CHAPTER 35

Judgments and Decrees Generally

ARTICLE 1

General Provisions

**SECTION 15‑35‑160.** Judgment for damages and costs against married women.

 In an action brought by or against a married woman judgment may be given against her as well for costs as for damages or both for such costs and for such damages, in the same manner as against other persons, to be levied and collected of her separate estate and not otherwise.

HISTORY: 1962 Code Section 10‑1515; 1952 Code Section 10‑1515; 1942 Code Section 657; 1932 Code Section 657; Civ. P. ‘22 Section 597; Civ. P. ‘12 Section 335; Civ. P. ‘02 Section 296; 1870 (14) 488 Section 298.

CROSS REFERENCES

Property rights of married women, see Sections 20‑5‑10 et seq.

LIBRARY REFERENCES

Westlaw Key Number Search: 205k237.

Husband and Wife 237.

NOTES OF DECISIONS

In general 1

1. In general

Stated in Bryant v. Smith (S.C. 1938) 187 S.C. 453, 198 S.E. 20.

Provision for levy and collection out of separate estate of married woman is only intended to indicate what property of the woman can be made liable. Habenicht v. Rawls (S.C. 1886) 24 S.C. 461, 58 Am.Rep. 268.

Provision for levy and collection out of separate estate of married woman merely directory. Clinkscales v. Hall (S.C. 1881) 15 S.C. 602.

**SECTION 15‑35‑170.** Judgments against unincorporated associations.

 On judgment being obtained against an unincorporated association under process served as provided in Section 15‑9‑330 final process may issue to recover satisfaction of such judgment, and any property of the association and the individual property of any copartner or member thereof found in the State shall be liable to judgment and execution for satisfaction of any such judgment.

HISTORY: 1962 Code Section 10‑1516; 1952 Code Section 10‑1516; 1942 Code Section 7798; 1932 Code Section 7798; Civ. C. ‘22 Section 5072; Civ. C. ‘12 Section 3338; Civ. C. ‘02 Section 2231; G. S. 1412; R. S. 1778; 1863 (13) 215.

CROSS REFERENCES

Name by which unincorporated associations may be sued, see Section 15‑5‑160.

LIBRARY REFERENCES

Westlaw Key Number Search: 41k20(1).

Associations 20(1).

C.J.S. Associations Sections 8, 40 to 43, 45 to 46, 48, 51 to 53.

RESEARCH REFERENCES

Treatises and Practice Aids

Employment Coordinator Labor Relations Section 2:46, South Carolina.

Employment Coordinator Labor Relations Section 62:205, Union Suits.

NOTES OF DECISIONS

In general 2

Action by member against association 4

Liability of members for debts of association 3

Validity 1

1. Validity

This section [former Code 1962 Section 10‑1516] is not repugnant to the due process clause of the Constitution. Edgar v. Southern Ry. Co. (S.C. 1948) 213 S.C. 445, 49 S.E.2d 841.

This section [former Code 1962 Section 10‑1516] does not violate the due process clause of the Constitution on account of substituted service. Appeal of Baylor (S.C. 1913) 93 S.C. 414, 77 S.E. 59.

2. In general

Stated in Bouchette v. International Ladies Garment Worker’s Union, AFL‑CIO, Local No. 371 (S.C. 1965) 245 S.C. 586, 141 S.E.2d 834.

Cited in Brame v. Garner (S.C. 1957) 232 S.C. 157, 101 S.E.2d 292.

The remedy of this section [Code 1962 Section 10‑1516] is exclusive. Elliott v. Greer Presbyterian Church (S.C. 1936) 181 S.C. 84, 186 S.E. 651.

This section [Code 1962 Section 10‑1516] applies to an unincorporated burial aid association requiring all the members to pay 25 cents to help defray the burial expenses of one dying. Appeal of Baylor (S.C. 1913) 93 S.C. 414, 77 S.E. 59. Beneficial Associations 20(3)

3. Liability of members for debts of association

The liability of members of an unincorporated association is joint and several for judgments entered against the association. Patterson v. Witter (S.C.App. 2016) 418 S.C. 66, 791 S.E.2d 294, rehearing denied. Trusts 1

Members of an unincorporated association are jointly and severally liable for the obligations of the association. Hall v. Walters (S.C. 1955) 226 S.C. 430, 85 S.E.2d 729, certiorari denied 75 S.Ct. 881, 349 U.S. 953, 99 L.Ed. 1277.

The liability of its members for debts contracted on behalf of the association is governed, not by the principles of partnership, but by those of agency. Elliott v. Greer Presbyterian Church (S.C. 1936) 181 S.C. 84, 186 S.E. 651. Associations 16

The liability of members of an association is joint and several; and as against the creditors, each member is individually liable for the entire debt, provided, of course, the debt is that of the association, with the right of a member paying the debt to enforce contribution against the other members. Elliott v. Greer Presbyterian Church (S.C. 1936) 181 S.C. 84, 186 S.E. 651. Associations 16

While each member of an association became a party to the action when the complaint was served upon an officer of the association, and while plaintiffs have the right to enter judgment against all or any one of the members, no liability arises against any member unless judgment is entered against such member by plaintiffs. Elliott v. Greer Presbyterian Church (S.C. 1936) 181 S.C. 84, 186 S.E. 651.

4. Action by member against association

A member of a church was permitted to maintain an action against the church, a charitable association, where he sustained injuries in a fall from the church rafters while voluntarily repairing the church’s sound system, and the fall was caused by the negligence of another church member who had cut the rafter and left it unsecured; however, the jury award of $300,000 would be reduced to the statutory maximum of $200,000, as provided by Section 33‑55‑210. Crocker v. Barr (S.C. 1991) 305 S.C. 406, 409 S.E.2d 368.

**SECTION 15‑35‑180.** Enforcement of judgments.

 When a judgment requires the payment of money or the delivery of real or personal property it may be enforced in those respects by execution as provided in this Title. When it requires the performance of any other act a certified copy of the judgment may be served upon the party against whom it is given or the person or officer who is required thereby or by law to obey it and his obedience thereto enforced. If he refuse he may be punished by the court as for contempt.

HISTORY: 1962 Code Section 10‑1519; 1952 Code Section 10‑1519; 1942 Code Section 738; 1932 Code Section 738; Civ. P. ‘22 Section 605; Civ. P. ‘12 Section 343; Civ. P. ‘02 Section 304; 1870 (14) 490 Section 308.

LIBRARY REFERENCES

Westlaw Key Number Search: 228k854.

Westlaw Key Number Searches: 93k19; 161k5.1.

Contempt 19.

Execution 5.1.

Judgment 854.

C.J.S. Contempt Section 14.

C.J.S. Executions Section 6.

C.J.S. Judgments Sections 693 to 695.

NOTES OF DECISIONS

In general 1

Discretion 2

1. In general

A judgment foreclosing a mortgage on land is not a judgment for its delivery so as to come under this section [former Code 1962 Section 10‑1519], but is a judgment for the sale of such property unless the debt is paid within the prescribed time, and therefore such judgment may be enforced by attachment. Gerald v Gerald, 31 SC 171, 9 SE 792 (1889). LeConte v Irwin, 23 SE 106 (1885). Trenholm v Wilson, 13 SC 174 (1880).

The enforcement of an alimony decree in South Carolina differs radically from the enforcement of an ordinary money judgment: in the latter case, subject to some exceptions, enforcement may be had by execution against property only, and not by attachment for contempt, but, in the case of a decree for alimony, a defaulting husband may be imprisoned if he fails to make payment in accordance with the terms of the decree. Katzburg v. Katzburg (S.C.App. 2014) 410 S.C. 184, 764 S.E.2d 3, rehearing denied. Contempt 25; Creditors’ Remedies 327; Divorce 1454(3)

Contemnor waived on appeal claim that circuit court sanctioned him without first determining whether sanction was appropriate, where contemnor failed to raise argument to circuit court despite his many opportunities to do so. Ex parte Cannon (S.C.App. 2009) 385 S.C. 643, 685 S.E.2d 814, on remand 2010 WL 9044590. Contempt 66(3)

Contemnor was not entitled to be served with a summons and complaint affording him an opportunity to be heard and to engage in discovery before circuit court could require him to pay $373,000 into court regarding disputed civil claim, because contempt proceedings were civil in nature, and thus, additional constitutional safeguards required in criminal contempt proceedings were not triggered. Ex parte Cannon (S.C.App. 2009) 385 S.C. 643, 685 S.E.2d 814, on remand 2010 WL 9044590. Contempt 55; Contempt 59; Contempt 61(1)

Contemnor’s argument on appeal, that circuit court erred in finding him in civil contempt for conduct that took place after he was removed as trustee, and imposing a purge remedy based upon assets or financial strength of contemnor’s wife, was abandoned due to contemnor’s failure to cite any legal authority in support of either argument. Ex parte Cannon (S.C.App. 2009) 385 S.C. 643, 685 S.E.2d 814, on remand 2010 WL 9044590. Contempt 66(7)

Circuit court’s imposition of conditional six‑month prison sentence, which allowed contemnor to purge the confinement upon payment of $373,000, as previously ordered by court, was not abuse of discretion, where contemnor either had ability to pay the $373,000 or was unable to pay the money as a direct consequence of his own actions from start of the proceedings. Ex parte Cannon (S.C.App. 2009) 385 S.C. 643, 685 S.E.2d 814, on remand 2010 WL 9044590. Contempt 81

Clear and convincing evidence supported finding that former trustee was in civil contempt for disobeying order relinquishing him of “signatory authority on all transactions, accounts, contracts, checks and/or instruments or undertakings of any kind” for estate and trust, where trustee amended estate’s corporate tax returns, and testified that he knew that probably he would have to “take the heat” for amending the tax returns without authority. Ex parte Cannon (S.C.App. 2009) 385 S.C. 643, 685 S.E.2d 814, on remand 2010 WL 9044590. Contempt 60(3)

Former trustee failed to carry burden of proving he was without fault in not being able to satisfy circuit court’s order to pay estate misappropriated amount of $373,000, and, thus, he could be held in civil contempt; less than one week after prior hearing where circuit court ordered trustee to pay estate $350,000 of the $900,000 that had been misappropriated, and made it clear that payment of $350,000 was only a partial payment, trustee purchased a lot in foreign country for $223,000, and paid $866,000 for “turn‑key contract” for construction of home, of which entire cost for lot and home was paid “up front” in cash. Ex parte Cannon (S.C.App. 2009) 385 S.C. 643, 685 S.E.2d 814, on remand 2010 WL 9044590. Contempt 60(3); Trusts 266

Former trustee’s conduct and his testimony that he knowingly and willfully disregarded court order to repay misappropriated funds to estate provided clear and convincing evidence of contemptuous behavior thus supporting finding of civil contempt and shifting burden to trustee to prove inability to pay. Ex parte Cannon (S.C.App. 2009) 385 S.C. 643, 685 S.E.2d 814, on remand 2010 WL 9044590. Contempt 60(1); Contempt 60(3)

Although former trustee was held in contempt in part and imprisoned for disobeying circuit court’s order to relinquish all authority associated with the estate and trust, finding of contempt was civil in nature, as purpose of contempt order was to coerce trustee to comply with circuit court’s order to pay $373,000 to estate, and he was not subject to an unconditional, fixed term of imprisonment. Ex parte Cannon (S.C.App. 2009) 385 S.C. 643, 685 S.E.2d 814, on remand 2010 WL 9044590. Contempt 78

Judgments generally are enforced by way of writs of execution issued to the sheriff. Johnson v. Service Management, Inc. (S.C.App. 1995) 319 S.C. 165, 459 S.E.2d 900, rehearing denied, certiorari granted, affirmed 324 S.C. 198, 478 S.E.2d 63. Creditors’ Remedies 321

Even if a judgment obtained in another state is a nullity because the other state court did not have personal jurisdiction, it does not follow that the South Carolina court would not have jurisdiction to entertain an action brought to enforce the judgment. Boan v. Jacobs (S.C.App. 1988) 296 S.C. 419, 373 S.E.2d 697. Judgment 930

Cited in Cayce Land Co. v. Guignard (S.C. 1926) 135 S.C. 446, 134 S.E. 1.

Order of circuit court granting leave to issue execution against body of defendant, as provided in this section [former Code 1962 Section 10‑1519], on failure to pay a judgment for fraudulently procuring the assignment of a lease and demise of certain property for the purpose of depriving plaintiff of the use thereof, is not void. Ex parte Hutto (S.C. 1907) 78 S.C. 560, 60 S.E. 34. Creditors’ Remedies 632

It seems that the language of this section [former Code 1962 Section 10‑1519], providing that a judgment for the delivery of real or personal property “may” be enforced by execution, intimates that it is permissive and not imperative. Gerald v. Gerald (S.C. 1889) 31 S.C. 171, 9 S.E. 792.

2. Discretion

Imposing $10,000 fine on former trustee for civil contempt was improper without statement of purpose; if fine was imposed for compensation, it was improper because record contained no reasonable relationship between trustee’s contemptuous conduct and imposition of the fine. Ex parte Cannon (S.C.App. 2009) 385 S.C. 643, 685 S.E.2d 814, on remand 2010 WL 9044590. Contempt 63(3); Contempt 74

Imposition of attorney fee award of $50,000 against contemnor to reimburse various parties of fees incurred in contempt proceedings was abuse of discretion because record lacked sufficient evidence from which circuit court could determine appropriate amount of attorney fees. Ex parte Cannon (S.C.App. 2009) 385 S.C. 643, 685 S.E.2d 814, on remand 2010 WL 9044590. Contempt 68

ARTICLE 3

Judgment by Default or Confession

**SECTION 15‑35‑350.** Judgment by confession; generally.

 A judgment by confession may be entered without action either for money due or to become due or to secure any person against contingent liability on behalf of the defendant, or both, in the manner prescribed in this article.

HISTORY: 1962 Code Section 10‑1535; 1952 Code Section 10‑1535; 1942 Code Section 670; 1932 Code Section 670; Civ. P. ‘22 Section 683; Civ. P. ‘12 Section 421; Civ. P. ‘02 Section 383; 1870 (14) 512 Section 399.

LIBRARY REFERENCES

Westlaw Key Number Searches: 228k29 to 228k70.

Judgment 29 to 70.

C.J.S. Judgments Sections 138 to 181, 363 to 369.

RESEARCH REFERENCES

Forms

South Carolina Litigation Forms and Analysis Section 37:6 , Confession of Judgment.

NOTES OF DECISIONS

In general 1

Correction of judgment 3

Setting judgment aside 2

1. In general

Clerk of court may take confession of judgment in his own favor. Trimmier v Winsmith, 23 SC 449 (1885). Moore v Trimmier, 32 SC 511, 11 SE 548, 552 (1890).

Cited in Ex parte Ware Furniture Co. (S.C. 1897) 49 S.C. 20, 27 S.E. 9.

Confession of judgment entered without action in clerk’s office during vacation is valid. Weinges v. Cash (S.C. 1881) 15 S.C. 44.

There is no law which requires a confession of judgment to be obtained or read in open court. Weinges v. Cash (S.C. 1881) 15 S.C. 44. Judgment 64

Confession of judgment may be made by client to his attorney, if made with entire fairness and full knowledge. Wise v. Hardin (S.C. 1874) 5 S.C. 325.

Guarantor of commercial loan was not entitled to plenary proceeding in order to present his defenses at full evidentiary hearing, in diversity action seeking entry of the confession of judgment signed by guarantor as security for guarantor’s payment obligations under settlement agreement with lender, where state law allowed for entry of confession judgments, and guarantor, in executing the settlement agreement, had voluntarily, knowingly, and intelligently waived full service; guarantor executed the settlement agreement with full knowledge of what he was signing, and received a release of claims worth more than $14 million. Orlando Residence, Ltd. v. Nelson (C.A.4 (S.C.) 2014) 565 Fed.Appx. 212, 2014 WL 1345975. Federal Civil Procedure 2396

2. Setting judgment aside

A confession made with a view to protect debtor’s property against debts present, or which he expects to contract, may be set aside for fraud by the subsequent creditors. Kohn v. Meyer (S.C. 1883) 19 S.C. 190. Fraudulent Conveyances 69(1)

A confession of judgment against a corporation by the president thereof is invalid, if it does not appear that he had authority to make it, or that it has been confirmed by acquiescence. Southern Porcelain Mfg. Co. v. Thew (S.C. 1873) 5 S.C. 5.

3. Correction of judgment

A judgment by confession has all the characteristics of an ordinary judgment and cannot be attacked collaterally; the remedy is by application to the court in which the confession is entered, to vacate or modify it, if it is insufficient in form or for any reason void. Southern Porcelain Mfg. Co. v. Thew (S.C. 1873) 5 S.C. 5.

**SECTION 15‑35‑360.** Judgment by confession; statement in writing and contents thereof.

 Before a judgment by confession shall be entered a statement in writing must be made and signed by the defendant and verified by his oath to the following effect:

 (1) It must state the amount for which judgment may be entered and authorize the entry of judgment therefor;

 (2) If it be for the money due or to become due, it must state concisely the facts out of which it arose and must show that the sum confessed therefor is justly due or to become due; and

 (3) If it be for the purpose of securing the plaintiff against a contingent liability, it must state concisely the facts constituting the liability and must show that the sum confessed therefor does not exceed the liability.

HISTORY: 1962 Code Section 10‑1536; 1952 Code Section 10‑1536; 1942 Code Section 671; 1932 Code Section 671; Civ. P. ‘22 Section 684; Civ. P. ‘12 Section 422; Civ. P. ‘02 Section 384; 1870 (14) 513 Section 400.

LIBRARY REFERENCES

Westlaw Key Number Searches: 228k29 to 228k70.

Judgment 29 to 70.

C.J.S. Judgments Sections 138 to 181, 363 to 369.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. South Carolina Rules of Civil Procedure Section 58.2, Discussion.

NOTES OF DECISIONS

In general 1

Affidavits 4

Amount of confession 3

Description of debt 2

1. In general

Judgment by confession satisfied the statutory requirements and was enforceable, even though, contrary to the judgment’s terms, a separate affidavit was not filed fixing the amount of the judgment, where the judgment was in writing, it set forth the amount of the judgment plus costs and attorney fees, and was signed by debtor and verified by oath, and filing of affidavit was permissive rather than mandatory. Linda Mc Company, Inc. v. Shore (S.C.App. 2007) 375 S.C. 432, 653 S.E.2d 279, certiorari granted, affirmed as modified 390 S.C. 543, 703 S.E.2d 499. Judgment 51

“For goods sold and delivered” is a sufficient statement. Ex parte Graham (S.C. 1899) 54 S.C. 163, 32 S.E. 67.

If the trial court finds the statement given under this section [former Code 1962 Section 10‑1536] insufficient, the question of whether the judgment, otherwise void, could be valid to the extent of costs charged by officers for services in obtaining the judgment, and referred to in the statement, not having been brought to the attention of the court, cannot be considered on appeal. Woods v. Bryan (S.C. 1894) 41 S.C. 74, 19 S.E. 218, 44 Am.St.Rep. 688.

2. Description of debt

A description of the debt without a statement of its consideration and the facts out of which it arose is insufficient. Ex parte Carrol, 17 SC 446 (1882). Kohn v Meyer, 19 SC 190 (1883).

Under this section [former Code 1962 Section 10‑1536] a statement that the sum confessed is for a certain note, without mention of the indebtedness for which the note was given, is insufficient, and the judgment entered thereon is void as to third persons. Woods v. Bryan (S.C. 1894) 41 S.C. 74, 19 S.E. 218, 44 Am.St.Rep. 688. Judgment 70

A judgment by confession, void for insufficient statement, cannot be made valid as to one not a party or privy by renewals of execution thereon, or by revival of the judgment, decided under former provisions permitting the renewal of executions or revival of judgments. Woods v. Bryan (S.C. 1894) 41 S.C. 74, 19 S.E. 218, 44 Am.St.Rep. 688. Judgment 25

3. Amount of confession

A confession for an amount less than what is actually due contains a sufficient statement. Weinges v. Cash (S.C. 1881) 15 S.C. 44.

A confession is not void merely because the value of the consideration is less than the amount of the confession. Wise v. Hardin (S.C. 1874) 5 S.C. 325.

Under South Carolina law, the appropriate comparison, in determining whether confession damages for commercial lender constituted an impermissible penalty, was to compare the $4 million confession of judgment securing guarantor’s payment obligations under settlement agreement, with the almost $14.5 million principal and interest on promissory notes stipulated to by lender and guarantor in settlement agreement, rather than comparing the $4 million confession of judgment with the $80,000 payment obligation under settlement agreement, which guarantor failed to pay in full, and thus, the confession damages were not an impermissible penalty. Orlando Residence, Ltd. v. Nelson (C.A.4 (S.C.) 2014) 565 Fed.Appx. 212, 2014 WL 1345975. Judgment 57

4. Affidavits

Judgment was not void for lack of an affidavit from judgment creditor setting forth exact amount due under judgment, although judgment by confession stated that judgment creditor could set forth by affidavit the correct amount of judgment by adjusting the amount owed for any credits previously applied by judgment creditor; entrance of an affidavit was permissive and not mandatory, and judgment satisfied statutory requirements for judgments by confession because it was made in writing, signed by judgment debtors, and verified by their oath. Linda Mc Co., Inc. v. Shore (S.C. 2010) 390 S.C. 543, 703 S.E.2d 499. Judgment 51

**SECTION 15‑35‑370.** Judgment by confession; entry of judgment.

 The statement may be filed with the clerk of court. The clerk shall enter a judgment endorsed upon the statement for the amount confessed and the fee provided by Section 8‑21‑310(11)(d), together with any necessary disbursements of the plaintiff. The statement and affidavit, with the judgment endorsed, shall thereupon become the judgment roll.

HISTORY: 1962 Code Section 10‑1537; 1952 Code Section 10‑1537; 1942 Code Section 672; 1932 Code Section 672; Civ. P. ‘22 Section 685; Civ. P. ‘12 Section 423; Civ. P. ‘02 Section 385; 1870 (14) 513 Section 401; 1884 (18) 693; 1996 Act No. 244, Section 2.

CROSS REFERENCES

Entry of judgment under South Carolina Rules of Civil Procedure, see Rule 58, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Searches: 228k60 to 228k70.

Judgment 60 to 70.

C.J.S. Judgments Sections 153, 169, 173 to 175, 177 to 181, 363 to 369.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Costs Section 51, Confessions of Judgment.

LAW REVIEW AND JOURNAL COMMENTARIES

Recovery of Attorneys’ Fees as Costs or Damages in South Carolina. 38 S.C. L. Rev. 823.

NOTES OF DECISIONS

In general 1

Correction of judgment 4

Entry on abstract of judgment 3

Place of entry 2

1. In general

Clerk of court may take confession of judgment in his own favor. Trimmier v Winsmith, 23 SC 449 (1885). Moore v Trimmier, 32 SC 511, 11 SE 548, 552 (1890).

Consent to confession of judgment is equivalent to voluntary appearance as to question of jurisdiction over person. Triangle Auto Spring Co. v. Gromlovitz (S.C. 1978) 270 S.C. 386, 242 S.E.2d 430. Courts 25

“The clerk” is the clerk of the county where defendant resides. Ex parte Ware Furniture Co. (S.C. 1897) 49 S.C. 20, 27 S.E. 9.

The debtor confessing judgment himself to clerk, the creditor cannot object that the clerk had no right to consider his application and statement and enroll the judgment. Trimmier v. Winsmith (S.C. 1885) 23 S.C. 449.

2. Place of entry

Place of entry of judgment is same as if formal action were pending. A judgment by confession can be entered only in the county in which judgment could have been obtained by action under former Code 1962 Section 10‑303, requiring actions to be tried in the county where defendant resides. Ex parte Ware Furniture Co., 49 SC 20, 27 SE 9 (1897). Martin & Co. v Bowie, 3 Hill (21 SCL) 225.

Confession of judgment on promissory note was properly enrolled in Richland County even though debtors were all Lexington County residents, since consent to confession of judgment was equivalent to voluntary appearance. Triangle Auto Spring Co. v. Gromlovitz (S.C. 1978) 270 S.C. 386, 242 S.E.2d 430. Judgment 16

3. Entry on abstract of judgment

An entry on abstract of judgments is sufficient. Ex parte Graham (S.C. 1899) 54 S.C. 163, 32 S.E. 67.

4. Correction of judgment

A judgment by confession has all the characteristics of an ordinary judgment and cannot be attacked collaterally. The remedy is by application to the court in which the confession is entered to vacate or modify it, if it is insufficient in form or for any reason void. Southern Porcelain Mfg. Co. v. Thew (S.C. 1873) 5 S.C. 5.

**SECTION 15‑35‑380.** Judgment by confession; execution thereon.

 Executions may be issued and enforced thereon in the same manner as upon judgments in other cases in such courts. When the debt for which the judgment is entered is not all due or is payable in installments and the installments are not all due the execution may issue upon such judgment for the collection of such installments as have become due and shall be in the usual form but shall have endorsed thereon, by the attorney or person issuing it, a direction to the sheriff to collect the amount due on such judgment, with interest and costs. Such amount shall be stated, with interest thereon, and the costs of the judgment. Notwithstanding the issue and collection of such execution the judgment shall remain as security for the installments thereafter to become due, and whenever any further installments become due execution may, in like manner, be issued for the collection and enforcement of such installments.

HISTORY: 1962 Code Section 10‑1538; 1952 Code Section 10‑1538; 1942 Code Section 672; 1932 Code Section 672; Civ. P. ‘22 Section 685; Civ. P. ‘12 Section 423; Civ. P. ‘02 Section 385; 1870 (14) 513 Section 401; 1884 (18) 693.

LIBRARY REFERENCES

Westlaw Key Number Search: 228k70.

Judgment 70.

C.J.S. Judgments Sections 177 to 179.

**SECTION 15‑35‑400.** Offer of judgment; acceptance; consequences of nonacceptance; attorney’s fees.

 (A) Offer of Judgment. Except in domestic relations actions, after commencement of any civil action based upon contract or seeking the recovery of money damages, whether or not other relief is sought, any party may, at any time more than twenty days before the actual trial date, file with the clerk of the court a written offer of judgment signed by the offeror or his attorney, directed to the opposing party, offering to take judgment in the offeror’s favor, or as the case may be, to allow judgment to be taken against the offeror, for a sum stated therein, for property, or to the effect specified in the offer. The offeror shall give notice of the offer of judgment to the offeree’s attorney, or if the offeree is not represented by an attorney, to the offeree himself, in accordance with the service rules for motions and other pleadings set forth in the South Carolina Rules of Civil Procedure. Within twenty days after notification, or at least ten days prior to the trial date, whichever date is earlier, the offeree or his attorney may file with the clerk of the court a written acceptance of the offer of judgment. Upon the filing, the clerk shall enter immediately judgment of the stipulation. If the offer of judgment is not accepted within twenty days after notification or prior to or on the tenth day before the actual trial date, whichever date occurs first, the offer shall be considered rejected and evidence thereof is not to be admissible except in a proceeding after the trial to fix costs, interests, attorney’s fees, and other recoverable monies. Any offeror may withdraw an offer of judgment prior to its acceptance or prior to the date on which it would be considered rejected by giving notice to the offeree or his attorney in accordance with the service rules for motions and other pleadings outlined in the South Carolina Rules of Civil Procedure. Any offeror may file a subsequent offer of judgment in any amount provided that the subsequent offer supersedes any earlier offer that was rejected by the offeree or withdrawn by the offeror, and, on filing, terminates any rights of interest or costs that may have been applicable to the superseded offer. Notwithstanding this provision, an offer is not considered rejected upon the making of a counteroffer by the offeree, but shall remain effective until accepted, rejected, or withdrawn as provided in this subsection. Any and all offers of judgment and any acceptance of offers of judgment must be included by the clerk in the record of the case.

 (B) Consequences of NonAcceptance. If an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall be allowed to recover from the offeree: (1) any administrative, filing, or other court costs from the date of the offer until judgment; (2) if the offeror is a plaintiff, eight percent interest computed on the amount of the verdict or award from the date of the offer; or (3) if the offeror is a defendant, a reduction from the judgment or award of eight percent interest computed on the amount of the verdict or award from the date of the offer.

 (C) This section shall not be interpreted to abrogate the contractual rights of any party concerning the recovery of attorney’s fees or other monies in accordance with the provisions of any written contract between the parties to the action.

HISTORY: 2005 Act No. 32, Section 3, eff July 1, 2005, for causes of action arising after that date.

CROSS REFERENCES

For South Carolina Rule of Civil Procedure governing offer of judgment and consequences of non‑acceptance, see SCRCP, Rule 68.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Compromise and Settlement Section 2, Background.

S.C. Jur. Costs Section 53, Offers of Judgment.

S.C. Jur. South Carolina Rules of Civil Procedure Section 68.1, Reporter’s Notes.

S.C. Jur. South Carolina Rules of Civil Procedure Section 68.2, Discussion.

ARTICLE 5

Judgment Roll; Abstracts; Filing or Docketing

**SECTION 15‑35‑510.** Clerk shall keep abstract of judgments.

 The clerk shall keep among the records of the court a book for the entry of judgments, to be called the “abstract of judgments.”

HISTORY: 1962 Code Section 10‑1541; 1952 Code Section 10‑1541; 1942 Code Section 662; 1932 Code Section 662; Civ. P. ‘22 Section 601; Civ. P. ‘12 Section 339; Civ. P. ‘02 Section 300; 1839 (11) 103 Section 8.

CROSS REFERENCES

Clerks keeping books under South Carolina Rules of Civil Procedure, see Rule 79, SCRCP.

Entry of judgment under South Carolina Rules of Civil Procedure, see Rule 58, SCRCP.

LIBRARY REFERENCES

Westlaw Key Number Searches: 228k270 to 228k293.

Judgment 270 to 293.

C.J.S. Judgments Sections 90, 93, 112 to 115, 117 to 137, 541.

LAW REVIEW AND JOURNAL COMMENTARIES

Judgment. 25 S.C. L. Rev. 445.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Ex parte Graham, 54 SC 163, 32 SE 67 (1899). Mason & Risch Vocalion Co. v Killough Music Co., 45 SC 11, 22 SE 755 (1895). British & American Mortg. Co. v Strait, 84 SC 141, 65 SE 1038 (1909). Farmers’ & Merchants’ Bank v Holliday, 108 SC 116, 93 SE 333 (1917). Reid v McGowan, 28 SC 74, 5 SE 215 (1888). Connor v McCoy, 83 SC 165, 65 SE 257 (1909).

The requirements of this section [former Code 1962 Section 10‑1541] are merely directory and ministerial. Connor v. McCoy (S.C. 1909) 83 S.C. 165, 65 S.E. 257.

**SECTION 15‑35‑520.** Entries in abstract of judgments; index to judgments.

 In this book shall be entered each case wherein judgment may be signed, including each case in dower, partition and escheat, after judgment or final order, with separate columns showing number of enrollment, names of parties, cause of action, attorney, date of judgment, amount of judgment, time of bearing interest, how judgment obtained, costs (separating attorney, clerk, sheriff, witness and total), kind of execution, date of issuing, sheriff’s return, and satisfaction, together with an index by the names of defendants and a cross index by the names of plaintiffs, each alphabetically arranged and kept in separate volumes with the number of enrollment of judgment. And whenever judgment against any party plaintiff or defendant has been entered the names of such party, and each of them, shall appear in the index and the name of the party plaintiff or defendant in whose favor judgment has been entered and each of them shall appear in the cross index.

HISTORY: 1962 Code Section 10‑1542; 1952 Code Section 10‑1542; 1942 Code Section 663; 1932 Code Section 663; Civ. P. ‘22 Section 602; Civ. P. ‘12 Section 340; Civ. P. ‘02 Section 301; 1897 (22) 436.

CROSS REFERENCES

Clerk keeping books under South Carolina Rules of Civil Procedure, see Rule 79, SCRCP.

Judgments against married women, see Section 15‑35‑160.

Requirement that a default judgment in favor of a creditor and against a consumer in an action arising from a consumer credit transaction be entered in the abstract of judgments, see Section 37‑5‑115.

LIBRARY REFERENCES

Westlaw Key Number Searches: 228k270 to 228k293.

Judgment 270 to 293.

C.J.S. Judgments Sections 90, 93, 112 to 115, 117 to 137, 541.

LAW REVIEW AND JOURNAL COMMENTARIES

Judgment. 25 S.C. L. Rev. 445.

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Provisions as directory and ministerial 2

1. In general

Under this section [former Code 1962 Section 10‑1542], former Code 1962 Section 10‑1541 and former Cir Ct Rule 3, the court, in the absence of evidence of special leave, will presume that a judgment was not entered until five days after the last day of the term, and that the judgment defendant did not have notice of the judgment until its entry. British & American Mortg. Co. v. Strait (S.C. 1909) 84 S.C. 141, 65 S.E. 1038.

2. Provisions as directory and ministerial

The requirements of this section [former Code 1962 Section 10‑1542] are merely directory and ministerial. Connor v. McCoy (S.C. 1909) 83 S.C. 165, 65 S.E. 257.

The entry of a judgment is a ministerial act, which consists in spreading upon the record a statement of the final conclusion reached by the court in the matter, thus furnishing external and incontestable evidence of the sentence given, and designed to stand as a perpetual memorial of its action. Mason & Risch Vocalion Co. v. Killough Music Co. (S.C. 1895) 45 S.C. 11, 22 S.E. 755.

Where a judgment was properly entered, but the formula lodged with the clerk was not dated and signed by him as is required by former Code 1962 Section 15‑1727, it was held that such judgment was not invalidated, the provision violated being directory only, and the object of enrollment being accomplished by the entry, which was properly made. Hardin v. Melton (S.C. 1888) 28 S.C. 38, 4 S.E. 805. Judgment 281

3. Entry of judgment as necessary for creation of lien—In general

The mere filing of a judgment roll, decree, or transcript thereof with the clerk constitutes no lien, until it is entered upon the book called the “abstract of judgments.” Farmers’ & Merchants’ Bank v. Holliday (S.C. 1917) 108 S.C. 116, 93 S.E. 333.

Entry of judgment is necessary for creation of lien. Reid v. McGowan (S.C. 1888) 28 S.C. 74, 5 S.E. 215.

4. —— Entry of judgment as constructive notice to parties dealing with property, entry of judgment as necessary for creation of lien

The failure to index a judgment as required by Section 15‑35‑520 deprives its recordation of its effectiveness as notice to subsequent purchasers. Thomas v. Thomas (S.C.App. 1985) 286 S.C. 294, 333 S.E.2d 76.

By this entry a lien is created upon the real estate of the judgment debtor, and such entry is constructive notice to all persons dealing with reference to the property affected by such lien. Ex parte Graham (S.C. 1899) 54 S.C. 163, 32 S.E. 67.

The object of the act in requiring the formulated judgment to go into the clerk’s office was to give notice to the world of the lien which had been established, so that third parties might deal with the property without peril, and also to enable the judgment creditor to make his money by fieri facias. Hardin v. Melton (S.C. 1888) 28 S.C. 38, 4 S.E. 805.

Entering and filing are the essential facts. Hardin v. Melton (S.C. 1888) 28 S.C. 38, 4 S.E. 805.

5. —— Entry of judgment as necessary before execution can properly issue, entry of judgment as necessary for creation of lien

A judgment obtained is not a lien upon personal property until execution is issued and levy made—and before execution can issue, the judgment must be entered. Powers v. Fidelity & Deposit Co. of Maryland (S.C. 1936) 180 S.C. 501, 186 S.E. 523. Judgment 766.1

The law contemplates an entry of the judgment in the book entitled “abstract of judgments” before the execution can be properly issued. Mason & Risch Vocalion Co. v. Killough Music Co. (S.C. 1895) 45 S.C. 11, 22 S.E. 755.

An execution issued before the judgment was entered in the “abstract of judgments” under the authority of this section [former Code 1962 Section 10‑1542] is of no effect. Mason & Risch Vocalion Co. v. Killough Music Co. (S.C. 1895) 45 S.C. 11, 22 S.E. 755.

6. Effect of failure to enter judgment on sale of land in partition proceedings

A confirmed sale of land for partition under a duly recorded deed cannot be collaterally impeached for the clerk’s failure to make up the roll and enter the decree according to this section [former Code 1962 Section 10‑1542] and former Code 1962 Section 10‑1541. Connor v. McCoy (S.C. 1909) 83 S.C. 165, 65 S.E. 257. Partition 108

The parties to an action for partition, who have accepted the proceeds of the sale made under a duly recorded decree, cannot question the validity of the sale on the ground that the clerk’s failure to make up and enter the judgment roll, contemplated by this section [former Code 1962 Section 10‑1542] and former Code 1962 Section 10‑1541, chilled the bidding. Connor v. McCoy (S.C. 1909) 83 S.C. 165, 65 S.E. 257. Partition 102

**SECTION 15‑35‑530.** Judgment roll.

 Unless the party or his attorney shall furnish a judgment roll the clerk, immediately after entering the judgment, shall attach together and file the following papers, which shall constitute the judgment roll:

 (1) In case the complaint be not answered by any defendant, the summons and complaint or copies thereof, proof of service and that no answer has been received, the report, if any, and a copy of the judgment; and

 (2) In all other cases, the summons, pleadings or copies thereof and a copy of the judgment, with any verdict or report, the offer of the defendant, exceptions, case and all orders and papers in any way involving the merits and necessarily affecting the judgment.

HISTORY: 1962 Code Section 10‑1543; 1952 Code Section 10‑1543; 1942 Code Section 664; 1932 Code Section 664; Civ. P. ‘22 Section 603; Civ. P. ‘12 Section 341; Civ. P. ‘02 Section 302; 1870 (14) 489 Section 305; 1929 (36) 251.

CROSS REFERENCES

Clerk keeping books under South Carolina Rules of Civil Procedure, see Rule 79, SCRCP.

Entry of judgment under South Carolina Rules of Civil Procedure, see Rule 58, SCRCP.

Judgments against married women, see Section 15‑35‑160.

LIBRARY REFERENCES

Westlaw Key Number Search: 228k277.

Judgment 277.

C.J.S. Judgments Section 130.

LAW REVIEW AND JOURNAL COMMENTARIES

Judgment. 25 S.C. L. Rev. 445.

NOTES OF DECISIONS

In general 1

1. In general

Where an appeal was dismissed by the clerk of the Supreme Court for failure of appellants to file the return within the prescribed time after the record constituting such return had been completed, and it appeared that the return was filed within 40 days after the case, as prepared for the Supreme Court, was finally settled, it was held that the word “case,” as used in item (2) of this section [former Code 1962 Section 10‑1543], referred to the case prepared on application for a new trial, addressed to the circuit court as prescribed by statute, and not to the case as prepared for argument in the Supreme Court; and, the return not having been filed within the prescribed time, the clerk properly dismissed the appeal. Tribble v Poore, 28 SC 565, 6 SE 577 (1888). Cummings v Wingo, 28 SC 610, 7 SE 48 (1888).

Cited in Powers v. Fidelity & Deposit Co. of Maryland (S.C. 1936) 180 S.C. 501, 186 S.E. 523.

The papers spoken of in this section [former Code 1962 Section 10‑1543] are the papers leading up to the judgment, and not those prepared after the judgment has been entered. Tribble v. Poore (S.C. 1888) 28 S.C. 565, 6 S.E. 577.

**SECTION 15‑35‑540.** Docketing transcript with clerks of other courts; effect thereof.

 A transcript of a final judgment of any court of record of this State or of any district or circuit court of the United States within this State directing in whole or in part the payment of money, may be docketed with the clerk of the court of common pleas in any county and when so docketed shall be entered upon the book of abstracts and duly indexed and shall have the same force and effect as a judgment of that court. Any such transcript shall set out the names of the parties, plaintiff and defendant, the attorneys of record, the date and amount of the judgment, the time from which interest is to be computed and the amount of costs.

HISTORY: 1962 Code Section 10‑1544; 1952 Code Section 10‑1544; 1942 Code Sections 664, 743; 1932 Code Sections 664, 743; Civ. P. ‘22 Sections 603, 610; Civ. P. ‘12 Sections 341, 348; Civ. P. ‘02 Sections 302, 309; 1870 (14) 489 Section 305, 491 Section 313; 1873 (15) 498; 1884 (18) 749; 1885 (19) 229; 1909 (26) 39; 1910 (26) 621; 1924 (33) 940; 1928 (35) 1223; 1929 (36) 251; 1946 (44) 1436.

CROSS REFERENCES

Docketing judgments of magistrates in offices of circuit courts, see Section 22‑3‑300.

Entry of judgment under South Carolina Rules of Civil Procedure, see Rule 58, SCRCP.

Lien of judgments upon entry and indexing in abstract of judgments, see Section 15‑35‑810.

LIBRARY REFERENCES

Westlaw Key Number Searches: 228k270 to 228k293.

Judgment 270 to 293.

C.J.S. Judgments Sections 90, 93, 112 to 115, 117 to 137, 541.

LAW REVIEW AND JOURNAL COMMENTARIES

Judgment. 25 S.C. L. Rev. 445.

Attorney General’s Opinions

Out‑of‑state district court judgments properly registered with district courts in this State may be docketed with county clerks of court in this State pursuant to Section 15‑35‑540. 1986 Op Atty Gen, No. 86‑121, p 353.

Entering foreign judgment. Clerks of court are not to enter a foreign judgment upon the book of abstracts of judgments until such foreign judgment is reduced to a local judgment in this State. 1966‑67 Op Atty Gen, No 2224, p 21.

Additional fees should not be charged for recording amended transcriptions of judgments from magistrate’s courts and federal district courts. Op Atty Gen 92‑05.

NOTES OF DECISIONS

In general 1

1. In general

A plaintiff was entitled, pursuant to Section 15‑35‑540, to enter in the Court of Common Pleas transcripts of judgments issued by the United States District Court for the District of South Carolina which were originally obtained in the United States District Court for the District of New Jersey and subsequently registered in South Carolina pursuant to 28 USC Section 1963. Integrity Ins. Co. v. Taylor (S.C.App. 1988) 295 S.C. 143, 367 S.E.2d 441.

Cited in Farmers’ & Merchants’ Bank v. Holliday (S.C. 1917) 108 S.C. 116, 93 S.E. 333.

“Final judgment” applies to the circuit court. Garrison v. Dougherty (S.C. 1883) 18 S.C. 486.

Transcript of final judgment is a copy of the entry in judgment book. Harrison v. Southern Porcelain Mfg. Co. (S.C. 1878) 10 S.C. 278.

Transcript is good, although certified to be from docket of judgments instead of judgment book, and without the clerk’s name but with his seal. Harrison v. Southern Porcelain Mfg. Co. (S.C. 1878) 10 S.C. 278.

ARTICLE 7

Satisfaction or Discharge

**SECTION 15‑35‑610.** Payment by surety shall not discharge judgment against principal.

 The payment by a surety of a debt secured by judgment or decree shall not operate as a satisfaction of such judgment or decree against the principal debtor, but by such payment the surety shall be entitled to all the rights and privileges of the plaintiff in such judgment or decree.

HISTORY: 1962 Code Section 10‑1551; 1952 Code Section 10‑1551; 1942 Code Section 7036; 1932 Code Section 7036; Civ. C. ‘22 Section 5596; Civ. C. ‘12 Section 3942; Civ. C. ‘02 Section 2839; G. S. 2180; R. S. 2309; 1876 (16) 137.

LIBRARY REFERENCES

Westlaw Key Number Searches: 228k874 to 228k899.

Judgment 874 to 899.

C.J.S. Judgments Sections 656 to 676, 678 to 692.

NOTES OF DECISIONS

In general 1

1. In general

Applied in Equitable Surety Co. v Illinois Surety Co., 111 SC 400, 98 SE 144 (1919). Garvin v Garvin, 27 SC 472, 4 SE 148 (1887).

For additional related cases, see Equitable Surety Co. v Illinois Surety Co., 108 SC 364, 94 SE 882 (1918). McIntosh v Wright, Rich Eq Cas (9 SC Eq) 385. Thompson v Palmer, 2 Rich Eq (19 SC Eq) 32. King v Aughtry, 3 Strob Eq (22 SC Eq) 149. Thompson v Palmer, 3 Rich Eq (24 SC Eq) 139. Garvin v Garvin, 31 SC 581, 10 SE 507 (1889).

“Surety” embraces endorser. Wilson v Wright, 7 Rich (41 SCL) 399. Patterson v Baxley, 33 SC 354, 11 SE 1065 (1890).

If satisfaction has been entered, the surety may have it set aside. Perkins v. Kershaw (S.C. 1833).

This section [former Code 1962 Section 10‑1551] applies where there is judgment against principal and none against surety. Kinard v. Baird (S.C. 1884) 20 S.C. 377.

**SECTION 15‑35‑620.** Payment by one surety shall not discharge judgment as to cosurety.

 In case any surety in such judgment or decree shall pay it such payment shall not operate as a satisfaction of such judgment or decree as against the cosurety or sureties thereto, but such surety shall have the right to enforce the execution on such judgment or decree against his cosurety or sureties or for contribution.

HISTORY: 1962 Code Section 10‑1552; 1952 Code Section 10‑1552; 1942 Code Section 7037; 1932 Code Section 7037; Civ. C. ‘22 Section 5597; Civ. C. ‘12 Section 3943; Civ. C. ‘02 Section 2840; G. S. 2181; R. S. 2310; 1876 (16) 137.

LIBRARY REFERENCES

Westlaw Key Number Searches: 228k874 to 228k899.

Judgment 874 to 899.

C.J.S. Judgments Sections 656 to 676, 678 to 692.

**SECTION 15‑35‑630.** Discharge of bankrupts from judgments.

 Any time after one year has elapsed since a bankrupt was discharged from his debts, pursuant to the acts of Congress relating to bankruptcy, the bankrupt, his receiver, trustee or any other interested person may apply, upon proof of the bankrupt’s discharge, to the court in which a judgment was rendered against him or, if rendered in a court not of record, to the court of which it has become a judgment by docketing it therein for an order directing the judgment to be cancelled and discharged of record. If it appears upon the hearing that the bankrupt has been discharged from the payment of that judgment or the debt upon which such judgment was recovered, an order must be made directing the judgment to be cancelled and discharged of record. And thereupon the clerk of the court shall cancel and discharge the judgment by marking on the docket thereof that it is cancelled and discharged by order of the court, giving the date of entry of the order of discharge.

 The provisions of this section shall not operate to discharge any debt, judgment or claim that is not dischargeable under the Federal Bankruptcy Act or the law of this State.

HISTORY: 1962 Code Section 10‑1553; 1952 Code Section 10‑1553; 1942 Code Section 664‑1; 1933 (38) 505.

CROSS REFERENCES

Docketing judgments of magistrates in offices of circuit courts, see Section 22‑3‑300.

LIBRARY REFERENCES

Westlaw Key Number Search: 228k894.

Judgment 894.

C.J.S. Judgments Section 687.

Attorney General’s Opinions

Judgments upon Commission Orders may be cancelled by the Commission’s evidence that the judgment creditor has cancelled the judgment. 1987, Op Atty Gen, No. 87‑91, p 245.

NOTES OF DECISIONS

In general 1

1. In general

**SECTION 15‑35‑630 was not intended to enlarge upon the relief granted a bankrupt through bankruptcy proceedings, but rather, it is clear that the Legislature intended that judgments or debts surviving bankruptcy proceedings would not be discharged under that section.** Ducker v. Standard Supply Co., Inc. (S.C. 1984) 280 S.C. 157, 311 S.E.2d 728.

**SECTION 15‑35‑640.** Discharge of bankrupts from judgments; notice of application.

 Notice of the application, accompanied with copies of the papers upon which it is made, must be served upon the judgment creditor or his attorney of record in the judgment, in the same manner as provided in the rules of the circuit courts of this State for the service of process, if the residence or place of business of such creditor or his attorney is known. But if such residence or place of business is unknown and cannot be ascertained after due diligence or if such creditor is a nonresident of this State and if his attorney is dead, removed from or cannot be found within the State, upon proof of such facts by affidavit, a judge of the court may make an order that the notice of such application be published in a newspaper designated therein once a week for not more than three weeks. Such publication, shown by the affidavit of the publisher, shall be sufficient service upon such judgment creditor of the application.

HISTORY: 1962 Code Section 10‑1554; 1952 Code Section 10‑1554; 1942 Code Section 664‑1; 1933 (38) 505.

LIBRARY REFERENCES

Westlaw Key Number Search: 228k894.

Judgment 894.

C.J.S. Judgments Section 687.

**SECTION 15‑35‑650.** Entry of cancellation on margin or index of judgment.

 All clerks of court shall enter the word “cancelled,” together with the signature of such officer, upon the margin or across the indices of judgments when any such judgment is duly cancelled of record by the judgment creditor or his assignee. Such cancellation and signature shall be entered in the margin opposite the names of the judgment debtor and judgment creditor, respectively, or across such names, and the like cancellation shall on the demand of the judgment debtor, or his legal representative, be made on judgments theretofore cancelled of record. Upon failure of such clerk of court to comply with the provisions of this section, he shall, in each instance, forfeit and pay to the judgment debtor the sum of ten dollars, to be recovered in any court of competent jurisdiction, and if such failure be wilful he shall, on conviction, be fined not more than one hundred dollars or be imprisoned not more than thirty days, in the discretion of the court. The solicitor of each circuit shall see that the provisions of this section are complied with or shall forthwith prosecute violators thereof.

HISTORY: 1962 Code Section 10‑1555; 1952 Code Section 10‑1555; 1942 Code Section 8709; 1932 Code Section 8709; Civ. C. ‘22 Section 5230; Cr. C. ‘22 Section 536; Civ. C. ‘12 Section 3466; 1910 (26) 587; 1911 (27) 164; 1912 (27) 628.

LIBRARY REFERENCES

Westlaw Key Number Search: 228k897.

Judgment 897.

C.J.S. Judgments Section 686.

ARTICLE 9

Lien

**SECTION 15‑35‑810.** Judgments lien on real estate continue for ten years.

 Final judgments and decrees entered in any court of record in this State subsequent to November 25, 1873, or in any circuit or district court of the United States within this State or of any other Federal court the final judgments and decrees of which, by act of Congress, shall be declared to create a lien, shall constitute a lien upon the real estate of the judgment debtor situate in any county in this State in which the judgment or transcript thereof is entered upon the book of abstracts of judgments and duly indexed, the lien to begin from the time of such entry on the book of abstracts and indices and to continue for a period of ten years from the date of such final judgment or decree.

HISTORY: 1962 Code Section 10‑1561; 1952 Code Section 10‑1561; 1942 Code Section 743; 1932 Code Section 743; Civ. P. ‘22 Section 610; Civ. P. ‘12 Section 348; Civ. P. ‘02 Section 309; 1870 (14) 491 Section 313; 1873 (15) 498; 1884 (18) 749; 1885 (19) 229; 1909 (26) 39; 1910 (26) 621; 1924 (33) 940; 1928 (35) 1223; 1946 (44) 1436.

CROSS REFERENCES

Docketing judgments of magistrates in offices of circuit courts, see Section 22‑3‑300.

Docketing transcripts of judgments with clerks of other courts, see Section 15‑35‑540.

Liens on real estate after 20 years, see Section 29‑1‑10.

LIBRARY REFERENCES

Westlaw Key Number Search: 228k794.

Judgment 794.

C.J.S. Judgments Section 596.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Covenants Section 44, Conditions Constituting Breach.

S.C. Jur. Lis Pendens Section 20, Sheriff’s Sales on Execution.

Attorney General’s Opinions

A lien for South Carolina income taxes is valid for a period of ten years from the date of recordation thereof. 1968‑69 Op Atty Gen, No 2750, p 224.

No time limit exists on the collection of fines, fees and restitution imposed by the Court of General Sessions. 1994 Op Atty Gen, No. 94‑10, p. 29.

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1. In general

Cited in Latimer v Trowbridge, 52 SC 193, 29 SE 634 (1898). Rowland v Shockley, 43 SC 246, 21 SE 21 (1895). Lyles v Lyles, 71 SC 391, 51 SE 113 (1905). Amick v Amick, 59 SC 70, 37 SE 39 (1900). Belknap v Greene, 56 SC 119, 34 SE 26 (1899). Witt v Leysath, 160 SC 251, 158 SE 226 (1931). Powers v Fidelity & Deposit Co., 180 SC 501, 186 SE 523 (1936). Hardee v Lynch, 212 SC 6, 46 SE2d 179 (1948).

Applied in Gilfillin v Rector, 131 SC 84, 126 SE 761 (1925). In re Glenn, 2 F Supp 579 (1932). Harvey v Gibson, 190 SC 98, 2 SE2d 385 (1939).

A South Carolina judgment entered upon the book of abstracts and duly indexed constitutes a lien upon the real estate of the judgment debtor located in the county where the judgment is indexed for a period of ten years. Commercial Credit Loans, Inc. v. Riddle (S.C.App. 1999) 334 S.C. 176, 512 S.E.2d 123, rehearing denied. Judgment 778

Hunting and fishing rights constitute personal property for the purpose of perfecting a judgment lien under Section 15‑35‑810. Ex parte Bedingfield (S.C. 1984) 283 S.C. 561, 324 S.E.2d 312. Judgment 777

Under Section 15‑35‑810, a judgment represents a judicial declaration that a judgment debtor is personally indebted to a judgment creditor for a sum of money, and a judgment may establish a lien upon the real property of the debtor. Ducker v. Standard Supply Co., Inc. (S.C. 1984) 280 S.C. 157, 311 S.E.2d 728. Judgment 1; Judgment 754

Judgment lien attaches, not only to property owned by debtor at time of rendition of judgment, but also to all that he may subsequently acquire during the 10‑year life of the lien. South Carolina Tax Commission v. Belk (S.C. 1976) 266 S.C. 539, 225 S.E.2d 177.

It is not essential to proceed under execution against real estate in order to perfect the statutory lien mentioned in this section [former Code 1962 Section 10‑1561]. U.S. v. State (S.C. 1955) 227 S.C. 187, 87 S.E.2d 577.

For effect of 1946 Act No. 516 [1946 (44) 1436] on this section [former Code 1962 Section 10‑1561], see U.S. Rubber Co. v. McManus (S.C. 1947) 211 S.C. 342, 45 S.E.2d 335.

The time within which a judgment creditor may enforce his judgment being fixed by statute, there is no room for the application of the doctrine of laches as a ground for injunction. Ex parte City of Anderson (S.C. 1909) 82 S.C. 131, 63 S.E. 354. Creditors’ Remedies 131

An order of a bankruptcy court directing a sale of the bankrupt’s property without mentioning liens, only authorizes a sale subject to the existing liens, including a valid judgment lien. Ex parte City of Anderson (S.C. 1909) 82 S.C. 131, 63 S.E. 354. Bankruptcy 3072(1)

It is the duty of the clerk to publish the judgments which constitute a lien on land as set out in this section [former Code 1962 Section 10‑1561], so as to protect innocent third parties. Ex parte Graham (S.C. 1899) 54 S.C. 163, 32 S.E. 67.

The provisions in this section [former Code 1962 Section 10‑1561] with respect to judgment liens are, in express terms, prospective only. Garvin v. Garvin (S.C. 1891) 34 S.C. 388, 13 S.E. 625.

The final adjudication of the rights of parties litigant is the judgment of the court, whether it be in a case at law or one involving an equity cause, and the rules enacted and established for the enforcement of liens of judgments apply to all, so that now a decree in chancery is a judgment to all intents and purposes, and is governed by the requirements of the Code and acts on the subject of judgments as fully as a judgment at law. Reid v. McGowan (S.C. 1888) 28 S.C. 74, 5 S.E. 215.

Lien allowed to decrees and judgments is no part of remedy of enforcement and an act which prevented such lien in absence of levy does not impair the obligation of the contract and is valid. Moore v. Holland (S.C. 1881) 16 S.C. 15.

A levy being made under an execution having active energy, the sheriff may sell at any time thereafter while the lien of the judgment remains. Adickes v. Lowry (S.C. 1879) 12 S.C. 97. Creditors’ Remedies 488

2. Duration of statutory lien

A judgment lien is purely statutory. Its duration as fixed by the legislature 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. Hughes v Slater, 214 SC 305, 52 SE2d 419 (1949). Garrison v Owens, 258 SC 442, 189 SE2d 31 (1972).

Ten‑year enforcement period applicable to creditor’s action to execute domesticated judgment against debtor’s property ran from the date of entry of the South Carolina judgment as opposed to the date of entry of the original foreign judgement. Commercial Credit Loans, Inc. v. Riddle (S.C.App. 1999) 334 S.C. 176, 512 S.E.2d 123, rehearing denied. Creditors’ Remedies 345

A receiver’s action to recover assets from former officers of a corporation was properly dismissed where the suit was commenced more than 10 years after the date the judgment was entered since the 10‑year period during which a judgment is enforceable was not tolled by appeals taken by the corporation during the tenure of the action. Wells ex rel. A.C. Sutton & Sons, Inc. v. Sutton (S.C.App. 1989) 299 S.C. 19, 382 S.E.2d 14.

A judgment constitutes a lien for a period of ten years from the date thereof and may not be revived. Garrison v. Owens (S.C. 1972) 258 S.C. 442, 189 S.E.2d 31.

The lien of a judgment is absolutely extinguished and ended after the expiration of ten years from the date of entry. Garrison v. Owens (S.C. 1972) 258 S.C. 442, 189 S.E.2d 31. Judgment 795(1)

3. When lien created

This section [former Code 1962 Section 10‑1561] creates a lien only upon the real estate of the judgment debtor situate in any county in this State in which the judgment or transcript thereof is entered upon the Book of Abstract of Judgments and duly indexed, the lien to begin from the time of such entry. State Farm Mut. Auto. Ins. Co. v. Hamilton (D.C.S.C. 1971) 326 F.Supp. 931. Judgment 784

A judgment in this State does not create a lien upon the personal property of a judgment debtor until an actual levy is made upon such personal property. State Farm Mut. Auto. Ins. Co. v. Hamilton (D.C.S.C. 1971) 326 F.Supp. 931. Judgment 772

Liens did not attach to real estate where, at time of filing of judgments, debtor held only a vendee’s equitable title in real estate, since such title is not subject to lien of judgment. FCX, Inc. v. Long Meadow Farms, Inc. (S.C. 1977) 269 S.C. 202, 237 S.E.2d 50. Judgment 780(3)

Recorded tax warrants against husband attached to land transferred from husband’s solely owned corporation to husband at moment he obtained title, even though he immediately transferred the land to his wife as part of settlement of property and alimony rights in divorce action and thus acted merely as a conduit. South Carolina Tax Commission v. Belk (S.C. 1976) 266 S.C. 539, 225 S.E.2d 177.

Under this section [former Code 1962 Section 10‑1561] as construed with former Code 1962 Sections 10‑1541 to 10‑1544, a judgment does not become a lien on the real estate of a judgment debtor in a county other than that where judgment was rendered by a mere filing of the transcript of judgment with the clerk of court of that county, but only on being entered on the abstract of judgments. Farmers’ & Merchants’ Bank v. Holliday (S.C. 1917) 108 S.C. 116, 93 S.E. 333. Judgment 768(1)

Under this section [former Code 1962 Section 10‑1561] a judgment does not create a lien until entered, and such lien must be postponed to a mortgage, executed before its entry, to one who had no notice of the judgment. Reid v. McGowan (S.C. 1888) 28 S.C. 74, 5 S.E. 215.

4. Priority of liens

An unrecorded mortgage has priority over a judgment obtained after, on a debt contracted before, its execution, although the judgment creditor had no notice of the mortgage until after the judgment had been entered. The judgment creditor cannot be considered a “subsequent creditor” within the meaning of the recording act. Prudential Ins. Co. v Wadford, 232 SC 476, 102 SE2d 889 (1958). Carraway v Carraway, 27 SC 576, 5 SE 157 (1886). Armstrong v Carwile, 56 SC 463, 35 SE 196 (1899).

In a case involving the distribution of automobile liability insurance coverage among three judgment creditors of the insured, the contention of one of the claimants that her claim had priority over the others, citing this section [former Code 1962 Section 10‑1561], had no merit whatever. State Farm Mut. Auto. Ins. Co. v. Hamilton (D.C.S.C. 1971) 326 F.Supp. 931.

Junior lien holder’s absence from senior lien holder’s foreclosure action against debtor did not prejudice him, where the debt owed to senior lien holder substantially exceeded the foreclosed property’s value such that any resale of the property would not have benefited junior lien holder. Green Tree Servicing, LLC v. Adams (S.C.App. 2007) 375 S.C. 583, 654 S.E.2d 100. Mortgages And Deeds Of Trust 2215

Since no judgment creditor had lien upon equitable interest, proceeds received from such asset should be distributed ratably among all judgment creditors, rather than granting priority either to alleged lienholder or in accordance with creditors’ respective dates of filing, unless a judgment creditor is entitled to priority by reason of its alleged superior diligence. FCX, Inc. v. Long Meadow Farms, Inc. (S.C. 1977) 269 S.C. 202, 237 S.E.2d 50.

Action of creditor in preserving debtor’s equitable interest in real estate through agreement assuming burden regarding contract of sale was not sufficient justification for granting creditor preference in payment of its judgment not otherwise sanctioned by law. FCX, Inc. v. Long Meadow Farms, Inc. (S.C. 1977) 269 S.C. 202, 237 S.E.2d 50.

Equitable principle of superior diligence should be sparingly applied in granting one judgment creditor priority over other judgment creditors. FCX, Inc. v. Long Meadow Farms, Inc. (S.C. 1977) 269 S.C. 202, 237 S.E.2d 50.

Federal income tax liens are inferior to specific and perfected liens of a judgment creditor and for income taxes of the State, and also to those taxes owing to a county and a town which had accrued prior to the filing of the Federal liens in the office of the clerk of court, where it was not shown when the assessment lists were received in the office of the collector. U.S. v. State (S.C. 1955) 227 S.C. 187, 87 S.E.2d 577.

A transcript of a judgment from another county entered on the same day as a judgment from the county in which the land is situated has no priority over the home county judgment, though it may have been rendered in the other county on a prior date. Farmers’ & Merchants’ Bank v. Holliday (S.C. 1917) 108 S.C. 116, 93 S.E. 333.

A sale of land under a junior lien will be referred to a senior lien where there are two judgments against the same party, the eldest of which is a lien on the land and the sheriff has endorsed a levy thereof on both executions. Arnold v. McKellar (S.C. 1878) 9 S.C. 335. Creditors’ Remedies 417

5. Tolling

Mortgagee could pursue foreclosure action after judgment lien was extinguished by virtue of statute of limitations ten years after judgment against mortgagor on promissory note. Lever v. Lighting Galleries, Inc. (S.C. 2007) 374 S.C. 30, 647 S.E.2d 214, rehearing denied. Mortgages And Deeds Of Trust 1624(2)

Ten‑year time period in which judgment creditor had to execute on federal judgment was not tolled during the period of time that judgment debtor was out of South Carolina; statute that tolled limitations period for causes of action that accrued against people that were out of State did not apply to execution of an already obtained judgment. Home Port Rentals, Inc. v. Moore (S.C. 2006) 369 S.C. 493, 632 S.E.2d 862. Creditors’ Remedies 345

**SECTION 15‑35‑820.** Judgments do not constitute a lien on exempt property.

 Section 15‑35‑810 shall not be construed so as to make final judgments in any case a lien on the real property of the judgment debtor exempt from attachment, levy and sale by the Constitution.

HISTORY: 1962 Code Section 10‑1562; 1952 Code Section 10‑1562; 1942 Code Section 743; 1932 Code Section 743; Civ. P. ‘22 Section 610; Civ. P. ‘12 Section 348; Civ. P. ‘02 Section 309; 1870 (14) 491 Section 313; 1873 (15) 498; 1884 (18) 749; 1885 (19) 229; 1909 (26) 39; 1910 (26) 621; 1924 (33) 940; 1928 (35) 1223; 1946 (44) 1436.

CROSS REFERENCES

Constitutional provisions as to exemptions, see SC Const Art 3, Section 28.

LIBRARY REFERENCES

Westlaw Key Number Search: 228k775.

Judgment 775.

C.J.S. Judgments Sections 552, 554, 569.

NOTES OF DECISIONS

In general 1

1. In general

A judgment does not constitute a lien on the land of the debtor exempt as a homestead, either in his or another’s hands, and whether it has been set off as a homestead or not. Cantrell v Fowler, 24 SC 424 (1886). Bailey & Sons v Wood, 71 SC 36, 50 SE 631 (1905).

Under this section [former Code 1962 Section 10‑1562], an execution on a judgment against a debtor cannot be enforced against a right of homestead in the debtor, and lands sold by the debtor can be subjected under execution only to the excess over the homestead, even though the homestead has not been set apart. Martin v Bowie, 37 SC 102, 15 SE 736 (1892). Ketchin v McCarley, 26 SC 1, 11 SE 1099 (1886).

Where a homestead in land was once set apart and duly recorded, and no exceptions were filed to the return of the commissioner, it could never be sold to satisfy the judgment in which it was set apart, though there may have been errors of law in the assignment. Sloan v. Hunter (S.C. 1903) 65 S.C. 235, 43 S.E. 788. Homestead 201

A levy is not a condition precedent to the right to make application for homestead, and the judgment debtor may, where there is an unlevied execution in the hands of the sheriff, notify the sheriff that he demands that his homestead be set off. Nance v. Hill (S.C. 1887) 26 S.C. 227, 1 S.E. 897.

**SECTION 15‑35‑830.** Payment of taxes by lienholders.

 Any person holding a lien by way of a judgment upon any property, the subject of taxation, upon which the judgment debtor shall have failed to pay the tax or upon which there may exist a lien for taxes on any other property of the judgment debtor may, at any time before the sale thereof for delinquent taxes, as provided in Title 12, pay the tax on all the property of the judgment debtor, with any costs, penalties or assessments which may have accrued thereon. And thereupon he shall be entitled, as against the judgment debtor, his representatives, privies or assigns, to include the amount so paid and all interest thereafter accruing thereon in the debt secured by such judgment. If a judgment creditor pay such taxes he shall have the first lien on the property subject to such tax to the extent of the taxes so paid with interest from the date of payment.

HISTORY: 1962 Code Section 10‑1563; 1952 Code Section 10‑1563.1; 1942 Code Section 2783; 1932 Code Section 2831; Civ. C. ‘22 Section 506; Civ. C. ‘12 Section 455; Civ. C. ‘02 Section 407; G. S. 277; R. S. 334; 1882 (18) 1028; 1900 (23) 352; 1922 (32) 927; 1943 (43) 126.

LIBRARY REFERENCES

Westlaw Key Number Search: 371k531.

Taxation 531.

C.J.S. Taxation Sections 865 to 874.

**SECTION 15‑35‑840.** Attorneys as agents of judgment creditors for service of process.

 Every judgment creditor who enters a judgment in any court of record in this State and does not at the same time enter as part thereof the appointment of an agent upon whom process may be served in any action or proceeding affecting any real estate upon which the judgment may at any time constitute a lien shall be deemed thereby to have constituted the attorney of record making the entry of such judgment as the agent of such judgment creditor and of his successor in interest for the purpose of accepting service of or being served with process in any such action.

HISTORY: 1962 Code Section 10‑1564; 1952 Code Section 10‑1564; 1942 Code Section 664‑2; 1941 (42) 222.

LIBRARY REFERENCES

Westlaw Key Number Search: 313k58.

Process 58.

C.J.S. Process Section 39.

**SECTION 15‑35‑850.** Termination of agency for service of process.

 Any such judgment creditor and his successor in interest may terminate such agency of such attorney or of such other agent appointed as provided in Section 15‑35‑840, by enrolling and entering in the record at any time a revocation of the agency and an appointment of some other competent person, whose name and address shall be clearly stated therein and who shall be a resident of this State, as such process agent.

HISTORY: 1962 Code Section 10‑1565; 1952 Code Section 10‑1565; 1942 Code Section 664‑2; 1941 (42) 222.

LIBRARY REFERENCES

Westlaw Key Number Search: 313k58.

Process 58.

C.J.S. Process Section 39.

**SECTION 15‑35‑860.** Enrollment of appointments and revocations.

 The clerk of court shall forthwith enroll all appointments and revocations of appointments of attorneys filed under Sections 15‑35‑840 and 15‑35‑850 and shall enter on the abstract of judgments a reference thereto and shall receive a fee of twenty‑five cents for every such entry to be paid by the judgment creditor at the time of such filing. But such enrollment and entry shall not affect service of process made prior thereto.

HISTORY: 1962 Code Section 10‑1566; 1952 Code Section 10‑1566; 1942 Code Section 664‑2; 1941 (42) 222.

LIBRARY REFERENCES

Westlaw Key Number Searches: 79k64; 313k58.

Clerks of Courts 64.

Process 58.

C.J.S. Courts Sections 249, 254.

C.J.S. Process Section 39.

**SECTION 15‑35‑870.** Service of process in other manner suffices.

 In any event service of process upon the judgment creditor in any other manner provided by law shall be sufficient.

HISTORY: 1962 Code Section 10‑1567; 1952 Code Section 10‑1567; 1942 Code Section 664‑2; 1941 (42) 222.

LIBRARY REFERENCES

Westlaw Key Number Searches: 313k48 to 313k111.

Process 48 to 111.

C.J.S. Process Sections 26, 33 to 76.

ARTICLE 11

Uniform Enforcement of Foreign Judgments

**SECTION 15‑35‑900.** Short title.

 This article may be cited as the Uniform Enforcement of Foreign Judgments Act.

HISTORY: 1993 Act No. 80, Section 1.

LIBRARY REFERENCES

50 C.J.S., Judgments Sections 888 et seq.

Westlaw Key Number Searches: 228k813 to 228k832.

Judgment 813 to 832.

C.J.S. Judgments Sections 965 to 1038, 1053.

RESEARCH REFERENCES

Encyclopedias

9 Am. Jur. Proof of Facts 3d 687, Invalidity of Judgment of Court of Foreign Country.

56 Am. Jur. Trials 529, Strategies for Effective Management of Crossborder Recognition and Enforcement of American Money Judgments.

S.C. Jur. Clerks of Court Section 11, Fees and Costs.

United States Supreme Court Annotations

Full faith and credit as to state statutes governing time limitations on action on foreign judgment—federal cases. 17 L Ed 2d 952.

Attorney General’s Opinions

The ten year statute of limitations applies to the enforcement of judgments rendered in foreign countries, but the limitation period does not begin to run until the defendant moves to South Carolina. S.C. Op.Atty.Gen. (December 12, 2016) 2016 WL 7423323.

**SECTION 15‑35‑910.** Definitions.

 As used in this article, unless the context requires otherwise:

 (1) “Foreign judgment” means a judgment, decree, or order of a court of the United States or a court of another state which is entitled to full faith and credit in this State, except any orders as defined in Section 63‑17‑2910 (the Uniform Interstate Family Support Act) or a “custody decree”, as defined in Section 63‑15‑302 (the Uniform Child Custody Jurisdiction Act).

 (2) “Judgment debtor” means the party against whom a foreign judgment has been rendered.

 (3) “Judgment creditor” means the party in whose favor a foreign judgment has been rendered.

HISTORY: 1993 Act No. 80, Section 1; 1994 Act No. 494, Section 2.

Code Commissioner’s Note

At the direction of the Code Commissioner, the reference in item (1) to Section 20‑7‑786 was changed to Section 20‑7‑6002, section 20‑7‑786 having been repealed by 2007 Act No. 60; and in accordance with 2008 Act No. 361 (Children’s Code), the references in item (1) to Sections 20‑17‑2910 and 20‑7‑6002 were changed to 63‑17‑2910 and 63‑15‑302, respectively.

LIBRARY REFERENCES

Westlaw Key Number Searches: 228k813 to 228k832.

Judgment 813 to 832.

C.J.S. Judgments Sections 965 to 1038, 1053.

**SECTION 15‑35‑920.** Filing of foreign judgment and affidavit; docketing and indexing; effect; stay of enforcement upon filing of motion for relief or notice of defense.

 (A) A copy of a foreign judgment authenticated in accordance with an act of Congress or the statutes of this State may be filed in the office of the clerk of court of any county of this State in which the judgment debtor resides or owns real or personal property. Along with the foreign judgment, the judgment creditor or his attorney shall make and file with the clerk an affidavit which states that the foreign judgment is final, that it is unsatisfied in whole or in part setting forth the amount remaining unpaid on the judgment, and whether the judgment is further contested. A contested judgment includes a judgment for which post‑trial motions are pending before the trial court, notice of appeal has been filed, or an appeal is pending.

 (B) Upon the filing of the foreign judgment and the affidavit, the foreign judgment must be docketed and indexed in the same manner as a judgment of this State; however, no foreign judgment may be indexed if contested until resolved and no execution may issue upon the foreign judgment nor may any other proceeding be taken for its enforcement until the expiration of thirty days from the date upon which notice of filing is served in accordance with Section 15‑35‑930.

 (C) A judgment so filed has the same effect and is subject to the same defenses as a judgment of this State and must be enforced or satisfied in like manner; however, if the judgment is contested, or the judgment debtor files a motion for relief or notice of defense pursuant to Section 15‑35‑940, enforcement of the foreign judgment is stayed automatically, without security, except as hereinafter provided, until the court finally disposes of the matter. During the time a motion for relief is pending or a stay under this section is in effect, no levy, writ of attachment, or other encumbrance of the judgment debtor’s property in furtherance of execution on the foreign judgment shall issue or otherwise be enforceable in this State unless after due notice to the judgment debtor and opportunity to be heard in a court of competent jurisdiction, the judgment creditor shows that the judgment debtor’s property in this State has been or is about to be disposed of or removed from this State with intent to defraud the judgment creditor, or to otherwise deplete the assets for purposes of avoiding payment of the judgment.

HISTORY: 1993 Act No. 80, Section 1; 2000 Act No. 306, Section 1.

CROSS REFERENCES

Fee for filing, indexing, enrolling, and entering a foreign judgment and affidavit pursuant to this article, see Section 8‑21‑310.

Federal Aspects

Foreign defamation judgments, recognition, see 28 U.S.C.A. Section 4102.

LIBRARY REFERENCES

Westlaw Key Number Searches: 228k813 to 228k832.

Judgment 813 to 832.

C.J.S. Judgments Sections 965 to 1038, 1053.

NOTES OF DECISIONS

In general 1

Duration of statutory lien 2

1. In general

Once former wife registered in circuit court, under Uniform Enforcement of Foreign Judgments Act (UEFJA), New York divorce judgment, pursuant to which husband was ordered to pay wife alimony of $3,200 per month and to pay her $662,770.50 for her equitable share of marital assets, and initiated action resulting in supplemental proceedings to discover husband’s assets, family court lacked subject matter jurisdiction to find husband in contempt for noncompliance with judgment. Katzburg v. Katzburg (S.C.App. 2014) 410 S.C. 184, 764 S.E.2d 3, rehearing denied. Courts 475(15)

To file foreign judgment in South Carolina, judgment must be final, unsatisfied in whole or in part, and not further contested by the debtor. NationsBank of North Carolina, N.A. v. Parsons (S.C.App. 1996) 324 S.C. 506, 477 S.E.2d 735. Judgment 823

North Carolina judgment entered against guarantors in lender’s action to recover on note was “final” and entitled to full faith and credit in South Carolina, even though it remained open for the determination of proper credits that might be available to guarantors; all appeals as to liability had been exhausted, judgment itself was not further contested, and judgment was unsatisfied in whole or in part. NationsBank of North Carolina, N.A. v. Parsons (S.C.App. 1996) 324 S.C. 506, 477 S.E.2d 735. Judgment 815

Once docketed in accordance with the Uniform Enforcement of Foreign Judgments Act, foreign judgment has same effect and is subject to same defenses as judgment of South Carolina, and must be enforced or satisfied in like manner. NationsBank of North Carolina, N.A. v. Parsons (S.C.App. 1996) 324 S.C. 506, 477 S.E.2d 735. Judgment 823

2. Duration of statutory lien

Absent some specific limitations period for enforcement under the Uniform Enforcement of Judgments Act (UEFJA), the ten‑year, catch‑all statute of limitations applies to the time in which a foreign judgment must be filed pursuant to the UEFJA, just as it does to an action to enforce a foreign judgment under common law. Abba Equipment, Inc. v. Thomason (S.C.App. 1999) 335 S.C. 477, 517 S.E.2d 235, rehearing denied, certiorari dismissed. Judgment 823

Ten‑year statute of limitations applicable to foreign judgment creditors action under the Uniform Enforcement of Judgments Act (UEFJA) to enforce judgment against debtor residing in state began to run when debtor moved to state, not when creditor first discovered that debtor moved to state. Abba Equipment, Inc. v. Thomason (S.C.App. 1999) 335 S.C. 477, 517 S.E.2d 235, rehearing denied, certiorari dismissed. Limitation Of Actions 60(1); Limitation Of Actions 95(3)

**SECTION 15‑35‑930.** Notice of filing; service and proof of service of notice.

 (A) Promptly upon the filing of a foreign judgment and affidavit, the judgment creditor shall serve the notice of filing provided for in subsection (B) on the judgment debtor and shall attach a filed, stamped copy of the foreign judgment and affidavit to the notice. Service and proof of service of the notice may be made in any manner provided for in the South Carolina Rules of Civil Procedure.

 (B) The notice must set forth the name and address of the judgment creditor, his attorney if any, and the clerk’s office in which the foreign judgment is filed in this State and must state that the judgment attached to the notice has been filed in that office, that the judgment debtor has thirty days from the date of receipt of the notice to seek relief from the enforcement of the judgment, and that if the judgment is not satisfied and no relief is sought within that thirty days, the judgment will be enforced in this State in the same manner as a judgment of this State.

HISTORY: 1993 Act No. 80, Section 1.

LIBRARY REFERENCES

Westlaw Key Number Searches: 228k813 to 228k832.

Judgment 813 to 832.

C.J.S. Judgments Sections 965 to 1038, 1053.

NOTES OF DECISIONS

In general 1

1. In general

Absent some specific limitations period for enforcement under the Uniform Enforcement of Judgments Act (UEFJA), the ten‑year, catch‑all statute of limitations applies to the time in which a foreign judgment must be filed pursuant to the UEFJA, just as it does to an action to enforce a foreign judgment under common law. Abba Equipment, Inc. v. Thomason (S.C.App. 1999) 335 S.C. 477, 517 S.E.2d 235, rehearing denied, certiorari dismissed. Judgment 823

Ten‑year statute of limitations applicable to foreign judgment creditors action under the Uniform Enforcement of Judgments Act (UEFJA) to enforce judgment against debtor residing in state began to run when debtor moved to state, not when creditor first discovered that debtor moved to state. Abba Equipment, Inc. v. Thomason (S.C.App. 1999) 335 S.C. 477, 517 S.E.2d 235, rehearing denied, certiorari dismissed. Limitation Of Actions 60(1); Limitation Of Actions 95(3)

**SECTION 15‑35‑940.** Motion for relief from, or notice of defense to, foreign judgment; grounds; motion for enforcement; Rules of Civil Procedure applicable; burden of proving judgment entitled to full faith and credit.

 (A) The judgment debtor may file a motion for relief from, or notice of defense to, the foreign judgment on the grounds that the foreign judgment has been appealed from, that enforcement has been stayed by the court which rendered it, or on any other ground for which relief from a judgment of this State is allowed.

 (B) If the judgment debtor has filed a motion for relief or notice of defenses, then the judgment creditor may move for enforcement or security of the foreign judgment as a judgment of this State, if all appeals of the foreign judgment are finally concluded and the judgment is not further contested. The judgment creditor’s motion must be heard before a judge who has jurisdiction of the matter based upon the amount in controversy as the amount remaining unpaid on the foreign judgment. The South Carolina Rules of Civil Procedure apply. The judgment creditor has the burden of proving that the foreign judgment is entitled to full faith and credit.

HISTORY: 1993 Act No. 80, Section 1; 2000 Act No. 306, Section 2.

LIBRARY REFERENCES

Westlaw Key Number Searches: 228k813 to 228k832.

Judgment 813 to 832.

C.J.S. Judgments Sections 965 to 1038, 1053.

United States Supreme Court Annotations

Full faith and credit as to state statutes governing time limitations on action on foreign judgment—federal cases. 17 L Ed 2d 952.

NOTES OF DECISIONS

In general 1

Duration of statutory lien 2

Full faith and credit 1/2

Presumptions and burden of proof 3

1 2. Full faith and credit

Last sentence of section of Uniform Enforcement of Foreign Judgments Act placing on judgment creditor the burden of proving that a foreign judgment is entitled to full faith and credit, would be severed from remainder of statute, since it could be presumed that legislature would have passed the remainder independent of unconstitutional portion. Law Firm of Paul L. Erickson, P.A. v. Boykin (S.C. 2009) 383 S.C. 497, 681 S.E.2d 575, rehearing denied. Statutes 1535(3)

Section of Uniform Enforcement of Foreign Judgments Act placing on judgment creditor the burden of proving that a foreign judgment is entitled to full faith and credit violated full faith and credit clause of United States Constitution, under which foreign judgments were presumed to be regular. Law Firm of Paul L. Erickson, P.A. v. Boykin (S.C. 2009) 383 S.C. 497, 681 S.E.2d 575, rehearing denied. Judgment 815; Judgment 823

1. In general

Notwithstanding Kansas forum selection clause in sales agreement, Missouri long arm statute conferred personal jurisdiction over buyer in seller’s suit for sums due, where goods were shipped from seller’s factory in Missouri. Digital Ally, Inc. v. Light‑N‑Up, LLC (S.C.App. 2014) 408 S.C. 101, 757 S.E.2d 732. Contracts 206; Courts 13.5(7)

Buyer had sufficient contacts with Missouri for that State’s exercise of personal jurisdiction over it in seller’s suit for sums due to satisfy due process, and for Missouri default judgment to be enforceable in South Carolina; buyer entered into six contracts for products from seller’s manufacturing facility in Missouri, payments were to be mailed to Missouri, and buyer took delivery in Missouri. Digital Ally, Inc. v. Light‑N‑Up, LLC (S.C.App. 2014) 408 S.C. 101, 757 S.E.2d 732. Constitutional Law 3965(4); Courts 13.5(7); Judgment 823

North Carolina long‑arm statute did not support exercise of personal jurisdiction over South Carolina retailer in North Carolina wholesaler’s action on account against retailer and related entities, as evidence showed that, although several of those related entities owed wholesaler money, wholesaler’s goods were neither sent to nor purchased by retailer; thus, insofar as North Carolina default judgment pertained to retailer, judgment was not entitled to full faith and credit under Uniform Enforcement of Foreign Judgments Act. Jay Group, Ltd. v. Bootery of Haywood Mall, Inc. (S.C.App. 1999) 335 S.C. 114, 515 S.E.2d 542. Courts 13.5(12); Judgment 815

Under Uniform Enforcement of Judgments Act, lack of personal jurisdiction is a ground upon which judgment debtor may file motion for relief from, or notice of defense to, foreign judgment. PYA/Monarch, Inc. v. Sowell’s Meats & Services, Inc. (S.C.App. 1997) 327 S.C. 469, 486 S.E.2d 766. Judgment 823

Under due process clause, for defendant to be subject to personal jurisdiction, maintenance of suit must not offend traditional notions of fair play and substantial justice, and defendant must have purposefully availed himself of privilege of conducting activities within forum state. PYA/Monarch, Inc. v. Sowell’s Meats & Services, Inc. (S.C.App. 1997) 327 S.C. 469, 486 S.E.2d 766. Constitutional Law 3964

2. Duration of statutory lien

Absent some specific limitations period for enforcement under the Uniform Enforcement of Judgments Act (UEFJA), the ten‑year, catch‑all statute of limitations applies to the time in which a foreign judgment must be filed pursuant to the UEFJA, just as it does to an action to enforce a foreign judgment under common law. Abba Equipment, Inc. v. Thomason (S.C.App. 1999) 335 S.C. 477, 517 S.E.2d 235, rehearing denied, certiorari dismissed. Judgment 823

Ten‑year statute of limitations applicable to foreign judgment creditors action under the Uniform Enforcement of Judgments Act (UEFJA) to enforce judgment against debtor residing in state began to run when debtor moved to state, not when creditor first discovered that debtor moved to state. Abba Equipment, Inc. v. Thomason (S.C.App. 1999) 335 S.C. 477, 517 S.E.2d 235, rehearing denied, certiorari dismissed. Limitation Of Actions 60(1); Limitation Of Actions 95(3)

3. Presumptions and burden of proof

Judgment debtor challenging a Missouri default judgment filed in South Carolina bore burden of overcoming, by record or by extrinsic evidence, constitutionally mandated presumption of foreign judgment’s regularity. Digital Ally, Inc. v. Light‑N‑Up, LLC (S.C.App. 2014) 408 S.C. 101, 757 S.E.2d 732. Judgment 818(4); Judgment 823

Judgment creditor, seeking enforcement of North Carolina default judgment pursuant to Uniform Enforcement of Foreign Judgments Act, did not have burden of proof to show that North Carolina had personal jurisdiction over judgment debtors, since foreign judgments were presumed to be regular under faith and credit clause of United States Constitution; overruling The Jay Group, Ltd. v. The Bootery of Haywood Mall, Inc., 335 S.C. 114, 515 S.E.2d 542. Law Firm of Paul L. Erickson, P.A. v. Boykin (S.C. 2009) 383 S.C. 497, 681 S.E.2d 575, rehearing denied. Judgment 815; Judgment 818(4); Judgment 823

**SECTION 15‑35‑950.** Article does not impair judgment creditor’s right to bring civil action in State to enforce judgment.

 This article may not be construed to impair a judgment creditor’s right to bring a civil action in this State to enforce the creditor’s judgment.

HISTORY: 1993 Act No. 80, Section 1.

LIBRARY REFERENCES

Westlaw Key Number Searches: 228k813 to 228k832.

Judgment 813 to 832.

C.J.S. Judgments Sections 965 to 1038, 1053.

**SECTION 15‑35‑960.** Inapplicability to judgments based on claims contrary to public policy.

 The provisions of this article do not apply to foreign judgments based on claims which are contrary to the public policies of this State.

HISTORY: 1993 Act No. 80, Section 1.

LIBRARY REFERENCES

Westlaw Key Number Searches: 228k813 to 228k832.

Judgment 813 to 832.

C.J.S. Judgments Sections 965 to 1038, 1053.

Notes of Decisions

In general 1

1. In general

Although causes of action of criminal conversation and alienation of affections were contrary to South Carolina public policy, section of Uniform Enforcement of Foreign Judgments Act (UEFJA), denying enforcement to foreign judgments based on claims which are contrary to the public policies of South Carolina, could not be applied to deny full faith and credit to North Carolina money judgment in favor of plaintiff on her claims for alienation of affections and criminal conversation. Widenhouse v. Colson (S.C. 2013) 405 S.C. 55, 747 S.E.2d 188. Judgment 815; Judgment 817; Judgment 823