

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SUMTER COUNTY
COURT OF COMMON PLEAS

THOMAS E. PLAYER, JR., SPECIAL REFEREE

CASE NO.: 2022-000601

John Weible,

Russell Self and Brandilyn Brunson,

Respondent,

Appellants.

RESPONDENT'S MEMORANDUM AS TO TIMELINESS OF APPEAL

SUMMARY OF PERTINENT FACTS AS TO TIMELINESS OF APPEAL

On March 16, 2020, a Foreclosure Order was signed in the above matter by the Special Referee, and on March 17, 2020 it was filed electronically by Clerk of Court's office. See Exhibit A. Also on March 17, 2020, a Motion for Reconsideration under Rule 59, SCRPC was filed electronically by Defendant Brunson's prior counsel. See Exhibit B. On November 24, 2020, a Consent Order for Substitution of Counsel was filed electronically in the Clerk of Court's office. See Exhibit C. On July 10, 2021, the Special Referee emailed notice of his decision denying the Motion for Reconsideration to counsel for both Plaintiff and Defendants. See Exhibit D. The Special Referee asks Plaintiff's counsel to prepare a written order as to same. On August 3, 2021, Defendants' counsel acknowledges that the Special Referee has denied the Motion for Reconsideration via email to Plaintiff's counsel. See Exhibit E. On August 19, 2021,

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SC Court of Appeals

the Special Referee advises that the written Order Denying Motion has been signed via email to counsel for Plaintiff and Defendants. See Exhibit F. On August 19, 2021, the signed order and a Notice of Sale are emailed to Clerk of Court's office for filing with a copy to Defendant's counsel. See Exhibit G. On August 20, 2021, the Clerk of Court's office advises counsel for both parties and the Special Referee via email that the signed order and signed Notice of Sale will be filed electronically. Also Exhibit G. On August 20, 2021, the Order Denying the Motion to Reconsider was electronically filed under a different case number, C/A #:2018-CP-43-02004, instead of 2018-CP-43-2005. See Exhibit H. On September 27, 2021, Defendant Brandilyn Brunson filed for bankruptcy protection. See Exhibit I. On January 10, 2022 the Order Denying the Motion to Reconsider was electronically filed under the correct case number. See Exhibit J. On January 20, 2022 Defendant Brunson's current counsel filed a second and successive Motion for Reconsideration under Rule 59, SCRCF. See Exhibit K. On March 30, 2022 the bankruptcy court issued its order denying Brandilyn Brunson's objection to claim of John Weible, and lifted the automatic stay in order for Brunson to be able to pursue a state court appeal. See Exhibit L. On April 26, 2022 the order of the Special Referee was filed denying again the Motion for Reconsideration. See Exhibit M. On April 27, 2022, Brunson personally served her Notice of Appeal in the state court action. See Exhibit N. Her bankruptcy petition remains pending.

ARGUMENT

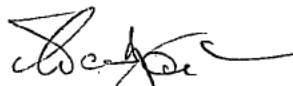
Rules 201 and 203, SCACR provide the right for a party to appeal a judgment from the Court of Common Pleas. The notice of appeal must be served within thirty (30) days after receipt of written notice of entry of the order. In this matter Brunson's counsel received an email

with a copy of the Order Denying Motion to Reconsider. Email notice of entry of an Order by the Court has been held to trigger the running of time for appeal. *Wells Fargo Bank, NA v. Fallon Properties South Carolina, LLC*, 776 S.E.2d 575 (Ct.App. 2015). *Lemmons v. Macedonia Water Works, Inc.*, (847 S.E.2d 471 (Ct.App. 2020). Thirty days from the date of the email to Defendant's counsel giving notice of the order ended on September 20, 2021. Brunson's bankruptcy case was not filed until September 27, 2022 and notice of this appeal was not served until April 27, 2022. Therefore, the automatic stay did not serve to protect Brunson's time limit to appeal which began before the bankruptcy was filed. It should also be noted that the Supreme Court's Order regarding Operation of the Trial Courts During the Coronavirus Emergency (2020-000447) allows for service upon counsel via email. Documents must be attached in PDF and service is complete upon transmission.

CONCLUSION

Accordingly, the notice of appeal is not timely and the appeal should be dismissed. As to the second successive Rule 59 Motion the same does not serve to extend the time to appeal. *Coward Hund Const. Co., Inc. v. Ball Corp.*, 518 S.E.2d 56 (Ct.App. 1999).

Respectfully submitted.



Michael M. Jordan
SCHWARTZ, MCLEOD & JORDAN
10 Law Range
Sumter, South Carolina 29150
Attorneys for Plaintiff
803-774-1000

Other Counsel of Record:

A. Paul Weissenstein
PO Box 2446
Sumter, SC 29151
(803)418-5700

May 23, 2022
Sumter, South Carolina

Exhibits

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER	)	
	)	C/A #:2018-CP-43-02005
John Weible,	)	
	)	
Plaintiff,	)	
vs.	)	ORDER FOR JUDGMENT AND
	)	DECREE OF FORECLOSURE
Russell Self and Brandy Brunson,	)	
a/k/a Brandilyn Self,	)	
	)	
Defendants.	)	
	)	

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, and by Order of The Honorable James C. Campbell, Clerk of Court, this case was referred to the undersigned to make appropriate findings of fact and conclusions of law, with authority to enter a final judgment in the case, with any appeal from final judgment so entered to made to the South Carolina Court of Appeals.

Pursuant to the order of reference a hearing was held, and was attended by Plaintiff and his attorney and Defendants and their attorney. Appearances made, evidence offered and received are as shown in the Record of Hearing. Based on the evidence, I find and conclude as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Lis Pendens was filed on October 29, 2018.
2. The Summons and Complaint were filed on October 29, 2018.
3. Service was made upon Defendants Russell Self and Brandy Brunson as shown by the affidavits and certificates of service filed with the Court.



4. The Defendants are each in default as shown by affidavit of default filed with the Court on February 6, 2019. No Defendant in default is in the military service of the United States of America, as contemplated under the Servicemembers' Civil Relief Act, 50 U.S.C. App. '501, *et seq.* and any amendments thereto.

5. The Defendants acting pro se, jointly filed a document captioned Acceptance of Foreclosure Intervention with the Court on November 13, 2018. Thereafter, the Plaintiff served Defendants with an Affidavit of Non Eligibility under the Home Affordable Modification Program (HAMP) on February 5, 2019.

6. The Defendants acting pro se, jointly filed an Answer May 16, 2019. Thereafter on June 27, 2019 Defendant Brandilyn Self, acting through counsel filed an Amended Answer. No relief from the entry of default was obtained prior to these filings of responsive pleadings. The Defendants argue that they are not in default in this foreclosure action as the same is stayed by the requirements of Administrative Order 2011-05-02-01 until loan modification has been attempted. However, the Defendants do not contest that HAMP has expired and review for loan modification and loan modification is purely voluntarily by lenders at this time. In fact, in the Amended Answer no reference is made to loan modification as being an issue and the same appears to have been abandoned from the Answer filed pro se by Defendants. In any event I find that Plaintiff does not participate in loan modification, nor is he required to do so. Having decided that loan

modification is not available and not required, this issue is resolved in compliance with Administrative Order 2011-05-02-01 and Defendants remain in default and have failed to seek relief from same as provided in the Rules of Civil Procedure.

7. A hearing in this matter was convened on May 28, 2019. At that time counsel for Defendant Brandilyn Self requested that the matter be continued and not go forward alleging Plaintiff had not complied with the requirements of Administrative Order 2011-05-02-01. Plaintiff denied same but agreed the matter should be continued and rescheduled at a later date with a court reporter present. Accordingly, the matter was continued until the date of this hearing.

8. All parties were notified of the time, date, and place of the final hearing in this matter. Plaintiff and Defendant Russell Self were examined under oath. Defendant Brandilyn Self did not testify. Both parties submitted exhibits into the evidence.

9. On November 5, 2010 for value received, Defendants executed a Note payable to the Plaintiff in the amount of \$115,000.00 with no interest charged thereon. The term of the loan was seven (7) years. This Note (Note #1) was entered into evidence.

10. Also on November 5, 2010 Defendants executed a Mortgage in favor of the Plaintiff securing \$65,000.00 of the above loan to the Plaintiff with the herein described real property as collateral. This Mortgage (Mortgage #1) was duly recorded in Book 1146 at Page 3425 in the Sumter County ROD and same

was entered into evidence.

11. On May 25, 2011 Defendants executed an additional Note in favor of the Plaintiff in the amount of \$60,000.00 with 8% interest per annum and with a two year term. This Note (Note #2) was entered into evidence.

12. On July 2, 2010 Defendants executed a Mortgage in favor of the Plaintiff securing existing indebtedness due to the Plaintiff in the amount of \$50,000.00 with the herein described real property as collateral. This Mortgage (Mortgage #2) was duly recorded in Book 1141 at Page 2066 in the Sumter County ROD and same was entered into evidence. When combined with the Mortgage identified in paragraph 10 above, the Defendants secured the full principal (\$115,000.00) of the November 5, 2010 Note.

13. On July 3, 2014 Defendants executed a Mortgage in favor of the Plaintiff securing indebtedness in the amount of \$48,923.00 with the herein described real property as collateral. This Mortgage (Mortgage #3) was duly recorded in Book 1202 at Page 5171 in the Sumter County ROD and same was entered into evidence. This Mortgage secured the May 25, 2011 Note.

14. Payments due on Note #1 and Note #2 have not been made as provided in said notes, and Plaintiff has elected to require immediate payment of the entire amounts due thereon and has placed the notes and mortgages in the hands of the attorney of record herein for collection by foreclosure.

15. The sum of Three Thousand Five Hundred and 00/100 (\$3,500.00) Dollars is reasonable to allow as attorney fees and costs incurred for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action, under the terms of the note and mortgage.

16. Plaintiff testified as to the outstanding balance of the debt due him from Defendants. Defendant Russell Self did not deny that the debt was owed, but rather contested the amount of same. He did not offer his own calculation as to the amount of the debt due but stated it was less than what the Plaintiff testified and offered. He (Defendant Russell Self) admitted that Defendants stopped paying on the Note in the amount of \$115,000.00 and he could not remember when they last paid on same. He stated that they did so (stopped making payments) because Plaintiff obstructed their (Defendants') efforts to obtain a refinance loan through Quicken Loans by not providing a payoff. He stated that they (Defendants) had made recent payments on the Note in the amount of \$60,000.00 and he disputed the balance due as calculated by Plaintiff. Mr. Self provided checks written to the Plaintiff in payment of this Note, however the checks were not delivered to the Plaintiff and had never been negotiated. In sum, Defendant Russell Self did not establish by a preponderance of the evidence a balance due on the Notes that contradicted Plaintiff's testimony and calculation.

17. The amount due and owing to Plaintiff for both Note #1 and Note #2, with interest applied only as provided in Note #2, and other costs and expenses of

the within action, including an attorney's fee, secured by the note and mortgage, is as follows:

(a) Principal due as of September 19, 2019	\$174,449.39
(b) Pre judgment Interest	\$0.00
(c) Attorney's fee, costs of collection through hearing, publication, (service, filing, etc.)	\$3,500.00

TOTAL debt secured by note and mortgage

including no interest to September 19, 2019 **\$177,949.39**

18. Plaintiff is seeking the usual foreclosure of the Mortgages and has in the Complaint, or subsequent thereto in writing, expressly waived the right to a personal or deficiency judgment should the proceeds of sale not be sufficient to satisfy the judgment debt. In the event there is a surplus from the sale of the subject property, the validity, priority and amount of any lien claim will be determined at a hearing subsequent to the sale, in accordance with Rule 71(c) South Carolina Rules of Civil Procedure.

19. The Plaintiff should have judgment of foreclosure of the mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.

20. The Mortgages held by the Plaintiff are reformed to include a 0.02 acre tract which was subsequently combined with the subject property of the Defendants as more fully depicted on the plat of William E. Lindler, Jr., PLS recorded at Plat Book 2010 at page 21, a copy of which was admitted into evidence. This property is part and parcel of the full tract, has no independent ingress and egress standing alone, and is necessary to include the full concrete deck of the swimming pool connected to the home.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. There is due to the Plaintiff on the obligation and mortgage set forth in the Complaint the sum of **\$177,949.39**, representing the total debt due Plaintiff as set out in Findings of Fact above, with no interest therein on the balance of principal from the date aforesaid to the date hereof.

2. The amount due in the preceding paragraph (the "Total Debt") shall constitute the total judgment debt due the Plaintiff and shall bear interest following judgment at the rate of **9.50%** per annum for 2019 and thereafter at the posted rate per Administrative Order of the South Carolina Supreme Court.

3. Defendants shall, on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

4. On default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint shall be sold by the undersigned Special Referee at public auction, at the location, and upon the date and time set forth in the Notice of Sale, and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on Tuesday next succeeding such holiday, on the following terms, that is to say:

a. For cash: The Special Referee will require a deposit of 5% on the amount of the bid in cash or equivalent (unless Plaintiff is the successful bidder) the same to be applied to the purchase price upon compliance with the bid. In case of non-compliance within the time specified in the Notice of Sale, the deposit will be forfeited and applied to the costs and Plaintiff's debt.

b. No interest shall accrue on the balance of the bid to the day of compliance.

c. The sale shall be subject to taxes and assessments, existing easements and restrictions and easements and restrictions of record, and any other senior encumbrances.

d. The Purchaser shall pay for the deed preparation and costs of recording the Deed and Deed Stamps.

5. If Plaintiff is the successful bidder at the sale for a sum not exceeding the amount of costs, expenses and the indebtedness due Plaintiff, Plaintiff may pay to the Special Referee only the amount of the costs and expenses, crediting

the balance of the bid on Plaintiff's indebtedness.

6. A personal or deficiency judgment having been waived, the bidding will not remain open after the date of sale, but compliance with the bid shall be made immediately.

7. The Special Referee will, by advertisement according to law, give notice of the date, time, and place of such sale, and the terms thereof, and will execute to the purchaser, or purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale. If the purchaser or purchasers at the sale should fail to comply with the terms thereof, then the Special Referee may advertise the said premises for resale on the next, or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

8. The Special Referee will apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this action, including any Guardian *ad Litem* fee or fees of attorneys appointed under Order of Court;

NEXT: To the payment to the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest, or so much thereof as the purchase money will pay on the same;

NEXT: Any surplus shall be held pending further Order of this Court.

9. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in the event the successful bidder is other than the Defendant in possession herein, the Sheriff, upon receipt of a Writ of Assistance or other order of ejectment, is authorized and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

10. IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant named herein, and all persons whosoever claiming under Defendant, be forever barred and foreclosed of all right, title, interest, and equity of redemption in the said mortgaged premises so sold, or any part thereof.

11. IT IS FURTHER ORDERED that the deed of conveyance made pursuant to said sale shall contain the names of only the first-named Plaintiff and the first-named Defendant, and the Defendant who was the titleholder of the mortgaged property at the time of the filing of the notice of pendency of the within action, and the name of the grantee; and, the Register of Deeds/Clerk of Court is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

12. The undersigned will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of

Assistance.

13. The following is a description of the premises herein ordered to be sold:

ALL that certain piece, parcel or lot of land with the improvements thereon, if any, situate, lying and being in the Privateer Township, County of Sumter, State of South Carolina, being shown and delineated as Lot No. 196, Phase I, "Lakewood Links" Subdivision, as shown on that certain Plat of Carl J. Croft, R.L.S., dated September 28, 1988 and recorded in the Office of the Register of Deeds for Sumter County in Plat Book 88 at Page 1292, more particularly showed on that certain plat of Joseph R. Edwards, P.L.S., dated October 7, 2009 and recorded in the Office of the Register of Deeds for Sumter County in Plat Book 2009 at Page 262, and having such boundaries, metes, courses and distances as are shown on said plat, reference to which is hereby made pursuant to authority contained in 30-5-250 of the Code of Laws of South Carolina, 1976, as amended.

AND ALSO: ALL that certain piece, parcel or lot of land with improvements thereon, if any, situate and lying and being in the Privateer Township, County of Sumter, State of South Carolina, being shown and delineated as 0.02 acres, as shown on that certain Plat of William E. Lindler, P.L.S.. Dated October 27, 2009 and recorded in the Office of the Register of Deeds for Sumter County in Plat Book 2010 at Page 21, and having such boundaries, metes, courses and distances as are shown on said plat, reference to which is hereby made pursuant to authority contained in 30-5-250 of the Code of Laws of South Carolina, 1976, as amended.

This property is known as 790 Torrey Pines Drive, Sumter, SC and is shown on the Maps in the Auditor's Office as Tax Map No. 222-02-01-014.

14. The Court notes that the Plaintiff has complied with the requirements of the Supreme Court's Administrative Order regarding the Home Affordable Modification Program and this property is not subject to Modification. Plaintiff has also given Defendants a Notice of Right Cure as required by the Consumer protection Code.

AND IT IS SO ORDERED.



Thomas E. Player, Jr.
Special Referee

Dated: March 14, 2020
Sumter, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER	)	
	)	CASE NO.: 2018-CP-43-02005
John Weible,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Russell Self and Brandilyn Self,	)	MOTION FOR RECONSIDERATION
	)	(RULE 59(E), SCRCP)
Defendant.	)	
	)	
	)	

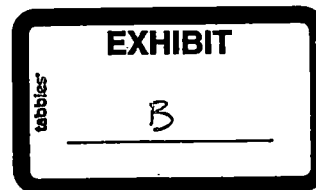
Plaintiffs Russell Self and Brandilyn Self, through their undersigned counsel, moves for the Court to reconsider its November 12, 2019 decision indicating the only evidence of the amount due was that presented by Mr. Weible. Plaintiff's motion is made pursuant to Rule 59(E), SCRCP. The basis for this motion is as follows.

- 1. The Court erred by finding that Defendants have not demonstrated any prejudice as a result of the hearing going forward.**

The analysis that the Court has adopted impermissibly eviscerates the plain language of the South Carolina Supreme Court's 2011 Administrative Order. The Order provides, in relevant part "No foreclosure hearing or foreclosure sale may be held in the foreclosure action until the Mortgagee's attorney certifies the following:

(e) that notice of the denial of loan modification or other means of loss mitigation has been served on the Mortgagor by mailing such notice to all know addresses of the Mortgagor; provided, that such notice shall also state that the Mortgagor has 30 days from the date of mailing the notice of denial of relief to file and serve an answer or other response to the Mortgagees summons and complaint.

If within thirty days after having been served with notice of the Mortgagor's rights, the Mortgagor has failed, refused, or voluntarily elected not to participate in any foreclosure intervention process, the Mortgagee, through its attorney, shall certify



that fact to the Court, and the foreclosure action may proceed.

The Plaintiff was subject to providing the Defendant's with express notice that their loan modification was denied and that they had 30 days to file a response to the matter. The Defendant's did not receive this notice, nor were they given 30 days to respond to the Plaintiff's denial of HAMP, a program that sunset in 2016. Here, because the Administrative Order was not complied with, the hearing should not have proceeded. All testimony and evidence presented on September 19, 2019 can't in good faith be considered until Plaintiff has certified compliance with the Administrative Order.

2. The Court erred by finding that the Defendants have not demonstrated good cause for setting aside the default since the debt and failure to pay were admitted.

The finding that the Defendants did not meet the standard of "mere good cause" to set aside the entry of default was found in error as the Defendant's did not default in this matter.

The standard for granting relief from an entry of default under 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." *Sundown Operating Co. v. Intedge Indus., Inc.*, 383, S.C. 601, 607, 681 S.E.2d 885, 888 (2009).

Because the Plaintiff did not comply with the 2011 Administrative Order, no default occurred in this matter. Plaintiff informed the Defendant's of the denial of HAMP and filed an *Affidavit of Default* two days later. The Defendant's did not have an opportunity to properly respond to complaint. They filed an Answer as soon as they were aware of the denial of HAMP.

3. The Court erred in finding that the only evidence of the amount due was that presented by Mr. Weible.

The Courts finding that the Plaintiff was the only party to submit evidence of the amount due is an error. The Defendant's acknowledged that there was a note totaling \$115,000 that was filed

with the Register of Deed's Office in Sumter County. They also submitted payments made to Plaintiff. The Plaintiff indicated that he would need to check his records as he did not have his receipt book with him. Plaintiff also revealed that he accepted payments from the Defendants after filing for foreclosure. At this time, Plaintiff was given the opportunity to provide his receipt book at a later date. Defendants have not received a copy of these documents. The Defendant's also have additional receipts that indicate that the entire \$115,000 note is not outstanding. Their receipts show that approximately \$22,151.60 is the balance in which the Defendant's have indicated that they will be able to pay the deficit. Subsequently, the decision was made, without the consideration of the payments made to the Plaintiff by the Defendants, allowing the Plaintiff to attempt to foreclose on the Defendant's property and collect more than is alleged in this matter.

WHEREFORE, Defendants, Russell Self and Brandilyn Self request that this Court take the following action:

1. Set aside the Default Order pursuant to Rule 59 (e) S.C.R.C.P.;
2. Void the Order of Default;
3. Require the Plaintiff to comply with the Administrative Order;
4. Consider additional receipts in the Defendant's possession;
5. Require the Plaintiff to provide all receipts of the payments made to him on the note.
6. Order such other relief as the Court finds just proper.

Respectfully Submitted,

SOUTH CAROLINA LEGAL SERVICES
/s/ Tiffney J. Love
Attorney for the Defendants
2109 Bull Street
Columbia, South Carolina 29201
Office: (803) 744-4176

Columbia, South Carolina

March 17, 2020

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)
John Weible,)
Plaintiff,)
vs.)
Russell Self and Brandy Brunson,)
Defendant.)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

Docket No: 2018-CP-43-02005

CONSENT ORDER
SUBSTITUTING COUNSEL

Tiffney Love has moved before this Court to be relieved as counsel for Russell Self and Brandy Brunson a/k/a Brandilyn Self so that they may retain and employ A. Paul Weissenstein, Jr. of Weissenstein Law Firm, LLC as substitute counsel.

Mr. Weissenstein has consented to this motion as shown by his consent attached thereto. The Motion also requested that the Court allow Mr. Weissenstein at least 30 days to be able to amend or file and serve such additional motions other documents as he may deem appropriate.

The relief sought being appropriate, and the attorney for the Plaintiff having also advised he has no objection, as shown by his consent hereto,

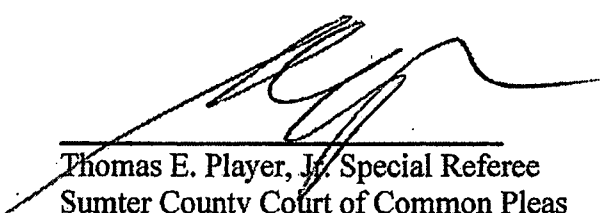
It is ORDERED that A. Paul Weissenstein, Jr. of Weissenstein Law Firm, LLC is hereby substituted for Tiffany Love, as counsel for Russell Self and Brandy Brunson in this matter, and that Tiffney Love is relieved as counsel, and Mr. Weissenstein shall have 30 days to be able to amend or file and serve such additional motions or other documents as he may deem appropriate.

EXHIBIT

C

AND IT IS SO ORDERED!

June 19, 2020
Sumter, SC



Thomas E. Player, Jr. Special Referee
Sumter County Court of Common Pleas

I CONSENT:

s/ A. Paul Weissenstein, Jr.
A. Paul Weissenstein, Jr.
Weissenstein Law Firm
Post Office Box 2446
Sumter, SC 29151

I SO MOVE:

s/ Tiffney Love
Tiffney Love
S.C. Legal Services
2109 Bull Street
Columbia, SC 29201

I CONSENT:

s/ Michael J. Jordan
Michael J. Jordan
10 Law Range
Sumter, SC 29150
Attorney for Plaintiff

Tommy and Paul, attached is the proposed order for your review. After Tommy's approval, I will ask Sherry Yow in the clerk's office to e-file same.

Thank you and let me know if there are corrections or changes needed.

Michael

Michael M. Jordan
Schwartz, McLeod & Jordan
Attorneys at Law
10 Law Range
Sumter, SC 29150
(803)774-1000

From: Michael Jordan <mjordan@legaloff.net>
Sent: Monday, July 12, 2021 2:50 PM
To: 'tommyplayer@playermcmillan.com' <tommyplayer@playermcmillan.com>; 'PAUL WEISSENSTEIN' <pwlaw2@gmail.com>
Subject: RE: {SPAM} Weible v self.

Tommy, I will prepare a proposed order as instructed and circulate same. Have a good afternoon.
Michael

Michael M. Jordan
Schwartz, McLeod & Jordan
Attorneys at Law
10 Law Range
Sumter, SC 29150
(803)774-1000

From: tommyplayer@playermcmillan.com <tommyplayer@playermcmillan.com>
Sent: ~~Saturday, July 10, 2021~~ 11:28 AM
To: 'Michael M. Jordan' <mjordan@legaloff.net>; PAUL WEISSENSTEIN <pwlaw2@gmail.com>
Subject: {SPAM} Weible v self.

Gentlemen, I have reviewed Mr. W's memorandum. Though scholarly written, the issues raised do not warrant a change in the order issued. The fact that the original hearing was postponed then conducted and/or ruled upon as if recognition were given to those matters mentioned in the amended answer, disposes of the matter. In addition, default in payment was not contested nor was any meaningful evidentiary challenge made as to the amount due. ~~I am asking Mr. Jordan to prepare a proposed order denying the motion for reconsideration.~~

Thomas E. Player, Jr.
Player & McMillan
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Tel 803-775-2306
Fax 803-436-5960
E-mail tommyplayer@playermcmillan.com

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Michael Jordan

From: Michael Jordan <mjordan@legaloff.net>
Sent: Tuesday, August 03, 2021 5:07 PM
To: 'Paul Weissenstein'
Subject: RE: Weible v Self

Paul, I have submitted the proposed order to Tommy Player with a copy to you. I believe the hearing was reported by Doris Tompkins Brown. Her email is cb7736@gmail.com.
Thanks and let me know if you need additional information.
Michael

Michael M. Jordan
Schwartz, McLeod & Jordan
Attorneys at Law
10 Law Range
Sumter, SC 29150
(803)774-1000

From: Paul Weissenstein <pwlaw2@gmail.com>
Sent: Tuesday, August 03, 2021 4:28 PM
To: Michael McKinney Jordan <mjordan@legaloff.net>
Subject: Weible v Self

Dear Michael,

Tommy Player has indicated that he has denied the motions that have been filed on behalf of Russel and Brandi Self and has requested that you prepare an order.

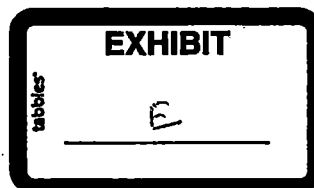
I have attempted to obtain the name of the court reporter from the hearing that resulted in the original order on March 16, 2020 and the Selfs' attorney does not have that information.

Please provide the name of the court reporter that attended this hearing so that I can try to obtain a transcript.

I will be out of the office until August 9th.

Yours very truly,

A. Paul Weissenstein, Jr.
Weissenstein Law Firm, LLC
P.O. Box 2446
Sumter, SC 29151
Telephone: 803-418-5700
Fax: 803-934-1505



From: Michael Jordan <mjordan@legaloff.net>
Sent: Thursday, August 19, 2021 11:05 AM
To: tommyplayer@playermcmillan.com
Cc: 'PAUL WEISSENSTEIN' <pwlaw2@gmail.com>
Subject: RE: {SPAM} RE: {SPAM} Weible v self.

Tommy, here is the Notice of Sale for your approval and signature.

Michael M. Jordan
Schwartz, McLeod & Jordan
Attorneys at Law
10 Law Range
Sumter, SC 29150
(803)774-1000

From: tommyplayer@playermcmillan.com <tommyplayer@playermcmillan.com>
Sent: Thursday, August 19, 2021 8:51 AM
To: 'Michael Jordan' <mjordan@legaloff.net>; 'PAUL WEISSENSTEIN' <pwlaw2@gmail.com>
Subject: {SPAM} RE: {SPAM} Weible v self.

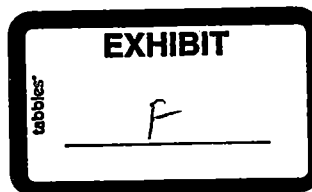
~~Michael, I have signed the Order.~~ The original is at my front desk to be retrieved. Please see to the filing

Thomas E. Player, Jr.
Player & McMillan
PO Box 3690
Sumter, SC 29151
Tel 803-775-2306
Fax 803-436-5960
E-mail tommyplayer@playermcmillan.com

SERVICE: UNLESS SPECIFICALLY STATED OTHERWISE, THE TRANSMISSION OF THIS MESSAGE, INCLUDING ANY ATTACHMENT HEREIN OR HERETO, IS INTENDED TO CONSTITUTE SERVICE WITHIN THE MEANING OF ANY COURT RULE OR ORDER PERMITTING SERVICE BY ELECTRONIC MEANS.

CONFIDENTIAL & PRIVILEGED Unless otherwise indicated or obvious from the nature of the above communication, the information contained herein may be an attorney-client privileged and confidential information/work product. The communication is intended for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error or are not sure whether it is privileged, please immediately notify us by return e-mail and destroy any copies, electronic, paper or otherwise, which you may have of this communication. CIRCULAR 230 DISCLOSURE: To comply with certain U.S. Treasury regulations, we inform you that, unless expressly stated otherwise, any U.S. Federal tax advice contained in this e-mail, including attachments, is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding any penalties that may be imposed by the Internal Revenue Service.

From: Michael Jordan <mjordan@legaloff.net>
Sent: Monday, August 2, 2021 9:22 AM
To: tommyplayer@playermcmillan.com; 'PAUL WEISSENSTEIN' <pwlaw2@gmail.com>
Subject: FW: {SPAM} Weible v self.



Michael Jordan

From: Sherry Yow <syow@sumtercountysc.org>
Sent: Friday, August 20, 2021 8:32 AM
To: Michael Jordan
Cc: tommyplayer@playermcmillan.com; 'PAUL-WEISSENSTEIN'
Subject: RE: Weible v Self

Yes, I'll do it today.

Sherry H. Yow
Sumter County Deputy Clerk
Court of Common Pleas
803-436-2228 Office
803-436-2223 Fax

-----Original Message-----

From: Michael Jordan <mjordan@legaloff.net>
Sent: Thursday, August 19, 2021 2:58 PM
To: Sherry Yow <syow@sumtercountysc.org>
Cc: tommyplayer@playermcmillan.com; 'PAUL WEISSENSTEIN' <pwlaw2@gmail.com>
Subject: Weible v Self

Sherry, can you e-file this order and notice of sale? Thanks.
Michael

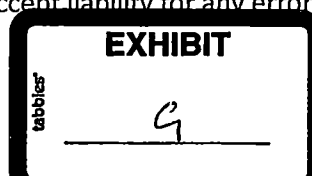
Michael M. Jordan
Schwartz, McLeod & Jordan
Attorneys at Law
10 Law Range
Sumter, SC 29150
(803)774-1000

-----Original Message-----

From: legaloff@ftc-i.net <legaloff@ftc-i.net>
Sent: Thursday, August 19, 2021 2:08 PM
To: mjordan@legaloff.net
Subject:

SENT FROM SCANNER
TASKalfa 4003i
[00:17:c8:89:ad:13]

This message contains confidential information and is intended only for the individual named. If you are not the named addressee, you should not disseminate, distribute or copy this email. Please notify the sender immediately by email if you have received this email by mistake and delete this email from your system. Email transmission cannot be guaranteed to be secure or error-free, as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender, therefore, does not accept liability for any errors or omissions in the



contents of this message which arise as a result of email transmission. If verification is required, please request a hard-copy version.

This message contains confidential information and is intended only for the individual named. If you are not the named addressee, you should not disseminate, distribute or copy this email. Please notify the sender immediately by email if you have received this email by mistake and delete this email from your system. Email transmission cannot be guaranteed to be secure or error-free, as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. The sender, therefore, does not accept liability for any errors or omissions in the contents of this message which arise as a result of email transmission. If verification is required, please request a hard-copy version.

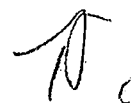
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER	)	
	)	C/A #: 2018-CP-43-02004
John Weible,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER DENYING MOTION TO RECONSIDER
	)	
Russell Self and Brandy Brunson,	)	
a/k/a Brandilyn Self,	)	
	)	
Defendants.	)	
	)	

A Final Order for Foreclosure was entered in this matter on March 17, 2020.

Defendants' Motion to Reconsider was timely filed on the same date. A Memorandum of Law in support of the Motion was filed on June 30, 2021 after substitution of counsel for Defendants. After thorough consideration of the Motion and memorandum, for the reasons set forth below, the Motion is Denied.

FACTS

On November 5, 2010 Defendants executed a note (Note #1) in favor of Plaintiff for \$115,000 with no interest and a term of 7 years. That note matured in December 2017 and is now due and payable in full. Said note was secured by a mortgage (Mortgage #1) in the amount of \$65,000 dated the same date of November 5, 2010, and another existing mortgage (Mortgage #2) in the amount of \$50,000 dated July 2, 2010. The underlying obligation was due and payable in December 2017, which was at least ten (10) months before the present action was filed. Accordingly, the Defendants seek to impose modification on a debt that has fully matured.



On July 3, 2014 Defendants executed another mortgage (Mortgage #3) securing existing debt of \$48,923.00 to the Plaintiff. The existing debt stemmed from a note (Note #2) Defendants executed in favor of Plaintiff dated May 25, 2011 for \$60,000 with an interest rate of 8% with a maturity date of 2 years, or June 2013. This debt has also fully matured.

An action for mortgage foreclosure was previously filed against Defendants on May 21, 2014. The parties reached a settlement agreement for loan modification at that time and as a result the action was dismissed by stipulation on July 14, 2014.

PROCEDURAL HISTORY

The instant foreclosure action was commenced on October 29, 2018 with Plaintiff's filing of a Lis Pendens, Summons and Complaint. Defendants filed an Acceptance of Foreclosure Intervention on November 13, 2018. An Affidavit of Non-Eligibility for loan modification was served February 5, 2019. An Affidavit of Default was filed on February 6, 2019. An Answer was filed on May 16, 2019. An Order referring this matter to Special Referee was filed on May 24, 2019. An Amended Answer was filed on June 27, 2019.

ADMINISTRATIVE ORDERS OF SOUTH CAROLINA SUPREME COURT

On May 22, 2009 the South Carolina Supreme Court issued its Administrative Order providing that all foreclosure actions filed after May 4, 2009 must contain a short, plain statement facts regarding applicability of Home Affordable Modification Program (HAMP). HAMP expired on December 31, 2016 and thus this Administrative Order 2009-05-22-01 has limited applicability and mortgage lenders must voluntarily offer loan modification to borrowers. The Complaint in this matter alleged in paragraph 10 that the mortgages are not subject to HAMP

TP

and are not insured by any federal agency (Fannie Mae or Freddie Mac). Further said paragraph of the Complaint alleges that Plaintiff does not participate in the HAMP program.

On May 2, 2011 the South Carolina Supreme Court issued its Administrative Order providing that foreclosure actions filed after May 9, 2011 shall include a notice of the Mortgagor's right to foreclosure intervention. It further provided that no foreclosure hearing could be held until compliance with the order. Upon certification of compliance with the above the foreclosure action could proceed. This Administrative Order is procedural in nature. The Administrative Order makes clear that failure to issue the Affidavit only works to stay the action, not as a dismissal. At the time of issuance of this Administrative Order, the HAMP was still in effect. However, as stated above the HAMP has expired, and thus the underlying purpose of the Administrative order has been impacted.

COMPLIANCE WITH ADMINISTRATIVE ORDER

The Plaintiff served his Affidavit of Non-Eligibility for loan modification on February 5, 2019 indicating that the loan was not eligible as the service (Plaintiff) had not executed an agreement under HAMP. The merits hearing in this matter was held on September 19, 2019 which was seven (7) months after Plaintiff served the Affidavit of Non-Eligibility for loan modification. The Defendants filed no counter affidavit as to contest eligibility for loan modification. In their Pro Se Answer filed May 16, 2019 the Defendants raised the issue of loan modification, stating they may be entitled to same under HAMP, which as set forth above had already expired. However, in the Amended Answer filed June 27, 2019 by counsel, the Defendants (or at least Defendant Brandilyn Self) abandoned their allegations as to potential loan modification under HAMP, obviously recognizing that HAMP had expired and offered them no

TP3

relief. The only loan modification for borrowers available at this time is optional through lenders that voluntarily participate in same and Plaintiff does not so participate.

DEFENDANTS' DEFAULT

The Defendants first served responsive pleadings on May 26, 2019 after an Affidavit of Default was already filed three (3) months earlier, as well as the Affidavit of Non-Eligibility for loan modification. The Defendants did not file their Answer within 30 days of either Affidavit. They filed an Amended Answer on June 27, 2019 without having obtained relief from the entry of default by the Court. Notwithstanding same, the Plaintiff's claim was for an unliquidated amount and the Defendants' could be heard regarding the proper amount of damages. Default would only serve to prevent the Defendants from contesting the validity of the debt and Defendant Russell Self admitted in his testimony to being indebted to the Plaintiff, but rather only disputed the amount of such debt. Therefore, the entry of default did not prevent Defendants from contesting the debt at the merits hearing and offering their own evidence as to the amount due and owing to the Plaintiff. Defendant Brandy Brunson did not testify.

To obtain relief from entry of default, the Defendants must comply with *Rule 55, SCRPC* and show good cause. *Sundown Operating Co., Inc. v. Intedge Industries, Inc.*, 681 S.E.2d 885 (S.C. 2009) A defendant in default admits liability but not damages. *Wells Fargo Bank, N.A. v. Marion Ampitheatre, LLC*, 757 S.E.2d 557 (S.C.Ct.App. 2014) The Plaintiff submits that the Defendants have admitted the debt due to the Plaintiff and the only question is to the amount of the debt due and relief of foreclosure under the mortgages.

TBY

TOTAL AMOUNT OWED TO THE PLAINTIFF

The Plaintiff testified that the debt due was \$179,444.39 as of the date of hearing. He had incurred \$3500.00 in attorney's fees and costs. In his testimony Defendant Russell Self indicated that he did not owe the Plaintiff the balance as stated. He admitted to non payment on the \$115,000 note, but said that the Plaintiff hindered his (Defendants') chance to refinance through Quicken Loans. Accordingly, he stopped paying. Defendant Russell Self did not provide any specific evidence of an amount or calculation different than what the Plaintiff testified to and as set forth in the Complaint. He submitted copies of the face page of checks made payable to the Plaintiff for the years 2014 through May, 2019. These checks do not indicate that each one has been negotiated and canceled.

Defendant Russell Self in his testimony admitted the loans from the Plaintiff. He admitted that he should repay the loans and that same should not be simply invalidated by the court. He only contested the amount due on the loan.

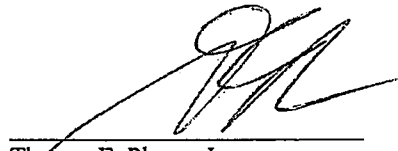
RULING

I find and conclude that the issues raised in the Motion do not warrant a change in the Order. The original hearing was postponed and then conducted and ruled upon and proper recognition given to those matters raised in the Amended Answer. Default in payment was not contested and no meaningful evidentiary challenge was as to the amount due.

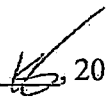


Therefore, the Motion to Reconsider is denied.

And it is so ordered.



Thomas E. Player, Jr.,
SPECIAL REFEREE

August , 2021

MASTER-IN-EQUITY/SPECIAL REFEREE'S SALE

BY VIRTUE of a decree heretofore granted in the case of John Weible against Russell Self and Brandy Brunson a/k/a Brandilyn Self, I, Thomas E. Player, Jr., the Special Referee in this matter, will sell on **Tuesday, September 7, 2021, at 12 o'clock noon**, at the **Sumter County Judicial Center**, Sumter, South Carolina, to the highest bidder:

ALL that certain piece, parcel or lot of land with the improvements thereon, if any, situate, lying and being in the Privateer Township, County of Sumter, State of South Carolina, being shown and delineated as Lot No. 196, Phase I, "Lakewood Links" Subdivision, as shown on that certain Plat of Carl J. Croft, R.L.S., dated September 28, 1988 and recorded in the Office of the Register of Deeds for Sumter County in Plat Book 88 at Page 1292, more particularly showed on that certain plat of Joseph R. Edwards, P.L.S., dated October 7, 2009 and recorded in the Office of the Register of Deeds for Sumter County in Plat Book 2009 at Page 262, and having such boundaries, metes, courses and distances as are shown on said plat, reference to which is hereby made pursuant to authority contained in 30-5-250 of the Code of Laws of South Carolina, 1976, as amended.

AND ALSO: ALL that certain piece, parcel or lot of land with improvements thereon, if any, situate and lying and being in the Privateer Township, County of Sumter, State of South Carolina, being shown and delineated as 0.02 acres, as shown on that certain Plat of William E. Lindler, P.L.S., Dated October 27, 2009 and recorded in the Office of the Register of Deeds for Sumter County in Plat Book 2010 at Page 21, and having such boundaries, metes, courses and distances as are shown on said plat, reference to which is hereby made pursuant to authority contained in 30-5-250 of the Code of Laws of South Carolina, 1976, as amended.

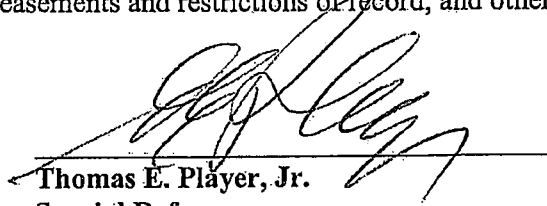
This property is known as 790 Torrey Pines Drive, Sumter, SC and is shown on the Maps in the Auditor's Office as Tax Map No. 222-02-01-014.

TERMS OF SALE: The successful bidder, other than the plaintiff, will deposit with the Special Referee at conclusion of the bidding, five percent (5%) of the bid, in cash or equivalent, as evidence of good faith, same to be applied to the purchase price in case of compliance, but to be forfeited and applied first to costs and then to plaintiff's debt in the case of non-compliance. If the Plaintiff's representative is not in attendance at the scheduled time of the sale, the sale shall be canceled and the property sold on some subsequent sales day after due advertisement. Should the last and highest bidder fail or refuse to make the

required deposit at time of bid or comply with the other terms of the bid within **thirty (30)** days, then the Special Referee may re-sell the property on the same terms and conditions on some subsequent Sales Day (at the risk of the said highest bidder).

As a deficiency judgment is being Waived, the bidding will not remain open thirty (30) days after the date of sale.

Purchaser to pay for preparation of deed, documentary stamps on the deed, and recording of the deed. The successful bidder will not pay interest on the amount of the bid from date of sale to date of compliance. Subject to assessments, **Sumter** County taxes, easements, easements and restrictions of record, and other senior encumbrances.



Thomas E. Player, Jr.
Special Referee

Date: August 19, 2021

SCHWARTZ, MCLEOD & JORDAN LAW FIRM
10 Law Range
Sumter, SC 29150
(803) 774-1000

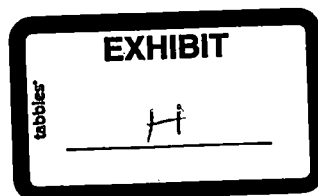
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER	)	
	)	C/A #: 2018-CP-43-02004
John Weible,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER DENYING MOTION TO RECONSIDER
	)	
Russell Self and Brandy Brunson,	)	
a/k/a Brandilyn Self,	)	
	)	
Defendants.	)	

A Final Order for Foreclosure was entered in this matter on March 17, 2020.

Defendants' Motion to Reconsider was timely filed on the same date. A Memorandum of Law in support of the Motion was filed on June 30, 2021 after substitution of counsel for Defendants. After thorough consideration of the Motion and memorandum, for the reasons set forth below, the Motion is Denied.

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On July 3, 2014 Defendants executed another mortgage (Mortgage #3) securing existing debt of \$48,923.00 to the Plaintiff. The existing debt stemmed from a note (Note #2) Defendants executed in favor of Plaintiff dated May 25, 2011 for \$60,000 with an interest rate of 8% with a maturity date of 2 years, or June 2013. This debt has also fully matured.

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TP

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TP3

relief. The only loan modification for borrowers available at this time is optional through lenders that voluntarily participate in same and Plaintiff does not so participate.

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To obtain relief from entry of default, the Defendants must comply with *Rule 55, SCRCP* and show good cause. *Sundown Operating Co., Inc. v. Intedge Industries, Inc.*, 681 S.E.2d 885 (S.C. 2009) A defendant in default admits liability but not damages. *Wells Fargo Bank, N.A. v. Marion Amphitheatre, LLC*, 757 S.E.2d 557 (S.C.Ct.App. 2014) The Plaintiff submits that the Defendants have admitted the debt due to the Plaintiff and the only question is to the amount of the debt due and relief of foreclosure under the mortgages.

TB4

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Defendant Russell Self in his testimony admitted the loans from the Plaintiff. He admitted that he should repay the loans and that same should not be simply invalidated by the court. He only contested the amount due on the loan.

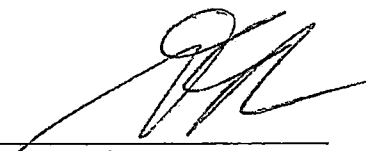
RULING

I find and conclude that the issues raised in the Motion do not warrant a change in the Order. The original hearing was postponed and then conducted and ruled upon and proper recognition given to those matters raised in the Amended Answer. Default in payment was not contested and no meaningful evidentiary challenge was as to the amount due.

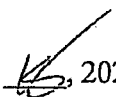
1385

Therefore, the Motion to Reconsider is denied.

And it is so ordered.



Thomas E. Player, Jr.,
SPECIAL REFEREE

August , 2021

United States Bankruptcy Court
District of South Carolina

Notice of Bankruptcy Case Filing

A bankruptcy case concerning the debtor(s) listed below was filed under Chapter 13 of the United States Bankruptcy Code, entered on 09/27/2021 at 4:11 PM and filed on 09/27/2021.

Brandilyn Denise Brunson
790 Torrey Pines Drive
Sumter, SC 29150
SSN / ITIN: xxx-xx-0650
aka Brandilyn Denise Self



The case was filed by the debtor's attorney: The bankruptcy trustee is:

Benjamin R. Matthews
Benjamin R. Matthews & Associates
2010 Gadsden St
Columbia, SC 29201
803-799-1700

Pamela Simmons-Beasley
250 Berryhill Road
Suite 402
Columbia, SC 29210
803-779-5180

The case was assigned case number 21-02498-dd to Judge David R. Duncan.

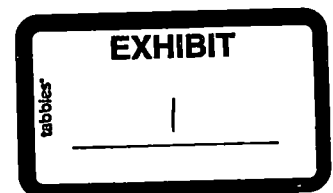
In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

If you would like to view the bankruptcy petition and other documents filed by the debtor, they are available at our *Internet* home page <http://ecf.scb.uscourts.gov> or at the Clerk's Office, J. Bratton Davis United States, Bankruptcy Courthouse, 1100 Laurel Street, Columbia, SC 29201-2423.

You may be a creditor of the debtor. If so, you will receive an additional notice from the court setting forth important deadlines.

Laura A. Austin
Clerk, United States
Bankruptcy Court

PACER Service Center	
Transaction Receipt	
01/06/2022 16:56:01	



STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)

John Weible,)

Plaintiff,)

vs.)

Russell Self and Brandy Brunson,)
a/k/a Brandilyn Self,)

Defendants.)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

C/A #: 2018-CP-43-02004

ORDER DENYING MOTION TO RECONSIDER

A Final Order for Foreclosure was entered in this matter on March 17, 2020.

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EXHIBIT

tabbies

J

10

On July 3, 2014 Defendants executed another mortgage (Mortgage #3) securing existing debt of \$48,923.00 to the Plaintiff. The existing debt stemmed from a note (Note #2) Defendants executed in favor of Plaintiff dated May 25, 2011 for \$60,000 with an interest rate of 8% with a maturity date of 2 years, or June 2013. This debt has also fully matured.

An action for mortgage foreclosure was previously filed against Defendants on May 21, 2014. The parties reached a settlement agreement for loan modification at that time and as a result the action was dismissed by stipulation on July 14, 2014.

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TP₂

and are not insured by any federal agency (Fannie Mae or Freddie Mac). Further said paragraph of the Complaint alleges that Plaintiff does not participate in the HAMP program.

On May 2, 2011 the South Carolina Supreme Court issued its Administrative Order providing that foreclosure actions filed after May 9, 2011 shall include a notice of the Mortgagor's right to foreclosure intervention. It further provided that no foreclosure hearing could be held until compliance with the order. Upon certification of compliance with the above the foreclosure action could proceed. This Administrative Order is procedural in nature. The Administrative Order makes clear that failure to issue the Affidavit only works to stay the action, not as a dismissal. At the time of issuance of this Administrative Order, the HAMP was still in effect. However, as stated above the HAMP has expired, and thus the underlying purpose of the Administrative order has been impacted.

COMPLIANCE WITH ADMINISTRATIVE ORDER

The Plaintiff served his Affidavit of Non-Eligibility for loan modification on February 5, 2019 indicating that the loan was not eligible as the service (Plaintiff) had not executed an agreement under HAMP. The merits hearing in this matter was held on September 19, 2019 which was seven (7) months after Plaintiff served the Affidavit of Non-Eligibility for loan modification. The Defendants filed no counter affidavit as to contest eligibility for loan modification. In their Pro Se Answer filed May 16, 2019 the Defendants raised the issue of loan modification, stating they may be entitled to same under HAMP, which as set forth above had already expired. However, in the Amended Answer filed June 27, 2019 by counsel, the Defendants (or at least Defendant Brandilyn Self) abandoned their allegations as to potential loan modification under HAMP, obviously recognizing that HAMP had expired and offered them no

TP3

relief. The only loan modification for borrowers available at this time is optional through lenders that voluntarily participate in same and Plaintiff does not so participate.

DEFENDANTS' DEFAULT

The Defendants first served responsive pleadings on May 26, 2019 after an Affidavit of Default was already filed three (3) months earlier, as well as the Affidavit of Non-Eligibility for loan modification. The Defendants did not file their Answer within 30 days of either Affidavit. They filed an Amended Answer on June 27, 2019 without having obtained relief from the entry of default by the Court. Notwithstanding same, the Plaintiff's claim was for an unliquidated amount and the Defendants' could be heard regarding the proper amount of damages. Default would only serve to prevent the Defendants from contesting the validity of the debt and Defendant Russell Self admitted in his testimony to being indebted to the Plaintiff, but rather only disputed the amount of such debt. Therefore, the entry of default did not prevent Defendants from contesting the debt at the merits hearing and offering their own evidence as to the amount due and owing to the Plaintiff. Defendant Brandy Brunson did not testify.

To obtain relief from entry of default, the Defendants must comply with *Rule 55, SCRCP* and show good cause. *Sundown Operating Co., Inc. v. Intedge Industries, Inc.*, 681 S.E.2d 885 (S.C. 2009) A defendant in default admits liability but not damages. *Wells Fargo Bank, N.A. v. Marion Ampitheatre, LLC*, 757 S.E.2d 557 (S.C.Ct.App. 2014) The Plaintiff submits that the Defendants have admitted the debt due to the Plaintiff and the only question is to the amount of the debt due and relief of foreclosure under the mortgages.

TB4

TOTAL AMOUNT OWED TO THE PLAINTIFF

The Plaintiff testified that the debt due was \$179,444.39 as of the date of hearing. He had incurred \$3500.00 in attorney's fees and costs. In his testimony Defendant Russell Self indicated that he did not owe the Plaintiff the balance as stated. He admitted to non payment on the \$115,000 note, but said that the Plaintiff hindered his (Defendants') chance to refinance through Quicken Loans. Accordingly, he stopped paying. Defendant Russell Self did not provide any specific evidence of an amount or calculation different than what the Plaintiff testified to and as set forth in the Complaint. He submitted copies of the face page of checks made payable to the Plaintiff for the years 2014 through May, 2019. These checks do not indicate that each one has been negotiated and canceled.

Defendant Russell Self in his testimony admitted the loans from the Plaintiff. He admitted that he should repay the loans and that same should not be simply invalidated by the court. He only contested the amount due on the loan.

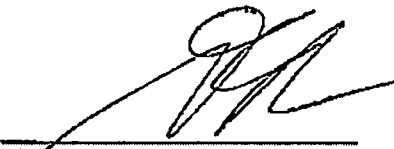
RULING

I find and conclude that the issues raised in the Motion do not warrant a change in the Order. The original hearing was postponed and then conducted and ruled upon and proper recognition given to those matters raised in the Amended Answer. Default in payment was not contested and no meaningful evidentiary challenge was as to the amount due.

185

Therefore, the Motion to Reconsider is denied.

And it is so ordered.



Thomas E. Player, Jr.,
SPECIAL REFEREE

August , 2021



2018CP4302005 : John Weible VS Russell Self , defendant, et al

Common Pleas

Case Number 2018CP4302005**Case Subtype** Foreclosure 420**Filed Date** 10-29-2018**Status** Judgment**Plaintiff**

John Weible

Defendant

Russell Self et al

Assigned Judge

Clerk Of Court C P, G S, And Family Court

File Type

Non-Jury

Show/Hide Participants

Name	Description	Type	File Date
Russell Self	NEF(04-29-2022 12:00:17 PM) Notice/Other	Filing	04-29-2022 02:02:24 PM
Russell Self	Notice/Other	Filing	04-29-2022 12:00:17 PM
Russell Self	Service/Certificate Of Hand Delivery	Filing	04-29-2022 12:00:17 PM
John Weible	NEF(04-26-2022 09:48:09 AM) Special Referee/Order/Other	Filing	04-26-2022 09:48:40 AM
John Weible	Special Referee/Order/Other	Order	04-26-2022 09:48:09 AM
Brandy Brunson	NEF(01-20-2022 10:55:45 AM) Motion/Reconsider	Filing	01-20-2022 10:59:36 AM
Russell Self	Motion/Reconsider	Motion	01-20-2022 10:55:45 AM
John Weible	~~Special Referee/Order/Other~~	Order	~~01-10-2022~~ 09:09:00 AM
Brandy Brunson	NEF(10-04-2021 02:52:35 PM) Notice/Other	Filing	10-04-2021 02:53:33 PM
Brandy Brunson	Notice/Other	Filing	10-04-2021 02:52:35 PM
Russell Self	NEF(06-30-2021 03:25:19 PM) Memo/Memo in Support	Filing	06-30-2021 03:29:23 PM
Russell Self	Memo/Memo in Support	Filing	06-30-2021 03:25:19 PM
Russell Self	NEF(11-24-2020 01:58:07 PM) Consent/Consent	Filing	11-24-2020 02:20:32 PM
Russell Self	Consent/Consent	Filing	11-24-2020 01:58:07 PM
Russell Self	Notice/Notice of Appearance	Filing	11-24-2020 01:58:07 PM
Russell Self	NEF(03-17-2020 12:15:35 PM) Motion/Reconsider	Filing	03-17-2020 01:37:02 PM
Brandy Brunson	Motion/Reconsider	Motion	03-17-2020 12:15:35 PM
John Weible	Judgment/Foreclosure	Judgment	03-17-2020 09:26:01 AM
Brandy Brunson	Judgment/Foreclosure	Judgment	03-17-2020 09:26:01 AM
John Weible	Judgment/Foreclosure	Judgment	03-17-2020 09:25:58 AM
Russell Self	Judgment/Foreclosure	Judgment	03-17-2020 09:25:58 AM
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John Weible	Special Referee/Order/Other	Order	03-17-2020 09:14:54 AM
John Weible	NEF(03-17-2020 09:14:01 AM) Special Referee/Report of Sa...	Filing	03-17-2020 09:14:09 AM
John Weible	Special Referee/Report of Sale	Filing	03-17-2020 09:14:01 AM
John Weible	NEF(10-04-2019 04:12:35 PM) Memo/Memo	Filing	10-04-2019 04:27:19 PM
John Weible	Memo/Memo	Filing	10-04-2019 04:12:35 PM
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Brandy Brunson	Memo/Memo in Support	Filing	09-18-2019 03:55:51 PM
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John Weible	Notice/Notice of Hearing and Service	Filing	08-08-2019 02:09:03 PM
Brandy Brunson	NEF(06-27-2019 12:44:57 AM) Answer/Amended Answer	Filing	06-27-2019 08:32:04 AM
Brandy Brunson	Answer/Amended Answer	Filing	06-27-2019 04:45:07 AM
John Weible	NEF(05-24-2019 09:32:08 AM) Order/Referred to Master or ...	Filing	05-24-2019 09:32:15 AM
John Weible	Order/Referred to Master or Special Referee	Order	05-24-2019 09:32:08 AM
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Brandy Brunson	Motion/Strike	Motion	05-23-2019 03:40:28 PM
Brandy Brunson	Certification/Certification of Indigent Representation	Filing	05-23-2019 03:40:28 PM
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Russell Self	Answer/Answer	Filing	05-20-2019 11:12:24 AM
Brandy Brunson	Answer/Answer	Filing	05-20-2019 11:12:24 AM
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John Weible	Notice/Notice of Hearing and Service	Filing	05-16-2019 12:44:42 PM
John Weible	NEF(02-08-2019 08:40:15 AM) Order/Referred to Master or ...	Filing	02-08-2019 08:40:24 AM
John Weible	Order/Referred to Master or Special Referee	Order	02-08-2019 08:40:15 AM
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John Weible	Order/Order Cover Sheet \$25.00	Filing	02-07-2019	04:05:15 PM
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John Weible	Affidavit/Default	Filing	02-06-2019	01:59:00 PM
John Weible	NEF(02-05-2019 06:32:09 PM) Affidavit/Eligible Home Affo...	Filing	02-06-2019	08:36:01 AM
John Weible	Affidavit/Eligible Home Afford Mod Prog & Cert Serv/Mail	Filing	02-05-2019	06:32:09 PM
Russell Self	Foreclosure/Other/Acceptance of Foreclosure Inter	Filing	11-13-2018	12:20:51 PM
John Weible	Lis Pendens Filed	Filing	10-29-2018	05:08:38 PM
John Weible	Summons & Complaint	Filing	10-29-2018	05:08:38 PM
John Weible	Summons & Complaint-EX_1	Filing	10-29-2018	05:08:38 PM
John Weible	Summons & Complaint-EX_2	Filing	10-29-2018	05:08:38 PM
John Weible	Summons & Complaint-EX_3	Filing	10-29-2018	05:08:38 PM
John Weible	Summons & Complaint-EX_4	Filing	10-29-2018	05:08:38 PM
John Weible	Summons & Complaint-EX_5	Filing	10-29-2018	05:08:38 PM
John Weible	Summons & Complaint-EX_6	Filing	10-29-2018	05:08:38 PM
John Weible	Summons & Complaint-EX_7	Filing	10-29-2018	05:08:38 PM

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)
John Weible)
Plaintiff,)
vs.)
Russell Self and Brandilyn Brunson)
Defendants.)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

CIVIL ACTION NO: 2018-CP-43-02005

NOTICE OF MOTION AND MOTION

Defendants by their undersigned attorney hereby file this motion pursuant to Rule 59 (e) SCRPC on the following grounds:

1. The Defendants reassert each ground set forth in their prior Rule 59 motion and as supplemented in their Memorandum dated June 30, 2021, and filed with the Court.
2. The Special Referee signed an Order on August 18, 2021, but which order was not filed until January 10, 2022, thus making this motion timely. In that order, the Special Referee reported that "the underlying purpose of the Administrative order had been impacted" as justification for the Plaintiff not being required to comply with the Supreme Court Administrative Order 2011 -05-02-01. The Defendants request that the Special Referee either reconsider that Order and grant to the Defendants the relief that they have requested or issue a new order setting forth the reasons of what constitutes "the impact" to the 2011 Supreme Court Administrative Order such that the Plaintiff would not be required to comply with that order. Such reasons will create a more complete record so that Defendants can adequately appeal any unfavorable decision of the Special Referee if Defendants so desire.



3. The Defendants assert that because the Plaintiff did not comply with the Supreme Court Order 2011-05-02-01, any actions in the Court of Common Pleas beginning with the filing of an affidavit of default and the subsequent order of default would have been a nullity, a solution for which could be to schedule and conduct a new hearing on the merits to determine the mortgage balance due.

4. In addition, the Defendants assert additional grounds for reconsideration of the August 18, 2021, order.

5. In addition to the Order of August 18, 2021, the Special Referee also signed a Notice of Sale, requiring Defendant Brandilyn Brunson to file a Chapter 13 Bankruptcy case on September 27, 2021, to stop the foreclosure sale.

6. During litigation in the Bankruptcy case regarding the amount of Plaintiff's Bankruptcy Court claim, Plaintiff filed a return with the Bankruptcy Court attaching a copy of the August 18, 2021, order showing it appeared to have been filed with the Clerk of Court and alleging same to be an unappealed final order. However, the copy submitted to the Bankruptcy Court had not been filed, and it contained a Common Pleas court case number that was not the correct foreclosure case number.

7. Defendant Debtor filed a Response with the Bankruptcy Court attaching a copy of the Common Pleas Court register printed January 5, 2022, showing that the August 18, 2021, Order had not been filed in the foreclosure case. On Tuesday morning, January 11, 2022, before the Bankruptcy Court hearing on the objection to claim, the undersigned again checked the Common Pleas Court record from a different computer in his office which showed the August 18, 2021, Order having been filed on August 20, 2021.

8. The undersigned immediately called the Clerk of Court's office to inquire as to why that August 20 filing record had not been present the previous week, or at any

time prior thereto. The clerk's assistant advised that Plaintiff's counsel had contacted her on January 10 after he determined that the August 18 Order had been filed in the wrong case. The clerk of court's assistant then purportedly corrected the filing but showed August 20, 2021, as the filing date (which the clerk's assistant stated was the date when the Order had been incorrectly filed in the wrong case), when in fact the Order was not filed in the foreclosure case until January 10, 2022, and Defendant did not receive notice of filing until January 10, 2022. Defendant's counsel advised the clerk's assistant that he did not have official notice of the filing until January 10, 2022, when the order was actually filed in the foreclosure case and received actual notice on January 11, 2022. The record created by the Clerk of Court on January 10, 2022 showing the filing on August 20, 2021, made it appear that Defendant's attorney missed all appeal deadlines.

9. The Clerk corrected the record to show that the August 18, 2021, Order was actually filed in the foreclosure case on January 10, 2022.

10. The August 18, 2021, Order was filed on January 10, 2022, without having Plaintiff first obtaining Relief from Stay from the Bankruptcy Court, and after Debtor's counsel in the Return filed with the Bankruptcy Court stated that the August 18, 2021, Order could not now be filed because of the Automatic Stay.

11. In addition, it appears the court register was modified by the Clerk of Court after a telephone request of Plaintiff's attorney without any motion being made by the party Plaintiff pursuant to Rule 60(a), SCRCP or subsequent court order pursuant to the motion requiring the correction.

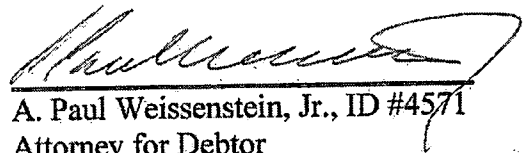
12. Because the Order of August 18, 2021, has now been filed in State Court, the undersigned obtained verbal permission from the Bankruptcy Court to file a protective response in State Court in the event that it is determined by the Court of Common Pleas or

by an Appellate Court that the time for appeal (or to file this Rule 59 SCRCP motion) had begun to run from the January 10, 2022, filing of the Order. Pursuant thereto, the Defendants have filed this motion.

13. As a result of these actions by Plaintiff, Defendant has incurred attorney fees in filing a bankruptcy action to stop a foreclosure sale before the final order denying Defendant's pending Rule 59 (e) Motion had been filed with the Clerk of Court, attorney's fees thereafter incurred in Bankruptcy Court, and attorney's fees and costs in preparing and filing this Motion. As a result, Defendants believe that they are entitled to an award of reasonable attorney's fees.

Wherefore, Defendants move that the Court grant to the Defendants appropriate relief as set forth in this motion, including, a) reconsideration of the August 18, 2021 order to either require Plaintiff to comply with the South Carolina Supreme Court Administrative Order 2011-05-02-01 or setting forth the reasons that constitute an impact to that Administrative Order such that Plaintiff should not be required to comply with same; and b) granting reasonable attorney's fees to Defendants for the reasons set forth in this motion, and c) granting such other and further relief to the Defendants as may be just and proper.

January 19, 2022
Sumter, SC


A. Paul Weissenstein, Jr., ID #4571
Attorney for Debtor
PO Box 2446
Sumter, SC 29151
(803) 418-5700
(803) 934-1505

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

In re:

Brandilyn Denise Brunson,

Debtor.

Case No. 21-02498-dd

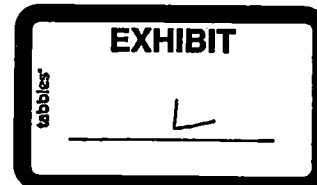
Chapter 13

ORDER ON OBJECTION TO CLAIM

This matter is before the Court on the Objection to Claim of John Weible (the “Objection”) filed by Brandilyn Denise Brunson (“Debtor”) on November 23, 2021. (Dkt. No. 12). John Weible (“Weible” or “Creditor”) filed a pro se Response to Objection to Claim on December 3, 2021 (Dkt. No. 13) and a Second Response to Objection to Claim through counsel on December 21, 2021 (Dkt. No. 18) with accompanying exhibits. A hearing was held on February 9, 2022, at which time the Court took the matter under advisement. Debtor appeared at the hearing and testified in support of her Objection. Weible appeared and both parties presented documentary evidence. Based on the testimony and evidence presented at the hearing, a review of the pleadings and applicable law, and after consideration of the arguments of the parties, the Court overrules the Objection (Dkt. No. 12) and finds as follows.

By way of background, Debtor and her husband, Russell Self, borrowed funds from Weible secured by mortgages on their primary residence (the “Property”). On March 17, 2020, An Order for Judgment and Decree of Foreclosure (the “State Court Order”) was entered by Thomas E. Player, Jr., as Special Referee, granting foreclosure in favor of Weible against Debtor and her husband and setting forth a balance due of \$177,949.39.¹ On that same date, Debtor, through her

¹ *Weible. v. Self, et al.*, C/A No. 2018-CP-43-02005 (C.P. Sumter Cnty.).



then counsel, filed a Motion for Reconsideration pursuant to Rule 59(e) (the “Rule 59(e) Motion”). The Special Referee signed an order on August 18, 2021 (the “August Order”), denying the Rule 59(e) Motion. Representations to the Court indicate all parties were aware of this ruling at that time.² However, the August Order was entered on the incorrect docket due to a clerical error. The clerical error was corrected when the August Order was properly filed under the correct case number on January 10, 2022.

Pertinently, Debtor asserts the balance due on the mortgage debt to be \$23,867.23, not the \$177,949.39 (with an interest rate of 9.5% per annum) determined by the Special Referee in the State Court Order. Debtor subsequently filed for chapter 13 bankruptcy relief on September 27, 2021. On October 21, 2021, Weible filed a proof of claim in the amount of \$202,017.52, secured by the Property (the “Claim”). At the time of this order, Debtor has not appealed the State Court Order to the South Carolina Court of Appeals. Instead, Debtor filed a second motion to reconsider³ on January 20, 2022, in the Sumter County Court of Common Pleas. Debtor’s successive motion to reconsider appears to reserve the right to appeal the State Court Order. Consistent with principles of comity, the Court declines to speculate how the Special Referee will construe the second motion to reconsider or the Debtor’s time to appeal. These matters are only peripheral to the narrow issue before the Court.

In the Court’s view, Debtor’s Objection is barred by the *Rooker–Feldman* doctrine, which divests this Court of jurisdiction since the Debtor is in essence seeking review by this Court of the State Court Order. *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fid. Tr. Co.*, 263 U.S. 413 (1923). The following requirements must be met for the *Rooker–Feldman* doctrine to

² It is unclear to the Court what, if any, manner of notice the parties received as to the August Order.

³ Rule 59(e) in the South Carolina Rules of Civil Procedure and in the Federal Rules of Civil Procedure are practically identical.

apply: (1) the federal plaintiff lost in state court; (2) the plaintiff complains of injuries caused by the state-court judgments; (3) those judgments were rendered before the federal suit was filed; and (4) the plaintiff is inviting the district court to review and reject the state-court judgments. *Exxon Mobil v. Saudi Basic Industries Corporation*, 544 U.S. 280, 284 (2005).⁴ If applicable, the federal court lacks subject matter jurisdiction over the federal plaintiff's claims and the claims must be dismissed. *See Feldman*, 460 U.S. at 476; *Rooker*, 263 U.S. at 416.

The present dispute meets all these requirements. Debtor did not prevail in the foreclosure action, where Debtor did not dispute being indebted to Weible, but contested the amount due and relief of foreclosure under the mortgages. Here, Debtor contests the amount due on the loan and asserts the balance owed is inaccurate. The relevant judgment was rendered by the State Court Order, which was entered by Thomas E. Player, Jr., as Special Referee prior to the commencement of this bankruptcy case. The State Court Order granted foreclosure in favor of Creditor against Debtor and her husband and set forth a balance due of \$177,949.39. Currently, Debtor's Objection seeks to have this Court recalculate the debt owed, effectively abrogating the State Court Order. Debtor also posits the Special Referee had no jurisdiction over the matter because Weible allegedly

⁴ In *Exxon*, the Supreme Court clarified that the *Rooker-Feldman* doctrine is a narrow doctrine. *Exxon*, 544 U.S. at 284. As explained by the Fourth Circuit following the issuance of the Supreme Court's *Exxon* decision, the "*Rooker-Feldman* doctrine applies only when the loser in state court files suit in federal district court seeking redress for an injury caused by the state court's decision itself." *Davani v. Virginia Dept. of Transp.*, 434 F.3d 712, 713 (4th Cir.2006). Prior to *Exxon*, the Fourth Circuit had interpreted the *Rooker-Feldman* doctrine broadly to provide that the loser in a state court adjudication was barred from bringing suit in federal court alleging the same claim or a claim that could have been brought in the state proceedings. *Davani v. Virginia Dept. of Transp.* 434 F.3d 712, 714 (4th Cir. 2006) (explaining the history of its interpretation of the doctrine). This broad interpretation arose out of the interpretation of the "inextricably intertwined" language contained in a footnote in the *Feldman* case. *See Feldman*, 460 U.S. at 483 n. 16. (stating that "if the constitutional claims presented to [the district court] are inextricably intertwined with the state court's [ruling] in a judicial proceeding . . . , then the district court is in essence being called upon to review the state court decision."). The Fourth Circuit has explained that following *Exxon*, *Feldman*'s "inextricably intertwined" language does not create an additional legal test for determining when claims challenging a state-court decision are barred, but merely states a conclusion: if the state-court loser seeks redress in the federal district court for the injury caused by the state-court decision, his federal claim is, by definition, "inextricably intertwined" with the state-court decision, and is therefore outside of the jurisdiction of the federal district court. *Davani*, 434 F.3d at 719.

failed to comply with South Carolina Supreme Court Administrative Order 2011-05-02-01. According to Debtor, any State Court action beginning with Debtor having filed an Affidavit and Order of Default in the foreclosure action was therefore a nullity. Nonetheless, this issue was already raised to and ruled upon by the Special Referee, who disagreed, as indicated by the August Order denying the motion to reconsider.

Debtor's Objection presents a dilemma for the Court. It must be recognized that while the appeal period remains open, the Claim remains somewhat in limbo. Because the *Rooker-Feldman* doctrine prevents this Court's review of the judgment, which must stand unless reversed by the South Carolina Court of Appeals, an appeal of the judgment is the only remedy available to Debtor if she wishes to contest the state court judgment. While *res judicata* and *Rooker-Feldman* may not bar this Court's consideration of the bankruptcy issues, there still exists the possibility of disparate results in the state and bankruptcy forums. Ostensibly, the time within which Debtor may appeal the State Court Order of March 17, 2020 has been tolled and has not expired.

First, the Court presupposes the appeal period for the State Court Order of March 17, 2020 has been tolled by the Rule 59(e) Motion. Rule 203(b)(1) of the South Carolina Appellate Court Rules governs appeals from the Court of Common Pleas and designates the commencement of the period in which to appeal as "receipt of written notice of entry of the order[.]" When a timely motion to reconsider under Rule 59(e) has been made, "the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion." SCACR 203(b)(1). It is unclear from the procedural history represented to the Court if the time to appeal began to run in August 2021 or January 2022. Given the extenuating circumstances surrounding the August Order denying the Rule 59(e) Motion, which by clerical

error was not entered on the docket until January 10, 2022,⁵ as well as underlying principles of comity, this Court declines to make a determination of timeliness and will defer to the state court to fully adjudicate the issue.

Second, Debtor's filing of this bankruptcy case on September 27, 2021, extended the time for Debtor to file an appeal until 30 days after this Court grants Debtor relief from stay to pursue the appeal. *See* 11 U.S.C. § 108(c)(2). Allowing an appeal to go forward correctly prevents the Bankruptcy Court from being rendered an appellate court for state-court proceedings. Here, victory by Creditor would eliminate Debtor's objection to Creditor's claim, whereas victory by Debtor would eliminate dispute as well as benefit the estate. It is therefore appropriate to grant Debtor sua sponte relief to pursue litigation in state court by way of an appeal of the pre-petition judgment. Considering the lingering questions about Weible's Claim, the Court finds cause to lift the automatic stay sua sponte for purposes of filing and pursuing an appeal of the State Court Order.⁶

Accordingly,

IT IS ORDERED that the automatic stay of 11 U.S.C. § 362(a) is modified to the extent necessary for Debtor to file a notice of appeal of the State Court Order of March 17, 2020, and

IT IS ORDERED that the automatic stay is modified for the purpose of allowing Debtor to pursue an appeal of the final order entered on March 17, 2020, by the Special Referee.

⁵ The South Carolina Supreme Court has explicitly distinguished the *receipt of notice* of the entry of an order from receipt of the order itself. *Ackerman v. 3-V Chem., Inc.*, 349 S.C. 212, 215–16, 562 S.E.2d 613, 615 (2002) (noting that although Rule 203(d)(2)(B) requires the appealing party to file a copy of the order challenged on appeal if it has been reduced to writing, there was no reason petitioners could not have requested a copy of the order filed on the date they received the written notice of the entry of judgment).

⁶ Although proceeding in this manner, the Court notes it previously held a hearing on the merits on February 9, 2022, at which time Debtor failed to proffer evidence of any probative value that was inconsistent with the State Court Order.

IT IS ORDERED that the automatic stay is modified as necessary for the purpose of allowing Creditor to defend the judgment of the state court.

IT IS FURTHER ORDERED that Debtor has thirty (30) days after entry of this order terminating the automatic stay under § 362 to file an appeal in accordance with South Carolina law of the state court's order of March 17, 2020. Debtor is barred from filing an appeal more than thirty (30) days after entry of this order.

IT IS, THEREFORE, ORDERED that Debtor Brandilyn Denise Brunson's Objection (Dkt. No. 12) to Claim No. 1 filed by John Weible is overruled.

AND IT IS SO ORDERED.

**FILED BY THE COURT
03/30/2022**



Entered: 03/30/2022

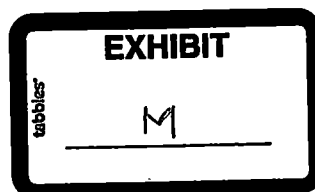
David R. Duncan
US Bankruptcy Judge
District of South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER	)	
	)	Docket No: 2018-CP-43-02005
John Weible,	)	
	)	
Plaintiff,	)	
vs.	)	ORDER
	)	
Russell Self and Brandy Brunson,	)	
	)	
Defendant.	)	
	)	

This matter came to be heard before the Court on Monday, April 18, 2022. Present at the hearing were Michael M. Jordan, Attorney for the Plaintiff, and A. Paul Weissenstein, Jr., attorney for the Defendants.

As a result of a hearing in June of 2021, and a brief thereafter submitted by Mr. Weissenstein at the Court's request, an Order was issued by the undersigned on August 18, 2021, denying a Rule 59 Motion filed by Defendants' prior counsel. That Order apparently was incorrectly filed into the wrong case, and was not correctly filed with the Clerk of Court until January 10, 2022. It is my understanding from information provided by the attorneys for the parties that by that time, one of the Defendants was in a Chapter 13 Bankruptcy, and a Bankruptcy Court hearing had been scheduled and was held the following day. At that hearing, the Bankruptcy Court gave Defendants permission to protectively file a new motion in state court while the matter was pending in Bankruptcy Court, in case it was later determined that the filing of the order on January 10, 2022, started any state court appeal deadlines.

Therefore, Mr. Weissenstein filed a new motion on behalf of the Defendants. Because the matter was pending in Bankruptcy Court, this court took no action on that motion until the Bankruptcy Court granted relief from stay, which allowed this court to proceed with this

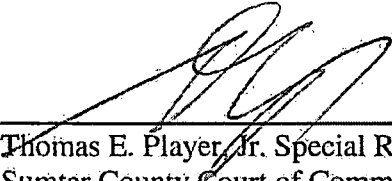


hearing. This order is presumed to be in keeping with the temporary lifting of the automatic stay of the Bankruptcy Court dated March 30, 2022, and to the extent it is not it should be disregarded.

After hearing argument from counsel, the Court denies the Motion by the Defendants for the reasons set forth in the August 18, 2021, order.

IT IS SO ORDERED

April 26, 2022
Sumter, SC



Thomas E. Player, Jr. Special Referee
Sumter County Court of Common Pleas

Weissenstein Law Firm, LLC

Attorney at Law

106 Broad Street

Post Office Box 2446

Sumter, South Carolina 29151-2446

Telephone: (803) 418-5700

Facsimile: (803) 934-1505

E-Mail: pwlaw2@gmail.com



A. Paul Weissenstein, Jr.

April 27, 2022

HAND DELIVERED

Michael M. Jordan

Schwartz, McLeod & Jordan

Attorneys at Law

10 Law Range

Sumter, South Carolina 29151

IN RE: John Weible vs Russell Self and Brandy Brunson
Case No: 2018-CP-43-02005

Dear Mr. Jordan,

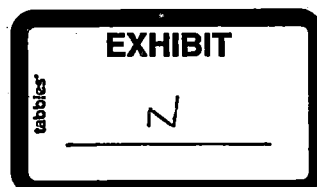
There is enclosed and served on you Notice of Appeal in the above referenced case,
together with Proof of Service.

Yours very truly,

A handwritten signature in cursive script, appearing to read "A. Paul Weissenstein, Jr.", written over a horizontal line.

A. Paul Weissenstein, Jr.

APWjr/mah
enclosures



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Thomas E. Player, Jr., Special Referee

Case No: 2018-CP-43-02005

John Weible

Respondent,

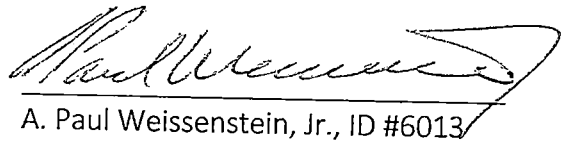
Russell Self and Brandilyn Brunson

Appellants.

NOTICE OF APPEAL

Russell Self and Brandilyn Brunson appeal the order of the Honorable Thomas E. Player, Jr. dated April 26, 2022, which had the effect of affirming prior orders dated August 18, 2021, March 16, 2020, and February 8, 2019. Appellant received written notice of entry of this order on April 26, 2022.

April 28, 2022



A. Paul Weissenstein, Jr., ID #6013

Attorney for Appellants

PO Box 2446

Sumter, SC 29151

(803) 418-5700

(803) 934-1505 (fax)

pwlaw2@gmail.com

Other Counsel of Record:

Michael M. Jordan

Schwartz, McLeod & Jordan

Attorneys at Law

10 Law Range

Sumter, South Carolina 29151

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SUMTER COUNTY

Thomas E. Player, Jr., Special Referee

Case No: 2018-CP-43-02005

John Weible

Respondent,

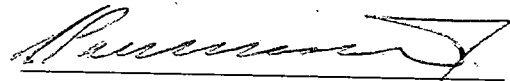
Russell Self and Brandilyn Brunson

Appellants.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on John Weible by personally delivering a copy of it, on April 28, 2022, to his attorney of record, Michael M. Jordan, at his office located at 10 Law Range, Sumter, South Carolina 29150.

April 28, 2022



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pwlaw2@gmail.com

Authorities

413 S.C. 642
776 S.E.2d 575

**WELLS FARGO BANK, N.A., successor-by-merger to Wachovia Bank, N.A.,
Respondent**

v.

**FALLON PROPERTIES SOUTH
CAROLINA, LLC, Timothy R. Fallon, Susan
C. Fallon, Fallon Luminous Products
Corporation, GE Business Capital
Corporation, formerly Transamerica
Business Capital Corporation, FSD
Repurchase Solutions, LLC, and South
Carolina Department of Revenue,
Defendants**

**Of Whom Fallon Properties South
Carolina, LLC, Timothy R. Fallon, and
Susan C. Fallon are the Appellants.**

Appellate Case No. 2015-000157.

Court of Appeals of South Carolina.

Aug. 26, 2015.

[776 S.E.2d 576]

ORDER

PER CURIAM.

[413 S.C. 643]

In this appeal from the court of common pleas, we find that an e-mail from the office of the master-in-equity with the order on appeal as an attachment constitutes written notice of entry of the order under Rule 203(b)(1) of the South Carolina Rules of Appellate Procedure. Because Appellants served their notice of appeal more than thirty days after receipt of the email, we find the appeal is untimely and deny the petition to rehear the dismissal of this appeal.

This appeal arises out of a foreclosure action. After the foreclosure sale, Appellants filed a petition for an order of appraisal pursuant to section 29-3-680 of the South Carolina Code

(2007). On December 15, 2014, the master filed an order denying the petition. The same day, the administrative assistant to the master sent attorneys for both sides an e-mail stating, "Please see attached copy of signed and clocked Form 4 and Order. I have also mailed a copy to all listed on the Form 4." The "signed and clocked" copies of the Form 4 and order were attached to the e-mail. The court¹ sent the

[413 S.C. 644]

parties a printed copy of the order through the United States Postal Service, which Appellants received on December 18, 2014.

On January 15, 2015, Appellants served Respondent with the notice of appeal from the December 15 order. The notice was served thirty-one days after Appellants received the email, but only twenty-eight days after they received the printed copy of the order. Respondent moved to dismiss the appeal as untimely. In an order signed by a single judge, we granted the motion and dismissed the appeal. The Appellants filed a petition for rehearing. We deny the petition.

Pursuant to Rule 203(b)(1), SCACR, a party wishing to appeal an order from the court of common pleas must serve the notice of appeal on the respondents "within thirty ... days after receipt of written notice of entry of the order." Since the adoption of Rule 203 in 1990, the only limitation ever expressed on how notice must be received is that it must be "written notice." For the reasons set forth below, this court finds the e-mail constitutes written notice.

The circumstances in this case are analogous to those in *Canal Insurance Co. v. Caldwell*, 338 S.C. 1, 5-6, 524 S.E.2d 416, 418 (Ct.App.1999), in which this court held a fax constituted written notice under Rule 203(b)(1). In *Canal*, the trial court issued its order on March 17, 1997; however, counsel for the appellants apparently did not receive a copy. 338 S.C. at 4, 524 S.E.2d at 417. Counsel contacted the respondent in June 1997 to inquire about the status of the order. *Id.* On July 8, 1997, counsel for the respondent "responded

via fax and mail,” stating the order “had been entered on March 19 as Judgment Roll Number 211763.” *Id.* Counsel for the appellants waited a month to request a copy of the order from the clerk of court and did not serve the notice of appeal until March 17, 1998. 338 S.C. at 5, 524 S.E.2d at 417–18. This court dismissed the appeal due to the appellants’ failure to timely serve the notice of appeal, noting “there is no question that [counsel for the appellants] received written notice of the entry of the judgment ... on July 8, 1997.” 338 S.C. at 5–6, 524 S.E.2d at 418. July 8, 1997, is the date counsel for the appellants received the fax from opposing counsel. 338 S.C. at 4, 524 S.E.2d at 417.

[413 S.C. 645]

Respondent’s argument in this case that the e-mail was “written notice of entry of the judgment” is more persuasive than the argument we adopted in *Canal* that the fax was written notice. First, the e-mail in this case was sent from the court itself, rather than an opposing party. Second, the e-mail included

[776 S.E.2d 577]

a copy of the signed and clocked order, whereas the fax in *Canal* did not.² See 338 S.C. at 4, 524 S.E.2d at 417. Finally, although neither the rules of civil nor appellate procedure specifically authorized service by fax, e-mail has actually been contemplated by the rules. See, e.g., Rule 410(e), SCACR (providing that both “[t]he mailing and e-mail address shown in the AIS [Attorney Information System] shall be used for the purpose of notifying and serving” an attorney).³ Counsel for Appellants was notified of entry of the order through the e-mail address he kept on file with the AIS.

Appellants rely on *White v. South Carolina Department of Health and Environmental Control*, 392 S.C. 247, 708 S.E.2d 812 (Ct.App.2011). In *White*, this court interpreted Rule 203(b)(6), SCACR, which governs appeals to this court from the administrative law court (ALC) and provides the notice of appeal must be

served on all parties of record within thirty days after “receipt of the decision.” 392 S.C. at 252–55, 708 S.E.2d at 814–16. In *White*, the appellant received an e-mail on January 28, 2009, containing a signed and filed copy of the decision. 392 S.C. at 252, 708 S.E.2d at 814–15. This court held Rule 203(b)(6) contemplates receipt of the decision through proper service by mail or hand delivery; accordingly, the time for serving the notice of appeal “did not commence on the day that counsel received the decision via e-mail.” 392 S.C. at 253, 708 S.E.2d at 815.

[413 S.C. 646]

White is distinguishable from this case for two reasons. First, this appeal falls under Rule 203(b)(1), rather than 203(b)(6). The court in *White* stressed that service of the ALC decision via the Postal Service was imperative because Rule 203(b)(6) requires actual “receipt of the decision,” noting this is a different requirement than “receipt of written notice of entry of the order” as provided in Rule 203(b)(1). 392 S.C. at 254–55, 708 S.E.2d at 815–16. Here, because this is an appeal from the court of common pleas, the time for initiating the appeal began to run from “receipt of written notice of entry of the order,” not “receipt of the decision.” See Rule 203(b)(1) ; Rule 203(b)(6).

Second, the due process concerns addressed by the court in *White* are not present in this case. The court in *White* reasoned that due process would not allow it to recognize an e-mail as “receipt of the decision” under Rule 203(b)(6) because there is nothing “that authorizes service of a decision of the ALC by electronic mail.” 392 S.C. at 254, 708 S.E.2d at 815. The court explained that in a prior case, we declined to hold a fax of an agency’s decision sufficient to initiate the time for serving a notice of appeal under Rule 203(b)(6) ; and thus, due process would not allow the court to then recognize service by electronic mail when “there was no official written rule or notice about the binding effect of the service of an order by electronic mail.” 392 S.C. at 253–54, 708 S.E.2d at 815 (citing *Trowell v. S.C. Dep’t of Pub. Safety*, 384 S.C. 232, 681 S.E.2d 893

(Ct.App.2009)). Conversely, in an appeal from the court of common pleas, the parties are on notice that a fax is written notice for initiating the time for serving a notice of appeal under Rule 203(b)(1). See *Canal*, 338 S.C. at 5–6, 524 S.E.2d at 417–18.

Receipt of written notice is the critical event under Rule 203(b)(1), and Appellants received written notice on December 15, 2014—the date of the e-mail. Appellants failed to timely serve the notice of appeal “within thirty ... days after receipt of written notice.” Rule 203(b)(1). Therefore, this court lacks appellate jurisdiction, and we were required to dismiss the appeal. See Rule 263(b), SCACR (“The time prescribed by these Rules for performing any act except the time for serving the notice of appeal

[776 S.E.2d 578]

under Rules 203 and 243 may be extended or shortened by the appellate court, or by any judge or justice

[413 S.C. 647]

thereof.”); *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008) (“The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service of the notice.”); *Canal*, 338 S.C. at 5, 524 S.E.2d at 418 (providing that the failure of a party to serve the notice of appeal within thirty days after receiving written notice of the entry of the order divests this court of jurisdiction and requires the dismissal of the appeal). For these reasons, the petition for rehearing is denied.

s/John Cannon Few, C.J.

s/Thomas E. Huff, J.

s/Paul E. Short, Jr., J.

Notes:

¹ This court's file does not indicate whether the printed copy was sent by the master or the clerk of court.

² In *Canal*, the court stated that the fax from the respondent's counsel merely “express[ed] surprise that opposing counsel had not been notified of the judgment and stat[ed] that it had been entered on March 19 as Judgment Roll Number 211763.” 338 S.C. at 4, 524 S.E.2d at 417. The court noted the appellants waited over a month to request a copy of the order. 338 S.C. at 6, 524 S.E.2d at 418.

³ Attorneys practicing in South Carolina have been required since November 18, 2011 to keep a valid e-mail address on file with the AIS. *Order RE: Attorney Information Systems Amendments and Requirements*, 396 S.C. 242, 721 S.E.2d 411 (2011).

**431 S.C. 186
847 S.E.2d 471**

**Joey LEMMONS d/b/a Rugs International,
Appellant,**

v.

**MACEDONIA WATER WORKS, INC.,
Respondent.**

**Appellate Case No. 2017-002171
Opinion No. 5747**

Court of Appeals of South Carolina.

**Submitted June 1, 2020.
Filed July 22, 2020**

Christopher David Kennedy and N. Douglas Brannon, both of Kennedy & Brannon, P.A., of Spartanburg; and J. Falkner Wilkes, of Greenville, for Appellant.

Joseph L. Mathis and Joseph L.V. Johnson, both of Saint-Amand Thompson & Mathis, LLC, of Gaffney; and Lawrence Emile Flynn, III, of Pope Flynn, LLC, of Columbia, for Respondent.

GEATHERS, J.:

[431 S.C. 188]

Appellant Joey Lemmons, d/b/a Rugs International (Customer) seeks review of the circuit court's order granting summary judgment to Respondent Macedonia Water Works, Inc. (Utility) in Customer's action seeking a refund. Customer argues the circuit

[847 S.E.2d 473]

court erred in declining to enforce section 58-5-390 of the South Carolina Code (2015), which limits the fee a utility may charge for the installation and maintenance of a fire sprinkler system. Utility seeks a dismissal of this appeal on the ground that Customer did not timely serve the notice of appeal. We deny the motion to dismiss and affirm the circuit court's order.

FACTS/PROCEDURAL HISTORY

In 1999, Customer purchased a commercial building in Cherokee County, near Gaffney, for his business, Rugs International.¹ At that time, a single tap onto Utility's water main supplied the water for the building's dual-purpose service line to a potable water system and a fire sprinkler system. The eight-inch line was accompanied by a four-inch bypass line to accommodate the variance in the volume of water flow—when the flow was low, a valve within the service line's compound

[431 S.C. 189]

meter assembly closed to force all of the water to flow through the assembly's four-inch meter, and when the flow increased to a certain point, the valve opened to allow the water to flow through the assembly's eight-inch meter. This assembly increased the accuracy of metering—a low flow could not be measured accurately by a large meter; therefore, the meter assembly compounded the readings between the eight-inch meter and the four-inch bypass meter.

Utility has billed its customers a certain monthly minimum charge based primarily on the size of the customer's water meter. The minimum charge has covered water usage up to 2,000 gallons, and a volumetric charge has been added for usage exceeding 2,000 gallons. Utility's water rate schedule (effective January 1, 2001) indicates that the minimum charge for an eight-inch meter is \$650. Utility determined this amount to be the actual cost of providing an eight-inch line, explaining that this amount includes the cost of increased capacity in the event that a customer "decides to make maximum use of the volumes of water that are available to him at any time." On the other hand, the monthly charge for a service line that is dedicated exclusively to a fire sprinkler system is a flat rate of \$50. These accounts are charged much less than other accounts because "consumption virtually never occurs ... unless there is a fire."²

In 2012, Customer became aware of section 58-5-390 of the South Carolina Code, which limits the fee a utility may charge for the installation and

maintenance of a fire sprinkler system.³ Customer believed that the statute applied to his water

[431 S.C. 190]

line and sought a refund of amounts he claimed Utility had overbilled him. Utility took the position that it had not overbilled Customer because his building did not have a service line dedicated exclusively to a fire sprinkler system.

[847 S.E.2d 474]

In March 2014, Customer added a new one-inch meter to his building to accommodate the potable water system and dedicated the eight-inch meter to the fire sprinkler system. From that point forward, Utility charged Customer \$50 per month for the line dedicated to the fire sprinkler system and a monthly minimum of \$20 for the one-inch line to the potable water system.

On November 24, 2014, Customer filed this action seeking a refund based on section 58-5-390. In his complaint, Customer alleged that his former compound meter had included an eight-inch meter and a two-inch meter and regular water usage had flowed through the two-inch meter. Customer also alleged that the higher volume of water had flowed through the eight-inch meter only when a fire activated the sprinkler system and only fifteen gallons had passed through the eight-inch meter since it had been installed. After filing an answer to Customer's complaint, Utility filed a motion for summary judgment, and the circuit court conducted a hearing on the motion on January 6, 2017. In its order granting summary judgment to Utility, the circuit court concluded that section 58-5-390 did not apply to Customer's former dual-purpose line because it was not dedicated exclusively to a fire sprinkler system as contemplated by the statute. The circuit court later denied Customer's Rule 59(e) motion. This appeal followed. Utility did not file a separate motion to dismiss this appeal, but rather raised the issue of appellate jurisdiction for the first time in its appellate brief.

[431 S.C. 191]

ISSUES ON APPEAL

1. Does this court have appellate jurisdiction over this action?
2. Did the circuit court err by interpreting section 58-5-390 to apply to only those lines dedicated exclusively to a fire sprinkler system?
3. Did Customer have a separate fire sprinkler line for purposes of section 58-5-390 during the period for which he seeks a refund?

STANDARD OF REVIEW

This court reviews the grant of a summary judgment motion under the same standard applied by the trial court pursuant to Rule 56(c), SCRPC. *Jackson v. Bermuda Sands, Inc.*, 383 S.C. 11, 14 n.2, 677 S.E.2d 612, 614 n.2 (Ct. App. 2009). Rule 56(c), SCRPC, provides that summary judgment shall be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Further, when a circuit court grants summary judgment on a question of law, such as statutory interpretation, the appellate court must review the ruling de novo. *Wright v. PRG Real Estate Mgmt., Inc.*, 426 S.C. 202, 212, 826 S.E.2d 285, 290 (2019) ; see *Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 363, 798 S.E.2d 555, 558 (2017) ("An issue regarding statutory interpretation is a question of law." (quoting *Univ. of S. Cal. v. Moran*, 365 S.C. 270, 274, 617 S.E.2d 135, 137 (Ct. App. 2005))).

LAW/ANALYSIS

I. Appellate Jurisdiction

Utility asserts that this appeal should be dismissed for lack of jurisdiction because Customer did not timely serve the notice of appeal.⁴ See Rule 203(b)(1), SCACR ("A notice of

[431 S.C. 192]

appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. When a timely motion for judgment n.o.v. (Rule 50, SCRCP), motion to alter or amend the judgment (Rules 52 and 59, SCRCP), or a motion for a new trial (Rule 59, SCRCP) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion.");

[847 S.E.2d 475]

Camp v. Camp , 386 S.C. 571, 574–75, 689 S.E.2d 634, 636 (2010) ("Service of the notice of appeal is a 'jurisdictional requirement, and this [c]ourt has no authority to extend or expand the time in which the notice of intent to appeal must be served.' " (quoting *Mears v. Mears* , 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985))).

Specifically, Utility contends that Customer's Rule 59(e) motion did not stay the time for serving the notice of appeal because the motion was not served until after the ten-day deadline. *See* Rule 59(e), SCRCP ("A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order."); Rule 203(b)(1), SCACR (indicating that when a timely post-trial or post-hearing motion has been made, "the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion"); *see also* Rule 59(f), SCRCP ("The time for appeal for all parties shall be stayed by a *timely* motion under this Rule and shall run from the receipt of written notice of entry of the order granting or denying such motions." (emphasis added)).

Utility bases its argument on the premise that the time-stamp on the circuit court's e-mail providing the parties notice of the entry of its summary judgment order was the starting point for calculating the ten-day deadline, relying on *Wells Fargo Bank, N.A. v. Fallon Props. S.C., LLC* , 422 S.C. 211, 217, 810 S.E.2d 856, 859 (2018). In *Wells Fargo* , our supreme court discussed the thirty-day deadline for filing a notice of appeal

and stated, "[A]n email providing written notice of entry of an order or judgment for purposes of Rule 203(b)(1), SCACR [,] triggers the time to appeal *as long as the email is*

[431 S.C. 193]

received from the court, an attorney of record, or a party. " 422 S.C. at 217, 810 S.E.2d at 859. The court explained that the notice of entry of the order being appealed does not have to be formally served by the court or an opposing party but rather "[a]ll that is required to trigger the time to appeal is that the parties *receive* such notice." *Id.* at 215–16, 810 S.E.2d at 858.

Notably, the *date* the appellants in *Wells Fargo* received the e-mail from the circuit court's administrative assistant was not in dispute. Rather, the appellants argued that their receipt of notice, by e-mail rather than by regular mail or hand delivery could not trigger the time within which to file the notice of appeal. *Id.* at 215, 810 S.E.2d at 858. However, in the instant case, Customer challenges the date of receipt of the e-mail because there was no record created before the circuit court as to that critical date.

Customer maintains that the time-stamp on the e-mail is not always the starting point because the time-stamp does not conclusively determine the date a party receives the e-mail and the date of receipt determines the starting point for calculating the ten-day deadline. *See* Rule 59(e), SCRCP ("A motion to alter or amend the judgment shall be served not later than 10 days after *receipt* of written notice of the entry of the order." (emphasis added)). Customer credibly asserts, "Emails, although commonly used, are nonetheless subject to unpredictable and unexplainable travels[and] delayed and sometimes failed delivery, just as are letters mailed through the postal system." *See* S.C. Code Ann. § 26-6-150(B) (2007) ("Unless otherwise agreed between a sender and the recipient, an electronic record is received when it: (1) enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the

type sent and from which the recipient is able to retrieve the electronic record; *and* (2) is in a form capable of being processed by that system." (emphasis added));⁵ S.C. Code Ann. § 26-6-150(G) (2007) ("If a person is aware that an electronic record purportedly sent pursuant to subsection (A), or purportedly received pursuant to subsection (B), was *not actually sent or received, the legal effect of the sending or*

[431 S.C. 194]

receipt is determined by other applicable law." (emphasis added)).

Customer also maintains that when the circuit court was considering his Rule 59(e) motion, he did not have an opportunity to submit evidence of the date he actually received written notice of the entry of the

[847 S.E.2d 476]

summary judgment order because at that time, Utility presented neither an argument that the Rule 59(e) motion was late nor the AIS document on which it now relies to show when the circuit court's e-mail was sent.⁶

The question of whether the e-mail's time-stamp can be presumed to be the date of a party's receipt of the notice has not yet been addressed by our appellate courts. In the absence of our supreme court's pronouncement of such a presumption, this court must look to the Record on Appeal to determine the date of receipt of the circuit court's e-mail notice according to the standards of section 26-6-150(B). *See* § 26-6-150(B) ("Unless otherwise agreed between a sender and the recipient, an electronic record is received when it: (1) *enters* an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; *and* (2) is in a form capable of being processed by that system." (emphases added)).

Because Utility failed to present to the circuit court its argument that Customer's Rule 59(e) motion was late, the parties did not create a record establishing either the date that the circuit court's e-mail notice entered counsel's e-mail server or whether the e-mail notice was "in a form capable of being processed by" counsel's server. Therefore, we reject Utility's argument that Customer did not timely invoke this court's appellate jurisdiction.

II. Interpretation of section 58-5-390

Customer maintains the circuit court erred by interpreting section 58-5-390 to apply to only those lines dedicated

[431 S.C. 195]

exclusively to a fire sprinkler system. He argues that the legislative intent underlying section 58-5-390 was for the statute to apply to all fire sprinkler systems "without exception, even if the tap supplies other water uses." We disagree.

Section 58-5-390 states,

(A) A publicly or privately owned utility may not impose a tap fee, other fee, or a recurring maintenance fee of any nature or however described for the installation and maintenance of a fire sprinkler system that exceeds the actual costs associated with the water line *to the system*.

(B) For purposes of this section, actual costs include direct labor, direct material, the necessity of increased capacity, and other direct charges associated with the *separate* fire sprinkler line. The direct costs *must* be documented by either an invoice or work order that *specifically assigns* the costs to the *separate* fire sprinkler line. Nothing in this section may be construed as requiring a utility to provide service

to support a private fire protection system.

(C) Nothing in this section shall give the commission or the regulatory staff any power to regulate or interfere with public utilities owned or operated by or on behalf of any municipality, county, or regional transportation authority as defined in Chapter 25 of this title or their agencies.

(emphases added).

"In interpreting statutes, the [c]ourt looks to the plain meaning of the statute and the intent of the Legislature." *Gay v. Ariail*, 381 S.C. 341, 344, 673 S.E.2d 418, 420 (2009). "All rules of statutory construction are subservient to the maxim that legislative intent must prevail if it can be reasonably discovered in the language used." *Id.* Therefore, "[i]n interpreting a statute, the court will give words their plain and ordinary meaning[] and will not resort to forced construction that would limit or expand the statute." *State v. Johnson*, 396 S.C. 182, 188, 720 S.E.2d 516, 520 (Ct. App. 2011).

Under the plain meaning rule, it is not the province of the court to change the meaning of a clear and unambiguous statute. Where the statute's language is plain, unambiguous,² and conveys a clear, definite

[847 S.E.2d 477]

meaning, the rules of

[431 S.C. 196]

statutory interpretation are not needed and the court has no right to impose another meaning.

S.C. Energy Users Comm. v. S.C. Pub. Serv. Comm'n, 388 S.C. 486, 491, 697 S.E.2d 587, 590

(2010) (citation omitted). Further, "[t]he intention of the legislature must be gleaned from the entire section and not simply clauses taken out of context." *Singletary v. S.C. Dep't of Educ.*, 316 S.C. 153, 162, 447 S.E.2d 231, 236 (Ct. App. 1994).

First, the plain language of the statute as a whole reflects the legislature's intent to isolate the costs "associated with" a line to a fire sprinkler system to a separate line dedicated to only that system. Subsection (A) limits the utility's fee to "the actual costs associated with the water line to the system." Next, subsection (B) fleshes out the terms "actual costs" and "associated with" by not only itemizing those costs but also requiring utilities to document costs and to do so in a manner that assigns them to a line dedicated solely to the fire sprinkler system: "The direct costs *must* be documented by either an invoice or work order that *specifically assigns* the costs to the *separate* fire sprinkler line." § 58-5-390(B) (emphases added); see *Collins v. Doe*, 352 S.C. 462, 470, 574 S.E.2d 739, 743 (2002) ("[U]se of words such as 'shall' or 'must' indicates the legislature's intent to enact a mandatory requirement.").

The use of this mandatory language rules out the possibility that the legislature simply left unaddressed the question of how costs could be calculated on dual-purpose lines to existing fire sprinkler systems, which would have created a latent ambiguity in the statute. See *Barth v. Barth*, 293 S.C. 305, 309, 360 S.E.2d 309, 311 (1987) ("The ascertainment of intention may be the least of a judge's troubles in ascribing meaning to a statute. The fact is ... that the difficulties of so-called interpretation arise when the legislature has had no meaning at all; when the question [that] is raised on the statute never occurred to it; when what the judges have to do is, not to determine what the legislature did mean on a point [that] was present to its mind, but to guess what it would have intended on a point not present to its mind, if the point had been present." (quoting Benjamin N. Cardozo, *The Nature of the Judicial Process* 14-14 (Yale University Press 1921))).

[431 S.C. 197]

Nonetheless, even if the statute may be reasonably interpreted in more than one way so as to render it ambiguous, applying the rules of statutory construction to section 58-5-390 underscores the reality that it is not feasible to determine all of the "actual" costs associated with a line to a fire sprinkler system if the line is also used for other purposes. The only way to stay true to the requirement to charge only the actual costs is to isolate those costs through the separation of the line to the fire sprinkler system from any water line serving other building systems. If the legislature had deemed it sufficient for a utility to extrapolate the costs of a water line to a fire sprinkler system from the costs of a dual-purpose line, it would not have included the word "actual" in subsections (A) and (B) or the word "separate" in subsection (B). See *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) ("[W]e read the statute as a whole and in a manner consonant and in harmony with its purpose." (emphasis added)); *id.* ("In that vein, we must read the statute so 'that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous,' for '[t]he General Assembly obviously intended [the statute] to have some efficacy, or the legislature would not have enacted it into law.'" (emphases added) (citation omitted) (alterations in original) (quoting *State v. Sweat*, 379 S.C. 367, 377, 382, 665 S.E.2d 645, 651, 654 (Ct. App. 2008) ("*Sweat I*"), *aff'd as modified on other grounds*, 386 S.C. 339, 688 S.E.2d 569 (2010) ("*Sweat II*")); *Sweat I*, 379 S.C. at 376, 665 S.E.2d at 650 ("A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers." (emphasis added)); *Sweat II*, 386 S.C. at 351, 688 S.E.2d at 575 ("Courts will reject a statutory interpretation [that] would lead to a result so plainly absurd that it could not have been intended by the Legislature or would defeat the plain legislative intention."); *id.* ("Any ambiguity in a statute should be resolved in

favor of a just, equitable, and beneficial operation of the law." (quoting *Bennett v. Sullivan's Island Bd. of Adjustment*, 313 S.C. 455, 458, 438 S.E.2d 273, 274 (Ct. App. 1993))).

Customer relies on the language stating the statute's purpose, i.e., "[I]t is the purpose of this act to create meaningful

[431 S.C. 198]

incentives for the installation of fire sprinkler systems,"⁸ to support his argument that the legislature intended for the statute to apply to all fire sprinkler systems. However, the statute's purpose contemplates the installation of new fire sprinkler systems into buildings that did not already have them on the statute's effective date and provides fair notice to utilities that they must document actual costs only by installing a separate line dedicated exclusively to a fire sprinkler system. See *CFRE*, 395 S.C. at 74, 716 S.E.2d at 881 ("[W]e read the statute as a whole and in a manner consonant and in harmony with its purpose." (emphasis added)); *Sweat I*, 379 S.C. at 376, 665 S.E.2d at 650 ("A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers." (emphasis added)); cf. *Gatewood v. S.C. Dep't of Corr.*, 416 S.C. 304, 321, 785 S.E.2d 600, 609 (Ct. App. 2016) ("[A]bsent a specific provision or clear legislative intent to the contrary, statutes are to be construed prospectively rather than retroactively, unless the statute is remedial or procedural in nature." (quoting *Edwards v. State Law Enft Div.*, 395 S.C. 571, 579, 720 S.E.2d 462, 466 (2011))).⁹ The owners of buildings with fire sprinkler systems already in place when section 58-5-390 was enacted did not need the incentive created by the statute. Therefore, the statute's incentive-creating purpose was not fulfilled by existing fire sprinkler systems. Hence, we see no incongruity in excluding from the class of the statute's beneficiaries those owners of fire sprinkler systems that were already existing on the statute's effective date and were served by a dual-purpose line.

[847 S.E.2d 478]

Further, we note that Act No. 357 also created or amended several other statutes to serve the purpose of creating incentives for installing fire sprinkler systems. For example, section 2 of the Act added section 12-6-3622 to the South Carolina Code. Act No. 357, 2008 S.C. Acts 3603-04;

[431 S.C. 199]

S.C. Code Ann. § 12-6-3622 (2014 & Supp. 2019). Section 12-6-3622 allows a property tax credit, under certain conditions, for the installation of a fire sprinkler system in a business or residence. Further, section 3 of the Act amended section 12-37-3130 of the South Carolina Code (2014) to exclude the voluntary installation of a fire sprinkler system from the definition of "additions" or "improvements" in determining the fair market value of real property for tax purposes, provided the utility and function of the structure remains unchanged. Act No. 357, 2008 S.C. Acts 3604-05. Moreover, section 5 of the Act amended section 12-37-220 of the South Carolina Code (2014 & Supp. 2019) to add a property tax exemption for fire sprinkler system equipment until the building in which the system is installed undergoes an "assessable transfer of interest." Act No. 357, 2008 S.C. Acts 3605. In light of these additional incentives, we do not believe that limiting the fire sprinkler systems governed by section 58-5-390 to those that have a separate connection to a utility's main significantly detracts from the Act's purpose of creating incentives for the installation of these systems.

Based on the foregoing, we affirm the circuit court's conclusion that section 58-5-390 applies to only those lines dedicated exclusively to a fire sprinkler system.

III. Separate Line

Customer argues that he presented at least a scintilla of evidence that his building had a separate fire sprinkler line for purposes of section 58-8-390 before he added his one-inch line and, therefore, summary judgment was inappropriate. See

[847 S.E.2d 479]

Hancock v. Mid-S. Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009) ("[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment."). Customer contends that the circuit court improperly weighed the evidence because "[a] simple examination of the two meters along with [Customer's] testimony was more than sufficient to require the court to deny summary judgment in this case." See *S.C. Prop. & Cas. Guar. Ass'n v. Yensen*, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct. App. 2001) ("At the summary judgment stage of litigation, the court does not weigh conflicting evidence with respect to a disputed material fact."). Customer

[431 S.C. 200]

also argues that the circuit court failed to view the evidence in the light most favorable to him. See *Hendricks v. Clemson Univ.*, 353 S.C. 449, 455-56, 578 S.E.2d 711, 714 (2003) ("In determining whether any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the nonmoving party."). We disagree.

"[A] scintilla of evidence is any material evidence which, taken as true, would tend to establish the issue in the mind of a reasonable juror." *Crosby v. Seaboard Air Line Ry.*, 81 S.C. 24, 31, 61 S.E. 1064, 1067 (1908) (emphasis added). "[A]ny evidence, even a scintilla, that is useful to withstand a summary judgment motion must meet the prerequisite of being probative." *Bass v. Gopal, Inc.*, 384 S.C. 238, 246 n.6, 680 S.E.2d 917, 921 n.6 (Ct. App. 2009), *aff'd*, 395 S.C. 129, 716 S.E.2d 910 (2011). The circuit court "is not required to single out some one morsel of evidence and attach to it great significance when patently the evidence is introduced solely in a vain attempt to create an issue of fact that is not genuine." *Main v. Corley*, 281 S.C. 525, 527, 316 S.E.2d 406, 407 (1984). "Once the moving party carries its initial burden, the opposing party must

come forward with specific facts that show there is a *genuine* issue of fact remaining for trial." *Sims v. Amisub of S.C., Inc.* , 408 S.C. 202, 208, 758 S.E.2d 187, 190–91 (Ct. App. 2014), *aff'd* , 414 S.C. 109, 777 S.E.2d 379 (2015) (emphasis added) (quoting *Sides v. Greenville Hosp. Sys.* , 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004)).

Here, Customer asserts that an examination of his meter assembly shows two separate lines running to two separate meters. However, in determining whether a factual issue is genuine, a true understanding of certain evidence requires the court to move beyond a cursory examination to acknowledge existing expertise on the matter. *See Crosby* , 81 S.C. at 31, 61 S.E. at 1067 ("[A] scintilla of evidence is any material evidence which, taken as true, would tend to establish the issue in the mind of a *reasonable* juror." (emphasis added)); *Main* , 281 S.C. at 527, 316 S.E.2d at 407 (stating that the circuit court "is not required to single out some one morsel of evidence and attach to it great significance when patently the evidence is introduced solely in a vain attempt to create an issue of fact that is not genuine"). Further, viewing the evidence in the light most favorable to the party opposing summary judgment does not change this reality.

[431 S.C. 201]

Turning to the opinions of both parties' experts in the present case, a reasonable juror could not escape the conclusion that during the period for which Customer seeks a refund, the building did not have a separate line dedicated to the fire sprinkler system. After examining these opinions, we agree with Utility's assessment that during the period for which Customer seeks a refund, the eight-inch line was not limited to fire service only as it served the entire building and water capacity was available to Customer at any time and for any purpose. Utility's engineering expert, William H. Bingham, Jr., prepared a report to formalize the findings he made during his site visit on November 1, 2013, and to provide the basis for his opinion regarding the service to the Rugs International facility.¹⁰ Bingham described Customer's water meter as an eight-inch

compound water meter with a four-inch bypass meter. Bingham explained the nature of this meter in the following manner:

[847 S.E.2d 480]

Since this style of water meter is used on both separate fire lines and dual purpose service lines, a determination of the type of water service for a given customer cannot be made *simply by observing* whether the meter assembly is comprised of a single meter or a compound meter. The use of two meters in the compound meter assembly is purely for improvement in the measurement of flow in the system and has no bearing on whether the water is used for fire sprinklers or other water consumption. *Compound meters on dual-purpose service lines have no capability to differentiate between the volume of water consumed by the commercial usage of a facility from the volume of water consumed by the fire sprinkler system.* There can be no assumption that the smaller meter reads the commercial water consumption and the larger diameter meter only reads the fire sprinkler consumption.

(emphases added).

Additionally, in his August 10, 2016 letter to Utility's counsel, Customer's own expert, Jeffrey Walker, General Manager for the Inman-Campobello Water District (ICWD), gave the following opinion after reviewing the report of Utility's expert:

[431 S.C. 202]

[S]ince all of the water for this customer flowed through this meter assembly and therefore, this was not a connection dedicated to fire

protection only, the ICWD would not consider this a private fire protection line. At the ICWD, a private fire protection line is solely dedicated to fire protection and *consumption virtually never occurs with these types of connections, unless there is a fire. For this reason, accounts of this type are charged much less than accounts that are not solely dedicated to fire protection.*

Therefore, given the same meter and the same or a similar industry, the ICWD would bill the customer the minimum bill for an 8-inch meter plus any consumption that exceeded the amount that is included in the minimum charge. Even though the meter assembly is comprised of two meters, it is still considered an 8-inch meter. The smaller meter is in place to capture lower flows that the 8-inch meter cannot detect.

(emphasis added).¹¹

Based on the foregoing, the circuit court properly granted summary judgment to Utility. *See* Rule 56(c), SCRPC (providing that summary judgment shall be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."); *Wright*, 426 S.C. at 211, 826 S.E.2d at 290 ("The purpose of summary judgment is to expedite disposition of cases [that] do not require the services of a fact finder." (quoting *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001))).

CONCLUSION

Accordingly, we deny the motion to dismiss and affirm the circuit court's order.

AFFIRMED.¹²

LOCKEMY, C.J., and HEWITT, J., concur.

Notes:

¹ In his affidavit, Customer references one building. However, in an exhibit attached to the affidavit, specifically, a letter from Utility to Customer, Utility contends, "In the case of the Rugs International facility, there are multiple facilities, services, and buildings [that] are supplied water service from a single water meter and tap." Nonetheless, we need not resolve this discrepancy for purposes of deciding the issues on appeal.

² Jeffrey Walker, Customer's expert witness and general manager for a nearby water district that bills in the same manner that Utility bills its customers, made this statement in his August 10, 2016 letter to Utility's counsel.

³ The legislation creating section 58-5-390 was passed in 2008. *See* Act No. 357, 2008 S.C. Acts 3601, effective June 25, 2008. This act was amended in 2010 to add subsection (C) to section 58-5-390. Section 58-5-390 states,

(A) A publicly or privately owned utility may not impose a tap fee, other fee, or a recurring maintenance fee of any nature or however described for the installation and maintenance of a fire sprinkler system that exceeds the actual costs associated with the water line to the system.

(B) For purposes of this section, actual costs include direct labor, direct material, the necessity of increased capacity, and other direct charges associated with the separate fire sprinkler line. The direct costs must be documented by either an invoice or work order that specifically assigns the costs to the

separate fire sprinkler line. Nothing in this section may be construed as requiring a utility to provide service to support a private fire protection system.

(C) Nothing in this section shall give the commission or the regulatory staff any power to regulate or interfere with public utilities owned or operated by or on behalf of any municipality, county, or regional transportation authority as defined in Chapter 25 of this title or their agencies.

(emphases added).

⁴ Utility actually employs the term "subject matter jurisdiction." However, late service of the notice of appeal deprives this court of appellate jurisdiction rather than subject matter jurisdiction. *See State v. Brown*, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004) (holding that the failure to comply with the procedural requirements for an appeal divests a court of appellate jurisdiction but not of subject matter jurisdiction).

⁵ Section 26-6-150 was enacted in 2004. Act No. 279, 2004 S.C. Acts 2804.

⁶ In its brief, Utility asserts that the order granting summary judgment was sent to the attorneys of record via the Attorney Information System (AIS) at 12:00 p.m. on March 23, 2017. Utility also asserts that Customer served his Rule 59(e) motion on Utility via AIS on April 4, 2017.

⁷ "If a statute is susceptible to two reasonable interpretations, it is ambiguous." *S.C. Dep't of Soc. Servs. v. Lisa C.*, 380 S.C. 406, 416, 669 S.E.2d 647, 652 (Ct. App. 2008).

⁸ Act No. 357, Preamble, 2008 S.C. Acts 3602, effective June 25, 2008.

⁹ *Id.* ("A statute is remedial whe[n] it creates new remedies for existing rights unless it violates a contractual obligation, creates a new right, or

divests a vested right." (quoting *Se. Site Prep, LLC v. Atl. Coast Builders & Contractors, LLC*, 394 S.C. 97, 106, 713 S.E.2d 650, 655 (Ct. App. 2011)); *id.* ("[A] statute that limits a right is generally not procedural." (quoting *Edwards*, 395 S.C. at 580, 720 S.E.2d at 467)).

¹⁰ Mr. Bingham conducted a subsequent site visit on May 12, 2015, to collect additional information needed for his report.

¹¹ Walker acknowledged that the ICWD bills in the same manner that Utility bills its customers.

¹² We decide this case without oral argument pursuant to Rule 215, SCACR.

The Supreme Court of South Carolina

RE: Operation of the Trial Courts During the Coronavirus
Emergency (As Amended November 23, 2021)

Appellate Case No. 2020-000447

ORDER

On April 3, 2020, this Court issued an order entitled "Operation of the Trial Courts During the Coronavirus Emergency." This order was subsequently amended on four occasions, with the last amended order being filed on June 15, 2021.

On August 27, 2021, this Court issued a completely revised order relating to the operation of the trial courts during the coronavirus emergency. That order is scheduled to expire on November 29, 2021.

This order amends the August 27, 2021, order to extend its provisions until February 4, 2022. While no substantive changes have been made, this introductory portion of the order has been shortened, footnotes have been revised or added, a citation to an Act has been updated, and temporal language contained in the August 27, 2021, order has been revised in several instances. For the benefit of the bench, bar and public, the language explaining which provisions of the June 15, 2021, have been continued, deleted or modified has been retained in this amended order.

(a) **Terminology.** The following terminology is used in this order.

- (1) **Judge:** a judge of the circuit court, family court, probate court, magistrate court and municipal court, including masters-in-equity and special referees.
- (2) **Remote Communication Technology:** technology such as video conferencing and teleconferencing which allows audio and/or video to be shared at differing locations in real time.
- (3) **Trial Court:** the circuit court (including master-in-equity court), family court, probate court, magistrate court and municipal court.
- (4) **Summary Court:** a magistrate or municipal court.

(b) **Authority of the Chief Justice to Impose Mitigation Measures.** Throughout the coronavirus pandemic, the Chief Justice has issued administrative orders and guidance under Article V, § 4, of the South Carolina Constitution to mitigate the risk posed by the pandemic. This Court is confident that the Chief Justice will continue to issue and modify guidance as may be appropriate to reduce the risk posed

by the coronavirus. Therefore, many of the restrictions and requirements in the June 15, 2021, order, which were designed to allow hearings, trials or other matters to be safely conducted during the pandemic, have not been included in this order, and these matters are now left to the Chief Justice.

(c) Discretion of the Trial Judges to Impose Mitigation Measures. In addition to the guidance the Chief Justice may issue, this Court is confident that trial judges will take appropriate mitigation measures to address any unique risk the coronavirus may pose in any individual case.

(d) Minimizing Hearings on Motions. Section (c)(4) of the June 15, 2021, order stated the following:

While the practice has been to conduct hearings on virtually all motions, this may not be possible during this emergency. If, upon reviewing a motion, a judge determines that the motion is without merit, the motion may be denied without waiting for any return or other response from the opposing party or parties. In all other situations except those where a motion may be made on an ex parte basis, a ruling shall not be made until the opposing party or parties have had an opportunity to file a return or other response to the motion. A trial judge may elect not to hold a hearing when the judge determines the motion may readily be decided without further input from the lawyers.

This Court continues to encourage judges to follow this guidance. As discussed above, judicial resources need to be focused on the timely and just resolution of cases, and holding unnecessary hearings is inconsistent with this goal.

(e) Service Using AIS E-mail Address.² A lawyer admitted to practice law in this state may serve a document on another lawyer admitted to practice law in this state using the lawyer's primary e-mail address listed in the Attorney Information System (AIS).³ For attorneys admitted pro hac vice, service on the associated South Carolina lawyer under this method of service shall be construed as service on the pro hac vice attorney; if appropriate, it is the responsibility of the associated lawyer to provide a copy to the pro hac vice attorney. For documents that are served by e-mail, a copy of the sent e-mail shall be enclosed with the proof of service, affidavit of service, or certificate of service for that document. This method of service may not be used for the service of a summons and complaint, subpoena, or any other pleading or document required to be personally served under Rule 4 of the South Carolina Rules of Civil Procedure (SCRCP), or for any document subject to mandatory e-filing under Section 2 of the South Carolina Electronic Filing Policies and Guidelines. In addition, the following shall apply:

(1) Documents served by e-mail must be sent as an attachment in PDF or a similar format unless otherwise agreed by the parties.

(2) Service by e-mail is complete upon transmission of the e-mail. If the serving party learns the e-mail did not reach the person to be served, the party shall immediately serve the pleading or paper by another form of service in Rule 5(b)(1), SCRCP, or other similar rule, together with evidence of the prior attempt at service by e-mail.

(3) In those actions governed by the South Carolina Rules of Civil Procedure, Rule 6(e), SCRCP, which adds five days to the time a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, shall also apply when service is made by e-mail under this provision.

(4) Lawyers are reminded of their obligation under Rule 410(g) of the South Carolina Appellate Court Rules (SCACR) to ensure that their AIS information is current and accurate at all times.

(f) Signatures of Lawyers on Documents.⁴ A lawyer may sign documents using "s/[typed name of lawyer]," a signature stamp, or a scanned or other electronic version of the lawyer's signature. Regardless of form, the signature shall still act as a certificate under Rule 11, SCRCP, that the lawyer has read the document; that to the best of the lawyer's knowledge, information, and belief there is good ground to support it; and that the document is not interposed for delay.

(g) Optional Filing Methods. Section (c)(15) of the June 15, 2021, order provided as follows:

During this emergency, clerks of the trial courts may, at their option, permit documents to be filed by electronic methods such as fax and e-mail. If the clerk elects to do so, the clerk will post detailed information on the court's website regarding the procedure to be followed, including any appropriate restrictions, such as size limitations, which may apply. Documents filed by one of these optional filing methods shall be treated as being filed when received by the clerk of court and a document received on or before 11:59:59 p.m., Eastern Standard Time, shall be considered filed on that day. These optional filing methods shall not be used for any document that can be e-filed under the South Carolina Electronic Filing Policies and Guidelines. If a trial court does not have a clerk of court, the court shall determine whether to allow the optional filing methods provided by this provision.

If such an optional filing system has been created prior to August 27, 2021, the clerk of court may continue to operate this system. By October 1, 2021, any court with an optional filing system was required to provide the Office of Court Administration with information regarding this system, including a general description of the system, a copy of the procedures posted to the court's website, discussion of how successful and useful the system has been, how the system has been received by the users, and, if available, the approximate number of filings which have been made using this system.

(h) Use of Remote Communication Technology. During the coronavirus pandemic, WebEx and other remote communication technologies were successfully used by the trial courts. Based on this experience, Rule 612 was added to the South Carolina Appellate Court Rules to allow this Court to issue an order allowing remote communication technology to be used in proceedings before the courts of this state. Pursuant to Rule 612, SCACR, this Court issued an order regarding the use of remote

communication technology in proceedings before the trial courts, including the administration of any required oath or affirmation.⁵ Therefore, the provisions in the June 15, 2021, order relating to the use of remote communication technology are not included in this order.

This Court recognizes that various trials, pleas or hearings may have already been scheduled to be conducted using remote communication technology under the guidance contained in the order of June 15, 2021. If so, the use of remote communication technology for that trial, plea or hearing may continue to be conducted under the guidance contained in the June 15, 2021 order, notwithstanding any new limitations in the order governing the use of remote communication technology referenced in the preceding paragraph.

(i) Family Court Provisions. Section (f) of the June 15, 2021, order contained provisions applicable to the family court. Many of these provisions have proven to be very beneficial during the pandemic, and can be used to conserve judicial resources which can better be used to resolve cases that have been necessarily delayed by the impact of the pandemic. This Court, however, believes that hearings on consent agreements or orders regarding divorces or other final matters can now be safely conducted either in-person or using remote communication technology, and having hearings on these matters is beneficial to the litigants and the judicial system. Therefore, this order has significantly amended the language from the prior order.

(1) Granting of Uncontested Divorces Based on Separation for One Year Without a Hearing. The family court may grant an uncontested divorce based on separation for one year without holding a hearing, including granting any requested name change, if:

(A) The relief sought is limited to a divorce and any related change of name. If other relief is sought, including but not limited to, child support, child custody or visitation, alimony, property distribution or fees for attorneys or guardians ad litem, the divorce may not be granted without a hearing.

(B) The parties submit written testimony in the form of affidavits of the parties and corroborating witnesses that address jurisdiction and venue questions, date of marriage, date of separation, and the impossibility of reconciliation.

(C) The written testimony must include copies of the parties' and witnesses' state-issued photo identifications.

(D) Any decree submitted by any attorney shall be accompanied by a statement, as an officer of the court, that all counsel approve the decree and that all waiting periods have been satisfied or waived by the parties.

(E) Should either party request a name change in connection with a request for divorce agreement approval, that party shall submit written testimony to the family court in the form of an affidavit addressing the appropriate questions for name change and the name which he or she wishes to resume. This relief shall be included in any proposed order submitted to the Court for approval at the time of the submission of the documents related to the relief requested.

(2) Approval of Agreements and Consent Orders Regarding Temporary Relief Without a Hearing. Based on the consent of the parties, temporary orders, including but not limited to those relating to child custody, child support, visitation, and alimony, may, in the discretion of the family court judge, be issued without a hearing. Any proposed order or agreement must be signed by the parties, counsel for the parties, and the guardian ad litem, if one has been appointed, and may be submitted and issued without the necessity of filing supporting affidavits, financial declarations or written testimony.

(3) Consent Orders under S.C. Code Ann. § 63-7-1700(D). Where all the parties consent and the family court determines a child may be safely maintained in the home in that the parent has remedied the conditions that caused the removal, and the return of the child to the child's parent would not cause an unreasonable risk of harm to the child's life, physical health, safety, or mental well-being, the family court may order the child returned to the child's parent without holding a hearing.

(4) Consent Orders Regarding Procedural Matters. With the consent of the parties, a consent order relating to discovery, the appointment of counsel or a guardian ad litem (including the fees for, or the relief of, a counsel or a guardian ad litem) or any other procedural matter may, in the discretion of the family court judge, be issued without requiring a hearing.

(5) Submission of Additional Information. Nothing in this order shall be construed as preventing a family court judge from requiring additional information or documents to be submitted before making a determination that the order can be issued without a hearing or from holding a hearing where the judge finds a hearing is appropriate.

(6) Consent Orders or Agreements Submitted to the Family Court Prior to the Effective Date of this Order. Consent orders or agreements submitted to the family court on or prior to August 27, 2021, may continue to be processed under the guidance contained in the order of June 15, 2021.

(j) Rule 3(c) of the South Carolina Rules of Criminal Procedure (SCRCrimP). While this order remains in effect, the ninety (90) day period provided by Rule 3(c), is increased to one-hundred and twenty (120) days.⁶

(k) Alternatives to Court Reporters and Digital Courtrooms. A trial or hearing in the court of common pleas (including the master-in-equity court), the court of general sessions or the family court is usually attended by a court reporter (before the master-in-equity this is usually a private court reporter) or is scheduled in one of the digital courtrooms with a court reporter or court monitor. While every effort will be made to continue these practices, this may not be possible as due to the impact of the pandemic and the expected increased demand for these resources to resolve cases which were delayed by the pandemic. In the event such resources are not reasonably available, a trial or hearing may proceed if a recording (preferably both audio and video) is made. The judge shall conduct the proceedings in a manner that will allow a court reporter to create a transcript at a later date. This would include, but is not limited to, making sure the names and spelling of all of the persons speaking or testifying are placed on the record; ensuring exhibits or other documents referred to are clearly identified and properly marked; controlling the proceeding so that multiple persons do not speak at the same time; and noting on the record the start times and the time of any recess or adjournment.

(l) Amendment to Rule 3, SCRCrimP. The June 15, 2021, order contained a provision regarding the service of an arrest warrant on a defendant already in the custody of the South Carolina Department of Corrections, or a detention center or jail in South Carolina. Since Rule 3(a), SCRCrimP, has been amended to incorporate this language, this provision is not included in this order.

(m) Bond Hearings in Criminal Cases. Section (h)(1) of the June 21, 2021, order has not been included in this order. Judges should, of course, continue to hold bond hearings in accordance with the guidance provided by the Chief Justice.

(n) Notarizations. During the height of the pandemic, the ability to obtain notarial services was significantly impacted. To address this, the prior versions of this order contained provisions allowing a certification in lieu of affidavit. Since notarial services are now readily available, these provisions have not been included in this order. It is also noted that the General Assembly recently enacted the "South Carolina Electronic Notary Public Act" (Act No. 85 of 2021), now codified as S.C. Code Ann. §§ 26-2-5 to -210 (Supp. 2021). The provisions in this Act should greatly reduce the impact any future emergency will have on the availability of notarial services.

(o) Extensions by Consent. Prior versions of this order created an exception to Rule 6(b), SCRCrimP, allowing extensions by the agreement of the parties. This exception is not included in this order, and Rule 6(b), SCRCrimP, shall govern any extension request made after August 27, 2021.

(p) Guilty Pleas by Affidavit or Certification in the Summary Court. Section (h)(3) of the June 15, 2021, order allowed a defendant to plead guilty by affidavit or certification before the summary courts. Since the order of the Chief Justice dated May 7, 2020 (available at

<https://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2020-05-07-01>, addresses this same issue, it is unnecessary to include the prior provision in this order.⁷

This order is effective immediately. Unless extended by order of this Court, this order will expire on February 4, 2022. Pursuant to Rule 611, SCACR, a copy of this order will be provided to the Chairs of the House and Senate Judiciary Committees.

s/Donald W. Beatty C.J.

s/John W. Kittredge J.

s/Kaye G. Hearn J.

s/John Cannon Few J.

s/George C. James, Jr. J.

Columbia, South Carolina
November 23, 2021

1 This order is available at <https://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=2623>.

2 The language of this section is identical to that contained in (c)(13) of the June 15, 2021, order.

3 The e-mail addresses for a lawyer admitted in South Carolina can be accessed utilizing the Attorney Information Search at: <https://www.sccourts.org/attorneys/dspSearchAttorneys.cfm>.

4 The language in this section is identical to that contained in section (c)(14) of the June 15, 2021, order.

5 The current version of this order is dated September 21, 2021, and is available at <https://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=2628>

6 This section is based on section (d)(1) of the June 15, 2021, order.

7 This Court does view a guilty plea by affidavit or certification as being a temporary measure in response to the coronavirus pandemic.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SUMTER COUNTY
COURT OF COMMON PLEAS

THOMAS E. PLAYER, JR., SPECIAL REFEREE

RECEIVED

MAY 24 2022

SC Court of Appeals

CASE NO.: 2022-000601

John Weible,

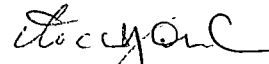
Respondent,

Russell Self and Brandilyn Brunson,

Appellants.

PROOF OF SERVICE

I certify that on May 23, 2022, I served the attached Memorandum on Russell Self and Brandilyn Brunson via first class U.S. Mail, to their attorney of record, A. Paul Weissenstein, Jr., at his office at PO Box 2446, Sumter, SC 29151.



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Michael M. Jordan
mjordan@legaloff.net

Ramon Schwartz, Jr. (1925-2017)
R. Kirk McLeod (1921-1987)

May 23, 2022

Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
PO Box 11629
Columbia, South Carolina 29211

RECEIVED

MAY 24 2022

SC Court of Appeals

RE: John Weible v Russell Self and Brandilyn Brunson
2022-000601

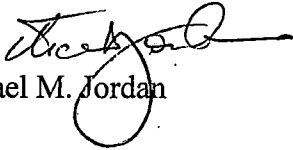
Dear Ms. Kitchings:

Pursuant to your letter dated May 13, 2022 in the above matter I have enclosed the requested Memorandum with attachments.

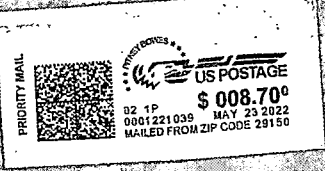
Please let me know if there is anything additional required from Respondent at this time.

With kindest regards, I am

Schwartz, McLeod & Jordan


Michael M. Jordan

C: A. Paul Weissenstein, Jr.



SCHWARTZ, MCLEOD & JORDAN
Attorneys at Law
10 Law Range
Sumter, South Carolina 29150

RECEIVED
MAY 24 2022
SC Court of Appeals

HONORABLE JENNY A KITCHINGS
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