STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-In-Equity

Appellate Case No. 2016-001227
Circuit Court Case No. 2014-CP-10-2884

Darryl M. Blaylock.....Respondent,

v.

Erica Lynn LaMarche.....Respondent,

and

David S. Chung.....Proposed Intervenor/Appellant.

INITIAL BRIEF OF RESPONDENT ERICA LYNN LAMARCHE

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INTRODUCTION

This appeal involves an untimely and improper attempt by Appellant David Chung, a judgment creditor, to intervene in a partition action between Respondents Erica Lynn LaMarche and Darryl M. Blaylock for purposes of collecting an outstanding monetary judgment against Respondent Blaylock. Respondent LaMarche, an innocent third party having no involvement in Chung's judgment against Blaylock, was granted possession of the partitioned property by virtue of a partition judgment on December 3, 2014. Ten months after the partition judgment transferring the property to LaMarche, Chung sought to intervene to reopen the proceedings for purposes of collecting on his judgment. However, neither equity nor the procedural vehicle of intervention can assist Chung where, as here, his judgment was subsequent to a properly filed notice of lis pendens, and Chung failed to timely assert his rights.

Despite LaMarche's dissociation with Chung's judgment, and despite having properly filed a notice of lis pendens three years prior to the instant motion to intervene, LaMarche is forced to her detriment to litigate this appeal. On appeal, Chung asserts two flawed arguments as a last ditch effort to assert a claim against the partitioned property: (1) the Master-in-Equity erred in failing to reopen the partition action judgment and allow Chung to intervene because he was a necessary party to the action; and (2) equity demanded he be protected in the proceeding. Chung's arguments in support of intervention are misguided and overlook the strict procedural deficiencies barring his claim of interest in the underlying partition proceedings.

As detailed herein and articulated by the Master-in-Equity below, Chung was not a necessary party under Rule 19, SCRCP. Under § 15-11-20 of the South Carolina Code, anyone who records or executes an encumbrance subsequent to the filing of a notice of lis pendens is deemed a subsequent encumbrancer and is bound by all proceedings occurring after the filing of

the notice. S.C. Code Ann. § 15-11-20. As a subsequent encumbrancer, Chung had no interest in the partition proceedings because Respondent LaMarche properly filed a lis pendens prior to his judgment, which remained valid and was never cancelled during the pendency of the litigation. See S.C. Code Ann. § 15-11-40.

Chung's equitable argument is likewise misguided as Chung waited three years to seek intervention after the notice of lis pendens was filed. Equity does not aid those "who slumber on their rights." Hemingway v. Mention, 228 S.C. 211, 89 S.E.2d 369 (1955) (stating "[e]quity aids the vigilant, not those who slumber on their rights."). Moreover, equity provides no remedy where, as here, there was a properly filed lis pendens, and Chung's lack of diligence would result in extreme prejudice to LaMarche, an innocent third party with no involvement in Chung's judgment who adhered to the law and acted with vigilance at every step in the underlying partition action. For these reasons and the reasons that follow, this Court must affirm the February 12, 2016 Order of the Master-In-Equity denying Chung's motion to intervene and set aside the partition judgment.

STATEMENT OF THE CASE

On September 28, 2005, Respondents Erica LaMarche and Darryl Blaylock purchased, as joint tenants, a single family home located at 1309 Langford Drive, Mount Pleasant, South Carolina (the "Langford property"). The Langford property was owned debt free until January 31, 2007, when the parties placed a mortgage on the property in the amount of four hundred thousand dollars and 00/100 ($400,000.00). The parties resided together at the Langford property until November 9, 2011, when LaMarche vacated the residence.

In February of 2012, Respondent Blaylock filed the instant action against LaMarche for conversion of personal property. LaMarche counterclaimed for partition and filed a notice of lis pendens on September 26, 2012. The matter was stricken under Rule 40(j), SCRCP, by consent

of the parties on February 5, 2013, and reinstated on May 6, 2014. On December 3, 2014, the Master-in-Equity issued an order partitioning the property and transferring it to LaMarche. In accordance with the order, LaMarche purchased Blaylock's equitable interest in the property for $20,639.57, after which title was transferred to her on January 23, 2015. The property was then sold to a third party on September 12, 2015, for six hundred and five thousand dollars and 00/100 ($605,000.00).

On September 11, 2015, ten months after the partition judgment, Chung filed a motion to intervene and set aside the partition judgment. Chung's assertion of interest in the Langford property arises from a one hundred thousand dollar ($100,000.00) judgment against Blaylock in a District of Columbia action concerning an unpaid business loan. The District of Columbia judgment was issued on February 26, 2013, and affirmed by the District of Columbia Court of Appeals on July 29, 2015.

During the pendency of Blaylock's appeal in the District of Columbia action, Chung domesticated the judgment in South Carolina on November 4, 2014. On September 11, 2015, nine months after domesticating the judgment and ten months after the December 3, 2014 order partitioning the property, Chung filed the instant motion to intervene and set aside the partition judgment. By order dated February 12, 2016, the Master denied Chung's motion, finding the notice of lis pendens filed prior to Chung's judgment rendered his subsequent claim of interest bound to the partition proceedings. The order further concluded that Chung's motion to intervene was untimely, and that there was no evidence of extrinsic fraud to warrant Chung's motion to set aside the partition judgment. Chung filed a motion pursuant to Rule 59(e), SCRCP, to alter or amend the Master's findings, which was denied. This appeal follows.

STANDARD OF REVIEW

A proceeding to partition real property is an action in equity. In an equitable proceeding, the appellate court may find facts in accordance with its own view of the preponderance of the evidence. S.C. Dep't of Transp. v. M & T Enterprises of Mt. Pleasant, LLC, 379 S.C. 645, 653–54, 667 S.E.2d 7, 12 (Ct. App. 2008) (citing Murrells Inlet Corp. v. Ward, 378 S.C. 225, 231, 662 S.E.2d 452, 455 (Ct. App. 2008); Friarsgate, Inc. v. First Fed. Sav. & Loan Ass'n of South Carolina, 317 S.C. 452, 456, 454 S.E.2d 901, 904 (Ct. App. 1995)). However, this broad scope of review does not require the appellate court to disregard the findings of the trial judge who saw and heard the witnesses and was in a better position to judge their credibility. Id. (citing Sloan v. Greenville County, 356 S.C. 531, 546, 590 S.E.2d 338, 346 (Ct. App. 2003)).

A case with both legal and equitable issues presents a divided scope of review. Id. For instance, questions of law may be decided with no particular deference to the trial court. Doe ex rel. Legal Guardian v. Barnwell School Dist. 45, 369 S.C. 659, 662, 633 S.E.2d 518, 519 (Ct. App. 2006) (citing Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 327, 534 S.E.2d 672, 675 (2000)). Thus, "a legal question in an equity case receives review as in law." Sloan, 356 S.C. at 546, 590 S.E.2d at 346 (citing Gunter v. Fallaw, 78 S.C. 457, 59 S.E. 70 (1907)). The appellate court may correct errors of law in both legal and equity actions. I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 411, 526 S.E.2d 716, 719 (2000) (citing S.C. Code Ann. § 14–8–200 (Supp. 1998)).

Whether to grant or deny motions under Rules 24(a)(2) and 60(b), SCRCP, lies within the sound discretion of the Master-in-Equity. In re Horry Cty. State Bank, 361 S.C. 503, 507, 604 S.E.2d 723, 725 (Ct. App. 2004) (stating standard of review for Rule 24(a)(2) motion to intervene is abuse of discretion); Coleman v. Dunlap, 306 S.C. 491, 494, 413 S.E.2d 15, 17 (1992) (stating standard of review for Rule 60(b) motion to set aside judgment is abuse of discretion). Appellate

review is therefore limited to determining whether there was an abuse of discretion. Raby Const., L.L.P. v. Orr, 358 S.C. 10, 17–18, 594 S.E.2d 478, 482 (2004).

ARGUMENT

I. THE MASTER-IN-EQUITY CORRECTLY DENIED CHUNG'S MOTION TO INTERVENE AND SET ASIDE THE JUDGMENT AS PROCEDURALLY DEFICIENT.

Pursuant to § 15-11-20, a properly filed notice of lis pendens binds subsequent purchasers or encumbrancers, like Appellant Chung, to all proceedings emanating from the litigation. See S.C. Code Ann. § 15-11-20; S.C. Code Ann. § 15-11-50 (stating the notice of the pendency of the action shall constitute notice for five years from the date of filing). Section 15-11-20 states in pertinent part that from the time of its filing, a notice of lis pendens:

> shall be constructive notice to a purchaser or encumbrancer of the property affected thereby, and every person whose conveyance or encumbrance is subsequently executed or subsequently recorded shall be deemed a subsequent purchaser or encumbrancer and shall be bound by all proceedings taken after the filing of such notice to the same extent as if he were made a party to the action.

S.C. Code Ann. § 15-11-20; see also S.C. Nat'l Bank v. Cook, 291 S.C. 530, 354 S.E.2d 562, 562 (1987); MI Co., Ltd. v. McLean, 325 S.C. 616, 482 S.E.2d 597, 603 (Ct. App. 1997).

In the underlying partition action, Respondent LaMarche filed a notice of lis pendens concerning the Langford property on September 26, 2012. Five months later, on February 26, 2013, Chung obtained his District of Columbia judgment against Blaylock. Chung then waited an additional eight months before domesticating the judgment in South Carolina on November 4, 2013. The partition judgment was entered by the Master-in-Equity on December 3, 2014. Chung filed the instant motion to intervene and set aside the partition judgment on September 11, 2015, three years after LaMarche filed the notice of lis pendens, and ten months after the partition judgment was entered. Under § 15-11-20, a judgment creditor, like Chung, who records or

executes an encumbrance on property subsequent to the filing of a notice of lis pendens, is a subsequent encumbrancer and is bound by all proceedings occurring after the filing of the notice, without any substantive rights. See S.C. Code Ann. § 15-11-20. Therefore, Chung, as a subsequent encumbrancer, had no substantive rights relating to the partition action and was bound to the December 3, 2014 partition judgment.

Moreover, Chung had ample time to discover that a lis pendens was filed on the Langford property and to seek additional property to satisfy his District of Columbia judgment. As observed by the Master-in-Equity, equity aids the vigilant. Equity does not aid those, like Chung, "who slumber on their rights" despite proper notice provided by a properly filed lis pendens. See Eldridge v. Eldridge, 398 S.C. 113, 121, 728 S.E.2d 24, 28 (2012) (quoting Hemingway, 228 S.C. 211, 89 S.E.2d 369 ("Equity aids the vigilant, not those who slumber on their rights.")).

a. Chung fails to establish the procedural prerequisites for intervention under Rule 24(a)(2), SCRCP.

Chung's motion to intervene fails to satisfy the threshold requirements of (1) timely application and (2) an interest in the property which is the subject of the action. Intervention of right is governed by Rule 24(a) of the South Carolina Rules of Civil Procedure, which provides:

> Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Rule 24(a), SCRCP. Thus, a party seeking intervention under Rule 24(a)(2) must: (1) establish timely application; (2) assert an interest relating to the property or transaction which is the subject of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its

interest is inadequately represented by other parties. Ex Parte Reichlyn, 310 S.C. 495, 427 S.E.2d 661 (1993); In re Horry Cty. State Bank, 361 S.C. at 507–08, 604 S.E.2d at 725.

Given the procedural deficiencies affecting Chung's assertion of interest in the partition action, Chung cannot establish timely application, nor can he assert an interest in the property. As provided above, Respondent LaMarche's notice of lis pendens filed prior to the domestication of Chung's judgment and prior to Chung's Motion to Intervene bars Chung's subsequent claim to the property. Moreover, Chung waited an additional ten months after the December 3, 2014 partition judgment to seek intervention. Given the priority of the partition litigation under § 15-11-20, and Chung's delay in seeking intervention, Chung's late attempt to intervene is untimely. See S.C. Code Ann. § 15-11-20; S.C. Code Ann. § 15-11-50 (stating the notice of the pendency of the action shall constitute notice for five years from the date of filing).

Furthermore, to the extent the partition proceedings divested Blaylock of any interest in the Langford property, Chung's interest also terminated. There being no interest upon which to assert a claim to the property, Chung cannot assert an interest in the property at issue in the action for purposes of seeking intervention under Rule 24(a)(2), SCRCP.

b. Chung's Rule 60(b)(3) motion to set aside the partition judgment fails in the absence of any evidence of extrinsic fraud.

Relief under Rule 60(b)(3) is inapplicable where, as here, there is a properly filed lis pendens, and there is no evidence of extrinsic fraud. See Raby Const., L.L.P., 358 S.C. at 20, 594 S.E.2d at 483 (rejecting the argument that relief from judgment is permitted for intrinsic fraud if raised within one year of the judgment and holding that relief from judgment for fraud must be based on extrinsic fraud). Chung asserts the Master-in-Equity erred in denying his Rule 60 motion to set aside the partition judgment, arguing the parties' failure to join him in the action was the result of fraud, accident or mistake, and resulted in unfair prejudice. As already discussed above,

the properly filed lis pendens relieved the parties of any duty to join Chung, thus extinguishing the presence of fraud, accident or mistake. Likewise, there is no evidence of extrinsic fraud sufficient to warrant setting aside the judgment.

Under Rule 60(b)(3) of the South Carolina Rules of Civil Procedure, an action to set aside a judgment based on fraud must be brought within one year after entry of the judgment and be based on extrinsic rather than intrinsic fraud. Rule 60(b)(3), SCRCP; Raby Const., 358 S.C. at 20, 594 S.E.2d at 483 (rejecting argument that relief from judgment is permitted for intrinsic fraud). "Relief is granted for extrinsic but not intrinsic fraud on the theory that the latter deceptions should be discovered during the litigation itself, and to permit such relief undermines the stability of all judgments." Mr. G v. Mrs. G, 320 S.C. 305, 308, 465 S.E.2d 101, 103 (Ct. App. 1995) (citation omitted); see also Bryan v. Bryan, 220 S.C. 164, 168, 66 S.E.2d 609, 610 (1951) ("[R]elief from a judgment is denied in cases of intrinsic fraud, on the theory that an issue which has been tried and passed upon in the original action should not be retried in an action for equitable relief against the judgment"). "Extrinsic fraud is fraud that induces a person not to present a case or deprives a person of the opportunity to be heard." Chewning v. Ford Motor Co., 354 S.C. 72, 81, 579 S.E.2d 605, 610 (2003) (citation omitted).

Here, there was no evidence of extrinsic fraud because the lis pendens served as constructive notice of the litigation and relieved the parties of any duty to join Chung in the partition proceedings. Contrary to Appellant's contention, the Master's reliance on the lis pendens is anything but faulty. In fact, to disregard the properly filed lis pendens would be tantamount to rewarding Chung's unreasonable delay and lack of diligence at the cost of prejudicing LaMarche, an innocent third party, for her vigilance and adherence to the statutory requirements for notice of lis pendens. It was Chung's duty, as a judgment creditor, to discover the lis pendens and to seek

other property to satisfy his judgment. Because he sat on his rights, neither equity nor Rule 60(b)(3) are applicable to justify reopening the partition action.

II. CHUNG'S ARGUMENTS ON APPEAL ARE INSUFFICIENT TO DEFEAT BOTH THE PROCEDURAL BAR OF LAMARCHE'S PROPERLY FILED NOTICE OF LIS PENDENS, AND THE EQUITABLE BAR OF CHUNG'S UNREASONABLE DELAY IN ASSERTING HIS RIGHTS.

a. Chung was not entitled to be made a party to the action once the matter was restored under Rule 40(j) because the litigation was still pending while stricken from the docket, and the lis pendens remained valid during the pendency of the litigation.

Chung asserts the notice of lis pendens does not bar his right to intervene because at the time his judgment was domesticated in South Carolina the partition action had been stricken under Rule 40(j), SCRCP, entitling him to be made a party to the partition proceedings when the case was restored to the active docket. Chung's argument is flawed and disregards § 15-11-40 regarding cancellation of a lis pendens.

Section 15-11-40 of the South Carolina Code governs cancellation of a notice of lis pendens and provides as follows:

> The court in which the action was commenced, in its discretion at any time after the action is settled, discontinued, or abated, as provided in Section 15-5-190, on application of a person aggrieved and on good cause shown and on a notice as directed or approved by the court, may order the notice authorized by this chapter to be cancelled of record by the clerk of any county in whose office the notice was filed or recorded. The cancellation must be made by an endorsement to that effect on the margin of the record which refers to the order and for which the clerk is entitled to a fee of one dollar.
>
> The lis pendens notice, however, may be cancelled without a court order by the person who filed the notice any time after the action has been settled, discontinued, abated, or dismissed by a court of law by the submission of a written notice of cancellation to the clerk of court of each county in which a notice was filed or recorded. The clerk may require a fee of one dollar for the effectuation of a cancellation in this manner.

S.C. Code Ann. § 15-11-40. The statute permits a court to cancel a lis pendens "at any time after the action is settled, discontinued, or abated." In other words, a properly filed lis pendens may not be cancelled during the pendency of litigation. Moreover, a matter stricken under Rule 40(j) is still pending while it is off the docket. See Robinson v. J.F. Cleckley & Co., 751 F.Supp. 100, 105 (D.S.C.1990) (stating for purposes of calculating timely removal pursuant to 28 U.S.C. § 1446(b) (2012), "an action which has been removed from the docket pursuant to [Rule] 40(c)(3) is pending while it is off of the docket" and is not "commenced when it is restored to the calendar"); see also Goodwin v. Landquest Development, LLC, 414 S.C. 623, 779 S.E.2d 826 (Ct. App. 2015) reh'g granted (Dec. 16, 2015), cert. denied (Oct. 20, 2016) (stating Rule 40(j) does not set a deadline for restoring a case).

Here, the action had not been "settled discontinued or abated" during the time the matter was stricken under Rule 40(j). As such, the lis pendens was never cancelled by the court or the filing party as provided by § 15-11-40. Instead, the lis pendens remained valid during the months the matter was stricken under Rule 40(j) because the litigation was still pending. The existence of a prior lis pendens, which remained valid during the pendency of the litigation, including the duration in which the matter was stricken under Rule 40(j), provides no basis to add Chung as a necessary party or to provide other notice once the matter was restored.

b. Chung was not a necessary party where his interest was subsequent to the lis pendens and subordinate to the outcome of the partition action.

Chung asserts he should be permitted to intervene because he was a necessary party to the action under Rule 19, SCRCP. Appellant's reliance on Rule 19, SCRCP, is misplaced because Chung, as a subsequent encumbrancer, had no prior interest in Langford property. Rule 19 permits joinder of persons for just adjudication only where either: (1) the court could not accord complete relief among the existing parties in Chung's absence; or (2) Chung has an interest in the subject of

the action which would be impaired if he was not permitted to be joined. See Rule 19, SCRCP. As provided above, Chung had no prior interest in the Langford property because the lis pendens preceded his judgment, rendering his property interest subsequent and subordinate to the outcome of the partition action. In fact, once Blaylock's interest was transferred to LaMarche, Chung's interest in the Langford property terminated. Chung cannot be a necessary party to a proceeding in which he has no prior interest.

Moreover, a long line of South Carolina case law suggests that a lienholder by virtue of a judgment need not be made a party to a partition proceeding. See e.g. Ex parte Johnson, 147 S.C. 259, 145 S.E. 113, 117 (1928) (holding a mortgage lienholder was not a necessary party to partition proceeding when the lien was automatically transferred to the funds which the court ordered paid to the mortgagee, and that the holders of said mortgage had no further lien on the land or any share therein, after the partition proceedings); Ketchin v. Patrick, 32 S. C. 443, 11 S. E. 301, 304 (1890) (stating it is well settled that "the lien of the judgment is subordinate to the right of the other tenants in common to demand partition, which, when made, transfers the lien to the share of the judgment debtor when ascertained by a partition in kind, or to his share of the proceeds of the sale when a sale is ordered for partition; and this is so whether the judgment creditor is a party to the proceedings for partition or not."); Riley v. Gaines, 14 S.C. 454 (1881) (finding the lien of a judgment upon the share of a joint tenant is subordinate to the right of his co-tenants to have partition made; and, after partition, the lien is transferred to the interest of the judgment debtor in the land assigned to him, or in the proceeds of the sale). Specifically, in the case of judgments against the interest of a cotenant, South Carolina courts historically held it was "not necessary, as a rule, to make such lienholders parties, because, after partition in kind is made, the judgment by operation of law attaches to the allotted share of the judgment debtor as of its original lien, or, in

case of sale, is transferred to his share in the fund." Ex parte Johnson, 145 S.E. 113 at 117. Indeed, the judgment liens in these cases existed prior to the partition proceedings, further emphasizing the importance of priority as statutorily enforced today under the lis pendens mechanism. Nonetheless, even assuming Chung's motion to intervene was not procedurally flawed, he was still not a necessary party to the action.

c. Chung's motion to intervene and set aside the partition judgment is barred by the doctrine of laches.

The equitable doctrine of laches bars Appellant's attempt to intervene and set aside the rightfully obtained partition judgment. As the Master-in-Equity correctly observed, "[e]quity aids the vigilant, not those who slumber on their rights." See Eldridge v. Eldridge, 398 S.C. 113, 121, 728 S.E.2d 24, 28 (2012) (quoting Hemingway v. Mention, 228 S.C. 211, 89 S.E.2d 369 (1955)). The equitable doctrine of laches is defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." Hallums v. Hallums, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988). "Under the doctrine of laches, if a party, knowing his rights, does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights." Chambers of S.C., Inc. v. County Council for Lee County, 315 S.C. 418, 421, 434 S.E.2d 279, 280 (1993). The party seeking to establish laches must show: (1) a delay; (2) that was unreasonable under the circumstances; and (3) prejudice. Robinson v. Estate of Harris, 389 S.C. 360, 371–72, 698 S.E.2d 801, 807 (2010).

Here, Chung waited eight months after he obtained the District of Columbia judgment before domesticating the judgment in South Carolina. He then waited an additional ten months to seek intervention. Chung's unreasonable delay in asserting his right to Blaylock's interest in

the Langford property causes extreme prejudice to Respondent LaMarche, an innocent third party with no involvement in the District of Columbia judgment. Had Chung acted with vigilance and timely sought to secure his judgment against Blaylock's property interest, Chung could have recovered against Blaylock without involving LaMarche and her separate and distinct interest in the property. Likewise, had Chung not sat on his rights, he would have discovered the lis pendens on the Langford property and he could have sought other property to satisfy his judgment against Blaylock. Instead, due to Chung's unreasonable delay and failure to timely assert his rights, LaMarche was forced to litigate Chung's procedurally deficient motion to intervene and the instant appeal, despite lacking involvement in the District of Columbia judgment and despite her diligence in properly filing a notice of lis pendens and obtaining a valid partition judgment. It would contravene the principles of equity to prejudice LaMarche for Chung's lack of diligence where she adhered to the law and acted with vigilance at every step in the underlying partition action.

CONCLUSION

In sum, the Master's reliance on the lis pendens was appropriate. The properly filed lis pendens and the plain language of § 15-11-20 binds Appellant's subsequent interest in the Langford property to the outcome of the partition proceeding. As a subsequent judgment creditor, it was Chung's duty to discover the lis pendens and to seek other property to satisfy his judgment. He did no such thing. Because Chung sat on his rights, neither equity nor Rules 24(a) or 60(b)(3), SCRCP, are applicable at this late juncture.

Based upon the foregoing, the Master-in-Equity properly denied Appellant's motion to intervene and set aside the partition action. Respondent LaMarche respectfully requests that the Court affirm the Order of the Master-In-Equity denying Appellant's untimely intervention. Respondent further asks the Court to affirm the Order presently on appeal for any ground appearing

in the record or previously argued to the lower court as provided by Rule 220(c) of the South Carolina Appellate Court Rules.

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CERTIFICATE OF COUNSEL

I HEREBY CERTIFY that the foregoing Brief of Respondent Erica LaMarche complies with Rule 211(b) of the South Carolina Appellate Court Rules.

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PROOF OF SERVICE

I certify that on the 20th day of December, 2016, I served a copy of Respondent Erica LaMarche's Initial Respondent's Brief and Designation of Matter to counsel of record by mailing copies of same via United States Mail, postage pre-paid and return address clearly indicated on said envelope, to counsel at the following addresses:

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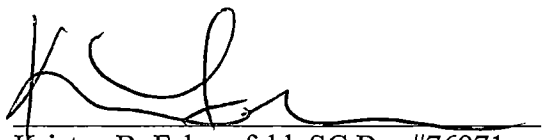

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December 20, 2016

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December 20, 2016

The Honorable Jenny Abbott Kitchings
Clerk of Court, S.C. Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: *Darryl M. Blalock v. Erica Lynn Lamarche and David S. Chung*

Dear Ms. Kitchings:

Enclosed the please find the original and one copy of the Initial Brief of Respondent Erica Lynn LaMarche in the above referenced matter. Please file the same and return a clocked in copy to our office via the enclosed envelope. Should you have any questions or concerns, please do not hesitate to contact our office.

With kind regards,

Sincerely,

Kelly D. Forrester

Kelly D. Forrester
Paralegal to Kristen B. Fehsenfeld, Esq.

KBF/kdf
cc: David K. Haller, Esq.
Darryl Blaylock

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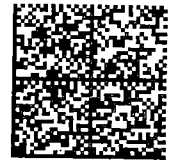

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