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May 9, 2012

RECEIVED

MAY 11 2012

S.C. Supreme Court

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
PO Box 11330
Columbia, SC 29211

RE: *Sue Taylor Colson Widenhouse, Respondent vs.*
Tammy Batson Colson, Appellant
C.A. No.: 2011-CP-23-5359

Dear Mr. Shearouse:

Pursuant to Rule 210(b) and 211(a), SCACR, enclosed please find the following:

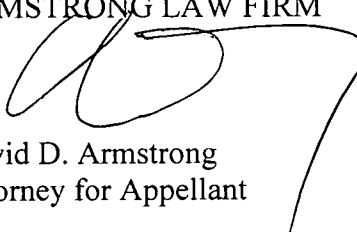
1. Record on Appeal with attached Certificate of Counsel (unbound original and 14 bound copies);
2. Final Brief of Appellants (unbound original and 14 bound copies).

Previously one copy of the Record on Appeal and one copy of the Final Brief of Appellants were served on counsel for the Respondent. The corresponding Proofs of Service have already been filed.

If you need anything further, please let me know.

Yours truly,

ARMSTRONG LAW FIRM


David D. Armstrong
Attorney for Appellant

DDA/kas
11-6325

cc: Tammy Colson (w/o copies)
Scott M. Tyler, Esq. (w/o copies)
Matthew D. Lincoln, Esq. (w/o copies)

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MAY 9 2012

S.C. SUPREME COURT

Armstrong Law Firm
Post Office Box 10855
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May 7, 2012

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
PO Box 11330
Columbia, SC 29211

RE: *Sue Taylor Colson Widenhouse, Respondent vs.*
Tammy Batson Colson, Appellant
C.A. No.: 2011-CP-23-5359

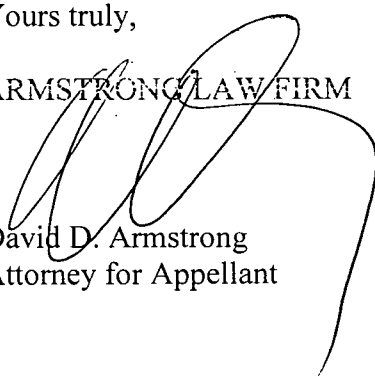
Dear Mr. Shearouse:

Enclosed, please find the original and one (1) copy of the Proof of Service, showing service of the Final Brief, via U.S. Mail, on counsel for the Respondent in the above referenced matter. Please return a stamped copy to me in the enclosed self-addressed envelope.

In advance, thank you for your attention and cooperation.

Yours truly,

ARMSTRONG LAW FIRM


David D. Armstrong
Attorney for Appellant

DDA/kas
11-6325

cc: Tammy Colson (w/one copy of Final Brief and Proof of Service)
Scott M. Tyler, Esq. (w/one copy of Final Brief and Proof of Service)
Matthew D. Lincoln, Esq. (w/one copy of Final Brief and Proof of Service)

Armstrong Law Firm
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April 26, 2012

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
PO Box 11330
Columbia, SC 29211

RE: *Sue Taylor Colson Widenhouse, Respondent vs.*
Tammy Batson Colson, Appellant
C.A. No.: 2011-CP-23-5359

Dear Mr. Shearouse:

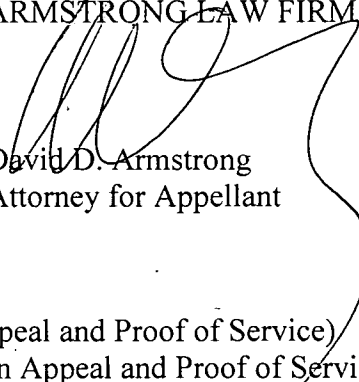
Enclosed, please find the original and one (1) copy of the Proof of Service, showing service of the Record on Appeal have been served, via U.S. Mail, on counsel for the Respondent in the above referenced matter. Please return a stamped copy to me in the enclosed self-addressed envelope.

In advance, thank you for your attention and cooperation.

RECEIVED
APR 30 2012
S.C. SUPREME COURT

Yours truly,

ARMSTRONG LAW FIRM


David D. Armstrong
Attorney for Appellant

DDA/kas
11-6325

cc: Tammy Colson (w/one copy of Record on Appeal and Proof of Service)
Scott M. Tyler, Esq. (w/one copy of Record on Appeal and Proof of Service)
Matthew D. Lincoln, Esq. (w/one copy of Record on Appeal and Proof of Service)

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge

Case No.: 2011-CP-23-5359

Sue Taylor Colson WidenhouseRespondent,

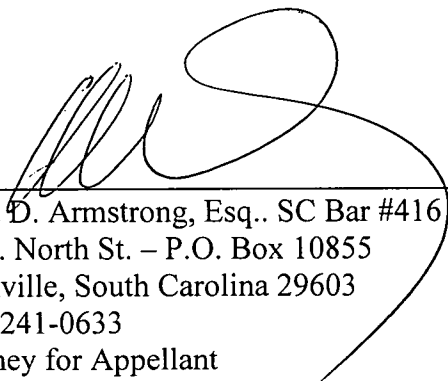
v.

Tammy Batson ColsonAppellant.

PROOF OF SERVICE

I certify that I have served the Record on Appeal on Sue Taylor Colson Widenhouse, by depositing copies of it in the United States Mail, postage prepaid, on April 26, 2012, addressed to her attorneys of record, Scott M. Tyler and Matthew D. Lincoln, Moore & Van Allen PLLC, 100 N. Tryon St., Suite 4700, Charlotte, NC, 28202.

April 26, 2012



David D. Armstrong, Esq., SC Bar #416
201 E. North St. – P.O. Box 10855
Greenville, South Carolina 29603
(864) 241-0633
Attorney for Appellant

RECEIVED

APR 30 2012

S.C. SUPREME COURT

Moore & Van Allen

April 9, 2012

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

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Attorney at Law

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Moore & Van Allen PLLC

Suite 4700
100 North Tryon Street
Charlotte, NC 28202-4003

Re: *Sue Taylor Colson Widenhouse, Respondent v. Tammy Batson Colson, Appellant*
C.A. No.: 2011-CP-23-5359


Dear Mr. Shearouse:

Enclosed please find the original and one (1) copy of the Initial Brief and Designation Of Matter To Be Included In The Record On Appeal to be filed in this matter on behalf of the Respondent, Sue Taylor Colson Widenhouse. Also enclosed is the corresponding Proof of Service. Please return stamped copies to me in the enclosed self-addressed envelope.

Thank you for your assistance, and please contact me if you have any questions.

Very truly yours,

Moore & Van Allen PLLC



Matthew D. Lincoln

MDL/tsm
Enclosures

cc/encl.: Sue Widenhouse
Scott M. Tyler, Esq.
David D. Armstrong, Esq.

RECEIVED

APR 11 2012

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

APR 11 2012

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
D. Garrison Hill, Circuit Court Judge

S.C. Supreme Court

Case No. 2011-CP-23-5359

Sue Taylor Colson WidenhouseRespondent,


v.

Tammy Batson Colson Appellant.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Respondent and Designation Of Matter To Be Included In The Record On Appeal on Tammy Batson Colson, by depositing copies thereof in the United States Mail, postage prepaid, on April 9, 2012, addressed to her attorney of record, David D. Armstrong, Armstrong Law Firm, P.O. Box 10855, Greenville, SC 29603.

April 9, 2012


Matthew D. Lincoln, Esquire
Scott M. Tyler, Esquire
Moore & Van Allen PLLC
100 North Tryon Street, Suite 4700
Charlotte, NC 28202
Telephone: (704) 331-3562
Facsimile: (704) 339-5979

Attorneys for Respondent

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March 9, 2012

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
PO Box 11330
Columbia, SC 29211

RE: *Sue Taylor Colson Widenhouse, Respondent vs.*
Tammy Batson Colson, Appellant
C.A. No.: 2011-CP-23-5359

Dear Mr. Shearouse:

Enclosed, please find two (2) copies of the Initial Brief and Designation of Matter To Be Included In the Record On Appeal to be filed in this matter on behalf of the Appellant Tammy Batson Colson. Also enclosed is the corresponding Proof of Service. Please return stamped copies to me in the enclosed self-addressed envelope.

In advance, thank you for your attention and cooperation.

Yours truly,

ARMSTRONG LAW FIRM

David D. Armstrong
Attorney for Appellant

DDA/kas
11-6325

cc: Tammy Colson (w/encl.)
Scott M. Tyler, Esq. (w/encl.)
Matthew D. Lincoln, Esq. (w/encl.)

RECEIVED

MAR 13 2012

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

MAR 18 2012

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

S.C. SUPREME COURT

D. Garrison Hill, Circuit Court Judge

Case No.: 2011-CP-23-5359

Sue Taylor Colson WidenhouseRespondent,

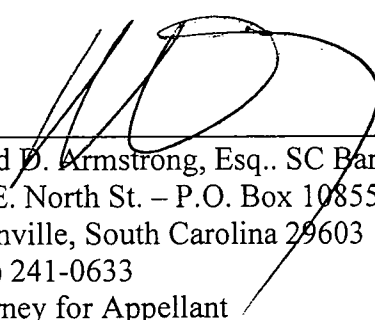
v.

Tammy Batson ColsonAppellant.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellant and Designation of Matter To Be Included In the Record On Appeal on Sue Taylor Colson Widenhouse, by depositing a copy of it in the United States Mail, postage prepaid, on March 9, 2012, addressed to her attorneys of record, Scott M. Tyler and Matthew D. Lincoln, Moore & Van Allen PLLC, 100 N. Tryon St., Suite 4700, Charlotte, NC, 28202.

March 9, 2012



David D. Armstrong, Esq., SC Bar #416
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Attorney for Appellant

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FACSIMILE
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February 16, 2012

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
PO Box 11330
Columbia, SC 29211

RE: *Sue Taylor Colson Widenhouse, Respondent vs.*
Tammy Batson Colson, Appellant
C.A. No.: 2011-CP-23-5359

Dear Mr. Shearouse:

Please be advised, that I, as Appellant's counsel, received the Transcript of Record from the Court Reporter on Monday, February 13, 2012.

Should you require any additional information, please advise.

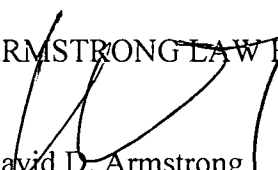
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FEB 21 2012

S.C. SUPREME COURT

Yours truly,

ARMSTRONG LAW FIRM


David D. Armstrong
Attorney for Appellant

DDA/kas
11-6325

cc: Tammy Colson
Scott M. Tyler, Esq.
Matthew D. Lincoln, Esq.

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December 19, 2011

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
PO Box 11330
Columbia, SC 29211

RE: *Sue Taylor Colson Widenhouse, Respondent vs.*
Tammy Batson Colson, Appellant
C.A. No.: 2011-CP-23-5359

Dear Mr. Shearouse:

You are correct. The Order being appealed does not contain any reference to constitutional challenges; that is part of the problem. The Order incorporates, *inter alia*, the enclosed Defendant's [Appellant's] Motion for Relief (without attachments) and Plaintiff's [Respondent's] Memorandum of Law in Support of Motion to Enforce Foreign Judgment and in Opposition to Defendant's [Appellant's] Motion for Relief. The Respondent raised constitutional issues and the issues were argued before the trial judge. The transcript has been ordered but has not yet been received.

In sum, Appellant argues that the foreign judgment founded on North Carolina's "Heart Balm" causes of action is not enforceable in South Carolina under Sec. 15-35-960. Respondent argues that it is enforceable under the full faith and credit clause of the United States Constitution.

Should you require any additional information, please advise.

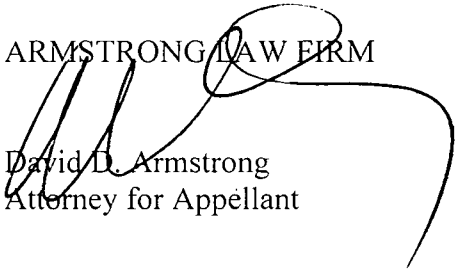
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DEC 23 2011

S.C. SUPREME COURT

Yours truly,

ARMSTRONG LAW FIRM


David D. Armstrong
Attorney for Appellant

DDA/kas
11-6325

Enclosures

cc: Tammy Colson (w/o encl.)
Scott M. Tyler, Esq. (w/o encl.)
Matthew D. Lincoln, Esq. (w/o encl.)

Motion for Relief on September 8, 2011, seeking to bar enforcement of the Foreign Judgment in South Carolina. Plaintiff filed her Motion to Enforce Foreign Judgment on October 14, 2011.

ARGUMENT

I. DEFENDANT CANNOT MEET HER BURDEN OF PROVING THAT THE FOREIGN JUDGMENT IS NOT ENTITLED TO FULL FAITH AND CREDIT.

It is Defendant, rather than Plaintiff, who carries the burden with respect to enforcement of the Foreign Judgment in South Carolina. The South Carolina Code contains a provision stating that “[t]he judgment creditor has the burden of proving that the foreign judgment is entitled to full faith and credit.” S.C. Code. § 15-35-940(B). Defendant asserts this provision in support of her motion for relief. (Def.’s Mot. at 2.) But in 2009, the South Carolina Supreme Court struck that language from the statute as violative of the federal Constitution. *Law Firm of Paul L. Erickson, P.A.*, 383 S.C. at 504-05, 681 S.E.2d at 579-80 (citing S.C. Code § 15-35-940(B)). Under the United States Constitution’s Full Faith and Credit Clause, “the burden of undermining the decree of a sister state ‘rests heavily on the assailant.’” *Id.* at 504, 681 S.E.2d at 579 (quoting *Cook v. Cook*, 342 U.S. 126, 128 (1951)). Thus, in the present case, it is Defendant’s burden to prove that the Foreign Judgment is not entitled to full faith and credit, rather than Plaintiff’s burden to prove that it is.

Defendant cannot meet her burden. “The law against which a foreign judgment is evaluated for viability and effect is the law of the State rendering the judgment.” *Law Firm*, 383 S.C. at 500 n.2, 681 S.E.2d at 577 n.2. Thus, as discussed in Section II, *infra*, that South Carolina has abolished the torts of criminal conversation and alienation of affections does not impact the enforceability of the Foreign Judgment, which is a final, valid, and enforceable civil judgment from North Carolina. Defendant’s queries into the procedural timeline of the underlying North Carolina case and speculations as to Plaintiff’s possible motivations for

bringing the action are similarly of no consequence. Defendant offers no challenge to the validity of the Foreign Judgment that would be permissible under a Full Faith and Credit analysis, such as whether the North Carolina court had jurisdiction or whether the Foreign Judgment was procured by fraud. This Court is thus required to enforce the Foreign Judgment pursuant to the Full Faith and Credit Clause.

II. THE FULL FAITH AND CREDIT CLAUSE MANDATES ENFORCEMENT OF THE FOREIGN JUDGMENT.

A. The Federal Constitution, A Federal Statute, And The U.S. Supreme Court All Mandate Recognition Of Sister States' Judgments.

Article IV of the United States Constitution provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." U.S. Const. art. IV, § 1. A federal statute implements this requirement. 28 U.S.C. § 1738. The U.S. Supreme Court has stated that the overarching purpose of the Full Faith and Credit Clause was to replace the previously existing discretionary doctrine of comity with a constitutional command for the recognition of sister state judgments. *See, e.g., Sun Oil Co. v. Wortman*, 486 U.S. 717, 723 n.1 (1988); *Estin v. Estin*, 334 U.S. 541, 546 (1948). "In order to fulfill this mandate[,] 'the judgment of a state court should have the same credit, validity and effect, in every other court of the United States, which it had in the state where it was pronounced.'" *Alladin Plastics, Inc. v. Wintenna, Inc.*, 301 S.C. 90, 91, 390 S.E.2d 370, 371 (Ct. App. 1990) (quoting *Hampton v. McConnel*, 16 U.S. (3 Wheat.) 234, 235, (1818) (Marshall, C.J.)). In fact, "the full faith and credit clause of the Constitution precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles upon which the judgment is based." *Id.* at 93 n.5, 390 S.E.2d at 372 n.5 (quoting *Hamilton v.*

Patterson, 236 S.C. 487, 492, 115 S.E.2d 68, 70 (1960)); *Security Credit Leasing, Inc. v. Armaly*, 339 S.C. 533, 540, 529 S.E.2d 283, 287 (Ct. App. 2000) (same).

B. South Carolina's Nonrecognition Of Claims For Alienation Of Affections And Criminal Conversation Is Not A Basis To Deny Enforcement Of The Foreign Judgment.

The U.S. Supreme Court has long held that the unavailability of a cause of action in one state is not a basis for denying enforcement of a foreign judgment from a sister state based on that cause of action. *Union Nat'l Bank v. Lamb*, 337 U.S. 38, 42 (1949) (“[T]he State of the forum could not defeat the foreign judgment because it was obtained by a procedure hostile to or inconsistent with that of the forum or because it was based on a cause of action which the forum itself would not have recognized.”); *Kenney v. Supreme Lodge of The World*, 252 U.S. 411, 415 (1920) (“[T]he fact that here the original cause of action could not have been maintained in Illinois is not an answer to a suit upon the judgment.”). Courts have rationalized this principle by describing a suit to enforce a foreign judgment not as a suit on the underlying cause of action, but as a suit to collect money owed, with the cause of action merged into the judgment. See *Milwaukee County v. M. E. White Co.*, 296 U.S. 268, 275 (1935) (“[T]he validity of the claim upon which [a foreign judgment] was founded is not open to inquiry, whatever its genesis. Regardless of the nature of the right which gave rise to it, the judgment is an obligation to pay money”); *Titus v. Wallick*, 306 U.S. 282, 291-92 (1939) (describing the judgment creditor as “standing upon a different footing”).

Here, Defendant's Motion for Relief is based entirely on an inquiry into the merits of the underlying causes of action. Moreover, the fact that South Carolina has abolished claims for alienation of affections and criminal conversation is irrelevant. As the U.S. Supreme Court has made clear, this Court should not consider South Carolina's position on the substantive law

supporting the Foreign Judgment, and should enforce the Foreign Judgment as the Full Faith and Credit Clause requires.

C. No Exception To The Full Faith And Credit Clause Applies To The Foreign Judgment In This Case.

Exceptions to the Full Faith and Credit clause exist, but are extremely limited, and none applies here. U.S. Supreme Court jurisprudence “has been reluctant to admit exceptions in case of judgments rendered by the courts of a sister state, since the ‘very purpose’ of Art. IV, § 1 was ‘to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation.’” *Williams v. North Carolina*, 317 U.S. 287, 295 (1942) (quoting *M. E. White Co.*, 296 U.S. at 276-77) (emphasis in original). The U.S. Supreme Court has excepted from the general rule cases in which the court rendering the judgment lacked personal jurisdiction over the defendant or subject matter jurisdiction. *See, e.g., Grover & Baker Sewing Machine Co. v. Radcliffe*, 137 U.S. 287, 294-95 (1890); *Milliken v. Meyer*, 311 U.S. 457, 462 (1940). There is also authority suggesting that judgments procured by fraud are excepted. *Treinius v. Sunshine Mining Co.*, 308 U.S. 66, 78 (1939); *M. E. White Co.*, 296 U.S. at 275-76. These exceptions have not even been alleged by Defendant.

Instead, Defendant relies on S.C. Code § 15-35-960, which states that “[t]he provisions of [the Uniform Enforcement of Foreign Judgments Act] do not apply to foreign judgments based on claims which are contrary to the public policies of this State.” This statutory provision would appear to carve out a public policy exception to the Full Faith and Credit clause. Importantly, this provision has not been cited in any reported opinion by any court. Moreover, the Full Faith and Credit Clause (*i.e.*, the United States Constitution) and U.S. Supreme Court case law clearly supersede any relevance of Section 15-35-960.

The U.S. Supreme Court has not recognized a “public policy” exception to the Full Faith and Credit Clause and, in fact, has expressly rejected it. “[C]onsiderations of policy of the forum which would defeat a suit upon the original cause of action are not involved in a suit upon the judgment and are insufficient to defeat it.” *M. E. White Co.*, 296 U.S. at 277. Indeed, the “very purpose” of the Full Faith and Credit Clause “ought not lightly to be set aside out of deference to a local policy which, if it exists, would seem to be too trivial to merit serious consideration when weighed against the policy of the constitutional provision” *Id.* While “[a] court may be guided by the forum State’s ‘public policy’ in determining the law applicable to a controversy[,] our decisions support no roving ‘public policy exception’ to the full faith and credit due judgments.” *Baker v. GMC*, 522 U.S. 222, 233 (1998) (emphasis in original).

Likewise, the U.S. Supreme Court is “aware of [no] considerations of local policy or law which could rightly be deemed to impair the force and effect which the full faith and credit clause and the Act of Congress require to be given to [a money] judgment outside the state of its rendition.” *Id.* at 234 (citations omitted); *see also Johnson v. Muelberger*, 340 U.S. 581, 584 (1951) (“Local policy must at times be required to give way, such is part of the price of our federal system.”) (citations omitted); *Fauntleroy v. Lum*, 210 U.S. 230, 239-40 (1908) (White, J., dissenting) (lamenting the majority’s decision, “since the effect will be to endow each State with authority to overthrow the public policy . . . of the others”). A foreign judgment, if valid where rendered, must be enforced in other states even if the judgment is “repugnant to its own statutes.” *Roche v. McDonald*, 275 U.S. 449, 452 (1928); *see also Estin v. Estin*, 334 U.S. 541, 546 (1948) (The Full Faith and Credit clause “ordered submission . . . even to hostile policies reflected in the judgment of another State, because the practical operation of the federal system, which the Constitution designed, demanded it.”). Justice Rutledge aptly explained the rationale of the rule:

The very function of the clause is to compel the states to give effect to the contrary policies of other states when these have been validly embodied in judgment. To this extent the Constitution has foreclosed the freedom of the states to apply their own local policies. The foreclosure was not intended only for slight differences or for unimportant matters. It was also for the most important ones. The Constitution was not dealing with puny matters or inconsequential limitations. If the impairment of the power of the states is large, it is one the Constitution itself has made. Neither the states nor we are free to disregard it. The "local public policy" exception is not an exception, properly speaking.

Williams v. North Carolina, 325 U.S. 226, 254-55 (1945) (Rutledge, J., dissenting).¹

Numerous state courts have followed the lead of the U.S. Supreme Court, giving full faith and credit to judgments of sister states based on claims contrary to the forum states' public policy. *E.g.*, *Kelly v. First Astri Corp.*, 72 Cal. App. 4th 462, 476-77 (1999); *Craven v. S. Farm Bureau Cas. Ins. Co.*, 117 P.3d 11, 14 (Colo. Ct. App. 2004); *Trauger v. A.J. Spagnol Lumber Co.*, 442 So. 2d 182, 183-84 (Fla. 1983); *Boyer v. Korsunsky, Frank, Erickson Architects*, 382 S.E.2d 362, 363-64 (Ga. Ct. App. 1989); *Pelczynski v. Dolatowski*, 721 N.E.2d 196, 199-200 (Ill. Ct. App. 1999); *Hankin v. Graphic Tech., Inc.*, 222 P.3d 523, 531-32 (Kan. Ct. App. 2010); *Int'l Recovery Sys. v. Gabler*, 210 Mich. App. 422, 424 (1995); *Desert Palace v. Weiss*, 17 Pa. D. & C.4th 51, 52-53 (1992); *Coghill v. Boardwalk Regency Corp.*, 396 S.E.2d 838, 838-40 (Va. 1990); *Conquistador Hotel Corp. v. Fortino*, 298 N.W.2d 236, 238-39 (Wis. Ct. App. 1980); Restatement (Second) of Conflict of Laws § 117.

Courts have even found foreign judgments based on the very claims at issue in the Foreign Judgment, alienation of affections and criminal conversation, to be entitled to Full Faith and Credit despite being expressly contrary to that state's public policy. For example, in *Burdick v. Nicholson*, 680 P.2d 589 (Nev. 1984), the Supreme Court of Nevada reversed the trial court which had refused—on public policy grounds—to enforce a North Carolina foreign judgment

¹ The majority in *Williams* held that the foreign judgment could be challenged on what it interpreted to be jurisdictional grounds.

based on an alienation of affections claim. The Supreme Court of Nevada held that “the action to enforce the judgment is an action to enforce a debt, not the underlying cause of action.” *Id.* at 589. Thus, despite a Nevada statute describing the abolishment of alienation of affections and criminal conversation as serving “the public policy of the state.” Nev. Rev. Stat. Ann. § 41.370, enforcement of the foreign judgment would not violate the state’s public policy. *Id.* at 589-90. Similarly, in *Parker v. Hoefler*, 142 N.E.2d 194 (N.Y. 1957), the Court of Appeals of New York (New York’s highest court) held that a Vermont judgment based on alienation of affections and criminal conversation claims, claims abolished in New York, was enforceable because the foreign judgment was “a debt which the defendant was under obligation to pay,” and the action to enforce it in New York was “upon an entirely different cause of action from that merged in the judgment.” *Id.* at 197. The court ruled in this fashion even though article 2-A of the Civil Practice Act abolished the claims as contrary to the public policy of New York. *Id.*; *see also* *Neporany v. Kir*, 173 N.Y.S.2d 146, 147 (App. Div. 1958).

Here, the Court should decline the invitation to pigeon-hole the Foreign Judgment into S.C. Code § 15-35-960. In the same fashion that South Carolina Supreme Court has found the final sentence of S.C. Code § 15-35-940(B) to violate the federal Constitution, *see* Section I, *supra*, Section 15-35-960 improperly “extend[s] greater protection to South Carolina citizens in the enforcement of foreign judgments and impacts the earlier presumption of validity” *Law Firm of Paul L. Erickson, P.A. v. Boykin*, 383 S.C. 497, 501-02, 681 S.E.2d 575, 578 (2009). The Court should instead follow the mandate of the U.S. Supreme Court, the final arbiter on the Full Faith and Credit Clause, and enforce the Foreign Judgment.

CONCLUSION

For the foregoing reasons, the Court should grant Plaintiff's Motion to Enforce Foreign Judgment and deny Defendant's Motion for Relief.



Scott M. Tyler, S.C. Bar No. 12037

scotttyler@mvalaw.com

Matthew D. Lincoln, S.C. Bar No. 74949

mattlincoln@mvalaw.com

MOORE & VAN ALLEN PLLC

100 North Tryon Street, Suite 4700

Charlotte, NC 28202-4003

Phone: (704) 331-1000

Fax: (704) 331-1159

ATTORNEYS FOR PLAINTIFF

Charlotte, North Carolina

Dated: October 21, 2011.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
SUE TAYLOR COLSON WIDENHOUSE,
Plaintiff,
vs.
TAMMY BATSON COLSON,
Defendant.

) IN THE COURT OF COMMON PLEAS
)
) 09:07 - 3 PM 3:10
) CIVIL CASE NUMBER 11-CP-23-5359

RECEIVED

DEC 29 2011

DEFENDANT'S
MOTION FOR RELIEF **S.C. SUPREME COURT**

TO: PLAINTIFF SUE TAYLOR COLSON WIDENHOUSE AND HER ATTORNEY,
SCOTT M. TYLER

PLEASE TAKE NOTICE that the Defendant, by and through Counsel, will move within 10 days of date or as soon thereafter as counsel can be heard, for this Court's Order relieving the Defendant from the Foreign Judgment ("Judgment") filed against her on August 10, 2011.

Under Code of Laws of South Carolina, 1976, § 15-35-960, the Foreign Judgment is not entitled to entry or enforcement in South Carolina, as the Judgment is contrary to the public policy of South Carolina.

As such, Defendant is further entitled to this Court's Order rendering the Judgment null and void, *ab initio*, from the August 10, 2011 date of filing of the Judgment in South Carolina; barring any enforcement of the Judgment in any form or fashion; and ordering the expungement of all public records of the Judgment.

FACTS

Plaintiff and her former husband, Dale Edward Colson, were married on June 20, 1981. They separated on September 15, 2006, and were divorced on December 20, 2007. Plaintiff remarried on July 11, 2009 (copy of Application, License and Certificate of Marriage, Exhibit A).

She filed her Complaint on August 6, 2009 in the General Court of Justice, Superior Court Division, in the State of North Carolina, County of Cabarrus, in *Sue Taylor Colson Widenhouse v. Tammy Batson Colson*, Civil Case No. 09-CV-003281; seeking compensatory and punitive damages from the Defendant for Alienation of Affection and Criminal Conversation. A

copy of the verified Complaint and Civil Summons is attached as Exhibit B. She instituted this suit in North Carolina, prior to the expiration of the Statute of Limitations, which upon information and belief, would have occurred on or about September 15, 2009. (North Carolina General Statutes § 52-13 (b). Cf. § 1-52 (5) (?))

Judgment was entered against the Defendant on July 5, 2010, in the sum of \$266,000.00. There was no apportionment of compensatory damages as to either cause of action. No punitive damages are indicated in the Judgment.

Now, over a year after the Judgment was entered in North Carolina, Plaintiff seeks to enforce it in South Carolina pursuant to the Uniform Enforcement of Foreign Judgments Act, § 15-35-900, *et seq.*

THE LAW

...“The judgment creditor [the Plaintiff] has the burden of proving that the foreign judgment is entitled to full faith and credit [in South Carolina]”. § 15-35-940 (B).

Plaintiff cannot meet the burden.

Section 15-35-960 states:

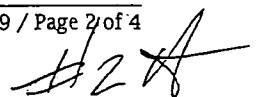
The provisions of this article do not apply to foreign judgments based on claims which are contrary to the public policies of this State.

In 1988, § 15-3-150 became law:

No civil action may be brought in this State for the tort of criminal conversation.

And in 1992, the South Carolina Supreme Court held that Alienation of Affections is no longer a viable cause of action in South Carolina.

The public policy of this State is to foster and protect marriage, to make it a permanent and public institution, to encourage the parties to live together, and to prevent separation. (Citation omitted.) We find, however, that the torts of criminal conversation and alienation of affections have outlived any usefulness they may have possessed in regard to preventing the dissolution of marriages. We discern that the public policy of this State is consistent with the modern course of the law moving away from “heart balm” causes of action. In fact, the legislature already has dispensed with causes of action for criminal conversation. (Citation omitted.) We join the majority of states in abolishing the “heart balm” tort of alienation of affections for causes of action accruing after the date of filing of this opinion. [September 21, 1992] *Russo v. Sutton*, 310 S.C. 200, 204-205, 422 S.E.2d 750, 753 (S.C. 1992).



The Court of Appeals of North Carolina recognized:

...It is important to note that plaintiff cannot bring the claims for alienation of affections and criminal conversation in South Carolina (defendant's resident state) since that state has abolished those causes of actions. *Russo v. Sutton*, 310 S.C. 200, 422 S.E. 2d 750 (1992). *Cooper v. Shealy*, 140 N.C.App. 729, 735, 537 S.E.2d 854, 858 (N.C.App. 2000).

The Supreme Court of South Carolina further noted:

Causes of action for criminal conversation and alienation of affections present opportunities for blackmail. They are often brought for mercenary or vindictive reasons. (Citation omitted.) The remedies of alienation of affections and criminal conversation foster bitterness, promote vexatious lawsuits, put marriages on the marketplace, and use marriages as a means of character assassination. (Citations omitted.) *Russo* at 203-204, 753.

ARGUMENT

The procedural time line is enlightening. Plaintiff remarried on July 11, 2009, verified her Complaint on July 30, 2009, and caused the underlying action to be filed in North Carolina on August 6, 2009, before the Statute of Limitations expired. She portrays a storybook marriage and herself a jilted woman, but at no place did she candidly allege her subsequent relationship and ultimate marriage on July 11, 2009, before she instituted suit.

Assuming the North Carolina Judgment against Defendant is valid in North Carolina, it is void against public policy in South Carolina. Chief Justice Harwell was prescient in his observation, *Id.* Is this an action by a vindictive plaintiff who remarried before instituting the suit? Is she attempting to blackmail a South Carolina defendant, with a vexatious suit that fosters bitterness contrary to South Carolina Law? Is she pursuing a character assassination of a South Carolina defendant?

The North Carolina Court of Appeals recognizes she is without a direct remedy in South Carolina. Yet, out of mercenary and/or vindictive motives, she seeks to indirectly obtain relief, contrary to South Carolina Law. In fact, her uncandid filing with this Court makes no mention that the Judgment was entered in North Carolina, granting her relief for Alienation of Affection and/or Criminal Conversation.

#3 A

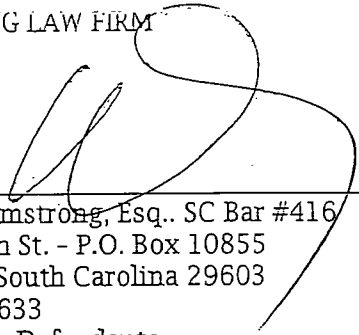
This Court must bring this opportunistic Plaintiff's pursuit to a rapid end in South Carolina.

CONCLUSION

Defendant is entitled to this Court's Order barring the Judgment from entry in South Carolina; rendering the Judgment as currently filed within the Greenville County Clerk of Court's Office null and void *ab initio*, as of date of filing; barring any enforcement of the Judgment; and ordering all public records of the filing of the Judgment to be expunged.

Respectfully submitted,

ARMSTRONG LAW FIRM

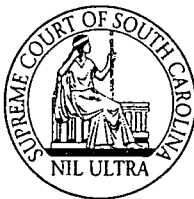


David D. Armstrong, Esq., SC Bar #416
201 E. North St. - P.O. Box 10855
Greenville, South Carolina 29603
(864) 241-0633
Attorney for Defendants

Greenville, South Carolina

Dated: _____

September 8, 2011



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

December 13, 2011

David D. Armstrong, Esquire
Armstrong Law Firm
P.O. Box 10855
Greenville, SC 29603-0855

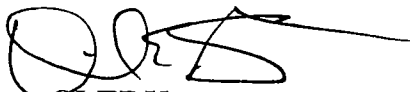
Re: Widenhouse, Sue v. Colson, Tammy, 2011-CP-23-5359

Dear Mr. Armstrong:

This office has received your notice of appeal in this matter. In the notice of appeal, you indicate that this notice of appeal is being filed in this Court because it involves a constitutional challenge to a statute or ordinance. The order being appealed does not contain any discussion or ruling on any constitutional challenge to any statute or ordinance.

I ask that you please provide additional information about this constitutional challenge to a statute or ordinance including how it was raised to and ruled on by the circuit court. This additional information should be provided within ten (10) days of the date of this letter.

Very truly yours,



CLERK

cc: Matthew D. Lincoln, Esquire
Scott Michael Tyler, Esquire

Armstrong Law Firm
Post Office Box 10855
Greenville, South Carolina 29603

DAVID D. ARMSTRONG

(864) 244-0639

www.armstrongfirm.com

201 EAST NORTH STREET
GREENVILLE, SC 29601

FACSIMILE
(864) 271-9136

December 8, 2011

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
PO Box 11330
Columbia, SC 29211

RECEIVED
DEC 12 2011
S.C. SUPREME COURT

RE: *Sue Taylor Colson Widenhouse, Respondent vs.*
Tammy Batson Colson, Appellant
C.A. No.: 2011-CP-23-5359

Dear Mr. Shearouse:

Enclosed for filing is a Notice of Appeal in the above case. Also enclosed are the following:

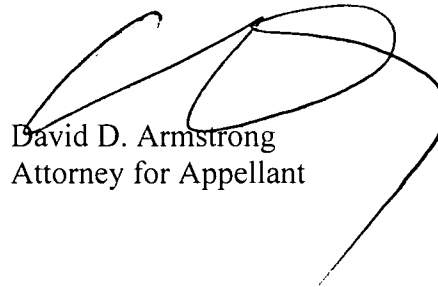
- (1) Proof of service of the Notice of Appeal on the respondent.
- (2) A copy of the Order which is to be challenged on appeal.
- (3) A filing fee of \$100.00;

(4) This appeal is being filed with the Supreme Court because Respondent seeks to enforce a foreign judgment in South Carolina. Appellant asserts that the foreign judgment is not entitled to entry or enforcement in South Carolina, as the judgment is contrary to the public policy of South Carolina (Code of Laws of South Carolina, 1976, Sec. 15-35-960). Respondent argues that the judgment is entitled to enforcement in South Carolina under the United States Constitution which provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State", U.S. Constitution Article IV, Sec. 1. This appeal is properly before the Supreme Court of South Carolina under Rule 203(d)(1)(A)(ii).

Clerk, Supreme Court of South Carolina
December 8, 2011
Page 2 of 2

Yours truly,

ARMSTRONG LAW FIRM

A handwritten signature in black ink, appearing to read "David D. Armstrong". The signature is stylized with large, sweeping loops and a long tail extending downwards and to the right.

David D. Armstrong
Attorney for Appellant

DDA/kas

11-6325

Enclosures

cc: Scott M. Tyler, Esq. (w/encl.)
Matthew D. Lincoln, Esq. (w/encl.)
Moore & Van Allen, PLLC
100 N. Tryon St., Suite 4700
Charlotte, NC 28202
Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In the Supreme Court

2011 DEC -8 PM 4:18

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

FILED-CLERK OF COURT
GREENVILLE CO S.C.
PAUL B. WICKENSIMER

D. Garrison Hill, Circuit Court Judge

Case No.: 2011-CP-23-5359

Sue Taylor Colson WidenhouseRespondent,

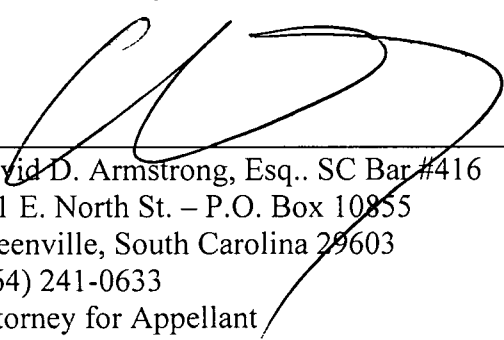
v.

Tammy Batson ColsonAppellant.

NOTICE OF APPEAL

Tammy Batson Colson appeals the Order of the Honorable D. Garrison Hill, dated November 9, 2011. Appellant received written notice of the entry of this Order on November 15, 2011.

December 8, 2011



David D. Armstrong, Esq., SC Bar #416
201 E. North St. - P.O. Box 10855
Greenville, South Carolina 29603
(864) 241-0633
Attorney for Appellant

Other Counsel of Record:

Scott M. Tyler, Esq.
Matthew D. Lincoln, Esq.
Moore & Van Allen PLLC
100 N. Tryon St., Suite 4700
Charlotte, NC 28202
Attorneys for the Respondent

RECEIVED

DEC 12 2011

S.C. Supreme Court

THE STATE OF SOUTH CAROLINA 2011 DEC -8 PM 4: 18
In the Supreme Court

FILED-CLERK OF COURT
GREENVILLE CO S.C.
PAUL B. WICKENSINER

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge

Case No.: 2011-CP-23-5359

Sue Taylor Colson WidenhouseRespondent,

v.

Tammy Batson ColsonAppellant.

PROOF OF SERVICE

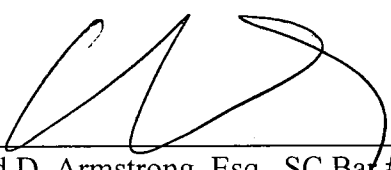
I certify that I have served the Notice of Appeal on Sue Taylor Colson Widenhouse, by depositing a copy of it in the United States Mail, postage prepaid, on December 8, 2011, addressed to her attorneys of record, Scott M. Tyler and Matthew D. Lincoln, Moore & Van Allen PLLC, 100 N. Tryon St., Suite 4700, Charlotte, NC, 28202.

December 8, 2011

RECEIVED

DEC 12 2011

S.C. Supreme Court


David D. Armstrong, Esq., SC Bar #416
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Attorney for Appellant

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GREENVILLE, SC 29601

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(864) 271-9136

December 8, 2011

Hollie M. Jenkins, Court Reporter
PO Box 16506
Greenville, SC 29606

RECEIVED

DEC 12 2011

S.C. Supreme Court

RE: *Sue Taylor Colson Widenhouse, Respondent vs.*
Tammy Batson Colson, Appellant
C.A. No.: 2011-CP-23-5359

Dear Ms. Jenkins:

On October 27, 2011, the above referenced case was tried before The Honorable D. Garrison Hill, Circuit Court Judge, in Greenville County. My records indicate that you were the court reporter for this case.

I request that you provide me with a transcript of the proceedings. Please transcribe the entire proceedings.

I agree to pay the per page charge for this transcript as provided by Rule 607, SCACR.

Yours truly,

ARMSTRONG LAW FIRM

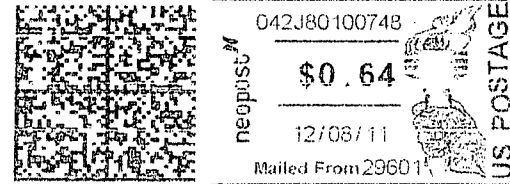
David D. Armstrong
Attorney for Appellant

DDA/kas

11-6325

cc: Scott M. Tyler, Esq.
Matthew D. Lincoln, Esq.
S.C. Court Administration
Clerk, Supreme Court of South Carolina

Armstrong Law Firm
Post Office Box 10855
Greenville, South Carolina 29603



|||||
The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
PO Box 11330
Columbia, SC 29211

29211 91330 8099

