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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
James E. Chellis, Master-in-Equity for Dorchester County
Case No. 2010-CP-18-1742

Appellate Case No. 2020-000561
Opinion No. 2022-UP-310, Filed July 27, 2022

Jaber Investments, LLC.....Appellant,

v.

Sleep King, LLC and Christopher C. Morris.....Respondent,

PETITION FOR REHEARING

Pursuant to Rules 221 and 240, S.C.A.C.R., Appellant Jaber Investments, LLC petitions this court to rehear and reconsider its opinion in Jaber Investments, LLC v. Sleep King, LLC and Christopher Morris, Opinion No. 2022-UT-310 filed July 27, 2022.

The Court affirmed the Dorchester County Master-in-Equity’s order denying the Appellant’s proposed rule to show cause and amended order for supplemental proceedings filed February 4, 2020 (R. p. 18-22), ruling that the statutory ten (10) period for execution of a judgment had expired (R. p. 1-5).

1. In affirming the Master-in-Equity, it is respectfully submitted that the Court of Appeals overlooked or misapprehended that the Master-in-Equity clearly erred in finding that Plaintiff’s request for supplemental proceedings failed since it was made “52 days after expiration of the judgment.” (R., p. 2).

Appellant's judgment resulted from two orders of Judge Harrington, the first, a "Form 4" order of entry of default and judgment by default filed October 22, 2009 (the "Form 4" order) (R. p. 6), and her "ORDER FOR ENTRY OF DEFAULT AND JUDGMENT BY DEFAULT IN FAVOR OF PLAINTIFF AGAINST DEFENDANTS" filed January 19, 2010 (the final order) (R. pp. 7-9).

The "Form 4" order contained the notation:

"MOTION FOR ENTRY OF DEFAULT AND JUDGMENT BY DEFAULT AS TO DEFENDANTS FILED ATTORNEY HALVERSON IS GRANTED. JUDGMENT FOR THE PLAINTIFF FOR MONIES OWED ON THE LEASE OF \$112,792.44 AND ATTORNEY'S FEES IN THE AMOUNT OF \$1,819.00; FORMAL ORDER TO FOLLOW." (R. p. 6)

Judge Harrington's "Form 4" order was not the final entry of judgment by the court. See Culbertson v. Clemons, 322 S.C. 20, 23, 471 S.E. 2nd 163 (1996) which provides:

"Any judgment or decree, leaving some further act to be done by the Court before the rights of the parties are determined, is interlocutory [and not final]." Id. at 322 S.C. 23.

In regard to a "Form 4" order, the Court of Appeals has previously held that while such an order may be final:

"...If the form 4 order is NOT efficacious as final order, the circuit court must specifically and with certitude signify:

1.) a more formal order will be filed;...."

Cheap-O's Truck Stop, Inc. v. Cloyd, 350 S.C. 596, 605, 471 S.E. 2nd 163 (Ct. App. 2002).

Since Judge Harrington's "Form 4" order provided "FORMAL ORDER TO FOLLOW" that order was not final until the formal order was filed on January 19, 2010. That is the date when the statutory ten (10) year period for execution of a judgment commenced.

Appellant filed its motion for supplemental proceedings on December 11, 2019, within the ten (10) year period of active energy.

January 19 and 20, 2020, were weekend days, therefore the last day for execution upon Appellant's judgment was Monday, January 21, 2020, the date on which supplemental proceedings were convened by the Master-in-Equity and the Respondent's failed to appear.

2. The Court of Appeals overlooked or misapprehended that Appellant's execution of the judgment was ordered in 2010 and that the sheriff filed a nulla bona return on September 2, 2010 (R. p. 11) both are within the ten (10) year statutory period.

S.C. Code Section 15-39-30 (205) provides in pertinent part:

“Executions may issue upon final judgments or decrees at any time within ten 10 years from the date of the original entry thereof....”

Since the execution has been issued and returned within the ten (10) years, the statute has been complied with, and the Master-in-Equity was not foreclosed from rescheduling the supplemental proceeding hearing due to the misconduct of the Respondents.

3. The Court of Appeals overlooked or misapprehended that supplemental proceedings are equitable in nature. See A-Fast Photo, Express, Inc. v. First National Bank of Chicago, 369 S.C. 80, 84, 630 S.E. 2nd 285 (Ct. App. 2006). Supplemental proceedings are a post-execution procedure for the discovery of assets per S.C. Code Section 15-39-310 which a judgment debtor “...unjustly refuses to apply toward the satisfaction of the judgment...”.

It is respectfully submitted that the Master-in-Equity still had equitable jurisdiction to order a reconvened examination of the debtors to discover any assets that could have been ordered applied toward satisfaction of the judgment.

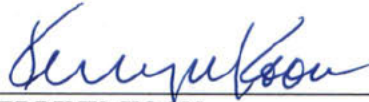
The Master-in-Equity should have rescheduled the debtor's examination on the basis of unclean hands demonstrated by Respondents' failure to appear.

4. The Court of Appeals overlooked or misapprehended the fact that the Respondent's failure to appear on January 21, 2020, is a violation of a specific order of Judge Goodstein that they appear and be examined upon their assets. Their failure to appear deprived the Master-in-Equity of the opportunity to issue an order to attach assets that may have been disclosed and which were not discovered by the sheriff's previous execution. Respondents should not be allowed to take advantage of their own non-compliance to avoid and frustrate the processes of the court.

CONCLUSION

The Court should grant the petition for re-hearing, withdraw its opinion and determine that, for the reasons stated above, the Master-in-Equity should be reversed and the matter remanded to the Master-in-Equity for the purpose of reconvening a supplemental proceedings hearing and issue such orders as may be appropriate.

Respectfully submitted,



KERRY W. KOON

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ATTORNEY FOR APPELLANT

August 4, 2022

THE STATE OF SOUTH CAROLINA
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Jaber Investments, LLC.....Appellant,

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PROOF OF SERVICE

I certify that I have served the Petitioner's Petition for Rehearing, on Christopher C. Morris, Pro se and for Sleep King, LLC, by depositing a copy of it in the United States Mail, postage prepaid, on August 4, 2022, addressed to 179 Cablewynd Way, Summerville, SC 29485 and 75 Old Trolley, Ste. 7, Summerville, SC 29485.

August 4, 2022



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Telephone: Bus: (843) 795-7000
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August 4, 2022

Jenny Kitchings, Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
PO Box 11629 (29211)
Columbia, SC 29201

RE: *Jaber Investments, LLC v. Sleep King, LLC and Christopher C. Morris*
Appellate #: 2020-000561
Opinion #: 2022-UP-310

Dear Madam Clerk,

Please find herewith the original and six (6) copies of Appellant's Petition for Rehearing together with a Proof of Service of the same concerning the above referenced matter.

Also enclosed is my check for the required fee.

With kindest personal regards, I am

Very truly yours,



Kerry W. Koon

KWK:mm
Enclosures

cc: Christopher C. Morris, Pro se and for Sleep King, LLC
179 Cablewynd Way
Summerville, SC 29485

Christopher C. Morris, Pro se and for Sleep King, LLC
75 Old trolley, Ste. 7
Summerville, SC 29485

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