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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
Court of Common Pleas
The Honorable Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2025-002399
Circuit Court Case No. 2025-CP-07-00718

Geraldine White, Appellant,
v.
John R.C. Bowen and Kori Brett McKeithan, Respondents.

APPELLANT'S REPLY BRIEF

Geraldine White, Appellant
141 Lamotte Drive #A3
Hilton Head Island, SC 29926
whitegeraldine91@gmail.com
843-681-3947

Stephen L Brown, Esq
D. Jay Davis, Jr., Esq
Kara S Grevey, Esq
Russell G Hines, Esq
Graydon V Olive, IV, Esq
Joseph Dubois, Esq

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INTRODUCTION

Respondent's brief does not eliminate the genuine issues presented by this appeal. It instead repeatedly treats disputed factual assertions as established facts, asks this Court to apply collateral estoppel to matters arising from a default judgment, and reads South Carolina's judgment-lien statute as though the statutory requirements of entry on the book of abstracts and indexing do not exist.

The most significant error in Respondent's argument is its collateral-estoppel theory. Respondent acknowledges that the 2018 judgment was entered after default, yet argues that Appellant is collaterally estopped from disputing boat ownership and corporate standing because those matters were supposedly necessary inferences from the judgment. South Carolina authority requires an issue to have been actually litigated and directly determined before issue preclusion applies. State v. Bacote specifically recognizes that a default judgment does not satisfy the 'actually litigated' requirement. Respondent therefore cannot transform the 2018 default into an adjudication of every factual premise alleged in the complaint.

Respondent's lien argument likewise confirms, rather than defeats, Appellant's point. Section 15-35-810[1] provides that a judgment constitutes a lien on real estate in a county in which the judgment or transcript is entered upon the book of abstracts of judgments and duly indexed, and the lien begins from that entry. Thus, the absence of a separate lien instrument may be immaterial, but the existence of proper entry and indexing is not. If the record does not establish those statutory acts, summary judgment cannot rest on an assumption that a lien existed against the real-estate interest or proceeds at issue.

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[1] See **Commercial Credit Loans, Inc. v. Riddle**, 334 S.C. 176, 512 S.E.2d 123 (Ct. App. 1999). The South Carolina Court of Appeals expressly held that a South Carolina judgment **"entered upon the book of abstracts and duly indexed constitutes a lien upon the real estate of the judgment debtor located in the county where the judgment is indexed."**

The order should be reversed and the matter remanded because the record, viewed in Appellant's favor, presents disputes concerning ownership, the basis and enforcement of the asserted lien, the circumstances surrounding the transfer of sale proceeds, and whether Respondent's challenged conduct was undertaken in good faith and within the protection of attorney immunity.

ARGUMENT

I. THE APPEAL IS NOT ABANDONED; THE INITIAL BRIEF IDENTIFIES PRESERVED LEGAL ERRORS AND DISPUTED MATERIAL FACTS.

Respondent begins by asking this Court to deem every issue abandoned because Appellant is self-represented and because Respondent considers the Initial Brief insufficiently supported. That request elevates form over the substance of the questions actually presented. The Initial Brief challenges the grant of summary judgment, identifies the disputed issues concerning boat ownership, the enforceability of the asserted judgment lien, the corporation's status, and the use of judgment proceeds, and argues that the circuit court resolved factual disputes rather than applying Rule 56 in Appellant's favor.

Rule 56(c), SCRCP, supplies the controlling legal standard. Summary judgment is permitted only when the materials before the court show no genuine issue of material fact and entitlement to judgment as a matter of law. The appellate court applies the same standard. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 326, 534 S.E.2d 672, 675 (2000)[2]. The respondent itself recognizes that standard. The fact that Appellant's presentation is pro se does not convert identified factual and legal disputes into abandonment.

[2] **Summary judgment:** The Court stated that summary judgment is inappropriate when further factual inquiry is desirable to clarify how the law applies. Even where the evidentiary facts themselves are undisputed, summary judgment should not be granted when there is a dispute about the conclusions to be drawn from those facts. The evidence and reasonable inferences must be viewed in favor of the nonmoving party. **341 S.C. at 326–27, 534 S.E.2d at 675.**

Moreover, Respondent's own eighteen-page merits discussion demonstrates that the issues were sufficiently identifiable to permit a full response. Respondent addresses boat ownership, collateral estoppel, corporate status, judgment liens, attorney immunity, and the circuit court's alternative grounds. Those are the same subjects Appellant asks this Court to review. The Court should decide the preserved issues on their merits.

II. COLLATERAL ESTOPPEL CANNOT BE USED TO CONVERT A DEFAULT JUDGMENT INTO AN ADJUDICATION OF ISSUES THAT WERE NEVER ACTUALLY LITIGATED.

Respondent's new collateral-estoppel theory is legally defective. Respondent quotes Holmes v. East Cooper Community Hospital, Inc., 408 S.C. 138, 147, 758 S.E.2d 483, 488 (2014), for the rule that issue preclusion applies when an issue of fact or law was 'actually litigated and determined' by a valid final judgment. Respondent then argues that Appellant's ownership of the vessel and Benny Hudson Seafood Corp.'s standing are precluded because those conclusions were 'inevitable inferences' from the 2018 judgment. The missing element is actual litigation.

South Carolina courts have repeatedly required the party invoking collateral estoppel to show that the precise issue was actually litigated, directly determined, and necessary to the prior judgment. Carrigg v. Cannon, 347 S.C. 75, 80, 552 S.E.2d 767, 770 (Ct. App. 2001). Most importantly, State v. Bacote, 331 S.C. 328, 503 S.E.2d 161 (1998), explains that in the context of a default judgment, issue preclusion does not apply because the essential requirement of actual litigation is absent. A default may have claim-preclusive consequences, but it does not establish for collateral-estoppel purposes every factual allegation that was never contested and tried.

Respondent's own procedural history states that neither Appellant nor Craig White answered, that affidavits of default were filed, and that the 2018 proceeding moved to a damages hearing. Respondent therefore cannot satisfy the 'actually litigated' requirement merely by labeling ownership and standing as necessary inferences. Nor can a new ground raised for affirmance under Rule 220(c), SCACR, succeed when the legal elements of that ground are absent.

Respondent also relies on a statement in a 2018 memorandum that 'Defendants' were the owner of the boat. Even assuming that statement is properly considered, the present record contains a dispute over what interest, if any, Appellant personally held and what legal effect should be given to a bill of sale, registration/title evidence, and the parties' respective roles. At summary judgment, the court may not resolve such conflicts by selecting the inference most favorable to the movant.

Accordingly, collateral estoppel provides no basis to affirm summary judgment on the ownership or corporate-status issues.

III. RESPONDENT'S LIEN ARGUMENT OMITS THE STATUTORY CONDITION THAT THE JUDGMENT BE ENTERED ON THE BOOK OF ABSTRACTS AND DULY INDEXED.

Respondent argues that no separately recorded 'lien document' was required. Appellant's position is narrower: the validity of a money judgment is not the same question as whether the statutory lien attached to particular real estate or its proceeds.

Section 15-35-810 states that final judgments constitute liens upon real estate of the judgment debtor in a county in which the judgment or transcript is 'entered upon the book of abstracts of judgments and duly indexed,' and that the lien begins from the time of that entry. The statute therefore makes entry and indexing operative conditions of the real-estate lien. South Carolina decisions applying section 15-35-810[3] likewise describe the lien as beginning upon the required entry in the book of abstracts and indices.

Respondent's brief says the judgment itself operates as a lien and that no separate instrument must be recorded in the register of deeds. Appellant does not need to dispute that proposition. The dispositive question is whether the 2018 judgment was actually entered on the applicable judgment abstract and duly indexed so that a statutory lien attached to Appellant's real-estate interest. Respondent's brief does not identify record evidence establishing that statutory fact; instead it assumes it.

That distinction matters because the challenged transaction involved proceeds from real property held through a family trust. Even if the 2018 judgment remained a valid personal judgment, the right to intercept or demand particular real-estate proceeds depends on the legal mechanism asserted for collection and the debtor's interest in the property. A court cannot skip the statutory lien requirements by equating 'valid judgment' with 'lien on specific real estate.'

At minimum, whether the statutory conditions for a judgment lien were satisfied presents an issue that could not properly be resolved against Appellant on an unsupported assumption at summary judgment.

[3] See **Commercial Credit Loans, Inc. v. Riddle**, 334 S.C. 176, 512 S.E.2d 123 (Ct. App. 1999). The South Carolina Court of Appeals expressly held that a South Carolina judgment **"entered upon the book of abstracts and duly indexed constitutes a lien upon the real estate of the judgment debtor located in the county where the judgment is indexed."**

IV. SUMMARY JUDGMENT WAS IMPROPER BECAUSE THE COURT WAS REQUIRED TO VIEW DISPUTED FACTS AND REASONABLE INFERENCES IN APPELLANT'S FAVOR.

Respondent repeatedly states that Appellant 'produced no evidence' and that the circuit court merely recognized an absence of proof. But Rule 56 requires the evidence and reasonable inferences to be viewed in favor of the nonmoving party. Pye v. Estate of Fox, 369 S.C. 555, 563, 633 S.E.2d 505, 509 (2006). South Carolina appellate decisions further caution that summary judgment is not appropriate where further inquiry into the facts is desirable to clarify application of the law, and it should not be granted where the evidentiary facts permit competing conclusions or inferences. Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 326, 534 S.E.2d 672, 675 (2000).

Here, Respondent's own brief identifies disputes concerning whether Appellant owned the vessel, what legal significance should be attached to her financing or signing a bill of sale[4], whether the asserted judgment lien was properly perfected, whether the closing documents amounted to knowing consent to the legal validity of the collection, and whether Respondent knowingly made or relied upon inaccurate factual representations. Those are not all pure questions of law.

Signing documents at a closing does not, by itself, establish as a matter of law that Appellant waived every objection to the legal enforceability of the collection. Likewise, providing funds for a purchase or signing a bill of sale may be evidence relevant to ownership, **a bill of sale by itself does not carry the statutory prima-facie effect of a South Carolina certificate of**

[4] **S.C. Code § 50-23-55 — Certificate of title as evidence of ownership** -Subsection (A) provides: "A certificate of title to a watercraft or outboard motor is prima facie evidence of ownership.... All watercraft and outboard motors subject to the titling requirements of this chapter must be titled."

title, and § 50-23-55 specifically limits when a bill of sale may substitute for a title.Therefore, Respondent's characterization of that evidence as conclusive is itself an inference. Where competing evidence or competing reasonable inferences exist, the court cannot weigh them on summary judgment.

Respondent also emphasizes testimony that Appellant transferred an interest for ten dollars to avoid another collection. Even if that evidence is accepted, a person's effort to protect property from a disputed collection does not prove that the collection was legally authorized, that a statutory lien existed, or that every factual representation underlying enforcement was true. It is not a substitute for proof of the elements Respondent was required to establish. Respondent characterized Appellant's transfer of her property as "Fraudulent Conveyance". Defendant Cromwell transferred her property[5] the exact same way because there was no lien.

V. ATTORNEY IMMUNITY DOES NOT AUTHORIZE KNOWING MISCONDUCT AND DOES NOT ELIMINATE FACTUAL DISPUTES CONCERNING GOOD FAITH AND THE SCOPE OF REPRESENTATION.

Respondent relies on Gaar, Stiles, and Pye for attorney immunity. Those authorities do not establish absolute immunity for every act performed by an attorney simply because the act occurred during representation. Gaar v. North Myrtle Beach Realty Co., 287 S.C. 525, 528, 339 S.E.2d 887, 889 (Ct. App. 1986), describes protection for an attorney acting in good faith with the authority of the client. Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995), recognizes that liability may arise where an attorney breaches an independent duty to a third person or acts in a personal interest outside the scope of representation. See also Pye v. Estate of

[5] See Case Number 2026-CP-07-00793 Benny Hudson Seafood Corp, Inc vs Rose White Cromwell that was dismissed by consent agreement between parties.

Fox, 369 S.C. 555, 564, 633 S.E.2d 505, 509 (2006) (discussing Gaar and Stiles in the attorney-immunity context).

The distinction is important at the summary-judgment stage. Appellant's theory is not merely that Respondent filed pleadings for his client. Appellant challenges allegedly knowing factual misrepresentations and later collection conduct involving proceeds from real property. Whether the challenged conduct was undertaken in good faith, whether the factual representations were knowingly false, and whether the conduct remained within the protected scope of representation are questions that cannot be resolved by simply labeling all conduct 'professional activities.'

Respondent's immunity argument also depends on accepting Respondent's version of disputed events. If the factfinder could reasonably conclude from admissible evidence that challenged acts were undertaken in bad faith, for an improper purpose, or outside the protection recognized by South Carolina law, summary judgment on blanket immunity is premature. Appellant does not contend that ordinary advocacy creates third-party liability; she contends that the immunity doctrine cannot be used to insulate independently actionable misconduct without first resolving the material factual predicates under the proper Rule 56 standard.

Accordingly, the circuit court's alternative immunity ruling does not independently sustain summary judgment.

VI. RESPONDENT'S CORPORATE-DISSOLUTION ARGUMENT DOES NOT RESOLVE THE INDEPENDENT ISSUES CONCERNING THE PROOF AND AMOUNT OF THE 2018 DAMAGES.

Respondent cites sections 33-14-105, 33-14-210, and 33-14-220 for the propositions that a dissolved corporation continues for winding-up purposes, that dissolution does not prevent suit in the corporate name, and that reinstatement may relate back. Appellant recognizes that these statutes bear on corporate capacity and that Respondent asserts Benny Hudson Seafood Corp. was reinstated before the 2018 complaint was filed.

But that statutory point does not answer every issue Appellant raised concerning the 2018 damages or current enforcement. Corporate capacity to sue is distinct from whether the claimed losses were supported by competent evidence, whether particular revenue or removal expenses were actually incurred, and whether the amount later collected from Appellant was lawfully tied to a perfected lien against her real-estate interest. Respondent's corporate-status argument therefore cannot supply summary judgment on those separate issues.

To the extent Respondent seeks collateral estoppel on corporate status, the argument fails for the additional reason explained above: the 2018 judgment arose from default, not actual litigation of the issue.

VII. THE PRESENT ACTION CHALLENGES PRESENT ENFORCEMENT CONDUCT AND RESULTING INJURY; IT IS NOT MERELY AN UNAUTHORIZED APPEAL FROM ONE CIRCUIT JUDGE TO ANOTHER.

Respondent invokes Enoree Baptist Church v. Fletcher, 287 S.C. 602, 340 S.E.2d 546 (1986), and Rice v. Doe, 442 S.C. 160, 898 S.E.2d 127 (2024), for the rule that one circuit judge ordinarily may not reverse the substantive order of another circuit judge. The appellant does not ask this Court to disregard that rule. The question is whether the 2025 action was properly reduced to an impermissible request for one circuit judge to sit in appellate review of the 2018 order.

The present controversy arose from later enforcement conduct involving sale proceeds and the asserted legal effect of the 2018 judgment on real property. A court can recognize the existence of a prior judgment while still deciding whether a later collection method complied with the statutes governing judgment liens and whether independent later conduct gives rise to relief. Those questions do not necessarily require the second judge to 'reverse' the first judgment.

Rice itself recognizes that the rule is directed against one circuit judge reversing an earlier substantive ruling. It does not erase jurisdiction over later disputes merely because a prior judgment forms part of the factual background. The circuit court therefore should have separately analyzed (1) the continuing validity of the judgment, (2) whether a statutory lien attached to the property or proceeds at issue, and (3) whether the later conduct challenged by Appellant was independently lawful.

By treating all three questions as the same question, the order effectively allowed the existence of the 2018 judgment to answer disputed issues of enforcement and alleged misconduct that arose years later. That was an error.

CONCLUSION

Respondent's brief does not establish a basis for affirmance as a matter of law. Collateral estoppel cannot be predicated on issues never actually litigated in a default proceeding. Section 15-35-810 requires entry on the book of abstracts and due indexing before a judgment constitutes a lien on real estate in the county. Rule 56 required all genuine factual disputes and reasonable inferences to be viewed in Appellant's favor. And attorney immunity does not eliminate the need to determine the factual predicates of good faith, scope of representation, and any alleged independent misconduct.

For these reasons, Appellant respectfully requests that this Court reverse the order granting summary judgment to Respondent John R.C. Bowen and remand the matter for further proceedings. In the alternative, Appellant requests such other relief as this Court deems just and proper.

Respectfully submitted,

s/Geraldine White

Geraldine White, Appellant, Pro Se
141 Lamotte Drive #A3
Hilton Head Island, SC 29926
843-681-3947
whitegeraldine91@gmail.com

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