

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

MAY 09 2022

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

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.**

FINAL BRIEF OF APPELLANT

Joseph C. Sun, pro se
P. O. Box 2543
Bluffton, SC 29910
854-304-0314

Scott Matthew Wild, Esq.
P. O. Box 6867
Hilton Head Island, SC 29938
843-785-9453
email: scott@wildlawfirm.com

TABLE OF CONTENTS

Table of Authorities	2
Statement of Issues on Appeal	4
Statement of the Case	5
Statement of Facts	7
Standard of Review	10
Arguments	11
Conclusion	28
Certificate of Compliance	29
Proof of Service	29

TABLE OF AUTHORITIES

	Page
<i>Arnold v. State</i> , 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992)	4,26
<i>Beckham v. Durant</i> , 300 S.C. 329, 331 n.2, 387 S.E.2d 701, 703 (Ct.App. 1989)	14,19
<i>Belle Hall Plantation Homeowners' Association, Inc. v. Murray</i> , 419 S.C. 605, 799 S.E.2d 310 (2017)	10,12
<i>Bloody Point Property Owner's Ass'n v. Ashton</i> , 410 S.C. 62, 66, 762 S.E.2d 729 (Ct. App. 2014)	2,10
<i>Brown v. Malloy</i> , 345 S.C. 113, 118, 546 S.E.2d 195, 197 (Ct.App.2001)	11,13
<i>Budinich v. Becton Dickinson and Co.</i> , 486 U.S. 196, 108 S.Ct. 1717, 100 L.Ed.2d 178 (1988)	4,26
<i>Coward Hund Const. Co., Inc. v. Ball Corp.</i> , 336 S.C. 1,4, 518 S.E.2d 56, 58 (1999)	4,7,26
<i>Donel, Inc. v. Badalian</i> (1978) 87 CA3d 327	9,12
<i>Elam v. S. Carolina Dep't of Trans.</i> , 361 S.C. 9, 602 S.E.2d 772, (2004)	4,26

<i>Hardy v. Aiken</i> , 369 S.C. 160, 165, 631 S.E.2d 539, 541 (2006)	13,14,18,23
<i>Hayne Fed. Credit Union v. Bailey</i> , 327 S.C.242, 248, 489 S.E.2d 472,475 (1997)	2,10
<i>Horry Cty. v. Ray</i> , 382 S.C. 76,80, 674 S.E.2d 519,522 (Ct.App. 2009)	2,11,14
<i>Lewis v. Congree of Racial Equality and/or C.O.R.E., Inc.</i> , 275 S.C.556, 274 S.E.2d 287 (1981)	19
<i>Miles v. Lee</i> , 319 S.C. 271, 274, 460 S.E.2d 423, 425 (Ct.App.1995)	11,13
<i>Pelican Bldg. Ctrs. v. Dutton</i> , 311S.C. 56, 427 S.E.2d 673 (1993)	7
<i>Pressley v. Lancaster County</i> , 343 S.C. 696, 542 S.E.2d 366 (Ct.App. 2001)	4,26
<i>Pye v. Estate of Fox</i> , 369 S.C. 555, 633 S.E.2d 505 (2006)	2,26
<i>Rawlinson Road Homeowners Association, Inc. v. Jackson</i> , 395 S.C. 25, 716 S.E.2d 337 (2011)	9,14,20,24,25
<i>Roberson v. Southern Finance of South Carolina</i> , 365 S.C. 6, 615 S.E.2d 112 (2005)	2,11
<i>S.C. Dep't of Natural Res. v. Town of McClellanville</i> , 345 S.C. 617, 550 S.E.2d 299 (2001)	23
<i>Taylor v. Lindsey</i> , 332 S.C. 1, 4, 498 S.E.2d 862, 863 (1998)	23
<i>U.S. Bank Trust National Association v. Bell</i> , 385 S.C. 364, 684 S.E.2d 199 (2009)	1,10

STATUTES

<i>S.C. Code Ann. § 15-9-710</i>	5,12
<i>S.C. Code Ann. § 18-9-130</i>	5,27
<i>South Carolina Civil Procedure 475–76 (2nd ed.1996)</i>	7
<i>U.S.C.A. Const. Amend. 14</i>	13

SOUTH CAROLINA COURT RULES

<i>SCRCP, Rule 53</i>	16,20
<i>South Carolina Rules Civ.Proc., Rules 55(b)(c)</i>	4,6,7,11,19,21,25
<i>South Carolina Rules Civ.Proc., Rules 59(e)</i>	6
<i>South Carolina Rules Civ.Proc., Rules 60(b)</i>	5,11,22
<i>South Carolina Rules Civ.Proc., Rule 65</i>	15
<i>South Carolina Rules Civ.Proc., Rules 71</i>	4,20,21,22,23,25

STATEMENT OF THE ISSUES

1. There was no lawful or legitimate reason that the Plaintiff-Respondent must obtain an Order of Publication to serve Appellant-Defendant in this case because Respondent counsel already knew Appellant's residential address in Ridgeland where Appellant could be served the process personally at his home in Jasper County. Service by Publication should not be used by the respondent-plaintiff to cover up its foreclosure action during a pandemic.
2. When the Order of Publication was obtained using a perjured affidavit, Appellant's Motion for Permanent Injunction and/or Temporary Restraining Order, and Motion to Open and Set Aside Default based on Respondent's false testimony, should have been heard in a hearing and be granted, and the default in this case should have been vacated and set aside.
3. It is error and abuse of discretion of the Master in Equity, to allow Plaintiff-Respondent to rely on the default signed by the Clerk of Circuit Court and bypass the default judgment to hold a foreclosure hearing on Appellant-Defendant's house on July 16, 2020 and ignore *SCRCP, Rule 55(b)(2)* without filing a motion or notice of hearing for a default judgment or allowing a trial. There should not have been a foreclosure hearing and the Master's Decree of Foreclosure, Sale and Judgment should not have been issued by the court therefore it must be vacated and set aside.
4. It is error of the Master in Equity and abuse of his discretion to deprive Appellant-Defendants their rights to due process of the law by awarding foreclosure of their house to the Respondent-Plaintiff without first allowing Appellant any discovery or the right to a trial, or any determination on the damages claimed by the Plaintiff-Respondent pursuant to *Rule 71(a), SCRCP*.
5. It is error and abuse of discretion of the Master in Equity, to allow Plaintiff-Respondent to include the sale of Appellant's house in the Master's Decree of Foreclosure, Sale and judgment without first requiring an undertaking or bond to the Appellant, with two good sureties, in double

the amount of the judgment of \$21,115.47 pursuant to *South Carolina Code §18-9-130(A)(2)* but requiring Appellant to post a bond pursuant to *South Carolina Code §18-9-170*.

STATEMENT OF THE CASE

The within appeal is filed by Appellants Joseph Sun (hereinafter Sun) and The 2009 Suns Family Trust in South Carolina, USA (hereinafter the Trust). All other parties named in the original civil case by the Respondent are not parties in this appeal. The purpose of their inclusion in the suit is unknown and unexplained by the Respondent-Plaintiff. Appellants Sun and the Trust rely and cite various documents recorded in the Beaufort County Public Index, copies of which are made parts of and indexed in the Record on Appeal.

On October 1, 2019 Respondent Bluffton Park Community Association (hereinafter Bluffton Park) filed a foreclosure action at the Beaufort County Court of Common Pleas against Appellants Sun and The Trust. (R.pp. 29-43) After failure of service of the process on the Appellant-Defendants at a wrong address falsely assumed by the Respondent counsel, he hastily obtained an Order of Publication (R.p.3) using false testimony in his affidavit.

On about June 18, 2020, Respondent-Plaintiff filed a notice of foreclosure hearing scheduled for July 16, 2020 (R.pp. 76-80). Appellant received notice of the hearing from his daughter who was back at the house from university summer break, and was aware of the foreclosure action for the first time. Appellants were never allowed discovery, trial on respondent's claim of damages. Appellants filed their Answer, Counterclaim and Crossclaim (R.pp. 81-92) prior to the scheduled foreclosure hearing but was disallowed by the Master at the hearing. (R.p. 195, lines 11-15; and p.306, lines 16-25)

The Master instructed respondent counsel to prepare a Decree of Foreclosure, Sale and

Judgment (R.pp.9-26) and signed it on January 13, 2021. After repeated request from Appellant, (R.p.295, line11, p.339, lines 10-16) the Master allowed counsel to include the denial of Appellants' two motions to open and set aside default and injunction against respondent's foreclosure, as part of his overall ruling. (R.p.339 - line15) Appellant also filed his objection (R.pp.131-136) to respondent's proposed Master's Decree but was ignored by the Master.

Appellant timely filed a motion to reconsider (R.pp. 155-160) stating all the aforesaid grounds listed in his statement of the issues: to wit, that service by publication was improper as Appellant's residence was known, but respondent counsel filed a false affidavit that Appellant could not be found (R.pp.155-157; pp.167-168), then Respondent skipped the requirement pursuant to *Rule 55(b)* of filing a motion for default judgment but improperly used a default signed by the clerk to schedule a foreclosure hearing, (R.p.332, line1 - p.334, line 6) causing Appellant to be deprived of a trial on respondent's damages (R.p.157 line 15- p.159 line 9), that Respondent erroneously used his allegations as proof of damages (R.p. 130) and that the master in equity abused his discretion in allowing the respondent to include the denial of all motions filed by Appellant, in counsel's own words in the Final Decree. (R.p.159 lines 10-16; p.97, line 10 - p.98, line 8). The judge had not ruled on the motions.

Appellant's motion to reconsider was denied in a Form 4 Order (R.p.27-28) without finding of facts and conclusion of law. Appellant timely filed a Notice of Appeal (R.p. 176-177) to the South Carolina Supreme Court because he had already filed a petition for writ of mandamus earlier at the Supreme Court. The Supreme Court immediately forwarded the Notice of Appeal to the South Carolina Court of Appeals. (R.p.176-177)

STATEMENT OF FACTS

After filing the within foreclosure action, Respondent counsel claimed that he could not serve Appellant Sun at the address of the property which was vacant at the time, and arbitrarily and falsely claimed that Appellant was avoiding service (R.p. 47, lines 12-13). But according to documents filed in Beaufort County Public Index, Respondent counsel already had Appellant's alternate address in Ridgeland, South Carolina in December 2019 soon after the case was filed. (R.p.51, lines 11-12, Address #6) Counsel chose to ignore the alternate address he already had for personal service but use a wrong address in Bluffton so he could have a false excuse to obtain an Order of Publication (R.p.3-4) unnecessarily.¹ Based on the perjured affidavit² (R.p.65, lines 6-7, p.51 of Exh.A, lines 11-12). signed and filed by Plaintiff-Respondent counsel, Appellant Sun had no knowledge of the publication therefore did not serve an answer in time as no documents in the case was served on him. Record in the Beaufort County Public Index shows Respondent counsel hastily obtained a default signed by the clerk of court. (R.pp. 5-8, pp. 73-75) Without seeking a Default Judgment by motion as required by *Rule 55(b)*, claiming the rule as unnecessary in a hearing, (R.p.332, line 1 - p.334, line 9) Respondent counsel immediately scheduled a foreclosure hearing on July 16, 2020. (R.pp.76-78)

Based on the false affidavit, Counsel on January 24, 2020 obtained an Order for Publication signed by the Clerk of Court (R.pp. 3-4). According to the Beaufort County Public Index, on June 5, 2020, Respondent Counsel Wild obtained the Order of Default and Reference stamped by the

¹ According to the Beaufort County Public Index, Counsel filed the affidavit of publication on January 24, 2020 and obtained the Order of Publication on January 31, 2020. Then he obtained the affidavit of publication from a newspaper on March 18, 2020. On June 5, 2020, Counsel Wild filed his affidavit of default against Appellant Sun who had no knowledge of his service by publication, claiming Sun was in default in February and March 2020 when there was a total State lock down due to the pandemic. No hearing was held or default judgment was ever obtained.

² Perjury shown later with affidavit filed by counsel himself in the Beaufort County Public Index.

Clerk of Court. (R.pp.5-8) On June 17, 2020, Respondent Counsel Wild bypassed the requirement of a motion pursuant to *Rule 55(b), SCRCF*, scheduled a foreclosure hearing on July 16, 2020 and served the notice of hearing filed on June 18, 2020 on Appellants Sun and the Trust.³ Appellant's daughter was home at the property from University Virginia for the summer therefore received the mails and forwarded to Appellant Sun. That was the first time, Appellants Sun and the Trust had knowledge of the foreclosure action. Respondent claimed that as "constructive notice"⁴ of the case in its proposed Master's Decree of Foreclosure, Sale and Judgment, to substitute a required personal service of the process Pursuant to Rule 4(d), SCRCF.

After Appellant received a copy of the Notice of the Foreclosure Hearing, he retrieved a copy of the Summons and Complaint from the Beaufort County Public Index and filed an answer and Counterclaim (R.pp. 81-92) and mailed it to the court for filing before the foreclosure hearing. At the WebEx hearing on July 16, 2020, Master in Equity immediately announced that he was not allowing any answer and counterclaim in the case (R.p.195, lines 11-15) and would not allow Appellant Sun to ask any question except regarding annual assessments, on Respondent's claim of damages. (R.p.195, lines 20-25) Appellant demanded a jury trial in his answer, but Appellants were not allowed any trial in the case at all. Beaufort County Public Index (R.pp.399-407) shows there was no trial in the case. A followup hearing was scheduled on August 4, 2020 to allow Appellant

³ Record shows that Respondent counsel had complained that mails sent to property address had been unclaimed or returned to him, and yet he continued to use the property address for mailing and claim that Appellant was avoiding service of process, after Respondent had been informed that Appellant did not live there and the subject property was vacant except when Appellant's daughter was home from her University in Virginia.

Beaufort County Public Index shows that after the Notice of Foreclosure Hearing filed on June 18, 2020 and scheduled for July 16, 2020, there was no allowance for a period of discovery, and there was no trial conducted pursuant to Rule 71, SCRCF.

⁴ Neither Respondent nor the master in equity could cite any case law explaining Respondent's "constructive notice" of the within action.

to only ask Respondent representative regarding the payment of assessment fees through all the years Appellant Trust had owned the property.

Appellant showed in the hearing that all assessment fees had been paid (R.pp. 259-261); See also Affidavit of Joseph Sun filed on 12/16/2020 with Exhibits B, (R.p.129). Therefore, Appellants did not owe Respondent any money except some illegal and impermissible penalties, and late fees which are barred, as they were not specifically allowed by the subdivision covenants and restrictions, as shown in the case of *Rawlinson Road Homeowners Association, Inc. v. Jackson*, 395 S.C. 25, 716 S.E.2d 337 (2011). (R.pp. 170-173) However, the Master by allowing the Respondent to summarily deny Appellants' motions in counsel's proposed order deprived Appellants such consideration. (R.p.23)

On August 7, 2020 Appellant filed a Motion to Open and Set Aside Default (R.pp.112-117) on the ground that Respondent Counsel bypassed the requirement of *Rule 55(b)(1)* and used the Default signed by the clerk of court as a default judgment to obtain a foreclosure of Appellant's house, and most of all as shown and alleged in the Supplement to Motion to Open and Set Aside Default filed on December 14, 2020 (R.pp.118-122) that Respondent Counsel is guilty of perjury to get the order of publication in that he testified under oath that he "exercised due diligence but was unable to locate a valid alternate address for Joseph Sun within or without the state of South Carolina" (R.p. 47, lines 9 - 13) for the service of the process when he filed an exhibited investigative report on the same date showing he had Sun's address at 43 Broadview Drive, Ridgeland, SC 29936 (R.p.51, lines 11-12) where Joseph Sun resided and could be personally served with the process. Counsel had served Sun papers in Ridgeland home therefore he knew he testified falsely (R.p.135,136.)

Record shows that respondent and the court have served Appellant on multiple occasions at

his Ridgeland address therefore service by publication should not have been allowed and must be nullified and vacated. Based on the same grounds and evidence as stated in the motion to open and set aside default, Appellants filed their motion for permanent injunction and/or temporary restraining order against the foreclosure. Master in Equity did not act on all pending motions or hold any hearing but instructed respondent counsel to include all motions in his proposed Master's Decree/Foreclosure, Sale & Judgment for his signature, in essence allowing Respondent counsel to rule on and deny Appellants motions.

Appellants filed their Objection to Respondent's proposed decree and judgment and submitted their version of a proposed order. The Master in Equity disregarded Appellants' objection and signed respondent's proposed Master Decree and a Form 4 Order on January 13, 2021. Upon receipt of the decree, Appellants timely filed their Motion to Reconsider on January 25, 2021 on the grounds that they had been deprived of the due process of a trial on damages claimed to have suffered by the respondent, that respondent had not obtained a default judgement and committed other denial of due process such as pretrial discovery, and most of all, the respondent obtained the Order of Publication by fraud using a perjured affidavit.

The Master denied Appellants' motion to reconsider in a Form 4 Order on April 7, 2021 (R.p. 27,28) and this appeal followed.

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)

ARGUMENT

1. Appellant should have been served personally with the process at his home at the alternate address in Ridgeland, which was already known by the respondent counsel. (R.p.51, lines 11-12, Amended Affidavit filed by counsel on January 24, 2020) There was no need for an Order of Publication during a period of pandemic except to coverup the service of process, making it less

noticeable. The respondent should not be allowed to choose the service by publication over the regular personal service of the process when the latter was available.

Because respondent's affidavit of publication contains perjured testimony as alleged in Appellant's Motion to Open and Set Aside Default and its supplement, and Motion to Reconsider, the service by publication and default (without the judgment) should have been vacated and set aside as Appellant was found and known by respondent counsel to be residing in Ridgeland, South Carolina. The Order of Publication was a fraudulent application by the respondent counsel on *South Carolina Code §15-9-710(3)*.

As a restatement of facts, counsel's affidavit in a sworn statement falsely claiming that he had "after due diligence, been unable to locate a valid and reliable alternate physical address for Joseph Sun within or without the State of South Carolina" when Appellant's current residence at 43 Broadview Drive in Ridgeland, SC 29936 was already listed in an exhibit filed by counsel who intentionally ignored it. Appellant could and should have been personally served by the Jasper County Sheriff. Appellant would have the opportunity to timely file his answer.

Respondent counsel intentionally falsely claimed that Appellant resided at the property address without complying with the requirement of due diligence in his search for Appellant in the service of the process. The affidavit must show that the steps taken were the steps "a reasonable person who truly desired to give notice would have taken under the circumstances." [*Donel, Inc. v. Badalian (1978) 87 CA3d 327*]⁵ An honest attempt must be made to find the defendant before service of publication. *Belle Hall Plantation Homeowners' Association, Inc. v. Murray, 419 S.C. 605, 799 S.E.2d 310 (2017)*. This would include speaking with relatives to determine if they are

⁵ In the within case, the respondent already had the address of Appellant's actual residence in Ridgeland but chose to ignore it to use service by publication.

aware of the location of the defendant as well as searching telephone directories in the area that the defendant is believed to be located. But Respondent counsel only continued to enjoy the fruits of his fraudulent service by publication and refused to spend money for personal process server.

The Service by Publication accomplished by the Respondent is a Fraud and Collusion using a facially defective, clearly perjured affidavit. Most of all, it is a Denial of Due Process against the Appellants. *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) The requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review. *U.S.C.A. Const. Amend. 14*. A party whose personal rights are to be affected by a personal judgment must have a day in court, or opportunity to be heard, and that without due notice and opportunity to be heard a court has no jurisdiction to adjudicate such personal rights. *Brown v. Malloy, supra*.

Respondent filed its initial brief stating "The main thrust of the case was an action for possession of real property located at 18 Sixth Avenue, Bluffton, S.C. 29910", seeking foreclosure of various matters - a lien, breach of contract, unjust enrichment, etc. But as evidence in the entire case can show, the respondent is not entitled to have possession of any property from the Appellants because there is no evidence Appellants owe anyone money. There is no merit on anything it claims and there is no documentary evidence or detail allegations anywhere in the entire case supporting its claims. As explained in more details herein this Brief and the Record on Appeal, Respondent employed fraud and collusion with a perjured affidavit (R.p.47, lines 12-13; Affidavit in Support of Order for Publication filed by Counsel Wild on December 23, 2019) which is facially defective because Counsel Wise in a sworn statement stated that:

"11. The undersigned has, after due diligence, been unable to locate a valid alternate address for Joseph Sun within or without the state of South Carolina."

The clerk of court based on that false statement, signed and issued an order of publication on January 31, 2020. But in an amended affidavit filed by Counsel Wise as an attachment on December 27, 2019 of a report by an investigator in support of Publication (R.p.51, lines 11-12; p.122, lines 11-12), there was an alternate address of 43 Broadview Drive, Ridgeland, S.C. in Jasper County where Sun was residing as permanent resident and Mr. Wild has such knowledge as stated in his amended respondent's brief. (Page 15)

In an appeal from an action in equity, such as the within case, 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. 76,80, 674 S.E.2d 519,522 (Ct.App. 2009).

All record and the transcripts of the hearings (on July 17, 2020 and August 4, 2020) can show, the first time Appellant Sun was informed of a default filed against them was when he was in a foreclosure hearing on July 17, 2020. (R.p.218,line 25 - p.219,line 6) Respondent counsel Wild tried to use his own fabrication and inadmissible hearsay as his own testimony without being sworn in, in the hearings and in his amended brief of respondent, (R.pp.311 - 338) to imply that Appellants had knowledge earlier. Appellant Sun complained to the judge to no avail. (R.p.327, lines 6-20) The transcripts of WebEx hearings can show, respondent agent acknowledged record of Appellants' payments on all annual assessments except 2017 and 2018. (R.p. 129, Exh. B) Other claims by the respondent on violations, penalties, attorney fees and late fees were charges it was not entitled to unless specifically authorized by the subdivision covenants and restriction as barred by this courts holding in *Rawlinson Road Homeowners Association, Inc. v. Jackson*, 395 S.C. 25, 716 S.E.2d 337 (2011).⁶

⁶ All the fines on any violations must be first authorized by the subdivision covenants and restrictions which respondent has not shown. Counsel Wild repeatedly refused to answer Appellant's inquiry on the details of all the illegal and impermissible charges at the hearings and claimed Appellants had already admitted all respondent's

At least all fees and charges must be litigated and proven in a trial on damages. Respondent counsel told numerous false and unsubstantiated in his respondent's brief which cannot be supported by any evidence. But he uses the vague citations in his entire brief by citing non-existing transcript of (Tr. 7.17.20; Tr.8.4.20; Tr.2.8.21)(R.pp.____).

By using a perjured affidavit signed by Counsel Wild, the respondent committed fraud and collusion, therefore, even though "the decision to order service by publication is final", after Appellants pointed that out with supporting evidence in the record in their motion to open and set aside default filed on August 7, 2020 (R.pp.112-117) and again in their motion to reconsider filed on January 25, 2021 (R.pp.115-160), Judge Dukes should not have instructed Counsel Wild to include the denial of the two motions to set aside the Master's Decree and for injunction, in the final Masters Decree of Foreclosure, without addressing the merits of Appellants' motions. Judge Dukes should not have signed the Master's Decree/Foreclosure without any review as prepared verbatim by Counsel Wild. Judge Dukes in essence committed dereliction of his duty and allowed Respondent Counsel Wild to rule and deny Appellants' motions without proper finding of fact or conclusion of law, or any determination by the court, in the Master's Decree/ Foreclosure, Sale & Judgment.⁷ (R.p.23, line 3 - p.24, line 5.)

On Page 15 of Respondent's Amended Initial Brief, Counsel Wild admitted he was aware

allegations and illegal charges because they were in default. (R.p.193, lines 1-23) Wild claimed the case was closed. The judge disregarded that Appellants had just found out the default at the foreclosure hearing and blamed Appellants had not requested to be let out of default. (R.p.194, lines 14 - p.198, line 24) Record in the case shows that because Respondent bypassed default judgment, no default hearing, the default was not known during pandemic lockdown, Appellants could not try to open the default because they did not know there was a default. Record shows that some default document was mailed to a P.O. Box or the vacant house in Bluffton and returned. Appellant Sun is 75 years old, usually stayed home at his Ridgeland house.

⁷ After repeated requests from Appellant Sun for rulings on Appellants' motions, Judge Dukes at the end of the Hearing on August 4, 2020 said he was going to rule on Appellant's motions as part of his overall ruling. (R.p.339, line 13 - p.340, line 8) In the end, his ruling was entirely prepared by Respondent counsel Wild verbatim. The grounds of denial of Appellants' motions were irrelevant to, avoiding all facts and arguments in Appellants' original motion, without addressing issues and arguments raised by Appellants. (R.p.23, line 3 - p.24, line 5.)

that Sun's Ridgeland address was number 6 on his list of search. Whether it was number 6 or 16 or whatever, Mr. Wild knew there was an alternate address for Sun. But he chose to ignore it and file a perjured affidavit that "Sun could not be found within or without the state of South Carolina" to obtain an Order of Publication by fraud so he could claim default against the Appellants surreptitiously when Appellants were not aware of the entire case. In the first foreclosure hearing (July 17, 2020) Wild repeatedly alleged that by default, Appellants had admitted to all his fraudulent allegations of debts. (R.p.192, line 24 - p.195, line 15; p.211, lines 8-20.) No further question was allowed and Judge Dukes agreed.

After the within case was filed in October 2019, Counsel Wild refused to even hire a process server to easily and readily have Sun personally served with the process. Wild's affidavits for publication were signed and filed in January 2020 during the total lock-down of the pandemic. Therefore, Wild's fraudulent scheme was clear. He devised the scheme to extort money from the Suns without allowing the Suns his day in court because by the time Sun was informed of the foreclosure hearing in June when Sun's daughter was back in the Bluffton house from university for the summer and forwarded to Sun the notice of foreclosure hearing, everything would be too late. Wild had covered up all the illegal penalties of impermissible violations and attorneys fees barred by this court's holding in *Rawlinson Road Homeowners Association, Inc.*, supra, where only violation of specifically recorded covenants and restrictions. He obtained an obscure default and buried the Suns' Answer, Counterclaim and CrossClaim against him.⁸

The service by publication in this case should be declared null and void and be vacated and

⁸ After Appellant received the notice of foreclosure hearing from his daughter, he downloaded the complaint from the Beaufort County Public Index and immediately filed the answer and counterclaim. Appellant was never served with the process and the service by publication was a nullity. Appellant's filing of his belated Answer and Counterclaim 3 days before the hearing could be deemed acceptance of circuit court's jurisdiction. However, Judge Dukes disallowed Appellant's filing (R.p.195, lines 11-15) therefore circuit court never had jurisdiction over the Appellants. There is no admissible evidence to show otherwise.

set aside. There should have been no default in this case because there was no sufficient service of process on the Appellants.

2. Appellants' initial motion to Open and Set Aside the Default alleges the false affidavit and fraud committed by the Respondent counsel in falsely claiming Appellant Sun could not be found within or without the state of South Carolina. As a pro se party, Appellant alleged some matters that are irrelevant to the issue. However, his allegations and the record in the Beaufort County Public Index are clear that Respondent counsel has falsely testified in getting the Order of Publication, and has not obtained a default judgment by motion and allowed Appellants the day in court on the issue of default, and there was no trial to determine the amount of violation and fines actually imposed by the respondent. (R.p.251, line 11 - p.252, line 15.)

Appellants clarified their motion in their supplement (R.p.118, Line12 - p.119, line12) on respondent counsel's false claim in his affidavit that at an early stage of the case, before he signed and filed his affidavit of publication, he already used an online service and obtained Appellant's residence address in Ridgeland where the appellant could personally be served with the process. (R.p.122, lines 11-12.)

Master in Equity in his Decree of Foreclosure, Sale and Judgment prepared by respondent counsel on Page 15 of 18 is an error and abuse of discretion where the Master did not rule on any issues raised in the Appellants' Motions because the proposed order was prepared by Counsel Wise. The Master states verbatim: (R.p.23, line 4 - 24)

"The Sun Defendants' Motion to Open and Set Aside Default - This motion was filed after the hearings: August 7, 2020. I declined to hear the motion at the July 17, 2020 foreclosure hearing as notice of it was untimely and it was not reflected in the records before me at the time of the hearing. Regardless, I deny the motion on the grounds that Mr. Sun, in his and the Suns Family Trust's Answer, in the instant motion (§6), and at the July 17, 2020 trial of this matter, admitted to have at least constructive notice of this action in March 2020; further, service by publication appears from the

record to have been properly conducted; further still, the facts or statements of law about the running of published summons or the illegality of service of process during the COVID-19 look-down do not excuse Defendants' failure to timely answer, are unfounded and do not constitute a legal justification for the Sun defendant's failure to answer. Therefore, the motion is denied."

The aforesaid paragraph in the Master Decree avoided Appellants' complaint on Respondent's perjury in its publication affidavit and exhibit on Appellant's residence in Ridgeland filed by respondent counsel. Further, it ignored Appellant's complaint that Respondent failed to file a motion for and obtain a default judgment pursuant to Rule 55(b), SCRPC where Appellants would have been notified of the default. Then the second reference of July 17, 2020 according to the same page in the Master's Decree, the Master's Decree falsely claimed that "at the July 17, 2020 trial of this matter, Appellant admitted to having at least constructive notice of this action in March 2020" Everything in the master's decree regarding the service by publication and the amount of money awarded to the respondent himself on previous pages (R.pp. 9-26) are fabrication by the Respondent counsel and signed by the Master without reading or verification for its truthfulness.⁹

Appellant noticed this pattern of behavior of the Master at an early stage of the case therefore filed a motion to recuse Judge Marvin Duke on August 19, 2020. At the Recusal Hearing on November 17, 2020, Judge Marvin Duke heard the motion himself and denied Appellant's motion to recuse him allowing respondent counsel to go on his defense.

Appellant raised the issues of deprivation of due process of a trial and respondent's use of false testimony in his affidavit for publication, and asked to set aside the default pursuant to *Rule 55(c)* and *Rule 60(b)*. Since Master in Equity has not ruled on issues raised by Appellants, this

⁹ The Master erroneously equated counsel's impermissible hearsay of "constructive notice of this action in March 2020" as the required due process of personal service pursuant to Rule 4(d), SCRPC.

court should reverse the denial and remand for a ruling by a different judge on Appellants' motion to set aside and vacate the default as the record is clear on the errors committed.

The denial of Appellants' motion for permanent injunction and/or temporary restraining order should also be reversed based on the reversal of motion to vacate and set aside default.

3. It is an error and abuse of discretion for the Master in Equity to allow the Respondent to skip the due process of *Rule 55(b), SCRPC* in requiring Respondent to file a motion for default judgment and serve Appellants with the notice of motion. Respondent's foreclosure should not be granted and Appellant must be allowed the right to be heard prior to issuing a foreclosure. The entire Beaufort County Public Index (R.pp.399-407) does not show any hearing or trial on respondent's damages. There was no entry of a Default Judgment. All assessments were paid.

In *Beckham v. Durant*, 300 S.C. 329, 331 n.2, 387 S.E.2d 701, 703 (Ct.App. 1989) South Carolina Supreme Court clarified that, "The entry of default is an official recognition of the failure to appear or otherwise respond, but is not a judgment by default. Judgment by default is not properly entered until damages are determined." Furthermore, Plaintiff in this case cannot deny defendants' right to discovery. Rule 26 does not distinguish between parties in default and those not in default. Rather, it provides for discovery by "parties". In the case at bar, the default judgment must be vacated and set aside.

Regardless of whether defendants were in default, it is incumbent upon the judge and/or the jury to make a judicial determination of the amount of damages based on sufficient proof. *Lewis v. Congree of Racial Equality and/or C.O.R.E., Inc.*, 275 S.C.556, 274 S.E.2d 287 (1981). The prayer in an action may not serve as a substitute for proof. *Id.* A Plaintiff must prove by complete evidence the amount of his damages. *Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 246 S.E.2d 880 (1978). Respondent-Plaintiff here erroneously believed that its "Verified Statement

and Affidavit of Debt”¹⁰ alone was all the proof it needed. The Defendants in this case must be allowed to conduct full discovery and cross examination on Plaintiff’s “Verified Statement” so that they may protect their right to contest the appropriateness and truthfulness of the violations and fines claimed by Plaintiff.¹¹ All assessments fees were fully paid.

Appellants should be allowed discovery and a trial by jury on the damages which respondent claims to have suffered prior to a foreclosure hearing. But instead, the first hearing in the case was the foreclosure hearing on July 16, 2020 when Appellant was informed there was a foreclosure on his house. Whatever the Respondent testified was taken as truth and Appellant was not allowed to question. The case of *Rawlinson Road Homeowners Assoc., Inc. v. Jackson*, 395 S.C. 25, 716 S.E.2d 337 (2011) was not even considered by the circuit court. The Master in Equity has deprived Appellants’ right to due process of the law, therefore, the Master Decree of Foreclosure, Sale and Judgment must be vacated and set aside.

4. It is error and abuse of the master’s discretion to deprive the Appellants the due process as set forth in *Rule 71, SCRPC* on proceedings on Foreclosure and Partition.

Rule 71, SCRPC, provides certain proceedings for foreclosure.

“(a) Actions to foreclose liens or obtain partition of real property shall be tried by the court and referred to a master pursuant to *Rule 53*. In foreclosure actions the judge or master shall compute the amounts due the plaintiff ... which amounts when determined shall be the total debt due to each. The total debt shall as a minimum set forth clearly the principal due on default In all cases proof shall be made of the facts and circumstances alleged in the pleadings and evidence given as to any payments which have been made or credits due. Prior to the filing of the master’s report or final order of judgment, the judge or master shall assure that the plaintiff and all claimants have complied with the statute pertaining to the filing of noticed of lis pendens. In all actions a record of hearings shall be made and preserved in the case file in the office of the

¹⁰ Without opportunity for Appellants to cross-examine.

¹¹ Transcript of hearing shows Respondent claimed all its allegations were deemed admitted because of Appellants’ default. (R.p.211, lines 12-20; p.216, lines 4-9.)

clerk of court.”

Respondent presumably filed the lis pendens and lien, but record in Beaufort County Public Index (R.pp. 399 - 407) shows that nothing was served or attempted to be served on the Appellants. Furthermore, it is clear that nothing required in the aforesaid paragraph has been complied with. Record shows that not only defendants had not been served with any notice of hearing on any proceedings, the first hearing was the foreclosure hearing where Appellant was forbidden to ask any question and was told that his house was already being foreclosed with no question allowed. (R.p.195, lines 20-25) Therefore, the violation of Rule 55(b), SCRCF is a deprivation of Appellants right to due process of the law. (R.p.196, lines 4 - 25.)

Subsequent Webex hearing Appellant was given certain statement and affidavits of debt, without the opportunity of cross examination. Everything submitted by the Respondent-Plaintiff was taken by the Master in Equity as truth in full amount. As shown in his Affidavit and Exhibits filed on December 16, 2020 (R.pp. 123-130) Appellant has shown that all library and government offices were closed from January through June of 2020 during the period of the Pandemic therefore Respondent’s publication could not be seen by Appellant. That alone was a denial of due process. Sun’s aforesaid affidavit and attachments also shows that all assessments fees owed the Respondent had been paid in full. Therefore, Appellant did not owe the respondent any money except some violations, penalties and late fees which Respondent illegally claimed as explained in the following paragraph. (See, *Rawlinson Road Homeowners Assoc., Inc. v. Jackson, supra.*)

Due to the fact that there was no trial allowed prior to the issuance of the Master’s Decree of Foreclosure, Sale and Judgment, the Master in Equity erroneously and impermissibly allowed the Respondent to include numerous unknown and illegal fines and penalties, such as parking Appellant’s private vehicles on his own yard and failure to cut grass in his yard, numerous late fees

and interests because Appellant refused to pay as he believed those penalties were illegal.

(R.pp.174-175) The Respondent included numerous fabricated amounts in the Master's Decree and the Master signed it with no questions asked after Appellants were deprived their rights to be heard and cross examine.

Respondent's fraudulent service by publication is a denial of Appellant's right to due process of the South Carolina Rules of Civil Procedure. Respondent used the fraudulently obtained default so it can collect illegal fees and fabricated fines with no questions allowed from the Appellant is a denial of due process. There was no actual trial in the within foreclosure case. The Master allowed Respondent to violate Rule 71(a)¹² in obtaining the Master's Decree of Foreclosure and Judgment which therefore must be vacated and set aside based on *Rule 60(b)(3)*. Record in the Beaufort County Public Index (R.pp. 399-407) can show the Master has not made any determination of the amount of debt respondent claimed as there was no trial for respondent to prove anything. The Master simply signed the proposed Decree full of fabrication made by the Respondent who has not shown any amount of money they claim was legal or even real, owed by Appellants or whether it was legitimate charges allowable by law or the covenant. The Master simply allowed everything Respondent claims that Appellant owed even though they were illegal or fabricated or impermissible based on purported violations, late fees and attorneys fees. Appellant has shown that he has paid all subdivision assessments and owed nothing. (R.p.129)

In the Master's Decree of Foreclosure, Sale and Judgment, prepared by Respondent counsel and later signed by Master without hearing or cross examination allowed, there are several pages of

¹² Rule 71(a) in Foreclosure action, the Master shall compute the amounts due the plaintiff which when determined shall be the total debt due to respondent. In all cases proof shall be made of the facts and circumstances alleged in the pleadings and evidence given as to any payments which have been made or credits due. Prior to the filing of the master's report, the master shall assure that plaintiff has complied with the statutes pertaining to the filing of notices of lis pendens which was filed but Appellant was not notified.

amounts claimed to be awarded to the Respondent Association (R.pp. 17-19). Those charges were fabricated by the Respondent and first time seen by Appellant in the Master's Decree. Appellant is unable to dispute Respondent's fabrications because Beaufort County Public Index can show Appellant was never given a forum or a trial to be heard even though on Page 11 of the Decree prepared by Respondent counsel briefly mentioned *Rule 71* regarding surplus funds which is irrelevant. Respondent then bypassed the remainder of *Rule 71* required in a foreclosure action.

Record in the Beaufort County Index shows respondent impermissibly tried to charge numerous penalties and late fees when illegal fines were not paid. (R.p174-175.)

Restrictive covenants are contractual in nature. *Hardy v. Aiken*, 369 S.C. 160, 165, 631 S.E.2d 539, 541 (2006) A restriction on the use of the property must be created in express terms or by plain and unmistakable implication. *Id.* Restrictions on the use of property will be **strictly construed with all doubts resolved in favor of free use of the property**; however the rule of strict construction should not be used to defeat the plain and obvious purpose of the restrictive covenants. *Taylor v. Lindsey*, 332 S.C. 1, 4, 498 S.E.2d 862, 863 (1998). The language of a restrictive covenant is to be construed according to the plain and ordinary meaning attributed to it at the time of execution. *Id.* Where as here, there was nothing in the covenant showing respondent could lawfully impose any fines for parking personal cars and boats on homeowners property or failure to cut the grass or pressure wash the house. Appellant's request for discovery was denied.

A restrictive covenant is ambiguous when its terms are reasonably susceptible of more than one interpretation. *S.C. Dep't of Natural Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302 (2001). It is a question of law for the court whether the language of a restrictive covenant is ambiguous. *Id.* at 623, 550 S.E.2d at 302-03. Once the court decides the language is ambiguous, evidence may be admitted to show the parties' intent. *Id.* at 623, 550 S.E.2d

at 303. The determination of intent is then a question of fact. *Id.*

In the within case, there is no question of ambiguity. By order of the Master, Respondent sent Appellant hundreds of pages of subdivision bylaws and restrictive covenants with many revisions. (See transcript, 2-8-2021¹³. R.pp. 385-397) There was no specific description or rules that prohibit the parking of cars, cutting grass or cleaning the house exterior, therefore, all penalties imposed by the respondent on the appellant were impermissible and must be removed. Appellant has shown that he owes respondent nothing regardless of the fraudulent service by publication. The respondent cannot charge or fine the homeowners of certain activities the director did not like when the so-claimed violation were not specifically documented. The burden is on the Respondent to show. Regardless of the last hearing, Appellant received many pages of documents but no “specific” restriction or covenant that could allow the respondent to fine Appellant or impose attorneys fee.

In the case of *Rawlinson Road Homeowners Association, Inc. v. Ronald D. Jackson*, 395 S.C. 25, 716 S.E.2d 337 (2011), there was a dispute between Mr. Jackson and Rawlinson Homeowners Association on the matter of whether Jackson had violated the restrictive covenant prohibiting the parking of a boat and trailer within the subdivision. Mr. Jackson was fined but he refused to pay the fine or the subsequent fines of \$25 per week thereafter.

The Association recorded a Notice of Lien against Jackson’s property for unpaid fines. The next year, the Association filed suit against Jackson and his mortgage lender, seeking to enforce the “no boats” rule and to foreclose on its purported lien against the property. The Association also sought to sell Jackson’s property and an order empowering the Sheriff to place the purchaser at said

¹³ The hearing was held after the judge already signed the Masters Decree and filed it on January 13, 2021. There was no further hearing on the matter. Respondent was awarded fabricated damages without evidence.

the purchaser at said foreclosure sale in possession of the property.

The difference in Jackson's case versus this case in Beaufort county is that, The Master in Jackson's case denied the Association's motion for an injunction and granted summary judgment to Jackson. In his order, the master found the restrictive covenants in place when Jackson purchased his property neither expressed nor implied a prohibition against boats or authorization for the Association to impose fines. The Master declared the restrictive covenants did not authorize the Association "to adopt rules and regulations relating to conduct on an individual lot." Finally, he declared the By-laws and Rules "null and void as they relate to the impositions of fines or assessments upon individual[395 S.C. 32] lot owners based on the use of their respective lots" and vacated the Association's lien against Jackson's property. In the Jackson case, the Association filed a motion to reconsider, which, after a hearing, the master denied in a Form 4 order.

The South Carolina Court of Appeals affirmed the Master's rulings. *Rawlinson, supra*, 395 S.C. at 25, 716 S.E.2d at 337. The Court of Appeals agreed with the fact that no covenant restricted the presence of a boat or trailer on private property at the time of purchase. *Id. at 34.*

Where as here, respondent has not shown any specific violation in the documented restrictive covenant which it claims Appellant is guilty of. Aforesaid case law has prohibited penalizing homeowners arbitrarily for keeping a boat or parking a car on his own yard.

There was no trial on the damages, no discovery allowed in violation of *Rules 55(b) and 71*. It is clear pursuant to the Beaufort County Public Index (Item 1, Designation of Matter) the first hearing was a foreclosure hearing when Appellant was notified of the foreclosure action for the first time. He was not allowed any questions, only allowed to verify that the Respondent Bluffton Park had received all annual assessment payments which payments were received. The two payments that Respondent claimed missing were found by Appellant in his bank record after the

hearing and made copies and filed at the Beaufort County Public Record (Item 10, Designation Matter, Affidavit Joseph Sun, 12/16/2020). Therefore, Appellants have proven that they do not owe the Respondent any annual assessment fees or anything legally permissible.

DENIAL OF DUE PROCESS - Respondent has not filed a motion or notice of hearing for default judgment or for actual trial for damages, Appellant knew nothing about the default. (See Transcript of hearing July 17, 2020). Without obtaining a default judgment, Respondent hastily scheduled a foreclosure hearing on July 17, 2020. Appellants filed a motion to open and set aside default (Item 12, Designation of Matter) and again in their Motion to Reconsider pursuant to Rule 59, SCRPC (Item 7, Designation of Matter). As aforesaid in their initial brief, the Master allowed the Respondent counsel to include his denial in the proposed Master Decree over Appellants' objection and signed it on January 13, 2021. (Designation of matter, Item 8.)

In *Pye v. Estate of Fox*, 369 S.C. 555, 633 S.E.2d 505 (2006), The South Carolina Supreme Court held that @566,

“Generally, an issue must be raised to and ruled upon by the circuit court to be preserved. *Elam v. S. Carolina Dep't of Trans.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (noting a party must file a Rule 59(e) motion “when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review”). However, an exception to this rule exists where an issue is raised but not ruled upon at a Rule 59(e) hearing. In *Coward Hund*, the court of appeals explained: “The purpose of Rule 59(e), SCRPC, to alter or amend the judgment [,] is to request the trial judge to ‘reconsider matters properly encompassed in a decision on the merits.’” *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992) *566 (quoting *Budinich v. Becton Dickinson and Co.*, 486 U.S. 196, 200, 108 S.Ct. 1717, 100 L.Ed.2d 178 (1988)). As one authority has noted, “Once the issue has been properly raised by a Rule 59(e) motion, it appears that it is preserved and a second motion is not required if the trial court does not specifically rule on the issue so raised.” *James F. Flanagan South Carolina Civil Procedure* 475 (2d ed.1996). *Coward Hund Const. Co., Inc. v. Ball Corp.*, 336 S.C. 1,4, 518 S.E.2d 56, 58 (Ct.App.1999) (emphasis added); see also *Collins Music Co., Inc. v. IGT*, 353 S.C. 559, 579 S.E.2d 524 (Ct.App.2002) (quoting *Coward Hund*). In *Pressley v. Lancaster County*, 343 S.C. 696, 542 S.E.2d 366 (Ct.App. 2001), the court of appeals, citing *Coward Hund*, applied this principle when the court addressed the merits of an argument which Pressley raised at trial and in a Rule 59(e) motion, but which the trial court “summarily denied.” See *Pressley*, 343 S.C. at 706 n. 4, 542 S.E.2d at 371 n. 4.”

Professor Flanagan further edifies: One commentator noted: “Lawyers cannot force a trial

judge to address a disputed **511 issue.” Moreover, the Supreme Court identifies two ways to preserve the issue: “a ruling by the trial judge or a post-trial motion.” The language implies that a properly requested ruling under Rule 59 is sufficient without a specific judicial decision on the matter. *South Carolina Civil Procedure* 475–76 (2nd ed.1996) (footnotes omitted) (quoting *Charles E. Carpenter, Jr. Preserving Error for Appeal, South Carolina Lawyer*, 15,18 (Mar./Apr.1995) and *Pelican Bldg. Ctrs. v. Dutton*, 311S.C. 56, 427 S.E.2d 673 (1993).

Therefore, all Appellants motions were preserved on appeal regardless whether the Master had ignored them or signed the order after respondent counsel denied them groundlessly or fraudulently. Appellants filed their verified Answer, Counterclaim and CrossClaim four (4) days before the first foreclosure hearing. Appellants’ Answer and Counterclaim were disallowed with no reason given, and no verbal or written order was issued. The other two (2) motions for Temporary Restraining Order filed on August 5, 2020 and to Open and Set Aside Default filed on August 7, 2020 were actually denied by the respondent counsel as the Master in Equity allowed the Respondent counsel to include them in its proposed Master Decree for denial without any finding of facts and conclusion of law. Therefore, All proceedings are preserved on appeal.

RESPONDENT’S MOTION TO DISMISSED SHOULD BE DENIED

Respondent’s insertion of a motion to dismiss in its Brief in Response on Appeal is a violation of South Carolina Appellate Procedure as its attempt to avoid paying the filing fee and trying to litigate an issue which should have been and had already been addressed at the circuit court. Appellant had already paid the full amount of the required bond on appeal pursuant to the Order of Master in Equity. Respondent chose to continue to “beat on a dead horse” as its harassment against the Appellants who have already suffered tremendous unnecessary losses due to respondent’s malicious fraudulent scheme of extortion. Evidence has already shown that it is not entitled to any additional money from the Appellant and Counsel Wild knows that.

5. The Master’s Decree of Foreclosure and Judgment has made no provision of surety required on the Respondent after Notice of Appeal is filed. *South Carolina Code Section 18-9-130(A)(2)*

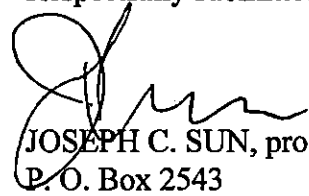
provides that “(2) A plaintiff may not enforce a sale of property after a notice of appeal is filed without giving an undertaking or bond to the defendant, with two good sureties, in double the appraised value of the property or double the amount of the judgment, conditioned to pay all damages the defendant may sustain by reason of the sale in case the judgment is reversed.” Respondent should be required to post the required surety prior to sale of Appellant’s home.

CONCLUSION

For the foregoing reasons, the Master’s Decree of Foreclosure, Sale & Judgment issued on January 13, 2021 and the subsequent Form 4 Order issued on April 7, 2021 should be reversed and vacated, including all the liens and lis pendens and all other documents against the Appellants and their properties. The service by publication should be declared null and void and respondent’s foreclosure action should be dismissed. The appeal bond filed by the Appellants should be released. The Respondent should be required to reimburse the Appellants all the fees and expenses they incurred in this entire case on appeal and in the circuit court. Appellants’ Counterclaim and CrossClaim should be allowed to proceed.

This 1st day of May, 2022.

Respectfully submitted

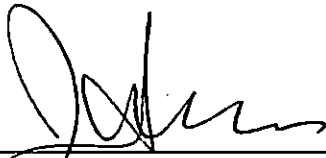


JOSEPH C. SUN, pro se
P. O. Box 2543
Bluffton, SC 29910
843-304-0314

CERTIFICATE OF COMPLIANCE

APPELLANT JOSEPH SUN hereby certifies that the Appellants' Final Brief complies with Rule 211(b) of the South Carolina Appellate Court Rules.

May 1, 2022.



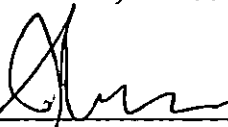
Joseph C. Sun, pro se
P. O. Box 2543
Bluffton, SC 29910
843-304-0314

PROOF OF SERVICE

This is to certify that I have this date served the Respondent a copy of Appellant's Final Brief, 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 1st day of May, 2022.



JOSEPH C. SUN

RECEIVED
MAY 09 2022
SC Court of Appeals

P. O. Box 2543
Bluffton, SC 29910
May 1, 2022

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

RECEIVED

MAY 09 2022

SC Court of Appeals

Re: Appeal Case: 2021-000434
Bluffton Park v. Sun

Gentlemen:

Enclosed please find two (2) copies of the Appellant's Final Brief for filing pursuant to Rule 211 (a), SCACR. Thank you for your assistance.

Sincerely,




JOSEPH C. SUN

Enclosure: Final Brief of Appellant - two (2) copies

J.C. Sun
P.O. Box 2543
Bluffton, SC 29910

RECEIVED
MAY 09 2022

RECEIVED
MAY 09 2022
SC Court of Appeals

F		U.S. POSTAGE \$3.38 FOR LG ENV 20910 Date of Sale 05/07/22 SC 09 25 05 1148592
		USPS FIRST-CLASS MAIL®
J.C. SUN P.O. Box 2543 Bluffton, SC 29910		11.70 oz
OFFICE OF THE CLERK, SOUTH CAROLINA COURT OF APPEALS SHIP TO: P.O. Box 11629 COLUMBIA SC 29211		
		
(420) 29211		

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

RECEIVED
MAY 09 2022
Court of Appeals

