THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM BERKELEY COUNTY
Court of Common Pleas



The Honorable Dale Van Slambrook, Master-In-Equity

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Case No. 2014-CP-08-00321
Appellate Case No. 2024-000658

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Edgefield Holdings, LLC,

Respondent,

v.

Christian E. Hamlin,

Appellant,

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# RESPONDENT'S FINAL BRIEF

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## STATEMENT OF ISSUES ON APPEAL

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 THE CASE

This matter concerns execution upon a judgment and the limits of timing related thereto. More specifically, it involves whether it is sufficient for a court to merely enter an order concerning execution within ten years, even if the sale of the subject property would occur outside the ten-year period. Furthermore, there is a problem in this state of debtors seeking to delay and re-litigate the judgments against them in an effort to run out the ten-year clock. The Court of Appeals needs to stop debtors from taking advantage of the ten-year clock in an effort to withhold assets from creditors.

The arguments concerning levy and attachment by Appellant Hamlin are misguided. It is clear that execution never occurred and is not going to occur under the 2014 judgment, as Edgefield has clearly stated it will not pursue the recovery of the assets listed for sale in the subject order. Regardless, Edgefield clearly held a valid and enforceable judgment. Under South Carolina law, all that is required for a valid execution is that the court enter an order granting relief prior to the run of the ten-year period for judgment enforcement. However, the actual execution can take place after the ten-year period has run. In the case at bar, if the execution had been pursued post-entry of the February order, then the sheriff had four months in which to levy. S.C. CODE ANN. § 15-39-100.

## STANDARD OF REVIEW

In equity cases decided by a master, the appellate court reviews findings of fact in accordance with its own view of the evidence and makes it owns findings of fact. *Matter of Estate of Kay*, 423 S.C. 476, 479, 816 S.E.2d 542 (2018). A legal question in an equity case receives appellate review as in law. *North American Products, Inc. v. Richardson*, 396 S.C. 124, 720 S.E.2d 53 (Ct. App. 2011). Whether in equity or at law, the Court of Appeals undertakes a *de novo* review

of all issues purely of law properly presented on appeal without any particular deference to the lower court. *South Carolina Dept. of Transp. v. M&T Enter. Of Mt. Pleasant, LLC*, 379 S.C. 645, 667 S.E.2d 7 (Ct. App. 2008).

## STATEMENT OF FACTS

On February 17, 2014, HomeTrust Bank ("HomeTrust") obtained a judgment against Debtor in Berkeley County, South Carolina in Case No. 2014-CP-08-00321, in the amount of $107,712.34 (the "Judgment"). (R. pp. 37-41). The Judgment was filed under the Uniform Enforcement of Foreign Judgments Act, S.C. CODE ANN. § 15-35-900 *et seq*. The Judgment originated from North Carolina. The North Carolina judgment was filed in North Carolina on August 12, 2013. (R. pp. 1-2).

HomeTrust assigned its Judgment to Edgefield, with the Assignment of Judgment filed March 20, 2023. (R. pp. 47-50). Edgefield initially attempted to execute upon its lien by filing a foreclosure action against Hamlin in Case No. 2023-CP-08-00783 on March 20, 2023 (the "Foreclosure"). (R. pp. 42-46).

Hamlin was served with the Foreclosure Complaint on March 24, 2023. Following receipt of an extension, Hamlin filed a Motion to Dismiss on May 8, 2023. (R. pp. 54-55). Due to the backlog of motions in the circuit, the Motion to Dismiss was not heard until October 12, 2023, by Judge Jennifer B. McCoy. Following the hearing, the Court denied the Motion to Dismiss; however, the decision and order was not filed until January 19, 2024. (R. pp. 18-20).

Hamlin filed a Motion to Reconsider the Order Denying the Motion to Dismiss on January 22, 2024, which was denied on February 6, 2024. (R. pp. 64-66 & pp. 24-26). Due to these procedural steps and delays, Hamlin had achieved his goal: By filing a Motion to Dismiss that lacked legal merit, he had successfully delayed the case for long enough so that there lacked

sufficient time to complete a foreclosure and sale prior to the end of the ten year length of the judgment, despite the Foreclosure being filed eleven months prior to expiration of the Judgment.

Realizing that the delay in the Foreclosure Lawsuit would result in possibly being unable to foreclose on Hamlin's real property, Edgefield obtained a Writ of Execution on the Judgment on July 5, 2023. (R. pp. 51-53). The Sheriff did not return the Judgment *nulla bona* until November 30, 2023. (R. pp. 56-58). A Petition for Supplemental Proceedings was filed the same day, with a Rule to Show Cause and Order for supplemental proceedings entered on December 5, 2023, setting a hearing date for December 18, 2023. (R. pp. 59-60 & pp. 6-9). Despite completing service, Hamlin failed to attend the hearing.

A Supplemental Rule to Show Cause and Order was entered December 18, 2023, setting a hearing date for January 4, 2024. (R. pp. 10-13). Hamlin filed a Motion to Dismiss the supplemental proceedings on January 3, 2024. (R. pp. 61-63). Following the hearing, the Court issued an Order Denying the Motion to Dismiss on January 12, 2024, and further order the production of documents concerning Hamlin's property. (R. pp. 14-17). Hamlin again filed a Motion to Reconsider, which was denied. (R. pp. 64-66 & pp. 21-23).

Following a hearing on February 5, 2024, the Court issued an Order on February 9, 2024, finding that Hamlin had assets that could be executed upon in partial satisfaction of the Judgment, including the sale of two vehicles, a charging order on Hamlin's distributional interest in a limited liability company, and foreclosure of that distributional interest. (R. pp. 27-33). The Court ruled that by entering the order prior to the ten-year run of the Judgment, it complied with South Carolina law concerning execution on judgments, as the relief itself was ordered prior to the expiration of the Judgment.

Because of the failure to get an order on the sale of the real property, Edgefield elected to not pursue the sale of the assets under the February 9, 2024 Order. Despite this lack of execution, Hamlin filed this appeal. The issues raised by Hamlin in this appeal are moot, as Edgefield has acknowledged that it does not plan to seek a sale of any of the assets listed in the February 9, 2024 Order.

## ARGUMENT

### I. THE CIRCUIT COURT CORRECTLY HELD THAT SO LONG AS AN ORDER FOR EXECUTION ON ASSETS WAS ENTERED PRIOR TO THE TEN YEAR TIME LIMIT ON EXECUTION OF JUDGMENTS, THE EXECUTION ITSELF COULD OCCUR AFTER THE TEN YEAR PERIOD HAD CONCLUDED.

#### A. The Master Correctly Held That Execution May Occur After the Ten-Year Period Has Concluded So Long as the Operative Order Was Entered Prior to the Conclusion of the Ten Year Period.

Pursuant to S.C. CODE ANN. § 15-39-30, "Executions may ***issue*** upon final judgments or decrees at any time within ten years from the date of the original entry thereof." (emphasis added) The February 9, 2024 Order served as issuance of the order of execution, and complied with the statutory requirements. All that is necessary is that the order is entered prior to the ten-year period running, and not that the sale be completed in this time period.

In *Gordon v Lancaster*, 425 S.C. 386, 823 S.E.2d 173 (2018), an order for execution was entered after the ten-year period had run; on appeal the Court held that such an order was not enforceable. The Court chose to uphold the traditional rule "that a judgment expires after ten years from its enrollment." *Id.* at 393. Under *Gordon*, the rule on execution went back to a "bright-line" test and deadline. *Gordon* stands for the clear rule that an **order** for execution must be entered within the ten-year rule of S.C. CODE ANN. § 15-39-30.

However, the case does not rule on what should occur if the order for execution is issued prior to the deadline, but the execution itself occurs after the ten-year period has run. As is clear from the language of the statute, the situation in the case at bar complies with the statute as well as with the ruling in *Gordon*.

In *Garrison v. Owens*, the Court held that "[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 the statute, if such time expires *before the action is tried.*" 258 S.C. 442, 446-47, 189 S.E.2d 31 (1972) (*emphasis added*). In *Garrison* the judgment creditor sought to enforce his judgment by filing an action approximately two months before it reached its ten-year anniversary. He did not get the case in a posture such that the court could order any relief to satisfy the judgment before the active energy window expired. In that case, the Supreme Court held simply, and narrowly, that if a judgment reaches its ten-year mark before "the action is tried" the fact that the judgment creditor filed before that date will not allow him to proceed with collection efforts. *Id.* 258 S.C. at 446-47. It did not deal with a situation in which the creditor pursued collection to the point relief could be ordered by the court during the ten-year active energy window but the actual sale occurred after the window.

The much more recent decision in *Gordon v. Lancaster* was confined to the Supreme Court addressing "the narrow question of whether a creditor may execute on a judgment more than ten years after its enrollment when the time period has expired during the course of litigation." *Gordon v. Lancaster*, 425 S.C. 386, 387, 823 S.E.2d 173 (2018). In *Gordon*, the bench trial through which the Plaintiff sought to collect on a 2001 judgment did not take place until 2013; years after the ten-year mark had passed. By that time Gordon had no right to any relief upon what was an over ten-year-old judgment. Neither case says the collection proceedings end when the judgment reaches

ten years. *Garrison* said "bringing an action" to collect will not extend the life of a judgment and *Gordon* held a creditor has ten years to obtain an order to execute upon a judgment.

None of the legal sources upon which Appellant Hamlin relies in this appeal hold or state that a judgment creditor should be denied relief when an order to execute is issued prior to the ten-year period reaching an end, regardless of when the execution occurs.

In this case Edgefield as the creditor executed on the Judgment during its ten-year active energy time period. Edgefield first sought execution nearly one year prior to the end of the ten-year period, commencing such procedures immediately following assignment of the judgment to it. Edgefield doggedly pursued collection efforts in the face of an onslaught of delay tactics and abuse of the legal system, noncompliance by Hamlin with Court orders, and Hamlin's taking advantage of delays in the court system that resulted from the closures of the court system during Covid. Ultimately, Edgefield was able to get the case in a posture such that the Master could order Hamlin's property be sold to satisfy the Judgment, at least in part, before it reached its ten-year mark. At that point the Master should and did have ordered judicial sale of the property in his February 9, 2024 Order, regardless of whether the sale process would end shortly after the judgment reached the ten-year mark. As admitted by Hamlin in his brief, the levy and sale statute provides that the sheriff has four months in which to sell the property following entry of the execution order. S.C. CODE ANN. § 15-39-100.

The relief to which Edgefield was undeniably entitled was ordered, and the fact that Edgefield's receipt of the proceeds from the sale would have come shortly after the judgment reached ten-years old is, and should be clearly deemed by this Court, irrelevant and an erroneous basis for upsetting the lower court's order. Edgefield's right to the relief of a judicial sale of the property vested when the Master determined Edgefield had a right to such relief; a date that was

undeniably before the Judgment reached its ten-year mark. Accordingly, it was appropriate for the Master to enter an order granting Edgefield its right to receive satisfaction of its valid and unexpired judgment. The same would be the case if a collection matter were tried to completion before the judgment underlying it reached its ten-year anniversary. In that scenario if a creditor obtained an order directing the debtor to do something to pay/satisfy the judgment debt prior to that judgment reaching its ten-year anniversary, the creditor would inevitably receive that relief at a later date. The relevant point is, however, that the creditor is entitled to that relief when it is ordered and should not be denied that vested right simply because it may not be realized until after the judgment surpasses its active energy window. Such is the case here and the Master did not err by ordering that Edgefield get the relief to which it was entitled under the law. Under the actual holdings in *Garrison* and *Gordon*, the creditor is entitled to receive the relief ordered by the Court during the ten-year active energy window regardless of when it would be received. Stated differently, neither of those cases forecloses that right and the Master properly ruled in basing his holding on the clear statutory language at play.

To accept Hamlin's arguments will allow debtors to continue to abuse the trial court system. Debtors are increasingly seeking to re-litigate their judgments, disrupting the execution process by filing frivolous pleadings and taking advantage of the delays inherent in getting motions scheduled in certain circuits in this state, all in an effort to run out the clock.

Because the court would not dismiss the appeal despite Edgefield taking the position that it does not intend to pursue the levy ordered in this matter, the Court should issue a holding that (a) a creditor may recover on its judgment so long as the order for relief is entered prior to the close of the ten year period, even if the sale of assets will occur after the ten year period has closed, and (b) that judges are given leeway to allow for something akin to equitable tolling if the court

system or the actions of the debtor causes delay so that the creditor could not execute on its judgment despite it taking reasonable actions to do so.

**B. The Appeal Is Moot**

As raised in a previous motion filed by Edgefield, the issues in this appeal are moot. In 2023 and 2024, Edgefield pursued execution efforts on the judgment. However, following the filing of this appeal, Edgefield made the determination that it no longer desires to pursue the relief it obtained under the captioned case number. Regardless of any success it may obtain in this appeal in opposing Appellant's positions, it will not take any efforts to execute upon the judgment or the orders issued under the captioned case (Case No. 2014-CP-08-00321). Therefore, any ruling on appeal will be advisory in nature, as the issues on appeal are now moot.

In general, this court may only consider cases where a justiciable controversy exists. *See Byrd v. Irmo High Sch.*, 321 S.C. 426, 430, 468 S.E.2d 861, 864 (1996). "A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial determination, as distinguished from a contingent, hypothetical or abstract dispute." *Pee Dee Elec. Coop., Inc. v. Carolina Power & Light Co.*, 279 S.C. 64, 66, 301 S.E.2d 761, 762 (1983). "A case is moot where a judgment rendered by the Court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the Court." *S.C. Ret. Syst. Inv. Comm'n v. Loftis*, 402 S.C. 382, 384, 741 S.E.2d 757, 758 (2013). "[M]oot appeals result when intervening events prevent a decision on appeal from having an immediate impact on the parties." 15 *S.C. Jur. Appeal and Error* § 19 (Supp. 2014). "Appellate court[s] will not pass on moot and academic questions or make an adjudication where there remains no actual controversy." *Linda Mc Co., Inc. v. Shore*, 390 S.C. 543, 558, 703 S.E.2d 499, 506 (2010).

"A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief." *Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001) (*quoting Mathis v. South Carolina State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973)). "The function of appellate courts is not to give opinions on merely abstract or theoretical matters, but only to decide actual controversies injuriously affecting the rights of some party to the litigation. Accordingly, cases or issues which have become moot or academic in nature are not a proper subject of review." *Wallace v. City of York*, 276 S.C. 693, 694, 281 S.E.2d 487, 488 (1981).

"In the civil context, there are three general exceptions to the mootness doctrine." *Curtis v. State*, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001). "First, an appellate court can take jurisdiction, despite mootness, if the issue raised is capable of repetition but evading review." *Id.* "Second, an appellate court may decide questions of imperative and manifest urgency to establish a rule for future conduct in matters of important public interest." *Id.* at 568, 549 S.E.2d at 596. "Finally, if a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though the appellate court cannot give effective relief in the present case." *Id.* at 568, 549 S.E.2d at 596.

In the case at bar, the intervening event is that Edgefield waives and releases any rights it may have to execute its 2014 judgment under the appealed orders. None of these exceptions apply to the case at bar. By filing this motion and informing the Court that Edgefield will not seek execution under the appealed orders, Edgefield is estopped from pursuing recovery under the 2014 judgment. The judgment is now more than ten years old. Unless the Court holds that equitable estoppel or some other allowance exists to enforce the judgment outside the ten-year period, the

judgment no longer has active energy and no further execution efforts can occur under the 2014 judgment.

## CONCLUSION

For the foregoing reasons, the Court should **AFFIRM** the Circuit Court's order that certain assets of Hamlin be sold to satisfy the underlying judgment, as the order for execution was entered with ten years of the dare of the judgment, and therefore it is proper for the levy and sale to take place after the run of the ten-year period.

Respectfully Submitted,

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May 20, 2025
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**RESPONDENT'S RULE 211 CERTIFICATION**

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The undersigned certifies that this Final Brief of Respondent Edgefield Holdings, LLC complies with Rule 211(b), SCACR.

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