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SC Court of Appeals

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

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

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

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

Bluffton Park Community Owners' Association, Inc., Respondent,

v.

Joseph Chakyng Sun, as Trustee of The 2009 Sun's Family Trust in South Carolina, USA; Joseph Chakyng Sun, Individually; Liling Sun n/k/a Liling Walsh; Oleysa Matyushevsky; Christine Varg; and Citizens Opposed to Domestic Abuse, Defendants,

of whom Joseph Chakyng Sun, as Trustee of The 2009 Sun's Family Trust in South Carolina, USA and Joseph Chakyng Sun, Individually, Appellants.

**MOTION TO AMEND APPELLANTS' INITIAL BRIEF and
DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD
ON APPEAL, and FOR LEAVE TO FILE 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 to conform 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. The addition is as follows:

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. *Horry Cty. V. Ray*, 382 S.C. 76, 674 S.E.2d 519, (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 amendments on Table of Contents and Table of Authorities will be incorporated in the Final Brief 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 the 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, as the payment to the court reporter was delayed.¹ Therefore, Appellants 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 on 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 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 necessary documents on appeal. The respondent served its Amended Initial Brief on March 2, 2022 (Appellant received on March 4, 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

¹ Appellant pro se is a retired 75 year old with a meager pay of Social Security every month.

Designation of Matter, and to serve and file their Reply Brief out of time. As an alternative not to cause any delay, Appellants pray the court to allow them to incorporate the Standard of Review which is set forth in their Reply Brief, and all the amendments on the Table of Contents and Cases in their Final Brief, and the added excerpts of transcripts, in their Record on Appeal, to be served and filed.

Respectfully submitted,

This 12th day of March, 2022.

J.C. Sun

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CERTIFICATE OF SERVICE

SC Court of Appeals

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.

J.C. Sun

JOSEPH C. SUN