

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**

AUG 01 2022

SC Court of Appeals

---

APPEAL FROM DORCHESTER COUNTY  
COURT OF COMMON PLEAS  
Judge William Keesley

---

Case # 2009-CP-18-2200

---

Howard W. Charpia and Jody E. Charpia.....Defendants  
Whom :

Howard W. Charpia.....Appellant

vs.

Rene McMasters (Ronaghan).....Respondent

---

**INITIAL BRIEF**

---

MOTION TO SET ASIDE SALE / JUDGMENT

Attorney Frank Cisa  
858 Lowcountry Blvd. St. 101  
Mt. Pleasant, SC 29464

Howard W. Charpia  
106 Axtell Drive  
Summerville, SC 29485

## TABLE OF CONTENTS

|   |         |
|---|---------|
| Table of Authorities.....   | ii      |
| Statement of the Issues.....  | 1,2     |
| Statement of the Case.....  | 2,3     |
| Facts.....  | 3,4,5,6 |
| Arguments.....  |         |
| 1. Did the Court err in violating Charpia’s “due process” by ruling upon his <i>Motion to Set Aside</i> without a Court hearing ?           |         |
| 2. Did the Court err in violating Charpia’s “due process” by not enforcing SC Code of Laws 33-44-303 (a) ?                                  |         |
| 3. Did the Court err in not accepting his “Motion to Set Aside” as an independent action pursuant to Rule 60 (b) , fraud upon the Court ?   |         |
| 4. Did the Court err in ruling within case # 2009-CP-18-2200 that does not fall within under a rule , law or regulation in South Carolina ? |         |
| 5. Does the sale price in August 2017 “shock the conscience of the Court ?  |         |
| 6. Did the Court err in not accepting <i>Chewning v. Ford Motor Company</i> , 354 S.C. as precedence for “fraud upon the Court”.            |         |
| Conclusion.....   | 6,7     |

TABLE OF AUTHORITIES

Chewning v. Ford Motor Company , 354 S.C.....

Gordon v. Lancaster , 419 S.C. 48.....

SC Code of Laws 33-44-303 et al.....

Rule 17 (a), SCRCP et al.....

## STATEMENT OF THE ISSUES

Charpia filed a “Motion to Set Aside/Vacate” said sale and judgment in October 2021 in which he requested a hearing and paid the required \$ 25.00 filing fee. Judge Keesley signed/filed a Form 4 on May 31, 2022 stating that “this action came to trail or hearing before the court.” Judge Keesley signed/filed an Order dismissing Charpia’s motion on May 31, 2022.

Charpia never had his hearing before the Court . Charpia’s “due process” did not receive 1. Notice 2. An opportunity to be heard and 3. An impartial tribunal ; pursuant to his constitutional rights.

Judgment was rendered in Case # 2002-CP-18-932 in August 2004 not this Case # 2009-CP-18-2200. The Court violated SC Code of Laws 33-44-303, et al.

Charpia filed this “motion” as an independent action in equity for “fraud upon the Court.”

Case # 2002-CP-18-2200 *does not* fall within under any rule, regulation or law in South Carolina , i.e. “foreclosure of a judgment lien”.

The sale price in August 2017 “shocks the conscience of the Court”.

Attorney Cisa suborned perjury to obtain said judgment against Charpia  
Residentials LLC and Howard W. Charpia in August 2004 .

*In Gordon v.Lancaster , 419 S.C. 48 (2018)* clearly states that the 10 year active  
energy of a judgment shall not extend beyond the “active energy” date (s) .

Case # 2021-CP-18-1390 that Judge Keesley references was for  
monetary damages , not an independent action in equity as Charpia’s motion.

#### STATEMENT OF THE CASE

Charpia’s “Motion to Set Aside/Vacate” is for fraud upon the Court , an  
independent action in equity pursuant to Rule 60 (B) SCRPC.

Charpia never had his hearing before the Court.

Howard W. Charpia is not liable for the debts of his LLC pursuant to SC  
Code 33-44-303 (a) et al. A provision , 33-44-303 (c)(1) is/was not in the  
articles of organization for Charpia Residentials LLC

The sale price of \$ 59,100 .00 and as Attorney Cisa was the high bidder did “shock the conscience of the Court “. On the date of the sale , said judgment was approx.. \$ 854,000.00.

There is no statute of limitations for “fraud upon the Court . *Chewning v. Ford Motor Company* .

### FACTS

Judgment was rendered against Charpia Residential LLC and Howard W. Charpia in August 2004, case # 2002-CP-18-932. Pursuant to Rule 17 (a) , SCRCP; Every action shall be prosecuted in the name of the real party in interest .

Attorney Cisa and Judge Edgar Dickson fabricated an action in Case # 2009-CP-18-2200 in 2009 that does not fall within under any rule , regulation or law for the Sate of South Carolina , i.e “foreclosure of a judgment lien”. The defendants in #2200 are Howard W. Charpia and Jody E. Charpia which does not adhere to Rule 17 (a), SCRCP.

This appealed “motion” is an independent action in equity which involves remedies other than monetary damages . Judge Keesley’s reference to case # 2021-CP-18-1390 was an action filed in a “court of law “ seeking monetary damages.

The original judgment case 932 and this case 2200 was rendered and based on a lie by Attorney Cisa , his witnesses and the Plaintiff , i.e suborned perjury.

There is no statute of limitations for “fraud upon the Court”.  
( Chewning v. Ford Motor Company )

This egregious misconduct by Attorney Cisa and the Plaintiff constitutes “fraud upon the Court “. Attorney Cisa and the Plaintiff acted with an intent to deceive and or defraud the Court.

In considering collateral attacks on final judgments , a Court must balance the interest of finality against the need *to provide a fair and just resolution of a dispute.*

In order to secure equitable relief on the basis of fraud , the fraud must be “extrinsic”. ( Chewning v. Ford Motor Company )

Howard W. Charpia is not responsible for the debts and obligations of Charpia Residentials LLC pursuant to SC Code of Laws 33-44-303 (a) , et al. Pursuant to Section 33-44-112 (b)(1) , Charpia Residentials LLC has the same powers as an individual which gives it the right to “defend in it’s name”.

Judge Keesley states in his “dismissal” that there were 3 sales of said Property , which is an untrue statement ; there were 5 sales on said property .

The first 2 sales were held by the Sheriff’s office and were cancelled by Attorney Cisa without the Court’s intervention , a hearing or an Order .

The subornation by Attorney Cisa and/or the intentional concealment of documents by Attorney Cisa are actions which constitute *extrinsic fraud*. (Cleveland Demolition Co. v. Azcon Scrap Corp. 827 F. 2d 984)

Attorney Cisa , his expert witnesses and McMasters testified under oath that the total cost to repair said home and “make her whole” was \$ 191,000.00; i.e. at trial against Charpia in August 2004 .

Glen Salsman , an expert witness for the Plaintiff and hired by Attorney Cisa Obtained a permit to repair said defects from Dorchester County in January 2005.

Permit was for \$ 30,864.00 , \$ 160,000.00 less than his perjured testimony.

Permit was for \$ 30,864.00 , \$ 160,000.00 less than his perjured testimony.

McMasters sold her home with the alleged defects in October 2005 for \$ 555,000.00 . Contract to build home in 2002 was approx.. \$ 234,000.00 .

Said home was sold again in 2011 for \$ 369,900.00 , i.e foreclosure .

### CONCLUSION

Attorney Cisa did suborn perjury at the trial in 2004 as the “record on appeal” will clearly show. Cisa’s expert witnesses and McMasters committed fraud at said trial. ( Chewning v. Ford Motor Company )

Howard W. Charpia can not be held liable for the debts of Charpia Residentials LLC , i.e judgment was rendered against Charpia Residentials LLC and Howard W. Charpia .

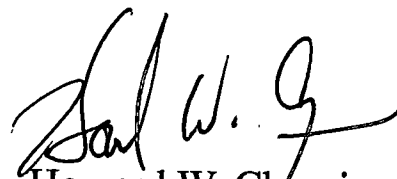
It is no longer equitable that the judgment should have prospective application.

The sale price of \$ 59, 100.0 in August 2017 does “shock the conscience of the Court”.

The judgment lost it’s active energy in 2014. ( Gordon v. Lancaster )

Charpia's due process was violated for not having notice, an opportunity to be heard and an impartial tribunal . The 14<sup>th</sup> Amendment clearly states : No state shall deprive any person of life , liberty , or property , without “ due process” of law; nor deny to any person within it's jurisdiction the equal protection of the laws. Judge Early violated Charpia's due process by not allowing him or anyone on his behalf to bid at the sale of his home in August 2017.

7.



Howard W. Charpia  
106 Axtell Drive  
Summerville, SC 29485

Attorney Frank Cisa  
858 Lowcountry Blvd. Suite 101  
Mt. Pleasant, SC 29464

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY  
COURT OF COMMON PLEAS  
Judge William Keesley

**RECEIVED**  
AUG 01 2022  
SC Court of Appeals

Case # 2009-CP-18-2200

Howard W. Charpia and Jody E. Charpia.....Defendants  
Whom :

Howard W. Charpia.....Appellant

vs.

Rene McMasters (Ronaghan).....Respondent

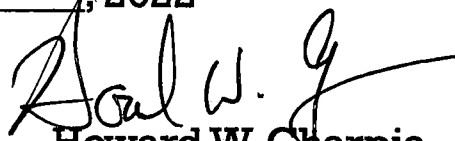
**PROOF OF SERVICE**

I , Howard W. Charpia , hereby certify that I mailed the "Initial Brief" to:

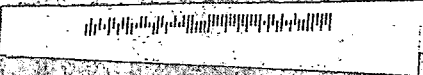
SC Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

Attorney Frank Cisa  
858 Lowcountry Blvd. ST. 101  
Mt. Pleasant, SC 29464

Date mailed 7-28, 2022

  
Howard W. Charpia

Buzzy Charpia  
106 Axtell Drive  
Summerville, SC 29485



U.S. POSTAGE PAID  
FCM PERMIT  
SUMMERVILLE, SC  
35418  
JUL 20 22  
AMOUNT  
**\$1.68**  
R2305P150712-08

1000 23201

**RECEIVED**

AUG 01 2022  
SC Court of Appeals

Att: J  
2022-000952

SC Court of Appeals  
1220 SENATE STREET  
COLUMBIA, SC  
29201