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**Apr 17 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Marvin H. Dukes, III, Master-in-Equity

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Appellate Case No. 2023-000421

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Southern First Bank, N.A. d/b/a Greenville First Bank,.....Appellant,

v.

Kenneth J. Vilcheck, Renee M. Vilcheck, Portfolio Recovery Associates, LLC, United States of America, acting through its agency, Department of Treasury – Internal Revenue Service, Federal Housing Commissioner, The South Carolina Department of Revenue, Belfair Property Owners’ Association, Inc., and the Greenery, Inc. a South Carolina corporation,.....Respondents.

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REPLY TO RETURN TO MOTION TO DISMISS APPEAL

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Respondents Kenneth and Renee Vilcheck (hereinafter “the Respondents”) submit this reply to the Appellant’s return to their motion for the dismissal of this appeal.

The Appellant is very free with its accusations, which make up the bulk of its return. Appellant’s assignment of a bad motive to the Respondents is not enough to prevent the dismissal of its appeal, primarily for two reasons: 1) this appeal is not a proceeding in which a referendum may be held on whether Respondents acted improperly and, 2) under binding state Supreme Court precedent, the expiration of the judgment makes it impossible for a reversal of the master-in-equity to result in a court-ordered sale or other execution on the judgment – impossible for the Appellant to get

any effectual relief, impossible for the decision in this appeal to be anything but academic. That is mootness. Wachesaw Plantation E. Cmty. Servs. Ass'n, Inc. v. Alexander, 414 S.C. 355, 359, 778 S.E.2d 898 (2015); S.C. Ret. Syst. Inv. Comm'n v. Loftis, 402 S.C. 382, 384, 741 S.E.2d 757, 758 (2013).

First of all, Respondents note that they did nothing improper and are confident that, in a proceeding in which the propriety of their conduct were at issue, the court holding that proceeding would conclude they did nothing wrong. Far moreover, though, this appeal is not such a proceeding. Procedural vehicles exist to assess whether a party engaged in improperly motivated conduct of the kind Appellant alleges and, if so, what should happen to such a party as a result. These include motions under the Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10, and Rule 11, SCRPC, both of which must be made at the trial court level and are not what is at issue here. This appeal is limited to issues concerning whether the master-in-equity erred in issuing the appealed orders. Apparently, Appellant seeks to use this appeal to seek a determination of matters beyond its scope and which must be raised in trial-court level motions.

The Supreme Court's decisions bind this court as precedents. S.C. Const. Art. V, § 9. Supreme Court precedent is what controls and what makes it impossible for an Appellant's victory in this appeal to provide the Appellant with any effectual relief. Per our Supreme Court, judgments in South Carolina cannot be enforced more than ten years after they are rendered, even if at that time there are pending proceedings to enforce the judgment. Gordon v. Lancaster, 425 S.C. 386, 823 S.E.2d 173 (2018). Further, "[t]he *lien* of a judgment" – and a judgment lien was what was sought to be

enforced in the proceedings that led to the appealed orders – “is absolutely extinguished and ended after the expiration of ten years from the date of entry.” Garrison v. Owens, 258 S.C. 442, 446-47, 189 S.E.2d 31 (1972) (emphasis added). If a judgment’s ten-year duration expires before the collection proceedings are complete, those proceedings terminate when the ten-year period runs. Gordon, 425 S.C. at 386; Garrison, 258 S.C. at 446-47.

And the Appellant knows this. As the Appellant writes in its return, “Gordon held a creditor has ten years to *execute* on a judgment.” (Return p. 8, emphasis in original.) “When a judgment requires the payment of money or the delivery of real or personal property it may be enforced in those respects by execution as provided in this Title.” S.C. Code Ann. § 15-35-180. The execution against real property of a judgment is done through a public auction conducted by the sheriff, master-in-equity, or special referee. S.C. Code Ann. §§ 15-39-610 & -630. The sale *is* the execution. S.C. Code Ann. §§ 15-35-180, 15-39-610 & 15-39-630. If a judgment is past its ten-year life, as this one is, execution cannot be had under governing Supreme Court precedent. Gordon, 425 S.C. at 386; Garrison, 258 S.C. at 446-47. Property cannot be sold to satisfy a judgment lien that has ceased to exist. Gordon, 425 S.C. at 386; Garrison, 258 S.C. at 446-47.

The Appellant seeks to convince this court that, because the appealed orders were issued before the judgment expired, the master was wrong to conclude that he could not order the real property sold. Even if Appellant succeeds in convincing this court of that, though, any order that would *then* be issued directing a sale would come only after the judgment’s collection period expired at the end of the day on March 27,

2023. Such an order would be plainly improper under even *the Appellant's* interpretation of Gordon. 425 S.C. at 386.

*That* is what makes this appeal moot.

Appellant also argues for the application of the capable-of-repetition-yet-evading-review and public importance exceptions to nonjusticiability. To sum up Appellant's argument in this regard, Appellant seeks for this court to modify the holding in Gordon. 425 S.C. at 386. To see this, the court need do no more than simply read pages 9-11 of Appellant's return. Appellant's argument that these exceptions should apply is premised on the idea that Gordon is unfair. But, because of the constitutional structure of South Carolina's court system, this court cannot modify Gordon even if it agrees with the Appellant that Gordon is unfair. S.C. Const. Art. V, § 9.

The expiration of the judgment's lien and collection period have mooted this appeal. If the Appellant wins on appeal, no sale can then be made in enforcement of the judgment, so a reversal will have no effect on the parties' positions. Gordon, 425 S.C. at 386; Garrison, 258 S.C. at 446-47. "[I]ntervening events" – the expiration of the judgment's ten-year period – "prevent a decision on appeal from having an immediate impact on the parties." Wachesaw Plantation, 414 S.C. at 359 (quoting 15 S.C. Jur. Appeal and Error § 19).

This appeal is moot and should be dismissed.

Respectfully submitted,

/s/ Andrew S. Radeker  
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PROOF OF SERVICE

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I certify that I have served the foregoing reply to return to motion to dismiss on the date given below by emailing it to counsel for the Appellant(s) and all other counsel of record in the underlying action at the address(es) noted below.

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Respectfully submitted,

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