

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM DARLINGTON COUNTY

Court of Common Pleas
Carl A. Saleeby, Special Referee

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Case No. 2017-000966

AUG 03 2017

SC Court of Appeals

Thomas E. Goodson, as Trustee of the Residuary
Beneficiaries Trust of the Estate of Margaret S.

Goodson and the Estate of Helen S. Goodson, ... Respondent,

v.

Harriet E. Wilmeth, Debra J. Freeman, Bank of
America, N.A., Lumber Yard, Inc., St. Bartholomew's
Episcopal Church, Canal Wood, LLC, Alexander C.
West, Alexander C. West, Jr., Airport Technologies, LLC,
Mutual Savings Bank, State of South Carolina Department
of Revenue, United States of America Acting through
the Department of Treasury/Internal Revenue Service,
Ford Motor Credit Company, LLC, James Gandy, Estate
of Amelia H. Anthony, Estate of Betty C. Wiggins,
Portfolio Recovery Assoc., South Carolina Department
of Probation, Parole and Pardon Services, Norwood
C. Bizzell, Robert "B.W." Bizzell, William E. Bizzell,
Mary Lathan Steele, and Vicki Eaddy, Defendants,

Of Whom Debra J. Freeman is the Appellant.

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ARGUMENT

I. UNDER SOUTH CAROLINA LAW, THE TRIAL COURT ERRED IN DENYING DEFENDANT/APPELLANT FREEMAN'S MOTION TO DISMISS THE COMPLAINT FOR FORECLOSURE OF JUDGMENT LIENS WITH RESPECT TO TWO EXPIRED JUDGMENTS

In this case, Defendant/Appellant Debra J. Freeman ("Freeman") is a named defendant in the Complaint for Foreclosure of three judgment liens against Defendant Harriet E. Wilmeth ("Wilmeth"), Freeman's former partner, and in favor of Plaintiff/Respondent Thomas E. Goodson, as Trustee of the Residuary Beneficiaries Trust of the Estate of Margaret S. Goodson and the Estate of Helen S. Goodson ("Respondent"). (Record on Appeal ["R"] pp 30-44) Two out of the three judgments were at issue in Freeman's Motion to Dismiss in the trial court. (R pp 134-135) Those two judgments were granted in favor of Helen S. Goodson and Margaret S. Goodson and against Wilmeth. Both judgments expired before a hearing on the foreclosure action was held. (R pp 134-135) Respondent nevertheless seeks to foreclose on these judgments as against Wilmeth's one-half interest in the real property she jointly owns with Freeman. Freeman is currently the sole occupant of the real property and is now solely responsible for making the mortgage payments on the property. (R p 180, lines 23-25; p 181, lines 1-9)

In Initial Respondent's Brief, Respondent Thomas E. Goodson, as Trustee of the Residuary Beneficiaries Trust of the Estate of Margaret S. Goodson and the Estate of Helen S. Goodson ("Respondent") fails to present any legal argument which supports the trial court's erroneous Order dated April 6, 2017, and filed on April 7, 2017, which denied Defendant/Appellant Debra J. Freeman's Motion to Dismiss Respondent's Complaint to Foreclose on Judgment Liens, which she filed because the judgments had expired under South Carolina law.

In fact, in the Initial Respondent's Brief, Respondent concedes that the two judgments at issue on this appeal were filed in the Office of the Clerk of Court on February 20, 2006, and that no hearing on their execution was scheduled before February 20, 2016. In fact, no hearing was held concerning the execution of those judgments until March 9, 2017, well past the expiration date of the two judgments. (R p 131; pp 149-191) It is also uncontested by Respondent that judgment liens, like the two at issue, have only a 10-year enforcement life, after which they expire. S.C. Code Ann. § 15-39-30 (Law. Co-op., 1976), as amended ("Executions may issue upon final judgments . . . at any time within ten years from the date of the original entry thereof and shall have active energy during such period, without any renewal thereof, and this whether any return may or may not have been made during such period on such executions.")

South Carolina law is consistent and clear that a judgment is "totally extinguished" after the expiration of the 10-year period. *Home Port Rental, Inc. v. Moore*, 359 S.C. 230, 597 S.E.2d 810 (2003), *aff'd as modified*, 369 S.C. 493, 682 S.E.2d 862 (2006). For this reason, the time limit is considered to be a statute of repose, and not a statute of limitations which can be tolled. *In re DC Dev., Inc.*, C/A No. 17-01279-DD, 2017 WL 2533342 (D.S.C. June 9, 2017). Citing *Hardee v. Lynch*, 212 S.C. 6, 46 S.E.2d 179 (1948), and *Linda McCompany, Inc. v. Shore*, 390 S.C. 543, 703 S.E.2d 499 (2010), the decision solely relied upon by Respondent throughout these proceedings, the court in *DC Development* recently stated earlier this month:

A statute of repose is distinctly different than a statute of limitations, because "a statute of repose creates a substantive right in those protected to be free from liability after a legislatively-determined period of time." *Langley v. Pierce*, 313 S.C. 401, 403-04, 438 S.E.2d 242, 243 (1993); *see also Goad v. Celotex Corp.*, 831 F.2d 508 (4th Cir. 1987). A statute of repose creates a strict time limit for liability. *See Linda Mc. Co., Inc. v. Shore*, 390 S.C. 543, 559, 703 S.E.2d 499, 507 (2010) (Beatty, J., dissenting) ("A statute of repose is typically an absolute time limit beyond which liability no longer exists and is not tolled for any reason

because to do so would upset the economic balance struck by the legislative body”) (quoting *Langley*, 313 S.C. at 404, 438 S.E.2d at 243).

2017 WL 2533342, at *3.

Under section 15-39-30 (Law. Co-op., 1976), as amended, therefore, when a judgment expires, as the two February 20, 2016 judgments had prior to the trial court taking any execution action, the judgments were no longer viable, legal documents for purposes of execution and recovery.

Again, the Initial Respondent’s Brief does not dispute this South Carolina law and the impact on the two judgments at issue in Freeman’s wrongly decided Motion to Dismiss. Instead, the Initial Respondent’s Brief only summarizes *Linda McCompany* without any attempt to analogize the factual circumstances in the *Linda McCompany* case to the factual circumstances in this case.

The two cases are factually distinguishable as explained in the Initial Appellate Brief. Because the cases are so different, the trial court’s reliance on the holding in *Linda McCompany* in the present case to justify its decision to deny Freeman’s Motion to Dismiss was in error and should be reversed. To extend the life of the two 2006 judgments based on a plainly distinguishable decision is tantamount to legislating an amendment to section 15-39-30 (Law. Co-op., 1976), as amended, and allowing a tolling of the 10-year statute of repose. If allowed, the trial court’s decision would render the statute of repose meaningless. It is a fundamental rule of statutory constructions that courts are not authorized to revise clear and unambiguous statutory language. That is the function of the legislature. *Wilson v. Charleston County Sch. Dist.*, 419 S.C. 442, 798 S.E.2d 499 (2017). In *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000), the court stated:

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. *Charleston County Sch. Dist. v. State Budget and Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993). Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. *In re Vincent J.*, 333 S.C. 233, 509 S.E.2d 261 (1998) (citations omitted). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.

Id. at 85, 533 S.E.2d at 581.

Further, the South Carolina Supreme Court in *Linda McCompany* was very careful in its wording not to allow such an outcome. The Supreme Court was careful to recognize that the state's judgment statutes clearly reflect the legislative purpose to nullify the effective force of a judgment after 10 years and that the impact of its decision to allow one day only for the purpose of allowing the court to issue its order was fact specific to the circumstances presented to the court by the parties. "We want to stress that this is a narrow holding limited to the facts similar to those at issue in this case. Hence, when a party has complied with the applicable statutes, as Respondent did in this case, and is merely waiting on a court's order regarding execution and levy, the 10-year limitations found in section 15-39-30 is extended to when the court finally issues an order." 390 S.C. at 554, 703 S.E.2d 499 at 554.

Again, in the present case, the original hearing date was scheduled for February 19, 2016. Judge Henderson, the trial judge, ordered that hearing be vacated because Appellant's Counsel was scheduled to appear in General Sessions Court at the same time, which court took precedence. (R p 3; pp 255-259) After the original hearing was vacated, however, the Respondent did not proceed to schedule a hearing, and no hearing was scheduled until over one year later, on March 9, 2017, at the request of Bank of America and Freeman. Unlike *Linda McCompany*, the Respondent was not "merely waiting on a court's order regarding execution."

By the time the hearing on the judgments was heard, the judgments had long expired and were extinguished under South Carolina law. The trial court's denial of Freeman's Motion to Dismiss should be reversed.

II. TWO ISSUES PRESENTED IN INITIAL RESPONDENT'S BRIEF ARE NOT ON APPEAL AND ARE NOT PRESENTED AS COUNTER-ISSUES AND CANNOT BE REVIEWED

In the Initial Respondent's Brief, the Respondent lists the following two issues which are not presented in Freeman's Initial Appellate Brief: (1) whether the Appellant had standing to file her Motion to Dismiss in the trial court; and (2) whether the trial court properly issued its order with respect to judgments other than the two February 2006 judgments. Neither of these issues can be reviewed at this time.

Under South Carolina law and the South Carolina Rules of Appellate Procedure, it is axiomatic that the issue presented in the Initial Appellate Brief by Freeman is the only issue before this Court. *Lanford v. W. Oakwood Cemetery Addition, Inc.*, 223 S.C. 350, 75 S.E.2d 865 (1953) (holding that where the respondent's brief fails to present a counter statement of issues and fails to challenge appellant's statement, the only issues before the court are those stated by the appellant). The reason for this is to control and narrow the focus of the appellate court's deliberations to the issues raised by the appellant. *Id.*; *see also* 16 S.C. Jur. *Appeal and Error* § 93 (2017). The rule is consistent with the companion rule that the appellant cannot, in a reply brief, argue an issue which he or she failed to raise in the appellant's initial brief. *Glasscock, Inc. v. USF & G*, 348 S.C. 76, 557 S.E.2d 689 (2002).

For these reasons, the only issue which should be reviewed by the court is stated in Freeman's Initial Appellate Brief as follows: Did the trial court err in denying Defendant Debra J. Freeman's Motion to Dismiss the Judgment Foreclosure Action with respect to two judgments dated February 2, 2006, which had expired?

If this Court nevertheless reviews the standing issue raised in the Initial Respondent's Brief, but not analyzed by Respondent in any substantive way, it is important to emphasize that Freeman is a named Defendant in Respondent's Complaint for Foreclosure of Judgment Liens. Respondent seeks to foreclose on Defendant Wilmeth's one-half interest in Freeman's residence, which foreclosure will dramatically impact on Freeman's one-half interest in the residence and could cause Freeman to vacate the property. (R p 32, lines 11-25; p 33, lines 1-21; p 35, lines 16-17) As a party Defendant, Freeman has a personal stake in defending herself. "To have standing, one must have a personal stake in the subject matter of the lawsuit, in other words, one must be a real party in interest." *Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Natural Res.*, 345 S.C. 594, 550 S.E.2d 287 (2001); *see also Charleston County Sch. Dist. v. Charleston County Election Comm'n*, 336 S.C. 174, 519 S.E.2d 567 (1999) (a real party in interest is one who has a real, or substantial, interest in the subject matter of the action).

Certainly, as a party Defendant facing a possible eviction from her home as to which she is the sole funder and inhabitant, arising from Respondent's threat to foreclose on her former partner's interest in the home, Freeman is a real party in interest. Freeman has both a real and substantial interest in the subject matter of the action. As such, Freeman was entirely within her rights to seek a motion to dismiss the complaint concerning two substantial but expired judgments against her former partner.

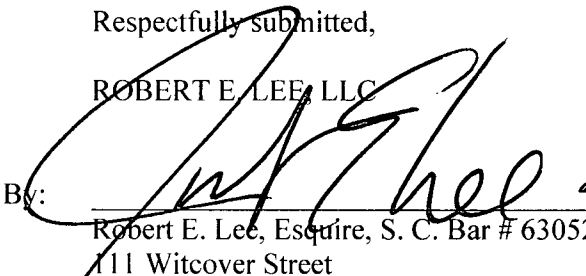
CONCLUSION

For each of the reasons stated herein, Appellant Freeman respectfully requests this Court to enter an Order reversing the Court of Common Pleas for Darlington County's Final Order dated April 17, 2017 on its conclusion that Freeman's Motion to Dismiss is denied, and order that the Court of Common Pleas for Darlington County had no jurisdiction over the two 2006 judgment liens, which had expired and were extinguished prior to the March 9, 2017 hearing on Respondent's Complaint to foreclosure judgments, and, if necessary, to conclude that Freeman had standing to defend against claims brought against her and to file a motion to dismiss, and for whatever further relief this Court deems just and proper at this time.

Dated: July 28, 2017

Respectfully submitted,

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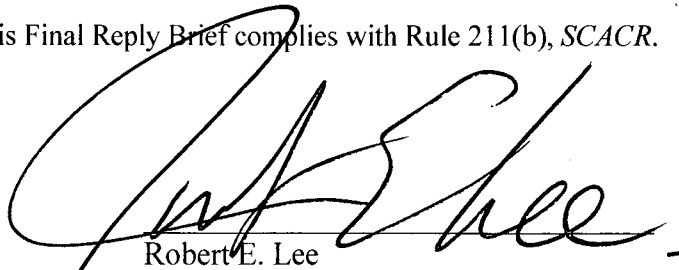
SC Court of Appeals

Of Whom Debra J. Freeman is the Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Reply Brief complies with Rule 211(b), SCACR.

July 28, 2017



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