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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

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**APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas**

SC Court of Appeals

Marvin H. Dukes III, Master in Equity & Special Circuit Court Judge

**Appeal Case No. 2021-000434
Circuit Court Case No. 2019CP0702178**

**JOSEPH CHAKYING SUN, Individually
and JOSEPH CHAKYING SUN, as Trustee
of The 2009 Sun's Family Trust in
South Carolina, USA**

.....

Appellants

v.

**BLUFFTON PARK COMMUNITY
OWNERS' ASSOCIATION, INC.**

.....

Respondent

**MOTION TO AMEND APPELLANTS' INITIAL BRIEF and
DESIGNATION OF MATTER TO BE INCLUDED IN
THE RECORD ON APPEAL, and THE FILING OF REPLY BRIEF OUT OF TIME**

APPELLANTS Joseph Sun, individually and as Trustee of The 2009 Sun's Family Trust,
hereby move the court to amend Appellants' Initial Brief in conformance to Rule 208, SCACR
(Revision of May 1, 2018) and Designation of Matter as follows:

1. The addition of the paragraph on "Standard of Review" as required pursuant to SCACR, Rule 208(b)(1)(D), per Revision of May 1, 2018 which paragraph was left out in Appellants' originally filed initial brief using the older revision of 2009 where the Standard of Review was not required. For several weeks Appellant Sun had to stay in bed rest and could not move around in his home.

He was not aware of the change and could not get the latest revision of the Appellate Court Rules:

STANDARD OF REVIEW

A foreclosure action is an action in equity. *Hayne Fed. Credit Union v. Bailey*, 327 S.C.242, 248, 489 S.E.2d 472,475 (1997). See also, *U.S. Bank Trust National Association v. Bell*, 385 S.C. 364, 684 S.E.2d 199 (2009). In an appeal from an action in equity, tried by a judge alone, the appellate court may find facts in accordance with its own view of the preponderance of the evidence. *Horr v Civ. V. Ray*, 382 S.C. 76,80, 674 S.E.2d 519,522 (Ct.App. 2009).

“The determination of whether to set aside a foreclosure sale is a matter within the discretion of the trial court.” *Bloody Point Property Owner’s Ass’n v. Ashton*, 410 S.C. 62, 66, 762 S.E.2d 729 (Ct. App. 2014). “An abuse of discretion occurs when the conclusion of the circuit court are either controlled by an error of law or are based on unsupported factual conclusions.” *Id.*

Generally, unless there exists fraud or collusion, “once the issuing officer is satisfied with the supporting affidavit, the decision to order service by publication is final unless the order of publication is premised upon a facially defective affidavit.” *Brown v. Malloy*, 345 S.C. 113, 118, 546 S.E.2d 195, 197 (Ct.App.2001); see *Miles v. Lee*, 319 S.C. 271, 274, 460 S.E.2d 423, 425 (Ct:App.1995)

An abuse of discretion in setting aside a default judgment occurs when the judge issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support. The standard for granting relief from an entry of default is good cause under rule governing default judgments, while the standard is more rigorous for granting relief from a default judgment under rule governing relief from judgment. *Rules Civ.Proc., Rules 55(c), 60(b)*. *Roberson v. Southern Finance of South*

Carolina, 365 S.C. 6, 615 S.E.2d 112 (2005)

2. The Table of Contents and Table of Authorities are also amended to accommodate the addition of the Standard of Review and the cited case laws. There is no substantive change in the contents of the entire initial brief. Therefore, there is no prejudice or any additional work for respondent.

3. Appellants timely filed and served their initial brief on June 28, 2021 (pursuant to Rule 208(a)(1)) before they received their copies of the transcripts of the hearings the following month ~~in July 2021, when they had the funds to pay the court reporter.~~ Therefore, Appellants now have to add the transcripts on the Designation of Matter after they received the transcript.

4. Appellants hereby amend their Designation of Matter to be Included in the record of appeal by adding the following excerpts of transcripts:

27. Excerpts of Transcript of WebEx Hearing on July 17, 2020.

28. Excerpts of Transcript of WebEx Hearing on August 4, 2020.

29. Excerpts of Transcript of WebEx Hearing on February 8, 2021.

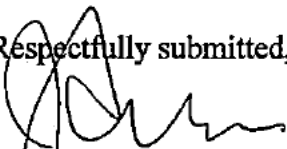
5. Appellant Sun is 75 years old and was under bed-rest for over a month due to medical problem of Stenosis and arthritis in his spine. He is presently only able to have limited movement of his body to do legal research and prepare legal documents. He will do the best he can to serve and file all the aforesaid documents. The respondent served its Amended Initial Brief on March 2, 2022, therefore, Appellants' Reply Brief served and filed on March 12, 2022 should be deemed timely. In the event that the court receives Appellants' reply brief after the required date of SCACR, Rule 208(a)(3), Appellants move the court for leave to serve and file their brief out of time.

Wherefore, Appellants pray the court for leave to amend their initial brief and their Designation of Matter, and to serve and file their Reply Brief out of time. As an alternative, Appellants pray the court to allow them to incorporate the Standard of Review which is set forth in their Reply Brief, in their Final Brief, and the added excerpts of transcripts, in their Record on

Appeal, to be served and filed.

This 12th day of March, 2022.

Respectfully submitted,



JOSEPH C. SUN, pro se
P. O. Box 2543
Bluffton, SC 29910
854-345-0501

CERTIFICATE OF SERVICE

This is to certify that I have this date served the Respondent a copy of Appellant's Motion for amendments and to file reply brief out of time, by sending a copy of same to:

Scott M. Wild, Esq. P. O. Box 6867, Hilton Head Island, SC 29938
and by email to: scott@wildlawfirm.com

This 12th day of March, 2022.



JOSEPH C. SUN

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SC Court of Appeals

on, SC 29910
P.O. Box 2543
Sun

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Clerk of Court
South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211



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