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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas
Kristie F. Curtis, Circuit Judge

Appellate Case No. 2020-001490
Common Pleas Case No. 2020-CP-14-00023

New Residential Mortgage, LLC,

Plaintiff,

v.

**Todd S. Crawford, Tricia L. Crawford, William T. Geddings, Jr.,
Jane U. Geddings, and USAA Federal Savings Bank,**

Defendants,

Of Whom William T. Geddings, Jr. and Jane U. Geddings are the

Appellants/Respondents,

and

New Residential Mortgage LLC is the

Respondent/Appellant,

and

USAA Federal Savings Bank is the

Respondent.

RESPONDENT'S BRIEF OF RESPONDENT/APPELLANT

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TABLE OF CONTENTS

	Page
Table of Authorities	iii
Statement of the Issue on Appeal.....	1
Statement of the Case.....	2
A. New Residential’s Foreclosure Claim and the Geddings’ Counterclaims.....	2
B. New Residential’s Motion for Judgment on the Pleadings and to Strike the Geddings’ Jury Demand, and the Trial Court’s Subsequent Orders.....	4
C. The Parties’ Appeals to this Court and the Geddings’ Simultaneous Filing of a Second Amended Answer and Counterclaims in the Trial Court.....	5
D. Cross-Motions to Dismiss the Appeals.....	6
E. Current Status of the Trial Court Proceedings.....	6
Summary of the Argument.....	8
Argument	9
I. The Geddings Have Waived Any Argument that the Trial Court Committed Any Errors in the Rule 12(c) Order.	9
II. The Geddings have Likewise Waived Any Argument that the Trial Court Erred by Denying the Geddings’ Motion to Reconsider the Dismissal of its Counterclaims.	9
III. Even if the Geddings Did Not Waive Arguments (Which They Did), the Trial Court Nevertheless Property Dismissed the Geddings’ Counterclaims for Negligence and Violation of the SCUTPA.....	10
IV. The Trial Court Properly Struck the Geddings’ Jury Demand, and Any Remaining Arguments are Premature and Improper.....	11
Conclusion	12

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Dema v. Tenet Physician Serv.-Hilton Head, Inc.</i> , 383 S.C. 115, 678 S.E.2d 430 (2009)	11
<i>Guinan v. Tenet Healthsys. of Hilton Head, Inc.</i> , 383 S.C. 48, 677 S.E.2d 32 (Ct. App. 2009).....	9, 10, 11
<i>J.T. Baggerly v. CSX Transp., Inc.</i> , 370 S.C. 362, 635 S.E.2d 97 (2006)	10
<i>Marsh v. Leo’s Inc.</i> , 249 S.C. 45, 152 S.E.2d 350 (1967)	9, 10, 11
<i>Talley v. S.C. Higher Educ. Tuition Grants Comm.</i> , 289 S.C. 483, 347 S.E.2d 99 (1986)	12
<i>Wachovia Bank, Nat’l Ass’n v. Blackburn</i> , 407 S.C. 321, 755 S.E.2d 437 (2014)	11
Statutes	
S.C. Code Ann. § 14-3-330.....	6
S.C. Code Ann. § 37-10-102.....	4
S.C. Code Ann. § 39-5-10.....	3
Other Authorities	
SCACR 208(b)(1)(D).....	9, 10
SCRCP 12(c).....	<i>passim</i>
SCRCP 38	12
SCRCP 53(b)	12

STATEMENT OF THE ISSUE ON APPEAL

Whether the trial court properly dismissed the Geddings' counterclaims for negligence and violation of the SCUTPA and properly struck the Geddings' jury demand, where the Geddings have no standing to assert those counterclaims and, in any event, make no argument on appeal that the trial court erred in dismissing those counterclaims; where the lone remaining counterclaim at the time sounded in equity and did not entitle the Geddings to a jury trial; and where the Geddings, in any event, made a jury demand in their newly filed counterclaims which the trial court permitted the Geddings to file.

STATEMENT OF THE CASE

A. New Residential's Foreclosure Claim and the Geddings' Counterclaims.

For the purposes of this appeal, the allegations in the Geddings' counterclaims must be accepted as true. On or about June 21, 2007, Todd S. Crawford executed a promissory note ("Note") in favor of USAA Federal Savings Bank ("USAA") in the amount of \$224,000. (R. pp. 11–12, ¶ 6). The Note was secured by a mortgage ("Mortgage") on property located at 1051 Doral Drive, Manning, South Carolina 29102 (the "Property"). (R. p. 12, ¶ 7). The Mortgage was recorded on or around July 18, 2007 in Mortgage Book 756 at page 160, in the Clarendon County Office of the Register of Deeds. (R. p. 12, ¶ 8). USAA subsequently assigned the Mortgage to Green Tree Servicing LLC on or around October 8, 2013. (R. pp. 12–13, ¶ 9). This assignment was recorded on October 18, 2013 in Mortgage Book 999 at page 39, in the Clarendon County Office of the Register of Deeds. (R. pp. 12–13, ¶ 9).

On or around August 25, 2018, pursuant to a Title to Real Estate, Mr. Crawford and Tricia L. Crawford (together, the "Crawfords") conveyed to William T. Geddings Jr. and Jane U. Geddings (together, the "Geddings") all right, title, and interest in the Property. (R. p. 13, ¶ 12). This Title to Real Estate was recorded on September 7, 2018 in Mortgage Book 1003 at page 2652, in the Clarendon County Office of the Register of Deeds. (R. p. 13, ¶ 12).

Thereafter, the Mortgage was further assigned to New Residential Mortgage LLC ("New Residential") on or around December 19, 2019. (R. p. 13, ¶ 10). This assignment was recorded on December 20, 2019 in Mortgage Book 1136 at page 1500, in the Clarendon County Office of the Register of Deeds. (R. p. 13, ¶ 10).

New Residential initiated this foreclosure action against the Crawfords, the Geddings, and USAA on January 15, 2020. (R. pp. 9–16).¹ The Complaint alleges, in relevant part, that the loan was in default and due on August 1, 2013, and that New Residential, as the holder of the Note and Mortgage, was declaring the entire balance of the principal and interest due and payable at once. (R. pp. 13–14, ¶ 15).

After filing an initial answer, the Geddings, on April 27, 2020, filed a document styled Amended Answer, Counterclaim and Cross-Claim of William T. Geddings Jr. and Jane U. Geddings and Third Party Complaint (“Amended Answer and Counterclaims”).² (R. pp. 17–27). The Geddings allege three separate counterclaims in the Amended Answer and Counterclaims (each of which they refer to as a “Counterclaim and Cross-Claim and Third Party Complaint”): (1) negligence, (2) quantum meruit and/or unjust enrichment, and (3) violation of the South Carolina Unfair Trade Practices Act (“SCUTPA”), S.C. Code Ann. § 39-5-10, *et seq.* (R. pp. 21–27, ¶¶ 27–50).

The Geddings’ negligence claim alleges that New Residential was responsible for the care, upkeep, and maintenance of the Property after the Crawfords vacated the Property (“between August 1, 2013 and March 21, 2014”) and that New Residential breached this alleged duty. (R. pp. 21–24, ¶¶ 27–40). The Geddings’ unjust enrichment claim seeks to recover from New Residential monies the Geddings’ purportedly spent repairing the Property. (R. pp. 23–24, ¶¶ 36, 39, 41–43). And the Geddings’ SCUTPA claim asserts a litany of alleged infractions ranging from

¹ New Residential named USAA as a defendant in the foreclosure action because USAA may have or claim an interest in the Property by virtue of the Mortgage given to the Crawfords by USAA. (R. p. 14, ¶ 19). New Residential named the Geddings as a defendant because the Geddings may have or claim an interest in the Property by virtue of the aforementioned Title to Real Estate. (R. pp. 14–15, ¶ 20).

² The Geddings name Green Tree Servicing LLC as a third-party defendant.

violation of South Carolina’s Attorney Preference Statute (S.C. Code Ann. § 37-10-102), to failure to properly communicate with the Geddings and maintain the Property, to foreclosing on an allegedly invalid lien, to alleged improprieties inherent in the assignment of the Mortgage. (R. pp. 25–27, ¶¶ 44–50). The Amended Answer and Counterclaims contained a jury demand. (R. p. 17). On May 12, 2020, New Residential filed a reply, together with affirmative defenses, to the Geddings’ three counterclaims set forth in the Amended Answer and Counterclaims (“New Residential’s Reply”). (R. pp. 28–36).

B. New Residential’s Motion for Judgment on the Pleadings and to Strike the Geddings’ Jury Demand, and the Trial Court’s Subsequent Orders.

On the same day – May 12, 2020 – New Residential also filed a motion for judgment on the pleadings as to the Geddings three counterclaims (“Rule 12(c) Motion”) (R. pp. 57–75), as well as a motion to strike the Geddings’ jury demand and for an order of reference to the Master in Equity (“Motion to Strike”) (R. pp. 76–78). The trial court held a hearing on the Rule 12(c) Motion and the Motion to Strike on August 19, 2020. (R. pp. 97–131).

On September 3, 2020, the trial court issued a ruling on the Rule 12(c) Motion and the Motion to Strike (“Rule 12(c) Order”). (R. pp. 1–4). The trial court granted New Residential’s Rule 12(c) Motion with regard to the Geddings’ counterclaims for negligence and violation of the SCUTPA; denied New Residential’s Rule 12(c) Motion with regard to the Geddings’ counterclaim for unjust enrichment; and granted the Motion to Strike. (R. p. 3).

With regard to the negligence counterclaim, which the Geddings premised on conduct predating their ownership of the property, the trial court concluded that the Geddings did not have standing and, in any event, New Residential owed no duty to the Geddings to maintain the Property at the time the alleged negligence occurred. (R. p. 2). As to the SCUTPA counterclaim, which

was premised on alleged misconduct in the course of the mortgage loan transaction, the trial court similarly concluded the Geddings did not have standing since they were not parties to the loan transaction and did not assume the obligation to pay the Note upon taking ownership of the Property in 2018. (R. pp. 2–3).

In granting the Motion to Strike, the trial court concluded as follows:

The Geddings’ sole remaining counterclaim and crossclaim for Unjust Enrichment is an equitable cause of action. The Geddings are therefore not entitled to trial by jury as of right, and the Court finds that it is appropriate to strike the jury demand and refer the matter to the Clarendon County Master in Equity.

(R. p. 3). The trial court did not explain the basis for its denial of New Residential’s motion for judgment on the pleadings on the unjust enrichment counterclaim. (R. p. 3).

On September 14, 2020, the Geddings filed a motion to reconsider the Order (*see* R. pp. 89–96), which the trial court denied on October 9, 2020 (“Reconsideration Order”). (R. pp. 5–8). In denying the motion for reconsideration, the trial court clarified “the dismissal is WITHOUT PREJUDICE and the Geddings have thirty (30) days from the date of this order to amend their pleadings.” (R. p. 7).

C. The Parties’ Appeals to this Court and the Geddings’ Simultaneous Filing of a Second Amended Answer and Counterclaims in the Trial Court.

Within thirty days from the trial’s court’s Reconsideration Order, the Geddings filed a further amended pleading styled “Second Amended Answer, Counterclaim, and Cross-Claim (Jury Trial Demanded).” (R. pp. 45–56). In the Second Amended Answer and Counterclaims, the Geddings allege the same three counterclaims (negligence, unjust enrichment, and violation of the SCUTPA) and add a fourth counterclaim for violation of the Attorney Preference Statute.

The very same day, the Geddings noticed an appeal to this Court from both the Rule 12(c) Order and the Reconsideration Order, which were rulings with respect to the Amended Answer

and Counterclaims – *not the newly filed (and currently operative) Second Amended Answer and Counterclaims*. (R. pp. 185–187).

On November 11, 2020, New Residential noticed a conditional cross-appeal to this Court from the Rule 12(c) Order, explaining: “This cross-appeal is contingent on the Court’s determination that it has appellate jurisdiction over this appeal, and Respondent-Appellant does not waive any right to seek dismissal of the appeal for lack of jurisdiction.” (R. pp. 188–192).

D. Cross-Motions to Dismiss the Appeals.

On December 1, 2020, New Residential filed a motion to dismiss the Geddings’ appeal (“New Residential’s Motion to Dismiss Appeal”), arguing that (a) the Geddings’ appeal concerning the sufficiency of the non-operative Amended Answer and Counterclaims (as opposed to the then-operative Second Amended Answer and Counterclaims) was moot and (b) the Rule 12(c) Order – which dismissed claims without prejudice and struck a jury demand with respect to an equitable claim – did not fit within the confines of this Court’s narrow appellate jurisdiction over interlocutory orders pursuant to S.C. Code Ann. § 14-3-330. (New Residential’s Motion to Dismiss Appeal). The Geddings, on December 23, 2020, moved to dismiss New Residential’s conditional cross-appeal (“Geddings’ Motion to Dismiss Appeal”). (Geddings’ Motion to Dismiss Appeal). New Residential made clear in response to the Geddings’ Motion to Dismiss Appeal that its cross-appeal was conditioned on this Court concluding it had jurisdiction over the Geddings’ appeal, and that if the Court dismissed the Geddings’ appeal it should also dismiss New Residential’s appeal. On January 14, 2021, this Court denied both motions to dismiss. (Order Denying Motions to Dismiss Appeal).

E. Current Status of the Trial Court Proceedings.

On November 19, 2020, New Residential filed a motion pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure to dismiss the four counterclaims asserted by the Geddings in their Second Amended Answer and Counterclaims. That motion remains pending as the trial court proceedings are likely stayed pending resolution of this appeal concerning the non-operative Amended Answer and Counterclaims.

SUMMARY OF THE ARGUMENT

The Geddings do not argue that the trial court committed any errors in its Rule 12(c) Order. Therefore, the Geddings have waived any and all arguments regarding the Rule 12(c) Order. The Geddings also appeal from the Reconsideration Order, but they do not argue that the trial court erred in dismissing their counterclaims for negligence and violation of the SCUTPA. The Geddings, therefore, have also waived those arguments. For these reasons alone, the Court should affirm the portions of the Rule 12(c) Order and Reconsideration Order dismissing the Geddings' counterclaims for negligence and violation of the SCUTPA. Even if this Court concludes the Geddings have not waived these arguments, it should nevertheless affirm the dismissal of these counterclaims.

The Geddings' primary argument on appeal is that the trial court erred in its Reconsideration Order by permitting the Geddings to file further amended counterclaims but failing to address or reverse its prior decision striking the jury demand. The trial court committed no error because, at the time the Reconsideration Order was issued, the Geddings had no counterclaims that might entitle them to a jury trial. Therefore, this Court should affirm the portion of the Rule 12(c) Order and Reconsideration Order striking the Geddings' jury demand in the Amended Answer and Counterclaims.

In any event, the Geddings' operative counterclaims contain a jury demand, and the trial court has not addressed the issue of whether the Geddings are entitled to a jury trial on those claims. The Geddings' remaining arguments, which ask this Court – in the first instance – to deem the currently pled counterclaims compulsory, are unpreserved and improper.

ARGUMENT

I. The Geddings Have Waived Any Argument that the Trial Court Committed Any Errors in the Rule 12(c) Order.

The Geddings' Notice of Appeal indicates the Geddings are appealing from the Rule 12(c) Order. (R. p. 185). But the Geddings do not raise any arguments on appeal contending the trial court committed any errors in the Rule 12(c) Order. Accordingly, the judgment in favor of New Residential on the Geddings' counterclaims for negligence and under the SCUTPA and the order striking the Geddings' jury demand should be affirmed.

Specifically, the Geddings advance no argument that the trial court erred in dismissing their counterclaims for negligence and violation of the SCUTPA. And in light of that ruling, the Geddings do not contend that the trial court erred in striking the jury demand at the time, when the Geddings' unjust enrichment claim was their only counterclaim then pending. To the contrary, the Geddings appear to tacitly concede that this was proper. (Geddings' Appellants' Brief at 3 ("As the only claims then left in the case sounded in equity, Judge Curtis struck the Geddings' jury demand and referred the case to the master-in-equity")). Having failed to make any arguments, the Geddings have waived any and all challenges to the Rule 12(c) Order. *See* SCACR 208(b)(1)(D) (stating issue on appeal must be argued in appellate brief); *Guinan v. Tenet Healthsys. of Hilton Head, Inc.*, 383 S.C. 48, 54 n.4, 677 S.E.2d 32, 36 n.4 (Ct. App. 2009) (finding issue not raised in appellate brief to be waived); *Marsh v. Leo's Inc.*, 249 S.C. 45, 48, 152 S.E.2d 350, 351 (1967) (finding particular "exception has been waived by failure to argue it in the brief").

II. The Geddings have Likewise Waived Any Argument that the Trial Court Erred by Denying the Geddings' Motion to Reconsider the Dismissal of its Counterclaims.

The Geddings also noticed an appeal from the Reconsideration Order. (R. p. 185). Nevertheless, the Geddings again make no argument that the trial court erred in dismissing their

counterclaims for negligence and violation of the SCUTPA. Because the Geddings have waived these arguments, the Court should affirm the portion of the Reconsideration Order denying the Geddings' request to reconsider the dismissal of their counterclaims for negligence and violation of the SCUTPA. *See* SCACR 208(b)(1)(D); *Guinan*, 383 S.C. at 54 n.4, 677 S.E.2d at 36 n.4; *Marsh*, 249 S.C. at 48, 152 S.E.2d at 351.

III. Even if the Geddings Did Not Waive Arguments (Which They Did), the Trial Court Nevertheless Property Dismissed the Geddings' Counterclaims for Negligence and Violation of the SCUTPA.

Because the Geddings have waived any arguments concerning the substance of the Rule 12(c) Order and the Reconsideration Order, the Court need not reach the merits of the dismissal of the Geddings' counterclaims for negligence and violation of the SCUTPA. However, even if the Geddings had not waived those arguments, the Court should still affirm the dismissal of those counterclaims (both in the Rule 12(c) Order and the Reconsideration Order) on the merits.

The Geddings' negligence claim alleges that New Residential was responsible for maintaining the Property, but failed to maintain the Property in 2013 and 2014. (R. pp. 21–23, ¶¶ 30–32). However, the Geddings did not acquire any interest in the Property until 2018. (R. p. 13, ¶ 12). Therefore, the trial court property concluded that the Geddings had no standing to assert these claims and that, in any event, New Residential owed no duty to the Geddings.³ (R. pp. 2, 7).

The Geddings' SCUTPA claim asserts a litany of alleged infractions relating to the underlying loan transaction. (R. pp. 25–27, ¶¶ 44–50). But because the Geddings were not parties to the Note or Mortgage, and since the Geddings did not assume those obligations, the trial court

³ *See J.T. Baggerly v. CSX Transp., Inc.*, 370 S.C. 362, 368–69, 635 S.E.2d 97, 101 (2006) (listing “duty of care” as element of negligence claim).

properly concluded that the Geddings do not have standing to assert these claims. (R. pp. 2–3, 6–7).

IV. The Trial Court Properly Struck the Geddings’ Jury Demand, and Any Remaining Arguments are Premature and Improper.

The Geddings spend the entirety of their Appellants’ Brief arguing about their right to a jury trial. But the trial court properly dismissed the Geddings’ legal counterclaims (and the Geddings waived those arguments in any event), and the Geddings were not entitled to a jury trial on their lone remaining equitable counterclaim for unjust enrichment alleged in the First Amended Answer and Counterclaims. *See Wachovia Bank, Nat’l Ass’n v. Blackburn*, 407 S.C. 321, 328, 755 S.E.2d 437, 441 (2014) (“In equity the parties are not entitled, as a matter of right, to a trial by jury.” (internal quotation marks omitted)); *Dema v. Tenet Physician Serv.-Hilton Head, Inc.*, 383 S.C. 115, 123, 678 S.E.2d 430, 434 (2009) (“Unjust enrichment is an equitable doctrine . . .”).⁴

⁴ Since the Geddings argue only about the impact of the Reconsideration Order on the jury demand in their *Second Amended Answer and Counterclaims*, they have technically waived any argument that the trial court erred in striking the jury demand in the *First Amended Answer and Counterclaims* and denying their request to reconsider that decision. *See* SCACR 208(b)(1)(D); *Guinan*, 383 S.C. at 54 n.4, 677 S.E.2d at 36 n.4; *Marsh*, 249 S.C. at 48, 152 S.E.2d at 351. The Geddings could have argued (a) their counterclaims for negligence and violation of the SCUTPA in the *Amended Answer and Counterclaims* should not have been dismissed, (b) that those counterclaims were legal and compulsory, and therefore (c) the trial court erred in striking the jury demand in their *Amended Answer and Counterclaims*. Instead, the Geddings filed their *Second Amended Answer and Counterclaims* (containing a jury demand) *on the same day* they noticed this appeal, and – under the guise of appealing from the Rule 12(c) Order and the Reconsideration Order – they ask this Court to render an advisory opinion about counterclaims that were *not even pled* when the Rule 12(c) Order and the Reconsideration Order were issued. In doing so, the Geddings’ reveal their appeal to be nothing more than a transparent delay tactic all too commonly employed in this Court by borrowers (and those in the Geddings’ position) in default and subject to foreclosure.

There are no other issues to decide in this appeal. This Court should therefore affirm the trial court's decision to strike the Geddings' jury demand.⁵ All of the Geddings' remaining arguments are premature, unpreserved, and therefore improper.⁶

CONCLUSION

As set forth in its earlier motion to dismiss the Geddings' appeal, New Residential believes this entire appeal is improper. This Court disagreed, and New Residential of course accepts that determination. This Court should now proceed to decide the merits of this appeal, and this Court should affirm, in relevant part, the two trial court orders at issue in this appeal. Specifically, and for the foregoing reasons, this Court should affirm the portions of the trial court's Rule 12(c) Order

⁵ The only potentially live issue the Geddings advance is that the trial court erred in the Reconsideration Order by permitting the Geddings to file amended counterclaims, but not addressing or reversing its prior decision striking the jury demand. (Geddings' Appellants' Brief at 4 (arguing the Reconsideration Order "left the Geddings' jury demand stricken" insofar as it "did nothing to address whether [the trial court's] previous order should be changed in that regard"). The trial court committed no such error because, at the time the Reconsideration Order was issued, the Geddings had no counterclaims pled that might entitle them to a jury trial. In any event, the Geddings' Second Amended Answer and Counterclaims contains a jury demand. (R. p. 45). If the case at the trial court level has not already been transferred back from the Master-in-Equity to the Circuit Court by operation of law on account of the Geddings' current jury demand, the Geddings can file such a request with the trial court. *See* S.C.R. Civ. P. 53(b) ("Any party may request a jury pursuant to Rule 38 on any or all issues triable of right by a jury and, upon filing a jury demand, the matter shall be returned to the circuit court." (emphasis added)); *see also id.* Note to 2002 Amendment ("The 2002 amendment permits referral of foreclosure cases to the master-in-equity by order of the clerk of court. If there are counterclaims requiring a jury trial, *any party may file a demand for a jury under Rule 38 and the case will be returned to the circuit court.*" (emphasis added)).

⁶ Whether the counterclaims asserted in the Geddings' Second Amended Answer and Counterclaims are legal and compulsory (and might entitle them to a jury trial) (Geddings' Appellants' Brief at 5–15) is not before the Court because the trial court did not – *and could not* – rule on that issue since the Second Amended Answer and Counterclaims had not yet been filed at the time of the Rule 12(c) Order and the Reconsideration Order. *See Talley v. S.C. Higher Educ. Tuition Grants Comm.*, 289 S.C. 483, 487, 347 S.E.2d 99, 101 (1986) ("issues may not be raised for the first time on appeal"; arguments "not ruled upon by the trial judge" are "not preserved" for appeal).

and Reconsideration Order which dismissed the Geddings' counterclaims for negligence and violation of the SCUTPA, and which struck the Geddings' jury demand.

This 1st day of November 2021.

/s/ Jonathan E. Schulz

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Of Whom William T. Geddings, Jr. and Jane U. Geddings are the

Appellants/Respondents,

and

New Residential Mortgage LLC is the

Respondent/Appellant,

and

USAA Federal Savings Bank is the

Respondent.

RULE 211(b) CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing **RESPONDENT'S BRIEF OF RESPONDENT/APPELLANT** complies with SCACR 211(b) because it is identical to Respondent/Appellant's previously filed Initial Respondent's Brief except for references to the record and correction of typographical errors and misspellings.

This the 1st day of November 2021.

/s/ Jonathan E. Schulz

Jonathan E. Schulz (SC Bar No. 79850)