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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

Hon. Walton J McLeod, Circuit Judge

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Case No. 2021-CP-32-00328  
Appellate Case No. 2024-001297

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John Deere Construction & Forestry Company, Respondent

v.

North Edisto Logging, INC.; The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019;  
The Estate of Paul D. Gunter; Matthew P. Rush; and Matthew Cody Gunter, Defendants

Of which, North Edisto Logging, INC.; The Paul & Brenda Gunter Revocable Trust UTD March 26,  
2019; The Estate of Paul D. Gunter; and Matthew Cody Gunter are the Appellants.

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APPELLANTS' BRIEF

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December 2, 2024

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## STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN CONCLUDING THAT RESPONDENT'S ACTION WAS TIMELY FILED UNDER THE NONCLAIM STATUTE S.C. CODE § 62-3-803(a)?
2. DID THE TRIAL COURT ERR IN FINDING PREJUDICE TO RESPONDENT BY IMPROPERLY SHIFTING THE BURDEN OF PROOF TO NORTH EDISTO?
3. DID THE TRIAL COURT ERR IN FINDING NORTH EDISTO FAILED TO RETAIN SUFFICIENT PROPERTY BY IMPROPERLY SHIFTING THE BURDEN OF PROOF TO NORTH EDISTO?
4. DID THE TRIAL COURT ERR IN CONCLUDING THAT THE TRANSFER OF PROPERTY 13 TO MATTHEW CODY GUNTER WAS PREJUDICIAL TO RESPONDENT'S WHEN THE PROPERTY WAS SUBJECT TO A PRIOR ARM'S LENGTH MORTGAGE THE EXCEEDED THE VALUE OF THE PROPERTY?
5. DID THE TRIAL COURT ERR IN FINDING THAT THE TESTIMONY OF PAULA KNEECE WAS HEARSAY?

## STATEMENT OF THE CASE

This action was commenced by the Respondent's filing of a Summons and Complaint on February 2, 2021.(R. p.\_\_). Motions to Dismiss were filed by each Appellant(R. p.\_\_). After denial of these motions (R. p.\_\_), answers were filed by each Appellant(R. p.\_\_). Motions for Summary Judgment were similarly filed (R. p.\_\_) and denied (R. p.\_\_). A Joint Stipulation of Facts was filed January 31 2024. (R. p.\_\_).

This action was tried (R. p.\_\_), and a order granting judgment was filed March 7, 2024. (R. p.\_\_). A timely motion to reconsider was filed and denied.(R. p.\_\_). This appeal followed. (R. p.\_\_).

## STATEMENT OF FACTS

Paul D. Gunter died on July 3, 2019. (See Complaint ¶ 19)(R. p.\_\_(See also Joint stipulation filed January 31 2024, item 11.)(R. p.\_\_))

This action was filed on February 2, 2021. (See Complaint generally)(R. p.\_\_).

February 2, 2021 is more than one year after July 3, 2019.

Appellant Matthew Cody Gunter acquired the property that he owns that is subject to this action by virtue of a deed from Paul D. Gunter. (See Complaint ¶ 26 and ¶ 27)(R. p. \_\_) .(See also Joint stipulation filed January 31 2024, item 19.)(R. p. \_\_)

Appellant The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019 acquired the property that it owns that is subject to this action by virtue of a deed from Paul D. Gunter. (See Complaint (R. p. \_\_) . (See also Joint stipulation filed January 31 2024, item 19.)(R. p. \_\_)

The tax value of Parcel 1 in 2019 was \$69,730.00.<sup>1</sup>

The tax value of Parcel 3 in 2019 was \$46,090.00

The tax value of Parcel 5 in 2019 was \$56,609.00

The tax value of Parcel 6 in 2019 was \$48,88.00

The tax value of Parcel 8 in 2019 was \$12,700.00

The tax value of Parcel 9 in 2019 was \$46,843.00

The total value of these properties, each of which were formerly owned by North Edisto, is \$280,660.00 (see trial exhibit 52.) The tax returns entered in evidence for the period 2018 through 2021 show at least \$2,620,031 in assets in each of the years from the year before the transfers, until the filing of this action. ( Box F, Page 1 of Exhibits 37, 46, 47 and 48).(R. p. \_\_)

The tax returns entered in evidence for the period 2018 through 2021 show at least \$5,046,089 in gross income in each of the years from the year before the transfers, until the filing of this action. ( Box F, Page 1 of Exhibits 37, 46, 47 and 48).(R. p. \_\_)

The total value of the properties transferred by North Edisto (\$280,660.00) was therefore less than 11% of the lowest asset value shown on the tax returns, and slightly over 5.5% of the lowest year

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<sup>1</sup> Each Parcel identification is keyed to Exhibit 52 (R. p. \_\_)

gross income for the relevant period.

#### DISPUTED ISSUES OF MATERIAL FACT

Was Respondent prejudiced by the transfers made by North Edisto?

Did North Edisto retain sufficient property to satisfy Respondent's claims?

Was Respondent prejudiced by the transfer of Property 13 to Matthew Cody Gunter?

#### STANDARD OF REVIEW

On appeal from an action sounding in equity, “this court may view the facts in accordance with our preponderance of the evidence.” *Anderson v. Buonforte*, 365 S.C. 482, 488, 617 S.E.2d 750, 753 (Ct.App.2005).

#### ARGUMENT 1

THE TRIAL COURT ERRED IN CONCLUDING THAT RESPONDENT'S ACTION WAS TIMELY FILED UNDER THE NONCLAIM STATUTE S.C. CODE § 62-3-803(a).

Under Rule 50 SCRPC, when the evidence in a matter yields only one inference, a directed verdict in favor of the moving party is proper. *Swinton Creek Nursery v. Edisto Farm Credit*, 334 S.C. 469, 514 S.E.2d 126 (1999); *Arthurs v. Aiken County*, 338 S.C. 253, 525 S.E.2d 542 (Ct. App. 1999). The parties have stipulated that Paul D. Gunter died on July 3, 2019. This action was filed on February 2, 2021. The date of filing is more than one year after Paul D. Gunter's death. Only a single inference can be drawn about the amount of time that passed between the Death of Paul D. Gunter and the filing of this action, *i.e.* it exceed one year. In fact Respondent was not even close to one year, filing 19 months after Paul D. Gunter's death.

In this case, the consequences of this sole inference comes down to the application of South Carolina's Nonclaim Statute. S.C. Code §62-3-803(a) provides:

SECTION 62-3-803. Limitations on presentation of claims.

(a) All claims against a decedent's estate which arose before the death of the decedent, including claims of the State and any political subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by another statute of limitations or nonclaim statute; **are barred against** the estate, the personal representative, the decedent's heirs and devisees, and **nonprobate transferees** of the decedent; unless presented within the **earlier of the following**:

- (1) **one year after the decedent's death**; or
- (2) the time provided by Section 62-3-801(b) for creditors who are given actual notice, and within the time provided in Section 62-3-801(a) for all creditors barred by publication.

[Emphasis added]

The fact that S.C. Code §62-3-803(a) is a nonclaim statute has been conclusively established by our Appellate Courts. See *Estate of Tollison* 320 S.C. 132,135, 63 S.E. 2D 611,613 (S.C. App 1995) (“Section 62-3-803 is a nonclaim statute. See *A. McCoy's, Inc. v. Garner*, 281 S.C. 378,315 S.E.2d 812 (Ct.App.1984) (finding former section 21-15-640 a nonclaim statute). Thus, unless the statute is complied with, the creditor's claim is barred. Id. “). *Estate of Tollison* was cited with approval by our Supreme Court in *In Re Estate of Hover* 407 S.C. 194, 754 S.E.2d 875(2014).

The Nonclaim Statute bars “all claims against a decedent's estate which arose before the death of the decedent” unless presented within one year after the decedent's death. S.C. Code Ann. § 62-3-803(a). A nonclaim statute is fundamentally different, and dramatically stronger, than a statute of limitations. While a statute of limitations is a defense to a claim of action, a nonclaim statute is a complete bar to a claim of action. See *In Re Estate of Hover*, 407 S.C., 754 S.E.2d (2014) (“In contrast

to the Bank's characterization, the nonclaim statute is not a general statute of limitations as the two statutes are fundamentally and operationally distinct.")

In *Phillips v. Quick*, 399 S.C. 226, 731 SE 2d 327 (S.C. App. 2012) the S.C. Court of Appeals adopted the following analysis:

[A] nonclaim statute ... grants to every person having a claim of any kind or character against a decedent's estate, the right to file the same in the court having jurisdiction thereof and have the same adjudicated, provided such claim is filed within the time specified in the statute. Unless such claim is filed within the time so allowed by the statute, it is forever barred. The time element is a built-in condition of the said statute and is of the essence of the right of action. Unless the claim is filed within the prescribed time set out in the statute, no enforceable right of action is created. **While such statutes limit the time in which a claim may be filed or an action brought, they have nothing in common with and are not to be confused with general statutes of limitation.** The former creates a right of action if commenced within the time prescribed by the statute, whereas the latter creates a defense to an action brought after the expiration of the time allowed by law for the bringing of such an action.

*Estate of Decker v. Farm Credit Servs. of Mid-Am., ACA*, 684 N.E.2d 1137, 1138-39 (Ind.1997)  
(quoting *Donnella v. Crady*, 135 Ind.App. 60, 185 N.E.2d 623, 624-25 (1962)).

The Probate Code defines "claims" as including "liabilities of the decedent or protected person whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration." S.C. Code Ann. § 62-1-201(4). The Probate Codes specifically excludes "estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate" from its definition of "claims." *Id.* However, the preamble of the general definitions in Section 201 contains the following language of limitation: "Subject to additional definitions contained in the subsequent articles which are applicable to specific articles or parts, and unless the context otherwise requires, in this Code. Therefore, the general definitions in Section 201 must be read in light of the context and more specific provisions of other sections, such as S.C. Code §62-3-803. The references in Section 803 to "all claims" and the inclusion of pairs of attributes such as "due or become due," "absolute or contingent,"

“liquidated or unliquidated,” and the trio “founded on contract, tort, or other legal basis” are inconsistent with the narrow Section 201 definition of claims. In each instance, the groupings are designed to cover the entirety of the spectrum of these attributes. There is also an integral distinction between the entities covered by the two definitions in Section 201 and 803. Section 201 applies only to claims against “estate of decedents and protected persons.” Section 803 applies to claims against “the estate, the personal representative, the decedent’s heirs and devisees, and nonprobate transferees of the decedent.” The Court finds a central tenet of the rules of statutory construction is that every word of the legislative enactment should be given credence. Adopting the restrictive Section 201 definition of claims would read many of the words of Section 804 out of existence and render them meaningless. The context and specifics of Section 804 also compel the conclusion that an expansive definition of claims is intended for the nonclaim statute.

While, Paul Gunter died intestate, and no estate file has been opened with the probate court, Respondent had ample opportunity to file claims under the Probate Code. S.C. Code §62-3-203(a)(6) allows a creditor to open an estate forty-five days after the death of the decedent. Additionally, S.C. Code §62-3-804(1)(b) references “a creditor seeking appointment as personal representative pursuant to Section 62-3-203(a)(6).” Therefore, Respondent had an opportunity to assert its claim in a probate proceeding any time between forty-six days and three hundred sixty-four days after the Decedent’s death and failed to do so.

Respondent has also argued that notwithstanding the expansive definition of claims in Section 804, their claims are still somehow excluded because of the alleged fraud. This is at odds with the language of the statute which expressly includes claims based on “contract, tort, or other legal basis” without any indication that any subclass of these three categories are excluded. Adding the phrase “except fraud claims” would have been a simple way to convey this intent, if that had been the will of the General Assembly. The absence of such a phrase strongly indicates that no such intent existed and

that neither fraud claims, nor anything else was meant to be excluded.

There is also no hint of a fraud exception in the case law. A claim for misappropriation of funds held in a Uniform Gift to Minors Act account was barred in *Phillips v. Quick*, 399 S.C. 226, 731 SE 2d 327 (S.C. App. 2012). Claims for both fraud and constructive fraud were barred in *In Re Estate of Hover* 407 S.C. 194, 754 S.E.2d 875(2014).

The entry of any deficiency judgment on Respondent's underlying action also if of no help to them. See *In Re Estate of Hover* 407 S.C. 194, 754 S.E.2d 875(2014) which held that: "Although the deficiency judgment was entered after the claims-filing time limits and arguably "arose after the decedent's death, this fact did not "toll" the time limits of the nonclaim statute as the claim that formed the basis of the deficiency judgment arose long before the deficiency judgment was entered. (Footnote omitted)

The discovery rule is also not available to save Respondent. The S.C Court of Appeals closed off this argument in *Phillips v. Quick*, 399 S.C. 226, 231; 731 SE 2d 327 (S.C. App. 2012) " Because we find no indication our legislature intended for the discovery rule to apply to the nonclaim statute, we conclude this rule does not extend to section 62-3-803."

Likewise, equitable considerations are unavailing in this context. See *In Re Estate of Hover* 407 S.C. 194, 754 S.E.2d 875(2014) to the effect that:

Furthermore, even though a decision in favor of the Estate may appear inequitable, equitable considerations are not a factor in the claims-barring analysis. Thus, neither Hover's continued payment on the Note after his mother's death or the act of default in the foreclosure proceedings can "override" or eliminate the nonclaim statute as this statute has been strictly applied in similar circumstances. See *Phillips v. Quick*, 399 S.C. 226, 230, 731 S.E.2d 327, 329 (Ct.App.2012)(" While equitable principles may extend the time for commencing an action under statutes of limitation, nonclaim statutes impose a condition precedent to the enforcement of a right of action and are not subject to equitable exceptions." (quoting *Estate of Decker v. Farm Credit Servs. of Mid-Am., ACA*, 684 N.E.2d 1137, 1139 (Ind.1997))); 34 C.J.S. *Executors & Administrators* § 547 (Supp.2013) ("Misleading statements, assurances, or conduct of the representative inducing a creditor to refrain from the due presentation of his or her claim do not estop the representative from contesting the claim because of such a failure to present the claim."). See generally *E.W.H.*, Annotation, *Effect of Conduct of Personal Representative Preventing*

*Filing of Claims Within Time Allowed by Statute of Nonclaim*, 66 A.L.R. 1415 (1930) (citing state and federal cases addressing the general rule that no promise on the part of a personal representative is sufficient to prevent the bar of the statute as to a claim not filed within the statutory period).”

No other considerations can save the Respondent from the inexorable march of the calendar. Therefore, the nonclaim statute serves as an absolute bar to Respondent's claims against Defendant Matthew Cody Gunter, as a nonprobate transferee of Paul D. Gunter. Likewise any claim against Paul D. Gunter's probate estate are barred. Claims against The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019, as a nonprobate transferee, of Paul D. Gunter, are also barred as to properties conveyed to the Trust by Paul D. Gunter, those being properties 10, 11, 12, 14 and 15 as listed on Trial Exhibit 52

## ARGUMENT 2

THE TRIAL COURT ERRED IN FINDING PREJUDICE TO RESPONDENT BY IMPROPERLY SHIFTING THE BURDEN OF PROOF TO NORTH EDISTO.

As noted by the trial court:

South Carolina "law will not permit one who is indebted at the time to give his property away, provided such gift proves prejudicial to the interest of existing creditors." *Gardner v. Kirven*, 184 S.C. 37, 191 S.E. 814, 816-17 (1937) (emphasis added).

The trial court improperly used its findings as to the existence of “badges of fraud” to shift the burden of proof not only as to intent, but also as to prejudice. Even though the trial court states the correct principle “where "one or more of the following 'badges of fraud' exist" fraudulent intent has been inferred by our courts” (Order filed March 7,2024.) (R. p.\_\_), it erroneously expanded the principle to also infer prejudice.

Further, Rule 301 South Carolina Rules of Evidence provides: “In all civil actions and proceedings not otherwise provided for by statute or by these rules, a presumption imposes on the party

against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast. (emphasis added)".

No presumption exists as to prejudice, and the tax returns entered in evidence (R. p. \_\_) establish the North Edisto had substantial assets and income at the time of the transfers and thereafter.

The tax returns entered in evidence for the period 2018 through 2021 show at least \$2,620,031 in assets in each of the years from the year before the transfers, until the filing of this action. ( Box F, Page 1 of Exhibits 37, 46, 47 and 48). (R. p. \_\_)

The tax returns entered in evidence for the period 2018 through 2021 show at least \$5,046,089 in gross income in each of the years from the year before the transfers, until the filing of this action. ( Line 1a, Page 1 of Exhibits 37, 46, 47 and 48). (R. p. \_\_)

The total value of the properties transferred by North Edisto (\$280,660.00) was therefore less than 11% of the lowest asset value shown on the tax returns, and slightly over 5.5% of the lowest year gross income for the relevant period.

Regardless of any presumed intent, Respondent failed to meet its burden as to prejudice.

### ARGUMENT 3

THE TRIAL COURT ERRED IN FINDING NORTH EDISTO FAILED TO RETAIN SUFFICIENT PROPERTY BY IMPROPERLY SHIFTING THE BURDEN OF PROOF TO NORTH EDISTO.

The Trial court correctly noted noted: The elements of a constructive fraudulent transfer are: "(1) the grantor was indebted to [the creditor] at the time of the transfer; (2) the conveyance was voluntary; and (3) the grantor failed to retain sufficient property to pay the indebtedness to the [creditor] plaintiff in full—not merely at the time of the transfer, but in the final analysis when

**the creditor seeks to collect his debt.** *In re J.R. Deans Co., Inc.*, 249 B.R. 121, 130 (Bankr. D.S.C. 2000) (citing *Mathis v. Burton*, 319 S.C. 261, 265, 460 S.E.2d 406, 408 (Ct. App. 1995)); see also *Gardner v. Kirven*, 184 S.C. 37, 191 S.E.814, 816-17 (1937) ("If in the final event the property of the debtor is not sufficient to pay his debts existing at the time of his voluntary conveyance, then such conveyance is null and void as to such debts.").(Order filed March 7,2024.) (R. p. \_\_)

The authorities cited by the trial court make it clear that the retention of sufficient property is a distinct and essential element of Respondent's claim. The property values and tax returns discussed above, lead to the same conclusion on the issue of retention of sufficient property as was reached on the issue of prejudice. Any burden shifting as to another element of Respondent's claim cannot make up for Respondent's failure to meet its burden of proving that North Edisto did not retain sufficient property.

#### ARGUMENT 4

THE TRIAL COURT ERRED IN CONCLUDING THAT THE TRANSFER OF PROPERTY 13 TO MATTHEW CODY GUNTER WAS PREJUDICIAL TO RESPONDENT'S WHEN THE PROPERTY WAS SUBJECT TO A PRIOR ARM'S LENGTH MORTGAGE THE EXCEEDED THE VALUE OF THE PROPERTY

In the event this Court finds that Respondent's action is not barred by S.C. Code §62-3-803(a) (See Argument 1 above), Respondent's claim against Property 13, which is owned by Appellant Matthew Cody Gunter, fails on the prejudice element required by *Gardner v. Kirven*, 184 S.C. 37, 191 S.E. 814, 816-17 (1937). The value of Property 13 is established by trial exhibit 52, introduced by Respondent as \$63,300.00 (R. p. \_\_). The Joint Stipulation of facts also establishes that Property 13 is subject to a prior arms length mortgage in favor of South State Bank. See also Joint stipulation filed January 31 2024, item 17.) (R. p. \_\_). Prejudice in this context is a wholly economic question of value that could go to satisfy respondent's claim. A property that is subject to a prior mortgage in excess of this value would provide no economic benefit and Respondent has not met its burden of proving how it

was prejudiced by the absence of this fully encumbered asset.

#### ARGUMENT 5

#### THE TRIAL COURT ERRED IN FINDING THAT THE TESTIMONY OF PAULA KNEECE WAS HEARSAY

Page 9 of the trial court's order concludes that the testimony of Paula Kneece was hearsay. (Order filed March 7, 2024.) (R. p. \_\_). First no contemporaneous objection was made on this basis as required by SCRE 103(a)(1). Moreover, even if a timely objection had been made, SCRE 803(3) regarding a declarant's "Then Existing Mental, Emotional, or Physical Condition" would apply. Finally Ms. Kneece's testimony was also based her involvement with her father's treatment for his ultimately fatal illness.

CONCLUSION

For the foregoing reasons, the Order of the Circuit Court should be reversed and the case remanded to the Lexington County Court of Common Pleas, with instructions to enter an order of dismissal as to The Paul & Brenda Gunter Revocable Trust UTD March 26, 2019; The Estate of Paul D. Gunter; and Matthew Cody Gunter, because the action was barred by S.C. Code § 62-3-803(a).

As to North Edisto Logging, INC., the trial court's order should be reversed because of Respondent's failure to meet their burden of proof as the North Edisto's insolvency, or the existence of prejudice to Respondent's as a result of the transfers complained of.

The associated *Lis Pendens* should be vacated and canceled of record.

Respectfully submitted,



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December 2, 2024