

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

S.C. SUPREME COURT

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.

APPENDIX - VOLUME I

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

Jeffrey M. Tzerman, Master-in-Equity

CIVIL ACTION NO.: 2006-CP-28-0433
APPELLATE CASE NO. 2014-002455

Palmetto Residential Builders, LLC Appellant,

v.

Michael Cox and Elizabeth Cox. Respondents.

RECORD ON APPEAL

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MAR 13 2015

SC Court of Appeals

A-1

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STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

BEFORE THE MASTER-IN-EQUITY
FIFTH JUDICIAL CIRCUIT

Palmetto Residential Builder, LLC,)
Petitioner,)
vs.)
Michael Cox and Elizabeth Cox,)
Respondents.)

**ORDER DENYING MOTION TO
ALTER OR AMEND**

Case No.: 06-CP-28-0433

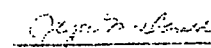
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JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

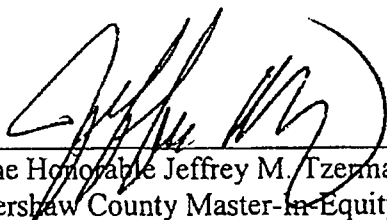
This matter came before me on pursuant to a Motion to Reconsider, Alter or Amend submitted by Petitioner on September 29, 2014. After having thoroughly reviewed the motion, Petitioner's Motion is denied for the following reasons: Prior Orders in this case are clearly distinguishable from the current Order in that the previous Orders did not concerns wages that were regularly deducted in order to make a legally allowable contribution to an ERISA covered 401-K plan. Previously, the Respondents liquidated assets that were used to repay a loan to the 401-K. This Court held that that transaction was fraudulent and that the monies must be turned over to the judgment creditor. Adopting the Petitioner's argument would require what is in essence, a wage garnishment, which is prohibited under our State law. Further, once the wages are deposited in the 401-K account, they have the protection of federal law.

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Petitioner's Motion to Reconsider, Alter or Amend this Court's Order signed on September 13, 2014 and filed on September 15, 2004, is denied.



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Court


Clerk of Court Kershaw County



The Honorable Jeffrey M. Tzerman
Kershaw County Master-in-Equity
Fifth Judicial Circuit

Camden, South Carolina
October 13, 2014

-STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)
)

BEFORE THE MASTER-IN-EQUITY
FIFTH JUDICIAL CIRCUIT

Palmetto Residential Builder, LLC,)
)
Petitioner,)

**ORDER ON MOTION TO SET
ASIDE CONVEYANCES**

vs.)

Case No.: 06-CP-28-0433

Michael Cox and Elizabeth Cox,)

Respondents.)

FILED FOR RECORD
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JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

This matter came before me on June 25, 2014, 9:00 a.m. in the Office of the Kershaw County Mast-In-Equity pursuant to a Motion for Order Setting Aside Fraudulent Conveyances and Executing on Certain Property. This Order concerns only the issue of whether Respondent Michael Cox's voluntary contributions to his employee retirement plan are fraudulent conveyances under the Employee Retirement Income Security Act and applicable state law.

Present at the hearing were Plaintiff's counsel, the Defendants Michael and Elizabeth Cox and their counsel. This Court heard extensive argument from both lawyers who also submitted detailed briefs on the relevant case and statutory law applicable to the issue.

BACKGROUND

Respondent Michael Cox has been making voluntary contributions into his ERISA covered 401K plan since 1985. Mr. Cox is employed by International Paper Company and has been for thirty (30) years. His plan is an individual retirement account under 408(a) of the Internal Revenue Code and it provides the required contractual "anti-alienation" provision (See 29 U.S.C. § 1057(d)(1)). The retirement plan to which Mr. Cox contributes 16.5% of his salary is known as The International Paper Salaried Savings Plan. This plan was established for employees of the

Company effective July 1, 1992 and is covered by ERISA (Employee Retirement Income Security Act of 1974) and is a "Qualified Employer Plan" under 26 U.S.C. § 401 (a). His plan is afforded the highest protection legally allowed under existing law, Federal or State.

In 2008, this Court rendered judgment against Mr. Cox and his wife in the amount of \$119,430.93. The Petitioner now wants this Court to rule that the contributions into his Employee Retirement Income Security Act (ERISA) covered 401(k) retirement plan made since judgment was rendered are fraudulent conveyance under the "Statute of Elizabeth" S.C. Code Ann. § 27-23-10.

Based on the record before me, arguments by the lawyers and their submitted written materials, I make the following findings of fact and conclusions of law.

1. This Court has proper continuing jurisdiction over the issues before me and parties hereto.
2. Under current law, Mr. Cox is allowed to contribute up to \$23,000.00 to his employee retirement account. All who contribute to 401(k) accounts are allowed to contribute up to \$17,500.00, pre-tax money into their retirement account. Mr. Cox, age 59, is allowed an additional \$5,500.00 pre-tax contribution pursuant to 26 U.S. Code § 219 (5)(B) which is called the "catch up" contribution and only those who are age 50 and over may take advantage of this provision.
3. Mr. Cox is currently and has been contributing less than \$17,500.00 to his retirement plan since judgment was rendered against he and his wife. The contributions are taken directly from his paycheck, deposited into his 401(k) trust account and are not counted as income to him for tax purposes.

4. Mr. Cox has been making contributions to his ERISA covered retirement plan for twenty-nine (29) years, since 1985. The Petitioners in this case were awarded judgment in 2008. Thus, Mr. Cox has been contributing to his ERISA covered 401(k) retirement plan for twenty-one (21) years prior to the Petitioner's judgment against him.

5. Mr. Cox has been making contributions into the 401(k) plan long before the Petitioner's judgment and since the judgment, Mr. Cox has not increased the amount of his contributions into the 401(k) account which he is entitled to do.

6. It follows then, that these transfers and continuing transfers of money from Mr. Cox's paycheck to his 401(k) were not made to delay, hinder, or defraud creditors under South Carolina's Statute of Elizabeth. Instead, they were made to provide for him and his wife's retirement.

7. The applicable exemption, S.C. Code Ann. § 15-30(A)(13) references Section 408(a) of the Internal Revenue Code and Section 408(a) references contributions to the plan. Thus, the contributions are allowed the same protection as the funds in 401K trust account. The contributions are pre-tax and not included in gross income.

8. Title I of ERISA requires that benefits under the plan may not be assigned or alienated. For the anti-alienation clause to be effective, the underlying plan must constitute a "pension plan" under ERISA which is defined as any plan, fund or program. . . which provides retirement income to employees. See ERISA § 3(2)(A). In the case at bar, Mr. Cox's plan is clearly an employee a pension plan under ERISA.

9. In addition to ERISA, the U.S. Code provides "that a trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that benefits provided under the plan may not be assigned or alienated." § 401 (a)(13)(A). Neither ERISA or

code protections apply to individual retirement plans (I.R.A.'s), simplified pension plans, government plans or most church plans. ERISA §§ 4(b) and 201; Code § 401(a); DOL Treas. Reg. §2510.3-2(d).

10. ERISA § 514 (a) provides that ERISA supersedes state laws to the extent that they state laws relate to employee benefit plans, also known as the "preemption" provision". The anti-alienation and preemption provisions both make state attachment and garnishment laws inapplicable or without force or effect with relation to ERISA covered plans.

11. There are exceptions to the anti-alienation and preemption provisions but the case before me is not one of them. Qualified Domestic Relations Orders (QDRO's) for child support may be exempted. Code § 401 (a)(13)(B); ERISA § 206(d)(3). In a marriage and subsequent divorce, the retirement plan is a marital asset subject to a Family Court's equitable division authority. Federal tax judgments and levies are also exempt. Treas. Reg. §1.401(a)-13(e). Criminal judgments may also be exempt. See U.S. v. Novak, 476 F.3d 1041 (9th Cir. 2007).

12. If Mr. Cox would have contributed more than \$23,000.00 for any tax year since he turned 50 years old, or otherwise contributed more than is allowed as a pre-tax contribution to his retirement plan, those funds would not be protected by ERISA and may be recovered by the Petitioner's in this case as a fraudulent conveyance..

13. None of the exceptions to the anti-alienation or preemption provisions are applicable in this case.

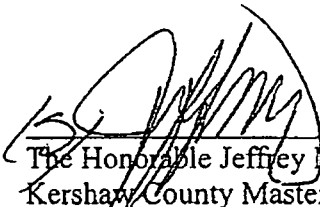
14. With respect to whether these contributions are fraudulent conveyances under South Carolina law, this Court finds that, "... conveyances shall be set aside under two conditions; First, where there was valuable consideration and the transfer is made by the grantor with the actual

intent to defraud; and, second, where a transfer is made without actual intent to defraud but without valuable consideration. Oskin v. Johnson, 400 S.C. 390, 735 S.E.2d 459 (S.C. 2012).

14. This Court finds that the voluntary contributions made by Mr. Cox to his retirement account are made with and for valuable consideration and were not made with any intent to defraud the judgment creditors at bar.

15. Therefore, under ERISA and our state's law, the contributions Mr. Cox has made into his 401(k) since judgment was rendered against him are not fraudulent conveyances, they were not made with the intent to defraud the creditor and are protected from attachment, levy or garnishment by the Employee Retirement Income Security Act.

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Petitioner's Motion to set aside Mr. Cox's voluntary contributions to his employee retirement plan is denied.



The Honorable Jeffrey M. Tzerman
Kershaw County Master-In-Equity
Fifth Judicial Circuit

Camden, South Carolina

September 13, 2014

STATE OF SOUTH CAROLINA)

BEFORE THE MASTER-IN-EQUITY

COUNTY OF KERSHAW)

Palmetto Residential Builders, LLC,)

Case No.: 2006-CP-28-433

Petitioner,)

v.)

Michael Cox and Elizabeth Cox,)

Respondents.)

ORDER

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2014 SEP 15 PM 3:55
JAYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

THIS MATTER came before the undersigned upon Motion by Petitioner Palmetto Residential Builders, LLC ("Petitioner"), by and through its undersigned counsel, for an order of execution as to certain assets of the Respondents. At a hearing held June 25, 2014, Benjamin C. Bruner, Esquire appeared on behalf of the Petitioner, and R. Charles Richards, Esquire on behalf of the Respondents. Petitioner asks that the Court set aside contributions Mr. Cox has made to his retirement account since the date of the judgment; order payment Respondents to pay proceeds from selling a vehicle in 2013 or, in the alternative, to direct the public sale of the 2013 Dodge Challenger; issue a charging order on Mr. Cox's interest in Cox Holdings, LLC; and awarding the Petitioner attorney's fees and costs related to the November 7, 2013 hearing in this matter as sanctions due to Mr. Cox's conduct. Having carefully considered the Petitioner's motion, I find it should be granted in part for the reasons set forth below. The Court will address by separate order Petitioner's requests to set aside contributions made to Mr. Cox's retirement account and to direct payment of proceeds from the 2010 Honda or, in the alternative, to direct the public sale of the 2013 Dodge Challenger.

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Court

Clara M. Shaw
Clerk of Court Kershaw County

A-12

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Petitioner commenced these supplemental proceedings to collect on a judgment based on a mechanic's lien after the Respondents failed to pay for the house Petitioner built for them. The jury returned a verdict in Petitioner's favor on January 30, 2008 in the amount of \$119,430.93.

In June of 2013, Petitioner resumed these supplemental proceedings, during which Petitioner discovered that Mr. Cox is a member of a South Carolina limited liability company known as Cox Holdings, LLC. Petitioner has moved for a charging order, and Respondents to do not contest it. I therefore find a charging order appropriate.

Another discovery Petitioner made is more troubling. The undersigned has previously issued orders restraining the Respondents from transferring or disposing of any assets subject to execution and levy without prior Court approval. Nonetheless, on December 29, 2010, Mr. Cox purchased a new 2010 Honda Accord for \$29,987.40. In doing so, he traded in a 2007 Honda he owned that was worth more than the existing \$5,000 vehicle exemption. In 2013, Mr. Cox again purchased a new vehicle, a 2013 Dodge Challenger, for \$33,000, and sold the 2010 Honda Accord.

At the August 27, 2014 hearing in this matter, Mr. Cox was asked under oath what happened to the 2010 Honda. He testified that he traded it in when he bought the 2013 Dodge Challenger. When Petitioner obtained the sales documents for the Dodge Challenger, it discovered Mr. Cox's testimony was false. No vehicle was traded in as part of that transaction. Instead, Mr. Cox sold the vehicle, paid off the note, and pocketed the balance. When confronted during a November 7, 2013 hearing, Mr. Cox claimed he had been confused. This Court, however, did not find his testimony convincing. In 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 Petitioner's judgment.

Respondents acknowledge that when they sold the 2010 Honda, they netted \$6,153.29 after paying off the note on the 2010 Honda. They did not pay the money toward their new car, nor did they use it to pay Petitioner's judgment. They simply spent it. Respondents concede that no exemption applies to \$1,153.29 of the proceeds since that is over the \$5,000 vehicle exemption, and they recently paid that amount to Petitioner. They insist, however, that the remaining \$5,000 is exempt. Petitioner argues, on the other hand, that the exemption applies to only one vehicle. The Court refrains from deciding whether the remaining \$5,000 is exempt at this time in order to give the parties to present further evidence.

Petitioner also moves the undersigned to hold Mr. Cox in contempt and award sanctions based on misrepresentations he has made during these proceedings under oath. After carefully considering the testimony and the circumstances of this matter, I find the motion should be granted. When confronted with testimony he gave at a prior hearing about selling the 2010 Honda, Mr. Cox testified as follows:

Q And you recall your testimony, in this room in August, when you said you traded in your Honda Accord on that Challenger; right?

THE COURT: More importantly -- let me interrupt.

More importantly, Mr. Cox, I remember it.

Continue.

BY MR. BRUNER:

Q Do you recall that testimony you gave in August?

A That I traded a Honda in on a Dodge Challenger?

Q Yes, sir.

A I do not remember saying that.

Q Okay. I am going to hand you a transcript. If you could --

MR. BRUNER: -- and I apologize to The Court. I only have two copies --

THE COURT: That's okay.

BY MR. BRUNER:

Q If you would turn to page 19 for me.

THE COURT: That's what I remembered.

BY MR. BRUNER:

Q It's flagged there, Mr. Cox, with the yellow tab.

A Okay. All right.

Q You see there in the middle of the page, there's a highlighted section. Start with line 12 --

A Twelve, okay.

Q -- and just read that.

A What did you have before the Dodge Challenger? A 2011 Honda Accord.

What happened to the 2011 Honda Accord? I traded it on the Dodge Challenger.

Q So your testimony in August was that you traded a Honda Accord in on the Challenger; right?

A Well, first off, I've never owned a 2011 Honda Accord.

Q I understand that, Mr. Cox. And do you recall later clarifying that it was not a 2011 Honda Accord that you traded in, but rather a 2010.

You just got the year wrong. That's correct; right?

A I don't know whether that is correct.

THE COURT: Find it.

THE WITNESS: You want the explanation?

THE COURT: Well, first we're going to get an answer on that question, Mr. Cox.

THE WITNESS: Okay.

MR. ROBINSON: Page 22.

THE WITNESS: Is it also flagged?

THE COURT: He'll tell you what line.

THE WITNESS: Okay.

BY MR. BRUNER:

Q And you can start with page 21, the bottom of the page, line 23.

And for brevity, I am going to go ahead and just read it. And you tell me if that is consistent with what you recall testifying to.

Question: If you traded in a one-year old Honda Accord, you mean to tell me you got a thousand dollars on the trade in?

Answer: Wait, a minute. A one year old car? Eleven, twelve, thirteen, fourteen.

Question: Well, it's 2013 now. And you had the Honda -- when did you buy the Honda Accord? It's two years old at the oldest; right?

Answer: I've had the Honda Accord for -- oh, it was a 2010. I'm sorry.

Question: You're looking at a note that your

wife just wrote you?

Answer: I did.

Question: That said 2010?

Answer: I thought it was a 2011.

A And?

Q So you agree me that you testified in August that you traded in the 2010 Honda Accord on the Dodge Challenger; right?---

A No. If I said I traded a car in on the Dodge Challenger, I didn't say that. I said I -- I had a 2007 that I traded on a 2010 Honda.

Q Okay. Where is the 2010 Honda today?

A It's been sold.

Q When did you sell it?

MS. COX: May.

THE WITNESS: Was it May? I'm not good with dates. May.

BY MR. BRUNER:

Q Who did you sell the 2010 Honda Accord to?

A I could not tell you.

Q When I asked you what happened to the 2010 Honda, why did you not tell me that you sold it?

A I do not recall you asking me if I sold the 2010 Honda.

THE COURT: That's because he asked you what happened to it? And you said you traded it in.

BY MR. BRUNER:

Q Go back to page 19 for me, please. My question to you:

What did you have before the Dodge Challenger?

Answer: The 2011 Honda Accord.

We've established that you were mistaken. That's the same car as the 2010 Honda Accord I'm asking you about.

My next question:

What happened to the Honda Accord?

A I thought you were talking about the 2007 or the 2010.

Q Okay. So at the time you --

A I sold the 2010 Honda Accord in May.

Q Okay. Who did you sell it to?

A I don't -- I couldn't tell you. It was in Carolina Trader. Sold it. And I don't -- I have not a clue.

Q How much did you sell it for?

A I really can't give you the -- the exact figure.

But it was --

Q Mr. Cox, I am going to find out.

A I -- I -- well, you know, and I'll give you as close as I can.

It was 15,500 -- I don't know. It was somewhere between 15 and \$16,000, as well as I recall.

Q Was it in cash? Was it a check?

A It was a check.

Q It was a check to you; correct?

A Well, the balance had to be paid off for the financing of it. And I got some \$5,000.

Q Who was the check made out to?

A I do not recall.

Q Okay. But you took that check and you put in an account and paid off the balance? Is that what you're telling me?

A I put that check and put it in -- no, no, no. The -- the automobile, where it was financed, was paid by the bank.

Q Which bank?

A I can't -- I couldn't tell you that.

Q You don't know --

A No.

Q -- the bank that had the lien on that car?

A Nope.

Q What happened to the 5,000-or-so money that came directly to you?

A It was -- I really -- it's -- I've spent it, so --

(Transcript of November 7, 2013 hearing, 29:9-34:24.)

Mr. Cox's testimony illustrates the disregard he has shown for these proceedings and for prior orders directing him not to dispose of non-exempt property. When asked in August what he did with the 2010 Honda, he testified that he traded it in. Even after the truth was exposed, he refused to cooperate and denied his prior testimony. I find Mr. Cox has willfully and intentionally violated this Court's orders and shown flagrant disregard for the truth in these proceedings. I therefore find Mr. Cox in contempt of court and order him to pay Petitioner for reasonable attorney's fees and costs incurred in connection with his contemptuous conduct.

Based upon the submissions of counsel and the record in this case, I find that amount is \$300. I further find that Mr. Cox's egregious conduct justify a jail sentence of thirty (30) days, suspended upon his full cooperation and compliance with this Court's order and with these proceedings. If Mr. Cox shall violate any order of this Court in any way, or if he fails to cooperate with these proceedings, then the Sheriff of Newberry County shall take him into custody immediately, and he shall serve thirty (30) days in jail.

IT IS THEREFORE ORDERED that Petitioner's motion for a charging order as to Respondents' interest in Cox Holdings, LLC shall be and hereby is GRANTED. The interest of Michael Cox as a member of Cox Holdings, LLC shall be and hereby is subject to an encumbrance and charging order in favor of and for the benefit of Palmetto Residential Builders, LLC.

IT IS FURTHER ORDERED that on or before October 10, 2014, Respondent Michael Cox shall file with the Kershaw County Clerk of Court a sworn answer reporting to the Court all amounts distributable or payable to him at the time of service of this order and at all subsequent times attributable to any interest owned in the company; and in such sworn answer and report Mr. Cox shall state the value, at the time of service of this order and at all subsequent times, of both the capital and income accounts attributable to the interest of him in the company.

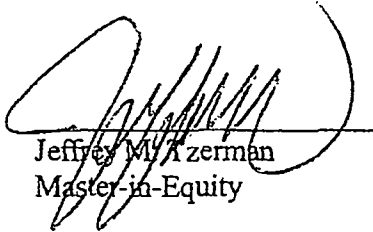
IT IS FURTHER ORDERED that neither Cox Holdings, LLC nor any of its members or managers shall distribute to Mr. Cox any funds or assets whatsoever, by virtue of his interest as a member in or owner of an interest in the company, but instead shall pay over to Palmetto Residential Builders, LLC all funds and assets whatsoever which, by virtue of Mr. Cox's interest as a member in or owner of an interest in the company, would have been distributed to him.

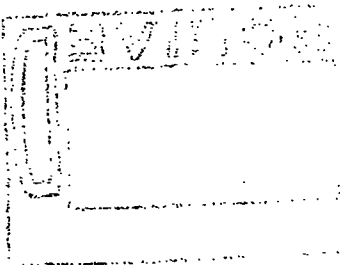
IT IS FURTHER ORDERED that Michael Cox is hereby held in contempt of court and shall pay Petitioner reasonable attorney's fees and costs in the amount of \$300 within sixty (60) days of the date of this order. IT IS FURTHER ORDERED that Michael Cox is hereby sentenced to thirty (30) days in jail for his contemptuous conduct; provided, however, this sentence is suspended upon Mr. Cox's full cooperation and compliance with this Court's orders and these proceedings.

AND IT IS SO ORDERED.

September 15, 2014

Camden, South Carolina


Jeffrey M. Azerman
Master-in-Equity



COPY

STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW)

Palmetto Residential Builders, LLC,)
)
Petitioner,)
)
v.)
)
Michael Cox and Elizabeth Cox,)
)
Respondents.)
_____)

BEFORE THE MASTER-IN-EQUITY

Case No.: 2006-CP-28-433

ORDER

FILED FOR RECORD
2013 SEP -6 AM 11:57
JULIE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

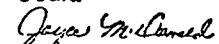
This matter came before me by way of a supplemental proceeding hearing on August 20, 2013, commencing at 10:00 a.m. in the Office of the Kershaw County Master-in-Equity. The Respondents, Michael Cox and Elizabeth Cox, both appeared at the hearing and testified under oath.

Mrs. Cox testified that she holds only one bank account (a joint checking account with Mr. Cox at Mid Carolina Credit Union), a 2004 Suburban that she owns 50/50 with her son. She further testified that the only real property she and Mr. Cox own is the house at 127 Lake Mallard Road, which is encumbered by a mortgage to BB&T. The current payoff on the mortgage is roughly \$310,000, according to testimony. Michael Cox testified that he holds the joint checking account at Mid Carolina in addition to a savings account there, a savings account at SAFE Federal Credit Union, a savings account at Bronco Federal Credit Union, and a 2012 Dodge Challenger that he purchased a few months ago.

During the hearing, counsel for the Petitioner moved to execute on the Respondents' home. At this time, however, the Court has no evidence that a public sale will net any proceeds



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Court.



Clerk of Court

Kershaw County
A-20

to the Petitioner. I therefore hold that motion in abeyance.

In light of the Coxes' homestead exemption, counsel for the Petitioner moved this Court for an order freezing and sweeping the Respondents' bank accounts. Mrs. Cox testified that after all outstanding checks clear, the remaining balance in the Mid Carolina checking account will be \$700 to \$800. I find no equitable basis for freezing the Respondents' accounts, especially since the Respondents had no notice prior to the hearing that their accounts may be frozen and that checks they have issued may be dishonored. However, I do find Petitioner is entitled to the \$800 balance in the joint account pursuant to S.C. Code Ann. § 15-41-30(A)(5).

Counsel for Petitioner further moved for an Order requiring Mr. Cox to produce all statements related to his retirement account for the last four years, or since the last hearing in these proceedings. Mr. Cox testified that he receives biannual statements. I previously held in this matter that Mr. Cox made fraudulent conveyances on two separate occasions when he deposited money into his retirement account. Given that history, as well as the fact that the Petitioner can obtain information about those transfers only from the Respondents, I find the Respondents must produce the statements from Mr. Cox's retirement account.

IT IS THEREFORE ORDERED that the Respondents shall pay the Petitioner \$800 no later than September 10, 2013.

IT IS FURTHER ORDERED that the Respondents shall produce all statements from the last four years for his retirement account no later than September 26, 2013.

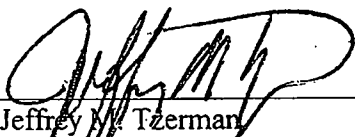
IT IS FURTHER ORDERED that this matter shall remain open for sixty (60) days to allow Petitioner time to receive the documents from the Respondents, conduct other discovery, and to make such motions as it deems proper.



This Supplemental Proceedings is still ongoing and this Order shall not be interpreted, in any way, to restrict the Plaintiff's ability to execute on any other assets, whether such assets have already been discovered which may be discovered in the future. The Defendants are once again reminded of the Rule to Show Cause and Order of Reference entered in this Supplemental Proceedings restraining and enjoining them from making any transaction or transfer or other disposition of property belonging to them which are not exempt from execution pending further Order of this Court.

IF YOU DO NOT COMPLY WITH THIS ORDER, YOU MAY BE HELD IN CONTEMPT OF COURT, WHICH COULD RESULT IN A FINE AND/OR JAIL SENTENCE.

AND IT IS SO ORDERED.



Jeffrey M. Tzerman
Master-in-Equity, Kershaw County

Camden, South Carolina

 ~~September 13~~
August __, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW)
)
Palmetto Residential Builders, LLC,)
)
Petitioner,)
)
v.)
)
Michael Cox and Elizabeth Cox,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS

COPY

RULE TO SHOW CAUSE
AND ORDER OF REFERENCE
(Case No.: 2006-CP-28-433)

FILED FOR RECORD
2013 JUN 24 AM 11:27
JOYCE HODGKINS
CLERK OF COURT
KERSHAW COUNTY, S.C.

Judgment having been rendered, an Execution issued, a *Nulla Bona* return made to said Execution, the Petitioner having moved for an examination of the Respondents, Michael Cox and Elizabeth Cox, pursuant to the provisions of §15-39-310, *et seq.*, as amended; it is therefore,

ORDERED that Michael Cox and Elizabeth Cox, DO APPEAR before the
The Honorable Jeffrey Marc Tzerman, at the Kershaw County Courthouse, Master-
in-Equity's Office, 304 Hampton Park, ~~1201 Broad Street~~, Camden, South Carolina, on the 27th day
of August 2013, at 10:00AM, to answer under oath concerning the assets
of the Respondent; TO SHOW CAUSE why its property should not be applied towards
satisfaction of the Judgment set out in the Petition; and TO SHOW CAUSE why a Receiver of its
property should not be appointed, pursuant to the provisions of § 15-39-430, *et seq.* South
Carolina Code Ann. (Law. Co-op. 1976).

The Master in Equity will entertain and rule upon all motions necessary to dispose of this
matter, to include but not limited to, motions to dismiss, motions to appoint Receiver, motions to
continue the matter, and motions to sell all or certain property of judgement debtor in satisfaction of
the Petitioner's debt and has authority to enter a Final Order. Any appeal from the Master in Equity

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Court.

Joyce M. Hodgkins
Clerk of Court Kershaw County
A-23

is directly to the Supreme Court.

IT IS FURTHER ORDERED that Respondents are hereby restrained and enjoined from making any transaction or transfer or other disposition of property belonging to them which is not exempt from execution pending further Order of this Court.

YOU ARE FURTHER ORDERED TO BRING WITH YOU TO THE HEARING the following:

1. Bank statements for all bank accounts owned in whole or in part by Defendant.
2. Pay stubs for the past five (5) years.
3. Federal and State Tax returns, all schedules and amendment, for the years 2010 to present.
4. Insurance Policies [home, automobile, real estate, etc...].
5. Records of any real estate owned, either in whole or in part.
6. Records of vehicles and boats.
7. Any inventories of personal property.
8. Copies of any contracts entitling you to payment of money.
9. Any personal financial statements prepared for any reasons either by your self or by any independent sources, with any applicable notes attached thereto from January 2010 to date and, if not reflected in such statements, a complete description of any and all contingent liabilities, including guarantees, by you.
10. Any and all year-end financial statements of any corporation, partnership, trust, or other business entity in which you hold directly or indirectly a 10% interest (balance sheet statements and statement of income and expenses) audited and unaudited for the last three years of the respective entities with any applicable notes attached thereto and any subsequently prepared financial reports or statements prepared by the entity or on its behalf for any reason.
11. Any and all documents and financial records that relate to, refer to, or describe, recount, or are in any way related to any transfer of or pledge, hypothecation, gift, assignment, or granting of a security interest in assets owned or controlled by him, made by him, or on his behalf in excess of One Hundred Dollars (\$100) in any single transaction from January 2010 to the present, and any and all documents and financial records that relate to, refer to, to describe the disposition of

proceeds, promissory notes, or other evidence of indebtedness or consideration received from such transfers, pledges, etc.

12. Any and all documents and financial records that relate to, refer to, or describe any and all transactions between him and members of his family.
13. Any and all documents and financial records, including appraisals which relate to, refer to, or describe or substantiate any valuation of assets disclosed in your financial statements/records produced under paragraph 11 above, and the manner of valuation or fixing of value of such assets, prepared either by you or by any third party or entity relating to these assets.
14. Any and all documents which relate to, or recount or describe any pending or potential claim against you or against any entity referenced in paragraph 10 above, whether or not currently in litigation, together with any and all documents which relate to, recount, or describe any judgments held against you or any entity referenced in paragraph 10.
15. Any and all documents which relate to, refer to, or describe any trust in which you are a beneficiary, including any financial statements of the aforesaid trust and the dispositive provisions of the trust as relates to you and members of your family.

IF YOU DO NOT APPEAR IT MAY RESULT IN THE APPOINTMENT OF A RECEIVER AND AWARDING THE PLAINTIFF/PETITIONER SUCH OTHER AND FURTHER RELIEF AS MAY BE REQUESTED. YOU MAY ALSO BE HELD IN CONTEMPT OF COURT WHICH COULD RESULT IN A FINE AND/OR JAIL SENTENCE.

AND IT IS SO ORDERED.

Camden, South Carolina

June 24, 2013

S/ Robert E. Hood
Presiding Circuit Court Judge, Kershaw County

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

Palmetto Residential Builders, LLC,

Plaintiff,

v.

Michael Cox and Elizabeth Cox,

Defendants.

BEFORE THE MASTER IN EQUITY

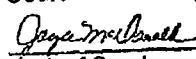
Case No.: 2006-CP-28-433

ORDER

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2009 FEB 16 AM 8:59
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

This matter came before me by way of a third Supplemental Proceeding hearing on January 22, 2009, commencing at 10:00 a.m. in the Office of the Kershaw County Master-in-Equity. There were a number of pending motions and this Court addressed several of them during the hearing. First, the Defendant, Michael Cox has failed to comply with this Court's Orders dated September 29, 2008 (filed October 1, 2008) and November 4, 2008 (filed November 7, 2008). In particular, Michael Cox has failed to withdraw the money from his retirement account, the JP Morgan Chase – International Paper Salaried Savings Plan, as previously ordered. Counsel for the Plaintiff sought to have an Order issued directing International Paper, or the account custodian, to pay the money directly to the Plaintiff in this matter. I find that the relief requested by the Plaintiff is appropriate in order to effectuate this Court's previous Orders. **IT IS THEREFORE ORDERED** that International Paper, JP Morgan and/or JP Morgan Chase Bank, whichever entity is the appropriate party to execute a withdrawal from Michael Cox's account shall, within 10 days of receipt of this Order, withdraw a sufficient amount from the account to tender a check in the amount of \$51,487.89. In the event any taxes and/or penalties must be paid

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Court


Clerk of Court Kershaw County


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from said withdrawal, said taxes and penalties shall be added to the withdrawal amount. The check shall be made payable to "Bruner Powell Robbins Wall & Mullins, LLC" and transmitted via overnight carrier to: Joey R. Floyd, Attorney for Palmetto Residential Builders, LLC, 1735 St. Julian Place, Suite 200, Columbia, SC 29204. Upon receipt of said proceeds (after the proceeds clear the bank), Counsel for the Plaintiff shall file a Partial Satisfaction of Judgment for the amount received.

In addition, Counsel for the Coxes, Paul Degenhart, Esquire, ~~filed a Motion to Quash on~~ June 6, 2008, seeking to quash the Subpoenas issued to Branch Banking and Trust ("BB&T"). After reviewing the subpoenas and hearing the arguments of Counsel, I find that the information sought by the Plaintiff's subpoenas is reasonable and in the scope of discovery available to a creditor in post-judgment proceedings. Therefore, the Motion to Quash the Plaintiff's subpoenas issued to BB&T are hereby denied. **IT IS THEREFORE ORDERED** that BB&T shall produce all documents responsive to the subpoenas within ten days after being served with a copy of this Order.

A non-party, Cox Holdings, LLC, received a subpoena from the Plaintiff in mid to late September 2008. Cox Holdings, LLC, by and through its attorney, Charles Richards, Esquire, provided Counsel for the Plaintiff with a written objection. Thereafter, in early January 2009, the Plaintiff issued a Subpoena Duces Tecum to Cox Holdings, LLC, requiring a representative of Cox Holdings, LLC to appear, bring certain documents and testify about Cox Holdings, LLC. Cox Holdings, LLC, by and through its attorney, provided another objection to the subpoena. After reviewing the subpoena to Cox Holdings, LLC and hearing the arguments of Counsel for both sides, I find that the information sought by the Plaintiff's second subpoena to Cox Holdings,

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LLC is reasonable and in the scope of discovery available to a creditor in post-judgment proceedings. **IT IS THEREFORE ORDERED** that Cox Holdings, LLC is hereby ordered to produce the documents demanded in the January 2009 subpoena within ten days of service of the Order upon Counsel for Cox Holdings, LLC. The documents shall be delivered to Counsel for the Plaintiff.¹

Counsel for the Plaintiff/Judgment Creditor also directed this Court's attention to the fact that Post-Judgment Interrogatories and Requests for Production were served on the Defendants on May 15, 2008. Counsel for the Plaintiff also represented to this Court that he has not received any responses from the Defendants. Counsel for the Defendants advised this Court that the Post-Judgment Discovery Requests had not been answered; however, Counsel for the Defendants also represented to the Court that he did not foresee any problems in providing Answers/Responses to the Post-Judgment Interrogatories and Requests for Production in 30 days from January 20, 2009. **IT IS THEREFORE ORDERED** that the Defendants shall provide Answers to the Post-Judgment Interrogatories and Requests for Production in 30 days from January 20, 2009.

This Supplemental Proceedings is still ongoing and this Order shall not be interpreted, in any way, to restrict the Plaintiff's ability to execute on any other assets, whether such assets have already been discovered which may be discovered in the future. The Defendants are once again reminded of the Rule to Show Cause and Order of Reference entered in this Supplemental Proceedings restraining and enjoining them from making any transaction or transfer or other

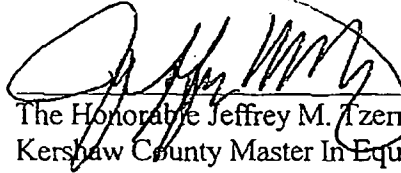
¹ Cox Holdings, LLC has produced some documents, which are currently in my possession by way of agreement from the January 22, 2009 hearing. I will be tendering these same documents to Counsel for the Plaintiff in the next couple of days. Counsel for Plaintiff and Counsel for Cox Holdings, LLC are encouraged to work together and resolve any "discovery" disputes between one another without the assistance of this Court. However, if Counsel for the Plaintiff and Counsel for Cox Holdings, LLC are unable to resolve a dispute, this Court will assist the parties in resolving such disputes.



disposition of property belonging to them which are not exempt from execution pending further Order of this Court.

IF YOU DO NOT COMPLY WITH THIS ORDER, YOU MAY BE HELD IN CONTEMPT OF COURT, WHICH COULD RESULT IN A FINE AND/OR JAIL SENTENCE.

AND IT IS SO ORDERED.


The Honorable Jeffrey M. Tzernan
Kershaw County Master In Equity

Camden, South Carolina

February 17, 2009

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)
Palmetto Residential Builders, LLC,)
Plaintiff,)
v.)
Michael Cox and Elizabeth Cox,)
Defendants.)

BEFORE THE MASTER IN EQUITY

Case No.: 2006-CP-28-433

ORDER

FILED FOR RECORD
2008 NOV - 7 AM 10:28
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

This matter came before me by way of a Supplemental Proceeding hearing on October 24, 2008, 10:00 a.m. in the Office of the Kershaw County Master-in-Equity. The Defendants were, once again, placed under oath and examined by Counsel for Plaintiff. Among other issues, the Defendant Michael Cox testified and acknowledged that he withdrew \$7,000.00 from his Bronco Federal Credit Union bank account on January 31, 2008, and immediately applied/deposited the \$7,000.00 into his retirement account (JP Morgan – International Paper Salaried Savings Plan) in order to repay a loan that he had taken against his retirement account. Notably, the withdrawal occurred one day after the jury verdict was rendered against the Defendants in this case.

It was also discovered that Mr. Cox has another account with Smith Barney, a “second” Smith Barney account, besides the Smith Barney stock account that he liquidated shortly after the jury verdict was rendered in this case. Mr. Cox did not advise this Court, or Counsel for the Plaintiff, during the Supplemental Proceedings hearing on September 8, 2008, that he had a second Smith Barney account. In particular, Mr. Cox has a ROTH IRA (“ROTH account” or “ROTH IRA”) with Smith Barney. Based on the documents provided to this Court, it appears

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[Signature]
Clerk of Court Kershaw County

that the ROTH IRA has a balance of approximately \$14,951.31, based on the April 1 - June 30, 2008 statement. When initially questioned about the ROTH IRA, Mr. Cox stated that he did not even know that he had this account and that he thought it was closed when he closed out the other Smith Barney account to repay his retirement account loan. Mr. & Mrs. Cox reaffirmed their prior testimony by testifying that their combined income totaled approximately \$125,000.00 (Mr. Cox - \$65,000.00 and Mrs. Cox - \$60,000.00).

Counsel for the Plaintiff/Judgment Creditor also directed this Court's attention to the fact that Post-Judgment Interrogatories and Requests for Production were served on the Defendants on May 15, 2008. Counsel for the Plaintiff also represented to this Court that he has not received any responses from the Defendants. Counsel for the Defendants advised this Court that the Post-Judgment Discovery Requests had not been answered; however, Counsel for the Defendants also represented to the Court that he did not foresee any problems in providing Answers/Responses to the Post-Judgment Interrogatories and Requests for Production in 30 days from October 24, 2008.

FINDINGS OF FACT

1. The Plaintiff obtained a Judgment, by way of a jury verdict, against the Defendants on January 30, 2008.
2. The Defendant, Michael Cox, withdrew \$7,000.00 on January 31, 2008, and immediately deposited the proceeds into his retirement account.
3. The Defendant, Michael Cox, testified that he deposited the \$7,000.00 into his retirement account in order to repay a loan that he had taken against his retirement account.

-2-


4. Counsel for the Plaintiff moved to set aside the repayment of the loan, i.e. the deposit of the proceeds into Michael Cox's retirement account, on the grounds that the transfer was a fraudulent transfer in accordance with S.C. Code 15-41-30(A)(13).
5. The Defendant Michael Cox has a ROTH IRA account with Smith Barney, Account Number [REDACTED], which he failed to disclose to this Court during the first supplemental proceeding hearing held on September 8, 2008.
6. The ROTH IRA had approximately \$14,951.31 in the account, as of June 30, 2008.
7. The Defendant Michael Cox did not even know that he had the second Smith Barney account until he was confronted with the Smith Barney documents during the Supplemental Proceedings hearing on October 23, 2008.
8. The Defendant Michael Cox and his spouse/co-Defendant, Elizabeth Cox, have a combined income equal to, or in excess of, \$125,000.00.
9. The Defendants are not using the ROTH IRA account for his/their support.
10. The Defendants have agreed to provide Counsel for the Plaintiff with responses to the Post-Judgment Interrogatories and Requests for Production in thirty (30) days, i.e. on, or before, November 24, 2008.

Conclusions of Law

I. Bronco Federal Credit Union Money

1. A Judgment Creditor is entitled to execute on the assets of a debtor, with limited exceptions/exemptions as provided in S.C. Code § 15-41-30. The exemption found at S.C. Code § 15-41-30(A)(13), provides:

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, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor. **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).

2. The purpose of the homestead exemption statute is "to protect from creditors a certain portion of the debtor's property, and to prevent citizens from becoming dependent on the State for support." *Holden v. Cribb*, 349 S.C. 132, 561 S.E.2d 634 (Ct. App. 2002) quoting *Scholtec v. Estate of Reeves*, 327 S.C. 551, 560, 490 S.E.2d 603, 607 (Ct.App. 1997) (citation omitted).
3. South Carolina's prohibition on fraudulent conveyances, i.e. the Statute of Elizabeth (S.C. Code § 27-23-10) 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 § 27-23-10.

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4. In *Mathis v. Burton*, 319 S.C. 261, 460 S.E.2d 406 (Ct.App. 1995), the South Carolina Court of Appeals held that:

For existing creditors, 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* at 264-5 citations omitted.

5. In *Klein v. Rossi*, 251 F.Supp. 1 (D.C.N.Y. 1966), the New York District Court noted, in an opinion that dealt with the fraudulent transfer of stock, that:

Such transfers are frauds because, however contingently they may do it, they are by their very nature calculated to hinder, delay and defeat the collection of a known debt; they are characterized as fraudulent by the dominance of the intention to withdraw the particular executionable asset from the reach of process.

Mr. Cox's fraudulent transfers of the cash from his Bronco Federal Credit Union and deposited into his retirement account is, by its very nature, calculated to hinder, delay and defeat the collection efforts by Palmetto to collect on its Judgment.

6. 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."

In re Goldsheim at 378-9.

7. The Defendant 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. The South Carolina General Assembly did not intend to protect and condone such devious acts through the Homestead Exemption Act. Mr. Cox's actions have, in effect, removed the cash from the 'jaws of execution.' The cash in the Bronco Federal Credit Union account was subject to execution and could have been applied towards the Plaintiff's Judgment had the Defendant, Michael Cox, abstained from withdrawing the cash from the Bronco Federal Credit Union account and placing it in his retirement account.
8. The Defendant's, Michael Cox's, transfer of \$7,000.00 from the Bronco Federal Credit Union account to his retirement account was a fraudulent transfer as contemplated by the South Carolina Code and common law of this State. Moreover, the attempted conversion of the non-exempt asset into an exempt asset fails because (a) the deposit of the Bronco Federal Credit Union proceeds was a fraudulent transfer and (2) the Bronco Federal Credit Union proceeds were never legitimate ERISA plan assets that are offered some protection under ERISA.

II. Second Smith Barney Account – ROTH IRA

1. A Judgment Creditor is entitled to execute on the assets of a debtor, with limited exceptions/exemptions as provided in S.C. Code § 15-41-30. The exemption found at S.C. Code § 15-41-30(A)(13), provides:

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, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor. 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).

2. The purpose of the homestead exemption statute is "to protect from creditors a certain portion of the debtor's property, and to prevent citizens from becoming dependent on the State for support." *Holden v. Cribb*, 349 S.C. 132, 561 S.E.2d 634 (Ct. App. 2002) quoting *Scholtec v. Estate of Reeves*, 327 S.C. 551, 560, 490 S.E.2d 603, 607 (Ct.App. 1997) (citation omitted).
3. ROTH IRAs are governed by 26 U.S.C. §408A of the internal Revenue Code.
4. As set forth above, there is an exception in the exemption statute that allows a Judgment creditor execute on a ROTH IRA account, i.e. a 408A account.
5. The Defendants have testified that the ROTH IRA account, Account Number [REDACTED], is not necessary for the support of Michael Cox and Elizabeth Cox. Notably, the Defendant Michael Cox testified that he did not even know that he had



the ROTH IRA account at Smith Barney, which further supports the fact that the account is not "reasonably necessary for the support of the debtor and any dependent of the debtor."

6. The Smith Barney ROTH IRA account, with approximately \$14,951.31 in it as of June 30, 2008, is subject to execution by the Judgment Creditor in this case.

III. Outstanding Discovery

1. The Defendants were served with the Plaintiff's First Set of Post-Judgment Interrogatories and Requests for Production on May 15, 2008.
2. The Defendants have failed to provide the Plaintiff with answers to the Interrogatories and responses to the Requests for Production as of October 28, 2008.
3. During the hearing on October 24, 2008, Counsel for the Defendants agreed that the Defendants would provide the Plaintiff with Answers to the Interrogatories and Responses to the Requests for Production within 30 days from October 24, 2008.
4. Counsel for the Plaintiff consented to allow the Defendants an additional 30 days to respond to the discovery requests.
5. Therefore, the Defendants shall provide the Plaintiff with answers to the Plaintiff's First Set of Post-Judgment Interrogatories and Requests for Production on, or before, November 24, 2008.

IT IS THEREFORE ORDERED that the Defendant, Michael Cox, shall, within 10 days of the date this Order is served upon him and/or his Counsel, tender a check to the Plaintiff in the amount of Seven Thousand Dollars and 00/100 (\$7,000.00) from his retirement account, which is the amount of the fraudulent transfer (Bronco Federal Credit Union account withdrawal)

-8- 

into his own retirement account.¹ Upon receipt of the funds (\$7,000.00), i.e. after any check or tender of payment by the Defendant Michael Cox has had time to be deposited and "clear the bank," Palmetto shall file a partial Satisfaction of Judgment in the amount of Seven Thousand Dollars and 00/100 (\$7,000.00). Furthermore, the Defendants are hereby ORDERED that they shall not transfer or move any additional money out of the retirement account, i.e. the account to which Bronco Federal Credit Union proceeds were deposited, until this Court instructs the Defendants otherwise.

IT IS ALSO HEREBY ORDERED that upon presentment of this Order to Smith Barney, Inc., Smith Barney, Inc. shall liquidate Account Number [REDACTED] and issue a check, made payable to "Palmetto Residential Builders, LLC," in the full amount being held in the Smith Barney, Inc. account within 10 days after this Order is served upon Smith Barney, Inc. and/or its Counsel. The check shall be mailed to the following address: Bruner Powell Robbins Wall & Mullins, LLC, Attn: Joey R. Floyd, Esquire, P.O. Box 61110, Columbia, SC 29260. Upon receipt of the funds from the Smith Barney account, i.e. after any check or tender of payment by Smith Barney has had time to be deposited and "clear the bank," Palmetto shall file a partial Satisfaction of Judgment in the amount of the check received from Smith Barney. Furthermore, the Defendants are hereby ORDERED that they shall not transfer or move any additional money out of the retirement account, i.e. the account to which Bronco Federal Credit Union proceeds were deposited, until this Court instructs the Defendants otherwise.

IT IS ALSO ORDERED that the Defendants provide the Plaintiff with Answers to the Plaintiff's First Set of Post-Judgment Interrogatories and Requests for Production on, or before,

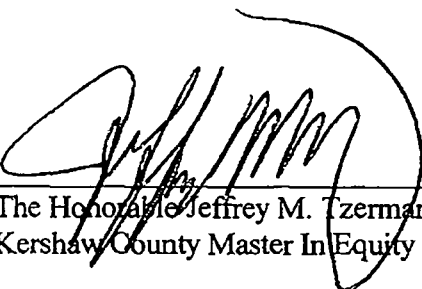
¹ This amount is in addition to the \$44,487.89 ordered (Order filed 10.1.08) to be tendered to

-9


November 24, 2008

This Supplemental Proceedings is still ongoing and this Order shall not be interpreted, in any way, to restrict the Plaintiff's ability to execute on any other assets, whether such assets have already been discovered or those assets which may be discovered in the future. The Defendants are once again reminded of the Rule to Show Cause and Order of Reference entered in this Supplemental Proceedings restraining and enjoining them from making any transaction or transfer or other disposition of property belonging to them which are not exempt from execution pending further Order of this Court.

AND IT IS SO ORDERED.


The Honorable Jeffrey M. Tzerman
Kershaw County Master In Equity

Camden, South Carolina

November 4
~~October~~, 2008

Plaintiff for the liquidation of a Smith Barney account and deposit into his retirement account.

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

Palmetto Residential Builders, LLC,

Plaintiff,

v.

Michael Cox and Elizabeth Cox,

Defendants.

BEFORE THE MASTER IN EQUITY

Case No.: 2006-CP-28-433

ORDER

FILED FOR RECORD
2008 OCT -1 AM 10:51
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

This matter came before me by way of a Supplemental Proceeding hearing on September 8, 2008, 2:00 p.m. in the Office of the Kershaw County Master-in-Equity. The Defendants were placed under oath and examined by Counsel for Plaintiff. Among other issues, the Defendant Michael Cox testified that he sold certain stock that he held in a Smith Barney account on February 4, 2008. Mr. Cox testified that the total amount received for the sale of the stock was \$44,487.89, as evidenced by the "Client Statement" from Smith Barney dated January 1 – February 29, 2008. Notably, the sale of the stock in the Smith Barney account occurred 5 days after the jury verdict was rendered by the Trial Court. Michael Cox testified that the money received from the sale of the stock was immediately applied/deposited in his retirement account (JP Morgan – International Paper Salaried Savings Plan) in order to repay a loan that he had taken against his retirement account.

FINDINGS OF FACT

- I. The Plaintiff obtained a Judgment, by way of a jury verdict, against the Defendants on January 30, 2008.

ATTEST True, Correct & Certified
Copy of Original on File in this
Court

Joyce McDonald
Clerk of Court Kershaw County

[Signature]
36

2. The Defendant, Michael Cox, sold stock in his Smith Barney account on February 4, 2008, i.e. liquidated his stock account, and deposited the proceeds into his retirement account.
3. The Defendant, Michael Cox, testified that he deposited the proceeds into his retirement account in order to repay a loan that he had taken against his retirement account.
4. Counsel for the Plaintiff moved to set aside the repayment of the loan, i.e. the deposit of the proceeds into Michael Cox's retirement account, on the grounds that the transfer was a fraudulent transfer in accordance with S.C. Code 15-41-30(A)(13)

Conclusions of Law

1. A Judgment Creditor is entitled to execute on the assets of a debtor, with limited exceptions/exemptions as provided in S.C. Code § 15-41-30. The exemption found at S.C. Code § 15-41-30(A)(13), provides:

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, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor. **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).

2. The purpose of the homestead exemption statute is "to protect from creditors a certain portion of the debtor's property, and to prevent citizens from becoming dependent on the State for support." *Holden v. Cribb*, 349 S.C. 132, 561 S.E.2d 634

(Ct. App. 2002) quoting *Scholtec v. Estate of Reeves*, 327 S.C. 551, 560, 490 S.E.2d 603, 607 (Ct.App. 1997) (citation omitted).

3. South Carolina's prohibition on fraudulent conveyances, i.e. the Statute of Elizabeth (S.C. Code § 27-23-10) 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 § 27-23-10.

4. In *Mathis v. Burton*, 319 S.C. 261, 460 S.E.2d 406 (Ct.App. 1995), the South Carolina Court of Appeals held that:

For existing creditors, 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* at 264-5 citations omitted.

5. In *Klein v. Rossi*, 251 F.Supp. 1 (D.C.N.Y. 1966), the New York District Court noted, in an opinion that dealt with the fraudulent transfer of stock, that:

Such transfers are frauds because, however contingently they may do it, they are by their very nature calculated to hinder, delay and defeat the collection of a known debt; they are characterized as fraudulent by the dominance of the intention to withdraw the particular executionable asset from the reach of process.

Mr. Cox's fraudulent transfers of the proceeds/cash generated from the sale of his stock and deposited into his retirement account is, by its very nature, calculated to hinder, delay and defeat the collection efforts by Palmetto to collect on its Judgment.

6. The Defendant, Michael Cox, has asserted that the Anti-Alienability provisions of ERISA qualified retirement plans prevent this Court from attachment, garnishment, levy, execution and/or other legal or equitable process. 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." *In re Goldschein* at 378-9.

7. The Defendant 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. The South Carolina General Assembly did not intend to protect and condone such devious acts through the Homestead Exemption Act. Mr. Cox's actions have, in effect, removed the cash/stock from the 'jaws of execution.' The stock in the Smith Barney account was subject to execution and could have been applied towards the Plaintiff's Judgment had the Defendant, Michael Cox, abstained from liquidating the stock and placing it in his retirement account.

8. The Defendants have also asserted that S.C. Code § 27-23-10 requires an independent action be brought alleging fraudulent conveyance. The fraudulent conveyance statute, otherwise known as the Statute of Elizabeth, does not require that a separate action be brought to set aside a fraudulent transfer. In fact, S.C. Code §15-39-410 expressly provides that this Court can order property to be applied towards the Satisfaction of a Judgment.
9. The Defendant's, Michael Cox's, transfer of \$44,487.89 from the Smith Barney account to his retirement account was a fraudulent transfer as contemplated by the South Carolina Code and common law of this State. Moreover, the attempted conversion of the non-exempt asset into an exempt asset fails because (a) the deposit of the Smith Barney proceeds was a fraudulent transfer and (2) the Smith Barney proceeds were never legitimate ERISA plan assets that are offered some protection under ERISA.

IT IS THEREFORE ORDERED that the Defendant, Michael Cox, shall, within 15 days of the date this Order is served upon him and/or his Counsel, tender a check to the Plaintiff

in the amount of Forty Four Thousand Four Hundred Eighty Seven Dollars and 89/100 (\$44,487.89) from his retirement account, which is the amount of the fraudulent transfer (generated from the sale of the Smith Barney account stock) into his own retirement account. Upon receipt of the funds (\$44,487.89), i.e. after any check or tender of payment by the Defendant Michael Cox has had time to be deposited and "clear the bank," Palmetto shall file a partial Satisfaction of Judgment in the amount of Forty Four Thousand Four Hundred Eighty Seven Dollars and 89/100 (\$44,487.89). Furthermore, the Defendants are hereby ORDERED that they shall not transfer or move any additional money out of the retirement account, i.e. the account to which the stock sale proceeds were deposited, until this Court instructs the Defendants otherwise. The Defendant, Michael Cox, testified that he also contributed an additional \$7,000.00 to the retirement account from his account with a Virginia Bank, Bronco Federal Credit Union, in the same time frame as the Smith Barney transfer. This Court will allow the Plaintiff additional time to continue its investigation of this transfer and move for relief with this Court if the Plaintiff deems it to be necessary.

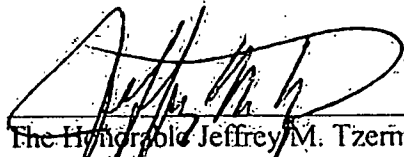
The Defendant Michael Cox may be entitled to a \$5,000.00 exemption in the proceeds that Palmetto is executing upon in accordance with S.C. Code§ 15-41-30(A)(5). If the Defendant Michael Cox elects to invoke this exemption, the amount payable to Palmetto shall be reduced to Thirty Nine Thousand Four Hundred Eighty Seven Dollars and 89/100 (\$39,487.89) and the amount of the Partial Satisfaction of Judgment shall be reduced accordingly. In accordance with S.C. Code§ 15-41(A)(5), if the Defendant Michael Cox elects to invoke the exemption, he shall be deemed to have waived his right to the homestead exemption in S.C. Code§ 15-41-30(A)(1).

This Supplemental Proceedings is still ongoing and this Order shall not be interpreted, in

-6-
41

any way, to restrict the Plaintiff's ability to execute on any other assets, whether such assets have already been discovered or those assets which may be discovered in the future. The Defendants are once again reminded of the Rule to Show Cause and Order of Reference entered in this Supplemental Proceedings restraining and enjoining them from making any transaction or transfer or other disposition of property belonging to them which are not exempt from execution pending further Order of this Court.

AND IT IS SO ORDERED.


The Honorable Jeffrey M. Tzerman
Kershaw County Master In Equity

Camden, South Carolina

September 29, 2008

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

Palmetto Residential Builders, LLC,

Plaintiff,

v.

Michael Cox and Elizabeth Cox,

Defendants.

BEFORE THE MASTER IN EQUITY

Case No.: 2006-CP-28-433

ORDER

JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

08 SEP 18 AM 10:54

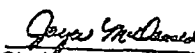
FILED FOR RECORD

This matter came before me by way of a Supplemental Proceeding hearing on September 8, 2008, 2:00 p.m. in the Office of the Kershaw County Master-in-Equity. The Defendants were placed under oath and examined by Counsel for Plaintiff. Among other issues, the Defendant Michael Cox testified that he sold certain stock that he held in a Smith Barney account on February 4, 2008. Mr. Cox testified that the total amount received for the sale of the stock was \$44,487.89, as evidenced by the "Client Statement" from Smith Barney dated January 1 – February 29, 2008. Notably, the sale of the stock in the Smith Barney account occurred 5 days after the jury verdict was rendered by the Trial Court. Michael Cox testified that the money received from the sale of the stock was immediately applied to his retirement account (JP Morgan – International Paper Salaried Savings Plan) in order to repay a loan that he had taken against his retirement account.

During the Supplemental Proceedings Hearing on September 8, 2008, the Plaintiff (Judgment Creditor) moved to set aside this transfer based on the fraudulent nature of the transfer pursuant to S.C. Code 15-41-30(A)(13). In lieu of ruling from the Bench at the supplemental

-1-


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Court


Clerk of Court Kershaw County

proceedings hearing regarding this transfer, this Court allowed Counsel for the Defendants 10 days to submit a written response explaining why this transfer of money is not a fraudulent transfer as contemplated in S.C. Code 15-41-30(A)(13). This Court also advised the parties that Counsel for the Plaintiff would have 7 days after it received Defendants' written response to submit its written reply regarding its position.

However, in the interim, the Defendants are hereby reminded of the restraining Order in place by virtue of the Rule to Show Cause and Order of Reference prohibiting the Defendants from making any transaction or transfer or other disposition of property belonging to them which is not exempt from execution pending further Order of this Court. Additionally, at the conclusion of the supplemental proceedings hearing on September 8, 2008, this Court issued a verbal order to the Defendants, specifically advising Michael Cox that he shall not transfer or move any money out of his retirement account, i.e. the account to which the stock sale proceeds were deposited, until this Court instructs him otherwise. This Court also advised Mr. Cox during the supplemental proceedings hearing that the failure to obey this Court's orders would result in severe sanctions.

IT IS THEREFORE ORDERED that the Defendants shall not transfer or move any money out of the retirement account, i.e. the account to which the stock sale proceeds were deposited, until this Court instructs the Defendants otherwise.

A handwritten signature in black ink, appearing to be 'Ch' with a large flourish, is located at the bottom center of the page.

This Supplemental Proceedings is still ongoing and this Order shall not be interpreted, in any way, to restrict the Plaintiff's ability to execute on any other assets, whether such assets have already been discovered or those assets which may be discovered in the future.

AND IT IS SO ORDERED.


The Honorable Jeffrey M. Tzernan
Kershaw County Master In Equity

Camden, South Carolina

September 15, 2008

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)
PALMETTO RESIDENTIAL)
BUILDERS, LLC,)
Plaintiff,)
vs.)
MICHAEL COX and ELIZABETH COX,)
Defendants)

COURT OF COMMON PLEAS
Civil Action No. 06-CP-28-433

ORDER OF JUDGMENT

FILED FOR RECORD
08 FEB 13 PM 3:00
JULIE M. DUDLEY
CLERK OF COURT
KERSHAW COUNTY, S.C.

The above matter come on for trial before me on January 29, 2008, and concluded on January 30, 2008. The jury found for the Plaintiff in the amount of \$83,956.66 in actual damages. The original complaint included a properly pled mechanic's lien, and a demand for attorney's fees and interest.

Under S.C. Code of Laws (Ann.) § 29-5-10 et seq., a party prevailing in a mechanic's lien action is entitled to its reasonable attorney's fees and costs, not to exceed the amount of the lien. A prevailing party is one who recovers more than one-half the difference between the claimant's claim and the defendants' counter-claim, if any. In this matter, the claimant claimed a total of \$112,940.38, and the defendants counter-claimed for \$50,000. Accordingly, the mid-point is a recovery by the Plaintiff of \$38,470.19. As the Plaintiff received a verdict for more than \$38,470.19, the Plaintiff is the prevailing party.

The Plaintiff's attorney, Brian P. Robinson, filed an affidavit with this court evidencing attorney's fees and costs of \$23,499.95, which cost is supported by detailed time records. Mr. Robinson served the affidavit upon the attorney for the Defendants. The Defendants filed a motion to reduce the requested fees, claiming that they are excessive. However, at trial, one of the

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Court.

Julie M. Dudley

Clerk of Court Kershaw County
A-50

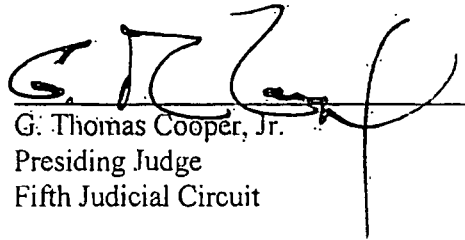
defendants, Mr. Cox, testified that his attorney's fees were in excess of \$20,000. Under S.C. Code of Laws (Ann.) § 29-5-10, the attorney's fee cannot exceed the amount of the lien. Accordingly, this Court holds that the attorney's fee is reasonable.

The Plaintiff also moved the court for interest on the award from June 13, 2006. This Court finds that interest is due on the amount of the award, that payment was due no later than June 13, 2006, and that the interest rate prescribed by law for prejudgment interest is 8-3/4%. Accordingly, interest in the amount of \$11,974.32 is due.

This Court finds that the total amount of the judgment is \$119,430.93.

JUDGMENT IS ORDERED FOR THE PLAINTIFF IN THE AMOUNT OF \$119,430.93.

AND IT IS SO ORDERED.



G. Thomas Cooper, Jr.
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina

February 12, 2008.

STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW)
)
Palmetto Residential Builders, LLC,)
)
Plaintiff,)
)
v.)
)
Michael Cox and Elizabeth Cox,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS

C/A No.: 2006-CP-28-433

VERDICT

FILED FOR RECORD
08 JAN 31 AM 8:14
JUDGE MICHAEL D.
CLEGG, CLERK OF COURT
KERSHAW COUNTY, S.C.

As to the Plaintiff's Claim:

We, the Jury, find for the Plaintiff against the Defendants in the amount of
83,956.66 actual damages.

Richard Carpen
FOREPERSON

---OR---

We, the Jury find for the Defendants against the Plaintiff on the Plaintiff's claim.

FOREPERSON

AND

As to the Defendants' Counterclaim:

We, the Jury, find for the Defendants against the Plaintiff on the counterclaim in the
amount of _____ actual damages.

FOREPERSON

---OR---

We, the Jury, find for the Plaintiff against the Defendants on the counterclaim.

Richard Carpen
FOREPERSON

January 30, 2008

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF KERSHAW	)	Civil Action No. 06-CP-28-433
	)	
PALMETTO RESIDENTIAL BUILDERS, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
MICHAEL COX and ELIZABETH COX,	)	
and BRANCH BANKING & TRUST COMPANY,	)	
	)	
Defendants.	)	

Amended
COMPLAINT
 (B/C, Q.M., M/L Slender)
 (Jury Trial Demand)

JOYCE MCDONALD
 CLERK OF COURT
 KERSHAW COUNTY, S.C.

06 SEP 14 AM 11:01

FILED FOR RECORD

Plaintiff, Palmetto Residential Builders, LLC ("Palmetto"), complaining of the Defendants, Michael Cox and Elizabeth Cox ("the Coxes"), alleges as follows:

1. Palmetto is a domestic corporation with its principal place of business in Kershaw County, South Carolina.
2. Upon information and belief, the Coxes are residents of Kershaw County, South Carolina.
3. Upon information and belief, Branch Banking and Trust Company is the construction lender, and therefore has an interest in the property.
4. Venue is proper in Kershaw County, South Carolina.
5. The Coxes hired Palmetto to construct a new home in Kershaw County, South Carolina for the sum of \$361,746.43, plus changes and adjustments for allowances.
6. The parties entered into a contract on or about June 3, 2005, a copy of which is attached as Exhibit "A".
7. Work began on or about June 3, 2005.

8. Progress payments were made during the course of the work, based upon work completed and inspected by the BB&T inspector.
9. The Coxes failed and refused to pay a \$32,000 payment due on or about June 8, 2006.
10. The Coxes stated that they would not pay any more on the house until it was completed.
11. During the course of construction, the Coxes ordered numerous changes, the total value of which is \$80,940.38.
12. The Coxes stated that they would not pay for any of the changes.
13. The Coxes owes Palmetto a total of \$112,940.38.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

14. Palmetto repeats and realleges the foregoing allegations to the extent required by, but not inconsistent with, the following allegations.
15. The Coxes' refusal to pay any amount of the money due is a material breach of the contract.
16. The Coxes' announced intention to refuse payment for changes is a material breach of the contract.
17. The Coxes' breaches of contract are the proximate cause of damage suffered by Palmetto.
18. Palmetto was damaged in the amount of \$112,940.38 by The Coxes' breaches.
19. Payment was due on June 8, 2006.
20. Palmetto is entitled to recover \$112,940.38 from the Coxes, plus interest at the rate of 8-3/4 percent, dating from June 8, 2006.

FOR A SECOND CAUSE OF ACTION
(Quantum Meruit)

21. Palmetto repeats and realleges the foregoing allegations to the extent required by, but not inconsistent with, the following allegations.
22. Palmetto performed work for the Coxes, for which the Coxes were obligated to pay.
23. The Coxes received the benefit of that work.
24. The Coxes have failed and refused to pay the equitable value of the work.
25. It would be inequitable for the Coxes to receive the value of the work without making payment therefore.
26. Palmetto is informed and believes the value of the work not paid for is \$112,940.38.
27. Palmetto is entitled to recover \$112,940.38 from the Coxes.

FOR A THIRD CAUSE OF ACTION
(Foreclosure of Mechanic's Lien)

28. Palmetto repeats and realleges the foregoing allegations to the extent required by, but not inconsistent with, the following allegations.
29. Within ninety (90) days of the last date upon which it furnished labor and materials, Palmetto imposed a mechanic's lien on the Coxes' interest in the property by notifying the Coxes in writing of the value of the labor and materials furnished. True and correct copies of Palmetto's lien and true statement of account are attached collectively hereto as Exhibit "B."
30. Palmetto has supplied labor, materials and equipment to said property and performed labor on said property for the benefit and at the request of the Coxes, and has a lien on said real property pursuant to S.C. Code Ann. § 29-5-10, et seq. in the amount set forth herein.

31. The amount due for the materials supplied and labor performed by Palmetto is \$112,940.38 plus interest and attorney's fees as set forth in Exhibit "B."
32. The amount owed has not been reduced by partial payment, discount, set off, or otherwise.
33. Palmetto is informed and believes that there is no set off or any other meritorious reason for denial of Palmetto's claim for payment, and Palmetto is entitled to immediate foreclosure of the premises of the Coxes, and for a determination of the amount due Palmetto, including interest at the rate of 8-3/4 percent and attorney's fees.

FOR A FOURTH CAUSE OF ACTION
(SLANDER)

34. Palmetto repeats and realleges the foregoing allegations to the extent required by, but not inconsistent with, the following allegations.
35. Michael Cox has made statements to persons in the construction industry to the effect that Palmetto took his money but would not finish the work.
36. Cox's statements are slander per se.
37. In addition to the slander per se, the remarks charge Palmetto with being unfit to carry out its profession, residential construction, because they charge Palmetto with failing to complete work for which it has already been paid.
38. A contractor who fails to complete its work after being paid is unfit to practice the profession of contracting.
39. Palmetto has suffered damage to its reputation in the community.
40. Cox's slanderous remarks are the proximate cause of injury suffered by Palmetto.
41. Palmetto is entitled to recover general and special damages for injury to its reputation.

42. Palmetto is entitled to recover punitive damages from Cox.

WHEREFORE, Palmetto prays for judgment in its favor, and for an award of \$112,940.38 plus interest at the pre-judgment rate for the first and third causes of action, that the property be sold and the proceeds used to pay Palmetto's demand in the third cause of action, and for reasonable attorney's fees on the third cause of action, and for an award of \$112,940.38 on the second cause of action, and for general, special, and punitive damages under the fourth cause of action, for costs, and for such other and further relief as this court deems just and fair.


Brian P. Robinson S.C. Bar No. 8814
BRUNER, POWELL, ROBBINS, WALL
& MULLINS, LLC
1735 St. Julian Street, Suite 200 (29204)
P.O. Box 61110
Columbia, SC 29260
252-7693

Columbia, South Carolina

September 13, 2006.

1 STATE OF SOUTH CAROLINA BEFORE THE MASTER-IN-EQUITY
2 COUNTY OF LEXINGTON Case No: 2006-CP-28-433

3
4 PALMETTO RESIDENTIAL BUILDERS,
5 LLC,

6 Petitioner,

7 vs.

8 MICHAEL COX AND ELIZABETH COX,

9 Respondents.

10
11 H E A R I N G
12 BEFORE THE HONORABLE JEFFREY M. TZERMAN,
13 MASTER-IN-EQUITY

14
15 DATE: Thursday, November 7, 2013

16 TIME: 9:59 a.m.

17 LOCATION: Master-in-Equity's Office
18 304 Hampton Park
Camden, South Carolina

19 REPORTED BY: TRACY E. BROWN
20 Certified Shorthand Reporter (CA)

21
22 COMPUSRIPTS, INC.
A Full-Service Court Reporting Agency
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24 1-888-988-0086
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A P P E A R A N C E S:

For PETITIONER:

BRUNER POWELL WALL & MULLINS, LLC
By: BENJAMIN C. BRUNER, ESQ.
- and -
BRIAN P. ROBINSON, ESQ.
1735 Saint Julian Place
Suite 200
Columbia, South Carolina 29260
803.252.7693
bbruner@brunerpowell.com

For RESPONDENTS:

RICHARDS LAW FIRM, LLC
By: R. CHARLES RICHARDS, ESQUIRE
1622 Sunset Boulevard
West Columbia, South Carolina 29169
803.796.9982
RcharlesResq@gmail.com

(INDEX AT REAR OF TRANSCRIPT)

1 A proper motion was made by Mr. Bruner asking me
2 to sweep the seven or eight-hundred dollars that were in
3 Mr. and Mrs. Cox's account. Mr. and Mrs. Cox were here
4 that day, let the record reflect, without counsel.

5 But I clearly went over the procedural aspects of
6 that statutory section, the exemption section, on
7 collection issues. And made it clear to Mr. and Mrs. Cox
8 that they had -- that they could exercise their homestead
9 exemption or the \$5,000 exemption, but they could not
10 exercise both.

11 They chose, most providently, to exercise their
12 homestead exemption. And, therefore, I granted the motion
13 to freeze the accounts of the Cox's and to sweep the seven
14 or eight-hundred dollars out.

15 Then Mr. and Mrs. Cox expressed their concern
16 that they had written checks on the accounts that were
17 based upon the money in there. And being The Court of
18 fairness, I provided that they could just pay the money
19 within -- don't hold me to this -- 15 days, something that
20 like that.

21 I can't remember the exact amount of time I gave.
22 Within 15 days I think. And allow the money that was in
23 the account, which was going to have checks presented on
24 it within days, so that they would not bounce.

25 That's about sizes it up.

1 You were not here, Mr. Richards, but does that
2 size it up pretty well?

3 MR. RICHARDS: Yes, Your Honor.

4 THE COURT: Does that size it up pretty well?

5 MR. COX: Yes, your Honor.

6 THE COURT: Well, Mr. Richards, I can't -- I deny
7 the 59(e) motion based upon that scenario, which your
8 clients and Mr. Bruner both acknowledges the state of
9 affairs. You can't have it both ways. I was courteous
10 enough not to freeze the account.

11 They have to pay the \$800, or they are going to
12 be held in contempt of court. And now, they've got to pay
13 real quick.

14 MR. BRUNER: I'll clarify for the record, Your
15 Honor.

16 There's -- when I brought this issue up to
17 Mr. Richards initially, he said they had paid to his
18 escrow account --

19 THE COURT: Yes.

20 MR. BRUNER: -- and admitted into his trust
21 account. Mr. Richards then sent me a check for the 800.
22 I have been holding it, pending this motion.

23 THE COURT: All right. Well you're free to cash
24 it.

25 MR. BRUNER: Okay.

1 THE COURT: Certainly, the -- if you disagree,
2 there's a higher court that can determine if I'm right or
3 wrong. I think I'm right.

4 The statutory framework is very clear,
5 Mr. Richards. You can't have it both ways. And the money
6 that's in the account is clearly -- defines -- comes
7 within the definition of liquid assets.

8 MR. RICHARDS: Yes, Your Honor.

9 THE COURT: And so that's my ruling on that.
10 Done.

11 Now, how does that affect your motion to compel
12 the money?

13 MR. BRUNER: Well, there's a second part of that.
14 I think that portion, that half of my motion to compel, is
15 decided as part of your denying his -- his motion, Rule 59
16 motion.

17 But the second part of his Rule 59 motion is --
18 and this is going to be something that I expect them to
19 fight a little harder -- the production of the retirement
20 account statements, showing contributions and showing --

21 THE COURT: All right. I can handle that too. I
22 can handle that without argument. Thank you for noticing
23 me that.

24 Again, Mr. Richards, you were not privy to any
25 issues prior to your being retained by the Coxes. And

1 that's an unfortunate scenario that you lacked information
2 concerning certain issues.

3 But, previous, much earlier in time, I had
4 ordered a disgorgement of monies from Mr. Cox's ERISA
5 account that is not touchable because of what I determined
6 -- and, I, again, with all due respect Mr. Cox --

7 MR. COX: That's fine.

8 THE COURT: -- we've been down this road before.
9 Which I determined was a fraudulent deposit. It was
10 deposited in an effort to avoid a creditor. And based --
11 and that was an un-appealed, firm order. It's the law of
12 the land in this case between us today.

13 And I tried to make you understand that too --

14 MR. COX: Yes, you did.

15 THE COURT: -- and I think you do.

16 And let the record reflect, I was -- made that
17 comment to Mr. Cox.

18 And based upon that being the law of the land,
19 that there's a previous history of a fraudulent
20 conveyance, and even though you might deem it fishing. It
21 was fishing last time that caught the -- that allowed the
22 judgment creditor to find that and bring that to The
23 Court's attention.

24 I do and am going to deny that portion of your
25 59(e) motion. And I don't recall what I said. But my

1 recollection is that I determined that Mr. Cox should
2 provide -- and he told me, I think, that they were either
3 quarterly or annual or semi-annual -- statements of all
4 deposits into the account.

5 That he should provide those records from the
6 date of the last deposit that I determined was
7 inappropriate and fraudulent, if I'm not mistaken; okay?

8 That's what my recollection is. And based upon
9 the law of the land from the previous, I don't think
10 Mr. Cox and Mrs. Cox -- didn't mean to leave you out --
11 can rightfully deny that information to this judgment
12 creditor, I just don't think.

13 Now, I have reviewed all of the -- all of the
14 documents. And there was one in here that I am just going
15 to jump right ahead because it's a good segway.

16 You made a motion to quash a subpoena. And I do
17 agree with one little portion of your subpoena. I am not
18 going to require anybody to disclose the current balance,
19 the current vested balance, of Mr. Cox's retirement plan.
20 I will require all contributions and disbursements; okay?

21 MR. RICHARDS: Your Honor --

22 THE COURT: And I'll let you argue that if you
23 want. But that's my -- I mean, it's obvious from what I
24 just told you, that they're entitled to see what
25 contributions there are. And I know you determined it

1 insufficient. But that's all they're entitled to, with
2 all due respect to you, Mr. Bruner.

3 MR. BRUNER: I understand.

4 THE COURT: I am not going to require -- and it
5 can be redacted as necessary -- cumulative totals -- or
6 any information regarding how much of that amount in the
7 cumulative totals is vested to Mr. Cox. Not going to
8 require that.

9 MR. BRUNER: And the key point here, Judge, I
10 think we're -- I think they are jumping ahead. Their
11 argument is, we can't discover it because they don't think
12 we can execute on it.

13 And I just want the information. I was under the
14 impression, weeks ago, that Mr. Richards was going to
15 deliver the information. He e-mailed me and said he was
16 going to hand-deliver redacted copies and here we are.

17 And that's why, in my motion to compel the
18 production, we've asked that you can consider issuing
19 sanctions for us for having to come here and get this
20 discoverable information.

21 We haven't moved yet because we don't know what
22 the contributions are. We haven't moved yet to execute on
23 it. This is simply whether it's discoverable. And I
24 think you're exactly right, it is discoverable.

25 THE COURT: Well, I think that portion that I

1 just mentioned is discoverable. The vested totals, I
2 don't think you need that to determine if any fraudulent
3 contributions, again, need to be disgorged as previously
4 done.

5 MR. BRUNER: If the facts change, Your Honor,
6 then our request may change. But right now --

7 THE COURT: Contributions and --

8 MR. BRUNER: -- right now, we want to know how
9 much he has been contributing to that account after the
10 judgment date.

11 THE COURT: Obviously, you're looking for an
12 inordinate contribution that doesn't fit with the scheme
13 and framework of his payroll deposit contributions.

14 MR. BRUNER: I think any contribution is
15 fraudulent, frankly, Your Honor.

16 THE COURT: Well, that's a good -- that's an
17 issue that I don't --

18 MR. BRUNER: And we're not there yet.

19 THE COURT: -- I don't think I'm at that point.

20 MR. BRUNER: Right.

21 THE COURT: Good luck trying to convincing me of
22 that.

23 Then you're getting almost into whether he's --
24 you're entitled to have a trustee over his wages.

25 MR. BRUNER: Well, the question is whether the

1 exemption statute entitles him to continue --

2 THE COURT: That's a good point.

3 MR. BRUNER: -- diverting money to a retirement
4 account.

5 THE COURT: That's interesting.

6 MR. BRUNER: The exemption statute only protects
7 what's in his right to distribution, from what's in there,
8 when we got our judgment against them.

9 THE COURT: Do you got any case law on that?

10 I mean, obviously, we're going to find
11 contributions, aren't we, Mr. Cox?

12 MR. COX: Oh, yeah. You can find contributions.

13 THE COURT: He has never withheld that
14 information at our previous hearing.

15 That's an interesting point, and I like that
16 point. And maybe --

17 MR. BRUNER: But we're not there yet.

18 THE COURT: I understand that. You've got to
19 first look and see what the contributions are.

20 MR. BRUNER: That's right.

21 THE COURT: Okay. Well, I am going to order that
22 be done, Mr. Richards.

23 Are those them?

24 MR. RICHARDS: Yes, your Honor, if I may.

25 What we had proposed, essentially, we didn't

1 argue that it's non-discoverable. We wanted there to be a
2 modification in your previous order, just requiring what
3 you just ruled, that they're entitled to know how much
4 money is coming into their account.

5 I am keenly aware that there's been a fraudulent
6 conveyance in the past.

7 THE COURT: Okay.

8 MR. RICHARDS: And so we've got redacted
9 statements beginning from January the 21st, 2010, through
10 June the 30th of this year. And it shows the amount, how
11 much has come in each month.

12 And so that's what we were going to propose to be
13 compliant with this Court's order.

14 THE COURT: Did you keep a set of un-redacted
15 statements before you made copies and redacted?

16 MR. RICHARDS: I wasn't given un-redacted
17 statements. I know my clients do have them.

18 THE COURT: Okay. So why didn't you just send
19 that to Mr. Bruner, outright?

20 MR. RICHARDS: Yes, Your Honor. That's a good
21 question.

22 The reason is, there has been one --

23 THE COURT: Because you're conceding that much.

24 MR. RICHARDS: Oh, yes, Your Honor. But the
25 reason was --

1 MR. BRUNER: And did weeks ago.

2 MR. RICHARDS: No, this wasn't weeks ago. This
3 was maybe two weeks ago.

4 But the reason that we waited, there is one
5 transaction here that is going to raise suspicion. And I
6 wanted to make sure that we can properly explain it to
7 this Court.

8 THE COURT: Well, you don't need to explain it to
9 me now because it's not in front of me right now.

10 You mean one deposit?

11 MR. RICHARDS: Yes, Your Honor. There was --
12 what happened -- there was -- my client --

13 THE COURT: All right. You want to go ahead and
14 share. Go ahead.

15 MR. RICHARDS: Okay. My client had directed this
16 retirement account to purchase some stock. And the
17 retirement account company purchased the incorrect stock.

18 And when the error was brought to their
19 attention, they paid the amount that should have gone into
20 their account, had they purchased the correct stock,
21 initially.

22 And we have a letter -- we are waiting for a
23 letter from the International Paper administrator just
24 kind of explaining that.

25 That's why I didn't get the documents to

1 Mr. Bruner and I told him why.

2 THE COURT: Well, isn't there a withdrawal that
3 precedes that that somewhat is similar in size to the
4 amount of the deposit?

5 MR. RICHARDS: No. There wasn't a -- there
6 wasn't a -- there wasn't any --

7 THE COURT: There wouldn't be a --

8 MR. RICHARDS: -- a deposit.

9 THE COURT: -- a deposit to repay for something
10 that was purchased, unless there was a withdrawal to
11 purchase.

12 MR. BRUNER: Well, that wouldn't --

13 THE COURT: Well, that's not really relevant
14 right now.

15 MR. ROBINSON: That's right.

16 THE COURT: That's for a subsequent hearing that
17 Mr. Bruner may bring in to -- after he's completed his
18 discovery to see if there is something that I need to
19 decide.

20 I mean, you're just kind of jumping the gun on
21 that, Mr. Richards.

22 MR. BRUNER: That's right.

23 THE COURT: It's not really before me right now.

24 MR. RICHARDS: Yes, Your Honor. I was just
25 trying to explain why --

1 THE COURT: It may come before me. But save your
2 explanation for if they decide to do something about it.

3 MR. RICHARDS: Yes, Your Honor. I just wanted to
4 explain why I didn't get the --

5 THE COURT: No. That's --

6 MR. RICHARDS: -- documents -- I didn't get the
7 documents to Mr. Bruner when I initially said this was
8 brought to my attention.

9 THE COURT: No. That's not a real good excuse,
10 Mr. Richards --

11 MR. RICHARDS: Yes, Your Honor. What I --

12 THE COURT: -- with all due respect to you, sir.

13 MR. RICHARDS: Yes, Your Honor.

14 MR. BRUNER: It's still discoverable, Judge. I
15 mean, we're talking about --

16 MR. RICHARDS: It is. And we have all those
17 documents here, Your Honor. What we're asking The Court
18 to do is allow these documents to --

19 THE COURT: What did you scratch out, the totals?

20 MR. RICHARDS: Yeah. The totals. The beginning
21 balance. The ending balance. Yeah, the balances.

22 THE COURT: So you got all the deposits --

23 MR. RICHARDS: Yes. All the money in and money
24 out.

25 THE COURT: That's what I ordered.

1 MR. RICHARDS: And that's what we got right here,
2 Judge.

3 THE COURT: Pass it on.

4 MR. BRUNER: I want to clarify for the record,
5 Judge.

6 Mr. Richards, did you redact these documents, or
7 did your clients' redact them?

8 MR. RICHARDS: My clients redacted them.

9 MR. BRUNER: Before they produced them to you?

10 MR. RICHARDS: That's correct.

11 MR. BRUNER: So you have never seen these
12 statements un-redacted?

13 MR. RICHARDS: That's correct.

14 MR. BRUNER: Okay.

15 THE COURT: All right. Well, I'm leaving the
16 file open, Mr. Bruner --

17 MR. BRUNER: I understand.

18 THE COURT: -- if you review those and determine
19 that -- it should be pretty clear just on the face of
20 it -- if all they scratched out were totals and balance in
21 and balance out on each statement.

22 MR. BRUNER: I agree.

23 THE COURT: If it, in any way, appears that
24 that's not the case, you'll be letting me know.

25 MR. BRUNER: I was also under the impression,

1 Your Honor, what we had requested is not necessarily
2 statements -- not necessary statements from the last
3 deposit that -- I'm trying to get the date down for our --

4 THE COURT: Well, we did talk about that some,
5 and I can't recollect.

6 Can you refresh my memory?

7 MR. BRUNER: What I recall asking for is
8 January 1, 2009 to present. Because our discovery --

9 THE COURT: Well, that's about -- that's a little
10 less than four years.

11 MR. BRUNER: Well, our discovery to --

12 THE COURT: It's whatever the order says. I
13 signed this order.

14 MR. BRUNER: We have statements up to that date.
15 And I wanted to pick up where we left off.

16 THE COURT: All right. Well, see if that
17 complies with January --

18 MR. BRUNER: These only go back to January 1,
19 2010, anyway.

20 THE COURT: All right. Well, you --

21 MR. ROBINSON: So in other words, we're missing
22 2009?

23 MR. RICHARDS: 2009.

24 THE COURT: Yes. Get those together promptly.

25 MS. COX: Can I speak?

1 THE COURT: Well, I'll give you a brief moment --
2 I'll allow you to speak briefly to your clients in the
3 lobby.

4 (Discussion held off the record
5 between the deponent and his counsel.)

6 MR. RICHARDS: Yes, Your Honor. Thank you.

7 So in other words --

8 THE COURT: Hold on. I'm just going to look
9 through my order real quick. It just says for the last
10 four years.

11 MR. BRUNER: Okay.

12 THE COURT: Which is not quite all of -- I mean,
13 the order is dated August 27th, you know.

14 MR. BRUNER: Right.

15 THE COURT: That's substantial compliance there.
16 You're missing September, October, November, December.

17 MR. BRUNER: Well, I understand that now that
18 they've produced them today, after we had to come here and
19 have --

20 THE COURT: I understand, all too well. But
21 that's what it looks like my order says. The last four
22 years. So it's pretty substantial, tardy compliance.

23 What you got there?

24 September, October, November, December 2009.

25 MR. COX: That's not a problem.

1 THE COURT: All right. I'm sure it isn't.

2 And Miss Cox says -- and I know she's not under
3 oath -- but maybe two, three weeks to get it?

4 MS. COX: Maybe three weeks because it takes a
5 while.

6 THE COURT: All right. Let's see, by
7 December 1st; okay? That's a little over three weeks.

8 MR. COX: I still would like to say one thing.

9 THE COURT: Well, hold on. We'll get to that in
10 a minute. We're doing the legal stuff right now,
11 Mr. Cox --

12 MR. COX: Okay.

13 THE COURT: -- okay? All right.

14 Okay. That's takes care of that.

15 All right. This last one is these records that
16 you want Mid Carolina Credit Union to produce. And,
17 apparently, they want to charge way too much money --

18 MR. BRUNER: That's right.

19 THE COURT: -- in your opinion.

20 MR. BRUNER: And that's -- it's a verified motion
21 for a rule to show cause. Because they are trying to
22 charge a dollar a page. And these are records --

23 THE COURT: Well, why don't you do this and see
24 if this -- because, you know, with all due respect, the
25 subpoena rules are pretty clear. And you handled the

1 subpoena correctly.

2 Which was, you send somebody to my office with
3 the records. And as long as it's not more than 50 miles
4 from your office, which it isn't, because I know where the
5 May Plant Credit Union is -- they've changed their name.
6 They've got to comply and show up. And then you can just
7 copy them yourself.

8 You have to provide them a \$15 witness fee -- is
9 it 15 or 25?

10 MR. ROBINSON: Twenty-five.

11 MR. BRUNER: Twenty-five.

12 THE COURT: \$25 witness fee and mileage, 50 cents
13 a mile. Which is about -- you can do the math. It's
14 like, probably \$35 mileage and the \$25.

15 So send them a letter. Tell them, we'll pay you
16 70 bucks, or you send somebody to my office with the
17 records, and I'll send you the 70 bucks anyway.

18 And that's what the Judge told me to do, or he's
19 going to issue a rule to show cause, and make you come to
20 his office, where he is go to tell you the same thing.

21 MR. BRUNER: Okay.

22 THE COURT: Let's try that. And 70 bucks is a
23 fair amount for the records. Because the employee is
24 going to take an hour or two to take care of it. But they
25 don't pay their employees at the bank that's going to do

1 this probably more than 15 bucks an hour at the most.

2 And 50 cents a page for, however pages there are,
3 can't be too many. I mean, it's one a month, isn't it?

4 MR. COX: Something --

5 THE COURT: You know, it's one statement a month.

6 You get a statement every month or every quarter,
7 Mrs. Cox, from May Plant?

8 One? You don't even know?

9 MS. COX: I don't know.

10 THE COURT: It's all online these days, isn't it?

11 So, you know, it's not a lot of copies.

12 MR. BRUNER: Right.

13 THE COURT: Let's try that, Mr. Bruner.

14 MR. BRUNER: I like that approach, Judge.

15 THE COURT: Well, I'm a problem solver. And I
16 try to be fair and equitable because that's what I'm
17 charged with doing. And I want to be fair and equitable
18 to the person who's not even here. But they will be here
19 if they don't agree to your proposal.

20 MR. BRUNER: Right. And I didn't just haul off
21 on October 26th and file the motion. I've had several
22 phone conversations and exchanged e-mails with --

23 THE COURT: Here is what I'm going to do. Let me
24 do my order this way; all right?

25 I am going to order that the rule to show cause

1 be issued provided; however, that the bank representative
2 can avoid coming to my office to tell me why it's going to
3 cost so much. If they either come to your office with the
4 records and you pay the \$70 --

5 MR. BRUNER: Okay.

6 THE COURT: -- or they just send you the records
7 for the \$70.

8 MR. BRUNER: Okay.

9 THE COURT: That way, we give them the option.
10 And that kind of covers me for prejudging a case.

11 MR. BRUNER: Right.

12 THE COURT: Because all I'm really granting is
13 the rule to show cause; okay?

14 And I don't mind saying that on the record
15 because that's a fair way to handle this.

16 I mean, I don't think you would even disagree
17 with that, Mr. Richards, would you?

18 MR. RICHARDS: Not at all, Judge.

19 THE COURT: And that doesn't have anything to do
20 with you folks. That's just your bank or your credit
21 union wanting to try and get a little more money than it
22 probably should, under the law.

23 If we don't have cooperation from the community
24 at large in the dispensation of legal justice, then we'll
25 have anarchy.

1 And that includes banks and credit unions as
2 well. And they have to comply with the rules that the
3 court administration -- excuse me -- the legislature has
4 set out, signed into law by the Governor, and administered
5 by our courts.

6 What else is there today, Mr. Bruner?

7 MR. BRUNER: I think there's -- there are a
8 couple of other items, Judge, that I have.

9 One of which is the paycheck stubs. I don't
10 believe the Coxs have produced paycheck stubs. They were
11 in the rule to show cause for the August hearing.

12 I need those because in the --

13 THE COURT: Well, the actual stubs may be
14 difficult to produce. I mean, you might throw them away.

15 MR. BRUNER: I need -- here's the information I
16 need: I need to know his gross wages and where it's
17 going, where the money is going.

18 Some of it, we suspect, is going into his
19 retirement account. Some of it is going into the Mid
20 Carolina Credit Union account. I don't know where the
21 rest of it's going.

22 THE COURT: All right. Well, you're entitled to
23 discovery. I, mean, we're going to require the -- not the
24 actual stubs be produced -- but a reasonable facsimile of
25 the stubs, by way of a -- the payroll record should cover

1 that.

2 MR. BRUNER: Yeah. Again --

3 THE COURT: In fact, it will probably cover any
4 of the automatic withdrawals -- or automatic -- the
5 withdrawals from his gross wages that automatically go to
6 his 401(k), I would expect.

7 MR. RICHARDS: And, Your Honor, if I may.

8 We have those check stubs that were attached to
9 our financial declaration, which I was going to use to
10 argue my motion for reconsideration. We have those
11 documents.

12 And I would also like The Court to know that
13 opposing counsel has sent us discovery, interrogatory
14 requests and request to produce. We have those documents
15 here today.

16 And now that the Coxs have counsel, it is our
17 intention to fully cooperate with this Court, opposing
18 counsel. And get this -- get the case settled in a way
19 that is equitable for the parties.

20 THE COURT: Well, get the discovery issues
21 settled.

22 MR. BRUNER: Right.

23 MR. RICHARDS: Yes, Your Honor.

24 MR. ROBINSON: Yes, Your Honor.

25 THE COURT: Because those are just procedural

1 matters as you know. And they -- on the ring of the
2 ladder, they're important, but not as important as the
3 substance.

4 So The Court just basically views those as
5 providing information the easy way.

6 MR. RICHARDS: Yes, Your Honor.

7 THE COURT: Okay. Because, obviously, if he has
8 to work extra hard for them and incur substantial costs,
9 he's going to ask me to make your clients pay for it.

10 MR. RICHARDS: Your Honor, I --

11 THE COURT: We don't need that.

12 MR. RICHARDS: I assure you that will not happen,
13 Judge.

14 THE COURT: And what else, Mr. Bruner?

15 MR. BRUNER: And just to note for the record,
16 Your Honor, I think we would be entitled to attorneys'
17 fees and costs anyway because of the mechanic's lien that
18 this whole case arose from.

19 THE COURT: I am going to hold issues of cost in
20 abeyance until we get towards the end; okay? Because I
21 don't think we're at the end yet.

22 MR. BRUNER: No, we're not.

23 THE COURT: And I'm going to leave the file open
24 for six months. I think I only did a ninety-day last
25 time. But I am going to extend that for -- to six months.

1 So that we don't have to come back and you don't have to
2 ask me, by way of a written motion, to extend it further
3 if you were starting to run out of time.

4 MR. BRUNER: Right.

5 THE COURT: But I will -- this is dicta. I will
6 ask to you to move forward with all deliberate speed,
7 Mr. Bruner. It looks like you are prepared to do that by
8 the way you've been handling yourself.

9 I don't want you to sit on your haunches and then
10 wait for five months and then start loading up the stuff;
11 okay?

12 MR. BRUNER: Right, Your Honor. And that's a
13 segway into my motion that I would like to make, on the
14 record, as a result of the investigation that we've been
15 performing.

16 You may recall at the last hearing, Mr. Cox
17 testified that in May of this year, he purchased a 2013
18 Dodge Challenger, a brand new car.

19 THE COURT: Well, he used -- borrowed money to
20 purchase it. He got a loan on it.

21 MR. BRUNER: He did. He also testified that --
22 that he --

23 THE COURT: Traded in one.

24 MR. BRUNER: -- traded in the 2010 Honda Accord.
25 In fact, I have a --

1 THE COURT: Well, I don't recall what he traded
2 in and how much was owned. But he did say he traded in
3 one --

4 MR. BRUNER: That's right.

5 THE COURT: -- and there was a debt still
6 outstanding on that that was -- you know, I can't recall
7 the amount, Mr. Cox.

8 But the dealer and whoever was the lender worked
9 through those things.

10 You got a \$1,250 exemption in a vehicle.

11 MR. ROBINSON: What I'm going to ask --

12 THE COURT: That's what I recollect.

13 MR. BRUNER: I am going to ask, Your Honor, that
14 we execute and conduct a public sale of the Challenger.

15 I have a copy right here. And this is why -- I
16 have a copy right here that I obtained from JT's Chrysler
17 Jeep Dodge.

18 And I am going to hand one up to The Court.

19 I obtained these by subpoena. And you will note,
20 down on the right-hand side, half way down, that there is
21 no allowance for a trade-in value.

22 I have not yet been able to determine what
23 happened to the Honda Accord that Mr. Cox says he traded
24 in.

25 THE COURT: All right. Well, we'll take care of

1 that in just a minute.

2 MR. BRUNER: Or who paid off --

3 THE COURT: Well, we'll take care of that in just
4 a minute.

5 I am going to hold this matter, not in permanent
6 abeyance to the final hearing, but just in abeyance right
7 now.

8 Because, Mr. Cox, raise your right hand.

9 THE COURT: All right. You can put your hand
10 down.

11 I'll give this back to you for right now,
12 Mr. Bruner.

13 MR. BRUNER: All right.

14 THE COURT: Your witness.

15 MICHAEL COX, having first been duly sworn, was
16 examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. BRUNER:

19 Q Mr. Cox, I am going to hand you a document. Have
20 you ever seen that before?

21 THE COURT: Does it have his signature on it?

22 BY MR. BRUNER:

23 Q Is that your signature at the bottom of the page?

24 THE COURT: Well, we can dispense with this
25 formality questioning. We're not in front of a jury.

1 THE WITNESS: Yes.

2 BY MR. BRUNER:

3 Q And this is the contract of sale when you
4 purchased the Dodge Challenger that you're driving;
5 correct?

6 A That's correct.

7 Q And it says no trade in allowance on it; right?

8 A Yup.

9 Q And you recall your testimony, in this room in
10 August, when you said you traded in your Honda Accord on
11 that Challenger; right?

12 THE COURT: More importantly -- let me interrupt.

13 More importantly, Mr. Cox, I remember it.

14 Continue.

15 BY MR. BRUNER:

16 Q Do you recall that testimony you gave in August?

17 A That I traded a Honda in on a Dodge Challenger?

18 Q Yes, sir.

19 A I do not remember saying that.

20 Q Okay. I am going to hand you a transcript. If
21 you could --

22 MR. BRUNER: -- and I apologize to The Court. I
23 only have two copies --

24 THE COURT: That's okay.

25 BY MR. BRUNER:

1 Q If you would turn to page 19 for me.

2 THE COURT: That's what I remembered.

3 BY MR. BRUNER:

4 Q It's flagged there, Mr. Cox, with the yellow tab.

5 A Okay. All right.

6 Q You see there in the middle of the page, there's
7 a highlighted section. Start with line 12 --

8 A Twelve, okay.

9 Q -- and just read that.

10 A What did you have before the Dodge Challenger? A
11 2011 Honda Accord.

12 What happened to the 2011 Honda Accord? I traded
13 it on the Dodge Challenger.

14 Q So your testimony in August was that you traded a
15 Honda Accord in on the Challenger; right?

16 A Well, first off, I've never owned a 2011 Honda
17 Accord.

18 Q I understand that, Mr. Cox. And do you recall
19 later clarifying that it was not a 2011 Honda Accord that
20 you traded in, but rather a 2010.

21 You just got the year wrong. That's correct;
22 right?

23 A I don't know whether that is correct.

24 THE COURT: Find it.

25 THE WITNESS: You want the explanation?

1 THE COURT: Well, first we're going to get an
2 answer on that question, Mr. Cox.

3 THE WITNESS: Okay.

4 MR. ROBINSON: Page 22.

5 THE WITNESS: Is it also flagged?

6 THE COURT: He'll tell you what line.

7 THE WITNESS: Okay.

8 BY MR. BRUNER:

9 Q And you can start with page 21, the bottom of the
10 page, line 23.

11 And for brevity, I am going to go ahead and just
12 read it. And you tell me if that is consistent with what
13 you recall testifying to.

14 Question: If you traded in a one-year old Honda
15 Accord, you mean to tell me you got a thousand dollars on
16 the trade in?

17 Answer: Wait, a minute. A one year old car?
18 Eleven, twelve, thirteen, fourteen.

19 Question: Well, it's 2013 now. And you had the
20 Honda -- when did you buy the Honda Accord? It's two
21 years old at the oldest; right?

22 Answer: I've had the Honda Accord for -- oh, it
23 was a 2010. I'm sorry.

24 Question: You're looking at a note that your
25 wife just wrote you?

1 Answer: I did.

2 Question: That said 2010?

3 Answer: I thought it was a 2011.

4 A And?

5 Q So you agree me that you testified in August that
6 you traded in the 2010 Honda Accord on the Dodge
7 Challenger; right?

8 A No. If I said I traded a car in on the Dodge
9 Challenger, I didn't say that. I said I -- I had a 2007
10 that I traded on a 2010 Honda.

11 Q Okay. Where is the 2010 Honda today?

12 A It's been sold.

13 Q When did you sell it?

14 MS. COX: May.

15 THE WITNESS: Was it May? I'm not good with
16 dates. May.

17 BY MR. BRUNER:

18 Q Who did you sell the 2010 Honda Accord to?

19 A I could not tell you.

20 Q When I asked you what happened to the 2010 Honda,
21 why did you not tell me that you sold it?

22 A I do not recall you asking me if I sold the 2010
23 Honda.

24 THE COURT: That's because he asked you what
25 happened to it? And you said you traded it in.

1 BY MR. BRUNER:

2 Q Go back to page 19 for me, please. My question
3 to you:

4 What did you have before the Dodge Challenger?

5 Answer: The 2011 Honda Accord.

6 We've established that you were mistaken. That's
7 the same car as the 2010 Honda Accord I'm asking you
8 about.

9 My next question:

10 What happened to the Honda Accord?

11 A I thought you were talking about the 2007 or the
12 2010.

13 Q Okay. So at the time you --

14 A I sold the 2010 Honda Accord in May.

15 Q Okay. Who did you sell it to?

16 A I don't -- I couldn't tell you. It was in
17 Carolina Trader. Sold it. And I don't -- I have not a
18 clue.

19 Q How much did you sell it for?

20 A I really can't give you the -- the exact figure.
21 But it was --

22 Q Mr. Cox, I am going to find out.

23 A I -- I -- well, you know, and I'll give you as
24 close as I can.

25 It was 15,500 -- I don't know. It was somewhere

1 between 15 and \$16,000, as well as I recall.

2 Q Was it in cash? Was it a check?

3 A It was a check.

4 Q It was a check to you; correct?

5 A Well, the balance had to be paid off for the
6 financing of it. And I got some \$5,000.

7 Q Who was the check made out to?

8 A I do not recall.

9 Q Okay. But you took that check and you put in an
10 account and paid off the balance? Is that what you're
11 telling me?

12 A I put that check and put it in -- no, no, no.
13 The -- the automobile, where it was financed, was paid by
14 the bank.

15 Q Which bank?

16 A I can't -- I couldn't tell you that.

17 Q You don't know --

18 A No.

19 Q -- the bank that had the lien on that car?

20 A Nope.

21 Q What happened to the 5,000-or-so money that came
22 directly to you?

23 A It was -- I really -- it's -- I've spent it,
24 so --

25 Q Okay.

1 A -- so whatever, you know --

2 MR. RICHARDS: Your Honor --

3 THE WITNESS: -- I paid bills with it and
4 whatever.

5 THE COURT: Let him finish his questions now, Mr.
6 Richards.

7 Do you have any more questions for Mr. --

8 MR. BRUNER: That's all I have.

9 THE COURT: Do you want to question Mr. --

10 MR. RICHARDS: Yes, Your Honor.

11 THE COURT: All right. Go ahead.

12 MR. RICHARDS: Just to clear this up.

13 DIRECT EXAMINATION

14 BY MR. RICHARDS:

15 Q Mr. Cox, just initially when you were questioned
16 at this hearing in August, did you confuse the trading in,
17 where you actually traded in the 2007 for a 2010 --

18 A I thought that was what he was speaking of.

19 Q And so -- you sold the 2010 in May; is that
20 right? And out of it -- how much equity, approximately,
21 did you get out of that vehicle?

22 A That's -- I'm -- I'm wanting to say it was
23 somewhere between 5 and \$5,500. I don't remember the
24 exact amount.

25 Q So you got around 5,000, maybe a little bit more?

1 A It could have been less. I don't know.

2 Q And are you willing to pay any amount over
3 \$5,000, which is the exemption level, into this Court to
4 satisfy the judgment?

5 A Yes. I mean, if -- if -- but if it was anything
6 over \$5,000, I -- it was very little.

7 MR. RICHARDS: That's right. But you will pay
8 that.

9 And thank you very much, Mr. Cox.

10 THE COURT: All right. Miss Cox --

11 MR. BRUNER: I've got --

12 THE COURT: -- raise your right hand.

13 We'll get your --

14 MR. BRUNER: I've got just --

15 THE COURT: -- motions after --

16 MR. BRUNER: -- a follow-up for him.

17 THE COURT: Oh, you've more questions?

18 MR. BRUNER: I do.

19 THE COURT: All right. Miss Cox, you raise your
20 right hand anyway.

21 All right. Put your hand down.

22 You got redirect for Mr. Cox?

23 MR. BRUNER: Yes, your Honor.

24 THE COURT: All right.

25 REDIRECT EXAMINATION

1 BY MR. BRUNER:

2 Q Mr. Cox, I want to clarify your testimony because
3 it's a little confusing to me.

4 Are you telling me, as we sit here today under
5 oath, that you traded in the 2007 Honda Accord on the
6 Dodge Challenger?

7 A No, no, no.

8 Q So --

9 A 2007 on the 2010.

10 Q Ten. Okay. So you're telling me, under oath,
11 that you thought when I asked you what happened to the
12 Honda Accord, you thought it was -- you thought you were
13 mistaken?

14 A I thought you were talking about the 2007 or the
15 2010. Because I told you -- I thought I understood that
16 the Challenger was --

17 MR. BRUNER: That's all I have, Your Honor.

18 THE COURT: All right. You got any questions for
19 Miss Cox today?

20 MR. BRUNER: I do, Your Honor.

21 THE COURT: All right. Go right ahead. She's
22 under oath.

23 ELIZABETH COX, having first been duly sworn, was.
24 examined and testified as follows:

25 DIRECT EXAMINATION

1 BY MR. BRUNER:

2 Q Mrs. Cox, you've heard the testimony about the
3 2010 Honda Accord; correct?

4 Do you know how much it was sold for?

5 A I just remember it was a little over \$5,000.
6 That's all that I remember that we got for that. I don't
7 know who the person was that bought it. I -- that was in
8 his name. He takes care of all that.

9 But I do remember it being somewhere between 5
10 and \$6,000, we got.

11 Q Okay. After the --

12 A We had nothing to do with all of that -- or he
13 did.

14 Q After you paid off what was owed on the 2010
15 Honda Accord, you got a check for 5 -- you all got a check
16 for 5 to \$6,000?

17 A He did.

18 Q He did, okay. Do you know what account that
19 check was deposited into?

20 A You would have to ask him that. I don't know.

21 MR. BRUNER: That's all I have, Your Honor.

22 THE COURT: You got any questions for Miss Cox,
23 Mr. Richards?

24 MR. RICHARDS: No, Your Honor.

25 THE COURT: All right. What else is on the

1 agenda today, Mr. Bruner?

2 MR. BRUNER: I would like to look at the
3 accounts, Your Honor.

4 I know there is a Bronco Federal Credit Union
5 account. We've tried to subpoena those records, and we
6 have been unsuccessful. Because that credit union
7 apparently operates only out of Virginia, according to the
8 response.

9 Those are records which I believe are
10 discoverable in -- within the ambit of what the
11 respondents' are obligated to produce, their statements.

12 THE COURT: Well, the statements, you can produce
13 through them.

14 MR. BRUNER: That's right. But they won't
15 produce it.

16 THE COURT: Through them, meaning the Coxs.

17 MR. BRUNER: Right. That's correct. So --

18 MS. COX: There is one statement in there.

19 THE COURT: All right. Well, you can produce the
20 one statement right now.

21 Tell me where you're going with this, Mr. Bruner.

22 MR. BRUNER: Your Honor --

23 THE COURT: I am going to give this back to you.

24 MR. BRUNER: The same place as we -- as getting
25 the paycheck stubs.

1 We have reason to believe that money is being
2 moved into different accounts, you know, in an effort to
3 thwart our efforts to collect on the judgment.

4 And at a minimum, it's discoverable. It may not
5 be the case, but --

6 THE COURT: Mr. Richards, do you got anything you
7 want to say about that?

8 MR. RICHARDS: Yes, Your Honor.

9 I've received a discovery request --

10 THE COURT: Requesting those records --

11 MR. RICHARDS: No.

12 THE COURT: -- records?

13 MR. RICHARDS: No. It didn't request those
14 records. I just got a subpoena I've complied with, and
15 will hand Mr. Bruner, discovery responsive to his request.

16 He didn't ask me for those documents. If he does
17 so, we'll comply with the discovery.

18 MR. BRUNER: They were covered within the rule to
19 show cause we served in the August hearing, Judge.

20 I've requested them three times over now. And we
21 requested --

22 THE COURT: Well, I'm not going to require them
23 to do more paperwork to -- so those records are
24 discoverable.

25 Have your client get them to you.

1 MR. RICHARDS: Yes, Your Honor. And we didn't --

2 THE COURT: Pass them on to -- so you can pass
3 them on.

4 MR. RICHARDS: We didn't object to the subpoena,
5 so --

6 THE COURT: I understand. I understand.

7 MR. BRUNER: I have also looked through the
8 documents the Coxs -- copies that the Coxs brought to the
9 August hearing and --

10 THE COURT: Yes.

11 MR. BRUNER: -- missing from those, are the 2009
12 tax returns, all schedules. And the copies I got for 2012
13 are difficult for me to read.

14 THE COURT: You mean, they are not legible by --
15 due to photocopying issues?

16 MR. BRUNER: Yes, Your Honor.

17 And I don't think that was intentional or
18 anything. It's just a full page got reduced to a quarter
19 page and then it's off kilter.

20 And I would ask them to produce legible copies of
21 those two years of tax returns and all schedules.

22 MR. RICHARDS: Which ones? 2009 and --

23 MR. BRUNER: 2009 and 2012 tax returns.

24 THE COURT: Okay.

25 MR. RICHARDS: And that's the first time -- I

1 didn't --

2 THE COURT: I am with you on that now.

3 Where else do you need this matter to go today?

4 Anyplace else? Anything I haven't covered, Mr. Bruner?

5 MR. ROBINSON: I'd like to make a statement, if

6 The Court will allow it.

7 THE COURT: I'll let everybody make a statement
8 before we adjourn. Because I know Miss Cox wanted to tell
9 me something too.

10 We will start with you, Mr. Robinson.

11 MR. ROBINSON: Thank you, Your Honor.

12 With respect to costs, I want the record to
13 reflect, that I am not charging for being here today.

14 THE COURT: Yes, sir.

15 MR. ROBINSON: So we're not trying to double up
16 or anything like that.

17 THE COURT: Okay. That's good.

18 MR. ROBINSON: And I do take notice of the
19 September 6th, 2013 order that was filed wherein The Court
20 took notice of the fact that the current payoff on the
21 mortgage is \$310,000 and is held in abeyance by our motion
22 to sell the house.

23 I've seen bobbing and weaving, in fights that
24 were less than what I've seen here today, and in the other
25 questioning we've had for these clients.

1 I think we need to sell that house. I think
2 that's where the money is going to come, if we do that.

3 And I would request The Court to reconsider that,
4 holding in abeyance, at The Court's leisure.

5 THE COURT: You know, I went to a seminar, the
6 required seminar that the Masters -- that Chief Justice
7 says the Masters go to.

8 And they had a very interesting presenter
9 regarding collection. And if you got a judgment, you
10 don't need to do it in supplemental proceedings. You can
11 just go right at it with your judgment.

12 And you can foreclose and sell it subject to the
13 mortgage and their homestead exemptions, which they've
14 deemed and desired to exercise. You can do that.

15 I'm going to continue to hold it in abeyance. If
16 you want to pursue that route, you're welcomed to do that.
17 I can't stop you.

18 MR. ROBINSON: Thank you, Your Honor.

19 MR. RICHARDS: And we've been discussing that.
20 We're amenable to discussing selling the home to get rid
21 of it. So we'll be talking to --

22 THE COURT: Well, that's between you and
23 Mr. Bruner and Mr. Robinson. That's not for my ears.

24 But what I said is for your ears.

25 MR. ROBINSON: Thank you, Your Honor.

1 THE COURT: What else? Is that about it?

2 MR. ROBINSON: That's all we got.

3 THE COURT: All right.

4 Mr. Bruner, any final comments before I go around
5 the table?

6 All right. Miss Cox, you wanted to tell me
7 something? Or do you want to just not -- keep it to
8 yourself now?

9 MS. COX: I was apologizing for those records. I
10 was sick for three months --

11 THE COURT: And she's much better today --

12 MR. COX: -- with cracked ribs --

13 The court: -- and I'm so glad.

14 MS. COX: -- and bronchitis, and my grandchildren
15 did a lot of stuff for me.

16 MR. COX: Don't you apologize for anything.

17 THE COURT: Yeah, absolutely not.

18 You were rather ill last time. And I saw it and
19 I know Mr. Bruner did as well.

20 I'm glad you're better.

21 MS. COX: Thank you.

22 THE COURT: Mr. Cox, anything you want to tell
23 me?

24 MR. COX: I have one thing.

25 THE COURT: Yes, sir.

1 And please don't go over the --

2 MR. COX: I'm not. I'm not.

3 THE COURT: -- judgment.

4 MR. COX: The 401(k) --

5 THE COURT: Yes, sir.

6 MR. COX: -- they tell me -- and they were
7 supposed to send in the statement, along with what
8 happened to the -- this transaction that was made.

9 That if these people knew anything about a
10 401(k), they would know that you can't put outside money
11 into a 401(k), unless you're paying a lot --

12 THE COURT: Well, what was novel and new that I
13 heard today, Mr. Cox, was Mr. Bruner's position, that he's
14 maybe taking at a later time after he reviews the record,
15 is whether or not you're entitled -- whether or not any of
16 your contributions as of the date of the entry of the
17 judgment, are legitimate contributions.

18 Whether the law allows you to make, continue to
19 make contributions to avoid a judgment creditor. Because
20 once the money's in there, it's not touchable.

21 MR. COX: Right.

22 THE COURT: That's what I understand after review
23 of the records, he may bring to my attention. We don't
24 want to prejudge anything.

25 MR. COX: Right.

1 THE COURT: But if we get to that point, let's be
2 sure that it's not a novel issue, if at all possible.

3 MR. COX: Well, Judge --

4 THE COURT: Whether it's this jurisdiction --

5 MS. COX: Hang on --

6 THE COURT: -- if not our jurisdiction, then one
7 of our sister jurisdictions, North Carolina and Georgia,
8 which are very persuasive.

9 And even from there, maybe the jurisdiction that
10 covers the federal court down in the southeast that
11 doesn't count us. Because that's very persuasive in our
12 jurisdiction, as well.

13 California, being kind of at the end of the line.
14 New York, kind of being at the end of the line.

15 But even those -- you know, don't come with it
16 being novel --

17 MR. COX: Judge --

18 THE COURT: -- if we get to that point,
19 Mr. Bruner.

20 MR. COX: Would that not be anymore than if I
21 didn't put it in, garnishing my wages? I mean --

22 THE COURT: Well, that's an interesting question.

23 MR. COX: If you don't put it in --

24 THE COURT: That's a very interesting question.
25 You should discuss that with your attorney.

1 MR. COX: I will.

2 THE COURT: All right. Because I was telling
3 Mr. Bruner to not come here with a novel issue for me.

4 MR. COX: Right.

5 THE COURT: Because I'm just a trial judge.
6 Trial judges like to have the big judges tell me what to
7 do. I don't want to be stuck having to decide what to do
8 without that guidance.

9 That puts your guy on notice that he needs to do
10 his homework for either one, just the opposite.

11 Something that says, oh, no, you can't do that
12 from a higher court. Or maybe, even, you know, that --
13 what you just brought out that we're just kind of
14 philosophically discussing now.

15 But y'all go back to your respective corners and
16 get to work on those things. Because I am not surprised
17 because you already told me that it's going to show that
18 you make regular contributions and have since the day that
19 judgment was made. You also told me that.

20 MR. COX: Long before.

21 THE COURT: So we're going to probably get to
22 that question.

23 Anything else from anybody?

24 We'll be adjourned. Six months.

25 MR. ROBINSON: Thank you, Your Honor.

1 MR. RICHARDS: Thanks, Your Honor.
2 MR. BRUNER: Thank you, Your Honor.
3 (The hearing concluded at: 10:49 a.m.)
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REPORTER'S CERTIFICATE

I, TRACY E. BROWN, CSR No. 13433, Certified Shorthand Reporter, certify;

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witnesses were put under oath by The Court;

That the testimony of the witnesses, the questions propounded, and all objections and statements made at the time of the examination were recorded stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct transcript of my shorthand notes so taken.

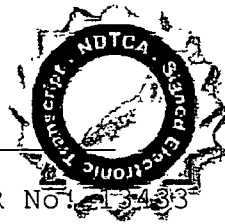
I further certify that I am not a relative or employee of any attorney of the parties, nor financially interested in the action.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Dated this 18th day of December, 2013.

Tracy E. Brown

TRACY E. BROWN, CSR No. 13433



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I N D E X

EXAMINATION

WITNESS NAME:	DIRECT	CROSS	REDIRECT	RECROSS
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MICHAEL COX

By Mr. Bruner	28		36	
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By Mr. Richards	35			
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ELIZABETH COX

By Mr. Bruner	37			
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E X H I B I T S

(None)

STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW)

BEFORE THE MASTER-IN-EQUITY

Palmetto Residential Builders, LLC,)
)
Petitioner,)

Case No.: 2006-CP-28-433

v.)

Michael Cox and Elizabeth Cox,)
)
Respondents.)

**MOTION TO RECONSIDER,
ALTER OR AMEND ORDER**

Petitioner Palmetto Residential Builders, LLC ("Petitioner"), by and through its undersigned counsel, hereby moves this Honorable Court pursuant to Rules 52 and 59, SCRP, to reconsider, alter or amend the Order issued September 13, 2014 and filed September 15, 2014 denying Petitioner's Motion to set aside post-judgment contributions Respondent Michael Cox has made to his International Paper retirement account ("Retirement Account"), a written copy of which Petitioner received by mail on September 18, 2014, upon the following grounds:

(1) On January 30, 2008, Petitioner obtained a judgment against Respondents by way of a jury verdict.

(2) On January 31, 2008, Mr. Cox withdrew \$7,000 from an account at Bronco Federal Credit Union and immediately deposited that money into the Retirement Account.

(3) On February 4, 2008, Mr. Cox liquidated stock in his Smith Barney account and deposited the \$44,487.89 in proceeds into the Retirement Account.

(4) By Order signed September 29, 2008 and filed October 1, 2008 (hereinafter, "September 29, 2008 Order," attached as **Exhibit A**), this Court addressed Petitioner's request to set aside Mr. Cox's deposit of the \$44,487.89 into his Retirement Account as a fraudulent transfer. Mr. Cox argued that the deposits he made to his Retirement Account were protected by

FILED FOR RECORD
2014 SEP 15 AM 9:58
JUDGE J. SCOTT DAVIS
CLERK OF COURT
KERSHAW COUNTY, S.C.

the anti-alienation provision in ERISA. Rejecting that argument, this Court 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.’”

(September 29, 2008 Order at 4) (emphasis in original). Based upon In re Goldschein, the Court concluded that “Mr. Cox’s...transfer of \$44,487.89 from the Smith Barney account to his retirement account was a fraudulent transfer as contemplated by the South Carolina Code and common law of this State.” Accordingly, the Court held those funds were never legitimate ERISA plan assets and directed Mr. Cox to issue payment to Petitioner within fifteen days of receiving the Order.

(5) In an Order issued November 4, 2008 and filed November 7, 2008 (hereinafter, “November 4, 2008 Order,” attached as **Exhibit B**), addressing Petitioner’s request to set aside another fraudulent transfer by Mr. Cox, the Court determined,

“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. The South Carolina General Assembly did not intend to protect and condone such devious acts through the Homestead Exemption Act.”

(November 4, 2008 Order at 6.) The Court further held that Mr. Cox’s “transfer of \$7,000 from the Bronco Federal Credit Union account to his retirement account was a fraudulent transfer as contemplated by the South Carolina Code and the common law of this State.” Similar to the money Mr. Cox tried to hide after liquidating stock, the Court held the \$7,000 from the Bronco Federal Credit Union account was never a legitimate ERISA plan assets and directed payment of that money to Petitioner.

(6) On January 22, 2009, the Court held a third hearing in these supplemental

proceedings after Mr. Cox failed to withdraw the fraudulently transferred funds and pay them to Petitioner pursuant to the September 29, 2008 Order and November 4, 2008 Order. (See February 16, 2009 Order, attached as Exhibit C.) As a result, the Court ordered the plan administrator to pay the funds.

(7) On June 30, 2009, nine months after being ordered to do so, Mr. Cox finally tendered payment of the \$44,487.89 to Petitioner.

(8) On November 6, 2013, Respondents served responses to discovery requests. Those responses included statements from Mr. Cox's Retirement Account showing that Mr. Cox was continuing to contribute to the Retirement Account. Between January 1, 2010 and June 30, 2013, Mr. Cox voluntarily contributed \$56,797.27 to his Retirement Account.

(9) All of Mr. Cox's contributions at issue have been voluntary and made after Petitioner obtained the judgment against him. Moreover, Respondents are not using the Retirement Account for their support.

(10) Nothing in the Homestead Exemption Act, S.C. Code Ann. §§ 15-41-10, *et seq.*, gives a judgment debtor the right to continue making voluntary contributions to a retirement account in preference over a judgment creditor when the debtor has no other assets with which to satisfy the judgment.

(11) The Court erred in finding Mr. Cox had been making similar contributions to his retirement account since 1985 because the Respondents presented no such evidence, by affidavit, testimony, or otherwise, supporting that finding.

(12) The Court erred in finding Respondents' post-judgment contributions to the Retirement Account are exempt from attachment and levy.

(13) The Court erred in finding, contrary to the law of the case, that Respondents' post-judgment contributions to the Retirement Account are not fraudulent conveyances based on Internal Revenue Service regulations.

(14) The Court erred in finding that Respondents' post-judgment contributions to the Retirement Account are not fraudulent conveyances.

(15) The Court erred in ostensibly creating a new exemption for debtors to make post-judgment contributions to retirement accounts in preference of judgment creditors when no such exemption is set forth in the Homestead Exemption Act or any other applicable law.

(16) The Court erred in finding the anti-alienation provision in ERISA applied, notwithstanding the law of the case that the anti-alienation provision and IRS regulations do not prevent the avoidance of fraudulent transfers to the specific Retirement Account to which Mr. Cox has continued making post-judgment transfers in preference of Petitioner's judgment.

(17) The Court erred in finding that based upon IRS regulations only contributions in excess of \$23,000 per year are fraudulent transfers.

(18) The Court erred in finding Mr. Cox's post-judgment contributions to his retirement account were made upon valuable consideration.

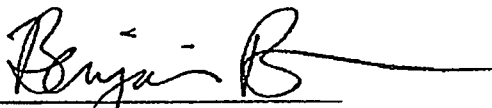
(19) The Court erred in requiring Petitioner to show the contributions to the Retirement Account were made with the actual intent to defraud creditors before setting the transfers aside.

(20) The Court further erred in finding the contributions were made without the actual intent by Mr. Cox to defraud his creditors. The record in this case shows (i) Mr. Cox has tried to hide money from Petitioner in his retirement accounts, including the one at issue, multiple times since Petitioner obtained the judgment against him, (ii) Mr. Cox has repeatedly tried to use this

same Retirement Account as his own offshore bank account; (iii) after he was caught, Mr. Cox refused to comply with this Court's order to pay those fraudulent conveyances to Petitioner, (iv) Mr. Cox bought and sold vehicles in spite of a Court Order restraining him from doing so, and (v) Mr. Cox lied in Court under oath about selling a 2013 Honda Accord in order to conceal from Petitioner the fact that he spent the money (over \$6,000) he netted from the sale (and has been held in contempt for doing so). At every turn, Mr. Cox's obstinate and contemptuous conduct has impeded these proceedings with the sole purpose of frustrating Petitioner's efforts to collect on its judgment.

WHEREFORE, Petitioner moves this Court to reconsider, alter or amend its Order denying Petitioner's motion to set aside the post-judgment contributions made to the Retirement Account. Petitioner further requests that the Court, based upon the Respondents' conduct, the law of the case, and the record as presented, set aside all of Respondents' post-judgment contributions to the Retirement Account and direct that Respondents pay Petitioner the sum of \$56,797.27, plus all other post-judgment contributions made to the Retirement Account which have not yet been paid to Petitioner.

BRUNER, POWELL, WALL & MULLINS, LLC

By: 

Brian P. Robinson

Joey R. Floyd

Benjamin C. Bruner

1735 St. Julian Place, Suite 200

Post Office Box 61110

Columbia, SC 29260-1110

(803) 252-7693

Attorneys for the Petitioner

September 29, 2014

EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF KERSHAW

Palmetto Residential Builders, LLC v. Michael Cox
and Elizabeth Cox

☒ Plaintiff

v.

Michael Cox And Elizabeth Cox

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2006-CP-28-433

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

FILED FOR RECORD
2008 OCT - 1 AM 10:51
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

Plaintiff's Attorney:

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Columbia, SC 29201

phone: 803.799.6000 fax: 803.799.6947

e-mail: other:

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT: 25.00

☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☒ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED – AMOUNT DUE: _____

STATE OF SOUTH CAROLINA)

BEFORE THE MASTER IN EQUITY

COUNTY OF KERSHAW)

Case No.: 2006-CP-28-433

Palmetto Residential Builders, LLC,)

Plaintiff,)

v.)

Michael Cox and Elizabeth Cox,)

Defendants.)

ORDER

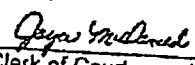
FILED FOR RECORD
2008 OCT -1 AM 10:51
JOYCE WEDDALL
CLERK OF COURT
KERSHAW COUNTY, S.C.

This matter came before me by way of a Supplemental Proceeding hearing on September 8, 2008, 2:00 p.m. in the Office of the Kershaw County Master-in-Equity. The Defendants were placed under oath and examined by Counsel for Plaintiff. Among other issues, the Defendant Michael Cox testified that he sold certain stock that he held in a Smith Barney account on February 4, 2008. Mr. Cox testified that the total amount received for the sale of the stock was \$44,487.89, as evidenced by the "Client Statement" from Smith Barney dated January 1 - February 29, 2008. Notably, the sale of the stock in the Smith Barney account occurred 5 days after the jury verdict was rendered by the Trial Court. Michael Cox testified that the money received from the sale of the stock was immediately applied/deposited in his retirement account (JP Morgan - International Paper Salaried Savings Plan) in order to repay a loan that he had taken against his retirement account.

FINDINGS OF FACT

1. The Plaintiff obtained a Judgment, by way of a jury verdict, against the Defendants on January 30, 2008.

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Court


Clerk of Court Kershaw County


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2. The Defendant, Michael Cox, sold stock in his Smith Barney account on February 4, 2008, i.e. liquidated his stock account, and deposited the proceeds into his retirement account.
3. The Defendant, Michael Cox, testified that he deposited the proceeds into his retirement account in order to repay a loan that he had taken against his retirement account.
4. Counsel for the Plaintiff moved to set aside the repayment of the loan, i.e. the deposit of the proceeds into Michael Cox's retirement account, on the grounds that the transfer was a fraudulent transfer in accordance with S.C. Code 15-41-30(A)(13)

Conclusions of Law

1. A Judgment Creditor is entitled to execute on the assets of a debtor, with limited exceptions/exemptions as provided in S.C. Code § 15-41-30. The exemption found at S.C. Code § 15-41-30(A)(13), provides:

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, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor. **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).

2. The purpose of the homestead exemption statute is "to protect from creditors a certain portion of the debtor's property, and to prevent citizens from becoming dependent on the State for support." *Holden v. Cribb*, 349 S.C. 132, 561 S.E.2d 634

(Ct. App. 2002) quoting *Scholtec v. Estate of Reeves*, 327 S.C. 551, 560, 490 S.E.2d 603, 607 (Ct.App. 1997) (citation omitted).

3. South Carolina's prohibition on fraudulent conveyances, i.e. the Statute of Elizabeth (S.C. Code § 27-23-10) 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 § 27-23-10.

4. In *Mathis v. Burton*, 319 S.C. 261, 460 S.E.2d 406 (Ct.App. 1995), the South Carolina Court of Appeals held that:

For existing creditors, 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* at 264-5 citations omitted.

5. In *Klein v. Rossi*, 251 F.Supp. 1 (D.C.N.Y. 1966), the New York District Court noted, in an opinion that dealt with the fraudulent transfer of stock, that:

Such transfers are frauds because, however contingently they may do it, they are by their very nature calculated to hinder, delay and defeat the collection of a known debt; they are characterized as fraudulent by the dominance of the intention to withdraw the particular executionable asset from the reach of process.

Mr. Cox's fraudulent transfers of the proceeds/cash generated from the sale of his stock and deposited into his retirement account is, by its very nature, calculated to hinder, delay and defeat the collection efforts by Palmetto to collect on its Judgment.

6. The Defendant, Michael Cox, has asserted that the Anti-Alienability provisions of ERISA qualified retirement plans prevent this Court from attachment, garnishment, levy, execution and/or other legal or equitable process. 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." *In re Goldschein* at 378-9.

7. The Defendant 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. The South Carolina General Assembly did not intend to protect and condone such devious acts through the Homestead Exemption Act. Mr. Cox's actions have, in effect, removed the cash/stock from the 'jaws of execution.' The stock in the Smith Barney account was subject to execution and could have been applied towards the Plaintiff's Judgment had the Defendant, Michael Cox, abstained from liquidating the stock and placing it in his retirement account.

8. The Defendants have also asserted that S.C. Code § 27-23-10 requires an independent action be brought alleging fraudulent conveyance. The fraudulent conveyance statute, otherwise known as the Statute of Elizabeth, does not require that a separate action be brought to set aside a fraudulent transfer. In fact, S.C. Code § 15-39-410 expressly provides that this Court can order property to be applied towards the Satisfaction of a Judgment.

9. The Defendant's, Michael Cox's, transfer of \$44,487.89 from the Smith Barney account to his retirement account was a fraudulent transfer as contemplated by the South Carolina Code and common law of this State. Moreover, the attempted conversion of the non-exempt asset into an exempt asset fails because (a) the deposit of the Smith Barney proceeds was a fraudulent transfer and (2) the Smith Barney proceeds were never legitimate ERISA plan assets that are offered some protection under ERISA.

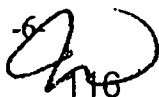
IT IS THEREFORE ORDERED that the Defendant, Michael Cox, shall, within 15 days of the date this Order is served upon him and/or his Counsel, tender a check to the Plaintiff

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in the amount of Forty Four Thousand Four Hundred Eighty Seven Dollars and 89/100 (\$44,487.89) from his retirement account, which is the amount of the fraudulent transfer (generated from the sale of the Smith Barney account stock) into his own retirement account. Upon receipt of the funds (\$44,487.89), i.e. after any check or tender of payment by the Defendant Michael Cox has had time to be deposited and "clear the bank," Palmetto shall file a partial Satisfaction of Judgment in the amount of Forty Four Thousand Four Hundred Eighty Seven Dollars and 89/100 (\$44,487.89). Furthermore, the Defendants are hereby ORDERED that they shall not transfer or move any additional money out of the retirement account, i.e. the account to which the stock sale proceeds were deposited, until this Court instructs the Defendants otherwise. The Defendant, Michael Cox, testified that he also contributed an additional \$7,000.00 to the retirement account from his account with a Virginia Bank, Bronco Federal Credit Union, in the same time frame as the Smith Barney transfer. This Court will allow the Plaintiff additional time to continue its investigation of this transfer and move for relief with this Court if the Plaintiff deems it to be necessary.

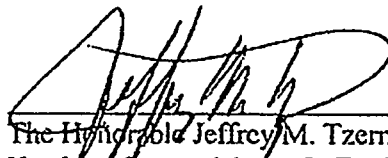
The Defendant Michael Cox may be entitled to a \$5,000.00 exemption in the proceeds that Palmetto is executing upon in accordance with S.C. Code§ 15-41-30(A)(5). If the Defendant Michael Cox elects to invoke this exemption, the amount payable to Palmetto shall be reduced to Thirty Nine Thousand Four Hundred Eighty Seven Dollars and 89/100 (\$39,487.89) and the amount of the Partial Satisfaction of Judgment shall be reduced accordingly. In accordance with S.C. Code§ 15-41(A)(5), if the Defendant Michael Cox elects to invoke the exemption, he shall be deemed to have waived his right to the homestead exemption in S.C. Code§ 15-41-30(A)(1).

This Supplemental Proceedings is still ongoing and this Order shall not be interpreted, in


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any way, to restrict the Plaintiff's ability to execute on any other assets, whether such assets have already been discovered or those assets which may be discovered in the future. The Defendants are once again reminded of the Rule to Show Cause and Order of Reference entered in this Supplemental Proceedings restraining and enjoining them from making any transaction or transfer or other disposition of property belonging to them which are not exempt from execution pending further Order of this Court.

AND IT IS SO ORDERED.



The Honorable Jeffrey M. Tzerman
Kershaw County Master In Equity

Camden, South Carolina

September 29, 2008

EXHIBIT B

STATE OF SOUTH CAROLINA	)	BEFORE THE MASTER IN EQUITY
	)	
COUNTY OF KERSHAW	)	Case No.: 2006-CP-28-433
	)	
Palmetto Residential Builders, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	<u>ORDER</u>
	)	
Michael Cox and Elizabeth Cox,	)	
	)	
Defendants.	)	

FILED FOR RECORD
2008 NOV -7 AM 10:28
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

This matter came before me by way of a Supplemental Proceeding hearing on October 24, 2008, 10:00 a.m. in the Office of the Kershaw County Master-in-Equity. The Defendants were, once again, placed under oath and examined by Counsel for Plaintiff. Among other issues, the Defendant Michael Cox testified and acknowledged that he withdrew \$7,000.00 from his Bronco Federal Credit Union bank account on January 31, 2008, and immediately applied/deposited the \$7,000.00 into his retirement account (JP Morgan – International Paper Salaried Savings Plan) in order to repay a loan that he had taken against his retirement account. Notably, the withdrawal occurred one day after the jury verdict was rendered against the Defendants in this case.

It was also discovered that Mr. Cox has another account with Smith Barney, a “second” Smith Barney account, besides the Smith Barney stock account that he liquidated shortly after the jury verdict was rendered in this case. Mr. Cox did not advise this Court, or Counsel for the Plaintiff, during the Supplemental Proceedings hearing on September 8, 2008, that he had a second Smith Barney account. In particular, Mr. Cox has a ROTH IRA (“ROTH account” or “ROTH IRA”) with Smith Barney. Based on the documents provided to this Court, it appears

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[Signature]

that the ROTH IRA has a balance of approximately \$14,951.31, based on the April 1 - June 30, 2008 statement. When initially questioned about the ROTH IRA, Mr. Cox stated that he did not even know that he had this account and that he thought it was closed when he closed out the other Smith Barney account to repay his retirement account loan. Mr. & Mrs. Cox reaffirmed their prior testimony by testifying that their combined income totaled approximately \$125,000.00 (Mr. Cox - \$65,000.00 and Mrs. Cox - \$60,000.00).

Counsel for the Plaintiff/Judgment Creditor also directed this Court's attention to the fact that Post-Judgment Interrogatories and Requests for Production were served on the Defendants on May 15, 2008. Counsel for the Plaintiff also represented to this Court that he has not received any responses from the Defendants. Counsel for the Defendants advised this Court that the Post-Judgment Discovery Requests had not been answered; however, Counsel for the Defendants also represented to the Court that he did not foresee any problems in providing Answers/Responses to the Post-Judgment Interrogatories and Requests for Production in 30 days from October 24, 2008.

FINDINGS OF FACT

1. The Plaintiff obtained a Judgment, by way of a jury verdict, against the Defendants on January 30, 2008.
2. The Defendant, Michael Cox, withdrew \$7,000.00 on January 31, 2008, and immediately deposited the proceeds into his retirement account.
3. The Defendant, Michael Cox, testified that he deposited the \$7,000.00 into his retirement account in order to repay a loan that he had taken against his retirement account.

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4. Counsel for the Plaintiff moved to set aside the repayment of the loan, i.e. the deposit of the proceeds into Michael Cox's retirement account, on the grounds that the transfer was a fraudulent transfer in accordance with S.C. Code 15-41-30(A)(13).
5. The Defendant Michael Cox has a ROTH IRA account with Smith Barney, Account Number [REDACTED], which he failed to disclose to this Court during the first supplemental proceeding hearing held on September 8, 2008.
6. The ROTH IRA had approximately \$14,951.31 in the account, as of June 30, 2008.
7. The Defendant Michael Cox did not even know that he had the second Smith Barney account until he was confronted with the Smith Barney documents during the Supplemental Proceedings hearing on October 23, 2008.
8. The Defendant Michael Cox and his spouse/co-Defendant, Elizabeth Cox, have a combined income equal to, or in excess of, \$125,000.00.
9. The Defendants are not using the ROTH IRA account for his/their support.
10. The Defendants have agreed to provide Counsel for the Plaintiff with responses to the Post-Judgment Interrogatories and Requests for Production in thirty (30) days, i.e. on, or before, November 24, 2008.

Conclusions of Law

I. Bronco Federal Credit Union Money

1. A Judgment Creditor is entitled to execute on the assets of a debtor, with limited exceptions/exemptions as provided in S.C. Code § 15-41-30. The exemption found at S.C. Code § 15-41-30(A)(13), provides:

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, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor. 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).

2. The purpose of the homestead exemption statute is "to protect from creditors a certain portion of the debtor's property, and to prevent citizens from becoming dependent on the State for support." *Holden v. Cribb*, 349 S.C. 132, 561 S.E.2d 634 (Ct. App. 2002) quoting *Scholtec v. Estate of Reeves*, 327 S.C. 551, 560, 490 S.E.2d 603, 607 (Ct.App. 1997) (citation omitted).
3. South Carolina's prohibition on fraudulent conveyances, i.e. the Statute of Elizabeth (S.C. Code § 27-23-10) 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 § 27-23-10.

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4. In *Mathis v. Burton*, 319 S.C. 261, 460 S.E.2d 406 (Ct.App. 1995), the South Carolina Court of Appeals held that:

For existing creditors, 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* at 264-5 citations omitted.

5. In *Klein v. Rossi*, 251 F.Supp. 1 (D.C.N.Y. 1966), the New York District Court noted, in an opinion that dealt with the fraudulent transfer of stock, that:

Such transfers are frauds because, however contingently they may do it, they are by their very nature calculated to hinder, delay and defeat the collection of a known debt; they are characterized as fraudulent by the dominance of the intention to withdraw the particular executionable asset from the reach of process.

Mr. Cox's fraudulent transfers of the cash from his Bronco Federal Credit Union and deposited into his retirement account is, by its very nature, calculated to hinder, delay and defeat the collection efforts by Palmetto to collect on its Judgment.

6. 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."

In re Goldsheim at 378-9.

7. The Defendant 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. The South Carolina General Assembly did not intend to protect and condone such devious acts through the Homestead Exemption Act. Mr. Cox's actions have, in effect, removed the cash from the 'jaws of execution.' The cash in the Bronco Federal Credit Union account was subject to execution and could have been applied towards the Plaintiff's Judgment had the Defendant, Michael Cox, abstained from withdrawing the cash from the Bronco Federal Credit Union account and placing it in his retirement account.
8. The Defendant's, Michael Cox's, transfer of \$7,000.00 from the Bronco Federal Credit Union account to his retirement account was a fraudulent transfer as contemplated by the South Carolina Code and common law of this State. Moreover, the attempted conversion of the non-exempt asset into an exempt asset fails because (a) the deposit of the Bronco Federal Credit Union proceeds was a fraudulent transfer and (2) the Bronco Federal Credit Union proceeds were never legitimate ERISA plan assets that are offered some protection under ERISA.



II. Second Smith Barney Account – ROTH IRA

1. A Judgment Creditor is entitled to execute on the assets of a debtor, with limited exceptions/exemptions as provided in S.C. Code § 15-41-30. The exemption found at S.C. Code § 15-41-30(A)(13), provides:

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, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor. 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).

2. The purpose of the homestead exemption statute is "to protect from creditors a certain portion of the debtor's property, and to prevent citizens from becoming dependent on the State for support." *Holden v. Cribb*, 349 S.C. 132, 561 S.E.2d 634 (Ct. App. 2002) quoting *Scholtec v. Estate of Reeves*, 327 S.C. 551, 560, 490 S.E.2d 603, 607 (Ct.App. 1997) (citation omitted).
3. ROTH IRAs are governed by 26 U.S.C. §408A of the internal Revenue Code.
4. As set forth above, there is an exception in the exemption statute that allows a Judgment creditor execute on a ROTH IRA account, i.e. a 408A account.
5. The Defendants have testified that the ROTH IRA account, Account Number [REDACTED] is not necessary for the support of Michael Cox and Elizabeth Cox. Notably, the Defendant Michael Cox testified that he did not even know that he had



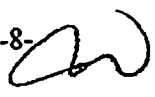
the ROTH IRA account at Smith Barney, which further supports the fact that the account is not "reasonably necessary for the support of the debtor and any dependent of the debtor."

6. The Smith Barney ROTH IRA account, with approximately \$14,951.31 in it as of June 30, 2008, is subject to execution by the Judgment Creditor in this case.

III. Outstanding Discovery

1. The Defendants were served with the Plaintiff's First Set of Post-Judgment Interrogatories and Requests for Production on May 15, 2008.
2. The Defendants have failed to provide the Plaintiff with answers to the Interrogatories and responses to the Requests for Production as of October 28, 2008.
3. During the hearing on October 24, 2008, Counsel for the Defendants agreed that the Defendants would provide the Plaintiff with Answers to the Interrogatories and Responses to the Requests for Production within 30 days from October 24, 2008.
4. Counsel for the Plaintiff consented to allow the Defendants an additional 30 days to respond to the discovery requests.
5. Therefore, the Defendants shall provide the Plaintiff with answers to the Plaintiff's First Set of Post-Judgment Interrogatories and Requests for Production on, or before, November 24, 2008.

IT IS THEREFORE ORDERED that the Defendant, Michael Cox, shall, within 10 days of the date this Order is served upon him and/or his Counsel, tender a check to the Plaintiff in the amount of Seven Thousand Dollars and 00/100 (\$7,000.00) from his retirement account, which is the amount of the fraudulent transfer (Bronco Federal Credit Union account withdrawal)

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into his own retirement account.¹ Upon receipt of the funds (\$7,000.00), i.e. after any check or tender of payment by the Defendant Michael Cox has had time to be deposited and "clear the bank," Palmetto shall file a partial Satisfaction of Judgment in the amount of Seven Thousand Dollars and 00/100 (\$7,000.00). Furthermore, the Defendants are hereby ORDERED that they shall not transfer or move any additional money out of the retirement account, i.e. the account to which Bronco Federal Credit Union proceeds were deposited, until this Court instructs the Defendants otherwise.

IT IS ALSO HEREBY ORDERED that upon presentment of this Order to Smith Barney, Inc., Smith Barney, Inc. shall liquidate Account Number [REDACTED] and issue a check, made payable to "Palmetto Residential Builders, LLC," in the full amount being held in the Smith Barney, Inc. account within 10 days after this Order is served upon Smith Barney, Inc. and/or its Counsel. The check shall be mailed to the following address: Bruner Powell Robbins Wall & Mullins, LLC, Attn: Joey R. Floyd, Esquire, P.O. Box 61110, Columbia, SC 29260. Upon receipt of the funds from the Smith Barney account, i.e. after any check or tender of payment by Smith Barney has had time to be deposited and "clear the bank," Palmetto shall file a partial Satisfaction of Judgment in the amount of the check received from Smith Barney. Furthermore, the Defendants are hereby ORDERED that they shall not transfer or move any additional money out of the retirement account, i.e. the account to which Bronco Federal Credit Union proceeds were deposited, until this Court instructs the Defendants otherwise.

IT IS ALSO ORDERED that the Defendants provide the Plaintiff with Answers to the Plaintiff's First Set of Post-Judgment Interrogatories and Requests for Production on, or before,

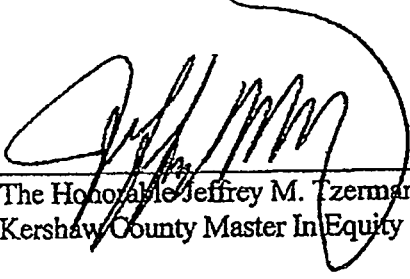
¹ This amount is in addition to the \$44,487.89 ordered (Order filed 10.1.08) to be tendered to



November 24, 2008

This Supplemental Proceedings is still ongoing and this Order shall not be interpreted, in any way, to restrict the Plaintiff's ability to execute on any other assets, whether such assets have already been discovered or those assets which may be discovered in the future. The Defendants are once again reminded of the Rule to Show Cause and Order of Reference entered in this Supplemental Proceedings restraining and enjoining them from making any transaction or transfer or other disposition of property belonging to them which are not exempt from execution pending further Order of this Court.

AND IT IS SO ORDERED.



The Honorable Jeffrey M. Tzerman
Kershaw County Master In Equity

Camden, South Carolina
Nov 24
~~October~~ _____, 2008

Plaintiff for the liquidation of a Smith Barney account and deposit into his retirement account.

EXHIBIT C

STATE OF SOUTH CAROLINA)

BEFORE THE MASTER IN EQUITY

COUNTY OF KERSHAW)

Case No.: 2006-CP-28-433

Palmetto Residential Builders, LLC,)

Plaintiff,)

v.)

Michael Cox and Elizabeth Cox,)

Defendants.)

ORDER

FILED FOR RECORD
2009 FEB 16 AM 8:59
JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY, S.C.

This matter came before me by way of a third Supplemental Proceeding hearing on January 22, 2009, commencing at 10:00 a.m. in the Office of the Kershaw County Master-in-Equity. There were a number of pending motions and this Court addressed several of them during the hearing. First, the Defendant, Michael Cox has failed to comply with this Court's Orders dated September 29, 2008 (filed October 1, 2008) and November 4, 2008 (filed November 7, 2008). In particular, Michael Cox has failed to withdraw the money from his retirement account, the JP Morgan Chase – International Paper Salaried Savings Plan, as previously ordered. Counsel for the Plaintiff sought to have an Order issued directing International Paper, or the account custodian, to pay the money directly to the Plaintiff in this matter. I find that the relief requested by the Plaintiff is appropriate in order to effectuate this Court's previous Orders. **IT IS THEREFORE ORDERED** that International Paper, JP Morgan and/or JP Morgan Chase Bank, whichever entity is the appropriate party to execute a withdrawal from Michael Cox's account shall, within 10 days of receipt of this Order, withdraw a sufficient amount from the account to tender a check in the amount of \$51,487.89. In the event any taxes and/or penalties must be paid

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Copy of Original on File in this
Court

Joyce McDonald
Clerk of Court Kershaw County

1-*[Signature]*
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from said withdrawal, said taxes and penalties shall be added to the withdrawal amount. The check shall be made payable to "Bruner Powell Robbins Wall & Mullins, LLC" and transmitted via overnight carrier to: Joey R. Floyd, Attorney for Palmetto Residential Builders, LLC, 1735 St. Julian Place, Suite 200, Columbia, SC 29204. Upon receipt of said proceeds (after the proceeds clear the bank), Counsel for the Plaintiff shall file a Partial Satisfaction of Judgment for the amount received.

In addition, Counsel for the Coxes, Paul Degenhart, Esquire, ~~filed a Motion to Quash on~~ June 6, 2008, seeking to quash the Subpoenas issued to Branch Banking and Trust ("BB&T"). After reviewing the subpoenas and hearing the arguments of Counsel, I find that the information sought by the Plaintiff's subpoenas is reasonable and in the scope of discovery available to a creditor in post-judgment proceedings. Therefore, the Motion to Quash the Plaintiff's subpoenas issued to BB&T are hereby denied. **IT IS THEREFORE ORDERED** that BB&T shall produce all documents responsive to the subpoenas within ten days after being served with a copy of this Order.

A non-party, Cox Holdings, LLC, received a subpoena from the Plaintiff in mid to late September 2008. Cox Holdings, LLC, by and through its attorney, Charles Richards, Esquire, provided Counsel for the Plaintiff with a written objection. Thereafter, in early January 2009, the Plaintiff issued a Subpoena Duces Tecum to Cox Holdings, LLC, requiring a representative of Cox Holdings, LLC to appear, bring certain documents and testify about Cox Holdings, LLC. Cox Holdings, LLC, by and through its attorney, provided another objection to the subpoena. After reviewing the subpoena to Cox Holdings, LLC and hearing the arguments of Counsel for both sides, I find that the information sought by the Plaintiff's second subpoena to Cox Holdings,

(2-12)

LLC is reasonable and in the scope of discovery available to a creditor in post-judgment proceedings. **IT IS THEREFORE ORDERED** that Cox Holdings, LLC is hereby ordered to produce the documents demanded in the January 2009 subpoena within ten days of service of the Order upon Counsel for Cox Holdings, LLC. The documents shall be delivered to Counsel for the Plaintiff.¹

Counsel for the Plaintiff/Judgment Creditor also directed this Court's attention to the fact that Post-Judgment Interrogatories and Requests for Production were served on the Defendants on May 15, 2008. Counsel for the Plaintiff also represented to this Court that he has not received any responses from the Defendants. Counsel for the Defendants advised this Court that the Post-Judgment Discovery Requests had not been answered; however, Counsel for the Defendants also represented to the Court that he did not foresee any problems in providing Answers/Responses to the Post-Judgment Interrogatories and Requests for Production in 30 days from January 20, 2009. **IT IS THEREFORE ORDERED** that the Defendants shall provide Answers to the Post-Judgment Interrogatories and Requests for Production in 30 days from January 20, 2009.

This Supplemental Proceedings is still ongoing and this Order shall not be interpreted, in any way, to restrict the Plaintiff's ability to execute on any other assets, whether such assets have already been discovered which may be discovered in the future. The Defendants are once again reminded of the Rule to Show Cause and Order of Reference entered in this Supplemental Proceedings restraining and enjoining them from making any transaction or transfer or other

¹ Cox Holdings, LLC has produced some documents, which are currently in my possession by way of agreement from the January 22, 2009 hearing. I will be tendering these same documents to Counsel for the Plaintiff in the next couple of days. Counsel for Plaintiff and Counsel for Cox Holdings, LLC are encouraged to work together and resolve any "discovery" disputes between one another without the assistance of this Court. However, if Counsel for the Plaintiff and Counsel for Cox Holdings, LLC are unable to resolve a dispute, this Court will assist the parties in resolving such disputes.



disposition of property belonging to them which are not exempt from execution pending further Order of this Court.

IF YOU DO NOT COMPLY WITH THIS ORDER, YOU MAY BE HELD IN CONTEMPT OF COURT, WHICH COULD RESULT IN A FINE AND/OR JAIL SENTENCE.

AND IT IS SO ORDERED.


The Honorable Jeffrey M. Tzerman
Kershaw County Master In Equity

Camden, South Carolina

February 27, 2009

STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW)

BEFORE THE MASTER-IN-EQUITY

Palmetto Residential Builders, LLC,)
)
Petitioner,)
)
v.)
)
Michael Cox and Elizabeth Cox,)
)
Respondents.)
_____)

Case No.: 2006-CP-28-433

**MOTION FOR ORDER SETTING ASIDE
FRAUDULENT CONVEYANCES AND
EXECUTING ON CERTAIN PROPERTY**

Petitioner Palmetto Residential Builders, LLC ("Petitioner"), by and through its undersigned counsel, hereby moves this Honorable Court for an Order setting aside fraudulent conveyances, directing the Respondents to pay funds they have fraudulently transferred into a retirement account, directing the Respondents to pay proceeds from selling a vehicle in 2013 or, in the alternative, directing the public sale of the 2013 Dodge Challenger, issuing a charging order on Mr. Cox's interest in Cox Holdings, LLC, and awarding the Petitioner attorney's fees and costs related to the November 7, 2013 hearing in this matter as sanctions due to Mr. Cox's conduct.

BACKGROUND

Petitioner commenced these supplemental proceedings to collect on a judgment based on a mechanic's lien after the Respondents failed to pay for the house Petitioner built for them. The jury returned a verdict in Petitioner's favor on January 30, 2008 in the amount of \$119,430.93. Five days later, Mr. Cox sold stock he held in a Smith Barney Account and deposited the proceeds it into his retirement account. This Court held that the transfer was fraudulent and ordered the Respondents to pay it over to the Petitioner pursuant to S.C. Code Ann. § 15-41-30(A)(13). On February 11, 2009, after Mr. Cox failed to withdraw the funds from his

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KERSHAW COUNTY, S.C.

retirement account and pay them as ordered, this Court ordered the JP Morgan, which administers the plan, to pay the funds to the Petitioner.

In June of 2013, Petitioner resumed these supplemental proceedings. Petitioner discovered that Mr. Cox has continued transferring money from his paycheck into his retirement account. From January of 2010 through June of 2013, Mr. Cox voluntarily contributed \$56,797.27 in his retirement account.

In addition, Petitioner discovered that Mr. Cox has continued to buy and sell vehicles at will and spend the proceeds without regard to Petitioner's judgment, as described above. In particular, Mr. Cox previously owned a 2007 Honda Accord worth in excess of the \$5,000 vehicle exemption. On December 29, 2010, Mr. Cox purchased a new 2010 Honda Accord for \$29,987.40. He traded in the 2007 Honda as part of the purchase. On May 17, 2013, Mr. Cox purchased a 2013 Dodge Challenger for \$33,000.

At the August 27, 2014 hearing in this matter, Mr. Cox was asked what happened to the 2010 Honda. He testified that he traded it in on the 2013 Dodge Challenger. *See Exhibit A*, Excerpts of Transcript from August 27, 2013 hearing. When Petitioner obtained the sales documents from Mr. Cox's purchase of the 2013 Dodge Challenger, it discovered that representation to be false. No vehicle was traded in as part of that transaction. When confronted with his lie roughly two months later, Mr. Cox first feigned memory loss about his prior testimony. *See Exhibit B*, Excerpts of Transcript from November 7, 2013 hearing. Then he claimed he was confused, and he testified that he could not remember how much he received for the 2010 Honda or the name of the buyer, even though the transaction had occurred only six months prior. *Id.* Upon further investigation, Petitioner discovered that when Mr. Cox sold the 2010 Honda, the payoff was \$9,646.71. Therefore, Mr. Cox netted approximately \$6,153.29.

He did not pay those funds toward the judgment or apply it toward the loan for the 2013 Dodge Challenger. Instead, he says he simply spent it.

In addition to these facts, Respondents' combined household income has exceeded \$100,000 each year from 2009 through 2013, yet the only payment of any significance they have made was when Petitioner discovered the fraudulent transfer in 2008. Even so, Respondents apparently have enough income to make the \$561 per month payment on the 2013 Dodge Challenger.

Petitioner has previously moved on the record in this matter to execute on the Respondents home, on the 2013 Dodge Challenger, and for attorney's fees and costs related to its Motion to Compel and Mr. Cox's conduct. The Court has held those Motions in abeyance. At this time, reserving its right to execute on the Respondents' home, Petitioner moves this Court for an Order (i) setting aside the contributions the Respondents made to the retirement account from January 1, 2010 to June 2013, (ii) directing the Respondents to pay over the fraudulently transferred funds, (iii) directing the Respondents to produce records necessary for the Court to determine what other funds have been fraudulently transferred to Mr. Cox's retirement account since January 1, 2009, (iv) directing the Respondents to pay Petitioner the \$6,153.29 in proceeds from the 2010 Honda or, in the alternative, ordering Respondents to pay \$1,153.29 and executing on the 2013 Dodge Challenger, (v) issuing a charging order in favor of Petitioner against the Respondents' interest in Cox Holdings, LLC, and (vi) awarding Petitioner attorney's fees and costs.

DISCUSSION

- I. The Respondents' have made over \$56,797.27 in fraudulent transfers that must be set aside and paid to the Petitioner, in addition to any other funds they contributed to Mr. Cox's retirement account after the jury verdict.**

A Judgment Creditor is entitled to execute on the assets of a debtor, with limited exceptions as provided in S.C. Code Ann. § 15-41-30. The exemption found at S.C. Code § 15-41-30(A)(13), provides:

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, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor. **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 purpose of the homestead exemption statute is "to protect from creditors a certain portion of the debtor's property, and to prevent citizens from becoming dependent on the State for support." *Holden v. Cribb*, 349 S.C. 132, 561 S.E.2d 634 (Ct. App. 2002) (quoting *Scholtec v. Estate of Reeves*, 327 S.C. 551, 560, 490 S.E.2d 603, 607 (Ct.App. 1997)). South Carolina's prohibition on fraudulent conveyances, *i.e.*, the Statute of Elizabeth, S.C. Code Ann. § 27-23-10, 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.**

In *Mathis v. Burton*, 319 S.C. 261, 460 S.E.2d 406 (Ct. App. 1995), the South Carolina

Court of Appeals held that:

For existing creditors, 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 at 264-65 (citations omitted). Moreover, even if the plan is one to which ERISA applies, "[t]he anti-alienation provision of ERISA and the Internal Revenue Code do not preclude the avoidance of fraudulent transfers." *In re Goldschein*, 241 B.R. 370, 379 (Bkry. D.Md. 1999). Finally, for the Respondents to claim that all transfers to the retirement account are exempt ignores the law of the case. This Court has already held that fraudulent transfers to the retirement account are not exempt under S.C. Code Ann. § 15-41-30, and it ordered them to pay the money to Petitioner accordingly. They never appealed that order. Thus, it is the law of the case. See *Sloan Const. Co., Inc. v. Southco Grassing, Inc.*, 395 S.C. 164, 169-70, 717 S.E.2d 603, 606 (2011).

The Respondents continue to make voluntarily contributions to Mr. Cox's retirement account while claiming they have no assets with which to satisfy the Petitioner's judgment. From January 2010 through June 2013, the Respondents contributed \$56,797.27 to the retirement account. See **Exhibit C**. These contributions were not employer contributions but instead were funds that would have been included in Mr. Cox's take-home pay had he not opted to have the

money deposited into his retirement account. The contributions for 2009 are unknown because the Respondents have refused to produce statements for that time period despite numerous requests. Nor have the Respondents produced records showing the contributions made after June of 2013. In essence, the Respondents are using the retirement account as an "offshore" bank account, funneling money through it in an attempt to avoid having to pay the Petitioner's judgment. One treatise on the issue has recognized,

In *Gilchinsky v. National Westminster Bank N.J.*, 159 N.J. 463, 732 A.2d 482, 23 Employee Benefits Cas. (BNA) 1382 (1999), the Supreme Court of New Jersey recognized that a judgment debtor's individual retirement account (IRA) enjoys qualified immunity from attachment by creditors under N.J. Stat. Ann. § 25:2-1, however, under the Fraudulent Transfer Act, N.J. Stat. Ann. §§ 25:2-20 to 25:2-34, such funds may be attached if deposited as a fraudulent conveyance by a debtor. The court stated that the purpose behind the expansive protection afforded to IRAs is to prevent creditors from attaching money earmarked for retirement. That immunity, however, the court said, is not absolute; creditors can attach funds transferred into an IRA in "preference" of other creditors, as a "fraudulent conveyance," or if the money is subject to a support order. In exempting fraudulent conveyances from the otherwise broad-based immunity, the court said, the legislature clearly intended to prevent debtors from using New Jersey law to shield their assets from creditors. The court recognized a similar exception to the exemption of IRAs for fraudulent conveyances under New York law, N.Y. C.P.L.R. 5205(c)5. The court stated that, although New York law generally exempts individual retirement account (IRA) funds from attachment by creditors seeking to enforce money judgments, that exemption is unavailable where the debtor secretes funds into an IRA in an attempt to avoid paying a money judgment.

Marjorie A. Shields, *Individual Retirement Accounts As Exempt from Money Judgments in State Courts*, 113 A.L.R.5th 487 (Originally published in 2003); *Accord, Baker v. Dorfman*, 2000 WL 1010285 (S.D. N.Y. 2000), *aff'd on other grounds*, 232 F.3d 121 (2d Cir. 2000) (holding plaintiff entitled to have the balance of defendant's IRA turned over to satisfy the judgment where all deposits to the IRA were made after complaint was filed against defendant).

Similar to other jurisdictions, South Carolina's Homestead Exemption Act protects a judgment debtor's right to receive individual retirement accounts, but it does not create a right

for judgment debtors to continue contributing to a retirement account in preference of a creditor. S.C. Code § 15-41-30(A)(13) ("The debtor's right to receive individual retirement accounts...").

Therefore, the \$56,797.27 in contributions the Respondents have made to the retirement account are fraudulent transfers that should be set aside and paid to the Petitioner toward satisfaction of its judgment. Moreover, the Petitioner should be ordered to produce all account statements for 2009 and statements from June 2013 to present so the Court can determine what additional funds the Respondents have transferred to the retirement account.

II. The Respondents should be directed to pay the Petitioner the \$6,153.29 in proceeds they disposed of after selling a vehicle and then lying about it under oath.

The Petitioner is also entitled either to receive the net proceeds from the sale of the 2010 Honda or to obtain an order of execution as to the 2013 Dodge Challenger.

The jury returned its verdict against the Respondents on January 30, 2008. At various times throughout these supplemental proceedings, the Respondents have been ordered not to transfer or dispose of any non-exempt property that would otherwise be applied to satisfy the Petitioner's judgment. For example, the Court's February 11, 2009 Order closed by reminding the Respondents once again of the restraining language in the Rule to Show Cause and Order of Reference in the matter. The Rule to Show Cause and Order of Reference re-opening this matter, with which the Respondents were served, contained the same restraining language. Nevertheless, Mr. Cox testified unequivocally at the August 27, 2013 hearing before this Court that he owned a 2010 Honda which he traded-in when purchased the 2013 Dodge Challenger he currently owns. Petitioner subsequently obtained copies of the sales documents for the 2013 Dodge Challenger. Those documents showed Mr. Cox did not, in fact, trade in the 2010 Honda when he purchased the 2013 Dodge Challenger. In addition, those records include a check from

Mid Carolina Federal Credit Union to the dealership for the full purchase price of the new car. These records directly contradict Mr. Cox's testimony in the August hearing.

When confronted with this contradiction, Mr. Cox at first baldly denied testifying that he traded-in the 2010 Honda. *See* Section IV, *infra*. He also claimed he misunderstood when Petitioner's counsel asked him what happened to the car. When he was pressed about the terms of sale of the 2010 Honda, Mr. Cox simply feigned memory loss. He did reveal, however, that after selling the 2010 Honda and paying off the lien he still had \$6,153.29 in proceeds remaining, which he spent. It is unclear whether Mr. Cox has exercised his vehicle exemption as to the proceeds from the 2010 Honda or the 2013 Dodge Challenger. What is clear, however, is that the Homestead Exemption Act applies only to one vehicle.

At the November 7, 2013 hearing in this matter, Mr. Cox, in response to his own attorney's inquiry, said he would pay over any amount in excess of the \$5,000.00 exemption. Since that hearing, however, no payment has been made. If Mr. Cox is, in fact, exercising his exemption under S.C. Code Ann. § 15-41-30(A)(2) as to the 2010 Honda, as opposed to the 2013 Dodge Challenger, then Petitioner is entitled to an Order directing the public sale of the 2013 Dodge Challenger. If, on the other hand, Mr. Cox misspoke, as he has in the past, and he wishes to exercise his exemption on the 2013 Dodge Challenger, then the Respondents should be directed to pay the Petitioner the entire \$6,153.29.

III. Petitioner is entitled to a charging order on Mr. Cox's interest in Cox Holdings, LLC.

Documents produced by the Respondents in these supplemental proceedings show Mr. Cox is a member of an entity organized as Cox Holdings, LLC and has received income from that membership interest in 2011 and 2012. *See Exhibit D*. Under S.C. Code Ann. § 33-44-504, this Court has the authority to issue a charging order on Mr. Cox's interest in Cox Holdings,

LLC. The issuance of this charging order may be the only way the Petitioner is eventually made whole in this case, since the Respondents have repeatedly claimed they have nothing else with which to satisfy the judgment. Accordingly, pursuant to S.C. Code Ann. § 33-44-504, Petitioner moves for a charging order against Petitioner's interest in Cox Holdings, LLC.

IV. Petitioner moves this Court to award sanctions in the form of attorney's fees and costs for the November 7, 2013 hearing necessitated by the Respondents' refusal to cooperate in discovery and Mr. Cox's misleading testimony about the 2010 Honda.

In its final point, Petitioner moves this Court to consider awarding it costs and attorney's fees incurred in connection with the November 7, 2013 hearing necessitated by the Respondents refusal to provide the documents as previously ordered and by Mr. Cox's misleading testimony that he trade-in the 2010 Honda when he purchased the 2013 Dodge Challenger. When confronted with the testimony he previously gave in order to hide the \$6,153.29 profit he made by selling the 2010 Honda, Mr. Cox feigned memory loss, and not well:

Q And you recall your testimony, in this room in August, when you said you traded in your Honda Accord on that Challenger; right?

THE COURT: More importantly -- let me interrupt. More importantly, Mr. Cox, I remember it. Continue.

BY MR. BRUNER:

Q Do you recall that testimony you gave in August?

A That I traded a Honda in on a Dodge Challenger?

Q Yes, sir.

A I do not remember saying that.

Q Okay. I am going to hand you a transcript. If you could --

MR. BRUNER: -- and I apologize to The Court. I only have two copies --

THE COURT: That's okay.

BY MR. BRUNER:

Q If you would turn to page 19 for me.

THE COURT: That's what I remembered.

BY MR. BRUNER:

Q It's flagged there, Mr. Cox, with the yellow tab.

A Okay. All right.

Q You see there in the middle of the page, there's a highlighted section. Start with line 12 --

A Twelve, okay.

Q -- and just read that.

A What did you have before the Dodge Challenger? A 2011 Honda Accord.

What happened to the 2011 Honda Accord? I traded it on the Dodge Challenger.

Q So your testimony in August was that you traded a Honda Accord in on the Challenger; right?

A Well, first off, I've never owned a 2011 Honda Accord.

Q I understand that, Mr. Cox. And do you recall later clarifying that it was not a 2011 Honda Accord that you traded in, but rather a 2010.

You just got the year wrong. That's correct; right?

A I don't know whether that is correct.

THE COURT: Find it.

THE WITNESS: You want the explanation?

THE COURT: Well, first we're going to get an answer on that question, Mr. Cox.

THE WITNESS: Okay.

MR. ROBINSON: Page 22.

THE WITNESS: Is it also flagged?

THE COURT: He'll tell you what line.

THE WITNESS: Okay.

BY MR. BRUNER:

Q And you can start with page 21, the bottom of the page, line 23.

And for brevity, I am going to go ahead and just read it. And you tell me if that is consistent with what you recall testifying to.

Question: If you traded in a one-year old Honda Accord, you mean to tell me you got a thousand dollars on the trade in?

Answer: Wait, a minute. A one year old car? Eleven, twelve, thirteen, fourteen.

Question: Well, it's 2013 now. And you had the Honda -- when did you buy the Honda Accord? It's two years old at the oldest; right?

Answer: I've had the Honda Accord for -- oh, it was a 2010. I'm sorry.

Question: You're looking at a note that your wife just wrote you?

Answer: I did.

Question: That said 2010?

Answer: I thought it was a 2011.

A And?

Q So you agree me that you testified in August that you traded in the 2010 Honda Accord on the Dodge Challenger; right?

A No. If I said I traded a car in on the Dodge Challenger, I didn't say that. I said I -- I had a 2007 that I traded on a 2010 Honda.

Q Okay. Where is the 2010 Honda today?

A It's been sold.

Q When did you sell it?

MS. COX: May.

THE WITNESS: Was it May? I'm not good with dates. May.

BY MR. BRUNER:

Q Who did you sell the 2010 Honda Accord to?

A I could not tell you.

Q When I asked you what happened to the 2010 Honda, why did you not tell me that you sold it?

A I do not recall you asking me if I sold the 2010 Honda.

THE COURT: That's because he asked you what happened to it? And you said you traded it in.

BY MR. BRUNER:

Q Go back to page 19 for me, please. My question to you:

What did you have before the Dodge Challenger?

Answer: The 2011 Honda Accord.

We've established that you were mistaken. That's the same car as the 2010 Honda Accord I'm asking you about.

My next question:

What happened to the Honda Accord?

A I thought you were talking about the 2007 or the 2010.

Q Okay. So at the time you --

A I sold the 2010 Honda Accord in May.

Q Okay. Who did you sell it to?

A I don't -- I couldn't tell you. It was in Carolina Trader. Sold it. And I don't -- I have not a clue.

Q How much did you sell it for?

A I really can't give you the -- the exact figure. But it was --

Q Mr. Cox, I am going to find out.
 A I -- I -- well, you know, and I'll give you as close as I can.
 It was 15,500 -- I don't know. It was somewhere between 15 and \$16,000, as well as I recall.
 Q Was it in cash? Was it a check?
 A It was a check.
 Q It was a check to you; correct?
 A Well, the balance had to be paid off for the financing of it. And I got some \$5,000.
 Q Who was the check made out to?
 A I do not recall.
 Q Okay. But you took that check and you put in an account and paid off the balance? Is that what you're telling me?
 A I put that check and put it in -- no, no, no. The -- the automobile, where it was financed, was paid by the bank.
 Q Which bank?
 A I can't -- I couldn't tell you that.
 Q You don't know --
 A No.
 Q -- the bank that had the lien on that car?
 A Nope.
 Q What happened to the 5,000-or-so money that came directly to you?
 A It was -- I really -- it's -- I've spent it, so --

(Transcript of November 7, 2013 hearing, 29:9-34:24.)

Above all else, Mr. Cox's testimony illustrates the respect he has given these proceedings and this process since the jury returned a verdict against him. He has continually tried to hide money despite that verdict and despite being caught. After he was caught the first time, he refused to withdraw the money from his account despite the Court ordering him to do so, and the Petitioner was forced to obtain yet another order directing the plan administrator to pay the money. Mr. Cox was caught a second time when the Petitioner discovered that he sold the 2010 Honda Accord and spent the non-exempt proceeds. Mr. Cox was caught a third time when Petitioner discovered he continued making contributions to his retirement account in preference

of the Petitioner's judgment. Most recently, he was caught a fourth time when the Court saw him lie under oath about his prior testimony in order to hide the fact that he made \$6,153.29 selling the 2010 Honda. Mr. Cox's testimony when confronted with his lies underscores his intention to do anything in his power to avoid paying the Petitioner's judgment. The result has only increased costs and fees to the Petitioner to obtain the information to which it is entitled.

Therefore, pursuant to Rule 37, SCRPC, and this Court's inherent power, Petitioner moves for an award of attorney's fees and costs in the amount of \$1,450.00, which were incurred solely in connection with the November 7, 2013 hearing. *See Exhibit E.*

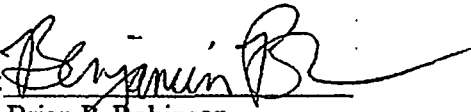
CONCLUSION

Accordingly, the Petitioner respectfully moves this Court for an Order granting the following relief:

1. That the Court determine the current amount owed on the Petitioner's judgment as of the date of this Motion, including interest and attorney's fees, is \$135,176.48;
2. That the Defendants shall cause Petitioner to be paid \$56,797.27 within thirty (30) days and further to produce all statements from 2009 and from July 2013 to present so the Court may inquire into other transfers made to the retirement account;
3. That, if the Defendant fails to pay these moneys, or have them paid, within thirty (30) days of the date of the Court's Order, this Court issue an Order directing the plan administrator for the Retirement Account to issue and promptly deliver a check to Petitioner in the amount of \$56,797.27;
4. That the Respondents be enjoined from diverting any future wages or compensation to the retirement account or to any similar account;
5. That if the Defendants withdraw any funds from the corpus of the Retirement Account in the future, those funds shall be transferred into an escrow or trust account, notice shall be given to the Respondent, and the funds shall be disbursed only as directed by this Court after an opportunity for all parties to be heard;
6. That the Respondents shall pay the Petitioner \$6,153.29 within ten (10) days or be held in contempt of court until they do or, in the alternative, that the Respondents shall pay the Petitioner \$1,153.29 within ten (10) days and the 2013 Dodge Challenger be sold at a public sale;

7. That this Court issue a charging order in favor of Petitioner as to any distributional interest either Respondent now has or may have in the future in Cox Holdings, LLC or any of its subsidiaries or affiliates, and that any money paid out on Mr. Cox's interest be deposited directly into escrow account, notice given to Petitioner pursuant to Rule 4, SCRCP, and the money disbursed only pursuant to this Court's order;
8. That the Petitioner may apply at a later time for an Order of Execution as to other property owner by the Respondents that may be applied to satisfy its judgment, including but not limited to their home and contents and furnishings within the home;
9. That Petitioner be awarded attorney's fees and costs in the amount of \$1,450.00 as sanctions in reference to the Motion to Compel and Mr. Cox's conduct;
10. That this matter be left open for Petitioner to determine what other funds have been fraudulently transferred into the retirement account from 2009 to present; and
11. Such other relief as the Court deems proper.

BRUNER, POWELL, WALL & MULLINS, LLC

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May 18, 2014

State of South Carolina

In the Court Of Common Pleas

County of Kershaw

PALMETTO RESIDENTIAL BUILDERS, LLC,)

Plaintiff,)

vs.)

NO. 06-CP-28-433

MICHAEL COX AND ELIZABETH COX,)

Defendants.)

MASTER-IN-EQUITY HEARING

BEFORE THE HONORABLE JEFFREY M. TZERMAN

DATE: August 27, 2013

TIME: 10:00 a.m. - 11:15 a.m.

LOCATION: Law Offices of Jeffrey Tzerman
304 Hampton Park
Camden, South Carolina

REPORTED BY: KATHRYN J. LINDLER

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EXHIBIT A

1 A. No.

2 Q. Do you own a vehicle?

3 A. Yes.

4 Q. Is it a Dodge?

5 A. It is a Dodge.

6 Q. Tell me about the Dodge.

7 A. What do you want to know about it? It's -- I

8 just traded cars and I bought a 2012 Dodge Challenger.

9 MRS. COX: That's on the insurance.

10 Q. When did you buy the Dodge Challenger?

11 A. I've only had it a few months.

12 Q. What did you have before the Dodge Challenger?

13 A. 2011 Honda Accord.

14 Q. What happened to the 2011 Honda Accord?

15 A. I traded it on the Dodge Challenger.

16 Q. What did you drive before the 2011 Honda Accord?

17 A. A 2007 Honda Accord I think it was.

18 Q. What happened to the 2007 Honda Accord?

19 A. I traded it on the 2011 Honda Accord.

20 Q. How long did you own the 2011 Accord?

21 A. From 2011 to six months ago, five-six months ago.

22 Whenever I traded it off.

23 Q. Did you buy it new?

24 A. I did.

25 Q. Did you buy the 2007 Accord new?

1 A. I did.

2 Q. You drove the 2007 Accord for four years?

3 A. I did.

4 Q. When you traded the 2007 Accord in, who did you
5 trade it in to?

6 A. To...

7 THE COURT: The dealership?

8 A. I can't -- a dealership in Columbia.

9 Q. You traded it in to a dealership. You didn't
10 sell it and take the money and buy the 2011 Accord? Is
11 that what you're telling me?

12 A. Yes.

13 Q. You traded that in and you bought the 2011 Accord
14 new?

15 A. Right.

16 Q. Do you remember where you bought the 2011 Accord
17 from?

18 A. Sumter Honda, whatever the name of it is.
19 Goodwin.

20 Q. How much did you pay for the 2011 Accord?

21 A. Too much, \$31,000. Wait a minute now. Hold up.
22 That was -- it listed for somewhere between 31 and \$32,000.
23 What I ended up paying for it, I don't remember. It was a
24 trade and I just don't remember. I think there was
25 something like \$28,000 financed on it.

1 Q. Over 60 months?

2 A. You figure, payments are \$500 a month, 500 and
3 some dollars a month for 60 months. So there's \$30,000.

4 Q. Where did you get the Dodge Challenger?

5 A. I can't recollect the name, but the Dodge
6 Challenger dealership was over in Lexington somewhere. I
7 can't, really I can't.

8 THE COURT: Where in Lexington? On Highway 378?
9 Or Highway 1?

10 A. 378. I think that was right.

11 THE COURT: There are two big drags in Lexington
12 County. Highway 1 and Highway 378.

13 A. I'll call the name of it in a minute, okay. Just
14 deal with me a minute and I'll call the name of it.

15 Q. How much did you pay for the Challenger?

16 A. 30 -- well, the Challenger listed for \$37,000. I
17 paid --

18 Q. Did you buy it new?

19 A. Yeah. I think it was \$31,000, 31-\$32,000
20 financed on it.

21 Q. If you traded in a one-year old Honda Accord, you
22 mean to tell me you got a thousand dollars on the trade-in?

23 A. Wait a minute. A one year old car? 11, 12, 13,
24 14.

25 Q. Well, it's 2013 now. You had the Honda -- when

1 did you buy the Honda Accord? It's two years old at the
2 oldest. Right?

3 A. I've had the Honda Accord for -- oh, it was 2010.
4 I'm sorry.

5 Q. You're looking at a note that your wife just
6 wrote you?

7 A. I did.

8 Q. That said 2010?

9 A. I thought it was a 2011.

10 Q. You've had it for three years?

11 A. Three years.

12 Q. How much did you get on the trade-in?

13 A. \$17,000 I think, but there was probably 14 owed
14 on it, so.

15 Q. There's a lien on the Dodge Challenger?

16 A. There is a lien on the Dodge Challenger.

17 Q. How much is that lien?

18 A. 32,000.

19 THE COURT: Give your best estimate, Mr. Cox.

20 A. That's as close as I can get, 32,000.

21 Q. Do you know who has the lien on that vehicle?

22 A. Yes.

23 Q. Who has the lien on that vehicle?

24 A. You'll have to call the name of it, Elizabeth.

25 My bank. I can't -- Mid-Carolina.

8/27/2013

CERTIFICATE OF REPORTER

I, Kathryn J. Lindler, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing testimony was taken before me on the date and at the time and location stated on Page 1 of this transcript; that the witness was duly sworn to testify to the truth, the whole truth and nothing but the truth; that the testimony of the witness and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed; that the foregoing deposition as typed is a true, accurate and complete record of the testimony of the witness and of all objections made at the time of the examination to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 30th day of August, 2013, at Columbia, Richland County, South Carolina.


Kathryn J. Lindler
Notary Public for South Carolina
My commission expires June 4, 2018



1 STATE OF SOUTH CAROLINA BEFORE THE MASTER-IN-EQUITY
2 COUNTY OF LEXINGTON Case No: 2006-CP-28-433

3

4 PALMETTO RESIDENTIAL BUILDERS,
5 LLC,

6

Petitioner,

7

vs.

8

MICHAEL COX AND ELIZABETH COX,

9

Respondents.

10

11

H E A R I N G

12

BEFORE THE HONORABLE JEFFREY M. TZERMAN,

13

MASTER-IN-EQUITY

14

15

DATE: Thursday, November 7, 2013

16

TIME: 9:59 a.m.

17

LOCATION: Master-in-Equity's Office
304 Hampton Park
Camden, South Carolina

18

19

REPORTED BY: TRACY E. BROWN
Certified Shorthand Reporter (CA)

20

21

22

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EXHIBIT B

1 that in just a minute.

2 MR. BRUNER: Or who paid off --

3 THE COURT: Well, we'll take care of that in just
4 a minute.

5 I am going to hold this matter, not in permanent
6 abeyance to the final hearing, but just in abeyance right
7 now.

8 Because, Mr. Cox, raise your right hand.

9 THE COURT: All right. You can put your hand
10 down.

11 I'll give this back to you for right now,
12 Mr. Bruner.

13 MR. BRUNER: All right.

14 THE COURT: Your witness.

15 MICHAEL COX, having first been duly sworn, was
16 examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. BRUNER:

19 Q Mr. Cox, I am going to hand you a document. Have
20 you ever seen that before?

21 THE COURT: Does it have his signature on it?

22 BY MR. BRUNER:

23 Q Is that your signature at the bottom of the page?

24 THE COURT: Well, we can dispense with this
25 formality questioning. We're not in front of a jury.

1 THE WITNESS: Yes.

2 BY MR. BRUNER:

3 Q And this is the contract of sale when you
4 purchased the Dodge Challenger that you're driving;
5 correct?

6 A That's correct.

7 Q And it says no trade in allowance on it; right?

8 A Yup.

9 Q And you recall your testimony, in this room in
10 August, when you said you traded in your Honda Accord on
11 that Challenger; right?

12 THE COURT: More importantly -- let me interrupt.

13 More importantly, Mr. Cox, I remember it.

14 Continue.

15 BY MR. BRUNER:

16 Q Do you recall that testimony you gave in August?

17 A That I traded a Honda in on a Dodge Challenger?

18 Q Yes, sir.

19 A I do not remember saying that.

20 Q Okay. I am going to hand you a transcript. If
21 you could --

22 MR. BRUNER: -- and I apologize to The Court. I
23 only have two copies --

24 THE COURT: That's okay.

25 BY MR. BRUNER:

1 Q If you would turn to page 19 for me.

2 THE COURT: That's what I remembered.

3 BY MR. BRUNER:

4 Q It's flagged there, Mr. Cox, with the yellow tab.

5 A Okay. All right.

6 Q You see there in the middle of the page, there's
7 a highlighted section. Start with line 12 --

8 A Twelve, okay.

9 Q -- and just read that.

10 A What did you have before the Dodge Challenger? A
11 2011 Honda Accord.

12 What happened to the 2011 Honda Accord? I traded
13 it on the Dodge Challenger.

14 Q So your testimony in August was that you traded a
15 Honda Accord in on the Challenger; right?

16 A Well, first off, I've never owned a 2011 Honda
17 Accord.

18 Q I understand that, Mr. Cox. And do you recall
19 later clarifying that it was not a 2011 Honda Accord that
20 you traded in, but rather a 2010.

21 You just got the year wrong. That's correct;
22 right?

23 A I don't know whether that is correct.

24 THE COURT: Find it.

25 THE WITNESS: You want the explanation?

1 THE COURT: Well, first we're going to get an
2 answer on that question, Mr. Cox.

3 THE WITNESS: Okay.

4 MR. ROBINSON: Page 22.

5 THE WITNESS: Is it also flagged?

6 THE COURT: He'll tell you what line.

7 THE WITNESS: Okay.

8 BY MR. BRUNER:

9 Q And you can start with page 21, the bottom of the
10 page, line 23.

11 And for brevity, I am going to go ahead and just
12 read it. And you tell me if that is consistent with what
13 you recall testifying to.

14 Question: If you traded in a one-year old Honda
15 Accord, you mean to tell me you got a thousand dollars on
16 the trade in?

17 Answer: Wait, a minute. A one year old car?
18 Eleven, twelve, thirteen, fourteen.

19 Question: Well, it's 2013 now. And you had the
20 Honda -- when did you buy the Honda Accord? It's two
21 years old at the oldest; right?

22 Answer: I've had the Honda Accord for -- oh, it
23 was a 2010. I'm sorry.

24 Question: You're looking at a note that your
25 wife just wrote you?

1 Answer: I did.

2 Question: That said 2010?

3 Answer: I thought it was a 2011.

4 A And?

5 Q So you agree me that you testified in August that
6 you traded in the 2010 Honda Accord on the Dodge
7 Challenger; right?

8 A No. If I said I traded a car in on the Dodge
9 Challenger, I didn't say that. I said I -- I had a 2007
10 that I traded on a 2010 Honda.

11 Q Okay. Where is the 2010 Honda today?

12 A It's been sold.

13 Q When did you sell it?

14 MS. COX: May.

15 THE WITNESS: Was it May? I'm not good with
16 dates. May.

17 BY MR. BRUNER:

18 Q Who did you sell the 2010 Honda Accord to?

19 A I could not tell you.

20 Q When I asked you what happened to the 2010 Honda,
21 why did you not tell me that you sold it?

22 A I do not recall you asking me if I sold the 2010
23 Honda.

24 THE COURT: That's because he asked you what
25 happened to it? And you said you traded it in.

1 BY MR. BRUNER:

2 Q Go back to page 19 for me, please. My question
3 to you:

4 What did you have before the Dodge Challenger?

5 Answer: The 2011 Honda Accord.

6 We've established that you were mistaken. That's
7 the same car as the 2010 Honda Accord I'm asking you
8 about.

9 My next question:

10 What happened to the Honda Accord?

11 A I thought you were talking about the 2007 or the
12 2010.

13 Q Okay. So at the time you --

14 A I sold the 2010 Honda Accord in May.

15 Q Okay. Who did you sell it to?

16 A I don't -- I couldn't tell you. It was in
17 Carolina Trader. Sold it. And I don't -- I have not a
18 clue.

19 Q How much did you sell it for?

20 A I really can't give you the -- the exact figure.
21 But it was --

22 Q Mr. Cox, I am going to find out.

23 A I -- I -- well, you know, and I'll give you as
24 close as I can.

25 It was 15,500 -- I don't know. It was somewhere

1 between 15 and \$16,000, as well as I recall.

2 Q Was it in cash? Was it a check?

3 A It was a check.

4 Q It was a check to you; correct?

5 A Well, the balance had to be paid off for the
6 financing of it. And I got some \$5,000.

7 Q Who was the check made out to?

8 A I do not recall.

9 Q Okay. But you took that check and you put in an
10 account and paid off the balance? Is that what you're
11 telling me?

12 A I put that check and put it in -- no, no, no.
13 The -- the automobile, where it was financed, was paid by
14 the bank.

15 Q Which bank?

16 A I can't -- I couldn't tell you that.

17 Q You don't know --

18 A No.

19 Q -- the bank that had the lien on that car?

20 A Nope.

21 Q What happened to the 5,000-or-so money that came
22 directly to you?

23 A It was -- I really -- it's -- I've spent it,
24 so --

25 Q Okay.

REPORTER'S CERTIFICATE

I, TRACY E. BROWN, CSR No. 13433, Certified Shorthand Reporter, certify;

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witnesses were put under oath by The Court;

That the testimony of the witnesses, the questions propounded, and all objections and statements made at the time of the examination were recorded stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct transcript of my shorthand notes so taken.

I further certify that I am not a relative or employee of any attorney of the parties, nor financially interested in the action.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Dated this 18th day of December, 2013.

Tracy E. Brown



TRACY E. BROWN, CSR No. 13433

MICHAEL V COX
127 LAKE MALLARD LN
CAMDEN, SC 29020-7977

Manage Your Account

Account-at-a-Glance

Beginning Balance

Money In	4,803.91
Money Out	0.00
Investment Gain/(Loss)	\$02.21

Ending Balance

Tested Balance

Account Activity by Source

	Before-Tax	Company Match	Co Match Current Year	Co Contribution	Total
Beginning Balance	11,935.00	3,473.51	159.30		
Money In	3,695.33	0.00	1,108.68	0.00	4,803.91
Money Out	0.00	0.00	0.00	0.00	0.00
Transfers In/(Out)	0.00	2,819.80	(2,819.80)	0.00	0.00
Investment Gain/(Loss)	579.38	509.42	(788.63)	0.04	302.21
Ending Balance	15,264.22	975.66	159.34		
Tested Percent	100%	100%	100%	100%	N/A
Tested Balance	15,264.22	975.66	159.34		

EXHIBIT C

International Paper Salaried
Savings Plan
MICHAEL V COX

Statement Period
April 01, 2010
June 30, 2010

Page 1 of 8

Manage Your Account

MICHAEL V COX
127 LAKE MALLARD LN
CAMDEN, SC 29020-7977

Account-at-a-Glance

Beginning Balance

Money In 4,760.58

Money Out 0.00

Investment Gain/(Loss)

Ending Balance

Vested Balance

Account Activity by Source

	Before-Tax	Company Match	Co Match Current Year	Co Contribution	Total
Beginning Balance		15,254.22	975.66	159.34	
Money In	3,677.39	0.00	1,103.19	0.00	4,780.58
Money Out	0.00	0.00	0.00	0.00	0.00
Transfers In/(Out)	0.00	0.00	0.00	0.00	0.00
Investment Gain/(Loss)		(926.71)	(181.89)	(8.89)	
Ending Balance		14,337.51	1,896.96	150.45	
Vested Percent	100%	100%	100%	100%	N/A
Vested Balance		14,337.51	1,896.96	150.45	

Manage Your Account

Web Site

Phone

☐ Plan Documents
☐ Investment Options
☐ Account Information

☐ Account Information
☐ Account Information
☐ Account Information

MICHAEL V COX
 127 LAKE MALLARD LN
 CAMDEN, SC 29020-7977

Account-at-a-Glance

Beginning Balance

Money In 5,492.26

Money Out

Investment Gain/(Loss)

Ending Balance

Vested Balance

Account Activity by Source

	Before-Tax	Company Match	Co Match Current Year	Co Contribution	Total
Beginning Balance		15,457.79	2,782.32	166.73	
Money In	4,224.84	0.00	1,267.42	0.00	5,492.26
Money Out				0.00	
Transfers In/(Out)	0.00	0.00	0.00	0.00	0.00
Investment Gain/(Loss)		978.83	317.43	14.94	36,896.87
Ending Balance		6,723.51	1,580.28	181.67	
Vested Percent	100%	100%	100%	100%	N/A
Vested Balance		6,723.51	1,580.28	181.67	

MICHAEL V COX
127 LAKE MALLARD LN
CAMDEN, SC 29020-7977

Manage Your Account

~~Web Site~~
~~Web Site: www.burialment.com~~

Phone
 202-455-2545
 202-455-2545

SECRET
 [REDACTED]
 [REDACTED]
 [REDACTED]

Account-at-a-Glance

Beginning Balance	
Money In	5,128.83
Money Out	0.00
Investment Gain/(Loss)	55.79
Ending Balance	
Vested Balance	

Account Activity by Source

	Before-Tax	Company Match	Co Match Current Year	Co Contribution	Total
Beginning Balance		6,723.51	1,580.28	181.67	
Money In	3,845.27	0.00	1,183.56	0.00	5,128.83
Money Out	0.00	0.00	0.00	0.00	0.00
Transfers In/(Out)	0.00	1,637.58	(1,637.58)	0.00	0.00
Investment Gain/(Loss)	36.89	119.68	(100.16)	(0.62)	55.79
Ending Balance		8,480.77	1,026.10	181.05	
Vested Percent	100%	100%	100%	100%	N/A
Vested Balance		8,480.77	1,026.10	181.05	



Manage Your Account

Web Site
<http://www.internationalpaper.com>

1-800-888-8888
 1-800-888-8888

Morgan Investment Plan

International Paper Salaried Savings Plan

MICHAEL V COX
 127 LAKE MALLARD LN
 CAMDEN, SC 29020-7977

Account-at-a-Glance

Beginning Balance	
Money In	6,066.38
Money Out	0.00
Investment Gain/(Loss)	(8,436.60)
Ending Balance	
Vested Balance	

Account Activity by Source

	Before-Tax	Company Match	Co Match Current Year	Co Contribution	Total
Beginning Balance		8,480.77	1,026.10	181.05	
Money In	4,666.47	0.00	1,399.91	0.00	6,066.38
Money Out	0.00	0.00	0.00	0.00	0.00
Transfers In/(Out)	0.00	0.00	0.00	0.00	0.00
Investment Gain/(Loss)		(245.02)	29.35	(2.88)	
Ending Balance		8,235.75	2,455.36	178.17	
Vested Percent	100%	100%	100%	100%	N/A
Vested Balance		8,235.75	2,455.36	178.17	



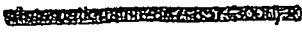
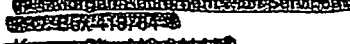
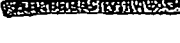
International Paper Salaried
Savings Plan
MICHAEL V COX

Statement Period
July 01, 2011
September 30, 2011

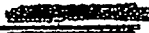
Page 1 of 8

MICHAEL V COX
127 LAKE MALLARD LN
CAMDEN, SC 29020-7977

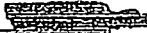
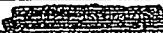
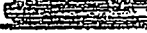
Manage Your Account

Account-at-a-Glance

Beginning Balance	
Money In	5,814.95
Money Out	0.00
Investment Gain/(Loss)	
Ending Balance	
Vested Balance	

Account Activity by Source

	Before-Tax	Company Match	Co Match Current Year	Co Contribution	Total
Beginning Balance		8,235.75	2,455.36	178.17	
Money In	4,467.77	0.00	1,340.30	6.88	5,814.95
Money Out	0.00	0.00	0.00	0.00	0.00
Transfers In/(Out)	0.00	0.00	0.00	0.00	0.00
Investment Gain/(Loss)		(2,003.68)	(448.96)	(32.72)	
Ending Balance		6,232.07	3,346.70	152.33	
Vested Percent	100%	100%	100%	100%	N/A
Vested Balance		6,232.07	3,346.70	152.33	

International Paper Salaried
Savings Plan
MICHAEL V COX

Statement Period
October 01, 2011
December 31, 2011

Page 1 of 8

Manage Your Account

MICHAEL V COX
127 LAKE MALLARD LN
CAMDEN, SC 29020-7977

Account-at-a-Glance

Beginning Balance

Money In	4,637.59
Money Out	0.00
Investment Gain/(Loss)	

Ending Balance

Vested Balance

Account Activity by Source

	Before-Tax	Company Match	Co Match Current Year	Co Contribution	Total
Beginning Balance		6,232.07	3,346.70	152.33	
Money In	3,567.40	0.00	1,070.19	0.00	4,637.59
Money Out	0.00	0.00	0.00	0.00	0.00
Transfers In/(Out)	0.00	0.00	0.00	0.00	0.00
Investment Gain/(Loss)		1,082.35	409.94	14.84	
Ending Balance		7,314.42	4,826.83	167.17	
Vested Percent	100%	100%	100%	100%	N/A
Vested Balance		7,314.42	4,826.83	167.17	

**International Paper Salaried
Savings Plan
MICHAEL V COX**

Statement Period
January 01, 2012
March 31, 2012

Page 1 of 8

Manage Your Account



MICHAEL V COX
127 LAKE MALLARD LN
CAMDEN, SC 29020-7977

Account-at-a-Glance

Beginning Balance

Money In 5,931.43

Money Out

Investment Gain/(Loss)

Ending Balance

Vested Balance

Account Activity by Source

	Before-Tax	Company Match	Co Match Current Year	Co Contribution	Total
Beginning Balance		7,314.42	4,826.83	167.17	
Money In	4,562.66	0.00	1,368.77	0.00	5,931.43
Money Out	0.00		0.00	(62.97)	
Transfers In/(Out)	0.00	5,040.33	(5,040.33)	0.00	0.00
Investment Gain/(Loss)		671.33	144.14	7.33	35,768.21
Ending Balance		8,089.05	1,299.41	111.53	
Vested Percent	100%	100%	100%	100%	N/A
Vested Balance		8,089.05	1,299.41	111.53	

International Paper Salaried
Savings Plan
MICHAEL V COX

Statement Period
April 01, 2012
June 30, 2012

Page 1 of 6

Manage Your Account

MICHAEL V COX
127 LAKE MALLARD LN
CAMDEN, SC 29020-7977

Account-at-a-Glance

Beginning Balance

Money In 23,881.43
Money Out
Investment Gain/(Loss)

Ending Balance

Vested Balance

Account Activity by Source

	Before-Tax	Company Match	Co Mch Current Year	Co Contribution	Total
Beginning Balance		8,089.05	1,299.41	111.53	
Money In	22,692.60	111.05	1,168.29	9.49	23,881.43
Money Out	(5,978.41)	(4,508.00)	(1,458.21)	(57.38)	
Transfers In/(Out)	0.00	0.00	0.00	0.00	0.00
Investment Gain/(Loss)		(630.32)	(25.53)	(8.42)	(32,605.21)
Ending Balance		3,061.78	985.96	55.22	
Vested Percent	100%	100%	100%	100%	N/A
Vested Balance		3,061.78	985.96	55.22	

J.P.Morgan

October 24, 2013

Michael V. Cox
127 Lake Mallard Lane
Camden, SC 29020

Re: International Paper Company Salaried Savings Plan, Michael V. Cox

Dear Mr. Cox:

In response to your recent telephone inquiry, we are providing the information you requested.

On August 18, 2011, a fund-to-fund transfer occurred in your International Paper Company Salaried Savings Plan (Plan) account and the amount of the affected investment was transferred to an incorrect investment.

Subsequently, the transaction was corrected and an adjustment in the amount of \$18,818.72, posted to your Plan account on June 25, 2012. The adjustment was reflected as "Money In" on your 2012 second quarter statement.

We hope you will find this helpful. If you have additional questions, please call J.P. Morgan Retirement Plan Services at [REDACTED] Retirement Service Center representatives are available weekdays from 7 a.m. to 8 p.m. Central time and will be glad to assist you.

Sincerely,

J.P. Morgan Retirement Plan Services

g78

**International Paper Salaried
Savings Plan
MICHAEL V COX**

Statement Period
July 01, 2012
September 30, 2012

Page 1 of 6

MICHAEL V COX
127 LAKE MALLARD LN
CAMDEN, SC 29020-7977

Manage Your Account

Web Site

Web Site: www.ip-savings.com

Investment

Investment: [Investment Information](#)

[Investment Information](#)

[Investment Information](#)

Withdrawal

Withdrawal: [Withdrawal Information](#)

[Withdrawal Information](#)

[Withdrawal Information](#)

Account-at-a-Glance

Beginning Balance

Money In 5,084.69

Money Out

Investment Gain/(Loss)

Ending Balance

Vested Balance

Account Activity by Source

	Before-Tax	Company Match	Co Match Current Year	Co Contribution	Total
Beginning Balance		3,061.78	985.96	55.22	
Money In	3,911.32	0.00	1,173.37	0.00	5,084.69
Money Out		(118.36)	(1,169.23)	(10.12)	
Transfers In/(Out)	0.00	0.00	0.00	0.00	0.00
Investment Gain/(Loss)	12,659.52	(211.92)	(6.41)	(2.97)	12,439.22
Ending Balance		2,731.50	983.69	42.13	
Vested Percent	100%	100%	100%	100%	N/A
Vested Balance		2,731.50	983.69	42.13	

Manage Your Account

MICHAEL V COX
127 LAKE MALLARD LN
CAMDEN, SC 29020-7977

Account-at-a-Glance

Beginning Balance	
Money In	5,652.29
Money Out	0.00
Investment Gain/(Loss)	
Ending Balance	
Vested Balance	

Account Activity by Source

	Before-Tax	Company Match	Co Match Current Year	Co Contribution	Total
Beginning Balance		2,731.50	983.69	42.13	
Money In	4,347.94	0.00	1,304.35	0.00	5,652.29
Money Out	0.00	0.00	0.00	0.00	0.00
Transfers In/(Out)	0.00	0.00	0.00	0.00	0.00
Investment Gain/(Loss)		367.17	21.92	5.69	19,151.42
Ending Balance		3,098.67	2,309.96	47.82	
Vested Percent	100%	100%	100%	100%	N/A
Vested Balance		3,098.67	2,309.96	47.82	

**International Paper Salaried
Savings Plan
MICHAEL V COX**

Statement Period
January 01, 2013
March 31, 2013

Page 1 of 6

Manage Your Account

 Web Site

 Phone

 Mail

J.P. Morgan Retirement Plan Services
P.O. Box 419784
Kansas City, MO 64141

MICHAEL V COX
127 LAKE MALLARD LN
CAMDEN, SC 29020-7977

Account-at-a-Glance

Beginning Balance

Money In 6,262.73

Money Out

Investment Gain/(Loss)

Ending Balance

Vested Balance

Account Activity by Source

	Before-Tax	Company Match	Co Match Current Year	Co Contribution	Total
Beginning Balance		3,098.67	2,309.86	47.82	
Money In	4,817.52	0.00	1,445.21	0.00	6,262.73
Money Out		(159.23)	(3,446.14)	(0.01)	
Transfers In/(Out)	0.00	153.25	(153.25)	0.00	0.00
Investment Gain/(Loss)	3,140.84	29.66	76.32	0.33	3,246.55
Ending Balance		3,122.25	232.10	48.14	
Vested Percent	100%	100%	100%	100%	N/A
Vested Balance		3,122.25	232.10	48.14	

International Paper Salaried
Savings Plan
MICHAEL V COX

Statement Period
April 01, 2013
June 30, 2013

Page 1 of 8

Manage Your Account

Web Site

[REDACTED]



Phone

[REDACTED]
[REDACTED]
[REDACTED]



[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

MICHAEL V COX
127 LAKE MALLARD LN
CAMDEN, SC 29020-7977

Account-at-a-Glance

Beginning Balance

Money In 4,871.61

Money Out [REDACTED]

Investment Gain/(Loss) [REDACTED]

Ending Balance

Vested Balance [REDACTED]

Account Activity by Source

	Before-Tax	Company Match	Co Match Current Year	Co Contribution	Total
Beginning Balance	[REDACTED]	3,122.26	232.10	48.14	[REDACTED]
Money In	3,747.41	0.00	1,124.20	0.00	4,871.61
Money Out	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Transfers In/(Out)	0.00	0.00	0.00	0.00	0.00
Investment Gain/(Loss)	(2,808.92)	(22.67)	39.42	(0.32)	(2,792.49)
Ending Balance	[REDACTED]	3,099.58	119.56	47.82	[REDACTED]
Vested Percent	100%	100%	100%	100%	N/A
Vested Balance	[REDACTED]	3,099.58	119.56	47.82	[REDACTED]

EXHIBIT C

Name(s) shown on return. Do not enter name and social security number if shown on Page 1.

Your social security number

Michael V & Elizabeth Cox

Caution: The IRS compares amounts reported on your tax return with amounts shown on Schedule(s) K-1.

Part II Income or Loss From Partnerships and S Corporations

Note. If you report a loss from an at-risk activity for which any amount is not at risk, you must check the box in column (e) on line 28 and attach Form 6198. See instructions.

27 Are you reporting any loss not allowed in a prior year due to the at-risk or basis limitations, a prior year unallowed loss from a passive activity (if that loss was not reported on Form 8582), or unreimbursed partnership expenses? ☒ Yes ☐ No
If you answered 'Yes,' see instructions before completing this section.

28	(a) Name	(b) Enter P for partnership; S for S corporation	(c) Check if foreign partnership	(d) Employer identification number	(e) Check if any amount is not at risk
	A WNC Tax Credits (EDPA)	P			
	B PYA	P			
	C Cox Holdings, LLC	P			
	D				

Passive Income and Loss			Nonpassive Income and Loss		
	(f) Passive loss allowed (attach Form 8582 if required)	(g) Passive income from Schedule K-1	(h) Nonpassive loss from Schedule K-1	(i) Section 179 expense deduction from Form 4552	(j) Nonpassive income from Schedule K-1
A			1,224.		
B	27,416.				
C		961.			
D					
29 a Totals		961.			
b Totals	27,416.		1,224.		
30 Add columns (g) and (i) of line 29a				30	961.
31 Add columns (h), (j), and (i) of line 29b				31	-28,640.
32 Total partnership and S corporation income or (loss). Combine lines 30 and 31. Enter the result here and include in the total on line 41 below				32	-27,679.

Part III Income or Loss From Estates and Trusts

33	(a) Name	(b) Employer ID no.
A		
B		

Passive Income and Loss			Nonpassive Income and Loss		
	(c) Passive deduction or loss allowed (attach Form 8582 if required)	(d) Passive income from Schedule K-1	(e) Deduction or loss from Schedule K-1	(f) Other income from Schedule K-1	
A					
B					
34 a Totals					
b Totals					
35 Add columns (d) and (f) of line 34a				35	
36 Add columns (c) and (e) of line 34b				36	
37 Total estate and trust income or (loss). Combine lines 35 and 36. Enter the result here and include in the total on line 41 below				37	

Part IV Income or Loss From Real Estate Mortgage Investment Conduits (REMICs) - Residual Holder

38	(a) Name	(b) Employer identification number	(c) Excess inclusion from Schedules D, line 2c (see instructions)	(d) Taxable income (not loss) from Schedules D, line 1b	(e) Income from Schedules Q, line 3b
39 Combine columns (d) and (e) only. Enter the result here and include in the total on line 41 below				39	

Part V Summary

40 Net farm rental income or (loss) from Form 4835. Also, complete line 42 below	40	
41 Total income or (loss). Combine lines 26, 32, 37, 39, and 40. Enter the result here and on Form 1040, line 17, or Form 1040NR, line 18	41	-27,679.
42 Reconciliation of farming and fishing income. Enter your gross farming and fishing income reported on Form 4835, line 7; Schedule K-1 (Form 1065), box 14, code B; Schedule K-1 (Form 1120S), box 17, code U; and Schedule K-1 (Form 1041), box 14, code F (see instructions)	42	
43 Reconciliation for real estate professionals. If you were a real estate professional (see instructions), enter the net income or (loss) you reported anywhere on Form 1040 or Form 1040NR from all rental real estate activities in which you materially participated under the passive activity loss rules	43	

EXHIBIT D

8582

Passive Activity Loss Limitations

OMB No. 1545-1008

Department of the Treasury
Internal Revenue Service (99)See separate instructions.
Attach to Form 1040 or Form 1041.2011
Attachment
Sequence No. 88

1041 (9) shown on return

Michael V & Elizabeth Cox

Identifying number

Part I 2011 Passive Activity Loss

Caution: Complete Worksheets 1, 2, and 3 before completing Part I.

Part I Real Estate Activities With Active Participation (For the definition of active participation, see Special Allowance for Rental Real Estate Activities in the instructions.)

1a	Activities with net income (enter the amount from Worksheet 1, column (a))		
1b	Activities with net loss (enter the amount from Worksheet 1, column (b))		
1c	Prior years unallowed losses (enter the amount from Worksheet 1, column (c))		
1d	Combine lines 1a, 1b, and 1c		
2a	Commercial Revitalization Deductions From Rental Real Estate Activities		
2b	Prior year unallowed commercial revitalization deductions from Worksheet 2, column (b)		
2c	Add lines 2a and 2b		
3a	Other Passive Activities		
3b	Activities with net income (enter the amount from Worksheet 3, column (a))	1,624.	
3c	Activities with net loss (enter the amount from Worksheet 3, column (b))	-929.	
3d	Prior years unallowed losses (enter the amount from Worksheet 3, column (c))	-28,111.	
3e	Combine lines 3a, 3b, and 3c		-27,416.
4	Combine lines 1d, 2c, and 3d. If this line is zero or more, stop here and include this form with your return; all losses are allowed, including any prior year unallowed losses entered on line 1c, 2b, or 3c. Report the losses on the forms and schedules normally used. If line 4 is a loss and: • Line 1d is a loss, go to Part II. • Line 2c is a loss (and line 1d is zero or more), skip Part II and go to Part III. • Line 3d is a loss (and lines 1d and 2c are zero or more), skip Parts II and III and go to line 15. If your filing status is married filing separately and you lived with your spouse at any time during the year, do not complete Part II or Part III. Instead, go to line 15.		-27,416.

Part II Special Allowance for Rental Real Estate Activities With Active Participation

Note: Enter all numbers in Part II as positive amounts. See the instructions for an example.

5	Enter the smaller of the loss on line 1d or the loss on line 4	
6	Enter \$150,000. If married filing separately, see the instructions	
7	Enter modified adjusted gross income, but not less than zero (see instructions)	
8	Notes: If line 7 is greater than or equal to line 6, skip lines 8 and 9, enter -0- on line 10. Otherwise, go to line 8. Subtract line 7 from line 6	
9	Multiply line 8 by 50% (.5). Do not enter more than \$25,000. If married filing separately, see instructions	
10	Enter the smaller of line 5 or line 9	0.
11	If line 2c is a loss, go to Part III. Otherwise, go to line 15.	

Part III Special Allowance for Commercial Revitalization Deductions From Rental Real Estate Activities

Note: Enter all numbers in Part III as positive amounts. See the example for Part II in the instructions.

11	Enter \$25,000 reduced by the amount, if any, on line 10. If married filing separately, see instructions	
12	Enter the loss from line 4	
13	Reduce line 12 by the amount on line 10	
14	Enter the smallest of line 2c (treated as a positive amount), line 11, or line 13	

Part IV Total Losses Allowed

15	Add the income, if any, on lines 1a and 3a and enter the total	1,624.
16	Total losses allowed from all passive activities for 2011. Add lines 10, 14, and 15. See the instructions to find out how to report the losses on your tax return. For Paperwork Reduction Act Notice, see instructions.	1,624.

FD-21001 12/12/11

Form 8582 (2011)

Name of Activity	Current Year		Prior Year Unallowed Loss	Overall Gain or Loss	
	Net Income	Net Loss		Gain	Loss
Cox Holdings, LLC	246.	0.	-13,449.		-13,203.
SNC Tax Credits XX, LP	0.	-1,806.	-59,614.		-61,420.
Totals	246.	-1,806.	-73,063.		-74,623.

The following information must be provided for each person who is a partner in a partnership or an S corporation.

Michael V & Elizabeth Cox

Your social security number

The IRS compares amounts reported on your tax return with amounts shown on Schedule(s) K-1.

Part II Income or Loss From Partnerships and S Corporations

Note. If you report a loss from an at-risk activity for which any amount is not at risk, you must check the box in column (e) on line 28 and attach Form 6198. See instructions.

7 Are you reporting any loss not allowed in a prior year due to the at-risk or basis limitations, a prior year unallowed loss from a passive activity (if that loss was not reported on Form 8582), or unreimbursed partnership expenses? ☒ Yes ☐ No
If you answered "Yes," see instructions before completing this section.

(a) Name	(b) Enter P for partnership; S for S corporation	(c) Check if foreign partnership	(d) Employer identification number	(e) Check if any amount is not at risk
EMC Tax Credits	P			
Cox Holdings, LLC	P			

Passive Income and Loss		Nonpassive Income and Loss		
(f) Passive loss allowed (attach Form 8582 if required)	(g) Passive income from Schedule K-1	(h) Nonpassive loss from Schedule K-1	(i) Section 179 expense deduction from Form 4562	(j) Nonpassive income from Schedule K-1
1,624.	1,624.			
Totals	1,624.			
Add columns (g) and (i) of line 29a			30	1,624.
Add columns (f), (h), and (j) of line 29b			31	-1,624.
Total partnership and S corporation income or (loss). Combine lines 30 and 31. Enter the result here and include in the total on line 41 below			32	0.

Part III Income or Loss From Estates and Trusts

(a) Name		(b) Employer ID no.	
Passive Income and Loss		Nonpassive Income and Loss	
(c) Passive deduction or loss allowed (attach Form 8582 if required)	(d) Passive income from Schedule K-1	(e) Deduction or loss from Schedule K-1	(f) Other income from Schedule K-1
Totals			
Totals			
Add columns (d) and (f) of line 34a		35	
Add columns (c) and (e) of line 34b		36	
Total estate and trust income or (loss). Combine lines 35 and 36. Enter the result here and include in the total on line 41 below		37	

Part IV Income or Loss From Real Estate Mortgage Investment Conduits (REMICs) — Residual Holder

(a) Name	(b) Employer identification number	(c) Enter inclusion from Schedules Q, line 2c (see instructions)	(d) Taxable income (net loss) from Schedules Q, line 1b	(e) Income from Schedules Q, line 3b
Combine columns (d) and (e) only. Enter the result here and include in the total on line 41 below				39

Part V Summary

Net farm rental income or (loss) from Form 4835. Also, complete line 42 below	40	
Total income or (loss). Combine lines 25, 32, 37, 39, and 40. Enter the result here and on Form 1040, line 17, or Form 1040NR, line 18	41	0.
Reconciliation of farming and fishing income. Enter your gross farming and fishing income reported on Form 4835, line 7; Schedule K-1 (Form 1065), line 14, code B; Schedule K-1 (Form 1120S), box 17, code U; and Schedule K-1 (Form 1041), line 14, code F (See instructions)	42	
Reconciliation for real estate professionals. If you were a real estate professional (see instructions), enter the net income or (loss) you reported anywhere on Form 1040 or Form 1040NR from all rental real estate activities in which you materially participated under the passive activity loss rules	43	

STATE

Michael V. & Elizabeth J. Cox

Form 8582AMT Summary of Passive Activities - AMT Statement 13

Name	Form or Schedule	Gain/Loss	Prior Year C/O	Net Gain/Loss	Unallowed Loss	Allowed Loss
Cox Holdings, LLC	Sch E	246.	-13,449.	-13,203.	13,203.	
WNC Tax Credits	Sch E					
XX, LP		-1,464.	-17,639.	-19,103.	19,103.	
Totals		-1,218.	-31,088.	-32,306.	32,306.	

Prior year carryovers allowed due to current year net activity income 246.
Total to Form 8582AMT, line 16 246.

Form 2106-EZ Other Business Expenses Statement 14

Description	Amount
Dental Hygienist	
Registration	245.
Uniforms & Shoes	508.
South Carolina Dental Hygienist License	134.
Total to Form 2106-EZ, Part I, line 4	887.

Form 2106-EZ Other Business Expenses Statement 15

Description	Amount
Industrial	
Workboots/Safety boots	180.
Uniforms	60.
Total to Form 2106-EZ, Part I, line 4	240.

35 Statement(s) 13, 14, 15
2010.03060 Cox, Michael V.

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF KERSHAW	)	Civil Action No. 06-CP-28-433
	)	
PALMETTO RESIDENTIAL	)	
BUILDERS, LLC,	)	
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
MICHAEL COX and ELIZABETH COX,	)	
	)	
Respondents.	)	

Personally appeared before me, Benjamin C. Bruner, who, after being duly sworn, deposes and states as follows:

1. He is competent to attest to the matters set forth herein.
2. He is a member of the South Carolina Bar.
3. He is a member of Bruner, Powell, Robbins, Wall & Mullins, LLC.
4. Bruner, Powell, Wall & Mullins, LLC ("Bruner Powell") is represents the Petitioner in this action, and is performing its work on an hourly fee plus costs basis.
5. In connection with the Petitioner's Motion to Compel and the hearing on November 7, 2013, Petitioner's counsel rendered services and incurred fees on behalf of the Petitioner in the amount of \$1,860.00 (12.4 hrs at \$150 per hour). This amount does not include any time for Brian P. Robinson, Esquire, who attended the November 7, 2013 hearing at no charge to the Petitioner, nor does it include work on aspects of the case not related to the Motion to Compel or the November 7, 2013 hearing.
6. In addition, Petitioner has incurred costs in the amount of \$103 for filing fees, postage, copying, etc.

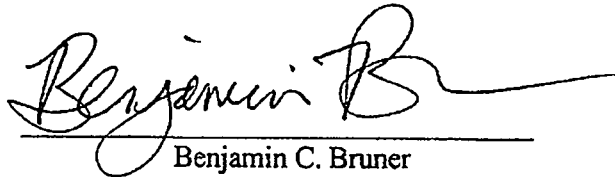
EXHIBIT E

7. The total costs and fees incurred in connection with the Motion to Compel and the November 7, 2013 hearing were \$1,963.00.

8. The amount is reflective of the work performed.

9. The amount of attorney's fees and costs charged is a reasonable sum under the circumstances.

FURTHER DEPONENT SAYETH NOT.


Benjamin C. Bruner

Sworn to before me this 16th

day of May 2014.

Bridget Stule (L.S.)

Notary Public for South Carolina

My Commission Expires: 5-27-2018

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

BEFORE THE MASTER-IN-EQUITY
FIFTH JUDICIAL CIRCUIT

COPY

Palmetto Residential Builders, LLC,)

Petitioner,)

vs.)

Michael Cox and Elizabeth Cox,)

Respondents.)

**NOTICE OF MOTION AND MOTION TO
QUASH OR MODIFY SUBPEONAS
Rule 45(c)(3)(A)(iii) SCRPC**

Case No.: 06-CP-28-0433

PLEASE TAKE NOTICE THAT Defendant will move this Court within ten (10) days or on the 7th day of November at 10 o'clock a.m., 2013, to quash two (2) subpoenas sent by Petitioner to Mr. Cox's employer and retirement plan administrator seeking his retirement statements, The Honorable Jeffrey M. Tzerman presiding, pursuant to Rule 45(c)(3)(A)(iii) of the South Carolina Rules of Civil Procedure based on the following:

1. This Court's Order signed on September 3, 2013 requires Respondents to "produce all statements from the last four (4) years for his retirement account no later than September 26, 2013."
2. After receiving notice of the entry of the Order, Respondent's counsel filed a Motion to Alter or Amend the Judgment pursuant to Rule 59(e) SCRPC. The motion was timely filed on September 17, 2013. This motion asks the Court to reconsider the issue of ordering Respondents to produce these returns on the grounds that they are exempt from attachment or levy as an ERISA qualified plan under S.C. Code Ann. § 15-41-30(A)(14). The hearing on this motion has been scheduled for November 7, 2013 at 10:00 a.m.
3. On or about October 7, 2013, Counsel for Petitioner mailed out two (2) subpoenas *duces tecum*. One subpoena was sent to the International Paper Company, Respondent Michael

Cox's employer, and the other sent to J.P. Morgan Retirement Plan Services. Both subpoenas seek: 1) the current balance in the account, 2) current vested amount in the account, 3) record of all contributions since September 1, 2008, 4) record of all withdrawals since September 1, 2008 (5) information describing the account plan and 6) all documents relating to the setup/opening of the account.

4. The subpoenas require International Paper and J.P. Morgan Retirement Plan Services to comply by October 25, 2013, which is prior to the hearing on the Respondents' Motion to Alter or Amend, scheduled for November 7, 2013.

5. Respondents will move the Court to rule: 1) these subpoenas should not be complied with until this Court rules on their Motion to Alter or Amend and, 2) the release of the records/information sought in the subpoenas "requires disclosure of privileged or otherwise protected matter. . ." Rule 45(c)(3)(A)(iii).

6. In the alternative, the Respondents will move the Court to allow only the "record of all contributions since September 1, 2008" to be turned over to Petitioner. The grounds for this request are an acknowledgment that this Court has found that the Respondents have transferred non-exempt money into this account previously. To ensure no other such transaction has occurred, Petitioner should only be allowed to receive the record of all contributions since September 1, 2008. The remaining information is unnecessary with respect to Petitioner seeking non-exempt funds from which to satisfy their judgment. Further, the remaining information is a portion of an exempt asset under §15-41-30(A)(14).

7. The Respondents merely ask this Court to quash the subpoenas and/or modify the subpoenas to limit the information required to be released pending this Court's ruling on their Motion to Alter or Amend Judgment.

8. Alternatively, the Respondents move this Court to modify the subpoena such that the date for compliance therewith shall be after the hearing on their Motion to Alter or Amend which has been scheduled for November 7, 2013.

WHEREFORE, Respondents pray this Court inquire into the matters alleged herein, quash the Subpoenas to International Paper Company and J.P. Morgan Retirement Plan Services pending this Court's ruling on the Respondents' Motion to Alter or Amend or, modify it such that the date for compliance is after November 7, 2013, and for any such other and further relief this Court deems just and proper.

RICHARDS LAW FIRM, LLC



R. Charles Richards (SC Bar# 11765)

Attorney for Respondents

1622 Sunset Boulevard

West Columbia, SC 29169

(803) 796-9982

(803) 926-1668 (fax)

Rcharlesresq@gmail.com

West Columbia, South Carolina
October 17, 2013

STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW)

BEFORE THE MASTER-IN-EQUITY

PALMETTO RESIDENTIAL)
BUILDERS, LLC,)
)
Plaintiff,)

Civil Action No. 06-CP-28-433

v.)

MICHAEL COX and ELIZABETH)
COX,)
)
Defendants.)

**NOTICE OF MOTION AND MOTION TO
COMPEL THE DEFENDANTS MICHAEL
COX AND ELIZABETH COX TO COMPLY
WITH THIS COURT'S ORDER, TO HOLD
DEFENDANTS IN CONTEMPT OF COURT
AND TO IMPOSE SANCTIONS**

FILED FOR RECORD
2013 OCT -8 AM 11:18
CLERK OF COURT
KERSHAW COUNTY, S.C.

TO: THE DEFENDANTS AND THEIR COUNSEL

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, Palmetto Residential Builders, LLC ("Palmetto"), by and through its undersigned counsel, will move before the Kershaw County Master in Equity, at the Kershaw County Master in Equity's Office, located at 304 Hampton Park, Camden, SC 29020, on the tenth (10th) day after service hereof, or as soon thereafter as the Court may schedule, for an Order to Compel the Defendants, Michael Cox and Elizabeth Cox, to comply with this Court's Order issued September 3, 2013 and filed September 6, 2013 ("Order") because the Defendants have failed to produce the documents as ordered. Palmetto further moves for an Order to hold Michael and Elizabeth Cox in Contempt of Court and to award sanctions in the form of attorney's fees and costs of this motion based upon the Defendants' repeated, willful and intentional failure to comply with the orders of this Court.

The undersigned certifies that he consulted with counsel for the Defendants in a good faith effort to resolve the subject-matter of this motion prior to filing the same.

Respectfully submitted,

BRUNER, POWELL, WALL & MULLINS, LLC

By: Benjamin B

Brian P. Robinson

Joey R. Floyd

Benjamin C. Bruner

1735 St. Julian Place, Suite 200

Post Office Box 61110

Columbia, SC 29260-1110

(803) 252-7693

Attorneys for Plaintiff

October 4, 2013

Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW)

Palmetto Residential Builders, LLC,)
)
Petitioner,)
)
v.)
)
Michael Cox and Elizabeth Cox,)
)
Respondents.)
_____)

IN THE COURT OF COMMON PLEAS

**VERIFIED PETITION FOR
SUPPLEMENTAL PROCEEDINGS**
(Case No.: 2006-CP-28-433)

FILED FOR RECORD
2013 JUN 24 AM 11:27
JOYCE HEDGECOCK
CLERK OF COURT
KERSHAW COUNTY

THE PETITIONER WOULD RESPECTFULLY SHOW:

1. That heretofore Petitioner recovered and recorded judgment against Respondents, Michael Cox and Elizabeth Cox ("Respondents") as hereinafter set forth; and that there is still due and owing on said judgment the sum indicated Respondents having failed and refused to satisfy same:

JUDGMENT ENTERED: February 13, 2008
JUDGMENT ROLL # : 2006-CP-28-433
JUDGMENT AMOUNT : \$119,430.93
PARTIAL PAYMENT(S): \$ 53,304.60
AMOUNT DUE : \$106,141.40, plus interest

2. That execution thereafter was duly issued to the Sheriff of Kershaw County against Respondents and said Sheriff has returned same NULLA BONA.

3. That upon information and belief, the Respondents have assets in the County not exempt from levy which Respondents unjustly refuses to apply toward satisfaction of said judgment.

4. That Petitioner is informed and believes that it is entitled under the law and statutes to have an examination of Respondents in supplementary proceedings and to ascertain and discover any and all property and assets, real, personal, or mixed, and wheresoever situated,

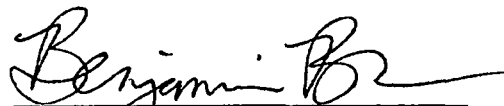
belonging to Respondents; or in which Respondents could claim any interest, solely or in conjunction with any person, firm, or corporation or entity, and any or all of which is or should be made applicable by the Court to the payment of said debt.

5. In addition, Petitioner is entitled to the appointment of a receiver of Respondents for any and all of the aforesaid property, assets, or effects which are so discovered or revealed in order to carry said judgment into effect.

WHEREFORE Petitioner prays that this court do inquire into the matters hereinabove alleged and that it issue such order or orders granting relief to which Petitioner believes it is entitled, for all expended and statutory costs allowable for this proceedings, and for such other and further relief and remedies as may be allowable and which the Court may deem proper.

And further Petitioner requests this matter be referred to the Master-In-Equity pursuant to Rule 53 of the South Carolina Rules of Civil Procedure with authority to enter a final order with any appeal being directly to the South Carolina Supreme Court.

**BRUNER, POWELL,
WALL & MULLINS, LLC**



Joey R. Floyd
Benjamin C. Bruner
P.O. Box 61110
Columbia, South Carolina 29260-1110
(803) 252-7693
Attorneys for Petitioner
Palmetto Residential Builders, LLC

June 18, 2013

VERIFICATION

PERSONALLY appears Benjamin C. Bruner, who first being duly sworn deposes and says that he is the attorney for the Petitioning judgment creditor and that he has read the foregoing Petition and knows the contents thereof and the same are true of his own knowledge except to matters alleged therein on information and belief, and as to these, he believes it to be true, that he is the attorney for the Petitioner and is authorized to make this oath on their behalf.

Benjamin B2

Benjamin C. Bruner
Attorney for the Petitioner

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 18th DAY OF June, 2013

Nancy G. Stagg
Notary Public for South Carolina
My Commission Expires 2/4/2020

FILED FOR PETITION
2013 JUN 24 AM 11:27
CLERK OF COURT
KERSHAW COUNTY

INTERNATIONAL PAPER				*** NOTIFICATION OF DEPOSIT *** Call the ESC at 1-888-372-2968, if you have questions.			
4049 Willow Lake Blvd., Memphis, TN 38118				LOCATION AREA SUB AREA	Eastover Mill Hrly w/Sal Ben	DEPOSIT NO. DEPOSIT DATE PERIOD ENDING	12249300 08/09/2013 08/04/2013
Michael V Cox 127 lake mallard ln. camden SC 29020		SSN ID PERS # PAY RATE	[REDACTED]		TAX DATA	MARITAL STATUS	ALLOWANCES ADDL. W/H
EARNINGS	RATE	HOURS	CURR	YTD	BEFORE TAX DEDUCTION	CURR	YTD
Gainsharing/Incentive-Ex Supplemental Vacation Pa	0.00		1,077.85	4,597.68 2,628.80			
TOTAL			6,073.95	72,695.26			
TAX TYPE	TAXABLE WAGES		TAX WITHHOLDING		TOTAL	1,150.44	13,942.20
	CURR	YTD	CURR	YTD	AFTER TAX DEDUCTIONS	CURR	YTD
TOTAL			1,624.07	18,087.78			
SUMMARY	CURR	YTD	CURRENT NET PAY DEPOSITS				
GROSS	6,073.95	72,695.26					
TAXES	1,624.07	18,087.78					
BEFORE TAX	1,150.44	13,942.20					
AFTER TAX	176.48	2,647.20					
NET PAY	3,122.96	38,018.08	TOTAL DEPOSITS	3,122.96	TOTAL	176.48	2,647.20

INTERNATIONAL PAPER				*** NOTIFICATION OF DEPOSIT *** Call the ESC at 1-888-372-2968, if you have questions.			
4049 Willow Lake Blvd., Memphis, TN 38118				LOCATION AREA SUB-AREA	Eastover Mill Hrly w/Sal Ben	DEPOSIT NO. DEPOSIT DATE PERIOD ENDING	12249300 08/23/2013 08/18/2013
Michael V Cox 127 lake.mallard ln. camden SC 29020		SSN ID PERS # PAY RATE	[REDACTED]		TAX DATA FED SC	MARITAL STATUS Married Married	ALLOWANCES 00 00
ADDL. W/H 0.00 0.00							
EARNINGS	RATE	HOURS	CURR	YTD	BEFORE TAX DEDUCTION	CURR	YTD
Hourly Rate	33.3500		0.00		Health Care FSA	46.15	784.55
Regular Hours	63.5000	2.00	127.00		EE Core PPO Ptax	114.00	1,938.00
Regular Hours	20.8400	1.00	20.84		EE Core Dental Pre-	18.46	313.82
Regular Hours	33.3500	109.50	3,651.85		EE Pre-Tax Savings	694.56	11,779.00
Regular Hours	49.4100	1.00	49.41	45,899.19			
Overtime Premium	16.6750	29.50	491.92	3,737.71			
Overtime 1.5				9,944.26			
Holiday				1,577.28			
Vacation Hours				1,971.60			
Sick Time				3,417.44			
Overtime Amount				480.42			
Shift Differential				1,181.10			
Daily Vacation				1,600.80			
TOTAL			4,341.02	77,036.28			
TAX TYPE	TAXABLE WAGES		TAX WITHHOLDING		TOTAL	873.17	14,815.37
	CURR	YTD	CURR	YTD	AFTER TAX DEDUCTIONS	CURR	YTD
Federal					Group Universal Lif	96.48	1,543.68
Withholding Tax	3,467.85	62,220.91	473.98	9,258.46	EE Retiree Med Sav	80.00	1,280.00
EE Social Securit	4,189.52	74,453.46	259.75	4,616.11			
EE Medicare Tax	4,189.52	74,453.46	60.75	1,079.58			
South Carolina							
Withholding Tax	3,467.85	62,220.91	231.21	4,159.32			
Cost of group lif	27.11	453.55					
TOTAL			1,025.69	19,113.47			
SUMMARY	CURR	YTD	CURRENT NET PAY DEPOSITS				
GROSS	4,341.02	77,036.28	C Deposit	[REDACTED]	2,265.68		
TAXES	1,025.69	19,113.47					
BEFORE TAX	873.17	14,815.37					
AFTER TAX	176.48	2,823.68					
NET PAY	2,265.68	40,283.76	TOTAL DEPOSITS	2,265.68	TOTAL	176.48	2,823.68

01AUG13 31AUG13

Phone inquiries to: (803) 432-8521

M

GO PAPERLESS.
Sign up for e-statements
today and keep your
account secure.

MICHAEL V. COX
127 LAKE MALLARD LN
CAMDEN SC 29020

Main Share Your balance at the beginning of the period.....\$ 45.74
Suffix [REDACTED] 28AUG* Withdrawal -40.00 = 5.74
719 HWY ONE SOUTH LUGOFF SCUS Trace #2329
Your new balance on 31AUG13.....\$ 5.74
Dividends Paid To You In 2013 On Suffix 0 \$ 0.02
Dividends to be paid on 01SEP13 \$ 0.00

=====

NEW Your balance at the beginning of the period.....\$ 30954.08
AUTO 1.99% ***ANNUAL PERCENTAGE RATE***
Loan [REDACTED] .005452% Daily Periodic Rate

=====

FINANCE**
(PAYMENT)**CHARGE**PRINCIPAL
15AUG Payment (561.00) 52.32 508.68 = 30445.40
Your new balance on 31AUG13.....\$ 30445.40
FINANCE CHARGES PAID IN 2013 ON LOAN 1 \$ 154.40

=====

CHECKING No. [REDACTED] Balance at the beginning of the period.....\$ 4974.90

Suffix 1 02AUG Withdrawal -52.51 = 4922.39
1001 HWY 1 SOUTH LUGOFF SCUS Trace #3029
02AUG Withdrawal -20.00 = 4902.39
5426 FOREST DR COLUMBIA SCUS Trace #512325
02AUG Withdrawal -225.16 = 4677.23
8283 WAL-SAMS COLUMBIA SCUS Trace #3362087
04AUG* Withdrawal -12.17 = 4665.06
2529 BROAD STREET CAMDEN SCUS Trace #851719
03AUG* Withdrawal-ACH-A-ECHOSTAR #4267 -100.00 = 4565.06
ECHOSTAR COMMUNI (DISCKPYMT)
05AUG Withdrawal-ACH-A-AT&T SERVICES #4266 -62.78 = 4502.28
AT&T SERVICES (CHECKPYMT)
05AUG Withdrawal -45.68 = 4456.60
8283 WAL-SAMS COLUMBIA SCUS Trace #96438522
05AUG* Withdrawal #4268 -1700.00 = 2756.60
06AUG Withdrawal -47.51 = 2709.09
1001 HWY 1 SOUTH LUGOFF SCUS Trace #4613
08AUG* Withdrawal -20.81 = 2688.28
2240 WEST DEKALB S CAMDEN SCUS Trace #872319
08AUG* Withdrawal -10.15 = 2678.13
886 HIGHWAY 1 SOUT LUGOFF SCUS Trace #126859
08AUG Withdrawal -19.16 = 2658.97
5426 FOREST DR COLUMBIA SCUS Trace #170151
08AUG Withdrawal -31.53 = 2627.44
8283 WAL-SAMS COLUMBIA SCUS Trace #96529205
09AUG* Deposit-ACH-IP 3122.96 = 5750.40
INTERNATIONAL PA (IP PAYROLL)
09AUG Withdrawal -260.00 = 5490.40
1015 MILL ST CAMDEN SCUS Trace #9993
09AUG Withdrawal -16.04 = 5474.36
NORTHERN TOOL EQUI COLUMBIA SCUS Trace #65181
11AUG* Withdrawal -59.91 = 5414.45
2529 BROAD STREET CAMDEN SCUS Trace #382405
13AUG Withdrawal #4270 -208.00 = 5206.45
14AUG Withdrawal-ACH-A-BRONCO FCU #4269 -171.58 = 5034.87
BRONCO FCU (PAYMENT)
14AUG Withdrawal-ACH-A-LOWES #4271 -303.93 = 4730.94
LOWES (CHECK PYMT)

01AUG13 31AUG13

Phone inquiries to: (803) 432-8521

MICHAEL V COX.
127 LAKE MALLARD LN.
CAMDEN SC 29020

14AUG. Withdrawal-ACH-A-CITIMORTGAGE INC #4274	-2900.00 =	1830.94
CITICARD PAYMENT (CHECK PYMT)		
14AUG. Withdrawal	-200.00 =	1630.94
719 HWY ONE SOUTH LUGOFF SCUS Trace #8719		
15AUG. Withdrawal #4276	-561.00 =	1069.94
15AUG. Withdrawal	-12.25 =	1057.69
10106 TWO NOTCH RD COLUMBIA SCUS Trace #9636903		
15AUG. Withdrawal #4272	-124.23 =	933.46
16AUG. Withdrawal-ACH-A-BELK #4273	-465.00 =	468.46
BELK ECHECKBOC ()		
17AUG* Withdrawal	-100.00 =	368.46
719 HWY ONE SOUTH LUGOFF SCUS Trace #9691		
19AUG. Withdrawal #4275	-50.00 =	318.46
21AUG. Withdrawal	-60.00 =	258.46
719 HWY ONE SOUTH LUGOFF SCUS Trace #527		
21AUG. Withdrawal	-21.59 =	236.87
TARGET T1319 COLUM. COLUMBIA SCUS Trace #4776		
23AUG* Deposit-ACH-IP	2265.68 =	2502.55
INTERNATIONAL PA (IP PAYROLL)		
24AUG* Withdrawal	-35.10 =	2467.45
0634 WAL-SAMS CAMDEN SCUS Trace #2447153		
24AUG* Withdrawal	-100.00 =	2367.45
719 HWY ONE SOUTH LUGOFF SCUS Trace #1271		
25AUG* Withdrawal	-16.34 =	2351.11
GINZA EXPRESS HIB CAMDEN SCUS Trace #70029		
29AUG. Withdrawal	-23.74 =	2327.37
THE UPS STORE 3479 CAMDEN SCUS Trace #13244		
30AUG. Withdrawal	-200.00 =	2127.37
719 HWY ONE SOUTH LUGOFF SCUS Trace #3099		
03SEP* Deposit-ACH-US TREASURY 303 (XXRR RET)	1457.00 =	3584.37

Drafts

ITEM----	AMOUNT-----	ITEM----	AMOUNT-----	ITEM----	AMOUNT-----
4266	62.78	4270	208.00	4274	2900.00
4267	100.00	4271	303.93	4275	50.00
4268	1700.00	4272	124.23	4276	561.00
4269	171.58	4273	465.00		

(* next to number indicates skipped numbers)

34 Withdrawals = 8236.17 3 Deposits = 6845.64 11 Checks Cleared
Your new balance on 31AUG13.....\$ 3584.37

	Total for this period	Total year-to-date
Total Overdraft Item Fees	0.00	0.00
Total Overdraft Protection Transfer Fee	0.00	0.00
Total Return Item Fees	0.00	0.00

Dividends Paid To You In 2013 On Suffix 1	\$ 0.00
Dividends to be paid on 01SEP13	\$ 0.00

01AUG13 31AUG13

Phone inquiries to: (803) 432-8521

MICHAEL V COX
 127 LAKE MALLARD LN
 CAMDEN SC 29020

Your	Your total Checking balances.....\$	3,584.37
Financial	Your total Share balances.....\$	5.74
Summary	Your total Loan balances.....\$	30,445.40

YTD Tax	YEAR-TO-DATE INFORMATION FOR TAX PURPOSES:	
Summary	Total non-IRA earnings	
	(May be reported to IRS as interest for this calendar year)...	\$ 0.02
	Total finance charges paid on loans this calendar year.....\$	154.40

STATE OF SOUTH CAROLINA	)	BEFORE THE MASTER-IN-EQUITY
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF KERSHAW	)	
Palmetto Residential Builder, LLC,	)	RETURN TO MOTION SETTING
	)	ASIDE CONVEYANCES AND EXECUTING
Petitioner,	)	ON CERTAIN PROPERTY
	)	
vs.	)	
	)	Case No.: 06-CP-28-0433
Michael Cox and Elizabeth Cox,	)	
	)	
Respondents.	)	

FILED FOR RECORD
2014 JUN 25 PM 4:27
CLERK OF COURT
KERSHAW COUNTY, S.C.

Respondents, replying to the Motion of Plaintiff, would respectfully show to this Court the following:

ISSUE: WHETHER CONTRIBUTIONS MICHAEL COX MADE THROUGH HIS EMPLOYER TO HIS COMPANY RETIREMENT SAVINGS ACCOUNT ARE EXEMPT FROM ATTACHMENT OR LEVY PURSUANT TO S.C. CODE ANN. 15-41-30(A)(13)

BACKGROUND

Respondent Michael Cox has been making voluntary contributions into his ERISA covered 401K plan since 1985. In 2008, this Courts rendered judgment against Mr. Cox and his wife in the amount of \$119,430.93. The Petitioner now wants this Court to rule that the contributions into his Employee Retirement Income Security Act (ERISA) covered 401(k) retirement plan made since judgment was rendered are fraudulent conveyance under the "Statute of Elizabeth" S.C. Code Ann. § 27-23-10, which reads:

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 defraud creditors and other 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 devised and practices are, must or might be in the 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.

Emphasis added.

Thus, The Statute of Elizabeth focuses on the *intent* of the debtor.

The exemption under which the Respondents claim the 401K contributions are exempt from creditors is S.C. Code Ann. § 15-41-30(A)(13), which reads:

The debtor's right to receive individual retirement accounts as described in Sections 408(a) and 408(A) 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 term, "Internal Revenue Code" has meaning provided In Section 12-6-40(A).

Emphasis added.

Section 408(a) of the Internal Revenue Code reads:

For purposes of this section, the term "individual retirement account" Means a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, but only if the written governing instrument creating the trust meets the following requirements:

(1) Except in the case of a rollover contribution described in subsection (d)(3) in section 402(c), 403(a)(4), 403(b)(8) or 457(e)(16), no contribution will be accepted unless it is in cash and contributions will not be accepted for the taxable year on behalf of any individual in excess of the amount in effect for such taxable year under section 219(b)(1)(a).

(2) The trustee is a bank (as defined in subsection (n) or such other

Person who demonstrates to the satisfaction of the Secretary that the manner in which such other person will administer the trust will be consistent with the requirement of this section.

(3) No part of the trust funds will be invested in life insurance contracts.

(4) The interest of an individual in the balance in his account in non-feitable.

(5) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.

(6) Under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

Emphasis added.

Thus, Section 408(a), which is referenced in the applicable *exemption*, twice refers to *contributions* into the plan.

Section 219(b)(1)(a) reads:

(b) Maximum amount of deduction: (1) In general: The amount allowable as a deduction under subsection (a) to any individual for any taxable year shall not exceed the lesser of- (A) the deductible amount, or (B) an amount equal to the compensation includable in the individual's gross income for such taxable year.

Subsection (a) reads: "In the case of an individual, there shall be allowed as a deduction an amount equal to the qualified retirement contributions of the individual for the taxable year."

Subsection (a) reads: "In the case of an individual, there shall be allowed as a deduction an amount equal to the qualified retirement contributions of the individual for the taxable year."

STANDARD OF REVIEW

"A clear and convincing evidentiary standard governs fraudulent conveyance claims brought under the Statute of Elizabeth." Windsor Props, Inc. v. Dolphin Head Constr. Co., 331

S.C. 466, 498 S.E.2d 858 (1998). An action to set aside a conveyance under the Statute of Elizabeth is an equitable action, and a de novo standard of review applies." Future Group II v. Nationsbank, 324 S.C. 97, 478 S.E.2d 45.

**ARGUMENT: VOLUNTARY CONTRIBUTIONS TO ERISA COVERED 401(k) PLANS
ARE NOT FRAUDULENT CONVEYANCES**

Mr. Cox is employed by International Paper Company and has been for thirty (30) years. His plan is an individual retirement account under 408(a) of the Internal Revenue Code and it provides the required contractual "anti-alienation" provision (See 29 U.S.C. § 1057(d)(1)). The retirement plan to which Mr. Cox contributes 16.5% of his salary is known as The International Paper Salaried Savings Plan. This plan was established for employees of the Company effective July 1, 1992 and is covered by ERISA (Employee Retirement Income Security Act of 1974) and is a "Qualified Employer Plan" under 26 U.S.C. § 401 (a). His plan is afforded the highest protection legally allowed under existing law, Federal or State.

Under current law, Mr. Cox is allowed to contribute up to \$23,000.00 (See attachment #1). All who contribute to 401(k) accounts are allowed to contribute up to \$17,500.00, pre-tax money into their retirement account. Mr. Cox, age 59, is allowed an additional \$5,500.00 pre-tax contribution pursuant to 26 U.S. Code § 219 (5)(B) which is called the "catch up" contribution and only those who are age 50 and over may take advantage of this provision.

In spite of that, Mr. Cox is currently and has been contributing less than \$17,500.00 to his retirement plan since judgment was entered against him. The contributions are taken directly from his paycheck, deposited into his 401(k) trust account and are not counted as income to him for tax purposes.

Mr. Cox has been making contributions to his ERISA covered retirement plan for

twenty-nine (29) years, since 1985. The Petitioners in this case were awarded judgment in 2008. Thus, Mr. Cox has been contributing to his ERISA covered 401(k) retirement plan for twenty-one (21) years prior to the Petitioner's judgment against him.

Therefore, Mr. Cox has been making contributions into the 401(k) plan long before the Petitioner's judgment. Since the judgment, Mr. Cox has not increased the amount of his contributions into the 401(k) account which he is entitled to do. It follows then, that these transfers and continuing transfers of money from Mr. Cox's paycheck to his 401(k) were not made to delay, hinder, or defraud creditors under South Carolina's Statute of Elizabeth. Instead, they were made to provide for him and his wife's retirement.

The Petitioner is an unsecured, non-priority debtor under South Carolina Bankruptcy law. There is no legal provision or statute allowing for wage garnishment for unsecured priority debts in South Carolina. In the case at bar, Mr. Cox's contributions are excluded from income and they are provided all the protections of ERISA.

The applicable exemption, S.C. Code Ann. § 15-30(A)(13) references Section 408(a) of the Internal Revenue Code and Section 408(a) references contributions to the plan. Thus, the contributions are allowed the same protection as the funds in 401K trust account. The contributions are pre-tax and not included in gross income.

Title I of ERISA requires that benefits under the plan may not be assigned or alienated. For the anti-alienation clause to be effective, the underlying plan must constitute a "pension plan" under ERISA which is defined as any plan, fund or program. . . which provides retirement income to employees. See ERISA § 3(2)(A). In the case at bar, Mr. Cox's plan is clearly an employee a pension plan under ERISA.

In addition to ERISA, the U.S. Code provides "that a trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that benefits provided under the plan may not be assigned or alienated." § 401 (a)(13)(A). Neither ERISA or code protections apply to individual retirement plans (I.R.A.'s), simplified pension plans, government plans or most church plans. ERISA §§ 4(b) and 201; Code § 401(a); DOL Treas. Reg. §2510.3-2(d).

Further, ERISA § 514 (a) provides that ERISA supersedes state laws to the extent that they state laws relate to employee benefit plans, also known as the "preemption" provision". The anti-alienation and preemption provisions both make state attachment and garnishment laws inapplicable or without force or effect with relation to ERISA covered plans.

There are exceptions to the anti-alienation and preemption provisions. For example, Qualified Domestic Relations Orders (QDRO's) for child support may be exempted. Code § 401 (a)(13)(B); ERISA § 206(d)(3). In a marriage and subsequent divorce, the retirement plan is a marital asset subject to a Family Court's equitable division authority. Federal tax judgments and levies are also exempt. Treas. Reg. §1.401(a)-13(e). Criminal judgments may also be exempt. See U.S. v. Novak, 476 F.3d 1041 (9th Cir. 2007).

The most applicable exception to the case *sub judice* is that civil (or criminal) judgments, settlement agreements and the like may be offset by a participant's fiduciary violation or crime committed by the contributor *against the plan*, i.e., doing something disallowed by the rules of the plan itself. For instance, if Mr. Cox would have contributed more than \$23,000.00 for any tax year since he turned 50 years old, those funds would not be protected by ERISA.

None of the exceptions to the anti-alienation or preemption provisions are applicable in this

case.

RELEVANT CASE LAW

Petitioner cites Mathis v. Burton, 319 S.C. 261 S.E.2d 406 (Ct.App. 1995) as an example of the Court setting aside a fraudulent conveyance. Mathis is easily distinguishable from the case at bar. In Mathis, an elderly woman deeded real property to her son six (6) days prior to going into the hospital for cancer treatments. She died shortly thereafter owing the hospital a large amount of money for her cancer treatments and hospitalization. The Mathis Court held that the conveyance of real property to her son without consideration was a fraudulent conveyance and set it aside.

As the Mathis Court states and as this Court has already held, fraudulent conveyances into the 401(k) account are disallowed and may be recovered by creditors. Prior to legal representation, Mr. Cox, sold stock from a Smith Barney account and deposited the funds therefrom into his 401(k) account. This Court properly held that such conveyance was fraudulent under our Statute of Elizabeth. The Petitioner now seeks to conflate the Smith Barney sale of stock and transfer into the 401(k) with the contributions Mr. Cox has made into his 401(k) since 1985. The issue at bar is whether the voluntary contributions Mr. Cox has made to his 401(k) since 1985 are "fraudulent conveyances" under South Carolina law.

Petitioner cites Gilchinisky v. National Westminster Bank N.J., 159 N.J. 463, 732 A.2d 482 which dealt with Individual Retirement Accounts, not ERISA covered 401(k) accounts. The differences between them are many and include that contributions to 401K accounts are pre-tax, i.e., not considered as income and are not taxed until the money is withdrawn while contributions. With traditional I.R.A.'s the contribution is deductible under certain conditions while "Roth"

IRA's are not tax deductible at all. See Publication 4530: Designated Roth Accounts under a 401K or 403(b) Plan. Internal Revenue Service, 2009 and Publication 590: Comparison of Roth 401(k), Roth I.R.A.'s & Traditional 401(k) Retirement Accounts. Internal Revenue Service, October 2010.

Our Court of Appeals has held Individual Retirement Accounts are not covered by ERISA. See *Rowland v. Strickland*, 294 S.C. 119, 362 S.E.2d (Ct. App 1987).

Most importantly, qualified 401(k) ERISA covered plans are given broad protection from creditors while the protection from creditors for I.R.A.'s vary from State to State. See ERISA §§ 4(b) and 201; Code § 401(a); DOL Treas. Reg. § 2510.3-2(d). Therefore, Gilinsky is inapplicable to the facts before this Court.

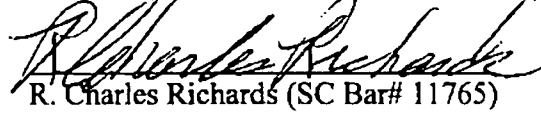
As Oskin v. Johnson, holds, in referring to the Statute of Elizabeth, " In interpreting this statute, this Court has held conveyances shall be set aside under two conditions; First, where there was valuable consideration and the transfer is made by the grantor with the actual intent to defraud; and, second, where a transfer is made without actual intent to defraud but without valuable consideration. 400 S.C. 390, 735 S.E.2d 459 (S.C. 2012).

The consideration Mr. Cox receives from his 401(k) contributions are that his employer will match his contribution and these contributions and employer matching contributions will be paid out over time after Mr. Cox retires. Therefore, under Oskin, the only way this Court may set aside the contributions into the 401(k) are if they are found to be made with the actual intent of defrauding the creditor. As stated previously, Mr. Cox has made contributions into this 401(k) plan for twenty-one (21) years prior to the judgment being entered against him. Further, he is contributing substantially less than he is allowed by applicable law.

Therefore, under ERISA and our state's law, the contributions Mr. Cox has made into his 401(k) since judgment was rendered against him are not fraudulent conveyances, they were not made with the intent to defraud the creditor and are protected from attachment, levy or garnishment.

WHEREFORE, Respondents pray this Court inquire into the matters alleged herein, and deny Petitioner's request to hold the contributions Mr. Cox made into his ERISA covered 401(k) plan as fraudulent conveyances and for any such other and further relief this Court deems just and proper.

RICHARDS LAW FIRM, LLC



R. Charles Richards (SC Bar# 11765)

Attorney for Respondents

1622 Sunset Boulevard

West Columbia, SC 29169

(803) 796-9982

(803) 926-1668 (fax)

West Columbia, South Carolina

June 24, 2014

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE KERSHAW COUNTY
Court Of Common Pleas

Jeffrey M. Tzerman, Master-in-Equity

CIVIL ACTION NO.: 2006-CP-28-0433
APPELLATE CASE NO.: 2014-002455

Palmetto Residential Builders, LLC Appellant,

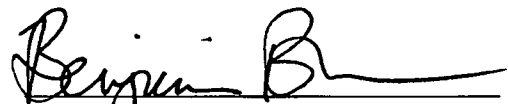
v.

Michael Cox and Elizabeth Cox. Respondents.

CERTIFICATION OF COUNSEL

The undersigned counsel for Appellant certifies pursuant to Rule 210(g), SCACR, that the Record on Appeal contains all material proposed to be included by the parties and not any other material.

March 12, 2015


Joey R. Floyd, Esquire
Benjamin C. Bruner, Esquire
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, South Carolina 29260
(803) 252-7693
Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE KERSHAW COUNTY
Court Of Common Pleas

Jeffrey M. Tzerman, Master-in-Equity

CIVIL ACTION NO.: 2006-CP-28-0433
APPELLATE CASE NO. 2014-002455

Palmetto Residential Builders, LLC Appellant,

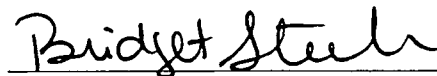
vs.

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

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 13th day of March 2015, I served the *Record on Appeal* upon opposing counsel by depositing copy of the same in the U.S. Mail, postage prepaid, and addressed as follows:

R. Charles Richards, Esq.
Richards Law Firm, LLC
1622 Sunset Boulevard
West Columbia, SC 29169
Attorney for Respondents



Bridget S. Steele
BRUNER, POWELL, WALL
& MULLINS, LLC
1735 St. Julian Place, Suite 200 (29204)
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Columbia, South Carolina 29260
(803) 252-7693

Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE KERSHAW COUNTY
Court Of Common Pleas

Jeffrey M. Tzerman, Master-in-Equity

CIVIL ACTION NO.: 2006-CP-28-0433
APPELLATE CASE NO.: 2014-002455

Palmetto Residential Builders, LLC Appellant,

v.

Michael Cox and Elizabeth Cox. Respondents.

FINAL BRIEF OF APPELLANT

March 12, 2015

Benjamin C. Bruner, Esquire
Joey R. Floyd, Esquire
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STATEMENT OF ISSUES ON APPEAL

- I. Does a judgment debtor have a right to voluntarily transfer non-exempt funds to a retirement account in preference of a judgment creditor and then claim the funds are exempt from attachment?
- II. Did the Master-in-Equity err when he held federal law barred avoidance of the fraudulent transfers notwithstanding the law of the case that the anti-alienation provision of ERISA and the Internal Revenue Code does not preclude avoidance of fraudulent transfers?
- III. Did the Master-in-Equity err when he held the voluntary, post-judgment contributions were not fraudulent conveyances because they were made for valuable consideration and there was no evidence of actual intent to defraud the judgment creditor?
- IV. Did the Master-in-Equity err when he found Mr. Cox did not increase the amount of contributions to his Retirement Account after entry of the judgment when there was no evidence to support such a finding?

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 transfers made by Respondent Michael Cox to his International Paper Salaried Savings Plan Account ("Retirement Account"), which he has used 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. Had Mr. Cox not made these voluntary contributions, the cash would have been deposited into a bank account and 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"). (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.)

Palmetto then commenced these supplemental proceedings to collect on the judgment. During the first hearing, Palmetto discovered that five days after the jury verdict Mr. Cox had liquidated \$44,487.89 worth of stock and transferred the proceeds his 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.) And 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.

On January 22, 2009, the Master-in-Equity held a third hearing, after which he ordered that the plan administrator pay the fraudulently transferred funds directly to Palmetto. (R. pp. 22-23.) Palmetto ultimately received payment, and the supplemental proceedings lay dormant until 2013, when Palmetto resumed its collection efforts. (R. pp. 19-21.)

After an August 27, 2013 hearing, the Master-in-Equity noted in his Order 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 additional transfers, which 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; he only 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 post-judgment contributions Mr. Cox made to his Retirement Account, reasoning that the anti-alienation provision of ERISA and the Internal Revenue Code precluded attachment of funds in the Retirement Account and that “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.)

On September 29, 2014, Palmetto made a motion for the Master-in-Equity to reconsider its order denying the motion to set aside the fraudulent transfers to the Retirement Account. (R. pp. 104-08.) The Master-in-Equity denied that motion. (R. pp. 1-2.) Palmetto then commenced this appeal seeking review of the Master-in-Equity’s Order denying its motion to set aside the fraudulent conveyances.

STATEMENT OF THE FACTS

The retirement account at issue in this case is Michael Cox’s International Paper Salaried Savings Plan Account (“Retirement Account”). (See R. pp. 161-75.) The record before the Master-in-Equity contained no description or terms of the plan.

As soon as the jury returned its verdict, Mr. Cox began making a series of fraudulent transfers to the Retirement Account. In addition to the two transfers of \$44,487.89 and \$7,000 immediately following the verdict, Mr. Cox diverted approximately \$56,917.81 in funds to the Retirement Account from January 1, 2010 to June 30, 2013. Id. Each transfers was a direct deposits from Mr. Cox’s paycheck that

would have been deposited into his checking account had he not diverted the funds to the Retirement Account. (See R. pp. 192-95.) It is undisputed that all of the transfers were voluntary contributions. (R. pp. 3 (“This Order concerns only...voluntary contributions....”) and 197.) Moreover, it is undisputed that all of these transfers occurred while the Respondents owed a substantial amount of money on Palmetto’s judgment. As of the date of this filing, after taking into account all payments received and interest owed on Palmetto’s judgment, the Respondents owe Palmetto \$119,611.79, exclusive of any attorney’s fees and costs incurred in supplemental proceedings.

ARGUMENT

As a matter of law, a judgment debtor should be required to pay his judgment creditor before he transfers non-exempt cash to his retirement account. In this case, the Respondents have diverted at least \$56,917.81 in funds to Mr. Cox’s International Paper Salaried Savings Plan Account (“Retirement Account”) that otherwise would have been applied toward Palmetto’s judgment. The Master-in-Equity condoned the fraudulent transfers, holding that the anti-alienation provision in the Employee Retirement Income Security Act (ERISA), 28 U.S.C. §§ 1001, et seq., and the Internal Revenue Code precluded Palmetto from attaching its judgment to any funds in the Retirement Account and that the transfers were not fraudulent because they were made for consideration and there was no evidence of actual fraud. (R. pp. 6-7.)

As set forth herein, Palmetto seeks a reversal of the Master-in-Equity’s Order because (i) judgment debtors in South Carolina do not have a right to make voluntary contributions to a retirement account in preference of a judgment creditor, (ii) under the law of the case doctrine, the anti-alienation provision in ERISA and the Internal Revenue Code does not prevent attachment of fraudulently transferred funds, (iii) the fraudulent

transfers were not made for consideration and, therefore, no evidence of actual fraud was necessary, and (iv) the record before the Master-in-Equity contained no evidence to support Respondents' contention that Mr. Cox did not increase his retirement account contributions after Palmetto's judgment.

"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 (Ct. App. 1984)). "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)). "The appellate court is not required, however, to disregard the findings of the master." Id.

I. A JUDGMENT DEBTOR HAS NO RIGHT TO VOLUNTARILY TRANSFER NON-EXEMPT FUNDS TO A RETIREMENT ACCOUNT IN PREFERENCE OF A JUDGMENT CREDITOR AND THEN CLAIM THE FUNDS ARE EXEMPT FROM ATTACHMENT.

It is against both public policy and the statutory exemption scheme for a judgment debtor to make a voluntary, post-judgment transfer of non-exempt funds into a retirement account and then show empty pockets to his judgment creditor. While the General Assembly has enacted some protections for judgment debtors in S.C. Code Ann. § 15-41-30, nothing in South Carolina law gives a judgment debtor a right to use his retirement account to hide non-exempt assets from a judgment creditor.

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. With respect to individual retirement accounts, S.C. Code Ann. § 15-41-30(A)(13) (Supp. 2014) exempts from attachment and levy,

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, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor. **A claimed exemption may be reduced or eliminated by the amount of a fraudulent conveyance into the individual retirement account or other plan.**

(emphasis added). The prior version of this exemption, which applies to contributions the Respondents made before May 14, 2012, contained the same exception for fraudulent transfers. S.C. Code Ann. § 15-41-30(A)(12) (Supp. 2008); see also Se. Site Prep, LLC v. Atl. Coast Builders & Contractors, LLC, 394 S.C. 97, 106, 713 S.E.2d 650, 654 (Ct. App. 2011) (a statute is to be construed prospectively unless it is remedial or procedural in nature).

“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). 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.) However, nothing in the statutory exemption scheme evidences the General Assembly’s intent to allow a judgment debtor to make contributions to a retirement account like the Respondents have made in this case. To allow such contributions would invite manipulation of the statute and reward a

judgment debtor for fraudulent activity. In fact, the clear and unambiguous language of section 15-41-30(A)(13) shows the General Assembly's intent to preclude judgment debtors from using the exemption to keep fraudulent transfers beyond the grasp of a judgment creditor. S.C. Code Ann. § 15-41-30(A)(13) (Supp. 2014). Therefore, it cannot be the public policy of this State that a judgment debtor has a right to make voluntary, post-judgment contributions to a retirement account in preference of paying his judgment creditor and show his judgment creditor empty pockets.

Similarly, nothing in federal law precludes a judgment creditor from avoiding fraudulent transfers a judgment debtor makes to his retirement account. Respondents argued to the Master-in-Equity that the anti-alienation provision in ERISA and the Internal Revenue Code prevents a creditor from attaching the voluntary, post-judgment contributions Mr. Cox made to his Retirement Account. However, Respondents never entered the plan description into evidence, so the Master-in-Equity had no evidence on which to find the International Paper plan "was clearly an employee pension plan under ERISA." (R. p. 5.) Had Respondents entered the plan into evidence and proven it qualified under ERISA, it would not make a difference. While no South Carolina court has reported an opinion on this issue, other courts have held that "[t]he anti-alienation provision of ERISA and the Internal Revenue Code do not preclude the avoidance of fraudulent transfers." In re Goldschein, 241 B.R. 370, 379 (Bkry. D.Md. 1999). See also Gilchinsky v. National Westminster Bank N.J., 159 N.J. 463, 732 A.2d 482 (1999). The reasoning is simple: the non-exempt funds should never have been in the retirement account to begin with. This reasoning is in harmony with the language the General Assembly included in S.C. Code Ann. § 15-41-30(A)(13), and it is the reasoning the Master-in-Equity adopted in his two orders setting aside other fraudulent transfers Mr.

Cox made to the Retirement Account. Since neither of those orders was appealed, as discussed below, it is also the law of this case that the anti-alienation provision of ERISA and the Internal Revenue Code do not preclude the avoidance of fraudulent transfers. See Section II, infra.

The question then is whether the post-judgment contributions are fraudulent transfers under South Carolina law. The Statute of Elizabeth, which applies to fraudulent transfers, 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).

It is well-established in South Carolina that under the Statute of Elizabeth, 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, 438 S.E.2d 259, 262 (Ct. App. 1993)).

Respondents have argued that the voluntary, post-judgment contributions Mr. Cox made to his Retirement Account were not fraudulent transfers because they were made for valuable consideration. They contend the consideration was the matching contributions International Paper made to the account. However, Respondents failed to present any evidence to the Master-in-Equity supporting that argument. See Sulton v. Healthsouth Corp., 400 S.C. 412, 420, 734 S.E.2d 641, 645-56 (2012) (arguments of counsel are not evidence). They presented no statements or plan description, nor did they present evidence that matching contributions had been made. Even if those matching contributions were made, they fail to qualify as valuable consideration because they were not paid to the Respondents. Rather, the matching contributions were made to the Retirement Account. Therefore, when the judgment debtor (Mr. Cox) transferred the money into the Retirement Account, he *received* no valuable consideration. No one paid the Respondents anything for the assets they fraudulently transferred to the Retirement Account. The matching contributions were an employment benefit, not valuable consideration as required by the Statute of Elizabeth. Mr. Cox simply moved non-exempt cash from one account to another, claimed an exemption, and then showed his judgment creditor empty pockets.

It is undisputed that the Respondents were indebted to Palmetto when they made the transfers; it is undisputed that each of the transfers was voluntary; and it is undisputed

that the Respondents have failed to retain sufficient assets to pay Palmetto's judgment. Had Mr. Cox not diverted portions of his paychecks to the Retirement Account, the funds would have been deposited into his Mid Carolina Credit Union checking account and would have been subject to execution.

The Master-in-Equity, therefore, erred when he held that federal law precluded avoidance of the fraudulent transfers and that the post-judgment contributions to the Retirement Account were exempt. While the law encourages this State's citizens to save for retirement, it should not encourage judgment debtors to contribute non-exempt cash to a retirement account to avoid paying their judgment creditors, and it should not allow exemptions to be subject to manipulation. To do otherwise would create two classes of judgment debtors: those with retirement accounts and those without. It cannot be the public policy of South Carolina to invite manipulation, reward fraud and create two classes of judgment debtors. However, that is the result of the Master-in-Equity's order.

For these reasons, the Master-in-Equity's order should be reversed.

II. THE MASTER-IN-EQUITY ERRED WHEN HE HELD FEDERAL LAW BARRED AVOIDANCE OF THE FRAUDULENT TRANSFERS BECAUSE THE LAW OF THE CASE IS THAT THE ANTI-ALIENATION PROVISION OF ERISA AND THE INTERNAL REVENUE CODE DOES NOT PRECLUDE AVOIDANCE OF FRAUDULENT TRANSFERS.

"An unappealed ruling is the law of the case and requires affirmance." Transportation Ins. Co. and Flagstar Corp. v. S.C. Second Injury Fund, 389 S.C. 422, 431, 699 S.E.2d 687, 691 (2010). "The doctrine of the law of the case applies to an order or ruling which finally determines a substantial right." Weil v. Weil, 299 S.C. 84, 89, 382 S.E.2d 471, 473 (Ct. App. 1989). The law of the case doctrine applies here because twice the Respondents argued that the anti-alienation provision in ERISA and the Internal

Revenue Code precluded Palmetto from avoiding fraudulent transfers, and both times the Master-in-Equity rejected the Respondents' argument and ordered funds disgorged from the Retirement Account.

In its October 1, 2008 Order, the Master-in-Equity wrote,

6. The Defendant, Michael Cox, has asserted that the Anti-Alienability provisions of ERISA qualified retirement plans prevent this Court from attachment, garnishment, levy, execution and/or other legal or equitable process. 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." 241 B.R. at 378-79.

7. The Defendant 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. The South Carolina General Assembly did not intend to protect and condone such devious acts through the Homestead Exemption Act. Mr. Cox's actions have, in effect, removed the cash/stock from the "jaws of execution." The stock in the Smith Barney account was subject to execution and could have been applied towards the Plaintiffs Judgment had the Defendant, Michael Cox, abstained from liquidating the stock and placing it in his retirement account.

(R. pp. 39-40.) The Master-in-Equity then held Mr. Cox's transfer of \$44,487.89 from his Smith Barney Account to the Retirement Account was a fraudulent transfer and ordered the funds paid to Palmetto. (R. pp. 39-41.)

In a subsequent Order addressing the \$7,000 fraudulent transfer, the Master-in-Equity again held that "[t]he anti-alienation provision of ERISA and the Internal Revenue Code do not preclude the avoidance of fraudulent transfers." (R. p. 30-31) (quoting Goldschein, 241 B.R. at 378-79). And again, the Master-in-Equity noted Mr. Cox's attempts to frustrate Palmetto's collection efforts:

The Defendant 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. The South Carolina General Assembly did not intend to protect and condone such devious acts through the Homestead Exemption Act. Mr. Cox's actions have, in effect, removed the cash from the "jaws of execution." The cash in the Bronco Federal Credit Union account was subject to execution and could have been applied towards the Plaintiff's Judgment had the Defendant, Michael Cox, abstained from withdrawing the cash from the Bronco Federal credit union account and placing it in his retirement account.

(R. p. 31.)

In both orders, the Master-in-Equity considered the Respondents' arguments and concluded that even if ERISA applied, the anti-alienation provision did not prevent Palmetto's motion to set aside the fraudulent transfers. Neither side appealed those orders. Therefore, it is the law of the case that the anti-alienation provision in ERISA and the Internal Revenue Code does not prevent Palmetto from setting aside fraudulent transfers to the Retirement Account. Accordingly, the Master-in-Equity erred as a matter of law when he held federal law precluded Palmetto's attempt to avoid the fraudulent transfers.

III. THE MASTER-IN-EQUITY ERRED WHEN HE HELD THE VOLUNTARY, POST-JUDGMENT CONTRIBUTIONS WERE MADE FOR VALUABLE CONSIDERATION AND THERE WAS NO EVIDENCE OF ACTUAL INTENT TO DEFRAUD.

Under the Statute of Elizabeth, S.C. Code Ann. § 27-23-10(A), 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, 319 S.C. at 264-65, 460 S.E.2d at 408.

In this case, the Master-in-Equity held that the post-judgment contributions were made for valuable consideration. (R. p. 7, ¶ 14.) In truth, however, no valuable consideration was exchanged. In addition to the reasons discussed above, Mr. Cox was simply moving money from one of his pockets to another. He voluntarily diverted non-exempt cash from this checking account to his Retirement Account so he could claim the non-exempt funds were exempt. Meanwhile, Mr. Cox has maintained an interest in the money he diverted to the Retirement Account. Therefore, the Master-in-Equity erred when he held that the transfers were made for consideration.

The Respondents' argument that International Paper's matching contributions suffice for consideration falls short not only for the reasons discussed above but also because it invites debtors to manipulate the statute. If the Respondents are correct, then a debtor will be allowed to divert money to retirement accounts rather than pay his judgments, and then, as soon as the ten-year anniversary of the judgment passes, reap the benefits of his deceit by either taking disbursements or by taking out a loan against the retirement account. The law should not condone such conduct.

As for the factors set forth in Mathis, the record leaves no doubt (i) that Respondents were indebted to Palmetto at the time of each contribution, (ii) that all of the conveyances were voluntary, or (iii) that Respondents failed to retain sufficient assets to pay the remainder of Palmetto's judgment. (R. pp. 3-7, 16-18, 46-47.)

Even assuming, without conceding, that the transfers were made for consideration and, therefore, that Palmetto must show actual intent by Mr. Cox to defraud creditors, the Master-in-Equity erred in holding the transfers were made with no intent to defraud. The record is replete with evidence of Mr. Cox's attempts to obstruct, evade and defraud Palmetto. 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 continued selling cars and buying new ones, he lied under oath during a November 7, 2013 hearing, and he refused to cooperate even when his lie was exposed. (R. pp. 10-14; p. 82, line 9 – p. 87, line 24.) The Master-in-Equity held him in contempt of court because he "willfully and intentionally violated this Court's orders and show[ed] flagrant disregard for the truth in [those] proceedings." (R. p. 13.) The Master-in-Equity went so far as to hold Mr. Cox in contempt, award attorney's fees and costs as sanctions, and impose a suspended jail sentence of thirty days based on Mr. Cox's egregious conduct. (R. pp. 13-15.)

Ever since the jury returned its verdict, Mr. Cox has worked diligently to avoid paying Palmetto. His vehicle for evading and defrauding his judgment creditor has been his Retirement Account. His practice, however, did not prevent him from buying two brand new cars. (R. pp. 9-10.) During Palmetto's efforts to collect on the judgment, Mr.

Cox has been caught making a \$44,487.89 fraudulent transfer to the Retirement Account (R. pp. 43-45); he has been caught making another \$7,000 fraudulent transfer to the Retirement Account (R. pp. 26-35); he has been caught buying and selling vehicles in blatant violation of the Court's orders (R. pp. 9-10); and he has been caught lying under oath to the Master-in-Equity. (R. pp. 10-14.)

Rather than pay Palmetto's judgment, the Respondents continue to divert money into the Retirement Account and patiently wait until Palmetto's time to collect on the judgment expires. See S.C. Code Ann. § 15-39-30 (2005). Respondents have voluntarily transferred at least \$56,917.81 to the Retirement Account, disguising those funds as exempt assets.

The Supreme Court of South Carolina has explained that a conveyance made without consideration is voluntary, or "gratuitous." Royal Z Lanes, Inc. v. Collins Holding Corp., 337 S.C. 592, 594-95, 524 S.E.2d 621, 622 (1999). It is undisputed in this case that all of the transfers Mr. Cox made to his Retirement Account were voluntary. These voluntary, or gratuitous, transfers are akin to gifts. The Supreme Court recognized long ago,

No rule is more clearly imbedded in the law of this state, than that a debtor must be just before he is generous. "The law will not permit one who is indebted at the time to give his property away, provided such gift proves prejudicial to the interest of existing creditors. The motive which prompts the donor to make the gift is wholly immaterial. If the donor is indebted at the time, and the event proves that it is necessary to resort to the property attempted to be conveyed away by a voluntary deed for the purpose of paying such indebtedness, the voluntary conveyance will be set aside, and the property subjected to the payment of such indebtedness upon the ground that it would otherwise operate as a legal fraud upon the rights of creditors, even though it might be perfectly clear that the transaction was free from any trace of moral fraud."

Penning v. Reid, 167 S.C. 263, 166 S.E. 139, 146 (1932) (quotations and citations

omitted). More recently, this Court held, "Courts have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible." Ex parte Dibble, 279 S.C. 592, 595, 310 S.E.2d 440, 442 (Ct. App. 1983). Under the facts of this case, the only just result is that the fraudulent transfers be set aside and the money be paid to Palmetto toward satisfaction of the judgment.

For these reasons, the Master-in-Equity's order should be reversed.

IV. THE MASTER-IN-EQUITY ERRED WHEN HE FOUND THAT MR. COX DID NOT INCREASE THE AMOUNT OF CONTRIBUTIONS TO HIS RETIREMENT ACCOUNT AFTER THE JUDGMENT.

In denying Palmetto's motion to set aside the fraudulent conveyances, the Master-in-Equity found that Mr. Cox made "contributions to his ERISA covered retirement plan for twenty-nine (29) years, since 1985" and further that "Mr. Cox has been making contributions into the 401(k) plan long before the Petitioner's judgment and since the judgment, Mr. Cox has not increased the amount of his contributions into the 401(k) account which he is entitled to do." (R. p. 5.) While Respondents' counsel argued those points to the Master-in-Equity in the Return to Palmetto's motion, Respondents offered no testimony or document to substantiate their position. See Sulton, 400 S.C. at 420, 734 S.E.2d at 645-56 (arguments of counsel are not evidence). The record before the Master-in-Equity contained absolutely no evidence of the contributions Mr. Cox made to the Retirement Account prior to the judgment, let alone the contributions made since 1985. The only evidence before the Master-in-Equity showing contributions made were redacted quarterly statements from January 1, 2010 to June 30, 2013, which the Respondents produced. Accordingly, the Master-in-Equity erred when he held

Respondents' contributions to the Retirement Account did not increase after entry of the judgment.

CONCLUSION

While South Carolina's Homestead Exemption Act, S.C. Code Ann. § 15-41-30, offers debtors protection in certain circumstances, the Act also protects judgment creditors when a judgment debtor takes cash that is subject to execution and deposits it into a retirement account to disguise the cash as being exempt. The law has never been intended to condone such conduct; to do so invites manipulation, rewards fraud and violates the public policy of this State. Therefore, as set forth above herein, this Court should reverse the Master-in-Equity's order denying Palmetto's motion to set aside the voluntary, post-judgment contributions to the Retirement Account.



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March 12, 2015

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE KERSHAW COUNTY
Court Of Common Pleas

Jeffrey M. Tzerman, Master-in-Equity

CIVIL ACTION NO.: 2006-CP-28-0433
APPELLATE CASE NO.: 2014-002455

Palmetto Residential Builders, LLC Appellant,

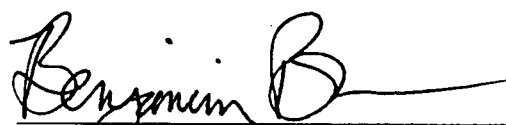
v.

Michael Cox and Elizabeth Cox. Respondents.

CERTIFICATION OF COUNSEL

The undersigned counsel for Appellant certifies that the Final Brief of Appellant filed in this matter complies with Rule 211(b), SCACR.

March 12, 2015



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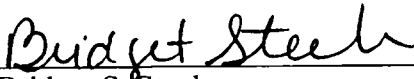
vs.

Michael Cox and Elizabeth Cox. Respondents.

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 13th day of March 2015, I served the *Final Brief of Appellant* upon opposing counsel by depositing copy of the same in the U.S. Mail, postage prepaid, and addressed as follows:

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE KERSHAW COUNTY
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Jeffrey M. Tzerman, Master-in-Equity

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MAR 31 2015

SC Court of Appeals

CIVIL ACTION NO.: 2006-CP-28-0433

Palmetto Residential Builders, LLC Appellant,

Michael Cox and Elizabeth Cox Respondents.

FINAL BRIEF OF RESPONDENTS

March 31, 2015

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STATEMENT OF THE ISSUES ON APPEAL

I. Whether the Master-in-Equity correctly ruled that the contributions from wages Respondent Michael Cox conveyed through his employer pursuant to and in compliance with an Employment Retirement Income Security Act of 1974 (hereinafter "ERISA" covered 401(k) pension plan are exempt from attachment or levy by a judgment creditor pursuant to ERISA, the Homestead exemption, S.C. Code Ann. §15-41-30(A)(13) (Supp. 2014), and S.C. Code Ann. § 27-23-10 (A) (2007), known as the "Statute of Elizabeth."

STATEMENT OF THE CASE

This is an appeal from a motion hearing in Supplemental Proceedings in which the Appellant sought, *inter alia*, to set aside the voluntary contributions, deducted from the paycheck of Respondent Michael Cox through his employer's ERISA covered 401(k) pension plan. 401(k) is the section in the Internal Revenue Code that allows for the employer-provided, pension plan.

Appellants won a jury trial judgment in the amount of \$119,430.93 on February 13, 2008. Appellants commenced supplemental proceedings in September of 2008 in the Kershaw County Master-in Equity Court to collect on the judgment.

Within one (1) week after the jury verdict was rendered, Mr. Cox sold \$44,487.89 worth of stock and deposited it into his 401(k) retirement account along with \$7,000.00 from a savings account. In separate Orders, the Master-in-Equity set both these conveyances aside as fraudulent. The \$44,487.89 by Order was filed on September 18, 2008 (R. pp. 36-42) and the \$7,000.00 by Order was filed November 7, 2008. (R. pp. 26-35).

At a subsequent hearing in January of 2009, the Master-in-Equity ordered the 401(k) plan administrator, J.P. Morgan Chase, to pay the funds mentioned above directly to the Appellant. (R. pp. 22-25). The case was dormant until June of 2013 when Appellants filed a Rule to Show Cause.

On May 20, 2014, Appellant moved to attach the wage contributions from Mr. Cox's paycheck into to his employer-sponsored 401(k) plan, arguing that the contributions were

fraudulent conveyances under South Carolina's Statute of Elizabeth, S.C. Code Ann. § 27-23-10 et seq. (R. pp. 132-145). Further, they argued that the applicable homestead exemption, S.C. Code Ann. 15-41-30(A)(13) did not apply, nor did ERISA or the Internal Revenue Code because the conveyances were fraudulent.

The hearing was held on June 25, 2014. Although Appellant was the moving party, they did not procure a Court Reporter to make a transcript of the hearing. The hearing lasted over one (1) hour. Each lawyer had ample time to argue their position and was questioned thoroughly by Judge Tzerman.

By Order filed on September 15, 2014, the Master-in-Equity denied the Appellant's motion to set aside the conveyances. (R. pp. 3-7). He ruled that the conveyances were not fraudulent, were not made with intent to defraud the creditor were made for valuable consideration. The Judge ruled the contributions at issue were taken directly from Mr. Cox's paycheck, the plan was an employee pension plan covered under ERISA and that the contributions were made in accordance with the plan and thus, exempt from attachment or levy. Judge Tzerman also ruled that the contributions were not income for tax purposes.

Appellants filed a Motion to Alter or Amend Judgment which was denied without a hearing by Order dated October 13, 2014. (R. pp. 132-145). This appeal followed.

STATEMENT OF THE FACTS

Respondent Michael Cox recently retired from International Paper Company where he worked for 30 years. International Paper Company set up this employee pension plan to comply with ERISA.

Mr. Cox has made voluntary contributions, deducted from his paycheck into his pension

account since 1985. Mr. Cox made voluntary contributions under the ERISA covered plan since it was available to International Paper employees on July 1, 1992. It is called the "Salaried Savings Plan." The plan is a "Qualified Employer Plan" under 26 U.S.C. § 401 (a).

In 2008, a jury rendered judgment against the Respondents in the amount of \$119,430.93. (R. pp. 46-47). Within a week or so of this judgment, Mr. Cox sold non-exempt stock, withdrew \$7,000.00 from a savings account and deposited these funds into his 401(k) pension account. These fraudulent conveyances were properly set aside by the Master-in-Equity. The Appellants now seek to attach contributions deducted from wages Mr. Cox paid into the plan since judgment was rendered against him and his wife.

ARGUMENT

The Appellant conflates Respondent Michael Cox's previous sale or transfer of non-exempt assets into his pension account with transfers deducted from wages into his pension account. The only issue in this appeal is whether the wage-withholding contributions from the paycheck of Mr. Cox made in compliance with an ERISA covered 401(k) plan are fraudulent conveyances or are otherwise subject to attachment by a judgment creditor.

Appellant cites In re Goldshein, 21 B.R. 370 (Bkrtcy. D.Md. 1999) (App. Br. p. 2) and Gilchinisky v. National Westminster Bank N.J., 159 N.J. 463, 732 A.2d 482 (1999) (App. Br. at 8) to support the proposition that the anti-alienation provision of ERISA does not allow fraudulent conveyances to be made into an otherwise exempt pension plan. Stated differently, non-exempt funds may not be transferred into a 401(k) plan or any type of pension fund. Appellant also states that it is the "law of the case" that the anti-alienation provision of ERISA and the Internal Revenue Code do not preclude the avoidance of fraudulent transfers. (App.'s Br. at 9).

The Respondents agree. No fraudulent conveyance may be made into a pension account; even a pension account covered by ERISA.

The Appellants thoroughly document the past wrongful conveyances made by Mr. Cox into his pension account. Now, they ask this Court to rule that wages; specifically wages deducted from Mr. Cox's paycheck in compliance with the pension plan are also fraudulent conveyances.

The relevant law before this Court is as follows:

South Carolina's "Statute of Elizabeth," S.C. Code Ann. § 27-23-10 reads:

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 defraud creditors and other 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, connivous, or fraudulent devised and practices are, must or might be in the 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.

(emphasis added).

Thus, The Statute of Elizabeth focuses on the *intent* of the debtor.

The exemption under which the Respondents claim the 401(k) contributions are exempt from creditors is S.C. Code Ann. § 15-41-30(A)(13), which reads:

The debtor's right to receive individual retirement accounts as described in **Sections 408(a) and 408(A)** 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 term, "Internal Revenue Code" has meaning provided In Section 12-6-40(A) (emphasis added).

Section 408(a) of the Internal Revenue Code reads:

For purposes of this section, the term "individual retirement account" Means a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, but only if the written governing instrument creating the trust meets the following requirements:

- (1) Except in the case of a rollover contribution described in subsection (d)(3) in section 402(c), 403(a)(4), 403(b)(8) or 457(e)(16), no **contribution** will be accepted unless it is in cash and **contributions** will not be accepted for the taxable year on behalf of any individual in excess of the amount in effect for such taxable year under section **219(b)(1)(a)** (emphasis added).
- (2) The trustee is a bank (as defined in subsection (n) or such other Person who demonstrates to the satisfaction of the Secretary that the manner in which such other person will administer the trust will be consistent with the requirement of this section.
- (3) No part of the trust funds will be invested in life insurance contracts.
- (4) The interest of an individual in the balance in his account in non-feitable.
- (5) The assets of the trust will not be commingled with other property except in a common trust fund or common investment fund.
- (6) Under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

(emphasis added).

Thus, Section 408(a), which is referenced in the applicable *exemption*, twice refers to *contributions* into the plan.

Section 219(b)(1)(a) reads:

(b) Maximum amount of deduction: (1) In general: The amount allowable as a deduction under subsection (a) to any individual for any taxable year shall not exceed the lesser of- (A) the deductible amount, or (B) an amount equal to the compensation includable in the individual's gross income for such taxable year (emphasis added).

Subsection (a) reads: "In the case of an individual, there shall be allowed as a deduction an amount equal to the qualified retirement contributions of the individual for the taxable year."

The 401(k) plan Mr. Cox has is an individual retirement account under 408(a) of the Internal Revenue Code and it provides the required contractual "anti-alienation" provision (See 29 U.S.C. § 1057(d)(1)).

An outline of the plan was presented at the motion hearing for the Master-in-Equity's review. No evidence was presented at the hearing that Mr. Cox made contributions in violation of the plan.

The 2014 tax-year rules allow Mr. Cox was allowed to contribute up to \$23,000.00 into his 401(k) under the current rule of the Internal Revenue Service. All who contribute to 401(k) accounts are allowed to contribute up to \$17,500.00 in 2014 pre-tax money into their retirement account. Mr. Cox at age 59, is allowed an additional \$5,500.00 pre-tax contribution into his pension plan pursuant to 26 U.S. Code § 219 (5)(B) which is called the "catch up" contribution. Only those who are 50 and over may take advantage of this provision.

Appellant wrongly classifies the contributions into the 401(k) as "non-exempt" (App. Br. at 5) and argues that allowing these contributions into the pension plan is against "public policy" (App. Br. at 6) and that Mr. Cox is using the 401(k) to "hide non-exempt assets from the creditor." (App. Br. at 6).

Mr. Cox's previous conversions of non-exempt property into the pension account were

properly voided. However, those conveyances are entirely irrelevant and different in kind to the issue before this Court.

The wage-withholding contributions are not taxed because the I.R.S. does not consider them as income. Further, as South Carolina's Wage Payment Act states, "Funds placed in pension plans or profit plans are not wages subject to this chapter." See S.C. Code Ann. § 41-10-10(2) (1986). Thus, the Appellants ask this Court to order the attachment of non-wages and/or non-income.

Even if the contributions at issue were considered to be wages or income, they would not be subject to attachment by a judgment creditor because wages and income are not subject to attachment by judgment creditors in South Carolina. First, these conveyances are exempt under S.C. § 15-41-30(A)(13). Second, the asset at issue is wages, which were deducted from Mr. Cox's paycheck.

South Carolina does not allow the garnishment of wages except under certain circumstances such as wages that may be garnished in this State for the payment of overdue taxes, under a Chapter 13 Bankruptcy Plan or for the payment of child or spousal support. See Ashley P. Cuttino, Glenn M. Spitler, III: An Employer's Guide to Navigating the Payment of Wages and Garnishments, S.C. Law., March 2014, at 27-28. See also 15 U.S.C. § 1671 et seq. (2012); 1420 (2013). But wages may not be garnished in South Carolina to satisfy the judgment of an unsecured, non-priority creditor as is the Appellant and there is no authority which states so.

Title I of ERISA requires that benefits under the plan may not be assigned or alienated. For the anti-alienation clause to be effective, the underlying plan must constitute a "pension plan" under ERISA which is defined as "any plan, fund or program . . . which provides retirement

income to employees.” See ERISA § 3(2)(A).

Further, ERISA § 514 (a) provides that ERISA supersedes state laws to the extent that they state laws relate to employee benefit plans, also known as the “preemption” provision”. The anti-alienation and preemption provisions both make state attachment and garnishment laws inapplicable or without force or effect with relation to ERISA covered plans. Although, as stated *supra*, this State does not even allow for the garnishment of an unsecured, non-priority creditor but even if it did, it would be preempted by ERISA.

There are federal exceptions to the anti-alienation and preemption provisions which mirror South Carolina’s. For example, Qualified Domestic Relations Orders (QDRO’s) for child support may be exempted. I.R.C. § 401 (a)(13)(B); ERISA § 206(d)(3). In a marriage and subsequent divorce, the retirement plan is a marital asset subject to a Family Court’s equitable division authority. Federal tax judgments and levies are also exempt. See Treas. Reg. §1.401(a)-13(e). Criminal judgments may also be exempt. See U.S. v. Novak, 476 F.3d 1041 (9th Cir. 2007).

The most applicable exception to the case at bar is that civil (or criminal) judgments, settlement agreements and the like may be offset by a participant’s fiduciary violation or crime committed by the contributor against the plan, i.e., doing something disallowed by the rules of the plan itself. For instance, if Mr. Cox would have contributed more than the prescribed amount for any tax year, those funds would not be protected by ERISA. None of the exceptions to the anti-alienation or preemption provisions are applicable in this case and no evidence was presented demonstrating more was paid into the plan than the plan allows.

Appellant notes that Respondents offered no testimony or entered documents into evidence

to support claims that Mr. Cox has complied with the provisions of the plan. (App. Br. at 17).

While that is true, there is also no evidence to rebut the claims. The moving party, the Appellants herein, had the burden of proof at the motion hearing. The hearing, of which no transcript was made, dealt almost entirely with whether an ERISA covered payroll deductions deposited into a 401(k) pension account after a judgment has been rendered against the individual, is a fraudulent conveyance.

As Oskin v. Johnson, holds, in referring to the Statute of Elizabeth; “In interpreting this statute, this Court has held conveyances shall be set aside under two conditions; First, where there was valuable consideration and the transfer is made by the grantor with the actual intent to defraud; and, second, where a transfer is made without actual intent to defraud but without valuable consideration. 400 S.C. 390, 735 S.E.2d 459 (S.C. 2012).

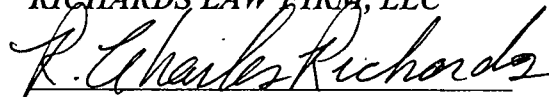
The consideration Mr. Cox receives from his 401(k) contributions are that his employer will match his contribution and these contributions and employer matching contributions will be paid out over time after Mr. Cox retires. Therefore, under Oskin, the only way this Court may set aside the contributions into the 401(k) are if they are found to be made with the actual intent of defrauding the creditor. As stated previously, Mr. Cox has made contributions into this 401(k) plan for many years prior to the judgment being entered against him and he is contributing less than he is allowed by applicable law.

CONCLUSION

Mr. Cox’s previous conversions of non-exempt property into his pension account were properly set aside. However, those conveyances are entirely irrelevant to the issue before this Court. Under ERISA and South Carolina’s exemption laws, the contributions Mr. Cox made into

his 401(k) since judgment was rendered against him are not fraudulent conveyances. The conveyances were made with the intent to provide for his family after he retires not to defraud the creditor and they were made for the valuable consideration of matching employer contributions and protection of these assets from creditors. The wage contributions were exempt, not considered income by the Internal Revenue Service and they would be exempt even if they were considered to be income under ERISA and our Statue of Elizabeth. Further, the moving party has the burden of proof. Appellants presented no evidence before the motion hearing, at the motion hearing or after the motion hearing that show Mr. Cox made contributions made to his plan that exceed the plan's guidelines. Accordingly, the Master ruled in accordance with the law and the facts and should be upheld on appeal.

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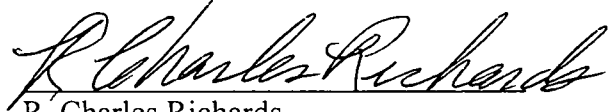
CIVIL ACTION NO.; 2006-CP-28-0433

Palmetto Residential Builders, LLC Appellant,

Michael Cox and Elizabeth Cox Respondents.

PROOF OF SERVICE

I certify that I have served a copy of the Respondent's Final Brief by depositing a copy of them in the United States Mail, postage prepaid, on Monday, March 31, 2015, addressed to Appellant's attorney Benjamin C. Bruner, Esquire by depositing same in the United States Mail with sufficient postage affixed and addressed it to their attorney of record Benjamin C. Bruner, at P.O. Box 61110, Columbia, South Carolina 29260.



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