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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

The Honorable Dale Van Slambrook, Master-in-Equity

Common Pleas Case No.: 2014-CP-08-00321
Appellate Case No.: 2024-000658

Edgefield Holdings, LLC,

Respondent,

v.

Christian E. Hamlin,

Appellant.

APPELLANT'S INITIAL BRIEF

October 3, 2024

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STATEMENT OF ISSUE

- I. DID THE MASTER-IN-EQUITY, IN ITS ORDER DATED ON MARCH 28, 2024, ERR IN FAILING TO RULE THAT THE FEBRUARY 17, 2014 JUDGMENT LACKED ACTIVE ENERGY AND WAS STALE?

STATEMENT OF FACTS

HomeTrust Bank recovered a judgment against Christian E. Hamlin in the State of North Carolina on August 12, 2013. (R. at ____). HomeTrust Bank then domesticated that judgment in South Carolina, under the Uniform Enforcement of Foreign Judgments Act, by filing the judgment in the Office of the Clerk of Court for Berkeley County on February 17, 2014. (R. at ____). On March 20, 2023, this judgment was subsequently assigned to Edgefield Holdings, LLC. (R. at ____). Edgefield proceeded with supplemental proceedings on November 30, 2023. (R. at ____). On February 9, 2024, the Master-In-Equity issued an order directing the Respondent to sell, via sheriff's sale, personal property of the Appellant. (R. at ____). On February 20, 2024, two days after the expiration of the judgment, Appellant requested the Court to reconsider its order and rule the judgment had no active energy. (R. at ____). On March 28, 2024, the Master affirmed the prior Order of February 9, 2024, and issued a new Order to correct a scrivener's error.

STATEMENT OF CASE

On November 30, 2023, Respondent filed a petition for supplemental proceedings. (R. at ____). December 4, 2023, the Court issued an Order of Reference in this 2013 matter. (R. at ____). On December 5, 2023, a Rule to Show Cause was filed with a hearing date of December 18, 2023. (R. at ____). On December 18, 2023, a Supplemental Rule to show Cause and Order was filed. (R. at ____). On December 18, 2023 Edgefield attempted to serve Mr. Hamlin. (R. at ____). Mr. Hamlin filed a Motion to Dismiss on January 3, 2024. (R. at ____). On January 4, 2024, Mr. Hamlin voluntarily appeared before the Master and argued his motion to dismiss the supplemental proceedings on the basis that the August 12, 2013, foreign judgment was over ten (10) years old and lacked active energy pursuant to *Home Port Rentals, Inc. v. Moore*, 369 S.C. 493, 597 S.E.2d 810 (Ct. App. 2006) (R. at ____).

On January 12, 2024, Judge Van Slambrook issued an Order denying the motion to dismiss, denying the rule to show cause, and ordering the matter shall remain open to allow the Petitioner and Debtor to have the opportunity to request the Court to hold another hearing prior to the Court issuing any further relief. (R. at ___). The Master-in-Equity further held that the judgment's active energy began when the foreign judgment was filed in South Carolina and unequivocally held that the petitioner shall have until February 17, 2024, to enforce the judgment in South Carolina. (R. at ___).

On January 22, 2024, Hamlin filed a Motion to Reconsider the January 12, 2024, Order pursuant to *Payne v. Claffy*, 281 S.C.385, 315 S.E.2d 814 (Ct. App. 1984). (R. at ___). On January 23, 2024, Edgefield filed a Motion for Sanctions for failure to provide discovery. (R. at ___). On January 26, 2024, Judge Van Slambrook denied Appellant's motion to reconsider of January 12, 2024, and denied the sanctions request of Respondent. (R. at ___). On February 9, 2024, the Master-in-Equity issued an order as follows: 1). That Edgefield is entitled to the sale proceeds of personal property of a 2005 Honda CR-V and 2002 Mercedes E Class; 2). That a charging order was granted to Edgefield against the distributional interest of Mr. Hamlin in his LLC, in accordance with S.C. Code Ann. § 33-44-501, stating that any distributions made to Mr. Hamlin because of his ownership interest in the LLC shall be transferred to Edgefield. Mr. Hamlin was required by the Order to transfer any pay and distributional interests to Edgefield as they occur in the normal course and to properly account for all payments and expenditures of the LLC; 3). That Edgefield was entitled to foreclose its charging lien against Mr. Hamlin's distributional and membership interest in the LLC, via sheriff's sale; 4). That both vehicles, as referenced in 1) above, are to be sold at the next available Berkeley County Sheriff's sale, after due advertisement as

required by South Carolina law; 5). That Edgefield is entitled to apply any distributions that it receives from the LLC towards the payment of its outstanding judgment; and 6). That Edgefield is also entitled to apply the sale proceeds from the sale of the two vehicles and the LLC toward payment of its outstanding judgment. On February 20, 2024, Petitioner timely filed a motion to reconsider the order dated February 9, 2024, and asserted that the ordered actions have not occurred and could not be completed because the judgment's active energy had expired pursuant to S.C. Code Ann. §15-39-30. (R. at ___). On March 28, 2024, the Court denied the portion of Appellant's Motion to Reconsider concerning the Court's Order from February 9, 2024, regarding active energy (R. at ___). Further, the Master revised the February 9, 2024, Order to clarify that underlying North Carolina judgment was filed August 12, 2013, rather than August 12, 2023, as previously Ordered. (R. at ___). On April 19, 2024, Mr. Christian E. Hamlin timely filed this appeal (R. at ___).

STANDARD OF REVIEW

The interpretation of a statute is a question of law, which an appellate court is free to decide *de novo* without deference to the trial court. *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008).

ARGUMENT

I. THE MASTER-IN-EQUITY ERRED IN FAILING TO RULE THAT THE FEBRUARY 17, 2013, JUDGMENT LACKED ACTIVE ENERGY AND WAS STALE.

Under S.C. Code Ann. § 15-39-30 a creditor has ten years of "active energy" to execute the judgment from the date of its entry, and this time period cannot be renewed or extended. S.C. Code Ann. § 15-39-30 provides:

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 Ann. § 15-39-30 (2005). (Emphasis added)

There is a bright-line rule that a judgment expires after ten years from its entry. *See Gordon v. Lancaster*, 425 S.C. 386, 391, 823 S.E.2d 173, 175 (2018). The Supreme Court in *Linda Mc Co., Inc. v. Shore*, 390 S.C. 543, 703 S.E.2d 499 (S.C. 2010) carved out an exception to S.C. Code Ann. §15-39-30 but that case overruled under the authority of *Gordon*. While the *Linda Mc* Court declared that the more equitable approach is to provide an exception to the bright-line rule, the *Gordon* Court held that the proper approach is to leave the public policy concerns regarding S.C. Code Ann. §15-39-30 to the General Assembly. *Id.* at 392. Thus, *Gordon* decision overruled *Linda Mc* and established that there is a bright-line rule that a judgment expires after ten years. *Id.*

Consistently the Supreme Court has held that under S.C. Code Ann. § 15-39-30 if a judgment becomes stale then that judgment lien is extinguished after ten years. *See, e.g., Garrison v. Owens*, 258 S.C. 442, 446–47, 189 S.E.2d 31, 33 (1972). The reasoning for this is,

“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 statute**, if such time expires before the action is tried.” *Id.* (Emphasis added)

Further, the South Carolina Supreme Court has made this clear, clarifying that a judgment is, “utterly extinguished after the expiration of ten years from the date of entry.” *Hardee v. Lynch*, 212 S.C. 6, 17, 46 S.E.2d 179, 183 (1948). Most importantly, our courts have emphasized that a judgment creditor should recognize this policy and proceed expeditiously to conclude their efforts to collect their judgment within the allotted ten years, as mandated under S.C. Code Ann. § 15-39-30. *Home Port Rentals, Inc. v. Moore*, 369 S.C. 493, 597 S.E.2d 810 (Ct. App. 2006); *Commercial Credit Loans, Inc. v. Riddle*, 334 S.C. 176, 512 S.E.2d (Ct. App. 1999); *Wells ex rel. A.C. Sutton & Sons, Inc. v. Sutton*, 299 S.C. 19, 382 S.E.2d 14 (Ct. App. 1989).

Even if enforcement proceedings commence within the ten-year period, the judgment loses its “active energy” at the end of the ten-year period, and that period starts at the date of entry and execution is prohibited after it loses its active energy. *LaRosa v. Johnston*, 328 S.C. 293, 493 S.E.2d 100 (Ct. App. 1997). For an execution to be binding one must have an actual attachment or levy. See *United States v. Southern Growth Indus., Inc.*, 251 S.C. 404, 408, 162 S.E.2d 849, 851 (1968). An execution is the only process to enforce a judgment in South Carolina. *Cheraw & C.R. Co. v. Marshall*, 40 S.C. 59, 63, 18 S.E. 247, 249 (1893). South Carolina Code Ann. § 15–39–100 states:

“Executions shall not bind the personal property of the debtor, but personal property shall only be bound by **actual attachment or levy** thereon for the period of four months from the date of such levy.” S.C. Code Ann. § 15–39–100 (1976). (Emphasis added)

Attachment is, “the act or process of taking, apprehending, or seizing persons or property, by virtue of a writ, summons, or other judicial order, and bringing the same into the custody of the law.” *Southern Growth*, 251 S.C. at 408. The South Carolina Supreme Court held that the verbatim law preceding South Carolina Code Ann. §15-39-100, “requires that the lien be attached to certain property by reducing it to possession.” *Id.* Possession constitutes, “a right to lay [the creditor’s] hands on the property. *Id.* at 409.

Here, Edgefield failed to attach or levy upon the Appellant’s property prior to February 17, 2024, pursuant to S.C. Code Ann. § 15-39-30 and thus all enforcement actions lacked active energy. The March 28, 2024, Order lacked active energy because the Order’s authority was supported by the February 17, 2014, order. Under S.C. Code Ann. § 15-39-30, a judgment may be executed at any time within ten years from its original entry date and shall retain its “active energy” during this period without the possibility of renewal. S.C. Code Ann. § 15-39-30. The South Carolina Supreme Court has consistently upheld this rule, in cases such as *Gordon* and *Home*

Port Rentals, a judgment is extinguished ten (10) years from its entry date. *Gordon*, 425 S.C. at 391; *Home Port Rental*, 369 S.C. at 497. Given that the South Carolina judgment was entered on February 17, 2014, the permissible period for enforcement, or “execution” expired after 11:59:59 p.m. on February 17, 2024. (R. at ____). Any enforcement actions taken by Edgefield Holdings, LLC on February 18, 2024, or thereafter, were unenforceable, as the judgment no longer retains its “active energy” and cannot be executed.

Moreover, South Carolina law under S.C. Code Ann. § 15-39-100 requires that for an execution to be binding on personal property, there must be an actual attachment or levy, which binds the property. Edgefield Holdings, LLC failed to achieve compliance with this requirement within the mandated timeframe. Without any attachment, the enforcement actions directed by the trial court lack enforceability after February 17, 2024. The trial court’s Order, on March 28, 2024, authorizing Edgefield to sell Mr. Hamlin’s vehicles and foreclose on his LLC interests exceeds the allowed period for execution and enforcement of the initial order of February 17, 2014. This legal command was in direct violation of S.C. Code Ann. § 15-39-100 and S.C. Code Ann. § 15-39-30.

Therefore, as Edgefield failed to attach or levy as directed by Order prior to February 17, 2024, the Order of March 28, 2024, was invalid as the judgment underlying the Order no longer retained its “active energy”.

CONCLUSION

Based upon the above, this Appellate Court should declare that the Orders dated February 9, 2024, and March 28, 2024, are no longer enforceable against Mr. Hamlin and affirm that the *Linda Mc* exception does not apply in South Carolina.

(Signature page follows)

October 2, 2024

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