

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM DORCHESTER COUNTY
COURT OF COMMON PLEAS

JUDGE EDGAR DICKSON , 1st Circuit

CASE # 2009-CP-18-2200

RENE McMASTERS.....Respondent

Vs.

HOWARD W. CHARPIA and JODY E. CHARPIA.....Appellants

PETITION / MOTION FOR REHEARING

Howard W. Charpia , et al
1450 Jahnz Ave.
Summerville , 29485
843-873-0976

Attorney Frank M. Cisa , for Respondent

AUTHORITIES

Thomas M. Toggas and Kathryn Toggas v. RRR , Inc

Case # 2014-CP-18-2016..... pages 13 - 20

**Linda Mc Co., Inc. v. Shore , 390 S.C. 543 , 554 , 703 S.E. 2d 499 505
(2010)**

GLASSCOCK , Inc V. US FIDELITY & GUAR., 348 S.C. 76 (Ct. App. (2001)

**P'ON LLC V. TOWN OF MT. PLEASANT , 338 S.C. 406 , 422 S.E. 2D
716 , 724 (2000)**

**Green v. Ford Opinion # 2016-UP-279 Appellant case # 2014-002730....pages
10,11**

**Deutsche Bank v. Morrow Opinion # 2016-UP-264 App. Case # 2014-002381
Pages....7,8,9**

Rule 62 SCRPC (a) (d).....page 32

Section 18-9-130 (a) (1) SC Code of Laws.....page 31

Home Port Rentals v. Moore Opinion # 261182

MEMORANDUM

PER CURIAM , states : The Charpias argue

- (1) The judgment underlying the foreclosure is void because 10 years has expired without execution of the judgment .

The issue of a / the judgment being void was not presented to the trial Court before this Appeal . This issue was not presented at the hearing of January 9 , 2013 ; which initiated this Appeal .

This issue was not presented to the Appellate Court in the Initial Brief , the Designation of Matter , the Final Brief nor the Respondent's Brief (s) .

An issue cannot be raised for the first time on Appeal , but must have been raised to and ruled upon by the trial Judge to be preserved for appellate review . *Deutsche Bank v. Morrow* , appellant case # 2014-002381 (2016) see pages7 , 8 , 9

It is axiomatic that an issue cannot be raised for the first time on appeal , but must have been raised to and ruled upon by the trial Court to be preserved For appellate review. *Green v. Ford* , appellant case # 2014-002730 (2016) see page.....10 , 11

An issue not argued in the brief (s) is deemed abandoned and will not be considered by the appellate Court. *GLASSCOCK , Inc V. US FIDELITY & GUAR.*, 348 S.C. 76 (Ct. App. (2001)

As Appellant did not present this argument to the trial Court , they are not properly before the Appellant Court . *I'On LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 422 S.E. 2d 716 (2000)

There is *no* judgment lien within case # 2009-CP-18-2200 , said judgment is / was rendered in case # 2002-CP-18-932 , against Howard W. Charpia and Charpia Residentials LLC on August 5 , 2004. See page.....12

Respondent should have filed their action under case # 2002-CP-18-932.

Should the Appellant Court entertain said judgment against Howard W. Charpia and Charpia Residentials LLC being *active or void*.

The Appellant Court refers to Linda McCompany v. Shore and SC Code 15-39-30 in their PER CURIAM.

Execution is the only process to enforce the judgment and the right to execute on a judgment does not constitute a cause of action . Execution is not initiated by bringing an action . *Home Port Rentals v. Moore Opinion # 261182*

The Court's Order of Foreclosure and Sale and the Respondent's action to foreclose on a judgment lien is not an "execution " on the judgment.

In Linda McCompany , the Court created a "narrow' exception to the bright line rule regarding extinguishment of a judgment after 10 years. The Court stated that 15-39-30 is not a statute of limitations , but operated like one *under the facts of that case.*

In this case and Appeal , 15-39-30 is a statute of repose.

Here , in this Appeal and Case ; the Respondent (Plaintiff) has not complied with the applicable statutes in South Carolina to collect on its Judgment . It is undisputed that there were no collection efforts pending.

See Toggas v. RRR, Inc pages.....13 - 20

The Respondent received an Order from Judge James C. Williams dated February 6, 2006 to execute on said property to satisfy the judgment.

See attached Order pages.....21

The Respondent has made no effort to execute by Order of February 6, 2006.

The parties had a trial on July 30 , 2012 during a non-jury term in St. George , SC . And the Court found in favor of the Respondent (Plaintiff) .

The Court ordered the property to be sold by the Clerk of Court .

The Respondent (Plaintiff) received an Order of Foreclosure and Sale dated October 29 , 2012 from the hearing of July 30, 2012 .

See attached Order.....pages 22 - 23

The Respondent has made no effort to execute by order of October 29, 2012 .

The Respondent and Court had a Judicial Sale in May 2009 in which McMasters (Respondent) was the high bidder at the Sheriff's sale.

McMasters nor her Attorney (Cisa) consummated this sale.

The Sheriff had an upset bid sale in June 2009 . Masters did not consummate this sale .

McMasters and her Attorney (Cisa) cancelled this sale without a cogent reason (s). See attached page.....24

The decision and findings in Linda McCompany v. Shore was that the only act remained to be done was the issuance of an Order by the Court .

In this case , the Respondent had received two Orders and *has not* acted to execute on said Orders . See Toggas v. RRR, Inc pages....13 - 26

Respondent's Attorney (Cisa) filed a WRIT OF EXECUTION on 9-2-04.

See Writ pages.....25 - 26

A NULLA BONA was issued on 9-28-04 .

See attached.....page 27

Respondent's Attorney filed another WRIT OF EXECUTION on 8-29-08.

See attached....pages 28 - 29

A NULLA BONA was issued on 5-19-10 . Page 30

Respondent failed to act on said executions .

The Appellant's (Defendant) appeal did not prevent McMasters from immediately pursuing collection of the judgment.

The 10 year period that a judgment has active energy in South Carolina is not tolled by Appeal. Wells ex. rel. AC Sutton & Sons v. Sutton, 382 SE 2d Court of Appeals 1989 .

Pursuant to Section 18-9-130 (a)(1) and (2) , an Appeal does not stay an execution . page 31

Pursuant to Rule 62 (d) , this statute clearly defines that an Appeal does not "stay" an execution unless a supersedeas bond is posted or given . page 32

South Carolina Courts will not permit a litigant to bypass the 10 year limitation on "executions" by styling an action as something other than an action to execute . *Garrison v. Owens , 258 S.C.442 S.E. 2d 31, 33 (1972)*

McMasters cannot complain now that the judgment has expired when she failed to pursue her rights during the Appeals , which *did not toll* the 10 year span of the judgment. See *Toggas v. RRR, Inc.* pages 13 - 20

(2) We find the Circuit Court properly exercised jurisdiction .

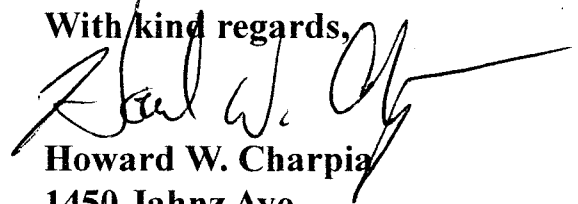
Chief Justice Jean Toal signed an Order on June 9 , 2008 ; transferring the case to Judge Perry M. Buckner . All hearings and Orders since this date are null and void . See attached Order pages 33 , 34 , 35

The Appellant (Defendant) challenged jurisdiction at the hearing of July 30 , 2012 with Judge Edgar Dickson in Dorchester County.

Wherefore , as the Respondent has not acted upon the state's applicable statutes to execute on said property *and* *Toggas v. RRR , Inc* dated January 26 , 2015 sets new precedence on judgments *and* 15-39-30 being a "statute of repose" *and* Rule 62 , SCRCP *and* SC Code 18-9-130 , in which an Appeal does not toll an execution *and* Chief Justice Jean Toal's order transferring said case to Judge Buckner for jurisdiction *and* the essential element of "laches" is an unreasonable delay by the Respondent in acting on the applicable statutes to execute which is an equitable defense .

The Appellant , Howard W. Charpia , prays that this Court reverse and remand this back to the lower Court , Common Pleas ; for the parties to address the extinguishment of said judgment pursuant to the Rules and Statutes and South Carolina and new precedence of Toggas v. RRR , Inc . (case # 2014-CP-07-2016)

With kind regards,



Howard W. Charpia
1450 Jahnz Ave.
Summerville , SC 29485
quarterback@sc.rr.com
843-873-0976

cc: Attorney Frank M. Cisa

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Deutsche Bank National Trust Company as Trustee for
First Franklin Mortgage Loan Trust 2006-FFI Pass-
Through Certificates, Series 2006-FFI, Respondent,

v.

Dora S. Morrow, Ray Martin, and Lease and Rental
Management Corp. d/b/a Auto Use and Auto Loan, a
Massachusetts Corporation, Southern New Hampshire
Bank and Trust Company, a New Hampshire Bank, and
Edman Hackworth, Defendants.

Edman Hackworth, 3rd Party Plaintiff,

v.

John Morrow, 3rd Party Defendant.

John Morrow and Dora Morrow, 3rd Party Plaintiffs,

Of Whom John Morrow and Dora Morrow are the
Appellants,

v.

Edman Hackworth and Debbie Hackworth, 3rd Party
Defendants,

Of Whom Edman Hackworth is a Respondent.

Appellate Case No. 2014-002381

Appeal From Greenville County
Charles B. Simmons, Jr., Master-in-Equity

Unpublished Opinion No. 2016-UP-264
Submitted February 1, 2016 – Filed June 8, 2016

AFFIRMED

David Richard Price, Jr., of David R. Price, Jr., P.A., of
Greenville, for Appellants.

Daniel Quigley Orvin and Matthew Tillman, both of
Womble Carlyle Sandridge & Rice, LLP, of Charleston,
for Respondent Deutsche Bank National Trust Company
as Trustee for First Franklin Mortgage Loan Trust 2006-
FFI Pass-Through Certificates, Series 2006-FFI.

Thomas Elihue Dudley, III, of Kenison Dudley &
Crawford, LLC, of Greenville, for Respondent Edman
Hackworth.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998)
("[A]n issue cannot be raised for the first time on appeal, but must have been raised
to and ruled upon by the trial judge to be preserved for appellate review."); *Mize v.*
Blue Ridge Ry. Co., 219 S.C. 119, 129-30, 64 S.E.2d 253, 258 (1951) (finding if an
appellant does not raise an issue at trial, but the trial judge addresses it, it is still not
preserved for appeal because it was not raised by the appellant); *Johnson v. Sonoco*
Prods. Co., 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) ("An issue may not be
raised for the first time in a motion to reconsider.").

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AFFIRMED.¹

HUFF, A.C.J., and KONDUROS and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Adriane Green, individually and as personal
representative of the estate of Adonous Green, Deceased,
Respondent,

v.

John Doe, James Cleveland, and James I. Ford, III, aka
"Big Ford," Defendants,

Of whom James I. Ford, III, aka "Big Ford" is the
Appellant.

Appellate Case No. 2014-002730

Appeal From Berkeley County
Kristi Lea Harrington, Circuit Court Judge

Unpublished Opinion No. 2016-UP-279
Submitted March 1, 2016 – Filed June 8, 2016

AFFIRMED

W. Dean Murphy, III, of Charleston, for Appellant.

Samuel K. Allen, of Clore Law Group, LLC, of
Charleston, for Respondent.

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PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial [court] to be preserved for appellate review."); *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) ("Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide [appellate courts] with a platform for meaningful appellate review." (quoting *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006))); *Scott v. Porter*, 340 S.C. 158, 169, 530 S.E.2d 389, 394 (Ct. App. 2000) (questioning whether a party's argument that the evidence presented was insufficient to support the damages awarded is preserved where the record on appeal does not include a directed verdict motion); *Chapman v. Upstate RV & Marine*, 364 S.C. 82, 88, 610 S.E.2d 852, 856 (Ct. App. 2005) (finding a party's argument that there was insufficient evidence to support the damages awarded was not preserved where the party filed a directed verdict motion only challenging causation); *Herron*, 395 S.C. at 465, 719 S.E.2d at 642 ("Constitutional arguments are no exception to the preservation rules, and if not raised to the trial court, the issues are deemed waived on appeal.").

AFFIRMED.¹

HUFF, A.C.J., and SHORT and THOMAS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS
RENE' MCMASTERS

JUDGMENT IN A CIVIL CASE
2002CP1800932

CHARPIA RESIDENTIAL, LLC
AND HOWARD W. CHARPIA, IND.

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE

- () ~~XXXXX~~ JURY VERDICT. THIS ACTION CAME BEFORE THE COURT FOR A TRIAL BY JURY. THE ISSUES HAVE BEEN TRIED AND A VERDICT RENDERED.
- () DECISION BY THE COURT. THIS ACTION CAME TO TRIAL OR HEARING BEFORE THE COURT. THE ISSUES HAVE BEEN TRIED OR HEARD AND A DECISION RENDERED.
- () ACTION DISMISSED (CHECK REASON): () RULE 12b, SCRPC; () RULE 41a SCRPC (VOL NONSUIT); () RULE 43k, SCRPC (SETTLED) () OTHER
- () ACTION STRICKEN (CHECK REASON): () RULE 40(j) SCRPC; () BANKRUPTCY () BINDING ARBITRATION, SUBJECT TO RIGHT TO RESTORE TO CONFIRM VACATE OR MODIFY ARBITRATION AWARD; () OTHER _____

FILED-RECORDED
2004 AUG -5 AM 9:46
CLERK OF COURT
DORCHESTER COUNTY

IT IS ORDERED AND ADJUDGED: () See Attached order; () Statement of Judgment by the court. WE THE JURY FIND FOR THE PLF. AGAINST THE DEFENDANT FOR BREACH OF CONTRACT IN THE AMOUNT OF \$3,400.00 ACTUAL DAMAGES, IMPLIED WARRANTY OF HABITABILITY IN THE AMOUNT OF \$100.00, AND NEGLIGENCE IN THE AMOUNT OF \$188,100.00.

DATED AT ST. GEORGE, S.C. THIS 4TH DAY OF AUGUST, 2004.


- HON. ROGER M. YOUNG
PRESIDING JUDGE

THIS JUDGMENT WAS ENTERED ON THE 5TH DAY OF AUGUST, 2004
AND A COPY WAS MAILED FIRST CLASS THIS 5TH DAY OF AUGUST
2004 TO ATTORNEY OF RECORD OR TO PARTIES WHEN APPEARING PRO SE
AS FOLLOWS:
FRANK CISA

WAYNE CHARPIA, PRO SE

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2004 AUG 5 2004

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT)

Civil Action No. 2014-CP-07-2016

THOMAS M. TOGGAS and
KATHRYN TOGGAS,

Plaintiffs,

v.

RRR, INC. d/b/a Maximum Resort Rentals,

Defendant.

**ORDER GRANTING PLAINTIFFS'
MOTION FOR JUDGMENT ON THE
PLEADINGS
AND
DENYING DEFENDANT'S MOTION TO
DISMISS**

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This declaratory judgment action is before the court on two motions: (1) Plaintiffs' motion for judgment on the pleadings, or in the alternative for summary judgment, and (2) Defendant's motion to dismiss. The parties submitted briefs in support and in opposition to the motions in advance of the hearing. The court has considered the memoranda and other documents submitted and the oral arguments of counsel presented at the December 9, 2014 hearing, and hereby grants Plaintiffs' motion and denies Defendant's motion as discussed more fully below.

PROCEDURAL BACKGROUND

This is a declaratory judgment action seeking an order by the court that a judgment entered against Plaintiffs on July 24, 2003 (the "Judgment"), has expired and has no active energy. Plaintiffs moved for judgment on the pleadings pursuant to Rule 12(c) or, in the alternative, for summary judgment pursuant to Rule 56 SCRPC, alleging that pursuant to S.C. Code Ann. § 15-39-30 the judgment was extinguished as a matter of law and had no further "active energy" as of July 24, 2013. Defendant moved to dismiss the declaratory judgment action based upon two arguments: (1) Plaintiffs lacked standing to bring the action due to the Plaintiffs' personal bankruptcy filings in which the Plaintiffs were both granted discharges, and (2) this court should decline to hear the

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Certified - A True Copy

Jerr Ann Rosoneau - Clerk of Court
Beaufort County, SC - Melissa Kilby

matter because a court in Washington, D.C. has already ruled on the issue in a preliminary order in a proceeding in that jurisdiction.

FINDING OF FACTS

The court finds that the material facts relevant to Plaintiffs' and Defendant's motions are as follows:

- (1) The subject Judgment was entered on July 24, 2003;
- (2) July 24, 2013 was ten years after the entry of the Judgment;
- (3) There are no pending efforts in South Carolina to execute on the Judgment;
- (4) July 24, 2013 passed almost a year and half ago;
- (5) Both of the Plaintiffs have received discharges in their separate bankruptcy proceedings;
- (6) The bankruptcy trustee has no property interest in this declaratory judgment action.

Defendant raised and argued facts relating to the merits of the underlying judgment. None of those facts are material or relevant in any way to the lifespan of a judgment under South Carolina law.

CONCLUSIONS OF LAW

Plaintiffs are entitled to a judgment on the pleadings (Rule 12(c)) or, in the alternative, summary judgment (Rule 56) because, pursuant to S.C. Code Ann. § 15-39-30, the judgment was extinguished and had no further "active energy" on July 24, 2013.

- I. Any execution upon the judgment had "active energy" for ten years from the date the judgment was entered and expired as a matter of law on July 24, 2013.

The time period within which to execute upon a South Carolina judgment is controlled by *S.C. Code Ann. §§ 15-39-20 and 15-39-30 (2005)*. Section 15-39-30 states as follows:

Issuance of executions; effective period.

Executions may issue upon final judgments or decrees at any time

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

According to the plain language of § 15-39-30, executions therefore have “active energy” for ten years after the date of the original entry of the judgment.

South Carolina courts have repeatedly held that a judgment is extinguished after the expiration of ten years from the date of entry. See *Hardee v. Lynch*, 46 S.E.2d 179, 183 (S.C. 1948) (noting that the effect of the 1946 Act repealing prior law on judgment executions, including the right to extend judgments beyond ten years, was to “utterly extinguish a judgment after the expiration of ten years from the date of entry”) (*emphasis added*); See also *Home Port Rentals, Inc. v. Moore*, 632 S.E.2d 862, 863 (S.C. 2006) (stating S.C. Supreme Court has “consistently held that under [§ 15-39-30], a judgment becomes stale and a judgment lien is extinguished after ten years.”)

As soon as a judgment becomes ten years old, the holder loses his or her status as a judgment creditor. See *Carr v. Guerard*, 616 S.Ed.2d 429, 430 (S.C. 2005). Even if an action is brought to enforce the judgment before the time expires, the judgment extinguishes if the ten-year period expires before the action is tried. See *Garrison v. Owens*, 189 S.E.2d 31, 33 (S.C. 1972) (holding judgment lien on real estate is absolutely extinguished after expiration of ten years from date of entry, and bringing action to enforce judgment lien will not preserve it beyond time fixed by statute if such time expires before action is tried). The only “narrow” exception to this rule is if the judgment creditor has completed all of its efforts under the South Carolina execution and Supplementary Proceedings (*S.C. Code Ann. §§ 15-39-310 – 15-39-490*) processes prior to the ten-year expiration date and is awaiting the issuance of an execution order by the court. See *Linda Mc Co., Inc.*, 703 S.E.2d at 505. The South Carolina Supreme Court’s decision

in *Linda Mc Co., Inc.* expressly reversed *Garrison* to the extent the holding in *Garrison* was inconsistent with *Linda Mc Co., Inc.*

In the present case, the South Carolina Judgment was entered on July 24, 2003. Therefore, on July 24, 2013 the South Carolina Judgment became utterly extinguished as a matter of law. Because the South Carolina Judgment is extinguished as a matter of law, Plaintiffs no longer owe any debts to RRR and RRR is no longer a judgment creditor of Plaintiffs.

II. The “narrow” holding in *Linda Mc Co., Inc. v. Shore*, 703 S.E.2d 499, 505 (S.C. 2010) does not extend the life of the Judgment here or change the analysis in section I, above.

In *Linda Mc Co.* the South Carolina Supreme Court created a “narrow” exception to the bright line rule regarding the utter extinguishment of a judgment after ten years. The Court stated in dictum that § 15-39-30 is not a statute of limitations, but operated like a statute of limitations *under the facts of that case*. The court further held that “when a party has complied with the applicable statutes, as [judgment creditor] did in this case, and is *merely waiting on a court’s order* regarding execution and levy, the ten-year limitation found in § 15-39-30 is extended to when the court finally issues an order.” *Id.* (*emphasis added*). The Court further stated: “[w]e want to stress that this is a narrow holding limited to facts similar to those at issue in this case.” *Id.* (*emphasis added*).¹

The facts of *Linda Mc Co.* bear no resemblance to the facts in this case. In *Linda Mc Co.* the judgment creditor had completed all collection efforts (including participating in a hearing before the master in equity) prior to the ten-year expiration of the judgment under § 15-39-30.

¹ *Linda Mc Co.* later states “if a party takes action to enforce a judgment within the ten-year statutory period of *active energy*, the resulting order will be effective even if issued after the ten-year period has expired.” *Id.* Although this statement appears to be more expansive than the “narrow holding,” it clearly relates back to the holding and would only apply in those instances involving facts similar to *Linda Mc Co.*, i.e., where the parties are merely waiting on the execution order when the ten-year statutory period expires. To apply a broader interpretation to this subsequent language would render meaningless the Court’s effort to “stress” how “narrow” the holding is.

The only act that remained to be done on the date of the ten-year expiration ~~was the issuance of the~~

~~order by the court.~~ The court then issued its order to execute and levy on assets of the judgment debtor one day after the ten year period had run. Under those limited facts, the Supreme Court held that the ten-year deadline should be extended. "To hold otherwise would put those trying to enforce their judgments at the mercy of the court system to conclude the matter within the ten-year period."

Id.

Here, Defendant has not complied with any of the applicable statutes in South Carolina to collect on its judgment. It is undisputed that there are no collection efforts pending in South Carolina. It is further undisputed that there has been no hearing on Supplementary Proceedings, and the parties are not awaiting an execution order from any court. And, perhaps most significantly, the Court in *Linda Mc Co.* extended the ten-year deadline by one day, whereas Defendant here seeks an indefinite extension because the ten-year deadline passed approximately one and a half years ago and the parties are not currently awaiting an order on collection.

Defendant argued that the ten-year expiration date should be extended because Plaintiffs have delayed Defendant's collection efforts. In support of this argument, Defendant accused Plaintiffs of filing meritless appeals on the underlying judgment. This is misleading and irrelevant. The underlying judgment resulted from a jury trial conducted in the Plaintiffs' absence. Plaintiffs argued that they did not receive notice of the jury trial, but the circuit judge denied their post-trial motions on that basis. Plaintiffs appealed the verdict. Although Plaintiffs' appeals were ultimately denied by the Court of Appeals and the Supreme Court, there is nothing in the record to suggest that the appeals were "meritless" or improper as implied by Defendant's argument. ~~In any event, as set forth below, the Plaintiffs' appeals did not prevent Defendant~~
~~from immediately pursuing collection of the judgment.~~

Moreover, the ten-year period that a judgment has active energy in South Carolina is not tolled by appeal(s). See *Wells ex rel. A.C. Sutton & Sons, Inc. v. Sutton*, 382 S.E.2d 14, 16 (Cl. App. 1989) (denying an appeal seeking to toll the ten-year life of a judgment due to the judgment debtor's appeals). The South Carolina Court of Appeals in *Wells* set forth its analysis for denying the appeal and the state's public policy as follows:

In affirming the trial court, this court emphasizes it does not condone efforts by judgment debtors to secrete assets to avoid payment of judgments. Likewise, *this court does not criticize appropriate use of the appellate process to obtain review of orders or decisions issued by the circuit court.* The reason for our holding is simply our recognition of the public policy of this State as expressed in the statutes to limit the life of judgments to ten years. *A judgment creditor should recognize this policy and proceed expeditiously to conclude his efforts to collect his judgment within the ten year period.*

Id. (emphasis added).

In fact, Defendant has never instituted any collection efforts in South Carolina on the judgment despite its right to do so 10 days after the jury verdict was entered as a judgment on July 24, 2003. See *Rule 62(a) SCRPC*. Defendant could have initiated efforts to collect on the judgment as early as August 3, 2003 but chose not to do so. Had Defendant initiated judgment collection efforts in August 2003, Plaintiffs would have had to post a *supersedeas* bond to stay those execution proceedings during their appeals. See *Rule 62(d) SCRPC*. Instead, Plaintiff took no action and, therefore, failed to proceed expeditiously to conclude its efforts to collect its judgment within the ten-year period. *Wells ex rel. A.C. Sutton & Sons* demonstrates that Defendant cannot complain now that the judgment has expired when it failed to pursue its rights during the appeals, which did not toll the ten-year life span of Plaintiff's judgment.

Defendant is currently pursuing a fraudulent transfer action in the District Court for the District of Columbia.² However, RRR is not actively trying to execute upon the South Carolina judgment in South Carolina, which is necessary to trigger the “narrow” exception to the statute created by the Supreme Court in *Linda Mc Co.*

Therefore, pursuant to § 15-39-30 the judgment expired on July 24, 2013 and there is no basis upon which Defendant can argue that the “active energy” of the judgment has been extended.

III. The respective bankruptcy filings of the Plaintiffs have been discharged and otherwise have no impact on this declaratory judgment action.

Defendant argued that Plaintiffs lack standing to bring this declaratory judgment action in South Carolina. The court disagrees. First, as set forth in the Findings of Fact, both of the Plaintiffs have received discharge orders in their respective bankruptcy proceedings. Second, the trustee has confirmed in writing that he claims no property interest in this declaratory judgment action. Third, even if the Plaintiffs had not obtained discharges and the bankruptcy trustee not disclaimed any interest in this action, this declaratory judgment action is not an asset or property interest of the Plaintiffs’ bankruptcy estates. In fact, the “interest” at stake in this declaratory judgment is the interest of a creditor (the Defendant) and not the bankruptcy debtors (Plaintiffs). In contrast, each of the cases cited by Defendant deals with situations where the debtor has a property interest in the underlying action or cause of action. Here, Plaintiffs seek merely to receive a declaratory judgment as to whether Defendant’s claim against them is valid.

Therefore, Defendant’s argument in support of its motion to dismiss that the Plaintiffs lack standing to bring this declaratory judgment in South Carolina lacks merit and is hereby rejected.

² A fraudulent transfer action pending in D.C. is not an execution proceeding that would trigger the “narrow” exception under *Linda Mc Co.*

IV. An interim order issued by a judge in Washington D.C. has no impact on this court's decision on whether a South Carolina judgment has been extinguished as a matter of law.

Defendant argues that this court should decline to hear the declaratory judgment action because a judge in Washington D.C. has already decided the issue against the Plaintiffs. Defendant asks this court to use its discretion to decline to hear the declaratory judgment action and defer to the Washington, D.C. court on this matter of South Carolina law.

Plaintiffs assert that this court, rather than a Washington D.C. judge, should determine whether, under South Carolina law, a South Carolina judgment has expired as a matter of law. This court agrees. The order issued by the Washington D.C. judge was an interim order ruling on Plaintiffs' motion to dismiss in the Defendant's fraudulent conveyance action against them. That decision is not binding upon this Court, nor does Defendant make that argument. Therefore, this Court will not defer to the Washington, D.C. judge's interim ruling on the issue presented.

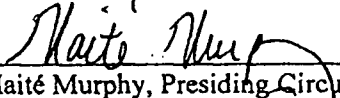
THEREFORE, IT IS HEREBY ORDERED THAT the Plaintiffs' motion for judgment on the pleadings, or in the alternative for summary judgment, is hereby granted.

IT IS HEREBY FURTHER ORDERED THAT Defendant's motion to dismiss is hereby denied.

IT IS HEREBY FURTHER ORDERED THAT, pursuant to S.C. Code Ann. § 15-39-30, the Judgment was extinguished and had no further "active energy" on July 24, 2013, and the Beaufort County Clerk of Court is directed to mark the Judgment expired and extinguished in the Judgment Roll of Beaufort County.

IT IS SO ORDERED.

January 26, 2015
St. George, South Carolina



Maité Murphy, Presiding Circuit Court Judge

ORDERED, that the Plaintiff, Renee McMasters, may seek levy and execution upon the residence located at 1450 Jahnz Avenue Summerville, SC as more particularly described on the attached Exhibit "A" in satisfaction or partial satisfaction of the judgement she obtained against Howard W. Charpia in Case Number 2002-CP-18-932; and it is further

ORDERED, that Summary Judgement is hereby granted to the Plaintiff, Renee McMasters, as to the Defendant's Counterclaim,

AND IT IS SO ORDERED!

1/3 James C. Williams, Jr.

James C. Williams, Jr., Judge

Orangeburg, South Carolina

This 6 day of February, 2006

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

RENE MCMASTERS now known)
as RENE MCMASTERS)
RONAGHAN)

Plaintiff,)

H. WAYNE CHARPIA a/k/a)
HOWARD W. CHARPIA)
and JODY E. CHARPIA)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
CASE NO.: 2009-CP-18-2200

ORDER OF FORECLOSURE AND SALE

This action was brought by Rene McMasters, now known as Rene McMasters Ronaghan, against the Defendants for the purpose of foreclosing a judgment lien relative to real estate located in Dorchester County, South Carolina.

An Order Granting a Compulsory Order of Reference was issued by me on April 27, 2010 and filed in the Clerk's office on April 28, 2010. The Defendant, H. Wayne Charpia, appealed the Order Granting Compulsory Order of Reference to the Court of Appeals. By order filed on October 11, 2011, the Court of Appeals affirmed the Compulsory Order of Reference. Thereafter, the matter was referred to the Honorable Maite Murphy, Master-in-Equity for Dorchester County. By Order dated April 10, 2012, Maite Murphy recused herself from hearing this matter and the action was remanded to the Circuit Court.

The case came before me for trial on July 30, 2012 during a non-jury term of court in St.

George, SC

of the RMC for Dorchester County in Plat Cabinet A, slide 173. The Property has the location, dimensions, and butts and bounds shown on the plat. Lot 22-B being the southern half of Lot 22, which said Lot 22 is found on a plat made by Woodrow W. Leland, R.L.S. dated May 24, 1956, and recorded in the RMC Office for Dorchester County in Plat Book 11 at page 200.

SUBJECT to any covenants, conditions, restrictions, and easements now of record and to the lien of current year real property taxes.

TMS# 145-13-02-011

AND IT IS SO ORDERED!



Edgar Warren Dickson
Circuit Court Judge of First Judicial Circuit

Orangeburg, South Carolina
October 29, 2012.

Aug. 6, 2009

CISA & DODDS, LLP
ATTORNEYS AND COUNSELORS AT LAW
858 Lowcountry Boulevard, Suite 101
Mt. Pleasant, South Carolina 29464
Telephone (843) 881-6530 Fax (843) 881-5433

FRANK M. CISA
JOHN J. DODDS, III
ROBERT S. DODDS

frank@cisadodds.com
john@cisadodds.com
robert@cisadodds.com

August 4, 2009

Dorchester County Sheriff's Office
Attn: Lt. Weathers
100 Sears Street
St. George, SC 29477

2009 AUG - 6 AM 10:10
DORCHESTER COUNTY
SHERIFF'S OFFICE
COMMUNICATIONS

RE: Rene' McMasters vs. Charpia Residential, LLC and Howard W. Charpia
Case No.: 02-CP-18-932
Our file: 03-460

Dear Lt. Weathers:

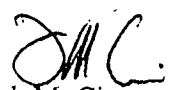
I would appreciate you cancelling the Sheriff's sale relative to H. Wayne Charpia's property located 1450 Jahnz Avenue, Summerville, SC, as I have decided that I am going to foreclose the judgment lien and request the Master-in-Equity to sell the property. Since Mr. Charpia conveyed out half of his interest in the property, I think this is be the best way proceed.

HC

I greatly appreciate all your help and assistance.

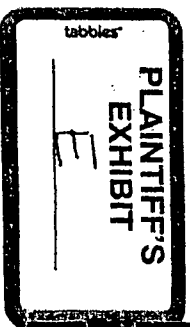
With kindest regards, I am

Very truly yours,



Frank M. Cisa

FMC/alp



STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO.: 02-CP-18-932

RENE McMASTERS,)
)
Plaintiff,)

WRIT OF EXECUTION

CHARPIA RESIDENTIAL, LLC)
and, HOWARD W. CHARPIA,)
individually,)
)
Defendants.)

TO: DORCHESTER COUNTY SHERIFF

Judgment was rendered against the Defendant, Howard W. Charpia, in the above action in the Court of Common Pleas for Dorchester County between Rene' McMasters, Plaintiff, and Howard W. Charpia, Defendant, in favor of said Plaintiff in the amount of One Hundred Ninety-One Thousand Six Hundred 00/100 (\$191,600.00) Dollars, which Judgment was filed in the Clerk of Court's Office for Dorchester County on August 5, 2004 and bears interest at 12 % per annum thereafter. Interest accrues of and from August 5, 2004 in the amount of \$62.99 per day.

YOU ARE THEREFORE DIRECTED to satisfy the said judgment out of the personal property of the judgment debtors within your county and if sufficient personal property cannot be found, then out of the real property in your county belonging to such judgment debtors on the day when the said judgment was docketed in your county, or at any time thereafter and duly return this execution, according to law, to the Clerk of Court of Common Pleas for the County of Dorchester.

WITNESS Cheryl Graham, as Clerk of said Court, at Dorchester, South Carolina, this

2 day of September, 2004.

CISA & DODDS, LLP



Frank M. Cisa
622 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464
(843) 881-3700
Attorney for the Plaintiff

September 1, 2004

ATTEST:



CLERK OF COURT FOR DORCHESTER COUNTY

Dorchester County Sheriff's Office
Ray Nash, Sheriff
100 Sears Street
St. George, South Carolina 29477

State of South Carolina
County Of Dorchester

Case Number: 2002CP18-932

Plaintiff: RENE McMASTERS

- VS -

Defendant: CHARPIA RESIDENTIAL, LLC & HOWARD W CHARPIA

AFFIDAVIT OF EXECUTION

Clerk of Court:

EXECUTION "NULLA BONA". I hereby certify that after diligent search I have been unable to locate any property in the name of the defendant on which to levy and I request that you please NULLA BONA on the above stated file as of this date.

JUDGEMENT INFORMATION:

Judgement Amount:	\$191,600.00
Interest:	\$3,401.46
Sheriffs Comm:	\$5,974.58
Judgement Total:	\$200,976.04

Amount Collected:	\$0.00
Ending Balance:	\$200,976.04

NULLA BONA

09-28-04
Ray Nash, Sheriff

Nulla Bona was issued for the reason indicated below:

- (1) Could not locate defendant
- (2) No Attachable Property
- (3) Under Bankruptcy
- (4) Lien(s)
- (5) Other (Specified)
- (6) Pending title research
- (7) Pending Property research
- (8) Pending fees received
- (9) Mortgage

Nulla Bona per Attorney - under appeal

Notary Statement

SWORN to before me on this the 28th day of September, 2004.

Peppy M. Judy
Notary Public For The State of South Carolina

My Commission Expires 03/24/2009

Joseph Blake Weather

#2

8-29-08

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO.: 02-CP-18-932

RENE McMASTERS,)
)
Plaintiff,)

vs.)

WRIT OF EXECUTION

CHARPIA RESIDENTIAL, LLC)
and, HOWARD W. CHARPIA,)
Individually,)
)
Defendants.)

TO: THE DORCHESTER COUNTY SHERIFF

Judgment was rendered against the Defendant, Howard W. Charpia, in the above action in the Court of Common Pleas for Dorchester County between Rene' McMasters, Plaintiff, and Howard W. Charpia, Defendant, in favor of said Plaintiff in the amount of One Hundred Ninety-One Thousand Six Hundred 00/100 (\$191,600.00) Dollars, which Judgment was filed in the Clerk of Court's Office for Dorchester County on August 5, 2004 and bears interest at 12 % per annum thereafter. Interest accrues of and from August 5, 2004 in the amount of \$62.99 per day.


YOU ARE THEREFORE DIRECTED to satisfy the said judgment out of the personal property of the judgment debtors within your county and if sufficient personal property cannot be found, then out of the real property in your county belonging to such judgment debtors on the day when the said judgment was docketed in your county, or at any time thereafter and duly return this execution, according to law, to the Clerk of Court of Common Pleas for the County of Dorchester.

28

WITNESS Cheryl Graham, as Clerk of said Court, at Dorchester, South Carolina, this

29 day of August, 2008.

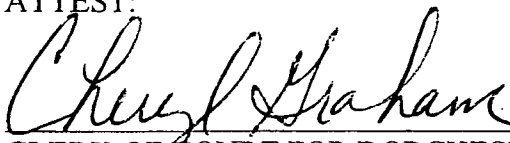
CISA & DODDS, LLP



Frank M. Cisa
622 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29464
(843) 881-3700
Attorney for the Plaintiff

August 29, 2008

ATTEST:



CLERK OF COURT FOR DORCHESTER COUNTY

Dorchester County Sheriff's Office

L C KNIGHT, SHERIFF

100 Sears Street

St. George, South Carolina 29477

MAY 4, 2009
JUNE 3, 2009
SALES

RECORDED
MAY 19 2010 11:25 AM

State of South Carolina
County Of Dorchester

Case Number: 2002CP18-932

Plaintiff: RENE McMASTERS

- VS -

Defendant: CHARPIA RESIDENTIAL,LLC & HOWARD W CHARPIA

AFFIDAVIT OF EXECUTION

Clerk of Court:

EXECUTION "NULLA BONA". I hereby certify that after diligent search I have been unable to locate any property in the name of the defendant on which to levy and I request that you please NULLA BONA on the above stated file as of this date.

JUDGEMENT INFORMATION:

Judgement Amount:	\$191,600.00
Interest:	\$133,097.87
Sheriffs Comm:	\$13,756.38
Judgement Total:	\$338,454.25
Amount Collected:	\$0.00
Ending Balance:	\$338,454.25

NULLA BONA
5-19-2010
L. C. Knight Sheriff

Nulla Bona was issued for the reason indicated below:

- (1) Could not locate defendant
- (2) No Attachable Property
- (3) Under Bankruptcy
- (4) Lien(s)
- (5) Other (Specified)
- (6) Pending title research
- (7) Pending Property research
- (8) Pending fees received
- (9) Mortgage

per attorney Cisa Nulla Bona

Notary Statement

SWORN to before me on this the 19th day of May, 2010.

Peggy M Glenn
Notary Public For The State of South Carolina

My Commission Expires 03/03/2019

Joseph Blake Weather

[Handwritten mark]

SECTION 18-9-130. Effect of notice of appeal on execution of judgment; sale of defendant's property; appeal in civil action involving signatory of Master Settlement Agreement.

(A)(1) A notice of appeal from a judgment directing the payment of money does not stay the execution of the judgment unless the presiding judge before whom the judgment was obtained grants a stay of execution. If the presiding judge grants a stay of execution and requires a bond or other surety to guarantee the payment of the judgment pending the appeal, the amount of the bond or other surety may not exceed the amount of the judgment or:

(a) twenty-five million dollars, whichever is less, for a business entity that employs more than fifty persons and has gross revenues exceeding five million dollars for the previous tax year; or

(b) one million dollars, whichever is less, for all other entities or individuals.

(2) A plaintiff may not enforce a sale of property after a notice of appeal is filed without giving an undertaking or bond to the defendant, with two good sureties, in double the appraised value of the property or double the amount of the judgment, conditioned to pay all damages the defendant may sustain by reason of the sale in case the judgment is reversed. The plaintiff in such a case may not proceed with a sale of defendant's property if the defendant enters into an undertaking, with good sureties, in double the appraised value of the property or the amount of the judgment, to pay the judgment with legal interest and all costs and damages the plaintiff may sustain by reason of the appeal or to produce the property levied on and submit to the sale if the judgment is confirmed.

(B)(1) The appeal of a judgment awarding relief in a civil action, under any legal theory, involving a signatory of the Master Settlement Agreement, as defined in Section 11-47-20(e), or a successor to or affiliate of a signatory to the agreement, automatically stays the execution of that judgment.

(2) The stay described in this subsection is effective upon the filing of the notice of appeal and during the entire course of appellate review of the judgment.

HISTORY: 1962 Code Section 7-412; 1952 Code Section 7-412; 1942 Code Section 782; 1932 Code Section 782; Civ. P. '22 Section 647; Civ. P. '12 Section 385; Civ. P. '02 Section 346; 1870 (14) 360; 1873 (15) 501; 2004 Act No. 216, Section 2, eff April 26, 2004; 2011 Act No. 52, Section 6, eff January 1, 2012.

RULE 62

STAY OF PROCEEDINGS TO ENFORCE A JUDGMENT

(a) Automatic Stay; Exceptions--Injunctions, Receivership, and Accountings. Except as stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry. Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action, or a judgment or order directing an accounting, shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subdivision (c) of this rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.

(b) Stay on Motion for New Trial or for Judgment. In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).

(c) Injunction Pending Appeal. When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

(d) Stay Upon Appeal. When an appeal is taken, a party, by giving a supersedeas bond, may obtain a stay subject to the exceptions contained in subdivision (a) of this rule and the South Carolina Appellate Court Rules. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the supersedeas as the case may be. The stay is effective when the supersedeas bond is approved by the court.

(e) Stay in Favor of the State or Agency Thereof. When an appeal is taken by the State or an officer or agency thereof or by direction of any department of the Government of the State and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

(f) Stay According to Statute. The provisions of this Rule 62 shall be considered as cumulative to and not superseding the right of any party to a stay of execution accorded by statute; except that the time limits and provision for supersedeas bond provided by this Rule 62 shall apply in all proceedings for stay of execution or order of supersedeas.

(g) Power of Appellate Court Not Limited. The provisions in this rule do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered. An application for such relief should first be made to the trial court under Rule 62(c) or (d), but when such application is not practicable it may first be made to an appellate court or a judge or justice thereof.

(h) Stay of Judgment as to Multiple Claims or Multiple Parties. When a court has ordered a final judgment under the conditions stated in Rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

Note:

32

This Rule 62 is drawn from the Federal Rule. Rule 62(a) provides for an automatic stay of execution for 10 days in all but injunctive actions or those involving receiverships or accounting. Stays in those proceedings, as well as motions for

The Supreme Court of South Carolina

Rene' McMasters,

Plaintiff,

Charpia Residential,

v.

Defendant.

Dorchester County
2002-CP-18-0932

FILED-RECORDED
2008 JUN 10 PM 2:10
CHERYL E. SPAIN
CLERK OF COURT
DORCHESTER COUNTY

Ruby M. Byrd,

Plaintiff,

Palmetto Traditional Homes, LLC,

v.

Defendant.

Dorchester County
2006-CP-18-1626R

Sherwin Williams Company,

Plaintiff,

Martin A. Giorgi d/b/a Excellence Painting,

v.

Defendant.

Dorchester County
2008-CP-18-1771

City of Charleston, Dorchester
Council of Governments,

Plaintiff,

Wachovia National Bank,

v.

Defendant.

Dorchester County
2007-CP-18-0336

D. R. Horton, Inc.,

Plaintiff,

Carolina Drywall, Inc.,

v.

Defendant.

Dorchester County
2007-CP-18-1805

[REDACTED]
[REDACTED]

v. Plaintiff,
Defendant.

Dorchester County
[REDACTED]

[REDACTED]
[REDACTED]

v. Plaintiff,
Defendant.

Dorchester County
[REDACTED]

[REDACTED]
[REDACTED]

v. Plaintiff,
Defendant.

Dorchester County
[REDACTED]

[REDACTED]
[REDACTED]

v. Plaintiff,
Defendant.

Dorchester County
[REDACTED]

ORDER

The above matters are pending in Dorchester County. The Honorable Diane S. Goodstein, Chief Judge for Administrative Purposes, has recused herself and cannot act as Chief Judge for Administrative Purposes to administer these cases. Therefore,

IT IS ORDERED that the Honorable Perry M. Buckner be assigned as Chief Judge for Administrative Purposes in the First Judicial Circuit for the sole purpose of

administering these cases and preparing them for trial.

IT IS SO ORDERED.

IT IS SO ORDERED

S/Jean Hofer Toal

JUNE 9 2008

JUNE 9, 2008

Columbia, South Carolina

Jean Hofer Toal
Chief Justice

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

OCT 25 2016

APPEAL FROM DORCHESTER COUNTY
COURT OF COMMON PLEAS

SC Court of Appeals

EDGAR W. DICKSON , FIRST CIRCUIT

Case # 2009-CP-18-2200

RENE McMASTERS (RONAGHAN).....Respondent

vs.

HOWARD W. CHARPIA and JODY E. CHARPIA.....Appellants

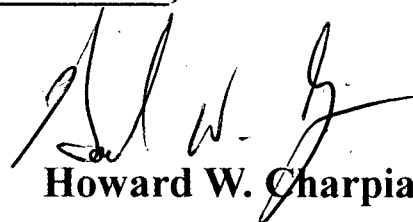
PROOF OF SERVICE

I, Howard W. Charpia , hereby certify that I mailed the Motion /
Petition for Rehearing to :

SC Court of Appeals
1220 Senate Street
Columbia , SC 29201

Attorney Frank M. Cisa
858 Lowcountry Blvd. Suite 101
Mt. Pleasant, SC 29464

Date mailed 10-24, 2016


Howard W. Charpia