STATE OF SOUTH CAROLINA
IN THE
SUPREME COURT

Appeal from the Court of Common Pleas for Charleston County
Honorable J. C. Nicholson, Jr., Circuit Judge
Civil Action Nos.: 2010-CP-10-9096 and 2011-CP-10-8840
419 S.C. 48, 795 S.E.2d 857 (Ct.App. 2016)

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S.C. SUPREME COURT

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

Respondent,

v.

Donald W. Lancaster,

Petitioner.

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

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Stephen P. Groves, Sr., Esquire
S.C. Bar No. 007854
Alexandra H. Austin, Esquire
S.C. Bar No. 102646
NEXSEN PRUET, LLC
205 King Street, Suite 400
Charleston, South Carolina 29401
Telephone: 843.720.1725/Telecopier: 843.414.8206
E-Mail: SGroves@nexsenpruet.com
AAustin@nexsenpruet.com

John J. Dodds, III, Esquire
S.C. Bar No. 001707
LAW FIRM OF CISA & DODDS, LLP
858 Lowcountry Boulevard, Suite 101
Mount Pleasant, South Carolina 29464
Telephone: 843.881.6530
E-Mail: john@cisadodds.com

Attorneys for the Petitioner

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

COMES NOW the Petitioner, Donald W. Lancaster ("Mr. Lancaster"), pursuant to Rule 221(a), SCACR, and respectfully submits his ***Reply to the Return to the Petition for Writ of Certiorari*** in response to the submission of the Respondent, Frank Gordon, Jr., Individually and as Trustee of the Dorothy S. Gordon (Deceased) Trust. Mr. Lancaster respectfully reiterates his request that this Supreme Court grant him certiorari and to reverse the decision of the Court of Appeals which affirmed the Circuit Court.[1]

I. ARGUMENT AND CITATION OF AUTHORITY

A. *LINDA Mc CO. V. SHORE's* VERY LIMITED HOLDING DID NOT VALIDATE MR. GORDON'S UNTIMELY ENFORCEMENT ACTION AGAINST MR. LANCASTER SINCE THE 2002 DREWS JUDGMENT WAS TEN YEARS OLD

"Executions may issue upon final judgments . . at any time within ***ten years from the date of the original entry thereof*** and shall have active energy during such period, without any renewal thereof . . . ."[2] Mr. Gordon, therefore, had to act on the judgments he obtained against Mr. Drews ***within ten years*** of receiving them. Mr. Gordon failed to timely do so and his claim against Mr. Lancaster was barred as a matter of law. This Supreme Court should grant certiorari, reverse the Court of Appeals' decision, and grant Mr. Lancaster judgment as a matter of law.

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1 *See* Gordon v. Lancaster, 419 S.C. 48, 795 S.E.2d 857 (Ct.App. 2016), *rehearing denied* (16 February 2017).

2 *See* S. C. Code Ann. 15-39-30 (Thomson Reuters West 2012) (Emphasis added). *See* *RRR, Inc. v. Toggas*, 98 F.Supp.3d 12, 17 (D.D.C. 2015); Linda Mc Co., Inc. v. Shore, 375 S.C. 432. 653 S.E.2d 279 (Ct.App. 2007), *certiorari granted and affirmed as modified*, 390 S.C. 543, 703 S.E.2d 499 (2010); Carr v. Guerard, 365 S.C. 151, 616 S.E.2d 429 (2005). Before 1946, the ten-year life of a judgment ***could be*** extended for another ten years. *See also* U.S. Rubber Co. v. McManus, 211 S.C. 342, 345-346, 45 S.E.2d 335, 336 (1947); Linda Mc. Co. v. Shore, 390 S.C. 543, 560, 703 S.E.2d 499, 508 (Beatty, J., dissenting). In 1946, our Legislature decided the ten-year time period was long enough and revised the law to eliminate any extension. This Supreme Court found "[t]he logical result of the 1946 enactment . . .was to utterly extinguish a judgment after the expiration of ten years from the date of entry." Hardee v. Lynch, 212 S.C. 6, 16-17, 46 S.E.2d 179, 183 (1948).

Undisputedly, Mr. Lancaster is not and never has been Mr. Gordon's ***original judgment debtor***. Mr. Drews and others occupied that position. Mr. Gordon has sought only to "attach" the "downstream" proceeds of monies which Mr. Drews ostensibly "parked" with Mr. Lancaster to hide that money from creditors. The overall fallacy with the Court of Appeals' decision is that the vast majority of the money at issue involved financial transactions which took place (a) when the Drewses ***did not have*** any debts and/or creditors, (b) ***long before*** Builders Station was either contemplated or existed, (c) ***long before*** Mr. Gordon even had a potential claim against Mr. Drews, (d) ***long before*** Mr. Gordon made any claim as a result of the failed investment in Builders Station, and (e) ***long before*** Mr. Gordon obtained a judgment against Mr. Drews.

The record shows Mr. Gordon obtained his damages ***judgment against Mr. Drews*** on ***5 December 2001*** (R.p.11, para. 2; R.pp.46-53; R.p.133, para. 9; R.p.726, para. 3; R.pp.1079-1085), and the attorneys' fees award on ***15 March 2002***. (R.p.11, para. 2; R.pp.41-43; R.pp.1079-1090). The total judgment was enrolled on ***18 March 2002***.[3] Almost nine years later, Mr. Gordon sued Mr. Lancaster on ***2 November 2010*** (R.pp.120-130), and almost 11½ years later obtained his judgment on ***19 August 2013***. (R.p.9; R.pp.10-30). By any reasonable calculation, Mr. Gordon's judgment against Mr. Drews had expired and was unenforceable as it was clearly more than ten years old.

The United States District Court for the District of Columbia, in *RRR, Inc. v. Toggas*, looking to a decision of the Beaufort County Court of Common Pleas in a related case, recognized that " 'South Carolina courts have repeatedly held that a judgment is extinguished after the expiration of ten years from the date of entry [and, therefore, a

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3 Gordon v. Lancaster, 419 S.C. 48, 63, 795 S.E.2d 857, 856 (Thomas, J, dissenting).

judgment] holder loses his or her status as a judgment creditor. . . [a]s soon as a judgment becomes ten years old.' "[4] The D.C. Court further acknowledged "[a] 'narrow exception' to this general rule exist[ed] 'if the ***judgment creditor ha[d] completed all of its efforts*** under . . . South Carolina [law] ***prior to the ten-year expiration date*** and [wa]s ***awaiting the issuance of an execution order by the court***.' "[5]

In Linda Mc Co. v. Shore, this Supreme Court, in a very limited holding, recognized S.C. Code Ann. § 15-39-30 operated like a statute of limitations in situation where a judgment creditor had ***initiated*** supplemental proceedings against the judgment debtor within the ten-year time period and ***conducted*** a merits hearing, but the Circuit Court had not issued the levy and execution order until after expiration of the ten-year period.[6] In Garrison v. Owens, this Supreme Court, in a clear precursor to Linda Mc Co.'s very narrow holding,[7] specifically held that since a "judgment lien [wa]s purely statutory . . the bringing of an action to enforce the lien will not preserve it beyond the time fixed by the statute, ***if such time expires before the action is tried***."[8]

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4 RRR, Inc. v. Toggas, 98 F.Supp.3d 12, 17 (*quoting* Toggas v. RRR, Inc., 2014-CP-07-2016, Beaufort CCCP, filed 29 January 2015) (*citing* Carr v. Guerard, 365 S.C. 151, 153, 616 S.E.2d 429, 430 (2005)) (Second alteration in original) (A copy of the order is attached to this Reply Brief for this Supreme Court's convenience as **Exhibit "A"**).

5 RRR, Inc. v. Toggas, 98 F.Supp.3d 12, 17 (*quoting* Toggas v. RRR, Inc., 2014-CP-07-2016) (*citing* Linda Mc Co. v. Shore, 390 S.C. 543, 551, 703 S.E.2d 499, 505) (Emphasis added).

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

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

8 Garrison v. Owens, 258 S.C. 442, 446-447, 189 S.E.2d 31, 33 (1972) (*overruled on other grounds*, Linda Mc Co. v. Shore, 390 S.C. 543, 703 S.E.2d 499) (*citing* 49 C.J.S., Judgments, § 495

Entirely unlike this Supreme Court's very limited factual situation in _Linda Mc Co._, or its prophetic _Garrison_ decision, this case ***did not involve*** a situation where Mr. Gordon, as the judgment creditor, " 'ha[d] complied with [all of] the applicable statutes . . and [wa]s ***merely waiting on a court's order*** regarding execution and levy [order]' "[9] Mr. Gordon sued Mr. Lancaster on ***2 November 2010*** (R.pp.120-130), and "the [C]ircuit [C]ourt ***did not hold the final hearing*** and actually try the case until ***June 2013***, more than one year after the expiration of the ten-year period."[10] Furthermore, Mr. Gordon's judgment against Mr. Lancaster was not effective until ***19 August 2013***. (R.p.9; R.pp.10-30). Again, by any reasonable time calculation, Mr. Gordon's judgment against Mr. Drews had expired and was completely unenforceable against anyone as it was more than ten years old.

The Court of Appeals has infinitely expanded _Linda Mc Co._'s very narrow reach to the extent that a judgment creditor can now file and serve an action to enforce an outstanding judgment on the ***very last day of the ten-year "active energy" period*** and still maintain effective enforcement rights since the judgment creditor had "filed [the] action . . . ***within*** the ten-year statutory period of active energy."[11] This rationale ***extends*** the ten-year "active energy" period for whatever length of time it takes the Circuit Court to (a) allow the issues to be joined, (b) conduct a merits hearing, and (c) issue a final

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(West 1970)). *See also generally* Hughes v. Slater, 214 S.C. 305, 311-312, 52 S.E.2d 419, 422 (1949) (citing cases); Harvey v. Gibson, 190 S.C. 98, 2 S.E.2d 385 (1939).

9 Gordon v. Lancaster, 419 S.C. 48, 63-64, 795 S.E.2d 857, 862 (*quoting* Linda Mc Co. v. Shore, 390 S.C. 543, 554-555, 703 S.E.2d 499, 505).

10 Gordon v. Lancaster, 419 S.C. 48, 62-63, 795 S.E.2d 857, 865 (Thomas, J., dissenting) (Emphasis added). In Garrison, the judgment was entered on or about 20 August 1960, and the enforcement action was not commenced until 23 June 1970, with a trial not possible until after expiration of the 10-year period. Garrison v. Owens, 258 S.C. 442, 444-445, 189 S.E.2d 31, 32.

11 Gordon v. Lancaster, 419 S.C. 48, 57, 795 S.E.2d 857, 862 (*citing* Linda Mc Co. v. Shore, 390 S.C. 543, 554 n.7, 703 S.E.2d 499, 505, n.7) (Emphasis added).

order. This can logically extend the supposedly limited "active energy" period many, many years into the future. This goes far beyond the admittedly very narrow circumstances this Supreme Court approved in Linda Mc Co. and has gratuitously expanded the holding of that case far, far beyond what this Supreme Court reasonably contemplated and intended.[12] Waiting to simply try a case is vastly different than merely waiting for the court to issue ruling after the trial has been completed.

As Judge Thomas noted in her dissent in this case:

> As of March 18, 2012, the final day of the ten-year period following enrollment of the judgment, [Mr. Gordon] ***had only filed the present action*** in the circuit court and settled his allegations against the Drews' estates. Although [Mr. Gordon] filed this action prior to the expiration of the ten-year period, he was not 'merely waiting on the court's order regarding execution and levy' as was the situation in *Linda Mc [Co. v. Shore]*.[13]

Furthermore, Judge Thomas recognized that the practical effect of the

> . . . majority [decision was to reward Mr. Gordon's] action [by declaring his judgment lien] was [both valid and] active ***simply because he filed it prior to the expiration of the ten-year period*** [and, therefore], the majority's interpretation could effectively allow any judgment holder to extend automatically the ten-year period [for an indeterminate time period] by merely filing a new action to execute prior to the expiration of the ten-year period."[14]

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[12] Mr. Gordon was required to bring suit against Mr. Lancaster in a timely manner sufficient to allow the Circuit Court to conduct the final hearing before termination of the ten-year period. Under Linda Mc Co., ten years means ten years and the only recognized extension involves circumstances where the final hearing has been held and the judgment creditor is merely awaiting the Circuit Court's issuance of the final order, levy, and execution. *See* Linda Mc Co. v. Shore, 390 S.C. 543, 554, 703 S.E.2d 499, 505. That did not occur in this case.

[13] Gordon v. Lancaster, 419 S.C. 48, 63-64, 795 S.E.2d 857, 865 (Thomas, J., dissenting).

[14] Gordon v. Lancaster, 419 S.C. 48, 63-64, 795 S.E.2d 857, 865 (Thomas, J., dissenting) (*citing* Linda Mc Co. v. Shore, 390 S.C. 543, 554, 703 S.E.2d 499, 505 ("[W]hen a party has complied with the applicable statutes, as [r]espondent did in this case, and is merely waiting on a court's order regarding execution and levy, the ten year limitation found in [S. C Code Ann. §] 15-39-30 is extended to when the court finally issues an order.") (Emphasis added).

In this vein, the Court of Appeals' reliance on *Hardee v. Lynch*,[15] to expand the holding in *Linda Mc Co.* was entirely misplaced. The *Hardee* Court addressed South Carolina law ***prior to 1946*** when the ten-year period could be extended for another ten years. Moreover, as (now Chief) Justice Beatty then noted, in *Linda Mc Co.*, the "*Hardee* court ***specifically declined*** to address the question of what happens when a timely-filed action to enforce a judgment [wa]s not concluded prior to the expiration of the ten-year repose period as it was unnecessary to resolve the issue before it."[16] Furthermore, (now Chief) Justice Beatty recognized, also in *Linda Mc Co.*, this Supreme Court had ***already*** "squarely confronted the question and concluded . . an action to enforce the lien ***will not preserve it*** beyond the time by statute if such time expires ***before the action is tried***."[17]

It is not reasonable to believe that this Supreme Court, without explicitly saying so, intended *Linda Mc Co.* to authorize a judgment creditor to effectively extend the statutory ten-year "active energy" time period indefinitely by the ***mere initiation*** of an enforcement action at some point within the ten-year time frame. *Linda Mc Co.* seems to clearly stand

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15 In Linda Mc Co., This Supreme Court mistakenly referred to Hardee v. Lynch as supporting the proposition that merely filing an enforcement action within the 10-year period sufficiently preserved the judgment's "active energy". As (now Chief) Justice Beatty recognized "the statutory scheme referred to in Hardee ha[d] been repealed and its obsolescence acknowledged by the Hardee court [as the] Hardee court was [always] referring to the way judgments were treated ***prior*** to the [1946] change in the law." Linda Mc Co. v. Shore, 390 S.C. 543, 561, 703 S.E.2d 499, 508 (*citing* Hardee v. Lynch, 212 S.C. 6, 13, 46 S.E.2d 179, 182 (1948)) (Beatty, J., dissenting) (Emphasis added)).

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

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

for the proposition that a judgment creditor has a three-prong duty: the creditor must have both ***filed*** (first prong) and ***tried*** (second prong) the judgment enforcement action and, in turn, simply be ***awaiting*** the trial court's final ruling (third prong) to survive the ten-year time limitation. Absent the occurrence of the first two prongs, the third prong in immaterial.**18**

Mr. Gordon complied with the first prong and failed as to the remaining two. His claim was barred as a matter of law.

B. THE $100,000.00 THE DREWSES PAID MR. LANCASTER IN 1992 TO PURCHASE BAINBRIDGE DRIVE WAS NOT A FRAUDULENT CONVEYANCE

The Court of Appeals incorrectly found the $100,000.00 Mr. Drews gave Mr. Lancaster in 1992 for the Drewses' life estate was done to ***defraud*** Mr. Drews' creditors.**19** The $100,000.00 payment was made solely to provide the Drewses a life estate so they could live in a comfortable and suitable home for the remainder of their natural lives.**20** Mr. Lancaster did not participate in any fraudulent scheme; he was ***simply trying to assist his aunt and uncle through their very tough financial situation***.

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18 Mr. Gordon asserts "[t]here were many instances where [he] was at the mercy of the court system to collect his judgments[, including the fact Mr.] Gordon unable to begin execution on them until the end of September 2005, when [Mr.] Lancaster lost his appeal . . . ." (Return to Petition, p.15). This is patently incorrect, Mr. Lancaster never appealed any issue until this present matter. Mr. Drews was the one whose appeal was unsuccessful. *See* Gordon v. Drews, 358 S.C. 598, 595 S.E.2d 864 (Ct.App. 2004), *rehearing denied* (20 May 2004), *cert. denied* (22 September 2005). Mr. Lancaster had nothing to do with that appeal and did not cause any delay whatsoever to Mr. Gordon's judgment lien enforcement proceedings. Any delay was caused by third-parties of Mr. Gordon himself "sitting on his rights".

19 Gordon v. Lancaster, 418 S.C. 48, 59-60, 795 S.E.2d 857, 862, 863-864.

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

1. Liens, Loans, and the Life Estate

During ***1990 and 1991*** the Drewses borrowed heavily on their Edgewater Park home to keep The Drews Company afloat. Unfortunately, after the IRS filed several liens against Mr. Drews and his business (R.p.13, para. 1; R.p.355, lines 6-12; R.p.373, lines 6-13; R.p.764, para. 4) Mr. Drews decided to sell out. (R.p.440, lines 5-10; R.p.764, para. 4). Furthermore, the Drewses sold their Edgewater Park home for the actual purpose of ***satisfying*** both the IRS liens and the outstanding mortgage loans. (R.p.355, lines 6-12; R.p.440, lines 11-15; R.pp.764-765, para. 5).

After ***paying off*** the mortgage loans and the IRS, the Drewses were left with $100,000.00 from the sale but, on the other hand, ***did not have a place to live***. (R.pp.764-765, para. 5). In desperation, the Drewses turned to Mr. Lancaster for help. In ***1992***, Mr. Drews proposed (R.p.321, lines 6-8) and Mr. Lancaster agreed (R.p.13, para. 2; R.p.387, lines 11-19; R.p.418, lines 6-21), that (a) the Drewses give Mr. Lancaster the remaining $100,000.00, (b) Mr. Lancaster use that money, in part, to purchase them a suitable home and (c) the Drewses, via a life estate,**21** would then live in the "new" home for the remainder of their lives ***without the need to make either rent or mortgage payments***. (R.pp.665-666; R.pp.677-681; R.pp.764-765, para. 5; R.pp.1053-1054; R.pp.1060-1064). Consequently, in ***1992***, Mr. Lancaster took the $100,000.00 (R.p.137, paras. 43-45; R.pp.144-145, paras. 3, 9-10; R.p.322, lines 13-25; R.p.376, lines 14-20), added some of his own money, and bought Bainbridge Drive on ***22 May 1992***. (R.p.14,

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21 A life estate is "an estate of indeterminate duration . . . " Strother v. Folk, 123 S.C. 127, 138, 115 S.E. 605, 611 (1922). The Drewses $100,000.00 payment to Mr. Lancaster was in exchange for the life estate in Bainbridge Drive and Nuffield Road. (R.p.373, line 6 – R.p.374, line 5; R.pp.764-765, para. 5). Mr. Lancaster had no nefarious intent or any other bad intent; he simply wanted to help his aunt and uncle.

para. 7; R.p.340, line 22 – R.p.341, line 7; R.p.376, line 24 – R.p.377, line 1; R.pp.662-664).[22] Mr. and Mrs. Drews moved in and lived there for the next 37 months. (R.p.137, para. 47; R.p.146, para. 11; R.p.379, lines 16-18).

In ***April 1995***, Mr. Drews again asked Mr. Lancaster for help in moving into a one-story home. (R.p.379, line 19 – R.p.380, line 3). The Drewses found Nuffield Road (R.p.359, lines 18-20; R.p.360, lines 11-15; R.p.380, lines 4-19) and Mr. Lancaster bought the property on ***16 May 1995*** (R.p.137, para. 48; R.p.146, para. 12; R.pp.667-671; R.pp.1055-1059), for $125,000.00. (R.pp.667-671; R.pp.1055-1059).[23] The Drewses lived there until their deaths (R.pp.137-138, paras. 49, 52; R.p.383, lines 2-7; R.p.378, line 23 – R.p.379, line 1) under the same life estate arrangement as with Bainbridge Drive. (R.p.378, lines 1-22; R.p.382, line 15 – R.p.383, line 1; R.p.677-671; R.pp.1060-1064).

2. No Continuing Debts or Creditors in 1992

The Court of Appeals held that even though Mr. "Lancaster argued the Drewses were debt free in 1992 after they sold their home, there was ***no documentary evidence*** the liens had been discharged or the sales proceeds were sufficient to pay off outstanding obligations."[24] Logically, the mere fact the Drewses were undisputedly able to sell their

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

23 Mr. Lancaster added an additional $15,000.00 or so for a new A/C system, updated appliances, and other needed repairs. (R.p.364, line 22 - R.p.365, line 2). The Court of Appeals' "conclusion" Mr. Lancaster's failure to keep a copy of the Power of Attorney for this purchase showed "nefariousness" is meritless. Gordon v. Lancaster, 418 S.C. 48, 52-52, 795 S.E.2d 857, 862, 859. Mr. Lancaster had no reason to retain the POA (copy or original) after the Nuffield Road sale closed (R.p.360, line 16 - R.p.361, line 11) as he used it only because he was out of town when Mr. Drews executed the Nuffield Road sales agreement. (R.p.360, lines 16-22; R.p.362, lines 3-8; R.p.380, lines 7-25; R.pp.672-676). In any case, Mr. Lancaster attended the final closing. (R.p.380, line 23 - R.p.381, line 4; R.pp.667-671). The POA argument is a "red herring".

24 Gordon v. Lancaster, 419 S.C. 48, 61, 795 S.E.2d 857, 862, 864 (Emphasis added).

Edgewater Park home and still have about $100,000.00 ***left over*** from the sale conclusively shows there were ***no remaining outstanding creditor debts***.**25** No credible evidence either showed or even reasonably inferred the Drewses possessed any unpaid debts and/or outstanding creditors in ***1992*** after they (a) sold their Edgewater Park home, (b) satisfied the IRS liens, and (c) paid off the loans they had incurred to keep The Drews Company in business.**26** The Drewses' $100,000.00 payment to Mr. Lancaster for the life estate was not a fraudulent conveyance to Mr. Lancaster.

C. THE $40,000.00 MR. LANCASTER LOANED THE DREWSES DURING 1993-1995 WAS NOT A FRAUDULENT CONVEYANCE

Mr. Lancaster loaned the Drewses a total of $40,000.00 during ***1993-1995*** to pay off their credit card debt. The Court of Appeals incorrectly called that loan fraudulent.**27** The $40,000.00 was solely to help the Drewses pay off their $35,000.00 credit card debt.**28**

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25 Had there been any recorded liens and/or judgments then existing, as a matter of law they would have had to be paid off before good and marketable title could transfer from the Drewses to the purchasers.

26 The Court of Appeals noted Mr. Gordon placed into evidence an IRS tax lien, dated 1 September 2000, and filed on 8 September 2000. (R.p.700). This IRS lien however, addressed unpaid taxes for periods ending in *1995*, *1996*, and *1997*. (R.p.700). Gordon v. Lancaster, 419 S.C. 48, 61, 795 S.E.2d 857, 862, 864. It did not involve debts from *1992*.

27 Gordon v. Lancaster, 419 S.C. 48, 61, 795 S.E.2d 857, 859, 864.

28 The Court of Appeals, absent supporting evidence, found these "payments were not loans. . ., but . . . constituted a surreptitious scheme to return to the Drewses a portion of the [original] $100,000[.00] . . . ." Gordon v. Lancaster, 419 S.C. 48, 61, 795 S.E.2d 857, 864. The evidence showed that on ***1 March 1995***, Mr. Drews gave Mr. Lancaster a mortgage on Mr. Drews' warehouse property at 1705 Meeting Street to secure the $40,000.00 in various loans. (R.p.346, line 8 – R.p.347, line 6; R.pp.629-630). On April 15, 1998, Mr. Drews gave Mr. Lancaster a $100,000.00 mortgage on the same property as security for any additional loans Mr. Lancaster would make to them on an open-ended basis. (R.p.348, line 20 – R.p.350, line 14; R.p.351, lines 18-22; R.p.402, lines 12-18; R.pp.633-637). Mr. Lancaster ***did not request*** the $100,000.00 mortgage and "wasn't involved in securing [it]." (R.p.348, line 20 – R.p.349, line 3). While Mr. Lancaster eventually satisfied the $40,000.00 mortgage in 2001, he was never asked to provide a satisfaction prior to that time. (R.p.350, line 9 – R.p.351, line 16). Both of these mortgages were satisfied in

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

The Drewses, except for their credit card companies, did not have any other unpaid debts or outstanding creditors during ***1993 through 1995*** since they had sold Edgewater Park in 1992, specifically to eliminate such debts. (R.p.355, lines 6-12; R.p.440, lines 11-15; R.pp.764-765 para. 5).**29** Mr. Lancaster made loans to the Drewses in various amounts from ***6 February 1993, through 30 January 1995***, and the Drewses were paying off their credit cards in part or in whole on an intermediate basis – essentially somewhat as the credit became due or, at least, not significantly overdue. (R.p.1065).**30**

November 2001, when Mr. and Mrs. Drews sold 1705 Meeting to Charleston Antique District. (R.p.357, lines 9-18; R.p.359, lines 1-8). Mr. Lancaster did not learn until much later that there were two separate mortgages - both a $40,000.00 mortgage and a $100,000.00 mortgage - or that they were still unsatisfied. (R.p.371, line 6 - R.p.372, line 9; R.p.401, line 19 - R.p.403, line 10). Mr. Lancaster was unaware of Mr. Drews' actions and should not be painted by the "broad brush" of Mr. Drews' possible misdeeds.

29 The Drewses' later payments to Mr. Lancaster for the $40,000.00 in loans could not have been made to "avoid creditors" since they used that money to pay their credit card creditors.

30 When Mr. Drews sold 623 Meeting (R.p.370, lines 15-21; R.p.384, lines 13-24), the Drewses still owed Mr. Lancaster $40,000.00. (R.p.370, line 22 - R.p.371, line 1; R.p.1065). Even though the $40,000.00 (plus interest) was supposed to have been fully satisfied from the sale (R.p.371, lines 10-15; R.p.386, lines 6-19), Mr. Lancaster only received around $3,000.00. (R.p.371, lines 2-5). Chagrined, Mr. Lancaster asked Mr. Drews for some security for the $40,000.00 loan (R.p.371, lines 6-15) and Mr. Drews, through Mrs. Drews, gave Mr. Lancaster a $40,000.00 mortgage on 1705 Meeting. (R.p.371, lines 16-17). There was no evidence Mr. Lancaster, other than seeking security for the $40,000.00 in total loans, had any other participation or involvement in the preparation of the $40,000.00 mortgage. (R.p.371, lines 18-23). Mr. Drews' lawyer, Attorney

For Mr. Gordon to "get to" the money the Drewses repaid Mr. Lancaster for the $40,000.00 in loans, Mr. Gordon was required to show, under the *State of Elizabeth*, the Drewses made the monetary transfer for the "***intent or purpose to delay, hinder, or defraud creditors*** . . ."[31] Mr. Lancaster made the $40,000.00 in loans to help the Drewses retire their $35,000.00 credit card debt. The Drewses had ***no*** income other than their social security and were only able to pay their normal living expense using their credit cards.

Despite all of the arguments and "conclusions" of alleged convoluted transactions and fraudulent transfers, three simple facts remain: (1) Mr. Lancaster accepted $100,000.00 from the Drewses in 1992 and, in exchange, provided them comfortable living accommodations for nearly 18 years from 1992 until their deaths in 2007 and 2010, respectively; (2) Mr. Lancaster loaned the Drewses $40,000.00 during 1993 to 1995, and the Drewses repaid him; and (3) Mr. Lancaster paid off $20,000.00 in two bank loans for the Drewses' benefit and the Drewses repaid him. There was nothing nefarious about any of the transactions.

D. THE *McMASTERS V. CHARPIA* DECISION IS NOT MATERIAL TO THIS APPEAL

Mr. Gordon asserted the Court of Appeals' decision in *McMasters v. Charpia*[32] was somehow material to this case. Such an assertion is, at best, misplaced as Mr. Gordon has misread the facts and circumstances in the decision.

Koon, prepared all of the required documentation. (R.p.371, line 24 - R.p.372, line 9). Furthermore, Mr. Lancaster was not given copies of the mortgages. (R.p.371, line 24 - R.p.372, line 9).

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

32 McMaster v. Charpia, 2016 WL 5799758 (S.C.App., filed 5 October 2016) (*per curiam*), *rehearing denied* (17 November 2016), *certiorari denied* (8 February 2017). Frank M. Cisa,

In *McMasters v. Charpia*, Ms. McMaster sued her builder, Howard Charpia, in 2002 for alleged construction defects to her home and obtained a judgment against him in August 2004, for over $191,000.00.**33** In 2003, during the pendency of this action, Mr. Charpia transferred title to his home to his wife for, among other things, $1.00.**34** Ms. McMasters moved to set aside the transfer as a fraudulent conveyance and the trial court appears to have granted her summary judgment in late 2005 or early 2006.**35** On appeal the Court of Appeals affirmed.**36** Litigation, both at the trial and appellate levels, ensued for the next several years involving, *inter alia*, (1) a compulsory reference to the Master-in-Equity, (2) the right to trial by jury, (3), judicial sales of property, (4), judgment lien foreclosure, (5) due process of law, and (6) the validity of a judgment lien.**37**

Mr. Gordon asserted that "the judgment creditor [who] was represented by [Mr. Cisa] argued in favor of applying *Linda Mc Co.* for an extension of the ten-year period [which is] the opposite position [being] advanced by the same law firm . . . ."**38** Mr. Gordon ignored the fact that any argument for an extension of the 10-year time limit was caused

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Esquire of The Law Firm of Cisa & Dodds, LLP represented Ms. McMaster n/k/a Rene McMasters Ronaghan. Mr. Cisa and John J. Dodds, III, Esquire (one of Mr. Lancaster's attorneys herein) are law partners.

33 McMasters v. Charpia, 2007 WL 8327419, *1 (S.C.App., filed 24 April 2007) (*per curiam*). *See also* McMasters v. Charpia, 2004 WL 7091243, *1 (S.C. Ct. Com. Pl., filed 5 August 2004), *affirmed*, 2011 WL 11733588, *1 (S.C.App., filed 14 March 2011) (*per curiam*).

34 McMasters v. Charpia, 2007 WL 8327419, *1.

35 McMasters v. Charpia, 2007 WL 8327419, *1.

36 McMasters v. Charpia, 2007 WL 8327419, **2-4. *See also* McMasters v. Charpia, 2004 WL 7091243, *1, *affirmed*, 2011 WL 11733588, *1.

37 *See generally* McMaster v. Charpia, 2016 WL 5799758; McMasters v. Charpia, 2011 WL 11735706, *1 (S.C.App., filed 11 October 2100) (*per curiam*). The litigation still continues.

38 *See* Mr. Gordon's Return to Petition for Writ of Certiorari, p.25 n.18 (*citing* McMasters v, Charpia, 2016 WL 5799758, *1).

solely by Mr. Charpia's multiple appeals and continuous attempts to frustrate foreclosure of the judgment lien and not through Ms. McMasters' failure to timely prosecute her claim. Unlike the present case where Mr. Gordon "sat on his rights" and failed to have his claim timely heard, a review of the McMaster v. Charpia litigation both in the Dorchester County Court of Common Pleas and in our state appellate system clearly demonstrates Ms. McMasters has done everything in her ability to pursue foreclosure of the lien and, conversely, has been frustrated at every turn by Mr. Charpia's dilatory and obstructionist tactics. Mr. Gordon has not shown one shred of evidence that Mr. Lancaster has resorted to any dilatory tactics or otherwise attempted to "string out" the lien foreclosure process as Mr. Charpia has done.

Mr. Grodon's assertion that Mr. Cisa's representation of Ms. McMasters and the legal positions she has asserted in that litigation somehow casts a negative pall on this case is both, at best, disingenuous and meritless. Such superfluous allegations should not be considered by this Supreme Court in any manner, shape, or form.[39]

---

39 Additionally, Mr. Gordon argues the Drewses "parked" assets with Dorsey Biller as they had done with Mr. Lancaster. (Return to Petition for Writ of Certiorari, pp.11-12). Assuming, *arguendo*, that Mr. Biller did have some "parked" assets, that fact (or supposition) has nothing to do with Mr. Lancaster. Mr. Drews didn't "park" any assets with Mr. Lancaster. Mr. Biller's involvement was in 2007, five years after 1705 Meeting was sold and 15 years after the life estate was established in 1992. Neither of the Drewses are appealing to this Supreme Court, Mr. Lancaster is doing so in order to clear his besmirched name. Mr. Lancaster did not have any involvement with or knowledge of any asset and/or money transfers between the Drewses, Mr. Drews, Mr. Biller, or Jesse Atkinson (Mrs. Drews' sister). It is absolutely inappropriate and disingenuous for Mr. Gordon to include these unrelated 2007 transactions which never involved Mr. Lancaster in any manner simply to "paint" Mr. Lancaster with some sin-laced "brush".

II. CONCLUSION

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

Respectfully submitted:

NEXSEN PRUET, LLC

By: ____________________________

Stephen P. Groves, Sr., Esquire
S.C. Bar No. 007854
Alexandra H. Austin, Esquire
S.C. Bar No. 102646
205 King Street, Suite 400
Charleston, South Carolina 29401
Telephone: 843.720.1725
Telecopier: 843.414.8206
E-Mail: SGroves@nexsenpruet.com

John J. Dodds, III, Esquire
SC Bar No. 001707
LAW FIRM OF CISA & DODDS, LLP
858 Lowcountry Boulevard, Suite 101
Mount Pleasant, South Carolina 29464
Telephone: 843.881.6530
E-Mail: john@cisadodds.com

Attorneys for the Petitioner,
Donald W. Lancaster

Charleston, South Carolina

20 April 2017

EXHIBIT
"A"

Exhibit A

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF BEAUFORT) Civil Action No. 2014-CP-07-2016

THOMAS M. TOGGAS and
KATHRYN TOGGAS,

Plaintiffs,

v.

RRR, INC. d/b/a Maximum Resort Rentals,

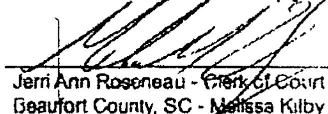
Defendant.

ORDER GRANTING PLAINTIFFS' MOTION FOR JUDGMENT ON THE PLEADINGS AND DENYING DEFENDANT'S MOTION TO DISMISS

This declaratory judgment action is before the court on two motions: (1) Plaintiffs' motion for judgment on the pleadings, or in the alternative for summary judgment, and (2) Defendant's motion to dismiss. The parties submitted briefs in support and in opposition to the motions in advance of the hearing. The court has considered the memoranda and other documents submitted and the oral arguments of counsel presented at the December 9, 2014 hearing, and hereby grants Plaintiffs' motion and denies Defendant's motion as discussed more fully below.

PROCEDURAL BACKGROUND

This is a declaratory judgment action seeking an order by the court that a judgment entered against Plaintiffs on July 24, 2003 (the "Judgment"), has expired and has no active energy. Plaintiffs moved for judgment on the pleadings pursuant to Rule 12(c) or, in the alternative, for summary judgment pursuant to Rule 56 SCRCP, alleging that pursuant to S.C. Code Ann. § 15-39-30 the judgment was extinguished as a matter of law and had no further "active energy" as of July 24, 2013. Defendant moved to dismiss the declaratory judgment action based upon two arguments: (1) Plaintiffs lacked standing to bring the action due to the Plaintiffs' personal bankruptcy filings in which the Plaintiffs were both granted discharges, and (2) this court should decline to hear the



matter because a court in Washington, D.C. has already ruled on the issue in a preliminary order in a proceeding in that jurisdiction.

FINDING OF FACTS

The court finds that the material facts relevant to Plaintiffs' and Defendant's motions are as follows:

(1) The subject Judgment was entered on July 24, 2003;

(2) July 24, 2013 was ten years after the entry of the Judgment;

(3) There are no pending efforts in South Carolina to execute on the Judgment;

(4) July 24, 2013 passed almost a year and half ago;

(5) Both of the Plaintiffs have received discharges in their separate bankruptcy proceedings;

(6) The bankruptcy trustee has no property interest in this declaratory judgment action.

Defendant raised and argued facts relating to the merits of the underlying judgment. None of those facts are material or relevant in any way to the lifespan of a judgment under South Carolina law.

CONCLUSIONS OF LAW

Plaintiffs are entitled to a judgment on the pleadings (Rule 12(c)) or, in the alternative, summary judgment (Rule 56) because, pursuant to S.C. Code Ann. § 15-39-30, the judgment was extinguished and had no further "active energy" on July 24, 2013.

I. Any execution upon the judgment had "active energy" for ten years from the date the judgment was entered and expired as a matter of law on July 24, 2013.

The time period within which to execute upon a South Carolina judgment is controlled by *S.C. Code Ann. §§ 15-39-20 and 15-39-30 (2005)*. *Section 15-39-30* states as follows:

> **Issuance of executions; effective period.**
>
> Executions may issue upon final judgments or decrees at any time

> within ten years from the date of the original entry thereof and shall have active energy during such period, without any renewal or renewals thereof, and this whether any return may or may not have been made during such period on such executions.

According to the plain language of *§ 15-39-30*, executions therefore have "active energy" for ten years after the date of the original entry of the judgment.

South Carolina courts have repeatedly held that a judgment is extinguished after the expiration of ten years from the date of entry. *See Hardee v. Lynch*, 46 S.E.2d 179, 183 (S.C. 1948) (noting that the effect of the 1946 Act repealing prior law on judgment executions, including the right to extend judgments beyond ten years, was to "*utterly extinguish* a judgment after the expiration of ten years from the date of entry") (*emphasis added*); *See also Home Port Rentals, Inc. v. Moore*, 632 S.E.2d 862, 863 (S.C. 2006) (stating S.C. Supreme Court has "consistently held that under [*§ 15-39-30*], a judgment becomes stale and a judgment lien is extinguished after ten years.")

As soon as a judgment becomes ten years old, the holder loses his or her status as a judgment creditor. *See Carr v. Guerard*, 616 S.Ed.2d 429, 430 (S.C. 2005). Even if an action is brought to enforce the judgment before the time expires, the judgment extinguishes if the ten-year period expires before the action is tried. *See Garrison v. Owens*, 189 S.E.2d 31, 33 (S.C. 1972) (holding judgment lien on real estate is absolutely extinguished after expiration of ten years from date of entry, and bringing action to enforce judgment lien will not preserve it beyond time fixed by statute if such time expires before action is tried). The only "narrow" exception to this rule is if the judgment creditor has completed all of its efforts under the South Carolina execution and Supplementary Proceedings (*S.C. Code Ann. §§ 15-39-310 – 15-39-490*) processes prior to the ten-year expiration date and is awaiting the issuance of an execution order by the court. *See Linda Mc Co., Inc.*, 703 S.E.2d at 505. The South Carolina Supreme Court's decision

in *Linda Mc Co., Inc.* expressly reversed *Garrison* to the extent the holding in *Garrison* was inconsistent with *Linda Mc Co., Inc.*

In the present case, the South Carolina Judgment was entered on July 24, 2003. Therefore, on July 24, 2013 the South Carolina Judgment became utterly extinguished as a matter of law. Because the South Carolina Judgment is extinguished as a matter of law, Plaintiffs no longer owe any debts to RRR and RRR is no longer a judgment creditor of Plaintiffs.

II. The "narrow" holding in *Linda Mc Co., Inc. v. Shore*, 703 S.E.2d 499, 505 (S.C. 2010) does not extend the life of the Judgment here or change the analysis in section I, above.

In *Linda Mc Co.* the South Carolina Supreme Court created a "narrow" exception to the bright line rule regarding the utter extinguishment of a judgment after ten years. The Court stated in dictum that *§ 15-39-30* is not a statute of limitations, but operated like a statute of limitations *under the facts of that case.* The court further held that "when a party has complied with the applicable statutes, as [judgment creditor] did in this case, and is *merely waiting on a court's order* regarding execution and levy, the ten-year limitation found in *§ 15-39-30* is extended to when the court finally issues an order." *Id.* (*emphasis added*). The Court further stated: "*[w]e want to stress that this is a narrow holding limited to facts similar to those at issue in this case.*" *Id.* (*emphasis added*). [1]

The facts of *Linda Mc Co.* bear no resemblance to the facts in this case. In *Linda Mc Co.* the judgment creditor had completed all collection efforts (including participating in a hearing before the master in equity) prior to the ten-year expiration of the judgment under *§ 15-39-30.*

[1] *Linda Mc Co.* later states "if a party takes action to enforce a judgment within the ten-year statutory period of ***active energy***, the resulting order will be effective even if issued after the ten-year period has expired." *Id.* Although this statement appears to be more expansive than the "narrow holding," it clearly relates back to the holding and would only apply in those instances involving facts similar to *Linda Mc Co.*, i.e., where the parties are merely waiting on the execution order when the ten-year statutory period expires. To apply a broader interpretation to this subsequent language would render meaningless the Court's effort to "stress" how "narrow" the holding is.

The only act that remained to be done on the date of the ten-year expiration was the issuance of the order by the court. The court then issued its order to execute and levy on assets of the judgment debtor one day after the ten year period had run. Under those limited facts, the Supreme Court held that the ten-year deadline should be extended. "To hold otherwise would put those trying to enforce their judgments at the mercy of the court system to conclude the matter within the ten-year period." *Id.*

Here, Defendant has not complied with any of the applicable statutes in South Carolina to collect on its judgment. It is undisputed that there are no collection efforts pending in South Carolina. It is further undisputed that there has been no hearing on Supplementary Proceedings, and the parties are not awaiting an execution order from any court. And, perhaps most significantly, the Court in *Linda Mc Co.* extended the ten-year deadline by one day, whereas Defendant here seeks an indefinite extension because the ten-year deadline passed approximately one and a half years ago and the parties are not currently awaiting an order on collection.

Defendant argued that the ten-year expiration date should be extended because Plaintiffs have delayed Defendant's collection efforts. In support of this argument, Defendant accused Plaintiffs of filing meritless appeals on the underlying judgment. This is misleading and irrelevant. The underlying judgment resulted from a jury trial conducted in the Plaintiffs' absence. Plaintiffs argued that they did not receive notice of the jury trial, but the circuit judge denied their post-trial motions on that basis. Plaintiffs appealed the verdict. Although Plaintiffs' appeals were ultimately denied by the Court of Appeals and the Supreme Court, there is nothing in the record to suggest that the appeals were "meritless" or improper as implied by Defendant's argument. In any event, as set forth below, the Plaintiffs' appeals did not prevent Defendant from immediately pursuing collection of the judgment.

Moreover, the ten-year period that a judgment has active energy in South Carolina is not tolled by appeal(s). *See Wells ex rel. A.C. Sutton & Sons, Inc. v. Sutton*, 382 S.E.2d 14, 16 (Ct. App. 1989) (denying an appeal seeking to toll the ten-year life of a judgment due to the judgment debtor's appeals). The South Carolina Court of Appeals in *Wells* set forth its analysis for denying the appeal and the state's public policy as follows:

> In affirming the trial court, this court emphasizes it does not condone efforts by judgment debtors to secrete assets to avoid payment of judgments. Likewise, *this court does not criticize appropriate use of the appellate process to obtain review of orders or decisions issued by the circuit court.* The reason for our holding is simply our recognition of the public policy of this State as expressed in the statutes to limit the life of judgments to ten years. *A judgment creditor should recognize this policy and proceed expeditiously to conclude his efforts to collect his judgment within the ten year period.*

Id. (emphasis added).

In fact, Defendant has never instituted <u>any</u> collection efforts in South Carolina on the judgment despite its right to do so 10 days after the jury verdict was entered as a judgment on July 24, 2003. *See Rule 62(a) SCRCP.* Defendant could have initiated efforts to collect on the judgment as early as August 3, 2003 but chose not to do so. Had Defendant initiated judgment collection efforts in August 2003, Plaintiffs would have had to post a *supersedeas* bond to stay those execution proceedings during their appeals. *See Rule 62(d) SCRCP.* Instead, Plaintiff took no action and, therefore, failed to proceed expeditiously to conclude its efforts to collect its judgment within the ten-year period. *Wells ex rel. A.C. Sutton & Sons* demonstrates that Defendant cannot complain now that the judgment has expired when it failed to pursue its rights during the appeals, which did not toll the ten-year life span of Plaintiff's judgment.

Defendant is currently pursuing a fraudulent transfer action in the District Court for the District of Columbia.[2] However, RRR is not actively trying to execute upon the South Carolina judgment in South Carolina, which is necessary to trigger the "narrow" exception to the statute created by the Supreme Court in *Linda Mc Co.*

Therefore, pursuant to *§ 15-39-30* the judgment expired on July 24, 2013 and there is no basis upon which Defendant can argue that the "active energy" of the judgment has been extended.

III. The respective bankruptcy filings of the Plaintiffs have been discharged and otherwise have no impact on this declaratory judgment action.

Defendant argued that Plaintiffs lack standing to bring this declaratory judgment action in South Carolina. The court disagrees. First, as set forth in the Findings of Fact, both of the Plaintiffs have received discharge orders in their respective bankruptcy proceedings. Second, the trustee has confirmed in writing that he claims no property interest in this declaratory judgment action. Third, even if the Plaintiffs had not obtained discharges and the bankruptcy trustee not disclaimed any interest in this action, this declaratory judgment action is not an <u>asset</u> or <u>property interest</u> of the Plaintiffs' bankruptcy estates. In fact, the "interest" at stake in this declaratory judgment is the interest of a <u>creditor</u> (the Defendant) and not the bankruptcy <u>debtors</u> (Plaintiffs). In contrast, each of the cases cited by Defendant deals with situations where the debtor has a property interest in the underlying action or cause of action. Here, Plaintiffs seek merely to receive a declaratory judgment as to whether Defendant's claim against them is valid.

Therefore, Defendant's argument in support of its motion to dismiss that the Plaintiffs lack standing to bring this declaratory judgment in South Carolina lacks merit and is hereby rejected.

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[2] A fraudulent transfer action pending in D.C. is not an execution proceeding that would trigger the "narrow" exception under *Linda Mc Co.*

IV. An interim order issued by a judge in Washington D.C. has no impact on this court's decision on whether a South Carolina judgment has been extinguished as a matter of law.

Defendant argues that this court should decline to hear the declaratory judgment action because a judge in Washington D.C. has already decided the issue against the Plaintiffs. Defendant asks this court to use its discretion to decline to hear the declaratory judgment action and defer to the Washington, D.C. court on this matter of South Carolina law.

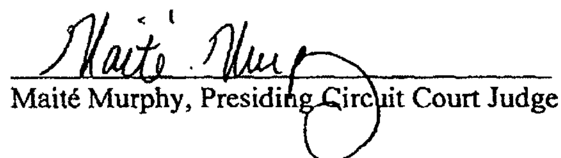
Plaintiffs assert that this court, rather than a Washington D.C. judge, should determine whether, under South Carolina law, a South Carolina judgment has expired as a matter of law. This court agrees. The order issued by the Washington D.C. judge was an interim order ruling on Plaintiffs' motion to dismiss in the Defendant's fraudulent conveyance action against them. That decision is not binding upon this Court, nor does Defendant make that argument. Therefore, this Court will not defer to the Washington, D.C. judge's interim ruling on the issue presented.

THEREFORE, IT IS HEREBY ORDERED THAT the Plaintiffs' motion for judgment on the pleadings, or in the alternative for summary judgment, is hereby granted.

IT IS HEREBY FURTHER ORDERED THAT Defendant's motion to dismiss is hereby denied.

IT IS HEREBY FURTHER ORDERED THAT, pursuant to S.C. Code Ann. § 15-39-30, the Judgment was extinguished and had no further "active energy" on July 24, 2013, and the Beaufort County Clerk of Court is directed to mark the Judgment expired and extinguished in the Judgment Roll of Beaufort County.

IT IS SO ORDERED.



Maité Murphy, Presiding Circuit Court Judge

January 26, 2015
St. George, South Carolina

COLUMBIA 1193320v1

STATE OF SOUTH CAROLINA
IN THE
SUPREME COURT

ORIGINAL

Appeal from the Court of Common Pleas for Charleston County
Honorable J. C. Nicholson, Jr., Circuit Judge
Civil Action Nos.: 2010-CP-10-9096 and 2011-CP-10-8840
419 S.C. 48, 795 S.E.2d 857 (Ct.App. 2016)

RECEIVED

APR 2 4 2017

S.C. SUPREME COURT

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

Respondent,

v.

Donald W. Lancaster,

Petitioner.

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

Stephen P. Groves, Sr., Esquire
S.C. Bar No. 007854
Alexandra H. Austin, Esquire
S.C. Bar No. 102646
NEXSEN PRUET, LLC
205 King Street, Suite 400
Charleston, South Carolina 29401
Telephone: 843.720.1725/Telecopier: 843.414.8206
E-Mail: SGroves@nexsenpruet.com
AAustin@nexsenpruet.com

John J. Dodds, III, Esquire
S.C. Bar No. 001707
LAW FIRM OF CISA & DODDS, LLP
858 Lowcountry Boulevard, Suite 101
Mount Pleasant, South Carolina 29464
Telephone: 843.881.6530
E-Mail: john@cisadodds.com

Attorneys for the Petitioner

I, Stephen P. Groves, Sr., Esquire, hereby certify that on 20 April 2017, I served one copy each of the ***Reply to the Return to the Petition for Writ of Certiorari*** submitted by the Petitioner, Donald W. Lancaster, on counsel for the Respondent via the United States Mail, postage pre-paid, and addressed as follows:

Justin O'Toole Lucey, Esquire / Stephanie L. Drawdy, Esquire
JUSTIN O'TOOLE LUCEY, P.A.
415 Mill Street
Mount Pleasant, South Carolina 29201
Telephone: 843.849.8400/Telecopier: 843.849.8406
E-Mail: jlucey@lucey-law.com / sdrawdy@lucey-law.com

Attorneys for the Respondent

I also hereby certify that on 20 April 2017, I served one copy of the ***Reply to the Return to the Petition for Writ of Certiorari*** on the Office of the Clerk of Court for the South Carolina Court of Appeals the United States Mail, postage pre-paid, and addressed as follows:

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

Signed: ______________________
Stephen P. Groves, Sr.

Charleston, South Carolina

20 April 2017

NPCHAR1:2015961.1-APL-(SPG) 053211-00001