STATE OF SOUTH CAROLINA
IN THE
SUPREME COURT

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

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

Respondent,

v.

Donald W. Lancaster,

Petitioner.

Brief on Certiorari by the Petitioner, Donald W. Lancaster

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Whether The South Carolina Court Of Appeals Unreasonably And Unnecessarily Expanded This Supreme Court's Decision in Linda Mc Co. v. Shore To Permit The Enforcement Of A Judgment Which Was Clearly Over Ten Years Old?

II. STATEMENT OF THE CASE

On 2 November 2010, the Respondent, Frank Gordon, Jr., as Attorney-in-Fact for Dorothy Gordon ("Mr. Gordon"), sued the Petitioner, Donald W. Lancaster ("Mr. Lancaster"), and others seeking to collect on a judgment Mr. Gordon obtained in 2001, against, among others, Mr. Lancaster's now-deceased uncle, Rudolph Robert Drews ("Mr. Drews"). (R.pp.120-130).**1** Mr. Gordon asserted claims for fraudulent conveyance (R.pp.121-129, paras. 8-53, 55-76) and constructive trust. (R.pp.121-126, 129, paras. 8-53, 78). He filed an Amended Complaint 28 days later, reprising the fraudulent conveyance (R.pp.133-140, paras. 8-53, 55-76) and constructive trust claims. (R.pp.133-138, 140-141, paras. 8-53, 78). Mr. Gordon also added claims for civil conspiracy (R.pp.133-138, 141, paras. 8-53, 80-82) and negligence/aiding and abetting. (R.pp.133-138, 141-142, paras. 8-53, 84-87). Mr. Lancaster denied the material allegations (R.pp.144-147, paras. 1-2, 4, 7-17) and asserted various affirmative defenses. (R.pp.147-149, paras. 20-26).

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1 Mr. Gordon also sued Jessie B. Atkinson, Individually, and as Personal Representative of the Estate of Effie D. Drews ("Ms. Atkinson") and Shirrese Brockington as Special Administrator of the Estate of Rudolph Robert Drews ("Ms. Brockington"). (R.pp.120-123, paras. 2-4). By the time of the trial, neither Ms. Atkinson nor Ms. Brockington were involved in the case. Ms. Atkinson, in her capacity as Mrs. Drews' Estates' Personal Representative, confessed judgment to Mr. Gordon in the amount of $293,703.43 (R.p.753, para. 6) and then settled Mr. Gordon's claims against the Estate for the sum of $60,000.00. (R.p.756, para.4).

The Circuit Court held a bench trial on 13-14 June 2013. (R.pp.307, 515). After Mr. Lancaster unsuccessfully moved for a directed verdict (R.p.517, line 7 – R.p.525, line 25), the Circuit Court "ruled from the Bench" and directed the parties' attorneys to prepare appropriate orders reflecting the Circuit Court's recited decision. (R.p.579, line 11 – R.p.584, line 20). On 19 August 2013, the Circuit Court awarded Mr. Gordon judgment for $211,677.30[2] on the fraudulent conveyance claim. (R.p.9, R.pp.10-27).[3]

Mr. Lancaster sought reconsideration, amendment of the judicial findings, and alteration/amendment of the judgment. (R.pp.296-306). By orders dated 6 May 2014, and 19 May 2011, the Circuit Court denied the motion. (R.pp.1-2). On appeal the Court of Appeals affirmed in a split decision.[4] While Mr. Lancaster unsuccessfully sought a rehearing, this Supreme Court, by order dated 13 December 2017, granted him *certiorari* in part.

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2 Mr. Gordon's accountant expert witness, Richard T. Livingston, CPA of Dixon Hughes Goodman (R.p.443, line 9 - R.p.447, line 8), stated that his damage calculations for Mr. Gordon, including pre-judgment interest, was only **$151,029.49**. (R.p.469, line 5 - R.p.470, line 11). The Circuit Court, which specifically "found Mr. Livingston to be both knowledgeable and credible (R.p.25, para. 80), inexplicably issued a judgment for $211,677.30 (R.p.9; R.pp.10-30), ***more than $60,000.00 higher***.

3 The Circuit Court found for Mr. Lancaster on Mr. Gordon's three other causes of action. (R.pp.3-4; R.pp.5-8). That order has not been appealed.

4 *See* Gordon v. Lancaster, 419 S.C. 48, 795 S.E.2d 857 (Ct.App. 2016), *rehearing denied* (16 February 2017), *certiorari granted in part* (13 December 2017).

III. STATEMENT OF THE FACTS[5]

A. Mr. Lancaster Assists Mr. And Mrs. Drews[6]

Mr. Lancaster is a certified internal auditor/business analyst performing contract work for the United States Department of State. (R.p.319, line 25 – R.p.320, line 15; R.p.763, para. 1). He is the nephew of both the late Mr. Drews and his wife, the late Effie D. Drews ("Mr. and Mrs. Drews") and was very close to them both. (R.p.387, lines 5-10; R.p.763, para. 2). Mr. Drews passed away in September 2007, and Mrs. Drews followed in February 2010. (R.p.383, lines 2-7; R.p.763, para. 2).

Mr. Drews previously owned and operated "The Drews Company" - a reasonably successful construction business in the Charleston area from 1946 or so to late 1991 or early 1992. (R.pp.763-764, para. 3). Mr. Lancaster, during various times in high school and college, worked for The Drews Company. (R.p.386, lines 20–25; R.p.440, line 12 – R.p.441, line 1; R.pp.763-764, para. 3). Unfortunately, after Hurricane Hugo in 1989,

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5 In an idiom oft attributed to the late accomplished journalist, editor, and playwright, Clare Boothe Luce (http://www.ehow.com/facts_7416321_origin-good-deed-goes-unpunished_.html) - Mr. Lancaster's predicament in this case is unfortunately a classic example of "no good deed goes unpunished." He tried to do the right thing by his aunt and uncle and has, heretofore, paid dearly for his kindnesses. Furthermore, the Court of Appeals' muddled rendition of the "facts" continues to tarnish Mr. Lancaster's good reputation by affirming the Circuit Court's findings that he was guilty of moral fraud. As the record shows, nothing could be further from the truth. Assuming, *arguendo*, Mr. Drews' dealings with Mr. Lancaster were intended to promote some nefarious scheme to hide money from his creditors, at best a meritless assumption, **Mr. Lancaster need not and should not be "painted with the same broad brush" as his motives and intentions in assisting Mr. and Mrs. Drews were above reproach.**

6 While Mr. Lancaster had prior financial dealings with Mr. and Mrs. Drews, it is ***undisputed*** that the financial transactions involved ***in this case*** began in ***1992***. (R.p.321, line 6 – R.p.322; R.p.956). It is also ***undisputed*** that Mr. Drews' subsequently ill-fated hardware store business – Builders Station, Inc. ("Builders Station") –, which gave rise to this, and the prior litigation, ***did not come into existence until 1996***, not less than ***four years later***. (R.p.365, line 3 – R.p.366, line 2). Mr. Gordon did not sue Mr. Drews until ***16 April 1999***, and did not obtain his damages judgment until ***5 December 2001***. (R.p.11; R.pp.46-53).

the Drews Company's business fortunes took a drastic turn for the worse (R.p.13, para. 1; R.p.439, line 23 – R.p.440, line 4; R.p.764, para. 4), aided in large part to an unscrupulous business associate who had absconded with company funds. (R.p.355, lines 13-18; R.p.764, para. 4).

Even though Mr. and Mrs. Drews attempted to "keep the company afloat" by borrowing heavily on their personal residence in Charleston's Edgewater Park subdivision, the Internal Revenue Service filed liens for unpaid payroll taxes. (R.p.13, para. 1; R.p.355, lines 6-12; R.p.373, lines 6-13; R.p.764, para. 4). Mr. Drews, in turn, decided to sell his company and exit the construction business. (R.p.440, lines 5-10; R.p.764, para. 4). Contemporaneously, Mr. and Mrs. Drews also decided to sell their Edgewater Park home to satisfy both the outstanding IRS liens and the various loans taken out to keep The Drews Company afloat. (R.p.355, lines 6-12; R.p.440, lines 11-15; R.pp.764-765, para. 5).

At the time Mr. Drews broached the "life estate" issue with Mr. Lancaster, Mr. and Mrs. Drews had approximately 30 days in which to vacate their then-sold Edgewater Park home. (R.p.373, lines 9-15). Before approaching Mr. Lancaster for assistance, Mr. and Mrs. Drews had looked for a comfortable home in the $100,000.00 range. (R.p.373, lines 14-25). Unfortunately, they had not been able to find anything suitable. (R.p.373, lines 14-25).

1. The Bainbridge Drive Property

In ***April 1992***, Mr. Drews advised Mr. Lancaster there would be about $100,000.00 left from the sale of the Edgewater Park residence. (R.p.373, line 6 – R.p.374, line 5; R.pp.764-765, para. 5). He asked Mr. Lancaster to consider undertaking the same housing arrangement he had made with his (Mr. Lancaster's)

parents. (R.p.373, line 6 – R.p.374, line 5; R.pp.764-765, para. 5).[7] Mr. Drews proposed to give Mr. Lancaster the remaining $100,000.00 in sales proceeds, have Mr. Lancaster use that money, in part, to purchase a suitable home, and then he and Mrs. Drews would live there for the rest of their lives, via a life estate, ***rent and mortgage free***. (R.pp.764-765, para. 5). Mr. and Mrs. Drews were, in effect, collectively making a single lease payment "up front" for an indeterminate time period (R.p.397, lines 11-15) and, in turn, leaving the risk of interest rate flux, property devaluation, *etc.* solely to Mr. Lancaster.[8]

Due to his close relationship with Mr. and Mrs. Drews (R.p.387, lines 5-10), as well as the fact no one else in their extended family possessed the financial wherewithal to help,[9] Mr. Lancaster agreed to Mr. Drews' proposal. (R.p.13, para. 2; R.p.387, lines 11-19; R.p.418, lines 6-21).

Mr. and Mrs. Drews did, in fact, sell their Edgewater Park home and, in May 1992, found a suitable home at 17 Bainbridge Drive in Charleston ("Bainbridge Drive") which met their needs. ***After properly paying off the IRS and satisfying their other outstanding debts***[10] (R.p.387, line 20 – R.p.388, line 2; R.p.488, line 16 – R.p.491, line

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7 Previously, Mr. Lancaster had purchased a home for his parents when his father was forced to stop working. (R.p.373, line 6 – R.p.374, line 5). Mr. Lancaster, while retaining ownership of the home, allowed his parents to live there for the remainder of their lives. (R.p.373, line 6 – R.p.374, line 5).

8 Essentially without any income, Mr. and Mrs. Drews did not have sufficient funds to either buy a home on their own or obtain a residential mortgage loan. (R.p.387, lines 11-14).

9 Mr. and Mrs. Drews apparently turned to Mr. Lancaster for help because he was single, had some good investments, and none of the other nieces or nephews "were in any kind of financial position to help them . . . ." (R.p.387, lines 15-19).

10 Mr. Livingston - Mr. Gordon's expert accounting witness (R.p.343, line 9 – R.p.347, line 8) – although opining "that the only reasonable explanation for the . . transactions

14), Mr. and Mrs. Drews gave Mr. Lancaster the remaining $100,000.00 in sale proceeds. (R.p.137, paras. 43-45; R.pp.144-145, paras. 3, 9-10; R.p.322, lines 13-25; R.p.376, lines 14-20).**11** Using that money (R.p.137, para. 44; R.p.144, para. 3; R.p.376, lines 21-23; R.p.484, lines 17-23), together with some of his own, Mr. Lancaster purchased Bainbridge Drive on 22 May 1992, for $160,000.00 (R.p.14, para. 7; R.p.340, line 22 – R.p.341, line 7; R.p.376, line 24 – R.p.377, line 1; R.pp.662-664)**12** and added

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[between Mr. and Mrs. Drews and Mr. Lancaster] was to hide assets from creditors" (R.p.25, para. 79; R.p.347, line 16 - R.p.348, line 13), testified that **he was not aware** of any specific creditors which Mr. and Mrs. Drews were attempting to avoid when they gave Mr. Lancaster the $100,000.00 to use in purchasing Bainbridge Drive. (R.p.491, lines 9-14).

11 Mr. Gordon and the Circuit Court "made much" of the fact Mr. Lancaster originally believed that the $100,000.00 Mr. and Mrs. Drews gave him for the life estate use of Bainbridge Drive was a "gift". (R.p.p13-14, para. 3; R.p.R.p.323, lines 5-20; R.p.336, line 2 - R.p.339, line 16; R.p.396, lines 9-24; R.p.409, line 16 - R.p.410, line 18). Mr. Lancaster thought the $100,000.00 was a gift because Mr. Drews' accountant (Jerry Gambrell) indicated that the money should be treated as a gift for income tax purposes. (R.p.336, lines 10-25; R.p.338, lines 13-19; R.p.374, line 6 - R.p.375, line 20; R.p.396, line 25 - R.p.397, line 4). Mr. Lancaster, admittedly concerned about the capital gains cost basis for Bainbridge Drive (R.p.336, lines 18-25; R.p.374, lines 6-25), had no reason to believe that Mr. Gambrell's advice might be incorrect. To memorialize the gift, Mr. Lancaster prepared a gift tax return in 1993 for Mr. Drews to sign and send to the IRS. (R.p.337, line 1 - R.p.338, line 9; R.p.375, line 79, - R.p.376, line 13; R.p.397, lines 5-10). When he advised Mr. Gordon he could not present a copy of the gift tax return (R.p.419, lines 8-17) due to a broken copier (R.p.376, lines 11-13; R.p.412, lines 10-20; R.p.413, lines 3-13), Mr. Gordon vigorously insinuated Mr. Lancaster had conspired with Mr. Drews to defraud the IRS. (R.pp.13-14,paras. 3-5; R.p.336, line 2 - R.p.339, line 16; R.p.397, line 25 - R.p.398, line 4; R.p.412, line 21 - R.p.415, line 1; R.p.415, line 23 - R.p.417, line 8). Mr. Lancaster did not realize the $100,000.00 was not a gift until this litigation began and he discussed the situation with his attorney. (R.p.338, line 10 - R.p.339, line 16). Nevertheless, for 18 or so years, Mr. Lancaster's belief was reasonable under the circumstances. He was acting on the recommendations of a professional accountant (R.p.336, lines 10-25; R.p.338, lines 13-19) and should have been able to rely on that advice. Moreover, Mr. Lancaster, as the **recipient** of the gift was neither responsible for receiving or retaining a copy of the gift tax return. Given the fact the Circuit Court dismissed Mr. Gordon's "civil conspiracy" claim (R.pp.11-12), this "gift" issue was nothing more than a "red herring" used to distract the Circuit Court and to "paint" Mr. Lancaster with a "conspiratorial brush". Mr. Gordon clearly succeeded in his efforts given the result he obtained.

12 The $160,000.00 purchase price was composed of the $100,000.00 from Mr. and Mrs. Drews and $60,000.00 Mr. Lancaster contributed himself. (R.p.341, line 2 - R.p.343, line 11; R.p.359, lines 14-17; R.p.360, lines 2-10; R.p.377, lines 2-17). Notwithstanding Mr. Gordon's

another $5,000.00 or so in repairs. (R.p.341, lines 2-7; R.p.379, lines 9-15).[13] Mr. and Mrs. Drews, via the life estate (R.p.14, para. 8; R.p.484, line 24 – R.p.485, line 2; R.p.487, lines 7-18; R.p.665), then moved into Bainbridge Drive and lived there for the next 37 months. (R.p.137, para. 47; R.p.146, para. 11; R.p.378, lines 16-18). While Mr. Lancaster paid the property taxes on Bainbridge Drive (R.p.378, lines 2-4), Mr. and Mrs. Drews paid for the property insurance and the utilities. (R.p.378, lines 5-8).

2. The Nuffield Road Property

In ***April 1995***, Mr. Drews asked Mr. Lancaster if it would be possible to sell Bainbridge Drive and to purchase another home, albeit only one story. (R.p.378, line 19 – R.p.379, line 3). One of Mr. Drews' knees had significantly deteriorated and he was no longer able to negotiate up and down the stairs at Bainbridge Drive. (R.p.379, line 19 – R.p.380, line 3; R.p.487, lines 19-23). Mr. and Mrs. Drews commenced another home search and found a suitable property at 2 Nuffield Road – also in Charleston ("Nuffield Road"). (R.p.360, lines 18-20; R.p.363, lines 11-15; R.p.380, lines 4-19). Mr. Lancaster bought the Nuffield Road property on 16 May 1995 (R.p.137, para. 48; R.p.144, para. 12; R.pp.667-671; R.pp.1055-1059),[14] for $125,000.00 (R.p.487, line 19

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assertions Mr. Lancaster was simply "washing" Mr. and Mrs. Drews' $100,000.00 through an equity line at South Carolina National Bank ("SCN") secured by Bainbridge Drive (R.p.342, line 12 – R.p.345, line 16), the $100,000.00 was for the life estate Mr. Lancaster gave Mr. and Mrs. Drews for the eventually 15+ years they lived in homes undisputedly owned by Mr. Lancaster. (R.p.354, lines 4-13; R.p.397, lines 11-19).

13 Mr. Lancaster was the undisputed record title holder to the Bainbridge Drive property from the purchase date until the time when it was later sold. (R.p.133, para. 47; R.p.146, para. 11; R.pp.662-664). Mr. and Mrs. Drews did not own a home once they sold Edgewater Park in 1992. (R.p.998, line 11 – R.p.999, line 13, R.p.1013, lines 2-17).

14 Mr. Drews, acting as Attorney-in-Fact for Mr. Lancaster via a Power-of-Attorney, signed the real estate sales documents for Nuffield Road. (R.p.360, line 16 – R.p.362, line 11; R.pp.672-676). Mr. Gordon, again playing "conspiracy theorist", attempted to characterize this 15 year old real estate transaction as nefarious since Mr. Lancaster could not locate a copy of the

– R.p.488, line 5; R.pp.667-671; R.pp.1055-1059)**15** and expended an additional $14,500.00 or so for a new air conditioning system, updated appliances, and various needed repairs. (R.p.364, line 22 – R.p.365, line 2; R.p.R.pp.687-688).**16** Mr. and Mrs. Drews then moved in (R.p.378, line 23 – R.p.379, line 1) and they had the same life estate arrangement with Mr. Lancaster at Nuffield Road as they had at Bainbridge Drive.**17** (R.p.378, lines 1-22; R.p.382, line 15 – R.p.383, line 1; R.p.488, lines 6-8; R.pp.677-681; R.p.726, para. 6; R.pp.1060-1064).**18** Again, Mr. Lancaster paid the

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POA (which Mr. Lancaster had no reason to retain after the Nuffield Road closing was completed) or the original POA (which Mr. Lancaster did not retrieve from Mr. Drews). (R.p.360, line 16 - R.p.361, line 11). Mr. Lancaster provided Mr. Drews with the POA since he (Mr. Lancaster) traveled for two weeks at a time and was in San Francisco on 27 April 1995, when Mr. Drews executed the Nuffield Road real estate sales agreement. (R.p.360, lines 16-22; R.p.362, lines 3-8; R.p.380, lines 7-25; R.pp.672-676). Mr. Lancaster did attend the closing held approximately two weeks or so later. (R.p.380, line 23 - R.p.381, line 4; R.pp.667-671).

15 Mr. Lancaster paid the $125,000.00 using $79,250.00 from his National Bank of South Carolina ("NBSC") equity line on Bainbridge Drive, $37,500.00 he borrowed on his own home on Fairmont Avenue in Mount Pleasant, and the remainder from his personal checking account. (R.p.381, lines 5-13). NBSC paid off the Bainbridge Drive equity line and transferred it to Nuffield Road. (R.p.381, lines 17-22). SCN was the original lender on Bainbridge Drive with NBSC holding a second position. (R.p.381, lines 23-25). Since NBSC did not want to remain second, it apparently paid off SCN to secure a primary position and, in turn, financed, at least in part, the Nuffield Road purchase. (R.p.382, lines 1-7).

16 Again, Mr. Lancaster was the undisputed record title holder to the Nuffield Road property from the purchase date until the time when it was later sold. (R.p.137, para. 49; R.p.146, para. 13; R.pp.R.pp.667-671). Again, Mr. and Mrs. Drews did not own a home once they sold Edgewater Park in 1992. (R.p.998, line 11 - R.p.999, line 13, R.p.1013, lines 2-17).

17 After Mr. Lancaster purchased Nuffield Drive, he put Bainbridge Drive on the market. (R.p.383, lines 16-19). Unfortunately, it took about eight months for a buyer to be found. (R.p.383, lines 16-21). In this interim period, Mr. Lancaster paid the $8,000.00 or so interest on both the Bainbridge Road and Nuffield Drive mortgages. (R.p.383, line 16 - R.p.384, line 5).

18 As with the original life estate documents used at Bainbridge Drive (R.p.378, lines 1-3; R.pp.665-666; R.pp.1053-1054), Mr. Drews' attorney again alone prepared and handled the life estate documentation for Nuffield Road. (R.p.378, lines 1-13; R.p.382, line 18 - R.p.383, line 1; R.pp.R.pp.677-681; R.pp.1060-1064). Mr. Lancaster's legal counsel was not involved. (R.p.378, lines 1-13; R.p.382, line 18 - R.p.383, line 1; R.pp.R.pp.665-666; R.pp.677-681; R.pp.1053-1054; R.pp.1060-1064).

property taxes (R.p.383, lines 8-10) while Mr. and Mrs. Drews paid for the utilities and casualty insurance. (R.p.383, lines 11-15). Mr. Drews lived at Nuffield Road for over 12 years from 1995, until his death in September 2007. (R.p.137, para. 49; R.p.383, lines 2-7). Mrs. Drews lived there for almost 15 years from 1995 until she passed away in February 2010. (R.pp.137-138, paras. 49, 52; R.p.383, lines 2-7).**19**

3. Other Loans And Advances

Since Mr. and Mrs. Drews did not have any "income" after the Drews Company failed, other than their social security benefits, they were paying their living expenses using credit cards. (R.p.328, lines 7-10; R.p.385, lines 4-20). Consequently, during the ***1993-1995*** time frame, Mr. Lancaster made additional direct loans/advances to Mr. and Mrs. Drews totaling $40,000.00 (R.p.324, lines 20-23; R.p.328, lines 7-10; R.p.385, line 21 – R.p.386, line 14; R.p.1065) so they could, in part, retire their $35,000.00 in credit card debt. (R.p.355, lines 19-25; R.pp.692-695).**20**

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19 Combining the time periods for Bainbridge Drive and Nuffield Road, Mr. and Mrs. Drews lived in property owned by Mr. Lancaster, via a life estate, for over 15 years (Mr. Drews) and almost 18 years (Mrs. Drews), respectively. After Mrs. Drews passed away and after having owned the property for almost 15 years, Mr. Lancaster sold Nuffield Road for $246,000.00. (R.p.138, para. 52; R.p.144, para. 3; R.p.359, lines 21-23; R.p.383, lines 2-7; R.p.488, lines 9-15; R.pp.741-744). Mr. Lancaster, however, only received $225,181.66 after the deduction of related selling expenses.

20 On 1 March 1995, Mr. Drews gave Mr. Lancaster a mortgage on some warehouse property he owned at 1705 Meeting Street in Charleston ("1705 Meeting") to secure the $40,000.00 in various loans. (R.p.346, line 8 – R.p.347, line 6; R.pp.629-630). On April 15, 1998, Mr. Drews gave Mr. Lancaster a $100,000.00 mortgage on the same property as security for any additional loans Mr. Lancaster would make to them on an open-ended basis. (R.p.348, line 20 – R.p.350, line 14; R.p.351, lines 18-22; R.p.402, lines 12-18; R.pp.633-637). Mr. Lancaster did not request the $100,000.00 mortgage and "wasn't involved in securing [it]." (R.p.348, line 20 – R.p.349, line 3). While Mr. Lancaster eventually satisfied the $40,000.00 mortgage in 2001, he was never asked to provide a satisfaction prior to that time. (R.p.350, line 9 – R.p.351, line 16). Both of these mortgages were satisfied in November 2001, when Mr. and Mrs. Drews sold 1705 Meeting to Charleston Antique District. (R.p.357, lines 9-18; R.p.359, lines 1-8). Mr. Lancaster never initiated any collection efforts on either of these mortgages. (R.p.358, lines 19-25; R.p.368,

In addition, in 1999, Mr. Lancaster loaned Mr. and Mrs. Drews $20,000.00 to pay off loans from First Citizens Bank and South Trust Bank obtained to finance the failed Builders Station hardware store business endeavor. (R.p.367, lines 11-22; R.p.388, line 23 – R.p.389, line 24; R.p.402, lines 19-23; R.pp.1060-1064). To satisfy those loans, Mr. Lancaster sent a check on 2 June 1999, to First Citizens from his own First Citizens account for $5,000.00 (R.p.389, lines 2-24; R.p.766, para. 8; R.p.1073) and, on 7 June 1999, had Wachovia issue a $15,000.00 check out of his Wachovia line of credit made payable directly to South Trust. (R.p.389, lines 2-24; R.p.766, para. 8; R.p.1073).**21** After this final $20,000.00 loan,**22** Mr. and Mrs. Drews' debt to Mr. Lancaster totaled $63,738.11 for the additional loans and accrued interest.**23**

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lines 8-16). Mr. Lancaster was aware of the $40,000.00 mortgage when it originated, but was not advised until about 1999, by Mr. Drews that he had increased the mortgage from $40,000.00 to $100,000.00. (R.p.401, line 19 – R.p.368, line 23). Mr. Lancaster did not learn until much later that there were two separate mortgages – both a $40,000.00 mortgage and a $100,000.00 mortgage – or that they were still unsatisfied. (R.p.371, line 6 – R.p.372, line 9; R.p.401, line 19 – R.p.403, line 10).

21 Mr. Lancaster paid out these amounts to the banks in early June 1999, due to the banks' demands for quick satisfaction of Mr. Drews' Builders Station-related debts at reduced amounts. (R.p.354, lines 3-13; R.p.369, lines 10-15; R.p.389, lines 2-12). He noted that the $20,000.00 mortgage was procured three weeks later because its production required attorney involvement. (R.p.354, lines 3-9).

22 On 1 July 1999, Mr. Drews gave Mr. Lancaster another mortgage for this final $20,000.00 loan – again on 1705 Meeting. (R.p.351, line 17 – R.p.353, line 23; R.pp.638-642). Mr. Lancaster was unaware of this last mortgage as Mr. Drews did it without his knowledge. (R.p.352, lines 3-6). Mr. Drews ultimately told Mr. Lancaster about the $20,000.00 mortgage sometime way after the fact. In any case, this mortgage was satisfied in November 2001, when Mr. and Mrs. Drews sold 1705 Meeting to Charleston Antique District. (R.p.357, lines 9-18; R.p.359, lines 1-8).

23 Mr. Lancaster kept good records of the monies he loaned to Mr. and Mrs. Drews and their payments back to him. (R.p.388, lines 3-22; R.p.390, line 15 – R.p.391, line 15; R.pp.692-695; R.pp.1066-1072). ***All of the monies Mr. Lancaster loaned to Mr. and Mrs. Drews undisputedly occurred in 1999 or before***. (R.p.399, lines 2-6). ***No loans of any type were made after 1999***. (R.p.399, lines 2-6).

4. Payments And Loan Security

In 1996, Mr. Drews sold another piece of property he owned – 623 Meeting Street ("623 Meeting").**24** (R.p.370, lines 15-21; R.p.384, lines 13-24). At the time, Mr. and Mrs. Drews still owed Mr. Lancaster the $40,000.00. (R.p.370, line 22 – R.p.371, line 1; R.p.1065). Unfortunately, Mr. Lancaster only received around $3,000.00 from the sale of 623 Meeting (R.p.371, lines 2-5), even though that $40,000.00 was supposed to have been fully satisfied from the sale of that property. (R.p.371, lines 10-15; R.p.386, lines 6-19). Understandably, Mr. Lancaster then asked Mr. Drews for some more assured and reliable security for the remainder of the $40,000.00 loan. (R.p.371, lines 6-15). In turn, Mr. Drews provided him with the $40,000.00 mortgage**25** on 1705 Meeting.**26** (R.p.371, lines 16-17).

Importantly, however, there was no evidence Mr. Lancaster, other than reasonably seeking security for the loans he made, had any other participation or involvement in the preparation of **either** the $100,000.00 mortgage, **or** the $40,000.00 mortgage, **or** the $20,000.00 mortgage. (R.p.371, lines 18-23). In fact, Mr. Drews'

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24 This was the original location of "The Drews Company" (R.p.379, lines 13-16), although the property was vacant/unoccupied at the time. (R.p.384, lines 17-24). In late 1991 or early 1992, Mr. Drews closed the business and sold it to Dorsey Biller and others. (R.p.384, lines 17-18; R.p.384, line 25 – R.p.385, line 3; R.p.440, lines 5-10).

25 Mr. Gordon insinuated Mr. Lancaster was involved in aiding Mr. Drews to dodge creditors by the fact the $40,000.00 mortgage was executed on 1 March 1995, but not recorded until 7 November 1995. (R.p.346, line 8 – R.p.347, line 6; Plf. Exh. 3). Mr. Gordon ignores the fact that an unrecorded mortgage is not "of record" and, therefore, not within the chain of title and required to be satisfied or addressed upon an ownership change. In fact, an unrecorded mortgage protects a debtor's creditors because it will likely never come into play. Consequently, as far as the outside world was concerned the $40,000.00 mortgage did not exist for the eight plus months between its execution and its recordation.

26 Mr. Drews owned the 1705 Meeting warehouse property and largely rented it to third-parties. (R.p.385, lines 4-13). Mr. Drews tried, but failed, to find tenants for both 623 Meeting and 1705 Meeting trying to create an income stream. (R.p.385, line 21 – R.p.386, line 5).

attorney – Kerry W. Koon, Esquire ("Attorney Koon") – prepared all of the necessary documentation.[27] Attorney Koon did not provide Mr. Lancaster with copies of the mortgages. (R.p.371, line 24 – R.p.372, line 9).

In November 2001, Mr. and Mrs. Drews sold 1705 Meeting to Charleston Antique District for around $190,000.00. (R.p.356, lines 16-23; R.p.391, lines 7-15; R.p.391, line 22 – R.p.392, line 6; R.pp.643-648). While most of the purchase price was financed,[28] Mr. Lancaster received around $11,089.63 from the sale. (R.pp.136-137, para. 41; R.p.145, para. 8; R.p.327, lines 3-19; R.p.392, lines 22-24). This reduced Mr. and Mrs. Drews' loan balance down to $50,912.00 which was then memorialized in a promissory note. (R.p.136, para. 37; R.pp.144-145, para. 3; R.p.327, line 23 – R.p.328, line 10; R.p.392, line 25 – R.p.393, line 16; R.p.658; R.p.1074).[29] The promissory note was, in turn, secured by an assignment of the 1705 Meeting mortgage. (R.p.136, para. 38; R.p.144, para. 3; R.p.328, lines 25 – R.p.329, line 2; R.p.393, line 22 – R.p.394, line 25; R.pp.651-652; R.pp.1075-1077).[30] Mr. and Mrs. Drews sent Mr. Lancaster the $540.00

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27 Attorney Koon prepared most, if not all, of the documents real estate documents involving Mr. and Mrs. Drews. (R.p.354, lines 15-18). Mr. Gordon ***did not present any evidence*** showing that either Attorney Koon represented Mr. Lancaster or requested Mr. Lancaster's input into any of the documents which Attorney Koon prepared for Mr. and Mrs. Drews.

28 Charleston Antique District gave Mr. Drews a $190,000.00 Promissory Note and a Mortgage as part of the financed sale. (R.p.134, para. 20; R.p.144, para. 3; R.p.329, lines 3-6; R.pp.643-648).

29 The promissory note had a 5% rate of interest with monthly payments of $540.00. (R.p.392, lines 1-21; R.p.658; R.p.1074). Attorney Koon prepared the promissory note. (R.p.393, lines 17-21).

30 Mr. Drews had assigned to Mrs. Drews the 1705 Meeting Note and Mortgage he received from Charleston Antique District. (R.pp.643-650). In turn, Mrs. Drews then assigned the 1705 Meeting mortgage (from Charleston Antique District) to Mr. Lancaster as security for her $50,912.00 Promissory Note to him. (R.p.134, para. 21; R.p.144, para. 3; R.p.372, lines 10-23; R.pp.651-652; R.pp.1075-1076). Mr. Gordon attempted to characterize this latter assignment transaction as being nefarious and conspiratorial. (R.p.330, line 7 - R.p.332, line 3). Mr.

monthly payment out of the funds they received each month from Charleston Antique District. (R.p.136, para. 40; R.p.144, para. 3; R.p.334, lines 21-25; R.p.391, lines 11-15; R.p.395, lines 1-23; R.pp.692-695; R.pp.1066-1071).**31**

In September 2005, Charleston Antique District sold 1705 Meeting to unrelated third-parties. (R.p.334, lines 13-16; R.p.395, lines 5-10; R.pp.R.pp.655-657; R.pp.721-725). Mr. and Mrs. Drews obtained approximately $130,000.00 from the sale. (R.p.335, line 19 – R.p.336, line 1; R.p.372, line 24 – R.p.373, lines 5; R.p.396, lines 3-8; R.pp.719-720). In turn, Mr. Lancaster received $35,621.12 from the sales proceeds, representing the remaining unpaid amount outstanding on Mr. and Mrs. Drews' original loan balance of $50,912.00. (R.p.136, para. 40; R.p.144, para. 3; R.p.334, lines 13-20; R.p.395, lines 5-23; R.p.658; R.pp.689-690).

B. The Underlying Judgment

In ***1996***, Mr. Drews and Raymond Beasley incorporated the ill-fated Builders Station hardware store business. (R.p.365, lines 3-16). Mr. Drews proceeded to sell "corporate" stock to various investors, including both Mr. Gordon ***and Mr. Lancaster***. (R.p.133, para. 8; R.p.365, lines 17-25). Ultimately, the Builders Station venture

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Lancaster simply wanted to secure Mr. and Mrs. Drews' $50,912.00 debt to him. (R.p.359, lines 16-19; R.p.393, line 22 - R.p.394, line 25). Attorney Koon, again Mr. Drews' counsel, suggested an assignment of the Charleston Antique District mortgage and prepared the necessary documentation. (R.p.393, line 22 - R.p.394, line 25; R.pp.651-652; R.pp.1075-1076). When Charleston Antiques District sold 1705 Meeting Mr. Lancaster satisfied and released the 1705 Meeting mortgage assignment which Mrs. Drews gave him in 2001. (R.p.395, line 24 - R.p.396, line 2; R.pp.689-691).

31 The interest rate on the $50,912.00 promissory note was fixed by agreement at 5% per annum. (R.p.392, lines 1-21; R.pp.651-652; R.pp.1075-1076). The interest rates on the 1993-1995 $40,000.00 loans and the 1999 $20,000.00 loan, however, were calculated at the same rate Mr. Lancaster was being charged by his financial institutions on the equity line. (R.p.391, lines 16-21). Mr. Lancaster was not "making a profit" from his aunt's and uncle's financial woes. (R.p.391, lines 16-21).

completely failed and Mr. Gordon sued seeking compensation for Mr. Drews' alleged violation of South Carolina's securities laws since South Carolina law ostensibly required the Builders Station stock was supposedly required to be registered as a security. . (R.p.133, para. 8; R.p.726, para. 2).**32**

There was no evidence showing Mr. Lancaster was involved, in any way, with the formation of Builders Station or the sale of the unregistered corporate stock. Mr. Lancaster, himself, was a victim of the failed venture as he had purchased $30,000.00 worth of Builders Station's stock. (R.p.365, lines 17-19; R.p.366, lines 3-5; R.p.389, line 25 – R.p.390, line 6). While the hardware store opened, it operated only for a short time before closing (R.p.367, lines 7-10) and Mr. Lancaster's stock was rendered worthless. (R.p.390, lines 7-8).

The Circuit Court held a non-jury trial on 3-4 December 2001, and granted Mr. Gordon judgment against Mr. Drews for $65,789.12. (R.p.11, para. 2; R.pp.46-53; R.p.133, para. 9; R.p.726, para. 3; R.pp.1079-1085). In March 2002, Mr. Gordon was awarded $42,693.50 in attorneys' fees and costs (R.p.11, para. 2; R.pp.41-43; R.pp.1079-1090) producing a total judgment of $108,482.62. (R.p.11; R.p.133, para. 9; R.pp.1079-1090).**33**

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32 *See* S.C. Code Ann. § 35-1-1490 (West Group 1995).

33 Mr. Gordon's judgment was affirmed on appeal. *See* Gordon v. Drews, 358 S.C. 598, 595 S.E.2d 864 (Ct.App. 2004), *rehearing denied* (20 May 2004), *cert. denied* (22 September 2005). Mr. Gordon also was awarded $1,467.21 in appellate costs. (R.pp.38-34). Mr. Lancaster first found out about Mr. Gordon's judgment against Mr. Drews in December 2001. (R.p.399, line 20 – R.p.400, line 1).

IV. ARGUMENT AND CITATION OF AUTHORITY

THE COURT OF APPEALS INCORRECTLY EXPANDED THIS SUPREME COURT'S VERY LIMITED HOLDING IN *LINDA Mc CO. V. SHORE* BY HOLDING MR. GORDON HAD TIMELY INITIATED HIS ENFORCEMENT ACTION AGAINST MR. LANCASTER EVEN THOUGH THE 2002 DREWS JUDGMENT WAS UNDISPUTEDLY MORE THAN TEN YEARS OLD

South Carolina law currently provides, in pertinent part, that "[e]xecutions may issue upon final judgments or decrees at any time within ***ten years from the date of the original entry thereof*** and shall have active energy during such period, without any renewal thereof, and this whether any return may or may not have been made during such period on such executions.**34** This required Mr. Gordon, with a very small unrelated exception, ***to affirmatively act*** on the judgment he obtained against Mr. Drews ***within ten years*** of receiving the judgment. The record shows Mr. Gordon failed to undertake any action to timely protect his enforcement claim and, therefore, his suit against Mr. Lancaster was barred as a matter of law.**35** This Supreme Court should reverse the Court of Appeals' decision and grant Mr. Lancaster judgment as Mr. Gordon's judgment was without any legal force and/or effect.

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34 *See* S. C. Code Ann. 15-39-30 (Thomson Reuters West 2012) (Emphasis added). *See also generally* Linda Mc Co. v. Shore, 375 S.C. 432. 653 S.E.2d 279 (Ct.App. 2007), *certiorari granted and affirmed as modified,* 390 S.C. 543, 703 S.E.2d 499 (2010); Carr v. Guerard, 365 S.C. 151, 616 S.E.2d 429 (2005). Before 1946, even though the life of a judgment was ten years, it could be extended for an additional ten years. *See generally* U.S. Rubber Co. v. McManus, 211 S.C. 342, 345-346, 45 S.E.2d 335, 336 (1947). *See also* Linda Mc. Co. v. Shore, 390 S.C. 543, 560, 703 S.E.2d 499, 508 (Beatty, J., dissenting). In 1946, the South Carolina Legislature decided that ten years was a ***sufficient time period*** and rewrote the law prohibiting any extension. This Supreme Court held "[t]he logical result of the 1946 enactment . . .was to ***utterly extinguish a judgment after the expiration of ten years from the date of entry***." Hardee v. Lynch, 212 S.C. 6, 16-17, 46 S.E.2d 179, 183 (1948) (Emphasis added).

35 The Hardee court acknowledged that "[j]udgment liens are creatures of law, and cannot be enforced in equity when they have ceased to be enforceable at law [and, therefore, when a] plaintiff[such as Mr. Gordon in this case, has] failed to take any [protective] steps to enforce this judgment while of active energy", then the judgment is considered invalid and worthless. *See* Hardee v. Lynch, 212 S.C. 6, 14, 46 S.E.2d 179, 182.

Mr. Gordon obtained his damages judgment against Mr. Drews on ***5 December 2001*** (R.p.11, para. 2; R.pp.46-53; R.p.133, para. 9; R.p.726, para. 3; R.pp.1079-1085), and the attorneys' fees award on ***15 March 2002***. (R.p.11, para. 2; R.pp.41-43; R.pp.1079-1090). The judgment was enrolled on ***18 March 2002***.**36** Mr. Gordon sued Mr. Lancaster on ***2 November 2010*** (R.pp.120-130), and obtained his judgment on ***19 August 2013***. (R.p.9; R.pp.10-30). By any reasonable temporal calculation, Mr. Gordon's judgments had expired and were, in turn, unenforceable as they were more than ten years old.

In *Linda Mc Co. v. Shore*, this Supreme Court, in a very limited holding, recognized that *S.C. Code Ann.* § 15-39-30 operated like a statute of limitations when a judgment creditor had ***initiated*** supplemental proceedings against the judgment debtor within the ten-year time period ***and*** conducted a merits hearing, but the Circuit Court ***had not issued*** the levy and execution order ***until after expiration*** of the ten-year period.**37** This Supreme Court concluded that since the creditor was "merely waiting on a court's order regarding execution and levy, the ten year limitation found in [*S.C. Code Ann.* §] 15-39-30 [wa]s extended to [the date] when the court finally issues an order."**38**

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

37 *See* Linda Mc Co. v. Shore, 390 S.C. 543, 554, 703 S.E.2d 499, 504-505.

38 *See* Linda Mc Co. v. Shore, 390 S.C. 543, 554, 703 S.E.2d 499, 505. That provision reads as follows:

> Executions may issue upon final judgments or decrees at any time within *ten years from the date of the original entry thereof* and shall have active energy during such period, without any renewal or renewals thereof, and this whether any return may or may not have been made during such period on such executions.

Furthermore, this Supreme Court recognized that "[t]o hold otherwise would put those trying to enforce their judgments at the mercy of the court system to conclude the matter within the ten-year period"**39** and assumedly have the claim completely barred if the court, for whatever reason, failed to issue the final order enforcing the judgment within the statutory ten year period. A plausible conclusion, but not applicable to the judgment Mr. Gordon has sought to enforce against Mr. Lancaster.

Entirely unlike the Supreme Court's admittedly ***very limited factual situation*** in *Linda Mc Co.*,**40** this case was ***not a circumstance*** where Mr. Gordon, as the judgment creditor, " 'ha[d] complied with the applicable statutes . . and [wa]s ***merely waiting*** on a court's order regarding execution and levy.' "**41** The record shows Mr. Gordon sued Mr. Lancaster on ***2 November 2010*** (R.pp.120-130), and was not "merely waiting on a court's order regarding execution and levy"**42** since "the [C]ircuit [C]ourt did not [even]

See S. C. Code Ann. 15-39-30 (Thomson Reuters West 2012) (Emphasis added). *See also generally* Linda Mc Co. v. Shore, 375 S.C. 432. 653 S.E.2d 279; Carr v. Guerard, 365 S.C. 151, 616 S.E.2d 429 (2005).

39 *See* Linda Mc Co. v. Shore, 390 S.C. 543, 554-555, 703 S.E.2d 499, 505.

40 The Supreme Court specifically stated that "[w]e want to stress that this is a **narrow holding** limited to facts similar to those at issue in this case." Linda Mc Co. v. Shore, 390 S.C. 543, 544, 703 S.E.2d 499, 504-505 (Emphasis added); GrandSouth Bank v. Cleveland Land Co., 2015 WL 5834241, *1 (Ct.App., filed 7 October 2015) (*per curiam*) (Not Reported in S.E.2d). *See also* RRR, Inc. v. Toggas, 98 F.Supp.3d 12, 17 (D.D.C. 2015); Alex Sanders & John S. Nichols, Trial Handbook for South Carolina Lawyers, §§ 36:18, 40:9 (Thomson Reuters West 2016 Supp.).

41 Gordon v. Lancaster, 419 S.C. 48, 58, 795 S.E.2d 857, 862 (*quoting* Linda Mc Co. v. Shore, 390 S.C. 543, 554-555, 703 S.E.2d 499, 505). As noted, Mr. Gordon obtained his damages judgment against Mr. Drews on **5 December 2001** (R.p.11, para. 2; R.pp.46-53; R.p.133, para. 9; R.p.726, para. 3; R.pp.1079-1085), and the attorneys' fees award on **15 March 2002**. (R.p.11, para. 2; R.pp.41-43; R.pp.1079-1090). The judgment was enrolled on **18 March 2002**. Gordon v. Lancaster, 419 S.C. 48, 63-64, 795 S.E.2d 857, 865 (Thomas, J, dissenting).

42 Gordon v. Lancaster, 419 S.C. 48, 58, 795 S.E.2d 857, 862 (*quoting* Linda Mc Co. v. Shore, 390 S.C. 543, 554-555, 703 S.E.2d 499, 505).

hold the final hearing in this case until ***June 2013***, some 13 or so months after expiration of the ten-year period"[43] and, in turn, Mr. Gordon's judgment against Mr. Lancaster was not effective until ***19 August 2013*** (R.p.9; R.pp.10-30), another two months thereafter.

The Court of Appeals vastly expanded *Linda Mc Co.*'s limited reach to the extent that now a judgment creditor could "legitimately" file and serve an action to enforce an outstanding judgment on the ***very last day of the ten-year "active energy" period*** and still have effective enforcement rights because the judgment creditor had "filed [the] action . . within the ten-year statutory period of active energy."[44] This rationale substantially and impermissibly ***extends*** the ten-year "active energy" period well beyond any time limits likely envisaged by this Supreme Court in *Linda Mc Co.* for whatever additional amount of time it takes either a Circuit Judge or a Master-in-Equity to both conduct a hearing ***and*** to issue a final order. Given the number of cases in our court – such an extension of time could potentially inflate the "ten-year period" many, many months into the future given legitimate delays, continuances and final order preparation.

This unwarranted extension of the ten-year period goes far beyond the limited circumstances addressed in *Linda Mc Co.* and has unnecessarily and gratuitously expanded the holding of that opinion well beyond what this Supreme Court seems to have anticipated, contemplated, and/or intended.[45]

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43 Gordon v. Lancaster, 419 S.C. 48, 64, 795 S.E.2d 857, 865 (Thomas, J., dissenting) (Emphasis added).

44 Gordon v. Lancaster, 419 S.C. 48, 64, 795 S.E.2d 857, 862 (*citing* Linda Mc Co. v. Shore, 390 S.C. 543, 554 n.7, 703 S.E.2d 499, 505, n.7).

45 Mr. Gordon was required to initiate litigation against Mr. Lancaster in a timely manner sufficient to allow the Circuit Court to conduct the final hearing. Under Linda Mc Co., ***ten years means ten years*** and the only recognized extension of time beyond the ten-year

Moreover, unlike *Linda Mc Co.*, where the creditor was essentially helpless and left to the mercy of the Circuit Court, Mr. Gordon held his destiny in his own hands. While Mr. Gordon filed his enforcement action within the ten-year time period (R.pp.120-130), he did not present any evidence he attempted to timely pursued his claim by, *inter alia*, seeking a final hearing within the applicable time period. Mr. Gordon was deemed to know the effect of *Linda Mc Co.* on his claim,[46] and he could have requested (*i.e.*; pushed) the Circuit Court to conduct a final hearing before the ten years ended. Had Mr. Gordon taken such affirmative action and, in turn, the Circuit Court had actually heard the case during the 10-year period, *Linda Mc Co.* would have protected Mr. Gordon's enforcement claim beyond the ten year time period. Nevertheless, Mr. Gordon failed to act and "the [C]ircuit [C]ourt did not hold the final hearing until . . more than one year ***after*** the expiration of the ten-year period."[47]

Unfortunately, the Court of Appeals rewarded Mr. Gordon's "lack of affirmative efforts" to protect his claim. This Supreme Court should not do the same.

"active energy" period involves a situation where the final hearing has been held and the judgment creditor is merely awaiting the Circuit Court's issuance of the final order, levy, and execution. That is not what occurred in this case.

[46] S. C. Dept. of Natural Resources v. Blanton, 1999 WL 566315, *2 (SCALJD, filed 14 July 1999) (*quoting* Gregory v. Gregory, 292 S.C. 587, 589-590, 358 S.E.2d 144, 146 (Ct.App. 1987)) ("It is a fundamental principle of law that everyone is charged with or deemed to have knowledge of the law. The legal axiom that ignorance of the law is no excuse has long been the law of this nation and state."). *See also* S.C. Wildlife & Marine Resources Dep't. v. Kunkle, 287 S.C. 177, 336 S.E.2d 468 (1985).

[47] Gordon v. Lancaster, 419 S.C. 48, 64, 795 S.E.2d 857, 865 (Thomas, J., dissenting) (Emphasis added). Mr. Gordon's judgment against Mr. Lancaster was not enrolled for another two months thereafter (R.p.9; R.pp.10-30) for a total post-expiration period of some 17 months or so.

The Court of Appeals' reliance on *Hardee v. Lynch*[48], to justify an expansion of the *Linda Mc Co.* holding is entirely misplaced. Not only does *Hardee v. Lynch* fail to support the Court of Appeals' decision, *Hardee v. Lynch* clearly demonstrates Mr. Lancaster's position is correct and the judgment had long expired before the trial, not even to mention the date the final judgment against Mr. Lancaster or the date on which that judgment was finally enrolled.

For one thing, *Hardee v. Lynch* addressed South Carolina law ***prior to 1946*** when, unlike today, the initial ten-year period could legitimately be extended for an additional ten years.[49] Moreover, as now Chief Justice Beatty then noted in *Linda Mc Co.*, the "*Hardee* court ***specifically declined*** to address the question of what happens when a timely-filed action to enforce a judgment [wa]s not concluded prior to the expiration of the ten-year repose period as it was unnecessary to resolve the issue

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48 Hardee v. Lynch, 212 S.C. 6, 46 S.E.2d 179. The Supreme Court incorrectly referred to Hardee v. Lynch in Linda Mc Co. as supporting the theory that the mere filing of an enforcement action within the ten-year period was sufficient to preserve the "active energy". In Hardee v. Lynch, the Supreme Court concluded that the "logical result of the 1946 enactment . . was to ***utterly extinguish a judgment after the expiration of ten years from the date of entry***." Hardee v. Lynch, 212 S.C. 6, 16-17, 46 S.E.2d 179, 183 (Emphasis added).

49 *See* U.S. Rubber Co. v. McManus, 211 S.C. 342, 45 S.E.2d 335. In this case the Supreme Court recognized that:

> Prior to the passage of the 1946 Act . . the limitation for bringing an action on a judgment was ***twenty years***, Section 387, subsection 1. Section 743, subsection 1, provided that judgments shall constitute a lien on the real estate of the judgment debtor for ten years from date of entry. And the procedure was set forth in subsection 2, 4, 5, 6 and 7 of Section 743 as to how ***judgments could be renewed or revived within the period of ten years*** by the service of a summons upon the judgment debtor. Section 745 permitted ***an action on a judgment after the lapse of twenty years*** from the date of its entry.

U.S. Rubber Co. v. McManus, 211 S.C. 342, 345-346, 45 S.E.2d 335, 336 (Emphasis added). *See also* Linda Mc. Co. v. Shore, 390 S.C. 543, 560, 703 S.E.2d 499, 508 (Beatty, J., dissenting).

before it."[50] Furthermore, now Chief Justice Beatty recognized this Supreme Court had ***already*** "squarely confronted the question and concluded that an action to enforce the lien ***will not preserve it*** beyond the time by statute if such time expires ***before the action is tried***."[51] That is precisely what occurred in this case as the Circuit Court's hearing was held more than 12 months after the statutory time period had expired and the judgment against Mr. Lancaster was entered some two months thereafter.

Furthermore, ***Mr. Lancaster is not and never has been the original judgment debtor to Mr. Gordon***. Mr. Drews and others occupied that position. Mr. Gordon has sought only to "attach" the "downstream" proceeds of monies which Mr. Drews allegedly "parked" with Mr. Lancaster to hide from creditors. The fallacy with the Court of Appeals' decision is that most of the loan transactions occurred (a) when the Drewses ***did not have*** any debts or creditors, (b) ***long before*** Builders Station existed, (c) ***long before*** Mr. Gordon had a potential claim against Mr. Drews, (d) ***long before*** Mr. Gordon made any claim due to the failed Builders Station investment, and (e) ***long before*** Mr. Gordon obtained any judgment of any type or amount against Mr. Drews.

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

51 Linda Mc Co. v. Shore, 390 S.C. 543, 561, 703 S.E.2d 499, 508 (*citing* Garrison v. Owens, 258 S.C. 442, 446-447, 189 S.E.2d 31,33 (1972)) (Beatty, J., dissenting) ("A judgment lien is purely statutory, its duration as fixed by the legislature ***may not be prolonged*** by the courts and the bringing of an action to enforce the lien will not preserve it beyond the time fixed by the statute, if ***such time expires before the action is tried***."). (Emphasis added). *See also generally* 49 C.J.S., Judgments, § 495 (West 1969); Hughes v. Slater, 214 S.C. 305, 52 S.E.2d 419 (1949); Harvey v. Gibson, 190 S.C. 98, 2 S.E.2d 385 (1939). Even though this Supreme Court overruled Garrison in Linda Mc Co., it did so **only to the extent** that Garrison was "inconsistent with th[e] opinion [in Linda Mc Co.]. *See* Linda Mc Co. v. Shore, 390 S.C. 543, 555 fn.8, 703 S.E.2d 499, 505 fn.8). To the extent Garrison prohibits an extension of the ten-year time period when the enforcement action has not yet been tried, that proposition is not inconsistent with Linda Mc Co. and, therefore, is still valid and retains controlling precedential value.

V. CONCLUSION

Based upon the foregoing arguments and citation of authority, the Petitioner, Donald W. Lancaster, respectfully requests this Supreme Court reverse the Court of Appeals' decision and grant him judgment.

Respectfully submitted:

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STATE OF SOUTH CAROLINA
IN THE
SUPREME COURT

Appeal from the Court of Common Pleas For Charleston County
Honorable J. C. Nicholson, Jr., Circuit Judge
Civil Action Nos.: 2010-CP-10-9096 and 2011-CP-10-8840
419 S.C. 48, 795 S.E.2d 857 (Ct.App. 2016)
(2016 WL 6471967)

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

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S.C. SUPREME COURT

Respondent,

v.

Donald W. Lancaster,

Petitioner.

Proof of Service for Brief on Certiorari by the Petitioner, Donald W. Lancaster

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I, Stephen P. Groves, Sr., Esquire, hereby certify that on 12 January 2018, I served one copy of the ***Brief of the Petitioner on Certiorari*** submitted by the Petitioner, Donald W. Lancaster, on counsel for the Respondent via the United States Mail, postage pre-paid, and addressed as follows:

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12 January 2018

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