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.

REPLY OF PETITIONER RE:
PETITION FOR A WRIT OF CERTIORARI

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INTRODUCTION

On July 1, 2024 Rule 221, SCACR, petition for rehearing was denied without comment on controlling precedent including *Carr v. Guerard*, 616 S.E.2d 429, 430 (S.C. 2005). When Petitioner raised this as a basis for a petition for writ of certiorari, the Respondent had an opportunity to address and raise any argument, whatsoever that could possibly counter the current law created by the South Carolina Supreme Court in 2005. In its response brief, Respondent followed the Appellate Court's "head in the sand" approach to the Supreme Court's precedent, by also completely ignoring *Carr v. Guerard* … again. The matters raised in Dr. Holmes' petition for writ of certiorari are crucial to not only the State, but this nation's preservation and protection of property rights. A statute of repose is a statute of repose. The Carr case has been cited in many jurisdictions beyond our State as a final word on when a civil matter is finally concluded. If the statute of repose is not absolute, as *Carr v. Guerard* determined, then no certification of title is safe, no judgement ever beyond resurrection, and there will be no final resolution to any civil legal matter in this State… perhaps in our nation, ever. Only a decision by the South Carolina Supreme Court, on this matter, stands between preservation of a well settled standard and, potentially, decades of legal chaos as judgment creditors seek more and more exceptions to this statute of repose.

REPLY TO RESPONDENT'S FACTUAL ASSERTIONS

Respondents assert, in their response "It is undisputed between Holmes and HSB that judgments expire ten years from the date on which the judgment was entered, absent an intervening event." (Respondent brief p. 8) This is absolutely untrue. Over and over again, it seems *ad nauseum*, Dr. Holmes has asserted that, pursuant to the prevailing law under *Carr v. Guerard*, 616 S.E.2d 429, 430 (S.C. 2005), there is no such thing as an "intervening event" that could ever... EVER overcome the statute of repose regarding collection on judgment.

The Respondent admits, in the response brief, that the 30 days to initiate collection expired on

June 11, 2020. The date is long gone. Even if it was reinstated, the right to collect would expire immediately, thus the Respondent's appeal is moot. An appeal, like the one at issue by HSB would not extend the 10 year period. *Wells v. AC. Sutton*, 299 S.C. 19, 382 S.E.2d 14 (1989). There is no justiciable controversy, no subject matter jurisdiction, and Respondent has no standing to pursue collection. In the *Davis* case, the lower court stated that "The issue of the suspension of the running of the time period while the Debtors were in bankruptcy is for another day. See § 108(c)(1) and, for example, *Aslanidis v. United States Lines, Inc*., 7 F.3d 1067, 1073 (2d Cir.1993); *Rogers v. Corrosion Products, Inc*., 42 F.3d 292, 297 (5th Cir. 1995)." In re *Davis*, 352 B.R. 758, 765 (Bankr. S.C. 2006).

REPLY TO ARGUMENT

In this case, the lower appellate court erred in failing to apply governing state substantive law to petitioner's property rights in the statute of repose barring defendant corporation's execution on a judgment more than 10 years old. It is well settled that state law governs petitioner's property rights under the bankruptcy code. The judgment in this case is now far more than ten years old. South Carolina Code Section 15–39–30 states:

> Executions may issue upon final judgments or decrees at any time within ten years from the date of the original entry thereof and shall have active energy during such period, without any renewal or renewals thereof, and this whether any return may or may not have been made during such period on such executions.

S.C. Code of Laws §15-39-30 (Law. Co-op 1976). In *Hardee v. Lynch,* 212 S.C. 6, 46 S.E.2d 179 (1948), the South Carolina Supreme Court dismissed the argument that the statutory period in which an execution may issue served as a statute of limitations, which would be considered waived unless pleaded. The South Carolina Supreme Court in that case stated:

> In order for a law to be a statute of limitations, it must contain within itself a specific statement limiting the time within which an action is to be brought.... [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.

Hardee, 212 S.C. at 16–17, 46 S.E.2d at 183. Thus, South Carolina law "***completely destroys***" the ability of the defendant corporation to bring "any right of action upon judgments." Defendant corporation's claims have been "***utterly extinguished***." There can not be any more final and definitive language than what the Court employed In Hardee to get that point across that nothing… NOTHING can resurrect the standing to pursue a judgment after the 10 year statute of repose has expired.

In the case of *Linda Mc Co. v. Shore*, 390 S.C. 543, 555, 703 S.E.2d 499, 505 (2010), the South Carolina Supreme Court created a narrow exception to the statute's historic interpretation. In the case of *Gordon v. Lancaster*, 425 S.C. 386, 390, 823 S.E.2d 173, 175 (2018), before the court on certiorari was the narrow issue of whether a creditor may execute on a judgment more than 10 years after its entry when that time period expired during the course of litigation. The South Carolina Supreme Court reversed the holding in *Linda Mc Co*., once again asserting that the statute of repose is a complete, total, and final conclusion to a judgment creditor's ability to collect: "[A]ccording to the statute's plain language, a creditor has ten years to execute on the judgment from the date of its entry, a time period that cannot be renewed." 390 S.C. at 555; 703 S.E.2d at 499. The Court went on to state, "[W]e note *Linda Mc* represents a departure from this Court's historic approach in analyzing section 15-39-30, and while we appreciate the compelling facts at issue therein, the decision has created confusion in what was heretofore a well-settled area of the law. Accordingly, we overrule it and return to the traditional bright-line rule." 425 S.C. at 391, 823 S.E.2d at 175. That statute of repose codifies public policy and the public interest of certainty and stability in the marketplace, for example, regarding liens and the title search/abstract. Thus, pursuant to the bright line rule, the standing of a judgment creditor to pursue collection of judgment in this case, and verily, in every case involving collection on a judgment is "utterly extinguished."

A statute of repose confers upon a party a substantive right to be shielded from liability after a legislatively-determined period of time. *First United Methodist Church of Hyattsville v. U.S. Gypsum Co.*, 882 F.2d 862, 866 (4th Cir. 1989). A statute of limitations, however, is a "procedural device that operates as a defense to limit the remedy available from an existing cause of action." Id. at 865. Consequently, "[t]he distinction between statutes of limitations and statutes of repose corresponds to the distinction between procedural and substantive laws." *Goad v. Celotex Corp*., 831 F.2d 508, 511 (4th Cir. 1987). *South Carolina Tel-Con, Inc. v. World Tower Co.* (D. S.C. 2012). South Carolina law states that judgments may be executed "at any time within ten years from the date of the original entry thereof and shall have active energy during such period." (quoting S.C.Code Ann. § 15–39–30). "South Carolina courts have repeatedly held that a judgment is extinguished after the expiration of ten years from the date of entry." Consequently, a judgment "holder loses his or her status as a judgment creditor ... [a]s soon as a judgment becomes ten years old." (citing *Carr v. Guerard*, 365 S.C. 151, 616 S.E.2d 429, 430 (2005)). *RRR, Inc. v. Toggas,* 98 F.Supp.3d 12, 17 (D. D.C. 2015) (internal citations omitted). "[T]he S.C. Opinion notes an over-arching 'public policy of [South Carolina is] expressed in the statutes to limit the life of judgments to ten years. A judgment creditor should recognize this policy and proceed expeditiously to conclude his efforts to collect his judgment within the ten year period. '" (quoting *Wells ex rel. A.C. Sutton & Sons, Inc. v. Sutton*, 299 S.C. 19, 382 S.E.2d 14, 16 (S.C.Ct.App.1989)). *RRR, Inc. v. Toggas*, 98 F.Supp.3d 12 (D. D.C. 2015) fn. 6. *Wells v. AC. Sutton*, 299 S.C. 19, 382 S.E.2d 14 (1989)(Holding that execution is the only means to enforce a judgment. That a judgment is extinguished after 10 years from entry and that appeals, including defendant's appeal herein, do not extend the 10 year period). Even the Supreme Court of the United Sates has recognized the impervious nature of a statute of repose. In *CALPERS v ANZ Securities*, *Inc*., 137 S. Ct. 2042 (2017), the Supreme Court resolved a longstanding circuit split by holding that the class action "tolling" principle set forth in American Pipe & Construction Co. v. Utah, 414 U.S. 538 (1974) does not apply to the three-year statute of repose under the Securities Act of 1933.

Legal opinions have always cautioned parties seeking to collect on judgments that, "an over-arching 'public policy of [South Carolina is] expressed in the statutes to limit the life of judgments to ten years. *A judgment creditor should recognize this policy and proceed expeditiously to conclude his efforts to collect his judgment within the ten year period*. '" (quoting *Wells ex rel. A.C. Sutton & Sons, Inc. v. Sutton*, 299 S.C. 19, 382 S.E.2d 14, 16 (S.C.Ct.App.1989)) (emphasis in original). *RRR, Inc. v. Toggas*, 98 F.Supp.3d 12 (D. D.C. 2015) fn. 6. In that case, "defendants filed a declaratory judgment action against the plaintiff in the South Carolina Court of Common Pleas "seeking an order by the court that a judgment entered against Plaintiffs on July 24, 2003 ... has expired and has no active energy." The South Carolina court granted the plaintiffs' motion for judgment on the pleadings. *Id*. at 16-17 (internal citations omitted). The Respondent, in this case, waited seven years from the date of the filing of the judgment to even begin any efforts to collect and conclusively failed to "proceed expeditiously."

Moreover, the plain language of the Federal statute makes it inapplicable to the statute of repose under the facts of this case. "(T)he right to execute on a judgment does not constitute a cause of action." *Home Port Rentals, Inc. v. Moore*, 632 S.E.2d 862 (S.C. 2006). It is well settled that a statute of repose and a statute of limitations are neither the same nor analogous: a statute of repose imposes a substantive right that cannot be equitably tolled, whereas a statute of limitations is a procedural mechanism that may be equitably tolled. *Heaton v. Stirling* (D. S.C. 2020). The state statute and law governing petitioner's property rights in this case involve a statute of repose, which is not subject to tolling and which is not a statute of limitations. A statute of repose confers upon a party a substantive right to be shielded from liability after a legislatively-determined period of time. *First United Methodist Church of Hyattsville v. U.S. Gypsum Co.*, 882 F.2d 862, 866 (4th Cir. 1989). A statute of limitations, however, is a "procedural device that operates as a defense to limit the remedy available from an existing cause of action." Id. at 865. Consequently, "[t]he distinction between statutes of limitations and statutes of repose corresponds to the distinction between procedural and substantive laws." *Goad v. Celotex Corp*., 831 F.2d 508, 511 (4th Cir. 1987). *South Carolina Tel-Con, Inc. v.*

World Tower Co. (D. S.C. 2012). South Carolina law states that judgments may be executed "at any time within ten years from the date of the original entry thereof and shall have active energy during such period." (quoting S.C.Code Ann. § 15–39–30). "South Carolina courts have repeatedly held that a judgment is extinguished after the expiration of ten years from the date of entry." Consequently, a judgment "holder loses his or her status as a judgment creditor ... [a]s soon as a judgment becomes ten years old." (citing *Carr v. Guerard*, 365 S.C. 151, 616 S.E.2d 429, 430 (2005)). *RRR, Inc. v. Toggas*, 98 F.Supp.3d 12, 17 (D. D.C. 2015) (internal citations omitted). "[T]he S.C. Opinion notes an over-arching 'public policy of [South Carolina is] expressed in the statutes to limit the life of judgments to ten years. A judgment creditor should recognize this policy and proceed expeditiously to conclude his efforts to collect his judgment within the ten year period. '" (quoting *Wells ex rel. A.C. Sutton & Sons, Inc. v. Sutton*, 299 S.C. 19, 382 S.E.2d 14, 16 (S.C.Ct.App.1989)). *RRR, Inc. v. Toggas*, 98 F.Supp.3d 12 (D. D.C. 2015) fn. 6. *Wells v. AC. Sutton*, 299 S.C. 19, 382 S.E.2d 14 (1989)(Holding that execution is the only means to enforce a judgment. That a judgment is extinguished after 10 years from entry and that appeals do not extend the 10 year period).

Focusing on the bankruptcy code, even the plain language of the Federal statute 11 U.S.C. § 108(c) makes it inapplicable to the statute of repose under the facts of this case which does not fix "a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor." 11 U.S.C. § 108(c). First, enforcement of a judgment is not a cause of action. "(T)he right to execute on a judgment does not constitute a cause of action." *Home Port Rentals, Inc. v. Moore*, 632 S.E.2d 862 (S.C. 2006). In addition, there is no "claim against the debtor" because of the discharge and because defendants concede a lien against real property, if any, is now long expired. Execution is the only means to enforce a judgment, and, as execution is not a cause of action, a judgment, no matter what, under any circumstances, regardless of any foreign or federal law extending deadlines to collect, is extinguished after 10 years from entry because after that time, the judgment creditor is no longer a judgment creditor, and has no standing to pursue a claim, even one in which he

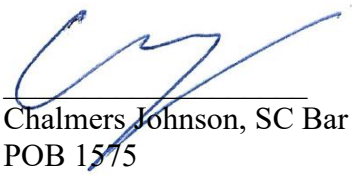
has an extended or independent time and right to pursue, which is the exact situation addressed by the Supreme Court in *Carr v. Guerard*, 616 S.E.2d 429, 430 (S.C. 2005).

CONCLUSION

The Supreme Court must assert its authority and defend its decision from *Carr v. Guerard*, 616 S.E.2d 429, 430 (S.C. 2005). This is matter of utmost importance, not only in this case, but to the Citizens and entities of this State, who should be able to depend on controversies coming to a final end, and even to the Nation, as many states have adopted and cited to *Carr v. Guerard*, 616 S.E.2d 429, 430 (S.C. 2005) to protect against the prospect of endless litigation of civil matters.

Respectfully submitted,

September 7, 2024



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PROOF OF SERVICE – REPLY RE PETITION FOR WRIT OF CERTIORARI

I certify that I have served a copy of the foregoing on the respondents by email at mcaskey@hsblawfirm.com and by mail at Other Counsel of Record: Box 11889 Columbia, SC 29201 on this date:

September 7, 2024

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