

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master-in-Equity

Appellate Case No. 2023-000421

Southern First Bank, N.A. d/b/a Greenville First Bank,.....Appellant,

v.

Kenneth J. Vilcheck, Renee M. Vilcheck, Portfolio Recovery Associates, LLC, United States of America, acting through its agency, Department of Treasury – Internal Revenue Service, Federal Housing Commissioner, The South Carolina Department of Revenue, Belfair Property Owners’ Association, Inc., and the Greenery, Inc. a South Carolina corporation,.....Respondents.

RETURN TO MOTION TO ARGUE AGAINST PRECEDENT

Respondents submit this return to the Appellant’s motion to argue against precedent. The court should deny that motion, including for the following reasons:

1. Appellant seeks leave to argue to this court, the Court of Appeals, that precedent authored by the Supreme Court, Gordon v. Lancaster, 425 S.C. 386, 823 S.E.2d 173 (2018), and Garrison v. Owens, 258 S.C. 442, 446-47, 189 S.E.2d 31 (1972), be overruled or modified to create an exception to those cases’ explicit, bright-line holdings.
2. There are many things this court may do, but violating the law is not one of them. The holdings of opinions issued by the Supreme Court of South Carolina constitute precedent that binds this court. S.C.

Const. Art. V, § 9. Overruling, modifying, deviating from, or otherwise changing the holdings of Supreme Court decisions is not an option for the Court of Appeals. Id. That may be done only by the Supreme Court. Id.

3. Permitting the Appellant to argue to this court against Supreme Court precedent would be futile. Id.
4. And it would not be futile for only the reason noted above. Everything the Appellant argues in this appeal, all of which is grounded in the idea that the master-in-equity should have deviated from compliance with the precedent of Gordon and Garrison, is not preserved for review by any appellate court.
5. To be preserved for appellate review, an argument must have been both raised to and ruled upon by the trial court. E.g., Wilder Corp. v. Wilke, 330 S.C. 71, 497 S.E.2d 731 (1998); Vespazziani v. McAlister, 307 S.C. 411, 413, 415 S.E.2d 427, 428 (Ct. App. 1992).
6. Unless the issue subject of an argument did not exist until it was created by the lower court's ruling, an argument, to be preserved for review, must have been raised to the court in the proceedings that produced the ruling in the first instance. See Johnson v. Sonoco Prods. Co., 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) ("An issue may not be raised for the first time in a motion to reconsider."); Jones v. Builders Inv. Grp., LLC, 415 S.C. 321, 330 n. 7, 781 S.E.2d 737, 742 n. 7 (Ct. App. 2015) (trial court and Court of Appeals refused to

consider evidence only presented with motion under Rule 59(e), SCRCF); Brailsford v. Brailsford, 380 S.C. 443, 669 S.E.2d 342, 344 (Ct. App. 2008) (party cannot use motion to alter or amend to present an issue that could have been raised before judgment but was not); Spreeuw v. Barker, 385 S.C. 45, 68-69, 682 S.E.2d 843, 855 (Ct. App. 2009) (stating evidence that first appeared as attachment to a Rule 59(e), SCRCF motion cannot be considered on appeal).

7. Here, Southern First's arguments on appeal are not preserved for review. The only one that Southern First made below is the contention that merely a hearing must be held before the end of the judgment's 10-year period, and that was not made until Southern First's motion to reconsider the denial of the judicial sale. (R. p. 137 ln. 19-25, p. 146 ln. 17 though p. 148 ln. 2, p. 148 ln. 14-19, pp. 464-72.) That argument having been advanced for the first time in a motion to reconsider, it is not preserved for review.
8. Southern First never argued below that the Vilchecks even engaged in bad faith, frivolous conduct, much less that such conduct provided a basis for Judge Dukes to order the sale of the property despite the certainty that the judgment lien would become nonexistent during the course of the proposed sale. Southern First never argued below that so-called "dilatatory tactics" provided a basis for the master-in-equity to rule in Southern First's favor in any respect, much less that they provided a basis for the master to do what precedent prohibits. (R. p.

136 ln. 7-22, p. 141 ln. 6-13, p. 142 ln. 4-10, p. 148 ln. 7-13, p. 180 ln. 13-20, p. 180 ln. 24 through p. 181 ln. 6.)

9. What did Southern First say below about the ostensible dilatory tactics it now says provide a basis for modifying precedent? It said that judgment debtor defendants are entitled to engage in them. (R. p. 136 ln. 7-22, p. 141 ln. 6-13, p. 142 ln. 4-10, p. 148 ln. 7-13.) What did Southern First say below about what the expiration of the ten-year judgment collection period would do (and now has done) to its collection efforts? That those efforts would cease to “be viable after the ten-year expiration.” (R. p. 180 ln. 13-20.)
10. Southern First has not just asked this court to do what the state constitution prohibits. S.C. Const. Art. V, § 9. It has asked that this court do so on the basis of arguments that could not be entertained by *any* appellate court of this state, even the Supreme Court. An appellant’s unpreserved arguments cannot prevail on appeal. E.g., Hatfield v. Hatfield, 327 S.C. 360, 367, 489 S.E.2d 212, 216 (Ct. App. 1997).
11. Respondents are unable to detect any sound basis for granting Appellant’s motion to argue that the Court of Appeals should violate the state constitution and undertake to change Supreme Court precedent. S.C. Const. Art. V, § 9.

WHEREFORE Respondents pray for an order that denies the Appellant’s motion to argue against precedent.

Respectfully submitted,

/s/ Andrew S. Radeker

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September 4, 2026

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PROOF OF SERVICE

I certify that I have served the foregoing return to motion to argue against precedent on the date given below by emailing it to the other in this appeal at the address(es) noted below.

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Respectfully submitted,

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