Serving the Master

Challenging the Authority, Power or Jurisdiction of the Master-in-Equity

By *Bruce Wallace*

"We are all apprentices in a craft where no one ever becomes a master."
—Ernest Hemingway

Masters-in-equity and special referees operate only when the circuit courts refer actions to them.[1] Rule 53 of the South Carolina Rules of Civil Procedure governs reference of matters to the master, but lawyers need to know how to challenge the master's judgment when the master acts outside of the scope of the order of reference. Integral to this issue is whether challenges are to the *authority and power* or *subject matter jurisdiction* of the master. If the former, a party's ability to challenge the judgment on appeal may be significantly limited; if the latter, the challenge can be raised at any time, including for the first time on appeal.[2] There is currently some confusion in the decisions of the

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MASTER OF EQUITY
Not Gonna Happen

appellate courts of this state: some Court of Appeals decisions decide appeals under "subject matter jurisdiction" analysis, while other Court of Appeals and Supreme Court decisions resolve similar challenges on other grounds, grounds that contradict the law of subject matter jurisdiction.

Procedure for referring a case to the master or referee

"You don't notice the referee during the game unless he makes a bad call."
—Drew Curtis

Rule 53(b) provides all the circumstances under which a matter can be referred to the master-in-equity. Rule 53(b) sets the parameters for referring a matter to the master:

> In an action where the parties consent, in a default case, or an action for foreclosure, some or all of the causes of action in a case may be referred to a master or special referee by order of a circuit judge or the clerk of court. In all other actions, the circuit court may, upon application of any party or upon its own motion, direct a reference of some or all of the causes of action in a case.

Rule 53 then empowers the master: "[o]nce referred, the master or special referee shall exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter."[3] In foreclosure actions or in any action where a party is in default, the circuit court or the clerk of court can refer the matter to the master-in-equity.[4] In all other cases, the court may refer an equitable action to the master, either *sua sponte* or on the motion of any party.[5]

Is consent necessary?

Rule 53(b) also allows any matter to be referred to the master "upon consent of the parties."[6] However, lack of consent does not provide a defense to the reference in some equitable actions. In *Smith Companies of Greenville, Inc. v. Hayes*,[7] defendant Hayes appealed the master's order, arguing the circuit court improperly referred the action to the master because Hayes did not consent to the reference. Dispensing with that argument in a footnote, the Court of Appeals simply stated "Rule 53(b), SCRCP, permits the circuit court to direct a reference of all equitable matters on its own motion."[8]

In *Roche v. Young Bros., Inc., of Florence*,[9] the Supreme Court considered the reference of a matter to a special referee, where the defendant was in default but had made an appearance. Citing section 14-11-60 of the South Carolina Code, the defendant argued the circuit court could only refer the matter to a special referee upon consent of the parties.[10] In reconciling that statute to the express terms of Rule 53(a) and (b), the Supreme Court held that consent of the defaulting party was not necessary for reference of the action to a special referee.[11]

The effect of a jury demand

In prior practice, the defendant had to file an answer before a reference could be ordered.[12] Now, Rule 53 specifically allows the circuit court to refer the matter before the defendant makes a jury demand: "*upon the filing of a jury demand*, the matter shall be returned to the circuit court."[13] Thus, in certain circumstances, the action should be returned to the circuit court if either party files a jury demand. However, the S.C. Court of Appeals has ruled that the master can sometimes rule on whether a jury demand is proper such that return to the circuit court is not automatic. In *Wells Fargo Bank, N.A. v. Smith*,[14] the circuit court referred a foreclosure action to the master-in-equity with the power "to take testimony and to direct entry of final judgment in this action under Rule 53(b), SCRCP, and all matters arising from or reasonably related to such action. The Master-in-Equity shall retain jurisdiction to perform all necessary acts incident to this foreclosure action . . . ."[15] Under this specific

wording of the order of reference ("perform all necessary acts incident to this foreclosure action"), the Court of Appeals held the master properly considered the motion to strike the jury demand.[16]

Authority or power of the master

"The wisest have the most authority." —Plato

Appeals from masters' judgments have addressed more than the court's striking of a jury demand. The Court of Appeals has resolved several challenges to the power and authority of the master. The court considered the appeal of a defendant from a master's judgment in *Hayes*, wherein the circuit court had referred the action to the master to foreclose a bond for title.[17] The master instead canceled the bond and issued an order requiring the defendant to vacate the premises.[18] Hayes appealed the master's decision, arguing the master did not have the authority to cancel the bond, but only the authority to foreclose his interest therein.[19] On appeal, the Court of Appeals held "Rule 53(c) gives the master the power to conduct hearings in the same manner as the circuit court, unless the order of reference specifies or limits his powers."[20] Because the order of reference did not limit the master's power, then, he was free to cancel the bond.[21] Because the court decided the case in light of any "limitation to the master's power," the *Hayes* court did not use the term "subject matter jurisdiction."[22]

Similarly, in *Smith v. Ocean Lakes Family Campground*,[23] the Court of Appeals considered the appeal of a defendant where the master issued his order outside the time limits imposed in the order of reference. In *Ocean Lakes*, the circuit court referred the action to the master, requiring that "the final order shall be filed within 90 days of the date of this order; otherwise this order of reference is null and void."[24] When the master filed his final order 145 days after the reference, and the parties appealed, the Court of Appeals held the order was invalid:

> the reference expired by its own terms 90 days after the date of the order of reference. At the time the master filed his order, the case had thus been withdrawn from him and returned to the circuit court, where it remains pending. Therefore, there has been no valid order entered in this case, and the appealed order is a nullity *entered without power or authority*.[25]

Similarly, in *Judy v. Judy*,[26] the Court of Appeals summarily dismissed a challenge to a special referee's authority to reform deeds because the issue was "unpreserved for appellate review."[27] In all three of these cases, then, the court considered the challenges in light of the master's power or authority, and never used the term "subject matter jurisdiction."

"Subject matter jurisdiction" of the master

"No mistake is more common and more fatuous than appealing to logic in cases which are beyond her jurisdiction." —Samuel Butler

The Court of Appeals has sometimes couched the appeal of the power of the master as a challenge to "jurisdiction," or "subject matter jurisdiction." There are three types of jurisdiction:

> Jurisdiction is generally defined as 'the authority to decide a given case one way or the other. Without jurisdiction, a court cannot proceed at all in any cause; jurisdiction is the power to declare law, and when it ceases to exist, the only function remaining to a court is that of announcing the fact and dismissing the cause.' Specifically, '[j]urisdiction is composed of three elements: (1) personal jurisdiction; (2) subject matter jurisdiction; and (3) the court's power to render the particular judgment requested.'[28]

Of the three types of jurisdiction, subject matter jurisdiction cannot be waived. In *Bonney v. Granger*,[29] a defendant challenged the master's jurisdiction to partition the subject real property because the claim for partition was raised by amendment to the pleadings after the order of reference was filed. The defendant reasoned that because the order of reference did not specifically mention partition, the master lacked jurisdiction to partition the property.[30] The Court of Appeals held "[s]ince the master was authorized to conduct the case in accordance with the rules of civil procedure, he had authority to permit amended pleadings and to enter judgment on the issues raised by the amendments."[31]

Thus, while initially deciding the case in light of the master's powers, in the next breath, the *Bonney* court held the defendant had "submitted to the master's *subject matter jurisdiction* to the same extent as if the matter were before the circuit court," and held this jurisdictional argument to be without merit.[32] In using the term "subject matter jurisdiction," the court cited the case of *Fox v. Munnerlyn*[33] in support of its holding. The *Fox* court did not decide a challenge to subject matter jurisdiction; in fact, the term appears nowhere in the *Fox* decision.

The Supreme Court considered a master's jurisdiction in *Wachovia Bank of South Carolina, N.A. v. Player*.[34] Initially, the Court of Appeals *sua sponte* requested that the appellants address the master's jurisdiction to entertain a Rule 60(b)(4) motion.[35] The Court of Appeals then dismissed the appeal because the master lacked "subject matter jurisdiction."[36] On writ of *certiorari,* the Supreme Court reversed, noting "[t]he proper construction of the order of reference is that it gives the master jurisdiction over the case and all matters arising from it until the master has performed all the duties assigned to him."[37] The Supreme Court then

held "the master had not concluded his duties under the order of reference when this Rule 60(b)(4) motion was filed, and therefore he had jurisdiction to decide the motion."[38] Therefore, in reversing the Court of Appeals, the Supreme Court confirmed that the order of reference granted the master jurisdiction. The Supreme Court did not use the term "subject matter jurisdiction," except where it described the Court of Appeals' use of that term. As a result, *Player* arguably does not stand for the proposition that a challenge to the master's power or authority is a challenge to subject matter jurisdiction.

The Court of Appeals' continued use of the term "subject matter jurisdiction" is evidenced in *Wells Fargo Bank v. Smith, supra*, where the court determined that "once the case is referred to the Master, he has subject matter jurisdiction to resolve the action to the extent the order of reference provides, and with the authority a circuit court judge would have in a similar matter."[39] As a result, the court found the master had subject matter jurisdiction to rule on Wells Fargo's motion to strike the jury demand, "as the matter was properly before the Master pursuant to the order of reference and our rules of civil procedure."[40] In finding "subject matter jurisdiction," the Court of Appeals relied on both *Hayes* and *Ocean Lakes Campground*.[41] Again, though, neither *Hayes* nor *Ocean Lakes Campground* mentions the term "subject matter jurisdiction."

When considered in light of a traditional subject matter jurisdictional challenge, it is easier to see that challenges to a master's authority are something else. In *Normandy Corp. v. S.C. Dep't of Transp.*,[42] the Court of Appeals decided a challenge to the master-in-equity's subject matter jurisdiction to determine the value of land in a condemnation action. However, the Court of Appeals analyzed the issue in light of the *circuit court's* subject matter jurisdiction:

> Under the Eminent Domain Procedure Act, a circuit court has the power to hear a condemnation action. Additionally, pursuant to the Uniform Declaratory Judgments Act, a circuit court has the authority to preside over a declaratory judgment action. The circuit court may, upon application of any party or upon its own motion, 'direct a reference' of some or all of the causes of action in a case to a master-in-equity. Once an action is referred, the master possesses all power and authority that a circuit judge sitting without a jury would have in a similar matter.[43]

Analyzing the subject matter jurisdiction challenge under the traditional subject matter jurisdiction case law, the Court of Appeals found the master had jurisdiction because the circuit court had subject matter jurisdiction.[44] Specifically, the court stated, "the amount of jurisdictional wetlands … was properly before the master. The issue was plainly pled … in [the] complaint."[45]

The Supreme Court reached the same result in *Linda Mc Co., Inc. v. Shore*.[46] Defendant Shore challenged the master's jurisdiction to proceed with supplemental proceedings because the subject judgment had expired. The Supreme Court curtly rejected the argument, stating, "the expiration of the judgment … would not affect the subject matter jurisdiction of the *circuit court* to hear the dispute. The running of the ten-year period does not influence the power of the circuit court to hear disputes related to section 15-39-30."[47]

Finally, challenges to a master's jurisdiction are not true "subject matter" challenges because they can be waived. Traditionally, "[t]he lack of subject matter jurisdiction may not be waived, even by consent of the parties[.]"[48] However, in *Karl Sitte Plumbing Co., Inc. v. Darby Dev. Co. of Columbia, Inc.*,[49] the Court of Appeals found appellant waived its right to contest the reference to the master. In *Karl Sitte*, the plaintiff obtained an order of reference without the consent of the defendant, although consent was required at the time by the terms of the South Carolina Code section 15-31-10.[50] However, the Court of Appeals held the defendant "East Coast … participated in the reference proceedings without objecting or excepting to … the master's appointment, authority, or *jurisdiction*. East Coast, therefore, waived any objection …"[51] The Court of Appeals also held the defendant, by participating without objection, "waived its right to attack the *authority* of the master to enter final judgment in the action."[52]

Practice pointers

"An ounce of practice is worth more than tons of preaching."
—Mahatma Gandhi

Because of the appellate courts' conflicting use of the term "subject matter jurisdiction" when discussing challenges to a master's authority or power, it is somewhat confusing whether such challenges invoke true challenge to subject matter jurisdiction. To avoid this confusion, South Carolina lawyers can and should take action to: (1) confirm the *circuit court*'s subject matter jurisdiction to hear the matter; (2) use the broad language of the order cited in *Wells Fargo v. Smith*[53] in the order of reference to ensure the master has the power and authority to rule on any issue; and (3) raise all objections to the master's jurisdiction, authority or power before the master and file a Rule 59(e) motion if those objections are not sufficiently addressed in an order by the master. Similarly, masters-in-equity and special referees can *sua sponte* raise the issue and ask each party if they challenge the order of reference or the master or special referee's authority or power to decide any issue pending before the court. With careful planning and cogent arguments, the challenged issues will be raised and ruled on, there-

fore preserving them for appeal regardless of their nature.

Bruce Wallace is a member in the Charleston office of Nexsen Pruet.

Endnotes

[1] *See Chabek v. Nationwide Mut. Fire Ins. Co.*, 303 S.C. 26, 29, 397 S.E.2d 786, 787 (Ct. App. 1990) ("[N]othing can originate before a master.").
[2] *See Linda Mc Co., Inc. v. Shore*, 390 S.C. 543, 557, 703 S.E.2d 499, 506 (2010) ("subject matter jurisdiction may be raised at any time including ... for the first time [on appeal].").
[3] Rule 58(c), SCRCP.
[4] *See Wells Fargo Bank, N.A. v. Smith*, 398 S.C. 487, 730 S.E.2d 328 (Ct. App. 2012) (Greenville County Clerk of Court); *Cockcroft v. Airco Alloys, Inc.*, 276 S.C. 184, 277 S.E.2d 587 (1981) (Charleston County Clerk); *Smith v. Hawkins*, 254 S.C. 423, 175 S.E.2d 824 (1970) (Greenwood County Clerk).
[5] Rule 53(b), SCRCP.
[6] *Id.*
[7] 311 S.C. 358, 428 S.E.2d 900 (Ct. App. 1993).
[8] *Id.* at 360, 428 S.E.2d at 902 n.1.
[9] 332 S.C. 75, 504 S.E.2d 311 (1998).
[10] *Id.* at 80, 504 S.E.2d at 313.
[11] *Id.* at 82–83, 504 S.E.2d at 315.
[12] *See First Palmetto State Bank and Trust Co. v. Boyles*, 302 S.C.136, 139, 394 S.E.2d 313, 315 (1990) (defendant had ten days after service of answer to demand trial by jury).
[13] Rule 53(c), SCRCP (emphasis added).
[14] 398 S.C. 487, 730 S.E.2d 328 (Ct. App. 2012)
[15] *Id.* at 493, 730 S.E.2d at 331.
[16] *Id.*
[17] 311 S.C. at 359, 428 S.E.2d at 901.
[18] *Id.*
[19] *Id.* at 360, 428 S.E.2d at 902.
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] 315 S.C. 379, 433 S.E.2d 909 (Ct. App. 1993).
[24] *Id.* at 380, 433 S.E.2d at 910.
[25] *Id.* at 381, 433 S.E.2d at 910 (emphasis added).
[26] 403 S.C. 203, 742 S.E.2d 672 (Ct. App. 2013).
[27] *Id.* at 210-11, 742 S.E.2d at 676.
[28] *Limehouse v. Hulsey*, 404 S.C. 93, 104, 744 S.E.2d 566, 572 (2013) (internal citations omitted).
[29] 292 S.C. 308, 356 S.E.2d 138 (Ct. App. 1987).
[30] *Id.*
[31] *Id.* at 322, 356 S.E.2d at 147.
[32] *Id.* (emphasis added).
[33] 283 S.C. 490, 493, 323 S.E.2d 68, 69 n.1 (Ct. App. 1984).
[34] 341 S.C. 424, 535 S.E.2d 128 (2000).
[35] *Id.* at 426, 535 S.E.2d at 129.
[36] *Id.*
[37] *Id.* at 427, 535 S.E.2d at 129.
[38] *Id.* at 428, 535 S.E.2d at 129.
[39] 398 S.C. at 493, 730 S.E.2d at 331.
[40] *Id.*
[41] *Id.*
[42] 386 S.C. 393, 688 S.E.2d 136 (Ct. App. 2009).
[43] *Id.* at 403, 688 S.E.2d at 141–142 (internal citations omitted).
[44] *Id.* at 403–04, 688 S.E.2d at 142.
[45] *Id.; cf. Bunkum v. Manor Properties*, 321 S.C. 95, 467 S.E.2d 758 (Ct. App. 1996) (finding the master in equity did not have subject matter jurisdiction because final judgment had been entered by the master and subject matter jurisdiction rested with "the circuit court proper").
[46] 390 S.C. 543, 703 S.E.2d 499 (2010).
[47] *Id.* at 558, 703 S.E.2d at 506 (emphasis added).
[48] *In re November 4, 2008 Bluffton Town Council Election*, 385 S.C. 632, 637, 686 S.E.2d 683, 686 (2009).
[49] 295 S.C. 70, 367 S.E.2d 162 (Ct. App. 1988).
[50] *Id.*, 367 S.E.2d at 163.
[51] *Id.* at 72, 367 S.E.2d at 163–64 (emphasis added).
[52] *Id.* at 73, 367 S.E.2d at 164 (emphasis added); *see also*, *Bonney v. Granger*, 292 S.C. 308, 356 S.E.2d 138 (Ct. App. 1987), holding party submitted to the subject matter jurisdiction of the master) compare, *Bailey v. Bailey*, 330 S.C. 326, 498 S.E.2d 891 (Ct. App. 1998) (holding special referee lacked "jurisdiction" to hear matter despite parties' consent to matter before the referee because the master did not have the authority to refer the matter); *Chabek v. Nationwide Mut. Fire Ins. Co.*, 303 S.C. 26, 397 S.E.2d 786 (Ct. App. 1990) (holding party's participation in the proceedings before the master did not confer jurisdiction to the master because the circuit court did not have subject matter jurisdiction); *Bunkum v. Manor Properties*, *supra* (parties cannot consent to subject matter jurisdiction before the master).
[53] 398 S.C. 487, 730 S.E.2d 328 (Ct. App. 2012).