TO: Purchasers of the Second Edition of *So You Have a Judgment, Now What?*

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RE: *Gordon* decision

As noted in the most recent edition of this Publication, in Chapter 4 on pages 24-25, The South Carolina Supreme Court granted cert in *Gordon v. Lancaster* on December 13, 2017. On November 21, 2018 (about ten days after the current edition of this publication arrived from the printer), the South Carolina Supreme Court issued its ruling in *Gordon*, Op. No. 27847 (S.C. Sup. Ct filed Nov. 21, 2018) (Shearhouse Adv. Sh. No. 46 at 8). In its ruling, the Court addressed the narrow question of whether a creditor may execute on a judgment more than ten years after its enrollment when the original time period has expired *during the course of litigation.* (emphasis added). The Court revisited its decision in the *Linda Mc.* case that, as mentioned earlier, had been applied by the Appellate Courts to potentially extend the life of a judgment beyond the statutory ten-year limit “merely by filing the action within ten years.”

In *Gordon*, the Court reversed and overruled *Linda Mc.* to arrive at its ruling. The Court agreed with Lancaster, who argued that *Linda Mc.* effectively nullifies the statutory ten-year limitation to execute on a judgment in South Carolina. Recall that under *Linda Mc.*, the Court had held that “if a party takes action to enforce a judgment within the ten-year statutory period of active energy, the resulting order will be effective even if issued after the ten-year period has expired.” *Linda Mc.*, 390 S.C. at 543, 703 S.E.2d at 499.

In *Gordon*, however, the Court has now held that under the plain language of S.C. Code Ann. Section 15-39-30 (2005), a creditor has ten years to execute on the judgment from the date of its entry, a time period that cannot be renewed, and stated that *Linda Mc.*  was a “departure from this Court’s historic approach in analyzing 15-39-30.” The Court decided to overrule *Linda Mc.* “and return to the traditional bright-line rule.”

It would appear then, that under *Gordon*, we are back to the traditional treatment of judgment life spans in South Carolina. Just as there is no mechanism to renew a judgment beyond ten years, the mere institution of an action within those ten years by a judgment creditor will not “preserve it beyond the time fixed by the statute, if such time expires before the action is tried.” *Gordon*, citing *Garrison v. Owens*, 258 S.C. 442, 446-7, 189 S.E.2d 31, 33 (1972).

Bottom line – err on the side of caution. Under *Gordon*, your judgment will not be extended beyond the ten years – “its duration as fixed by the legislature may not be prolonged by the court.” *Id.*

Justice Hearn wrote the opinion of the majority, and Justices Beatty and Kittredge concurred, along with Justice Few[[1]](#footnote-1), who concurred in a separate opinion, and Justice James, who concurred in part and dissented in part in a separate opinion.

1. Justice Few’s separate opinion interestingly states that, while he agrees with the result reached by the majority, he disagrees that the Court should overrule the holding in *Linda Mc.* In his opinion, the facts of *Gordon* do not fall within the “narrow exception” created by *Linda Mc.*, and therefore “it is not necessary to our decision in this case that we overrule *Linda Mc.* Justice Few further states that the “expansive language appear[ing] to drastically extend the period of time in which an execution may be issued” in *Linda Mc*. was “not necessary to the decision of the case,” making the statement “dictum” – and therefore not binding authority in the first place. [↑](#footnote-ref-1)