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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Julie J. Armstrong, Clerk of Court

Case No. 2019-CP-10-04231

Edgefield Holdings, LLC

Respondent,

v.

Ace Construction Company,
Inc. of Charleston a/k/a Ace
Construction Company, Inc.,
of Charleston a/k/a Ace
Construction Co., Inc. of
Charleston; Audrey O. Chavis
a/k/a Audrey O. Chavis, Sr.;
Alberta Chavis a/k/a Alberta
S. Chavis; and Commissioners
of Public Works of the City of
Charleston,

Of whom, Ace Construction
Company, Inc. of Charleston
a/k/a Ace Construction
Company, Inc., of Charleston
a/k/a Ace Construction Co.,
Inc. of Charleston; Audrey O.
Chavis a/k/a Audrey O.
Chavis, Sr.; and Alberta
Chavis a/k/a Alberta S. Chavis
are

Appellants.

RECEIVED
APR 27 2020
SC Court of Appeals

PETITION FOR REHEARING, WITH SUPPORTING MEMORANDUM

Pursuant to Rules 221, 240 and 267, SCACR, the above-listed Appellants hereby respectfully petition for rehearing and request that the Court reconsider and vacate its Dispositional Order, filed on April 13, 2020.

STATEMENT OF THE CASE

This appeal arises out of an order of reference (“Order of Reference”), issued by The Honorable Julie J. Armstrong, Clerk of Court for Charleston County, on March 23, 2020.

In the underlying case, the Respondent has asserted causes of action for foreclosure, fraudulent conveyance, judgment against transferee, and civil conspiracy. (Ex. A). On or about September 27, 2019, the Appellants moved to dismiss certain of the Respondent’s causes of action based on the statute of limitations. (Ex. B). That motion was heard on February 28, 2020, and ultimately denied by way of an order issued on March 18, 2020. Pursuant to Rule 59, SCRCF, the Appellants would have had until March 30, 2020 to file a motion for reconsideration of that order.¹ Prior to the Appellants being afforded ten days to contest the March 18, 2020, order or properly answer the Respondent’s complaint, the Order of Reference was issued.

On March 30, 2020, the Appellants filed a notice of appeal of the Order of Reference, and, on April 13, 2020, this Court dismissed the appeal, finding that the Order of Reference was not subject to immediate appeal because the underlying suit was one for foreclosure.

(Dispositional Order, April 13, 2020).

ARGUMENTS

I. The Order of Reference was subject to immediate appeal because it deprived the Appellants their right under Rule 38, SCRCF, and established case law, to a jury trial on

¹ The ten-day deadline under Rule 59, SCRCF, fell on March 28, 2020, which was a Saturday, extending the deadline to Monday, March 30, 2020.

certain causes of action and issues.

The underlying case is identical *First Palmetto State Bank and Trust Co. v. Boyles*, 302 S.C. 136, 394 S.E.2d 313 (1990). In *Boyles*, the plaintiff filed suit for claim and delivery. *Id.* at 137, 314. Prior to the defendants filing their answer, however, the case was referred to the master-in-equity. *Id.* at 137-138, 314. The South Carolina Supreme Court ruled that “the case was referred on August 8, 1988, four days prior to filing of the answer and before the time to answer had expired. We find that the reference deprived the Boyles of their right to a jury trial as provided under Rule 38(a).” *Id.* at 139, 315.

This Court has held that orders of reference are not only subject to immediate appeal but that immediate appeal is required to prevent waiver of a right to a jury trial. *First Union Nat. Bank of South Carolina v. Soden*, 333 S.C. 554, 565, 511 S.E.2d 372, 377-378 (Ct.App.1998).

Exactly like the order in *Boyles*, the Order of Reference was issued prior the Appellants being able to answer, counterclaim, or demand a jury trial on certain claims or issued, depriving them of their constitutional right to a jury and subjecting the Order of Reference to immediate appeal.

The Dispositional Order cites only to the Respondent’s foreclosure as the reason for dismissal. However, the Respondent’s complaint also asserts causes of action for civil conspiracy², under which it requests punitive damages, and for judgment against one of the Appellants. (Ex. A, p. 12 ¶¶ 55-58, p. 14 ¶¶ 70-75). These causes of action are subject to a jury

² Apparently, after this appeal was filed, the Respondent attempted to get around the issue by dismissing without prejudice the civil conspiracy cause of action. This does not render the issue moot because the cause of action was dismissed without prejudice, making the issue capable of repetition and potentially affecting future events. *Sloan v. Greenville County*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct.App.2009). Further, even with the civil conspiracy cause of action dismissed, the Appellants have jury rights with respect to the other cause of action (“judgment against transferee”) and certain issues, such as the statute of limitations, discussed *infra*.

trial. *Floyd v. Floyd*, 306 S.C. 376, 380, 412 S.E.2d 397, 399 (1991) (clarifying that the “main purpose” rule does not prevent a litigant from demanding a jury trial when both legal and equitable claims are brought and holding “in instances where legal and equitable issues or rights are asserted in the same complaint, the legal issues are for determination by a jury and the equitable issues are to be decided by the court.”) (citing *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 358 S.E.2d 150 (Ct.App.1987)).

Further, certain issues are subject to a jury trial. For example, based on the Appellants’ motion to dismiss, the statute of limitations will be a key issue in this case. “The date on which discovery should have been made is an objective, not subjective, question.” *Arant v. Kressler*, 327 S.C. 225, 229, 489 S.E.2d 206, 208 (1997) (citing *Kreutner v. David*, 320 S.C. 283, 465 S.E.2d 88 (1995). “When there is conflicting testimony regarding the time of discovery, it becomes an issue for the jury to decide.” *Id.* (citing *Brown v. Finger*, 240 S.C. 102, 124 S.E.2d 781 (1962)).

In addition, the Appellant’s theoretically could have asserted compulsory legal counterclaims, entitling them a jury trial on those counterclaims prior to any of the equitable claims being heard. *Gardner v. Travis*, 316 S.C. 315, 318, 450 S.E.2d 54, 56 (Ct.App.1994).

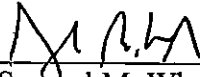
Unfortunately, the Order of Reference was issued prior to the Appellant’s asserting jury trial rights, in violation of Rule 38, SCRCF, and *First Palmetto State Bank and Trust Co. v. Boyles*, 302 S.C. 136, 394 S.E.2d 313 (1990).

CONCLUSION

For all the above-stated reasons, this Court should grant this petition for rehearing, vacate the Dispositional Order and allow this appeal to go forward.

(Signature on following page)

SMITH | CLOSSER | WHEELER, P.A.



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April 22, 2020

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Charleston, SC 29402

*Attorney for Commissioners of Public Works
of the City of Charleston*

Exhibit A

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Edgefield Holdings, LLC,)
)
 Plaintiff,)
)
 vs.)
)
 Ace Construction Company, Inc. of)
 Charleston a/k/a Ace Construction)
 Company, Inc., of Charleston a/k/a Ace)
 Construction Co., Inc. of Charleston;)
 Audrey O. Chavis a/k/a Audrey O.)
 Chavis, Sr.; Alberta Chavis a/k/a Alberta)
 S. Chavis; and Commissioners of Public)
 Works of the City of Charleston,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 Civil Action No.: 2019-CP-10- 4231

COMPLAINT
(Foreclosure on Judgment Liens)
(Fraudulent Conveyance)
(Judgment Against Transferee)
(Civil Conspiracy to Defraud a Creditor)
(Non-Jury)

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 J. A. STRONG
 CLERK OF COURT
FILED

Plaintiff Edgefield Holdings, LLC (“Plaintiff”), by and through its undersigned counsel, complaining of Defendants Ace Construction Company, Inc. of Charleston a/k/a Ace Construction Company, Inc., of Charleston a/k/a Ace Construction Co., Inc. of Charleston (“Ace Construction”); Audrey O. Chavis a/k/a Audrey O. Chavis, Sr. (“Audrey Chavis”); Alberta Chavis a/k/a Alberta S. Chavis (“Alberta Chavis”); and Commissioners of Public Works of the City of Charleston (“CPW”) (hereinafter collectively referred to as the “Defendants”), alleges and states as follows:

1. Plaintiff is a Delaware limited liability company authorized to transact business in the State of South Carolina.
2. Upon information and belief, Ace Construction is a corporation organized and existing under the laws of the State of South Carolina.

3. Upon information and belief, Audrey Chavis and Alberta Chavis are individual citizens and residents of Charleston County, South Carolina.

4. Upon information and belief, CPW is an agency, division and/or department of the City of Charleston.

5. Upon information and belief, the properties hereinafter described, which are the subject of this action, are situate and located in Charleston County, South Carolina.

6. Some lien or interest in the real properties, the subject of this action, may be claimed by the Defendants herein.

7. This Court has jurisdiction over the parties and subject matter of this action, and venue is proper in Charleston County, South Carolina.

BACKGROUND FACTS

8. On June 24 2010, Regions Bank commenced a foreclosure action against Ace Construction and Audrey Chavis in the Court of Common Pleas for Charleston County, South Carolina, denominated *Regions Bank v. Ace Construction Company, Inc. of Charleston, et al.*, Case No. 2010-CP-10-05119 (the "5119 Foreclosure Action").

9. On March 7, 2011, a deficiency judgment was entered in the 5119 Foreclosure Action against Ace Construction and Audrey Chavis, jointly and severally, in the total amount of \$160,012.86 (the "5119 Judgment"), which continues to accrue interest at the judgment rate thereafter. A true and correct copy of the 5119 Judgment is attached hereto as **Exhibit A** and incorporated herein by reference.

10. The 5119 Judgment was subsequently assigned by Regions Bank to Plaintiff, which assignment was filed with the Charleston County Clerk of Court on July 10, 2019. A true

and correct copy of the Notice of Filing Assignment of Judgment is attached hereto as **Exhibit B** and incorporated herein by reference.

11. On June 24 2010, Regions Bank commenced a foreclosure action against Ace Construction and Audrey Chavis in the Court of Common Pleas for Charleston County, South Carolina, denominated *Regions Bank v. Ace Construction Company, Inc. of Charleston, et al.*, Case No. 2010-CP-10-05120 (the “5120 Foreclosure Action” and together with the 5119 Foreclosure Action, the “Foreclosure Actions”).

12. On March 7, 2011, a deficiency judgment was entered in the 5120 Foreclosure Action against Ace Construction and Audrey Chavis, jointly and severally, in the total amount of \$274,349.65 (the “5120 Judgment” and together with the 5119 Judgment, the “Judgments”), which continues to accrue interest at the judgment rate thereafter. A true and correct copy of the 5120 Judgment is attached hereto as **Exhibit C** and incorporated herein by reference.

13. The 5120 Judgment was subsequently assigned by Regions Bank to Plaintiff, which assignment was filed with the Charleston County Clerk of Court on July 15, 2019. A true and correct copy of the Notice of Filing Assignment of Judgment is attached hereto as **Exhibit D** and incorporated herein by reference.

FOR A FIRST CAUSE OF ACTION
(Foreclosure on Judgment Liens – 566 Harborview Circle, Charleston, SC)

14. Plaintiff incorporates by reference the allegations in the paragraphs above as if fully restated herein.

15. Plaintiff is informed and believes that Audrey Chavis owned at the time of the filing of the Judgments in Charleston County, an undivided one-half (½) interest in certain real property located in Charleston County (“Property-1”) described more fully as follows:

ALL that certain lot, piece or parcel of land, situate, lying and being on James Island, Charleston County, South Carolina, and known and designated as **Lot 8, Harbor View Subdivision**, prepared by Hilliard B. Good, RLS, dated May 1952, which plat was duly recorded in the RMC Office for Charleston County in Plat Book J, Page 148; said Lot having such size, shape, dimensions, buttings and boundings as shown on said plat, reference to which is hereby made for a more complete description.

SUBJECT, nevertheless, to all restrictions and easements of record.

BEING the same property conveyed to Audrey O. Chavis, Sr. and Alberta S. Chavis by deed of Audrey O'Neil Chavis, Jr. and Deanna M. Chavis, dated January 22, 1992, and recorded March 1, 1993, in the Office of the Register of Deeds for Charleston County, South Carolina in Book C-224 at Page 168.

TMS#: 424-07-00-019

16. Upon information and belief, Audrey Chavis still owns an undivided one-half (1/2) interest in Property-1 identified above.

17. Upon information and belief, the other undivided one-half (1/2) interest in Property-1 is owned by Alberta Chavis.

18. Upon information and belief, Audrey Chavis and Alberta Chavis executed and delivered a mortgage to Countrywide Home Loans, Inc., in the original principal amount of \$135,983.00, dated December 1, 2006, and recorded in the Register of Deeds Office for Charleston County on December 14, 2006, in Book T-608 at Page 151.

19. Plaintiff has filed a Lis Pendens on Property-1 in conjunction with its filing of this lawsuit.

20. The indebtedness evidenced by the Judgments and secured by valid liens on Audrey Chavis's undivided one-half (1/2) interest in Property-1 has not been paid and remains due and owing in full.

21. There remains due and owing on the 5119 Judgment as of March 7, 2011, the amount of \$160,012.83, plus interest thereafter at the judgment rate as provided by law.

22. There remains due and owing on the 5120 Judgment as of March 7, 2011, the amount of \$274,349.65, plus interest thereafter at the judgment rate as provided by law.

23. As a result, Plaintiff is entitled to a judgment of foreclosure as to Property-1 against Audrey Chavis in the aggregate amount of \$434,362.51, plus post-judgment interest thereon and the costs of this action.

24. Plaintiff is informed and believes that its Judgments constitute valid second-priority liens on Audrey Chavis's undivided one-half (1/2) interest in Property-1, subject only to the lien of the mortgage referenced in Paragraph 17 above.

25. The Plaintiff is further informed and believes that CPW claims or may claim an interest in all or a portion of Property-1 by virtue of that certain Agreement to Buy dated March 27, 2019, and recorded in the Register of Deeds Office for Charleston County on March 28, 2019, in Book 0786 at Page 163.

26. The interests of the Defendants, if any, are junior and subordinate to the lien of Plaintiff's Judgments, and Plaintiff is entitled to judgment barring the Defendants and all persons claiming by or through the Defendants from any and all right, title and interest in or to Property-1, and each and every part thereof.

27. Plaintiff expressly reserves the right to have the proceeds from the sale of Audrey Chavis's undivided one-half (1/2) interest in Property-1 applied to the outstanding balance of its Judgments, with any unpaid balance thereof remaining as a personal judgment against Ace Construction and Audrey Chavis.

FOR A SECOND CAUSE OF ACTION
(Foreclosure on Judgment Liens – 6 Hillcreek Blvd., Charleston, SC)

28. Plaintiff incorporates by reference the allegations in the paragraphs above as if fully restated herein.

29. Plaintiff is informed and believes that Audrey Chavis owned at the time of the filing of the Judgments in Charleston County, an undivided one-half (1/2) interest in certain real property located in Charleston County (“Property-2”) described more fully as follows:

ALL that piece, parcel or lot of land, situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina, and known and designated as **Lot 3, Block E, Crosscreek Subdivision**, which lot is shown on a plat entitled, “CROSSCREEK SUBDIVISION, JAMES ISLAND, CHARLESTON COUNTY, SC OWNER G & K, A PARTNERSHIP,” which plat was prepared by George A. S. [sic: Z.] Johnson, Jr., Inc., dated February 4, 1976, and recorded in the RMC Office for Charleston County in Plat Boko AK at Page 104; said lot having such size, shape, dimensions, buttings and boundings as shown on said plat. Reference to which is hereby made for a more complete description.

BEING the same property conveyed to Audrey O. Chavis and Alberta Chavis by deed of Audrey O. Chavis, dated November 14, 2007, recorded November 20, 2007, in the Office of the Register of Deeds for Charleston County, South Carolina in Book K-644 at Page 605 and re-recorded January 18, 2008, in Book D-649 at Page 270.

TMS#: 424-04-00-138

30. Upon information and belief, Audrey Chavis still owns an undivided one-half (1/2) interest in Property-2 identified above.

31. Upon information and belief, the other undivided one-half (1/2) interest in Property-2 is owned by Alberta Chavis.

32. Upon information and belief, Audrey Chavis and Alberta Chavis executed and delivered a mortgage to Mortgage Electronic Registration Systems, Inc. acting solely as a nominee for Countrywide Bank, FSB, in the original principal amount of \$150,000.00, dated

November 14, 2007, and recorded in the Register of Deeds Office for Charleston County on November 20, 2007, in Book L-644 at Page 331 and re-recorded on January 18, 2008, in Book E-649 at Page 666.

33. Plaintiff has filed a Lis Pendens on Property-2 in conjunction with its filing of this lawsuit.

34. The indebtedness evidenced by the Judgments and secured by valid liens on Audrey Chavis's undivided one-half (1/2) interest in Property-2 has not been paid and remains due and owing in full.

35. There remains due and owing on the 5119 Judgment as of March 7, 2011, the amount of \$160,012.83, plus interest thereafter at the judgment rate as provided by law.

36. There remains due and owing on the 5120 Judgment as of March 7, 2011, the amount of \$274,349.65, plus interest thereafter at the judgment rate as provided by law.

37. As a result, Plaintiff is entitled to a judgment of foreclosure as to Property-2 against Audrey Chavis in the aggregate amount of \$434,362.51, plus post-judgment interest thereon and the costs of this action.

38. Plaintiff is informed and believes that its Judgments constitute valid second-priority liens on Audrey Chavis's undivided one-half (1/2) interest in Property-2, subject only to the lien of the mortgage referenced in Paragraph 30 above.

39. The interests of the Defendants, if any, are junior and subordinate to the lien of Plaintiff's Judgments, and Plaintiff is entitled to judgment barring the Defendants and all persons claiming by or through the Defendants from any and all right, title and interest in or to Property-2, and each and every part thereof.

40. Plaintiff expressly reserves the right to have the proceeds from the sale of Audrey Chavis's undivided one-half (1/2) interest in Property-2 applied to the outstanding balance of its Judgments, with any unpaid balance thereof remaining as a personal judgment against Ace Construction and Audrey Chavis.

FOR A THIRD CAUSE OF ACTION
(Fraudulent Transfer as to Real Property)

41. Plaintiff incorporates by reference the allegations in the paragraphs above as if fully restated herein.

42. According to the public records of Charleston County, on or about August 3, 2009, Ace Construction conveyed the below referenced real property to Alberta Chavis as evidenced by that certain deed of conveyance (the "Deed") recorded in the Register of Deeds Office for Charleston County on August 4, 2009, in Book 0072 at Page 552. A copy of the Deed is attached hereto as **Exhibit E** and incorporated herein by reference, and the real property as described therein is as follows ("Property-3"):

ALL those certain lots, pieces or parcels of land, situate, lying and being in Green Crest Subdivision as shown and designated as **Lot 3, Block B, and Lot 4, Block B**, on a survey entitled Plat of Green Crest by the John McCrady Company, Engineers, dated June, 1946, and which plat is recorded in Plat Book G at Page 3 in the RMC Office for Charleston County.

BEING the same property conveyed to Alberta S. Chavis by deed of Ace Construction Co., Inc. of Charleston, recorded August 4, 2009, in the Office of the Register of Deeds for Charleston County, South Carolina in Book 0072 at Page 552.

TMS#: 427-01-00-057 (Lot 3) and 427-01-00-056 (Lot 4)

43. Upon information and belief, Alberta Chavis is the wife of Audrey Chavis, who is or was a principal of Ace Construction.

44. Upon information and belief, Ace Construction conveyed Property-3 to Alberta Chavis in exchange for \$15,000.00 while knowing that Ace Construction owed a debt to Plaintiff's predecessor in interest, Regions Bank, and that Ace Construction was in default or soon to be in default on the loans underlying such debt.

45. Upon information and belief, Ace Construction fraudulently transferred Property-3 to Alberta Chavis in an effort to put its assets outside the reach of its creditors, including Plaintiff's predecessor in interest, Regions Bank.

46. Ace Construction's actions were taken in direct response to being in default under the Notes that were the subject of the above referenced Foreclosure Actions filed only ten months later.

47. Further, upon information and belief, as a result of the said transfer to Alberta Chavis, Ace Construction failed to retain sufficient property to pay the Judgments to Regions Bank in full, and Ace Construction is still unable to pay the Judgments in full at the time of this Complaint.

48. Upon information and belief, the said conveyance to Alberta Chavis was not made for valuable consideration and, therefore, constitutes a voluntary transfer.

49. Upon information and belief, Ace Construction transferred its interest in Property-3 to Alberta Chavis with the actual intent to hinder, defraud, and/or delay Ace Construction's creditors, including Plaintiff.

50. Upon information and belief, Alberta Chavis knew, or should have known, Ace Construction's intent in making the transfer of its interest in Property-3.

51. The actions and conduct of Ace Construction and Alberta Chavis set forth above constitute a fraudulent conveyance in direct violation of South Carolina's Statute of Elizabeth.

52. The transfer of Ace Construction's interest in Property-3 is void and of no effect in accordance with S.C. CODE ANN. § 27-23-10, and Plaintiff is entitled to have it set aside.

53. Further, Plaintiff is entitled to judgment against Ace Construction and Alberta Chavis finding that the transfer of Ace Construction's interest in Property-3 was a fraudulent conveyance and that the purported transfer is clearly and utterly void and of no effect.

54. Plaintiff is entitled to receive actual and punitive damages from Ace Construction and Alberta Chavis based on their intentional and deceitful conduct.

FOR A FOURTH CAUSE OF ACTION
(Judgment Against Transferee)

55. Plaintiff incorporates by reference the allegations in the paragraphs above as if fully restated herein.

56. Alberta Chavis took title to Property-3 and with knowledge that she was taking Property-3 without valid consideration.

57. Alberta Chavis took title to Property-3 with knowledge that Ace Construction was unable to pay the debts it owed to Plaintiff's predecessor in interest, Regions Bank.

58. Because of Alberta Chavis's involvement in the fraudulent conveyance, Plaintiff is entitled to a judgment against Alberta Chavis in the same amounts that Plaintiff holds against Ace Construction from Case Nos. 2010-CP-10-05119 and 2010-CP-10-05120.

FOR A FIFTH CAUSE OF ACTION
(Foreclosure on Judgment Liens – Lots 3 & 4, Folly Road, Charleston, SC)

59. Plaintiff incorporates by reference the allegations in the paragraphs above as if fully restated herein.

60. Plaintiff is informed and believes that its Judgments constitute a lien on all real property owned by Ace Construction in Charleston County at the time of filing.

61. Because the attempted transfer of Ace Construction's interest in Property-3 was a fraudulent conveyance and said transfer is, therefore, clearly and utterly void and of no effect, Ace Construction remained and was an owner of Property-3 at the time of filing of the Judgments in Charleston County. Therefore, Plaintiff's Judgments constitute valid judgment liens upon Property-3.

62. Plaintiff filed a Lis Pendens on Property-3 in conjunction with the filing of this Complaint.

63. The indebtedness evidenced by the Judgments and secured by valid liens on Property-3 have not been paid and remains due and owing in full.

64. There remains due and owing on the 5119 Judgment as of March 7, 2011, the amount of \$160,012.83, plus interest thereafter at the judgment rate as provided by law.

65. There remains due and owing on the 5120 Judgment as of March 7, 2011, the amount of \$274,349.65, plus interest thereafter at the judgment rate as provided by law.

66. As a result, Plaintiff is entitled to a judgment of foreclosure as to Property-3 against Ace Construction in the aggregate amount of \$434,362.51, plus post-judgment interest thereon and the costs of this action.

67. Plaintiff is informed and believes that its Judgments constitute valid first-priority liens on Property-3.

68. The interests of the Defendants, if any, are junior and subordinate to the lien of Plaintiff's Judgments, and Plaintiff is entitled to judgment barring the Defendants and all persons claiming by or through the Defendants from any and all right, title and interest in or to Property-3, and each and every part thereof.

69. Plaintiff expressly reserves the right to have the proceeds from the sale Property-3 applied to the outstanding balance of its Judgments, with any unpaid balance thereof remaining as a personal judgment against Ace Construction and Audrey Chavis.

FOR A SIXTH CAUSE OF ACTION
(Civil Conspiracy to Defraud a Creditor)

70. Plaintiff incorporates by reference the allegations in the paragraphs above as if fully restated herein.

71. Ace Construction and Alberta Chavis agreed and conspired for the purpose of injuring Plaintiff or its predecessor, namely by preventing Plaintiff or its predecessor from obtaining recovery on its Judgments.

72. Ace Construction and Alberta Chavis each took acts in furtherance of and pursuant to this unlawful agreement.

73. As a result of Ace Construction and Alberta Chavis's willful, wanton, fraudulent and malicious conduct, Plaintiff has suffered damages, including special damages.

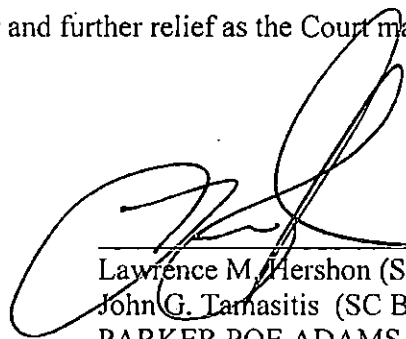
74. Ace Construction and Alberta Chavis are jointly and severally liable for the act of any one of them has done in furtherance of the conspiracy.

75. Plaintiff is entitled to receive punitive damages from Ace Construction and Alberta Chavis based on their intentional and deceitful conduct.

WHEREFORE, Plaintiff respectfully prays:

- a. For the entry of judgment against Ace Construction and Alberta Chavis finding that the transfer of Ace Construction's interest in Property-3 was a fraudulent conveyance that is clearly and utterly void and of no effect;
- b. That the Court direct the Register of Deeds to void the deed of transfer of Property-3;
- c. For an award of punitive damages for the intentional and deceitful conduct of Ace Construction and Alberta Chavis;

- d. That the amounts due to Plaintiff on its Judgments be ascertained and determined under the direction of the Court, together with attorneys' fees and the costs of this action;
- e. For a judgment of foreclosure as to Property-1, Property-2 and Property-3 (together, the "Properties") for the amount found due and owing to Plaintiff, together with attorneys' fees and the costs of this action;
- f. That Audrey Chavis's undivided one-half (½) interest in Property-1 and Property-2 be sold pursuant to Order of this Court, the equity of redemption be barred, and the proceeds of sales be first applied to the costs and expenses of this action, with the remaining proceeds to be paid to Plaintiff, with any amount in excess to be held by the Court until further ordered;
- g. That Property-3 be sold pursuant to Order of this Court, the equity of redemption be barred, and the proceeds of sale be first applied to the costs and expenses of this action, any amount in excess to be held by the Court until further ordered;
- h. That the Defendants and all persons whomsoever claiming by or through Defendants be forever barred of all right, title, and interest in and to the Properties, and each and every part thereof;
- i. That any unpaid balance on the Judgments after applying proceeds from the sale remain as a personal judgment against Ace Construction and Audrey Chavis; and
- j. For such other and further relief as the Court may deem just and proper.



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August 8, 2019
Columbia, South Carolina

Exhibit B

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Edgefield Holdings, LLC,

Plaintiff,

vs.

Ace Construction Company, Inc. of Charleston
a/k/a Ace Construction Company, Inc., of
Charleston a/k/a Ace Construction Co., Inc. of
Charleston; Audrey O. Chavis a/k/a Audrey O.
Chavis, Sr.; Alberta Chavis a/k/a Alberta S.
Chavis; and Commissioners of Public Works
of the City of Charleston,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2019-CP-10-4231

**CERTAIN DEFENDANTS' NOTICE OF
MOTION AND MOTION TO DISMISS,
WITH SUPPORTING MEMORANDUM**

SEP 27 PM 2:23
J. ARMSTRONG
CLERK OF COURT
AB

FILED

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for all Defendants, with the exception of Commissioners of Public Works of the City of Charleston, will move before the Presiding Judge for the Ninth Judicial Circuit within ten (10) days from the service of this Notice of Motion and Motion, or as soon thereafter as Counsel may be heard, for an Order dismissing the Plaintiff's third, fourth, fifth and sixth causes of action, pursuant to Rule 12(b)(6), SCRPC.

BRIEF FACTS

This action arises out of the Plaintiff's attempt to collect on two separate deficiency judgments entered on March 7, 2011, in favor of Regions Bank and against Defendants Ace Construction Company, Inc. of Charleston and Audrey O. Chavis ("Judgment Debtors").¹ As alleged in the Plaintiff's Complaint, on August 4, 2009, the Judgment Debtors deeded certain real property ("Property") to Defendant Alberta Chavis. (Compl. ¶ 42). The deed conveying the

¹ Plaintiff claims to be a successor-in-interest to Regions Bank through assignments of the judgments. Nothing in this motion should be construed as a waiver of defenses with respect to those assignments.

Property was recorded in the Charleston County Register of Deeds. (Compl. ¶ 42). That conveyance and deed forms the basis of the Plaintiff's third, fourth, fifth and sixth causes of action. As to the Plaintiff's third cause of action, the Plaintiff alleges the Judgment Debtors conveyed the Property to escape a known debt to Regions Bank, amounting to a violation of South Carolina's Statute of Elizabeth, S.C. Code Ann. § 27-23-10 *et seq.* (Compl. ¶¶ 41 -54). The fourth, fifth and sixth causes of action directly flow from the Plaintiff's allegations with respect to the 2009 deed and transfer of the Property. (see Compl.). Under the fourth cause of action, the Plaintiff alleges that it is entitled to judgment against Alberta Chavis, individually, since she received the Property that the Plaintiff alleges was conveyed in violation of the Statute of Elizabeth. (Compl. ¶¶ 56-58). Under the fifth cause of action, the Plaintiff alleges that the Property should be returned to the Judgment Debtors, thus allowing the judgments to attach and the Plaintiffs to move forward with foreclosure of its judgment liens. (Compl. ¶¶ 60-69). And, lastly, under the sixth cause of action, the Plaintiff alleges a civil conspiracy among the parties involved in the transfer of the Property. (Compl. ¶¶ 71-75).

STANDARD OF REVIEW

The ruling on a Rule 12(b)(6), SCRCP motion to dismiss must be based solely upon the allegations set forth in the complaint. *State Bd. of Med. Examiners v. Fenwick Hall, Inc.*, 300 S.C. 274, 387 S.E.2d 458 (1990). The motion will not be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case. *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995); *Brown v. Leverette*, 291 S.C. 364, 353 S.E.2d 697 (1987). The question to be considered is whether in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. *Toussaint v. Ham*, 292 S.C. 415, 357 S.E.2d 8 (1987).

DISCUSSION

I. The Plaintiff's third, fourth, fifth and sixth causes of action all arise from the 2009 transfer of the Property, barring those claims under the statute of limitations.

In considering whether the statute of limitations applies to the Statute of Elizabeth, the South Carolina Court of Appeals held,

A cause of action based upon South Carolina Code section 27-23-10 to set aside a fraudulent conveyance must be commenced within six years of the conveyance. S.C.Code Ann. § 15-3-530. The accrual of the action is tolled, however, until the aggrieved party discovers or should have discovered facts, which by the exercise of due diligence, would be sufficient to put the creditor on notice of the fraud. *Walter J. Klein Co. v. Kneece*, 239 S.C. 478, 123 S.E.2d 870 (1962).

Commercial Credit Loans, Inc. v. Riddle, 334 S.C. 176, 183-184, 512 S.E.2d 123,127 (Ct.App.1999).²

The statute of limitations for a cause of action under the Statute of Elizabeth is three years from the date of conveyance of the Property. *Id.* S.C. Code Ann. § 15-3-530. The Property was conveyed in 2009, more than three years and more than six years before this case was filed, barring the Plaintiff third cause of action under the Statute of Elizabeth. The Plaintiff's fourth, fifth and sixth causes of action are also time-barred, because they all depend on and flow from the Plaintiff's allegation that the transfer of Property was fraudulent and should be invalidated.

The Plaintiff's actions do not allow for a tolling of the statute of limitations. It, and Regions Bank, sat on their alleged rights for a decade. They exercised no due diligence to discover the Property transfer. The Property transfer was recorded with the Charleston County Register of Deeds and was in plain sight. (Compl. ¶ 42). The Plaintiff readily admits in its Complaint that the Property conveyance is public record and that its causes of action related to

² This cited case was decided in 1999, prior to South Carolina's switch from a 6-year statute of limitations to a 3-

the Property arise from the transfer, which, again, was public record. With the least amount of due diligence (i.e., simply reviewing recorded deeds of public record), the Plaintiff would have discovered the transfer. Instead, the Property transfer went unchallenged for a decade.

For these reasons, the Plaintiffs third, fourth, fifth and sixth causes of action are barred by the statute of limitations, requiring dismissal of these claims and any Defendants against whom the claims were made.

II. At minimum, the Plaintiff's sixth cause of action for civil conspiracy should be dismissed, because the Plaintiff has failed to allege special damages.

A cause of action for civil conspiracy includes the element of special damages.

Hackworth v. Greywood at Hammett, LLC, 385 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct.App.2009). "Special damages must, therefore, be specifically alleged in the complaint to avoid surprise to the other party." *Id.* at 117, 875. "If a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed." *Id.*

In this case, under the civil conspiracy cause of action, the Plaintiff has simply alleged that "Plaintiff has suffered damages, including special damages." (Compl. ¶ 23). This is not the specified pleading required under a civil conspiracy cause of action. Further, the Plaintiff prayer for relief does not include any damages that might be considered special damages. (Compl., Prayer). Every prayed-for relief amount to damages encompassed by its other causes of action. As held by the *Hackworth* court, a plaintiff simply repeating damages from another cause of action requires dismissal of a civil conspiracy cause of action. *Id.*

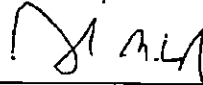
CONCLUSION

As more fully argued above, this Court should dismiss the Plaintiff's third, fourth, fifth

year statute of limitations. Under either time frame, the Plaintiff's claims are barred.

and sixth causes of action.

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Attorneys for all Defendants except

*Commissioners of Public Works of the City of
Charleston*

September 25, 2019

Charleston, South Carolina

19-287

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Julie J. Armstrong, Clerk of Court

Case No. 2019-CP-10-04231

Edgefield Holdings, LLC

Respondent,

v.

Ace Construction Company,
Inc. of Charleston a/k/a Ace
Construction Company, Inc.,
of Charleston a/k/a Ace
Construction Co., Inc. of
Charleston; Audrey O. Chavis
a/k/a Audrey O. Chavis, Sr.;
Alberta Chavis a/k/a Alberta
S. Chavis; and Commissioners
of Public Works of the City of
Charleston,

Of whom, Ace Construction
Company, Inc. of Charleston
a/k/a Ace Construction
Company, Inc., of Charleston
a/k/a Ace Construction Co.,
Inc. of Charleston; Audrey O.
Chavis a/k/a Audrey O.
Chavis, Sr.; and Alberta
Chavis a/k/a Alberta S. Chavis
are

Appellants.

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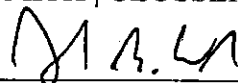
PROOF OF SERVICE

I certify that, on the date indicated below, I served the Appellants' Petition for Rehearing by United States Mail, postage prepaid, on the following:

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April 22, 2020

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April 22, 2020

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
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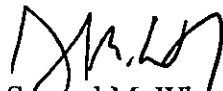
RE: Petition for Rehearing
Appellate Case No. 2020-000580
S/C File No. 19-287

Dear Ms. Kitchings:

Enclosed please find (1) the original of the Appellants' Petition for Rehearing; (2) six copies of the Petition; (3) Proof of Service; and (4) a check to cover your filing fee. I would appreciate you filing the original and returning a clocked-in copy to me in the envelope provided.

Thank you for your assistance. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Samuel M. Wheeler

cc: Lawrence M. Hershon, Esq.
John G. Tamasitis, Esq.
Benjamin H. Joyce, Esq.

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