STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS

Appeal from the Court of Common Pleas
For Charleston County
Honorable J. C. Nicholson, Jr., Circuit Judge
Civil Action Nos.: 2010-CP-10-9096
And 2011-CP-10-8840
Appellate Case Tracking No. 2014-001247

Frank Gordon, Jr., Individually and as Trustee
of Dorothy S. Gordon (Deceased) Trust,

Respondent,

v.

Donald W. Lancaster,

Appellant.

Final Reply Brief of the Appellant, Donald W. Lancaster

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The Appellant, Donald W. Lancaster ("Mr. Lancaster"), respectfully submits this Final Reply Brief in response to the Brief of the Respondent, Frank Gordon, Jr., Individually and as Trustee of Dorothy S. Gordon (Deceased) Trust ("Mr. Gordon").[1]

ARGUMENT AND CITATION OF AUTHORITY[2]

A. MR. GORDON'S JUDGMENTS WERE MORE THAN 10-YEARS OLD AND WERE NOT EXTENDED BY THE ACTION UNDERLYING THIS APPEAL

Contrary to Mr. Gordon's assertions, his judgments did not retain their "active energy" as a result of, *in his own words*, this "enforcement-***related*** proceeding" given the fact that Mr. Gordon failed to timely pursue his "collection" efforts. Furthermore, Mr.

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1 Mr. Gordon asserts that the "judgment [against Mr. Lancaster] has not been appealed; rather, a minority of the findings have been appealed." (Respondent's Brief, p.2). Mr. Gordon misstates and misinterprets the facts. As Mr. Lancaster's Appellant's Brief showed, both the judgment and the Circuit Court's important findings have been appealed and are at issue in this matter. Furthermore, Mr. Lancaster's Notice of Appeal specifically referenced both of the Circuit Court's orders and the SCRCP Form 4 Judgments which set forth the $211,677.30 judgment.

2 There is not enough space in this Reply Brief to point out many, much less all, of the factual inaccuracies/misstatements in Mr. Gordon's charitably captioned Statement of the "Facts". A few examples will show their pervasive nature. Mr. Gordon asserts in 1992, when Mr. and Mrs. Drews paid Mr. Lancaster the $100,000.00 for the life estate, they had "debts . . . they could not pay . . . ." (Respondent's Brief, p.4). ***Mr. Gordon ignored*** the fact Mr. and Mrs. Drews sold Edgewater Park ***to pay off all of those very same debts*** and, in turn, had ***no debts in 1992***. (R.p.355, lines 6-12; R.p.440, lines 11-15; R.p.491, lines 9-14; R.pp.764-765, para. 5). Mr. Gordon took issue with the legal document creating the life estate. (Respondent's Brief, p.4). ***Mr. Gordon ignored*** the fact Mr. Drews' attorney alone prepared and handled the life estate documentation and that Mr. Lancaster's attorney was not involved. (R.p.R.p.378, lines 1-13; R.p.382, line 18 - R.p.383, line 1; R.pp.R.pp.665-666; R.pp.677-681; R.pp.1053-1054; R.pp.1060-1064). Mr. Gordon asserts Mr. and Mr. "Drews, and not [Mr. Lancaster], paid the interest on the SC National [Bank} [e]quity [l]ine of [c]redit." (Respondent's Brief, p.5). ***Mr. Gordon ignored*** the fact that Mr. and Mrs. Drews, did not have an income stream at the time (other than their social security benefits) and were living off of their credit cards. (R.p.328, lines 7-10; R.p.385, lines 4-20). Mr. Lancaster's additional $40,000.00 in direct loans/advances to Mr. and Mrs. Drews (R.p.324, lines 20-23; R.p.328, lines 7-10; R.p.385, line 21 - R.p.386, line 14; R.p.1065) were made so they could, in part, retire their $35,000.00 in credit card debt. (R.p.355, lines 19-25; R.pp.692-695). Clearly, Mr. and Mrs. Drews did not and could not pay the interest on the SCN line-of- credit when they could not even pay their own living expenses without using their credit cards. There are many other examples of Mr. Gordon's "imaginary" facts, but only so much space in which they could be addressed.

Gordon attempts to excuse his actions by alleging that Mr. Lancaster is "painted with the broad brush" of Mr. Drews' actions (whether appropriate or not), as well as Mr. Drews' alleged "effectiveness in hiding assets". Fortunately, mere allegations and assertions don't equate to facts nor do they provide support for the Circuit Court's ultimate decision against Mr. Lancaster.

As this Court of Appeals is certainly aware, "[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 . . . ."**3** Nevertheless, once that ten-year time period has ended, the judgment dies as a matter of law and cannot be extended or resurrected. That is the situation we have at hand.

Mr. Gordon obtained his original damages judgment for $65,789.12 against Mr. Drews on ***5 December 2001*** (R.p.11, para. 2; R.pp.46-53; R.p.133, para. 9; R.p.726, para. 3; R.pp.1079-1085), and the subsequent attorneys' fees award of $42,693.50 on ***15 March 2002***. (R.p.11, para. 2; R.pp.41-43; R.pp.1079-1090). In turn, Mr. Gordon obtained his $211,677.30 judgment in this instant case against Mr. Lancaster on ***19 August 2013***.**4** (R.p.9; R.pp.10-30). Clearly, starting in either December 2001 (main judgment award), or, in March 2002 (attorneys' fees award), those time frames constitute time periods which are ***more than 11 years*** after the Mr. Gordon's original

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3 *See* S. C. Code Ann. 15-39-30 (Thomson Reuters West 2012) (Emphasis added). *See also generally* Linda Mc Co. v. Shore, 375 S.C. 432, 653 S.E.2d 279 (Ct.App. 2007), *certiorari granted and affirmed as modified*, 390 S.C. 543, 703 S.E.2d 499 (2010); Carr v. Guerard, 365 S.C. 151, 616 S.E.2d 429 (2005).

4 As an aside, Mr. Gordon's accountant "expert" witness, Richard T. Livingston, CPA of Dixon Hughes Goodman (R.p.443, line 9 - R.p.447, line 8), stated that ***his damage calculations for Mr. Gordon, including pre-judgment interest, was only $151,029.49***. (R.p.469, line 5 - R.p.470, line 11). The Circuit Court, which specifically "found Mr. Livingston to be both knowledgeable and credible (R.p.25, para. 80), however, inexplicably then issued a judgment for $211,677.30 (R.p.9; R.pp.10-30), ***more than $60,000.00 higher***.

judgments. Mr. Gordon's damages and attorneys' fees judgments expired and are, in turn, unenforceable since they were more than ten years old when he obtained his judgment against Mr. Lancaster.

Furthermore, Mr. Lancaster is not, was not, and never has been Mr. Gordon's original judgment debtor. Undisputedly, Mr. Drews and others occupied that unenviable and unfortunate position. Lacking any other viable means of monetary collection, Mr. Gordon has sought only to "attach" the "downstream" proceeds of monies which Mr. Drews allegedly "parked" with Mr. Lancaster for the ostensible purpose of hiding those assets from his (*i.e.*; Mr. Drews') creditors. The utter fallacy with Mr. Gordon's position and the Circuit Court's decision is that most of the monies at issue (and which comprised the majority of the Circuit Court's judgment against Mr. Lancaster) were involved in transactions between Mr. and Mrs. Drews and Mr. Lancaster which took place:

(a) at a time when Mr. and Mrs. Drews ***did not have*** any debts or creditors,

(b) ***long before*** the Builders Station endeavor existed or had even been contemplated, much less failed,

(c) ***long before*** Mr. Gordon ever possessed any potential, much less actual, claim against Mr. Drews due to the ultimately failed Builders Station business venture,

(d) ***long before*** Mr. Gordon actually asserted any claim against anyone, including Mr. Drews, as a result of his failed investment in the Builders Station business venture, and

(e) ***long before*** Mr. Gordon obtained any judgment of any type or amount against Mr. Drews.

In this vein, the evidence before this Court of Appeals demonstrates the following:

A. In ***1992***, when Mr. and Mrs. Drews paid Mr. Lancaster the $100,000.00 for a life estate in Bainbridge Drive, they had neither creditors nor debts. Mr. and Mrs. Drews had already sold their Edgewater Park home to pay off the IRS and the loans taken out to keep The Drews Company operating. (R.p.355, lines 6-12; R.p.440, lines 11-15; R.pp.764-765, para. 5). After The Drews Company finally failed, other than their respective social security benefits, the $100,000.00 left from the sale of their home was all the money Mr. and Mrs. Drews had to live on ***for the rest of their lives***. (R.p.328, lines 7-10; R.p.355, lines 19-25; R.p.385, lines 4-20; R.p.387, lines 11-14; R.pp.764-765, para. 5).**5**

B. During the ***1993-1995*** time frame, Mr. Lancaster made eight separate loans to Mr. and Mrs. Drews totaling $40,000.00. (R.p.324, lines 20-23; R.p.328, lines 7-10; R.p.385, line 21 – R.p.386, line 14; R.p.1065). Mr. and Mrs. Drews used those loans, in substantial part, to retire their $35,000.00 credit card debt. (R.p.355, lines 19-25; R.pp.692-695).**6**

C. Mr. Lancaster's ***1999*** $20,000.00 in loans were not given straight to Mr. and Mrs. Drews, but consisted of checks made payable directly to First Citizens ($5,000.00) and South Trust ($15,000.00). (R.p.392, lines 2-24; R.p.766, para. 8; R.p.1073). The money was used to satisfy loans Mr. Drews had obtained to

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5 The Builders Station disaster did not begin until 1996, *over four years later*. (R.p.365, line 3 - R.p.366, line 2).

6 Mr. and Mrs. Drews were not able to generate an income stream by attempting to rent the 1705 Meeting and 623 Meeting properties. (R.p.385, lines 4-13; R.p.385, line 21 - R.p.386, line 5). After The Drews Company failed, other than their social security benefits, Mr. and Mrs. Drews did not have any "income" and were forced to pay their normal living expenses via their credit cards. (R.p.328, lines 7-10; R.p.355, lines 19-25; R.p.385, lines 4-20; R.p.979, lines 14-21; R.p.1012, lines 14-16). In doing so, Mr. and Mrs. Drews incurred around $35,000.00 in credit card debt. (R.p.355, lines 19-25; R.pp.692-695). Mr. Lancaster's **1993-1995** loans to Mr. and Mrs. Drews were made well before the Builders Station disaster was contemplated, much less incorporated. The loans did not have anything to do with Builders Station.

> finance the failed Builders Station endeavor. (R.p.367, lines 11-22; R.p.388, line 23 – R.p.389, line 24; R.p.402, lines 19-23; R.p.766, para. 8; R.p.1073).**7**

Mr. Lancaster, simply in an effort to help his aunt and uncle who were in severe financial distress, (a) bought Bainbridge Drive (and then Nuffield Road), (b) granted Mr. and Mrs. Drews a life estate to live there rent free for the rest of their lives, (c) loaned them an additional $40,000.00 to pay off their credit card debt, and (d) and directly paid $20,000.00 to First Citizens and South Trust for Builders Station-related loans.**8**

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7 Mr. Lancaster paid out these amounts to the banks in early June 1999, due to the banks' demands for quick satisfaction of Mr. Drews' Builders Station-related debts at reduced amounts. (R.p.354, lines 3-13; R.p.369, lines 10-15; R.p.3892, lines 2-12). He noted that the $20,000.00 mortgage was procured three weeks later because its production required attorney involvement. (R.p.354, lines 3-9). Furthermore, the loans represented by those two checks paid off two of Mr. and Mrs. Drews' creditors and clearly were not made in any type of effort to defraud creditors. At the time these loans were made, Mr. Gordon had only recently filed his lawsuit against Mr. Drews and the issues had not yet been joined.

8 Mr. Lancaster became involved in these financial transaction with Mr. and Mrs. Drews due to his close personal relationship with them (R.p.387, lines 5-10), as well as the fact no one else in their extended family possessed the financial wherewithal to help. (R.p.13, para. 2; R.p.387, lines 11-19; R.p.418, lines 6-21). The evidence demonstrates that Mr. Lancaster merely attempted to assist his aunt and uncle who were in severe financial straits and has been "paying for" that kindness ever since. The classic "no good deed goes unpunished" situation. *See* Rollins v. Fencers Club, Inc., 128 A.D.3d 401, 411, 8 N.Y.S.3d 202, 205-206 (1st Dept. 2015) (Friedman, J.P., dissenting); Bank of the Ozarks v. Arco Community Outreach Coalition, Inc., 2013 WL 4482483, *1 (S.D.Ga., filed 20 August 2013); Hawkins v. JPMorgan Chase Bank, N.A., 2013 WL 443954, *8 n.6 (W.D.Tex, filed 29 January 2013), *affirmed in part, vacated in part, and remanded on other grounds*, ___ Fed.Appx. ___ (5th Cir. 2015) (2015 WL 3505353, filed 4 June 2015); *In re* Marra, 2011 WL 3879498, *4 (Bkrtcy. D.Md., filed 30 August 2011). As the Montana Supreme Court appropriately noted:

> In spite of doing what most [people (excepting Mr. Gordon and the Circuit Court)] would agree ***was honest, responsible, fair[,] and morally correct***, [Mr. Lancaster's] reward for 'doing the right thing' [in assisting Mr. and Mrs. Drews] was the [invalidation] of [his] security interest[s] and any real ability to obtain [unchallenged] payment for the loan[s] [he] made to [Mr. and Mrs. Drews]. {Under Mr. Gordon's position, Mr. Lancaster] was determined to be the 'stuckee' [in the loan transactions] despite [his] being the least blameworthy of all of the participants in this unfortunate case.

In light of the evidence, the Circuit Court wrongfully determined that the transfers made by (a) Mr. and Mrs. Drews to Mr. Lancaster and/or (b) Mr. Lancaster to Mr. and Mrs. Drews constituted fraudulent conveyances. The transactions did not meet the elements of a fraudulent conveyance. Moreover, Mr. Gordon's original judgment against Mr. Drews was admittedly well over ten years old and, therefore, did not have any "active energy" when he obtained his judgment against Mr. Lancaster. Furthermore, Mr. Lancaster never was nor never had been Mr. Gordon's original judgment debtor, merely the "last man standing" with the financial wherewithal to respond to a judgment – if ultimately obtained.

This Court of Appeals should and, indeed, must reverse the Circuit Court's decision in all respects and enter judgment for Mr. Lancaster.

B. MR. AND MRS. DREWS' $100,000.00 PAYMENT IN 1992 TO MR. LANCASTER IN WHICH WAS USED TO PURCHASE BAINBRIDGE DRIVE WAS NOT A FRAUDULENT CONVEYANCE

The Circuit Court found for Mr. Gordon on his fraudulent conveyance claim (R.pp.10-30), albeit, incorrectly determining Mr. Drews' 1992 payment of $100,000.00 to Mr. Lancaster for Mr. and Mrs. Drews' life estate defrauded Mr. Drews' creditors. (R.p.14, para. 6). The Circuit Court ignored both the facts and the law. Mr. Drews' $100,000.00 payment was solely for the life estate in order that he and his wife could live in a reasonably comfortable and suitable home for the remainder of their natural

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American Fed. Sav. & Loan Ass'n v. Madison Valley Properties, Inc., 288 Mont. 365, 379, 958 P.2d 57, 66 (1998) (Emphasis added). *See also generally* Donahue v. Donahue, 2008 WL 283285, *2 (Conn.Super., filed 17 January 2008); Newman v. Santiago Creek, 2007 WL 4465809, *3 (Cal.App. 4th Dist., filed 20 December 2007).

lives.[9] Contrary to Mr. Gordon's bald assertions, the $100,000.00 payment was ***made for valuable consideration*** given the fact that Mr. and Mrs. Drews were allowed to live in Bainbridge Drive (and later Nuffield Road) for over 15 years ***rent and mortgage free***. (R.p.354, lines 4-13; R.p.397, lines 11-19; R.p.764-765, para. 5).[10]

South Carolina law provides, in pertinent part, that, *inter alia*, gifts, transfers, land conveyances which are intended to "delay, hinder, or defraud creditors . . must be deemed and taken . . to be clearly and utterly void, frustrate and of no effect. . . ."[11] Certainly this is a reasonable and fair proposition intended to protect creditors from unscrupulous debtors and their witting accomplices. Nevertheless, the key to the theory is that the debtor-party making the transfer (*i.e.*; gift, conveyance, *etc.*) must do so with the intent to actually delay, hinder, or defraud his or her or its creditors[12] or the conveyance was voluntary – (*i.e.*; made without the existence of valuable

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9 In fact, Mr. Gordon (via his legal counsel) stated that "the valuable consideration [involved in Mr. and Mrs. Drews' $100,000.00 payment to Mr. Lancaster] was providing Mr. and Mrs. Drews a house to live in for the rest of their years . . . ." (R.p.323, lines 5-7). Mr. Lancaster, of course, agreed with this assessment. (R.p.323, lines 5-11).

10 For all practical purposes, Mr. and Mrs. Drews collectively made a single "up front" lease payment (R.p.397, lines 11-15), leaving Mr. Lancaster with the risk of maintenance, needed repairs, interest rate flux, property devaluation, *etc.* Clearly, this type of transaction constitutes the passing of valuable consideration, especially in view of the fact Mr. and Mrs. Drews – either together or singularly – lived in Bainbridge Drive and Nuffield Road for ***over 15 years***. (R.p.345, lines 4-13; R.p.387, lines 11-19). *See* Roper, LLC v. Harris Teeter, Inc., 2013 WL 8539469, *1 (S.C.App. 2013) (*quoting* Hennes v. Shaw, 397 S.C. 391, 399, 725 S.E.2d 501, 505 (Ct.App. 2012) (construing the term " 'valuable consideration' as 'some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered[,] or undertaken by the other.' "). Conservatively speaking, for the 15+ years stay, Mr. and Mrs. Drews enjoyed a "monthly rental payment" of not more than $555.56. Effectively speaking, rent control at its very best.

11 *See* S.C. Code Ann. § 27-23-10(A) (Thomson Reuters West 2012). *See also* S.C. Jurisprudence, § 23.5 (Thomson Reuters West 2014).

12 Carr v. Guerard, 365 S.C. 151, 153-154, 616 S.E.2d 429, 430 (*citing* S.C.Code Ann. § 27-23-10; Future Group, II v. Nationsbank, 324 S.C. 89, 98, 478 S.E.2d 45, 50 (1996); Lebovitz v. Mudd, 293 S.C. 49, 52-53, 358 S.E.2d 698, 700-701 (1987)).

consideration).[13] Furthermore, and very importantly in this case, "[e]ven where it is shown that the grantor has fraudulent intent, to "annul for fraud a deed based upon value consideration [under the *Statute of Elizabeth*], it must not only be shown that the grantor intended to hinder, delay[,] or defraud creditors, ***but it must also appear that the grantee participated in such fraudulent act***."[14]

Mr. and Mrs. Drews Did Not Have Any Outstanding Debts When They Paid The $100,000.00 To Mr. Lancaster[15]

In ***1990/1991***, Mr. and Mrs. Drews were in a financial crisis as they had mortgaged their Edgewater Park home to the hilt in order to keep The Drews Company open and, equally devastating, the IRS had placed several liens against Mr. Drews and The Drews Company. (R.p.13, para. 1; R.p.355, lines 6-12; R.p.373, lines 6-13; R.p.764, para. 4).[16] Totally out of options, Mr. and Mrs. Drews sold Edgewater Park to satisfy the loans and pay off the IRS. (R.p.355, lines 6-12; R.p.440, lines 11-15;

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13 Oskin v. Johnson, 400 S.C. 390, 397-398, 735 S.E.2d 459, 463 (2012) (*citing* Future Group, II v. Nationsbank, 324 S.C. 89, 96, 478 S.E.2d 45, 48-49; McDaniel v. Allen, 265 S.C. 237, 242-243, 217 S.E.2d 773, 775-776 (1975)). *See also In re* Hankel, 512 B.R. 539, 546 (Bkrtcy. D.S.C. 2014) (*citing* Windsor Prop., Inc. v. Dolphin Head Constr. Co., 331 S.C. 466, 498 S.E.2d 858, 860 (1998)).

14 Oskin v. Johnson, 400 S.C. 390, 398 n.5, 735 S.E.2d 459, 463 n.5 (*quoting* McDaniel v. Allen, 265 S.C. 237, 242-243, 217 S.E.2d 773, 775-776) (Second alteration in original and emphasis added). See *In re* Hankel, 512 B.R. 539, 546 (*citing and quoting* Royal Z Lanes, Inc. v. Collins Holding Corp., 337 S.C. 592, 524 S.E.2d 621, 622 (1999); Furman Univ. v. Waller, 124 S.C. 68, 117 S.E. 356, 358 (1923); Cadence Bank, N.A. v. Horry Prop., LLC, 2012 WL 1110089, *14 (D.S.C., filed 2 April 2012) (Not reported in F.Supp.2d)) (In any case, "[g]rossly inadequate consideration does not render a conveyance voluntary; rather, the inadequacy of the consideration is treated as a 'badge of fraud', and actual intent to defraud must be proven.") (Internal citations omitted and alteration in original).

15 While Mr. Lancaster has financial dealing with Mr. and Mrs. Drews in the past, it is ***undisputed*** that the financial transaction involved in this case started in ***1992***. (R.p.321, line 6 - R.p.322; R.p.956).

16 The Drews Company's dire financial condition finally convinced Mr. Drews to sell the business. (R.p.440, lines 5-10; R.p.764, para. 4).

R.pp.764-765, para. 5). After making those creditor payments, Mr. and Mrs. Drews were only left with a mere $100,000.00 from the sale of their home (R.pp.764-765, para. 5) and, as equally important, ***had less than 30 days to vacate the property and find other suitable living accommodations***. (R.p.373, lines 9-15).**17**

Admittedly, $100,000.00 was very little money for Mr. and Mrs. Drews to live on for the rest of their lives. In 1992 (R.p.321, lines 6-8), Mr. Drews proposed to Mr. Lancaster that he could use the $100,000.00, in part, to purchase a suitable home for Mr. and Mrs. Drews and, they under to a life estate, could then live there for the rest of their lives ***without the need to make either rent or mortgage payments***. (R.pp.665-666; R.pp.677-681; R.pp.764-765, para. 5; R.pp.1053-1054; R.pp.1060-1064). Mr. Lancaster agreed and the transaction was accomplished.**18**

Contrary to the Circuit Court's "conclusion" that Mr. and Mrs. Drews were debt-ridden in 1992, the uncontested evidence was, in fact, to the contrary. In fact, Mr. Livingston, Mr. Gordon's expert accounting witness, specifically testified that ***he was***

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17 Before approaching Mr. Lancaster for assistance, Mr. and Mrs. Drews had looked for a comfortable home in the $100,000.00 range, but had not found anything which was suitable. (R.p.373, lines 14-25).

18 Mr. Lancaster took $100,000.00 (R.p.137, paras. 43-45; R.pp.144-145, paras. 3, 9-10; R.p.322, lines 13-25; R.p.376, lines 14-20), together with some of his own money, and bought Bainbridge Drive for $160,000.00 on 22 May 1992. (R.p.14, para. 7; R.p.340, line 22 - R.p.341, line 7; R.p.376, line 24 - R.p.377, line 1; R.pp.662-664). Mr. Lancaster added another $5,000.00 or so in repairs. (R.p.341, lines 2-7; R.p.379, lines 9-15). Mr. and Mrs. Drews lived there for the next 37 months. (R.p.137, para. 47; R.p.146, para. 11; R.p.378, lines 16-18). On 16 May 1995, due to Mr. Drews' deteriorating health, Mr. Lancaster purchased Nuffield Road (R.p.137, para. 48; R.p.144, para. 12; R.pp.667-671; R.pp.1055-1059) for $125,000.00 (R.p.487, line 19 - R.p.488, line 5; R.pp.667-671; R.pp.1055-1059) and spent an additional $15,000.00 or so for a new air conditioning system, updated appliances, and other needed repairs. (R.p.364, line 22 - R.p.365, line 2; R.p.R.pp.687-688). Mr. and Mrs. Drews lived there under the same life estate arrangement (R.p.378, lines 1-22; R.p.382, line 15 - R.p.383, line 1; R.p.488, lines 6-8; R.pp.677-681; R.p.726, para. 6; R.pp.1060-1064) - Mr. Drews for over 12 years (R.p.137, para. 49; R.p.383, lines 2-7) and Mrs. Drews for almost 15 years. (R.pp.137-138, paras. 49, 52; R.p.383, lines 2-7).

not aware of the specific creditors which Mr. and Mrs. Drews were attempting to avoid when they paid Mr. Lancaster the $100,000.00 for the life estate in Bainbridge Drive. (R.p.491, lines 9-14). Moreover, the only credible evidence in the record was that Mr. and Mr. Drews specifically sold their Edgewater Park home to pay off the IRS and satisfy the outstanding loans. (R.p.355, lines 6-12; R.p.440, lines 11-15; R.pp.764-765, para. 5). There was no evidence of any other creditors then existing.**19** Mr. Gordon was responsible to show the existence of unpaid debts or lurking creditors in the 1992, post-Edgewater Park sale. He would have presented that proof had there been any to present. Mr. Gordon could not do so because there were no such unpaid claims or debts.

Furthermore, even if, as Mr. Gordon has alleged, Mr. Lancaster's testimony was "contradictory"**20** as to (a) the alleged "gift" status of the $100,000.00, (b) the existence

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19 Mr. Livingston attempted to fabricate the existence of then-existing creditors and debts based upon Mr. Lancaster's deposition which, like his trial testimony (R.p.13, para. 1; R.p.355, lines 6-12; R.p.373, lines 6-13; R.p.764, para. 4), indicated that (a) the IRS had placed liens against Mr. Drews and The Drews Company, (b) Mr. and Mrs. Drews had borrowed against Edgewater Park to keep the business going, and (c) Mr. and Mrs. Drews were going to sell Edgewater Park to pay off the loans and the IRS. (R.p.488, lines 21 - R.pp.489, line 23). Somehow Mr. Livingston "believed" that meant the IRS was still looming and the loans taken on Edgewater Park were still viable. As a practical matter, if any lender made a loan secured by Edgewater Park, the loan would have been satisfied when the property was sold. Mr. Gordon did not produce any documentation evidencing a different result. In any case, the result is still the same, Mr. Gordon ***did not and could not show*** that Mr. and Mrs. Drews had debts or creditors once they sold Edgewater Park. In fact, as has been repeatedly noted herein and effectively uncontested at trial, the sole reason they sold Edgewater Park was to pay their debts. (R.p.355, lines 6-12; R.p.440, lines 11-15; R.pp.764-765, para. 5).

20 Mr. Gordon has made much (Respondent's Brief, pp.21-23) of the Circuit Court's conclusion that Mr. "Lancaster's testimony at trial regarding these [various alleged asset] transfers lacked credibility and evidenced that the transfers in question were indeed inter-family transfers for no consideration . . .made in furtherance of [Mr.] Drews' scheme to conceal his assets . . . ." (R.p.24, para. 74). Over and above the fact that the evidence parented to the Circuit Court failed to provide any support for the Circuit Court's conclusion, it is axiomatic that trial testimony is, by its very nature, very stressful. State v. Foster, 135 Wash.2d 441, 465,

of the gift tax return, and (c) the broken copy machine,**21** that still does not negate the fact that Mr. Lancaster, using both the $100,000.00 and his own funds, (a) bought Bainbridge Drive and Nuffield Road, (b) made needed repairs to both, (c) allowed Mr. and Mrs. Drews to live in both places for 15+ years rent free and mortgage free, and (d)

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957 P.2d 712, 725 (1998) (*citing* Brady v. State, 575 N.E.2d 981, 992 (Ind.1991) (Krahulik, J., dissenting)). Furthermore, " 'anyone who has ever tried a case or presided as a judge at a trial knows that ***witnesses are prone to fudge, to fumble, to misspeak, to misstate, to exaggerate***. If any such pratfall warranted disbelieving a witness's entire testimony, few trials would get all the way to judgment.' " United States v. Edwards, 581 F.3d 604, 613 (7th Cir. 2009) (*quoting* Kadia v. Gonzales, 501 F.3d 817, 821 (7th Cir. 2007)) (Emphasis added). Consequently, although Mr. Lancaster may have been somewhat understandably equivocal or vague on the precise step-by-step events, the evidence failed to support the proposition that Mr. Lancaster was untruthful in his testimony about occurrences ***which took place over 20 years in the past***. Moreover, the Circuit Court itself acknowledged that Mr. Lancaster was having difficulty, on direct examination, going through the exhibit notebook and that Mr. Lancaster may not have been familiar with mortgages. (R.p.348, lines 2-19). In fact the Circuit Court directed Mr. Gordon's counsel to assist Mr. Lancaster with the various exhibits. (R.p.348, lines 2-19) (As an aside, Mr. Lancaster previously suffered a stroke and, as a result, has certain physical limitations.). Furthermore, piggy-backing upon the Circuit Court's unjustified "conclusion", Mr. Gordon's assertion regarding "feigned lack of knowledge" regarding the financial transactions between himself and Mr. and Mrs. Drews (Respondent's Brief, p.12), simply does not have any evidentiary support and is an unwarranted personal attack on Mr. Lancaster.

21 Mr. Lancaster thought the $100,000.00 was a gift because Mr. Drews' accountant (Jerry Gambrell) indicated that the money should be treated as a gift for income tax purposes. (R.p.336, lines 10-25; R.p.338, lines 13-19; R.p.374, line 6 - R.p.375, line 20; R.p.396, line 25 - R.p.397, line 4). Mr. Lancaster, admittedly concerned about the capital gains cost basis for Bainbridge Drive (R.p.336, lines 18-25; R.p.374, lines 6-25), had no reason to believe that Mr. Gambrell's advise might not be correct. In order to memorialize the gift, in 1993, Mr. Lancaster prepared a gift tax return for Mr. Drews to sign and send to the IRS. (R.p.337, line 1 - R.p.338, line 9; R.p.375, line 79, - R.p.376, line 13; R.p.397, lines 5-10). When he advised Mr. Gordon he could not present a copy of the gift tax return (R.p.419, lines 8-17) due to a broken copier (R.p.376, lines 11-13; R.p.412, lines 10-20; R.p.413, lines 3-13), Mr. Gordon strongly intimated that Mr. Lancaster had conspired with Mr. Drews to defraud the IRS. (R.pp.13-14,paras. 3-5; R.p.336, line 2 - R.p.339, line 16; R.p.397, line 25 - R.p.398, line 4; R.p.412, line 21 - R.p.415, line 1; R.p.415, line 23 - R.p.417, line 8). Mr. Lancaster did not realize the $100,000.00 was not, in reality, a gift until this litigation began and he discussed the situation with his attorney. (R.p.338, line 10 - R.p.339, line 16). Nevertheless, for 18 or so years, Mr. Lancaster's belief was reasonable under the circumstances. He was acting on the recommendations of a professional accountant (R.p.336, lines 10-25; R.p.338, lines 13-19) and should have been able to rely on that advice. Moreover, Mr. Lancaster, as the recipient of the gift was neither responsible for receiving or retaining a copy of the gift tax return.

paid the real estate property taxes on both properties during the entire time period Mr. and Mrs. Drews resided there. (R.p.378, lines 2-4; R.p.383, lines 8-10). By any reasonable definition, that should and, indeed, must be considered "valuable consideration" regardless of any so-called allegedly "contradictory" evidence coming from Mr. Lancaster.**22** As the evidence in the record shows, Mr. Gordon failed to prove otherwise.

The Circuit Court incorrectly concluded the $100,000.00 Mr. and Mrs. Drews paid Mr. Lancaster (used, in part, to buy Bainbridge Drive), constituted a fraudulent conveyance. Mr. and Mrs. Drews did not have any debts or creditors when they paid Mr. Lancaster this money and, therefore, the $100,000.00 could not have been fraudulently conveyed.

This Court of Appeals should and, indeed, must reverse the decision of the Circuit Court, at the very minimum, as to this legitimate and proper $100,000.00 transfer.**23**

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22 Notwithstanding Mr. Lancaster's alleged testimonial contradictions, the clear and convincing evidence showed Mr. and Mrs. Drews **did not have any debts in 1992**, as they had paid off the IRS and satisfied the outstanding bank loans from the proceed of the sale of Edgewater Park. (R.p.355, lines 6-12; R.p.440, lines 11-15; R.pp.764-765, para. 5). Mr. Livingston, Mr. Gordon's ***expert*** accounting witness, specifically testified that he was ***not aware of the specific creditors which Mr. and Mrs. Drews were attempting to avoid*** when they paid Mr. Lancaster the $100,000.00 for the life estate in Bainbridge Drive. (R.p.491, lines 9-14). *See generally* Windsor Properties, Inc. v. Dolphin Head Const. Co., Inc., 331 S.C. 446, 470-471, 498 S.E.2d 858, 860-861 (*citing* Gardner v. Kirven, 184 S.C. 37, 41, 191 S.E. 814, 816 (1937); Coleman v. Daniel, II, 261 S.C. 198, 199 S.E.2d 74 (1973); Matthews v. Matthews, 207 S.C. 170, 35 S.E.2d 157 (1945); Matthews v. Montgomery, 193 S.C. 118, 7 S.E.2d 841 (1940); First Union Nat. Bank v. Smith, 314 S.C. 459, 445 S.E.2d 457 (Ct.App. 1994)).

23 Mr. Gordon's claims against Mr. Drews did not even come into existence until, at the earliest, ***September 1996***, when Mr. Drews sold Mr. Gordon the unregistered stock in Builders Station. (R.p.133, para. 8). This was some 52 months after Mr. and Mrs. Drews paid Mr. Lancaster the $100,000.00 and ***well before*** Builders Station was even contemplated, much less launched.

C. MR. LANCASTER'S $40,000.00 LOANS TO MR. AND MRS. DREWS WERE NOT FRAUDULENT CONVEYANCES

The Circuit Court found that Mr. Lancaster's 1993-1995 loans to Mr. and Mrs. Drews were done to defraud creditors. (R.p.15, paras. 12-13; R.p.29). Again, the Circuit Court was incorrect on both the facts and the law. Those loans were made to assist Mr. and Mrs. Drews pay off their $35,000.00 credit card debt.

As noted previously, once The Drews Company tanked, Mr. and Mrs. Drews had no "income" other than their social security benefits and paid their living expenses using credit cards. (R.p.328, lines 7-10; R.p.385, lines 4-20; R.p.979, lines 14-21; R.p.1012, lines 14-16). They racked up approximately $35,000.00 in credit card debt (*Plf. Exh.* 28) and, during the ***1993-1995*** time frame, Mr. Lancaster made additional direct loans to Mr. and Mrs. Drews totaling $40,000.00 (R.p.324, lines 20-23; R.p.328, lines 7-10; R.p.385, line 21 – R.p.386, line 14; R.p.1065) so they could, in large part, retire their credit card debt. (R.p.355, lines 19-25; R.pp.692-695).

Mr. Gordon, while attempting to cobble together some "evidence of Mr. Lancaster's wrongdoing vis-à-vis the $40,000.00 in loans (*Respondent's Brief*, pp.35-37), still failed to produce any credible evidence whatsoever which showed or even reasonably inferred that Mr. and Mrs. Drews had any unpaid debts or outstanding creditors during the ***1993-1995*** time period given the fact Mr. and Mrs. Drews sold Edgewater Park in 1992, to satisfy the IRS liens and the outstanding business-related loans incurred to keep The Drews Company in business. (R.p.355, lines 6-12; R.p.440, lines 11-15; R.pp.764-765 para. 5).**24** Given the periodic nature of the loans Mr.

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24 Mr. Gordon submitted the 8 September 2000, IRS tax lien (R.p.700) which only addressed unpaid taxes for periods ending 31 December ***1995***, 31 December ***1996***, and 31 December ***1997***. (R.p.700; R.pp.925-955).

Lancaster made to Mr. and Mrs. Drews from 6 February 1993, through 30 January 1995, it appears that Mr. and Mrs. Drews were paying off their credit cards in part or in whole on an intermediate basis – essentially somewhat as the credit became due or, at least, not significantly overdue. (R.p.1065).**25**

While Mr. Gordon may have had a potential "claim" against Mr. Drews beginning in September 1996, he did not become a judgment creditor of Mr. Drews' until December 2001. Moreover, Mr. Gordon clearly did not have any claim during the 1993-1995 time frame. The $40,000.00 in loans were made to pay off credit card creditors, not to hide funds from those creditors or from other creditors. Mr. Lancaster was entitled to have the $40,000.00 in loans repaid.

This Court of Appeals should and, indeed, must reverse the Circuit Court's decision in all respects. Nevertheless, at a minimum, this Court of Appeals must reverse the Circuit Court as to the $40,000.00 amount.

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25 Mr. Lancaster loaned Mr. and Mrs. Drews (a) $5,000.00 on 6 February 1993, (b) $3,000.00 on 19 April 1993, (c) $7,000.00 on 9 July 1993, (d) $6,000.00 on 28 August 1993, (e) $3,000.00 0n 21 December 1993, (f) $6,000.00 on 18 January 1994, (g) $5,000.00 on 20 June, 1994, and (h) $5,000.00 on 30 January 1995, for a total amount of $40,000.00. (R.pp.692-695; R.pp.804A-811; R.p.1065; R.pp.1066-1071). Contrary to Mr. Gordon's unsupported assertions, the only "creditors" Mr. and Mrs. Drews theoretically had during the 1993-1995 time frame ***were the very same credit card companies they were paying off*** using the $40,000.00 Mr. Lancaster provided to them. Clearly, this was not transactions to defraud creditors, but to satisfy creditor claims.

D. THE MORTGAGE GIVEN TO MR. LANCASTER AS SECURITY FOR THE $20,000.00 LOAN CONTAINED ADEQUATE AND PROPER CONSIDERATION

In ***1999***, Mr. Lancaster loaned Mr. and Mrs. Drews $20,000.00 to pay off loans from First Citizens Bank and South Trust Bank which they had obtained to finance the failed Builders Station hardware store business endeavor. (R.p.367, lines 11-22; R.p.388, line 23 – R.p.389, line 24; R.p.402, lines 19-23; R.p.1073).**26** Mr. Drews gave Mr. Lancaster a mortgage to secure this final $20,000.00 loan. (R.p.19, para. 41; R.p.351, line 17 – R.p.353, line 23; R.pp.638-642).**27**

The Circuit Court incorrectly rejected this $20,000.00 mortgage and Mr. Lancaster's $20,000.00 payment to First Citizens and South Trust on the grounds Mr. "Lancaster did not give [Mr.] Drews any contemporaneous consideration from the $20,000[.00] Meeting Street Mortgage." (R.p.137, para. 42). Mr. Gordon seconds this position, asserting there was no adequate and/or contemporaneous consideration. (*Respondent's Brief*, pp.38-40).

Mr. Lancaster was provided the $20,000.00 mortgage (R.p.19, para. 41; R.p.351, line 17 – R.p.353, line 23; R.pp.638-642), some three weeks after he paid First Citizens $5,000.00 and South Trust $15,000.00. (R.p.389, lines 2-24; R.p.766, para. 8; R.p.1073). The transaction allegedly failed because Mr. Lancaster did not give Mr. and Mrs. Drews "contemporaneous consideration" for the mortgage. (R.p.19, para. 42).

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26 To satisfy those loans, Mr. Lancaster sent a $5,000.00 check on 2 June 1999, directly to First Citizens from his own First Citizens account (R.p.389, lines 2-24; R.p.766, para. 8; R.p.1073) and, on 7 June 1999, had Wachovia issue a $15,000.00 check out of his Wachovia line of credit made payable directly to South Trust. (R.p.389, lines 2-24; R.p.766, para. 8; R.p.1073).

27 Mr. Lancaster was initially unaware of this mortgage as Mr. Drews did it without his knowledge. (R.p.352, lines 3-6). Mr. Drews later disclosed it to Mr. Lancaster sometime well after the fact.

Contrary to Mr. Gordon's assertions and the Circuit Court's conclusions, the evidence showed Mr. Drews told Mr. Lancaster in early June 1999, he (Mr. Drews) "had talked to both First Citizens and South Trust and [the banks] were both offering him 24 hours to settle [his outstanding loans] for substantially less than the amount owed . . ." (R.p.389, lines 4-7). As had been the situation a number of times in the past, Mr. Drews turned to Mr. Lancaster for help. (R.p.389, lines 7-8).**28** Clearly, this urgent situation in which Mr. and Mrs. Drews ***would be paying off creditors*** (*i.e.*; neither hiding assets nor defrauding creditors) demanded immediate and swift action.**29**

While Mr. and Mrs. Drews gave Mr. Lancaster the $20,000.00 mortgage around three weeks later the $20,000.00 consideration had unquestionably been paid to First Citizens and South Trust. (R.p.354, lines 3-13; R.p.369, lines 10-15; R.p.389, lines 2-12).**30** Notwithstanding Mr. Gordon's allegations to the contrary, Mr. Lancaster paid the $20,000.00 directly to the banks on Mr. Drews' behalf and, in turn, provided Mr. and Mrs. Drews as much contemporaneous consideration for the $20,000.00 mortgage as could be done in light of the exigent circumstances.

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28 Since Mr. Drews did not have any "other source [from which to obtain the] 20,000 dollars, so to be able to take advantage of those [lessened] payoffs [Mr. Lancaster] drew [$]15,000[.00] out of [his] equity loan on [his personal] house] and [$]5.000[.00] [he] had in [his] checking account to pay the other." (R.p.389, lines 9-12).

29 Mr. Lancaster paid the $20,000.00 to the banks as quickly as he could, due to the banks' demands for quick satisfaction of Mr. Drews' Builders Station-related debts at significantly reduced amounts. (R.p.354, lines 3-13; R.p.369, lines 10-15; R.p.389, lines 2-12).

30 Development and production of the documentation needed to evidence the $20,000.00 mortgage required legal counsel involvement. (R.p.354, lines 3-9). Based upon the banks' temporal settlement demands (i.e.; "one time great deal") it was thought that to obtain counsel's involvement would have taken more time than either First Citizens or South Trust were willing to provide to Mr. and Mrs. Drews.

As has been the case throughout, Mr. Lancaster made the $20,000.00 in loans, albeit indirectly as a benefit to Mr. and Mrs. Drews, to pay off First Citizens and South Trust for Mr. Drews' Builders Station-related loans, not to hide funds from those creditors or from any other creditors. In fact, Mr. Drews' creditors were actually being paid in these two transactions. It seems somewhat illogical to punish Mr. Lancaster on the grounds of a fraudulent conveyance in a transaction where he was seeking mortgage security for loans he made, albeit indirectly, to Mr. and Mrs. Drews for the purpose of satisfying Mr. Drews' outstanding debts. Mr. Lancaster was entitled to have the $20,000.00 repaid.

This Court of Appeals should and, indeed, must reverse the Circuit Court's decision in all respects. Nevertheless, at a minimum, this Court of Appeals must reverse the Circuit Court as to the $20,000.00 amount.

E. MR. LANCASTER CHALLENGED THE TRIAL COURT'S DETERMINATION THAT HE FAILED TO MEET HIS BURDEN OF PROOF VIS-À-VIS THE ALLEGED INTERFAMILIAL CONVEYANCES

Mr. Gordon asserts, somewhat interestingly, that this appeal must be affirmed on the grounds that Mr. Lancaster failed to appeal the Circuit Court's conclusion that he did not meet his burden of proof regarding the Circuit Court's determination that the transactions between Mr. and Mrs. Drews and Mr. Lancaster were so-called "inter familial conveyances. (*Respondent's Brief*, pp.14-15.). It is amazingly disingenuous for Mr. Gordon to assert that Mr. Lancaster has not challenged in this appeal the Trial Court's conclusion that Mr. "Lancaster failed to meet his burden [of proof]" in establishing the validity of the financial transactions between himself and Mr. and Mrs. Drews. (*Respondent's Brief*, p.16). Mr. Gordon apparently failed to read Mr.

Lancaster's appellate brief in that it is clear therein that even though the financial transactions between Mr. Lancaster and his later aunt and uncle were amongst related family members, Mr. Lancaster has unquestionably asserted that those transactions were proper and above-board regardless of what standard of proof is used.

Under the "law of the case" doctrine " '[a]n unappealed ruling is the law of the case and requires affirmance' [and] should the appealing party fail to raise all of the grounds upon which a lower court's decision was based, those unappealed findings - whether correct or not - become the law of the case."**31** Nevertheless, "a party is [only] precluded [under the doctrine] from re-litigating issues decided in a lower court order, when the party ***voluntarily abandons*** [the] appeal of that order."**32** Mr. Lancaster has not abandoned his appeal of the Circuit Court's incorrect determination that he failed to meet his burden of proof in asserting the financial transactions with Mr. and Mrs. Drews were legitimate, correct, and made without any intent to defraud creditors.

Mr. Gordon makes this baseless assertion, apparently in an attempt to short circuit this appeal and have this Court of Appeals avoid the appellate merits. He takes this position notwithstanding the fact that the evidence regarding the issues Mr. Lancaster has raised in this appeal demonstrate that the majority of the transactions encompassing up Mr. Gordon's unwarranted judgment occurred either (a) before the Builders Station endeavor was ever contemplated, much less put into action, or (b) as part of Mr. and Mrs. Drews' efforts to actually pay off (*i.e.*; satisfy) their creditors.

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31 Dreher v. S.C. Dept. of Health and Envt'l. Control, 412 S.C. 244, 249-250, 772 S.E.2d 505, 508 (2015) (*quoting* Shirley's Iron Works, Inc. v. City of Union, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013), and *citing* Judy v. Martin, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009)).

32 Hudson *ex. rel.* Hudson v. Lancaster Convalescent Home, 407 S.C 112, 119, 754 S.E.2d 486, 490 (2014).

Mr. Lancaster has correctly and properly appealed/challenged the Trial Court's "determination" that he failed to meet his burden of proof vis-à-vis the allegedly improper inter familial conveyances. Those financial transactions were both proper and above-board. This Court of Appeals should address this appeal on its merits.

F. THE "LAW OF THE CASE" DOCTRINE DOES NOT PRECLUDE MR. LANCASTER'S CHALLENGE TO THE PRINCIPAL ALLEGEDLY FRAUDULENT CONVEYANCES

Mr. Gordon asserts, again somewhat interestingly, that Mr. Lancaster is prohibited from challenging less than all of the allegedly fraudulent conveyances in this appeal on the grounds that all of the "fraudulent conveyances" were part and parcel of "convoluted, multi-step transactions" (R.p.26) and, apparently, cannot be separated. (*Respondent's Brief*, pp.16-17.). Again, Mr. Gordon's assertion is, at best, disingenuous, in light of Mr. Lancaster's clear challenge to the principal components of the incorrectly characterized "convoluted, multi-step transactions" (R.p.26).

The "law of the case" doctrine means that " '[a]n unappealed ruling is the law of the case and requires affirmance' [and] should the appealing party fail to raise all of the grounds upon which a lower court's decision was based, those unappealed findings - whether correct or not - become the law of the case."**33** Nevertheless, "a party is [only] precluded [under the doctrine] from re-litigating issues decided in a lower court order, when the party ***voluntarily abandons*** [the] appeal of that order."**34** Mr. Lancaster has not abandoned his appeal of the Circuit Court's incorrect determination he was involved

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33 Dreher v. S.C. Dept. of Health and Envt'l. Control, 412 S.C. 244, 249-250, 772 S.E.2d 505, 508 (*quoting* Shirley's Iron Works, Inc. v. City of Union, 403 S.C. 560, 573, 743 S.E.2d 778, 785, and *citing* Judy v. Martin, 381 S.C. 455, 458, 674 S.E.2d 151, 153).

34 Hudson *ex. rel.* Hudson v. Lancaster Convalescent Home, 407 S.C 112, 119, 754 S.E.2d 486, 490 (Emphasis added).

in various "fraudulent conveyances" which were comprised of a series of "convoluted, multi-step transactions" (R.p.26). He clearly has challenged the invalidity of (a) Mr. and Mrs. Drews' $100k payment, (b) his $40k in loans to them to repay their credit card debt, and (c) his $20k payments to First Citizens and South Trust.

Contrary to Mr. Gordon's assertions, Mr. Lancaster has challenged (*i.e.*; appealed) the very nature of the Circuit Court's wrongful conclusion that all of the financial transactions between Mr. Lancaster and Mr. and Mrs. Drews were somehow part and parcel of a "grand scheme" to hide Mr. Drews' assets and to defraud his creditors. As previously noted, Mr. Gordon takes this position notwithstanding the fact that the evidence regarding the issues Mr. Lancaster has raised in this appeal demonstrate that the majority of the transactions comprising Mr. Gordon's unwarranted judgment occurred either (a) before the Builders Station endeavor was ever contemplated, much less put into action, or (b) as part of Mr. and Mrs. Drews' efforts to actually pay off (*i.e.*; satisfy) their creditors.

This Court of Appeals should resolve this appeal on its merits based upon the facts of this case.

CONCLUSION

Based upon the foregoing arguments and citation of authority, the Appellant, Donald W. Lancaster, respectfully requests that this Court of Appeals reverse the Circuit Court in all respects, grant judgment to Mr. Lancaster, and dismiss the action with prejudice.

Respectfully submitted:

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6 November 2015

NPCHAR1:1643856.1-APL-(SPG) 053211-00001

STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS

Appeal from the Court of Common Pleas
For Charleston County
Honorable J. C. Nicholson, Jr., Circuit Judge
Civil Action Nos.: 2010-CP-10-9096
And 2011-CP-10-8840
Appellate Case Tracking No. 2014-001247

Frank Gordon, Jr., Individually and as Trustee
of Dorothy S. Gordon (Deceased) Trust,

Respondent,

v.

Donald W. Lancaster,

Appellant.

RULE 211, *SCACR*, CERTIFICATION FOR THE FINAL REPLY BRIEF OF THE APPELLLANT, DONALD W. LANCASTER

I, Stephen P. Groves, Sr., Esquire, hereby certifies and attests that the ***Final Appellant's Reply Brief*** of the Appellant, Donald W. Lancaster, complies with the requirements of Rule 211(b) of the *South Carolina Appellate Court Rules*.

Signed: Stephen P. Groves by Cheryl D. Shaw
Stephen P. Groves, Sr., Esquire
S.C. Bar No. 007854

Charleston, South Carolina
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Proof of Service for Final Reply Brief

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Attorneys for the Appellant

I, Stephen P. Groves, Sr., Esquire, hereby certify that on 6 November 2015, I served two copies of the ***Final Appellant's Reply Brief*** submitted by the Appellant, Donald W. Lancaster, on counsel for the Respondent via the United States Mail, postage pre-paid, and addressed as follows:

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