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. 2019-001838

SRP 2011-6, LLC..... Respondent,

v.

Alluette K. Jones, South Carolina Federal Credit Union,
Synovus Bank, and Historic Charleston Foundation.....Defendants,

Of whom Alluette K. Jones is the.....Appellant.

INITIAL BRIEF OF RESPONDENT

Andrew M. Sullivan
SC Bar No.: 100464
Clawson and Staubes, LLC
1612 Marion Street, Suite 200
Columbia, SC 29201
(800) 774-8242

Attorneys for Respondent

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STATEMENT OF CASE[1]

This appeal results from the Master in Equity's Form 4 Order that was filed October 25, 2019 following a hearing that occurred on the morning of October 15, 2019 before the Master in Equity of Charleston County on the Emergency Motion and Demand for Relief from Final Judgment per Rule 60(b)(4), SCRCP, of the Appellant, Alluette Karen Jones (hereinafter "Appellant" or "Ms. Jones"). The underlying mortgage foreclosure action was filed on May 7, 2018 by the Respondent, SRP 2011-6, LLC (hereinafter "Respondent" or "SRP"). (*See generally* Compl., R. ____). An Affidavit of Service reflecting personal service of the Lis Pendens, Summons, Complaint, Notice of Right to Foreclosure Intervention, Notice of Intent to Refer, Corporate Verification, Exhibits, Certificate of ADR Exemption and Civil Action Coversheet on the Appellant on May 10, 2018 was filed May 11, 2018. (Aff. of Serv., R. ____).

An Affidavit of Default, Affidavit as to Non-Military Service, Certification of Exemption from Administrative Order 2011-05-02-01, and Certificate of Mailing was filed on July 17, 2018. (Aff. of Default, Aff. of Non-Military, Cert. of Exempt. Admin. Order, and Cert. of Mailing, R. _____). The foregoing were submitted to the Charleston Clerk of Court concurrently with an Order of Default and Order of Reference to the Honorable Mikell R. Scarborough, Master in Equity for Charleston County, which were entered and filed on July 24, 2018 and July 30, 2018, respectively. (Ord. of Default, R. _____, Ord. of Reference, R. _____).

The final judgment foreclosure hearing was held on February 12, 2019 and attended by the Appellant. (Transcript 2/12/19 Hearing, pp. 1, R. _____). The Master in Equity entered the Order and Judgment of Foreclosure and Sale on February 26, 2019 and the property was ordered to be

[1] Respondent objects to the Statement of the Case presented by the Appellant as in violation of Rule 208(b)(1)(C), SCACR, because it contains contested matters and arguments.

sold at the May 7, 2019 foreclosure sale by the Master in Equity. (Ord. and Jdgmt. of Foreclosure and Sale, R. _____; Transcript 2/12/19 Hearing, pp. ___, R. _____). The Certificate of Mailing reflecting service of the Order and Judgment of Foreclosure and Sale and Notice of Sale on the Appellant was filed March 21, 2019. (Cert. of Mailing, R. _____). After a series of bankruptcy filings by the Appellant, the property was duly advertised for judicial sale and scheduled to be sold by the Master in Equity on October 15, 2019. (Aff. of Pub., R. _____, Cert. of Mailing, R. _____).

Appellant filed the Emergency Motion and Demand for Relief from Final Judgment per Rule 60(b)(4), SCRCP, ("Emergency Motion") on October 11, 2019, largely disputing that she had not been served with the underlying pleadings. (Emerg. Mot. Rule 60(b)(4), SCRCP, R: _____). The Emergency Motion was heard by the Master in Equity on October 15, 2019 and denied at the hearing per the Form 4 Order filed October 25, 2019. (Transcript 10/15/19, pp. __, R. _____; Form 4 Ord., R. _____). The Master in Equity found and held, among other things, that the affidavit of service clearly describes Ms. Jones and that she identified herself and accepted service of the pleadings in the case. (Form 4 Ord., R. _____). Further, the Master in Equity found that "Defendant's Motion was filed in an attempt to delay the foreclosure process and that the Defendant had acted in bad faith." (*Id.*, R. _____). The Court referenced the September 18, 2019 bankruptcy court Order Granting Relief from Automatic Stay and *In Rem* Relief entered by the Honorable John E. Waites in Case No. 19-04160-jw as additional support for the denial. (Ord. Granting Rel. Aut. Stay and In Rem Rel., R. _____).

Following the denial of the Appellant's Emergency Motion, the Master in Equity sold the underlying property at the scheduled judicial sale on the same date, October 15, 2019, to third party bidder, Troy Barber, who was the successful high bidder. Appellant did not post a bond to stay the foreclosure sale and no motion for supersedeas or to stay the sale was made prior to the

property being sold by the Master in Equity. The Appellant subsequently filed her Notice of Appeal of the Master in Equity's ruling and Form 4 Order denying the Emergency Motion with this Court on November 1, 2019.

STATEMENT OF FACTS[2]

This appeal results from a lawful mortgage foreclosure action involving residential real property situated in Charleston County, South Carolina. Respondent sought to foreclose upon a Mortgage given by Alluette K. Jones to First Federal Savings and Loan Association of Charleston, its successors and assigns, on July 27, 2006. (Compl. Exhibits, R. ____). The Mortgage secured a Note given by Alluette K. Jones to First Federal Savings and Loan Association of Charleston on the same date. (*Id.*, R. ____). The Mortgage was recorded in the RMC/ROD Office for Charleston County in Book V593 at Page 743. (*Id.*, R. _____). The terms of the Note and Mortgage were modified on or about June 1, 2009 by virtue of that certain Amendment to Note and/or Mortgage recorded in the RMC/ROD Office for Charleston County in Book 0105 at Page 736. (*Id.*, R. _____). The Mortgage was assigned to SRP 2011-6, LLC by virtue of an Assignment of Mortgage dated November 12, 2011 and recorded in the RMC/ROD Office for Charleston County on February 3, 2012 in Book 0231 at Page 599. (*Id.*, R. _____).

Respondent initiated this foreclosure action against Appellant by filing the Lis Pendens, Summons, Complaint, Notice of Right to Foreclosure Intervention, Notice of Intent to Refer, Corporate Verification, Exhibits, Certificate of ADR Exemption and Civil Action Coversheet on May 7, 2018. (*See generally* Compl., R. ____). The Complaint alleged that the Appellant had defaulted on the Note and Mortgage by failing to make all of the required payments, and

[2] Respondent disagrees and disputes almost the entirety of the facts posited in Appellant's Initial Brief pursuant to, and as required by, Rule 208(b)(1)(C), SCACR. Moreover, Appellant appears to advance legal argument in the facts of her initial brief.

Respondent was entitled to enforce the terms thereof by declaring the entire indebtedness due and payable and seek foreclosure of the Mortgage. (*Id.* at ¶ 12-13, 16-19, R. ____).

An Affidavit of Service reflecting personal service of the Complaint[3] on the Appellant on May 10, 2018 was filed May 11, 2018. (Aff. of Serv., R. ____). Specifically, the Affidavit of Service for Appellant provides in pertinent part that Alluette K. Jones was served at her dwelling house or usual abode on May 10, 2018 at 7:12 PM, at the address of 142 Coming St., Charleston, Charleston County, SC 29403. (*Id.*, R. ____). Further, according to the affidavit, the pleadings were personally delivered upon Alluette K. Jones, who accepted service, with identity confirmed by subject stating their name, a black female approx. over 65 years of age, 5'6"-5'8" tall, weighing 140-160 lbs with gray hair with glasses – her hair more white than gray. (*Id.*, R. ____). Appellant did not file an answer or responsive pleading and was held in default pursuant to the Order of Default filed July 24, 2018. (Aff. of Default, R. ____, Ord. of Default, R. ____). The Order of Default was never challenged or appealed by the Appellant and no motion was ever made to set aside the same. The case was referred to the Honorable Mikell R. Scarborough, Master in Equity for Charleston County, pursuant to the Order of Reference filed July 30, 2018. (Ord. of Ref., R. ___).

A final judgment foreclosure hearing before the Master in Equity was scheduled for November 13, 2018 but cancelled due to a loss mitigation review. (Transcript 2/12/19 Hearing, pp. 1, R. _____, Transcript 10/15/19, pp. __, R. ____). Upon an unsuccessful loss mitigation resolution, the foreclosure hearing was rescheduled before the Master in Equity on February 12, 2019 at 10:00 a.m. (Not. of Hearing and Cert. of Mailing filed January 10, 2019, R. ____).

[3] Including the Lis Pendens, Summons, Complaint, Notice of Right to Foreclosure Intervention, Notice of Intent to Refer, Corporate Verification, Exhibits, Certificate of ADR Exemption and Civil Action Coversheet.

The Appellant voluntarily appeared at the final judgment default foreclosure hearing on February 12, 2019. (Transcript 2/12/19 Hearing, pp. 1-9, R. _____). At the hearing, the Appellant acknowledged she was aware of the pending lawsuit, admitted to having been recently considered for a loan modification by Respondent and having been in communication with Respondent's counsel when she stated, "I am going to settle this lawsuit...That's what I was telling Mr. Sullivan. He and I have been in communication. It's not like I didn't want to communicate with you guys. I was hoping that I could have gotten a modification so that they could put what I owe on the backside." (*Id.*, pp. 7, R. _____). At no point in the February 12, 2019 hearing did Appellant ever contest the default, lack of service of process, or the Court's jurisdiction over the matter. (*Id.*, pp. 1-9, R. _____). Appellant simply requested additional time to try and settle a pending personal injury lawsuit and/or sell a parcel of property she believed would be sufficient to either reinstate or payoff the Respondent's mortgage loan as she had done before in a prior foreclosure action between Appellant and Respondent. (*Id.*, pp. 3-6, 8-9, R. _____). The Master in Equity agreed to push back the judicial foreclosure sale to May 7, 2019 and notified Appellant of the same. (*Id.*, pp. 8-9, R. _____). A copy of the Record of Hearing and proposed Master in Equity's Order and Judgment of Foreclosure and Sale was provided to Appellant at the February 12, 2019 hearing.

The Master in Equity formally entered the Order and Judgment of Foreclosure and Sale on February 26, 2019 along with the Record of Hearing. (Ord. and Jdgmt. of Foreclosure and Sale, R. _____; Rec. of Hearing, pp. ___, R. _____). The Certificate of Mailing reflecting service of the Order and Judgment of Foreclosure and Sale and Notice of Sale on the Appellant was filed March 21, 2019. (Cert. of Mailing filed March 21, 2019, R. _____). The Order and Judgment of Foreclosure and Sale was not appealed by the Appellant and no motion was ever made to set aside the same.

On May 6, 2019, one day prior to the scheduled foreclosure sale of May 7, 2019, the Appellant filed a *pro se* voluntary petition under Chapter 13 of the United States Bankruptcy Code in Bankruptcy Case No. 19-02497-jw. (Ord. Granting Rel. Aut. Stay and In Rem Rel., ¶ 7, R. _____). Appellant's bankruptcy case was dismissed on or about June 18, 2019 for, among other things, failing to file required documents. (*Id.*, ¶ 8, R. _____). Upon the dismissal, Respondent rescheduled the judicial foreclosure sale with the Master in Equity for Charleston County for August 6, 2019 and duly advertised for the same. (*Id.*, ¶ 9, R. ____, Aff. of Pub., R. ____). On August 5, 2019, again, one day prior to the scheduled foreclosure sale, Appellant filed a *pro se* voluntary petition under Chapter 13 of the United States Bankruptcy Code in Bankruptcy Case No. 19-04160-jw. (*Id.*, ¶ 10, R. _____). On September 18, 2019, the Honorable John Waites of the U.S. Bankruptcy Court entered an Order Granting Relief from Automatic Stay and *In Rem* Relief in Case No. 19-04160-jw in which he found and concluded that Appellant had acted in bad faith and abused the bankruptcy process to delay the foreclosure process. (*Id.*, ¶15 and Conclusions of Law, R. ___). Thereafter, the Order Granting Relief from Automatic Stay and *In Rem* Relief was recorded in the RMC/ROD for Charleston County on September 26, 2019, in Book 824 at Page 701. Respondent subsequently rescheduled the judicial foreclosure sale with the Master in Equity for Charleston County for October 15, 2019, and duly advertised for the same. (Aff. of Pub. dated 10/8/19, R. ___).

On October 11, 2019, Appellant filed her Emergency Motion. (Emerg. Mot. Rule 60(b)(4), SCRCP, R: _____). The Master in Equity's office learned of the filing of the Emergency Motion on the afternoon of October 14, 2019 and promptly alerted Respondent's counsel of the filing which the same was otherwise unaware of. (Transcript 10/15/19, pp. 11-12, R. _____). The Emergency Motion was set for hearing the following morning, October 15, 2019, just prior to the

foreclosure sale. (*Id.*, pp. 1, R. ____). Although difficult to ascertain the specific issues and arguments raised by Appellant in her Emergency Motion due to its convoluted and fragmented nature, the Master in Equity interpreted the motion to principally contend that Appellant was disputing service of process, and the Appellant agreed. (*Id.*, pp. 3, R. _____). Appellant claimed she was not served, had no record of being handed information from the process server, and wanted the matter "thrown out" because she was not served. (*Id.*, pp. 4, R. ___). Appellant further claimed that her daughter had some sort of medical event on the date of service which caused Appellant to be away from the residence some of the day. (*Id.*, pp. 4, R. ___).

Counsel for Respondent countered the argument of Appellant by taking the Master in Equity through the procedural history of the action and position of Respondent with respect to the Emergency Motion, including, but not limited to: (1) the prior communications and correspondence between the parties; (2) the familiarity Appellant and counsel for Respondent had with one another[4]; (3) the Affidavit of Service's highly descriptive physical appearance of the Appellant which he believed accurately describes the Appellant and the confirmation of her identity to the process server; (4) the Appellant's prior voluntary appearance at the foreclosure hearing (on February 12, 2019) and her failure to raise service as an issue at that hearing; (5) the multiple bankruptcy filings of the Appellant and the finding of the bankruptcy court that Appellant had engaged in a scheme to delay and hinder creditor from pursuing relief and seeking foreclosure; and (6) the overall belief that Appellant had full knowledge of the lawsuit, had in fact been served

[4] Respondent previously filed a foreclosure action against Appellant involving the same property which is the subject of the instant case (*See* Civil Action No.: 2014CP1007602). Respondent's counsel and Appellant had extensive communications and correspondence with one another in that matter developing a familiarity with each other. Appellant ultimately was able reinstate the mortgage resulting in a dismissal of that action.

in the action, and was otherwise attempting to delay Respondent's foreclosure of the property. (*Id.*, pp. 5-8, R. ___).

Based on the arguments of the parties, the Master in Equity found that Appellant had, in fact, been properly served in the foreclosure action and made specific care to point out that Appellant had had "ample opportunity to bring this to the Court's attention" at the February hearing or otherwise. (*Id.*, pp. 10, 11-12, R. ___). The Master in Equity further found, echoing the bankruptcy court's finding, that Appellant had engaged in bad faith to delay the foreclosure. (*Id.*, pp. 10, R. ___). The Emergency Motion was denied and the Appellant was advised that the property would be sold at that morning's foreclosure sale. (*Id.*, pp. 13, R. ___).

The Master in Equity presided over and sold the subject property at the judicial foreclosure sale on October 15, 2019 and a third party bidder, Troy Barber, was the successful high bidder. Appellant did not post a bond to stay the foreclosure sale and no motion for supersedeas or to stay the sale was made prior to the property being sold by the Master in Equity. The Appellant subsequently filed her Notice of Appeal of the Master in Equity's ruling and Form 4 Order denying the Emergency Motion with this Court on November 1, 2019. Appellant's proof of service of the Notice of Appeal indicates Respondent was served with the Notice of Appeal on October 26, 2019. While Respondent does not agree with the above service date, Respondent does appear to have received the Notice of Appeal via the United States Postal Service in a priority mail package postmarked October 17, 2019.

STANDARD OF REVIEW

Motions for relief under Rule 60(b), SCRCP, are within the master's discretion, and will not be reversed absent an abuse of discretion. *Hillman v. Pinion*, 347 S.C. 253, 255-56, 554 S.E.2d 427, 429 (Ct. App. 2001). An abuse of discretion occurs when the master's order is controlled by

an error of law or is without evidentiary support. *Id.* The movant in a Rule 60(b), SCRCP, motion has the burden of presenting evidence proving the facts essential to entitle him to relief. *BB&T v. Taylor*, 369 S.C. 548, 552, 633 S.E.2d 501, 503 (2006).

ARGUMENT

I. THE TRIAL COURT CORRECTLY DETERMINED THAT IT HAD JURISDICTION OVER THE APPELLANT AND THAT SHE HAD BEEN PROPERLY SERVED PURSUANT TO RULE 4(D), SCRCP.

Appellant contends that she was never served with the Summons and Complaint in the foreclosure action and, therefore, the Master in Equity did not have jurisdiction over the matter. Appellant's Emergency Motion was labeled a Rule 60(b)(4) Void Order/Judgment. (Emerg. Mot. Rule 60(b)(4), SCRCP, R: ____). "In determining whether to grant a motion under Rule 60(b), the trial judge should consider: (1) the promptness with which relief is sought, (2) the reasons for the failure to act promptly, (3) the existence of a meritorious defense, and (4) the prejudice to the other party." *Mictronics, Inc. v. South Carolina Dep't of Revenue*, 345 S.C. 506, 510-11, 548 S.E.2d 223, 226 (Ct. App. 2001). Further, Rule 60(b)(4), SCRCP, provides that a party may seek relief from judgment where the judgment is void. However, the definition of void for Rule 60(b)(4) purposes "only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction." *McDaniel v. U.S. Fid. & Guar. Co.*, 324 S.C. 639, 644, 478 S.E.2d 868, 871 (Ct. App. 1996). "A judgment is not rendered void by irregularities which do not involve jurisdiction." *Universal Benefits, Inc. v. McKinney*, 349 S.C. 179, 183, 561 S.E.2d 659, 661 (Ct. App. 2002)

The record before this Court demonstrates that Appellant did not promptly seek relief, that she failed to advance any meaningful reason for her failure to act promptly, that the existence of a meritorious defense is specious or unsubstantiated, and Respondent would have been prejudiced

by granting the relief sought. The facts and evidence before the trial court, when applied with the law, simply do not support Appellant's position. Additionally, the Master in Equity did not abuse his discretion or lack evidentiary support for his ruling.

A. There was no defect in the service of process and the Master in Equity did not abuse his discretion in determining that Appellant had been served in the action.

Rule 4, SCRCP, governs service of process. "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. Exacting compliance with the rules is not required to effect service of process. Rather, inquiry must be made as to 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." *Moore v. Simpson*, 322 S.C. 518, 473 S.E.2d 64, 66 (Ct. App. 1996). "Further, an [officer's] return of process creates the legal presumption of proper service that cannot be 'impeached by the mere denial of service by the defendant.'" *Fassett v. Evans*, 364 S.C. 42, 47, 610 S.E.2d 841, 844 (Ct. App. 2005) (quoting *Richardson Constr. Co. v. Meek Eng'g and Constr., Inc.*, 274 S.C. 307, 311, 262 S.E.2d 913, 916 (1980).

First, with respect to the Affidavit of Service and finding of the Master in Equity that Appellant had been served, it is clear that the Master in Equity neither committed any error at law nor abused his discretion in reaching the determination that service had been effected on the Appellant. Respondent complied with the rule for personal service and presented an affidavit of service to the trial court, and, thus, proper service is presumed. *See Delta Apparel, Inc. v. Farina*, 750 S.E.2d 615, 620, 406 S.C. 257, 267 (S.C. App. 2013).

The Master in Equity reviewed and read directly from the Affidavit of Service which described the physical appearance of the Appellant in great detail and stated, while physically observing the Appellant before him at hearing, "Ms. Jones, that certainly appears to describe you

and according to the affidavit of the process server, he confirmed your identity with you at the time of service." (Transcript 10/15/19, pp. 9, R. ___). The Master in Equity further noted, "...the affidavit of the process server, *who's got no stake in the case*, says that Alluette K. Jones accepted service with identity confirmed by subject stating their name." (Emphasis added) (*Id.*, pp. 11, R. ___).

With an Emergency Motion filed just a few days before the property was sold at a foreclosure sale, the Appellant previously appearing before the Master in Equity at the February 12, 2019 default foreclosure hearing[5], and being aware of the Appellant's previous attempts to thwart the foreclosure process by filing bad faith bankruptcy cases, the Master in Equity presiding over the Emergency Motion hearing is in the best position to assess the credibility of the Appellant and her testimony." See *Pinckney v. Warren*, 344 S.C. 382, 387, 544 S.E.2d 620, 623 (2001). The Master in Equity was correct to conclude that Appellant's claims lacked merit and deny the Emergency Motion of Appellant. Appellant has further failed to meet her burden in demonstrating that the Master in Equity lacked evidentiary support for his ruling. Therefore, the Master in Equity's ruling that service of process was properly effected, and, thus, personal jurisdiction established on the Appellant, should be affirmed.

B. Appellant voluntarily appeared at the February 12, 2019 default foreclosure hearing therefore conclusively establishing the trial court's personal jurisdiction over the Appellant.

While the Master in Equity was correct in finding that the Appellant had been served pursuant to the Affidavit of Service as provided above, the Appellant's argument that she was not served and that the trial court lacked jurisdiction is further defeated, and perhaps even more so,

[5] Including previous foreclosure hearings before the Master in Equity as referenced in prior foreclosure actions. See, *supra*, footnote 4.

because the Appellant personally availed herself of the jurisdiction of the trial court when she voluntarily appeared at the final judgment foreclosure hearing on February 12, 2019. (Transcript 2/12/19 Hearing, pp. 1-9, R. _____).

It is well established by this Court, and by the South Carolina Rules of Civil Procedure, that the voluntary appearance by a defendant constitutes personal service. *See* Rule 4(d), SCRCP. "Although a court commonly obtains personal jurisdiction by the service of the summons and complaint, it may also obtain personal jurisdiction if the defendant makes a voluntary appearance." *Stearns Bank Nat'l Ass'n v. Glenwood Falls, LP,* 373 S.C. 331, 337, 644 S.E.2d 793, 796 (Ct.App.2007); see also *S.C. Dep't of Social Services ex rel. Roseboro v. Burris*, 297 S.C. 537, 377 S.E.2d 578 (1989) (A father's "voluntary appearance was equivalent to personal service, vesting the Family Court with jurisdiction). "A defendant may waive any complaints he may have regarding personal jurisdiction by failing to object to the lack of personal jurisdiction and by appearing to defend his case." *State v. Dudley,* 354 S.C. 514, 542, 581 S.E.2d 171, 186 (Ct. App.2003). Objections to personal jurisdiction are waived unless raised. See *Bakala v. Bakala,* 352 S.C. 612, 630, 576 S.E.2d 156,165 (2003). Additionally, failure to timely assert improper service waives any issue regarding its validity. *Garner v. Houck*, 312 S.C. 481, 435 S.E.2d 847 (1993).

At no point in the February 12, 2019 hearing did Appellant ever raise service of process as an issue, question the Court's jurisdiction over the matter, or mention any other perceived violation of law. (Transcript 2/12/19, pp. 1-9, R. _____). To the contrary, Appellant acknowledged having been aware of the lawsuit, did not deny the default, and acknowledged having been in contact with the Respondent and/or its counsel. (*Id.*, pp. 3-6, 8-9, R. _____). Appellant simply wanted additional time from the Master in Equity to settle a pending personal injury lawsuit and/or sell a

parcel of property she believed would be sufficient to either reinstate or payoff the Respondent's mortgage loan as she had done before in a prior foreclosure action between the Appellant and Respondent. (*Id.*, pp. 3-6, 8-9, R. _____). The Master in Equity afforded Appellant the additional time sought.

Having been involved in prior foreclosure proceedings alone should have been enough for Appellant to have a basic understanding and familiarity with the legal process. "A *pro se* litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law." *State v. Burton*, 356 S.C. 259, 265, n. 5, 589 S.E.2d 6, 9 n. 5 (2003). In South Carolina Courts a *pro se* litigant is held to the same standard as an attorney. See *State v. Hollman*, 232 S.C. 489, 498, 102 S.E.2d 873, 877 (1958). It is critically important to note that the Appellant never raised an issue regarding the alleged defective service of process or challenge the jurisdiction of the Master in Equity from the February 12, 2019 foreclosure hearing to October 11, 2019. If in fact she was aggrieved, as alleged, Appellant never provided justification or a legitimate reason for failing to raise the issues at an earlier. Instead, she waited for nine (9) months to pass, filed multiple frivolous bankruptcy cases, and then made a desperation emergency motion to the Master in Equity just a few days before her house was sold.

The law is clear, at a minimum, the trial court was vested of personal jurisdiction over the Appellant the moment she voluntarily appeared at the final judgment default hearing on February 12, 2019. By failing to object to personal jurisdiction at that hearing or raising issues regarding service of process, any future objection to the same was waived by the Appellant. See *Bakala,* 352 S.C. 612, 630, 576 S.E.2d 156,165 (2003); see also *Garner v. Houck*, 312 S.C. 481, 435 S.E.2d 847 (1993).

C. Appellant failed to appeal the Master in Equity's Order and Judgment of Foreclosure and Sale and the unappealed ruling is the law of the case which requires affirmance by this Court.

As set forth above, there is no dispute that the Appellant appeared at the final judgment default foreclosure hearing on February 12, 2019 and acknowledged that she was aware of the lawsuit, and had been in contact with Respondent and its counsel, etc. (Transcript 2/12/19 Hearing, pp. 7, R. ___). Appellant received a copy of the proposed Order of Foreclosure and Record of Hearing at the February 12, 2019 hearing and Appellant was unquestionably notified of the Master in Equity's order and intent to sell the property at the May 7, 2019 judicial foreclosure sale. (*Id.*, pp.9, R.____). Subsequently, Appellant was duly served on March 19, 2019 with the Order of Foreclosure at the property address which Appellant undisputedly resided and no appeal of that order was ever filed. (Cert. of Mailing filed ____, R. ___).

"The doctrine of the law of the case applies to an order or ruling which finally determines a substantial right." *Weil v. Weil*, 299 S.C. 84, 89, 382 S.E.2d 471, 473 (Ct. App. 1989) (quoting, in part, 21 C.J.S. Courts Section 195 at 335 (1940)). "An unappealed ruling is the law of the case and requires affirmance." *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013). "Under the law of the case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court." *Judy v. Martin*, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (S.C. 2009); see also *Buckner v. Preferred Mut. Ins. Co.*, 255 S.C. 159, 160-161, 177 S.E.2d 544 (S.C. 1970) (holding that an unappealed ruling, whether right or wrong, is the law of the case).

By being present at the February 12, 2019 hearing and subsequently failing to appeal the Order of Foreclosure, that very same order became the "law of the case" and the question, if any, regarding personal jurisdiction and service of process was effectively settled as a matter of law.

See *Mathis v. S.C. State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973) ("A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy. This is true when some event occurs making it impossible for reviewing Court to grant effectual relief."); *Byrd v. Irmo High Sch.*, 321 S.C. 426, 430, 468 S.E.2d 861, 864 (1996) ("Before any action can be maintained, there must exist a justiciable controversy."); *Id.* at 431, 468 S.E.2d at 864 ("This Court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy.").

In not raising an objection to the personal jurisdiction of the trial court at the February 12, 2019 final judgment default foreclosure hearing and not filing an appeal to the Order of Foreclosure, the issue of personal jurisdiction was waived and abandoned by the Appellant. The Master in Equity appropriately and correctly found that service of process on the Appellant was proper, therein conclusively establishing and vesting the Court with personal jurisdiction over the Appellant. Accordingly, the Order of Foreclosure is the law of the case, there no longer exists a justiciable controversy regarding the issue of personal jurisdiction or otherwise, and this Court may not take up the issue on appeal as the matter is moot.

D. This Court cannot consider Appellant's appeal based on her motion pursuant to Rule 60, SCRCP, because Appellant failed to appeal the Master in Equity's Order and Judgment of Foreclosure and Sale.

The appeal of Appellant, based on her last minute Emergency Motion pursuant to Rule 60(b)(4) filed on the eve of the judicial foreclosure sale of her property is not appropriate for consideration by this Court because the Appellant previously had an opportunity to raise the alleged jurisdiction and service of process issue (or any other alleged issue or perceived violation of law) before the trial court at hearing on February 12, 2019, or otherwise appeal the Order of Foreclosure which was served on her, and she failed to do so. A party may not invoke Rule 60,

SCRCP, where it could have pursued the issue on appeal. See *Tench v. S.C. Dep't of Educ.*, 347 S.C. 117, 121, 553 S.E.2d 451, 453 (2001). "Relief from judgment under Rule 60, SCRCP, should not be considered a substitute for appeal from a final judgment, particularly when it is clear the party seeking relief could have litigated at trial and on appeal the claims he now makes by motion." *Smith Cos. of Greenville v. Hayes*, 311 S.C. 358, 359, 428 S.E.2d 900, 902 (Ct. App. 1993).

Appellant's Rule 60(b) motion is nothing but an attempt to re-litigate issues that could have been raised in earlier proceedings but was not. The issues of service of process and jurisdiction of the Court over the Appellant had already been established as the "law of the case" once the Order of Foreclosure went unappealed, as argued above. Appellant would have known of the alleged jurisdictional and service of process defects well before the filing of her Emergency Motion, yet she never appealed the Order of Foreclosure.

E. The Master in Equity had subject matter jurisdiction over the matter.

While it does not appear entirely clear whether Appellant is specifically questioning the subject matter jurisdiction of the Master in Equity to hear and preside over the foreclosure action, to the extent that she is, subject matter jurisdiction is proper. Subject matter jurisdiction is the power of a court to hear a general class of cases, and Masters-in-Equity have power to hear foreclosure actions. See *Johnson v. S.C. Dep't of Prob., Parole, & Pardon Servs.*, 372 S.C. 279, 284, 641 S.E.2d 895, 897 (2007) ("Stated somewhat differently, 'subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong.'" (quoting *State v. Gentry*, 363 S.C. 93, 100, 610 S.E.2d 494, 498 (2005))); Rule 53(b), SCRCP ("In . . . an action for foreclosure, some or all of the causes of action in a case may be referred to a master . . . .").

There is no dispute that the underlying cause of action of the Respondent is a mortgage foreclosure action involving property situated in Charleston County. Even in Appellant's disjointed and otherwise hard to follow brief, there does not appear to be any question that the subject at large concerns the foreclosure of Appellant's residence. As is customary in mortgage foreclosure actions throughout South Carolina, Respondent appropriately referred the matter to the Master in Equity for Charleston County pursuant Rule 53(b), SCRCP, to make findings of fact and conclusions of law and to enter final judgment in the matter. (Ord. of Ref., R. ___). The Order of Reference specifically retained jurisdiction in the Master in Equity to hear any action contesting the validity of the foreclosure action or sale or any motions pursuant to Rule 60(b), SCRCP. (*Id.*, pp. 2, R. ___). The Appellant never appealed nor did she otherwise move to challenge the Order of Reference. Therefore, subject matter jurisdiction is proper before the Master in Equity.

II. APPELLANT FAILED TO PRESERVE ALL ISSUES RAISED ON APPEAL, INCLUDING A SHOWING OF ANY ERROR IN THE MASTER IN EQUITY'S GRANTING OF THE FORECLOSURE JUDGMENT, ANY VIOLATION OF APPELLANT'S CONSTITUTIONAL RIGHTS TO DUE PROCESS AND EQUAL PROTECTION OF THE LAW, AND ANY VIOLATION OF APPELLANT'S CIVIL RIGHTS.

The Appellant has raised issues on appeal that were never raised to or otherwise ruled upon by the Master in Equity. Moreover, for the reasons set forth in the argument above, Appellant had proper notice of and failed to appeal the Order of Foreclosure which is the "law of the case." Accordingly, Appellant's arguments are not properly before this Court and should not be considered. Regardless, Appellant did not preserve her issues on appeal.

"Preserving issues for appellate review is a fundamental component of appellate practice." *Kennedy v.* S. C. *Ret. Sys.*, 349 S.C. 531, 532-33, 564 S.E.2d 322, 323 (2001). "It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the [master] to be preserved for appellate review. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497

S.E.2d 731, 733 (1998). "[T]o preserve an issue for appellate review, a matter may not be raised for the first time on appeal, but must have been both raised to and ruled upon by the trial court." *Hill v* S.C. *Dep't of Health & Envtl. Control,* 389 S.C. 1, 21, 698 S.E.2d 612, 623 (2010) (citing *Wilder Corp.,* 330 S.C. 71, 497 S.E.2d 731 (1998)). "The issue must be sufficiently clear to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the judge." *Malloy v. Thompson,* 409 S.C. 557, 561, 762 S.E.2d 690, 692 (2014) (citations omitted)). "The losing party must first try to convince the lower court it is has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred." *I'On, L.L.C. v. Town of Mt. Pleasant,* 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). "A bald assertion, without supporting argument, does not preserve an issue for appeal." *In re McCracken,* 346 S.C. 87, 92, 551 S.E.2d 235, 238 (2001) (citing *Wilder Corp.,* 330 S.C. 71, 497 S.E.2d 731 (1998)). "If [a] review of the record establishes that an issue is not preserved, then [this Court] should not reach it." *Atl. Coast Builders & Contractors, LLC v. Lewis,* 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012).

In this instance, the Appellant filed her Emergency Motion and, when before the Court at hearing the morning of the foreclosure sale, October 15, 2019, she consented that the basis of the Emergency Motion was limited to the issue of service of process and the jurisdiction of the Master in Equity. (Transcript 10/15/19, pp. 3, 13, R. ___). Therefore, those were the only issues ruled upon by the Master in Equity and those are the only issues potentially capable of review by this court on appeal. Respondent again asserts that by appearing at the February 12, 2019 hearing, not raising the apparent issues of service of process and jurisdiction at that time, and not appealing Order of Foreclosure, the order is the "law of the case" and analysis or review of the question of jurisdiction and service of process is moot. See *Byrd v. Irmo High Sch.*, 321 S.C. 426, 430, 468 S.E.2d 861, 864 (1996).

In Appellant's brief, she raises for the first time a variety of issues which are, quite frankly, difficult to decipher and make sense of, including the alleged violation of constitutional and civil rights of the Appellant. More specifically, these issues run the gamut from breach of trust, wrongful foreclosure, fraud, negligence, slander, unfair practices, deprivation of constitutional rights (federal and state), abuse of process, malicious prosecution, lack of standing, evidentiary issues, etc. References are frequently made to federal law, the Federal Rules of Evidence, the Federal Rules of Civil Procedure or are cases which are not applicable to this state court action. Again, these issues are either being raised for the first time on appeal or were not raised to or otherwise ruled upon by the Master in Equity. Therefore, these issues are not preserved and this Court may not reach them. See *Atl. Coast Builders & Contractors, LLC v. Lewis,* 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012).

III. APPELLANT ABANDONED HER ISSUES ON APPEAL, INCLUDING BUT NOT LIMITED TO ANY VIOLATION OF APPELLANT'S CONSTITUTIONAL RIGHTS TO DUE PROCESS AND EQUAL PROTECTION OF THE LAW AND CIVIL RIGHTS.

Appellant routinely raises issues in this appeal by making only conclusory statements or arguments without providing any statutory or common law in support of her allegations; therefore, they should be considered abandoned. "Numerous cases have held that where an issue is not argued within the body of the brief but is only a short conclusory statement, it is abandoned on appeal." *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 99, 594 S.E.2d 485, 496 (Ct. App. 2004); see also *Wright v. Craft*, 372 S.C. 1, 20, 640 S.E.2d 486, 497 (Ct. App. 2006) (providing an issue listed in the statement of issues on appeal but not addressed in briefs is abandoned). Frivolous citations to irrelevant case law, statutes or legislation alone cannot substantiate a litigant's position; when a litigant cannot adequately support an issue that he or she raises with supporting legal authority, that issue must be considered abandoned. *Id.* Furthermore, the litigant possesses the burden to

argue his or her position using the case law and statutory authority referenced, if any. *Id.* It is not the duty of the [C]ourt to presume or deduce the intention behind a litigant's choice in a legal citation, or to speculate as to how the legal authority was meant to be used when a litigant carelessly inserts a legal citation into a brief without any supporting explanation. *Id.*

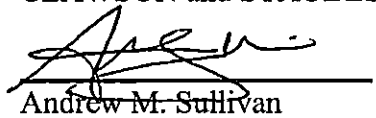
Throughout the Appellant's brief, she makes blanket statements but provides no context and advances no supporting argument to show how some particular authority, when applied to the facts, proves anything at all. Quite simply, they are just statements – words on a page. The "argument" section of Appellant's brief is limited to three (3) short conclusory paragraphs which do not contain any further discussion, explanation or any case law to support the conclusory statements. They also reference individuals, entities, and judges that are not even parties to the underlying case or this appeal. Therefore, it is clear that the Appellant has abandoned her issues by failing to provide any relevant authority for her arguments and this Court should not consider them.

Finally, it is a well-established legal doctrine that litigants are not permitted to use an appeal of one claim as a catch-all opportunity to raise any alleged outstanding or peripheral legal issues that they would like to address. See *Dunes West Golf Club, LLC v. Town of Mount Pleasant*, 401 S.C. 280, 302, 737 S.E.2d, 601, 612 (2013); see also *Caldwell v. Wiquist*, 402 S.C. 565, 576-77, 741 S.E.2d 583, 589-91 (2013). Perhaps that is the best characterization of what Appellant is doing here. Throw enough stuff at the wall and see what sticks. In this case, however, the issues raised by the Appellant were mooted by the entry of the Order of Foreclosure, not preserved for review by this Court and abandoned on appeal.

CONCLUSION

The record in this appeal is clear. The Master in Equity did not abuse his discretion or commit an error of law when ruling on the Emergency Motion of the Appellant. The Master in Equity is in the best position to assess credibility of Appellant and his ruling did not lack evidentiary support. In fact, the opposite is true. It is undisputed that the Appellant appeared at the foreclosure hearing on February 12, 2019, failed to raise jurisdictional or service of process issues at the hearing, and failed to appeal the Order of Foreclosure which deems the same the "law of the case." Further, Appellant failed to preserve or otherwise abandoned the other issues stated on appeal, including the alleged constitutional and civil rights violations. At every step of the way since the February 12, 2019 default foreclosure hearing, Appellant has taken deliberate and intentional actions to delay and hinder Respondent from pursuing its lawful rights to foreclose the subject property. For the foregoing reasons, this court should affirm the Master in Equity's Form 4 Order filed October 25, 2019 denying the Appellant's Rule 60(b) Emergency Motion.

CLAWSON and STAUBES, LLC



Andrew M. Sullivan
Bar No.: 100464
1612 Marion Street, Suite 200
Columbia, South Carolina 29201-2939
Phone: (800) 774-8242
Fax: (843) 722-2867
Email: asullivan@clawsonandstaubes.com
Attorney for Respondent

October 17, 2020

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SC Court of Appeals

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. 2019-001838

SRP 2011-6, LLC..... Respondent,

v.

Alluette K. Jones, South Carolina Federal Credit Union, Synovus Bank, and Historic Charleston Foundation.....Defendants,

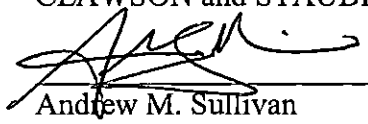
Of whom Alluette K. Jones is the.....Appellant.

PROOF OF SERVICE

I certify that I have served the *Respondent's Initial Brief and Designation of Matter to be Included in the Record on Appeal*, by depositing a copy of it in the United States Mail, postage prepaid, on October 17, 2020 to the Appellant as follows:

Alluette K. Jones
142 Coming St.
Charleston, SC 29403-6104

CLAWSON and STAUBES, LLC



Andrew M. Sullivan
Bar No.: 100464
1612 Marion Street, Suite 200
Columbia, South Carolina 29201-2939
Phone: (800) 774-8242
Fax: (843) 722-2867

Email: asullivan@clawsonandstaubes.com
Attorneys for Respondent

October 17, 2020

CLAWSON AND STAUBES LLC

Andrew M. Sullivan
Licensed in SC
asullivan@clawsonandstaubes.com

October 17, 2020

File No.: 20140012.007

VIA US MAIL AND EMAIL
Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211
ctappfilings@sccourts.org

Re: *SRP 2011-6, LLC v. Alluette K. Jones, et al.*
Appellate Case No.: 2019-001838

Dear Ms. Kitchings:

Enclosed please find the original and one (1) copy of the *Respondent's Initial Brief, Designation of Matter to be Included in Record on Appeal* and related *Proof of Service* to be filed in the above-referenced case. Please file the original and return a stamped, filed copy of the same in the self-addressed, stamped envelope provided for your convenience.

By copy of this letter, I am serving a copy of the *Respondent's Initial Brief, Designation of Matter to be Included in Record on Appeal* and related *Proof of Service* upon the Appellant.

Should you have any issues or questions regarding the above, please do not hesitate to contact my office at your convenience.

With kindest regards, I remain,

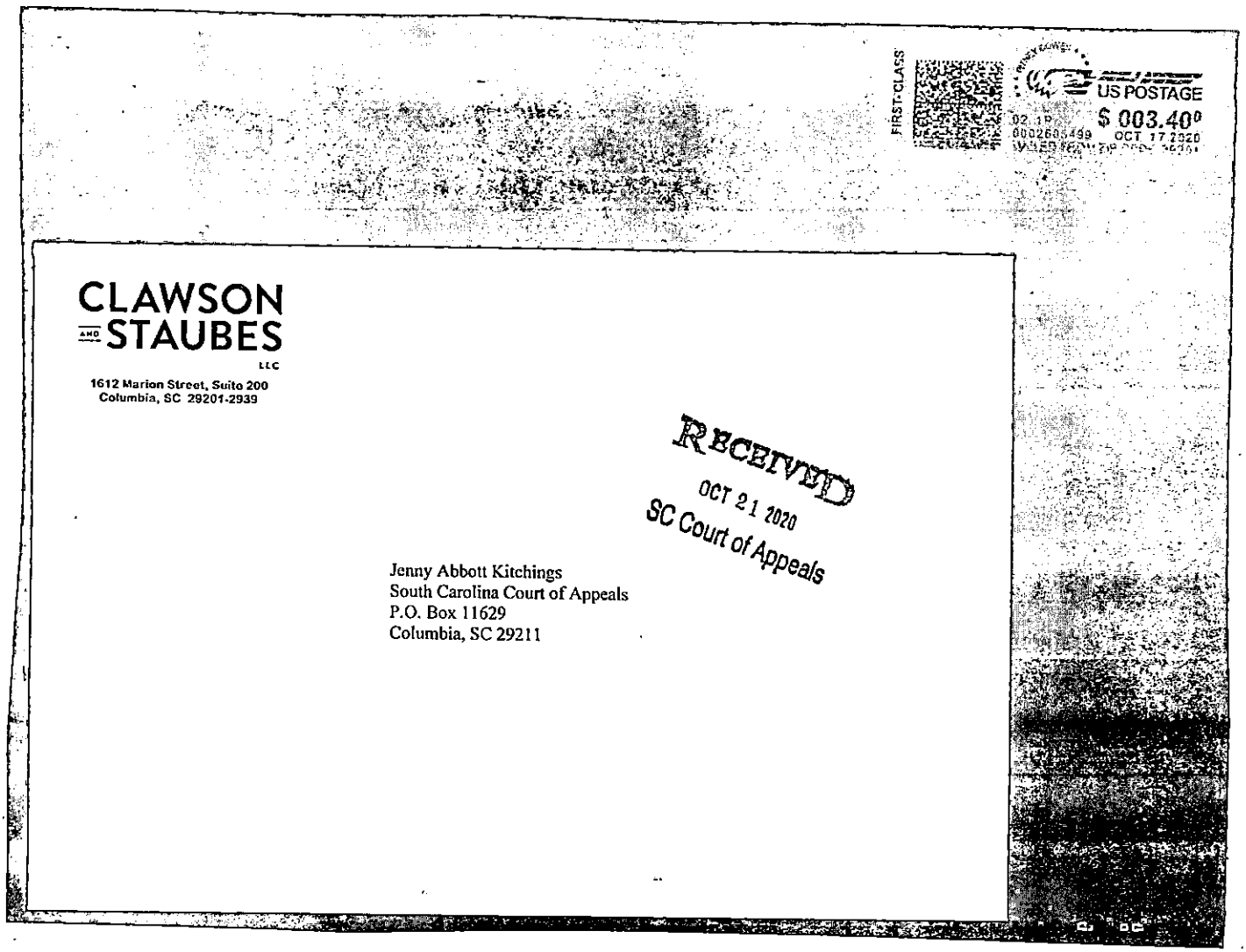
Very truly yours,

CLAWSON and STAUBES, LLC

Andrew M. Sullivan.

Enclosures

cc: Alluette Jones (via US Mail and Email)



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CLAWSON AND STAUBES LLC
1612 Marion Street, Suite 200
Columbia, SC 29201-2939

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Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211