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STATE OF SOUTH CAROLINA  
IN THE  
SUPREME COURT

**S.C. SUPREME COURT**

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

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

Respondent,

v.

Donald W. Lancaster,

Petitioner.

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**Reply Brief on Certiorari by the Petitioner,  
Donald W. Lancaster**

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The Petitioner, Donald W. Lancaster ("Mr. Lancaster"),<sup>1</sup> respectfully submits this Reply Brief in response to the Brief of the Respondent, Frank Gordon, Jr., as Attorney-in-Fact for Dorothy Gordon ("Mr. Gordon"), in this matter.

## **ARGUMENT AND CITATION OF AUTHORITY**

**A. THE COURT OF APPEALS ERRONEOUSLY EXPANDED THE ACKNOWLEDGED LIMITED HOLDING IN *LINDA Mc CO. v. SHORE* BY FINDING MR. GORDON TIMELY COMMENCED HIS ENFORCEMENT ACTION AGAINST MR. LANCASTER ALTHOUGH THE 2002 DREWS JUDGMENT WAS UNDENIABLY OVER TEN YEARS OLD.**

The issue involved in this case is fairly straightforward and can be summarized as follows:

*Does a judgment's ten-year "active energy" time period terminate when the judgment debtor's enforcement action has not yet gone to trial before the ten-year time period expires or, conversely, does a judgment debtor's mere institution of the enforcement action within the ten-year time frame extend that ten-year period indefinitely until both the merits trial is held and a final order issued?*<sup>2</sup>

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<sup>1</sup> Mr. Lancaster's predicament herein is unfortunately a classic example of the classic idiom "no good deed goes unpunished." He tried to do the right thing by his aunt and uncle and has, heretofore, paid dearly for his kindnesses. Furthermore, this Court of Appeals' rendition of the "facts" continues to tarnish his good reputation by affirming the Circuit Court's findings that he was guilty of moral fraud. As demonstrated by the record, nothing could be further from the truth. Even if it is assumed that Mr. Drews was promoting some nefarious scheme to hide money from his creditors, a meritless assumption at best, **Mr. Lancaster should not be "painted with the same broad brush" as his motives and intentions were above reproach.**

<sup>2</sup> During the merits trial, in the Court of Appeals, and now, Mr. Gordon has continued his personal attack upon Mr. Lancaster's veracity and reputation. (Respondent's Brief on Certiorari, pp.3-12). One particularly galling example is Mr. Gordon's reference to the money Mr. Drews allegedly "parked" with Dorsey Biller. (Respondent's Brief on Certiorari, p.12). There is absolutely **no evidence whatsoever** that Mr. Lancaster had anything to do with or was otherwise involved in these transactions which occurred in 2007, **some 15 years after** Mr. Lancaster purchased the Bainbridge Drive Property. (R.p.14, para. 7; R.p.340, line 22 - R.p.341, line 7; R.p.376, line 24 - R.p.377, line 1; R.pp.662-664). By referencing these transactions Mr.

The answer is and correctly should be a resounding “no”. South Carolina law required Mr. Gordon to affirmatively act on the judgment he obtained against Mr. Drews within ten years of receiving that judgment.<sup>3</sup> Other than in a very limited situation,<sup>4</sup> this Supreme Court has consistently concluded that ten years means ten years and not a day more.<sup>5</sup> Mr. Gordon failed to timely protect his claim, and his suit

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Gordon seeks to “color” this Supreme Court’s view of Mr. Lancaster even though such assertions are unsupported by the record. Again, even if Mr. Drews is wrongly assumed to have developed and executed some nefarious scheme to hide money from his creditors, Mr. Lancaster was not involved in such an alleged scheme. His motives and intentions were above reproach. In that vein, it seems appropriate to reference the well-known legal axiom:

There is an old adage in the law that, if the facts are on your side, you pound on the facts. If the law is on your side, you pound on the law. If neither the facts nor the law is on your side, you pound on the table. It appears there is a lot of table pounding going on here.

Righthaven, LLC v. Democratic Underground, LLC, 2011 WL 1457743, \*2 (D.Nev., filed 14 April 2011). See also Magin v. Solitude Homeowner’s, Inc., 255 P.3d 920, 935 (Wyo. 2011); Titlow v. Burt, 2010 WL 4115410, \*21 (E.D.Mich., filed 19 October 2010), *reversed on other grounds*, 680 F.3d 577 (10<sup>th</sup> Cir. 2012, *rehearing and rehearing en banc denied* (2 August 2012); *cert. granted and reversed on other grounds and remanded*, 571 U.S. 12 (2013); Sims v. State, 131 P.3d 1280 (Table) 2006 WL 995364, \*3 (Kan.App., filed 14 April 2006); People v. Titlow, 2003 WL 22928815, \*6 (Mich.App., filed 11 December 2003); Hatch v. State Farm Fire & Cas. Co., 930 P.2d 382, 398 (Wyo. 1997); Hendricks v. State, 640 S.W.2d 932, 936 (Tex.Crim.App. 1982). A slight variation in the phraseology seems fitting herein. Instead of pounding on the table Mr. Gordon proceeds to “pound on the victim.” Hamilton v. State, 396 P.3d 1009, 1014 (Wyo. 2017). Mr. Lancaster is the victim and has been wrongfully punished for simply trying to do the right thing by assisting Mr. and Mrs. Drews when they were in dire financial need.

<sup>3</sup> See S. C. Code Ann. 15-39-30 (Thomson Reuters West 2012). See also Linda Mc Co. v. Shore, 375 S.C. 432, 653 S.E.2d 279 (Ct.App. 2007), *certiorari granted and affirmed as modified*, 390 S.C. 543, 703 S.E.2d 499 (2010); Carr v. Guerard, 365 S.C. 151, 616 S.E.2d 429 (2005). See also Linda Mc. Co. v. Shore, 390 S.C. 543, 560, 703 S.E.2d 499, 508 (Beatty, J., dissenting); Hardee v. Lynch, 212 S.C. 6, 16-17, 46 S.E.2d 179, 183 (1948).

<sup>4</sup> See Linda Mc. Co. v. Shore, 390 S.C. 543, 554-555, 703 S.E.2d 499, 504-505 (2010).

<sup>5</sup> See generally Linda Mc. Co. v. Shore, 390 S.C. 543, 561-562, 703 S.E.2d 499, 508-509 (Pleicones, J., dissenting) (“Since the judgment cannot be enforced by execution and levy [under S.C. Code Ann. § 15-39-130 (Thomson Reuters West 2005)] after ten years, it is futile to continue court proceedings after that date. Upon the passage of ten years, the judgment is unenforceable as a matter of law, and all process related to it, whether in the courts or in the hands of the sheriff or other officer, must cease.”).

against Mr. Lancaster was barred as a matter of law.<sup>6</sup> This Supreme Court should reverse the Court of Appeals' decision and grant Mr. Lancaster judgment as Mr. Gordon's judgment was invalid and unenforceable.

The record undisputedly shows Mr. Gordon obtained his damages judgment against Mr. Drews on 5 December 2001 (R.p.11, para. 2; R.pp.46-53; R.p.133, para. 9; R.p.726, para. 3; R.pp.1079-1085), and the attorneys' fees award on 15 March 2002. (R.p.11, para. 2; R.pp.41-43; R.pp.1079-1090). The combined judgment amount was enrolled on 18 March 2002.<sup>7</sup> Mr. Gordon sued Mr. Lancaster on 2 November 2010 (R.pp.120-130), and obtained his judgment on 19 August 2013. (R.p.9; R.pp.10-30). By any reasonable temporal calculation, Mr. Gordon's judgments had expired and were, as a matter of law, unenforceable as they were more than ten years old.

In Linda Mc Co. v. Shore, this Supreme Court, in a specifically very limited holding, recognized S.C. Code Ann. § 15-39-30 operated like a statute of limitations when a judgment creditor had initiated supplemental proceedings against the judgment debtor within the ten-year time period and conducted a merits hearing, but the Circuit Court had not issued the levy and execution order until after expiration of the ten-year period.<sup>8</sup> This Supreme Court reasoned that since the judgment creditor was

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

<sup>7</sup> Gordon v. Lancaster, 419 S.C. 48, 63-64, 795 S.E.2d 857, 865 (Thomas, J, dissenting).

<sup>8</sup> See Linda Mc Co. v. Shore, 390 S.C. 543, 554, 703 S.E.2d 499, 504-505. Of note, this Supreme Court "stress[ed] that this [wa]s a narrow holding limited to facts similar to those at issue in this case." Linda Mc Co. v. Shore, 390 S.C. 543, 554, 703 S.E.2d 499, 505 (Emphasis added).

“merely waiting on a court’s order regarding execution and levy, the ten[-]year limitation found in [S.C. Code Ann. §] 15-39-30 [wa]s extended to [the date] when the court finally issues an order.”<sup>9</sup> Moreover, this Supreme Court recognized that “[t]o hold otherwise would put those trying to enforce their judgments at the mercy of the court system to conclude the matter within the ten-year period”<sup>10</sup> and assumedly have the claim completely barred if the court failed to timely issue the final order enforcing the judgment within the precise statutory ten-year period. While Linda Mc Co. had an understandable outcome, it does not resurrect the expired judgment Mr. Gordon was permitted to wrongly enforce against Mr. Lancaster.

Again, unlike Linda Mc Co.’s **very limited factual situation**,<sup>11</sup> the judgment creditor – Mr. Gordon – in this case failed to do all that he could do to prosecute his claim and, in turn, cannot reasonably be characterized as “ ‘**merely waiting** on a court’s order regarding execution and levy.’ ”<sup>12</sup> Mr. Gordon’s judgment against Mr. Drews was enrolled on **18 March 2002**<sup>13</sup> and he sued Mr. Lancaster on **2 November 2010** (R.pp.120-130). While the ten-year time period ended on **18 March 2012**, “the [C]ircuit

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<sup>9</sup> See Linda Mc Co. v. Shore, 390 S.C. 543, 554, 703 S.E.2d 499, 505. See also generally Carr v. Guerard, 365 S.C. 151, 616 S.E.2d 429.

<sup>10</sup> See Linda Mc Co. v. Shore, 390 S.C. 543, 554-555, 703 S.E.2d 499, 505.

<sup>11</sup> Linda Mc Co. v. Shore, 390 S.C. 543, 544, 703 S.E.2d 499, 504-505 (Emphasis added); GrandSouth Bank v. Cleveland Land Co., 2015 WL 5834241, \*1 (Ct.App., filed 7 October 2015) (*per curiam*). See also RRR, Inc. v. Toggas, 98 F.Supp.3d 12, 17 (D.D.C. 2015); Alex Sanders & John S. Nichols, Trial Handbook for South Carolina Lawyers, §§ 36:18, 40:9 (Thomson Reuters West 2016 Supp.).

<sup>12</sup> Gordon v. Lancaster, 419 S.C. 48, 58, 795 S.E.2d 857, 862 (*quoting Linda Mc Co. v. Shore*, 390 S.C. 543, 554-555, 703 S.E.2d 499, 505). See Gordon v. Lancaster, 419 S.C. 48, 63-64, 795 S.E.2d 857, 865 (Thomas, J, dissenting) (judgement procurement and enforcement timing).

<sup>13</sup> Gordon v. Lancaster, 419 S.C. 48, 63-64, 795 S.E.2d 857, 865 (Thomas, J, dissenting).

[C]ourt did not hold the final hearing in this case until **June 2013**, more than one year **after the expiration** of the ten-year period".<sup>14</sup> Mr. Gordon then finally obtained his judgment against Mr. Lancaster on **19 August 2013** (R.p.9; R.pp.10-30), some 17 months after the ten years ended.

Under the Court of Appeals' decision herein, a judgment creditor now has the authority to merely file and serve a judgment enforcement action on the **final day of the ten-year "active energy" period** and still have effective enforcement rights since the judgment creditor had "filed [the] action . . . within the ten-year statutory period of active energy."<sup>15</sup> This "reasoning" significantly **enlarges** the ten-year "active energy" period well beyond the very limited time frame clearly contemplated in Linda Mc Co. Consequently, a judgment creditor could reasonably add several years to the statutory ten-year time frame while waiting for the court to conduct a final merits hearing, as well as to issue a final order.

Unfortunately, this pointless additional delay, over and above that granted in Linda Mc Co., engenders needless uncertainty for "debtors, creditors, and other commercial entities by [dis]allowing all interested parties [the ability] to review the judgment rolls and know with certainty the date upon which a judgment will lose its efficacy."<sup>16</sup> Furthermore, this unwarranted, unjustified, and undeserved extension of the ten-year period goes well beyond the narrow circumstances this Supreme Court

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<sup>14</sup> Gordon v. Lancaster, 419 S.C. 48, 64, 795 S.E.2d 857, 865 (Thomas, J., dissenting) (Emphasis added).

<sup>15</sup> Gordon v. Lancaster, 419 S.C. 48, 64, 795 S.E.2d 857, 862 (citing Linda Mc Co. v. Shore, 390 S.C. 543, 554 n.7, 703 S.E.2d 499, 505, n.7).

<sup>16</sup> Linda Mc Co. v. Shore, 390 S.C. 543, 562, 703 S.E.2d 499, 509 (Pleicones, J., dissenting).

addressed in Linda Mc Co. Moreover, given the admittedly limited nature of Linda Mc Co., the Court of Appeals has unnecessarily and gratuitously expanded that decision's holding well beyond what this Supreme Court seems to have anticipated, contemplated, and/or intended.<sup>17</sup>

Moreover, unlike Linda Mc Co. where the creditor was essentially left to the mercy of the Circuit Court, Mr. Gordon had some degree of control over his own destiny. Even though Mr. Gordon filed his enforcement action within the ten-year time period (R.pp.120-130), there was no evidence Mr. Gordon attempted to timely pursue his claim by seeking a final hearing within the ten-year time period. Mr. Gordon was deemed to know the effect of Linda Mc Co. on his claim,<sup>18</sup> and he could have easily "pushed" the Circuit Court to conduct a timely final hearing.<sup>19</sup> Nevertheless, Mr. Gordon failed to act and "the [C]ircuit [C]ourt did not hold the final hearing until . . . more than one year after the expiration of the ten-year period."<sup>20</sup>

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<sup>17</sup> Mr. Gordon was required to initiate litigation against Mr. Lancaster in a timely manner sufficient to allow the Circuit Court to conduct the final hearing. Under Linda Mc Co., ten years means ten years and the only recognized extension of time beyond the ten-year "active energy" period involves a situation where the final hearing has been held and the judgment creditor is merely awaiting the Circuit Court's issuance of the final order, levy, and execution. That is not what occurred in this case.

<sup>18</sup> S. C. Dept. of Natural Resources v. Blanton, 1999 WL 566315, \*2 (SCALJD, filed 14 July 1999) (quoting Gregory v. Gregory, 292 S.C. 587, 589-590, 358 S.E.2d 144, 146 (Ct.App. 1987)) ("It is a fundamental principle of law that everyone is charged with or deemed to have knowledge of the law. The legal axiom that ignorance of the law is no excuse has long been the law of this nation and state."). See also S.C. Wildlife & Marine Resources Dep't. v. Kunkle, 287 S.C. 177, 336 S.E.2d 468 (1985).

<sup>19</sup> Had Mr. Gordon taken such affirmative action and, in turn, the Circuit Court had actually heard the case during the ten-year period, Linda Mc Co. would, of course, protect Mr. Gordon's enforcement claim beyond expiration of the ten-year time period.

<sup>20</sup> Gordon v. Lancaster, 419 S.C. 48, 64, 795 S.E.2d 857, 865 (Thomas, J., dissenting) (Emphasis added). Mr. Gordon's judgment against Mr. Lancaster was not enrolled for another

Unfortunately, the Court of Appeals rewarded Mr. Gordon by affirming his judgment against Mr. Lancaster notwithstanding the clear evidence Mr. Gordon failed to take “affirmative efforts” to protect his claim. This Supreme Court should not do the same and, in turn, should reverse the Court of Appeals’ decision in all respects.

**B. HARDEE v. LYNCH DOES NOT SUPPORT EXPANDING THE LIMITED HOLDING IN LINDA Mc CO. v. SHORE**

The Court of Appeals relied on Hardee v. Lynch<sup>21</sup>, to justify the expansion of Linda Mc Co.’s holding. This reliance was entirely misplaced and unsustainable. Not only does Hardee v. Lynch not support the Court of Appeals’ decision, Hardee v. Lynch demonstrates Mr. Lancaster’s position is correct and Mr. Gordon’s judgment against Mr. Drews had long expired before the merits trial, not to mention the date of the final judgment against Mr. Lancaster or the date on which that judgment was finally enrolled.

In Hardee, this Supreme Court reversed a finding for a judgment creditor since the action to enforce the 1927 judgment<sup>22</sup> was not initiated before the South Carolina Legislature repealed the old law and adopted provisions determined “to utterly extinguish a judgment after the expiration of ten years from the date of entry.”<sup>23</sup> Importantly, Hardee v. Lynch addressed South Carolina law which existed **prior to 1946**

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two months thereafter (R.p.9; R.pp.10-30) for a total post-expiration period of some 17 months or so.

**21** Hardee v. Lynch, 212 S.C. 6, 46 S.E.2d 179. The Hardee v. Lynch decision does not support the theory that the mere filing of an enforcement action within the ten-year period was sufficient to preserve the “active energy”. In Hardee v. Lynch, the Supreme Court concluded that the “logical result of the 1946 enactment . . . was to utterly extinguish a judgment after the expiration of ten years from the date of entry.” Hardee v. Lynch, 212 S.C. 6, 16-17, 46 S.E.2d 179, 183 (Emphasis added).

**22** The judgment creditor had originally obtained the judgment under the old law which allowed a one-time ten-year renewal of a judgment.

**23** Hardee v. Lynch, 212 S.C. 6, 17, 46 S.E.2d 179, 183.

when, unlike today, the initial ten-year period could legitimately be extended for an additional ten years.<sup>24</sup> Moreover, as now Chief Justice Beatty noted in Linda Mc Co., the “Hardee court **specifically declined** to address the question of what happens when a timely-filed action to enforce a judgment [wa]s not concluded prior to the expiration of the ten-year repose period as it was unnecessary to resolve the issue before it.”<sup>25</sup> Furthermore, now Chief Justice Beatty recognized that this Supreme Court, in Garrison v. Owens, had **already** “squarely confronted the question and concluded that an action to enforce the lien **will not preserve it** beyond the time by statute if such time expires **before the action is tried.**”<sup>26</sup> In Garrison v. Owens, this Supreme Court stated:

A judgment lien is purely statutory, its duration as fixed by the legislature may not be prolonged by the courts and the bringing of an action to enforce the lien will not preserve it beyond the time fixed by the statute, if such time expires before the action is tried.”<sup>27</sup>

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<sup>24</sup> See U.S. Rubber Co. v. McManus, 211 S.C. 342, 345-346, 45 S.E.2d 335, 336. See also Linda Mc Co. v. Shore, 390 S.C. 543, 560, 703 S.E.2d 499, 508 (Beatty, J., dissenting). In fact the Hardee Court specifically acknowledged it was addressing provisions *which had been repealed* and were no longer valid South Carolina law. Hardee v. Lynch, 212 S.C. 6, 16-17, 46 S.E.2d 179, 183 (“Section 1 of Act No. 516 specifically provides that subsection 1 of Section 387 of the Code of Laws of South Carolina 1942, providing for an action upon a judgment or decree within twenty years, be and the same hereby is repealed.”).

<sup>25</sup> Linda Mc Co. v. Shore, 390 S.C. 543, 561, 703 S.E.2d 499, 508 (citing Hardee v. Lynch, 212 S.C. 6, 13, 46 S.E.2d 179, 182) (Beatty, J., dissenting) (Emphasis added).

<sup>26</sup> Linda Mc Co. v. Shore, 390 S.C. 543, 561, 703 S.E.2d 499, 508 (citing Garrison v. Owens, 258 S.C. 442, 446-447, 189 S.E.2d 31, 33 (1972)) (Beatty, J., dissenting) (“A judgment lien is purely statutory, its duration as fixed by the legislature **may not be prolonged** by the courts and the bringing of an action to enforce the lien will not preserve it beyond the time fixed by the statute, if **such time expires before the action is tried.**”). (Emphasis added). See also generally 49 C.J.S., Judgments, § 495 (West 1969); Hughes v. Slater, 214 S.C. 305, 52 S.E.2d 419 (1949); Harvey v. Gibson, 190 S.C. 98, 2 S.E.2d 385 (1939).

<sup>27</sup> Garrison v. Owens, 258 S.C. 442, 446-447, 189 S.E.2d 31, 33 (citing 49 C.J.S., Judgments, § 495). Cf. Hughes v. Slater, 214 S.C. 305, 52 S.E.2d 419 (1949); Harvey v. Gibson, 190 S.C. 98, 2 S.E.2d 385 (1939).

That is precisely what occurred in this case as the Circuit Court's hearing was held more than 12 months after the statutory time period had expired and the judgment against Mr. Lancaster was not entered until some two or so months thereafter.

It is important to note what Linda Mc Co. says, as well as what it does not say. In Linda Mc Co., this Supreme Court extended the ten-year time period only to the extent that it took the trial judge to issue the judgment and execution order. The judgment debtor had apparently prosecuted his claim to the fullest extent possible and " [wa]s merely waiting on a court's order regarding execution and levy." **28** Conversely, in Linda Mc Co., this Supreme Court did not validate a judgment debtor's failure to actively pursue his claim when he could have taken steps to seek a hearing within the ten-year time period.**29** The Linda Mc Co. Court simply sought to protect a judgment debtor when he had done everything possible, including having the matter tried, and was left hanging while the trial court considered the claim and issued a final order. Nevertheless, in situations like herein where the judgment debtor had failed to timely reach the litigation process' "on hold" waiting position, such a judgment debtor should not be entitled to the same protection afforded by Linda Mc Co. In such cases, the judgment debtor must bear the burden of his own prosecutorial failures.

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

**29** Linda Mc Co. v. Shore, 390 S.C. 543, 703 S.E.2d 499.

Furthermore, while this Supreme Court stated that “LaRosa and Garrison [were] overruled[, it was only] to the extent th[ose] [decisions were] inconsistent with [the Linda Mc Co.] opinion.”<sup>30</sup> On the other hand, to the extent Garrison prohibits an extension of time beyond the ten-year termination date when, as here, the judgment creditor’s enforcement action has yet to be tried on the merits, that proposition is not inconsistent with the limited extra time granted by Linda Mc Co. Consequently, to that extent, Garrison and its progeny appear to still be valid South Carolina law and would retain legitimate precedential value.<sup>31</sup>

Furthermore, **Mr. Lancaster is not and never has been the original judgment debtor to Mr. Gordon.** Mr. Drews and others undeniably occupied that position. Mr. Gordon has sought only to “attach” the “downstream” proceeds of monies which Mr. and Mrs. Drews legitimately paid to Mr. Lancaster in exchange for life tenancy in two houses

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<sup>30</sup> Linda Mc Co. v. Shore, 390 S.C. 543, 555 fn.8, 703 S.E.2d 499, 505 fn.8. In LaRosa v. Johnston, the Court of Appeals found the creditor’s judgment on the debt was invalid because the Master-in-Equity filed it seven days after the 10 years expired. See LaRosa v. Johnston, 328 S.C. 293, 493 S.E.2d 100 (Ct.App. 1997). Logically, since the trial court was the actor which delayed the process, LaRosa was clearly inconsistent with Linda Mc Co.’s limited holding. In Garrison, this Supreme Court affirmed dismissal of the 20 August 1960 judgment enforcement action which, although filed before the ten-year period expired, did not have a final order issued until 22 November 1971. See Garrison v. Owens, 258 S.C. 442, 444, 189 S.E.2d 31, 32. Again, like LaRosa, the trial court held up the process by not timely issuing the final order – a holding likewise inconsistent with Linda Mc Co. Interestingly, Garrison is silent as to whether the final hearing was held either before or after the ten-year termination date of 20 August 1970. In any case, like LaRosa and Linda Mc Co., the trial court issued the final order after the ten-year period had ended.

<sup>31</sup> See also Home Port Rentals, Inc. v. Moore, 359 S.C. 230, 597 S.E.2d 810 (Ct.App. 2004), *rehearing denied* (25 June 2004), *certiorari granted* (22 September 2005), 369 S.C. 493, 496, 632 S.E.2d 862, 864 (2006); Commercial Credit Loans, Inc. v. Riddle, 334 S.C. 176, 185, 512 S.E.2d 123, 128 (Ct.App. 1999), *rehearing denied* (27 March 1999); Transouth Financial Corp. v. Cochran, 324 S.C. 290, 296, 478 S.E.2d 63, 66 (Ct.App. 1996). See also generally W.H. Beach, Anno., *Effect of Failure Before Commencing Action to Obtain Leave Under Statute Providing That No Action Shall Be Brought Upon a Judgment Without Leave of Court or Judge*, 160 A.L.R. 605 (1946 and Thomson Reuters West Supp. 2011).

Mr. Lancaster purchased<sup>32</sup> and in the repayment of monies which Mr. Lancaster lent to Mr. and Mrs. Drews when they were in dire financial straits. The fallacy with the Court of Appeals' "conclusion" that Mr. and Mrs. Drews allegedly "parked" monies with Mr. Lancaster in order to hide it from their creditors is that **both** of the real estate transactions and **most** of the monetary loan transactions occurred:

- (a) **after** Mr. and Mrs. Drews had sold their Edgewater Park home in **1992**, had paid off all of their outstanding debts, and most importantly, admittedly<sup>33</sup> **did not have** any then-existing debts or creditors,

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**32** Mr. and Mrs. Drews ultimately lived in the Bainbridge Drive and the Nuffield Road properties for the rest of their lives (15 years for Mr. Drews and almost 18 years for Mrs. Drews), respectively, via a life estate, rent and mortgage free. (R.pp.764-765, para. 5). They were, for all practical purposes, collectively making a single lease payment "up front" for an indeterminate time period (R.p.397, lines 11-15) and, in turn, leaving Mr. Lancaster to pay the property taxes (R.p.378, lines 2-4; R.p.383, lines 8-10) and to bear the risk of interest rate flux, property devaluation, *etc.* Mr. and Mrs. Drews only paid for property insurance and the utilities. (R.p.378, lines 5-8; R.p.383, lines 11-15).

**33** Mr. Gordon's accounting expert witness, Richard T. Livingston, CPA of Dixon Hughes Goodman (R.p.443, line 9 - R.p.447, line 8), testified **he was not aware of any specific creditors** which Mr. and Mrs. Drews were attempting to avoid when they gave Mr. Lancaster the \$100,000.00 to use in purchasing Bainbridge Drive. (R.p.491, lines 9-14). Mr. Livingston's testimony was obviously correct, although completely ignored by the Court of Appeals which did not reference him even once in its decision. Gordon v. Lancaster, 419 S.C. 48, 795 S.E.2d 857. (Mr. Gordon devoted a specific section to Mr. Livingston, but failed to concede that Mr. Livingston could not name any of Mr. and Mrs. Drews' creditors then-existing in 1992.). In fact, Mr. Livingston's testimony was essentially contrary to the Court of Appeals' erroneous conclusion that "there was no documentary evidence the liens had been discharged or the sales proceeds were sufficient to pay off outstanding obligations." Gordon v. Lancaster, 419 S.C. 48, 61, 795 S.E.2d 857, 864. Again, while there may not have been any documents, Messrs. Lancaster's and Livingston's confirming testimony showed the only evidence needed was the simple undisputed fact the property was sold. Clearly, **Mr. and Mrs. Drews could not have sold their Edgewater Park home in 1992 if there still had been liens attached to the property.** See S.C. Code Ann. § 15-35-810 (Thomson Reuters West 2015); Commercial Credit Loans, Inc. v. Riddle, 334 S.C. 176, 181, 512 S.E.2d 123, 125-126; Ducker v. Standard Supply Co., Inc., 280 S.C. 157, 158, 311 S.E.2d 728, 729 (1984). The fact they did so with about \$100,000.00 left over demonstrates Mr. and Mrs. Drews were **debt free** in 1992.

- (b) **long before** Builders Station existed or was even contemplated,**34**
- (c) **long before** Mr. Gordon had a potential claim against Mr. Drews,**35**
- (d) **long before** Mr. Gordon made any claim due to the failed Builders Station investment,**36** and
- (e) **long before** Mr. Gordon obtained any judgment of any type or amount against Mr. Drews.**37**

This Supreme Court should and must reverse the Court of Appeals' decision in all respects as it is legally unsupportable.**38** Moreover, the Court of Appeals' decision impermissibly extends Linda Mc Co. well beyond its very limited boundaries which should only be done, if at all, by this Supreme Court.

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**34** Gordon v. Lancaster, 419 S.C. 48, 51-53, 795 S.E.2d 857, 859-860.

**35** Gordon v. Lancaster, 419 S.C. 48, 53, 795 S.E.2d 857, 860.

**36** Gordon v. Lancaster, 419 S.C. 48, 53-54, 795 S.E.2d 857, 860.

**37** Gordon v. Lancaster, 419 S.C. 48, 53-54, 795 S.E.2d 857, 860.

**38** Mr. Gordon spent a great deal of time and effort setting forth cases from other jurisdictions which he believed "touched" on the principal issue in this case (Respondent's Brief on Certiorari, pp.17-23) which apparently should "influence" this Supreme Court's ultimate decision in this case. Whether the cases cited support some "majority" or "minority" position is unclear and, in any case, have no binding authority on this Supreme Court. Moreover, while mildly "informative" they are of little value as they do not seem to involve the same or similar statutory framework which the South Carolina Legislature has adopted and which this Supreme Court has long enforced vis-à-vis the "active energy" lifetime of judgments. Except with the limited Linda Mc Co. exception, it is well-established by our appellate courts that in South Carolina, as far as the "active energy" of a judgment goes, **ten years is ten years** and not a day more.

**CONCLUSION**

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

Respectfully submitted:

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9 March 2018

NPCHAR1:2387293.1-APL-(SPG) 053211-00001

STATE OF SOUTH CAROLINA  
IN THE  
SUPREME COURT

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

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

Respondent,

v.

Donald W. Lancaster,

Petitioner.

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

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**S.C. SUPREME COURT**

I, Stephen P. Groves, Sr., Esquire, hereby certify that on 9 March 2018, I served one copy of the Reply Brief of the Petitioner on Certiorari submitted by the Petitioner, Donald W. Lancaster, on counsel for the Respondent via the United States Mail, postage pre-paid, and addressed as follows:

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