

FACTUAL BACKGROUND

Briefly, Holly Woods Association of Residence Owners (“Holly Woods” or “Plaintiff”) brought the above captioned action against HHH Ltd. of Greenville (“HHH”), Joe W. Hiller, David Hiller, Robert E. Hiller et al. (the “Defendants”) in 2005 (C.A. No: 2005-CP-23-2852). The matter came to trial before a jury and on May 14, 2007, verdict was entered in favor of Plaintiff and a judgment was entered against HHH in the amount of \$971,000.00 (the “Judgment”).

On September 28, 2012, as a part of Plaintiff’s attempts to execute on the Judgment, along with allegations of Plaintiff that real property of HHH was being fraudulently conveyed, Plaintiff petitioned for Supplemental Proceedings, praying for this Court to issue a Rule to Show Cause Order and an order appointing the Receiver to take possession of any assets so discovered and to apply any proceeds from the sale of the same to the Judgment. A hearing on Plaintiff’s petition for Supplemental Proceedings was held on November 9, 2012 and, on January 16, 2013, the Court ordered the appointment of the Receiver to safeguard, preserve and protect HHH’s property until the Judgment became satisfied in full.

In connection with the order appointing the Receiver, Defendants’ were enjoined from selling, transferring, secreting, encumbering, disposing of or otherwise impairing the value of any real property owned by the Defendants either individually or jointly. Furthermore, the Court’s order appointing the receiver provided for the Honorable Charles B. Simmons, Greenville County Master in Equity, to retain jurisdiction for further orders as may be just and proper.

Subject to the Court’s order appointing the Receiver, on October 16, 2013, the Receiver filed suit, C.A. No.: 2013-CP-23-05575 (the “Receiver’s Suit”) on behalf of HHH against Randall S. Hiller, Robert E. Hiller and Randall S. Hiller, P.A. (collectively “Hiller Defendants”) for reasons including, but not limited to, purported fraudulent conveyances of certain real property

being subject to the Judgment. Appeal was then filed on behalf of the Hiller Defendants, the same being dismissed by order filed on behalf of the South Carolina Court of Appeals on June 29, 2016. Soon thereafter, the Hiller Defendants petitioned for a writ of certiorari to the South Carolina Supreme Court. The Receiver suit remains active.

DISCUSSION

Since the Hiller Defendants' petition for a writ of certiorari to the South Carolina Supreme Court, more than ten (10) years has elapsed since the entry of the Judgment on May 14, 2007. Defendants now seek termination of the Receiver and an order from this Court directing an accounting of assets being held by the Receiver. As the basis for their motion, Defendants cite *Garrison v. Owens*, 258 S.C. 442, 189 S.E.2d 31 (1972) and S.C. Code Ann. § 15-39-10 et seq., specifically noting that the above-captioned matter and attempts to execute on the Judgment resulting therefrom no longer possess active energy due to the lapse of ten (10) years since the entry of the Judgment and that the Receiver had not timely pursued assets and had wasted property of Defendants that could have otherwise been used towards satisfaction of the judgment.

Our appellate courts have taken a less rigid approach than the Defendants in interpreting the above referenced case and statutory law in determining duration of active energy in executions of judgments. Specifically, in overruling *Garrison*, the South Carolina Supreme Court held, "[W]hen 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 its order. To hold otherwise would put those trying to enforce the judgments at the mercy of the court system to conclude the matter within the ten-year period". See *The Linda Mc Company v. Shore*, 390 S.C.543, 703 S.E.2d 499, 504-505 (2010). Furthermore, and without limitation, the South Carolina Court of Appeals recently

expounded on the Supreme Court's decision recognizing an exception to nullification of a judgment after ten years if an action, for the purpose of aiding in execution of the judgment, is commenced prior to the expiration of ten years. *See Gordon v. Lancaster*, 419 S.C. 48, 795 S.E.2d 857 (Ct. App. 2016). Notwithstanding this, Defendants argue that *Shore* is still a valid basic proposition and that *Garrison* did not overrule *Shore* except in a narrow and limited manner. In other words, Defendants argue that *Garrison* does not extend other means of collecting a judgment once the 10 year time frame has run.

Similar to the case at hand, in *Gordon*, judgment was entered in favor of the plaintiff against the defendant on March 14, 2002. After the dismissal of appeals filed by the defendant, the Court of Common Pleas for the Ninth Judicial Circuit issued an order granting supplemental proceedings, which were held open, to aid the plaintiff in obtaining satisfaction of the judgment. Moreover, in November of 2010, approximately one year prior to the expiration of the judgment, the plaintiff filed an action in the same Court against the defendants' estate for alleged fraudulent conveyances which impeded the plaintiff's ability to successfully execute on the judgment. In August 2013, nearly twelve years since entry of the judgment, the Court ruled in favor of the plaintiff on the fraudulent conveyances matter. Thereafter, in November 2016, the South Carolina Court of Appeals held that the judgment execution period under S.C. Code Ann. § 15-39-10 et seq. had not expired because the plaintiff's action "was filed before the ten-year period expired and because the [plaintiff] continued to pursue satisfaction of the judgment". *Id.* at 57-59.

In this case, the Plaintiff filed a supplemental proceeding to aid in the collection of its judgment against HHH, which resulted in the Receiver being appointed. The order appointing the Receiver further provided that this Court would retain jurisdiction over the matter thereby leaving the supplemental proceeding open. The Receiver, who was charged with the responsibility of

managing and disposing of HHH's assets for the purpose of satisfying the judgment, was entitled to bring an action for fraudulent conveyances and did so over two years prior to the expiration of the active energy of the Judgment pursuant to S.C. Code Ann. § 15-39-10 et seq. Further, the Receiver's Suit was filed for the purpose of pursuing satisfaction of the Judgment. The Court of Appeals decision in *Gordon* applies to the Receiver's Suit and the above-captioned action (collectively the "Subject Suits"). Therefore, as a result of the Plaintiff's aforementioned efforts to satisfy the Judgment, the Judgment retains its active energy and the Subject Suits, including the receivership, are allowed to continue for the purpose of executing upon the Judgment in accordance with S.C. Code Ann. § 15-39-10 et seq.

ORDER

Based upon the forgoing, it is **ORDERED** that the Defendants' Motion to Terminate the Receiver and for an Accounting is **DENIED**. The Receiver is directed to move as expeditiously as possible and to provide monthly written reports to the court and the parties of his efforts and results there from. After a period of 6 months, Defendants shall have the right to seek to renew their Motion.

AND IT IS SO ORDERED!

JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW



Greenville Common Pleas

Case Caption: Holly Woods Association Of Residence Owners vs. Joe W Hiller ,
defendant, et al
Case Number: 2005CP2302852
Type: Master/Order/Other

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

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