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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

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

Appellate Case No. 2025-001522

Synovus Bank,..... Respondent,

v.

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

APPELLANT'S FINAL BRIEF

/S/ James G. Carpenter

S.C. Bar No. 1136

THE CARPENTER LAW FIRM, PC

819 E. North Street

Greenville, South Carolina 29601

(864) 235-1269

Attorneys for Appellant

July 8, 2026

Other Counsel of Record:

Mary Caskey

Haynesworth Sinkler Boyd, PA

PO Box 1889

Columbia, SC 29211

Attorneys for Synovus Bank

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STATEMENT OF ISSUES ON APPEAL

- 1. When the charging order has expired by its terms, is the judgment creditor entitled to payment on the debt from monies received after the expiration of the charging order?**
- 2. When money received by judgment debtor is the partial repayment of an investment loan, made jointly by the debtor and his wife from marital assets, is the judgment creditor entitled to 100% of the repayment?**

STATEMENT OF THE CASE

Appellant Jeffrey L. Clemens, a realtor, has borrowed money from Synovus Bank many times, often backed by real estate. On the loan at issue, Clemens's wife, Kelly B. Clemens, did not sign the note. A few years later, in 2008, the real estate market suffered a severe crash of real estate values and liquidity. Being a realtor, Clemens does not receive a regular salary; he receives compensation only by sales commissions. After the crash, Clemens and his wife faithfully paid the \$3200 loan payment each month on the lot loan out of marital assets, until 2019, and then Clemens became unable to repay the loan. The bank sued him on the note.

The Court awarded the bank a judgment against Clemens for \$395,998.18. The Sheriff's office returned the judgment *nulla bono*. The bank then brought supplemental proceedings, including requests for production documents and the deposition of Clemens. Supplemental proceedings "provid[e] for examination of the judgment debtor for the purpose of discovering property out of which the judgment against him may be satisfied." *Lynn v. Int'l Bhd. of Firemen & Oilers*, 228 S.C. 357, 362, 90 S.E.2d 204, 206 (1955).

"If a judgment is unsatisfied, the judgment creditor may institute supplementary proceedings to discover assets." *Johnson v. Serv. Mgmt., Inc.*, 319 S.C. 165, 167, 459 S.E.2d 900, 902 (Ct. App. 1995), *aff'd*, 324 S.C. 198, 478 S.E.2d 63 (1996). "Supplementary proceedings are equitable in nature." *Ag-Chem Equip. Co. v. Daggerhart*, 281 S.C. 380, 383, 315 S.E.2d 379, 381 (Ct. App. 1984).

First Citizens Bank and Trust Company, Inc. v. Taylor, 431 S.C. 149, 157-58, 847 S.E.2d 249, 253 (2020).

The Court held a hearing on the supplemental proceedings on November 16, 2021, and entered a Charging Order on December 2, 2021 (R. pp. 1-4). The Charging Order required that various dividends, distributions, profits, and other amounts payable from corporations and companies in which Clemens owned an interest must be attached (R. pp. 1-4).

South Carolina Code Section 15-39-410 provides the court “may order any property of the judgment debtor, not exempt from execution, *in the hands either of himself or any other person or due to the judgment debtor*, to be applied toward the satisfaction of the judgment.” S.C. Code Ann. § 15-39-410 (2005) (emphasis added).

First Citizens Bank and Trust Company, Inc. v. Taylor, 431 S.C. 149, 158, 847 S.E.2d 249, 253 (2020). The Charging Order covered, among other things, “amounts payable from . . . IT-SPE, LLC.” (R. pp. 1-4). By its terms, the Charging Order was effective for 24 months; it expired December 2, 2023. (R. pp. 1-4.)

The Court entered an Order and Rule to Show Cause on September 18, 2024, that restricted Clemens from “transferring any assets out of the ordinary course of business until otherwise ordered by this Court.” (R. pp. 6-11).

Later, the Circuit Court extended the Charging Order for 90 days starting December 12, 2024, until March 12, 2025. (R. pp. 14-18). Thereafter, the Court entered an Order on March 14, 2025, extending the Charging Order from March 13, 2025, to September 21, 2026 (R. pp. 22-27). Clemens is not challenging the Judgment, the entry of the Charging Order, or its extension.

Clemens challenges only the Court’s Order entered on June 30, 2025, which required Clemens to pay the Bank \$9,494 that was paid to him from the IT-SPE in December 2024, after the Charging Order had expired, and before it was renewed or extended (R. pp. 28-31). Clemens contends this compulsion violates his rights to due process.

Clemens further contends that requiring him to pay on the judgment from funds which are a repayment of a loan or investment made jointly by him and his wife, from marital assets, exceeds the legitimate power and judgment of the court. The amount payable on the judgment should be only that part of the repayment attributable to the assets of Clemens, not that attributable to the assets of his wife, as the Court acknowledged in the Order entered June 30, 2025 (R. pp. 28-31).

STANDARD OF REVIEW

“‘Our scope of review for a case heard by a Master permits us to determine facts in accordance with our own view of the preponderance of the evidence.’ *King v. James*, 388 S.C. 16, 24, 694 S.E.2d 35, 39 (Ct. App. 2010).” *First Citizens Bank and Trust Company, Inc. v. Blue Ox, LLC*, 422 S.C. 461, 466, 812 S.E.2d 418, 420 (2018).

“On appeal from an action in equity, [the appellate court] may find facts in accordance with its view of the preponderance of the evidence.” *Walker v. Brooks*, 414 S.C. 343, 347, 778 S.E.2d 477, 479 (2015). “However, this broad scope of review does not require this court to disregard the findings at trial or ignore the fact that the [master] was in a better position to assess the credibility of the witnesses.” *Laughon v. O’Braitis*, 360 S.C. 520, 524-25, 602 S.E.2d 108, 110 (Ct. App. 2004)

First Citizens Bank and Trust Company, Inc. v. Taylor, 431 S.C. 149, 156-57, 847 S.E.2d 249, 253 (2020).

“‘Supplementary proceedings are equitable in nature.’ *Ag-Chem Equip. Co. v. Daggerhart*, 281 S.C. 380, 383, 315 S.E.2d 379, 381 (Ct. App. 1984).” *First Citizens Bank and Trust Company, Inc. v. Taylor*, 431 S.C. 149, 157, 847 S.E.2d 249, 253 (2020).

ARGUMENT

After the charging order entered December 2, 2021, had expired, Clemens received money from an investment made many years earlier. On December 6, 2024, Clemens received a check for \$9,494. This check should not be required to be applied to the debt. First, the Court's prior charging order had expired in December, 2023, a year earlier. Second, the check represents a partial repayment of a \$100,000 loan that he and his wife made from joint funds to the Cliffs in 2010, to try to keep the Cliffs afloat financially. Clemens presented to the court a copy of the Subscription Agreement dated April 1, 2010, substantiating the terms of the loan (R. pp. 40-51).

Clemens also presented to the Circuit Court a copy of his check to the Cliffs in the amount of \$95,000, and another check amount of \$5,100 (R. pp. 52-53). Both checks were paid from the joint account of Clemens and his wife. Clemens and his wife have received back only about \$30-\$40,000 of the \$100,000 investment. Accordingly, this money is not income, but it represents only a partial repayment of their investment.

Clemens contends that because the previous Charging Order had expired a year earlier, it was no longer in force, and he had no legal obligation to pay the money he received to the judgment creditor. The Court's Charging Order entered December 2, 2021, was very specific on its timing, and on any party's ability to extend the Charging Order, which the bank had failed to do for more than a year after its expiration (R. pp. 1-4).

Second, the proceeds from the IT-SPE arose from an investment in The Cliffs subdivision, where Clemens and his wife owned property for many years. At some point, The Cliffs subdivision was having financial difficulty and appealed to the lot owners in the subdivision to invest or lend money to the developer to sustain him through what he hoped would be a temporary time of cash

flow shortage. Clemens and his wife lent or invested money with the developer, and after many years, they received a partial repayment of their loan or investment.

The Circuit Court found in its Order entered June 30, 2025, and acknowledged that Clemens and his wife had jointly contributed marital funds to lend or invest the money. Accordingly, Clemens contended that any proceeds from the IT-SPE should be split, and only that half of the proceeds attributable to Clemens be applied to this judgment debt (R. pp. 28-31).

The Circuit Court ruled that from the date of the order, and going forward, only one half of the funds would be payable, but the Court ruled that looking back, despite the source being jointly owned marital funds, those proceeds received in 2023 and 2024, must be paid to the Bank **in whole**, including those funds equitably belong to Clemens's wife (R. pp. 28-31). This ruling violates Clemens's rights to due process. *See First Citizens Bank and Trust Company, Inc. v. Taylor*, 431 S.C. 149, 157, 847 S.E.2d 249, 253 (2020).

Clemens does not contest the need to pay Synovus 50% of the \$6,145.17, received from the IT-SPE in November 2023, while the Order was in force, but objects to paying 100% of those funds, since the Court found, those proceeds arose from marital funds, jointly owned.

Furthermore, in an earlier effort to address the debt in good faith, and work out a settlement of this Judgment, and Clemens and his wife surrendered to the Bank an unimproved and unencumbered lot that they owned in the Cliffs subdivision, in partial satisfaction of the debt. Thereafter, through its poor management or lack of management, the bank allowed this lot to be sold at a property tax sale, where it generated only \$8,000, to apply to the debt. That same lot was later sold for \$100,000. Clemens and his wife should have been credited with the full \$100,000 value of that lot. The lot should not have gone to tax sale, and the bank should have applied the full market value of the lot against the debt. Accordingly, the bank has failed to respond reasonably

to Clemens's numerous overtures to resolve this matter amicably, and has made no serious offers to settle this debt.

Clemens and his wife have had several loans with the bank over many years and have repaid more than a million dollars in principal and interest on multiple loans from the bank.

Finally, Clemens and his wife paid, out of joint marital funds, monthly payments of \$3,200 per month for more than 11 years on this loan at issue. which the Bank has not seemed to take into consideration in the futile negotiations to resolve this dispute short of litigation, judgment, and supplemental proceedings.

CONCLUSION

WHEREFORE, Clemens prays the Court to reverse the judgment of the Circuit Court and rule that after the Charging Order had expired, it was error to compel payment from Clemens on the debt; and any proceeds from the IT-SPE should be split 50/50 with only half of the proceeds representing the equitable interest of the debtor be applied to this debt.

Respectfully submitted,
THE CARPENTER LAW FIRM, P.C.

/S/ James G. Carpenter
S.C. Bar No. 1136
819 E. North Street
Greenville, SC 29601
Telephone: (864) 235-1269
Facsimile: (864) 331-3083
Attorney for Appellant

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Certificate of Service

The undersigned attorney hereby certifies that he served a copy of the foregoing Appellant's Final Brief on counsel for Defendants by email as allowed by the rules on Monday, July 8, 2026, to the following:

Mary Caskey
Haynesworth Sinkler Boyd, PA
PO Box 1889
Columbia, SC 29211
mcaskey@hsblawfirm.com
Attorney for Synovus Bank

/S/ James G. Carpenter
S.C. Bar No. 1136
THE CARPENTER LAW FIRM, P.C.
819 E. North Street
Greenville, South Carolina 29601
Tel. (864) 235-1269
Fax (864) 331-3083
Attorneys for Appellants