THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable D. Garrison Hill, Circuit Court Judge

Appellate Case No. 2014-001917

Investment Associates, ...Appellant,

v.

Joseph D. Lancia, ...Respondent.

FINAL BRIEF OF RESPONDENT

HAYNSWORTH SINKLER BOYD, P.A.

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III. WHETHER ENFORCEMENT OF THE CONNECTICUT JUDGMENT, IF VIEWED AS A NEW JUDGMENT, IS BARRED BECAUSE CONNECTICUT LACKED PERSONAL JURISDICTION OVER LANCIA AT THE TIME THAT INVESTMENT ASSOCIATES SOUGHT REVIVAL OF THE JUDGMENT.

IV. WHETHER ENFORCEMENT OF THE JUDGMENT IS BARRED BECAUSE INVESTMENT ASSOCIATES LACKS CAPACITY TO ENFORCE THE JUDGMENT.

STATEMENT OF THE CASE

Investment Associates brought this action on **January 28, 2014** seeking to enforce a judgment that was entered on **May 17, 1994** in the State of Connecticut Superior Court, number CV091-0309954 (hereinafter the "Judgment"). (R. pp. 22-25). The Judgment was entered against Joseph Lancia, and two other defendants who are not parties to this action, in the amount of $272,505.03, plus costs of $201.20 and interest at the annual rate of ten percent (10%).[1] (R. p. 24). Lancia moved from Connecticut to South Carolina in 1992 and has been a resident of South Carolina since August 1992, residing continuously at the address of 109 Thornblade Boulevard in Greer, South Carolina.[2] (R. p. 39 ¶¶ 2-3).

Investment Associates filed an action in 2007 with the Connecticut Superior Court seeking a new judgment based on the Judgment. (*See* R. p. 58).[3] Lancia moved to dismiss for lack of personal jurisdiction since he had been a resident of South Carolina since 1992, had worked in South Carolina exclusively during that time, and had no

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[1] At the time of the January 28, 2014 filing, Investment Associates was seeking $823,898.00 when accounting for the ten percent interest. (R. p. 29).

[2] In Investment Associates' Statement of the Case, it makes false statements that are simply not in the record, in a clear effort to influence the Court by improperly creating a negative impression of Mr. Lancia. For example, Investment Associates inaccurately states that the Judgment was based on a promissory note that Lancia signed in favor of Investment Associates as compensation for burning the building, and that "Lancia fled Connecticut." These statements are inaccurate and unsupported. The Judgment was based on a promissory note incident to the purchase of a business from Investment Associates by Lancia's company, Summit Associates, Inc. Lancia subsequently sold his interest in Summit Associates, Inc. to one of the two men involved in Investment Associates, and came to South Carolina to pursue a new opportunity. Lancia believed that the liability was taken care of as part of the sale. Regardless, these facts are irrelevant to this appeal.

[3] The May 5, 2008 order is also available at *Investment Associates v Lancia*, CV074028746S, 2008 WL 2168983, 2008 Conn. Super LEXIS 1112 (Conn. Super. Ct. May 5, 2008).

contacts with Connecticut since 1992. (R. pp. 57, 62, 65). The Connecticut Superior Court granted Lancia's motion and held that Connecticut lacked personal jurisdiction over Lancia since his sole contact with Connecticut was the Judgment, which the court found to be insufficient. (R. pp. 64-66). Investment Associates did not appeal that decision.

In 2009, the Connecticut legislature passed General Statutes § 52-598(c), which provides:

> With respect to a judgment for money damages rendered in any court of this state, including, but not limited to, a small claims session, a motion to revive such judgment may be filed with the Superior Court prior to the expiration of any applicable period of time to enforce such judgment as set forth in this section. The court may grant the motion to revive the judgment if the court finds that the applicable time period to enforce the judgment under this section has not expired. No order to revive a judgment may extend the time period to enforce a judgment beyond the applicable time period set forth in this section.

On October 6, 2009, Investment Associates filed a "Motion to Revive" the Judgment in the Connecticut Superior Court pursuant to the new statute. *See Investment Associates v Lancia*, CV91-0309954-S, 2010 WL 1376471, at *1, 2010 Conn. Super. LEXIS 548, at *1 (Conn. Super. Ct. March 4, 2010). Lancia moved to dismiss for lack of personal jurisdiction. *Id* The court simultaneously granted the motion to revive and denied the motion to dismiss, finding that the motion to revive was merely a continuation of the original action and not a new action that would require Connecticut to obtain personal jurisdiction. *See id*, 2010 WL 1376471, at *5, 2010 Conn. Super. LEXIS 548, at *15.

Lancia appealed this decision and, on August 27, 2013, the Supreme Court of Connecticut issued an opinion affirming the Superior Court. *Investment Assocs v*

Summit Assocs, 74 A.3d 1192 (Conn. 2013). The Court explained that "a motion to revive under § 52-598 (c) is effectively a continuation of the original proceeding rather than a new action." *Id* at 1201; *id* at 1207 ("as we continue to underscore, a proceeding to revive a judgment is a continuation of the original action."). Accordingly, the court found that, for purposes of the motion to revive, Connecticut did not need to obtain personal jurisdiction over Lancia independent of the personal jurisdiction present at the initial judgment. *See id* at 1211; *see also id* at 1198. In determining that the revival was a continuation of the original Judgment, the Connecticut Supreme Court acknowledged that, as a continuation, South Carolina may bar enforcement of the Judgment under its statute of limitations. *See Investment Assoc*, 74 A.3d at 1201 n. 8 ("[w]hether the revived judgment is deemed a continuation of the original judgment or a new judgment may affect whether the foreign jurisdiction will consider Connecticut's revived judgment to be the operative judgment for purposes of that jurisdiction's time limit for enforcement."). Moreover, the Connecticut Supreme Court expressly acknowledged that General Statutes § 52-598(c) "obviously does not alter the foreign jurisdiction's law with respect to the period of enforcement." *Id* at 1210.

On January 28, 2014, nearly 20 years after the Judgment was rendered, Investment Associates filed the Judgment in South Carolina for the first time, along with a Notice of Filing, pursuant to the Uniform Enforcement of Foreign Judgments Act, S.C. Code Ann. § 15-35-900, *et seq.* (R. pp. 22-25). Lancia timely filed a Motion for Relief from and Notice of Defenses to Foreign Judgment pursuant to South Carolina Code section 15-35-940. (R. pp. 30-38). Lancia's motion asserted, among other defenses, that the action was barred by the statute of limitations set forth in South Carolina Code

section 15-3-600 (2005) because more than ten (10) years had passed since South Carolina became empowered to adjudicate this dispute. (R. pp. 31-32, 68-77).

On May 17, 2014, Investment Associates filed another action to enforce the Judgment, this time pursuant to South Carolina Code section 15-35-950 (2005). (R. p. 168). Lancia timely filed a Motion to Dismiss and/or Motion for Relief from Foreign Judgment, wherein Lancia repeated the same defenses. Lancia also sought dismissal pursuant to Rule 12(b)(8), SCRCP, because the May 17, 2014 and the January 28, 2014 actions were between the same parties in their same capacities for the same claim. (R. pp. 205-11, 336-45). On July 29, 2014, the parties filed a consent order that merged the May 17th action into the January 28th action. (R. pp. 13-17).

On August 6, 2014, the Circuit Court entered an order finding that enforcement of the Judgment was barred by the ten year statute of limitations set forth in South Carolina Code section 15-3-600 because Investment Associates filed the Judgment in South Carolina more than ten years after South Carolina became empowered to adjudicate the dispute. (R. p. 1-11). Investment Associates appeals the August 6, 2014 order by notice of appeal dated September 5, 2014.

ARGUMENT

I. THE CIRCUIT COURT PROPERLY FOUND THAT SOUTH CAROLINA CODE SECTION 15-3-600 BARS ENFORCEMENT OF THE JUDGMENT.

A. The Ten Year Limitations Period in Section 15-3-600 Began to Run in 1994 and Expired in 2004.

South Carolina Code section 15-3-600 states that "[a]n action for relief not provided for in this chapter must be commenced within ten years after the cause of action shall have accrued." This provision applies to the time in which a creditor must file a foreign judgment, whether under the Uniform Enforcement of Foreign Judgments Act (UEFJA) or the common law. *Abba Equipment, Inc v Thomason*, 335 S.C. 477, 483, 517 S.E.2d 235, 238 (Ct. App. 1999) ("the catch-all limitation period of § 15-3-600 applies to the time in which a foreign judgment must be filed . . . "). Contrary to Investment Associates' assertions, the ten year clock begins to run when the debtor moves to South Carolina and the courts of this state become empowered to adjudicate between the parties, regardless of when the creditor discovered that the debtor was a South Carolina resident. *Id* at 482, 517 S.E.2d at 237 ("the limitation period does not begin to run until the judgment debtor moves to South Carolina and the courts of this state become empowered to adjudicate between the parties upon the particular cause of action."); *id* at 485-86, 517 S.E.2d at 239 ("We hold the ten year limitations period of § 15-3-600, for enforcement of [creditor's] foreign judgment under the UEFJA, began to run when [debtor] became a resident of South Carolina, not when [creditor] discovered [debtor] was a South Carolina resident."). There is no discovery rule. *Id* at 485-86, 517 S.E.2d at 239.

Here, Investment Associates does not dispute that Mr. Lancia has been a resident of South Carolina since 1992. (*See* Appellant's Brief at 1-2; *see also* R. pp. 39-41 ¶¶2-17); *Investment Assocs.*, 74 A.3d at 1196 ("The following facts are undisputed. . . . In 1992, while the action was pending, the defendant moved from Connecticut to South Carolina."). Mr. Lancia has resided at the same address continuously since 1992.[4] (R. p. 39 ¶¶ 2-3).

The courts of South Carolina became empowered to adjudicate this dispute when the Judgment was entered in 1994, and the ten year statutory period began to run at that time. The statutory period expired in 2004. Investment Associates filed this enforcement action in 2014, almost twenty (20) years after the ten year statutory period began to run. Consequently, the Circuit Court properly found that this action is barred.

B. The Granting of the Motion to Revive the Judgment Does Not Alter the Application of South Carolina Code Section 15-3-600.

Investment Associates' revival of the Judgment under Connecticut General Statutes section 52-598(c) does not change the conclusion that South Carolina Code Section 15-3-600 bars this action. A revived judgment under section 52-598(c) of the Connecticut General Statutes is nothing more than a continuation of the original

[4] Though the discovery rule does not apply, Investment Associates knew or should have known as of 1992, and certainly no later than 1994, that Mr. Lancia resided in South Carolina. Lancia has been active in the Greenville community since he moved to South Carolina and his residency has been easily ascertainable. (*See* R. pp. 39-41 ¶¶ 2-17). Moreover, in 1993, Mr. Lancia received a document in South Carolina from the Connecticut Superior Court in a related action in which Investment Associates was involved and the document is addressed to him in South Carolina. (R. p. 40 ¶ 16, R. p. 54). The Clerk of Court would have provided a copy of that document, addressed to Lancia in South Carolina, to Investment Associates. *See Keating v Jordan*, 1991 WL 183058, at *1, 1991 Conn. Super. LEXIS 2051 (Conn. Super. Ct. Sept. 10, 1991) ("Connecticut Practice Book Section 398 requires the clerk to give notice to the attorneys of record of all judgments and defaults made concerning pending cases"); s*ee also* Conn. General Statutes § 51-53.

judgment and is not a new judgment. *See Investment Assoc.*, 74 A.3d at 1201, *id* at 1210. Therefore, the revival goes only to the validity of the Judgment in Connecticut and does not affect South Carolina's statute of limitations. *See id.* at 1210 (stating that Connecticut General Statutes section 52-598(c) "obviously does not alter the foreign jurisdiction's law with respect to the period of enforcement"); *Owens v. Henry*, 161 U.S. 642, 646 (1896) (holding that a Pennsylvania judgment rendered in 1861 and revived in 1871 was barred in 1880 Louisiana action by Louisiana's ten year statute of limitations since "considered as in continuation of the prior action and a revival of the original judgment for purposes of execution . . . it ***operated merely to keep in force the local lien, and could not be availed of as removing the statutory bar of lex fori***") (emphasis added).[5]

South Carolina Code section 15-3-600 bars enforcement of a foreign judgment after the statutory time period even where that judgment is still valid in the rendering

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[5] *See also Corzo Trucking Corp v West*, 674 S.E.2d 414, 415-16 (Ga. App. 2009) ("if a judgment is revived in the rendering state, a forum state is free to refuse enforcement of the revived judgment if the revival is merely an extension of the original judgment and enforcement of that judgment is barred by the forum state's statutory period of enforcement."); *Oakley v Wagner*, 431 S.E.2d 676 (W. Va. 1993) (holding that enforcement of Ohio judgment was barred by West Virginia's ten year statute despite revival in Ohio three months before West Virginia proceedings since revival was mere continuation of original judgment); *Carter v. Carter*, 349 S.E.2d 95, 97 (Va. 1996) (holding that enforcement of Florida judgment was barred by Virginia's ten year statute despite revival in Florida four years before Virginia proceedings since revival was "merely a continuation of the original judgment."); *Mundaca Fin. Servs. LLC v. Casella*, 2011 WL 883506, 2011 N.C. App. LEXIS 471 N.C. Ct. App. March 15, 2011) (reversing and remanding the trial court's determination that the judgment was filed within North Carolina's ten year statute of limitations since the trial court erred in holding that the plaintiff's 2009 revival of a New Jersey judgment in New Jersey was a new judgment) (unpublished); *Jacobs v. Sprague*, 280 P.2d 919, 921 (Cal. App. 1955) (concluding "that the Oregon proceedings resulting in the order of revival was not a new suit but merely a continuation of the old, and hence that the instant action was upon the original judgment and barred by limitation.").

state, as shown by *Abba Equipment, Inc. v Thomason*, 335 S.C. 477, 517 S.E.2d 235 (Ct. App. 1999). In *Abba Equipment, Inc.*, the plaintiff obtained a Florida judgment against the debtor in 1983 and the debtor became a South Carolina resident by 1985. *See id.* at 480-81, 517 S.E.2d at 236-37. The plaintiff filed the judgment in Greenville County, South Carolina on December 23, 1996. *Id* at 480, 517 S.E.2d at 236. Under Florida law, the judgment was valid for 20 years from the date of entry. *See id.* at 480, 517 S.E.2d at 236 n. 2. The *Abba Equipment* Court held that South Carolina Code section 15-3-600 barred the plaintiff's enforcement of the judgment even though the Florida judgment was still valid under Florida law when it was filed in South Carolina in 1996. *See id* at 483, 517 S.E.2d at 238.

The revival of the Judgment was merely a continuation of the validity of the Judgment in Connecticut. Thus, the Judgment is no different than the Florida judgment in *Abba Equipment, Inc* , which continued to be valid in Florida. Consequently, the Judgment is barred by the statute of limitations in South Carolina Code section 15-3-600.

C. South Carolina Code Section 15-3-600 Applies to the Filing of Foreign Judgments.

In this appeal, Investment Associates argues, for the first time, that *Abba Equipment, Inc* , *supra*, is no longer good law and South Carolina section 15-3-600 does not apply to the time in which a foreign judgment must be filed. (*See* Appellant's Brief at 8-10). Investment Associates asserts that while a creditor has ten years from the date of entry in South Carolina to enforce a judgment, there is no statute of limitations as to when the foreign creditor can file the judgment in South Carolina. (*See id.* at 5-10). Investment Associates' argument is erroneous on its merits, as set forth in Argument C,

2, below. However, this Court need not reach the merits of that argument since Investment Associates did not raise this argument at all in the Circuit Court.

1. Investment Associates did not preserve its argument that South Carolina Code section 15-3-600 does not apply.

To be preserved for appellate review, issues and arguments must have been "'(1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity.'" *Walterboro Cmty. Hosp., Inc v Meacher*, 392 S.C. 479, 493, 709 S.E.2d 71, 78 (Ct. App. 2010) (quoting *S C. Dep't of Transp. v. First Carolina Corp. of S C* , 372 S.C. 295, 301-02, 641 S.E.2d 903, 907 (2007)); *see also Elam v S C DOT*, 361 S.C. 9, 23-24, 602 S.E.2d 772, 779-80 (2004) ("[i]ssues and arguments are preserved for appellate review only when they are raised to and ruled on by the lower court."). "It is well-settled that appellants cannot raise new arguments" on appeal. *Morris v Anderson County*, 349 S.C. 607, 611 n.4, 564 S.E.2d 649, 651 n.4 (2002). The purpose of these preservation requirements is "to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments." *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000).

Moreover, appellate courts are limited "to consider only the ***precise question*** that was before the trial judge and that was ruled on by him or her." *State v Whitten*, 375 S.C. 43, 47, 649 S.E.2d 505, 507 (Ct. App. 2007) (emphasis added). "When a trial judge makes a general ruling on an issue, but does not address the ***specific argument*** raised by the appellant and the appellant does not make a motion to alter or amend pursuant to Rule 59(e), SCRCP, to obtain a ruling on the argument, the appellate court cannot consider the argument on appeal." *Floyd v Floyd*, 365 S.C. 56, 73, 615 S.E.2d 465, 474 (Ct. App.

2005) (citing *Noisette v Ismail*, 304 S.C. 56, 58, 403 S.E.2d 122, 124 (1991)) (emphasis added).

With respect to Lancia's statute of limitations defense, Investment Associates' only argument in the Circuit Court was that its 2009 motion to revive created a "new judgment" that restarted the ten-year period under South Carolina Code section 15-3-600.[6] (*See* R. pp. 142-48). Investment Associates never argued that South Carolina Code section 15-3-600 does not apply to the time in which a foreign judgment must be filed. It never asserted that *Abba Equipment* was not good law even though Lancia relied upon *Abba Equipment* in his Motion for Relief. (*See* R. pp. 31-33, 70-71, 73). In fact, Investment Associates conceded in the Circuit Court that "S.C. Code §15-3-600 should apply." (*See* R. pp. 147-48). Since it was never raised, the Circuit Court did not address any argument that South Carolina Code section 15-3-600 does not apply to the filing of foreign judgments.

Consequently, the argument that South Carolina Code section 15-3-600 does not apply to the filing of foreign judgments is not preserved for appellate review and cannot be considered by this Court. *See Meacher*, 392 S.C. at 493, 709 S.E.2d at 78 (refusing to address issue of whether the test for equitable indemnity should be modified for vicarious liability cases since the appellant "never specifically argued to the circuit court that the Vermeer test should be modified for vicarious liability cases."); *Morris*, 349 S.C. at 611 n. 4, 564 S.E.2d at 652 n. 4 (refusing to consider "additional statutory bases for a duty"

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[6] Investment Associates does not appear to have asserted this argument in this appeal, and therefore, this argument should not be considered either. *See Amick v Hagler*, 286 S.C. 481, 486, 334 S.E.2d 525, 528 (Ct. App. 1985); *see also Rutland v. S.C DOT*, 400 S.C. 209, 214 n. 4, 734 S.E.2d 142, 146, n. 4 (2012). In any event, this argument fails since, as stated above, the revival was a continuation and not a new judgment.

that were asserted by appellants on appeal but were never "raised to or ruled upon by the trial court."); *Whitten*, 375 S.C. at 47, 649 S.E.2d at 507 (refusing to consider argument offered in support of a jury charge despite previous case with "similar fact patterns" because "[w]hile the cases, admittedly, contain similar fact patterns, we are limited in this instance by appellate rules that allow us to consider only the precise question that was before the trial judge and that was ruled on by him or her").

2. Even if Investment Associates' argument was properly preserved for review, the argument fails on the merits since *Abba Equipment* is still good law.

Investment Associates now argues, for the first time, that *Abba Equipment* is no longer good law. Investment Associates erroneously relies on *Home Port Rentals Inc v Moore*, 369 S.C. 493, 632 S.E.2d 862 (2006) in support of that proposition.[7] *Home Port Rentals* is not only distinguishable from *Abba Equipment* and the present case, but actually supports the ruling by the Circuit Court.

In *Home Port Rentals*, the creditor was seeking to enforce a judgment entered by the United States District Court for the District of South Carolina on March 20, 1989. 369 S.C. at 494-95, 632 S.E.2d at 862-63 A federal statute provides that "[e]very judgment rendered by a district court within a State shall be a lien on the property located in such State in the same manner, to the same extent and under the same conditions as a judgment of a court of general jurisdiction in such State, and shall cease to be a lien in the same manner and time." 28 U.S.C.A. § 1962. South Carolina Code section 15-35-810 (2005) applies the federal statute and provides that a judgment of the District Court for the District of South Carolina "shall constitute a lien upon the real estate of the judgment

[7] As further evidence of the failure to preserve this issue, Lancia notes that Investment Associates never even cited *Home Port Rentals Inc* to the Circuit Court.

debtor situate[d] in any county in this State in which the judgment or transcript thereof is entered upon the book of abstracts of judgments and duly indexed, the lien to begin from the time of such entry on the book of abstracts and indices and to continue for a period of ten years from the date of such final judgment ...." Thus, the judgment became effective immediately "when it was entered on March 20, 1989." 369 S.C. at 496, 632 S.E.2d at 863.

The creditor in *Home Port Rentals* filed a declaratory judgment action on July 14, 2000 seeking a declaration that the 1989 judgment was still effective despite the ten year statute of limitations for execution of final judgments set forth in South Carolina Code section 15-39-30 (2005).[8] The creditor argued that, pursuant to the tolling provision in South Carolina Code section 15-3-30 (2005), the limitations period was tolled during the eleven years that the debtor was absent from South Carolina following entry of the judgment.[9] *Id* at 494-95, 632 S.E.2d at 862-63. The *Home Port Rentals* Court held that South Carolina Code section 15-3-30 did not apply to toll the time period for enforcement, and, therefore, the statute of limitations in South Carolina Code section 15-39-30 barred enforcement of the judgment. Accordingly, the holding supports Lancia's position that the statute of limitations in this case bars enforcement of the action.

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[8] South Carolina Code section 15-39-30 provides that "[e]xecutions 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."

[9] South Carolina Code section 15-3-30 provides "[i]f when a cause of action shall accrue against any person he shall be out of the State, such action may be commenced within the terms in this chapter respectively limited after the return of such person into this State. And if, after such cause of action shall have accrued, such person shall depart from and reside out of this State or remain continuously absent therefrom for the space of one year or more, the time of his absence shall not be deemed or taken as any part of the time limited for the commencement of such action."

Investment Associates points to Judge Hearn's dissent in *Abba Equipment*, where Judge Hearn argued that the statute of limitations in South Carolina section 15-3-600 applies to causes of action and "not a unilateral act such as registration under the UEFJA." *See Abba Equipment*, 335 S.C. at 488, 517 S.E.2d at 240. Investment Associates asserts that *Home Port Rentals* agreed with Judge Hearn by ruling that the tolling statute did not apply. This argument is without merit for several reasons.

First, the tolling statute of South Carolina Code section 15-3-30 is not at issue in this case, nor are any of the other statutory provisions that were at issue in *Home Port Rentals*. Unlike the tolling statute, section 15-3-600 applies to any "action for relief not provided for in this chapter." The very first sentence of Investment Associates' Brief is "[t]his is an ***action*** to enforce a judgment from the State of Connecticut." (Appellant's Brief at 1) (emphasis added). This statement is binding on Investment Associates. *See* Rule 208(b)(1)(C), SCACR. Further, Investment Associates' filing of the Judgment, both on January 28, 2014 and May 15, 2014, is accompanied by a "Civil Action Coversheet" that requires Investment Associates to fill out the "Nature of Action " (R. pp. 20, 165). Investment Associates filled out "Foreign Judgment." (*Id*). The action here is clearly an "action for relief" under South Carolina Code section 15-3-600. *See Abba Equipment*, 335 S.C. at 483-84, 517 S.E.2d at 238; *see also Transp Ins Co v S C. Second Injury Fund*, 389 S.C. 422, 699 S.E.2d 687 (2010) (holding that South Carolina Code section 15-3-600 applies to workers' compensation carriers' requests for reimbursement from the South Carolina Second Injury Fund).

Moreover, *Home Port Rentals* does not apply to the filing of foreign judgments. The *Home Port Rentals* Court found that the tolling statute of section 15-3-30 applied "to

the accrual of a 'cause of action'" and "does not refer to the statutory time period within which to execute an already obtained judgment." *Home Port Rentals*, 369 S.C. at 497, 632 S.E.2d at 864. The Court explained that "the right to execute on a judgment does not constitute a cause of action. Indeed, execution is not initiated by bringing an action." *Id.*

The judgment at issue in *Home Port Rentals* was a federal judgment that, pursuant to 28 U.S.C.A. § 1962 and South Carolina Code section 15-35-810, did not have to be enrolled and was a lien immediately upon entry. *See Home Port Rentals*, 369 S.C. at 495, 632 S.E.2d at 863. As the *Home Port Rentals* Court explained, the federal judgment "is effectively a South Carolina judgment" that "became effective when it was entered on March 20, 1989." *See id.* at 495-96, 632 S.E.2d at 863. The creditor did not need to bring an action to execute upon it in South Carolina. *See id.*; S.C. Code Ann. § 15-35-810. The *Home Port Rentals* Court specifically noted the distinction that a foreign judgment under the UEFJA must be enrolled, unlike a federal judgment from this district: "[o]rdinarily, a foreign judgment must be enrolled in this state in order to be effective as a South Carolina judgment. Under federal law, however, a judgment of the United States District Court for the District of South Carolina is effectively a South Carolina judgment." *Id*

Unlike a South Carolina judgment or a District of South Carolina judgment, a creditor must file a foreign judgment in accordance with specific statutory criteria and the foreign judgment cannot be enforced until after the debtor refuses to timely respond to the filing of the judgment or the debtor's defenses are resolved by a South Carolina court. The creditor is required to give notice of the filing to the debtor. S.C. Code Ann. §15-35-930(A) (2005). Like a summons, the notice must tell the debtor that he or she has 30

days from receipt of the notice to seek relief and "that **if** . . . no relief is sought within that thirty days, the judgment will be enforced in this State in the same manner as a judgment of this State." *Id* at §15-35-930(B) (emphasis added). No execution may issue during that 30 day time period. *Id* at § 15-35-920(B). Further, if the debtor moves for relief or files a notice of defenses within the 30 days, then no execution or enforcement can be taken upon the judgment until the court disposes of the matter. *Id.* at § 15-35-920(C); *id.* at § 15-35-930(B). These provisions reveal that, unlike the judgment in *Home Port Rentals*, the creditor has no right to execute on a foreign judgment until after the debtor has had the opportunity to litigate its objections. Only if the debtor asserts no objections or a South Carolina court resolves the objections in favor of the creditor will the judgment be enforced in the same manner as a South Carolina judgment.[10]

Further, the *Home Port Rentals* Court did not face the issue of having to decide that no statute of limitations would apply. If South Carolina Code section 15-3-600 does not apply to the time period in which to file a foreign judgment, then there would be no limitations period for filing a foreign judgment. "Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs." *Transp Ins Co.*, 389 S.C. at 428, 699 S.E.2d at 690 (quoting *Moates v. Bobb*, 322 S.C. 172, 176, 470 S E.2d 402, 404 (Ct. App. 1996)). "The cornerstone policy consideration underlying

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[10] This Court has found that South Carolina Code section 15-39-30 applies to South Carolina judgments and does not apply to foreign judgments until they are docketed and indexed as South Carolina judgments. *Commercial Credit Loans, Inc. v. Riddle*, 334 S.C. 176, 181-82, 512 S.E.2d 123, 126 (Ct. App. 1999). If a foreign judgment is not distinct from a South Carolina judgment, then there is no reason to distinguish South Carolina judgments and foreign judgments for purposes of South Carolina Code section 15-39-30. If the Court finds that enforcement of the Judgment is not barred by South Carolina Code section 15-3-600, then the Court should find that it is barred by section 15-39-30.

statutes of limitations is the laudable goal of law to promote and achieve finality in litigation." *Carolina Marine Handling, Inc v Lasch*, 363 S.C. 169, 175, 609 S.E.2d 548, 552 (Ct. App. 2005). They provide defendants with certainty of when they can no longer be haled into court and discourage plaintiffs from sitting on their rights. *Id.* "Statutes of limitations are, indeed, fundamental to our judicial system." *Id*

In light of these important public policy considerations, the legislature created South Carolina Code section 15-3-600 as a default provision for actions for relief not otherwise enumerated "[s]o that other unnamed civil actions were not excluded from having a limitations period." *Transp Ins Co* , 389 S.C. at 428, 699 S.E.2d at 690. If South Carolina Code section 15-3-600 was held not to apply to the filing of foreign judgments, then such actions "could theoretically extend endlessly into the future, thwarting the intent of the legislature's passing of section of section 15-3-600." *Id* at 430, 699 S.E.2d at 691. Such a holding would also defy "the strong public policy" in South Carolina "to limit the enforcement of judgments to ten years." *See Commercial Credit Loans, Inc.*, 334 S.C. at 185 n. 7, 512 S.E.2d at 128 n. 7; *see also Wells ex rel A.C Sutton & Sons, Inc v. Sutton*, 299 S.C. 19, 22, 382 S.E.2d 14, 16 (Ct. App. 1989). South Carolina already affords greater rights to foreign judgments than domestic judgments in South Carolina since a foreign creditor could file the foreign judgment in South Carolina within ten years pursuant to section 15-3-600, at which point the foreign judgment would then be valid for an additional ten (10) years after enrollment in South Carolina. *See id.* at 182, 512 S.E.2d at 126. Foreign judgments should not provide unlimited duration, as Investment Associates urges.

This Court in *Abba Equipment* properly found that section 15-3-600 applies to the filing of foreign judgments.

II. THE APPLICATION OF SOUTH CAROLINA CODE SECTION 15-3-600 TO THE JUDGMENT IS CONSISTENT WITH THE FULL FAITH AND CREDIT CLAUSE.

In arguing that a judgment contrary to public policy of the forum state is entitled to full faith and credit, Investment Associates confuses substantive law with procedural law and thereby misconstrues the case law it cites.

Statutes of limitations are procedural, and, therefore, a forum state can properly apply its own statute of limitations without running afoul of full faith and credit. The United States Supreme Court has repeatedly reaffirmed this principle, and has held that a forum state may apply its own statute of limitations to bar enforcement of a foreign judgment. *See Baker v General Motors Corp* , 522 U.S. 222, 235 (1998) ("Full faith and credit, however does not mean that states must adopt the practices of other states regarding the time, manner and mechanisms for enforcing judgments. Enforcement measures do not travel with the sister state judgments as preclusive effects do; such measures remain subject to the even-handed control of forum law."); *Wells v. Simonds Abrasive Co* , 345 U.S. 514, 517 (1953) ("the Full Faith and Credit Clause does not compel the forum state to use the period of limitation of a foreign state" and "'[i]f action is barred by the statute of limitations of the forum, no action can be maintained though action is not barred in the state where the cause of action arose.'") (quoting *Order of United Commercial Travelers v. Wolfe*, 331 U.S. 586, 607 (1947)); *McElmoyle v. Cohen*, 38 U.S. 312, 328 (1839) ("It being settled that the statute of limitations may bar recoveries upon foreign judgments; that the effect intended to be given under our

Constitution to judgments, is, that they are conclusive only as regards the merits; the common law principle then applies to suits upon them, that they must be brought within the period prescribed by the local law, the lex fori, or the suit will be barred."); *see also Sun Oil Co. v Wortman,* 486 U.S. 717, 722 (1988) (concluding that the holding in *McElmoyle* is "sound").

Under these cases, the application of South Carolina Code section 15-3-600 comports with the Full Faith and Credit Clause. *See also* 47 Am. Jur.2d *Judgments* § 788 (2006) ("the forum state may properly bar an action on a foreign judgment where the forum state's own time limitation for actions on judgments has elapsed, even though the action would not be barred by the law of the state that originally rendered the judgment").

Moreover, under South Carolina law, actions on foreign and South Carolina judgments alike must be maintained within 10 years. Proceedings to execute on a South Carolina judgment must be brought within ten (10) years. S.C. Code Ann. § 15-39-30; *see also Linda Mc Company, Inc v Shore*, 390 S.C. 543, 554-55, 703 S.E.2d 499, 505 (2010). South Carolina judgments "cannot be renewed" or revived. *See LaRosa v Johnston*, 328 S.C. 293, 300, 493 S.E.2d 100, 103 (Ct. App. 1997) *overruled in part as stated in Linda Mc Company, Inc.*, 390 S.C. at 554-55 n. 8, 703 S.E.2d at 505 n. 8; *Home Port Rentals, Inc. v. International Yachting Group*, 95 F.Supp.2d 623, 624 (W.D. La. 2000) ("South Carolina courts interpret [S.C. Code § 15-39-30] to mean what it says: a judgment is utterly extinguished ten years from the date of entry. *There is no procedure for renewal or revival* ") (emphasis added).

As stated above, South Carolina already affords foreign judgments greater rights than South Carolina judgments since a foreign creditor could file the foreign judgment in

South Carolina within ten years, at which point the foreign judgment would then be valid for 10 years after enrollment in South Carolina. Consequently, the application of South Carolina Code section 15-3-600 to bar this action is clearly in line with the Full Faith and Credit Clause. *See Great Western Tel. Co v Purdy*, 162 U.S. 329, 338 (1896) (holding that Iowa statute of limitations was proper since "[n]either the statutes nor the decisions of the State of Iowa upon this subject have made any discrimination against the citizens, the contracts or the judgments of other States, or against any right asserted under the Constitution or laws of the United States."); *Suter v. Suter*, 37 S.E.2d 474, 478 (W. Va. 1946) ("we do not think that, under the full faith and credit clause of our Federal Constitution, a court of any state is required to give to the decree of a court of a foreign state, a higher decree of force or effect than that accorded to the decrees of its own courts.").

Investment Associates argues that the Judgment is entitled to full faith and credit relying on *Widenhouse v. Colson*, 405 S.C. 55, 747 S.E.2d 188 (2013). Once again, this argument was not raised below, nor was *Widenhouse* cited by Investment Associates to the Circuit Court and, pursuant to the authorities cited above in section I, C, the argument is not preserved for appellate review. Even if the argument was preserved, the argument is without merit and Investment Associates' reliance on *Widenhouse* is misplaced.

In *Widenhouse*, the South Carolina Supreme Court found that South Carolina was required to afford full faith and credit to a North Carolina judgment that was based on alienation of affections and criminal conversation even though South Carolina declared such claims to be in violation of public policy. The statute of limitations was not at issue in *Widenhouse*. *Widenhouse* is entirely in line with the authorities cited above, that

judgments of sister states "are conclusive only as regards the merits" but that "the statute of limitations may bar recoveries upon foreign judgments." *M'Elmoyle*, 38 U.S. at 328.

Investment Associates' brief quotes the *Widenhouse* Court's quotation of *Milwaukee County v. M E White Co*, 296 U.S. 268, 277 (1935) that "[f]ull faith and credit is required to be given to the judgment of another state, although the original suit on which it was based arose out of the forum and was barred there by the Statute of Limitations when the judgment was rendered . . ." *Widenhouse*, 405 S.C. at 60, 747 S.E.2d at 191 (quoting *Milwaukee County*, 296 U.S. at 277 (citations omitted)). The statute of limitations referenced in *Milwaukee County* was the statute of limitations on the underlying claim, not the statute of limitations of the forum state where the judgment was being enforced. The forum state can apply its own statute of limitations regarding the time period for filing or enforcement of the Judgment. *See, e g, Baker,* 522 U.S. at 235. In fact, the *Milwaukee County* Court cited *Christmas v Russell*, 72 U.S. 290 (1866) for the proposition quoted above. The *Christmas* Court specifically held that *M'Elmoyle v. Cohen*, *supra*, was valid and "that the statute of limitations of Georgia might be pleaded to an action in that State founded upon a judgment rendered in the State Court of South Carolina." *Christmas*, 72 U.S. at 300.

For these reasons, the application of the ten year bar in South Carolina Code section 15-3-600 does not violate the full faith and credit clause in the United States Constitution.

III. LANCIA'S DEFENSE OF PERSONAL JURISDICTION WAS PLED IN THE ALTERNATIVE AND BARS ENFORCEMENT OF THE JUDGMENT IF THE JUDGMENT IS VIEWED AS A NEW JUDGMENT.

Investment Associates argues that this Court should reject Lancia's defense of personal jurisdiction since the Connecticut Supreme Court already rejected it. Investment Associates misconstrues Lancia's personal jurisdiction defense.

Lancia asserted the defense of lack of personal jurisdiction as a defense in the event that the revival of the judgment is viewed as a new judgment. Investment Associates cites the Supreme Court of Connecticut opinion that was on appeal from the granting of the 2009 motion to revive by Investment Associates. The Supreme Court of Connecticut affirmed the finding by the Appellate Court in Connecticut that a motion to revive under Connecticut General Statutes § 52-598(c) "is not a new action that would require the trial court to obtain personal jurisdiction over the defendant independent of the jurisdiction present at judgment." *Id* at 1198, at 1211. Nevertheless, Investment Associates' primary argument to the Circuit Court was that the revival of the Judgment created a "new" judgment (*see* R. p. 143) While Investment Associates does not appear to advance this argument on appeal, to the extent Investment Associates seeks to argue that the revival of the Judgment created a new judgment, and to the extent the Judgment is viewed as a new judgment by virtue of the revival, enforcement of the Judgment is barred for lack of personal jurisdiction over Lancia.

By decision dated May 5, 2008, the court granted Lancia's motion to dismiss and found that Connecticut lacked personal jurisdiction over Lancia as to Investment Associates' 2007 action on the judgment. *See* R pp. 65-66; *Investment Associates*, 2008 WL 2168983, 2008 Conn. Super LEXIS 1112. Investment Associates did not appeal

that decision, and the time period for doing so has expired. *See Investment Associates*, 74 A.3d at 1197 n. 4.

Consequently, the May 5, 2008 order by the Connecticut Superior Court is conclusive on the issue of whether Connecticut had personal jurisdiction over Lancia as of at least 2007 and certainly at the time the revival was granted. *See* R. pp. 65-66; *see also* R. pp. 39-41 ¶¶2-17. Thus, if the Judgment is viewed as a new judgment by virtue of the revival pursuant to Connecticut General Statutes § 52-598(c), then enforcement of the Judgment is barred because the courts in Connecticut clearly lacked personal jurisdiction over Lancia to render a new judgment. On the other hand, if viewed as a continuation, the Judgment is barred by the statute of limitations, as set forth above. Either way, the Judgment is clearly unenforceable. *See Owens v Henry*, 161 U.S. 642, 646 (1896) (holding that the revival of a judgment in Pennsylvania "had no binding force in Louisiana" due to lack of personal jurisdiction when viewed as a new judgment, and, when viewed as a continuation of the prior action, the revival "operated merely to keep in force the local [Pennsylvania] lien, and could not be availed of as removing" Louisiana's 10 year statute of limitations)

IV. LANCIA'S DEFENSE AS TO STANDING WAS MADE IN THE ALTERNATIVE AND MAY PROVIDE AN ADDITIONAL SUSTAINING GROUND.

Lancia submits that the Court need not reach this issue based on the arguments set forth above. Nevertheless, this defense is based on the fact that the Complaint giving rise to the Judgment alleges that Investment Associates was a joint venture equally owned by R.S.S. McKosky and Alton W. Seavey, Jr. This is insufficient to confer standing upon

Investment Associates and the court lacks subject matter jurisdiction over the action since Investment Associates is not an existing entity.

Further, Investment Associates lacked standing, and the Connecticut Superior Court lacked subject matter jurisdiction when it rendered the Judgment and granted the motion to revive the Judgment, since joint ventures are not capable of filing suit in Connecticut.[11] To the extent Investment Associates is construed to be a partnership, it was not a legal entity capable of filing suit. *See Fidelity Trust Co v BVD Associates*, 196 Conn. 270, 273, 492 A.2d 180, 182 (1985) ("Because the partnership was not regarded as a legal entity it could not take or hold title to real estate in the firm name."). While Connecticut General Statutes section 34-328(a) permits partnerships to bring actions in their own name, Connecticut General Statutes section 34-399 provides that "[s]ections 34-300 to 34-399, inclusive, do not affect an action or proceeding commenced or right accrued before July 1, 1997." There is no dispute that the lawsuit was filed in 1991 and accrued before July 1, 1997. Thus, under *Fidelity Trust Co v BVD Associates, supra*, the partnership could not file suit. As such, the court lacked subject matter

[11] *See American Lines, LLC v. CIC Ins. Co.*, 2004 WL 3281717 (D. Conn. Sept. 30, 2004) (plaintiff has the burden to establish its corporate existence); *Coldwell Banker Manning Reality. Inc. v. Computer Sciences Corp* , 2010 WL 4942790, 2010 Conn. Super. LEXIS 2915 (Conn. Super. Ct. Nov. 12, 2010) "aff'd 47 A.3d 465 (Conn. App. 2012)" (the plaintiff must be a corporation registered with the Secretary of State to have standing to invoke the court's jurisdiction); *GMA Yacht Sales v Skagit Marine Distributing, Inc.*, 2000 WL 1475551, 2000 Conn. Super. LEXIS 2486 (Conn. Super. Ct. Sept. 7, 2000) (mere trade name cannot invoke jurisdiction of the trial court since trade name is not a legal entity); *Isaac v. Mount Sinai Hospital*, 3 Conn. App. 598, 600, 490 A.2d 1024, 1026 (1985) ("to confer jurisdiction on the court the plaintiff must have an actual legal existence, that is he or it must be a person in law or a legal entity with legal capacity to sue."); *Argent Mortgage Co , LLC v Huertas*, 288 Conn. 568, 576, 953 A.2d 868, 873 (2008) ("No principle is more universal than that the judgment of a court without jurisdiction is a nullity . . . Such a judgment, whenever and wherever declared upon as a source of a right, may always be challenged.").

jurisdiction over the suit, rendering the Judgment void. *See Walter v. National Indem Co.*, 3 Cal. App.3d 630, 634 (1st Dist. 1970) ("if the plaintiff or defendant was dead before the action was begun, the judgment is void and subject to collateral attack, because he *never was a party*, i.e., the court never acquired jurisdiction of the person.").[12]

CONCLUSION

For all of the foregoing reasons, Respondent Joseph Lancia respectfully requests that this Court affirm the Circuit Court.

Respectfully submitted,

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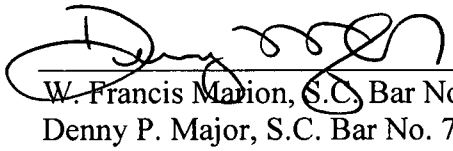

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[12] Lancia has also asserted additional defenses, such as satisfaction of the judgment, that would require discovery and would only become relevant if the Court reverses the Circuit Court. Thus, such defenses are not discussed in this brief.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Court of Common Pleas

The Honorable D. Garrison Hill, Circuit Court Judge

Appellate Case No. 2014-001917

Investment Associates, ... Appellant,

v.

Joseph D. Lancia, ... Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Respondent's Final Brief complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

I hereby certify that the *Final Brief of Respondent* and *Certificate of Counsel* in the above-referenced matter were served on the following counsel of record via U.S. Mail, postage prepaid, on this the 8th day of April, 2015.

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