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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
James O. Spence, Master-in-Equity

Case No. 2011-CP-32-01205

Appellate Case No. 2020-001580

First Reliance Bank,

Respondent,

v.

Charles E. Bishop, Brett D. Blanks, BCM of Lexington, LLC d/b/a Dam Bar & Grill, B&H of Lexington, LLC, and Branch Banking and Trust Company of South Carolina, Defendants,

Of whom Brett D. Blanks, BCM of Lexington, LLC d/b/a Dam Bar & Grill, and B&H of Lexington, LLC are Appellants.

FINAL BRIEF OF APPELLANTS

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STATEMENT OF ISSUES ON APPEAL

1. Did the master-in-equity err in refusing to vacate the order affirming the appraisal panel return and the deficiency judgment where the master found the Receiver did not properly notify Appellants of their attorney's suspension from the practice of law and Appellants did not receive notice of the order or judgment and were not properly served with the order or judgment?

2. Did the circuit court err in denying Appellants' Rule 59(e) motion where the uncontroverted testimony before the master-in-equity was that the appraisers made a mistake in the valuation of the property?

STATEMENT OF THE CASE AND FACTS[1]

Respondent First Reliance Bank ("Respondent") initiated this foreclosure action on March 28, 2011, against Appellants Brett Blanks ("Blanks"), BCM of Lexington, LLC d/b/a Dam Bar & Grill ("BCM"), B&H of Lexington, LLC ("B&H" and collectively with Blanks and B&H, "Appellants"), and Defendants Charles E. Bishop ("Bishop") and Branch Banking and Trust Company of South Carolina. (Compl.; R. at 126–205). The case was referred to the Honorable James O. Spence, Master-in-Equity, on August 1, 2011. (Order of Ref.; R. at 1). The master-in-equity issued a judgment of foreclosure on January 11, 2012, finding the total debt owed to Plaintiff, including interest and attorney's fees, was $1,482,122.05. (Report and Judgement of Foreclosure and Sale; R. at 2–34). The property sold at a foreclosure sale on February 6, 2012. (Nov. 4 Order; R. at 91). On April 3, 2012, the master-in-equity entered an order of deficiency judgment in the amount of $632,121.09 against Appellants and Defendant Bishop, after subtracting the foreclosure sale price of $913,483.60 from $1,545,604.69, the total amount owed to Respondent as of the date of the foreclosure sale. (Order of Deficiency Judgment; R. at 35–40).

On April 3, 2012, Appellants and Defendant Bishop filed a Petition for Order of Appraisal pursuant to section 29-3-680 of the South Carolina Code. (Pet. for Order of Appraisal; R. at 223–24). The master-in-equity granted the Petition on December 4, 2012. (Dec. 4, 2012 Order; R. at 41–51). On January 22, 2013, the master-in-equity appointed Kevin McGee as the court-appointed appraiser, James Petty as the appraiser selected by Appellants and Defendant Bishop, and Philip Urso as the appraiser selected by Respondent. (Order Appointing Appraisers; R. at 52).

On February 21, 2013, the appraisers submitted a letter to the circuit court, finding the

[1] Appellant combines the statement of the case and statement of the facts to eliminate repetition due to considerable overlap between the procedural history and the facts in this case.

market value of the subject property as of March 7, 2012 was $1,040,000.00 which the appraisers allocated as follows:

Front Land (2.357 acres):	$200,000
Improvements:	$715,000
F F & E:	$100,000
Excess Back Land (1.753 acres):	$25,000

(Ret. Of Appraisers; R. at 53–55). On March 15, 2013, Appellants and Defendant Bishop filed an appeal of the return of the appraisers. (Appeal of Ret. of Appraisers; R. at 248–55).

On December 31, 2013, counsel for Appellants and Defendant Bishop submitted a Consent Order to the Court relieving Gene Trotter as counsel for these defendants and ordering that George H. McMaster ("Mr. McMaster") was the sole counsel of record for these defendants. (Cons. Order to be Relieved as Counsel; R. at 56–58).

The master-in-equity held a hearing on the appeal on April 10, 2014. (Apr. 10, 2015 Hrg. Tr. ; R. at 475–617). On June 18, 2014, the master-in-equity sent a letter to counsel for Respondent and Mr. McMaster requesting counsel for Respondent prepare a proposed order affirming the return of the appraisal panel within thirty days of the letter. (June 18, 2014 Ltr.; R. at 686–87). The master-in-equity indicated the letter was not a final order. (*Id.*; R. at 686).

On July 2, 2014, the Supreme Court of South Carolina issued an order placing Mr. McMaster on interim suspension until further notice.[2] (Ex. C to Rule 59(e) and 60(b) Mot; R. at 344). The Supreme Court appointed Peyre T. Lumpkin, Esquire ("Receiver") as the receiver to "assume responsibility for [Mr. McMaster]'s client files, trust account(s), escrow account(s), operating account(s) and any of law office account(s) [Mr. McMaster] may maintain." (*Id.*; R. at 344). The Supreme Court ordered Receiver to "take action as required by Rule 31, RLDE, Rule

[2] On November 27, 2019, the South Carolina Supreme Court granted Mr. McMaster's motion to surrender his law license. (Ex. D to Rule 59(e) and 60(b) Mot.; R. at 346–57).

413, SCACR, to protect the interests of [Mr. McMaster]'s clients." (*Id.*; R. at 344). On July 15, 2014, Mr. McMaster sent a letter to Plaintiff's counsel advising him that he was placed on interim suspension. (July 15, 2014 Ltr.; R. at 688).

On July 16, 2014, Receiver mailed notice letters regarding Mr. McMaster's suspension from the practice of law to Blanks and Bishop, addressed as follows: (1) Brett Blanks, 101 Old Orangeburg Road, Lexington, SC 29072[3] and (2) Charlie Bishop, 101 Old Orangeburg Road, Lexington, SC 29072. (Ex. G to Rule 59(e) and 60(b) Motion; R. at 359–66). Both letters were marked "return to sender – not deliverable as addressed – unable to forward" on July 23, 2014. (*Id.*; R. at 362, 366). According to the date stamp of Receiver, his officed received the undeliverable letters back on July 28, 2014. (*Id.*; R. at 362, 366). There were no letters in Receiver's file to BCM or B&H. (Nov. 4 Order; R. at 100–01).

On July 31, 2014, Plaintiff's counsel emailed the master-in-equity a letter enclosing a proposed order affirming the return of the appraisal panel and the letter he received from Mr. McMaster. (Ex. F to Rule 59(e) and 60(b) Mot.; R. at 351–57). Receiver responded via email on July 31, 2014, indicating he was in receipt of Plaintiff's counsel's proposed order and stated:

> When we are appointed Receiver for a suspended attorney we do not assume representation of clients but merely take possession of client files to facilitate their return to clients or to new counsel. Consequently, I can neither object nor consent to any proposed order on behalf of any clients of Tompkins and McMaster.
>
> In this particular matter, we gave Mr. McMaster's client written notice of the suspension and his right to pick up his file by a notice letter mailed on July 16, 2014. However, as of today, he has not contacted us or arranged for his file to be sent to him. I will, however, place a copy of this correspondence in his file for his future reference.

[3] Blanks had not resided at this address since August 12, 2011. (Blanks Aff.; Nov. 4 Order; R. at 103, 429–46).

(*Id.*; R. at 353). Receiver failed to inform the master-in-equity the two notice letters had been returned as undeliverable three days earlier. (Nov. 4 Order; R. at 101).

On October 22, 2014, the master-in-equity emailed Plaintiff's Counsel and Receiver to check on the status of the case and inquire whether "Mr. McMaster's client has, pursuant to July 16, 2014 Notice letter, contacted [Receiver] or arranged to have file retrieved." (Oct. 22, 2014 Email; R. at 708). Receiver responded, "We still have the Bishop file in our possession. He has not responded to our notice letter." (*Id.*; R. at 708). Receiver again did not inform the master-in-equity the letters to Blanks and Bishop were returned as undeliverable and no notice letters were mailed to BCM or B&H. (Nov. 4 Order; R. at 101). On October 23, 2014, the master-in-equity responded, "Unless advised otherwise, I will [sign the] proposed Order in the case since it has been over 60 days with no response." (Oct. 23, 2014 Email R. at 708). Receiver did not make any other attempts to contact Appellants or the master-in-equity. (Nov. 4 Order; R. at 100–01). The master-in-equity entered the Order Affirming Appraisal Panel Return on October 27, 2014. (Order Aff. Appraisal Panel Ret.; R. at 61–82). Receiver received a copy of this Order addressed to Receiver on October 30, 2014, and a copy of this Order addressed to Mr. McMaster on November 6, 2014. (Ex. H to Rule 59(e) and 60(b) Mot.; R. at 390, 413).

The master-in-equity entered an Amended Order of Deficiency Judgment on Appraisal on November 26, 2014, and awarded a deficiency judgment against Blanks, Bishop, and BCM in the amount of $508,104.69, which equaled the appraisal value of $1,037,500 subtracted from the total debt of $1,545,604.69. (Am. Deficiency Judgment; R. at 83–85). The Clerk of Court's Office mailed the Amended Deficiency Judgment to: (1) James Edward Bradley at P.O. Box 5709, West Columbia, SC 29171 and (2) George Hunter McMaster at P.O. Box 7337, Columbia, SC 29202.

(*Id.*; R. at 85). A copy of the Amended Deficiency Judgment was not found in Receiver's file. (Rule 59(e) and 60(b) Mot.; R. at 305).

On April 14, 2020, Plaintiff filed an Execution of Judgment against Blanks and Bishop which was returned Nulla Bona by the Lexington County Sheriff's Office on April 24, 2020. (Execution & Nulla Bona; R. at 282). On April 30, 2020, Michael H. Wells and Russell W. Fry filed electronic notices of appearance on behalf of Blanks. (Nov. 4 Order; R. at 94). The Deputy Clerk of Court entered a Transcript of Judgment on April 30, 2020, giving notice of the judgment entered on November 26, 2014, and that interest would accrue at a rate of 12% from March 28, 2012. (Tr. Of Judgment; R. at 285). Bishop filed an appeal of the November 26, 2014 Amended Order of Deficiency Judgment on Appraisal on June 10, 2020. *See* Appellate Case No. 2020-000872. On June 15, 2020, Plaintiff filed a petition for supplemental proceedings. (Pet. for Supp. Proceedings; R. at 293–301).

On June 26, 2020, G. Murrell Smith, Jr., and Shanon N. Peake filed notices of appearance on behalf of Appellants. *See* June 26, 2020 Notice of Appearance, *First Reliance Bank v. Charles E. Bishop, et al.*, 2011-CP-32-01205. The master-in-equity held a status conference on June 26, 2020. (Nov. 4 Order; R. at 94). At the status conference, counsel for Appellants informed the master-in-equity they were attempting to obtain the original file of Mr. McMaster and Receiver's file from Receiver and they anticipated filing a motion challenging the October 27, 2014 Order affirming the appraisal panel and November 26, 2014 Amended Deficiency Judgment. (*Id.*; R. at 94). Appellants' counsel obtained the file from Receiver on June 29, 2020. (*Id.*; R. at 94).

On July 9, 2020, Appellants filed a Motion to Alter or Amended pursuant to Rule 59(e),

SCRCP, and/or Motion to Vacate pursuant to Rule 60(b), SCRCP.[4] (Rule 59(e) and 60(b) Mot.; R. at 302–428). In the motions, Appellants argued their procedural due process rights were violated because they were not given notice of their attorney's suspension from the practice of law and were not served with copies of the master-in-equity's Order Affirming Appraisal Panel Return and the Amended Deficiency Judgment. (*Id.*; R. at 307–17). Because of these due process violations, Appellants argued Rule 60(b)(4) required the master-in-equity to vacate these orders. (*Id.*; R. at 313–17). Appellants further requested the master-in-equity reconsider the Order Affirming Appraisal Panel Return, arguing the only testimony before the master-in-equity showed the appraisers made a mistake in valuing the property. (*Id.*; R. at 310–13).

The master-in-equity held a hearing on Appellants' motions on September 9, 2020. Prior to the hearing, James Bradley, counsel for Respondent, submitted an affidavit showing his office mailed the Order Affirming Appraisal Panel Return to Blanks at 137 Belle Chase Drive, Lexington, SC 29072 on November 6, 2014. (Bradley Aff.; R. at 447–54). Appellants submitted the affidavit of Blanks along with property deeds showing Blanks and his wife sold the Belle Chase property in August 2011 and did not reside or receive mail at that address after that date. (Blanks Aff.; R. at 429–46).

On November 4, 2020, the master-in-equity issued an Order denying Appellants' Rule 59(e) motion and Rule 60(b) motion. (Nov. 4 Order; R. at 89–122). In considering Appellants' Rule 60(b) motion, the master-in-equity found the Receiver did not comply with his duties under Rule 31, RLDE, in notifying Appellants of McMaster's suspension. (Nov. 4 Or. at 12–14; R. at 100–02). The master-in-equity further found Blanks did not receive the Order Affirming Appraisal

[4] Bishop originally joined in Appellants' motions; however, Bishop withdrew his participation in the motion prior to the hearing due to his pending appeal. (Nov. 4 Order; R. at 9).

Panel Return which was mailed by Plaintiff's counsel because he did not reside at that address. (Nov. 4 Or. at 15; R. at 103). However, the master-in-equity found Appellants were at fault and in the "best position to avoid this situation." (Nov. 4 Or. at 17; R. at 105). Despite being "extremely concerned" with Appellants' attorney's suspension, Receiver's subsequent actions, and the lack of notice, the master-in-equity found that the "proper due process remedy" was to entertain Appellants' Rule 59(e) motion so that Respondent and Appellants would be placed "in the same position they would have been in had [Appellants] received" notice. (Nov. 4 Or. 19, 22; R. at 107, 110). The master-in-equity then considered and denied Appellants' Rule 59(e) motion of the Order Affirming the Appraisal Panel Return. (Nov. 4 Or. at 22–33; R. at 110–11).

Appellants filed a Rule 59(e) Motion to Alter or Amend related to the November 4, 2020 Order on November 13, 2020.[5] (Rule 59(e) Motion; R. at 455–63). Appellants filed a Notice of Appeal from the November 4, 2020 Order on December 1, 2020. (Notice of Appeal; R. at 711–51).

STANDARD OF REVIEW

Pursuant to Rule 59(e), a party may move to alter, amend, or seek reconsideration of a judgment or order. *See Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004). A motion pursuant to Rule 59(e) "shall be served not later than 10 days after *receipt of written notice of the entry of the order*." Rule 59(e), SCRCP (emphasis added). The decision of whether to grant or deny a Rule 59(e) motion lies within the sound discretion of the trial court. *Pollard v. City of Florence*, 314 S.C. 397, 402, 444 S.E.2d 534, 536 (Ct. App. 1994). "An abuse of discretion occurs when the judgment is controlled by some error of law or when the order, based upon factual, as distinguished from legal[,] conclusions[] is without evidentiary support." *Regions*

[5] This motion is currently pending before the master-in-equity.

Bank v. Owens, 402 S.C. 642, 647, 741 S.E.2d 51, 54 (Ct. App. 2013). Further, as this is a matter in equity, this Court "may make findings of fact in accordance with [its] own view of the evidence." *S.C. Nat. Bank v. Cent. Carolina Livestock Mkt., Inc.*, 289 S.C. 309, 314–15, 345 S.E.2d 485, 489 (1986).

Pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure, a party may move the Court for an order relieving them from a "final judgment, order, or proceeding" due to:

> (1) mistake, inadvertence, surprise, or excusable neglect;
> (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
> (3) fraud, misrepresentation, or other misconduct of an adverse party;
> (4) the judgment is void; [or]
> (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

Rule 60(b), SCRCP. A judgment may be set aside more than one year after its entry pursuant to Rule 60(b)(4). *Thomas & Howard Co. v. T.W. Graham and Co.*, 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995). "Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the judge." *BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 502 (2006). "A void judgment is one that, from its inception, is a complete nullity and is without legal effect." *Id.* "The definition of 'void' under the rule 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).

"Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the

Fifth or Fourteenth Amendment of the United States Constitution." *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008). "It is fundamental that no judgment or order affecting the rights of a party to the cause shall be made or rendered without notice to the party whose rights are to be affected." *Universal Benefits, Inc. v. McKinney*, 349 S.C. 179, 183, 561 S.E.2d 659, 661 (Ct. App. 2002) (quoting *Tryon Fed. Sav. & Loan Ass'n v. Phelps*, 307 S.C. 361, 362, 415 S.E.2d 397, 398 (1992)). "The requirements of due process not only include notice, but also include an opportunity to be heard in a meaningful way, and judicial review." *Id.*

ARGUMENT

I. The master-in-equity erred in refusing to vacate the order and judgment after finding the Receiver failed to properly notify Appellants of their attorney's suspension from the practice of law and Appellants did not receive copies of the order and judgment and were not served with the order and judgment.

The Court should reverse the master-in-equity and vacate the October 27, 2014 Order Affirming the Appraisal Panel Return and the November 26, 2014 Amended Deficiency Judgment as void pursuant to Rule 60(b)(4) because these orders failed to provide proper procedural due process to Appellants. Despite finding Appellants did not receive notice of entry of these orders until almost six years after the entry of the orders and finding Receiver failed to properly notify Appellants of their attorney's suspension from law, the master-in-equity refused to vacate the void orders because it found "the proper due process remedy" was to allow Appellants to argue their Rule 59(e) Motion.[6] (Nov. 4 Order at 12–16, 18, 22; R. at 100–04, 106, 110). However, there is no remedy for a due process violation. An order issued without proper due process is void. The

[6] As discussed further herein, although the master-in-equity found Appellants' Rule 59(e) motion was timely, Appellants were not afforded appropriate due process because they were at a severe disadvantage in not being served with the order and judgment affecting their rights and not knowing of this order and judgment until almost six years later.

master-in-equity erred in attempting to retroactively remedy the due process violations that occurred here in order to uphold these void orders.

"The definition of 'void' under [Rule 60(b)(4)] 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*, 324 S.C. at 644, 478 S.E.2d at 871. It is fundamental to procedural due process "that no judgment or order affecting the rights of a party to the cause shall be made or rendered without notice to the party whose rights are to be affected." *Universal Benefits, Inc.*, 349 S.C. at 183, 561 S.E.2d at 661 (quoting *Tryon Fed. Sav. & Loan Ass'n*, 307 S.C. at 362, 415 S.E.2d at 398). "The requirements of due process not only include notice, but also include an opportunity to be heard in a meaningful way, and judicial review." *Id.* "A person against whom a judgment or order is taken without notice may rightly ignore it and may assume that no court will enforce it against his person or property." *Ins. Co. of N. Am. v. Hyatt*, 290 S.C. 159, 162, 348 S.E.2d 532, 535 (Ct. App. 1986).

It is clear Appellants did not have notice of the order and judgment affecting their rights, an opportunity to be meaningfully heard related to this order and judgment, or necessary judicial review of the order and judgment after July 2, 2014, due to Mr. McMaster's suspension from the practice of law.

A. Receiver failed to notify Appellants of their attorney's suspension

Despite knowing of the impending deficiency judgment and the need for Appellants to act with haste to obtain new counsel and protect their rights, Receiver failed to notify Appellants of Mr. McMaster's suspension from the practice of law. The South Carolina Supreme Court appointed Receiver to take possession of Mr. McMaster's files, ensure each of Mr. McMaster's

clients were timely notified of his suspension, and take other actions required by Rule 31. Pursuant to Rule 31,

> The receiver *shall*:
>
> **(1)** Take custody of the lawyer's active and closed files and trust, escrow, operating and any other law office accounts. The lawyer shall cooperate with the receiver and any attorney appointed to assist the receiver and shall comply with requests to take specific action regarding the client files and accounts. The chair or vice chair may issue such orders as may be necessary to assist the receiver in obtaining custody over such files and accounts, to include orders compelling the lawyer or a third party to take specific action regarding the files and accounts. The willful failure to comply with such an order may be punished as a contempt of the Supreme Court. A party who wishes to challenge such an order must immediately seek review of the order by petition to the Supreme Court;
>
> **(2)** Notify each client in a pending matter, and in the discretion of the receiver, in any other matter, at the client's address shown in the file, by first class mail, of the client's right to obtain any papers, money or other property to which the client is entitled and the time and place at which the papers, money or other property may be obtained, calling attention to any urgency in obtaining the papers, money or other property;
>
> **(3)** Publish, in a newspaper of general circulation in the county or counties in which the lawyer resided or engaged in any substantial practice of law, once a week for three consecutive weeks, notice of the discontinuance or interruption of the lawyer's law practice. The notice shall include the name and address of the lawyer whose practice has been discontinued or interrupted; the time, date and location where clients may pick up their files; and the name, address and telephone number of the receiver. The notice shall also be mailed, by first class mail, to any errors and omissions insurer or other entity having reason to be informed of the discontinuance or interruption of the law practice;
>
> **(4)** Release to each client the papers, money or other property to which the client is entitled. Before releasing the property, the receiver shall obtain a receipt from the client for the property;
>
> **(5)** With the consent of the client, file notices, motions or pleadings on behalf of the client where jurisdictional time limits are involved and other legal counsel has not yet been obtained; and
>
> **(6)** Perform any other acts directed in the order of receivership.

Rule 31(d) (emphasis added). Receiver failed to notify Appellants by letter of Mr. McMaster's suspension, to appropriately publish notice of the suspension pursuant to Rule 31, to obtain consent from Appellants to file motions or pleadings to protect their interests where jurisdictional time limits were involved, and to inform the master-in-equity of his failure to contact Appellants. (Nov. 4 Order at 14; R. at 102). This directly impacted Appellants' due process rights and resulted in them not knowing of the order and judgment entered against them and not being able to obtain judicial review of the order and judgement.

i. Receiver's Improper Notice Letters

Receiver mailed notice letters only to Appellant Blanks and Defendant Bishop at 101 Old Orangeburg Road, Lexington, SC 29072 on July 16, 2014. This was not the correct address for either Blanks or Bishop because both letters were marked "return to sender – not deliverable as addressed – unable to forward" by the United States Postal Service on July 23, 2014, and returned to Receiver on July 28, 2014. (Nov. 4 Order at 12; Ex. G to Rule 59(e) and 60(b) Mot.; R. at 100, 358–66). As the master-in-equity found, there were no other attempts by Receiver to contact Blanks to give him the required notice of Mr. McMaster's suspension. (Nov. 4 Order at 12; R. at 100). Further, Rule 31(d)(2) required Receiver to notify "*each* client." (emphasis added). Receiver did not attempt to send any notice letters to B&H or BCM. (Nov. 4 Order at 13; R. at 101). There were other addresses for Appellants listed in Mr. McMaster's file, including a fax from Blanks to Mr. McMaster which listed a fax number and a letter that former counsel for Appellants sent to Blanks.[7] (Ex. K to Rule 59(e) and 60(b) Mot.; R. at 419–25). Receiver did not attempt to mail

[7] In the November 4, 2020 Order, the master-in-equity improperly found that Blanks failed to notify Mr. McMaster of his current address after he moved in August 2011 from 137 Belle Chase Drive and the record was silent about how Mr. McMaster contacted Appellants. (Nov. 4 Or. At 17; R. at 105). These factual findings are not supported by the record as Appellants submitted evidence of other address in Mr. McMaster's file after August 2011 and as well as evidence that

notice letters to any of the other addresses found in Mr. McMaster's file. (Nov. 4 Or. At 12; R. at 100).

Furthermore, on July 31, 2014, when Receiver emailed the master-in-equity and Plaintiff's counsel to say he could neither object nor consent to the proposed order affecting Appellants' rights, he did not inform the master-in-equity that the notice letters to Blanks and Bishop were returned to him as undeliverable three days before and he did not attempt to mail notice letters to B&H or BCM. Instead, he merely informed the Court he mailed the notice letters and "he has not contacted us or arranged for his file to be sent to him."[8] (Ex. F to Rule 59(e) and 60(b) Mot.; R. at 353). Again, on October 22, 2014, when the Court contacted Receiver to check on the status of the file, Receiver did not inform the Court the notice letters were returned as undeliverable. Instead, Receiver stated "[w]e still have the Bishop file in our possession. He has not responded to our notice letter." (Ex. F to Rule 59(e) and 60(b) Mot.; R. at 351). The master-in-equity acknowledged "if the Receiver notified the Court that Receiver['s] notices has been returned undeliverable, then there may have been better opportunity for further action to ensure proper Rule 31 notice [was] sent to" Appellants. (Nov. 4 Order at 10–11; R. at 98–99).

Accordingly, it is clear Receiver did not comply with his duty to under Rule 31(2) to notify "*each* client in a pending matter" of Mr. McMaster's suspension by mailing a notice letter "at the client's address shown in the file." Instead, Receiver attempted to mail two of the four clients notice letters to addresses which he quickly discovered were defective. Receiver did not inform

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Appellants and Mr. McMaster communicated by fax. However, even if these factual findings were warranted, they are irrelevant and do not excuse Receiver's failure to (1) notify Blanks at another address located in the file after Receiver knew the address he used on the notice letter was incorrect and (2) make any attempts to notify Appellants B&H or BCM.

[8] In the emails, Receiver and the master-in-equity refer to Mr. McMaster's "client" despite there being four clients. (Ex. F to Rule 59(e) and 60(b) Mot.; R. at 351–53).

the master-in-equity of his difficulty of contacting Appellants and instead represented to the Court that he correctly mailed the notice letters and was waiting on Appellants to make arrangements to pick up the file. This failure resulted in Appellants not receiving notice of the order and judgment affecting their rights until almost six years later, directly impacting their procedural due process rights. Because the order and judgment did not afford Appellants proper procedural due process, the Court should vacate the order and judgment.

ii. Receiver's Improper Notice by Publication

Receiver further failed to appropriately publish notice as required by Rule 31. Pursuant to Rule 31(3), Receiver was required to "[p]ublish, in a newspaper of general circulation *in the county or counties in which the lawyer resided or engaged in any substantial practice of law*, once a week for three consecutive weeks, notice of the discontinuance or interruption of the lawyer's law practice." Rule 31(d)(3) (emphasis added). Although Receiver did publish notice, he did not do so until February and March 2015—almost four to five months *after* the order and judgment in the instant case and seven months *after* Mr. McMaster's suspension. (Ex. I to Rule 59(e) and 60(b) Mot.; R. at 415). Furthermore, Receiver only published notice in The Columbia Star, a newspaper in Richland County. (Ex. I to Rule 59(e) and 60(b) Mot.; R. at 415). Appellants resided in Lexington County, and this case is in Lexington County. Receiver was required to publish notice in all counties where Mr. McMaster substantially practiced, which would have included Lexington County and numerous other counties.

Although the master-in-equity found it was "not clear if [Mr. McMaster] did substantial practice in Lexington County," Appellants submit the fact that this case is in Lexington County and Appellants reside in Lexington County should have alerted Receiver to investigate where Mr. McMaster substantially practiced. Especially in light of our increasingly interconnected world and

the size of our state, it would be extremely unlikely that an attorney would not practice in multiple counties, and Receiver should have done some investigation into where Mr. McMaster substantially practiced. However, there is no evidence Receiver did any kind of investigation. Further, Receiver failed to appropriately publish notice even in Columbia and notify Appellants in any way or attempt to contact them to protect their rights. Thus, the fact that Receiver did not attempt to publish notice in any other counties or investigate whether notice needed to be published in other counties further contributed to the violation of Appellants' due process rights.

Receiver's published notice in Richland County seven months after Mr. McMaster's suspension was not enough to satisfy his duties under Rule 31. Rule 31 requires a court-appointed receiver to take affirmative action to notify all clients of their attorney's suspension from the practice of law in order to meet fundamental due process requirements. The notice required by Rule 31 is required a receiver to take more action than is required by standard notice by publication pursuant to section 15-9-740 of the South Carolina Code. In the instant case, jurisdictional time limits were involved related to the order and judgment. Further, Receiver knew in October 2014 that the notice letter he sent to Blanks did not reach Blanks as it was returned as undeliverable and Receiver knew he did not attempt to notify B&H or BCM. Rule 31 requires numerous steps on the part of the Receiver in order to ensure that clients will be timely notified of their attorney's suspension in order to obtain new counsel to protect their rights. Even if Receiver should have only published notice in Richland County, the delay in waiting seven months to publish notice was unreasonable, not in compliance with Rule 31, and contributed to the violations of Appellants' due process rights.

iii. Receiver's failure to take any action to protect Appellants' rights

Further, Rule 31 also requires the receiver to file notices, motions, and pleadings on behalf

of an attorney's clients, with their consent, when jurisdictional time limits are involved, as here. Receiver knew of the impending deficiency judgment being entered against Appellants, knew they did not receive notice of Mr. McMaster's suspension via letter, knew notice had not been published, and did not attempt to contact Appellants further to obtain their consent to file a motion to protect their rights. After Receiver informed the master-in-equity that he could neither object nor consent to the proposed order on July 31, 2014, the master-in-equity, assuming that Receiver properly notified Appellants of Mr. McMaster's suspension, waited to sign the proposed order to give Appellants time to obtain the file from Receiver. Almost three months later, on October 22, 2014, the master-in-equity reached back out to the Receiver and the Receiver indicated he still had the file in his possession because "[h]e has not responded to our notice letter." (Ex. F to Rule 59(e) and 60(b) Mot.; R. at 351). In response, the master-in-equity indicated he would sign the proposed order "[u]nless advised otherwise." (Ex. F to Rule 59(e) and 60(b) Mot.; R. at 351). Despite being prompted multiple times by the master-in-equity over a period of three months, Receiver did not take any steps to notify Appellants of the order being entered against them or Mr. McMaster's suspension and acted as if Appellants had received notice. Receiver received copies of the signed order on October 30, 2014 and November 6, 2014. (Ex. H to Rule 59(e) and 60(b) Mot.; R. at 367–413). Receiver knew or should have known that there were jurisdictional time limits involved on Appellants' rights to move for reconsideration or to appeal the order. Despite this, Receiver did not attempt to contact Appellants to obtain consent to file any motions or other filings to preserve their rights as provided for in Rule 31(d)(5).

Instead, Receiver simply said he would "place a copy of this correspondence in his file for his future reference." (Ex. F to Rule 59(e) and 60(b) Mot.; R. at 353). Rule 31 contemplates situations where clients will be unable to find new counsel prior to jurisdictional time limits

expiring and places a duty on Receiver to inform the clients of these time limits and obtain consent to file papers to preserve their rights. This is an affirmative duty to ensure unsophisticated litigants receive procedural due process even after their attorney is suspended from the practice of law. Here, Appellants did not even know of their attorney's suspension due to Receiver's failures. However, Receiver should have known that Appellants needed to act swiftly to preserve their rights and objections to the order and taken additional steps to obtain their consent to file a notice of appeal or motion for reconsideration. Receiver did not meet his duty under Rule 31, and Defendants were deprived of fundamental due process rights because of it.

B. Appellants were not served with the Order and Judgment

In addition to Appellants not receiving required notice of their attorney's suspension from the practice of law, Appellants did not receive notice of the Order Affirming the Appraisal Panel or the Amended Deficiency Judgment. Pursuant to Rule 5 of the South Carolina Rules of Civil Procedure, all orders must be served upon each of the parties of record.[9] Rule 5(b)(1) of the South Carolina Rules of Civil Procedure requires service of orders either by "delivering a copy to [the party or their attorney] or by mailing it to [them] at [their] last known address."

There were no certificates of service on the public index showing service of either the order or judgment on Appellants. However, prior to the hearing on Appellants' Rule 59(e) and 60(b) Motions, Respondent submitted an affidavit of its counsel with an affidavit of service attached from November 6, 2014, showing Lynn G. Ivey mailed copies of the Order Affirming Appraisal Panel Return to (1) the Receiver, (2) Bishop, (3) Mr. McMaster, and (4) Blanks. (Bradley Aff.; R. at 450). In the affidavit, Respondent's counsel averred his office sent the Order Affirming

[9] The order and judgment in this case were entered prior to the establishment of the e-filing system. *See* South Carolina Supreme Court Order, appellate case no. 2015-002439, December 1, 2015 (establishing Pilot Program for the Electronic Filing of documents in the Court of Common Pleas).

Appraisal Panel Return to Blanks at 137 Belle Chase Drive, Lexington, SC 29072 because Blanks testified in his deposition that he resided at this address and no one "ever let [his office] know that [Blank's] address was different." (Bradley Aff.; R. at 448).

Notably absent from Respondent's counsel's affidavit are any attempts by Respondent's counsel to serve the Order Affirming Appraisal Panel Return to BCM or B&H. Rule 5 requires service on each individual party in a matter. *See McCall v. IKON*, 363 S.C. 646, 654–55, 611 S.E.2d 315, 319 (Ct. App. 2005) (noting "[t]he plain language of [Rule 5] requires that *each* party shall be served separately" and "mailing one letter addressed to" two defendants "was not sufficient to comply with" Rule 5). The *McCall* Court explained the importance of the service requirement,

> The need to properly serve each party individually does not arise from an arcane or highly technical application of the rules. Rather, this requirement serves an essential function—ensuring that notice is properly received by all entitled to it. Addressing a single notice to two distinct parties as McCall did in the present case, sharply diminishes the likelihood that both will actually receive notice, as such a method necessarily depends upon one of the parties "passing along" the notification to the other. The rules of service are designed to eliminate the need for such contingencies.

Id. at 655, 611 S.E.2d at 319. In the instant case, there were no attempts at all to serve the Order Affirming Appraisal Panel Return on BCM and B&H. This was an error and requires these orders be vacated as to BCM and B&H. *See Universal Benefits. Inc.*, 349 S.C. at 183, 561 S.E.2d at 661 (noting that judgments should not be issued without notice to a party whose rights are affected, the court stated that "a person against whom a judgment or order is taken without notice may rightly ignore it and may assume that no court will enforce it" against him); *Keowee Inv. Grp., LLC v. Pickens Cty.*, No. 2004-UP-459, 2004 WL 6331837, at *4 (S.C. Ct. App. Aug. 30, 2004) ("Clearly, failure to serve a particular party with a motion or order adverse to that party's rights would render it ineffective against that party.").

Further, although Respondent's counsel averred his office mailed a copy of the Order Affirming Appraisal Panel Return to Blanks at his last known address, Blanks did not receive the order because he no longer lived at that address at the time. (Nov. 4 Or. at 2, 15; R. at 90, 103). Blanks provided an affidavit and property deeds showing he and his wife sold the 137 Belle Chase Drive property on August 12, 2011. (Blanks Aff.; R. at 429–46). Pursuant to South Carolina law, "[i]n civil matters, the mailing of a properly stamped and addressed letter which is not returned by the postal authorities gives rise to a *rebuttable presumption* that the letter was received by the addressee in the due course of mail." *State v. Langston*, 275 S.C. 439, 441, 272 S.E.2d 436, 437 (1980) (emphasis added); *see also Hopkins v. Harrell*, 352 S.C. 517, 523, 574 S.E.2d 747, 750 (Ct. App. 2002); *Calder v. Commercial Cas. Ins. Co.*, 182 S.C. 240, 188 S.E. 864, 866 (1936). However, this presumption may be rebutted by evidence showing there was no actual receipt. *Id.*; *see also Foster v. Ford Motor Credit Co.*, 302 S.C. 450, 395 S.E.2d 440 (1990); *Burbage v. Jefferson Standard Life Ins. Co.*, 138 S.C. 208, 136 S.E. 230, 231 (1926). In the instant case, Blanks presented actual evidence showing he did not receive the copy of the hearing Respondent's counsel's office allegedly mailed to 137 Belle Chase Drive because it was not his address.[10] As the master-in-equity found, Blanks never received the order or notice of its entry. (Nov. 4 Or. at 2, 15; R. at 90, 103).

Similarly, Appellants did not receive notice of the amended deficiency judgment entered against them on November 26, 2014. There is no evidence Respondent's counsel attempted to serve the amended deficiency judgment on Appellants. Further, on the last page of the November 26, 2014 Amended Deficiency Judgment, the Clerk of Court's Office noted that the Judgment was

[10] While Blanks did testify in his deposition that he lived at this address, the deposition occurred on June 29, 2011, almost two months before he and his wife sold the Belle Chase property. (Nov. 4 Or. at 15; Blanks Aff.; June 29, 2011 Deposition; R. at 103, 429–46, 464).

mailed only to Respondent's counsel and Mr. McMaster on December 5, 2014. (Am. Def. Jud.; R. at 83–85). The master-in-equity erred in refusing to vacate these orders where Appellants were never served with them and did not receive notice of them. *See Universal Benefits*, 349 S.C. at 183, 561 S.E.2d at 661 ("[A] person against whom a judgment or order is taken without notice may rightly ignore it and may assume that no court will enforce it" against him.).

Moreover, the master-in-equity erred in considering these due process errors from the lens of equity and finding Appellants were in a position to best avoid the situation.[11] Although this case concerns an equitable foreclosure matter, Appellants motions and arguments concerned their fundamental right to due process which is not an equitable matter, and the violation of their due process rights requires reversal of the Order and Judgment. *See Universal Benefits, Inc.*, 349 S.C. at 183, 561 S.E.2d at 661 ("It is fundamental that no judgment or order affecting the rights of a party to the cause shall be made or rendered without notice to the party whose rights are to be affected." (quoting *Tryon Fed. Sav. & Loan Ass'n*, 307 S.C. at 362, 415 S.E.2d at 398)). In the November 4, 2020 Order, the master-in-equity stated, as part of his reason for denying Appellants' Rule 60(b)(4) motion:

> A common Equity phrase is "Equity Aids the Vigilant." . . . The court next considers a paraphrase of what South Carolina Court of Appeals Judge Randy Bell once wrote about an equitable matter 'Who was in the best position to avoid this situation?" The problem arose because Defendants did not furnish forwarding address to the Post Office or by inference—failed to notify his new/second attorney

[11] The master-in-equity further erred in valuing Respondent's due process rights more than Appellants' due process rights. (Nov. 4 Or. at 10; R. at 98) ("Initially, the court notes Due Process is a two-sided issue. One could review the facts and find Plaintiff did nothing wrong, and Plaintiff should be entitled to strictly reading the rules to validate its right to due process, and not give Defendant a chance to retry the case years after the ruling."). As discussed herein, Appellants submit a strict reading of the rules requires reversal of the order and judgment as Appellants were entitled to notice of their attorney's suspension and service of the order and judgment. It is not in contravention of Respondent's due process rights to ensure Appellants' due process rights are met.

> of his new address during the time gap between when Defendant sold his home and moved and attorney suspension.[12]

(Nov. 4 Or. at 17; R. at 105). The master-in-equity erred in finding Appellants were responsible for the suspension of their attorney, the failure of the Receiver to appropriately notify them of the suspension and the Order and Judgment being entered against them, and the failure of Plaintiff or the Clerk of Court to serve them with the Order and Judgment. The master-in-equity, without citing any support under South Carolina law, found that Appellants had an affirmative duty to update their address with the United States Postal Service as well as to contact the circuit court or Supreme Court. However, because the Receiver did not notify Appellants of Mr. McMaster's suspension, Appellants did not know their interests were no longer being protected by their counsel.[13] Further, the master-in-equity's analysis does not excuse the fact that proper service of the order and judgment did not occur.

Further, the master-in-equity erred in finding that, although there was a due process violation, "the proper due process remedy" was to allow Appellants "the opportunity to argue [their] Rule 59 motion." (Nov. 4 Or. 22; R. at 110). The master-in-equity found "[s]uch remedy places both [Respondent] and [Appellants] in the same position they would have been in had the

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[12] As discussed in footnote 7 above, the master-in-equity's finding that Appellants failed to provide their address to their attorney is without factual support in the record.

[13] Rule 11(a) of the South Carolina Rules of Civil Procedure would require a pro se plaintiff to include their address on all pleadings in a case. Thus, courts have found pro se parties could not argue they did not receive notice of documents or hearings when they did not provide the court with updated addresses. *See Dunham v. Coffey*, No. 2004-UP-344, 2004 WL 6331137, at *2 (S.C. Ct. App. May 25, 2004), aff'd, No. 2005-MO-052, 2005 WL 7145303 (S.C. Oct. 17, 2005) (finding pro se plaintiff's "own error in not providing the court with his address . . . caused him to fail to receive notice of the final hearing"). However, Appellants were not pro se parties. They were represented by an attorney who was suspended from the practice of law, and, the Receiver, who the Supreme Court appointed to ensure Appellants received notice of this suspension and that their interests were being protected in these extreme circumstances, did not fulfill his duties under South Carolina law, as found by the Court in the Order.

[Appellants] received the Notice the Receiver or [Respondent] had sent – they could file post Order mtoions (Rule 59 or 60 etc) or a straight appeal." (Nov. 4 Or. at 22; R. at 110). However, as discussed above, orders that fail to provide proper due process are void, and our rules require proper service of orders and judgments. *See Hyatt*, 290 S.C. at 162, 348 S.E.2d at 535 ("A person against whom a judgment or order is taken without notice may rightly ignore it and may assume that no court will enforce it against his person or property."); *McDaniel*, 324 S.C. at 644, 478 S.E.2d at 871 ("The definition of 'void' under the rule only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction."). Further, the master-in-equity failed to realize that Appellants, who did not receive notice of the order or judgment until June 29, 2020, were not in the same position they would have been in if they had received notice almost six years ago. Instead, Appellants and their new counsel, who were not involved in the action six years ago, were required to obtain the Receiver's file, review and analyze the voluminous documents contained in the Receiver's file as well as Mr. McMaster's file, review the case file from the Lexington County Clerk of Court's Office, and file a Rule 59(e) and Rule 60(b) motion all within ten days of receipt of the Receiver's file.[14] Appellants were not in the same position they would have been in had the Receiver properly notified them prior to the entry of the October 2014 Order or had they received appropriate notice of the October 2014 Order and November 2014 Judgment. Defendants could have moved before the Court for additional time to find new counsel and for the new counsel to have adequate time to obtain and review all of the file materials in the case as well as contact Defendants' previous attorney and Receiver to discuss the case. Had this occurred at the

[14] As Appellants noted in their Rule 59(e) and 60(b), they were only able to complete a cursory review of the Receiver's file at the time of filing the Motions. (Rule 59(e) and 60(b) Mot. at 14; R. at 315).

appropriate time prior to the entry of the October 2014 order, Appellants could have requested this extension from the master-in-equity prior to the time when jurisdictional time limits, which cannot be extended, were involved. The master-in-equity would have given this additional time to Appellants as the master-in-equity waited from July to October 2014 to allow Appellants to "receive" the Receiver's deficient notice, only signed the October 2014 order because there was no objection. Further, the master-in-equity found there would have been "better opportunity for further action" had the Court known of the deficiencies in the Receiver's compliance with Rule 31. (Ex. F to Rule 59(e) and 60(b) Mot., Nov. 4 Or. at 10–11; R. at 98–99, 350–57).

Accordingly, the master-in-equity abused his discretion in denying Appellants' Rule 60(b) motion where Appellants did not receive the required notice of their attorney's suspension and were not properly served with the order and judgment entered against them. Because of these procedural due process violations, Appellants respectfully request the Court vacate the October 27, 2014 and November 26, 2014 Orders as void pursuant to Rule 60(b)(4).

II. The master-in-equity erred in denying Appellants' Rule 59(e) Motion where the uncontroverted testimony showed the appraisers made a mistake in valuing the property

The master-in-equity erred in denying Appellants' Rule 59(e) motion and refusing to order a new appraisal of the property. The master-in-equity abused his discretion in ignoring the uncontroverted testimony of appraiser James Petty that he and the other appraisers failed to realize the realities of the property and made a mistake in the valuation of the property without viewing it.

Pursuant to section 29-3-720 of the South Carolina Code, the board of appraisers must

> view and value the mortgaged property and all or a majority thereof shall make a sworn return within thirty days from their appointment of the true value of the property as of the date of sale, taking into consideration sale value, cost and

> replacement value of improvements, income production and all other proper elements which, in their discretion, enter into the determination of value.

The return of the appraisers is subject to an appeal. S.C. Code Ann. § 29-3-740. In an appeal from an appraisal return, the circuit court may "confirm the return or order a new appraisal upon such terms as he may deem equitable." S.C. Code Ann. § 29-3-750.

In this case, the return of the appraisers found the market value of the subject property as of March 7, 2012 was $1,040,000.00 which the appraisers allocated as follows:

Front Land (2.357 acres):	$200,000
Improvements:	$715,000
F F & E:	$100,000
Excess Back Land (1.753 acres):	$25,000

(Ret. of Appraisers; R. at 53–55). However, at the appraisal appeal hearing on April 10, 2014, Petty testified the appraisers mistakenly believed the excess back land[15] "had no access, and therefore it was more of a token value." (Apr. 10, 2014 Tr. at 7:21–23; R. at 482). Petty also testified the appraisers only considered the property as having 3.61 acres instead of 4.11 acres. (*Id.* at 8:7–14; 483). He testified these mistakes occurred because the plat the appraisers used when they met to discuss the value of the property only showed 3.61 acres and did not show that the back land had a public access point. (*Id.* at 10:6–12:4; 485–87). Petty explained,

> It was discussed about the dirt road, that's like a driveway, and in my opinion it's on other peoples' property. So you can't assume that you're going to get to a site by going down a driveway on somebody else's property to get to your property. I didn't see any kind of dedicated easement or any of that stuff, so I totally disregarded – or did not consider . . . the back land, meaning the 1.73 acres.

[15] Petty testified excess land is land that "can be sold on the open market for whatever it can be used for, and it doesn't affect the land that's left" because it is considered separate property. (Apr. 10, 2014 Tr. at 22:7–10; R. at 497). This can add value to a property because the separate land can be sold for "highest and best use" and "without involving the portion that's being operated." (*Id.* at 21:25–22:7; R. at 496–97).

(*Id.* at 12:14–21; R. at 487). He then testified the other appraisers "didn't even think about" the excess back land and were only "concerned with" the graveled portion of the excess back land that could provide additional parking for the restaurant, not the entire land. (*Id.* at 12:23–13:3; R. at 487–88). Petty testified if the appraisers had viewed the correct plat, they would have come to a different conclusion on the value of the property. (*Id.* at 13:12–13; R. at 488). Instead, Petty testified the appraisers gave the excess back land a "token value of $25,000." (*Id.* at 12:8–9, 20:16–17; R. at 487, 495).

Petty discovered later that the excess back land "does in fact have access, both from the front . . . onto the main road[and] it's got access on a dedicated paved road on Beekeeper Court." (*Id.* at 20:18–25; R. at 495). Petty testified if the appraisers had known this fact, it would have changed the valuation of the property, and explained,

> [T]he portion of Parcel 2 that is not being used is in fact combined with Parcel 1 . . . and, therefore, it could be sold for a proper use for what the zoning allows; and that it does have value, and then it does look like a corner property. So what we considered the excess land, or the back land, does in fact have value because it does have access from the front through Parcel 2; it all being under the same ownership.

(*Id.* at 20:25–21:4; R. at 495–96). Petty testified the correct plat showed "Parcel 2C [a]nd then of course the road, 2B and 3A and 3B" and, had he viewed the correct plat, he would have "realized that Beekeeper Court actually goes into Parcel 2, and from there they can gain access to Parcel 1." (*Id.* at 22:23–23, 25:1–4; R. at 497, 500). He further testified, "we-all three considered that the back land did not have access, and that's why we came up with 25,000." (*Id.* at 25:6–8; R. at 500). Petty testified the appraisers should have "come up with . . . a market value of the excess land, based on the fact that it could be sold and used for something." (*Id.* at 28:19–22; R. at 503). He indicated he believed the excess back land was actually worth $566,000. (*Id.* at 31:7; R. at 506).

Petty was the only witness to testify at the appraisal appeal hearing. Therefore, the only evidence before the master-in-equity was that had the appraisers not mistakenly believed the excess back land had no accessibility, the true value of the property would have dramatically increased, and the fact that the appraisal report refers to this land as "excess back land" with a de minimis value proves the other appraisers did mistakenly believe there was no access. There was no testimony in the record to dispute Mr. Petty's testimony that the other appraisers had the same mistaken belief. Even though the appraisers seemingly considered the factors required by section 29-3-720, their consideration of these factors was incorrect because of their mistake in failing to fully realize the realities of the property. This warranted a new appraisal of the property because their determination of "the true value of the property as of the date of sale" was incorrect. *See* S.C. Code Ann. § 29-3-720; *see also Peoples Fed. Savings and Loan Association v. Myrtle Beach Retirement Group, Inc.*, 302 S.C. 223, 394 S.E.2d 849 (Ct. App. 1990) (explaining that the circuit court is required to order a new appraisal if they appraisers do not consider the required facts and also retains its discretion to order a new appraisal for other reasons). Petty's testimony showed the conclusion of the appraisal panel as to the true value of the property was fundamentally flawed because the appraisers failed to consider the full acreage of the property and the fact that the back land had an access point. The appraisers' wrongful determination as to access led them to give a de minimis value to the excess back lot and greatly impacted the sales value of the real estate.

Further, Petty's testimony at the hearing established that an incorrect plat was used to value the property instead actually viewing the property, as required by section 29-3-720 (requiring the appraisers to "view and value the mortgaged property). The testimony of Mr. Petty, and all reasonable inferences therefrom, established that the appraisers never visited the property prior to making a sworn statement of valuation. Accordingly, the appraisers did not properly comply with

the appraisal statute which lead to the appraisers' mistake in valuation, as testified to by Mr. Petty at the hearing. Had the appraisers viewed the entire property, they would not have made the mistake and would have come to a different valuation.

Despite Petty's testimony that he and the other appraisers made a mistake in valuation, the master-in-equity denied Appellants' Rule 59(e) motion because Appellants "chose not to call" the other appraisers as "witnesses" at the hearing. (Nov. 4 Or. at 28; R. at 116). The master-in-equity improperly mischaracterized Petty's testimony as only that he made a mistake in valuation and ignored Petty's testimony that the other appraisers were mistaken as well. Respondent did not call the other appraisers to testify. Therefore, the only evidence in the record before the master-in-equity was that the appraisers mistakenly valued the property because they misunderstood the realities of the property.

The master-in-equity cited to *South Carolina National Bank v. S & L Investment Partnership*, 308 S.C. 511, 419 S.E.2d 243 (Ct. App. 1992) for the proposition that Petty was a minority appraiser and his renunciation of the appraiser did not warrant a new appraisal. (Nov. 4 Or. at 32; R. at 120). However, the instant case is distinguishable from *S & L* because here, unlike in *S & L*, Petty testified that the other appraisers were also mistaken in believing the excess back land did not have an access point. In *S & L*, the only arguments before the circuit court were that one of the appraisers violated section 29-3-720 because that appraiser only considered income production and not the other required factors. 308 S.C. at 513, 419 S.E.2d at 244. Thus, the master-in-equity abused its discretion in ignoring Petty's uncontroverted testimony, and the master-in-equity's finding that Petty testified only he made a mistake is without evidentiary support in the record.

Further, although the master-in-equity noted there was no case law regarding an appraiser that disavows an appraisal due to a mistake in the appraisal, the master-in-equity did not fully appreciate and discuss the effect of this on the legitimacy of the appraisal. (Order Aff. App. Panel Ret. at 12, Nov. 4 Or. at 32; R. at 72, 120). The master-in-equity relied on contract law to find it could not order a reappraisal because the master-in-equity believed Petty's mistake was a unilateral mistake instead of a mutual mistake. (Order Aff. App. Panel Ret. at 11, Nov. 4 Or. at 31; R. at 71, 119). However, the appraisal return is not subject to contract law, and the case law indicates the appraisal panel serves in a quasi-judicial capacity. *See Peoples Federal*, 302 S.C. at 224, 394 S.E.2d at 850 ("[I]n South Carolina the appraisers act in a quasi-judical capacity insofar as their factual determination of the value of the subject property."). As judgments may be attacked on the basis of a mistake, so too can the appraisal in this case that was based upon mistaken beliefs as to lack of access and incorrect acreage. *See* Rule 60(b)(1), SCRCP. The appraisers had a statutory duty to determine the true value of the property and failed to correctly determine the true value due to mistaken beliefs as to the property. Accordingly, Appellants respectfully request the Court reverse the master-in-equity's order and remand for a new appraisal of the property.

CONCLUSION

For the reasons stated above, Appellant respectfully requests the Court reverse the circuit court and vacate the order and judgment pursuant to Rule 60(b)(4), or, in the alternative, to remand for a new appraisal.

(Signature page follows)

RESPECTFULLY SUBMITTED,

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June 30, 2021.

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Jun 30 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
James O. Spence, Master-in-Equity

Case No. 2011-CP-32-01205

Appellate Case No. 2020-001580

First Reliance Bank,

Respondent,

v.

Charles E. Bishop, Brett D. Blanks, BCM of Lexington, LLC d/b/a Dam Bar & Grill, B&H of Lexington, LLC, and Branch Banking and Trust Company of South Carolina, Defendants,

Of whom Brett D. Blanks, BCM of Lexington, LLC d/b/a Dam Bar & Grill, and B&H of Lexington, LLC are Appellants.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 211(a), SCACR, I certify that this brief complies with the provisions of Rule 211(b), SCACR.

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