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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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**SC Court of Appeals**

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APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

James J. Corbett, Circuit Court Special Referee

\_\_\_\_\_  
Appellate Case No. 2014-001280

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

v.

Xavier Troy Smith, Respondent.

\_\_\_\_\_  
INITIAL BRIEF OF APPELLANT

\_\_\_\_\_  
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Appellant, Pro Se

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2. BECAUSE THE ORIGINAL PLAINTIFF, LYNN G. YACOUBIAN, PRESENTED NO EVIDENCE THAT A CONTINGENCY AGREEMENT EXISTED BETWEEN HER AND GLEN K. LaCONEY, AS A CONDITION OF THE ASSIGNMENT OF JUDGMENT, THE TRIAL COURT ERRED IN FINDING THAT LaCONEY HAD ENGAGED IN THE UNAUTHORIZED PRACTICE OF LAW.

3. THE TRIAL COURT ERRED IN FINDING THAT THE ASSIGNMENT OF JUDGMENT WAS INVALID AGAINST XAVIER TROY SMITH BASED ON THE POORLY EXPRESSED RECITAL.

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## STATEMENT OF ISSUES ON APPEAL

DID THE CIRCUIT COURT ERR IN HOLDING THAT XAVIER TROY SMITH WAS NOT PERSONALLY SERVED WITH THE SUMMONS AND COMPLAINT IN THE UNDERLYING SUIT?

DID THE CIRCUIT COURT ERR IN HOLDING THAT A CONTINGENCY AGREEMENT EXISTED BETWEEN THE ORIGINAL PLAINTIFF, LYNN G. YACOUBIAN, AND GLEN K. LaCONEY, AS A CONDITION OF THE ASSIGNMENT OF JUDGMENT AT ISSUE?

DID THE CIRCUIT COURT ERR IN HOLDING THAT LYNN G. YACOUBIAN DID NOT HAVE THE RIGHT TO VOLUNTARILY DISPOSE OF AND ASSIGN THE JUDGMENT TO GLEN K. LaCONEY WITHOUT EXCHANGE OF MONETARY CONSIDERATION?

DID THE CIRCUIT COURT ERR IN HOLDING THAT BY ACCEPTING AND ATTEMPTING TO ENFORCE THE VOLUNTARILY ASSIGNMENT OF JUDGMENT FROM LYNN G. YACOUBIAN, GLEN K. LaCONEY HAD ENGAGED IN THE UNAUTHORIZED PRACTICE OF LAW?

DID THE CIRCUIT COURT ERR IN FINDING THAT THE ASSIGNMENT OF JUDGMENT WAS INVALID AGAINST XAVIER TROY SMITH BASED ON THE POORLY EXPRESSED RECITAL?

DID THE CIRCUIT COURT ABUSE IT'S DISCRETION IN DISMISSING THE SUPPLEMENTARY PROCEEDINGS AGAINST XAVIER TROY SMITH?

## STATEMENT OF THE CASE

On February 28, 2005, judgment by default was entered in favor of Lynn G. Yacoubian against Xavier Troy Smith and Home Assist Real Estate, LLC. The default judgment was not joint and several. The default judgment was subsequently assigned to Glen K. LaConey on September 23, 2005. The assignment of judgment recited the amount awarded against Home Assist Real Estate, LLC and omitted any recital of the amount awarded against Smith.

On April 3, 2013, the circuit court appointed James J. Corbett, Esq. to serve as Special Referee for supplementary proceedings against Xavier Troy Smith. Special Referee Corbett, by his Order and Rule to Show Cause, filed August 27, 2013, directed Smith to appear for supplementary proceedings. Smith sought relief from the judgment and supplementary proceeding by alleging that the circuit court lacked personal jurisdiction over him; and that LaConey was engaged in the unauthorized practice of law. Special Referee Corbett dismissed in favor of Smith by Order Dismissing the Supplemental Proceedings, filed May 8, 2014.

On May 16, 2014, LaConey filed his Notice of Motion and Motion to Alter or Amend Judgment, which was denied by Order Denying Petitioner LaConey's Motion To Alter Or Amend Judgment, filed June 2, 2014. On June 18, 2014, LaConey served Smith with a Notice of Appeal.

## FACTS

### (Service of Process)

In 2002, realtor, Lori Pelzer persuaded her great-aunt, Lynn G. Yacoubian (Yacoubian) to loan money to her real estate company, Home Assist Real Estate, LLC. The loan was defaulted. Additionally, Lori Pelzer's brother, realtor, Xavier Troy Smith (Smith), persuaded Yacoubian to borrow funds to purchase distressed homes as investments. Instead, Smith converted Yacoubian's money for his personal use, leaving Yacoubian with two defaulted mortgages. Yacoubian sued and was awarded a default judgment against Home Assist Real Estate, LLC in the amount of \$26,500.00; and against Xavier Troy Smith for conversion and breach of trust in the amount of \$95,743.69, on February 28, 2005. Yacoubian subsequently assigned the default judgment to Glen K. LaConey (LaConey) for "valuable consideration" and duly filed the assignment on September 23, 2005. The assignment contained no recital of the specific nature of the consideration. Additionally, the assignment recited the amount of \$26,500.00 entered against co-defendant Home Assist Real Estate, LLC and erroneously omitted any recital of the amount of \$95,743.69 entered against co-defendant, Xavier Troy Smith as a scrivener's error. LaConey proceeded to move for supplementary proceedings against Smith. The matter was referred to James J. Corbett, Esq. to serve as Special Referee by Order of Reference filed by the Honorable L. Casey Manning on April 3, 2013. Special Referee Corbett filed his Order and Rule to Show Cause, on August 27, 2013, directing Smith to appear for supplementary proceedings on September 13, 2013.

Smith was personally served at his real estate office, Aggressive Realty, LLC, by Serve One, Inc. on August 29, 2013.

On or about September 7, 2013, Smith, represented by his counsel, Robert L. Reibold, Esq., submitted to Special Referee Corbett and to LaConey, a Notice of Motion and Motion for Relief from Default Judgment pursuant to Rule 60(b)(4), SCRPC, supported by his affidavit, to vacate the default judgment entered against him alleging that he was not served with the Summons and Complaint in the underlying suit; that he was unaware of the underlying suit filed, or of entry of the default judgment against him; and that the default judgment is void for lack of personal jurisdiction. Additionally, Smith submitted a Notice of Motion and Motion to Dismiss and/or Stay Supplemental Proceedings raising the equitable defense of unclean hands by alleging that LaConey was engaged in the unauthorized practice of law based solely on the opinion of the South Carolina Supreme Court in Roberts v. LaConey, 375 S.C. 97, 650 S.E.2d 474 (2007).

[Neither the Motion for Relief from Default Judgment, nor the Motion to Dismiss and/or Stay Supplemental Proceedings, none of Smith's affidavits, nor the deposition of Lynn G. Yacoubian, were filed with the circuit court. Therefore, LaConey submits that those materials should be excluded from the Record on Appeal, and should not be considered by this Court.]

Special Referee Corbett excused Smith from appearing for supplementary proceedings and heard arguments on Smith's motion in lieu of supplementary proceedings. Special Referee Corbett issued no Order amending the nature of the proceeding. Additionally, during the September 13th hearing, no evidence was submitted in support of Smith's claims that he was

not or could not have been served with the Summons and Complaint, or otherwise noticed of any hearings in the matter. Smith swore in his affidavit, dated September 6, 2013, in support of his Motion for Dismissal, neither of which were filed with the trial court, that he was in fact employed at Bob Capes Realty office on the date and at the address of purported service; however, that he was "meeting with clients and viewing homes" at the time of purported service. Smith has presented no evidence that he was "meeting with clients and viewing homes" or otherwise engaged in any activities that would have precluded service upon him on the date and time of purported service. Smith submitted an affidavit, dated September 26, 2013, to Special Referee Corbett and to LaConey, which was not filed in the record, that the Bob Capes Realty office at 7335 Saint Andrews Road, had closed and relocated in early 2004, before Smith could be served by Certified Mail with notice of a damages hearing. Again, Smith has presented no evidence that the office at 7335 Saint Andrews Road had closed or, otherwise, that mail could not have been forwarded to any other location accessible to Smith. LaConey notes that a copy of the certified mail return receipt, bearing Smith's signature, does not appear of record.

Special Referee Corbett filed his Order on Motion to Dismiss, on November 18, 2013, directing the parties to conduct limited discovery in support of their positions. LaConey served Smith with Petitioner's First Set of Request for Admissions on December 18, 2013, via Certified Mail, Return Receipt Requested, which was delivered on December 20, 2013.

Smith's responses to Requests to Admit included a denial, stating that he was unable to recall his activities on the date and time of purported service of the Summons and Complaint on the basis that LaConey sought information about events "at a specific hour on a specific date over 10 years ago". Smith conducted a deposition of Yacoubian, December 30, 2013, which LaConey elected not to attend. LaConey was not served with any other discovery requests. LaConey duly filed the originals of his Request for Admissions and his Petitioner's Discovery Status Report on January 21, 2014 with the circuit court. LaConey served copies of both upon Robert L. Reibold, Esq. and upon Special Referee Corbett.

Smith filed a Notice of Motion and Supplemental Motion to Dismiss with the circuit court on March 4, 2014; alleging that LaConey was engaged in the unauthorized practice of law. Smith raised no claims whatsoever in his Supplemental Motion to Dismiss that he was not served with the Summons and Complaint or, otherwise, that he lacked any knowledge of entry of the default judgment.

Special Referee Corbett asserted in his Order Dismissing the Supplemental Proceeding, [May 8, 2014, pp. 1 - 3], that a hearing was held on March 13, 2014, during which Smith purportedly presented copies of a letter and a magazine addressed to him at Bob Capes Realty office at 3561 Dreher Shoals Road in Irmo, South Carolina, which somehow evinces that the Bob Capes Realty office at 7335 Saint Andrews Road, had closed in early 2004; thereby, precluding Smith from being served with notice of a damages hearing. However, no order for and no official transcript of the purported hearing appears of record.

"[A] party who controverts the validity of a judgment generally bears the burden of showing such invalidity by proper evidence." 47 Am. Jur. 2d Judgments § 800, at 378-79 (2006). LaConey contends that avoidance of the default judgment, without any supporting evidence, would have a chilling effect upon all default judgments.

LaConey relies on the Affidavit of Personal Service, duly filed by Belec's Process Service on September 16, 2003, which recites in pertinent part, that the process server, Gail Belec, did serve the Summons and Complaint, and other documents "on the Defendant by delivering to Xavier Troy Smith personally" at 7335 Saint Andrews Road, Columbia, South Carolina. The Affidavit of Service notes the date and time of service as September 15, 2003 at 12:26 p.m., respectively.

A review of public records, in Deed Book R1631, pp. 963 - 973, at the Richland County Office of the Register of Deeds, disclosed that Smith's wife, Paulette Parker-Smith, purchased a homestead at 203 Silverwood Trail in Richland County, South Carolina solely in her name in 2010, after entry of the default judgment in 2005. LaConey contends that the nature and timing of the transaction suggests that Smith did have knowledge of the default judgment on the basis that Smith withheld his name from the property deed to defeat execution against the property, or otherwise, that the default judgment adversely affected Smith's credit; thereby, precluding Smith's property purchase jointly with his wife.

(Unauthorized Practice of Law)

In his Order of Dismissal, [May 8, 2014, pp. 4 - 5], Special Referee Corbett's assertion that Yacoubian testified in her deposition that the only consideration she received in exchange for the assignment of judgment was the promise to receive a percentage of the proceeds LaConey recovered from the judgment is contradicted by Yacoubian's deposition, in which Yacoubian testified that she did not recall the transaction between her and LaConey with respect to the assignment. [Deposition of Lynn G. Yacoubian, December 30, 2013, p. 16, Lines 1 - 17; p. 18, Lines 2 - 4; p. 19, Lines 2 - 20; p. 20, Lines 2 - 14; p. 21, Lines 1 - 25 and p. 22, Lines 1 - 11]. Additionally, Yacoubian failed to produce any written contracts between her and LaConey with respect to the assignment of judgment. Special Referee Corbett further omitted that Yacoubian testified that she failed to maintain contact with LaConey after the assignment, which suggests that there was no continuing business relationship between them, and that Yacoubian had no expectation of future payment from LaConey. [Id. at p. 22, Lines 12 - 18 and p. 25, Lines 6 - 16]. Yacoubian further testified that while she would have enjoyed receiving money from the judgment, she was so angry at Smith that she was satisfied with the prospect that Smith would "pay somebody", even if Smith would not pay her. Yacoubian further testified that "if he could get it he was welcome to it, Mr. LaConey", which suggests that the assignment was voluntary, and that LaConey made no solicitations, promises or inducements in exchange for the assignment. [Id. at p. 16, Lines 10 - 17; p. 19, Lines 5 - 10 and p. 25, Lines 6 - 16].

Special Referee Corbett, in his Order of Dismissal of Supplemental Proceedings, [Id. at p. 7], declined to adopt "dislike and satisfaction" as valuable consideration. LaConey contends that no consideration was required based on Yacoubian's voluntary, unsolicited assignment.

There have been no authorities presented, either by Smith or the trial court, that prescribes what consideration Yacoubian is allowed to accept as valuable in exchange for the stated assignment, if required. Additionally, there have been no authorities presented that proscribes hypothecation of Yacoubian's judgment, or which precludes Yacoubian's right to voluntarily dispose of her judgment as she pleases, under the attendant circumstances.

Special Referee Corbett's assertion, in his Order of Dismissal of Supplemental Proceedings [May 8, 2014, p. 5], that "LaConey admits that he did not pay Ms. Yacoubian anything except the emotional value of the judgment possibly being enforced against Mr. Smith."; and that "both LaConey and Yacoubian testified each was to receive a percentage of any recovery" [Id. at p. 6], or of any other admissions or testimony, during any purported hearing on March 13, 2014, is unsupported by the record.

Special Referee Corbett asserted in his Order of Dismissal [May 8, 2014, pp. 11 - 13], that the assignment of judgment is void against Smith on the basis that the assignment recited only the amount entered against the co-defendant, Home Assist Real Estate, LLC and omitted any recital of the amount of the judgment against Smith. However, Special Referee Corbett omitted that Yacoubian testified repeatedly in her deposition that she sought to assign the judgment against "him" (Smith) to LaConey; that she "assigned everything to Mr. LaConey";

and "isn't Smith Home Assist?", which suggests that Yacoubian believed that she had in fact assigned the judgment against Smith to LaConey. [Id. at p. 12, Lines 13 - 19; p. 16, Lines 12 - 17; p. 19, Lines 18 - 19]

LaConey contends that in this matter in equity, the circuit court erred in failing to recognize the assignment as an equitable assignment, requiring no particular form, which, if not cognizable at law, would be recognized and protected in equity. Additionally, any language showing an intent to transfer property interests would be recognized no matter how poorly expressed. Parol and written assignments are of equal validity. See Player v. Player, 240 S.C. 274, 125 S.E.2d 636 (1962), and Troublefield v. Heyward, 111 S.C. 293, 97 S.E.2d. (1919).

The circuit court erred in failing to consider the intent of Yacoubian, as well as the extrinsic circumstances, verbalized in Yacoubian's deposition, that would be admissible to aid in interpreting the written assignment. See Lawrence v. Burnett, 116 S.C. 347, 108 S.E. 142 (1921). Special Referee Corbett did acknowledge in his Order of Dismissal [May 8, 2014, pp. 11 - 12] that "Yacoubian did not reserve any rights in the judgment"; therefore, Yacoubian retained no interests that could be represented directly by LaConey.

Special Referee Corbett's assertion that in Roberts v. LaConey, 375 S.C. 97, 650 S.E.2d 474 (2007), the South Carolina Supreme Court held that LaConey was engaged in the unauthorized practice of law based on purported threats made by LaConey to Roberts, constituted the unauthorized practice of law is unsupported by the Supreme Court's ruling.

Those matters were not before the Court. Id. at n.2. Additionally, Special Referee Corbett's assertion that LaConey transmitted a handwritten letter to Smith threatening to report Smith to the IRS Criminal Division, if he "failed to pay LaConey on the judgment", is unsupported by any evidence in the record. Even if it were true, such threats, per se, would not constitute the unauthorized practice of law, as decided in Roberts; and, therefore, would be moot.

LaConey contends that Special Referee Corbett's blatant and numerous false assertions, and his omissions favorable to Smith evinces Special Referee Corbett's bias towards Smith and prejudice against LaConey. LaConey further contends that Special Referee Corbett's dismissal of the supplemental proceedings constitutes an abuse of discretion.

LaConey further contends that Special Referee Corbett acted in an arbitrary, capricious, and unreasonable manner; that Special Referee Corbett's ruling has a palpably incorrect or irrational basis; and that Special Referee Corbett's ruling was wholly unsupported by evidence. Additionally, Special Referee Corbett either did not consider, or failed to appreciate the significance of competent, probative evidence.

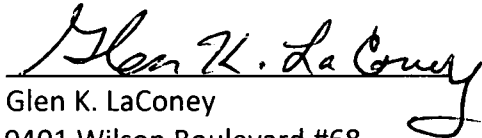
In an action in equity, the appellate court will disturb the ruling of a special referee when the ruling is wholly unsupported by evidence or controlled by an erroneous conception or application of the law. See Maddux Supply Co. v. Safhi, Inc., 316 S.C. 404, 450 S.E.2d 101, 102 (Ct. App. 1994); T.W. Morton Builders, Inc. v. von Buedingen, 316 S.C. 388, 450 S.E.2d 87, 92 (Ct. App. 1994); Jefferies v. Phillips, 316 S.C. 523, 451 S.E.2d 21, 22-3 (Ct. App. 1994).

Additionally, in an action in equity, the appellate court may find facts in accordance with its own view of the preponderance of the evidence. See Mi Co. Ltd. v. McLean, 325 S.C. 616, 623, 482 S.E.2d 597, 601 (Ct. App. 1994); Hayne Federal Credit Union v. Bailey, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997); Houck v. Rivers, 316 S.C. 414, 418, 450 S.E.2d 106, 109 (Ct. App. 1994); S.C. Federal Savings Bank v. Atlantic Land Title Co., 314 S.C. 292, 442 S.E.2d 630, 631 (Ct. App. 1994).

#### CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court, and remand the matter for supplementary proceedings.

Respectfully submitted,

  
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October 17, 2014