

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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Oct 09 2020
SC Court of Appeals

The Honorable Jennifer B. McCoy

Case No.: 2007-CP-10-01444
App. Case No.: 2020-000968

Cynthia Holmes, M.D.Respondent,

v.

Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A.,
Manton Grier and James Y. Becker, Defendants,

Of which Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A.,
Is the AppellantAppellant.

INITIAL REPLY BRIEF OF APPELLANT

HAYNSWORTH SINKLER BOYD, P.A.

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ARGUMENT

I. HSB had standing to pursue the Judgment when it sought an order of execution against Holmes' property because 11 U.S.C. § 108 preempted state law and stayed the expiration of the Judgment.

Holmes argues that HSB did not have standing to pursue the Judgment because the Judgment had expired under state law by the time that HSB filed the Motion for Execution. Holmes completely ignores and does not even attempt to address the applicability of 11 U.S.C. § 108(c), which undeniably stayed the expiration of the Judgment while the bankruptcy case was pending. Simply, Holmes' arguments related to whether the Judgment is in rem or whether or not the Judgment was equitably tolled miss the mark and do not respond to the basis for the appeal by HSB.

HSB does not dispute that, under South Carolina law, if Holmes had not filed for bankruptcy protection and the automatic stay under 11 U.S.C. § 362 been imposed upon HSB, the Judgment would have already expired.¹ However, “the United States Bankruptcy Code provides an exception to the general rule that the collection period for a judgment may not be tolled under S.C. Code Ann. § 15-39-30 where the execution period expires during the automatic stay period imposed by 11 U.S.C. § 362(a).” *In re Holmes*, 610 B.R. 541, 547-48 (Bankr. D.S.C. 2020). It is well-settled that provisions of the bankruptcy code preempt state law when they conflict, as they do here. *In re Citrus Tower Boulevard Imaging Ctr., LLC*, 460 B.R. 334, 340 (Bankr. N.D. Ga. 2011) (“The Bankruptcy Code is federal law that preempts state law where such laws conflict.”); *In re*

¹ If Holmes had not filed bankruptcy, HSB would have moved forward with the hearing in April 2019 to have the property sold before the Judgment would have originally expired. The reason HSB was prevented from doing so was 11 U.S.C. § 362.

Williams, No. 06-32921 KRH, 2007 WL 2122131, at *9 (Bankr. E.D. Va. July 19, 2007) (same). Further, section 108(c) has been specifically held to preempt state law with respect to the time for a creditor to take certain actions related to a debt or judgment. *See, e.g., In re Perry*, 425 B.R. 323, 397 (Bankr. S.D. Tex. 2010) (holding that that pursuant to 11 U.S.C. § 108(c), the automatic stay has extended the limitations period for the creditor to pursue a deficiency action against a debtor); *In re Lobherr*, 282 B.R. 912, 916 (Bankr. C.D. Cal. 2002) (holding that section 108(c) preempts California law related to the time period for renewing a judgment).

II. The Record is replete with evidence that HSB was entitled to emergency relief.

In her brief, Holmes suggests through a biblical analogy that HSB has unclean hands and somehow failed to pursue its rights to collect the Judgment. (Brief at 13, R. at ____.) However, there is no evidence in the Record that HSB acted negligently, unfairly, or with unnecessary delay in attempting to enforce the Judgment. Instead, pleading after pleading in the Record demonstrate the attempts by HSB to gather financial information about Holmes to which it was entitled and Holmes' efforts to prevent the gathering of the information and to force HSB to defend frivolous lawsuits and motions. Holmes further sued the trial court judge involved two times in an attempt to further delay the enforcement of the Judgment. (R. ____.) Holmes intentionally violated the Supreme Court's order prohibiting her from filing *pro se* documents in the state court, filed multiple lawsuits and motions based on the same facts, even though they were denied and dismissed over and over again, and engaged in personal attacks against the judiciary and the attorneys involved in the case. (Caskey Aff., R. ____.) Because HSB pursued the

Judgment with diligence and because HSB's attempts to enforce the Judgment were halted by Holmes' filing of the bankruptcy case, HSB was entitled to the emergency relief requested in the Motion for Execution and to enforce the Judgment against Holmes' property as it had been trying to do for years.

CONCLUSION

For the reasons above, Holmes' arguments are without merit, and the trial court's order should be reversed.

Respectfully submitted,

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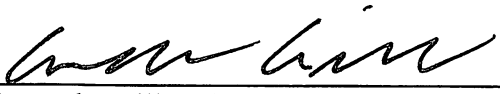
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Is the AppellantAppellant.

PROOF OF SERVICE

I certify that the **Initial Reply Brief of Appellant Haynsworth Sinkler Boyd, P.A.** was served upon the Respondent’s attorney of record by electronic mail only, on the 9th day of October, 2020, sent to Chalmers C. Johnson, Esquire at chalmersjohnson@gmail.com.


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