

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

RECEIVED

APPEAL FROM DORCHESTER COUNTY  
COURT OF COMMON PLEAS

DEC 20 2016

S.C. SUPREME COURT

JUDGE EDGAR DICKSON , 1<sup>st</sup> Circuit

CASE # 2009-CP-18-2200

RENE McMASTERS.....Respondent

Vs.

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

WRIT OF CERTIORARI

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

Attorney Frank M. Cisa , for Respondent

PRO SE LITIGANTS;

*(Here is a great tool for you Pro se pioneers. The courts both on the state and federal level can not dismiss your case just because you didn't articulate yourself well enough or failure to cite proper legal authority. The link is at the bottom to the 15-page article. Here is just some of the info.)*  
*Connecticut DCF Watch*

Pro se litigants' court submissions are to be construed liberally and held to less stringent standards than submissions of lawyers. If the court can reasonably read the submissions, it should do so despite failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or litigant's unfamiliarity with rule requirements. *Boag v. MacDougall*, 454 U.S. 364, 102 S.Ct. 700, 70 L.Ed.2d 551 (1982); *Estelle v. Gamble*, 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976)(quoting *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957)); *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972); *McDowell v. Delaware State Police*, 88 F.3d 188, 189 (3rd Cir. 1996); *United States v. Day*, 969 F.2d 39, 42 (3rd Cir. 1992)(holding pro se petition cannot be held to same standard as pleadings drafted by attorneys); *Then v. I.N.S.*, 58 F.Supp.2d 422, 429 (D.N.J. 1999).

The courts provide pro se parties wide latitude when construing their pleadings and papers. When interpreting pro se papers, the Court should use common sense to determine what relief the party desires. *S.E.C. v. Elliott*, 953 F.2d 1560, 1582 (11th Cir. 1992). See also, *United States v. Miller*, 197 F.3d 644, 648 (3rd Cir. 1999)

(Court has special obligation to construe pro se litigants' pleadings liberally); *Poling v. K.Hovnanian Enterprises*, 99 F.Supp.2d 502, 506-07 (D.N.J. 2000).

Defendant has the right to submit pro se briefs on appeal, even though they may be inartfully drawn but the court can reasonably read and understand them. See, *Vega v. Johnson*, 149 F.3d 354 (5th Cir. 1998). Courts will go to particular pains to protect pro se litigants against consequences of technical errors if injustice would otherwise result. *U.S. v. Sanchez*, 88 F.3d 1243 (D.C.Cir. 1996).

<http://www.zorza.net/JudicialTech.JJWi03.pdf>



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

~~December 15, 2016~~

Howard W. Charpia  
1450 Jahnz Ave.  
Summerville SC 29485

Re: Rene McMasters v. H. Wayne Charpia  
Appellate Case No. 2013-002311

Dear Mr. Charpia:

The Court received your correspondence dated November 25, 2016. As you know from phone conversations with my staff, the next step for review of your appeal is the filing of a petition for writ of certiorari with the Supreme Court, as provided by Rule 242 of the South Carolina Appellate Court Rules (SCACR). If no petition is filed, we will send the remittitur as required by Rule 221(b), SCAR. ~~We do not have a copy of an "execution" as requested,~~ so we are returning your \$5.00 check to you. Finally, it is our Court policy to provide the trial judge a copy of our opinions. We hope this letter satisfactorily addresses your concerns.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jody E. Charpia".

CLERK

cc: Jody E. Charpia  
Frank M. Cisa, Esquire

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

APPEAL FROM DORCHESTER COUNTY  
COURT OF COMMON PLEAS

EDGAR W. DICKSON , FIRST CIRCUIT

---

Case # 2009-CP-18-2200

---

RENE McMASTERS (RONAGHAN).....Respondent

vs.

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

---

CERTIFICATION

---


I, Howard W. Charpia , hereby certify that I made a Motion for Rehearing filed on October 26 , 2016 and was ruled upon by the Court on / filed November 17 , 2016 .

SC Court of Appeals  
1220 Senate Street  
Columbia , SC 29201

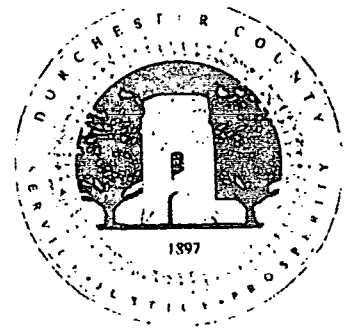
Attorney Frank M. Cisa  
858 Lowcountry Blvd. Suite 101  
Mt. Pleasant, SC 29464

Supreme Court  
1231 Gervais Street  
Columbia , SC 29201

Date mailed 12-19 , 2016

  
Howard W. Charpia

DORCHESTER COUNTY CLERK OF COURT  
Cheryl Graham, Clerk of Court  
5200 East Jim Bilton Blvd.  
St. George, SC 29477



December 6, 2016

H. Wayne Charpia  
1450 Jahnz Ave.  
Summerville, SC 29485

Re: Rene' McMasters vs. Charpia Residential, LLC  
Case No: 2002-CP-18-00932

Rene McMasters vs. H Wayne Charpia, et al.  
Case No: 2009-CP-18-2200

FILED-RECORDED  
2016 DEC -6 PM 1:10  
DORCHESTER COUNTY  
CLERK OF COURT  
CHERYL GRAHAM

Mr. Charpia:

Pursuant to your request, please let this letter confirm that there are no pending Writ of Executions in the above-referenced cases.

Sincerely yours,

A handwritten signature in cursive script that reads "Cheryl Graham".

Cheryl Graham  
Clerk of Court

## STATEMENT OF THE CASE

Charpia's address this Appeal from a hearing held January 9, 2013 .  
The Charpia's were not notified of this hearing which was agreed upon by  
the Appellate Court . *See # 2 Opinion 2016-UP-423*

The Appellate Court stated that " the circuit Court had already held  
a July 30 , 2012 hearing on the foreclosure action that the Charpia's attended,  
and it issued an order granting foreclosure . "

Since the Appellate Court raised this argument in their opinion , the  
Charpia's will address this in this petition .

The Charpia's *were not* on the trial roster for July 30 , 2012 . *See roster*  
"Notice of Case Scheduling" from the Clerk's office did not give nor  
site the grounds to be argued or addressed . *See " Notice of Case Scheduling"*

Respondent's letter to the Charpia's dated may 24 , 2012 did not give nor  
site the grounds to be argued or addressed .

The Appellate Court sites Webster v. Clanton in it's opinion # 423 , " It  
is a fundamental doctrine of the law that a party whose rights are to be affected  
by a judgment must have a day in court and without due notice a Court has  
no jurisdiction to adjudicate " , etc .

Appellant Howard W. Charpia challenged the Court and Judge Dickson on the grounds before it to be heard on July 30 , 2012 . *See transcript page 9*

**APPENDIX**

Judge Dickson abused his discretion preceding with the hearing July 30 .

Judge Dickson signed a SCRCF Form 4C on October 29 , 2012 with his signed order of “ Foreclosure and Sale “ , ending this case . *See form 4C*

Respondent filed their action on August 10 , 2009 and the Court issued it's order to sell the property on July 30 , 2012 . This order was signed on October 29 , 2012 by Dickson along with the Form 4C . *See attached*

Respondent had from July 30 , 2012 to ” execute” on it's judgment and failed to take any action from July 30 , 2012 til August 5, 2014 ( 10 year ) .

South Carolina Courts have held that the Respondent “ cannot complain now that the judgment has expired when they failed to pursue their rights during the appeals “ raised by the Appellant . *See Federal Judge Beryl Howell's Order ; civil action # 11-1622 (BAH) attached*

The Appellate Court stated “ the judgment underlying the foreclosure is void because ten years has expired without execution. “ This argument *was not* presented to the trial Court *nor* the Appellate Court in the Charpia’s Appeal . Charpia’s will address this in their argument in support of the petition . *Rule 242 (d) (4)*

Appellate Court states that the Circuit Court properly exercised jurisdiction .

*See # 2 opinion 2016-UP-423*

Charpia will address this in their argument in support of the petition .

*See Justice Jean Toal’s Order of June 2008*

APPENDIX  
PAGE 3 (S)

## QUESTIONS FOR REVIEW

1. Did the Court violate the Appellant's "due process". *see Initial Brief Of Appellant*

Appellate Court 's opinion ( 2 ) ; "It is a fundamental doctrine of the Law that a party whose rights are to be affected by a judgment must have a day in Court , etc ". *see opinion 2016-UP-423 ( 2 )*

Appellate Court 's opinion ( 2 ) ; Further , the January 9 ,2013 hearing consisted primarily of discussion about whether the Charpia's received notice and the Circuit Court's order did not indicate it considered anything presented at the hearing . *See transcript from January 9, 2013*

2. Did the Appellate Court err in it's opinion 2016-UP-423 ?

The Court of Appeal's opinion 2016-UP-423 , dated October 12, 2016 raises questions to the judgment's active energy and "executions" on judgments. The Court sites Linda Mc Co , Inc v. Shore . *Opinion 26878*

Chief Justice Pleicones and Justice Beatty dissented in Linda Mc Co , Inc V. Shore . *see Opinion 26878 15-39-30*

In Linda Mc Co , Inc. v Shore , II Section 15-39-30 ; The Court of Appeals held this argument was not presented to the trial Court and was not preserved for appellate review .

Appellant's judgment and it's active energy *was not* presented to the Circuit Court for argument . Said subject matter *was not* in the Initial Brief , the Record on Appeal , the Respondent's Brief nor their Final Brief's .

3. Did the Appellate Court err in it's jurisdiction ruling ?

Chief Justice Jean Toal signed an Order in June 2008 , transferring the Case to Judge Perry Buckner . *See Toal's order*

## ARGUMENT IN SUPPORT OF PETITION

1. Charpia's ( Appellant ) did not have proper notice of the scope of the hearing on July 30 , 2012 . *Murdock v. Murdock 338 S.C. 322 (1999)*

Charpia's were not on the Roster for July 30 , 2012 . *See roster Pages 11, 12, 14 (s) , 4 (s) Appendix*

Respondent *did not* file a Motion for a Foreclosure Hearing pursuant to Rule 7 (b) (1) . Respondent failed to follow the statutory rule .  
*See page 71 Appendix*

The "Due Process" clause demands " notice reasonably calculated under all circumstances , to apprise parties of the pendency of the action and afford them the opportunity to present their objections . " *Webster v. Clanton 259 S.C.*

Charpia's *were not* notified of the hearing on January 9, 2013 .  
*See # 2 of Opinion 2016-UP-423 / pages 8, 9, 10 Appendix / transcript pg 5 (s)*

Appellate Court states in their opinion 2016-UP-423 " Further , the January 9, 2013 hearing consisted of discussion , etc. AND *the circuit Court's order did not indicate it considered anything presented at the hearing . "*  
*See transcript from January 9 , 2013 page 5 (s) Appendix*

The Court ( Judge Dickson ) and the Respondent's Attorney (Cisa) did discuss and brought forth argument on Charpia's Motions .

*See transcript pages 5 (s)*

Judge Dickson's correspondence of January 10 , 2013 states that the Court feels it no longer has jurisdiction to hear Motions in this case pursuant to Charpia's appeal , then with his next breath rules on Charpia's two Motions in which this appeal is based upon . *Page 8 Appendix*

Rule 62 (d) SCRCP and SC Code 18-9-130 (a) (1) (2) ; A notice of Appeal from a judgment does <sup>NOT</sup> "stay" the execution of the judgment unless the Respondent ( Defendant ) post a *supersedes* bond . *pgs. 1 , 2 Appendix*

No *supersedes* bond was posted by Appellant nor Respondent .

2. The Appellate Court's opinion 2016-UP-423 # 1 , states " we find the judgment underlying the foreclosure was not void because McMasters sought to enforce it within the 10 year period ."

If the Supreme Court entertains this argument , I will address this *now* in this Petition .

This subject matter , the 10 year active energy was not presented to the Circuit Court on July 30 , 2012 nor January 9 , 2013 . *Linda Mc Co v. Shore*

The Court of Appeals held this argument was not presented to the trial Court and was therefore not preserved for appellate review . *Linda Mc Co*

**Opinion 2016-UP-264 Deutsche Bank v. Morrow , Pursuant to Rule 220(b) ;**

*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 review.*

see page 53 , 54 , 55 Appendix

**Judgment was rendered on August 5, 2004 namely the ten year active energy was extinguished on August 5, 2014 .**

**A “ narrow exception “ exists “ if the judgment creditor has completed all efforts under the South Carolina *execution* and Supplementary proceedings processes prior to the 10 year expiration date and is awaiting the issuance of an execution order by the Court .**

**The Court on July 30 , 2012 *ordered* the property to be sold by the Clerk of Court for Dorchester County , not the Sheriff’s office . Respondent had from July 30 , 2012 until August 5 , 2014 to “execute” on said judgment. See pages 59 ,60, 61 Appendix....reduced for ease of reading**

**Respondent failed to follow the applicable statutes in South Carolina to collect on it’s judgment from July 30 , 2012.**

**Respondent cannot blame the Appeal process for their dilatory actions not to enforce Judge Dickson’s order of July 30 , 2012 .**

**An appeal does not “stay” the execution of a judgment pursuant to Rule 62 , SCRCF and SC Code 18-9-130 (a)(1) (2) . *Pages 2 , 1 Appendix***

Section 15-39-30 is a statute of repose . The Appellate Court has repeatedly stated that a statute of repose is not tolled for any reason .

*Langley v. Pierce* 313 S.C. per : Judge Donald W. Beatty

Chief Justice Costa M. Pleicones in *Linda Mc Co v. Shore* sites SC Code 15-39-130 , that a judgment can not be enforced after 10 years.

Justice Beatty and Justice Pleicones agree with the enforcement of 15-39-30 , thus ending the active energy of a judgment after 10 years.

Chief Justice Pleicones and Justice Beatty concur on Issues 1 , 3, 4, 5, 6 & 7 AND dissent on issue #2 ; 15-39-30 in *Linda Mc. Co. v. Shore*

*Opinion # 26878*

3. Present day precedence has been set by Federal Court Judge Beryl A. Howell in civil action # 11-1622 (BAH) dated April 13 , 2015 and First Circuit Court Judge Maite' Murphy in civil action # 2014-CP-07-2016 Dated January 26 , 2015 . see *Toggas v. RRR , Inc* See page 6 (s) Appendix

Both of the above cases and Orders address 15-39-30 , the active energy and extinguishments of judgments , namely ten years . *Both cases site*

*Linda Mc. Co., Inc v. Shore* 390 S.C. 2010 in which both Judges agree that any Respondent ( Plaintiff ) must “ execute “ upon a judgment within the 10 year active energy applicably statutes.

*See Judge Beryl Howell's order in “ argument in support of petition”.*

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 “. see *Garrison v. Owens* , 258 S.C. ( 1972 )

4. Judgment against Howard W. Charpia and Charpia Residentials LLC was rendered in Case # 2002-CP-18-932 .

There are no active or pending collection efforts to “execute” on the judgment by the Respondents in the above named case.

*See letter from Clerk in “ argument in support of petition ” dated 12-6-16*

The “ Foreclsoure on a Judgment Lien ” is filed in another case , Case # 2002-CP-18-2200 , against Howard W. Charpia and Jody E. Charpia .

Any and all collection efforts / “executions “ should have been filed and presented to the Court under case # 2002-CP-18-932 .

Respondent did not oppose the Appellant’s Petition for Rehearing .

Pursuant to Rule 240 (e) .

**RE: FW: FW: New Civil Action  
2009-CP-18-2200**

Thursday, January 10, 2013 2:38 PM

From:

"Carolyn Ayer" <CAyer@dorchestercounty.net> [Add sender to Contacts](#)

To:

"HWayne CHARPIA" [charpia13@bellsouth.net](mailto:charpia13@bellsouth.net)

Cc: [frank@cisadodds.com](mailto:frank@cisadodds.com), "Becky Stevens" <BStevens@dorchestercounty.net>

Wayne,

After checking, it seems we had a technical error your email was entered under your name instead of your name as pro se, and that seems to be why you didn't get notice after checking with IT Dept. I will talk to Judge Dickson and get back to you.

JANUARY 9, 2013

Carolyn Ayer  
Deputy/Civil Court Coordinator  
Dorchester County  
5200 East Jim Bilton Blvd.  
St. George, S.C. 29477

[cayer@dorchestercounty.net](mailto:cayer@dorchestercounty.net)

# Master v. Charpia, 2009-CP-18-2200, Motion to Reconsider/Motion to Set Aside Judgment

Thursday, January 10, 2013 4:35 PM

From:

"Dickson, Edgar W. Law Clerk (Andrew C. Evans)" <edicksonlc@sccourts.org> Add sender to Contacts

To:

"charpia13@bellsouth.net" <charpia13@bellsouth.net>, "frank@cisadodds.com" <frank@cisadodds.com>

Cc:

"Dickson, Edgar W. Secretary (Peggy Smith)" <edicksonsc@sccourts.org>, "Becky Stevens (BStevens@dorchestercounty.net)" <BStevens@dorchestercounty.net>, "Ayer, Carolyn L." <cayer@dorchestercounty.net>

Gentlemen,

It has come to the Court's attention that Mr. Charpia contends that he was not notified of the hearing that took place yesterday, January 9, 2013 in Dorchester County.

The Court would like to apologize for this oversight.

~~It appearing that this matter is currently before the South Carolina Court of Appeals, the Court feels it no longer has the jurisdiction to hear Motions in the case. However, the Court wishes to make a ruling on Mr. Charpia's two Motions without any further argument.~~

The Court has taken both Motions under consideration and has consulted the Court file as well as arguments of the parties, written submissions, and its own notes from the prior hearing. The Court has found nothing therein raising grounds to alter or set aside the judgment. As such, both Motions are hereby denied.

Mr. Cisa, Judge Dickson asks that you prepare an Order and send a copy to Mr. Charpia. Please send us a hard copy via US Mail with a self-addressed return envelope.

Thank you. Kind regards,

Drew Evans  
Andrew C. Evans  
Law Clerk, Hon. Edgar Warren Dickson  
First Judicial Circuit  
P. O. Box 1949  
Orangeburg, S. C. 29116



DORCHESTER COUNTY CLERK OF COURT  
Cheryl Graham, Clerk of Court  
5200 East Jim Bilton Blvd.  
St. George, SC 29477



Case No. 2009CP1802200  
McMasters vs. Charpia  
Motion: Motion for Reconsideration

2014 MAY 12 PM 3:58  
CERTIFIED COPY  
DORCHESTER COUNTY CLERK OF COURT  
Cheryl Graham

*This is to acknowledge that the Clerk of Court Coordinator did not notify the defendant Jody Charpia of the hearing on January 9, 2013 on the above captioned case.*

May 12, 2014

*Carolyn Ayer*  
Carolyn Ayer, Civil Court  
Coordinator  
Dorchester County



**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

May 24, 2012

H. Wayne Charpia  
1450 Jahnz Ave.  
Summerville, SC 29485

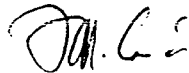
RE: Rene' McMasters. now known as Rene McMasters Ronaghan.v. H. Wayne Charpia,et.al  
Case No.: 2009-CP-18-2200  
Our file: 09-084

Dear Mr. Charpia:

The above case appears on the trial roster for a term commencing on Monday, July 30, 2012 in Dorchester County. This case is currently listed as case number #2 on the trial roster and therefore it will in all likelihood be reached on Monday, July 30, 2012. The docket meeting is scheduled to commence at 10:00a.m. You will need to be present for the trial of the above case.

With kindest regards, I am

Very truly yours,



Frank M. Cisa

FMC/alp

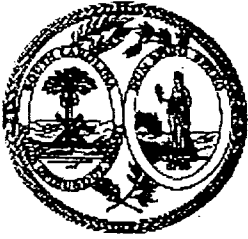
cc: Rene McMasters Ronaghan

REC. 5-26-12

NO PROPER NOTICE OF SCOPE FOR HEARING

NOTICE OF CASE SCHEDULING

May 23, 2012



Case 2009CP1802200 - Rene Mcmasters VS H Wayne Charpia ,  
defendant, et al has been added to the following Court Roster:

Roster ID: 117 - Non Jury Trial Roster, July 30, 2012 Hon . Edgar  
Dickson, Presiding

This case has been assigned as priority 2 of 19 cases scheduled for the court period of  
7/30/2012 through 7/30/2012

Attorneys: Non Jury Roster Meeting July 30, 2012 10:00 a.m. trials will begin immediately  
after roster meeting. Roster can be found at [www.sccourts.org](http://www.sccourts.org) . Hon.Edgar Dickson  
Presiding, Dorchester County Courthouse 5200 East Jim Bilton Blvd., St. George, S.C. 29477  
if your case has settled please notify [cayer@dorchestercounty.net](mailto:cayer@dorchestercounty.net)

Thank you,  
s/Diane S. Goodstein, Chief Adm. Judge  
Carolyn Ayer  
Civil Court Coordinator  
Dorchester County  
843-823-0108

CERTIFIED COPY  
2012 MAY 24 AM 11:38  
CLERK OF COURT  
DORCHESTER COUNTY

Mail Notice To:
H Wayne Charpia 1450 Jahnz Ave.  Summerville, SC 29485

Court Info:
Common Pleas 5200 E. Jim Bilton Blvd.  St. George, SC 29477-9477

If you have any questions regarding the scheduling of this case, please contact the courts at:  
1-843-563-0108

Respectfully,

*PO Box 234*  
*29477*  
**NO PROPER NOTICE OF SCOPE FOR HEARING**

Carolyn Ayer  
Civil Court Coordinator

**Dorchester County First Judicial Circuit - Roster Details**  
**Motions, July 30, 2012, Hon. Edgar Dickson, Presiding**

Court Agency		Common Pleas		Judge	Dickson	Roster Id	109				
Roster Type		Motions		Roster Begin Date	07/30/2012	Roster End Date	07/30/2012				
Number of motions = 18											
Scheduled	#	Time	hr:mn	Description	Filing Party	Filed Date	Case	Case Sub Type	Plaintiff Attorney	Defendant Attorney	Notes
07/30/2012	1	9:30 AM	0:15	Amended Motion to Compel	Carmen Hutto-PLT	07/19/2012	2011CP1802529 Carmen Hutto , plaintiff, et al VS Casey G Carver	Wrongful Death 360	David Wesley Whittington (843) 821-9700	R Bruce Wallace (843) 577-9440	Completed-07/30/2012
07/30/2012	2	9:30 AM	0:15	Notice of Motion & Motion for order of reference	Eleanor Reynolds-PLT	03/12/2012	2010CP1802603 Eleanor Reynolds VS George W Middleton, defendant, et al	Foreclosure 420	Gregory Hyland (843) 871-7765 Andrew Shepherd (843) 871-7765	Arlithia Cherry Hayes Randall Webb Charpia (843) 261-7026 Carol Liggins Kenya Hamilton Hayes George Hayes Ralph Clayton	Completed-07/30/2012
07/30/2012	3	9:30 AM	0:15	Motion for Order of Refer to Master	First Federal Savings And Loan Association Of Charleston-PLT	11/22/2011	2011CP1801268 First Federal Savings And Loan Association Of Charleston VS Russell C Davis , defendant, et al	Foreclosure 420	Kristen Nichols Voyer ((84) 3) -577 -x2026	Tammy C Davis Russell C Davis	Completed-07/30/2012
07/30/2012	4	10:00 AM	0:15	Notice of Motion and Motion of lift Default	William D Waltz-DEF	03/19/2012	2011CP1800466 Tommie J Dangerfield VS William D Waltz	Personal Injury 350	David Wesley Whittington (843) 821-9700	William D Waltz John L McDonald Jr. (843) 577-2026	Completed-08/01/2012
07/30/2012	5	2:00 PM	0:15	Def DC School Dist. 2 Motion to Dismiss/Alternatively	Dorchester County School District 2-DEF	10/26/2011	2011CP1801727 Mary Rita Watson VS Dorchester County School District 2 , defendant, et al	Breach of Cont 140	Gregg E. Meyers (843) 720-8714	Hugh Willcox Buyck (843) 377-1400 Gordon Wade Cooper (843) 577-4435 Elizabeth Palmer ((84) 3) -266- x8166	Completed-07/30/2012
07/30/2012	6	2:00 PM	0:15	Def Luther Carl Knights Motion to Dismiss/Alternative/Motion	Sheriff Dorchester County-DEF	11/16/2011	2011CP1801727 Mary Rita Watson VS Dorchester County School District 2 , defendant, et al	Breach of Cont 140	Gregg E. Meyers (843) 720-8714	Hugh Willcox Buyck (843) 377-1400 Gordon Wade Cooper (843) 577-4435 Elizabeth Palmer ((84) 3) -266- x8166	Completed-07/30/2012
07/30/2012	7	2:00 PM	0:15	Notice of Motion for Temporary Restraining Order	William Blazer-PLT	06/16/2011	2011CP1801233 William Blazer VS Jody Vavra Bentley	Contract/Other 199	Margie A Pizarro (843) 285-7100	Russell A. DeMott (843) 695-0830 Jody Vavra Bentley	Completed-04/30/2012
07/30/2012	8	2:00 PM	0:15	Motion for Protective Order/Affidavit		05/11/2012	2011CP1801632 Amber Nicole Thompkins , plaintiff, et al VS Dorchester County School District 2 , defendant, et al	Personal Injury 350	David Butler Yarborough Jr. (843) 972-0150	Alice F. Paylor (843) 266-8105 James A. Stuckey Jr. (843) 577-9323	Completed-06/22/2012
07/30/2012	9	2:00 PM	0:15	Motion to reopen the Record of a PCR Hearing	Louis Sheppard-PLT	09/08/2011	2010CP1802042 Louis Sheppard VS South Carolina State Of	Post Convict Rel 500	Charles Thomas Brooks (803) 418-5708	Robert Comey (843) 734-5178	Completed-07/30/2012

**NOT ON ROSTER**  
**FOR JULY 30, 2012**

**Dorchester County First Judicial Circuit - Roster Details**  
**Motions, July 30, 2012, Hon. Edgar Dickson, Presiding**

<b>Court Agency</b>	<b>Common Pleas</b>	<b>Judge</b>	<b>Dickson</b>	<b>Roster Id</b>	<b>109</b>
<b>Roster Type</b>	<b>Motions</b>	<b>Roster Begin Date</b>	<b>07/30/2012</b>	<b>Roster End Date</b>	<b>07/30/2012</b>

Number of motions = 18

Scheduled	#	Time	hr:mn	Description	Filing Party	Filed Date	Case	Case Sub Type	Plaintiff Attorney	Defendant Attorney	Notes
07/30/2012	10	2:00 PM	0:15	Motion for Substitution of Counsel	Michael Dever-DEF	02/24/2012	2011CP1800508 514 Jump Amusements Llc VS Sarah Rangel defendant, et al	Debt Collections 110	Paul B. Ferrara III (843) 568-5511	Michael Dever (843) 224-1503 Sarah Rangel (843) 224-1503	Completed-07/30/2012
07/30/2012	11	2:00 PM	0:15	Motion to Dismiss/Answer	Us Bank National Association-DEF	03/08/2012	2010CP1802777 Marva A HardeeThomas , plaintiff, et al VS Us Bank National Association	Real Prop/Other 499	Marva A HardeeThomas (843) 553-6363	Mark S. Wierman (704) 338-6000	Completed-07/30/2012
07/30/2012	12	2:00 PM	0:15	Motion/Damages	Beulah Bryant-PLT	02/23/2012	2011CP1800906 Beulah Bryant VS Carl L. Felder Sr.	Personal Injury 350	Matthew Douglas (843) 821-9700	Carl L. Felder Sr	Completed-07/30/2012
07/30/2012	13	3:00 PM	0:15	Motion for Reconsider	Michael Dever-DEF	02/24/2012	2011CP1800508 514 Jump Amusements Llc VS Sarah Rangel , defendant, et al	Debt Collections 110	Paul B. Ferrara III (843) 569-5511	Michael Dever (843) 224-1503 Sarah Rangel (843) 224-1503	Completed-07/30/2012
07/30/2012	14	3:00 PM	0:15	Motion for Dismissal	Michael Dever-DEF	02/24/2012	2011CP1800508 514 Jump Amusements Llc VS Sarah Rangel defendant, et al	Debt Collections 110	Paul B. Ferrara III (843) 569-5511	Michael Dever (843) 224-1503 Sarah Rangel (843) 224-1503	Completed-07/30/2012
07/30/2012	15	3:00 PM	0:15	Motion/Dismiss of defendant Christiane E McNeal	Christiane E McNeal-DEF	05/16/2012	2012CP1800895 Taunya Lou Stephens Jeter , plaintiff, et al VS Department Of Corrections South Carolina , defendant, et al	Wrongful Death 360	C. Carter Elliott Jr. (843) 546-0650	James Edward Scott IV (843) 577-4000 Michael C. Tanner (803) 245-9153 James C. Parham Jr. (803) 749-8555 Randolph L. Lee (919) 439-2221 Jonathan Hopkins Dunlap ((80) 3) - 446- x5606 Donald Jay Davis Jr. (843) 577-4000 David H. Batten (919) 439-2221	Completed-07/26/2012
07/30/2012	16	3:00 PM	0:15	Motion to Dismiss/Answer to Amended Complaint	Trident Medical Center, LLC-DEF	05/14/2012	2012CP1800895 Taunya Lou Stephens Jeter , plaintiff, et al VS Department Of Corrections South Carolina , defendant, et al	Wrongful Death 360	C. Carter Elliott Jr. (843) 546-0650	James Edward Scott IV (843) 577-4000 Michael C. Tanner (803) 245-9153 James C. Parham Jr. (803) 749-8555 Randolph L. Lee (919) 439-2221 Jonathan Hopkins	Completed-07/26/2012

Dorchester County First Judicial Circuit - Roster Details  
 Motions, July 30, 2012, Hon. Edgar Dickson, Presiding

Judge	Dickson	Roster Id	109
Roster Begin Date	07/30/2012	Roster End Date	07/30/2012

Description	Filing Party	Filed Date	Case	Case Sub Type	Plaintiff Attorney	Defendant Attorney	Notes				
						Dunlap: ((80) 3) - 446- x5606 Donald Jay Davis Jr. (843) 577-4000 David H. Batten (919) 438-2221					
16 Motion for Summary Judgment	AAA Plumbing LLC -DEF	02/09/2012	2011CP1801400 John Philip Garber, plaintiff, et al VS Keystone Builders Resource Group, defendant, et al	Constructions 100	Ivon Keith McCarty (843) 793-1272	Patrick T. Morrissey (843) 577-2026 S Ross Shealy J David Banner (843) 669-8787 David Starr Cobb (843) 576-2803 Edward Glenn Elliott (843) 669-8787 Roopal Ruparelia Samuels (803) 779-3080	Completed-07/12/2012				
17											
07/30/2012	18	3:00 PM	0:15	Motion/Quash deposition	Thomas Quinn-DEF	06/27/2012	2009CP1802698 Boyle Plantation, Hoa Assn, Inc VS: Thomas Quinn, defendant, et al	Relief 820	Peter Brandt Shelbourne (843) 871-2210 Melanie Anne Maes (84) 3-871-x2210	George Hamlin O'Kelley III (843) 856-4488	Completed-07/09/2012



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

RRR, INC.,

Plaintiff,

v.

THOMAS M. TOGGAS, *et al.*,

Defendants.

Civil Action No. 11-1622 (BAH)

Judge Beryl A. Howell

MEMORANDUM OPINION

Pending before the Court in this long-running action is Defendants Thomas M. Toggas and Kathryn Toggas' Motion for Relief from Judgment ("Defs.' Mot."), ECF No. 72, which the Court construes as a motion for relief, pursuant to Federal Rule of Civil Procedure 54(b), from the Court's Memorandum Opinion and Order of January 9, 2014, ECF No. 52, denying the defendants' "Motion to Dismiss (Subject Matter Jurisdiction)" ("Defs.' 2013 Mot. Dismiss"), ECF No. 48. Since the Court issued its Order denying the defendants' 2013 Motion to Dismiss, a South Carolina court has definitively—and dispositively—resolved a fundamental dispute in this matter. Consequently, for the reasons set forth below, the defendants' motion is granted and this case is dismissed as to all defendants.

**I. BACKGROUND**

The factual background of this action, brought pursuant to the District of Columbia's Uniform Fraudulent Transfer Act (the "DCUFTA"), D.C. Code §§ 28-3101 *et seq.*, has been explained in detail in this Court's prior opinions and orders. *See* Mem. Op., Sept. 24, 2013 (the "Sept. 2013 Mem. Op.") at 2–9, ECF No. 39; Mem. Op., Jan. 9, 2014 (the "January 2014 Mem. Op.") at 1–4, ECF No. 52. The full history of this litigation will not be repeated here, in favor of

Consequently, the Court first summarizes that opinion and its holdings before turning to the resolution of the instant motion.

**A. The South Carolina Judgment**

Nearly three years after the instant suit was filed, on August 15, 2014, the defendants<sup>2</sup> filed a declaratory judgment action against the plaintiff in the South Carolina Court of Common Pleas “seeking an order by the court that a judgment entered against Plaintiffs on July 24, 2003 . . . has expired and has no active energy.” Defs.’ Mot. Ex. A (*Toggas v. RRR, Inc.*, Case No. 2014-CP-07-2016, Order Granting Pls.’ Mot. J. on the Pleadings and Denying Def.’s Mot. Dismiss (the “S.C. Opinion”)) at 1, ECF No. 72. The South Carolina court granted the plaintiffs’ motion for judgment on the pleadings. *Id.*

South Carolina law states that judgments may be executed “at any time within ten years from the date of the original entry thereof and shall have active energy during such period.” *Id.* at 2–3 (quoting S.C. Code Ann. § 15-39-30). “South Carolina courts have repeatedly held that a judgment is extinguished after the expiration of ten years from the date of entry.” *Id.* at 3. Consequently, a judgment “holder loses his or her status as a judgment creditor . . . [a]s soon as a judgment becomes ten years old.” *Id.* (citing *Carr v. Guerard*, 616 S.E. 2d 429, 430 (S.C. 2005)).

A “narrow exception” to this general rule exists “if the judgment creditor has completed all of its efforts under the South Carolina execution and Supplementary Proceedings processes prior to the ten-year expiration date and is awaiting the issuance of an execution order by the court.” *Id.* (citing *Linda Mc Co., Inc. v. Shore*, 703 S.E. 2d 499, 505 (S.C. 2010)). The South

ORDER WAS ISSUED July 30, 2012

<sup>2</sup> To avoid confusion, the Court refers to the parties as they are delineated in this case, even though in the South Carolina court’s opinion Defendants Thomas Toggas and Kathryn Toggas are the plaintiffs and Plaintiff RRR, Inc. is the defendant.

Carolina court held that the plaintiff had “not complied with any of the applicable statutes in South Carolina to collect on its judgment,” as required by *Linda Mc Company, Inc.* *Id.* at 5. The South Carolina court noted that there were “no collection efforts pending in South Carolina,” “no hearing on Supplementary Proceedings,” and no party was “awaiting an execution order from any court.” *Id.* Moreover, had the plaintiff initiated proceedings in South Carolina to collect on the judgment, the defendants “would have had to post a *supersedeas* bond to stay those execution proceedings during their appeals” before the South Carolina Supreme Court. *Id.* at 6. Since the plaintiff failed to take any action to collect on its judgment in South Carolina, the South Carolina court held that the plaintiff “cannot complain now that the judgment has expired when it failed to pursue its rights during the appeals” raised by the defendants. *Id.*<sup>3</sup>

The South Carolina court specifically addressed the instant proceedings, stating that the plaintiff was “currently pursuing a fraudulent transfer action in the District Court for the District of Columbia.” *Id.* at 7. The South Carolina court found this inconsequential to the question at hand, since the plaintiff was “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 [South Carolina] Supreme Court in *Linda Mc. Co.*” *Id.* (first emphasis added).<sup>4</sup>

With this context, the instant motion is now examined.

---

<sup>3</sup> This Court’s January 2014 Memorandum Opinion found that the South Carolina judgment was *not* extinguished because it found that the exception in *Linda Mc Company, Inc.* did apply to the instant matter and the ten year period in which to execute the South Carolina judgment was tolled. January 2014 Mem. Op. at 8–9. In doing so, this Court interpreted South Carolina law more broadly than the South Carolina court did in the S.C. Opinion, finding that the plaintiff’s UFTA action in this Court was sufficient to trigger the *Linda Mc Company* exception. *Compare id.* at 8–9 (finding the DCUFTA action “constitutes a judgment enforcement action [that] tolled the ten year limitations period”) with S.C. Opinion at 4–7 (interpreting *Linda Mc Company, Inc.* exception as “narrow”) *id.* at 7 n.2 (finding that the instant matter did not constitute a proceeding under South Carolina law sufficient to trigger the *Linda Mc Company* exception). Thus, the S.C. Opinion removes the factual predicate on which this Court’s January 2014 Memorandum Opinion was based, namely, that the 2003 South Carolina judgment remained valid due to equitable tolling. *See* January 2014 Mem. Op. at 9.

<sup>4</sup> The South Carolina court also rejected an argument raised by the plaintiff that the defendants lacked standing to bring their action in South Carolina. S.C. Op. at 7.

**B. The Extinguishment Of The Underlying Judgment Is Fatal To The Plaintiff's DCUFTA Claims.**

The defendants argue that the Court's Order denying their motion to dismiss in 2014 should be reconsidered in light of the South Carolina court's decision that the underlying judgment on which the plaintiff's action is based has expired, since the S.C. Opinion has res judicata effect on this action. *See* Defs.' Mot. at 1–2. The defendants further argue that if the S.C. Opinion is given preclusive effect, the plaintiff's claims must fail. *See id.* The Court examines each contention in turn.

**1. The South Carolina Opinion Has Preclusive Effect**

In the January 2014 Memorandum Opinion denying the defendants' December 2013 Motion to Dismiss, this Court held that the 2003 judgment against the defendants had not expired because (1) the plaintiff had instituted an enforcement action that triggered the exception outlined in *Linda Mc Company, Inc.*, and (2) the policy implication of the defendants' view was that “judgment debtors would be encouraged to engage in conniving or otherwise unscrupulous practices to avoid payment of their debts for ten years in an effort to be automatically relieved from the obligation by the passage of time.” January 2014 Mem. Op. at 8–9.

The final judgment of the South Carolina court, interpreting South Carolina law, directly contradicts this Court's interim holding. The S.C. Opinion states clearly that the instant action before this Court “is not an execution proceeding that would trigger the ‘narrow’ exception under *Linda Mc Co.*” S.C. Op. at 7 n.2.<sup>5</sup> The defendants argue that this ruling should be given res judicata effect in this matter. Defs.' Mot. at 1.

---

<sup>5</sup> The plaintiff argues that this statement is “dictum” and need not be followed by this Court. Pl.'s Opp'n at 3. To the contrary, the South Carolina court was required to determine whether the plaintiff's had instituted proceedings that would toll the expiration of the pre-existing judgment in order to resolve the question before it. *See* S.C. Op. at 5–7. Thus, the issue of whether any action generally, and this action particularly, could toll the expiration of the pre-existing judgment was “actually and necessarily determined by a court of competent jurisdiction” in the S.C. Opinion. *See Martin v. U.S. Dep't of Justice*, 488 F.3d 446, 454 (D.C. Cir. 2007).

the plaintiff is incorrect because that garnishment action is based on a judgment that is no longer valid. In other words, this Court lacks subject matter jurisdiction over this action because there is no longer an active case or controversy between the parties, since the extinguishment of the 2003 judgment also extinguished the plaintiff's DCUFTA claims.

Although this may appear to be a harsh result, particularly in the context of the defendants' flagrant abuses of the discovery process and dilatory tactics, the plaintiff could easily have avoided it by instituting proceedings at any point in the ten years following its judgment in South Carolina to collect on that judgment. *See* S.C. Op. at 6. At the very least, the plaintiff would have forced the defendants to put forward a *supersedeas* bond in order to avoid paying the plaintiff immediately. *Id.* The plaintiff's failure to "institute[] 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," *id.* (emphasis in original), is ultimately responsible for the dismissal of the plaintiff's claims here.

#### IV. CONCLUSION

For the foregoing reasons, the defendants' motion is granted and this matter is dismissed under Federal Rule of Civil Procedure 12(b)(1), since there is no longer a live case or controversy before this Court.

An Order consistent with this Memorandum Opinion will issue contemporaneously.

Date: April 13, 2015



Digitally signed by Judge Beryl A Howell  
DN: cn=Judge Beryl A. Howell,  
o=United States District Court,  
ou=District of Columbia,  
email=Howell\_Chambers@dcd.uscourts.gov, c=US  
Date: 2015.04.13 14:02:49 -04'00'

**BERYL A. HOWELL**  
United States District Judge

**THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS**

---

**APPEAL FROM DORCHESTER COUNTY  
COURT OF COMMON PLEAS**

**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 Writ of  
Certiorari and the Appendix to :**

**SC Court of Appeals  
1220 Senate Street  
Columbia , SC 29201**

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

**Supreme Court  
1231 Gervais Street  
Columbia , SC 29201**

**Date mailed 12-19, 2016**

  
**Howard W. Charpia**