

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

The Honorable R. Knox McMahon

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Case No. 2012-CP-32-00541  
Appellate Case No.: 2012-212587

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SC Court of Appeals

David Randolph Whitt,

Appellant,

v.

Clonta M. Fox,

Respondent.

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**FINAL BRIEF OF THE RESPONDENT**

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## STATEMENT OF ISSUE ON APPEAL

1. **DID THE TRIAL COURT ERR IN FAILING TO GRANT THE RELIEF SOUGHT IN PLAINTIFF'S MOTION TO ATTACH PROPERTY, GIVEN THE DISJUNCTIVE NATURE OF THE CONTROLLING PROVISIONS OF *SECTION 15-19-10?***

## STATEMENT OF THE CASE

The current action was filed by Plaintiff David Randolph Whitt, hereafter "Plaintiff," on February 6, 2012. The Plaintiff and Defendant are neighbors, both residing in Lexington County. The Plaintiff is seeking \$200,000 in liquidated damages for three causes of action: Abuse of Process, Malicious Prosecution, and Civil Conspiracy. These complaints stem from the Defendant's reporting of the Plaintiff's discharge of fireworks to the Lexington County Sheriff's Department. After a ticket was issued, the Plaintiff was found not-guilty after a Magistrate Court jury trial. Defendant Clonta M. Fox filed a Motion to Dismiss to the Plaintiff's Complaint on February 27, 2012. Thereafter, the Plaintiff filed a Motion to Attach Property on March 6, 2012. The Defendant submitted a Memorandum in Opposition to Motion to Attach Property, dated April 17, 2012. Plaintiff filed an Affidavit in Support of the Motion to Attach Property on April 23, 2012. The parties were unable to resolve these matters and a hearing was held on May 17, 2012. The Honorable R. Knox McMahon heard and denied the Motion to Attach in open court. Defendant's attorney was tasked with drafting a formal order for the Court. After consultation with the Plaintiff's attorney, an agreement as to the form of the order could not be reached and two versions of a formal Order were submitted to Judge McMahon on June 19, 2012. A formal Order from the Court has not been issued. Plaintiff then submitted a Notice of Appeal dated July 25, 2012.

## ARGUMENT

### **I. THE TRIAL COURT DID NOT ERR WHEN IT REFUSED TO GRANT AN ATTACHMENT OF DEFENDANT'S PROPERTY.**

S.C. Code Ann. §15-19-10 provides the grounds for attachment of property in South Carolina. Section (8) of this statute is at issue in this appeal. This subsection provides that “[i]n any action: (8) [w]hen any person or corporation is about to remove any of his or its property from this State, or has assigned, disposed of or secreted or is about to assign, dispose of or secrete any of his or its property with intent to defraud creditors as mentioned in this chapter”. (S.C. Code Ann. §15-19-10(8) (1976, as amended)).

At the hearing held on May 17, 2012, Plaintiff's counsel was afforded the opportunity to argue his motion fully. Plaintiff's counsel stated during the hearing that the Defendant had placed his home up for sale, that it was listed with a realty company, that there is a “For Sale” sign in front of the house, and that a rental truck was parked at the Defendant's home (R. p. 23, lines 15-24). Additionally, at the time of oral arguments, the Court and the Plaintiff were provided with a Memorandum in Opposition to Motion to Attach. This memorandum was verified by the Defendant himself (R. p. 6). In this memorandum, the Defendant informs both the Court and the Plaintiff why his home was listed for sale—his wife, who is not a party to this lawsuit, obtained a new position in Spartanburg, South Carolina (R. p. 14, second full paragraph). The Defendant's decision to put his home up for sale had nothing to do with the filing of this lawsuit as the Plaintiff insinuates in his oral argument. (R. p. 23, lines 6-11; R. p. 25, lines 8-17).

Plaintiff's counsel argued that Plaintiff is entitled to an attachment of Defendant's property because he is “afraid that he's [the Defendant] about to dispose of assets.” (R. p. 24, lines 9-11). According to S.C. Code Ann. §15-19-10(8), an attachment is proper “[w]hen any

person or corporation is about to remove any of his or its property from this State, or has assigned, disposed of or secreted or is about to assign, dispose of or secrete any of his or its property with intent to defraud creditors as mentioned in this chapter”. (S.C. Code Ann. §15-19-10(8) (1976, as amended). There is nothing in the record to suggest that the Defendant’s relocation to Spartanburg County is in any way an effort to defraud any creditors.

**II. THE DEFENDANT’S PROPERTY IS EXEMPT FROM ATTACHMENT PURSUANT TO THE HOMESTEAD EXEMPTION OF S.C. CODE § 15-41-30(A)(1).**

S.C. Code § 15-41-30 (“Property Exempt from Attachment, Levy, and Sale”), subsection (A)(1) states as follows:

- (A) The following real and personal property of a debtor domiciled in this State is exempt from attachment, levy, and sale under any mense or final process issued by a court or a bankruptcy proceeding:
  - (1) The debtor’s aggregate interest, not to exceed fifty thousand dollars in value, in real or personal property that the debtor or a dependent of the debtor uses as a residence . . .

The trial court reviewed the verified “Defendant’s Memorandum in Opposition to Motion to Attach property. This is the only information in the record related to the value of the Defendant’s property. At the time of the hearing, the listing price of the Defendant’s home was set at \$199,500 (R. p. 14). After the indebtedness was paid there would be “around \$28,804.51” remaining from which commissions and closing costs would need to be paid (R. p. 15).


The purpose of attachment generally is to take a defendant’s property into legal custody so that it may be applied to the plaintiff’s debt when established. Scratch Golf Co. v. Dunes West Residential Golf Properties, Inc. (S.C. 2004) 361 S.C. 117, 605 S.E.2d 905. The Plaintiff in this action cannot assert any greater right to the proceeds than the Defendant himself has. Charles R. Allen, Inc. vs. Island Co-Op. Ass’n Limited (S.C. 1959) 234 S.C. 537, 109 S.E.2d 446.

Based on all evidence in the record, the Defendant's own interest in the subject property, which is his residence, is less than \$50,000. This amount is fully protected by the homestead exemption of § 15-41-30, rendering any attachment proceeding moot. Instead of securing the Plaintiff's ability to collect a prospective verdict, the only result of an attachment in this matter would be to impede the Defendant's attempts at the sale of his house and relocation away from the Plaintiff.

**CONCLUSION**

Therefore, based on the foregoing, the decision denying the Attachment of Defendant's Property should be affirmed.

January 23, 2013  
Lexington, South Carolina

  
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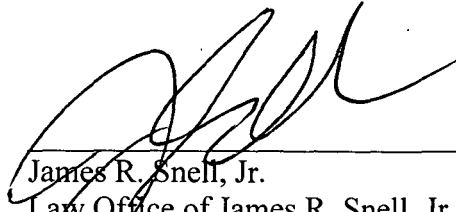
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**CERTIFICATE OF COUNSEL**

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The undersigned hereby certifies that the Final Brief complies with Rule 211(b).

Respectfully Submitted,



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