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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Jennifer B. McCoy, Circuit Court Judge

Appellate Case No. 2020-000968

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

Petitioner,

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.

Respondent.

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel certifies that The Court of Appeals issued a final decision in this matter on July 1, 2024, in which the Petitioner's Petition for Rehearing *en banc* was denied. This Petition for Writ of Certiorari is being filed with the Court within 30 days of the receipt of the Appellate Court's final order, in compliance with SCACR 242(c). The content of the petition complies with SCACR 242(d). This petition raises issues listed as those of a character of reasons for granting a Petition for Certiorari under SCARC 242(b) including:

- Where there are novel questions of law SCACR 242(b)(1) **(Issues I,II,III)**
- Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court SCACR 242(b)(3) **(Issues I,II,III,IV)**
- Where substantial constitutional issues are directly involved SCACR 242(b)(5) **(Issue IV)**

ISSUES PRESENTED FOR REVIEW

I. Is the Appellate Court's determination that a federal bankruptcy extension will allow a judgment creditor to have standing to collect on a judgment after the expiration of the ten year S.C. Code Ann § 15-39-30 statute of repose contradictory both to statutory law and the Supreme Court's decision from *Carr v. Guerard*, 616 S.E.2d 429 (S.C. 2005) which holds that, after 10 years, a judgment creditor no longer has standing to collect on an expired judgment?

II. Does applying Equitable Tolling to a Statute of repose (specifically, S.C. Code Ann § 15-39-30) run contradictory to the Supreme Court's decision in *Carr v. Guerard*, 616 S.E.2d 429 (S.C. 2005)?

III. Does the S.C. Appellate Court have subject matter jurisdiction to issue what amounts to a sanction against Dr. Holmes, *sua sponte*, by conferring standing on a party that does not have standing as a matter of law?

IV. Does the S.C. Appellate Court's decision to ignore a Supreme Court ruling and grant standing to a party that did not have standing as a sanction against Dr. Holmes without notice or an opportunity to be heard violates Dr. Holmes' Due process rights under the Constitution of the State of South Carolina (Article 1 § 3)?

V. Is it proper for the S.C. Appellate Court to dismiss a party's appeal on the grounds that it failed to cite to legal authority or offer argument when the brief clearly does include both?

STATEMENT OF THE CASE

In 1998, Mr. Grier and Mr. Becker attorneys with Sinkler & Boyd, P.A. represented Dr. Holmes before a peer review hospital board of physicians who decided and recommended the hospital reverse course on an issue involving Dr. Holmes' access to use the hospital facilities. In 1999, The attorneys filed suit on Dr. Holmes' behalf against the hospital in the United States District Court in Charleston. The attorneys obtained a temporary injunction protecting Dr. Holmes' privileges (her right to treat her patients at the hospital) but then lost it by refusing to respond until Dr. Holmes paid them more money. They delayed too long and failed to meet a response deadline in the Federal Court. The Court dismissed the federal claims, leaving State law claims active, at which point, the attorneys and Sinkler & Boyd abandoned their client. Dr. Holmes filed a complaint against the hospital pro se, and was able to obtain a settlement. Thereafter, she sued Sinkler & Boyd and Messrs. Grier and Becker in the Charleston Court of Common Pleas, in 2002. Based on the conduct of the attorneys during the federal case, she alleged that they had caused her injury through legal malpractice.

The Court denied a motion for summary judgment by Sinkler & Boyd and the defendant attorneys and a jury trial commenced. Before the case could be given to the jury for deliberation, the Trial Court Judge granted a directed verdict against Dr. Holmes. After the directed verdict, Sinkler & Boyd and the two individual defendants moved for sanctions against Dr. Holmes under the revised S.C. Code Section 15-36-10, the South Carolina Frivolous Civil Proceedings Sanctions Act (FPA) Despite the fact that the Judge had denied a motion for summary judgment by the Defendants (Sinkler & Boyd and Mr. Messrs. Grier and Becker) he determined her action to have been frivolous and granted $200,000.00 in sanctions, retroactively applying the 2005 revised version of the FPA when it was, actually, inapplicable. (See *Southeastern Site Prep Llc v.*

Atl. Coast Builders, 394 S.C. 97, 713 S.E.2d 650 (S.C. App., 2011).) Dr. Holmes appealed the award of sanctions, but was unsuccessful. The Judgment was issued on November 18, 2009.

In 2011, the Appellate Court issued the opinion in *Southeastern Site Prep Llc v. Atl. Coast Builders*, 394 S.C. 97, 713 S.E.2d 650 (S.C. App., 2011). It held that the 2005 revised FPA, which allowed the Court to judge whether an action was frivolous or not based on a "reasonable attorney" standard (even when applied to non-attorneys) only applied to actions which arose after July of 2005. Dr. Holmes had filed her action in 2002. Based on the new law, Dr. Holmes filed Rule 59(e) request for reconsideration on July 2, 2015 and a Rule 60 motion to alter or amend the judgment on August 5, 2015. Neither were ever set for a hearing by the Court and are currently pending (almost 10 years later) with request for hearing.

On December 19, 2016, approximately seven years after the Judgment was issued against Dr. Holmes, Sinkler & Boyd (now Haynesworth Sinkler & Boyd) and Messrs. Grier and Becker initiated supplemental proceedings against Dr. Holmes. She filed Motion to Dismiss and Rule 59(e), SCRCP, motion. A certified true copy of the Order of Reference shows it was not complete and not final pending disposition on those motions challenging the efficacy of the incomplete and/or invalid order of reference. On January 12, 2017, Dr. Holmes moved for sanctions, alleging, that they had submitted false statements to the Court with the Petition. On February 1, 2017, Haynesworth Sinkler & Boyd (hereinafter referred to as HSB) and Messrs. Grier and Becker also moved to alter or amend their filings. Without a valid order of reference, the master of equity (hereafter MOE) then held an ex parte hearing (excluding Dr. Holmes) on February 9, 2017. He was presented with a document which purported to be an Order from the SC Supreme Court captioned Doe v. Duncan. That 2009 Order directed the clerk of court not to file respondent-appellant's pro se filings relating to the case against the Hospital. Neither the SC

Supreme Court archives, nor the relevant advance sheets reflect any such order, published or unpublished, in that case. Despite this lack of provenance or proof of its authenticity, and the fact that, pursuant to Rule 268, SCACR, unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved (see Rule 268(d)(2)), the MOE prohibited Dr. Holmes from defending herself, filing any motions, or taking any action to protect her assets and family home during the court proceedings. Dr. Holmes appealed this order, but, despite the pending appeal denying jurisdiction to the trial court, the MOE allowed HSB and Messrs. Grier and Becker to prosecute their supplemental proceeding action against Dr. Holmes, including compelling the Doctor to submit to hearings and discovery. When she attempted to present evidence, call witnesses, and depose HSB's witnesses, the MOE prevented her from doing so. He went on to hold Dr. Holmes in contempt when she tried to explain that MOE did not have jurisdiction while the appeal was pending issuing orders for sanctions on 6-21-17 and 6-23-17. This all occurred while the MOE was deprived of jurisdiction due to the pending appeal. Jurisdiction was returned to the Circuit Court by remittitur on 11-30-17. On April 19, 2019, the respondent-appellant filed a motion requesting relief on several grounds, enumerating the violations of due process and her constitutional rights which she alleged had been denied. In response, the MOE issued an Order entitled "Order Denying Filing" on May 24, 2019, in which the MOE simply refuses to acknowledge anything that filed by Dr. Holmes on her own behalf.

On November 18, 2019, the Order granting sanctions to the Appellant (which had been issued November 18, 2009) expired, having been in existence for ten years. The statute of repose and the SC Supreme Court's decision in *Carr v. Guerard*, 616 S.E.2d 429 (S.C. 2005) prohibited HSB and Messrs. Grier and Becker from collecting on the expired judgment. Despite the law, HSB continued attempts to collect on the expired judgment. HSB's collection efforts were finally

terminated by were denied in an Order from Circuit Court Judge, Jennifer McCoy dated June 10, 2020, as the 2009 judgement had expired and Appellant did not have standing to take any action regarding the expired judgment. HSB appealed Judge McCoy's Order. Neither HSB, the Appellate Court, or the en banc panel were willing to address the Supreme Court decision of *Carr v. Guerard*, 616 S.E.2d 429 (S.C. 2005), which was raised by Dr. Holmes in support of Judge McCoy's Order. The Appellate Court, without addressing *Carr v. Guerard*, 616 S.E.2d 429 (S.C. 2005), found that an extension granted in federal bankruptcy Court allowed HSB to proceed with collections on a judgment that was more than ten years old. When Dr. Holmes petitioned the Court, *en banc*, asking them to apply the Supreme Court's decision from Carr, the petition was denied without mention of the Carr opinion. Dr. Holmes is bringing this petition to the SC Supreme Court because the Appellate Court's opinion runs contrary to *Carr v. Guerard*, 616 S.E.2d 429 (S.C. 2005), and the Court has chosen never to address how or why it decided to ignore the Supreme Court decision in this matter.

Dr. Holmes also filed a cross appeal. In that appeal, she challenged the constitutionality and legality, and jurisdiction of the series of sanctions and Orders denying her right to represent herself issued by the MOE. In a footnote to its opinion, the Appellate Court opted not to consider the appeal, stating that Dr. Holmes had abandoned it by failing to present an argument or cite any law regarding a prior order partially dismissing the appeal. This was not true. She had. When Dr. Holmes presented the portion of the brief where she had done just that in a petition for rehearing, the Court denied the petition without comment on the merits of the petition. She has, yet again, been denied the right to present her arguments to be considered on their merits and the basic rights afforded to citizens of this State and this Country.

ARGUMENT

I. The Appellate Court's determination that a federal bankruptcy extension will allow a judgment creditor to have standing to collect on a judgment after the expiration of the ten year S.C. Code Ann § 15-39-30 statute of repose is contradictory both to statutory law and the Supreme Court's decision from *Carr v. Guerard*, 616 S.E.2d 429 (S.C. 2005) which holds that, after 10 years, a judgment creditor no longer has standing to collect on an expired judgment.

The issue on appeal was whether Judge McCoy erred when she determined that a judgment creditor no longer had standing to pursue a judgment after ten years from the date of the judgment. The Respondent/Appellant, Dr. Holmes, presented the Court with a brief, supporting Judge McCoy's decision, in which she cited to the Supreme Court opinion, *Carr v. Guerard*, 365 S.C. 151 (S.C. 2005). In that case, the Court held that S.C. Code Ann § 15-39-30 conferred standing to pursue collection of a judgment upon a party holding the judgment because it made the party a "judgment creditor." The Court recognized that the plain language of the statute granted this status during a ten-year period from the date of the judgment, and not for one minute longer. The Supreme Court explained that the status of "judgment creditor" conferred standing upon the party seeking to enforce the judgment no longer exists once the ten-year period is over. "First, as soon as his judgment became more than ten years old, Carr lost his judgment-creditor status. Because he is no longer a creditor, he lacks standing to bring an action under the Statute of Elizabeth." *Carr v. Guerard*, 365 S.C. 151, 154 (S.C. 2005). The fact that Mr. Carr, in that case, had lost standing as a judgment creditor, meant that he lacked standing in any action, even one in which he was not trying, directly, to collect on a judgment (in an action under the Statute of Elizabeth, he was asking for return of funds that Mr. Guerard had fraudulently transferred to avoid paying a judgment). The Court made it abundantly clear that no action that could possibly lead to an attempt to collect on a judgment, would be allowed after the expiration of the ten-year time limit, even an action that was not directly an effort to collect:

"Although at this point Carr is seeking only to set aside the money transfers, he admits that his next step would be to seek to attach the subject funds. The only way for him to do that would be to try to execute on his judgment, which is stale. It would be a meaningless exercise to permit the setting aside of the transfers despite Carr's inability to effectively take any subsequent action. Thus, under the rationale of *Garrison* and *Hardee*, Carr's Statute of Elizabeth action must fail.

CONCLUSION

Carr is no longer a judgment creditor and lacks standing to bring this action under the Statute of Elizabeth. In addition, Carr's fraudulent-transfer action is actually an impermissible attempt to circumvent the bar to his executing on the expired judgment. For these alternate reasons, the circuit court's decision to grant summary judgment to the respondents is

AFFIRMED.

TOAL, C.J., MOORE, WALLER and BURNETT, JJ., concur."

Carr v. Guerard, 365 S.C. 151, 155 (S.C. 2005)

The Carr opinion has been cited and accepted as law in at least seven other cases, in different jurisdictions, including the bankruptcy Court. See *In re DC Dev., Inc.*, 572 B.R. 171, 175 (Bankr. D.S.C. 2017):

"As the South Carolina Supreme Court has previously held, as soon as a judgment becomes more than ten years old, the creditor loses his judgment-creditor status. *See Carr v. Guerard* , 365 S.C. 151, 154, 616 S.E.2d 429, 430 (2005) ("First, as soon as his judgment became more than ten years old, Carr lost his judgment-creditor status.").

Under South Carolina Code Section 15–39–30 DC Development's liability under the

> Bishop and McBride judgments has been extinguished and the judgments cannot be the basis for an involuntary petition under 11 U.S.C. § 303, as a bona fide dispute exists."

The only legal basis for its decision that the Court offered was to note that "A federal law may either expressly or impliedly preempt a state law." While federal law may preempt state law in some circumstances, the Court did not provide any precedential basis for S.C. Code Ann § 15-39-30 to be preempted by a section of the federal bankruptcy code. There is precedent to the contrary, however. As noted above, the Bankruptcy Court has already ruled that the Supreme Court decision from *Carr v. Guerard* does hold sway over the bankruptcy code.

The Appellate Court did not offer an explanation as to how it came to the conclusion that applying an extension to a collection deadline authorized under bankruptcy code would have any effect on a party's standing. The Court writes, in its opinion that "We find that under section 108(c) of the Bankruptcy Code, the Judgment did not expire until June 11, 2020, thirty days after the expiration of the automatic stay imposed by section 362." It did not find that this conferred standing on the party to collect. In the Carr case, Mr. Carr filed his claim under the Statute of Elizabeth and served it within the statute of limitations. He was pursuing relief that did not include collection. There was no reason why he should not, legally, have been able to pursue the action under the Statute of Elizabeth, except that he lacked standing to bring another action (a collection action) which he was not even pursuing because that standing was limited in time by S.C. Code Ann § 15-39-30. This result came from the Supreme Court, in a case where Carr actually did have standing to bring the fraudulent transfer action. Even if the bankruptcy code extends the life of a judgment, it does not confer standing on a party which does not have standing.

Section 108(c) of the Bankruptcy Code states, in relevant part:

> "If applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period for commencing or continuing a civil action in a court other than bankruptcy court on a claim against the debtor,… and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of –
>
> (1) The end of such period, including any suspension of such period occurring on or after the commencement of the case; or
>
> (2) 30 days after notice of the termination or expiration of the stay under section 362, 922 1201, or 1301 of this title as the case may be, with respect to such claim."

11 U.S.C. § 108(c). Section 108(c) by its terms does not apply to section 15-39-30 of the South Carolina Code. Section 15-39-30 does not "fix a period for commencing or continuation of a civil action." If it did, it would be a statute of limitations. South Carolina Courts have determined that Section 15-39-30 is not a statute of limitations. See Hardee v. Lynch, 212 S.C. 6, 46 S.E.2d 179 (1948) (this statute "provides no limitation period, but completely destroys any right of action upon judgments.") The undersigned could find no caselaw on the application of Section 108(c) of the bankruptcy code to SC Code Section 15-39-30. HSB has not provided any. Neither has the Appellate Court. On this basis the undersigned feels confident in asserting that none exists. However, there is case law on a similar statute, specifically, Section 1635(f) of the Truth in Lending Act (TILA). As stated in *Williams v. Emc Mortg. Corp* (*In re Williams*), 276 B.R. 394, 397-398: "The plain language of Section 108(c) provides an extension of time for 'commencing or continuing a civil action in a court other than a bankruptcy court.' However, the time period of Section 1635(f) does not fix a time period for bringing or continuing a civil action. In Beach, the Supreme Court wrote '[Section 1635(f)] says nothing in terms of bringing an action but instead provides that the 'right of recission [under the act] shall expire' at the end of

the period. It talks not of a suit's commencement but of a right's duration, which it addresses in terms so straightforward as to render any limitations on the time for seeking remedy superfluous." 276 B.R. 394, 397-398 (citing *Beach v. Ocwen Federal Bank*, 523 U.S. 410, 118 S.Ct. 1408, 1412, 140 L.Ed.2d 566 (1998)). Similarly, Section 15-39-30 fixes the "right's duration." It is a statute of repose, not a statute of limitations.

As it relates to the application of Section 108(c) to statutes of repose, the Courts, everywhere, are unanimous… ***nothing*** tolls the running of a statute of repose. *CTS Corp. v. Waldburger*, 573 U.S. 1,9-10,134 S.Ct. 2175, 2183-84, 189 L.Ed. 62,73 (2014) ("But a statute of repose is a judgment that defendants should 'be free from liability after the legislatively determined period of time, beyond which the liability will no longer exist and will net be tolled for any reason."; *Jones*, 161F.3d 2, 5-6 (4th Cir. 1998) ("It is easy to understand why a statute of repose is typically an absolute time limit beyond which liability no longer exists and is not tolled for any reason."); *Jones v. Saxon Mortg*., 537 F.3d 320, 327 (U.S. App. 1998); *First United Methodist Church of Hyattsville v. United States Gypsum Co*., 882 F.2d 862, 865 (4th Cir. 1989), cert. denied, 493 U.S. 1070, 107 L.Ed. 2d 1020, 110 S.Ct. 1113 (1990) (because § 1635(f) is a statute of repose, the time period stated therein is typically not tolled for any reason); *Reinbold v. Kohansieh* (*In re Sandburg Mall Realty Mgmt. LLC*), 563 B.R. 875, 896 (Bankr 2017) ("The repose provision is therefore equivalent to a cutoff, in essence an absolute bar on defendant's temporal liability. A period of repose is thus inconsistent with tolling. A repose period is fixed and its expiration will not be delayed by estoppel or tolling."; Restatement (Second) of Torts §899, Comment g (1977).

The SC Supreme Court's decision in *Carr v. Guerard*, 365 S.C. 151, 155 (S.C. 2005) has been cited in multiple jurisdictions and in other states as good law. It has never been overturned

or even challenged. The Appeals Court's decision flies directly in the face of this landmark decision. It is shocking that not only the Appellate panel, but the entire Appellate *en banc* court has blatantly, and without any explanation, simply chosen to ignore the SC Supreme Court's ruling in this matter.

II. The Court's opinion that a party's conduct was offensive to them does not grant the Court authority to ignore the statute of repose set forth in S.C. Code Ann § 15-39-30 and the Supreme Court's ruling from *Carr v. Guerard*, 365 S.C. 151, 155 (S.C. 2005). Equitable tolling does not apply to a statute of repose.

The Court, in the April 17, 2024 Opinion, criticizes Dr. Holmes' past history of litigation in the underlying action, and makes that a basis for determining that the statute of repose set forth in S.C. Code Ann § 15-39-30 should be ignored. "Dr. Holmes's tactics have undeniably caused undue delay and prejudice to HSB and warrant reversal of the court's order." *Holmes v. Haynesworth Sinkler Boyd* Unpublished Opinion No. 2024-UP-125 Filed April 17, 2024 This kind of basis (and in fact, any basis, equitable or not) for granting standing to a party with no legal standing due to the expiration of a statute of repose has been soundly rejected by the South Carolina Supreme Court.

The concept of equitable tolling simply does not apply to a statute of repose, including Code Ann § 15-39-30. *See Hardee v. Lynch* , 212 S.C. 6, 46 S.E.2d 179 (1948) ("[The statute at issue] provides no limitation period, but completely destroys any right of action upon judgments. The logical result of the [statute] was to utterly extinguish a judgment after the expiration of ten years from the date of entry."). A statute of repose is distinctly different than a statute of limitations, because "a statute of repose creates a substantive right in those protected to be free from liability after a legislatively-determined period of time." *Langley v. Pierce* , 313 S.C. 401, 403–04, 438 S.E.2d 242, 243 (1993) ; *see also Goad v. Celotex Corp.* , 831 F.2d 508 (4th Cir.

1987). A statute of repose creates a strict time limit for liability. *See Linda Mc Co., Inc. v. Shore* , 390 S.C. 543, 559, 703 S.E.2d 499, 507 (2010) (Beatty, J., dissenting) ("A statute of repose is typically an absolute time limit beyond which liability no longer exists and is not tolled for any reason because to do so would upset the economic balance struck by the legislative body") (quoting *Langley* , 313 S.C. at 404, 438 S.E.2d at 243).")

Equitable tolling and estoppel only apply to statutes of limitation. The concept of equitable tolling is based on reliance and stem from the idea a defendant should not be able to rely on a statute of limitations defense when a plaintiff is induced by the defendant to believe a claim would be taken care of without filing a claim. *Black v. Lexington Sch. Dist. No. 2* , 327 S.C. 55, 488 S.E.2d 327 (1997) (Defendant may be estopped from claiming statute of limitations as defense if delay that otherwise would give operation to statute was induced by defendant's conduct; such inducement may consist either of express representation that claim will be settled without litigation, or conduct that suggests lawsuit is not necessary.) The concept of equitable tolling, therefore, has no place in this case, and it was an error of law for the Court to apply it.

Beyond that, the Supreme Court, in *Carr v. Guerard*, 365 S.C. 151, 155 (S.C. 2005) has already considered a case in which the Defendant engaged in conduct that prejudiced the Plaintiff's ability to pursue collection. In that case, the conduct was not even litigation, it was outright fraud, which included lying to the Court and the Plaintiff. For 10 years, as Mr. Carr pursued his judgment in the Courts, Mr. Guerard had been hiding his money by writing checks to his wife and children so as to hide his assets from Carr and the Court:

> "The judgment was entered on June 14, 1991. Throughout the next ten years, Carr actively sought but was unable to locate assets of Guerard to satisfy the judgment. On

January 11, 2002 — ten years and seven months after entry of the judgment — Carr brought this action based on the Statute of Elizabeth. Carr alleges that beginning in 1997, Guerard wrote checks to his wife and son on funds that should have been used to satisfy the judgment. Carr further alleges that Guerard fraudulently concealed the transfers to avoid fulfilling his obligation to Carr. Guerard and the other respondents moved for summary judgment, arguing that Carr's action was an action to recover on the 1991 judgment and that the judgment was stale because it was over ten years old. The circuit court agreed and granted summary judgment to the respondents. On appeal, Carr argues that his fraudulent-transfer action is not an action to recover on the judgment but rather an independent action. Further, Carr claims, the statute of limitations in South Carolina Code section 15-3-530 applies, and Carr asserts he brought this action within the limitations period." *Carr v. Guerard*, 365 S.C. 151, 153 (S.C. 2005)

In that case, the Court acknowledged that Mr. Guerard's fraudulent efforts would be rewarded by his escaping justice and collection. The Court rejected the notion that this reprehensible conduct would provide any basis for overcoming the statute of repose, even when the action Carr was seeking to pursue was not directly related to collection of the judgment and Carr's action, despite the fact that the case before the Court (to address the fraudulent transactions), had been timely filed and pursued. *Carr v. Guerard*, 365 S.C. 151, 154 n.5 (S.C. 2005) ("Carr is correct that a three-year limitations period and the discovery rule apply to Statute of Elizabeth claims… Carr overlooks that Code section 15-39-30 also applies, rendering the statute of limitations inapposite in this particular case.")

The Supreme Court has clearly already considered the question of whether a party's egregious actions, intentionally causing delay and hindering legal efforts to collect on a judgment

could grant grounds to confer standing where the judgment statute had expired and determined that, even in cases where the conduct was blatantly fraudulent, there was no basis to do so. In the instant case, HSB's judgment began on November 18, 2009 and expired on November 18, 2019, ten years after the Order upon which it was based was issued. Unlike Mr. Carr, who had doggedly pursued Mr. Guerard to collect for ten years, only to be thwarted by intentional fraud, Haynsworth sat on its hands for almost eight of its ten years of standing, not instituting supplemental proceedings until 2017. Any delay caused by Dr. Holmes' litigation was massively outweighed by Haynesworth's own dilatory negligence in pursuing its judgment.

III. The Appellate Court does not have subject matter jurisdiction to issue what amounts to a sanction against Dr. Holmes, *sua sponte*, by conferring standing on a party that does not have standing as a matter of law.

Issues relating to subject matter jurisdiction may be raised at any time, cannot be waived even by consent, and should be taken notice of by this court on our own motion. *Johnson v. State*, 319 S.C. 62, 64, 459 S.E.2d 840, 841 (1995). As set forth in the preceding section, the Court appears to have conferred standing on Haynesworth Sinkler Boyd as a sanction against Dr. Holmes for her past litigation efforts, of which the Court obviously disapproves. As authority for its decision, the Court offered the following cite: "*Cf. Davis v. Parkview Apartments*, 409 S.C. 266, 283, 762 S.E.2d 535 (2014) (Finding dismissal of the pleadings was not an unduly harsh sanction in light of the plaintiff's willful and repeated failure to comply with various orders of the trial court, which resulted in unnecessary delay and prejudice to the defendants)." The issue of whether Dr. Holmes should be sanctioned for her bankruptcy filing is not before the Court in this appeal, and never was. No such relief was requested by any motion from any party. The action was taken *sua sponte*. Although the Courts may interpret statutes where there is not plan language, the Appellate Court does not have the authority to confer standing on a party that does

not have legal standing, and override a statute or binding precedent from the South Carolina Supreme Court. It certainly does not have the authority to do so as a sanction for activity that is unrelated to the appeal before it. The Appellate Court's decision on this matter should be stricken, as the Court lacks the jurisdiction to take the action. *DeWitt v. S.C. Dept. of Highways & Public Transp*., 274 S.C. 184, 262 S.E.2d 28 (1980) (all proceedings of a court lacking subject matter jurisdiction are a nullity, and its judgment has no effect). At the very least, if the Court is going to issue a *sua sponte* sanction, Dr. Holmes is entitled, as a constitutional right, to procedural due process including notice and an opportunity to be heard on the matter. S.C. Const. Art I § 3

IV. The Court's decision to ignore a Supreme Court ruling and grant standing to a party that did not have standing as a sanction against Dr. Holmes without notice or an opportunity to be heard violates Dr. Holmes' Due process rights under the Constitution of the State of South Carolina.

The Court's decision in this case, to grant standing, *sua sponte*, apparently as a "sanction" against Dr. Holmes is not only beyond the Court's subject matter jurisdiction in this case, but runs directly counter to the Supreme Court's decision in *Carr v. Guerard*, 365 S.C. 151 (S.C. 2005) and violates the constitution by denying Dr. Holmes a right to a trial by jury, or even due process. This is a violation of Dr. Holmes' rights under the South Carolina Constitution, Article I § 3 (Privileges and immunities; due process; equal protection of laws. The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws. (1970 (56) 2684; 1971 (57) 315.)

V. The Appellate Court has ignored the fact that Dr. Holmes did cite to legal authority and offered argument as to why her cross appeal addressing prior orders of the Court should be considered.

The only mention of Dr. Holmes' cross appeal in the Court of Appeals opinion is in a footnote, where the Court summarily dismisses the entire cross appeal finding that she had abandoned her appeal. To justify this, the Court cited to "*First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 5124 (1994) (noting when a party fails to cite authority or when the argument is simply a conclusory statement in the appellate brief, the party is deemed to have abandoned the issue on appeal.)" The Court overlooked the fact that Dr. Holmes did address the issue of whether the Court has jurisdiction to review prior orders in this case. Here is the section from pages 5-6 of her brief in which she both offers argument and cites to authority in support:

"II. The Appellate Court has Jurisdiction to review the Circuit Court's final Order of May 24, 2019, and all prior orders are appealed including, but not limited to, the order(s) of reference and orders entered June 23, 2017, February 9, 2017, and March 14, 2017.

When a party timely files its notice of intent to appeal from a judgment, the appellate court may review any intermediate order necessarily affecting that judgment. *SCDOT v. Faulkenberry*, 337 S.C.140, 522 S.E.2dS 822 (Ct. App. 1999). The Appellate Court has found that Dr. Holmes' attempt to appeal those orders after receiving an order purporting to end the case in the lower court were untimely and interlocutory. Now that Haynsworth Sinkler Boyd has asserted that the case is ended in order to bring its own appeal, it is likely safe to assume that Haynsworth Sinkler Boyd would not be arguing that the Order it is appealing is interlocutory. Thus, Dr. Holmes has filed her cross appeal addressing the order entered May 24, 2019, and all prior orders in the history of the action below. Those intermediate orders issued during the

supplemental proceedings including but not limited to the orders entered June 23, 2017, February 9, 2017, and March 14, 2017 are subject to review on appeal, as a matter of law.

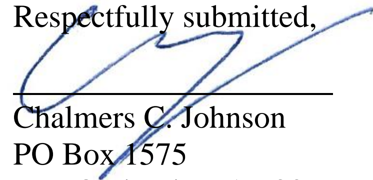
The dismissive footnote and the *en banc* order denying review are in error, clearly and blatantly in error. The error is catastrophically prejudicial to Dr. Holmes as the Court simply refused to even consider the appeal at all. The Court should have reviewed, considered and responded to the issues that Dr. Holmes properly raised on cross appeal in this case. The cross appeal should be remanded for consideration by the Appellate panel or, if the Supreme Court is willing to review it directly, by the Supreme Court. What happened to her at the hands of the Master in Equity in Charleston is a horrific affront to the legitimacy of our judicial system and needs to be addressed if this State's judiciary is ever going to expect to deserve the faith of its citizens.

CONCLUSION

On July 1, 2024 a petition for rehearing was denied without addressing the fact that the underlying opinion opposed governing precedent from the Supreme Court from *Carr v. Guerard*, 616 S.E.2d 429, 430 (S.C. 2005). Neither the opinion nor the denial of the petition for rehearing responded, in any way, to the fact that the petitioner raised and argued *Carr v. Guerard* in both her brief and the petition for rehearing. Neither did the appellate court comment on violations of the State Constitutional due process, or the fact that a party's entire appeal was dismissed out of hand based on a blatant factual misstatement by the Court. Judge McCoy, the Trial Court Judge in this case, did not err in applying the statute of repose, S.C. Code § 15-39-30. The Appellate Court was wrong to find that Dr. Holmes abandoned her appeal and exceeded its jurisdiction by imposing sanctions on her which violate her constitutional rights (both State and Federal), run counter to established law, including a Supreme Court ruling, and lack the fairness, equity, and

integrity that we, as citizens of this State, should have the right to expect from our judiciary. Dr. Holmes, as Petitioner, respectfully requests this Honorable Court accept her petition and grant her the opportunity to present these matters to the South Carolina Supreme Court for a fair and just adjudication.

Respectfully submitted,



Date July 29, 2024

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