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**Oct 14 2022**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Georgetown County Court of Common Pleas  
H. Steven DeBerry, IV, Circuit Court Judge  
Case No.: 2020-CP-22-00991

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Case No.: 2022-000058

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**Michael Mares and Emergency Power, LLC,**

**Appellants,**

**v.**

**Bradley Douglas Marx (deceased) and  
Catherine Marx, Individually and in  
her capacity as Personal Representative  
of the Estate of Bradley Douglas Marx,**

**Respondents.**

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REPLY BRIEF OF APPELLANT

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October 14, 2022

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**Appellant's Reply to  
Respondent's Initial Brief**

Defendants claim that it was improper for the Appellants to bring their claims in the Court of Common Pleas, Georgetown County, because the probate court, Respondents allege, has exclusive jurisdiction over the claims herein. (*See* Respondents' Initial Brief, at p. 2.) However, some of Plaintiffs' claims, and specifically, the individual claims of conversion and unjust enrichment against Catherine Marx, are claims which the probate court clearly lacks jurisdiction to hear. In addition, the probate code clearly permits filings in circuit court, and Defendants conceded at the Motion hearing that the Circuit Court had subject matter jurisdiction in this case. Moreover, the S.C. Probate Code specifically contemplates the concurrent jurisdiction of the probate courts and circuit courts in matters such as this case, which is specifically recognized at Section 62-3-804(3) of the Probate Code, which provides that:

In lieu of the procedure provided in subsections (1) and (2) [related to bringing an action in the probate court], and subject to subsection (6) [no proceeding may be commenced in any venue until a PR has been appointed], a claimant may commence *a legal proceeding* against the personal representative, by the filing of a summons and petition for allowance of claim or complaint *in any court* where the personal representative may be subjected to jurisdiction....

S.C. Code § 62-3-804(3) (Thompson, 2020 Supp.)(emphasis added). While Plaintiffs could have brought their claims in the probate court, such filing would have been futile because the claims go well beyond what the probate court may hear. Plaintiffs submit that the claims raised herein were properly brought in the circuit court, and that the circuit court was properly vested with jurisdiction over this matter, pursuant to the concurrent jurisdiction contemplated by Section 62-3-804 of the S.C. Probate Code.

## ARGUMENT

### **I. Did the Court commit reversible error by dismissing all of the plaintiffs' causes of action and alleged damages?**

Respondent argues that the SC Probate Code precludes the filing of a claim against a decedent's estate following the one year statute under S.C. Code Ann 62-3-803(a)(1) and (a)(2). However, in accordance with the SC Supreme Court Order 2020-04-22-01 the filing of an action with the Circuit Court following the disallowance of a creditor claim in the Probate Court on December 7, 2020 was appropriate, in that the Court's Order allowed for an additional thirty (30) days for all trial court filings, which would include the commencement of litigation in the Circuit Court following the disallowance of a creditor claim in the Probate Court.

SC Supreme Court Order 2020-04-22-01 allowed for an additional 30 days for all trial court filings; therefore the filing of an action with the Circuit Court after disallowance of the creditor claim should have applied under the Court's April 22, 2020 Order. Accordingly, the SC Order can be applied in that it allowed an additional 30 days to file an appropriate pleading in reply to the disallowance.

Notwithstanding the SC Order allowing an additional 30 days in which to file responsive pleadings, the Plaintiffs' Complaint includes allegations that are directed against Catherine Marx individually. Claims against the Defendant Catherine Marx in her individual capacity would not be barred by the provisions of the Probate Code that the Court has relied upon in dismissing the Plaintiff's claims. The claims against Catherine Marx are not controlled by the Probate Code but, rather, by the Circuit Court. The dismissal of individual claims against Catherine Marx has prejudiced the Plaintiffs in that they are now barred from pursuing litigation for the recovery of money stolen from Emergency Power, LLC.

Defendants did not challenge the conversion and unjust enrichment claims brought by Plaintiffs against Catherine Marx individually but rather argued that the failure to file a notice of appeal with the Probate Court for the disallowed creditor claim was cause for dismissal. Accordingly, the lower court dismissal of all claims, and specifically the claims against Catherine Marx individually, was improper. The only recourse available to Plaintiffs at this point, would be a criminal action against Respondent Catherine Marx.

**II. Did the Circuit Court commit reversible error by solely relying on the SC Probate Code in determining the appropriate Statute of Limitations?**

In order to bring an action against Catherine Marx individually, Plaintiffs were required to commence an action in the Circuit Court in accordance with the three (3) year statute of limitations under S.C. Code Ann. §15-3-530(4). At no point have Defendants challenged the Plaintiffs' claims of conversion and unjust enrichment against Catherine Marx and accordingly the Circuit Court's dismissal of all claims, especially those against Catherine Marx individually, was inappropriate.

**III. Did the Circuit Court commit reversible error by misinterpreting and failing to properly apply Orders of the SC Supreme Court?**

The Court has mis-interpreted and failed to properly apply the relief provided to litigants for procedural defaults under the Orders of the South Carolina Supreme Court related to extensions of time and forgiveness of procedural defaults during the COVID-19 pandemic. *See, In RE: Operation of the Trial Courts During the Coronavirus Emergency*, dated April 3, 2020, as Amended December 16, 2020, Appellate Case No. 2020-000447. The Supreme Court's Order opines that in any conflict between the Order and all other SC Rules, that the Supreme Court order "shall control." SC 2020-000447, December 16, 2020. The Order further states that "the due dates for all trial court filings due on or after the effective date of this order are hereby

extended for thirty (30) days.” The Supreme Court identified all trial courts as “circuit court, family court, probate court, magistrate court and municipal court.”

The Circuit Court’s failure to appropriately apply the Supreme Court order dated April 3, 2020, as Amended December 16, 2020, was inappropriate in that the filing of an action in the Circuit Court following the disallowance of the creditor claim in the Probate Court should have been allowed with the thirty (30) day extension ordered by the SC Supreme Court.

### CONCLUSION

For the reasons set forth herein, this Court should reverse the judgment of the Lower Court this action.

Respectfully submitted,



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Dated: October 14, 2022  
Myrtle Beach, South Carolina

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**PROOF OF SERVICE**

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I certify that on the 14<sup>th</sup> day of October, 2022, I served the Reply Brief of Appellants and Designation of Matter on each party or counsel of record by mailing or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure as follows:

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