STATE OF SOUTH CAROLINA
IN THE
SUPREME COURT

Appeal from the Court of Common Pleas For Charleston County
Honorable J. C. Nicholson, Jr., Circuit Judge
Civil Action Nos.: 2010-CP-10-9096 and 2011-CP-10-8840
___ S.C. ___, 795 S.E.2d 857 (Ct.App. 2016)

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

Respondent,

v.

Donald W. Lancaster,

Petitioner.

Petition for Writ of Certiorari by the Petitioner, Donald W. Lancaster

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TO: THE HONORABLE JUSTICES OF THE SOUTH CAROLINA SUPREME COURT:

COMES NOW the Petitioner, Donald W. Lancaster ("Mr. Lancaster"), pursuant to Rule 221(a), *SCACR*, and respectfully submits his ***Petition for Writ of Certiorari***. Mr. Lancaster respectfully requests this Supreme Court to grant him certiorari and to reverse the decision of the Court of Appeals which affirmed the Circuit Court.**1**

Certiorari is appropriate, because the Court of Appeals, *with one strongly dissenting judge*, overlooked the import of material facts of record and, furthermore, misinterpreted the relevant facts and the law. The record clearly demonstrated Mr. Lancaster acted appropriately in assisting his aunt and uncle during their dire financial dilemmas. Moreover, the judgment upon which the Trial Court based its judgment against Mr. Lancaster was undisputedly more than ten years old when entered and, therefore, neither effective nor enforceable.

I. STATEMENT OF THE ISSUES ON CERTIORARI

A. Whether The Court of Appeals Unreasonably And Unnecessarily Expanded This Supreme Court's Decision in *Linda Mc Co. v. Shore* To Permit The Enforcement Of A Judgment Which Was Clearly Over Ten Years Old?

B. Whether The Judgments Obtained Against Mr. Drews Were Unenforceable Against The Petitioner Due To The Passage Of The Ten-Year Validity Period?

C. Whether The Court of Appeals Improperly Held The $100,000.00 The Drewses Paid The Petitioner In 1992 Constituted A Fraudulent Conveyance?

D. Whether The Court of Appeals Improperly Held The $40,000.00 The Petitioner Loaned The Drewses During 1993-1995 Constituted Fraudulent Conveyances?

E. Whether The Court of Appeals Improperly Held The Drewses Gave The Petitioner A $20,000.00 Mortgage Without Any Valuable Consideration?

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1 *See* Gordon v. Lancaster, ___ S.C. ___, 795 S.E.2d 857 (Ct.App. 2016).

II. STATEMENT OF THE FACTS[2]

A. Mr. Lancaster Assists The Drewses

Mr. Lancaster is a certified internal auditor/business analyst who performs contract work for the U.S. Department of State. (R.p.319, line 25 – R.p.320, line 15; R.p.763, para. 1). He is the nephew of the late Mr. Rudolph Robert Drews and his wife, the late Effie D. Drews (the "Drewses") and was very close to them both. (R.p.387, lines 5-10; R.p.763, para. 2).[3]

Mr. Drews previously owned and operated "The Drews Company" - a fairly successful Charleston area construction business from 1946 or so to about late 1991 or early 1992. (R.pp.763-764, para. 3). The Drews Company fell upon hard times after Hurricane Hugo in 1989 (R.p.13, para. 1; R.p.439, line 23 – R.p.440, line 4; R.p.764, para. 4), due, in part, to an unscrupulous business associate who had absconded with company funds. (R.p.355, lines 13-18; R.p.764, para. 4). Even though Mr. Drews attempted to "keep the company afloat" by borrowing heavily against the Drewses' personal residence in Charleston's Edgewater Park subdivision, the IRS still filed liens against the business for unpaid payroll taxes. (R.p.13, para. 1; R.p.355, lines 6-12; R.p.373, lines 6-13; R.p.764, para. 4). In response, Mr. Drews decided to sell his company. (R.p.440, lines 5-10; R.p.764, para. 4). The Drewses also decided to sell

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2 Mr. Lancaster's predicament herein is unfortunately a classic example of the classic idiom "no good deed goes unpunished." He tried to do the right thing by his aunt and uncle and has, heretofore, paid dearly for his kindnesses. Furthermore, this Court of Appeals' rendition of the "facts" continues to tarnish his good reputation by affirming the Circuit Court's findings that he was guilty of moral fraud. As demonstrated by the record, nothing could be further from the truth. Even if it is assumed that Mr. Drews was promoting some nefarious scheme to hide money from his creditors, a meritless assumption at best, **Mr. Lancaster should not be "painted with the same broad brush" as his motives and intentions were above reproach.**

3 Mr. Drews passed away in September 2007, and Mrs. Drews followed in February 2010. (R.p.383, lines 2-7; R.p.763, para. 2).

their Edgewater Park home to ***satisfy*** the outstanding IRS liens, as well as the various loans they had taken out to keep The Drews Company in business. (R.p.355, lines 6-12; R.p.440, lines 11-15; R.pp.764-765, para. 5).**4**

1. The Bainbridge Drive Property

In ***April 1992***, Mr. Drews told Mr. Lancaster about $100,000.00 would remain from the sale of the Edgewater Park residence and asked Mr. Lancaster if he would consider agreeing to the same housing arrangement he previously made with his parents. (R.p.373, line 6 – R.p.374, line 5; R.pp.764-765, para. 5).**5** Mr. Drews proposed to (a) give Mr. Lancaster the $100,000.00, (b) have him use that money, in part, to purchase a suitable home, and (c) then allow the Drewses to live there, via a life estate, for the rest of their lives rent and mortgage "free". (R.pp.764-765, para. 5).**6** Due to his close relationship with the Drewses (R.p.387, lines 5-10) and since no one else in their family possessed the financial ability to help, Mr. Lancaster agreed to help the Drewses. (R.p.13, para. 2; R.p.387, lines 11-19; R.p.418, lines 6-21).

In May 1992, the Drewses sold their Edgewater Park home and found a suitable home at 17 Bainbridge Drive. ***After paying off the IRS and satisfying other***

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4 When Mr. Drews broached the "life estate" issue with Mr. Lancaster, the Drewes had about 30 days in which to vacate their home. (R.p.373, lines 9-15). They had not yet been able to find a comfortable home in the $100,000.00 price range. (R.p.373, lines 14-25).

5 Mr. Lancaster had previously purchased a home for his parents after his father was forced to stop working and, while retaining ownership thereof, allowed his parents to live there for the remainder of their lives. (R.p.373, line 6 – R.p.374, line 5).

6 For all practical purposes, the Drewses had simply made their lease payments "up front" (R.p.397, lines 11-15) while, on the other hand, leaving Mr. Lancaster with the risk of interest rate flux, major maintenance costs, property devaluation, *etc.* The Drewses did not have sufficient funds to purchase a home on their own and, with ***no income***, could not obtain a residential mortgage. (R.p.387, lines 11-14). The Drewses (one or both) lived comfortably and rent-free in Mr. Lancaster's properties for more than 17 years in exchange for a single payment of $100,000.00, the equivalent of less than ***$500.00 per month***. An excellent bargain for them.

outstanding debts[7] (R.p.387, line 20 – R.p.388, line 2; R.p.488, line 16 – R.p.491, line 14),[8] the Drewses gave Mr. Lancaster the remaining $100,000.00. (R.p.137, paras. 43-45; R.pp.144-145, paras. 3, 9-10; R.p.322, lines 13-25; R.p.376, lines 14-20). Using that money (R.p.137, para. 44; R.p.144, para. 3; R.p.376, lines 21-23; R.p.484, lines 17-23), together with some of his own, Mr. Lancaster purchased Bainbridge Drive on ***22 May 1992***, for $160,000.00 (R.p.14, para. 7; R.p.340, line 22 – R.p.341, line 7; R.p.376, line 24 – R.p.377, line 1; R.pp.662-664).[9] He added another $5,000.00 or so in repairs. (R.p.341, lines 2-7; R.p.379, lines 9-15).[10] The Drewses, via the life estate (R.p.14, para. 8; R.p.484, line 24 – R.p.485, line 2; R.p.487, lines 7-18; R.p.665), then moved into Bainbridge Drive and lived there for the next 37 months. (R.p.137, para. 47; R.p.146, para. 11; R.p.378, lines 16-18).

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7 Contrary to the record, the Court of Appeals stated that while Mr. "Lancaster argued the Drewses were debt free in 1992 after they sold their home, there was no documentary evidence the liens had been discharged or the sales proceeds were sufficient to pay off outstanding obligations." Gordon v. Lancaster, 2016 WL 6471967, *7. The mere fact the property was sold was all the evidence needed. ***Mr. and Mrs. Drews could not have sold their Edgewater Park home in 1992 if there still had been liens attached to the property***. The fact they did so with about $100,000.00 left over demonstrates they were ***debt free*** in 1992.

8 Mr. Gordon's accounting expert witness, Richard T. Livingston, CPA of Dixon Hughes Goodman (R.p.443, line 9 - R.p.447, line 8), ***testified that he was not aware of any specific creditors which the Drewses were attempting to avoid when they gave Mr. Lancaster the $100,000.00 to use in purchasing Bainbridge Drive***. (R.p.491, lines 9-14). This testimony is obviously correct in that the Drewses had paid off the IRS and the other creditors with the proceeds from the sale of their home and still had $100,000.00 left over.

9 Mr. Lancaster contributed $60,000.00. (R.p.341, line 2 - R.p.343, line 11; R.p.359, lines 14-17; R.p.360, lines 2-10; R.p.377, lines 2-17). Mr. Drews' attorney - Kerry Koon, Esquire - prepared most, if not all, of the real estate documents involving the Drewses, including the life estate documentation. (R.p.354, lines 15-18). There was ***no evidence*** showing that either Attorney Koon represented Mr. Lancaster or requested Mr. Lancaster's input into any of the documents Attorney Koon prepared for the Drewses.

10 Mr. Lancaster owned Bainbridge Drive (R.p.133, para. 47; R.p.146, para. 11; R.pp.662-664) and paid the property taxes on that home. (R.p.378, lines 2-4). The Drewses paid the property insurance and the utilities. (R.p.378, lines 5-8). The Drewses did not own a home once they sold Edgewater Park. (R.p.998, line 11 - R.p.999, line 13, R.p.1013, lines 2-17).

2. The Nuffield Road Property

In ***April 1995***, Mr. Drews asked Mr. Lancaster to sell Bainbridge Drive (two story) and to purchase a one story home. (R.p.378, line 19 – R.p.379, line 3).**11** The Drewses located a suitable residence at 2 Nuffield Road. (R.p.360, lines 18-20; R.p.363, lines 11-15; R.p.380, lines 4-19). Mr. Lancaster bought the Nuffield Road property on ***16 May 1995*** (R.p.137, para. 48; R.p.144, para. 12; R.pp.667-671; R.pp.1055-1059),**12** for $125,000.00 (R.p.487, line 19 – R.p.488, line 5; R.pp.667-671; R.pp.1055-1059) and expended an additional $14,500.00 or so for a new a/c system, updated appliances, and various other repairs. (R.p.364, line 22 – R.p.365, line 2; R.p.R.pp.687-688).**13** The Drewses lived there (R.p.378, line 23 – R.p.379, line 1) under the same life estate arrangement with Mr. Lancaster as before. (R.p.378, lines 1-22; R.p.382, line 15 – R.p.383, line 1; R.p.488, lines 6-8; R.pp.677-681; R.p.726, para. 6; R.pp.1060-1064).**14**

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11 One of Mr. Drews' knees had deteriorated and he was unable to negotiate the stairs at Bainbridge Drive. (R.p.379, line 19 - R.p.380, line 3; R.p.487, lines 19-23).

12 Mr. Drews, acting as Attorney-in-Fact for Mr. Lancaster via a Power-of Attorney, signed the real estate sales documents for Nuffield Road. (R.p.360, line 16 - R.p.362, line 11; R.pp.672-676). The Court of Appeals characterized this 15 year-old real estate transaction as nefarious since Mr. Lancaster could not locate a copy of the POA. Gordon v. Lancaster, 2016 WL 6471967, *2. Mr. Lancaster had no reason to retain a copy of the POA after the Nuffield Road sale closed or the original POA which he did not retrieve from Mr. Drews. (R.p.360, line 16 - R.p.361, line 11). Mr. Lancaster used the POA since he was in San Francisco on 27 April 1995, when Mr. Drews executed the real estate sales agreement for Nuffield Road. (R.p.360, lines 16-22; R.p.362, lines 3-8; R.p.380, lines 7–25; R.pp.672-676). Mr. Lancaster later attended the closing. (R.p.380, line 23 - R.p.381, line 4; R.pp.667-671).

13 Mr. Lancaster owned Nuffield Road. (R.p.137, para. 49; R.p.146, para. 13; R.pp.R.pp.667-671). Like with Bainbridge Drive before, he paid the property taxes (R.p.383, lines 8-10) and the Drewses paid the utilities and casualty insurance. (R.p.383, lines 11-15).

14 As with the Bainbridge Drive life estate documents (R.p.378, lines 1-3; R.pp.665-666; R.pp.1053-1054), Attorney Koon again prepared and handled the Nuffield Road life estate documentation. (R.p.378, lines 1-13; R.p.382, line 18 - R.p.383, line 1; R.pp.R.pp.677-681; R.pp.1060-1064). Mr. Lancaster's legal counsel was not involved. (R.p.378, lines 1-13; R.p.382, line 18 - R.p.383, line 1; R.pp.R.pp.665-666; R.pp.677-681; R.pp.1053-1054; R.pp.1060-1064).

Mr. Drews lived at Nuffield Road for over 12 years from 1995, until his death in September 2007. (R.p.137, para. 49; R.p.383, lines 2-7). Mrs. Drews lived there for almost 15 years from 1995 until she passed away in February 2010. (R.pp.137-138, paras. 49, 52; R.p.383, lines 2-7).**15**

3. Other Loans And Advances

Since the Drewses had no "income" after The Drews Company failed, other than their social security benefits, they were forced to pay their living expenses using their credit cards. (R.p.328, lines 7-10; R.p.385, lines 4-20). Consequently, during the ***1993-1995***-time frame, Mr. Lancaster made additional direct loans/advances to Mr. and Mrs. Drews totaling $40,000.00 (R.p.324, lines 20-23; R.p.328, lines 7-10; R.p.385, line 21 – R.p.386, line 14; R.p.1065) so they could, in large part, pay down their $35,000.00 in credit card debt. (R.p.355, lines 19-25; R.pp.692-695).**16**

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15 Considering both Bainbridge Drive and Nuffield Road, the Drewses lived in property owned by Mr. Lancaster for over 15 years (Mr. Drews) and almost 18 years (Mrs. Drews), respectively.

16 Absent record support, the Court of Appeals concluded these "payments were not loans. . ., but . . . constituted a surreptitious scheme to return to the Drewses a portion of the [original] $100,000[.00] [Mr.] Drews provided [Mr.] Lancaster in 1992." Gordon v. Lancaster, ___ S.C. ___, ___. 795 S.E.2d 857, 864. The evidence showed that on ***1 March 1995***, Mr. Drews gave Mr. Lancaster a mortgage on Mr. Drews' warehouse property at 1705 Meeting Street to secure the $40,000.00 in various loans. (R.p.346, line 8 - R.p.347, line 6; R.pp.629-630). On 15 April 1998, Mr. Drews gave Mr. Lancaster a $100,000.00 mortgage on the same property as security for any additional loans Mr. Lancaster would make to them on an open-ended basis. (R.p.348, line 20 - R.p.350, line 14; R.p.351, lines 18-22; R.p.402, lines 12-18; R.pp.633-637). Mr. Lancaster ***did not request*** the $100,000.00 mortgage and "wasn't involved in securing [it]." (R.p.348, line 20 - R.p.349, line 3). While Mr. Lancaster eventually satisfied the $40,000.00 mortgage in 2001, he was never asked to do so before then. (R.p.350, line 9 - R.p.351, line 16). Both of these mortgages were satisfied in November 2001, when Mr. and Mrs. Drews sold 1705 Meeting to Charleston Antique District. (R.p.357, lines 9-18; R.p.359, lines 1-8). Mr. Lancaster never initiated any collection efforts on either of these mortgages. (R.p.358, lines 19-25; R.p.368, lines 8-16). Mr. Lancaster was aware of the $40,000.00 mortgage when it originated, but did not find out until about 1999, that Mr. Drews had increased the mortgage from $40,000.00 to $100,000.00. (R.p.401, line 19 - R.p.368, line 23). Mr. Lancaster did not learn until much later that there were two separate mortgages - one for $40,000.00 and another for $100,000.00 - or

In addition, in ***1999***, Mr. Lancaster, albeit indirectly, loaned Mr. and Mrs. Drews $20,000.00 to pay off loans obtained from First Citizens Bank and South Trust Bank to finance the failed Builders Station hardware store business endeavor. (R.p.367, lines 11-22; R.p.388, line 23 – R.p.389, line 24; R.p.402, lines 19-23; R.pp.1060-1064). To satisfy those loans, Mr. Lancaster sent a check on ***2 June 1999***, ***directly to First Citizens*** for $5,000.00 (R.p.389, lines 2-24; R.p.766, para. 8; R.p.1073) and, on ***7 June 1999***, had Wachovia issue a $15,000.00 check made payable ***directly to South Trust***. (R.p.389, lines 2-24; R.p.766, para. 8; p.1073). After this final $20,000.00 loan,**17** the Drewses' debt to Mr. Lancaster totaled $63,738.11, including accrued interest.**18**

4. Payments And Loan Security

In 1996, Mr. Drews sold another piece of property he owned – 623 Meeting Street. (R.p.370, lines 15-21; R.p.384, lines 13-24). The Drewses still owed Mr. Lancaster $40,000.00. (R.p.370, line 22 – R.p.371, line 1; R.p.1065).**19** Understandably, Mr. Lancaster asked Mr. Drews for some security for the unpaid

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that they had not been satisfied. (R.p.371, line 6 - R.p.372, line 9; R.p.401, line 19 - R.p.403, line 10). Mr. Lancaster was unaware of Mr. Drews' actions and it should not be "assumed" that Mr. Lancaster's actions were inappropriate and/or fraudulent.

17 On 1 July 1999, Mr. Drews gave Mr. Lancaster another mortgage for this last $20,000.00 loan - also on 1705 Meeting. (R.p.351, line 17 - R.p.353, line 23; R.pp.638-642). Mr. Lancaster was unaware of this mortgage as Mr. Drews had it drawn up without his knowledge. (R.p.352, lines 3-6). Mr. Drews later advised Mr. Lancaster of this last mortgage way after the fact. In any case, this final mortgage was satisfied in November 2001, when the Drewses sold 1705 Meeting to Charleston Antique District. (R.p.357, lines 9-18; R.p.359, lines 1-8).

18 Mr. Lancaster kept good records of the monies he loaned to Mr. and Mrs. Drews and their payments back to him. (R.p.388, lines 3-22; R.p.390, line 15 - R.p.391, line 15; R.pp.692-695; R.pp.1066-1072). ***All of the monies Mr. Lancaster loaned to Mr. and Mrs. Drews undisputedly occurred in 1999 or before***. (R.p.399, lines 2-6). ***No loans of any type were made after 1999***. (R.p.399, lines 2-6).

19 Mr. Lancaster only received around $3,000.00 from the 623 Meeting sales proceeds (R.p.371, lines 2-5), even though he and Mr. Drews had agreed that the $40,000.00 in loans would be fully satisfied from that sale. (R.p.371, lines 10-15; R.p.386, lines 6-19).

balance of the $40,000.00 loan. (R.p.371, lines 6-15). Mr. Drews provided him with the $40,000.00 mortgage[20] on 1705 Meeting. (R.p.371, lines 16-17). Importantly, however, there was ***no evidence (other than rank speculation) Mr. Lancaster***, other than seeking security for the loans he made, ***had any other participation or involvement in the preparation of either the $100,000.00 mortgage, or the $40,000.00 mortgage, or the $20,000.00 mortgage***. (R.p.371, lines 18-23). Attorney Koon prepared all of the required documentation. Mr. Lancaster was not given copies of the mortgages. (R.p.371, line 24 – R.p.372, line 9).

In November 2001, the Drewses sold 1705 Meeting to Charleston Antique District for around $190,000.00. (R.p.356, lines 16-23; R.p.391, lines 7-15; R.p.391, line 22 – R.p.392, line 6; R.pp.643-648). While most of the purchase price was financed,[21] Mr. Lancaster received around $11,089.63 from the sale. (R.pp.136-137, para. 41; R.p.145, para. 8; R.p.327, lines 3-19; R.p.392, lines 22-24). This reduced the Drewses' outstanding loan balance to $50,912.00 which was memorialized in a promissory note. (R.p.136, para. 37; R.pp.144-145, para. 3; R.p.327, line 23 – R.p.328, line 10; R.p.392, line 25 – R.p.393, line 16; R.p.658; R.p.1074).[22] The note was secured by an assignment of the 1705 Meeting mortgage given to and *held by the Drewses*. (R.p.136,

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20 The Court of Appeals intoned that Mr. Lancaster assisted Mr. Drews to dodge creditors since the $40,000.00 mortgage was executed on 1 March 1995, but not recorded until 7 November 1995. Gordon v. Lancaster, ___ S.C., ___, 795 S.E.2d 857, 859. This assertion ignores the fact that an unrecorded mortgage is not "of record" and, therefore, ***not*** within the chain of title and ***not*** required to be satisfied or addressed upon an ownership change. An ***unrecorded mortgage protects a debtors' creditors*** because it will likely never come into play. As far as the public was concerned the $40,000.00 mortgage ***did not exist*** during the time it was not recorded.

21 Charleston Antique District gave Mr. Drews a $190,000.00 Promissory Note and a Mortgage. (R.p.134, para. 20; R.p.144, para. 3; R.p.329, lines 3-6; R.pp.643-648).

22 Attorney Koon prepared the promissory note (R.p.393, lines 17-21) which had a 5% rate of interest with monthly payments of $540.00. (R.p.392, lines 1-21; R.p.658; R.p.1074).

para. 38; R.p.144, para. 3; R.p.328, lines 25 – R.p.329, line 2; R.p.393, line 22 – R.p.394, line 25; R.pp.651-652; R.pp.1075-1077).**23** The Drewses paid Mr. Lancaster his $540.00 monthly payment out of the monthly payments they received from Charleston Antique District. (R.p.136, para. 40; R.p.144, para. 3; R.p.334, lines 21-25; R.p.391, lines 11-15; R.p.395, lines 1-23; R.pp.692-695; R.pp.1066-1071).**24**

B. The Underlying Judgment

In ***1996***, Mr. Drews and Raymond Beasley incorporated the ill-fated Builders Station hardware store business. (R.p.365, lines 3-16). Mr. Drews sold stock, allegedly required to be registered, to various investors, including Mr. Gordon ***and Mr. Lancaster***. (R.p.133, para. 8; R.p.365, lines 17-25).**25** Builders Station completely failed and Mr. Gordon sued seeking compensation for Mr. Drews' purported violations of South Carolina's securities laws. (R.p.133, para. 8; R.p.726, para. 2). The Circuit Court

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23 Mr. Drews assigned to Mrs. Drews the Charleston Antique District's 1705 Meeting Note and Mortgage. (R.pp.643-650). Mrs. Drews then assigned the same mortgage to Mr. Lancaster to secure the $50,912.00 Promissory Note. (R.p.134, para. 21; R.p.144, para. 3; R.p.372, lines 10-23; R.pp.651-652; R.pp.1075-1076). Mr. Lancaster understandably wanted to secure the Drewses' $50,912.00 debt. (R.p.359, lines 16-19; R.p.393, line 22 - R.p.394, line 25). Attorney Koon suggested an assignment of the Charleston Antique District mortgage and prepared the necessary documentation. (R.p.393, line 22 - R.p.394, line 25; R.pp.651-652; R.pp.1075-1076). When Charleston Antiques District sold 1705 Meeting Mr. Lancaster satisfied and released the 1705 Meeting mortgage assignment. (R.p.395, line 24 - R.p.396, line 2; R.pp.689-691).

24 In September 2005, Charleston Antique District, in turn, sold 1705 Meeting to unrelated third-parties. (R.p.334, lines 13-16; R.p.395, lines 5-10; R.pp.R.pp.655-657; R.pp.721-725). The Drewses obtained approximately $130,000.00 from the sale. (R.p.335, line 19 - R.p.336, line 1; R.p.372, line 24 - R.p.373, lines 5; R.p.396, lines 3-8; R.pp.719-720). They paid Mr. Lancaster $35,621.12, representing the remaining unpaid amount outstanding on the Drewses' original loan balance of $50,912.00. (R.p.136, para. 40; R.p.144, para. 3; R.p.334, lines 13-20; R.p.395, lines 5-23; R.p.658; R.pp.689-690).

25 *There was no evidence showing Mr. Lancaster was involved, in any way, with the formation of Builders Station or the sale of the unregistered corporate stock.* Mr. Lancaster, himself, was a victim as he had purchased $30,000.00 worth of Builders Station's stock. (R.p.365, lines 17-19; R.p.366, lines 3-5; R.p.389, line 25 - R.p.390, line 6).

held a non-jury trial on ***3-4 December 2001***, and granted Mr. Gordon judgment against Mr. Drews for $65,789.12. (R.p.11, para. 2; R.pp.46-53; R.p.133, para. 9; R.p.726, para. 3; R.pp.1079-1085). In March 2002, Mr. Gordon was awarded $42,693.50 in attorneys' fees and costs (R.p.11, para. 2; R.pp.41-43; R.pp.1079-1090) producing a total judgment of $108,482.62.**26** (R.p.11; R.p.133, para. 9; R.pp.1079-1090).**27**

III. ARGUMENT AND CITATION OF AUTHORITY

A. THE COURT OF APPEALS INCORRECTLY EXPANDED THIS SUPREME COURT'S VERY LIMITED HOLDING IN *LINDA Mc CO. V. SHORE* BY HOLDING MR. GORDON HAD TIMELY INITIATED HIS ENFORCEMENT ACTION AGAINST MR. LANCASTER EVEN THOUGH THE 2002 DREWS JUDGMENT WAS UNDISPUTEDLY MORE THAN TEN YEARS OLD

South Carolina law currently provides, in pertinent part, that "[e]xecutions may issue upon final judgments or decrees at any time within ***ten years from the date of the original entry thereof*** and shall have active energy during such period, without any renewal thereof, and this whether any return may or may not have been made during such period on such executions.**28** This required Mr. Gordon, with a very small

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26 Mr. Gordon's judgment was affirmed on appeal. *See* Gordon v. Drews, 358 S.C. 598, 595 S.E.2d 864 (Ct.App. 2004), *rehearing denied* (20 May 2004), *cert. denied* (22 September 2005). Mr. Gordon also was awarded $1,467.21 in appellate costs. (R.pp.38-34). Mr. Lancaster first found out about Mr. Gordon's judgment against Mr. Drews in December 2001. (R.p.399, line 20 - R.p.400, line 1).

27 Notwithstanding the amount of the ***original judgment against Mr. Drews***, the Circuit Court in this present case, ***inexplicably*** issued a judgment for ***$211,677.30*** (R.p.9; R.pp.10-30), even though Mr. Gordon's accounting expert witness, Mr. Livingston (R.p.443, line 9 - R.p.447, line 8), stated that his damage calculations for Mr. Gordon, including pre-judgment interest, ***was only*** **$151,029.49** (R.p.469, line 5 - R.p.470, line 11), ***more than $60,000.00 lower***. In addition, prior to the final judgment herein, Mr. Gordon had settled with Jessie Atkinson (Mrs. Drews' sister and PR for her estate) another party to this litigation for $60,000.00. (R.pp.12, 30; R.p.100, paras. 66-69, R.p.110, paras. 66-69; R.pp.158-164). No set off in that sum has been given.

28 *See* S. C. Code Ann. 15-39-30 (Thomson Reuters West 2012) (Emphasis added). *See also generally* Linda Mc Co. v. Shore, 375 S.C. 432. 653 S.E.2d 279 (Ct.App. 2007), *certiorari granted and affirmed as modified*, 390 S.C. 543, 703 S.E.2d 499 (2010); Carr v. Guerard, 365 S.C. 151, 616 S.E.2d 429 (2005). Before 1946, even though the life of a judgment was ten years, it could be

unrelated exception, to act on the judgment he obtained against Mr. Drews ***within ten years*** of receiving that judgment. The record demonstrates Mr. Gordon failed to timely do so and his claim against Mr. Lancaster was barred as a matter of law. This Supreme Court should reverse the Court of Appeals' decision and grant Mr. Lancaster judgment.

Mr. Gordon obtained his damages judgment against Mr. Drews on ***5 December 2001*** (R.p.11, para. 2; R.pp.46-53; R.p.133, para. 9; R.p.726, para. 3; R.pp.1079-1085), and the attorneys' fees award on ***15 March 2002***. (R.p.11, para. 2; R.pp.41-43; R.pp.1079-1090). The judgment was enrolled on ***18 March 2002***.**29** Mr. Gordon sued Mr. Lancaster on ***2 November 2010*** (R.pp.120-130), and obtained his judgment on ***19 August 2013***. (R.p.9; R.pp.10-30). By any reasonable calculation, Mr. Gordon's judgments had expired and were unenforceable as they were more than ten years old.

In *Linda Mc Co. v. Shore*, this Supreme Court, in a very limited holding, recognized that *S.C. Code Ann.* § 15-39-30 operated like a statute of limitations when a judgment creditor had initiated supplemental proceedings against the judgment debtor within the ten-year time period and conducted a merits hearing, but the Circuit Court ***had not issued*** the levy and execution order ***until after expiration*** of the ten-year period.**30** Entirely unlike the Supreme Court's ***very limited factual situation*** in *Linda*

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extended for an additional ten years. *See generally* U.S. Rubber Co. v. McManus, 211 S.C. 342, 345-346, 45 S.E.2d 335, 336 (1947). *See also* Linda Mc. Co. v. Shore, 390 S.C. 543, 560, 703 S.E.2d 499, 508 (Beatty, J., dissenting). In 1946, the South Carolina Legislature decided that ten years was a ***sufficient time period*** and rewrote the law prohibiting any extension. This Supreme Court held "[t]he logical result of the 1946 enactment . . .was to ***utterly extinguish a judgment after the expiration of ten years from the date of entry***." Hardee v. Lynch, 212 S.C. 6, 16-17, 46 S.E.2d 179, 183 (1948) (Emphasis added).

29 Gordon v. Lancaster, ___ S.C. ___, ___, 795 S.E.2d 857, 856 (Thomas, J, dissenting).

30 *See* Linda Mc Co. v. Shore, 390 S.C. 543, 544, 703 S.E.2d 499, 504-505.

Mc Co.,**31** this case was not a circumstance where Mr. Gordon, as the judgment creditor, " 'ha[d] complied with the applicable statutes . . and [wa]s ***merely waiting on a court's order*** regarding execution and levy [order]' "**32** Mr. Gordon sued Mr. Lancaster on ***2 November 2010*** (R.pp.120-130), and "the [C]ircuit [C]ourt ***did not hold the final hearing*** until June 2013, more than one year after the expiration of the ten-year period."**33** Furthermore, Mr. Gordon's judgment was not effective until ***19 August 2013***. (R.p.9; R.pp.10-30).

The Court of Appeals vastly expanded *Linda Mc Co.*'s limited reach to the extent that now a judgment creditor could "legitimately" file and serve an action to enforce an outstanding judgment on the ***very last day of the ten-year "active energy" period*** and still have effective enforcement rights because the judgment creditor had "filed [the] action . . . within the ten-year statutory period of active energy."**34** This rationale substantially ***extends*** the ten-year "active energy" period for whatever amount of time it takes the Circuit Court to ***actually conduct a hearing and to issue a final order*** – potentially years into the future given legitimate delays and continuances. This goes far beyond the limited circumstances this Supreme Court addressed in *Linda Mc Co.* and

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31 The Supreme Court specifically stated that "[w]e want to stress that this is a ***narrow holding*** limited to facts similar to those at issue in this case." Linda Mc Co. v. Shore, 390 S.C. 543, 544, 703 S.E.2d 499, 504-505 (Emphasis added); GrandSouth Bank v. Cleveland Land Co., 2015 WL 5834241, *1 (Ct.App., filed 7 October 2015) (*per curiam*) (Not Reported in S.E.2d). *See also* RRR, Inc. v. Toggas, 98 F.Supp.3d 12, 17 (D.D.C. 2015); Alex Sanders & John S. Nichols, Trial Handbook for South Carolina Lawyers, §§ 36:18, 40:9 (Thomson Reuters West 2016 Supp.).

32 Gordon v. Lancaster, ___ S.C. ___, ___, 795 S.E.2d 857, 862 (*quoting* Linda Mc Co. v. Shore, 390 S.C. 543, 554-555, 703 S.E.2d 499, 505).

33 Gordon v. Lancaster, ___ S.C. ___, ___, 795 S.E.2d 857, 865 (Thomas, J., dissenting) (Emphasis added).

34 Gordon v. Lancaster, ___ S.C. ___, ___, 795 S.E.2d 857, 862 (*citing* Linda Mc Co. v. Shore, 390 S.C. 543, 554 n.7, 703 S.E.2d 499, 505, n.7).

has unnecessarily and gratuitously expanded the holding of that opinion well beyond what this Supreme Court seems to have anticipated, contemplated, and/or intended.**35**

Additionally, the Court of Appeals' reliance on *Hardee v. Lynch***36**, to justify an expansion of the *Linda Mc Co.* holding is entirely misplaced. Firstly, *Hardee v. Lynch* addressed South Carolina law ***prior to 1946*** when, unlike today, the ten-year period could be legitimately extended for an additional ten years. Moreover, as now Chief Justice Beatty then noted in *Linda Mc Co.*, the "*Hardee* court ***specifically declined*** to address the question of what happens when a timely-filed action to enforce a judgment [wa]s not concluded prior to the expiration of the ten-year repose period as it was unnecessary to resolve the issue before it."**37** Furthermore, now Chief Justice Beatty recognized that this Supreme Court had ***already*** "squarely confronted the question and concluded that an action to enforce the lien ***will not preserve it*** beyond the time by statute if such time expires[, as in this case,] ***before the action is tried***."**38**

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35 Mr. Gordon was required to initiate litigation against Mr. Lancaster in a timely manner sufficient to allow the Circuit Court to conduct the final hearing. Under Linda Mc Co., ***ten years means ten years*** and the only recognized extension of time beyond the ten-year "active energy" period involves a situation where the final hearing has been held and the judgment creditor is merely awaiting the Circuit Court's issuance of the final order, levy, and execution. That is not what occurred in this case.

36 Hardee v. Lynch, 212 S.C. 6, 46 S.E.2d 179. The Supreme Court incorrectly referred to Hardee v. Lynch in Linda Mc Co. as supporting the theory that the mere filing of an enforcement action within the ten-year period was sufficient to preserve the "active energy".

37 Linda Mc Co. v. Shore, 390 S.C. 543, 561, 703 S.E.2d 499, 508 (*citing* Hardee v. Lynch, 212 S.C. 6, 13, 46 S.E.2d 179, 182) (Beatty, J., dissenting) (Emphasis added).

38 Linda Mc Co. v. Shore, 390 S.C. 543, 561, 703 S.E.2d 499, 508 (*citing* Garrison v. Owens, 258 S.C. 442, 446-447, 189 S.E.2d 31,33 (1972)) (Beatty, J., dissenting) ("A judgment lien is purely statutory, its duration as fixed by the legislature ***may not be prolonged*** by the courts and the bringing of an action to enforce the lien will not preserve it beyond the time fixed by the statute, if ***such time expires before the action is tried***."). (Emphasis added). *See also generally* 49 C.J.S., Judgments, § 495 (West 1969); Hughes v. Slater, 214 S.C. 305, 52 S.E.2d 419 (1949); Harvey v. Gibson, 190 S.C. 98, 2 S.E.2d 385 (1939).

Furthermore, ***Mr. Lancaster is not and never has been the original judgment debtor to Mr. Gordon***. Mr. Drews and others occupied that position. Mr. Gordon has sought only to "attach" the "downstream" proceeds of monies which Mr. Drews allegedly "parked" with Mr. Lancaster to hide from creditors. The fallacy with the Court of Appeals' decision is that most of the loan transactions occurred (a) when the Drewses ***did not have*** any debts or creditors, (b) ***long before*** Builders Station existed, (c) ***long before*** Mr. Gordon had a potential claim against Mr. Drews, (d) ***long before*** Mr. Gordon made any claim due to the failed Builders Station investment, and (e) ***long before*** Mr. Gordon obtained any judgment of any type or amount against Mr. Drews.

B. THE COURT OF APPEALS INCORRECTLY HELD THE $100,000.00 THE DREWSES PAID MR. LANCASTER IN 1992 TO PURCHASE BAINBRIDGE DRIVE CONSTITUTED A FRAUDULENT CONVEYANCE

The Court of Appeals concluded the $100,000.00 Mr. Drews gave Mr. Lancaster in 1992 for the Drewses' life estate was somehow undertaken to defraud Mr. Drews' creditors.**39** The Court of Appeals was incorrect on both the facts and the law. The $100,000.00 payment for the Drews' life estate was made solely for that purpose – to obtain the Drewses a life estate – in order that they could live in a comfortable and suitable home for the remainder of their natural lives.**40**

In *Carr v. Guerard*, this Supreme Court held the "*Statute of Elizabeth* renders void any transfer of property made with '***intent or purpose to delay, hinder, or defraud creditors*** and others' [and] may be employed by any creditor, including a

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39 Gordon v. Lancaster, ___ S.C. ___, ___, 795 S.E.2d 857, 862, 863-864.

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

judgment creditor."[41] Furthermore, "[w]hen a judgment creditor is the plaintiff, the statute limiting the time for executing on judgments to ten years might also apply."[42] Furthermore, the "*Statute of Elizabeth* is concerned with the intent of the grantor who conveys an interest in land."[43] Importantly, "[e]ven where it is shown that the grantor has fraudulent intent, to "annul for fraud a deed based upon value consideration [under the *Statute of Elizabeth*], it must not only be shown that the grantor intended to hinder, delay[,] or defraud creditors, but it must also appear that the ***grantee participated in such fraudulent act***."[44] Mr. Lancaster did not participate in any fraudulent scheme; he was ***simply trying to assist his aunt and uncle through their very tough situation***.

1. IRS Liens And Outstanding Loans

The Drewses, during ***1990/1991***, valiantly sought to keep The Drews Company afloat by borrowing heavily on their Edgewater Park home. Unfortunately, the IRS filed several liens against Mr. Drews and his business (R.p.13, para. 1; R.p.355, lines 6-12; R.p.373, lines 6-13; R.p.764, para. 4) which convinced him to sell the concern. (R.p.440, lines 5-10; R.p.764, para. 4). During the same time, the Drewses undisputedly sold their Edgewater Park home to ***satisfy the IRS liens and the***

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41 Carr v. Guerard, 365 S.C. 151, 153-154, 616 S.E.2d 429, 430 (2005) (*citing* S.C.Code Ann. § 27-23-10; Future Group, II v. Nationsbank, 324 S.C. 89, 98, 478 S.E.2d 45, 50; Lebovitz v. Mudd, 293 S.C. 49, 52-53, 358 S.E.2d 698, 700-01 (1987)) (Emphasis added).

42 Carr v. Guerard, 365 S.C. 151, 154, 616 S.E.2d 429, 430 (*citing* S.C.Code Ann. § 15-39-30). *See also* Oskin v. Johnson, 400 S.C. 390, 397-398, 735 S.E.2d 459, 463 (2012) (*citing* Future Group, II v. Nationsbank, 324 S.C. 89, 96, 478 S.E.2d 45, 48–49; McDaniel v. Allen, 265 S.C. 237, 242–243, 217 S.E.2d 773, 775–776 (1975).

43 Oskin v. Johnson, 400 S.C. 390, 397-398, 735 S.E.2d 459, 463 (*citing* McDaniel v. Allen, 265 S.C. 237, 242–243, 217 S.E.2d 773, 775–776 (1975)).

44 Oskin v. Johnson, 400 S.C. 390, 398 n.5, 735 S.E.2d 459, 463 n.5 (*quoting* McDaniel v. Allen, 265 S.C. 237, 242–243, 217 S.E.2d 773, 775–776 (1975)) (Second alteration in original and emphasis added).

outstanding mortgage loans. (R.p.355, lines 6-12; R.p.440, lines 11-15; R.pp.764-765, para. 5). After ***paying off*** the mortgage loans and the IRS, Mr. and Mrs. Drews were left with $100,000.00 from the sale of their home. (R.pp.764-765, para. 5).

2. The Life Estate – Bainbridge Drive And Nuffield Road[45]

Desperate, the Drewses turned to Mr. Lancaster for help. In 1992, Mr. Drews proposed (R.p.321, lines 6-8), that (a) the Drewses give Mr. Lancaster the remaining $100,000.00, (b) Mr. Lancaster use that money, in part, to purchase them a suitable home and (c) the Drewses, via a life estate,[46] would then live in that "new" home for the remainder of their lives ***without the need to make either rent or mortgage payments***. (R.pp.665-666; R.pp.677-681; R.pp.764-765, para. 5; R.pp.1053-1054; R.pp.1060-1064). Mr. Lancaster agreed to Mr. Drews' proposal. (R.p.13, para. 2; R.p.387, lines 11-19; R.p.418, lines 6-21). Consequently, in ***1992***, Mr. Lancaster took the $100,000.00 (R.p.137, paras. 43-45; R.pp.144-145, paras. 3, 9-10; R.p.322, lines 13-25; R.p.376, lines 14-20), added some of his own money, and bought Bainbridge Drive on ***22 May 1992***. (R.p.14, para. 7; R.p.340, line 22 – R.p.341, line 7; R.p.376, line 24 – R.p.377,

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45 While Mr. Lancaster had financial dealings with Mr. and Mrs. Drews in the past, it is *undisputed* that the financial transactions involved in this case started in *1992*. (R.p.321, line 6 – R.p.322, line 19; R.p.956).

46 A life estate is "an estate of indeterminate duration . . . " Strother v. Folk, 123 S.C. 127, 138, 115 S.E. 605, 611 (1922). The Court of Appeals, while imputing to Mr. Lancaster "a nefarious motive" to assist the Drewses in avoiding creditors, noted *Mr. Lancaster's* failure to file the life estate agreement (R.pp.665-666; R.pp.1053-1054) in the public record. Gordon v. Lancaster, ___ S.C. ___, ___, 795 S.E.2d 857, 859, 864. This "logic" in unsupportable as – (a) there were *no* creditors to avoid as they had been paid off from the Edgewater Park sale proceeds (R.p.355, lines 6-12; R.p.440, lines 11-15; R.pp.764-765, para. 5), (b) Mr. Drews' lawyer – Attorney Koon – prepared and handled all of the life estate documentation and, as Mr. Gordon's attorney conceded, would have been responsible for recording the life estates. (R.p.378, lines 1-22; R.p.382, line 15 – R.p.383, line 1; R.pp.665-666; R.pp.672-676; R.pp.1053-1054; R.pp.1060-1064). Mr. Lancaster had no nefarious intent or any other bad intent; he simply wanted to help his aunt and uncle.

line 1; R.pp.662-664).**47** Mr. and Mrs. Drews moved in and lived there for the next 37 months. (R.p.137, para. 47; R.p.146, para. 11; R.p.379, lines 16-18).

In ***April 1995***, Mr. Drews again asked Mr. Lancaster for help in moving into a one-story home. (R.p.379, line 19 – R.p.380, line 3). The Drewses found Nuffield Road (R.p.359, lines 18-20; R.p.360, lines 11-15; R.p.380, lines 4-19) and Mr. Lancaster bought the property on ***16 May 1995*** (R.p.137, para. 48; R.p.146, para. 12; R.pp.667-671; R.pp.1055-1059), for $125,000.00. (R.pp.667-671; R.pp.1055-1059).**48** The Drewses lived there (R.p.378, line 23 – R.p.379, line 1) under the same life estate arrangement as had existed at Bainbridge Drive. (R.p.378, lines 1-22; R.p.382, line 15 – R.p.383, line 1; R.p.677-671; R.pp.1060-1064).

3. No Evidence Of Any Continuing Debts Or Creditors In 1992

The Court of Appeals held that while Mr. "Lancaster argued the Drewses were debt free in 1992 after they sold their home, there was ***no documentary evidence*** the liens had been discharged or the sales proceeds were sufficient to pay off outstanding obligations."**49** On the contrary, the mere fact the Drewses were able to sell their home and still have about $100,000.00 left over from the sale emphatically shows there were ***no outstanding creditor debts***. Had there been any recorded liens or judgments then existing, they would have had to be paid off before title could transfer. In fact, contrary to the Court of Appeals "conclusion", there was absolutely no credible evidence which either showed, or even reasonably inferred, the Drewses possessed any unpaid debts

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47 Mr. Lancaster added another $5,000.00 or so in repairs. (R.p.341, lines 2-7; R.p.379, lines 9-15).

48 Mr. Lancaster added an additional $15,000.00 or so for a new air conditioning system, updated appliances, and other needed repairs. (R.p.364, line 22 – R.p.365, line 2).

49 Gordon v. Lancaster, ___ S.C. ___, ___, 795 S.E.2d 857, 862, 864 (Emphasis added).

or outstanding creditors in ***1992*** after they sold their Edgewater Park home, satisfied the IRS liens, and paid off the loans incurred to keep The Drews Company in business.**50**

In order to "get to" the $100,000.00 the Drewses repaid Mr. Lancaster in 1992, Mr. Gordon was required to show, under the *Statute of Elizabeth*, that the Drewses made the monetary transfer for the "***intent or purpose to delay, hinder, or defraud creditors*** . . ."**51** There was no credible evidence of any still outstanding debts or unpaid creditors. The actual "uncontested evidence" was to the contrary – no debts or creditors existed when the $100,000.00 was paid. Moreover, the only credible evidence in the record was the Drewses specifically sold Edgewater Park to ***pay off the IRS and satisfy the outstanding loans***. (R.p.355, lines 6-12; R.p.440, lines 11-15; R.pp.764-765, para. 5). There was no evidence of any other creditors then existing.

C. THE COURT OF APPEALS IMPROPERLY FOUND THE $40,000.00 MR. LANCASTER LOANED THE DREWSES DURING 1993-1995 TO PAY OFF THEIR CREDIT CARD DEBTS WAS A FRAUDULENT CONVEYANCE

The Court of Appeals found that the $40,000.00 Mr. Lancaster loaned the Drewses during the ***1993 to 1995*** time period was done to defraud creditors.**52** Again, the Court of Appeals was incorrect on both the facts and the law. The $40,000.00 in loans were made simply and solely for the purpose of helping the Drewses pay off their $35,000.00 mountain of credit card debt.

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50 The Court of Appeals noted that Mr. Gordon submitted an IRS tax lien into evidence which was dated 1 September 2000, and filed on 8 September 2000. (R.p.700). The IRS lien, however, only addressed unpaid taxes for periods ending 31 December ***1995***, 31 December ***1996***, and 31 December ***1997***. (R.p.700). Gordon v. Lancaster, 2106 WL 6471967, *7. Clearly, that lien does not involve debts from ***1992***.

51 *See* S.C. Code Ann. § 27-23-10(A) (Emphasis added). Mr. Livingston, Mr. Gordon's expert accounting witness, specifically testified ***he was not aware of the specific creditors which the Drewses were attempting to avoid*** when they paid Mr. Lancaster the $100,000.00 for the life estate in Bainbridge Drive. (R.p.491, lines 9-14).

52 Gordon v. Lancaster, ___ S.C. ___, ___, 795 S.E.2d 857, 859, 864.

Mr. and Mrs. Drews had no "income" after The Drews Company failed, other than their social security benefits, and were living off of their credit cards. (R.p.328, lines 7-10; R.p.385, lines 4-20; R.p.979, lines 14-21; R.p.1012, lines 14-16). They racked up about $35,000.00 in credit card debt (R.pp.692-695) and, during ***1993-1995***, Mr. Lancaster periodically made six direct loans to the Drewses totaling $40,000.00 (R.p.324, lines 20-23; R.p.328, lines 7-10; R.p.385, line 21 – R.p.386, line 14; R.p.1065) so they could, in part, retire their credit card debt. (R.p.355, lines 19-25; R.pp.692-695).

Mr. Gordon produced no credible evidence demonstrating the Drewses had any unpaid debts or outstanding creditors during the ***1993-1995***-time period as the Drewses had sold Edgewater Park in 1992, to eliminate their then existing debts. (R.p.355, lines 6-12; R.p.440, lines 11-15; R.pp.764-765 para. 5).**53** Mr. Lancaster made loans to the Drewses in various amounts from ***6 February 1993, through 30 January 1995***,**54** and it appears the Drewses were paying off their credit cards in part or in whole on an intermediate basis – essentially somewhat as the credit became due or, at least, not significantly overdue. (R.p.1065).

When Mr. Drews sold 623 Meeting (R.p.370, lines 15-21; R.p.384, lines 13-24), the Drewses still owed Mr. Lancaster $40,000.00. (R.p.370, line 22 – R.p.371, line 1; R.p.1065). Even though the $40,000.00 (plus interest) was supposed to have been fully

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53 The only "creditors" the Drewses could have "had" during 1993-1995 were the very credit card companies which they were periodically paying off using Mr. Lancaster's loaned $40,000.00. As the Drewses were paying off their credit card debts it cannot credibly be argued that payments they subsequently made to Mr. Lancaster to reimburse him for the $40,000.00 was done to "avoid creditors". Mr. Gordon presented no proof to the contrary.

54 Mr. Lancaster loaned the Drewses (a) $5,000.00 on 6 February 1993, (b) $3,000.00 on 19 April 1993, (c) $7,000.00 on 9 July 1993, (d) $6,000.00 on 28 August 1993, (e) $3,000.00 0n 21 December 1993, (f) $6,000.00 on 18 January 1994, (g) $5,000.00 on 20 June, 1994, and (h) $5,000.00 on 30 January 1995 - totaling $40,000.00. (R.pp.692-695; R.pp.804A-811; R.p.1065; R.pp.1066-1071).

satisfied from the sale (R.p.371, lines 10-15; R.p.386, lines 6-19), Mr. Lancaster only received around $3,000.00. (R.p.371, lines 2-5). Chagrined, Mr. Lancaster asked Mr. Drews for some security for the $40,000.00 loan (R.p.371, lines 6-15) and Mr. Drews, via Mrs. Drews, gave Mr. Lancaster a $40,000.00 mortgage on 1705 Meeting. (R.p.371, lines 16-17). There was ***no evidence Mr. Lancaster***, other than seeking security for the $40,000.00 in total loans, ***had any other participation or involvement in the preparation of the $40,000.00 mortgage***. (R.p.371, lines 18-23). Mr. Drews' lawyer, Attorney Koon, prepared all of the required documentation. Mr. Lancaster was not provided a copy of the mortgages. (R.p.371, line 24 – R.p.372, line 9).

For Mr. Gordon to "get to" the money the Drewses repaid Mr. Lancaster for the $40,000.00 in loans, Mr. Gordon was required to show, under the *State of Elizabeth*, the Drewses made the monetary transfer for the "***intent or purpose to delay, hinder, or defraud creditors*** . . ."**55** Mr. Lancaster made the $40,000.00 in loans to help the Drewses retire their $35,000.00 credit card debt. The Drewses had ***no*** income other than their social security and were only able to pay their normal living expense using their credit cards.

D. THE COURT OF APPEALS INCORRECTLY FOUND THE $20,000.00 MORTGAGE THE DREWSES GAVE MR. LANCASTER TO SECURE THE $20,000.00 LOAN WAS NOT BASED UPON ADEQUATE CONSIDERATION

In ***1999***, Mr. Lancaster loaned, albeit indirectly, the Drewses $20,000.00 to pay off loans from First Citizens Bank and South Trust Bank obtained to finance the failed Builders Station business endeavor. (R.p.367, lines 11-22; R.p.388, line 23 – R.p.389, line 24; R.p.402, lines 19-23; R.p.1073). To satisfy those loans, Mr. Lancaster sent a

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55 *See* S.C. Code Ann. § 27-23-10(A) (Emphasis added).

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

On 1 July 1999, Mr. Drews gave Mr. Lancaster another mortgage for this final $20,000.00 loan – again on 1705 Meeting. (R.p.19, para. 41; R.p.351, line 17 – R.p.353, line 23; R.pp.638-642).**56** The Court of Appeals dismissed this $20,000.00 mortgage and Mr. Lancaster's $20,000.00 payments to First Citizens and South Trust on the basis the "$20,000 mortgage was not supported by either contemporaneous or past valuable consideration and constituted actual moral fraud . . . ."**57** The Court of Appeals misinterpreted and misapplied the facts of this transaction.

In *Roper, LLC v. Harris Teeter, Inc.*,**58** the Court of Appeals noted that the term "valuable consideration" has been defined "as 'some right, interest, profit[,] or benefit accruing to one party or some forbearance, detriment, loss[,] or responsibility given, suffered[,] or undertaken by the other.' "**59** In *Royal Z. Lanes, Inc. v. Collins Holding Corp.***60**, this Supreme Court recognized that "grossly inadequate consideration [was defined] as 'a consideration so far short of the value of the property as to arouse a

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56 Mr. Lancaster was initially unaware of this last mortgage as Mr. Drews did it without his knowledge. (R.p.352, lines 3-6). Mr. Drews later told Mr. Lancaster about the $20,000.00 mortgage well after its inception.

57 Gordon v. Lancaster, ___ S.C. ___, ___, 795 S.E.2d 857, 864.

58 Roper, LLC v. Harris Teeter, Inc., 2013 WL 8539469 (Ct.App., filed 17 July 2013) (Not reported in S.E.2d).

59 Roper, LLC v. Harris Teeter, Inc., 2013 WL 8539469, * 1 (*quoting* Hennes v. Shaw, 397 S.C. 391, 399, 725 S.E.2d 501, 505 (Ct.App. 2012)).

60 Royal Z. Lanes, Inc. v. Collins Holding Corp., 337 S.C. 592, 524 S.E.2d 621.

presumption in the mind that the person who takes that property takes it under some kind of secret trust.' "**61**

The Drewses gave Mr. Lancaster the $20,000.00 mortgage on 1 July 1999 (R.p.19, para. 41; R.p.351, line 17 – R.p.353, line 23; R.pp.638-642), about three weeks after Mr. Lancaster sent the $5,000.00 check to First Citizens and the $15,000.00 check to South Trust. (R.p.766, para. 8; R.p.1073). While this Court of Appeals voided this transaction because Mr. Lancaster did not give the Drewses "contemporaneous consideration" for the mortgage (R.p.19, para.42), this Court of Appeals completely ignored the exigent circumstances surrounding the transactions necessitating quick action to settle the debts.

Mr. Drews called Mr. Lancaster in early June 1999, and advised him that he (Mr. Drews) "had talked to both First Citizens and South Trust and [the banks] were both offering him ***24 hours*** to settle [his outstanding loans] for substantially less than the amount owed . . ." (R.p.389, lines 4-7) (Emphasis added). Mr. Drews asked Mr. Lancaster if he could help. (R.p.389, lines 7-8). Since Mr. Drews did not have any "other source [for the $]20,000 dollars, so to be able to take advantage of those [lessened] payoffs, [Mr. Lancaster] [with]drew [$]15,000[.00] out of [his] equity loan on [his personal] house] and [$]5.000[.00] [he] had in [his] checking account to pay the other." (R.p.389, lines 9-12).

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61 Royal Z. Lanes, Inc. v. Collins Holding Corp., 337 S.C. 592, 596, 524 S.E.2d 621, 623 (*quoting* McGhee v. Wells, 57 S.C. 280, 35 S.E. 529, 531 (1900)). In any case, "[w]hen a transfer is supported by valuable consideration, it may be set aside as a fraudulent conveyance ***only if an actual intent to defraud creditors may be imputable to the grantee***." Pfeil v. Steven Walker Homes Corp., 2006 WL 7286989 (Ct.App. filed 23 October 2006) (*citing* Royal Z Lanes, Inc. v. Collins Holding Corp., 337 S.C. 592, 594, 524 S.E.2d 621, 622) (Not reported in S.E.2d) (Emphasis added).

Clearly, this urgent situation demanded immediate action. Mr. Lancaster paid out the $20,000.00 to the banks as quickly as possible, due to the banks' demands for quick satisfaction (*i.e.*; 24 hours) of Mr. Drews' Builders Station-related debts at significantly reduced amounts. (R.p.354, lines 3-13; R.p.369, lines 10-15; R.p.389, lines 2-12). Even though the Drewses gave the $20,000.00 mortgage around three weeks later, the $20,000.00 consideration had unquestionably been paid directly to First Citizens and South Trust respectively.**62** Under the circumstances, it seems particularly disingenuous for the Court of Appeals to hold Mr. Lancaster, who admittedly paid the banks $20,000.00, failed to give the Drewses contemporaneous consideration for the mortgage. This is especially true when the funds were paid directly to the banks to settle some of Mr. Drews' debts.

The $20,000.00 in loans were made to pay off First Citizens and South Trust for Builders Station-related loans, not to hide funds from those creditors or from other creditors. Mr. Lancaster was entitled to have the $20,000.00 repaid. This Supreme Court should reverse the Court of Appeals' decision and grant judgment to Mr. Lancaster.

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62 Moreover, the development and production of the documentation needed to evidence the $20,000.00 mortgage required the involvement of legal counsel. (R.p.354, lines 3-9). Given the pressing nature of the banks' settlement demands, it was thought that to obtain counsel's involvement would have taken more time than either First Citizens or South Trust were willing to give.

IV. CONCLUSION

Based upon the foregoing arguments and citation of authority, the Petitioner, Donald W. Lancaster, respectfully requests that this Supreme Court to grant him certiorari, reverse the Court of Appeals', and grant him judgment.

Respectfully submitted:

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15 March 2017

NPCHAR1:1872259.1-APL-(SPG) 053211-00001

STATE OF SOUTH CAROLINA
IN THE
SUPREME COURT

Appeal from the Court of Common Pleas For Charleston County
Honorable J. C. Nicholson, Jr., Circuit Judge
Civil Action Nos.: 2010-CP-10-9096 and 2011-CP-10-8840
___ S.C. ___, ___ S.E.2d ___ (Ct.App. 2016)
(2016 WL 6471967)

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

Respondent,

v.

Donald W. Lancaster,

Petitioner.

Proof of Service for Petition for Writ of Certiorari by the Petitioner, Donald W. Lancaster

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Attorneys for the Petitioner

I, Stephen P. Groves, Sr., Esquire, hereby certify that on 15 March 2017, I served one copy each of the ***Petition for Writ of Certiorari*** and the ***Appendix to the Petition for Writ of Certiorari*** submitted by the Petitioner, Donald W. Lancaster, on counsel for the Respondent via the United States Mail, postage pre-paid, and addressed as follows:

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I also hereby certify that on 15 March 2017, I served one copy of the ***Petition for Writ of Certiorari*** on the Office of the Clerk of Court for the South Carolina Court of Appeals the United States Mail, postage pre-paid, and addressed as follows:

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

Signed:_____
Stephen P. Groves, Sr.

Charleston, South Carolina

15 March 2017

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