

STATE OF SOUTH CAROLINA
IN THE
SUPREME COURT

Appeal from the Court of Common Pleas for Charleston County
Honorable J. C. Nicholson, Jr., Circuit Judge
Civil Action Nos.: 2010-CP-10-9096 and 2011-CP-10-8840
419 S.C. 48, 795 S.E.2d 857 (Ct.App. 2016), reversed,
___ S.C. ___, ___ S.E.2d ___ (2018) (2018 WL 6072352)

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

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S.C. SUPREME COURT Respondent,

v.

Donald W. Lancaster,

Petitioner.

**Petitioner, Donald W. Lancaster's,
Response to the Petition for Rehearing**

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TO: THE HONORABLE JUSTICES OF THE SOUTH CAROLINA SUPREME COURT:

COMES NOW the Petitioner, Donald W. Lancaster (“Mr. Lancaster”), pursuant to Rules 221 and 240(e) of the South Carolina Appellate Court Rules, and respectfully responds to the Petition for Rehearing submitted by the Respondent, Frank Gordon, Jr., Individually and as Trustee of the Dorothy S. Gordon (Deceased) Trust (“Mr. Gordon”). Mr. Lancaster respectfully requests that the Petition for Rehearing be denied in all respects and this Supreme Court’s previously-issued opinion¹ be upheld.

A. Mr. Gordon Admitted This Action Against Mr. Lancaster Was Specifically Based On The 2001-2002 Drews Judgments²

Contrary to Mr. Gordon’s lengthy “arguments” regarding why the Drews litigation was allegedly separate from this present action (*Pet. Rhg.*, pp.3-7), the evidence shows all of this “collection” litigation was but a single action. This Supreme Court did not, as alleged (*Pet. Rhg.*, pp.6-7), misunderstand the proposition that Mr. Gordon was “seek[ing] to execute upon the 2001 judgment . . . ,”³ nor did this Supreme “Court err in relying on one paragraph of the [Second Amended] Complaint verses the record as a whole” (*Pet. Rhg.*, p.6) (Footnote omitted). Mr. Gordon asserted in his Second Amended Complaint that he “**does not seek to enlarge or change the judgment upon which he**

¹ See Gordon v. Lancaster, 2018 WL 6072352 (SC Sup.Ct., filed 21 Nov. 2018), *reversing*, Gordon v. Lancaster, 419 S.C. 48, 795 S.E.2d 857 (Ct.App. 2016).

² Mr. Gordon failed to previously argue many of the positions he now asserts in his Petition for Rehearing. To the extent that the previously non-raised propositions could be “significant”, they cannot now be considered. See Herron v. Century BMW, 395 S.C. 461, 467, 719 S.E.2d 640, 643 (2011) (*quoting* Kennedy v. S.C. Retirement Sys., 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) (*quoting* Jean H. Toal, *et.al.*, Appellate Practice in South Carolina, 309 (1999) (“The purpose of a petition for rehearing is ***not*** to present points which lawyers for the losing parties have overlooked or misapprehended”) (Emphasis added).

³ Gordon v. Lancaster, 2018 WL 6072352, *3 fn.5.

is suing; [he] is still collecting on the 2001-2002 [Drews] Judgments” (App. 151, para. 3) (Emphasis added).⁴ This action, regardless of how Mr. Gordon presently seeks to characterize it, was his attempt to collect from Mr. Lancaster the \$108,482.62 judgment Mr. Gordon had obtained against Mr. Drews.⁵ Mr. Gordon cannot now “change his tune” simply because this Supreme Court has ruled against him.⁶ In fact, it is disingenuous for him to argue otherwise⁷ since Mr. Gordon’s judgment against Mr. Drews is and always has been the basis for this litigation.⁸

In any case, the record shows there (a) were no fraudulent transfers between Mr. Lancaster and the Drewses, (b) Mr. Lancaster was simply trying to help his aunt and uncle who by 1992 had found themselves in dire financial straits, and (c) even assuming, *arguendo*, the existence of an alleged nefarious motive the vast majority of the financial

⁴ This Supreme Court acknowledged the admission. Gordon v. Lancaster, 2018 WL 6072352, *1.

⁵ Mr. Gordon obtained judgment against Mr. Drews in December 2001, for \$65,789.12. (R.p.11, para. 2; R.pp.46-53; R.p.133, para. 9; R.p.726, para. 3; R.pp.1079-1085). In March 2002, he was awarded \$42,693.50 in attorneys’ fees and costs (R.p.11, para. 2; R.pp.41-43; R.pp.1079-1090) producing a total judgment of \$108,482.62. (R.p.11; R.p.133, para. 9; R.pp.1079-1090).

⁶ Mr. Gordon is bound by any admissions in his pleadings. Elrod v. All, 243 S.C. 425, 436, 134 S.E.2d 410, 416 (1964).

⁷ The Trial Court found Mr. Gordon had brought “[t]his action . . .to aid in **executing on a Judgment he obtained against [Mr. Drews].**” (R.p.10) (Emphasis added). The Court of Appeals recognized that this was “a lawsuit [Mr.] Gordon filed to **collect on a prior judgment he obtained against [Mr.] Lancaster’s uncle** [(i.e.; Mr. Drews)]. Gordon v. Lancaster, 419 S.C. 48, 51, 795 S.E.2d 857, 858, *rehearing denied* (16 Feb. 2017), *certiorari granted in part* (13 Dec. 2017), *reversed*, 2018 WL 6072352 (Emphasis added). As this Supreme Court noted, “ ‘South Carolina courts will not permit a litigant to bypass the ten-year limitation on executions by **styling an action as something other than an action to execute.**’ ” Gordon v. Lancaster, 2018 WL 6072352, *3 fn.5 (*quoting Carr v. Guerard*, 365 S.C. 151, 154, 616 S.E.2d 429, 431 (2005)) (Emphasis added).

⁸ Mr. Gordon argues Mr. Lancaster’s trial counsel admitted to existence this matter was separate from the litigation against Mr. Drews. (Pet. Rhg., pp.4-5). Even if the proposition was true, it is immaterial. “ ‘Arguments made by counsel are not evidence.’ ” Sulton v. Health South Corp., 400 S.C. 412, 420, 734 S.E.2d 641, 645-646 (2012) (*quoting S.C. Dept. of Trans. V. Thompson*, 357 S.C. 101, 105, 590 S.E.2d 511, 513 (Ct.App. 2000)).

transactions occurred (i) when the Drewses **did not have** any debts or creditors (**May 1992**) (R.p.387, line 20 – R.p.388, line 2; R.p.488, line 16 – R.p.491, line 14), (ii) **long before** Builders Station began operations (**1996**) (R.p.365, lines 3-16), (iii) **long before** Mr. Gordon had a potential claim against Mr. Drews (**1997?**) (R.p.11), (iv) **long before** Mr. Gordon made any claim due to the failed Builders Station investment (**1999**) (R.p.11), and (v) **long before** Mr. Gordon obtained any type of judgment against Mr. Drews. (**2001-2002**). (R.p.11, para. 2; R.pp.46-53; R.p.133, para. 9; R.p.726, para. 3; R.pp.1079-1085).

B. This Supreme Court Properly Relied On Carr v. Guerard

Mr. Gordon asserts this Supreme Court improperly relied on Carr v. Guerard⁹ as support for its decision and, instead, should have considered Brock v. Kirkpatrick¹⁰. As before, Mr. Gordon's position is meritless.

Firstly, under Mr. Gordon's reading of Brock v. Kirkpatrick, and much like the Linda Mc Co. decision, a judgment creditor would have the ability to simply file and serve a judgment enforcement action on the **final day of the ten-year "active energy" period** and still have effective judgment enforcement rights since the judgment creditor had "filed [the] action . . . within the ten-year statutory period of active energy."¹¹ This "reasoning" significantly **enlarges** the ten-year "active energy" period well beyond both the very

⁹ Carr v. Guerard, 365 S.C. 151, 616 S.E.2d 429.

¹⁰ Brock v. Kirkpatrick, 60 S.C. 322, 38 S.E. 779 (1901). Notwithstanding Mr. Gordon's present reliance on this case, he has never previously referenced the decision in any of his prior filings.

¹¹ 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). See also generally Brock v. Kirkpatrick, 60 S.C. 322, 352, 38 S.E. 779, 790. In Brock, unlike this case, the initial judgment had been obtained against the executor of the decedent's estate and the judgment debtor attempted to use the judgment to obtain possession of property in the hands of third-party devisees. Brock v. Kirkpatrick, 60 S.C. 322, 352, 38 S.E. 779, 790. In this case, Mr. Gordon obtained his judgment against Mr. Drews directly, long before Mr. Drews passed away.

limited time frame clearly contemplated in Linda Mc Co. and/or through the necessity of bringing a separate action and creating a new limitations time period.¹² 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.

Additionally, Brock v. Kirkpatrick was an “action to subject lands devised to the [heir] defendants [and in their possession] to the payment of debts of the devisor.”¹³ Mr. Gordon, fully aware Mr. Lancaster did not possess any of the Drewses’ real property prior to the initiation of this action (R.p.126, para. 52; R.p.153, para.24), effectively sought only a monetary recovery from Mr. Lancaster. This type of recovery was, of course, substantially different and much less onerous than the real property in Brock v. Kirkpatrick, as well as not evoking the protections/concerns normally afforded transfers of real property. Like here, the Brock v. Kirkpatrick judgment creditor sought to collect from third-parties by suing them on the amount of the originally-obtained judgment.¹⁴

Contrary to Mr. Gordon’s assertions, Carr v. Guerard is in line with this Supreme Court’s decision in this case. As noted in Carr, the “Statute of Elizabeth [used by Mr. Gordon herein (R.pp.12-13; *Resp. Brf.*, p.15)] may be employed by any creditor, including a judgment creditor”, however, “[w]hen a judgment creditor is the plaintiff, the statute

¹² This is true whether S.C. Code Ann. § 15-39-30 (Thomson Reuters West 2014) is viewed as a statute of repose or a statute of limitations.

¹³ Brock v. Kirkpatrick, 60 S.C. 322, 333, 38 S.E. 779, 784.

¹⁴ While the judgment in Brock v. Kirkpatrick was obtained against the deceased debtor’s executor, Brock v. Kirkpatrick, 60 S.C. 322, 333, 38 S.E. 779, 784; the judgment in this case was obtained directly against the actual judgment debtor himself, not his legal representative. Gordon v. Lancaster, 2018 WL 6072352, *1. Mr. Gordon commenced legal proceeding against Mr. Drews on 16 April 1999, well before Mr. Drews passed away in September 2007. (R.p.11; R.p.151, paras. 5-8).

limiting the time for executing on judgments to ten years might also apply.”¹⁵ That is what occurred in this matter. Furthermore, this Supreme Court recognized that “Carr s[ought] to have [certain inter-family] money transfers set aside so that he c[ould] attach the funds, which he says should have been used to satisfy his judgment.”¹⁶ This Supreme Court concluded in Carr that our “courts will not permit a litigant to bypass the ten-year limitation on executions by styling an action as something other than an action to execute.”¹⁷ Mr. Gordon attempted a similar end-around and ultimately failed in his quest.

From Hardee v. Lynch¹⁸ to Hughes v. Slater¹⁹ to Garrison v. Owens²⁰ and even to Linda Mc. Company, Inc. v. Shore,²¹ this Supreme Court has consistently held that when interpreting the time limitations contained in S.C. Code Ann. § 15-39-30 (or its predecessors) that “ten years means ten years”.²² The decision in this case eliminates

¹⁵ Carr v. Guerard, 365 S.C. 151, 153-154, 616 S.E.2d 429, 430 (*citing* Future Group, II v. Nationsbank, 324 S.C. 89, 98, 478 S.E.2d 45, 50 (1996); Lebovitz v. Mudd, 293 S.C. 49, 52–53, 358 S.E.2d 698, 700–01 (1987); S.C. Code Ann. §§ 15-39-30, 27-23-10 (Thomson Reuters West 2013)).

¹⁶ Carr v. Guerard, 365 S.C. 151, 154, 616 S.E.2d 429, 431.

¹⁷ Carr v. Guerard, 365 S.C. 151, 154-155, 616 S.E.2d 429, 431 (*citing* Garrison v. Owens, 258 S.C. 442, 445, 189 S.E.2d 31, 33 (1972); Hardee v. Lynch, 212 S.C. 6, 13, 46 S.E.2d 179, 182 (1948)).

¹⁸ Hardee v. Lynch, 212 S.C. 6, 46 S.E.2d 179 (1948).

¹⁹ Hughes v. Slater, 214 S.C. 305, 52 S.E.2d 419 (1949).

²⁰ Garrison v. Owens, 258 S.C. 442, 189 S.E.2d 31 (1972).

²¹ Linda Mc Co., Inc. v. Shore, 390 S.C. 543, 390 S.E.2d 543 (2010). *See also generally* In re: DC Development, Inc., 572 B.R. 171 (Bkcty. DSC 2017) (Acknowledging that S.C. Code Ann. § 15-39-30 was a 10-year statute of repose and declining to apply the Linda Mc Co. “narrow exception”); McMasters v. Charpia, 2016 WL 5799758, filed 5 Oct. 2016 (*per curiam*) (Seeming to hold that the Linda Mc Co. “narrow exception” applied only to court orders still outstanding when the time period ended).

²² Hardee v. Lynch, 212 S.C. 6, 16-17, 46 S.E.2d 179, 183; Hughes v. Slater, 214 S.C. 305, 52 S.E.2d 419 (under prior law where judgment could be revived for another 10 years); Garrison v. Owens, 258 S.C. 442, 446-447, 189 S.E.2d 31, 33; Linda Mc Co., Inc. v. Shore, 390 S.C. 543, 554-555, 703 S.E.2d 499, 504-505. Admittedly, there was the very limited one day extension exception in Linda Mc Co. which, of course caused the situation at Bar. *See also* LaRosa v. Johnston, 328 S.C. 293, 493

any “exception” (however limited or however broad) and reaffirms the ten-year absolute limitation. There is no justifiable reason for this Supreme Court to retreat from this position as it has now set forth a bright-line rule clarifying the law for both creditors and debtors.

C. Mr. Lancaster Cannot Be Viewed As An Executor De Son Tort.²³

Mr. Gordon asserts Mr. Lancaster should be characterized as an executor de son tort of the Drewses’ estates. (*Pet. Rhg.*, pp.9-11). The proposition is, at best, ludicrous and should be dismissed as meritless. Moreover, this is simply another attempt by Mr. Gordon to launch a “Hail Mary”²⁴ to somehow avoid the ten-year time limitation to enforce his judgment.

Firstly, notwithstanding Mr. Gordon’s arguments, the record demonstrates Mr. Gordon never specifically asserted a claim in the Second Amended Complaint that Mr. Lancaster was an executor de son tort. (R.pp.150-157, paras. 1-50).²⁵ Apparently, in a roundabout manner, Mr. Gordon attempted to do so by referencing the Confession of Judgment, Assignment, and Settlement Agreement provided to him by Mr. Drews’ estate

S.E.2d 100 (Ct.App. 1997) (declined to extend the 10-year time period for an additional seven days), *overruled by Linda Mc Co., Inc. v. Shore*, 390 S.C. 543, 703 S.E.2d 499.

²³ This “argument” is the sole one of all of Mr. Gordon’s new arguments that he previously “mentioned” prior to filing his Petition for Rehearing.

²⁴ “[A] Hail Mary [has been defined as one person’s or a group’s] desperate attempt to resolve a serious problem at the last minute”. See UsingEnglish.com (www.usingenglish.com/reference/idioms/hail+mary+pass.html). Mr. Gordon’s arguments herein constitute “a very tardy ‘Hail Mary’ pass after the last whistle blew and the fans were filing toward the exits” Nortel Networks, Inc. v. Bd. of Education, 191 Cal.App.4th 1259, 1272, 119 Cal.Rptr.3d 905, 914 (AD 2nd Dist. 2011).

²⁵ In fact, the Trial Court granted Mr. Gordon judgment against Mr. Lancaster solely on the basis of Mr. Lancaster’s alleged violation of the Statute of Elizabeth. (R.pp.25-26). The term “executor de son tort” was not mentioned. (R.pp.10-27). Additionally, the term was not mentioned during the trial. (R.pp.307-587) or during the post-trial motions hearing. (R.pp.588-626)

(R.pp.158-161), as well as the Settlement Agreement and Assignment he received from Mrs. Drews' estate. (R.pp.162-169). A cursory review of those documents shows they do not pass muster to constitute an "executor *de son tort*"²⁶ claim.

Mr. Drews' estate's settlement/assignment document refers only to (a) the \$100,000.00 payment the Drewses gave Mr. Lancaster in 1992 to facilitate Mr. Lancaster's purchase of the Bainbridge Drive property and then the Nuffield Road property (R.p.159, para. 3) and (b) some amorphous alleged "other payments" Mr. Drews made to Mr. Lancaster "during the time that [Mr.] Gordon's underlying action had accrued and/or [Mr.] Gordon's judgment was entered against [Mr. Drews]. (R.p.159, para. 4). Moreover, Mrs. Drews' estate's settlement/assignment document does not reference any alleged improper transaction involving Mr. Lancaster. (R.pp.162-164). In any case, even if there were "questionable transactions", *of which there were none*, the timeframe demonstrates that the vast majority of the financial transactions between Mr. Lancaster and the Drewses took place well before both when Mr. Drews incorporated the Builders

²⁶ South Carolina law defines the term "executor *de son tort*" as follows:

Any person who obtains, receives, or possesses property of whatever kind, belonging to the decedent, by means of fraud or without paying valuable consideration equivalent to the value of the property, shall be charged and chargeable as executor of his own wrong (executor *de son tort*) with respect to the goods and debts. The value of the property is charged to the executor *de son tort*. Likewise, the value of the property shall be deducted from any distribution or payment of any claim or commission to which the executor *de son tort* is entitled from the estate.

See S.C. Code Ann. § 62-3-619 (Thomson Reuters West 2015). *See also* *Judy v. Judy*, 393 S.C. 160, 170-171, 712 S.E.2d 408, 413 (2011) (*citing* *Haley v. Thames*, 30 S.C. 270, 276, 9 S.E. 110, 112 (1889)) (Executor *de son tort* defined as a stranger taking it upon himself or herself to intrude upon the administration of a decedent's estate and assume the position as executor without request or appointment).

Station hardware store business (R.p.365, line 3 – R.p.366, line 2) and when Mr. Gordon could have possibly asserted a claim against Mr. Drews arising from that ill-fated and ultimately catastrophic commercial business endeavor. (R.p.11).²⁷

Initially, there is no evidence that Mr. Lancaster took it upon himself to intrude upon either the administration of Mr. Drews' estate or Mrs. Drews' estate and, in turn, assume the position as either of those estates' executor without request or appointment.²⁸ Moreover, assuming *arguendo*, that Mr. Lancaster theoretically could be considered as an executor *de son tort*, the evidence shows that even had he obtained, received, and/or possessed property belonging to Mr. Drews (which, of course, he did not), as of the time of Mr. Drews' death, Mr. Lancaster would have had obtained, received, or possessed such property for "valuable consideration equivalent to the value of the property" as shown by the \$100,000.00 payment which was only part of the payment for Bainbridge Drive which, in turn, was then put into Nuffield Road.

²⁷ In 1992, when the Drewses paid Mr. Lancaster \$100,000.00 for the life estate in Bainbridge Drive, they had no creditors nor debts. (R.p.355, lines 6-12; R.p.440, lines 11-15; R.pp.764-765, para. 5). After The Drews Company failed, other than their monthly social security payments, the \$100,000.00 left from the sale of their Edgewater Park home was all the money the Drewses had left to live on for the rest of their lives. (R.p.328, lines 7-10; R.p.355, lines 19-25; R.p.385, lines 4-20; R.p.387, lines 11-14; R.pp.764-765, para. 5). During the 1993-1995 time period, Mr. Lancaster made a series of eight loans to the Drewses totaling \$40,000.00 (R.p.324, lines 20-23; R.p.328, lines 7-10; R.p.385, line 21 – R.p.386, line 14; R.p.1065) so they could, at least in great part, retire their credit card debt. (R.pp.692-695). The loans varied in amounts from a low of \$3,000.00 up to a high of \$7,000.00. (R.p.1065). The first loan was made on 6 February 1993, and the last one was made on 30 January 1995. (R.p.1065). The Drewses had been "living off" of their credit cards and incurred some \$35,000.00 of credit card debt. (R.p.328, lines 7-10; R.p.355, lines 19-25; R.p.385, lines 4-20; R.pp.692-695; R.p.979, lines 14-21; R.p.1012, lines 14-16). Lastly, in 1999, Mr. Lancaster's \$20,000.00 loan to the Drewses was not made to them, but made directly to First Citizens Bank and South Trust Bank of \$5,000.00 and \$15,000.00 respectively (R.p.392, lines 2-24; R.p.766, para. 8; R.p.1073) to pay off loans Mr. Drews had obtained to finance the Builders Station endeavor. (R.p.367, lines 11-22; R.p.388, line 23 – R.p.389, line 24; R.p.402, lines 19-23; R.p.766, para. 8; R.p.1073). The alleged "other payments" to Mr. Lancaster were merely the Drewses' repayments, including interest, of those loans.

²⁸ See Haley v. Thames, 30 S.C. 270, 276, 9 S.E. 110, 112.

The \$100,000.00 payment for the Drewses' life estate in 1992 was made so they could live in a comfortable and suitable home for the remainder of their natural lives – both Bainbridge Drive and Nuffield Road - without the need to make either rent or mortgage payments. (R.pp.665-666; R.pp.677-681; R.pp.764-765, para. 5; R.pp.1053-1054; R.pp.1060-1064). Mr. Gordon admitted “the valuable consideration [involved in the Drewses' \$100,000.00 payment to Mr. Lancaster] was providing [the Drewses] a house to live in for the rest of their years” (R.p.323, lines 5-7). The series of loans totaling \$40,000.00 to the Drewses during 1993-1995 (R.p.324, lines 20-23; R.p.328, lines 7-10; R.p.385, line 21 – R.p.386, line 14; R.p.1065) was made so they could, in great part, retire their \$35,000.00 credit card debt. (R.p.355, lines 19-25; R.pp.692-695). These loans prevented any attempt by the credit card companies to encumber either Bainbridge Drive or Nuffield Road and diminish Mr. Lancaster's interests.²⁹ Furthermore, the Drewses lived, both **rent free and mortgage free**, in Bainbridge Drive for some 37 months (R.p.137, para. 47; R.p.146, para. 11; R.p.378, lines 16-18) and then in Nuffield Road for over 12 years (Mr. Drews) and almost 15 years (Mrs. Drews). (R.p.137, para. 49; R.pp.137-138, paras. 49, 52; R.p.383, lines 2-7). Effectively, the \$100,000.00 represented the Drewses' making a single “up front” lease payment (R.p.397, lines 11-15) which, in turn, left the risk of interest rate flux, property devaluation, etc. solely to Mr. Lancaster.

²⁹ As an aside, it is undisputed that Mr. Lancaster paid the real estate property taxes on both properties (R.p.378, lines 2-4; R.p.383, lines 8-10) plus expended additional sums to make major repairs to improve the two properties prior to the Drewses moving in. (R.p.341, lines 2-7; R.p.364, line 22 – R.p.365, line 2; R.p.379, lines 9-15; R.p.R.pp.687-688).

Mr. Lancaster was not an executor *de son tort* to either Mr. Drews' estate or to Mrs. Drews' estate. There is no evidence he "intruded" into the administration of either estate. This is simply Mr. Gordon's attempt to somehow bypass the time limitations which prevent enforcement of the judgments he obtained against Mr. Drews in 2001 and 2002.

D. This Supreme Court Properly Interpreted S.C. Code Ann. § 15-39-30

This Supreme Court stated that "[a]ccording to [S.C. Code Ann. § 15-39-30's] plain language, a creditor has ten years to execute on the judgment [obtained] from the date of its entry, a time period that cannot be renewed."³⁰ Mr. Gordon asserts this was incorrect given this Supreme Court's opinion in *Linda Mc Co.* (*Pet. Rhg.*, pp.12-13). Again, this proposition is, at best, ludicrous.

In *Payne v. Tennessee*, the United States Supreme Court concluded that "[s]tare *decisis* [wa]s the preferred course because it promote[d] the evenhanded, predictable, and consistent development of legal principles, foster[ed] reliance on judicial decisions, and contribute[d] to the actual and perceived integrity of the judicial process."³¹ On the other hand, the Supreme Court appropriately recognized that "when governing decisions are unworkable or are badly reasoned, 'this Court has never felt constrained to follow precedent' "³² and, therefore, "[s]tare *decisis* [wa]s not an inexorable command; rather, it 'is a principle of policy and not a mechanical formula of adherence [by the Supreme Court] to the latest decision.' "³³

³⁰ *Gordon v. Lancaster*, 2018 WL 6072352, *2.

³¹ *Payne v. Tenn.*, 501 U.S. 808, 827 (1991) (*citing Vasquez v. Hillery*, 474 U.S. 254, 265–266 (1986)).

³² *Payne v. Tenn.*, 501 U.S. 808, 827 (*quoting Smith v. Allwright*, 321 U.S. 649, 665 (1944)).

³³ *Payne v. Tenn.*, 501 U.S. 808, 828 (*quoting Helvering v. Hallock*, 309 U.S. 106 (1940)).

This Supreme Court follows the same basic principles. In State v. One Coin-Operated Video Game Machine, this Supreme Court stated that “[s]tare decisis exists to insure a quality of justice which results from certainty and stability.”³⁴ Nevertheless, in noting “ [t]here is no virtue in sinning against light or persisting in palpable error, for nothing is settled until it is settled right . . . [and] [t]here should be no blind adherence to a precedent which, if it is wrong, should be corrected at the first practical moment.”³⁵

Applying those principals to this case, it is clear that the Linda Mc Co. decision has proven to essentially be unworkable and cumbersome in its application. Even though the decision was ostensibly a “narrow holding limited to facts similar to those at issue in th[at] case”,³⁶ the problem became the determination of how to define the phrase “facts similar to those at issue” in Linda Mc Co. Taken strictly in light of the facts in Linda Mc Co. then the limited extension beyond the ten-year limitation period could only entail the time period during which a judgment creditor was “merely waiting on a court’s order regarding execution and levy” after having completed all other proceedings up “to when the [Trial] [C]ourt finally issues an order”.³⁷ On the other hand, taken to its “logical” extreme, the time period could be significantly longer since a judgment creditor could “legitimately” file

³⁴ State v. One Coin-Operated Video Game Machine, 321 S.C. 176, 181, 467 S.E.2d 443, 446 (1996) (quoting McCall v. Batson, 285 S.C. 243, 256, 329 S.E.2d 741, 747 (1985) (Chandler, J., concurring) (citing Brown v. Anderson County Hosp. Ass'n, 268 S.C. 479, 234 S.E.2d 873 (1977))).

³⁵ McLeod v. Starnes, 396 S.C. 647, 654, 723 S.E.2d 198, 202 (2012) (quoting Smith v. Daniel Const. Co., 253 S.C. 248, 255–256, 169 S.E.2d 767, 771 (1969) (Bussey, J., dissenting) (quoting Sidney Spitzer & Co. v. Comm'rs of Franklin County, 188 N.C. 30, 123 S.E. 636, 638 (1924))).

³⁶ Gordon v. Lancaster, 2018 WL 6072352, *2 (quoting Linda Mc. Co. v. Shore, 390 S.C. 543, 554, 703 S.E.2d 499, 505).

³⁷ Linda Mc. Co. v. Shore, 390 S.C. 543, 554, 703 S.E.2d 499, 505

and serve an action to enforce a judgment on the very last day of the ten-year “active energy” period and still have effective enforcement rights because the judgment creditor had “filed [the] action . . . within the ten-year statutory period of active energy.”³⁸

This broad interpretation was the root of the problem with Linda Mc Co. as this “rationale” substantially extended the ostensible ten-year “active energy” period well beyond any time limits seemingly envisaged by this Supreme Court to include whatever additional amount of time it took either a trial judge, whether in state or federal court, to both conduct a hearing and to issue a final order.³⁹

This case presented a prime example of the Linda Mc Co. conundrum. Mr. Gordon obtained his judgment against Mr. Drews in 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).⁴⁰ Mr. Gordon sued Mr. Lancaster in November 2010 (R.pp.120-130), and was not “merely waiting on a court’s order regarding execution and levy”⁴¹ since “the [C]ircuit [C]ourt did not [even] hold the final hearing in this case until June 2013, some 13 or so months after expiration of the

³⁸ 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). Mr. Gordon argues that the use of “may” in S.C. Code Ann. § 15-39-30 mandates multiple interpretations of the statute, thereby supporting his position. (Pet. Rhg., pp.13-14). Mr. Gordon ignores the very language of S.C. Code Ann. § 15-39-30 which requires an execution to be issued within the non-renewable ten-year time period. “[A]n order of execution has still not been issued in this case” against Mr. Lancaster. Gordon v. Lancaster, 2018 WL 6072352, *3.

³⁹ See generally Gordon v. Lancaster, 419 S.C. 48, 56-58, 795 S.E.2d 857, 861-862, rehearing denied (16 Feb. 2017), certiorari granted in part (13 Dec. 2017), reversed, 2018 WL 6072352.

⁴⁰ The judgment, with the attorneys’ fees award, was enrolled in March 2002. (R.p.11, para. 2; R.pp.41-43; R.pp.1079-1090). See Gordon v. Lancaster, 419 S.C. 48, 63-64, 795 S.E.2d 857, 865 (Thomas, J, dissenting).

⁴¹ 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).

ten-year period”⁴² and, in turn, Mr. Gordon’s judgment against Mr. Lancaster was not effective until August 2013 (R.p.9; R.pp.10-30), another two months thereafter. The facts of this case were not, as this Supreme Court recognized herein,⁴³ “similar to those at issue in [*Linda Mc Co.*].”⁴⁴

This Supreme Court properly and correctly interpreted S.C. Code Ann. § 15-39-30 in this matter. While Linda Mc Co. was a somewhat understandable departure from the ten-years mandatory limitation, it has proven to be an unworkable aberration prone to extreme interpretation. Ten years means ten years as it should be.

**E. Linda Mc Co. Warped The Legislative’s Intent
In Adopting S.C. Code Ann. § 15-39-30⁴⁵**

Based upon the language the South Carolina Legislature used in S.C. Code Ann. § 15-39-30 it appears clear and unambiguous that a judgment “creditor has ten years to execute on the judgment [obtained] from the date of its entry, a time period that cannot be renewed.”⁴⁶ Unfortunately, in Linda Mc Co., this Supreme Court discounted that

⁴² Gordon v. Lancaster, 419 S.C. 48, 64, 795 S.E.2d 857, 865 (Thomas, J., dissenting) (Emphasis added).

⁴³ Gordon v. Lancaster, 2018 WL 6072352, *3 (In this case “the hearing was not even held until over a year past expiration of the time period, and an order of execution has still not been issued.”)

⁴⁴ Gordon v. Lancaster, 2018 WL 6072352, *2 (quoting Linda Mc. Co. v. Shore, 390 S.C. 543, 554, 703 S.E.2d 499, 505).

⁴⁵ Mr. Gordon’s arguments in this section basically assert the same positions set forth in Section D of his Petition for Rehearing (*i.e.*; this Supreme Court’s failure to follow the Legislature’s alleged statutory intent). The arguments have simply been rephrased and reworded. “When I see a bird that walks like a duck and swims like a duck and quacks like a duck, I call that bird a duck” Duck Test (https://en.wikipedia.org/wiki/Duck_test) (citing Michael Heim, Exploring Indiana Highways, p.68 (Travel Organization Network Exchange, Inc. 2007) (quoting James Whitcomb Riley)).

⁴⁶ Gordon v. Lancaster, 2018 WL 6072352, *2. See also RRR, Inc. v. Toggas, 98 F.Supp.3d 12, 17 (D.D.C. 2015) (quoting S.C. Code Ann. § 15-39-30). The District of Columbia District Court recognized that “ ‘South Carolina courts have repeatedly held that a judgment is extinguished after the expiration of ten years from the date of entry.’ ” RRR, Inc. v. Toggas, 98 F.Supp.3d 12, 17

language by giving the judgment creditor an extra day⁴⁷ and, in turn, opening the door to confusion and possible abuse. Nevertheless, Mr. Gordon asserts Linda Mc Co. most assuredly followed the Legislature's intent when it adopted S.C. Code Ann. § 15-39-30. (*Pet. Rhg.*, pp.12-13). Mr. Gordon's position is meritless and should be dismissed outright.

As has been noted previously, not only did Linda Mc Co. not follow the Legislature's intent in adopting S.C. Code Ann. § 15-39-30 the decision effectively sidestepped that intent by permitting a judgment creditor to execute one a judgment past the expiration of the ten-year time period. Even though this specifically "limited" exception only extended the ten-year limitation during the time when the judgment creditor was "merely waiting on a court's order regarding execution and levy" up "to when the [Trial] [C]ourt finally issues an order",⁴⁸ this "tiny crack" in the temporal dam created a myriad of extension possibilities certainly unintended by this Supreme Court.⁴⁹

The South Carolina Legislature, when adopting S.C. Code Ann. § 15-39-20 and S.C. Code Ann. § 15-39-30, specifically stated in both statutes that a writ of execution may be issued and be enforced against an outstanding judgment "***within ten years***" after the judgment was entered.⁵⁰ While both statutes admittedly use the word "may", both statutes also specifically require any execution against the judgment at issue to occur

(*quoting Toggas v. RRR, Inc.*, (Beaufort County Court of Common Pleas Case No. 2014-CP-07-2016, Order dated 29 Jan. 2015, **2-3)) (*quoting S.C. Code Ann.* § 15-39-30)).

⁴⁷ Gordon v. Lancaster, 2018 WL 6072352, *2 (*quoting Linda Mc. Co. v. Shore*, 390 S.C. 543, 554, 703 S.E.2d 499, 505).

⁴⁸ Linda Mc. Co. v. Shore, 390 S.C. 543, 554, 703 S.E.2d 499, 505

⁴⁹ Gordon v. Lancaster, 2018 WL 6072352, *2.

⁵⁰ S.C. Code Ann. §§ 15-39-20, 30 (Thomson Reuters West 2014) (emphasis added).

within⁵¹ ten years after the judgment was entered and/or enrolled. Notwithstanding Linda Mc Co., the language used in the two statutes demonstrates that the Legislature intended that a judgement creditor's execution against a judgment debtor occur within the ten-year time period – not one day, nor one week, nor one month, nor one year later. If the judgment creditor does not accomplish the execution **within** the ten-year period, the judgment holder loses his or her status as a judgment creditor.⁵²

Looking to S.C. Code Ann. § 15-3-600,⁵³ Mr. Gordon argues that “[b]y overturning Linda Mc Co., this [Supreme] Court has also read [S.C. Code Ann. § 15-39-30] to treat in-state collections even more harshly than out-of-state collections.” (*Pet. Rhg.*, pp.16-17). He states that Payne v. Claffy,⁵⁴ demonstrates this problem. (*Pet. Rhg.*, p.17). Mr. Gordon is incorrect on both counts. In Payne, the Court of Appeals addressed a judgment Payne obtained against Claffy in Virginia in 1965, and which Payne sought to enforce in

51 See Hopponen v. All Season Party Rentals, LLC, 2010 WL 5030797, *2 (Conn. Super., filed 16 Nov. 2010) (*quoting* Lamberti v. Stamford, 131 Conn. 396, 398, 40 A.2d 190 (1944) (Internal quotation marks omitted in original) (“The word ‘within’ is of controlling importance. It means ‘not longer in time than’ . . . ‘not later than.’ ”)). See also Kumar v. Metropolitan Prop. & Laib. Ins. Co., 1992 WL 348180, *2 (Ohio App. 2nd Dist., filed 23 Nov. 1992) (*quoting* Blacks Law Dictionary, 5th Ed., p.1437 (West 1989) (“When used relative to time, [within] has been defined variously as meaning any time before; at or before; at the end of; before the expiration of; not beyond; not exceeding; not later than.”)); Colville v. Alleghany County Retirement Bd., 592 Pa. 433, 445, 926 A.2d 424, 432-434 (2007) (*quoting* Blacks Law Dictionary, 6th Ed., pp.1602-1603 (West 1990)) (same); Norris v. Treadwell, 907 So.2d 1217, 1220 (Fla. 1st DCA 2005) (Kahn, J, dissenting) (*quoting* Amer. Heritage Dictionary (2nd College Ed.) (Amer. Heritage Pub. 1985) (“[T]wo dictionary definitions of ‘within’ are ‘[i]nside the limits or extent of in time, degree, or distance’; and ‘[i]nside the fixed limits of; not beyond.’ ”)) (Second and third alterations in original).

52 Carr v. Guerard, 365 S.C. 151, 154, 616 S.E2d 429, 430); RRR, Inc. v. Toggas, 98 F.Supp.3^d 12, 17; In re DC Development, Inc., 572 B.R. 171, 175; Richardson v. Chambliss, 2018 WL 29996633, *5 (Ala., filed 18 June 2018).

53 S.C. Code Ann. § 15-3-600 (Thomson Reuters West 2014).

54 Payne v. Claffy, 281 S.C. 385, 315 S.E.2d 814 (Ct.App. 1984).

South Carolina in 1981, some 16 years later.⁵⁵ The Court of Appeals allowed the execution as Virginia had a 20-year time period since South Carolina recognized the continuing enforceability.⁵⁶ Moreover, since both Claffy had been in South Carolina for only four years and S.C. Code Ann. § 15-3-600 contained the “within ten years” language, six years of enforceability still remained.⁵⁷ Consequently, contrary to Mr. Gordon’s assertion, the Virginia judgment was treated no differently than one from South Carolina.

Comparing the makeup of the Linda Mc Co. court with this present Supreme Court, Mr. Gordon asserts that “[i]t is patently unfair that a change in judiciary membership is the only reason well-settled precedent is overruled.” (Pet. Rhq., p.18 fn.16). While the personnel makeup of this Supreme Court is certainly different than that of the Linda Mc Co. court, there is no evidence that proposition played any role in this Supreme Court reaching the decision in this case. Any assertion to the contrary is, at best, meritless speculation. Moreover, even if judiciary composition had some bearing on the decision, there is nothing improper as a result.

In this case, however, it appears that the overriding proposition for reversing Linda Mc Co. was not court makeup, but the need to re-establish a bright line rule concerning the enforceability time frame of an outstanding judgment. Linda Mc Co. created a plethora

⁵⁵ Payne v. Claffy, 281 S.C. 385, 386, 315 S.E.2d 814, 814.

⁵⁶ Payne v. Claffy, 281 S.C. 385, 386-387, 315 S.E.2d 814, 815.

⁵⁷ Payne v. Claffy, 281 S.C. 385, 386-387-388, 315 S.E.2d 814, 815. *See also* Home Port Rentals, Inc. v. Moore, 369 S.C. 439, 632 S.E.2d 862 (2006) (quoting Garrison v. Owens, 258 S.C. 442, 446-447, 189 S.E.2d 31, 33 (Acknowledging that this Supreme Court has consistently held that “[a] judgment lien is purely statutory, its duration as fixed by the [L]egislature 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 statute, if such time expires before the action is tried.”)). *See also* Hardee v. Lynch, 212 S.C. 6, 46 S.E.2d 179.

of issues regarding the “bottom line” time period in which a judgment creditor could properly execute on a judgment. Was it (a) the Linda Mc Co. ten years plus “one extra day” or was it (b) whenever a trial court judge issued a final order (assuming all other requirements had been met, *including* conducting the merits trial), or was it (c) something else (assuming an action had been filed within the ten year time period)? The determination seemed to depend on the particular facts of a particular case.⁵⁸

This Supreme Court’s decision in this case, not only mirrors the legislative intent, it returns the state of the law to conform to that intent in light of Linda Mc Co.’s departure from the “ten years means ten years” mandate. The decision should be confirmed in all respects.

F. This Supreme Court’s Decision Herein Does Not Promote Judgment Creditor Abuse Of The Judicial System

Mr. Gordon asserts that this Supreme Court’s decision in this case “rewards a fraudster who has abused the legal system for over a decade.” (*Pet. Rhg.*, p.18). This proposition is both offensive and preposterous.⁵⁹ It should be dismissed without any consideration.

⁵⁸ See e.g.; McMasters v. Charpia, 2016 WL 5799758, *1 (Ct.App. 2016) (*per curiam*) (execution made within the ten-year period); RRR, Inc. v. Toggas, 98 F.Supp.3d 12, 13 (SC judgment obtained in 2003, and collection still continuing); In re DC Development, Inc., 572 B.R. 171, 174-175 (2005 judgments extinguished in June 2015, due to actions not timely completed; 2011 judgment still effective); Grandsouth Bank v. Cleveland Land Co., Inc., 2015 WL 5834241, *1 (Ct.App., filed 7 Oct. 2015) (*per curiam*) (August execution against July 2004 judgment ineffective).

⁵⁹ While this has been mentioned in previous filings, given Mr. Gordon’s vitriolic and spiteful claims, it is appropriate to state the proposition again. In an idiom oft attributed to the late accomplished journalist, editor, and playwright, Clare Boothe Luce (http://www.ehow.com/facts_7416321_origin-good-deed-goes-unpunished_.html) - Mr. Lancaster’s predicament in this case is, and always has been, unfortunately the classic example of “no good deed goes unpunished.” He tried to do the right thing by financially assisting his aunt and uncle and has, heretofore, paid dearly for his kindnesses. Furthermore, the Court of Appeals’ muddled rendition of the “facts”, Gordon v. Lancaster, 419 S.C. 48, 51-56, 795 S.E.2d 857, 857-861; has continued to tarnish

Mr. Gordon further asserts that the opinion obviates any motivation by judgment creditors “to pay the money they owe” as now they “will be [only] motivated to continually appeal a case . . . in hopes to delay enforcement of the judgment for at least ten years until it expires.” (*Pet. Rhg.*, pp.18-19). Certainly, there will be those judgment debtors who will try to evade enforcement and to “string out” the proceedings, but that would be no different either before or after this Supreme Court’s decision herein. There will **always** be those who seek to avoid their responsibilities, whether financial or otherwise, and the *Gordon v. Lancaster* opinion does not change that in any respect. All it does is makes sure that a judgment creditor is diligent in pursuing execution since, under *S.C. Code Ann.* § 15-39-30, ten years does, in fact, mean ten years. Moreover, the opinion re-establishes the bright line rule that if the judgment at issue has not been executed upon within the ten year time frame, the judgment becomes unenforceable. All of the parties – both creditor and debtor – know the time parameters involved. There are no exceptions – regardless of how limited or expansive they may be.

Furthermore, even if a judgment debtor attempted to use every procedural action and/or delaying tactic possible in order to prolong the proceedings past the ten-year time limit, a judgment creditor has certain alternative remedies available to him or her in order to seek a substitute monetary recovery. Using the judgment amount (plus accrued interest, attorney’s fees, litigation costs, *etc.*) as the claim amount in controversy, the

Mr. Lancaster’s good reputation by affirming the Circuit Court’s manifestly incorrect findings that he was guilty of moral fraud. As the record shows, nothing could be further from the truth. Assuming, *arguendo*, that Mr. Drews intended his financial dealings with Mr. Lancaster to somehow promote an alleged nefarious scheme to hide money from his alleged creditors, at best a less than demonstrable assumption, **Mr. Lancaster should not be “painted with the same broad brush” since the record shows his motives and intentions in assisting his late aunt and uncle were above reproach.**

creditor could bring an action under either the South Carolina Frivolous Civil Proceedings Sanctions Act⁶⁰ or a claim under Rule 11, SCRCivP,⁶¹ or under Rule 11, FRCivP.⁶² This Supreme Court's decision does not foreclose a judgment creditor's rights to make some or all of a recovery.

G. This Supreme Court's Decision Applies To Bar Mr. Gordon's Claim Against Mr. Lancaster

Mr. Gordon asserts that this Supreme Court's decision should not apply to him since the facts involving his claim effectively come within the "limited exception" created by Linda Mc Co. Mr. Gordon ignores the record which clearly demonstrates that the proceedings involving his claim fell well beyond the ostensibly "narrow holding limited to facts similar to those at issue" in Linda Mc Co.,⁶³ involving the fact the judgment creditor had done all he could do and was "merely waiting on a court's order regarding execution and levy. . . ." ⁶⁴

⁶⁰ See S.C. Code Ann. §§ 15-36-10, *et seq.* (Thomson Reuters West 2018). See Holmes v Haynsworth, Sinkler & Boyd, P.A., 408 S.C. 620, 641- 644, 760 S.E.2d 369, 410-411 (2014), *abrogated on other grounds by Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 787 S.E.2d 485 (2017); Holmes v. East Cooper Cmty. Hosp., Inc., 408 S.C. 138, 163-167, 758 S.E.2d 483, 497-499 (2014). See also Susan Taylor Wall, *Righting A Wrong: The South Carolina Frivolous Civil Proceedings Sanctions Act*, 6 S.C. Lawyer 36 (November/December 1994); Wachovia Securities, LLC v. Brand, 2010 WL 3420214, ** 712 (D.S.C., filed 26 Aug. 2010); Sapphire Dev., LLC v. Span USA, Inc., 120 Fed.Appx. 466, 472 (4th Cir. 2005)

⁶¹ Holmes v Haynsworth, Sinkler & Boyd, P.A., 408 S.C. 620, 644-645, 760 S.E.2d 369, 412. See also In re Beard, 359 S.C. 351, 360, 597 S.E.2d 835, 839 (Ct.App. 2004) (*quoting The Father v. South Carolina Dep't of Soc. Servs.*, 345 S.C. 57, 72, 545 S.E.2d 523, 531 (Ct.App. 2001) ("[T]he 'criteria for Rule 11 sanctions are essentially the same as those for sanctions under the [FCPSA].'" (Second alteration in original)).

⁶² Guarantee Co. of N. Amer. USA v. Metro Contracting, Inc., 2015 WL 402909, **6-7 (D.S.C., filed 28 Jan. 2015); LOP Capital, LLC v. Cosimo, LLC, 2012 WL 2446894, **2-3 (D.S.C., filed 27 June 2012); Gibbs v. Rose Hill Plantation Dev. Co., 794 F.Supp.2d 1327, 1342-1343 (D.S.C. 1992).

⁶³ Linda Mc Co. v. Shore, 390 S.C. 543, 554, 703 S.E.2d 499, 505.

⁶⁴ Linda Mc Co. v. Shore, 390 S.C. 543, 554, 703 S.E.2d 499, 505.

As this Supreme Court is aware, Mr. Gordon's procedural facts were markedly dissimilar. Under well-settled law, "[e]xecutions may issue upon final judgments or decrees 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 or renewals thereof, and this whether any return may or may not have been made during such period on such executions.⁶⁵ Consequently, Mr. Gordon had to affirmatively act on the judgment he obtained against Mr. Drews within ten years of receiving the judgment. The record shows Mr. Gordon failed to undertake any action to timely protect his enforcement claim and, therefore, his suit against Mr. Lancaster was barred as a matter of law.⁶⁶

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 2002.⁶⁷ 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). Mr. Gordon's judgments expired and were unenforceable as they were more than ten years old.

⁶⁵ See S. C. Code Ann. 15-39-30 (Emphasis added). In 1946, the Legislature deemed ten years a sufficient time period in which to accomplish an execution and rewrote the law prohibiting any extension. Prior to then an additional ten-year period could be added. This Supreme Court held "[t]he 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).

⁶⁶ 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[such as Mr. Gordon in this case, has] failed to take any [protective] steps to enforce this judgment while of active energy", then the judgment is considered invalid and worthless. See Hardee v. Lynch, 212 S.C. 6, 14, 46 S.E.2d 179, 182.

⁶⁷ Gordon v. Lancaster, 419 S.C. 48, 63-64, 795 S.E.2d 857, 865 (Thomas, J, dissenting).

Unlike Mr. Gordon's reliance on Linda Mc Co.'s explicitly the **very limited** factually-based exception,⁶⁸ this was **not** a situation where Mr. Gordon " 'ha[d] complied with the applicable statutes . . . and [wa]s merely waiting on a court's order regarding execution and levy.' "⁶⁹ Mr. Gordon could not, under any of the facts herein, be considered to have been "merely waiting on a court's order regarding execution and levy"⁷⁰ as the merits "hearing was not even held until over a year past expiration of the time period, and an order of execution has still not been issued."⁷¹ The trial occurred in mid-June 2013, 13 or so months after the ten-year period expired. (R.pp.5, 10). Mr. Gordon's judgment against Mr. Lancaster issued on 19 August 2013 (R.p.9; R.pp.10-30), some two months later.

This Supreme Court's decision applies to the judgment against Mr. Lancaster. Mr. Gordon did not complete the necessary execution activities prior to the ten-year time period ending. His situation does not fit Linda Mc Co.'s narrow limited holding. Mr. Gordon was not only not waiting on a court's order; the trial court had not even conducted the merits hearing. To extend Linda Mc Co.'s limited exception to include Mr. Gordon's situation would exacerbate an already confused situation. This Supreme Court's now re-established bright line rule is appropriate and its implementation should be confirmed.

⁶⁸ The Supreme Court specifically stated that "[w]e want to stress that this is a narrow holding limited to facts similar to those at issue in this case." Linda Mc Co. v. Shore, 390 S.C. 543, 544, 703 S.E.2d 499, 504-505. See GrandSouth Bank v. Cleveland Land Co., 2015 WL 5834241, *1; RRR, Inc. v. Toggas, 98 F.Supp.3d 12, 17; Alex Sanders & John S. Nichols, Trial Handbook for South Carolina Lawyers, §§ 36:18, 40:9 (Thomson Reuters West 2016 Supp.).

⁶⁹ 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).

⁷⁰ Gordon v. Lancaster, 2018 WL 6072352, *2 (quoting Gordon v. Lancaster, 419 S.C. 48, 63, 795 S.E.2d 857, 865 (Thomas, J., dissenting)).

⁷¹ Gordon v. Lancaster, 2018 WL 6072352, **2, 3. See also Gordon v. Lancaster, 419 S.C. 48, 64, 795 S.E.2d 857, 865 (Thomas, J., dissenting).

CONCLUSION

Based upon the forgoing arguments and citation of authority the Petitioner, Donald W. Lancaster, respectfully requests this Supreme Court to deny the Petition for Rehearing in all respects.⁷²

Respectfully submitted:

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17 January 2019

NPCHAR1:2561757.1-APL-(SPG) 053211-00001

⁷² This Supreme Court “overrule[d] Linda Mc prospectively, yielding protection only to pending cases that f[e]ll within its narrow holding.” Gordon v. Lancaster, 2018 WL 6072352, *4 fn.6 (citing Steinke v. S.C. Dep’t of Labor, Licensing & Regulation, 336 S.C. 373, 399, 520 S.E.2d 142, 155 (1999)). Mr. Lancaster would respectfully argue that the opinion in this case is not a “narrow holding”, but a repudiation of Linda Mc Co. and a return to the proper interpretation of S. C. Code Ann. 15-39-30. Therefore, the decision should be given retroactive effect for pending cases not within Linda Mc Co.’s limited set of facts. Relief to a judgment debtor under a different set of facts was always available. See generally Toth v. Square D Corp., 298 S.C. 6, 377 S.E.2d 584 (1989).

STATE OF SOUTH CAROLINA
IN THE
SUPREME COURT

Appeal from the Court of Common Pleas for Charleston County
Honorable J. C. Nicholson, Jr., Circuit Judge
Civil Action Nos.: 2010-CP-10-9096 and 2011-CP-10-8840
419 S.C. 48, 795 S.E.2d 857 (Ct.App. 2016), reversed,
___ S.C. ___, ___ S.E.2d ___ (2018) (2018 WL 6072352)

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

RECEIVED

JAN 17 2018

v.

S.C. SUPREME COURT

Donald W. Lancaster,

Petitioner.

**Proof of Service for
Petitioner, Donald W. Lancaster's,
Response to the Petition to Rehearing**

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I, Stephen P. Groves, Sr., Esquire, hereby certify that on 17 January 2019, I served a copy of the **Response to Petition for Rehearing** 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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17 January 2019

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