

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

The Hon. Charles B. Simmons, Jr.  
Master in Equity

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Case No. 2014-CP-23-4097

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First Citizens Bank and Trust Company, Inc.

Respondents

v.

Ronald D. Taylor and Ted D. Smith

Defendants

Of Whom Smith Family, LLC, WHS Properties, LLC,  
And Wanda H. Smith are the Appellants.

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**REPLY BRIEF**

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Randall S. Hiller  
850 Wade Hampton Blvd.  
Greenville, SC 29609  
864-232-0026  
Attorney for Appellants

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## ARGUMENTS

### **I. The Master in Equity improperly determined that the funds at issue belonged to Ted Smith and should be applied towards the judgment against him, pursuant to SC Code Section 15-39-410.**

The Master in Equity gratuitously inserted Section 15-39-410 as justification for his order in one portion thereof and Section 15-39-310 in the conclusion of his order. Neither were relied upon nor were any of the necessary findings of fact made by the Master to support the purported reliance thereon, nor was the Appellant in possession of the amount ordered to be delivered.

The Respondent's reliance upon Deer Island Lumber Company v. Virginia Carolina Chemical Company, 111 SC 299, 302-03, 97 SC 833 (1999) is misplaced and incorrectly states the finding of the Court. Indeed, that case was relied upon by the Appellant in its initial brief as that case states that funds in the hands of a third party may be "arrested" pending a *Statute of Elizabeth* claim. Likewise, the only holding in Johnson v. Service Management, 319 SC 165; 458 SC 2<sup>nd</sup> 900 (1995) was that the only way a chosen in action could be claimed was through supplemental proceeding, holding that funds on deposit with a banking institution constitute a chose in action rather than segregated personal property.

Respondent's reliance on the lack of claim and/or the lack of evidence as to the ownership of the funds in the account of Respondent are illustrative only of the complete lack of due process and procedure afforded Respondent during the course of these proceedings. No pleadings, claim or demand was ever made upon the Respondent to which it had an opportunity to reply or answer. No opportunity to testify or submit evidence was ever afforded the Respondent as it was not joined in the action until the same day that a judgment was rendered against it. The only "evidence" from the Respondent was the use of a deposition that was noticed and taken as a witness deposition in a proceeding to which it was not a party. Notwithstanding that the Respondent was completely deprived of any opportunity to answer, plead or present testimony or evidence there still is evidence in the record that the funds that were deposited into its account had been expended during the normal course of events to pay the household and living expenses of Ted and Wanda Smith in the same manner that the funds provided by Wanda Smith had been expended to pay household and living expenses over the past 8 years. (R) The "evidence" also demonstrates that the Appellants account did

not have \$81,000.00 in it at the time of the hearing. (R)

The ultimate fallacy of the Respondent's argument, and further evidence that the order did not rely on Section 15-39-410, and would be deficient if it had, is that there was no attempt to determine or make a finding of fact that there was "property of the judgment debtor" which was "not exempt from execution" or was not the "earnings of the debtor for his personal services" as mandated by that section. Even then, the remedy is set forth in the same chapter that must be utilized if the person or corporation alleged to have property of the judgment debtor claims an adverse interest. Section 15-39-460, *South Carolina Code of Laws*, states that any such claim "shall be recoverable only in an action against such person or corporation."

Finally, it should go without saying that in order to utilize Section 15-39-410 the property has to be in existence. The record before the court reflects that at the time of the hearing there was not \$81,000.00 in the Appellant's account to seize. Instead, the court seized precious metals that had been purchased by the Appellant as an investment, which according to the evidence presented by the Respondent, all but \$32,589.27 was purchased prior to any deposit being made of any personal funds of the judgment debtor into the account of Appellant. Based on the uncontradicted record of even the Respondent's evidence reflects that only two of the purchases of the precious metals occurred subsequent to the first and second deposit by the judgment debtor of \$32,589.27 into the Appellant's account. Thus, there was not anywhere near \$81,000.00 in the possession of the Appellant at the time of the filing of the motion to include Appellants as parties to the proceeding or the order requiring them to deliver the funds to the Respondent.

**II. The Master in Equity incorrectly applied the funds to the judgment under the *Statute of Elizabeth*.**

Wannamaker v. Bryant, 165 SC 107; 162 SC 779 (1932) is controlling. As stated above, Appellants were made a party to the supplementary proceedings on the same day that the Judge entered an order against it without the benefit of pleadings. Appellant was deprived of the opportunity to submit any evidence. There is no distinction between cash or real estate in Wannamaker.

Of course the Appellants have claimed ownership of the funds in its bank account, even though the amount in the account was less than the Master sought to garnish. Had the Respondent,

as it was obligated to do, filed an action in the Court of Common Pleas invoking the *Statute of Elizabeth* then an answer would have been filed raising that as a specific defense and the Appellant would have been afforded an opportunity to conduct discovery, produce records and testify at a trial on the issue.

**III. Appellants have appropriately argued Arguments I and IV in their Brief by citing to court rules and statutes.**


**IV. The issue of exemption is ripe for review.**

The issue of exemptions is ripe for review. The Court did rule on the issue of exemptions by postponing it to some unknown later date after the judgment had been enforced. Appellant filed its motion to reconsider which included that specific issue and which was summarily denied by the Court. (R)

As pointed out in Argument I the clear statutory language makes a determination of exemption a prerequisite to application of any property to the judgment debt.

#### **CONCLUSION**

For the reasons set forth herein as well as those contained in Appellant's Brief the Master in Equity's order as it effects the rights of Appellant should be reversed.

  
\_\_\_\_\_  
Randall S. Hiller (SCB#2513)  
850 Wade Hampton Blvd.  
Greenville, South Carolina 29609  
Attorney for Appellant

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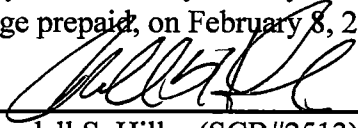
Smith Family, LLC, WHS Properties, LLC,  
And Wanda H. Smith

Appellants

PROOF OF SERVICE

I certify that I have served the Appellants' Reply Brief on Joey R. Floyd, Esq. by depositing a copy of it in the United States Mail, postage prepaid, on February 8, 2018.

February 8, 2018

  
Randall S. Hiller (SCB#2513)  
850 Wade Hampton Blvd.  
Greenville, South Carolina 29609  
Attorney for Appellant

RANDALL S. HILLER, P.A.  
ATTORNEYS AT LAW  
850-B WADE HAMPTON BOULEVARD  
GREENVILLE, SOUTH CAROLINA 29609

RANDALL S. HILLER  
EMAIL: rsh@rshpa.org

(864) 232-0026  
FAX (864) 242-4692

February 8, 2018

SC Court of Appeals  
Attn: Clerk  
1015 Sumter St.  
Columbia, SC 29201

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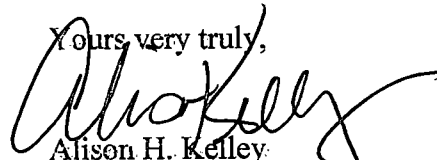
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**2014-CP-23-4097**

Dear Madam Clerk:

Please find enclosed one original and one copy of our Reply Brief and Proof of Service regarding the above. Please file the original and return the stamped copies to me in the envelope provided.

By copy of this letter I am providing opposing counsel with same.

Yours very truly,



Alison H. Kelley  
Paralegal to Randall S. Hiller

/ak

Enclosures.

Cc: Joey R. Floyd, Esq.

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**RANDALL S. HILLER, P.A.**  
ATTORNEYS AT LAW

850-B WADE HAMPTON BOULEVARD  
GREENVILLE, SOUTH CAROLINA 29609



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