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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY

Court of Common Pleas

Hon. S. Jackson Kimball, III

Master in Equity Judge

C/A NO.: 2017-001254

TRIPLE M PARTNERS, LP.

.....Plaintiff

vs.

SUZETTE LEFEBVRE, as Individual,

and as Trustee of the SUZETTE LEFEBVRE TRUST N/A

.....Defendant Appellant

vs.

BLANCO GmbH + CO.KG

.....Respondent Intervenor

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SC Court of Appeals

INITIAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE TRIAL COURT ERR IN FINDING LEFEBVRE FAILED TO RAISE ISSUES BEFORE THE COURT AT THE MARCH 22 HEARING?**

- II. DID THE TRIAL COURT ERR BY GRANTING RELIEF TO RESPONDENT INTERVENOR NOT REQUESTED BY PLAINTIFF OR RESPONDENT INTERVENOR?**

- III. DID THE TRIAL COURT ERR IN NOT FINDING THAT DEFENDANT APPELLANT LEFEBVRE WAS DENIED HER PROCEDURAL DUE PROCESS RIGHTS**

- IV. DID THE TRIAL COURT ERR IN NOT FINDING THAT DEFENDANT APPELLANT LEFEBVRE WAS DENIED HER SUBSTANTIVE DUE PROCESS RIGHTS**

STATEMENT OF THE CASE

Defendant Appellant commenced this Appeal on May 24, 2017 and served the Notice of Appeal on Plaintiff Triple M and Respondent Intervenor on May 24, 2017 by electronic delivery. Defendant Appellant seeks a reversal of the April 26, 2017 Order rendered by the Honorable S. Jackson Kimball, Master in Equity wherein Judge Kimball denied Defendant Appellant's Motion to Stay and Motion to Alter and/ or Motion to Amend the Order dated March 22, 2017. The March 22, 2017 Order allowed for the disbursement of contested proceeds from the sale of real property to Respondent Intervenor instead of requiring them to be held in escrow. Defendant Appellant's appeal is based upon three arguments; 1) what relief Respondent Intervenor was entitled to request from the Trial Court with respect to the surplus funds; 2) what notice, if any Defendant Appellant had received would be the issues heard by the Court on March 22, 2017; and 3) whether the Trial Court had been put on notice Defendant Appellant had a spousal equity interest in the Property, and by extension the sale proceeds. Respondent Intervenor opposed Defendant Appellant's Motions to Stay and Alter and/ or Amend on the basis the Trial Court's Order was accurate and appropriately issued. The amount of sale proceeds was Eight Hundred Nine Thousand One Hundred Ninety and 02/100 Dollars (\$809,190.02).

STATEMENT OF FACTS

On May 19, 2001, Defendant Appellant Suzette LeFebvre (hereinafter "LeFebvre") and her former spouse, Vito Antonio Laera (hereinafter "Laera") were married in Colorado in the Foothills Chapel. At the time of the ceremony, the couple had one young son and were residing together in Miami, Florida. While the couple did not apply for or receive a marriage license prior to the ceremony, Colorado Revised Statute 14-2-109.5, recognized "common law marriage." *C.R.S. 14-2-109.5*. Following the marriage, the couple returned to Florida. They

moved to Matthews, North Carolina on or about 2006, where they resided as husband and wife until they separated on December 7, 2012 due to Laera's adultery.¹ See Complaint filed in *LeFebvre v. Laera*, No. 2014-DR-46-623, 2014 Fam. Ct. (York Cty 16th Jud Cir October 31, 2014). Laera moved out of the marital home located in North Carolina into a warehouse apartment the couple owned located at 419 Yorkmont Road Fort Mill, South Carolina (hereinafter "Property"). The Property is a commercially zoned warehouse wherein Laera operated his business and included a 6.5 acre tract of real property which can also be identified as York County Tax Map No. 7280000030. On March 25, 2014, LeFebvre filed a Complaint against Laera in the York County Family Court alleging adultery as the grounds for the separation and made claims for child custody, child support, alimony, equitable distribution, and attorney fees ("Divorce Action"). *Id.* LeFebvre was represented in the domestic proceedings by attorney John Freeman.

As part of domestic proceedings, the parties negotiated the terms of child custody and visitation and child support for two minor children, alimony for LeFebvre, the dependent spouse, equitable distribution, and attorney fees to be paid for by Laera. The negotiations were conducted between LeFebvre's attorney and Laera, who was *pro se*. In addition to the above claims, negotiations included, but were not limited to; filing for temporary relief on issues of child custody, child support, alimony, attorney fees and to appoint a *guardian ad litem* for the minor children as well as preparation of a financial affidavit and the exchange of financial documents. See *LeFebvre v. Laera*, No. 2014-DR-46-623, 2014 Fam. Ct. (York Cty 16th Jud. Cir. October 31, 2014).

On or about mid-October 2014, a final settlement was reached on the terms and conditions of child custody, child support, alimony, equitable distribution, and attorney fees.

¹ Lefebvre and Laera had a second child while residing in Florida in 2008.

The parties memorialized the agreement in a Consent Order accepted by and entered by the Honorable Henry T. Woods of the Family Court in and for York County, South Carolina in Case # 2014-DR-46-623. *See* Divorce Decree filed in *LeFebvre v. Laera*, No. 2014-DR-46-623, 2014 Fam. Ct. (York Cty 16th Jud Cir October 31, 2014). As part of the equitable distribution of the assets and liabilities of the marriage, the Consent Judgment awarded the Property to LeFebvre along with the mortgage obligation encumbering it. LeFebvre was also awarded sole custody of the minor children, child support, alimony, and additional assets and liabilities of the marriage. *Id.*

Unbeknownst to LeFebvre during the marriage, Laera had been named as a defendant in a lawsuit in the Southern District of Florida Court for misappropriating intellectual property from Respondent Intervenor Blanco + Gmb CO (hereinafter “Blanco”). In early 2014, a Judgment was entered against Laera and in October of that year, Blanco registered its Judgment for enforcement in York County, South Carolina (“Foreign Judgment”). *See Blanco GMBH+ CO.KG v. Laera*, No. 201-CP-46-3272, 2017 Ct. of Common Pleas, (S.C. Ct. Common Pleas February 28, 2017). At no time prior to the separation, during the domestic proceedings, or following their conclusion did LeFebvre have knowledge of Blanco’s Judgment against Laera.² *See* Dep. of Suzette LeFebvre, Pg 65, L25 – Pg 67, L23 (November 22, 2016).

Several months after the divorce proceedings were finalized, LeFebvre was named as Defendant with Laera in *Blanco GmbH + CO.KG v. Laera*, No. 0:15-CV-02199 (TLW), 2017 U.S. Dist. PACER Docket, (S.C. Dist. May 26, 2017); (hereinafter “South Carolina Federal Case”), Blanco alleged she had worked in concert with Laera to defraud Blanco from collecting on its Judgment by allowing the Property, inclusive of the warehouse awarded to her in the

² Laera was not an ideal spouse in that not only did he commit adultery, he would at times deny he was married. During his deposition in *Blanco + CO.KG v. Vito Antonio Laera and Suzette LeFebvre C.A. No.: 0:15-cv-2199* Laera went so far to deny being married. LeFebvre discovered this when she was named as a co-defendant with Laera in the Federal Case.

divorce proceedings to be conveyed to her. Based upon the Blanco's Complaint in the South Carolina Federal Case, Blanco not only appeared to be unaware of the couple's marital status until the disclosure by LeFebvre's counsel, but that the Property had been conveyed pursuant to a domestic court order. *See* Divorce Decree. Following notification of the couple's marital status by LeFebvre's attorneys, Blanco argued in response to LeFebvre's Motions to Dismiss and Summary Judgement, that the couple was not married and therefore, Judge Wood had no authority to enter the October 31, 2014 Divorce Decree.³ *See* Memorandums in Support of Granting and Denying Defendant LeFebvre's Motion to Dismiss in South Carolina Federal Case. Blanco's argument in favor of its claims of fraudulent transfer in the South Carolina Federal case was essentially that the couple was not married by common law either in Colorado where the couple had their wedding ceremony in 2001, under North Carolina's solemnization statute codified in *N.C. Gen. Stat.* § 51-1, or pursuant to South Carolina's common law statute or its recognition of the marriage contained in the Divorce Judgment.

At the time the South Carolina Federal case was filed in February 2015, there was no question as to whether or not LeFebvre had priority of interest in the Property vis-à-vis Blanco in terms of the time of filing since the Divorce Decree entered October 31, 2014. Following the disclosure of the marriage, the South Carolina Federal case arguments centered on the priority rights to the Property in between Laera and LeFebvre.

On or about May 2016, LeFebvre placed the Property for sale, and on or about August 30, 2016, LeFebvre and Triple M Partners, LLC (hereinafter "Triple M") entered into a contract for a purchase price of One Million Nine Hundred Sixty Dollars and Zero Cents (\$1,960,000.00). A closing date was set for December 15, 2016. During the process of selling the property, the

³ The Motion to Dismiss in *Blanco v. Laera et. al.* centered on whether the Federal Court had the authority to rule on the validity of a marriage recognized by the State of South Carolina. The Motion for Summary Judgment centered on whether the parties marriage was valid and if so, who had priority rights to the property, and by extension the proceeds from the sale of the property.

buyer and Plaintiff of this action, Triple M commenced this action to enforce certain provisions of the sales contract, including obtaining access to the property to inspect the same. *See Triple M. Partners, LP v. LeFebvre*, No. 2016-CP-46-03382, Ct. of Common Pleas (York Cty. S.C. Ct. of Common Pleas May 17, 2017). Triple M's claims for breach of contract and specific performance was filed on November 16, 2016. On November 22, 2016, Triple M also filed a Motion for Temporary Restraining Order, Injunction and Emergency Relief ("Motion for Emergency Relief"). *See Triple M Motion for Emergency Relief*. LeFebvre and the Suzette LeFebvre Trust were served on November 21, 2016. *See Triple M Affidavits of Service*. An order for Emergency Relief was entered by the presiding Judge the Honorable Daniel D. Hall on November 30, 2016. *See Triple M Order for Emergency Relief*.

On January 9, 2017, Triple M filed a Motion for Default Judgment and noticed it for hearing on February 16, 2017. *See Triple M Motion for Default Judgment*. On February 16, 2017, Judge Kimball granted Triple M's Motion for Default Judgment. On February 23, 2017 the written Order was entered. *See Triple M Order for Default Judgment*. The Default Judgment enforced the sale of the property to Triple M and the decretal portion of the Order entering the Default Judgment required the proceeds from the sale of the property be deposited with the Clerk of Court. *Id.*

Two days earlier, on February 14, 2017, Blanco filed a Motion to Intervene in the Triple M matter. The Motion to Intervene was not heard at the February 16, 2017 hearing. The Motion to Intervene was granted on March 13, 2017, without hearing. Blanco filed its Answer on March 14, 2017. *See Answer of Blanco in Triple M Case*. Blanco did not file a crossclaim against LeFebvre.

Blanco's Foreign Judgment was filed in South Carolina on October 3, 2014 as set forth above. *See Blanco GMBH+ CO.KG v. Laera*, No. 2017-CP-46-3272, York County, February 28, 2017. However, it was not entered on the Abstracts of Judgment or the Judgment Roll until March 3, 2017. *Id.* When Blanco received notice of this occurrence, it filed a Writ of Mandamus requesting Judge Kimball enter an Order of Mandamus making the effective date of the filing of the Foreign Judgment October 3, 2014, and retroactively ordering that the Abstracts of Judgment or the Judgment Roll reflect a date of the same. *See Writ of Mandamus of Blanco and Order of Mandamus in Triple M Case.* Judge Kimball granted the Writ of Mandamus and entered the Order of Mandamus on February 28, 2017.

The closing on the Property was rescheduled for the week of March 13, 2017. When LeFebvre would not agree to voluntarily extend the lien rights on the real property against the Proceeds, Blanco filed a Motion for Modification of the prior Order of Default Judgment. *See Respondent's Motion for Modification of Default Judgment and Expedited Hearing*, March 15, 2017. Blanco's Motion for Modification of Default Judgment was set for hearing on March 22, 2017. *See March 20, 2017 and March 21, 2017 Emails from MaryAnn Motz.* In the Memorandum in Support of Blanco's Motion for Modification of Default Judgment, Blanco represented to the Court that it was "not seeking a ruling at this point regarding the priority of its judgment vis-à-vis Defendant LeFebvre to the Property and therefore to the proceeds; it is merely seeking an Order, to the extent Blanco has a lien against the Property, that same priority lien applies to the proceeds from the sale of the Property." *See Respondent's Memorandum in Support of Respondent's Motion for Modification of Default Judgment and Expedited Hearing*, March 15, 2017. Specifically, Blanco's prayer for relief was for the "judgment lien on real property transfer to the proceeds of the transaction, as it keeps the Defendants in the same

priority position each had against the Property...[to]...permit the ...[closing]...transaction to proceed.” See Respondent’s Motion for Modification of Default Judgment and Expedited Hearing (March 15, 2017). On March 21, 2017, the Associate Clerk of Court for York County, MaryAnn Motz emailed the parties and counsel regarding the upcoming hearing to ascertain and confirm who would be attending. LeFebvre responded to the email the Court that she resided in Florida and therefore would not be able to attend. She also made the following Request for Relief:

“I ask this court to issue a new order that; 1, I complied with its order and signed all closing documents as agreed and 2, to release and pay all excess proceeds from the sale of 419 York Southern sold to Triple M partners to me, Suzette LeFebvre, immediately after the first mortgage has been paid 3, close the case between me and Triple M Partners.” LeFebvre email response dated March 21, 2017 addressed to the Court, Respondent, and Triple M.

Ms. Motz replied LeFebvre’s email would be printed and placed in the file for the Judge. There were no objections to LeFebvre’s email or Ms. Motz’s reply.

At March 22, 2017 hearing, on Blanco’s Motion for Modification of Default Judgment, Blanco was awarded the sale proceeds in the amount of Eight Hundred Nine Thousand One Hundred Ninety and 02/100 Dollars (\$809,190.02). The Supplemental Order of Default Judgment was filed on April 4, 2017. See Supplemental Order of Default Judgment. The escrowed funds were disbursed to Blanco on April 5, 2017. See Transcript of April 20, 2017 Hearing p.56, L 18- L 24.

The issue of who would receive the sale proceeds or had priority with respect to the sale proceeds was not noticed for hearing nor contained in any motion or brief filed with the Court. No transcript of the March 22, 2017 Hearing exists. See May 30, 2017 Email of MaryAnn Motz; See June 1, 2017 Email of the Honorable S. Jackson Kimball. LeFebvre received notice the Trial

Court had ordered the sale proceeds be disbursed from the Clerk's office to Blanco when she received the file stamped Supplemental Order on Default Judgment ("Supplemental Order"). *See Supplemental Order on Default Judgment*. On April 13, 2017, LeFebvre timely filed a Motion to Stay and Motion to Alter and/or Motion to Amend the Supplemental Order, which are the subject of this Appeal in addition to the underlying March 22, 2017 Order. *See* LeFebvre's Motion to Stay and Motion to Alter and/or Motion to Amend the Supplemental Order in Triple M Case. A hearing was scheduled for April 20, 2017.

On April 14, 2017, Blanco filed a Motion for the Disbursement of the Funds to itself ("Motion for Disbursement"). *See* Respondent's Motion for the Disbursement.

At the April 20, 2017 hearing Judge Kimball denied LeFebvre's Motion to Stay and Motion to Alter/ Motion to Amend on the premise he had not rendered a decision as to who had priority to the sale proceeds. As of the April 20, 2017 hearing, the South Carolina Federal Court had also not ruled on the cross-motions for summary judgment pending in Federal Court nor was the issue of who was entitled to the sale proceeds pending before the State Trial Court.

Simultaneously with the filing of the Motion to Stay and Motion to Alter and/ or Motion to Amend, LeFebvre filed an action to partition the Property to address priority of the sale proceeds, in the event the Trial Court determined it had no authority to do so. *See* Complaint on Partition. Blanco declined to allow its local counsel, who represented it in both the State and Federal Court actions to accept service. Blanco was recently served in that matter via the provisions for service of process pursuant to the Hague Convention requirements and its local counsel has filed an Answer. *See* Answer on Partition. In addition to its refusal to allow its local counsel to accept service, Blanco also moved to dismiss the Federal case on April 11, 2017 and

the South Carolina Federal Court entered the Order dismissing the case on May 26, 2017 over LeFebvre's objection. *See* Order of Dismissal.

STATEMENT OF ISSUES ON APPEAL

I. DID THE TRIAL COURT ERR IN FINDING LEFEBVRE FAILED TO RAISE ISSUES BEFORE THE COURT AT THE MARCH 22 HEARING?

The Trial Court's ruling LeFebvre failed to raise issues before the Court at the March 22, 2017 hearing is in error. In the April 26, 2017 Order denying LeFebvre's Motion to Alter and/ or Amend the Supplemental Default Judgment Order of March 22, 2017, the Trial Court ruled "LeFebvre raises issues...not presented to the Court or otherwise before the Court for determination at the March 22 hearing." *See* April 26, 2017 Order denying LeFebvre's Motion to Alter and/ or Amend. LeFebvre contends that this ruling is in error.

The South Carolina Rules of Civil Procedure "contemplate two basic situations in which a party should consider filing a *Rule 59(e)* motion." *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 779 (2004). A party in its discretion may file such a motion when it "believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." A party is compelled to "file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." *Id.*

The April 26, 2017 Order states; the purpose of Rule 59(e), SCRCF, to alter or amend a judgment is to request the Court "to "reconsider matters properly encompassed in a decision on the merits." *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). The Trial Court further ruled "a party cannot use a motion to reconsider, alter, or amend a judgment to present an

issue that could have been raised prior to judgment but was not.” *See Johnson v. Sonoco Products Co.*, 381 S.C. 172, 672 S.E. 2d 567 (2009); and *Poch v. Bayshore Concrete Products/South Carolina, Inc.*, 386 S.C. 13, 686 S.E. 2d 689 (Ct. App. 2009).

LeFebvre contends there is, “nothing inherently unfair in allowing a party one final chance not only to call the court’s attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument. It is inherently unfair to disallow such an opportunity.” *See Elam* at 22, 602 S.E.2d 772, 779 (2004).

At the March 22, 2017 hearing, the sole issue before the Trial Court was Blanco’s request to modify the default judgment to extend the lien on the Property to the surplus sale proceeds in order to require the sale proceeds be held in escrow by the York County Clerk of Court. *See Motion for Modification of Default Judgment and Memorandum in Support of Motion for Modification of Default Judgment*. The Trial Court’s March 22, 2017, Order is not reflective of this request. Instead the Trial Court’s Order awards Blanco the surplus sale proceeds. *See Supplemental Default Judgment*.

At the April 20, 2017 Hearing, LeFebvre raised the following arguments; 1) the Trial Court’s Order awarding Blanco the surplus sale proceeds was in error since Blanco had no claim for relief as to LeFebvre; and 2) the Trial Court’s Order awarding Blanco the surplus sale proceeds was in error since disbursement of the monies was not noticed for hearing; and 3) the Trial Court had notice LeFebvre had a spousal equity interest in the Property and by extension the sale proceeds.

With respect to the first argument, at the April 20, 2017 hearing, Counsel for LeFebvre argued LeFebvre was in default as to Triple M, but was “not in default” as to Blanco. *See*

Hearing Transcript Pg 29, L14-21. A party must be “sufficiently clear in framing his objection so as to draw the court’s attention to the precise nature of the alleged error.” *Buist v Buist*, 410 S.C. 569,574 766 S.E. 2d 381, 383 (2014). LeFebvre’s argument is clear, the default judgment entered against LeFebvre was only as to Triple M’s claims. With respect to the second and third issues, Blanco’s counsel admitted at the April 20, 2017 hearing that the only relief Blanco had pled for was to hold the funds in escrow. *See* Transcript of April 20, 2017 Hearing, Pg 33, L9-24. In addition, Blanco’s filings with the Trial Court lack any evidence LeFebvre had notice Blanco intended to ask the Trial Court to rule on disbursing the surplus sale proceeds. Finally, Blanco admitted in the April 20, 2017 Hearing that LeFebvre was claiming a spousal equity interest in the Property and the surplus funds remaining post-sale. *See* Transcript of April 20, 2017 Hearing, Pg 35, L16 – Pg 36, L 21.

LeFebvre contends that each of these issues was raised in the Trial Court and that the Trial Court either misunderstood them, failed to consider them, or failed to rule on them. Furthermore, given the nature and gravity of each issue considering their consequences, the Court must inherently consider them as part of its deliberations process before rendering a decision on Blanco’s Motion for Modification of Default Judgment.

In sum, the Trial Court erred in its ruling on April 20, 2017 that LeFebvre had failed to raise; 1) the issue of what relief Blanco was entitled to request from the Trial Court with respect to the surplus funds; 2) what notice LeFebvre had received would be heard by the Court on March 22, 2017; and 3) whether the Trial Court had been put on notice LeFebvre had a spousal equity interest in the Property, and by extension the sale proceeds.

As a result, the Trial Court’s denial of LeFebvre’s Motion to Alter and/ or Amend was in error.

II. DID THE TRIAL COURT ERR BY GRANTING RELIEF TO RESPONDENT INTEVENOR NOT REQUESTED BY PLAINTIFF OR RESPONDENT INTERVENOR?

- a. *Blanco did not assert a claim for relief as to LeFebvre and therefore, cannot request and receive relief not pled for.*

Blanco did not assert a claim against LeFebvre in this case via crossclaim. *See Answer of Intevenor.* While Blanco's Motion to Intervene and Answer contained a request for the surplus sale proceeds to be disbursed to it, the request was based upon its claims against LeFebvre in the South Carolina Federal Case as it references that the title to LeFebvre was obtained via fraudulent transfer which claim was then pending in Federal Court. The Default Judgment in Triple M's favor as to LeFebvre was to enforce the sale of the Property to Triple M. Triple M had no interest in the surplus sale proceeds. *See Triple M Complaint and Default Judgment entered February 16, 2017.*

A party seeking a default judgment is entitled to only such relief as is framed by his pleading, and then only to the extent requested therein. *Mutual Sav. and Loan Ass'n v. McKenzie*, 274 S.C. 630, 632 266 S.E. 2d 423, 424 (1980). Therefore, "if a complaint fails to state a cause of action, the rendering of a default judgment thereon is without authority of law and therefore reversible error." *Id.*

As part of its legal reasoning in rendering a decision on the relief given to Blanco by the Trial Court at the March 22, 2017 hearing, the Trial Court was required to first determine whether or not Blanco had properly plead for and was entitled to the release of surplus funds based upon the pleadings. A review of Blanco's Motion to Intervene, Answer to Triple M's Complaint, and the Motion for Modification of Default Judgment and supporting brief all reveal a lack of claims asserted against LeFebvre by Blanco in the State Court action.

In order for Blanco to successfully claim it had any right to demand the surplus funds be awarded to it. Blanco must have, at a minimum, asserted a claim against LeFebvre in the Triple M case. Blanco did not do so and Blanco's failure to do so renders any order issued by the Trial Court granting relief outside the scope of what was requested as void. In short, Blanco lacked standing to request relief against LeFebvre because Blanco had no claim for relief pending.

Precisely what transpired during March 22, 2017 cannot be ascertained since there is no recording of the proceedings. See Email from MaryAnn Motz of May 30, 2017. What does exist is an Order granting Blanco the right to have the surplus sale proceeds disbursed to it. See Triple M Supplemental Default Judgment Order In response to LeFebvre's Counsel's transcript request pursuant to the Rules of Appellate Procedure, Judge Kimball sent an email to all counsel stating the failure of a recording of the proceedings was an "operator error" and that the Court was the "operator." He went on to state;

"In any event, the March 22 hearing was attended by Bob Bernstein and Dan Ballou. As Dan's client did not oppose the relief sought, the hearing was essentially on an uncontested motion. My order from that hearing accurately reflects the issues raised, argued, and ruled on at the hearing. It also contains the supporting authority for the rulings." See June 1, 2017 Email of the Honorable S. Jackson Kimball.

This statement does not set forth the issues raised and does not explain how the Trial Court arrived at the decision to issue the April 4, 2017 Order disbursing the surplus sale proceeds to Blanco.

b. LeFebvre Did Not Waive her Right(s) to Appear, Respond, or Otherwise Defend Against Claims by Blanco to the Surplus Sales Proceeds.

At the April 20, 2017 Hearing, Blanco argued LeFebvre had waived her right to defend herself against any claims asserted by Blanco on the basis a default judgment had been entered against her. See Transcript of April 20, 2017 Hearing, Pg 43, L17- Pg 45, 7. Notwithstanding

the argument set forth above Blanco had never asserted any claims against LeFebvre and the award of the surplus funds exceeded the scope of any relief requested, LeFebvre cannot have been construed to have waived her rights to defend against Blanco following its Motion to Intervene as LeFebvre participated *pro se* in the proceedings following Blanco's entry into the case. She did so without objection and at the invitation of Blanco and Triple M. Due to being unable to travel as a single mother in the middle of the week, she had been participating in the discussions regarding the upcoming March 23, 2017 hearing, but unsure she would be able to make it in person. *See* LeFebvre Email Response of March 21, 2017 addressed to the Court, Respondent, and Triple M. In response to this email at 11:58am, Blanco informed LeFebvre she was welcome to participate in the March 22, 2017 Hearing by telephone, if the Court would allow it. *See* Blanco email response of March 21, 2017 addressed to the Court, Respondent, and Triple M. Following receipt of the Judge's decision, that she would not be allowed to participate by telephone, LeFebvre communicated directly with the Court via the Courtroom Clerk, Ms. MaryAnn Motz, via email. In her email dated March 21, 2017, LeFebvre stated: "Request for Relief: I ask this court to issue a new order that; 1, I complied with its order and signed all closing documents as agreed and 2, to release and pay all excess proceeds from the sale of 419 York Southern sold to Triple M partners to me, Suzette LeFebvre, immediately after the first mortgage has been paid 3, close the case between me and Triple M Partners.." *See* LeFebvre email response (March 21, 2017) addressed to the Court, LeFebvre, and Triple M. To which, Ms. Motz replied; "Thank you. I will print your email so Judge Kimball will have in the file for the hearing in the morning." *See* Emails of MaryAnn Motz of March 21, 2017 addressed to LeFebvre, Respondent, and Triple M. There was no objection by Blanco or Triple M to the email correspondence.

The argument by LeFebvre is not ignorance of the law, but that the law applies equally whether represented or not by counsel before the Court as to the right to receive proper notice and the opportunity to respond to the opposing party's arguments, and the right to have claims against her pled in court filed pleadings. LeFebvre issued a *pro se* position statement in response to the Motion for Modification that was not rejected as untimely or not properly before the Court nor objected to by Blanco or Triple M.

Moreover, Blanco specifically represented it had no objection to LeFebvre appearing by telephone for the Hearing in its March 20, 2017 email correspondence (which the Court declined to allow), and it did not object to Ms. Motz placing the email correspondence containing LeFebvre's position on the hearing and the issues existing between it and Blanco (namely that the funds were contested), it cannot now argue LeFebvre waived any rights to the proceeds because of either the default or an abandonment of her rights by not appearing. *See* Transcript of April 20, 2017 Hearing, Pg 43, L17 – Pg 45, L 7.

If, in fact, Blanco intended to raise the issue of priority before the Trial Court, then it had an obligation to notify her that failure to appear would be argued by Blanco to be a waiver and/or abandonment of her rights as a litigant in the case. The succinct statement by LeFebvre on March 21, 2017, that was not objected to by the parties or the Trial Court stands as express notice to the Trial Court and Blanco that LeFebvre disagreed with Blanco's stated position in its Answer that Blanco receive the sale proceeds from the Property. This, in conjunction, with Blanco's admissions at the April 20, 2017 hearing that Blanco had notified the Trial Court on March 21, 2017: 1) that the issue of priority rights to the money was not before the Trial Court that day; and 2) that LeFebvre had asserted an equitable spousal interest in the Property and the sale proceeds, placed the Trial Court on notice that priority of the funds was a contested matter

and one not on the Trial Court's calendar that day. See Transcript of April 20, 2017 Hearing, Pg 33 L 9 – Pg 33 L 19; Pg 35, L16 – Pg 36, L 21.

Based upon the foregoing, the Trial Court erred by granting the Supplemental Default Judgment Order allowing for the disbursement of the surplus sale proceeds to Blanco.

III. DID THE TRIAL COURT ERR IN NOT FINDING THAT DEFENDANT APPELLANT LEFEBVRE WAS DENIED HER PROCEDURAL DUE PROCESS RIGHTS?

The United States Constitution and the Constitution of the State of South Carolina recognize that “No person shall be deprived of life, liberty, or property without due process of law.” See *U.S. Const. amend. XIV, § 1; S.C. Const. art. I, § 3*. There are two forms of Due Process, substantive and procedural. LeFebvre contends that she was deprived of both.

The Supplemental Default Judgment should be declared void and invalid due to the failure of procedural due process from the lack of notice to LeFebvre. In order to show that one did not receive adequate procedural due process, one must show a failure of the following requirements of Procedural due process including (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses. *Moore v. Moore*, 376 S.C. 467, 657 S.E. 2d 743 (quoting *Clear Channel Outdoor v. City of Myrtle Beach*, 372 S.C. 230, 235, 642 S.E.2d 565, 567 (2007)). Due Process requires that “litigants be placed on notice of the issues which a court is to consider.” *Mayhill Homes Corp. v. Family Federal Sav. and Loan*, 284 S.C. 60, 61, 324 S.E. 2d 340, 341 (1984) (quoting *Bryan v. Bryan S.C.*, 319 S.E. 2d 360 (Ct. App. 1984)).

A judgment is considered void if “from its inception, is a complete nullity and is without legal effect.” *Universal Benefits, Inc. v. McKinney*, 349 S.C. 179, 183 561 S.E.2d 659, 661

(2002) (quoting *Thomas & Howard Co. v. T.W. Graham and Co.*, 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995)). A judgment can only be void if the Court “failed to provide proper due process” or if a Court “lacked subject matter jurisdiction or personal jurisdiction.” *Id.* “It is fundamental that no judgment or order affecting the rights of a party to the cause shall be made or rendered without notice to the party whose rights are to be affected.” *Id.* Generally, a person against whom a judgment or order is taken without notice “may rightly ignore it and may assume that no court will enforce it against his person or property”. *Id.*

a. The Lack of Notice of the Relief being Requested by Blanco and the Trial Court’s subsequent Supplemental Default Judgment ordering the disbursement of the Monies to Blanco deprived LeFebvre of her Procedural Due Process Rights.

LeFebvre was not afforded procedural due process at the March 22, 2017 hearing on Blanco’s Motion for Modification of Default Judgment. Although LeFebvre was provided notice of a hearing to be held March 22, 2017, LeFebvre was never put on notice that the hearing would address, consider, contemplate or adjudicate the priority rights to the surplus proceeds of the Property or the release of the surplus proceeds of the specific performance action sale. Neither the Motion for Modification of Default Judgment nor the filed Memorandum in support of the Motion for Modification of Default Judgment asks the Court to disburse funds to Blanco. In fact, no filed pleading or brief by Blanco requests the Court determine who had priority of rights in the surplus proceeds as between LeFebvre and Blanco.

In addition, prior to the hearing, counsel for Blanco sent an email to the Court attaching a copy of the filed Motion and specifically represented the Default Judgment Order of February 23, 2017 did not address the transfer of Blanco’s judgment lien to the proceeds of sale, and that the sole purpose of the motion hearing of March 22, 2017 was to amend the Default Judgment Order “to provide for the transfer of the lien, to the extent it exists, to the proceeds from the

sale...” See March 17, 2017 Email from Counsel for Blanco to Court. Furthermore, Blanco’s Memorandum in Support of the Motion for Modification specifically stated that Blanco was:

“not seeking a ruling at this point regarding the priority of its judgment vis-à-vis Defendant LeFebvre to the Property and therefore to the proceeds; it is merely seeking an Order than, to the extent Blanco has a lien against the Property, that same priority lien applies to the proceeds from the sale of the Property.” See Memorandum in Support of Blanco’s Motion for Modification of Default Judgment

Supporting Lefebvre’s arguments she was denied procedural due process was the express acknowledgement by Blanco’s Counsel during the April 20, 2017 hearing wherein counsel for Blanco agreed that the Motion before the Court on March 22, 2017 did not address or contain a request for the disbursement of proceeds to Blanco. See Hearing Transcript Pg 30, L 23 – Pg 34, L 24.

In short, at no time did Blanco provide LeFebvre notice that it would be asking the Court to award it the surplus proceeds from the sale of the property. In fact, the totality of the advance notice provided to LeFebvre by Blanco was that Blanco wanted the Court to merely hold the funds in escrow pending a decision of priority or pending a decision from the Federal Court.

As a result of the foregoing, LeFebvre was denied her procedural due process rights in the proceeds from the sale of the property.

IV. DID THE TRIAL COURT ERR IN NOT FINDING THAT DEFENDANT APPELLANT LEFEBVRE WAS DENIED HER SUBSTANTIVE DUE PROCESS RIGHTS?

LeFebvre was denied her substantive due process rights to the Property and the proceeds from the same. Substantive due process is a fundamental right that “protects a person from being deprived of life, liberty or property for arbitrary reasons.” *Worlesy Companies, Inc. v. Town of Mount Pleasant*, 339 S.E. 51, 56, 528 S.E. 2d 657, 660 (2000). “In order to prove a denial of

substantive due process, a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law.” *Moore v. Moore*, 376 SC 467, 657 S.E. 2d 743 (quoting *Sloan v. S.C. Bd. of Physical Therapy Examr’s*, 370 S.C. 452, 483, 636 S.E.2d 598, 614 (2006)). By ordering all of the proceeds to be disbursed directly to Blanco, the Supplemental Default Judgment deprived LeFebvre of a cognizable property interest rooted in state law.

a. Issue was before the Court at the March 22, 2017 hearing and as such, the Trial Court was on Notice the Funds were subject to outstanding claims not before it either by Motion or Notice.

At the April 20, 2017 hearing, Counsel for Blanco acknowledged he had reminded the Court LeFebvre had asserted her right to her spousal equity interest at the March 22, 2017 hearing. *See* Hearing Transcript Pg 35, L 16 – Pg 36, L 12.

b. Substantive Due Process Rights Denied to LeFebvre

During the pendency of this action, LeFebvre had a priority interest in the Property and the subsequent sale proceeds over Blanco. Her position of priority is based upon *S.C. Code of Laws § 30-7-10*, which provides that so long as the divorce decree against Laera was entered before Blanco’s Foreign Judgment against Laera appeared and was entered on the Abstracts of Judgments, she is the priority judgment. She maintained this position until the Trial Court entered the Order of Mandamus March 3, 2016. At that time, a question arose as to who had priority of interest to the real property and by extension, the proceeds between LeFebvre and Blanco.

This question did not exist before since LeFebvre had clear priority based upon the legal doctrine of “First in time, first in right” as she had the first recorded judgment on the Abstracts of Judgment with her Divorce Judgment dated October 31, 2014. However, as part of the Order of Mandamus, the Trial Court ordered Blanco’s date of judgment retroactive back to the date its

filing in South Carolina, October 3, 2014. Absent any claim to the contrary, this would place Blanco ahead of LeFebvre in the race to the courthouse.

However, LeFebvre has a claim to the contrary. LeFebvre, by and through her marriage to Vito Laera, acquired a vested spousal statutory interest in the property pursuant to *S.C. Code of Laws § 20-3-610*. “During the marriage a spouse shall acquire, based upon the factors set out in *S.C. Code of Laws § 20-3-620*, a vested special equity and ownership right in the marital property as defined in *S.C. Code of Laws § 20-3-630*, which equity and ownership right are subject to apportionment between the spouses by the family courts of this State at the time marital litigation is filed or commenced as provided in *Section 20-3-620*.” *S.C. Code of Laws § 20-3-610 (2008)*

S.C. Code of Laws § 20-3-610 afforded LeFebvre such a vested spousal statutory interest in the property prior to the Divorce Decree of October 31, 2014, and prior to the time of the filing of the Foreign Judgment of Blanco as those rights accrue and apportion “at the time marital litigation is filed or commenced.” *S.C. Code of Laws § 20-3-610*. The Divorce action, which included LeFebvre’s claim for equitable distribution was filed March 25, 2014, seven (7) months before Blanco’s Foreign Judgment against Laera was filed on October 3, 2014.

In response to this argument at the April 20, 2017 hearing, Blanco argued the Supplemental Order should stand because no true property right existed for LeFebvre. *See* Hearing Transcript Pg 36, L 11- 21. Blanco contended that pursuant to *S.C. Code of Laws § 20-3-670⁴*, the lack of a filed lis pendens prior to the date of the filing of the Foreign Judgment of

⁴ *S.C. Code of Laws § 20-3-670* provides in part:(A)(1) In a proceeding under this article, either party may record a notice of the pendency of proceedings in the manner provided in civil actions generally, which has the same effect as a notice in civil actions. The rights and interests of each spouse in the other's property created by this article are not effective against third parties:

October 3, 2014, terminated any claim of priority maintained by LeFebvre against Laera. This was the first time that the Court had heard an argument about the Lis Pendens. *See* Hearing Transcript Pg 36, L 22.

Blanco essentially contends that the filing of the Lis Pendens by LeFebvre is a prerequisite to the recovery by LeFebvre as against any third party for rights or interest in the Property. Blanco cited no legal authority at the Hearing to support this argument. Moreover, Blanco's argument seemed to try and persuade the Trial Court to accept a legal fiction that it did not know about LeFebvre and Laera's marriage and divorce despite the fact that Blanco and LeFebvre have been embroiled in a lawsuit for two (2) years regarding the Property and despite the fact that Blanco has been a direct claimant against LeFebvre regarding the Property. Blanco's argument requires an adoption by this Court of a legal fiction that Blanco is a true innocent third party and should have status as first in time retroactive to October 3, 2014, pursuant to *S.C. Code § 20-3-670*.

If this Court adopts Blanco's position, it will result in a termination of all of LeFebvre's vested spousal equitable ownership interest rights, which she earned for her years of supporting Laera. In addition, LeFebvre will have lost these rights without having received notice and the opportunity to be heard on the issue before the Trial Court, and without having required Blanco to have asserted any claims against LeFebvre.

The Supplemental Default Judgment ordering the disbursement of the surplus sale proceeds to Blanco was in error in that it violated LeFebvre's Substantive Due Process rights.

(a) with regard to any parcel of real property in which an interest under this article is claimed until a Notice of Pendency of Action is filed as provided in Section 15-11-10 with the clerk of court of the county in which such parcel of real property is situated.

CONCLUSION

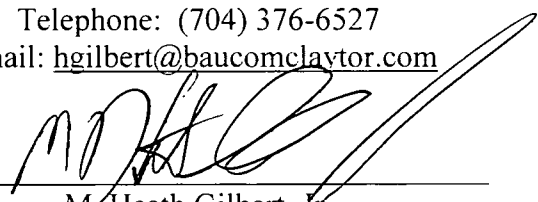
The Court of Appeals should reverse the Trial Court's Order denying LeFebvre's *Rule 59(e)* and instruct the Trial Court to alter and/or amend its Supplemental Default Judgment Order of March 22, 2017 requiring the surplus sale proceeds be held in escrow until a determination on the merits is made by the Trial Court in the Partition Action or until a determination on rights to the proceeds can be made in this present action by the Court of Common Pleas of York County.

Respectfully submitted, this 5th day of September 2017.

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