

**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.

RECORD ON APPEAL

Wendell L. Hawkins, PA
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Attorney for Respondent

RECEIVED

MAR 05 2015

SC Court of Appeals

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

2014 AUG 18 PM 4 30 A. No. 2005-CP-23-04155

GrandSouth Bank,
Petitioner,
v.
Cleveland Land Company, Inc., Walter C.
Robinson and Albert E. Fitzgerald.
Respondents.

ORDER AND RULE TO SHOW CAUSE

TO: THE ABOVE NAMED RESPONDENT, WALTER C. ROBINSON:

It appears that the petitioner has obtained judgment against Robinson C. Walter and Albert E. Fitzgerald (hereinafter "Respondents"). On July 1, 2005 the judgment rendered against Defendants in an action in the Court of Common Pleas of Lexington County was docketed in Greenville County. Execution was duly lodged with the Sheriff for handling and was later returned "Nulla Bona" to the Clerk of Court on July 18, 2014.

NOW, THEREFORE, IT IS ORDERED that you appear before the ^{Master} Presiding Judge of the Thirteenth Judicial Circuit, Greenville County Courthouse, ^{in Equity Street,} 305 E. North Greenville, South Carolina 29601 on the 16 day of September, 2014 at 10:00 o'clock a.m., and show cause why you should not be held in contempt of court for failure to respond to duly issued subpoenas and bring with you any of the following documents:

- a. All records of real estate in which you own an interest;

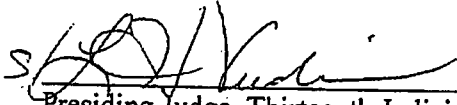
Handwritten signature

- b. All bank accounts, savings accounts, annuities, certificates of deposit, insurance policies with cash surrender value and other evidences of liquid assets which you have or have had an interest since July 1, 2005 to current;
- c. All stocks, bonds, or other evidences of ownership of any legal entity, and including the last financial statement, K-1 and State and Federal tax returns for each such entity, including but not limited to East North Veterinary Clinic, Inc. and Carolina Rental Property, Inc.;
- d. All other investments, including foreign investments of any nature, including bank accounts in which you have or have had any interest since July 1, 2005 to current, excluding only assets exempt from execution but including transfers in and to such accounts within the last ten years;
- e. Titles to any and all vehicles, boats, trailers and/or equipment in which you have an interest since July 1, 2005 to current with all schedules and any and all other evidences of assets presently standing in your name or which you have transferred since July 1, 2005 to current;
- f. Identify all records for the past ten years concerning all banking, checking, certificates of deposit, savings accounts, and bank deposit boxes holding any assets, by identifying the bank, the account or box number, each party who has signatory authority and the present

balance due in any and all such account or assets on deposit in such
bank deposit box; and

g. A copy of your Social Security Card.

IT IS SO ORDERED.



Presiding Judge, Thirteenth Judicial Circuit

8 / 11, 2014
Greenville, South Carolina

AFFIDAVIT OF SERVICE

State of South Carolina

County of Greenville

Common Pleas Court

Case Number: 2005-CP-23-04155 Court Date: 9/16/2014 10:00 am

Petitioner:
GrandSouth Bank

vs.

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

For:
Wendall Hawkins
Wendall Hawkins PA
103 C Regency Commons Drive
Greer, SC 29650

FILED IN CLERK OF COURT
GREENVILLE CO. S.C.
PAUL N. WOODRUM/CLERK
2014 AUG 27 PM 2 16

Received by Wendall Hawkins PA to be served on Walter C. Robinson, 550 Old Howell Rd, Greenville, SC 29615.

I, Lynn Smith, being duly sworn, depose and say that on the 22nd day of August, 2014 at 1:25 pm, I:

INDIVIDUALLY/PERSONALLY served by delivering a true copy of the Letter, Order and Rule to Show Cause and Judgment in a Civil Case and Notice to: Walter C. Robinson at the address of: 550 Old Howell Rd, Greenville, SC 29615, and informed said person of the contents therein, in compliance with state statutes.

I certify that I am over the age of 18, have no interest in the above action, and am a Process Server, in good standing, in the judicial circuit in which the process was served.

Lynn Smith

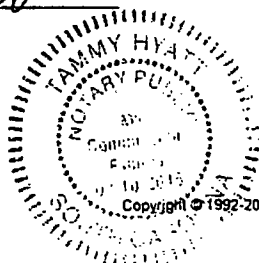
Lynn Smith
Process Server

Wendall Hawkins PA
103 C Regency Commons Drive
Greer, SC 29650
() 848-9370

Our Job Serial Number: SJB-2014005458

Subscribed and Sworn to before me on the 25th day of August, 2014 by the affiant who is personally known to me.

Tammy Hyatt
NOTARY PUBLIC



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

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2005CP2304155

GrandSouth Bank vs. Cleveland Land Company Inc

OCT 16 PM 2 25

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. 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

Office on May 27, 2014. The Sheriff of Greenville County returned the execution marked "*Nulla Bona*" on July 18, 2014.¹

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.² 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

¹ 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.

² 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.



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



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.



The Honorable Charles B. Simmons, Jr.
Presiding Judge

STATE OF SOUTH CAROLINA)
)
)
COUNTY OF GREENVILLE)

EXECUTION AGAINST PROPERTY

To the Sheriff of the County of Greenville; GREETING:

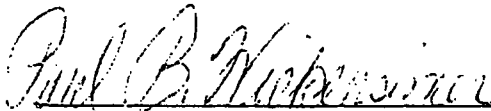
WHEREAS, judgment was rendered on the **First**, day of **July**, 2005 in an action in the Court of Common Pleas of **Greenville County**, State of South Carolina, between **GrandSouth Bank**, Plaintiff(s) and **Cleveland Land Company, Inc., Walter C. Robinson and Albert E. Fitzgerald**, Defendant(s) in favor of said **GrandSouth Bank** against the **Walter C. Robinson** for the Sum of **\$111,059.21** as appears to us by the Judgment Roll No. **2005-CP-23-04155** so filed in the Clerk of the Court of Common Pleas, County of **Greenville**; and

WHEREAS, the said judgment was docketed in your county on the **First** day of **July**, 2005 and the sum of **\$ 233,738.41** and the further sum of **N/A** for the costs of the suit, are now actually due thereon, with interest thereon from the **23rd** day of **May** 2014 with per diem interest thereon of **\$15.99**.

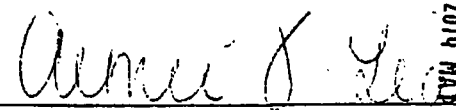
Therefore, we recommend you, that you satisfy the said judgment out of the personal property of the said judgment debtor(s) within your County; or if sufficient personal property cannot be found, then out of the real property in your County belonging to the said judgment debtor(s) on the day when the said judgment was so docketed in your County, or at any time thereafter in whose hands so ever the same may be, and duly return this execution according to law, to this Clerk of the Court of Common Pleas for the County of **Greenville**,

Witness **The Honorable Paul B. Wickensimer** as Clerk of said Court at **Greenville County**, South Carolina this **23rd** day of **May**, 2014.

Attest:



The Honorable Paul B. Wickensimer
Clerk of Court of Common Pleas



Aimee V. Leary
Attorney for Plaintiffs

2014 MAY 27 P 2:28
GREENVILLE COUNTY
SHERIFF'S OFFICE
CIVIL DIVISION

INTEREST CALCULATION

July 1, 2005 to January 14, 2006

$$\text{\$111,059.21} \times [(9.25\%/365) \times 198] = \text{\$ 116,631.95}$$

January 15, 2006 to January 14, 2007

$$\text{\$ 116,631.95} \times 11.25\% = \text{\$ 129,753.04}$$

January 15, 2007 to January 14, 2008

$$\text{\$ 129,753.04} \times 12.25\% = \text{\$ 144,350.26}$$

January 15, 2008 to January 14, 2009

$$\text{\$ 144,350.26} \times 11.25\% = \text{\$ 160,589.67}$$

January 15, 2009 to January 14, 2010

$$\text{\$ 160,589.67} \times 7.25\% = \text{\$ 172,232.41}$$

January 15, 2010 to January 14, 2011

$$\text{\$ 172,232.41} \times 7.25\% = \text{\$ 184,719.26}$$

January 15, 2011 to January 14, 2012

$$\text{\$ 184,719.26} \times 7.25\% = \text{\$ 198,111.41}$$

January 15, 2012 to January 14, 2013

$$\text{\$ 198,111.41} \times 7.25\% = \text{\$ 212,474.49}$$

January 15, 2013 to January 14, 2014

$$\text{\$ 212,474.49} \times 7.25\% = \text{\$ 227,898.89}$$

January 14, 2014 to May 23, 2014

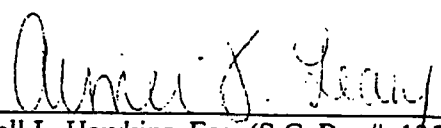
$$\text{\$ 227,898.89} \times [(7.25\%/365) \times 129] = \text{\$ 233,738.41}$$

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
)	
GrandSouth Bank,	)	C.A. No. 2005-CP-23-04155
)	
Petitioner,)	
)	
v.	)	SUMMONS
)	
Cleveland Land Company, Inc., Walter C.)	
Robinson and Albert E. Fitzgerald.)	
)	
Respondents.)	
_____)	

TO: THE ABOVE NAMED RESPONDENT, WALTER C. ROBINSON:

You are hereby summoned and required to answer the Petition in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Petition, upon the subscriber at 103-C Regency Commons Dr. Greer, SC 29650 and to appear at the time and place specified in the Order served herewith upon you. Upon your failure to so appear as directed application shall be made for civil sanctions as the Court may direct.

Respectfully Submitted,



Wendell L. Hawkins, Esq. (S.C. Bar #: 13583)
 Aimee V. Leary, Esq. (S.C. Bar # 100657)
 Wendell L. Hawkins, PA
 103-C Regency Commons Dr. Greer, SC 29650
 (864) 848-9370 (Ph) (864) 848-9759 (Fax)
 wlh@wlhawkinslawfirm.com
 avl@wlhawkinslawfirm.com
 Attorneys for Petitioner

July 21, 2014
 Greer, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
)	
GrandSouth Bank,	)	C.A. No. 2005-CP-23-04155
)	
Petitioner,)	
	)	PETITION
v.)	
)	
Cleveland Land Company, Inc., Walter C.)	
Robinson and Albert E. Fitzgerald.)	
)	
Respondents.)	
_____)	

TO: THE ABOVE NAMED RESPONDENT, WALTER C. ROBINSON:

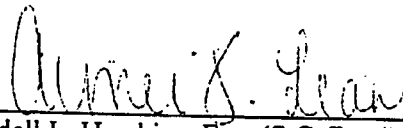
Petitioner would respectfully show unto the court as follows:

1. That 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 Lancaster County on July 27, 2004 (Judgment Roll No.: 2003-CP-32-1984). The said judgment was transcribed on July 1, 2005 in the indexes and records of the Clerk of Greenville County, South Carolina in Judgment Roll No. 2005-CP-23-04155. That the Clerk of said Court has issued an execution against the property of Respondent which was delivered to the Sheriff of Greenville County and which has been returned by the Sheriff marked "Null Bona."

2. That Petitioner is informed and believe that such judgment debtor has assets which said debtor unjustly refuses to apply towards satisfaction of the within judgment, including but not limited to, bank accounts, real estate assets, boats, vehicles and/or income from Respondent's Veterinary practice.

WHEREFORE, Petitioner prays for an Order of this Court requiring the Respondent, Walter C. Robinson, to appear before the Court at such time and place as may be designated in said Order and Rule to Show Cause and question Respondent to show cause why its property should not be applied toward satisfaction of the judgment set out in the Petition.

Respectfully Submitted,



Wendell L. Hawkins, Esq. (S.C. Bar #: 13583)
Aimee V. Leary, Esq. (S.C. Bar # 100657)
Wendell L. Hawkins, PA
103-C Regency Commons Dr. Greer, SC 29650
(864) 848-9370 (Ph) (864) 848-9759 (Fax)
wlh@wlhawkinslawfirm.com
avl@wlhawkinslawfirm.com
Attorneys for Petitioner

Greer, South Carolina
July 21, 2014

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
 THIRTEENTH JUDICIAL CIRCUIT
 C.A. No. 2005-CP-23-04155

**ORDER AND RULE TO SHOW
 CAUSE**

TO: THE ABOVE NAMED RESPONDENT, WALTER C. ROBINSON:

It appears that the petitioner has obtained judgment against Robinson C. Walter and Albert E. Fitzgerald (hereinafter "Respondents"). On July 1, 2005 the judgment rendered against Defendants in an action in the Court of Common Pleas of Lexington County was docketed in Greenville County. Execution was duly lodged with the Sheriff for handling and was later returned "Nulla Bona" to the Clerk of Court on July _____, 2014.

NOW, THEREFORE, IT IS ORDERED that you appear before the Presiding Judge of the Thirteenth Judicial Circuit, Greenville County Courthouse, 305 E. North Street, Greenville, South Carolina 29601 on the ____ day of _____, 2014 at _____ o'clock __.m., and show cause why you should not be held in contempt of court for failure to respond to duly issued subpoenas and bring with you any of the following documents:

- a. All records of real estate in which you own an interest;

- b. All bank accounts, savings accounts, annuities, certificates of deposit, insurance policies with cash surrender value and other evidences of liquid assets which you have or have had an interest since July 1, 2005 to current;**
- c. All stocks, bonds, or other evidences of ownership of any legal entity, and including the last financial statement, K-1 and State and Federal tax returns for each such entity, including but not limited to East North Veterinary Clinic, Inc. and Carolina Rental Property, Inc.;**
- d. All other investments, including foreign investments of any nature, including bank accounts in which you have or have had any interest since July 1, 2005 to current, excluding only assets exempt from execution but including transfers in and to such accounts within the last ten years;**
- e. Titles to any and all vehicles, boats, trailers and/or equipment in which you have an interest since July 1, 2005 to current with all schedules and any and all other evidences of assets presently standing in your name or which you have transferred since July 1, 2005 to current;**
- f. Identify all records for the past ten years concerning all banking, checking, certificates of deposit, savings accounts, and bank deposit boxes holding any assets, by identifying the bank, the account or box number, each party who has signatory authority and the present**

balance due in any and all such account or assets on deposit in such
bank deposit box; and

- g. A copy of your Social Security Card.

IT IS SO ORDERED.

Presiding Judge, Thirteenth Judicial Circuit

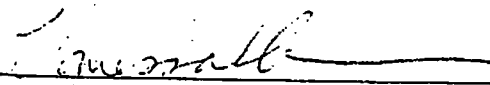
_____, 2014
Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
)	
GrandSouth Bank,	)	C.A. No. 2005-CP-23-04155
)	
Petitioner,)	
	)	CERTIFICATE OF SERVICE
v.)	
)	
Cleveland Land Company, Inc., Walter C.)	
Robinson and Albert E. Fitzgerald.)	
)	
Respondents.)	
_____)	

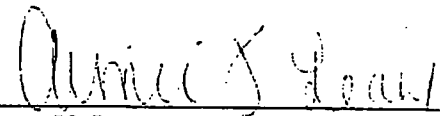
I, **Aimee Leary**, hereby certify that **Petitioner's Summons, Petition and Proposed Order and Rule to Show Cause**, in the above captioned matter was/were served via U.S. Mail, First Class, postage prepaid, on this the 21 day of **July**, 2014:

Addressed to: Walter C. Robinson, III
 550 Old Howell Road
 Greenville, South Carolina 29615

Sworn to me before this 24th day of **July**, 2014.



 Notary Public, South Carolina
 My Commission Expires: 10/18/17



Aimee V. Leary, Esq.

1 STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
 2 COUNTY OF GREENVILLE)
 3

4 GrandSouth Bank,) Case No.: 05-CP-23-04155
)
 5 Plaintiff,) **TRANSCRIPT OF TESTIMONY**
 6 vs.)
) September 16th, 2014
 7 Cleveland Land Company, Inc.,) Greenville, South Carolina
 Walter C. Robinson,)
 8 Individually, and)
 Albert E. Fitzgerald,)
 9 Individually,)
)
 10 Defendant(s),
)

11
 12 B E F O R E:

13 The Honorable Charles B. Simmons, Jr.
 14 Master in Equity for Greenville County

15 A P P E A R A N C E S:

16
 17 Wendell L. Hawkins, Esquire
 Aimee V. Leary, Esquire
 18 Attorneys for the Plaintiff

19 Rodney Pillsbury, Esquire
 Pillsbury & Read
 20 Attorney for the Defendant Robinson

21
 22
 23

24 **Ann Dickey Campbell, CVR**
Court Reporter
 25

1 BY THE COURT: All right, for the record, this is 2005-
 2 4155. At the outset, I need to state on the record, as I was
 3 discussing back in chambers with the very fine lawyers involved
 4 in this case, that Dr. Robinson, to the best of my recollection,
 5 was my father's veterinarian, and my father died sixteen,
 6 seventeen years ago. So, you know, I do have an obligation, I
 7 feel, to disclose that. And as we discussed back in chambers, I
 8 am going to allow both sides ten days to discuss the matter with
 9 their clients, and if either client feels like I need to recuse
 10 myself, I certainly will, because as I discussed, at the end of
 11 the day, regardless of my ruling, I want to make sure that both
 12 sides feel like they had a fair and impartial judge. But since
 13 everybody's here, and since the issues have been briefed, and
 14 since this is a question of law, we're going to go ahead and
 15 proceed and build the record today.

16 And, gentlemen and lady, let me go through what I
 17 understand are the uncontested facts, because I really believe
 18 that the decision is going to hinge on one fairly narrow legal
 19 point.

20 July 27th, 2004, a judgment is entered in favor of
 21 GrandSouth against these Defendants, Cleveland Land Company,
 22 Walter C. Robinson, and Albert E. Fitzgerald, in Lexington
 23 County.

24 On July 1st, 2005, the judgment is transcribed and recorded
 25 here in Greenville County.

1 On May 23rd, 2014, GrandSouth Bank files an execution
2 against Dr. Robinson here in Greenville. It comes back *nulla*
3 *bona*.

4 On August 18th, 2014, GrandSouth Bank files the Petition
5 that we are here on today.

6 So let me ask, as far as the attorneys, factually, do both
7 sides agree with what I just recited?

8 MR. PILLSBURY: Yes, Your Honor. Rodney Pillsbury for
9 Dr. Robinson.

10 MR. HAWKINS: Yes, Your Honor. There are some dates in-
11 between, Your Honor, but those are correct dates.

12 BY THE COURT: The ones I just went through are the
13 most critical, is that correct?

14 MR. HAWKINS: I think so, Your Honor.

15 BY THE COURT: All right, and it seems like the Linda
16 McCompany case, which is 703 S.E. 2d 499, which is a 2010
17 Supreme Court case, is the dispositive and controlling case here
18 and the phrase "active energy" that our Court used. And I
19 believe, at the end of the day, all this boils down to, when is
20 that active energy commenced, if you will. Is it on the date of
21 execution, which clearly was within the ten years, or is it the
22 date of filing the Petition, which is outside the ten years.

23 So, Mr. Hawkins, let me hear from you.

24 MR. HAWKINS: Thank you, Your Honor. May it please the
25 Court, I've got a copy of the McCompany case, if you want me to

1 hand it up.

2 BY THE COURT: I'm familiar with it.

3 MR. HAWKINS: Your Honor, I think it's probably best to
4 respond to Mr. Pillsbury's position.

5 Mr. Pillsbury's position seems to be that he is, in his
6 Brief, saying that everything again has to be done within the
7 ten years and refers to the language of 15-39-30 in that he
8 highlights and bolds the language "during that period," Your
9 Honor. And if that particular language meant that everything had
10 to be done, if it referred to the ten-year period, that would
11 make the statute obsolete. What I think it refers to is the
12 period of the process of execution, Your Honor. The statute
13 itself says that, "Executions may issue upon final Judgments or
14 Decrees at any time within ten years from the date of the
15 original entry thereof and shall have active energy during such
16 period."

17 Your Honor, it would be my position "during such period,"
18 and this is what the Shore case holds, is during the period of
19 execution. The executions, Your Honor, by Rule 69 and Rule 70,
20 in the practice of law, they're issued by the Clerk. The statute
21 plainly says that once you file that execution, that the active
22 energy period kicks in, and you're entitled to go through that
23 process and get your Judgment or Decree and, you know, gather up
24 assets. That's what we've attempted to do.

25 Our execution was filed long before the --- well, I say

1 long, that's a relative term --- but two months before the
2 expiration of the judgment. By the plain meaning of the statute,
3 Your Honor, and as backed up by the Shore case, we did what we
4 were supposed to do. The case holds that as long as we comply
5 with the statutes, that we are entitled to the tolling, if you
6 will, of the ten-year extinguishment of judgments as provided by
7 the statute, which they clearly say is not a statute of
8 limitations. This §15-39-30 is a statute enacted to preserve
9 that active energy. If it was ten years and that's it, this
10 statute would be useless.

11 Secondly, Your Honor, you know, I think Mr. Pillsbury wants
12 to argue that the Shore case holds that a Petition must be filed
13 in order to preserve active energy. Now, that's what happened in
14 this particular case, in Shore. There's no doubt about that.
15 That happened. But that wasn't a holding of this Court. The
16 holding of the Court would be, actually, when you go through the
17 case, the Roman numeral one (I) just addressed the terms of the
18 parties' agreements and the issues before the Court were set
19 forth very clearly in the beginning of the case, and the Court
20 broke down each issue before it. And Roman numeral two (II) was
21 the §15-39-30. The Court doesn't even mention the filing of the
22 Petition in that as any sort of --- as any sort of requirement
23 or holding, Your Honor. What the Court did hold is it said,
24 "Hence, when a party has complied with the applicable statutes
25 as Respondent did in this case and is merely waiting on a

1 Court's Order regarding execution and levy, the ten-year
 2 limitation found in §15-39-30 is extended to when the Court
 3 finally issues an Order. To hold otherwise would put those
 4 trying to enforce their judgments at the mercy of the court
 5 system to conclude the matter within the ten-year period." And
 6 they go on to say, in the next paragraph, "Furthermore, if the
 7 party takes action to enforce a judgment within the ten-year
 8 statutory period of active energy, resulting Order would be
 9 effective even if issued after the ten-year period has expired."

10 BY THE COURT: All right, well, then, how do you
 11 respond to what I understand at least part of Mr. Pillsbury's
 12 argument is that execution is not the same as taking action to
 13 enforce the judgment? And I'm looking at that language you just
 14 quoted, and it says, "If a party takes action," and again, Mr.
 15 Pillsbury argues that the execution is not action, "To enforce
 16 the judgment within the ten-year statutory period of active
 17 energy, the resulting Order," and there is no Order issued here
 18 until after the ten years will be effective. So how do you
 19 respond to his position?

20 MR. HAWKINS: Well, if I understand it correctly, it's
 21 that at least by the Shore case, you have to file the Petition.
 22 That's not what the statute says, and that's not what the Court
 23 held. The statute says, "Executions may issue." Execution comes
 24 from the Clerk of Court. The Clerk of Court signs it. The
 25 Sheriff goes out, gets the *nulla bona*, brings it back. The *nulla*

1 bona is a condition to the filing of the Petition, Your Honor. I
2 can't file a Petition without a *nulla bona*.

3 Like I said, it's just the plain language of the statute.
4 It's the fact that the only time the Petition is mentioned in
5 Shore is in the factual history, or procedural history, and if
6 you look under that section of Shore which addresses §15-39-30,
7 the Court says all you have to do is take action. And I
8 understand you're looking for the definition of action. If they
9 gave us that, that would be great, but I think if you couple
10 that with the intent of this particular ruling, in fact, you
11 know, the Court of Appeals came to the same decision but on kind
12 of a different basis. And the Supreme Court found it so
13 important for future litigants, they said, "We need to address
14 that." So they merely affirmed the Court of Appeals in modifying
15 with this language. And I think the only thing you can take from
16 this case as a holding is that if you take action to enforce a
17 judgment under §15-39-30, which clearly says execution, then the
18 statute, or the --- the statute is tolled.

19 BY THE COURT: All right, Mr. Pillsbury?

20 MR. PILLSBURY: Yes, sir?

21 BY THE COURT: What do you do with the language of §15-
22 39-30, because the execution here was issued within the ten-year
23 entry of a judgment in Lexington?

24 MR. PILLSBURY: Your Honor, as a preliminary point, I
25 know Your Honor has read the Briefs of both sides and obviously

1 and has incorporated. I didn't want, for the purpose of the
2 Record, I didn't want to rehash everything that has been
3 provided to the Court that the Court has obviously reviewed.

4 BY THE COURT: And that's a good thing, that we're not
5 going to rehash it.

6 MR. PILLSBURY: Right, yes.

7 The first thing, Your Honor, is that one of the points that
8 the bank has made is that a *nulla bona* is a requirement to file
9 a Petition. Under §15-39-30, it absolutely is not. That's why it
10 has the language of the statute that this is whether any return
11 may or may not have been made during such period on such
12 execution.

13 So the bank didn't have to wait for the Sheriff. They could
14 go ahead and file the Petition. My point is, is that the
15 execution --- and if I may, I know Your Honor is familiar with
16 the statute, but sometimes it just helps to have the language,
17 because it's critical in this case.

18 The execution itself has active energy during the ten-year
19 period. The execution is what has active energy. And the bank's
20 position totally defeats the purpose of the ten-year limitation,
21 because if you adopt their position, they could file a Petition
22 five, ten years later and say, "Hey, we're still acting on the
23 original execution," because there's no deadline for them
24 anywhere to file a Petition for supplemental proceedings other
25 than the ten-year limitation that's provided for §15-39-30. And

1 that's why, when the bank filed its execution in May of 2014, it
 2 had two options at that point. It could hand it over to the
 3 Sheriff for collection, or they could file their Petition for
 4 supplemental proceedings. And if the Sheriff's collection had
 5 taken longer than the expiration of the ten-year period, then I
 6 would say that falls under the Linda McCompany case. That was
 7 the active energy on what was done beforehand would survive the
 8 ten-year period. If they had filed the Petition before the
 9 expiration of the ten year period, then under Linda McCompany,
 10 whatever happened as a result of the court proceedings on that
 11 Petition, that's the active energy that the statute is
 12 specifically addressing, again, because to do otherwise totally
 13 defeats the purpose of the statute. There would be --- there
 14 would be no rule that they couldn't wait another year, another
 15 two years, to file their Petition for supplemental proceedings,
 16 and so ---

17 BY THE COURT: All right, but wasn't part of the
 18 message that the Linda McCompany case sent to the bench and to
 19 the bar was, "Yeah, we know that historically it's been ten
 20 years, but there are going to be some circumstances where, as
 21 long as there's some pursuit, court-sanctioned, if it goes
 22 beyond ten years, we're going to give it active energy and
 23 extend it"?

24 MR. PILLSBURY: And that's why I say, if the Petition
 25 had been filed prior to the expiration of the ten-year period,

1 then whatever happened as a result of that Petition, that would
2 be protected, but the execution itself, the active energy of the
3 execution expired on July 27th, 2014. And at that point, whatever
4 court process was in play is extended or covered under Linda
5 McCompany, but after that, that's why the statute specifically
6 says, "The execution shall have active energy during such
7 period." And so they were free to pursue whatever avenues within
8 that period, but once that ten-year period had lapsed, then the
9 execution loses its viability.

10 BY THE COURT: All right, well, how do you respond to
11 Mr. Hawkins' argument that the execution is part of the process?

12 MR. PILLSBURY: Well, if you look specifically at the
13 statute, the statute says that the execution has active energy
14 during the ten-year period. I mean, that's a true statement,
15 that it is part of the process, but it is --- the execution
16 itself ceases at the ten-year period.

17 BY THE COURT: So you're arguing, obviously, a narrow
18 interpretation of "during such period" with the execution still
19 being, when you hit ten years, there's no active energy if
20 there's execution only?

21 MR. PILLSBURY: My position is, whatever court process
22 has been instituted on the execution within the ten-year period
23 would survive. But absent, like for example, if they'd gotten
24 the execution and waited a year to hand it over to the Sheriff,
25 that's outside the ten-year period. The execution doesn't have

1 active energy at the end of the ten-year period, so the Sheriff
2 couldn't collect.

3 BY THE COURT: So the only thing that would allow ---
4 and I want to make sure I understand your argument --- the only
5 thing that would allow the execution itself to extend beyond ten
6 years would be the filing of the Petition?

7 MR. PILLSBURY: Correct, which is why I think the Linda
8 McCompany case specifically focused on that --- the
9 supplemental, the Petition for supplemental proceedings in that
10 case had been filed a year before the expiration of the period,
11 and it took more than a year --- well, it took a substantial
12 period of time to get the Orders back and the Court did a
13 balancing test of, "What is fair to the litigants?" I mean, they
14 don't have --- once something has been filed, they don't have
15 control over the schedule any more. But the onus is on them to
16 make sure everything is filed within that ten-year period, which
17 is why there's such a strong public policy that favors, you
18 know, you've got to act timely, and why the ten-year period is
19 so critical.

20 BY THE COURT: All right, Mr. Hawkins ---

21 MR. HAWKINS: Thank you, Your Honor. May it please the
22 Court?

23 BY THE COURT: Yes, let me hear from you.

24 MR. HAWKINS: Well, I still think, Your Honor, that the
25 statute speaks for itself. It says the executions issue, and

1 then that starts your active energy period. If you couldn't do
2 all of these other things, the statute would again be
3 purposeless, and necessarily to collect, you have to go through
4 the process. The execution is what starts the process.

5 Now, let's suppose I get an execution and, you know, I sit
6 on it for a year and a half, two years, or whatever. I think
7 there's probably some equitable arguments that, you know, you've
8 kind of sat on your rights.

9 But again, nothing in the case, in the McCompany case, says
10 that you have to file the Petition. Its just --- isn't in the
11 case. But what the Court did hold is if you take action to
12 enforce the judgment, then that stays the ten-year provision of
13 §15-39-30. I think that's clear. And, you know, the Court also
14 goes on to say, is otherwise --- or it says, "To hold otherwise
15 would put those trying to enforce their judgments at the mercy
16 of the court system." It doesn't say the judge's schedule or
17 anything like that. It says the court system. Some counties,
18 it's impossible to get the Sheriff out there to serve that
19 thing, you know, within a reasonable amount of time. So what I
20 believe the Court's intent is, and what their holding is, as
21 long as you comply with §15-39-30, then we're going to stay the
22 ten-year extinguishment of judgments provided by the statute.

23 BY THE COURT: All right, but doesn't Mr. Pillsbury's
24 argument give some degree of finality? What if the situation
25 comes up there is an execution that's done within the ten years,

1 and, to use your example, a year and a half later, five years
2 later, whatever, the creditor, at that point, goes to the court
3 and files the Petition. Under your argument, so long as the
4 execution was filed within ten years, there's no back door that
5 gets closed. But under Mr. Pillsbury's argument, there is a back
6 door that gets closed, because Mr. Pillsbury says, "You've got
7 ten years to file the Petition with the Court, and if you don't,
8 the door is closed. If you do file it within ten years, you have
9 active energy." So help me sort through that.

10 MR. HAWKINS: I think the Court's got to take that on a
11 case-by-case basis, Your Honor. I mean, clearly, in this
12 particular case, we didn't sit on our rights.

13 BY THE COURT: Oh, absolutely, I agree with that.

14 MR. HAWKINS: Mr. Robinson was actually served with his
15 debtor worksheet on June 2nd, 2014. He tells the Sheriff, "I
16 don't know anybody at GrandSouth Bank. I don't know who
17 Cleveland Land Company is." That's a delay in the action, Your
18 Honor, so to the degree we're balancing the equities of the
19 behaviors, certainly, I think in this certain set of
20 circumstances, his conduct is more culpable than anything we've
21 done. And then, of course, when he filed his Affidavit, he
22 remembers everything. And so, you know, we're at the mercy of
23 the court system at that point in time, and I think the intent
24 of the statute and the holdings, the actual holdings of Shore,
25 say that as long as we're actively pursuing collecting our

1 judgment, the ten-year period is stayed.

2 BY THE COURT: All right, let me ask you one other
3 question, about what Mr. Pillsbury argued. He stated that the
4 judgment creditor had the right, independent of the execution,
5 to file a Petition for collection of the debt. Is that accurate?

6 MR. HAWKINS: Well, maybe they do, Your Honor, but
7 that's not what the statute says. I can do anything, but if I'm
8 a practicing lawyer, I've got to go to the statutes and I've got
9 to see what the statutes say. That prevents us from having to
10 guess on how to practice law.

11 BY THE COURT: All right, is the execution a
12 prerequisite to issuance of a Rule to Show Cause for
13 supplemental proceedings?

14 MR. HAWKINS: I do not think the court will allow you
15 to file it without mentioning that the Sheriff has gone out and
16 he has returned the execution *nulla bona*. I think that is the
17 statutory requirement. I'd have to look it up for you to give
18 you the law. I know that I've never been able to submit a
19 Petition without a *nulla bona*.

20 BY THE COURT: Mr. Pillsbury, what is the mechanism
21 that you mentioned earlier? It has been my understanding, and I
22 haven't looked at it. I wasn't aware that may become an issue
23 today, but it has always been my understanding that before the
24 Court could issue a Rule for supplemental proceedings, that
25 there had to be a *nulla bona*, which means there had to be an

1 execution.

2 MR. PILLSBURY: My contention would be, Your Honor, is
3 that if you look at §15-39-30, it specifically addresses this
4 point. It says that regarding the execution, that this, whether
5 any return may or may not have been made during such period on
6 such executions. So it's not when he said in some counties it's
7 difficult to do, difficult to do. The statute specifically gives
8 the creditor the right to at least file something with the Court
9 to preserve its rights under the execution within that ten-year
10 period.

11 BY THE COURT: But then wouldn't the lawyer on the
12 other side jump up and say, "There's been no execution, there is
13 no basis to file this"?

14 MR. PILLSBURY: Well, that's what the execution, and
15 that's what can be done with or without a return, and the
16 Petition for supplemental proceedings, you know, again, that
17 execution has active energy during that period. To do anything
18 otherwise puts debtors and everybody else at the mercy of
19 whenever a creditor may get around to filing a Motion for
20 supplemental proceedings.

21 And I just have to address this issue very briefly, because
22 counsel had raised it, about the respective equities in this
23 situation. I mean, Dr. Robinson didn't know anything about the
24 original judgment. He thought it had been taken care of because
25 the guy who was the principal debtor told them that it had been

1 taken care of, and I've looked to find where any of the
2 transcription of judgment, where any of that was ever served on
3 him, and I can't find any. And, you know, for reasons completely
4 unknown, there wasn't even an attempt by the bank until two
5 months before the ten-year window closes, and Dr. Robinson has
6 been actively practicing here in Greenville for forty-plus
7 years. I mean, it's not like he was running away or hiding or
8 left the jurisdiction. Where they served him with the paperwork
9 is where he's been for forty years, and so what happened during
10 that ten-year period is the original debt more than doubled, and
11 he doesn't know where Mr. Fitzgerald is, so he has no ability to
12 get any type of contribution, and so, respectfully, you know,
13 and not that the Court has addressed it, but counsel did, about
14 the relative equities.

15 BY THE COURT: And I understand that. And I'm not sure,
16 on the issue before the Court, the Court can address the
17 equities at this point.

18 All right, anything else that either counsel wants to have
19 on the record? That's not an invitation, but if there's
20 something you all left out, I will certainly ---

21 MR. HAWKINS: I would like to raise just one thing that
22 I haven't discussed before.

23 BY THE COURT: Yes, sir.

24 MR. HAWKINS: You know, Your Honor, the argument that a
25 Petition has to be filed, well, golly, I mean, we just look at

1 the last sentence of the statute. This says that the case
2 retains active energy whether or not he even got *nulla bona*
3 back. So I don't --- if I'm still waiting on a *nulla bona*, I
4 think the statute takes that into account, that I'm waiting on
5 the return from the Sheriff. I assume that's what they're
6 talking about, is the return from the Sheriff. Even if you don't
7 have that back, your active energy is still going. Again, just
8 kind of looking at the statute, I think that's plainly what it
9 says.

10 BY THE COURT: It's really not a tennis match to where
11 you have to hit it back, Mr. Pillsbury, but if there's something
12 you want to state for the record, I will be glad to hear you.

13 MR. PILLSBURY: There was a quote from "Money Ball."
14 Did you ever see the movie, Your Honor?

15 BY THE COURT: Yes, sir, I did.

16 MR. PILLSBURY: Okay, never talk after you get ---
17 yeah, so thank you, Your Honor.

18 BY THE COURT: All right, and just for the record, it's
19 a pleasure to have good lawyers and good issues, so I thank you
20 all for that. And if you will let me know as soon as you can.
21 And I'm fine if you communicate directly with my court reporter
22 via email relative to the recusal. And again, if either side
23 wishes a different judge, I have no problem with it. If you are
24 both in agreement with my continuing to hear it, I will issue my
25 ruling within ten days of hearing from you.

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All right, thank you very much.

MR. PILLSBURY: Thank you, Your Honor.

----- END OF TRANSCRIPT -----

1 I, the undersigned Ann D. Campbell, Court Reporter, Office
 2 of Master in Equity for Greenville County, South Carolina, do
 3 hereby certify that the foregoing is a true, accurate and
 4 complete transcript of record of all the proceedings had and
 5 evidence introduced in the hearing of the captioned case,
 6 relative to appeal, before The Honorable Charles B. Simmons,
 7 Jr., as Master in Equity for Greenville County, South Carolina,
 8 on the 16TH day of September, 2014.

9 I do further certify that I am neither of kin, counsel, nor
 10 any interest to any parties hereto.

11 December 2nd, 2014

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 14 Ann Dickey Campbell, CVR

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STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
13th JUDICIAL CIRCUIT

COUNTY OF GREENVILLE)

CASE NO.: 2005-CP-23-04155

GrandSouth Bank)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff,)

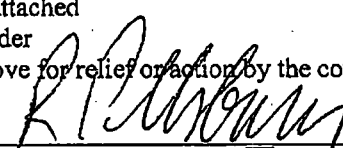
vs.)

Cleveland Land Company, Inc., Walter C.)

Robinson and Albert E. Fitzgerald.)

Defendant.)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS, CLERK
2014 SEP 5 PM 3:58

Plaintiff's Attorney: Almee V. Leary, Bar No. _____ Address: 103-C Regency Commons Dr, Greer, SC Phone: 864-848-9370 Fax 864-848-9759 E-mail: avl@wlhawkinslawfirm.com Other: _____	Defendant's Attorney: Rodney F. Pillsbury, Bar No. 13067 Address: 1204-A E. Washington St., Greenville, SC Phone: 864-241-9828 Fax 864-241-9818 E-mail: rpillsbury@prlawpa.com Other: _____
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Motion to Dismiss Petitioner's Petition Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type <input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. <div style="text-align: right; margin-right: 100px;">  Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant </div> <div style="text-align: right;"> September 5, 2014 Date submitted </div>	
SECTION III: Motion Fee <input type="checkbox"/> PAID - AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT: (check reason) <ul style="list-style-type: none"> <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____ 	
JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

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-23-04155

**RESPONDENT DR. WALTER
 ROBINSON III'S MOTION TO
 DISMISS PETITIONER'S PETITION**

FILED - CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENS
 SEP 5 PM 3:30

By and through his undersigned counsel, Respondent Walter C. Robinson III, DVM, moves to dismiss the GrandSouth Bank's ["GSB" or "Petitioner"] petition on the ground that it is untimely. GrandSouth Bank's petition was not filed within the ten (10) year period from the date of filing for the original judgment giving rise to its petition, as required by S.C. Code of Laws §15-39-30. Accordingly, its petition should be dismissed as a matter of law.

Introduction

The instant action exemplifies why 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). Respondent Dr. Walter Robinson III ["Respondent" or "Dr. Robinson"] is now 73 years old and has been a practicing veterinarian in Greenville for almost forty (40) years. [Attachment A, Affidavit of Dr. Walter C. Robinson, III, DVM, ¶ 2] He holds a Masters degree in veterinary science (surgery) and is a diplomat in the American Board of Veterinary Practitioners, specializing in companion animals.

He also is currently a member of the South Carolina Board of Veterinary Medical Examiners.

[*Id.*]

Almost twenty (20) years ago, Albert Fitzgerald, an acquaintance who had been helpful to Dr. Robinson when he moved to Greenville in the 70s, asked him to co-sign for a note so Mr. Fitzgerald could develop some property in Lexington County. As a favor, Dr. Robinson agreed to sign. Dr. Robinson knew nothing about the property; he had nothing to do with its management, development or re-sale. He was not a member or shareholder in Cleveland Land Company, LLC (the entity through which Mr. Fitzgerald did business). He was not involved in the business in any capacity, never received benefit from the company – nothing other than helping out a friend at the time who had asked a favor. [*Id.* at ¶ 3]

At some point around 2003, Dr. Robinson learned that Mr. Fitzgerald's business was – apparently – not meeting its obligations. Tired of receiving notices from the bank, Dr. Robinson confronted Mr. Fitzgerald and had a “come to Jesus” meeting with him about making everything right. [*Id.* at ¶ 4] Mr. Fitzgerald assured him that he would take care of everything. A few months following that meeting, Fitzgerald called Dr. Robinson to inform him that everything had gotten worked out. [*Id.* at ¶5]

From that point, up until he was served with a Rule to Show Cause in August, 2015, Dr. Robinson heard nothing about the debt or obligation.¹ He had assumed that everything had, been resolved, just like his former friend, Albert Fitzgerald, has assured him years ago. [*Id.* at ¶ 6]

¹ As of this writing, time has not permitted Dr. Robinson to obtain the original records from the Lexington County Clerk of Court. Dr. Robinson has no recollection of ever being served with any legal papers back in 2003.

Dr. Robinson is now 73 years old. His veterinarian practice is largely a hobby, because he has – from time to time - contributed his personal money to make its bills. He has a few investment properties from which he earns his retirement income. [*Id.* at ¶ 11]

Since being served with the Rule to Show Cause – over 10 years from when he met with Mr. Fitzgerald and was assured everything had been taken care of, Dr. Robinson cannot even locate Mr. Fitzgerald now. He does not know if Albert Fitzgerald is even alive. [*Id.* at ¶ 9]

Based upon the documents of record, the original judgment in the amount of \$111,059.21 has now ballooned into the amount currently claimed by GrandSouth Bank, \$233,738.41,

If forced to pay off this amount at this time, the basis of Dr. Robinson's retirement income would be liquidated, he would be forced to close a practice that has served Greenville County for almost forty (40) years, and he has no ability to seek contribution from the true responsible party. [*Id.* at ¶ 11] Basically, GrandSouth Bank's inexcusable delay of 10+ years in pursuing its judgment from Lexington County will now render Dr. Robinson essentially destitute in his retirement years with no real means to obtain contribution from the person who was responsible for the debt. [*Id.* at ¶ 11]

Procedural History

According to the public records currently available, the judgment giving rise to the current petition was arose from a complaint filed by GrandSouth Bank's in Lexington County² on May 29, 2003: GrandSouth Bank v. Cleveland Land Company, Inc., et al. (C.A. No. 2003-CP-32-1984) (Court of Common Pleas, Lexington County, South Carolina). [Attachment B,

² GrandSouth Bank's petition incorrectly states the original judgment was entered in Lancaster County.

Docket Report] From that complaint, a deficiency judgment was entered on July 27, 2004 against Dr. Robinson (and others) in the amount of \$111,059.21. See, Attachment C: GrandSouth Bank's Petition, ¶1].

GrandSouth Bank waited for almost a year (July 1, 2005) before having the judgment transcribed here in Greenville County (the county of Dr. Robinson's domicile). [Attachment D: Transcription of Judgment] There is no record that the transcription of the judgment was ever served on Dr. Robinson. No one on behalf of the petitioner every attempted to collect on the recorded judgment, prior to his receiving the Rule to Show Cause in August of this year.

For reasons unknown, GrandSouth Bank waited almost ten (10) years until May 23, 2014 before filing its Execution Against Property. [Attachment E: Execution Against Property] By that ten (10) year lapse, the original judgment of \$111,059,21 had more than doubled into the staggering amount of \$233,738.41.

Nevertheless, Grandsouth Bank had until July 27, 2014 to take action on its Execution Against Property. GSB did not file its petition until August 18, 2014, more than ten (10) years after the original judgment giving rise to the current Rule to Show Cause. [Attachment F, Rule to Show Cause]

Legal Discussion

The case at bar raises two (2) critical issues: (1) for a South Carolina judgment entered in one county, does transcribing it to another county extend the life of the original judgment; and (2) was GrandSouth Bank's petition required to be filed within ten (10) years from the date the original judgment was entered? An analysis of the applicable statute and South Carolina case

law confirms that the intrastate transcribing of a South Carolina judgment does not extend the ten (10) year period. Furthermore, under S.C. Code §15-39-30, GSB's execution against property only had "active energy" during the ten (10) year period, such that its petition filed outside the ten (10) year limitation is void and should be dismissed.

In this case, the timeline of the following events are the most critical:

July 27, 2004	GSB's Deficiency Judgment against Dr. Robinson is entered and recorded in Lexington County;
July 1, 2005	GSB transcribes its judgment to Greenville County.
May 23, 2014	GSB issues an Execution Against Property.
August 18, 2014	GSB files its Petition, giving rise to the Rule to Show Cause.

The first question inherently raised by GSB's petition is whether transcribing its judgment from Lexington County to Greenville County extended the life of its original judgment by almost a year. The original judgment was entered in Lexington County on July 27, 2004; GSB did not transcribe the judgment to Greenville County until July 1, 2005.

South Carolina 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)).

While no court has specifically addressed the application of SC Section 15-39-30 to intrastate transcription of judgments,³ South Carolina courts have steadfastly refused to recognize any mechanism that would toll or extend the original judgment filed in South Carolina. Home Port Rentals, Inc. v. Moore, 369 S.C. 493, 632 S.E.2d 862 (2006) (enforcement of judgment was not tolled under S.C. Code §15-3-30 because of debtor’s absence from the state); Commercial Credit Loans, Inc. v. Riddle, 334 S.C. 176, 512 S.E.2d 123 (Ct. App. 1999) (same); Carr v. Guerard, 365 S.C. 151, 616 S.E.2d 429 (2005) (judgment creditor cannot file action under Statute of Elizabeth [S.C.Code Ann. § 27-23-10] when underlying judgment was stale).

Time and time again, South Carolina courts have recognized that when the original judgment was stale or had expired, the judgment creditor loses its rights to pursue collection. See, e.g., Hardee v. Lynch, 212 S.C. 6, 46 S.E.2d 179 (1948); Home Port Rentals, Inc. v. Moore, 369 S.C. 493, 632 S.E.2d 862 (2006); Wells ex rel. A.C. Sutton & Sons, Inc. v. Sutton, 382 S.E.2d 14, 299 S.C. 19 (S.C. App., 1989) and Carr v. Guerard, 365 S.C. 151, 616 S.E.2d 429

³ One court has addressed the application the ten year time period for a foreign judgment domesticated in South Carolina. In Credit Loans, Inc. v. Riddle, the judgment creditor originally obtained its judgment in Illinois on May 27, 1986. The creditor then domesticated its judgment in South Carolina on February 21, 1989. The Court held that the effective date for entry of a judgment was the date it was first entered in South Carolina (1989), as opposed to the date where the judgment was originally obtained (1986).

However, this is not analogous to the case at bar. This original judgment arose in South Carolina from a South Carolina action. See, e.g., Home Port Rentals v. Moore, 359 S.C. 230, 597 S.E.2d 810 (S.C. App., 2004), *aff’d*, Home Port Rentals, Inc. v. Moore, 369 S.C. 493, 632 S.E.2d 862 (2006) (for purposes of determining entry date of judgment under SC §15-39-30, date judgment entered in Federal District Court in South Carolina was the effective date of entry as a South Carolina judgment).

(2005). All rights GrandSouth Bank has as a judgment creditor in Greenville County arise solely as a judgment creditor for its original judgment in Lexington County. Accordingly, if its rights expired under the original judgment, GSB would have no independent rights or causes of action that would survive here in Greenville County.

Allowing a judgment creditor to artificially extend the life of a South Carolina judgment simply by transcribing it from county to county would directly thwart South Carolina's "strong public policy to limit the enforcement of judgments to ten years." Otherwise, GSB could have waited until July 26, 2014 to transcribe its Lexington County judgment here in Greenville County, and argue it was entitled to pursue Dr. Robinson for another ten (10) years for its collection. Or GSB could transcribe the judgment from Greenville County to another county where the judgment debtor may own property or real estate and continue pursuit *ad infinitum*.

Accordingly, whatever rights GrandSouth Bank has as a judgment creditor expired on July 27, 2014, the date its original judgment was recorded in Lexington County.

The next issue thusly becomes whether GrandSouth Bank was required to file its petition within ten (10) years from the date the original judgment was entered. A close reading of S.C. Code §15-39-30 and a review of the applicable case law answers the question definitively in the affirmative. S.C. Code § 15-39-30 provides, "Executions may issue upon final judgments or decrees at any time within ten years from the date of the original entry thereof and shall have active energy **during such period**, without any renewal or renewals thereof, and this whether any return may or may not have been made during such period on such executions. (emphasis added). GrandSouth Bank obtained an Execution Against Property of Dr. Robinson on May 23, 2014. By statute, its execution only had "active energy" until July 27, 2014.

Section 15-39-30 specifically provides that GBS did not have to wait for a return from the sheriff before taking any further legal action to enforce its lien. However, what is clear from the case law is that whatever legal action GrandSouth Bank elected to pursue, that court action must be initiated within the ten (10) year period. The case of Linda McCompany, Inc. v. Shore best illustrates this principle.

In Linda McCompany, Inc., the judgment at issue was recorded on June 2, 1995. The judgment creditor filed its petition for supplemental proceedings on July 29, 2004 - well within the 10 year period. Thereafter, there were multiple hearings held by the special referee (October 1, 2004 and another on May 24, 2005). On June 3, 2005, the special referee issued his report back to circuit court with findings in favor of the judgment creditor – 10 years + 1 day after the original judgment was entered. The judgment debtor then sought to thwart payment by arguing that because the special referee's order was entered after the 10 year period had run, the order was void.

The South Carolina Supreme Court went through an extensive analysis of balancing the respective equities to the parties when applying the statute and established case law up to that time. The prior decisions of Garrison v. Owens, 258 S.C. 442, 189 S.E.2d 31 (1972) and LaRosa v. Johnston, 328 S.C. 293, 493 S.E.2d 100 (Ct.App.1997) had implicitly held that the 10 year limitation was *de facto* limitation of repose whereby nothing to be done once the 10 year period had run.

The Linda McCompany Inc. court found the application of this rule to be too harsh under the circumstances the case at bar, where the judgment creditor had initiated supplemental proceedings well within the 10 year period. The court recognized that “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.” *Id* at p. 505.

Importantly to the case at bar, the court noted, “While the order came after the ten-year period, **a petition for supplemental proceedings** was filed before the ten-year period expired. Therefore, the judgment had active energy on June 3, 2005 because that order was the result of the supplemental proceedings filed during the ten-year period.” *Id.* (emphasis added). The court concluded:

In conclusion, section 15-39-30 is not a statute of limitations but it does operate similar to one under these factual circumstances. Furthermore, **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).

Thus, under Sec. 15-39-30, GrandSouth Bank’s execution against property had active energy up through July 27, 2014. However, under Linda McCompany Inc., GrandSouth Bank was required to file its petition for supplemental proceedings before the ten-year period expired. Because the petition was not filed within the ten-year period, it must be dismissed.

Such a result is particularly fair and just under these circumstances. Dr. Robinson has maintained his life and veterinarian practice here in Greenville for more than forty (40) years. He has never hidden or otherwise attempted to thwart the collection of any valid debt. Yet, literally on this verge of his retirement, GSB seeks forcibly receive the substantial basis upon which Dr. Robinson anticipated live on.

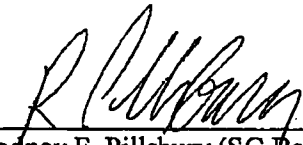
There is no excuse for GrandSouth Bank's ten year delay. The passage of time has caused the judgment to more than double and has left Dr. Robinson with no recourse against the person who was truly responsible for the debt, Mr. Fitzgerald.

Conclusion

For these reasons, GrandSouth Bank's Petition for Supplemental Proceedings should be dismissed and the judgment of record in Greenville and Lexington counties should be noted as expired.

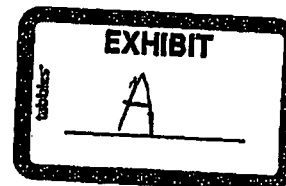
Respectfully submitted,

Pillsbury & Read, P.A.



Rodney F. Pillsbury (SC Bar #13067)
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Greenville, SC 29601
Phone: (864) 241-9828
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Email: rpillsbury@prlawpa.com

September 5, 2014



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-23-04155

**AFFIDAVIT OF
WALTER C. ROBINSON, III, D.V.M.**

Personally appears before me, **Walter C. Robinson, III, D.V.M.**, the undersigned, who upon being duly sworn, deposes and sates as follows:

1. I am a resident of South Carolina, over the age of eighteen, competent to testify and the statements set forth hereunder are those known personally unto me.
2. I am 73 years old and has been a practicing veterinarian in Greenville for almost forty (40) years. I am a graduate of Wofford College in physics, and graduated from the College of Veterinary Medicine at the University of Georgia. I completed my surgery residency at Purdue University where I received a master's degree in veterinary science (surgery). I am a diplomat in the American Board of Veterinary Practitioners, specializing in companion animals. I am also currently a member of the South Carolina Board of Veterinary Medical Examiners.
3. Almost twenty (20) years ago, Albert Fitzgerald, an acquaintance who had helped me when I moved to Greenville in the 70s, asked me to co-sign for a promissory note for him to develop some property in Lexington County. As a favor, I agreed. I never knew anything about

the property. I had nothing to do with paying the bills. I was never an officer, employee, manager, shareholder or member with the company through which Mr. Fitzgerald was doing business, Cleveland Land Company. I had nothing whatsoever to do with his company or the property he purchased. I never received any benefit from the company. At the time, I was only helping out a friend at the time who had asked me a favor.

4. At some point around 2003, I learned that Mr. Fitzgerald's business was – apparently – not meeting its obligations. I had received notices from the bank. I grew tired of this and confronted Mr. Fitzgerald about the situation. I had a “come to Jesus” meeting with him about making everything right.

5. Mr. Fitzgerald assured me that he would take care of everything. A few months following that meeting, Fitzgerald called me to report everything had gotten worked out.

6. From that point forward, I stopped receiving notices and I heard nothing about the matter, so I assumed that everything was as Mr. Fitzgerald had represented it to be.

7. I did not receive a Summons and Complaint in the Lexington County case. I am trying to get their records to see how and when the petitioner contends I was served.

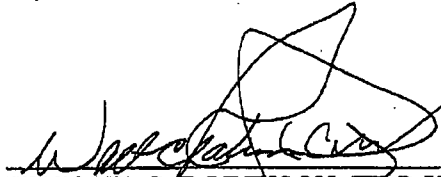
8. Nevertheless, it was not until I was served with a Rule to Show Cause in August of this year, that I knew anything about money still being owed in Lexington.

9. I do not know where Albert Fitzgerald is or if he is even alive. I have no idea about his financial ability to take care of any debt he may owe on his business. I have neither seen, nor spoken to him in over ten (10) years.

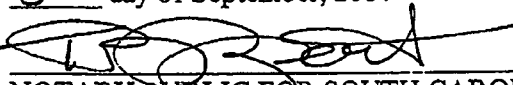
10. At age 73, my veterinarian practice is largely a hobby, because I enjoy the people and because I enjoy taking care of animals. From time-to-time I have had to put my personal money into the practice to cover its bills.

11. Based upon the documents of record, the original judgment in the amount of \$111,059.21 has now ballooned into the amount currently claimed by GrandSouth Bank, \$233,738.41. I have a few investment properties from which I earn my retirement income. However, if forced to pay off this amount at this time, the basis of my retirement income would be liquidated, I would be forced to close my practice and I would be rendered essentially destitute in my retirement years with no real means to obtain contribution from the person who was responsible for the debt, Mr. Fitzgerald.

UNDER THE PAINS AND PENALTIES OF PERJURY, THE AFFIANT FURTHER SAITH NOT.

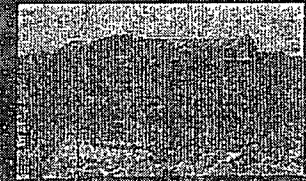

WALTER C. ROBINSON, III, D.V.M.

SWORN to before me this
5th day of September, 2014


NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 10/18/21



Lexington County Eleventh Judicial Circuit Public Index



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EXHIBIT
B

Switch View

Grandsouth Bank VS Cleveland Land Company Inc, defendant, et al					
Case Number:	2003CP3201984	Court/Agency:	Common Pleas	Filed Date:	05/29/2003
Case Type:	Common Pleas	Case Sub Type:	Foreclosure 420	File Type:	Non-Jury
Status:	Disposed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court		
Disposition:	Other / Circuit Civil	Disposition Date:	02/12/2004	Disposition Judge:	Solicitor / Master In Equity G S And C P
Original Source Doc:		Original Case #:			
Judgment Number:	2003CP3201984	Court Roster:			

Case Parties

Click the icon to show associated parties.

Name	Address	Race	Sex	Date Of Birth	Party Type	Party Status	Last Updated
<input checked="" type="checkbox"/> Cleveland Land Company Inc					Defendant		08/18/2007
<input checked="" type="checkbox"/> Cleveland Land Company Inc					Defendant Pro Se		08/18/2007
<input checked="" type="checkbox"/> Faulkner, D Sean	Roe Cassidy Coates & Price, PA P.O. Box 10529 Greenville SC 29603				Plaintiff Attorney		
<input checked="" type="checkbox"/> Fitzgerald, Albert E					Defendant		08/18/2007
<input checked="" type="checkbox"/> Fitzgerald, Albert E					Defendant Pro Se		08/18/2007
<input checked="" type="checkbox"/> Grandsouth Bank					Plaintiff		08/18/2007
<input checked="" type="checkbox"/> Robinson, Walter C					Defendant		08/18/2007
<input checked="" type="checkbox"/> Robinson, Walter C					Defendant Pro Se		08/18/2007

Judgments

	Cleveland Land	Judg	Judgment
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For:	Grandsouth Bank	Against:	Company Inc	Amount:	\$0.00	Date:	02/12/2004
Description:	Judgment/Judgment	Disposition:		Disp. Date:		Date Entered/Last Changed:	-- 08/16/2007
Notes:	None						

Judgment Details							
Claims Code	Detail Desc.			Detail Amount	Detail Date		

For:	Grandsouth Bank	Against:	Robinson, Walter C	Judg. Amount:	\$0.00	Judgment Date:	02/12/2004
Description:	Judgment/Judgment	Disposition:		Disp. Date:		Date Entered/Last Changed:	-- 08/16/2007
Notes:	None						

Judgment Details							
Claims Code	Detail Desc.			Detail Amount	Detail Date		

For:	Grandsouth Bank	Against:	Fitzgerald, Albert E	Judg. Amount:	\$0.00	Judgment Date:	02/12/2004
Description:	Judgment/Judgment	Disposition:		Disp. Date:		Date Entered/Last Changed:	-- 08/16/2007
Notes:	None						

Judgment Details							
Claims Code	Detail Desc.			Detail Amount	Detail Date		

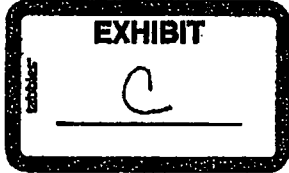
Actions

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Grandsouth Bank	MOTION INFORMATION FORM AND COVER SHEET	Motion		04/24/2007-00:00	04/24/2007-00:00	
Grandsouth Bank	MOTION FOR RELEASE OF JUDGMENT AS TO PROPERTY INVOLVED IN F.C.	Motion		04/24/2007-00:00	04/24/2007-00:00	
Grandsouth Bank	ORDER RELEASING JUDGMENT AS TO PROPERTY INVOLVED IN FORECLOS	Order		04/24/2007-00:00	04/24/2007-00:00	
Grandsouth Bank	ORDER OF DEFICIENCY JUDGEMENT	Order		07/27/2004-00:00	07/27/2004-00:00	
Grandsouth Bank	STATEMENT OF RECPTS & DISBURSEMENTS	Filing		07/27/2004-00:00	07/27/2004-00:00	
Grandsouth Bank	REPORT ON SALE & DISBURSEMENTS	Filing		07/27/2004-00:00	07/27/2004-00:00	
Grandsouth Bank	AFFIDAVIT OF	Filing		04/02/2004-	04/02/2004-	

	PUBLICATION			00:00	00:00
Grandsouth Bank	DECREE OF FORECLOSURE	Filing		02/12/2004-00:00	02/12/2004-00:00
Grandsouth Bank	MASTER IN EQUITY SALE	Filing		02/12/2004-00:00	02/12/2004-00:00
Grandsouth Bank	TESTIMONY	Filing		02/12/2004-00:00	02/12/2004-00:00
Grandsouth Bank	STATEMENT OF ACCOUNT	Filing		02/12/2004-00:00	02/12/2004-00:00
Grandsouth Bank	Judgment/Judgment	Judgment		02/12/2004-00:00	
Grandsouth Bank	Judgment/Judgment	Judgment		02/12/2004-00:00	
Grandsouth Bank	Judgment/Judgment	Judgment		02/12/2004-00:00	
Cleveland Land Company Inc	Judgment/Judgment	Judgment		02/12/2004-00:00	
Robinson, Walter C	Judgment/Judgment	Judgment		02/12/2004-00:00	
Fitzgerald, Albert E	Judgment/Judgment	Judgment		02/12/2004-00:00	
Grandsouth Bank	CERTIFICATE OF MAILING	Filing		02/03/2004-00:00	02/03/2004-00:00
Grandsouth Bank	CERTIFICATE OF MAILING	Filing		01/28/2004-00:00	01/28/2004-00:00
Grandsouth Bank	SUMMONS & ORDER SET HEARING DATE	Filing		10/28/2003-00:00	10/28/2003-00:00
Grandsouth Bank	MOTION INFORMATION FORM AND COVER SHEET	Motion		10/23/2003-00:00	10/23/2003-00:00
Grandsouth Bank	ORDER OF REFERENCE	Order		10/23/2003-00:00	10/23/2003-00:00
Grandsouth Bank	ORDER OF DEFAULT	Order		10/23/2003-00:00	10/23/2003-00:00
Grandsouth Bank	AFFIDAVIT OF NGN MILITARY SERVICE	Filing		10/23/2003-00:00	10/23/2003-00:00
Grandsouth Bank	AFFIDAVIT OF DEFAULT	Filing		10/23/2003-00:00	10/23/2003-00:00
Grandsouth Bank	Order/Referred to Master	Order		10/21/2003-00:00	05/29/2003-00:00
Grandsouth Bank	AFFIDAVIT OF SERVICE	Filing		07/25/2003-00:00	07/25/2003-00:00
Grandsouth Bank	AFFIDAVIT OF SERVICE	Filing		07/25/2003-00:00	07/25/2003-00:00
Grandsouth Bank	AFFIDAVIT OF SERVICE	Filing		07/25/2003-00:00	07/25/2003-00:00
Grandsouth Bank	Filing Fee	Filing		05/29/2003-00:00	05/29/2003-00:00

Grandsouth Bank	Amended/Amended	Filing	05/29/2003-00:00	05/29/2003-00:00
Grandsouth Bank	SUMMONS & COMPLAINT	Filing	05/29/2003-00:00	05/29/2003-00:00

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STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS)
THIRTEENTH JUDICIAL CIRCUIT)

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

GrandSouth Bank,)
Petitioner,)

PETITION

v.)

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

Respondents.)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2005 AUG 18 PM 4 30

TO: THE ABOVE NAMED RESPONDENT, WALTER C. ROBINSON:


Petitioner would respectfully show unto the court as follows:

1. That 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 Lancaster County on July 27, 2004 (Judgment Roll No.: 2003-CP-32-1984). The said judgment was transcribed on July 1, 2005 in the indexes and records of the Clerk of Greenville County, South Carolina in Judgment Roll No. 2005-CP-23-04155. That the Clerk of said Court has issued an execution against the property of Respondent which was delivered to the Sheriff of Greenville County and which has been returned by the Sheriff marked "Null Bona."

2. That Petitioner is informed and believe that such judgment debtor has assets which said debtor unjustly refuses to apply towards satisfaction of the within judgment, including but not limited to, bank accounts, real estate assets, boats, vehicles and/or income from Respondent's Veterinary practice.

WHEREFORE, Petitioner prays for an Order of this Court requiring the Respondent, Walter C. Robinson, to appear before the Court at such time and place as may be designated in said Order and Rule to Show Cause and question Respondent to show cause why its property should not be applied toward satisfaction of the judgment set out in the Petition.

Respectfully Submitted,



Wendell L. Hawkins, Esq. (S.C. Bar #: 13583)
Aimee V. Leary, Esq. (S.C. Bar # 100657)
Wendell L. Hawkins, PA
103-C Regency Commons Dr. Greer, SC 29650
(864) 848-9370 (Ph) (864) 848-9759 (Fax)
wlh@wlhawkinslawfirm.com
avl@wlhawkinslawfirm.com
Attorneys for Petitioner

Greer, South Carolina
July 29, 2014



STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

2005-CP-23-4155

GrandSouth Bank,)
Plaintiff,)

TRANSCRIPT OF JUDGMENT
C. A. No. 2003-CP-32-1984

Verified

v.)

ENTERED COMPUTER

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

NAME OF PARTY AGAINST WHOM JUDGMENT HAS BEEN OBTAINED:

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

FILED
CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSMEYER

2005 JUL -1 P 12:00

NAME OF PARTY IN WHOSE FAVOR JUDGMENT HAS BEEN OBTAINED:

GrandSouth Bank

Judgment Roll No.: 2003-CP-32-1984
Amount: \$111,059.21

Date: February 10, 2004 (Decree of Foreclosure)
Filed of Record: February 12, 2004
Date: July 20, 2004 (Order for Deficiency Judgment)
Filed of Record: July 27, 2004


ATTORNEYS: D. Sean Faulkner
Roe Cassidy Coates & Price, P.A.
Post Office Box 10529
Greenville, SC 29603
(864) 349-2600

DAMAGES AND COSTS:

Principal:	\$111,059.21
Attorney's Fees:	(included)
Costs:	(Included)

Total Amount due on Judgment plus interest from date at the rate of 14% per annum:	----- \$111,059.21
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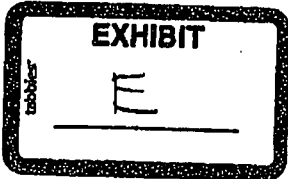
I CERTIFY THAT THE FOREGOING IS A CORRECT
TRANSCRIPT FROM THE DOCKET OF JUDGMENTS KEPT IN MY OFFICE.



Beth A. Carrigg
Clerk of Court
Lexington County Court House

Lexington, South Carolina

February , 2005



STATE OF SOUTH CAROLINA)
) EXECUTION AGAINST PROPERTY
)
 COUNTY OF GREENVILLE)

To the Sheriff of the County of Greenville; GREETING:

WHEREAS, judgment was rendered on the First, day of July, 2005 in an action in the Court of Common Pleas of Greenville County, State of South Carolina, between GrandSouth Bank, Plaintiff(s) and Cleveland Land Company, Inc., Walter C. Robinson and Albert E. Fitzgerald, Defendant(s) in favor of, said GrandSouth Bank against the Walter C. Robinson for the Sum of \$111,059.21 as appears to us by the Judgment Roll No. 2005-CP-23-04155 so filed in the Clerk of the Court of Common Pleas, County of Greenville; and

WHEREAS, the said judgment was docketed in your county on the First day of July, 2005 and the sum of \$ 233,738.41 and the further sum of N/A for the costs of the suit, are now actually due thereon, with interest thereon from the 23rd day of May 2014 with per diem interest thereon of \$15.99.

Therefore, we recommend you, that you satisfy the said judgment out of the personal property of the said judgment debtor(s) within your County; or if sufficient personal property cannot be found, then out of the real property in your County belonging to the said judgment debtor(s) on the day when the said judgment was so docketed in your County, or at any time thereafter in whose hands so ever the same may be, and duly return this execution according to law, to this Clerk of the Court of Common Pleas for the County of Greenville,

Witness The Honorable Paul B. Wickensimer as Clerk of said Court at Greenville County, South Carolina this 23rd day of May, 2014.

Attest:

The Honorable Paul B. Wickensimer
 Clerk of Court of Common Pleas

Aimee V. Leary
 Attorney for Plaintiffs

ENTERED COMPUTER

ml

INTEREST CALCULATION

July 1, 2005 to January 14, 2006

$$\$111,059.21 \times [(9.25\%/365) \times 198] = \$ 116,631.95$$

January 15, 2006 to January 14, 2007

$$\$ 116, 631.95 \times 11.25\% = \$ 129,753.04$$

January 15, 2007 to January 14, 2008

$$\$ 129,753.04 \times 12.25\% = \$ 144,350.26$$

January 15, 2008 to January 14, 2009

$$\$ 144,350.26 \times 11.25\% = \$ 160,589.67$$

January 15, 2009 to January 14, 2010

$$\$ 160,589.67 \times 7.25\% = \$ 172,232.41$$

January 15, 2010 to January 14, 2011

$$\$ 172,232.41 \times 7.25\% = \$ 184,719.26$$

January 15, 2011 to January 14, 2012

$$\$ 184,719.26 \times 7.25\% = \$ 198,111.41$$

January 15, 2012 to January 14, 2013

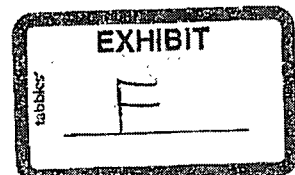
$$\$ 198,111.41 \times 7.25\% = \$ 212,474.49$$

January 15, 2013 to January 14, 2014

$$\$ 212,474.49 \times 7.25\% = \$ 227,898.89$$

January 14, 2014 to May 23, 2014

$$\$ 227,898.89 \times [(7.25\%/365) \times 129] = \$ 233,738.41$$



116 E. Earle St.
Anderson, SC 29621
(864) 332-0881 Phone
(864) 332-0882 Fax
anderson@wlhawkinslawfirm.com

Wendell L. Hawkins, PA
Attorneys at Law

August 21, 2014

Susan S. Miranda, Esq.
Willie J. Peters, III, Esq.

103-C Regency Commons Dr.
Greer, SC 29615
(864) 848-9370 Phone
(864) 848-9754 Fax
greenvise@wlhawkinslawfirm.com

Wendell L. Hawkins, Esq.
Aimee V. Leary, Esq.

Writer's Reply Address
avl@wlhawkinslawfirm.com
864.848.9370 ext. 210

Walter C. Robinson
634 Groce Meadow Road
Taylors, South Carolina 29687

Re: GrandSouth Bank v. Cleveland Land Company, Inc., Walter C. Robinson and
Albert E. Fitzgerald
2012-CP-23-04155

Dear Mr. Robinson:

Please find herewith an **Order and Rule to Show Cause** for the above referenced case ordering you to appear at the Greenville County Courthouse, 305 E. North Street Greenville, South Carolina 29601, Courtroom 5, on September 16, 2014 at 10:00 a.m. bringing with you the documents and information requested within the enclosed Order.

If you have any questions or concerns please feel free to contact me.

With kind regards I remain,

Very truly yours,

Aimee V. Leary, Esq.

Enclosures

FILED - CLERK OF COURT
 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
 GREENVILLE, S.C.
 COUNTY OF GREENVILLE PAUL B. WILSON THIRTEENTH JUDICIAL CIRCUIT

2014 AUG 18 PM 4 30 A. No. 2005-CP-23-04158

GrandSouth Bank,
)
)
 Petitioner,
)
)
 v.
)
)
 Cleveland Land Company, Inc., Walter C.
)
)
 Robinson and Albert E. Fitzgerald.
)
)
 Respondents.
)

ORDER AND RULE TO SHOW
 CAUSE

TO: THE ABOVE NAMED RESPONDENT, WALTER C. ROBINSON:

It appears that the petitioner has obtained judgment against Robinson C. Walter and Albert E. Fitzgerald (hereinafter "Respondents"). On July 1, 2005 the judgment rendered against Defendants in an action in the Court of Common Pleas of Lexington County was docketed in Greenville County. Execution was duly lodged with the Sheriff for handling and was later returned "Nulla Bona" to the Clerk of Court on July 18, 2014.

NOW, THEREFORE, IT IS ORDERED that you appear before the Presiding Judge of the Thirteenth Judicial Circuit, Greenville County Courthouse, 305 E. North Street, Greenville, South Carolina 29601 on the 16 day of September, 2014 at 10:00 o'clock a.m., and show cause why you should not be held in contempt of court for failure to respond to duly issued subpoenas and bring with you any of the following documents:

- a. All records of real estate in which you own an interest;

Adv

*Master
 Ch. R. R. 5*

in Equity

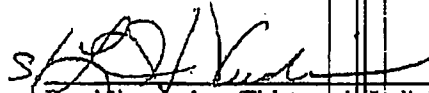
- b. All bank accounts, savings accounts, annuities, certificates of deposit, insurance policies with cash surrender value and other evidences of liquid assets which you have or have had an interest since July 1, 2005 to current;
- c. All stocks, bonds, or other evidences of ownership of any legal entity and including the last financial statement, K-1 and State and Federal tax returns for each such entity, including but not limited to East North Veterinary Clinic, Inc. and Carolina Rental Property, Inc.;
- d. All other investments, including foreign investments of any nature including bank accounts in which you have or have had any interest since July 1, 2005 to current, excluding only assets exempt from execution but including transfers in and to such accounts within the last ten years;
- e. Titles to any and all vehicles, boats, trailers and/or equipment in which you have an interest since July 1, 2005 to current with all schedules and any and all other evidences of assets presently standing in your name or which you have transferred since July 1, 2005 to current;
- f. Identify all records for the past ten years concerning all banking, checking, certificates of deposit, savings accounts, and bank deposit boxes holding any assets, by identifying the bank, the account or box number, each party who has signatory authority and the present

2/24

balance due in any and all such account or assets on deposit in such
bank deposit box; and

- g. A copy of your Social Security Card.

IT IS SO ORDERED.



Presiding Judge, Thirteenth Judicial Circuit

8 / 11, 2014
Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2005CF2304155

GrandSouth Bank vs. Cleveland Land Company Inc

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, 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;
 - 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 And Rule To Show Cause 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) 457-8551 or email a request to bieffords@greenvillecounty.org. If you would like a copy via email, please provide a valid email address.

Dated at Greenville, South Carolina, this 18th day of August, 2014.

Court Reporter:

PRESIDING JUDGE

D. Sean Faulkner Nelson Mullins Riley &
Scarborough LLP P.O. Box 10084 Greenville, SC
29603-0084

ATTORNEY(S) FOR THE PLAINTIFF(S)


ATTORNEY(S) FOR THE DEFENDANT(S)

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

balance due in any and all such account or assets on deposit in such
bank deposit box; and

g. A copy of your Social Security Card.

IT IS SO ORDERED.



Presiding Judge, Thirteenth Judicial Circuit

8/11, 2014
Greenville, South Carolina



Greenville County Sheriff's Office

Civil Division



601 E. McBee Ave., Suite 210
Greenville, SC 29601

PHONE: (864) 282-0008
FAX: (864) 235-9171

Judgment Debtor Worksheet

(Complete and Return)

Our File No.: 137809-0001

1. I WILL PAY THE JUDGMENT IN FULL. Contact our office for actual payoff and attach check in the amount of \$ _____ (OR Complete #2 and #3 below).

2. I own the following property:

Personal Property	Liens		Value
(Description)	(Lienholder)	(Lien Amount)	(Amount)
Auto _____	_____	\$ _____	\$ _____
Auto _____	_____	_____	_____
Auto _____	_____	_____	_____
Other _____	_____	_____	_____
Other _____	_____	_____	_____
Other _____	_____	_____	_____
Real Estate:			
Home _____	_____	_____	_____
Other _____	_____	_____	_____
Other _____	_____	_____	_____

3. I WANT TO PAY THE JUDGMENT IN THE FOLLOWING MANNER (With approval of the judgment creditor):

I DO NOT KNOW ANYONE AT HONDA SALES TRUCKS OR THE
CLEVELAND LEASE COMPANY,
A WASHINGTON DC

I UNDERSTAND THAT A JUDGMENT HAS BEEN ENTERED AGAINST ME AND THAT THE SHERIFF HAS BEEN COMMANDED TO SEIZE MY PROPERTY AND SELL IT AT PUBLIC SALE, IF I DO NOT PAY THE AMOUNT OR MAKE OTHER ARRANGEMENTS.

Walter C Robinson III
Print Full Name

550 Old Hawyeri Rd
Street Address

[Signature]
Signature

June 2, 2014
Date

GREENVILLE SC 29605
City State Zip

Work phone: (864) 235-0812

Home phone: 864-421-7550
895-9100



Greenville County Sheriff's Office Civil Division



601 E. McBee Ave., Suite 210
Greenville, SC 29601

PHONE: (864) 282-0008
FAX: (864) 235-9171

Friday, July 18, 2014

WENDELL L. HAWKINS, P.A.
Aimee V Leary, Esq
103-C Regency Commons Drive
Greer, SC 29650

Re: GrandSouth Bank v Cleveland Land Company, Inc.
Your File No.:
Our File No.: 137809-0001

Dear Aimee V Leary, Esq

Enclosed please find the Execution Against Property stamped nulla bona. Our office has either made a demand for full payment and the judgment debtor has refused or you requested the return. In the future if you wish to levy on any of the debtor's property discovered by you through supplemental proceeding (or your own subsequent investigation), this office will be ready to do so promptly.

Regarding future requests to seize property, the Sheriff's Office will seize, with proof of ownership, specific property from the judgment debtor. Levy on specific property shall be made only upon your direct request. The Sheriff's Office will not make unilateral decisions to levy on or sell property. Your request for seizure should be accompanied by the original Execution Against Property and a Notice of Levy, to be prepared by you and signed by us (or by an appropriate Order).

Please be aware that all costs of levy, seizure, storage, safekeeping, advertising, and any other expenses of sale may be required to be advanced by you prior to levy or seizure. If a check for advance funds is required, it will be refunded to you when it is determined that the sale proceeds are sufficient to pay the expenses after the debtor's statutory exemptions and encumbrances are satisfied.

If you have any further questions regarding this matter, please do not hesitate to contact our office.

Sincerely,
Greenville County Sheriff's Office
Civil Division

B. M. McCurley
Deputy

Enclosure

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,

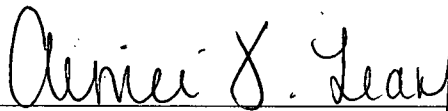
Defendants,

Of whom Walter C. Robinson is the Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.

Wendell L. Hawkins, PA



Wendell L. Hawkins, Esq., S.C. Bar 13583
Aimee V. Leary, Esq., S.C. Bar 100657
103-C Regency Commons Drive
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wlh@wlhawkinslawfirm.com

avl@wlhawkinslawfirm.com
Attorneys for the Appellant

February 11, 2015
Greer, South Carolina

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,

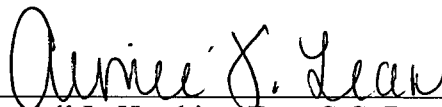
Defendants,

Of whom Walter C. Robinson is the Respondent.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Record on Appeal complies with Supreme Court Order dated August 13, 2007, regarding personal identifiers and sensitive information.

Wendell L. Hawkins, PA



Wendell L. Hawkins, Esq., S.C. Bar 13583
Aimee V. Leary, Esq., S.C. Bar 100657
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wlh@wlhawkinslawfirm.com
avl@wlhawkinslawfirm.com
Attorneys for the Appellant

February 11, 2015
Greer, South Carolina

**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,

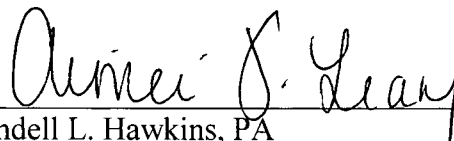
Defendants,

Of whom Walter C. Robinson is the Respondent.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Record on Appeal with this Certificate of Service were served upon counsel on February 11, 2015 by First Class Mail as follows:

Rodney F. Pillsbury, Esq.
1204-A E. Washington Street
Greenville, South Carolina 29601



Wendell L. Hawkins, PA
Wendell L. Hawkins, Esq., SC Bar 13583
Aimee V. Leary, Esq., S.C. Bar 100657
103-C Regency Commons Dr. Greer, SC 29650
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wlh@wlhawkinslawfirm.com
avl@wlhawkinslawfirm.com
Attorneys for the Appellant