

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Jennifer B. McCoy

Case No.: 2007-CP-10-01444

**RECEIVED**

**Aug 31 2020**

**SC Court of Appeals**

Cynthia Holmes, M.D. ....Respondent,

v.

Haynsworth Sinkler Boyd, P.A.<sup>1</sup> .....Appellant.

**INITIAL BRIEF OF APPELLANT**

**HAYNSWORTH SINKLER BOYD, P.A.**

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<sup>1</sup> The caption in the original case included Sinkler & Boyd, P.A., Manton Grier, and James Y. Becker as parties, but Haynsworth Sinkler Boyd, P.A., as successor to Sinker & Boyd, P.A. is the only party appealing to this Court.

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**STATEMENT OF ISSUES ON APPEAL**

1. Did the trial court err in deciding that the judgment of Appellant Haynsworth Sinkler Boyd, P.A. against Respondent Cynthia Holmes has expired under applicable South Carolina and Federal law?
  
2. Did the trial court err in denying the Motion of Appellant Haynsworth Sinkler Boyd, P.A. for emergency relief and an expedited order of execution against Respondent Cynthia Holmes's interest in real property given the previous efforts of Appellant to enforce the judgment?

## STATEMENT OF THE CASE

This appeal is the result of a lengthy period of litigation between the parties. Haynsworth Sinkler Boyd, P.A. (“HSB”) holds a judgment against Cynthia Holmes (“Holmes”) entered on November 18, 2009, in the principal amount of \$200,000.00 (the “Judgment”).<sup>2</sup> (Judgment, R. at \_\_.) As of May 13, 2020, the amount due on the Judgment was \$436,924.02. (Caskey Aff; Judgment, R. at \_\_.)

The Judgment arose after Holmes sued HSB for malpractice in connection with HSB’s representation of her in litigation against East Cooper Community Hospital concerning the revocation of Holmes’s medical staff privileges. (Judgment, R. at \_\_.) Holmes’s malpractice claims against HSB were ultimately dismissed in their entirety after protracted litigation, and the trial court issued the Judgment as an award for sanctions against Holmes. (Judgment, Motions related to disqualify, district court action, R. at \_\_.) The Judgment was affirmed by the South Carolina Supreme Court on June 4, 2014, in *Holmes v. Haynsworth Sinkler Boyd, P.A.*, 408 S.C. 620, 760 S.E.2d 399 (2014).

During the pendency of the litigation between Holmes and HSB, the South Carolina Supreme Court directed the Clerks of Court in South Carolina to refuse to accept any further filings from Holmes that were related in any way to the revocation of Holmes’s hospital privileges unless the documents were filed by an attorney, other than Holmes, who was licensed to practice law in South Carolina. (See Order, entered in *Doe v. Duncan*, No. 2008-UP-596,

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<sup>2</sup> Although the Judgment was entered in favor of all Sinkler & Boyd, P.A., Manton M. Grier, and James Y. Becker, HSB, as successor to Sinkler & Boyd, P.A., is the only Defendant pursuing the Judgment at this time. James Y. Becker and Manton M. Grier are employees of HSB. See Order Granting Defendants’ Motion to Dismiss Certain Parties entered on September 29, 2017.

(Dec. 2, 2009) (the “Doe Order”).) Holmes’s legal license was also suspended in 2014 and has not yet been reinstated. *See In re Collie*, 410 S.C. 556, 569, 765 S.E.2d 835, 841 (2014).

HSB began its efforts to collect the Judgment in 2016 by sending a demand letter to Holmes that went unanswered. (Caskey Aff., R. at \_\_.) The writ of execution was sent to the Charleston County Clerk of Court for attestation on October 19, 2016, and the sheriff returned the writ of execution marked *nulla bona* on December 8, 2016. (Ver. Petition, Caskey Aff., R. at \_\_.) Thereafter, HSB filed a Verified Petition to commence supplementary proceedings pursuant to S.C. Code § 15-39-310 on January 3, 2017. (Ver. Petition; R. at \_\_.)

The Court issued a Rule to Show Cause on January 18, 2017, and scheduled a hearing for March 10, 2017. (RTSC order, R. at \_\_.) In preparation for the hearing, HSB sent a notice of deposition and a first request for production to Holmes on January 20, 2017. (Caskey Aff., R. at \_\_.) Holmes did not answer the written discovery or appear at the deposition scheduled for March 2, 2017. (Caskey Aff., R. at \_\_.) Instead of complying with her obligations under the South Carolina Rules of Civil Procedure, Holmes filed three motions *pro se* after receiving the Verified Petition, including a motion for sanctions against HSB for pursuing the Judgment and a motion to quash the discovery against her. (Pro se motions; R. at \_\_.)

Holmes appeared at the hearing on March 10, 2017, but failed to produce the documents as ordered by the Court. (Order, R. at \_\_.) The Court informed Holmes that it would not entertain any motions filed by her *pro se* due to the Doe Order. (Order, R. at \_\_.) On March 14, 2017, the Court entered its Supplemental Proceedings Order in which Holmes was ordered to provide documentation of her assets to HSB by April 14, 2017. (Order, R. at \_\_.)

Holmes never complied with the Supplemental Proceedings Order. (Sanctions Motion, R. at \_\_.) The only financial documents that Holmes has ever produced to HSB were her 2014 and

2015 tax returns, and she failed to provide all other documentation of her assets and ability to satisfy the Judgment. (Caskey Aff., Sanction Order, R. at \_\_.)

Through its independent efforts, HSB identified the property located at 1611 Poe Avenue, Sullivan's Island, SC 29482 (the "Property") as an asset of Holmes that was available to apply towards the Judgment. (Caskey Aff., R. at \_\_.) After completing a title search on the Property, HSB identified a mortgage held by Bank of America. (Motion to quash, Caskey Aff, R. at \_\_.) HSB sent a subpoena to Bank of America to determine the mortgage balance on the Property, but Holmes filed a motion to quash in response without any legitimate reason to support it. (Response to Motion to Quash, R. at \_\_.) In light of the motion to quash, Bank of America refused to respond to HSB's subpoena. (Sanctions motion, R. at \_\_.)

HSB filed a Motion for Contempt and Sanctions after Holmes refused to comply with the Supplemental Proceedings Order, which was granted following a hearing on Jun 21, 2017. (Sanctions Motion, Sanctions Order, R. at \_\_.) The Court ordered Bank of America to respond to HSB's subpoena, ordered Holmes to produce the requested asset information, and imposed a \$2500 sanctions award in favor of HSB. (Sanctions Order, R. at \_\_.) On July 28, 2017, Bank of America responded to HSB's subpoena and produced financial documents reflecting a total balance of \$77,272.20 remaining on the mortgage held in connection with Holmes's interest in the Property. (Caskey Aff., R. at \_\_.)

Despite the June 21, 2017, Order, Holmes continued her efforts to prevent HSB from collecting the Judgment. (Caskey Aff, R. at \_\_.) Holmes failed to provide any additional documents to HSB despite the Order and multiple letters from Ms. Caskey. (Caskey Aff, R. at \_\_.) To date, Holmes has only ever produced copies of the same tax returns she originally

produced, despite repeated orders to produce complete responses to the Rule to Show Cause Order. (Caskey Aff, R. at \_\_.)

In addition to her antics before the trial court, Holmes filed eight appeals to this Court. (Appellate filings, R. at \_\_.) All of them were dismissed. (Appellate dismissals, Motion, R. at \_\_.) She also continued to file motions in the collection action in which she challenged almost every order entered by the Court and attempted to overturn the Court's orders and thwart HSB's attempts at legitimate discovery and collection. (Motions, R. at \_\_; Caskey Aff., R. at \_\_.) Holmes also filed numerous petitions for rehearing and petitions for writ of certiorari with the South Carolina Court of Appeals and the South Carolina Supreme Court, all of which were denied or dismissed. (S. Ct. Orders, R. at \_\_.)

During this time, Holmes also turned to federal court and filed an action against HSB, James Y. Becker, and HSB's attorney collecting the Judgment, Mary M. Caskey, on November 1, 2017. (District Court Complaint, *Holmes v. Becker et al.*, Case No. 2:17-cv-2949-PMD-BM (the "USDC Action").) In her Complaint, Holmes alleged a variety of state and federal claims arising from HSB's efforts to collect the Judgment. (District Court complaint, R. at \_\_.) Ultimately, the USDC Action, which was amended to add Judge Mikell Scarborough as a defendant, was dismissed on March 29, 2019, after District Court Judge Bruce H. Hendricks entered an Order Adopting the Report and Recommendation of Magistrate Judge Bristow Marchant. (Dismissal order, R. at \_\_.) Holmes appealed the Order dismissing the USDC Action to the Fourth Circuit Court of Appeals, and all Defendants moved to dismiss the appeal. (4th Circuit appeal, R. at \_\_.) Holmes's Fourth Circuit Appeal was finally dismissed on November 25, 2019, and the Fourth Circuit denies Holmes's subsequent petitions for rehearing *en banc* and her motion to reconsider. (Order dismissing appeal; R. at \_\_.)

In order to determine if the Judgment could be satisfied, HSB continued its investigation into Holmes's assets throughout her lawsuits and appeals. (Caskey aff, R. at \_\_.) Although Holmes never complied with South Carolina law and court orders instructing her to provide HSB with financial records, HSB determined that the Property was an asset that could be sold to pay the Judgment pursuant to S.C. Code Ann. § 15-39-410. (Caskey Aff., R. at \_\_.) Holmes has a one-half (50%) interest in the Property, which she owns with her ex-husband, Kevin Holmes. (Caskey Aff., R. at \_\_.)

HSB requested that the Court order the sale of Holmes's interest in the Property on January 2, 2019, but the Court notified HSB that a hearing would be delayed while the USDC Action and subsequent appeals were pending. (Emails with clerk/court, Jan. and April 2019; Caskey Aff., R. at \_\_.) However, HSB requested that the Court move forward with a hearing to allow for ample time to sell the Property prior to the expiration of the Judgment. (Emails with court, R. at \_\_.) The Court agreed and set a hearing for April 8, 2019, to rule on whether or not Holmes's interest in the Property should be sold. (Notice of Hearing; court emails, R. at \_\_.)

To avoid the hearing and the sale of the Property, Holmes filed a petition for relief under Chapter 7 of the United States Bankruptcy Code on March 22, 2019, Case No. 19-10644, in the Bankruptcy Court for the District of South Carolina (the "Bankruptcy Case"). (Petition, R. at \_\_.) The Bankruptcy Case stayed the ability of HSB to collect the Judgment pursuant to 11 U.S.C. § 362. (Petition, R. at \_\_\_\_.) HSB filed a proof of claim in the Bankruptcy Case, which has not been disallowed. (Proof of claim, R. at \_\_.) The bankruptcy case is ongoing, and no assets have been abandoned or liquidated, and no distribution has been made. (Caskey Aff., R. at \_\_.) During the Bankruptcy Case, Holmes continued to file multiple motions, appeals, and

pleadings to try and prevent HSB from pursuing its claim based on the Judgment before it expired. (Motion to disqualify, etc., Caskey Aff., R. at \_\_.)

Prior to the Bankruptcy Case, HSB was prepared to move forward with the execution of the Property as evidenced by the hearing that was scheduled in April, 2019, well before the expiration of the Judgment. (Caskey Aff., court emails, R. at \_\_.) While the Bankruptcy Case was pending, HSB was prevented from collecting any amounts due on the Judgment or to enforce the Judgment lien due to the automatic stay. (Caskey Aff., R. at \_\_.)

On May 12, 2020, Holmes received a discharge pursuant to 11 U.S.C. § 727, and the automatic stay was lifted. (Discharge Order, R. at \_\_.) Only then was HSB able to pursue its claim based on the Judgment. (Motion, R. at \_\_.)

Immediately after the Discharge Order was entered, HSB filed its Emergency Motion for Expedited Order of Execution and Sale of Property and Issuing Notice of Sale (“Motion for Execution”) on May 14, 2020. (Motion, R. at \_\_.) In its Motion for Execution, HSB requested that the Court issue an execution of the Judgment and order the sale of the Property so that it could be sold no later than June 11, 2020. (Motion, R. at \_\_.) In support of the Motion for Execution, HSB submitted the Affidavit of Mary M. Caskey to detail the efforts HSB took to pursue the Judgment and describe the antics of Holmes to try to avoid the Judgment, including filing affirmative lawsuits against the attorneys involved and the judge who entered the orders against her. (Caskey Aff. \_\_, R. at \_\_.) In pursuing the Judgment and defending itself against the protracted litigation described below, HSB has incurred attorneys’ fees in the amount of \$117,702.74, and costs in the amount of \$2,291.15 since June 4, 2014. (Caskey Aff., R. at \_\_.)

The Motion for Execution was originally scheduled to be heard by Judge Mikell Scarborough, to whom the case was referred via the Verified Petition and Rule to Show Cause.

(Caskey Aff., R. at \_\_.) The Court’s staff notified Ms. Caskey that no sale could be held within the thirty (30) days requested due to COVID-19 but that the Court would consider the Motion for Execution. (May 15, 2020, email, R. at \_\_.) However, at the time of the request, Holmes had filed a second action against Judge Scarborough in state court, alleging the same claims against him, (and HSB and its attorneys), that had already been dismissed in the District Court Action. (Caskey Aff.; District Court Order, R. at \_\_.) As a result, Judge Scarborough requested that Judge Jennifer McCoy hear the Motion for Execution. (May 21, 2020, email, R. at \_\_.)

HSB’s Motion for Execution was denied in an Order issued by Judge McCoy dated June 11, 2020. (Order, R. at \_\_.) HSB filed a Motion to Reconsider on June 22, 2020, which was denied in a Form 4 on June 26, 2020. This appeal followed.

#### **STANDARD OF REVIEW**

HSB’s Motion for Execution and the Order denying the same involve the interpretation of South Carolina law found in S.C. Code Ann. § 15-39-30 (providing for the expiration of a Judgment after ten (10) years), S.C. Code Ann. § 15-39-610, *et seq.* (concerning judicial sales to satisfy judgments), and 11 U.S.C. § 108(c) (staying the expiration of a judgment during the pendency of a bankruptcy case and for 30-days thereafter).

The interpretation of a statute is a question of law for the Court. *Catawba Indian Tribe of S.C. v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007) (*citing Charleston County Parks & Recreation Comm'n v. Somers*, 319 S.C. 65, 67, 459 S.E.2d 841, 843 (1995) (“The determination of legislative intent is a matter of law.”).) This Court reviews questions of law de novo. *First Citizens Bank & Tr. Co., Inc. v. Blue Ox, LLC*, 422 S.C. 461, 466, 812 S.E.2d 418, 420 (Ct. App. 2018), *reh'g denied* (Apr. 26, 2018), *cert. denied* (Aug. 3, 2018) (*quoting Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008)).) An appellate court does

not need to defer to the trial court's rulings in regards to questions of law and may make its own determination. *Nationwide Mut. Fire Ins. Co. v. Walls*, 427 S.C. 348, 354, 831 S.E.2d 131, 134 (Ct. App. 2019), *reh'g denied* (Aug. 22, 2019), *cert. granted* (Feb. 12, 2020) (*quoting S.C. Farm Bureau Mut. Ins. Co. v. Kennedy*, 398 S.C. 604, 610, 730 S.E.2d 862, 864 (2012).)

## ARGUMENT

In denying HSB's Motion for Execution, the trial court erred both in determining that the Judgment had expired during the Bankruptcy Case and in disallowing HSB to finally collect its Judgment after its extensive efforts and after extraordinary inequitable delay tactics by Holmes. The Judgment survived the Bankruptcy Case as a valid lien on the Property. While South Carolina statutes and case law reflect that a judgment cannot last more than ten years, the Bankruptcy Code stayed the execution of the Judgment and tolled the deadline for HSB to collect it. Further, emergency relief was warranted in this case in light of the efforts by Holmes to avoid the Judgment, particularly in light of the prohibitions against her filings that was in place pursuant to the Doe order. HSB should have been granted an order of execution to allow the sale of the Property at a date and time that the Court allowed sales to move forward. Holding otherwise simply rewards Holmes for her dilatory and abusive actions, the likes of which led to the Judgment in the first place.

### **I. HSB's Judgment remained a valid lien on the Property after Holmes received a discharge from the Bankruptcy Court.**

During the pendency of Holmes's Bankruptcy Case, the automatic stay prevented HSB from moving forward in supplemental proceedings to execute and collect the Judgment. However, upon the discharge granted to Holmes by the Bankruptcy Court, the automatic stay pursuant to 11 U.S.C. § 362 expired. 11 U.S.C. § 362(c)(2)(c). Only Holmes's personal liability was discharged by the Bankruptcy Court. 11 U.S.C. § 524(a)(2). Therefore, the Judgment was

still a valid lien on the Property after the conclusion of the Bankruptcy Case. *See Washington v. Green Tree Servicing (In re Washington)*, 529 B.R. 654, 662-63 (Bankr. D.S.C. 2015) (holding a creditor does not surrender a lien when a debtor is discharged from personal liability); *see also In re Penrod*, 50 F.3d 459, 461-62 (7th Cir.1995) (“The secured creditor does not, by participating in the bankruptcy proceeding through filing a claim, surrender his lien.”); *In re Pennington–Thurman*, 499 B.R. 329, 331–32 (8th Cir. BAP 2013) (“Although personal liability to pay a debt does not continue, a discharge does not operate to extinguish a creditor’s *in rem* rights to foreclose against property in which it holds a lien.”) (internal citations omitted); *In re Tucker*, 516 B.R. 340, 346 (Bankr. W.D. Va. 2014); *In re Rountree*, 448 B.R. 389, 401-02 (Bankr. E.D. Va.2011) (“Courts in [the Fourth C]ircuit have long followed the principle that *in rem* claims survive the bankruptcy discharge, while *in personam* claims are extinguished.”); *In re Dendy*, 396 B.R. 171, 177-78 (Bankr. D.S.C. 2008) (citing *Home State Bank*, 501 U.S. 78, 84 (1991) and *Ducker v. Standard Supply Co.*, 280 S.C. 157, 311 S.E.2d 728 (1984) in support of the position that *in rem* actions against debtors remain viable subsequent to discharge).

At the time of Holmes’s Bankruptcy Petition, the Judgment had not yet expired. Therefore, it was still a valid lien on the Property throughout the Bankruptcy Case, and HSB should have been given emergency relief to enforce its lien thereafter. This Court should reverse the order denying the Motion and recognize the validity of the Judgment as a lien on the Property that survived the Bankruptcy Case.

**II. The expiration of HSB’s Judgment was stayed until 30 days from Holmes’s discharge received from the Bankruptcy Court.**

At the time that HSB filed its Emergency Motion for an order of execution and sale of the Property, the Judgment had not yet expired, and the trial court erred in finding that the Judgment

had expired. Upon the filing of Holmes's petition in the Bankruptcy Case, the Judgment was stayed pursuant to 11 U.S.C. § 108(c).

Section 108(c) provides:

Except as provided in section 524 of this title, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then such period does not expire until the *later of-*

(1) the end of such period, *including any suspension of such period occurring on or after the commencement of the case;* or

(2) 30 days after notice of the termination or expiration of the stay under section 362, 922 , 1201 , or 1301 of this title, as the case may be, with respect to such claim.

(emphasis added.)

In this case, the applicable nonbankruptcy law is S.C. Code Ann. § 15-39-30, which provides that a Judgment expires ten (10) years after it was entered. Therefore, under South Carolina law, the Judgment would have expired on November 18, 2019, except for 11 U.S.C. § 108(c). Now, the Judgment was stayed during the Bankruptcy Case, and after the stay was lifted, the expiration of the Judgment would have been no earlier than June 11, 2020, thirty (30) days from the discharge of Holmes.

HSB contends that the time to execute on the Judgment was stayed by 11 U.S.C. § 362, and therefore was suspended for the entirety of the Bankruptcy Case. Section 108(c)(1) provides that the time to execute is tolled until "the end of such period, including any suspension of such period occurring on or after the commencement of the case." It is HSB's position that Section 108(c) should be interpreted such that the time for execution has been extended for the time that the automatic stay was in place, which was from March 22, 2019, to May 12, 2019, a period of

417 days. Therefore, the time for HSB to execute on the Judgment should be 417 days from May 12, 2019, when the stay was lifted, which would be Saturday, July 3, 2021. *See In re Washington*, 581 B.R. 150, 160-62 (Bankr. D.S.C. 2017) (finding that under South Carolina law and section 108, the statute of limitations was tolled during the entire time the bankruptcy case was in effect).

However, there is no controlling South Carolina authority on the issue of how long a judgment lasts after the stay is lifted under 11 U.S.C. § 108(c).<sup>3</sup> If HSB is correct on its analysis above, then HSB would have had ample time to pursue the sale of the Property, and the trial court erred in finding that HSB was out of time. If HSB is incorrect, then at the least, the Judgment was stayed for 30 days from the termination of the stay, which time period expired on June 11, 2020, and would have still given HSB an opportunity to obtain an execution.

In addition to the lack of guidance on the length of the stay applicable to the Judgment under 11 U.S.C. § 108(c), matters are complicated by the South Carolina Supreme Court's plurality opinion in *Gordon v. Lancaster*, 425 S.C. 386, 392–93, 823 S.E.2d 173, 176 (2018), *reh'g denied* (Feb. 20, 2019). In *Lancaster*, a plurality of the Supreme Court overruled prior case law that would have allowed a judgment to remain unexpired while it had active energy to complete the remaining tasks to execute against a judgment. In *Lancaster*, the plurality held that there were no judicial exceptions to the bright-line rule that a judgment expires after 10 years from its enrollment. *Id.* at 393, 823 S.C. at 176. It remains unclear from

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<sup>3</sup> In an adversary proceeding filed by HSB against her concerning the dischargeability of the debt due under the Judgment, Holmes filed a Motion to Dismiss and argued that the Judgment had expired. Bankruptcy Judge David R. Duncan disagreed and ruled that the expiration of the Judgment was stayed pursuant to 11 U.S.C. § 108(c)(2) for 30 days after the stay was lifted. *See Haynsworth Sinkler Boyd, P.A. v. Holmes*, 610 B.R. 551, 547 (Bankr. D.S.C. 2020).<sup>3</sup> Even though Judge Duncan dismissed the adversary, ruling in favor of Holmes, Holmes appealed his

*Lancaster* whether the Court can enter an execution Order prior to the expiration of the sale of the asset being executed against and then have the sale of the asset occur after expiration.

Therefore, this is a novel issue regarding the construction of the South Carolina statutes concerning the expiration of a judgment and the applicability of bankruptcy law to that determination. The trial court stated that the holding of the *Lancaster* case controlled the enforcement period of the Judgment irrespective of the bankruptcy statutes staying the expiration. This was in error, as it rewarded Holmes for her tactics and allowed Holmes's bankruptcy case to essentially void the Judgment in contravention of federal law extending the life of the Judgment for the time period the bankruptcy case was pending and the automatic stay was in place *preventing HSB from doing the things it would have otherwise done to enforce the Judgment*. HSB requests that the Court reverse the trial court's decision and find that the Judgment does not expire until July 3, 2021, under 11 U.S.C. § 108(c).

**III. HSB was entitled to emergency relief as a result of the extraordinary delay and harassment committed by Holmes.**

As at the time HSB filed its Motion for Execution, HSB was ready, willing, and able to proceed and finalize its efforts to enforce the Judgment. The only delay remaining was the time the Court required to enter an execution of the Property and hold a sale of the Property.<sup>4</sup> The indisputable evidence before the Court was that HSB was entitled to a Court-ordered execution based on the valid Judgment and lien on the Property pursuant to S.C. Code Ann. § 15-39-410. Moreover, HSB demonstrated that it was entitled to emergency relief based on the extensive

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Order, and the appeal is currently pending. *See Holmes v. Haynsworth Sinkler Boyd, P.A., C/A No. 2:20-234-BHH-BM (D.S.C.)*.

<sup>4</sup> HSB originally sought in its Motion to have an order of execution entered and have the sale finalized. However, the Court notified HSB that the sale would not be possible due to COVID-19. (R. at \_\_\_.) It is HSB's position that the 10 year statute of limitation rules only require that

work of HSB to collect the Judgment despite Holmes's attempts to thwart all valid discovery efforts and the collection activity of HSB. The Affidavit of Mary M. Caskey describes these efforts in detail and demonstrates why the fees incurred by HSB were so significant while the collection efforts should have been very simple. (*See* R. at \_\_\_\_.)

In denying the Motion, the Court disabled HSB from executing its Judgment within the more conservation 30-day period allowed by the Bankruptcy Code. Whether or not the 11 U.S.C. § 108(c) still allows HSB to collect until July 3, 2021, is undetermined. However, because of this uncertainty, emergency relief was warranted.

HSB has pursued its rights to enforce the Judgment in a diligent manner. Over three and half years before the Judgment was set to expire, HSB commenced formal collection efforts by filing its Verified Petition and requesting a Rule to Show Cause in supplementary proceedings. Holmes has violated multiple orders of the trial court by refusing to provide information about her assets that HSB was entitled to under South Carolina law. She has further caused delay by appealing interlocutory orders over and over, filing baseless and untimely petitions for rehearing and motions to reconsider with no basis, commencing new actions against HSB, its attorneys, and judges to try to avoid HSB efforts, and finally by filing Chapter 7 bankruptcy when her only significant debt was the Judgment owed to HSB. HSB moved with due speed until Holmes filed for bankruptcy protection, and HSB has been subject to the automatic stay since March 22, 2019. HSB received notice of Holmes's discharge on May 12, 2020, and expediently filed its Motion for Execution two days later to ensure its abilities to timely execute the Judgment. The overwhelming weight of the facts in support of this Motion for Execution demonstrated that HSB has done everything in its power to pursue its rights under the Judgment in a timely manner, and

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an execution of sale occur prior to the 10 year expiration and in any event HSB should not be

HSB was entitled to an immediate execution of the Judgment against the Property. Simply, the trial court erred in rewarding Holmes for her tactics and allowing her to avoid the Judgment by engaging in the very actions that led to the Judgment in the first place.

**CONCLUSION**

For the reasons above, the trial court erred in denying HSB's Emergency Motion for Execution for an expedited order of execution against the interest of Holmes in the Property. Therefore, the trial court's order should be reversed and the matter should be remanded for entry of an order allowing the execution of the Judgment, which does expire until 2021.

Respectfully submitted,

**HAYNSWORTH SINKLER BOYD, P.A.**

*/s/ C. Elizabeth Weston*

\_\_\_\_\_  
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*Attorneys for Appellant  
Haynsworth Sinkler Boyd, P.A.*

August 31, 2020  
Charleston, South Carolina

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penalized for the Court's inability to conduct sales due to a global pandemic.

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Jennifer B. McCoy

Case No.: 2007-CP-10-01444

RECEIVED

Aug 31 2020

SC Court of Appeals

Cynthia Holmes, M.D. ....Respondent,

v.

Haynsworth Sinkler Boyd, P.A.<sup>1</sup> .....Appellant.

**PROOF OF SERVICE**

I certify that the **Initial Brief of Appellant Haynsworth Sinkler Boyd, P.A.’s and the Designation of Matter** was served upon the Respondent’s attorney of record by electronic mail only, on this 31<sup>st</sup> day of August, 2020, sent to Chalmers C. Johnson, Esquire at [chalmersjohnson@gmail.com](mailto:chalmersjohnson@gmail.com).



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<sup>1</sup> The caption in the original case included Sinkler & Boyd, P.A., Manton Grier, and James Y. Becker as parties, but Haynsworth Sinkler Boyd, P.A., as successor to Sinkler & Boyd, P.A. is the only party appealing to this Court.

**HAYNSWORTH  
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August 31, 2020

**via email: ctappfilings@sccourts.org**

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

**RECEIVED**

**Aug 31 2020**

**SC Court of Appeals**

RE: *Cynthia Holmes, M.D. v. Haynsworth Sinkler Boyd, PA*  
Case No. 2007-CP-10-1444  
Appellate Case No. 2020-000968  
HSB File No. 04625.1439

Dear Ms. Kitchings:

Enclosed for filing is Appellant Haynsworth Sinkler Boyd, P.A.'s Initial Brief of Appellant Haynsworth Sinkler Boyd, P.A.'s, Designation of Matter to be Included in Record on Appeal, and the Proof of Service on counsel for Cynthia Holmes, M.D.

Please contact me at 803-779-3080 if you have any questions or need anything further from me at this time.

Thank you for your assistance in this matter.

Sincerely,



C. Elizabeth Weston

CEW/hh

Enclosures

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Mary M. Caskey, Esq. (via e-mail: [mcaskey@hsblawfirm.com](mailto:mcaskey@hsblawfirm.com))