

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

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

OCT 16 PM 2 26

JUDGMENT IN A CIVIL CASE

CASE NO: 2005CP2304155

RECEIVED

NOV 04 2014

GrandSouth Bank vs. Cleveland Land Company Inc

SC Court of Appeals

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
  - Rule 12(b), SCRPC;
  - Rule 41(a), SCRPC (Vol. Nonsuit);
  - Rule 43(k), SCRPC (Settled);
  - Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**
  - Rule 40(j) SCRPC;
  - Bankruptcy;
  - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
  - Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
  - Affirmed;
  - Reversed;
  - Remanded;
  - Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order;  Statement of Judgment by the Court:

NOTICE

This is a notice to you that an Order For Petitioner Robinson's Motion To Dismiss Granted in this case has been filed in the Clerk of Court's Office. To obtain a certified copy, you may contact our office by phone (864) 467-8551 or email a request to [bjeffords@greenvillecounty.org](mailto:bjeffords@greenvillecounty.org). If you would like a copy via email, please provide a valid email address.

Dated at Greenville, South Carolina, this 16th day of October, 2014.

Court Reporter:

PRESIDING JUDGE -

D. Sean Faulkner Poinsett Plaza 104 S. Main Street,  
Suite 900 Greenville, SC 29601  
Aimee Victoria-Ann Leary 103-C Regency  
Commons Drive Greer, SC 29650

Rodney F. Pillsbury 1204-A E. Washington St.  
Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court  
- Clerk of Court

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 GrandSouth Bank, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 Cleveland Land Company, Inc., Walter C. )  
 Robinson and Albert E. Fitzgerald. )  
 )  
 Respondents. )  
 )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON  
 PLEAS  
 13th JUDICIAL CIRCUIT

C.A. No.: 2005-CP-23-041

**ORDER**

FILED-CLERK OF COURT  
 GREENVILLE CO. S.C.  
 PAUL B. WICKENSIMMER  
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This matter comes before the Court upon Respondent Walter C. Robinson's Motion to Dismiss the Petition filed by GrandSouth Bank seeking supplemental proceedings against him to collect on a judgment. The motion was extensively briefed and well argued by counsel for both parties. After careful consideration of the facts and the applicable legal statutes and case law, the Court agrees with Respondent Robinson and grants his motion to dismiss.

The salient facts are not disputed. Petitioner GrandSouth Bank obtained a judgment against Respondents on July 20, 2004. The judgment was filed of record in Lexington County on July 27, 2004 (2003-CP-32-1984). Thereafter, the judgment was transcribed and filed with Greenville County on July 1, 2005 (Judgment Roll: 2005-CP-23-04155). The Clerk of Court for Greenville County issued an execution against property of Walter C. Robinson on May 23, 2014. This was some two months prior to the ten years running prescribed by S.C. Code Ann. §15-39-30 (the "the 10 year period"). The execution was filed with the Greenville County Sheriff's

Office on May 27, 2014. The Sheriff of Greenville County returned the execution marked "*Nulla Bona*" on July 18, 2014.<sup>1</sup>

Petitioner then filed its Petition, Summons and proposed Order and Rule to Show Cause with the Clerk of Court for Greenville County after the ten year period had expired.<sup>2</sup> On August 18, 2014, an Order and Rule to Show Cause was issued by the Administrative Judge directing that Walter C. Robinson appear before the Court on September 16, 2014 for supplemental proceedings.

Petitioner argues that since it filed its execution with the Sheriff's Office on May 27, 2014, within the ten year period set forth in §15-39-30, the judgment had "active energy" beyond the ten-year period. GrandSouth Bank further argues that since its Petition was filed with the court in a prompt and timely fashion after receiving the *Nulla Bona* return, it was merely waiting on the court's order directing supplemental proceedings. As such, Petitioner argues that since it filed its execution within the ten-year period, the ten-year limitation would not be a bar even

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<sup>1</sup> Petitioner argued that the information Respondent provided on the Sheriff's worksheet creates a basis for equitably tolling the ten-year period. In the debtor's worksheet returned to the Greenville County Sheriff, Dr. Robinson stated that he did not know anyone at GrandSouth Bank or Cleveland Land Company. [Petitioner's Brief in Opposition, Ex. 2] In support of his motion to dismiss, Dr. Robinson submitted an affidavit that he did not know anything about the judgment, because he had co-signed a loan for Fitzgerald, whom had assured him over ten years ago that everything had been taken care of.

The Court finds the worksheet of Robinson does not provide a basis for equitably tolling the ten-year period since there is no showing of a definite, substantial and detrimental change of position of Petitioner. Further, under 15-39-30, supplemental proceedings could have been instituted prior to the "*Nulla Bona*" Return from the Sheriff's Office.

<sup>2</sup> The record is unclear whether GrandSouth Bank filed its petition on July 29, 2014 or August 18, 2014 based upon discrepancies between the motion cover sheet and the file stamped copy of the petition. For purposes of this motion, it is a distinction without a difference, because both dates are after the expiration of the ten-year period set out in 15-39-30.

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though the actual court order directing supplemental proceedings was not issued until after the ten-year period had expired.

Respondent Robinson argues that since the Petition seeking an order was not filed with the court until after the ten-year limitation set forth in §15-39-30, the “active energy” of its judgment had expired, and, accordingly, the Order and Rule to Show Cause should be dismissed. Respondent posits that, to accept Petitioner's rationale, would be to allow a judgment creditor the right to file an execution at any time within the ten-year period and then, at some later date after the ten-year period expired, petition the court for supplemental proceedings – potentially extending the ten-year limitation period for years thereafter. In other words, Respondent contends that adopting the Petitioner’s legal position would mean there would be no finality to judgments if a judgment holder, so long as it had filed an execution within the ten-year period, could then proceed with supplemental proceedings at any point outside the ten-year period. For that reason, Robinson argues that the petition itself must be filed with the court within the ten-year period.

#### Legal Discussion

South Carolina courts have long recognized its “strong public policy to limit the enforcement of judgments to ten years.” Commercial Credit Loans, Inc. v. Riddle, 334 S.C. 176, 512 S.E.2d 123 (Ct. App. 1999). Our courts have consistently held that under the statute, a judgment becomes stale and a judgment lien is extinguished after ten years. See, e.g., Home Port Rentals, Inc. v. Moore, 369 S.C. 493, 632 S.E.2d 862 (2006), Commercial Credit Loans, Inc. v. Riddle, 334 S.C. 176, 512 S.E.2d 123 (Ct. App. 1999), and Hardee v. Lynch, 212 S.C. 6, 46 S.E.2d 179 (1948). In so holding, the Court has reasoned, “A judgment lien is purely statutory,



its duration as fixed by the legislature may not be prolonged by the courts and the bringing of an action to enforce the lien will not preserve it beyond the time fixed by statute, if such time expires before the action is tried." Linda McCompany, Inc. v. Shore, 390 S.C. 543, 703 S.E.2d 499 (2010) (quoting, Garrison v. Owens, 258 S.C. 442, 446-47, 189 S.E.2d 31, 33 (1972)).

The controlling and dispositive case is Linda McCompany, Inc. v. Shore, 703 S.E.2d 499 (S.C. 2010). In Shore, the judgment was filed with the Clerk of Court on June 2, 1995 and a petition for supplemental proceedings was filed with the court on July 29, 2004. A special referee conducted a hearing on October 1, 2004. However, the actual Orders of the special referee and of the Circuit Court were not issued until one day after the expiration of the ten-year period set forth in 15-39-30.

In balancing the respective equities of the parties, our Supreme Court indicated that, "when a party has complied with the applicable statutes, as Respondent did in this case, and is merely waiting on a court's order regarding execution and levy, the ten-year limitation found in §15-39-30 is extended to when the court finally issues an order. To hold otherwise would put those trying to enforce their judgments at the mercy of the court system to conclude the matter within the ten-year period." See, Id. 703 S.E. 2d at 554, 555. The rationale of the Shore case is that once a judgment creditor complies with the applicable statutes and files its petition or pleadings with the court, the judgment continues with "active energy" until the court system issues its final order. Of critical importance here is the fact that, in Shore, the petition for supplemental proceedings was filed with the court before the ten-year period expired.

The Court notes that Petitioner, through its very fine attorney, acted in a prompt manner in filing its petition with the court once the execution was returned *Nulla Bona*. Notwithstanding

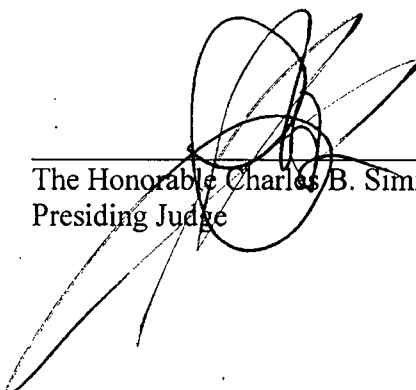
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this fact, the petition for supplemental proceedings was not filed with the court before the ten-year period expired. As such, and finding Shore to be controlling, the Court necessarily finds that the judgment against Robinson had expired, albeit by only a few days, prior to the petition for supplemental proceedings being filed.

Conclusion

For these reasons, Petitioner Robinson's motion to dismiss is GRANTED. The judgment as to Respondent Robinson has expired as a matter of law.

IT IS SO ORDERED, this 16 day of October, 2014.



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The Honorable Charles B. Simmons, Jr.  
Presiding Judge

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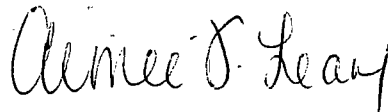
RE: GrandSouth Bank v. Cleveland Land Company, Inc., Walter C. Robinson and  
Albert E. Fitzgerald: 2005-CP-23-04155  
Request for Transcript

Dear Ms. Campbell:

Please prepare and provide me with a copy of the transcript for the hearing in this matter which took place on September 16, 2014 before the Honorable Charles B. Simmons, Jr., Master in Equity of Greenville County, South Carolina. The hearing was Defendant Walter C. Robinson's Motion to Dismiss. If you need any further information, please feel free to give me a call. Also, if you require payment in advance, just let me know and I will be glad to furnish the same.

With kind regards I remain,

Very truly yours,



Aimee V. Leary, Esq.

cc: Rodney F. Pillsbury, Esq.  
1204-A E. Washington Street  
Greenville, South Carolina 29601  
Attorney for Respondent Walter C. Robinson

The Honorable Jenny Abbott Kitchings  
Clerk of Court S.C. Court of Appeals  
P.O. Box 11629  
Columbia, South Carolina 29211