



STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
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Emily P. Smith et al,)
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Plaintiff)
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vs.)
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Robert T. Smith et al,)
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)
Defendant.)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

C/A No.: 2022-CP-32-01419

**ORDER DENYING EMERGENCY
APPOINTMENT OF A RECEIVER**

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INTRODUCTION

This matter arises out of Plaintiffs’ (“Plaintiff”) Complaint filed on April 28, 2022 seeking Judicial Dissolution and Winding Up on an LLC owned by the parties, Emergency Temporary Appointment of a Receiver, and asserting tort claims for Conversion, Attempted Tortious Interference with Contract, as well as Imposition of Constructive Trust. The crux of this civil action appears to be Plaintiff’s allegation that Defendant is denying her of her rightfully owed income from their jointly owned real estate brokerage, Southern Collection Brokerage LLC, through his actions. Plaintiff contacted this Court on Friday, April 29, 2022, requesting an emergency hearing regarding Plaintiff’s Motion for Appointment of a Receiver. A hearing was held on May 5, 2022 in the WebEx virtual courtroom. Desa Ballard, Esquire appeared for the Plaintiff, while Ashby Jones, Esquire and Mark Goddard, Esquire appeared on behalf of the Defendants.

While this civil action was filed case was filed recently, the parties have been actively litigating a highly contested divorce action in the Lexington County Family Court since August 18, 2021, and there appears to be great overlap of the issues. Plaintiff contends that the circuit

court can and should grant the appointment of a receiver because this dispute is centered around an LLC and the dissolution thereof. Defendants contend that this matter should not be handled by the circuit court because exclusive jurisdiction of the properties and assets owned by the parties remains with the family court, and no divestment of such jurisdiction has occurred. Of particular interest to this Court is whether the relief from harm sought by the Plaintiff could be fully addressed by the family court.

After hearing arguments from counsel and reviewing the parties' submitted documents, the Court hereby denies Plaintiff's Request for Appointment of a Receiver without prejudice.

STANDARD OF REVIEW

"The appointment of a receiver is a drastic remedy, and should be granted only with reluctance and caution." *Midlands Utility, Inc. v. South Carolina Dept. of Health and Environmental Control*, 301 S.C. 224, 391 S.E.2d 535 (1989) citing *Vasiliades v. Vasiliades*, 231 S.C. 366 (1957). Further, "the appointment of receiver rests in the sound discretion of the Court to which application is made." *Andrick Development Corp. v. Maccaro*, 280 S.C. 103, 106, 311 S.E.2d 95, 97 (Ct. App. 1984).

A receiver stands in the shoes of debtor with respect to the property of the latter. *Jeffcoat v. Morris*, 300 S.C. 526, 389 S.E.2d 159 (Ct. App. 1989). A receiver holds the property coming into his or her hands by the same right and title as the person for whose property he or she is receiver. *Id.* A receiver represents the court appointing him, and he is an officer of the court and is the agency through which the Court acts. *Kirven v. Lawrence*, 244 S.C. 572, 137 S.E.2d 764 (1964).

In order to warrant the appointment of a receiver prior to the entry of judgment, four conditions must be met. (1) The Plaintiff must show an apparent right to the property; which is

(2) the subject of the action; (3) in possession of an adverse party; and (4) in danger of being lost, materially injured, or impaired. S.C. Code Ann. § 15-65-10, *et seq.*

ANALYSIS

To be clear, this case does not involve a mortgage foreclosure, bankruptcy, and/or creditor issue at this time, which would be the typical area involving Receivers. Plaintiff asserts that only the circuit court can provide her relief, however, there appears to be prior South Carolina case law supporting the use of a Receiver in the family court context. In *Whetstone v. Whetstone*, 309 S.C. 227, 420 S.E.2d 877 (Ct. App. 1993), the family court appointed a Receiver to assist in property division, and ultimately approved the Receiver's plan which also involved three corporations in which the family members were stockholders. S.C. Code Ann. § 15-65-10, refers to the circuit court addressing and handling the appointment of receivers; however, much of the case law dealing with the applicability and appointment of receivers involve cases that pre-date the formation of the S.C. Family Court in 1976. While it is clear that the appointment of receiver is in the discretion of the circuit court, such acts appear to be appropriate in the family court in the proper context as well.

Even assuming the Plaintiff's allegations regarding withholding of marital assets or income are true, it appears that the family court has the necessary and proper tools to prevent the dissipation or other improper conduct involving contested marital assets through injunctive relief if so sought. See for example *S.C. Code §20-3-650*. As communicated to the attorneys, this court is solely focused on whether emergency appointment of a Receiver is necessary and proper. This court finds in the negative – emergency appointment is not necessary at this time.

CONCLUSION

Based upon the arguments of counsel and the pleadings, Plaintiff's Motion for Emergency Appointment of a Receiver is DENIED. The parties are to seek relief from the Family Court directly, and should further proceedings in the Circuit Court be needed, they may be sought by the parties.

IT IS SO ORDERED.

[ELECTRONIC SIGNATURE PAGE TO FOLLOW]



Lexington Common Pleas

Case Caption: Emily P. Smith , plaintiff, et al VS Robert T. Smith , defendant, et al

Case Number: 2022CP3201419

Type: Order/Other

It Is So Ordered

s/ Walton J. McLeod

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