

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2018-CP-10-01622

COBB, DILL & HAMMETT, LLC,
Plaintiff,

vs.

Chris Khamnei and
COLUMBUS STREET HOLDINGS, LLC,
Defendants.

- ORDER**
- 1) GRANTING PLAINTIFF'S MOTION FOR INTERPLEADER DEPOSIT OF ESCROW FUNDS;
 - 2) GRANTING PLAINTIFF'S MOTION FOR ATTORNEYS' FEES/COSTS; AND
 - 3) GRANTING PLAINTIFF'S MOTION TO BE DISMISSED WITH PREJUDICE AS A PARTY

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SC Court of Appeals

THIS MATTER CAME BEOFRE THE COURT on March 3, 2022, for a hearing. **SC Court of Appeals**
a motioned filed by Plaintiff, COBB DILL & HAMMETT, LLC ("CDH"), under Rule 22, SCRCP, seeking an Order allowing it to deposit with the Court the escrow funds it is holding, which are subject to the claims between the Defendants, to be held until further order of the Court; seeking payment of the legal fees and costs incurred by CDH under the escrow agreement; and to be dismissed from this lawsuit with prejudice.

After careful consideration of the documents in the Court's record, the Court hereby GRANTS Plaintiff's interpleader tender of escrow funds to the Clerk of Court; GRANTS Plaintiff's claim for \$14,631.49 in reasonable legal fees and costs and orders the same amount be immediately dispersed to Plaintiff; and GRANTS Plaintiff's motion to be dismissed with prejudice.

Standard of Review

A trial court's grant of interpleader is appropriate when there is sufficient evidence "to support its grant of interpleader." First Union Nat'l Bank of South Carolina v. FCVS Communications, 321 S.C. 496, 499, 469 S.E.2d 613, 616 (Ct. App.1997), rev'd in part,

328 S.C. 290, 494 S.E.2d 429 (1997) (dismissing as moot the writ of certiorari as to interpleader). Interpleader provisions, being remedial in nature, are to be liberally construed to best effectuate their purposes. Id. When claims are such that a plaintiff is or may be exposed to double or multiple liability, the claimants may be joined as defendants and required to interplead. Rule 22(a), SCRCP. “The historical and still the primary purpose of interpleader is to enable a neutral stakeholder, usually an insurance company or a bank, to shield itself from liability for paying over the stake to the wrong party.” FCVS Communications, 321 S.C. at 499, 469 S.E.2d at 616 (quoting Indianapolis Colts v. Mayor of Baltimore, 733 F.2d 484, 486 (7th Cir. 1984)). Only the potential for multiple claims is needed. Id. at 499, 469 S.E.2d at 616.

FINDINGS OF FACT

On or about March 23, 2017, Defendant, Chris Khamnei (“Mr. Khamnei”), and Defendant, COLUMBUS STREET HOLDINGS, LLC (“Columbus Street Holdings”), executed a contract for the sale and purchase of real property located at 1 Drews Aly, Charleston, South Carolina (“the Property”). See (Contract dated March 23, 2017, filed with Plaintiff’s motion as Exhibit 1). On April 20, 2017, Mr. Khamnei executed a limited power of attorney (the “POA”) appointing Sean A. Scapellato, Esq. (“Mr. Scapellato”) or Hal E. Cobb, Esq. (“Mr. Cobb”), both lawyers practicing with CDH, as his Attorney-in-Fact only to consummate the Sale but without retaining Mr. Scapellato or Mr. Cobb to provide legal advice on the substantive provisions of the Sale. See (Power of Attorney, dated April 20, 2017, filed with Plaintiff’s motion as Exhibit 2). On April 21, 2017, Mr. Khamnei, through the POA, and Columbus Street Holdings entered into an escrow agreement (the “Escrow Agreement”) whereby Mr. Khamnei agreed to escrow Fifty Thousand and No/100 (\$50,000) Dollars (the “Funds”) to evict any tenants in the Property after the Sale and

canceling a Lis Pendens that existed at the time of closing (the "Post-Closing Matter").

See (Escrow Agreement, dated April 21, 2017, filed with Plaintiff's motion as Exhibit 3).

The Escrow Agreement provides:

6. The parties hereto covenant and agree that in performing any of its duties under this Agreement, [CDH] shall be released and not be liable for any loss, costs or damage which it may incur as a result of serving as Escrow Agent hereunder, except for any loss, costs or damage arising out of its willful default or gross negligence.

Accordingly, [CDH] shall not incur any liability, whatsoever, with respect to (i) any action taken or omitted to be taken in good faith upon advice of its counsel given with respect to any questions relating to the duties and responsibilities, or (ii) to any action taken or omitted to be taken in reliance upon any document, including any written notice of instruction provided for in the Escrow Agreement, not only as to its due execution and the validity and effectiveness of its provisions, but also to the truth and accuracy of any information contained therein, which [CDH] shall in good faith believe to be genuine, to have been signed or presented by a proper person or persons and to conform with the provisions of this Escrow Agreement.

[Mr. Khamnei] and Columbus Street Holdings, LLC hereby agree to indemnify and hold harmless [CDH] against any and all losses, claims, damages, liabilities and expenses, including without limitation, reasonable costs of investigation and attorneys fees, costs and disbursements which may be imposed upon or incurred by [CDH] in connection with its serving as Escrow Agent hereunder. [CDH] shall be entitled to be indemnified by [Mr. Khamnei] and Columbus Street Holdings, LLC for all amounts, to include all attorney's fees and costs, at the rate of \$325.00 per an hour, for any action required by [CDH] other than disbursing the Escrow Funds by consent under Paragraph #5 above. Said amounts shall be paid by [Mr. Khamnei], to [CDH], upon demand and invoice (which shall be evidenced by the HUD-1 closing statement), in advance of the Escrow Agent being required to disburse the funds as set forth in this Agreement.

In an event of a dispute between any of the parties hereto sufficient in the sole discretion of [CDH] to justify its doing so, [CDH] shall be entitled to tender unto the registry or custody of any court of competent jurisdiction all money or property in its hands held under the terms of this Escrow Agreement, together with such legal pleading as it deems appropriate, with [Mr. Khamnei] and Columbus Street Holdings, LLC being responsible for any and all attorney's fees, costs, damages and expenses incurred by [CDH] in doing so, with the same being paid by [Mr. Khamnei] and Columbus Street Holdings, LLC to [CDH], upon invoice of the Escrow Agent, at the rate of \$325.00 per an hour.

See (Escrow Agreement, p. 2, Ex. 3).

Under the Escrow Agreement, Mr. Khamnei and Columbus Street Holdings agreed that upon completing the Post-Closing Matter, Mr. Khamnei and Columbus Street Holdings would provide CDH with written notice they had agreed to disbursement of the Funds and, upon receiving such notice, CDH would disburse the Funds to Mr. Khamnei.

On or about June 6, 2017, Columbus Street Holdings notified CDH it would not provide written notice and consent to disburse the Funds. On August 11, 2017, Mr. Khamnei filed suit against Columbus Street Holdings in the Court of Common Pleas for Charleston County. See (Summons & Complaint, dated August 11, 2017, filed with Plaintiff's motion as Exhibit 4).

While CDH was maintaining the escrow funds and in connection with this transaction and litigation, CDH, as escrow agent for Mr. Khamnei and Columbus Street Holdings, received notice of a lien and lien for attorney fees by Westbrook Wills of the LAW OFFICE OF W. WESTBROOK WILLS III for \$10,299.05 on or about May 15, 2018, which was filed with the Charleston County Clerk of Court and directed to Mr. Scapellato as escrow agent for Khamnei and CSH. This lien has not been satisfied as of this Order.

On March 30, 2018, CDH filed this Interpleader Complaint because there was uncertainty as to who is entitled to the escrow funds.

Under the Escrow agreement, Mr. Khamnei and Columbus Street Holdings agreed to indemnify CDH for all amounts, to include attorney's fees and costs, at Three Hundred Twenty-Five and No/100 (\$325.00) Dollars per hour, for any legal action required to be taken by CDH. To date, CDH has incurred \$14,631.49 in attorney's fees and costs regarding the legal actions taken by CDH concerning the Escrow Agreement. See (Affidavit of Attorney's Fees, filed with Plaintiff's motion as Exhibit 5).

CONCLUSIONS OF LAW

- I. **The Escrow Agreement and Rule 22(b), SCRCP, provide for the deposit of the escrow funds into the Court based on a dispute between Defendants.**

CDH is entitled to deposit the entire balance of the Escrow Account into the Clerk of Court as a matter of right under the Escrow Agreement and under Rule 22(b), SCRCP.

A. Escrow Agreement provisions.

The Escrow Agreement provides in ¶ 6 for CDH to “tender unto the registry or custody of any court of competent jurisdiction all money or property in its hands held under the terms of this Escrow Agreement” if a dispute arises between Mr. Khamnei and Columbus Street Holdings. Because the fact of a dispute between Mr. Khamnei and Columbus Street Holdings is manifested in the pleadings, the Court finds it is time for CDH to tender the escrow funds into the Court.

B. Rule 22(b), SCRCP, provisions.

Rule 22(b) of the South Carolina Rules of Civil Procedure provides:

(b) Release From Liability, Deposit, Delivery, or Bond. Any party seeking interpleader . . . may deposit with the court the amount claimed, . . . , conditioned upon the compliance by the plaintiff with the further order of judgment of the court with respect to the subject matter of the controversy. The court may thereupon order such party discharged from liability as to such claims, and the action continued as between claimants of such money or property.

Rule 22(b), SCRCP.

[T]he primary purpose of interpleader is to enable a neutral stakeholder. . . to shield itself from liability for paying over the stake to the wrong party. This is done by forcing all the claimants to litigate their claims in a single action brought by the stakeholder.... There need not be actual competing claims against the stakeholder for him to be entitled to interpleader, as long as there is the potential for multiple claims.

FCVS Communications, 321 S.C. at 499, 469 S.E.2d at 616 (citations and internal quotation marks omitted). Upon CDH’s showing it is simply a stakeholder, under Rule

22(b), SCRPC, the Court finds CDH is entitled to be discharged from liability from the conflicting claims between the parties to the escrow agreement, who are the Defendants in this lawsuit. First Union Nat. Bank of S.C. v. FCVS Communications, 328 S.C. 290, 292, 494 S.E.2d 429, 430 (1997). Unlike the parties to the escrow agreement in FCVS Communications, the parties in this case agreed CDH was entitled to “to be indemnified by Mr. Khamnei and Columbus Street Holdings for all amounts, to include all attorney’s fees and costs, at the rate of \$325.00 per an hour, for any action required by the Escrow Agent other than disbursing the Escrow Funds by consent”

The Court will maintain jurisdiction over the funds until the dispute between the Defendants is resolved. See Rule 67, SCRPC (“Money paid into the court under this rule ... shall be withdrawn only upon the check of the clerk of court in favor of the party to whom the order of the court directs.”).

II. CDH is entitled to recover legal fees and expenses incurred in serving as Escrow Agent under the Escrow Agreement.

The Escrow Agreement in ¶ 6 provides for CDH to be paid legal fees and expenses incurred while serving as Escrow Agent under the Escrow Agreement as follows:

[Mr. Khamnei] and Columbus Street Holdings, LLC hereby agree to indemnify and hold harmless [CDH] against any and all losses, claims, damages, liabilities and expenses, including without limitation, reasonable costs of investigation and attorneys fees, costs and disbursements which may be imposed upon or incurred by [CDH] in connection with its serving as Escrow Agent hereunder.

See (Escrow Agreement, ¶ 6.)

There is no material dispute CDH incurred \$14,631.49 in reasonable legal fees and costs “in connection with its serving as Escrow Agent.” The Court approves and

hereby finds CDH is entitled to reimburse of \$14,631.49 for the reasonable legal fees and costs "in connection with its serving as Escrow Agent."

III. Rule 22(b), SCRCP, provides for the dismissal of CDH from this lawsuit with prejudice.

CDH is a neutral stakeholder with no interest in how the escrow funds are allocated between Mr. Khamnei and Columbus Street Holdings. Now that the escrow funds are being deposited with the Clerk of Court, Rule 22(b), SCRCP, directs CDH should be dismissed with prejudice as a party to this action. See FCVS Communications, 321 S.C. at 499, 469 S.E.2d at 616 ("[T]he primary purpose of interpleader is to enable a neutral stakeholder. . . to shield itself from liability for paying over the stake to the wrong party.") and Rule 22(b), SCRCP ("The court may thereupon order such party discharged from liability as to such claims, and the action continued as between claimants of such money or property.")

The Court finds CDH is hereby dismissed as a party to this lawsuit with prejudice.

CONCLUSION

In summary, based on the foregoing Findings of Fact and Conclusions of Law, the Court hereby Orders as follows:

1. CDH's interpleader motion to tender of the Escrow Funds to the Clerk of Court is GRANTED;
2. CDH's claim for the reasonable legal fees and expenses incurred serving as escrow agent of the escrow account, in the amount of \$14,631.49 is GRANTED, and those funds are to be paid out of the escrow funds and paid prior to CDH delivering the remaining funds in the Escrow Account to the Clerk of Court; and
3. CDH's motion to be dismissing with prejudice from this lawsuit is GRANTED.

AND IT IS SO ORDERED!

Edgar W. Dickson
Presiding Circuit Court Judge

June 17, 2022

Orangeburg, South Carolina

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Charleston Common Pleas

Case Caption: Cobb Dill & Hammett LLC VS Chris Khamnei , defendant, et al
Case Number: 2018CP1001622
Type: Order/Dismissal

So Ordered

s/ Edgar W. Dickson #2153