

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court Of Common Pleas

The Honorable Charles B. Simmons, Jr., Master-in-Equity

Case No.: 2014-CP-23-01871

China Construction America of South Carolina, Inc..... Appellant/Respondent,

vs.

MS Production Solutions LLC a/k/a MSPS Steel Fabricators, Manfred Sprenger and Patricia
Sprenger Respondents/Appellants

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STATEMENT OF ISSUES ON APPEAL

1. DID THE MASTER IN EQUITY ERR IN FINDING THE TRANSFERS FROM MS PRODUCTION SOLUTIONS, LLC TO MANFRED SPRENGER WERE NOT FRAUDULENT TRANSFERS WITHIN THE MEANING OF S.C. CODE ANN. § 27-23-10?
2. DID THE MASTER IN EQUITY ERR WHEN IT LIMITED APPELLANT'S RECOVERY TO FRAUDULENT TRANSFERS THAT OCCURRED AFTER THE DATE APPELLANT'S LAWSUIT WAS FILED?
3. DID THE MASTER IN EQUITY ERR WHEN IT DETERMINED THAT THE TRANSFERS FROM MS PRODUCTION SOLUTIONS TO PATRICIA SPRENGER WERE FRAUDULENT BUT FAILED TO ENTER A JUDGMENT AGAINST PATRICIA SPRENGER INDIVIDUALLY, WHO WAS A PARTY TO THE SUPPLEMENTAL PROCEEDINGS?
4. DID THE MASTER IN EQUITY ERR WHEN IT FAILED TO MAKE A FINDING THAT THERE IS NO PERFECTED SECURITY INTEREST IN THE DEPOSIT ACCOUNTS OF MS PRODUCTION SOLUTIONS, LLC AND FAILED TO ORDER EXECUTION ON THE SAME?

STATEMENT OF THE CASE

Appellant-Respondent China Construction America of South Carolina Inc. (“CCA”) commenced this action on April 2, 2014, seeking damages for breach of contract for failure to manufacture and deliver steel in accordance with the terms of the subcontract with Respondent-Appellant MS Production Solutions, LLC. (“MSPS”). (Complaint). By letter dated May 29, 2014 and filed June 3, 2014, MSPS attempted to respond to CCA’s Complaint. (Response to Complaint). However, because MSPS failed to properly answer or otherwise appear and an Order of Default was entered against MSPS on July 31, 2014 and filed on August 5, 2014. (Order of Default).

A damages hearing was held on November 17, 2014 before the Honorable G. Garrison Hill. (Notice of Motion and Motion for Damages Hearing). An Order of Judgment was entered against MSPS on December 23, 2014 and filed on December 24, 2014. (Order of Judgment). An Amended Order of Judgment in the amount of \$657,137.30 was subsequently entered against MSPS on January 28, 2015 and filed on January 29, 2015. (Amended Order of Judgment). Execution was issued on the amended judgment (hereinafter “the Judgment”) and thereafter returned *nulla bona* by the sheriff of Greenville County.

CCA then commenced supplemental proceedings to examine the defendant and execute on MSPS’s assets to satisfy the \$657,137.30 judgment. On May 5, 2015, a Rule to Show Cause and Order of Reference referring the matter to the Greenville County Master-In-Equity was filed. (Rule to Show Cause and Order of Reference). On May 5, 2015, CCA filed a Verified Petition for Supplemental Proceedings. (Verified Petition for Supplemental Proceedings). A supplemental proceedings hearing was held on June 2, 2015. (Hearing Tran. June 2, 2015).

After it became clear that MSPS diverted a significant amount of MSPS funds to Manfred Sprenger and Patricia Sprenger, CCA filed a Motion for Execution and to Set Aside Fraudulent Transfers on September 23, 2015, and a hearing was held on October 2, 2015 before the Greenville County Master In Equity. (Motion to Execute and Set Aside Fraudulent Transfers; Hearing Tran. Oct. 2, 2015). At the direction of the Master-in-Equity, CCA filed a Motion to Join Respondents-Appellants Manfred Sprenger and Patricia Sprenger as parties to the Supplemental Proceedings on October 12, 2015. (Motion to Join Parties). By Order dated October 27, 2015, the Court held in abeyance the determination of the fraudulent nature of the transfers. (Order on Motion to Set Aside Conveyances, Oct. 13, 2015). A hearing was held on CCA's Motion to Join on November 18, 2015, at which Manfred Sprenger and Patricia Sprenger were both represented individually by counsel. On December 23, 2015, the Court entered an Order joining Manfred Sprenger and Patricia Sprenger as parties. (Order, Dec. 23, 2015).

A final hearing on CCA's Motion to Execute and Set Aside Transfers was held on March 2, 2016. (Hearing Tran. March 2, 2016), and the Court entered an Order setting aside certain fraudulent conveyances on June 7, 2016. (Order, June 7, 2016). The parties all filed respective motions to reconsider (MSPS Motion to Alter or Amend; CCA Motion to Alter or Amend). The Master-in-Equity denied both motions. (Order, August 2, 2016).

CCA served its Notice of Appeal on August 29, 2016, seeking review of the June 7, 2016 Order on Motion to Set Aside Conveyances and the Order denying CCA's Rule 59(e) Motion filed on August 2, 2016. On September 1, 2016, MSPS, Manfred Sprenger and Patricia Sprenger served their Notice of Cross-Appeal.

FACTS

This Appeal arises out of CCA's attempt to set aside and execute on approximately \$361,393.84 of MS Production Solutions, LLC ("MSPS") funds that were fraudulently conveyed/transferred to Manfred Sprenger and Patricia Sprenger in an effort to avoid CCA's Judgment against it as well as the funds remaining in the MSPS corporate bank account. Respondent/Appellant Manfred Sprenger ("Manfred") is the sole principal and owner of MSPS. Respondent/Appellant Patricia Sprenger ("Patricia") is Manfred's wife, and at all relevant times was not an employee of MSPS. (Hearing Tran. June 2, 2015, 9:13-20; Pl. Ex 1, tab 8, Patricia Sprenger Dep, 12:12-22). Each of the transfers at issue to Manfred and Patricia Sprenger occurred while the lawsuit or supplemental proceedings were ongoing/pending.¹

On December 12, 2012, CCA and MSPS entered into a Contract in the amount of \$1,093,242.89 for MSPS to manufacture and deliver steel for a construction project at Irmo High School ("the Project"). (See Complaint). Throughout the Project, MSPS delayed the Project, failed to deliver a majority of the steel under the Contract, and delivered defective and non-conforming steel. (Amended Order of Judgment). After it became clear that a conflict arose between CCA and MSPS regarding MSPS's non-performance and defective work, Manfred Sprenger began writing checks from the MSPS bank account made payable to Patricia Sprenger without consideration. (Hearing Tran., March 2, 2016, 33:16-34:8; Response to Complaint). It is undisputed that Patricia Sprenger was not an employee of MSPS.

Over the course of about seven months, From August 29, 2013 to March 27, 2014, MSPS fraudulently transferred \$82,000.00 of MSPS funds to Patricia Sprenger (the "pre-lawsuit

¹ For ease of reference, CCA has prepared a chart summarizing the dates of the transfers in relation to the filing of pleadings and various motions in the underlying lawsuit. This summary is attached to this Brief as Appendix I. All evidence relating to the transfers and the filings are included in the Record before the Court and cited to in the Appendix. (See Appendix I).

transfers”), \$47,000.00 of which was transferred on March 27, 2014, just 7 days prior to CCA’s filing its lawsuit against MSPS. (Plaintiff’s Ex. 1, tab 3; Notice of Motion and Motion for Default). Patricia Sprenger deposited the MSPS funds into a joint bank account located at First Citizens Bank that she and Manfred Sprenger owned together. (Pl. Ex. 1, tab 3).

On April 2, 2014, CCA filed a Complaint against MSPS for damages arising out of MSPS’s failure to manufacture and deliver the structural steel for certain additions and renovations to Irmo High School pursuant to its contract with CCA. (Complaint). CCA’s damages exceeded \$400,000.00. Id. On April 28, 2014, MSPS transferred an additional \$7,000.00, fraudulently and without consideration, of MSPS funds to Patricia Sprenger. (Pl. Ex. 1, tab 3).

On May 2, 2014, MSPS was served with a copy of the Summons Complaint. (Affidavit of Service). MSPS did not answer or otherwise properly respond to CCA’s Complaint.² On July 25, 2014, CCA served its Motion for Default on MSPS. (Notice of Motion and Motion for Default). From May 14, 2014 to July 30, 2014, a little over two months and after MSPS was served the Complaint, MSPS fraudulently transferred an additional \$42,600 of MSPS funds to Patricia Sprenger, \$27,000 of which was transferred just 5 days after MSPS was served with CCA’s Motion for Default. (Pl. Ex. 1, tab 3).

An Order of Default was entered against MSPS on July 31, 2014 and filed on August 5, 2014. (Order of Default). From August 27, 2014 to December 22, 2014, after the Order of Default was served on MSPS, MSPS fraudulently transferred an additional \$98,000.00 from the MSPS account to Patricia Sprenger, \$70,000.00 of which was transferred just two weeks after MSPS

² After counsel for CCA notified MSPS of its intent to file a lawsuit against it, MSPS responded by letter to the Clerk of Court of Greenville County, which was signed by Manfred Sprenger and dated May 29, 2014 (prior to the filing of the lawsuit) and filed July 3, 2014 generally objecting CCA’s claims against it. (Response Letter).

received notice of the damages hearing.³ (Hearing Tran., March 2, 2016, 34:9-35:7; Pl. Ex. 1, tab 3; Notice of Motion and Motion for Damages Hearing). A damages hearing was held on November 17, 2014 and MSPS did not appear.

On December 24, 2014, CCA obtained a judgment against MSPS. (Order of Judgment). And on January 29, 2015, an Amended Order of Judgment was entered against Defendant MSPS in the amount of \$657,137.30. (Amended Order of Judgment). The fraudulent transfers to Patricia Sprenger continued through December of 2015. (Pl. Ex. 1, tab 3).

However, shortly after MSPS was served CCA's Verified Petition for Supplemental Proceedings on April 13, 2015, and after a Rule to Show Cause was issued on May 1, 2015, Manfred Sprenger began fraudulently transferring MSPS funds directly to himself as well. (Rule to Show Cause; Pl. Ex. 1, tab 3; Verified Petition for Supp. Proceedings). Notwithstanding the court's Order refraining and enjoining MSPS from making any transaction or transfer or other disposition of property belonging to it which is not exempt from execution pending further Order of the court, Manfred Sprenger continued his self-dealing effort. (Rule to Show Cause and Order of Reference, p. 2; Appendix I).

A supplemental proceeding hearing was held on June 2, 2015. (Hearing Tran., June 2, 2015). At the hearing, Manfred testified that his wife was not an employee of MSPS and the company does not pay him a salary (Hearing Tran. June 2, 2015, 8:20-9:20). CCA moved to execute on the assets of MSPS and the MSPS account at Bank of America. (Hearing Tran. June 2, 2015, 27:13-21). However, the hearing was held open to allow the parties to engage in additional discovery, and the court reminded Manfred of MSPS's obligation to refrain from

³ CCA served its Notice of Motion and Motion for Damages Hearing on MSPS on September 4, 2014. (Notice of Motion and Motion for Damages Hearing). On September 11, 2014, Manfred Sprenger was notified via US Mail that a damages hearing was to take place on November 17, 2014.

transferring company assets outside the normal course of business. (Hearing Tran. June 2, 2015, 28:22-29:20). In spite of the court's Order, Manfred continued transferring money to himself and his wife. From August 12, 2015 to December 7, 2015, Manfred fraudulently transferred an additional \$57,800.00 of MSPS funds to himself while simultaneously continuing to transfer funds to his wife. (Pl. Ex. 1, tab 3; Appendix I). Notably, after the Supplemental Proceedings Hearing and after Manfred and Patricia were served a subpoena *duces tecum* to appear for their depositions. Manfred Sprenger began writing checks payable to himself from the MSPS Bank Account instead of to his wife. (Pl. Ex. 1, tab 3; Plaintiff's Ex. 1, tab 9; Appendix I).⁴

Manfred and Patricia Sprenger were deposed on September 21, 2015. (Pl. Ex. 1, tabs 7, 8, and 9). At her deposition, Patricia Sprenger was questioned regarding a \$60,000.00 transfer to her dated May 27, 2015 and her subsequent cash withdrawal from her First Citizens account for \$50,000.00 on June 4, 2014. (Patricia Sprenger Dep., 30:1-30:22, 38:17-23, Pl. Ex. 1, tabs 8 and 9). In order to conceal the location of the cash, Manfred Sprenger interjected and attempted to prevent Patricia Sprenger from testifying. *Id.* However, Patricia's testimony revealed that she and Manfred had stored at least \$50,000.00 in cash in the bedroom of their home, the same cash that had been withdrawn from First Citizens Bank. *Id.*

The day after the depositions, Manfred Sprenger wrote himself a second check from the MSPS account for \$7,000.00. (Pl. Ex. 1, tab 3). On September 22, 2015, CCA filed a Motion for Execution and to Set Aside Fraudulent Transfers and Request for Expedited Hearing. (Motion to Execute and Set Aside). That same day, Manfred Sprenger wrote himself a third check from the MSPS account, this time for \$14,000.00. (Pl. Ex. 1, tab 3).

⁴ On July 31, 2015, Manfred Sprenger was served a Subpoena *Duces Tecum* to appear for his deposition. However, only the Subpoena *Duces Tecum* to Patricia was included as an Exhibit at the March 2, 2016 final hearing on the Motion to Execute and Set Aside Fraudulent Transfers.

A hearing was held on CCA's Motion to Execute and Set Aside Fraudulent Transfers on October 2, 2015. (Hearing Tran., Oct. 2, 2015). By the time the hearing was scheduled, 11 days after Manfred and Patricia's depositions, Manfred Sprenger and MSPS claimed only \$8,500.00 in cash remained in the home. (Hearing Tran., Oct. 2, 2015, 6:4-20). The Court heard arguments from counsel regarding the fraudulent nature of the transfers to both Patricia and Manfred, which MSPS claimed were "loan repayments" with a complete lack of documentation. (Hearing Tran., Oct. 2, 2015, 17:4-20:15). Notably, the court cautioned MSPS regarding transfers and repayments for any "loans" absent proper documentation. (Hearing Tran., Oct. 2, 2015, 25:2-26:1). Four days later, on October 6, 2015, CCA served its Motion to Join Manfred Sprenger and Patricia Sprenger as parties to the Supplemental Proceedings. (Motion to Join Parties). That same day, Manfred transferred another \$7,000.00 of MSPS funds to himself. (Pl. Ex. 1, tab 3).

On October 8, 2015, the court entered an order on CCA's Motion to Set Aside Conveyances, which was filed on October 13, 2015. (Order on Motion to Set Aside Conveyances). CCA moved to amend the October 8th Order, and the court filed an Amended Order on CCA's Motion to Execute and Set Aside Fraudulent Transfers on October 27, 2015. (Amended Order, Oct. 27, 2015). The Court held the determination of the fraudulent nature of the transfers in abeyance and again reminded MSPS that "it is enjoined from making any further transfers outside the ordinary course of business, including but not limited to, repayment of any 'loans' or 'capital contributions' not evidenced by any note or other proper loan documentation." (Amended Order Oct. 27, 2015, p.2.). The Court also noted that "while Manfred Sprenger nor Patricia Sprenger are parties at this point, they are clearly on notice of the allegations of this lawsuit and the likelihood of being named a party." (Amended Order, Oct. 27, 2015, p. 3).

On November 18, 2015, a hearing was held on CCA's Motion to Join Manfred Sprenger and Patricia Sprenger as parties. (Hearing Tran., Nov. 18, 2015). Manfred and Patricia Sprenger were represented at the hearing individually by counsel. (Hearing Tran. Nov. 18, 2015, 3:21-22). That very same day, and in direct defiance of the court's October 13 and October 27, 2015 Orders, Manfred Sprenger wrote himself a check from the MSPS bank account for \$10,000.00. (Pl. Ex. 1, tab 3; Order on Motion to Set Aside Conveyances; Amended Order). Finally, on December 3, 2015 and December 7, 2015, Manfred Sprenger wrote himself two more checks from the MSPS account for \$10,000 and \$2,800 respectively. (Pl. Ex. 1, tab 3). *

The Court granted CCA's Motion to Join Manfred and Patricia Sprenger as parties by order dated December 21, 2015 and filed December 23, 2015. (Order on Multiple Motions, Dec. 23, 2015). In its Order, the Court conceded that "it appears that many of the transfers were not only made when it was clear to defendant of the pendency or threat of litigation, but after the lawsuit was actually filed." (Order on Multiple Motions, Dec. 23, 2015, p. 2).

Manfred and Patricia were present at the final hearing on CCA's Motion to Execute and Set Aside Transfers, which was held on March 2, 2016. (Hearing Tran., March 2, 2016). At the hearing, MSPS took the position that all company assets, including the MSPS deposit account, that could satisfy CCA's judgment are secured by a loan held by Small Business Loan source, LLC ("SBL") in the amount of \$1,457,000.00 and is perfected by a UCC financing statement. (Pl. Ex. 1, tabs 11 and 12). At all relevant times, MSPS has remained current on the small business loan. (Hearing Tran. June 2, 2015, 4:20-5:3). CCA sought execution of the money in the MSPS deposit account and the fraudulent transfers to Manfred and Patricia Sprenger, arguing that SBL does not have a perfected security interest in the MSPS deposit account or the fraudulent transfers of cash. (Hearing Tran. March 2, 2016, 36:5-38:22). The court entered a final order setting aside only the

post-filing transfers to Patricia Sprenger but expressly declined to enter a judgment against her for the same. The order was silent as to CCA's entitlement to MSPS's deposit account. (Order, June 7, 2016).

STANDARD OF REVIEW

The evidentiary standard governing fraudulent conveyance claims brought under the Statute of Elizabeth is the clear and convincing standard. Oskin v. Johnson, 400 S.C. 390, 396, 735 S.E.2d 459, 463 (2012). An action to set aside a conveyance under the Statute of Elizabeth is an equitable action, and a de novo standard of review applies." Id. "In an appeal from an action in equity, [an appellate court] has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence." Pinckney v. Warren, 344 S.C. 382, 387, 544 S.E.2d 620, 623 (2001).

ARGUMENT

- I. THE MASTER IN EQUITY COMMITTED REVERSIBLE ERROR IN FINDING THE TRANSFERS FROM MS PRODUCTION SOLUTIONS, LLC TO MANFRED SPRENGER WERE NOT FRAUDULENT TRANSFERS WITHIN THE MEANING OF S.C. CODE ANN. § 27-23-10.

Between August 12, 2015 and December 7, 2015, MSPS transferred a total of \$57,800.00 to Manfred Sprenger. (Pl. Ex. 1, tab 3; Appendix I). Each of the transfers from MSPS to Manfred took place well after the judgment was entered against MSPS. (Pl. Ex. 1, tab 3; Appendix I). In fact, despite not making any transfers to Manfred Sprenger in the previous two years, MSPS began making the transfers to Manfred shortly after the first supplemental proceedings hearing in this matter was held. (Pl. Ex. 1, tab 3; Appendix I). The Master In Equity incorrectly determined that these transfers should not be set aside as fraudulent transfers. It is well-established in South Carolina that a debtor may not transfer or convey property to frustrate or impede a creditor. To that point, the Statute of Elizabeth provides:

Every gift, grant, alienation, bargain, transfer, and conveyance of lands, tenements, or hereditaments, goods and chattels or any of them, or of any lease, rent, commons, or other profit or charge out of the same, by writing or otherwise, and every bond, suit, judgment, and execution which may be had or made to or for any intent or purpose to delay, hinder, or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties, and forfeitures must be deemed and taken (only as against that person or persons, his or their heirs, successors, executors, administrators and assigns, and every one of them whose actions, suits, debts, accounts, damages, penalties, and forfeitures by guileful, covinous, or fraudulent devices and practices are, must, or might be in any ways disturbed, hindered, delayed, or defrauded) to be clearly and utterly void, frustrate and of no effect, any pretense, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding.

S.C. Code Ann. § 27-23-10(A) (2007). Our courts have applied the Statute of Elizabeth to set aside conveyance in two instances:

First, where the challenged transfer was made for a valuable consideration, it will be set aside if the plaintiff establishes that (1) the transfer was made by the grantor with the actual intent of defrauding his creditors; (2) the grantor was indebted at the time of the transfer; and (3) the grantor's intent is imputable to the grantee. **Second, where the transfer was not made on a valuable consideration, no actual intent to hinder or delay creditors must be proven. Instead, as a matter of equity, the transfer will be set aside if the plaintiff shows that (1) the grantor was indebted to him at the time of the transfer; (2) the conveyance was voluntary; and (3) the grantor failed to retain sufficient property to pay the indebtedness to the plaintiff in full-not merely at the time of the transfer, but in the final analysis when the creditor seeks to collect his debt.**

Mathis v. Burton, 319 S.C. 261, 264-65, 460 S.E.2d 406, 408 (Ct. App. 1995) (quoting Durham v. Blackard, 313 S.C. 432, 437, 438 S.E.2d 259, 262 (Ct. App. 1993)) (emphasis added); see also Oskin v. Johnson, 400 S.C. 390, 397, 735 S.E.2d 459, 463 (2012).

Manfred Sprenger failed to establish valuable consideration for the transfers from MSPS to himself; therefore, the Master In Equity erred in finding the transfers not subject to execution. In the absence of valuable consideration, the party seeking to set aside a transfer does not need to prove

fraudulent intent. Id. A transfer should be set aside if the transferor was indebted when the transfer was made, there was no consideration for the transfer and the indebted party fails to retain assets or property to satisfy the judgment. Id. Furthermore, it is well-settled that “where a conveyance to a family member or close relative is attacked on account of its voluntary character, the law imposes a duty of the transferee to establish both a valuable consideration and the bona fides of the transaction by clear and convincing evidence.” First State Sav. & Loan Ass’n v. Nodine, 291 S.C. 445, 450, 354 S.E.2d 51, 54 (1987) (citing Coleman v. Daniel, 261 S.C. 198, 199 S.E.2d 74 (1973)). The Master In Equity did not specify whether the burden shifted to Manfred Sprenger, the transferee, to establish valuable consideration and the bona fides of the transfers. However, the same logic and reasoning that justifies shifting the burden of proof to the transferee when dealing with transfers between family members or close relatives should be applied when a business owner transfers assets from the business to himself.

Here, Manfred Sprenger failed to prove there was valuable consideration and he further failed to demonstrate that the transfers were bona fide.⁵ Under South Carolina law, “consideration...may consist either in some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other.” Furman Univ. v. Waller, 124 S.C. 68, 117 S.E. 356, 358 (1923). Manfred Sprenger failed to show that he either received a benefit or suffered a detriment from the transfers from MSPS to himself. Given that Manfred Sprenger retained total control over the money regardless of the account in which it was held, Manfred Sprenger was in the exact same position before and after the transfers to himself. The funds were simply in a different account.

⁵ Black’s Law Dictionary defines bona fide as “[m]ade in good faith; without fraud or deceit”. Black’s Law Dictionary 81 (4th pocket ed. 2011).

The only argument offered by Manfred Sprenger supporting the contention that there was valuable consideration was that the transfers from MSPS to himself were loan repayments from loans he previously made to MSPS. (Hearing Tran., March 2, 2016, R. p. ____). However, Manfred Sprenger offered no documentation supporting the loans and could not provide details regarding when and how much money he loaned to the company. (Order, June 7, 2016, p. 8). Despite making a finding that Manfred Sprenger failed to introduce records documenting the alleged loans and that Manfred Sprenger improperly commingled business and personal assets, the lower court ruled that the transfers from MSPS to Manfred Sprenger should not be set aside as fraudulent transfers. (*Id.* at 7-8). The only reasoning provided by the Court in support of its ruling was that bank records showed that Manfred Sprenger had made “loans” to MSPS which were necessary to keep the business bank account from having a negative balance on several occasions. (*Id.* at 8). Regardless of whether Manfred Sprenger had loaned money to MSPS, Manfred Sprenger impermissibly chose to repay himself prior to paying his creditors.⁶ CCA’s judgment lien against MSPS takes priority over Manfred Sprenger, an unsecured creditor. Therefore, even taking Manfred Sprenger’s allegations regarding the loans as true, the “repayments” should be set aside. The limited evidence in support of his argument that the transfers were loan repayments does not amount to the clear and convincing evidence required by South Carolina case law. Therefore, the lower court erred in ruling that the transfers were not subject to execution.

Even assuming that there was consideration for the transfers, which CCA denies, the transfers from MSPS to Manfred Sprenger should still be set aside as fraudulent transfers. If a transfer alleged to be fraudulent is found to have been supported by valuable consideration, it may still be set aside if the transferor was (1) indebted at the time of the transfer; (2) the transfers were

⁶ “The principal of justice demands that one shall be just before he is generous.” *Suber v. Chandler*, 18 S.C. 526 (1883).

made with an intent to delay or defraud creditors and (3) the transferor failed to retain sufficient funds to satisfy the judgment against it. See Mathis, 319 S.C. at 264-65, 460 S.E.2d at 408. Here, it is undisputed that the transfers from MSPS to Manfred Sprenger were made after the judgment was entered against MSPS. The earliest transfer from MSPS to Manfred Sprenger was made on August 12, 2015, nearly nine months after the Order of Judgment was entered against MSPS. (Dec. 23, 2014 Order of Judgment; Pl. Ex. 1, tab 3). It is also undisputed that MSPS failed to retain sufficient funds to satisfy CCA's judgment against it. Throughout supplemental proceedings, MSPS has consistently maintained that it has no assets which can be applied towards CCA's judgment. Thus, the only issue for the court to determine is whether the transfers were made with the "intent or purpose to delay, hinder, or defraud" CCA from collecting on its judgment. See S.C. Code Ann. § 27-23-10.

In determining whether a debtor acted with the requisite intent to establish a fraudulent conveyance, courts often evaluate the particular circumstances of the transfer for "badges of fraud." Coleman v. Daniel, 261 S.C. 198, 209, 199 S.E.2d 74, 79 (1973) ("Certain circumstances so frequently attend conveyances to defraud creditors that they are recognized and referred to as 'badges of fraud.' The badges tend to excite suspicions as to the Bona fides of a challenged conveyance."). The presence of one or more badge of fraud creates a rebuttable presumption of intent to defraud. See Royal Z Lanes, Inc. v. Collins Holding Corp., 337 S.C. 592, 596, 524 S.E.2d 621, 623 (1999). In Coleman, our Supreme Court stated the following regarding the badges of fraud:

The facts which are recognized indicia of fraud are numerous, and no court could pretend to anticipate or catalog them all. Among the generally recognized badges of fraud are the insolvency or indebtedness of the transferor, lack of consideration for the conveyance, relationship between the transferor and the transferee, the pendency or threat of litigation, secrecy or concealment,

departure from the usual method of business, the transfer of the debtor's entire estate, the reservation of benefit to the transferor, and the retention by the debtor of possession of the property.

Id. (citing 37 Am.Jur.(2d), Fraudulent Conveyances, § 10 (1968)); see also In re Jones, 397 B.R. 765, 770 (Bankr. D.S.C. 2008); In re Ducate, 369 B.R. 251 (Bankr. D.S.C. 2007). The circumstance of MSPS's transfers to Manfred Sprenger meet at nearly all of the badges of fraud listed above.⁷ "Although the presence of a single factor, i.e., badge of fraud, may cast suspicion on the transferor's intent, the confluence of several in one transaction generally provides conclusive evidence of an actual intent to defraud." Gilchinsky v. Nat'l Westminster Bank, 732 A.2d 482, 490 (1999). Here, MSPS was (1) MSPS was indebted to CCA at the time of the transfers; (2) transferred the funds to its owner, a person in a close relationship with the business, (3) began transferring funds to Manfred Sprenger after CCA imitated supplemental proceedings; (4) attempted to conceal the transfers from CCA (5) departed from ordinary practice by transferring the funds to Manfred Sprenger (6) reserved the benefit of the funds by transferring them to its owner and (7) retained possession of the funds. The presence of these badges of fraud surrounding MSPS' post judgment transfers reveals its "actual intent to hinder, delay, or defraud" CCA from collecting on its judgment.

Establishing that a debtor acted with actual intent to hinder, delay or defraud a creditor is rarely proven by direct evidence. In re Schmit, 71 B.R. 587, 590 (Bankr. D. Minn. 1987). It is typically inferred from the facts and circumstances of the debtor's conduct. Id.; see also Farmers Co-op. Ass'n v. Strunk, 671 F.2d 391, 395 (10th Cir.1982) ("Fraudulent intent of course may be established by circumstantial evidence, or by inferences drawn from a course of conduct."). The

⁷ One of the badges of fraud satisfied is lack of consideration. CCA takes the position that the transfers at issue were not made on valuable consideration. *See supra* p. 12. However, as this section of the brief assumes, *arguendo*, that there was consideration, CCA will only address the other badges of fraud that are present.

circumstances of this case shows that MSPS, through its owner, took deliberate steps to prevent CCA from collecting its judgment. The contradictory testimony and the actions taken by Manfred Sprenger and his wife, Patricia Sprenger, are both strong evidence of their intent to prevent CCA from collecting its judgment. For example, during the supplemental proceedings hearing on June 2, 2015, Manfred Sprenger testified that he did not pay himself a salary from the MSPS business account. (Hearing Tran., June 2, 2015, 8:22-25). However, at the March 2, 2016 hearing, Manfred Sprenger then stated that he had a set salary from MSPS. (Hearing Tran., March 2, 2016, 18:22-1925). The change in testimony conveniently came after Manfred Sprenger's first explanation for the transfers from MSPS to himself was attacked by CCA. Manfred Sprenger's attempt to limit his wife's deposition testimony also demonstrates his fraudulent intent and blatant effort to obstruct CCA's collection effort.

During her deposition, Patricia Sprenger was questioned regarding the amount of cash kept in the Sprenger home. (Tran. of Patricia Sprenger Depo., Sept. 21, 2015, 30:1-30:22). In order to conceal the amount and location of the cash, Manfred Sprenger interjected and attempted to prevent Patricia Sprenger from testifying. (*Id.*). Manfred Sprenger's failure to mention that he had a significant amount of cash in his bedroom along with his attempts to prevent Patricia Sprenger from providing truthful testimony is further proof that he took steps to hinder or delay CCA's collection efforts.

Manfred Sprenger's continued disregard for the court's rulings should also be noted. In Judge Simmons October 8, 2015 Order, MSPS was ordered that it was enjoined making any transfers "outside the ordinary course of business, including but not limited to, repayment of any 'loans' or 'capital contributions'" (Oct. 8, 2015 Order at 2). Over the course of the next two months, MSPS transferred nearly \$23,000.000 to Manfred Sprenger, a direct violation of Judge

Simmons' Order. Viewed as a whole, Manfred Sprenger's contradictory and evasive testimony, his efforts to impede discovery and his conscious disregard for the court's rulings demonstrates "actual intent to hinder, delay, or defraud" CCA from collecting on its judgment. The law does not condone such action. This Court should find that the transfers from MSPS to Manfred Sprenger totaling \$57,800.00 should be set aside as fraudulent transfers and enter a judgment against Manfred Sprenger individually for the same.

II. THE MASTER IN EQUITY COMMITTED REVERSIBLE ERROR WHEN IT LIMITED APPELLANT'S RECOVERY TO FRAUDULENT TRANSFERS THAT OCCURRED AFTER THE DATE APPELLANT'S LAWSUIT WAS FILED.

The Master In Equity found that CCA was only entitled to execute on transfers from MSPS which occurred after CCA's lawsuit was filed. (Order, June 7, 2016, pp.6-7).⁸ This was error. South Carolina case law is clear that, for the purposes of the Statute of Elizabeth, "it is only necessary that the debt should have been in existence or the right of action have accrued at or before the time of the transfer." Albertson v. Robinson, 371 S.C. 311, 317-18, 638 S.E.2d 81, 84 (2006) (quoting Matthews v. Montgomery, 193 S.C. 118, 133, 7 S.E.2d 841, 848 (1940)). Further, in determining "whether a person is such an existing creditor as can invoke the protection of the statute *the inception of the debt or obligation is the time which controls*; and not the date of the subsequent entry of judgment. Id. (emphasis added).

In Albertson, a creditor sought to set aside an alleged fraudulent transfer from a husband to his wife which took place prior to a judgment being filed against the husband. Id. at 313-15, 638 S.E.2d at 82-83. The lower court ruled that the transfer was not a fraudulent transfer because the husband was not indebted to the creditor at the time of the transfer. Id. at 315, 638 S.E.2d at

⁸ In its Order, the court noted that "the court chooses not to go behind the date of the filing of the lawsuit based on the unique facts of this case". (Order, June 7, 2016, p. 7). The court failed to identify the "unique facts" that formed a basis for its decision to limit the transfers to after the date the lawsuit was filed and denied CCA's Motion to Reconsider seeking clarification of the same.

83. The Court of Appeals reversed and ruled that the transfer should have been voided as a fraudulent transfer. *Id.* In *Albertson*, like the present case, the husband's debt arose from the breach of a construction contract. *Id.* at 314, 638 S.E.2d at 82. In ruling that the transfer from the husband to his wife should be set aside, the Court of Appeals found the operative date, "[t]he inception of the debt or obligation", to be the date the husband breached his contract with the plaintiffs. *Id.* at 317, 638 S.E.2d 84. In this case, the damages hearing judge found that MSPS breached its contract with CCA on August 12, 2013, well before CCA filed suit in April of 2014.⁹ Pursuant to South Carolina case law, August 12, 2013 represents the "[t]he inception of the debt or obligation". *Id.* Accordingly, the lower court erred in limiting CCA's recovery to transfers occurring after the lawsuit was filed on April 2, 2014.

In total, the lower court ruled that \$82,000.00 in transfers from MSPS to Patricia Sprenger occurring prior to the filing of the lawsuit were not subject to execution.¹⁰ (Order, June 7, 2016, p. 7; Appendix I). While CCA submits that every transfer from MSPS to Manfred or Patricia Sprenger occurring after August 12, 2013 should be set aside as a fraudulent transfer, two transfers from MSPS to Patricia Sprenger on March 27, 2014 deserve special attention. These transfers, totaling \$47,000.00, are notable in that they came less than one week prior to CCA filing suit against MSPS. There is no dispute that MSPS was on notice of CCA's claims prior to the March 27, 2014 transfers from MSPS to Patricia Sprenger. MSPS had received correspondence regarding CCA's claims and even responded to CCA's letter. (Hearing Tran., March 2, 2015, 34:2-34:8).

⁹ The Amended Order of Judgment filed on January 29, 2014 mistakenly indicates that MSPS' breach of contract occurred on August 12, 2014. This was typographical error which should have been August 12, 2013. As the Order indicates that prejudgment interest accrued for 462 days prior to the entry of the Order of Judgment, it is clear that the Court ruled that the breach occurred on August 12, 2013. (Amended Order of Judgment, p. 2).

¹⁰ As a point of clarification, the lower court found that all of the transfers from MSPS to Patricia Sprenger alleged to be fraudulent by CCA should be set aside except those occurring prior to the filing of the lawsuit on April 2, 2014.

The lower court's determination that CCA is only entitled to transfers after it filed suit against MSPS is unsupported by South Carolina case law. Furthermore, given that the lower court failed to provide its reasoning for choosing the day the lawsuit was filed as the operative date, it appears to be an arbitrary date without justification. This is especially true given that MSPS was clearly on notice of CCA's claims prior to the lawsuit being filed. This Court should find that CCA is entitled to set aside all transfers from MSPS from August 12, 2013 by virtue of the fraudulent transfers.

III. THE MASTER IN EQUITY ERRED WHEN IT DETERMINED THAT THE TRANSFERS FROM MSPS TO PATRICIA SPRENGER WERE FRAUDULENT BUT FAILED TO ENTER A JUDGMENT AGAINST PATRICIA SPRENGER INDIVIDUALLY, WHO WAS A PARTY TO THE SUPPLEMENTAL PROCEEDINGS.

CCA is entitled to a judgment against Patricia Sprenger for the funds MSPS fraudulently transferred to her. The Court found the transfers to Patricia Sprenger were fraudulent transfers within the meaning of S.C. Code § 27-23-10 but erred when it failed to provide an adequate a remedy to CCA to recover the same. Specifically, the Court found

MSPS improperly transferred its assets into the hands of Patricia. Petitioner is entitled to a full examination of Patricia to determine her assets. Petitioner shall be entitled to execute on any non-exempt assets of Patricia up to \$221,593.84 which represents the transfers from MSPS to Patricia dating from April 2, 2014, the date this lawsuit was filed, until December 24, 2015...

It is further ordered that Petitioner be entitled to a full examination of Patricia within 30 days from the entry of this Order to determine if any assets that were improperly transferred from MSPS to Patricia remain. The *petitioner is entitled to recover any remaining* non-exempt assets from those improperly transferred from MSPS to Patricia between April 2, 2014 and December 24, 2015, up to \$221,593.94...*However, this Order shall not be construed as a judgment against Patricia.*"

(Order, June 7, 2016, pp. 6, 9, emphasis added).

S.C. Code § 15-39-410 provides “[t]he judge may order any property of the judgment debtor, not exempt from execution, in the hands either of himself or any other person or due to the judgment debtor, to be applied toward the satisfaction of the judgment, except that the earnings of the debtor for his personal services cannot be so applied.” As such, funds proven prima facie to belong to a judgment debtor in the hands of a third party may be reached in supplementary proceedings. Lynn v. International Broth. of Firemen and Oilers, 228 S.C. 357, 90 S.E.2d 204 (1955).

The issue in this case is in regard to the method the court may order those funds be applied to satisfy the judgment. While South Carolina courts have not spoken on this issue, other jurisdictions have held “a money judgment against the transferee may also be an available form of substitute relief where the transferee has disposed of the wrongfully conveyed property in some manner which makes it impossible to return.” Joslin v. Lopez, 309 A.D.2d 837, 765 N.Y.S.2d 895 (N.Y. App. Div. 2d Dep’t 2003); Marine Midland Bank v. Murkoff, 120 A.D.2d 122, 508 N.Y.S.2d 17 (N.Y. App. Div. 1986); see also Buchanan v. Buchanan, 266 Va. 207, 585 S.E.2d 533 (2003); Price v. Hawkins, 247 Va. 32, 439 S.E.2d 382 (1994).

In a case involving similar facts, The Supreme Court of Virginia upheld the decision of a lower court to enter a judgment against third party transferees of cash. Price v. Hawkins, 247 Va. 32, 439 S.E.2d 382 (1994). In that case, the plaintiff-creditor claimed the defendant-debtor fraudulently transferred various amounts of cash to the debtor’s girlfriend and two sons in an effort to avoid the plaintiff’s judgment and in violation of Virginia’s fraudulent and voluntary conveyances statute. The court held a judgment against the third party transferees for the full amount of the conveyances was proper because “a mere declaration...that the cash transfers are ‘void; is meaningless in terms of relief to the defrauded creditor in this case” because “cash money

has been transferred and, if merely ordered to return money to the court, the transferees may refuse to do so, or claim that the money transferred has been spent and is no longer available. In effect, the defrauded creditor in this case is without any effective remedy...unless personal judgments are entered against the defrauders.” Id. at 37-38.

It is imperative to remember that the asset at issue in the case is cash, which is personal property and not real property. Similar to Price, the assets that were fraudulently transferred to Patricia was cash from the MSPS corporate bank account that was deposited into a joint personal account owned by Manfred and Patricia and located at First Citizens Bank. (Pl. Ex. 1, tab 3, Pl Ex. 1, tab 8: 17:13-20:13). As the wife of Manfred Sprenger, the principal and owner of the debtor, MSPS, Patricia was an “insider transferee” of the funds. Manfred Sprenger and Patricia Sprenger would then withdraw the fraudulently transferred funds in cash. (Ex. A to Pl. Notice of Motion and Motion for Execution and to Set Aside Fraudulent Transfers). In fact, Patricia Sprenger testified at her deposition that she and Manfred Sprenger had at least \$50,000.00 in cash in their home bedroom. (Pl. Ex. 1, tab 8, Patricia Sprenger Dep. 30:11-23). However, by the time a hearing could be held (11 days after Patricia Sprenger’s deposition), Manfred Sprenger and MSPS claimed only \$8,500.00 in cash remained available. (Hearing Tran., Oct. 2, 2015, 6:4-20).¹¹ All the while, the Sprengers continually depleted the balance in their First Citizens account. (Pl. Ex. 1, tab 8, Patricia Sprenger Dep. 38:1-12).

¹¹ By Amended Order dated October 26, 2015 and filed October 27, 2015, the Court found that Manfred Sprenger “appears to have some access to the \$50,000.00 in cash”, ordered MSPS to exercise all reasonable efforts to recover the \$50,000.00 to be held in trust by counsel for MSPS, and noted that “Manfred Sprenger and Patricia Sprenger...are clearly on notice of the allegations of this lawsuit and the likelihood of being named a party.” (Order, Oct. 27, 2015, pp. 2-3.). Despite admitting at least \$8,500 in cash remained in the home, MSPS refused to remit those funds to its attorney to be held in trust and forcing CCA to file a Motion for Contempt and to Impose Sanctions. (Motion for Contempt). After a hearing on CCA’s Motion, MSPS ultimately turned over \$8,000.00 to its attorney to be held in trust.

The remedy the Master-In-Equity ordered, an examination of Patricia's assets to determine if "any remaining non-exempt assets from those improperly transferred from MSPS to Patricia", is effectively no remedy at all. The Court's refusal to enter a judgment against Patricia Sprenger for the value of the funds she fraudulently accepted from MSPS leaves CCA with no practical ability to collect the money owed and does nothing but incentivize a judgment debtor to transfer cash subject to execution to third parties, withdraw the money and hold it in a safe somewhere. A judgment in this case is proper because the transferee has disposed of the property in a manner which makes it impossible to return.

This is not a situation where a transferee sells real estate to a third party and the third party takes the property subject to the judgment creditor's lien, in which case the court can unravel the transfer of property. In that instance, the judgment creditor has a remedy available against the subsequent purchaser by forcing it to return the property. See e.g. Joslin v. Lopez, 309 A.D.2d 837, 765 N.Y.S.2d 895 (N.Y. App. Div. 2d Dep't 2003). Here, MSPS cannot recover cash Patricia has fraudulently obtained and disposed of.

MSPS argues the only way which it may reach the funds fraudulently transferred to Patricia Sprenger in partial satisfaction of the judgment would be to obtain a judgment against her individually. Patricia Sprenger was properly joined in the supplemental proceedings as a third party transferee of approximately \$361,393.84 of MSPS funds. (Motion to Join Manfred Sprenger and Patricia Sprenger as Parties; Order filed Dec. 23, 2015). On November 18, 2015, a hearing was held on CCA's Motion to Join, at which Patricia Sprenger was individually represented by counsel. (Hearing Tran., Nov. 18, 2015, 3:21-22). Patricia Sprenger had a fair opportunity to raise any defense and did not move to reconsider or appeal the Court's order joining her as a party to the supplemental proceedings. Therefore, a Judgment should be entered against Patricia Sprenger

in the amount fraudulently transferred to Patricia Sprenger, including but not limited to, those transfers that occurred prior to the filing of the lawsuit in this case.

IV. THE MASTER IN EQUITY ERRED WHEN IT FAILED TO MAKE A FINDING THAT THERE IS NO PERFECTED SECURITY INTEREST IN THE DEPOSIT ACCOUNTS OF MS PRODUCTION SOLUTIONS, LLC AND FAILED TO ISSUE AN ORDER OF EXECUTION ON THE SAME AND DIRECTING BANK OF AMERICA TO DELIVER ALL FUNDS ON DEPOSIT TO CCA.

The court erred when it failed to order the funds in the MSPS corporate bank account be delivered to CCA in satisfaction of the judgment. CCA argued at length at the March 2, 2016 hearing that it was entitled to execute on the monies in the MSPS corporate bank account and raised this issue again in its Motion to Reconsider. (Hearing Tran., March 2, 2016 36:5-39:3; PI's Motion to Reconsider, p.2). However, the court simply held that "petitioner is not entitled to set aside the payments" from the MSPS account to Manfred Sprenger and left undecided CCA's request to execute on the remaining monies in the MSPS account, which were never transferred to Manfred Sprenger and is still available to the company today. (Order Setting Aside Fraudulent Conveyances, p. 7).¹²

CCA was entitled to execute on the funds in the MSPS bank account because no perfected security interest exists in the cash on hand in the MSPS corporate bank account, nor is the money in the corporate account subject to any statutory exemption. It is well established that customary deposits in a bank creates debts owed by the bank to the depositor and may be reached through supplementary proceedings. McManus v. Bank of Greenwood, 171 S.C. 84, 171 S.E. 473 (1933); Deer Island Lumber Co. v. Virginia-Carolina Chemical Co., 111 S.C. 299, 97 S.E. 833 (S.C. 1919).

¹² Notably, the Court acknowledged in its Order Setting Aside Fraudulent Conveyances that "Petitioner clarified that it only sought to execute on MSPS' deposit accounts and the cash it alleged was improperly transferred out of MSPS and currently being held in the Sprenger's home. Petitioner referred the Court to S.C. Code §36-9-104 which states that a security interest in deposit accounts is only perfected through control." (Order Setting Aside Fraudulent Conveyances, p. 7). However, the Court failed to rule entirely on the funds remaining in the MSPS account.

Johnson v. Service Mgmt., 319 S.C. 165, 459 S.E.2d 900 (S.C. Ct. App. 1995). Section 36-9-102(29) of the South Carolina Commercial Code defines “deposit account” as “a demand, time, savings, passbook, or similar account maintained with a bank.” To perfect its interest in the debtor’s deposit account, the Lender must gain “control” over the debtor’s deposit account. S.C. Code Ann. §36-9-314(a)-(b).¹³ A secured party may perfect its security interest in a deposit account by having “control” of the account by (a) having a three-party control agreement among the debtor, the secured party and the depository bank pursuant to which the depository bank agrees to follow the secured party’s directions regarding the distribution of funds in the account without further consent of the debtor or (b) being the “customer” of the depository bank with respect to the deposit account (i.e. the deposit account is the secured party’s account rather than the debtor’s account). S.C. Code. Ann. §36-9-104(a)(2)-(3).

It is undisputed that Small Business Loan Source, LLC (“SBL” or “Lender”) holds a security interest in a majority of MSPS’s assets pursuant to its Security Agreement. (Ex. 1, tab 11). The Security Agreement does provide that SBL holds a security interest in “all...accounts...and other rights to monies from the Premises and or the businesses and operations conducted by Mortgagor” and “all of Mortgagor’s accounts now owned or hereafter acquired” (Ex. 1, tab 11). The description of collateral in the SBL UCC financing statement also includes “all accounts” and “deposit accounts.” (Pl. Ex. 1, tab 12). However, because deposit accounts must be perfected by control and cannot be perfected by filing a financing statement, the Lender does not have a perfected security interest in the MSPS deposit account. SBL is not the bank with which the

¹³ S.C. Code Ann. §36-9-314(a) provides: “[a] security interest ... deposit accounts... may be perfected by control of the collateral under Section ... 36-9-104...”. S.C. Code Ann. §36-9-314(b) further provides that “[a] security interest in...deposit accounts...is perfected by control under Section...36-9-104... when the secured party obtains control and remains perfected by control only while the secured party retains control.”

deposit account is maintained; the deposit account is maintained at Bank of America. (Hearing Tran., March 2, 2016, 26:13-16; Ex. 1, tab 9). Finally, SBL does not own MSPS's deposit account and no a control agreement exists between SBL, Bank of America and MSPS and Manfred Sprenger. (Hearing Tran., March 2, 2016, 26:13-27:19).

Because SBL did not exercise the requisite control over the deposit account and CCA moved for execution on the deposit account, CCA achieved a legal preference and priority over the funds that account. See Freedman's Saving & Trust Co. v. Earle, 110 U.S. S.Ct. 226, 229, 28 L.Ed. 301 (1884) ("It is the execution first begun to be executed, unless otherwise regulated by statute, which is entitled to priority"). As such, SBL does not a have perfected security interest in the deposit account and CCA takes free of SBL's security interest because it became a lien creditor¹⁴ when it moved to execute on all non-exempt assets of MSPS. S.C. Code Ann. §36-9-317(a).¹⁵ Therefore, the court erred when it did not execute against the MSPS deposit account or issue an order directing Bank of America to deliver to CCA all funds on deposit in the MSPS account.

CONCLUSION

For the reasons stated above, this Court should reverse the lower court's holding that CCA cannot recover the post-judgment fraudulent transfers to Manfred Sprenger and the pre-lawsuit transfers to Patricia Sprenger and direct the lower court to enter a judgment against Manfred and Patricia Sprenger for the same. Respondents-Appellants presented no evidence, other than offering testimony which directly contradicted prior sworn testimony, to refute CCA's

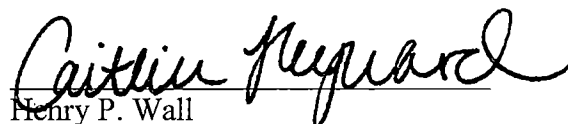
¹⁴ S.C. Code Ann. §36-9-102(52)(A) defines "lien creditor" as "a creditor that has acquired a lien on the property involved by attachment, levy, or the like."

¹⁵ S.C. Code Ann. §36-9-317(a) provides in relevant part: "[a] security interest...is subordinate to the rights of...a person that become a lien creditor before the earlier of the time the security interest....is perfected..."

overwhelming evidence that the transfers were fraudulent and intended to hinder or prevent CCA from collecting on its judgment against MSPS. Furthermore, the lower court erred when it failed to rule that MSPS's corporate deposit account is subject to execution. This action should be remitted to the Master-In-Equity for an order directing Bank of America to deliver to CCA all funds on deposit in MSPS's corporate bank account and for a judgment to be entered in favor of CCA against Manfred Sprenger and Patricia Sprenger in the amount of \$361,393.84.

Respectfully submitted,

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January 6, 2017

**APPENDIX I
TO INITIAL BRIEF OF APPELLANT-RESPONDNET**

	Date	Check No.	Filing	Payable To The Order Of	Amount of Transfers	Record
1.	8/29/2013	53663		Patricia Sprenger	\$7,000.00	R. p._
2.	9/27/2013	53716		Patricia Sprenger	\$7,000.00	R. p._
3.	10/30/2013	53751		Patricia Sprenger	\$7,000.00	R. p._
4.	11/26/2013	53784		Patricia Sprenger	\$7,000.00	R. p._
5.	2/25/2014	53894		Patricia Sprenger	\$7,000.00	R. p._
6.	3/27/2014	53948		Patricia Sprenger	\$40,000.00	R. p._
7.	3/27/2014	53946		Patricia Sprenger	\$7,000.00	R. p._
	5/29/2014		MSPS Response to Complaint			R. p._
	4/2/2014		Lawsuit Filed			R. p._
8.	4/28/2014	54042		Patricia Sprenger	\$7,000.00	R. p._
	5/2/2014		Affidavit of Service of Lawsuit			R. p._
9.	5/14/2014	54079		Patricia Sprenger	\$1,600.00	R. p._
10.	5/29/2014	54084		Patricia Sprenger	\$7,000.00	R. p._
11.	6/24/2014	54119		Patricia Sprenger	\$7,000.00	R. p._
	7/25/2014		Notice of Motion and Motion for Default Served			R. p._
	7/29/2014		Notice of Motion and Motion for Default Filed			R. p._
12.	7/30/2014	54165		Patricia Sprenger	\$27,000.00	R. p._
	8/5/14		Order of Default Filed			R. p._
13.	8/27/2014	54191		Patricia Sprenger	\$7,000.00	R. p._

	Date	Check No.	Filing	Payable To The Order Of	Amount of Transfers	Record
	9/5/2014		Motion for Damages Hearing Filed			R. p._
14.	9/29/2014	54255		Patricia Sprenger	\$70,000.00	R. p._
15.	9/29/2014	54252		Patricia Sprenger	\$7,000.00	R. p._
16.	11/3/2014	54283		Patricia Sprenger	\$7,000.00	R. p._
	11/17/14			Damages Hearing Held		R. p._
17.	12/22/2014	54341		Patricia Sprenger	\$7,000.00	R. p._
	12/24/2014		Order of Judgment Filed			R. p._
	1/29/2015		Amended Order of Judgment Filed			R. p._
	4/13/2015		VP for Supplemental Proceedings			R. p._
	5/1/2015		Rule to Show Cause Entered			R. p._
	5/13/15		RTSC served on MSPS			R. p._
18.	5/27/2015	54522		Patricia Sprenger	\$60,000.00	R. p._
	6/2/2015		Supplemental Proceeding Hearing			R. p._
	6/4/2015			Patricia \$50,000.00 cash withdrawal from First Citizens Account		R. p._
19.	6/23/2015	54548		Patricia Sprenger	\$7,000.00	R. p._
	7/31/2015		Subpoena Duces Tecum-Patricia			R. p._

	Date	Check No.	Filing	Payable To The Order Of	Amount of Transfers	Record
20.	8/12/2015	54598		Manfred Sprenger	\$7,000.00	R. p._
	9/21/2015		Deposition of Manfred, Patricia and 30(b)(6) of MSPS			R. p._
	9/22/2015		CCA's Motion for Execute and Set Aside Fraudulent Transfers			R. p._
21.	9/22/2015	55055		Manfred Sprenger	\$7,000.00	R. p._
22.	9/23/2015	55057		Manfred Sprenger	\$14,000.00	R. p._
23.	9/24/2015	54806		Patricia Sprenger	\$499.56	R. p._
	10/2/2015		Hearing on Motion to Set Aside Fraudulent Transfers			R. p._
24.	10/6/2015	55060		Manfred Sprenger	\$7,000.00	R. p._
	10/6/2015		Motion to Join Manfred and Patricia as Parties			R. p._
25.	10/8/2015	55701		Patricia Sprenger	\$499.56	R. p._
	10/13/2015		First Order on Motion to Set Aside Fraudulent Conveyances			R. p._
26.	10/15/2015	55708		Patricia Sprenger	\$499.56	R. p._
	10/19/2015		Motion for Contempt and Sanctions			R. p._
27.	10/22/2015	55716		Patricia Sprenger	\$499.56	R. p._

	Date	Check No.	Filing	Payable To The Order Of	Amount of Transfers	Record
	10/26/2015		Amended Order on Motion to Set Aside Fraudulent Conveyances			R. p._
28.	10/29/2015	55723		Patricia Sprenger	\$499.56	R. p._
29.	11/5/2015	55730		Patricia Sprenger	\$499.56	R. p._
30.	11/12/2015	55737		Patricia Sprenger	\$499.56	R. p._
	11/18/15		Hearing on Motion to Join Parties			R. p._
31.	11/18/2015	55118		Manfred Sprenger	\$10,000.00	R. p._
32.	11/19/2015	55743		Patricia Sprenger	\$499.56	R. p._
33.	11/27/2015	55749		Patricia Sprenger	\$499.56	R. p._
34.	12/3/2015	55139		Manfred Sprenger	\$10,000.00	R. p._
35.	12/3/2015	55757		Patricia Sprenger	\$499.56	R. p._
36.	12/7/2015	55140		Manfred Sprenger	\$2,800.00	R. p._
37.	12/10/2015	55766		Patricia Sprenger	\$499.56	R. p._
38.	12/17/2015	55774		Patricia Sprenger	\$499.56	R. p._
39.	12/24/2015	55782		Patricia Sprenger	\$499.56	R. p._
40.	12/24/2015	55790		Patricia Sprenger	\$499.56	R. p._
TOTAL					\$361,393.84	

BRUNER, POWELL, WALL & MULLINS, LLC

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BRYAN M.J. TRIPLETT

** Also Admitted in District of Columbia

AUTHOR'S E-MAIL: CHEYWARD@BRUNERPOWELL.COM

January 6, 2017

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29201

RECEIVED

JAN 06 2017

SC Court of Appeals

Re: China Construction America of S.C., Inc. v. MS Production Solution, LLC
Appellate Case No.: 2016-1787
C/A No.: 2014-CP-23-1871
Our File No.: 9-948.131

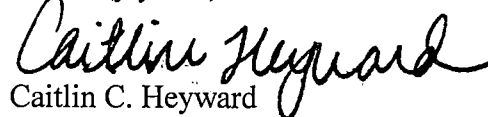
Dear Ms. Kitchings:

Enclosed for filing please find the **APPELLANTS' INITIAL BRIEF OF APPELLANTS/RESPONDENTS**. Also enclosed please find the Designation of Matter to be Included in the Record on Appeal and Proof of Service evidencing that the Appellants' Initial Brief of Appellants/Respondents and Designation of Matter were served on J. Falkner Wilkes, Esquire, attorney for the Respondent/Appellant.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

With my kindest regards, I am

Sincerely yours,


Caitlin C. Heyward

CCH/kg

Enclosures

cc: J. Falkner Wilkes
Mike Watson, China Construction

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

JAN 06 2017

SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court Of Common Pleas

The Honorable Charles B. Simmons, Jr., Master-in-Equity

Common Pleas Case No.: 2014-CP-23-01871
Appellate Case No.: 2016-1787

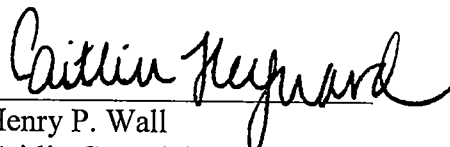
China Construction America of South Carolina, Inc..... Appellant,

vs.

MS Production Solutions LLC a/k/a MSPS Steel Fabricators, Manfred Sprenger and
Patricia Sprenger Respondents

PROOF OF SERVICE

I certify that I have served the APPELLANTS' INTIAL BRIEF OF APPELLANTS/RESPONDENTS AND DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL upon the attorney of Record for the Record for the Respondent/Appellant by mailing a copy of the same to their attorney of record, J. Falkner Wilkes, Esquire, Attorney at Law, 114 Whitsett Street, Greenville, South Carolina 29601 via United States mail, postage prepaid this 6th day of January 2017.



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*Attorneys for Appellant/Respondent
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South Carolina, Inc.*