

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

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Appellate Case No. 2019-000076

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CAROL MANIGAULT,

Appellant,

v.

MORRIS ELLISON, AS PERSONAL  
REPRESENTATIVE OF THE  
ESTATE OF ANDREW  
MANIGAULT,

Respondent.

**RECEIVED**  
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SC Court of Appeals

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**INITIAL BRIEF OF RESPONDENT**

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## STATEMENT OF ISSUES ON APPEAL

- I. Did the Circuit Court err in affirming the Probate Court's Order granting Summary Judgment and dismissing certain creditor's claims asserted by Appellant?
- II. Did the Circuit Court err in not restricting its reasons for affirmance to those set forth in the Probate Court's April 7, 2017 decision?

## STANDARD OF REVIEW

This case is an appeal from the Circuit Court's affirmance of the Charleston County Probate Court's grant of summary judgment in favor of the Respondent's denial of Appellant's creditor's claim. As such, the standard of review is governed by Rule 56(c) of the South Carolina Rules of Civil Procedure. This rule provides a motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. An appellate court reviews the granting of summary judgment under the same standard applied by the trial court pursuant to Rule 56, SCRPC. Beach First Nat'l Bank v. Gurnham (In re Estate of Gurnham), 407 S.C. 194, 754 S.E.2d 875 (2014), citing Brockbank v. Best Capital Corp., 341 S.C. 372, 379, 534 S.E.2d 688, 692 (2000).

### *ADDITIONAL SUSTAINING GROUNDS*

In addition, Rule 220(c) of the South Carolina Rule of Appellate Procedure expressly provides that the appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal. Rule 220(c), SCACR. Further, a respondent may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, even if those reasons have not been presented to or ruled on by the lower court. S.C. DOL v. Chastain, 392 S.C. 259, 708 S.E.2d 818 (Ct. App. 2011), citing I'On LLC v. Town of Mt. Pleasant, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000). The appellate court may review the respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment. Id. at 420, 526

S.E.2d 723. A prevailing party need never raise an additional sustaining ground below, nor secure a ruling on it, in order for the issue to be preserved for appellate review. *See*, Rule 220(c), SCACR. Respondent respectfully submits in this Initial Brief additional sustaining grounds upon which the Probate Court's Order granting summary judgment should be affirmed. In addition, Respondent further respectfully requests that the Court take judicial notice of those versions of cited statutes in effect at relevant times.

## STATEMENT OF THE CASE

Andrew Manigault (the "**Decedent**") and his ex-wife Carol Manigault (the "**Appellant**") were divorced pursuant to an October 3, 2002 Final Judgment of Divorce issued by the Superior Court of New Jersey, Chancery Division, Bergen County (the "**Divorce Decree**")<sup>1</sup>. The Decedent died seven and one-half years later on March 5, 2010. The Decedent's Last Will and Testament dated January 21, 2007,<sup>2</sup> appointed Morris A. Ellison, Esq. (the "**Respondent**" or "**Personal Representative**") to serve as Personal Representative of the Estate of Andrew Manigault (the "**Estate**"). The Decedent's estate plan provides that Appellant is to receive approximately one-half (1/2) of the Decedent's assets, separate and apart from her creditor's claims asserted in this action, after payment of administrative expenses and creditors.

On September 15, 2010, Appellant filed in the Probate Court for Charleston County (the "**Probate Court**") a Statement of Creditor's Claim,<sup>3</sup> seeking \$212,577.00 in mortgage and refinance expenses in connection with the Divorce Decree. Specifically, Appellant claimed \$9,600.93 for the refinancing of the mortgage in March 2005 which allegedly resulted "because of Mr. Manigault's default on mortgage."<sup>4</sup> On November 17, 2010, Appellant filed a second Statement of Creditor's Claim<sup>5</sup> attaching the Divorce Decree as an exhibit, seeking an

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<sup>1</sup> Final Judgment of Divorce (Carol Manigault v. Andrew Manigault), Superior Court of New Jersey, Chancery Division, Bergen County, dated October 3, 2002.

<sup>2</sup> Last Will and Testament of Andrew Manigault dated January 21, 2007, p. 1.

<sup>3</sup> Statement of Creditor's Claim of Carol Manigault in the amount of \$212,577.00 for property located at 1288 Taft Road, Teaneck, NJ and filed on September 15, 2010 in the Charleston County Probate Court under Case No. 2010-ES-10-0413.

<sup>4</sup> Id., p. 1.

<sup>5</sup> Statement of Creditor's Claim of Carol Manigault in the amount of \$875,000.00 (est.) re: Equitable Distribution of property located at Beech Mountain, NC and Acreage located in Christ Church Parish, Charleston County, S.C. and filed on November 17, 2010 in the Charleston County Probate Court under Case No. 2010-ES-10-0413.

"[estimated] \$875,000.00 for SC Property and NC Property-Unknown," listing as the basis of her claim:

Equitable Distribution of Property located at Tract 233, Beech Mountain, TMS# 194009250244, recorded in Plat Book 14 at Page 49 in the Register of Deeds in Avery County, North Carolina and Lot B, 5.77 acres located on Hamlin Road and U.S. Highway #17, Christ Church Parish, Charleston County, South Carolina, recorded in Plat Book CK at Page 42.<sup>6</sup>

On November 17, 2010, Appellant filed in the Charleston County Court of Common Pleas (the "**Court of Common Pleas**") a Notice of Filing of Foreign Judgment, Attorney's Affidavit of Filing Foreign Judgment and Certified Final Judgment of Divorce<sup>7</sup>, seeking payment from Decedent's Estate based on the 2002 Divorce Decree. On January 7, 2011, the Personal Representative filed a Motion for Relief from Foreign Judgment and Notice of Defenses to Foreign Judgment.<sup>8</sup> The Personal Representative set forth a number of defenses, *inter alia*, (i) arguing that the Court of Common Pleas lacked subject matter jurisdiction to address claims against the Estate; (ii) citing Rule 12(b)(8) of the South Carolina Rules of Civil Procedure such that another action was pending for the same claim; (iii) maintaining that the Divorce Decree was not a "foreign judgment" as defined in the South Carolina Uniform Enforcement of Judgments Act, S.C. Code Ann. S.C. Code Ann. § 15-35-900 et seq., arguing that no adjudication had been made by any court that the Personal Representative, Estate, or Decedent failed to comply with the Divorce Decree; and (iv) pointing out that Appellant had failed to

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<sup>6</sup> *Id.*, p. 1.

<sup>7</sup> Notice of Filing of Foreign Judgment, Declaration of Filing of Foreign Judgment, Attorney's Affidavit of Filing of Foreign Judgment and Certified Copy of New Jersey Final Judgment of Divorce re: Equitable Distribution of property and filed on November 17, 2010 in the Charleston County Court of Common Pleas under Case No. 2010-CP-10-9512.

<sup>8</sup> Motion for Relief from Foreign Judgment and Notice of Defenses to Foreign Judgment by Personal Representative filed on January 7, 2011 in the Charleston County Court of Common Pleas under Case No. 2010-CP-10-9512.

comply with the applicable provisions of New Jersey law, the South Carolina Probate Code, and the South Carolina Uniform Enforcement of Judgments Act. Id.

On July 29, 2011, the Court of Common Pleas issued an Order Granting the Personal Representative's Motion for Relief from Foreign Judgment, dismissing Appellant's Foreign Judgment claims for lack of subject matter jurisdiction and pursuant to Rule 12(b)(8) of the South Carolina Rules of Civil Procedure.<sup>9</sup> The July 29, 2011 Order did not in any way refer or transfer Appellant's foreign judgment claims to the Probate Court. Id.

On January 19, 2016, Respondent filed and served two Form #372ES Notices of Disallowance of Claims<sup>10</sup> on Appellant and her attorney which disallowed the entirety of both of Appellant's creditor claims. Both Notices of Disallowance of Claims included an express warning that Appellant's disallowed claims would be forever barred unless she commenced a legal proceeding within thirty (30) days, pursuant to S.C. Code Ann. § 62-3-804(2). Respondent's Proof of Delivery for the Notices of Disallowance of Creditor Claims<sup>11</sup> was filed with the Probate Court on January 19, 2016, along with a copy of the Notices of Disallowance.

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<sup>9</sup> Charleston County Court of Common Pleas Order of Hon. Roger M. Young, Sr. granting Personal Representative's Motion for Relief from Foreign Judgment filed on August 1, 2011 under Case No. 2010-CP-10-9512.

<sup>10</sup> Notice of Disallowance by the Personal Representative re: Carol Manigault's Creditor's Claim for \$212,577.00, filed on January 19, 2016 in the Charleston County Probate Court under Case No. 2010-ES-10-413; and Notice of Disallowance by the Personal Representative re: Carol Manigault's Creditor's Claim for \$875,000.00 (est.) filed on January 19, 2016 in the Charleston County Probate Court under Case No. 2010-ES-10-413.

<sup>11</sup> Notice of Disallowance by the Personal Representative re: Carol Manigault's Creditor's Claim for \$212,577.00, filed on January 19, 2016 in the Charleston County Probate Court under Case No. 2010-ES-10-413; and Notice of Disallowance by the Personal Representative re: Carol Manigault's Creditor's Claim for \$875,000.00 (est.) filed on January 19, 2016 in the Charleston County Probate Court under Case No. 2010-ES-10-413.

Appellant filed her Petition for Allowance of Claim<sup>12</sup> with the Probate Court on February 10, 2016 and her Summons<sup>13</sup> in connection with her Petition on February 19, 2016. Appellant has never filed with the Probate Court any Proof of Delivery showing service of her Summons and Petition for Allowance of Claim on Respondent.<sup>14</sup> Appellant sent a courier to deliver two unposted, handwritten envelopes to Respondent.<sup>15</sup> The courier left the documents at the front desk of Respondent's and Respondent's attorney's office with a receptionist unauthorized to accept service.<sup>16</sup> On this basis, Respondent maintains that Appellant had not timely commenced her action since service was neither timely nor properly effectuated.

On March 18, 2016, Respondent timely filed and served an Answer to Appellant's Petition for Allowance of Creditor's Claims.<sup>17</sup> In its Answer, Respondent alleged “[a]s Respondent was not timely or properly served with a Summons and Complaint for allowance of claims, the Petitioner’s creditor claims are barred as a matter of South Carolina Statute and other applicable law.”<sup>18</sup> On November 18, 2016, Respondent filed and served a Motion for Summary

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<sup>12</sup> Summons and Petition on behalf of Carol Manigault for Allowance of the Two Creditor’s Claims filed on February 19, 2016 in the Charleston County Probate Court under Case No. 2010-ES-10-413.

<sup>13</sup> Summons and Petition on behalf of Carol Manigault for Allowance of the Two Creditor’s Claims filed on February 19, 2016 in the Charleston County Probate Court under Case No. 2010-ES-10-413.

<sup>14</sup> Charleston County Probate Court Order of Hon. Tamara C. Curry granting Personal Representative’s Motion for Summary Judgment dated April 7, 2017 under Case No. 2010-ES-10-413.

<sup>15</sup> Transcript of Charleston County Probate Court Hearing held on January 19, 2017 re: Personal Representative’s Motion for Summary Judgment under Case No. 2010-ES-10-10-413, pp. 13, 20.

<sup>16</sup> *Id.*

<sup>17</sup> Personal Representative’s Answer to Carol Manigault’s Petition for Creditor Claim on behalf of Personal Representative filed on March 18, 2016 in the Charleston County Probate Court under Case No. 2010-ES-10-413.

<sup>18</sup> *Id.*, at 2-3.

Judgment seeking dismissal of Appellant's Petition for Allowance of Claim.<sup>19</sup> Appellant filed her opposition brief<sup>20</sup> on January 17, 2017. A hearing on the motion took place on January 19, 2017 before the Honorable Tamara C. Curry, Associate Probate Judge.<sup>21</sup> On April 7, 2017, Judge Curry issued an Order Granting Summary Judgment to Respondent.<sup>22</sup> Appellant filed a Motion to Alter or Amend the Probate Court's Judgment<sup>23</sup> on April 24, 2017, which was denied by the Probate Court in a June 1, 2017 Order.<sup>24</sup>

On June 16, 2017, Appellant filed a Notice of Appeal with the Charleston County Court of Common Pleas (the "**Circuit Court**"), Case No. 2017-CP-10-03110<sup>25</sup>

On June 30, 2018 the Honorable J. Mark Hayes, II heard Appellant's appeal.<sup>26</sup> At the hearing, Respondent submitted an exhibit entitled "Comparison of 2010 and 2014 SC Code 62-3-806" which provided a copy of the statute as it appeared in 2010, a copy of the statute as it appeared in 2014, and a "red-lined" comparison of the two<sup>27</sup>;

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<sup>19</sup> Motion for Summary Judgment on behalf of Personal Representative filed on November 18, 2016 in the Charleston County Probate Court under Case No. 2010-ES-10-413.

<sup>20</sup> Opposition to Motion for Summary Judgment on behalf of Carol Manigault filed on January 17, 2017 in the Charleston County Probate Court under Case No. 2010-ES-10-413.

<sup>21</sup> Transcript of Charleston County Probate Court Hearing held on January 19, 2017 re: Personal Representative's Motion for Summary Judgment under Case No. 2010-ES-10-413.

<sup>22</sup> Charleston County Probate Court Order of Hon. Tamara C. Curry granting Personal Representative's Motion for Summary Judgment dated April 7, 2017 under Case No. 2010-ES-10-413.

<sup>23</sup> Motion to Alter or Amend Judgment on behalf of Carol Manigault filed on April 24, 2017 in the Charleston County Probate Court under Case No. 2010-ES-10-413.

<sup>24</sup> Charleston County Probate Court Order of Hon. Tamara C. Curry denying Carol Manigault's Motion to Alter or Amend Judgment dated June 1, 2017 under Case No. 2010-ES-10-413.

<sup>25</sup> Notice of Appeal to Circuit Court filed on June 16, 2017 in the Charleston County Court of Common Pleas under Case No. 2017-CP-10-3110.

<sup>26</sup> Transcript of Appellate Court (Charleston County Court of Common Pleas) Hearing held on July 30, 2018.

<sup>27</sup> Comparison of 2010 and 2014 S.C. Code (3 pages) submitted by James Myrick, Esq., Respondent's attorney at the appellate hearing on July 30, 2018.

On December 27, 2018 the Circuit Court issued an “Order Denying Appeal.”<sup>28</sup> On January 27, 2019, Appellant filed a Notice of Appeal with the South Carolina Court of Appeals.

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<sup>28</sup> Order Denying Appeal filed on December 27, 2018 in the Charleston County Court of Common Pleas signed by Hon. J. Mark Hayes, II under Case No. 2017-CP-10-3110.

## ARGUMENT

### SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when no genuine issue of material fact exists. South Carolina Rule of Civil Procedure (SCRCP) 56. Summary judgment must be entered in favor of a party who shows there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Baughman v. At& T, 306 S.C. 101, 410 S.E.2d 537 (1991); Café Assocs.v. Gerngross, 305 S.C. 6, 406 S.E.2d 162 (1991). A party responding to a properly supported motion for summary judgment may not rest on the mere allegations or denials in its own pleading. SCRCP 56(e). Instead, the response must set forth specific facts, admissible in evidence, showing there is a genuine issue for trial; if he does not so respond summary judgment should be awarded against him. SCRCP 56(e); *see*, Moody v. McLellan, 295 S.C. 157, 367 S.E.2d 449 ( Ct. App. 1988).

If a plaintiff fails to establish a genuine issue of fact as to any essential element to the cause of action, the existence of factual issues relating to other elements becomes immaterial and therefore subject to summary judgment. Fender & Latham, Inc. v. First Union Nat'l Bank, 316 S.C. 48, 446 S.E.2d 448 (Ct. App. 1994). A litigant cannot create a genuine issue of material fact through mere speculation or the building of one inference upon another. Beale v. Hardy, 769 F.2d 213, 214 (4th Cir. 1985). The existence of a mere scintilla of evidence in support of the non-moving party's position is insufficient to overcome a motion for summary judgment. Id. Summary judgment is designed to save valuable trial time and thus assist in securing speedy and inexpensive justice. Royster Co. v. E.Distribution, Inc., 301 S.C. 18, 389 S.E.2d 863 (1990). In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the party opposing summary judgment.

Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 673 S.E.2d 801 (2009). A motion for summary judgment can be used to raise the defense of the statute of limitations. McDonnell v. Consol. Sch. Dist., 315 S.C. 487, 489, 445 S.E.2d 638 (1994).

I. APPELLANT'S NEW JERSEY DIVORCE DECREE, LABELED "FINAL JUDGMENT OF DIVORCE," WAS NEVER PROPERLY ENROLLED IN SOUTH CAROLINA UNDER THE UNIFORM ENFORCEMENT OF JUDGMENTS ACT, CONTAINED NO SUM CERTAIN DUE, AND WAS FILED IN THE PROBATE COURT AS AN EXHIBIT IN SUPPORT OF TWO CREDITOR'S CLAIMS. APPELLANT FAILED TO FILE AND SERVE A PETITION UPON THE DISALLOWANCE OF HER CREDITOR'S CLAIMS AND INCORRECTLY ASSERTS THAT THE DIVORCE DECREE SHOULD HAVE "STAND-ALONE" STATUS.

Calling a Chihuahua a Great Dane does not make the dog at issue any larger. Nor does merely filing a "Final Judgment of Divorce" make it necessarily qualify as domesticated judgment under S. C. Code Ann. §15-35-920 subject to the Uniform Enforcement of Foreign Judgments Act. Here, no New Jersey court has ever ruled that Decedent Andrew Manigault breached the 2002 divorce decree in any way before his death in 2010. Further, no court had reduced any such alleged violation of the Final Judgment of Divorce to a sum certain.

If Appellant believed she could prove monies were due to her for Decedent's alleged failure to make certain mortgage payments under the Divorce Decree, any such claims would have to have been heard and reduced to a judgment by the New Jersey court. There is no evidence in the record that they were. If any such claims somehow survived three years after a 2005 refinancing (when the supporting HUD documentation from New Jersey disclosed her knowledge of such perceived breach<sup>29</sup>), Appellant's remedy would have been to file and serve a

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<sup>29</sup> HUD-1 Settlement Statement dated March 17, 2005, filed September 15, 2010 (Exhibit A to Estate's Motion for Summary Judgment)

timely petition with the Probate Court. The Probate Court and later the Circuit Court found she did not timely file and serve such a petition.

The gravamen of a properly docketed and indexed foreign judgment is that it constitutes in effect an established debt of the judgment debtor. No such certainty or clarity exists by the mere filing a divorce decree. No documents establishing the alleged debt at all were provided, nor even any documents stating a debt was due at all except the conclusory affidavit of Appellant's attorney.<sup>30</sup> No New Jersey court reached such a conclusion nor did any other court reviewing the enforcement of the divorce decree in any other state.

Appellant acknowledges and now apparently concedes that the divorce decree, also filed in the Charleston County Court of Common Pleas as a "foreign judgment," was properly dismissed by the Circuit Court.<sup>31</sup> The Circuit Court concluded it had no subject matter jurisdiction dismissing (not transferring to the Probate Court, as Appellant's statement of fact incorrectly recites) the filing.<sup>32</sup>

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<sup>30</sup> Civil Action Cover Sheet, Notice of Filing of Foreign Judgment, Declaration of Filing of Foreign Judgment, Attorney's Affidavit of Filing of Foreign Judgment and Certified Copy of New Jersey Final Judgment of Divorce re: payment of mortgage on Teaneck, NJ property (approx.. \$212,577.00) and filed on November 17, 2010 in the Charleston County Court of Common Pleas under Case No. 2010-CP-10-9512; and Notice of Filing of Foreign Judgment, Declaration of Filing of Foreign Judgment, Attorney's Affidavit of Filing of Foreign Judgment and Certified Copy of New Jersey Final Judgment of Divorce re; Equitable Distribution of property and filed on November 17, 2010 in the Charleston County Court of Common Pleas under Case No. 2010-CP-10-9512.

<sup>31</sup> Appellant's Initial Brief filed with this Court on May 21, 2019, p. 11. ("In it's Order Denying Appeal, the Court of Common Pleas held that Appellant's Foreign Judgment claim that was filed November 17, 2010 with the Court of Common Pleas was properly dismissed for lack of subject matter jurisdiction and pursuant to Rule 12(b)(8) of the SCRCP. Appellant is in agreement upon that ruling.").

<sup>32</sup> Charleston County Court of Common Pleas Order Granting Defendant's Motion for Relief from Foreign Judgment signed by Hon. Roger Young and filed on August 1, 2011 under Case No. 2010-CP-10-9512.

Consistent with its position filed in the Court of Common Pleas<sup>33</sup>, the Respondent contested the validity and enforceability of the purported Foreign Judgment in Probate Court by disallowing the two creditor's claims. Because Appellant never pursued the disallowances, no court ever determined if the Divorce Decree was breached and if so, the amount of any breach. Additionally, § 15-35-920 states "a foreign judgment must be docketed and indexed in the same manner as a judgment of the state"<sup>34</sup> and it is undisputed these mandatory steps were not taken to enroll the Final Judgment of Divorce.

II. APPELLANT FUNDAMENTALLY MISCONSTRUES THE DIFFERENCE BETWEEN PRESERVATION RULES FOR AN APPELLANT UNDER LONG-ESTABLISHED LEGAL PRINCIPLES AND FOR A RESPONDENT UNDER RULE 220(C) OF THE SOUTH CAROLINA APPELLANT COURT RULES.

Appellant claims

[r]espondent's initial brief to the Court of Common Pleas addressed issues that were not raised in the Probate Court and therefore, were not preserved for appellate review. The Court of Common Pleas erroneously ruled upon these unpreserved issues despite the objection of Appellant's attorney.<sup>35</sup>

Appellant then lists the four issues which are addressed in greater detail below.

The express foundation for Appellant's objection is that "[a]n appellate court will not consider issues on appeal that have not been preserved for appellate review." In the Interest of Michael H., 360 S.C. 540, 546, 602 S.E.2d 729, 732 (2004). This analysis misses the mark and the express language of Rule 220(c). It is true an appellant as the losing party generally must

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<sup>33</sup> Motion for Relief from Foreign Judgment and Notice of Defenses to Foreign Judgment by Personal Representative filed on January 7, 2011 in the Charleston County Court of Common Pleas under Case No. 2010-CP-10-9512. ("The Estate denies the allegations in the DeJong Affidavit, and affirmatively contests the validity and enforceability of the purported Foreign Judgment under applicable Law.").

<sup>34</sup> S.C. Code Ann. § 15-35-920 (1976).

<sup>35</sup> Appellant's Initial Brief filed with this Court on May 21, 2019, p. 13.

both present his issues and arguments to the lower court and obtain a ruling for an appellate court which will review those issues and arguments. e.g. Mercer v. Phillips, 318 S.C. 453, 458 S.E.2d 427 (1995) (appellate court generally will not address an issue unless the issue was raised to and ruled upon by the trial court); State v. Williams, 303 S.C. 410, 401 S.E. 2d 168 (1991) (same); Sumter Bldg. & Loan Ass'n v. Winn, 45 S.C. 381, 23 S.E. 29 (1895) (same) as cited in I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E. 2d 716 (2000). But this standard must always be distinguished from the rule applying to the respondent, as the prevailing party below. A respondent may raise on appeal “any addition reasons the appellate court should affirm the lower court’s ruling, regardless of whether these reasons have been presented to or ruled on by the lower court.” Id. at 419 (emphasis added). The I'on court further explained the rationale for this difference in the preservation rules:

It would be inefficient and pointless to require a respondent to return to a judge and ask for a ruling on other arguments to preserve them for appellate review. It could also violate the principle that a court usually should refrain from deciding unnecessary questions [citations omitted].

Id. at 419.

As the circuit court properly recognized in the case at bar,

Rule 220(c) SCACR also empowers a court hearing a matter on appeal to ‘affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.’ Therefore, the court in this matter is not restricted to the reasons set forth in the Probate Court’s April 7, 2017 decision. Further, a respondent may raise on appeal any additional reasons the Appellate Court should affirm the lower court’s ruling. South Carolina Dept. of Labor, Licensing and Regulation v. Chastain, 392 S.C. 259, 708 SE 2d 818 (Court App. 2011) citing I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 419, 526 SE 2d 716, 723 (SC 2000). The court hearing the appeal may consider the respondent’s additional reasons, and, if convinced it is proper to do so, rely on them or any

other reason appearing in the record to affirm the lower court's judgment. P'On, L.L.C., 338 S.C. at 420.<sup>36</sup>

So long as the grounds for affirming the Probate Court appeared in the record on appeal and the Circuit Court was convinced it was proper and fair to affirm, the Circuit Court acted appropriately.

Evidence on all four issues cited by the Appellant appeared in the record before the Circuit Court and supported the Circuit Court's ruling. Evidence of the Appellant's failure to properly serve her Summons and Petition for allowance of claims as required under South Carolina law appears in the record.<sup>37</sup>

Evidence appears in the record that the Appellant had clear notice in 2005 of any breach of the Divorce Decree, as proven in the very language of Appellant's creditors claim and its accompanying HUD Uniform Settlement for Refinance dated 2005.<sup>38</sup> Therefore, any claims by Appellant were barred by the three (3) year statute of limitations of S.C. Code Ann. §15-3-510(1), well before Decedent's death in 2010.

There is also proof in the record also that Appellant failed to reduce to judgment and to domesticate any foreign judgment in South Carolina as required under S.C. Code Ann. §15-35-

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<sup>36</sup> Order Denying Appeal filed on December 27, 2018 in the Charleston County Court of Common Pleas signed by Hon. J. Mark Hayes, II under Case No. 2017-CP-10-3110.

<sup>37</sup> Charleston County Probate Court Order of Hon. Tamara C. Curry granting Personal Representative's Motion for Summary Judgment dated April 7, 2017 under Case No. 2010-ES-10-413, p. 3 ("on February 19, 2016, Petitioner filed a Summons and Petition for Allowance of Claim. However, no Proof of Delivery to the Personal Representative was filed with this Court").

<sup>38</sup> Statement of Creditor's Claim of Carol Manigault in the amount of \$212,577.00 for property located at 1288 Taft Road, Teaneck, NJ and filed on September 15, 2010 in the Charleston County Probate Court under Case No. 2010-ES-10-0413, p. 1 ("[r]efinance closing costs because of Mr. Manigault's default on mortgage"); HUD-1 Settlement Statement dated March 17, 2005, filed September 15, 2010 under Case No. 2010-ES-10-0413 ("settlement date: 3/17/05").

920.<sup>39</sup> No required docketing and indexing were accomplished, for example, as required by the statute. In fact, the Probate Court acknowledged that the argument had been made before it that the Divorce Decree was not enforceable as a foreign judgment when it stated in its order it need not reach such argument for its ruling.<sup>40</sup>

There is also evidence in the record that the Personal Representative complied with the relevant prior version of S.C. Code Ann. § 62-3-806(a) in effect at the time of Decedent's 2010 death when the Personal Representative issued disallowances of the claim on January 20, 2016 and January 25, 2016<sup>41</sup>. This version of the statute did not contain the deadline for disallowance relied upon by the Appellant. See Hayes Order.<sup>42</sup>

Appellant's statement that "the Court of Common Pleas ruled upon the unpreserved issues and these findings should be vacated"<sup>43</sup> ignores Rule 220(c) and is simply a misinterpretation of the law.

III. RESPONDENT'S USE OF AN EXHIBIT ENTITLED "COMPARISON OF 2010 & 2014 SC CODE SECTION 62-3-806, ALLOWANCE OF CLAIMS" IS NOT EVIDENCE AT ALL, MUCH LESS NEW EVIDENCE.

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<sup>39</sup> Transcript of Circuit Court Appellate Hearing held on July 30, 2018 before Hon. J. Mark Hayes, II., pp. 17-20; Order Denying Appeal filed on December 27, 2018 in the Charleston County Court of Common Pleas signed by Hon. J. Mark Hayes, II under Case No. 2017-CP-10-3110, pp. 7-8 ("In fact, the record reveals no indication that Appellant ever domesticated the Foreign Judgment against the Estate.")..

<sup>40</sup> Charleston County Probate Court's Order Granting Summary Judgment signed by Hon. Tamara Curry on April 7, 2017 in the Charleston County Probate Court under Case No. 2010-ES-10-0413, p. 6; See also, Transcript of Charleston County Probate Court Hearing held on January 19, 2017 re: Personal Representative's Motion for Summary Judgment under Case No. 2010-ES-10-0413, pp. 15-18.

<sup>41</sup> Transcript of Circuit Court Appellate Hearing held on July 30, 2018 before Hon. J. Mark Hayes, II., pp. 20-15

<sup>42</sup> Order Denying Appeal filed on December 27, 2018 in the Charleston County Court of Common Pleas signed by Hon. J. Mark Hayes, II under Case No. 2017-CP-10-3110, pp. 8-9.

<sup>43</sup> Appellant's Initial Brief filed with this Court on May 21, 2019, p. 14.

At the hearing of the appeal in Circuit Court, Respondent's counsel presented a chart or exhibit comparing the controlling statute S.C. Code Ann. §62-3-806 as it read in 2010 at the time of Decedent's death and as the statute read after its 2014 amendment. The point of the exhibit was to show exactly how the statute's language had changed. Respondent alleges this "new evidence" should "have never been used by the Respondent and that this use at the hearing was inappropriate."<sup>44</sup>

The opposite is true. It is the very role of the Circuit Court to interpret the law, any changes in the law, and to apply controlling law to the facts. To argue "[t]his new evidence should not have been admitted and should be stricken from the record" and that "any decision by the Court of Common Pleas that includes any portion of the comparison of 2010 & 2014 SC Code should be vacated," misses the point entirely: Only by understanding the difference between the South Carolina Code in effect at the time of Decedent's death and later versions can the Circuit Court do its job. In fact, the issue of interpretation of a statute is exclusively a question of law for the court to decide. Myat v. Tuomey Reg'l Med. Ctr., No. 5636, 2019 WL 1461570, 2019 S.C. App LEXIS\_30 (Ct. App. Apr. 3, 2019). Any failure to recognize the timing and effect of any amendments would be error. Comparison of statutes is not evidence. Providing a "red-lined" version of the applicable Code Section as an exhibit for the Court would seem a productive exercise by any advocate.

There is no suggestion that the comparison was inaccurate. Similarly, there is no factual dispute that the Personal Representative complied with the terms of S.C. Code Ann. §62-3-806 as it read in 2010 at the time of Decedent's death.

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<sup>44</sup> Appellant's Initial Brief filed with this Court on May 21, 2019, p. 14.

IV. THE PROBATE COURT’S CITATION TO A “REPORTER’S COMMENT” FROM AN EARLIER VERSION OF SC CODE SECTION 62-3-806 HAS NOT BEEN SHOWN TO BE A CONTROLLING ERROR BECAUSE THE LOWER COURT PROPERLY APPLIED THE STATUTE.

In its Order<sup>45</sup>, the Probate Court cites a “Reporter’s Comment” to S.C. Code Ann. § 62-3-806 which reads as follows. “Failure of a person representative to mail notice of his action within 30 days after the claim filing period has expired constitutes a notice of disallowance with warning of the impending bar.” Appellant insists that the Probate Court was misguided in citing and relying upon the Reporter’s Comment since the Reporter’s Comment cannot be found anywhere in the official SC Code of Laws. Regardless of the Reporter’s Comment, however, the key consideration is that the Probate Court properly applied the version of S.C. Code Ann. §62-3-806(a) in effect at the time of Decedent’s death in 2010, and not a later version. The 2010 statute contained neither the sixty (60) day nor the fourteen (14) month timeline described by Appellant as “statutes of limitations” in her arguments. Without such governing timelines to issue the disallowances being in effect at the time of the Decedent’s 2010 death, Respondent did not fail under the statute. This complies with the general rule that statutes in general do not have retroactive application unless the statute says so<sup>46</sup>. Reference to the Reporter’s Comment, therefore, was not a controlling error.

V. THE 2014 VERSION OF S.C. CODE ANN. SECTION 62-3-806(A) WHICH CONTAINS THE TIMELINES APPELLANT SEEKS TO IMPOSE WAS NOT IN EFFECT WHEN THE DECEDENT DIED IN 2010.

The version of Section 62-3-806(a) in effect at the time of the Decedent’s death – which is controlling in this matter – did not contain any specific deadline for a personal representative

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<sup>45</sup> Charleston County Probate Court’s Order Granting Summary Judgment signed by Hon. Tamara Curry on April 7, 2017 in the Charleston County Probate Court under Case No. 2010-ES-10-0413, p. 5.

<sup>46</sup> See, eg., State v. Hilton, 406 S.C. 580, 752 S.E.2d 549 (Ct. App. 2013).

to file a Disallowance of Claim. The controlling version of S.C. Code Ann. § 62-3-806(a) read as follows:

As to claims presented in the manner described in Section 62-3-804 within the time limit prescribed in 62-3-803, the personal representative may mail a notice to any claimants stating that the claim has been disallowed. If, after allowing or disallowing a claim, the personal representative changes his decision concerning the claim, he shall notify the claimant. The personal representative may not change a disallowance of claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has run and the claim has been barred. Every claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commencing a proceeding against the personal representative not later than 30 days after the mailing of the Notice of Disallowance or partial allowance if warns the claimant of the impending bar. It is the responsibility of the personal representative to notify the claimant if a claim is disallowed.

In light of the statute in effect on the date of Decedent's death, the Court held that there is no evidence whatsoever that Respondent's January 19, 2016 Disallowance of Appellant's Claims were untimely. For this reason, there remained no genuine issue as any material fact and Respondent was entitled to judgment as a matter of law".<sup>47</sup>

Appellant's attempts to shoehorn the facts of this case into a later 2014 version of the statute which contains Appellant's preferred timelines are ineffective. The revisionist approach appears thus in Appellant's brief:

It is important to note that the statute of limitations with [sic] which Respondent had to file a Notice of Disallowance of the creditor's claim was enacted in 2014. Respondent knew or should have known that there was now a deadline with [sic] which to file a Disallowance of Claim in an estate matter. Yet, Respondent did

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<sup>47</sup> See, Charleston County Court of Common Pleas Appellate Court Order Denying Appeal signed by Hon. J. Mark Hayes, II, and filed on December 27, 2018 under Case No. 2017-CP-10-03110, p. 9.

not file a disallowance of Appellant's claim for another 2 years, well past the statute of limitations.<sup>48</sup>

To accept this logic would mean that on the date the amended statute was enacted in 2014, all pending creditor's claims were automatically accepted on that date for any 2010 or 2011 Estate if no Notices of Disallowance had yet been mailed. This would be true because fourteen (14) months would have passed since any death in 2010 or 2011. Such retroactivity and the absurd result it would create were clearly not the intent of the amended statute.

In short, the Court of Common Pleas did not "skip over" Appellant's argument on the effect on the amended statute and its timelines as Appellant suggests. It merely disagreed that the 2014 statute applied retrospectively.

VI. THE CIRCUIT COURT CORRECTLY RECOGNIZED AS A SEPARATE, INDEPENDENT GROUND FOR DISMISSAL OF THE APPEAL APPELLANT'S FAILURE TO COMPLY WITH S.C. CODE ANN. SECTION 62-1-308(D) AND (E), AS WELL AS RULE 208 OF THE SOUTH CAROLINA APPELLATE COURT RULES.

Appellant argues "[r]espondent's counsel did not raise an objection to either of these grounds during the course of the case." Respondent disagrees. The transcript of the July 30, 2018 hearing expressly states:

There is one other point that I'm obligated to make for this as it becomes an appellate record and that's at page 10 of my brief. . . . The initial brief and designation of matter were filed and served in this matter. That deadline was August 28, 2017, and this did not happen until August 30, 2017. And this is under Rule 62-1-308(d) and Rule 208 of the South Carolina Appellate Court rules.<sup>49</sup>

Timely filing and service of an appeal is a jurisdictional requirement. Should a filing occur outside the period prescribed by statute and by rule, the appellate court is deprived of

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<sup>48</sup> Appellant's Initial Brief filed with this Court on May 21, 2019, p. 16.

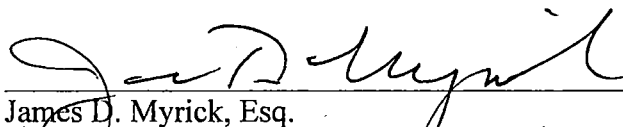
<sup>49</sup> Transcript of Circuit Court Appellate Hearing held on July 30, 2018 before Hon. J. Mark Hayes, II., p. 26.

jurisdiction. See, eg., Elam v. S.C. DOT, 361 S.C. 9,15, 602 S.E.2d 772,775 (2004) accord; Camp v. Camp, 386 S.C. 571, 574, 689 S.E.2d 634, 636 (2010). Although Appellant claims “[t]his appeal was unusual in that there was no specific rule regarding extension on deadlines when a case is appealed from the Probate Court to the Court of Common Pleas,”<sup>50</sup> such deadlines are clearly provided by statute. See, S.C. Code Ann. § 62-1-308. The method for providing an appellate record on appeal to the Circuit Court is also specified, and the record here shows Appellant’s noncompliance. If the Circuit Court had no jurisdiction to hear the appeal from the Probate Court, the only correct action was to dismiss the appeal as a matter of law just as the Circuit Court did.

### CONCLUSION

For the reasons set forth above the appeal commenced by the Appellant to the South Carolina Court of Appeals should hereby be dismissed with prejudice and the Circuit Court’s Order affirmed.

Respectfully submitted,



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Attorneys for the Respondent

July 18, 2019

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<sup>50</sup> Appellant’s Initial Brief filed with this Court on May 21, 2019, p. 17.

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

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Appellate Case No. 2019-000076

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CAROL MANIGAULT,

Appellant,

v.

MORRIS ELLISON, AS PERSONAL  
REPRESENTATIVE OF THE  
ESTATE OF ANDREW  
MANIGAULT,

Respondent.

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**SC Court of Appeals**

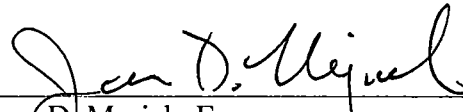
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**PROOF OF SERVICE**

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I certify that I have served the Initial Brief of Respondent on Counsel for the Appellant by placing (1) copy for delivery via Federal Express Overnight Delivery, prepaid, on July 18, 2019, address to Counsel for the Appellant, Karen DeJong, Esq., DEJONG LAW FIRM, LLC, 222 West Coleman Blvd., Ste. 110, Mt. Pleasant, SC 29464.

Respectfully submitted,



---

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*Attorneys for the Respondent*

July 18, 20109



July 18, 2019

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

**Via Federal Express, Overnight Delivery**

Re: In re: Estate of Andrew Manigault  
*Carol Manigault, Appellant v. Morris Ellison, Esq. as PR  
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S.C. Court of Appeals Case No.: 2019-000076  
Charleston CP Case No.: 17-CP-10-3110 (on Appeal  
from Charleston Probate Court Case No.: 10-ES-10-413)  
Our File Number: 70387.0033.7

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Dear Ms. Kitchings:

Please find enclosed an original plus two (2) copies of the Initial Brief of Respondent with Proof of Service and Respondent's Designation of Matter to be included in the Record on Appeal with Proof of Service. Please return the file stamped stamped copies to my office via the enclosed self-addressed, stamped envelope.

Thanking you for your assistance with this matter, I am

Sincerely,

**Womble Bond Dickinson (US) LLP**

A handwritten signature in black ink, appearing to read "Jim Myrick". The signature is fluid and cursive, with a large, sweeping flourish at the end.

James D. Myrick

JDM/def

Enclosures

cc: Karen M. DeJong, Esq.

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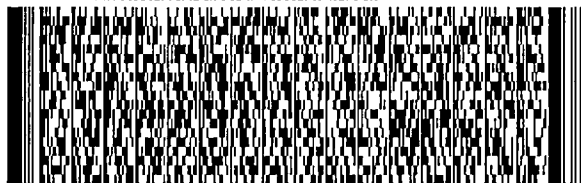
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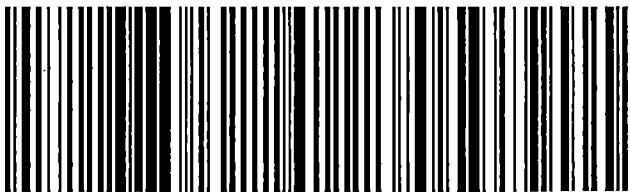
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