THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Marvin H. Dukes, III, Master-in-Equity

Civil Action Nos.: 2011-CP-07-128 and 2011-CP-07-129

Appellate Case No.: 2015-002156

First Citizens Bank and Trust Company, Inc., ... Petitioner,

v.

Blue Ox, LLC and J. Chris Lindgren, ... Defendants,

Of Whom J. Chris Lindgren is the..... Respondent.

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATION BY COUNSEL

This matter came before the South Carolina Court of Appeals pursuant to cross notices of appeal. The appeal of J. Chris Lindgren ("Respondent" or "Lindgren") was filed under appellate case number 2015-002159. The appeal of First Citizens Bank and Trust Company, Inc. ("Petitioner" or "First Citizens") was docketed as 2015-002156. The matters were subsequently consolidated for consideration under the number 2015-002156, although two separate sets of briefs were filed. A dispositional decision, adverse to Petitioner, was filed on January 31, 2018 (Opinion Number 5532). Appendix at 0439. Petitioner filed a Petition for Rehearing with the Court of Appeals on February 12, 2018. Appendix at 0449. The Court of Appeals denied the Petition for Rehearing on April 26, 2018. Appendix at 0470. Therefore, the undersigned counsel certifies that a petition for rehearing was filed with and finally ruled on by the Court of Appeals.

Chelsea J. Clark, Esquire
Attorney for Petitioner

May 11, 2018
Columbia, South Carolina

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STATEMENT OF THE CASE

J. Chris Lindgren and Blue Ox, LLC ("Blue Ox") executed confessions of judgment on May 13, 2010 in favor Petitioner (R. 27–34). The Honorable Marvin H. Dukes III, Beaufort County Master-in-Equity, held a Supplemental Proceedings hearing on September 2, 2014. (R. 8). Lindgren was extensively examined as to any assets that may have been subject to execution, including funds in retirement accounts. (R. 97–206). Petitioner moved to execute on voluntary post-judgment retirement contributions to these retirement accounts. (R. 11–12). On June 11, 2015, Judge Dukes entered an Order finding that First Citizens was entitled to execute on Lindgren's voluntary post-judgment contributions to his IRA account; however, Lindgren's voluntary, post-judgment contributions to the 401k were not subject to execution. (R. pp. 13–19). Lindgren filed a Motion to Reconsider and a hearing was held on the motion on July 8, 2015. (R. 41–47, 209–74). First Citizens filed a reply memorandum in opposition to the Motion for Reconsideration on July 20, 2015. (R. p. 48–53). On October 7, 2015, Judge Dukes issued a Form 4 Order denying Lindgren's Motion for Reconsideration in both cases. (R. pp. 20–23). On October 12, 2015, Lindgren filed a Notice of Appeal. First Citizens filed a Notice of Cross Appeal on October 20, 2015. The Court of Appeals held oral arguments on October 3, 2017 and issued its opinion affirming in part and reversing in part on January 31, 2018. First Citizens filed a Petition for Rehearing, which was denied on April 26, 2018. Presently before the Court is First Citizens' Petition for Certiorari.

STATEMENT OF THE FACTS

Lindgren, and his company Blue Ox, owe First Citizens one hundred thirteen thousand seven hundred two dollars and four cents, plus interest. (R. 27, 31). First Citizens has not been able to recoup these funds from Lindgren, even though Lindgren has acknowledged that he owes this money. (*Id.*). Blue Ox has no assets and is not a party to this appeal. (R. 162–63).

Lindgren is an exceptionally sophisticated financial operator who has layered limited liability companies like Russian nesting dolls. (R. 130–32). Lindgren, who has an LLM in tax law, has few personal assets, despite having at least thirty-eight different companies that have held such assets as 10,000 shares in Coastal State Bank and a Maserati. (R. 103, 118, 122, 166). Lindgren does not personally own a car, although his spouse, who is self-employed as a skincare salesperson, owns three or four. (R. 102–05).

Lindgren is a former employee and current sole shareholder and president of Rockmoor, Inc. (R. 122–24). Rockmoor, Inc. exists to collect fees for managing the operations of Lindgren's other companies. (R. 126–27, 145). These other companies include real estate investments and export operations. (R. 127–28). Rockmoor, Inc. receives part of its funds through inner-company transfers under Lindgren's multi-corporation consolidated tax accounting scheme. (R. 187–88). Lindgren receives "self-employment income" from Rockmoor, Inc., although he is not presently on the payroll. (R. 189).

Rockmoor, Inc. administers a 401(k) plan for its employee(s). (R. 275). Rockmoor, Inc. currently has a single administrative and bookkeeping employee. (R. 122–24). Previously, Rockmoor, Inc. also employed Lindgren. (R. 123, 275). During the time that he was employed, Lindgren contends that he regularly contributed to the 401(k) program he sponsored through his company and for which he acted as trustee. (R. 275–76). This account has contained hundreds of

thousands of dollars according to documents submitted by Lindgren to First Citizens. (R. 109). Between the year of judgment, 2010, and the year 2014, Lindgren contributed just under fifty thousand dollars. (R. 276–77).

Lindgren also has two individual retirement accounts (IRAs). (R. 114–116). One account is a traditional IRA that existed prior to judgment. (R. 277). Between the year of judgment, 2010, and the year 2014, Lindgren contributed $18,500 to this account. (R. 276–77). The other account is a Roth IRA that was created post-judgment. (*Id.*). In 2014, Lindgren began contributing to this account with $6,500. The subject of this appeal is the money placed in these three accounts following the confessions of judgment.

QUESTIONS PRESENTED FOR REVIEW

The Court of Appeal's decision in this matter presents the following questions for review by the Supreme Court.

I. **WHETHER LINDGREN'S POST-JUDGMENT CONTRIBUTIONS TO IRA ACCOUNTS ARE SUBJECT TO EXECUTION.**

   a. **Whether the Court of Appeals erred in determining that post-judgment contributions to an IRA account are exempt pursuant to Section 15-41-30.**

   b. **Whether the Court of Appeals erred in determining that Lindgren's post-judgment transfers were neither transfers, nor fraudulent, pursuant to Sections 15-41-30 and 27-23-10.**

II. **WHETHER LINDGREN'S POST-JUDGMENT 401(k) CONTRIBUTIONS ARE SUBJECT TO EXECUTION UNDER SECTION 15-41-30.**

STANDARD OF REVIEW

Writs of certiorari are granted in the discretion of the justices of the Supreme Court. Rule 42(b), SCACR. Reasons for granting a petition for writ of certiorari include where (1) there are novel questions of law, (2) there is a dissent in the decision of the Court of Appeals, (3) the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court, (4) substantial constitutional issues are directly involved, and (5) a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court. *Id.*

The nature of the case before the Court is equitable. *See A Fast Photo Express, Inc. v. First Nat'l Bank of Chi.*, 369 S.C. 80, 84, 630 S.E.2d 285, 287 (Ct. App. 2006) (quoting *Ag-Chem Equip. Co. v. Daggerhart*, 281 S.C. 380, 383, 315 S.E.2d 379, 381 (Ct. App. 1984)). Therefore, in ruling on a Master-in-Equity appeal such as this one, the appellate court may determine the facts "in accordance with its own view of the preponderance of the evidence." *Id.* (citing *Friarsgate, Inc., v. First Fed. Sav. & Loan Ass'n*, 317 S.C. 452, 456, 454 S.E.2d 901, 904 (Ct. App. 1995)).

However, an appellate court is not required to ignore the facts found by the master, who saw and heard the witnesses, and was in a better position to evaluate their credibility. *Snow v. Smith ex rel. Stoudenmire*, 416 S.C. 72, 84, 784 S.E.2d 242, 249 (Ct. App. 2016) (citing *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 105, 531 S.E.2d 287, 291 (2000)). Furthermore, the appellant is not relieved of the burden of convincing the appellate court that the master committed error in its findings. *Id.* (citing *Pinckney v. Warren*, 344 S.C. 382, 387-88, 544 S.E.2d 620, 623 (2001)).

ARGUMENT

Popular financial guru Dave Ramsay has said, "There are no shortcuts when it comes to getting out of debt[.]"[1] Mr. Ramsey is only partially correct—there are no shortcuts to getting out of debt, but a creative and savvy person can develop circuitous methods to avoid paying a valid obligation. This case is about such a person. Lindgren does not dispute that he owes First Citizens more than one hundred thousand dollars. What he does dispute is that First Citizens may execute on his existing funds to satisfy the debt. The funds in question consist of Lindgren's voluntary post-judgment contributions to three types of retirement account, an IRA, a Roth IRA, and a 401(k). Whether First Citizens may execute upon these funds depends upon the Court's interpretation of two laws, the Homestead Exemption statute, Section 15-41-30, and the Statute of Elizabeth, Section 27-23-10.

Based upon a reading the Homestead Exemption statute, the Court of Appeals concluded that Lindgren's post-judgment retirement contributions were wholly exempt from execution. Thus, the central issue in this case is whether placing money in a retirement account bars execution by a judgment creditor, even where there are "several badges of fraud." *See Opinion of the Court of Appeals*, Appendix at 0446. Petitioner argues that the Court of Appeals erred both in its interpretation the Homestead Exemption statute and in its determination that a transfer of funds into a retirement account is not in fact a "transfer" covered by the Statute of Elizabeth, but rather a "conversion" of funds into a protected asset. Additionally, Petitioner disputes the finding of the Court of Appeals that there was no actual intent by Respondent to evade his creditors.

The questions presented by the rulings of the Master-in-Equity and the Court of Appeals in this case are ones that have not been sufficiently addressed in the appellate precedent of this

[1] Dave Says, *Why you shouldn't cash out* (Nov. 26, 2012), https://www.daveramsey.com/davesays/dave_says_2012-11-26/.

state. Indeed, a Shephard's report on Section 15-40-30 reveals only four published South Carolina cases prior to this one.[2] None of these cases deal with the particular exemption at bar, nor do they address the application of the Statute of Elizabeth in an exemption case. Therefore, this case presents a novel question for review by the Supreme Court.

Additionally, Petitioner contends that portions of the Court of Appeal's ruling conflict with existing Supreme Court precedent. The Court of Appeals ruled that a depositor of funds into a retirement account converts the funds into a protected asset, but does not transfer, gift, grant, or otherwise convey ownership of the funds to anyone else. This holding, which forms a majority of the basis for the Court of Appeal's ruling, is in direct contradiction to prior Supreme Court precedent that was cited by the Court of Appeals in 1995. *See Johnson v. Serv. Mgmt.*, 319 S.C. 165, 168, 459 S.E.2d 900, 902 (Ct. App. 1995) (citing *McManus v. Bank of Greenwood*, 171 S.C. 84, 171 S.E. 473 (1933) (stating that "the funds on deposit [with a bank] thus are *no longer the personal property of the depositor*; instead, the depositor has a chose in action against the bank for recovery of the deposit" (emphasis added)) and 30 Am. Jur. 2d *Executions & Enforcement of Judgments* § 651 (1994)). This contradiction creates a question of law that should be answered by this Court.

For these reasons and those set forth below, Petitioner respectfully asks the Supreme Court to grant a writ of certiorari in this matter.

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[2] *Am. Serv. Corp. v. Hickle*, 312 S.C. 520, 435 S.E.2d 870 (1993) (addressing equal protection of residents and non-residents); *Cerny v. Salter*, 311 S.C. 430, 429 S.E.2d 809 (1993) (addressing equal protection and due process); *Holden v. Cribb*, 349 S.C. 132, 561 S.E.2d 634 (Ct. App. 2002) (reaching the conclusion that an incarcerated person may still be a resident for purposes of the homestead exemption statute); and *Scholtec v. Estate of Reeves*, 327 S.C. 551, 490 S.E.2d 603 (Ct. App. 1997) (addressing whether a decedent's dependents may benefit from an applicable exemption related to payments for certain tort claims).

I. WHETHER LINDGREN'S POST-JUDGMENT CONTRIBUTIONS TO IRA ACCOUNTS ARE SUBJECT TO EXECUTION.

In this case, the Master-in-Equity ruled that Lindgren's post-judgment contributions to his IRA and Roth IRA accounts were subject to execution. The Court of Appeals reversed the ruling of the Master-in-Equity based on an interpretation of the law that appears to foreclose execution on retirement funds under all but the most improbable of circumstances. The Court of Appeals reached this decision based on an analysis of the homestead exemption statute. Two subsections address retirement accounts. In relevant part, the statute provides:

> (A) The following real and personal property of a debtor domiciled in this State is exempt from attachment, levy, and sale under any mesne or final process issued by a court or bankruptcy proceeding:
>
> ***
>
> (13) **The debtor's right to receive individual retirement accounts** as described in Sections 408(a) and 408A of the Internal Revenue Code, individual retirement annuities as described in Section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in Section 408(c) of the Internal Revenue Code. **A claimed exemption may be reduced or eliminated by the amount of a fraudulent conveyance into the individual retirement account or other plan.** For purposes of this item, "Internal Revenue Code" has the meaning provided in Section 12-6-40(A). The interest of an individual under a retirement plan shall be exempt from creditor process to the same extent permitted in Section 522(d) under federal bankruptcy law and is an exception to Section 15-41-35. The exemption provided by this section shall be available whether such individual has an interest in the retirement plan as a participant, beneficiary, contingent annuitant, alternate payee, or otherwise.
>
> (14) The debtor's interest in a pension plan qualified under the Employee Retirement Income Security Act of 1974, as amended.

S.C. Code Ann. § 15-41-30(A)(13)–(14) (Supp. 2017) (emphasis added).

Petitioner contends that the ruling of the Court of Appeals failed to consider several aspects of the quoted law and reached a conclusion contrary to legislative intent. There are two primary questions raised by the court's opinion. First, does the Homestead Exemption statute protect retirement contributions from execution almost without qualification? Second, can an endogenous

conveyance of funds into a retirement account, made with the intent to avoid a judgment creditor, be subject to execution?

a. Whether the Court of Appeals erred in determining that post-judgment contributions to an IRA account are exempt pursuant to Section 15-41-30.

The Homestead Exemption statute has a well-established purpose: to protect certain property of a debtor from execution and thereby prevent the debtor from becoming a ward of the State. *See Holden v. Cribb*, 349 S.C. at 140, 561 S.E.2d at 639 (citations omitted). Interests protected include those in a home or car. *See* S.C. Code Ann. § 15-41-30(A)(1)–(2). One of these interests is the "debtor's right to receive individual retirement accounts . . . ." *Id.* at § 15-41-30(A)(13). Although the subsection concerning this exemption is lengthy and contains many details, the Court of Appeals took a sweeping approach to the statute, ignoring key phrases and seemingly protecting all retirement accounts from execution under largely any circumstance.[3]

Initially, Petitioner asserts that the Court of Appeals entirely failed to address the meaning of the term "right to receive" in the first sentence of Subsection (13).[4] This language, on its face, does not encompass the right to continue contributing large sums of money to retirement accounts after a debtor has confessed to a debt. The plain language of the statute suggests, rather, that a judgment creditor cannot execute on funds *received* from a retirement account or plan.

The plain-language definition of "receive" is "to come into possession of." *Receive*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/receive (last visited Feb. 7, 2018). This is consistent with the legal concept of accounts receivable. Black's Law Dictionary variously defines "receivable" as "awaiting receipt of payment," "subject to call for payment," or

[3] Petitioner acknowledges that the Court of Appeals opinion includes a token discussion of "actual intent" that would allow for execution. However, Petitioner was and is perplexed as to what might demonstrate actual intent, where "several badges of fraud" did not suffice.

[4] For preservation purposes, Petitioner notes that this issue was raised both in its briefs and in its Petition for Rehearing. Although the Court of Appeals recited this portion of the statute, it made no comment thereupon.

"an amount owed." BLACK'S LAW DICTIONARY 1383 (9th ed. 2009). The plain language meaning of "right to receive" does not encompass a right to *contribute* post-judgment. It encompasses payments a debtor may *receive*.[5]

Under South Carolina principles of statutory construction, the cardinal rule is to ascertain and effectuate the intent of the legislature. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (citing *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993)). This means that "it is not the court's place to change the meaning of a clear and unambiguous statute." *Id.* (citing *In re Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998)). Petitioner avers that the Court of Appeals imposed a new meaning upon Subsection (13) by failing to construe the phrase "right to receive." This interpretation by omission is novel and creates a question of law that should be resolved by the Supreme Court—what does the "right to receive" mean?

First Citizens has not contended, nor does it contend now, that funds paid into a retirement account or program prior to judgment are subject to execution. Further, First Citizens does not contend that funds received from retirement accounts or plan after judgment are subject to execution. Rather, grounded in the plain language of the statute, First Citizens contends that

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[5] Although the plain language of the statute is all that is necessary to understand the intent of the legislature, Petitioner's argument is supported by comparison to the Georgia exemption statute, which protects the debtor's "right to receive" a "payment from an individual retirement account within the meaning of Title 26 U.S.C. Section 408 to the extent reasonably necessary for the support of the debtor and any dependent of the debtor . . . ." O.C.G.A. § 44-13-100(a)(2)(F). Clearly, a "right to receive" encompasses payment and not contribution. This is consistent with the public policy supporting the Homestead Exemption statute: prevention of dependency on the state. A judgment creditor cannot execute upon retirement *payments* intended for support of the debtor.
Petitioner notes that its argument is also supported by precedent in bankruptcy cases where the Homestead Exemption statute is applied. *See In re Vance*, No. 15-04743-HB, 2015 Bankr. LEXIS 4267, at *11 (Bankr. D.S.C. Dec. 17, 2015) (citation omitted) (stating that it is a basic principle of bankruptcy law that "exemptions are determined as of the date that a bankruptcy petition is filed"); *see also Johnson v. GMAC*, 165 B.R. 524, 528 (S.D. Ga. 1994) ("The date on which the bankruptcy petition is filed and the order for relief is entered is the watershed date of a bankruptcy proceeding. As of this date, creditors' rights are fixed (as much as possible), the bankruptcy estate is created, and the value of the debtor's exemptions is determined.").

voluntary post-judgment contributions to accounts are subject to execution, especially when, as in this case, those contributions carry with them indicia of fraud.[6]

b. Whether the Court of Appeals erred in determining that Lindgren's post-judgment transfers were neither transfers, nor fraudulent, pursuant to Sections 15-41-30 and 27-23-10.

Both the Homestead Exemption statute and the Statute of Elizabeth address fraud. The Court of Appeals concluded that the latter does not apply, while the former requires proof of actual intent to defraud creditors. The Court of Appeals based its ruling, in large part, upon the premise that a transfer of funds into a retirement account is not a transfer of ownership of the funds. This conclusion was without a citation to law. *See* Appendix at 0444. Additionally, this conclusion failed to consider established Supreme Court precedent which states that ownership of bank-deposited funds does transfer ownership. *See Johnson,* 319 S.C. at 168, 459 S.E.2d at 902 (citing *McManus v. Bank of Greenwood*, 171 S.C. 84, 171 S.E. 473 (1933) (stating that "the funds on deposit [with a bank] thus are *no longer the personal property of the depositor*; instead, the depositor has a chose in action against the bank for recovery of the deposit" (emphasis added)) and 30 Am. Jur. 2d *Executions & Enforcement of Judgments* § 651 (1994)). Indeed, this transfer of custody and ownership into the hands of a third party is the reason that deposited funds may not be executed upon by a Sheriff, but must rather be obtained through supplemental proceedings. *See generally Wannamaker v. Bryant*, 165 S.C. 107, 162 S.E. 779 (1932); *Palmetto Bank & Tr. Co. v.*

[6] In its opinion, the Court of Appeals stated that homestead exemptions should be liberally construed in favor of the debtor. *See* Appendix 0444–0445. Petitioner notes that the principles of liberal or strict construction cannot and do not change the meaning of the plain language of a statute. *See CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 75, 716 S.E.2d 877, 881 (2011) (citation and internal punctuation omitted) (discussing strict construction and noting that it is "only when the literal application of the statute produces an absurd result will we consider a different meaning").

McCown-Clark Co., 143 S.C. 98, 141 S.E. 155 (1928); *Deer Island Lumber Co. v. Va.-Carolina Chem. Co.*, 111 S.C. 299, 97 S.E. 833 (1919).[7]

Petitioner argues that this erroneous legal conclusion, made without citation to supporting authority, contradicts a long line of South Carolina Supreme Court cases based upon the fundamental concept that funds in the hands of a bank are no longer in the hands of a judgment debtor, but instead must be reached through an ownership determination during supplemental proceedings. If deposited funds are no longer in the hands of the judgment debtor, they have been transferred. If the funds have been transferred, then the Statute of Elizabeth applies.

The Statute of Elizabeth governs every "gift, grant, alienation, bargain, transfer, and conveyance of lands . . . which may be . . . made to or for any intent or purpose to delay, hinder, or defraud creditors . . . ." S.C. Code Ann. § 27-23-10(A). Subsection (B) of the Statute of Elizabeth sets forth badges of fraud, any two of which create a rebuttable presumption of fraud. *See* S.C. Code Ann. § 27-23-10(B). The Court of Appeals acknowledged that several badges of fraud are present in this case, but declined to apply the Statute of Elizabeth on the grounds that no gift, grant, alienation, bargain, or transfer was made or had. As stated, this conclusion contradicts existing precedent. Furthermore, this conclusion contradicts the language of the Homestead Exemption statute itself.

The exemption statute provides, "A claimed exemption may be reduced or eliminated by the amount of a *fraudulent conveyance* into the individual retirement account or other plan." S.C. Code Ann. § 15-41-30(A)(13) (emphasis added). Clearly, the Homestead Exemption statute contemplates the potential for a fraudulent deposit into a retirement account. However, rather than applying a Statute of Elizabeth analysis to the question of whether a conveyance is indeed

[7] Collectively, these cases form a line of precedent requiring supplemental proceedings to determine the ownership of funds in the hands of third parties, such as a bank. *See also* S.C. Code Ann. § 15-39-410.

fraudulent, the Court of Appeals read into this language an actual intent standard. Presumably, this standard places a higher burden on the judgment creditor to prove a fraudulent conveyance than that required to create a rebuttable presumption under a Statute of Elizabeth analysis. The imposition of this higher standard is based upon the Court of Appeal's conclusion that a fraudulent conveyance of funds is not a fraudulent transfer of funds. In the opinion of Petitioner, this reasoning ignores the plain language rule and tortures the phrasing of the statute. *See Hall v. United Rentals, Inc.*, 371 S.C. 69, 81, 636 S.E.2d 876, 883 (Ct. App. 2006) (quoting *Gattis v. Murrells Inlet VFW # 10420*, 353 S.C. 100, 113, 576 S.E.2d 191, 198 (Ct. App. 2003) ("'the court must give the words their plain and ordinary meaning without resorting to a tortured construction which limits or expands the statute's operation'"). Furthermore, this reading of the statute goes against longstanding cannons of construction related to the Legislature's knowledge of existing law and its interpretation. *See e.g.*, *State v. Bridges*, 329 S.C. 11, 14, 495 S.E.2d 196, 197–98 (1997) (citing *Caughman v. Columbia YMCA*, 212 S.C. 337, 344; 47 S.E.2d 788, 791 (1948) and *Coakley v. Tidewater Constr. Corp.*, 194 S.C. 284, 288, 9 S.E.2d 724, 726 (1940)) ("The General Assembly is presumed to be aware of the common law, and where a statute uses a term that has a well-recognized meaning in the law, the presumption is that the General Assembly intended to use the term in that sense.").

To create so great a distinction between a fraudulent conveyance and a fraudulent transfer is to disregard hundreds of years of legal history and to disregard the common usage of these interchangeable phrases. For instance, a 1985 journal article begins, "In 1571 Parliament passed a statute making illegal and void any transfer made for the purpose of hindering, delaying, or defrauding creditors . . . [t]his law, commonly know as the Statute of 13 Elizabeth, was intend to curb . . . wide-spread abuse." Douglas G. Baird & Thomas H. Jackson, *Fraudulent Conveyance*

Law and Its Proper Domain, 38 Vand. L. Rev. 829, 829 (1985). This language concerning fraudulent transfers falls directly below the title, "Fraudulent Conveyance Law and Its Proper Domain." Another article, published in 1920, discusses the newly drafted Uniform Fraudulent Conveyances Act and how its authors took upon themselves the task of defining "fraudulent transfers" in that act. Charles S. Ascher & James M. Wolf, *Current Legislation: The Uniform Fraudulent Conveyances Act*, 20 Colum. L. Rev. 339, 339 (1920). The two terms are so interchangeable that the Wikipedia article on "Fraudulent conveyance" begins, "A fraudulent conveyance, or fraudulent transfer, is an attempt to avoid debt by transferring money . . . ." *Fraudulent conveyance*, Wikipedia, https://en.wikipedia.org/wiki/Fraudulent_conveyance (last visited May 8, 2018). There is no question that the Court of Appeal's strained interpretation of the Homestead Exemption statute contradicts not only centuries of legal history, but also defies the unmistakable plain meaning of the words of the statute.

The necessary conclusion is clear: a debtor's transfer of funds into a retirement account may be fraudulent, and fraudulent conveyances are analyzed under the Statute of Elizabeth. To arrive at any other conclusion is to waste years of accumulated precedent in favor of a new and inchoate standard. Because the Court of Appeal's opinion disregards existing precedent and hundreds of years of legal tradition, the Supreme Court should grant Petitioner's request for a writ of certiorari and clarify the interpretation of the two statutes at issue in this matter.

II. WHETHER LINDGREN'S POST-JUDGMENT 401(k) CONTRIBUTIONS ARE SUBJECT TO EXECUTION UNDER SECTION 15-41-30.

The primary portion of the Homestead Exemption statute construed by the lower courts is Subsection (13), which addresses retirement account like Respondent's IRAs. However, this case also concerns Subsection (14), which covers plans like Respondent's 401(k). The language of Subsection (14) is relatively simple when compared to Subsection (13). Subsection (14) exempts

[t]he debtor's interest in a pension plan qualified under the Employee Retirement Income Security Act of 1974, as amended." S.C. Code Ann. § 15-41-30(A)(14). However, Petitioner argues that Subsections (13) and (14) should be read together. Specifically, subsection (13) provides in part that a "claimed exemption may be reduced or eliminated by the amount of a fraudulent conveyance into the individual retirement account *or other plan*." *Id.* at § 15-41-30(A)(13).

The Court of Appeals held that the funds in a 401(k) account are not subject to execution. This holding disregards the phrase in the subsection directly above that addresses fraudulent conveyances to an IRA or "other plan." To read this sentence as applying only to the IRAs covered in subsection (13) is to not give meaning to the words "other plan." The rules of statutory construction state that "statutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result." *Beaufort Cty. v. S.C. State Election Comm'n*, 395 S.C. 366, 371, 718 S.E.2d 432, 435 (2011). It would be very odd if the Legislature intended that creditors could execute upon fraudulent conveyances to an IRA, but not a 401(k). To give effect to the intent of the legislature, this sentence should be read as applying to all retirement plans, including those covered by subsection (14), as the plain language dictates.

CONCLUSION

For all of the above reasons, Petitioner respectfully requests that the Court grant its Petition for Writ of Certiorari. This case concerns novel questions of law, as yet unaddressed by this Court. Perhaps the reason for this lack of specific precedent is the existence of many centuries of legal tradition relating to the execution of funds and assets fraudulently transferred or conveyed. To provide clear guidance on the application of ancient law to the modern creature that is the retirement account, the Court should grant a writ of certiorari in this matter. Left untested, the decision of the lower court has the potential to let judgment debtors more successfully evade their

rightful obligation to pay their debt. The respondent in this case has prepared throughout his entire professional life for the threat of litigation. He has routinely kept his entire estate in shielded companies or accounts, all of which were controlled by himself. He has intentionally and with intent to defraud placed the only assets he personally owns into accounts his creditors cannot presently reach through execution. By virtue of the ruling of the Court of Appeals, Respondent is perpetuating abuses of the financial system recognized by our legal forebears more than four centuries ago. For this reason, Petitioner asks the Supreme Court to take up this matter and provide conclusive authority and instruction on the issues presented in this case.

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APPEAL FROM BEAUFORT COUNTY
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The Honorable Marvin H. Dukes, III, Master-in-Equity

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PROOF OF SERVICE

I, Katie Gjennestad, with the law firm of Bruner, Powell, Wall & Mullins, LLC, Attorneys for the Petitioner, do hereby certify that on this 11th day of May, 2018, I served the **Petition for Writ of Certiorari** upon counsel for the Respondent by depositing a copy of same in the U.S. Mail, first class, postage prepaid, addressed as follows:

VIA U.S. Mail
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May 11, 2018
Columbia, SC

Katie Gjennestad
Katie Gjennestad