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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM DORCHESTER COUNTY

Honorable Diane S. Goodstein, Circuit Court Judge

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Case No. 2016CP1801678

Appellate Case No. 2020-001130

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Wilmington Savings Fund Society FSB, as Trustee of Stanwich Mortgage Loan Trust C …….Respondent

v.

Nelson L. Bruce, Capital Return Investments, LLC, Charleston Area CDC, SC Housing Corp., South Carolina Housing Trust Fund, and Reminisce Homeowners Association, Inc., Defendants,

Of Whom Nelson L. Bruce is the…….…….……..Appellant

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# BRIEF OF RESPONDENT

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August 11, 2021

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III. Whether the Court should have instructed the Appellant to correct his Counterclaims.

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## STATEMENT OF THE CASE

This case is a foreclosure of a Mortgage given by Appellant Nelson L. Bruce to Respondent's predecessor. The case was initiated by the filing of a Lis Pendens, Summons and Complaint on August 19, 2016. Appellant filed a Motion to Dismiss on April 3, 2017. A hearing was held on September 13, 2017. By Order dated September 15, 2017, the Court denied Appellant's motion.

Appellant filed an Answer and Counterclaims on September 13, 2017, which he amended and filed on September 25, 2017. (Hereinafter "Answer") (Appellant's Answer) In response a Reply was timely[1] filed its March 1, 2018. (Reply) The Reply included a Motion to Dismiss Appellant's claims under SCRCP 12(b)(6) for failure to state a claim upon which relief can be granted.

On March 9, 2018, Bank of America, N.A., the Plaintiff at the time, filed a motion to substitute Wilmington Savings Fund Society, FSB, as Trustee of Stanwich Mortgage Loan Trust C as Plaintiff since the mortgage had been assigned after the initiation of the case. By order entered March 23, 2018, the motion was granted.

On July 20, 2018 Appellant filed a Motion for Pre-trial Discovery and for Proof of Jurisdiction. Appellant amended the Motion on July 23, 2018. On August 23, 2018 Appellant filed several motions with the Court, some of which were duplicative. They were captioned:

> Motion to Dismiss, Authorization Form to Collect Filing Fee and Instructions (445 Form) (Appellant's Motion to Dismiss)

[1] Before Respondent's time to reply had run, Appellant removed the case to the United States District Court for the District of South Carolina. The District Court issued an Order to Remand the case to State Court. The Remand Order was appealed to the United States Court of Appeals for the Fourth Circuit. The Court of Appeals denied the appeal, remanding the case back to the Circuit Court.

Motion to Vacate/Set Aside Judgment/Order Pursuant to SC.R.Civ.P. 60(b), Authorization Form to Collect Filing Fee and Instructions (445 Form) (Appellant's Motion to Set Aside Judgment)

Motion for Temporary Restraining Order, Preliminary and Permanent Injunctions, and Damages, Court Filing Fee Objection/Challenge, Authorization Form to Collect Filing Fee and Instructions (SSA-445 Form) (Appellant's Motion for TRO, etc.)

The Clerk of Court filed them as Motion/Dismiss (Filing Fee Contested), Motion/Vacate 3/23/18 Order (Filing Fee Contested), Motion/Dismiss 9/25/17[2] Order (Filing Fee Contested), Motion/Vacate 9/15/17 Order (Filing Fee Contested) and Motion/TRO (Filing Fee Contested). Appellant did not pay the motion fee for any of the motions. On October 16, 2018 Respondent filed responses to Appellant's motions.

On October 16, 2018 Respondent also filed a Motion to Dismiss Appellant's Counterclaims and to Refer the case to the Master in Equity. (Respondent's Motion to Dismiss and Memorandum in Support) On December 17, 2018 Appellant filed a response in opposition to Respondent's Motion to Dismiss and Refer. (Appellant's Opposition to Motion to Dismiss and Refer)

The Court scheduled Appellant's six motions and Respondent's motion for a hearing on March 12, 2020. Before the hearing, Appellant filed a Motion to Stay Pending Arbitration Award (Filing Fees Contested) on February 28, 2020. (Appellant's Motion to Stay) The eight outstanding motions were heard on March 12, 2020. By Order entered April 22, 2020 the Court issued an order denying Appellant's outstanding motions, continuing Appellant's Amended Motion for Pre-Trial Discovery; granting Respondent's Motion to Dismiss Counterclaims; and granting Respondent's Motion to Refer. (Order Dismissing Counterclaims and Referring Case) This April 22, 2020 Order is the order being appealed by Appellant.

[2] No order was issued on September 25, 2017. This appears to be a typo since the Appellant's motion references the Order signed September 15, 2017.

Appellant filed a Motion to Reconsider on May 20, 2020. (Appellant's Motion to Reconsider) The Master in Equity remanded the matter back to the Circuit Court for consideration of the Motion to Reconsider. The Appellant's Motion was denied, and the case was referred back to the Master in Equity by Order entered July 8, 2020. (Order Denying Motion to Reconsider) Appellant filed a Notice of Appeal on July 21, 2020 and an Amended Notice of Appeal on August 27, 2020. (Amended Notice of Appeal)

## ARGUMENT

### I. The Court was correct in denying Appellant's motions for which he refused to pay the filing fees.

#### a. Standard of Review

The trial Court denied Appellant's motions on the basis that he had not paid the required motion fees as required by statute. (Order Dismissing Counterclaims and Referring Case, p. 2) "Determining the proper interpretation of a statute is a question of law, and this Court reviews questions of law de novo." *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008) (*Internal cite omitted.)*

#### b. Appellant did not preserve this issue for appeal.

At the hearing Appellant argued that he should not have to pay filing fees until the county provided him proof of where the fees are being allocated. (Transcript., p. 4, ll., 14-18). In his brief Appellant abandons this argument and argues instead he should be allowed to proceed without paying filing fees under the theory he has filed sufficient documents to evidence his indigent status. (Appellant's Initial Brief) Failure to raise an issue constitutes waiver and is not properly before the Court on appeal. *Carolina Attractions, Inc. v. Courtney*, 287 S.C. 140, 143, 337 S.E.2d 244, 245 (Ct. App. 1985)

Appellant has not preserved his claim to proceed as an indigent. He did not claim that position at hearing instead arguing the county had not proven to him where the funds will go. Judge Goodstein asked about the filing of an affidavit of indigency. Appellant informed the Court he had not filed one. Judge Goodstein then invited Appellant to argue whey he had not paid the fee, and Appellant declined to argue indigency. (Tr., p. 3, l. 24 – p. 4, l. 18) Thus, having not raised the issue to the Circuit Court, Appellant cannot raise it now.

#### c. Appellant has abandoned this issue on appeal.

Appellant cites no authority in his brief for his position that he should not have to pay the filing fee. "'An issue is deemed abandoned if the argument in the brief is not supported by authority or is only conclusory.' *Potter v. Spartanburg Sch. Dist. 7*, 395 S.C. 17, 24, 716 S.E.2d 123, 127 (Ct.App.2011); *see also S.C. Dep't of Soc. Servs. v. Mother*, 375 S.C. 276, 283, 651 S.E.2d 622, 626 (Ct.App.2007) (finding an issue abandoned because the appellant made 'a conclusory argument without citation of any authority to support her claim'); *Hunt v. S.C. Forestry Comm'n*, 358 S.C. 564, 573, 595 S.E.2d 846, 851 (Ct.App.2004) ('Issues raised in a brief but not supported by authority are deemed abandoned and will not be considered on appeal.')." *Bluffton Towne Ctr., LLC v. Gilleland-Prince*, 412 S.C. 554, 573, 772 S.E.2d 882, 892 (Ct. App. 2015)

**d. Even had Appellant preserved this issue, the trial Court correctly ruled that the Appellant is required to pay the filing fee for his motions to be heard.**

Appellant has failed to pay the $25.00 filing fee for any of the motions subject of this appeal (though he has paid the motion fees for other motions in the case). When questioned by the Court on this issue, Appellant stated that he did not believe that he is required to pay motion filing fees. Appellant further asserted that he would want to know how the County uses the proceeds from the motion filing fees before he would agree to pay the fees. Appellant offered no other explanation for his failure to pay the filing fees. (Tr. pp. 3-6)

Appellant is clearly incorrect. S.C. CODE § 8-21-320 generally requires that a $25.00 filing fee be collected for every motion filed in the Court of Common Pleas. Appellant has not demonstrated any reason why he should be exempt from the general requirement imposed by state law. He argued at hearing there should be no requirement for filing fees. Though Appellant is certainly entitled to his philosophical opinion, it has no bearing on the law.

Appellant now wants to argue he is indigent. This issue was not before the trial Court since Appellant did not claim indigency at hearing. The Court directly asked Appellant if he had filed an affidavit of indigency, and he informed the Court he did not. (Tr. p. 3, ll. 24-25 and p. 4, l. 1) There was no further argument from Appellant or assertion that his failure to pay fees was based on practical considerations. Appellant should not be allowed to file motions, without paying the statutory fee, then argue to the trial Court that there shouldn't be fees and subsequently claim to be unable to pay the fee on appeal.

## II. The Court properly dismissed Appellant's Counterclaims.

### a. Standard of Review

"In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP, the appellate court applies the same standard of review as the trial court." *Cricket Cove Ventures, LLC v. Gilland,* 390 S.C. 312, 321, 701 S.E.2d 39, 44 (Ct.App.2010) "... a ruling on a motion to dismiss under Rule 12(b)(6), SCRCP, must be based solely on the allegations contained in the complaint." *Chewning v. Ford Motor Co.*, 346 S.C. 28, 32, 550 S.E.2d 584, 586 (Ct. App. 2001*) citing Baird v. Charleston County*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999). "'Viewing the evidence in favor of the [non-moving party], the motion must be granted if facts alleged in the complaint and inferences reasonably deductible therefrom do not entitle the plaintiff to relief …" *Chewning, Id. Citing Jarrell v. Petoseed Co.*, 331 S.C. 207, 209, 500 S.E.2d 793, 794 (Ct. App. 1998).

Additionally, the well settled rule is that *facts,* and not *legal conclusions,* must be stated in pleadings… *Lowry v. Jackson,* 27 S.C. 318, 323, 3 S.E. 473, 477 (1887). In reviewing the pleadings the Court is "not bound to accept as true a legal conclusion couched as a factual allegation." *Builder Mart of Am., Inc. v. First Union Corp.*, 349 S.C. 500, 512, 563 S.E.2d 352, 358 (Ct. App. 2002) *citing Papasan v. Allain*, 478 U.S. 265, 286, 106 S. Ct. 2932, 2944, 92 L. Ed.

2d 209 (1986).

**b. Appellant has not preserved his FDCPA claims because he is attempting to change his argument and position on appeal.**

Appellant argued a different theory for his Fair Debt Collections Practices Act ("FDCPA") claims at hearing than the theory he seeks to argue in his brief to this Court and has not preserved a claim under FDCPA for review.

At the hearing, Appellant argued that he did not receive a verification in the form he wanted. (Tr. pp. 11-12) Appellant did not address whether Respondent is a debt collector under the FDCPA, a necessary element of an FDCPA claim. In the argument section of his brief Appellant now argues Respondent is a debt collector under the FDCPA. (Appellant's Initial Brief, Pp. 13-18, 29-34) However, Appellant did not raise or argue this point at the hearing.

Appellant's entire position at hearing was that he should have a verification in the form he requires. He cannot now raise other issues and theories for the first time to in an appeal. See *Carolina Attractions, Inc.*

**c. Even had Appellant preserved the dismissal of his FDCPA claim, the Court was correct in dismissing the claim.**

Appellant asserts a violation of the Fair Debt Collection Practices Act (FDCPA). "To establish a violation of the FDCPA, [Appellant] must prove that (1) [s]he has been the object of collection activity arising from consumer debt, (2) the defendant is a debt collector as defined by the FDCPA, and (3) the defendant has engaged in an act or omission prohibited by the FDCPA. *Chatman v. GC Servs., LP*, 57 F. Supp. 3d 560, 565 (D.S.C. 2014)

Appellant cannot maintain a claim against Respondent under the FDCPA because the act only applies to debt collectors, and Respondent is not a Debt Collector under the statute. "'[T]he

FDCPA purports to regulate only the conduct of debt collectors, not creditors, generally distinguishing between the two based on whether the person acts in an agency relationship with the person to whom the borrower is indebted.' The FDCPA defines 'debt collector' as '(1) a person whose *principal purpose* is to collect debts; (2) a person who *regularly* collects debts *owed to another*; or (3) a person who collects *its own debts*, using *a name other than its own* as if it were a debt collector.'" *Richardson v. Shapiro & Brown, LLP*, 751 F. App'x 346, 349 (4th Cir. 2018) (*Emphasis in original. Internal Cites omitted.)*

Appellant's Answer did not assert any facts that Respondent's principal purpose is the collection of debts. Accordingly, Respondent is not a debt collector under the first prong of the statute. Similarly, Appellant has not alleged Respondent is operating using a name other than its own as would be required to satisfy the third prong. Finally, Respondent is not a debt collector under the second prong of the statute. The U.S. Supreme Court has stated, "you have to attempt to collect debts owed *another* before you can ever qualify as a debt collector." *Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1724, 198 L. Ed. 2d 177 (2017) (Emphasis in original.) Appellant is the holder of the Note and the legal title owner of the Mortgage, so it is not collecting the debt of another. Assuming the facts of Appellant's Answer to be true, there are still no facts alleged from which it could be inferred that Respondent is a debt collector under the statute.

As an additional sustaining ground, Appellant is not seeking to collect a debt; it is seeking to enforce a lien against real estate, so no claim can be maintained under the FDCPA. Appellant has waived its rights to any deficiency against Respondent and is seeking only to foreclose its security interest in the property. "A mortgage and a note are separate securities for the same debt, and a mortgagee who has a note and a mortgage to secure a debt has the option to either bring an

action on the note or to pursue a foreclosure action." *Bank of Am., N.A. v. Draper*, 405 S.C. 214, 220–21, 746 S.E.2d 478, 481 (Ct. App. 2013) Citing *U.S. Bank Trust Nat'l Ass'n v. Bell*, 385 S.C. 364, 374, 684 S.E.2d 199, 204 (Ct.App.2009). In making that choice, the mortgagee has the option of seeking to collect from the note maker or seeking to collect from the sale of the real estate. A foreclosure without a deficiency demand is not an attempt to collect a debt from a consumer; it is an attempt to enforce a lien.

**d. Appellant has not preserved the dismissal of his other Counterclaims by refusing to argue his position at hearing.**

At the hearing before Judge Goodstein, counsel for Respondent argued the Motion to Dismiss. After the conclusion of that presentation, the Court asked Appellant for his response. Appellant declined to argue his position and has waived the right to try to re-litigate it before this Court because the issue is not preserved. The transcript of the motion hearing shows:

> MR. BRUCE: And for me to speak as far as what he's talking about ---
>
> THE COURT: Yes.
>
> MR. BRUCE: --- the motion to dismiss.
>
> THE COURT: Yes.
>
> MR. BRUCE: It would be a breach of that contract for me to continue and start making objections towards the issue that he's claiming.
>
> (Tr., p. 11, ll. 3-10)

When given the opportunity to present his case, Appellant declined.[3] Appellant has not preserved any issues related to his counterclaims.

"'Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review.' *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct.App.2006). At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). It is 'axiomatic that an issue cannot be raised for the first time on appeal.' *Id.* Imposing such a requirement on the appellant 'is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.' *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000)." *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011)

**e. Even had Appellant preserved his claim for Libel, the Court properly dismissed it.**

The Appellant lists Libel in the caption. In Paragraph 13, subsection b) of his Answer Appellant states "the state of South Carolina has laws against libel and slander, and I bring forth my claim for such …" (Appellant's Answer, P. 5) Appellant seems to be making a claim for Libel against the Respondent.

Appellant has not pleaded facts sufficient to support this claim. Appellant has not identified any statement which is libelous. He makes reference to "information on this public record". (Appellant's Answer, P. 5) What information the Appellant is referring to is unclear. If

[3] Later in the hearing Respondent did make some argument about his Fair Debt Collection Practices Act claim, which Appellant has addressed in sections IV.c. and IV.d.

it is not possible to tell what facts the Appellant is referring to, then it cannot be reasonably said that the Appellant has pleaded facts sufficient to support a cause of action.

Assuming *arguendo* the Appellant is referring to the filing of the Lis Pendens, Summons and Complaint or other pleadings as being libelous, Appellant's claim should be dismissed. The filing of those pleadings is absolutely privileged:

> South Carolina has long recognized that relevant pleadings, even if defamatory, are absolutely privileged. *McKesson & Robbins v. Newsome*, 206 S.C. 269, 33 S.E.2d 585 (1945); *Texas Co. v. C.W. Brewer & Co.*, 180 S.C. 325, 185 S.E. 623 (1936); *Rodgers v. Wise*, 193 S.C. 5, 7 S.E.2d 517 (1940); *Sanders v. Rollinson*, 33 S.C. Law (2 Strob.) 447 (1848) (stating an action for slander based on a defamatory affidavit was a non-suit; the proper attack is under malicious prosecution); *accord Lone v. Brown*, 199 N.J.Super. 420, 489 A.2d 1192, 1195 (App.Div.1985) ("It is well established that statements, written or oral, made by judges, attorneys, witnesses, parties or jurors in the course of judicial proceedings, which have some relation thereto, are absolutely privileged from slander or defamation actions, even if the statements are made with malice."); *Kropp v. Prather*, 526 S.W.2d 283, 286 (Tex.Civ.App.1975) ("Any communication, oral or written, uttered *24 or published in the due course of a judicial proceeding is absolutely privileged and cannot form the basis for a cause of action in libel or slander.").
>
> *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 23–24, 567 S.E.2d 881, 893 (Ct. App. 2002)

**f. Even had Appellant preserved his claim for Slander, the Court properly dismissed it.**

Appellant appeared to be asserting a claim for Slander. "Slander is a spoken defamation while libel is a written defamation or one accomplished by actions or conduct." *Kunst v. Loree*, 424 S.C. 24, 39, 817 S.E.2d 295, 302 (Ct. App. 2018), *reh'g denied* (Aug. 16, 2018) *Citing Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 484, 514 S.E.2d 126, 133–34 (1999). Appellant has not identified any statement made by Respondent, or any statement at all. Accordingly, appellant has not pleaded facts sufficient to support a claim for Slander.

**g. Even had Appellant preserved his claim for Conspiracy, the Court properly dismissed it.**

**"**A civil conspiracy consists of three elements: (1) A combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes the plaintiff special damages". *Hammond v. Butler, Means, Evins & Brown*, 300 S.C. 458, 463, 388 S.E.2d 796, 798 (1990). Appellant has not alleged facts to support any of the elements. In his claim he states "the opposing parties". There are no opposing parties, only the Appellant. There is no combination of two or more persons.

Appellant has not pleaded facts showing any parties have come together for the purpose of injuring Appellant. Additionally, Appellant has not pleaded special damages, which is an essential element. Rule 9(g), SCRCP, requires "when items of special damage are claimed, they shall be specifically stated." In *AJG Holdings LLC v. Dunn*, the Court of Appeals stated, "To prove special damages, [claimaints] had to show that the acts in furtherance of the conspiracy were separate and independent from other wrongful acts alleged in the complaint." *See Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 293, 278 S.E.2d 607, 611 (1981). Special damages must be properly pled, or the claim for civil conspiracy will be dismissed. *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115–16, 682 S.E.2d 871, 875 (Ct.App.2009); *see also* Rule 9(g), SCRCP (requiring special damages to be specifically stated in the pleadings). *AJG Holdings LLC v. Dunn*, 392 S.C. 160, 167–68, 708 S.E.2d 218, 222–23 (Ct. App. 2011), *aff'd*, 410 S.C. 346, 764 S.E.2d 912 (2014)

The *AJG* Court cited the *Hackworth* case, which makes it clear that dismissal is appropriate when special damages are not properly pleaded.

Additionally, Appellant's claim seems to center around an assertion about standing to bring this action. (Appellant's Answer) Even assuming this to be true, lack of standing may be a defense to the action, not the basis of a conspiracy claim.

**h. Appellant's Answer and Counterclaim makes reference to other claims, but they are unintelligible and cannot form the basis of a cause of action.**

The Appellant's Answer and Counterclaim makes references to other vague claims, statutes and causes of action, but Appellant has not pleaded facts to support any cause of action against Respondent under any of the mentioned statutes. (*See Generally* Appellant's Answer) Insofar as the Court is inclined to deem other causes of actions as having been pleaded, they should be dismissed for failure to state a claim upon which relief can be granted.

## III. The Court has no duty to instruct Appellant how to plead his Counterclaims, and it was never asked to.

**a. There is no ruling to which a standard of review would apply.**

At the hearing Appellant made no request of the Court to be given leave to amend his pleadings. Consequently, there is no ruling to be appealed or reviewed.

**b. Appellant has not preserved this issue.**

Because the appellant did not raise this issue to the trial court it is not preserved for appeal. Failure to raise an issue constitutes waiver and is not properly before the Court on appeal. *See Carolina Attractions, Inc.*

**c. Appellant is to be held to the same standard as an attorney.**

Appellant claims that he is entitled to special treatment, but the record reflects he is a sophisticated party. (Appellant's Initial Brief, Pp. 18-19) Appellant has filed two answers and many motions. He has filed memoranda of law. He has removed the case to the United States District Court, twice. He has appealed to the United States Court of the Appeals for the Fourth Circuit. This is his second appeal in this case to this Court.

He should be held to the same standard as an attorney. "[L]ack of familiarity with legal proceedings is not an acceptable excuse and the court will hold a layman to the same standard as

an attorney." *Rouvet v. Rouvet*, 388 S.C. 301, 310, 696 S.E.2d 204, 208 (Ct. App. 2010) (*Citing Hill v. Dotts*, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct.App.2001)).

## IV. The Court properly referred the case to the Master in Equity.

### a. Standard of Review

"Whether a party is entitled to a jury trial is a question of law. Appellate courts may decide questions of law with no particular deference to the circuit court's findings." *S.C. Cmty. Bank v. Salon Proz, LLC*, 420 S.C. 89, 93, 800 S.E.2d 488, 490 (Ct. App. 2017) (*Internal Cites Omitted.*)

### b. Appellant has not preserved this issue for appeal.

Appellant has not preserved any objection to the order of reference. At the hearing, Appellant did not offer any argument or objection to an order of reference. Although he was invited by the trial judge to present his position, he did not assert his right to a jury trial. Failure to raise an issue constitutes waiver and is not properly before the Court on appeal. S*ee Carolina Attractions, Inc.*

### c. Even had Appellant preserved this issue, Appellant is not entitled to a jury trial in a foreclosure action.

Appellant contends he is entitled to have this action heard by a jury. (Appellant's Initial Brief, Pp. 21-23) The trial correctly ruled that the Appellant has no right to a trial by jury and that reference to the Master in Equity was appropriate.

After Appellant's counterclaims were dismissed, the only cause of action before the Court was Respondent's foreclosure action. "A mortgage foreclosure is an action in equity." *U.S. Bank Trust Nat'l Ass'n v. Bell*, 385 S.C. at 373, 684 S.E.2d at 204. "Generally, the relevant question in determining the right to trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions." *Lester v. Dawson*, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997).

South Carolina's Rules of Civil Procedure support the Judge's decision. In relevant part Rule 53(b) provides: "In an action … for foreclosure, some or all of the causes of action in a case may be referred to a master." Rule 53(b), SCRCP Rule 71 (a) adds: "Actions to foreclose liens or obtain partition of real property shall be tried by the court, and shall ordinarily be referred to a master pursuant to Rule 53." Rule 71, SCRCP It is clear that reference to the Master was the correct ruling.

## V. The Court has no duty to physically filed proof of its Jurisdiction.

### a. Standard of Review

In his brief, Appellant argues the trial Court should have filed proof of its jurisdiction before proceeding with the case. (Appellant's Initial Brief, Pp. 28-29) This was not ruled upon by the trial Court, so there is no ruling to review.

### b. Appellant has not preserved this issue for review.

Appellant has not preserved this issue for appellate review. He did not argue or mention it at the hearing. Failure to raise an issue constitutes waiver and is not properly before the Court on appeal. *See Carolina Attractions, Inc.*

### c. Appellant has effectively abandoned this issue.

In his brief Appellant abandons this issue because he cites to no authority for his position. "Issues raised in a brief but not supported by authority are deemed abandoned and will not be considered on appeal" *Bluffton Towne Ctr., LLC*, 412 S.C. at 573, 772 S.E.2d at 892

### d. Appellant has voluntarily submitted to the Court's jurisdiction.

Even if this issue were before the Court, Appellant cites to no authority which would place the burden of proof on the Circuit Court to prove to the Appellant it has the jurisdiction. Further, Appellant has waived any objection to jurisdiction by voluntarily appearing in this case. Appellant

has filed an Answer and an Amended Answer as well as myriad motions. "Voluntary appearance by defendant is equivalent to personal service." SCRCP 4 "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. Ass'n v. Glenwood Falls, LP*, 373 S.C. 331, 337, 644 S.E.2d 793, 796 (Ct. App. 2007)

## CONCLUSION

Appellant has not preserved any issues for appeal, and the appeal should be dismissed for that reason. However, if the Court should construe some issues as being properly before the Court, then the trial court's order dismissing Appellant's Counterclaims and referring the matter to the Master should be affirmed.

Respectfully submitted,

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