

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

9<sup>TH</sup> Judicial Circuit Court Judge

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Case No. 2007-CP-10-1444  
Appellate Case No. 2020-00968

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**RECEIVED**

MAY 23 2024

SC Court of Appeals

Cynthia Holmes, M.D.,

Respondent/Appellant,

v.

Haynsworth Sinkler Boyd, P.A.,  
as successor to Sinkler & Boyd, P.A.,  
Manton Grier and James Y. Becker,  
Defendants,

Of which Haynsworth Sinkler Boyd, P.A.,  
successor to Sinkler & Boyd, P.A. is the  
Appellant/Respondent.

Appellant/Respondent.

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**APPELLANT/RESPONDENT'S  
RETURN TO CYNTHIA HOLMES, M.D.'S  
PETITION FOR REHEARING**

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**INTRODUCTION**

Pursuant to South Carolina Appellate Court Rules 221 and 240, Appellant/Respondent Haynsworth Sinkler Boyd, P.A., as successor to Sinkler & Boyd, P.A. ("HSB") files this Return to the Amended Petition for Rehearing of Cynthia Holmes ("Holmes"). This Court's opinion

filed on April 17, 2024, fully considered all points raised during the appeal of this matter, including those raised in Holmes's Petition, and did not overlook, misapprehend, or otherwise fail in any way to properly consider the law or the facts relevant to the appeal, and therefore, Holmes' Petition should be denied.

### ARGUMENT

First, Holmes' request for rehearing on this matter argues that the Court did not address HSB's alleged lack of standing in this case to pursue the collection of the Judgment<sup>1</sup> against Holmes. Holmes' argument is solely based on her contention that the Court erred in ruling that 11 U.S.C. § 108 tolled the expiration of the Judgment until thirty days after Holmes' bankruptcy case was dismissed. Holmes does not even attempt to address the applicability of 11 U.S.C. § 108(c), which stayed the expiration of the Judgment while the bankruptcy case was pending. Further, the Court applied well-settled law that provides that provisions of the bankruptcy code preempt state law when they conflict, as they do here, none of which is addressed by Holmes. *In re Citrus Tower Boulevard Imaging Ctr., LLC*, 460 B.R. 334, 340 (Bankr. N.D. Ga. 2011) ("The Bankruptcy Code is federal law that preempts state law where such laws conflict."); *In re Williams*, No. 06-32921 KRH, 2007 WL 2122131, at \*9 (Bankr. E.D. Va. July 19, 2007) (same). Further, section 108(c) has been specifically held to preempt state law with respect to the time for a creditor to take certain actions related to a debt or judgment. *See, e.g., In re Perry*, 425 B.R. 323, 397 (Bankr. S.D. Tex. 2010) (holding that pursuant to 11 U.S.C. § 108(c), the automatic stay has extended the limitations period for the creditor to pursue a deficiency action against a debtor); *In re Lobherr*, 282 B.R. 912, 916 (Bankr. C.D. Cal. 2002) (holding that section 108(c) preempts California law related to the time period for renewing a judgment). Here, the Court

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<sup>1</sup> All capitalized terms not otherwise defined herein shall have the meaning set forth in the Court's opinion.

correctly ruled that the expiration of the Judgment was stayed by 11 U.S.C. § 108(c), and therefore, HSB retained standing to pursue the Judgment.

Second, Holmes also argues that the Court improperly failed to make determinations as to whether equitable tolling applied. However, the Court's opinion properly determined that the expiration of the Judgment was statutorily tolled pursuant to 11 U.S.C. § 108, and therefore it was unnecessary to make a determination that the expiration of the Judgment was equitably tolled. In fact, HSB's appeal was not based on an argument that the expiration of the Judgment was equitably tolled. HSB offered proof concerning Holmes' behavior in support of its request for expedited relief to obtain an execution of the Judgment in the thirty days following the dismissal of the bankruptcy case. The Court's findings and conclusions related to Holmes' actions and behavior, which were accurate and supported by the Record, support HSB's request for expedited relief to obtain an execution of the Judgment.

Third, Holmes argues that the Court did not have subject matter jurisdiction, but the argument is hard to follow. She seems to argue again that HSB does not have standing even though it is the holder of the Judgment and was a party to the action in which the sanctions were issued. Despite Holmes' statements to the contrary, HSB does not seek in this appeal any additional sanctions against Holmes, but instead, to enforce its rights to collect on the original Judgment. While HSB has pointed out Holmes' ongoing actions in support of its request for relief, HSB has not sought to have any additional monetary sanctions awarded against her, and therefore, Holmes failed to identify any issue that was overlooked or misapprehended by the Court.

Fourth, the Court properly determined that Holmes abandoned her cross appeals. The Court properly made reference to this Court's prior order on February 4, 2021, dismissing

Holmes cross-appeal in part. The only two orders that remained on appeal were two orders from June 2020, neither of which Holmes addressed in her brief or her petition for rehearing. Holmes merely cited to her prior brief, without any explanation as to how the Court misapprehended or otherwise overlooked the law or facts relevant to the Holmes' cross-appeals.

**CONCLUSION**

Because Holmes has failed to identify any matter with particularity that the Court has overlooked or misapprehended, her Petition for rehearing should be denied

Respectfully submitted,

/s/Mary M. Caskey

Mary M. Caskey

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*Attorneys for Appellant/Respondent*

May 23, 2024

Columbia, South Carolina

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Jennifer B. McCoy

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Case No.: 2007-CP-10-01444  
App. Case No.: 2020-000968

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**RECEIVED**  
MAY 23 2024  
SC Court of Appeals

Cynthia Holmes, M.D., Respondent/Appellant,

v.

Haynsworth Sinkler Boyd, P.A., successor to Sinkler &  
Boyd, P.A., Manton Grier and James Y. Becker, Defendants,

Of which Haynsworth Sinkler Boyd, P.A., successor to  
Sinkler & Boyd, P.A., is the Appellant/Respondent.

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**PROOF OF SERVICE**

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I certify that on May 23, 2023, I have served the Appellant/Respondent's Return to Cynthia Holmes, M.D.'s Petition for Rehearing on counsel for Respondent/Appellant, Chalmers C. Johnson, by electronic mail only as follows: at [chalmersjohnson@gmail.com](mailto:chalmersjohnson@gmail.com).

*s/Mary M. Caskey*

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May 23, 2024

**VIA HAND DELIVERY**

Attn: Stormy Falin  
Office of Clerk of Court  
The South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

**RECEIVED**

MAY 23 2024

SC Court of Appeals

RE: *Cynthia Holmes, M.D. v. Haynsworth Sinkler Boyd, PA*  
Case No. 2007-CP-10-01444  
Appellate Case No. 2020-000968  
HSB File No. 04625.1439

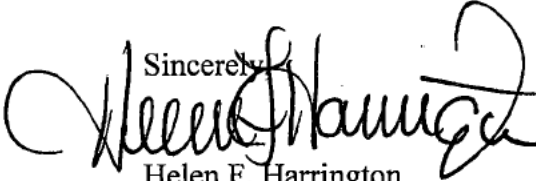
Dear Ms. Falin:

Enclosed is an original and six (6) copies of Appellant/Respondent's Return to Cynthia Holmes, M.D.'s Petition for Rehearing and Proof of Service in connection with the referenced Appeal. We would appreciate your returning a clocked-in copy to us via our office courier.

By copy of this letter, we are serving a copy of Appellant/Respondent's Return to Cynthia Holmes, M.D.'s Petition for Rehearing on counsel for Respondent/Appellant.

Please contact me if you have any questions or need anything further from us at this time.

Thank you for your assistance in this matter.

Sincerely,  
  
Helen F. Harrington  
Paralegal to Mary M. Caskey

MCE/hh  
Enclosures  
cc(w/encl.)

Chalmers Johnson, Esquire (via email only: [chalmersjohnson@gmail.com](mailto:chalmersjohnson@gmail.com))

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