

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas
Carl A. Saleeby, Special Referee

Case No. 2017-000966

Thomas E. Goodson, as Trustee of the Residuary
Beneficiaries Trust of the Estate of Margaret S.
Goodson and the Estate of Helen S. Goodson,.....Respondent,

v.

Harriet E. Wilmeth, Debra J. Freeman, Bank of
America, N.A., Lumber Yard, Inc., St. Bartholomew's
Episcopal Church, Canal Wood, LLC, Alexander C.
West, Alexander C. West, Jr., Airport Technologies, LLC,
Mutual Savings Bank, State of South Carolina Department
Of Revenue, United States of America Acting through
The Department of Treasury/Internal Revenue Service,
Ford Motor Credit Company, LLC, James Gandy, Estate
Of Amelia H. Anthony, Estate of Betty C. Wiggins,
Portfolio Recovery Assoc., South Carolina Department
Of Probation, Parole and Pardon Services, Norwood
C. Bizzell, Robert "B.W" Bizzell, William E. Bizzell,
Mary Lathan Steele, and Vicki Eaddy, Defendants.

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SC Court of Appeals

Of Whom Debra J. Freeman is the.....Appellant.

FINAL RESPONDENT'S BRIEF

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TABLE OF CONTENTS

	Page
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES.....	ii
STATEMENT OF ISSUES ON APPEAL.....	1
STATEMENT OF THE CASE.....	3
STATEMENT OF FACTS.....	9
ARGUMENT	
I. THE TRIAL COURT ERRED IN DENYING DEFENDANT..... FREEMAN’S MOTION TO DISMISS ON TWO (2) EXPIRED JUDGMENTS.	23
II. LINDA McCo v SHORE, 390 S.C. 543, 703 S.E. 2d 499 (2010),..... DOES NOT TOLL THE STATUTORY 10-YEAR ENFORCEMENT PERIOD OF THE TWO (2) 2006 JUDGMENT LIENS	27
III. THE COURT OF APPEALS SHOULD AFFIRM THE DENIAL..... OF DEFENDANT FREEMAN’S MOTION TO DISMISS	28
IV. THE COURT OF APPEALS SHOULD AFFIRM THE APRIL..... 6, 2017 FINAL ORDER OF THE SPECIAL REFEREE	29
CONCLUSION.....	30
CERTIFICATE OF SERVICE	

TABLE OF AUTHORITIES

Cases	Page
<i>Linda McCompany, Inc. v. James G. Shore and Jan Shore</i> , 390 S.C. 543, 703 S.E 2d 499 (S.C. 2010)	23, 24
<i>Linda McCompany, Inc. v. Shore</i> , 375 S.C. 432, 653 S.E.2d 279..... (Ct. App. 2007)	24
<i>Hardee v. Lynch</i> , 212 S.C. 6, 46 S.E. 2d 179 (1948).....	24
<i>Hughes v. Slater</i> , 214 S.C. 305, 52 S.E 2d 419 (1949).....	25

Statutes

<i>S.C. Code Ann. §15-39-30</i>	24, 25, 26
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STATEMENT OF ISSUES ON APPEAL

- (1) Did the trial court err in denying Appellant's Motion to Dismiss the Judgment Foreclosure Action with respect to two (2) Judgments dated February 2, 2006 and filed on February 20, 2006, which had expired?
- (2) Did the Appellant "Have Standing" to file the Appellant's Motion to Dismiss when the Respondent's prayer for relief in the Foreclosure Complaint did not request any action in connection with the Appellant's undivided one-half (1/2) interest in the Subject Property?
- (3) Did the trial court properly issue its Order, dated April 6, 2017 and filed on April 7, 2017, which foreclosed on the undivided one-half (1/2) interest of the Defendant, Harriet E. Wilmeth, ("Wilmeth) as requested by the Respondent's Complaint, dated and filed on December 22, 2015, in connection with three (3) Judgments granted in favor of the Respondent against Defendant Wilmeth, with one (1) judgment having been recorded on February 20, 2006 as Judgment Roll Number 54,639, and with one (1) Judgment having been recorded on February 20, 2006 as Judgment Roll Number, 54,640, and with one (1) Judgment having been recorded on September 2, 2015 as Judgment Roll Number 15-CP-16-686; and, in connection with a Foreclosure Request of the Defendant, Estate of Amelia H. Anthony, in its Answer and Counterclaim, dated January 13, 2016 and filed on January 15, 2016, regarding a Judgment granted in favor of the Defendant, Estate of Amelia H. Anthony, against the Defendant Wilmeth, which was recorded as Judgment Roll Number 56,710 on November 15, 2007; and, in connection with a Foreclosure Request of the Defendant, Alexander C. West, in his Answer dated January 20, 2016 and filed on January 22, 2016, regarding a Judgment granted in favor of the Defendant, Alexander C. West, against the Defendant Wilmeth, which was recorded as Judgment Roll Number 55,352 on September 21, 2006; and, in connection with a Foreclosure

Request of the Defendant, Alexander C. West, Jr., in his Answer dated January 20, 2016 and filed on January 22, 2016, regarding Judgment granted in favor of the Defendant, Alexander C. West, Jr., against the Defendant Wilmeth, which was recorded as Judgment Roll Number 55,353 on September 21, 2006?

STATEMENT OF THE CASE

Respondent, Thomas E. Goodson, as Trustee of the Residuary Beneficiaries Trust of the Estate of Margaret S. Goodson and the Estate of Helen S. Goodson ("Respondent") filed a Complaint For Foreclosure of three (3) Judgment Liens against the Defendant Wilmeth of her undivided one-half (1/2) interest in property located at 1309 Quail Meadow Lane, Hartsville, South Carolina, ("Subject Property,"), on December 22, 2015. (Compl. For Foreclosure) (R.p. 30-44.)

One (1) of the Judgment Liens requested to be foreclosed by the Respondent was a Judgment granted in favor of the Estate of Helen S. Goodson against the Defendant Wilmeth in the sum of \$317,970.97 as reflected on a Transcript of Judgment in favor of the Estate of Helen S. Goodson against the Defendant Wilmeth, which was filed in the Office of the Clerk of Court on February 20, 2006 as Judgment Roll Number 54,639. (3/9/17 Tr. of Hr'g Pl.'s Ex. 4) (R.p. 209-211.)

Another of the Judgment Liens requested to be foreclosed by the Respondent was a Judgment granted in favor of the Estate of Margaret S. Goodson against the Defendant Wilmeth in the sum of \$150,010.00 as reflected on a Transcript of Judgment in favor of the Estate of Margaret S. Goodson against the Defendant Wilmeth, which was filed in the Office of the Clerk of Court on February 20, 2006 as Judgment Roll Number 54,640. (3/9/17) Tr. of Hr'g Pl.'s Ex. 7.) (R.p. 218-219-but the Record on Appeal does not contain the first (1st) page of this Judgment.)

Another of the Judgment Liens requested to be foreclosed by the Respondent was a Judgment granted in favor of the Estate of Helen S. Goodson against the Defendant Wilmeth, in the sum of \$96,513.15 as reflected in a Judgment in favor of the Estate of Helen S. Godson

against the Defendant Wilmeth, which was filed in the Office of the Clerk of Court on September 2, 2015 in Judgment Roll Number 15-CP-16-686. (3/9/17 Tr. of Hr'g Pl.'s Ex. 38) (R.p. 227)

All of the above referenced three (3) Judgments were assigned to the Respondent by the Estate of Helen S. Goodson and the Estate of Margaret S. Goodson. (3/19/17 Tr. of Hr'g Pl.'s Ex. 5, 8, 39.) (R.p. 213, 221, 229)

The Respondent named the Defendant Wilmeth, as a party Defendant due to the above referenced three (3) Judgment Liens held by the Respondent.

The Respondent also named the Appellant as a Party Defendant due to the Appellant owning the other undivided one-half (1/2) interest in the Subject Property with the Defendant Wilmeth.

The Respondent also named Bank of America as a party Defendant due to Bank of America having been given a Mortgage on the Subject Property by the Appellant and the Defendant Wilmeth.

The Respondent also named several other persons, business entities, and/or governmental entities due to having filed Judgment Liens and/or Tax Liens against the Defendant Wilmeth.

The Defendant, Estate of Amelia H. Anthony, filed an Answer to the Respondent's Complaint and a Counterclaim against the Defendant Wilmeth in which it requested the foreclosure of the Defendant Wilmeth's undivided one-half (1/2) interest in the Subject Property due to its Judgment Lien granted in its favor against the Defendant Wilmeth in the sum of \$1,691,346.08 dated November 15, 2007 and filed on November 15, 2007, in Judgment Roll Number 56,710. (Answer and Counterclaim of the Estate of Amelia H. Anthony) (R.p. 91-101.)

The Defendant, Alexander C. West, filed an Answer to the Respondent's Complaint in which he requested the foreclosure of the Defendant Wilmeth's undivided one-half (1/2) interest in the Subject Property due to his Judgment Lien granted in his favor against the Defendant Wilmeth in the sum of \$160,000.00, dated September 20, 2006 and filed on September 21, 2006 as Judgment Roll Number 55,352. (Answer of Alexander C. West.) (R.p. 102-106.)

The Defendant, Alexander C. West, Jr., filed an Answer to the Respondent's Complaint in which he requested the foreclosure of the Defendant Wilmeth's undivided one-half (1/2) interest in the Subject Property due to his Judgment lien granted in his favor against the Defendant Wilmeth in the sum of \$60,000.00, dated September 20, 2006 and filed on September 21, 2006 as Judgment Roll Number 55,353. (Answer of Alexander C. West, Jr.) (R.p. 107-111.)

The Defendant, Bank of America, filed its Answer to the Respondent's Complaint in which it requested any foreclosure sale of the undivided one-half (1/2) interest of the Defendant Wilmeth in the Subject Property be "sold subject to its Mortgage Lien recorded on November 25, 2002 in Mortgage Book 1024 at Page 4218". (Answer of Bank of America.) (R.p. 112-116.)

The Appellant initially filed her Answer to the Respondent's Complaint dated February 15, 2016 and filed on February 18, 2016. (Answer of Appellant.) (R.p. 119-121.)

The Appellant also filed an Amended Answer and Cross-Claim to the Respondent's Complaint, dated February 15, 2016, but did not file it until March 21, 2016. In the Appellant's Cross-Claim against the Defendant Wilmeth, the Appellant requested Judgment against the Defendant Wilmeth in the sum of \$75,000.00. (Amended Answer and Cross-Claim of Appellant.) (R.p. 124-126.)

On February 8, 2016, Judge Paul M. Burch executed an Order of Reference With Finality to Carl A. Saleeby, as Special Referee, which was filed on February 11, 2016. (Order of Reference With Finality) (R.p. 1-2.)

On February 19, 2016, Respondent's Attorney executed and filed an Affidavit of No Answer as to the Defendant Wilmeth in regards to the Respondent's Complaint. (Affidavit of No Answer as to Defendant Wilmeth) (R.p. 122-123.)

On February 12, 2016, the Respondent's Attorney executed a Notice of Hearing scheduled for February 19, 2016 which was filed on February 16, 2016. (Respondent's Notice of Hearing for February 19, 2016) (R.p. 117-118)

However, on February 18, 2016, the Attorney for the Appellant, Robert E. Lee, obtained an Order For Protection in regards to the February 19, 2016 Hearing Date and this Order For Protection was filed on February 18, 2016. (Order of Protection for Appellant's Attorney, Robert E. Lee) (R.p. 3-4.)

As a result of the Order For Protection for the Appellant's Attorney, Robert E. Lee, the Hearing scheduled for February 19, 2016 was not held by the Special Referee.

On January 24, 2017, the Defendant, Bank of America, submitted a Motion for Summary Judgment as to Lien Validity and Priority and this Motion was filed on January 27, 2017. (Defendant, Bank of America's Motion For Summary Judgment) (R.p. 127.)

On February 14, 2017, the Defendant, Bank of America, submitted a Notice of Hearing for March 9, 2017 on Defendant's Motion for Summary Judgment and this Notice of Hearing was filed on February 16, 2017. (Defendant, Bank of America's Notice of Hearing) (R.p. 131)

On March 2, 2017, the Respondent submitted a Notice of Hearing for March 9, 2017 and this Notice of Hearing was filed on March 6, 2016. (Respondent's Notice of Hearing) (R.p. 132-133)

On March 8, 2017, the Appellant submitted a Motion to Dismiss Pursuant to Rule 12(c) SCRCF, and this Motion was filed on March 8, 2017. (Appellant's Mot. To Dismiss Pursuant To Rule 12(c) SCRCF) (R.p. 134-135.)

On March 9, 2017, the Special Referee held a Hearing on (1) Bank of America's Motion For Summary Judgment, (2) Appellant's Motion To Dismiss Pursuant to Rule 12(c) SCRCF, and (3) Respondent's Foreclosure Complaint. (3/9/17 Tr. of Hr'g) (R.p. 149-191.)

On April 6, 2017, the Special Referee issued its Final Order which was filed on April 7, 2017. In this Final Order, the Special Referee granted the Bank of America's Motion For Summary Judgment, which established that its Mortgage Lien was valid and that its Mortgage Lien was a first (1st) Lien on the Subject Property. (4/6/17 Final Order 2, 13, 17) (R.p. 6, 17, 21).

The Final Order denied the Appellant's Motion To Dismiss Pursuant to Rule 12(c) SCRCF. (4/6/17 Final Order 18) (R.p. 22). In addition, the Final Order set forth the Priority of the Judgment Liens and/or the Tax Liens in Paragraph 7 under the Findings of Fact Section of the Final Order (4/6/17 Final Order 13, 14, 15, 16) (R.p. 17, 18, 19, 20.), that the undivided one-half (1/2) interest of the Defendant Wilmeth in the Subject Property be sold at public auction subject to the first (1st) Mortgage of Bank of America. (4/6/17 Final Order 18, 19) (R.p. 22,23.)

On April 6, 2017, the Special Referee issued its Notice of Sale for May 1, 2017 at 12:00 Noon and the Notice of Sale was filed on April 7, 2017. The Notice of Sale stated that the sale would be subject to the first (1st) Mortgage of Bank of America. (4/6/17 Notice of Sale) (R.p. 25-27)

The Appellant filed her Notice of Appeal on April 19, 2017 (R.p. 144-148).

STATEMENT OF FACTS

The Appellant and Defendant Wilmeth purchased a lot together located at 1309 Quail Meadow Lane, Hartsville, South Carolina, ("Subject Property"), as evidenced by Deed dated March 30, 1984 and filed on April 7, 1984 in Deed Book 867 at Page 790 to build a home on the lot. The Appellant and the Defendant Wilmeth each owned an undivided one-half (1/2) interest in the Subject Property. (3/9/17 Tr. of Hr'g Pl.'s Ex. 1) (R.p. 197,198,199.)

On November 18, 2002, the Appellant and the Defendant Wilmeth executed a Mortgage in favor of the Defendant, Bank of America, in the sum of \$234,666.00 and this Mortgage was filed on November 25, 2002 in Mortgage Book 1024 at Page 4218. (3/9/17 Tr. of Hr'g Pl.'s Ex. 2) (R.p. 201-208.)

On February 20, 2006, the Estate of Helen S. Godson filed a Transcript of Judgment against the Defendant Wilmeth in the Office of the Clerk of Court in the sum of \$317,970.97 and it was recorded as Judgment Roll Number 54,639 and this established a Judgment Lien of the Estate of Helen S. Goodson against the undivided one-half (1/2) interest of the Defendant Wilmeth. (3/9/17 Tr. of Hr'g Pl.'s Ex. 4) (R.p. 210-211.)

On February 20, 2006, the Estate of Margaret S. Goodson filed a Transcript of Judgment against the Defendant Wilmeth in the Office of the Clerk of Court in the sum of \$150,010.00 and it was recorded as Judgment Roll Number 54,640 and this established a Judgment Lien of the Estate of Margaret S. Goodson against the undivided one-half (1/2) interest of the Defendant Wilmeth. (3/9/17 Tr. of Hr'g Pl.'s Ex. 7) (R.p. 219-but the Record on Appeal does not contain the first (1st) page of the Judgment.)

On September 2, 2015, a Judgment was filed in favor of the Estate of Helen S. Goodson against the Defendant Wilmeth in the sum of \$96,513.15 and it was recorded as Judgment Roll Number 15-CP-16-686 and this established a Judgment Lien of the Estate of Helen S. Goodson against the undivided one-half (1/2) interest of the Defendant Wilmeth. (3/9/17 Tr. of Hr'g Pl's Ex. 38) (R.p. 227.)

An Assignment of the Judgment of Helen S. Goodson in Judgment Roll Number 54, 639 was made to the Respondent, dated November 18, 2013 and filed on November 21, 2013. (3/9/17 Tr. of Hr'g Pl.'s Ex. 5) (R.p. 213-214).

An Assignment of the Judgment of Margaret S. Goodson in Judgment Roll Number 54,640 was made to the Respondent, dated November 18, 2013 and filed on November 21, 2013. (3/9/17 Tr. of Hr'g Pl.s Ex. 8) (R.p. 221-222).

An Assignment of the Judgment of Helen S. Goodson in Judgment Roll Number 15-CP-16-686 (Court Ordered Restitution by the Defendant Wilmeth to the Estate of Helen S. Goodson) was made to the Respondent, dated November 18, 2013 and filed on November 21, 2013. (3/9/17 Tr. of Hr'g Pl.s Ex. 39) (R.p. 229-230).

On December 22, 2015, the Respondent submitted and filed a Complaint For Foreclosure of the three (3) Judgment Liens against the Defendant Wilmeth of her undivided one-half (1/2) interest in the Subject Property. (Compl. For Foreclosure) (R.p. 30-44).

The Respondent's Complaint named the Defendant Wilmeth, as a party Defendant due to the above referenced three (3) Judgment Liens held by the Respondent. (Compl. For Foreclosure) (R.p. 30-44).

The Respondent's Complaint also named the Appellant as a Party Defendant due to the Appellant owning the other undivided one-half (1/2) interest in the Subject Property with the Defendant Wilmeth. (Compl. For Foreclosure) (R.p. 30-44).

The Respondent's Complaint also named Bank of America as a party Defendant due to Bank of America having been given a Mortgage on the Subject Property by the Appellant and the Defendant Wilmeth. (Compl. For Foreclosure) (R.p. 30-44).

The Respondent's Complaint also named several other persons, business entities, and/or governmental entities due to having filed Judgment Liens and/or Tax Liens against the Defendant Wilmeth. (Compl. For Foreclosure) (R.p. 30-44).

The Defendant, Estate of Amelia H. Anthony, filed an Answer to the Respondent's Complaint and a Counterclaim against the Defendant Wilmeth in which it requested the foreclosure of the Defendant Wilmeth's undivided one-half (1/2) interest in the Subject Property due to its Judgment Lien granted in its favor against the Defendant Wilmeth in the sum of \$1,691,346.08 dated November 15, 2007 and filed on November 15, 2007, in Judgment Roll Number 56,710. (Answer and Counterclaim of the Estate of Amelia H. Anthony) (R.p. 91-101)

The Defendant, Alexander C. West, filed an Answer to the Respondent's Complaint in which he requested the foreclosure of the Defendant Wilmeth's undivided one-half (1/2) interest in the Subject Property due to his Judgment Lien granted in his favor against the Defendant Wilmeth in the sum of \$160,000.00, dated September 20, 2006 and filed on September 21, 2006 as Judgment Roll Number 55,352. (Answer of Alexander C. West) (R.p. 102-106)

The Defendant, Alexander C. West, Jr., filed an Answer to the Respondent's Complaint in which he requested the foreclosure of the Defendant Wilmeth's undivided one-half (1/2) interest in the Subject Property due to his Judgment lien granted in his favor against the

Defendant Wilmeth in the sum of \$60,000.00, dated September 20, 2006 and filed on September 21, 2006 as Judgment Roll Number 55,353. (Answer of Alexander C. West, Jr.) (R.p. 107-111)

The Defendant, Bank of America, filed its Answer to the Respondent's Complaint in which it requested any foreclosure sale of the undivided one-half (1/2) interest of the Defendant Wilmeth in the Subject Property be "sold subject to its Mortgage Lien recorded on November 25, 2002 in Mortgage Book 1024 at Page 4218". (Answer of Bank of America) (R.p. 112-116.)

The Appellant initially filed her Answer to the Respondent's Complaint dated February 15, 2016 and filed on February 18, 2016. (Answer of Appellant) (R.p. 119-121)

The Appellant also filed an Amended Answer and Cross-Claim to the Respondent's Complaint, dated February 15, 2016, but did not file it until March 21, 2016. In the Appellant's Cross-Claim against the Defendant Wilmeth, the Appellant requested Judgment against the Defendant Wilmeth in the sum of \$75,000.00. (Amended Answer and Cross-Claim of Appellant) (R.p. 124-126)

The Defendants, Lumber Yard, Inc., St. Bartholomew's Episcopal Church, Airport Technologies, LLC, S.C. Department of Revenue, United States of America, Acting through the Department of Treasury/Internal Revenue Service, Ford Motor Credit Company, LLC, James Gandy, Norwood C. Bizzell, Robert B.W. Bizzell, William E. Bizzell, Mary Lathan Steele, Vicki Eaddy, and St. Bartholomew's Episcopal Church also filed their respective Answers to the Respondent's Complaint in which each of the said Defendants admitted their respective Judgment Liens and/or Tax Liens and requested that their interest be protected. (4/6/17 Final Order – page 5-6) (R.p. 9-10.)

The Defendant's, Canal Wood, LLC, Mutual Savings Bank, Estate of Betty C. Wiggins, Portfolio Recovery Assoc., and the S.C. Department of Probation, Parole, and Pardon Services

did not file an Answer to Respondent's Complaint and Affidavits of No Answer were filed by Respondent's Attorney for each of them. (4/6/17 Final Order – page 6) (R.p. 10)

On February 8, 2016, Judge Paul M. Burch executed an Order of Reference With Finality to Carl A. Saleeby, as Special Referee, which was filed on February 11, 2016. (Order of Reference With Finality) ((R.p. 1-2)

On February 12, 2016, the Respondent's Attorney executed a Notice of Hearing scheduled for February 19, 2016 which was filed on February 16, 2016. (Respondent's Notice of Hearing for February 19, 2016) (R.p. 117-118)

On February 19, 2016, Respondent's Attorney executed and filed an Affidavit of No Answer as to the Defendant Wilmeth in regards to the Respondent's Complaint. (Affidavit of No Answer as to Defendant Wilmeth) (R.p. 122-123.)

However, on February 18, 2016, the Attorney for the Appellant, Robert E. Lee, obtained an Order For Protection in regards to the February 19, 2016 Hearing Date and this Order For Protection was filed on February 18, 2016. (Order of Protection for Appellant's Attorney, Robert E. Lee) (R.p. 3-4)

As a result of the Order For Protection for the Appellant's Attorney, Robert E. Lee, the Hearing scheduled for February 19, 2016 was not held by the Special Referee.

The February 19, 2016 Hearing would have been within the ten (10) year period of a Judgment, but it was postponed by the Order For Protection issued on February 18, 2016 for the benefit of Appellant's Attorney, Robert E. Lee.

On January 24, 2017, the Defendant, Bank of America, submitted a Motion for Summary Judgment as to Lien Validity and Priority and this Motion was filed on January 27, 2017. (Defendant, Bank of America's Motion For Summary Judgment) (R.p. 127.)

On February 14, 2017, the Defendant, Bank of America, submitted a Notice of Hearing for March 9, 2017 on Defendant's Motion for Summary Judgment and this Notice of Hearing was filed on February 16, 2017. (Defendant, Bank of America's Notice of Hearing) (R.p. 131)

On March 2, 2017, the Respondent submitted a Notice of Hearing for March 9, 2017 and this Notice of Hearing was filed on March 6, 2016. (Respondent's Notice of Hearing) (R.p. 132-133)

On March 8, 2017, the Appellant submitted a Motion to Dismiss Pursuant to Rule 12(c) SCRCF, and this Motion was filed on March 8, 2017. (Appellant's Mot. To Dismiss Pursuant To Rule 12(c) SCRCF) (R.p. 134-135.)

On March 9, 2017, the Special Referee held a Hearing on (1) Bank of America's Motion For Summary Judgment, (2) Appellant's Motion To Dismiss Pursuant to Rule 12(c) SCRCF, and (3) Respondent's Foreclosure Complaint. (3/9/17 Tr. of Hr'g.) (R.p. 149-191.)

Present at the March 9, 2017 Hearing was the Respondent, Thomas E. Goodson, the Respondent's Attorney, J. Alex Stanton, IV, the Appellant, Debra J. Freeman, the Appellant's Attorney, Robert E. Lee, Attorney Chad Burgess on behalf of the Defendant, Bank of America, Attorney Martin S. Driggers, Jr., on behalf of the Defendants, Alexander C. West and Alexander C. West, Jr., Mr. Gregg Alexander, CPA, on behalf of the Defendant, Estate of Betty C. Wiggins, and Attorney D. Malloy McEachin, Jr., on behalf of the Defendant, Estate of Amelia H. Anthony, (3/9/17 Tr. of Hr'g 2, 3) (R.p. 150-151.)

The Respondent's Attorney provided some background information to the Special Referee regarding this case and identified the Defendant sin this case. (3/9/17 Tr. Hr'g 7) (R.p. 155)

The Respondent's Attorney also provided information to the Special Referee in

connection with the Answers to the Respondent's Complaint which were filed by some of the Defendants. (3/9/17 Tr. of Hr'g 8, 9) (R.p. 156-157.) The Respondent's Attorney also provided information to the Special Referee of the Defendant's which did not file Answers to the Respondent's Complaint and that Affidavits of No Answer were filed as to those Defendants. (3/9/17 Tr. of Hr'g 10) (R.p. 158.) The Respondent's Attorney also provided information to the Special Referee regarding the Order of Reference dated February 8, 2016 and filed on February 11, 2016 (3/9/17 Tr. of Hr'g 10) (R.p. 158.) The Respondent's Attorney also provided information to the Special Referee of Respondent's Notice of Hearing for February for February 19, 2016 which was dated February 12, 2016 and filed on February 16, 2016. (3/9/17 Tr. of Hr'g 10) (R.p. 158). The Respondent's Attorney also provided information to the Special Referee that the February 19, 2016 hearing was not held due to the filing of an order For Protection, dated and filed on February 18, 2016 by the Appellant's Attorney, Robert E. Lee. (3/9/17 Tr. of Hr'g 10, 11) (R.p. 158-159.)

Prior to addressing the Appellant's Motion to Dismiss Respondent's Complaint Pursuant to Rule 12(c) SCRCF, the Special Referee made inquiries to all persons present as to their position on the Bank of America Motion For Summary Judgment to the validity and priority of the Bank of America Mortgage. None of the persons present had any objection and the Special Referee granted the Motion For Summary Judgment of Bank of America that the Bank of America Mortgage was valid and was the first (1st) Lien on the Subject Property. (4/6/17 Final Order 2.) (R.p. 6.)

The Respondent's Attorney also provided information to the Special Referee that the Respondent filed a Notice of Hearing for March 9, 2017, which was dated March 2, 2017 and filed on March 6, 2017. (3/9/17 Tr. of Hr'g 11.) (R.p. 159.)

The Respondent's Attorney also provided information to the Special Referee that the Respondent was requesting to foreclose on Defendant Wilmeth's undivided one-half (1/2) interest in the Subject Property due to the Respondent's two (2) Judgments against the Defendant Wilmeth which were filed on February 20, 2016 and one (1) Judgment against Defendant Wilmeth which was filed on September 2, 2016. (3/9/17 Tr. of Hr'g 12.) (R.p. 160).

The Special Referee decided to first (1st) hear the Appellant's Motion to Dismiss the Respondent's Complaint Pursuant to Rule 12(c) SCRCF. (3/9/17 Tr. of Hr'g 12.) (R.p. 160).

Appellant's Attorney began his arguments in favor of the Appellant's Motion to Dismiss the Respondent's Complaint Pursuant to Rule 12(c) SCRCF as to the two (2) 2006 Judgments against Defendant Wilmeth and the Appellant's Attorney cited some cases and stated that a Judgment expires ten (10) years from its filing. (Tr. of Hr'g 12, 13, 14, 15.) (R.p. 160, 161, 162, 163). However, the Appellant's Attorney admitted that the Respondent's Judgment against Defendant Wilmeth filed in 2015 would not expire until 2025 as it was alive and can be foreclosed. (Tr. of Hr'g 14) (R.p. 162).

Respondent's Attorney began his arguments against the Appellant's Motion to Dismiss the Respondent's Complaint Pursuant to Rule 12(c) SCRCF. The Respondent's Attorney first (1st) raised the "issue as to whether the Appellant had any standing" to raise this issue since the Respondent's Complaint did not request that the Appellant's undivided one-half (1/2) interest in the Subject Property be sold or anything. The Respondent's Attorney also informed the Special Referee that other Defendant's had requested that their Judgments against Defendant Wilmeth also be foreclosed. (3/9/17 Tr. of Hr'g 15.) (R.p. 163.)

Next the Respondent's Attorney raised the issue that the Respondent's Attorney had not been served with the Appellant's Motion to Dismiss the Respondent's Complaint Pursuant to

Rule 12(c) SCRCPP until the late afternoon of March 8, 2017 which would be in violation of Rule 6 of the SCRCPP which requires a written Motion shall be served not later than ten (10) days before the time to be heard. (3/9/17 Tr. of Hr'g 15) (R.p. 163.)

The Respondent's Attorney also raised the defense that not only did the Respondent have the owner of two (2) Judgments against Defendant Wilmeth which were filed on February 20, 2006, but the Respondent was also the owner of a Judgment against the Defendant Wilmeth that was filed in 2015. (3/9/17 Tr. of Hr'g 16.) (R.p. 164).

The Respondent's Attorney also advised the Special Referee that the case of Linda McCo v. Shore would allow the Request to foreclose also on the two (2) 2006 Judgments granted against the Defendant Wilmeth. (3/9/17 Tr. of Hr'g 16, 17.) (R.p. 164-165.)

The Respondent's Attorney also advised the Special Referee that the original Hearing scheduled for February 19, 2016 was within any ten (10) year period of time, but that the February 19, 2016 Hearing was not held due to the Order For Protection granted to the Appellant's Attorney. (3/9/17 Tr. of Hr'g 17.) (R.p. 165.)

Mr. D. Malloy McEachin, Jr., the Attorney for the Defendant, Estate of Amelia H. Anthony, then addressed the Special Referee and informed him that the Defendant, Estate of Amelia H. Anthony, had also requested that its Judgment against the Defendant Wilmeth be foreclosed in this action and that even if the Court does not follow the limit of the McCompany case, its Judgment would be less than ten (10) years old. (3/9/17 Tr. of Hr'g 17, 18) (R.p. 165,166).

Mr. Martin S. Driggers, Jr., the Attorney for Alexander C. West and Alexander C. West, Jr., addressed the Special Referee and sated that he, on behalf of his clients, would join in the Respondent's Attorney's arguments, as to his client's two (2) Judgments against Defendant Wilmeth. (3/9/17 Tr. of Hr'g 18) (R.p. 166)

The Appellant's Attorney was then provided an opportunity to reply to the arguments made by Attorney Stanton, Attorney McEachin, and Attorney Driggers. (3/9/17 Tr. of Hr'g 18, 19.) (R.p. 166-167).

The Special Referee inquired as of the Appellant's Attorney as to whether he wanted the Court to dismiss he Cross-Claim of the Appellant against Defendant Wilmeth. (3/9/17 Tr. of Hr'g 20, 21) (R.p. 168-169).

The Appellant's Attorney responded that the Appellant would like a Judgment for \$75,000.00 against Defendant Wilmeth. He further stated that to the extent Appellant is asking for it, the Appellant will testify to it and will ask for it. (3/9/17 Tr. of Hr'g 20, 21.) (R.p. 168-169).

The Special Referee stated that he was not in a position to make a ruling on Appellant's Motion to Dismiss the Respondent's Complaint Pursuant to Rule 12(c), SCRCF as to the two (2) Judgments of the Respondent against Defendant Wilmeth which were filed in 2006. (3/9/17 Tr. of Hr'g 21, 22.) (R.p. 169-170).

The Respondent's Attorney requested that Respondent's forty-three (43) Exhibits of recorded documents be introduced into evidence on behalf of the Respondent. (3/9/17 Tr. of Hr'g 22, 23.) (R.p. 170-171).

The Special Referee asked those persons present as to whether or not any of them had an objection to introducing the Respondent's forty-three (43) Exhibits of recorded documents. No one objected and the Special Referee admitted into evidence Respondent's forty-three (43) Exhibits of recorded documents. (3/9/1 Tr. of Hr'g 23.) (R.p. 171).

The Respondent, Thomas E. Goodson, as Trustee of the Residuary Beneficiaries Trust of the Estate of Margaret S. Goodson and the Estate of Helen S. Goodson, was called to testify under the direction examination by Respondent's Attorney. Mr. Godson testified that he was familiar with the Estate of Margaret S. Goodson and the Estate of Helen S. Goodson and the Residuary Beneficiaries Trust of the Estate of Margaret S. Goodson and the Estate of Helen S. Goodson. Mr. Goodson further testified that he was aware of the February 20, 2006 Judgment granted to the Estate of Helen S. Goodson against the Defendant Wilmeth and that it had been assigned to the Residuary Beneficiaries Trust of the Estate of Margaret S. Goodson and the Estate of Helen S. Goodson. Mr. Goodson further testified that he was aware of the February 20, 2006 Judgment granted to the Estate of Margaret S. Goodson against the Defendant Wilmeth and that it had been assigned to the Residuary Beneficiaries Trust of the Estate of Margaret S. Goodson and the Estate of Helen S. Goodson. Mr. Godson testified that he was also aware that due to Defendant Wilmeth pleading guilty in General Sessions Court that the Helen S. Goodson Estate was designated to receive restitution from Defendant Wilmeth and that he was aware of a Judgment granted in favor of the Estate of Helen S. Goodson against Defendant Wilmeth which was dated August 2, 2015 and recorded on September 2, 2015 and that this Judgment had been assigned to the Residuary Beneficiaries Trust of the Estate of Margaret S. Goodson and the Estate of Helen S. Goodson. Mr. Goodson testified that, on behalf of the Respondents, he was requesting that the Court foreclose on the Defendant Wilmeth's undivided one-half (1/2) interest

in the Subject Property. (3/9/17 Tr. of Hr'g 24, 25, 26, 64527, 28, 29.) (R.p. 172, 173, 174, 175, 176, 177).

The Special Referee allowed each of the persons present to Cross-Examine Mr. Goodson, but all declined to do so. (3/9/17 Tr. of Hr'g 29) (R.p. 177).

The Appellant, Debra J. Freeman, was called to testify under the direct examination by Appellant's Attorney. The Appellant testified that she was aware of the purchase of the lot on the Subject Property and that the Appellant and Defendant Wilmeth built a home on it and resided there together. She also testified that she was aware of a Mortgage given to Bank of America on the Subject Property by the Appellant and Defendant Wilmeth and that the Bank of America Mortgage was still a Lien on the Subject Property. The Appellant testified that prior to Defendant Wilmeth getting in trouble and losing her ability to practice law, the Appellant and Defendant Wilmeth paid the bills together. After Defendant Wilmeth got in trouble and was not allowed to practice law, the Appellant testified that the Appellant was solely responsible for the payment of the bills. The Appellant testified that she wanted to be granted a Judgment against Defendant Wilmeth for \$75,000.00. Upon Cross-Examination by Respondent's Attorney, the Appellant again requested that she be granted a Judgment against the Defendant Wilmeth for \$75,000.00. The other persons present desired to ask the Appellant any questions. (3/9/17 Tr. of Hr'g 30, 31, 32, 33, 34, 35, 36, 37, 38.) (R.p. 178, 179, 180, 181, 182, 183, 184, 185, 186.).

Mr. D. Malloy McEachin, Jr., Attorney for the Estate of Amelia H. Anthony, stated that no monies owed by the Defendant Wilmeth to the Estate of Amelia H. Anthony in its Counterclaim in this action has been paid. (3/9/17 Tr. of Hr'g 40) (R.p. 188)

Mr. Martin S. Driggers, Jr., Attorney for Alexander C. West and Alexander C. West, Jr., advised the Court that no monies have been paid by the Defendant Wilmeth on his Client's Judgment against Defendant Wilmeth (R.p. 188).

The Special Referee advised those present that he was going to order the foreclosure of Defendant Wilmeth's undivided one-half (1/2) interest in the Subject Property and that he will set forth a priority of the Liens. He further stated that he would issue a ruling on the Respondent's two (2) 2006 Judgments against the Defendant Wilmeth and a ruling on the Appellant's Cross-Claim for a Judgment of \$75,000.00 against the Defendant Wilmeth. (3/9/17 Tr. of Hr'g 40, 41.) (R.p. 188-189.)

On April 6, 2017, the Special Referee issued its Final Order which was filed on April 7, 2017. In this Final Order, the Special Referee granted the Bank of America's Motion For Summary Judgment, which established that its Mortgage Lien was valid and that its Mortgage Lien was a first (1st) Lien on the Subject Property. (4/6/17 Final Order 2, 13, 17) (R.p. 6, 17, 21).

The Final Order denied the Appellant's Motion To Dismiss Pursuant to Rule 12(c) SCRCF. (4/6/17 Final Order 18.) (R.p. 22). In addition, the Final Order set forth the Priority of the Judgment Liens and/or the Tax Liens in Paragraph 7 under the Findings of Fact Section of the Final Order (4/6/17 Final Order 13, 14, 15, 16) (R.p. 17, 18, 19, 20), and set forth that the undivided one-half (1/2) interest of the Defendant Wilmeth in the Subject Property be sold at public auction subject to the first (1st) Mortgage of Bank of America. (4/6/17 Final Order 18.) (R.p. 22)

On April 6, 2017, the Special Referee issued its Notice of Sale for May 1, 2017 at 12:00 Noon and the Notice of Sale was filed on April 7, 2017. The Notice of Sale stated that the sale would be subject to the first (1st) Mortgage of Bank of America. (4/6/17 Notice of Sale.) (R.p. 25-27).

The Appellant filed her Notice of Appeal on April 19, 2017 (R.p. 144-145).

ARGUMENT

I. THE TRIAL COURT ERRED IN DENYING DEFENDANT FREEMAN'S MOTION TO DISMISS ON TWO (2) EXPIRED JUDGMENTS.

The Respondent takes the position that the trial Court was correct in Denying the Appellant's Motion to Dismiss on two (2) expired Judgments.

First of all, the Appellant "did not have Standing" to file the Motion to Dismiss. The Respondent's Complaint only requested Foreclosure against the Defendant Wilmeth's undivided one-half (1/2) interest in the Subject Property. It should be noted that Defendant Wilmeth did not file an Answer to the Respondent's Complaint nor did Defendant Wilmeth attend the Trial of the case. The Respondent's Complaint did not request any relief from the Court as to the undivided one-half (1/2) interest of the Appellant in the Subject Property.

The Trial Court relied upon and "cited" excerpts from the case of Linda McCompany, Inc v. James G. Shore and Jan Shore, 390 S.C. 543, 703 S.E.2d 499 (2010).

This was a Case that had been referred to a Special Referee to enforce a Judgment granted to Linda McCompany, Inc. (Respondent) by James G. Shore and Jan Shore (Petitioners).

The Petitioners "Confessed a Judgment" in favor of the Respondent which was dated December 8, 1964 and recorded on June 2, 1995 in the sum of \$110,000.00.

On October 1, 2004 the Special Referee conducted a hearing to determine whether the Petitioners had any assets that could satisfy the Respondent's Judgment.

The Petitioners filed a Motion to Dismiss alleging the Judgment was void, and the Special Referee denied the Motion and concluded that the Respondent's Judgment was valid and enforceable.

On May 24, 2005 the Special Referee conducted another Hearing.

On June 3, 2005 the Special Referee issued his Report to the Circuit Court that the Petitioners owed the Judgment to the Respondent. Also, on June 3, 2005, the Circuit Court issued an Order to execute and levy upon the assets owned by the Petitioners.

The Petitioners appealed to the South Carolina Court of Appeals and the decision by the Trial Court was upheld by the South Carolina Court of Appeals with the decision being filed on November 2, 2007 in the case of Linda McCompany, Inc. v. James G. Shore and Jan Shore, 375 S.C. 432, 653 S.E.2d 279 (2007) in which the South Carolina Court of Appeals Affirmed the Order of the Trial Court.

The Petitioners appealed the decision of the South Carolina Court of Appeals to the South Carolina Supreme Court and “some of the issues” before the South Carolina Supreme Court were as follows:

1. Does section 15-39-30 deprive the judgment of “active energy”?
2. Did the expiration of the judgment render it and any supplemental proceedings to it “moot”?
3. Did the expiration of the judgment deprive the circuit court of jurisdiction to proceed with supplemental proceedings or execution?

The Petitioners argued section 15-39-30 “deprives the judgment of active energy” and execution may not issue thereon because ten years have passed since the filing of the judgment. The Supreme Court Disagreed.

The Supreme Court further stated our state’s statutes “clearly evince the legislative purpose to nullify the effective force of a judgment after ten years, unless revived, or a suit thereon be brought before the expiration of the period allowed by law.: Citing Hardee v. Lynch, 212 S.C. 6, 46 S.E.2d 179 (1948) Id. at 188. The Supreme Court further stated that “filing an

action preserves lien even though statutory period expires while matter is pending”. Citing *Hughes v. Slater* 214 S.C. 305, 52 S.E.2d 419 (1949) Id. at 422. Furthermore, the Supreme Court stated “hence, while section 15-39-30 is not a statute of limitations, it operates like a state of limitations”. The Supreme Court went further and stated that “when a party has complied with the applicable statutes, as Respondent did in this case, and is merely waiting on a court’s order regarding execution and levy, the ten year limitation found in section 15-39-30 is extended to when the court finally issues an order. 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”.

The Supreme Court went further to state “in this case, the judgment was entered June 2, 1995 and the order was issued June 3, 2005. While the order came after the ten-year period, a petition for supplemental proceedings was filed before the ten-year period expired. Therefore, the judgment had active energy on June 3, 2005 because that order was the result of the supplemental proceeding filed during the ten-year period”. The Supreme Court stated “if a party takes action to enforce a judgment within a ten-year statutory period of active energy, the resulting order will be effective even if issued after the ten-year period has expired. Hence, regarding this issue the decision of the court of appeals should be affirmed as modified”.

In further Affirming the Decision of the Court of Appeals the Supreme Court Disagreed with the petitioners’ argument that the expiration of the Judgment “deprived the Court with jurisdiction” to proceed with either the supplemental proceedings or execution. The Supreme Court further stated “the running of the ten-year period does not influence the power of the circuit court to hear disputes related to section 15-39-30”.

In conclusion, the Supreme Court held that the Decision of the South Carolina Court of Appeals was Affirmed, as modified.

S.C. Code Section 15-39-30 which was cited by the South Carolina Supreme Court in its Decision is as follows:

S.C. Code Section 15-39-30. 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 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 any such executions”.

Therefore the Respondent argues that the Trial Court was correct on Denying the Appellant’s Motion to Dismiss the Respondent’s two (2) Judgments which were filed on February 20, 2006 due to (1) the Appellant “Lacking Standing” to file such Motion to Dismiss, (2) the Respondent having filed Respondent’s Complaint for Foreclosure within the ten (10) year period from the filing of the two (2) February 20, 2006 Judgments, and (3) the Supreme Court’s Decision in Linda McCompany v. Shore.

II. LINDA McCo. v. SHORE, 390 S.C. 543, 703 S.E. 2nd 499 (2010), DOES NOT TOLL
THE STATUTORY 10-YEAR ENFORCEMENT PERIOD OF THE TWO (2) 2006
JUDGMENT LIENS

The Respondent argues that the South Carolina Supreme Court's Decision in Linda McCompany v. Shore, 390 S.C. 543, 703 S.E.2d 499 (2010) does allow the Trial Court to have enforced the two (2) Judgment Liens of the Respondent in the Trial Court's Order dated April 6, 2017.

The Respondent refers this Court to the Respondent's Argument I which is set forth hereinabove.

III. THE COURT OF APPEALS SHOULD AFFIRM THE DENIAL OF DEFENDANT
FREEMAN'S MOTION TO DISMISS

The Respondent argues that this Court should Affirm the Trial Court's Denial of Defendant Freeman's Motion to Dismiss.

The Respondent argues that the South Carolina Supreme Court's Decision in Linda McCompany v. Shore, 590 S.C. 543, 703 S.E.2d 499 (2010) allowed the Trial Court to Deny the Defendant Freeman's Motion to Dismiss.

The Respondent refers this Court to the Respondent's Argument I and II which are set forth hereinabove.

IV. THE COURT OF APPEALS SHOULD AFFIRM THE APRIL 6, 2017 FINAL ORDER OF THE SPECIAL REFEREE

The Respondent argues that the Respondent filed the Respondent's Foreclosure Complaint within ten (10) years from the filing of the Respondent's two (2) February 20, 2006 Judgments and certainly within ten (10) years of the filing of the Respondent's September 2, 2015 Judgment.

The Respondent argues that the trial Court's Listing of the Judgment Liens and/or Tax Liens Priority was proper in light of the South Carolina Supreme Court's Decision in *Linda McCompany, Inc. v. Shore*, 390 S.C. 543, 703 S.E.2d 488 (2010) (relating to Respondent's two (2) February 20, 2006 Judgments).

However, if this Court rules that the Respondent's two (2) February 20, 2006 Judgments had expired and did not have active energy at the March 9, 2017 Hearing, then this Court should Affirm the Final Order as it relates to the Foreclosure of the Defendant Wilmeth's undivided one-half (1/2) interest in the Subject Property and require the Trial Court "to revise the Priority of Judgment Liens and/or Tax Liens" and schedule a new Sales Date for the sale of the Defendant Wilmeth's undivided one-half (1/2) interest in the Subject Property.

CONCLUSION

For each of the reasons stated herein, the Respondent respectfully requests the Court to enter an Order Affirming the Court of Common Pleas for Darlington County's Final order dated April 6, 2017 and for whatever further relief this Court deems just and proper at this time.

Dated July 31, 2017

Respectfully submitted,

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