

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

James J. Corbett, Special Referee

Case No. 2003-CP-40-4186

Judgment Roll Number 258732

Glen K. LaConey, successor of Lynn G. Yacoubian,Appellant,

v.

Xavier Troy Smith,Respondent.

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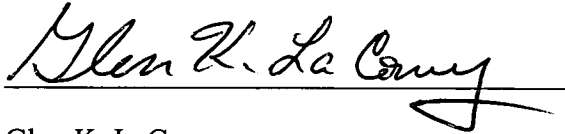
JUN 12 2014

S.C. Supreme Court

NOTICE OF APPEAL

Glen K. LaConey appeals the Order of Dismissal of Supplemental Proceedings of the Honorable James J. Corbett, dated May 8, 2014. Appellant received a copy of the Order on May 9, 2014.

June 12, 2014



Glen K. LaConey

9401 Wilson Boulevard #68

Columbia, South Carolina 29203

(803) 665-3460

Appellant, Pro Se

Other Counsel of Record:

Robert L. Reibold, Esq.

Walker | Reibold

Post Office Box 61140

Columbia, South Carolina 29260

(803) 454-0955

Attorney for Respondent

THE STATE OF SOUTH CAROLINA

In The Supreme Court

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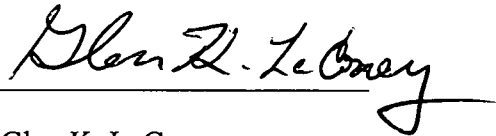
JUN 12 2014

S.C. Supreme Court

PROOF OF SERVICE

I, the undersigned, hereby certify that I have served the Notice of Appeal on Xavier Troy Smith by depositing a true copy of same in the United States Mail, via Certified Mail, Return Receipt Requested, Number 7013-0600-0001-1615-4724, postage prepaid, on June 12, 2014, addressed to his attorney of record, Robert L. Reibold, Post Office Box 61140, Columbia, South Carolina 29260.

June 12, 2014



Glen K. LaConey

9401 Wilson Boulevard #68

Columbia, South Carolina 29203

(803) 665-3460

Appellant, Pro Se

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Glen K. LaConey,)
successor in interest of)
Lynn G. Yacoubian)
)
Petitioner,)
)
vs.)
)
Xavier Troy Smith,)
)
Respondent,)

Judgement Roll No. 258732

ORDER DENYING PETITIONER
LACONEY'S MOTION TO ALTER
OR AMEND JUDGMENT

2014 JUN -2 AM 11:03
RICHLAND COUNTY
FILED
JEANETTE V. McBRIDE
C.L.R. & G.S.

Petitioner's Motion is denied. Petitioner does not specifically cite provisions of the Order from the hearing he contests, but the following issues are noted:

1. LaConey's Request to Admit were reviewed by the Court but not cited at the hearing by the Petitioner for any specific issue. The Request to Admit and the Answers to Interrogatories do not provide grounds to alter or amend the judgment and nothing specific is cited.

2. Smith's Affidavit and testimony was that he was not served and rarely was at the office when service is alleged, because almost all of his time was spent outside the office "meeting with clients and viewing houses," making service difficult at that business location.

3. Petitioner failed to present any evidence concerning the purchase of a home by Smith's wife or its relevance to

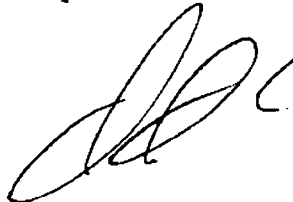
JUN 12 2014

service on Smith, so that evidence was not considered in the Order and cannot be considered upon reconsideration. See C.A.H. v. L.H., 315 S.C. 389, 434 S.E.2d 268 (1993). Subsequent activities, such as those cited in Respondent Smith's Reply are not the basis for denial of the Motion to Reconsider.

4. The court's records show the hearing resulting in this Order was held March 13, 2014. LaConey fails to state when he believes the hearing was held, and why the specific date affects the holding of the Order.

5. Petitioner fails to cite anything in the record or Ms. Yacoubian's deposition testimony showing she was "unable to recall" the contingency arrangement. Ms. Yacoubian's testimony P 22 - 23 clearly states she assigned any judgment listed for a promise of a percentage of any amount recovered, and that Petitioner LaConey paid her nothing for the assignment. Motive alone will not be consideration. See Generally 3 Williston on Contracts § 7:17 (4th Ed.). Petitioner LaConey admitted at the hearing under oath that he paid nothing for the Assignment of Judgment by Yacoubian. Together with his attempts to recover on the judgment, these actions amounted to the unauthorized practice of law as described in the Order of Dismissal.

6. Petitioner failed to argue during the hearing the "equitable assignment" issue in response to the Motions by Respondent. Even if equitable assignment was a legally recognized, was a properly considered issue and argued, no

 #2

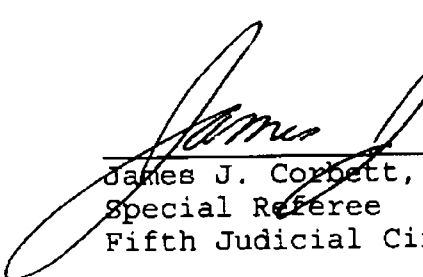
JUN 12 2014

consideration was paid, therefore there could not be a valid assignment.

7. LaConey's threat to turn Smith into the IRS Criminal Division is contained in Exhibit 9.

8. Respondent Smith's additional grounds for denial raised in his Reply are noted, but are not needed to deny Petitioner's Motion to Alter or Amend.

Petitioner has failed to point out any evidence submitted and not considered in the Order, or any error, that would justify altering or amending the Order, so Petitioner's Motion is denied. The parties are ordered to provide Ms. Yacoubian and her attorney Paul W. Owen a copy of this Order within ten (10) days of its receipt. Respondent's attorney Robert Reibold is also ordered to provide a current address for Mr. Smith to Ms. Yacoubian and Attorney Owen with this Order. The Clerk is ordered to remove the Judgment from the rolls, reflect the case as filed and returned to the Master Roster pending service of the Complaint after all appeals have been exhausted or the time to appeal has run.


James J. Corbett,
Special Referee
Fifth Judicial Circuit

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Janetta W. M. Sides
C.C.P.&G.S. [gvt]
SOUTH CAROLINA

Dated: May 30, 2014

JUN 12 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Glen K. LaConey,)
successor in interest of)
Lynn G. Yacoubian)
)
Petitioner,)
)
vs.)
)
Xavier Troy Smith,)
)
Respondent,)
_____)

Judgement Roll No. 258732

03-4186

ORDER DISMISSING THE
SUPPLEMENTAL PROCEEDING

JEANNETTE W. MCBRIDE
C.S.P. & C.S.

2014 MAY -8 PM 4:06

RICHLAND COUNTY
FILED

This matter came before me for a second hearing on March 13, 2014, pursuant to the authority conferred on me as Special Referee in an Order of Reference signed by Chief Administrative Judge L. Casey Manning on March 29, 2013. Present were the Petitioner, Glen K. LaConey as the successor in interest of Judgment holder Lynn G. Yacoubian, Respondent Xavier Troy Smith and his attorney Robert L. Reibold. Mr. LaConey was not represented and brought this action pro se. A previous hearing was held on September 13, 2013.

Respondent Smith has moved that: (1) the default judgment against him be voided pursuant to Rule 60(B)(4) of the South Carolina Rules of Civil Procedure for lack of personal jurisdiction, ie., Plaintiff's failure to properly serve Smith with the Summons and Complaint; (2) that the proceedings be dismissed because Mr. LaConey is engaging in the unauthorized

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practice of law by taking a contingency fee for assignment of the judgment, creating the equitable relief of unclean hands; and (3) the Assignment by Yacoubian was a partial assignment and void as a matter of law, so it cannot be enforced.

FINDINGS OF FACT

1. A default damages hearing was held January 14, 2005. The February 22, 2005 Order of Judgment finds that proper service was personally made on Smith on September 18, 2003 and that notice of the damages hearing was sent to Smith by letter addressed January 7, 2005 to the same address as service; 7335 St. Andrews Road, Irmo, South Carolina 29063. Defendant Smith testified in accord with his sworn Affidavits that he was never served with the Summons and Complaint or received the damages hearing notice. The Affidavit of Service and first class letter mailed informing Smith of a damages hearing were the only support presented for good service. A judgment was filed against Smith and Home Assist Real Estate, LLC. There is nothing in the record to indicate that the notice letter was returned or received or that the Order of Judgment was ever served on Smith.

Smith testified that the address of service is a real estate office that he frequented only 1 - 2 times per week, which closed in early 2004 when the Bob Capes Realty location moved to 3561 Dreher Shoals Road. Smith presented a letter addressed to him at

JUN 14 2014

the new address dated September 7, 2004 and a magazine addressed to him at that new address in July 2004, each well before the January 7, 2005 damages hearing letter of notice sent to the former business location.

The Affidavit of Service is ambiguous whether service was at Smith's business or personal address. The process server did not testify and no other supporting evidence of service was provided. Smith testified that as a new employee if served at the office he would be embarrassed, and it be something he would definitely remember. I find Mr. Smith to be credible.

2. The Order of Judgment against Smith was for \$70,743.69, plus a punitive damages award of \$25,000.00, for a total judgment of \$95,743.69. A \$26,500.00 judgment was ordered against Co-Defendant Home Assist Real Estate, LLC by the same Order. The judgments were not joint and several. The assignment of judgment against Smith to Mr. LaConey by Ms. Yacoubian was for \$26,500.00. It was not disputed that LaConey sent Smith a hand written letter threatening to turn Smith into the IRS Criminal Division if he failed to pay LaConey on the judgment. The letter is similar to a letter described and found to be improper if sent by an attorney in Roberts v. LaConey, 375 S.C. 97, 650 S.E.2d 474 (2007), where LaConey was found to have engaged in the unauthorized practice of law. An e-mail LaConey sent linking Smith's Motion to Dismiss to Smith's possible criminal record and

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its effect on his real estate license, was also entered into evidence.

3. Petitioner LaConey previously asserted he owned a \$26,500.00 judgment against Home Assist Real Estate, LLC and had an Order of Reference and Rule to Show Cause served on Home Assist Manager Lori Pelzer. LaConey asserted in an Affidavit of February 3, 2006 that he was the owner of a \$26,500.00 judgment and was attempting to enforce it against Home Assist Real Estate, LLC. Pelzer was examined before the Richland County Master-in-Equity concerning assets of Home Assist. Petitioner filed another affidavit dated June 3, 2011 in furtherance of collection that confirms the \$26,500.00 judgment against Home Assist Real Estate, LLC, stating Smith was not served as a party, and further that the Court had "no post judgment or subject jurisdiction over Xavier Troy Smith."

4. The Execution against property and the Nulla Bona return from the Sheriff dated September 30, 2005 do not specify whether they apply to one or both of the judgment debtors, Home Assist Realty LLC or Smith.

5. Original judgment holder Lynn J. Yacoubian testified in her deposition that her judgment against Home Assist LLC was for \$26,500.00 and against Mr. Smith for over \$95,000.00. The only consideration she received for assigning the judgment against Smith was the promise to receive a percentage of what Mr. LaConey

received, perhaps even less than LaConey's share, and some emotional satisfaction for Mr. Smith being forced to pay "somebody." Mr. LaConey asserts this is good and valuable consideration. Ms. Yacoubian and Mr. LaConey are unrelated, and Ms. Yacoubian testified several times that she did not know Mr. LaConey well. Ms. Yacoubian testified the \$26,500.00 assigned was the judgment against Home Assist or a partial assignment of the judgment against Smith.

6. Mr. LaConey admits that he did not pay Ms. Yacoubian anything except the "emotional value" of the judgment possibly being enforced against Mr. Smith. He stated that "no tangible property" was given by him to Yacoubian as consideration, just the "emotional satisfaction." Mr. LaConey admitted both he and Ms. Yacoubian were to receive a percentage of the amount recovered from Yacoubian's judgment.

7. Mr. LaConey affirmed he is not a licensed attorney, yet he filed the Rule to Show Cause, served Discovery and represented himself at both hearings. Mr. LaConey testified that he did not prepare the assignment form. When filing this Rule to Show Cause LaConey used the same judgment roll number that he used for the Home Assist Supplemental Proceedings.

CONCLUSIONS OF LAW

1. It is undisputed that Mr. LaConey filed and drafted the

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Rule to Show Cause for supplemental proceedings, responded to motions, engaged in discovery, represented himself at two hearings and performed all other actions in this attempt to enforce the judgment except, according to LaConey, drafting the actual assignment of the \$26,500.00 judgment. He has acted as his own attorney.

As both LaConey and Yacoubian testified each was to receive a percentage of any recovery, LaConey was also representing Yacoubian on a contingency basis, and thus engaged in the practice of law without being a licensed attorney. See Roberts v. LaConey, 375 S.C. 97, 650 S.E.2d 474 (2007). The assignment in this case is dated September 3, 2005, almost 2 years before the Supreme Court's decision in Roberts v. LaConey, Supra., and has striking similarity to the Roberts assignment. The Supreme Court found LaConey had engaged in the unauthorized practice of law by soliciting assignment of judgments without payment except for a promise of a percentage of whatever is collected, then instituting supplemental proceedings and threatening criminal prosecution of judgment debtors to extract payment, including reporting them to the IRS. This Court's decision is consistent with Roberts v. LaConey.¹ Mr. LaConey comes to this Court of Equity with unclean hands based on his unauthorized practice of

¹ The Supreme Court, adopting a Special Master's findings, specifically found many of Petitioner's threats were "entirely inappropriate, and would have violated the Rules of Professional Conduct if made by a lawyer." Id. At n.2.

law, and Respondent's Motion to Dismiss the Supplemental Proceedings must be granted.

Ms. Yacoubian testified she made the assignment because she wanted Mr. Smith to "pay somebody." The Court declines to adopt "dislike and satisfaction" as valuable consideration similar to "love and affection" for family members which is recognized as consideration for certain conveyances.

2. Petitioner LaConey maintains that the Special Referee and all other Courts are barred from considering an unauthorized practice of law claim except the South Carolina Supreme Court, even as a defense in these Supplemental Proceedings. The Court disagrees. The Special Referee has the authority to hear this claim as an equitable defense.

While the South Carolina Supreme Court has authority to consider questions of unauthorized practice of law in its original jurisdiction, trial and other courts inferior to the Supreme Court retain the power to address issues related to the unauthorized practice of law where, as here, the issue is asserted as a defense. Our Supreme Court has allowed the use of the unauthorized practice of law as an equitable defense in lower court equitable cases. See Wachovia Bank v. Coffey and Bank of America, 389 S.C. 68, 698 S.E.2d 244 (SC App. 2010) followed by Matrix Financial Services Corp., v. Frazer, 394 S.C. 134, 714 S.E.2d 532 (2011) and then BAC Home Loan Servicing, L.P. v.

Kinder, 398 S.C. 619, 731 S.E.2d 547 (2012) all concerning the unauthorized practice of law in mortgage foreclosures.

The nature of supplemental proceedings is to discover assets and are equitable in nature. Ag-Chem Equip. Co., Inc., v. Daggerhart, 281 S.C. 380, 315 S.E.2d 379 (Ct. App. 1984) ("Supplementary proceedings are equitable in nature.") Supplemental proceedings can result in Orders disbursing or disposing of assets or punishing any debtor for disposing of assets. See also In Re Allied Mutual Insurance Company v. Roberson, 220 F. Supp. 25, 7 Fed.R.Serv.2d 296 (1963), holding that a Supplemental Proceeding to enforce collection of a judgment is an equitable matter, which is in line with South Carolina practice and procedure. The unauthorized practice of law can be raised as an equitable defense in Supplemental Proceedings.

3. Respondent is also entitled to dismissal of the Supplemental Proceedings as a matter of law pursuant to Rule 55 and Rule 60 of the South Carolina Rules of Civil Procedure with opportunity for a trial on the merits. Respondent's Motion cites lack of jurisdiction under Rule 60(b) 4, but its argument is in effect a Rule 55 Motion to Set Aside Default. Intertwining the two rules is not uncommon, and as a "practical matter" the factors to obtain relief are "relevant under both rules." New Hampshire Ins., Co., v. The Bey Corporation, 312 S.C. 47, 435

S.E.2d 377, 379 (Ct. App. 1993). A Special Referee has standing to consider a Rule 55 or Rule 60 Motion after an Order of Judgment is signed by the Circuit Court without violating the general rule prohibiting one Circuit Judge from over ruling another. See generally Narruhn v. Alea London Ltd., OP. No. 27270 (App. Case No. 2011-191646 filed June 13, 2013). Though not the trial judge, this Court finds itself as the logical and perhaps only place for Smith to contest default. There is no evidence he received notice of his default or the default judgment hearing notice.

The greater weight of the evidence is that Smith was not served. Personal jurisdiction by a Court is obtained generally by service of the Summons and Complaint. BB&T v. Taylor, 369 S.C. 578, 633 S.E.2d 501 (2006). Without it, a Court can not enforce a judgment, so the Order of Judgment must be set aside under Rule 60(b).

Rule 55(C) allows a default to be set aside for good cause shown. Wham v. Shearson Lehman Bros., Inc., 298 S.C. 462, 381 S.E.2D 499 (Ct. App. 1989) requires a satisfactory explanation constituting good cause to be followed by consideration of: 1) the timing of the Motion for Relief; 2) whether the Defendant has a meritorious defense; and 3) the degree of prejudice, if any, to Plaintiff if the Motion is granted. The decision is within the sound discretion of the Court.

The requirements of Rule 55(C) and Wham are met in this case. It is undisputed that Smith filed his Motion within two (2) weeks of being served with the Rule to Show Cause to enforce the judgment, his first notice of this action, so timing is proper. Smith was not served and the damages hearing notice was sent to an old work address, not used by Smith for at least 6 months prior to the hearing. No evidence was presented that the letter or the actual filed judgment were ever received by or served on Smith, therefore he had no opportunity or notice to contest service until service of the Rule to Show Cause. If this evidence had been presented at the Default Judgment hearing, I find the Circuit Court would have granted relief from the default so that the case could proceed toward a trial on the merits. It would be inequitable to allow the default judgment to be enforced based on the evidence presented.

Smith's evidence of a meritorious defense is slight but sufficient. Our Courts strongly favor trials on the merits. Smith testified he left Home Assist in October 2002. The allegations are that two homes were purchased in April and May 2002 with a mortgage providing cash in each case to renovate and market the homes, which was allegedly received by Smith and not used for those purposes. The time line on foreclosure on the homes was not presented.

Prejudice to Yacoubian appears slight despite the age of the

JUN 12 2014

judgment. From the record presented Yacoubian never moved to enforce the judgment and LaConey has paid nothing for it, so neither suffers any prejudice if a trial on the merits occurs. Yacoubian can still proceed to prove the allegations of her Complaint. Based on the Order of Judgment, proof appears based mostly on documents and not necessarily eye witness testimony that could be affected by time and memory loss. Ms. Yacoubian's testimony showed sufficient recollection of the events to testify. Mr. LaConey can pay for assignment of any future judgment. Equitable tolling, though, will be required.

The strong inclination of our Courts' is to have cases decided upon their merits, so the Motion to Set Aside Default is granted under Rule 55(C) also.

4. Even if service was proper and there was no unauthorized practice of law, the Rule to Show Cause and Supplemental Proceedings are dismissed as a matter of law because the assignment is not valid. The language of the assignment clearly states "the entire principal of \$26,500.00" is assigned by Yacoubian to LaConey. This is the amount of the judgment Yacoubian received against Home Assist Real Estate, LLC but not Smith. The judgment against Smith is for \$95,743.69. Therefore, the attempted assignment of the \$26,500.00 by Ms. Yacoubian is invalid as against Mr. Smith.

According to the plain wording of the Assignment, Ms.

Yacoubian did not reserve any rights in the judgment. In South Carolina it seems a question of first impression, whether a judgment can be partially assigned for collection in a supplemental proceedings. In a somewhat similar situation, Pacific Mills v. Textile Workers Union of America, Local #254, 197 S.C. 330, 15 S.E.2d 134 (1941), our Supreme Court held that partial assignments by union members of wages equal to union dues is unenforceable against the employer, and therefore void and of no effect. The Court reasoned the time and financial burden on the employer was inequitable.

Our Court's have long held that related causes of action can not be split by Plaintiffs. Judicial economy requires all issues arising out of the same transactions and occurrences be pled together. Compulsive counterclaims are treated similarly or lost.

Other states support the notion that partial assignments of judgments are not enforceable. Rathbone v. Ward, 603 S.E.2d 20 (Ga. App. 2004); Richard's Paint Mfg., Co., Inc., v. Onyx Paints, Inc. 394 So.2d 1064 (Fla. App. 1981); Salter v. Walsworth, 167 S. 494 (Ga. Ap. 1936); Ellis v. Superior Court in and or Riversdale County, 33 P.2d 60 (Cal. App. 1934). The Court agrees and finds that this partial assignment of a judgment, even if knowingly made and meant to be for the amount of \$26,500.00 from Smith's \$95,743.69, is void and unenforceable.

Based on the amount(s) assigned, either the wrong judgment was assigned or a partial assignment was attempted. This is not a scrivener's error, but a failure of minds to meet on an attempted partial assignment. Though enforcement or voiding the assignment contract is not sought by either party to it, a Court of Equity can not enforce an improperly assigned judgment, mistaken either as to the amount to be assigned or the party owing the specific judgment assigned, or a partial assignment.

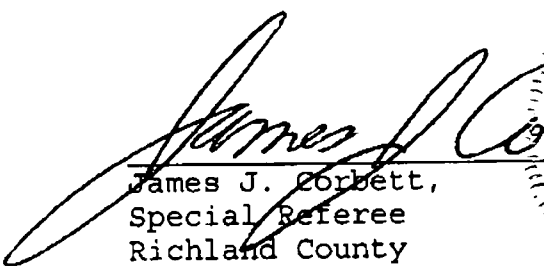
THEREFORE, it is Ordered that the Motions to Dismiss filed by Respondent Troy Smith be granted and Supplemental Proceedings be dismissed.

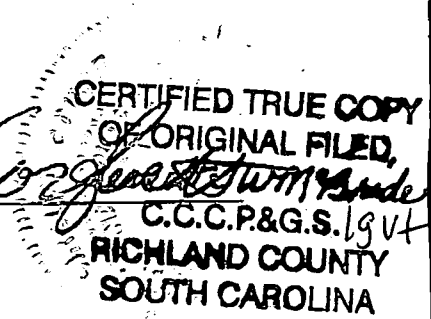
EQUITABLE TOLLING OF THE STATUTE OF LIMITATIONS

Our judicial system seeks to have disputes between individuals decided on their merits. Since this Court has granted the Rule 60(b)4 Motion to Set Aside Default using Rule 55(C), service has not been effectuated. It appears the statute of limitations has expired. It would be inequitable to the original Plaintiff and judgment holder Lynn G. Yacoubian to extinguish her rights to prove the allegations of her Complaint. These are rare and exceptional circumstances, and tolling is necessary to prevent unfairness to a diligent Plaintiff. Hooper v. Ebenezer Senior Services and Rehabilitation Center, 377 S.C. 217, 659 S.E.2d 213 (Ct. App. 2008).

THEREFORE IT IS ORDERED that the Statute of Limitations is equitably tolled as to the causes of action filed by and held by Ms. Yacoubian versus the Respondent Xavier Troy Smith as stated in the original Complaint, beginning from the alleged date of service, September 13, 2003 until the date of the filing of this Order. Within 10 days of receipt of this Order, Petitioner LaConey and counsel for Mr. Smith are instructed to provide both Ms. Yacoubian and her attorney of record in 2005, Paul W. Owen, Jr., a copy of this Order informing them of her rights to proceed on the merits of her case against Mr. Smith. Smith's attorney, Robert Reibold, is further ordered to provide a current address for Mr. Smith to Ms. Yacoubian and her attorney Paul W. Owen, Jr., with the Order.

AND IT IS SO ORDERED.


James J. Corbett,
Special Referee
Richland County



Columbia, South Carolina
May 8, 2014

JUN 12 2014

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 GLEN K. LaCONEY,)
 successor in interest of)
 LYNN G. YACOUBIAN)
)
 Petitioner,)
)
 v.)
)
 XAVIER TROY SMITH,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

Judgment Roll No. 258732

ORDER OF REFERENCE

RICHLAND COUNTY
 FILED
 2013 APR -3 PM 4:10
 JEANNETTE W. MCBRIDE
 C.C.P. & G.S.

The Petitioner having moved for supplemental proceedings pursuant to S.C. Code Ann. §§ 15-39-310, et seq., Law. Co-op. (1976, as amended), and South Carolina Rules of Civil Procedure 69, 53, 66 and 45; and this being a proper matter for reference to a Special Referee; it is therefore,

ORDERED that this matter be referred to **James J. Corbett, Esq.** to serve as Special Referee for further proceedings consistent with this Order.

IT IS FURTHER ORDERED that any appeal from the Special Referee shall be directly to the South Carolina Supreme Court.

CERTIFIED TRUE COPY
 OF ORIGINAL FILED,
 IT IS SO ORDERED *W.M. Wade*
 C.C.C.P. & G.S. *Stavt*
 RICHLAND COUNTY
 SOUTH CAROLINA
[Signature]
 Chief Administrative Judge,
 Court of Common Pleas

Columbia, South Carolina
 this 29 day of March, 2013

JUN 12 2014