

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

RECEIVED
DEC 27 2017
SC Court of Appeals

C/A NO.: 2017-001254

TRIPLE M PARTNERS, LP

.....Plaintiff

v.

SUZETTE LEFEBVRE, as Individual and as Trustee of the
SUZETTE LEFEBVRE TRUST N/A, and BLANCO GmbH + CO.KG

.....Defendants

Of whom SUZETTE LEFEBVRE, as Individual and as Trustee of the
SUZETTE LEFEBVRE TRUST N/A,

.....Appellant

and

Of which BLANCO GmbH + CO.KG

..... Respondent

RECORD ON APPEAL

M. Heath Gilbert, Jr.
Baucom, Claytor, Benton,
Morgan & Wood, P.A.
P.O. Box 35246
Charlotte, NC 28235
Attorney for Defendant Appellant

Daniel J. Ballou
Morton & Gettys, LLC
331 E. Main Street, Suite 300
Rock Hill, SC 29731
Attorney for Plaintiff

Robert A. Bernstein
Bernstein & Bernstein, P.A.
PO Box 20519
Charleston, SC 29413
Attorney for Respondent

INDEX

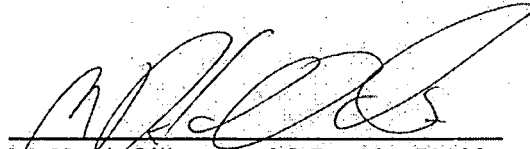
| | |
|--|-----|
| Order of November 30, 2016 | 001 |
| Order of March 14, 2017 | 008 |
| Order of March 21, 2017 | 011 |
| Supplemental Order of April 4, 2017 | 013 |
| Order of April 26, 2017 | 027 |
| Judgment of February 24, 2017 | 031 |
| Summons & Complaint of November 16, 2016 | 036 |
| Lis Pendens dated November 16, 2016 | 063 |
| Motion dated November 16, 2016 | 065 |
| Affidavit dated November 28, 2016 | 069 |
| Affidavit dated December 8, 2016 | 072 |
| Affidavit dated December 8, 2016 | 073 |
| Motion dated January 9, 2017 | 074 |
| Motion dated February 14, 2017 | 077 |
| Affidavit dated February 14, 2017 | 082 |
| Memorandum of February 14, 2017 | 084 |
| Answer dated March 14, 2017 | 086 |
| Motion dated March 15, 2017 | 090 |
| Memorandum of March 15, 2017 | 091 |
| Notice dated April 7, 2017 | 095 |
| Motion dated April 13, 2017 | 097 |
| Memorandum of April 20, 2017 | 108 |

| | |
|--|-----|
| Transcript dated April 20, 2017 | 128 |
| Motion dated November 30, 2016..... | 190 |
| Affidavit dated December 22, 2016 | 192 |
| Complaint for Divorce by Suzette LeFebvre | 194 |
| Complaint dated May 29, 2014..... | 199 |
| Notice dated October 3, 2014..... | 310 |
| Exhibit dated October 30, 2014..... | 311 |
| Email of March 17, 2017 from Robert Bernstein..... | 317 |
| Email of March 20, 2017 from Maryann Motz..... | 337 |
| Email of March 20, 2017 from Heath Gilbert..... | 349 |
| Email of March 20, 2017 from Maryann Motz..... | 362 |
| Email of March 21, 2017 from Suzette LeFebvre..... | 376 |
| Email of March 21, 2017 from Maryann Motz..... | 398 |
| Exhibit 3 dated April 20, 2017 | 421 |
| Email of May 30, 2017 from Maryann Motz..... | 424 |
| Email of June 1, 2017 from Judge Kimball..... | 427 |

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

This the 4th day of December, 2017.



M. Heath Gilbert, Jr. SC Bar No. 72198

Attorney for Defendant Appellant

BAUCOM CLAYTOR BENTON

MORGAN & WOOD, PA.

PO Box 35246

Charlotte, NC 28235

Telephone: (704) 376-6527

STATE OF SOUTH CAROLINA
COUNTY OF YORK

) IN THE COURT OF COMMON PLEAS
) SIXTEENTH JUDICIAL CIRCUIT
) C/A NO.: 2016-CP-46-03382

TRIPLE M PARTNERS, LP,
Plaintiff,

v.

SUZETTE LEFEBVRE, as Individual, and
as Trustee of the SUZETTE LEFEBVRE
TRUST N/A,

Defendant

ORDER

FILED-REC'D
2016 NOV 30 AM 9:04
CLERK OF COURT
SOUTH CAROLINA

This matter comes before me on the Plaintiff's Motion for Temporary Restraining Order, Injunction and Emergency Relief. Based upon the record before the Court, the applicable law, the papers filed by the parties and the arguments of counsel, I make the following findings and conclusions.

FINDINGS OF FACT

1. This case arises from an Agreement for the Purchase and Sale of Real Property ("Agreement") whereby Defendant agreed to sell to Plaintiff the 6.5 acre tract of real property identified as York County Tax Map No. 7280000030, located at 419 York Southern Road, Fort Mill, South Carolina (the "Property"), for a purchase price of \$1,960,000.00.

2. Under the Agreement, the parties agreed that closing would occur on or before December 15, 2016. The parties further agreed that the Examination Period under the Agreement shall extend from the first date of the Agreement and extend through 11:59 pm on November 30, 2016, and that time is of the essence as to the Examination Period.

3. Suzette Lefebvre represented in the Agreement that she had full authority to sign the Agreement and such instruments as may be necessary to effectuate any transaction contemplated by the Agreement. In separate litigation pending in the United States District Court for the District of South Carolina, Rock Hill, Division, entitled Blanco GmbH + CO.KG v. Laera and Lefebvre, Docket No. 0:15-2199-TLW (the "Blanco Case"), Defendant has asserted that she is the sole owner of the Property by virtue of the Decree of Divorce in Family Court Case 2014-DR-46-623.

4. On or before August 31, 2016, Plaintiff paid an earnest money deposit in the amount of \$15,000.00 to Chicago Title Insurance Company pursuant to Section 1 of the Agreement.

5. Plaintiff has complied with all applicable terms and obligations of the Agreement, and remains ready, willing and able to comply with its obligations of the Agreement.

6. On or before September 21, 2016, Plaintiff delivered to Defendant its objections to certain defects and exceptions to title to the Property. Since that time, Defendant has not allowed Plaintiff access to the Property to complete its due diligence examinations.

7. Plaintiff personally served Defendant with the Summons and Complaint on November 21, 2016, and served her with the Motion and Notice of Hearing on November 23, 2016. Plaintiff's counsel notified M. Heath Gilbert, Jr., counsel for the Defendant in the Blanco Case, of the hearing as well as the revised hearing date on Monday, November 28, 2016.

8. The facts alleged in Plaintiff's Complaint and supported by the Affidavit of Robert S. Loose, Jr. support the issuance of a temporary and permanent

injunction. Plaintiff and Defendant entered into a valid and binding Agreement for the purchase and sale of the Property. Despite multiple requests, the Defendant has prohibited the Plaintiff from conducting due diligence on the Property premises, in clear contravention of the terms of the Agreement.

CONCLUSIONS OF LAW

1. In order to recover under a breach of contract cause of action, the Plaintiff must establish by the greater weight of the evidence (a) that the parties entered into a binding contract, (b) that the defendant breached or unjustifiably failed to perform this contract, and (c) that the plaintiff has suffered damage as a direct and proximate result of the breach: See, Tom J. Ervin, *Ervin's South Carolina Request to Charge - Civil § 22-13*, at 181 (1994). 17A Am. Jur. 2d Contracts § 716.

2. The purpose of a preliminary injunction is to preserve the status quo and prevent irreparable harm to the party requesting it. Powell v. Immanuel Baptist Church, 261 S.C. 219, 221, 199 S.E.2d 60, 61 (1973). An applicant for a preliminary injunction must allege facts sufficient to state a cause of action for injunction and demonstrate that this relief is reasonably necessary to preserve the rights of the parties during the litigation. County of Richland v. Simpkins, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct.App.2002). Plaintiff must establish three elements to receive this relief:

- a. it will suffer immediate, irreparable harm without the injunction;
- b. It has a likelihood of success on the merits; and
- c. it has no adequate remedy at law.

Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc., 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004).

3. I find and conclude that Suzette Lefebvre individually owns all legal, equitable and beneficial interest in the Property and is legally capable of transferring fee simple title to it as contemplated by the Agreement.

4. Permitting the Defendant to unilaterally frustrate the intent of the parties under the Agreement by depriving Plaintiff access to the Property will irreparably deprive Plaintiff of legitimate contract rights if not immediately enjoined, Plaintiff has established it's right to proceed with due diligence under the Agreement and is therefore likely to prevail on the merits of its claims, and Plaintiff's future damages cannot be readily ascertained.

ORDER

IT IS HEREBY ORDERED that Suzette Lefebvre, both individually and as trustee of the Suzette Lefebvre Trust is temporarily restrained and permanently enjoined as follows:

- a. Defendant is prohibited from selling or disposing of the Property during the pendency of this action,
- b. Defendant is prohibited from taking any action inconsistent with the Agreement;
- c. Defendant is directed to allow Plaintiff access to the Property to complete due diligence within a reasonable time, irrespective of the November 30, 2016 time frame in the Agreement, and to close on the sale of the Property within a reasonable time of receiving notice from the Plaintiff of its intent to close;
- d. Defendant is directed to execute any and all documents necessary to convey the Property to the Plaintiff free of any encumbrances within a reasonable time following notice by Plaintiff that it has completed its due diligence and is prepared to proceed to closing;
- e. Defendant is prohibited from taking any action that would divest or otherwise impair her sole ability to convey title to the Property at closing.

AND IT IS SO ORDERED.

5/ Daniel D. Hall
Daniel D. Hall
Resident Judge
Sixteenth Judicial Circuit

York, South Carolina
November 20, 2016

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF YORK
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2016CP4603382

| | | | |
|----------------------|--|------------------|------------------------------|
| Triple M Partners LP | | Suzette Lefebvre | Suzette Lefebvre Trust NA |
|----------------------|--|------------------|------------------------------|

| | |
|---------------|---|
| PLAINTIFF(S) | DEFENDANT(S) |
| Submitted by: | Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant |

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION
 ORDER PERMITTING INTERVENTION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment In Favor of (List name(s) below) | Judgment Against (List name(s) below) | Judgment Amount To be Enrolled (List amount(s) below) |
|--|--|--|
| | | |
| | | |
| | | |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
 Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

S/S Jackson Kimball
 Circuit Court Judge

3063
 Judge Code

3/14/2017
 Date

For Clerk of Court Office Use Only

This judgment was entered on 03/14/2017, and a copy mailed first class or placed in the appropriate attorney's box on 03/14/2017, to attorneys of record or to parties (when appearing pro se) as follows:

Daniel Joseph Ballou PO Box 707 Rock Hill, SC 29731

Robert Alan Bernstein PO Box 20519 Charleston, SC
29413-0519

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FILED-RECEIVED

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

Case No: 2016-CP-46-3382

Triple M. Partners, L.P.,

Plaintiff,

v.

Suzette LeFebvre, as individual, and as
Trustee of the Suzette LeFebvre Trust, N/A

Defendant.

ORDER PERMITTING INTERVENTION
BY BLANCO GmbH+CO.KG

This matter came before the Court on February 16, 2017, upon the motion by Blanco GmbH+Co.KG to intervene in the present action. Counsel for the Plaintiff, and for Blanco GmbH+ Co.KG, were present; no attorney made an appearance for the Defendant. Counsel for Plaintiff did not object to the Motion to Intervene.

Pursuant to Rule 24, SCRPC:

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

The Intervenor claims to be a judgment lienholder against the property that is the subject of this action, and claims to have an interest in the proceeds of the sale of the property superior to the interest of Defendant LeFebvre. Thus, the Intervenor claims an interest relating to the property or transaction that is the subject of the action, and is so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest. The intervention of Blanco GmbH+Co.KG is, therefore, proper in order to allow it to protect that interest.

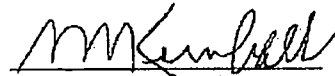
Therefore, it is ordered that the Motion of Blanco GmbH + Co.KG to Intervene in this matter be, and the same hereby is, granted. The Clerk of this Court shall file the Answer of

ml
#1


Blanco KmbH+Co.KG which was submitted with the Motion to Intervene.

AND IT IS SO ORDERED.

March 10, 2017



S. Jackson Kimball
Special Circuit Court Judge
York County



STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

FILED-RECEIVED
2017 MAR 21 PM 2:46
DAVID HAMILTON
Y.C.C.C.P. & G.S.
YORK COUNTY, SC

Triple M. Partners, L.P.,)
 Plaintiff)

CASE NO.:

v.)

2016-CP-46-3382

Suzette LeFebvre, etc.,)
 Defendant)

MOTION INFORMATION FORM
AND COVER SHEET

check box above indicating submitting party

| | |
|---|--|
| name, S.C. Bar no. and address of plaintiff's attorney: Daniel J Ballou S.C. Bar No. 5935 331 E Main St., Suite 300 Rock Hill, SC 29731 telephone: (803) 366-3388 fax: (803) 366-4044 e-mail: Dan.Ballou@MortonGettys.com other: | name, S.C. Bar no. and address of defendant's attorney: Robert A. Bernstein S.C. Bar No. 677 Post Office Box 20519 Charleston, SC 29413 telephone: (843) 529-1111 fax: (843) 529-0035 e-mail: rbernstein@bernsteinpa.com other: |
|---|--|

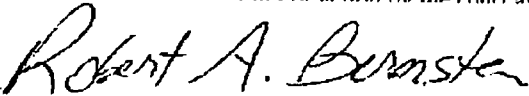
MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion For Reference
 Estimated Time Needed: _____ Reporter Needed: YES / NO

SECTION II: Motion Type

Written motion attached
 Form Motion/Order
 I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for Plaintiff / Defendant

March 15, 2017
 Date submitted

SECTION III: Motion Fee

PAID - AMOUNT: \$25.00
 EXEMPT: Rule to Show Cause in Child or Spousal Support
 (check reason) Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRCP)
 Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter:
 Other:

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.
 Other: _____

JUDGE _____
 CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: Lynn St. Date Filed: 3/21/17
 print name #
 MOTION FEE COLLECTED: 25.00
 CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) Case No: 2016-CP-46-3382
Triple M. Partners, L.P.,)
) Plaintiff,)
))
v.) MOTION FOR ORDER OF REFERENCE
))
Suzette LeFebvre, as individual, and as)
Trustee of the Suzette LeFebvre Trust, N/A)
and Blanco GmbH+CO.KG,)
))
Defendants.)
_____)

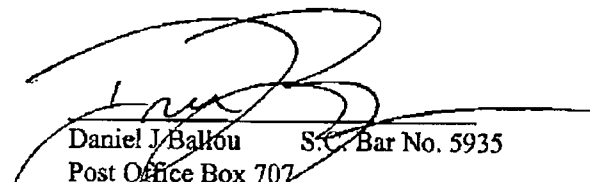
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DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

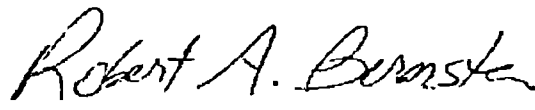
The undersigned attorneys for the Plaintiff and Defendant Blanco GmbH+CO.KG, being all parties who have appeared herein, hereby jointly move for an Order of Reference of the within action to the Master in Equity for York County, to conduct all pretrial proceedings in this matter, as well as to conduct a trial on all matters herein and resolve any post-trial proceedings, with appeal directly to the Appellate courts of the State of South Carolina.

WE SO MOVE!

MORTON & GETTYS

BERNSTEIN & BERNSTEIN, P.A.


Daniel J. Balkou S.C. Bar No. 5935
Post Office Box 707
Rock Hill, SC 29731-0707
(803) 366-3388; (803) 366-4044 (fax)
ATTORNEYS FOR PLAINTIFF


Robert A. Bernstein S.C. Bar No. 677
Post Office Box 20519
Charleston, SC 29413-0519
(843) 529-1111; (843) 529-0035 (fax)
ATTORNEYS FOR DEFENDANT
BLANCO GmbH+CO.KG

March 15, 2017

March 15, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
Triple M. Partners, L.P.,)
Plaintiff,)
v.)
Suzette LeFebvre, as individual, and as)
Trustee of the Suzette LeFebvre Trust, N/A,)
and Blanco GmbH+CO.KG,)
Defendants.)

IN THE COURT OF COMMON PLEAS

Case No: 2016-CP-46-3382

CONSENT ORDER OF REFERENCE

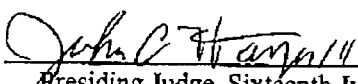
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2017 MAR 21 PM 2:46
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

The present matter is before the Court pursuant to the Motion of all parties who have appeared herein for an Order of Reference to the Master in Equity for York County to conduct all pretrial proceedings in this matter, as well as to conduct a trial on all matters herein and resolve any post-trial proceedings, with appeal directly to the Appellate courts of the State of South Carolina. Whereas, reference of the within proceeding is proper pursuant to Rule 53, South Carolina Rules of Civil Procedure,

IT IS HEREBY ORDERED that this case is referred to the Master in Equity for York County to conduct all pretrial proceedings in this matter, as well as to conduct a trial on all matters herein and resolve any post-trial proceedings, with appeal directly to the Appellate courts of the State of South Carolina. The Master in Equity is hereby authorized to enter such orders and take such action as he shall deem fit in all respects under Rule 53 of the South Carolina Rules of Civil procedure and for the entry of any further judgment as may be appropriate.

IT IS SO ORDERED!

York, South Carolina
This 20th day of March, 2017.


Residing Judge, Sixteenth Judicial Circuit

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 Triple M. Partners, L.P.,)
)
 Plaintiff,)
)
 v.)
)
 Suzette LeFebvre, as individual, and as)
 Trustee of the Suzette LeFebvre Trust,)
 N/A, and Blanco GmbH+CO.KG)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 Case No: 2016-CP-46-3382

**SUPPLEMENTAL ORDER OF
 DEFAULT JUDGMENT**

FILED-RECEIVED
 2017 APR -4 AM 8:29
 CLERK OF COURT
 YORK COUNTY, SC

This matter came before the Court on March 22, 2017, upon the motion of Defendant Blanco GmbH+CO.KG ("Blanco") pursuant to Rule 60, SCRPC. Representing Blanco was Robert A. Bernstein. Daniel J. Ballou represented Plaintiff. No other party appeared, either personally, or through counsel.

PROCEDURAL HISTORY

This matter is an action seeking the remedy of Specific Performance to enforce a contract for the sale of real property located at 419 York Southern Road, Fort Mill, South Carolina ("Property"). The matter originally came before the Court on February 16, 2017, upon Plaintiff's Motion for Default Judgment, and upon the Motion of Blanco to intervene in this action. Counsel for the Plaintiff, and for proposed Intervenor Blanco, appeared for that hearing. Defendant Suzette LeFebvre ("LeFebvre") did not appear individually or through counsel in this case, or at the February 16, 2017, hearing.¹

At that hearing, the Court verbally granted the Motion of Blanco to Intervene in this action, and later entered a written Order permitting the intervention. As a result of that hearing, the Court entered an Order of Default Judgment on February 23, 2017, requiring that the Defendant LeFebvre, *inter alia*,

. . . duly execute and deliver to Plaintiff's counsel a general warranty deed conveying title to the Property to Plaintiff, an

¹ Defendant LeFebvre is represented by counsel in litigation pending between Blanco and Defendant LeFebvre in the United States District Court for the District of South Carolina. Counsel for Defendant LeFebvre attended the February 16, 2017, hearing, but specifically advised this Court that he had not been retained to represent, nor was he making an appearance for, Defendant LeFebvre in this action.

affidavit of true consideration, a lien waiver affidavit satisfactory to the title insurance company of the Plaintiff's choosing, a quitclaim deed from the Suzette LeFebvre Trust, a closing statement in such form as reasonably provided by Plaintiff, an IRS Form 1099s, a non-foreign status affidavit (also known as a FIRPIA Certificate), and any and all other documents necessary to deliver and convey clear and marketable title ("Closing Documents") to Plaintiff, at a closing to be held within fourteen days of the date of this Order, or at such later time as established by Plaintiff.

The Order of Default Judgment was filed with the Clerk of Court on February 24, 2017.

On the same date as the Default Judgment hearing, the Court heard a motion regarding the date of filing of the judgment of Blanco in a related action before the Court, entitled *Blanco GmbH+CO.KG v. Vito Antonio Laera, et al.*, bearing Case Number 2014-CP-46-3272. In that related case, the Court ordered that the judgment of Blanco against Vito Antonio Laera be entered on the judgment rolls effective as of October 3, 2014.

On March 15, 2017, counsel for Blanco filed a Motion to Amend the Order of Default Judgment, and a request for an expedited hearing. In addition, the parties who have appeared in this matter jointly moved for the reference of this matter to the Master in Equity. The matter was referred to the undersigned with finality.

Upon being advised that a closing had been scheduled, and that required documentation may not have been provided, the Court notified the parties that a hearing on the pending motions would be conducted on March 22, 2017, at 9:30 a.m. in Courtroom 2, of the York County Courthouse. Court convened at the appointed time to consider the motion. Despite failing to appear, and having defaulted in the action, LeFebvre was notified of the March 22 hearing. LeFebvre did not appear in person or by counsel, and did not object to the hearing date. She did send an e-mail to the Court on March 21, 2017, stating her position in the matter.

FINDINGS OF FACT

1. Defendant LeFebvre and the Suzette LeFebvre Trust have failed to appear or otherwise defend, deny or oppose the allegations of the Complaint, and are in default.
2. As a result of this Court's ruling in *Blanco GmbH+CO.KG v. Vito Antonio Laera, et al.*, Case Number 2014-CP-46-3272, the lien of judgment of Blanco GmbH+CO.KG against Vito Antonio Laera attached against the Property effective as of October 3, 2014. On that date, Vito Antonio Laera was the sole titled owner of the Property, which is the subject of this action. The Property was thereafter transferred by Vito Antonio Laera to LeFebvre and



Defendant The Suzette LeFebvre Trust.

3. Counsel for the Plaintiff scheduled a closing for March 16, 2017, in Rock Hill, South Carolina.

4. Prior to the scheduled closing, counsel for Blanco prepared a document providing for the transfer of the lien of judgment from the Property to the proceeds from the sale, and sent it to LeFebvre for signature as a part of the closing. Counsel for Blanco advised Plaintiff and LeFebvre that Blanco would not release its judgment lien against the Property, unless the agreement to transfer the lien to the proceeds was signed by LeFebvre.

5. On March 15, 2017, Defendant LeFebvre contacted counsel for Plaintiff, and advised that she would execute the Deed and other documents submitted to effectuate the closing. However, she refused to sign the document transferring the lien of judgment to the proceeds of the sale.

6. ~~On March 15, 2017, Blanco filed a Motion to Amend the Order of Default Judgment to have this Court transfer the lien of judgment to the proceeds of the sale of the Property as a condition for its delivery of a release of its judgment lien against the Property.~~

7. On March 16, 2017, the date of the closing, Defendant LeFebvre signed and delivered all documents submitted to effectuate the closing except the document prepared by Blanco's counsel transferring the lien to the proceeds.

8. Due to the lack of an instrument transferring the judgment lien to the sale proceeds, Blanco refused to deliver an unconditional release of the Property from its judgment lien.

9. On March 20, 2017, this Court sent an e-mail to all parties, advising that it would hold a hearing on the pending motions on March 22, 2017, at 9:30 a.m.

10. On March 21, 2017, Defendant LeFebvre sent an e-mail to the Court, which is made part of the record, acknowledging receipt of notice of the hearing. She stated her position regarding the closing, and the disbursement of funds. She did not request a continuance of the hearing, and did not hire counsel to appear on her behalf.

11. Defendant LeFebvre has failed and refused to sign a document necessary to deliver and convey clear and marketable title to Plaintiff, as required by this Court's Order.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and the subject matter hereof.
2. Service of the pending Motion for Amendment of the Order of Default was not required upon Defendant LeFebvre pursuant to Rule 5(a), SCRCP. Both counsel for the

DM
12/3

appearing parties, as well as this Court notified LeFebvre of these proceedings by e-mail, which she actually received, as shown by her e-mail referenced above.² To the extent that any notice was required to be provided to LeFebvre, notice was sent to her, and she received it. By failing to object to the hearing, failing to hire counsel to attend or object to the hearing and submitting matters for consideration by the Court at the hearing, she has waived any asserted defect in notice.

3. The Blanco judgment entered in *Blanco GmbH+CO.KG v. Vito Antonio Laera, et al.*, Case Number 2014-CP-46-3272, attached to the entire Property effective as of October 3, 2014. On October 3, 2014, the Property was titled solely in the name of Vito Antonio Laera. Although the property was subsequently transferred to LeFebvre, it was transferred subject to the judgment lien of Blanco GmbH+CO.KG in the amount of \$834,634.31, with interest accruing from October 3, 2014. Thus, the Blanco judgment constitutes a lien against the Property, preventing the transfer of clear and marketable title.

4. Defendant Lefebvre has failed to comply with this Court's Order of February 23, 2017, requiring that she "duly execute and deliver to Plaintiff's counsel . . . any and all other documents necessary to deliver and convey clear and marketable title . . . to Plaintiff." She has been given the opportunity to execute documents that would transfer clear and marketable title by transferring the lien from the real estate to the proceeds, but she has refused to execute the documentation.

5. An action for Specific Performance is an action in equity. As an equitable action, this Court is guided by the well-accepted maxims of equity.

The principle "equity regards as done that which ought to be done" applies in cases where the party seeking equitable relief establishes "a clear obligation based upon a valuable consideration that another do some act which he has failed to perform." *Wilkie v. Phila. Life Ins. Co.*, 187 S.C. 382, 393-94, 197 S.E. 375, 380 (1938). The notion "equity looks to substance rather than form" evolved out of judicial regard for that which ought to be done. *Id.* at 393, 197 S.E. at 380. This maxim applies by "dispensing with pure formalities which would otherwise defeat the equity." *Id.*; see also *Kerr v. City of Columbia*, 232 S.C. 405, 410, 102 S.E.2d 364, 366 (1958) After a party establishes an equitable right, the

² In addition to notification to Defendant LeFebvre, counsel for Ms. LeFebvre in the federal court action was notified of the hearing and given the opportunity to appear. Counsel for Defendant LeFebvre in the federal court action declined to appear at the hearing, and notified the Court that he did not represent Defendant LeFebvre in this matter.

AM
#4

court may dispense with pure formalities which would otherwise defeat the equity. *Willkie, supra*, 187 S.C. at 393, 197 S.E. at 380.


Regions Bank v. Wingard Props., Inc., 394 S.C. 241, 253-254, 715 S.E.2d 348, 354-355 (Ct. App. 2011).

Counsel for Blanco has advised the Court that it is willing to release the Property from its lien of judgment if the proceeds are applied to pay toward its judgment. Applying these equitable principles, the Court can effectuate the actions necessary to complete the transaction transferring the real estate.

6. Under the contract which is to be specifically performed, the purchase price of the Property is \$1,960,000.00. In the Order entered February 22, 2017, the Court ordered that the documents of conveyance of clear title be executed, and that the proceeds after the payment of the mortgage against the property be delivered to the Clerk of Court. The parties have advised the Court that the net proceeds after the payment of the prior mortgage are less than the current value of Blanco's judgment against the Property. Accordingly, after the receipt of the net proceeds from counsel for Plaintiff, the Clerk of Court is authorized and directed to disburse the proceeds from the sale deposited with him to counsel for Blanco GmbH+CO.KG, up to and including the amount of the October 3, 2014, judgment, together with accumulated interest, against Vito Antonio Laera. In the event that there are sufficient funds to make full payment of the Blanco GmbH+CO.KG judgment and additional proceeds remain with the Clerk of Court, the Clerk of Court shall hold the proceeds in excess of the amount to be paid to Blanco GmbH+CO.KG until further Order of this Court.

AND IT IS SO ORDERED.

April 3, 2017



S. Jackson Kimball
Master In Equity
York County

45



From: Robert Bernstein
To: "Heath Gilbert"; "lbudd@thebuddlawgroup.com"
Cc: Jane Smith
Subject: RE: Fw: Case 0:15-cv-02199-TLW BLANCO GmbH + CO.KG v. Laera et al
Date: Tuesday, March 14, 2017 6:16:00 PM
Attachments: ACKNOWLEDGMENT AND AGREEMENT AS TO DISPOSITION OF PROCEEDS.2.pdf

Heath and Laura:

The closing of the sale of the South Carolina property is scheduled for this week. I understand that the closing attorneys are presenting the closing documents to her this week. Please let me know if Ms. LeFebvre is prepared to execute and deliver the attached document acknowledging that if the sale goes through that the lien against the property transfers to the proceeds from the sale.

On another subject, has your client made a decision on the latest settlement proposal? Time is of the essence, so we look forward to hearing from you shortly.

Yours Very Truly,
BERNSTEIN & BERNSTEIN, P.A.

Bob Bernstein

Robert A. Bernstein
Post Office Box 20519 5418-B Rivers Avenue
Charleston, SC 29413-0519 N. Charleston, SC 29406-6129
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell)
rbernstein@bernsteinpa.com

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From: Robert Bernstein
Sent: Monday, March 06, 2017 12:09 PM
To: 'Heath Gilbert' <hgilbert@baucomclaytor.com>; 'lbudd@thebuddlawgroup.com' <lbudd@thebuddlawgroup.com>
Cc: Jane Smith <JSmith@bernsteinpa.com>; 'JFGALLAGHER@nmmlaw.com'



ACKNOWLEDGMENT AND AGREEMENT AS TO DISPOSITION OF PROCEEDS

WHEREAS, Triple M. Partners, LP entered into a contract with Suzette LeFebvre for the sale of the following parcel of real estate, to wit:

419 York Southern Road, Fort Mill, South Carolina 29715

All that certain piece, parcel or lot of land, lying and being situate in Fort Mill, York County, South Carolina, containing 6.539 acres, more or less, more particularly described and shown on Survey entitled "Sterling Properties of the Carolinas, LLC" prepared by Hucks and Associates, PC dated December 8, 1999, and being described in that certain deed from Ciba-Geigy Corporation to Jerry H. Pettus, Sr., Elcanor P. Pettus and Jerry Pettus, Jr., dated August 19, 1994, recorded August 23, 1994, Book 1078 at Page 306, Office of the clerk of court for York County, South Carolina.

DERIVATION: This is the identical real property conveyed to Vito Antonio Laera deed of Sterling Properties of the Carolinas, LLC dated May 23, 2007 and recorded on July 16, 2007 in Book 9264 at Page 0046 in the records of the clerk of court for York County, SC, and as subsequently purported to be conveyed by Vito Antonio Laera to Suzette LeFebvre and Vito Antonio Laera by deed dated January 7, 2015, and recorded on January 15, 2015 in Book 14617 at Page 0086, in the records of the clerk of Court for York County, SC.

(hereinafter the "PROPERTY"); and

WHEREAS, in the course of researching the title to the PROPERTY, it was discovered that judgment liens exist against the property from a date prior to the date of the conveyance of the PROPERTY from Vito Antonio Laera to Suzette LeFebvre and the Suzette LeFebvre Trust, N/A; and

WHEREAS, pursuant to an Order entered in the case of Triple M. Partners, LP v. Suzette LeFebvre, Individually and as Trustee of the Suzette LeFebvre Trust, N/A, pending in the Court of Common Pleas for York County, South Carolina, bearing Case No. 2016-CP-46-03382, Suzette LeFebvre was ordered to convey clear and marketable title of the PROPERTY to Triple M Partners, LP, and to execute any and all documents necessary to deliver and convey clear and marketable title to the PROPERTY; a true and correct copy of the said Order is attached hereto as Exhibit "A" to this Acknowledgment and Agreement as to Disposition of Proceeds (hereinafter the ORDER"); and

WHEREAS, Suzette LeFebvre cannot deliver and convey to Triple M. Partners, LP clear and marketable title to the PROPERTY unless the PROPERTY is released from the judgment liens held by Blanco GmbH+Co.KG as recorded in the Office of the Clerk of Court for York County, South Carolina; and

WHEREAS, Blanco GmbH+Co.KG will not release the PROPERTY from its judgment liens

unless and until it is agreed upon by all parties that the proceeds from the sale of the PROPERTY are subject to the judgment liens to the extent of and in the order of priority of the liens to the PROPERTY;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the undersigned hereby agrees and acknowledges the existence of the judgments of Blanco GmbH+Co.KG and the claim to liens by Blanco GmbH+Co.KG against the PROPERTY. The undersigned disputes the claimed liens and priority claimed by Blanco GmbH+Co.KG against the PROPERTY. To facilitate the closing and passing of title of the PROPERTY to Triple M. Partners, LP and in consideration thereof, and further to comply with the ORDER, the undersigned Suzette LeFebvre, individually and as Trustee of the Suzette LeFebvre Trust, N/A, hereby agrees that, to the extent that a lien exists in favor of Blanco GmbH+Co.KG against the PROPERTY and in such priority that the judgment lien has against the property, the said lien shall be transferred to the proceeds of the sale of the PROPERTY. Nothing contained in this Acknowledgment and Agreement as to Disposition of Proceeds shall be deemed to give Blanco GmbH+Co.KG any greater or any lesser rights against the proceeds of the sale of the PROPERTY than it had against the actual PROPERTY.

Witness my hand and seal this ____ day of March, 2017.

Signed, Sealed and delivered in the presence of:

Suzette LeFebvre L.S.

STATE OF _____
COUNTY OF _____

I, _____, Notary Public for the State of _____, do hereby certify that Suzette LeFebvre personally appeared before me this day and acknowledged the due execution of the foregoing instrument; that Suzette LeFebvre is either known personally by me or produced satisfactory evidence of her identity; and that the undersigned is neither a signer to nor beneficiary of the transaction witnessed herein.

Witness my hand and official seal this ____ day of March, 2017.

Notary Public, State of _____
My Commission Expires:

From: Dan Ballou
To: Robert Bernstein
Subject: FW: Fw: Case 0:15-cv-02199-TLW BLANCO GmbH + CO.KG v. Laera et al
Date: Thursday, March 16, 2017 1:07:43 PM
Attachments: image001.png
image002.png
image003.png
image004.png



Daniel J Ballou, Senior Counsel
Attorney at Law
MORTON & GETTYS
Fountain Park Place
331 E Main St Suite 300
PO Box 707
Rock Hill, SC 29731

Main Tel: 803.366.3388
Fax: 803.366.4044
Web: www.mortongettys.com

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MORTON & GETTYS

ATTORNEYS AT LAW

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From: Suzette Lefebvre [mailto:zette222@gmail.com]

Sent: Wednesday, March 15, 2017 5:50 PM

To: Dan Ballou <Dan.Ballou@mortongettys.com>; Heath Gilbert <hgilbert@baucomclaytor.com>

Subject: Re: Fw: Case 0:15-cv-02199-TLW BLANCO GmbH + CO.KG v. Laera et al

I will absolutely not sign the document **ACKNOWLEDGMENT AND AGREEMENT AS TO DISPOSITION OF PROCEEDS.**

However since you mentioned that it is not part of the package of closing documents you are delivering tomorrow I will ignore it.

On Wed, Mar 15, 2017 at 5:20 PM, Dan Ballou <Dan.Ballou@mortongettys.com> wrote:

Heath;

That document is not included in the package of closing documents we are delivering to Suzette tomorrow. Please let me know when after about 11:00 am she will be available to sign, and we will have someone there with documents to be executed pursuant to Judge Kimball's Order.

Thanks,

Dan

Daniel J Ballou, Senior Counsel
Attorney at Law
MORTON & GETTYS
Fountain Park Place

MORTON & GETTYS

ATTORNEYS AT LAW

331 E Main St Suite 300
PO Box 707
Rock Hill, SC 29731

Main Tel: 803.366.3388
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Web: www.mortongettys.com

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From: Heath Gilbert [mailto:hgilbert@baucomclaytor.com]

Sent: Wednesday, March 15, 2017 5:13 PM

To: Brown, Dave (DBrown@HorackTalley.com) <DBrown@HorackTalley.com>; Dan Ballou <Dan.Ballou@mortongettys.com>

Cc: Suzette Lefebvre <zette222@gmail.com>; 'Laura Budd (lbudd@thebuddlawgroup.com)' <lbudd@thebuddlawgroup.com>; Kenneth Raynor <Ken@Raynorlawfirm.com>

Subject: FW: Fw: Case 0:15-cv-02199-TLW BLANCO GmbH + CO.KG v. Laera et al

Dave,

We received this from counsel for Blanco yesterday. This is the document that they want executed to release their claim to the property. Have you had the chance to review this and comment on it?

M. Heath Gilbert, Jr.
BAUCOM CLAYTOR
200 Providence Road, Suite 106
Charlotte, NC 28207
704-376-6527 (ph) Ext. 2014
704-376-6207 (fx)
www.baucomclaytor.com

From: Robert Bernstein [mailto:RBernstein@bernsteinpa.com]

Sent: Tuesday, March 14, 2017 6:17 PM

To: Heath Gilbert; lbudd@thebuddlawgroup.com

Cc: Jane Smith

Subject: RE: Fw: Case 0:15-cv-02199-TLW BLANCO GmbH + CO.KG v. Laera et al

Heath and Laura:

The closing of the sale of the South Carolina property is scheduled for this week. I understand that the closing attorneys are presenting the closing documents to her this week. Please let me know if Ms. Lefebvre is prepared to execute and deliver the attached document acknowledging that if the sale goes through that the lien against the property transfers to the proceeds from the sale.



From: Motz, Maryann
To: "Suzette Lefebvre"; Kimball, Jack
Cc: Heath Gilbert; Dan Ballou; Robert Bernstein; Jane Smith; David W. Brown Jr. (DBrown@HorackTalley.com); Laura Budd; JFGALLAGHER@nmmlaw.com; ABhatt@nmmlaw.com; Kenneth Raynor
Subject: RE: Triple M. Partners v. Suzette Lefebvre and Blanco GMBH+CO.KG; #16-3382
Date: Tuesday, March 21, 2017 1:26:30 PM
Attachments: image001.png
image002.png
image003.png
image004.png
image005.png
image007.png
image008.png
log_20d6738-shfc-4bdc-91fd-e2d7464255d7.png

Thank you. I will print your email so Judge Kimball will have in the file for the hearing in the morning.

Mary Ann

Maryann Motz
Associate Court Clerk
York County

Phone: 803-628-3930



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From: Suzette Lefebvre [mailto:zette222@gmail.com]
Sent: Tuesday, March 21, 2017 1:07 PM
To: Motz, Maryann; Kimball, Jack
Cc: Heath Gilbert; Dan Ballou; Robert Bernstein; Jane Smith; David W. Brown Jr. (DBrown@HorackTalley.com); Laura Budd; JFGALLAGHER@nmmlaw.com; ABhatt@nmmlaw.com; Kenneth Raynor
Subject: Re: Triple M. Partners v. Suzette Lefebvre and Blanco GMBH+CO.KG; #16-3382

Hello Ms. Motz,

I just saw this email chain, if at all possible please do not email me because sometimes I don't check my email for days and often important emails end up in the junk folder. Please mail me all communications to my address at 5960 SW 32 Terrace Fort Lauderdale, FL 33312.

I want to advise the court that I complied with its order and signed all the closing documents

listed by the judge and prepared by Triple M Partners, as I am sure Triple M Partners will confirm. To my knowledge the property has closed and is now Triple M Partners is the new owner.

In one of the orders from the court it mentions that Blanco GMBH + Co is in a pending litigation in Federal Court. My counsel in that case is Mr. Gilbert, he presented me with a document to sign from Blanco GMBH + Co in my case with Triple M Partners, the heading of the document was Acknowledgment and agreement as to disposition of proceeds. I didn't agree to sign it because it wasn't part of our settlement in the case with Triple M Partners, even the judge didn't require it. So I do not consent to it because it is not what was agreed to with Triple M Partners.

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.

Sincerely Yours,

Suzette Lefebvre

On Tue, Mar 21, 2017 at 11:56 AM, Motz, Maryann <Maryann.Motz@yorkcountygov.com> wrote:

Thank you. I will print your email so Judge Kimball will have in the file for the hearing in the morning. The only attorneys that have confirmed they will attend tomorrow's hearing are Mr. Benstein and Mr. Ballou. Attorneys Bhatt and Gallagher will not appear.

Mary Ann

Maryann Motz
Associate Court Clerk
York County

Phone: 803-628-3930



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From: Heath Gilbert [mailto:hgilbert@baucomclaytor.com]
Sent: Tuesday, March 21, 2017 11:33 AM
To: Motz, Maryann; Dan Ballou; Robert Bernstein
Cc: Jane Smith; David W. Brown Jr. (DBrown@HorackTalley.com); Laura Budd;

JFGALLAGHER@nmmlaw.com; ABhatt@nmmlaw.com; zette222@gmail.com; Kenneth Raynor
Subject: RE: Triple M. Partners v. Suzette LeFebvre and Blanco GMBH+CO.KG; #16-3382

Ms. Motz,

I will not be at the hearing tomorrow. Ms. LeFebvre has not retained me to appear in this matter and I have not entered an appearance. Additionally, I do not want to send the wrong signals to the Court or inadvertently insert myself into a case where I am not representing a party. I represent Ms. LeFebvre in the matter in Federal Court. The reason that I attended the mandamus hearing back in February was that it affected the outcome of the Federal matter. This Triple M matter was heard at the same time.

I have cc'd Ken Raynor on the matter as his client was Ms. Lefebvre's tenant.

To whatever degree possible, I would like to know the outcome to the extent it concerns the matters that which we are handling in Federal Court. Thank you in advance.

M. Heath Gilbert, Jr.
BAUCOM CLAYTOR
200 Providence Road, Suite 106
Charlotte, NC 28207
704-376-6527 (ph) Ext. 2014
704-376-6207 (fx)
www.baucomclaytor.com

From: Motz, Maryann [<mailto:Maryann.Motz@yorkcountygov.com>]
Sent: Monday, March 20, 2017 2:05 PM
To: Heath Gilbert; Dan Ballou; Robert Bernstein
Cc: Jane Smith; David W. Brown Jr. (DBrown@HorackTalley.com); Laura Budd;
JFGALLAGHER@nmmlaw.com; ABhatt@nmmlaw.com; zette222@gmail.com
Subject: RE: Triple M. Partners v. Suzette LeFebvre and Blanco GMBH+CO.KG; #16-3382

I would like to confirm for Wednesday, March 22nd at 9:30. Mr. Bernstein and Mr. Ballou are available for that date, and have responded. Judge Kimball will not allow Ms. Lefebvre to participate by telephone, but Mr. Gilbert may appear on her behalf at the hearing. I look forward to their responses.

There are others included in the email that have not responded; however, I will add the motion to the roster for March 22nd at 9:30 pending objection/responses.

Thank you,

Mary Ann

Maryann Motz
Associate Court Clerk

York County

Phone: 803-628-3930



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From: Heath Gilbert [mailto:hgilbert@baucomclaytor.com]
Sent: Monday, March 20, 2017 1:40 PM
To: Dan Ballou; Robert Bernstein; Motz, Maryann
Cc: Jane Smith; David W. Brown Jr. (DBrown@HorackTalley.com); Laura Budd; JFGALLAGHER@nmmlaw.com; ABhatk@nmmlaw.com; zette222@gmail.com
Subject: RE: Triple M. Partners v. Suzette LeFebvre and Blanco GMBH+CO.KG; #16-3382

Ms. Motz,

I have not been asked to make an appearance by Ms. Lefebvre in this matter. I am available if the Court wants me to be there on Wednesday. Ms. Lefebvre is in Florida and likely unable to travel. She might be available by telephone. I am by way of this email asking her to please respond to you as to her availability telephonically if the Court would so permit.

M. Heath Gilbert, Jr.
BAUCOM CLAYTOR
200 Providence Road, Suite 106
Charlotte, NC 28207
704-376-6527 (ph) Ext. 2014
704-376-6207 (fx)
www.baucomclaytor.com

From: Dan Ballou [mailto:Dan.Ballou@mortongettys.com]
Sent: Monday, March 20, 2017 12:03 PM
To: Robert Bernstein; Motz, Maryann
Cc: Jane Smith; David W. Brown Jr. (DBrown@HorackTalley.com); Heath Gilbert; Laura Budd; JFGALLAGHER@nmmlaw.com; ABhatk@nmmlaw.com; zette222@gmail.com
Subject: RE: Triple M. Partners v. Suzette LeFebvre and Blanco GMBH+CO.KG; #16-3382

Maryann;

I am just now getting into this email chain. I am available Wednesday morning both times.

Thank you,

Dan

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP4603382**

| | | | |
|----------------------|--|------------------|------------------------------|
| Triple M Partners LP | | Suzette Lefebvre | Suzette Lefebvre Trust NA |
|----------------------|--|------------------|------------------------------|

| | |
|--------------------------------|---|
| PLAINTIFF(S) | DEFENDANT(S) |
| Submitted by: The Court | Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant |

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 12(b), SCRPC;
 - Rule 41(a), SCRPC (Vol. Nonsuit);
 - Rule 43(k), SCRPC (Settled);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j) SCRPC;
 - Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 - Affirmed;
 - Reversed;
 - Remanded;
 - Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED; See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of (List name(s) below) | Judgment Against (List name(s) below) | Judgment Amount To be Enrolled (List amount(s) below) |
|--|--|--|
| | | |
| | | |
| | | |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

s/S. Jackson Kimball

Circuit Court Judge

3063

Judge Code

4/26/2017

Date

For Clerk of Court Office Use Only

This judgment was entered on April 26, 2017, and a copy mailed first class or placed in the appropriate attorney's box on April 26, 2017, to attorneys of record or to parties (when appearing pro se) as follows:

Daniel Joseph Ballou PO Box 707 Rock Hill, SC 29731

Robert Alan Bernstein PO Box 20519 Charleston, SC
29413-0519
Milton Heath Gilbert Jr. 200 Providence Road Suite 106
Charlotte, NC 28207

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF YORK
TRIPLE M PARTNERS, LP,

FILED-RECEIVED
2017 APR 26 PM 0:51
THE COURT OF COMMON PLEAS
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

Plaintiff,
v.
SUZETTE LEFEBVRE, as Individual,
and as Trustee of the SUZETTE
LEFEBVRE TRUST N/A, and BLANCO
GmbH + CO.KG,
Defendants.

ORDER
(RULE 59(e) MOTION)
Case No. 2016CP4603382

This matter came before the Court on April 20, 2017, upon motion of Defendant Suzette Lefebvre ("Lefebvre") pursuant to Rule 59(e), SCRCP, asking the Court to alter or amend the ruling in the Order signed April 3, 2017, and filed April 4, 2017 ("April 3 Order"). Representing Defendant BLANCO GmbH + CO.KG ("Blanco") was Robert A. Bernstein. Representing Defendant Lefebvre was M. Heath Gilbert.

BACKGROUND

The April 3 Order was the result of a motion by Blanco that was heard on March 22, 2017. The motion asked the Court to transfer the judgment lien of Blanco to the proceeds of the sale of the property that was the subject of this action. Lefebvre was given timely notice of the hearing, but did not appear personally, or through counsel.¹

On March 21, 2017, Defendant LeFebvre sent an e-mail to the Court that acknowledges receipt of notice of the hearing. She stated her position regarding the closing of the sale of the subject property, and the disbursement of funds. She did not request a continuance of the hearing.

At the motion hearing, Blanco presented ample argument to satisfy the Court that the relief requested was warranted. Counsel for Triple M appeared at the hearing, and did not object to the relief sought. Blanco's judgment lien was the only lien on record, except for a first mortgage lien to which Blanco's lien was subordinate. As a result, the order authorized and directed the Clerk of Court to disburse the funds remaining after payment of the first mortgage to Blanco.

¹ At the time, counsel representing Lefebvre in this matter was representing her in a somewhat related matter in Federal District Court in South Carolina.

In the present motion by Lefebvre, she now challenges the April 3 Order based on her claim of lien arising out of her alleged spousal interest in the subject property, pursuant to S.C. Code Ann. sec. 20-3-610 (1976, as amended). She asserts that the lien of her spousal interest is superior to Blanco's judgment lien.

RULE 59(e) STANDARD

The purpose of Rule 59(e), SCRCP, is to request the hearing judge to ". . . reconsider matters properly encompassed in a decision on the merits." *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992) (citations omitted). A party cannot use a motion to reconsider, alter or amend a judgment to present an issue that could have been raised prior to the 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).

DISCUSSION

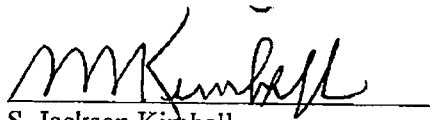
In this motion, Lefebvre raises issues, cited above, not presented to the Court, or otherwise before the Court for determination, at the March 22 hearing. In accordance with Rule 59(e) and applicable case law, those issues may not be raised for the first time at this juncture.

In the present motion, Lefebvre asserts that the Court's authorization and direction that the proceeds of sale on deposit with the Clerk of Court be disbursed to Blanco was not part of the motion before the Court, and was, therefore, error. I disagree. There were no other competing liens asserted by any party at the hearing, and there were no competing liens of record. Directing payment of the proceeds held by the Clerk of Court to Blanco was a natural consequence, and logical extension, of confirming Blanco's status as a lien claimant against the proceeds.

Aside from Lefebvre's newly asserted objection, and upon reviewing the memoranda and arguments of counsel, I find no matter presented that was not addressed expressly or by clear implication in the April 3 Order. I further find no basis for reconsideration or amendment of the ruling in the prior Order.

Therefore, it is ordered that Plaintiff's Motion pursuant to Rule 59(e), SCRCP be denied.
AND IT IS SO ORDERED.

April 26, 2017


S. Jackson Kimball
Special Circuit Court Judge
York County

#2

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2016CP4603382**

| | | | |
|----------------------|--|------------------|------------------------------|
| Triple M Partners LP | | Suzette Lefebvre | Suzette Lefebvre Trust NA |
|----------------------|--|------------------|------------------------------|

| | |
|-------------------------------|--|
| PLAINTIFF(S) | DEFENDANT(S) |
| Submitted by: Daniel J Ballou | Attorney for: <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant |

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 12(b), SCRPC;
 - Rule 41(a), SCRPC (Vol. Nonsuit);
 - Rule 43(k), SCRPC (Settled);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j) SCRPC;
 - Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 - Affirmed;
 - Reversed;
 - Remanded;
 - Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

DEFAULT JUDGMENT

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of (List name(s) below) | Judgment Against (List name(s) below) | Judgment Amount To be Enrolled (List amount(s) below) |
|--|--|--|
| n/a | n/a | n/a |
| | | |
| | | |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

S. Jackson Kimball
Circuit Court Judge

3063
Judge Code

2/23/2017
Date

For Clerk of Court Office Use Only

This judgment was entered on **February 24, 2017**, and a copy mailed first class or placed in the appropriate attorney's box on **February 24, 2017**, to attorneys of record or to parties (when appearing pro se) as follows:

Daniel Joseph Ballou PO Box 707 Rock Hill, SC 29731

Robert Alan Bernstein PO Box 20519 Charleston, SC
29413-0519

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

David Hamilton

Court Reporter

David Hamilton - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
TRIPLE M PARTNERS, LP,)
Plaintiff,)
v.)
SUZETTE LEFEBVRE, as Individual, and)
as Trustee of the SUZETTE LEFEBVRE)
TRUST N/A,)
Defendant.)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-46-03382

DEFAULT JUDGMENT

2017 FEB 24 AM 10:47
DAVID A. MILLION
CLERK OF COURT
YORK COUNTY, SC

This matter came before the Court on February 16, 2017, upon Plaintiff's motion for default judgment. Appearing at the hearing for Plaintiff was Daniel J. Ballou. The Defendant has not appeared individually, or through counsel, in this case, and did not appear at the hearing. Based upon the pleadings and affidavits of record, I make the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Plaintiff commenced this action by filing a summons and complaint on November 15, 2016, which was supported by a verification filed on November 28, 2016. Plaintiff's verified complaint seeks specific performance of an Agreement for the Purchase and Sale of Real Property ("Agreement"). Under the Agreement, Defendant agreed to sell to Plaintiff a 6.5-acre tract of real property identified by York County Tax Map No. 728-00-00-030, located at 419 York Southern Road, Fort Mill, South Carolina ("Property"), for a purchase price of \$1,960,000.00.
2. Plaintiff personally served Defendant with process on November 21, 2016. By order dated November 30, 2016, and after notice and a hearing, Hon. Daniel D. Hall granted emergency relief ("Order") to allow the Plaintiff access to the Property to complete its due diligence under the Agreement.
3. Pursuant to the Order, Defendant was temporarily restrained and enjoined as follows:
 - a. Defendant was prohibited from selling or disposing of the Property during the pendency of this action;

DM
\$1

- b. Defendant was prohibited from taking any action inconsistent with the Agreement;
- c. Defendant was directed to allow Plaintiff access to the Property to complete due diligence within a reasonable time, irrespective of the time specifications in the Agreement, and to close on the sale of the Property within a reasonable time of receiving notice from the Plaintiff of its intent to close;
- d. Defendant was directed to execute any and all documents necessary to convey the Property to Plaintiff free of any encumbrances within a reasonable time following notice by Plaintiff that it has completed its due diligence, and is prepared to proceed to closing;
- e. Defendant was prohibited from taking any action that would divest or otherwise impair her sole ability to convey title to the Property at closing.

4. Defendant has failed to appear or otherwise defend, deny or oppose the allegations of the Complaint, and is in default.

5. On February 15, 2017, in Case No. 2016-CP-46-02920, *U.S. Bank, N.A. v. Laera, et al.*, in a foreclosure action brought by U.S. Bank, N.A. ("U.S. Bank") against the Defendants and others concerning the Property, this Court granted U.S. Bank's Motion for Appointment of a Receiver.

6. On February 13, 2017, Blanco GmbH + CO.KG ("Blanco") plaintiff in a collection action against Defendants and others filed a Motion to Intervene in this action, which Motion has not yet been heard.

CONCLUSIONS OF LAW

1. By reason of Defendant's default, Plaintiff is entitled to judgment against Defendant, and to an order requiring the specific performance of the Agreement, and further, Defendant remains bound by the prior Order in this case, which is incorporated herein by reference.

2. Defendant Suzette Lefebvre is required to duly execute and deliver to Plaintiff's counsel a general warranty deed conveying title to the Property to Plaintiff, an affidavit of true consideration, a lien waiver affidavit satisfactory to the title insurance company of the Plaintiff's choosing, a quitclaim deed from the Suzette Lefebvre Trust, a closing statement in such form as reasonably provided by Plaintiff, an IRS Form 1099s, a non-foreign status affidavit (also known as a FIRPTA Certificate), and any and all other documents necessary to deliver and convey clear

OCM
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and marketable title ("Closing Documents") to Plaintiff, at a closing to be held within fourteen days of the date of this Order, or at such later time as established by Plaintiff.

3. Should Defendant fail to deliver satisfactory Closing Documents to Plaintiff, as provided above, the Clerk of Court for York County is hereby authorized and directed to execute and deliver a clerk's deed to the Property to Plaintiff upon receipt of written notice of Defendant's refusal to comply with this Order.

4. At the closing of the sale of the Property, after payment of the first mortgage held by U.S. Bank, N.A., the net proceeds shall be deposited with the Clerk of Court, who is authorized and directed to receive and deposit such funds, pending further order of this Court.

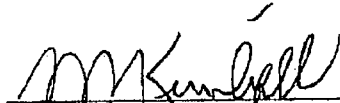
JUDGMENT

It is ordered that default judgment be entered against the Defendant, consistent with the conclusions of law above, and the relief set forth above be granted.

It is further ordered that, to the extent that the Plaintiff seeks any further relief sought in the Complaint, including but not limited to an award of damages, Plaintiff may request a hearing on such matters by written motion, and after proper notice to Defendant.

AND IT IS SO ORDERED.

February 23, 2017


S. Jackson Kimball
Special Circuit Court Judge
York County

23

STATE OF SOUTH CAROLINA

COUNTY OF YORK

TRIPLE M PARTNERS, LP

Plaintiff(s)

vs.

SUZETTE LEFEBVRE, as Individual, and as Trustee of the SUZETTE LEFEBVRE TRUST N/A

Defendant(s)

Submitted By: Daniel J. Ballou
Address: P.O. Box 707; Rock Hill, SC 29731

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2016-CP - 46-

FILED-RECEIVED
NOV 16 PM 3:09
DAVID HAMILTON
C.C.P. CLERK
YORK COUNTY, SC

SC Bar #: 5935
Telephone #: 803.366.3467
Fax #: 803.366.4044
Other:
E-mail: dan.ballou@mortongettys.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action Is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
NON-JURY TRIAL demanded in complaint.
This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Breach of Contract (140)
Torts - Professional Malpractice: Dental Malpractice (200)
Torts - Personal Injury: Conversion (310)
Real Property: Claim & Delivery (400)
Inmate Petitions: PCR (500)
Administrative Law/Relief: Reinstatement License (800)
Judgments/Settlements: Death Settlement (700)
Appeals: Arbitration (900)
Special/Complex/Other: Environmental (600)
Pharmaceuticals (630)
Petition for Workers Compensation Settlement Approval (780)

Submitting Party Signature:

[Handwritten Signature]

Date: 11/16/16

STATE OF SOUTH CAROLINA

COUNTY OF YORK

TRIPLE M PARTNERS, LP,

Plaintiff,

v.

SUZETTE LEFEBVRE, as Individual, and
as Trustee of the SUZETTE LEFEBVRE
TRUST N/A,

Defendant

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
C/A NO.: 2016-CP-46-03382


SUMMONS

FILED-RECEIVED
2016 NOV 16 PM 3:09
DAVID HAMILTON
C.C.P. CLERK
YORK COUNTY, SC

TO: THE DEFENDANTS, AND ALL OTHERS TO WHOM THESE PRESENTS MAY COME:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herewith served upon you, and to serve a copy of your answer to such Complaint upon the subscribers at their offices at 331 East Main Street; Suite 300; Rock Hill, South Carolina 29730, or by United States Mail at P.O. Box 707, Rock Hill, South Carolina, within thirty (30) days after the date of service hereof upon you, exclusive of the day of such service, and if you fail to answer such Complaint within the time aforesaid, Plaintiff will apply to the Court for the relief demanded in the Complaint.

Respectfully submitted,



Daniel T. Ballou, SC Bar No. 5935

Morton & Gettys, LLC

Attorney for Plaintiff

P.O. Box 707

Rock Hill, SC 29731

T: 803.366.3457

F: 803.366.4044

dan.ballou@mortongettys.com

11/16, 2016
Rock Hill, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 TRIPLE M PARTNERS, LP,)
)
 Plaintiff,)
)
 v.)
)
 SUZETTE LEFEBVRE, as Individual, and)
 as Trustee of the SUZETTE LEFEBVRE)
 TRUST N/A,)
)
 Defendant)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT
 C/A NO.: 2016-CP-46-~~03388~~

COMPLAINT

DAVID HAMILTON
 C. C. P. S.
 YORK COUNTY, SC

2016 NOV 16 PM 3:09

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The Plaintiff, Triple M Partners, LP ("Plaintiff"), complaining of the Defendants Suzette Lefebvre and the Suzette Lefebvre Trust N/A, ("Defendant"), would allege and show unto the Court as follows:

PARTIES AND JURISDICTION

1. Plaintiff is a limited partnership formed under the laws of the state of Pennsylvania with its principal place of business located in Malvern, Pennsylvania.
2. On information and belief, Defendant is a citizen and resident of a state other than South Carolina. On further information and belief, Suzette Lefebvre is the legal and equitable holder of title to real property located in York County, South Carolina that is the subject of this litigation.
3. This Court has jurisdiction over the parties and the subject matter of this dispute since the property in dispute is located in York County.

FACTS

4. On or about August 30, 2016, Plaintiff and Suzette Lefebvre entered into an Agreement for the Purchase and Sale of Real Property ("Agreement") whereby Suzette Lefebvre "as individual and as trustee" agreed to sell to Plaintiff the 6.5 acre tract of real property identified as York County Tax Map No. 7280000030, located at 419 York Southern Road, Fort Mill, South Carolina (the "Property"), for a purchase price of \$1,960,000.00. A true and correct copy of the Agreement is attached hereto as Exhibit A and incorporated by reference for all purposes.

5. Suzette Lefebvre obtained title to the Property pursuant to the Decree of Divorce dated October 31, 2014.

6. Upon information and belief, Suzette Lefebvre individually owns all legal and beneficial interest in the Property and is capable of transferring fee simple title in it. Suzette Lefebvre cannot hold in trust any interest in the Property for the benefit of herself, and therefore any and all interest in the Property is held by Suzette Lefebvre individually.

7. Suzette Lefebvre represented in the Agreement that she had full authority to sign the Agreement and such instruments as may be necessary to effectuate any transaction contemplated by the Agreement.

8. On or before August 31, 2016, Plaintiff paid an earnest money deposit in the amount of \$15,000.00 to Chicago Title Insurance Company ("Escrow Agent") pursuant to Section 1 of the Agreement.

9. The parties agreed that the Closing Date under the Agreement shall be on or before December 15, 2016.

10. The parties further agreed that the Examination Period under the Agreement shall extend from the first date of the Agreement and extend through 11:59 pm on November 30, 2016.

11. The parties further agreed that time is of the essence as to the examination period.

12. Plaintiff has complied with all applicable terms and obligations of the Agreement, and remains ready, willing and able to comply with its obligations of the Agreement.

13. On or before September 21, 2016, Plaintiff delivered to Defendant its objections to certain defects and exceptions to title to the Property.

14. Defendant responded that she would only agree to sell the Property if Plaintiff waived all title objections and closed before December 15, 2016.

15. Defendant has refused to comply with the Agreement by barring the Plaintiff from performing or completing any due diligence inspections of the Property other than an initial inspection of the exterior of the roof of the warehouse building located thereon.

16. Plaintiff has repeatedly demanded that Defendants allow Plaintiff access to the Property to complete due diligence, without success.

17. Most recently, Plaintiff wrote Defendant on November 11, 2016, demanding that the Defendant allow Plaintiff access to the Property to conduct due diligence, again without response. A true and correct copy of the November

11, 2016 letter is attached hereto as **Exhibit B** and incorporated by reference for all purposes.

18. Defendant has ceased all further communication with Plaintiff even though the Examination Period under the Agreement has not yet run.

19. By silence, refusal to respond to repeated requests and failure to allow access to the Property, the Defendant has repudiated the Agreement and is in breach.

20. The Property is a unique parcel of real estate and other real property with the same qualities is not available.

FOR A FIRST CAUSE OF ACTION
(Specific Performance)

21. Plaintiff reiterates the allegations of Paragraph 1-16, and incorporates them by reference.

22. Defendant has acted in bad faith and have been unreasonable in refusing to comply with the terms and conditions of the Agreement.

23. Defendant should be compelled and required to perform specifically all of the terms and conditions of the Agreement, including providing access to the Property to allow completion of due diligence and conveying by warranty deed the Property in return for the purchase price set forth in the Agreement.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract)

24. Plaintiff reiterates the allegations of Paragraphs 1-19 and incorporates them by reference.

25. Defendant has breached the Agreement as set forth herein, including but not limited to refusing to allow completion of due diligence during the Examination Period. Defendant's actions have violated the duty of good faith and fair dealing implied in all contracts in this state.

26. If the Property is determined to be not unique and similar property can be obtained, the Plaintiff would be entitled to recover its earnest money, out of pocket expenses, all actual and consequential damages, and attorney's fees and costs as set forth in the Agreement.

27. By reason of the foregoing, Plaintiff is entitled to a judgment against Defendant for actual damages in an amount to be determined by the trier of fact.

FOR A THIRD CAUSE OF ACTION
(Preliminary and Permanent Injunction)

28. Plaintiff reiterates the allegations of Paragraphs 1-23 and incorporates them by reference.

29. Defendant owes a duty under the Agreement under the common law to allow the Plaintiff access to the Property to complete due diligence and ultimately to purchase the Property.

30. Defendant has breached these duties as set forth herein.

31. Defendant's actions have caused and will continue to cause irreparable harm to Plaintiff.

32. Plaintiff has no adequate remedy at law to redress Defendant's wrongful acts.

33. By reason of the foregoing, the Plaintiff seeks and is entitled to a preliminary and permanent injunction:

- a. prohibiting Defendant from selling or disposing of the Property during the pendency of this action in a manner that violates the terms and spirit of the Agreement,
- b. prohibiting Defendant from taking any action inconsistent with the Agreement;
- c. directing Defendant to allow Plaintiff access to the Property to complete due diligence within a reasonable time, whether before or after November 30, 2016;
- d. directing the Defendant to convey the Property to the Plaintiff free of any encumbrances within a reasonable time following notice by Plaintiff that it has completed its due diligence and is prepared to proceed to closing.

WHEREFORE, Plaintiff prays for the relief set forth in this complaint, for attorney's fees and the costs of this action, and for such other relief as the Court deems just and proper.

Respectfully submitted,


Daniel J. Ballou, SC Bar No. 5935
Morton & Gettys, LLC
Attorney for Plaintiff
P.O. Box 707
Rock Hill, SC 29731
T: 803.366.3457
F: 803.366.4044
dan.ballou@mortongettys.com

11/16, 2016
Rock Hill, South Carolina



AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT, including any and all addenda attached hereto ("Agreement"), is by and between
Triple M Partners, LP and/or assigns

a(n) Pennsylvania Limited Partnership ("Buyer"), and
(individual or State of formation and type of entity)

Suzette Lefebvre As Individual & As Trustee

a(n) _____ ("Seller"),
(individual or State of formation and type of entity)

FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES SET FORTH HEREBIN AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

Section 1. Terms and Definitions: The terms listed below shall have the respective meaning given them as set forth adjacent to each term.

(a) "Property": (Address) 419 York Southern Road, Fort Mill, SC 29715

Plat Reference: Lot(s) _____, Block or Section _____, as shown on Plat Book or Slide
55 at Page(s) 105, York County, consisting of 6.5 acres.

If this box is checked, "Property" shall mean that property described on Exhibit A attached hereto and incorporated herewith by reference.

(For information purposes: (i) the tax parcel number of the Property is: 7280000030
and, (ii) some or all of the Property, consisting of approximately 6.5 acres, is described in Deed Book
15656, Page No. 170, York County.)

together with all buildings and improvements thereon and all fixtures and appurtenances thereto and all personal property, if any, itemized on Exhibit A.

\$ \$1,960,000.00 (b) "Purchase Price" shall mean the sum of One Million, Nine Hundred Sixty Thousand
Dollars.

payable on the following terms:

\$ 15,000.00 (i) "Earnest Money" shall mean Fifteen Thousand Dollars.
or terms as follows:

Upon this Agreement becoming a contract in accordance with Section 14, the Earnest Money shall be promptly deposited in escrow with Chicago Title Insurance (Charlotte office (name of person/entity with whom deposited), to be applied as part payment of the Purchase Price of the Property at Closing, or disbursed as agreed upon under the provisions of Section 10 herein.



This form jointly approved by:
North Carolina Bar Association
North Carolina Association of REALTORS®, Inc.

Buyer Initials [Signature]

Seller Initials [Signature]

STANDARD FORM 580-T
Revised 7/2013
© 7/2016



ANY EARNEST MONEY DEPOSITED BY BUYER IN A TRUST ACCOUNT MAY BE PLACED IN AN INTEREST BEARING TRUST ACCOUNT, AND: (check only ONE box)

ANY INTEREST EARNED THEREON SHALL BE APPLIED AS PART PAYMENT OF THE PURCHASE PRICE OF THE PROPERTY AT CLOSING, OR DISBURSED AS AGREED UPON UNDER THE PROVISIONS OF SECTION 10 HEREIN. (Buyer's Taxpayer Identification Number is: _____)


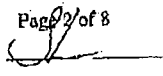
ANY INTEREST EARNED THEREON SHALL BELONG TO THE ACCOUNT HOLDER IN CONSIDERATION OF THE EXPENSES INCURRED BY MAINTAINING SUCH ACCOUNT AND RECORDS ASSOCIATED THEREWITH.

\$ _____ N/A (ii) Proceeds of a new loan in the amount of _____ Dollars for a term of _____ years, with an amortization period not to exceed _____ years, at an interest rate not to exceed _____ % per annum with mortgage loan discount points not to exceed _____ % of the loan amount, or such other terms as may be set forth on Exhibit B. Buyer shall pay all costs associated with any such loan.

\$ _____ N/A (iii) Delivery of a promissory note secured by a deed of trust, said promissory note in the amount of _____ Dollars being payable over a term of _____ years, with an amortization period of _____ years, payable in monthly installments of principal, together with accrued interest on the outstanding principal balance at the rate of _____ percent (_____ %) per annum in the amount of \$ _____, with the first principal payment beginning on the first day of the month next succeeding the date of Closing, or such other terms as may be set forth on Exhibit B. At any time, the promissory note may be prepaid in whole or in part without penalty and without further interest on the amounts prepaid from the date of such prepayment. (NOTE: In the event of Buyer's subsequent default upon a promissory note and deed of trust given hereunder, Seller's remedies may be limited to foreclosure of the Property. If the deed of trust given hereunder is subordinated to senior financing, the material terms of such financing must be set forth on Exhibit B. If such senior financing is subsequently foreclosed, the Seller may have no remedy to recover under the note.)

\$ _____ N/A (iv) Assumption of that unpaid obligation of Seller secured by a deed of trust on the Property, such obligation having an outstanding principal balance of \$ _____ and evidenced by a note bearing interest at the rate of _____ percent (_____ %) per annum, and a current payment amount of \$ _____. The obligations of Buyer under this Agreement are conditioned upon Buyer being able to assume the existing loan described above. If such assumption requires the lender's approval, Buyer agrees to use its best efforts to secure such approval and to advise Seller immediately upon receipt of the lender's decision. Approval must be granted on or before _____. On or before this date, Buyer has the right to terminate this Agreement for failure to be able to assume the loan described above by delivering to Seller written notice of termination by the above date, *time being of the essence*. If Buyer delivers such notice, this Agreement shall be null and void and Earnest Money shall be refunded to Buyer. If Buyer fails to deliver such notice, then Buyer will be deemed to have waived the loan condition. Unless provided otherwise in Section 3 hereof, Buyer shall pay all fees and costs associated with any such assumption, including any assumption fee charged by the lender. At or before Closing, Seller shall assign to Buyer all interest of Seller in any current reserves or escrows held by the lender, any property management company and/or Seller, including but not limited to any tenant improvement reserves, leasing commission reserves, security deposits and operating or capital reserves for which Seller shall be credited said amounts at Closing.

\$ 1,945,000.00 (v) Cash balance of Purchase Price, at Closing in the amount of One Million, Nine Hundred Forty-Five Thousand _____ Dollars.

Buyer Initials  Seller Initials 

(c) "Closing" shall mean the date and time of recording of the deed. Closing shall occur on or before December 15, 2016 or _____

(d) "Contract Date" means the date this Agreement has been fully executed by both Buyer and Seller.

(e) "Examination Period" shall mean the period beginning on the first day after the Contract Date and extending through _____ through 11:59pm (based upon time at the locale of the Property) on November 30, 2016

TIME IS OF THE ESSENCE AS TO THE EXAMINATION PERIOD.

(f) "Broker(s)" shall mean:

_____ N/A _____ ("Listing Agency"),
Acting as: Seller's Agent; Dual Agent ("Listing Agent" - License # _____)
and _____ Colliers International _____ ("Selling Agency"),
Chris Neal ("Selling Agent" - License # 92129)
Acting as: Buyer's Agent; Seller's (Sub) Agent; Dual Agent

(g) "Seller's Notice Address" shall be as follows:
1516 Glenn Valley Drive Matthews, NC 28105

except as same may be changed pursuant to Section 12.

(h) "Buyer's Notice Address" shall be as follows:
Triple M Partners LP 11 Lee Blvd Malvern, PA 19355 Attn: Robert S. Loose, Jr.

except as same may be changed pursuant to Section 12.

(i) If this block is marked, additional terms of this Agreement are set forth on Exhibit B attached hereto and incorporated herein by reference. (Note: Under North Carolina law, real estate agents are not permitted to draft conditions or contingencies to this Agreement.)

Section 2. Sale of Property and Payment of Purchase Price: Seller agrees to sell and Buyer agrees to buy the Property for the Purchase Price.

Section 3. Proration of Expenses and Payment of Costs: Seller and Buyer agree that all property taxes (on a calendar year basis), leases, rents, mortgage payments and utilities or any other assumed liabilities as detailed on attached Exhibit B, if any, shall be prorated as of the date of Closing. Seller shall pay for preparation of a deed and all other documents necessary to perform Seller's obligations under this Agreement, excise tax (revenue stamps), any deferred or rollback taxes, and other conveyance fees or taxes required by law, and the following:

Buyer Initials _____

Seller Initials _____

Page 3 of 8

STANDARD FORM 580-T
Revised 7/2013
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Buyer shall pay recording costs, costs of any title search, title insurance, survey, the cost of any inspections or investigations undertaken by Buyer under this Agreement and the following:

Each party shall pay its own attorney's fees.

Section 4. Deliveries: Seller agrees to use best efforts to deliver to Buyer as soon as reasonably possible after the Contract Date copies of all information relating to the Property in possession of or available to Seller, including but not limited to: title insurance policies (and copies of any documents referenced therein), surveys, soil test reports, environmental surveys or reports, site plans, civil drawings, building plans, maintenance records and copies of all presently effective warranties or service contracts related to the Property. Seller authorizes (1) any attorney presently or previously representing Seller to release and disclose any title insurance policy in such attorney's file to Buyer and both Buyer's and Seller's agents and attorneys; and (2) the Property's title insurer or its agent to release and disclose all materials in the Property's title insurer's (or title insurer's agent's) file to Buyer and both Buyer's and Seller's agents and attorneys. If Buyer does not consummate the Closing for any reason other than Seller default, then Buyer shall return to Seller all materials delivered by Seller to Buyer pursuant to this Section 4 (or Section 7, if applicable), if any, and shall, upon Seller's request, provide to Seller copies of (subject to the ownership and copyright interests of the preparer thereof) any and all studies, reports, surveys and other information relating directly to the Property prepared by or at the request of Buyer, its employees and agents, and shall deliver to Seller, upon the release of the Earnest Money, copies of all of the foregoing without any warranty or representation by Buyer as to the contents, accuracy or correctness thereof.

Section 5. Evidence of Title: Seller agrees to convey fee simple marketable and insurable title to the Property without exception for mechanics' liens, free and clear of all liens, encumbrances and defects of title other than: (a) zoning ordinances affecting the Property, (b) Leases (if applicable) and (c) matters of record existing at the Contract Date that are not objected to by Buyer prior to the end of the Examination Period ("Permitted Exceptions"); provided that Seller shall be required to satisfy, at or prior to Closing, any encumbrances that may be satisfied by the payment of a fixed sum of money, such as deeds of trust, mortgages or statutory liens. Seller shall not enter into or record any instrument that affects the Property (or any personal property listed on Exhibit A) after the Contract Date without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed.

Section 6. Conditions: This Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon fulfillment (or waiver by Buyer, whether explicit or implied) of the following conditions:

(a) **New Loan:** The Buyer must be able to obtain the loan, if any, referenced in Section 1(b)(ii). Buyer must be able to obtain a firm commitment for this loan on or before N/A, effective through the date of Closing. Buyer agrees to use its best efforts to secure such commitment and to advise Seller immediately upon receipt of lender's decision. On or before the above date, Buyer has the right to terminate this Agreement for failure to obtain the loan referenced in Section 1(b)(ii) by delivering to Seller written notice of termination by the above date, *this being of the essence*. If Buyer delivers such notice, this Agreement shall be null and void and Earnest Money shall be refunded to Buyer. If Buyer fails to deliver such notice, then Buyer will be deemed to have waived the loan condition. Notwithstanding the foregoing, after the above date, Seller may request in writing from Buyer a copy of the commitment letter. If Buyer fails to provide Seller a copy of the commitment letter within five (5) days of receipt of Seller's request, then Seller may terminate this Agreement by written notice to Buyer at any time thereafter, provided Seller has not then received a copy of the commitment letter, and Buyer shall receive a return of Earnest Money.

(b) **Qualification for Financing:** If Buyer is to assume any indebtedness in connection with payment of the Purchase Price, Buyer agrees to use its best efforts to qualify for the assumption. Should Buyer fail to qualify, Buyer shall notify Seller in writing immediately upon lender's decision, whereupon this Agreement shall terminate, and Buyer shall receive a return of Earnest Money.

(c) **Title Examination:** After the Contract Date, Buyer shall, at Buyer's expense, cause a title examination to be made of the Property before the end of the Examination Period. In the event that such title examination shall show that Seller's title is not fee simple marketable and insurable, subject only to Permitted Exceptions, then Buyer shall promptly notify Seller in writing of all such title defects and exceptions, in no case later than the end of the Examination Period, and Seller shall have thirty (30) days to cure said noticed defects. If Seller does not cure the defects or objections within thirty (30) days of notice thereof, then Buyer may terminate this Agreement and receive a return of Earnest Money (notwithstanding that the Examination Period may have expired). If Buyer is to purchase title insurance, the insuring company must be licensed to do business in the state in which the Property is located. Title to the Property must be insurable at regular rates, subject only to standard exceptions and Permitted Exceptions.

(d) **Same Condition:** If the Property is not in substantially the same condition at Closing as of the date of the offer, reasonable wear and tear excepted, then the Buyer may (i) terminate this Agreement and receive a return of the Earnest Money or (ii) proceed to Closing whereupon Buyer shall be entitled to receive, in addition to the Property, any of the Seller's insurance proceeds payable on account of the damage or destruction applicable to the Property.

Buyer Initials [Signature] Seller Initials [Signature]

Page 4 of 8

STANDARD FORM 580-T
Revised 7/2013
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(c) **Inspections:** Buyer, its agents or representatives, at Buyer's expense and at reasonable times during normal business hours, shall have the right to enter upon the Property for the purpose of inspecting, examining, performing soil boring and other testing, conducting timber cruises, and surveying the Property. Buyer shall conduct all such on-site inspections, examinations, soil boring and other testing, timber cruises and surveying of the Property in a good and workmanlike manner, shall repair any damage to the Property caused by Buyer's entry and on-site inspections and shall conduct same in a manner that does not unreasonably interfere with Seller's or any tenant's use and enjoyment of the Property. In that respect, Buyer shall make reasonable efforts to undertake on-site inspections outside of the hours any tenant's business is open to the public and shall give prior notice to any tenants of any entry onto any tenant's portion of the Property for the purpose of conducting inspections. Upon Seller's request, Buyer shall provide to Seller evidence of general liability insurance. Buyer shall also have a right to review and inspect all contracts or other agreements affecting or related directly to the Property and shall be entitled to review such books and records of Seller that relate directly to the operation and maintenance of the Property, provided, however, that Buyer shall not disclose any information regarding this Property (or any tenant therein) unless required by law and the same shall be regarded as confidential, to any person, except to his attorneys, accountants, lenders and other professional advisors, in which case Buyer shall obtain their agreement to maintain such confidentiality. Buyer assumes all responsibility for the acts of itself, its agents or representatives in exercising its rights under this Section 6(c) and agrees to indemnify and hold Seller harmless from any damages resulting therefrom. This indemnification obligation of Buyer shall survive the Closing or earlier termination of this Agreement. Buyer shall, at Buyer's expense, promptly repair any damage to the Property caused by Buyer's entry and on-site inspections. Except as provided in Section 6(c) above, Buyer shall have from the Contract Date through the end of the Examination Period to perform the above inspections, examinations and testing. **IF BUYER CHOOSES NOT TO PURCHASE THE PROPERTY, FOR ANY REASON OR NO REASON, AND PROVIDES WRITTEN NOTICE TO SELLER THEREOF PRIOR TO THE EXPIRATION OF THE EXAMINATION PERIOD, THEN THIS AGREEMENT SHALL TERMINATE, AND BUYER SHALL RECEIVE A RETURN OF THE EARNEST MONEY.**

Section 7. Leases (Check one of the following, as applicable):

If this box is checked, Seller affirmatively represents and warrants that there are no Leases (as hereinafter defined) affecting the Property.

If this box is checked, Seller discloses that there are one or more leases affecting the Property (oral or written, recorded or not - "Leases") and the following provisions are hereby made a part of this Agreement.

(a) A list of all Leases shall be set forth on Exhibit B;

(b) Seller shall deliver copies of any Leases to Buyer pursuant to Section 4 as if the Leases were listed therein;

(c) Seller represents and warrants that as of the Contract Date there are no current defaults (or any existing situation which, with the passage of time, or the giving of notice, or both, or at the election of either landlord or tenant could constitute a default) either by Seller, as landlord, or by any tenant under any Lease ("Lease Default"). In the event there is any Lease Default as of the Contract Date, Seller agrees to provide Buyer with a detailed description of the situation in accordance with Section 4. Seller agrees not to commit a Lease Default as Landlord after the Contract Date, and agrees further to notify Buyer immediately in the event a Lease Default arises or is claimed, asserted or threatened to be asserted by either Seller or a tenant under the Lease.

(d) In addition to the conditions provided in Section 6 of this Agreement, this Agreement and the rights and obligations of the parties under this Agreement are hereby made expressly conditioned upon the assignment of Seller's interest in any Lease to Buyer in form and content acceptable to Buyer (with tenant's written consent and acknowledgement, if required under the Lease), and Seller agrees to use its best efforts to effect such assignment. Any assignment required under this Section 7 shall be required to be delivered at or before Closing by Seller in addition to those deliveries required under Section 11 of this Agreement.

(e) Seller agrees to deliver an assignment of any Lease at or before Closing, with any security deposits held by Seller under any Leases to be transferred or credited to Buyer at or before Closing. Seller also agrees to execute and deliver (and work diligently to obtain any tenant signatures necessary for same) any estoppel certificates and subordination, nondisturbance and attornment agreements in such form as Buyer may reasonably request.

Section 8. Environmental: Seller represents and warrants that it has no actual knowledge of the presence or disposal, except as in accordance with applicable law, within the buildings or on the Property of hazardous or toxic waste or substances, which are defined as those substances, materials, and wastes, including, but not limited to, those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR Part 172.101) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302.4) and amendments thereto, or such substances, materials and wastes, which are or become regulated under any applicable local, state or federal law, including, without limitation, any material, waste or substance which is (i) petroleum, (ii) asbestos, (iii) polychlorinated biphenyls, (iv) designated as a Hazardous Substance pursuant to Section 311 of the

Page 5 of 8

Buyer Initials _____

Seller Initials _____

STANDARD FORM 580-T
Revised 7/2013
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Clean Water Act of 1977 (33 U.S.C. §1321) or listed pursuant to Section 307 of the Clean Water Act of 1977 (33 U.S.C. §1317); (v) defined as a hazardous waste pursuant to Section 1004 of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §6903) or (vi) defined as a hazardous substance pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §9601). Seller has no actual knowledge of any contamination of the Property from such substances as may have been disposed of or stored on neighboring tracts.

Section 9. Risk of Loss/Damage/Repair: Until Closing, the risk of loss or damage to the Property, except as otherwise provided herein, shall be borne by Seller. Except as to maintaining the Property in its same condition, Seller shall have no responsibility for the repair of the Property, including any improvements, unless the parties hereto agree in writing.

Section 10. Earnest Money Disbursement: In the event that any of the conditions hereto are not satisfied, or in the event of a breach of this Agreement by Seller, then the Earnest Money shall be returned to Buyer, but such return shall not affect any other remedies available to Buyer for such breach. In the event this offer is accepted and Buyer breaches this Agreement, then the Earnest Money shall be forfeited, but such forfeiture shall not affect any other remedies available to Seller for such breach. **NOTE:** In the event of a dispute between Seller and Buyer over the return or forfeiture of Earnest Money held in escrow by a licensed real estate broker, the broker is required by state law to retain said Earnest Money in its trust or escrow account until it has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction, or alternatively, the party holding the Earnest Money may deposit the disputed monies with the appropriate clerk of court in accordance with the provisions of N.C.G.S. §93A-12.

Section 11. Closing: At or before Closing, Seller shall deliver to Buyer a general warranty deed unless otherwise specified on Exhibit B and other documents customarily executed or delivered by a seller in similar transactions, including without limitation, a bill of sale for any personalty listed on Exhibit A, an owner's affidavit, lien waiver forms (and such other lien related documentation as shall permit the Property to be conveyed free and clear of any claim for mechanics' liens) and a non-foreign status affidavit (pursuant to the Foreign Investment in Real Property Tax Act), and Buyer shall pay to Seller the Purchase Price. At Closing, the Earnest Money shall be applied as part of the Purchase Price. The Closing shall be conducted by Buyer's attorney or handled in such other manner as the parties hereto may mutually agree in writing. Possession shall be delivered at Closing, unless otherwise agreed herein. The Purchase Price and other funds to be disbursed pursuant to this Agreement shall not be disbursed until Closing has taken place.


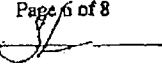
Section 12. Notices: Unless otherwise provided herein, all notices and other communications which may be or are required to be given or made by any party to the other in connection herewith shall be in writing and shall be deemed to have been properly given and received on the date delivered in person or deposited in the United States mail, registered or certified, return receipt requested, to the addressee set-out in Section 1(g) as to Seller and in Section 1(h) as to Buyer, or at such other addresses as specified by written notice delivered in accordance herewith.

Section 13. Entire Agreement: This Agreement constitutes the sole and entire agreement among the parties hereto and no modification of this Agreement shall be binding unless in writing and signed by all parties hereto. The invalidity of one or more provisions of this Agreement shall not affect the validity of any other provisions hereof and this Agreement shall be construed and enforced as if such invalid provisions were not included.

Section 14. Enforceability: This Agreement shall become a contract when signed by both Buyer and Seller and such signing is communicated to both parties; it being expressly agreed that the notice described in Section 12 is not required for effective communication for the purposes of this Section 14. The parties acknowledge and agree that: (i) the initials lines at the bottom of each page of this Agreement are merely evidence of their having reviewed the terms of each page, and (ii) the complete execution of such initials lines shall not be a condition of the effectiveness of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns and their personal representatives.

Section 15. Adverse Information and Compliance with Laws:

(a) **Seller Knowledge:** Seller has no actual knowledge of (i) condemnation(s) affecting or contemplated with respect to the Property; (ii) actions, suits or proceedings pending or threatened against the Property; (iii) changes contemplated in any applicable laws, ordinances or restrictions affecting the Property; or (iv) governmental special assessments, either pending or confirmed, for sidewalk, paving, water, sewer, or other improvements on or adjoining the Property, and no pending or confirmed owners' association special assessments, except as follows (Insert "None" or the identification of any matters relating to (i) through (iv) above, if any):

Buyer Initials  Seller Initials 

Page 6 of 8

STANDARD FORM 580-T
Revised 7/2013
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Note: For purposes of this Agreement, a "confirmed" special assessment is defined as an assessment that has been approved by a governmental agency or an owners' association for the purpose(s) stated, whether or not it is fully payable at time of closing. A "pending" special assessment is defined as an assessment that is under formal consideration by a governing body. Seller shall pay all owners' association assessments and all governmental assessments confirmed as of the date of Closing, if any, and Buyer shall take title subject to all pending assessments disclosed by Seller herein, if any.

Seller represents that the regular owners' association dues, if any, are \$ N/A per _____.

(b) **Compliance:** To Seller's actual knowledge, (i) Seller has complied with all applicable laws, ordinances, regulations, statutes, rules and restrictions pertaining to or affecting the Property; (ii) performance of the Agreement will not result in the breach of, constitute any default under or result in the imposition of any lien or encumbrance upon the Property under any agreement or other instrument to which Seller is a party or by which Seller or the Property is bound; and (iii) there are no legal actions, suits or other legal or administrative proceedings pending or threatened against the Property, and Seller is not aware of any facts which might result in any such action, suit or other proceeding.

Section 16. Survival of Representations and Warranties: All representations, warranties, covenants and agreements made by the parties hereto shall survive the Closing and delivery of the deed. Seller shall, at or within six (6) months after the Closing, and without further consideration, execute, acknowledge and deliver to Buyer such other documents and instruments, and take such other action as Buyer may reasonably request or as may be necessary to more effectively transfer to Buyer the Property described herein in accordance with this Agreement.

Section 17. Applicable Law: This Agreement shall be construed under the laws of the state in which the Property is located. This form has only been approved for use in North Carolina.

Section 18. Assignment: This Agreement is freely assignable unless otherwise expressly provided on Exhibit B.

Section 19. Tax-Deferred Exchange: In the event Buyer or Seller desires to effect a tax-deferred exchange in connection with the conveyance of the Property, Buyer and Seller agree to cooperate in effecting such exchange; provided, however, that the exchanging party shall be responsible for all additional costs associated with such exchange, and provided further, that a non-exchanging party shall not assume any additional liability with respect to such tax-deferred exchange. Seller and Buyer shall execute such additional documents, at no cost to the non-exchanging party, as shall be required to give effect to this provision.

Section 20. Memorandum of Contract: Upon request by either party, the parties hereto shall execute a memorandum of contract in recordable form setting forth such provisions hereof (other than the Purchase Price and other sums due) as either party may wish to incorporate. Such memorandum of contract shall contain a statement that it automatically terminates and the Property is released from any effect thereby as of a specific date to be stated in the memorandum (which specific date shall be no later than the date of Closing). The cost of recording such memorandum of contract shall be borne by the party requesting execution of same.

Section 21. Authority: Each signatory to this Agreement represents and warrants that he or she has full authority to sign this Agreement and such instruments as may be necessary to effectuate any transaction contemplated by this Agreement on behalf of the party for whom he or she signs and that his or her signature binds such party.

Section 22. Brokers: Except as expressly provided herein, Buyer and Seller agree to indemnify and hold each other harmless from any and all claims of brokers, consultants or real estate agents by, through or under the indemnifying party for fees or commissions arising out of the sale of the Property to Buyer. Buyer and Seller represent and warrant to each other that: (i) except as to the Brokers designated under Section 1(f) of this Agreement, they have not employed nor engaged any brokers, consultants or real estate agents to be involved in this transaction and (ii) that the compensation of the Brokers is established by and shall be governed by separate agreements entered into as amongst the Brokers, the Buyer and/or the Seller.

Section 23. Attorneys Fees: If legal proceedings are instituted to enforce any provision of this Agreement, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorneys fees and court costs incurred in connection with the proceeding.

EIPS/SYNTHETIC STUCCO: If the adjacent box is checked, Seller discloses that the Property has been clad previously (either in whole or in part) with an "exterior insulating and finishing system" commonly known as "EIPS" or "synthetic stucco". Seller makes no representations or warranties regarding such system and Buyer is advised to make its own independent determinations with respect to conditions related to or occasioned by the existence of such materials at the Property.

Buyer Initials [Signature] Seller Initials [Signature]

THE NORTH CAROLINA ASSOCIATION OF REALTORS®, INC. AND THE NORTH CAROLINA BAR ASSOCIATION MAKE NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION. IF YOU DO NOT UNDERSTAND THIS FORM OR FEEL THAT IT DOES NOT PROVIDE FOR YOUR LEGAL NEEDS, YOU SHOULD CONSULT A NORTH CAROLINA REAL ESTATE ATTORNEY BEFORE YOU SIGN IT.

BUYER:

Individual

Date: _____

Date: _____

Business Entity

Triple M Partners LP
(Name of Entity)

By: _____

Name: ROBERT S. LANE JR.

Title: PARTNER

Date: 8/30/16

SELLER:

Individual

Suzette Lefebvre
Suzette Lefebvre
Date: 08/30/2016

Date: _____

Business Entity

(Name of Entity)

By: _____

Name: _____

Title: _____

Date: _____

The undersigned hereby acknowledges receipt of the Earnest Money set forth herein and agrees to hold said Earnest Money in accordance with the terms hereof.

Chicago Title Insurance
(Name of Firm)

Date: _____

By: _____

Exhibit A

[Handwritten signature]
8/20/16



EXHIBIT B

LEASE AGREEMENT

SECTION 1 BASICS

- 1.1 Date of Lease:
- 1.2 Landlord:
- 1.3 Address of Landlord: 419 York Southern Road, Fort Mill, SC 29715.
- 1.4 Tenant: P. Kaufmann, Inc.
- 1.5 Address of Tenant: 3 Park Avenue, New York, NY 10016
- 1.6 Leased Premises: Space shown on Exhibit "A" attached hereto consisting of approximately 12,800 square feet, together with access to dock doors for loading and unloading products and access to and use of rest rooms in adjoining space.
- 1.7 Address of Building: 419 York Southern Road, Fort Mill SC 29715.
- 1.8 Such Building being shown on Exhibit "A" attached hereto.
- 1.9 Commencement Date: May 1, 2014.
- 1.10 Lease Term: Two Years. Tenant may cancel this Lease at any time on 60 day's prior written notice.
- 1.11 Rent: \$3,733.00 per month (\$3.50/sq ft/annum). (12,800 sq ft.)
Rent includes taxes and utilities, including, without limitation, water, electric, and gas which shall be provided at no extra charge.
- 1.12 Permitted Use: Warehouse.
- 1.13 Real Estate Brokers: None.
- 1.14 Parking: Parking spaces as needed by Tenant in parking lot at the Building.
- 1.15 Landlord's Work: Leased Premises to be tendered in broom clean condition with warehouse floors cleaned.
- 1.16 Tenant's Work: Put up a demising fence to separate the premises from Landlord's area.

SECTION 2 LEASED PREMISES

Landlord hereby leases to Tenant and Tenant hereby hires from Landlord the Leased Premises as shown and crosshatched on Exhibit "A" attached hereto.

SECTION 3 PAYMENT OF RENT

Tenant covenants to pay Landlord the rent on or before the first day of each month during the Term of this Lease.

SECTION 4 REPAIRS AND CARE

Landlord shall maintain in good condition, order and repair the roof, gutters, exterior, load bearing walls and other structural elements of the Building and any public areas of the Building. Landlord shall maintain in good condition, order and repair the Building systems including the electrical, plumbing and heating system serving the Demised Premises except for those installed by Tenant, provided however, that the forgoing repairs are not caused by the acts or omissions of Tenant, its employees, agents, invitees or contractors. Landlord will cure promptly all violations of record in the Building and the Demised Premises and remove any asbestos or other hazardous material that interferes with Tenant's use. Tenant shall otherwise maintain the Leased Premises in good condition, normal wear and tear excluded.

SECTION 5 TAXES AND ASSESSMENTS

5.1 During the Term Landlord shall pay all real estate taxes.

SECTION 6 UTILITIES

Landlord agrees to pay all charges for gas, water, sewer, electric, telephone (or other communications services), and all other utilities used or supplied upon or in connection with the Leased Premises. Landlord shall cause all utility services supplied to the Leased Premises to be metered in its own name.

SECTION 7 COMPLIANCE WITH LAWS

Landlord shall comply with all laws, rules and requirements of governmental authorities affecting the Leased Premises and its use except those necessitated by reason of any Tenant's construction or Tenant's breach of this Lease.

SECTION 8 ALTERATIONS

Tenant shall not make or permit to be made any alteration or improvement to the Leased Premises without first obtaining the written consent of Landlord, which shall not be unreasonably withheld or delayed.

SECTION 9 INSURANCE

9.1 Landlord and Tenant shall maintain the following insurance.

- (a) All risk rent and fire insurance.
- (b) Comprehensive general liability insurance.

- (e) Insurance against such other hazards as, from time to time, are then commonly insured against for buildings similarly situated.

9.2 Each party waives all right of recovery against the other for any business interruption or any loss, damage or injury of any nature whatsoever to person or property (real or personal) for which such party is insured, or for which there is coverage available by any insurance policy required by this Lease. Each party on behalf of itself and its insurance carriers expressly waives all rights of subrogation that it or such carriers now have or may subsequently acquire against the other, its members, directors, officers, shareholders, partners, trustees, agents, employees, contractors and other representatives.

SECTION 10 FIRE AND OTHER CASUALTY

If all or any part of the Leased Premises shall be substantially damaged or destroyed by fire or other casualty Landlord or Tenant may elect either to terminate the Lease Term. Otherwise, Landlord shall promptly repair any such damage.

SECTION 11 CONDEMNATION

If the Leased Premises shall be taken or condemned for any public purpose to such an extent as to render the Leased Premises untenable, the Lease Term shall, at the option of either party, forthwith terminate as of the date of such taking. Otherwise Landlord shall redemise the Premises and the rent shall be equitably adjusted.

SECTION 12 DEFAULT

12.1 The occurrence of any of the following events shall constitute a default under this Lease:

- (1) Tenant fails to perform or comply with any other obligation of this Lease, and such default continues for a period of 30 days after written notice to Tenant, provided however, that the same cannot be completely cured or remedied within such 30 day period through the exercise of reasonable diligence, so long as Tenant shall have diligently commenced to cure such default during such 30 day period and thereafter with reasonable diligence and in good faith proceed to remedy or cure such default, the time for curing such default shall be extended; or
- (2) Tenant shall become insolvent or commit an act of bankruptcy.

12.2 Landlord, notwithstanding any other remedy it may have under this Lease, at law or in equity, upon the happening of any one or more of the defaults or events aforesaid, may at any time thereafter give written notice to Tenant specifying such event of default and stating that the Lease Term shall expire on the date specified in such notice, and upon the date specified in such notice, the Lease Term, and all rights of Tenant hereunder, shall terminate (but Tenant shall remain liable for all rent previously due plus rent for an additional sixty days from the date of termination).

SECTION 13 QUIET ENJOYMENT

Landlord covenants that so long as Tenant keeps and performs each and every covenant, agreement or condition herein required to be kept and performed by it, Tenant shall peacefully and quietly enjoy the Leased Premises without hindrance or molestation by Landlord, subject to the covenants, agreements and conditions of this Lease.

SECTION 14 SUBLETTING AND ASSIGNMENT

Tenant shall not assign or sublet this lease without first obtaining the written consent of Landlord, which shall not be unreasonably withheld or delayed.

SECTION 15 CONDITION OF PREMISES, LOSS AND ACCEPTANCE

Landlord represents and warrants that the structural portions of the Building and the Building systems such as the electrical and plumbing systems serving the Leased Premises will be delivered in good condition.

SECTION 16 NOTICE

Every notice herein shall not be effective unless given or served in writing either by hand delivery, overnight courier service or by United States registered or certified mail, return receipt requested, directed, if to Tenant to the Leased Premises and to the street address set forth for Tenant hereinabove, and if to Landlord, at the address set forth by Landlord hereinabove, or such other address as either party may designate by notice from time to time. A copy of all notices to Tenant shall be sent via email to Rick DePalo at RDePalo@PKaufmann.com.

SECTION 17 SURRENDER

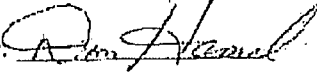
On the last day or sooner termination of the Term, Tenant shall remove all its goods, personal property and trade fixtures, and quit and surrender the Leased Premises in good order and broom clean condition (reasonable wear and tear excepted).

APPLICABLE LAW

This Lease shall be construed, governed and enforced under the laws of the State of South Carolina.

IN WITNESS WHEREOF, on the day and year first above written, Landlord and Tenant agree to this Lease.

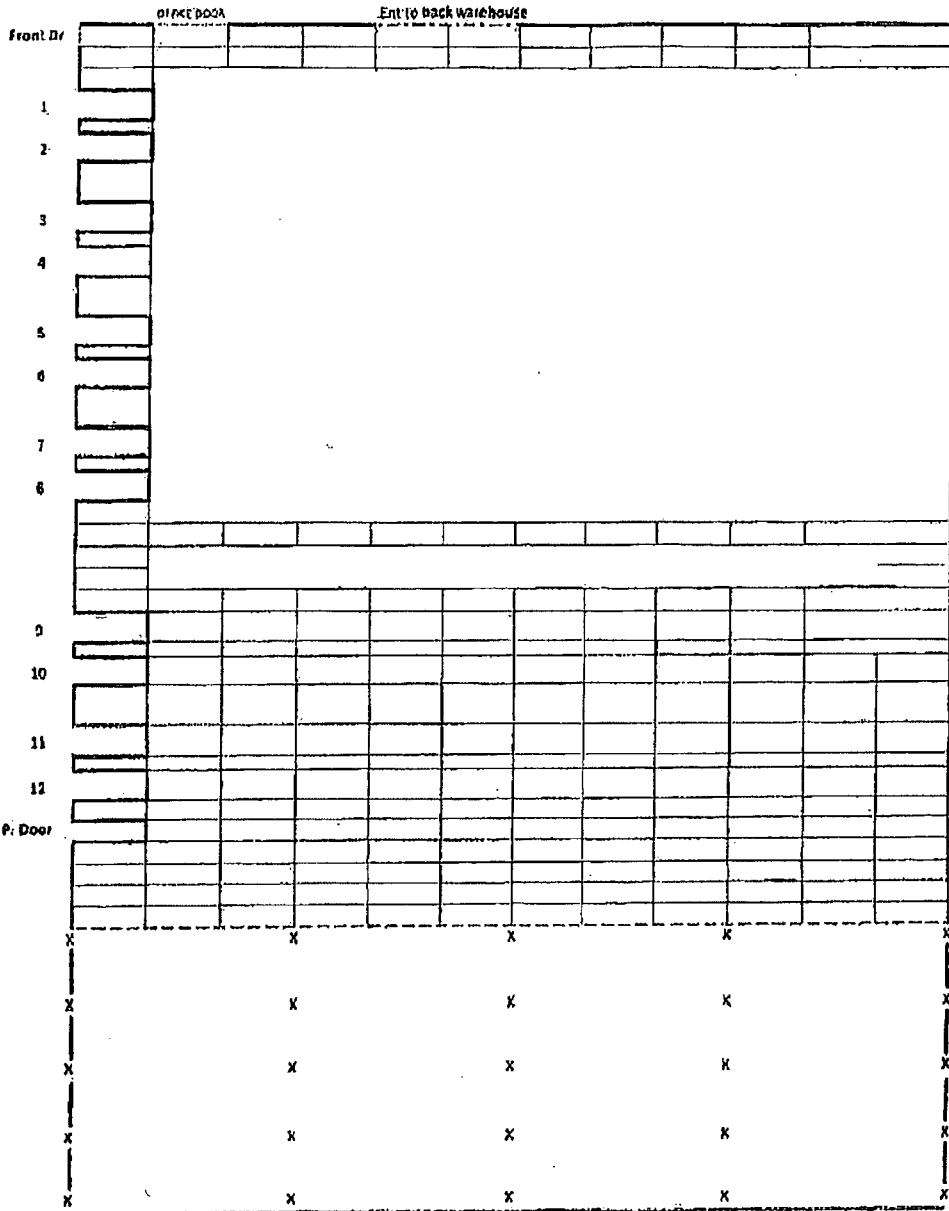
P. Kaufmann, Inc. (Tenant)

By: 

Name: Don Hamel

Title: Distribution Manager

4/24/14



THIRD AMENDMENT OF LEASE

THIRD AMENDMENT OF LEASE (this "Amendment"), dated this 1 day of February, 2015, between _____ ("Landlord"), having an office at 419 York Southern Road, Fort Mill, SC 29715 and P. KAUFMANN, INC., having an office at 3 Park Avenue, New York, New York 10016 ("Tenant").

WHEREAS, Landlord and Tenant entered into a lease, dated April 24, 2014 (the "Lease"), for 12,800 sq. ft. in the building located at 419 York Southern Road, Fort Mill, SC 29715 (the "Building"), for the term ending April 30, 2016; and

WHEREAS, Landlord, on two previous occasions agreed to amend the lease to increase the amount of space in leased to Tenant in the Building to 15,200 sq. ft. effective 8/1/14 and then to 17,600 sq. ft. effective 1/1/15; and

WHEREAS, Tenant now wishes to rent an additional 10,400 sq. ft. in the Building as shown as the hatched area on Schedule A attached hereto (the "Additional Premises") and Landlord is willing to do so, upon the terms and conditions hereinafter provided.

NOW THEREFORE, in consideration of the premises and the mutual covenants hereinafter provided, Landlord and Tenant agree as follows:

1. With respect only to the Additional Premises, the Commencement Date shall be 2/1/15.
2. The Leased Premises is amended to 28,000 square feet (in addition to the Additional Premises the Leased Premises is shown on Exhibit A).
3. Section 1.10, "Lease Term," is deleted in its entirety and replaced with "Lease Termination Date." The Lease Termination Date shall be 06/30/17. Tenant may

return all or some of the Leased Premises to the Landlord at any time upon 60 days prior written notice and the monthly Rent will be adjusted accordingly. In the event Tenant returns all of the Leased Premises to the Landlord the Lease (as amended) will be terminated.

4. Tenant's Work is amended to allow Tenant to install shelving at Tenant's own cost and expense. The shelving shall remain the property of Tenant and Tenant shall remove said shelving upon termination of the Lease and, if the shelving was fastened by Tenant to the floor, repair any damage to the floor.

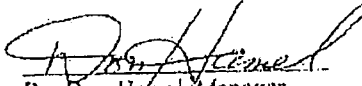
5. Landlord's Work is amended to include repairs to five twisted I-beams.

6. Rent is amended to \$8,166.67 per month (\$3.50 p/s/f per annum)

7. All other terms contained in the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Amendment on the day and year first above written.

P. Kaufmann, Inc. (Tenant)


By: Don Hamel, Manager

TRIPLE M PARTNERS, LP

11 Lee Boulevard, Malvern PA 19355

November 11, 2016

Via Certified Mail with Electronic Mail Copy

Ms. Suzette Lefebvre
1516 Glenn Valley Drive
Matthews NC 28105

Re: Agreement for Purchase and Sale of Real Property between Triple M Partners LP and or assigns and Suzette Lefebvre As Individual and As Trustee, regarding property at 419 York Southern Road, Fort Mill SC 29715

Ms. Lefebvre;

I write to formally request that you as Seller in our Agreement first noted above, comply with the terms of the Agreement and afford us immediate access to the Property so that we can conduct our Due Diligence in accord with the Agreement. Specifically, Section 6 (e) Inspections states "Buyer, its agents or representatives, at Buyer's expense and at reasonable times during normal business hours, shall have the right to enter upon the Property, for the purpose of inspecting, examining, performing soil boring and other testing, conducting timber cruises and surveying the Property." To date, you have not complied with this requirement, which may be considered a material breach of the Agreement.

We have requested access on numerous occasions via electronic mail, and you have rejected our requests. You have chosen to assert additional terms, not considered by the Agreement as contingent to providing us access. That is not contemplated by the Agreement, and we now demand that you make yourself or your representatives available as soon as possible, but not later than normal business hours during the week of November 14th-18th, 2016 to provide our representatives with access to the property so that we may conduct and finalize our inspections.

As the Buyer under the Agreement we have always been, and remain committed to completion of the purchase pursuant to the Agreement. We hereby assert our rights under the Agreement and formally demand that you comply, and provide our team with the access we need to complete our Due Diligence. Please contact me immediately to advise me of when the property will be available for inspection. You may contact me via email to rloosejr@maslo.com or by phone to 267-428-0934.

Respectfully,



Robert S. Loose, Jr.
Partner, Triple M Partners, LP



**Cc: Suzette Lefebvre, 3389 Sheridan St., Suite 303, Hollywood FL 33021
M. Heath Gilbert Jr. Esq., Baucom Claytor, 200 Providence Rd., Suite 106 Charlotte NC 28207**

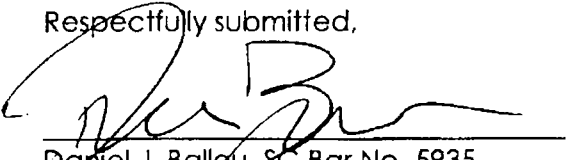
STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 TRIPLE M PARTNERS, LP,)
)
 Plaintiff,)
)
 v.)
)
 SUZETTE LEFEBVRE, as Individual, and)
 as Trustee of the SUZETTE LEFEBVRE)
 TRUST N/A,)
)
 Defendant)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT
 C/A NO.: 2016-CP-46-0011
 LIS PENDENS
 L/P NO.: 2016-LP-46-0011

FILED-RECEIVED
 NOV 16 PM 3:09
 DAVID HANLTON
 C.C.J. # 2855
 YORK COUNTY, SO

TO: THE CLERK OF COURT FOR ENTRY OF RECORD AND TO THE DEFENDANT ABOVE NAMED:

NOTICE IS HEREBY GIVEN that an action as above entitled has been commenced, or will be commenced within twenty (20) days following the filing of this lis pendens, in the Court of Common Pleas for York County, South Carolina, between the above-named Plaintiff and the above-named Defendants, for specific performance of a real estate contract and breach of contract regarding real estate described on Exhibit A, attached hereto.

Respectfully submitted,

 Daniel J. Ballou, SC Bar No. 5935
 Morton & Gettys, LLC
 Attorney for Plaintiff
 P.O. Box 707
 Rock Hill, SC 29731
 T: 803.366.3457
 F: 803.366.4044
 dan.ballou@mortongettys.com

11/16, 2016
 Rock Hill, South Carolina

EXHIBIT A

All that certain piece, parcel or lot of land, lying and being situate in Fort Mill, York County, South Carolina, containing 6.539 acres, more or less, more particularly described and shown on Survey entitled "Sterling Properties of the Carolinas, LLC" prepared by Hucks and Associates, PC dated December 8, 1999, and being described in that certain deed from Ciba-Geigy Corporation to Jerry H. Pettus, Sr., Eleanor P. Pettus and Jerry Pettus, Jr., dated August 19, 1994, recorded August 23, 1994, Book 1078 at Page 306, Office of the clerk of court for York County, south Carolina.

DERIVATION: This is the identical real property conveyed to Vito Antonio Laera deed of Sterling Properties of the Carolinas, LLC dated May 23, 2007 and recorded on July 16, 2007 in Book 9264 at Page 0046 in the records of the clerk of court for York County, SC, and as subsequently purported to be conveyed by Vito Antonio Laera to Suzette LeFebvre and Vito Antonio Laera by deed dated January 7, 2015, and recorded on January 15, 2015 in Book 14617 at Page 0086, in the records of the clerk of Court for York County, SC.

TMS # 728-00-00-030
419 York Southern Road; Fort Mill, SC

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 TRIPLE M PARTNERS, LP,)
)
 Plaintiff,)
)
 v.)
)
 SUZETTE LEFEBVRE, as Individual, and as)
 Trustee of the SUZETTE LEFEBVRE TRUST)
 N/A,)
)
 Defendant

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT
 C/A NO.: 2016-CP-46-03382

FILED
 2016 NOV 22 PM 06
 YORK COUNTY
 CLERK OF COURT

**PLAINTIFF'S MOTION FOR TEMPORARY
 RESTRAINING ORDER, INJUNCTION, AND
 EMERGENCY RELIEF**

The Plaintiff Triple M Partners, LP ("Plaintiff") moves this Honorable Court for a Temporary Restraining Order and to schedule a hearing within ten (10) days on Plaintiff's Motion for a Temporary and/or Permanent Injunction and would allege and show as follows, the following being shown on the Complaint filed herewith:

1. The Plaintiff is a limited partnership formed under the laws of the state of Pennsylvania with its principal place of business located in Malvern, Pennsylvania.
2. Defendant Suzette Lefebvre ("Defendant") is a citizen and resident of a state other than South Carolina.
3. Defendant was personally served with the Summons and Complaint in this matter on Monday, November 21, 2016.
4. As set forth in the Complaint filed herein, on or about August 30, 2016, Plaintiff and Defendant entered into an Agreement for the Purchase and Sale of Real Property ("Agreement") whereby Defendant agreed to sell to Plaintiff the 6.5 acre tract of real property identified as York County Tax Map No. 7280000030, located at 419 York Southern Road, Fort Mill, South Carolina (the "Property"), for a purchase price of \$1,960,000.00. A true

and correct copy of the Agreement is attached to the Complaint as Exhibit A and incorporated herein by reference for all purposes.

5. Under the Agreement, the parties agreed that closing would occur on or before December 15, 2016. The parties further agreed that the Examination Period under the Agreement shall extend from the first date of the Agreement and extend through 11:59 pm on November 30, 2016, and that time is of the essence as to the Examination Period.

6. The Defendant has prevented the Plaintiff from entering the Property for purposes of concluding its due diligence within the Examination Period. In order to protect its rights under the Agreement, Plaintiff requests an order (1) granting it immediate access to the Property until such time as it can complete its due diligence and (2) finding that the Defendant's conduct in preventing access to the Property precludes it from enforcing the time limit for the Examination Period and Closing under the Agreement.

7. The requested relief is reasonably necessary to protect the Plaintiff's legal rights pending a trial on the merits of this action. Plaintiff is currently occupying space for its operations under a lease that will terminate on December 31, 2016, and notified Defendant of this fact at the time of the Agreement. Defendant thereafter unreasonably prohibited Plaintiff from entering the Property in order to obtain negotiating leverage against it under the Agreement, and/or to induce the Plaintiff to abandon or otherwise modify the terms of the Agreement.

8. Plaintiff is simply seeking to protect its rights under the Agreement, is likely to succeed on the merits of its claims, and no adequate remedy at law exists to redress breach of the Agreement by the Defendant.

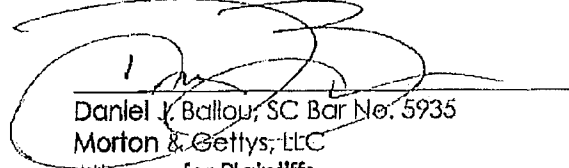
9. Defendants will suffer no harm if an injunction is granted, while Plaintiff will suffer immediate and potentially irreparable harm if an injunction is not granted.

10. This motion is supported by the Complaint filed herewith in support of this motion and the Affidavit of Robert S. Loose, Jr., attached hereto. Plaintiffs tender security in the sum of \$250.00, or such amount as the Court deems appropriate for the payment of such costs and damages Defendants may incur as the result of a temporary restraining order.

WHEREFORE, Plaintiff prays that this Honorable Court grant a temporary restraining order and/or temporary injunction providing the following relief:

- 1) Prohibiting and restraining the Defendant from using, transferring or otherwise disposing of any of the Property described in the Complaint;
- 2) prohibiting Defendant from taking any action inconsistent with the Agreement;
- 3) directing Defendant to allow Plaintiff immediate access to the Property to complete due diligence within a reasonable time, whether before or after November 30, 2016;
- 4) directing the Defendant to convey the Property to the Plaintiff free of any encumbrances within a reasonable time following notice by Plaintiff that it has completed its due diligence and is prepared to proceed to closing.
- 5) To schedule a hearing within ten (10) days, within which time Plaintiff will provide notice of same to the Defendant named herein;
- 6) For such other and further relief as the Court deems just and proper.

Respectfully submitted,



Daniel J. Ballou, SC Bar No. 5935

Morton & Gettys, LLC

Attorney for Plaintiffs

P.O. Box 707

Rock Hill, SC 29731

T: 803.366.3457

F: 803.366.4044

dan.ballou@mortongettys.com

November 22, 2016
Rock Hill, South Carolina

STATE OF SOUTH CAROLINA)
 COUNTY OF YORK)
 TRIPLE M PARTNERS, LP,)
 Plaintiff,)
 v.)
 SUZETTE LEFEBVRE, as Individual, and)
 as Trustee of the SUZETTE LEFEBVRE)
 TRUST N/A,)
 Defendant

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT
 C/A NO.: 2016-CP-46-03382

AFFIDAVIT AND VERIFICATION OF
 COMPLAINT

DAVID HAMILTON
 C.C.P. & GS
 YORK COUNTY, SC

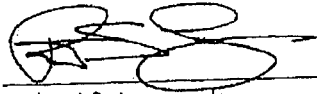
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FILED-RECEIVED

Robert S. Loose, Jr. of Triple M Partners, LP, personally appeared before me and made the following statement under oath:

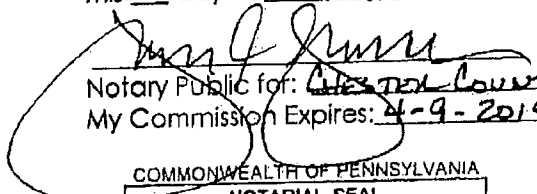
1. I am over the age of eighteen and am competent to testify regarding the matters set forth in this affidavit. I am a partner in Triple M Partners, LP ("Plaintiff"), the Plaintiff in this action and am authorized to make this affidavit. This affidavit is based upon my personal knowledge and belief, or is reflected in records that Plaintiff maintains in the ordinary course of its business.
2. I have reviewed the Complaint filed in this matter, as well as Plaintiff's Motion for Temporary Restraining Order, Injunction and Emergency Relief, and attest that the matters and things alleged therein are true to the best of my knowledge, except those matters and things alleged on information and belief, and as to those, I believe them to be true.

Further affiant sayeth not.


Robert S. Loose, Jr.

SWORN to and subscribed before me

This 22nd day of NOVEMBER, 2016.



Notary Public for: CHESTER COUNTY
My Commission Expires: 4-9-2019

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
James A. Angelucci, Notary Public
East Whiteland Twp., Chester County
My Commission Expires April 9, 2019
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES


CERTIFICATE OF MAILING
2016-CP46-03382

I, Leah Anderson McCraney, Paralegal for Daniel J. Ballou, did mail the following party a copy of the affidavit and verification of complaint via the United States Mail, with proper postage affixed to the following described address:

Suzette Lefebvre
5960 SW 32nd Terrace
Hollywood, Florida 33312


Leah Anderson McCraney
Paralegal for Daniel J. Ballou

11/23, 2016
Rock Hill, South Carolina

FILED-RECEIVED

2016 NOV 28 PM 12:10
DAVID HAMILTON
C.C.P. & GS
SPK COUNTY, SC

AFFIDAVIT OF SERVICE

State of South Carolina

County of York

Common Pleas Court

Case Number: 2016-CP-46-03382



PVU2016009285

Plaintiff:
TRIPLE M PARTNERS LP

vs.

Defendant:
SUZETTE LEFEBVRE, as Individual, and as Trustee of the SUZETTE LEFEBVRE TRUST N/A

For:
Daniel J. Ballou
Morton And Gettys, Llc
P.O. Box 707
Rockhill, SC 29731

Received by Morton And Gettys, Llc on the 17th day of November, 2016 at 12:09 pm to be served on **Trustee of the SUZETTE LEFEBVRE TRUST c/o Suzette Lefebvre, 3389 Sheridan Street, Suite 303, Hollywood, FL 33021.**

I, Leonard J. Gartman, being duly sworn, depose and say that on the **21st day of November, 2016 at 2:42 pm, I:**

SUBSTITUTE served by delivering a true copy of the **Summons and Complaint, Lis Pendes, Civil Cover Sheet and Exhibits** with the date and hour of service endorsed thereon by me, to: **Suzette LeFebvre as Listed Agent on behalf of Trustee of the SUZETTE LEFEBVRE TRUST**, at the address of: **5960 SW 32nd Terrace, Hollywood, FL 33312**, and informed said person of the contents therein, in compliance with state statutes.

I am over the age of 18, have no interest in the above action, and am a Certified Process Server, in good standing, in the judicial circuit in which the process was served.

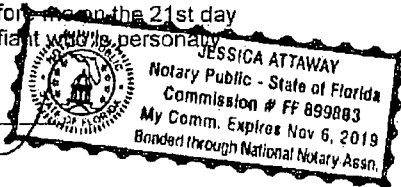
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2016 DEC - 8 PM 2:45
D. J. BALLOU
C. D. BALLOU
YORK COUNTY, SC

Leonard J. Gartman
#1365

Morton And Gettys, Llc
P.O. Box 707
Rockhill, SC 29731
(803) 366-3457

Our Job Serial Number: PVU-2016009285

Subscribed and Sworn to before me on the **21st day**
of November, 2016 by the affiant **with** personally
known to me.



NOTARY PUBLIC

AFFIDAVIT OF SERVICE

State of South Carolina

County of York

Common Pleas Court

Case Number: 2016-CP-46-03382



PVU2016009500

Plaintiff:
TRIPLE M PARTNERS LP

vs.

Defendant:
SUZETTE LEFEBVRE, as Individual, and as Trustee of the SUZETTE LEFEBVRE TRUST N/A

For:
Daniel J. Ballou
Morton And Gettys, Llc
P.O. Box 707
Rockhill, SC 29731

Received by Morton And Gettys, Llc on the 17th day of November, 2016 at 12:09 pm to be served on **Suzette LeFebvre, 5960 SW 32nd Terrace, Hollywood, FL 33312.**

I, Leonard J. Gartman, being duly sworn, depose and say that on the **23rd day of November, 2016 at 2:12 pm, I:**

INDIVIDUALLY/PERSONALLY served Suzette LeFebvre by delivering a true copy of the Notice of GHearing and Motion with the date and hour of service endorsed thereon by me, directly to Suzette LeFebvre at the given address of: 5960 SW 32nd Terrace, Hollywood, FL 33312, and informed said person of the contents therein, in compliance with state statutes.

I am over the age of 18, have no interest in the above action, and am a Certified Process Server, in good standing, in the judicial circuit in which the process was served.

FILED DECEMBER 8 2016
2:12 PM
CLERK OF COURT
YORK COUNTY, SC

Leonard J. Gartman
#1365

Morton And Gettys, Llc
P.O. Box 707
Rockhill, SC 29731
(803) 366-3457

Our Job Serial Number: PVU-2016009500

Subscribed and Sworn to before me on the 26th day of November, 2016 by the affiant who is personally known to me.

NOTARY PUBLIC

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 TRIPLE M PARTNERS, LP,)
)
 Plaintiff,)
)
 v.)
)
 SUZETTE LEFEBVRE, as Individual, and)
 as Trustee of the SUZETTE LEFEBVRE)
 TRUST N/A,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT
 C/A NO.: 2016-CP-46-03382

MOTION FOR DEFAULT JUDGMENT

2016 JAN -9 PM 2:17
 RECEIVED
 CLERK OF COURT
 SIXTEENTH JUDICIAL CIRCUIT
 YORK COUNTY, SOUTH CAROLINA

The Plaintiff hereby moves this Court for an order (1) adjudging the Defendant Suzette Lefebvre, as Individual and as Trustee of the Suzette Lefebvre Trust, N/A in default for want of an appearance, (2) granting the Plaintiff the relief demanded in the Complaint, and (3) based upon the Affidavit and Verification of Complaint of Robert S. Loose, Jr., and the Order granting preliminary and emergency relief filed November 30, 2016, granting a final partial judgment as follows:

- a. Prohibiting Defendant from selling or disposing of the Property during the pendency of this action,
- b. Prohibiting Defendant from taking any action inconsistent with the Agreement;
- c. Requiring Defendant to allow Plaintiff access to the Property to complete due diligence within a reasonable time, irrespective of the November 30, 2016 time frame in the Agreement, and to close

on the sale of the Property within a reasonable time of receiving notice from the Plaintiff of its intent to close;

- d. Requiring Defendant to execute any and all documents necessary to convey the Property to the Plaintiff free of any encumbrances within a reasonable time following notice by Plaintiff that it has completed its due diligence and is prepared to proceed to closing;
- e. Prohibiting Defendant from taking any action that would divest or otherwise impair her sole ability to convey title to the Property at closing.

This motion is based upon the pleadings, Rule 55 of the South Carolina Rules of Civil Procedure, the Affidavit and Verification of Complaint of Robert S. Loose, Jr., and the Order granting preliminary and emergency relief filed November 30, 2016.

Respectfully submitted,



Daniel J. Ballou, SC Bar No. 5935
Morton & Gettys, LLC
Attorney for Plaintiff
P.O. Box 707
Rock Hill, SC 29731
T: 803.366.3457
F: 803.366.4044
dan.ballou@mortongettys.com

Jan 6, 2017
Rock Hill, South Carolina

CERTIFICATE OF MAILING
2016-CP-46-03382

I, Leah Anderson McCraney, Paralegal for Daniel J. Ballou, did mail the following party a copy of the motion and order information coversheet and motion for default judgment via the United States Mail, with proper postage affixed to the following described address:

Suzette Lefebvre
5960 SW 32nd Terrace
Hollywood, Florida 33312


Leah Anderson McCraney
Paralegal for Daniel J. Ballou

1/6, 2017
Rock Hill, South Carolina

RECEIVED
2017 JAN -9 PM 2:17
U.S. MAIL
ROCK HILL, SC

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 Triple M. Partners, L.P.,)
)
 Plaintiff,)
)
 v.)
)
 Suzette LeFebvre, as individual, and as)
 Trustee of the Suzette LeFebvre Trust, N/A)
)
 Defendant.)
)

IN THE COURT OF COMMON PLEAS

Case No: 2016-CP-46-3382

MOTION BY BLANCO GmbH + CO.KG
 TO INTERVENE

FILED-RECEIVED
 2017 FEB 14 PM 1:58
 DAVID HAMILTON
 C.C.P. & GS
 YORK COUNTY, SC

TO: ALL PARTIES TO THE PRESENT LITIGATION:

YOU WILL HEREBY TAKE NOTICE that as soon as they may be heard, the undersigned

Attorneys for BLANCO GmbH + CO.KG will move before this Court for an Order permitting the intervention of BLANCO GmbH + CO.KG as a party to the present litigation. This Motion is based upon Rule 24(a)(2) & (b)(2), South Carolina Rules of Civil Procedure, and the affidavit of counsel filed herewith.

BERNSTEIN & BERNSTEIN, P.A.

Robert A. Bernstein
 Robert A. Bernstein
 5418-B Rivers Avenue
 North Charleston, SC 29406-6129
 (843) 529-1111; (843) 529-0035 (fax)
rbernstein@bernsteinpa.com

ATTORNEYS FOR BLANCO GmbH + CO.KG

February 12, 2017

| | | |
|---|---|---------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | |
| COUNTY OF YORK |) | CASE NO: 2016-CP-46-3382 |
| |) | |
| Triple M. Partners, L.P., |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | ANSWER OF INTERVENING |
| |) | DEFENDANT BLANCO GMBH + CO., KG |
| |) | |
| Suzette LeFebvre, as individual, and as |) | |
| Trustee of the Suzette LeFebvre Trust, N/A, |) | |
| and Blanco GmbH + Co., KG |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

The Intervening Defendant, Blanco GmbH +Co., KG. responds to the allegations of the Complaint as follows:

1. Each and every allegation in the Complaint not hereinafter admitted is denied.
2. The allegations of Paragraph One (1) of the Complaint are admitted.
3. This Defendant admits so much of the allegations of Paragraph Two of the Complaint which alleges that Defendant Suzette LeFebvre, individually and as Trustee of the Suzette LeFebvre Trust, N/A, is a resident of a state other than the State of South Carolina, and that she claims title to the subject property located in York County, South Carolina; this Defendant denies, however, that she holds either legal or equitable title in such property, and therefore denies the remaining allegations of Paragraph Two (2) of the Complaint.
4. The allegations of Paragraphs Three (3) and Four (4) of the Complaint are admitted.
5. Responding to the allegations of Paragraph Five (5) of th Complaint, this Defendant admits that a divorce decree dated October 31, 2014 purported to order the transfer of the subject property to Defendant LeFebvre; this Defendant denies that the court rendering such Order had subject matter jurisdiction to do so, and therefore denies the remaining allegations of Paragraph Five

RFB
#1

(5) of the Complaint.

6. Responding to the allegations of Paragraph Six (6) of the Complaint, this Defendant would show that if this Court decides to enforce the terms of the purported contract, this Defendant admits that Defendant LeFebvre has the authority to transfer title thereto; in the event that this Court rules that the Defendant Lefebvre is not required to comply with the terms of the contract with the Plaintiff, this Defendant denies that Defendant LeFebvre has such authority; This Defendant further admits that the Defendant LeFebvre cannot hold property in trust for herself; the remaining allegations of Paragraph Six (6) of the Complaint are denied.

7. The allegations of Paragraphs Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), Sixteen (16), Seventeen (17), Eighteen (18), Nineteen (19) and Twenty (20) of the Complaint are admitted.

8. Responding to the allegations of Paragraph Twenty-One (21) of the Complaint, this Defendant repeats and realleges the allegations of Paragraphs One (1) through Seven (7) of this Answer as if set forth herein verbatim.

9. The allegations of Paragraphs Twenty-Two (22) and Twenty-Three (23) of the Complaint are admitted.

10. Responding to the allegations of Paragraph Twenty-Four (24) of the Complaint, this Defendant repeats and realleges the allegations of Paragraphs One (1) through Nine (9) of this Answer as if set forth herein verbatim.

11. The allegations of Paragraphs Twenty-Five (25), Twenty-Six (26) and Twenty-Seven (27) of the Complaint are admitted.

12. Responding to the allegations of Paragraph Twenty-Eight (28) of the Complaint, this Defendant repeats and realleges the allegations of Paragraphs One (1) through Eleven (11) of this

Answer as if set forth herein verbatim.

13. The allegations of Paragraphs Twenty-Nine (29), Thirty (30), Thirty-One (31), Thirty-Two (32) and Thirty-Three (33) of the Complaint are admitted.

FOR A SECOND DEFENSE
(Prior Judgment Lien)

14. Further responding to the Complaint and as an additional defense thereto, this Defendant would allege and show unto the Court that the Defendant Blanco GmbH + Co., KG properly filed its judgment against the record owner of the property, Vito Antonio Laera, prior to its purported transfer to Defendant LeFebvre, for which reason this Defendant has a judgment lien against the said property which must be satisfied from the sale proceeds prior to the payment of any sale proceeds to Defendant LeFebvre.

FOR A THIRD DEFENSE
(Invalid Transfer/Lack of Title)

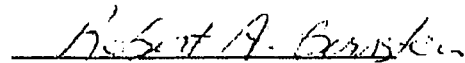
14. Further responding to the allegations of the Complaint, this Defendant would show that if the Defendant LeFebvre is not bound to transfer the property to the Plaintiff, which is denied, then the Defendant LeFebvre lacks free and clear title to the subject property and it was obtained by a fraudulent conveyance and was issued by a court lacking the authority to transfer the said property, for which reason the Defendant LeFebvre may not recover in any sum whatsoever.

WHEREFORE, having fully responded to the allegations of the Complaint, this Defendant prays that this Court take jurisdiction hereof and enter an Order requiring the Defendant LeFebvre to comply with the obligations of the contract with the contract with the Plaintiff, that this court assume control over the funds generated from said transfer, and disburse the sums realized therefrom first to the costs and expenses of the completion of the transaction; next to the payment of the first mortgage encumbering the said property, and that this Court distribute the remainder thereof to

apply toward the payment of the judgment of this Defendant. In the alternative, this Defendant prays that this Court rule that the Defendant LeFebvre lacks title to the said property and that she has no authority to convey title thereto.

#4

BERNSTEIN & BERNSTEIN, P.A.


Robert A. Bernstein
5418-B Rivers Avenue
North Charleston, SC 29406-6129
(843) 529-1111; (843) 529-0035 (fax)
rbernstein@bernsteinpa.com
ATTORNEYS FOR DEFENDANT
BLANCO GmbH + CO, KG

February 12, 2017

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 Triple M. Partners, L.P.,)
)
 Plaintiff,)
)
 v.)
)
 Suzette LeFebvre, as individual, and as)
 Trustee of the Suzette LeFebvre Trust, N/A)
)
 Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 CASE NO: 2016-CP-46-3382

AFFIDAVIT

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 2017 FEB 14 PM 1:58
 DAVID HAMILTON
 C.C.P. & GS
 YORK COUNTY, SC

Personally appeared before me, Robert A. Bernstein, who being first duly sworn, deposes and says:

1. I am the attorney for BLANCO GmbH + CO.KG in a judgment filed in the York County Court of Common Pleas on October 3, 2014, entitled "BLANCO GmbH + CO.KG v. Vito Antonio Laera, VLANCO INDUSTRIES, LLC, G-Tech-1, Inc., Robert Johnson, Joseph Napolitano and Vilanco Industries, Inc." bearing Case No. 2014-CP-46-3272, under which a judgment was granted to the Plaintiff and against Defendant Vito Antonio Laera in the amount of \$833,634.31.

BAG #1

2. I am the attorney for BLANCO GmbH + CO.KG in a judgment filed in the York County Court of Common Pleas on May 6, 2016, entitled "BLANCO GmbH + CO.KG v. VLANCO INDUSTRIES, LLC, G-Tech-1, Inc. and Vito Antonio Laera", bearing Case No. 2016-CP-46-1403, under which a judgment was granted to the Plaintiff and against Defendant Vito Antonio Laera in the amount of \$753,318.02.

3. I am the attorney for BLANCO GmbH + CO.KG in a pending lawsuit in the United States District Court for the District of South Carolina, Rock Hill Division, entitled "BLANCO GmbH + CO.KG v. Vito Antonio Laera and Suzette LeFebvre", bearing Case No. 0:15-cv-2199-TLW, wherein the Complaint seeks a declaratory judgment that the transfers of title of the subject property from Vito Antonio Laera are fraudulent Transfers, are void and should be disregarded, and seeking to impose liabilities for the fraudulent transfers and seeking to foreclose the judgment liens against the property which is the subject of the present action; a true and correct copy of the Complaint in that action is attached hereto as Exhibit "A" to this Affidavit.

4. Discovery conducted in the federal court action has presented significant issues which BLANCO GmbH + CO.KG contends establishes that the Defendant was not married to Vito Antonio Laera and thus that there was no consideration for the transfer of the property, and further that even if married, that the South Carolina Family Court lacked jurisdiction to enter an order apportioning the alleged martial property of such marriage.

5. The Plaintiff herein is and has been aware of the assertions being presented in federal court, as it made reference to that proceeding in seeking to impose a preliminary injunction in the present matter.

6. It is in the interests of both the Plaintiff and Defendant LeFebvre to have this court rule that Defendant LeFebvre is properly the owner of the property at issue in this action, as it would permit the sale of the property despite the serious objections to title which have been raised by BLANCO GmbH + CO.KG.


7. BLANCO GmbH + CO.KG claims a judgment lien against the property which is the subject of this action which is superior to the alleged title of both the Defendant and her transferor, and under the current status of the present litigation, the disposition of the action may as a practical matter impair or impede the ability of BLANCO GmbH + CO.KG to protect its interest in the property.

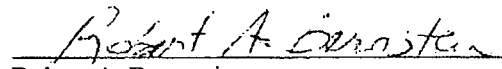
RAB
#2

FURTHER DEPONENT SAYETH NOT!

Sworn and Subscribed before me }
this 13th day of February, 2017 }

BERNSTEIN & BERNSTEIN, P.A.


Notary Public for the State of South Carolina }
My Commission Expires: 08.26.18 }


Robert A. Bernstein
5418-B Rivers Avenue
North Charleston, SC 29406-6129
(843) 529-1111; (843) 529-0035 (fax)
rbernstein@bernsteinpa.com

| | | |
|--|---|-------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | |
| COUNTY OF YORK |) | CASE NO: 2016-CP-46-3382 |
| |) | |
| Triple M. Partners, L.P., |) | |
| |) | |
| Plaintiff, |) | MEMORANDUM IN SUPPORT OF |
| |) | MOTION BY BLANCO GmbH + CO.KG |
| v. |) | TO INTERVENE |
| |) | |
| Suzette LeFebvre, as individual, and as |) | |
| Trustee of the Suzette LeFebvre Trust, N/A |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

FILED-RECEIVED
 2017 FEB 14 PM 1:38
 DAVID SPALDING
 C.C.C.P. & G.S.C.
 YORK COUNTY, S.C.

The undersigned attorneys for BLANCO GmbH + CO.KG submit the present Memorandum in Support of its Motion to Intervene in this action. Pursuant to Rule 24(a)(2), SCRCPC, the movant has the right to intervene in this action.

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

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#1

The Complaint in this action seeks to have a contract for the sale of certain property located in York County, South Carolina enforced. That property is alleged to have been transferred to the Defendant pursuant to an Order of the Family Court of South Carolina entered on October 31, 2014 (Complaint, ¶5). Unstated in the Complaint, however, is that BLANCO GmbH + CO.KG filed a foreign judgment against the transferor of the property, Vito Antonio Laera, with the York County Clerk of Court on October 3, 2014, 28 days prior to the entry of the Order by the Family Court, and 104 days prior to the execution of a deed by the Transferor to Ms. LeFebvre. Blanco GmbH + Co. thus claims an interest in the real estate by reason of its judgment lien. Further, on May 29, 2015,

BLANCO GmbH + CO.KG filed an action in the United States District Court for the District of South Carolina asserting that the asserted transfer from Vito Antonio Laera to the Defendant was void as a fraudulent transfer, and that its judgment is a prior lien as against any claims by the Defendant. The actual deed from the transferor, Vito Antonio Laera, was not executed until January 2015, and transferred only a half interest in the subject property to Defendant. The second half interest of Mr. Laera was not transferred to the Defendant until 2016.

The proposed intervenor clearly claims an interest in the property adverse to the claims of the Plaintiff and the current Defendant. The Plaintiff and Defendant assert that the Defendant is the owner of the property, and that the Defendant has authority to transfer the property. Furthermore, in the event that Ms. LeFebvre is the proper owner of the property, the proposed intervenor has an interest in the distribution of the proceeds to it as prior judgment lien holder against the property.

12/13
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Because both the Plaintiff and Defendant claim, for their benefit, that the Defendant has title to the property at issue, the interests of BLANCO GmbH + CO.KG are not properly protected by the current parties; in fact, the interest of BLANCO GmbH + CO.KG is antagonistic to the interests of the current parties. BLANCO GmbH + CO.KG must therefore seek intervention to protect its interests in and to the subject property. For the foregoing reasons, BLANCO GmbH + CO.KG seeks to intervene in the current action and file the attached proposed Answer, Counterclaim and Cross Claim to the Complaint.

BERNSTEIN & BERNSTEIN, P.A.



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rbernstein@bernsteinpa.com

ATTORNEYS FOR BLANCO GmbH + CO.KG

February 12, 2017

CERTIFIED TRUE COPY

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK

CASE NO: 2016-CP-46-3382

Triple M. Partners, L.P., YORK COUNTY

Plaintiff,

v.

Suzette LeFebvre, as individual, and as
Trustee of the Suzette LeFebvre Trust, N/A,
and Blanco GmbH + Co., KG

Defendants.

ANSWER OF INTERVENING
DEFENDANT BLANCO GMBH + CO., KG

The Intevening Defendant, Blanco GmbH +Co., KG. responds to the allegations of the
Complaint as follows:

1. Each and every allegation in the Complaint not hereinafter admitted is denied.
2. The allegations of Paragraph One (1) of the Complaint are admitted.
3. This Defendant admits so much of the allegations of Paragraph Two of the Complaint which alleges that Defendant Suzette LeFebvre, individually and as Trustee of the Suzette LeFebvre Trust, N/A, is a resident of a state other than the State of South Carolina, and that she claims title to the subject property located in York County, South Carolina; this Defendant denies, however, that she holds either legal or equitable title in such property, and therefore denies the remaining allegations of Paragraph Two (2) of the Complaint.
4. The allegations of Paragraphs Three (3) and Four (4) of the Complaint are admitted.
5. Responding to the allegations of Paragraph Five (5) of th Complaint, this Defendant admits that a divorce decree dated October 31, 2014 purported to order the transfer of the subject property to Defendant LeFebvre; this Defendant denies that the court rendering such Order had subject matter jurisdiction to do so, and therefore denies the remaining allegations of Paragraph Five

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(5) of the Complaint.

6. Responding to the allegations of Paragraph Six (6) of the Complaint, this Defendant would show that if this Court decides to enforce the terms of the purported contract, this Defendant admits that Defendant LeFebvre has the authority to transfer title thereto; in the event that this Court rules that the Defendant Lefebvre is not required to comply with the terms of the contract with the Plaintiff, this Defendant denies that Defendant LeFebvre has such authority; This Defendant further admits that the Defendant LeFebvre cannot hold property in trust for herself; the remaining allegations of Paragraph Six (6) of the Complaint are denied.

7. The allegations of Paragraphs Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), Sixteen (16), Seventeen (17), Eighteen (18), Nineteen (19) and Twenty (20) of the Complaint are admitted.

8. Responding to the allegations of Paragraph Twenty-One (21) of the Complaint, this Defendant repeats and realleges the allegations of Paragraphs One (1) through Seven (7) of this Answer as if set forth herein verbatim.

9. The allegations of Paragraphs Twenty-Two (22) and Twenty-Three (23) of the Complaint are admitted.

10. Responding to the allegations of Paragraph Twenty-Four (24) of the Complaint, this Defendant repeats and realleges the allegations of Paragraphs One (1) through Nine (9) of this Answer as if set forth herein verbatim.

11. The allegations of Paragraphs Twenty-Five (25), Twenty-Six (26) and Twenty-Seven (27) of the Complaint are admitted.

12. Responding to the allegations of Paragraph Twenty-Eight (28) of the Complaint, this Defendant repeats and realleges the allegations of Paragraphs One (1) through Eleven (11) of this

Answer as if set forth herein verbatim.

13. The allegations of Paragraphs Twenty-Nine (29), Thirty (30), Thirty-One (31), Thirty-Two (32) and Thirty-Three (33) of the Complaint are admitted.

FOR A SECOND DEFENSE
(Prior Judgment Lien)

14. Further responding to the Complaint and as an additional defense thereto, this Defendant would allege and show unto the Court that the Defendant Blanco GmbH + Co., KG properly filed its judgment against the record owner of the property, Vito Antonio Laera, prior to its purported transfer to Defendant LeFebvre, for which reason this Defendant has a judgment lien against the said property which must be satisfied from the sale proceeds prior to the payment of any sale proceeds to Defendant LeFebvre.

FOR A THIRD DEFENSE
(Invalid Transfer/Lack of Title)

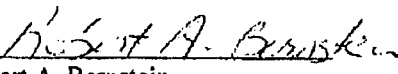
14. Further responding to the allegations of the Complaint, this Defendant would show that if the Defendant LeFebvre is not bound to transfer the property to the Plaintiff, which is denied, then the Defendant LeFebvre lacks free and clear title to the subject property and it was obtained by a fraudulent conveyance and was issued by a court lacking the authority to transfer the said property, for which reason the Defendant LeFebvre may not recover in any sum whatsoever.

WHEREFORE, having fully responded to the allegations of the Complaint, this Defendant prays that this Court take jurisdiction hereof and enter an Order requiring the Defendant LeFebvre to comply with the obligations of the contract with the contract with the Plaintiff, that this court assume control over the funds generated from said transfer, and disburse the sums realized therefrom first to the costs and expenses of the completion of the transaction; next to the payment of the first mortgage encumbering the said property, and that this Court distribute the remainder thereof to

apply toward the payment of the judgment of this Defendant. In the alternative, this Defendant prays that this Court rule that the Defendant LeFebvre lacks title to the said property and that she has no authority to convey title thereto.

#4

BERNSTEIN & BERNSTEIN, P.A.


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ATTORNEYS FOR DEFENDANT
BLANCO GmbH + CO, KG

February 12, 2017

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 Triple M. Partners, L.P.,)
)
 Plaintiff,)
)
 v.)
)
 Suzette LeFebvre, as individual, and as)
 Trustee of the Suzette LeFebvre Trust, N/A)
 and Blanco GmbH+CO.KG,)
)
 Defendants.)
)

IN THE COURT OF COMMON PLEAS

Case No: 2016-CP-46-3382

MOTION BY BLANCO GmbH + CO.KG
 FOR MODIFICATION OF ORDER OF
 DEFAULT JUDGMENT AND
 FOR EXPEDITED HEARING

2017 MAR 15 PM 12:49
 RECEIVED
 DAVIDSON MILLTON
 CLERK OF COURT
 YORK COUNTY, SC

TO: ALL PARTIES TO THE PRESENT LITIGATION:

YOU WILL HEREBY TAKE NOTICE that as soon as they may be heard, the undersigned Attorneys for BLANCO GmbH + CO.KG will move before this Court for an Order modifying the Order of Default Judgment signed on February 23, 2017, and entered on February 24, 2017. This Motion is based upon the prior Motion for Default Judgment filed by the Plaintiff, the Order filed by the Court, and the necessity of additional language and action by the Court to carry into effect the prior Order entered by the Court. This Motion is based on Rule 60, SCRPC, and the Memorandum of Law submitted herewith.

BERNSTEIN & BERNSTEIN, P.A.

Robert A. Bernstein
 Robert A. Bernstein S.C. Bar No. 0677
 5418-B Rivers Avenue
 North Charleston, SC 29406-6129
 (843) 529-1111; (843) 529-0035 (fax)
 rbernstein@bernsteinpa.com

ATTORNEYS FOR BLANCO GmbH + CO.KG

March 15, 2017

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 Triple M. Partners, L.P.,)
)
 Plaintiff,)
)
 v.)
)
 Suzette LeFebvre, as individual, and as)
 Trustee of the Suzette LeFebvre Trust, N/A)
 and Blanco GmbH+CO.KG,)
)
 Defendants.)
)

IN THE COURT OF COMMON PLEAS
 CASE NO: 2016-CP-46-3382

MEMORANDUM IN SUPPORT OF
 MOTION BY BLANCO GmbH + CO.KG
 FOR MODIFICATION OF ORDER OF
 DEFAULT JUDGMENT AND
 FOR EXPEDITED HEARING

FILED-RECEIVED
 2017 MAR 15 PM 12:47
 DAVID HANSEN
 C.D.C.P. CLERK
 YORK COUNTY, SC

The undersigned attorney for BLANCO GmbH + CO.KG submits the present Memorandum in Support of its Motion for Modification of the prior Order for Default Judgment.

The Complaint in this action seeks to have a contract for the sale of certain property located in York County, South Carolina enforced. That property is alleged to have been transferred to the Defendant pursuant to an Order of the Family Court of South Carolina entered on October 31, 2014 (Complaint, ¶5). Prior to the Family Court Order, Blanco GmbH+Co.KG had filed with the York County Clerk of Court a judgment against the transferor of the property, Vito Antonio Laera. Blanco GmbH + Co. thus claims a judgment lien against the real estate pursuant to S.C. Code Ann. §15-35-810 et seq. Thereafter, on January 2015, Vito Laera executed a deed transferring half of the subject property to Defendant LeFebvre. On May 6, 2016, Blanco GmbH+Co.KG filed a second judgment against Mr. Laera with the York County Clerk of Court. On May 16, 2016, Mr. Laera executed and recorded a deed transferring the other half of his interest in the subject property to Defendant LeFebvre. Blanco GmbH+Co.KG therefore claims two judgment liens against the property which is the subject of this action.

On August 30, 2016, the Plaintiff entered into the contract with Ms. LeFebvre which is the subject of this action. The Defendant defaulted in this Specific Performance action, and on February 16, 2017, this Court held a hearing upon the Plaintiff's Motion for Summary Judgment. The Court granted the Plaintiff's Motion for Summary Judgment, ordering that Defendant LeFebvre "duly execute and deliver to Plaintiff's counsel a general warranty deed conveying title to the Property to the Plaintiff . . . and any other documents necessary to deliver and convey clear and marketable title (Closing Documents) to Plaintiff, at a closing to be held within fourteen days of the date of this Order, or at such time as established by the Plaintiff."

At the time of the Summary Judgment hearing, Blanco GmbH+CO.KG's Motion to Intervene had not been heard; it has since been granted. As noted previously, Blanco GmbH+CO.KG holds judgment liens against the Property which is the subject of this action. Blanco is willing to permit the transaction to go forward upon the condition that the judgment liens entered against the Property transfer to the proceeds of the sale, such that to the extent that the Blanco judgment liens had priority over the property interest of Defendant LeFebvre, the same lien would exist in the same priority against the proceeds of the sale. Absent this lien against the proceeds, Blanco GmbH+CO.KG is unwilling to release the judgment liens against the Property, and the Defendant cannot comply with the Court's Order "to deliver and convey clear and marketable title to the Plaintiff."

This specific performance action is an action in equity, and this Court has wide discretion to fashion a remedy which meets the maxims of equity. Banco GmbH+CO.KG has a legal lien against the Property which this Court has Order to be transferred, and there is no basis for denying Blanco its interest in the property when it was a stranger to the contract which is the subject of this action. The Plaintiff is in agreement with the proposal to have the judgment lien transfer to the

proceeds of the transaction, as it keeps the Defendants in the same priority position each had against the Property, and it permits the transaction to proceed.

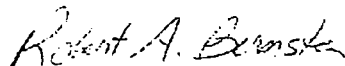
Counsel for Blanco has searched and found no authority for the proposition that a judgment lien transfers to proceeds of a sale in the event the property burdened by the lien is sold. There is plenty of authority, however, establishing that the existence of the judgment lien, properly recorded, follows the property and remains upon the property notwithstanding the transfer by the transferor, and the property remains burdened by the judgment notwithstanding the transfer. The only way that the Defendant can therefore transfer clear and marketable title to the Property is if she signs a document agreeing that the liens against the Property transfer to the proceeds from the sale of the Property, or this Court orders that the lien so transfers. The Plaintiff has indicated its consent to an Order permitting the attachment of the lien to the proceeds of the sale of the Property; Defendant LeFebvre has not made an appearance in this action and is in default.

The Plaintiff has set a closing date of March 16, 2017. The Defendant LeFebvre cannot convey clear title to the Plaintiff in that closing unless this Court enters an Order that the judgment liens existing against the Property transfers to the proceeds from the ordered sale of the property. Although this Defendant believes that the Court intended this result in entering the Order of Default Judgment, the Order of Default Judgment does not contain such a provision. Defendant Blanco does not seek a ruling at this point regarding the priority of its judgment vis-a-vis Defendant LeFebvre to the Property and, therefore, to the proceeds; it is merely seeking an Order that, to the extent Blanco has a lien against the Property, that same priority lien applies to the proceeds from the sale of the Property.

Rule 60(a), SCRCP, provides that "Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any

time of its own initiative or on the motion of any party and after such notice, if any, as the court orders." In light of the fact that this Court intended that the judgment lien of Blanco GmbH+CO.KG be transferred to the proceeds of the sale of the Property, Blanco believes that this Court inadvertently omitted this provision in the Default Judgment Order, and can on its own accord modify the Order to provide for the placement of this lien. In the alternative; Blanco GmbH+CO.KG respectfully requests that this Court hold an expedited hearing on this Motion so that the closing may occur as scheduled.

BERNSTEIN & BERNSTEIN, P.A.



Robert A. Bernstein S.C. Bar No. 677

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rbernstein@bernsteinpa.com

ATTORNEYS FOR BLANCO GmbH + CO.KG

March 15, 2017

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
C/A NO.: 2016-CP-46-03382

TRIPLE M PARTNERS, LP,

Plaintiff,

v.

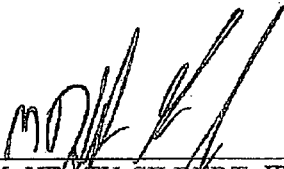
SUZETTE LEFEBVRE, as Individual,
and as Trustee of the SUZETTE
LEFEBVRE TRUST N/A, BLANCO
GmbH + CO.KG

Defendant.

NOTICE OF APPEARANCE

NOTICE IS HEREBY GIVEN that M. Heath Gilbert, Jr. of the firm Baucom, Claytor, Benton, Morgan & Wood, P.A., 200 Providence Road, Suite 106, Charlotte, North Carolina 28207, hereby appears as counsel for Suzette Lefebvre, as Individual, and as Trustee of the Suzette Lefebvre Trust N/A, Blanco GmbH + CO.KG in the above-captioned matter. Please serve M. Heath Gilbert, Jr. on all future pleadings, notices and any other documents filed or served in this matter at the address provided below.

This 6th day of April, 2017.


M. HEATH GILBERT, JR.

State Bar No. 72198

Attorney for Defendant.

Baucom, Claytor, Benton, Morgan & Wood, P.A.

P.O. Box 35246

Charlotte, NC 28235

704-376-6527 (P)

704-376-6207 (F)

FILED-RECEIVED
2017 APR -7 AM 11:46
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

CERTIFICATE OF SERVICE

Certified that on the 6th day of April, 2017, service of the foregoing pleading was made upon counsel of record by placing a copy thereof in the United States Mail, sufficient postage prepaid and properly addressed and via e-mail as follows:

Daniel J. Ballou
Morton & Gettys, LLC
331 E. Main Street, Suite 300
Rock Hill, SC 29731
dan.ballou@mortongettys.com

Robert A. Bernstein
Bernstein & Bernstein, P.A.
P.O. Box 20519
Charleston, SC 29413
rbernstein@bernsteinpa.com



M. Heath Gilbert, Jr., Esq.
State Bar No. 72198
Attorney for Defendant Suzette Lefebvre
Baucom, Claytor, Benton, Morgan & Wood, P.A.
P.O. Box 35246
Charlotte, NC 28235
704-376-6527 (P)
704-376-6207 (F)

FILED-RECEIVED
2017 APR -7 AM 11:46
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF YORK

) IN THE COURT OF COMMON PLEAS
) SIXTEENTH JUDICIAL CIRCUIT
) C/A NO.: 2016-CP-46-03382

TRIPLE M PARTNERS, LP,

Plaintiff,

v.

SUZETTE LEFEBVRE, as Individual, and
as Trustee of the SUZETTE LEFEBVRE
TRUST N/A, BLANCO GmbH + CO.KG

Defendants

MOTION TO AMEND
OR ALTER JUDGMENT

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2017 APR 13 PM 2:22

NOW COMES the Defendant, Suzette Lefebvre ("Lefebvre"), by and through undersigned counsel, and pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure moves this Court to Alter or Amend its Supplemental Order on Default Judgment entered in this matter on April 3, 2017 ("Supplemental Order").

Defendant Lefebvre's motion is based upon the fact that the Supplemental Order ("Supplemental Order") orders that upon receipt of net proceeds from counsel for the Plaintiff, the Clerk of Court is authorized and directed to distribute the received proceeds from the sale "to counsel for BLANCO GmbH + CO. KG ("Blanco") up to and including the amount of the October 3, 2014 judgment together with accumulated interest, against Vito Antonia Laera".

On March 15, 2017, Blanco filed a Motion for Modification of the Default Judgment ("Blanco's Motion"). In that Blanco's Motion, Blanco all that Blanco specifically requested was that a lien on the proceeds have the same effect as the lien on property and that the judgment lien transfer to the proceeds. In particular, in their Memorandum of Law, Blanco acknowledged the rights that which LeFebvre claims on the property and thus the proceeds and did not ask the Court for a determination of those rights at the time of their motion for the Supplemental Order. Blanco in its motion specifically argued:

Defendant Blanco does not seek a ruling at this point regarding the priority of its judgment vis-a-vis Defendant Lefebvre to the Property and, therefore, to the proceeds; it is merely seeking an Order that, to the extent Blanco has a lien against the Property, that same priority lien applies to the proceeds from the sale of the Property.

In Blanco's Motion, Blanco did not seek and did not request disbursement of the proceeds to itself. Blanco merely asked the Court to have the proceeds held by the Clerk of Court pending a determination of rights to proceeds between Blanco and LeFebvre.

In the Supplemental Order, however, the Court awarded Blanco a disbursement of the proceeds without any consideration of the rights to LeFebvre to the proceeds. In particular LeFebvre was not provided any notice that the hearing on March 22, 2017 would address or determine LeFebvre's rights to the proceeds or determine whether or not she had a priority interest in the proceeds. LeFebvre maintains and contends that such rights have not been adjudicated by any judicial tribunal.

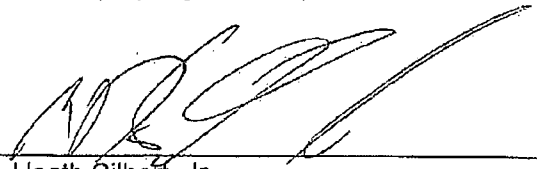
Defendant maintains that despite the fact that she was not on the title to the property, she retained a Spousal Equitable Interest in the property pursuant to S.C. Code of Laws § 20-3-610 and that due to the fact that her Complaint for Divorce against Vito Laera was filed on March 3, 2014, almost eight (8) months before BLANCO's judgment, Defendant has a priority interest in the real property and a priority interest in her portion of the proceeds under the Spousal Equitable Interest.

Additionally and concurrent to this matter, there are pending motions for Summary Judgment in case filed the United State District Court for the District of South Carolina, entitled BLANCO + CO.KG v. Vito Antonio Laera and Suzette LeFebvre, File Number 15-2199-TLW. In this Federal Court matter, BLANCO has requested the Court to determine the marital status of the Defendants Vito Laera and LeFebvre and their respective rights in the real estate ("property") and therefore the proceeds of the same that which is the subject of both this matter and the matter in Federal Court. A copy of Blanco's filed motion for Summary Judgement and Memorandum of Law are attached and incorporated by reference herein as Exhibit A. The Federal Court has not made a ruling as of yet.

Defendant requests that this Court alter or amend the Supplemental Order to require the Clerk of Court to retain the funds pending a determination either by the Federal Court or pending a determination by the Court of Common Pleas of the State of South Carolina as to Defendant's rights to the property and the proceeds.

WHEREFORE, Defendant prays unto the Court for an order altering or amending the Supplemental Order to require the Clerk of Court to retain the funds pending a determination either by the Federal Court or pending a determination by the Court of Common Pleas of the State of South Carolina as to Defendant's rights to the property and the proceeds.

This the 6th day of April, 2017.



M. Heath Gilbert, Jr.
State Bar No. 72198
Baucom, Claytor, Benton, Morgan & Wood, P.A.
P.O. Box 35246
Charlotte, NC 28235
(704) 376-6527
Attorney for Defendant Suzette LeFebvre

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

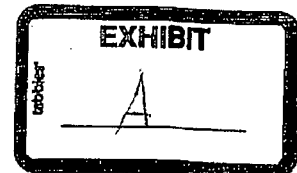
| | | |
|--|---|---------------------------------|
| BLANCO GmbH + CO.KG, |) | |
| |) | C.A. No: 0:15-cv-2199-TLW |
| Plaintiff, |) | |
| |) | |
| v. |) | NOTICE OF MOTION AND MOTION FOR |
| |) | SUMMARY JUDGMENT |
| Vito Antonio Laera and Suzette LeFebvre, |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

The undersigned attorney for Plaintiff hereby moves for the Summary Judgment, pursuant to Rule 56, Federal Rules of Civil Procedure, on the grounds that there are no materials issues of fact, and that the Plaintiff is entitled to judgment as a matter of law. In support hereof, the Plaintiff asserts that a) The Plaintiff properly filed its judgment against Defendant Vito Antonio Laera prior to the attempted transfer of the underlying property to Defendant LeFebvre, and is therefore entitled to maintain a priority lien against the subject property; and b) the Defendants were never married, either under the statutory or common law, and thus the stated consideration for the transfer of the subject property - in consideration of divorce - cannot be sufficient consideration to support the transfer of the property; and c) the South Carolina Family Court lacked jurisdiction to render a decree of divorce and a property settlement, for which reason the purported transfer of property pursuant to the Family Court Order was void. This Motion is based upon Rule 56, Federal Rules of Civil Procedure, upon deposition transcripts to be supplied to the Court, upon responses to discovery requests, and upon the Memorandum of Law filed in support hereof, and the exhibits attached thereto.

BERNSTEIN & BERNSTEIN, P.A.

s/Robert A. Bernstein
 Robert A. Bernstein Fed. I.D. #1311
 5418-B Rivers Avenue
 North Charleston, SC 29406-6129
 (843) 529-1111; (843) 529-0035 (Fax)
 ATTORNEYS FOR THE PLAINTIFF

November 30, 2016



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

| | | |
|--|---|-----------------------------|
| BLANCO GmbH + CO.KG, |) | |
| |) | C.A. No: 0:15-cv-2199-TLW |
| Plaintiff, |) | |
| |) | MEMORANDUM IN SUPPORT OF |
| v. |) | MOTION FOR SUMMARY JUDGMENT |
| |) | |
| Vito Antonio Laera and Suzette LeFebvre, |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

The Plaintiff presents this Memorandum in Support of its Motion for Summary Judgment.

FACTS

The Plaintiff is a German company which has obtained a judgment against Defendant Vito Anthony Laera in the United States District Court for the Southern District of Florida. Defendant Vito Antonio Laera is currently a resident of Cuba; Defendant Suzette LeFebvre is a resident of Florida. ¹

Defendants Vito Antonio Laera and Suzette LeFebvre lived together for many years, beginning in 1996. The Defendants were not married when they began cohabitation, and did not represent themselves as married at the time. In 2001, the Defendants participated in a wedding ceremony in Golden, Colorado before an ordained minister (Exhibit #1 to Memorandum). The

Although the Plaintiff intends to make citations to testimony of record in this Memorandum, it is unable at the time of filing to do so. Defendant intends to file and cite to deposition testimony of Defendant Suzette LeFebvre. Ms. LeFebvre was scheduled to be deposed on October 28, 2016 in Rock Hill, SC, after proper notice. Ms. LeFebvre failed to appear for her deposition as noticed. After several failed attempts, the parties were able to subsequently arrange a deposition by telephone of Ms. LeFebvre on November 22, 2016 at her location in Florida; the parties are awaiting the delivery of the transcript at this time. Citations to testimony will necessarily be by memory of the testimony, subject to being confirmed with citations to testimony when the transcript is delivered.

Defendants did not, however, obtain a marriage license in Colorado prior to or subsequent to this ceremony, nor did they obtain a marriage license from their state of residence at the time, Florida.

In late 2006, the Defendants moved to Matthews, North Carolina. The parties continued to own the real estate in which they had lived in Florida during this time. Defendant Laera continued to live part time in the property in Florida, and part time in the property in North Carolina. In July 2007, Defendant Laera purchased a commercial parcel of property in Fort Mill, SC, for \$2,000,000.00 (Exhibit #2 to Memorandum). The Defendant operated his business from this location, located at 419 York Southern Road.

In August 2012, the Plaintiff filed a Complaint against the Defendant in the Southern District of Florida. On January 21, 2014, the United States District Court for the Southern District of Florida entered judgment in favor of the Plaintiff and against Defendant Laera in the amount of \$834,634.87 (Exhibit #3 to Memorandum). On October 3, 2014, the judgment from the US District Court from Florida was filed with the Clerk of Court for York County, SC (Exhibit #4 to Memorandum).

On January 29, 2015, the United States District Court entered a second judgment in favor of the Plaintiff against Defendant Laera in the amount of \$753,318.02 (Exhibit #5 to Memorandum). The second judgment was filed with the United States District Court for the District of South Carolina on March 24, 2016 (Exhibit #6 to Memorandum), and was filed with the Clerk of Court for York County on May 6, 2016 (Exhibit #7 to Memorandum).

Defendant LeFebvre initiated a divorce proceeding in York County on March 26, 2014, asserting that the Defendants were married in 2001 and that Defendant Laera was a resident of York County, South Carolina (Exhibit #8 to Memorandum). The Defendant Laera asserted that he lived in Florida, Charlotte and South Carolina (Exhibit #9 to Memorandum). The divorce documentation indicated that the parties had been married in Jefferson County, Colorado in 2001. The Defendants

reached an agreement between themselves regarding divorce and property division, and after a hearing where Defendant Laera did not appear but did consent to the agreed judgment, the Court affirmed that agreement. The York County Family Court ordered, *inter alia*, that the property located in York County be transferred to Defendant LeFebvre, with certain conditions regarding to lease the property and conditions upon sale. On October 31, 2014, the York County Family Court awarded the York County property to Defendant LeFebvre (Exhibit #10 to Memorandum). The actual deed to the property was executed by Defendant Laera on January 7, 2015, and was filed on January 16, 2015 (Exhibit #11 to Memorandum). Significantly, the transfer was not to Ms. LeFebvre alone, but was instead to Ms. LeFebvre and Vito Antonio Laera. On May 16, 2016, Defendant Laera transferred his remaining half interest in the South Carolina property to the Suzette Lefebvre Trust N/A (Exhibit #12 to Memorandum).

The Complaint asserts that the Plaintiff has a priority lien to the South Carolina commercial property by reason of the filing of its judgment against the South Carolina property prior to the attempted transfer of the property from Laera to LeFebvre. The Complaint further asserts that the transfer, both in the Family Court proceedings and in the deed records, was a fraudulent transfer, in violation of S.C. Code Ann. §27-23-10 *et seq.* The Plaintiff has sought a declaratory judgment that the property transaction was a fraudulent conveyance, and that judgment be granted against both Defendants, as participants in that conveyance, in the amount of one year's value of the property. The Plaintiff further seeks that the property be sold and the proceeds be applied toward the judgment lien.

ARGUMENT

- I. THE PLAINTIFF IS ENTITLED TO HAVE A FIRST PRIORITY LIEN AGAINST THE SOUTH CAROLINA PROPERTY, SUPERIOR TO THE INTERESTS OF SUZETTE LEFEBVRE.

The foreign judgment from the Florida court was filed with the York County Clerk of Court on October 3, 2014. At the time of filing, the property located in Fort Mill was titled solely in the name of Vito Antonio Laera.

Pursuant to South Carolina law, a judgment entered on the record constitutes a lien against real property of the judgment debtor for a period of ten years from its date of entry.

S.C. CODE ANN. §15-35-810. Judgments lien on real estate continue for ten years.

Final judgments and decrees entered in any court of record in this State subsequent to November 25, 1873, or in any circuit or district court of the United States within this State or of any other Federal court the final judgments and decrees of which, by act of Congress, shall be declared to create a lien, shall constitute a lien upon the real estate of the judgment debtor situate in any county in this State in which the judgment or transcript thereof is entered upon the book of abstracts of judgments and duly indexed, the lien to begin from the time of such entry on the book of abstracts and indices and to continue for a period of ten years from the date of such final judgment or decree

Once a foreign judgment is filed with the Clerk of Court in York County, it becomes a judgment of the State of South Carolina and is entitled to be enforced as a judgment of this State.

S.C. CODE ANN. § 15-35-920. Filing of foreign judgment and affidavit; docketing and indexing; effect; stay of enforcement upon filing of motion for relief or notice of defense.

(A) A copy of a foreign judgment authenticated in accordance with an act of Congress or the statutes of this State may be filed in the office of the clerk of court of any county of this State in which the judgment debtor resides or owns real or personal property. . . .

(B) Upon the filing of the foreign judgment and the affidavit, the foreign judgment must be docketed and indexed in the same manner as a judgment of this State

(C) A judgment so filed has the same effect and is subject to the same defenses as a judgment of this State and must be enforced or satisfied in like manner

The foreign judgment was filed by the Plaintiff with the York County Clerk of Court on October 3, 2014. Pursuant to S.C. Code Ann. 15-35-920 (B), the Clerk of Court must file it and index it in the same manner as a judgment of this State.

The Clerk of Court for York County filed the foreign judgment on October 3, 2016. He did not, however, enter it in the index of Judgments until March 3, 2016. Nonetheless, he was required by statute to do so upon the filing of the foreign judgment and affidavit as of the original date of filing, i.e., October 3, 2014. Defendant Suzette LeFebvre did nothing in reliance upon the failure of the Clerk to earlier enter the judgment in the index of judgments, as she was not involved in the drafting or filing of the deeds from Mr. Laera to her. The Court should hold that the judgment was effective upon filing under S.C. Code Ann. 15-35-920(B), and thus that the lien of the Plaintiff constitutes a first lien with priority over the attempted transfer of the property from Mr. Laera to Ms. LeFebvre.

II. THE DEFENDANTS LAERA AND LEFEBVRE WERE NEVER MARRIED; ACCORDINGLY, THE ASSERTED CONSIDERATION FOR THE TRANSFER - PURSUANT TO A DIVORCE SETTLEMENT - CANNOT BE CONSIDERATION FOR THE TRANSFER. THE TRANSFER WAS THUS WITHOUT CONSIDERATION, AND IS VOID AS A FRAUDULENT TRANSFER.

A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue. *Felts v. Richland County*, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991). An action to set aside a transfer as fraudulent pursuant to the Statute of Elizabeth is an action in equity. *Future Group, II v. Nationsbank*, 324 S.C. 89, 97 n.6, 478 S.E.2d 45, 49 n.6 (1996).

* * *

The Statute of Elizabeth, as codified in section 27-23-10 of the South Carolina Code (Supp. 2005), governs fraudulent conveyances and provides in relevant part:

Every . . . conveyance of lands . . . which may be had or made to or for any intent or purpose to delay, hinder, or defraud creditors and others of their just and lawful . . . debts . . . must be deemed and taken

Accordingly, Defendant Laera would have to have resided in South Carolina for a full year prior to the filing of the divorce action. Although the Defendants contend that Mr. Laera lived in the warehouse in South Carolina for the year prior to the filing of the divorce, the only evidence available to this Court is that he did not.

In the October 29, 2013 sworn testimony in the Florida District Court evidentiary hearing, Laera testified:

Q. Okay. Are you familiar with a property at 5960 Southeast 32nd Terrace in Fort Lauderdale, zip code 33066?

A. You got that one wrong too, the zip code. You get a lot of things wrong.

Q. What's the correct zip code?

A. 33312.

Q. And what is that property?

A. It's my home, my first residence.

Q. Okay. Do you live there now?

A. Not full-time.

Q. Okay. About how much time do you live in the 5960 Southeast 32nd Terrace address?

A. I don't count. Could be a few months out of the year. Something like that.

Q. Where do you primarily reside?

A. Well, that's a long story, sir. It would have to -- I'm going to stick with Florida as my main residence. There you go.

Q. Would you say you only spend a couple months out of the year in Florida? So I'm just trying to understand where do you spend the majority of your time?

A. I have a place in South Carolina. I'm gone two months out of the year, so that's 20 percent right there. And, you know, I stay with my family often. So it would depend on what -- you know, you're asking me, I'm telling you that's my -- if you were to ask me what's my home, 5960 would be my home.

* * *

Q. Mr. Laera, are you familiar with an address of 419 York Southern Road, Fort Mills, South Carolina?

A. Yes, sir.

Q. What is that address?

A. That is a commercial building that I own.

Q. Okay. Do you reside at that building? You live in that building?

A. Sometimes.

Q. How much time out of the year do you think you reside at the 419 York Southern Road address?

A. I don't count, sir.

Q. Can you give us an approximation?

A. 20, 25 percent.

Q. Are you familiar with an address of 2513 Ashby Woods Drive in Matthews, North Carolina?

A. Yes, sir.

Q. What is that address?

A. That's a long story too, but it's a property I own that is used for an employee that we brought up and didn't work out and now it's empty.

Q. Who was that employee?

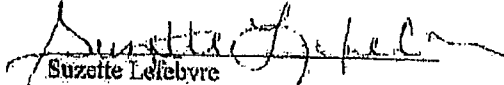
A. Now it's -- it was Henry. But anyway...

STATE OF SOUTH CAROLINA
COUNTY OF YORK

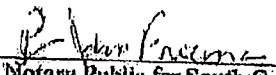
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DAVID HAMILTON
FAMILY COURT
YORK COUNTY SC

COPY

Suzette Lefebvre, being duly sworn, says that she is the Plaintiff herein, and that she has read the foregoing Complaint and knows the contents thereof; that the same is true of her own knowledge, except as to the matters therein stated to be alleged on information and belief; and to those matters she believes them to be true.


Suzette Lefebvre

SWORN to and subscribed before me
this 26th day of March, 2014



Notary Public for South Carolina
My Commission Expires: 5/15/19

STATE OF SOUTH CAROLINA
COUNTY OF YORK

) IN THE COURT OF COMMON PLEAS
) SIXTEENTH JUDICIAL CIRCUIT
) C/A NO.: 2016-CP-46-03382

TRIPLE M PARTNERS, LP,
Plaintiff,

v.

SUZETTE LEFEBVRE, as Individual,
and as Trustee of the SUZETTE
LEFEBVRE TRUST N/A, BLANCO
GmbH + CO.KG
Defendants

**MEMORANDUM IN SUPPORT OF
SUZETTE LEFEBVRE'S MOTION TO
AMEND
OR ALTER JUDGMENT**

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DAVID HAMILTON
S.C. S&G.S.
YORK COUNTY, SC

NOW COMES the Defendant, Suzette Lefebvre ("Lefebvre"), by and through undersigned counsel, and submits the following memorandum in support of her Motion to Amend or Alter Judgment.

FACTS

On May 19, 2001, Defendant Husband Laera and Defendant Wife LeFebvre 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. Following the marriage ceremony and subsequent time spent in Colorado, the couple returned to Florida. They moved to Matthews, North Carolina in 2006 where they resided as husband and wife until they separated on December 7, 2012 due to Laera's adultery. Laera moved out of the marital home located in North Carolina into a warehouse apartment the couple owned in Fort Mill, South Carolina. The Property was a commercially zoned warehouse wherein Laera operated his business and is the subject matter of this lawsuit ("real property"). On March 25, 2014, LeFebvre filed suit against Laera for divorce in the York County Family Court in a case entitled *Suzette LeFebvre v. Vito*

Antonio Laera Case # 2014-DR-46-623 (“divorce action”). A Copy of the divorce filing is attached hereto as **Exhibit A**. In the divorce action, LeFebvre alleged adultery as the grounds for the separation and made claims for child custody, child support, alimony, equitable distribution, and attorney fees. 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 as the dependant spouse, equitable distribution, and attorney fees to be paid for by Laera. The negotiations were conducted between LeFebvre’s attorney and Laera, who was acting *pro se*. They included, but were not limited to filing for temporary relief issue 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.

On or about mid-October 2014, a final settlement was reached on the terms and conditions of child custody, child support, child custody, alimony, equitable distribution, and attorney fees. On October 30, 2014, the Honorable Henry T. Woods, after a hearing, accepted and entered the proposed consent order of the parties for a judgment of divorce (“Divorce Decree”). The Final Judgment for Divorce was filed and docketed by the York County Clerk of Court on October 31, 2014. A copy of the Final Judgment for Divorce is attached hereto as **Exhibit B**. As part of the equitable distribution of the assets and liabilities of the marriage, the Consent Judgment awarded the real 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.

BLANCO GmbH + CO.KG (“Blanco”) has a judgment against Laera that arises out of a judgment issued in the United States District Court for the Southern District of Florida issued and entered on June 24, 2014 against Laera. The foreign judgment was subsequently filed in South Carolina on October 3, 2014, but was not entered on the Abstracts of Judgment or the Judgment Roll until March 3, 2016. By and through motion of Blanco, this Court entered an Order of Mandamus making the effective date of the filing of October 3, 2014 and retroactively ordered that the Abstracts of Judgment or the Judgment Roll reflect a date of the same.

This case arises from an Agreement for the Purchase and Sale of Real Property (“Agreement”) whereby Lefebvre agreed to sell to Plaintiff Triple M Partners, LP (“Triple M”) a 6.5 acre tract of real property identified as York County Tax Map No. 7280000030, located at 419 York Southern Road, Fort Mill, South Carolina (the “Property”), for a purchase price of \$1,960,000.00. When Ms. LeFebvre attempted to terminate the agreement, Triple M objected and instituted this action obtaining an injunction ordering the sale of the property. At a hearing on February 16, 2017, this Court approved the motion to intervene brought by Blanco in this matter and Blanco intervened in this matter as a co-Defendant. Blanco has not filed a claim against LeFebvre in this matter. On February 23, 2017, this Court issued a default judgment in favor of Triple M as to Ms. Lefebvre to enforce the sale of the property to Triple M.

On March 15, 2017, in this matter, Blanco filed a Motion for Modification of the Default Judgment requesting that a lien on proceeds have the same effect as a lien on property and that the judgment lien transfer to the proceeds. In particular, Blanco specifically requested of this 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 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.” On March 22, 2017, at the hearing at this matter, this Court determined that due to the fact that LeFebvre was in default as to Triple M that she had forfeited her rights to contest priority claims as the proceeds from the property and instructed counsel for Blanco to draw up an order providing the proceeds to Blanco. A Supplemental Order of Default Judgment awarding the same was entered on April 3, 2017 and subsequently filed on April 4, 2017. LeFebvre moves to alter or amend the entered and filed Supplemental Order.

ARGUMENT

Defendant LeFebvre moves to alter or amend the entered and filed Supplemental Order as the Supplemental Order was issued without affording Defendant LeFebvre the ability to offer any facts or present any argument against her fellow co-defendant Blanco nor was she put on notice that Blanco was even going to argue or that this Court would be entertaining argument on claims of priority interest. In addition, Defendant LeFebvre moves to alter or amend the entered and filed Supplemental Order due to the fact that she has an actual vested statutory ownership right in the property that the Court cannot ignore or disregard.

I. Due Process not afforded

It is without question that both 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, one being substantive and the other being procedural.

“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). 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 SC 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).

In this in this matter, Supplemental Order granted a co-Defendant, Blanco, a full priority right in all proceeds from the Court ordered sale to Triple M including any rights that LeFebvre may have to those proceeds pursuant to any state statute. In particular, 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 which specifically provided:

“During the marriage a spouse shall acquire, based upon the factors set out in Section 20-3-620, a vested special equity and ownership right in the marital property as defined in Section 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.”

LeFebvre previously had a priority interest to Blanco based upon S.C. Code of Laws § 30-7-10 as the divorce decree against Laera was entered before the original date that the judgment of Blanco against Laera was entered on the Abstracts of Judgments. The Writ of Mandamus order changed the priority rights of LeFebvre’s finally entered Divorce decree of October 31, 2014 vis-à-vis Blanco to make Blanco’s date of judgment effective as of the date of the foreign filing in South Carolina of the United States District Court for the Southern District of Florida Judgment which was October 3, 2014. The change of the filing date absent any claim

to the contrary would otherwise make Blanco's interest the priority interest to any other claims that or judgments that would come afterwards.

With all due respect, what this Court failed to appreciate in its ruling on the Supplemental Order was that a property right did in fact exist for LeFebvre as to the property prior to the Divorce Decree of October 31, 2014 in the form of S.C. Code of Laws § 20-3-610. Specifically, the statute states; "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." The divorce action, which included LeFebvre's claim for equitable distribution was filed March 25, 2014, seven months before Blanco's Judgment was filed in October 3, 2014. Moreover, that Spousal Equitable Interest was a vested interest in property rather than some esoteric argument for a non-statutory equitable claim. By ordering all of the proceeds to be disbursed directly to Blanco, this Court has deprived LeFebvre of a cognizable property interest rooted in state law.

Additionally, LeFebvre's was not afforded procedural due process. Although LeFebvre was provided notice of the hearing of March 22, 2017, LeFebvre was never put on notice that at any time during that hearing would argument be taken, considered, put forth, consummated or conducted regarding priority rights to the proceeds of real property. Blanco did not assert a claim against LeFebvre in this matter and has not asked for specific relief against LeFebvre in this matter via crossclaim. The place for such a priority fight would be in a well pled and thoroughly briefed, litigated and tried partition action in the Courts of this state, rather than in this case which is a case for specific performance of a sales agreement involving only the buyer and seller of the property. Moreover, as provided in the fact section above, the memorandum in support of the Supplemental Order by Blanco shows that Blanco only wanted the Court to hold the funds in escrow pending a decision of priority.

As a result of the foregoing, Defendant LeFebvre requests that this Court alter and/or amend the Supplemental Order so that Due process can be afforded to Defendant LeFebvre.

2. Actual ownership right

As set forth in S.C. Code of Laws § 20-3-610 and as argued above, Defendant LeFebvre had an actual vested ownership right in the property and the proceeds of the same that should not be ignored by this Court. The maxim of “Equity does follow the law” is one of the guiding principles which equity courts use to deny claims for equitable relief. *Regions Bank V. Wingard Properties, Inc.*, 394 S.C. 241, 254 715 S.E.2d 348, 355 (2011). Where “a substantive right exists, an equitable remedy may be fashioned to give effect to that right”. *Id.* When providing an equitable remedy, the court may not ignore statutes, rules, and other precedent. *See Id citing Lonchar v. Thomas*, 517 U.S. 314, 323, 116 S.Ct. 1293, 134 L.Ed.2d 440 (1996). “The court’s equitable powers must yield in the face of an unambiguously worded statute.” *See Id quoting Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm’n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989).

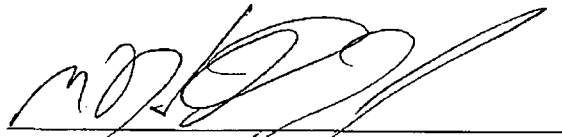
Despite the fact that the statutory vested Spousal Equitable Interest pursuant to S.C. Code of Laws § 20-3-610 exists, once a judgment declares its existence, the interest relates back in to time to the beginning of the interest. This equitable lien is “neither an estate or property in the thing itself, nor a right to recover the thing, but is simply a right of a special nature over the thing, which constitutes a charge upon the thing....” *Fibkins v. Fibkins*, 303 S.C. 112, 115 399 S.E.2d 158, 160 (1990) quoting *Carolina Attractions, Inc. v. Courtney*, 287 S.C. 140, 145, 337 S.E.2d 244, 247 (Ct.App.1985). An equitable lien is a “mere floating equity until a judgment or decree subjecting the property to the payment of the debt or claim is rendered, but even though not judicially recognized until a judgment declaring its existence, it relates back to the time it

was created by the conduct of the parties.” See *Fibkins at 115, 399 S.E. 2d 158, 160 citing 51 Am.Jur.2d Liens Section 22 at 161 (1970)*. The rights of LeFebvre to the property and thus to any proceeds therefrom, began on the date of that the divorce was filed on March 25, 2014 and was effectuated as of the date of the Divorce Decree dated October 31, 2014. That equitable interest and thus, the vested statutory interest related back to provide LeFebvre a property interest predates Blanco’s interest. This Court’s ruling on March 22, 2017 erroneously awarded that interest to Blanco, and did so without proper notice and due process afforded to LeFebvre.

Defendant respectfully requests that this Court alter or amend the Supplemental Order to require the Clerk of Court to retain the funds pending a determination either by the Federal Court or pending a determination by the Court of Common Pleas of the State of South Carolina as to Defendant’s rights to the property and the proceeds.

WHEREFORE, Defendant prays unto the Court for an order altering or amending its order and for such other and further relief as the court deems just and proper.

This the 18th day of April, 2017.



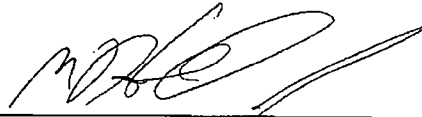
M. Heath Gilbert, Jr.
State Bar No. 72198
Baucom, Claytor, Benton, Morgan & Wood, P.A.
P.O. Box 35246
Charlotte, NC 28235
(704) 376-6527
Attorney for Defendant Suzette LeFebvre

CERTIFICATE OF SERVICE

Certified that on the 18th day of April, 2017, service of the foregoing pleading was made upon counsel of record by placing a copy thereof in the United States Mail, sufficient postage prepaid and properly addressed and via e-mail as follows:

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dan.ballou@mortongettys.com

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704-376-6207 (F)

STATE OF SOUTH CAROLINA
YORK COUNTY

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DAVID HAMILTON
FAMILY COURT
YORK COUNTY, SC

Suzette LeFebvre,
Plaintiff,

vs.

Vito Antonio Laera,
Defendant.

COPY

COMPLAINT

File Book #2014-DR-46-623

TO: THE DEFENDANT ABOVE-NAMED:

COMES NOW the Plaintiff, Suzette LeFebvre, and complains of the acts and/or omissions of Defendant, Vito Antonio Laera, in the following particulars, to wit:

1. *Jurisdiction and Venue.* The defendant is a citizen and resident of York County, South Carolina, and has been so for a period in excess of twelve months immediately preceding the commencement of this action. The statutory basis of jurisdiction is S.C. Code Ann. §20-3-30.
2. *Marriage.* The parties were married May 19, 2001 and are husband and wife.
3. *Children.* Two (2) children were born to the marriage of the parties, to wit [redacted] and [redacted] born [redacted].
4. *Lack of Collusion.* The parties have not colluded and the act or acts complained of by the Plaintiff were not done with the knowledge or assent of the plaintiff for the purpose of obtaining a divorce.
5. *Adultery.* The Defendant is committing adultery. The Defendant has had inclination and opportunity to commit adultery and, in fact, has engaged in and committed adultery during the course of the parties' marriage, and continued to engage in the same since he



moved out of the marital residence. The Plaintiff is entitled to a divorce on the grounds of adultery.

6. *Separation.* The parties have lived separate and apart since December 7, 2012.
7. *One Year's Continuous Separation.* In the alternative, the Plaintiff would show she is entitled to a divorce on the grounds that the parties have not cohabitated as husband and wife in over one (1) year and have lived separate since the separation date set forth above.
8. *Child Custody.* The Plaintiff is the fit and proper person to maintain custody of the minor children herein. The best interests of the minor children would be served by sole custody to the Plaintiff. The minor children have been in the primary care and custody of the Plaintiff since the parties separated. The Defendant has had regular contact with the minor children.
9. *Child Support.* The minor children herein rely on both parents for the necessities of life. Both parties are fit and capable of earning an income. The Plaintiff needs the financial support of the Defendant. The Plaintiff requests child support from the Defendant as determined by the South Carolina Department of Social Services Guidelines.
10. *Equitable Apportionment of Property.* The parties acquired real and personal property during their marriage. The parties acquired debts during their marriage. The parties are entitled to an equitable apportionment of their marital property and marital debts.
11. *Alimony.* The Plaintiff believes she is entitled to permanent periodic alimony and hereby requests the same.

12. *Attorney's Fees and Suit Money.* The Plaintiff cannot afford to pay her attorney. The Plaintiff has a meritorious cause of action. The necessity of this proceeding resulted from the Defendant's conduct. The Plaintiff is entitled to recover her attorney's fees and costs.
13. *Discovery.* The ability of the parties to prepare their cases, judicial economy, and the ends of justice will be served by this court allowing each party all discovery available under Rules 26-37, SCRPC.
14. *Guardian ad Litem.* Should the Defendant claim custody, the appointment of a guardian ad litem may be needed to protect the interests of the minor child during this litigation.
15. *Temporary and Pendente Lite Relief.* The Plaintiff will suffer irreparable harm unless she is granted temporary relief including sole custody of the minor children herein, child support, temporary and permanent support and maintenance, use of property as an incident of support, injunctive relief, appointment of a guardian ad litem if the Court deems necessary, discovery, and attorney's fees.


WHEREFORE, the Plaintiff prays for a Decree of Divorce and for the following temporary and permanent ancillary and collateral relief:

- a. Sole custody of the parties' minor children;
- b. Child support as determined by the SC DSS guidelines;
- c. A Divorce on the grounds of the Defendant's adultery;
- d. In the alternative, a divorce on the grounds of a one years' continuous separation;
- e. An equitable apportionment of all marital property and debts acquired by the parties during their marriage;
- f. Permanent periodic alimony and temporary support and maintenance;
- g. If necessary, as stated above in Paragraph Fourteen (14), appointment of a guardian *ad litem* to protect the interests of the minor child of the parties;

- h. Attorney's fees, costs and suit money in a reasonable sum;
- i. Allowance to each party of all discovery available under Rules 26-37, SCRPC.
- j. Such other and further relief as the Court might deem just and proper.

RESPECTFULLY SUBMITTED,

HALFORD, NIEMIEC & FREEMAN, LLP



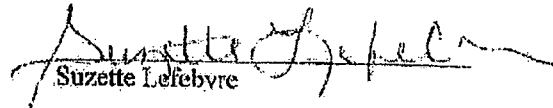
P. John Freeman
238 Rockmont Drive
Fort Mill, South Carolina 29708
Telephone: 803-547-6618
Facsimile: 803-547-6638
ATTORNEYS FOR THE PLAINTIFF

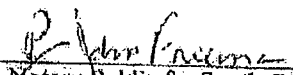
March 26, 2014

STATE OF SOUTH CAROLINA
COUNTY OF YORK

FILED RECEIVED
2014 MAR 26 10 42 AM
DAVID HAMILTON
FAMILY COURT
YORK COUNTY, SC
COPY

Suzette Lefebvre, being duly sworn, says that she is the Plaintiff herein, and that she has read the foregoing Complaint and knows the contents thereof; that the same is true of her own knowledge, except as to the matters therein stated to be alleged on information and belief; and to those matters she believes them to be true.


Suzette Lefebvre

SWORN to and subscribed before me)
this 26th day of March, 2014)
)
)

Notary Public for South Carolina)
My Commission Expires: 5/15/19)

STATE OF SOUTH CAROLINA FILED-RECEIVED IN THE FAMILY COURT OF THE
COUNTY OF YORK 2014 OCT 31 PM 3:07 SIXTEENTH JUDICIAL CIRCUIT

Suzette LeFebvre,

Plaintiff,

vs.

Vito Antonio Laera,

Defendant.

DAVID J. SUTTON
FAMILY COURT
YORK COUNTY, SC

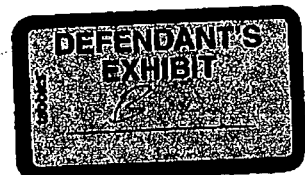
DECREE OF DIVORCE

File Book # 2014-DR-46-623

HEARING DATE: October 24, 2014
TRIAL JUDGE: Henry T. Woods
PLAINTIFF'S ATTORNEY: P. John Freeman
DEFENDANT'S ATTORNEY: Pro Se
COURT REPORTER: Cheryl St. Germain

This action was scheduled for a final hearing as shown above. The Plaintiff was present with her attorney, P. John Freeman, of the York County Bar. The Defendant was not present but Plaintiff's attorney provided an Affidavit on behalf of the Defendant. After review of the Defendant's Affidavit, I am satisfied that the Defendant that he is capable of representing himself in this manner, has represented himself to date and wishes for the Court to approve the terms of the parties' agreement. In the present matter, the Summons and Complaint were filed in the office of the clerk of court for York County on March 25, 2014. The Defendant filed a written response admitting the contents of the Complaint and filed it with the Court on April 25, 2014. The Defendant was served with the Notice of this Hearing by Certified Mail, Return Receipt Requested, Restricted Delivery on September 16, 2014. The Plaintiff sought a divorce on the grounds of adultery or, in the alternative, on the grounds of one (1) year continuous separation as well as custody of the parties'

SHHW



minor children, child support, alimony, separate maintenance and support, equitable apportionment of marital property and debt, guardian ad litem, discovery, and attorney's fees.

Prior to the commencement of the hearing, the parties, through Plaintiff's attorney, announced to the court that they had reached a final agreement resolving all of the ancillary and collateral issues of their divorce. The agreement was read into the record by the Plaintiff's attorney and the Plaintiff was questioned as to the agreement itself.

I find this Court has jurisdiction of the subject matter of this action and personal jurisdiction of the parties. I find that the requirements of the South Carolina Rules of Family Court and all statutory and common-law procedural requirements have been met. I considered the testimony of the Plaintiff and the Plaintiff's witness as well as the Defendant's Affidavit.

FINDINGS OF FACT

I find by the preponderance of the evidence the following facts:

1. The Defendant is a resident of York County, South Carolina and has been so domiciled in excess of one (1) year prior to the commencement of this action. The Plaintiff is a resident of Matthews, North Carolina. The parties last resided together as husband and wife in York County, South Carolina. The statutory basis of jurisdiction is S. C. Code Ann. §63-3-530 and §20-3-30.
2. The parties were married on May 19, 2001 and are husband and wife.
3. Two children were born to the marriage of the parties, *to wit*: Antonio Laera, born October 17, 1996; and Julia Laera, born September 22, 2004. No other child is currently in gestation.
4. The parties were separated on December 7, 2012.

SHTW

5. The Plaintiff has provided the court with clear and convincing evidence that the Defendant has had the opportunity to commit adultery and has, in fact, committed adultery based upon the testimony of the private investigator, Scott Bernard.
6. Prior to the commencement of the hearing, the parties announced they had reached a full and final agreement as to all issues ancillary to the divorce. The agreement of the parties is as follows, *to wit*:
- A. The Plaintiff shall have sole custody of the parties' minor children. Due to the age of the children, the Defendant shall have regular contact with the children without any restrictions or limitations whatsoever and at such other times as the parties may mutually agree.
- B. The Defendant shall pay the sum of Twelve Thousand and no/100 (\$12,000.00) Dollars per month as child support directly to the Plaintiff beginning October 1, 2014 and continuing to be due on the first of each subsequent month thereafter. The Defendant shall pay child support payments to the Plaintiff on behalf of the minor child, Julia Laera, until she graduates high school or June, 2023. However, if the Defendant is ever five (5) days late in any of his child support payments, the Plaintiff shall be reserved the right to file an affidavit with the York County Clerk of Court and the Defendant's child support payments shall immediately begin payable through the Clerk of Court's Office and shall include an additional five (5%) percent court cost.
- C. The Defendant shall also pay the sum of Three Thousand and no/100 (\$3,000.00) Dollars per month as alimony directly to the Plaintiff beginning October 1, 2014 and continuing to be due on the first of each subsequent month thereafter. However, if the Defendant is ever five (5) days late in any of his child support payments, the Plaintiff shall be reserved the right to file an affidavit with the York County Clerk of Court and the Defendant's alimony payments shall immediately begin payable through the Clerk of Court's Office and shall include an additional five (5%) percent court cost.
- D. The Plaintiff shall be entitled to sole ownership and possession of the property located at 419 York Southern Road, Fort Mill, South Carolina. The Defendant shall be allowed to lease this property from the Plaintiff in the amount of Twelve Thousand Five Hundred Sixty-five and no/100 (\$12,565.00) Dollars per month for two (2) years from the date of this Decree. Said payments shall be paid directly to the Plaintiff beginning October 1, 2014 and continuing to be due on the first of each subsequent month thereafter. If the Plaintiff elects to sell this property at the end of

SHHW

two (2) years, the Defendant shall be given the first opportunity to purchase the property prior to the Plaintiff listing the property for sale. The parties have executed a Lease Agreement for this property setting forth the terms and conditions which pertain to this property.

- E. The Plaintiff shall be entitled to sole ownership and possession of the parties' former marital residence located at 1516 Glenn Valley Drive, Matthews, North Carolina and shall be responsible for all mortgage payments, taxes, and insurance due thereon. The Plaintiff shall hold the Defendant harmless from any deficiencies which may result in her failure to pay the same. The Defendant shall sign any documents necessary in order to transfer ownership of this property to the Plaintiff.
- F. The parties shall be entitled to joint ownership and possession of the property located at 5960 SW 32 Terrace, Fort Lauderdale, Florida and Defendant shall be responsible for all taxes and insurance due thereon.
- G. The Defendant shall maintain a life insurance policy on his life in the amount of One Million (\$1,000,000.00) Dollars with the parties' children as beneficiaries. The Defendant shall maintain this policy until the minor child, Julia Laera, graduates from high school or June, 2023.
- H. Each party shall be solely responsible for the debts listed in their respective names. The parties have no jointly listed marital debt.
- I. The parties have divided their personal property, including vehicles, to their mutual satisfaction. Each party shall sign any documents necessary in order to transfer ownership of these vehicles.
- J. Each party shall be responsible for their own attorney's fees.

THEREFORE, IT IS ORDERED:

- a. The agreement of the parties is hereby approved and incorporated into this Order as if repeated verbatim herein; and
- b. The Plaintiff is hereby granted a divorce from the Defendant on the ground of adultery.

IT IS SO ORDERED.

October 30, 2014.

H. T. Woods

Henry T. Woods,
Judge, Sixteenth Judicial Circuit

DAVID HAMILTON
 CLERK OF COURT
 YORK COUNTY, SC
 2014 OCT 31 PM 3:06
 CERTIFIED TRUE COPY

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Suzette LeFebvre,

vs.

Vito Antonio Laera,

IN THE FAMILY COURT
SIXTEENTH JUDICIAL CIRCUIT

COPY

FILED RECEIVED

2014 OCT 31 PM 3:06

JUDGMENT IN A
FAMILY COURT CASE

Plaintiff, Defendant, Docket No. 2014-DR46-623

| | |
|--------------------------------------|---|
| Submitted by: P. John Freeman | Attorney for <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant |
| | or <input type="checkbox"/> Self-Represented Litigant <input type="checkbox"/> GAL |

DECISION BY COURT (check all that apply)

- This action came to trial, hearing or was resolved by consent and an order was rendered.
- This action has been dismissed pursuant to Rule 12(b), SCRPC Rule 41(a), SCRPC
 Rule 43(k), SCRPC Family Court Benchmark
 Other: _____

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

Additional information for Clerk: _____

ORDER INFORMATION

- This is a Temporary Final order. If Final, does this order end the case? Yes No
- Support is not ordered is ordered, and it is to be paid through the court. directly to the CP.
- Case number under which support is paid if different from this one: _____
- This order involves the immediate issuance dismissal of a bench warrant, or does not apply.
- The following motions are ended by this order (include motion filing date): _____
- This order adds or dismisses the following parties to this case:
 dismiss add: _____ dismiss add: _____

| INFORMATION FOR THE PUBLIC INDEX/TRANSCRIPT OF JUDGMENT (§ 20-3-670(B)(1)) | | |
|--|--|--|
| Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information to enroll, indicate "N/A" in one of the boxes below. | | |
| Judgment In Favor of (List name(s) below) | Judgment Against (List name(s) below) | Judgment Amount to be Enrolled (List amount(s) below) |
| N/A | | \$ |
| | | \$ |
| | | \$ |
| If applicable, describe the property, including tax map information and address, referenced in the order: _____ | | |

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the South Carolina Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: title abstractors and researchers should refer to the official court order for judgment details.

[Signature] 125 10/30/14
Family Court Judge Judge Code Date

FOR CLERK OF COURT OFFICE USE ONLY

This judgment was entered on the 10-31 and a copy mailed first class or placed in the appropriate attorney's box on _____, to attorneys of record or to parties (when appearing pro se) as follows:

P. John Freeman, Esquire
238 Rockmont Drive
Fort Mill, SC 29708
ATTORNEY(S) FOR THE PLAINTIFF(S)

Vito Antonio Laera
419 York Southern Road
Fort Mill, SC 29715
ATTORNEY(S) FOR THE DEFENDANT(S)

Paul Hamilton

CLERK OF COURT

Court Reporter: Cheryl St. Germain

Custodial Parent (if applicable): _____

I-N-D-E-X

WITNESSES:

(NO TESTIMONY TAKEN)

E-X-H-I-B-I-T-S

| <u>NO.</u> | <u>DESCRIPTION</u> | <u>ID.</u> | <u>EV.</u> |
|------------|----------------------------------|------------|------------|
| D-1 | Federal court complaint | 4 | 38 |
| D-2 | Federal court motion to dismiss | 4 | 38 |
| D-3 | York County docket | 4 | 38 |
| D-4 | Family court complaint | 4 | 38 |
| D-5 | Family court answer | 4 | 38 |
| D-6 | LeFebvre deposition | 4 | 38 |
| D-7 | Florida Federal Court motion | 4 | 38 |
| D-8 | Florida Federal Court pleadings | 4 | 38 |
| D-9 | Florida Federal Court transcript | 4 | 38 |
| D-10 | Credit Line Mortgage | 4 | 38 |
| D-11 | Modification of Mortgage | 4 | 38 |
| D-12 | Mortgage Deed | 4 | 38 |
| D-13 | General Warranty Deed | 4 | 38 |
| D-14 | Deed of Trust | 4 | 38 |
| D-15 | Warranty Deed | 4 | 38 |
| D-16 | Warranty Deed | 4 | 38 |
| D-17 | Warranty Deed | 4 | 38 |
| D-18 | Deed of Trust | 4 | 38 |
| D-19 | Warranty Deed | 4 | 38 |

1 (WHEREUPON, DOCUMENTS MARKED AS DEFENDANT'S
2 EXHIBIT 1 THROUGH 19 FOR IDENTIFICATION)

3 THE COURT - All right, let me begin by being sure
4 what we have to hear. How about that?

5 I've got a motion to alter or amend which is Ms.
6 LeFebvre's motion. I have a motion by Blanco, the
7 Defendant Blanco for the disbursement of the funds. I have
8 a motion to stay which has to do with that disbursement
9 which -- and I suppose those are opposing motions. And
10 that's Ms. LeFebvre's motion, and then I have a motion for
11 attorney's fees by Triple M?

12 MR. BALLOU - That's correct.

13 THE COURT - Anything else that I've got to hear?
14 Is that it?

15 MR. FREEMAN - I -- yes, Your Honor, I'm sorry,
16 John Freeman.

17 THE COURT - Yes, sir.

18 MR. FREEMAN - My office represents Ms. LeFebvre
19 in a new action which was just filed a few days ago, a
20 partition action, versus Blanco, and I wanted to make the
21 Court aware of that. I realize the Court would not have
22 that information, and I would not presume that Mr.
23 Breakfield was going to accept service of that action, so
24 it would be our position ---

25 THE COURT - You mean Mr. Bernstein?

1 MR. FREEMAN - I mean Mr. Bernstein, -- Mr.
2 Bernstein I'm sorry -- wasn't going to accept service of
3 that. I believe he's been provided with a copy, but it
4 would be our position that that's the case where the
5 distribution of the funds should be decided because all
6 parties in interest will be properly joined ---

7 THE COURT - Well, that's not before me.

8 MR. FREEMAN - I understand, Your Honor. I wanted
9 to make the Court aware of it; that's why I'm here.

10 THE COURT - Well, I'm going to rule on what's
11 before me. How about that?

12 MR. FREEMAN - Yes, sir.

13 THE COURT - All right, let's -- probably the --
14 the first thing then to hear would be probably Ms.
15 LeFebvre's motion to alter or amend which has to do with
16 the order authorizing disbursement, I believe? Or are we
17 talking also about the order -- well, no -- Mr. Bernstein?

18 MR. BERNSTEIN - The original default judgment
19 order ---

20 THE COURT - Right.

21 MR. BERNSTEIN - --- had to do with the sale of
22 the property. Because there was a failure to deliver
23 certain documents, we had a motion to amend ---

24 THE COURT - That's right.

25 MR. BERNSTEIN - --- which you heard.

1 THE COURT - Right.

2 MR. BERNSTEIN - In that order, you ordered that
3 the funds be disbursed to my client.

4 THE COURT - Yes.

5 MR. BERNSTEIN - And that is the order which is
6 the subject of the current motion by Ms. LeFebvre.

7 THE COURT - All right.

8 MR. GILBERT - In fairness to Mr. Ballou, Your
9 Honor, the reason we're here today is because he started --
10 -

11 COURT REPORTER - I'm sorry, I need your name.

12 MR. GILBERT - I'm sorry. Heath Gilbert, Your
13 Honor, for Ms. LeFebvre.

14 The reason we're here today is because Mr. Ballou
15 noticed his motion first for attorney's fees, and so just
16 out of deference to Mr. Ballou and his client, want to make
17 the Court aware of that, and I'm okay if he wants to do his
18 motion first and then we can go in that order, because I
19 suspect his probably won't take very long.

20 MR. BERNSTEIN - I agree with that; that'd be
21 fine.

22 THE COURT - That's all right with me.

23 MR. BALLOU - Very good.

24 THE COURT - Mr. Ballou.

1 MR. BALLOU - Thank you, Your Honor. May it
2 please the Court. Dan Ballou on behalf of Triple M
3 Partners, LP, the plaintiff in this action. Judge, we're
4 before you on a motion for attorney's fees. The order of
5 default judgment allowed the record to stay open for
6 further order of the Court. We have alleged a breach of
7 contract in this case. The contract contains an attorney's
8 fee provision. I've submitted for the Court's review an
9 affidavit and an amended affidavit of attorney's fees, and
10 in light of the work done to bring this case forward to
11 obtain a closing and funds for over which the rest of can
12 argue, we are asking for an order awarding our attorney's
13 fees. I guess the question becomes from winch do those
14 fees -- where would they be paid if they are, in fact,
15 awarded. There is a source of money that is -- was ordered
16 to be disbursed. Subject to the order of this Court we
17 would ask initially for an order awarding fees out of the
18 proceeds before any further disbursements are made. Baring
19 that, in the Court's discretion, ordering some -- there's
20 (sic) only be really as for Ms. LeFebvre; she was a party
21 to the contract. Blanco certainly if it's -- if Blanco was
22 disbursed the funds, we don't have any basis to claim
23 attorney's fees from Blanco, but um -- so I think it makes
24 sense to have all these issues resolved, but the -- but the

1 first issue is we would like an order awarding fees in the
2 amount of thirty --

3 THE COURT - Thirty thousand five under and sixty-
4 six dollars.

5 MR. BALLOU - Thirty thousand five sixty-six ---

6 THE COURT - Plus cost of a eleven o four forty-
7 seven.

8 MR. BALLOU - That's correct.

9 THE COURT - Okay.

10 MR. BALLOU - Thank you.

11 THE COURT - Mr. Bernstein, what's the amount of
12 your client's judgment? I can't remember. Is it six
13 hundred and some thousand?

14 MR. BERNSTEIN - The original amount was six
15 hundred thousand plus some costs and expenses. It's over a
16 million dollars with interest now.

17 THE COURT - It is now?

18 MR. BERNSTEIN - Oh, yeah, absolutely, and ---

19 THE COURT - Okay.

20 MR. BERNSTEIN - --- there is, in fact, a second
21 judgment which was entered for a similar amount but the --
22 the amount of the judgment far exceeds the amount that was
23 placed in escrow with the Court and subsequently disbursed.

24 THE COURT - That's right. There was a mortgage
25 to be paid off.

1 MR. BALLOU - That's correct.

2 THE COURT - I forgot about that. Okay. That's
3 what I was trying to process. All right. As to Mr.
4 Ballou's motion?

5 MR. BERNSTEIN - As to Mr. Ballou's motion, we
6 have no objection whatsoever with the award of attorney's
7 fees to Mr. Ballou's client from Ms. LeFebvre. There
8 clearly is a contract which provides for that, however,
9 there is nothing which would provide for the payment of
10 those funds out of the funds which have been escrowed,
11 because the Court had already ruled that those funds belong
12 to Blanco. That is, they had priority over those funds.
13 There's nothing in their underlying contract which would
14 provide for the payment of those funds from the excess
15 amount and from the amount that had been deposited with the
16 Court. It becomes an issue of priority. The Court has
17 ruled that previously, and certainly can look at it again,
18 that Blanco has priority of those funds. There is nothing
19 in the contract which would give Triple M priority as to
20 those funds. It would have to come from statute or from
21 some rule, otherwise, it has a breach of contract damages
22 issue against Ms. LeFebvre, he's entitled to attorney's
23 fees from Ms. LeFebvre, but not from these funds, because
24 Blanco had priority over these funds; they're not Ms.
25 LeFebvre's funds, as the Court has ruled, they're --

1 Blanco's entitled to them; they've been disbursed already.
2 The check has been paid by the Court; they've been
3 disbursed to Blanco. There's no funds from which at this
4 point to disbursement them, number one, and number two,
5 even if there was, there's no authority for that attorney's
6 fee award coming from that amount. Having said that, there
7 is a provision in the rules which deal with the situation
8 when the Court handles an interpleader action. If the
9 Court wanted to treat them like an interpleader action, the
10 funds to which Mr. -- Triple M would be entitled to would
11 be the funds dealing with the payment of those excess funds
12 and then the disbursement. The only thing ---

13 THE COURT - Say that again.

14 MR. BERNSTEIN - The funds he'd be entitled to, if
15 it was a -- if it was a interpleader action, would be the
16 costs of interpleading the funds into the Court, not all
17 the case -- all the funds, all the attorney's fees spent in
18 enforcing the contract itself. So first of all, I don't
19 believe there's any basis for providing for the payment of
20 the attorney's fee award from the excess funds since Blanco
21 has priority as to those, and second of all, if the Court
22 was to treat it like an interpleader, only those funds
23 expended in preparing a petition for interpleader and
24 paying them into Court would be amounts that would be
25 appropriate to be awarded from those funds, not the entire

1 litigation costs of their breach of contract action against
2 Ms. LeFebvre.

3 THE COURT - Mr. Ballou, the attorney fee amount
4 is not otherwise itemized by any kind of, you know, record,
5 billing records, anything like that.

6 MR. BALLOU - I have not submitted but certainly
7 would be willing to submit detailed records.

8 THE COURT - Well, the question I have is, (a)
9 there was a contract ---

10 MR. BALLOU - That's correct.

11 THE COURT - --- to buy the property. There were
12 certainly attorney's fees occurred in connection with that
13 contract ---

14 MR. BALLOU - Right.

15 THE COURT - --- just carrying out the -- all that
16 was necessary to complete the contract.

17 MR. BALLOU - And we have segregated the
18 attorney's fees that were incurred by my firm and other
19 lawyers in the closing of the transaction, and those are
20 not -- these are straight litigation attorney's fees.

21 THE COURT - This action.

22 MR. BALLOU - Yes, sir.

23 THE COURT - Okay, well, -- I mean I accept that
24 representation but these folks may want to see some -- some
25 records that would establish that.

1 MR. BALLOU - More than happy to provide those
2 upon request, Judge.

3 THE COURT - And I guess -- well, only if I -- if
4 the funds are -- if you don't have a claim against the
5 funds at issue here, I don't -- I don't think Mr. Bernstein
6 cares one way or another.

7 MR. BALLOU - I think that's correct. I guess my
8 only position would be that to the extent that it is
9 treated as an interpleader, I mean there would be funds had
10 we not pursued the litigation to get this case -- this
11 transaction to a closing date or -- and to get signatures
12 and to get disbursement, so I don't think you can parse out
13 the litigation fees ---

14 THE COURT - No, I'm not trying to. I just want
15 to be sure that that's what we're looking at.

16 MR. BALLOU - That's correct. Thank you.

17 THE COURT - All right, Mr. Gilbert.

18 MR. GILBERT - Your Honor, I -- I think for the
19 record I'm going to offer an objection for Ms. LeFebvre,
20 but I really don't want to be heard on this issue, Your
21 Honor, on that.

22 THE COURT - Okay. All right, well, I grant the
23 motion -- what about the records? Are you interested in
24 seeing ---

1 MR. GILBERT - I think -- if Mr. Ballou would like
2 to provide them, but I -- I know Mr. Ballou; he's a very
3 fair man, and I -- very honorable and I have a feeling that
4 his records will back-up exactly what his affidavits have.

5 THE COURT - Well, I do too, but I just want to be
6 sure everybody's happy about that.

7 MR. GILBERT - And so ---

8 THE COURT - Now, as to the where the funds come
9 from, the transaction could not have occurred but for
10 payment of Mr. Bernstein's Blanco's judgment, because by
11 order of the Court those funds attach -- that debt attached
12 as a lien to the property prior to any time Ms. LeFebvre
13 owned anything.

14 MR. BALLOU - As the current order stands, that's
15 correct.

16 THE COURT - That's correct. Thus I don't -- I
17 think that that lien would have to be satisfied before --
18 obviously would have to be satisfied before the closing
19 could take place, so I'm not going to order -- well, let me
20 say it this way -- I'm going to grant the motion for
21 attorney's fees in the amount of thirty thousand five
22 sixty-six plus cost of eleven o four, forty-seven. I deny
23 the request to have the attorney's fees paid from the net
24 proceeds from the sale. Now, I think that covers

1 everything, doesn't it, Mr. Bernstein? We don't have to
2 worry about ---

3 MR. BERNSTEIN - It does as far as we're
4 concerned, Your Honor.

5 MR. BALLOU - Should I prepare an order on that
6 issue?

7 THE COURT - Please, if you would, yes, sir, find
8 that they're reasonable, that that was uncontested and that
9 they relate only to the -- to this litigation.

10 Okay, hang on just a minute. (Brief pause)

11 (WHEREUPON, ATTORNEYS ARE MUMBLING TO EACH OTHER
12 WHICH WAS NOT REPORTED AND OUT OF THE HEARING OF THE COURT
13 REPORTER.)

14 THE COURT - Don't you think you ought to ask me
15 that?

16 MR. BERNSTEIN - I'm not making any motion; I'm
17 not giving him authority to do anything.

18 THE COURT - Bernstein's going to let you go.

19 MR. BERNSTEIN - Thank you, Your Honor. Thank
20 you, Your Honor.

21 (WHEREUPON, LAUGHING)

22 MR. BALLOU - Now, Judge, ---

23 MR. BERNSTEIN - I presume that's why he wanted
24 his money first.

1 THE COURT - That's the way they do things in
2 Charleston.

3 MR. BALLOU - That's right, must be.

4 MR. BERNSTEIN - No one has yet to figure out how
5 we do things in Charleston.

6 (WHEREUPON, LAUGHING)

7 THE COURT - Okay, next -- what would be the
8 logical order next? Mr. Gilbert, your motion?

9 MR. GILBERT - I think at that point it'll be our
10 motion, Your Honor.

11 THE COURT - Okay, that would Ms. LeFebvre's
12 motion to alter or amend.

13 MR. BALLOU - I would ask for -- I mean I would
14 like to hear some of this, but I'm not sure I -- I don't
15 want to necessarily stay for all, because it could go for
16 a while.

17 THE COURT - That's fine.

18 MR. BALLOU - If -- so if I could be excused to
19 sit in the gallery ---

20 THE COURT - Certainly.

21 MR. BALLOU - --- but I'm -- I'm done with my
22 matter, so thank you.

23 THE COURT - As long as you're reasonable quiet
24 that back.

1 MR. GILBERT - Mr. Bernstein said it was okay if I
2 left, too, Your Honor, so that's why ---

3 (WHEREUPON, LAUGHING)

4 THE COURT - I appreciate his help.

5 MR. GILBERT - I do.

6 THE COURT - Okay, Mr. Gilbert?

7 MR. GILBERT - Thank you, Your Honor. Your Honor,

8 ---

9 THE COURT - Now, let's be clear about the order.
10 The order we're talking about -- let me find the correct
11 order. We're talking about the order ---

12 MR. GILBERT - This is the 7 -- 4, April, 2017,
13 Your Honor.

14 THE COURT - Okay, hang on just a second.

15 MR. GILBERT - Supplemental order on default
16 judgment.

17 THE COURT - Okay, let me try to dig out -- did
18 you attach it to the motion, Mr. Gilbert? Is it attached
19 to your motion?

20 MR. GILBERT - I don't know if I did or not, Your
21 Honor. I've got -- I've got a copy if the Court needs it.

22 THE COURT - That would be helpful if you don't
23 mind.

24 MR. GILBERT - If I may approach, Your Honor.

25 THE COURT - Yes, sir.

1 (WHEREUPON, DOCUMENT HANDED UP TO THE COURT.)

2 THE COURT - Okay, go ahead.

3 MR. GILBERT - Okay, thank you, Your Honor. Your
4 Honor, this is our -- so this is our motion to alter or
5 amend the judgment pursuant to 59(e) and then also it's a
6 motion to stay which would also be pursuant to the same --
7 same motion. This is in relation to the April -- filed and
8 entered April 4th supplemental order and in particular it
9 deals with the disbursement of funds that were -- that were
10 received as proceeds from the sale of the property ---

11 THE COURT - Right.

12 MR. GILBERT - --- and really just relates to that
13 issue in itself. So if I -- I know we've been in front of
14 you before -- I've been in front of you before ---

15 THE COURT - You have.

16 MR. GILBERT - --- and by the time I was in front
17 of you, I think February, we did not represent Ms. LeFebvre
18 in this case if you'll recall.

19 THE COURT - I do.

20 MR. GILBERT - And we do -- did represent her and
21 represent still ---

22 THE COURT - Actually, you were relieved at some
23 point, weren't you, and then ---

24 MR. GILBERT - No, ---

25 THE COURT - Seems like there was some order ---

1 MR. GILBERT - No, I represented her in the
2 federal case down in -- well, here, but ---

3 THE COURT - All right.

4 MR. GILBERT - --- she didn't use us for this
5 case, and she now is, um, but let me see if I can set the
6 table for you a little bit, Your Honor, because I don't
7 know if you know anything about Ms. LeFebvre and just very
8 briefly for the Court but probably help a little bit with
9 the mindset of who my client is, because this is a -- the
10 facts are a little different I'd say to say the least with
11 regards to my client and the way this has transpired. Ms.
12 LeFebvre was married to this fellow named Vito Laera since
13 2001. They had a civil ceremony out in Colorado and had
14 some -- had a couple children, lived in Florida, they moved
15 up in North Carolina. Mr. Laera does fixtures and faucets
16 and sinks and things like that for a living. That's what
17 his living was. Mr. Laera was admittedly an -- admittedly
18 an adulterer, ran around on her, and she um -- she was, I
19 would say, um -- to say that she was mentally abused, I
20 think that would probably be an understatement, physically,
21 as well. Ms. LeFebvre eventually decided to divorce him.
22 He ended up moving down to South Carolina and living in an
23 apartment in this warehouse that we're talking about here.
24 And literally there was an apartment in this warehouse, --
25 it is ridiculous, this apartment. This place palatial

1 bathroom you've never seen before, warehouse, but he lived
2 inside this apartment. She goes down and she hires Mr.
3 Freeman for the divorce action, and after she files a
4 divorce action -- I believe on March 26th, 2014 -- files
5 the action for divorce. Mr. Laera files a response and
6 actually the response I think -- I think counsel actually
7 spent (sic) at the Court wherein he says, uh -- he actually
8 says I've been living in Fort Mill for two years; this is
9 my principal place of business; I also live in Florida; I
10 also live in North Carolina, but he says I spend most of my
11 time in South Carolina. Um, the divorce settlement is
12 negotiated; they go in front of Judge Woods; Judge Woods
13 grants the divorce decree, signs it; it's granted and
14 entered on the 31st of October, 2014. So that's just from
15 a placement standpoint where we are.

16 Ms. LeFebvre has testified to Mr. Bernstein that
17 she had no idea that Blanco even existed. She really had
18 nothing to do with his businesses. She had no idea about
19 them and who they were. And as we know, because of the
20 writ of mandamus there was no abstract of judgment at that
21 time because because of um -- because of, you know, what
22 happened with the clerk's office, so there was nothing on
23 the record that Mr. Freeman could deal with regarding
24 priority interest or whatever as to Blanco. And that's --
25 that's kind of where things were at that time. When Blanco

1 actually began its process of trying to collect all their
2 money, they realized that Ms. LeFebvre had title to the
3 property, and it was because of the spousal interest. My
4 feeling is they probably didn't know that they -- she was
5 actually a wife, because her name's not Laera, it's
6 LeFebvre ---

7 THE COURT - Was there anything in the family
8 court establishing a spousal interest in this property?

9 MR. GILBERT - The -- what establishes spousal
10 interest in the property, Your Honor, under 20-3-610 is the
11 fact that ---

12 THE COURT - On -- doesn't there pre-dispose some
13 facts ---

14 MR. GILBERT - --- it was filed. It was filed.
15 The order was filed. Anything that's ordered -- anything
16 they own at the time of the filing of that, that divorce
17 filing, that establishes that equitable interest, and yes,
18 there is an equitable interest I believe established by the
19 um -- by the Court.

20 THE COURT - Well, I don't claim any recollection
21 of family court law I'm happy to say.

22 MR. BERNSTEIN - About to learn. (laughing)

23 MR. GILBERT - Yeah, and the final decree, Your
24 Honor, -- and I think we did submit this as part of our
25 motion -- it's in the divorce decree -- or it's in the

1 memorandum which we filed -- we filed today, sent to the
2 Court earlier -- if the Court doesn't have a copy I can
3 hand one up to the Court.

4 THE COURT - I do not.

5 MR. GILBERT - And I'll be glad to do that.

6 THE COURT - You say it's a -- now, I've got a
7 copy of the filed motion. You say it's attached to that.

8 MR. GILBERT - Well, if I may approach, Your
9 Honor, ---

10 THE COURT - Yeah.

11 MR. GILBERT - --- I'll give you that.

12 (WHEREUPON, DOCUMENT HANDED UP TO THE COURT.)

13 MR. GILBERT - That's in our -- and counsel's got
14 a copy of that. This is our memorandum which we've sent to
15 the Court.

16 THE COURT - Okay.

17 MR. GILBERT - And in that -- there's two things
18 in that one, one is this -- the complaint for divorce.
19 I'll be honest with you, it's redacted, because in federal
20 court we had to redact the ages and names of the children,
21 and so I couldn't find my other copy, so if you see exhibit
22 A, you'll see there's a blank space, because it was
23 redacted for federal court purposes, the names and ages of
24 the kids. Exhibit B is the decree of divorce. And what
25 I'm referencing is on page three of four, paragraph B,

1 where it says the plaintiff shall be entitled to sole
2 ownership and possession of the property located at 419
3 York Southern Road, Fort Mill, South Carolina, ---

4 THE COURT - Let me stop you a second.

5 MR. GILBERT - Sure, I'm sorry.

6 THE COURT - What -- where -- what page? Exhibit
7 what now?

8 MR. GILBERT - It's on -- it's on B.

9 THE COURT - B?

10 MR. GILBERT - Yes, Your Honor.

11 THE COURT - All right.

12 MR. GILBERT - Close to the back.

13 THE COURT - Got you. Page three of four.

14 MR. GILBERT - Three of four.

15 THE COURT - Okay.

16 MR. GILBERT - It says the plaintiff should be
17 entitled to sole ownership and possession of the property,
18 D, located at 419 York Southern Road, Fort Mill, South
19 Carolina, so that's the -- it's the establishment of the
20 property interest. Now, however, this -- this vested
21 spousal equitable interest, which is what the statute says
22 -- and I've got a copy of the statute if the Court would
23 like a copy -- if I may approach ---

24 (WHEREUPON, DOCUMENT HANDED UP TO THE COURT.)

1 MR. GILBERT - My understanding, that, Your Honor,
2 this, basically, acts a little bit like a mechanic's lien.
3 It's a priority -- priority back in time kind of deal. It
4 has to begin -- your rights begin at the time that you
5 filed your divorce action, the day you filed it. It can't
6 begin until then though, but if you -- if Blanco has a
7 judgment on the records, before she files that record,
8 they've got priority, but the moment she files that -- that
9 divorce, that begins her priority, and then she's got to --
10 she's got to consummate that like you do a mechanic's lien
11 with a judgment.

12 THE COURT - You talking about a priority, in
13 quotes, lien?

14 MR. GILBERT - I believe it is, Your Honor. I
15 believe it ends up becoming an equitable interest, an
16 equitable lien on that property at that time, ---

17 THE COURT - Well, ---

18 MR. GILBERT - --- because she -- because she has
19 -- she has at that point -- that establishes her right, her
20 vested right to her marital right of that property.

21 Whatever he ---

22 THE COURT - Well, let me make it simple for me.

23 MR. GILBERT - Sure.

24 THE COURT - Well, let's suppose at the time she
25 filed for divorce they owned a home and titled entirely in

1 his name and he had this judgment, you're telling me a
2 creditor can't levy and execute on that?

3 MR. GILBERT - The judgment -- so -- so ---

4 THE COURT - Entirely?

5 MR. GILBERT - Let me see -- let me understand the
6 Court correctly. Are you -- is the Court saying that the
7 judgment was on the books and records at the time that she
8 filed the divorce decree?

9 THE COURT - Yes.

10 MR. GILBERT - Then they would have priority.

11 THE COURT - Okay, well, that's my -- all right.

12 MR. GILBERT - They would have -- the creditor
13 would have priority, because they're first in time.

14 THE COURT - Okay.

15 MR. GILBERT - So just like mechanic's lien, they
16 got it. And there's a case -- Your Honor, I thought I had
17 it here and I do not, but there's -- if you go to the
18 statute, there's only one case that it cites to and it's a
19 -- and there's a case that, specifically, says, yeah, if
20 they're -- if they're locked or clocked in first ---

21 THE COURT - And this is from the date of the
22 filing of the divorce action?

23 MR. GILBERT - It's the filing of the divorce
24 action. That's the ---

1 THE COURT - All right. And that -- and that was
2 what date?

3 MR. GILBERT - That was March 26th, 2014.

4 THE COURT - 3/26/14. All right.

5 MR. Bernstein, what was the date of -- the
6 retroactive date of the filing of the judgment?

7 MR. BERNSTEIN - October the 3rd of 2014.

8 THE COURT - All right, go ahead, Mr. Gilbert.

9 MR. GILBERT - Thank you, Your Honor. So our --
10 so that sets the table for Your Honor, and Ms. -- what goes
11 on happened with our case is Blanco files suit against us
12 in the federal case; Ms. LeFebvre has to hire us to come in
13 to fight.

14 THE COURT - What was the federal case about?

15 MR. GILBERT - It was a fraudulent transfer claim,
16 Your Honor. Um ---

17 THE COURT - And that's the memo -- I'm looking at
18 a memo now that's got a memorandum ---

19 MR. GILBERT - It is.

20 THE COURT - --- filed in the federal court
21 action.

22 MR. GILBERT - Yes. So two years ago Mr.
23 Bernstein on behalf of his client files a federal court
24 action claiming fraudulent transfer, because the property's
25 titled in the name of Ms. LeFebvre ---

1 THE COURT - And this -- hold on a second. This
2 is -- in that action the plaintiff is Blanco. Right?

3 MR. GILBERT - Yes, Your Honor.

4 THE COURT - All right. And this memo that I'm
5 looking at is Blanco's memo? Is attached to your motion to
6 alter or amend?

7 MR. GILBERT - That may be -- that may be their
8 summary judgment memo.

9 THE COURT - That's correct.

10 MR. GILBERT - That's -- yes, that's one of them.
11 Yes, I believe that is, Your Honor.

12 THE COURT - Were they granted summary judgment?

13 MR. GILBERT - They have not. The Court has not
14 ruled yet.

15 THE COURT - Hadn't ruled yet.

16 MR. GILBERT - And we're -- we actually got right
17 before pre-trial ---

18 THE COURT - Roman Numeral II of that memo makes
19 this statement, and I -- I didn't notice this when I read
20 through things yesterday -- the Defendants Laera and -- is
21 it LeFebvre? ---

22 MR. GILBERT - LeFebvre. That's how she says it,
23 yeah.

24 THE COURT - --- were never married.

1 MR. GILBERT - That is the -- so -- so that's the
2 -- that was the allegation that was provided in federal
3 court.

4 THE COURT - Yes.

5 MR. GILBERT - That was the argument that was made
6 by Blanco. Blanco's -- gave a number of reasons why --
7 said, well, they weren't married; they had a civil ceremony
8 in Colorado, there was no married license. Civil
9 ceremonies in Colorado -- at the time the law in Colorado
10 was common-law marriage. You had to hold yourself out as
11 married and um -- and they were married, the officiant --
12 we even -- were going to have the officiant come and
13 testify that, yes, sir, they were married. North Carolina
14 under the -- a case called the In Re: Peacock, as long as
15 you have a -- as long as you have somebody who is a civil
16 ceremony, considered married. South Carolina as well. As
17 the Court knows, there's also common-law marriage. Either
18 way, it's our contention that they were married. It really
19 doesn't matter in our opinion, because Judge Woods says
20 they were married in the divorce decree, and that's the law
21 of the case as far as we're concerned, and until Judge
22 Woods decides to overturn that ruling, we're all stuck with
23 the fact that they're married. And so the argument,
24 however, was there's a fraudulent transfer because they
25 weren't married and the Court needs to ---

1 THE COURT - Yeah, this transfer was a fraudulent
2 transfer.

3 MR. GILBERT - The -- the original one from Laera
4 to LeFebvre ---

5 THE COURT - Half interest or -- oh, the second
6 half interest.

7 MR. GILBERT - The half interest.

8 THE COURT - The first half interest.

9 MR. GILBERT - The first half interest. Correct.

10 MR. BERNSTEIN - Actually both.

11 MR. GILBERT - Yeah, the first half interest. The
12 first -- and then -- and the second one whenever it got
13 transferred to the trust.

14 THE COURT - All right.

15 MR. GILBERT - Okay. That was the nature of that
16 case, and we went on for about two years. We got all the
17 way to summary judgment, depositions, mediation, and then
18 at some point this year counsel realized that ---

19 THE COURT - But where are we headed with this,
20 because I heard a case ---

21 MR. GILBERT - I know.

22 THE COURT - --- a full argument of this case with
23 -- where Ms. LeFebvre had actual notice of -- of this -- of
24 that argument, of -- of the hearing on that motion. In
25 fact, she corresponded with the Court ---

1 MR. GILBERT - Yep.

2 THE COURT - --- by e-mail, and neither she nor
3 anyone representing her appeared.

4 MR. GILBERT - Right, Your Honor. So let me --
5 let me -- let me cut to the chase on that, if I may. Ms.
6 LeFebvre was given notice of a desire by Blanco to escrow
7 the funds. That was the nature of their motion. That was
8 what was in front of you. That's what they provided;
9 that's the information they provided to us; that's the
10 information provided by Ms. LeFebvre. Their memo ---

11 THE COURT - With the clerk.

12 MR. GILBERT - With the clerk.

13 THE COURT - Right.

14 MR. GILBERT - And that's what -- that's what we -
15 - everyone knew. Ms. LeFebvre was not in default as to
16 Blanco. She was in default as to Triple M, but not as to
17 Blanco. Blanco never asserted a priority claim in that
18 memoran -- in that memorandum that was in front of you.
19 They never made the argument in the memorandum such that
20 she would have notice of that and to know to get somebody
21 here to fight for her.

22 THE COURT - The issue was never raised.

23 MR. GILBERT - Either way, the order -- I don't
24 know if it was sua sponte or what happened, but the order
25 now says that the proceeds go to Blanco as a priority

1 interest, and -- and our concern is, well, no, because that
2 issue hasn't been litigated. My client has a right as a --
3 substantive due process right to that property and a
4 procedural due process to notice that the fact is that she
5 needs to be able to be in here for at least to make that
6 argument on priority, but she was not given.

7 THE COURT - But the order you gave me is order
8 number two ---

9 MR. GILBERT - That's order number two.

10 THE COURT - --- with respect to this property ---

11 MR. GILBERT - Yes, Your Honor.

12 THE COURT - --- for the money proceeds?

13 MR. GILBERT - That's correct. It's just the
14 issue of proceeds. That's the issue that Mr. Freeman has
15 just recently just filed a ---

16 THE COURT - Okay, hold on just a second. (Pause)
17 You can have a seat if you want to. I want to look back
18 through this order ---

19 MR. GILBERT - Okay, sure.

20 THE COURT - --- because there are several -- I
21 mean this thing's been intertwined.

22 (WHEREUPON, BRIEF PAUSE IN RECORD)

23 THE COURT - All right, let me -- this thing is
24 not a simple matter. The -- the -- this is order number

1 two transferring the lien -- the lien of Blanco to the
2 proceeds.

3 MR. GILBERT - Correct.

4 THE COURT - In connection with that matter, this
5 order recites -- and correctly I believe, unless somebody
6 tells me different -- that Ms. LeFebvre received a document
7 purporting to transfer the lien to the proceeds that she
8 was to execute. She refused to do that and I set a hearing
9 on that issue. All the parties were advised that there
10 would be a hearing on the motions, and there was a prior
11 notice of some kind that I remember, and Ms. LeFebvre sent
12 an e-mail acknowledging receipt saying she wouldn't be able
13 to come as I recall, -- that's not in this order -- stated
14 her position about the closing and not executing the lien
15 transfer, did not request a continuance and did not hire
16 anybody to appear on her behalf. A hearing was held on
17 March the 22nd and it seems to me that issue was decided in
18 this order ---

19 MR. GILBERT - I think what was ---

20 THE COURT - --- with her having an opportunity to
21 appear and raise the question.

22 MR. GILBERT - I don't believe, Your Honor, that
23 that was priority over her rights and the proceeds were
24 there. I think the only question that was in front of the

1 Court that day was whether or not a lien was going to be
2 granted as the proceeds or not, because ---

3 THE COURT - Say again.

4 MR. GILBERT - I think as of that day, Your Honor,
5 the -- it was either going to be that the property gets
6 sold and the proceeds get put aside and there's a lien
7 against the proceeds or it is not.

8 THE COURT - But my question -- it seems to me
9 that the order -- (pause) -- decides that issue.

10 MR. GILBERT - The order says that proceeds will
11 be disbursed to Blanco and Blanco it -- it basically says
12 they get all the money; that's what it says. And I don't
13 believe that Ms. LeFebvre was given the opportunity,
14 notice, certainly to -- to argue about priority, because
15 that wasn't in front of the Court that day.

16 THE COURT - She was given the opportunity.

17 MR. GILBERT - I do not believe so, Your Honor, it
18 wasn't ---

19 THE COURT - Why wasn't she given the opportunity?

20 MR. GILBERT - Because it wasn't in front of the
21 Court that day.

22 THE COURT - Transferring the lien of the proceeds
23 to ---

24 MR. GILBERT - Transferring the lien ---

1 THE COURT - Isn't her claim of priority an
2 objection to that?

3 MR. GILBERT - Her claim of priority is to whether
4 or not the -- the lien certainly can remain on the
5 proceeds. They still get to maintain a lien on it.

6 THE COURT - No, the document she wouldn't sign
7 was transferring her interest in the lien to -- to -- let
8 me get it right. Her interest in the lien -- yes, sir?

9 MR. BERNSTEIN - Your Honor, I'm sorry. The
10 document which was supposed to be signed at closing was a
11 provision that the lien that Blanco held to the extent held
12 against the property ---

13 THE COURT - Yes.

14 MR. BERNSTEIN - --- would be transferred to the
15 proceeds.

16 THE COURT - Not who would get the proceeds.

17 MR. BERNSTEIN - That was not part of the actual
18 motion. Correct.

19 THE COURT - All right.

20 MR. GILBERT - And in particular, Your Honor, they
21 actually in their memorandum say we are not at this time
22 asking the Court to decide to -- how proceeds will be
23 disbursed ---

24 THE COURT - All right.

1 MR. GILBERT - --- and that was the notice that my
2 client was given. She is under the understanding ---

3 THE COURT - All right, ---

4 MR. GILBERT - --- in absentia that no one's going
5 to decide how proceeds are going to be disbursed. In her
6 mind it's going to be in the Court. The Court's going to
7 hold the proceeds, and we'll fight that later, and that's
8 all she was given notice of, and that's what we're arguing
9 today is that nobody said, you're going to have to deal
10 with whether or not the priority's handled today or not.
11 That was never in front of this Court and it was -- and was
12 never provided to my client in notice, and our contention
13 is that her property right has been taken from her.

14 THE COURT - All right, well, let me stop and ask
15 Mr. Bernstein. Mr. Bernstein, what -- do you agree with
16 their position about the attachment of her spousal interest
17 as a lien at the time of the filing of the divorce?

18 MR. BERNSTEIN - I completely disagree. He gave
19 you part of the story, Your Honor, and I'll give you the
20 rest of the story right now. First of all, we're dealing
21 with a motion ---

22 THE COURT - Well, no, I'm not through asking
23 questions yet. Hold on a second.

24 MR. BERNSTEIN - Sure.

1 THE COURT - The -- there was a third order.

2 Right?

3 MR. BERNSTEIN - There was the first order which
4 was the default order saying you closed and the excess
5 proceeds be stuck with the Court.

6 THE COURT - The supplemental order ---

7 MR. BERNSTEIN - Supplemental order dealt with ---

8 THE COURT - Transferred the interest -- the lien
9 to the -- judgment lien to the proceeds.

10 MR. BERNSTEIN - And then ordered the clerk to
11 disburse.

12 THE COURT - All right, hang on a second.

13 (WHEREUPON, BRIEF PAUSE)

14 MR. BERNSTEIN - To answer your question, Your
15 Honor, ---

16 THE COURT - It appears to me that from the second
17 order and from my recollection of the whole process, that
18 nobody ever raised the issue of a spousal interest at any
19 point along the line. Is that correct?

20 MR. BERNSTEIN - No, sir, actually when we were at
21 that hearing ---

22 THE COURT - Which hearing?

23 MR. BERNSTEIN - --- and I don't -- the second
24 hearing where the second order was done ---

1 THE COURT - When just you and Mr. Ballou were
2 present.

3 MR. BERNSTEIN - Correct. You asked, you know,
4 was there any interest there, and I said that Ms. LeFebvre
5 was raising a spousal interest to which your response was,
6 well, now, I don't know how that comes before your judgment
7 and -- you know, what about that, and I said, well, I don't
8 want to argue their position. They weren't here to argue,
9 ---

10 THE COURT - All right.

11 MR. BERNSTEIN - --- so I didn't make an argument
12 none-the-less, but I said it existed. Now, I think there's
13 something that the Court needs to take very substantial
14 notice of. Mr. Gilbert made reference to the statute
15 dealing with the spousal interest; what he didn't make
16 reference to is the subsequent statute which says, when
17 you're dealing with real estate, if you're going to claim
18 of spousal interest, it has no effect against third parties
19 unless you file a lis pendens with the clerk. That is
20 section 20-3-670(a)1(a) and here's the -- the statute's
21 right there.

22 THE COURT - And no lis pendens was filed?

23 MR. BERNSTEIN - I was going to say -- that -- I'm
24 going to move into evidence Exhibits 1 through 19 which
25 have been marked for the Court for the -- those are both in

1 opposition to his motion to reconsider, as well as in
2 support of our motion to disburse the funds, because to be
3 quite honest, I think they got all the notice they're
4 entitled to, but if they didn't, we gave them notice and
5 we're asking to argue it today, and we're prepared to go
6 forward on that today, but ---

7 THE COURT - All right, hold on a minute. Let me
8 read this statute.

9 MR. BERNSTEIN - Sure.

10 THE COURT - This is 670?

11 MR. BERNSTEIN - Yes, Your Honor, (a)1(a), I
12 believe.

13 THE COURT - Thank you.

14 (WHEREUPON, BRIEF PAUSE IN THE RECORD.)

15 THE COURT - Okay.

16 MR. BERNSTEIN - So, although the argument's being
17 made that there's an equitable spousal interest, the
18 statute, specifically, says if you're going to claim it and
19 you want to claim it against third parties, you have to
20 file a lis pendens. It makes specific reference to section
21 15-11-10, that's the lis pendens statute, Your Honor. I
22 move into evidence Exhibits number 1 through 19 which have
23 already been provided to the other side, and if you'll look
24 at Exhibit 3, Your Honor, Exhibit 3 ---

25 THE COURT - Well, hold on a second.

1 MR. BERNSTEIN - Sure.

2 THE COURT - Any objection, Mr. Gilbert?

3 MR. GILBERT - Yes. Your Honor, ---

4 MR. BERNSTEIN - That's fine.

5 MR. GILBERT - Well, as to what -- what he's
6 trying to move in or as to his lis pendens argument?

7 THE COURT - As to his offering these exhibits.

8 MR. GILBERT - He can -- he can provide to the
9 Court whatever he wants to, Your Honor, from his ---

10 THE COURT - All right. They're received.

11 (WHEREUPON, DOCUMENTS ENTERED INTO EVIDENCE AS
12 DEFENDANT'S EXHIBITS 1 THROUGH 17.)

13 MR. BERNSTEIN - Okay. Now, having said that,
14 Your Honor, Exhibit 3 is a copy of the docket sheets from
15 the York County Clerk of Court. There are two lis pendens
16 which are filed -- excuse me -- as against Ms. LeFebvre --
17 excuse me, against Mr. Laera -- there are three lis pendens
18 filed.

19 THE COURT - (Indicating yes)

20 MR. BERNSTEIN - One is the one that Blanco filed
21 in preparation for filing the federal court action. One is
22 the -- is the Triple M -- and actually that would be
23 against Ms. LeFebvre. There's two against Mr. Laera; one
24 is the foreclosure action; one is the action on behalf of
25 Blanco. The important thing is what's missing is a lis

1 pendens filed by Ms. LeFebvre against Mr. Laera asserting
2 this supposed spousal interest, and by statute, if you
3 don't file a lis pendens, it's ineffective against any
4 third party claims unless and until it's filed. There are
5 no lis pendens filed by Ms. LeFebvre against Mr. Laera,
6 therefore, they are junior in priority and they can't claim
7 a priority interest by reason of this claim to a spousal
8 interest, because she didn't file, as required by statute,
9 a lis pendens. And unless and until, there is no -- there
10 is no right to claim priority over the claim of Blanco. So
11 even though the divorce action was filed in March, the fact
12 that they didn't file a lis pendens means unless and until
13 they do, our judgment lien attach on October the 3rd,
14 before the filing of the lis pendens, before any kind of
15 decision from the Court, before any kind of deed, and for
16 that reason, the Court's absolutely right that Blanco takes
17 priority. That's number one, Your Honor. So ---

18 THE COURT - All right, let me ask Mr. Gilbert
19 about that. What about that, Mr. Gilbert?

20 MR. GILBERT - Well, Your Honor, the first thing
21 is -- you know, that would've been all well and good if we
22 could've argued that back -- back -- back in 22nd (sic),
23 that's ---

24 THE COURT - No. Was there a lis pendens filed?

1 MR. GILBERT - Your Honor, a lis pendens does not
2 establish an equitable lien pri -- property (sic) ---

3 THE COURT - No, but it ---

4 MR. GILBERT - It's not a priority.

5 THE COURT - --- but it ---

6 MR. GILBERT - All it does is put a third party on
7 notice.

8 THE COURT - Listen to me. Listen to me. A lis
9 pendens by this statute it seems to me says this, the
10 rights and interest of each spouse and the other's property
11 created by this article are not effective against third
12 parties with regard to any parcel of real property in which
13 an interest under this article is claimed until a notice of
14 pendency of action is filed.

15 MR. GILBERT - Sure. And, Your Honor, if somebody
16 had come along ---

17 THE COURT - So how can you ---

18 MR. GILBERT - Well, ---

19 THE COURT - It's just like an unrecorded
20 mortgage.

21 MR. GILBERT - So, if somebody had come along and
22 decided to sell the property at that time and she's going
23 to claim an interest at that time, then -- then the lis
24 pendens would've been effective, but in January, 2015,
25 she's got title of the property. Their motion or mandamus

1 is retroactive all the way back; it didn't exist at the
2 time.

3 THE COURT - If fact she didn't have a spousal
4 interest at that time; she owned it.

5 MR. GILBERT - She owned it. That's correct,
6 Your Honor. And they didn't -- there was nobody put on
7 notice of any kind of lis pendens. They weren't even --
8 that's -- you put people on notice ---

9 THE COURT - That's not their problem.

10 MR. GILBERT - It's not, but, Your Honor, it is
11 insofar as the fact -- all it's to do is to put somebody on
12 notice that I have an interest that exist; they've known
13 about that interest for two years. It does not ---

14 THE COURT - No, sir. That is not ---

15 MR. GILBERT - --- establish a priority interest -
16 --

17 THE COURT - Do you mind listening to me?

18 MR. GILBERT - Yeah, I'm sorry, Your Honor.

19 THE COURT - If you hold a mortgage on a property
20 and do not file it and somebody gets a judgment before you
21 do, they have priority over you no matter when your
22 mortgage was executed.

23 MR. GILBERT - I don't believe that's the case,
24 Your Honor, in this instance.

25 THE COURT - I know it's the case ---

1 MR. GILBERT - I think she ---

2 THE COURT - --- with respect to mortgages.

3 MR. GILBERT - In -- well, in this instance, I --
4 she had a priority interest. I mean if you ---

5 THE COURT - No, she doesn't; she has an interest.

6 MR. GILBERT - Well, if you think about it this
7 way, Your Honor, is every single spouse going to go about

8 ---

9 THE COURT - Did she have a priority interest over
10 the mortgagee that held the mortgage on the property?

11 MR. GILBERT - Well, if ---

12 THE COURT - Did she?

13 MR. GILBERT - I'm sorry, Your Honor, ---

14 THE COURT - Did she?

15 MR. GILBERT - No, she did not.

16 THE COURT - Okay.

17 MR. GILBERT - The mortgage interest had that --

18 THE COURT - Then how -- then how is that a
19 priority interest?

20 MR. GILBERT - To the mortgagee?

21 THE COURT - Yes, sir.

22 MR. GILBERT - Because they always take subject to
23 mortgage.

24 THE COURT - No, we don't.

1 MR. GILBERT - The mortgagee always takes subject
2 to anybody else, and plus, her interest didn't even begin
3 until the divorce decree -- until she filed the complaint
4 of divorce, and by that time the mortgage had already been
5 entered long before.

6 THE COURT - Well, I've heard enough about issue.
7 What's your next point, Mr. Bernstein?

8 MR. BERNSTEIN - Your Honor, the issue that was --
9 be raised is whether or not Ms. LeFebvre had constitutional
10 notice of the proceedings before this Court, and the answer
11 to that is yes. They're saying that because the motion
12 itself didn't make a specific provision with respect to the
13 distribution of the funds -- it just talked about
14 transferring the lien to the proceeds -- that somehow that
15 deprived her of the right ---

16 THE COURT - The judgment lien.

17 MR. BERNSTEIN - Right, the judgment -- deprived
18 her of the right with the argument as to proceeds --
19 claiming she didn't know anything, that this Court could
20 consider the proceeds. Well, here's the fallacy of that
21 argument. Number one, this Court had previously granted
22 the motion of Blanco to intervene in this case and to file
23 an answer. She was served with that. The answer
24 specifically stated that Blanco has a judgment and it's
25 entitled to priority and payment out of the proceeds, so

1 she had that notice and didn't make an appearance after
2 that. That's number one. Number two, the rules don't
3 require that she get any notice at all; when she's in
4 default, she's in default. We gave her notice at a hearing
5 out of a matter of courtesy. Not only did we give her
6 notice, we gave Mr. -- Ms. Bud notice; we gave Mr. Gilbert
7 notice, and we got a response from Ms. LeFebvre saying, not
8 that I want to hire someone, not that I want to come up
9 here; the notice said, I did what I'm supposed to do, you
10 should pay me the money. Now, how can she come before this
11 Court and say, I didn't know you were going to make a
12 decision on paying the money when she sent a notice the
13 night before saying, pay me the money? How can she do
14 that? It doesn't work both ways, so in terms of the -- the
15 constitutional arguments to whether she had notice, (a)
16 she's not entitled to notice; she's in default. She got
17 notice anyway, (b) she made the appearance ---

18 THE COURT - Now, let's be clear about this.

19 Which action are we talking about here? Triple M?

20 MR. BERNSTEIN - We're talking about -- this
21 Triple M ---

22 THE COURT - Okay.

23 MR. BERNSTEIN - --- this -- the Court ordered
24 that she -- that the property be sold and that the proceeds
25 be placed with the Court. She's on notice that they're

1 there. She's on notice that Blanco's made claim against
2 them. She's still in default. She still hasn't made an
3 appearance. She's not entitled to notice of anything,
4 because she's in default, but we gave her notice anyway and
5 she stated her position before the Court; she can't come
6 here and say now I didn't know she was -- that you were
7 going to disburse it.

8 THE COURT - She notified the Court, communicated
9 with the Court indicating that she didn't intend to appear.

10 MR. BERNSTEIN - Now, having said all that, Your
11 Honor, ---

12 THE COURT - Nobody's ever argued before me that
13 she had a priority interest on this money.

14 MR. BERNSTEIN - Now, having said all that, Your
15 Honor, I make a motion for the disbursement of the funds
16 now. So even if this Court were to make a decision she
17 didn't have the notice ---

18 THE COURT - Well, the funds have been disbursed,
19 have they not?

20 MR. BERNSTEIN - Pardon? Yeah, they've been --
21 they've been disbursed, so I think it's moot with regard to
22 the issue of the -- the motion for the stay, because by the
23 time that motion was made, the funds had already been paid
24 out and they'd been disbursed.

1 THE COURT - Well, when I became aware of what was
2 going on, I attempted to intervene to have the clerk not
3 disburse the money, but it was already done by the time I
4 knew about it.

5 MR. BERNSTEIN - Again, I -- no motion had been
6 made; we had disbursed the funds -- the motion -- by the
7 time the motion had been made, the funds had already been
8 disbursed. Having said all that, Your Honor, getting back
9 to the issue which brings us here and that is the motion to
10 amend it on the assertion that she failed to receive a
11 constitutional notice of the proceedings before the Court
12 is just not true. She got the notice; she knew what was at
13 issue in the matter, and she didn't appear. She's in
14 default; she's not entitled to any further notice.
15 However, if the Court feels that she's entitled to that
16 notice, it's what we're here for today. I've got all these
17 exhibits to establish the various things showing that my
18 client's entitled to priority, so whether she got notice or
19 didn't, on a substantive issue, my client's entitled to
20 priority; (a) we've already talked about the fact that she
21 didn't file the lis pendens, so even though she may claim a
22 marital interest, the simple fact of the matter is, she
23 didn't file the lis pendens; third parties are not affected
24 by her marital interest until she does, and it's clear and
25 I believe it's been acknowledged that no lis pendens was

1 filed, for that reason has no effect, my client has the
2 priority. That's number one. Now, the Court -- this is a
3 very convoluted case, the underlying case. Now, there were
4 two other issues which deal with the reasons why she
5 doesn't have a marital interest to start out with. One --
6 one is the lis pendens issue. Number two, if the family
7 court order was to be upheld, (a) the family court had to
8 have jurisdiction over the parties, and (b) they had to be
9 married in the first place, and we've touched on that from
10 looking at the federal court there. We've submitted
11 evidence, and I can go through it piece by piece to explain
12 it ---

13 THE COURT - All right, the matter in federal
14 court was Blanco's motion for summary judgment based upon,
15 among other things, the fact that they weren't, in fact,
16 married, so that's an issue to be decided by the federal
17 judge?

18 MR. BERNSTEIN - Not anymore, and here's why. The
19 action in federal court was an action for fraudulent
20 conveyance and seeking to impose liability for a fraudulent
21 conveyance and seeking to have the property sold. Once
22 this Court authorized the sale by Ms. LeFebvre to the
23 current owner, Triple M, we're no longer contesting her
24 title to that property. We're claiming, okay, she had
25 title. She was entitled to do it.

1 THE COURT - Has the federal action been
2 dismissed?

3 MR. BERNSTEIN - We've made a motion to dismiss
4 the federal action; it's been objected to by the
5 defendants. So it's sitting there waiting to be heard;
6 we've moved to dismiss it, and that's plaintiff's exhibit
7 number 2 showing where we made the motion to dismiss,
8 because even though the issue of, were they married, did
9 the family court have jurisdiction, were issues pending in
10 front of the federal court, is no longer a case for
11 controversy, because we're no longer seeking a decision or
12 a determination that it was a fraudulent transfer. We're
13 no longer seeking to impose liability for a fraudulent
14 transfer. We want it dismissed. We're fine with the sale.
15 So even though those matters were a part of what was being
16 determined by the federal court, the federal court action
17 is now moot; that's why we're seeking to have it dismissed.
18 Now, having said that, the state court -- excuse me -- the
19 family court as I indicated was filed in March of 2014.
20 Okay? Prior to that, Mr. Laera was involved in numerous
21 litigations in Florida United States District Court in
22 2013, etcetera, which led to this underlying judgment, Your
23 Honor. In that underlying -- in those underlying cases,
24 there's testimony as part of, I believe, Exhibit 9 which
25 had -- which was given by Ms. Laera under oath in federal

1 court in front of the federal judge in December of --
2 excuse me -- December of 2014, four months before -- less
3 than four months before this divorce action was filed. In
4 that the testimony is, he's never been married to Ms.
5 LeFebvre; she's just the mother of his children; they've
6 never owned any property together, and he testified that he
7 lives in Florida. He's filed federal court actions in
8 cases which say I'm a resident of Florida. His license is,
9 I'm a resident of Florida. Why is that important? Under
10 South Carolina law, the family court doesn't have
11 jurisdiction unless one of the parties -- the plaintiff is
12 a resident, which wasn't; Ms. LeFebvre was the plaintiff;
13 she's a resident of Charlotte; she's never been a resident
14 of South Carolina, and if the defendant is the basis for
15 the jurisdiction, the defendant has to have resided in
16 South Carolina for a year prior to the filing. We've got
17 federal court testimony saying he's a resident of Florida,
18 not of South Carolina. So we've got a family court action
19 that they're relying -- they're basing their whole case on
20 between a Florida and Charlotte resident. Well, guess
21 what? South Carolina family court doesn't have
22 jurisdiction despite the fact that they want to put it in
23 there.

24 THE COURT - Well, how does your client have the -
25 - have the standing to raise that issue?

1 MR. BERNSTEIN - They're saying we should've done
2 that in family court; we didn't have the notice of it, but
3 the point is, lack of jurisdiction could be raised at any
4 time. I don't care whether they get divorce or not.

5 THE COURT - That's subject matter jurisdiction.

6 MR. BERNSTEIN - Yeah. I don't care whether they
7 get divorced or not. I don't think they were ever married,
8 but the point is, they're claiming a -- a marital property
9 interest in this property. Well, you know, if -- if the
10 Court has jurisdiction to determine that marital property
11 interest, great, but they don't because they -- that's why
12 we have standing. They didn't have that. They didn't live
13 there for a year. On top of which, we get back to the
14 issue of the common-law marriage, that's the other reason.
15 There's no common-law marriage in North Carolina; there's
16 no common-law marriage in Florida. There is in South
17 Carolina, but they never lived in South Carolina. The only
18 evidence she has that Mr. Laera lived in South Carolina,
19 according to her deposition is, he told me he did. Well,
20 we've got federal testimony in 2013, four months before he
21 files his motion, saying he lives in Florida.

22 THE COURT - I get all that.

23 MR. BERNSTEIN - So we get back to this three
24 reasons why, clearly, the -- stay at -- their (sic) marital
25 interest. First and foremost, even if they were married,

1 and even if the family court matter was appropriate, they
2 didn't file a lis pendens. That's the easiest way -- the
3 Court doesn't even have to get into the issue of whether
4 they were married, whether they weren't married or whether
5 the family court had jurisdiction ---

6 THE COURT - Well, I am not going to -- I am not
7 going to opine anything about whether or not she had a
8 marital interest. That's not -- that's -- without my --
9 outside of any -- any jurisdiction I might have.

10 MR. BERNSTEIN - Well, that's what their claim is
11 as to why you shouldn't have distributed the proceeds, and
12 that's clearly before this Court; both parties are before
13 this Court. The plaintiff's entitled -- I mean, excuse me,
14 -- Blanco's entitled to those proceeds. The defendant
15 hasn't shown any reason why this Court shouldn't have
16 distributed those funds. As a practical matter, she got
17 all this constitutional notice she should've had; she made
18 an appearance, stated her position. There's no basis,
19 whatsoever, for the assertion that she wasn't on notice,
20 that she didn't have her constitutional notice ---

21 THE COURT - You said all that.

22 MR. BERNSTEIN - Okay.

23 THE COURT - Anything else?

24 MR. BERNSTEIN - I think that's enough, Your
25 Honor.

1 THE COURT - All right.

2 Mr. Gilbert, I am not going to venture into the
3 question of the divorce, but I am -- I am concerned about
4 the language of this statute that's 20-3-670, which says
5 that the -- the interest of a spouse is not effective
6 against third parties, so the question becomes who are the
7 third parties? Well, it doesn't mean just the next -- the
8 next five guys that walk down the street. It means parties
9 who claim a prior interest in the property. That's the
10 whole purpose of a lis pendens, to govern the priority of
11 people who -- that require some sort of interest in real
12 estate, whether it be a mortgage, a judgment, um -- for
13 example, if somebody does some bad title work in connection
14 with a foreclosure and they fail to name a judgment
15 creditor that should've been named and would have a right
16 to have their priority determined, that judgment -- well,
17 let me back up -- who acquired an interest prior to the lis
18 pendens and was not named as a party, they have -- there's
19 a process by which you got back and bind those people to
20 the foreclosure, but I mean this -- the business about not
21 effective against third parties doesn't make any sense
22 unless you're talking about third parties who claim a prior
23 interest. There'd be no reason to say that unless these
24 people are claiming a prior interest -- a prior interest, a
25 superior interest in time. And if -- if Ms. LeFebvre

1 didn't file a lis pendens, then I think anybody, not just -
2 - not just Blanco, could -- could obtain an intervening
3 interest superior to hers.

4 MR. GILBERT - Well, if I may, Your Honor ---

5 THE COURT - Yes, sir. I mean I -- I'm troubled
6 by all this, because it seems to me there's a lot that I
7 didn't hear, but I ---

8 MR. GILBERT - I understand, Your Honor.

9 THE COURT - --- but I think that's just as much
10 Ms. LeFebvre's fault as it is anybody else's. She had a
11 notice, opportunity, she had a problem with the process and
12 never raised this issue.

13 MR. GILBERT - I think this issue would be --
14 would be served in the partition action as to whether or
15 not, you know, the equitable -- the claim of the lien --
16 the notice of lis pendens -- those issues would be well-
17 settled there. For your purposes, Your Honor, and I think
18 for our purposes it gets back to what was she told she was
19 going to be deciding that day, the 22nd, and all that she
20 knew was going to be decided was whether or not money was
21 going to be escrowed and whether or not a lien was going to
22 be applied to the escrow. That's what she was told.
23 That's all -- that's all she was given by opposing counsel,
24 and that's all that we were notified of, and so beyond
25 that, to know that there was going to be a claim -- and I -

1 - I understand the issue, well, she was in default as to
2 Triple M, not as to -- as to Blanco. They didn't have a
3 claim against her in that case. They had a -- they had a
4 desire; they had a desire to proceeds, but they didn't tell
5 her we're going to come and argue that day. Matter of
6 fact, they told her in federal court, that's where we're
7 going to argue it, and as far as she knew, that's where it
8 was being argued is as to whether or not we get a right to
9 proceeds. That's what's pending in federal court is
10 whether or not there's a right to monies out of that -- out
11 of the property. That's what's currently pending in
12 federal court. So that's what she knew is that we're going
13 to be deciding whether or not there was going to be a lien
14 carried on -- on those proceeds. That's what she knew.

15 THE COURT - Aren't you in a position now where
16 because the money has been disbursed, that this issue is
17 really one where -- where she needs to assert that interest
18 against the person who received the money, in other words,
19 out of order lien-holder?

20 MR. GILBERT - Yeah, against Blanco, and that's
21 what -- that's what Mr. Freeman filed.

22 THE COURT - What's that got to do with the
23 partition?

1 MR. GILBERT - It's a partition dec action is what
2 it is. They filed an action claiming who has rights to
3 priority rights and that -- but yes, that's ---

4 THE COURT - But there's no property to partition?

5 MR. GILBERT - Well, -- I'll let you address that
6 with Mr. Freeman, but anyway that's ---

7 THE COURT - I'll eventually have to hear that
8 one.

9 MR. GILBERT - But that's -- that is essentially
10 what needs to be addressed, briefed, litigated, researched,
11 all this information come in, we can, you know, bring it
12 all in here and have people testify, but I think the
13 problem is that the opportunity to do that wasn't there and
14 the notice of opportunity to do that as to that particular
15 issue -- that's -- I think we're getting a little far
16 afield -- that's what our concern is, is we need to address
17 did she know that she was supposed to come in here and
18 argue about the priority that day and she did not that day.

19 THE COURT - All right.

20 MR. BERNSTEIN - With all due respect, I
21 understand that -- I believe it was yesterday when this ---

22 THE COURT - Briefly.

23 MR. BERNSTEIN - --- partition action was filed.
24 We intend to file -- once it's served, we intend ---

1 THE COURT - I don't want to hear about the
2 partition action.

3 MR. BERNSTEIN - What I want to say is, the issue
4 was already before this Court. They don't need a separate
5 lawsuit. That's why we're here. Got the jurisdiction over
6 the parties, got jurisdiction over the property.

7 THE COURT - I am not concerned with that action.
8 I don't know anything about it.

9 MR. BERNSTEIN - I understand. The point is, Your
10 Honor, the issue which is the subject -- it has -- already
11 in litigation here. This -- these issues have been raised
12 before this Court. Priority to the funds is, specifically,
13 what is at issue in this Court and what this Court has
14 ruled on.

15 THE COURT - Okay. I'm -- have a seat.

16 I am -- you want me to alter the order to --
17 essentially to remove the authorization of the clerk to
18 disburse the money?

19 MR. GILBERT - That's it, Your Honor. We'd like
20 the money in escrow so we can fight about who's got
21 priority over it.

22 THE COURT - All right, hang on.

23 MR. GILBERT - And we'd like to fast-track fight
24 about that; I'm sure Mr. Bernstein would like to too, so --

1 but the funds have been disbursed, so they've got to put
2 them back.

3 THE COURT - Kind of like trying to unscramble an
4 egg.

5 MR. BERNSTEIN - The fact of the matter is, Your
6 Honor, Blanco is a substantial corporation. If the Court
7 wants to take into consideration entitlement to the funds
8 and reaches a contrary conclusion, it can order that Blanco
9 pay it back at that time ---

10 THE COURT - Hold on. (Pause) Okay, Mr. Gilbert,
11 the order does authorize the clerk to disburse the money to
12 Blanco. It does not address at all, as I read it, the
13 question of whether, (a) Ms. LeFebvre has a spousal
14 interest or (b) the priority of her spousal interest. So
15 in other words, what I'm trying to say is, I do not believe
16 that those issues are foreclosed by this order. What --
17 the problem is the money's gone.

18 MR. GILBERT - Correct, Your Honor.

19 THE COURT - So I am -- I'm going to deny the
20 motion to alter or amend this order simply because that
21 issue was not before me and don't know that it could've
22 been determined in that proceeding. The issue is still
23 alive. And in any event, if I am to decide that issue now,
24 I would have to say that -- that Ms. LeFebvre's spousal
25 interest, if any she has, could not be effective against

1 the judgment lien of -- of Blanco, because she didn't file
2 a lis pendens. And I know that's not your -- that's not
3 your problem, but I -- I think that is fatal to her claim.
4 So I am -- so in effect, that issue was not decided by that
5 prior order and I'm not going to alter or amend that order
6 to decide that issue, let the order stand as it is. I
7 believe that based on what was before the Court, the
8 authorization disburse the money to Blanco was proper. It
9 may not have been proper if everything was laid out, but I
10 don't think that's foreclosed; I don't think it's
11 precluded; it's just that the money's gone. So I think
12 probably the better thing for me to do is to do a fairly
13 summary order denying the 59(E) relief without comment on
14 issues that were not raised. Is that -- anything question
15 about that?

16 MR. GILBERT - No, I mean but ---

17 THE COURT - I'm not going to change the order. I
18 ---

19 MR. GILBERT - I understand, Your Honor. Would
20 the Court be willing -- to ask -- to order that Blanco put
21 the money back in the Court pending the outcome?

22 THE COURT - No, sir. Your position -- so that's
23 what I'm going to do. It seems to me like your position is
24 something -- may be akin to the question of whether in a
25 default case a -- a plaintiff in a default judgment,

1 personal injury case can ask for more damages than they ask
2 for in the complaint, is the nearest analogy I can think
3 of, and you can't. The Court can't grant more damages than
4 -- than were pleaded. In other words, a party has a right
5 to go into default to a certain extent if they're not
6 worried about that, but -- but I'm not going to change that
7 order, and the issue of -- the issue of priority -- well,
8 let me say -- I'll leave it to the parties to argue whether
9 or not the issue of priority has been foreclosed, precluded
10 by some sort of -- estoppel or issue of preclusion.

11 Anything -- any questions?

12 MR. BERNSTEIN - Who do you want to prepare the
13 order, Your Honor?

14 THE COURT - Maybe me.

15 MR. BERNSTEIN - I'm okay with that.

16 MR. GILBERT - Your Honor, would you be willing to
17 indicate in the order that at least as far as that issue on
18 priority that the Court's not ruling on that?

19 THE COURT - If you want -- let me say it this
20 way, if you want me to rule on the question of priority ---

21 MR. GILBERT - I do not.

22 MR. COURT - --- I can tell you right now that I
23 think 23-670 controls.

24 MR. GILBERT - I'm not looking for the Court to
25 order -- to order on priority today. We would prefer it if

1 the Court would just indicate that that order -- that
2 question is not been decided today.

3 MR. BERNSTEIN - Somehow I think I'm going to have
4 a problem getting an order of reference ---

5 COURT REPORTER - I'm sorry, I'm not -- I can't
6 hear you.

7 MR. BERNSTEIN - I'm sorry. Nothing. I withdraw
8 that comment.

9 THE COURT - Let me do this. I will -- I'm going
10 to -- I'm going to -- I'm going to do an order of my own
11 dealing with it the way I think I need to deal with it.
12 I'm not going to change my order. I'm not exactly sure how
13 I'm going to deal with it either, so you all will know when
14 you get it I guess.

15 MR. BERNSTEIN - Thank you, Your Honor.

16 MR. GILBERT - Thank you, Your Honor.

17 THE COURT - Anything else?

18 MR. GILBERT - No, Your Honor.

19 THE COURT - Thank you. Do I need -- do you need
20 to say anything else, John?

21 MR. FREEMAN - I'll just put the case number on
22 the record, Your Honor.

23 THE COURT - Well, it doesn't need to be; it's not
24 before me yet.

1 MR. FREEMAN - Then nothing. I mean -- not at
2 this time, Your Honor, no, sir.

3 THE COURT - All right, thank you.

4 MR. GILBERT - Thank you, Your Honor.

5 (END OF TRANSCRIPT)

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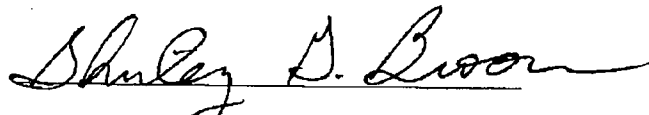
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C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 61 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of Triple M. Partners, LP vs. Suzetta LeFebvre and BLANCO GmbH + CO.KG, as taken by me in The Court of Common Pleas for the Sixteenth Judicial Circuit on April 20, 2017, and provided by me this the 3rd day of July, 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party herein.



Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

| | | |
|---|---|------------------------------------|
| BLANCO GmbH + CO.KG, |) | |
| |) | Docket No. 0:15-2199-TLW |
| Plaintiff, |) | |
| v. |) | |
| |) | <u>DEFENDANT LEFEBVRE'S</u> |
| Vito Antonio Laera and Suzette LeFebvre |) | <u>MOTION FOR SUMMARY</u> |
| Defendant. |) | <u>JUDGMENT</u> |
| _____ |) | |

Defendant Suzette LeFebvre, pursuant to Rule 56(a) and 56(c) of the Federal Rules of Civil Procedure, moves the Court to enter Summary Judgment in the Defendant's favor, dismissing this action with prejudice on the grounds that the pleadings, discovery and disclosure materials on file, affidavits and sworn testimony show that there is no genuine issue as to any material fact with respect to the essential elements of Plaintiffs' claim for Fraudulent Transfer. In connection with this Motion, Defendants have separately filed a Concise Statement of Material Facts and Memorandum in Support of this Motion. The basis for the Motion is that Plaintiffs have not set forth an actionable claim for fraudulent transfer and the underlying basis developed during discovery for the claim of fraudulent transfer is without merit and wholly inconsistent with the law.

WHEREFORE, Defendants pray that the Court enter Summary Judgment in their favor dismissing this action with prejudice and taxing costs to the Plaintiff.

This the 30th day of November, 2016.

S/ M. HEATH GILBERT, JR.
M. HEATH GILBERT, JR., FED ID # 10760
Attorneys for Defendant Suzette LeFebvre
Baucom, Claytor, Benton, Morgan & Wood, P.A.
P.O. Box 35246
Charlotte, NC 28235
704-376-6527
704-376-6207 (F)
hgilbert@baucomclaytor.com

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

| | | |
|---|---|--------------------------------------|
| BLANCO GmbH + CO.KG, |) | |
| |) | Docket No. 0:15-2199-TLW |
| Plaintiff, |) | |
| v. |) | |
| |) | <u>CERTIFICATE OF SERVICE</u> |
| Vito Antonio Laera and Suzette LeFebvre |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

This is to certify that the undersigned has this the 30th day of November, 2016, the undersigned served the foregoing document, which was filed using the Court's CM/ECF system. Notice of the filing will be sent to all counsel by operation of the Court's electronic filing system. Parties may access this filing through the Court's System.

S/ M. HEATH GILBERT, JR.
M. HEATH GILBERT, JR., FED ID # 10760
Attorney for Defendant Suzette LeFebvre
Baucom, Claytor, Benton, Morgan & Wood, P.A.
P.O. Box 35246
Charlotte, NC 28235
704-376-6527
704-376-6207 (F)
hgilbert@baucomclaytor.com

STATE OF SOUTH CAROLINA
COUNTY OF YORK

) IN THE COURT OF COMMON PLEAS
)
) CASE NUMBER 2014-CP-46-3272

BLANCO GMBH+CO.KG,
Plaintiff,

v.

Vito Antonio Laera, VLANCO INDUSTRIES, LLC,
G-Tech-1, Inc., Robert Johnson, Joseph Napolitano)
and Vilanco Industries, Inc.,)
Defendants.)

AFFIDAVIT

2016 DEC 22 PM 3:37
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DAVID A. BERNSTEIN
C.C.C.P. & G.S.
YORK COUNTY, SC

The undersigned Robert A. Bernstein, being first duly sworn, deposes and says:

1. I am an attorney at law licensed to practice in the State of South Carolina, and I am the attorney for the Plaintiff in the within action.
2. On October 3, 2014, the attorney for the Plaintiff filed a foreign judgment and affidavit in support thereof with the Clerk of Court of York County; a true and correct copy of the Civil Coversheet, Notice of Filing of Foreign Judgment and affidavit are attached to this Motion .
3. The Foreign Judgment and affidavit were properly served on Defendant Vito Antonio Laera, as appears by the records of this Court.
4. No person has appeared and contested the entry of the judgment in the records of this State.
5. Although the Clerk of this Court entered the foreign Judgment in the docket as of October 4, 2014, the Clerk of Court failed to enter the Judgment in the Abstract of Judgments as of that date, as required by S.C. Code Ann. 15-35-920(B).
6. On March 3, 2016, the Clerk of Court of York County entered the judgment n the

Abstract of Judgments.

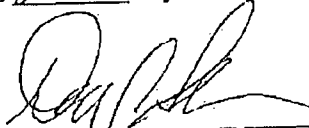
7. The attorneys for the Plaintiff have demanded that the judgment be entered in the Abstract of Judgments as of October 3, 2014, as required by S.C. Code Ann. 15-35-920(B), but the Clerk of Court has failed and refused to do so.

8. The Plaintiff will suffer irreparable harm if the Clerk of Court fails to enter the Judgment as required by law on the date when the foreign judgment was filed with this Court, since the Defendant, with knowledge of the pending judgment, attempted to transfer a parcel of property worth over \$2 million out of his name after the said judgment was filed with the Clerk of this Court, but before the judgment was docketed in 2016.

9. In the event that this Court fails to require the Clerk of this Court to perform his statutory duty to properly docket the judgment in the Abstract of Judgments, the Plaintiff may lose a significant portion of the judgment lien against the Defendant's real estate, with no other avenue to recover the amount so lost.

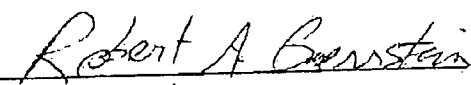
FURTHER DEPONENT SAYETH NOT!

Sworn and Subscribed before me
this 20th day of December, 2016



Notary Public for the State of South Carolina
My Commission Expires: 2/21/2017

} BERNSTEIN & BERNSTEIN, P.A.



Robert A. Bernstein
5418-B Rivers Avenue
North Charleston, SC 29406-6129
(843) 529-1111; (843) 529-0035 (fax)
rbernstein@bernsteinpa.com
ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA THE FAMILY COURT OF THE
YORK COUNTY SIXTEENTH JUDICIAL CIRCUIT

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2014 MAR 20 PM 1:42

Suzette LeFebvre,
Plaintiff,

DAVID HAMILTON
FAMILY COURT
YORK COUNTY, SC

vs.

Vito Antonio Laera,

Defendant.

COMPLAINT

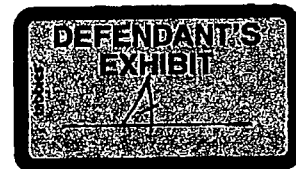
COPY

File Book #2014-DR-46- 623

TO: THE DEFENDANT ABOVE-NAMED:

COMES NOW the Plaintiff, Suzette LeFebvre, and complains of the acts and/or omissions of Defendant, Vito Antonio Laera, in the following particulars, to wit:

1. *Jurisdiction and Venue.* The defendant is a citizen and resident of York County, South Carolina, and has been so for a period in excess of twelve months immediately preceding the commencement of this action. The statutory basis of jurisdiction is S.C. Code Ann. §20-3-30.
2. *Marriage.* The parties were married May 19, 2001 and are husband and wife.
3. *Children.* Two (2) children were born to the marriage of the parties, to wit [REDACTED] and [REDACTED] born [REDACTED]
4. *Lack of Collusion.* The parties have not colluded and the act or acts complained of by the Plaintiff were not done with the knowledge or assent of the plaintiff for the purpose of obtaining a divorce.
5. *Adultery.* The Defendant is committing adultery. The Defendant has had inclination and opportunity to commit adultery and, in fact, has engaged in and committed adultery during the course of the parties' marriage, and continued to engage in the same since he



moved out of the marital residence. The Plaintiff is entitled to a divorce on the grounds of adultery.

6. *Separation.* The parties have lived separate and apart since December 7, 2012.
7. *One Year's Continuous Separation.* In the alternative, the Plaintiff would show she is entitled to a divorce on the grounds that the parties have not cohabitated as husband and wife in over one (1) year and have lived separate since the separation date set forth above.
8. *Child Custody.* The Plaintiff is the fit and proper person to maintain custody of the minor children herein. The best interests of the minor children would be served by sole custody to the Plaintiff. The minor children have been in the primary care and custody of the Plaintiff since the parties separated. The Defendant has had regular contact with the minor children.
9. *Child Support.* The minor children herein rely on both parents for the necessities of life. Both parties are fit and capable of earning an income. The Plaintiff needs the financial support of the Defendant. The Plaintiff requests child support from the Defendant as determined by the South Carolina Department of Social Services Guidelines.
10. *Equitable Apportionment of Property.* The parties acquired real and personal property during their marriage. The parties acquired debts during their marriage. The parties are entitled to an equitable apportionment of their marital property and marital debts.
11. *Alimony.* The Plaintiff believes she is entitled to permanent periodic alimony and hereby requests the same.

12. *Attorney's Fees and Suit Money.* The Plaintiff cannot afford to pay her attorney. The Plaintiff has a meritorious cause of action. The necessity of this proceeding resulted from the Defendant's conduct. The Plaintiff is entitled to recover her attorney's fees and costs.
13. *Discovery.* The ability of the parties to prepare their cases, judicial economy, and the ends of justice will be served by this court allowing each party all discovery available under Rules 26-37, SCRPC.
14. *Guardian ad Litem.* Should the Defendant claim custody, the appointment of a guardian ad litem may be needed to protect the interests of the minor child during this litigation.
15. *Temporary and Pendente Lite Relief.* The Plaintiff will suffer irreparable harm unless she is granted temporary relief including sole custody of the minor children herein, child support, temporary and permanent support and maintenance, use of property as an incident of support, injunctive relief, appointment of a guardian ad litem if the Court deems necessary, discovery, and attorney's fees.

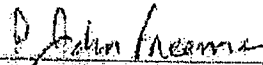
WHEREFORE, the Plaintiff prays for a Decree of Divorce and for the following temporary and permanent ancillary and collateral relief:

- a. Sole custody of the parties' minor children;
- b. Child support as determined by the SC DSS guidelines;
- c. A Divorce on the grounds of the Defendant's adultery;
- d. In the alternative, a divorce on the grounds of a one years' continuous separation;
- e. An equitable apportionment of all marital property and debts acquired by the parties during their marriage;
- f. Permanent periodic alimony and temporary support and maintenance;
- g. If necessary, as stated above in Paragraph Fourteen (14), appointment of a guardian *ad litem* to protect the interests of the minor child of the parties;

- h. Attorney's fees, costs and suit money in a reasonable sum;
- i. Allowance to each party of all discovery available under Rules 26-37, SCRPC.
- j. Such other and further relief as the Court might deem just and proper.

RESPECTFULLY SUBMITTED,

HALFORD, NIEMIEC & FREEMAN, LLP



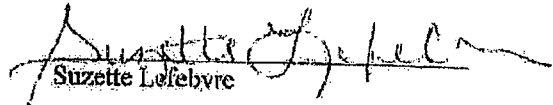
P. John Freeman
238 Rockmont Drive
Fort Mill, South Carolina 29708
Telephone: 803-547-6618
Facsimile: 803-547-6638
ATTORNEYS FOR THE PLAINTIFF


March 26, 2014

STATE OF SOUTH CAROLINA
COUNTY OF YORK

FILED RECEIVED
2014 MAR 26 10 42 AM
DAVID HAMILTON
FAMILY COURT
YORK COUNTY SC
VERIFICATION
COPY

Suzette Lefebvre, being duly sworn, says that she is the Plaintiff herein, and that she has read the foregoing Complaint and knows the contents thereof; that the same is true of her own knowledge, except as to the matters therein stated to be alleged on information and belief; and to those matters she believes them to be true.


Suzette Lefebvre

SWORN to and subscribed before me)
this 26th day of March, 2014)
)
)

Notary Public for South Carolina)
My Commission Expires: 5/15/19)

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of South Carolina

BLANCO GmbH + CO.KG,

Plaintiff(s)

v.

Vito Antonio Laera and Suzette LeFebvre

Defendant(s)

Civil Action No. 0:15-2199-TLW

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Suzette LeFebvre
1516 Glenn Valley Drive
Matthews, NC 28105

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Robert A. Bernstein
BERNSTEIN & BERNSTEIN, P.A.
5418-B Rivers Avenue
N. Charleston, SC 29406-6129

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: May 29, 2015

s: Kuren Boston

Signature of Clerk or Deputy Clerk



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

| | | |
|--|---|--------------------------------------|
| BLANCO GmbH + CO.KG, |) | |
| |) | C.A. No: 0:15-2199-TLW |
| Plaintiff, |) | |
| |) | COMPLAINT |
| v. |) | <i>(Declaratory Judgment;</i> |
| |) | <i>Fraudulent Transfer;</i> |
| Vito Antonio Laera and Suzette LeFebvre, |) | <i>Foreclosure of Judgment Lien)</i> |
| |) | |
| Defendants. |) | |
| _____ |) | |

The Plaintiff, complaining of the Defendants, would show unto this Honorable Court:

1. The Plaintiff is a German company with its principal place of business located therein, which operates in the United States through its home base in Burlington County, New Jersey.
2. The Defendants Vito Antonio Laera and Suzette Lefebvre are citizens and residents of the Mecklenburg County, North Carolina.
3. The real property which is the subject of this action is located in York County, South Carolina.
4. This Court has jurisdiction over the subject matter hereof pursuant to 28 U.S.C. §1332 and over the parties hereto, and venue is proper pursuant to 28 U.S.C. §1441.

FOR A FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS
(Declaratory Judgment)

5. On or about May 23, 2007, Defendant Vito Antonio Laera was granted fee simple title to a parcel of property located within York County, South Carolina known as 419 York Southern Road, in Fort Mill, South Carolina, bearing Tax Map Number 728-00-00-030, said deed

recorded in the property records of York County in Deed Book 9264, Page 46 (hereinafter referred to as the PROPERTY).

6. On or about August 14, 2012, the Plaintiff filed suit against Defendant Vito Antonio Laera in the United States District Court for the Southern District of Florida, entitled "BLANCO GmbH+CO.KG v. Vianco Industries, LLC, G-Tech-1, Inc., and Vito Antonio Laera," bearing Civil Action Number 0:12-cv-61580-JAL (hereinafter the LAWSUIT).

7. On January 21, 2014, the Plaintiff was granted judgment against Defendant Vito Antonio Laera in the amount of \$600,000.00, attorneys fees in the amount of \$227,387.00, costs of non-taxable costs of \$6,47.56, and taxable costs of \$769.75.

8. On or about January 7, 2015, the said Defendant Vito Antonio Laera conveyed his interest in the PROPERTY to himself and Defendant Suzette Lefebvre, for less than adequate or no consideration, and/or for the specific intent of committing a fraud upon creditors.

9. The judgment rendered in favor of the Plaintiff against Defendant Vito Antonio Laera is final.

10. On or about October 3, 2014, the Transcript of Judgment rendered in the LAWSUIT was filed with the York County Clerk of Court.

11. The aforesaid transfer of an interest in the PROPERTY by Defendant Vito Antonio Laera to himself and Defendant Suzette Lefebvre was for little or less than valuable consideration, and was performed for the purpose of avoiding debts to and committing fraud upon the creditors of Vito Antonio Laera.

12. The aforesaid transfer of real estate was undertaken in violation of S.C. Code Ann. §27-23-10 *et seq.*

13. The Plaintiff is informed and believe that the transfer by Defendant Vito Antonio Laera of his interest in the PROPERTY to himself and Defendant Suzette Lefebvre is void, frustrate and of no effect, as in violation of S.C. Code Ann. §27-23-10.

14. The aforesaid transfer of an interest in the PROPERTY by Vito Antonio Laera was participated in and abetted by Defendant Suzette Lefebvre.

15. The Plaintiff are informed and believes that it holds a judgment lien upon the interest of Defendant Vito Antonio Laera in the PROPERTY pursuant to S.C. Code Ann. §15-35-810.

16. There exists an actual controversy within the jurisdiction of this Court, and this Court has the authority to take jurisdiction hereof and issue a declaratory judgment thereupon.

17. The Plaintiff prays that this Court take jurisdiction hereof, and issue its Order declaring that the transfer of by Defendant Vito Antonio Laera to himself and Defendant Suzette Lefebvre of his interest in the PROPERTY was void, frustrate and of no effect, as in violation of S.C. Code Ann. §27-23-10.

18. The Plaintiff prays that this Court take jurisdiction hercof, and issue its Order declaring that the judgment lien of the Plaintiff constitutes a judgment lien upon the interest of Defendant Vito Antonio Laera in the said PROPERTY.

**FOR A SECOND CAUSE OF ACTION AGAINST
DEFENDANTS VITO ANTONIO LAERA AND SUZETTE LEFEBVRE
(Liability for Fraudulent Transfer; S.C. Code Ann. §27-23-30)**

19. The allegations of Paragraphs One (1) through Eighteen (18) of this Complaint are recalloged as if repeated herein verbatim.

20. The aforesaid transfer of the interest of Defendant Vito Antonio Laera in the PROPERTY to himself and Defendant Suzette Lefebvre was participated in by Defendant Vito

Antonio Laera and with actual intent to defraud the Plaintiff of its claim against the said property.

21. The aforesaid Defendant Suzette Lefebvre actively participated in the conveyance of the PROPERTY in violation of S.C. Code Ann. §27-23-30.

22. By reason of the aforesaid conveyance of the interest of Defendant Vito Antonio Laera in violation of S.C. Code Ann. §27-23-30, Defendants Vito Antonio Laera and Suzette Lefebvre are each liable to the Plaintiff in an amount equal to one year's value of the property so transferred, pursuant to S.C. Code Ann. §27-23-30.

**FOR A THIRD CAUSE OF ACTION AGAINST
DEFENDANT VITO ANTONIO LAERA
(Foreclosure of Judgment Lien)**

23. The allegations of Paragraphs One (1) through Twenty-Two (22) of this Complaint are realleged as if repeated herein verbatim.

24. The Plaintiff has demanded that the Defendant Vito Antonio Laera pay the judgment which has been rendered in its favor against Defendant Vito Antonio Laera, but the said Defendant has failed and refused to do so.

25. The Defendant Vito Antonio Laera owns an interest in the PROPERTY which unjustly refuses to apply to the partial satisfaction of Plaintiff's judgment.

26. By reason of the foregoing, the Plaintiff is entitled to an Order from this Court foreclosing its lien of judgment against the property of the Defendant Vito Antonio Laera, and Ordering that his interest in the PROPERTY be sold, and that the proceeds from the said sale first be applied to pay the costs of sale, then next to pay the judgment rendered to the Plaintiff and, if any excess exists thereafter, to be paid into the Court for further disposition.

WHEREFORE, having fully complained of the Defendants, the Plaintiff pray that this Court

take jurisdiction hercof, and issue its Order:

A. Under the First Cause of Action holding that the attempted conveyance of the PROPERTY by Defendant Vito Antonio Laera to himself and Defendant Suzette Lefebvre was void, frustrate and of no effect:

B. Under the Second Cause of Action for an Order of Judgment against Defendants Vito Antonio Laera and Defendant Suzette Lefebvre in the amount of one year's value of the PROPERTY;

C. Under the Third Cause of Action for an Order that the interest of Defendant Vito Antonio Laera in the PROPERTY be sold, and that the proceeds from the said sale first be applied to pay the costs of sale, then next to pay any the judgment rendered to the Plaintiff and, if any excess exists thereafter, to be paid into the Court for further disposition.

BERNSTEIN & BERNSTEIN, P.A.

s:Robert A. Bernstein
Robert A. Bernstein
Federal I.D. #1311
Post Office Box 20519
Charleston, SC 29413-0519
(843) 529-1111; (843) 529-0035 (fax)
Charleston, South Carolina
ATTORNEYS FOR THE PLAINTIFF

May 29, 2015

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

| | | |
|--|---|-------------------------|
| BLANCO GmbH + CO.KG, |) | |
| |) | C.A. No: 0:15-2199-TLW |
| Plaintiff, |) | |
| |) | |
| v. |) | DISCLOSURES PURSUANT TO |
| |) | RULE 26.01, DSC |
| Vito Antonio Lacra and Suzette LeFebvre. |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

The Plaintiff responds to the mandatory disclosures of Rule 26.01, DSC, as follows:

(A) State the full name, address, and telephone number of all persons or legal entities who may have a subrogation interest in each claim and state the basis and extent of said interest.

Response: There are no known subrogation interests to this claim.

(B) As to each claim, state whether it should be tried jury or nonjury and why.

Response: The Plaintiff has requested a nonjury trial.

(C) State whether the party submitting these responses is a publicly-owned company and separately identify: (1) any parent corporation and any publicly-held corporation owning ten percent (10%) or more of the party's stock; (2) each publicly-owned company of which it is a parent and (3) each publicly-owned company in which the party owns ten percent (10%) or more of the outstanding shares.

Response: The Plaintiff is a German privately held company.

(D) State the basis for asserting the claim in the division in which it was filed (or the basis of any challenge to the appropriateness of the division).

Response: The property which is the subject of this action is in York County, SC, and

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-61580-CIV-LENARD

BLANCO GMBH + CO. KG,
Plaintiff,

vs.

VLANCO INDUSTRIES, LLC, et al.,
Defendant.

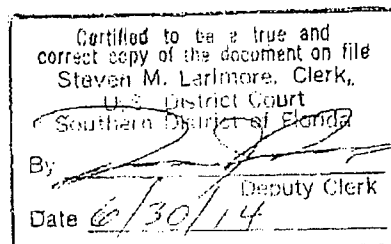
AMENDED CLERK'S ENTRY OF FINAL JUDGMENT

Pursuant to Fed. R. Civ. P. 58 and the Court's Order directing Clerk to enter an Amended Judgment (DE 264), this Amended Final Judgment is entered in favor of Plaintiff Blanco GmbH+Co. KG and against Vito Antonio Laera, Vilanco Industries, LLC, G-Tech-I, Inc., Robert Johnson, Joseph Napolitano, and Vilanco Industries, Inc., jointly and severally, for liquidated damages in the amount of \$600,000.00, attorneys' fees in the amount of \$227,387.00, non-taxable costs in the amount of \$6,477.56, and taxable costs in the amount of \$769.75.

DONE AND ORDERED this 24th day of June, 2014 in the Southern District of Florida.

Steven Larimore
Clerk of Court

BY: s/ Deloris McIntosh
Deputy Clerk



JOIACP4603272

UNITED STATES DISTRICT COURT

SOUTHERN

District of

FLORIDA

EXEMPLIFICATION CERTIFICATE

FILED
2014 OCT - 22 PM 12:49
D. M. HARRISON
CLERK
U.S. DISTRICT COURT
FORT LAUDERDALE, FL

I, Steven M. Larimore, Clerk of this United States District Court, keeper of the records and seal, certify that the attached documents:
Case Number 12-CV-61580 DE# 265 Amended Clerk's Entry of Final Judgment

are true copies of records of this Court.

In testimony whereof I sign my name and affix the seal of this Court, in this District, at Fort Lauderdale on 6/30/2014

Steven M. Larimore City Fort Lauderdale Date
Clerk *(Signature)*
(By) Deputy Clerk

I, Joan A. Lenard, a Judicial Officer of this Court, certify that Steven M. Larimore, named above, is and was on the date noted, Clerk of this Court, duly appointed and sworn, and keeper of the records and seal, and that this certificate, and the attestation of the record, are in accordance with the laws of the United States.

7/7/14 Date Joan A. Lenard Signature of Judge
United States District Court Judge
Title

I, Steven M. Larimore, Clerk of this United States District Court, keeper of the seal, certify that the Honorable Joan A. Lenard, Judge, named above, is and was on the date noted a Judicial Officer of this Court, duly appointed, sworn and qualified, and that I am well acquainted with the Judge's official signature and know and certify the above signature to be that of the Judge.

In testimony whereof I sign my name, and affix the seal of this Court at Fort Lauderdale in this State, on 6/30/2014
Clerk Steven M. Larimore *(Signature)*
(By) Deputy Clerk

STATE OF SOUTH CAROLINA

COUNTY OF YORK

BLANCO GMBH+CO. KG,

Plaintiff(s)

vs.

Vito Antonio Laera, VLANCO INDUSTRIES, LLC, G-TECH-1, Inc., Robert Johnson, Joseph Napolitano and Vilanco Industries, Inc.

Defendant(s)

Submitted By: Anthony D. Hoefler

Address: 207 N. Washington St.

P.O. Drawer 730 Sumter, S.C. 29151

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2014-CP - 46-03712

FILED-RECORDED 2014 OCT -3 PM 12:49

SC Bar #: 2547 Telephone #: 803-773-8431 Fax #: 803-775-9011 Other: E-mail: lwbbd@ftc-i.net

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint. This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules. This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules. This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), Employment (120), General (130), Breach of Contract (140), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case #, Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Assault/Slander/Libel (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Administrative Law/Relief: Reinstate Drv. License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), Confession of Judgment (770), Petition for Workers Compensation Settlement Approval (780), Other (799)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Public Service Comm. (991), Other (999)
Special/Complex/Other: Environmental (600), Automobile Arb (610), Medical (620), Other (699), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Motion to Quash Subpoena in an Out-of-County Action (660), Sexual Predator (510)

Submitting Party Signature: [Signature]

Date: September 29, 2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

| | | |
|--|---|---------------------------|
| BLANCO GmbH + CO.KG, |) | |
| |) | C.A. No: 0:15-cv-2199-TLW |
| Plaintiff, |) | |
| |) | MEMORANDUM IN OPPOSITION |
| v. |) | TO MOTION TO AMEND |
| |) | TO ASSERT COUNTERCLAIM |
| Vito Antonio Laera and Suzette LeFebvre, |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

The Plaintiff presents this Memorandum in Opposition to the Motion of the Defendant LeFebvre to Amend her pleadings to assert a counterclaim.

FACTS

The facts underlying the Complaint herein have been extensively set forth in the Motions for Summary Judgment which have heretofore been filed¹. The Plaintiff is a German company which recovered a judgment against Defendant Laera in the United States District Court for the Southern District of Florida. The Plaintiff domesticated that judgment to the York County Court of Common Pleas (Plaintiff's Exhibit 1), where Defendant Laera was the titled owner of a parcel of real estate. Subsequent to filing the judgment, Defendant Laera executed a deed transferring a portion of that property to Defendant LeFebvre. The Plaintiff brought this action seeking a declaratory judgment

There are numerous assertions of facts made by counsel for Defendant LeFebvre's counsel in its Memorandum in Support of its Motion to Amend, asserting as fact that the Defendants were married, that they lived as husband and wife, that they divorced and that Mr. Laera resided in South Carolina. All of these claimed statements of fact are controverted and denied by counsel for the Plaintiff and have been extensively addressed and briefed in prior filings with this Court. Because most of the facts relevant to this Motion do not need to go into detail regarding these controverted assertions of fact, the Plaintiff will cite to only those portions it deems necessary for addressing the issues in this pending motion.

that the transfer was a fraudulent conveyance allegedly participated in by the Defendants, and sought to set it aside, to hold each Defendant liable for damages for the fraudulent conveyance, and requesting that the Court sell the property and apply the proceeds toward the payment of the Plaintiff's judgment.

In her Answer, filed on July 31, 2015, the Defendant LeFebvre challenged the jurisdiction of this Court to consider the matter due to a divorce decree entered in the York County Family Court, asserted as an affirmative defense that the transfer was on good consideration by reason of her claim to the property by the marital litigation, and further asserted that she was a prior creditor by reason of her marital claim. She did not, however, file a counterclaim or cross claim seeking a declaratory judgment as to her asserted priority as to the property.

During the course of discovery regarding the fraudulent conveyance action, issues arose whether or not the Defendants were or were not legally married, whether they held themselves out to the public as husband and wife, and whether the York County Family Court had jurisdiction to enter the divorce decree due to issues of the residency of the Defendants. All of these issues were factual issues related to the ultimate causes of action whether there was a fraudulent conveyance of the property, but were not actual causes of action in the case pending before this Court.

Unbeknownst to the Plaintiff, during the course of this litigation, Defendant Laera attempted to sell the disputed property to a third party, Triple M Partners, LLC. Ms. LeFebvre did not disclose to the purchaser that the property was the subject of this litigation or that the Plaintiff was asserting rights against the property pursuant to its judgment lien. The contract for sale was not disclosed to anyone until the purchaser conducted its title search and discovered the Plaintiff's lien and claim to the property, and contacted counsel for the Plaintiff to determine the basis and claim against the property. The purchaser insisted that Defendant LeFebvre take the necessary action to release the

property from the Plaintiff's lien to pass clear title as required under their contract, and Defendant LeFebvre asserted that they had to purchase the property subject to the lien, or the deal was to be canceled.

Triple M Partners brought suit in the York County Court of Common Pleas seeking specific performance of the contract of sale and requiring LeFebvre to pass clear title (Plaintiff's Exhibit 2); Defendant LeFebvre failed to appear in that case. Blanco petitioned to Intervene in that case to protect its rights to that property, and made a claim for the payment of the proceeds resulting from the sale (Plaintiff's Exhibit 3); a copy of the Motion to Intervene and the proposed Answer and claim to those proceeds was served upon Ms. LeFebvre². Ms. LeFebvre did not oppose the motion to Intervene, and did not appear for the hearing on the motion, and the Court granted the Motion (Plaintiff's Exhibit 4).

The state court entered a order that Ms. LeFebvre comply with the contract and pass clear title to the subject property to Triple M Partners, LLC (Plaintiff's Exhibit 5). A closing was scheduled, and counsel for Blanco drafted a proposed agreement that, to the extent that its judgment constituted a lien against the contested property, the lien would transfer to the proceeds of the sale existing after payment of the first mortgage. Ms. LeFebvre refused to sign the agreement and, as a result, Blanco did not release its claim against the property. A motion was made before the state court to amend the prior default judgment to have the lien transferred to the proceeds of the sale, and require Ms. LeFebvre to transfer clear title (Plaintiff's Exhibit 6). Ms. LeFebvre was served with this

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The counsel for Ms. LeFebvre in the current case - Mr. Gilbert and Ms. Buss - were also provided copies of the Motion to Intervene and the proposed Answer seeking payment of the proceeds from the sale. Mr. Gilbert and Ms. Budd were present at the time the motion to intervene was heard and advised the presiding judge in the state court action that they had not been retained to represent Ms. LeFebvre in that state court case. They have further so advised the court in writing that they did not at that time represent Ms. LeFebvre in the state court proceedings.

motion, and when the court scheduled an emergency hearing on the matter³, responded to the court that she felt that she was entitled to the proceeds.

The state court conducted a hearing on March 22, 2017, and found that Ms. LeFebvre was given notice and an opportunity to be heard in the pending motion, and did not appear or hire counsel. The state court also ruled that by failing to execute the agreement transferring the lien to the proceeds, she had failed to comply with the court's prior order to transfer clear title to the property. The court ruled that the proceeds after payment of the first mortgage be delivered to the York County Clerk of Court, and further that the Plaintiff's judgment was a first lien against those proceeds and thus that the proceeds should be paid by the York County Clerk of Court to the Plaintiff.

On April 4, 2017, the state court entered its written order confirming the oral ruling from the March 22, 2017 hearing (Plaintiff's Exhibit 7). On April 5, 2017, the York County Clerk of Court issued the check for the excess proceeds to the Plaintiff. On April 6, 2017, Mr. Gilbert filed a Notice of Appearance in the state court action on behalf of Ms. LeFebvre, moved to stay the Court's Order and made a Motion to Alter or Amend the April 4 Order (Plaintiff's Exhibit 8). On April 18, 2017, Ms. LeFebvre also filed a new action in York County against the Blanco seeking partition and/or a declaratory judgment regarding the right to the funds (Plaintiff's Exhibit 9). That action has not been served against Blanco under the dictates of the Hague Convention.

Because the state court had ordered the transfer of the underlying property and the transfer had been accomplished, the issue of a fraudulent transfer from Mr. Laera to Ms. LeFebvre was moot. Inasmuch as the issue of the propriety of the transfer from Mr. Laera to Ms. LeFebvre was no longer

³ Mr. Gilbert and Ms. Budd were also copied on this correspondence and were afforded the opportunity to appear at this hearing, and Mr. Gilbert advised the Court that they were not representing Ms. LeFebvre in the state court action.

an issue, on April 11, 2017 the Plaintiff filed a Motion to Dismiss this action as moot.

On April 20, 2017, the state court held a hearing upon the motion of Ms. LeFebvre for the status of the prior Order and her motion to Alter or Amend; the state court denied the motions (Plaintiff's Exhibit 10).

After counsel for the Blanco advised that it would not voluntarily accept service of the new state court action and that service would have to be accomplished pursuant to the Hague Convention, the attorneys for Ms. LeFebvre filed the current motion seeking to assert the counterclaim in this case. For the following reasons, this Motion should be denied.

ARGUMENT

**I. THE PRESENT CASE IS MOOT, AND SHOULD BE DISMISSED
PURSUANT TO THE PLAINTIFF'S PENDING MOTION.
SINCE THE MAIN ACTION SHOULD BE DISMISSED, NO
COUNTERCLAIM SHOULD BE PERMITTED AT THIS LATE DATE,
AND A SEPARATE ACTION, IF ANY, SHOULD BE REQUIRED.**

As noted in the recitation of facts, the Complaint herein sought a declaratory judgment as to the existence of a fraudulent conveyance and sought to sell the property subject to the Plaintiff's judgment; there was no prayer for any declaratory judgment as to the validity of the Defendants' alleged marriage or the jurisdiction of the York Family Court (though they were eventually factors to be determined in reaching the issues which were the subject of the Complaint). Since the parties have confirmed the validity of the title held by Defendant LeFebvre and the property has been transferred, the causes of action sought in the Complaint are moot, and the action should thus be dismissed.

A federal court may adjudicate a claim only if "an actual controversy [is] extant at all stages of review, not merely at the time the complaint is filed." *Arizonans for Official English v. Arizona*, 137 L. Ed. 2d 170, 193, 117 S. Ct. 1055 (1997) (internal quotation marks and citations omitted). Federal courts should determine whether a live case or controversy continues to exist at the outset since

mootness goes to the heart of the Article III jurisdiction of the courts. *See id.*

Suarez Corp. Indus. v. McGraw, 125 F.3d 222, 228 (4th Cir. 1997).

The Constitution limits this Court's jurisdiction to the adjudication of actual cases and controversies. See U.S. Const. art. III, § 2; *DeFunis v. Odegaard*, 416 U.S. 312, 316, 40 L. Ed. 2d 164, 94 S. Ct. 1704 (1974) (per curiam). "[A] case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Powell v. McCormack*, 395 U.S. 486, 496, 23 L. Ed. 2d 491, 89 S. Ct. 1944 (1969). The requirement that a case have an actual, ongoing controversy extends throughout the pendency of the action. See *Preiser v. Newkirk*, 422 U.S. 395, 401, 45 L. Ed. 2d 272, 95 S. Ct. 2330 (1975).

Mellen v. Bunting, 327 F.3d 355, 363 (4th Cir. 2003).

In the present action, the sole relief sought - a declaration of a fraudulent conveyance and the sale of the property to apply toward the Plaintiff's judgment - has been rendered moot due to the actual sale of the property to a third person. The state court has already entered an order with respect to the distribution of those funds. The relief sought in this action is no longer possible, and the case should thus be dismissed. The attempt to revive a moot action by asserting an additional claim at this late date should not revive a dead case.

II. THE ASSERTION OF THE COUNTERCLAIM IS NOT APPROPRIATE UNDER RULES 13(e) AND 15(d), FRCP.

Rule 13(e), FRCP, permits the filing of a supplemental pleading asserting a counterclaim that matured or was acquired by a party after serving an initial pleading. Its operation is in conjunction with Rule 15(d), FRCP. In the present action, however, the claim as to priority was an issue which existed at the time the Defendant filed her previous pleading, and thus the fact that she subsequently sold the property does not result in rights allegedly acquired or maturing after the filing of the original Answer under Rule 13(e). The Plaintiff sought the sale of the property in the original Complaint, and the issue of priority was thus framed at that time; the issue of the priority between

the Plaintiff and Ms. LeFebvre was in fact in existence at that time, and was not newly accrued during the course of these proceedings. If Ms. LeFebvre is asserting a prior right to the proceeds of a sale - a subject which was prayed for in the Complaint - they are rights that existed at the time of the initial pleading, and a supplemental counterclaim should not be asserted two years after the institution of this action.

Federal Rule of Civil Procedure 13 generally governs counterclaims. Although a defendant typically files a counterclaim when it answers the complaint, Rule 13(e) permits a party to present, with permission of the court, a counterclaim by supplemental pleading that has matured or acquired after the original pleading. *See* Fed. R. Civ. P. 13(e). Since a counterclaim under Rule 13(e) is presented by supplemental pleading, it is read in conjunction with Rule 15(d). *See Bergquist v. Aetna U.S. Healthcare*, 289 F. Supp. 2d 400, 414 (S.D.N.Y. 2003). Rule 15(d) provides that the Court may allow a party to file supplemental pleadings setting forth "transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented." Fed. R. Civ. P. 15(d).

* * * *

By definition, an after-acquired counterclaim does not exist at the time of serving of the original answer and counterclaim. Therefore, an after-acquired claim is not considered a compulsory counterclaim under Rule 13(a), and failure to introduce it will not bar its assertion in a later lawsuit. *Stone v. Dep't of Aviation*, 453 F.3d 1271, 1280-81 (10th Cir. 2006). Before allowing the addition of new counterclaims under Rule 13(e), the court must consider whether the counterclaim will cause confusion or inconvenience. *See Texas Co. v. Borne Scrymser Co.*, 68 F.2d 104 (4th Cir. 1933) (holding that a counterclaim should not be permitted if it would result in a hindrance and delay to the plaintiff and make it more difficult to prosecute its claim); *Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Conti'l Ill. Corp.*, 113 F.R.D. 527, 530 (N.D. Ill. 1986) (noting that a court should consider whether allowing the claim would be inconvenient or confusing because of the progress or nature of the case). Indeed, "[t]he reason that [the court's] permission is required is that the course of the litigation may be unduly disrupted if new claims are belatedly injected; in that case permission will be denied and the defendant can bring his claim as an independent lawsuit." *Harbor Ins. Co. v. Continental Bank Corp.*, 922 F.2d 357, 361 (7th Cir. 1990). Thus, although Rule 15(d) generally permits leave to be freely granted to supplement, where a counterclaim does not arise from the same transaction or occurrence as the plaintiff's claims, and is therefore not particularly relevant, a court may properly conclude that such a claim should be asserted in an independent proceeding. *See Ins. Concepts, Inc. v. W. Life Ins. Co.*, 639 F.2d 1108, 1114 (5th Cir. 1981) (holding that a trial court has discretion to refuse to allow a supplemental counterclaim not particularly relevant to the plaintiff's claim).

Davenport v. Richfood, 2008 U.S. Dist. LEXIS 51297, 103 Fair Empl. Prac. Cas. (BNA) 993 (E.D. Va. June 13, 2008).

III. THE AMENDMENT TO ASSERT A COUNTERCLAIM SHOULD BE DENIED, BECAUSE THE RELIEF SOUGHT IN THE COUNTERCLAIM IS FUTILE

While under normal circumstances leave to amend pleadings should be freely granted under Rule 15, FRCP, the matter is discretionary with the Court. Where, as here, the case or controversy no longer exists and two years later the Defendant seeks to interpose new claims, a proper use of discretion by the Court would be to deny the amendment. Where the amendment sought would be futile, it is proper to deny the amendment.

Although leave to amend should "be freely given when justice so requires," Fed. R. Civ. P. 15(a), the district court may deny leave to amend for reasons "such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of the allowance of the amendment, futility of amendment, etc." Foman v. Davis, 371 U.S. 178, 182, 9 L. Ed. 2d 222, 83 S. Ct. 227 (1962).

GE Inv. Private Placement Partners II v. Parker, 247 F.3d 543, 548 (4th Cir. 2001). The proposed Counterclaim being asserted by the Defendant LeFebvre is, in fact futile, and leave to amend should thus be denied.

A. The Proposed Counterclaim is Barred by the Rooker-Feldman Doctrine.

The Rooker-Feldman doctrine arises from the cases of Rooker v. Fidelity Trust Co., 263 U.S. 413 (U.S. 1923), and D.C. Court of Appeals v. Feldman, 460 U.S. 462 (U.S. 1983). Those cases held that the sole jurisdiction to hear an appeal from a state court decision rests with the state appellate courts and ultimately with the United States Supreme Court, and that the federal courts do not have jurisdiction to hear certain collateral challenges to state court decisions. The Fourth Circuit Court of Appeals has taken a broad view of the application of the Rooker-Feldman doctrine in actions challenging the ruling of a state court.

The Rooker-Feldman doctrine generally bars district courts from sitting in direct review of state court decisions. The prohibition extends not only to issues actually decided by a state court but also to those that are inextricably intertwined with questions ruled upon by a state court. A federal claim is inextricably intertwined with a state court decision if success on the federal claim depends upon a determination that the state court wrongly decided the issues before it.

Barefoot v. City of Wilmington, 306 F.3d 113, 121 (4th Cir. 2002). In 2005, the United States Supreme Court refined the Rooker-Feldman doctrine to cases where the complainant was seeking redress challenging the decision of the state court. See Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 125 S. Ct. 1517, 161 L. Ed. 2d 454 (2005). The Fourth Circuit Court of Appeals had the opportunity to reexamine the Rooker-Feldman doctrine in light of the *Exxon* case in Davani v. Va. DOT, 434 F.3d 712 (4th Cir. 2006). In the *Davani* case, the Fourth Circuit held:

Exxon requires us to examine whether the state-court loser who files suit in federal district court seeks redress for an injury caused by the state-court decision itself. If he is not challenging the state-court decision, the Rooker-Feldman doctrine does not apply. See, e.g., Washington v. Wilmore, 407 F.3d 274, 280 (4th Cir. 2005) (holding, post-*Exxon*, that the Rooker-Feldman doctrine did not apply because "[the plaintiff's] claim of injury rests not on the state court judgment itself, but rather on the alleged violation of his constitutional rights [by the defendant]"). If, on the other hand, he is challenging the state-court decision, the Rooker-Feldman doctrine applies. It is important to note that the Rooker-Feldman doctrine applies in this second situation even if the state-court loser did not argue to the state court the basis of recovery that he asserts in the federal district court. *A claim seeking redress for an injury caused by the state-court decision itself -- even if the basis of the claim was not asserted to the state court -- asks the federal district court to conduct an appellate review of the state-court decision.* *Exxon* clarifies, however, that § 1257(a) provides that only the Supreme Court may review state-court decisions. Under *Exxon*, then, Feldman's "inextricably intertwined" language does not create an additional legal test for determining when claims challenging a state-court decision are barred, but merely states a conclusion: *if the state-court loser seeks redress in the federal district court for the injury caused by the state-court decision, his federal claim is, by definition, "inextricably intertwined" with the state-court decision, and is therefore outside of the jurisdiction of the federal district court.*

Davani, 434 F.3d at 718-719 (emphasis added).

In the case before this Court, Defendant LeFebvre is seeking a claim that she is entitled to

the proceeds of the sale of the property conducted pursuant to the state court ordered sale. That issue, however, was already decided by the April 3 Order of The Honorable Jackson Kimball, who held:

3. The Blanco judgment entered in *Blanco GmbH+CO.KG v. Vito Antonio Laera, et al*, Case Number 2014-CP-46-3272, attached to the entire Property as of October 3, 2014. On October 3, 2014, the Property was titled solely in the name of Vito Antonio Laera. Although the Property was subsequently transferred to LeFebvre, it was transferred subject to the judgment lien of Blanco GmbH+CO.KG in the amount of \$834,634.31, with interest accruing from October 3, 2014.

Judge Kimball then ordered that the Clerk pay the excess proceeds to the Plaintiff. In its proposed Counterclaim, Defendant LeFebvre is seeking to have this Court determine that the ruling of Judge Kimball was incorrect and that she has a prior interest in the property and the proceeds, and further that the funds were converted by Blanco when it accepted the funds as ordered by the state court. This Counterclaim is directly prohibited by the Rooker-Feldman doctrine, since the federal court claim is inextricably intertwined with the ruling by the state court. Since the Rooker-Feldman doctrine would prevent the assertion of the proposed counterclaim, leave to file the counterclaim should be denied, since it is futile.

B. The Proposed Counterclaim Is Futile since the Defendant LeFebvre Cannot, as a Matter of Law, Claim Priority over the Judgment Lien of the Plaintiff.

In her proposed Counterclaim, Defendant LeFebvre is asserting that she obtained rights in the underlying property by reason of the filing of an action in Family Court for divorce, claiming property rights under S.C. Code Ann. §20-3-610 as of the date that she filed the family court action in March 2014⁴. Nonetheless, it is undisputed that the Plaintiff did not at that time and has at no time

⁴The Plaintiff does not in any way concede that the parties were in fact married or that the Family Court had jurisdiction to award any such equitable distribution of the property, for the reasons which were extensively briefed in the Plaintiff's Motion for Summary Judgment.

since file a lis pendens with the York County Clerk of Court giving notice as to her claim to an interest in the property. The failure to file a lis pendens pursuant to statutory requirements is fatal to any attempt to claim priority over the Plaintiff's judgment, and thus Defendant LeFebvre's claim to priority is futile.

Pursuant to S.C. Code Ann. §20-3-610, a spouse obtains an equitable right to real and personal marital property during the course of the marriage, which interest can be apportioned by the Family Court upon the filing of marital litigation. Significantly, however, the same statutory scheme explicitly provides that any such claim to an equitable interest in real property obtained during the marriage is not effective against third parties unless the claimant files a lis pendens with the Clerk of Court in the County where the property is located.

SECTION 20-3-670. Notice of pendency of action.

(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:*

(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 (emphasis added).

It is undisputed that neither Ms. LeFebvre, Mr. Laera, nor their attorneys filed a lis pendens with the York County Clerk of Court prior to the attachment of the Plaintiff's judgment lien against the subject property (Plaintiff's Exhibit 11). Under the specific terms of the statute, the claims of Ms. LeFebvre to an interest in the real estate are ineffective against a third party, such as Blanco, "until

Nonetheless, even if it could be determined that the parties were married and that the Family Court had jurisdiction, Defendant LeFebvre is still barred from asserting her claim due to the failure to file a lis pendens.

a Notice of Pendency of Action is filed." Since she is claiming rights under the Article related to a spousal interest and the Article specifically states that no such claim is effective against third parties until that notice is filed, Ms. LeFebvre cannot as a matter of law claim a priority over the rights of Blanco to the property. The asserted counterclaim is therefore futile, and thus leave to file the counterclaim should be denied.

IV. THIS COURT SHOULD ABSTAIN FROM ENTERTAINING THE PROPOSED COUNTERCLAIM UNDER THE COLORADO RIVER ABSTENTION DOCTRINE.

The Court should deny the Motion to Amend to assert the Counterclaim because the same issue is pending between the parties in two actions pending in the York County Court of Common Pleas. First, in the declaratory judgment action, in which Ms. LeFebvre was served and defaulted, Blanco intervened and moved for the payment of the excess funds to it; the Court granted this relief. Defendant LeFebvre, though she defaulted, is a party to that action, as is Blanco, the matter was placed in controversy in that action, and the Court ruled upon it. Furthermore, prior to filing the present action, Ms LeFebvre brought a separate action against the Blanco asserting the same issues she is now attempting to pursue in this Counterclaim. Because the issues between the parties are pending in the state court, this Court should abstain from exercising jurisdiction over that claim, and thus should deny leave to file the counterclaim.

The basic notion underlying the Colorado River doctrine is that in certain circumstances it may be appropriate for a federal court to refrain from exercising its jurisdiction to avoid duplicative litigation. See Colorado River, 424 U.S. at 817-19; Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 15-16, 74 L. Ed. 2d 765, 103 S. Ct. 927 (1983). However, such abstention is the exception rather than the rule. See Colorado River, 424 U.S. at 817-18; Gordon v. Luksch, 887 F.2d 496, 497 (4th Cir. 1989). The threshold question in deciding whether Colorado River abstention is appropriate is whether there are parallel suits. See Romine v. Compuserve Corp., 160 F.3d 337, 339 (6th Cir. 1998); New Beckley Mining Corp. v. International Union, UMWA, 946 F.2d 1072, 1073 (4th Cir. 1991). If parallel suits

exist, then a district court must carefully balance several factors, "with the balance heavily weighted in favor of the exercise of jurisdiction." Moses H. Cone Mem. Hosp., 460 U.S. at 16. These factors include, inter alia, the relative inconvenience of the federal forum, the relative order of the two suits, the source of law in the case, and the relative progress of the two proceedings. See Finova Capital Corp. v. Ryan Helicopters U.S.A., Inc., 180 F.3d 896, 898-99 (7th Cir. 1999); Romine, 160 F.3d at 340-41; McLaughlin v. United Va. Bank, 955 F.2d 930, 934-35 (4th Cir. 1992).

Al-Abood v. El Shamari, 217 F.3d 225, 232 (4th Cir. 2000).

In the present situation, there are two parallel suits pending in state court making the same arguments as to priority now being claimed by Defendant LeFebvre in her proposed Counterclaim. Those suits were filed prior to the motion by LeFebvre to amend her Answer to assert a counterclaim. In weighing the factors to determine whether to abstain from considering the proposed Counterclaim, it is important to point out that the issue of priority was already raised in and has been ruled upon in one of the state court actions; and that the issues raised are based solely on state claims as to priority under the state statutes, not federal statutes. For these reasons, this Court should abstain from entertaining the proposed Counterclaim and permit the matter to be litigated further, if necessary, in state court.

For the foregoing reasons, the Plaintiff respectfully asserts that the Motion of the Defendant Suzette LeFebvre to Amend her pleadings to assert a Counterclaim should be denied.

Respectfully Submitted,

BERNSTEIN & BERNSTEIN, P.A.

s/Robert A. Bernstein
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ATTORNEYS FOR PLAINTIFF

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

| | | |
|--|---|--------------------------------------|
| BLANCO GmbH + CO.KG, |) | |
| |) | C.A. No: 0:15-cv-2199-TLW |
| Plaintiff, |) | |
| |) | |
| v. |) | NOTICE OF MOTION AND MOTION TO |
| |) | DISMISS PURSUANT TO RULE 41(a), FRCP |
| Vito Antonio Laera and Suzette LeFebvre, |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

The undersigned attorney for Plaintiff hereby moves for dismissal of the current action pursuant to Rule 41(a)(2), Federal Rules of Civil Procedure. The basis for the Motion to dismiss is that the current action is one to declare that a transfer of certain real estate was a fraudulent transfer under South Carolina law, to establish monetary damages for the fraudulent transfer, and to have this Court sell the subject property and apply the proceeds to the judgment of the Plaintiff. Since the filing of the present action, Defendant Laera has transferred any interest in the property to Ms. LeFebvre and Ms. LeFebvre has entered into a contract for the sale of the subject real estate to a third party, which sale has been consummated. The Plaintiff has consented to the sale of the subject property to the third party, and an action is pending in South Carolina state court to establish the priority to the proceeds. Because the property has been sold and the sale consummated, and the Plaintiff has consented to that sale, the action seeking to hold that Defendant LeFebvre's was void and the request that the Court conduct a judicial sale are moot. Furthermore, the Plaintiff has agreed to dismiss the action seeking monetary damages against the Defendants by participation in the asserted fraudulent transfer, rendering all causes of action in this matter moot.

Counsel for the Plaintiff has consulted with counsel for the Defendants, and counsel for Defendant LeFebvre has indicated that he would not consent to the voluntary dismissal without prejudice.

For the foregoing reasons, the Plaintiff moves that this Court enter an Order dismissing the present action without prejudice upon such terms and conditions as it deems just, pursuant to Rule 41(a)(2), FRCP.

BERNSTEIN & BERNSTEIN, P.A.

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ATTORNEYS FOR THE PLAINTIFF

April 11, 2017

regarding priority of interest in their Complaint. Essentially, this Court has not been asked to make any determination regarding equitable relief of priority position of claims by Plaintiff in their Complaint as this case is nothing more than a claim of fraudulent transfer. To the extent that this Court considers whether or not Plaintiff has a priority position of equitable rights as to the real property, Defendant restates and refers the Court to her argument in her Memorandum in Support of her Motion for Summary Judgment as to the issue of priority of lien rights versus the claim of Plaintiff.

2. Defendants were legally married to each other

Plaintiff asserts in his Memorandum in Support of Plaintiff's Motion for Summary Judgment that the Defendants were never married and therefore the transfer of the real property located 419 York Southern Road pursuant to the South Carolina Divorce Court lacked consideration thereby rendering it a fraudulent transfer. Plaintiff's argument is flawed for three reasons.

First, while Plaintiff acknowledges the Defendants had a ceremony in Colorado he does not address the North Carolina law that specifically recognizes marriage ceremonies performed in other States that might not otherwise be valid in North Carolina will be considered "a valid and sufficient marriage" in North Carolina. Specifically, North Carolina General Statute § 51-1 states; "A valid and sufficient marriage is created by the consent of a male and female person who may lawfully marry, presently to take each other as husband and wife, freely, seriously and plainly expressed by each in the presence of the other...(1) a. In the presence of an ordained minister of any religious denomination, a minister authorized by a church, or a magistrate..."

N.C. Gen. Stat. § 51-1 (2016)

Plaintiff admits the May 19, 2001 ceremony took place, but argues the marriage ceremony does not result in the two Defendants being married because the two did not cohabitate together in Colorado. Plaintiff cites to no provision in Colorado law that requires the two to cohabitate in Colorado for the marriage to have occurred.¹

Plaintiff cites the holding in Whitenhill v. Kaiser Permanente, 940 P.2d 1129, 1132 (Colo. Ct. App. 1997) that the two primary factors establishing a couple as married under common law are the cohabitation of the couple and a general reputation in the community that the parties hold themselves out as husband and wife. With respect to the first prong of Whitenhill, it is uncontested that Defendants resided together as a husband and wife first in Florida between 2001 -2006, then in North Carolina from 2006-2012 until they separated on December 7, 2012. Additionally, the Defendants cohabitated in Colorado for a short number of days after the ceremony.

Thus, Plaintiff's argument rests on the second prong of Whitenhill, whether the couple had a reputation in the community as a married couple. Plaintiff relies on a list of ten isolated acts that it contends are evidence that parties did not hold themselves out as a married couple to the community thereby negating their marriage. Plaintiff's argument is essentially a "cherry picking" of certain acts over a fourteen year time period while ignoring the large picture and context of the life Mr. Laera and Ms. LeFebvre built together with two small children. One in which Mr. Laera was the breadwinner, in control of the finances, and in most, if not all the

¹ Plaintiff's Conclusion contains a contradicting statement: "The Defendants were never ceremonially married...". It is unclear if Plaintiff is attempting to advance an alternative argument or theory, but given no evidence is cited to support the statement, Defendant LeFebvre cannot respond to it beyond what has already been argued by Defendant LeFebvre that a marriage ceremony did in fact take place on May 19, 2001.

decisions related to the family. Ms. LeFebvre was a stay at home mother of two children, who largely remained ignorant of anything outside the home.²

The ten items deal solely with real property ownership and/ or lines of credit associated with real property. It should be noted that only three of the items on the list of ten involve LeFebvre signing or representing anything, and all of the documents LeFebvre had to sign were prepared by third parties and she was only asked to sign what had been prepared.³ Furthermore, per Mr. Laera's own self-centered testimony on October 29, 2013, what he owned, only he owned. *See Plaintiff's Memo. P. 9, Pl. Exhibit 23 to Memo. pp. 25-26, line 16* The history of the marriage is that Mr. Laera was in charge of the finances, the property(s), and he made all of the decisions. Ms. LeFebvre was a stay at mother of two who was not gainfully employed for most of the marriage, and was ignorant of what was owned, how properties were titled, and her husband's business dealings. In fact, Ms. LeFebvre was unaware of the Judgment obtained by Plaintiff until Plaintiff filed suit against her for fraudulent conveyance.⁴ According to the records available, she owned nothing in her separate name. Mr. Laera owned everything.

Plaintiff also points to testimony by Mr. Laera in October of 2013 regarding Mr. Laera's personal life to support his proposition the couple was not married. Mr. Laera's testimony is confusing at best. He states he is single, was at one time married, it's a long story, says he is not married to "Ms. Lebure" (LeFebvre), but then that he should not have said that because he is on the record "and whatever". *Pl. Memo, pp. 8-9.* At the time of this testimony, Defendants had been separated for no less than ten months and it is possible that Defendant Laera was not certain about what precisely his marital status was at that time. The propounder of the questions did not

² Ms. LeFebvre testified to this during her deposition.

³ Upon information and belief, LeFebvre testified in response to being asked about these questions that she did not remember the transactions and/ or did not read the documents prior to signing them.

⁴ Defendant LeFebvre testified during her deposition that until she was served with the above encaptioned lawsuit, she was unaware of the underlying case and the Judgment rendered in it.

follow-up and ask Defendant Laera what he meant with his statement(s) to clarify what he meant or understood his marital status to be and one cannot logically conclude that his confusing, discombobulated responses meant he thought he was not married to Defendant LeFebvre and/ or that he had never been married to her.

Plaintiff's final attempts to discredit the marriage are the lack of jointly filed tax returns and that Ms. LeFebvre did not take her husband's last name, Laera First, Plaintiff asserts Defendants refused to produce their tax returns, then Plaintiff concedes Ms. LeFebvre did answer the discovery request by producing the only return she had, which was post-divorce. From this Plaintiff contends that because Ms. LeFebvre did not file a return for the years requested in discovery that Mr. Laera *must* have filed his tax returns and *must* have done so as a single man. *Pl. Memo. pp. 8-9.* The claim is based upon the theory that if Mr. Laera and Ms. LeFebvre had been married, they would have filed jointly to obtain the tax break they would have been entitled to as a married couple. There is no evidence that Defendant Laera filed a tax return in any capacity, much less that he filed as a single man. In fact, given Defendant Laera's disrespect for the rule of law and the property rights of others, it is far more likely that Defendant Laera did not file tax returns at all.

Finally, Plaintiff concludes that because Ms. LeFebvre did not take on her husband's last name they must not really be married. There is no legal requirement a woman take her husband's last name as her own and Plaintiff provides no evidence to support his argument this was somehow required.

In conclusion, Plaintiff has not provided any evidence to support his argument that Mr. Laera and Ms. LeFebvre did not represent themselves to the "community" that they were married. Plaintiff does not address the multitude of documents in which the parties are listed

residing together as the mother and father of the two minor children such as school records, medical records, religious records such as baptism certificates and the like, the parties wedding photos dated May 19, 2001, or what transpired within the community and how they were viewed as a couple between May 19, 2001 – October 31, 2014 by friends, family, and neighbors.

3. South Carolina had proper jurisdiction

Plaintiff asserts that there was a lack of jurisdiction for the Decree of Divorce and that this Court should declare that a lack of jurisdiction exists. This assertion is without any basis in the law. A Federal court “cannot annul and vacate the orders and judgment of a state court. No court other than the one that entered those orders and judgment can exercise that power”. See *Folk v. Monsell*, 71 F 2d 816, 819 (1934) citing *Wells Fargo & Co. v. Taylor*, 254 U.S. 175, 184, 41 S.Ct. 93, 65 L.Ed. 205; *In re Rochester Sanitarium & Baths Co. (C.C.A.)* 222 F. 22.

The first sentence in the first line of the first paragraph of the findings of fact in the Divorce Decree found that “Defendant is a resident of York County, South Carolina and has been so domiciled in excess of one (1) year prior to the commencement of this action.” This Court has no authority to revoke, rescind and restate the finding of fact of the Family Court of York County, South Carolina. As a result, absent a ruling from the York County Family Court overturning its finding of fact, this Court is without jurisdiction to find that the South Carolina Family Court had no jurisdiction in a case in which it entered a Judgment for Divorce.

Based upon the above arguments and evidence, no genuine issue of material fact exists to support Plaintiff’s allegation that Defendant LeFebvre was a participant, directly or indirectly in a fraudulent transfer of the subject real property. She received the property subject to and in compliance with equitable distribution laws of South Carolina as the wife of Laera pursuant to a South Carolina Domestic Court Order.

CONCLUSION

For the reasons set forth herein, Defendant LeFebvre respectfully request this court to grant her motion for Summary Judgment.

Respectfully submitted this 19th day of December, 2016.

S/ M. HEATH GILBERT, JR.

M. HEATH GILBERT, JR., FED ID # 10760

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

| | | |
|---|---|--------------------------------------|
| BLANCO GmbH + CO.KG, |) | |
| |) | Docket No. 0:15-2199-TLW |
| Plaintiff, |) | |
| v. |) | |
| |) | <u>CERTIFICATE OF SERVICE</u> |
| Vito Antonio Laera and Suzette LeFebvre |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

This is to certify that the undersigned has this the 19th day of December, 2016, the undersigned served the foregoing document, which was filed using the Court's CM/ECF system. Notice of the filing will be sent to all counsel by operation of the Court's electronic filing system. Parties may access this filing through the Court's System.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

| | | |
|--|---|------------------------------|
| BLANCO GmbH + CO.KG, |) | |
| |) | C.A. No: 0:15-cv-2199-TLW |
| Plaintiff, |) | |
| |) | |
| v. |) | MEMORANDUM OF LAW IN |
| |) | OPPOSITION TO DEFENDANTS' |
| Vito Antonio Laera and Suzette LeFebvre, |) | MOTIONS FOR SUMMARY JUDGMENT |
| |) | |
| Defendants. |) | |
| _____ |) | |

The Plaintiff submits this Memorandum in Opposition to the Defendant Lefebvre's Motion for Summary Judgment, later joined in by Defendant Laera.

FACTUAL ASSERTIONS

For the factual assertions underlying this case, the Plaintiff relies upon and refers to the factual scenario set forth in the Plaintiff's Motion for Summary Judgment on file herein. Nonetheless, the Plaintiff wishes to point out what it believes to be several misstatements contained in the factual statement cited in the Defendant's Memorandum in Support of its Motion for Summary Judgment.

The Defendant's Memorandum states that the Defendants were married in Colorado and after spending time there, returned to Florida and later to North Carolina, where they lived as man and wife. The Memorandum further states that after the parties split, Mr. Laera moved to his warehouse located in South Carolina in 2012. While the Plaintiff does not dispute that the Defendants underwent a marriage ceremony in 2001 in Colorado, the failure to obtain a marriage license prevents such a ceremony from establishing a ceremonial marriage; as a result, the ceremony does

not render the couple married unless they had a common law marriage. Colorado Rev. Stat. §14-2-104¹. The failure to obtain such a license makes the union voidable. Colorado Rev. Stat. §14-2-106(b). The statute does, however, recognize common law marriage. The remaining statements regarding the "fact" that the parties were married lacks factual support. Although the parties did remain for the weekend in Colorado following the ceremony and the Defendants did return to Florida and later purchase and live in a house in North Carolina, the evidence is overwhelming that they did not hold themselves out as husband and wife. The Defendant could not identify a single person other than family members to whom the representation was made that they were married. Lefebvre deposition, Page 97, line 22 - Page 98, line 15. In response to Interrogatories propounded to the Defendant Lefebvre when she was asked to identify each and every document wherein she represented to any third party that she was married to Defendant Laera, Defendant Lefebvre cited one - an alleged application for the lease of a Mercedes automobile. See response Lefebvre response to Interrogatory No. 7. In response to a specific Request for Production regarding any written material evidencing that the Defendants held themselves out as husband and wife, Defendant Lefebvre did not present the application, and only produced the certificate from the marriage ceremony as such evidence. See Defendant Lefebvre's Responses and Supplemental Responses to Requests for Production). In contrast, Defendant Lefebvre signed three deeds and mortgages **after the alleged marriage and before the alleged divorce**, which are filed on the public records, stating that she was a single person. Defendant Laera filed nine deeds and mortgages during that time referring to himself as a single or unmarried man. By testimony given in federal court on October 19, 2013,

1. Although the statute was revised in 2005, the statute in existence as of the time of the marriage in 2001 contained the same provisions requiring a marriage license for a ceremonial marriage. A copy of the 2001 statute is attached as an exhibit.

seven months before the initiation of the alleged divorce, Defendant Laera testified that he had never been married to Defendant Lefebvre. Neither Defendant can produce a single document wherein Defendant Lefebvre signed her name as Suzette Laera.

The assertion that Mr. Laera moved to his warehouse in 2012 is also without any factual support. The sole basis for this assertion is the assertion that Mr. Laera told Ms. Lefebvre that he was staying at the warehouse. However, Mr. Laera testified on October 29, 2013 - eleven months after the alleged split and seven months before the institution of the "divorce" - that he spent some time in the home in North Carolina with his family, some time in the warehouse and some time in the property in Florida, but that his residence was in Florida. Defendant Laera never obtained a driver's license in South Carolina² nor ever registered to vote in South Carolina. The only way that Defendant Laera could have avoided obtaining a South Carolina license for the extended period of time claimed by the Defendants is if he was not a resident of South Carolina. There is simply no evidence that he was such a resident, other than self-serving assertions made by Ms. Lefebvre's attorney in documents submitted to the Family Court.

Finally, Defendant Lefebvre asserts that at no time prior to the current litigation did she have any knowledge of the judgment rendered against Laera. In Response to Requests for Admissions, however, Defendant Lefebvre acknowledged knowing of the judgment, but not knowing that collection would be attempted against the warehouse property. Defendant Lefebvre Responses to

²Under S.C. Code Ann. 56-1-20, a driver on the roads of South Carolina must have a valid South Carolina driver's license. A nonresident may drive on the roads only if he maintains a permanent residence in another state or country where he gets his mail, "also, a person may not claim nonresidence exemption under this provision who for all other intents and purposes has or may remove his residence into this State.

Requests for Admissions 1 and 2.

RESPONSES TO DEFENDANT LEFEBVRE'S ARGUMENTS

A. Actual Fraud

Defendant Lefebvre argues that the conveyance of the property from Defendant Laera to her is not a fraudulent conveyance as a matter of law, for the reason that there is no evidence of fraudulent behavior on her part. She asserts that she had no knowledge of the Defendant Laera's business dealings prior to the service of the present Summons and Complaint. As noted previously, however, the Defendant admitted in responses to Requests for Admissions that she was aware that Defendant Laera had been sued by the Plaintiff and that a judgment had been rendered against him in the litigation.

In considering a fraudulent conveyance action under South Carolina law,

The "badges of fraud" to be considered are the following:

The insolvency or indebtedness of the transferor, lack of consideration for the conveyance, relationship between the transferor and the transferee, the pendency or threat of litigation, secrecy or concealment, departure from the usual method of business, the transfer of the debtor's entire estate, the reservation of benefit to the transferor, and the retention by the debtor of possession of the property.

Coleman v. Daniel, 261 S.C. 198, 199 S.E.2d 74, 79 (S.C. 1973).

Campbell v. Deans (In re J.R. Deans Co.), 249 B.R. 121, 134 (Bankr. D.S.C. 2000).

In the present action, just about all of the badges of fraud are present. The transferor has significant judgments against him, no money was paid for the transfer, there is a relationship between the transferor and transferee, whether marriage or otherwise, litigation was pending against the transferor, there was no notice of the "divorce" or transfer given to any creditor, it was a departure from any usual course of business, and the debtor transferred his main asset, despite entering into

a lease to let him remain on the property.

The burden of proof to establish a fraudulent conveyance shifts to the Defendants when the conveyance is to an alleged family member.

A clear and convincing evidentiary standard governs fraudulent conveyance claims brought under the Statute of Elizabeth, S.C. Code Ann. § 27-23-10(A), meaning that a plaintiff usually must prove both prongs by clear and convincing evidence. However, there is an exception to this burden of proof in instances of voluntary transfers to family members. Specifically, where transfers to members of the family are attacked either upon the ground of actual fraud or on account of lack of consideration, the law imposes the burden on the transferee to establish both a valuable consideration and the bona fides of the transaction by clear and convincing testimony.

PCS Nitrogen, Inc. v. Ross Dev. Corp., 127 F. Supp. 3d 568 (D.S.C. 2015)

In the present action, if the parties are deemed not to be married, there is clearly no consideration for the transfer. If the parties are deemed to have been married, then the Defendants bear the burden of proving that the transfer of the property was not a fraudulent transfer. There is more than sufficient evidence that to rebut the assertion that there was no fraud on her part; in fact, the Defendant has asserted nothing than her bare statement to support her assertion that it wasn't fraudulent. The Plaintiff's Motion for Summary Judgment should be denied upon this ground.

B. Constructive Fraud/Voluntary Transfer

The second basis for asserting that a fraudulent transfer occurred is the fact that the transfer of the property was for no consideration, or for less than adequate consideration. The Defendants assert that the concept of no consideration has no application in the context of a transfer in a family law matter. The Defendants cite no authority for this assertion and, indeed, none exists. In *Albertson v. Robinson*, 371 S.C. 311, 638 S.E.2d 81 (Ct.App 2006), the parties had entered into a separation agreement, and ultimately were divorced. The property was retained by the spouse in the

divorce in 2005. Nonetheless, the appellate court held as a matter of law that there was no consideration for the transfer, notwithstanding the fact that the determination was made after the divorce decree.

The Plaintiffs do not dispute that the Family Court can make an equitable apportionment of the assets of a married couple. The Defendants' arguments completely ignore three aspects of this matter: a) there is a multitude of evidence that the Defendants were never married or that the Family Court had jurisdiction to render such a decision; b) the determination regarding the disposition of the property was done by agreement between the parties, which the Family Court confirmed; and 3) Defendant Laera could not transfer to Defendant Lefebvre a greater interest than he had in the property. Defendant Laera had already been found liable for damages to the Plaintiff at the time of the asserted "transfer," and could not give to Ms. Lefebvre a greater interest in the property than he had. The Defendants' assertions that adequate consideration has no place in a domestic setting lacks any basis.

C. *Estoppel does not prevent this Court from determining the validity of the "marriage."*

Among the assertions of the Plaintiff is that the Defendants were never legally married, and thus any alleged apportionment between them pursuant to a "divorce decree" renders the transfer both fraudulent, as well as without consideration. The Defendants argue in their brief that the Family Court ruled in its Order of 2014 that the Defendants were married, and an attack upon that conclusion is precluded by the doctrine of *res judicata*. In support of their argument, the Defendants cite 28 U.S.C. 1738, the full faith and credit statute. While the Plaintiff does not dispute that state court judgments are entitled to the full faith and credit of this Court, the principle of *res judicata* has

no application in this action.

Federal courts must give the same preclusive effect to a state court judgment as the forum that rendered the judgment would have given it. *Sartin v. Macik*, 535 F.3d 284, 287 (4th Cir. 2008). In order for res judicata to operate as a bar to a subsequent action, "the following elements needed to be proven: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. *Riedman Corp. v. Greenville Steel Structures, Inc.*, 308 S.C. 467, 419 S.E.2d 217 (1992)." *Judy v. Judy*, 393 S.C. 160, 167, 712 S.E.2d 408, 412 (2011). Furthermore, for the application of res judicata, the court must find that the rendering court had jurisdiction to render the determination. "'The jurisdiction of a court over the subject matter of a proceeding is determined by the Constitution, the laws of the state, and is fundamental.' Thus, the extent of the . . . court's jurisdiction is defined by our legislature." *Id.*

Res Judicata does not apply by definition, since there neither is identity of the parties, nor were the issues raised or adjudicated in the prior litigation. Obviously, there is no identity of the parties in that action and the current litigation, since the Plaintiff was not a party to that action. Furthermore, in the Family Court action, the issue of residence was collusively asserted, and the issue thus not raised nor adjudicated. In fact, the Family Court Order presented to that Court and signed asserted that the parties had last lived together as husband and wife in South Carolina, yet there had never been any assertion or documentation submitted to Court to infer this; in fact, the Defendants have admitted in response to Requests for Admissions that they never lived together as husband and wife in South Carolina. (See Responses to Plaintiff's Requests for Admissions).

The legal doctrine the Defendants are attempting to assert is collateral estoppel, not res judicata.

[A] party seeking to rely on the doctrine of collateral estoppel is obliged to establish five elements: (1) that the issue sought to be precluded is identical to one previously litigated ("element one"); (2) that the issue was actually determined in the prior proceeding ("element two"); (3) that the issue's determination was a critical and necessary part of the decision in the prior proceeding ("element three"); (4) that the prior judgment is final and valid ("element four"); and (5) that the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the previous forum ("element five").

Westmoreland Coal Co. v. Sharpe, 692 F.3d 317, 331 (4th Cir. 2012).

Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same." Carolina Renewal, Inc. v. S.C. Dep't of Transp., 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). "The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." Id. "While the traditional use of collateral estoppel required mutuality of parties to bar relitigation, modern courts recognize the mutuality requirement is not necessary for the application of collateral estoppel where the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issue." Id. (quoting Snavelly v. AMISUB of S.C., Inc., 379 S.C. 386, 398, 665 S.E.2d 222, 228 (Ct. App. 2008)). "The doctrine of collateral estoppel should not be rigidly or mechanically applied." Id. at 555, 684 S.E.2d at 782. "Thus, even if all the elements for collateral estoppel are met, when unfairness or injustice results or public policy requires it, courts may refuse to apply it." Id.

State v. Hewins, 409 S.C. 93, 106, 760 S.E.2d 814, 821 (2014). Where an issue was not actually litigated and ruled upon, collateral estoppel has no application. Kunst v. Loree, 404 S.C. 649, 655-656, 746 S.E.2d 360(Ct. App. 2013).

In this case, the application of collateral estoppel on the issue is not appropriate. The Plaintiff was not a party to the underlying Family Court issue. The issue of the existence of the marriage between the parties and the residence of the parties was asserted by agreement, and was not litigated; the parties simply had the Court confirm their agreement. Having failed to notify the Plaintiff of the divorce proceedings and afford it an opportunity to appear and protect its interests,

and in light of the fact that the issues now being presented were never litigated in the Family Court, the principles of collateral estoppel clearly do not apply.

The Fourth Circuit had the occasion to determine whether a default judgment could prevent, under collateral estoppel principles, the litigation of an issue in a subsequent bankruptcy proceeding. Noting that it had to apply North Carolina law, the Court quoted the Restatement (Second) of Judgments Section 27 in ruling that the litigation of the issue was not precluded by collateral estoppel.

Section 27 provides "[w]hen an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." Restatement (Second) of Judgments § 27 (1982). The comments to section 27 explain, however, that "[i]n the case of a judgment entered *by confession, consent, or default*, none of the issues is actually litigated. Therefore, the rule of this Section does not apply with respect to any issue in a subsequent action." Restatement (Second) of Judgments § 27 cmt. e (1982) (emphasis added).

Sartin v. Macik, 535 F.3d 284, 288-89 (2008).

In the present action, it is abundantly clear that the Defendants colluded to attempt to create jurisdiction in the Family Court by agreeing to a consent Order stating that Defendant Laera was a resident of South Carolina, when his sworn testimony and all supporting evidence clearly indicate that he was not. Since the matter was a consent Order, it has no collateral estoppel effect, and this Court can and should hold that the Family Court lacked jurisdiction to apportion property among the Defendants.

The Defendants have asserted that the Plaintiff is seeking to have this Court act as an appellate court to determine whether the parties were married. To the contrary, the Plaintiff is seeking a determination whether the parties engaged in a fraudulent conveyance through the misuse

and fraud upon a state tribunal and otherwise; it is not seeking any appeal of the Family Court action.

D. *There was no consideration for the Transfer of the Real Estate between the Defendants.*

The Defendants assert that there can be no fraudulent transfer because they were married, and the Family Courts apportionment of the property between them is sufficient consideration for the transfer. The Defendants, however, ignore the fact that the South Carolina Family Court lacked jurisdiction to apportion the property between the parties, and thus the transfer lacks consideration.

1. *The South Carolina Family Court is a Court of limited jurisdiction.*

"The jurisdiction of a court over the subject matter of a proceeding is determined by the Constitution, the laws of the state, and is fundamental. Lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court." Anderson v. Anderson, 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989) (Citing Fielden v. Fielden, 274 S.C. 219, 262 S.E. 2d 43 (1980); Harden v. South Carolina State Highway Dept., 266 S.C. 119, 221 S.E. 2d 851 (1976); State v. Gorie, 256 S.C. 539, 183 S.E. 2d 334 (1971)).

The family Courts of the State of South Carolina were established pursuant to S.C. Code Ann. 63-3-10: "There hereby are created courts of limited jurisdiction to be known and designated in this title as 'family courts.'" The Family Court has exclusive jurisdiction "to hear and determine actions for divorce a vinculo matrimonii, separate support and maintenance, legal separation, and in other marital litigation between the parties, and for settlement of all legal and equitable rights of the parties in the actions in and to the real and personal property of the marriage and attorney's fees, if requested by either party in the pleadings." S.C. Code Ann. §63-3-350(A)(2). Since the Court has limited jurisdiction as to the legal and equitable rights of the parties to the real and personal property

of the marriage, the Court lacks jurisdiction to render decisions relating to those rights of parties who are not married.

a. *The Family Court lacked jurisdiction because the Defendants Were Not Married, Either Ceremoniously or at Common Law.*

Although the Defendants assert that they are married under the common law of Colorado, it is undisputed that they did not obtain a marriage license in Colorado, they did not cohabit in Colorado beyond that weekend, they never resided in Colorado, and they did not hold themselves out as husband and wife other than going through the marriage ceremony. "A common law marriage does not require any kind of ceremony at all but only the agreement of the parties, followed by the mutual and open assumption of a marital relationship." *In re Marriage of Cargill*, 843 P.2d 1335, 1339 (Colo. 1993). "Mutual consent or agreement manifested by mutual public acknowledgment of the marital relationship was essential to the establishment of a common law marriage." *People v. Lucero*, 747 P.2d 660, 661 (Colo. 1987). "Common-law marriage is more than mere cohabitation. 'A common law marriage is established by the mutual consent or agreement of the parties to be husband and wife, followed by a mutual and open assumption of a marital relationship.' *People v. Lucero*, 747 P.2d 660, 663 (Colo. 1987)." *Salzman v. Bachrach*, 996 P.2d 1263, 1268-1269 (Colo. 2000).

In the present case, the sole evidence of common law marriage is the conduct of the ceremony. Other than that, the parties never assumed the marital relations or mutually held themselves out as husband and wife. Although living together, Ms. Lefebvre never used the name Laera in her dealings. Ms. Lefebvre executed and recorded three documents related to real estate stating that she was a single woman. Furthermore, there is no evidence of any "mutual and open

assumption of a marital relationship," as Mr. Laera has testified that he was not married to Ms. Lefebvre and executed multiple and significant legal documents expressly stating that he was an unmarried man.

Q. Okay. Your wife was never a shareholder?

A. I'm single, sir.

Q. Okay. Were you ever married?

A. It's a long story. I would rather not put that on record.

Q. Wouldn't want to delve into your personal life. You can answer yes or no, were you married at some point in time?

A. I was married at some point in time.

Q. Were you married to Ms. LeFebure?

A. No, sir.³ I shouldn't have said that because it's going to be on the record and whatever.

Q. Was Ms. LeFebure ever a shareholder in G-Tech-I, Inc.?

A. No.

Q. Okay. Was Ms. LeFebure ever a shareholder in Vlanco Industries, Inc.?

A. I prefer you don't even say that word LeFebure. She's just the mother of my children.

Q. Okay. Was she ever a shareholder?

A. No, she doesn't own anything that I own, she doesn't -- we have no interest in -- whatever's hers is hers, whatever's mine is mine. The only thing we have is that house because we bought it 20 years ago and we can't even sell the thing.

Transcript of Hearing, Page 25, Line 21 - Page 26, Line 16

The mere fact that the parties went through a ceremony without obtaining a necessary license does not establish a common law marriage, without the mutual holding out that they were man and wife. The parties kept their property separate, and Ms. Lefebvre was "just the mother" of Mr. Laera's children. The assertion that Ms. Lefebvre alone may have thought they were married (despite her

³Based upon this testimony, the Plaintiff believes that Mr. Laera may have been married prior to the time he met Ms. Lefebvre and that he never obtained a divorce from his prior marriage; the Defendants have failed to produce evidence of the prior marriage and divorce. If Mr. Laera did have a prior marriage and had not obtained a divorce, he could not as a matter of law have been married to Ms. Lefebvre, either by statute or common law.

own signed and sealed documentation exhibiting that she was not) is insufficient to establish a common law marriage. Since the Defendants were not married, the South Carolina Family Court lacked jurisdiction to apportion their property. Without the right to claim some interest in the property as a result of a marriage, there is no consideration for the transfer, making it a fraudulent conveyance.

b. Even if the Defendants could be deemed to have been common law husband and wife, the South Carolina Family Court lacked jurisdiction.

Pursuant to S.C. Code Ann. 20-3-30, "In order to institute an action for divorce from the bonds of matrimony the plaintiff must have resided in this State at least one year prior to the commencement of the action or, if the plaintiff is a nonresident, the defendant must have so resided in this State for this period" The Defendant Lefebvre, who is the Plaintiff in the Family Court action, acknowledges that she has never lived in South Carolina. The only basis for the assumption of jurisdiction by the Family Court, therefore, is that Defendant Laera was a resident of South Carolina for a year prior to the institution of the divorce proceeding. The only evidence is that Defendant Laera was not a resident of South Carolina, as he is judicially estopped from claiming otherwise, and thus the South Carolina Family Court lacked jurisdiction to entertain the divorce litigation filed by the Plaintiff.

In the evidentiary hearing conducted on October 29, 2013 in the litigation in the US District Court for the Southern District of Florida, Defendant Laera was specifically asked where he resided:

Q. Where do you primarily reside?

A. Well, that's a long story, sir. It would have to -- I'm going to stick with Florida as my main residence. There you go.

Q. Would you say you only spend a couple months out of the year in Florida? So I'm just trying to understand where do you spend the majority of your time?

A. I have a place in South Carolina. I'm gone two months out of the year, so that's

20 percent right there. And, you know, I stay with my family often. So it would depend on what -- you know, you're asking me, I'm telling you that's my -- if you were to ask me what's my home, 5960 would be my home.

Transcript of Hearing, Page 11, Line 1 - 11.

Q. Mr. Laera, are you familiar with an address of 419 York Southern Road, Fort Mills, South Carolina?

A. Yes, sir.

Q. What is that address?

A. That is a commercial building that I own.

Q. Okay. Do you reside at that building? You live in that building?

A. Sometimes.

Q. How much time out of the year do you think you reside at the 419 York Southern Road address?

A. I don't count, sir.

Q. Can you give us an approximation?

A. 20, 25 percent.

Transcript of Hearing, Page 11, Line 16 - Page 12, Line 3.

Q. Are you familiar with an address of 1516 Glenn Valley Drive, Matthews, North Carolina?

A. Yes, sir.

Q. Who owns that property?

A. I do.

Q. Do you reside in that property?

A. Technically I don't, but...

Q. Okay. What do you mean by "technically you don't"?

A. Another long story. Basically Suzette and the kids are there and, you know, we don't get along all the time and I love the kids, I go check them and see them and, you know, if I can't bear it, I go somewhere else. So we have an arrangement and that arrangement is basically -- shoot, I don't even know how to describe it. But she stays there, she lives there and I go do what I have to do and that's it.

Q. Okay. And I don't mean to pry into your personal life. I'm just trying to get an understanding of if you ever reside in that residence.

A. Yes. I sleep there sometimes.⁴

⁴The Defendant Laera asserted that he slept at the Matthews Road address for significant periods of time, which would have resulted in condonation of any asserted ground of adultery as the basis for the "divorce." While this issue does not reflect upon the jurisdiction of the Family Court, it is very powerful evidence of the fraudulent conduct of both parties in the representations made to the Family Court, as well as their fraudulent

Q. And approximately how much time do you reside at the 1516 Glenn Valley Drive address?

A. 20, 25 percent. I think that adds up to 100.

Transcript of Hearing, Page 12, Line 19 - Page 13, Line 15.

In addition to the testimony that Mr. Laera was a Florida resident, in numerous pleadings within one year of the filing of the Family Court action Mr. Laera listed his residence as being in Florida. Such filings were not just in the federal court action brought by the Plaintiff, but also in a federal court action he filed on his own behalf, asserting that he was a Florida resident and that the Court had jurisdiction by reason of his residence. See Laera v. Blanco GmbH, et al; 0:13-cv-61423 (S.D.Fla.)(attached).

Based upon his testimony and filings in federal court, Defendant Laera is judicially estopped from asserting that he was a resident of South Carolina for a year prior to the filing of the Family Court action, a prerequisite for the jurisdiction of that court.

Judicial estoppel precludes a party from adopting a position that is inconsistent with a stance taken in prior litigation. The purpose of the doctrine is to prevent a party from playing fast and loose with the courts, and to protect the essential integrity of the judicial process." John S. Clark Co. v. Faggert & Frieden, P.C., 65 F.3d 26, 28-29 (4th Cir. 1995)(citations and internal quotation marks omitted). See also Mark J. Plumer, *Note, Judicial Estoppel: The Refurbishing of a Judicial Shield*, 55 Geo. Wash. L. Rev. 409, 435 (1987) ("Judicial estoppel is properly defined as a bar against the alteration of a factual assertion that is inconsistent with a position sworn to and benefitted from in an earlier proceeding").

Lowery v. Stovall, 92 F.3d 219, 223 (4th Cir. 1996). To apply judicial estoppel, several elements must be met. First, the party sought to be estopped must be seeking to adopt a position that is inconsistent with a stance taken in prior litigation, and the position sought to be estopped must be one of fact rather than law or legal theory. Second, the prior inconsistent position must have been

intentions in transferring the property which is the subject of this action.

accepted by the court. Finally, the party sought to be estopped must have intentionally misled the court to gain unfair advantage. *Id.* at 224.

The elements of judicial estoppel clearly apply in this case to prevent the assertion that Mr. Laera was a resident of South Carolina for the year prior to the filing of the Family Court proceeding. The assertion that he was a resident of South Carolina is clearly inconsistent with the prior testimony and filings with the federal courts in the Southern District of Florida. By asserting his residence as being in Florida in June of 2013, Mr. Laera invoked the diversity jurisdiction of that Court, and thus the assertion was accepted by that court for the benefit of Mr. Laera. Finally, Mr. Laera is attempting to mislead the Court for his own advantage in attempting to uphold a clearly fraudulent conveyance.

The elements of judicial estoppel clearly apply to prevent Mr. Laera from asserting that he was a resident of South Carolina for the year prior to the filing of the "divorce" action in South Carolina. Since Mr. Laera cannot assert that he was a South Carolina resident for this time frame, the Family Court lacked jurisdiction to apportion the property of the Defendants, *even if it could be found that they were married*. Since the Court lacked jurisdiction to grant a divorce or apportion the property of the Defendants, there was no consideration for the transfer of the property from Mr. Laera to Ms. Lefebvre. Without that element of consideration, the transfer was fraudulent as a matter of law.

E. The Defendants are estopped from asserting that the transfer was for adequate consideration.

In the affidavit filed to support the asserted transaction, the attorney for Ms. Lefebvre asserted that the deed was exempt from the assessment of the deed stamp tax because the "Consideration paid was less than \$100.00." Pursuant to S.C. Code Ann. §12-24-10, "a recording fee is imposed for the

privilege of recording a deed in which land and improvements on the land, tenements, or other realty is transferred to another person." The Transferor is primarily liable for the payment of the recording stamps, and the transferee is secondarily liable for the fee. The available exemptions to the liability for the recording fee are set forth in S.C. Code Ann. §12-24-40; transfer pursuant to a divorce is not one of the transactions exempted from the fee. In filing the 2015 deed, the attorney for Ms. Lefebvre, P. John Freeman, swore that the value of the transfer was less than \$100.00. An attorney making such a representation on behalf of his client binds the client. "In the attorney-client relationship, clients are generally bound by their attorneys' acts or omissions during the course of the legal representation that fall within the apparent scope of their attorneys' authority. Koutsogiannis v. BB&T, 365 S.C. 145, 149, 616 S.E.2d 425, 428 (2005); Motley v. Williams, 374 S.C. 107, 647 S.E.2d 244 (Ct.App. 2007). Further, on May 21, 2016, Defendant Laera transferred his remaining half interest to the Suzette Lefebvre Trust, NA, and in conjunction therewith, filed another affidavit attesting that the consideration paid was less than \$100.00. Once again, the Defendants are attempting to take one position when it is to their financial advantage, yet assert to this Court a different factual representation when it serves their later interest. Ms. Lefebvre's attorney having sworn in 2015 that the consideration for the transfer was less than \$100.00 in order to avoid the imposition of deed stamps, and Defendant Laera having again sworn to this fact in 2016, the Defendants cannot now advise the court that Ms. Lefebvre paid consideration of close to two million dollars for the transfer of the property.

F. The delayed entry of the judgment in the judgment rolls does not prevent the attachment of the judgment lien to the property.

The Plaintiff filed the foreign judgment with the York County Clerk of Court on October 3,

2014. Pursuant to S.C. Code Ann. §15-35-920(B), "Upon the filing of the foreign judgment and the affidavit, the foreign judgment must be docketed and indexed in the same manner as a judgment of this State." The Clerk of Court for York County, therefore, was required to enter the judgment upon the index of judgments upon filing, i.e., on October 3, 2014. The Clerk clocked in the judgment on October 3, 2014, but failed to enter it on the abstract of judgments until March 3, 2016. The late entry of the judgment was in dereliction of his duty to enter the judgment on October 3, 2014, and the Plaintiff has requested that the Clerk enter the judgment on the judgment rolls as of October 3, 2014. The Plaintiff is awaiting the response of the Clerk.

Pursuant to S.C. Code Ann. §14-17-600, Judges may require that the Clerk of Court comply with the requirements of properly filing and entering judgments on the abstract of judgments. In the event that the Clerk fails to do so, this Court can require that he do so.

The Defendants have no basis for objecting to the proper docketing of the judgment. Although the Defendant Laera did transfer half of the subject property to Defendant Laera on January 15, 2015, it was in no way based upon any reliance upon the fact that the Clerk of Court had not properly entered and indexed the judgment. Ms. Lefebvre testified that she never discussed the transfer of the property from Mr. Laera to her, and all such discussions would have been had by her attorney. Ms. Lefebvre can therefore not show that she relied in any way upon the failure of the Clerk to properly docket the judgment in the abstract of judgments as the reason for her acceptance of the half interest in the property. Since the Defendant Lefebvre did not rely upon the failure to have the judgment properly docketed and did not change her position based on that reliance, she cannot show that the proper docketing of the judgment on October 3, 2014 would be a proximate cause of the lack of equity in the property as of the date of transfer.

Further, the Defendant asserts that the transfer of the property should be free and clear of the judgment. This assertion, ignores, however, the fact that the January 15, 2015 deed transferred only a half interest in the property to her, and Mr. Laera retained a half interest in the property pursuant to that deed⁵. Even if the January 15, 2015 deed could be deemed valid and that the Plaintiff's judgment lien did not attach until March 2016, the lien nonetheless attached to Mr. Laera's half interest in the property as of that date. The subsequent transfer of the remaining half of the property to the Suzette Lefebvre Trust NA during the course of this action came **AFTER** the docketing of Plaintiff's first and second judgments upon the York County Abstract of Judgments. Defendant Lefebvre, therefore, cannot take the property free and clear of the judgments which clearly attached to Mr. Laera's interest in the property prior to the subsequent transfer to Ms. Lefebvre.

CONCLUSION

Although the Defendants contend that this Court is foreclosed from considering the bona fides of the transfer of the property from Defendant Laera to Defendant Lefebvre under the doctrine of res judicata, the doctrine to res judicata has no application to this action due to lack of identity of the parties. Furthermore, the principles of collateral estoppel do not apply to prevent this Court from examining the transaction, as the matters at issue in this action were not raised or actually litigated in the Family Court action. The factual matters presented to the Court clearly and unequivocally establish that Defendant Laera was not legally or common law married to Defendant Lefebvre and

⁵Indeed, the retention of a half interest in the property is further evidence of the sham nature of the divorce decree. The divorce decree supposedly ordered that the entire property be deeded to Ms. Lefebvre, and the attorney for Ms. Lefebvre prepared and filed a deed transferring only a half interest in the property to her. Further pursuant to the decree, Ms. Lefebvre was supposed to thereafter make payments on the mortgage, but Mr. Laera is the person who continued to pay that mortgage and the mortgage on the residence which was transferred.

further that he was not a resident of South Carolina at the time of the filing of the Family Court action, and therefore the Family Court lacked jurisdiction to apportion property between the Defendants. The evidence is overwhelming that the Defendants fraudulently attempted to create jurisdiction in the Family Court in order to shield the subject property from the Plaintiff's judgment. Whether Ms. Lefebvre was aware of the judgment or not, it is clear that Mr. Laera was aware of it and, as transferor, attempted to place it beyond the valid claims of the Plaintiff; all of the badges of fraud are present, requiring the Defendants to rebut the presumption that the transfer was fraudulent. Since, however, there was no consideration for the transfer of the real estate, intent to defraud is not necessary; the transfer was voluntary, and must be set aside. The Defendants acknowledged that there was a lack of consideration by executing and filing affidavits acknowledging that the consideration for the transfer was less than \$100.00.

Even in the event that this Court upholds the transfer, the Plaintiff did all that was necessary to file the judgment with the Clerk of Court for York County, and the judgment should be given priority notwithstanding the filing error of the Clerk of Court. Even if the Court fails to overlook the filing error of the Clerk of Court, the Plaintiff has rights against Mr. Laera's continuing interest in the property retained after the January 15, 2015 deed. For all of the foregoing reasons, the Defendants' Motions for Summary Judgment should be denied, and the Plaintiff's Motion for Summary Judgment should be granted.

BERNSTEIN & BERNSTEIN, P.A.

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ATTORNEYS FOR THE PLAINTIFF

December 19, 2016

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

| | | |
|--|---|-----------------------------|
| BLANCO GmbH + CO.KG, |) | |
| |) | C.A. No: 0:15-cv-2199-TLW |
| Plaintiff, |) | |
| |) | MEMORANDUM IN SUPPORT OF |
| v. |) | MOTION FOR SUMMARY JUDGMENT |
| |) | |
| Vito Antonio Laera and Suzette LeFebvre, |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

The Plaintiff presents this Memorandum in Support of its Motion for Summary Judgment.

FACTS

The Plaintiff is a German company which has obtained a judgment against Defendant Vito Anthony Laera in the United States District Court for the Southern District of Florida. Defendant Vito Antonio Laera is currently a resident of Cuba; Defendant Suzette LeFebvre is a resident of Florida.¹

Defendants Vito Antonio Laera and Suzette LeFebvre lived together for many years, beginning in 1996. The Defendants were not married when they began cohabitation, and did not represent themselves as married at the time. In 2001, the Defendants participated in a wedding ceremony in Golden, Colorado before an ordained minister (Exhibit #1 to Memorandum). The

¹

Although the Plaintiff intends to make citations to testimony of record in this Memorandum, it is unable at the time of filing to do so. Defendant intends to file and cite to deposition testimony of Defendant Suzette LeFebvre. Ms. LeFebvre was scheduled to be deposed on October 28, 2016 in Rock Hill, SC, after proper notice. Ms. LeFebvre failed to appear for her deposition as noticed. After several failed attempts, the parties were able to subsequently arrange a deposition by telephone of Ms. LeFebvre on November 22, 2016 at her location in Florida; the parties are awaiting the delivery of the transcript at this time. Citations to testimony will necessarily be by memory of the testimony, subject to being confirmed with citations to testimony when the transcript is delivered.

reached an agreement between themselves regarding divorce and property division, and after a hearing where Defendant Laera did not appear but did consent to the agreed judgment, the Court affirmed that agreement. The York County Family Court ordered, *inter alia*, that the property located in York County be transferred to Defendant LeFebvre, with certain conditions regarding to lease the property and conditions upon sale. On October 31, 2014, the York County Family Court awarded the York County property to Defendant LeFebvre (Exhibit #10 to Memorandum). The actual deed to the property was executed by Defendant Laera on January 7, 2015, and was filed on January 16, 2015 (Exhibit #11 to Memorandum). Significantly, the transfer was not to Ms. LeFebvre alone, but was instead to Ms. LeFebvre and Vito Antonio Laera. On May 16, 2016, Defendant Laera transferred his remaining half interest in the South Carolina property to the Suzette Lefebvre Trust N/A (Exhibit #12 to Memorandum).

The Complaint asserts that the Plaintiff has a priority lien to the South Carolina commercial property by reason of the filing of its judgment against the South Carolina property prior to the attempted transfer of the property from Laera to LeFebvre. The Complaint further asserts that the transfer, both in the Family Court proceedings and in the deed records, was a fraudulent transfer, in violation of S.C. Code Ann. §27-23-10 *et seq.* The Plaintiff has sought a declaratory judgment that the property transaction was a fraudulent conveyance, and that judgment be granted against both Defendants, as participants in that conveyance, in the amount of one year's value of the property. The Plaintiff further seeks that the property be sold and the proceeds be applied toward the judgment lien.

ARGUMENT

- I. THE PLAINTIFF IS ENTITLED TO HAVE A FIRST PRIORITY LIEN AGAINST THE SOUTH CAROLINA PROPERTY, SUPERIOR TO THE INTERESTS OF SUZETTE LEFEBVRE.

The foreign judgment was filed by the Plaintiff with the York County Clerk of Court on October 3, 2014. Pursuant to S.C. Code Ann. 15-35-920 (B), the Clerk of Court must file it and index it in the same manner as a judgment of this State.

The Clerk of Court for York County filed the foreign judgment on October 3, 2016. He did not, however, enter it in the index of Judgments until March 3, 2016. Nonetheless, he was required by statute to do so upon the filing of the foreign judgment and affidavit as of the original date of filing, i.e., October 3, 2014. Defendant Suzette LeFebvre did nothing in reliance upon the failure of the Clerk to earlier enter the judgment in the index of judgments, as she was not involved in the drafting or filing of the deeds from Mr. Laera to her. The Court should hold that the judgment was effective upon filing under S.C. Code Ann. 15-35-920(B), and thus that the lien of the Plaintiff constitutes a first lien with priority over the attempted transfer of the property from Mr. Laera to Ms. LeFebvre.

II. THE DEFENDANTS LAERA AND LEFEBVRE WERE NEVER MARRIED; ACCORDINGLY, THE ASSERTED CONSIDERATION FOR THE TRANSFER - PURSUANT TO A DIVORCE SETTLEMENT - CANNOT BE CONSIDERATION FOR THE TRANSFER. THE TRANSFER WAS THUS WITHOUT CONSIDERATION, AND IS VOID AS A FRAUDULENT TRANSFER.

A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue. *Felts v. Richland County*, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991). An action to set aside a transfer as fraudulent pursuant to the Statute of Elizabeth is an action in equity. *Future Group, II v. Nationsbank*, 324 S.C. 89, 97 n.6, 478 S.E.2d 45, 49 n.6 (1996).

* * *

The Statute of Elizabeth, as codified in section 27-23-10 of the South Carolina Code (Supp. 2005), governs fraudulent conveyances and provides in relevant part:

Every . . . conveyance of lands . . . which may be had or made to or for any intent or purpose to delay, hinder, or defraud creditors and others of their just and lawful . . . debts . . . must be deemed and taken

of a marital relationship. *People v. Lucero*, 747 P.2d 660, 663 (Colo. 1987)." *In re Marriage of Cargill*, 843 P.2d 1335, 1339 (Colo. 1993). "Evidence concerning a common-law marriage should be clear, consistent and convincing; and in *Estate of Klipfel v. Klipfel*, 41 Colo. 40, 92 Pac. 26, we ruled that to establish the presumption of marriage by cohabitation and repute, the marriage contract must be established by convincing and positive evidence. " *Employers Mut. Liability Ins. Co. v. Industrial Com.*, 124 Colo. 68, 73, 234 P.2d 901, 903 (Colo. 1951).

A common law marriage is established by the mutual consent or agreement of the parties to be husband and wife, followed by a mutual and open assumption of a marital relationship. *People v. Lucero*, 747 P.2d 660 (Colo. 1987). Absent an express agreement, the two factors considered the most reliable in determining whether an intent to be married has been established are cohabitation and a general reputation in the community that the parties hold themselves out as husband and wife.

Whitenhill v. Kaiser Permanente, 940 P.2d 1129, 1132 (Colo. Ct. App. 1997).

When judged by the standards of Colorado law, it is abundantly clear that although the Defendants may have undergone a marriage ceremony, the Defendants did not obtain a "general reputation in the community that the parties hold themselves out as husband and wife," and thus could not be deemed to have a common law marriage. The record is replete that, following the ceremony, the Defendants continued to represent to the community that they were not married. Significantly, Defendant LeFebvre did not take the last name "Laera" and continued to refer to herself by her own last name. In multiple legal documents, both Defendants repeatedly referred to themselves as unmarried:

1. On April 1, 2002, both Defendants entered into a modification of the credit line mortgage wherein they were referred to as "Vito A. Laera, an unmarried person and Suzette Lefebvre, an unmarried person": (Exhibit #13 to Memorandum)
2. On August 29, 2003, both Defendants entered into a credit line mortgage wherein they were referred to as "Vito A. Laera, an unmarried person and Suzette Lefebvre, an

whatever.

Q. Was Ms. LeFebure ever a shareholder in G-Tech-I, Inc.?

A. No.

Q. Okay. Was Ms. LeFebure ever a shareholder in Vlanco Industries, Inc.?

A. I prefer you don't even say that word LeFebure. She's just the mother of my children.

Q. Okay. was she ever a shareholder?

A. No, she doesn't own anything that I own, she doesn't -- we have no interest in -- whatever's hers is hers, whatever's mine is mine. The only thing we have is that house because we bought it 20 years ago and we can't even sell the thing.

Testimony of Evidentiary Hearing October 29, 2013, p. 25, line 21 through p. 26, line 16. (Memorandum Exhibit #23)

The Defendant's spent several days in Colorado and had a ceremony. They did not cohabitate in Colorado. Although they cohabitated in Florida and North Carolina, they did not hold themselves out as husband and wife. Mr. Laera kept his name, and Ms. LeFebvre kept her name. They entered into multiple significant legal documents after the ceremony identifying themselves as single. Mr. Laera testified under oath prior to the "divorce" that he was single and never married to Ms. LeFebvre. The Defendants were not and cannot be deemed to be common law married under any definition, since they did not hold themselves out to the public as married.

The Plaintiff suspects that the Defendants filed their tax returns indicating that they were single. The Plaintiff has requested copies of these tax returns from the years prior to the "divorce" in the course of discovery, but Defendants have refused to produce them. Defendant LeFebvre has produced her post-divorce return, indicating that she did not file for previous years because she did

Accordingly, Defendant Laera would have to have resided in South Carolina for a full year prior to the filing of the divorce action. Although the Defendants contend that Mr. Laera lived in the warehouse in South Carolina for the year prior to the filing of the divorce, the only evidence available to this Court is that he did not.

In the October 29, 2013 sworn testimony in the Florida District Court evidentiary hearing, Laera testified:

Q. Okay. Are you familiar with a property at 5960 Southeast 32nd Terrace in Fort Lauderdale, zip code 33066?

A. You got that one wrong too, the zip code. You get a lot of things wrong.

Q. What's the correct zip code?

A. 33312.

Q. And what is that property?

A. It's my home, my first residence.

Q. Okay. Do you live there now?

A. Not full-time.

Q. Okay. About how much time do you live in the 5960 Southeast 32nd Terrace address?

A. I don't count. Could be a few months out of the year. Something like that.

Q. Where do you primarily reside?

A. Well, that's a long story, sir. It would have to -- I'm going to stick with Florida as my main residence. There you go.

Q. Would you say you only spend a couple months out of the year in Florida? So I'm just trying to understand where do you spend the majority of your time?

Q. I'm sorry, Henry?

A. It's basically a place to put friends. Right now it's empty.

Q. That was my next question. Is anyone residing at that address right now?

A. No, it's empty.

Q. Are you familiar with an address of 1516 Glenn Valley Drive, Matthews, North Carolina?

A. Yes, sir.

Q. Who owns that property?

A. I do.

Q. Do you reside in that property?

A. Technically I don't, but...

Q. Okay. what do you mean by "technically you don't"?

A. Another long story. Basically Suzette and the kids are there and, you know, we don't get along all the time and I love the kids, I go check them and see them and, you know, if I can't bear it, I go somewhere else. So we have an arrangement and that arrangement is basically-- shoot, I don't even know how to describe it. But she stays there, she lives there and I go do what I have to do and that's it.

Q. Okay. And I don't mean to pry into your personal life. I'm just trying to get an understanding of if you ever reside in that residence.

A. Yes. I sleep there sometimes.

Q. And approximately how much time do you reside at the 1516 Glenn Valley Drive address?

A. 20, 25 percent. I think that adds up to 100.

Q. Okay. Do you have a driver's license?

CONCLUSION

The Plaintiff properly filed its Judgment with the Clerk of Court for York County, and is entitled to have the judgment enforced against the property interests of Vito Antonio Laera in York County as of that date. on the date when the Judgment was filed, Mr. Laera owned the York Southern Road warehouse in his sole name in fee simple, and the property is thus subject to the lien of the first judgment as a matter of law.

The Defendants were never ceremonially married nor can they be deemed to have been married under the common law of the State of Colorado, Florida or North Carolina. Without a marriage, there can be no divorce. Without a divorce, there can be no property division transferring Mr. Laera's rights to real property in fraud of the claims of his creditors. Furthermore, the Defendants committed fraud upon the York County Family Court, the York County Family Court lacked jurisdiction to entertain a divorce action or grant a divorce or property separation, and any Order requiring the transfer of property from Mr. laera to Ms. LeFebvre is void. The transfer of the South Carolina property to Defendant LeFebvre was a fraudulent conveyance as a matter of law, and should be overturned as a matter of law.

Respectfully submitted,

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ATTORNEYS FOR THE PLAINTIFF

November 30, 2016

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

| | | |
|--|---|---------------------------|
| BLANCO GmbH + CO.KG, |) | C.A. No: 0:15-cv-2199-TLW |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | ORDER |
| |) | |
| Vito Antonio Laera and Suzette LeFebvre, |) | |
| |) | |
| Defendants. |) | |
| |) | |

This matter is before the Court on a Motion to Dismiss (ECF No. 10) filed by Defendant Suzette LeFebvre pursuant to Federal Rule of Civil Procedure 12(b)(1).¹ Plaintiff filed a memorandum in opposition to the motion and LeFebvre replied. (ECF Nos. 14, 15.) The motion is now ripe for disposition and, as set forth below, the motion is denied.

This lawsuit primarily involves the enforcement of a judgment that Plaintiff alleges it obtained against Laera in a lawsuit in the Southern District of Florida captioned *BLANCO GmbH + CO.KG v. Vlanco Industries, LLC, G-Tech-1, Inc., and Vito Antonio Laera*, C.A. No. 0:12-cv-61580-JAL. (ECF No. 1.) Specifically, Plaintiff presently seeks a declaratory judgment as to the validity of an allegedly fraudulent conveyance of a parcel of real property that it asserts is encumbered by the judgment, in addition to seeking damages for the allegedly fraudulent conveyance and foreclosure of the judgment lien. (*Id.*)

In the instant motion, LeFebvre asserts this Court lacks subject matter jurisdiction over these claims. She first argues that the Court cannot take up this matter pursuant to the domestic relations exception to diversity jurisdiction as set forth in *Ankenbrandt v. Richards*, 504 U.S. 689 (1992) and *Wilkins v. Rogers*, 581 F.2d 399 (4th Cir. 1978). In support of her motion, LeFebvre alleges that the property against which Plaintiff seeks to enforce its lien was the subject of a family court divorce decree between Laera and LeFebvre and, therefore, this Court cannot

¹ The Court notes that at the time of the filing of this order, Defendant Vito Antonio Laera has not been served in this action.

exercise jurisdiction over the property. Further, LeFebvre urges that the exercise of federal jurisdiction in this case would, in effect, impermissibly serve as an appellate review of the family court's divorce decree pursuant to *Anderson v. Colorado*, 793 F.2d 262 (10th Cir. 1986). Conversely, Plaintiff contends that the domestic relations exception is not broad enough to bar jurisdiction over the claims set forth in its complaint.

The domestic relations exception to federal subject matter jurisdiction is based on the policy consideration that the states have traditionally adjudicated marital and child custody disputes and therefore have developed competence and expertise in adjudicating such matters, which federal courts lack. See *Ankenbrandt*, 504 U.S. 689. However, both the Supreme Court and the Fourth Circuit have explained that the exception affords narrow application.

In an instructional and significant decision, the Supreme Court reversed a district court's dismissal of a child abuse claim brought by a mother on behalf of her children against her former husband in *Ankenbrandt*. The Court stated that the domestic relations exception "encompasses only cases involving issuance of a divorce, alimony, or child custody decree," and concluded that torts committed by a former spouse were outside this scope. *Id.* at 704. In comparison, the Fourth Circuit affirmed a district court's application of the doctrine when it abstained from considering the constitutionality of several South Carolina domestic relations statutes related to dower. *Wilkins*, 581 F.2d at 403. There, the application of the doctrine was deemed appropriate because "original jurisdiction of suits *primarily involving domestic relations* is improper, notwithstanding that the parties are residents of different states . . ." *Id.* (emphasis added).

The Court has carefully considered the prevailing authorities and the memoranda submitted by the parties. After thorough review, the Court concludes that the domestic relations exception is narrower than LeFebvre asserts. Under the facts presently before the Court, the exception does not divest the Court of subject matter jurisdiction as this case neither involves the "issuance of a divorce, alimony, or child custody decree," *Ankenbrandt*, 504 U.S. at 704, nor does it "primarily involve[e] domestic relations," *Wilkins*, 581 F.2d at 403. Further, the Court is not persuaded that the exercise of federal jurisdiction over the enforcement of this lien would

amount to an appellate review of the relevant family court order because the issue of whether or not the conveyance of property was fraudulent was not before the family court during the divorce proceedings.²

Therefore, LeFebvre's Motion to Dismiss (ECF No. 10) is hereby **DENIED**.

IT IS SO ORDERED.

s/ Terry L. Wooten
Chief United States District Judge

October 21, 2015
Columbia, South Carolina

² The Court observes that the conveyance of the subject property pursuant to the divorce decree was apparently premised upon the mutual agreement of the parties to that action, LeFebvre and Laera. In the present lawsuit, Plaintiff questions whether Defendants were, in fact, perpetrating fraud upon the family court by arranging for the court to order this conveyance. (See Pl.'s Mem.; ECF No. 14.)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

| | | |
|--|---|-----------------------------|
| BLANCO GmbH + CO.KG, |) | |
| |) | C.A. No: 0:15-cv-2199-TLW |
| Plaintiff, |) | |
| |) | MEMORANDUM IN OPPOSITION TO |
| v. |) | MOTION TO DISMISS |
| |) | |
| Vito Antonio Laera and Suzette LeFebvre, |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

The Plaintiff presents this Memorandum in Opposition to Defendant LeFebvre's Motion to Dismiss the Complaint. For the following reasons, the Motion to Dismiss should be denied.

FACTS

The Plaintiff is a foreign company which has obtained a judgment against Defendant Vito Anthony Laera in the United States District Court for the Southern District of Florida; the Defendants are alleged to be citizens and residents of North Carolina. Defendants own a parcel of real estate located in York County, South Carolina. Prior to October 31, 2014, the property was owned by and titled solely to Defendant Laera.

Defendant LeFebvre initiated a divorce proceeding in York County on March 26, 2014, asserting that the Defendants were married in 2001 and that Defendant Laera was a resident of York County, South Carolina (Exhibit 1 to Memorandum). The Defendant Laera admitted that he had been residing in South Carolina, but asserted that the marital residence had been in North Carolina (Exhibit 2 to Memorandum). The divorce documentation indicated that the parties had been married in Jefferson County, Colorado in 2001 (Exhibit 3 to Memorandum). The Defendants reached an agreement between themselves regarding divorce and property division, and after a hearing where

Defendant Laera did not appear but did consent to the agreed judgment (Exhibit 4 to Memorandum), the Court affirmed that agreement. The York County Family Court ordered, inter alia, that the property located in York County be transferred to Defendant LeFebvre, with certain conditions regarding to lease the property and conditions upon sale. On October 31, 2014, the York County Family Court awarded the York County to Defendant LeFebvre (Exhibit 5 to Memorandum). The actual deed to the property was executed by Defendant Laera on January 7, 2015, and was filed on January 16, 2015 (Exhibit 6 to Memorandum). Significantly, the transfer was not to Ms. LeFebvre alone, but was instead to Ms. LeFebvre and Vito Antonio Laera, in apparent violation of the Family Court Order.

The Complaint asserts that the transfer, both in the court proceedings and in the deed records, was a fraudulent transfer, in violation of S.C. Code Ann. §27-23-10 *et seq.* The Plaintiff has sought a declaratory judgment that the property transaction was a fraudulent conveyance, and that judgment be granted against both Defendants, as participants in that conveyance, in the amount of one year's value of the property. The Plaintiff further seeks that the property be sold and the proceeds be applied toward the judgment lien.

The Defendant LeFebvre has moved to dismiss the action, asserting that the York Family Court has sole jurisdiction to modify or vacate the Order it had entered. The Defendant further asserts that this Court lacks jurisdiction under the domestic relations exception to diversity jurisdiction. Although the Defendant asserts that the Plaintiff is attempting to either modify or overturn the South Carolina domestic proceedings, the Complaint does not seek any such remedy. The Complaint seeks a declaration that the Defendants committed fraud upon the Family Court and fraudulently transferred the property at issue, and seeks a judgment for participation in that fraud. Although the form submitted to the Family Court indicated that the parties were married in Jefferson

County, Colorado, the records of Jefferson County, Colorado has no record of a marriage license issued to either party (Exhibit 7 to Memorandum). Likewise, the records of both Mecklenburg County, North Carolina and Broward County Florida, where the Defendants have resided, have no records of any marriage between the Defendants (Exhibit 8 to Memorandum). Furthermore, in sworn testimony before the U.S. District Court in Florida, Defendant Laera admitted that he had never been married to Defendant LeFebvre (Exhibit 9 to Memorandum).

ARGUMENT

The Defendant asserts that this Court lacks diversity jurisdiction under the domestic relations exception to diversity jurisdiction. Citing *Ankenbrandt v. Richards*, 504 U.S. 689, 112 S. Ct. 2206, 119 L. Ed. 2d 468 (1992) and *Wilkins v. Rodgers*, 581 F.2d 399, 403 (4th Cir. 1978), the Defendant argues that where domestic relations are involved, the federal courts lack jurisdiction to adjudicate a matter. The Defendant, however, overstates the scope of the domestic relations exception to diversity jurisdiction. The *Ankenbrandt* case, in fact, supports the exercise of jurisdiction in this matter. *Ankenbrandt* reaffirmed that the federal courts were not to interfere in the issues of divorce and child custody; there is no prohibition, however, in the court's exercise of jurisdiction regarding other matters between the parties under state law, and the Court is not limited from the exercise of jurisdiction just because the parties have been or are married. The Supreme Court affirmed that the District Court has jurisdiction over matters cognizable under state law independent of the divorce and child custody aspects of the litigation. In *Ankenbrandt*, the Court ruled that the Court had jurisdiction over assertions of child abuse, irrespective of the fact that the litigants had been married.

Likewise, the Fourth Circuit has repeatedly recognized that the domestic relations exception applies solely to the power to grant divorces, determine alimony or support obligations, or determine child custody rights. Citing *Cole v. Cole*, 633 F.2d 1083, 1088-89 (4th Cir. 1980), the Court

reaffirmed that

A district court may not simply avoid all diversity cases having intrafamily aspects. Rather it must consider the exact nature of the rights asserted or of the breaches alleged.... So long as diversity jurisdiction endures, federal courts cannot shirk the inconvenience of sometimes trading in wares from the foul rag-and-bone shop of the heart.

Wasserman v. Wasserman, 671 F.2d 832, 834 (1982). In the Cole case, the complaint involved aspects of malicious prosecution, abuse of process, arson and conversion. The Court held that the determination of the case

does not arise out of or require ... a present or prior family relation"; "deciding this case would not require the court either to adjust family status or to establish duties under family-relations law or to determine whether or not such duties had been breached"; "the claims asserted could have arisen between strangers, and certainly between people with no marital relationship whatever"; and the asserted causes of action "do not require the existence of any rule particularly marital in nature as a substantial ingredient to give them vitality.

Id.

In Wasserman v. Wasserman, 671 F.2d 832 (4th Cir. 1982), the plaintiff mother complained of the defendant father's actions in removing children from the state and preventing them from returning to her household. The plaintiff brought actions sounding in child enticement, intentional infliction of emotional distress, and civil conspiracy. After the District Court dismissed the action on the basis of the domestic relations exception to diversity jurisdiction, the Fourth Circuit reversed.

As in Cole, the previous marital relationship of the parties and the presumably strong feelings associated with that relationship may as a factual matter have contributed to the underlying events and initiation of this suit; however, the torts of child enticement and intentional infliction of emotional distress are in no way dependent on a present or prior family relationship. Furthermore, prosecution of these torts will not require the existence of any rule particularly marital in nature. Similarly, these claims could have arisen between persons with no marital relationship whatsoever and in fact have done so in this case in view of the allegations relating to appellees other than Irwin Wasserman.

* * *

As the Cole court observed, federal courts have often exercised diversity jurisdiction

to rule on the validity of prior state decrees or to determine the existence of a breach of duties established in such decrees, especially when the duties are no longer subject to modification. 633 F.2d at 1087; cf. *id.* at 1088 n.5. See also *Jagiella v. Jagiella*, 647 F.2d 561 (5th Cir. 1981); *Crouch v. Crouch*, 566 F.2d 486 (5th Cir. 1978); *Keating v. Keating*, 542 F. *Wasserman*, 834-835.

Applying these principles to the present action, there is a statute in South Carolina which declares that any fraudulent transfers between parties for the purpose or with the effect of defrauding creditors is void, frustrate and of no effect. The prohibition in the statute does not relate to or require that the parties be married, nor does it except married parties from its operation. The preliminary evidence in this matter is overwhelming both that the parties never resided as a couple in South Carolina nor that they were married, and thus that the action in commencing and presenting marital litigation in South Carolina was fraudulent. The fraudulent conveyance statute applies to all parties engaging in property transactions in South Carolina. The present action does not deal with issues of divorce or child custody; it deals with a fraud committed by the Defendants both upon the courts and upon the Plaintiff, as a judgment creditor. The domestic relations exception to the exercise of diversity jurisdiction does not apply to this action.

For the foregoing reasons, the Court should deny the Motion of Defendant LeFebvre to dismiss this action.

Respectfully submitted,
BERNSTEIN & BERNSTEIN, P.A.
s/Robert A. Bernstein
Robert A. Bernstein
Federal I.D. #1311
5418-B Rivers Avenue
N. Charleston, SC 29406
(843) 529-1111; (843) 529-0035 (fax)
ATTORNEYS FOR THE PLAINTIFF

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

| | | |
|--|---|---------------------------|
| BLANCO GmbH + CO.KG, |) | |
| |) | C.A. No: 0:15-cv-2199-TLW |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| Vito Antonio Laera and Suzette LeFebvre, |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

EXHIBITS TO MEMORANDUM
IN OPPOSITION TO
MOTION TO DISMISS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

| | | |
|--|---|---------------------------|
| BLANCO GmbH + CO.KG, |) | |
| |) | C.A. No: 0:15-cv-2199-TLW |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| Vito Antonio Laera and Suzette LeFebvre, |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

EXHIBIT 1 TO
MEMORANDUM IN
OPPOSITION TO
MOTION TO DISMISS

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE FAMILY COURT
16TH JUDICIAL CIRCUIT

Suzette Lefebvre

vs.

Vito Antonio Laera

FILED-RECEIVED
MAR 29 4:38 PM '15
FAMILY COURT
DOCKET No. 2014-DR-46-623

FAMILY COURT COVERSHEET

ORIGINAL

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for docketing purposes for the Clerk of Court and must be signed and dated, and filled out completely. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

Submitted by: P. John Freeman SC Bar # 64178
Address: 238 Rockmont Drive Telephone # 803-547-6618
Fort Mill, SC 29708 Fax # 803-547-6638
Email: jfreeman@fortmilllaw.com Other: _____

DOCKETING INFORMATION (Check one box below if filing in a Mandatory Mediation County)

- This case is subject to MEDIATION pursuant to the Family Court Alternative Dispute Resolution Rules.
- This case is exempt from ADR (certificate attached).

Nature of Action Codes
(Check One)

Marital Dissolution

- Divorce (110)
- Annulment (120)
- Separate Support and Maintenance (130)
- Registration of Foreign Divorce Decree - without support/custody (190)
- Registration of Foreign Divorce Decree - with support/custody (191)
- Marital Dissolution - Other (199) _____

Abuse and Neglect

- Abuse and Neglect - Child (210)
- Abuse and Neglect - Adult (220)
- Abuse and Neglect - Other (299) _____

Juvenile Delinquency

- Truancy (311)
- Incurrable (312)
- Runaway (313)
- Criminal Offense (320)
- Juvenile Delinquency - Other (399) _____

Protection from Domestic Abuse

- Domestic Abuse - Intimate Partner (410)
- Domestic Abuse - Minor (420)
- Registration of Foreign Order of Protection (490)
- Domestic Abuse - Other (499) _____

Support

- Child Support - Private (501)
- Child Support - Administrative Process (502)
- Child Support - Judicial Process (503)
- Registration of Foreign Order of Support (504)
- UIFSA - Outgoing (505)
- UIFSA - Incoming (506)
- Modification of Child Support - Private (507)
- Modification of Child Support - DSS (508)
- Modification of Alimony (525)
- College Expenses (530)
- Support - Other (599) _____

Custody/Visitation

- Child Custody/Visitation (610)
- Modification of Custody/Visitation (615)
- Registration of Foreign Child Custody Order (690)
- Custody/Visitation - Other (699) _____

Miscellaneous Actions

- Name Change (710)
- Correction/Birth Record (720)
- Judicial Bypass (730)
- Adoption (740)
- Foreign Adoption (741)
- Post Dissolution Equitable Distribution (750)
- Paternity - Private (761)
- Paternity - DSS (762)
- Termination of Parental Rights - Private (771)
- Termination of Parental Rights - DSS (772)
- Miscellaneous Actions - Others (799) _____

Submitting Party Signature: _____

P. John Freeman

Date: _____

3/26/14

Custodial Parent (if applicable): _____

Note: Frivolous civil proceedings are subject to sanctions pursuant to Rule 11, SCRCP and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 et seq.

SCCA 467 (6/2013)

Exhibit 1 to Memorandum in Opposition to Motion to Dismiss
Blanco GMBH v. Laera and Lefebvre
C.A. No. 0:15-cv-2199-TLW

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York Counties.

SUPREME COURT RULES REQUIRE MEDIATION OF ALL CONTESTED DOMESTIC RELATIONS ACTIONS. IF THE DOCKETING INFORMATION ON PAGE 1 OF THIS COVERSHEET INDICATES THAT THIS CASE IS SUBJECT TO MEDIATION YOU ARE NOTIFIED THAT MEDIATED SETTLEMENT CONFERENCES ARE REQUIRED IN THIS CASE, AND THAT THE COURT-ANNEXED ADR RULES SHALL APPLY TO ALL CASES IN WHICH MEDIATION IS REQUIRED. FOR ADDITIONAL INFORMATION CONCERNING THE PROCESS AND TIME FRAMES, PLEASE CONSULT THE ADR RULES. KEY SECTIONS OF THE RULES ARE IDENTIFIED BELOW.

CONTESTED ACTIONS INVOLVING CUSTODY AND VISITATION

| | |
|-------------------------|---|
| Rule 3 | Actions Subject to ADR |
| Rule 4(d)(1)(3)(4) &(5) | Appointment of Mediator by Family Court |
| Rule 5(g) | Scheduling in Family Court |
| Rule 6(g) | Agreement in Family Court |
| Rule 7(f) | Reporting Results of Conference |
| Rule 9 | Compensation of Neutral |

ALL OTHER CONTESTED ACTIONS

| | |
|-------------------------|---|
| Rule 3 | Actions Subject to ADR |
| Rule 4(d)(2)(3)(4) &(5) | Appointment of Mediator by Family Court |
| Rule 5(g) | Scheduling in Family Court |
| Rule 6(g) | Agreement in Family Court |
| Rule 7(f) | Reporting Results of Conference |
| Rule 9 | Compensation of Neutral |

Indigent Cases: Where a mediator has been appointed, a party may move before the Chief Judge for Administrative Purposes to be exempted from payment of neutral fees and expenses based upon indigency. Applications for indigency shall be filed no later than ten (10) days after the ADR conference has been concluded. Determination of indigency shall be in the sole discretion of the Chief Judge for Administrative Purposes.

Please Note: Attendance at mediated settlement conferences is mandatory. You must comply with the Supreme Court rules regarding court-ordered mediation. Failure to do so may affect your case and may result in sanctions.

Note: Frivolous civil proceedings are subject to sanctions pursuant to Rule 11, SCRPC and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10 et seq.

SCCA 467 (6/2013)

*Exhibit 1 to Memorandum in Opposition to Motion to Dismiss
Blanco GMBH v. Laera and LeFebvre
C.A. No. 0:15-cv-2199-TLW*

ORIGINAL

STATE OF SOUTH CAROLINA - RECEIVED FAMILY COURT OF THE COUNTY OF YORK 2014 MAR 26 PM 3:38 16th JUDICIAL CIRCUIT

| | | | |
|---------------------|---------------------------------|---|---------------------------------|
| Suzette Lefebvre, | DAVID L. HILTON FAMILY COURT |) | SUMMONS |
| Plaintiff, | YORK COUNTY, SC |) | |
| v. |) |) | FILE NO. <u>2014-DR-46- 623</u> |
| Vito Antonio Laera, |) |) | |
| Defendant |) |) | |

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Respectfully Submitted,

HALFORD, NIEMIEC & FREEMAN, LLP

P. John Freeman

P. John Freeman
238 Rockmont Drive
Fort Mill, South Carolina 29708
Telephone: 803-547-6618
Facsimile: 803-547-6638

ATTORNEY FOR THE PLAINTIFF

March 26, 2014

Fort Mill, South Carolina

moved out of the marital residence. The Plaintiff is entitled to a divorce on the grounds of adultery.

6. *Separation.* The parties have lived separate and apart since December 7, 2012.
7. *One Year's Continuous Separation.* In the alternative, the Plaintiff would show she is entitled to a divorce on the grounds that the parties have not cohabitated as husband and wife in over one (1) year and have lived separate since the separation date set forth above.
8. *Child Custody.* The Plaintiff is the fit and proper person to maintain custody of the minor children herein. The best interests of the minor children would be served by sole custody to the Plaintiff. The minor children have been in the primary care and custody of the Plaintiff since the parties separated. The Defendant has had regular contact with the minor children.
9. *Child Support.* The minor children herein rely on both parents for the necessities of life. Both parties are fit and capable of earning an income. The Plaintiff needs the financial support of the Defendant. The Plaintiff requests child support from the Defendant as determined by the South Carolina Department of Social Services Guidelines.
10. *Equitable Apportionment of Property.* The parties acquired real and personal property during their marriage. The parties acquired debts during their marriage. The parties are entitled to an equitable apportionment of their marital property and marital debts.
11. *Alimony.* The Plaintiff believes she is entitled to permanent periodic alimony and hereby requests the same.

12. *Attorney's Fees and Suit Money.* The Plaintiff cannot afford to pay her attorney. The Plaintiff has a meritorious cause of action. The necessity of this proceeding resulted from the Defendant's conduct. The Plaintiff is entitled to recover her attorney's fees and costs.
13. *Discovery.* The ability of the parties to prepare their cases, judicial economy, and the ends of justice will be served by this court allowing each party all discovery available under Rules 26-37, SCRCP.
14. *Guardian ad Litem.* Should the Defendant claim custody, the appointment of a guardian ad litem may be needed to protect the interests of the minor child during this litigation.
15. *Temporary and Pendente Lite Relief.* The Plaintiff will suffer irreparable harm unless she is granted temporary relief including sole custody of the minor children herein, child support, temporary and permanent support and maintenance, use of property as an incident of support, injunctive relief, appointment of a guardian ad litem if the Court deems necessary, discovery, and attorney's fees.

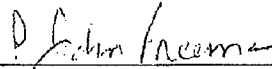
WHEREFORE, the Plaintiff prays for a Decree of Divorce and for the following temporary and permanent ancillary and collateral relief:

- a. Sole custody of the parties' minor children;
- b. Child support as determined by the SC DSS guidelines;
- c. A Divorce on the grounds of the Defendant's adultery;
- d. In the alternative, a divorce on the grounds of a one years' continuous separation;
- e. An equitable apportionment of all marital property and debts acquired by the parties during their marriage;
- f. Permanent periodic alimony and temporary support and maintenance;
- g. If necessary, as stated above in Paragraph Fourteen (14), appointment of a guardian *ad litem* to protect the interests of the minor child of the parties;

- h. Attorney's fees, costs and suit money in a reasonable sum;
- i. Allowance to each party of all discovery available under Rules 26-37, SCRPC.
- j. Such other and further relief as the Court might deem just and proper.

RESPECTFULLY SUBMITTED,

HALFORD, NIEMIEC & FREEMAN, LLP



P. John Freeman
238 Rockmont Drive
Fort Mill, South Carolina 29708
Telephone: 803-547-6618
Facsimile: 803-547-6638
ATTORNEYS FOR THE PLAINTIFF

March 26, 2014

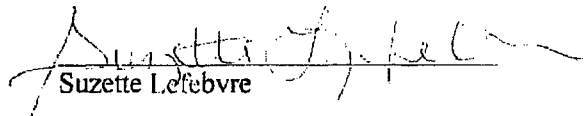
ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF YORK

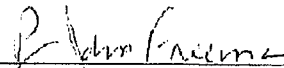
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2014 MAR 26 PM 4:38

DAVID L. LEECH
FAMILY COURT
YORK COUNTY, SC

Suzette Lefebvre, being duly sworn, says that she is the Plaintiff herein, and that she has read the foregoing Complaint and knows the contents thereof; that the same is true of her own knowledge, except as to the matters therein stated to be alleged on information and belief; and to those matters she believes them to be true.


Suzette Lefebvre

SWORN to and subscribed before me)
this 26th day of March, 2014)


Notary Public for South Carolina)
My Commission Expires: 5/15/19)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

BLANCO GmbH + CO.KG,)
) C.A. No: 0:15-cv-2199-TLW
)
 Plaintiff,)
)
)
 v.)
)
)
 Vito Antonio Laera and Suzette LeFebvre,)
)
)
 Defendants.)
)
 _____)

EXHIBIT 2 TO
MEMORANDUM IN
OPPOSITION TO
MOTION TO DISMISS

IN THE FAMILY COURT OF THE SIXTEENTH
JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

SUZETTE LEFEBVRE)

Plaintiff)

VITO ANTONIO LAERA)

Defendant)

CASE# 2014-DR-46-623

FILED
FRI 28 57

RESPONSE TO;

1. NOTICE OF MOTION AND MOTION FOR TEMPORARY RELIEF

2. COMPLAINT

I, Vito Antonio Laera (defendant) hereby submit my timely reply to the above as follows;

My reply to the "Notice of motion and motion for temporary relief" is as

follows;

- I believe the parties have agreed on sole custody of the parties minor children.
- I believe the parties have agreed on child support.
- I believe the parties have agreed on an equitable apportionment of all marital property and debts acquired by the parties during their marriage.
- I believe the parties have agreed on permanent periodic alimony and temporary support and maintenance.
- I believe the parties have agreed that appointment of a guardian ad litem to protect the interests of the minor child of the parties is NOT NECESSARY.
- I believe the parties have agreed on attorney's fees and suit money.

My reply to the allegations in the "complaint" are as follows;

1. *Jurisdiction and Venue. The defendant is a citizen and resident of York County, South Carolina, and has been so for a period in excess of twelve months immediately preceding the commencement of this action. The statutory basis of jurisdiction is S.C. Code Ann. §20-3-30.*

Answer: I have been living at 419 York Southern Fort Mill SC 29715 for about two years, this is also my principle place of business. I also live in Florida. I also live in our home in North Carolina. Out of all three I probably spend most of the time in South Carolina. Based on this I admit the allegations.

2. *Marriage. The parties were married May 19, 2001 and are husband and wife.*

Answer: I admit the allegation.

3. *Children. Two (2) children were born to the marriage of the parties, to wit: Antonio Laera, born October 17, 1996; and Julia Laera, born September 22, 2004.*

Answer: I admit the allegation.

4. *Lack of Collusion. The parties have not colluded and the act or acts complained of by the Plaintiff were not done with the knowledge or assent of the plaintiff for the purpose of obtaining a divorce.*

Answer: I admit the allegation.

5. *Adultery. The Defendant is committing adultery. The Defendant has had inclination and opportunity to commit adultery and, in fact, has engaged in and committed adultery during the course of the parties' marriage, and continued to engage in the same since he moved out of the marital residence. The Plaintiff is entitled to a divorce on the grounds of adultery.*

Answer: I admit the allegation.

6. *Separation. The parties have lived separate and apart since December 7, 2012.*

Answer: I have been living at 419 York Southern Fort Mill SC 29715 for about two years, this is also my principle place of business. I also live in Florida. I also live in our home in North Carolina. Based on this I admit the allegations.

7. *One Year's Continuous Separation. In the alternative, the Plaintiff would show she is entitled to a divorce on the grounds that the parties have not cohabitated as husband and wife in over one (1) year and have lived separate since the separation date set forth above.*

Answer: I have been living at 419 York Southern Fort Mill SC 29715 for about two years, this is also my principle place of business. I also live in Florida. I also live in our home in North Carolina. Based on this I admit the allegations.

8. *Child Custody. The Plaintiff is the fit and proper person to maintain custody of the minor children herein. The best interests of the minor children would be served by sole custody to the Plaintiff. The minor children have been in the primary care and custody of the Plaintiff since the parties separated. The Defendant has had regular contact with the minor children.*

Answer: The parties have agreed that defendant can continue to have regular contact with the children without any restrictions or limitations whatsoever and that the children will continue to live the same lifestyle they do now in the same home, with their mother. Based on this I admit the allegation.

9. *Child Support. The minor children herein rely on both parents for the necessities of life. Both parties are fit and capable of earning an income. The Plaintiff needs the financial support of the Defendant. The Plaintiff requests child support from the Defendant as determined by the South Carolina Department of Social Services Guidelines.*

Answer: I admit the allegation.

10. *Equitable Apportionment of Property. The parties acquired real and personal property during their marriage. The parties acquired debts during their marriage. The parties are entitled to an equitable apportionment of their marital property and marital debts.*

Answer: I admit the allegation.

11. *Alimony. The Plaintiff believes she is entitled to permanent periodic alimony and hereby requests the same.*

Answer: I admit the allegation.

12. *Attorney's Fees and Suit Money. The Plaintiff cannot afford to pay her attorney. The Plaintiff has a meritorious cause of action. The necessity of this proceeding resulted from the Defendant's conduct. The Plaintiff is entitled to recover her attorney's fees and costs.*

Answer: I admit the allegation.

13. *Discovery. The ability of the parties to prepare their cases, judicial economy, and the ends of justice will be served by this court allowing each party all discovery available under Rules 26-37, SCRCP.*

Answer: I admit the allegation.

14. *Guardian ad Litem. Should the Defendant claim custody, the appointment of a guardian ad litem may be needed to protect the interests of the minor child during this litigation.*

Answer: I admit the allegation.

15. *Temporary and Pendente Lite Relief. The Plaintiff will suffer irreparable harm unless she is granted temporary relief including sole custody of the minor children herein, child support, temporary and permanent support and maintenance, use of property as an incident of support, injunctive relief, appointment of a guardian ad litem if the Court deems necessary, discovery, and attorney's fees.*

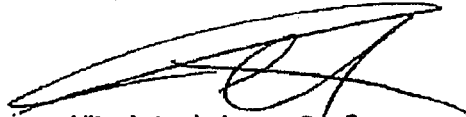
Answer: I believe the parties have come to a mutual agreement on this and will settle the matter amicably and economically, based on that I admit the allegation.

Errors and omissions expected.

I hereby certify that the above and foregoing "Response to; 1.Notice of motion and motion for temporary relief 2.Complaint" was served upon the party listed below by FedEx#798640237641, on this date, addressed to attorney for the plaintiff:

Halford, Niemiec & Freeman, LLP
P. John Freeman
238 Rockmont Drive
Fort Mill, SC 29708

Respectfully submitted and sworn on April 23, 2014 by,



Vito Antonio Laera, *Pro Se*
419 York Southern Road
Fort Mill, SC 29715
vito@419york.com
Tel 803-431-4759

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

| | | |
|--|---|---------------------------|
| BLANCO GmbH + CO.KG, |) | |
| |) | C.A. No: 0:15-cv-2199-TLW |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| Vito Antonio Laera and Suzette LeFebvre, |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

EXHIBIT 3 TO
MEMORANDUM IN
OPPOSITION TO
MOTION TO DISMISS

State of South Carolina
 Department of Health and Environmental Control

REPORT OF DIVORCE OR ANNULMENT OF MARRIAGE

State File No.

| | | | |
|--|--|---|--|
| 1. HUSBAND-NAME (First, Middle, Last, Suffix) <u>Vito Antonio Laera</u> | | 2. DATE OF BIRTH <u>April 24, 1969</u> | 3. PLACE OF BIRTH (State/Country) <u>Italy</u> |
| 4. RESIDENCE (County, State/Country) <u>York, South Carolina</u> | | 5. NUMBER OF THIS MARRIAGE - First, Second, etc. (Specify) <u>First</u> | |
| 6. WIFE-MAIDEN NAME (First, Middle, Last, Suffix) <u>Suzette LeFebvre n/m/n</u> | | 7. DATE OF BIRTH <u>July 9, 1969</u> | 8. PLACE OF BIRTH (State/Country) <u>New Jersey</u> |
| 9. RESIDENCE (County, State/Country) <u>New Athens, North Carolina</u> | | 10. NUMBER OF THIS MARRIAGE- First, Second, etc. (Specify) <u>First</u> | |
| 11. PLACE OF THIS MARRIAGE (County, State/Country) <u>Jefferson, Colorado</u> | | 12. DATE OF MARRIAGE (MM/DD/YYYY) <u>05/19/2001</u> | |
| 13. PLAINTIFF <input type="checkbox"/> Husband <input checked="" type="checkbox"/> Wife | | 15. NUMBER OF CHILDREN UNDER 18 INVOLVED IN THIS ACTION <u>1</u> <input type="checkbox"/> No Children | |
| 14. MAIDEN NAME RESUMED BY DECREE <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | | | |
| 16. DATE DECREE FILED (MM/DD/YYYY) <u>10-31-2014</u> | | 17. TYPE OF DECREE <input checked="" type="checkbox"/> Absolute Divorce <input type="checkbox"/> Annulment | |
| 18. COUNTY <u>York</u> | | 19. DOCKET NUMBER <u>2014-DR-46-623</u> | |
| 20. I CERTIFY THE MARRIAGE OF THE ABOVE NAMED PERSONS WAS DISSOLVED ON THE DATE DECREE FILED. | | | |
| SIGNATURE OF CLERK OF COURT: <u>[Signature]</u> | | DATE SIGNED: <u>10-31-2014</u> (MM/DD/YYYY) | |

Confidential and statistical information (The information below will not appear on certified copies of the report)

| | |
|--|---|
| 21. HUSBAND - SOCIAL SECURITY NUMBER <u>Unknown</u> | 22. HUSBAND - RACE <u>Italian</u> |
| 23. WIFE - SOCIAL SECURITY NUMBER <u>[Redacted]</u> | 24. WIFE - RACE <u>White</u> |
| 25. ATTORNEY FOR PLAINTIFF <u>P. John Freeman</u> | 26. ATTORNEY BAR NUMBER <u>0064178</u> |
| 27. LEGAL GROUNDS <u>Adultery</u> | |

DHEC 0602 (02/2008)



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

BLANCO GmbH + CO.KG,)
) C.A. No: 0:15-cv-2199-TLW
 Plaintiff,)
)
 v.)
)
 Vito Antonio Laera and Suzette LeFebvre,)
)
 Defendants.)
 _____)

EXHIBIT 4 TO
MEMORANDUM IN
OPPOSITION TO
MOTION TO DISMISS

 ORIGINAL

STATE OF SOUTH CAROLINA) IN THE FAMILY COURT FOR THE
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT

Suzette LeFebvre,

Plaintiff,

-vs-

Vito Antonio Laera,













Defendant.

AFFIDAVIT REQUESTING
APPROVAL OF AGREEMENT

2014-DR-46-623

Personally appeared before me, Vito Antonio Laera, who first being duly sworn, deposes and says:


(initial when applicable)

-  (1) I am a Defendant in the above entitled action.
-  (2) I am 45 years old as of the date of this affidavit.
-  (3) I have several years of education and I do read, write and understand the English language.
-  (4) I am employed at Pitbull Consulting Corporation as owner and have been so employed for a period of 6 months/~~years~~.
-  (5) I have read and understand the Decree of Divorce and which bears my signature and all the terms to which I have agreed are correctly stated thereon.
-  (6) I have authorized my wife's attorney, P. John Freeman, to orally consent for me to the Decree of Divorce to be presented in open Court and this authorization can only be withdrawn by me, if in writing and submitted to the Court prior to the hearing requesting approval of the agreement.
-  (7) I have not agreed to anything that is not in the document mentioned in number (5) above.
-  (8) I understand if this agreement is approved by a presiding Judge of the Family Court, it can also be enforced by any Judge of the Family Court.
-  (9) I have had explained to me and I understand what the enforcement powers of the powers of the Family Court are.
-  (10) I do not have any questions concerning the proposed agreement I have not asked or received a satisfactory answer to.
-  (11) I am entering this agreement freely and voluntarily and, I am not being forced to enter into this agreement in any way.
-  (12) I understand I am waiving my right to a full and complete trial on all of the issues contained in the agreement knowing that the trial Judge may rule differently on the items in the agreement, if we had a trial using direct and cross examination of witnesses and the presentation of evidence.

- J (13) I have given the other party to the agreement a copy of a true and correct financial declaration showing all my income, earnings and property; also, I am aware of my own financial circumstances so that I can make an informed and intelligent decision on all financial issues involved in this matter.
- J (14) I have received from the other party to the agreement a Financial Declaration showing that parties income, earnings and property and I believe it is correct. Further, I believe I understand the other party's present financial position well enough so that I can make an informed and intelligent decision on the financial issues in this matter.
- J (15) I understand that unless it is permitted in the agreement, or, permissible by law, I can not come back into this Court, or any Court, and ask for the terms of the agreement to be changed or modified in any way.
- J (16) I am not now under the influence or any types of drugs, medication, stress, alcohol, or other mind altering substance, nor do I have any mental or physical condition which would prevent me from understanding this affidavit, and the same was also true at the time the agreement was read and executed by me.
- J (17) I agree to accept any possible tax consequences from any taxing authority that may result if this agreement is approved and made into a Court Order.
- J (18) I have not consulted with anyone about any possible future bankruptcy, nor am I considering such a course of action at the present time.
- J (19) The agreement presented to the Court is both fair and equitable to me.
- J (20) The agreement presented to the Court is both fair and equitable to the opposing party in this action.
- J (21) Considering all the facts and circumstances of my particular case I believe it is in my best interest for the Court to approve the agreement and, if applicable, it is also in my children's best interest for the Court to approve the agreement.
- J (22) I understand this affidavit will be submitted to the trial judge for the judge's consideration because I can not attend the hearing requesting approval of the agreement.
- J (23) Affiant sayeth further naught.

SWORN to before me this 23rd
day of October, 2014

P. Adam Freeman
Notary Public for South Carolina
My Commission Expires: 5/15/19



Vito Antonio Laera,
Defendant (L.S.)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

BLANCO GmbH + CO.KG,)
)
 Plaintiff,) C.A. No: 0:15-cv-2199-TLW
)
 v.)
)
 Vito Antonio Laera and Suzette LeFebvre,)
)
 Defendants.)
 _____)

EXHIBIT 5 TO
MEMORANDUM IN
OPPOSITION TO
MOTION TO DISMISS

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE FAMILY COURT OF THE
SIXTEENTH JUDICIAL CIRCUIT

Suzette LeFebvre,

Plaintiff.

vs.

Vito Antonio Laera,

Defendant.

DECREE OF DIVORCE

File Book # 2014-DR-46-623

| | |
|-----------------------|--------------------|
| HEARING DATE: | October 24, 2014 |
| TRIAL JUDGE: | Henry T. Woods |
| PLAINTIFF'S ATTORNEY: | P. John Freeman |
| DEFENDANT'S ATTORNEY: | Pro Se |
| COURT REPORTER: | Cheryl St. Germain |

This action was scheduled for a final hearing as shown above. The Plaintiff was present with her attorney, P. John Freeman, of the York County Bar. The Defendant was not present but Plaintiff's attorney provided an Affidavit on behalf of the Defendant. After review of the Defendant's Affidavit, I am satisfied that the Defendant that he is capable of representing himself in this manner, has represented himself to date and wishes for the Court to approve the terms of the parties' agreement. In the present matter, the Summons and Complaint were filed in the office of the clerk of court for York County on March 25, 2014. The Defendant filed a written response admitting the contents of the Complaint and filed it with the Court on April 25, 2014. The Defendant was served with the Notice of this Hearing by Certified Mail, Return Receipt Requested, Restricted Delivery on September 16, 2014. The Plaintiff sought a divorce on the grounds of adultery or, in the alternative, on the grounds of one (1) year continuous separation as well as custody of the parties'

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minor children, child support, alimony, separate maintenance and support, equitable apportionment of marital property and debt, guardian ad litem, discovery, and attorney's fees.

Prior to the commencement of the hearing, the parties, through Plaintiff's attorney, announced to the court that they had reached a final agreement resolving all of the ancillary and collateral issues of their divorce. The agreement was read into the record by the Plaintiff's attorney and the Plaintiff was questioned as to the agreement itself.

I find this Court has jurisdiction of the subject matter of this action and personal jurisdiction of the parties. I find that the requirements of the South Carolina Rules of Family Court and all statutory and common-law procedural requirements have been met. I considered the testimony of the Plaintiff and the Plaintiff's witness as well as the Defendant's Affidavit.

FINDINGS OF FACT

I find by the preponderance of the evidence the following facts:

1. The Defendant is a resident of York County, South Carolina and has been so domiciled in excess of one (1) year prior to the commencement of this action. The Plaintiff is a resident of Matthews, North Carolina. The parties last resided together as husband and wife in York County, South Carolina. The statutory basis of jurisdiction is S. C. Code Ann. §63-3-530 and §20-3-30.
2. The parties were married on May 19, 2001 and are husband and wife.
3. Two children were born to the marriage of the parties, *to wit*: Antonio Laera, born October 17, 1996; and Julia Laera, born September 22, 2004. No other child is currently in gestation.
4. The parties were separated on December 7, 2012.

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NW

5. The Plaintiff has provided the court with clear and convincing evidence that the Defendant has had the opportunity to commit adultery and has, in fact, committed adultery based upon the testimony of the private investigator, Scott Bernard.
6. Prior to the commencement of the hearing, the parties announced they had reached a full and final agreement as to all issues ancillary to the divorce. The agreement of the parties is as follows, *to wit*:
 - A. The Plaintiff shall have sole custody of the parties' minor children. Due to the age of the children, the Defendant shall have regular contact with the children without any restrictions or limitations whatsoever and at such other times as the parties may mutually agree.
 - B. The Defendant shall pay the sum of Twelve Thousand and no/100 (\$12,000.00) Dollars per month as child support directly to the Plaintiff beginning October 1, 2014 and continuing to be due on the first of each subsequent month thereafter. The Defendant shall pay child support payments to the Plaintiff on behalf of the minor child, Julia Laera, until she graduates high school or June, 2023. However, if the Defendant is ever five (5) days late in any of his child support payments, the Plaintiff shall be reserved the right to file an affidavit with the York County Clerk of Court and the Defendant's child support payments shall immediately begin payable through the Clerk of Court's Office and shall include an additional five (5%) percent court cost.
 - C. The Defendant shall also pay the sum of Three Thousand and no/100 (\$3,000.00) Dollars per month as alimony directly to the Plaintiff beginning October 1, 2014 and continuing to be due on the first of each subsequent month thereafter. However, if the Defendant is ever five (5) days late in any of his child support payments, the Plaintiff shall be reserved the right to file an affidavit with the York County Clerk of Court and the Defendant's alimony payments shall immediately begin payable through the Clerk of Court's Office and shall include an additional five (5%) percent court cost.
 - D. The Plaintiff shall be entitled to sole ownership and possession of the property located at 419 York Southern Road, Fort Mill, South Carolina. The Defendant shall be allowed to lease this property from the Plaintiff in the amount of Twelve Thousand Five Hundred Sixty-five and no/100 (\$12,565.00) Dollars per month for two (2) years from the date of this Decree. Said payments shall be paid directly to the Plaintiff beginning October 1, 2014 and continuing to be due on the first of each subsequent month thereafter. If the Plaintiff elects to sell this property at the end of

#3
PLW

two (2) years, the Defendant shall be given the first opportunity to purchase the property prior to the Plaintiff listing the property for sale. The parties have executed a Lease Agreement for this property setting forth the terms and conditions which pertain to this property.

- E. The Plaintiff shall be entitled to sole ownership and possession of the parties' former marital residence located at 1516 Glenn Valley Drive, Matthews, North Carolina and shall be responsible for all mortgage payments, taxes, and insurance due thereon. The Plaintiff shall hold the Defendant harmless from any deficiencies which may result in her failure to pay the same. The Defendant shall sign any documents necessary in order to transfer ownership of this property to the Plaintiff.
- F. The parties shall be entitled to joint ownership and possession of the property located at 5960 SW 32 Terrace, Fort Lauderdale, Florida and Defendant shall be responsible for all taxes and insurance due thereon.
- G. The Defendant shall maintain a life insurance policy on his life in the amount of One Million (\$1,000,000,000.00) Dollars with the parties' children as beneficiaries. The Defendant shall maintain this policy until the minor child, Julia Laera, graduates from high school or June, 2023.
- H. Each party shall be solely responsible for the debts listed in their respective names. The parties have no jointly listed marital debt.
- I. The parties have divided their personal property, including vehicles, to their mutual satisfaction. Each party shall sign any documents necessary in order to transfer ownership of these vehicles.
- J. Each party shall be responsible for their own attorney's fees.

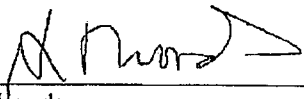
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THEREFORE, IT IS ORDERED:

- a. The agreement of the parties is hereby approved and incorporated into this Order as if repeated verbatim herein; and
- b. The Plaintiff is hereby granted a divorce from the Defendant on the grounds of adultery.

IT IS SO ORDERED.

October 30, 2014.



Henry T. Woods,
Judge, Sixteenth Judicial Circuit

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

BLANCO GmbH + CO.KG,)
) C.A. No: 0:15-cv-2199-TLW
Plaintiff,)
)
v.)
)
Vito Antonio Laera and Suzette LeFebvre,)
)
Defendants.)
_____)

EXHIBIT 6 TO
MEMORANDUM IN
OPPOSITION TO
MOTION TO DISMISS

WITNESS my Hand and Seal this 7 day of January in the year of our Lord 2015.

Signed, Sealed and Delivered
in the Presence of:

Kathleen Garrick
Witness #1
Jammyll Lauck
Witness #2

Vito Antonio Laera
Vito Antonio Laera

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Personally appeared before me the undersigned and made oath that he/she saw the within named Grantor(s) sign, seal and as his/her/their act and deed, deliver the within-written Deed for the uses and purposes therein mentioned, and that he/she with the other witness subscribed above witnessed the execution thereof.

SWORN to before me this
7 day of January 2015.

Kathleen Garrick
Witness #1 (signs again)

Jammyll Lauck
Notary Public for the State of South Carolina
My Commission Expires: 3-3-2016

Instrument
201500283999 OR
Vol Page
14617 87

PERSONALLY appeared before me, who being duly sworn, depose(s) and say(s):

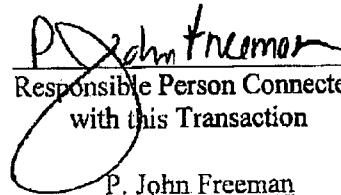
1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located at 419 York Southern Road, Fort Mill, South Carolina 29715 bearing Tax Map Number 728-00-00-030 was transferred by Vito Antonio Laera to Suzete LeFebvre and Vito Antonio Laera.
3. The deed is exempt from the deed recording fee because:

Exemption # 1 "Consideration paid less than \$ 100.00.

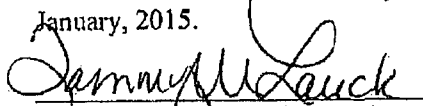
4. As required by Code Section 12-24-70, I state that I am a responsible person who is connected with the transaction as:

Attorney for Grantor

5. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.


 Responsible Person Connected
 with this Transaction
P. John Freeman
 Print or Type Name Here

Sworn to before me this 7th day of January, 2015.


 Notary Public in and for South Carolina
 My Commission Expires: 3-3-2016

Instrument
20150028399 OR
Vol Page
14617 88

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

BLANCO GmbH + CO.KG,)
) C.A. No: 0:15-cv-2199-TLW
Plaintiff,)
)
v.)
)
Vito Antonio Laera and Suzette LeFebvre,)
)
Defendants.)
_____)

EXHIBIT 7 TO
MEMORANDUM IN
OPPOSITION TO
MOTION TO DISMISS



Jefferson County, Colorado

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| Marriage Document Access | | | | |

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*Exhibit 7 to Memorandum in Opposition to Motion to Dismiss
Blanco GMBH v. Laera and LeFebvre
C.A. No. 0:15-cv-2199-TLW*



Jefferson County, Colorado

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|--------------------------|----------|-------------|-------------------------|-----|
| Welcome | Marriage | Real Estate | Uniform Commercial Code | FAQ |
| Marriage Document Access | | | | |

Original: Gröans Names Lira LAERA
0 records found as of 08/30/2015 09:49:16 AM count: 0/100

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Sort By:

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*Exhibit 7 to Memorandum in Opposition to Motion to Dismiss
Blanco GMBH v. Laera and LeFebvre
C.A. No. 0:15-cv-2199-TLW*

<https://landrecords.co.jefferson.co.us/Marriage/SearchResults.aspx>

8/30/2015

R-302



Jefferson County, Colorado
Clerk & Recorder Web Access

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 Marriage Document Access

Criteria: Brices Name Like LEFEBVRE
 Showing Records 1 through 5 (5 records found as of 08/30/2015 06:47:52 AM central time)

Other Options
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Page 1

Sort By:

| # | <input type="checkbox"/> | License # | Type | Application Date | Date Of Marriage/Union | Groom's / 1st Party Name | Bride's / 2nd Party Name |
|---|--------------------------|-----------|-----------------------|------------------|------------------------|--------------------------|---------------------------|
| 1 | <input type="checkbox"/> | E0126521 | -MARRIAGE APPLICATION | 10/06/1995 | 10/13/1995 | MAGGARD ROGER DEAN | LEFEBVRE MICHELLE MARIE |
| 2 | <input type="checkbox"/> | E0020263 | -MARRIAGE APPLICATION | 12/30/1980 | | FAIRCHILD JAMES E JR | LEFEBVRE MARTHA C |
| 3 | <input type="checkbox"/> | 0030257 | -MARRIAGE APPLICATION | 05/15/2013 | 05/24/2013 | SHAFFER DAVID WILLIAM | LEFEBVRE JESSICA A |
| 4 | <input type="checkbox"/> | E0061118 | -MARRIAGE APPLICATION | 04/21/1992 | 04/25/1992 | DALY JOSEPH PATRICK | LEFEBVRE DONNA M |
| 5 | <input type="checkbox"/> | E1230555 | -MARRIAGE APPLICATION | 08/02/2001 | 08/21/2001 | HOWE JUSTIN THOMAS | LEFEBVRE CHARISA ROCHELLE |

Other Options
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Page 1

Sort By:

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*Exhibit 7 to Memorandum in Opposition to Motion to Dismiss
 Blanco GMBH v. Laera and LeFebvre
 C.A. No. 0:15-cv-2199-TLW*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

BLANCO GmbH + CO.KG,)
) C.A. No: 0:15-cv-2199-TLW
)
 Plaintiff,)
)
)
 v.)
)
 Vito Antonio Laera and Suzette LeFebvre,)
)
)
 Defendants.)
 _____)

EXHIBIT 8 TO
MEMORANDUM IN
OPPOSITION TO
MOTION TO DISMISS










Mecklenburg County Register of Deeds - Web Access


Friday, August 14, 20

Search Marriage Index

Criteria: Name begins with LAERA

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*Exhibit 8 to Memorandum in Opposition to Motion to Dismiss
Blanco GMBH v. Laera and LeFebvre
C.A. No. 0:15-cv-2199-TLW*

Mecklenburg County Register of Deeds - Web Access

Friday, August 14, 20

Search Marriage Index

Criteria: *Name begins with LEFEBVRE

Showing Records 1 through 5 (5 records found as of 08/14/2015 01:02:00 PM [close popup](#))

| # | License # | Application Date | Date of Marriage | Book | Page | Applicant 1 | Last Name at Birth | Applicant 2 | Last Name at Birth |
|---|-----------|------------------|------------------|------|------|---------------------------|--------------------|-----------------------|--------------------|
| 1 | 200210864 | 09/21/2002 | 08/31/2002 | 0 | 0 | O'DONNELL BRENDAN ANDREW | | LEFEBVRE MAYA USE | LEFEBVRE |
| 2 | 200840452 | 07/03/2006 | 07/08/2006 | 0 | 0 | KEEVER JOHN MATTHEW | | LEFEBVRE MARY NA | NA |
| 3 | 201080818 | 03/31/2010 | 04/02/2010 | 0 | 0 | LEFEBVRE ERIK ARN | | FORLAND DANIELLE RUTH | |
| 4 | 201084017 | 06/28/2010 | 10/10/2010 | 0 | 0 | O'LEARY JAMES FRANCIS III | | LEFEBVRE TRACY JEAN | |
| 5 | 201379163 | 05/21/2013 | 05/17/2013 | | | PARENT KERRY TONY | PARENT | LEFEBVRE KIMBERLY ANN | LEFEBVRE |

484 md

No more records available.

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*Exhibit 8 to Memorandum in Opposition to Motion to Dismiss
Blanco GMBH v. Laera and LeFebvre
C.A. No. 0:15-cv-2199-TLW*

<http://meckrod.manatron.com/Marriage/SearchResults.aspx>

8/14/2015
R-306

Marriage License System - License Search

| | | |
|---------------------------------------|---|---|
| Name Search | | Application Number |
| Spouse 1 | First: <input type="text"/> Middle: <input type="text"/> Last: LAERA | <input type="text"/> |
| | <small>*Please enter name at the time of the application</small> | <input type="text"/> / <input type="text"/> / <input type="text"/> <small>(mm/dd/yyyy)</small> |
| Spouse 2 | First: <input type="text"/> Middle: <input type="text"/> Last: <input type="text"/> | <input type="text"/> |
| | <small>*Please enter name at the time of the application</small> | <input type="text"/> / <input type="text"/> / <input type="text"/> <small>(mm/dd/yyyy)</small> |
| Marriage Date | From: <input type="text"/> / <input type="text"/> / <input type="text"/> To: <input type="text"/> / <input type="text"/> / <input type="text"/> | |
| | <small>(mm/dd/yyyy) (mm/dd/yyyy)</small> | |
| <input type="button" value="Submit"/> | *** No Records Found *** | <input type="button" value="Reset"/> |

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*Exhibit 8 to Memorandum in Opposition to Motion to Dismiss
Blanco GMBH v. Laera and LeFebvre
C.A. No. 0:15-cv-2199-TLW*

Marriage License System - License Search

| | | |
|---------------------------------------|--|--|
| Name Search | | Application Number |
| Spouse 1 | First: <input type="text"/> Middle: <input type="text"/> Last: <input type="text" value="LEFEBVRE"/> | <input type="text"/> / <input type="text"/> / <input type="text"/> |
| | <small>*Please enter name at the time of the application</small> | |
| Spouse 2 | First: <input type="text"/> Middle: <input type="text"/> Last: <input type="text"/> | <input type="text"/> / <input type="text"/> / <input type="text"/> |
| | <small>*Please enter name at the time of the application</small> | |
| Marriage Date | From: <input type="text"/> / <input type="text"/> / <input type="text"/> | To: <input type="text"/> / <input type="text"/> / <input type="text"/> |
| | <small>(mm/dd/yyyy) (mm/dd/yyyy)</small> | |
| <input type="button" value="Submit"/> | *** No Records Found *** | <input type="button" value="Reset"/> |

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*Exhibit 8 to Memorandum in Opposition to Motion to Dismiss
Blanco GMBH v. Laera and LeFebvre
C.A. No. 0:15-cv-2199-TLW*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

| | | |
|--|---|---------------------------|
| BLANCO GmbH + CO.KG, |) | |
| |) | C.A. No: 0:15-cv-2199-TLW |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| Vito Antonio Laera and Suzette LeFebvre, |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

EXHIBIT 9 TO
MEMORANDUM IN
OPPOSITION TO
MOTION TO DISMISS

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

CCMCPC4603872

BLANCO GMBH+CO. KG,)
)
Plaintiff)

vs)

NOTICE OF FILING OF
FOREIGN JUDGMENT

Vito Antonio Laera, VLANCO INDUSTRIES, LLC,)
G-Tech-1, Inc., Robert Johnson, Joseph Napolitano)
and Vilanco Industries, Inc.,)
)
Defendants.)

FILED-RECEIVED
2014 OCT -3 PM 12:49
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

TO: VITO ANTONIO LAERA, DEFENDANT.

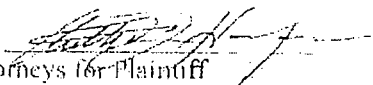
YOU WILL PLEASE TAKE NOTICE That Plaintiff above named, by its undersigned attorneys, has filed the Foreign Judgment, a certified copy of which is attached hereto and made a part hereof, with the Clerk of this Court.

YOU WILL PLEASE TAKE FURTHER NOTICE That you have thirty (30) days from the date of the receipt of this notice to seek relief from the enforcement of this Judgment and that if the Judgment is not satisfied and no relief is sought within that thirty (30) days, the said judgment will be enforced in this State in the same manner as a Judgment of this State.

Plaintiff: BLANCO GMBH+CO. KG,
c/o Steven Mitnick, Esq.
SM Financial Services Corporation
Post Office Box 429
Frenchtown, New Jersey 08825

Clerk of Court: Honorable David Hamilton
Clerk of Court, York County
Post Office Box 649
York, South Carolina 29745-0649

LEVI, WITTENBERG, HARRITT,
HOEFER & DAVIS

By 
Attorneys for Plaintiff
207 N. Washington Street
P. O. Drawer 730
803 773 8431

Sumter, South Carolina

Sept. 29, 2014.

STATE OF SOUTH CAROLINA FILED-RECEIVED IN THE FAMILY COURT OF THE
COUNTY OF YORK 2014 OCT 31 PM 3:07 SIXTEENTH JUDICIAL CIRCUIT

Suzette LeFebvre,

Plaintiff,

vs.

Vito Antonio Laera,

Defendant.

DAVID M. NELSON
FAMILY COURT
YORK COUNTY, SC

DECREE OF DIVORCE

File Book # 2014-DR-46-623

HEARING DATE: October 24, 2014
TRIAL JUDGE: Henry T. Woods
PLAINTIFF'S ATTORNEY: P. John Freeman
DEFENDANT'S ATTORNEY: Pro Se
COURT REPORTER: Cheryl St. Germain

This action was scheduled for a final hearing as shown above. The Plaintiff was present with her attorney, P. John Freeman, of the York County Bar. The Defendant was not present but Plaintiff's attorney provided an Affidavit on behalf of the Defendant. After review of the Defendant's Affidavit, I am satisfied that the Defendant that he is capable of representing himself in this manner, has represented himself to date and wishes for the Court to approve the terms of the parties' agreement. In the present matter, the Summons and Complaint were filed in the office of the clerk of court for York County on March 25, 2014. The Defendant filed a written response admitting the contents of the Complaint and filed it with the Court on April 25, 2014. The Defendant was served with the Notice of this Hearing by Certified Mail, Return Receipt Requested, Restricted Delivery on September 16, 2014. The Plaintiff sought a divorce on the grounds of adultery or, in the alternative, on the grounds of one (1) year continuous separation as well as custody of the parties'

87 HTW



minor children, child support, alimony, separate maintenance and support, equitable apportionment of marital property and debt, guardian ad litem, discovery, and attorney's fees.

Prior to the commencement of the hearing, the parties, through Plaintiff's attorney, announced to the court that they had reached a final agreement resolving all of the ancillary and collateral issues of their divorce. The agreement was read into the record by the Plaintiff's attorney and the Plaintiff was questioned as to the agreement itself.

I find this Court has jurisdiction of the subject matter of this action and personal jurisdiction of the parties. I find that the requirements of the South Carolina Rules of Family Court and all statutory and common-law procedural requirements have been met. I considered the testimony of the Plaintiff and the Plaintiff's witness as well as the Defendant's Affidavit.

FINDINGS OF FACT

I find by the preponderance of the evidence the following facts:

1. The Defendant is a resident of York County, South Carolina and has been so domiciled in excess of one (1) year prior to the commencement of this action. The Plaintiff is a resident of Matthews, North Carolina. The parties last resided together as husband and wife in York County, South Carolina. The statutory basis of jurisdiction is S. C. Code Ann. §63-3-530 and §20-3-30.
2. The parties were married on May 19, 2001 and are husband and wife.
3. Two children were born to the marriage of the parties, *to wit*: Antonio Laera, born October 17, 1996; and Julia Laera, born September 22, 2004. No other child is currently in gestation.
4. The parties were separated on December 7, 2012.

SHW

5. The Plaintiff has provided the court with clear and convincing evidence that the Defendant has had the opportunity to commit adultery and has, in fact, committed adultery based upon the testimony of the private investigator, Scott Bernard.
6. Prior to the commencement of the hearing, the parties announced they had reached a full and final agreement as to all issues ancillary to the divorce. The agreement of the parties is as follows, *to wit*:
- A. The Plaintiff shall have sole custody of the parties' minor children. Due to the age of the children, the Defendant shall have regular contact with the children without any restrictions or limitations whatsoever and at such other times as the parties may mutually agree.
 - B. The Defendant shall pay the sum of Twelve Thousand and no/100 (\$12,000.00) Dollars per month as child support directly to the Plaintiff beginning October 1, 2014 and continuing to be due on the first of each subsequent month thereafter. The Defendant shall pay child support payments to the Plaintiff on behalf of the minor child, Julia Laera, until she graduates high school or June, 2023. However, if the Defendant is ever five (5) days late in any of his child support payments, the Plaintiff shall be reserved the right to file an affidavit with the York County Clerk of Court and the Defendant's child support payments shall immediately begin payable through the Clerk of Court's Office and shall include an additional five (5%) percent court cost.
 - C. The Defendant shall also pay the sum of Three Thousand and no/100 (\$3,000.00) Dollars per month as alimony directly to the Plaintiff beginning October 1, 2014 and continuing to be due on the first of each subsequent month thereafter. However, if the Defendant is ever five (5) days late in any of his child support payments, the Plaintiff shall be reserved the right to file an affidavit with the York County Clerk of Court and the Defendant's alimony payments shall immediately begin payable through the Clerk of Court's Office and shall include an additional five (5%) percent court cost.
 - D. The Plaintiff shall be entitled to sole ownership and possession of the property located at 419 York Southern Road, Fort Mill, South Carolina. The Defendant shall be allowed to lease this property from the Plaintiff in the amount of Twelve Thousand Five Hundred Sixty-five and no/100 (\$12,565.00) Dollars per month for two (2) years from the date of this Decree. Said payments shall be paid directly to the Plaintiff beginning October 1, 2014 and continuing to be due on the first of each subsequent month thereafter. If the Plaintiff elects to sell this property at the end of

SHW

two (2) years, the Defendant shall be given the first opportunity to purchase the property prior to the Plaintiff listing the property for sale. The parties have executed a Lease Agreement for this property setting forth the terms and conditions which pertain to this property.

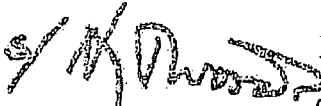
- E. The Plaintiff shall be entitled to sole ownership and possession of the parties' former marital residence located at 1516 Glenn Valley Drive, Matthews, North Carolina and shall be responsible for all mortgage payments, taxes, and insurance due thereon. The Plaintiff shall hold the Defendant harmless from any deficiencies which may result in her failure to pay the same. The Defendant shall sign any documents necessary in order to transfer ownership of this property to the Plaintiff.
- F. The parties shall be entitled to joint ownership and possession of the property located at 5960 SW 32 Terrace, Fort Lauderdale, Florida and Defendant shall be responsible for all taxes and insurance due thereon.
- G. The Defendant shall maintain a life insurance policy on his life in the amount of One Million (\$1,000,000,000.00) Dollars with the parties' children as beneficiaries. The Defendant shall maintain this policy until the minor child, Julia Laera, graduates from high school or June, 2023.
- H. Each party shall be solely responsible for the debts listed in their respective names. The parties have no jointly listed marital debt.
- I. The parties have divided their personal property, including vehicles, to their mutual satisfaction. Each party shall sign any documents necessary in order to transfer ownership of these vehicles.
- J. Each party shall be responsible for their own attorney's fees.

THEREFORE, IT IS ORDERED:

- a. The agreement of the parties is hereby approved and incorporated into this Order as if repeated verbatim herein; and
- b. The Plaintiff is hereby granted a divorce from the Defendant on grounds of adultery.

IT IS SO ORDERED.

October 30, 2014.


Henry T. Woods,
Judge, Sixteenth Judicial Circuit

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC
2014 OCT 31 PM 3:06
CERTIFIED TRUE COPY

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Suzette LeFebvre,

vs.

Vito Antonio Laera,

Defendant.

IN THE FAMILY COURT
SIXTEENTH JUDICIAL CIRCUIT

COPY

FILED RECEIVED

31 OCT 01 PM 3:06

JUDGMENT IN A
FAMILY COURT CASE

Docket No. 2014-DR46-623

| | |
|----------------------------------|--|
| Submitted by: P. John Freeman | Attorney for <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant <input type="checkbox"/> GAL |
|----------------------------------|--|

DECISION BY COURT (check all that apply)

- This action came to trial, hearing or was resolved by consent and an order was rendered.
- This action has been dismissed pursuant to Rule 12(b), SCRCF Rule 41(a), SCRCF
 Rule 43(k), SCRCF Family Court Benchmark
 Other: _____

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

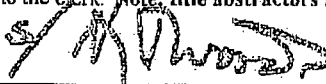
Additional information for Clerk: _____

ORDER INFORMATION

- This is a Temporary Final order. If Final, does this order end the case? Yes No
- Support is not ordered is ordered, and it is to be paid through the court. directly to the CP.
- Case number under which support is paid if different from this one: _____
- This order involves the immediate issuance dismissal of a bench warrant, or does not apply.
- The following motions are ended by this order (include motion filing date): _____
- This order adds or dismisses the following parties to this case:
 dismiss add: _____ dismiss add: _____

| INFORMATION FOR THE PUBLIC INDEX/TRANSCRIPT OF JUDGMENT (§ 20-3-670(B)(1)) | | |
|--|--|--|
| Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information to enroll, indicate "N/A" in one of the boxes below. | | |
| Judgment In Favor of (List name(s) below) | Judgment Against (List name(s) below) | Judgment Amount to be Enrolled (List amount(s) below) |
| N/A | | \$ |
| | | \$ |
| | | \$ |
| If applicable, describe the property, including tax map information and address, referenced in the order: | | |

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the South Carolina Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: title abstractors and researchers should refer to the official court order for judgment details.


 Family Court Judge 125 Judge Code 10/30/14 Date

FOR CLERK OF COURT OFFICE USE ONLY

This judgment was entered on the 10-31 and a copy mailed first class or placed in the appropriate attorney's box on _____, to attorneys of record or to parties (when appearing pro se) as follows:

P. John Freeman, Esquire
238 Rockmont Drive
Fort Mill, SC 29708
ATTORNEY(S) FOR THE PLAINTIFF(S)

Vito Antonlo Laera
419 York Southern Road
Fort Mill, SC 29715
ATTORNEY(S) FOR THE DEFENDANT(S)

Paul Hamilton
CLERK OF COURT

Court Reporter: Cheryl St. Germain

Custodial Parent (if applicable): _____

Heath Gilbert

From: Robert Bernstein <RBernstein@bernsteinpa.com>
Sent: Friday, March 17, 2017 5:58 PM
To: Kimball, Jack
Cc: Jane Smith; Motz, Maryann; Dan Ballou; David W. Brown Jr. (DBrown@HorackTalley.com); Heath Gilbert; Laura Budd; JFGALLAGHER@nmmlaw.com; ABhatt@nmmlaw.com; zette222@gmail.com
Subject: RE: Triple M. Partners v. Suzette LeFebvre and Blanco GMBH+CO.KG; #16-3382
Attachments: Motion for Modiofication of Default Judgment Order. filed.pdf; Order of Default Judgment.pdf

Judge Kimball:

On February 23, 2017, you entered a Default Judgment Order in this action (attached). At the time of the hearing, we had a Motion to Intervene pending, which had not yet been granted. You ordered that the Defendant execute the necessary documents to transfer clear title to the Plaintiff, and that the proceeds after payment of the mortgage be deposited with the Court. My client claims a lien against the real estate; your Order, however, did not address the transfer of that judgment lien to the proceeds of sale. I have found no statutory authority for the transfer of the lien in the event of a court ordered sale. The closing was scheduled for yesterday, but my client has refused to release the judgment liens against the property unless the judgment lien against the property is transferred to the proceeds of the sale. The Defendant has refused to sign a proposed Stipulation I had drafted to that effect. The closing cannot therefore occur as presently situated.

We have made a motion 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; we have also asked that any hearing on the motion be expedited due to the closing (attached). A Motion for an Order of Reference was also delivered to your office. In light of the exigency of this matter, we would respectfully request that a hearing on this motion be expedited and scheduled at your earliest possible convenience.

By copy of this e-mail to the attorneys for the Plaintiff and to Defendant Ms. LeFebvre, we are advising of the pending Motions and our request for an expedited hearing. Although they have indicated that they have specifically not made an appearance for Ms. LeFebvre in this action, attorneys Heath Gilbert and Laura Budd appeared at the underlying motion hearing, and are representing Ms. LeFebvre in related litigation in federal Court. Out of an abundance of caution and fairness, I am also copying them on this e-mail since the matter may affect their client's interest in the pending federal court litigation.

I appreciate the Court's consideration of an expedited hearing on this matter, if the Court deems one necessary. I look forward to hearing from you shortly.

Yours Very Truly,
BERNSTEIN & BERNSTEIN, P.A.

Robert A. Bernstein

Robert A. Bernstein
Post Office Box 20519 5418-B Rivers Avenue
Charleston, SC 29413-0519 N. Charleston, SC 29406-6129
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell)
rbernstein@bernsteinpa.com

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From: Kimball, Jack [mailto:jack.kimball@yorkcountygov.com]
Sent: Friday, March 10, 2017 3:57 PM
To: Robert Bernstein <RBernstein@bernsteinpa.com>
Cc: Jane Smith <JSmith@bernsteinpa.com>; Motz, Maryann <Maryann.Motz@yorkcountygov.com>
Subject: RE: Blanco GMBH+CO.KG #14-3272

Bob:

Attached is an order in this case, which I have signed and am sending to the Clerk to be filed. The Clerk will send you a filed copy. To expedite receiving a filed copy, you should contact the Clerk's office.

Thank you.

Jack Kimball

S Jackson Kimball
Master in Equity
York County

Phone: 803-628-3930



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From: Robert Bernstein [<mailto:RBernstein@bernsteinpa.com>]
Sent: Tuesday, March 07, 2017 5:12 PM
To: Kimball, Jack
Cc: Jane Smith
Subject: RE: Blanco GMBH+CO.KG #14-3272

Judge Kimball:

I apologize for the delay in getting you this proposed Order.. I have attached the proposed Order for your signature and entry. Thank you for your consideration.

Yours Very Truly,
BERNSTEIN & BERNSTEIN, P.A.

Robert A. Bernstein

Robert A. Bernstein
Post Office Box 20519 5418-B Rivers Avenue
Charleston, SC 29413-0519 N. Charleston, SC 29406-6129
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell)
rbernstein@bernsteinpa.com

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From: Kimball, Jack [<mailto:jack.kimball@yorkcountygov.com>]
Sent: Monday, February 27, 2017 11:42 AM
To: Robert Bernstein <RBernstein@bernsteinpa.com>
Subject: RE: Blanco GMBH+CO.KG #14-3272

Bob,

My notes indicate that you were also going to send an order on the motion to intervene. Please send me that one at your earliest convenience. If you have sent it, & I've misplaced it, I apologize.

Thanks.

Jack Kimball

S Jackson Kimball

Master in Equity

York County

Phone: 803-628-3930



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From: Robert Bernstein [<mailto:RBernstein@bernsteinpa.com>]

Sent: Thursday, February 16, 2017 4:02 PM

To: Kimball, Jack

Cc: Motz, Maryann; Brown, Emily; Kendree, Michael; Kenneth Raynor; JFGALLAGHER@nmmlaw.com; ABhatt@nmmlaw.com; Heath Gilbert; Laura Budd (lbudd@thebuddlawgroup.com); Brown, Dave; Dan Ballou

Subject: RE: Blanco GMBH+CO.KG #14-3272

Judge Kimball:

Pursuant to your ruling in the above referenced action at the hearing this morning, we are submitting the proposed Order granting the writ of mandamus in the above action. By copy of this e-mail to all interested counsel, we are providing them with a copy of the proposed Order for their review. Should you need any further submissions from this office, please feel free to contact me.

Yours Very Truly,

BERNSTEIN & BERNSTEIN, P.A.

Robert A. Bernstein

Robert A. Bernstein

Post Office Box 20519 5418-B Rivers Avenue

Charleston, SC 29413-0519 N. Charleston, SC 29406-6129

(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell)

rbernstein@bernsteinpa.com

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From: Kimball, Jack [<mailto:jack.kimball@yorkcountygov.com>]
Sent: Tuesday, February 14, 2017 4:38 PM
To: Robert Bernstein <RBernstein@bernsteinpa.com>
Cc: Motz, Maryann <Maryann.Motz@yorkcountygov.com>; Brown, Emily <Emily.Brown@yorkcountygov.com>;
Kendree, Michael <michael.kendree@yorkcountygov.com>; Kenneth Raynor <Ken@Raynorlawfirm.com>;
JFGALLAGHER@nmmlaw.com; ABhatt@nmmlaw.com
Subject: RE: Blanco GMBH+CO.KG #14-3272

10-4. See you all then.

S Jackson Kimball
Master in Equity
York County

Phone: 803-628-3930



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From: Robert Bernstein [<mailto:RBernstein@bernsteinpa.com>]
Sent: Tuesday, February 14, 2017 4:30 PM
To: Kimball, Jack
Cc: Motz, Maryann; Brown, Emily; Kendree, Michael; Kenneth Raynor; JFGALLAGHER@nmmlaw.com;
ABhatt@nmmlaw.com
Subject: RE: Blanco GMBH+CO.KG #14-3272

Judge Kimball:

Mr. Hamilton has agreed that the hearing should go forward on Thursday morning as scheduled. Thank you.

Yours Very Truly,
BERNSTEIN & BERNSTEIN, P.A.

Robert A. Bernstein

Robert A. Bernstein
Post Office Box 20519 5418-B Rivers Avenue

Charleston, SC 29413-0519 N. Charleston, SC 29406-6129
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell)
rbernstein@bernsteinpa.com

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From: Kimball, Jack [<mailto:jack.kimball@yorkcountygov.com>]
Sent: Tuesday, February 14, 2017 1:20 PM
To: Robert Bernstein <RBernstein@bernsteinpa.com>
Cc: Motz, Maryann <Maryann.Motz@yorkcountygov.com>; Brown, Emily <Emily.Brown@yorkcountygov.com>;
Kendree, Michael <michael.kendree@yorkcountygov.com>
Subject: RE: Blanco GMBH+CO.KG #14-3272

Bob,

Thank you for the quick response. I spoke with Emily Brown, who was not aware of the motion (and would not necessarily be), not Michael Kendree. I will let them decide how they want to deal with the motion. I look forward to seeing you Thursday.

Jack Kimball

S Jackson Kimball
Master in Equity
York County

Phone: 803-628-3930



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From: Robert Bernstein [<mailto:RBernstein@bernsteinpa.com>]
Sent: Tuesday, February 14, 2017 12:46 PM
To: Kimball, Jack
Cc: Motz, Maryann; Brown, Emily
Subject: RE: Blanco GMBH+CO.KG #14-3272

Judge Kimball:

The County attorney is aware of the Motion. On January 30, I spoke with him at length about it, and sent him the motion and the memorandum. He indicated it was not a problem. Set out below are the e-mails confirming this.

Yours Very Truly,
BERNSTEIN & BERNSTEIN, P.A.

Robert A. Bernstein

Robert A. Bernstein
Post Office Box 20519 5418-B Rivers Avenue
Charleston, SC 29413-0519 N. Charleston, SC 29406-6129
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell)
rbernstein@bernsteinpa.com

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-----Original Message-----

From: Robert Bernstein
Sent: Thursday, February 09, 2017 4:00 PM
To: 'Michael.Kedree@yorkcountygov.com' <Michael.Kedree@yorkcountygov.com>
Cc: Jane Smith <JSmith@bernsteinpa.com>; 'JFGALLAGHER@nmmlaw.com' <JFGALLAGHER@nmmlaw.com>; 'ABhatt@nmmlaw.com' <ABhatt@nmmlaw.com>; 'Kenneth Raynor' <Ken@Raynorlawfirm.com>
Subject: RE: Motion "MOTION-Motion For Writ of Mandamus To Require Clerk to Enter Judg" for Case "2014CP4603272-Blanco GMBH CO KG VS Vito Antonio Laera , defendant, et al" was added to a Motions Roster for 2/16/2017 at 2:00 PM

Michael:

I wanted to let you know that the motion hearing originally scheduled for February 16, 2017 at 2:00 p.m. has been moved to 9:00 a.m. that same morning. I will be filing a memorandum in support with the Court and once I do, I will provide you with a copy.

Yours Very Truly,
BERNSTEIN & BERNSTEIN, P.A.
Robert A. Bernstein

Robert A. Bernstein

Post Office Box 20519 5418-B Rivers Avenue Charleston, SC 29413-0519 N. Charleston, SC 29406-6129
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell) rbernstein@bernsteinpa.com This message is intended solely for review by the person to whom it is addressed at the beginning of this electronic mail. To ensure compliance with US IRS Circular 230, please be advised that any US federal tax advice contained in this communication (including any attachment) is not intended or written to be used, and cannot be used, for the purpose of (I) avoiding penalties under the IRC or (II) promoting, marketing, or recommending to another party any transaction or matter addressed herein. This advice may not be forwarded without our express written consent

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-----Original Message-----

From: Robert Bernstein

Sent: Monday, January 30, 2017 1:02 PM

To: 'Michael.Kedree@yorkcountygov.com' <Michael.Kedree@yorkcountygov.com>

Cc: Jane Smith <JSmith@bernsteinpa.com>; JFGALLAGHER@nmmlaw.com; ABhatt@nmmlaw.com; 'Kenneth Raynor' <Ken@Raynorlawfirm.com>

Subject: FW: Motion "MOTION-Motion For Writ of Mandamus To Require Clerk to Enter Judg" for Case "2014CP4603272- Blanco GMBH CO KG VS Vito Antonio Laera , defendant, et al" was added to a Motions Roster for 2/16/2017 at 2:00 PM

Michael:

Thank you for speaking with me this morning. As the York County attorney, I believe you may need to represent the County and the Clerk of Court with respect to a Motion for a Writ of Mandamus which has been filed affecting the York County Clerk of Court (attached).

As I advised, I represent a judgment creditor who had filed a Notice of Filing of Foreign Judgment in York County. That case is Blanco GMBH + Co. v. Vito Antonio Laera, Case No. 2014-CP-46-3272 (attached). After the case was filed on October 3, 2014, there was difficulty in finding Mr. Laera to effect service; he was eventually served in 2016. When we submitted the affidavit of service, we were instructed to submit a proposed Order to have the Judgment entered on the judgment rolls. I advised the Deputy Clerk that under the statute, the judgment was supposed to be entered on the judgment rolls at the time the foreign judgment was filed, i.e., back in 2014. She indicated that the Clerk's manual indicated that the judgment was not to be filed on the judgment rolls until 30 days after service of the debtor. She then called court administration, and was informed that no, it was to be filed when the foreign judgment was filed. She indicated, however, that she Would not backdate the date of placement on the judgment rolls and would only do so as of that date, i.e., in 2016.

The reason for the urgency of filing the judgment in 2014 vs. 2016 has to do with the date of the transfer of some property by the judgment debtor. In April 2014, the asserted spouse of Mr. Laera, Suzette LeFebvre, began a Family Court action in York County (Case No. 2014-DR-46- 0623). An Consent Order of Divorce was entered on October 31, 2014, under which ownership of a valuable parcel of property was transferred from the judgment debtor to his purported spouse. This was, however, several weeks after the judgment should have been entered on the judgment rolls, and thus have been a prior lien against the property. The "spouse" has asserted that the judgment was not entered on the judgment rolls until 2016, and thus that the transfer to her has priority over our judgment lien.

I have made a Motion for a Writ of Mandamus in the 2014 Foreign Judgment case to require the Clerk of Court for York County to enter the judgment on the Judgment Roll effective as of October 3, 2014. The statute at issue is S.C. Code Ann. 15-35-920(B), which states:

(B) Upon the filing of the foreign judgment and the affidavit, the foreign judgment must be docketed and indexed in the same manner as a judgment of this State; however, no foreign judgment may be indexed if contested until resolved and no execution may issue upon the foreign judgment nor may any other proceeding be taken for its enforcement until the expiration of thirty days from the date upon which notice of filing is served in accordance with Section 15-35-930.

The property at issue is property located at 419 York Southern Road, Fort Mill, SC; the tax map number is 728-00-00-030.

As I advised when we spoke, the filing of the foreign judgment action and the family court action are only two of several cases between the parties. In addition, there is a federal court action (Case No. 0:15-cv-2199-TLW) in which a Lis Pendens is filed with York County (No. 2015-LP-46-0428); a second foreign judgment which has been filed by my client against Mr. Laera (Case No. 2016-CP-46-1403); a foreclosure action which has been filed against the property (Case No. 2016-CP-46-2920) and a Specific Performance action by a contract purchaser of the property (2016-CP-46-3382).

In light of the fact that the writ is sought to require the Clerk of Court to perform a statutory requirement, we are putting you on notice, as legal representative for the County, as to the pending Motion and the hearing date. After looking into the matter and meeting with the Clerk of Court, please let us know in advance the position, if any, that the Clerk of Court intends to take in this matter. By copy of this e-mail to Ken Raynor, attorney for the Defendant Mr. Laera, we are advising him of this communication and of your involvement in the matter. I look forward to hearing from you shortly.

Yours Very Truly,
BERNSTEIN & BERNSTEIN, P.A.

Robert A. Bernstein

Robert A. Bernstein
Post Office Box 20519 5418-B Rivers Avenue Charleston, SC 29413-0519 N. Charleston, SC 29406-6129
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell) rbernstein@bernsteinpa.com This message is intended solely for review by the person to whom it is addressed at the beginning of this electronic mail. To ensure compliance with US IRS Circular 230, please be advised that any US federal tax advice contained in this communication (including any attachment) is not intended or written to be used, and cannot be used, for the purpose of (I) avoiding penalties under the IRC or (II) promoting, marketing, or recommending to another party any transaction or matter addressed herein. This advice may not be forwarded without our express written consent

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-----Original Message-----

From: Courtmail46_DoNotReply@sccourts.org [mailto:Courtmail46_DoNotReply@sccourts.org]
Sent: Wednesday, January 25, 2017 8:52 AM
To: Robert Bernstein <RBernstein@bernsteinpa.com>
Subject: Motion "MOTION-Motion For Writ of Mandamus To Require Clerk to Enter Judg" for Case "2014CP4603272-Blanco GMBH CO KG VS Vito Antonio Laera , defendant, et al" was added to a Motions Roster for 2/16/2017 at 2:00 PM

You have a case that appears on the February 16, 2017 York County Motions Roster before Judge S. Jackson Kimball. These hearings will be held at the Historic York Courthouse, Courtroom 2 located at 2 South Congress Street, York SC, 29745. These hearings are scheduled at 9:00 am, 11:00 am & 2:00 pm. You can visit www.sccourts.org to view the Motions Roster for your hearing time(s). Please notify me by email if your case settles or is continued. This will allow me to update the online roster.

Lynn Strait
Court Coordinator
York County Court of Common Pleas
lynn.strait@yorkcountygov.com

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**From:** Kimball, Jack [<mailto:jack.kimball@yorkcountygov.com>]  
**Sent:** Tuesday, February 14, 2017 12:01 PM  
**To:** Robert Bernstein <[RBernstein@bernsteinpa.com](mailto:RBernstein@bernsteinpa.com)>  
**Cc:** Motz, Maryann <[Maryann.Motz@yorkcountygov.com](mailto:Maryann.Motz@yorkcountygov.com)>; Brown, Emily <[Emily.Brown@yorkcountygov.com](mailto:Emily.Brown@yorkcountygov.com)>  
**Subject:** Blanco GMBH+CO.KG #14-3272

Bob,

In looking through this file for Thursday's motion, I do not find that the Clerk of Court has been served with the motion. Can you give me some information about that? Should the motion be postponed until that is done? The County attorney is unaware of the motion. Please let me know.

Thanks.

Jack Kimball

**S Jackson Kimball**  
*Master in Equity*  
*Master in Equity*  
*York County*

---

[jack.kimball@yorkcountygov.com](mailto:jack.kimball@yorkcountygov.com)  
Phone: 803-628-3930



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To: [hgilbert@baucomclaytor.com](mailto:hgilbert@baucomclaytor.com)

[Remove this sender from my allow list](#)

From: [rbernstein@bernsteinpa.com](mailto:rbernstein@bernsteinpa.com)

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF YORK )  
 )  
 Triple M. Partners, L.P., )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 Suzette LeFebvre, as individual, and as )  
 Trustee of the Suzette LeFebvre Trust, N/A )  
 and Blanco GmbH+CO.KG, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 Case No: 2016-CP-46-3382

MOTION BY BLANCO GmbH + CO.KG  
 FOR MODIFICATION OF ORDER OF  
 DEFAULT JUDGMENT AND  
 FOR EXPEDITED HEARING

FILED-RECEIVED  
 2017 MAR 15 PM 12:49  
 DAVID R. MILLION  
 CLERK OF COURT  
 YORK COUNTY, SC

TO: ALL PARTIES TO THE PRESENT LITIGATION:

YOU WILL HEREBY TAKE NOTICE that as soon as they may be heard, the undersigned Attorneys for BLANCO GmbH + CO.KG will move before this Court for an Order modifying the Order of Default Judgment signed on February 23, 2017, and entered on February 24, 2017. This Motion is based upon the prior Motion for Default Judgment filed by the Plaintiff, the Order filed by the Court, and the necessity of additional language and action by the Court to carry into effect the prior Order entered by the Court. This Motion is based on Rule 60, SCRPC, and the Memorandum of Law submitted herewith.

BERNSTEIN & BERNSTEIN, P.A.

*Robert A. Bernstein*  
 Robert A. Bernstein S.C. Bar No. 0677  
 5418-B Rivers Avenue  
 North Charleston, SC 29406-6129  
 (843) 529-1111; (843) 529-0035 (fax)  
 rbernstein@bernsteinpa.com

ATTORNEYS FOR BLANCO GmbH + CO.KG

March 15, 2017

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF YORK )  
 )  
 Triple M. Partners, L.P., )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 Suzette LeFebvre, as individual, and as )  
 Trustee of the Suzette LeFebvre Trust, N/A )  
 and Blanco GmbH+CO.KG, )  
 )  
 Defendants. )  
 )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 CASE NO: 2016-CP-46-3382

MEMORANDUM IN SUPPORT OF  
 MOTION BY BLANCO GmbH + CO.KG  
 FOR MODIFICATION OF ORDER OF  
 DEFAULT JUDGMENT AND  
 FOR EXPEDITED HEARING

FILED-RECEIVED  
 2017 MAR 15 PM 12:47  
 DAVID HANSEN  
 S.C.C.P. & S.  
 YORK COUNTY, SC

The undersigned attorney for BLANCO GmbH + CO.KG submits the present Memorandum in Support of its Motion for Modification of the prior Order for Default Judgment.

The Complaint in this action seeks to have a contract for the sale of certain property located in York County, South Carolina enforced. That property is alleged to have been transferred to the Defendant pursuant to an Order of the Family Court of South Carolina entered on October 31, 2014 (Complaint, ¶5). Prior to the Family Court Order, Blanco GmbH+Co.KG had filed with the York County Clerk of Court a judgment against the transferor of the property, Vito Antonio Laera. Blanco GmbH + Co. thus claims a judgment lien against the real estate pursuant to S.C. Code Ann. §15-35-810 et seq. Thereafter, on January 2015, Vito Laera executed a deed transferring half of the subject property to Defendant LeFebvre. On May 6, 2016, Blanco GmbH+Co.KG filed a second judgment against Mr. Laera with the York County Clerk of Court. On May 16, 2016, Mr. Laera executed and recorded a deed transferring the other half of his interest in the subject property to Defendant LeFebvre. Blanco GmbH+Co.KG therefore claims two judgment liens against the property which is the subject of this action.

On August 30, 2016, the Plaintiff entered into the contract with Ms. LeFebvre which is the subject of this action. The Defendant defaulted in this Specific Performance action, and on February 16, 2017, this Court held a hearing upon the Plaintiff's Motion for Summary Judgment. The Court granted the Plaintiff's Motion for Summary Judgment, ordering that Defendant LeFebvre "duly execute and deliver to Plaintiff's counsel a general warranty deed conveying title to the Property to the Plaintiff . . . and any other documents necessary to deliver and convey clear and marketable title (Closing Documents) to Plaintiff, at a closing to be held within fourteen days of the date of this Order, or at such time as established by the Plaintiff."

At the time of the Summary Judgment hearing, Blanco GmbH+CO.KG's Motion to Intervene had not been heard; it has since been granted. As noted previously, Blanco GmbH+CO.KG holds judgment liens against the Property which is the subject of this action. Blanco is willing to permit the transaction to go forward upon the condition that the judgment liens entered against the Property transfer to the proceeds of the sale, such that to the extent that the Blanco judgment liens had priority over the property interest of Defendant LeFebvre, the same lien would exist in the same priority against the proceeds of the sale. Absent this lien against the proceeds, Blanco GmbH+CO.KG is unwilling to release the judgment liens against the Property, and the Defendant cannot comply with the Court's Order "to deliver and convey clear and marketable title to the Plaintiff."

This specific performance action is an action in equity, and this Court has wide discretion to fashion a remedy which meets the maxims of equity. Banco GmbH+CO.KG has a legal lien against the Property which this Court has Order to be transferred, and there is no basis for denying Blanco its interest in the property when it was a stranger to the contract which is the subject of this action. The Plaintiff is in agreement with the proposal to have the judgment lien transfer to the

proceeds of the transaction, as it keeps the Defendants in the same priority position each had against the Property, and it permits the transaction to proceed.

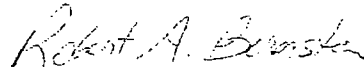
Counsel for Blanco has searched and found no authority for the proposition that a judgment lien transfers to proceeds of a sale in the event the property burdened by the lien is sold. There is plenty of authority, however, establishing that the existence of the judgment lien, properly recorded, follows the property and remains upon the property notwithstanding the transfer by the transferor, and the property remains burdened by the judgment notwithstanding the transfer. The only way that the Defendant can therefore transfer clear and marketable title to the Property is if she signs a document agreeing that the liens against the Property transfer to the proceeds from the sale of the Property, or this Court orders that the lien so transfers. The Plaintiff has indicated its consent to an Order permitting the attachment of the lien to the proceeds of the sale of the Property; Defendant LeFebvre has not made an appearance in this action and is in default.

The Plaintiff has set a closing date of March 16, 2017. The Defendant LeFebvre cannot convey clear title to the Plaintiff in that closing unless this Court enters an Order that the judgment liens existing against the Property transfers to the proceeds from the ordered sale of the property. Although this Defendant believes that the Court intended this result in entering the Order of Default Judgment, the Order of Default Judgment does not contain such a provision. Defendant Blanco does not seek a ruling at this point regarding the priority of its judgment vis-a-vis Defendant LeFebvre to the Property and, therefore, to the proceeds; it is merely seeking an Order that, to the extent Blanco has a lien against the Property, that same priority lien applies to the proceeds from the sale of the Property.

Rule 60(a), SCRCP, provides that "Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any

time of its own initiative or on the motion of any party and after such notice, if any, as the court orders." In light of the fact that this Court intended that the judgment lien of Blanco GmbH+CO.KG be transferred to the proceeds of the sale of the Property, Blanco believes that this Court inadvertently omitted this provision in the Default Judgment Order, and can on its own accord modify the Order to provide for the placement of this lien. In the alternative; Blanco GmbH+CO.KG respectfully requests that this Court hold an expedited hearing on this Motion so that the closing may occur as scheduled.

BERNSTEIN & BERNSTEIN, P.A.



Robert A. Bernstein S.C. Bar No. 677  
5418-B Rivers Avenue  
North Charleston, SC 29406-6129  
(843) 529-1111; (843) 529-0035 (fax)  
[rbernstein@bernsteinpa.com](mailto:rbernstein@bernsteinpa.com)

ATTORNEYS FOR BLANCO GmbH + CO.KG

March 15, 2017

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF YORK )  
 )  
 TRIPLE M PARTNERS, LP, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 SUZETTE LEFEBVRE, as Individual, and )  
 as Trustee of the SUZETTE LEFEBVRE )  
 TRUST N/A, )  
 )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 SIXTEENTH JUDICIAL CIRCUIT  
 CASE NO.: 2016-CP-46-03382

**DEFAULT JUDGMENT**

This matter came before the Court on February 16, 2017, upon Plaintiff's motion for default judgment. Appearing at the hearing for Plaintiff was Daniel J. Ballou. The Defendant has not appeared individually, or through counsel, in this case, and did not appear at the hearing. Based upon the pleadings and affidavits of record, I make the following findings of fact and conclusions of law.

**FINDINGS OF FACT**

1. Plaintiff commenced this action by filing a summons and complaint on November 15, 2016, which was supported by a verification filed on November 28, 2016. Plaintiff's verified complaint seeks specific performance of an Agreement for the Purchase and Sale of Real Property ("Agreement"). Under the Agreement, Defendant agreed to sell to Plaintiff a 6.5-acre tract of real property identified by York County Tax Map No. 728-00-00-030, located at 419 York Southern Road, Fort Mill, South Carolina ("Property"), for a purchase price of \$1,960,000.00.
2. Plaintiff personally served Defendant with process on November 21, 2016. By order dated November 30, 2016, and after notice and a hearing, Hon. Daniel D. Hall granted emergency relief ("Order") to allow the Plaintiff access to the Property to complete its due diligence under the Agreement.
3. Pursuant to the Order, Defendant was temporarily restrained and enjoined as follows:
  - a. Defendant was prohibited from selling or disposing of the Property during the pendency of this action;

*[Handwritten signature]*  
 # 1

- b. Defendant was prohibited from taking any action inconsistent with the Agreement;
  - c. Defendant was directed to allow Plaintiff access to the Property to complete due diligence within a reasonable time, irrespective of the time specifications in the Agreement, and to close on the sale of the Property within a reasonable time of receiving notice from the Plaintiff of its intent to close;
  - d. Defendant was directed to execute any and all documents necessary to convey the Property to Plaintiff free of any encumbrances within a reasonable time following notice by Plaintiff that it has completed its due diligence, and is prepared to proceed to closing;
  - e. Defendant was prohibited from taking any action that would divest or otherwise impair her sole ability to convey title to the Property at closing.
4. Defendant has failed to appear or otherwise defend, deny or oppose the allegations of the Complaint, and is in default.
5. On February 15, 2017, in Case No. 2016-CP-46-02920, *U.S. Bank, N.A. v. Laera, et al.*, in a foreclosure action brought by U.S. Bank, N.A. ("U.S. Bank") against the Defendants and others concerning the Property, this Court granted U.S. Bank's Motion for Appointment of a Receiver.
6. On February 13, 2017, Blanco GmbH + CO.KG ("Blanco") plaintiff in a collection action against Defendants and others filed a Motion to Intervene in this action, which Motion has not yet been heard.

#### CONCLUSIONS OF LAW

1. By reason of Defendant's default, Plaintiff is entitled to judgment against Defendant, and to an order requiring the specific performance of the Agreement, and further, Defendant remains bound by the prior Order in this case, which is incorporated herein by reference.
2. Defendant Suzette Lefebvre is required to duly execute and deliver to Plaintiff's counsel a general warranty deed conveying title to the Property to Plaintiff, an affidavit of true consideration, a lien waiver affidavit satisfactory to the title insurance company of the Plaintiff's choosing, a quitclaim deed from the Suzette Lefebvre Trust, a closing statement in such form as reasonably provided by Plaintiff, an IRS Form 1099s, a non-foreign status affidavit (also known as a FIRPTA Certificate), and any and all other documents necessary to deliver and convey clear

*OCM*  
#2

and marketable title ("Closing Documents") to Plaintiff, at a closing to be held within fourteen days of the date of this Order, or at such later time as established by Plaintiff.

3. Should Defendant fail to deliver satisfactory Closing Documents to Plaintiff, as provided above, the Clerk of Court for York County is hereby authorized and directed to execute and deliver a clerk's deed to the Property to Plaintiff upon receipt of written notice of Defendant's refusal to comply with this Order.

4. At the closing of the sale of the Property, after payment of the first mortgage held by U.S. Bank, N.A., the net proceeds shall be deposited with the Clerk of Court, who is authorized and directed to receive and deposit such funds, pending further order of this Court.


**JUDGMENT**

It is ordered that default judgment be entered against the Defendant, consistent with the conclusions of law above, and the relief set forth above be granted.

It is further ordered that, to the extent that the Plaintiff seeks any further relief sought in the Complaint, including but not limited to an award of damages, Plaintiff may request a hearing on such matters by written motion, and after proper notice to Defendant.

AND IT IS SO ORDERED.

February 23, 2017

  
S. Jackson Kimball  
Special Circuit Court Judge  
York County

23

## Heath Gilbert

---

**From:** Motz, Maryann <Maryann.Motz@yorkcountygov.com>  
**Sent:** Monday, March 20, 2017 9:30 AM  
**To:** 'Robert Bernstein'  
**Cc:** Jane Smith; Dan Ballou; David W. Brown Jr. (DBrown@HorackTalley.com); Heath Gilbert; Laura Budd; JFGALLAGHER@nmmlaw.com; ABhatt@nmmlaw.com; zette222@gmail.com  
**Subject:** RE: Triple M. Partners v. Suzette LeFebvre and Blanco GMBH+CO.KG; #16-3382  
**Importance:** High

Good morning,

Judge Kimball has reviewed Mr. Bernstein's email and asked that I schedule an expedited hearing. We have time available Tuesday, 3-21-17 at 1:30 or Wednesday, 3-22-17 at either 9:30 or 10:00. Please coordinate and respond so I can confirm a date/time. I appreciate everyone's help.

Thank you,  
Mary Ann

Maryann Motz  
Associate Court Clerk  
York County  
Phone: 803-628-3930



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**From:** Robert Bernstein [mailto:RBernstein@bernsteinpa.com]  
**Sent:** Friday, March 17, 2017 5:58 PM  
**To:** Kimball, Jack  
**Cc:** Jane Smith; Motz, Maryann; Dan Ballou; David W. Brown Jr. (DBrown@HorackTalley.com); Heath Gilbert; Laura Budd; JFGALLAGHER@nmmlaw.com; ABhatt@nmmlaw.com; zette222@gmail.com  
**Subject:** RE: Triple M. Partners v. Suzette LeFebvre and Blanco GMBH+CO.KG; #16-3382

Judge Kimball:

On February 23, 2017, you entered a Default Judgment Order in this action (attached). At the time of the hearing, we had a Motion to Intervene pending, which had not yet been granted. You ordered that the Defendant execute the necessary documents to transfer clear title to the Plaintiff, and that the proceeds after payment of the mortgage be deposited with the Court. My client claims a lien against the real estate; your Order, however, did not address the transfer of that judgment lien to the proceeds of sale. I have found no statutory authority for the transfer of the lien in the event of a court ordered sale. The closing was scheduled for yesterday, but my client has refused to release the judgment liens against the property unless the judgment lien against the property is transferred to the proceeds of the sale. The Defendant has refused to sign a proposed Stipulation I had drafted to that effect. The closing cannot therefore occur as presently situated.

We have made a motion 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; we have also asked that any hearing on the motion be expedited due to the closing (attached). A Motion for an Order of Reference was also delivered to your office. In light of the exigency of this matter, we would respectfully request that a hearing on this motion be expedited and scheduled at your earliest possible convenience.

By copy of this e-mail to the attorneys for the Plaintiff and to Defendant Ms. LeFebvre, we are advising of the pending Motions and our request for an expedited hearing. Although they have indicated that they have specifically not made an appearance for Ms. LeFebvre in this action, attorneys Heath Gilbert and Laura Budd appeared at the underlying motion hearing, and are representing Ms. LeFebvre in related litigation in federal Court. Out of an abundance of caution and fairness, I am also copying them on this e-mail since the matter may affect their client's interest in the pending federal court litigation.

I appreciate the Court's consideration of an expedited hearing on this matter, if the Court deems one necessary. I look forward to hearing from you shortly.

Yours Very Truly,  
**BERNSTEIN & BERNSTEIN, P.A.**

*Robert A. Bernstein*

Robert A. Bernstein  
Post Office Box 20519      5418-B Rivers Avenue  
Charleston, SC 29413-0519    N. Charleston, SC 29406-6129  
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell)  
[rbernstein@bernsteinpa.com](mailto:rbernstein@bernsteinpa.com)

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**From:** Kimball, Jack [<mailto:jack.kimball@yorkcountygov.com>]  
**Sent:** Friday, March 10, 2017 3:57 PM  
**To:** Robert Bernstein <[RBernstein@bernsteinpa.com](mailto:RBernstein@bernsteinpa.com)>

Cc: Jane Smith <JSmith@bernsteinpa.com>; Motz, Maryann <Maryann.Motz@yorkcountygov.com>

Subject: RE: Blanco GMBH+CO.KG #14-3272

Bob:

Attached is an order in this case, which I have signed and am sending to the Clerk to be filed. The Clerk will send you a filed copy. To expedite receiving a filed copy, you should contact the Clerk's office.

Thank you.

Jack Kimball

S Jackson Kimball

Master in Equity

*York County*

Phone: 803-628-3930



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**From:** Robert Bernstein [<mailto:RBernstein@bernsteinpa.com>]

**Sent:** Tuesday, March 07, 2017 5:12 PM

**To:** Kimball, Jack

**Cc:** Jane Smith

**Subject:** RE: Blanco GMBH+CO.KG #14-3272

Judge Kimball:

I apologize for the delay in getting you this proposed Order.. I have attached the proposed Order for your signature and entry. Thank you for your consideration.

Yours Very Truly,

BERNSTEIN & BERNSTEIN, P.A.

*Robert A. Bernstein*

Robert A. Bernstein  
Post Office Box 20519      5418-B Rivers Avenue  
Charleston, SC 29413-0519      N. Charleston, SC 29406-6129  
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell)  
[rbernstein@bernsteinpa.com](mailto:rbernstein@bernsteinpa.com)

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**From:** Kimball, Jack [<mailto:jack.kimball@yorkcountygov.com>]  
**Sent:** Monday, February 27, 2017 11:42 AM  
**To:** Robert Bernstein <[RBernstein@bernsteinpa.com](mailto:RBernstein@bernsteinpa.com)>  
**Subject:** RE: Blanco GMBH+CO.KG #14-3272

Bob,

My notes indicate that you were also going to send an order on the motion to intervene. Please send me that one at your earliest convenience. If you have sent it, & I've misplaced it, I apologize.

Thanks.

Jack Kimball

S Jackson Kimball  
Master in Equity  
York County

Phone: 803-628-3930



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**From:** Robert Bernstein [<mailto:RBernstein@bernsteinpa.com>]  
**Sent:** Thursday, February 16, 2017 4:02 PM  
**To:** Kimball, Jack  
**Cc:** Motz, Maryann; Brown, Emily; Kendree, Michael; Kenneth Raynor; [JFGALLAGHER@nmmlaw.com](mailto:JFGALLAGHER@nmmlaw.com); [ABhatt@nmmlaw.com](mailto:ABhatt@nmmlaw.com); Heath Gilbert; Laura Budd ([lbudd@thebuddlawgroup.com](mailto:lbudd@thebuddlawgroup.com)); Brown, Dave; Dan Ballou  
**Subject:** RE: Blanco GMBH+CO.KG #14-3272

Judge Kimball:

Pursuant to your ruling in the above referenced action at the hearing this morning, we are submitting the proposed Order granting the writ of mandamus in the above action. By copy of this e-mail to all interested counsel, we are providing them with a copy of the proposed Order for their review. Should you need any further submissions from this office, please feel free to contact me.

Yours Very Truly,

**BERNSTEIN & BERNSTEIN, P.A.**

*Robert A. Bernstein*

Robert A. Bernstein  
Post Office Box 20519 5418-B Rivers Avenue  
Charleston, SC 29413-0519 N. Charleston, SC 29406-6129  
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell)  
[rbernstein@bernsteinpa.com](mailto:rbernstein@bernsteinpa.com)

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**From:** Kimball, Jack [<mailto:jack.kimball@yorkcountygov.com>]  
**Sent:** Tuesday, February 14, 2017 4:38 PM  
**To:** Robert Bernstein <[RBernstein@bernsteinpa.com](mailto:RBernstein@bernsteinpa.com)>  
**Cc:** Motz, Maryann <[Maryann.Motz@yorkcountygov.com](mailto:Maryann.Motz@yorkcountygov.com)>; Brown, Emily <[Emily.Brown@yorkcountygov.com](mailto:Emily.Brown@yorkcountygov.com)>; Kendree, Michael <[michael.kendree@yorkcountygov.com](mailto:michael.kendree@yorkcountygov.com)>; Kenneth Raynor <[Ken@Raynorlawfirm.com](mailto:Ken@Raynorlawfirm.com)>; [JFGALLAGHER@nmmlaw.com](mailto:JFGALLAGHER@nmmlaw.com); [ABhatt@nmmlaw.com](mailto:ABhatt@nmmlaw.com)  
**Subject:** RE: Blanco GMBH+CO.KG #14-3272

10-4. See you all then.

S Jackson Kimball  
Master in Equity  
York County

Phone: 803-628-3930



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**From:** Robert Bernstein [<mailto:RBernstein@bernsteinpa.com>]  
**Sent:** Tuesday, February 14, 2017 4:30 PM  
**To:** Kimball, Jack  
**Cc:** Motz, Maryann; Brown, Emily; Kendree, Michael; Kenneth Raynor; [JFGALLAGHER@nmmlaw.com](mailto:JFGALLAGHER@nmmlaw.com); [ABhatt@nmmlaw.com](mailto:ABhatt@nmmlaw.com)  
**Subject:** RE: Blanco GMBH+CO.KG #14-3272

Judge Kimball:

Mr. Hamilton has agreed that the hearing should go forward on Thursday morning as scheduled. Thank you.

Yours Very Truly,  
BERNSTEIN & BERNSTEIN, P.A.

*Robert A. Bernstein*

Robert A. Bernstein  
Post Office Box 20519      5418-B Rivers Avenue  
Charleston, SC 29413-0519    N. Charleston, SC 29406-6129  
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell)  
[rbernstein@bernsteinpa.com](mailto:rbernstein@bernsteinpa.com)

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**From:** Kimball, Jack [<mailto:jack.kimball@yorkcountygov.com>]  
**Sent:** Tuesday, February 14, 2017 1:20 PM  
**To:** Robert Bernstein <[RBernstein@bernsteinpa.com](mailto:RBernstein@bernsteinpa.com)>  
**Cc:** Motz, Maryann <[Maryann.Motz@yorkcountygov.com](mailto:Maryann.Motz@yorkcountygov.com)>; Brown, Emily <[Emily.Brown@yorkcountygov.com](mailto:Emily.Brown@yorkcountygov.com)>;  
Kendree, Michael <[michael.kendree@yorkcountygov.com](mailto:michael.kendree@yorkcountygov.com)>  
**Subject:** RE: Blanco GMBH+CO.KG #14-3272

Bob,

Thank you for the quick response. I spoke with Emily Brown, who was not aware of the motion (and would not necessarily be), not Michael Kendree. I will let them decide how they want to deal with the motion. I look forward to seeing you Thursday.

Jack Kimball

S Jackson Kimball  
Master in Equity  
York County  
  
Phone: 803-628-3930



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**From:** Robert Bernstein [<mailto:RBernstein@bernsteinpa.com>]  
**Sent:** Tuesday, February 14, 2017 12:46 PM  
**To:** Kimball, Jack  
**Cc:** Motz, Maryann; Brown, Emily  
**Subject:** RE: Blanco GMBH+CO.KG #14-3272

Judge Kimball:

The County attorney is aware of the Motion. On January 30, I spoke with him at length about it, and sent him the motion and the memorandum. He indicated it was not a problem. Set out below are the e-mails confirming this.

Yours Very Truly,  
BERNSTEIN & BERNSTEIN, P.A.

# Robert A. Bernstein

Robert A. Bernstein  
Post Office Box 20519 5418-B Rivers Avenue  
Charleston, SC 29413-0519 N. Charleston, SC 29406-6129  
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell)  
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-----Original Message-----

From: Robert Bernstein  
Sent: Thursday, February 09, 2017 4:00 PM  
To: 'Michael.Kedree@yorkcountygov.com' <[Michael.Kedree@yorkcountygov.com](mailto:Michael.Kedree@yorkcountygov.com)>  
Cc: Jane Smith <[JSmith@bernsteinpa.com](mailto:JSmith@bernsteinpa.com)>; 'JFGALLAGHER@nmmlaw.com' <[JFGALLAGHER@nmmlaw.com](mailto:JFGALLAGHER@nmmlaw.com)>; 'ABhatt@nmmlaw.com' <[ABhatt@nmmlaw.com](mailto:ABhatt@nmmlaw.com)>; 'Kenneth Raynor' <[Ken@Raynorlawfirm.com](mailto:Ken@Raynorlawfirm.com)>  
Subject: RE: Motion "MOTION-Motion For Writ of Mandamus To Require Clerk to Enter Judg" for Case "2014CP4603272-Blanco GMBH CO KG VS Vito Antonio Laera , defendant, et al" was added to a Motions Roster for 2/16/2017 at 2:00 PM

Michael:

I wanted to let you know that the motion hearing originally scheduled for February 16, 2017 at 2:00 p.m. has been moved to 9:00 a.m. that same morning. I will be filing a memorandum in support with the Court and once I do, I will provide you with a copy.

Yours Very Truly,  
BERNSTEIN & BERNSTEIN, P.A.  
Robert A. Bernstein

Robert A. Bernstein  
Post Office Box 20519 5418-B Rivers Avenue Charleston, SC 29413-0519 N. Charleston, SC 29406-6129  
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell) [rbernstein@bernsteinpa.com](mailto:rbernstein@bernsteinpa.com) This message is intended solely for review by the person to whom it is addressed at the beginning of this electronic mail. To ensure compliance with US IRS Circular 230, please be advised that any US federal tax advice contained in this communication (including any attachment) is not intended or written to be used, and cannot be used, for the purpose of (I) avoiding penalties under the IRC or (II) promoting, marketing, or recommending to another party any transaction or matter addressed herein. This advice may not be forwarded without our express written consent

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-----Original Message-----

From: Robert Bernstein

Sent: Monday, January 30, 2017 1:02 PM

To: 'Michael.Kedree@yorkcountygov.com' <Michael.Kedree@yorkcountygov.com>

Cc: Jane Smith <JSmith@bernsteinpa.com>; JFGALLAGHER@nmmlaw.com; ABhatt@nmmlaw.com; 'Kenneth Raynor' <Ken@Raynorlawfirm.com>

Subject: FW: Motion "MOTION-Motion For Writ of Mandamus To Require Clerk to Enter Judg" for Case "2014CP4603272- Blanco GMBH CO KG VS Vito Antonio Laera , defendant, et al" was added to a Motions Roster for 2/16/2017 at 2:00 PM

Michael:

Thank you for speaking with me this morning. As the York County attorney, I believe you may need to represent the County and the Clerk of Court with respect to a Motion for a Writ of Mandamus which has been filed affecting the York County Clerk of Court (attached).

As I advised, I represent a judgment creditor who had filed a Notice of Filing of Foreign Judgment in York County. That case is Blanco GMBH + Co. v. Vito Antonio Laera, Case No. 2014-CP-46-3272 (attached). After the case was filed on October 3, 2014, there was difficulty in finding Mr. Laera to effect service; he was eventually served in 2016. When we submitted the affidavit of service, we were instructed to submit a proposed Order to have the Judgment entered on the judgment rolls. I advised the Deputy Clerk that under the statute, the judgment was supposed to be entered on the judgment rolls at the time the foreign judgment was filed, i.e., back in 2014. She indicated that the Clerk's manual indicated that the judgment was not to be filed on the judgment rolls until 30 days after service of the debtor. She then called court administration, and was informed that no, it was to be filed when the foreign judgment was filed. She indicated, however, that she Would not backdate the date of placement on the judgment rolls and would only do so as of that date, i.e., in 2016.

The reason for the urgency of filing the judgment in 2014 vs. 2016 has to do with the date of the transfer of some property by the judgment debtor. In April 2014, the asserted spouse of Mr. Laera, Suzette LeFebvre, began a Family Court action in York County (Case No. 2014-DR-46-0623). An Consent Order of Divorce was entered on October 31, 2014, under which ownership of a valuable parcel of property was transferred from the judgment debtor to his purported spouse. This was, however, several weeks after the judgment should have been entered on the judgment rolls, and thus have been a prior lien against the property. The "spouse" has asserted that the judgment was not entered on the judgment rolls until 2016, and thus that the transfer to her has priority over our judgment lien.

I have made a Motion for a Writ of Mandamus in the 2014 Foreign Judgment case to require the Clerk of Court for York County to enter the judgment on the Judgment Roll effective as of October 3, 2014. The statute at issue is S.C. Code Ann. 15-35-920(B), which states:

(B) Upon the filing of the foreign judgment and the affidavit, the foreign judgment must be docketed and indexed in the same manner as a judgment of this State; however, no foreign judgment may be indexed if contested until resolved and no execution may issue upon the foreign judgment nor may any other proceeding be taken for its enforcement until the expiration of thirty days from the date upon which notice of filing is served in accordance with Section 15-35-930.

The property at issue is property located at 419 York Southern Road, Fort Mill, SC; the tax map number is 728-00-00-030.

As I advised when we spoke, the filing of the foreign judgment action and the family court action are only two of several cases between the parties. In addition, there is a federal court action (Case No. 0:15-cv-2199-TLW) in which a Lis Pendens is filed with York County (No. 2015-LP-46-0428); a second foreign judgment which has been filed by my client

against Mr. Laera (Case No. 2016-CP-46-1403); a foreclosure action which has been filed against the property (Case No. 2016-CP-46-2920) and a Specific Performance action by a contract purchaser of the property (2016-CP-46-3382).

In light of the fact that the writ is sought to require the Clerk of Court to perform a statutory requirement, we are putting you on notice, as legal representative for the County, as to the pending Motion and the hearing date. After looking into the matter and meeting with the Clerk of Court, please let us know in advance the position, if any, that the Clerk of Court intends to take in this matter. By copy of this e-mail to Ken Raynor, attorney for the Defendant Mr. Laera, we are advising him of this communication and of your involvement in the matter. I look forward to hearing from you shortly.

Yours Very Truly,  
BERNSTEIN & BERNSTEIN, P.A.

Robert A. Bernstein

Robert A. Bernstein  
Post Office Box 20519 5418-B Rivers Avenue Charleston, SC 29413-0519 N. Charleston, SC 29406-6129  
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell) rbernstein@bernsteinpa.com This message is intended solely for review by the person to whom it is addressed at the beginning of this electronic mail. To ensure compliance with US IRS Circular 230, please be advised that any US federal tax advice contained in this communication (including any attachment) is not intended or written to be used, and cannot be used, for the purpose of (I) avoiding penalties under the IRC or (II) promoting, marketing, or recommending to another party any transaction or matter addressed herein. This advice may not be forwarded without our express written consent

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-----Original Message-----

From: Courtmail46\_DoNotReply@sccourts.org [mailto:Courtmail46\_DoNotReply@sccourts.org]  
Sent: Wednesday, January 25, 2017 8:52 AM  
To: Robert Bernstein <RBernstein@bernsteinpa.com>  
Subject: Motion "MOTION-Motion For Writ of Mandamus To Require Clerk to Enter Judg" for Case "2014CP4603272-Blanco GMBH CO KG VS Vito Antonio Laera , defendant, et al" was added to a Motions Roster for 2/16/2017 at 2:00 PM

You have a case that appears on the February 16, 2017 York County Motions Roster before Judge S. Jackson Kimball. These hearings will be held at the Historic York Courthouse, Courtroom 2 located at 2 South Congress Street, York SC, 29745. These hearings are scheduled at 9:00 am, 11:00 am & 2:00 pm. You can visit [www.sccourts.org](http://www.sccourts.org) to view the Motions Roster for your hearing time(s). Please notify me by email if your case settles or is continued. This will allow me to update the online roster.

Lynn Strait  
Court Coordinator  
York County Court of Common Pleas  
[lynn.strait@yorkcountygov.com](mailto:lynn.strait@yorkcountygov.com)

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From: Kimball, Jack [<mailto:jack.kimball@yorkcountygov.com>]
Sent: Tuesday, February 14, 2017 12:01 PM
To: Robert Bernstein <RBernstein@bernsteinpa.com>
Cc: Motz, Maryann <Maryann.Motz@yorkcountygov.com>; Brown, Emily <Emily.Brown@yorkcountygov.com>
Subject: Blanco GMBH+CO.KG #14-3272

Bob,

In looking through this file for Thursday's motion, I do not find that the Clerk of Court has been served with the motion. Can you give me some information about that? Should the motion be postponed until that is done? The County attorney is unaware of the motion. Please let me know.

Thanks.

Jack Kimball

S Jackson Kimball
Master in Equity
Master in Equity
York County

jack.kimball@yorkcountygov.com
Phone: 803-628-3930



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btvl==2524a132d6a==maryann.motz@yorkcountygov.com

Low (90): Pass

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Heath Gilbert

From: Heath Gilbert
Sent: Monday, March 20, 2017 1:40 PM
To: Dan Ballou; Robert Bernstein; Motz, Maryann
Cc: Jane Smith; David W. Brown Jr. (DBrown@HorackTalley.com); Laura Budd; JFGALLAGHER@nmmlaw.com; ABhatt@nmmlaw.com; zette222@gmail.com
Subject: RE: Triple M. Partners v. Suzette LeFebvre and Blanco GMBH+CO.KG; #16-3382

Ms. Motz,

I have not been asked to make an appearance by Ms. Lefebvre in this matter. I am available if the Court wants me to be there on Wednesday. Ms. Lefebvre is in Florida and likely unable to travel. She might be available by telephone. I am by way of this email asking her to please respond to you as to her availability telephonically if the Court would so permit.

M. Heath Gilbert, Jr.
BAUCOM CLAYTOR
200 Providence Road, Suite 106
Charlotte, NC 28207
704-376-6527 (ph) Ext. 2014
704-376-6207 (fx)
www.baucomclaytor.com

From: Dan Ballou [mailto:Dan.Ballou@mortongettys.com]
Sent: Monday, March 20, 2017 12:03 PM
To: Robert Bernstein; Motz, Maryann
Cc: Jane Smith; David W. Brown Jr. (DBrown@HorackTalley.com); Heath Gilbert; Laura Budd; JFGALLAGHER@nmmlaw.com; ABhatt@nmmlaw.com; zette222@gmail.com
Subject: RE: Triple M. Partners v. Suzette LeFebvre and Blanco GMBH+CO.KG; #16-3382

Maryann;

I am just now getting into this email chain. I am available Wednesday morning both times.

Thank you,

Dan

Daniel J Ballou, Senior Counsel
Attorney at Law
MORTON & GETTYS
Fountain Park Place
331 E Main St Suite 300
PO Box 707
Rock Hill, SC 29731

Main Tel: 803.366.3388
Fax: 803.366.4044
Web: www.mortongettys.com

MORTON & GETTYS

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ANY TAX RELATED MATTER ADDRESSED HEREIN.

From: Robert Bernstein [<mailto:RBernstein@bernsteinpa.com>]
Sent: Monday, March 20, 2017 11:58 AM
To: zette222@gmail.com; Dan Ballou <Dan.Ballou@mortongettys.com>
Cc: Jane Smith <JSmith@bernsteinpa.com>; David W. Brown Jr. (DBrown@HorackTalley.com) <DBrown@HorackTalley.com>; Heath Gilbert <hgilbert@baucomclaytor.com>; Laura Budd <lbudd@thebuddlawgroup.com>; JFGALLAGHER@nmmlaw.com; ABhatt@nmmlaw.com; Motz, Maryann <Maryann.Motz@yorkcountygov.com>
Subject: RE: Triple M. Partners v. Suzette LeFebvre and Blanco GMBH+CO.KG; #16-3382
Importance: High

Dan and Ms. LeFebvre:

I am available either of the times suggested by the Court. Ms. LeFebvre, if you wish, I would not object to your participation by telephone, if that is agreeable to the Court. Please identify which of the designated times are acceptable to you so that we can advise the Court. I look forward to hearing from you shortly.

Yours Very Truly,
BERNSTEIN & BERNSTEIN, P.A.

Robert A. Bernstein

Robert A. Bernstein
Post Office Box 20519 5418-B Rivers Avenue
Charleston, SC 29413-0519 N. Charleston, SC 29406-6129
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell)
rbernstein@bernsteinpa.com

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From: Motz, Maryann [<mailto:Maryann.Motz@yorkcountygov.com>]
Sent: Monday, March 20, 2017 9:30 AM
To: Robert Bernstein <RBernstein@bernsteinpa.com>
Cc: Jane Smith <JSmith@bernsteinpa.com>; Dan Ballou <Dan.Ballou@mortongettys.com>; David W. Brown Jr. (DBrown@HorackTalley.com) <DBrown@HorackTalley.com>; Heath Gilbert <hgilbert@baucomclaytor.com>; Laura Budd <lbudd@thebuddlawgroup.com>; JFGALLAGHER@nmmlaw.com; ABhatt@nmmlaw.com; zette222@gmail.com
Subject: RE: Triple M. Partners v. Suzette LeFebvre and Blanco GMBH+CO.KG; #16-3382
Importance: High

Good morning,

Judge Kimball has reviewed Mr. Bernstein's email and asked that I schedule an expedited hearing. We have time available Tuesday, 3-21-17 at 1:30 or Wednesday, 3-22-17 at either 9:30 or 10:00. Please coordinate and respond so I can confirm a date/time. I appreciate everyone's help.

Thank you,
Mary Ann

Maryann Motz
Associate Court Clerk
York County

Phone: 803-628-3930



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From: Robert Bernstein [<mailto:RBernstein@bernsteinpa.com>]

Sent: Friday, March 17, 2017 5:58 PM

To: Kimball, Jack

Cc: Jane Smith; Motz, Maryann; Dan Ballou; David W. Brown Jr. (DBrown@HorackTalley.com); Heath Gilbert; Laura Budd; JFGALLAGHER@nmmlaw.com; ABhatt@nmmlaw.com; zette222@gmail.com

Subject: RE: Triple M. Partners v. Suzette LeFebvre and Blanco GMBH+CO.KG; #16-3382

Judge Kimball:

On February 23, 2017, you entered a Default Judgment Order in this action (attached). At the time of the hearing, we had a Motion to Intervene pending, which had not yet been granted. You ordered that the Defendant execute the necessary documents to transfer clear title to the Plaintiff, and that the proceeds after payment of the mortgage be deposited with the Court. My client claims a lien against the real estate; your Order, however, did not address the transfer of that judgment lien to the proceeds of sale. I have found no statutory authority for the transfer of the lien in the event of a court ordered sale. The closing was scheduled for yesterday, but my client has refused to release the judgment liens against the property unless the judgment lien against the property is transferred to the proceeds of the sale. The Defendant has refused to sign a proposed Stipulation I had drafted to that effect. The closing cannot therefore occur as presently situated.

We have made a motion 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; we have also asked that any hearing on the motion be expedited due to the closing (attached). A Motion for an Order of Reference was also delivered to your office. In light of the exigency of this matter,

we would respectfully request that a hearing on this motion be expedited and scheduled at your earliest possible convenience.

By copy of this e-mail to the attorneys for the Plaintiff and to Defendant Ms. LeFebvre, we are advising of the pending Motions and our request for an expedited hearing. Although they have indicated that they have specifically not made an appearance for Ms. LeFebvre in this action, attorneys Heath Gilbert and Laura Budd appeared at the underlying motion hearing, and are representing Ms. LeFebvre in related litigation in federal Court. Out of an abundance of caution and fairness, I am also copying them on this e-mail since the matter may affect their client's interest in the pending federal court litigation.

I appreciate the Court's consideration of an expedited hearing on this matter, if the Court deems one necessary. I look forward to hearing from you shortly.

Yours Very Truly,

BERNSTEIN & BERNSTEIN, P.A.

Robert A. Bernstein

Robert A. Bernstein
Post Office Box 20519 5418-B Rivers Avenue
Charleston, SC 29413-0519 N. Charleston, SC 29406-6129
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell)
rbernstein@bernsteinpa.com

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From: Kimball, Jack [<mailto:jack.kimball@yorkcountygov.com>]
Sent: Friday, March 10, 2017 3:57 PM
To: Robert Bernstein <RBernstein@bernsteinpa.com>
Cc: Jane Smith <JSmith@bernsteinpa.com>; Motz, Maryann <Maryann.Motz@yorkcountygov.com>
Subject: RE: Blanco GMBH+CO.KG #14-3272

Bob:

Attached is an order in this case, which I have signed and am sending to the Clerk to be filed. The Clerk will send you a filed copy. To expedite receiving a filed copy, you should contact the Clerk's office.

Thank you.

Jack Kimball

S Jackson Kimball
Master in Equity
York County

Phone: 803-628-3930



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From: Robert Bernstein [<mailto:RBernstein@bernsteinpa.com>]
Sent: Tuesday, March 07, 2017 5:12 PM
To: Kimball, Jack
Cc: Jane Smith
Subject: RE: Blanco GMBH+CO.KG #14-3272

Judge Kimball:

I apologize for the delay in getting you this proposed Order.. I have attached the proposed Order for your signature and entry. Thank you for your consideration.

Yours Very Truly,
BERNSTEIN & BERNSTEIN, P.A.

Robert A. Bernstein

Robert A. Bernstein
Post Office Box 20519 5418-B Rivers Avenue
Charleston, SC 29413-0519 N. Charleston, SC 29406-6129
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell)
rbernstein@bernsteinpa.com

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From: Kimball, Jack [<mailto:jack.kimball@yorkcountygov.com>]
Sent: Monday, February 27, 2017 11:42 AM
To: Robert Bernstein <RBernstein@bernsteinpa.com>
Subject: RE: Blanco GMBH+CO.KG #14-3272

Bob,

My notes indicate that you were also going to send an order on the motion to intervene. Please send me that one at your earliest convenience. If you have sent it, & I've misplaced it, I apologize.

Thanks.

Jack Kimball

S. Jackson Kimball
Master in Equity
York County

Phone: 803-628-3930



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From: Robert Bernstein [<mailto:RBernstein@bernsteinpa.com>]
Sent: Thursday, February 16, 2017 4:02 PM
To: Kimball, Jack
Cc: Motz, Maryann; Brown, Emily; Kendree, Michael; Kenneth Raynor; JFGALLAGHER@nmmlaw.com; ABhatt@nmmlaw.com; Heath Gilbert; Laura Budd (lbudd@thebuddlawgroup.com); Brown, Dave; Dan Ballou
Subject: RE: Blanco GMBH+CO.KG #14-3272

Judge Kimball:

Pursuant to your ruling in the above referenced action at the hearing this morning, we are submitting the proposed Order granting the writ of mandamus in the above action. By copy of this e-mail to all interested counsel, we are

providing them with a copy of the proposed Order for their review. Should you need any further submissions from this office, please feel free to contact me.

Yours Very Truly,
BERNSTEIN & BERNSTEIN, P.A.

Robert A. Bernstein

Robert A. Bernstein
Post Office Box 20519 5418-B Rivers Avenue
Charleston, SC 29413-0519 N. Charleston, SC 29406-6129
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell)
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From: Kimball, Jack [<mailto:jack.kimball@yorkcountygov.com>]
Sent: Tuesday, February 14, 2017 4:38 PM
To: Robert Bernstein <RBernstein@bernsteinpa.com>
Cc: Motz, Maryann <Maryann.Motz@yorkcountygov.com>; Brown, Emily <Emily.Brown@yorkcountygov.com>;
Kendree, Michael <michael.kendree@yorkcountygov.com>; Kenneth Raynor <Ken@Raynorlawfirm.com>;
JFGALLAGHER@nmmlaw.com; ABhatt@nmmlaw.com
Subject: RE: Blanco GMBH+CO.KG #14-3272

10-4. See you all then.

S Jackson Kimball
Master in Equity
York County

Phone: 803-628-3930



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From: Robert Bernstein [<mailto:RBernstein@bernsteinpa.com>]
Sent: Tuesday, February 14, 2017 4:30 PM
To: Kimball, Jack
Cc: Motz, Maryann; Brown, Emily; Kendree, Michael; Kenneth Raynor; JFGALLAGHER@nmmlaw.com; ABhatt@nmmlaw.com
Subject: RE: Blanco GMBH+CO.KG #14-3272

Judge Kimball:

Mr. Hamilton has agreed that the hearing should go forward on Thursday morning as scheduled. Thank you.

Yours Very Truly,
BERNSTEIN & BERNSTEIN, P.A.

Robert A. Bernstein

Robert A. Bernstein
Post Office Box 20519 5418-B Rivers Avenue
Charleston, SC 29413-0519 N. Charleston, SC 29406-6129
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell)
rbernstein@bernsteinpa.com

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From: Kimball, Jack [<mailto:jack.kimball@yorkcountygov.com>]
Sent: Tuesday, February 14, 2017 1:20 PM
To: Robert Bernstein <RBernstein@bernsteinpa.com>
Cc: Motz, Maryann <Maryann.Motz@yorkcountygov.com>; Brown, Emily <Emily.Brown@yorkcountygov.com>; Kendree, Michael <michael.kendree@yorkcountygov.com>
Subject: RE: Blanco GMBH+CO.KG #14-3272

Bob,

Thank you for the quick response. I spoke with Emily Brown, who was not aware of the motion (and would not necessarily be), not Michael Kendree. I will let them decide how they want to deal with the motion. I look forward to seeing you Thursday.

Jack Kimball

S Jackson Kimball
Master in Equity
York County

Phone: 803-628-3930



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From: Robert Bernstein [<mailto:RBernstein@bernsteinpa.com>]

Sent: Tuesday, February 14, 2017 12:46 PM

To: Kimball, Jack

Cc: Motz, Maryann; Brown, Emily

Subject: RE: Blanco GMBH+CO.KG #14-3272

Judge Kimball:

The County attorney is aware of the Motion. On January 30, I spoke with him at length about it, and sent him the motion and the memorandum. He indicated it was not a problem. Set out below are the e-mails confirming this.

Yours Very Truly,

BERNSTEIN & BERNSTEIN, P.A.

Robert A. Bernstein

Robert A. Bernstein
Post Office Box 20519 5418-B Rivers Avenue
Charleston, SC 29413-0519 N. Charleston, SC 29406-6129
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell)
rbernstein@bernsteinpa.com

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-----Original Message-----

From: Robert Bernstein

Sent: Thursday, February 09, 2017 4:00 PM

To: 'Michael.Kedree@yorkcountygov.com' <Michael.Kedree@yorkcountygov.com>

Cc: Jane Smith <JSmith@bernsteinpa.com>; 'JFGALLAGHER@nmmlaw.com' <JFGALLAGHER@nmmlaw.com>;

'ABhatt@nmmlaw.com' <ABhatt@nmmlaw.com>; 'Kenneth Raynor' <Ken@Raynorlawfirm.com>

Subject: RE: Motion "MOTION-Motion For Writ of Mandamus To Require Clerk to Enter Judg" for Case "2014CP4603272-Blanco GMBH CO KG VS Vito Antonio Laera , defendant, et al" was added to a Motions Roster for 2/16/2017 at 2:00 PM

Michael:

I wanted to let you know that the motion hearing originally scheduled for February 16, 2017 at 2:00 p.m. has been moved to 9:00 a.m. that same morning. I will be filing a memorandum in support with the Court and once I do, I will provide you with a copy.

Yours Very Truly,
BERNSTEIN & BERNSTEIN, P.A.
Robert A. Bernstein

Robert A. Bernstein

Post Office Box 20519 5418-B Rivers Avenue Charleston, SC 29413-0519 N. Charleston, SC 29406-6129
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell) rbernstein@bernsteinpa.com This message is intended solely for review by the person to whom it is addressed at the beginning of this electronic mail. To ensure compliance with US IRS Circular 230, please be advised that any US federal tax advice contained in this communication (including any attachment) is not intended or written to be used, and cannot be used, for the purpose of (I) avoiding penalties under the IRC or (II) promoting, marketing, or recommending to another party any transaction or matter addressed herein. This advice may not be forwarded without our express written consent

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-----Original Message-----

From: Robert Bernstein

Sent: Monday, January 30, 2017 1:02 PM

To: 'Michael.Kedree@yorkcountygov.com' <Michael.Kedree@yorkcountygov.com>

Cc: Jane Smith <JSmith@bernsteinpa.com>; JFGALLAGHER@nmmlaw.com; ABhatt@nmmlaw.com; 'Kenneth Raynor' <Ken@Raynorlawfirm.com>

Subject: FW: Motion "MOTION-Motion For Writ of Mandamus To Require Clerk to Enter Judg" for Case "2014CP4603272- Blanco GMBH CO KG VS Vito Antonio Laera , defendant, et al" was added to a Motions Roster for 2/16/2017 at 2:00 PM

Michael:

Thank you for speaking with me this morning. As the York County attorney, I believe you may need to represent the County and the Clerk of Court with respect to a Motion for a Writ of Mandamus which has been filed affecting the York County Clerk of Court (attached).

As I advised, I represent a judgment creditor who had filed a Notice of Filing of Foreign Judgment in York County. That case is Blanco GMBH + Co. v. Vito Antonio Laera, Case No. 2014-CP-46-3272 (attached). After the case was filed on October 3, 2014, there was difficulty in finding Mr. Laera to effect service; he was eventually served in 2016. When we submitted the affidavit of service, we were instructed to submit a proposed Order to have the Judgment entered on the judgment rolls. I advised the Deputy Clerk that under the statute, the judgment was supposed to be entered on the judgment rolls at the time the foreign judgment was filed, i.e., back in 2014. She indicated that the Clerk's manual indicated that the judgment was not to be filed on the judgment rolls until 30 days after service of the debtor. She then called court administration, and was informed that no, it was to be filed when the foreign judgment was filed. She indicated, however, that she Would not backdate the date of placement on the judgment rolls and would only do so as of that date, i.e., in 2016.

The reason for the urgency of filing the judgment in 2014 vs. 2016 has to do with the date of the transfer of some property by the judgment debtor. In April 2014, the asserted spouse of Mr. Laera, Suzette LeFebvre, began a Family Court action in York County (Case No. 2014-DR-46- 0623). An Consent Order of Divorce was entered on October 31, 2014, under which ownership of a valuable parcel of property was transferred from the judgment debtor to his purported spouse. This was, however, several weeks after the judgment should have been entered on the judgment rolls, and thus have been a prior lien against the property. The "spouse" has asserted that the judgment was not entered on the judgment rolls until 2016, and thus that the transfer to her has priority over our judgment lien.

I have made a Motion for a Writ of Mandamus in the 2014 Foreign Judgment case to require the Clerk of Court for York County to enter the judgment on the Judgment Roll effective as of October 3, 2014. The statute at issue is S.C. Code Ann. 15-35-920(B), which states:

(B) Upon the filing of the foreign judgment and the affidavit, the foreign judgment must be docketed and indexed in the same manner as a judgment of this State; however, no foreign judgment may be indexed if contested until resolved and no execution may issue upon the foreign judgment nor may any other proceeding be taken for its enforcement until the expiration of thirty days from the date upon which notice of filing is served in accordance with Section 15-35-930.

The property at issue is property located at 419 York Southern Road, Fort Mill, SC; the tax map number is 728-00-00-030.

As I advised when we spoke, the filing of the foreign judgment action and the family court action are only two of several cases between the parties. In addition, there is a federal court action (Case No. 0:15-cv-2199-TLW) in which a Lis Pendens is filed with York County (No. 2015-LP-46-0428); a second foreign judgment which has been filed by my client against Mr. Laera (Case No. 2016-CP-46-1403); a foreclosure action which has been filed against the property (Case No. 2016-CP-46-2920) and a Specific Performance action by a contract purchaser of the property (2016-CP-46-3382).

In light of the fact that the writ is sought to require the Clerk of Court to perform a statutory requirement, we are putting you on notice, as legal representative for the County, as to the pending Motion and the hearing date. After looking into the matter and meeting with the Clerk of Court, please let us know in advance the position, if any, that the Clerk of Court intends to take in this matter. By copy of this e-mail to Ken Raynor, attorney for the Defendant Mr. Laera, we are advising him of this communication and of your involvement in the matter. I look forward to hearing from you shortly.

Yours Very Truly,
BERNSTEIN & BERNSTEIN, P.A.

Robert A. Bernstein

Robert A. Bernstein
Post Office Box 20519 5418-B Rivers Avenue Charleston, SC 29413-0519 N. Charleston, SC 29406-6129
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell) rbernstein@bernsteinpa.com This message is intended solely for review by the person to whom it is addressed at the beginning of this electronic mail. To ensure compliance with US IRS Circular 230, please be advised that any US federal tax advice contained in this communication (including any attachment) is not intended or written to be used, and cannot be used, for the purpose of (I) avoiding penalties under the IRC or (II) promoting, marketing, or recommending to another party any transaction or matter addressed herein. This advice may not be forwarded without our express written consent

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-----Original Message-----

From: Courtmail46_DoNotReply@sccourts.org [mailto:Courtmail46_DoNotReply@sccourts.org]
Sent: Wednesday, January 25, 2017 8:52 AM
To: Robert Bernstein <RBernstein@bernsteinpa.com>
Subject: Motion "MOTION-Motion For Writ of Mandamus To Require Clerk to Enter Judg" for Case "2014CP4603272-Blanco GMBH CO KG VS Vito Antonio Laera , defendant, et al" was added to a Motions Roster for 2/16/2017 at 2:00 PM

You have a case that appears on the February 16, 2017 York County Motions Roster before Judge S. Jackson Kimball. These hearings will be held at the Historic York Courthouse, Courtroom 2 located at 2 South Congress Street, York SC, 29745. These hearings are scheduled at 9:00 am, 11:00 am & 2:00 pm. You can visit www.sccourts.org to view the Motions Roster for your hearing time(s). Please notify me by email if your case settles or is continued. This will allow me to update the online roster.

Lynn Strait
Court Coordinator
York County Court of Common Pleas
lynn.strait@yorkcountygov.com

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**From:** Kimball, Jack [<mailto:jack.kimball@yorkcountygov.com>]  
**Sent:** Tuesday, February 14, 2017 12:01 PM  
**To:** Robert Bernstein <[RBernstein@bernsteinpa.com](mailto:RBernstein@bernsteinpa.com)>  
**Cc:** Motz, Maryann <[Maryann.Motz@yorkcountygov.com](mailto:Maryann.Motz@yorkcountygov.com)>; Brown, Emily <[Emily.Brown@yorkcountygov.com](mailto:Emily.Brown@yorkcountygov.com)>  
**Subject:** Blanco GMBH+CO.KG #14-3272

Bob,

In looking through this file for Thursday's motion, I do not find that the Clerk of Court has been served with the motion. Can you give me some information about

that? Should the motion be postponed until that is done? The County attorney is unaware of the motion. Please let me know.

Thanks.

Jack Kimball

S Jackson Kimball

Master in Equity

*Master in Equity*

*York County*

---

[jack.kimball@yorkcountygov.com](mailto:jack.kimball@yorkcountygov.com)

Phone: 803-628-3930



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From: [dan.ballou@mortongettys.com](mailto:dan.ballou@mortongettys.com)

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## Heath Gilbert

---

**From:** Motz, Maryann <Maryann.Motz@yorkcountygov.com> ✓  
**Sent:** Monday, March 20, 2017 2:05 PM  
**To:** Heath Gilbert; Dan Ballou; Robert Bernstein  
**Cc:** Jane Smith; David W. Brown Jr. (DBrown@HorackTalley.com); Laura Budd; JFGALLAGHER@nmmlaw.com; ABhatt@nmmlaw.com; zette222@gmail.com  
**Subject:** RE: Triple M. Partners v. Suzette LeFebvre and Blanco GMBH+CO.KG; #16-3382

I would like to confirm for Wednesday, March 22<sup>nd</sup> at 9:30. Mr. Bernstein and Mr. Ballou are available for that date, and have responded. Judge Kimball will not allow Ms. Lefebvre to participate by telephone, but Mr. Gilbert may appear on her behalf at the hearing. I look forward to their responses.

There are others included in the email that have not responded; however, I will add the motion to the roster for March 22<sup>nd</sup> at 9:30 pending objection/responses.

Thank you,

Mary Ann

Maryann Motz  
Associate Court Clerk  
York County

Phone: 803-628-3930



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**From:** Heath Gilbert [mailto:hgilbert@baucomclaytor.com]  
**Sent:** Monday, March 20, 2017 1:40 PM  
**To:** Dan Ballou; Robert Bernstein; Motz, Maryann  
**Cc:** Jane Smith; David W. Brown Jr. (DBrown@HorackTalley.com); Laura Budd; JFGALLAGHER@nmmlaw.com; ABhatt@nmmlaw.com; zette222@gmail.com  
**Subject:** RE: Triple M. Partners v. Suzette LeFebvre and Blanco GMBH+CO.KG; #16-3382

Ms. Motz,

I have not been asked to make an appearance by Ms. Lefebvre in this matter. I am available if the Court wants me to be there on Wednesday. Ms. Lefebvre is in Florida and likely unable to travel. She might be available by telephone. I am by way of this email asking her to please respond to you as to her availability telephonically if the Court would so permit.

M. Heath Gilbert, Jr.  
**BAUCOM CLAYTOR**  
200 Providence Road, Suite 106  
Charlotte, NC 28207  
704-376-6527 (ph) Ext. 2014  
704-376-6207 (fx)  
[www.baucomclaytor.com](http://www.baucomclaytor.com)

**From:** Dan Ballou [<mailto:Dan.Ballou@mortongettys.com>]  
**Sent:** Monday, March 20, 2017 12:03 PM  
**To:** Robert Bernstein; Motz, Maryann  
**Cc:** Jane Smith; David W. Brown Jr. ([DBrown@HorackTalley.com](mailto:DBrown@HorackTalley.com)); Heath Gilbert; Laura Budd; [JFGALLAGHER@nmmlaw.com](mailto:JFGALLAGHER@nmmlaw.com); [ABhatt@nmmlaw.com](mailto:ABhatt@nmmlaw.com); [zette222@gmail.com](mailto:zette222@gmail.com)  
**Subject:** RE: Triple M. Partners v. Suzette LeFebvre and Blanco GMBH+CO.KG; #16-3382

Maryann;

I am just now getting into this email chain. I am available Wednesday morning both times.

Thank you,

Dan

Daniel J Ballou, Senior Counsel  
Attorney at Law  
**MORTON & GETTYS**  
Fountain Park Place  
331 E Main St Suite 300  
PO Box 707  
Rock Hill, SC 29731

Main Tel: 803.366.3388  
Fax: 803.366.4044  
Web: [www.mortongettys.com](http://www.mortongettys.com)

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## MORTON & GETTYS

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**From:** Robert Bernstein [<mailto:RBernstein@bernsteinpa.com>]  
**Sent:** Monday, March 20, 2017 11:58 AM  
**To:** [zette222@gmail.com](mailto:zette222@gmail.com); Dan Ballou <[Dan.Ballou@mortongettys.com](mailto:Dan.Ballou@mortongettys.com)>  
**Cc:** Jane Smith <[JSmith@bernsteinpa.com](mailto:JSmith@bernsteinpa.com)>; David W. Brown Jr. ([DBrown@HorackTalley.com](mailto:DBrown@HorackTalley.com)) <[DBrown@HorackTalley.com](mailto:DBrown@HorackTalley.com)>; Heath Gilbert <[hgilbert@baucomclaytor.com](mailto:hgilbert@baucomclaytor.com)>; Laura Budd <[lbudd@thebuddlawgroup.com](mailto:lbudd@thebuddlawgroup.com)>; [JFGALLAGHER@nmmlaw.com](mailto:JFGALLAGHER@nmmlaw.com); [ABhatt@nmmlaw.com](mailto:ABhatt@nmmlaw.com); Motz, Maryann <[Maryann.Motz@yorkcountygov.com](mailto:Maryann.Motz@yorkcountygov.com)>  
**Subject:** RE: Triple M. Partners v. Suzette LeFebvre and Blanco GMBH+CO.KG; #16-3382  
**Importance:** High

Dan and Ms. LeFebvre:

I am available either of the times suggested by the Court. Ms. LeFebvre, if you wish, I would not object to your participation by telephone, if that is agreeable to the Court. Please identify which of the designated times are acceptable to you so that we can advise the Court. I look forward to hearing from you shortly.

Yours Very Truly,  
**BERNSTEIN & BERNSTEIN, P.A.**

*Robert A. Bernstein*

Robert A. Bernstein  
Post Office Box 20519            5418-B Rivers Avenue  
Charleston, SC 29413-0519    N. Charleston, SC 29406-6129  
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell)  
[rbernstein@bernsteinpa.com](mailto:rbernstein@bernsteinpa.com)

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**From:** Motz, Maryann [<mailto:Maryann.Motz@yorkcountygov.com>]  
**Sent:** Monday, March 20, 2017 9:30 AM  
**To:** Robert Bernstein <[RBernstein@bernsteinpa.com](mailto:RBernstein@bernsteinpa.com)>  
**Cc:** Jane Smith <[JSmith@bernsteinpa.com](mailto:JSmith@bernsteinpa.com)>; Dan Ballou <[Dan.Ballou@mortongettys.com](mailto:Dan.Ballou@mortongettys.com)>; David W. Brown Jr. ([DBrown@HorackTalley.com](mailto:DBrown@HorackTalley.com)) <[DBrown@HorackTalley.com](mailto:DBrown@HorackTalley.com)>; Heath Gilbert <[hgilbert@baucomclaytor.com](mailto:hgilbert@baucomclaytor.com)>; Laura Budd <[lbudd@thebuddlawgroup.com](mailto:lbudd@thebuddlawgroup.com)>; [JFGALLAGHER@nmmlaw.com](mailto:JFGALLAGHER@nmmlaw.com); [ABhatt@nmmlaw.com](mailto:ABhatt@nmmlaw.com); [zette222@gmail.com](mailto:zette222@gmail.com)  
**Subject:** RE: Triple M. Partners v. Suzette LeFebvre and Blanco GMBH+CO.KG; #16-3382  
**Importance:** High

Good morning,

Judge Kimball has reviewed Mr. Bernstein's email and asked that I schedule an expedited hearing. We have time available Tuesday, 3-21-17 at 1:30 or Wednesday, 3-22-17 at either 9:30 or 10:00. Please coordinate and respond so I can confirm a date/time. I appreciate everyone's help.

Thank you,  
Mary Ann

Maryann Motz  
Associate Court Clerk  
York County

Phone: 803-628-3930



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**From:** Robert Bernstein [<mailto:RBernstein@bernsteinpa.com>]

**Sent:** Friday, March 17, 2017 5:58 PM

**To:** Kimball, Jack

**Cc:** Jane Smith; Motz, Maryann; Dan Ballou; David W. Brown Jr. ([DBrown@HorackTalley.com](mailto:DBrown@HorackTalley.com)); Heath Gilbert; Laura Budd; [JFGALLAGHER@nmmlaw.com](mailto:JFGALLAGHER@nmmlaw.com); [ABhatt@nmmlaw.com](mailto:ABhatt@nmmlaw.com); [zette222@gmail.com](mailto:zette222@gmail.com)

**Subject:** RE: Triple M. Partners v. Suzette LeFebvre and Blanco GMBH+CO.KG; #16-3382

Judge Kimball:

On February 23, 2017, you entered a Default Judgment Order in this action (attached). At the time of the hearing, we had a Motion to Intervene pending, which had not yet been granted. You ordered that the Defendant execute the necessary documents to transfer clear title to the Plaintiff, and that the proceeds after payment of the mortgage be deposited with the Court. My client claims a lien against the real estate; your Order, however, did not address the transfer of that judgment lien to the proceeds of sale. I have found no statutory authority for the transfer of the lien in the event of a court ordered sale. The closing was scheduled for yesterday, but my client has refused to release the judgment liens against the property unless the judgment lien against the property is transferred to the proceeds of the sale. The Defendant has refused to sign a proposed Stipulation I had drafted to that effect. The closing cannot therefore occur as presently situated.

We have made a motion 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; we have also asked that any hearing on the motion be expedited due to the closing (attached). A Motion for an Order of Reference was also delivered to your office. In light of the exigency of this matter, we would respectfully request that a hearing on this motion be expedited and scheduled at your earliest possible convenience.

By copy of this e-mail to the attorneys for the Plaintiff and to Defendant Ms. LeFebvre, we are advising of the pending Motions and our request for an expedited hearing. Although they have indicated that they have specifically not made an appearance for Ms. LeFebvre in this action, attorneys Heath Gilbert and Laura Budd appeared at the underlying motion hearing, and are representing Ms. LeFebvre in related litigation in federal Court. Out of an abundance of caution and fairness, I am also copying them on this e-mail since the matter may affect their client's interest in the pending federal court litigation.

I appreciate the Court's consideration of an expedited hearing on this matter, if the Court deems one necessary. I look forward to hearing from you shortly.

Yours Very Truly,  
BERNSTEIN & BERNSTEIN, P.A.

*Robert A. Bernstein*

Robert A. Bernstein  
Post Office Box 20519            5418-B Rivers Avenue  
Charleston, SC 29413-0519    N. Charleston, SC 29406-6129  
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell)  
[rbernstein@bernsteinpa.com](mailto:rbernstein@bernsteinpa.com)

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**From:** Kimball, Jack [<mailto:jack.kimball@yorkcountygov.com>]  
**Sent:** Friday, March 10, 2017 3:57 PM  
**To:** Robert Bernstein <[RBernstein@bernsteinpa.com](mailto:RBernstein@bernsteinpa.com)>  
**Cc:** Jane Smith <[JSmith@bernsteinpa.com](mailto:JSmith@bernsteinpa.com)>; Motz, Maryann <[Maryann.Motz@yorkcountygov.com](mailto:Maryann.Motz@yorkcountygov.com)>  
**Subject:** RE: Blanco GMBH+CO.KG #14-3272

Bob:

Attached is an order in this case, which I have signed and am sending to the Clerk to be filed. The Clerk will send you a filed copy. To expedite receiving a filed copy, you should contact the Clerk's office.

Thank you.

Jack Kimball

S Jackson Kimball  
Master in Equity  
York County  
Phone: 803-628-3930



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**From:** Robert Bernstein [<mailto:RBernstein@bernsteinpa.com>]  
**Sent:** Tuesday, March 07, 2017 5:12 PM  
**To:** Kimball, Jack  
**Cc:** Jane Smith  
**Subject:** RE: Blanco GMBH+CO.KG #14-3272

Judge Kimball:

I apologize for the delay in getting you this proposed Order.. I have attached the proposed Order for your signature and entry. Thank you for your consideration.

Yours Very Truly,  
BERNSTEIN & BERNSTEIN, P.A.

*Robert A. Bernstein*

Robert A. Bernstein  
Post Office Box 20519            5418-B Rivers Avenue  
Charleston, SC 29413-0519    N. Charleston, SC 29406-6129  
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell)  
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**From:** Kimball, Jack [<mailto:jack.kimball@yorkcountygov.com>]  
**Sent:** Monday, February 27, 2017 11:42 AM  
**To:** Robert Bernstein <[RBernstein@bernsteinpa.com](mailto:RBernstein@bernsteinpa.com)>  
**Subject:** RE: Blanco GMBH+CO.KG #14-3272

Bob,

My notes indicate that you were also going to send an order on the motion to intervene. Please send me that one at your earliest convenience. If you have sent it, & I've misplaced it, I apologize.

Thanks.

Jack Kimball

S. Jackson Kimball  
Master in Equity  
York County

Phone: 803-628-3930



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**From:** Robert Bernstein [<mailto:RBernstein@bernsteinpa.com>]

**Sent:** Thursday, February 16, 2017 4:02 PM

**To:** Kimball, Jack

**Cc:** Motz, Maryann; Brown, Emily; Kendree, Michael; Kenneth Raynor; [JFGALLAGHER@nmmlaw.com](mailto:JFGALLAGHER@nmmlaw.com); [ABhatt@nmmlaw.com](mailto:ABhatt@nmmlaw.com); Heath Gilbert; Laura Budd ([lbudd@thebuddlawgroup.com](mailto:lbudd@thebuddlawgroup.com)); Brown, Dave; Dan Ballou

**Subject:** RE: Blanco GMBH+CO.KG #14-3272

Judge Kimball:

Pursuant to your ruling in the above referenced action at the hearing this morning, we are submitting the proposed Order granting the writ of mandamus in the above action. By copy of this e-mail to all interested counsel, we are providing them with a copy of the proposed Order for their review. Should you need any further submissions from this office, please feel free to contact me.

Yours Very Truly,  
BERNSTEIN & BERNSTEIN, P.A.

*Robert A. Bernstein*

Robert A. Bernstein

Post Office Box 20519      5418-B Rivers Avenue  
Charleston, SC 29413-0519    N. Charleston, SC 29406-6129  
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell)  
[rbernstein@bernsteinpa.com](mailto:rbernstein@bernsteinpa.com)

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**From:** Kimball, Jack [<mailto:jack.kimball@yorkcountygov.com>]  
**Sent:** Tuesday, February 14, 2017 4:38 PM  
**To:** Robert Bernstein <[RBernstein@bernsteinpa.com](mailto:RBernstein@bernsteinpa.com)>  
**Cc:** Motz, Maryann <[Maryann.Motz@yorkcountygov.com](mailto:Maryann.Motz@yorkcountygov.com)>; Brown, Emily <[Emily.Brown@yorkcountygov.com](mailto:Emily.Brown@yorkcountygov.com)>; Kendree, Michael <[michael.kendree@yorkcountygov.com](mailto:michael.kendree@yorkcountygov.com)>; Kenneth Raynor <[Ken@Raynorlawfirm.com](mailto:Ken@Raynorlawfirm.com)>; [JFGALLAGHER@nmmlaw.com](mailto:JFGALLAGHER@nmmlaw.com); [ABhatt@nmmlaw.com](mailto:ABhatt@nmmlaw.com)  
**Subject:** RE: Blanco GMBH+CO.KG #14-3272

10-4. See you all then.

S Jackson Kimball  
Master in Equity  
*York County*  
Phone: 803-628-3930



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**From:** Robert Bernstein [<mailto:RBernstein@bernsteinpa.com>]  
**Sent:** Tuesday, February 14, 2017 4:30 PM  
**To:** Kimball, Jack  
**Cc:** Motz, Maryann; Brown, Emily; Kendree, Michael; Kenneth Raynor; [JFGALLAGHER@nmmlaw.com](mailto:JFGALLAGHER@nmmlaw.com);

[ABhatt@nmmlaw.com](mailto:ABhatt@nmmlaw.com)

**Subject:** RE: Blanco GMBH+CO.KG #14-3272

Judge Kimball:

Mr. Hamilton has agreed that the hearing should go forward on Thursday morning as scheduled. Thank you.

Yours Very Truly,

**BERNSTEIN & BERNSTEIN, P.A.**

*Robert A. Bernstein*

Robert A. Bernstein

Post Office Box 20519            5418-B Rivers Avenue

Charleston, SC 29413-0519    N. Charleston, SC 29406-6129

(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell)

[rbernstein@bernsteinpa.com](mailto:rbernstein@bernsteinpa.com)

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**From:** Kimball, Jack [<mailto:jack.kimball@yorkcountygov.com>]

**Sent:** Tuesday, February 14, 2017 1:20 PM

**To:** Robert Bernstein <[RBernstein@bernsteinpa.com](mailto:RBernstein@bernsteinpa.com)>

**Cc:** Motz, Maryann <[Maryann.Motz@yorkcountygov.com](mailto:Maryann.Motz@yorkcountygov.com)>; Brown, Emily <[Emily.Brown@yorkcountygov.com](mailto:Emily.Brown@yorkcountygov.com)>;

Kendree, Michael <[michael.kendree@yorkcountygov.com](mailto:michael.kendree@yorkcountygov.com)>

**Subject:** RE: Blanco GMBH+CO.KG #14-3272

Bob,

Thank you for the quick response. I spoke with Emily Brown, who was not aware of the motion (and would not necessarily be), not Michael Kendree. I will let them decide how they want to deal with the motion. I look forward to seeing you Thursday.

Jack Kimball

S Jackson Kimball  
Master in Equity  
York County

Phone: 803-628-3930



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**From:** Robert Bernstein [<mailto:RBernstein@bernsteinpa.com>]  
**Sent:** Tuesday, February 14, 2017 12:46 PM  
**To:** Kimball, Jack  
**Cc:** Motz, Maryann; Brown, Emily  
**Subject:** RE: Blanco GMBH+CO.KG #14-3272

Judge Kimball:

The County attorney is aware of the Motion. On January 30, I spoke with him at length about it, and sent him the motion and the memorandum. He indicated it was not a problem. Set out below are the e-mails confirming this.

Yours Very Truly,  
BERNSTEIN & BERNSTEIN, P.A.

*Robert A. Bernstein*

Robert A. Bernstein  
Post Office Box 20519      5418-B Rivers Avenue  
Charleston, SC 29413-0519    N. Charleston, SC 29406-6129  
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell)  
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-----Original Message-----

From: Robert Bernstein

Sent: Thursday, February 09, 2017 4:00 PM

To: 'Michael.Kedree@yorkcountygov.com' <Michael.Kedree@yorkcountygov.com>

Cc: Jane Smith <JSmith@bernsteinpa.com>; 'JFGALLAGHER@nmmlaw.com' <JFGALLAGHER@nmmlaw.com>;

'ABhatt@nmmlaw.com' <ABhatt@nmmlaw.com>; 'Kenneth Raynor' <Ken@Raynorlawfirm.com>

Subject: RE: Motion "MOTION-Motion For Writ of Mandamus To Require Clerk to Enter Judg" for Case "2014CP4603272-Blanco GMBH CO KG VS Vito Antonio Laera , defendant, et al" was added to a Motions Roster for 2/16/2017 at 2:00 PM

Michael:

I wanted to let you know that the motion hearing originally scheduled for February 16, 2017 at 2:00 p.m. has been moved to 9:00 a.m. that same morning. I will be filing a memorandum in support with the Court and once I do, I will provide you with a copy.

Yours Very Truly,  
BERNSTEIN & BERNSTEIN, P.A.  
Robert A. Bernstein

Robert A. Bernstein

Post Office Box 20519            5418-B Rivers Avenue Charleston, SC 29413-0519    N. Charleston, SC 29406-6129  
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-----Original Message-----

From: Robert Bernstein

Sent: Monday, January 30, 2017 1:02 PM

To: 'Michael.Kedree@yorkcountygov.com' <Michael.Kedree@yorkcountygov.com>

Cc: Jane Smith <JSmith@bernsteinpa.com>; JFGALLAGHER@nmmlaw.com; ABhatt@nmmlaw.com; 'Kenneth Raynor' <Ken@Raynorlawfirm.com>

Subject: FW: Motion "MOTION-Motion For Writ of Mandamus To Require Clerk to Enter Judg" for Case "2014CP4603272- Blanco GMBH CO KG VS Vito Antonio Laera , defendant, et al" was added to a Motions Roster for 2/16/2017 at 2:00 PM

Michael:

Thank you for speaking with me this morning. As the York County attorney, I believe you may need to represent the County and the Clerk of Court with respect to a Motion for a Writ of Mandamus which has been filed affecting the York County Clerk of Court (attached).

As I advised, I represent a judgment creditor who had filed a Notice of Filing of Foreign Judgment in York County. That case is Blanco GMBH + Co. v. Vito Antonio Laera, Case No. 2014-CP-46-3272 (attached). After the case was filed on October 3, 2014, there was difficulty in finding Mr. Laera to effect service; he was eventually served in 2016. When we submitted the affidavit of service, we were instructed to submit a proposed Order to have the Judgment entered on the judgment rolls. I advised the Deputy Clerk that under the statute, the judgment was supposed to be entered on the judgment rolls at the time the foreign judgment was filed, i.e., back in 2014. She indicated that the Clerk's manual indicated that the judgment was not to be filed on the judgment rolls until 30 days after service of the debtor. She then called court administration, and was informed that no, it was to be filed when the foreign judgment was filed. She indicated, however, that she Would not backdate the date of placement on the judgment rolls and would only do so as of that date, i.e., in 2016.

The reason for the urgency of filing the judgment in 2014 vs. 2016 has to do with the date of the transfer of some property by the judgment debtor. In April 2014, the asserted spouse of Mr. Laera, Suzette LeFebvre, began a Family Court action in York County (Case No. 2014-DR-46-0623). An Consent Order of Divorce was entered on October 31, 2014, under which ownership of a valuable parcel of property was transferred from the judgment debtor to his purported spouse. This was, however, several weeks after the judgment should have been entered on the judgment rolls, and thus have been a prior lien against the property. The "spouse" has asserted that the judgment was not entered on the judgment rolls until 2016, and thus that the transfer to her has priority over our judgment lien.

I have made a Motion for a Writ of Mandamus in the 2014 Foreign Judgment case to require the Clerk of Court for York County to enter the judgment on the Judgment Roll effective as of October 3, 2014. The statute at issue is S.C. Code Ann. 15-35-920(B), which states:

(B) Upon the filing of the foreign judgment and the affidavit, the foreign judgment must be docketed and indexed in the same manner as a judgment of this State; however, no foreign judgment may be indexed if contested until resolved and no execution may issue upon the foreign judgment nor may any other proceeding be taken for its enforcement until the expiration of thirty days from the date upon which notice of filing is served in accordance with Section 15-35-930.

The property at issue is property located at 419 York Southern Road, Fort Mill, SC; the tax map number is 728-00-00-030.

As I advised when we spoke, the filing of the foreign judgment action and the family court action are only two of several cases between the parties. In addition, there is a federal court action (Case No. 0:15-cv-2199-TLW) in which a Lis Pendens is filed with York County (No. 2015-LP-46-0428); a second foreign judgment which has been filed by my client against Mr. Laera (Case No. 2016-CP-46-1403); a foreclosure action which has been filed against the property (Case No. 2016-CP-46-2920) and a Specific Performance action by a contract purchaser of the property (2016-CP-46-3382).

In light of the fact that the writ is sought to require the Clerk of Court to perform a statutory requirement, we are putting you on notice, as legal representative for the County, as to the pending Motion and the hearing date. After looking into the matter and meeting with the Clerk of Court, please let us know in advance the position, if any, that the Clerk of Court intends to take in this matter. By copy of this e-mail to Ken Raynor, attorney for the Defendant Mr. Laera, we are advising him of this communication and of your involvement in the matter. I look forward to hearing from you shortly.

Yours Very Truly,  
BERNSTEIN & BERNSTEIN, P.A.

Robert A. Bernstein

Robert A. Bernstein  
Post Office Box 20519      5418-B Rivers Avenue Charleston, SC 29413-0519      N. Charleston, SC 29406-6129  
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell) rbernstein@bernsteinpa.com This message is intended solely for review by the person to whom it is addressed at the beginning of this electronic mail. To ensure compliance with US

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-----Original Message-----

From: Courtmail46\_DoNotReply@sccourts.org [mailto:Courtmail46\_DoNotReply@sccourts.org]  
Sent: Wednesday, January 25, 2017 8:52 AM  
To: Robert Bernstein <RBernstein@bernsteinpa.com>  
Subject: Motion "MOTION-Motion For Writ of Mandamus To Require Clerk to Enter Judg" for Case "2014CP4603272-Blanco GMBH CO KG VS Vito Antonio Laera , defendant, et al" was added to a Motions Roster for 2/16/2017 at 2:00 PM

You have a case that appears on the February 16, 2017 York County Motions Roster before Judge S. Jackson Kimball. These hearings will be held at the Historic York Courthouse, Courtroom 2 located at 2 South Congress Street, York SC, 29745. These hearings are scheduled at 9:00 am, 11:00 am & 2:00 pm. You can visit [www.sccourts.org](http://www.sccourts.org) to view the Motions Roster for your hearing time(s). Please notify me by email if your case settles or is continued. This will allow me to update the online roster.

Lynn Strait  
Court Coordinator  
York County Court of Common Pleas  
[lynn.strait@yorkcountygov.com](mailto:lynn.strait@yorkcountygov.com)

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From: Kimball, Jack [<mailto:jack.kimball@yorkcountygov.com>]
Sent: Tuesday, February 14, 2017 12:01 PM
To: Robert Bernstein <RBernstein@bernsteinpa.com>
Cc: Motz, Maryann <Maryann.Motz@yorkcountygov.com>; Brown, Emily <Emily.Brown@yorkcountygov.com>
Subject: Blanco GMBH+CO.KG #14-3272

Bob,

In looking through this file for Thursday's motion, I do not find that the Clerk of Court has been served with the motion. Can you give me some information about that? Should the motion be postponed until that is done? The County attorney is unaware of the motion. Please let me know.

Thanks.

Jack Kimball

S Jackson Kimball

Master in Equity

Master in Equity

York County

jack.kimball@yorkcountygov.com

Phone: 803-628-3930

York County
south carolina



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Message Score: 50

High (60): Pass

From:

My Spam Blocking Level: Low

Medium (75): Pass

bvt1=2524a132d6a=maryann.motz@yorkcountygov.com

Low (90): Pass

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Heath Gilbert

From: Suzette Lefebvre <zette222@gmail.com>
Sent: Tuesday, March 21, 2017 1:07 PM
To: Motz, Maryann; jack.kimball@yorkcountygov.com
Cc: Heath Gilbert; Dan Ballou; Robert Bernstein; Jane Smith; David W. Brown Jr. (DBrown@HorackTalley.com); Laura Budd; JFGALLAGHER@nmmlaw.com; ABhatt@nmmlaw.com; Kenneth Raynor
Subject: Re: Triple M. Partners v. Suzette LeFebvre and Blanco GMBH+CO.KG; #16-3382

Hello Ms. Motz,

I just saw this email chain, If at all possible please do not email me because sometimes I don't check my email for days and often important emails end up in the junk folder. Please mail me all communications to my address at 5960 SW 32 Terrace Fort Lauderdale, FL 33312.

I want to advise the court that I complied with its order and signed all the closing documents listed by the judge and prepared by Triple M Partners, as I am sure Triple M Partners will confirm. To my knowledge the property has closed and is now Triple M Partners is the new owner.

In one of the orders from the court it mentions that Blanco GMBH + Co is in a pending litigation in Federal Court. My counsel in that case is Mr. Gilbert, he presented me with a document to sign from Blanco GMBH + Co in my case with Triple M Partners, the heading of the document was Acknowledgment and agreement as to disposition of proceeds. I didn't agree to sign it because it wasn't part of our settlement in the case with Triple M Partners, even the judge didn't require it. So I do not consent to it because it is not what was agreed to with Triple M Partners.

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.

Sincerely Yours,

Suzette Lefebvre

On Tue, Mar 21, 2017 at 11:56 AM, Motz, Maryann <Maryann.Motz@yorkcountygov.com> wrote:

Thank you. I will print your email so Judge Kimball will have in the file for the hearing in the morning. The only attorneys that have confirmed they will attend tomorrow's hearing are Mr. Benstein and Mr. Ballou. Attorneys Bhatt and Gallagher will not appear.

Mary Ann

Maryann Motz
Associate Court Clerk
York County

Phone: 803-628-3930



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From: Heath Gilbert [<mailto:hgilbert@baucomclaytor.com>]
Sent: Tuesday, March 21, 2017 11:33 AM
To: Motz, Maryann; Dan Ballou; Robert Bernstein
Cc: Jane Smith; David W. Brown Jr. (DBrown@HorackTalley.com); Laura Budd; JFGALLAGHER@nmmlaw.com; ABhatt@nmmlaw.com; zette222@gmail.com; Kenneth Raynor
Subject: RE: Triple M. Partners v. Suzette LeFebvre and Blanco GMBH+CO.KG; #16-3382

Ms. Motz,

I will not be at the hearing tomorrow. Ms. LeFebvre has not retained me to appear in this matter and I have not entered an appearance. Additionally, I do not want to send the wrong signals to the Court or inadvertently insert myself into a case where I am not representing a party. I represent Ms. LeFebvre in the matter in Federal Court. The reason that I attended the mandamus hearing back in February was that it affected the outcome of the Federal matter. This Triple M matter was heard at the same time.

I have cc'd Ken Raynor on the matter as his client was Ms. Lefebvre's tenant.

To whatever degree possible, I would like to know the outcome to the extent it concerns the matters that which we are handling in Federal Court. Thank you in advance.

M. Heath Gilbert, Jr.

BAUCOM CLAYTOR

200 Providence Road, Suite 106

Charlotte, NC 28207

704-376-6527 (ph) Ext. 2014

704-376-6207 (fx)

www.baucomclaytor.com

From: Motz, Maryann [<mailto:Maryann.Motz@yorkcountygov.com>]

Sent: Monday, March 20, 2017 2:05 PM

To: Heath Gilbert; Dan Ballou; Robert Bernstein

Cc: Jane Smith; David W. Brown Jr. (DBrown@HorackTalley.com); Laura Budd; JFGALLAGHER@nmmlaw.com; ABhatt@nmmlaw.com; zette222@gmail.com

Subject: RE: Triple M. Partners v. Suzette LeFebvre and Blanco GMBH+[CO.KG](#); #16-3382

I would like to confirm for Wednesday, March 22nd at 9:30. Mr. Bernstein and Mr. Ballou are available for that date, and have responded. Judge Kimball will not allow Ms. Lefebvre to participate by telephone, but Mr. Gilbert may appear on her behalf at the hearing. I look forward to their responses.

There are others included in the email that have not responded; however, I will add the motion to the roster for March 22nd at 9:30 pending objection/responses.

Thank you,

Mary Ann

Maryann Motz
Associate Court Clerk
York County

Phone: 803-628-3930



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From: Heath Gilbert [<mailto:hgilbert@baucomclaytor.com>]
Sent: Monday, March 20, 2017 1:40 PM
To: Dan Ballou; Robert Bernstein; Motz, Maryann
Cc: Jane Smith; David W. Brown Jr. (DBrown@HorackTalley.com); Laura Budd; JGALLAGHER@nmmlaw.com; ABhatt@nmmlaw.com; zette222@gmail.com
Subject: RE: Triple M. Partners v. Suzette LeFebvre and Blanco GMBH+CO.KG; #16-3382

Ms. Motz,

I have not been asked to make an appearance by Ms. Lefebvre in this matter. I am available if the Court wants me to be there on Wednesday. Ms. Lefebvre is in Florida and likely unable to travel. She might be available by telephone. I am by way of this email asking her to please respond to you as to her availability telephonically if the Court would so permit.

M. Heath Gilbert, Jr.

BAUCOM CLAYTOR

200 Providence Road, Suite 106

Charlotte, NC 28207

704-376-6527 (ph) Ext. 2014

704-376-6207 (fx)

From: Dan Ballou [<mailto:Dan.Ballou@mortongettys.com>]
Sent: Monday, March 20, 2017 12:03 PM
To: Robert Bernstein; Motz, Maryann
Cc: Jane Smith; David W. Brown Jr. (DBrown@HorackTalley.com); Heath Gilbert; Laura Budd;
JFGALLAGHER@nmmlaw.com; ABhatt@nmmlaw.com; zette222@gmail.com
Subject: RE: Triple M. Partners v. Suzette LeFebvre and Blanco GMBH+CO.KG; #16-3382

Maryann;

I am just now getting into this email chain. I am available Wednesday morning both times.

Thank you,

Dan

Daniel J Ballou, Senior Counsel
Attorney at Law
MORTON & GETTYS
Fountain Park Place
331 E Main St Suite 300
PO Box 707
Rock Hill, SC 29731

Main Tel: 803.366.3388
Fax: 803.366.4044
Web: www.mortongettys.com

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From: Robert Bernstein [<mailto:RBernstein@bernsteinpa.com>]
Sent: Monday, March 20, 2017 11:58 AM
To: zette222@gmail.com; Dan Ballou <Dan.Ballou@mortongettys.com>
Cc: Jane Smith <JSmith@bernsteinpa.com>; David W. Brown Jr. (DBrown@HorackTalley.com) <DBrown@HorackTalley.com>; Heath Gilbert <hgilbert@baucomclaytor.com>; Laura Budd <lbudd@thebuddlawgroup.com>; JFGALLAGHER@nmmlaw.com; ABhatt@nmmlaw.com; Motz, Maryann

<Maryann.Motz@yorkcountygov.com>

Subject: RE: Triple M. Partners v. Suzette LeFebvre and Blanco GMBH+CO.KG; #16-3382

Importance: High

Dan and Ms. LeFebvre:

I am available either of the times suggested by the Court. Ms. LeFebvre, if you wish, I would not object to your participation by telephone, if that is agreeable to the Court. Please identify which of the designated times are acceptable to you so that we can advise the Court. I look forward to hearing from you shortly.

Yours Very Truly,
BERNSTEIN & BERNSTEIN, P.A.

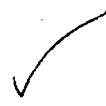
Robert A. Bernstein

Robert A. Bernstein
Post Office Box 20519 5418-B Rivers Avenue
Charleston, SC 29413-0519 N. Charleston, SC 29406-6129
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell)
rbernstein@bernsteinpa.com

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From: Motz, Maryann [<mailto:Maryann.Motz@yorkcountygov.com>]
Sent: Monday, March 20, 2017 9:30 AM
To: Robert Bernstein <RBernstein@bernsteinpa.com>



Cc: Jane Smith <JSmith@bernsteinpa.com>; Dan Ballou <Dan.Ballou@mortongettys.com>; David W. Brown Jr. (DBrown@HorackTalley.com) <DBrown@HorackTalley.com>; Heath Gilbert <hgilbert@baucomclaytor.com>; Laura Budd <lbudd@thebuddlawgroup.com>; JFGALLAGHER@nmmlaw.com; ABhatt@nmmlaw.com; zette222@gmail.com
Subject: RE: Triple M. Partners v. Suzette LeFebvre and Blanco GMBH+CO.KG; #16-3382
Importance: High

Good morning,

Judge Kimball has reviewed Mr. Bernstein's email and asked that I schedule an expedited hearing. We have time available Tuesday, 3-21-17 at 1:30 or Wednesday, 3-22-17 at either 9:30 or 10:00. Please coordinate and respond so I can confirm a date/time. I appreciate everyone's help.

Thank you,

Mary Ann

Maryann Motz
Associate Court Clerk
York County

Phone: 803-628-3930



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From: Robert Bernstein [<mailto:RBernstein@bernsteinpa.com>]

Sent: Friday, March 17, 2017 5:58 PM

To: Kimball, Jack

Cc: Jane Smith; Motz, Maryann; Dan Ballou; David W. Brown Jr. (DBrown@HorackTalley.com); Heath Gilbert; Laura

Budd; JFGALLAGHER@nmmlaw.com; ABhatt@nmmlaw.com; zette222@gmail.com

Subject: RE: Triple M. Partners v. Suzette LeFebvre and Blanco GMBH+CO.KG; #16-3382

Judge Kimball:

On February 23, 2017, you entered a Default Judgment Order in this action (attached). At the time of the hearing, we had a Motion to Intervene pending, which had not yet been granted. You ordered that the Defendant execute the necessary documents to transfer clear title to the Plaintiff, and that the proceeds after payment of the mortgage be deposited with the Court. My client claims a lien against the real estate; your Order, however, did not address the transfer of that judgment lien to the proceeds of sale. I have found no statutory authority for the transfer of the lien in the event of a court ordered sale. The closing was scheduled for yesterday, but my client has refused to release the judgment liens against the property unless the judgment lien against the property is transferred to the proceeds of the sale. The Defendant has refused to sign a proposed Stipulation I had drafted to that effect. The closing cannot therefore occur as presently situated.

We have made a motion 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; we have also asked that any hearing on the motion be expedited due to the closing (attached). A Motion for an Order of Reference was also delivered to your office. In light of the exigency of this matter, we would respectfully request that a hearing on this motion be expedited and scheduled at your earliest possible convenience.

By copy of this e-mail to the attorneys for the Plaintiff and to Defendant Ms. LeFebvre, we are advising of the pending Motions and our request for an expedited hearing. Although they have indicated that they have specifically not made an appearance for Ms. LeFebvre in this action, attorneys Heath Gilbert and Laura Budd appeared at the underlying motion hearing, and are representing Ms. LeFebvre in related litigation in federal Court. Out of an abundance of caution and fairness, I am also copying them on this e-mail since the matter may affect their client's interest in the pending federal court litigation.

I appreciate the Court's consideration of an expedited hearing on this matter, if the Court deems one necessary. I look forward to hearing from you shortly.

Yours Very Truly,
BERNSTEIN & BERNSTEIN, P.A.

Robert A. Bernstein

Robert A. Bernstein

Post Office Box 20519 5418-B Rivers Avenue
Charleston, SC 29413-0519 N. Charleston, SC 29406-6129
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell)
rbernstein@bernsteinpa.com

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From: Kimball, Jack [<mailto:jack.kimball@yorkcountygov.com>]
Sent: Friday, March 10, 2017 3:57 PM
To: Robert Bernstein <RBernstein@bernsteinpa.com>
Cc: Jane Smith <JSmith@bernsteinpa.com>; Motz, Maryann <Maryann.Motz@yorkcountygov.com>
Subject: RE: Blanco GMBH+CO.KG #14-3272

Bob:

Attached is an order in this case, which I have signed and am sending to the Clerk to be filed. The Clerk will send you a filed copy. To expedite receiving a filed copy, you should contact the Clerk's office.

Thank you.

Jack Kimball

S Jackson Kimball
Master in Equity
York County

Phone: 803-628-3930



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From: Robert Bernstein [<mailto:RBernstein@bernsteinpa.com>]
Sent: Tuesday, March 07, 2017 5:12 PM
To: Kimball, Jack
Cc: Jane Smith
Subject: RE: Blanco GMBH+CO.KG #14-3272

Judge Kimball:

I apologize for the delay in getting you this proposed Order.. I have attached the proposed Order for your signature and entry. Thank you for your consideration.

Yours Very Truly,
BERNSTEIN & BERNSTEIN, P.A.

Robert A. Bernstein

Robert A. Bernstein
Post Office Box 20519 5418-B Rivers Avenue
Charleston, SC 29413-0519 N. Charleston, SC 29406-6129
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell)
rbernstein@bernsteinpa.com

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From: Kimball, Jack [<mailto:jack.kimball@yorkcountygov.com>]
Sent: Monday, February 27, 2017 11:42 AM
To: Robert Bernstein <RBernstein@bernsteinpa.com>
Subject: RE: Blanco GMBH+CO.KG #14-3272

Bob,

My notes indicate that you were also going to send an order on the motion to intervene. Please send me that one at your earliest convenience. If you have sent it, & I've misplaced it, I apologize.

Thanks.

Jack Kimball

S Jackson Kimball
Master in Equity
York County

Phone: 803-628-3930



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From: Robert Bernstein [<mailto:RBernstein@bernsteinpa.com>]
Sent: Thursday, February 16, 2017 4:02 PM
To: Kimball, Jack
Cc: Motz, Maryann; Brown, Emily; Kendree, Michael; Kenneth Raynor; JFGALLAGHER@nmmlaw.com; ABhatt@nmmlaw.com; Heath Gilbert; Laura Budd (lbudd@thebuddlawgroup.com); Brown, Dave; Dan Ballou
Subject: RE: Blanco GMBH+CO.KG #14-3272

Judge Kimball:

Pursuant to your ruling in the above referenced action at the hearing this morning, we are submitting the proposed Order granting the writ of mandamus in the above action. By copy of this e-mail to all interested counsel, we are providing them with a copy of the proposed Order for their review. Should you need any further submissions from this office, please feel free to contact me.

Yours Very Truly,
BERNSTEIN & BERNSTEIN, P.A.

Robert A. Bernstein

Robert A. Bernstein
Post Office Box 20519 5418-B Rivers Avenue
Charleston, SC 29413-0519 N. Charleston, SC 29406-6129
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell)
rbernstein@bernsteinpa.com

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From: Kimball, Jack [<mailto:jack.kimball@yorkcountygov.com>]
Sent: Tuesday, February 14, 2017 4:38 PM
To: Robert Bernstein <RBernstein@bernsteinpa.com>
Cc: Motz, Maryann <Maryann.Motz@yorkcountygov.com>; Brown, Emily <Emily.Brown@yorkcountygov.com>; Kendree, Michael <michael.kendree@yorkcountygov.com>; Kenneth Raynor <Ken@Raynorlawfirm.com>; JFGALLAGHER@nmmlaw.com; ABhatt@nmmlaw.com
Subject: RE: Blanco GMBH+CO.KG #14-3272

10-4. See you all then.

S Jackson Kimball
Master in Equity
York County

Phone: 803-628-3930



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From: Robert Bernstein [<mailto:RBernstein@bernsteinpa.com>]
Sent: Tuesday, February 14, 2017 4:30 PM
To: Kimball, Jack
Cc: Motz, Maryann; Brown, Emily; Kendree, Michael; Kenneth Raynor; JFGALLAGHER@nmmlaw.com; ABhatt@nmmlaw.com
Subject: RE: Blanco GMBH+CO.KG #14-3272

Judge Kimball:

Mr. Hamilton has agreed that the hearing should go forward on Thursday morning as scheduled. Thank you.

Yours Very Truly,
BERNSTEIN & BERNSTEIN, P.A.

Robert A. Bernstein

Robert A. Bernstein
Post Office Box 20519 5418-B Rivers Avenue
Charleston, SC 29413-0519 N. Charleston, SC 29406-6129
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell)
rbernstein@bernsteinpa.com

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From: Kimball, Jack [<mailto:jack.kimball@yorkcountygov.com>]
Sent: Tuesday, February 14, 2017 1:20 PM
To: Robert Bernstein <RBernstein@bernsteinpa.com>
Cc: Motz, Maryann <Maryann.Motz@yorkcountygov.com>; Brown, Emily <Emily.Brown@yorkcountygov.com>; Kendree, Michael <michael.kendree@yorkcountygov.com>
Subject: RE: Blanco GMBH+CO.KG #14-3272

Bob,

Thank you for the quick response. I spoke with Emily Brown, who was not aware of the motion (and would not necessarily be), not Michael Kendree. I will let them decide how they want to deal with the motion. I look forward to seeing you Thursday.

Jack Kimball

S Jackson Kimball
Master in Equity
York County

Phone: 803-628-3930



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From: Robert Bernstein [<mailto:RBernstein@bernsteinpa.com>]
Sent: Tuesday, February 14, 2017 12:46 PM
To: Kimball, Jack
Cc: Motz, Maryann; Brown, Emily
Subject: RE: Blanco GMBH+CO.KG #14-3272

Judge Kimball:

The County attorney is aware of the Motion. On January 30, I spoke with him at length about it, and sent him the motion and the memorandum. He indicated it was not a problem. Set out below are the e-mails confirming this.

Yours Very Truly,
BERNSTEIN & BERNSTEIN, P.A.

Robert A. Bernstein

Robert A. Bernstein
Post Office Box 20519 5418-B Rivers Avenue
Charleston, SC 29413-0519 N. Charleston, SC 29406-6129
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell)
rbernstein@bernsteinpa.com

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-----Original Message-----

From: Robert Bernstein
Sent: Thursday, February 09, 2017 4:00 PM
To: 'Michael.Kedree@yorkcountygov.com' <Michael.Kedree@yorkcountygov.com>
Cc: Jane Smith <JSmith@bernsteinpa.com>; 'JFGALLAGHER@nmmlaw.com' <JFGALLAGHER@nmmlaw.com>; 'ABhatt@nmmlaw.com' <ABhatt@nmmlaw.com>; 'Kenneth Raynor' <Ken@Raynorlawfirm.com>
Subject: RE: Motion "MOTION-Motion For Writ of Mandamus To Require Clerk to Enter Judg" for Case

"2014CP4603272- Blanco GMBH CO KG VS Vito Antonio Laera , defendant, et al" was added to a Motions Roster for 2/16/2017 at 2:00 PM

Michael:

I wanted to let you know that the motion hearing originally scheduled for February 16, 2017 at 2:00 p.m. has been moved to 9:00 a.m. that same morning. I will be filing a memorandum in support with the Court and once I do, I will provide you with a copy.

Yours Very Truly,

BERNSTEIN & BERNSTEIN, P.A.

Robert A. Bernstein

Robert A. Bernstein

Post Office Box 20519 5418-B Rivers Avenue Charleston, SC 29413-0519 N. Charleston, SC
29406-6129

(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell) rbernstein@bernsteinpa.com This message is intended solely for review by the person to whom it is addressed at the beginning of this electronic mail. To ensure compliance with US IRS Circular 230, please be advised that any US federal tax advice contained in this communication (including any attachment) is not intended or written to be used, and cannot be used, for the purpose of (I) avoiding penalties under the IRC or (II) promoting, marketing, or recommending to another party any transaction or matter addressed herein. This advice may not be forwarded without our express written consent

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-----Original Message-----

From: Robert Bernstein

Sent: Monday, January 30, 2017 1:02 PM

To: 'Michael.Kedree@yorkcountygov.com' <Michael.Kedree@yorkcountygov.com>

Cc: Jane Smith <JSmith@bernsteinpa.com>; JFGALLAGHER@nmmlaw.com; ABhatt@nmmlaw.com; 'Kenneth Raynor' <Ken@Raynorlawfirm.com>

Subject: FW: Motion "MOTION-Motion For Writ of Mandamus To Require Clerk to Enter Judg" for Case "2014CP4603272- Blanco GMBH CO KG VS Vito Antonio Laera , defendant, et al" was added to a Motions Roster for 2/16/2017 at 2:00 PM

Michael:

Thank you for speaking with me this morning. As the York County attorney, I believe you may need to represent the County and the Clerk of Court with respect to a Motion for a Writ of Mandamus which has been filed affecting the York County Clerk of Court (attached).

As I advised, I represent a judgment creditor who had filed a Notice of Filing of Foreign Judgment in York County. That case is Blanco GMBH + Co. v. Vito Antonio Laera, Case No. 2014-CP-46-3272 (attached). After the case was filed on October 3, 2014, there was difficulty in finding Mr. Laera to effect service; he was eventually served in 2016. When we submitted the affidavit of service, we were instructed to submit a proposed Order to have the Judgment entered on the judgment rolls. I advised the Deputy Clerk that under the statute, the judgment was supposed to be entered on the judgment rolls at the time the foreign judgment was filed, i.e., back in 2014. She indicated that the Clerk's manual indicated that the judgment was not to be filed on the judgment rolls until 30 days after service of the debtor. She then called court administration, and was informed that no, it was to be filed when the foreign judgment was filed. She indicated, however, that she would not backdate the date of placement on the judgment rolls and would only do so as of that date, i.e., in 2016.

The reason for the urgency of filing the judgment in 2014 vs. 2016 has to do with the date of the transfer of some property by the judgment debtor. In April 2014, the asserted spouse of Mr. Laera, Suzette LeFebvre, began a Family Court action in York County (Case No. 2014-DR-46- 0623). An Consent Order of Divorce was entered on October 31, 2014, under which ownership of a valuable parcel of property was transferred from the judgment debtor to his purported spouse. This was, however, several weeks after the judgment should have been entered on the judgment rolls, and thus have been a prior lien against the property. The "spouse" has asserted that the judgment was not entered on the judgment rolls until 2016, and thus that the transfer to her has priority over our judgment lien.

I have made a Motion for a Writ of Mandamus in the 2014 Foreign Judgment case to require the Clerk of Court for York County to enter the judgment on the Judgment Roll effective as of October 3, 2014. The statute at issue is S.C. Code Ann. 15-35-920(B), which states:

(B) Upon the filing of the foreign judgment and the affidavit, the foreign judgment must be docketed and indexed in the same manner as a judgment of this State; however, no foreign judgment may be indexed if contested until resolved and no execution may issue upon the foreign judgment nor may any other proceeding be taken for its enforcement until the expiration of thirty days from the date upon which notice of filing is served in accordance with Section 15-35-930.

The property at issue is property located at 419 York Southern Road, Fort Mill, SC; the tax map number is 728-00-00-030.

As I advised when we spoke, the filing of the foreign judgment action and the family court action are only two of several cases between the parties. In addition, there is a federal court action (Case No. 0:15-cv-2199-TLW) in which a Lis Pendens is filed with York County (No. 2015-LP-46-0428); a second foreign judgment which has been filed by my client against Mr. Laera (Case No. 2016-CP-46-1403); a foreclosure action which has been filed against the property (Case No. 2016-CP-46-2920) and a Specific Performance action by a contract purchaser of the property (2016-CP-46-3382).

In light of the fact that the writ is sought to require the Clerk of Court to perform a statutory requirement, we are putting you on notice, as legal representative for the County, as to the pending Motion and the hearing date. After looking into the matter and meeting with the Clerk of Court, please let us know in advance the position, if any, that the Clerk of Court intends to take in this matter. By copy of this e-mail to Ken Raynor, attorney for the Defendant Mr. Laera, we are advising him of this communication and of your involvement in the matter. I look forward to hearing from you shortly.

Yours Very Truly,

BERNSTEIN & BERNSTEIN, P.A.

Robert A. Bernstein

Robert A. Bernstein

Post Office Box 20519
29406-6129

5418-B Rivers Avenue Charleston, SC 29413-0519 N. Charleston, SC

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-----Original Message-----

From: Courtmail46_DoNotReply@sccourts.org [mailto:Courtmail46_DoNotReply@sccourts.org]

Sent: Wednesday, January 25, 2017 8:52 AM

To: Robert Bernstein <RBernstein@bernsteinpa.com>

Subject: Motion "MOTION-Motion For Writ of Mandamus To Require Clerk to Enter Judg" for Case "2014CP4603272- Blanco GMBH CO KG VS Vito Antonio Laera , defendant, et al" was added to a Motions Roster for 2/16/2017 at 2:00 PM

You have a case that appears on the February 16, 2017 York County Motions Roster before Judge S. Jackson Kimball. These hearings will be held at the Historic York Courthouse, Courtroom 2 located at 2 South Congress Street, York SC, 29745. These hearings are scheduled at 9:00 am, 11:00 am & 2:00 pm. You can visit www.sccourts.org to view the Motions Roster for your hearing time(s). Please notify me by email if your case settles or is continued. This will allow me to update the online roster.

Lynn Strait

Court Coordinator

York County Court of Common Pleas

lynn.strait@yorkcountygov.com

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**From:** Kimball, Jack [<mailto:jack.kimball@yorkcountygov.com>]  
**Sent:** Tuesday, February 14, 2017 12:01 PM  
**To:** Robert Bernstein <[RBernstein@bernsteinpa.com](mailto:RBernstein@bernsteinpa.com)>  
**Cc:** Motz, Maryann <[Maryann.Motz@yorkcountygov.com](mailto:Maryann.Motz@yorkcountygov.com)>; Brown, Emily <[Emily.Brown@yorkcountygov.com](mailto:Emily.Brown@yorkcountygov.com)>  
**Subject:** Blanco GMBH+CO.KG #14-3272

Bob,

In looking through this file for Thursday's motion, I do not find that the Clerk of Court has been served with the motion. Can you give me some information about that? Should the motion be postponed until that is done? The County attorney is unaware of the motion. Please let me know.

Thanks.

Jack Kimball

**S Jackson Kimball**

Master in Equity  
*Master in Equity*  
*York County*

---

[jack.kimball@yorkcountygov.com](mailto:jack.kimball@yorkcountygov.com)

Phone: 803-628-3930

**York County**  
south carolina



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From: [zette222@gmail.com](mailto:zette222@gmail.com)

*You received this message because the sender is on your allow list.*

## Heath Gilbert

---

**From:** Motz, Maryann <Maryann.Motz@yorkcountygov.com>  
**Sent:** Tuesday, March 21, 2017 1:26 PM  
**To:** 'Suzette Lefebvre'; Kimball, Jack  
**Cc:** Heath Gilbert; Dan Ballou; Robert Bernstein; Jane Smith; David W. Brown Jr. (DBrown@HorackTalley.com); Laura Budd; JFGALLAGHER@nmmlaw.com; ABhatt@nmmlaw.com; Kenneth Raynor  
**Subject:** RE: Triple M. Partners v. Suzette LeFebvre and Blanco GMBH+CO.KG; #16-3382

Thank you. I will print your email so Judge Kimball will have in the file for the hearing in the morning.

Mary Ann

Maryann Motz  
Associate Court Clerk  
York County

Phone: 803-628-3930



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**From:** Suzette Lefebvre [mailto:zette222@gmail.com]

**Sent:** Tuesday, March 21, 2017 1:07 PM

**To:** Motz, Maryann; Kimball, Jack

**Cc:** Heath Gilbert; Dan Ballou; Robert Bernstein; Jane Smith; David W. Brown Jr. (DBrown@HorackTalley.com); Laura Budd; JFGALLAGHER@nmmlaw.com; ABhatt@nmmlaw.com; Kenneth Raynor

**Subject:** Re: Triple M. Partners v. Suzette LeFebvre and Blanco GMBH+CO.KG; #16-3382

Hello Ms. Motz,

I just saw this email chain, If at all possible please do not email me because sometimes I don't check my email for days and often important emails end up in the junk folder. Please mail me all communications to my address at 5960 SW 32 Terrace Fort Lauderdale, FL 33312.

I want to advise the court that I complied with its order and signed all the closing documents listed by the judge and prepared by Triple M Partners, as I am sure Triple M Partners will confirm. To my knowledge the property has closed and is now Triple M Partners is the new owner.

In one of the orders from the court it mentions that Blanco GMBH + Co is in a pending litigation in Federal Court. My counsel in that case is Mr. Gilbert, he presented me with a document to sign from Blanco GMBH + Co in my case with Triple M Partners, the heading of the document was Acknowledgment and agreement as to disposition of proceeds. I didn't agree to sign it because it wasn't part of our settlement in the case with Triple M Partners, even the judge didn't require it. So I do not consent to it because it is not what was agreed to with Triple M Partners.

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.

Sincerely Yours,

Suzette Lefebvre

On Tue, Mar 21, 2017 at 11:56 AM, Motz, Maryann <[Maryann.Motz@yorkcountygov.com](mailto:Maryann.Motz@yorkcountygov.com)> wrote:

Thank you. I will print your email so Judge Kimball will have in the file for the hearing in the morning. The only attorneys that have confirmed they will attend tomorrow's hearing are Mr. Benstein and Mr. Ballou. Attorneys Bhatt and Gallagher will not appear.

Mary Ann

Maryann Motz  
Associate Court Clerk  
York County

Phone: 803-628-3930



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**From:** Heath Gilbert [<mailto:hgilbert@baucomclaytor.com>]

**Sent:** Tuesday, March 21, 2017 11:33 AM

**To:** Motz, Maryann; Dan Ballou; Robert Bernstein

**Cc:** Jane Smith; David W. Brown Jr. ([DBrown@HorackTalley.com](mailto:DBrown@HorackTalley.com)); Laura Budd; [JFGALLAGHER@nmmlaw.com](mailto:JFGALLAGHER@nmmlaw.com);

[ABhatt@nmmlaw.com](mailto:ABhatt@nmmlaw.com); [zette222@gmail.com](mailto:zette222@gmail.com); Kenneth Raynor

**Subject:** RE: Triple M. Partners v. Suzette LeFebvre and Blanco GMBH+CO.KG; #16-3382

Ms. Motz,

I will not be at the hearing tomorrow. Ms. LeFebvre has not retained me to appear in this matter and I have not entered an appearance. Additionally, I do not want to send the wrong signals to the Court or inadvertently insert myself into a case where I am not representing a party. I represent Ms. LeFebvre in the matter in Federal Court. The reason that I attended the mandamus hearing back in February was that it affected the outcome of the Federal matter. This Triple M matter was heard at the same time.

I have cc'd Ken Raynor on the matter as his client was Ms. Lefebvre's tenant.

To whatever degree possible, I would like to know the outcome to the extent it concerns the matters that which we are handling in Federal Court. Thank you in advance.

M. Heath Gilbert, Jr.

**BAUCOM CLAYTOR**

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Charlotte, NC 28207

704-376-6527 (ph) Ext. 2014

704-376-6207 (fx)

[www.baucomclaytor.com](http://www.baucomclaytor.com)

**From:** Motz, Maryann [<mailto:Maryann.Motz@yorkcountygov.com>]

**Sent:** Monday, March 20, 2017 2:05 PM

**To:** Heath Gilbert; Dan Ballou; Robert Bernstein

**Cc:** Jane Smith; David W. Brown Jr. ([DBrown@HorackTalley.com](mailto:DBrown@HorackTalley.com)); Laura Budd; [JFGALLAGHER@nmmlaw.com](mailto:JFGALLAGHER@nmmlaw.com); [ABhatt@nmmlaw.com](mailto:ABhatt@nmmlaw.com); [zette222@gmail.com](mailto:zette222@gmail.com)

**Subject:** RE: Triple M. Partners v. Suzette LeFebvre and Blanco GMBH+CO.KG; #16-3382

I would like to confirm for Wednesday, March 22<sup>nd</sup> at 9:30. Mr. Bernstein and Mr. Ballou are available for that date, and have responded. Judge Kimball will not allow Ms. Lefebvre to participate by telephone, but Mr. Gilbert may appear on her behalf at the hearing. I look forward to their responses.

There are others included in the email that have not responded; however, I will add the motion to the roster for March 22<sup>nd</sup> at 9:30 pending objection/responses.

Thank you,

Mary Ann

Maryann Motz  
Associate Court Clerk  
York County

Phone: 803-628-3930



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**From:** Heath Gilbert [<mailto:hgilbert@baucomclaytor.com>]  
**Sent:** Monday, March 20, 2017 1:40 PM  
**To:** Dan Ballou; Robert Bernstein; Motz, Maryann  
**Cc:** Jane Smith; David W. Brown Jr. ([DBrown@HorackTalley.com](mailto:DBrown@HorackTalley.com)); Laura Budd; [JFGALLAGHER@nmmlaw.com](mailto:JFGALLAGHER@nmmlaw.com); [ABhatt@nmmlaw.com](mailto:ABhatt@nmmlaw.com); [zette222@gmail.com](mailto:zette222@gmail.com)  
**Subject:** RE: Triple M. Partners v. Suzette Lefebvre and Blanco GMBH+CO.KG; #16-3382

Ms. Motz,

I have not been asked to make an appearance by Ms. Lefebvre in this matter. I am available if the Court wants me to be there on Wednesday. Ms. Lefebvre is in Florida and likely unable to travel. She might be available by telephone. I am by way of this email asking her to please respond to you as to her availability telephonically if the Court would so permit.

M. Heath Gilbert, Jr.

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Charlotte, NC 28207

704-376-6527 (ph) Ext. 2014

704-376-6207 (fx)

[www.baucomclaytor.com](http://www.baucomclaytor.com)

---

**From:** Dan Ballou [<mailto:Dan.Ballou@mortongettys.com>]

**Sent:** Monday, March 20, 2017 12:03 PM

**To:** Robert Bernstein; Motz, Maryann

**Cc:** Jane Smith; David W. Brown Jr. ([DBrown@HorackTalley.com](mailto:DBrown@HorackTalley.com)); Heath Gilbert; Laura Budd; [JFGALLAGHER@nmmlaw.com](mailto:JFGALLAGHER@nmmlaw.com); [ABhatt@nmmlaw.com](mailto:ABhatt@nmmlaw.com); [zette222@gmail.com](mailto:zette222@gmail.com)

**Subject:** RE: Triple M. Partners v. Suzette LeFebvre and Bianco GMBH+CO.KG; #16-3382

Maryann;

I am just now getting into this email chain. I am available Wednesday morning both times.

Thank you,

Dan

Daniel J Ballou, Senior Counsel  
Attorney at Law  
MORTON & GETTYS  
Fountain Park Place  
331 E Main St Suite 300  
PO Box 707  
Rock Hill, SC 29731

Main Tel: 803.366.3388  
Fax: 803.366.4044  
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# MORTON & GETTYS

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**From:** Robert Bernstein [<mailto:RBernstein@bernsteinpa.com>]

**Sent:** Monday, March 20, 2017 11:58 AM

**To:** [zette222@gmail.com](mailto:zette222@gmail.com); Dan Ballou <[Dan.Ballou@mortongettys.com](mailto:Dan.Ballou@mortongettys.com)>

**Cc:** Jane Smith <[JSmith@bernsteinpa.com](mailto:JSmith@bernsteinpa.com)>; David W. Brown Jr. ([DBrown@HorackTalley.com](mailto:DBrown@HorackTalley.com))

<[DBrown@HorackTalley.com](mailto:DBrown@HorackTalley.com)>; Heath Gilbert <[hgilbert@baucomclaytor.com](mailto:hgilbert@baucomclaytor.com)>; Laura Budd

<[lbudd@thebuddlawgroup.com](mailto:lbudd@thebuddlawgroup.com)>; [JFGALLAGHER@nmmlaw.com](mailto:JFGALLAGHER@nmmlaw.com); [ABhatt@nmmlaw.com](mailto:ABhatt@nmmlaw.com); Motz, Maryann

<[Maryann.Motz@yorkcountygov.com](mailto:Maryann.Motz@yorkcountygov.com)>

**Subject:** RE: Triple M. Partners v. Suzette LeFebvre and Blanco GMBH+[CO.KG](http://CO.KG); #16-3382

**Importance:** High

Dan and Ms. LeFebvre:

I am available either of the times suggested by the Court. Ms. LeFebvre, if you wish, I would not object to your participation by telephone, if that is agreeable to the Court. Please identify which of the designated times are acceptable to you so that we can advise the Court. I look forward to hearing from you shortly.

Yours Very Truly,  
BERNSTEIN & BERNSTEIN, P.A.

*Robert A. Bernstein*

Robert A. Bernstein  
Post Office Box 20519      5418-B Rivers Avenue  
Charleston, SC 29413-0519      N. Charleston, SC 29406-6129  
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell)  
[rbernstein@bernsteinpa.com](mailto:rbernstein@bernsteinpa.com)

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**From:** Motz, Maryann [<mailto:Maryann.Motz@yorkcountygov.com>]  
**Sent:** Monday, March 20, 2017 9:30 AM  
**To:** Robert Bernstein <[RBernstein@bernsteinpa.com](mailto:RBernstein@bernsteinpa.com)>  
**Cc:** Jane Smith <[JSmith@bernsteinpa.com](mailto:JSmith@bernsteinpa.com)>; Dan Ballou <[Dan.Ballou@mortongettys.com](mailto:Dan.Ballou@mortongettys.com)>; David W. Brown Jr. ([DBrown@HorackTalley.com](mailto:DBrown@HorackTalley.com)) <[DBrown@HorackTalley.com](mailto:DBrown@HorackTalley.com)>; Heath Gilbert <[hgilbert@baucomclaytor.com](mailto:hgilbert@baucomclaytor.com)>; Laura Budd <[lbudd@thebuddlawgroup.com](mailto:lbudd@thebuddlawgroup.com)>; [JFGALLAGHER@nmmlaw.com](mailto:JFGALLAGHER@nmmlaw.com); [ABhatt@nmmlaw.com](mailto:ABhatt@nmmlaw.com); [zette222@gmail.com](mailto:zette222@gmail.com)  
**Subject:** RE: Triple M. Partners v. Suzette LeFebvre and Blanco GMBH+CO.KG; #16-3382  
**Importance:** High

Good morning,

Judge Kimball has reviewed Mr. Bernstein's email and asked that I schedule an expedited hearing. We have time available Tuesday, 3-21-17 at 1:30 or Wednesday, 3-22-17 at either 9:30 or 10:00. Please coordinate and respond so I can confirm a date/time. I appreciate everyone's help.

Thank you,

Mary Ann

Maryann Motz  
Associate Court Clerk  
York County

Phone: 803-628-3930



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**From:** Robert Bernstein [<mailto:RBernstein@bernsteinpa.com>]  
**Sent:** Friday, March 17, 2017 5:58 PM  
**To:** Kimball, Jack  
**Cc:** Jane Smith; Motz, Maryann; Dan Ballou; David W. Brown Jr. ([DBrown@HorackTalley.com](mailto:DBrown@HorackTalley.com)); Heath Gilbert; Laura Budd; [JFGALLAGHER@nmmlaw.com](mailto:JFGALLAGHER@nmmlaw.com); [ABhatt@nmmlaw.com](mailto:ABhatt@nmmlaw.com); [zette222@gmail.com](mailto:zette222@gmail.com)  
**Subject:** RE: Triple M. Partners v. Suzette LeFebvre and Blanco GMBH+CO.KG; #16-3382

Judge Kimball:

On February 23, 2017, you entered a Default Judgment Order in this action (attached). At the time of the hearing, we had a Motion to Intervene pending, which had not yet been granted. You ordered that the Defendant execute the necessary documents to transfer clear title to the Plaintiff, and that the proceeds after payment of the mortgage be deposited with the Court. My client claims a lien against the real estate; your Order, however, did not address the transfer of that judgment lien to the proceeds of sale. I have found no statutory authority for the transfer of the lien in the event of a court ordered sale. The closing was scheduled for yesterday, but my client has refused to release the judgment liens against the property unless the judgment lien against the property is transferred to the proceeds of the sale. The Defendant has refused to sign a proposed Stipulation I had drafted to that effect. The closing cannot therefore occur as presently situated.

We have made a motion 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; we have also asked that any hearing on the motion be expedited due to the closing (attached). A Motion for an Order of Reference was also delivered to your office. In light of the exigency of this matter, we would respectfully request that a hearing on this motion be expedited and scheduled at your earliest possible convenience.

By copy of this e-mail to the attorneys for the Plaintiff and to Defendant Ms. LeFebvre, we are advising of the pending Motions and our request for an expedited hearing. Although they have indicated that they have specifically not made an appearance for Ms. LeFebvre in this action, attorneys Heath Gilbert and Laura Budd appeared at the underlying motion hearing, and are representing Ms. LeFebvre in related litigation in federal Court. Out of an abundance of caution and fairness, I am also copying them on this e-mail since the matter may affect their client's interest in the pending federal court litigation.

I appreciate the Court's consideration of an expedited hearing on this matter, if the Court deems one necessary. I look forward to hearing from you shortly.

Yours Very Truly,  
BERNSTEIN & BERNSTEIN, P.A.

*Robert A. Bernstein*

Robert A. Bernstein  
Post Office Box 20519                      5418-B Rivers Avenue  
Charleston, SC 29413-0519      N. Charleston, SC 29406-6129  
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell)  
[rbernstein@bernsteinpa.com](mailto:rbernstein@bernsteinpa.com)

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**From:** Kimball, Jack [<mailto:jack.kimball@yorkcountygov.com>]  
**Sent:** Friday, March 10, 2017 3:57 PM  
**To:** Robert Bernstein <[RBernstein@bernsteinpa.com](mailto:RBernstein@bernsteinpa.com)>  
**Cc:** Jane Smith <[JSmith@bernsteinpa.com](mailto:JSmith@bernsteinpa.com)>; Motz, Maryann <[Maryann.Motz@yorkcountygov.com](mailto:Maryann.Motz@yorkcountygov.com)>  
**Subject:** RE: Blanco GMBH+CO.KG #14-3272

Bob:

Attached is an order in this case, which I have signed and am sending to the Clerk to be filed. The Clerk will send you a filed copy. To expedite receiving a filed copy, you should contact the Clerk's office.

Thank you.

Jack Kimball

S. Jackson Kimball  
Master in Equity  
York County

Phone: 803-628-3930



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**From:** Robert Bernstein [<mailto:RBernstein@bernsteinpa.com>]  
**Sent:** Tuesday, March 07, 2017 5:12 PM  
**To:** Kimball, Jack  
**Cc:** Jane Smith  
**Subject:** RE: Blanco GMBH+CO.KG #14-3272

Judge Kimball:

I apologize for the delay in getting you this proposed Order.. I have attached the proposed Order for your signature and entry. Thank you for your consideration.

Yours Very Truly,  
**BERNSTEIN & BERNSTEIN, P.A.**

*Robert A. Bernstein*

Robert A. Bernstein  
Post Office Box 20519                      5418-B Rivers Avenue  
Charleston, SC 29413-0519      N. Charleston, SC 29406-6129  
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell)  
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**From:** Kimball, Jack [<mailto:jack.kimball@yorkcountygov.com>]  
**Sent:** Monday, February 27, 2017 11:42 AM  
**To:** Robert Bernstein <[RBernstein@bernsteinpa.com](mailto:RBernstein@bernsteinpa.com)>  
**Subject:** RE: Blanco GMBH+CO.KG #14-3272

Bob,

My notes indicate that you were also going to send an order on the motion to intervene. Please send me that one at your earliest convenience. If you have sent it, & I've misplaced it, I apologize.

Thanks.

Jack Kimball

S Jackson Kimball  
Master in Equity  
York County

Phone: 803-628-3930



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**From:** Robert Bernstein [<mailto:RBernstein@bernsteinpa.com>]

**Sent:** Thursday, February 16, 2017 4:02 PM

**To:** Kimball, Jack

**Cc:** Motz, Maryann; Brown, Emily; Kendree, Michael; Kenneth Raynor; [JFGALLAGHER@nmmlaw.com](mailto:JFGALLAGHER@nmmlaw.com); [ABhatt@nmmlaw.com](mailto:ABhatt@nmmlaw.com); Heath Gilbert; Laura Budd ([lbudd@thebuddlawgroup.com](mailto:lbudd@thebuddlawgroup.com)); Brown, Dave; Dan Ballou

**Subject:** RE: Blanco GMBH+CO.KG #14-3272

Judge Kimball:

Pursuant to your ruling in the above referenced action at the hearing this morning, we are submitting the proposed Order granting the writ of mandamus in the above action. By copy of this e-mail to all interested

counsel, we are providing them with a copy of the proposed Order for their review. Should you need any further submissions from this office, please feel free to contact me.

Yours Very Truly,  
BERNSTEIN & BERNSTEIN, P.A.

*Robert A. Bernstein*

Robert A. Bernstein  
Post Office Box 20519                      5418-B Rivers Avenue  
Charleston, SC 29413-0519    N. Charleston, SC 29406-6129  
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell)  
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**From:** Kimball, Jack [<mailto:jack.kimball@yorkcountygov.com>]  
**Sent:** Tuesday, February 14, 2017 4:38 PM  
**To:** Robert Bernstein <[RBernstein@bernsteinpa.com](mailto:RBernstein@bernsteinpa.com)>  
**Cc:** Motz, Maryann <[Maryann.Motz@yorkcountygov.com](mailto:Maryann.Motz@yorkcountygov.com)>; Brown, Emily <[Emily.Brown@yorkcountygov.com](mailto:Emily.Brown@yorkcountygov.com)>; Kendree, Michael <[michael.kendree@yorkcountygov.com](mailto:michael.kendree@yorkcountygov.com)>; Kenneth Raynor <[Ken@Raynorlawfirm.com](mailto:Ken@Raynorlawfirm.com)>; JFGALLAGHER@nmmlaw.com; ABhatt@nmmlaw.com  
**Subject:** RE: Blanco GMBH+CO.KG #14-3272

10-4. See you all then.

S Jackson Kimball  
Master in Equity  
York County

Phone: 803-628-3930



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**From:** Robert Bernstein [<mailto:RBernstein@bernsteinpa.com>]  
**Sent:** Tuesday, February 14, 2017 4:30 PM  
**To:** Kimball, Jack  
**Cc:** Motz, Maryann; Brown, Emily; Kendree, Michael; Kenneth Raynor; [JFGALLAGHER@nmmlaw.com](mailto:JFGALLAGHER@nmmlaw.com); [ABhatt@nmmlaw.com](mailto:ABhatt@nmmlaw.com)  
**Subject:** RE: Blanco GMBH+CO.KG #14-3272

Judge Kimball:

Mr. Hamilton has agreed that the hearing should go forward on Thursday morning as scheduled. Thank you.

Yours Very Truly,  
BERNSTEIN & BERNSTEIN, P.A.

*Robert A. Bernstein*

Robert A. Bernstein  
Post Office Box 20519                      5418-B Rivers Avenue  
Charleston, SC 29413-0519              N. Charleston, SC 29406-6129  
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell)  
[rbernstein@bernsteinpa.com](mailto:rbernstein@bernsteinpa.com)

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**From:** Kimball, Jack [<mailto:jack.kimball@yorkcountygov.com>]  
**Sent:** Tuesday, February 14, 2017 1:20 PM  
**To:** Robert Bernstein <[RBernstein@bernsteinpa.com](mailto:RBernstein@bernsteinpa.com)>  
**Cc:** Motz, Maryann <[Maryann.Motz@yorkcountygov.com](mailto:Maryann.Motz@yorkcountygov.com)>; Brown, Emily <[Emily.Brown@yorkcountygov.com](mailto:Emily.Brown@yorkcountygov.com)>; Kendree, Michael <[michael.kendree@yorkcountygov.com](mailto:michael.kendree@yorkcountygov.com)>  
**Subject:** RE: Blanco GMBH+CO.KG #14-3272

Bob,

Thank you for the quick response. I spoke with Emily Brown, who was not aware of the motion (and would not necessarily be), not Michael Kendree. I will let them decide how they want to deal with the motion. I look forward to seeing you Thursday.

Jack Kimball

S Jackson Kimball  
Master in Equity  
*York County*

Phone: 803-628-3930



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**From:** Robert Bernstein [<mailto:RBernstein@bernsteinpa.com>]  
**Sent:** Tuesday, February 14, 2017 12:46 PM  
**To:** Kimball, Jack  
**Cc:** Motz, Maryann; Brown, Emily  
**Subject:** RE: Blanco GMBH+CO.KG #14-3272

Judge Kimball:

The County attorney is aware of the Motion. On January 30, I spoke with him at length about it, and sent him the motion and the memorandum. He indicated it was not a problem. Set out below are the e-mails confirming this.

Yours Very Truly,  
**BERNSTEIN & BERNSTEIN, P.A.**

*Robert A. Bernstein*

Robert A. Bernstein  
Post Office Box 20519                      5418-B Rivers Avenue  
Charleston, SC 29413-0519      N. Charleston, SC 29406-6129  
(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell)  
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-----Original Message-----

From: Robert Bernstein

Sent: Thursday, February 09, 2017 4:00 PM

To: '[Michael.Kedree@yorkcountygov.com](mailto:Michael.Kedree@yorkcountygov.com)' <[Michael.Kedree@yorkcountygov.com](mailto:Michael.Kedree@yorkcountygov.com)>

Cc: Jane Smith <[JSmith@bernsteinpa.com](mailto:JSmith@bernsteinpa.com)>; '[JFGALLAGHER@nmmlaw.com](mailto:JFGALLAGHER@nmmlaw.com)' <[JFGALLAGHER@nmmlaw.com](mailto:JFGALLAGHER@nmmlaw.com)>; '[ABhatt@nmmlaw.com](mailto:ABhatt@nmmlaw.com)' <[ABhatt@nmmlaw.com](mailto:ABhatt@nmmlaw.com)>; 'Kenneth Raynor' <[Ken@Raynorlawfirm.com](mailto:Ken@Raynorlawfirm.com)>

Subject: RE: Motion "MOTION-Motion For Writ of Mandamus To Require Clerk to Enter Judg" for Case "2014CP4603272- Blanco GMBH CO KG VS Vito Antonio Laera , defendant, et al" was added to a Motions Roster for 2/16/2017 at 2:00 PM

Michael:

I wanted to let you know that the motion hearing originally scheduled for February 16, 2017 at 2:00 p.m. has been moved to 9:00 a.m. that same morning. I will be filing a memorandum in support with the Court and once I do, I will provide you with a copy.

Yours Very Truly,

BERNSTEIN & BERNSTEIN, P.A.

Robert A. Bernstein

Robert A. Bernstein

Post Office Box 20519                      5418-B Rivers Avenue Charleston, SC 29413-0519      N. Charleston, SC  
29406-6129

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-----Original Message-----

From: Robert Bernstein

Sent: Monday, January 30, 2017 1:02 PM

To: '[Michael.Kedree@yorkcountygov.com](mailto:Michael.Kedree@yorkcountygov.com)' <[Michael.Kedree@yorkcountygov.com](mailto:Michael.Kedree@yorkcountygov.com)>

Cc: Jane Smith <[JSmith@bernsteinpa.com](mailto:JSmith@bernsteinpa.com)>; [JFGALLAGHER@nmmlaw.com](mailto:JFGALLAGHER@nmmlaw.com); [ABhatt@nmmlaw.com](mailto:ABhatt@nmmlaw.com); 'Kenneth Raynor' <[Ken@Raynorlawfirm.com](mailto:Ken@Raynorlawfirm.com)>

Subject: FW: Motion "MOTION-Motion For Writ of Mandamus To Require Clerk to Enter Judg" for Case "2014CP4603272- Blanco GMBH CO KG VS Vito Antonio Laera , defendant, et al" was added to a Motions Roster for 2/16/2017 at 2:00 PM

Michael:

Thank you for speaking with me this morning. As the York County attorney, I believe you may need to represent the County and the Clerk of Court with respect to a Motion for a Writ of Mandamus which has been filed affecting the York County Clerk of Court (attached).

As I advised, I represent a judgment creditor who had filed a Notice of Filing of Foreign Judgment in York County. That case is Blanco GMBH + Co. v. Vito Antonio Laera, Case No. 2014-CP-46-3272 (attached). After the case was filed on October 3, 2014, there was difficulty in finding Mr. Laera to effect service; he was eventually served in 2016. When we submitted the affidavit of service, we were instructed to submit a proposed Order to have the Judgment entered on the judgment rolls. I advised the Deputy Clerk that under the statute, the judgment was supposed to be entered on the judgment rolls at the time the foreign judgment was filed, i.e., back in 2014. She indicated that the Clerk's manual indicated that the judgment was

not to be filed on the judgment rolls until 30 days after service of the debtor. She then called court administration, and was informed that no, it was to be filed when the foreign judgment was filed. She indicated, however, that she would not backdate the date of placement on the judgment rolls and would only do so as of that date, i.e., in 2016.

The reason for the urgency of filing the judgment in 2014 vs. 2016 has to do with the date of the transfer of some property by the judgment debtor. In April 2014, the asserted spouse of Mr. Laera, Suzette LeFebvre, began a Family Court action in York County (Case No. 2014-DR-46-0623). An Consent Order of Divorce was entered on October 31, 2014, under which ownership of a valuable parcel of property was transferred from the judgment debtor to his purported spouse. This was, however, several weeks after the judgment should have been entered on the judgment rolls, and thus have been a prior lien against the property. The "spouse" has asserted that the judgment was not entered on the judgment rolls until 2016, and thus that the transfer to her has priority over our judgment lien.

I have made a Motion for a Writ of Mandamus in the 2014 Foreign Judgment case to require the Clerk of Court for York County to enter the judgment on the Judgment Roll effective as of October 3, 2014. The statute at issue is S.C. Code Ann. 15-35-920(B), which states:

(B) Upon the filing of the foreign judgment and the affidavit, the foreign judgment must be docketed and indexed in the same manner as a judgment of this State; however, no foreign judgment may be indexed if contested until resolved and no execution may issue upon the foreign judgment nor may any other proceeding be taken for its enforcement until the expiration of thirty days from the date upon which notice of filing is served in accordance with Section 15-35-930.

The property at issue is property located at 419 York Southern Road, Fort Mill, SC; the tax map number is 728-00-00-030.

As I advised when we spoke, the filing of the foreign judgment action and the family court action are only two of several cases between the parties. In addition, there is a federal court action (Case No. 0:15-cv-2199-TLW) in which a Lis Pendens is filed with York County (No. 2015-LP-46-0428); a second foreign judgment which has been filed by my client against Mr. Laera (Case No. 2016-CP-46-1403); a foreclosure action which has been filed against the property (Case No. 2016-CP-46-2920) and a Specific Performance action by a contract purchaser of the property (2016-CP-46-3382).

In light of the fact that the writ is sought to require the Clerk of Court to perform a statutory requirement, we are putting you on notice, as legal representative for the County, as to the pending Motion and the hearing date. After looking into the matter and meeting with the Clerk of Court, please let us know in advance the position, if any, that the Clerk of Court intends to take in this matter. By copy of this e-mail to Ken Raynor,

attorney for the Defendant Mr. Laera, we are advising him of this communication and of your involvement in the matter. I look forward to hearing from you shortly.

Yours Very Truly,

BERNSTEIN & BERNSTEIN, P.A.

Robert A. Bernstein

Robert A. Bernstein

Post Office Box 20519                      5418-B Rivers Avenue Charleston, SC 29413-0519    N. Charleston, SC  
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From: Courtmail46\_DoNotReply@sccourts.org [mailto:[Courtmail46\\_DoNotReply@sccourts.org](mailto:Courtmail46_DoNotReply@sccourts.org)]

Sent: Wednesday, January 25, 2017 8:52 AM

To: Robert Bernstein <[RBernstein@bernsteinpa.com](mailto:RBernstein@bernsteinpa.com)>

Subject: Motion "MOTION-Motion For Writ of Mandamus To Require Clerk to Enter Judg" for Case "2014CP4603272- Blanco GMBH CO KG VS Vito Antonio Laera , defendant, et al" was added to a Motions Roster for 2/16/2017 at 2:00 PM

You have a case that appears on the February 16, 2017 York County Motions Roster before Judge S. Jackson Kimball. These hearings will be held at the Historic York Courthouse, Courtroom 2 located at 2 South Congress Street, York SC, 29745. These hearings are scheduled at 9:00 am, 11:00 am & 2:00 pm. You can visit [www.sccourts.org](http://www.sccourts.org) to view the Motions Roster for your hearing time(s). Please notify me by email if your case settles or is continued. This will allow me to update the online roster.

Lynn Strait

Court Coordinator

York County Court of Common Pleas

[lynn.strait@yorkcountygov.com](mailto:lynn.strait@yorkcountygov.com)

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From: Kimball, Jack [<mailto:jack.kimball@yorkcountygov.com>]
Sent: Tuesday, February 14, 2017 12:01 PM
To: Robert Bernstein <RBernstein@bernsteinpa.com>
Cc: Motz, Maryann <Maryann.Motz@yorkcountygov.com>; Brown, Emily <Emily.Brown@yorkcountygov.com>
Subject: Blanco GMBH+CO.KG #14-3272

Bob,

In looking through this file for Thursday's motion, I do not find that the Clerk of Court has been served with the motion. Can you give me some information about

that? Should the motion be postponed until that is done? The County attorney is unaware of the motion. Please let me know.

Thanks.

Jack Kimball

S Jackson Kimball

Master in Equity

Master in Equity

York County

jack.kimball@yorkcountygov.com

Phone: 803-628-3930



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Action Type All Actions
Date Type **Beginning** **Ending**
Tax Map# From **Through**
Only for Civil Cases... Index Search All Lis Pendens Judgments | **Cross Index Search** All Judgment For Judgment Against
Search **Reset Search Fields** | **Name Search Option** Begins With Contains

| Name | Party Type | Case Number | Filed Date | Case Status | Disposition Date | Type | Subtype | Judgment # | Court Agency |
|---------------------|------------|---------------|------------|--------------------|------------------|--------------|----------------------|---------------|------------------------------|
| Laera, Vito A | Defendant | 2016CP4601403 | 05/06/2016 | Judgment | 05/06/2016 | Common Pleas | Transcript Judg 740 | 2016CP4601403 | York County Common Pleas |
| Laera, Vito A | Defendant | 2016CP4602920 | 10/04/2016 | Referred To Master | | Common Pleas | Foreclosure 420 | | York County Common Pleas |
| Laera, Vito A | Defendant | 2016CP4602920 | 11/14/2016 | Pending | | Common Pleas | Foreclosure 420 | | York County Master In Equity |
| Laera, Vito A | Defendant | 2016LP4600615 | 10/04/2016 | Pending | | Lis Pendens | Foreclosure | | York County Common Pleas |
| Laera, Vito Antonio | Defendant | 2014CP4603272 | 10/03/2014 | Judgment | 03/03/2016 | Common Pleas | Foreign Judgment 710 | 2014CP4603272 | York County Common Pleas |
| Laera, Vito Antonio | Defendant | 2014CP4603742 | 11/13/2014 | Judgment | 11/13/2014 | Common Pleas | Judgment/Oth Fam Ct | | York County Common Pleas |
| Laera, Vito Antonio | Defendant | 2015LP4600428 | 06/03/2015 | Cancelled | 03/22/2017 | Lis Pendens | Lis Pendens (\$10) | | York County Common Pleas |
| Laera, Vito Antonio | Defendant | 2016CP4601403 | 05/06/2016 | Judgment | 05/06/2016 | Common Pleas | Transcript Judg 740 | 2016CP4601403 | York County Common Pleas |
| Laera, Vito Antonio | Defendant | 2016CP4602920 | 10/04/2016 | Referred To Master | | Common Pleas | Foreclo 420 | | York County |

DEFENDANT'S EXHIBIT
Blanco 3

| | | | | | | | | | |
|---------------------|-----------|----------------------|------------|---------|--|--------------|-----------------|--|------------------------------|
| | | | | | | | | | Common Pleas |
| Laera, Vito Antonio | Defendant | <u>2016CP4602920</u> | 11/14/2016 | Pending | | Common Pleas | Foreclosure 420 | | York County Master In Equity |
| Laera, Vito Antonio | Defendant | <u>2016LP4600615</u> | 10/04/2016 | Pending | | Lis Pendens | Foreclosure | | York County Common Pleas |

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|-------------------------|------------|---------------|------------|--------------------|------------------|--------------|---------------------|---------------|------------------------------|
| Lefebvre, Michael James | Defendant | F524733 | 03/20/2012 | Disposed | 05/16/2012 | Traffic | | | York/Bethesda Magistrate |
| LeFebvre, Suzette | Plaintiff | 2014CP4603742 | 11/13/2014 | Judgment | 11/13/2014 | Common Pleas | Judgment/Oth Fam Ct | | York County Common Pleas |
| Lefebvre, Suzette | Defendant | 2015LP4600428 | 06/03/2015 | Cancelled | 03/22/2017 | Lis Pendens | Lis Pendens (\$10) | | York County Common Pleas |
| LeFebvre, Suzette | Defendant | 2016CP4602920 | 10/04/2016 | Referred To Master | | Common Pleas | Foreclosure 420 | | York County Common Pleas |
| LeFebvre, Suzette | Defendant | 2016CP4602920 | 11/14/2016 | Pending | | Common Pleas | Foreclosure 420 | | York County Master In Equity |
| Lefebvre, Suzette | Defendant | 2016CP4603382 | 11/16/2016 | Referred To Master | 02/24/2017 | Common Pleas | Breach of Cont 140 | 2016CP4603382 | York County Common Pleas |
| Lefebvre, Suzette | Defendant | 2016CP4603382 | 03/21/2017 | Pending | | Common Pleas | Breach of Cont 140 | 2016CP4603382 | York County Master In Equity |
| LeFebvre, Suzette | Defendant | 2016LP4600615 | 10/04/2016 | Pending | | Lis Pendens | Foreclosure | | York County Common Pleas |
| Lefebvre, Suzette | Defendant | 2016LP4600711 | 11/16/2016 | Judgment | 02/24/2017 | Lis Pendens | Foreclosure | | York County Common Pleas |

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Heath Gilbert

From: Motz, Maryann <Maryann.Motz@yorkcountygov.com>
Sent: Tuesday, May 30, 2017 4:52 PM
To: Heath Gilbert; Robert Bernstein (RBernstein@bernsteinpa.com); dan.ballou@mortongettys.com
Subject: FW: 05/30/2017 15:55
Attachments: DOC053017-05302017155526.pdf

Good afternoon,

I received the above letter in today's mail and wanted to respond for clarification. A court reporter was not present for the March 22, 2017 hearing, but the April 20 2017 motions were heard during our regular motions day, and Shirley Broom was the court reporter on that date.

Your letter indicates I confirmed there was no reporter for either date. That is in error. I have emails confirming our responses concerning the March 22nd hearing, but do not see emails requesting the information on the April 20th hearing. You should contact Ms. Broom for any transcript for the April 20th hearing. Her contact information is : sbroom@sccourts.org or 502 Unity Street, Fort Mill, SC 29715.

Thank you,
Mary Ann

-----Original Message-----

From: MIE Copier [<mailto:copier@yorkcountygov.com>]
Sent: Tuesday, May 30, 2017 3:56 PM
To: Motz, Maryann
Subject: 05/30/2017 15:55

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Maryann Motz
Associate Court Clerk
York County

Phone: 803-628-3930

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Brian E. Wolfe*
Lloyd F. Baucom, Of Counsel

Clay A. Campbell*
Robert C. Gunst, Jr.*
Elsbeth Crawford Long

Telephone (704) 376-6527
Telefax (704) 376-6207
www.BaucomClaytor.com

* denotes also licensed
in South Carolina

May 24, 2017

Ms. Shirley Broom
P.O. Box 627
York, SC 29745


Ms. Mary Ann Motz
P.O. Box 627
York, SC 29745

**RE: Triple M. Partners, LP v. Suzette LeFebvre (Defendant Appellant) and
BLANCO GmbH + CO.KG (Intervenor Respondent)
C/A No.: 2016-CP-46-03382**

Dear Ms. Broom:

On March 22, 2017 and April 20, 2017, two hearings were held in the above case before the Honorable S. Jackson Kimball, Master in Equity, in York County. Based on information received from you, Ms. Motz, and Judge Kimball, there was no court reporter present for either hearing and no recordings were made.

As such, I do not think it is possible to request a transcript. If that is incorrect, please let me know immediately.


M. HEATH GILBERT, JR., SC Bar #72198 *with provision*
P.O. Box 35246
Charlotte, NC 28235
Tele: 704-376-6527
Fax: 704-376-6207
hgilbert@baucomclaytor.com
Attorney for Defendant Appellant Suzette LeFebvre

cc. Robert Bernstein, *Counsel for Respondent*
Daniel J. Ballou, *Counsel for Plaintiff*
SC Court Administration
Clerk, Court of Appeals

Heath Gilbert

From: Kimball, Jack <jack.kimball@yorkcountygov.com>
Sent: Thursday, June 01, 2017 11:50 AM
To: Heath Gilbert
Cc: 'Bob Bernstein'; 'Dan Ballou'; Motz, Maryann
Subject: Triple M Partners - Lefebvre

Heath,

In discussing with Ms. Motz the matter of records of the two hearings at issue concerning this case, I note that you have copied both the Court of Appeals and Court Administration, and filed with the Clerk of Court for York County, on a letter indicating that there was neither a court reporter, nor a recording for both hearings. As you now know, that is incorrect.

There was a court reporter present for the April 20 hearing, but no reporter, and no recording, for the March 22 hearing. The lack of a recording for the March 22 hearing was due to some error related to the court's new audio-visual system installed in the renovated courthouse. It may have been "operator error" (me).

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.

My concern is that the Court of Appeals and Court Administration receive an accurate and complete representation of the status of this matter with regard to the record made in connection with all that has transpired. Thus, I want you to make the necessary correction of your previous letter with the Court of Appeals and Court Administration by advising both entities of the actual status of the record in the lower court. You may cite this email if you wish. Please copy me, and other counsel in this matter with that communication.

If you have any question, feel free to call me.

Thank you.

Jack Kimball

From: Heath Gilbert [<mailto:hgilbert@baucomclaytor.com>]
Sent: Tuesday, May 30, 2017 4:58 PM
To: Robert Bernstein; Motz, Maryann; dan.ballou@mortongettys.com

Cc: 'Laura Budd (lbudd@thebuddlawgroup.com)'

Subject: RE: 05/30/2017 15:55

We have been informed that there was no recording of the March 22nd hearing. I will forward you the communication that we received from the Court.

M. Heath Gilbert, Jr.

BAUCOM CLAYTOR

200 Providence Road, Suite 106

Charlotte, NC 28207

704-376-6527 (ph) Ext. 2014

704-376-6207 (fx)

www.baucomclaytor.com

From: Robert Bernstein [<mailto:RBernstein@bernsteinpa.com>]

Sent: Tuesday, May 30, 2017 4:58 PM

To: Heath Gilbert; Motz, Maryann; dan.ballou@mortongettys.com

Subject: RE: 05/30/2017 15:55

I was advised by the Court on the March 22 hearing was being recorded, but no court reporter was present. I was under the impression that the court reporter's recorder was operating during that hearing; Judge Kimball can confirm, or refute that.

Yours Very Truly,

BERNSTEIN & BERNSTEIN, P.A.

Robert A. Bernstein

Robert A. Bernstein

Post Office Box 20519 5418-B Rivers Avenue

Charleston, SC 29413-0519 N. Charleston, SC 29406-6129

(843) 529-1111; (843) 529-0035 (fax); (843) 270-6390 (cell)

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From: Heath Gilbert [<mailto:hgilbert@baucomclaytor.com>]

Sent: Tuesday, May 30, 2017 4:54 PM

To: Motz, Maryann <Maryann.Motz@yorkcountygov.com>; Robert Bernstein <RBernstein@bernsteinpa.com>;

dan.ballou@mortongettys.com

Subject: RE: 05/30/2017 15:55

Thank you Ms. Motz. We are doing just that. I apologize for the confusion.

M. Heath Gilbert, Jr.
BAUCOM CLAYTOR
200 Providence Road, Suite 106
Charlotte, NC 28207
704-376-6527 (ph) Ext. 2014
704-376-6207 (fx)
www.baucomclaytor.com

From: Motz, Maryann [<mailto:Maryann.Motz@yorkcountygov.com>]
Sent: Tuesday, May 30, 2017 4:52 PM
To: Heath Gilbert; Robert Bernstein (RBernstein@bernsteinpa.com); dan.ballou@mortongettys.com
Subject: FW: 05/30/2017 15:55

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Mary Ann

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S Jackson Kimball

Master in Equity
Master in Equity
York County

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