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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Charles B. Simmons, Master in Equity  
And Special Circuit Court Judge

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Case No. 2019-CP-23-00367  
Appellate Case No. 2025- 001522

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Synovus Bank, .....Respondent,

v.

Jeffrey L. Clemens, .....Appellant.

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**FINAL BRIEF OF RESPONDENT**

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Mary M. Caskey  
HAYNSWORTH SINKLER BOYD, PA  
Post Office. Box 1189  
Columbia, SC 29211-1189  
Telephone: (803) 779-3080  
[mcaskey@hsblawfirm.com](mailto:mcaskey@hsblawfirm.com)

*ATTORNEYS FOR RESPONDENT*

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## **STATEMENT OF ISSUES ON APPEAL**

- I. Did the Master-in-Equity Properly Order Payment of Assets Received by the Debtor after a Rule to Show Cause Order was Entered, Prohibiting Transfer of Assets?
- II. Did the Master-in-Equity Properly Order Attachment of the Computershare Payments after considering the Evidence Surrounding the Manner of the Computershare Payments?

## **STATEMENT OF THE CASE**

Respondent Synovus Bank (“Synovus”) initiated supplemental proceedings to collect a judgment entered against Appellant Jeffrey L. Clemens (“Clemens”) on June 6, 2019, in the amount of \$395,998.18 (the “Judgment”). (R. p. 1). On December 2, 2021, the Master-in-Equity issued a charging order (the “2021 Charging Order”) based on Clemens testimony that he held ownership interests in multiple entities, including Clemens Family Corporation, ITSPE, LLC (“Computershare”)<sup>1</sup>, Snap Dragon Way, LLC, Clemens Realty Group, LLC, and ABCD Treats of Greenville, LP (collectively, the “Companies”) from which he received dividends, distributions, or other payments. (R. p. 2). The 2021 Charging Order attached the Judgment to all distributions from the Companies for a twenty-four-month period, with the option to extend the 2021 Charging Order once it expired. (R. pp. 2-3). Clemens did not oppose the attachment of the Judgment to 100% of the payments from any of the Companies, but in particular as it relates to his appeal, the payments by Computershare. (R. p. 29). He also did not appeal the 2021 Charging Order. (R. p. 29). The 2021 Charging Order expired on December 2, 2023. (R. pp. 1-4).

After the 2021 Charging Order expired, Synovus filed a partial satisfaction of the Judgment to reflect payments made by the Companies while the Charging Order was pending, and recommenced supplemental proceedings in part to extend the 2021 Charging Order. (R. p. 5). On September 18, 2024, the Master-in-Equity issued an Order and Rule to Show Cause (“RTSC

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<sup>1</sup> This interest has been referred to by several different names throughout the history of this case, due to changes in the entity names that control and owe the money to Clemens. First, in the 2021 Charging Order, it is identified as ITSPE, LLC (either directly or through Wells Fargo, as trustee). Second, in the 2025 Charging Order, it is identified as Computershare Trust Company, National Association, in its capacity as Indenture Trustee, as successor to Wells Fargo Bank, N.A., with respect to the Series A Notes and Series B Notes pursuant to the Chapter 11 Plan of The Cliffs Club and Hospitality Group, Inc. et al. (“Computershare”). Third, in Appellant’s Initial Brief, it is referred to as “proceeds from the IT-SPE.” All references describe the same interest, which will be referred to herein as “Computershare.”

Order”), requiring Clemens to appear and testify regarding his assets and prohibiting him from transferring assets outside the ordinary course of business until a hearing could be held. (R. pp. 6-11). The hearing was initially scheduled for November 21, 2024, but was later continued to December 12, 2024, at Clemens’s request because he said he would be out of the country. (R. pp. 12-13).

After the RTSC Order was entered but before the hearing on December 12, 2024, Clemens received a payment from Computershare on December 6, 2024, in the amount of \$9,494.00 (the “Computershare 2024 Payment”). (R. p. 37).

Despite having requested a continuance until December 12, 2024, Clemens failed to appear at the hearing and refused to provide all of the financial records required under the RTSC Order. (R. pp. 14-18). As a result, the Master-in-Equity issued an order on January 2, 2025 (the “January 2025 Order”), extending the 2021 Charging Order for ninety days, directing Clemens to produce outstanding financial documents by January 15, 2025, assessing \$1,748.64 for failing to appear, and requiring Clemens to submit to deposition on January 31, 2025. (R. pp. 15-17). Clemens refused to pay the amount ordered under the January 2025 Order, and on January 26, 2025, Synovus filed a Motion requesting a hearing in supplemental proceedings, requesting that the Court determine whether Clemens failed to comply with the 2021 Charging Order, the January 2025 Order, and whether there were assets to which the Judgment could attached. (R. pp. 34-35).

A hearing occurred on Plaintiff’s Motion for Supplemental Proceedings Hearing on March 4, 2025. (R. pp. 64-78). At that hearing, Synovus presented Clemens’ deposition testimony, in which he admitted that he had not tendered all distributions subject to the 2021 Charging Order, but for the first time, disputed the right of Synovus to have the Judgment attached to the entire Computershare distribution, based on an argument that he and his wife were owed the money

jointly. (R. p. 71, lines 20-24). The Master-in-Equity reviewed Clemens' deposition testimony and heard argument regarding both the Computershare 2024 Payment<sup>2</sup> and a prior payment dated November 30, 2023 (the "Computershare 2023 Payment"). (R. pp. 71-78). The Master-in-Equity extended the charging order through September 12, 2026, but took the remaining issues under advisement (the "March 2025 Order"). (R. pp. 22-27). The Master-in-Equity asked for proof by Clemens that the Computershare payments were payments of a debt owed to both Clemens and his wife, and for copies of the checks from Computershare to determine to whom the payments were made payable. (R. p. 28). Clemens submitted, for the first time on March 6, 2025, information as to the origination of the money owed by Computer, which purported to show that the funds were loaned jointly by Clemens and his wife to the Cliffs. (R. p. 36-51).

On June 30, 2025, the Master-in-Equity issued its findings (the "2025 Charging Order"), determining that: (1) The Computershare 2023 Payment was subject to the 2021 Charging Order and must be paid by Clemens and applied to the Judgment; (2) The Computershare 2024 Payment was subject to the RTSC Order and was received before Synovus could seek modification of the charging order; and (3) Based on the evidence presented as of the March 2025 Order, all Computershare payments constituted Clemens's personal property arising from his ownership or distribution interests. (R. pp. 28-31). Based on subsequently produced evidence, the Master-in-Equity limited future Computershare payments to fifty percent (50%), while applying prior payments in full to the Judgment. (R. p. 29). The Court did not apply the 50% allocation retroactively, given that Clemens had never raised the issue of ownership of the Computershare

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<sup>2</sup> At the March 4, 2025, hearing, Synovus was aware only that Clemens received a check from Computershare for approximately \$9,000. Synovus could not verify the exact amounts and dates of payment until much later, as Clemens had not produced the requested financial documents despite the January 2025 Order and did not recall the check amount during the January 30, 2025, deposition or the March 4, 2025 hearing.

payments previously and did not provide proof of the loan to the Cliffs until after March 2025. (R. p. 29).

### **STANDARD OF REVIEW**

Supplementary proceedings are equitable in nature. *Ag-Chem Equip. Co., Inc. v. Daggerhart*, 281 S.C. 380, 383, 315 S.E.2d 379, 381 (Ct. App. 1984). In an equitable matter referred to a master-in-equity for final judgment, the appellate court may find facts in accordance with its own view of the preponderance of the evidence. *Van Blarcum v. City of North Myrtle Beach*, 337 S.C. 446, 450, 523 S.E.2d 486, 488 (Ct. App. 1999). However, the appellate court is not required to disregard the findings of the master-in-equity. *Friarsgate, Inc. v. First Fed. Sav. & Loan Ass'n*, 317 S.C. 452, 456, 454 S.E.2d 901, 904 (Ct. App. 1995). The trial court's consideration of evidence will not be reversed absent an abuse of discretion or legal error resulting in prejudice. *Wright v. Craft*, 372 S.C. 1, 33, 640 S.E.2d 486, 504 (Ct. App. 2006).

### **ARGUMENT**

#### **I. THE MASTER-IN-EQUITY PROPERLY COMPELLED PAYMENT OF THE COMPUTERSHARE 2024 PAYMENT BASED ON THE RTSC ORDER.**

Clemens incorrectly asserts that no obligation existed regarding the Computershare 2024 Payment because the 2021 Charging Order had expired. However, the Master-in-Equity's ruling was based on the RTSC Order, issued pursuant to the Order of Reference and S.C. Code Ann. § 15-39-440, which expressly prohibited Clemens from transferring assets prior to a hearing. The Master-in-Equity did not require turnover of the Computershare 2024 Payment because of the 2021 Charging Order.

The obligation to remit the Computershare 2024 Payment arose only after the Master-in-Equity afforded Clemens an opportunity to explain why the payment should not apply to the

Judgment. Clemens did not any legitimate basis to argue that the Computershare 2024 Payment was an asset to which the Judgment should attach. Instead, his only argument is that there was no charging order in place, which ignores the effect and validity of the RTSC Order and S.C. Code Ann. § 15-39-440.<sup>3</sup>

The 2025 Charging Order found that the Computershare 2024 Payment was received while Clemens was subject to the RTSC Order and that, at the time, all evidence demonstrated the payment was made solely to Clemens. Accordingly, the Master-in-Equity did not require payment based on the expired 2021 Charging Order, but pursuant to subsequent rule to show cause orders properly extending its effect plus the requirement not to transfer any assets. The Master-in-Equity did not err in exercising this power pursuant to S.C. Code Ann. § 15-39-440 and the findings and rulings in the 2025 Charging Order were correct.

**II. THE MASTER-IN-EQUITY PROPERLY HELD THAT THE COMPUTERSHARE 2024 PAYMENT AND THE COMPUTERSHARE 2023 PAYMENT ATTACHED TO THE JUDGMENT.**

Based on the evidence before him, the Master-in-Equity correctly determined that the Computershare 2024 Payment and the Computershare 2023 Payment represented assets of Clemens subject to attachment to be applied to the Judgment. The 2021 Charging Order was based on Clemens' own testimony regarding his ownership interests in the Companies and right to payment from Computershare. At the time the Computershare 2024 Payment and the Computershare 2023 Payment were received, the evidence of record was that the payments arose

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<sup>3</sup> Clemens also ignores the fact that if the hearing had occurred on November 21, 2024, as originally planned, the Charging Order would have been extended, and the Computershare 2024 Payment would have been subject to the charging order at that time. Clemens took advantage of the continuance and then failed to appear at the hearing rescheduled at his request, demonstrating unclean hands.

from a debt owed to Clemens, and all of the checks were made payable to Clemens only. There was never a check presented showing payment by Computershare to Clemens and his wife.

Only after the Master-in-Equity extended the charging order through September 2026 did Clemens produce contrary documentation, prompting the Master-in-Equity to limit future payments to fifty percent (50%). This decision reflects a proper exercise of discretion based on the evidence available at each stage and therefore there is no reversible error.

**III. ANY REQUESTED RELIEF AGAINST SYNOVUS IS NOT PRESERVED FOR APPELLATE REVIEW.**

Clemens argues for consideration of \$100,000.00 toward the Judgment and acknowledgement of voluntary payments for 11 years. (App. Brief at 6 &7.) Clemens did not raise these issues to the Master-in-Equity at any hearing, the Master-in-Equity did not rule on anything like this, and Clemens raises it for the first time in its appeal. Thus, it is not preserved for appellate review. *Staubes v. City of Folly Beach*, 339 S.C. 406,412 529 S.E.2d 543,546 (2000) ("it is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review.")

This rule applies universally, including constitutional arguments and South Carolina explicitly rejects the plain error doctrine. *State v. Sheppard*, 391 S.C. 415, 421, 706 S.E.2d 16, 19 (2011). Further, the issues which Clemens argues could entitle it to relief against Synovus were not in the statement of facts. SCACR 208 (b)(1)(B) ("ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal.").

**CONCLUSION**

For the foregoing reasons, the Master-in-Equity ruled that the Judgment should attach to the Computershare Payments, and those funds should be paid to Synovus. Therefore, the Court should affirm the June 2025 Charging Order.

Respectfully submitted,

*s/Mary M. Caskey*

Mary M. Caskey (SC Bar No. 76198)  
HAYNSWORTH SINKLER BOYD, P.A.  
Post Office Box 11889  
Columbia, South Carolina 29211-1189  
Telephone: (803) 779-3080  
[mcaskey@hsblawfirm.com](mailto:mcaskey@hsblawfirm.com)

*ATTORNEYS FOR RESPONDENT*

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