

**STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM GREENVILLE COUNTY
Master in Equity**

The Honorable Charles B. Simmons, Jr., Master in Equity

C.A. No. 2005-CP-23-04155

GrandSouth Bank

Appellant,

v.

Cleveland Land Company, Inc., Walter C.
Robinson and Albert E. Fitzgerald,

Defendants,

Of whom Walter C. Robinson is the Respondent.

INITIAL BRIEF OF APPELLANT

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Aimee V. Leary, Esq.
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STATEMENT OF ISSUES ON APPEAL

- I. DID THE MASTER IN EQUITY ERR IN GRANTING RESPONDENT WALTER C. ROBINSON'S MOTION TO DISMISS APPELLANT'S PETITION SEEKING SUPPLEMENTAL PROCEEDINGS TO COLLECT ON A JUDGMENT?

STATEMENT OF THE CASE

Petitioner obtained judgment against the Respondent, Walter C. Robinson, on July 20, 2004 in the amount of One Hundred Eleven Thousand Fifty Nine and 21/100 Dollars (\$111,059.21) plus interest thereon and reported in the indexes and records of the Clerk of Court for Lexington County on July 27, 2004 (Judgment Roll No.: 2003-CP-32-1984). The judgment was transcribed and entered upon the index and records of the Clerk of Greenville County, South Carolina on July 1, 2005 in Judgment Roll No. 2005-CP-23-04155. The Greenville County Clerk of Court issued an Execution Against Property (the "Execution") of Respondent on May 23, 2014, some two (2) months prior to the ten (10) year running of the time prescribed by S.C. Code Ann. § 15-39-30 (1976) for the extinguishment of judgments. (**Execution Against Property**) The Execution was clocked in the Greenville County Sheriff's Civil Division for service on May 27, 2014 exactly two months prior to the ten (10) year running of the time prescribed by S.C. Code Ann. § 15-39-30 (1976) for the extinguishment of judgments. *Id.* Respondent, Robinson, signed a judgment debtor worksheet on June 2, 2014 alleging that he, "[did] not know anyone at Grandsouth Bank or the Cleveland Land Company." (**Judgment Debtor Worksheet of Walter C. Robinson, III**). The Sheriff of Greenville County returned the Execution marked "Nulla Bona" on July 18, 2014. (**Nulla Bona Return with Cover Letter**). Petitioner filed its Petition, Summons and Proposed Order and Rule to Show Cause on July 29, 2014. (**Petition, Summons and Proposed Order and Rule to Show Cause**).

An Order on the Rule to Show Cause was signed on August 11, 2014 and filed with the Clerk of Court on August 18, 2014 (the "Order"). (**Order and Rule to Show Cause**). The Order was served on the Respondent on August 22, 2014. (**Affidavit of Service**). Thereafter Respondent filed a Motion to Dismiss Appellant's Petition. The parties presented their Memoranda and oral arguments at a hearing before the Greenville County Master in Equity on September 16, 2014. (**Transcript**). The Master in Equity issued an Order stating that "the petition for supplemental proceedings was not filed with the court before the ten-year period expired" and therefore "the judgment against Robinson had expired." Therefore, *"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.* (emphasis added). (**Order Granting Motion to Dismiss**, p. 5). The Order was filed on October 16, 2014 and the Notice of Appeal was filed and served on October 31, 2014. (**Notice of Appeal**).

ARGUMENT

A. Appellant Is Not Barred From Seeking Supplemental Proceedings Against Respondent As Appellant Filed Its Execution With The Clerk of Court To Begin "Active Energy" Within Ten-Years Of The Entry Of Judgment And Is Therefore Not Barred By The Ten-Year Expiration Of Judgments.

Appellant asserts that the Master in Equity should have denied Respondent's Motion to Dismiss. The Supreme Court of the State of South Carolina addressed the issues before this Court in the case of Linda McCompany, Inc. v. Shore, 390 S.C. 543, 703 S.E. 2d 499 (2010). The Supreme Court specifically addressed this issue such that its decision would impact further litigants. Id at 504. The court noted the provisions of S.C. Code of Laws Ann. § 15-39-30 (1976) which provide:

Executions may issue upon final judgments or decrees at any

time within ten years from the original entry thereof and shall have active energy during such period without an renewal or renewals thereof, and this whether any return may or may not have been made during such period on such executions.

§ 15-39-30 is not a statute of limitations. *Id.* at 504. *Shore* held "if a party takes action to enforce a judgment within the ten-year statutory period of active energy, the resulting order will be effective even if issued after the ten-year period as expired." *Id.* at 505. In the *Shore* case the issue was whether the Order approving Respondent's Petition on a Rule to Show Cause issued one day after the expiration of the ten-year statute of limitations would bar Respondent from seeking supplemental proceedings on the judgment. However, the court does not limit its holding to these facts alone. Instead the court emphasizes the efforts a judgment creditor must exhaust in order to seek Supplemental Proceedings and does not wish to punish those creditors once they have begun collection. Although the petition in *Shore* was filed prior to the expiration of the ten (10) year period of 15-39-30, there was no holding by the court that a petition is the magic document that begins "active energy." Instead, the court held,

[w]hen 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 section 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." (emphasis added).

The court further writes, "*if a party takes action to enforce a judgment within the ten-year statutory period of active energy, the resulting order will be effective even if issued after the ten year-period has expired.*" *Id.* (emphasis added).

Section 15-39-30 is quite clear and unambiguous in providing that all that needs to be done is to issue the execution. Section 15-39-30 states, "~~e~~*xecutions may issue* upon final judgments or decrees at any time within ten years from the original entry thereof and shall have active energy during such period" (emphasis added). Furthermore, § 15-39-310 entitled "Order for Discovery of Property" states,

When an *execution* against property of the judgment debtor ... is filed is returned unsatisfied in whole or in part the judgment creditor ... is entitled to an order from a judge of the circuit court requiring such judgment debtor to appear and answer concerning his property before such judge at a time and place specified in the order. (emphasis added).

In the present case, an *execution* was issued by the Clerk of Court in this matter on May 23, 2014 exactly two months prior to the ten (10) year running of the time prescribed by S.C. Code Ann. § 15-39-30 (1976). Respondent, Robinson, signed a judgment debtor worksheet on June 2, 2014 alleging that he, "[did] not know anyone at Grandsouth Bank or the Cleveland Land Company." The Sheriff of Greenville County returned the Execution marked "Null Bona" on July 18, 2014. Petitioner filed its Petition, Summons and Proposed Order and Rule to show Cause on July 29, 2014. Pursuant to the Order for Discovery of Property as prescribed in § 15-39-310, an Order on the Rule to Show Cause was signed on August 11, 2014 and filed with the Clerk of Court on August 18, 2014 (the "Order"). The Order was served on Respondent on August 22, 2014. By filing the Execution on May 23, 2014, Petitioner began its action to enforce the judgment well before the running of the ten-year limitation of § 15-39-30.

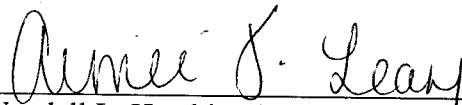
Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not

needed and the court has no right to impose another meaning. In re Vincent J., 333 S.C. 233, 509 S.E.2d 261 (1998) (citing Paschal v. State Election Comm'n, 317 S.C. 434, 454 S.E.2d 890 (1995)). As § 15-39-310 and § 15-39-30 do not contain ambiguous language so as to suggest the statutes are capable of more than one meaning, the Court should rely on the same to determine that Appellant complied with the statutory requirements to initiating supplemental proceedings within the expiration of the ten-year judgment period and that the "active-energy" period began upon Appellant's filing of the execution which was signed by the Greenville County Clerk of Court on May 23, 2014, well before the tenth anniversary of Appellant's judgment.

CONCLUSION

Because Appellant filed its Execution on May 23, 2014, prior to the expiration of the Ten-Year Judgment period, Appellant complied with the plain meaning of S.C. Code §§ 15-39-30 and 15-39-310. Therefore, Appellant shall be entitled to a reversal of the Greenville County Master in Equity's Order Granting Respondent's Motion to Dismiss with this action to be remanded to the Master in Equity for Appellant to continue supplemental proceedings.

Respectfully submitted,



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December 16, 2014

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The Honorable Charles B. Simmons, Jr., Master in Equity

C.A. No. 2005-CP-23-04155

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Defendants,

Of whom Walter C. Robinson is the Respondent.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Initial Brief of Appellant, Designation of Matter to be Included in the Record on Appeal, along with this Certificate of Service were served upon counsel on December 16, 2014 by First Class Mail as follows:

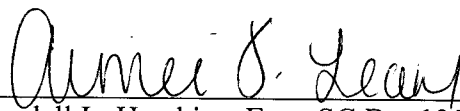
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SC Court of Appeals

Wendell L. Hawkins, PA

A handwritten signature in cursive script that reads "Aimee V. Leary". The signature is written in black ink and is positioned above a horizontal line.

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December 16, 2014
Via US Mail

The Honorable Jenny Abbott Kitchings
Clerk of Court
S.C. Court of Appeals
P.O. Box 11629
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RE: GrandSouth Bank v. Cleveland Land Company, Inc., Walter C. Robinson
and Albert E. Fitzgerald Case No.: 2005-CP-23-04155
Appellate Case No.: 2014-002384

Dear Ms. Kitchings:

Please find enclosed the original **Initial Brief of Appellant, Designation of Matter** along with a Certificate of Service for the above referenced case. By way of this correspondence I am serving opposing counsel, Rodney F. Pillsbury, Esq., with a copy of these documents.

With kind regards I remain,

Very truly yours,



Aimee V. Leary, Esq.

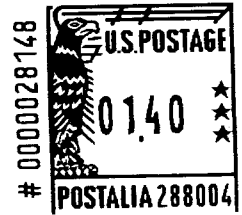
Enclosures

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