THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

THE HONORABLE JENNIFER B. MCCOY, CIRCUIT COURT JUDGE

APPELLATE CASE NO.: 2020-001335

GENEVIEVE STRATOS,.....RESPONDENT,

V.

CHARLESTON COUNTY SHERIFF'S OFFICE
AND
KARMATIC, LLC,.....DEFENDANTS,

OF WHICH
KARMATIC, LLC IS THE.....APPELLANT.

BRIEF OF RESPONDENT

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I. STATEMENT OF ISSUES ON APPEAL

1. As any decision this Court would make as to when the judgment expired will have no practical effect, should this appeal be dismissed as moot?

2. Because Appellant fails to state how the trial court abused its discretion in its findings, is the argument abandoned and this appeal moot?

3. Has the Appellant preserved the right to appeal its argument that "the lower court's failure to recognize there are two methods by which a creditor may obtain a deficiency judgment in a foreclosure action" when Appellant did not ask the lower court to specifically address the issue before filing this appeal?

4. As alleged facts and facts support the trial court's determination that the judgment against Stratos was entered August 16, 2010 and expired August 16, 2020, did the trial court abuse its discretion?

II. STATEMENT OF THE CASE

Ms. Genevieve Stratos (Stratos) filed a verified complaint on August 28, 2020 against Appellant Karmatic, LLC (Karmatic or Appellant) and the Charleston County Sheriff's Office.[1] (R. pp. 44- 177) Complaint August 28, 2020. She sought a temporary restraining order, preliminary and permanent injunction and declaratory relief from execution of a judgment and the Sheriff's sale of her property to satisfy the judgment entered in *Tidelands Bank v. Southrail Enterprises, LLC*, *et al* Civil Action No. 2010-CP-10-139.[2]

Stratos alleged the judgment was no longer enforceable pursuant to S.C. Code Ann. § 15-39-30 because it was entered on August 16, 2010, more than 10 years earlier. *See e.g.* (R. pp. 48, 50) Complaint August 28, 2020 ¶¶ 19, 20, 31.

Stratos alleged her former attorney created Karmatic in 2019 to buy the 2010 judgment against her. (R. pp. 61, 74) (Complaint August 28, 2020 Ex. A, Affidavit of Stratos, Ex. 1 B) Her former attorney claims to have sold Karmatic to a friend

[1] The first paragraph of Appellant's Statement of the Case should be disregarded as it contains "contested matters" concerning what the question raised in this appeal concerns. SCACR, Rule 208 (b)(1)(C).

[2] As explained below, Karmatic, LLC bought the judgment in 2019 and was substituted for Tidelands Bank.

and fellow attorney, who tried to collect on the judgment. (R. pp. 60-61) *Id.* ¶ 8, p. 2-3.

Stratos claimed it was unfair for her former attorney to buy the "very judgment [that] was to be addressed by that attorney as part of or within the scope of his representation…." She alleged it was improper for the attorney who "bought" Karmatic from her former attorney to work together to collect on the judgment. (R. pp. 51, 100) Complaint August 28, 2020 ¶ 32d and Ex. 6. The lawsuit was served.

On August 28, 2020, Stratos timely filed a notice and motion for preliminary restraining order and injunction seeking to stay the execution and sale of her property. (R. pp. 172-185) (Notice and Motion for Prelim Rest. Order and Injunction Aug. 28, 2020). On September 4, 2020, Karmatic filed a memorandum in opposition. (R. pp. 186-190). Karmatic claimed the judgment it sought to enforce was not entered until December 8, 2010; thus, it was not yet stale and was still enforceable. (R. pp. 186-187) Karmatic Memo in Opposition Sep. 4, 2020, pp. 1-2. Karmatic stipulated that if Stratos was "correct" that the judgment was entered August 16, 2010, judgment "interest would have been accruing from August 16, 2010…" (R. p. 189) *Id*. p. 4.

On September 4, 2020, the trial court held a hearing. Stratos cited the orders showing that interest at the judgment rate was accruing from August of 2010. (R. pp. 398-400) Transcript Sep. 4, 2020, pp. 4-6. The trial court issued an order granting Stratos' request for a temporary injunction, which postponed the advertising and sale of her property. (R. p. 1) Order Sept. 4, 2020. Karmatic did not file a SCRCP, Rule 59 motion for reconsideration. A hearing was set for the week of September 14, 2020 "to determine the issue of the date of the judgment." (R. p. 1) Order Sept. 4, 2020. Karmatic did not object.

On September 11, 2020, Stratos filed the affidavit of the Charleston County Clerk of Court showing a "[j]udgment in the amount of $345,024.13 was entered on August 16, 2010 against … Stratos." (R. pp. 259-260) Armstrong Affidavit ¶4. Stratos filed a memorandum in support of injunction "in the form of a proposed order…" (R. pp. 250-258) Stratos Memo. Sept. 11, 2020.

On September 15, 2020, the day of the hearing, Appellant filed a memorandum in opposition along with various attachments. (R. pp. 261 – 354) Karmatic Supp. Memo in Opposition. At the hearing, the trial court stated it was reconvened "on the sole issue of when the judgment was actually considered to be in place for purposes of the ten year statute of limitations…" (R. p. 418) Transcript Sept. 15, 2020, p. 4, lines 17-20. During oral argument, Karmatic's counsel agreed

"I know that when you pull up this case on the index, it shows the date of judgment as August 16th of 2010." (R. p. 427) Transcript, Sept. 15, 2020, p. 13, lines 12-14. Based on the alleged facts, facts and argument presented, the trial court stated "…the August date really is the controlling date…" (R. p. 434) Transcript of Hearing, Sept. 15, 2020, p. 20, lines 16-17.

On September 16, 2020, a "Statement of Judgment" was issued which in part held "Based on the memoranda submitted and the arguments of counsel at the hearing dated 9/15/2020, Plaintiff's Motion for Injunctive Relief is hereby GRANTED." (R. p. 4) Sept. 16, 2020 Order. Karmatic did not file a SCRCP, Rule 59 motion to have the trial court reconsider its decision or request the trial court to specifically address its "two method" argument raised on appeal.

On October 5, 2020, Karmatic served its Notice of Appeal related to the September 4, 2020 trial court order and September 16, 2020 judgment. The notice was filed with the trial court on October 6, 2020.

On October 26, 2020, Appellant filed its answer with the trial court. (R. pp. 358-362) Answer Karmatic.

III. SUMMARY OF ARGUMENTS

This appeal should be dismissed for several reasons. First, the appeal is moot because any determination by this Court will have no practical legal effect upon the

existing controversy. Sufficient time has passed such that the 2010 judgment expired whether one uses the August 16, 2010 date or December 8, 2010 date argued by Appellant. Second, as to the standard of review, Appellant fails to argue *how* the trial court abused its discretion based on the facts presented, facts alleged in the Complaint, or facts argued in reaching its decision. Last, Appellant claims the trial court abused its discretion by failing to recognize "two methods by which a creditor may obtain a deficiency judgment in a foreclosure action" and that the "second method" was used in 2010. Appellant Brief, p. 7. Appellant failed to preserve this argument for appeal as it did not seek a motion to reconsider or have the trial court specifically address that issue for appeal.

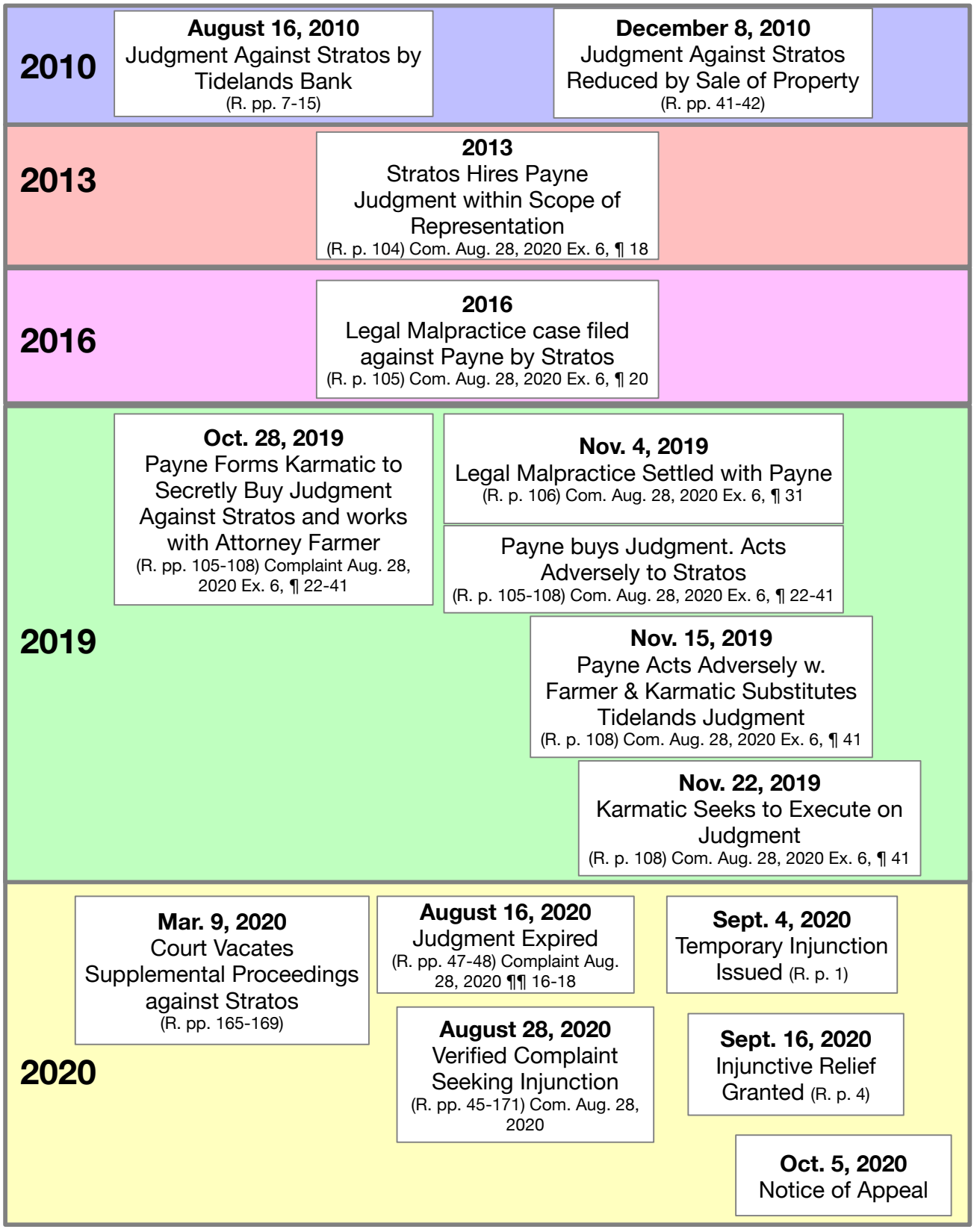
In any case, the "second method" relates to S.C. Code Ann. § 29-3-660. This statute was not plead in the 2010 Complaint resulting in the judgment against Stratos and was never referenced in any order or judgment entered against her. Further, the statute is inapplicable as Stratos was not a mortgagor within the meaning of S.C. Code Ann. § 29-3-660 as she was sued only on a guaranty.

Last, the Court should affirm the trial court as it did not abuse its discretion because facts and facts alleged support the finding that the judgment was entered against Stratos on August 16, 2010. The factual allegations and facts include:

1. Affidavit Charleston County Clerk of Court that the judgment against Stratos was entered August 16, 2010; (R. pp. 259-60) Affidavit Armstrong, Sept. 11, 2020.
2. Specific language in the August 16, 2010 Order stating Stratos was to pay the "Total Debt" which "shall constitute the total judgment debt due…and shall bear interest hereafter at the legal rate of interest for judgments." (R. p. 137) Order August 16, 2010 p. 7.
3. Appellant's concession that the judgment index reflected the August 16, 2010 date; (R. p. 427) Transcript of Hearing Sept. 15, p. 13, lines 13-14.
4. The Master found a sum certain amount of money owed, referred to the amount as the "judgment debt" and judgment interest at the rate of 7.25% was calculated based on the sum certain amount from August 13, 2010; (R. pp. 10, 42); Order August 16, 2010 and Order Dec. 6, 2010; and
5. The Complaint and supporting documents filed by Stratos (R. pp. 44-171).

In sum, the trial court did not abuse its discretion. It properly granted injunctive relief to stop the execution because the facts alleged and facts show the judgment entered against Stratos on August 16, 2010 had expired. Thus, this appeal should be dismissed as moot or affirmed.

IV. Timeline Selected Factual Allegations and Events



V. Statement of the Facts

A. No Foreclosure Cause of Action Filed Against Stratos

No foreclosure cause of action was filed against Stratos in *Tidelands Bank v. Southrail Enterprises, LLC, et al* Civil Action No. 2010-CP-10-139. Stratos was not a mortgagor. The complaint alleged "Southrail Enterprises, LLC., executed a Mortgage." (R. p. 365) Complaint Jan. 8, 2010, ¶9. The Real Estate Mortgage shows the mortgagor was "Southrail Enterprises, LLC", not Stratos. (R. p. 377) Complaint Jan. 8, 2010, Ex. B shown below.

MORTGAGOR: Southrail Enterprises, LLC
1810 Tennyson Row
Mount Pleasant, SC 29466

B. Stratos Sued On Guaranty, Not As Mortgagor

The only cause of action in which Stratos was named in the 2010 lawsuit was for a suit on a guaranty. (R. pp. 366-367) Complaint Jan. 8, 2010 Second Cause of Action Suit on Guaranty ¶ 17, pp. 3-4. It was alleged Stratos "executed agreements personally guaranteeing payment of all obligations of Southrail Enterprises, LLC…" ("Southrail") (R. p. 367) Complaint Jan. 8, 2010, ¶ 17 Jan. 8, 2010. Tidelands sought a determination that it was "entitled to judgment" against Stratos "for the full amount due…" as a guarantor. (R. p. 367) Complaint Jan. 8, 2010, ¶¶ 19 and 20.

C. Southrail Was Sued as Mortgagor, Not Stratos

Only Southrail was sued to foreclose on the note and mortgage. It was alleged Southrail "made, executed and delivered to Tidelands Bank, the Plaintiff, a Promissory Note" and Southrail "executed a Mortgage" of Real Estate pledging as collateral certain real property. (R. pp. 365-366), Complaint Jan. 8, 2010, ¶¶ 8-9, 14. Only Southrail was "in default under the terms of the Note and Mortgage." (R. p. 366) *Id*. ¶ 15.

D. August 16, 2010 Judgment Added Legal Rate of Judgement Interest

The matter was referred to the Master for "a final decision" pursuant to SCRCP, Rules 53 (Masters and Special Referees), 71 (Foreclosure and Partition) and S.C. Code Ann. § 14-11-85 (Appeal from final judgment of master-in-equity). (R. pp. 392-393) Order of Reference dated May 7, 2010.

A judgment against Stratos on the guaranty was signed on August 13, 2010 and entered on August 16, 2010. (R. pp. 7-15) (August 16, 2010 Order) and (R. pp. 259-260) (Aff. Armstrong ¶ 4a.) Karmatic agrees the public records "shows the date of judgment as August 16th of 2010." (R. pp. 423, 427-428) Transcript Sept. 15, 2020, p. 9, lines 11-12, p. 13, lines 13-14.

The Master ordered, adjudged and decreed the amount of the principal, accrued interest, costs, taxes and attorney's fees was $345,024.13. (R. pp. 10, 13)

Order August 16, 2010 ¶23, p. 4, 7. This amount was the "'Total Debt' to comprise the amount of the ***judgment debt entered herein***." *Id*. (R. p. 10) ¶ 23 (emphasis added). Further,

> ***interest*** after the date of judgment ***at the legal rate of interest for judgments*** on the ***judgment debt should be added***…

Id. (R. p. 10) (emphasis added).

The August 16, 2010 judgment, states:

> **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that the amount due in the preceding paragraph (the "Total Debt" as set forth in Paragraph 23 [$345,024.13], *supra*, and later accrued interest on the principal) **shall constitute the total judgment debt** due the Plaintiff and **shall bear interest hereafter at the legal rate of interest for judgments**"

See (R. p. 13) August 16, 2010 Order, p. 7. (emphasis added).

The order held Stratos was liable for and to pay the full judgment debt "before the date of sale." This is shown below.

> **IT IS FURTHER ORDERED, ADJUDGED AND DECREED**, that … **Genevieve Stratos**, on or ***before the date of sale*** of the property herein described, **pay to the Plaintiff, or Plaintiff's attorney, the total amount due Plaintiff**, together with the costs and disbursements of this action, including reasonable attorney's fees;

(R. p. 13) Order August 16, 2010, p. 7 (emphasis added).

On August 16, 2010, the judgment against Stratos was entered and interest at the legal rate of interest on judgments began to accrue. (R. p. 13) Order August 16, 2010, p. 7. The Clerk of Court of Charleston County entered the judgment against Stratos on August 16, 2010 in the amount of $345,024.13. (R. pp. 259-260) (R. pp. 177, 185) *See* Charleston County Clerk of Court's Affidavit dated September 11, 2020 and Charleston County Clerk of Court's public website.

E. Court Added Judgment Interest from August 13, 2010 to December 6, 2010 and Applied Credit For Property Sale

After the August 16, 2010 entry of judgment against Stratos, on November 18, 2010 there was a sale of property secured by the mortgage. The proceeds from the sale resulted in a credit and partial satisfaction of the August 16, 2010 judgment against Stratos. The Master's December 8, 2010 calculation shows interest accrued at the legal rate for judgments of 7.25% from August 13, 2010. (R. p. 42)[3] *See* Supreme Court Order 2010-01-04-01 setting the legal rate of interest at 7.25%. (R. p. 43) This is shown below.

[3] The Master signed the order of judgment August 13, 2010 and it was filed and entered August 16, 2010. (R. pp. 7-15).

=	Total judgment amount as of August 13, 2010)	$345,338.63
+	Accrued Interest on total judgment amount @ 7.25% from August 13, 2010 to November 18, 2010 (97 days) (i.e., date of 2nd sale)	$6,653.68
=	Total judgment amount as of November 18, 2010	$351,992.31
=	Total judgment amount as of November 18, 2010	$351,992.31
-	Credit for Plaintiff's Bid Amount	$299,916.30

(R. p. 42)

F. Appellant Conceded If Judgment Interest Accruing From August 16, 2010, Stratos Was Correct

Appellant stipulated[4] "If Plaintiff's argument were correct [that judgment was entered on August 16, 2010 against Stratos], interest would have been accruing from August 16, 2010…" (R. p. 189) Karmatic Opp. Sep. 4, 2020 p. 4. The December 8, 2010 Order shows interest at the rate for judgments was accruing from the August 2010 judgment order. (R. p. 42) That Order states: "Total judgment amount as of August 13, 2010" and adds "Accrued Interest on total judgment amount @ 7.25 % from August 13, 2010…" (R. p. 42) Order December 8, 2010, p. 2. Interest at the rate on judgments of 7.25% began August 13, 2010 and

[4] A stipulation is an agreement, admission or concession made in judicial proceedings by parties thereto or their attorneys. *See State v. Anderson,* 318 S.C. 395, 458 S.E.2d 56 (Ct. App. 1995). Stipulations are binding upon those who make them. *Kirkland v. Allcraft Steel Co.*, 329 S.C. 389, 392–93, 496 S.E.2d 624, 626 (1998).

was added to the 97 days before the December 8, 2010 Order was entered after crediting the sale to the prior judgment. (R. p. 42) Order December 8, 2010.

G. Karmatic Formed by Stratos's Former Attorney When Resolving Legal Malpractice Case Filed Against Him

In 2016, Stratos filed suit against M. Chase Payne, Esq. (Payne) alleging, among other things, that he was negligent in handling a closing and short sale while representing her. (R. pp. 55 – 64) Stratos Affidavit of Jan. 22, 2020 Attached to Ex. A of Complaint dated Aug. 28, 2020. Negotiations to resolve the case took place. In 2019, as the legal malpractice case was about to resolve, unknown to Stratos, Payne created Karmatic and purchased the August 16, 2010 judgment against his former client. *See e.g.*, *Id.* (R. pp. 60-61) Ex. A., ¶ 8. Payne signed papers settling the legal malpractice case the same day he signed papers purchasing the judgment against Stratos. (R. pp. 105-107) Complaint, Ex. 6. Karmatic was substituted for Tidelands Bank by "Order Substituting Plaintiff" filed November 18, 2019. (R. p. 87). *Tidelands Bank v. Southrail Enterprises, LLC*, was amended to ***Karmatic, LLC v.*** *Southrail Enterprises, LLC*.

H. Prior Unappealed Order Held "Judgment was entered August 16, 2010"

Shortly after purchasing the judgment in 2019, Karmatic began supplemental proceedings against Stratos. She sought to vacate those proceedings alleging

improprieties. The trial court agreed and vacated the proceedings. It found the judgment at issue was "entered August 16, 2010." (R. pp. 50, 166) Complaint ¶ 30, Ex. C Order Vacating Supplemental Proceedings, p. 2 Dated March 9, 2020. Karmatic did not appeal that order which was entered by the same trial judge as the one issuing the orders involved in this appeal.

I. KARMATIC ANSWER ADMITS JUDGMENT AUGUST 16, 2010

On October 26, 2020, after filing its notice of appeal of the temporary injunction and finding that the judgment from August 16, 2010 was stale and unenforceable, Appellant answered the Complaint in this matter. (R. pp. 358-362) Answer Karmatic Oct. 26, 2020. Appellant "admits that, at the time Plaintiff's Complaint was filed [August 28, 2020], that more than 10 years had passed since the entry of the August 16, 2010, judgment." *Id.* (R. p. 359) ¶ 13.

VI. Argument

A. Background

Stratos alleged Payne, her former attorney, created Karmatic and bought the judgment at issue in 2019, over nine years after its August 16, 2010 entry. (R. p. 51) Complaint ¶ 32 d and (R. pp. 100-129) Ex. 6 thereto. She claims he did this in order to effect revenge because she dared sue him for legal malpractice. Payne should have addressed the judgment at issue within the scope of his representation when he handled the foreclosure and short sale. *See, e.g.* (R. p. 128) *Id.* and (R. pp. 59-64) Stratos Affidavit Jan 22, 2020. The trial court was familiar with these facts because there was a prior hearing vacating Karmatic's prior supplemental proceedings against Stratos. (R. pp. 165-169) Order Vacating Supplemental Proceedings March 9, 2020. This lawsuit is the result of Karmatic's renewed attempt to execute on a stale judgment against Stratos after the prior supplemental proceedings were vacated.

B. Standard of Review

Appellant correctly cites the clearly erroneous standard as stated in *Atwood Agency v. Black*, 374 S.C. 68, 72, 646 S.E.2d 882, 884 (2007). Appellant's Brief, p. 6. Appellant claims the standard of review is "whether ***the facts*** support the temporary injunction…." However, *Atwood* holds "***the facts alleged*** [in the Complaint] must be sufficient to support a temporary injunction and the injunction

must be reasonably necessary to protect the rights of the moving party." *Id.* (emphasis added). As explained below, Appellant fails to argue or show how the trial court abused its discretion concerning the sufficiency of ***the facts alleged*** or presented by Stratos. Thus, this matter should be dismissed.

C. Judgment Lien Expired, Thus Appeal is Moot and Should Be Dismissed

This appeal should be dismissed as moot. Whether the judgment was entered August 16, 2010 as the trial court determined or December 8, 2010 as Appellant argues, no decision made by this Court will change the fact that the 2010 judgment is stale or otherwise extinguished because ten years has passed.

It is undisputed that a judgment lien is purely statutory. It is not enforceable after ten years, the duration fixed by the legislature. S.C. Code Ann. § 15-39-30. The time may not be prolonged by the courts and the bringing of an action to enforce the lien will not preserve it beyond the time fixed by the statute, if such time expires before the action is tried. *Gordon v. Lancaster*, 425 S.C. 386, 392, 823 S.E.2d 173, 176 (2018), *reh'g denied* (Feb. 20, 2019). The Supreme Court has "consistently held that under the statute, a judgment becomes stale and a judgment lien is extinguished after ten years." *Id.* (internal citations omitted). The Court held "we decline to judicially adopt an exception to the bright-line rule that a judgment expires after ten years from its enrollment." *Id.*

In its Initial Brief, Appellant cites *Curtis v. State*, 345 S.C. 557, 549 S.E.2d 591 (2001). *Curtis* further supports dismissal of this appeal. It states:

> Where only injunctive relief is sought and ***the need for that relief has ceased to be a justiciable issue, an appellate court should not review the merits***…

Id., 568, 597 (emphasis added).

"A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief." *Id.*, 567, 596. The Supreme Court recently held, "A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy." *S.C. Coastal Conservation League v. Dominion Energy S.C., Inc.*, 432 S.C. 217, 224, 851 S.E.2d 699, 702 (2020).

"Where a decision by the appellate court will not have a practical legal effect on a temporary injunction, the case is nonjusticiable." *See* Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, *Appellate Practice in South Carolina* 3rd Ed. p. 135 (2016). "Where only injunctive relief is sought and the need for that relief has ceased to be a justiciable issue, an appellate court should not review the merits, or consider granting of a new trial after it has become impossible to have a new trial in the case." *Id.*

Mootness also arises when some event occurs making it impossible for the reviewing court to grant effectual relief. *Sloan v. Greenville Cty.*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009).

Here, even under Appellant's theory, the judgment expired December 6, 2020. Knowing the judgment would expire in December of 2020[5] under its theory, Appellant chose to appeal instead of moving forward on the merits before the judgment would expire.[6] Karmatic filed an appeal on October 5, 2020.

This is not a case where "the issue raised is capable of repetition but generally will evade review…" *Sloan v. Greenville Cty.*, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009). The law that a judgment becomes stale after ten years is firmly established and is not challenged by Appellant. *Gordon v. Lancaster*, citing *Home Port Rentals, Inc. v. Moore*, 369 S.C. 493, 496, 632 S.E.2d 173, 176 (2018) *reh. denied* Feb. 20, 2019 (internal citations omitted).

[5] The Court stated "I understand that this thing is expiring under their [Karmatic's] argument in December." (R. p. 435, lines 16-18) Transcript Sept. 15, 2020, p. 21.

[6] (R. pp. 437-438) Transcript, Sept. 15, 2020, pp. 23-24.

In sum, Appellant chose to appeal an interlocutory decision of the trial court instead of proceeding on the merits when it had the chance to do so. That fatal decision has now left Appellant with a stale judgment even under its theory.

The sole object of a temporary injunction is to preserve the subject of the controversy in its condition at the time of the order until opportunity is offered for full and deliberate trial investigation. *Epps v. Bryant,* 218 S.C. 359, 62 S.E.2d 832 (1950). Temporary injunctions are interlocutory, tentative, and impermanent and are superseded by the final judgment rendered on the merits. 42 AM.JUR.2D *Injunctions* § 294 (2000). Thus, temporary injunctions "remain in force only until, and expire upon, the entry of the final judgment and are not enforceable after the final judgment has been entered." *Curtis v. State*, 345 S.C. 557, 569, 549 S.E.2d 591, 597 (2001).

Due to the passage of time, no matter what this Court were to decide, Appellant cannot enforce the judgment lien. *Gordon v. Lancaster*, 425 S.C. 386, 823 S.E.2d 173 (2018). Thus, the appeal should be dismissed as moot. By filing an appeal and allowing more time to pass, Appellant waived its rights to have a decision on the merits.

D. Karmatic Fails to Show Abuse of Discretion as Facts Alleged and Facts Presented Show August 16, 2010 Judgment Against Stratos was Entered.

The standard of review on appeal for an order granting a temporary injunction is whether ***the facts alleged*** support the decision. *Atwood Agency v. Black*, 374 S.C. 68, 72, 646 S.E.2d 882, 884 (2007). Karmatic argues that the standard on appeal is "whether the facts support the temporary injunction…" Appellate Brief, p. 6.

Stratos' Complaint alleges facts and facts were presented to the trial court showing the judgment against her was entered on August 16, 2010. Some of these facts were presented in the Complaint (R. pp. 44 – 171), the Proposed Order of Sept. 11, 2020 (R. pp. 250-258), in the affidavit of Armstrong (R. pp. 259-260) and during the hearing. *See, e.g.* (R. pp. 419-420) Transcript Sept. 15, 2020, pp. 5-6. Appellant presented no facts whether in the form of affidavit or otherwise to contradict the facts showing that the judgment against Stratos was entered on August 16, 2010.

On appeal, instead of addressing the abuse of discretion standard and pointing to specific facts showing the trial court abused its discretion, Karmatic side steps and argues the trial court's "error" was the "failure to recognize that there are ***two methods*** by which a creditor may obtain a deficiency judgment ***in a foreclosure action***…" Appellant Brief, p. 7 (Emphasis added). As has been stated, that statute

is irrelevant as no foreclosure cause of action was filed against Stratos. She was sued on a guaranty and judgment was entered against her on the guaranty on August 16, 2010.

Karmatic presented to the trial court and this Court parts of orders ***from other foreclosure cases*** in an effort to support its position as to what happened in August of 2010 in this case. Stratos argued it was improper to consider orders from other cases. (R. p. 421) Transcript Sept. 15, 2020, p. 7, lines 4-11. Appellant concedes that after doing "a lot of research" it found no "case specifically on point."[7] Appellant still cites no law or authority to support why the trial court abused its discretion or erred by not basing its decision on ***orders in other matters***.

Quite simply, Karmatic fails to establish any basis to support the abuse of discretion standard it must meet to reverse the trial court. Essentially, Appellant abandons or otherwise fails to address ***how*** the trial court abused its discretion related to the sufficiency of ***the facts alleged*** as *Curtis* requires. Thus, this matter should be dismissed.

[7] (R. p. 423) Transcript Sept. 15, 2020, p. 9, lines 22-23.

If Appellant claims the trial court failed to consider the "two method" approach, then it should have requested the trial court make a specific finding about that argument to preserve it for appeal via SCRCP, Rule 59. It did not.

Karmatic focuses on one issue – S.C. Code Ann. § 29-3-660, a foreclosure statute never cited in the complaint filed against Stratos or any of the orders entered against her in 2010. It is undisputed that Stratos was sued only on a guaranty, not as a mortgagor. *See e.g.* (R. pp. 421-422, 430) Transcript Sept. 15, 2020 pp. 7-8, 16. The statute does not apply to Stratos as she was not a mortgagor. (R. p. 421) Transcript Sept. 15, 2020, p. 7, lines 13-17. The original plaintiff, Tidelands Bank *never sought a foreclosure against her*. The cause of action against Stratos was titled "Suit on Guaranty." (R. pp. 366-367) Complaint Jan. 8, 2010, pp. 3-4. The bank sought "the right to enter personal judgment against" her. *Id*. (R. p. 369) p. 6. No contrary facts were submitted by Appellant.

As to the Order entered August 16, 2010, it was contemplated that there *could* be further action, including a sale, report of surplus or deficiency following the Order, if Stratos did not "pay to the Plaintiff, or Plaintiff's attorney, the total amount due Plaintiff…" (R. p. 13) August 16, 2010 Order, p. 7. The fact that there *could* be a sale of the mortgaged property does not change the fact a sum certain amount was determined to be owed by Stratos pursuant to the Guaranty from

which an appeal would lie. A judgment for that amount was entered August 16, 2010. *See. e.g.* (R. pp. 259-260) Affidavit of Armstrong.

Karmatic contends, without any support or reference to the Order at issue that the Master used the "procedure set forth in S.C. Code Ann § 29-3-660, resulting in the entry of a deficiency judgment following the conclusion of the foreclosure sale." (R. p. 190) Defendant Karmatic, LLC's Memo dated Sept. 4, 2020. Further, Karmatic argues that the Deficiency Judgment was "an independent judgment which Karmatic is statutorily permitted to enforce, and further because less than ten years have elapsed since the judgment was entered" Karmatic is entitled to enforce the judgment. (R. p. 190) *Id.*

Karmatic's argument is incorrect for several reasons. First, in this case, the deficiency judgment was dependent on the judgment entered on August 16, 2010. Stratos was obligated to pay the amount at that time and prior to the sale. Following the sale, the judgment was decreased based on the credit given for the sale. That remainder or residue was the deficiency amount remaining.

Second, the statutory language is clear that the debt must be established *by a judgment before* the foreclosure sale. S.C. Code Ann. § 29-3-630. (No sale under or by virtue of any mortgage…shall be valid to pass the title of the land mortgaged unless the debt for which the security is given ***shall first be established by the***

judgment of some court of competent jurisdiction…). Because there was a foreclosure sale, the August 16, 2010 Order must have been a judgment. Further, the South Carolina Rules of Civil Procedure, Rule 71(b) makes clear that the "***judgment*** shall direct the mortgaged premises…be sold…[and that] ***judgment*** shall also contain a good and sufficient legal description of the property being sold" and other items. The requirements set forth in SCRCP, Rule 71(b) related to "Judgment and Sale on Foreclosure" are present here further supporting the conclusion that the Order was a judgment. (R. pp. 13-15) August 16, 2010 Order pp. 7-9. (emphasis added).

"A judgment represents a judicial declaration that a judgment debtor is personally indebted to a judgment creditor for a sum of money." *Wells ex rel. A.C. Sutton & Sons, Inc. v. Sutton*, 299 S.C. 19, 22, 382 S.E.2d 14, 16 (Ct. App. 1989).

The trial court did not commit reversible error by concluding that the alleged facts and facts show that the Master determined the judgment debtors, including Stratos, were personally indebted to the judgment creditor "for a sum of money" in August of 2010. (R. p. 10 ¶ 23) Order August 16, 2010. Based on the August 16, 2010 Order (R. p. 10 ¶ 23), the Clerk of Court's entry of judgment on August 16, 2010 (R. pp. 185, 259-260) and the other facts alleged and present in this case, the trial court did not abuse its discretion in making its determination that the

judgment against Stratos was issued and entered on August 16, 2010. This is the date that there was a judicial declaration filed that debtors, including Stratos, were personally indebted to the judgment creditor for a sum of money. The Master referred to the amount as the "judgment debt" and judgment interest at the rate of 7.25% was calculated based on the sum certain amount as explained in the subsequent Order dated December 2010. (R. p. 42).

Instead of pointing out where the trial court abused its discretion, Karmatic simply repeats its unsupported argument that *other* orders in *other* matters suggest a different way of looking at the August 16, 2010 judgment in this case. Appellant Brief, pp. 10-11. Karmatic suggests that looking at the four corners of the August 16, 2010 judgment "compels the conclusion" that the master in equity "utilized the method provided by S.C. Code Ann. § 29-3-660." Appellant Brief, p. 8. This is inconsistent with Karmatic's prior position and in its Answer which states that the judgment against Stratos "speaks for itself." (R. p. 359) Answer ¶ 8. Further, Karmatic has now admitted at the time Stratos' Complaint in this matter was filed, "more than 10 years had passed since the entry of the August 16, 2010, judgment." (R. p. 359) Answer dated October 26, 2010, p. 2, ¶ 13.

E. Facts Alleged and Presented Supporting Trial Court's Order August 16, 2010 Was Judgment Date

Appellant agrees the decision of a trial court to grant injunctive relief is discretionary and the appellate court "will not disturb" the decision "absent an abuse of discretion" showing that the order is "clearly erroneous." Appellant Brief, p. 6. Appellant fails to address *how* the trial court order was "clearly erroneous." Appellant argues, "for purposes of comparison" (Appellant Brief, p. 10) that IF one considers what other judges in other cases might have done, the trial court could have reached another conclusion. This does not establish an abuse of discretion.

Appellant also argues that the Master used a statute never cited in its order. This unsupported argument does not meet the clearly erroneous standard required to warrant reversal.

At best, Appellant merely argues a statute it cites applies based on other matters. Karmatic does not explain how the trial court abused its discretion based on the facts alleged and presented. The trial court should be affirmed.

VII. Conclusion

For the foregoing reasons, the appeal should be dismissed as moot. In the alternative, the trial court should be affirmed and the Court should grant such other and further relief as is deemed just and proper.

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

THE HONORABLE JENNIFER B. MCCOY, CIRCUIT COURT JUDGE

APPELLATE CASE NO.: 2020-001335

GENEVIEVE STRATOS,.....RESPONDENT,

V.

CHARLESTON COUNTY SHERIFF'S OFFICE
AND
KARMATIC, LLC,.....DEFENDANTS,

OF WHICH
KARMATIC, LLC IS THE.....APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned hereby certify that Respondent's Final Brief complies with Rule 211(b), SCACR.

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