THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM THE KERSHAW COUNTY
Court of Common Pleas

Jeffrey M. Tzerman, Master-in-Equity

Opinion No. 2016-UP-524 (S.C. Ct. App. filed Dec. 21, 2016)

Palmetto Residential Builders, LLC . . . . . .Petitioner,

v.

Michael Cox and Elizabeth Cox. . . . . Respondents.

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATION OF COUNSEL

The undersigned attorney for the Petitioner hereby certifies that the Court of Appeals finally ruled on the Petition for Rehearing in this case on February 27, 2017.

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March 29, 2017
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QUESTIONS PRESENTED

I. When a judgment debtor makes voluntary, post-judgment contributions to a retirement account, do the contributions constitute transfers made for valuable consideration?

II. Does the exemption set forth in S.C. Code Ann. § 15-41-30(A)(13) protecting a debtor's right to receive a retirement account also confer a right upon a judgment debtor to make post-judgment contributions to an individual retirement account using funds that otherwise would not be exempt from attachment?

STATEMENT OF THE CASE

This is an appeal from supplemental proceedings, in which Palmetto Residential Builders, LLC ("Palmetto") is attempting to set aside voluntary, post-judgment contributions Respondent Michael Cox made to his International Paper Salaried Savings Plan Account ("Retirement Account"). He has used this same account to evade Palmetto's collection efforts throughout these proceedings. All of the funds at issue in this appeal were voluntary, post-judgment transfers Mr. Cox elected to direct-deposit from his paychecks into the Retirement Account rather than receive into his regular checking account. Had Mr. Cox not made the contributions, the cash would have been deposited into Mr. Cox's checking account and would have been subject to execution.

Palmetto filed this lawsuit on June 29, 2006 to collect payment for a new home it constructed for Michael Cox and Elizabeth Cox (collectively, "Respondents") because they refused to pay. (R. pp. 49-50.) The complaint asserted claims for breach of contract, quantum meruit and foreclosure on a mechanic's lien. (R. pp. 50-52.) On January 30, 2008, the jury returned a general verdict for Palmetto in the amount of $83,956.66. (R. p. 48.) After awarding attorney's fees, costs and interest, the trial court

entered judgment in the amount of $119,430.93. (R. p. 46-47.) The Respondents still refused to pay.

Palmetto then commenced these supplemental proceedings to collect on the judgment. During the first hearing in these proceedings, Palmetto discovered that five days after the jury verdict Mr. Cox had liquidated $44,487.89 worth of stock and transferred the proceeds to the Retirement Account to repay a loan he had taken from that account. (R. p. 43.) After allowing the parties to brief the issue, the master-in-equity held Mr. Cox was "essentially using his retirement account as his own 'offshore bank account'" and granted Palmetto's motion to set aside the deposit as a fraudulent transfer. (R. p. 39.) Although the Respondents argued that the anti-alienation provision in the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code precluded Palmetto's request to set aside the transfers, the master-in-equity held,

> The Defendant's assertion is misplaced. In the case of In re Goldschein, 241 B.R. 370 (Bkrtcy. D.Md. 1999), a debtor and a 'Benefit Plan' made a similar argument, where non-exempt assets were transferred to a 'Benefit Plan' that was supposedly exempt. "The Benefit Plan's inalienability argument is grounded in a faulty premise...The anti-alienation provision of ERISA and the Internal Revenue Code do not preclude the avoidance of fraudulent transfers."

Id. (emphasis in original). Neither party appealed the October 1, 2008 Order.

On October 24, 2008, the master-in-equity held a second hearing. Mr. Cox testified at the hearing that on January 31, 2008, the day after the jury verdict, he had transferred an additional $7,000 from a savings account at Bronco Federal Credit Union to his Retirement Account. (R. p. 26.) Palmetto moved to set aside the $7,000, as well, and the master-in-equity granted that motion. Again, the master-in-equity held, "Michael Cox is essentially using his retirement account as his own 'offshore bank account' to

borrow money and repay himself with non-exempt assets to keep the non-exempt assets out of reach from a Judgment creditor." (R. p. 31.) Again, the master-in-equity rejected the Respondents' argument that federal law precluded Palmetto's attempt to avoid the fraudulent transfer. (R. pp. 33-34.) Neither party appealed that order.

After an August 27, 2013 hearing, the master-in-equity noted that Mr. Cox had recently purchased a new car and ordered that Mr. Cox produce all statements for his Retirement Account for the previous four years. (R. p. 17.) Palmetto continued to pursue discovery with little cooperation from the Respondents. (R. pp. 187-88.)

On May 20, 2014, Palmetto moved to set aside the contributions Mr. Cox made to his Retirement Account that are the subject of this appeal. (R. pp. 132-145.) The Respondents filed a Return to the Motion on June 25, 2014, immediately prior to the hearing. (R. pp. 197-205.) At the June 25th hearing, the master-in-equity took no testimony or other evidence. Rather he heard and considered the arguments of counsel and their filings. Ultimately, the master-in-equity granted Palmetto's motion in part (R. pp. 8-15), and denied it in part. (R. pp. 3-7.) The master-in-equity granted Palmetto a charging order and held Mr. Cox in contempt of court because he "willfully and intentionally violated this Court's orders and show[ed] flagrant disregard for the truth in these proceedings." (R. p. 13.) The master-in-equity found "troubling" the fact that "[i]n complete disregard for this Court's orders, Mr. Cox has continued to buy and sell vehicles without restraint and spend the proceeds, which should have been applied toward satisfaction of [Palmetto's] judgment." (R. p. 9.) In a separate order, however, the master-in-equity denied Palmetto's motion to set aside the voluntary, post-judgment contributions Mr. Cox made to his Retirement Account. The court reasoned that (i) the

anti-alienation provision of ERISA and the Internal Revenue Code precluded attachment of funds in the Retirement Account and (ii) "the voluntary contributions made by Mr. Cox to his retirement account [were] made with and for valuable consideration and were not made with any intent to defraud [Palmetto]." (R. pp. 6-7.) Palmetto's motion to reconsider was denied. (R. pp. 1-2.) This appeal followed.

ARGUMENT

In this case Palmetto asks this Court to define the limits of the statutory exemption protecting a judgment debtor's right to receive funds from a retirement account. Palmetto also asks that the Court clarify the burden of proof a judgment creditor must carry to set aside fraudulent transfers a judgment creditor makes post-judgment to an individual retirement account. The contributions at issue, which Palmetto is informed and believes are in excess of $60,000,[1] remain Palmetto's best chance of finally receiving payment for the home Palmetto built the Respondents more than ten years ago.

Specifically, Palmetto asks that this Court reverse the Court of Appeals' order because the Court (i) erred by holding Palmetto must prove Mr. Cox increased the amount of his contributions to the Retirement Account after entry of the judgment to establish a fraudulent transfer, and (ii) erred in holding the exemption in S.C. Code Ann. § 15-41-30(A)(13) protecting retirement accounts from attachment also protect post-judgment contributions a debtor makes to the retirement account.

"Supplementary proceedings are equitable in nature." A Fast Photo Exp., Inc. v. First Nat. Bank of Chicago, 369 S.C. 80, 84, 630 S.E.2d 285, 287 (Ct. App. 2006) (quoting Ag-Chem Equip. Co. v. Daggerhart, 281 S.C. 380, 383, 315 S.E.2d 379, 381

[1] Based on quarterly statements beginning April 1, 2011.

(Ct. App. 1984)). "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 equitable matter referred to a master for final judgment with direct appeal to the supreme court, the appellate court may determine the facts in accordance with its own view of the preponderance of the evidence." Id. (quoting Friarsgate, Inc., v. First Fed. Sav. & Loan Ass'n, 317 S.C. 452, 456, 454 S.E.2d 901, 904 (Ct. App. 1995)).

I. THE COURT OF APPEALS ERRED IN HOLDING PALMETTO MUST PROVE MR. COX INCREASED THE AMOUNT OF CONTRIBUTIONS AFTER ENTRY OF JUDGMENT TO SET ASIDE THE POST-JUDGMENT CONTRIBUTIONS AS FRAUDULENT TRANSFERS BECAUSE THE POST-JUDGMENT CONTRIBUTIONS TO THE RETIREMENT ACCOUNT WERE NOT TRANSFERS MADE UPON VALUABLE CONSIDERATION.

The Court of Appeals and master-in-equity both recognized that S.C. Code Ann. § 15-41-30(A)(13) includes an exception for fraudulent transfers. However, both erred in holding the contributions at issue in this case were not fraudulent transfers because the amount of the contributions did not increase after entry of judgment.

Pursuant to the Statute of Elizabeth, which governs avoidance of fraudulent transfers,

> Every gift, grant, alienation, bargain, transfer, and conveyance of lands . . . 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 . . . to be clearly and utterly void. . . .

S.C. Code Ann. § 27-23-10(A) (2007). According to well-established jurisprudence,

fraudulent conveyances can be set aside 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, 4 38 S.E.2d 259, 262 (Ct. App. 1993)).

A. THE POST-JUDGMENT CONTRIBUTIONS TO THE RETIREMENT ACCOUNT WERE NOT TRANSFERS MADE UPON VALUABLE CONSIDERATION.

The Court of Appeals affirmed the lower court in part because Palmetto did not prove the amounts of contributions to the Retirement Account increased after entry of judgment. That holding is necessarily premised upon the finding that Palmetto must prove actual intent to defraud under the first test promulgated in Mathis because the transfers at issue were made for valuable consideration. The clear and convincing evidence in the record, however, demonstrates that Mr. Cox voluntarily opted to divert the funds into his Retirement Account and that the transferee paid no valuable consideration in return.

A transfer for valuable consideration is one made by the debtor to another in exchange for some consideration of value. See Royal Z Lanes, Inc. v. Collins Holding

Corp., 337 S.C. 592, 595, 524 S.E.2d 621, 622 (1999); Coleman v. Daniel, 261 S.C. 198, 199 S.E.2d 74 (1973); Jeffords v. Berry, 247 S.C. 347, 147 S.E.2d 415 (1966). "A transfer made without valuable consideration has been referred to as a 'voluntary conveyance.'" Royal Z Lanes, Inc. v. Collins Holding Corp., 337 S.C. 592, 594, 524 S.E.2d 621, 622 (1999). "A voluntary conveyance is a transfer made in good faith without consideration or for a mere nominal consideration." Durham v. Blackard, 313 S.C. 432, 438, 438 S.E.2d 259, 263 (Ct. App. 1993).

In this case, the record is devoid of any evidence that the post-judgment transfers Mr. Cox made to his Retirement Account were made for valuable consideration. It is uncontested that all of the post-judgment contributions were voluntary, as opposed to required by Mr. Cox's employer. It is also uncontested that Mr. Cox chose the amounts he contributed at all times. At no time did Mr. Cox enter any account agreement or plan into evidence, nor did he offer any testimony or other evidence to support his argument that he received anything of value in exchange for his contributions to the Retirement Account. In fact, the Respondents offered no evidence of any kind that they received any consideration in exchange for the post-judgment contributions. See Windsor Props., Inc. v. Dolphin Head Constr., 331 S.C. 466, 471, 498 S.E.2d 858, 860 (1998) (noting "extensive evidence" of "no consideration" where debtor and transferee failed to present any evidence of value given in exchange for deed). Rather, the Respondents offered only arguments of counsel. The master-in-equity's finding that the transfers were made upon valuable consideration, therefore, rests on nothing more than argument of counsel.

Even accepting the arguments of counsel as fact, there is no basis upon which to conclude Mr. Cox's employer gave him any value in exchange for the post-judgment

contributions. Rather, all contributions were payments into the Retirement Account. Our courts have held that consideration paid to a person other than the debtor does not qualify as "valuable consideration" for purposes of the Statute of Elizabeth. Dufresne v. Regency Realty, Inc., 295 S.C. 1, 366 S.E.2d 256, (Ct. App. 1987), overruled in part, Royal Z Lanes, Inc. v. Collins Holding Corp., 337 S.C. 592, 524 S.E.2d 621 (1999). To the extent the law considers the matching contributions to have been paid to Mr. Cox, then his contributions to the Retirement Account cannot be considered transfers at all.

Therefore, the master-in-equity erred when he held that the transfers were made for valuable consideration, and the Court of Appeals erred when it affirmed that holding despite an absence of even a scintilla of evidence of even nominal consideration given to Respondents in exchange for the post-judgment transfers. It is incontrovertible that Mr. Cox chose to divert money from one account to another to keep those funds out of reach of an existing judgment creditor. All the while, Mr. Cox has maintained complete control of the funds in the Retirement Account, with the right to call on the funds or take a loan against them at any time. For the law to allow a person to continue building his nest egg while living in a home for which he still refuses to pay is nothing short of madness.

B. PALMETTO ESTABLISHED AN INFERENCE OF FRAUD WHICH THE RESPONDENTS FAILED TO REBUT.

The Court of Appeals erred when it affirmed the master-in-equity based upon the conclusion that Palmetto failed to prove Mr. Cox increased the amount of his contributions post-judgment. A judgment creditor is not required to prove increased contributions when other evidence of fraudulent intent is present.

"Fraud is seldom provable by direct evidence. More often, it must be proved by circumstantial evidence." Coleman v. Daniel, 261 S.C. 198, 207, 199 S.E.2d 74, 78 (1973). "When a party denies any fraudulent intent in transferring an asset outside the reach of a creditor . . . our courts have inferred fraudulent intent if one or more of the following 'badges of fraud' exist:

> [T]he insolvency or indebtedness of the transferor, [a] lack of consideration for the conveyance, [a] relationship between the transferor and the transferee, the pendency or threat of litigation, secrecy or concealment, [a] 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.

First Citizens Bank & Tr. Co. v. Park at Durbin Creek, LLC, Op. No. 5469, 2017 S.C. App. LEXIS 19, at *9 (Ct. App. Feb. 15, 2017) (quoting Coleman v. Daniel, 261 S.C. 198, 209, 199 S.E.2d 74, 79 (1973)).

> It is generally recognized that, although the identification of one badge of fraud does not create a presumption of fraud, "whe[n] there is a concurrence of several such badges of fraud[,] an inference of fraud may be warranted." Id. at 209-10, 199 S.E.2d at 79-80 (quoting 37 AM. JUR. 2D Fraudulent Conveyances § 10 (1968)). "A badge of fraud creates a rebuttable presumption of intent to defraud." Royal Z Lanes, Inc. v. Collins Holding Corp., 337 S.C. 592, 596, 524 S.E.2d 621, 623 (1999).

Id.

This case presents many of the badges of fraud our courts have recognized. First, the record reveals no question that Respondents were indebted to Palmetto when each of the transfers was made because all of the transfers occurred after entry of judgment on the jury's verdict. Second, Respondents received no valuable consideration for the funds transferred to the Retirement Account because neither J.P. Morgan (the transferee) nor International Paper paid any money to the Respondents. Any value Mr. Cox derived remained in the Retirement Account. Third, the transfers were made during the pendency

of litigation because they were made during these supplemental proceedings to collect on the judgment against Respondents. Fourth, Respondents have repeatedly concealed transfers made to the Retirement Account and have refused to disclose the amount and date of each and every post-judgment contribution. Mr. Cox has repeatedly bought and sold new cars during these proceedings, without any regard for the court orders restraining him from doing so. In fact, Mr. Cox's conduct has been so egregious that the master-in-equity held him in contempt of court. (See App.'s Brief at 15-16.) Fifth, Mr. Cox has retained an interest in and complete control of the money he diverted to the Retirement Account. Sixth, all of the post-judgment contributions Mr. Cox made were essentially to himself because he maintains control of the funds in his Retirement Account. Therefore, this case presents at least seven of the badges of fraud.

In addition, the record is replete with evidence of Mr. Cox's actual intent to obstruct, evade and defraud Palmetto's collection efforts. On two prior occasions, the master-in-equity held Mr. Cox made fraudulent transfers to the same Retirement Account. Each time, the master-in-equity noted that Mr. Cox was trying to use the Retirement Account as his own offshore bank account to keep non-exempt assets beyond the reach of Palmetto; and each time, the Respondents were ordered to pay the funds to Palmetto. (R. pp. 31, 39-40.) Notwithstanding those orders, Mr. Cox refused to pay Palmetto, forcing the master-in-equity to order the plan administrator to pay the money directly to Palmetto. (R. pp. 22-25.) Even after that order, Mr. Cox continued showing absolute disregard for the Court's orders and for these proceedings. (See R. pp. 10-14.) He sold vehicles and bought brand new ones, he lied under oath during a November 7, 2013 hearing, and then he lied about having lied under oath. (R. pp. 10-14; p. 82, line 9 –

p. 87, line 24.) The master-in-equity held him in contempt of court, award attorney's fees and costs as sanctions, and impose a suspended jail sentence of thirty days because Mr. Cox "willfully and intentionally violated this Court's orders and show[ed] flagrant disregard for the truth in [those] proceedings." (R. p. 13 - 15.)

Thus, in addition to evidence establishing an inference of fraud, the other evidence in the record clearly established Mr. Cox's intent to defraud and obstruct Palmetto's collection of the judgment. In addition, the remaining two factors from Mathis are satisfied. All of the transfers were made while the grantor was indebted because the transfers were post-judgment. The grantor's intent is imputable to the grantee (the third-party administrator) because J.P. Morgan received Mr. Cox's money without having paying anything for it. Finally, Mr. Cox continues to control the money because he can borrow against it and call on it at any time.

Therefore, at a minimum Palmetto carried its burden of proof by establishing an inference of fraud. It was the burden of the Respondents, not of Palmetto, to present evidence rebutting that inference. See Coleman, supra at 208, 199 S.E.2d at 79. They did not. In fact, not only did the Respondents not present any evidencethe Respondents refused to produce any statements for the Retirement Account at all prior to entry of the judgment. They offered only unsupported arguments of counsel.

For these reasons, the Court of Appeals committed reversible error when it affirmed the master-in-equity's holding based upon the absence of evidence that contributions to the Retirement Account increased after entry of judgment.

II. THE COURT ERRED IN HOLDING S.C. CODE ANN. § 15-41-30(A)(13) CONFERS A RIGHT TO MAKE VOLUNTARY, POST-JUDGMENT CONTRIBUTIONS TO A RETIREMENT ACCOUNT.

Under South Carolina law, a judgment creditor is entitled to execute on "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." S.C. Code Ann. § 15-39-410 (2005). Limited exceptions are found in S.C. Code Ann. § 15-41-30. One of those exemptions is for "a debtor's right to *receive*" funds from a retirement account. S.C. Code Ann. § 15-41-30(A)(13) (Supp. 2014) (emphasis added). The Court of Appeals erred when it construed that statute to establish the right for a judgment debtor to *continue contributing* funds to a retirement account, as opposed to protecting only the right to receive funds the debtor contributed prior to entry of judgment.

According to the statute,

> (A) The following real and personal property of a debtor domiciled in this State is exempt from attachment, levy, and sale under any mesne or final process issued by a court or bankruptcy proceeding:
>
> * * *
>
> (13) The debtor's right to receive individual retirement accounts as described in Sections 408(a) and 408A of the Internal Revenue Code, individual retirement annuities as described in Section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in Section 408(c) of the Internal Revenue Code. A claimed exemption may be reduced or eliminated by the amount of a fraudulent conveyance into the individual retirement account or other plan. For purposes of this item, "Internal Revenue Code" has the meaning provided in Section 12-6-40(A). The interest of an individual under a retirement plan shall be exempt

> from creditor process to the same extent permitted in Section 522(d) under federal bankruptcy law and is an exception to Section 15-41-35. The exemption provided by this section shall be available whether such individual has an interest in the retirement plan as a participant, beneficiary, contingent annuitant, alternate payee, or otherwise.
>
> * * *

S.C. Code Ann. § 15-41-30(A) (Supp. 2014).

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Media Gen. Commc'ns, Inc. v. S.C. Dep't of Revenue, 388 S.C. 138, 147, 694 S.E.2d 525, 529 (2010). "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Id. "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." Id.

The master-in-equity held S.C. Code Ann. § 15-41-30(A)(13) precluded attachment of all funds in the Retirement Account, including the Respondents' post-judgment transfers. (R. p. 5, ¶ 7.) The Court of Appeals affirmed. However, nothing in the statutory exemption scheme evidences the General Assembly's intent to allow a judgment debtor to make post-judgment contributions to a retirement account like the Respondents have made in this case. Rather, the plain language of the statute protects only the right to receive the money already tucked away prior to entry of a judgment.

This conclusion is further supported by the General Assembly's decision to include a clear exception for fraudulent conveyances, which may reduce or eliminate the scope of the exemption.

The statute further provides that "[t]he interest of an individual under a retirement plan shall be exempt from the creditor process to the same extent permitted in section 522(d) under federal bankruptcy law...." S.C. Code Ann. § 15-41-30(A). Application of the exemption therefore requires that our courts look to federal bankruptcy law for guidance, something neither the mater-in-equity nor the Court of Appeals did.

The federal bankruptcy procedure used to apply exemptions is well-established. "The [United States] Supreme Court has long held that exemptions are determined on the bankruptcy filing date." In re O'Brien, 443 B.R. 117, 130 (Bankr. W.D. Mich. 2011) (citing White v. Stump, 266 U.S. 310, 45 S.Ct. 103 (1924); see also Owen v. Owen, 500 U.S. 305, 314 n. 6, 111 S.Ct. 1833, 1841 n. 6 (1991) (stating the proper date for determining whether an exemption exists is the date of filing of the bankruptcy petition). State courts have also consistently recognized this rule. See e.g., In re Tetreault, 11 A.3d 635, 642 (R.I. 2011) ("It is well established in bankruptcy law that a debtor's exemptions are determined as of the date of filing of the bankruptcy petition."). Stated another way, "bankruptcy exemptions are fixed on the date of filing." In re Peterson, 897 F.2d at 937. Therefore, the property that a debtor is entitled to exempt is determined on the date of filing, not on various dates throughout the bankruptcy proceedings.

Furthermore, the language of 11 U.S.C § 522(d)(12) (referred to hereinafter as "section 522(d)(12)") also plainly indicates that it is only meant to exempt assets contributed to an IRA prior to the date the bankruptcy petition is filed. Section

522(d)(12) states that a debtor may exempt "retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986" from becoming part of the bankruptcy estate. The use of the phrase "to the extent that those funds are in a fund or account" shows that Congress only intended to exempt funds which are already "in" a retirement fund or account. Noticeably absent is any mention of the exemption applying to future contributions.

Therefore, in addition to the plain language of the statute, well-established federal bankruptcy law supports the conclusion that the exemption in S.C. Code Ann. § 15-41-30(A)(13) applies only to pre-judgment contributions, not to any post-judgment contributions. The rules of statutory construction prevent the reference to section 522(d) in S.C. Code § 15-41-30(A)(13) from being construed as a scrivener's error or accident. Indeed, to interpret the statute to protect the post-judgment contributions Mr. Cox has made to his Retirement Account would render that portion of the statute meaningless.

By focusing on the debtor's right to receive, including an exception for fraudulent conveyances and referring to federal bankruptcy law, the General Assembly enacted a statute which plainly encourages citizens to build their respective nest eggs without fear that the money could be swept away if a judgment is entered against them. Conversely, no reasonable interpretation of the statute gives a judgment debtor the right to continue building his nest egg using a retirement account while showing his creditors empty pockets.

For these reasons, the interpretations the master-in-equity and Court of Appeals assigned to S.C. Code Ann. § 15-41-30(A)(13) are unreasonable, contrary to statute, and

contrary to the decisions of this Honorable Court. It cannot be the policy of this State that a judgment debtor has a right to voluntarily contribute money to a retirement account after entry of judgment in preference of satisfying his judgment creditor. Cox had no right to *receive* the funds from his retirement account (which is what the exemption protects) *until he fraudulently transferred them to the Retirement Account*. To allow such contributions protection under the retirement account exemptions in S.C. Code Ann. § 25-42-30(A) only invites manipulation of the statute and rewards a judgment debtor for fraudulent activity.

CONCLUSION

While South Carolina's Homestead Exemption Act, S.C. Code Ann. § 15-41-30, offers debtors protection in certain circumstances, our courts must be careful not to construe the plain language the General Assembly enacted so as to condone or reward a fraudulent, obstructive, and evasive conduct by a debtor determined to avoid payment of a judgment. Therefore, Palmetto respectfully petitions this Court to issue a writ of certiorari to review Opinion No. 2016-UP-524.

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PROOF OF SERVICE

I, Bridget S. Steele, a Legal Assistant of Bruner, Powell, Wall & Mullins, LLC, attorneys for Appellants, Palmetto Residential Builders, LLC do hereby certify that on the 29th day of March, 2017, I served the *Petition for Writ of Certiorari, Appendix – Volume I, and Appendix – Volume II* upon opposing counsel by depositing copy of the same in the U.S. Mail, postage prepaid, and addressed as follows:

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