

**STATE OF SOUTH CAROLINA
IN THE
SUPREME COURT**

Appeal from the Court of Common Pleas
For Charleston County
Honorable J. C. Nicholson, Jr., Circuit Judge
Civil Action Nos.: 2010-CP-10-9096
And 2011-CP-10-8840
Appellate Case Tracking No. 2017-00640

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

Respondent.

v.

Donald W. Lancaster,

Petitioner.

Respondent's Brief on Certiorari

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Respondent Frank Gordon, Jr., Individually and as Trustee of the Dorothy S. Gordon (Deceased) Trust (“Gordon”) submits his Response to the Brief on Certiorari filed by Petitioner Donald Lancaster (“Lancaster”) on January 12, 2018. This Court granted Lancaster certiorari on the sole issue of whether the Court of Appeals improperly expanded the Supreme Court’s decision in *Linda Mc Company, Inc. v. Shore* to permit enforcement of a judgment that was over ten years old. 375 S.C. 432, 653 S.E.2d 279 (Ct. App. 2007), *aff’d as modified*, 390 S.C. 543, 703 S.E.2d 499 (2010). Gordon respectfully submits to the Court that the Court of Appeals properly applied *Linda Mc Company v. Shore*, and its opinion is well-supported by the record and sound legal precedent.

STATEMENT OF THE FACTS¹

I. The Underlying Judgments

The underlying Judgments that give rise to this case stem from Drews’ promotion of a new enterprise known as Builders Station, a hardware store. In 1996, Drews marketed and sold stock in this company to the Respondent. (R. pp 1044-1048). In 1997, the company failed. On April 16, 1999, Respondent filed suit against Drews in the Charleston County Court of Common Pleas for the illegal sale of stock under S.C. Code Section 35-1-1490, alleging violation of the South Carolina securities laws. *Gordon v. Drews, et al.* (Case No. 1999-CP-1001407). In December 2001, a three-day non-jury trial was held in *Gordon v. Drews*, which culminated in a \$50,000 Judgment against Drews, plus \$15,782.12 in interest. By Order dated *March 15, 2002*, Respondent was also awarded \$42,693.50 in attorney fees, for a total Judgment of \$108,482.62.

From April 2002 until September 2005, Drews appealed the Judgment. The Court of

¹ Respondent incorporates by reference all findings of fact made by the Circuit Court in its Order & Judgment dated August 19, 2013. (R. pp. 10-27)

Appeals affirmed the Judgment, and the Supreme Court ultimately denied Drews' Petition for Writ of Certiorari. On *September 28, 2005*, Respondent was additionally awarded \$1,467.21 in appellate fees and expenses. (R. pp. 38-40).

In August 2006, the Circuit Court entered an Order for Supplemental Proceedings to be opened to aid Respondent in satisfaction of the Judgments. On September 26, 2006, a hearing was held in the Supplemental Proceedings, which were left open due to Drews' failure to produce financial records, in contravention of the Order for Supplemental Proceedings. (R. pp. 34-37).

On September 25, 2007, Drews died, and his Estate was opened on October 26, 2007, Case No. 2007-ES-10-1518. On February 8, 2010, the Estate's inventory and appraisal was filed, indicating no assets. (R. pp. 732-739). Gordon filed a claim with Drews' Estate. Contested proceedings took place over who would serve as Administrator of the Estate.²

On February 26, 2010, Lancaster (Drews' nephew) was deposed in the Supplemental Proceedings. During his deposition, Gordon became aware of fraudulent transfers between Drews and Lancaster that rendered Drews insolvent and allowed Lancaster to financially benefit to Gordon's detriment.

On February 27, 2010, Mrs. Drews died. On March 30, 2010, her Estate was opened. In Re: Estate of Effie D. Drews, Case No. 2010-ES-00-00494. On June 29, 2010, the Estate's

² On May 1, 2008, Gordon filed a Petition for Appointment of Special Administrator for Drews' estate. On June 16, 2008, the Court issued a Notice of Hearing on Gordon's Petition. On July 31, 2008, Drews' wife, ("Mrs. Drews") filed a Request for Correction and Application to have herself appointed as Personal Representative of Drews' Estate. On August 6, 2008, a hearing was held, resulting in an Order Appointing Third-Party Beatrice Whitten as Special Administrator. On October 22, 2008, a Notice of Hearing was again set due to Mrs. Drews' withdrawal of consent to Whitten's appointment. On December 10, 2008, a hearing was held, resulting in a December 17, 2008 Order denying Mrs. Drews' Motion to Reconsider her Consent of Appointment of Whitten. On June 9, 2009, Mrs. Drews filed a Motion for Order of Recusal of Whitten. On October 14, 2009, an Order for Substitution of Shirrese Brockington as Special Administrator was filed.

inventory and appraisal was filed, indicating a net worth of \$55,460.04. (R. pp. 745-749). On December 10, 2010, Gordon filed a Statement of Creditor's Claim in Mrs. Drews' Estate.

On November 11, 2011, Gordon received a Confession of Judgment, Assignment and Settlement Agreement from Drews' Estate, and a Settlement and Assignment from Mrs. Drews' Estate. (R. pp. 162-169). The Confession of Judgment from Drews' Estate was in the amount of \$293,703.43 (R. pp.751-754). Both Estates assigned to Gordon any and all rights they may have to assets which should have or could have been included in the Drewses' Estates. Gordon's pursuit of these additional claims was reflected in the Second Amended Complaint (R. pp.150-151, para.3; 152, para 12). Ultimately, on June 13, 2013, the Trial Court took judicial notice of Plaintiffs' Judgment and Assignments (R. p. 12).

II. Drews' \$100,000 Payment to Lancaster and Related Conveyances

A. Drews' \$100,000 Transfer to Lancaster

In the early 1990s, Mr. and Mrs. Drews were in financial trouble. Mr. Drews had a failed business, was suffering from creditor claims, and was living off of his credit cards – which he could not pay. (R. p. 764, para. 4 -765, para. 6). By early 1992, the IRS was closing in on collecting tax debt from Mr. Drews. (R. p. 764, para. 4). Despite these debts that Drews could not pay, in early 1992, Drews transferred \$100,000 to Lancaster. (R. p. 322, lines 17-19; 956). In 2010, Lancaster testified in his pre-suit deposition that the \$100,000 was a gift with which he could do anything he wanted, including buy stocks. (R. p. 418, lines 6-19). After Lancaster conferred with his new counsel in defense of this suit, he claimed *for the first time at trial* that the \$100,000 was not a gift³ (R. p. 338, lines 10-24), but rather was given to him on the condition that he purchase a

³ Lancaster challenges a point from trial regarding his testimony that he could not produce the gift tax return for the \$100,000 “gift” to Drews. In his brief, Lancaster states that he had no copy “due to a broken copier”. (P’s Brief at 6, FN 11). In fact, Lancaster contradicted his testimony that there

house in which the Drewses could live for the remainder of their lives. (R. p. 323, lines 5-8). The \$100,000 transfer was substantially all of Drews' assets at the time. (R. p. 764, para. 5).

B. Lancaster's Purchase of Bainbridge Property for the Drewses

On May 22, 1992, Lancaster invested Drews' \$100,000 and \$60,000 of his own money in the purchase of 17 Bainbridge Drive in Charleston, South Carolina ("Bainbridge Property"). (R. pp. 765, para. 6; 709-712). Soon thereafter, Lancaster executed an agreement whereby he purportedly gave the Drewses a life estate in the Bainbridge Property. (R. pp. 665-666). Lancaster did not create the alleged life estate by deed, and neither the life estate nor the \$100,000 transfer was recorded in public records to give proper notice. (R. pp. 665-666; 508, line 22 – 509, line 3). The "Agreement" conveying the life estate stated that the consideration for the transaction was "the sum of TEN (\$10.00) AND NO/100S DOLLARS and love and affection for my uncle." (R. pp. 665-666). Notably, the "agreement" does not mention the \$100,000 conveyance that Lancaster alleged was the consideration for this conveyance.

C. Lancaster's \$40,000 to Drews from Bainbridge Equity Line of Credit

On June 12, 1992, Lancaster obtained a \$40,000 open-end mortgage on the Bainbridge Property from South Carolina National Bank ("SC National Equity Line of Credit"). (R. pp. 696-699). From 1993 to 1995, Lancaster gave the Drewses several checks totaling \$40,000, which were drawn from South Carolina National Bank. (R. pp. 324, lines 20-23; 692). This \$40,000 was allegedly paid to Drews so that he could pay his living expenses. (R. p. 328, lines 9-10). Lancaster did not have Drews sign notes of indebtedness, or even "IOUs" for any of these payments. (R. p. 325, lines 5-11). Lancaster was using the equity line of credit on the house, largely paid for by

was no copy when he testified that "I would have had my eyes open for it" there was a copy and he'd spent time searching Drews' desk for it. (ROA at 414:24-25).

Drews, to return to the Drewses part of the \$100,000 transfer from the Drewses to Lancaster. (R. p. 344, lines 18-21). The Drewses, and not Lancaster, paid the interest incurred on the SC National Equity Line of Credit. (R. p. 344, line 22 – 345, line 3). Lancaster did not charge Drews for any additional interest for these alleged loans. (R. pp. 450, line 19 – 451, line 18).

Lancaster testified that he tracked all the activities relating to the \$40,000 of “loans” in a spreadsheet, including any interest Drews paid. He further testified that the spreadsheet entries were made contemporaneously. (R. p. 388, lines 9-22). However, at trial, two versions of the spreadsheet, both dated “February 3, 1997,” were admitted which contained material differences.⁴ (R. pp. 467, line 4 - 468, line 20; 692-695; 1066-1071). One of the principal differences is that the one produced at trial showed Lancaster being owed approximately \$6,000 more than the one that had been produced at his deposition. (R. p. 468, lines 16-20). Lancaster was unable to explain this discrepancy. The discrepancy in these two identically-dated documents indicated that the accounting records were not contemporaneously kept, contrary to Lancaster’s testimony.

D. Bainbridge Property Is Exchanged for Nuffield Property

In 1995, Drews and Lancaster allegedly agreed that they would substitute a one-story house of the Drewses’ choice for the two-story Bainbridge house because Drews was having medical issues with his knees. (R. p. 360, lines 13-15; 379, line 18 - 380, line 6). Although Lancaster claims he gave Drews power of attorney to find and buy a house, Lancaster was unable to produce for the Trial Court a Power of Attorney evidencing the same. (R. p. 360, line 13 - 361, line 11). On April 27, 1995, Drews, allegedly acting as Lancaster’s Power of Attorney, signed an agreement to

⁴ One version of Lancaster’s amortization schedule indicated a balance forward of \$44,211.20 and the other indicated a balance forward of \$50,292.80, resulting in a 1996 balance-forward discrepancy of \$6,081.60. (R. pp. 692-695; 1066-1071). Lancaster’s amortization schedules also contained contradictory information regarding interest paid in 1995.

purchase the replacement residence located at 2 Nuffield Road in Charleston, South Carolina (“Nuffield Property”). (R. pp. 672-76). Mrs. Drews (not Lancaster) made a \$1,000 down payment on the house. (R. p. 362, lines 3-11). On May 15, 1995, Lancaster increased the \$40,000 SC National Equity Line of Credit to \$79,250 (further drawing out Drew’s original transfer). (R. pp. 696-699; 701-704). The very next day, on May 16, 1995, Lancaster purchased the Nuffield property for \$125,000. (R. pp. 667-671).

On May 17, 1995, Lancaster executed a “Memorandum of Lease and Subordination Agreement” for the Nuffield Property. (R. pp. 677-681). However, this document was not a “lease” as entitled, but rather a document that purported to give the Drewses a life estate in the Nuffield Property, allegedly in substitution for the purported Bainbridge Property Life Estate. (*Id.*). This document was recorded but did not give meaningful notice of Drews’ interest in the property since it was mistitled a “Lease.” The Memorandum cites the consideration for the life estate as “Ten and No/Hundreds Dollars (\$10.00) and other good and valuable consideration.” (*Id.*). Lancaster again did not create and record a deed for this life estate.

E. Lancaster Sells Nuffield Property after Mr. and Mrs. Drews’ Deaths

From 1992 until Mr. and Mrs. Drews’ deaths in 2007 and 2010 respectively, Lancaster held their alleged residence(s) in his name while allowing them full use, control, and enjoyment of the residence(s). After their deaths, on April 29, 2010, Lancaster sold the Nuffield Property for \$246,000 (R. p. 359, lines 21-23; 741-744), and received \$121,000 in profit.⁵

III. Conveyances Relating to Mortgages on Drews’ Meeting Street Property

A. The \$40,000 Meeting Street Mortgage

⁵ Respondent also presented the Trial Court with the present value of the monies Drews transferred to Lancaster that were used to purchase the property. (R. pp. 478, line 17 - 479, line 5; 1098-1102).

In March 1995, Drews granted Lancaster a \$40,000 mortgage on Drews' property located at 1705 Meeting Street in Charleston, South Carolina ("\$40,000 Meeting Street Mortgage"). (R. pp. 629-630). Lancaster did not provide Drews any contemporaneous consideration for the \$40,000 Meeting Street Mortgage. (R. p. 454, lines 4-10). No note was ever executed on this mortgage, and this mortgage was not recorded until November 1995, approximately eight (8) months after it was executed. (R. pp. 333, lines 9-22; 346, line 25 – 347, line 6; 629-630). Drews allegedly paid the interest Lancaster incurred for this line of equity. (R. p. 344, line 22 - 345, line 3). Drews did not pay any additional amounts to Lancaster for allegedly loaning him the money. (R. p. 451, lines 9-18).

B. In 1996, Respondent's Cause of Action Accrued against Drews

In 1996, Drews marketed and sold stock in Builders Station hardware to many investors, including the Respondent (R. pp. 1044-1048). In 1997, the company failed, and on April 16, 1999, Respondent filed suit against Drews in the Charleston County Court of Common Pleas for the illegal sale of stock under S.C. Code § 35-1-1490, alleging violation of the South Carolina securities laws. *Gordon v. Drews, et al.* (Case No. 1999-CP-1001407).

C. The \$100,000 Meeting Street Mortgage

On April 15, 1998, after Respondent's cause of action had accrued, Drews granted Lancaster an additional \$100,000 Mortgage on Drews' 1705 Meeting Street property ("\$100,000 Meeting Street Mortgage"). (R. p. 633-637). Once again, Lancaster did not give Drews any contemporaneous consideration for the \$100,000 Meeting Street Mortgage (R. pp. 349, line 25 – 350, line 8; 454, lines 4-10), and no note was ever executed on this mortgage (R. p. 333, lines 9-22; 324, line 20 – 325, line 11). Even though Lancaster testified that the \$100,000 mortgage was to replace the \$40,000 mortgage, the \$40,000 mortgage was not contemporaneously satisfied when

the \$100,000 mortgage was executed. (R. p. 350, lines 9-14; 350 line 25 - 351, line 13). Therefore, the public record showed \$140,000 of debt on this property.

D. The \$20,000 Meeting Street Mortgage

In July 1999, three months after Respondent filed suit against Drews, Drews granted Lancaster a third mortgage on the property for \$20,000 (“\$20,000 Meeting Street Mortgage”). (R. pp. 638-642). Drews gave Lancaster this mortgage even though Lancaster already had at least \$60,000 to \$100,000 in unused security provided by the \$100,000 mortgage. (R. p. 331, lines 15-18). Again, Lancaster did not give Drews any contemporaneous consideration for the \$20,000 Meeting Street Mortgage. (R. pp. 339, line 19 – p. 340, line 3). As with the prior two mortgages, no note was executed on this mortgage. (R. p. 324, line 20 - 325, line 11; 333, lines 9-22). And no prior mortgages were contemporaneously satisfied.

IV. The Assignment of a \$190,000 Meeting Street Mortgage to Lancaster

In November, 2001, *one month* before commencement of the trial in the *first* action, the following transactions occurred:

- On November 5 and 6, 2001, Lancaster executed satisfactions for the three existing Meeting Street Mortgages (\$40,000, \$100,000, \$20,000) (R. pp. 20, para. 50; 627-628; 631-632; 638-642);
- The next day, Drews sold the Meeting Street Property and received a \$190,000 Note and Mortgage from a third-party purchaser (Charleston Antiques) as consideration for the purchase (R. pp. 20, para. 51; 719-720);
- Simultaneously, Drews allegedly assigned the \$190,000 Meeting Street Note and Mortgage to Mrs. Drews (R. pp. 20, para. 52; 364, lines 8-17; 643-650);
- Mrs. Drews then allegedly gave Lancaster a \$50,912 Note on the Proceeds of the Sale of Meeting Street Property (R. p. 20, para. 53; 658); and,
- Mrs. Drews then purportedly assigned the \$190,000 Meeting Street Mortgage to Lancaster (“\$190,000 Meeting Street Assignment”) in full, allegedly as security for the \$50,912 Meeting Street Note (R. pp. 651-652).

Lancaster was not assigned the \$190,000 Meeting Street Note. (R. p. 21, para. 58). Moreover, no evidence was presented that Lancaster gave any contemporaneous consideration for either the \$50,912 Meeting Street Note, or the \$190,000 Meeting Street Assignment. (R. p. 21, paras. 54 & 57). Further, Lancaster testified that he was not contemporaneously aware of the \$190,000 Meeting Street Assignment at the time it was executed on his behalf. (R. p. 21, para. 56).

In 2001 and 2002 (and 2005), Gordon obtained Judgments against Drews.

From 2001 to 2005, Drews (by way of Mrs. Drews) received payments on the \$190,000 Meeting Street Note and Mortgage for the benefit of the Drewses, and passed a portion of these payments on to Lancaster for the alleged \$50,912 Meeting Street Note. (R. p. 21, para. 61).

In August 2005, the South Carolina Supreme Court denied Drews' Petition for Writ of Certiorari. On September 28, 2005, Respondent was awarded \$1,467.21 in fees and expenses.

In September 2005, the Drewses received approximately \$130,000 as final payment on the \$190,000 Meeting Street Note (R. pp. 721-725) and paid to Lancaster the remaining amount on his \$50,912 Meeting Street Note.⁶ (R. p. 21, paras. 62-63). In 2005, Lancaster received more than \$40,000 related to this transaction. (R. p. 22, paras. 64-65). Notably, the Trial Court found Lancaster and Drews failed to report the alleged \$50,912 Meeting Street Note's interest as income or interest expense on their respective tax returns (R. pp. 812-912); and that failure evidences that they did not actually treat this Note as a legitimate loan and continued to hide evidence of the transaction from the public, creditors included. (R. p. 22, paras. 65-67) As Lancaster has not challenged this or other findings related to the \$190,000 Meeting Street transaction, the Trial Court's rulings related to these transactions are the law of this case. *S.C. Coastal Conserv. League*

⁶ Lancaster issued a satisfaction for the \$50,912 Meeting Street Note (R. p. 658) and assigned back to Mrs. Drews the \$190,000 Meeting Street Property Mortgage (R. pp. 653-654).

v. S.C. Dep't of Health & Env't'l Control, 363 S.C. 67, 610 S.E.2d 482 (2005).

V. Expert Testimony of Richard Livingston, C.P.A.

At trial, Respondent presented testimony of certified public accountant Richard Livingston, who was duly qualified as an expert in forensic accounting. (R. p. 446, lines 24-25). Based on his detailed review of extensive financial records relating to all the above transactions, Livingston testified to a reasonable degree of certainty in his expertise, that in looking at the transactions in their entirety between Lancaster and Drews, they did not make economic or financial sense. (R. pp. 447, line 24 - 448, line 2). Livingston explained that not only did Lancaster's and Drews' transactions deviate from normal business and accounting principles, but they also did not make family or favor sense either, as the parties had consistently chosen to accomplish the transactions in multiple, convoluted steps instead of in one or two simple steps. (R. p. 25, para. 78). He further testified that the transactions created a situation whereby Drews maintained control over and benefit from his assets while keeping them in someone else's name. (R. p. 448, lines 3-5). Based upon his analysis, Livingston further opined that the only purpose of these transactions was to shelter and hide them from creditors. (R. p. 25, para. 79; 448, lines 7-9). The Trial Court found Livingston to be both knowledgeable and credible. (R. p. 25, para 80).

VI. The Trial Court Found that Lancaster was Not a Credible Witness

The Trial Court found that Lancaster was not a credible witness:

[T]estimony at trial regarding these transfers lacked credibility and evidenced that the transfers in question were indeed interfamily transfers for no consideration that were made in furtherance of Drews' scheme to conceal his assets from present and subsequent creditors.

(R. p. 24, para 74). The Trial Court based its assessment of Lancaster, in part, on his evasiveness in answering Respondent's counsel's questions (as compared to his very direct and knowledgeable answers to his own counsel), his contradictory testimony regarding his transactions with Mr. and

Mrs. Drews, and his claimed lack of knowledge regarding these transactions as well as typical business practices. (R. p. 24-25, para. 74). The trial judge made the following observations on the record at the end of the trial before entering its Order:

And the court does not find it believable on direct examination⁷ the defendant appeared to not understand anything about notes and mortgages or anything else. However, on direct he was very knowledgeable about basis about any question that his defense counsel asked him and even knew the cap on the gift tax at the time of the transfer of the 100,000 dollars, I believe 1.2 million dollars; he was very knowledgeable.

(R. p. 582, lines 11-18).

Lancaster's feigned lack of knowledge is in stark contrast to his testimony that he is a very experienced corporate internal auditor who worked for two and a half decades auditing businesses (R. pp. 24- 25, para 74; 320, lines 2-15); and his testimony that he understands financial investments and handled them all his life. (R. p. 320, lines 18-21). Lancaster's detailed records and amortization schedules (R. pp. 1066-1071), and his complicated, self-prepared tax returns (R. pp. 889-912), also show he is a very knowledgeable and sophisticated businessman when it comes to financial matters.

The Trial Court also made specific findings as to Lancaster's credibility when it came to testifying about his role in assisting Drews in defrauding creditors by hiding assets:

The court finds that his failure to testify that he was not aware of any of this and didn't know anything about notes and mortgages and how this functions, the court does not find believable. The issue aboutneither party showing any payment of interest by the Drews on the tax return, the '05 tax return, the defendant didn't show any return of interest. The court finds it was a concerted effort by both parties to hide all these transactions from any view of the public either by recording in the Register Mesne Conveyance, tax return, or any other methods to avoid any finding those assets by any creditor.

(R. p. 582, line 19 - 583, line 5)

⁷ The Trial Court refers to his "direct examination" as Plaintiff called Mr. Lancaster as an adverse witness in Plaintiff's case in chief.

VII. Drews Similarly Parked Assets with Dorsey Biller

In 2007, Drews gave Mr. Dorsey Biller (a former business associate) a check for \$50,000. (R. 435, lines 4-17). Although purportedly to pay back money he owed to Biller, Drews told Biller that he was not doing really well financially and that Drews may need some of the money back. Drews then asked Biller, beginning the very next month, to return money back to him. (*Id.*). At Drews' request, Biller made several payments back to Drews, and then once Drews died, Biller made payments to Drews' wife, Effie Drews. (R. pp. 435, line 18 - 436, line 13). Once Effie Drews died, the remaining amount of the \$50,000 was paid to her estate. (R. p. 436, lines 14-24). The evidence also showed that the \$50,000 check was originally endorsed by Drews' sister, Jesse Atkinson. Atkinson testified that the Drewses gave her money to open a bank account, and that the money was to be used for the Drewses. (R. p. 1007, line 3 - 1008, line 6). Biller explained in his testimony that Drews tried to give the money to Atkinson first, "but she would not do the deal with him." (R. p. 441, lines 9 - 442, line 4).

ARGUMENT

Gordon unquestionably satisfies the requirement set out in *Linda Mc Co* and its progeny that, to fall within the ten-year judgment rule exception, he take action within the judgments' active energy period. Further, *Linda Mc Co* is in accord with treatment by other jurisdictions, and should not be restricted. Lastly, Gordon's claims as assignee of the Drewes' estates were unaffected by the ten year rule.

I. The Court of Appeals Correctly Applied *Linda Mc Company* by Affirming the Circuit Court's Decision that Gordon's Actions within Ten Years of the Judgments and Pursuit of Satisfaction of Judgments Extended the Judgments' Active Periods.

The Court of Appeals appropriately applied *Linda Mc Co* by holding that Gordon had timely initiated his enforcement action. While the general rule is that judgments only have "active energy" for ten years under S.C. Code Ann. § 15-39-30, *Linda Mc Co* recognized a "narrow

exception” to this South Carolina rule; this exception is triggered when a judgment creditor actively tries to execute on a judgment in this state during its ten-year period. *RRR, Inc. v. Toggas*, 98 F. Supp. 3d 12, 18 (D.D.C. 2015) (“actively trying to execute” on a judgment “is necessary to trigger the narrow exception to the statute created by the [South Carolina] Supreme Court in *Linda Mc. Co.*”) (quoting *Toggas v. RRR, Inc.*, Case No. 2014–CP–07–2016, Beaufort CCCP, filed 29 January 2015). Gordon’s diligent efforts in this state since 2006 to execute on the Judgments at issue place him soundly within the *Linda Mc Co* exception.⁸

A. The Court of Appeals’ Correctly Sustained the Circuit Court’ Ruling that Gordon Could Still Obtain Satisfaction of his Judgment Because He Filed within the Ten-Year Period

Linda Mc Company’s concluding paragraph sets forth the requirement to trigger its exception to the ten-year rule - that a judgment creditor “takes action to enforce a judgment” during its active energy period:

... if a party *takes action to enforce* a judgment within the ten-year statutory period of active energy, the resulting order will be effective even if issued after the ten-year period has expired.

Linda Mc Co., 390 S.C. at 555, 703 S.E.2d at 505 (*emphasis added*). This Court’s “action” language was at the heart of the Court of Appeals’ finding that Gordon’s actions were sufficient to keep his enforcement claim active: “Like the court in *Linda Mc*, we find the action was active

⁸ The lower court’s findings that Gordon took action during the period of active energy and that he was diligent in his efforts is not subject to further review. This Court has long recognized that it will not review a lower court’s findings of facts on a writ of certiorari “unless they are wholly unsupported by the evidence.” *Jacoby v. S.C. State Bd. of Naturopathic Examiners*, 219 S.C. 66, 88, 64 S.E.2d 138, 148 (1951) (“This Court will not review the findings of fact of an inferior court or body on a writ of certiorari unless they are wholly unsupported by the evidence.”) *S.C. Bd. of Examiners in Optometry v. Cohen*, 256 S.C. 13, 18, 180 S.E.2d 650, 652 (1971) (citations omitted) (“We have held in numerous cases that this Court on writ of certiorari will confine its review to the correction of errors of law only, and will not review the findings of fact of an inferior court or body except when such findings are wholly unsupported by the evidence.”)

because it was filed before the ten-year period expired *and Gordon continued to pursue* satisfaction of his judgment.” *Gordon v. Lancaster*, 419 S.C. 48, 58, 795 S.E.2d 857, 862 (Ct. App. 2016), *reh'g denied* (Feb. 16, 2017), *cert. granted* (Dec. 13, 2017) (emphasis added).

During the ten years after entry of the Judgments, Gordon repeatedly took “action” to enforce the Judgments:

- Gordon initiated Supplemental Proceedings approximately four years after entry of the Judgments, and less than one year after denial of Drews’ appeal of the Judgments;
- Gordon attempted to procure financial documentation from Drews during a hearing in the Supplemental Proceedings, which Drews failed to produce despite being under court order;
- Gordon attempted to depose Mrs. Drews, but was unable to do so due to her untimely death;
- Gordon deposed Lancaster and learned for the first time of his financial dealings with the Drewses;
- Gordon filed suits against the estates of both Mr. and Mrs. Drews and received assignments from each, and a confession of judgment from Drews’ estate; and
- Gordon filed this action against Lancaster.

This chronicle of action actually shows Mr. Gordon was more diligent than the respondents in *Linda Mc Co*, who only filed a supplemental proceeding, and waited approximately nine and half years after entry of judgment to do so. 390 S.C. at 549. The extenuating facts that prolonged Gordon’s collection efforts - the deceptive transactions of Drews and Lancaster and the deaths of Mr. and Mrs. Drews – do not detract from the fact that Gordon timely acted by initiating and aggressively pursuing legal actions to enforce the judgments.

The recent decision from the District of Columbia, *RRR*, 98 F. Supp. 3d 12, 17–18, further exemplifies that the *Linda Mc Co* exception is “triggered” by action during the active energy

period. In *Toggas*, the court addressed creditors who filed a fraudulent transfer action in D.C. in an attempt to enforce an already extinguished South Carolina judgment. This States' Court of Common Pleas held the judgment expired because **no** action was filed in South Carolina during the active energy period as required to “trigger” the *Linda Mc Co* exception:

Since the plaintiff failed to take any action to collect on its judgment in South Carolina, the South Carolina court held that the plaintiff “cannot complain now that the judgment has expired [...]”

[..] the plaintiff was “not actively trying to execute upon the South Carolina judgment *in South Carolina*, which is necessary to trigger the ‘narrow’ exception to the statute created by the [South Carolina] Supreme Court in *Linda Mc. Co.*”

Toggas, 98 F. Supp. 3d 12, 17–18 (quoting *Toggas v. RRR, Inc.*, Case No. 2014–CP–07–2016, Beaufort CCCP, filed 29 January 2015).⁹ See also *In re DC Development*, 572 B.R. 171, 175 (Bankr. D.S.C. 2017) (judgments “extinguished” because only a corporate veil piercing action was filed during judgments’ active energy, not a collection action as required under the “narrow exception” of *Linda Mc Co*).

B. The Court Correctly Took into Account the Reasoning Expressed in *Linda Mc Company* that a Party Should Not be at the Mercy of a Court to Collect on his Judgment During the Active Period.

This Court held in *Linda Mc Co* that a party should not be “at the mercy of the court system to conclude the matter within the ten-year period” when a party has complied with applicable statutes to collect on his judgment. 390 S.C. at 555, 703 S.E.2d at 505. There were many instances where Gordon was at the mercy of the court system to collect on his judgments. For example, even though the judgments were awarded in December 2001, and March 2002, Gordon was unable to

⁹ Lancaster cites to *Toggas* as further support for his proposition that *Linda McCo* is a “very limited factual situation.” (P’s Brief at 17, FN 40). However, the facts in *Toggas* are completely different from those at issue here. Unlike *Toggas*, this record is replete with evidence that Gordon took action to collect on his Judgments during their period of active energy.

begin execution on them until the end of September 2005, when Drews lost his appeal and Gordon received the final award and modification of the judgments.

Gordon also lost over two years after Drews died in September 25, 2007. Gordon was diligent in pursuing collection on his judgments during this time by bringing claims against Drews' estate. Gordon lost additional time after Effie Drews died. He once again filed an estate claim to diligently pursue his judgment, and had to wait for the estate proceedings to progress. It was not until November 2011 that the Drews estate confessed judgment and both Drews' estate and Mrs. Drews' estate assigned their claims to Gordon. The Drewses' deaths during his judgments' ten-year active period and the necessary resulting estate proceedings, were completely outside of Gordon's control and thwarted his timely efforts to enforce his judgments.

Gordon acted even earlier to enforce his judgments than the *Linda Mc Co* creditor, and should not lose his right to recover because this litigation took longer. This is especially true when this case took much longer to litigate due to the discovery efforts required to uncover the complicated, convoluted, and dishonest transactions in which Lancaster and Drews engaged. Lancaster should not be able to benefit from those dishonest acts by arguing that Gordon should be treated differently from the *Linda Mc Co* creditor because Gordon was not merely awaiting a decision.

C. The Court of Appeals' Reliance on *Hardee* Is In Keeping with the Narrow Exception Approach Set Forth In *Linda Mc Company*.

The Court of Appeals' reliance on *Hardee v. Lynch*, 212 S.C. 6, 46 S.E.2d 179 (1948), is proper in light of *Linda Mc Co*. In *Hardee*, this Court reversed a lower court that had allowed a judgment collection action on a judgment that expired due to lack of "any" enforcement steps during its period of active energy. 212 S.C. at 14. In finding reversal was proper, the *Hardee* Court noted the legislative intent for judgments to expire after ten years "unless revived, or *suit thereon*

be brought before the expiration of the period allowed by law.” 212 S.C. at 14. (emphasis added). Thus, *Hardee* stands for the same proposition *Linda Mc Co.* does – a narrow exception exists for creditors (like Gordon) who initiate collection proceedings during the ten years of active energy.

The narrow exception approach is even more appropriate under current law and facts like those at bar. Creditors like Gordon cannot request an extension, and have only half the time to attempt to collect monies rightfully due them as was available under the twenty-year rule. Additionally, despite Gordon’s attempts to enforce his judgments during the active energy period, his efforts were frustrated by factors outside of his control. Moreover, Lancaster is not the original debtor, and his fraud in helping Drews hide assets was not discovered until years later, so Lancaster should not be able to avail himself of a ten-year rule on his liability for fraudulent conveyances. The Court of Appeals affirmance of the Circuit Court’s holding is in keeping with South Carolina’s and other states’ legal precedent, and sound public policy.

II. The Court of Appeals’ Interpretation of *Linda Mc Company* is Consistent With Other Jurisdictions That Have Recognized a Judgment’s Enforceability Should Be Extended When the Judgment Creditor Brought Action to Enforce the Judgment During the Judgment’s Active Energy.

Throughout the country, it is well-settled that a judgment creditor may maintain his enforcement action through satisfaction — by form of an execution, action to enforce a judgment, revivor or renewal — when commenced before expiration of the statutory period.¹⁰ In states such

¹⁰ See generally 52 A.L.R.2d 672, 2 (“...a judgment or order of revival or renewal made after the expiration of the limitation period is valid where it represents a lawful culmination of the proceeding or action thus commenced.”); see also *Cave v. Reiser*, 268 Neb. 539, 541 (2004) (Nebraska requiring action to revive the judgment be commenced within 10 years); *Barkley v. City of Blue Lake*, 47 Cal. App. 4th 309, 311 (1996) (“A judgment creditor is entitled as a matter of right to a judgment on the original judgment providing it is commenced within the 10-year statute of limitations period.”); *Fischbach v. Fischbach*, 187 Md. App. 61, 76 (2009) (holding action on a judgment must be filed within twelve years from the date that the cause of action accrues and the commencement requirement was met by the timely filing of the suit when the right accrued at time the benefit could be received); *Sandwich Mfg. Co. v. Earl*, 56 Minn. 390, 393 (1894) (“Where an

as South Carolina, with no express statutory mechanism for revivor or renewal, the proper procedure to enforce a suit is an action on the judgment.¹¹ As noted in 47 Am. Jur. 2d Judgments § 945 (1995), the main purpose of an action on a judgment is to obtain a new judgment which will

action is commenced upon a judgment within ten years from the time of its rendition, it may be maintained and completed after the expiration of such ten years.”); *Fulton v. Fulton*, 2003 ML 2026, 6 (2003) (“[A]n action to extend a judgment of any court of record of any state must be commenced within ten (10) years from the date the judgment is first docketed.”) *Adamar of New Jersey, Inc. v. Mason*, 399 N.J. Super. 63, 66 (2008) (“A judgment in any court of record in this state may be revived by proper proceedings or an action at law may be commenced thereon within 20 years next after the date thereof, but not thereafter”); *In re Scott*, 272 N.Y. 228, 230 (1936) (“Unless an action on a judgment is commenced within 20 years after the judgment is recovered, the right of action thereon is extinguished. However, once an action is actually commenced within the 20 years, the statute cannot be set up as a bar, even though at the time the answer is served more than 20 years have expired.”); *Reid v. Bristol*, 241 N.C. 699, 701-02, 86 S.E.2d 417, 419 (1955) (“The only procedure which may be used to enforce a dormant judgment that was never executed is through the institution of an independent action commenced by the issuance of a summons and the filing of a complaint within 10 years from the issuance of the original judgment.”); *Ford Motor Credit Co., LLC v. Halvorson*, 2013 ND 216, ¶ 8, 840 N.W.2d 79, 81 (“[T]he original judgment was dated February 27, 2003, and this action was commenced by personal service upon Halvorson on February 5, 2013, within the ten-year period. This was an appropriate and timely action upon the judgment.”); *Ames v. Ames*, 60 Ore. App. 50, 52 (1982) (“Under Or. Rev. Stat. § 12.070, an action on a judgment of a court of any state shall be commenced within 10 years.”); *Hammond v. Hammond*, 14 P.3d 199, 202 (2000) (collection action within the umbrella of the applicable statute of limitations and not time-barred when she commenced her action within 21 years.)

¹¹ See generally 46 Am Jur 2d Judgments § 370 (2017); 47 Am Jur 2d Judgments § 723 (2017) (“In jurisdictions that provide no other specific procedure whereby a dormant judgment may be renewed or revived, a party's only choice is to bring a new action on the party's judgment. Such an action is deemed distinct from the original suit in which the prior judgment was rendered, and must be commenced and prosecuted as in the case of any other civil action brought to recover judgment on a debt. It is regarded as a separate, new, and independent action, and different from the proceeding in which the original judgment was obtained, even if its purpose is to revive the judgment.”); see also *NCNB Nat'l Bank v. Robinson*, 341 S.E.2d 364, 366 (1986) (Court granting relief to a judgment creditor when an independent action upon judgment was brought in 1983 for an unpaid judgment rendered in 1974, finding, “There is no procedure now recognized in this State by which a judgment may be revived or renewed. Instead, a party must bring an action on a judgment, as in the case at bar, which is deemed an independent action separate and distinct from the original suit in which the prior judgment was rendered.”); *Duplin County DSS v. Frazier*, 230 N.C. App. 480, 483 (2013) (“As our Court has previously explained, although ‘there is no procedure now recognized in this State by which a judgment may be renewed,’ a party may obtain a new judgment on the amount owed by bringing an independent action on the prior judgment.”)

facilitate the ultimate goal of securing satisfaction of the original cause of action; “If the statute of limitation period has almost run on the judgment...the judgment creditor can start the limitation period anew by bringing an action upon the judgment and obtaining a new judgment.” *Adams v. Adams*, 691 So. 2d 10, 11 (1997) (Florida decision citing and agreeing with Vermont law¹² and holding, “The appellant claims that appellee is not entitled to bring an action on a former judgment, thus extending the statute of limitations on the prior final judgment. We disagree and affirm.”); *see also Burshan v. Nat'l Union Fire Ins. Co.*, 805 So. 2d 835, 837 (2001). In all states, actions to enforce judgments may commence at any period before the expiration of the statutory period enacted by that state’s legislature; simply stated, the general rule is “a suit or action may not be continued if it is not begun before the statute becomes a bar, but that it may be continued to completion if begun within the period of the statute.” *Wayland v. Kansas City*, 321 Mo. 654, 662 (1928).

For example, the California Court of Appeal reached this conclusion in *United States Capital Corp. v. Nickelberry*, 120 Cal. App. 3d 864 (1981). Where no renewal statute existed at that time¹³, the trial court held a judgment creditor’s enforcement action timely when commenced *three days* before the end of the statutory period, even though the ten-year period had since expired under the due course of litigation. Though the judgment debtor conceded that the enforcement

¹² See *Koerber v. Middlesex College*, 136 Vt. 4, 5-9 (1978) (“A judgment creditor generally has a right to bring an action upon a judgment at any time after its rendition, until it is barred by the statute of limitation... While ordinarily no advantage is gained by bringing an action in the same state upon a judgment, if the statute of limitation period has almost run upon the judgment [internal citation omitted] the judgment creditor can start the limitation period anew by bringing an action upon the judgment and obtaining a new judgment. Restatement of Judgments § 47, Comment e at 185 (1942). This is precisely what the judgment creditor did in the case at bar.”)

¹³ See, e.g., *OCM Principal Opportunities Fund, L.P. v. CIBC World Markets Corp.*, 168 Cal. App. 4th 185, 193-194 (2008) (noting that with the 1982 enactment of the Enforcement of Judgments Law, California Legislature “abrogated the first method of extending the period for the enforcement of a judgment, and replaced the method with [a] renewal procedure.”)

action was commenced within the ten-year statute of limitations¹⁴, he challenged the trial court's ruling. The California Court of Appeals affirmed the trial court, stating, "A judgment creditor is entitled as a matter of right to a judgment on the original judgment providing it is commenced within the 10-year statute of limitations period." *Id* (emphasis added).

States with renewal or revival statutes come to the same conclusion. In *Good*, 122 Kan. 105, 107-108, 251 P. 405, a Kansas Supreme Court case applying Missouri law considered whether a judgment creditor's action to enforce a judgment could continue to satisfaction when commenced one week prior to the expiration of the statutory period. *Good v. Kleinhammer*, 122 Kan. 105, 107-108 (1926). The debtors argued the judgment had no force because the ten-year statutory period would expire before they were required to answer the petition. *Id*. The Supreme Court of Kansas found that even one week before expiration, "the cause of action was then alive, and commencement of this action within time saved the cause of action from the operation of the statute of limitation," stating:

This Missouri doctrine is in accord with our own decisions, which hold that statutes of limitation, including in that term statutes making judgments dormant after the lapse of a specified time without execution, do not run against a judgment during any portion of the time an appropriate judicial proceeding is pending to enforce it [...] This Missouri case accords also with what appears to be the prevailing rule.

Good, 122 Kan. 105, 107-108 (internal citations omitted); *see also Johnson Bros. Wholesale Liquor Co. v. Clemmons*, 233 Kan. 405, 409 (1983) ("Under Minnesota case law, where a new action is filed on an old judgment during the ten-year period, the judgment creditor obtains a *new judgment* which thereafter has a ten-year life of its own.")

¹⁴ This is similar to the issue at hand, where the judgment debtor also admitted the suit commenced within the expiration of the statutory period. *see* R.p. 623:4-12

In construing these statutes, courts across the country have come to the conclusion reached by the trial court in this matter: once a judgment creditor commences his action within the statutory period, “the plaintiff has done all that he or she ordinarily need do to obtain renewal, barring some valid challenge to the motion. The length of time that the court may require to act on the motion, and any delay that may be occasioned by the defendant filing an objection, are beyond the control of the plaintiff.” *Smith v. Smith*, 131 Idaho 800, 964 P.2d 667 (Ct. App. 1998). Moreover, Courts with an ‘execution’ trigger for action have found the term interpreted broadly and “defined as an act of enforcing, carrying out, or putting into effect a judgment” to encompass enforcement suits, garnishments and liens. *see, e.g., Wade v. Poma Glass & Specialty Windows, Inc.*, 394 S.W.3d 886, 887 (2012). In the Georgia case, *Magnum Communications Limited v. Samoluk*, the court stated:

The statute recites explicitly that revival of a dormant judgment may be accomplished by “an action” within three years of when the judgment became dormant, not by “a judgment” within that time period.... This construction also comports with common sense. The timing of a judgment is not within the control of a litigant. A party may file a motion for summary judgment, as *Magnum* did here, but it is the trial court that decides when it will rule on the motion. It would be patently unfair to require a party to obtain a judgment by a certain time when entry of judgment is not within the party's control.

Magnum Communs. Ltd. v. Samoluk, 275 Ga. App. 177, 179 (2005).¹⁵

The Court of Appeals of Louisiana came to a similar finding in *Seymour v. Jones* when the judgment creditor instituted his suit on May 24, 1989 before the ten-year period lapsed on a judgment rendered June 8, 1979, holding: “Judgment reviving a money judgment does not have to be rendered within ten years of the original rendition of that judgment.” *Seymour v. Jones*, 631 So. 2d 666, 669 (1994). In the case of *Thomas v. Towns*, the Supreme Court of Georgia found the

¹⁵ Compare S.C. Code Ann. 15-39-30, which also does not require judgment within the statutory period. S.C. Code Ann. 15-39-30

commencement of a collection suit or revival action — rather than the ultimate judgment on the same — to be the statutory trigger. *Thomas v. Towns*, 66 Ga. 78, 79-80 (1880). In its ruling, the Supreme Court of Georgia stated¹⁶:

Two remedies are thus provided [by the code] -- one by scire facias and one by suit on the judgment. The latter remedy may be *commenced* within three years from the dormancy of the judgment. This is the limitation expressly fixed, and we can see no reason why, if instead of bringing suit the plaintiff elects to proceed by scire facias he has not the *same limit* in which to *commence his suit thus to revive*. To hold that *a judgment of revival must be had within the period of three years* from the dormancy of the original judgment would, we think, be a construction unprecedented in all limitation laws. [emphasis original].

In the case *Hensen v. Peter*, a judgment creditor obtained a judgment against a debtor, who then utilized the legal system to stall enforcement on his property until the statutory period expired. *Hensen v. Peter*, 95 Wash. 628 (1917). In finding the creditor's action timely, the Supreme Court of Washington stated:

Why was it that the plaintiff at law delayed this long period to enforce his judgment? The response is that the debtors, by the means which they employed, forced him to delay. It was not an act of choice on his part, but one of legal compulsion. He but obeyed the process of the court, issued and kept in operation by the debtors, in the fruitless litigation which they carried on for this long period of time. That which is forced upon a party cannot be said to be his voluntary act. He ceased to prosecute his remedy on his judgment, because such was the command of the process, which issued in pursuance of the prayer of the debtors. But it is not necessary to dwell on this point. It is sufficient to know that the plaintiff only obeyed the process in refraining from enforcing his judgment; and it certainly comes with a bad grace from parties who availed themselves of all the means known to the law, to continue this process in full operation, now to complain of the plaintiff's obedience to that which he dared not, under what ought to have been heavy penalties, to disobey.

[O]ne shall not, by waging unfounded litigation, be rewarded at the expense of his unwilling opponent. It is based upon the equitable principle that a party will not be permitted to avail himself of an unconscientious advantage obtained by his own

¹⁶ See also *Ellis v. McCrary*, 52 Ga App 583, 183 SE 823 (1936) (Where the time limitation within which a suit had to be brought had not expired on the date of the filing of the suit but had expired before the date of the perfection of service, the suit was filed within the period of the statute of limitations).

wrongful act and without fault on the part of his adversary. It is sustained by the wholesome consideration that a party should not be permitted to profit by the abuse or misuse of legal process or by imposing upon judicial tribunals litigation without merit. It is also fortified by that sound public policy which sets its face against putting a premium upon unrighteous and vexatious litigation commenced and prosecuted by a party for the ulterior purpose of obtaining by indirection an advantage which in equity and good conscience he is not entitled to enjoy.

95 Wash. 628, 632-633, 637. Timely commencement of the enforcement action — not the judgment thereon — is the trigger to satisfy any statutory timing requirement, regardless of the statutory vehicle a judgment creditor uses to pursue satisfaction of his judgment.

In sum, other jurisdictions' decisions align with the findings of the circuit court and South Carolina Court of Appeals' decisions in this case: an action filed to enforce a judgment is timely when filed within the statutory period and should allow facilitation of the ultimate goal of securing satisfaction of the original judgment. For the foregoing reasons, the decisions below were correct and should be affirmed.

III. Gordon was Entitled to Bring the Action Underlying this Appeal as Assignee of the Drewses' Estates.

Gordon should also prevail against Lancaster given that Gordon was the assignee of the Drewses' Estate claims. (R. pp. 152, para 12; 751-761). The Estates' rights accrued sometime after the Drewses' deaths in 2007 and 2010 respectively, as assets at issue in this matter should have been included in those Estates.¹⁷ As of November 2011, Gordon had a second, independent right to bring suit against Lancaster as a de facto, "executor de son tort" of the monies that rightfully belonged in Mr. and Mrs. Drews' Estates.¹⁸ There is no issue as to whether the Estates' claims

¹⁷ See Respondent's Final Brief, Section VIII, at p. 48.

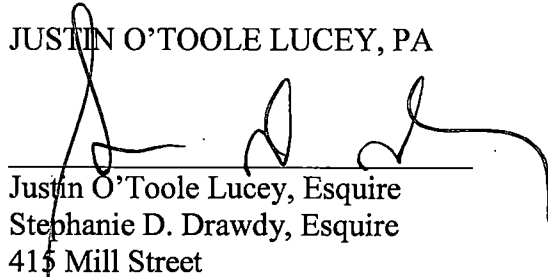
¹⁸ S.C. Code Ann. § 62-3-619 provides that an "executor de son tort" is "[a]ny person who obtains, receives, or possesses property of whatever kind, belonging to the decedent, by means of fraud or without paying valuable consideration equivalent to the value of the property, shall be charged and chargeable as executor of his own wrong (executor de son tort) with respect to the goods and debts. The value of the property is charged to the executor de son tort..."

brought by Gordon were timely. Gordon's assignee status serves as an additional, sustaining ground for this Court to affirm the Circuit Court's Order irrespective of Lancaster's argument that Respondent's Judgment had expired and was unenforceable.

CONCLUSION

The Circuit Court correctly applied the *Linda Mc Co v. Shore* precedent. Gordon repeatedly took the action necessary to trigger the *Linda Mc Co* exception to the ten-year rule. The Court of Appeals' opinion affirming the Circuit Court's decision is well-supported by the record and is consistent with the legal precedent of this Court and other courts across the country. Based on the foregoing arguments and citation of evidence and authority, Respondent respectfully requests this Court uphold the Court of Appeals' and Circuit Court's opinions and decisions.

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March 1, 2018
Mount Pleasant, SC

STATE OF SOUTH CAROLINA
IN THE
SUPREME COURT

Appeal from the Court of Common Pleas
For Charleston County
Honorable J. C. Nicholson, Jr., Circuit Judge
Civil Action Nos.: 2010-CP-10-9096
And 2011-CP-10-8840
Appellate Case Tracking No. 2017-00640

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

v.

Donald W. Lancaster,
Petitioner.

Proof of Service for Respondent's Brief

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S.C. SUPREME COURT

I, Stephanie D. Drawdy, Esquire, hereby certify that on March 1, 2018, I served a copy of the *Respondent's Brief on Certiorari* submitted by the Respondent, Frank Gordon, Jr., Individually and as Trustee of the Dorothy S. Gordon (Deceased) Trust, on counsel for Petitioner Donald W. Lancaster, via the United States Mail, postage pre-paid, and addressed as follows:

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