

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

JABER INVESTMENTS, LLC,
Plaintiff,

Versus

SLEEP KING, LLC AND
CHRISTOPHER C. MORRIS,
Defendants.

IN THE COURT OF COMMON PLEAS
EQUITY DIVISION
CIVIL CASE #: 2010-CP-18-1742

*ORDER DENYING RULE TO SHOW
CAUSE & AMENDED ORDER FOR
SUPPLEMENTAL PROCEEDINGS
(Of Hearing for supplemental proceedings
originally scheduled for 1/21/2020 @ 11 AM)*

1. The present matter pertains to a petition for supplemental proceedings brought by the Plaintiff.
2. Plaintiff procured judgment against the Defendant on October 22, 2009¹ in the amount of \$114,610.63.
3. Plaintiff transcribed this judgment in the judgment rolls for Dorchester County on June 28, 2010.
4. On September 2, 2010, the Plaintiff filed an execution against property marked "Nulla Bona" by the Sheriff of Dorchester County.
5. On December 11, 2019², Plaintiff petitioned the Honorable Diane S. Goodstein for Supplemental Proceedings requesting examination of the Defendants as to certain assets. Judge Goodstein entered a Rule to Show Cause to the Defendants directing them to appear before this Court on January 21, 2020.
6. On January 21, 2020, this Court held a hearing at which Plaintiff's attorney appeared.
7. The Defendants failed to appear.
8. Plaintiff's attorney inquired as to the process this Court followed when a Defendant failed to appear before the Court pursuant to a Rule to Show Cause³.

¹ Ten years from the Date of the judgment was October 20, 2009.

² 52 days after the expiration of the ten years from the date of the judgment.

³ My preference is to attempt to have the Respondent appear a second time. Hence, I will enter an amended Rule to Show Cause directing the Respondent appear at a subsequent date and time. If the Respondent does not appear then, I will consider a petition to hold the non-appearing respondent in contempt of court. Thus, I order a hearing specifically to determine if the Respondent should be held in contempt of court for failing to appear on two occasions. At that hearing, if the respondent fails to appear, I issue a bench warrant for respondents arrest and incarceration for contempt of court with directions that the Sheriff advise the Court when the arrest and incarceration has taken place. Thereafter, I arrange a hearing as soon as practicably possible. At that hearing I determine the contempt penalty.

RECEIVED

MAR 27 2020

SC Court of Appeals

9. During the hearing, Plaintiff's counsel requested the matter be continued to allow Plaintiff to request a second date and time for the Defendants to appear by order of the court for purposes of determining whether the Defendants have assets out of which this Court could enforce satisfaction of Defendants' judgment or some part of it.

10. This court agreed to continue the matter verbally for this purpose and in accord with my preference as explained in footnote 3.

11. After receiving a proposed order to set the second hearing, this Court reviewed the very recent case reported by our Supreme Court, *Gordon v. Lancaster*, 425 S.C. 386, 389, 823 S.E.2d 173, 174, 2018 WL 6072352 (2018), *reh'g denied* (Feb. 20, 2019) where the Court examines this issue: "Does a judgment's ten-year "active energy" terminate when the judgment creditor's enforcement action remains untried when the ten-year period expires, or conversely, does a judgment creditor's mere institution of the enforcement action within ten years extend that ten-year period indefinitely until trial is held and a final order is issued?" The Court held the active energy ends on the passing of the ten years. Hence, the judgment creditors mere institution of the enforcement action does not extend the judgment since its force and effect ends upon the expiration of ten years from the date of the judgment.

12. Since, in *Gordon*, the Court "decline[d] to judicially adopt an exception to the bright-line rule that a judgment expires after ten years from its enrollment," the Plaintiff's request to continue the action is denied.

13. Moreover, S.C. Code Ann. § 15-39-30 (2005) provides: "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."

14. Plaintiff's request for supplemental proceedings fails since it is 52 days after expiration of the judgment. IT IS, THEREFORE

15. ORDERED, ADJUDGED AND DECREED that Plaintiff's motion for supplemental proceedings to be continued is denied.

So, Ordered!

Electronic Signature of the Court follows:



Dorchester Common Pleas

Case Caption: Jaber Investments LLC VS Sleep King LLC , defendant, et al

Case Number: 2010CP1801742

Type: Master/Order/Other

So Ordered

s/James E. Chellis, Master in Equity, SCJD#3078