ELECTRONICALLY FILED - 2022 Sep 21 4:44 PM - RICHLAND - COMMON PLEAS - CASE#2014CP4007229

STATE OF SOUTH CAROLINA	)	BEFORE THE MASTER IN EQUITY
	)	
COUNTY OF RICHLAND	)	
Group III Mgt., Inc.	)	C.A. No.: 2014-CP-40-07229
	)	
Plaintiff,	)	
	)	ORDER
v.	)	
	)	
Suncrete of Carolina, Inc. d/b/a Crystal Pools	)	
	)	
Defendant.	)	
	)	

RECEIVED
OCT 21 2022
SC Court of Appeals

This matter comes before the Court on the motion of Defendant ("Suncrete") motion to reconsider the Court's Order of April 29, 2022, pursuant to Rule 59(e), Defendant's motion to stay enforcement of judgment, and Plaintiff's motion to join several co-defendants. The Court denies all motions.

I. Defendant's Motion for Summary Judgment, Motion to Strike, and Motion to Stay Enforcement of Judgment.

1) Defendant argues the Court erred by granting relief against persons (Bear & Alligator, LLC, Ali Enterprises, LLC, Allison Felschow, and Dean Felschow) because they were not parties to the proceedings,

The Court has ruled on this argument in its Order. The Court found "Suncrete transferred property to Crystal Pools in violation of S.C. Code Ann. § 27-23-10(A), and …Suncrete and Crystal Pools effectively were a "single business enterprise," and there was an amalgamation of interests between Bear & Alligator, LLC, Ali Enterprises, LLC, and Allison Felschow, and Dean Felschow. Order, pp. 6-10. The Court rejected Defendant's argument that its alter ego parties had to be joined in this proceeding before judgment could be entered against them. Order, p. 9 *citing* Inter-Tel Techs., Inc. v. Linn Station Props, LLC, 360 S.W.3d 152, 168 (Ky. 2012). The Defendant argues Bear & Alligator was not in existence at the time of the judgment. However,

ELECTRONICALLY FILED - 2022 Sep 21 4:44 PM - RICHLAND - COMMON PLEAS - CASE#2014CP4007229

the company was established about four months after the judgment was affirmed by the Circuit Court as a successor to C&E Partnership, both entities wholly owned by Allison Felschow, as were Suncrete and Crystal Pools. Bear and Alligator was created in furtherance of the Defendant's scheme to evade execution. Defendant raises no issues and points to no evidence overlooked by the Court.

2) **Defendant argues the Court abused its discretion and erred by applying the amalgamation of entities doctrine to this case,**

Defendant's arguments about the amalgamation of interest arguments were raised in its post-hearing memorandum and have been ruled on by the Court. Defendant also argues that the Court lacks "clear and convincing evidence" of injustice or abuse to support its finding of amalgamation of interests.

The Court finds clear and convincing evidence that Allison Felschow worked in concert with the amalgamated entities to unjustly avoid paying Defendant's obligations. In support of this finding, the Court points to the deceptive use of the name "Crystal Pools", first as a "d/b/a" name and subsequently as the name of a company formed almost immediately after the arbitrator's judgment. Defendant's manipulation of the various' entities' assets on its tax returns also supports the Court's finding of deceit. Defendant took full advantage of the vehicles, pole building, and other personal property it claims was owned by Ali Enterprises, Inc. Bear & Alligator, or Ms. Felschow. This personal and real property was used in service to and represented to the public as part of Defendant's business.

3) **Defendant argues the Court misconstrued the legal status of leasehold improvements on property not owned by Defendant.**

ELECTRONICALLY FILED - 2022 Sep 21 4:44 PM - RICHLAND - COMMON PLEAS - CASE#2014CP4007229

Defendant argues that the Court erred in ordering the Sheriff to seize a pole building in its possession to satisfy the judgment. Defendant testified it purchased the pole building on July 21, 1998, and sold it on September 1, 2014. Tr. pp. 31. l. 8-21. 33 l. 16-23. The pole building is on the showroom premises at 1101 Sparkleberry Lane Extension ("1101 Sparkleberry"). pp. 47, l. 22-48, l. 27. Defendant also argues that the pole building is a leasehold improvement belonging to Bear & Alligator, LLC, and therefore exempt from execution. However, there is no evidence that the pole building cannot be removed from the premises and sold to satisfy Plaintiff's judgment.

4) Defendant argues the Court erred in finding that Suncrete had assets in 2014

The Court has addressed Defendant's argument of insolvency. While Defendant points to its tax returns as evidence of insolvency, the tax returns tell a different story. They are evidence of the artifice relied on by Suncrete, Bear & Alligator, LLC, Crystal Pools, LLC, and Ali Enterprises, LLC to evade its obligations to creditors. The tax returns show the company earned substantial income and deducted expenses it did not actually incur and depreciated assets it now claims not to own.

5) Defendant argues the Court erred as a matter of law when it set aside the payments to Allison and Dean Felschow's retirement accounts as fraudulent conveyances.

The case law cited by Defendant stands for the proposition that a debtor's payments to a 401(k) account made in the regular course of business are protected from seizure. First Citizens Bank & Tr. Co. v. Blue Ox, LLC, 422 S.C. 461, 812 S.E.2d 418 (Ct. App. 2018) Blue Ox is not applicable here. In Blue Ox, the sole member of a limited liability company signed a confession of judgment in his personal capacity and then contributed to his 401(k), which the Court of Appeals held were exempt from execution under S.C. Code Ann. § 15-41-30(A)(14). Here, Suncrete contributed to the 401(k) accounts of Allison and Dean Felschow. S.C. Code Ann. § 15-41-

ELECTRONICALLY FILED - 2022 Sep 21 4:44 PM - RICHLAND - COMMON PLEAS - CASE#2014CP4007229

30(A)(14) only exempts "the *debtor's* interest in a pension plan qualified under the Employee Retirement Income Security Act of 1974" and therefore does not apply.

6) **Defendant argues the Court erred as a matter of law in interpreting "recapture income" on Suncrete's 2014 income tax return as if the same constituted earnings from operations for that tax period.**

Defendant's argument, for which it cites no authority, that it claimed depreciation expenses for vehicles it did not own is not credible. First, the Court notes that for Defendant to claim "recaptured income" upon the sale of the property on its tax return, it had to own the property in the first place, which Defendant denies. The tax return is proof of the actual ownership of these assets and clear and convincing evidence that their transfer was made to avoid paying Plaintiff's judgment. Defendant also claimed the Court ignored "valuable consideration" paid for the vehicles, specifically the assumption of associated debt by the transferred. However, the record is devoid of any evidence of the *actual* value of the vehicles. Defendant testified that, while it did not own the vehicles, it sold them to Ali Enterprises, LLC. Transcript, pp. 18, l. 2-4, 37 l. 10-17, while Elliott Hayes, Defendant's tax preparer, claimed that Defendant leased the vehicles. Tr. p. 114, l. 15-20. This conflicting testimony is only further evidence that the interests of these entities were so conflated as to be without distinction. The Court is correct to order the sale of these vehicles so their true value of the vehicles can be applied to Plaintiff's judgment. Defendant also argues that the Court ignored "payments" to Suncrete, in the form of assumption of debt, for the vehicles. However, as the Court has found, there was no evidence the transfers were made at market value. If there is legitimate debt associated with any of the vehicles, it will have to be satisfied in due course of business and the net proceeds from their sale will be applied towards Plaintiff's judgment.

7) **Defendant argues that the Court improperly relied on an accountant's affidavit in reaching its decision.**

ELECTRONICALLY FILED - 2022 Sep 21 4:44 PM - RICHLAND - COMMON PLEAS - CASE#2014CP4007229

Plaintiff submitted the affidavit of Mark Hobbs, CPA, after the hearing of August 10, 2021. Defendant moved to strike the affidavit contending it was improper evidence. Defendant responded that the affidavit was not submitted as evidence but as a basis for the Court to reconvene supplementary proceedings if it had questions about Defendant's tax returns. However, in its Order, the Court stated it did not need to reconvene the hearing and did not rely on the affidavit because there is sufficient evidence in the record to arrive at its decision. Order, p. 2. Therefore, the Court's Order mooted Defendant's motion to strike.

8) **Defendant argues that the Court erred in finding the property at 1101 Sparkleberry could be applied to the judgment because Suncrete does not own the property.**

Defendant claims, "There is no evidence in the record to support by a clear and convincing evidence standard that the building now owned by Bear & Alligator, LLC and leased to Suncrete was operated in any unusual manner, or in any way in concert with Suncrete and more than any building owned by any shareholder in any other business is operated in such a manner." Plaintiff's Mot. for Reconsid. p. 21. Defendant argues that Bear & Alligator LLC was established on June 30, 2015, and was not in existence at the time of the judgment. This does not alter the Court's conclusion that 1101 Sparkleberry should be applied to satisfy Plaintiff's judgment.

C&E Partnership, of which Allison Felschow was the sole member since 2012, deeded 1101 Sparkleberry to Allison Felschow on April 20, 2015. Plaintiff's Ex. 1. Allison Felschow deeded 1101 Sparkleberry to Bear & Alligator, LLC, wholly owned by Ms. Felschow, on July 22, 2015. Id; p. 10, l. 14-22. Yet, the property was never functionally separate from the Defendant. Ms. Felschow testified that Defendant was evicted. Whether C&E Partnership or Bear & Alligator, LLC owned it, does not change the fact that Defendant expensed $61,400 in rent for 1101 Sparkleberry, which it did not pay, thereby reducing its taxable income. This rent was supposedly

ELECTRONICALLY FILED - 2022 Sep 21 4:44 PM - RICHLAND - COMMON PLEAS - CASE#2014CP4007229

paid *after* Defendant had supposedly been evicted (but continued to occupy the premises). Tr. p. 26, l. 5-9. There was no functional distinction between C & Partnership and Defendant, and Ms. Felschow's transfer of the premises to Bear & Alligator, LLC, does not vitiate this fact.

9) **Defendant's argument that the Court should void its order due to the way Plaintiff submitted its proposed order.**

Defendant argues that the Court's order should be void because Plaintiff violated the S.C. Rules of Civil Procedure and the South Carolina Supreme Court's Electronic Filing Policies. The Court disagrees. Rule 5(b)(3) states:

> Any party providing a proposed order, proposed findings of fact or conclusions of law, or proposed judgment or other paper to the court for its consideration in any pending matter shall serve the same on all counsel of record at the same time and by the same means.

Plaintiff's counsel sent its proposed order to the Court by U.S. mail, copying Defendant's counsel by email on April 26, 2022. While Plaintiff did not comply with the letter on Rule 5(b)(3), it satisfied the rule's intent by sending the proposed order to Defendant *before* the Court received it. Thus, Defendant suffered no prejudice. Nevertheless, Defendant argues, the Court's Order should be voided because Plaintiff should have E-Filed it in accordance with the S.C. Electronic Filing Policies & Guidelines ("E-Filing Policies"). The E-Filing Policies state, "Proposed orders prepared as part of a motion or as proposed consent orders should be E-Filed as attachments to the motion or other submitting document, such as a motion/order cover sheet." E-Filing Policies and Procedures, Rule 8(c). Plaintiff's counsel explained his paralegal attempted to E-File the proposed order but was unable to, so he instructed her to submit it by U.S. Mail and email a copy to Defendant. Again, the Court finds no prejudice to Defendant in how the proposed order was served. The E-Filing Policies "shall be liberally construed to ensure substantial justice for all

ELECTRONICALLY FILED - 2022 Sep 21 4:44 PM - RICHLAND - COMMON PLEAS - CASE#2014CP4007229

parties, and that cases are disposed of on the merits." Rule 11(e). The Court finds no basis to void its Order.[1]

10) Defendant argues repayment of "properly documented loans" is not a fraudulent conveyance.

In its motion, Defendant points to no documentation of its "loans". At the hearing, Defendant introduced several amortization schedules prepared by Elliott Hayes, its tax preparer as evidence of loans. Tr. pp. 102-103, Def. Exhibit 4. There are no promissory notes in the record or any evidence of the actual transfer of funds from Ms. Felschow to Suncrete. The schedules are insufficient evidence of the loans Defendant claims Ms. Felschow made to the business.

Therefore, Defendant's Motion for Reconsideration is denied. Finding no grounds to reconsider its Order, Defendant's motion to stay enforcement of the judgment is also denied.

II. Plaintiff's Motion to Join Additional Defendants.

Plaintiff's Motion to Bear & Alligator, LLC, Ali Enterprises, LLC, Dean Felschow, and Allison Felschow is also denied, as the liability of these persons was addressed in the Court's Order. Joinder is not necessary for Plaintiff to collect against them.

Therefore, the Court declines to reconsider its Order of April 29, 2022.

AND IT IS SO ORDERED

Date:

_____
The Honorable Joseph M. Strickland
Master-in-Equity for Richland County

[1] The Court will reissue the Order, however, to remove the caption "Plaintiff's Proposed Order" which was retained by mistake.

ELECTRONICALLY FILED - 2022 Sep 21 4:44 PM - RICHLAND - COMMON PLEAS - CASE#2014CP4007229

Richland Common Pleas

Case Caption:	Group III Management Inc vs Suncrete Of Carolina Inc , defendant, et al
Case Number:	2014CP4007229
Type:	Order/Other

It is so Ordered

s/Joseph M. Strickland, 3055