THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM YORK COUNTY

COURT OF COMMON PLEAS

S. Jackson Kimball, III, Master-in-Equity
and Special Circuit Court Judge

Appellate Case No. 2018-000411

Suzette LeFebvre.....Appellant

vs.

Blanco GmbH+CO.KG.....Respondent

INITIAL BRIEF OF RESPONDENT

Robert A. Bernstein, Esquire (SC Bar No. 0677)
BERNSTEIN & BERNSTEIN, P.A.
5418-B Rivers Avenue
North Charleston, SC 29406-6129
(843) 529-1111
(843) 529-0035
rbernstein@bernsteinpa.com
Attorneys for Respondent

October 24, 2018

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

STATEMENT OF ISSUES ON APPEAL

I. APPELLANT HAS ABANDONED THE RIGHT TO CONTEST THE ORDER DENYING RECUSAL BY FAILING TO APPEAL THAT ORDER.

II. THE LOWER COURT DID NOT ERR IN FAILING TO RECUSE ITSELF.

III. THE APPELLANT'S APPEAL IS PRECLUDED BY THE TWO ISSUE RULE.

IV. THE TRIAL COURT PROPERLY GRANTED RESPONDENT'S MOTION FOR SUMMARY JUDGMENT ON THE BASIS OF *RES JUDICATA*.

V. THE RESPONDENT WAS ENTITLED TO SUMMARY JUDGMENT DUE TO THE APPELLANT'S FAILURE TO FILE A *LIS PENDENS* PRIOR TO THE ENTRY OF THE RESPONDENT'S JUDGMENT LIEN.

STATEMENT OF THE CASE

The present action was instituted by the Plaintiff-Appellant on April 18, 2017, by the filing of a Summons and Complaint seeking a Declaratory Judgment, or Partition. Service was effected on July 17, 2017. The Respondent filed its Answer on August 17, 2017. On November 6, 2017, the Respondent filed its Motion for Summary Judgment. On January 10, 2018, the Plaintiff-Appellant filed a Motion for Disqualification of the presiding judge or, in the alternative, for a stay. On January 16, 2018, the parties filed a Stipulation of Facts.

On January 18, 2018, a hearing on pending motions was conducted by the Honorable S. Jackson Kimball. At the hearing, Judge Kimball denied the Plaintiff-Appellant's Motion for Disqualification or for a Stay, and granted the Motion for Summary Judgment, on the grounds that (I) Plaintiff's Complaint was barred by the doctrine of *res judicata*, and (ii) Respondent was entitled to the grant of summary judgment based upon the stipulated facts submitted to the Court. On February 5, 2018[1], Judge Kimball entered a written Order denying the Motion for Judicial Disqualification or a Stay. On February 7, 2018[2], Judge Kimball entered an Order granting the Respondent's Motion for Summary Judgment. The Appellant filed the present Notice of Appeal with this Court on March 8, 2018.

---

[1]The Order denying the Motion to Disqualify was signed on February 2, 2018, and was filed with the Clerk of Court on February 5, 2018.

[2]The Order granting Summary Judgment was signed on February 6, 2018, and was filed with the Clerk of Court on February 7, 2018.

STATEMENT OF FACTS

Plaintiff-Appellant Suzette LeFebvre (hereinafter "Appellant") was formerly in a relationship with Vito Antonio Laera[3] (hereinafter "Laera"). On May 23, 2007, during the course of the couple's cohabitation, Laera was granted fee simple title to property located at 419 York Southern Road, in Fort Mill, South Carolina (hereinafter the "Property")(Stipulation of Fact No. 1, Page 1).

A. Prior Litigation

On January 21, 2014, Respondent Blanco GmbH+CO.KG (hereinafter "Blanco" or "Respondent") was granted a final judgment against Laera by the United States District Court for the Southern District of Florida, in the amount of $834,634.31 (hereinafter the "Blanco Judgment")(Stipulation of Fact No. 4, Page 1). On March 25, 2014, Appellant Lefebvre filed a Complaint against Laera in the York County Family Court seeking a divorce (Stipulation of Fact No. 3, Page 1); no *lis pendens* was filed in that action or with the York County Clerk of Court at that time or at any time thereafter (Stipulation of Fact No. 6, Page 2). On October 3, 2014, the Blanco Judgment was filed with the York County Clerk of Court (Stipulation of Fact No. 4, Page 1). Appellant Lefebvre and Laera entered into an agreement regarding the divorce, and on October 31, 2014, the agreement was adopted by and made a Consent Order of the York County Family Court(Stipulation of Fact No. 5, Page 2). Under the terms of the Consent Order, Laera was directed to transfer his interest in the Property to Appellant Lefebvre. On January 7, 2015, Laera transferred a one-half interest in the Property to Appellant (Stipulation of Fact No. 7, Page 2). On May 16,

[3]Although the Appellant asserts as a fact that she was married to Laera, the issue of the validity of the "marriage" had been the topic of extensive litigation in the United States District Court for the District of South Carolina, Rock Hill Division; the validity of the marriage is not relevant to the issues presented upon this appeal.

2016, Laera transferred his remaining half interest in the Property to the Appellant, as Trustee of the Suzette Lefebvre Trust N/A (Stipulation of Fact No. 8, Page 2).

On August 30, 2016, Appellant signed a contract for the sale of the Property for $1.96 million, with a closing date set for December 15, 2016. After the existence of the judgment was disclosed in a title search, the purchaser brought an action seeking specific performance of the sale contract, requiring Appellant to convey the Property free and clear of all liens (Complaint, Triple M Partners, LP v. Suzette LeFebvre, Case No. 2016-CP-46-0338). Appellant was served with the Summons and Complaint, but did not file an Answer. Respondent Blanco made a motion to intervene in that action, which was granted by the Court. Respondent Blanco thereafter moved to have the proceeds from the sale of the Property applied towards payment of the Blanco Judgment lien[4] (Motion for Disbursement of Funds).

On February 23, 2017, Judge Kimball entered an Order requiring Appellant to execute such documents as were necessary to convey the Property free and clear of liens to the purchaser, and directed that the funds from the sale be used to pay the first mortgage, with excess funds to be deposited with the Clerk of Court for York County until further Order of the Court (Default Judgment Order). The closing on the Property was rescheduled for the week of March 13, 2017. Respondent Blanco refused to sign a document releasing the Blanco Judgment lien against the Property unless the Appellant also signed a document agreeing that the Blanco Judgment lien would thereafter attach in the same order of priority to the proceeds from the sale of the Property. Appellant

[4]It is undisputed by the parties that there was a valid prior mortgage against the Property in the approximate amount of $1.1 million, leaving the remaining proceeds after payment of the mortgage at issue between the current parties.

refused to agree to these terms.

Respondent Blanco thereafter filed a Motion with the Court for an Order modifying the Default Judgment Order to provide that the Blanco Judgment lien would attach to the sale proceeds in the same priority that it existed against the Property, and moved for an expedited hearing (Motion for Modification of Default Judgment Order). After being given notice of the hearing to be conducted on March 22, 2017, Appellant e-mailed the Court on March 21, 2017 and indicated that she did not intend to appear at the hearing, refused to agree to the Blanco Judgment lien attaching to the sale proceeds, and demanded that the sale proceeds be distributed to her (Supplemental Order of Default Judgment). The court conducted a hearing on March 22, 2017 and ruled that Appellant had failed to comply with the prior Default Judgment Order requiring the Appellant to execute such documents as were necessary to convey the Property free and clear of liens. The Court entered an Order transferring the Property free and clear of liens, ruled that the Blanco Judgment lien held a priority interest to the net proceeds, and ruled that the net proceeds shall be paid to Respondent Blanco (Supplemental Order of Default Judgment). The closing took place and the proceeds in excess of the first mortgage were distributed to Respondent Blanco on April 5, 2017.

On April 7, 2017, Counsel for the Appellant[5] filed a Notice of Appearance in the specific performance litigation, and filed a Motion to Alter or Amend the Court's Order therein (Motion to Amend or Alter). After a hearing was held on the Appellant's Motion, the Court denied the Motion to Alter or Amend. On April 26, 2017, the Court confirmed its oral denial of the Motion to Alter or Amend (Order, Rule 59(e) Motion). Respondent thereafter filed a Notice of Appeal of that Order,

[5]Counsel for the Appellant in the present appeal did not represent Ms. LeFebvre in the prior litigation.

which is pending before this Court of Appeals, bearing Case No. 2017-001254 (Notice of Appeal).

B. Current Litigation

On April 18, 2017, after the lower court had ordered the distribution of the proceeds held by it, after the actual disbursement of those proceeds and after the court had conducted a hearing and orally denied the Appellant's Motion to Alter or Amend, the Appellant filed the present action (Complaint). Although the Appellant termed the action as a "partition" action, no real estate was at issue and the proceeds had already been distributed by the Court; the Appellant sought a declaration that she was entitled to all net sale proceeds after payment of the first mortgage. The Respondent filed its Answer denying the requested relief (Answer).

The Respondent moved for Summary Judgment on two grounds. The Respondent first asserted that the new action was barred by the doctrine of *res judicata*, arguing that the facts of this case were determined adversely to the Appellant in the prior litigation (Motion for Summary Judgment). The Motion for Summary Judgment also contended that the Respondent's Blanco Judgment lien has priority over any claim Appellant may have as a matter of law, for the reason that the Blanco Judgment was filed prior to Laera's transfer of the title to the Property to the Appellant, and that the Appellant's claimed marital equitable interest was subordinate to the Blanco Judgment lien due to the failure of Appellant to file a *lis pendens* at any time prior to the registration of the Blanco Judgment. A hearing was scheduled for January 18, 2018. On January 10, 2018, the Appellant filed a Motion seeking to have the Court disqualify itself from hearing the matter, on the basis that it had heard and ruled upon the prior litigation, and the prior ruling adverse to the Appellant rendered the presiding judge unable to render an unbiased ruling in the present litigation

(Motion to Disqualify). The Court conducted hearings on both pending motions, and rendered a ruling denying the Motion for Disqualification (Order denying Motion to Disqualify), and granting Respondent's Motion for Summary Judgment on both grounds asserted (Order Granting Summary Judgment). The Appellant filed a Notice of Appeal from the Court's Summary Judgment Order, but has not filed an appeal from the Order denying the Motion for Disqualification (Notice of Appeal).

For the ease of this Court's reference, a time line of the relevant dates is provided:

May 23, 2007	-	Property in York County conveyed to Vito Antonio Laera
June 24, 2014	-	Judgment rendered in favor of Blanco GmbH+CO. KG against Vito Antonio Laera
March 26, 2014	-	Divorce action filed by Suzette LeFebvre against Vito Antonio Laera
October 3, 2014	-	Foreign Judgment against Vito Antonio Laera filed in York County
October 31, 2014	-	Order of Divorce entered in York County Family Court
January 15, 2015	-	Deed of one-half interest in York County Property from Vito Antonio Laera to Suzette LeFebvre
May 16, 2016	-	Deed of remaining one-half interest in York County Property to Suzette LeFebvre Trust

ARGUMENT

I. APPELLANT HAS ABANDONED THE RIGHT TO CONTEST THE ORDER DENYING RECUSAL BY FAILING TO APPEAL THAT ORDER.

In its first assignment of error, the Appellant phrased the issue whether the lower court committed error in failing to recuse itself. The lower court, however, issued separate orders dealing with each pending motion; one dated February 5, 2018 denying the Motion to Disqualify, and one dated February 6, 2018 granting the Motion for Summary Judgment. The Appellant's Notice of Appeal, filed with this Court on March 8, 2018, states that the Appellant gave notice of "appeal of the February 6, 2018 Order of Special Circuit Court Judge S. Jackson Kimball . . . .;" a copy of the Order granting Summary Judgment was attached to the Notice of Appeal. No reference was made of the February 5, 2018 Order denying the Motion to Disqualify or Stay, nor was a copy of that Order attached to the Notice of Appeal.

Rule 203, SCRAP, provides that to appeal an order of the Court, "The notice filed with the appellate court shall be accompanied by . . . (ii) A copy of the order(s) and judgment(s) to be challenged on appeal if they have been reduced to writing." In the present case, the Appellant did not appeal the Order denying the Motion to Disqualify, and did not attach a copy thereof to her Notice of Appeal; she cannot now argue that the lower Court erred in denying the Motion.

> If the Supreme Court of South Carolina's review of the record establishes that an issue is not preserved, then the Court should not reach it. This is so regardless of the "life-blood litigant or criminal defendant" before the Court. However, this is not a "gotcha" game aimed at embarrassing attorneys or harming litigants, but rather is an adherence to settled principles that serve an important function. While it may be good practice for the Court to reach the merits of an issue when error preservation is doubtful, the Court should follow its longstanding precedent and resolve the issue on preservation grounds when it clearly is unpreserved.

Atl. Coast Builders & Contrs., LLC v. Lewis, 730 S.E.2d 282, 283, 398 S.C. 323, 325 (2012). The Appellant has not properly appealed the lower Court Order denying the Motion to Disqualify, has failed to preserve the issue for appeal, and therefore must be deemed to have abandoned that claim before this Court.

II. THE LOWER COURT DID NOT ERR IN FAILING TO RECUSE ITSELF.

Even if it could be argued that the Appellant somehow preserved the recusal issue for consideration by this Court, the Court properly denied the Motion to Disqualify. The Appellant asserts that the Court's adverse ruling in the prior litigation indicated a "predisposition" to rule against her in the present litigation, constituting partiality and requiring recusal. The argument of the Appellant, carried to its illogical conclusion, would quickly result in the required recusal of every judge who had ruled adverse to a litigant on an issue of law in a prior case. The ruling of the Court on an issue of law or fact in a prior case without more does not and cannot indicate a partiality to one litigant over another; it merely indicates that the Court has previously performed its duty to apply the law to the facts.

As the Appellant quoted in her brief:

> It is not enough for the party seeking disqualification to simply allege bias or prejudice. The party must show some evidence of that bias or prejudice. The alleged bias or prejudice must stem from an extra-judicial source and result in a decision based on information other than what the judge learned from his or her participation in the case as a judge. If there is no evidence of judicial bias or prejudice, a judge's failure to disqualify himself will not be reversed on appeal.

State v. Jackson, 353 S.C. 625, 627; 578 S.E. 2d 744, 745 (Ct.App. 2003).

In the present action, the lower court was called upon to determine the application of *res judicata*, which necessarily involved examining a prior court ruling involving the parties. The only assertion of prejudice results from the Court's prior consideration, in its judicial role, of the same facts presented in the underlying case, and rendering a ruling thereon. Appellant neither presented nor cited any evidence of extra-judicial influence upon the Court; no evidence of personal bias or prejudice, nor any assertion of adverse financial or other interest. The only assertion by the Appellant is that the facts were presented to the same judge previously, that the prior ruling was adverse to Appellant, and that Appellant now wants to argue the same facts before another judge in an attempt to get a different result.

If the Court were to countenance Appellant's position that a prior judicial ruling prevents that court from making subsequent determinations in a case, any litigant could automatically force the removal of every judge who has previously ruled against the litigant, in the same or a different case. The Appellant filed a second suit after having received an adverse determination in a prior action based upon the same facts, and is arguing, in effect, that she is entitled to another shot at contradicting the prior ruling before another judge - i.e., judge shopping. This record is devoid of evidence of extrajudicial prejudice, and Appellant's argument should be rejected by this Court.

Having failed to produce any evidence of any extra-judicial bias or prejudice, the Court was under a duty to render a decision resolving the dispute.

> Having found no evidence that could question the impartiality of *[the trial judge*], or any other reason requiring her recusal, we find Canon 3(B)(1) to be controlling, which imposes a "duty to sit." When disqualification is not required, the South Carolina Code of Judicial Conduct holds, "A judge shall hear and decide matters assigned to the judge . . . ." Canon 3(B)(1) of the Code of Judicial Conduct, Rule 501, SCACR (*emphasis added*). This duty has been recognized and imposed in

both state and federal courts. *See* McBeth v. Nissan Motor Corp. U.S.A., 921 F. Supp. 1473, 1477 (D.S.C. 1996) ("No judge, of course, has a duty to sit where his impartiality might be reasonably questioned."); Barritt v. State, No. CACR06-1261, 2007 Ark. App. LEXIS 619, 2007 WL 2713593, at (Ark. Ct. App. Sept. 19, 2007) ("When recusal is in issue, this court has held that a judge has a duty to sit on a case unless there is a valid reason to disqualify . . . .") (*internal citations omitted*); In re Turney, 311 Md. 246, 533 A.2d 916, 920 (Md. 1987) ("Moreover, a judge's duty to sit where not disqualified is equally as strong as the duty not to sit where disqualified."); Adair v. State, 474 Mich. 1027, 709 N.W.2d 567, 579 (Mich. 2006) ("[W]here the standards governing disqualification have not been met, disqualification is not optional; rather, it is prohibited.")(*internal quotations and citations omitted)*; Millen v. Eighth Judicial Dist. ex rel. County of Clark, 148 P.3d 694, 700 (Nev. 2006) ("Thus, a judge has a general duty to sit, unless a judicial canon, statute, or rule requires the judge's disqualification."); Tennant v. Marion Health Care Found., Inc., 194 W. Va. 97, 459 S.E.2d 374, 385 (W. Va. 1995) ("Also important, however, is the rule that a judge has an equally strong duty to sit where there is no valid reason for recusal.").

III. THE APPELLANT'S APPEAL IS PRECLUDED BY THE TWO ISSUE RULE.

In her appeal, the Appellant argues that the court erred in granting Respondent's Motion for Summary Judgment on the grounds of *res judicata*. In advancing this argument, the Appellant asserts that the Court failed to consider the "special marital interest" accorded to Appellant by S.C. Code Ann. §20-3-670, an issue which was asserted to be different than the issues considered in the prior litigation.

In making this argument, the Appellant ignores the fact that the lower court granted summary judgment on two grounds, i.e., *res judicata* and Appellant's undisputed failure to file a *lis pendens* prior Respondent's recording of the Blanco Judgment lien, giving the Respondent priority to the net sale proceeds. "The Defendant [Blanco] is further entitled to the grant of summary judgment upon the grounds that it had a priority claim to the subject proceeds as a matter of law." (Order, page 4.) The court then explicitly examined the statute under which the Appellant claimed an interest in the

Property and held that Respondent's judgment lien was entitled to priority over any interest held by the Appellant. The trial court ruled:

> The Plaintiff's claim to the York Southern Road property and the net proceeds derived from the sale thereof is subordinate to and subject to the Defendant's judgment lien as a matter of law, and the Court properly ordered the application of those proceeds in the *Triple M Partners, L.P.* case. Since the Defendant has a priority interest in the net proceeds and those proceeds were properly distributed to it, the Defendant is entitled to the grant of summary judgment dismissing the Plaintiff's Complaint with prejudice.

(Order, Page 7). Having failed to appeal all bases for the grant of summary judgment, the Appellant is precluded from pursing the present appeal.

"Under the two issue rule, where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become law of the case. *Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010)." *Atl. Coast Builders & Contrs., LLC v. Lewis*, 398 S.C. 323, 328, 730 S.E.2d 282, 284 (2012). "[A]n unappealed ruling, right or wrong, is the law of the case." (*citing Buckner v. Preferred Mut. Ins. Co.*, 255 S.C. 159, 160-61, 177 S.E.2d 544, 544 (1970))." *Nucor Corp. v. S.C. Dep't of Empl. & Workforce*, 410 S.C. 507, 514, 765 S.E.2d 558, 561 (2014). *See also, Skywaves I Corp. v. Branch Banking & Trust Co.*, 423 S.C. 432, 814 S.E.2d 643 (Ct.App. 2018)

Since the lower court ruled that summary judgment was proper upon two separate grounds and the Appellant has challenged one, but not both, of those grounds, the two issue rule precludes the present appeal, and the same should be denied.

IV. THE TRIAL COURT PROPERLY GRANTED RESPONDENT'S MOTION FOR SUMMARY JUDGMENT ON THE BASIS OF *RES JUDICATA*.

The Appellant contends that the Court erred in ruling that summary judgment was proper under principles of *res judicata*. In support of her position, the Appellant now asserts that the issue of her equitable interest in the underlying Property was not raised nor considered in the prior litigation, and thus the doctrine of *res judicata* should not apply to bar this subsequent action. The assertions by the Appellant are, however, both factually and legally incorrect, as 1)the application of *res judicata* does not require that the exact same legal arguments had to be asserted in the prior action; and 2) the equitable interest was asserted and considered in the prior litigation.

> *Res judicata* bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties. Sub-Zero Freezer Co. v. R.J. Clarkson Co., 308 S.C. 188, 417 S.E.2d 569 (1992). Under the doctrine of *res judicata*, "[a] litigant is barred from raising any issues which were adjudicated in the former suit and any issues which might have been raised in the former suit." Hilton Head Center of South Carolina, Inc. v. Public Service Comm'n of South Carolina, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987). To establish *res judicata*, the defendant must prove the following three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. Riedman Corp. v. Greenville Steel Structures, Inc., 308 S.C. 467, 419 S.E.2d 217 (1992); Sealy v. Dodge, 289 S.C. 543, 347 S.E.2d 504 (1986).

Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 34-35, 512 S.E.2d 106, 109 (1999). The application of the doctrine of *res judicata* does not require that the exact legal argument had been raised in prior litigation between the identical parties, only that it could have been raised. In applying the three elements for the application of the *res judicata* doctrine set forth in the *Riedman Corp. v. Greenville Steel Structures, Inc.* case, it is undisputed that both the Appellant and the Respondent were parties to the prior litigation; the subject matter (i.e., entitlement to sale proceeds) was a subject matter in dispute in the prior litigation; and the entitlement to those proceeds was

determined in the prior litigation. Since all of the requirements of *res judicata* were met, the lower court properly applied the doctrine to prevent the re-litigation of the issue in this second action.

Appellant incorrectly asserts that the issue of the Appellant's equitable interest in the Property was not the subject of or argued in the prior litigation. The Appellant, through counsel, filed a Motion to Amend or Alter Judgment on April 13, 2017. In the Motion to Amend or Alter, counsel for the Appellant specifically stated:

> Defendant maintains that despite the fact that she was not on the title to the property, she retained a Spousal Equitable Interest in the property pursuant to S.C. Code of Laws §20-3-610 and that due to the fact that her Complaint for Divorce against Vito Laera was filed on March 3, 2014, almost eight (8) months before BLANCO's judgment, Defendant has a priority interest in the real property and a priority interest in her portion of the proceeds under the Spousal Equitable Interest.

(Lefebvre's Motion to Amend or Alter Judgment, page 2). In her Memorandum in Support of the Motion to Amend or Alter, filed on April 20, 2017, counsel for Lefebvre wrote:

> In particular, LeFebvre, by and through her marriage to Vito Laera, acquired a vested spousal statutory interest in the property pursuant to S.C. Code of Laws §20-3-610
> . . . .
> LeFebvre previously had a priority interest to Blanco based upon S.C. Code of Laws 30-7-10 as the divorce decree against Laera was entered before the original date that the judgment of Blanco against Laera was entered on the Abstract of Judgment.

(Memorandum in Support of Suzette Lefebvre's Motion to Amend or Alter Judgment, page 5).

Thus, contrary to the statement in the Appellant's brief that the prior case did not involve consideration of the statutory spousal interest, it is clear that the Appellant appeared in that action, argued for the priority of the asserted statutory interest, and the Court ruled against her assertion on that point. All elements of the application of *res judicata* are present in this subsequent proceeding - identify of parties, identical subject matter, and a final determination. The application of *res judicata* was appropriate in this instance, the grant of summary judgment based thereof was proper.

V. THE RESPONDENT ENTITLED TO SUMMARY JUDGMENT DUE TO THE APPELLANT'S FAILURE TO FILE A *LIS PENDENS* PRIOR TO THE ENTRY OF THE RESPONDENT'S JUDGMENT LIEN.

Even if the prior bases for denying the appeal are not considered, the grant of summary judgment was proper for the reason that the Respondent's lien had priority over the alleged spousal interest claim of the Appellant, and thus summary judgment was properly granted on those grounds.

It is undisputed that Laera obtained title to real estate in York County in 2007. It is also undisputed that the Respondent filed the Blanco Judgment against Laera in York County on October 3, 2014, thereby obtaining a judgment lien against Laera's interest in the Property pursuant to S.C. Code Ann. §15-35-810. More than six months prior to the filing of the Blanco Judgment, Appellant filed an action for divorce against Laera with the York County Family Court. It is further undisputed that the Appellant did not file a *lis pendens* with the Clerk of Court at that time or at any time thereafter. Nonetheless, the Appellant asserts that S.C. Code Ann. §20-3-670 provided her an equitable interest in the York County Property. That interest, however, is subject to superior lien rights of third parties unless and until the claimant to such interest files a *lis pendens* to give record notice of her interest to such third parties. Unless and until such a *lis pendens* is filed, the spousal equitable interest is subordinate to the lien claims of judgment creditors such as the Respondent as a matter of law.

S.C. Code Ann. §20-3-610 provides:

> During the marriage *a spouse shall acquire*, based upon the factors set out in Section 20-3-620, *a vested special equity and ownership right in the marital property* as defined in Section 20-3-630, which equity and ownership right are subject to apportionment between the spouses by the family courts of this State at the time marital litigation is filed or commenced as provided in Section 20-3-620. *(emphasis added).*

S.C. Code Ann. §20-3-670(A)(1) provides:

> In a proceeding under this article, either party may record a notice of the pendency of proceedings in the manner provided in civil actions generally, which has the same effect as a notice in civil actions. *The rights and interests of each spouse in the other's property created by this article are not effective against third parties: (a) with regard to any parcel of real property in which an interest under this article is claimed until a Notice of Pendency of Action is filed* as provided in Section 15-11-10[6] with the clerk of court of the county in which such parcel of real property is situated . . . . *(emphasis added).*

The Appellant argues that she had an equitable spousal interest in the York County Property, which interest predates the Respondent's filing of its judgment lien. Though the Appellant correctly states that such an interest *may have* arisen, S.C. Code Ann. §20-3-670(A)(1) specifically provides that such interest is ineffective against the rights of third parties such as respondent unless and until the *lis pendens* is filed. Appellant has stipulated that she never filed a *lis pendens* (Stipulation of Fact No. 6, Page 2). Any statutorily created equitable spousal interest Appellant may have had in and to the Property was thus subordinate to the Blanco Judgment lien rights. Since the spousal interest was ineffective against third party claims and the Respondent's judgment lien attached to the Property prior to the Family Court Order awarding an interest to the Appellant, the Respondent had priority to the net Property sale proceeds over the Appellant's interest as a matter of law. The grant of summary judgment to the Respondent was proper, because Respondent held a Judgment lien interest that had priority over Appellant's spousal interest. The trial court therefore correctly determined that Respondent was entitled to the net sale proceeds, and the appeal of the Appellant must fail.

---

[6] S.C. Code Ann. §15-11-10 is entitled "Time when notice of *lis pendens* may be filed."

CONCLUSION

The Appellant has failed to properly appeal the lower court's Order refusing to disqualify itself from these proceedings, and thus may not now seek to have this Court review that decision; in any event, the Appellant has failed to present any substantive basis to support a claim that she was entitled to an Order of Recusal. The Appellant has not appealed all grounds upon which summary judgment was granted, and the unappealed ground becomes the law of the case, preventing the Appellant from contesting the grant of summary judgment. The lower court further properly applied the doctrine of *res judicata* and granted summary judgment to Respondent on that ground, and also properly granted summary judgment upon the ground that the Appellant's claimed interest in the Property sale proceeds was subordinate to Respondent's Judgment lien interest since Appellant failed to file a notice of *lis pendens* in accordance with the governing statute. For all of these reasons, Respondent respectfully submits that the lower court's orders should be affirmed in all respects and Appellant's appeal should be dismissed with prejudice.

Robert A. Bernstein, Esquire S.C. Bar No. 0677
BERNSTEIN & BERNSTEIN, P.A.
5418-B Rivers Avenue
North Charleston, SC 29406-6129
(843) 529-1111
(843) 529-0035 (fax)
rbernstein@bernsteinpa.com
Attorneys for Respondent

October 24, 2018

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM YORK COUNTY

COURT OF COMMON PLEAS

S. Jackson Kimball, III, Master-in-Equity
and Special Circuit Court Judge

Appellate Case No. 2018-000411

Suzette LeFebvre.....Appellant

vs.

Blanco GmbH+CO.KG.....Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that I am the attorney for the Respondent in the above case and that on October 25, 2018, I did serve a copy of the Initial Brief of the Respondent and Respondent's Designation of Matter to be Included In the Record On Appeal upon counsel for the Appellant by depositing a copy of the same in the United States Mail, postage prepaid, and addressed as follows:

P. John Freeman, Esquire
Halford Niemiec & Freeman, LLP
238 Rockmont Drive
Fort Mill, SC 29708

Robert A. Bernstein

Robert A. Bernstein S.C. Bar No. 677
BERNSTEIN & BERNSTEIN, P.A.
5418-B Rivers Avenue
North Charleston, SC 29406-6129
(843) 529-1111
Attorneys for Respondent

October 25, 2018

BERNSTEIN & BERNSTEIN, P.A.
ATTORNEYS AT LAW
P.O. BOX 20519 • CHARLESTON, SC 29413-0519
5418-B RIVERS AVENUE • NORTH CHARLESTON, SC 29406-6129
PHONE (843) 529-1111 • FAX (843) 529-0035

ROBERT A. BERNSTEIN, ESQUIRE
rbernstein@bernsteinpa.com

CHARLES S. BERNSTEIN, ESQUIRE
(Retired)

October 25, 2018

The Honorable Jenny Abbott Kitchings
Clerk of SC Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: Suzette LeFebvre
vs. Blanco GmbH+CO.KG
Appellate Case No. 2018-000411

Dear Ms. Kitchings:

Enclosed herein for filing please find the original and one copy of the Respondent's Initial Brief and Designation of Matter to Be Included In The Record, as well as our Certificate of Service of the same. By copy of this correspondence to John Freeman, Attorney for the Appellant, we are serving the Appellant with a copy of these documents. Thanking you for your consideration, we are

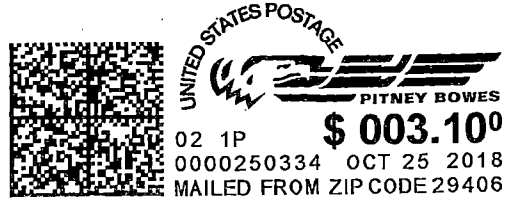
Yours Very Truly,

BERNSTEIN & BERNSTEIN, P.A.

Robert A. Bernstein

Robert A. Bernstein

cc: P. John Freeman, Esquire ✓



BERNSTEIN &
BERNSTEIN, P.A.
5418-B RIVERS AVENUE
N. CHARLESTON, SC 29406-6129

ADDRESS CORRECTION REQUESTED

The Honorable Jenny Abbott Kitchings
Clerk of SC Court of Appeals
1220 Senate Street
Columbia, SC 29201