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JUN 02 2021

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

[In The Supreme Court]

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APPEAL FROM MARION COUNTY

Court of Common Pleas

Thomas A. Russo, Circuit Court Judge

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Case No. 2013-CP-33-00306

Appellant Case No. 2018-002061

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Anderson Brothers Bank

Respondent,

Dazarhea Monique Parson, a/k/a Dazarhea D. Parson, a/k/a Dazarhea Monique Daniels Parson, A. Tyrone Parson, Jr. a/k/a Arnold Tyrone Parson Jr., South Carolina Department of Revenue and South Carolina Department of Motor Vehicles, Defendants, Of whom Dazarhea Monique Parson, a/k/a Dazarhea D. Parson, a/k/a Dazarhea Monique Daniels Parson, A. Tyrone Parson, Jr. a/k/a Arnold Tyrone Parson Jr.

Appellants,

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**Petition for Rehearing (En Banc)**

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This Petition for Rehearing (En Banc) is on accord with Rule 221(a), and 219(a)(1)(2) S.C.A.C.R. This Petition is based upon those certain points, factual and legal, which the Petitioners believe the court have overlooked, or misapprehended, as shown by the ultimate facts supported by the evidentiary facts stated herein.

### **The Decision on Appeal**

This opinion of this court was filed on May 19, 2021. To the extent allowed, Petitioners restates and by way of this reference reargues all matters set out in their Initial Brief, Reply, and Final Briefs previously received by Appellant Court. In this opinion it states, “We find the circuit court did not abuse its discretion by denying the petition for relief under 60(b)(4), because the petition was not filed within a reasonable time.” Petitioners respectfully submit that this court overlooked certain factual points, or misapprehended the points set forth below. “Rehearing is warranted when the court has overlooked or misapprehended an argument” Kennedy v. S.C. Retirement System 349 S.C. 531, 564 S.E. 2d 322 (2001). Petitioners move this court to grant Petition for Rehearing (En Banc) based off the facts stated herein.

### **Statement of Facts**

The Appellant Court overlooked and misapprehended and/or both the fact that Appellants Challenged the Jurisdiction of the court to enforce the foreclosure, order for sale and Writ of assistance order entered by a Special Referee that lacked the jurisdiction (subject matter, and personam) to enter. Jurisdiction should have been the first issue for the circuit court and Court of Appeals to determine before going into any other issues raised by Appellants. In order for the Special Referee to gain jurisdiction over the subject matter and the parties (personam) the parties must (i) all consent to go before the special referee See S.C.R.C.P Rule 53 or (ii) the matter is

removed from a non jury docket to a jury docket where a sitting judge must determine whether the issues raised are to go before a jury or special referee. In absence, of both, (i), and (ii) Special Referee has no jurisdiction to enter any rulings or orders, and should a special referee enter an order where he lacked jurisdiction the order is void from its inception. Under 60(b)(4), SCRPC, “The definition of “void” under the rule only encompasses judgments from courts which failed to provide due process...” **McDaniel v. U.S Fidelity & Guaranty Co.**, 324 S.C 639, 644, 478 S.E. 2d 868, 871 (Ct. App. 1996); Contra **Gatling v. Beach Palace, Inc.**, 294 S.C. 464, 365 S.E. 2d 736(Ct. App. 1988) (per curiam)(“holding that the reasonable time requirement does not apply to 60(b)(4) because a void judgment is a nullity and thus may be attacked at anytime”) Flanagan, South Carolina Civil Procedure 487(2<sup>nd</sup> ed. 1996). See e.g. **Lake v. Reeder Constr. Co.**, 330 S.C. 242, 248, 498 S.E. 2d 650, 653 (Ct.App.1998)(“Lack of Subject matter jurisdiction can be raise for the first time on appeal, and can be raised sua sponte by the court.”)

Special Referee lacked subject matter jurisdiction pursuant to South Carolina Rules of Civil Procedure 12(b)(1). Special Referee also lacked personam jurisdiction pursuant to South Carolina Rules of Civil Procedure Rule. 12(b)(2). “Once jurisdiction is challenged, the court cannot proceed when it clearly appears that the court has no authority to reach merits, but, rather, should dismiss the action.” **Melo v. US**, 505 F2d 1026; “A judgment rendered by a court without personal jurisdiction over the defendant is void, It is a nullity. **Sramek v. Sramek**, 17 Kan. App. 2d 573, 576-77, 840 P.2d 553 (1992); “Court must prove on the record, all jurisdiction fact related to the jurisdiction asserted.” **Latana v. Hopper, 102 F.2d 188; Chicago v. New York**, 37 F Supp. 150, “The law provides that once State and Federal Jurisdiction has been challenged, it must be proven.” **Main v. Thiboutot**, 100 S. Ct. 2502 (1980). “Jurisdiction can be challenged at any time.” And “Jurisdiction, once challenged , cannot be assumed and must be decided.

**Basso v. Utah Power & Light Co.**, 495 F.2d 906, 910. “Defense of lack of jurisdiction over the subject matter may be raised at any time, even on appeal.” **Hill Top Developers v. Holiday Pines Service Corp.**, 478 So. 2d. 368 (Fla 2<sup>nd</sup> DCA 1985). The circuit court has a wide range of discretion however, “There is no discretion to ignore that lack of jurisdiction.” **Joyce v. US**, 474 F2d 215. “The burden shift to the court to prove jurisdiction.” **Rosemond v. Lambert**, 469 F2d 416. The Special Referee and Respondents had full knowledge that Appellants objected to the Order of Reference pursuant to S.C.R.C.P Rule 53 and demanded a trial by jury pursuant to S.C.R.C.P Rule 38. “Thus, where a judicial tribunal has no jurisdiction of subject matter on which it assumes to act, its proceedings are absolutely void in the fullest sense of the term.” **Dillon v. Dillon**, 187 P 27. “A departure by a court from those recognized and established requirements of law, however close apparent adherence to mere form in method of procedure, which has the effect of depriving one of a constitutional right, is an excess of jurisdiction.” **Wuest v. Wuest**, 127 P2d 934, 937. Pursuant to the above precedent the actions of the Special Referee entering an order where he lacked proper jurisdiction was in excess of jurisdiction, therefore null and void. In light of the facts alleged, supported by evidentiary facts that the reasonable time requirement does not supersede jurisdictional issues. Furthermore, the Respondents have failed to provide any evidence that the Special Referee did have proper jurisdiction over parties.

### **Conclusion**

In conclusion, the circuit court did abuse its discretion by failing to determine the issues of whether or not the Special Referee had jurisdiction over subject matter and the parties. For all the reasons set out and referenced above, the Petitioners request that this matter be reheard by the

Court of Appeals, and determine whether the Special referee had proper jurisdiction (subject matter and personam) (Pursuant to S.C.R.C.P Rule 53) to enter a foreclosure and order for sale entered on August 5, 2013, and Writ of Assistance received October 1, 2015 and any other relief entitled in law or equity.

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May 28, 2021

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Appellants,

We certify that we served Appellants Petition for Rehearing (En Banc) in this case by depositing a copy of it on the date shown below in the United States Mail, and by postage prepaid addressed as follows:

Cc:

Suzanne Grigg

Post Office Drawer 2426

Columbia, South Carolina 29202

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

May 28, 2021

Respectfully submitted,

By: Arnold Jr. Dazarhea Parson

Arnold Jr., Dazarhea Parson Pro Se

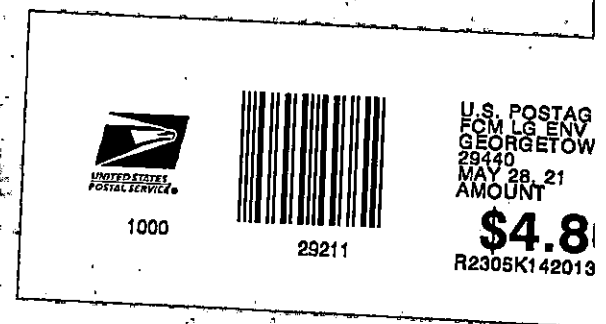
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