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SG Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

COA: 2016-01227
2014-CP-10-02844

Darryl M. Blaylock Respondent,

v.

Erica Lynn LaMarche Respondent,

and David S Chung. Proposed Intervenor/Appellant.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2014-CP-10-2884

Darryl M. Blaylock)
Plaintiff,)

vs.)

Erica Lynn LaMarche,)
Defendant.)

and)

David S. Chung,)
Intervening Defendant.)

**ORDER DENYING DAVID CHUNG'S
MOTION TO INTERVENE AND TO
SET ASIDE PARTITION JUDGMENT**

FILED
2016 FEB 12 PM 2:18
JULIE J. ARMSTRONG
CLERK OF COURT

THIS MATTER is before the court on David Chung's ("Chung") Motion pursuant to SCRCP 60(b)(3) seeking to intervene in this action and set aside a judgment of partition of a home owned by plaintiff Darryl Blaylock ("Blaylock") and defendant Erica Lynn LaMarche ("LaMarche"). Chung asserts he should have been made a party to the original action because of a District of Columbia judgment filed in South Carolina. Although Chung's judgment has merit, Defendant filed a Lis Pendens in accordance with S.C. Code Ann. § 15-11-10 prior to both domestication of the judgment and the filing of this Motion, therefore any subsequent claims to the property are barred. Therefore, Defendants Motion is denied.

FACTS

On September 28, 2005, Blaylock and LaMarche purchased a single-family home located at 1309 Langford Drive, Mount Pleasant, South Carolina. Blaylock and LaMarche purchased the real property in cash and owned the property debt free as joint tenants. In 2007, Blaylock and



HLF484

LaMarche took out a mortgage on the Langford property and borrowed \$400,000.00.

In February of 2012, Blaylock brought the current action against LaMarche for conversion of personal property and LaMarche counterclaimed for partition of the Langford property. On September 26, 2012 LaMarche filed a notice of Lis Pendens and the action was stricken by consent of both parties pursuant to SCRCP 40(j) on February 5, 2013, then reinstated pursuant to SCRCP 40(j) on May 6, 2014. The Court declared, by final order, on December 3, 2014, that Blaylock did have \$100,000.00 worth of equity in the Langford property subject to an \$80,000.00 mortgage. In accordance with the final order, LaMarche paid Blaylock \$20,639.57 to purchase his remaining equity in the Langford property and a Quiet Title Deed was issued on January 23, 2015. The Langford property was then sold on September 12, 2015, for \$605,000.00 to a third party.

Chung's assertion of an interest in the Langford property arises from a District of Columbia lawsuit against Blaylock in which he was found liable on February 26, 2013 of fraud, unjust enrichment, and fraudulent conveyance. The District of Columbia action was filed in 2008 alleging Blaylock, through his agent, induced Chung into investing \$100,000.00 for renovations on a coffee shop. The loan required Blaylock to pay back the principal plus 100 % interest on the loan.

Blaylock subsequently did no renovations to the coffee shop and, unbeknownst to Chung and LaMarche, transferred the funds to LaMarche to make payments toward the mortgage on the Langford property. The District of Columbia jury awarded Chung \$100,000 in actual damages and \$100,000 in punitive damages. Chung's principal debt was satisfied by a settlement agreement with Blaylock's agent and the current claim against Blaylock and LaMarche is for the balance due on the judgment with interest. Chung domesticated his judgment on November 4,



2014, in South Carolina eight months after judgment was entered in the District of Columbia matter.

Chung filed a Motion to Intervene and Set Aside the Judgment in the current action on September 11, 2015, to have the court create a constructive trust of the proceeds from the sale of the real property.

LAW/ANALYSIS

Chung's Motion to Intervene and Set Aside the Judgment is procedurally deficient because LaMarche filed notice of Lis Pendens prior to Chung domesticating the District of Columbia judgment. A properly filed notice of Lis Pendens binds subsequent purchasers or encumbrancers to all proceedings emanating from the litigation. S.C. Code Ann. § 15-11-20 (1976); S.C. Code Ann. § 15-11-50 (1976) (When the summons is published or served as above provided, the notice of the pendency of the action shall constitute notice for five years from the date of the filing); *Pipkin v. Fletcher*, 165 S.C. 98, 162 S.E. 774 (1932); *S. Carolina Nat. Bank v. Cook*, 291 S.C. 530, 532, 354 S.E.2d 562, 562 (1987). The Lis Pendens mechanism is designed primarily to protect unidentified third parties by alerting prospective encumbrancers and purchasers of property as to what is already on public record, "i.e., the fact of a suit involving property;" therefore, it notifies potential encumbrancers and purchasers that they will take subject to the judgment, without any substantive rights. *Horry Cty. v. Ray*, 382 S.C. 76, 81, 674 S.E.2d 519, 522 (Ct. App. 2009).

In this matter, LaMarche filed notice of Lis Pendens in regard to the real property on September 26, 2012, in a counterclaim against Blaylock. Chung was awarded his District of Columbia judgment February 26, 2013 and waited eight months until November 4, 2013, to domesticate his judgment in South Carolina. Chung filed his Motion to Intervene and Set Aside

the Judgment pursuant to SCRCP 24(a)(2) and SCRCP 60(b)(3) on September 11, 2015, three years after notice of Lis Pendens was filed on the Langford property. In this Court, Equity aids the vigilant; Chung had ample time to discover Lis Pendens was filed on the property and seek other property to satisfy his District of Columbia judgment. Here, Equity will not aid Chung because he sat on his rights for a substantial period of time after proper notice had been provided with a properly filed notice of Lis Pendens.

I. SCRCP 24(a)(2)

Chung's Motion to Intervene is untimely pursuant to statute because LaMarche filed notice of Lis Pendens. SCRCP 24(a)(2) reads as follows:

Upon timely application, anyone shall be permitted to intervene in an action when the applicant claims an interest relation 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 represent by existing parties.

A party seeking intervention under SCRCP 24(a)(2) must:

1. establish timely application;
2. assert an interest relation to the property or transaction which is subject of the action;
3. demonstrate, that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and
4. demonstrate that its interest is inadequately represented by other parties.

In re Horry Cty. State Bank, 361 S.C. 503, 604 S.E.2d 723 (Ct. App. 2004). Failure to satisfy any one of the four requirements precludes intervention. *Ex parte Reichlyn*, 310 S.C. 495, 427 S.E.2d 661 (1993).

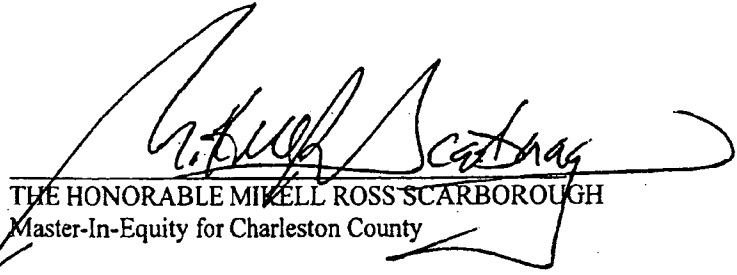
In this matter, Chung fails the first requirement by not establishing timely application of the motion. Chung, despite his domesticated judgment, did not appear in this action until the real property in question had been sold to a third party who was a bona fide purchaser for value. Accordingly, the Court finds Chung's failure to establish timely application pursuant to SCRCP 24(a)(2) results in denial of the relief sought herein.

II. SCRPC 60(b)(3)

Finally, SCRPC 60(b)(3) can be used to set aside a judgment in cases of extrinsic fraud, however this case does not present such circumstance. Extrinsic fraud induces a person not to present a case or deprives a person of the opportunity to be heard. *Robinson v. Estate of Harris*, 388 S.C. 645, 698 S.E.2d 229 (2010). If a judgment procured by extrinsic fraud could have been avoided if the challenging party exercised due diligence, a court generally will not grant relief. *Id.* As previously stated, Chung did exercise due diligence in domesticating his judgment here in South Carolina. Furthermore, Chung has not presented evidence to indicate that he was fraudulently excluded from the proceedings, notwithstanding the notice of Lis Pendens filed by LaMarche, he does not have an interest in the real property because LaMarche had no direct knowledge of the fraud Blaylock perpetrated in the District of Columbia matter.

THEREFORE IT IS ORDERED that David Chung's Motion to Intervene and Set Aside the Judgment is denied.

AND IT IS SO ORDERED!


THE HONORABLE MIKELL ROSS SCARBOROUGH
Master-In-Equity for Charleston County

This 11 day of February, 2016
Charleston, South Carolina

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-10-2884

Blaylock

2016 MAY -5 PM 3:25

LaMarche

JULIE J. ARMSTRONG
CLERK OF COURT

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☒ Defendant
or
☐ 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.
- ☐ 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: This matter comes before the court by way of a Motion to Reconsider filed by Intervening Defendant David Chung. The court respectfully denies the Motion to Reconsider for the reasons stated in the Order of the court dated February 12, 2016. Further, Petitioner's reliance on Goodwin v. Landquest is misplaced. See Robinson v. J.F. Cleckley Co., 751 F. Supp. 100 (D.S.C. 1990) cited therein. Also, filing of a Lis Pendens does not stay or alter the right to seek for 5 years

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

ORDER INFORMATION

INFORMATION FOR THE PUBLIC INDEX

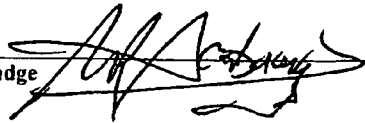
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

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.

Circuit Court Judge



3062

Judge Code

Date

5/3/16

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-10-2884

Blaylock

2016 MAY -5 PM 3:25

LaMarche

JULIE J. ARMSTRONG
CLERK OF COURT

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☒ Defendant
or
☐ 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.
- ☐ **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

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Also, filing of a Lis Pendens puts creditors on notice to search for 5 years
ORDER INFORMATION *therefore Johnson had notice of the Motion*

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

INFORMATION FOR THE PUBLIC 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)
		\$
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		\$
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.

Circuit Court Judge



3062

Judge Code

5/3/16
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014CP-10-2884

BlaylockL.A. March

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ 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:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk:

Defendant's motion for a partition by
Adelment is granted.

INFORMATION FOR THE PUBLIC 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)
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		\$

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Circuit Court Judge

3062

Judge Code

Date

11/20/14

2014-CP-10-2084

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012- CP-10-1347

Darryl M. Blaylock
PLAINTIFF(S)

Erica L LaMarche
DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ 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.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ 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: Defendant's Motion to Restore Case to the Active, filed on February 5, 2014, came before the Court on April 7, 2014, and is hereby GRANTED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : This case shall be restored to the active roster.

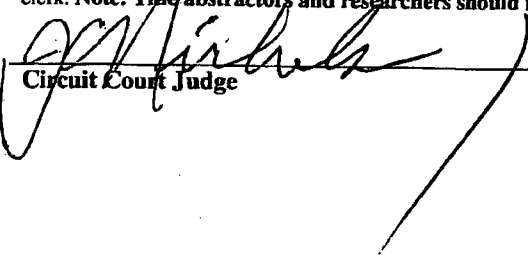
INFORMATION FOR THE JUDGMENT INDEX

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		

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.


Circuit Court Judge

2117
Judge Code

4/10/2014
Date

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-10-2884

Blaylock

La Marche

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ 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.
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- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ 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:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

Plaintiff's Rule 60 Motion for Relief from Judgment is Denied. Defendant's Motion to Vacate is Granted. Plaintiff must

INFORMATION FOR THE PUBLIC 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:

Vacate by Friday, July 17, 2015 at 5 p.m. Statute to be preserved until trust is complete

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.

Circuit Court Judge

3062
Judge Code

Date

6/15/15

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP-10-6744

David S. Chung

Darryl Blaylock

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: David K. Haller

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ 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: Chung's District of Columbia against Blaylock in the amount of \$100,000.00 plus costs of \$10,000 and interest is enrolled in Charleston County.

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)
David S. Chung	Darryl Blaylock	\$110,000.00
		\$
		\$

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.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

David K. Haller

115 River Landing Drive, Suite 102

Charleston, SC 29492

ATTORNEY(S) FOR THE PLAINTIFF(S)

Pro Se

1309 Langford Road

Mt. Pleasant, SC 29464

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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 CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-10-6744

David S. Chung,

Plaintiff,

versus

Darryl Blaylock,

Defendant.

ORDER ENROLLING FOREIGN JUDGMENT

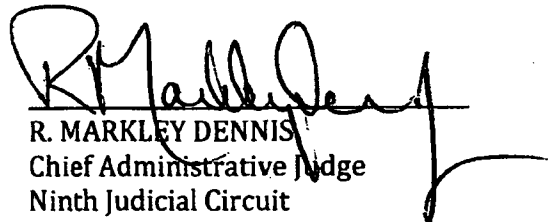
2015 DEC 15 PM 2:07
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

IT APPEARING that on November 14, 2013, David S. Chung filed a Notice of Filing Foreign Judgment to enroll a valid District of Columbia judgment obtained against Darryl Blaylock in the amount of \$100,000, plus costs of \$10,000, and interest at the judgment rate. By order dated February 19, 2014, Blaylock was served notice of the filing by publication. The District of Columbia judgment became uncontested on or about July 29, 2015. Blaylock has made no appearance and has not filed an objection.

Accordingly, pursuant to S.C. Code Ann. §15-35-900, et seq., it is ORDERED that David S. Chung's judgment against Darryl Blaylock from the District of Columbia in the amount of \$110,000, plus interest at the judgment rate, shall be enrolled in the judgment rolls of Charleston County.

AND IT IS SO ORDERED!


R. MARKLEY DENNIS
Chief Administrative Judge
Ninth Judicial Circuit

December 7, 2015

At Charleston, South Carolina

Haller Law Firm, P.C.
Counselors at Law

David K. Haller
Certified Civil Court Mediator

December 1, 2015

The Honorable R. Markley Dennis
Chief Administrative Judge
Ninth Judicial Circuit
300 California Avenue
Moncks Corner, SC 29461

In Re: *Chung v. Blaylock*
Case No. 2013-CP-10-6744

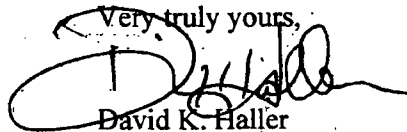
Dear Judge Dennis:

I represent David S. Chung. Enclosed for your consideration is an Order Enrolling Foreign Judgment and accompanying Form 4. I am sending this to you at the request of the Charleston County Clerk of Court's office, because although the Uniform Foreign Judgment Act does not specifically require an order, the Clerk believed one might be more appropriate to cause the enrollment.

By way of background, Mr. Chung obtained a judgment in the District of Columbia in February of 2013. We filed the Notice of Foreign Judgment in November of 2013. Attempts to serve Mr. Blaylock failed and he was served by publication in February 2014. He filed no objection. During this time, the case proceeded on appeal to the District of Columbia Court of Appeals. It became an uncontested judgment under the UFJA in July of this year and I filed an affidavit to that effect in September. I served that affidavit on Mr. Blaylock at his last known address more than 30 days ago. No objection or other appearance has been filed and enrollment is now proper.

Accordingly, if the order and Form 4 meet your approval, please sign the same and return the original to me in the enclosed self-addressed envelope and I will forward to the Clerk for filing.

Please let me know if you have any questions. Thank you for your time and attention to this matter.

Very truly yours,

David K. Haller

cc: Darryl Blaylock (to last known address)
Client

2014-CP-10-2884

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012- CP-10-1347

Darryl M. Blaylock
PLAINTIFF(S)

Erica L LaMarche
DEFENDANT(S)

Submitted by: _____	Attorney for : ☐ Plaintiff ☐ Defendant
	or ☐ 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.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ 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: Defendant's Motion to Restore Case to the Active, filed on February 5, 2014, came before the Court on April 7, 2014, and is hereby GRANTED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : This case shall be restored to the active roster.

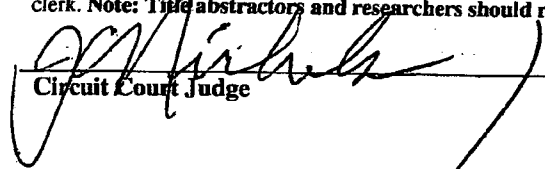
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N/A		

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

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Circuit Court Judge

2117
Judge Code

4/10/2014
Date

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012- CP-10-1347

Darryl M. Blaylock
PLAINTIFF(S)

Erica L LaMarche
DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ 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.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____
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☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

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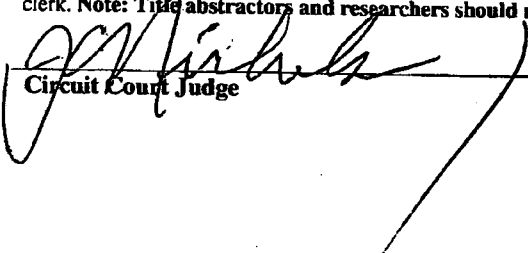
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Circuit Court Judge

2117
Judge Code

4/10/2014
Date

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
DARRYL BLAYLOCK,)
Plaintiff,)
v.)
ERICA LYNN LaMARCHE and,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-10-2884
(Reference case number 2012-CP-10-1347)

FINAL ORDER

FILED
2014 DEC -3 AM 8:46
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Date of Hearing: November 20, 2014
Presiding Judge: Mikell R. Scarborough
Attorney for Plaintiff: No Appearance
Attorney for Defendant: Guy J. Vitetta
Court Reporter:

This matter came before the court pursuant to the Defendant's request for a Final Hearing and a Motion for Summary Judgement. Present before the court was the Defendant and her attorney, Guy J. Vitetta of the Charleston Bar. The Plaintiff was not present. The court notes that the Plaintiff was served with notice of this hearing by way of US Mail at 1309 Langford Road, Mt. Pleasant South Carolina on October 30, 2014 pursuant to Rule 5 of the South Carolina Rules of Civil Procedure. The Charleston County Sheriff's office also attempted to serve the Plaintiff at 1309 Langford Road, Mt. Pleasant South Carolina with notice of this hearing by way of personal service on two (2) separate occasions but the Plaintiff did not come to his door. Finally, the Defendant retained a private process server, Craig Fedor, who also attempted to serve the Plaintiff at 1309 Langford Road, Mt. Pleasant South Carolina with notice of this hearing on two (2) additional separate occasions. On November 10, 2014 Mr. Fedor made contact with the Plaintiff and the Plaintiff told him to leave his property and refused to accept Mr. Fedor's documents.

This matter was commenced by the Plaintiff on February 24, 2012 with the filing of a Summons and Complaint in case number 2012-CP-10-1347 requesting a Declaratory Judgment regarding the ownership of certain real and personal property, as well as other legal and equitable relief. The Defendant filed an Answer and Counterclaim on March 26, 2012 and the Plaintiff

filed a Reply on April 25, 2012. The matter was stricken from the Court's Docket pursuant to Rule 40j of the South Carolina Rules of Civil Procedure on February 5, 2013. On May 6, 2014 the matter was restored to the active docket of cases at the request of the Defendant. On July 31, 2014 this matter was properly referenced to this Court at the Defendant's request. The Plaintiff has requested no relief of this court nor made any demands for trial since this matter was stricken from the docket on February 5, 2013. On June 30, 2014 the attorney for the Plaintiff, Justin McGee, was relieved as counsel for the Plaintiff.

The Defendant, no less than the Plaintiff, had the *right* to press for trial; but the *duty* to do so was the Plaintiff's. While the Defendant may bring about an expeditious trial of her case, she has no legal obligation to do so; except to meet such actions as are taken by the Plaintiff, she may remain passive. *Thomas & Howard Co. v. Fowler*, 238 S.C. 46, 52-53, 119 S.E.2d 97, 100 (1961).

The court finds that the Plaintiff has been properly notified of this hearing and that he has failed to fulfill his duty to this court to prosecute his case to defend the allegations raised in the Defendant's Counterclaim and her Motion for Summary Judgment.

The Defendant next requested that the Plaintiff's Complaint be dismissed for lack of prosecution and the Court denied the Defendant's request. ^{*}The Court then heard the argument of Counsel in support of the Defendant's Motion for Summary Judgement.

Based upon the pleadings, the affidavit of the Defendant, argument of Counsel and the Court's file, the Court makes the following Findings of Fact:

Both parties purchased real property located at 1309 Langford Road, Mt. Pleasant, South Carolina on September 28, 2005 as joint tenants and were never married. On January 31, 2007 the parties placed a mortgage on this property in the amount of \$400,000 for the benefit of the Plaintiff's separate business. The mortgage balance at the time of this hearing is approximately Eighty Two Thousand, Two Hundred Eighty Two Dollars and Eighteen Cents (\$82,282.18). The parties resided in this property together until November 9, 2011 when the Defendant vacated the residence. The Plaintiff has continued to reside in this property since that time. On October 16, 2014 this property was appraised by J. Michael Surles for Five Hundred and Twenty Thousand Dollars (\$520,000).

* Essentially, both parties seek the same relief -
a Court Ordered determination of the title to real property.
12/28

The Defendant made a personal loan to the Plaintiff in the amount of One Hundred Thousand Dollars (\$100,000) on October 13, 2006 and that the same has never been repaid. The Defendant has expended the sum of Nine Thousand Nine Hundred and Ninety Six Dollars and Fifty Cents (\$9,996.50) in attorney fees and costs that were reasonable and necessary and benefited both parties to this action. Further, two liens have been placed on the real property at issue by a homeowners association in the aggregate amount of Three Thousand Three Hundred and Sixty Dollars (\$3,360).

The real property at issue in this matter, 1309 Langford Road, has a monthly rental value of Two Thousand Eight Hundred Dollars (\$2,800) per month. The Plaintiff has been residing in this property since the commencement of this litigation and the Defendant is entitled to reasonable compensation for rent. I find that the Plaintiff owes the Defendant one half of the monthly rental during the term of his tenancy of 36 months in the amount of Fifty Thousand Four Hundred Dollars (\$50,400).

Finally the Plaintiff is in possession of a baby grand piano that rightfully belongs to the Defendant and that said property has not been taken for tax, assessment or fines pursuant to statute or seized under an execution or attachment.

Based upon the foregoing Findings of Fact, the court makes the following conclusions of Law:

- a. The parties hereto and subject matter herein are within the jurisdiction of this Court and venue is proper.
- b. All the statutory requirements have been complied with, including service of process of the Summons, Complaint, Answer, Counterclaim, Reply and notice of this Hearing on the Plaintiff.
- c. In spite of the failure of the Plaintiff to exercise his legal duty to prosecute this matter, his request for Declaratory Relief is properly before this Court.
- d. The Defendant's request for Summary Judgment can be granted if there is no genuine issue of material fact such that she must prevail as a matter of law. When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. *Fleming v. Rose*, 350 S.C. 488, 493-94, 567 S.E.2d 857, 860 (2002).

A handwritten signature, possibly 'JMT', is written over the number '483'.

Based upon ~~for~~ ^{the} ~~the~~ Findings of Fact and Conclusions of Law, the court makes the following Final Order:

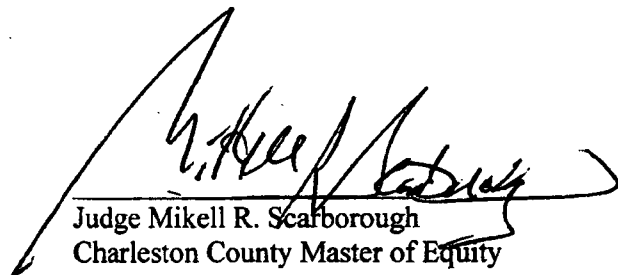
1. The Defendant's Motion for Summary Judgement is granted.
2. The real property located at 1309 Langford Road, Mt. Pleasant, South Carolina shall be partitioned by allotment and title shall be transferred to the Defendant.
3. The court grants the Plaintiff's request for a Declaratory Judgement. The Plaintiff's equitable interest in 1309 Langford Road, Mt. Pleasant South Carolina shall be One Hundred Thousand Dollars (\$100,000) and it shall be subject to the existing mortgage. The Defendant's equitable interest in said real property shall be all of the remaining equity.
4. The Defendant is the rightful owner of a baby grand piano that is in the Plaintiff's possession and she shall be entitled to immediate possession of the same.

5. The Defendant shall purchase the Plaintiff's equitable interest in said real property, ^{As computed below.} after a set off for the existing mortgage, ^(182,282.18) upon payment of \$20,639.57. ^{satisfaction of}

6. Once title has been transferred to the Defendant this court shall issue to her a Writ of Eviction upon Defendant's request. See Rule 70, SCRPC.

7. All remaining allegations contained in the Plaintiff's Complaint are dismissed with prejudice.

AND IT IS SO ORDERED!


Judge Mikell R. Scarborough
Charleston County Master of Equity

At Charleston, South Carolina

11/25/14

Gross Value \$520,000
- 9996.50 Att'y's Fees
3360 Lien HHA
Net Value \$506,643.50
1/2 Equity = \$253,321.75

TT's Equity 253,321.75
- 50,400 Rent
202,921.75
- 100,000 loan by Δ
102,921.75
- 82,282.18 Mtg
\$20,639.57 *

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 13-CV-918

DARRYL BLAYLOCK, APPELLANT,

v.

DAVID S. CHUNG, APPELLEE.

Appeal from the Superior Court
of the District of Columbia
(7389-CAB-08)

(Hon. Michael Rankin, Trial Judge)

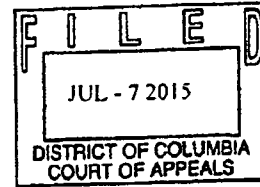
(Argued June 10, 2014)

Decided July 7, 2015)

Before GLICKMAN, EASTERLY, and MCLEESE, *Associate Judges*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: This is an appeal of a judgment for monetary damages entered after a jury found appellant Blaylock liable for his involvement in a fraudulent scheme that he allegedly perpetrated against appellee Chung with his former co-defendant, Ryan Egle. The jury awarded Chung \$100,000 in compensatory damages. Blaylock claims the trial court erred by declining to grant him a *pro tanto* credit in the amount that Egle and other, affiliated co-defendants had agreed to pay Chung to settle Chung's related claims against them. We conclude that the trial court did not err, because (1) the settlement covered more items of damage than the judgment, and Blaylock did not establish what proportion of the settlement related to damages covered by the judgment or that any *pro tanto* credit was necessary to prevent Chung from being overcompensated; and (2) Blaylock waived any claim for a *pro rata* credit by electing not to seek such a credit in the trial court proceedings (or even in this court). We therefore affirm the judgment on appeal.



HLF641

I.

According to the evidence at trial, Blaylock and Egle were business partners in 1309 19th Street LLC, which operated a coffee shop in Dupont Circle. In 2008, Egle induced Chung to lend the LLC \$100,000 on the pretext that the funds would be used to renovate the coffee shop so that it could be sold at a substantial profit. In return, Egle and the LLC promised to repay the \$100,000 and to pay Chung an additional \$100,000 thereafter.

In actuality, the \$100,000 that Chung lent the LLC was not used to renovate the coffee shop. Instead, unbeknownst to Chung, the money was wired from the LLC's bank account directly into Blaylock's personal bank account. The LLC's remaining assets were sold, and Blaylock received the proceeds of their sale as well. Chung was not repaid.

Chung sued Egle, Blaylock, the LLC, and certain affiliated parties¹ in Superior Court, alleging fraud and other causes of action. (Blaylock was added as a defendant in Chung's first amended complaint.) In addition to compensatory damages, Chung sought punitive damages of up to nine times the amount of the compensatory damages. On September 2, 2010, Chung entered into a settlement agreement with all the defendants except Blaylock. The settling defendants agreed to pay Chung the sum of \$100,000 in exchange for a full release of all his claims against them and without any admission of liability. The agreement explicitly allowed Chung to continue his lawsuit against Blaylock and contemplated that Chung could collect up to \$75,000 of any judgment he obtained in that suit from disbursements or distributions the settling defendants would otherwise make to Blaylock.

After concluding this settlement, Chung filed a second amended complaint naming Blaylock as the sole remaining defendant and asserting claims against him of fraud, conspiracy to commit fraud, unjust enrichment, conversion, and fraudulent conveyance. Unlike the original and first amended complaints that

¹ The other defendants were members of Egle's family and business entities affiliated with Egle and Blaylock. Chung states in his brief that they were "included in this case due to concerns about commingling of assets." Supplemental Brief of Appellee at 10 n.2.

Chung had filed against all the defendants prior to the partial settlement, the second amended complaint omitted a claim for breach of contract.²

The case against Blaylock was tried to a jury in February 2013. The trial judge ruled that Chung could not seek punitive damages, though Chung would have been allowed to do so had Egle been on trial. The judge instructed the jury that the maximum amount it could award Chung on his causes of action was \$100,000, representing Chung's out-of-pocket loss, except that on the fraud and conspiracy claims the jury also could award Chung "any interest that he's proved . . . was due to him."³ The jury returned a plaintiff's verdict, finding Blaylock liable to Chung for fraud, unjust enrichment, conversion, and fraudulent conveyance, and awarding Chung \$100,000 in compensatory damages—his entire out-of-pocket loss, without any interest added.⁴ The court entered judgment in accordance with this verdict.

Blaylock thereafter moved to amend the judgment, arguing that he was entitled to a dollar-for-dollar, or *pro tanto*, credit in the amount that the settling defendants had agreed to pay Chung for a release of his claims against them, i.e., \$100,000. Such a credit would reduce the judgment against Blaylock to zero. After a hearing, the trial court denied Blaylock's request. The court ruled that it would be inequitable to reduce the award on account of the settlement, in essence because Chung had a contract under which he expected to get \$200,000 and thus he was not being overcompensated.⁵

² According to his brief, "Chung did not pursue the breach of contract claim against Blaylock because Chung had never met Blaylock prior to filing this action and could not prove an agreement between the two." Brief of Appellee at 3. Blaylock has not disputed this explanation.

³ The judge explained that "the limitation on the \$100,000 doesn't apply [to the fraud and conspiracy claims], because if you credit the evidence you can award the interest that the plaintiff argues to you in this case was a part of the deal that he made under this theory of fraud." Chung accordingly urged the jury to award him interest in the amount of \$100,000, because that was what Egle promised Chung he would receive for making the loan.

⁴ The jury found for Blaylock on the conspiracy claim.

⁵ The court articulated its reasoning as follows:

(continued...)

II.

"How to credit the judgment entered upon a jury verdict against a nonsettling defendant with the proceeds a settling defendant paid to the plaintiff is purely a question of law, subject to this court's review *de novo*."⁶ In seeking a *pro tanto* credit in this case, Blaylock invokes the rule that, when a plaintiff has settled a claim for damages with a party whose liability has not been established, admitted, or stipulated, the nonsettling defendant found liable to the plaintiff for those damages is entitled to a dollar-for-dollar credit in the amount of the settlement.⁷ "The rationale behind the *pro tanto* credit . . . is to ensure that the plaintiff receives no more than the loss actually suffered for her claim,"⁸ i.e., just "one recovery for a single injury."⁹

It follows that a *pro tanto* credit against a jury award to reflect a settlement is appropriate only to the extent necessary to avoid an overpayment to the plaintiff.

(continued...)

[T]his matter of contribution is an equitable matter, and the question . . . is whether it's equitable or inequitable . . . [T]he resolution of the issue favors the plaintiff, because what you have here at its base is a contract between these two individuals, with Egle acting as an agent for Blaylock. . . . Egle went out and told Chung, give me 100,000 today and I'll give 200,000 in two weeks. And that means that Chung . . . expected to get \$200,000, settled with the settling defendants for \$100,000, went to the jury and got 100,000 against Blaylock. I'm going to let him go at it.

⁶ *Berg v. Footer*, 673 A.2d 1244, 1247 (D.C. 1996).

⁷ See *id.* at 1248-49; *Snowden v. D.C. Trans. Syst., Inc.*, 454 F.2d 1047, 1048-49 (D.C. Cir. 1971).

⁸ *Washington v. Washington Hosp. Ctr.*, 579 A.2d 177, 190 (D.C. 1990) (citing *Snowden*, 454 F.2d at 1048-49).

⁹ *Berg*, 673 A.2d at 1249.

This means it is necessary to consider whether and to what extent the settlement and the jury award cover different items of damage—for example, because certain claims covered by the settlement were not submitted to the jury.¹⁰ As Chung argues, that is the case here.

This is so for two reasons. First, the settlement encompassed Chung's claim for breach of contract damages while the jury was not asked to award such damages. This is significant because Chung plausibly could have recovered the promised \$100,000 return on his loan as breach of contract damages (had he gone to trial against Egle)¹¹ even though the jury did not award it to him as fraud damages—which was not surprising, since it was neither part of Chung's out-of-pocket loss¹² nor a reasonable sum to award as pre-judgment interest. Indeed, the trial judge himself commented afterward that he would have been "surprised" had the jury awarded Chung \$200,000, though he recognized that was what Chung "expected to get" under his contract with Egle.

¹⁰ See *McDermott, Inc. v. AmClyde & River Don Castings Ltd.*, 511 U.S. 202, 217 n.26 (1994) (explaining that under the *pro tanto* rule, where the settlement "covered more items of damage than the judgment," the burden is "to figure out what proportion of the settlement related to damages covered by the judgment and what percentage related to damages covered only by the settlement"); see also *Convit v. Washington Brain & Spine Inst., P.C.*, 980 A.2d 1104, 1130-31 (D.C. 2009) (where settlement applied only to a loss of consortium claim, it could not be applied to reduce award of damages on an independent negligence claim); *Paul v. Bier*, 758 A.2d 40, 43 (D.C. 2000) (addressing plaintiff's contention that "the jury verdict compensated for damages solely attributable to Dr. Bier, i.e., that it was not intended as full compensation for [the plaintiff's] injuries," while the settlement also covered separate injurious acts of negligence of another doctor).

¹¹ See *Allen v. Yates*, 870 A.2d 39, 52 (D.C. 2005) ("Where the parties have entered into a contract, being made whole means realizing the benefit of the bargain that they struck.").

¹² The ordinary measure of damages in a fraud action is the plaintiff's out-of-pocket loss attributable to the fraud. *Dresser v. Sunderland Apartments Tenants Ass'n*, 465 A.2d 835, 840 n.18 (D.C. 1983).

Second, the settlement also encompassed Chung's claim for punitive damages while the jury was precluded from considering such damages. This is significant because the trial judge recognized the plausibility of a punitive damages claim against Egle.¹³

Given that the settlement discharged claims for breach of contract and punitive damages that were not covered by the jury's award, Blaylock was not entitled to the full *pro tanto* credit he sought. He might have been entitled to a *pro tanto* credit for a portion of the settlement allocable to Chung's claim for repayment of his out-of-pocket loss, since that loss was covered by the jury's award. But Blaylock did not propose or request such an allocation, nor did he shoulder his burden of establishing its amount.¹⁴ As he therefore failed to show that the combination of the jury's award and the settlement overcompensated Chung for any portion of his claimed damages, we cannot fault the trial court for denying Blaylock's request for a *pro tanto* credit.

As an alternative to a *pro tanto* credit, Blaylock might have sought a *pro rata* credit based on the equal apportionment of liability among joint tortfeasors.¹⁵

¹³ Cf. *Allen*, 870 A.2d at 47-48 (acknowledging that a guarantor of a promissory note is entitled to an offset for the amount paid by the principal obligor in a settlement with the holder of the note to discharge his indebtedness on the note, but not for any portion of the settlement paid to discharge a *bona fide* claim for punitive damages).

¹⁴ The settlement agreement itself contains no such allocation, and we have no basis to impose one as a matter of law. Even assuming that some portion of the settlement would have to be allocated to Chung's out-of-pocket loss, which is not clear, the allocation might be unfavorable to Blaylock. For example, if we posit that Chung asserted damage claims against the settling defendants amounting to \$2 million *in toto* (\$200,000 in compensatory damages plus nine times that amount, or \$1.8 million, in punitive damages), then the proportion of the settlement allocable to his out-of-pocket loss (\$100,000) presumably might have been 5%, and any credit would have been only \$5,000—a comparative pittance.

¹⁵ See generally *Convit*, 980 A.2d at 1128-29; *Paul*, 758 A.2d at 43-45; *District of Columbia v. Shannon*, 696 A.2d 1359, 1366-68 (D.C. 1997); *Berg*, 673 A.2d at 1248.

Blaylock admittedly "elected not to do so," however, and he insists that it is "impossible and inappropriate" to apply a *pro rata* credit in the circumstances of this case.¹⁶ We conclude that Blaylock has waived any claim he might have for a *pro rata* credit.

The judgment of the Superior Court is hereby affirmed.

ENTERED BY DIRECTION OF THE COURT:

Julio A. Castillo

JULIO A. CASTILLO
Clerk of the Court

Copies to:

Honorable Michael Rankin

Joseph J. DiPietro, Esq.
8200 Greenboro Drive – Suite 900
McLean, VA 22102

Thomas S. Urban, II, Esq.
Urban & Falk, PLLC
P.O. Box 321043
Alexandria, VA 22320

¹⁶ Supplemental Brief of Appellant at 5.

A true Copy
Test:

Julio Castillo
Clerk of the District of Columbia Court
of Appeals

BY

[Signature]
DEPUTY CLERK

Julio Castillo
Clerk of the District of Columbia
Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarbough, Master-In-Equity

Case No. 2014-CP-10-2884

2016 JUN -9 AM 11:26
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FILED

Darryl M. Blaylock,

Plaintiff/Respondent,

versus

Erica Lynn LaMarche,

Defendant/Respondent,

versus

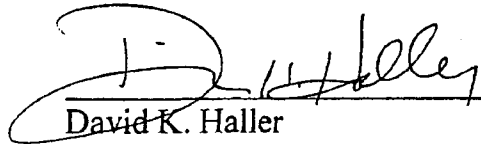
David S. Chung,

Intervening Defendants/Appellant.

NOTICE OF APPEAL

Intervening Defendant David S. Chung appeals the Master-in-Equity's orders dated February 12, 2016 and May 5, 2016. Appellant received written notice of entry of the order denying his motion to reconsider on May 9, 2016.

HALLER LAW FIRM, P.C.



David K. Haller

115 River Landing Drive, Suite 102

Charleston, SC 29492

(843) 849-1384

dhaller@hallerlawfirm.com

6th day of June, 2016

Charleston, South Carolina

OTHER COUNSEL OF RECORD:

Guy Vitetta, Esquire

225 Seven Farms Drive #201

Daniel Island, SC 29492

Attorney for Defendant Erica LaMarche

Darryl Blaylock

1309 Langford Road

Mount Pleasant, SC 29464

Pro Se- served at last known address

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2014-CP-10-2884

Darryl M. Blaylock)
Plaintiff,)

vs.)

Erica Lynn LaMarche,)
Defendant.)

and)

David S. Chung,)
Intervening Defendant.)

**ORDER DENYING DAVID CHUNG'S
MOTION TO INTERVENE AND TO
SET ASIDE PARTITION JUDGMENT**

FILED
2016 FEB 12 - PM 2:18
JULIE J. ARMSTRONG
CLERK OF COURT

THIS MATTER is before the court on David Chung's ("Chung") Motion pursuant to SCRCP 60(b)(3) seeking to intervene in this action and set aside a judgment of partition of a home owned by plaintiff Darryl Blaylock ("Blaylock") and defendant Erica Lynn LaMarche ("LaMarche"). Chung asserts he should have been made a party to the original action because of a District of Columbia judgment filed in South Carolina. Although Chung's judgment has merit, Defendant filed a Lis Pendens in accordance with S.C. Code Ann. § 15-11-10 prior to both domestication of the judgment and the filing of this Motion, therefore any subsequent claims to the property are barred. Therefore, Defendants Motion is denied.

FACTS

On September 28, 2005, Blaylock and LaMarche purchased a single-family home located at 1309 Langford Drive, Mount Pleasant, South Carolina. Blaylock and LaMarche purchased the real property in cash and owned the property debt free as joint tenants. In 2007, Blaylock and



LaMarche took out a mortgage on the Langford property and borrowed \$400,000.00.

In February of 2012, Blaylock brought the current action against LaMarche for conversion of personal property and LaMarche counterclaimed for partition of the Langford property. On September 26, 2012 LaMarche filed a notice of Lis Pendens and the action was stricken by consent of both parties pursuant to SCRC P 40(j) on February 5, 2013, then reinstated pursuant to SCRC P 40(j) on May 6, 2014. The Court declared, by final order, on December 3, 2014, that Blaylock did have \$100,000.00 worth of equity in the Langford property subject to an \$80,000.00 mortgage. In accordance with the final order, LaMarche paid Blaylock \$20,639.57 to purchase his remaining equity in the Langford property and a Quiet Title Deed was issued on January 23, 2015. The Langford property was then sold on September 12, 2015, for \$605,000.00 to a third party.

Chung's assertion of an interest in the Langford property arises from a District of Columbia lawsuit against Blaylock in which he was found liable on February 26, 2013 of fraud, unjust enrichment, and fraudulent conveyance. The District of Columbia action was filed in 2008 alleging Blaylock, through his agent, induced Chung into investing \$100,000.00 for renovations on a coffee shop. The loan required Blaylock to pay back the principal plus 100 % interest on the loan.

Blaylock subsequently did no renovations to the coffee shop and, unbeknownst to Chung and LaMarche, transferred the funds to LaMarche to make payments toward the mortgage on the Langford property. The District of Columbia jury awarded Chung \$100,000 in actual damages and \$100,000 in punitive damages. Chung's principal debt was satisfied by a settlement agreement with Blaylock's agent and the current claim against Blaylock and LaMarche is for the balance due on the judgment with interest. Chung domesticated his judgment on November 4,



2014, in South Carolina eight months after judgment was entered in the District of Columbia matter.

Chung filed a Motion to Intervene and Set Aside the Judgment in the current action on September 11, 2015, to have the court create a constructive trust of the proceeds from the sale of the real property.

LAW/ANALYSIS

Chung's Motion to Intervene and Set Aside the Judgment is procedurally deficient because LaMarche filed notice of Lis Pendens prior to Chung domesticating the District of Columbia judgment. A properly filed notice of Lis Pendens binds subsequent purchasers or encumbrancers to all proceedings emanating from the litigation. S.C. Code Ann. § 15-11-20 (1976); S.C. Code Ann. § 15-11-50 (1976) (When the summons is published or served as above provided, the notice of the pendency of the action shall constitute notice for five years from the date of the filing); *Pipkin v. Fletcher*, 165 S.C. 98, 162 S.E. 774 (1932); *S. Carolina Nat. Bank v. Cook*, 291 S.C. 530, 532, 354 S.E.2d 562, 562 (1987). The Lis Pendens mechanism is designed primarily to protect unidentified third parties by alerting prospective encumbrancers and purchasers of property as to what is already on public record, "i.e., the fact of a suit involving property;" therefore, it notifies potential encumbrancers and purchasers that they will take subject to the judgment, without any substantive rights. *Horry Cty. v. Ray*, 382 S.C. 76, 81, 674 S.E.2d 519, 522 (Ct. App. 2009).

In this matter, LaMarche filed notice of Lis Pendens in regard to the real property on September 26, 2012, in a counterclaim against Blaylock. Chung was awarded his District of Columbia judgment February 26, 2013 and waited eight months until November 4, 2013, to domesticate his judgment in South Carolina. Chung filed his Motion to Intervene and Set Aside

the Judgment pursuant to SCRCP 24(a)(2) and SCRCP 60(b)(3) on September 11, 2015, three years after notice of Lis Pendens was filed on the Langford property. In this Court, Equity aids the vigilant; Chung had ample time to discover Lis Pendens was filed on the property and seek other property to satisfy his District of Columbia judgment. Here, Equity will not aid Chung because he sat on his rights for a substantial period of time after proper notice had been provided with a properly filed notice of Lis Pendens.

I. SCRCP 24(a)(2)

Chung's Motion to Intervene is untimely pursuant to statute because LaMarche filed notice of Lis Pendens. SCRCP 24(a)(2) reads as follows:

Upon timely application, anyone shall be permitted to intervene in an action when the applicant claims an interest relation 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.

A party seeking intervention under SCRCP 24(a)(2) must:

1. establish timely application;
2. assert an interest relation to the property or transaction which is subject of the action;
3. demonstrate, that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest; and
4. demonstrate that its interest is inadequately represented by other parties.

In re Horry Cty. State Bank, 361 S.C. 503, 604 S.E.2d 723 (Ct. App. 2004). Failure to satisfy any one of the four requirements precludes intervention. *Ex parte Reichlyn*, 310 S.C. 495, 427 S.E.2d 661 (1993).

In this matter, Chung fails the first requirement by not establishing timely application of the motion. Chung, despite his domesticated judgment, did not appear in this action until the real property in question had been sold to a third party who was a bona fide purchaser for value.

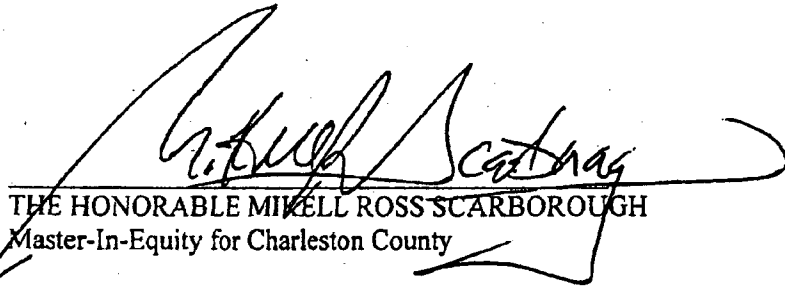
Accordingly, the Court finds Chung's failure to establish timely application pursuant to SCRCP 24(a)(2) results in denial of the relief sought herein.

II. SCRCP 60(b)(3)

Finally, SCRCP 60(b)(3) can be used to set aside a judgment in cases of extrinsic fraud, however this case does not present such circumstance. Extrinsic fraud induces a person not to present a case or deprives a person of the opportunity to be heard. *Robinson v. Estate of Harris*, 388 S.C. 645, 698 S.E.2d 229 (2010). If a judgment procured by extrinsic fraud could have been avoided if the challenging party exercised due diligence, a court generally will not grant relief. *Id.* As previously stated, Chung did exercise due diligence in domesticating his judgment here in South Carolina. Furthermore, Chung has not presented evidence to indicate that he was fraudulently excluded from the proceedings, notwithstanding the notice of Lis Pendens filed by LaMarche, he does not have an interest in the real property because LaMarche had no direct knowledge of the fraud Blaylock perpetrated in the District of Columbia matter.

THEREFORE IT IS ORDERED that David Chung's Motion to Intervene and Set Aside the Judgment is denied.

AND IT IS SO ORDERED!


THE HONORABLE MIKELL ROSS SCARBOROUGH
Master-In-Equity for Charleston County

This 11 day of February, 2016
Charleston, South Carolina

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-10-2884

Blaylock

2016 MAY -5 PM 3:25

LaMarche

JULIE J. ARMSTRONG
CLERK OF COURT

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☒ Defendant
or
☐ 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.
- ☐ **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: This matter comes before the court by way of a Motion to Reconsider filed by Intervening Defendant David Chung. The court respectfully denies the Motion to Reconsider for the reasons stated in the Order of the court dated February 12, 2016. Further, Petitioner's reliance on *Goodwin v. Landquest* is misplaced. See *Robinson v. J.F. Cleckley Co.*, 751 F. Supp. 100 (D.S.C. 1990) cited therein.

This order ☒ ends ☐ does not end the case.

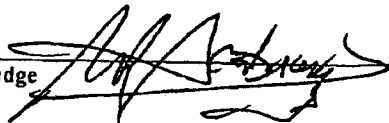
Additional Information for the Clerk:

Also, filing of a Lis Pendens docs constitutes an Notice to Search for 5 years
ORDER INFORMATION *therefore Arkansas had Notice of the Motion*

INFORMATION FOR THE PUBLIC 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.

Circuit Court Judge



3062

Judge Code

Date

5/3/16

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarbough, Master-In-Equity

Case No. 2014-CP-10-2884

Darryl M. Blaylock,

Plaintiff/Respondent,

versus

Erica Lynn LaMarche,

Defendant/Respondent,

versus

David S. Chung,

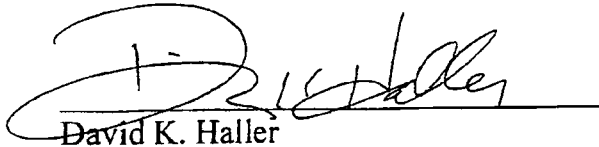
Intervening Defendants/Appellant.

PROOF OF SERVICE

I certify that I served the forgoing Notice of Appeal on counsel of record and
the pro se defendant at the addresses listed below this date.

HALLER LAW FIRM, P.C.

FILED
2016 JUN 29 AM 11:26
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

A handwritten signature in black ink, appearing to read "David K. Haller", is written over a horizontal line.

David K. Haller
115 River Landing Drive, Suite 102
Charleston, SC 29492
(843) 849-1384
dhaller@hallerlawfirm.com

6th day of June, 2016

Charleston, South Carolina

Haller Law Firm, P.C.

Counselors at Law

David K. Haller
Certified Civil Court Mediator

June 6, 2016

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

In Re: *Blaylock v. LaMarche*
Case No. 2014-CP-10-2884

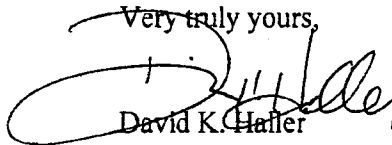
Dear Madame Clerk:

Enclosed for filing with your office please find the original and one (1) copy of the Notice of Appeal in the above matter, together with the orders being appealed and my firm check for \$100. Please file the original and return the copies to me in the enclosed envelope provided.

By copy of this letter, I am serving other counsel of record.

Thank you for your time and attention to this matter.

Very truly yours,



David K. Haller

Enclosures

cc: Guy Vitetta, Esq.
Darryl Blaylock (pro se)

Haller Law Firm, P.C.
Counselors at Law

David K. Haller
Certified Civil Court Mediator

June 6, 2016

Julie J. Armstrong, Clerk of Court
100 Broad Street
Charleston, SC 29401

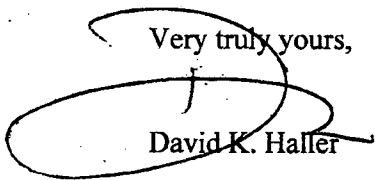
In Re: *Blaylock v. LaMarche*
Case No. 2014-CP-10-2884

Dear Madame Clerk:

Enclosed for filing with your office please find a copy of the Notice of Appeal in the above matter. A return copy is not required.

Thank you for your time and attention to this matter.

Very truly yours,


David K. Haller

Enclosures

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

DARRYL M. BLAYLOCK

Plaintiff(s)

vs.

ERICA L. LaMARCHE

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2012-CP - 10-

2012 CP 101347

(Please Print)

Submitted By: JUSTIN M. McGEE

Address: 104 BROAD STREET, CHARLESTON, SC 29401

SC Bar #: 79040

Telephone #: 843. 724. 7707

Fax #: 843. 724. 7058

Other:

E-mail: justin@mcgee-lawfirm.com

NOTE: The cover sheet 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 cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

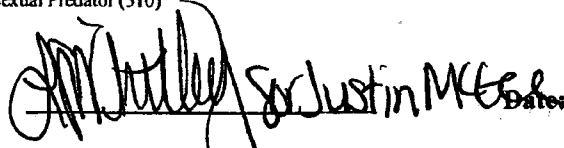
*If Action is Judgment/Settlement do not complete

- ☒ 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 #
20 -CP-
☐ 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) | 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)
☐ Other (799) | Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security 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)
☐ Sexual Predator (510) | | |

Submitting Party Signature:

 Date: 2/22/2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

2012 CP 101347

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

DARRYL M. BLAYLOCK,

Plaintiff,

v.

ERICA L. LaMARCHE,

Defendant.

CASE NO.: 2012-CP-____

SUMMONS

BY

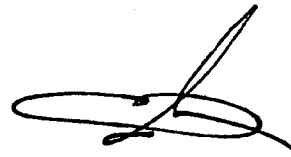
JULIE J. ARMSTRONG
CLERK OF COURT

2012 FEB 24 PM 3:01

FILED

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, 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 the service hereof, exclusive of the day of such service.

YOU ARE HEREBY GIVEN FURTHER NOTICE that failure to appear and defend or to Answer the Complaint as required by this Summons within thirty (30) days after the service hereof, judgment by default will be rendered for the relief demanded in the Complaint.



Justin M. McGee
McGee Law Firm
104 Broad Street
Charleston, South Carolina 29401
Phone: 843.724.7707

Attorney for Plaintiff

Charleston, South Carolina
February 21, 2011

BLAYLOCK V. LAMARCHE
SUMMONS

PAGE 1 OF 1

2012 CP 101347

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

DARRYL M. BLAYLOCK,

Plaintiff,

v.

ERICA L. LaMARCHE,

Defendant.

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-_____

COMPLAINT
(Jury Trial Demanded)

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2012 FEB 24 PM 3:01

FILED

Darryl M. Blaylock (the "Plaintiff") brings this action against Erica L. LaMarche (individually, the "Defendant" and collectively, with Plaintiff, the "Parties") based on the allegations set forth below.

PARTIES, JURISDICTION, & VENUE

1. Plaintiff is a resident of the County of Charleston, State of South Carolina.
2. Defendant is also a resident of the County of Charleston, State of South Carolina.
3. This action involves the title to real property located within the County of Charleston, State of South Carolina.
4. This action arises out of alleged acts and omissions of Defendant which occurred within the County of Charleston, State of South Carolina.
5. Based on the foregoing, this Honorable Court possesses personal jurisdiction over the Parties and real property, possesses subject matter jurisdiction over all the causes of action pleaded herein and, furthermore, venue is proper within the County of Charleston, State of South Carolina.

FACTS

6. Plaintiff restates and re-alleges each of the foregoing allegations as if fully set forth herein.

7. The Parties entered a romantic relationship in 2001.

8. The Parties were eventually engaged; this engagement commenced in 2005 and endured until November 2011, but no marriage occurred.

9. When the Parties commenced the engagement, Plaintiff gave Defendant a greater than two carat, center stone diamond ring, set in platinum, with additional side stone diamonds (the "Ring") to confirm the engagement and serve as a wedding ring upon the Parties' marriage, in accordance with American customs.

10. Upon information and belief, the current value of the Ring is approximately \$120,000.00.

11. Two children were born of this relationship: Ryder James Blaylock, born on November 21, 2008, and Wyatt Joseph Blaylock, born on April 8, 2010.

12. In 2004, the Parties purchased real property together, which is located at 1309 Langford Road in Mount Pleasant, South Carolina (the "Property" and more particularly described in Exhibit 1 attached hereto and incorporated by reference).

13. The Property was purchased for \$497,600.00 and each of the Parties contributed 50% of the Property's purchase price.

14. On or about January 25, 2007, the Parties obtained a subsequent loan from Fidelity & Trust Mortgage, Incorporated in the amount of \$400,000.00, which was secured by the Property (the "Loan").

15. Currently, the Loan balance is \$90,140.00.
16. Plaintiff funded and made all payments related to the Loan, the total of which exceeds \$300,000.00.
17. Upon information and belief, the Property is currently worth \$395,000.00.
18. The Parties currently have equity equal to approximately \$305,000.00 in the Property.
19. Plaintiff purchased a 2007 BMW model X5 vehicle (the "BMW") solely with Plaintiff's funds. Defendant used the vehicle with Plaintiff's permission to transport the Parties' children until November 2011.
20. Defendant has no ownership interest in the BMW.
21. After the Parties' romantic relationship deteriorated in November 2011, Plaintiff requested that Defendant cease using the BMW and that Defendant return it to Plaintiff; Defendant refused.
22. Defendant continues to possess the BMW despite Plaintiff's repeated requests that it be returned to Defendant.
23. Upon information and belief, the BMW was worth approximately \$31,000.00 in November 2011.
24. Plaintiff also purchased a single stroke oil painting by Michael Flohr worth approximately \$60,000.00 (the "Painting") and placed it on a wall inside the Property.
25. Defendant has no ownership interest in the Painting.
26. Defendant removed the Painting without Plaintiff's permission and over Plaintiff's contemporaneous verbal objections in December 2011 and, despite Plaintiff's repeated requests, has not returned it.

27. Plaintiff also requested Defendant return the Ring in November and December 2011; despite not fulfilling the condition upon which the Ring was given – marriage – Defendant refused and refuses to return the Ring to Plaintiff.

28. Plaintiff also purchased numerous household items, including but not limited to a cutlery set, pots, pans, furniture, kitchenware, items of home décor, and other personal items, for use at the Property (the “Household Items”).

29. Defendant has no ownership interest in the Household Items, which were purchased by Plaintiff exclusively with Plaintiff’s funds.

30. In December 2011, Defendant removed a substantial amount of the Household Items without Plaintiff’s permission; Defendant refused and continues to refuse to return the Household items taken from the Property despite Plaintiff’s repeated requests for their return.

31. Upon information and belief, a conservative estimate of the value of the Household Items removed from the Property by Plaintiff exceeds \$10,000.00.

32. Plaintiff also purchased a golf cart (the “Golf Cart”) with Plaintiff’s funds for the Parties’ use around the neighborhood where the Property is situated; in January 2012, Defendant removed the Golf Cart from the Property without Plaintiff’s permission and over Plaintiff’s contemporaneous objections.

33. Upon information and belief, the Gold Cart is worth \$5,000.00.

34. Defendant refuses to return the Golf Cart despite Plaintiff’s requests for its return.

FOR A FIRST CAUSE OF ACTION
(Conversion)

35. Plaintiff restates and re-alleges each of the foregoing allegations as if fully set forth herein.

36. Plaintiff has an interest in the BMW, Ring, Painting, Golf Cart, and Household Items.

37. Defendant willfully and intentionally converted the BMW, Ring, Painting, Golf Cart, and Household Items to Defendant's own use, without Plaintiff's permission and contrary to Plaintiff's numerous requests these items be returned to Plaintiff.

38. Plaintiff is informed and believes he is entitled to judgment under this cause of action against Defendant for the highest market value of the items converted, including the amount of accrued legal interest on this value commencing upon the date of conversion and enduring until final disposition of this matter, pre and post judgment interest, punitive damages, and any other damages demonstrated at trial.

FOR A SECOND CAUSE OF ACTION
(Promissory Estoppel)

39. Plaintiff restates and re-alleges each of the foregoing allegations as if fully set forth herein.

40. Defendant's promise to marry, create a family, and build a life with Plaintiff was unambiguous in its terms.

41. Plaintiff reasonably relied upon this promise when purchasing the Ring, BMW, Golf Cart, and Household Items for the family's use.

42. Plaintiff's reliance upon this promise of Defendant was foreseeable to and expected by Defendant.

43. Plaintiff is informed and believes he is entitled to judgment under this cause of action against Defendant for restitution and reliance damages, pre and post judgment interest, and any other damages demonstrated at trial.

FOR A THIRD CAUSE OF ACTION
(Quantum Meruit/Unjust Enrichment)

44. Plaintiff restates and re-alleges each of the foregoing allegations as if fully set forth herein.

45. Plaintiff conferred a benefit upon Defendant through Defendant's use of the BMW, Ring, Painting, Golf Cart, and Household Items.

46. Though Defendant assumed and continues to assume possession of these items, Plaintiff was not and has not been compensated for these items by Defendant.

47. Defendant realized the benefits conferred by Plaintiff.

48. Retention of these benefits by Defendant without compensating Plaintiff for their value would be unjust.

49. Plaintiff is informed and believes he is entitled to a recovery under this cause of action against Defendant for the reasonable value of the benefits conferred and realized, plus pre and post judgment interest and any other damages demonstrated at trial.

FOR A FOURTH CAUSE OF ACTION
(Declaratory Judgment)

50. Plaintiff restates and re-alleges each of the foregoing allegations as if fully set forth herein.

51. As established herein, Defendant impermissibly converted or otherwise illicitly possesses items of Plaintiff's personal property, the value of which exceeds Defendant's portion of the equity in the Property.

52. Indeed, considering the property Defendant took from Plaintiff and respective values thereof, as illustrated in the preceding paragraphs, Defendant owes Plaintiff more money than Plaintiff would have to pay Defendant to purchase Defendant's share of the Property.

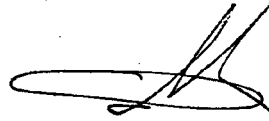
53. Despite owing Plaintiff an amount in excess of Defendant's interest in the Property, Defendant refuses to relinquish her interest to Plaintiff.

54. Nevertheless, the fact that Defendant is unwilling to transfer Defendant's interest in the Property to Plaintiff as consideration for the sums owed to Plaintiff creates a justiciable controversy between Plaintiff and Defendant for which a declaration of rights is required from the Court.

55. Pursuant to the South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann. 15-53-10 et seq. and Rule 57 of the South Carolina Rules of Civil Procedure, Plaintiff respectfully requests the Court issue a declaratory judgment holding that Plaintiff is the sole and lawful owner of the Property and that Defendant has no ownership interest, or other rights or interests whatsoever, associated with the same.

WHEREFORE, Plaintiff prays that (1) judgment be entered against Defendant on all causes of action, that (2) the Court issue a declaratory judgment holding that Plaintiff is the sole and lawful owner of the Property, that (3) Plaintiff be awarded restitution, and reliance, actual, and consequential damages for any amount of damage exceeding Defendant's interest in the Property, (4) plus punitive damages, (5) pre and post judgment interest at the legal rate, (6) attorney fees and costs for bringing this action, and for (7) such other and further relief as the Court deems just and appropriate.

McGee Law Firm



Justin M. McGee
104 Broad Street
Charleston, South Carolina 29401
Phone: 843.727.7707

Attorney for Plaintiff

Charleston, South Carolina

February 21, 2011

EXHIBIT 1 – THE “PROPERTY”

EXHIBIT "A"

ALL that certain piece, parcel or lot of land, situate, lying and being in the Town of Mt. Pleasant, Charleston County, South Carolina, and being shown and designated as Lot 7, Block D, Shellpoint Subdivision on that plat entitled "FINAL PLAT PHASE I SHELLPOINT SUBDIVISION TOWN OF MT. PLEASANT CHARLESTON COUNTY, S.C." prepared by Forsberg Engineering & Surveying, Inc., dated October 1, 2002 and recorded January 2, 2003 in the RMC Office for Charleston County, South Carolina, in Plat Book EG at Page 89 said lot having such size, shape, dimensions, buttings and bounding as will by reference to said Plat more fully appear.

BEING the same premises conveyed to the Mortgagor herein by deed of Design Builders, Inc. dated September 28, 2005 and recorded in the RMC Office for Charleston County in Book G557, page 315.

TMS# 560-06-00-121

9-26-12
3:01 P.M.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

DARRYL BLAYLOCK,

Plaintiff,

v.

ERICA LYNN LA MARCHE,

Defendant.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2012 - CP- 10-1347

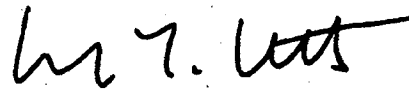
LIS PENDENS

2012 SEP 26 PM 2:58
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

NOTICE IS HEREBY GIVEN that an action has been commenced and is now pending in the Court of Common Pleas for the Ninth Judicial Circuit between the named Plaintiff and against the above-named Defendant, the object of which being to establish a partition of the real property located at 1309 Langford Road, Mt. Pleasant South Carolina. A description of the property affected by said action is attached hereto as Exhibit "A".

FURTHER TAKE NOTICE that all persons claiming by, through and under said Plaintiff or Defendant since the filing of the Lis Pendens in this suit, will be forever foreclosed and barred of all equity of redemption in and to said property.



Guy J. Vitetta, Esquire
Vitetta Law Group, LLC
225 Seven Farms Drive;
Suite 201
Daniel Island, SC 29492
843-302-2050 (telephone)
843-377-8390 (facsimile)

Attorney for the Defendant

Daniel Island, South Carolina

9.25, 2012.

EXHIBIT "A"

ALL that certain piece, parcel or lot of land, situate, lying and being in the Town of Mt. Pleasant, Charleston County, South Carolina, and being shown and designated as Lot 7, Block D, Shellpoint Subdivision on that plat entitled "FINAL PLAT PHASE I SHELLPOINT SUBDIVISION TOWN OF MT. PLEASANT CHARLESTON COUNTY, S.C." prepared by Forsberg Engineering & Surveying, Inc., dated October 1, 2002 and recorded January 2, 2003 in the RMC Office for Charleston County, South Carolina, in Plat Book EG at Page 89 said lot having such size, shape, dimensions, buttings and bounding as will by reference to said Plat more fully appear.

BEING the same premises conveyed to the Mortgagor herein by deed of Design Builders, Inc. dated September 28, 2005 and recorded in the RMC Office for Charleston County in Book G557, page 315.

TMS# 560-06-00-121



September 25, 2012

Via Bullet Delivery

Clerk of Court
Charleston County Court of Common Pleas
100 Broad Street
Charleston, South Carolina 29401

Re: Blaylock v LaMarche

Dear Clerk:

Please find the attached original(s) and 4 copies of Lis Pendens, submitted for filing. Please leave the filed copies for our courier who will return them to us.

Feel free to call our office with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Guy J. Vitetta', is written over a horizontal line.

Guy J. Vitetta

Enclosures: as stated

Cc: Erica LaMarche, via email only
Justin McGee via email only

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
DARRYL BLAYLOCK,)
Plaintiff,)
v.)
ERICA LYNN LaMARCHE and,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2012-CP-10-1347

ANSWER AND COUNTERCLAIM

FILED
2012 MAR 26 PM 3:59
JULIE J. ARMSTRONG
CLERK OF COURT

THE DEFENDANT answers the Plaintiff's complaint as follows:

1. The Defendant denies each and every allegation of the Plaintiff's complaint not herein specifically admitted, qualified or explained.
2. The Defendant admits the allegations contained in paragraph one (1).
3. The Defendant admits the allegations contained in paragraph two (2).
4. The Defendant admits the allegations contained in paragraph three (3).
5. The Defendant denies the allegations contained in paragraph four (4).
6. The Defendant admits that the parties were engaged, but denies the remaining allegations contained in paragraph five (5).
7. The allegations contained in paragraph six (6) do not require a response.
8. The Defendant admits the allegations contained in paragraph seven (7).
9. The Defendant denies the allegations contained in paragraph eight (8).
10. The Defendant denies the allegations contained in paragraph nine (9).
11. The Defendant denies the allegations contained in paragraph ten (10).
12. The Defendant admits the allegations contained in paragraph eleven (11).
13. The Defendant admits the allegations contained in paragraph twelve (12).
14. The Defendant admits the allegations contained in paragraph thirteen (13).
15. The Defendant admits the allegations contained in paragraph fourteen (14).
16. The Defendant admits the allegations contained in paragraph fifteen (15).

Answer and Counterclaim
Blaylock v. LaMarche, 2011-CP-10-1347
Page 1 of 5



17. The Defendant denies the allegations contained in paragraph sixteen (16).
18. The Defendant denies the allegations contained in paragraph seventeen (17).
19. The Defendant denies the allegations contained in paragraph eighteen (18).
20. The Defendant denies the allegations contained in paragraph nineteen (19).
21. The Defendant denies the allegations contained in paragraph twenty (20).
22. The Defendant denies the allegations contained in paragraph twenty one (21).
23. The Defendant denies the allegations contained in paragraph twenty two (22).
24. The Defendant denies the allegations contained in paragraph twenty three (23).
25. The Defendant denies the allegations contained in paragraph twenty four (24).
26. The Defendant denies the allegations contained in paragraph twenty five (25).
27. The Defendant denies the allegations contained in paragraph twenty six (26).
28. The Defendant denies the allegations contained in paragraph twenty seven (27).
29. The Defendant denies the allegations contained in paragraph twenty eight (28).
30. The Defendant denies the allegations contained in paragraph twenty nine (29).
31. The Defendant denies the allegations contained in paragraph thirty (30).
32. The Defendant denies the allegations contained in paragraph thirty one (31).
33. The Defendant denies the allegations contained in paragraph thirty two (32).
34. The Defendant denies the allegations contained in paragraph thirty three (33).
35. The Defendant denies the allegations contained in paragraph thirty four (34).
36. Paragraph thirty five (35) does not require a response.
37. The Defendant denies the allegations contained in paragraph thirty six (36).
38. The Defendant denies the allegations contained in paragraph thirty seven (37).
39. The Defendant denies the allegations contained in paragraph thirty eight (38).
40. The allegations in paragraph thirty nine (39) do not require a response.
41. The Defendant denies the allegations contained in paragraph forty (40).
42. The Defendant denies the allegations contained in paragraph forty one (41).

43. The Defendant denies the allegations contained in paragraph forty two (42).
44. The Defendant denies the allegations contained in paragraph forty three (43).
45. The allegations contained in paragraph forty four (44) do not require a response.
46. The Defendant denies the allegations contained in paragraph forty five (45).
47. The Defendant denies the allegations contained in paragraph forty six (46).
48. The Defendant denies the allegations contained in paragraph forty seven (47).
49. The Defendant denies the allegations contained in paragraph forty eight (48).
50. The Defendant denies the allegations contained in paragraph forty nine (49).
51. The allegations contained in paragraph fifty (50) do not require a response.
52. The Defendant denies the allegations contained in paragraph fifty one (51).
53. The Defendant denies the allegations contained in paragraph fifty two (52).
54. The Defendant denies the allegations contained in paragraph fifty three (53).
55. The Defendant denies the allegations contained in paragraph fifty four (54).

COUNTERCLAIM

CLAIM AND DELIVERY

56. The allegations contained above in paragraphs one (1) through fifty-five (55) are reiterated herein as if fully set forth verbatim.
57. This Court has jurisdiction over the parties and subject matter of this action and venue is proper.
58. The Defendant and the Plaintiff have resided together at 1309 Langford Road, Mt. Pleasant South Carolina for approximately seven (7) years. Two children were born of this relationship, and the children were born and raised in this home.
59. Upon information and belief, the Plaintiff has long history of addictions to various prescription medications. Said addictions effect his ability to interact with the Defendant and the minor children.
60. On or about November 9, 2011 the Defendant was suddenly forced to leave the home due to the erratic, unstable and bizarre behavior of the Plaintiff resulting from his continued use and/ or abuse of prescription medications.
61. The Defendant was unable to remove all of her personal property from the residence upon her sudden departure. She left a great deal of personal property in her residence to which she is the rightful owner.

62. On numerous occasions the Defendant has requested that the Plaintiff permit her access to her residence to retrieve her personal property. The Plaintiff has only permitted the Defendant to retrieve personal property of his choosing, continuing wrongfully to maintain possession of a great deal of Defendant's personal property.
63. That the property has not been taken for a tax, assessment or fine pursuant to a statute or seized under an execution or attachment against the property of the Plaintiff or the Defendant; and
64. The Defendant is informed believes that the value of the property is in excess of ten thousand dollars (\$10,000.00).
65. The Defendant is informed and believes that this Court should Order the Plaintiff to grant the Defendant immediate entry upon her property in order to retrieve all personal property listed on her attached affidavit.

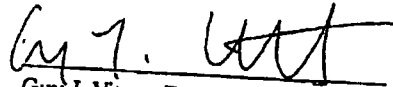
PARTITION OF REAL PROPERTY

66. The allegations contained above in paragraphs one (1) through sixty-five (65) are reiterated herein as if fully set forth verbatim.
67. The Plaintiff and the Defendant are joint owners of certain real property located at 1309 Langford Road, Mt. Pleasant South Carolina.
68. The Plaintiff and the Defendant purchased this property together and the same is titled jointly in their names. Each party owns an equal share of this property.
69. All indebtedness owing 1309 Langford Road, Mt. Pleasant South Carolina is jointly titled. Each party is equally responsible for all debt attached to this property.
70. The Plaintiff and the Defendant resided in this property for approximately six (6) years. During this time, two children were born of their relationship. This is the only home the minor children have known since birth. Pursuant to the Temporary Order of the Family Court in case number 11-DR-10-4319, the Defendant is the primary physical custodian of the minor children.
71. The Defendant is informed and believes that 1309 Langford Road, Mt. Pleasant South Carolina should be partitioned pursuant to Rule 71, SCRPC.
72. The Defendant is informed and believes that the issuance of a Writ of Partition would cause an unnecessary expense to the parties and the Court should dispense with this property without the appointment of Commissioners.
73. The Defendant is informed and believes that pursuant to Rule 71(f)(4), SCRPC, 1309 Langford Road, Mt. Pleasant, South Carolina ("the home") should be vested in the name of the Defendant upon the payment of one-half of the value the home to the Plaintiff and that pending payment of one-half of the value of the home to Plaintiff, Defendant be awarded sole use and possession of the home. Plaintiff further requests that Plaintiff be

divested of all interest in the home upon payment of one-half of the value of the home to the Plaintiff by Defendant.

WHEREFORE, the Defendant prays that the relief requested in the Plaintiff's Complaint be denied where requested and that the relief requested in the Defendant's Counterclaim be granted. Defendant further prays for such other and further relief as may be just and proper.

Respectfully submitted,



Guy J. Vitetta Esq.

Vitetta.Sarji Law Group

225 Seven Farms Drive, Suite 201

Daniel Island, SC 29492

843.302.2050 (telephone)

843.377.8390 (facsimile)

Daniel Island, South Carolina

3.26, 2012

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE FAMILY COURT
NINTH JUDICIAL CIRCUIT

DARRYL M. BLAYLOCK

Plaintiff,

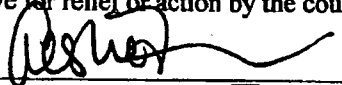
vs.

ERICA L. LAMARCHE

Defendant.

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Docket No. 2012-CP-10-1347

Plaintiff's Attorney: Justin M. McGee, Bar No. 79050 Address: 104 Broad Street Charleston, SC 29401 Phone: 843-724-7707 Fax 843-724-7058 E-mail: justin@mcgee-lawfirm.com Other: _____	Defendant's Attorney: Guy J. Vitetta, Bar No. _____ Address: 225 Seven Farms Drive, Suite 201 Charleston, SC 29492 Phone: 843.302.2050 Fax _____ E-mail: guy@vitettalawgroup.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: _____ Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/ ☐ NO	
SECTION II: Motion/Order 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 Date submitted: 1/28/2013	
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ 25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ Sexually Violent Predator Act ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ 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: _____ ☐ State Agency v. Indigent Party ☐ Post-Conviction Relief ☐ Motion for Execution (Rule 69, SCRPC)	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____ Judge Signature: _____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

Custodial Parent (if applicable): _____

SCCA 233F (12/2009)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

DARRYL M. BLAYLOCK,
Plaintiff,

v.

ERICA L. LaMARCHE,
Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-10-1347

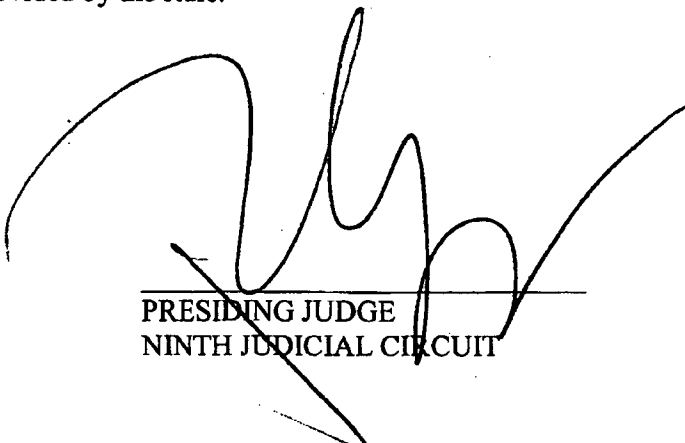
CONSENT ORDER TO STRIKE
PURSUANT TO RULE 40(j)

FILED
2013 FEB -5 PM 4:17
JANIE J. ARMSTRONG
CLERK OF COURT

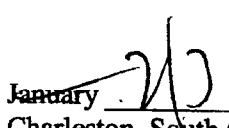
Based on the consent of the parties to the above-referenced matter, as evidenced by the signatures of the undersigned counsel, it is hereby

ORDERED, ADJUDGED AND DECREED that the above captioned matter is hereby stricken from the active trial docket pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure. Futher Plaintiff may have his claims restored upon motion and notice to all parties made within one (1) year of the date stricken and the statute of limitations shall be tolled during the time the case is stricken. Upon being restored, the case shall be placed on the General Docket and proceed from that date as provided by the Rule.

AND IT IS SO ORDERED.



PRESIDING JUDGE
NINTH JUDICIAL CIRCUIT

 January 20, 2013
Charleston, South Carolina

WE CONSENT:

and for Justin M. McGee on behalf of
Justin M. McGee
McGEE LAW FIRM
104 Broad Street
Charleston, SC 29401
(843) 724-7707
justin@mcgee-lawfirm.com

Attorney for Plaintiff

Guy J. Vitetta
Guy J. Vitetta
VITETTA LAW GROUP
225 Seven Farms Drive, Suite 201
Charleston, SC 29492
(843) 302-2050
guy@vitettalawgroup.com

Attorney for Defendant

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-10-2884

**DAVID CHUNG'S MOTION
PURSUANT TO SCRPC RULE 60**

versus

FILED
2015 SEP 11 PM 2:58
JULIE J ARMSTRONG
CLERK OF COURT
BY _____

and

David S. Chung,
Intervening Defendant.

YOU WILL PLEASE TAKE NOTICE that David S. Chung will move, in ten (10) days at the Charleston County Courthouse, or at such other time and place as the court deems proper, for an order pursuant to SCRPC Rule 60(b), setting aside the judgment of partition by allotment in this matter. The grounds for this motion are, as set forth more fully below, Mr. Chung was a necessary and indispensable party to these proceedings, known to Blaylock and LaMarche, yet was neither named nor given notice. Mr. Chung holds a judgment against Darryl Blaylock domesticated in South Carolina in 2014 that attached to the property partitioned here. See Case No. 2013-CP-10-6744 (Judgment attached as Exhibit A). Moreover, the funds that are the factual basis of Mr. Chung's judgment were used to pay down the mortgage on the property and he has an equitable lien on it.

The facts of the action, taken from judgments involving the parties and the sworn testimony of Blaylock, are these:

1. In 2008, a Ryan Egle induced Mr. Chung to lend an Egle-owned company \$100,000.00 to renovate a coffee shop in Washington, DC. Rather than putting these funds into the coffee shop, however, Egle wired these funds to Blaylock's personal bank account. *Blaylock v. Chung*, 2015 WL 4865288 (Memorandum Opinion and Judgment attached hereto at Exhibit B).
2. Blaylock and LaMarche purchased 1309 Langford Road, Mount Pleasant in 2005. In or about 2007, they placed a mortgage on the property in the amount of \$400,000.00. (See Final Order dated December 3, 2014 herein).
3. In 2011, Blaylock testified that he received Chung's money and used it to pay down the Langford Road mortgage:

- Q. What is the loan that's out on the Langford? Is that still the home equity loan?
- A. Yes.
- Q. **You got \$100,000 that came from David Chung and you got \$375,000 that came from Josh Volen.**
- A. And I got the money that came from Ryan Egle.
- Q. So you got \$475,000 through Ryan Egle that came from those two people?
- A. Supposedly.
- Q. **And you testified that you used that money to pay off the home equity loan?**
- A. Yes.

Depo. of Blaylock, p.431, ln. 24-p.432, ln. 1; p. 432, ln. 6-15. (See Exhibit C; emphasis added).

4. In February, 2013, a District of Columbia jury awarded Chung \$100,000.00 against Blaylock for fraud, unjust enrichment, and conversion arising from his involvement in the fraudulent scheme. See Exhibit B. Chung domesticated that judgment in

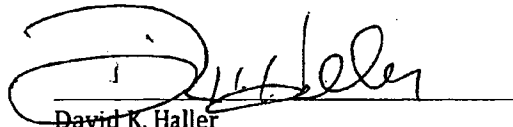
Charleston County in November of 2013. Because Chung's fraudulently obtained funds were applied to the mortgage on the Langford Road home, both Blaylock and LaMarche from the ill-gotten gain.

5. Blaylock and LaMarche dismissed this action pursuant to SCRPC Rule 40(j) in February of 2013 and sought restoration in February of 2014. Although Mr. Chung's judgment was of record at that time and attached to the home, the parties failed to name Chung as an indispensable party so that his judgment and lien rights could be adjudicated.

6. Chung has rights in the property. Because the parties failed to inform the court of Chung's judgment and name him as an indispensable party to this action either by fraud, inadvertence, mistake, or other reason, the court's judgment of December 13, 2014 should be set aside, Chung added as a defendant, and the action reopened to determine the interests of all parties.

WHEREFORE David S. Chung prays for the relief requested herein and such other relief as the court deems just, prudent, and proper.

HALLER LAW FIRM, P.C.



David K. Haller
115 River Landing Drive, Suite 102
Charleston, SC 29492
dhaller@hallerlawfirm.com
ATTORNEY FOR DAVID S. CHUNG

11th day of September, 2015

Charleston, South Carolina

Superior Court of the District of Columbia

Authentication

2008 CA 73896

The Clerk of the Court hereby certifies that the document(s) annexed to this certificate is a true copy of the original on file and of record in said Court.

WITNESS my hand and the seal of said Court this 30th day of October, 20 13

Clerk of the Court /s/ Dianne B. Delaney

By [Signature]
Deputy Clerk

The Chief Judge of said Court hereby certifies that the foregoing attestation by the Clerk of the Court is in due form.

WITNESS my hand and the seal of said Court this 30th day of October, 20 13

Lee F. Satterfield
Chief Judge

The Clerk of the Court hereby certifies that the signature subscribed to the foregoing certificate was, at the time of signing and attesting the same, as that of the Chief Judge of said Court, duly commissioned and qualified.

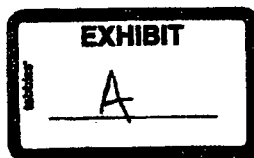
WITNESS my hand and the seal of said Court this 30th day of October, 20 13

Clerk of the Court /s/ Dianne B. Delaney

By [Signature]
Deputy Clerk

FORM SC-699/Feb 00

COST: \$ 830





2013 CP-10 - 6744
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

DAVID S CHUNG

Plaintiff

vs

DARRYL BLAYLOCK

Defendant

FILED
IN OPEN COURT

FEB 26 2013

2008 CA 007389 B

Case No.

MICHAEL L RANKIN

Judge

JUDGMENT

This action came for ☒ Trial ☐ Non-Jury Trial ☐ Ex-Parte Proof Hearing

before the Honorable MICHAEL L RANKIN, Superior Court Judge, presiding and

☐ proof having been duly presented

☒ the jury having rendered its verdict

☐ and the judge having rendered a decision

it is on this date February 26, 2013

FILED
2013 NOV 14 PM 2:44
JULIE J ARMSTRONG
CLERK OF COURT

ORDERED

That judgment be entered in favor of CHUNG, DAVID S and against BLAYLOCK, DARRYL
in the amount of \$100,000.00 with interest, thereon at the statutory rate and their costs of action.

A TRUE COPY
TEST: OCT 30 2013

Clerk, Superior Court of
the District of Columbia

By

Deputy Clerk

Duane B. Delaney
Clerk of the Court

Claytona Rogers, Courtroom Clerk



DOCKETED FEB 26, 2013 MAILED FEB 26, 2013

CC:
Thomas F. Urban II, Esquire
URBAN & FALK, PLLC
2867 S. Abingdon Street
Arlington, Virginia 20006

Daniel A. Gross
Law Office of Daniel A. Gross, PLLC
1629 K Street, NW Ste. 300
Washington, DC 20006

CAJO-1

EXHIBIT B



SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

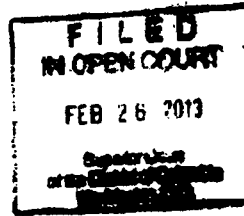
DAVID S CHUNG

Plaintiff

vs

DARRYL BLAYLOCK

Defendant



2008 CA 007389 B
Case No.

MICHAEL L RANKIN
Judge

JUDGMENT

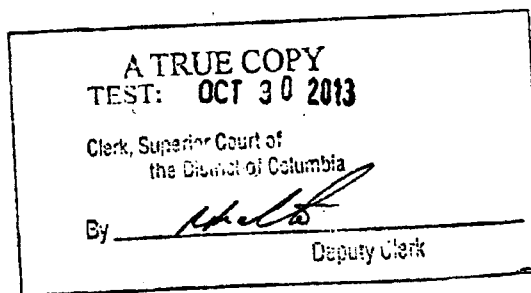
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Washington, DC 20006

CAJO-1

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 13-CV-918

DARRYL BLAYLOCK, APPELLANT,

v.

DAVID S. CHUNG, APPELLEE.

Appeal from the Superior Court
of the District of Columbia
(7389-CAB-08)

(Hon. Michael Rankin, Trial Judge)

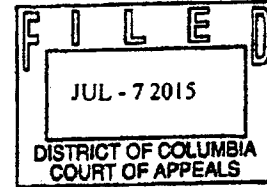
(Argued June 10, 2014

Decided July 7, 2015)

Before GLICKMAN, EASTERLY, and MCLEESE, *Associate Judges*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: This is an appeal of a judgment for monetary damages entered after a jury found appellant Blaylock liable for his involvement in a fraudulent scheme that he allegedly perpetrated against appellee Chung with his former co-defendant, Ryan Egle. The jury awarded Chung \$100,000 in compensatory damages. Blaylock claims the trial court erred by declining to grant him a *pro tanto* credit in the amount that Egle and other, affiliated co-defendants had agreed to pay Chung to settle Chung's related claims against them. We conclude that the trial court did not err, because (1) the settlement covered more items of damage than the judgment, and Blaylock did not establish what proportion of the settlement related to damages covered by the judgment or that any *pro tanto* credit was necessary to prevent Chung from being overcompensated; and (2) Blaylock waived any claim for a *pro rata* credit by electing not to seek such a credit in the trial court proceedings (or even in this court). We therefore affirm the judgment on appeal.



I.

According to the evidence at trial, Blaylock and Egle were business partners in 1309 19th Street LLC, which operated a coffee shop in Dupont Circle. In 2008, Egle induced Chung to lend the LLC \$100,000 on the pretext that the funds would be used to renovate the coffee shop so that it could be sold at a substantial profit. In return, Egle and the LLC promised to repay the \$100,000 and to pay Chung an additional \$100,000 thereafter.

In actuality, the \$100,000 that Chung lent the LLC was not used to renovate the coffee shop. Instead, unbeknownst to Chung, the money was wired from the LLC's bank account directly into Blaylock's personal bank account. The LLC's remaining assets were sold, and Blaylock received the proceeds of their sale as well. Chung was not repaid.

Chung sued Egle, Blaylock, the LLC, and certain affiliated parties¹ in Superior Court, alleging fraud and other causes of action. (Blaylock was added as a defendant in Chung's first amended complaint.) In addition to compensatory damages, Chung sought punitive damages of up to nine times the amount of the compensatory damages. On September 2, 2010, Chung entered into a settlement agreement with all the defendants except Blaylock. The settling defendants agreed to pay Chung the sum of \$100,000 in exchange for a full release of all his claims against them and without any admission of liability. The agreement explicitly allowed Chung to continue his lawsuit against Blaylock and contemplated that Chung could collect up to \$75,000 of any judgment he obtained in that suit from disbursements or distributions the settling defendants would otherwise make to Blaylock.

After concluding this settlement, Chung filed a second amended complaint naming Blaylock as the sole remaining defendant and asserting claims against him of fraud, conspiracy to commit fraud, unjust enrichment, conversion, and fraudulent conveyance. Unlike the original and first amended complaints that

¹ The other defendants were members of Egle's family and business entities affiliated with Egle and Blaylock. Chung states in his brief that they were "included in this case due to concerns about commingling of assets." Supplemental Brief of Appellee at 10 n.2.

Chung had filed against all the defendants prior to the partial settlement, the second amended complaint omitted a claim for breach of contract.²

The case against Blaylock was tried to a jury in February 2013. The trial judge ruled that Chung could not seek punitive damages, though Chung would have been allowed to do so had Egle been on trial. The judge instructed the jury that the maximum amount it could award Chung on his causes of action was \$100,000, representing Chung's out-of-pocket loss, except that on the fraud and conspiracy claims the jury also could award Chung "any interest that he's proved . . . was due to him."³ The jury returned a plaintiff's verdict, finding Blaylock liable to Chung for fraud, unjust enrichment, conversion, and fraudulent conveyance, and awarding Chung \$100,000 in compensatory damages—his entire out-of-pocket loss, without any interest added.⁴ The court entered judgment in accordance with this verdict.

Blaylock thereafter moved to amend the judgment, arguing that he was entitled to a dollar-for-dollar, or *pro tanto*, credit in the amount that the settling defendants had agreed to pay Chung for a release of his claims against them, i.e., \$100,000. Such a credit would reduce the judgment against Blaylock to zero. After a hearing, the trial court denied Blaylock's request. The court ruled that it would be inequitable to reduce the award on account of the settlement, in essence because Chung had a contract under which he expected to get \$200,000 and thus he was not being overcompensated.⁵

² According to his brief, "Chung did not pursue the breach of contract claim against Blaylock because Chung had never met Blaylock prior to filing this action and could not prove an agreement between the two." Brief of Appellee at 3. Blaylock has not disputed this explanation.

³ The judge explained that "the limitation on the \$100,000 doesn't apply [to the fraud and conspiracy claims], because if you credit the evidence you can award the interest that the plaintiff argues to you in this case was a part of the deal that he made under this theory of fraud." Chung accordingly urged the jury to award him interest in the amount of \$100,000, because that was what Egle promised Chung he would receive for making the loan.

⁴ The jury found for Blaylock on the conspiracy claim.

⁵ The court articulated its reasoning as follows:

(continued...)

II.

"How to credit the judgment entered upon a jury verdict against a nonsettling defendant with the proceeds a settling defendant paid to the plaintiff is purely a question of law, subject to this court's review *de novo*."⁶ In seeking a *pro tanto* credit in this case, Blaylock invokes the rule that, when a plaintiff has settled a claim for damages with a party whose liability has not been established, admitted, or stipulated, the nonsettling defendant found liable to the plaintiff for those damages is entitled to a dollar-for-dollar credit in the amount of the settlement.⁷ "The rationale behind the *pro tanto* credit . . . is to ensure that the plaintiff receives no more than the loss actually suffered for her claim,"⁸ i.e., just "one recovery for a single injury."⁹

It follows that a *pro tanto* credit against a jury award to reflect a settlement is appropriate only to the extent necessary to avoid an overpayment to the plaintiff.

(continued...)

[T]his matter of contribution is an equitable matter, and the question . . . is whether it's equitable or inequitable . . . [T]he resolution of the issue favors the plaintiff, because what you have here at its base is a contract between these two individuals, with Egle acting as an agent for Blaylock. . . . Egle went out and told Chung, give me 100,000 today and I'll give 200,000 in two weeks. And that means that Chung . . . expected to get \$200,000, settled with the settling defendants for \$100,000, went to the jury and got 100,000 against Blaylock. I'm going to let him go at it.

⁶ *Berg v. Footer*, 673 A.2d 1244, 1247 (D.C. 1996).

⁷ See *id.* at 1248-49; *Snowden v. D.C. Trans. Syst., Inc.*, 454 F.2d 1047, 1048-49 (D.C. Cir. 1971).

⁸ *Washington v. Washington Hosp. Ctr.*, 579 A.2d 177, 190 (D.C. 1990) (citing *Snowden*, 454 F.2d at 1048-49).

⁹ *Berg*, 673 A.2d at 1249.

This means it is necessary to consider whether and to what extent the settlement and the jury award cover different items of damage—for example, because certain claims covered by the settlement were not submitted to the jury.¹⁰ As Chung argues, that is the case here.

This is so for two reasons. First, the settlement encompassed Chung's claim for breach of contract damages while the jury was not asked to award such damages. This is significant because Chung plausibly could have recovered the promised \$100,000 return on his loan as breach of contract damages (had he gone to trial against Egle)¹¹ even though the jury did not award it to him as fraud damages—which was not surprising, since it was neither part of Chung's out-of-pocket loss¹² nor a reasonable sum to award as pre-judgment interest. Indeed, the trial judge himself commented afterward that he would have been "surprised" had the jury awarded Chung \$200,000, though he recognized that was what Chung "expected to get" under his contract with Egle.

¹⁰ See *McDermott, Inc. v. AmClyde & River Don Castings Ltd.*, 511 U.S. 202, 217 n.26 (1994) (explaining that under the *pro tanto* rule, where the settlement "covered more items of damage than the judgment," the burden is "to figure out what proportion of the settlement related to damages covered by the judgment and what percentage related to damages covered only by the settlement"); see also *Convit v. Washington Brain & Spine Inst., P.C.*, 980 A.2d 1104, 1130-31 (D.C. 2009) (where settlement applied only to a loss of consortium claim, it could not be applied to reduce award of damages on an independent negligence claim); *Paul v. Bier*, 758 A.2d 40, 43 (D.C. 2000) (addressing plaintiff's contention that "the jury verdict compensated for damages solely attributable to Dr. Bier, i.e., that it was not intended as full compensation for [the plaintiff's] injuries," while the settlement also covered separate injurious acts of negligence of another doctor).

¹¹ See *Allen v. Yates*, 870 A.2d 39, 52 (D.C. 2005) ("Where the parties have entered into a contract, being made whole means realizing the benefit of the bargain that they struck.").

¹² The ordinary measure of damages in a fraud action is the plaintiff's out-of-pocket loss attributable to the fraud. *Dresser v. Sunderland Apartments Tenants Ass'n*, 465 A.2d 835, 840 n.18 (D.C. 1983).

Second, the settlement also encompassed Chung's claim for punitive damages while the jury was precluded from considering such damages. This is significant because the trial judge recognized the plausibility of a punitive damages claim against Egle.¹³

Given that the settlement discharged claims for breach of contract and punitive damages that were not covered by the jury's award, Blaylock was not entitled to the full *pro tanto* credit he sought. He might have been entitled to a *pro tanto* credit for a portion of the settlement allocable to Chung's claim for repayment of his out-of-pocket loss, since that loss was covered by the jury's award. But Blaylock did not propose or request such an allocation, nor did he shoulder his burden of establishing its amount.¹⁴ As he therefore failed to show that the combination of the jury's award and the settlement overcompensated Chung for any portion of his claimed damages, we cannot fault the trial court for denying Blaylock's request for a *pro tanto* credit.

As an alternative to a *pro tanto* credit, Blaylock might have sought a *pro rata* credit based on the equal apportionment of liability among joint tortfeasors.¹⁵

¹³ Cf. *Allen*, 870 A.2d at 47-48 (acknowledging that a guarantor of a promissory note is entitled to an offset for the amount paid by the principal obligor in a settlement with the holder of the note to discharge his indebtedness on the note, but not for any portion of the settlement paid to discharge a *bona fide* claim for punitive damages).

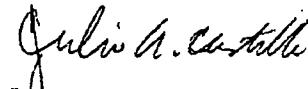
¹⁴ The settlement agreement itself contains no such allocation, and we have no basis to impose one as a matter of law. Even assuming that some portion of the settlement would have to be allocated to Chung's out-of-pocket loss, which is not clear, the allocation might be unfavorable to Blaylock. For example, if we posit that Chung asserted damage claims against the settling defendants amounting to \$2 million *in toto* (\$200,000 in compensatory damages plus nine times that amount, or \$1.8 million, in punitive damages), then the proportion of the settlement allocable to his out-of-pocket loss (\$100,000) presumably might have been 5%, and any credit would have been only \$5,000—a comparative pittance.

¹⁵ See generally *Convit*, 980 A.2d at 1128-29; *Paul*, 758 A.2d at 43-45; *District of Columbia v. Shannon*, 696 A.2d 1359, 1366-68 (D.C. 1997); *Berg*, 673 A.2d at 1248.

7
Blaylock admittedly "elected not to do so," however, and he insists that it is "impossible and inappropriate" to apply a *pro rata* credit in the circumstances of this case.¹⁶ We conclude that Blaylock has waived any claim he might have for a *pro rata* credit.

The judgment of the Superior Court is hereby affirmed.

ENTERED BY DIRECTION OF THE COURT:


JULIO A. CASTILLO
Clerk of the Court

Copies to:

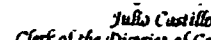
Honorable Michael Rankin

Joseph J. DiPietro, Esq.
8200 Greenboro Drive – Suite 900
McLean, VA 22102

Thomas S. Urban, II, Esq.
Urban & Falk, PLLC
P.O. Box 321043
Alexandria, VA 22320

¹⁶ Supplemental Brief of Appellant at 5.

A true Copy
Test:


Clerk of the District of Columbia Court
of Appeals

BY 
DEPUTY CLERK
Julio Castillo
Clerk of the District of Columbia
Court of Appeals

1 SUPERIOR COURT FOR THE DISTRICT OF COLUMBIA

2 CIVIL DIVISION

3 - - - - - X

4 DAVID S. CHUNG, :

5 Plaintiff, : Case No.

6 v. : 2008 CA 007389 B

7 DARRYL BLAYLOCK, :

8 Defendant. :

9 - - - - - X

10 Washington, D.C.

11 Wednesday, October 5, 2011

12 . Continued videotaped deposition of DARRYL
13 BLAYLOCK, a witness herein, called for examination by
14 counsel for Plaintiff in the above-entitled matter,
15 pursuant to notice, the witness being duly sworn by
16 MARY GRACE CASTLEBERRY, a Notary Public in and for
17 the District of Columbia, taken at the offices of
18 Hogan Lovells, 555 13th Street, N.W., Washington,
19 D.C., at 10:00 a.m., Wednesday, October 5, 2011, and
20 the proceedings being taken down by Stenotype by MARY
21 GRACE CASTLEBERRY, RPR, and transcribed under her
22 direction.

Alderson Reporting Company
1-800-FOR-DEPO



Page 431	Page 433
1 A. M-a-r-r-e-o-w, maybe. 2 Q. Louisiana? 3 A. Yes, sir. 4 Q. Do you know what the ZIP is? 5 A. 70072. 6 Q. Do you live there with anyone else? 7 A. Yes. 8 Q. Who else lives there? 9 A. My brother-in-law. 10 Q. What's his name? 11 A. John. 12 Q. LaMarche? No, what's his last name? 13 A. Dupree. 14 Q. So this would be -- 15 A. My brother-in-law. 16 Q. Is this your sister's husband? How is he 17 related? 18 A. Ex-husband. 19 Q. Sister's ex-husband? Does he work for you 20 or any of your entities? 21 A. No. 22 Q. What is the loan that's out on the	1 more. 2 Q. And this is the loan with Bank of America? 3 A. Yes. 4 Q. And do you know what the balance is on 5 that loan? 6 A. Under 100. 7 Q. Do you know what the balance is on your 8 checking account with Bank of America? 9 A. No. Somewhere around like 1,200. 10 Q. And what's your balance on any other bank 11 account that you have? 12 A. That's not your business, sir. 13 Q. I'm sorry, it is, because that's your 14 assets and liabilities. So that's assets for net 15 worth purposes. 16 A. Not very much. 17 Q. Is it under \$5,000? 18 A. It's between five and 16,000. 19 Q. How are you paying all of these expenses 20 that you're paying per month if all you've got in the 21 bank is, at most, \$17,200? 22 A. I just am, sir.
Page 432	Page 434
1 Langford? Is that still the home equity loan? 2 A. Yes. 3 Q. So that was not paid off in full when you 4 got the \$475,000 in 2009? 5 A. \$475,000? 6 Q. You got \$100,000 that came from David 7 Chung and you got \$375,000 that came from Josh Volen. 8 A. And I got the money that came from Ryan 9 Egle. 10 Q. So you got \$475,000 through Ryan Egle that 11 came from those two people? 12 A. Supposedly. 13 Q. And you testified that you used that money 14 to pay off the home equity loan? 15 A. Yes. 16 Q. So if it was paid off, why are you still 17 paying between 1,500 and 2,000 on it? 18 A. Because there is a little bit left. 19 Q. Well, if you're paying 2,000 a month, 20 that's probably about \$200,000 left. 21 A. No, it's a lot less than that. It's my 22 option to pay either the baseline on equity or pay	1 Q. How are you, five hours before you fly, 2 making reservations? 3 A. This is not relevant to what's going on. 4 Q. Yes, it does. It makes no sense that you 5 have that little money and somehow you're able to 6 make flight arrangements on a moment's notice. 7 A. I use a credit card. 8 Q. So you're putting all this on your credit 9 card? 10 A. Yes. 11 Q. So you're just running up credit card debt 12 every month? 13 A. Through the ceiling. 14 Q. And you have no income at the present 15 time? 16 A. Like I said, I have money that I 17 inherited. There is money there. 18 Q. Well, that's only about \$17,000, according 19 to you, because it's all in your Bank of America -- 20 A. I didn't say it was all in my Bank of 21 America account. I have no more accounts. 22 Q. And what other accounts do you have money

55 (Pages 431 to 434)

STATE OF SOUTH CAROLINA

COUNTY OF NINTH

Blaylock

Plaintiff,

vs.

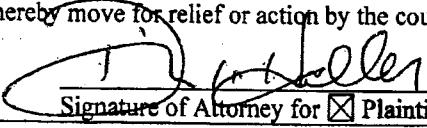
LaMarche

Defendant.

IN THE COURT OF COMMON PLEAS
CHARLESTON JUDICIAL CIRCUIT

CASE NO.: 2014-CP-10-2884

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: <u>Shannon Jones</u> , Bar No. _____ Address: <u>3 State Street, Charleston, SC 29401</u> Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: <u>Guy Vietta</u> , Bar No. _____ Address: <u>225 Seven Farms Road, Ste.201, Daniel Island, SC 29492</u> Phone: _____ Fax _____ E-mail: _____ 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: <u>To Set Aside Judgment</u> Estimated Time Needed: <u>30 minutes</u> Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order 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 <u>Sept. 11, 2015</u> Date submitted	
SECTION III: Motion Fee	
☐ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ 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: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

SCCA 233 (11/2003)

Movant's Counsel:

David K. Haller
SC Bar Number 13411

115 River Landing Drive, Suite 102
Charleston, SC 29492

843-224-7860

dhaller@hallerlawfirm.com

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-10-2884

Darryl M. Blaylock,

Plaintiff,

versus

Erica Lynn LaMarche,

Defendant.

and

David S. Chung,

Intervening Defendant.

SUPPLEMENTAL RECORD TO
MOTION TO INTERVENE AND TO
SET ASIDE PARTITION JUDGMENT

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2015 NOV 30 AM 11:22

FILED

David S. Chung files the attached in support of his Motion to Intervene and Set Aside Partition Judgment.

HALLER LAW FIRM, P.C.



David K. Haller

115 River Landing Drive, Suite 102

Charleston, SC 29492

(843) 224-7860

(843) 853-9377

dhaller@hallerlawfirm.com

ATTORNEY FOR THE PETITIONER

24th day of November, 2015

Charleston, South Carolina

Deposition of ERICA LAMARCHE

1 SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
2 CIVIL DIVISION
3 CASE NO: 2008-CA-007389-B
4

5 DEPOSITION OF ERICA LAMARCHE

6 DAVID S. CHUNG,

7 PLAINTIFFS,

8 vs.

9 RYAN EGLE, JACK EGLE, JOLYN EGLE, DARRYL BLAYLOCK,
10 1309 19TH ST., LLC, 3500 O STREET, LLC, PURA VIDA
COFFEE HOLDINGS, LLC, SAXBYS COFFEE WORLDWIDE, LLC,
11 DOES 3-10,

DEFENDANTS.

12 -----
13 WITNESS: ERICA LAMARCHE

14 DATE: JUNE 8, 2012

15 TIME: 10:00 A.M.

16 LOCATION: CLARK & ASSOCIATES
17 154-A Cannon Street
Charleston, South Carolina
18 -----

19 REPORTED BY:
20 WANDA S. BUCKNER
21 NCRA Registered Professional Reporter
22 NCRA Certified Realtime Reporter
CLARK & ASSOCIATES
23 P.O. Box 73129
North Charleston, SC 29415
(843) 762-6294
24

25 A P P E A R A N C E S

Clark and Associates Inc.

Page: 1

1 Q The \$100,000, how did you -- how did you
2 become aware of it? Did Darryl say, hey, I got
3 \$100,000 from Ryan Egle?

4 A Um-hum, yeah. It was used to pay down the
5 mortgage, I believe.

6 Q In 2008 did Darryl Blaylock receive other
7 monies from Ryan Egle that were used to pay off that
8 loan, the mortgage?

9 A Yeah.

10 Q How much?

11 A I am not sure how much. He received it
12 and it went to his bank account. I know I was
13 responsible for paying down the mortgage because he
14 has proven himself to be irresponsible with money,
15 correct. So I had a vested interest in, you know,
16 paying down the note, so when he would get money
17 from Ryan, I would make sure it went towards that.

18 Q So the \$100,000, you made sure it went
19 toward the loan and it wasn't spent on motorcycles
20 or something?

21 A Exactly.

22 Q Okay. Then there was another amount that
23 you received in 2008?

24 A That I received?

25 Q That Darryl Blaylock received that was

Deposition of ERICA LAMARCHE

1 applied toward the mortgage? Does that sound right.

2 A I am not sure.

3 Q Let me ask it differently. Beyond the
4 \$100,000 that Ryan Egle gave Darryl Blaylock, did
5 Ryan Egle give Darryl Blaylock any other -- any
6 other amounts of money?

7 A I believe so.

8 Q How much, do you recall?

9 A I don't remember how much. I know that
10 our mortgage went down like -- we paid off close to
11 \$300,000 of it.

12 Q Do you recall paying off about \$300,000 of
13 that mortgage within -- it was a pretty short time
14 span?

15 A I am not sure.

16 Q Like a couple of months?

17 A I am not sure.

18 Q Did you -- when you received the
19 100,000 -- I am saying you received it, I mean when
20 Darryl Blaylock received the 100,000 -- you made
21 sure it was applied toward the mortgage, did you ask
22 him, where did Ryan Egle get this from? Did you ask
23 Darryl Blaylock that?

24 A Yeah. And I got an, I don't know, maybe
25 his mom, maybe, I don't know, doesn't matter.

Deposition of ERICA LAMARCHE

1 Q Doesn't matter?

2 A Not that it doesn't matter, none of my
3 business, pretty much.

4 Q Were you -- based on your knowledge of
5 Ryan Egle, were you curious, where did he come up
6 with this kind of money from?

7 A Yes. I mean, he has family. Even though
8 he was still getting paid with his real estate
9 company. I thought it was a little bit strange, but
10 I also know like they make stuff happen that can't
11 normally happen. So I don't know. I mean, I didn't
12 know if he borrowed it from -- if he took a loan.
13 If he sold the condo. I don't know what he did.

14 At that time I was so over them, I was
15 pregnant, I was not -- I wasn't interested in his
16 saga anymore, his problem.

17 Q By "his", who do you mean?

18 A Ryan.

19 Q Okay. Was Darryl Blaylock putting
20 pressure on Ryan Egle at that time period to pay him
21 back?

22 A No.

23 Q Saying --

24 A I am sure they had conversations where
25 they said, we have to sort this out somehow.

1 Q Yeah.

2 A Just that Ryan borrowed money from
3 Mr. Chung and that he never paid him back and that
4 now Mr. Chung is going after everybody to get his
5 money back.

6 Q Well --

7 A That's pretty much what my knowledge of
8 the lawsuit is.

9 Q Okay.

10 A Once again, all of this is from Darryl
11 and --

12 Q The 100,000 --

13 A Darryl, he doesn't really tell full
14 stories and chunks of time and, I mean, that is what
15 I gathered the facts to be.

16 Q Have you ever asked Darryl Blaylock, that
17 \$100,000 is that David Chung's \$100,000?

18 A No, never asked him.

19 Q Have you guys ever talked about that?

20 A No.

21 Q Did you --

22 MR. MALLOY: Let's go off the record for a
23 second.

24 (Off-the-record.)

25 Q The money that was used to pay down -- pay

Deposition of ERICA LAMARCHE

1 off the mortgage --

2 A Um-hum.

3 Q -- have you ever asked Darryl Blaylock
4 about where it came from?

5 A Ryan.

6 Q Have you ever asked him where did Ryan get
7 it from?

8 A I never asked.

9 Q Even after you found out about this
10 lawsuit?

11 A It is none of my business.

12 Q Well, it was used to pay off your -- a
13 mortgage on your house.

14 A Okay. That makes it my business?

15 Q Well, if the source, the money --

16 MR. GROSS: Objection. Counsel is
17 testifying. You can only ask questions in a
18 deposition.

19 A I am not arguing. I'm sorry, I didn't
20 mean to be argumentative at all. I am just
21 confused.

22 Q Well --

23 A Did I ever ask -- Darryl was getting the
24 money from Ryan. I didn't know if Ryan was raking
25 it on area development, I didn't know if he had

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
DARRYL BLAYLOCK,)
)
Plaintiff,)
v.)
ERICA LYNN LaMARCHE and,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2012-CP-10-1347

ANSWER AND COUNTERCLAIM

FILED
2012 MAR 26 PM 3:59
JULIE J. ARMSTRONG
CLERK OF COURT

THE DEFENDANT answers the Plaintiff's complaint as follows:

1. The Defendant denies each and every allegation of the Plaintiff's complaint not herein specifically admitted, qualified or explained.
2. The Defendant admits the allegations contained in paragraph one (1).
3. The Defendant admits the allegations contained in paragraph two (2).
4. The Defendant admits the allegations contained in paragraph three (3).
5. The Defendant denies the allegations contained in paragraph four (4).
6. The Defendant admits that the parties were engaged, but denies the remaining allegations contained in paragraph five (5).
7. The allegations contained in paragraph six (6) do not require a response.
8. The Defendant admits the allegations contained in paragraph seven (7).
9. The Defendant denies the allegations contained in paragraph eight (8).
10. The Defendant denies the allegations contained in paragraph nine (9).
11. The Defendant denies the allegations contained in paragraph ten (10).
12. The Defendant admits the allegations contained in paragraph eleven (11).
13. The Defendant admits the allegations contained in paragraph twelve (12).
14. The Defendant admits the allegations contained in paragraph thirteen (13).
15. The Defendant admits the allegations contained in paragraph fourteen (14).
16. The Defendant admits the allegations contained in paragraph fifteen (15).

17. The Defendant denies the allegations contained in paragraph sixteen (16).
18. The Defendant denies the allegations contained in paragraph seventeen (17).
19. The Defendant denies the allegations contained in paragraph eighteen (18).
20. The Defendant denies the allegations contained in paragraph nineteen (19).
21. The Defendant denies the allegations contained in paragraph twenty (20).
22. The Defendant denies the allegations contained in paragraph twenty one (21).
23. The Defendant denies the allegations contained in paragraph twenty two (22).
24. The Defendant denies the allegations contained in paragraph twenty three (23).
25. The Defendant denies the allegations contained in paragraph twenty four (24).
26. The Defendant denies the allegations contained in paragraph twenty five (25).
27. The Defendant denies the allegations contained in paragraph twenty six (26).
28. The Defendant denies the allegations contained in paragraph twenty seven (27).
29. The Defendant denies the allegations contained in paragraph twenty eight (28).
30. The Defendant denies the allegations contained in paragraph twenty nine (29).
31. The Defendant denies the allegations contained in paragraph thirty (30).
32. The Defendant denies the allegations contained in paragraph thirty one (31).
33. The Defendant denies the allegations contained in paragraph thirty two (32).
34. The Defendant denies the allegations contained in paragraph thirty three (33).
35. The Defendant denies the allegations contained in paragraph thirty four (34).
36. Paragraph thirty five (35) does not require a response.
37. The Defendant denies the allegations contained in paragraph thirty six (36).
38. The Defendant denies the allegations contained in paragraph thirty seven (37).
39. The Defendant denies the allegations contained in paragraph thirty eight (38).
40. The allegations in paragraph thirty nine (39) do not require a response.
41. The Defendant denies the allegations contained in paragraph forty (40).
42. The Defendant denies the allegations contained in paragraph forty one (41).

43. The Defendant denies the allegations contained in paragraph forty two (42).
44. The Defendant denies the allegations contained in paragraph forty three (43).
45. The allegations contained in paragraph forty four (44) do not require a response.
46. The Defendant denies the allegations contained in paragraph forty five (45).
47. The Defendant denies the allegations contained in paragraph forty six (46).
48. The Defendant denies the allegations contained in paragraph forty seven (47).
49. The Defendant denies the allegations contained in paragraph forty eight (48).
50. The Defendant denies the allegations contained in paragraph forty nine (49).
51. The allegations contained in paragraph fifty (50) do not require a response.
52. The Defendant denies the allegations contained in paragraph fifty one (51).
53. The Defendant denies the allegations contained in paragraph fifty two (52).
54. The Defendant denies the allegations contained in paragraph fifty three (53).
55. The Defendant denies the allegations contained in paragraph fifty four (54).

COUNTERCLAIM

CLAIM AND DELIVERY

56. The allegations contained above in paragraphs one (1) through fifty-five (55) are reiterated herein as if fully set forth verbatim.
57. This Court has jurisdiction over the parties and subject matter of this action and venue is proper.
58. The Defendant and the Plaintiff have resided together at 1309 Langford Road, Mt. Pleasant South Carolina for approximately seven (7) years. Two children were born of this relationship, and the children were born and raised in this home.
59. Upon information and belief, the Plaintiff has long history of addictions to various prescription medications. Said addictions effect his ability to interact with the Defendant and the minor children.
60. On or about November 9, 2011 the Defendant was suddenly forced to leave the home due to the erratic, unstable and bizarre behavior of the Plaintiff resulting from his continued use and/ or abuse of prescription medications.
61. The Defendant was unable to remove all of her personal property from the residence upon her sudden departure. She left a great deal of personal property in her residence to which she is the rightful owner.

62. On numerous occasions the Defendant has requested that the Plaintiff permit her access to her residence to retrieve her personal property. The Plaintiff has only permitted the Defendant to retrieve personal property of his choosing, continuing wrongfully to maintain possession of a great deal of Defendant's personal property.
63. That the property has not been taken for a tax, assessment or fine pursuant to a statute or seized under an execution or attachment against the property of the Plaintiff or the Defendant; and
64. The Defendant is informed believes that the value of the property is in excess of ten thousand dollars (\$10,000.00).
65. The Defendant is informed and believes that this Court should Order the Plaintiff to grant the Defendant immediate entry upon her property in order to retrieve all personal property listed on her attached affidavit.

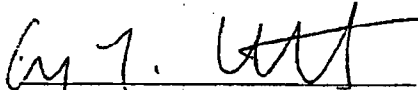
PARTITION OF REAL PROPERTY

66. The allegations contained above in paragraphs one (1) through sixty-five (65) are reiterated herein as if fully set forth verbatim.
67. The Plaintiff and the Defendant are joint owners of certain real property located at 1309 Langford Road, Mt. Pleasant South Carolina.
68. The Plaintiff and the Defendant purchased this property together and the same is titled jointly in their names. Each party owns an equal share of this property.
69. All indebtedness owing 1309 Langford Road, Mt. Pleasant South Carolina is jointly titled. Each party is equally responsible for all debt attached to this property.
70. The Plaintiff and the Defendant resided in this property for approximately six (6) years. During this time, two children were born of their relationship. This is the only home the minor children have known since birth. Pursuant to the Temporary Order of the Family Court in case number 11-DR-10-4319, the Defendant is the primary physical custodian of the minor children.
71. The Defendant is informed and believes that 1309 Langford Road, Mt. Pleasant South Carolina should be partitioned pursuant to Rule 71, SCRPC.
72. The Defendant is informed and believes that the issuance of a Writ of Partition would cause an unnecessary expense to the parties and the Court should dispense with this property without the appointment of Commissioners.
73. The Defendant is informed and believes that pursuant to Rule 71(f)(4), SCRPC, 1309 Langford Road, Mt. Pleasant, South Carolina ("the home") should be vested in the name of the Defendant upon the payment of one-half of the value the home to the Plaintiff and that pending payment of one-half of the value of the home to Plaintiff, Defendant be awarded sole use and possession of the home. Plaintiff further requests that Plaintiff be

divested of all interest in the home upon payment of one-half of the value of the home to the Plaintiff by Defendant.

WHEREFORE, the Defendant prays that the relief requested in the Plaintiff's Complaint be denied where requested and that the relief requested in the Defendant's Counterclaim be granted. Defendant further prays for such other and further relief as may be just and proper.

Respectfully submitted,



Guy J. Vitetta Esq.
Vitetta.Sarji Law Group
225 Seven Farms Drive, Suite 201
Daniel Island, SC 29492
843.302.2050 (telephone)
843.377.8390 (facsimile)

Daniel Island, South Carolina

3.26, 2012



March 26, 2012

Via Bullet Delivery

Clerk of Court
Charleston County Court of Common Pleas
100 Broad Street
Charleston, South Carolina 29401

Re: Blaylock v LaMarche, 12-CP-10-1347

Dear Clerk:

Please find the attached original(s) and 4 copies of an Answer and Counterclaim, submitted for filing. Please leave the filed copies for our courier who will return them to us.

Feel free to call our office with any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Guy J. Vitetta', with a stylized flourish at the end.

Guy J. Vitetta

Enclosures: as stated

Cc: Justin McGee via email only
Erica LaMarche via email only

Haller Law Firm, P.C.
Counselors at Law

David K. Haller
Certified Civil Court Mediator

November 24, 2015

Julie J. Armstrong
Clerk of Court
100 Broad Street
Charleston, SC 29401

In Re: *Blaylock v. Chung*
Case No. 2014-CP-10-2884

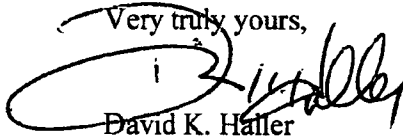
Dear Madame Clerk:

Enclosed for filing with your office, please find the original and one (1) copy of the Supplemental Record in Support in the above matter. Kindly file the original and return the copy to me in the enclosed self-addressed stamped envelope provided.

By copy of this letter, I am serving all counsel of record.

Thank you for your time and attention in this matter.

Very truly yours,



David K. Haller

Enclosure

cc: Client

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-10-2884

Darryl M. Blaylock,

Plaintiff,

versus

Erica Lynn LaMarche,

Defendant.

and

David S. Chung,

Intervening Defendant.

**DAVID CHUNG'S REPLY BRIEF ON
MOTION TO INTERVENE AND TO
SET ASIDE PARTITION JUDGMENT**

2015 DEC 22 PM 1:16
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

Erica LaMarche's Memorandum in Opposition to David Chung's Rule 60 Motion is part legal fiction, part factual fantasy. LaMarche being a single mother of two has nothing to do with the fact that she was unjustly enriched at the hands of Mr. Chung, nor does it have anything to do with the fact that, eight months after this Court's quit claim deed to her, she made a profit of \$80,000 on the sale of the home. LaMarche is not a victim, but a savvy manipulator of the system who has unjustly gained \$180,000 as a result of her misconduct at the hands of Chung requiring the Court's protections.

LaMarche's memorandum is full of misrepresentations and red herrings. First, this Court's partition order was not a judgment for financial losses suffered by her – it was the allotment of assets and debts incurred by her and Blaylock while they lived together during their romantic relationship. Moreover, LaMarche gained substantially by Blaylock's failure to appear at trial, including being credited for a very suspicious \$100,000 "loan" to Blaylock. Once she took title to the house, she sold it just eight months later and made a profit of \$80,000. Exhibit A,

Charleston County Property Tax Record. LaMarche has not lost anything; rather, she's gained a windfall of \$180,000. A court of equity will not suffer a windfall and should reopen the partition to prohibit it. *SUEM—Spitz's Ultimate Equitable Maxim: In Equity, Good Guys Should Win and Bad Guys Should Lose*, 55 S.C. L. Rev. 175, 189.

Second, LaMarche's attempt to redefine Chung's loss is faulty. The District of Columbia judgment is clear: "The jury returned a plaintiff's verdict [in Chung's favor], finding Blaylock liable to Chung for fraud, unjust enrichment, conversion, and fraudulent conveyance, and awarding Chung \$100,000 in compensatory damages—*his entire out-of-pocket loss*, without any interest added." DCCA Op. at 3. (Emphasis added). Blaylock testified that he took the money obtained and used it to pay the mortgage on the home.¹ LaMarche testified she knew the money was from Blaylock's co-conspirator, Egle, and that she, personally, paid the funds on the mortgage.² Chung's money benefited LaMarche, those funds were improperly obtained and thus unjust for her to keep it.

Third, LaMarche's attempt to cast Mr. Chung as a "loan shark" is off-base and against the already-found facts. "According to the evidence at trial, *Blaylock and Egle were business partners* in 1309 19th Street LLC, which operated a coffee shop in Dupont Circle. In 2008, *Egle induced Chung to lend the LLC \$100,000* on the pretext that the funds would be used to renovate the coffee shop so that it could be sold at a substantial profit. *In return, Egle and the*

-
- ¹ Q: You got \$100,00 that came from David Chung.
A: And I got that money that came from Ryan Egle.
Q: And you testified that you used that money to pay off the home equity loan?
A: Yes.

Depo. of Darryl Blaylock, October 5, 2011, p. 432, ln. 6-15.

² "... I was responsible for paying down the mortgage because [Blaylock] has proven himself to be irresponsible with money," *Id.* p. 85, ln.12-21.

LLC promised to repay the \$100,000 and to pay Chung an additional \$100,000 thereafter."

DCCA Op. at 2. (Emphasis added). The money was not a simple loan, it was a fraudulently induced payment to rectify whatever shenanigans was occurring between Blaylock and Egle, all to Chung's disadvantage.

Whether LaMarche was a defendant in the District of Columbia action is irrelevant. Her joint tenant, Blaylock, was. The money Blaylock stole from Chung was used to pay a debt—the mortgage—for which LaMarche was jointly liable or which could have been satisfied by the property she pushed to partition. She then took a house with \$100,000 less debt and sold it for \$80,000 more than what she told the Court the house was worth.³ Her attempt to play victim and innocent is hollow.

Fourth, a lis pendens in a dismissed case is no notice at all. "The filing of a lis pendens is an extraordinary privilege granted by statute, and strict compliance with the statutory provisions is required." *South Carolina National Bank v. Cook*, 354 S.E.2d 562 (1987).⁴ In *Cook*, the Supreme Court held that the failure to file a complaint within twenty (20) days after the lis pendens invalidated the lis pendens and gave the filing no effect. *Id.* at 563. Here, Blaylock and LaMarche elected to dismiss the action with the right, but not the obligation, to restore. "Rule 40(j) does not *require* that a party move to restore the case to the docket within one (1) year after it was stricken. Instead, the unambiguous language provides that, *if* the claim is restored..." *Maxwell v. Genez*, 356 S.C. 617, 620-21, 591 S.E.2d 26, 28 (2003). LaMarche's position is that a third party, not served with anything, should have to read the minds of adversarial parties to an

³ According to the partition judgment, the appraiser put forth by Ms. LaMarche testified the house was worth \$525,000.

⁴ In addition to the case having been dismissed, the lis pendens LaMarche relies on was never served by publication as required by S.C. Code 15-31-30.

action and determined through mind tricks whether they are going to reinstate the case. This cannot be the law.

In fact, it was LaMarche's obligation to do a full title search and join as parties any person who had a claim when she restored the case, which she failed to do. SCRCF Rule 71. Although a mortgage, a homeowner's association lien, and Chung's judgment were of record, she added *none* of them as parties to state their claims. By rule, the burden to join all necessary parties is on the partition plaintiff (LaMarche), not Chung. Her attempt to cast blame on David Chung illustrates how far she will go to avoid being responsible for her conduct.

LaMarche may be unmarried and she may have young children, but that does not make her innocent. On the contrary: she knowingly took title to a home that was worth more because Chung's stolen money was used to pay down the debt on it. She then turned around and sold it for \$80,000 more than what she represented to the Court it was worth. Failing to open the case not only allows LaMarche to be unjustly enriched by Chung's money, but also allows her to walk away with a substantial windfall she could have controlled by simply having added Chung to the case in the first place.

For the reasons above, Chung prays his motion be granted and for such other relief as the Court deems just, prudent, and proper.



David K. Haller, Esq.
115 River Landing Drive, Suite 102
Charleston, SC 29492
843-224-7860
dhaller@hallerlawfirm.com
Attorney for the Movant

This 19th day of December, 2015

Charleston, South Carolina



CHARLESTON COUNTY, SC

Site Provided by...
governmax.com 1.14

Overview



Street Address
1 of 1

Records

Overview

Parcel

Land

Improvements

Sales Disclosure

Pay Taxes

Property ID (PIN)	Alternate ID (AIN)	Parcel Address	Data refreshed as of	Assess Year	Pay Year
5600600121		1309 LANGFORD RD, MOUNT PLEASANT	12/5/2015	2014	2014

Current Parcel Information

Owner	JESS RICHARD LIVING TRUST JESS DANIELLE D	Property Class Code	101 - RESID-SFR
		Acreage	.2800
Owner Address	1309 LANGFORD RD MOUNT PLEASANT SC 29464		

Legal Description Subdivison Name -SHELL POINT Description -LOT 7 BLOCK D PHASE I
PlatSuffix EG-89 PolTwp 002

Historic Information

Tax Year	Land	Improvements	Market	Taxes	Payment
2015	\$175,000	\$352,100	\$527,100	\$2,034.61	\$2,034.61
2014	\$114,000	\$330,000	\$444,000	\$1,718.72	\$1,718.72
2013	\$114,000	\$330,000	\$444,000	\$1,606.83	\$1,606.83
2012	\$114,000	\$330,000	\$444,000	\$1,623.25	\$1,623.25
2011			\$444,000	\$1,737.41	\$1,737.41

Sales Disclosure

Grantor	Book & Page	Date	Deed	Vacant	Sale Price
LAMARCHE ERICA LYNN	0503 830	9/10/2015	G		\$605,000
LAMARCHE ERICA LYNN	0459 602	2/26/2015	M		\$0
DESIGN BUILDERS INC	G557 315	9/28/2005	G		\$497,600
GLADDEN CONSTRUCTION LLC	P491 162	4/20/2004	G		\$85,000
ADDCO LLC	P463 394	8/21/2003	G		\$69,500
DESIGN BUILDERS INC	P491 394	8/21/2003	G		\$69,500
NOT SUPPLIED	S411 611	7/10/2002	G		\$0

Improvements

Building	Type	Use Code Description	Constructed Year	Stories	Bedrooms	Finished Improvement Sq. Ft.	Size
----------	------	-------------------------	---------------------	---------	----------	---------------------------------	------

Search by

Property ID (PIN)

Street Address

Legal Description

Sales

Owner Name

Functions

Homepage

Real Property

Personal Property

Motor Vehicle

Shopping Cart

Help

Feedback

County Login

R01	DWELL	Dwelling	2005	2.0	03	2,410	
R01	ATTGAR	Attached Garage	0000	0	0		484

Charleston County makes every effort to produce the most accurate information possible. No warranties, expressed or implied are provided for the data herein, its use or interpretation. All data is subject to change.

Print Print List First Previous Next Last

Haller Law Firm, P.C.
Counselors at Law

David K. Haller
Certified Civil Court Mediator

December 19, 2015

Julie J. Armstrong, Clerk of Court
100 Broad Street
Charleston, SC 29401

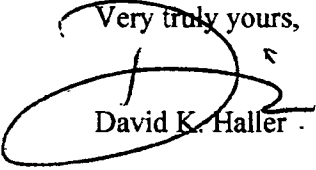
In Re: Blaylock v. LaMarche
Case No. 2014-CP-10-2884

Dear Madame Clerk:

Enclosed for filing with your office please find the original and one copy of David Chung's Reply Brief on Motion to Intervene and To Set Aside Partition Judgment. Kindly file one copy and return the second in the enclosed self-addressed stamped envelope.

Thank you for your time and attention to this matter.

Very truly yours,


David K. Haller

cc: Counsel of Record

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2014-CP-10-2884

Darryl M. Blaylock,
Plaintiff,

versus

Erica Lynn LaMarche,
Defendant.

and

David S. Chung,
Intervening Defendant.

INTERVENING DEFENDANT DAVID
CHUNG'S MOTION TO ALTER
OR AMEND

FILED
2016 FEB 29 PM 3:01
JULIE J. HARRIS
CLERK OF COURT

TO: GUY VIETTA, COUNSEL FOR THE DEFENDANT

YOU WILL PLEASE TAKE NOTICE that intervening defendant David S. Chung will move, in ten (10) days at the Charleston County Courthouse, or at such other time and place as the court deems proper, for an order pursuant to SCRCR Rule 59(e) altering or amending its February 12, 2016 order. Chung received written notice of the entry of judgment on February 21, 2016.

The grounds for the motion are as follows:

A. Lis Pendens issue.

The Court erred in determining that Chung's rights were barred because a lis pendens regarding the Blaylock/LaMarche partition had been filed prior to Chung filing his judgment. At the time Chung filed his judgment in South Carolina, the partition action had been dismissed. A lis pendens, "notifies potential purchasers that there is *pending litigation* that may affect their title to real property and that the purchaser will take subject to the judgment, without any substantive rights." *Horry County v. Ray*, 382 S.C. 76, 81, 674 S.E.2d 519, 522 (Ct. App.

2009)(emphasis added). The purpose of a lis pendens is to place a cloud on a title and prevent a sale of the property until the litigation is resolved. *Id.* “The filing of a lis pendens is an extraordinary privilege granted by statute, and strict compliance with the statutory provisions is required.” *South Carolina Nat. Bank v. Cook*, 291 S.C. 530, 354 S.E.2d 562 (1987). In *Cook*, the court held that a lis pendens was invalid where a complaint was not filed within the statutorily required time. *Id.*

Similarly, the lis pendens here did not bind Chung because at the time of the filing of his judgment there was no action pending because Blaylock and LaMarche had dismissed it. *Goodwin v. Landquest Development, LLC*, et al. Shearouse Op. No. 5342 Filed December 16, 2015 (“While our rules do not clearly provide that striking a case pursuant to Rule 40(j) is a dismissal, there is a basis in our law for considering a case stricken pursuant to the rule as the equivalent of dismissed.”). Because the case was dismissed, the lis pendens could not be notice of litigation that was not pending. A lis pendens in a dismissed case is no notice at all. Respectfully, the Court erred in holding otherwise.

B. Finding that LaMarche did not know of the fraudulently obtained funds

The Court erred in holding: “Blaylock subsequently did no renovations to the coffee shop and, unbeknownst to Chung and LaMarche, transferred the funds to LaMarche to make payments toward the mortgage on the Langford property.” Order at 2. LaMarche testified that she also knew Egle had given Blaylock \$100,000 and that those funds were used to pay down the mortgage on the home. Depo. of LaMarche, p. 85, ln. 1-8. In fact, LaMarche testified that she was the one that paid down the mortgage: “... I was responsible for paying down the mortgage because [Blaylock] has proven himself to be irresponsible with money,” *Id.* p. 85, ln.12-21. She also testified that she later learned Egle’s funds were taken from Chung. *Id.* p. 86, 87, 91, 92, *passim*. There is no

evidence to support this finding and Chung respectfully requests the Order be amended to reflect her testimony.

C. Timeliness of the Motion

The Court erred in determining that the motion was not timely pursuant to SCRCR Rule 24. First, pursuant to SCRCR Rule 71, it was LaMarche's duty to add Chung to the case when she unilaterally chose to restore it and obtain a partition. Second, that the property was sold to a third party does not foreclose a remedy to providing restitution to the defrauded Chung. The sale simply changes the form of the asset from real property to cash. In this vein, execution of the requested constructive trust is simple: LaMarche is required to return the proceeds from the sale to Chung that she used to pay down the mortgage. Respectfully, the Court erred in holding otherwise.

D. The Court erred in not adopting findings and fact and conclusions of law as set forth in Exhibit A, all of which is incorporated by reference herein and made a part and parcel hereof.

WHEREFORE Mr. Chung prays for the relief requested herein and such other relief as the court deems just, prudent, and proper.

HALLER LAW FIRM, PC


David K. Haller, Esq.
115 River Landing Drive, Suite 102
Charleston, SC 29492
(843) 224-7860
dhaller@hallerlawfirm.com

This 29th day of February, 2016

Charleston, South Carolina

Certificate of Service
This is to certify that I have served counsel for all parties in the foregoing matter with a copy of MAN depositing in the U.S. mail a copy of same in a properly addressed envelope with adequate postage thereon. ☒ handing counsel a copy thereof. e M
this _____ day of _____, 20____

HLF501

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2014-CP-10-2884
	)	
DARRYL BLAYLOCK,	)	
	)	
Plaintiff,	)	Response to David Chung's Motion
v.	)	To Alter or Amend
	)	
ERICA LYNN LaMARCHE,	)	
	)	
Defendant.	)	
	)	

To David Haller, Attorney for David Chung:

The Defendant Eric Lynn LaMarche, respond's to David Chung's Motion to Alter or Amend as follows:

Mr. Chung is not an Intervening Defendant. As stated in Ms. LaMarche's prior response to Mr. Chung's proposed order, Mr. Chung never sought to intervene in the above matter at anytime during litigation.

The filing of a 40(j), as Mr. Chung so notes, does not automatically dismiss a case. In fact, the 40(j) consent order filed in this matter, which is a public record available for any person to view, specifically provides that the matter was only "**stricken from the active docket of cases**" and that "**...the Plaintiff may have claims restored upon motion and notice to all parties within one (1) year...**" and further that the "**... statute of limitations shall be tolled during the time the case is stricken**".

The clear intent of the parties was to simply "strike" the case from the "active docket of cases", not dismiss all claims and counterclaims. After one year, the case was restored and the Defendant proceeded to prosecute her claims against the Plaintiff. Again, had Mr. Chung cared to know the status of the case, all he had to do was look online.

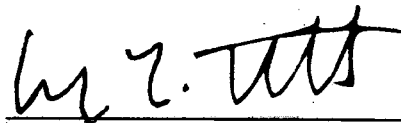
Most importantly, and this should have been obvious to Mr. Chung and his attorney, the statute of limitation was tolled. By tolling the statute of limitations, the parties clearly evidenced an intent NOT to dismiss their claims. This would have been obvious to Mr. Chung and his lawyer had they cared to view the document.

The Defendant relies on the court's ruling regarding her knowledge of alleged fraud committed on the part of the Plaintiff, as this issue has been raised by the parties and ruled upon by this court. Mr. Chung presents nothin new regarding this issue.

Mr. Chung re-states his argument regarding the timeliness of his motion. Mr. Chung presents nothin new regarding this issue and the Defendant relies upon the courts ruling.

Finally, **Mr. Chung, who has no standing in this matter and has been re-paid in full for the original loan of One Hundred Thousand Dollars (\$100,000) that he made to the Plaintiff**, has made no new legal arguments and is simply re-stating his original position. He is hoping that this court will take One Hundred Thousand Dollars (\$100,000) from the Defendant, a single mother of two small children who also had valid claims against the Plaintiff, and give it to Mr. Chung so Mr. Chung can realize a 100% profit from a loan to the Plaintiff.

The Defendant respectfully requests that this court deny Mr. Chung's motion.



Guy J. Vitetta, Esq.
225 Seven Farms Dr., Ste 201
Daniel Island, SC 29492
843.302.2050
guy@vitettalawgroup.com

At Charleston, South Carolina

3. 14. 16



March 14, 2016

Clerk of Court
Charleston County Master-In-Equity
100 Broad Street
Charleston, SC 29401

Re: Blaylock v. LaMarche
Case Number 2014-CP-10-2884

Dear Clerk:

Please find enclosed the original and three (3) copies of a Response to David Chung's Motion to Alter or Amend, submitted to you for filing, relative to the above captioned case.

Please leave the filed copy for Bullet Deliveries who will return the copy to our office.

If you have any questions, or need further information, please do not hesitate to contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read 'Guy J. Vitetta', with a stylized flourish at the end.

Guy J. Vitetta, Esq.

Enclosures

C: Erica LaMarche via email
David Haller, via Bullet Delivery

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTONChung

Plaintiff(s)

vs.

Blaylock

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2013 -CP- 10 - 10744

(Please Print)

Submitted By: David HallerAddress: 115 River Landing Dr., Ste. 102
Charleston, SC 29492

SC Bar #:

13411

Telephone #:

843-849-1384

Fax #:

843-853-9327

Other:

E-mail:

d.haller@hallerlawfirm.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)

- | | | | |
|---|---|---|--|
| <p>Contracts</p> <p>☐ Constructions (100)
 ☐ Debt Collection (110)
 ☐ Employment (120)
 ☐ General (130)
 ☐ Breach of Contract (140)
 ☐ Other (199)</p> | <p>Torts - Professional Malpractice</p> <p>☐ Dental Malpractice (200)
 ☐ Legal Malpractice (210)
 ☐ Medical Malpractice (220)
 ☐ Previous Notice of Intent Case #
 <u>20</u> -CP-
 ☐ Notice/ File Med Mal (230)
 ☐ Other (299)</p> | <p>Torts - Personal Injury</p> <p>☐ Assault/Stander/Libel (300)
 ☐ Conversion (310)
 ☐ Motor Vehicle Accident (320)
 ☐ Premises Liability (330)
 ☐ Products Liability (340)
 ☐ Personal Injury (350)
 ☐ Wrongful Death (360)
 ☐ Other (399)</p> | <p>Real Property</p> <p>☐ Claim & Delivery (400)
 ☐ Condemnation (410)
 ☐ Foreclosure (420)
 ☐ Mechanic's Lien (430)
 ☐ Partition (440)
 ☐ Possession (450)
 ☐ Building Code Violation (460)
 ☐ Other (499)</p> |
| <p>Inmate Petitions</p> <p>☐ PCR (500)
 ☐ Mandamus (520)
 ☐ Habeas Corpus (530)
 ☐ Other (599)</p> | <p>Administrative Law/Relief</p> <p>☐ Reinstate Drv. License (800)
 ☐ Judicial Review (810)
 ☐ Relief (820)
 ☐ Permanent Injunction (830)
 ☐ Forfeiture-Petition (840)
 ☐ Forfeiture-Consent Order (850)
 ☐ Other (899)</p> | <p>Judgments/Settlements</p> <p>☐ Death Settlement (700)
 ☒ Foreign Judgment (710)
 ☐ Magistrate's Judgment (720)
 ☐ Minor Settlement (730)
 ☐ Transcript of 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)</p> | <p>Appeals</p> <p>☐ Arbitration (900)
 ☐ Magistrate-Civil (910)
 ☐ Magistrate-Criminal (920)
 ☐ Municipal (930)
 ☐ Probate Court (940)
 ☐ SCDOT (950)
 ☐ Worker's Comp (960)
 ☐ Zoning Board (970)
 ☐ Public Service Commission (990)
 ☐ Employment Security Commission (991)
 ☐ Other (999)</p> |
| <p>Special/Complex /Other</p> <p>☐ Environmental (600)
 ☐ Automobile Arb. (610)
 ☐ Medical (620)
 ☐ Other (699)
 ☐ Sexual Predator (510)</p> | | | |
| <p>☐ Pharmaceuticals (630)
 ☐ Unfair Trade Practices (640)
 ☐ Foreign Subpoenas (650)
 ☐ Motion to Quash Subpoena
 in Out-of-County Action
 (660)</p> | | | |

Submitting Party Signature

David Haller

Date:

11-14-13

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.

SCCA / 234 (06/2013)

Page 1 of 2

HLF434

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

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

David S. Chung,

Plaintiff,

versus

Darryl Blaylock,

Defendant.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-10- 6741

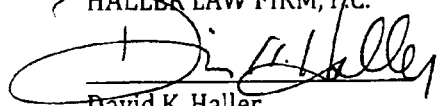
NOTICE OF FILING FOREIGN JUDGMENT

2013 NOV 14 PM 2:44
FILED
CLERK OF COURT

TO: DARRYL BLAYLOCK

YOU WILL PLEASE TAKE NOTICE, that pursuant to the Uniform Enforcement of Foreign Judgments Act, S.C. Code Ann. §15-35-900, et seq., the plaintiff and Foreign Judgment Creditor, David S. Chung, by and through his undersigned counsel, has filed with the office of the Clerk of Court for Charleston County, South Carolina, the attached Petition, Affidavit and Foreign Judgment. You have thirty (30) days from the receipt of this notice to seek relief from the enforcement of this judgment. If the judgment is not satisfied and no relief is sought within the thirty (30) days, then the judgment will be enforced in the same manner as any judgment in the State of South Carolina.

HALLER LAW FIRM, P/C.



David K. Haller

115 River Landing Drive, Suite 102

Charleston, SC 29492

(843) 849-1384

(843) 853-9377 FACSIMILE

13th day of November, 2013

Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

David S. Chung,

Plaintiff,

versus

Darryl Blaylock,

Defendant.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) CASE NO. 2013-CP-10-6744

PETITION TO ENTER
FOREIGN JUDGMENT

2013 NOV 14 PM 2:44
JULIE J. AUSTIN
CLERK OF COURT

TO: THE DEFENDANT ABOVE NAMED

Petitioner David S. Chung, by and through his undersigned counsel, hereby files his Foreign Judgment pursuant to S.C. Code Ann. §15-35-920 and seeks enrollment of the same in Charleston County, South Carolina. An Authentication of the Foreign Judgment from the District of Columbia is attached hereto as Exhibit A and incorporated by reference herein. The Foreign Judgment was entered against Darryl Blaylock by the Honorable Michael L. Rankin of the Superior Court of the District of Columbia on February 26, 2013 and is attached as Exhibit B and incorporated by reference herein. All appeal deadlines have lapsed and the judgment is final. The Foreign Judgment remains unsatisfied, as evidenced by the Affidavit of the undersigned attached hereto as Exhibit C.

Prayer and Signature Block Continue Next Page

WHEREFORE petitioner prays the court enroll the foreign judgment against Darryl Blaylock on the judgment rolls of Charleston County, for the relief requested herein and for such other relief as the court deems just, prudent, and proper.

HALLER LAW FIRM, P.C.

A handwritten signature in black ink, appearing to read "D. Haller", written over a horizontal line.

David K. Haller
115 River Landing Drive, Suite 102
Charleston, SC 29492
(843) 849-1384
(843) 853-9377 FACSIMILE

14th day of November, 2013

Charleston, South Carolina

EXHIBIT A

Superior Court of the District of Columbia

Authentication

2008 CA 73896

The Clerk of the Court hereby certifies that the document(s) annexed to this certificate is a true copy of the original on file and of record in said Court.

WITNESS my hand and the seal of said Court this 30th day of October, 20 13

Clerk of the Court /s/ Duane B. Delaney

By [Signature]
Deputy Clerk

The Chief Judge of said Court hereby certifies that the foregoing attestation by the Clerk of the Court is in due form.

WITNESS my hand and the seal of said Court this 30th day of October, 20 13

[Signature]
Chief Judge

The Clerk of the Court hereby certifies that the signature subscribed to the foregoing certificate was, at the time of signing and attesting the same, as that of the Chief Judge of said Court, duly commissioned and qualified.

WITNESS my hand and the seal of said Court this 30th day of October, 20 13

Clerk of the Court /s/ Duane B. Delaney

By [Signature]
Deputy Clerk

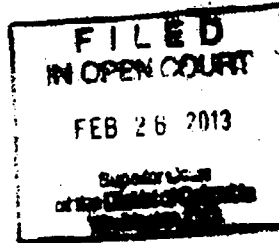


SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

DAVID S CHUNG
Plaintiff

VS

DARRYL BLAYLOCK
Defendant



2008 CA 007389 B
Case No.

MICHAEL L RANKIN
Judge

JUDGMENT

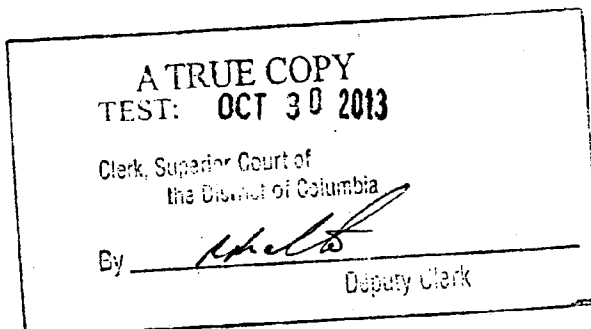
This action came for ☒ Trial ☐ Non-Jury Trial ☐ Ex-Parte Proof Hearing
before the Honorable MICHAEL L RANKIN, Superior Court Judge, presiding and

- ☐ proof having been duly presented
- ☒ the jury having rendered its verdict
- ☐ and the judge having rendered a decision

it is on this date February 26, 2013

ORDERED

That judgment be entered in favor of CHUNG, DAVID S and against BLAYLOCK, DARRYL
in the amount of \$100,000.00 with interest, thereon at the statutory rate and their costs of action.



Duane B. Delaney
Clerk of the Court

[Signature]
Claytonna Rogers, Courtroom Clerk



DOCKETED FEB 26, 2013 MAILED FEB 26, 2013

CC:
Thomas F. Urban II, Esquire
URBAN & FALK, PLLC
2867 S. Abingdon Street
Arlington, Virginia 20006

Daniel A. Gross
Law Office of Daniel A. Gross, PLLC
1629 K Street, NW Ste. 300
Washington, DC 20006

WLB

CAJO-1

EXHIBIT B



SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

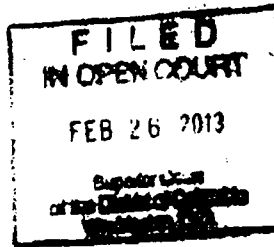
DAVID S CHUNG

Plaintiff

vs

DARRYL BLAYLOCK

Defendant



2008 CA 007389 B

Case No.

MICHAEL L RANKIN

Judge

JUDGMENT

This action came for ☒ Trial ☐ Non-Jury Trial ☐ Ex-Parte Proof Hearing

before the Honorable MICHAEL L RANKIN, Superior Court Judge, presiding and

☐ proof having been duly presented

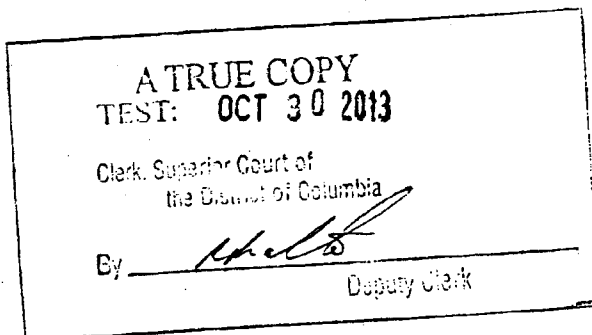
☒ the jury having rendered its verdict

☐ and the judge having rendered a decision

it is on this date February 26, 2013

ORDERED

That judgment be entered in favor of CHUNG, DAVID S and against BLAYLOCK, DARRYL
in the amount of \$100,000.00 with interest, thereon at the statutory rate and their costs of action.



Duane B. Delaney
Clerk of the Court

[Signature]

Claytonna Rogers, Courtroom Clerk



DOCKETED FEB 26, 2013 MAILED FEB 26, 2013

CC:
Thomas F. Urban II, Esquire
URBAN & FALK, PLLC
2867 S. Abingdon Street
Arlington, Virginia 20006

Daniel A. Gross
Law Office of Daniel A. Gross, PLLC
1629 K Street, NW Ste. 300
Washington, DC 20006

CAJO-1

HLF445

EXHIBIT C

44 12

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

David S. Chung,

Plaintiff,

versus

Darryl Blaylock,

Defendant.

) IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

) CASE NO. 2013-CP-10- 6744

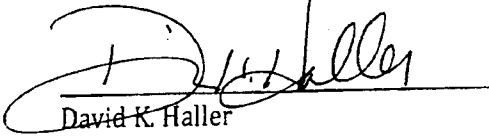
) **AFFIDAVIT OF DAVID K. HALLER**

APPEARED BEFORE ME David K. Haller, who being duly sworn, deposes as follows:

1. I am an adult and am competent to make the statements contained in this affidavit.
2. I am the attorney for judgment creditor David S. Chung in this matter, who is causing to be filed herein the accompanying Petition and Notice of Filing of a Foreign Judgment ("Notice").
3. The judgment rendered and reflected by the Authenticated Foreign Judgment filed with the Notice, upon information and belief, is a final judgment and said judgment remains unsatisfied in whole or in part.
4. The judgment rendered and reflected by the Authenticated Foreign Judgment is, upon information and belief, uncontested in there are no post-trial motions pending before the trial court or appeal in the original jurisdiction of the court, and the time for the filing of the same has now elapsed.
5. I have reviewed the Judgment Entry and the pleadings supporting the entry of same, as well as having knowledge of the underlying case giving rise to the entry of the judgment in the District of Columbia, Case Number 2008CA7389B. Darryl

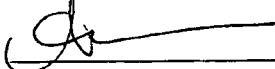
Blaylock is justly indebted to David S. Chung in the amount of One Hundred
Thousand (\$100,000.00) Dollars, plus interest at the statutory rate plus the costs
of the actions.

FURTHER THE AFFIANT SAYETH NOT!!!


David K. Haller

SWORN TO AND SUBSCRIBED BEFORE ME

This 14th day of November, 2013


Notary Public for South Carolina
My Commission Expires: 10-22-23

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

David S. Chung,

Plaintiff,

versus

Darryl Blaylock,

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-10- 6744

**CORRECTED AFFIDAVIT
OF DAVID K. HALLER**

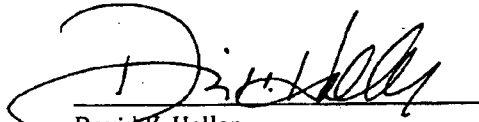
FILED
2013 NOV 18 PM 3:49
JULIE J. ARHSTRONG
CLERK OF COURT

APPEARED BEFORE ME David K. Haller, who being duly sworn, deposes as follows:

1. I am an adult and am competent to make the statements contained in this affidavit.
2. I am the attorney for judgment creditor David S. Chung in this matter, who is causing to be filed herein the accompanying Petition and Notice of Filing of a Foreign Judgment ("Notice");
3. The judgment rendered and reflected by the Authenticated Foreign Judgment filed with the Notice, upon information and belief, said judgment remains unsatisfied in whole or in part.
4. The judgment rendered and reflected by the Authenticated Foreign Judgment is, upon information and belief, on appeal in the District of Columbia and is contested.
5. I have reviewed the Judgment Entry and the pleadings supporting the entry of same, as well as having knowledge of the underlying case giving rise to the entry of the judgment in the District of Columbia, Case Number 2008CA7389B. Darryl Blaylock is justly indebted to David S. Chung in the amount of One Hundred

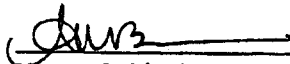
Thousand (\$100,000.00) Dollars, plus interest at the statutory rate plus the costs
of the actions.

FURTHER THE AFFIANT SAYETH NOT!!!


David R. Haller

SWORN TO AND SUBSCRIBED BEFORE ME

This 18th day of November, 2013


Notary Public for South Carolina
My Commission Expires: 10/22/2023

Haller Law Firm, P.C.
Counselors at Law

David K. Haller
Certified Civil Court Mediator

December 1, 2015

The Honorable R. Markley Dennis
Chief Administrative Judge
Ninth Judicial Circuit
300 California Avenue
Moncks Corner, SC 29461

In Re: *Chung v. Blaylock*
Case No. 2013-CP-10-6744

Dear Judge Dennis:

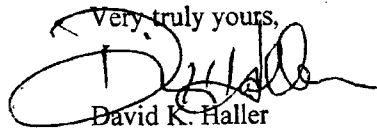
I represent David S. Chung. Enclosed for your consideration is an Order Enrolling Foreign Judgment and accompanying Form 4. I am sending this to you at the request of the Charleston County Clerk of Court's office, because although the Uniform Foreign Judgment Act does not specifically require an order, the Clerk believed one might be more appropriate to cause the enrollment.

By way of background, Mr. Chung obtained a judgment in the District of Columbia in February of 2013. We filed the Notice of Foreign Judgment in November of 2013. Attempts to serve Mr. Blaylock failed and he was served by publication in February 2014. He filed no objection. During this time, the case proceeded on appeal to the District of Columbia Court of Appeals. It became an uncontested judgment under the UFJA in July of this year and I filed an affidavit to that effect in September. I served that affidavit on Mr. Blaylock at his last known address more than 30 days ago. No objection or other appearance has been filed and enrollment is now proper.

Accordingly, if the order and Form 4 meet your approval, please sign the same and return the original to me in the enclosed self-addressed envelope and I will forward to the Clerk for filing.

Please let me know if you have any questions. Thank you for your time and attention to this matter.

Very truly yours,



David K. Haller

cc: Darryl Blaylock (to last known address)
Client

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2013-CP-10-6744
David S. Chung,	)	
	)	
Plaintiff,	)	
	)	
versus	)	ORDER ENROLLING FOREIGN JUDGMENT
	)	
Darryl Blaylock,	)	
	)	
Defendant.	)	
_____)		

IT APPEARING that on November 14, 2013, David S. Chung filed a Notice of Filing Foreign Judgment to enroll a valid District of Columbia judgment obtained against Darryl Blaylock in the amount of \$100,000, plus costs of \$10,000, and interest at the judgment rate. By order dated February 19, 2014, Blaylock was served notice of the filing by publication. The District of Columbia judgment became uncontested on or about July 29, 2015. Blaylock has made no appearance and has not filed an objection.

Accordingly, pursuant to S.C. Code Ann. §15-35-900, et seq., it is ORDERED that David S. Chung's judgment against Darryl Blaylock from the District of Columbia in the amount of \$110,000, plus interest at the judgment rate, shall be enrolled in the judgment rolls of Charleston County.

AND IT IS SO ORDERED!

R. MARKLEY DENNIS
Chief Administrative Judge
Ninth Judicial Circuit

December ____, 2015

At _____, South Carolina

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP-10-6744

David S. Chung

Darryl Blaylock

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: David K. Haller

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ 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: Chung's District of Columbia against Blaylock in the amount of \$100,000.00 plus costs of \$10,000 and interest is enrolled in Charleston County.

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)
David S. Chung	Darryl Blaylock	\$110,000.00
		\$
		\$

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.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

David K. Haller

115 River Landing Drive, Suite 102

Charleston, SC 29492

ATTORNEY(S) FOR THE PLAINTIFF(S)

Pro Se

1309 Langford Road

Mt. Pleasant, SC 29464

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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.

SCRCP Form 4C (03/2013)

Page 2

Haller Law Firm, P.C.
Counselors at Law

David K. Haller
Certified Civil Court Mediator

September 10, 2015

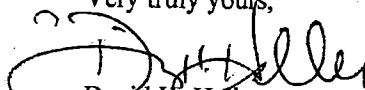
Darryl Blaylock
1309 Langford Road
Mt. Pleasant, SC 29464

In Re: *Chung v. Blaylock*
Case No. 2013-CP-10-6744

Dear Mr. Blaylock:

Enclosed please find an affidavit filed in the above matter.

Very truly yours,



David K. Haller

cc: David Chung

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
David S. Chung,)
Plaintiff,)
versus)
Darryl Blaylock,)
Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2013-CP-10-6744

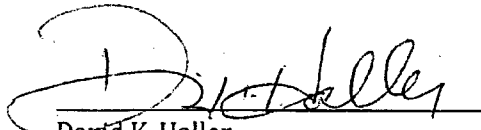
AFFIDAVIT OF DAVID HALLER

FILED
2015 SEP -9 PM 4:40
JULIE L. ARISTON
CLERK OF COURT

Appeared before me the undersigned who, being duly sworn, deposes and states as follows:

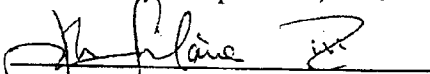
1. I am an adult and competent to make the states contained in this affidavit.
2. I am the attorney for the judgment creditor, David Chung, in this matter.
3. On or about July 29, 2015, the Court of Appeals for the District of Columbia issued its mandate affirming the judgment obtained by Mr. Chung against Blalock. A true and correct copy of the mandate is attached hereto as Exhibit A.
4. The judgment rendered and reflected by the Authenticated Foreign Judgment filed with the Notice is valid and said judgment remains unsatisfied in whole or in part.
5. The judgment rendered and reflected by the Authenticated Foreign Judgment is final and uncontested.
6. I have reviewed the Judgment Entry and the pleadings supporting the entry of same, as well as having knowledge of the underlying case giving rise to the entry of the judgment in the District of Columbia, Case Number 2008CA7389B. Darryl Blaylock is justly indebted to David S. Chung in the amount of One Hundred Thousand (\$100,000.00) Dollars plus interest at the statutory rate and costs.

FURTHER THE AFFIANT SAYETH NOT!


David K. Haller

SWORN TO AND SUBSCRIBED BEFORE ME

This 9th day of September, 2015


Notary Public for South Carolina
My Commission Expires: March 30, 2019

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

David S. Chung,

Plaintiff,

versus

Darryl Blaylock,

Defendant.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) CASE NO. 2013-CP-10-6744

ORDER ENROLLING FOREIGN JUDGMENT

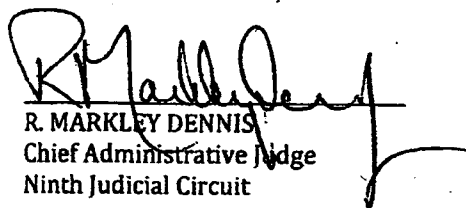
2015 DEC 15 PM 2:07
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

IT APPEARING that on November 14, 2013, David S. Chung filed a Notice of Filing Foreign Judgment to enroll a valid District of Columbia judgment obtained against Darryl Blaylock in the amount of \$100,000, plus costs of \$10,000, and interest at the judgment rate. By order dated February 19, 2014, Blaylock was served notice of the filing by publication. The District of Columbia judgment became uncontested on or about July 29, 2015. Blaylock has made no appearance and has not filed an objection.

Accordingly, pursuant to S.C. Code Ann. §15-35-900, et seq., it is ORDERED that David S. Chung's judgment against Darryl Blaylock from the District of Columbia in the amount of \$110,000, plus interest at the judgment rate, shall be enrolled in the judgment rolls of Charleston County.

AND IT IS SO ORDERED!


R. MARKLEY DENNIS
Chief Administrative Judge
Ninth Judicial Circuit

December 7, 2015

At Charleston, South Carolina

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP-10-6744

David S. Chung

Darryl Blaylock

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: David K. Haller

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ 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: Chung's District of Columbia against Blaylock in the amount of \$100,000.00 plus costs of \$10,000 and interest is enrolled in Charleston County.

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)
David S. Chung	Darryl Blaylock	\$110,000.00
		\$
		\$

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.

Circuit Court Judge

2060
Judge Code

12/7/15
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

David K. Haller
115 River Landing Drive, Suite 102
Charleston, SC 29492
ATTORNEY(S) FOR THE PLAINTIFF(S)

Pro Se
1309 Langford Road
Mt. Pleasant, SC 29464
ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

**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.

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2014-CP-10-2884
	)	(Reference case number 2012-CP-10-1347)
DARRYL BLAYLOCK,	)	
	)	
Plaintiff,	)	MEMORANDUM OF LAW IN OPPOSITION TO
v.	)	DAVID CHUNG'S MOTION PURSUANT TO
	)	RULE 60 SCRPC
ERICA LYNN LaMARCHE and,	)	
	)	
Defendant.	)	
	)	

TO DAVID CHUNG, BY AND THROUGH HIS ATTORNEY DAVID HALLER, the Defendant Erica Lynn LaMarche submits the following Memorandum of Law in opposition to David Chung's Motion pursuant to Rule 60 SCRPC, as follows:

The record in this matter has established that the **Defendant, Erica LaMarche, who is a single mother of two elementary school children, was awarded a judgment granting her compensation for financial losses caused to her by the Plaintiff, Darryl Blaylock.** The subject property has now been sold and the proceeds distributed in accord with this Court's Final Order. David C. Chung now seeks to intervene, 10 months after judgment, in an attempt to collect \$100,000 from Ms. LaMarche alleging that "unique circumstances" permit this court to re-open this matter and permit litigation to continue.

Mr. Chung relies on this Court's equity jurisdiction to seek "fairness" and protect Mr. Chung against a "loss" due to Mr. Blaylock's unethical behavior. **Mr. Chung does not tell the court that he has suffered no financial loss. Mr. Chung has been compensated in full for his initial \$100,000 loan and is seeking to enforce a judgment relative to a \$100,000 profit. (Exhibit A)**

Equity, or fairness, requires that Mr. Chung's motion be denied as he has suffered no financial loss. Equity, or fairness, requires that the judgment in favor of Ms. LaMarche, who has suffered real financial loss at the hands of the Defendant and is the single mother of two small children, be upheld.

In the instant case a *Lis Pendens* was filed by Defendant LaMarche on September 26, 2012, thirteen (13) months prior to Mr. Chung's out of state judgment, **(Exhibit B)**. The litigation proceeded for nearly one year (after it had be restored), with numerous hearings, all of which were published publicly.

At no time during the pendency of the action did Mr. Chung ever serve a motion to intervene as provided in Rule 24 SCRPC nor did he ever even bother to informally request that he be made a party. Furthermore, *Defendant LaMarche was not a party to the lawsuit between Chung and Plaintiff Blaylock, and she was never served with the DC Judgment.*

In spite of Mr. Chung having local counsel, he did not file a *Lis Pendens* on Mr. Blaylock's property, he did not place a lien on Mr. Blaylock's property, and took no steps to protect his judgment whatsoever other than filing an out of state judgment with the Clerk of Court. *Even though Mr. Chung had local counsel his motion was not even made until 10 months after the Final Judgment was issued when all of hearings and rulings were published publicly.*

Mr. Chung relies on *Davis v Jennings*; 304 S.C. 502, 505, 405 S.E.2d 601 (1991) and *In Re Horry County State Bank*; 361 S.C. 503, 604 S.E.2d 723 (Ct. App. 2004) in order to seek intervention after judgment due to "unique circumstances" and that no other relief can be afforded to him. In fact, there are no unique circumstances in this matter and Mr. Chung continues to have different remedies to seek relief other than re-opening the litigation in this matter.

In *Davis*, the South Carolina Supreme Court found that the *party seeking intervention had no reason to seek intervention prior to the end of case*. It was only actions taken by the original litigants *after* the end of the case that presented the intervening party with the unique set of circumstances permitting them to intervene after judgment. *In this matter, given Mr. Chung's allegations against Mr. Blaylock, Mr. Chung had a very good reason to seek intervention:* The usury nature of the loan (a 100% interest rate) which was the subject of his out of state lawsuit, the fact that Mr. Chung claims to have been "defrauded" by Mr. Blaylock yet suffered no financial loss, he had employed local counsel and was aware of the pending litigation between the Plaintiff and Defendant LaMarche, and the subject of the litigation had sufficient equity to satisfy his DC judgment

granting him a \$100,000 profit. These are ample reasons to seek intervention under the rules, but Mr. Chung and his lawyer did nothing.

In *Horry County*, the Court found that the party seeking intervention after judgment did *not even know about the litigation until after judgment*, again presenting them with a unique set of circumstances. In the the present matter, *both Mr. Chung and his lawyer knew about the pending litigation, Mr. Chung had retained local counsel to file a judgment with the Clerk, all hearings and orders were public and published publicly, a Lis Pendens was filed by Defendant LaMarche one year before Mr. Chung's judgment, yet Mr. Chung and his lawyer took no action*. In fact, in spite of having local counsel, Mr. Chung apparently did not even know about the judgment in this matter for 10 months after its entry.

It is clear that no "unique circumstances" exist permitting Mr. Chung to intervene 10 months after the judgment has been issued in this matter. He knew about the litigation, he had local counsel, he claimed to have an interest in the subject of the litigation, the litigation was public and all hearings published publicly, and Mr. Chung did nothing to protect his judgment regarding a 100% profit on a loan to Mr. Blaylock other than file the judgment.

Mr. Chung has not presented any unique facts, but rather is asking this Court for special treatment to assist him in collection of his gambling debts. **What would be "unique" is for this court to reopen this case and force Mr. LaMarche to defend her judgment against Mr. Chung's efforts to take \$100,000 from her and her children when Mr. Chung has suffered no financial loss.** There are many other avenues for Mr. Chung to try to collect his gambling debts, but re-opening this case and naming him an intervening party, 10 months after judgment, should not be one of them.

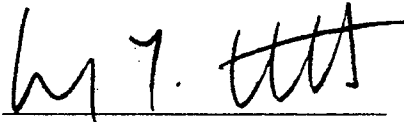
Finally, the prejudice to Ms. LaMarche is plainly obvious and severe. At no point has Mr. Chung ever accused Ms. LaMarche of being involved in the shady and speculative financial dealings in which he engaged with Mr. Blaylock. Ms. LaMarche is a single mother of two elementary school children, she has never been a party to the underlying lawsuit between Mr. Chung and Mr. Blaylock, she was never served with the DC judgment, she knew very little about the allegations being made against Mr. Blaylock (as is

reflected in the Transcript provided by Mr. Chung with his proposed order), and she made clear in her counterclaim that *she was a real victim* of Mr. Blaylock's financial malfeasance and suffered real financial loss.

This Court ruled on Ms. LaMarche's claims against Mr. Blaylock and granted her appropriate relief, reserving to Mr. Blaylock an interest of about \$110,000, which was subject to a mortgage of about \$80,000. The subject property has been sold and the proceeds distributed. Should this Court grant Mr. Chung's motion, it would reverse a *valid judgment in favor of Ms. LaMarche to compensate her for real financial loss*, and Ms. LaMarche, a single mother of two small children, would then be forced to spend money to re-litigate her case in order to protect her judgment. This would all happen simply so that Mr. Chung, *who has suffered no financial loss*, can make a 100% profit on a usury loan to Mr. Blaylock.

A ruling granting Mr. Chung's motion would not be justice, but would reward Mr. Chung for shady financial dealings that are akin to a loan shark. This Court should deny his motion.

Respectfully submitted,



Guy J. Vitetta, Esq.
225 Seven Farms Drive, Ste. 201
Daniel Island, South Carolina, 29492
843.302.2050 (telephone)
843.377.8390 (facsimile)
guy@vitettalawgroup.com
Attorney for Erica LaMarche

At Charleston, South Carolina

12.10.15



**SETTLEMENT AGREEMENT
AND GENERAL RELEASE**

THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE ("Agreement") is made as of the 2nd day of September, 2010, and is by and between David S. Chung, for himself, his agents, representatives, heirs, successors and assigns (referred to herein as "Chung") and Ryan Egle, Jolyn Egle, Jack Egle, 1309 19th Street, LLC, 3500 O Street, LLC ("3500"), and Pura Vida Coffee Holdings, LLC, for themselves, their agents, representatives, heirs, successors and assigns (referred to herein as the "Agreeing Parties").

RECITALS

WHEREAS, Chung filed a complaint against the Agreeing Parties and others, captioned *Chung v. Egle, et al*, Civil Action No. 2008 CA 007389 B, in the Superior Court of the District of Columbia, Civil Division (hereinafter the "Litigation").

WHEREAS, the Litigation involves claims and disputes arising out of, and in connection with, an alleged loan from Chung to the Agreeing Parties and other Defendants, including, Saxbys Coffee Worldwide, LLC, and Darryl Blaylock ("Blaylock").

WHEREAS, all Defendants deny all liability as to Chung.

WHEREAS, the parties to this Agreement desire to resolve this matter without resort to further or additional litigation.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties covenant and agree as follows:

1. **Recitals:** The foregoing recitals are incorporated into and made part of this Agreement.
2. **Settlement Payment:** In full and complete settlement of the Litigation, the Agreeing Parties agree to pay to Chung the sum of one hundred thousand dollars and 00/100 (\$100,000.00) (hereby collectively referred to herein as the "Settlement Sum") on the following schedule:
 - (a) fifty thousand dollars and 00/100 (\$50,000.00) no later than Wednesday, September 8, 2010, (hereby referred to as the "Initial Sum"), to be paid by cashier's check or money order or wire transfer, to the order of David S. Chung, Thomas F. Urban II, and Seann P. Malloy; and

(b) fifty thousand dollars and 00/100 (\$50,000.00) pursuant to that Confessed Judgment Promissory Note, a copy of which is attached hereto as **Exhibit A** and incorporated by this reference.

(c) In case of a default as defined in the Confessed Judgment Promissory Note, 3500 will be responsible for all amounts still owed under the Confessed Judgment Promissory Note. 3500 agrees that it will not at any time sell or otherwise transfer all or substantially all of its assets either by asset or stock sale to any person or entity during the period of time that payments are still being made under the Confessed Judgment Promissory Note nor will any of the Agreeing Parties sell or transfer any of their stock or ownership interest during this time period without notice to David Chung. If such a sale or transfer does take place during the payment period, all amounts not yet paid under the Confessed Judgment Promissory Note shall be taken out of the proceeds of such sale before any funds are disbursed to any of the Agreeing Parties, subject to any monies owed to EagleBank. Any such sale or transfer shall be for an amount equal to or greater than the amount at that time owed to EagleBank and the outstanding amount owed to David Chung under the Confessed Judgment Promissory Note.

3. Mutual Releases:

(a) In consideration of the mutual promises and agreements contained in this Agreement, Chung hereby remises, releases, waives and forever discharges the Agreeing Parties and Saxbys Coffee Worldwide, LLC from any and all claims, demands, actions, causes of action, duties, sums of money, suits, reckonings, contracts, controversies, agreements, liens, promises, damages, responsibilities, liabilities and accounts of whatever kind, nature, or description, direct or indirect, in law or in equity, in contract or in tort or arising under any statute or otherwise, that he now has, including without limitation all claims arising out of or relating to all of the matters and issues that were or could have been asserted in the Litigation.

(b) In consideration of the mutual promises and agreements contained in this Agreement, Ryan Egle, Jolyn Egle, Jack Egle, 1309 19th Street, LLC, 3500 O Street, LLC, and Pura Vida Coffee Holdings, hereby remise, release, waive and forever discharge Chung from any and all claims, demands, actions, causes of action, duties, sums of money, suits, reckonings, contracts, controversies, agreements, liens, promises, damages, responsibilities, liabilities and accounts of whatever kind, nature, or description, direct or indirect, in law or in equity, in contract or in tort or arising under any statute or otherwise, that he now has, including without limitation all claims arising out of or relating to all of the matters and issues that were or could have been asserted in the Litigation.

(c) The foregoing release shall not prejudice Chung's rights and/or remedies as against Blaylock, provided that, in the event that Chung obtains a judgment against Blaylock, Chung shall not enforce such judgment against Blaylock's assets that constitute an interest in an entity partially and/or wholly owned by the Agreeing Parties, whether such interest is debt, equity or otherwise, which companies include, without limitation, 1309 19th

Street, LLC, 3500 O Street, LLC and/or Pura Vida Coffee Holdings, LLC, except to the extent that Chung may attach any disbursements/distributions made by these entities to Blaylock up to the amount of any default or other judgment. If such an attachment of Blaylock's disbursements/distributions does occur, the Agreeing Parties shall guarantee that Chung receives a disbursement/distribution of no less than \$2,000 per month for the months of September through May and \$1,000 per month for the months of June, July, and August up to a total disbursement not to exceed \$75,000. The disbursements/distributions shall be pro rata with that of other members of 3500 and paid starting the month following notice being provided to 3500 and Blaylock of the Writ of Attachment.

(d) Nothing in this Agreement should be construed to limit the Agreeing Parties' rights to seek contribution from Blaylock.

4. **Dismissal of the Litigation:** Chung shall file the Stipulation of Dismissal With Prejudice (the "Praecept") in the form of a praecipe attached hereto as **Exhibit B** within ten days of the full execution of this Agreement and receipt of the Initial Sum, and serve the same on the Agreeing Parties.

5. **Full and Complete Settlement:** The undersigned declare and represent that the terms of this settlement are accepted for the purpose of making a full and final compromise, adjustment and settlement of any and all claims regarding the subject matter of this Agreement and the Litigation as against the Agreeing Parties and Saxby's Coffee Worldwide LLC; that the Agreement is for the express purpose of forever precluding Chung or the Agreeing Parties from asserting any further or additional claims arising out of the matters described in the Litigation as against the Agreeing Parties and Saxby's Coffee Worldwide LLC or Chung; that no promise, inducement or agreement not herein expressed has been made; that the Agreement contains the entire agreement between the parties hereto; and that the terms of this instrument are contractual and not merely a recital.

6. **Entire Agreement of the Parties:** This Agreement constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes all other prior and contemporaneous written or oral agreements and discussions. Only a writing signed by all parties hereto may amend this Agreement. The Parties agree that this Agreement is subject to renegotiation based upon any requested amendment provided by EagleBank in light of their current loan to 3500.

7. **Severability:** In the event that any covenant, condition, or other provision contained in this Agreement is held to be invalid, void or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect, impair or invalidate any other covenant, condition or other provision contained herein. If such condition, covenant or other provision shall be deemed invalid due to its scope of breadth, such covenant, condition or other provision shall be deemed valid to the extent of the scope of breadth permitted by law.

8. **Waiver:** No breach, violation, or failure to comply with any provision of this Agreement, other than a failure to pay the sums owed pursuant to Paragraph 2(b) of the Agreement, shall be enforceable unless written notice thereof is provided to the breaching party by the non-breaching party, which notice shall provide the breaching party a reasonable opportunity to cure. Failure by either party to provide the aforementioned notice and/or failure by either party to enforce any provision of this Agreement will not be deemed a waiver of separate, independent, future or subsequent breaches, violations or failures to comply with the same provision identified in such notice, or of separate, independent, future or subsequent breaches, violations or failures to comply with any other provision of this Agreement. Failure to comply with the payment provisions of Paragraph 2(b) shall be governed by the attached Confessed Judgment Promissory Note.

9. **Confidentiality:** In consideration of the mutual promises and agreements contained in this Agreement, and as a condition thereof, the parties agree that they will not reveal, disclose, discuss or convey to any other person, other than with those otherwise required by law, the contents of this Agreement or any information pertaining to the resolution of this dispute without the express written consent of the other party hereto. In the event either party breaches the obligations set forth in this paragraph, the non-breaching party will be entitled to injunctive relief preventing further breach, and the non-breaching party's costs and expenses, including reasonable attorneys' fees in connection with any action to enforce the Agreement, and all other remedies at law or in equity that would otherwise be available to the non-breaching party. Notwithstanding the foregoing, the Parties agree that they may state that the matter has been amicably resolved.

10. **Execution in Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same document; provided, however, that this Agreement shall not be effective unless and until the parties named herein shall have executed it.

11. **Governing Law:** This Agreement shall be governed by, and construed in accordance with, the laws of the District of Columbia without giving effect to its conflicts of laws provisions. Any alleged breach of this Agreement, other than that discussed pursuant to the Confessed Judgment Promissory Note, shall be addressed in a Motion to Re-open the case to enforce the settlement agreement.

12. **No Admission of Liability:** It is understood and agreed by parties to this Agreement that unless otherwise specifically provided herein, nothing in this Agreement shall at any time or of any purpose be argued or construed to be an admission of fact, contention, liability or responsibility by either party related to any disputed claims or issues between them.

13. **Satisfaction of All Claims:** This Agreement is executed without reliance upon any statement or representation of the parties or any of their representatives concerning the nature and extent of legal liability, and acceptance of the agreements and promises set forth herein is in full accord and satisfaction of the disputed claims to any damages asserted directly or indirectly in connection with the Litigation.

reasonable attorneys' fees and expenses, as well as the fees and expenses for any expert witnesses retained by the prevailing party in such action.

16. **Voluntary Act:** The parties represent that each has consulted or has had the opportunity to consult legal counsel. Each party has carefully read this Agreement, fully understands this Agreement and signs the same as a voluntary act.

17. **WAIVER OF JURY TRIAL:** EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY ACKNOWLEDGES AND AGREES TO WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY TERM OR CONDITION CONTAINED IN THIS AGREEMENT.

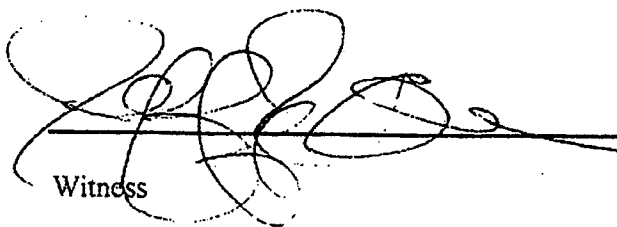
IN WITNESS WHEREOF, each party hereto has executed this Agreement or caused it to be executed on its behalf by its duly authorized representative as of the date first written above and has placed his or her hand and seal upon this document for the purpose of extending any and all applicable statutes of limitation that may or do apply to this document.

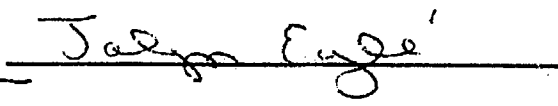
Witness

Ryan Egle

Date:

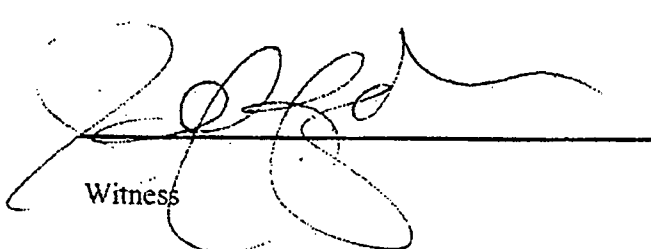
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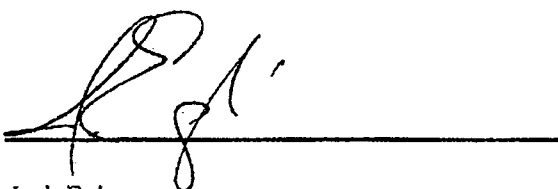
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 Jolyn Egle

Jolyn Egle

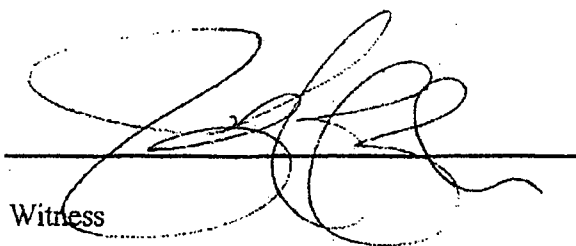
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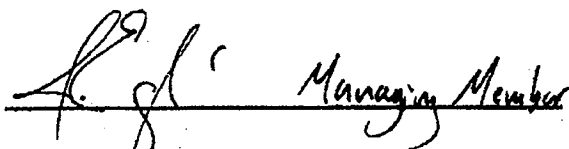
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 Jack Egle

Jack Egle

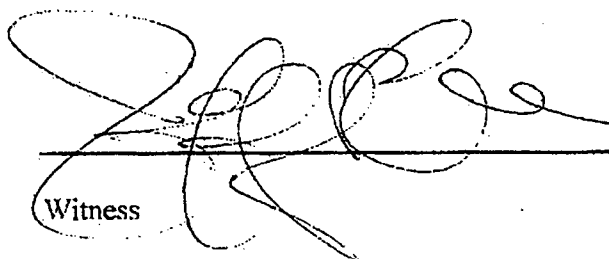
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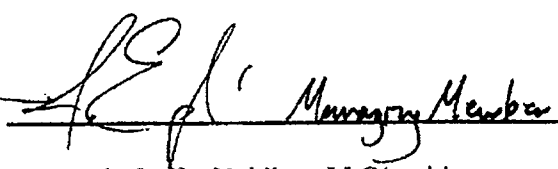
 Witness

 Managing Member

3500 O Street LLC/position

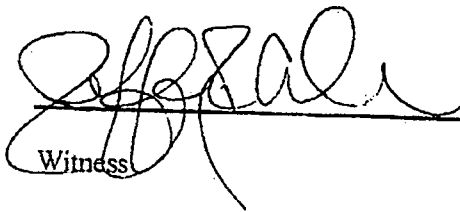
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 Witness

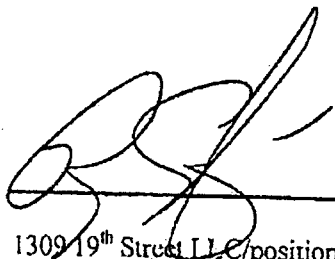
 Managing Member

Pura Vida Coffee Holdings LLC/position

Date: 9/2/10



Witness



1309 19th Street LLC/position

Date: 9/2/10

Witness

David Chung

Date: _____

Witness

1309 19th Street LLC/position

Date: _____

Thomas F. Ulmer II

Witness

[Signature]

David Chung

Date: 9/2/10

IMPORTANT NOTICE

THIS INSTRUMENT CONTAINS A CONFESSION OF JUDGMENT PROVISION WHICH CONSTITUTES A WAIVER OF IMPORTANT RIGHTS YOU MAY HAVE AS A DEBTOR AND ALLOWS THE CREDITOR TO OBTAIN A JUDGMENT AGAINST YOU WITHOUT ANY FURTHER NOTICE.

CONFESSED JUDGMENT PROMISSORY NOTE

Date: 9/2, 2010
\$50,000.00

For value received, the undersigned jointly and severally promise to pay to the order of David S. Chung ("Holder") the sum of fifty thousand dollars (\$50,000.00), without interest, payable in twenty-four (24) monthly installments of two thousand, eighty-three dollars and 33/100 (\$2,083.33) due to be received on the first day of the month beginning October 1, 2010 and terminating September 1, 2012. Payment shall be made by personal check, electronic transfer, cashier's check, or money order, and shall arrive on the first of the month at the following address:

Seann P. Malloy, Esq.
Malloy Law Offices, LLC
7910 Woodmont Avenue
Suite 1440
Bethesda, Maryland 20814
Attorney for David Chung

Chung and/or his attorney may from time to time change the place of payment and/or person to whom payment should be made by giving notice in writing to the makers.

There is no prepayment penalty.

In the event that the makers and endorsers fail to pay any installment by the due date, the makers and endorsers have two (2) weeks to cure such failure. No notice of failure to pay is required. If the payment amount due is not received by the 15th of the same month, the balance of the Note plus a liquidated damage of \$5,000 shall become immediately due and payable. If the makers and endorsers are late three times in one twelve month period, then the Parties agree to a \$500 liquidated damage fee.

Upon default of any of the obligations set forth in this Note, each maker and endorser authorizes and empowers any attorney, Justice of the Peace, or Clerk of Court of Record in any of the jurisdictions in which the makers or endorsers reside, work or own property, in the District of Columbia, or in any other jurisdiction, to enter judgment by confession

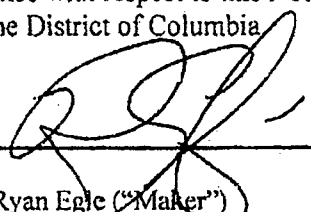
against such makers or endorsers, jointly and severally, in favor of David S. Chung or his assigns, for the full amount plus all costs of collection including, without limitation, court costs and reasonable attorneys' fees and five thousand dollars (\$5,000.00) in liquidated damages. Each maker and endorser expressly waives any summons or other process, consents to immediate execution of said judgment, and expressly waives benefit of all exemption laws and presentment, demand, protest, and notice of maturity, and/or protest, and also waives the benefit of any other requirements necessary to hold each of them liable as makers and endorsers.

In case of a default as defined above, 3500 O Street, LLC will be responsible for all amounts still owed under the Confessed Promissory Note. 3500 O Street, LLC agrees that it will not at any time sell or otherwise transfer all or substantially all of its assets either by asset or stock sale to any person or entity during the period of time that payments are still being made under the Confessed Judgment Promissory Note nor will any of the Agreeing Parties sell or transfer any of their stock during this time period without notice to David Chung. If such a sale or transfer does take place during the payment period, all amounts not yet paid under this Confessed Judgment Promissory Note shall be taken out of the proceeds of such sale before any funds are disbursed to any of the Agreeing Parties, subject to any monies owed to EagleBank. The Parties agree that this Agreement is subject to renegotiation based upon any requested amendment provided by EagleBank in light of their current loan to 3500.

If any one or more of the words or terms of this Note shall be held to be indefinite, invalid or otherwise unenforceable, in whole or in part, for any reason, by any court of competent jurisdiction, the remainder of this Note shall continue in full force and effect and shall be construed as if such indefinite, invalid, illegal or unenforceable words or terms had not been contained herein. This Note may not be modified orally, but only by an agreement in writing executed by David Chung and signatories to this Note, and no course of dealing or conduct shall be effective to amend, modify or waive any provisions of this Note.

Any provision contained in this Note which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

It is expressly agreed that time is of the essence with respect to this Note. The terms of this Note shall be governed by the laws of the District of Columbia



Ryan Egle ("Maker")

Date: 9/2/10

Jolyn Egle

Jolyn Egle ("Maker")

Date:

9-2-10

[Signature]

3500 O Street, LLC ("Endorser")

Date:

9/2/10

Superior Court of the District of Columbia

CIVIL DIVISION

PRAECIPE

- ☒ CIVIL ACTION JM-170
☐ LANDLORD AND TENANT JM-255
☐ SMALL CLAIMS JM

The 2nd Day of September, 20 10

David Chung
 Plaintiff

vs.

Ryan Egle, et al.
 Defendant

2008 CA 007389 B
 Case Number

The Clerk of said Court will dismiss this matter as to

Defendants Ryan Egle; Jack Egle; Jolyn
Egle; 1309 19th Street, LLC; 3500 O Street,
LLC, Pura Vida Coffee Holdings LLC, and
Saxby's Coffee Worldwide ~~Holdings~~ ^{Tru}, LLC
pursuant to the attached Settlement Agreement
executed this date.

Attorney for Defendant		Attorney for Plaintiff	
<u>JEFFREY R. COHEN</u>		<u>Thomas F. Urban II</u>	
Address		Address	
<u>2200 Clarendon Blvd.</u>		<u>2867 S. Abingdon St.</u>	
<u>Suite 1400 Arlington, VA 22207</u>		<u>Arlington, Va 22206</u>	
Phone No.	Bar No.	Phone No.	Bar No.
<u>703 243-6333</u>	<u>424610242N/A</u>	<u>703-861-5235</u>	<u>432124</u>

Form CV-358/Jul. 00



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

DARRYL BLAYLOCK,
Plaintiff,

v.

ERICA LYNN LA MARCHE,
Defendant.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2012 - CP- 10- 1347

LIS PENDENS

BY

CLERK OF COURT

2012 SEP 26 PM 2:58

NOTICE IS HEREBY GIVEN that an action has been commenced and is now pending in the Court of Common Pleas for the Ninth Judicial Circuit between the named Plaintiff and against the above-named Defendant, the object of which being to establish a partition of the real property located at 1309 Langford Road, Mt. Pleasant South Carolina. A description of the property affected by said action is attached hereto as Exhibit "A".

FURTHER TAKE NOTICE that all persons claiming by, through and under said Plaintiff or Defendant since the filing of the Lis Pendens in this suit, will be forever foreclosed and barred of all equity of redemption in and to said property.

Guy J. Vitetta, Esquire
Vitetta Law Group, LLC
225 Seven Farms Drive;
Suite 201
Daniel Island, SC 29492
843-302-2050 (telephone)
843-377-8390 (facsimile)

Attorney for the Defendant

Daniel Island, South Carolina

9.25, 2012.

EXHIBIT "A"

ALL that certain piece, parcel or lot of land, situate, lying and being in the Town of Mt. Pleasant, Charleston County, South Carolina, and being shown and designated as Lot 7, Block D, Shellpoint Subdivision on that plat entitled "FINAL PLAT PHASE I SHELLPOINT SUBDIVISION TOWN OF MT. PLEASANT CHARLESTON COUNTY, S.C." prepared by Forsberg Engineering & Surveying, Inc., dated October 1, 2002 and recorded January 2, 2003 in the RMC Office for Charleston County, South Carolina, in Plat Book EG at Page 89 said lot having such size, shape, dimensions, buttings and bounding as will by reference to said Plat more fully appear.

BEING the same premises conveyed to the Mortgagor herein by deed of Design Builders, Inc. dated September 28, 2005 and recorded in the RMC Office for Charleston County in Book G557, page 315.

TMS# 560-06-00-121



December 11, 2015

Via Bullet Delivery

The Honorable Mikell R. Scarborough
100 Broad St Ste 266
Charleston, SC 29401-2243

Re: Blaylock v LaMarche
2014-CP-10-2884

Dear Judge Scarborough:

Please find the enclosed Memorandum in opposition to Mr. Chung's request after judgment for relief pursuant to Rule 60(b) SCRPC in the above matter.

If you have any questions, or need additional information, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Guy J. Vitetta", with a stylized flourish at the end.

Guy J. Vitetta

c: Erica LaMarche
David Haller, Esq. via courier

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

DARRYL BLAYLOCK

Plaintiff,

vs.

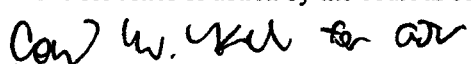
ERICA LYNN LAMARCHE

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2012 -CP-10-1347

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: <u>Guy J. Vitetta</u> , Bar No. <u>0066597</u> Address: <u>225 Seven Farms Drive, Ste 201 Daniel Island SC</u> <u>29492</u> Phone: <u>843.302.2050</u> Fax <u>843.377.8390</u> E-mail: <u>guy@vitettasari.com</u> Other: _____		Defendant's Attorney: <u>Justin M. McGee</u> , Bar No. _____ Address: <u>104 Broad Street, Charleston SC 29401</u> Phone: <u>843.724.7707</u> Fax _____ E-mail: _____ 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: <u>Restore Case to Active</u> Estimated Time Needed: <u>15 Minutes</u> Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order 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 Date submitted <u>2.5.14</u>			
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$ <u>25.00</u> ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ 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: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE COUNTY OF CHARLESTON
COUNTY OF CHARLESTON	)	CASE NO.:12-CP-10-1347
	)	
DARRYL BLAYLOCK,	)	NOTICE OF MOTION
Plaintiff,	)	and
	)	MOTION TO RESTORE CASE TO
v.	)	ACTIVE TO ACTIVE ROSTER
	)	OF CASES
ERICA LYNN LaMARCHE,	)	
Defendants.	)	

TO: THE PLAINTIFF ABOVE NAMED:

PLEASE BE ADVISED that the Defendant, Erica Lynn LaMarche, through her undersigned attorney, will move before the presiding judge of the Court of Common Pleas for the Ninth Judicial Circuit, on the _____ day of _____, 2014, at _____ o'clock __.m., in Courtroom No. _____, in the Circuit Court of Charleston County, South Carolina, or as soon thereafter as counsel may be heard, for an Order of this Court restoring the case to the active Roster of cases:

The basis for this Motion is that the parties have been attempting to resolve the issues between them but without success. The Defendant now desires that this case be restored on the active Roster of cases in order to resolve the issues raised by the pleadings of the parties.

Respectfully submitted,

Guy J. Vitetta

Guy J. Vitetta, Esq.
225 Seven Farms Drive, Ste. 201
Charleston, SC 29492
843-302-2050 (Telephone)
843-377-8390 (Fax)

Charleston, South Carolina

February 5 2014

FILED
 2014 FEB -5 PM 3:52
 JULIE J. ARMSTRONG
 CLERK OF COURT



Unavailable dates for
Guy J. Vitetta, Esq.
 and
Courtney W. Kerce, Esq.

As of: February 5, 14

Date	AM or PM	Where	Attorney	Reason
February 4	All Day	Georgetown	GJV	Hearing
February 6	AM	Charleston	GJV	Hearing
February 7	AM	Charleston	GJV	Hearing (2)
	AM	Berkeley	GJV	Preliminary Hrg.
February 14	All Day	Columbia	GJV	Bar Meeting
February 19	PM	Charleston	GJV	Hearing
February 20	All Day	Charleston	CWK	CLE Seminar
February 21	AM	Charleston	CWK	Docket
February 25	All Day	Charleston	CWK	Mediation
February 28	All Day	Charleston	GJV CWK	Presentation
March 5	PM	Charleston	GJV	Hearing
March 6	AM	Charleston	GJV CWK	Conference
March 10 - 14	All Day	Charleston	GJV	Hearing
April 1	PM	Charleston	GJV	Personal
April 4	All Day	Charleston	GJV CWK	Trial

April 16-17	All Day	Charleston	GJV CWK	Trial
May 19	PM	Charleston	GJV	Personal
June 16 - 19	All Day	Berkeley	CWK GJV	Trial

Vitetta Law Group, LLC, 225 Seven Farms Dr., Ste. 201, Daniel Island SC 29492
843.302.2050



February 5, 2014

Clerk of Court Court
Common Pleas and Court of General Sessions
100 Broad Street
Suite 106
Charleston, SC 29401

Dear Clerk of Court:

Re: Blaylock v LaMarche Case No.: 12-CP-10-1347

Please find attached an original and 3 copies of Notice of Motion and Motion to Restore Case to Active to Active Roster of Cases, our check #15012 in the amount of \$25.00, and a list of Mr. Vitetta's unavailable dates.

If you require further information please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads 'Shelley Howe'.

Shelley Howe
Office Manager

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF CHARLESTON

4 Darryl M. Blaylock,
5 Plaintiff,

6 vs. CASE NO. 2014-CP-10-2884

7 Erica Lynn LaMarche,
8 Defendant.

9 and
10 David S. Chung,
11 Intervening Defendant.

12
13
14 Hearing before the Honorable Mikell
15 R. Scarborough, reported by Christine A. Smith, Court
16 Reporter and Notary Public, at 11:15 a.m. on
17 November 3, 2015 at 100 Broad Street, Charleston,
18 South Carolina.

19 **COPY**

20
21 Christine A. Smith, Court Reporter

22 Master-in-Equity
23 P.O. Box 30276
24 Charleston, South Carolina, 29417
25 (843) 958-5071
casmith@charlestoncounty.org

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFF:

3 Margaret Decker, Esq.
4 Shannon Jones Law Firm
5 3 State Street
6 Charleston, SC 29401
7 (843) 720-3100

8 ATTORNEYS FOR THE DEFENDANT:

9 Guy Vitetta, Esq.
10 Law Office of Guy Vitetta
11 225 Seven Farms Drive
12 Suite 201
13 Daniel Island, SC 29492
14 (843) 302-2050
15 Dhaller@hallerlawfirm.com

16 David K. Haller, Esq.
17 Haller Law Firm, PC
18 115 River Landing Drive
19 Suite 102
20 Charleston, SC 29492
21 (843) 849-1384
22 Dhaller@hallerlawfirm.com
23
24
25

3
P R O C E E D I N G S

1
2
3 THE COURT: We're here for the case captioned
4 Blaylock versus LaMarche, Case No. 2014-CP-10-2884.
5 I'm trying to get my players straight on this one.
6 Mr. Blaylock was the Plaintiff. Ms. LaMarche was the
7 Counterclaiming Defendant. Mr. Haller, you're now
8 representing Mr. Blaylock?

9 MR. HALLER: No, sir.

10 THE COURT: Is that correct or not?

11 MR. HALLER: No, sir. I represent a man by
12 the name of David Chung, a judgment creditor.

13 THE COURT: Intervening Defendant,
14 interesting. And then Mr. Vitetta, you represent
15 Ms. LaMarche?

16 MR. VITETTA: Yes.

17 MS. DECKER: Maggie Decker for the Shannon
18 Jones Law Firm. We no longer represent Mr. Blaylock.
19 We are of the opinion that the service was not valid
20 on Mr. Blaylock by sending it to us. Although we may
21 have been the attorney of record, the rule doesn't
22 require it to -- when the petition was denied to
23 vacate the final order and the case was ended that's
24 where our representation ended.

25 THE COURT: I understand. So you were noticed

4
1 by Mr. Haller to be here today?

2 MS. DECKER: Yes. We are not here -- we're
3 just here out of an abundance of caution.

4 THE COURT: That's a good idea. Mr. Haller,
5 tell me where we stand.

6 MR. HALLER: Thank you, Your Honor. May it
7 please the Court?

8 THE COURT: Yes.

9 MR. HALLER: Your Honor, I represent David
10 Chung, who is the holder of a judgment from the
11 District of Columbia against Darryl Blaylock
12 resulting out of Mr. Blaylock's obtaining of \$100,000
13 in funds by fraud and unjust enrichment. Those
14 monies were then used to pay the debt down on a home
15 that was at the time shared by both of the parties in
16 this action, Ms. LaMarche and Mr. Blaylock.

17 Let me give you a little bit -- just to
18 refresh your whole recollection of the timetable of
19 this, and to let you know that all of what I'm about
20 to tell you comes directly from either Your Honor's
21 final order here or from the District of Columbia's
22 final order in Washington.

23 THE COURT: Let me just ask you some pointed
24 questions right off the bat so I can get my brain
25 around this. When was your judgment obtained in DC?

1 MR. HALLER: February of 2013.

2 THE COURT: And when was it enrolled here in
3 Charleston County?

4 MR. HALLER: November of 2013.

5 THE COURT: November of '13?

6 MR. HALLER: Yes, sir.

7 THE COURT: And it is as to Mr. Blaylock only?

8 MR. HALLER: That is correct. However,
9 Mr. Blaylock -- this is in the record -- testified
10 that when he received the money he used it to pay
11 down the debt in which both Mr. Blaylock and
12 Ms. LaMarche were jointly and severely liable, so
13 they both got the benefit of the fraudulently
14 obtained funds.

15 THE COURT: All right.

16 MR. HALLER: Just to refresh Your Honor's
17 recollection, the parties bought a house, 1309
18 Langford Drive, in September of 2005. About a year
19 and a half later -- it's almost two years later --
20 they obtained a mortgage from Bank of America for
21 \$400,000 and placed that mortgage on the property.

22 I understand from reading the documents, it
23 appears that maybe that was a line of credit.

24 Nevertheless it was a mortgage, and when the trial
25 was held before you in 2014 that mortgage had been

1 reduced to \$82,000.

2 In 2008 a man named Mr. Egle approached his
3 business partner, my client, David Chung, and said --
4 the two of them were business partners in a coffee
5 shop in Washington, DC. He asked Mr. Chung for
6 \$100,000 to upfit the coffee shop which would then be
7 flipped and sold and he would then get -- Mr. Chung
8 would then get his original \$100,000 back and
9 interest of \$100,000. It sounds like a pretty good
10 deal.

11 Mr. Chung gave him the \$100,000. Mr. Egle
12 then promptly wired that \$100,000 from the LLC that
13 he -- that Egle and Chung had together and wired that
14 into Mr. Blaylock's personal account. Mr. Blaylock
15 testified in the DC case that he then took that money
16 and used it to pay down the debt on the home at
17 Langford Road.

18 Mr. Chung then brought an action in the
19 District of Columbia against Egle, various other
20 people and Blaylock. He eventually settled out with
21 everybody but Mr. Blaylock and a Jury in Washington,
22 DC found that Mr. Blaylock -- just so I can be
23 sure -- this is from the DC Court of Appeals. It
24 specifically says that the Jury returned a verdict
25 for the Plaintiff, Mr. Chung, finding Blaylock liable

7
1 to Chung for fraud, unjust enrichment, conversion,
2 and fraudulent conveyance and awarded Chung \$100,000
3 in compensatory damages.

4 The Clerk of Court for the District of
5 Columbia entered judgment in February of 2013. We
6 then domesticated that judgment here in November of
7 2013.

8 In between all of that happening Mr. Blaylock
9 and Ms. LaMarche began their domestic dispute. I
10 understand they were never married, but they
11 certainly lived together, and they owned the Langford
12 property together. I believe Ms. LaMarche left the
13 home. Mr. Blaylock was living there by himself.
14 This action was pending at the time. Mr. Blaylock
15 brought the action to partition the home in --
16 2/24/12 is the date on which Mr. Blaylock brought the
17 action -- or brought the action to partition the
18 home.

19 THE COURT: 2012?

20 MR. HALLER: Yes, sir. At the same time the
21 action in DC was going on. Okay? A year later,
22 February 5th of 2013, the parties 40(j)ed the
23 partition action. The Jury verdict in the District
24 of Columbia on the fraud claim against Mr. Blaylock
25 came down February 26th of 2013.

1 We then domesticated that judgment here in
2 South Carolina. That action was rebrought
3 unilaterally -- the partition action was restored
4 unilaterally by Ms. LaMarche in November of 2014.
5 However, although that was a partition/quiet title
6 action the only parties named in the action at the
7 time were Blaylock and LaMarche. The bank was not
8 named. Apparently the homeowner's association had
9 some sort of claim. My client had some sort of
10 claim. The only two parties that were named in the
11 quiet title in the action, which resulted in the
12 quieted title in favor of Ms. LaMarche, were Blaylock
13 and LaMarche.

14 Your Honor held a partition hearing
15 November 20th of 2014, at which point Mr. Blaylock
16 did not appear. Your Honor partitioned the property
17 assessing certain debts to the parties and eventually
18 ordered that Ms. LaMarche could purchase
19 Blaylock's -- let me make sure I don't get this
20 wrong. LaMarche could purchase Blaylock's interest
21 for \$20,000 and change.

22 Eventually that happened, and Your Honor
23 issued a quiet title deed on January 23rd of 2015.

24 THE COURT: Okay.

25 MR. HALLER: We filed our Motion to Reopen

1 this Case on September 11, 2015, and found out about
2 ten days later that the day before we filed our
3 motion that Ms. LaMarche had sold the property for
4 \$605,000. So between the time that Your Honor held
5 the trial she made a cool \$85,000 on the deal.

6 THE WITNESS: Our position is this -- it's
7 really quite simple: As a judgment creditor we were
8 a necessary party because we had interest in the
9 property to be determined, number one.

10 Number two, not only did we have an interest
11 in the property, the money that is the subject of the
12 judgment went directly to the benefit of the property
13 and both of the parties. That is undisputed.
14 Mr. Blaylock testified exactly to that point.
15 Because of that now what has happened is my client,
16 who has been defrauded by Blaylock and at the very
17 least taken advantage of by Ms. LaMarche, who
18 benefitted from that fraud, no longer has the
19 property to collect on. The property has now been
20 sold which means the judgment is still attached to
21 the property owner. So that means we have an
22 innocent purchaser who I learned this morning is a
23 party named Jess, only because the property tax
24 records just got updated.

25 That innocent party now has got a property

1 that is subject to a judgment. Likely there's now a
2 title insurance company that also is an innocent
3 party that may have to find it or may have to pay
4 that. The reason they could never have found it is
5 because if you only go back to Your Honor's quiet
6 title, which lists LaMarche, you would never go and
7 look for a judgment against Blaylock.

8 So we would ask Your Honor to -- the first
9 thing we would ask Your Honor to do is reopen the
10 case. We've also filed a petition for writ of
11 attachment and the amount of the judgment that we
12 have against Ms. LaMarche, only being fair since
13 she's got the proceeds from the sale of the house
14 which we have an interest in, that those funds, at
15 least the attached -- so we can all determine exactly
16 who it is and how much money we're entitled to.

17 THE COURT: Okay.

18 MR. HALLER: The amount of the judgment as of
19 October 31st, Your Honor, is \$115,427.20.

20 THE COURT: As of 10/31?

21 MR. HALLER: Yes, sir.

22 THE COURT: Let me just ask for my own
23 edification again, you've made reference to the DC
24 Court of Appeals. Is that the Jury verdict of the DC
25 Court of Appeals, or was that taken up on appeal.

1 somehow?

2 MR. HALLER: Mr. Blaylock appealed -- not the
3 findings of fact that there was a fraud, but that he
4 was entitled to a setoff from monies that had been
5 received from the other Defendants. In other words,
6 initially Mr. Chung sued a group of people who were
7 involved in this fraud/scheme.

8 All of them but Blaylock settled, and he
9 claimed -- Mr. Blaylock asserted in the Court of
10 Appeals of the District of Columbia, that he's
11 entitled to a setoff.

12 THE COURT: And that's when it became final?

13 MR. HALLER: Yes, sir. Thank you, Your Honor.

14 THE COURT: Very good. Mr. Vitetta, let me
15 start with you. My first question is whether or not
16 any lis pendens was ever filed in this action?

17 MR. VITETTA: No. Not until Mr. Haller did it
18 last month.

19 THE COURT: Very good.

20 MR. VITETTA: I guess my question is, on the
21 motion Mr. Chung was an Intervening Defendant -- and
22 Mr. Haller has a pretty good recitation of the
23 history of the case. I'm just surprised that at no
24 point was any effort taken to intervene in this case
25 by Rule or to anything until almost a year after this.

1 Court's ruling.

2 I think there has to be some responsibility on
3 the part of Mr. Chung to intervene in the case. We
4 have \$100,000 from his house. I don't really
5 understand what happened. I do know -- I can
6 testify -- I can tell you as an officer of this Court
7 -- I do know that they knew about the litigation
8 because my client was named as a witness in it and
9 was deposed by some lawyer in DC.

10 So they know -- they know about this entire
11 case going on. They know that we're being sued by
12 Mr. Blaylock. They know that this house is involved.
13 They get a judgment and they do nothing. I think
14 that they have some responsibility to do something,
15 at least put a lis pendens on it or relief or move to
16 intervene in the middle of our case. You know, all
17 of this stuff is public. Every single hearing -- in
18 '14 we must have had ten hearings. Every one of them
19 is an e-mail notification to anybody who wants to
20 know about this case.

21 So I think that -- I don't think he's got any
22 standing to raise this point. He's not a party to
23 the action. He is a judgment creditor, but he's had
24 ample opportunity for about three years to file the
25 appropriate Motion to Intervene in this matter.

1 So I would ask that this be denied. Again,
2 you know, Judge, from our perspective, you had all
3 the evidence in front of you. Our client -- Erica
4 has just as much of a claim for money against
5 Mr. Blaylock as Mr. Chung does. In fact, we were
6 just another creditor in that case just like
7 Mr. Chung. We did what we were supposed to do. I'm
8 not sure why they didn't do anything down here. It's
9 my belief that they should have moved to intervene.
10 Thank you, Judge.

11 THE COURT: Okay. Ms. Decker, anything you
12 want to add?

13 MS. DECKER: We still hold the position that
14 we are no longer representing Mr. Blaylock,
15 notwithstanding that we don't see how we could
16 recommend to Mr. Blaylock to support Mr. Haller's
17 position. He doesn't have any money left to continue
18 this battle. The house was given --

19 THE COURT: Did he ever pick up the check?
20 There was a check waiting here for him. Do you know
21 if he picked that check up? It was like \$20,000
22 bucks or something that was hanging around here for a
23 while.

24 MR. HALLER: Right now I'll take it.

25 THE COURT: I thought the writ of attachment

1 was asking for that. I will have to check with my
2 staff. We might have \$20,000.

3 MR. VITETTA: We have no -- obviously no
4 position on that. Mr. Haller can have it or
5 whatever.

6 MS. DECKER: I'm not sure. I was not at
7 the --

8 THE COURT: I think he came up here and picked
9 the funds up, but I don't know.

10 MS. DECKER: I know he did receive a portion
11 from Ms. LaMarche for the house.

12 THE COURT: Right. Ms. LaMarche had to
13 purchase his interest in the property.

14 MS. DECKER: Right. And I'm not sure how much
15 he did receive for that, but a majority of his assets
16 were given to Ms. LaMarche. He received little, but
17 when our petition to vacate the final order was
18 denied the case ended and our representation ended at
19 that time, but notwithstanding that we believe the
20 motion should be denied.

21 THE COURT: Okay. Thank you. Mr. Vitetta, it
22 looks like you did file a lis pendens in this case.

23 MR. VITETTA: Oh, I did early, yes. Early on.

24 THE COURT: That was my question.

25 MR. VITETTA: Oh, I'm sorry. Did I ever file

1 one?

2 THE COURT: Yes.

3 MR. VITETTA: Yes. I filed one toward the
4 pendency of our case.

5 THE COURT: The original action, right?

6 MR. VITETTA: Yes. Yes. Yes. I'm sorry. I
7 thought you were talking about Mr. Chung.

8 THE COURT: All right. So he did file a lis
9 pendens.

10 MR. HALLER: Your Honor, that filing of lis
11 pendens was filed in 2012 in a case which was
12 dismissed.

13 THE COURT: And resurrected in '14, right?

14 MR. HALLER: Right. And our judgment was
15 obtained and domesticated in the gap time.

16 THE COURT: All right.

17 MR. HALLER: So when we filed our judgment and
18 domesticated it here the first partition case had
19 already been 40(j)ed and dismissed, and we then filed
20 and then they refiled without -- apparently without
21 having checked the file.

22 THE COURT: Apparently. But the 40(j) --
23 there was a case just recently on 40(j)s. All it
24 does is just resurrect the case in a new fashion;
25 does it not? You don't have to refile a whole new

1 lawsuit when you bring it back from a 40(j).

2 MR. HALLER: I don't believe you do. You can
3 just call in and get an order restoring the case.

4 THE COURT: Right.

5 MR. VITETTA: They gave us a new case number.
6 We went forward on the --

7 THE COURT: But everything else remains the
8 same, right? This is where Mr. Blaylock was behind
9 the eight ball because he initiated the lawsuit.
10 He's the one that started the whole thing. It was a
11 service of process question as it relates to
12 Mr. Blaylock.

13 So number one, Mr. Haller, you seek to
14 intervene in this case which actually had ended,
15 right? But it's within a certain period of time.
16 You would have anticipated, I assume, that at the
17 time of the sale of the property someone would have
18 searched the title I suppose?

19 MR. HALLER: Your Honor, I've got -- it's not
20 like we were hidden. This is the Clerk of Court's
21 website where right there is the original case and
22 there we are. It says, Judgment.

23 THE COURT: All right.

24 MR. HALLER: I think a basic title search
25 would have picked this up.

1 THE COURT: Well, that's asking a lot
2 sometimes. I don't understand why it's such trouble,
3 but it seems to bring them in here.

4 All right. This a new one on me. I will have
5 to think about this one. Refresh my memory on the
6 equities in the property. I found that
7 Ms. LaMarche -- I think I started out 50/50. This is
8 the order I wrote all the numbers on if I remember.
9 That's probably why we've got what we've got.

10 MR. VITETTA: I didn't bring that with me, but
11 we had proved a lot of claims -- I think there was a
12 \$100,000 check that we had that was -- there was rent
13 and there were things like that with the Court.

14 Really it exhausted the entire --
15 Mr. Blaylock's entire equity, and then we set a
16 statute to do that, so we posted \$20,000 or something
17 with the clerk.

18 THE COURT: All right.

19 MR. VITETTA: We provided you all of the
20 evidence and the documents that supported our claims.

21 THE COURT: You-all's position -- both
22 parties' position is that the motion is coming late
23 is what I'm hearing you-all say, right? The Motion
24 to Intervene is coming late, and the case is over.
25 And then Mr. Haller's position is that we're a

1 judgment creditor, and that judgment had attached at
2 the time of the sale of the property, so you-all are
3 looking for somebody to collect those funds from I'm
4 assuming?

5 MR. HALLER: That's correct. By statute at
6 the moment of filing it attached to the property.

7 THE COURT: I'm with you. Then it is in rem,
8 both in personam and in rem.

9 MR. HALLER: That's correct.

10 THE COURT: And at the time that the -- let me
11 make sure I'm clear on this. Hold on a second. At
12 the time that the judgment attached the property was
13 in both names? Was it in both names?

14 MR. HALLER: Yes, sir.

15 THE COURT: And it was only after -- how did
16 we transfer that? Did I do a Master's Deed to
17 Ms. LaMarche?

18 MR. VITETTA: Yes.

19 THE COURT: When was that done?

20 MR. HALLER: Your Honor, we filed -- it was
21 filed January 23rd, 2015.

22 THE COURT: Actually, it was January of 2015?

23 MR. HALLER: Yes.

24 THE COURT: Okay. By then your judgment had
25 been rolled --

1 MR. HALLER: A year -- a little more than a
2 year.

3 THE COURT: I've got it. Okay.

4 MR. HALLER: And Your Honor, we've taken the
5 position that as a matter of law our judgment
6 attached to Mr. Blaylock's interest at the moment of
7 filing as a matter of equity because there is -- the
8 parties were jointly and severally liable on the
9 first note on the mortgage, which Your Honor
10 apportioned, and they took the fraudulently obtained
11 funds and paid on a joint and several debt. They
12 jointly and severally benefitted from the
13 fraudulently obtained funds.

14 THE COURT: You're talking about the mortgage
15 there?

16 MR. HALLER: By the payment of Mr. Chung's
17 money to Blaylock, which he subsequently paid to Bank
18 of America to pay down the mortgage that both
19 Blaylock and LaMarche were liable on. They both
20 benefitted from it. So at the very least with
21 respect to LaMarche's claim that she gave \$100,000,
22 none of which has ever been perfected aside from
23 Your Honor's order in a note, mortgage, or anything
24 like that. We still have a right to argue priority.

25 THE COURT: How did you establish that fact?

1 How do you establish the fact that your funds were
2 used to pay down Bank of America.

3 MR. HALLER: Mr. Blaylock testified to that.
4 I'll read it to you.

5 THE COURT: And then which proceeding was
6 that?

7 MR. HALLER: This was in the District of
8 Columbia. On October 5, 2005 he testified --

9 "Q. You got \$100,000 that came from David
10 Chung, and you had \$375,000 that came from
11 Josh Fulton?

12 A. And I got the money that came from Ryan
13 Egle.

14 Q. So you got \$475,000 through Ryan Egle
15 that came from those two people?

16 A. Supposedly.

17 Q. And you testified that you used that
18 money to pay off the home equity loan?

19 A. Yes."

20 This is attached to our motion.

21 THE COURT: Okay.

22 MR. HALLER: And there's been nothing put in
23 the record that would dispute that.

24 THE COURT: And so your position is that
25 you-all should be equitably subordinated to that, to

1 the tune of that?

2 MR. HALLER: We would be equitably
3 subordinated to -- the Bank of America, I think,
4 probably has first priority as a purchase fund alone,
5 but as a judgment creditor we would be subordinated
6 to that at least as to his interest, but because they
7 both benefitted from the payment, because they're
8 both on the mortgage, and because that's what Your
9 Honor found, that the parties took out a mortgage for
10 \$400,000 and Mr. Blaylock said he took that money
11 from Chung and paid down the parties' mortgage, so
12 they both benefitted.

13 Ms. LaMarche, I don't know whether she's a
14 fraudfeasor or not, but she certainly obtained
15 unjustly a benefit from Mr. Chung, and as a Court of
16 Equity essentially what they're saying is, let us
17 keep our ill-gotten gain and keep Chung, innocent
18 party; Jess, innocent party; and then the purchaser
19 and the title insurance part of the company, innocent
20 party; and we'll just go on our merry way.

21 THE COURT: Here's what I'm going to ask you
22 to do. Mr. Haller, I want you to put together a
23 proposed order for me to review setting forth your
24 basis for this. The first issue is going to have to
25 be the standing issue on whether or not you've got a

1 right to bring this after the case has ended. Okay?
2 That is the first hurdle you're going to have to
3 have. After that it's going to -- ultimately, it's
4 going to get to that unjust enrichment argument.
5 Okay?

6 I understand factually how you got there. The
7 number one thing is going to be the question of the
8 timing of the claim and why that should survive. I
9 think I understand it.

10 If you want to check with my office to see if
11 those funds are still there? I have a bad feeling
12 that Mr. Blaylock has picked those funds up. Anyway,
13 I think that might get you somewhere. It might stop
14 some of the bleeding, and then -- what I would
15 request then would be Mr. Vitetta, after he submits
16 that -- how much time do you want to put something
17 together like that?

18 MR. HALLER: I'm usually pretty quick on these
19 things.

20 THE COURT: So let's say 15 days, and then
21 Mr. Vitetta, if you would respond to that proposed
22 order within 15 days I'll take a look at that. I'm
23 going to have to do some reading on some case law
24 apparently. This is a new one on me.

25 MR. HALLER: Your Honor, can we get some sort

1 of relief to keep the parties from disposing of the
2 funds?

3 THE COURT: Yes. Let's keep the status quo
4 for now. Are you still representing Ms. --

5 MR. VITETTA: Apparently. I don't really know
6 what I'm doing now.

7 THE COURT: -- Ms. LaMarche?

8 MR. VITETTA: She won't get a real estate
9 lawyer so here I am.

10 THE COURT: Well, somebody needs to hold onto
11 those funds for now unless they evaporate, but I
12 understand what's going on there.

13 MR. VITETTA: Do you want an order, or do you
14 want me just to tell her? I don't know anything
15 about what she's done.

16 THE COURT: Right. Is she still living here
17 as far as you know?

18 MR. VITETTA: Yes. And her kids are in school
19 here.

20 THE COURT: Tell her she better hold back some
21 of the funds in reserve before she spends it all.
22 That would be my position for now. That would be in
23 her best interest.

24 Ms. Decker, I'm going to find that you-all are
25 out.

1 MS DECKER: Thank you.

2 THE COURT: That you represented him at the
3 hearing, and that matter was over. That presents a
4 different issue. I think that's correct.

5 MR. HALLER: As to today's hearing, the reason
6 they're here --

7 THE COURT: They're here because you noticed
8 them to be here?

9 MR. HALLER: The position we took was: Until
10 you're relieved as Counsel you're still Counsel of
11 record. It's fine with me if they want to be
12 relieved as Counsel today.

13 THE COURT: I'm going to suggest you-all go
14 back to my office and find out if those funds are
15 still hanging around. I think he came in here and
16 picked them up. Okay? Go back there and check with
17 Ms. January on that. All right?

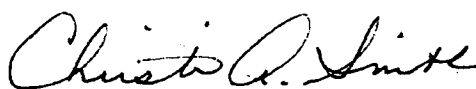
18 (The proceedings were concluded at 11:40 a.m.)
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25

1 State of South Carolina)
2 County of Charleston) C E R T I F I C A T E
3

4 I, Christine A. Smith, Court Reporter and
5 Notary Public for the State of South Carolina at
6 Large, do hereby certify that the foregoing
7 transcript is a true, accurate, and complete record.

8 I further certify that I am neither related to
9 nor counsel for any party to the cause pending or
10 interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 28th day of June, 2016 at
13 Charleston, Charleston County, South Carolina.
14

15
16
17 

18 Christine A. Smith
19 Notary Public
20 My Commission Expires
21 May 12, 2021
22
23
24
25

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

David S. Chung,

Plaintiff,

versus

Darryl Blaylock,

Defendant.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-10-6744

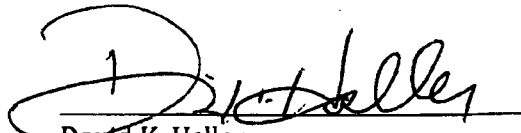
AFFIDAVIT OF DAVID HALLER

FILED
2015 SEP -9 PM 4:40
JULIE J. ARMSTRONG
CLERK OF COURT

Appeared before me the undersigned who, being duly sworn, deposes and states as follows:

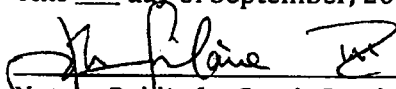
1. I am an adult and competent to make the states contained in this affidavit.
2. I am the attorney for the judgment creditor, David Chung, in this matter.
3. On or about July 29, 2015, the Court of Appeals for the District of Columbia issued its mandate affirming the judgment obtained by Mr. Chung against Blalock. A true and correct copy of the mandate is attached hereto as Exhibit A.
4. The judgment rendered and reflected by the Authenticated Foreign Judgment filed with the Notice is valid and said judgment remains unsatisfied in whole or in part.
5. The judgment rendered and reflected by the Authenticated Foreign Judgment is final and uncontested.
6. I have reviewed the Judgment Entry and the pleadings supporting the entry of same, as well as having knowledge of the underlying case giving rise to the entry of the judgment in the District of Columbia, Case Number 2008CA7389B. Darryl Blaylock is justly indebted to David S. Chung in the amount of One Hundred Thousand (\$100,000.00) Dollars plus interest at the statutory rate and costs.

FURTHER THE AFFIANT SAYETH NOT!


David K. Haller

SWORN TO AND SUBSCRIBED BEFORE ME

This 9th day of September, 2015


Notary Public for South Carolina
My Commission Expires: March 30, 2019

**District of Columbia
Court of Appeals**

07/29/2015

No. 13-CV-918

DARRYL BLAYLOCK,

Appellant,

CAB7389-08

v.

DAVID S. CHUNG,

Appellee.

James D. McGinley, Clerk
Superior Court of the District of Columbia

Dear Mr. McGinley:

The attached certified copy of the Decision in this case, pursuant to Rule 41(a) of the Rules of this Court, constitutes the mandate issued this date.

JULIO A. CASTILLO
Clerk of the Court

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 13-CV-918

DARRYL BLAYLOCK, APPELLANT,

v.

DAVID S. CHUNG, APPELLEE.

Appeal from the Superior Court
of the District of Columbia
(7389-CAB-08)

(Hon. Michael Rankin, Trial Judge)

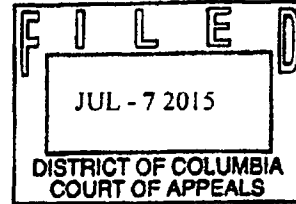
(Argued June 10, 2014)

Decided July 7, 2015)

Before GLICKMAN, EASTERLY, and MCLEESE, *Associate Judges*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: This is an appeal of a judgment for monetary damages entered after a jury found appellant Blaylock liable for his involvement in a fraudulent scheme that he allegedly perpetrated against appellee Chung with his former co-defendant, Ryan Egle. The jury awarded Chung \$100,000 in compensatory damages. Blaylock claims the trial court erred by declining to grant him a *pro tanto* credit in the amount that Egle and other, affiliated co-defendants had agreed to pay Chung to settle Chung's related claims against them. We conclude that the trial court did not err, because (1) the settlement covered more items of damage than the judgment, and Blaylock did not establish what proportion of the settlement related to damages covered by the judgment or that any *pro tanto* credit was necessary to prevent Chung from being overcompensated; and (2) Blaylock waived any claim for a *pro rata* credit by electing not to seek such a credit in the trial court proceedings (or even in this court). We therefore affirm the judgment on appeal.



I.

According to the evidence at trial, Blaylock and Egle were business partners in 1309 19th Street LLC, which operated a coffee shop in Dupont Circle. In 2008, Egle induced Chung to lend the LLC \$100,000 on the pretext that the funds would be used to renovate the coffee shop so that it could be sold at a substantial profit. In return, Egle and the LLC promised to repay the \$100,000 and to pay Chung an additional \$100,000 thereafter.

In actuality, the \$100,000 that Chung lent the LLC was not used to renovate the coffee shop. Instead, unbeknownst to Chung, the money was wired from the LLC's bank account directly into Blaylock's personal bank account. The LLC's remaining assets were sold, and Blaylock received the proceeds of their sale as well. Chung was not repaid.

Chung sued Egle, Blaylock, the LLC, and certain affiliated parties¹ in Superior Court, alleging fraud and other causes of action. (Blaylock was added as a defendant in Chung's first amended complaint.) In addition to compensatory damages, Chung sought punitive damages of up to nine times the amount of the compensatory damages. On September 2, 2010, Chung entered into a settlement agreement with all the defendants except Blaylock. The settling defendants agreed to pay Chung the sum of \$100,000 in exchange for a full release of all his claims against them and without any admission of liability. The agreement explicitly allowed Chung to continue his lawsuit against Blaylock and contemplated that Chung could collect up to \$75,000 of any judgment he obtained in that suit from disbursements or distributions the settling defendants would otherwise make to Blaylock.

After concluding this settlement, Chung filed a second amended complaint naming Blaylock as the sole remaining defendant and asserting claims against him of fraud, conspiracy to commit fraud, unjust enrichment, conversion, and fraudulent conveyance. Unlike the original and first amended complaints that

¹ The other defendants were members of Egle's family and business entities affiliated with Egle and Blaylock. Chung states in his brief that they were "included in this case due to concerns about commingling of assets." Supplemental Brief of Appellee at 10 n.2.

Chung had filed against all the defendants prior to the partial settlement, the second amended complaint omitted a claim for breach of contract.²

The case against Blaylock was tried to a jury in February 2013. The trial judge ruled that Chung could not seek punitive damages, though Chung would have been allowed to do so had Egle been on trial. The judge instructed the jury that the maximum amount it could award Chung on his causes of action was \$100,000, representing Chung's out-of-pocket loss, except that on the fraud and conspiracy claims the jury also could award Chung "any interest that he's proved . . . was due to him."³ The jury returned a plaintiff's verdict, finding Blaylock liable to Chung for fraud, unjust enrichment, conversion, and fraudulent conveyance, and awarding Chung \$100,000 in compensatory damages—his entire out-of-pocket loss, without any interest added.⁴ The court entered judgment in accordance with this verdict.

Blaylock thereafter moved to amend the judgment, arguing that he was entitled to a dollar-for-dollar, or *pro tanto*, credit in the amount that the settling defendants had agreed to pay Chung for a release of his claims against them, i.e., \$100,000. Such a credit would reduce the judgment against Blaylock to zero. After a hearing, the trial court denied Blaylock's request. The court ruled that it would be inequitable to reduce the award on account of the settlement, in essence because Chung had a contract under which he expected to get \$200,000 and thus he was not being overcompensated.⁵

² According to his brief, "Chung did not pursue the breach of contract claim against Blaylock because Chung had never met Blaylock prior to filing this action and could not prove an agreement between the two." Brief of Appellee at 3. Blaylock has not disputed this explanation.

³ The judge explained that "the limitation on the \$100,000 doesn't apply [to the fraud and conspiracy claims], because if you credit the evidence you can award the interest that the plaintiff argues to you in this case was a part of the deal that he made under this theory of fraud." Chung accordingly urged the jury to award him interest in the amount of \$100,000, because that was what Egle promised Chung he would receive for making the loan.

⁴ The jury found for Blaylock on the conspiracy claim.

⁵ The court articulated its reasoning as follows:

(continued...)

II.

"How to credit the judgment entered upon a jury verdict against a nonsettling defendant with the proceeds a settling defendant paid to the plaintiff is purely a question of law, subject to this court's review *de novo*."⁶ In seeking a *pro tanto* credit in this case, Blaylock invokes the rule that, when a plaintiff has settled a claim for damages with a party whose liability has not been established, admitted, or stipulated, the nonsettling defendant found liable to the plaintiff for those damages is entitled to a dollar-for-dollar credit in the amount of the settlement.⁷ "The rationale behind the *pro tanto* credit . . . is to ensure that the plaintiff receives no more than the loss actually suffered for her claim,"⁸ i.e., just "one recovery for a single injury."⁹

It follows that a *pro tanto* credit against a jury award to reflect a settlement is appropriate only to the extent necessary to avoid an overpayment to the plaintiff.

(continued...)

[T]his matter of contribution is an equitable matter, and the question . . . is whether it's equitable or inequitable . . . [T]he resolution of the issue favors the plaintiff, because what you have here at its base is a contract between these two individuals, with Egle acting as an agent for Blaylock. . . . Egle went out and told Chung, give me 100,000 today and I'll give 200,000 in two weeks. And that means that Chung . . . expected to get \$200,000, settled with the settling defendants for \$100,000, went to the jury and got 100,000 against Blaylock. I'm going to let him go at it.

⁶ *Berg v. Footer*, 673 A.2d 1244, 1247 (D.C. 1996).

⁷ See *id.* at 1248-49; *Snowden v. D.C. Trans. Syst., Inc.*, 454 F.2d 1047, 1048-49 (D.C. Cir. 1971).

⁸ *Washington v. Washington Hosp. Ctr.*, 579 A.2d 177, 190 (D.C. 1990) (citing *Snowden*, 454 F.2d at 1048-49).

⁹ *Berg*, 673 A.2d at 1249.

This means it is necessary to consider whether and to what extent the settlement and the jury award cover different items of damage—for example, because certain claims covered by the settlement were not submitted to the jury.¹⁰ As Chung argues, that is the case here.

This is so for two reasons. First, the settlement encompassed Chung's claim for breach of contract damages while the jury was not asked to award such damages. This is significant because Chung plausibly could have recovered the promised \$100,000 return on his loan as breach of contract damages (had he gone to trial against Egle)¹¹ even though the jury did not award it to him as fraud damages—which was not surprising, since it was neither part of Chung's out-of-pocket loss¹² nor a reasonable sum to award as pre-judgment interest. Indeed, the trial judge himself commented afterward that he would have been “surprised” had the jury awarded Chung \$200,000, though he recognized that was what Chung “expected to get” under his contract with Egle.

¹⁰ See *McDermott, Inc. v. AmClyde & River Don Castings Ltd.*, 511 U.S. 202, 217 n.26 (1994) (explaining that under the *pro tanto* rule, where the settlement “covered more items of damage than the judgment,” the burden is “to figure out what proportion of the settlement related to damages covered by the judgment and what percentage related to damages covered only by the settlement”); see also *Convit v. Washington Brain & Spine Inst., P.C.*, 980 A.2d 1104, 1130-31 (D.C. 2009) (where settlement applied only to a loss of consortium claim, it could not be applied to reduce award of damages on an independent negligence claim); *Paul v. Bier*, 758 A.2d 40, 43 (D.C. 2000) (addressing plaintiff's contention that “the jury verdict compensated for damages solely attributable to Dr. Bier, *i.e.*, that it was not intended as full compensation for [the plaintiff's] injuries,” while the settlement also covered separate injurious acts of negligence of another doctor).

¹¹ See *Allen v. Yates*, 870 A.2d 39, 52 (D.C. 2005) (“Where the parties have entered into a contract, being made whole means realizing the benefit of the bargain that they struck.”).

¹² The ordinary measure of damages in a fraud action is the plaintiff's out-of-pocket loss attributable to the fraud. *Dresser v. Sunderland Apartments Tenants Ass'n*, 465 A.2d 835, 840 n.18 (D.C. 1983).

Second, the settlement also encompassed Chung's claim for punitive damages while the jury was precluded from considering such damages. This is significant because the trial judge recognized the plausibility of a punitive damages claim against Egle.¹³

Given that the settlement discharged claims for breach of contract and punitive damages that were not covered by the jury's award, Blaylock was not entitled to the full *pro tanto* credit he sought. He might have been entitled to a *pro tanto* credit for a portion of the settlement allocable to Chung's claim for repayment of his out-of-pocket loss, since that loss was covered by the jury's award. But Blaylock did not propose or request such an allocation, nor did he shoulder his burden of establishing its amount.¹⁴ As he therefore failed to show that the combination of the jury's award and the settlement overcompensated Chung for any portion of his claimed damages, we cannot fault the trial court for denying Blaylock's request for a *pro tanto* credit.

As an alternative to a *pro tanto* credit, Blaylock might have sought a *pro rata* credit based on the equal apportionment of liability among joint tortfeasors.¹⁵

¹³ Cf. *Allen*, 870 A.2d at 47-48 (acknowledging that a guarantor of a promissory note is entitled to an offset for the amount paid by the principal obligor in a settlement with the holder of the note to discharge his indebtedness on the note, but not for any portion of the settlement paid to discharge a *bona fide* claim for punitive damages).

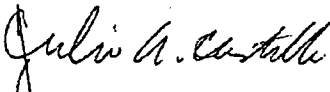
¹⁴ The settlement agreement itself contains no such allocation, and we have no basis to impose one as a matter of law. Even assuming that some portion of the settlement would have to be allocated to Chung's out-of-pocket loss, which is not clear, the allocation might be unfavorable to Blaylock. For example, if we posit that Chung asserted damage claims against the settling defendants amounting to \$2 million *in toto* (\$200,000 in compensatory damages plus nine times that amount, or \$1.8 million, in punitive damages), then the proportion of the settlement allocable to his out-of-pocket loss (\$100,000) presumably might have been 5%, and any credit would have been only \$5,000—a comparative pittance.

¹⁵ See generally *Convit*, 980 A.2d at 1128-29; *Paul*, 758 A.2d at 43-45; *District of Columbia v. Shannon*, 696 A.2d 1359, 1366-68 (D.C. 1997); *Berg*, 673 A.2d at 1248.

7
Blaylock admittedly "elected not to do so," however, and he insists that it is "impossible and inappropriate" to apply a *pro rata* credit in the circumstances of this case.¹⁶ We conclude that Blaylock has waived any claim he might have for a *pro rata* credit.

The judgment of the Superior Court is hereby affirmed.

ENTERED BY DIRECTION OF THE COURT:


JULIO A. CASTILLO
Clerk of the Court

Copies to:

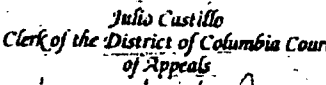
Honorable Michael Rankin

Joseph J. DiPietro, Esq.
8200 Greenboro Drive – Suite 900
McLean, VA 22102

Thomas S. Urban, II, Esq.
Urban & Falk, PLLC
P.O. Box 321043
Alexandria, VA 22320

¹⁶ Supplemental Brief of Appellant at 5.

A true Copy
Test:


Julio Castillo
Clerk of the District of Columbia Court
of Appeals

BY


DEPUTY CLERK
Julio Castillo
Clerk of the District of Columbia
Court of Appeals

STATE OF SOUTH CAROLINA
COUNTY OF: CHARLESTON

IN THE PROBATE COURT

EX PARTE:

Rose Marie Swanson
Conservator/Petitioner

IN RE:

Elizabeth B. O'Connor

Minor/Incapacitated Person:

PETITION FOR EXPENDITURE (S)

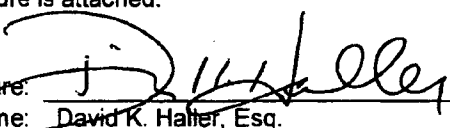
CASE NUMBER: 2014GC10-0172

Petitioner is the duly appointed Conservator for the Minor/Incapacitated Person and is now actively engaged in the duties as such. The Minor/Incapacitated Person currently resides at Bishop Gadsden, Charleston, South Carolina. S (he) has total cash assets of \$2.7 million. Said Minor/Incapacitated Person is now in need of certain items, and your Petitioner requests permission of the Court to purchase the following:

Item	Estimated Cost	Reason for Purchase
1. Timothy R. Liptak, DMD & Assoc., LLC	\$2,900.00	Cost to replace one of the ward's teeth (see attached invoice).
2.		
3.		

If available, documentation supporting each requested expenditure is attached.

SWORN to before me this 8th day of September, 2015.
Notary Public for South Carolina
My Commission Expires: March 30, 2019

Signature: 
Name: David K. Haller, Esq.
Address: 115 River Landing Dr., Suite 102
Charleston, SC 29492
E-mail: dhaller@hallerlawfirm.com
Telephone (O): 843-224-7860
(H):

ORDER

Upon reading the above Petition, questioning the Petitioner, and determining that the requested expenditures is in the best interest of the Minor/Protected person, IT IS ORDERED, that the said Conservator have permission to use \$ specifically for the purpose so stated in the Petition.

Receipts to be filed with the Court within 30 days from the date of this Order.

Given under my hand and seal this _____ day of _____, 2015.

_____, Probate Court Judge



Proposed Treatment Plan
Timothy R Liptak DMD & Associates LLC

07/28/2015

114-1/2 Ashley Avenue
Charleston, SC 29401
(843)577-6376

Elizabeth O'Connor (Betty)
1 Bishop Gadsden Way
C-46
Charleston, SC 29412

ID: 4278

<u>Phase</u>	<u>Date Plan</u>	<u>Appt</u>	<u>Provider</u>	<u>Service</u>	<u>Qty</u>	<u>Surf</u>	<u>Fee</u>	<u>Ins.</u>	<u>Pat.</u>
	07/28/2015		TRL	D6057 Custom Abutment Includes Placem	13		\$1,150.00	\$0.00	\$1,150.00
	07/28/2015		TRL	D6058 Abutment Supported Porcelain Cro	13		\$1,750.00	\$0.00	\$1,750.00
Subtotal:							\$2,900.00	\$0.00	\$2,900.00

Insurance coverage is only an estimation. Guarantor is responsible for all treatment not covered by insurance.

Total Proposed:	\$2,900.00
Total Completed:	\$0.00
Total Accepted:	\$0.00
Proposed Insurance:	\$0.00

Insurance coverage is only an estimation. Guarantor is responsible for all treatment not covered by insurance.

I REQUEST AND AUTHORIZE THE DENTIST OR QUALIFIED ASSIGNEE TO PERFORM THE WORK DESCRIBED ABOVE.

Patient or Guarantor's Signature _____

Date _____