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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Marvin H. Dukes, III, Master in Equity

Appellate Case No. 2023-000421

Southern First Bank….....Appellant,

v.

Kenneth J. Vilcheck, Renee M. Vilcheck, Portfolio Recovery Associates, LLC, The Federal Housing Commissioner, The Department of the Treasury – Internal Revenue Service, and The South Carolina Department of Revenue….....Respondents.

APPELLANT'S FINAL BRIEF

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March 22, 2024
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2. Does a creditor's right and ability to collect on a judgment vest when the relief to which they are entitled is ordered regardless of whether effectuating such relief will be complete more than ten years after entry of the judgment?
3. Did the Master err in failing to consider Respondents' dilatory tactics that delayed the collection process resulting in the judicial sale not being able to be complete before the Judgment reached the 10-year mark in denying Appellant's Motion for Sale of the Property?
4. Is there sound public policy for clear jurisprudence that warrants an exception to a bright line ten-year judgment expiration period where the debtor is shown to have undertaken actions in bad faith to stall the collection process, including by the filing of frivolous appeals?

II. STATEMENT OF THE CASE

A. The Judgment and the Property

The underlying action leading to this appeal arose out of a judgment entered against the Respondents, Renne M. and Kenneth J. Vilcheck (the "Vilchecks" or "Respondents") in the principal amount of $391,284.46 plus post judgment interest at the legal rate entered in Beaufort County on March 27, 2013 (the "Judgment"), in favor of Appellant Southern First Bank (the "Bank" or "Appellant"). (**R. pp. 193-205**). That Judgment immediately attached to the Vilchecks' real property in Beaufort County and would attach to any new real property they subsequently acquired in the County. In November 2020, Renee Vilcheck acquired non-exempt real property in Beaufort County with the address 318 Bamberg Dr., Bluffton, SC 29910 (the "Property"). The Deed for the Property to Renee M. Wilcheck was recorded with the Lexington County Register of Deeds Office on November 25, 2020.[1]

On July 8, 2015, the Beaufort County Register of Deeds recorded a deed dated June 26, 2015, conveying the Property from Renee M. Vilcheck as Trustee of the Bermuda Trust Agreement UAD to Renee M. Vilcheck. Then on February 5, 2019, the Beaufort County Register of Deeds recorded a Quitclaim Deed dated February 5, 2019, conveying the Property from Renee Marsh Vilcheck to Kenneth Joseph Vilcheck and Renee Marsh Vilcheck. On May 16, 2019, the Property was again conveyed, this time from Renee M. Vilcheck a/k/a Renee Marsh Vilcheck and Kenneth Joseph Vilcheck to Kenneth J. Vilcheck and Renee M. Vilcheck. That same day the Beaufort County Register of Deeds recorded the Federal Housing Commissioner's Adjustable-Rate Home Equity Conversion Second Mortgage secured by the Property, dated May 9, 2019. Then, on October 8, 2019, the Department of the Treasury filed a tax lien in the amount of

[1] Other creditors obtained subsequent judgments or filed tax liens all junior to the Appellant's Judgment following its entry.

$285,799 on the Property. On June 12, 2020, the South Carolina Department of Revenue filed state tax liens against both Respondents for an approximate total amount of $22,000.

B. Collection Proceedings Commence and Respondents Delay Tactics

On February 9, 2021, Execution on the Judgment was filed by the Appellant seeking to collect on the Judgment. (**R. pp. 65-67**). Shortly thereafter, Appellants served the Respondents with a copy of the Execution and subpoenas. On February 22, 2021, Appellant filed the stamped *Nulla Bona* with the Court. Then, on March 1, 2021, the Bank petitioned the court for an Order of Reference. On March 2, 2021, an Order of Reference was entered referring the matter to the Honorable Marvin H. Dukes, Master in Equity of Beaufort County. (**R. pp. 1-3**). Three days later Appellant filed a Petition for Supplemental Proceedings. (**R. pp. 206-213**). On May 5, 2021, Appellant filed a foreclosure action seeking to foreclose on the Property (C.A. No. 2021-07-00944) to satisfy the Judgment. Following that there was a series of filings as Respondents failed to respond to subpoenas or otherwise cooperate in the judicial process resulting in the Appellant withdrawing its petition for supplemental proceedings on July 9, 2021. (**R. pp. 68-78**).

Respondents answered the foreclosure complaint and demanded a jury trial. (**R. pp. 79-86**). Appellants moved to strike the jury demand and have the foreclosure matter referred to the Master. (**R. pp. 264-265**). Those motions were granted motions through orders entered on May 9 and 10, 2022. (**R. pp. 12-14; R. pp. 15-17**). Respondents filed a motion to reconsider those rulings, which was denied on June 15, 2022. (**R. pp. 27-29**). Respondents then filed a notice of appeal of those three orders on July 11, 2022 (the "First Appeal"). (**R. pp. 252-256**).[2]

[2] *See* Appellate CA. No. 2022-000958.

Two days later, on July 13, 2022, the Respondents filed Motions to Stay Proceedings and Motion for Relief from the Rule to Show Cause and to Quash ("Rule 60 Motion") asking the Master to declare the Judgment void due to non-service of the Summons and Complaint, leading to a purported lack of personal jurisdiction over the Vilchecks (even though they had filed responsive pleadings and various other filings with the court in the matter). (**R. pp. 276-296; R. pp. 297-299**). The Master heard arguments on those and several other motions on July 20, 2022. On August 25, 2022, the Master issued an Order that included his determination that the Motion to Stay needed to be heard and decided before any other motions and prior to a supplemental proceeding examination or other judgment collection proceedings. (**R. pp. 30-33 at 30**). The Master ordered a hearing to resolve that motion be held on September 29, 2022, during which live testimony would be taken to allow the Court to resolve the issues presented. ***Id***. The Master also directed Respondents to arrange for a court report and turn over certain documents to the Appellant by August 19, 2022**. *Id.* at 30-31**. The order concluded by noting "time is of the essence." The September 29th hearing was subsequently canceled. Respondents turned over some of the documentation they were required to provide on September 27, 2022.

Ultimately, on October 17, 2022, the Master held a hearing on Respondents' Rule 60 Motion. Three days later the Master entered an order denying that Rule 60 Motion finding that the court had personal jurisdiction over the Respondents, the Judgement was not void, and supplemental proceedings could continue. (**R. pp. 34-35**).

On October 21, 2022, Appellant motioned for an order applying the Property towards satisfaction of the Judgement by selling it at auction according to South Carolina law, and another motion to join all necessary parties. (**R. pp. 300-382**). That same day, Respondents filed a Motion for Extension of their initial briefing deadline in the First Appeal filed over three months earlier. (**R. pp. 383-386**). In the interim, the Vilchecks filed a Motion to Reconsider the denial of

their Rule 60 Motion which was denied on November 7, 2022. (**R. pp. 36-38**). The same day the Master entered an order joining necessary parties (**R. pp. 39-41**), which Respondents challenged through a motion to reconsider submitted on November 17, 2022. (**R. pp. 389-391**). Respondents also filed a second motion for extension of their initial briefing deadline on November 17, 2022, with this Court. (**R. pp. 392-395**). This Court granted that second request saying "[n]o further extensions would be granted absent extraordinary circumstances." (**R. p. 42-43**). The Master denied Respondent's November 17th motion to reconsider shortly after its filing. (**R. pp. 44-46**). Six days later, on November 28, 2022, Respondents filed a Notice of Appeal of the lower court's Order denying their Rule 60 Motion and its Order to Join Necessary Parties, along with the orders denying both motions to reconsider those rulings (the "Second Appeal")(**R. pp. 257-259**).[3]

All told, at that point, the Vilchecks had filed appeals challenging four substantive orders (along with the denials of motions to reconsider them) over the course of approximately four months all in service of attempting to delay the collection proceedings process as much as possible. Notably, Respondents never filed any actual briefs addressing the numerous orders they appealed to this Court, even though the first appeal was filed in July 2022.

Knowing they would not get any further extensions on the initial briefing deadline in their First Appeal through a standard motion for extension, the Respondents submitted a Motion to

[3] *See* Appellate CA No. 2022-001678.

Consolidate the First Appeal and Second Appeal to the appellate Court on December 20, 2022. (**R. pp. 396-400**). That led to opposition briefing lasting through the end of 2022, and caused this Court to hold all filing deadlines in both appeals in abeyance while it decided on consolidation. They had again succeeded in not actually challenging the orders appealed over five months prior.

The Master held a status conference on January 19, 2023, during which the Respondents argued that their appeal of the Order denying their Rule 60 Motion stayed the proceedings, acted to deprive the lower court of jurisdiction until that appeal was resolved, and asked the Master to wait until the Appellate court ruled on their motion for rehearing their Motion to Stay the lower court proceedings; again another attempt to waste time and run out the judgment clock. (**R. pp. 222-230, 246-247, 249-250**). The Master expressed concerns about the court's ability to proceed with ordering the Property be sold to satisfy the Judgment and ultimately declined to hold a hearing on the Appellant's motion to do so at that time. Shortly afterward, Appellant counsel emailed the Master laying out the applicable law showing that the Vilchecks' appeals did not automatically stay the proceedings and again requested that an order be entered requiring the Property be sold to satisfy the Judgment. (**R. pp. 223-225**). That email, in part, specified that SCACR 241 did not automatically stay the proceedings as Respondents argued and cited to a South Carolina Supreme Court case directly on point that makes clear denials of Rule 60(b) motions do not automatically stay the lower court proceedings. *Id*. citing to *Stearns Bank v. Glenwood Falls*, 375 S.C. 423, 653 S.E.2d 274 (2007). That correspondence further noted that the Supreme Court made clear in *Raby Const., LLP v. Orr*, that when there are specific orders stayed on appeal, they do not stay the execution of the underlying order of judgment. 358 S.C. 10, 23, 594 S.E.2d 478, 485 (2004)("In other words, because the only appeal pending at the time the

trial court awarded additional attorneys' fees was the denial of the Rule 60(b) motion, that is the only order that would be automatically stayed; the general rule does not authorize a stay of the underlying order of judgment or order of foreclosure. *Cf. In re Zapata Gulf Marine Corp.*, 941 F.2d 293, 295 (5th Cir.1991)(where the court, applying analogous federal rules, reversed the district court's stay of execution of the underlying judgment where the only appeal pending was the denial of the Rule 60(b) motion).”). Knowing the Appellant’s reasserted legal position to be correct, Respondents had to act fact to delay the Master from proceeding to order sale of the Property.

To that end, on February 1, 2023, Respondents filed a Motion to Stay the lower court’s proceedings with this Court arguing that SCACR 205 and 241(as) required cessation of the collection proceedings below, including a hearing set for two days later on Appellant’s motion for judicial sale of the Property. (**R. pp. 401-452**). This Court immediately denied Respondents’ motion the day it was filed. (**R. pp. 47-48**). The next day, Respondents petitioned for rehearing and requested consideration by a full panel. (**R. pp. 453-458**).

In the midst of Respondents’ ongoing efforts to halt any progress in the collection proceedings, on February 3, 2023, the Master heard Appellant’s Motion for an order applying the Property towards satisfaction of the Judgment by selling it at auction. (**R. pp. 87-129**). In challenging that Motion, the Vilchecks again argued that the pending appeals should stay the proceedings and prevent the Master from ordering their Property be sold at auction to satisfy the Judgment debt, even though this Court had already rejected that argument two days earlier. (***Id.* pp. 105-108**). Respondents asked the Master to not order the sale until their petitions for rehearing were resolved by a full panel of this Court. (***Id.* p. 106, lines 7-11**). The Master appeared to reason that the sale could go forward under certain conditions (namely Appellant posting an adequate bond)

and requested Appellant counsel to prepare a proposed order effectuating the sale. The Master did, however, wait until after this Court denied the Vilchecks' petitions for rehearing on February 6, 2022, to rule on the motion for sale of the Property. (***Id.* pp. 110-111**).[4]

That ruling came on February 9, 2023, when the Master entered the Order challenged by this appeal in which he denied Respondents' Motion to sell the Property because the judicial sale process, he found, would not be complete before the judgment reached its ten-year mark on March 27, 2023. (**R. pp. 51-60 at 56-59**).[5] Thus, according to the Master, the judgment's "active energy" would expire on that date, and unless the judicial process could be completed beforehand, ordering it would be futile under controlling law. ***Id***. The Master reasoned that the applicable statutory provisions for judicial sales required a 30-day process that could not be completed by the next judicial sales day of March 6th, but rather would be final upon the following judicial sale date of April 5th, eight days after the Judgment hit its ten-year mark. (**R. pp. 58-59**). Thus, the Master held that ordering the sale of the Property would be futile and therefore denied the Motion.

That ruling was in err for multiple reasons, including the Master's misinterpretation and application of relevant case and statutory law and his failure to consider and account for Respondents' multifaceted and relentless delay tactics aimed at prolonging the proceedings to such an extent they could convince the court that they should not have to repay their debt due to the age of the judgment. Those efforts proved successful and Appellant seeks relief from that erroneous

[4] The Court again recognized that time was of the essence but there was still enough time to effectuate the judicial sale. (**R. p. 113, lines 11-12, p. 111, line 25 – p. 115, line 2**).

[5] Appellant filed a Motion to Establish Sales Procedures for Sale of the Property on February 17, 2023. (**R. pp. 473-478**). This appeal also includes the Order Denying that Motion filed March 9, 2023, although that decision has no articulated substantive basis at all, so as to make it substantively different than the challenged February 9, 2022, Order. (**R. pp. 63-64**). Presumably, the Master denied the Motion to Establish Sales Procedures for the same reasons articulated in his February 9, 2023, Order on appeal.

ruling from this Court.

The Respondents filed stipulations of dismiss on both their appeals on March 16, 2023. (**R. pp. 260-261**). This Court dismissed both appeals on March 22, 2023, and issued remittiturs on April 12, 2023. Not a single substantive filing was submitted addressing the alleged merits of the Respondents' appeals.

III. STANDARD OF REVIEW

In equity cases decided by a master, the appellate court reviews findings of fact in accordance with its own view of the evidence and makes it owns findings of fact. *Matter of Estate of Kay*, 423 S.C. 476, 479, 816 S.E.2d 542 (2018). A legal question in an equity case receives appellate review as in law. *North American Products, Inc. v. Richardson*, 396 S.C. 124, 720 S.E.2d 53 (Ct. App. 2011). Whether in equity or at law, the Court of Appeals undertakes a *de novo* review of all issues purely of law property presented on appeal without any particular deference to the lower court. *South Carolina Dept. of Transp. V. M&T Enter. Of Mt. Pleasant, LLC,* 379 S.C. 645, 667 S.E.2d 7 (Ct. App. 2008).

IV. ARGUMENT & ANALYSIS

A. The Master Erred in Denying the Appellant the Relief to Which it was Entitled

The Master, in his Order, denied the Bank the relief to which he recognized it was entitled at the time because the process for effectuating it would end eight days after the Judgment reached its ten-year mark on March 27, 2023. (**R. pp. 57-59**). That ruling was in err and should be reversed by this Court.

In this case the Judgment's ten-year anniversary fell on March 27, 2023. Appellant motioned the lower court for judicial sale of the Property to satisfy its judgment on October 21, 2022. (**R. pp. 300-382**). That motion was heard by the

Master on February 3, 2023, and the Order denying it entered February 9, 2023; all prior to the ten-year anniversary of the Judgment. The Master relied upon the South Carolina Supreme Court's holdings in *Gordon v. Lancaster* and *Garrison v. Owens* along with the language of S.C. Code Ann. § 15-39-30 for the foundational proposition underlying its denial of Appellant's motion for judicial sale stating that "[i]f a judgment's 10-year duration expires before the collection proceedings are complete, no matter how close they might be to complete, the collection proceedings stop because the expiration of the judgment has made collection efforts moot." (**R. p. 57 ¶ 28**). That is not what those cases or statute say nor stand for, and the Master erred in concluding otherwise to deny Appellant's motion as futile.

In *Garrison v. Owens*, the Court held that "[a] judgment lien is purely statutory, its duration as fixed by the legislature may not be prolonged by the courts and the *bringing of an action* to enforce the lien will not preserve it beyond the time fixed by the statute, if such time expires *before the action is tried*." 258 S.C. 442, 446-47, 189 S.E.2d 31 (1972)(*emphasis added*). In *Garrison* the judgment creditor sought to enforce his judgment by filing an action approximately two months before it reached its ten-year anniversary. He did not get the case in a posture such that the court could order any relief to satisfy the judgment before the active energy window expired. In that case, the Supreme Court held simply, and narrowly, that if a judgment reaches its ten-year mark before "the action is tried" the fact that the judgment creditor filed before that date will not allow him to proceed with collection efforts. *Id*. 258 S.C. at 446-47. It did not deal with a situation in which the creditor filed years before the judgment was ten years old and pursued collection to the point relief could be ordered by the court during the ten-year active energy window.

The much more recent decision in *Gordon v. Lancaster* was confined to the Supreme Court addressing "the narrow question of whether a creditor may execute on a judgment more than ten

years after its enrollment when the time period has expired during the course of litigation." *Gordon v. Lancaster*, 425 S.C. 386, 387, 823 S.E.2d 173 (2018). In *Gordon*, the bench trial through which the Plaintiff sought to collect on a 2001 judgment did not take place until 2013; years after the ten-year mark had passed. By that time Gordon had no right to any relief upon what was an over ten-year-old judgment. Neither case says the collection proceeding ends when the judgment reaches ten years as the Master contended and relied upon to deny Appellant's motion for judicial sale. *Garrison* said "bringing an action" to collect will not extend the life of a judgment and *Gordon* held a creditor has ten years to *execute* on a judgment. Likewise, the statute cited by the Master in the Order says that "[e]xecutions may issue upon final judgments...at any time within ten years from the date of the original entry thereof and shall have active energy during such period." S.C. Code Ann. ¶ 15-39-30. None of these legal sources upon which the Order relies to deny Appellant's motion says that a judgment creditor should be denied relief they have a legal right to receive which can be ordered before hitting the ten-year mark because the process of effectuating that relief will end sometime after the ten years is up.

In this case the Appellant as the creditor executed on the Judgment during its ten-year active energy time period. Appellant first filed for execution on February 9, 2021, over two years before the Judgment would reach ten years old on March 27, 2023. The Appellant doggedly pursued collection efforts in the face of an onslaught of delay tactics and noncompliance by the Respondent debtors (which is addressed in more detail below). Ultimately, the Bank was able to get the case in a posture such that the Master could order the Respondents' Property be sold to satisfy the Judgment before it reached its ten-year mark. At that point the Master could, and should, have ordered judicial sale of the Property in his February 6, 2023, Order regardless of whether the sale process would end shortly after the judgment reached the ten-year mark. The relief to which

Appellant was undeniably entitled would have been ordered, and the fact that the Bank's receipt of it would have come shortly after the judgment reached ten-years old is, and should be clearly deemed by this Court, irrelevant and an erroneous basis for denying the motion for judicial sale. Appellant's right to the relief of a judicial sale of the Property vested when the Master determined the Bank had a right to such relief; a date that was undeniably before the Judgment reached its ten-year mark. Accordingly, it was an error for the Master to deny the Appellant its right to receive satisfaction of its valid and unexpired judgment simply because the process for effectuating it would end a few days after March 27, 2023. The same would be the case if a collection matter were tried to completion before the judgment underlying it reached its ten-year anniversary. In that scenario if a creditor obtained an order directing the debtor to do something to pay/satisfy the judgment debt prior to that judgment reaching its ten-year anniversary, the creditor would inevitably receive that relief at a later date. The relevant point is, however, that the creditor is entitled to that relief when it is ordered and should not be denied that vested right simply because it may not be realized until after the judgment surpasses its active energy window. Such is the case here and the Master erred in not ordering that the Appellant get the relief to which they were entitled under the clear law. Under the actual holdings in *Garrison* and *Gordon*, the creditor would be entitled to receive the relief ordered by the Court during the ten-year active energy window regardless of when it would be received. Stated differently, neither of those cases forecloses that right and the Master erred in basing his holding on that caselaw as if they did.

This was a legal error and Appellant respectfully requests that this Court reverse the Master's Order and provide that he may in fact order the judicial sale of the Property to satisfy the Judgment. Otherwise, creditors will be faced with the prospect of debtors continuing to abuse the lower court system, and this Court, to run out the clock on their judgment debt. Even if there were

one or two years left on the Judgment at issue when the Master made the ruling challenged in this appeal, it is very plausible that the Respondent debtors could tie up the matter in the appellate courts for those two years in order to reach the ten-year mark. The judiciary should not be so abused, and this case is one in which it was and can and should be rectified by this Court.

This appeal is asking that the Court consider this issue and enter a precedential holding that establishes a creditor may collect on a judgment under these circumstances – when an order is entered during the judgment's ten year "active energy" window directing some action that satisfies the judgment debt (in whole or part) regardless of how long the process effectuating that relief may take, even if it ends after the ten-year mark is reached. Appellant believes that is the law in South Carolina under the controlling precedent and statutory law, but it certainly needs to be clarified so that bad faith dilatory tactics are not employed by debtors to avoid repaying their debts.

B. The Master Erred by Not Taking into Account Respondents' Dilatory Tactics that Delayed the Collection Process

As recounted above, the Respondents deployed a defense strategy of delay heavily reliant upon the filing of numerous appeals with this Court on essentially any order entered by the Master adverse to them and arguing, incorrectly, that those filing stayed the collection process below. The Master erred in not considering or otherwise accounting for the Respondents' dilatory tactics in holding the Appellant would not get the relief to which it was entitled under the law. That err should be reversed through an order making it clear that debtors cannot use this Court to delay a creditor's ability to collect valid debts through the judicial process.

Respondents abused the appellate court system to delay the proceedings below and run out the ten-year clock on the Judgment all in an effort to avoid satisfying their debt even when they have adequate assets to do so.[6] As recounted above, the Respondents appealed four substantive

[6] Appellant understands that the Property was worth significantly more than the Judgment

orders in two separate appeals. The first was filed on July 11, 2022, and challenged the lower court's granting of a motion to strike a jury demand and an order referring the case to the Master (along with the denials of motions to reconsider those rulings). Two days later, Respondents attempted to stay the collection proceedings based on their appeal by filing a Motion to Stay in the lower court, along with various other motions. (**R. pp. 276-296**). That Motion to Stay resulted in further delays, with multiple hearings and a decision that the collection efforts could proceed not being entered until over three months later on October 21, 2022. (**R. pp. 34-35**).

Instead of submitting their initial briefing on the group of orders challenged in the First Appeal filed over three months earlier, the Respondents requested an extension of their initial filing deadline. (**R. pp. 383-386**). Around that same time, they also sought reconsideration of the Master's denial of their Rule 60 Motion which was denied on November 7, 2022. (**R. pp. 36-38**). Respondents went on to challenge the Master's order joining necessary parties ten days later. (**R. pp. 389-391**). That same day, November 17, 2022, Respondents filed a Second Motion for extension of time to file their initial briefs in the First Appeal. (**R. pp. 392-395**). This Court granted that second request, saying "[n]o further extensions shall be granted absent extraordinary circumstances." (**R. pp. 42-43**). The Master denied Respondents' motion to reconsider its joining of necessary parties on November 22, 2022. (**R. pp. 44-46**). At that point, the First Appeal and subsequent challenges to the Master's rulings had prolonged the litigation by some five months. Respondents did not stop there, however.

On November 28, 2022, just six days after the Master denied their most recent motions to reconsider, Respondents filed their Second Appeal purporting to challenge the Master's denial of

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amount and was not encumbered in a manner which would prevent the sale proceeds from satisfying a majority if not likely the entirety of the Judgment.

their Rule 60 Motion and his order joining necessary parties. Knowing they could no longer obtain extensions to file initial briefs in the First Appeal, Respondents filed a Motion to Consolidate the First Appeal and Second Appeal on December 20, 2022. (**R. pp. 396-400**). That filing resulted in oppositional briefing lasting through December 30, 2022, with this Court holding all other filing deadlines in abeyance while it decided on consolidation. Again, Respondents' goal of delay had been achieved without substantive challenge to the orders they had appealed in July. Again, that was not the end of it.

A status conference was set for 2:00 pm on January 19, 2023, with the Parties and Master. Eight minutes beforehand, Respondents emailed the Master citing to case law they contended supported the incorrect argument the appeal of the Order denying their Rule 60 motion automatically stayed the collection proceedings. (**R. pp. 229-230**). During that January 19, 2023, status conference Respondents argued their appeal of the Master's Order denying their Rule 60 motion stayed the proceedings, deprived the lower court of jurisdiction until the appeal was resolved, and requested everything be halted until the higher court resolved the challenges before it. Appellant contended that was not correct and the collection process could proceed despite the appeals. Respondents' efforts were effective, with the Master expressing his concerns about the court's ability to proceed with ordering the Property be sold to satisfy the Judgment and ultimately declining to have a hearing on Appellant's motion for such relief. In an act of somewhat desperation, the Appellant emailed the Master laying out in detail the applicable law showing that the Vilchecks' appeals did not automatically stay the proceedings as they argued and asking him to move forward with a hearing on the motion for judicial sale of the Property. (**R. pp. 223-225**). Knowing the legal position laid out in the Appellant's email was correct and the judicial sale hearing could and should proceed, the Respondents had to move quickly to keep the Master from moving forward, including most notably, with a hearing set for February 3,

2023, to take up the motion for judicial sale.

To that end, on February 1, 2023, Respondents filed a Motion to Stay the proceedings in the lower court with this Court arguing that SCACR 205 and 241(a) required the cessation of collection proceedings below, including the hearing that was scheduled to take place two days later on Appellant's motion for judicial sale of the Property. (**R. pp. 401-452**). This Court immediately denied that motion the day it was filed. (**R. pp. 49-50**). Undeterred, the Respondents filed a motion for rehearing the following day and requested consideration by a full appellate panel. (**R. pp. 453-458**).

The February 3, 2023, hearing went forward, with the Master hearing Appellant's motion for an order applying the Property towards satisfaction of the Judgment by selling it at auction. (**R. pp. 87-129**). At that hearing, the Respondents again argued for staying the proceedings and asked the Master to not order judicial sale of the Property until their petition for rehearing was resolved by a full panel of this Court. (**R. pp. 105, line 25 – p. 107, line 11**). The Master reasoned, but did not make a final ruling, that the sale could go forward under certain conditions (namely Appellant posting a sufficient bond) and asked Appellant counsel to prepare a proposed order effectuating the sale. (**R. pp. 101, lines 10-11, 110, line 5 - p. 111, line 20, p. 113, lines 6-15, 113, line 3 - p.115, line 2**). The Master, however, did as Respondents asked and waited until after this Court denied the motion for rehearing on February 6, 2023, to rule on Appellant's motion for sale of the Property.

In order to provide enough time to advertise the sale for the statutorily mandated three weeks and for it to be complete thirty days after the sale date, the Master needed to enter an order granting Appellant's motion for judicial sale of the Property by February 6, 2023, at the absolute

latest.[7] Through their various appeals, incorrect arguments about the impact they had on the ability of the Master to proceed with the collection process, and filings challenging everything decided by the lower court and then this Court in denying a motion for rehearing, motions for extension, motion for consolidation, motions to stay, and other dilatory tactics the Respondents' succeeded in pushing the Master's decision on the motion for sale of the Property out to a point that made it impossible to complete the judicial sale before March 27, 2023. That resulted in the denial of that relief to which the Appellant was entitled.

Respondents did not file appeals of numerous orders to actually challenge the substantive rulings in them, but instead to cause as much delay in the collection process as possible. Respondents' actions with regard to their appeals show they were filed for the purpose of delay and nothing more. Respondents filed no substantive briefs with this Court, only motions for extensions, and when the Court would grant no more, submitted other dilatory motions to push out filing deadlines and take up as much time as possible rather than substantively addressing the purported issues and rulings they appealed. Respondents argued to this Court and the Master that their appeals stayed the lower court proceedings despite clear law to the contrary and filed motions to stay the collection proceedings with both courts. This Court dispatched that argument within 24 hours of its being made. (**R. pp. 47-48**). The Master was, however, slower to accept the law that made clear he could proceed with ordering the Property be sold to satisfy the Judgment. Thus, Respondents' tactics worked to delay the proceedings just enough for them to be in a situation where the Master was convinced he could proceed with ordering the

[7] Statutes require a judicial sale be advertised for three weeks before the sale date and specify it will remain open until the 30th day after the sale date, exclusive of the sale date. S.C. Code §§ 15-39-650 & 720. Accordingly, an order had to be entered at least 51 days before March 27, 2023, to ensure the judicial sale was complete within the Judgment's active energy window under the Master's reasoning in the Order that such sales are not final until the bidding ends 30 days after the sale date.

judicial sale following this Court's refusal to stay the proceedings below but ultimately refused to order it because the process would end after the judgment reached its ten-year mark. That was in err and should not be allowed to stand under the circumstances of this case. Other debtors can and have abused the appellate court system in much the same way by filing for appeal of every order entered by a Master or lower court judge in a collection proceeding just to run out the ten-year clock on a judgment. In the event they succeed in pushing the process past that date, as Respondents have done in this case, then their actions evade review if the Court dispatches with appeals such as the one before it without addressing this real and pervasive issue that clogs up the appellate courts and prevents parties from obtaining the relief they are entitled to under the law. Parties should of course be able to seek appellate review of lower court rulings, but they also need to know that appealing every order in a collection proceeding will not prevent creditors from collecting on their judgment debts; especially when no actual substantive challenge is lodged, and the record shows a clear defense strategy of delay through appeal and other means.

There is a public interest in preventing the abuse of the judiciary, and namely the appellate, court system by a debtor to evade paying their debts. The State and its citizens have a strong public interest in knowing that debtors with means must honor their debts rather than evade repaying them by legal gamesmanship that clogs up an already overburdened appellate system with a litany of appeals none of which have the purpose of resolving actual legal issues or errors, but instead are aimed primarily if not exclusively at delaying the collection process as much as possible. This Court should be reserved for and burdened with only good faith challenges to lower court rulings and the resolution of legal issues impacting litigants and the citizens of South Carolina. Appellant counsel, namely the collection attorneys of Angell Molony, LLC that handled this matter below, have seen debtors abuse this Court time and time again in an effort to have their judgment reach

the ten-year mark.[8] The public interest would be greatly served by this Court addressing that practice and making it clear to debtors that it will not allow them to evade paying their debts through these tactics. Whether that is accomplished through establishing an exception to a bright line ten year cut off for a judgment or other legal basis is up to this Court, but Appellant strongly and respectfully asks that it consider the issue and make a ruling that prevents debtors from abusing the system to run out the judgment clock as long as possible.

Furthermore, there is a public interest in clarifying the applicability of the narrow rulings in *Garrison* and *Gordon* to situations such as the one at hand in this appeal. Appellants believe as noted above that those rulings do not actually stand for the proposition stated in the Master's Order and underlying his denial of the motion for judicial sale– that all collection proceedings regardless of the debtor's actions and when relief can and should be granted end without exception ten years after the judgment was entered. Appellant contends they do not. Appellant contends that the law allows for a court to order relief to a judgment creditor within the ten-year window regardless of whether it will take more time after that date to effectuate the process of the creditor receiving the relief ordered. This Court has the opportunity to preserve its integrity and ensure that the lower courts of equity actually function to provide equitable relief; a process that requires consideration of the parties' actions in the underlying case and the Master's legal reasoning in the Order

[8] Appellant directs the Court to the case of *Independence Nat'l Bank v. David Decarlis* and the related cases involving those parties or otherwise related to the Bank's attempt to collect a large judgment from a debtor who could afford to pay it. Just like in this matter, Mr. Decarlis and other aligned parties deployed a defense strategy of delay, primarily by filing a litany of appeals with this Court and the South Carolina Supreme Court. The Appellate Case Management System shows some ten different appellate case numbers associated with those matters. (**App. CA Nos. 2019-001349, 20219-002047, 2020-000490, 2020-000990, 2020-001563, 2020-001694, 2021-000283, 2021-000368, 2021-000534, 20221-000704**). Mr. Decarlis filed at least eight notices of appeal, purporting to appeal ten orders. Respondents' counsel represented a party in one of those actions and filed a notice of appeal seeking to challenge three orders related to an action filed by the Receiver looking to collect on the same judgment debt. (**NOA 11.30.20 App. CA No. 2020-001563**).

challenged by this appeal. Accordingly, Appellant respectfully requests that the Orders challenged by this appeal be reversed and an order entered directing and allowing judicial sale of the Respondents' Property to satisfy the Judgment.

V. CONCLUSION

Upholding the Master's Order(s) would mean that a lower court could commit egregious error(s) preventing collection of a judgment debt which cannot be appealed if appeal is filed or would be resolved more than ten years from entry of that judgment. Stated conversely, affirming the Master would be an affirmation and open invitation for a debtor with the necessary means to stymie the judicial process through filing of frivolous appeals that would push collection proceedings beyond the judgment's ten-year marker to avoid paying their debts. That practice is the very thing that this appeal is aimed at challenging so that the Court can address it and issue an order, not only granting the Appellant the relief to which it is entitled, but also preventing debtors from employing those tactics in the future. It is in the Appellant's, other creditors', and frankly this Court's interest that a binding decision makes clear that debtors cannot escape paying their debts by abusing the appellate system. That is precisely what the Respondents have done in this case, as have other well-funded debtors before them. It is a practice that snubs its nose at the fundamental concept of equity, good reason, and preservation of judicial economy. Debtors with means, such as the Respondents in this case, should be made to pay their debts and not escape liability for them through dilatory litigation tactics whose primary, if not sole, purpose is to reach the judgment's ten-year mark. Certainly, judgments do and should have an expiration date, but enforcing an unyielding and immovable end date that fails to consider the totality of the circumstances, including importantly whether the debtor has taken unreasonable actions to delay collection efforts, the Court incentivizes those with means to burden the appellate courts, and

judicial system as a whole, to avoid paying their debts that they can afford to pay. That should not be the case. Accordingly, the Appellant strenuously and respectfully asks that the Court reverse the Order(s) challenged by this appeal and take up this important issue so that equity can awarded when warranted and the integrity of the appellate, and judicial process as a whole preserved.

Respectfully Submitted,

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March 22, 2024
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Marvin H. Dukes, III, Master in Equity

Appellate Case No. 2023-000421

Southern First Bank….....Appellant,

v.

Kenneth J. Vilcheck, Renee M. Vilcheck, Portfolio Recovery Associates, LLC, The Federal Housing Commissioner, The Department of the Treasury – Internal Revenue Service, and The South Carolina Department of Revenue….....Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Appellant's Final Brief complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

The undersigned hereby certifies that on March 25, 2024, he served the foregoing Appellant's Final Brief by emailing a copy to the persons below listed for opposing counsel on AIS pursuant to SCACR 262 as amended by the Supreme Court's August 25, 2021, Order, addressed as follows:

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