STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS

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

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

Respondent,

v.

Donald W. Lancaster,

Appellant.

Final Brief of the Appellant, Donald W. Lancaster

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II. STATEMENT OF THE CASE

On 2 November 2010, the Respondent, Frank Gordon, Jr., as Attorney-in-Fact for Dorothy Gordon ("Mr. Gordon"), sued the Appellant, Donald W. Lancaster ("Mr. Lancaster"), and others seeking to collect on a judgment Mr. Gordon obtained against, among others, Mr. Lancaster's now-deceased uncle, Rudolph Robert Drews ("Mr. Drews") in 2001. (R.pp.120-130).[1] He asserted claims of fraudulent conveyance (R.pp.121-129, paras. 8-53, 55-76) and constructive trust. (R.pp.121-126, 129, paras. 8-53, 78). Mr. Gordon filed an Amended Complaint on 30 November 2010, reprising the claims of fraudulent conveyance (R.pp.133-140, paras. 8-53, 55-76) and constructive trust. (R.pp.133-138, 140-141, paras. 8-53, 78). He added claims for civil conspiracy (R.pp.133-138, 141, paras. 8-53, 80-82) and negligence/aiding and abetting (R.pp.133-138, 141-142, paras. 8-53, 84-87). On 22 December 2010, Mr. Lancaster responded to the Amended Complaint by denying the material allegations (R.pp.144-147, paras. 1-2, 4, 7-17) and asserting various affirmative defenses (R.pp.147-149, paras. 20-26), including statute of limitations (R.p.148, paras. 21-22) and adequate consideration. (R.p.148, paras. 23-24).

The case was tried, non-jury, on 13-14 June 2013. (R.pp.307, 515). After Mr. Lancaster unsuccessfully moved for a directed verdict (R.p.517, line 7 – R.p.525, line 25), the Circuit Court proceeded to effectively "rule from the Bench" and directed the

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1 Mr. Gordon also sued Jessie B. Atkinson, Individually, and as Personal Representative of the Estate of Effie D. Drews ("Ms. Atkinson") and Shirrese Brockington as Special Administrator of the Estate of Rudolph Robert Drews ("Ms. Brockington"). (Complaint, paras. 2-4). By the time of the trial, neither Ms. Atkinson nor Ms. Brockington were involved in the case. Ms. Atkinson, in her capacity as Mrs. Drews' Estates' Personal Representative, confessed judgment to Mr. Gordon in the amount of $293,703.43 (R.p.753, para. 6) and then settled Mr. Gordon's claims against the Estate for the sum of $60,000.00. (R.p.756, para.4).

parties' respective attorneys to prepare appropriate order reflecting the Circuit Court's decision. (R.p.579, line 11 – R.p.584, line 20). The Circuit Court issued its written order on 19 August 2013, awarding judgment to Mr. Gordon for the fraudulent conveyance claim in the amount of $211,677.30.**2** (R.p.9, R.pp.10-27).**3**

Mr. Lancaster sought reconsideration, amendment of the Circuit Court's findings, and alteration/amendment of the judgment. (R.pp 296-306). The Circuit Court, by orders dated 6 May 2014, and 19 May 2011, denied the motion. (R.pp.1-2). This appeal followed.

III. STATEMENT OF THE FACTS**4**

A. Mr. Lancaster Assists Mr. And Mrs. Drews**5**

Mr. Lancaster is a certified internal auditor/business analyst who performs contract work for the United States Department of State. (R.p.319, line 25 – R.p.320, line 15; R.p.763, para. 1). He is the nephew of both the late Mr. Drews and his wife, the

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2 Interestingly, Mr. Gordon's accountant expert witness, Richard T. Livingston, CPA of Dixon Hughes Goodman (R.p.443, line 9 - R.p.447, line 8), stated that his damage calculations for Mr. Gordon, including pre-judgment interest, was only $151,029.49. (R.p.469, line 5 - R.p.470, line 11). The Circuit Court, which specifically "found Mr. Livingston to be both knowledgeable and credible (R.p.25, para. 80), however, inexplicably issued a judgment for $211,677.30 (R.p.9; R.pp.10-30), *more than $60,000.00 higher*.

3 The Circuit Court found for Mr. Lancaster on Mr. Gordon's three other causes of action. (R.pp.3-4; R.pp.5-8). That order has not been appealed.

4 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 unfortunately a classic example of "no good deed goes unpunished." He tried to do the right thing by his aunt and uncle and has heretofore paid dearly for his kindness.

5 While Mr. Lancaster had prior financial dealings with Mr. and Mrs. Drews, it is *undisputed* that the financial transactions involved in this case started in *1992*. (R.p.321, line 6 - R.p.322; R.p.956). It is also undisputed that Mr. Drews' subsequently ill-fated and failed hardware store business - Builders Station, Inc. ("Builders Station") - which gave rise to this and the prior litigation *did not come into existence until 1996*, not less than *four years later*. (R.p.365, line 3 - R.p.366, line 2). Mr. Gordon did not sue Mr. Gordon until *16 April 1999*, and did not obtain his damages judgment until 5 December 2001. (R.p.11; R.pp.46-53).

late Effie D. Drews ("Mr. and Mrs. Drews") and was very close to them both. (R.p.387, lines 5-10; R.p.763, para. 2). Mr. Drews passed away in September 2007, and Mrs. Drews followed in February 2010. (R p.383, lines 2-7; R.p.763, para. 2).

Mr. Drews previously owned and operated "The Drews Company" - a fairly successful construction business in Charleston from 1946 or so to about late 1991 or early 1992. (R.pp.763-764, para. 3). Mr. Lancaster, during various times in high school and college, worked for The Drews Company. (R.p.386, lines 20–25; R.p.440, line 12 – R.p.441, line 1; R.pp.763-764, para. 3). Unfortunately, The Drews Company fell upon hard times after Hurricane Hugo in 1989 (R.p.13, para. 1; R.p.439, line 23 – R.p.440, line 4; R.p.764, para. 4), due, in part, to an unscrupulous business associate who had absconded with company funds. (R.p.355, lines 13-18; R.p.764, para. 4).

Even though Mr. and Mrs. Drews attempted to "keep the company afloat" by borrowing heavily on their personal residence in Charleston's Edgewater Park subdivision, the Internal Revenue Service filed liens for unpaid payroll taxes. (R.p.13, para. 1; R.p.355, lines 6-12; R.p.373, lines 6-13; R.p.764, para. 4). This caused Mr. Drews to decide to get out of the construction business and sell his company. (R.p.440, lines 5-10; R.p.764, para. 4). Contemporaneously, Mr. and Mrs. Drews also decided to sell their Edgewater Park home in order to satisfy the outstanding IRS liens, as well as and the various loans taken out to keep The Drews Company in business. (R.p.355, lines 6-12; R.p.440, lines 11-15; R.pp.764-765, para. 5).**6**

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6 At the time Mr. Drews broached the "life estate" issue with Mr. Lancaster, Mr. and Mrs. Drews had approximately 30 days in which to vacate their Edgewater Park home. (R.p.373, lines 9-15). Before approaching Mr. Lancaster for assistance, Mr. and Mrs. Drews had looked for a comfortable home in the $100,000.00 range, but had not found anything suitable. (R.p.373, lines 14-25).

1. The Bainbridge Drive Property

In ***April 1992***, Mr. Drews advised Mr. Lancaster there would be approximately $100,000.00 remaining from the sale of the Edgewater Park residence and asked if Mr. Lancaster would consider doing the same housing arrangement he had done with his (Mr. Lancaster's) parents. (R.p.373, line 6 – R.p.374, line 5; R.pp.764-765, para. 5).**7** Mr. Drews proposed to give Mr. Lancaster the $100,000.00, have Mr. Lancaster use that money, in part, to purchase a suitable home, and then he and Mrs. Drews would live there for the rest of their lives, via a life estate, rent and mortgage free. (R.pp.764-765, para. 5).**8** For obvious reasons, Mr. and Mrs. Drews did not have sufficient funds to purchase a home on their own and, since they essentially did not have any income, could not themselves obtain a mortgage on a residence. (R.p.387, lines 11-14). Due to his close relationship with Mr. and Mrs. Drews (R.p.387, lines 5-10), as well as the fact no one else in their extended family possessed the financial wherewithal to help, Mr. Lancaster agreed to Mr. Drews' proposal. (R.p.13, para. 2; R.p.387, lines 11-19; R.p.418, lines 6-21).**9**

Mr. and Mrs. Drews ultimately sold their Edgewater Park home and, in May 1992, they were able to locate a home at 17 Bainbridge Drive in Charleston ("Bainbridge Drive") which met their needs. ***After appropriately paying off the IRS and satisfying***

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7 Previously, Mr. Lancaster had purchased a home for his parents when his father was forced to stop working and, while retaining ownership thereof, allowed them to live there for the remainder of their lives. (R.p.373, line 6 – R.p.374, line 5).

8 Effectively, Mr. and Mrs. Drews were collectively making a single lease payment "up front" (R.p.397, lines 11-15) and leaving the risk of interest rate flux, property devaluation, *etc.* solely to Mr. Lancaster.

9 It seems that Mr. and Mrs. Drews turned to Mr. Lancaster for help because he was single, had some good investments, and none of the other nieces or nephews "were in any kind of financial position to help them . . . ." (R.p.387, lines 15-19).

other outstanding debts[10] (R.p.387, line 20 – R.p.388, line 2; R.p.488, line 16 – R.p.491, line 14), Mr. and Mrs. Drews gave Mr. Lancaster the remaining $100,000.00. (R.p.137, paras. 43-45; R.pp.144-145, paras. 3, 9-10; R.p.322, lines 13-25; R.p.376, lines 14-20).[11] Using that money (R.p.137, para. 44; R.p.144, para. 3; R.p.376, lines 21-23; R.p.484, lines 17-23), together with some of his own, Mr. Lancaster purchased Bainbridge Drive on 22 May 1992, for $160,000.00 (R.p.14, para. 7; R.p.340, line 22 –

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10 Mr. Livingston - Mr. Gordon's expert accounting witness (R.p.343, line 9 – R.p.347, line 8) – although opining "that the only reasonable explanation for the . . . transactions [between Mr. and Mrs. Drews and Mr. Lancaster] was to hide assets from creditors" (R.p.25, para. 79; R.p.347, line 16 – R.p.348, line 13), testified that *he was not aware* of any specific creditors which Mr. and Mrs. Drews were attempting to avoid when they gave Mr. Lancaster the $100,000.00 to use in purchasing Bainbridge Drive. (R.p.491, lines 9-14).

11 Mr. Gordon and the Circuit Court "made much" of the fact Mr. Lancaster originally believed that the $100,000.00 Mr. and Mrs. Drews gave him for the life estate use of Bainbridge Drive was a "gift". (R.p.p13-14, para. 3; R.p.R.p.323, lines 5-20; R.p.336, line 2 – R.p.339, line 16; R.p.396, lines 9-24; R.p.409, line 16 – R.p.410, line 18). Mr. Lancaster thought the $100,000.00 was a gift because Mr. Drews' accountant (Jerry Gambrell) indicated that the money should be treated as a gift for income tax purposes. (R.p.336, lines 10-25; R.p.338, lines 13-19; R.p.374, line 6 – R.p.375, line 20; R.p.396, line 25 – R.p.397, line 4). Mr. Lancaster, admittedly concerned about the capital gains cost basis for Bainbridge Drive (R.p.336, lines 18-25; R.p.374, lines 6-25), had no reason to believe that Mr. Gambrell's advise might not be correct. In order to memorialize the gift, in 1993, Mr. Lancaster prepared a gift tax return for Mr. Drews to sign and send to the IRS. (R.p.337, line 1 – R.p.338, line 9; R.p.375, line 79, - R.p.376, line 13; R.p.397, lines 5-10). When he advised Mr. Gordon he could not present a copy of the gift tax return (R.p.419, lines 8-17) due to a broken copier (R.p.376, lines 11-13; R.p.412, lines 10-20; R.p.413, lines 3-13), Mr. Gordon strongly intimated that Mr. Lancaster had conspired with Mr. Drews to defraud the IRS. (R.pp.13-14,paras. 3-5; R.p.336, line 2 – R.p.339, line 16; R.p.397, line 25 – R.p.398, line 4; R.p.412, line 21 – R.p.415, line 1; R.p.415, line 23 – R.p.417, line 8). Mr. Lancaster did not realize the $100,000.00 was not, in reality, a gift until this litigation began and he discussed the situation with his attorney. (R.p.338, line 10 – R.p.339, line 16). Nevertheless, for 18 or so years, Mr. Lancaster's belief was reasonable under the circumstances. He was acting on the recommendations of a professional accountant (R.p.336, lines 10-25; R.p.338, lines 13-19) and should have been able to reply on that advice. Moreover, Mr. Lancaster, as the recipient of the gift was neither responsible for receiving or retaining a copy of the gift tax return. Given the fact the Circuit Court dismissed Mr. Gordon's "civil conspiracy" claim (R.pp.11-12), this "gift" issue was nothing more than a "red herring" used to distract the Circuit Court and to "paint" Mr. Lancaster with a "conspiratorial brush". Mr. Gordon obviously succeeded in his efforts given the result he obtained.

R.p.341, line 7; R.p.376, line 24 – R.p.377, line 1; R.pp.662-664)[12] and added another $5,000.00 or so in repairs. (R.p.341, lines 2-7; R.p.379, lines 9-15).[13] Mr. and Mrs. Drews, via the life estate (R.p.14, para. 8; R.p 484, line 24 – R.p.485, line 2; R.p.487, lines 7-18; R.p.665), then moved into Bainbridge Drive and lived there for the next 37 months. (R.p.137, para. 47; R.p.146, para. 11; R.p.378, lines 16-18). While Mr. Lancaster paid the property taxes on Bainbridge Drive (R.p.378, lines 2-4), Mr. and Mrs. Drews paid for the property insurance and the utilities. (R.p.378, lines 5-8).

2. The Nuffield Road Property

In ***April 1995***, Mr. Drews asked Mr. Lancaster if it would be possible to sell Bainbridge Drive and to purchase another home, albeit only one story. (R.p.378, line 19 – R.p.379, line 3). One of Mr. Drews' knees had significantly deteriorated and he was no longer able to negotiate up and down the stairs at Bainbridge Drive. (R.p.379, line 19 – R.p.380, line 3; R.p.487, lines 19-23). Mr. and Mrs. Drews commenced another home search and found a suitable property at 2 Nuffield Road – also in Charleston ("Nuffield Road"). (R.p.360, lines 18-20; R.p.363, lines 11-15; R.p.380, lines 4-19). Mr. Lancaster bought the Nuffield Road property on 16 May 1995 (R.p.137, para. 48;

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12 The $160,000.00 purchase price was composed of the $100,000.00 from Mr. and Mrs. Drews and $60,000.00 Mr. Lancaster contributed himself. (R.p.341, line 2 – R.p.343, line 11; R.p.359, lines 14-17; R.p.360, lines 2-10; R.p.377, lines 2-17). Notwithstanding Mr. Gordon's assertions that Mr. Lancaster was simply "washing" Mr. and Mrs. Drews' $100,000.00 through an equity line at South Carolina National Bank secured by Bainbridge Drive (R.p.342, line 12 – R.p.345, line 16), the $100,000.00 was for the life estate Mr. Lancaster gave Mr. and Mrs. Drews for the 15+ years they lived in homes undisputedly owned by Mr. Lancaster. (R.p.354, lines 4-13; R.p.397, lines 11-19).

13 Mr. Lancaster was the undisputed record title holder to the Bainbridge Drive property. (R.p.133, para. 47; R.p.146, para. 11; R.pp.662-664). Mr. and Mrs. Drews did not own a home once they sold Edgewater Park. (R.p.998, line 11 – R.p.999, line 13, R.p.1013, lines 2-17).

R.p.144, para. 12; R pp.667-671; R.pp.1055-1059),**14** for $125,000.00 (R.p.487, line 19 – R.p.488, line 5; R.pp.667-671; R.pp.1055-1059)**15** and expended an additional $14,500.00 or so for a new air conditioning system, updated appliances, and various needed repairs. (R.p.364, line 22 – R.p.365, line 2; R.p.R.pp.687-688).**16** Mr. and Mrs. Drews then moved in (R.p.378, line 23 – R.p.379, line 1) and they had the same life estate arrangement with Mr. Lancaster at Nuffield Road as they had at Bainbridge Drive.**17** (R.p.378, lines 1-22; R.p.382, line 15 – R.p.383, line 1; R.p.488, lines 6-8;

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14 Mr. Drews, acting as Attorney-in-Fact for Mr. Lancaster via a Power-of Attorney, signed the real estate sales documents for Nuffield Road. (R.p.360, line 16 - R.p.362, line 11; R.pp.672-676). Mr. Gordon, again playing "conspiracy theorist", attempted to characterize this 15 year old real estate transaction as nefarious since Mr. Lancaster could not locate a copy of the POA (which Mr. Lancaster had no reason to retain after the Nuffield Road closing was completed) or the original POA (which Mr. Lancaster did not retrieve from Mr. Drews). (R.p.360, line 16 - R.p.361, line 11). Mr. Lancaster provided Mr. Drews with the POA since he (Mr. Lancaster) traveled for two weeks at a time and was in San Francisco on 27 April 1995, when Mr. Drews executed the real estate sales agreement for Nuffield Road. (R.p.360, lines 16-22; R.p.362, lines 3-8; R.p.380, lines 7-25; R.pp.672-676). Mr. Lancaster did, however, attend the closing approximately two weeks or so later. (R.p.380, line 23 - R.p.381, line 4; R.pp.667-671).

15 Mr. Lancaster paid the $125,000.00 using $79,250.00 from his National Bank of South Carolina ("NBSC") equity line on Bainbridge Drive, $37,500.00 he borrowed on his own home on Fairmont Avenue in Mount Pleasant, and the remainder from his personal checking account. (R.p.381, lines 5-13). NBSC paid off the Bainbridge Drive equity line and transferred it to Nuffield Road. (R.p.381, lines 17-22). SCN was the original lender on Bainbridge Drive with NBSC holding a second position. (R.p.381, lines 23-25). Since NBSC did not want to remain second, it apparently paid off SCN to secure a primary position and, in turn, financed, at least in part, the Nuffield Road purchase. (R.p.382, lines 1-7).

16 Again, Mr. Lancaster was the undisputed record title holder to the Nuffield Road property. (R.p.137, para. 49; R.p.146, para. 13; R.pp.R.pp.667-671). Again, Mr. and Mrs. Drews did not own a home once they sold Edgewater Park. (R.p.998, line 11 - R.p.999, line 13, R.p.1013, lines 2-17).

17 After Mr. Lancaster purchased Nuffield Drive, he put Bainbridge Drive on the market. (R.p.383, lines 16-19). Unfortunately, it took about eight months for a buyer to be found. (R.p.383, lines 16-21). In this interim period, Mr. Lancaster paid the $8,000.00 or so interest on both the Bainbridge Road and Nuffield Drive mortgages. (R.p.383, line 16 - R.p.384, line 5).

R.pp.677-681; R.p.726, para. 6; R.pp.1060-1064) **18** Again, Mr. Lancaster paid the property taxes (R.p.383, lines 8-10) while Mr. and Mrs. Drews paid for the utilities and casualty insurance. (R.p.383, lines 11-15). Mr. Drews lived at Nuffield Road for over 12 years from 1995, until his death in September 2007. (R.p.137, para. 49; R.p.383, lines 2-7). Mrs. Drews lived there for almost 15 years from 1995 until she passed away in February 2010. (R.pp.137-138, paras. 49, 52; R.p.383, lines 2-7).**19**

3. Other Loans And Advances

Since Mr. and Mrs. Drews did not have any "income" after the Drews Company failed, other than their social security benefits, they were paying their living expenses using credit cards. (R.p.328, lines 7-10; R.p.385, lines 4-20). Consequently, during the ***1993-1995*** time frame, Mr. Lancaster made additional direct loans/advances to Mr. and Mrs. Drews 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, in part, retire their $35,000.00 in credit card debt. (R.p.355, lines 19-25; R.pp.692-695).**20**

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18 As with the original life estate documents used at Bainbridge Drive (R.p.378, lines 1-3; R.pp.665-666; R.pp.1053-1054), Mr. Drews' attorney again alone prepared and handled the life estate documentation for Nuffield Road. (R.p.378, lines 1-13; R.p.382, line 18 - R.p.383, line 1; R.pp.R.pp.677-681; R.pp.1060-1064). Mr. Lancaster's legal counsel was not involved. (R.p.378, lines 1-13; R.p.382, line 18 - R.p.383, line 1; R.pp.R.pp.665-666; R.pp.677-681; R.pp.1053-1054; R.pp.1060-1064).

19 Combining the time periods for Bainbridge Drive and Nuffield Road, Mr. and Mrs. Drews lived in property owned by Mr. Lancaster, via a life estate, for over 15 years (Mr. Drews) and almost 18 years (Mrs. Drews), respectively. After Mrs. Drews passed away and after having owned the property for almost 15 years, Mr. Lancaster sold Nuffield Road for $246,000.00. (R.p.138, para. 52; R.p.144, para. 3; R.p.359, lines 21-23; R.p.383, lines 2-7; R.p.488, lines 9-15; R.pp.741-744). Mr. Lancaster, however, only received $225,181.66 after the deduction of related selling expenses.

20 On 1 March 1995, Mr. Drews gave Mr. Lancaster a mortgage on some warehouse property he owned at 1705 Meeting Street in Charleston ("1705 Meeting") to secure the $40,000.00 in various loans. (R.p.346, line 8 - R.p.347, line 6; R.pp.629-630). On April 15, 1998, Mr. Drews gave Mr. Lancaster a $100,000.00 mortgage on the same property as security for any

In addition, in 1999, Mr. Lancaster loaned Mr. and Mrs. Drews $20,000.00 to pay off loans from First Citizens Bank and South Trust Bank obtained to finance the failed Builders Station hardware store business endeavor. (R.p.367, lines 11-22; R.p.388, line 23 – R.p.389, line 24; R.p.402, lines 19-23; R.pp.1060-1064). To satisfy those loans, Mr. Lancaster sent a check on 2 June 1999, to First Citizens from his own First Citizens account for $5,000.00 (R.p.389, lines 2-24; R.p.766, para. 8; R.p.1073) and, on 7 June 1999, had Wachovia issue a $15,000.00 check out of his Wachovia line of credit made payable directly to South Trust. (R.p.389, lines 2-24; R.p.766, para. 8; R.p.1073).**21** After this final $20,000.00 loan,**22** Mr. and Mrs. Drews' debt to Mr. Lancaster totaled $63,738.11 for the additional loans and accrued interest.**23**

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additional loans Mr. Lancaster would make to them on an open-ended basis. (R.p.348, line 20 – R.p.350, line 14; R.p.351, lines 18-22; R.p.402, lines 12-18; R.pp.633-637). Mr. Lancaster did not request the $100,000.00 mortgage and "wasn't involved in securing [it]." (R.p.348, line 20 – R.p.349, line 3). While Mr. Lancaster eventually satisfied the $40,000.00 mortgage in 2001, he was never asked to provide a satisfaction prior to that time. (R.p.350, line 9 – R.p.351, line 16). Both of these mortgages were satisfied in November 2001, when Mr. and Mrs. Drews sold 1705 Meeting to Charleston Antique District. (R.p.357, lines 9-18; R.p.359, lines 1-8). Mr. Lancaster never initiated any collection efforts on either of these mortgages. (R.p.358, lines 19-25; R.p.368, lines 8-16). Mr. Lancaster was aware of the $40,000.00 mortgage when it originated, but was not advised until about 1999, by Mr. Drews that he had increased the mortgage from $40,000.00 to $100,000.00. (R.p.401, line 19 – R.p.368, line 23). Mr. Lancaster did not learn until much later that there were two separate mortgages – both a $40,000.00 mortgage and a $100,000.00 mortgage – or that they were still unsatisfied. (R.p.371, line 6 – R.p.372, line 9; R.p.401, line 19 – R.p.403, line 10).

21 Mr. Lancaster paid out these amounts to the banks in early June 1999, due to the banks' demands for quick satisfaction of Mr. Drews' Builders Station-related debts at reduced amounts. (R.p.354, lines 3-13; R.p.369, lines 10-15; R.p.389, lines 2-12). He noted that the $20,000.00 mortgage was procured three weeks later because its production required attorney involvement. (R.p.354, lines 3-9).

22 On 1 July 1999, Mr. Drews gave Mr. Lancaster another mortgage for this final $20,000.00 loan – again on 1705 Meeting. (R.p.351, line 17 – R.p.353, line 23; R.pp.638-642). Mr. Lancaster was unaware of this last mortgage as Mr. Drews did it without his knowledge. (R.p.352, lines 3-6). Mr. Drews ultimately told Mr. Lancaster about the $20,000.00 mortgage sometime way after the fact. In any case, this mortgage was satisfied in November 2001, when

4. Payments And Loan Security

In 1996, Mr. Drews sold another piece of property he owned – 623 Meeting Street ("623 Meeting").**24** (R.p.370, lines 15-21; R.p.384, lines 13-24). At the time, Mr. and Mrs. Drews still owed Mr. Lancaster the $40,000.00. (R.p.370, line 22 – R.p.371, line 1; R.p.1065). Unfortunately, Mr. Lancaster only received around $3,000.00 from the 623 Meeting sales proceeds (R.p.371, lines 2-5), even though that $40,000.00 was supposed to have been fully satisfied from that property sale. (R.p.371, lines 10-15; R.p.386, lines 6-19). Understandably, Mr. Lancaster asked Mr. Drews for some security for the remainder of the $40,000.00 loan. (R.p.371, lines 6-15). In turn, Mr. Drews provided him with the $40,000.00 mortgage**25** on 1705 Meeting.**26** (R.p.371, lines 16-

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Mr. and Mrs. Drews sold 1705 Meeting to Charleston Antique District. (R.p.357, lines 9-18; R.p.359, lines 1-8).

23 Mr. Lancaster kept good records of the monies he loaned to Mr. and Mrs. Drews and their payments back to him. (R.p.388, lines 3-22; R.p.390, line 15 – R.p.391, line 15; R.pp.692-695; R.pp.1066-1072). *All of the monies Mr. Lancaster loaned to Mr. and Mrs. Drews undisputedly occurred in 1999 or before*. (R.p.399, lines 2-6). *No loans of any type were made after 1999*. (R.p.399, lines 2-6).

24 This was the original location of "The Drews Company" (R.p.379, lines 13-16), although the property was vacant/unoccupied at the time. (R.p.384, lines 17-24). In late 1991 or early 1992, Mr. Drews closed the business and sold it to Dorsey Biller and others. (R.p.384, lines 17-18; R.p.384, line 25 – R.p.385, line 3; R.p.440, lines 5-10).

25 Mr. Gordon insinuated Mr. Lancaster was involved in aiding Mr. Drews to dodge creditors by the fact the $40,000.00 mortgage was executed on 1 March 1995, but not recorded until 7 November 1995. (R.p.346, line 8 – R.p.347, line 6; Plf. Exh. 3). Mr. Gordon ignores the fact that an unrecorded mortgage is not "of record" and, therefore, not within the chain of title and required to be satisfied or addressed upon an ownership change. In fact, an unrecorded mortgage protects a debtors creditors because it will likely never come into play. Consequently, as far as the outside world was concerned the $40,000.00 mortgage did not exist for the eight plus months between its execution and its recordation.

26 As previously noted 1705 Meeting was warehouse property Mr. Drews owned which he used for rental purposes to third-parties. (R.p.385, lines 4-13). Mr. Drews attempted, albeit unsuccessfully, to find tenants for both 623 Meeting and 1705 Meeting in order to produce an income stream. (R.p.385, line 21 – R.p.386, line 5).

17). Importantly, however, there was no evidence that Mr. Lancaster, other than seeking security for the loans he made, had any other participation or involvement in the preparation of either the $100,000.00 mortgage, or the $40,000.00 mortgage, or the $20,000.00 mortgage. (R.p.371, lines 18-23). In fact, Mr. Drews' attorney – Kerry W. Koon, Esquire ("Attorney Koon") –prepared all of the required documentation.**27** Mr. Lancaster was not given copies of the mortgages. (R.p.371, line 24 – R.p.372, line 9).

In November 2001, Mr. and Mrs. Drews sold 1705 Meeting to Charleston Antique District for around $190,000.00. (R.p.356, lines 16-23; R.p.391, lines 7-15; R.p.391, line 22 – R.p.392, line 6; R.pp.643-648). While most of the purchase price was financed,**28** Mr. Lancaster received around $11,089.63 from the sale. (R.pp.136-137, para. 41; R.p.145, para. 8; R.p.327, lines 3-19; R.p.392, lines 22-24). This reduced Mr. and Mrs. Drews' loan balance down to $50,912.00 which was then memorialized in a promissory note. (R.p.136, para. 37; R.pp.144-145, para. 3; R.p.327, line 23 – R.p.328, line 10; R.p.392, line 25 – R.p.393, line 16; R.p.658; R.p.1074).**29** The promissory note was, in turn, secured by an assignment of the 1705 Meeting mortgage. (R.p.136, para. 38; R.p.144, para. 3; R.p.328, lines 25 – R.p.329, line 2; R.p.393, line 22 – R.p.394, line 25;

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27 Attorney Koon prepared most, if not all, of the documents real; estate documents involving Mr. and Mrs. Drews. (R.p.354, lines 15-18). Mr. Gordon ***did not***, however, ***present any evidence*** showing that either Attorney Koon represented Mr. Lancaster or requested Mr. Lancaster's input into any of the documents Attorney Koon prepared for Mr. and Mrs. Drews.

28 Charleston Antique District gave Mr. Drews a $190,000.00 Promissory Note and a Mortgage as part of the financed sale. (R.p.134, para. 20; R.p.144, para. 3; R.p.329, lines 3-6; R.pp.643-648).

29 The promissory note had a 5% rate of interest with monthly payments of $540.00. (R.p.392, lines 1-21; R.p.658; R.p.1074). Attorney Koon prepared the promissory note. (R.p.393, lines 17-21).

R.pp.651-652; R.pp.1075-1077).**30** Mr. and Mrs. Drews sent Mr. Lancaster the $540.00 monthly payment out of the funds they received each month from Charleston Antique District. (R.p.136, para. 40; R.p.144, para. 3; R.p.334, lines 21-25; R.p.391, lines 11-15; R.p.395, lines 1-23; R.pp.692-695; R.pp.1066-1071).**31**

In September 2005, Charleston Antique District, in turn, sold 1705 Meeting to unrelated third- parties, namely William J. Lynch, Jr. and William T. Blackburn, Jr. (R.p.334, lines 13-16; R.p.395, lines 5-10; R.pp.R.pp.655-657; R.pp.721-725).**32** Mr. Lancaster was paid $35,621.12 from the sales proceeds, representing the remaining unpaid amount outstanding on Mr. and Mrs. Drews' original loan balance of $50,912.00.

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30 Mr. Drews had assigned to Mrs. Drews the 1705 Meeting Note and Mortgage he received from Charleston Antique District. (R.pp.643-650). In turn, Mrs. Drews then assigned the 1705 Meeting mortgage (from Charleston Antique District) to Mr. Lancaster as security for her $50,912.00 Promissory Note to him. (R.p.134, para. 21; R.p.144, para. 3; R.p.372, lines 10-23; R.pp.651-652; R.pp.1075-1076). Mr. Gordon attempted to characterize this latter assignment transaction as being nefarious and conspiratorial. (R.p.330, line 7 - R.p.332, line 3). Mr. Lancaster simply wanted to secure Mr. and Mrs. Drews' $50,912.00 debt to him. (R.p.359, lines 16-19; R.p.393, line 22 - R.p.394, line 25). Attorney Koon, again Mr. Drews' counsel, suggested an assignment of the Charleston Antique District mortgage and prepared the necessary documentation. (R.p.393, line 22 - R.p.394, line 25; R.pp.651-652; R.pp.1075-1076). When Charleston Antiques District sold 1705 Meeting Mr. Lancaster satisfied and released the 1705 Meeting mortgage assignment which Mrs. Drews gave him in 2001. (R.p.395, line 24 - R.p.396, line 2; R.pp.689-691).

31 The interest rate on the $50,912.00 promissory note was fixed by agreement at 5% per annum. (R.p.392, lines 1-21; R.pp.651-652; R.pp.1075-1076). The interest rates on the 1993-1995 $40,000.00 loans and the 1999 $20,000.00 loan, however, were calculated at the same rate Mr. Lancaster was being charged by his financial institutions on the equity line. (R.p.391, lines 16-21). Mr. Lancaster was not "making a profit" from his aunt's and uncle's financial woes. (R.p.391, lines 16-21). Mr. Lancaster conceded he had unintentionally/inadvertently neglected to report on his 2005 income tax form the interest payments Mr. Lancaster received from Mr. and Mrs. Drews for the eight months in 2005 prior to the loan being repaid in full. (R.p.403, line 24 - R.p.407, line 1; R.p.407, lines 20-24; R.pp.889-912). Furthermore, Mr. and Mrs. Drews did not claim a deduction on their 2005 income tax return for the interest ***they paid*** to Mr. Lancaster. (R.p.408, line 12 - R.p409, line 15; R.pp.877-888).

32 Mr. and Mrs. Drews obtained approximately $130,000.00 from the sale. (R.p.335, line 19 - R.p.336, line 1; R.p.372, line 24 - R.p.373, lines 5; R.p.396, lines 3-8; R.pp.719-720).

(R.p.136, para. 40; R.p.144, para. 3; R.p.334, lines 13-20; R.p.395, lines 5-23; R.p.658; R.pp.689-690).

B. The Underlying Judgment

In ***1996***, Mr. Drews and Raymond Beasley incorporated the ill-fated Builders Station hardware store business. (R.p.365, lines 3-16). Mr. Drews proceeded to sell stock, albeit supposedly required to be registered, to various investors, including Mr. Gordon ***and Mr. Lancaster***. (R.p.133, para. 8, R.p.365, lines 17-25).**33** Ultimately, Builders Station completely failed and Mr. Gordon sued seeking compensation for Mr. Drews' alleged violation of South Carolina's securities laws. (R.p.133, para. 8; R.p.726, para. 2).**34** The Circuit Court held a non-jury trial on 3-4 December 2001, and granted Mr. Gordon judgment against Mr. Drews 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, Mr. Gordon 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).**35**

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33 *There was no evidence showing Mr. Lancaster was involved, in any way, with the formation of Builders Station or the sale of the unregistered corporate stock.* Mr. Lancaster, himself, was a victim as he had purchased $30,000.00 worth of Builders Station's stock. (R.p.365, lines 17-19; R.p.366, lines 3-5; R.p.389, line 25 – R.p.390, line 6). While the hardware store opened, it operated only for a short time before closing. (R.p.367, lines 7-10). Mr. Lancaster's stock was rendered worthless. (R.p.390, lines 7-8). Mr. Lancaster was able to claim a capital gains loss on his income tax returns. (R.p.390, lines 9-14).

34 *See* S.C. Code Ann. § 35-1-1490 (West Group 1995).

35 Mr. Gordon's judgment was affirmed on appeal. *See* Gordon v. Drews, 358 S.C. 598, 595 S.E.2d 864 (Ct.App. 2004), *rehearing denied* (20 May 2004), *cert. denied* (22 September 2005). Mr. Gordon also was awarded $1,467.21 in appellate costs. (R.pp.38-34). Mr. Lancaster first found out about Mr. Gordon's judgment in December 2001. (R.p.399, line 20 – R.p.400, line 1).

IV. ARGUMENT AND CITATION OF AUTHORITY

Standard Of Review

Our courts have noted that "a clear and convincing evidentiary standard governs fraudulent conveyance claims brought under the *Statute of Elizabeth*."**36** Furthermore, "[a]n action to set aside a conveyance under the *Statute of Elizabeth* is an equitable action, and a *de novo* standard of review applies.**37** Additionally, "[q]uestions of law are decided with no particular deference to the trial court."**38**

A. MR. GORDON'S JUDGMENTS WERE MORE THAN 10-YEARS OLD BEFORE HE OBTAINED A JUDGMENT AGAINST MR. LANCASTER AND, THEREFORE, THE JUDGMENTS HAD EXPIRED AND WERE UNENFORCEABLE

South Carolina law provides, in pertinent part, that

> Executions 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.**39**

Until 1946, like today, the life of a judgment was ***ten years*** (*i.e.*; the so-called "active energy" period). Nevertheless, a judgment's life could be extended for an additional ten

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36 Oskin v. Johnson, 400 S.C. 390, 396, 735 S.E.2d 459, 463 (2012) (*citing* Windsor Props., Inc. v. Dolphin Head Constr. Co., 331 S.C. 466, 471, 498 S.E.2d 858, 860 (1998) (Internal citations omitted in original)). *See also* Albertson v. Robertson, 371 S.C. 311, 315, 638 S.E.2d 81, 83 (Ct.App. 2006).

37 Oskin v. Johnson, 400 S.C. 390, 396, 735 S.E.2d 459, 463 (2012) (*citing* Future Group, II v. Nationsbank, 324 S.C. 89, 97 n.6, 478 S.E.2d 45, 49 n.6 (1996); S.C. Const. art. V, § 5).

38 City of N. Myrtle Beach v. E. Cherry Grove Realty Co., LLC, 397 S.C. 497, 502, 725 S.E.2d 676, 678 (2012) (*citing* Wiegand v. U.S. Auto. Assn., 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011)).

39 *See* S. C. Code Ann. 15-39-30 (Thomson Reuters West 2012) (Emphasis added). *See also generally* Linda Mc Co. v. Shore, 375 S.C. 432. 653 S.E.2d 279 (Ct.App. 2007), *certiorari granted and affirmed as modified*, 390 S.C. 543, 703 S.E.2d 499 (2010); Carr v. Guerard, 365 S.C. 151, 616 S.E.2d 429 (2005).

years past the original ten years.**40** That year, our Legislature apparently concluded that ten years was a ***sufficient time period*** and rewrote the law. In turn, the Supreme Court noted, in *Hardee v. Lynch*,**41** that "[t]he logical result of the 1946 enactment, 44 *Stats.*1436, was to ***utterly extinguish a judgment after the expiration of ten years from the date of entry***."**42**

Moreover, the Legislature, in conjunction with S.C. Code Ann. § 15-39-30, has provided that a "sheriff, coroner[,] or other officer with whom final process [is] lodged", is prohibited from attempting any execution of the judgment as of "the first day of the term at which the active energy of the process shall [have] cease[d] as provided by law [the officer] shall return the process, if it has not been before returned, as fully executed."**43**

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40 In U.S. Rubber Co. v. McManus, 211 S.C. 342, 45 S.E.2d 335 (1947), the Supreme Court recognized that:

> Prior to the passage of the 1946 Act above referred to, the limitation for bringing an action on a judgment was *twenty years*, Section 387, subsection 1. Section 743, subsection 1, provided that judgments shall constitute a lien on the real estate of the judgment debtor for ten years from date of entry. And the procedure was set forth in subsection 2, 4, 5, 6 and 7 of Section 743 as to how *judgments could be renewed or revived within the period of ten years* by the service of a summons upon the judgment debtor. Section 745 permitted *an action on a judgment after the lapse of twenty years* from the date of its entry.

U.S. Rubber Co. v. McManus, 211 S.C. 342, 345-346, 45 S.E.2d 335, 336 (Emphasis added). *See also* Linda Mc. Co. v. Shore, 390 S.C. 543, 560, 703 S.E.2d 499, 508 (Beatty, J., dissenting).

41 Hardee v. Lynch, 212 S.C. 6, 16-17, 46 S.E.2d 179, 183 (1948).

42 Hardee v. Lynch, 212 S.C. 6, 16-17, 46 S.E.2d 179, 183 ("The logical result of the 1946 enactment, 44 Stats.1436, was to *utterly extinguish a judgment after the expiration of ten years from the date of entry*.") (Emphasis added).

43 S.C. Code Ann. § 15-39-130 (Thomson Reuters West 2012). Additionally, the officer's failure to do so could result in severe penalties for his or her neglect of duty. *See* S.C. Code Ann. § 15-39-140 (Thomson Reuters West 2012). *See also* Linda Mc. Co. v. Shore, 390 S.C. 543, 561, 703 S.E.2d 499, 508 (Pleicones, J., dissenting).

It is undisputed that Mr. Gordon obtained his original damages judgment for $65,789.12 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 of $42,693.50 on **15 March 2002**. (R.p.11, para. 2; R.pp.41-43; R.pp.1079-1090). It is also undisputed that Mr. Gordon obtained his judgment in this case against Mr. Lancaster on ***19 August 2013***. (R.p.9; R.pp.10-30). By any time and/or date calculation, 19 August 2013, is almost 11½ years after 15 March 2002, and more than 11½ years after 5 December 2001. By operation of law, Mr. Gordon's damages and attorneys' fees judgments had expired and were unenforceable since they were more than ten years old.

Furthermore, the Supreme Court has recognized that, while *S.C. Code Ann.* § 15-39-30 was not a statute of limitations, it operated similar to one in circumstances where a judgment creditor initiated supplemental proceedings against the judgment debtor within the ten-year time period and the Circuit Court did not issue the levy and execution order until after expiration of the ten-year period.[44] Unlike most cases, that is not the situation in this case, ***Mr. Lancaster was not and never has been the original judgment debtor to Mr. Gordon***. Mr. Drews and others occupied that position. Mr. Gordon has sought only to "attach" the "downstream" proceeds of monies which Mr. Drews allegedly "parked" with Mr. Lancaster to hide from creditors. The fallacy with Mr. Gordon's position and the Circuit Court's decision is that most of the monies at issue were involved in transaction which took place (a) when Mr. and Mrs. Drews ***did not have*** any debts or creditors, (b) ***long before*** Builders Station existed, (c) ***long before***

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[44] *See* Linda Mc Co. v. Shore, 390 S.C. 543, 544, 703 S.E.2d 499, 504-505.

Mr. Gordon had a potential claim against Mr. Drews, (d) ***long before*** Mr. Gordon made any claim as a result of his failed investment in Builders Station, and (e) ***long before*** Mr. Gordon obtained any judgment of any type or amount against Mr. Drews.

In ***1992***, when Mr. and Mrs. Drews paid Mr. Lancaster $100,000.00 for the life estate in Bainbridge Drive, they did not have any creditors or debts. Mr. and Mrs. Drews had already sold their Edgewater Park home to pay off the IRS and the loans they had previously taken out for The Drews Company. (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 home was all the money they 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). Conversely, the eventual Builders Station disaster did not begin until 1996, over four years later. (R.p.365, line 3 – R.p.366, line 2).

During the ***1993-1995*** time period, Mr. Lancaster made a series of eight loans to Mr. and Mrs. Crews 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).**45** As noted, after The Drews Company failed, Mr. and Mrs. Had no "income", other than their social security benefits, and were forced to pay their normal living expenses using their credit cards.**46** (R.p.328, lines 7-10; R.p.355, lines 19-25; R.p.385, lines 4-20; R.p.979, lines 14-21; R.p.1012, lines 14-16).

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45 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 on was made on 30 January 1995. (R.p.1065).

46 Mr. and Mrs. Drews were unable to generate an income stream by trying to rent their properties at 1705 Meeting and 623 Meeting. (R.p.385, lines 4-13; R.p.385, line 21 – R.p.386, line 5).

In doing so, Mr. and Mrs. Drews incurred around $35,000.00 in credit card debt. (R.p.355, lines 19-25; R.pp.692-695).

Those ***1993-1995*** loans from Mr. Lancaster to Mr. and Mrs. Drews were made well before Builders Station was contemplated, much less incorporated. The loans did not have anything to do with Builders Station and Mr. Gordon did not present any evidence which indicated that to be the case.

Finally, in ***1999***, the $20,000.00 loan to Mr. and Mrs. Drews was not made to them, but consisted of checks made payable directly to First Citizens and South Trust of $5,000.00 and $15,000.00 respectively. (R.p.392, lines 2-24; R.p.766, para. 8; R.p.1073). Mr. Lancaster loaned Mr. and Mrs. Drews the money to pay off the banks for loans Mr. Drews had obtained to finance the failed Builders Station hardware store business 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).[47]

The loans represented by those two checks paid off two of Mr. and Mrs. Drews' creditors and clearly were not made in any type of effort to defraud creditors. At the time these loans were made, Mr. Gordon had only recently filed his lawsuit against Mr. Drews and the issues had not yet been joined.

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47 As already noted, Mr. Lancaster paid out these amounts to the banks in early June 1999, due to the banks' demands for quick satisfaction of Mr. Drews' Builders Station-related debts at reduced amounts. (R.p.354, lines 3-13; R.p.369, lines 10-15; R.p.3892, lines 2-12). He noted that the $20,000.00 mortgage was procured three weeks later because its production required attorney involvement. (R.p.354, lines 3-9).

Mr. Lancaster, in an effort to help his aunt and uncle who were in severe financial distress, (a) bought Bainbridge Drive (and then Nuffield Road), (b) granted Mr. and Mrs. Drews a life estate to live there rent free for the rest of their lives, (c) loaned them an additional $40,000.00 to pay off their credit card debt, and (d) and directly paid First Citizens and South Trust for Builders Station-related loans.

The Circuit Court incorrectly concluded that the transfers made by Mr. and Mrs. Drews to Mr. Lancaster or from Mr. Lancaster to Mr. and Mrs. Drews constituted fraudulent conveyances. The transactions did not meet the elements of a fraudulent conveyance. Moreover, Mr. Gordon's original judgment against Mr. Drews was over ten years old and, therefore, did not have any active energy when he obtained his judgment against Mr. Lancaster.

This Court of Appeals should and, indeed, must reverse the Circuit Court's decision in all respects and enter judgment for Mr. Lancaster.

B. THE $100,000.00 MR. AND MRS. DREWS PAID TO MR. LANCASTER IN 1992 TO PURCHASE BAINBRIDGE DRIVE WAS NOT A FRAUDULENT CONVEYANCE

Mr. Gordon asserted a number of claims against Mr. Lancaster. (R.pp.133-142). Mr. Lancaster prevailed on three of the claims (R.pp.5-8) and the Circuit Court concluded Mr. Gordon had succeeded on his fraudulent conveyance claim. (R.pp.10-30). In finding for Mr. Gordon, the Circuit Court determined that the $100,000.00 Mr. Drews gave Mr. Lancaster in 1992 for Mr. and Mrs. Drews' life estate was somehow done in order to defraud creditors. (R.p.14, para. 6). The Circuit Court was incorrect on both the facts and the law. The $100,000.00 payment for the Drews' life estate was made simply and solely for that purpose – to obtain a life estate for Mr. and Mrs. Drews

- so they could live in a comfortable and suitable home for the remainder of their natural lives.**48**

South Carolina law provides, in pertinent part, that

> ***Every gift***, grant, alienation, bargain, ***transfer***, and conveyance of lands, tenements, or hereditaments, goods and chattels or any of them, or of any lease, rent, commons, or other profit or charge out of the same, by writing or otherwise, and every bond, suit, judgment, and execution which may be had or made to or ***for any intent or purpose to delay, hinder, or defraud creditors*** and others of their just and lawful actions, suits, debts, accounts, damages, penalties, and forfeitures ***must be deemed and taken*** (only as against that person or persons, his or their heirs, successors, executors, administrators and assigns, and every one of them whose actions, suits, debts, accounts, damages, penalties, and forfeitures by guileful, covinous, or fraudulent devices and practices are, must, or might be in any ways disturbed, hindered, delayed, or defrauded) to be ***clearly and utterly void, frustrate and of no effect***, any pretense, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding.**49**

In *Carr v. Guerard*, the Supreme Court noted that the "*Statute of Elizabeth* renders void any transfer of property made with '***intent or purpose to delay, hinder, or defraud creditors*** and others' [and] may be employed by any creditor, including a judgment

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48 In fact, Mr. Gordon (via his legal counsel) stated that "the valuable consideration [involved in Mr. and Mrs. Drews' $100,000.00 payment to Mr. Lancaster] was providing Mr. and Mrs. Drews a house to live in for the rest of their years . . . ." (R.p.323, lines 5-7). Mr. Lancaster, of course, agreed with this assessment. (R.p.323, lines 5-11).

49 *See* S.C. Code Ann. § 27-23-10(A) (Thomson Reuters West 2012) (Emphasis added). This provision is more commonly referred to as the "Statute of Elizabeth". The Fraudulent Conveyances Act 1571 (13 Eliz 1, c 5), also known as the Statute of 13 Elizabeth, laid the foundations for the unwinding of allegedly fraudulent transactions for insolvent and/or bankrupt persons. The Fraudulent Conveyances Act was repealed by the Law of Property Act 1925 s 207. The successor to those rules are now found in the Insolvency Act 1986 s 423. *See generally* http://en.wikipedia.org/wiki/Fraudulent_Conveyances_Act_1571. *See also* S.C. Jurisprudence, § 23.5 (Thomson Reuters West 2014).

creditor."**50** Furthermore, "[w]hen [, as in this case,] a judgment creditor is the plaintiff, the statute limiting the time for executing on judgments to ten years might [and more often than not, also appl[ies]."**51**

In *Oskin v. Johnson*,**52** the Supreme Court stated:

> In interpreting th[e] [*S]tatute [of Elizabeth*], this Court has held conveyances shall be set aside under two conditions: First, where there was valuable consideration and the transfer is made by the grantor with the ***actual intent to defraud***; and, second, where a transfer is made ***without actual intent to defraud but without valuable consideration.***53

Furthermore, the "*Statute of Elizabeth* is concerned with the intent of the grantor who conveys an interest in land."**54** Importantly, "[e]ven where it is shown that the grantor has fraudulent intent, to "annul for fraud a deed based upon value consideration [under the *Statute of Elizabeth*], it must not only be shown that the grantor intended to hinder, delay[,] or defraud creditors, but it must also appear that the grantee participated in such fraudulent act."**55**

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

51 Carr v. Guerard, 365 S.C. 151, 154, 616 S.E.2d 429, 430 (*citing* S.C.Code Ann. § 15-39-30).

52 Oskin v. Johnson, 400 S.C. 390, 735 S.E.2d 459.

53 Oskin v. Johnson, 400 S.C. 390, 397-398, 735 S.E.2d 459, 463 (*citing* Future Group, II v. Nationsbank, 324 S.C. 89, 96, 478 S.E.2d 45, 48-49 (Internal citations omitted in original); McDaniel v. Allen, 265 S.C. 237, 242-243, 217 S.E.2d 773, 775-776 (1975) (Internal citations omitted in original)) (Emphasis added). *See also In re* Hankel, 512 B.R. 539, 546 (Bkrtcy. D.S.C. 2014) (*citing* Windsor Prop., Inc. v. Dolphin Head Constr. Co., 331 S.C. 466, 498 S.E.2d 858, 860 (1998)).

54 Oskin v. Johnson, 400 S.C. 390, 397-398, 735 S.E.2d 459, 463 (*citing* McDaniel v. Allen, 265 S.C. 237, 242-243, 217 S.E.2d 773, 775-776).

55 Oskin v. Johnson, 400 S.C. 390, 398 n.5, 735 S.E.2d 459, 463 n.5 (*quoting* McDaniel v. Allen, 265 S.C. 237, 242-243, 217 S.E.2d 773, 775-776) (Second alteration in original)..

The United States Bankruptcy Court for the District of South Carolina, in *In re Hankel*, noted:

> Under South Carolina law, a voluntary conveyance may be avoided without proving actual intent to defraud creditors. A voluntary conveyance means a gratuitous transfer made without valuable consideration. "[V]aluable consideration, in the sense of the law, may consist either in some right, interest, profit, or benefit, accruing to the one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other." Grossly inadequate consideration does not render a conveyance voluntary; rather, the inadequacy of the consideration is treated as a "badge of fraud," and actual intent to defraud must be proven.**56**

1. IRS Liens And Outstanding Loans

It is undisputed that during ***1990/1991*** while Mr. and Mrs. Drews attempted to keep The Drews Company operating by borrowing heavily on their Edgewater Park home, the IRS filed various liens against Mr. Drews and the company. (R.p.13, para. 1; R.p.355, lines 6-12; R.p.373, lines 6-13; R.p.764, para. 4). These liens finally convinced Mr. Drews to sell the business. (R.p.440, lines 5-10; R.p.764, para. 4). During the same time, Mr. and Mrs. Drews sold their Edgewater Park home in order to satisfy the IRS liens and the outstanding loans. (R.p.355, lines 6-12; R.p.440, lines 11-15; R.pp.764-765, para. 5). After ***paying off*** the loans and the IRS, Mr. and Mrs. Drews were left with $100,000.00 from the sale of their home. (R.pp.764-765, para. 5).**57**

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56 *In re* Hankel, 512 B.R. 539, 546 (*citing and quoting* Royal Z Lanes, Inc. v. Collins Holding Corp., 337 S.C. 592, 524 S.E.2d 621, 622 (1999); Furman Univ. v. Waller, 124 S.C. 68, 117 S.E. 356, 358 (1923); Cadence Bank, N.A. v. Horry Prop., LLC, 2012 WL 1110089, *14 (D.S.C., filed 2 April 2012) (Not reported in F.Supp.2d)) (Internal citations omitted and alteration in original).

57 Mr. and Mrs. Drews did not have other sufficient funds to purchase a home on their own and, since they did not have any income other than Social Security, could not

2. The Life Estate – Bainbridge Drive And Nuffield Road[58]

In desperation, Mr. and Mrs. Drews turned to Mr. Lancaster, their nephew, for possible help and assistance.[59] Mr. Drews proposed in ***1992*** (R.p.321, lines 6-8), that (a) he and Mrs. Drews give Mr. Lancaster the $100,000.00 remaining from the sale of their Edgewater Park home, (b) that Mr. Lancaster use that money, in part, to purchase a suitable home for them,[60] and (c) that he and Mrs. Drews, pursuant to a life estate,[61] would then live in that "new" home for the remainder of their lives ***without the need to make either rent or mortgage payments***. (R.pp.665-666; R.pp.677-681; R.pp.764-

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otherwise obtain a mortgage for a residence on their own. (R.p.328, lines 7-10; R.p.355, lines 19-25; R.p.385, lines 4-20; R.p.387, lines 11-14).

58 While Mr. Lancaster has financial dealing with Mr. and Mrs. Drews in the past, it is *undisputed* that the financial transaction involved in this case started in *1992*. (R.p.321, line 6 - R.p.322, line 19; R.p.956).

59 Mr. and Mrs. Drews turned to Mr. Lancaster for help because he was single, had some good investments, and none of the other nieces or nephews "were in any kind of financial position to help them . . . ." (R.p.387, lines 15-19). Furthermore, Mr. Lancaster had previously entered into the same type of arrangement for his parents when his father was forced to stop working. (R.p.373, line 6 - R.p.374, line 5). In fact, the home in which they resided is now where Mr. Lancaster lives.

60 When Mr. Drews turned to Mr. Lancaster, he and Mrs. Drews had only 30 or so days to vacate their Edgewater Park home. (R.p.373, lines 9-15). Mr. and Mrs. Drews had looked for a comfortable home in the $100,000.00 range, but had not been able to find anything suitable. (R.p.373, lines 14-25).

61 A life estate is "an estate of indeterminate duration . . . " Strother v. Folk, 123 S.C. 127, 138, 115 S.E. 605, 611 (1922). Mr. Gordon, against imputing some nefarious motive to Mr. Lancaster, asserted that *Mr. Lancaster's* failure to file the life estate agreement (R.pp.665-666; R.pp.1053-1054) in the public record, evidenced his intent to "avoid[ ] notice of the life estate's existence (and the $100,000[.00] transfer) to [Mr. and Mrs.] Drews' creditors." (R.pp.14-15, para. 9). There are several fallacies with this "logic" - (a) there were *no* creditors to avoid as they had been paid for the Edgewater Park sale proceeds (R.p.355, lines 6-12; R.p.440, lines 11-15; R.pp.764-765, para. 5), (b) Mr. Drews' lawyer - Attorney Koon - prepared and handled all of the life estate documentation and would have been responsible for recording the life estates (R.p.378, lines 1-22; R.p.382, line 15 - R.p.383, line 1; R.pp.665-666; R.pp.672-676; R.pp.1053-1054; R.pp.1060-1064), and (c), the Mr. Gordon's counsel acknowledged, Mr. Koon apparently record the life estate documents. (R.p.382, line 24 - R.p.383, line 1; R.p.486, line 8 - R.p.487, line 6; R.pp.665-666; R.pp.672-676; R.pp.1053-1054; R.pp.1060-1064).

765, para. 5; R.pp.1053-1054; R.pp.1060-1064). Given the fact Mr. Lancaster was very close with Mr. and Mrs. Drews (R.p.387, lines 5-10) and, more importantly, the fact ***no one else*** in their family was financially able to help, Mr. Lancaster agreed to Mr. Drews' proposal. (R.p.13, para. 2; R.p.387, lines 11-19; R.p.418, lines 6-21).

In ***1992***, Mr. and Mrs. Drews did, in fact, give Mr. Lancaster the $100,000.00 (R.p.137, paras. 43-45; R.pp.144-145, paras. 3, 9-10; R.p.322, lines 13-25; R.p.376, lines 14-20) which, together with some of his own money, he bought Bainbridge Drive for $160,000.00 on ***22 May 1992***. (R.p.14, para. 7; R.p.340, line 22 – R.p.341, line 7; R.p.376, line 24 – R.p.377, line 1; R.pp.662-664). Mr. Lancaster added another $5,000.00 or so in repairs. (R.p.341, lines 2-7; R.p.379, lines 9-15). Mr. and Mrs. Drews moved in and lived there for the next 37 months. (R.p.137, para. 47; R.p.146, para. 11; R.p.379, lines 16-18).

In ***April 1995***, due to Mr. Drews' deteriorating health, he again asked Mr. Lancaster for help in moving out of Bainbridge Drive and into a one-story home. (R.p.379, line 19 – R.p.380, line 3). "*Like A Good [Nephew, Mr. Lancaster] [Wa]s There*" and agreed again to help. Mr. and Mrs. Drews found Nuffield Road (R.p.359, lines 18-20; R.p.360, lines 11-15; R.p.380, lines 4-19) and Mr. Lancaster bought the property on 16 May 1995 (R.p.137, para. 48; R.p.146, para. 12; R.pp.667-671; R.pp.1055-1059), for $125,000.00 (R.pp.667-671; R.pp.1055-1059) and expended an additional $15,000.00 or so for a new air conditioning system, updated appliances, and other needed repairs. (R.p.364, line 22 – R.p.365, line 2). Mr. and Mrs. Drews then moved in (R.p.378, line 23 – R.p.379, line 1) under the same life estate arrangement as had existed at Bainbridge Drive. (R.p.378, lines 1-22; R.p.382, line 15 – R.p.383, line 1;

R.p.677-671; R.pp.1060-1064). Mr. Drews lived at Nuffield Road for over 12 years until he died. (R.p.137, para. 49; R.p.383, lines 2-7). Mrs. Drews lived there for almost 15 years. (R.pp.137-138, paras. 49, 52; R.p.383, lines 2-7).

3. No Evidence Of Any Continuing Debts Or Creditors In 1992

The Circuit Court "concluded" that the "***uncontested evidence was that at the time of the $100,000[.00] transfer was made***, and for the remainder of his life, ***[Mr. Drews] had pending creditor claims***, including IRS assessments and liens during most of the [19]90s and a 1999 demand on a bank loan guarantee due to the failure of [Builders Station]. . . ." (R.p.14, para. 6) (Emphasis added). Notwithstanding this "conclusion", the uncontested evidence was, in fact, to the contrary even though Mr. Gordon attempted to use insinuation, innuendo, and pure speculation (*i.e.*; "smoke and mirrors") to create some type of believable "evidence" out of mere nothing.

Mr. Gordon, however, failed to produce any credible evidence which showed or even reasonably inferred that Mr. and Mrs. Drews had any unpaid debts or outstanding creditors in ***1992*** once they sold their Edgewater Park home, satisfied the IRS liens, and paid off the loans they had incurred to keep The Drews Company in business.**62** In order to "get to" the $100,000.00 Mr. and Mrs. Drews paid Mr. Lancaster in 1992, Mr. Gordon was required to show, under the *State of Elizabeth*, that Mr. and Mrs. Drews made the monetary transfer for the "***intent or purpose to delay, hinder, or defraud creditors*** . . ."**63** Regardless of the Circuit Court's "uncontested evidence" statement

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62 Mr. Gordon submitted an IRS tax lien into evidence which was dated 1 September 2000, and filed on 8 September 2000. (R.p.700). The IRS lien, however, only addressed unpaid taxes for periods ending 31 December *1995*, 31 December *1996*, and 31 December *1997*. (R.p.700).

63 *See* S.C. Code Ann. § 27-23-10(A) (Emphasis added).

(*2013 Order*, para. 6), there was no evidence of any still outstanding debts or unpaid creditors. Contrary to the Circuit Court's "conclusion" the actual "uncontested evidence" was to the contrary – no debts or creditors existed when the $100,000.00 was paid.

Mr. Livingston, Mr. Gordon's expert accounting witness, specifically testified that ***he was not aware of the specific creditors*** which Mr. and Mrs. Drews were attempting to avoid when they paid Mr. Lancaster the $100,000.00 for the life estate in Bainbridge Drive. (R.p.491, lines 9-14). Moreover, the only credible evidence in the record was that Mr. and Mr. Drews specifically sold their Edgewater Park home to pay off the IRS and satisfy the outstanding loans. (R.p.355, lines 6-12; R.p.440, lines 11-15; R.pp.764-765, para. 5). There was no evidence of any other creditors then existing.**64** Mr. Gordon was responsible to show the existence of unpaid debts or lurking creditors in the 1992, post-Edgewater Park sale. He would have presented that proof had there been any to present. Mr. Gordon could not do so because there were no such unpaid claims or debts.

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64 Mr. Livingston attempted to fabricate the existence of then-existing creditors and debts based upon Mr. Lancaster's deposition which, like his trial testimony (R.p.13, para. 1; R.p.355, lines 6-12; R.p.373, lines 6-13; R.p.764, para. 4), indicated that (a) the IRS had placed liens against Mr. Drews and The Drews Company, (b) Mr. and Mrs. Drews had borrowed against Edgewater Park to keep the business going, and (c) Mr. and Mrs. Drews were going to sell Edgewater Park to pay off the loans and the IRS. (R.p.488, lines 21 – R.pp.489, line 23). Somehow Mr. Livingston "believed" that meant the IRS was still looming and the loans taken on Edgewater Park were still viable. As a practical matter, if any lender made a loan secured by Edgewater Park, the loan would have been satisfied when the property was sold. Mr. Gordon did not produce any documentation evidencing a different result. In any case, the result is still the same, Mr. Gordon ***did not and could not show*** that Mr. and Mrs. Drews had debts or creditors once they sold Edgewater Park. In fact, as has been repeatedly noted herein and effectively uncontested at trial, the sole reason they sold Edgewater Park was to pay their debts. (R.p.355, lines 6-12; R.p.440, lines 11-15; R.pp.764-765, para. 5).

The Circuit Court incorrectly concluded the $100,000.00 Mr. and Mrs. Drews paid Mr. Lancaster (used, in part, to buy Bainbridge Drive), constituted a fraudulent conveyance. Mr. and Mrs. Drews did not have any debts or creditors when they paid Mr. Lancaster this money and, therefore, the $100,000.00 could not have been fraudulently conveyed.

This Court of Appeals should and, indeed, must reverse the decision of the Circuit Court, at the very minimum, as to this transfer.[65]

C. THE $40,000.00 MR. LANCASTER LOANED TO MR. AND MRS. DREWS DURING THE 1993-1995 PERIOD TO PAY OFF THEIR CREDIT CARD DEBTS WAS NOT A FRAUDULENT CONVEYANCE

As mentioned previously, while Mr. Gordon asserted a number of claims against Mr. Lancaster (R.pp.133-143), he succeeded solely on his fraudulent conveyance claim. (R.pp.4-8; R.pp.10-30). In finding for Mr. Gordon, the Circuit Court had to have effectively determined that the $40,000.00 Mr. Lancaster loaned Mr. and Mrs. Drews during the ***1993 to 1995*** time period was again somehow done in order to defraud creditors. (R.p.15, paras. 12-13; R.p.29). The Circuit Court was incorrect on both the facts and the law. The $40,000.00 loans were made simply and solely for the purpose of helping Mr. and Mrs. Drews pay off their $35,000.00 high mountain of credit card debt.

Given that Mr. and Mrs. Drews did not have any "income" after The Drews Company failed, other than their social security benefits, they were paying their living expenses (*i.e.*; utilities, insurance, food, *etc.*) using their credit cards. (R.p.328, lines 7-

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65 Mr. Gordon's claims against Mr. Drews did not even come into existence until, at the earliest, *September 1996*, when Mr. Drews sold Mr. Gordon the unregistered stock in Builders Station. (R.p.133, para. 8). This was *some 52 months after* Mr. and Mrs. Drews gave Mr. Lancaster the $100,00.00 and well before Builders Station was even contemplated.

10; R.p.385, lines 4-20; R.p.979, lines 14-21; R.p.1012, lines 14-16).**66** Unfortunately, by living in this fashion, they racked up approximately $35,000.00 in credit card debt. (R.pp.692-695). Consequently, during the ***1993-1995*** time frame, Mr. Lancaster made additional direct loans to Mr. and Mrs. Drews 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, in part, retire their credit card debt. (R.p.355, lines 19-25; R pp.692-695).

Mr. Gordon failed to produce any credible evidence whatsoever which showed or even reasonably inferred that Mr. and Mrs. Drews had any unpaid debts or outstanding creditors during the ***1993-1995*** time period given the fact Mr. and Mrs. Drews had specifically sold their Edgewater Park home in 1992, for the sole purpose of clearing and eliminating their debts by satisfying the IRS liens and paying off the loans they had incurred to keep The Drews Company in business. (R.p.355, lines 6-12; R.p.440, lines 11-15; R.pp.764-765 para. 5).**67** Given the periodic nature of the loans Mr. Lancaster made to Mr. and Mrs. Drews from ***6 February 1993, through 30 January 1995***, it appears that Mr. and Mrs. Drews were paying off their credit cards in part or in whole on an intermediate basis – essentially somewhat as the credit became due or, at least, not significantly overdue. (R.p.1065).**68**

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66 As already noted, Mr. and Mrs. Drews failed in their attempt to generate an income stream by trying to rent their properties at 1705 Meeting (rental warehouse property) (R.p.385, lines 4-13) and 623 Meeting (The Drews Company's now vacant original location) (R.p.379, lines 13-16; R.p.384, lines 17-24) to third-parties. (R.p.385, lines 4-13; R.p.385, line 21 – R.p.386, line 5).

67 As mentioned previously, Mr. Gordon submitted the 8 September 2000, IRS tax lien (R.p.700) which only addressed unpaid taxes for periods ending 31 December *1995*, 31 December *1996*, and 31 December *1997*. (R.p.700; R.pp.925-955).

68 Mr. Lancaster loaned Mr. and Mrs. Drews (a) $5,000.00 on 6 February 1993, (b) $3,000.00 on 19 April 1993, (c) $7,000.00 on 9 July 1993, (d) $6,000.00 on 28 August 1993, (e) $3,000.00 0n 21 December 1993, (f) $6,000.00 on 18 January 1994, (g) $5,000.00 on 20 June, 1994,

Consequently, the only "creditors"**69** Mr. and Mrs. Drews theoretically had during the ***1993-1995*** time frame were the very credit card companies which Mr. and Mrs. Drews periodically paid off using the $40,000 00 in total loans provided to them by Mr. Lancaster. Since Mr. and Mrs. Drews were actually paying off their credit card debts it cannot credibly be argued that any payments they subsequently made to Mr. Lancaster to reimburse him for the $40,000.00 in loans was done to "avoid creditors". The creditors whose very extension of personal consumer credit to Mr. and Mr. Drews which actually gave rise to the $35,000.00 in credit card debt had undisputedly been paid.

When Mr. Drews sold 623 Meeting (R.p.370, lines 15-21; R.p.384, lines 13-24), he and Mrs. Drews still owed Mr. Lancaster the $40,000.00. (R.p.370, line 22 – R.p.371, line 1; R.p.1065). Even though that $40,000.00 (plus interest) was supposed to have been fully satisfied from the sale of 623 Meeting (R.p.371, lines 10-15; R.p.386, lines 6-19), Mr. Lancaster only received around $3,000.00. (R.p.371, lines 2-5). Chagrined by this unsettling and somewhat distressing financial development, Mr. Lancaster reasonably asked Mr. Drews for some security for the $40,000.00 loan. (R.p.371, lines 6-15).**70** In turn, Mr. Drews gave Mr. Lancaster a $40,000.00 mortgage on 1705 Meeting. (R.p.371, lines 16-17). There was no evidence that Mr. Lancaster,

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and (h) $5,000.00 on 30 January 1995, for a total amount of $40,000.00. (R.pp.692-695; R.pp.804A-811; R.p.1065; R.pp.1066-1071).

69 Bell Finance Co., Inc. v. S. C. Dept. of Consumer Affairs, 297 S.C. 111, 114, 374 S.E.2d 918, 920 (Ct. App. 1988) (Noting that "the term 'creditor' has been defined by the General Assembly in [S.C. Code Ann. §] 37-1-301(13) [(Thomson Reuters West 2012)] to include a 'person who grants credit in a credit transaction.' " *See also* S.C. Code Ann. § 37-1-201(7)(c) (Thomson Reuters West 2012) ("Creditor" is defined to include a "person who grants credit in a consumer credit transaction").

70 The $3,000.00 payment simply "touched the interest" (R.p.371, lines 14-15) and Mr. Lancaster determined he needed security for the $40,000.00 in remaining principal. (R.p.371, lines 10-23).

other than seeking security for the $40,000.00 in total loans he had previously made during 1993-1995, had any other participation or involvement in the preparation of the $40,000.00 mortgage. (R.p.371, lines 18-23). Mr. Drews' lawyer, Attorney Koon, prepared all of the required documentation,[71] Mr. Lancaster was not given a copy of the mortgages. (R.p.371, line 24 – R.p.372, line 9).

While Mr. Gordon may have had a potential "claim" against Mr. Drews beginning in September 1996, he did not become a judgment creditor of Mr. Drews' until December 2001. For Mr. Gordon to "get to" the money Mr. and Mrs. Drews ultimately paid Mr. Lancaster for the $40,000.00 in loans, Mr. Gordon was required to show, under the *State of Elizabeth*, that Mr. and Mrs. Drews made the monetary transfer for the "***intent or purpose to delay, hinder, or defraud creditors*** . . ."[72] Mr. Lancaster made the $40,000.00 in loans to help Mr. and Mrs. Drews get rid of their $35,000.00 credit card debt. They were only able to pay their normal living expense using their credit cards. Mr. and Mrs. Drews did not have any income other than their social security. While Mr. Gordon did not refute the legitimacy of that evidence, he convinced the Circuit Court to effectively require Mr. Lancaster to disgorge the money Mr. and Mrs. Drews had provided to him in repayment of the $40,000.00 in total loans.

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[71] Attorney Koon prepared most, if not all, of the documents real estate documents involving Mr. and Mrs. Drews. (R.p.354, lines 15-18). Mr. Gordon ***did not***, however, ***present any evidence*** showing that either Attorney Koon represented Mr. Lancaster or requested Mr. Lancaster's input into any of the documents Attorney Koon prepared for Mr. and Mrs. Drews.

[72] *See* S.C. Code Ann. § 27-23-10(A) (Emphasis added).

The $40,000.00 in total loans were made to pay off credit card creditors, not to hide funds from those creditors or from other creditors. Mr. Lancaster was entitled to have the $40,000.00 in loans repaid. This Court of Appeals should and, indeed, must reverse the Circuit Court's decision in all respects. Nevertheless, at a minimum, this Court of Appeals must reverse the Circuit Court as to the $40,000.00 amount.

D. THE $20,000.00 MORTGAGE MR. AMD MRS. DREWS GAVE MR. LANCASTER AS SECURITY FOR THE $20,000.00 LOAN WAS BASED UPON ADEQUATE AND PROPER CONSIDERATION

In ***1999***, Mr. Lancaster loaned Mr. and Mrs. Drews $20,000.00 to pay off loans from First Citizens Bank and South Trust Bank which they had obtained to finance the failed Builders Station hardware store business 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.1073). To satisfy those loans, Mr. Lancaster sent a $5,000.00 check on ***2 June 1999***, directly to First Citizens from his own First Citizens account (R.p.389, lines 2-24; R.p.766, para. 8; R.p.1073) and, on ***7 June 1999***, had Wachovia issue a $15,000.00 check out of his Wachovia line of credit made payable directly to South Trust. (R.p.389, lines 2-24; R.p.766, para. 8; R.p.1073).

On 1 July 1999, Mr. Drews gave Mr. Lancaster another mortgage for this final $20,000.00 loan – again on 1705 Meeting. (R.p.19, para. 41; R.p.351, line 17 – R.p.353, line 23; R.pp.638-642). While Mr. Lancaster was initially unaware of this last mortgage as Mr. Drews did it without his knowledge (R.p.352, lines 3-6), Mr. Drews later told Mr. Lancaster about the $20,000.00 mortgage sometime after the fact.

The Circuit Court dismissed and devalued this $20,000.00 mortgage and Mr. Lancaster's $20,000.00 payment to First Citizens and South Trust on the proposition that Mr. "Lancaster did not give [Mr.] Drews any contemporaneous consideration from the $20,000[.00] Meeting Street Mortgage." (R.p.19, para. 42). The Circuit Court was incorrect and must be reversed.

In *Roper, LLC v. Harris Teeter, Inc.*,[73] this Court of Appeals noted that the term "valuable consideration" has been defined "as 'some right, interest, profit[,] or benefit accruing to one party or some forbearance, detriment, loss[,] or responsibility given, suffered[,] or undertaken by the other.' "[74] Conversely, in *Royal Z. Lanes, Inc. v. Collins Holding Corp.*[75], the Supreme Court stated recognized that "grossly inadequate consideration [is defined] as 'a consideration so far short of the value of the property as to arouse a presumption in the mind that the person who takes that property takes it under some kind of secret trust.' "[76]

Mr. and Mrs. Drews gave Mr. Lancaster the $20,000.00 mortgage on 1 July 1999 (R.p.19, para. 41; R.p.351, line 17 – R.p.353, line 23; R.pp.638-642), approximately three weeks after Mr. Lancaster sent the $5,000.00 check to First Citizens and the $15,000.00 check to South Trust. (R.p.766, para. 8; R.p.1073). The

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73 Roper, LLC v. Harris Teeter, Inc., 2013 WL 8539469 (Ct.App., filed 17 July 2013) (Not reported in S.E.2d).

74 Roper, LLC v. Harris Teeter, Inc., 2013 WL 8539469, * 1 (*quoting* Hennes v. Shaw, 397 S.C. 391, 399, 725 S.E.2d 501, 505 (Ct.App. 2012)).

75 Royal Z. Lanes, Inc. v. Collins Holding Corp., 337 S.C. 592, 524 S.E.2d 621.

76 Royal Z. Lanes, Inc. v. Collins Holding Corp., 337 S.C. 592, 596, 524 S.E.2d 621, 623 (*quoting* McGhee v. Wells, 57 S.C. 280, 35 S.E. 529, 531 (1900)). In any case, "[w]hen a transfer is supported by valuable consideration, it may be set aside as a fraudulent conveyance only if an actual intent to defraud creditors may be imputable to the grantee." Pfeil v. Steven Walker Homes Corp., 2006 WL 7286989 (Ct.App. filed 23 October 2006) (*citing* Royal Z Lanes, Inc. v. Collins Holding Corp., 337 S.C. 592, 594, 524 S.E.2d 621, 622) (Not reported in S.E.2d).

Circuit Court effectively voided this transaction on the grounds Mr Lancaster did not give Mr. and Mrs. Drews "contemporaneous consideration" for the mortgage. (R.p.19, para.42). The Circuit Court, however, completely ignored the exigent circumstances surrounding the transaction necessitating quick action to settle the debts.

The evidence showed Mr. Drews called Mr. Lancaster in early June 1999, and advised him that he (Mr. Drews) "had talked to both First Citizens and South Trust and [the banks] were both offering him ***24 hours*** to settle [his outstanding loans] for substantially less than the amount owed . . ." (R.p.389, lines 4-7) (Emphasis added). Mr. Drews asked Mr. Lancaster if he could help him. (R.p.389, lines 7-8). Since Mr. Drews did not have any "other source [from which to obtain the] 20,000 dollars, so to be able to take advantage of those [lessened] payoffs [Mr. Lancaster] [with]drew [$]15,000[.00] out of [his] equity loan on [his personal] house] and [$]5.000[.00] [he] had in [his] checking account to pay the other." (R.p.389, lines 9-12).

Clearly, this urgent situation demanded immediate action. Mr. Lancaster paid out the $20,000.00 to the banks as quickly as he could, due to the banks' demands for quick satisfaction (*i.e.*; 24 hours) of Mr. Drews' Builders Station-related debts at significantly reduced amounts. (R.p.354, lines 3-13; R.p.369, lines 10-15; R.p.389, lines 2-12). Even though Mr. and Mrs. Drews provided the $20,000.00 mortgage around three weeks later, the $20,000.00 consideration had unquestionably been paid to First Citizens and South Trust respectively. Moreover, the development and production of the documentation needed to evidence the $20,000.00 required the involvement of legal counsel. (R.p.354, lines 3-9). Given the pressing nature of the banks' settlement demands, it was thought that to obtain counsel's involvement would have taken more

time than either First Citizens or South Trust were willing to give. Under the circumstances, it seems disingenuous to assert that Mr. Lancaster, who admittedly paid the banks $20,000.00, failed to give Mr. and Mrs. Drews contemporaneous consideration for the mortgage. This is especially true when the funds were paid directly to the banks to settle some of Mr. Drews' debts.

The $20,000.00 in loans were made to pay off First Citizens and South Trust for Builders Station-related loans, not to hide funds from those creditors or from other creditors. Mr. Lancaster was entitled to have the $20,000.00 repaid. This Court of Appeals should and, indeed, must reverse the Circuit Court's decision in all respects. Nevertheless, at a minimum, this Court of Appeals must reverse the Circuit Court as to the $20,000.00 amount.

E. THE CIRCUIT COURT SHOULD HAVE GRANTED MR. LANCASTER A DIRECTED VERDICT MADE PURSUANT TO RULE 50(A). *SCRCP*, OR IN THE ALTERNATIVE, SHOULD HAVE GRANTED MR. LANCASTER'S POST-TRIAL MOTIONS MADE PURSUANT TO RULES 52(b) AND 59(e), *SCRCP*

At the end of Mr. Gordon's evidence, Mr. Lancaster moved, albeit unsuccessfully, for a directed verdict. (R.p.517, line 7 – R p.525, line 25). In addition, after the trial was completed and the Circuit Court issued its two orders, Mr. Lancaster filed a post-trial motion seeking (a) a reconsideration, (b) an amendment of the Circuit Court's findings, and (c) an alteration and/or amendment of the final judgment. (R.pp.296-306). In light of the complete lack of credible evidence Mr. Gordon presented, especially regarding, *inter alia*, the transactions involving (1) Mr. and Mrs. Drews' $100,000.00 payment to Mr. Lancaster in ***1992*** for the life estate, (2) Mr. Lancaster's $40,000.00 in total loans during ***1993-1995*** to Mr. and Mrs. Drews, and (3) Mr. Lancaster's payment of

$20,000.00 directly to First Citizens and South Trust, the Circuit Court should have granted Mr. Lancaster a directed verdict or, in the alternative, granted one or more of his post-trial motions.

This Court of Appeals, in Solanski v. Wal-Mart Store No. 2806,[77] addressed the standard involved when considering a Circuit Court's denial of litigant's motion for directed verdict, stating:

> The standard of review as regards the refusal to grant a directed verdict is well established: In ruling on motions for directed verdict and JNOV, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions and to deny the motions where either the evidence yields more than one inference or its inference is in doubt. The trial court can only be reversed by this [c]ourt when there is not evidence to support the ruling below.[78]

Furthermore, in Wright ex. rel. Estate of Wright v. Colleton County Sherriff's Dep't.,[79] this Court of Appeals noted that " '[t]his court will reverse the trial court's ruling on a directed verdict motion [when] no evidence exists to support the ruling, or if the decision was controlled by an error of law.' "[80]

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77 Solanski v. Wal-Mart Store No. 2806, 410 S.C. 229, 763 S.E.2d 615 (Ct.App. 2014).

78 Solanski v. Wal-Mart Store No. 2806, 410 S.C. 229, 236, 763 S.E.2d 615, 618 (*citing* Creech v. S.C. Wildlife & Marine Res. Dep't, 328 S.C. 24, 28-29, 491 S.E.2d 571, 573 (1997) (Internal quotation marks omitted in original)) (Alteration in original).

79 Wright *ex. rel.* Estate of Wright v. Colleton County Sherriff's Dep't., 2014 WL 2575434 (Ct.App., filed 8 January 2014) (Not reported in S.E.2d).

80 Wright *ex. rel.* Estate of Wright v. Colleton County Sherriff's Dep't., 2014 WL 2575434, *1 (*quoting* Wright v. Craft, 372 S.C. 1, 18, 640 S.E.2d 486, 495-96 (Ct.App.2006)).

1. The $100,000.00 Transfer

As this Court of Appeals is certainly aware, In ***1992***, Mr. and Mrs. Drews paid Mr. Lancaster $100,000.00 (R.p.137, paras. 43-45; R.pp.144-145, paras. 3, 9-10; R.p.322, lines 13-25; R.p.376, lines 14-20) which he used, together with his own money, to buy Bainbridge Drive for $160,000.00 on ***22 May 1992***. (R.p.14, para. 7; R.p.340, line 22 – R.p.341, line 7; R.p.376, line 24 – R.p.377; R.pp.662-664).**81** Almost three years later, in ***April 1995***, due to Mr. Drews' deteriorating health, he again asked Mr. Lancaster for help in moving out of Bainbridge Drive and into a one-story home. (R.p.379, line 19 – R.p.380, line 3). Mr. Lancaster agreed and Mr. and Mrs. Drews found Nuffield Road. (R.p.359, lines 18-20; R.p.360, lines 11-15; R.p.380, lines 4-19). Mr. Lancaster bought the property on ***16 May 1995*** (R.p.137, para. 48; R.p.146, para. 12; R.pp.667-671; R.pp.1055-1059), for $125,000.00 (R.pp.667-671; R.pp.1055-1059) and added an additional $15,000.00 for repairs and updates. (R.p.364, line 22 – R.p.365, line 2). Mr. and Mrs. Drews moved in (R.p.378, line 23 – R.p.379, line 1) pursuant to the same life estate arrangement as existed at Bainbridge Drive. (R.p.378, lines 1-22; R.p.382, line 15 – R.p.383, line 1; R.pp.677-671; R.pp.1060-1064).**82**

Mr. Gordon failed to produce any credible evidence which showed or even reasonably inferred that Mr. and Mrs. Drews had any unpaid debts or outstanding creditors ***in 1992*** once they sold their Edgewater Park home, satisfied the IRS liens, and paid off the loans they had incurred to keep The Drews Company in business.

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81 Mr. and Mrs. Drews moved in and lived there for the next 37 months. (R.p.137, para. 47; R.p.146, para. 11; R.p.379, lines 16-18).

82 Mr. Drews lived at Nuffield Road for over 12 years until he died. (R.p.137, para. 49; R.p.383, lines 2-7). Mrs. Drews lived there for almost 15 years. (R.pp.137-138, paras. 49, 52; R.p.383, lines 2-7).

There simply was no evidence of any still outstanding debts or unpaid creditors. Contrary to the Circuit Court's "conclusion" the actual "uncontested evidence" was to the contrary – no debts or creditors existed when the $100,000.00 was paid. In fact, Mr. Livingston, Mr. Gordon's expert accounting witness, specifically testified that ***he was not aware of the specific creditors*** which Mr. and Mrs. Drews were attempting to avoid when they paid Mr. Lancaster the $100,000.00 for the life estate in Bainbridge Drive. (R.p.491, lines 9-14). Moreover, the only credible evidence in the record was that Mr. and Mr. Drews specifically sold their Edgewater Park home to pay off the IRS and satisfy the outstanding loans (R.p.355, lines 6-12; R.p.440, lines 11-15; R.pp.764-765, para. 5). There was no evidence of any other creditors then existing in 1992 when the $100,000.00 transfer was made.

2. The $40,000.00 Total In Loans

Again, as this Court of Appeals is certainly aware, after The Drews Company failed, Mr. and Mrs. Drews did not have any "income" during the ***1993-1995*** time frame, other than their social security benefits, and were paying their living expenses via their credit cards. (R.p.328, lines 7-10; R.p.385, lines 4-20; R.p.979, lines 14-21, R.p.1012, lines 14-16). By living this way, they ran up around $35,000.00 in credit card debt. (R.pp.692-695). During this ***1993-1995*** period, Mr. Lancaster made additional direct loans to Mr. and Mrs. Drews 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, in part, retire their credit card debt. (R.p.355, lines 19-25; R.pp.692-695).**83**

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83 Mr. Lancaster loaned Mr. and Mrs. Drews (a) $5,000.00 on 6 February 1993, (b) $3,000.00 on 19 April 1993, (c) $7,000.00 on 9 July 1993, (d) $6,000.00 on 28 August 1993, (e) $3,000.00 0n 21 December 1993, (f) $6,000.00 on 18 January 1994, (g) $5,000.00 on 20 June, 1994,

Mr. Gordon failed to produce any credible evidence whatsoever which showed or even reasonably inferred that Mr. and Mrs. Drews had any unpaid debts or outstanding creditors during the ***1993-1995*** time period given the fact Mr. and Mrs. Drews had specifically sold their Edgewater Park home in 1992, for the sole purpose of clearing and eliminating their debts by satisfying the IRS liens and paying off the loans they had incurred to keep The Drews Company in business. (R.p.355, lines 6-12; R.p.440, lines 11-15; R.pp.764-765, para. 5). Consequently, the only "creditors"**84** Mr. and Mrs. Drews theoretically had during the ***1993-1995*** time frame were the very credit card companies which Mr. and Mrs. Drews periodically paid off using the $40,000.00 in total loans provided to them by Mr. Lancaster. Since Mr. and Mrs. Drews were actually paying off their credit card debts it cannot credibly be argued that any payments they subsequently made to Mr. Lancaster to reimburse him for the $40,000.00 in loans was done to "avoid creditors". The creditors whose very extension of personal consumer credit to Mr. and Mr. Drews which actually gave rise to the $35,000.00 in credit card debt had undisputedly been paid.

3. The $20,000.00 In Payments To The Banks

Again, as this Court of Appeals is certainly aware, in ***1999***, Mr. Lancaster loaned Mr. and Mrs. Drews $20,000.00 to pay off loans from First Citizens Bank and South Trust Bank which they had obtained to finance the failed Builders Station hardware store business endeavor. (R.p.369, lines 11-22; R.p.388, line 23 – R.p.389, line 24;

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and (h) $5,000.00 on 30 January 1995, for a total amount of $40,000.00. (R.pp.692-695; R.pp.804A-811; R.p.1065; R.pp.1066-1071).

84 Bell Finance Co., Inc. v. S. C. Dept. of Consumer Affairs, 297 S.C. 111, 114, 374 S.E.2d 918, 920.

R.p.402, lines 19-23; R.p.1073). To satisfy those loans, Mr. Lancaster sent a $5,000.00 check on 2 June 1999, directly to First Citizens from his own First Citizens account (R.p.389, lines 2-24; R.p.766, para. 8; R.p.1073) and, on 7 June 1999, had Wachovia issue a $15,000.00 check out of his Wachovia line of credit made payable directly to South Trust. (R.p.389, lines 2-24; R.p.766, para. 8; R.p.1073).

The funds did not go to Mr. and Mrs. Drews, but, instead, were paid directly to the affected financial institutions in order to settle the outstanding Builders Station-related loans at a significantly reduced amount. Again, the funds were paid to satisfy Mr. and Mrs. Drews debts and cannot reasonably be seen to have constituted an attempt to defraud creditors or to hide money from creditors.

Mr./ Gordon failed to present any credible evidence which showed that (a) the $100,000.00 Mr. and Mrs. Drews paid Mr. Lancaster in ***1992***, (b) the $40,000.00 Mr. Lancaster loaned Mr and Mrs. Drews in ***1993-1995***, or (c) the $20,000.00 Mr. Lancaster paid in ***1999*** to First Citizens and South Trust constituted fraudulent conveyances.

This Court of Appeals should and, indeed, must reverse the Circuit Court's decision not to have granted Mr. Lancaster a directed verdict or, in the alternative, an amendment of the Circuit Court's findings and/or an alteration and/or amendment of the judgment and, in turn, render judgment in Mr. Lancaster's favor.

V. CONCLUSION

Based upon the foregoing arguments and citation of authority, the Appellant, Donald W. Lancaster, respectfully requests that this Court of Appeals reverse the Circuit Court in all respects, grant judgment to Mr. Lancaster, and dismiss the action with prejudice.

Respectfully submitted:

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