

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2022-CP-26-01323

HSS BAREFOOT, LLC, d/b/a CENTURY 21)
BAREFOOT; R&G CORP, d/b/a CENTURY 21)
THE HARRELSON GROUP, KEVIN MILLS,)
individually, MILLS, LLC, and GREG)
HARRELSON, individually,)

Plaintiffs,)

v.)

JOEL D. BARBER, individually and as licensed)
realtor, BARBER REAL ESTATE, INC.,)
NICHOLAS FITZPATRICK, as licensed realtor,)
DARCY VARNEY, individually and as broker-in-)
charge, eXp REALTY, LLC, JAMES RAY)
LUNSFORD, individually and as broker-in-charge,)
and NORTHGROUP REAL ESTATE, INC.,)

Defendants.)

**AMENDED ORDER GRANTING
PLAINTIFFS' MOTION FOR CONTEMPT
AGAINST DEFENDANT JOEL D.
BARBER**

RECEIVED
Feb 07 2023
SC Court of Appeals

This matter was presented to the Court by Plaintiffs HSS Barefoot, LLC, d/b/a Century 21 Barefoot, R&G Corp., d/b/a Century 21 The Harrelson Group (collectively, "Century 21"), Kevin Mills, Mills, LLC, and Greg Harrelson's (collectively, "Plaintiffs") Motion for Contempt Against Defendant Joel D. Barber, filed July 25, 2022. A virtual hearing was held regarding Plaintiffs' Motion on November 16, 2022. Present at the hearing were Plaintiffs Greg Harrelson and Kevin Mills, as well as Amanda A. Bailey, Esquire, and Taylor K. Voegel, Esquire, as counsel for Plaintiffs. Defendant Barber was also present, as was his counsel, Christian H. Staples, Esquire and Jason A. Daigle, Esquire. Lawrence M. Hershon, Esquire, counsel for Defendants Darcy Varney and eXp Realty, LLC, and Russell M. Racine, Esquire, counsel for Defendants Nicholas Fitzpatrick, James Ray Lunsford, and NorthGroup Real Estate, Inc., were also present. After consideration of the submittals by Plaintiffs and Defendant Barber, the arguments of counsel, and

the applicable law, the Motion for Contempt was granted. Defendant Barber filed a Motion to Reconsider on November 22, 2022, and a virtual hearing was held on January 3, 2023. The Court issued a Form 4 Order on January 9, 2023, and this formal Order follows. Although it appears Defendant Barber did not comply with Rule 59(g), SCRPC, and it also appears Defendant Barber's Motion to Reconsider relies upon newly produced evidence, the Court hereby modifies its previous Order entered on November 22, 2022, as it relates to the inspection of Defendant Barber's real estate business-related data devices and databases.

This civil action is premised upon the allegations that Defendant Barber, a former agent of Century 21, improperly accessed, retained, and otherwise used confidential information belonging to Century 21 for his benefit and the benefit of other brokerage companies. Approximately one month after the start of this civil action, the Court issued a Temporary Injunction ("the Injunction"). The Court held hearings on the matter and issued an oral ruling on March 31, 2022, granting Plaintiffs' Motion for a Temporary Injunction, and a formal written order was filed on April 8, 2022. The Injunction, which continues to be in effect until the resolution of this case, sets forth in pertinent part that Defendant Barber is enjoined from:

c. [] using any information to which [he] gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022 including, but not limited to, leads, clients, prospects, customers, marketing materials, business plans, scripts, flyers, websites, website providers, email templates, email scripts, listing strategies, reduction letters, system subscriptions, CRMs [Customer Relationship Management technology], software or cloud ware, and files;

d. [] initiating contact or communication with leads, clients, prospects, and customers he gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022; [and]

e. [] selling or disclosing any information to which [he] gained access to by being an independent contractor and working with any of the Plaintiffs between March 14, 2017 and February 7, 2022 including, but not limited to, leads, clients, prospects, customers, marketing materials, business plans, scripts, flyers, websites,

website providers, email templates, email scripts, listing strategies, reduction letters, system subscriptions, CRMs [Customer Relationship Management technology], software or cloud ware, and files.

Inj., ¶ 23(c)-(e). Based upon this Court's review of Rob Safa, Susan Brown, Defendant Barber, and Plaintiff Harrelson's affidavits, Defendant Barber's deposition testimony from November 15, 2022 represented by Plaintiffs' counsel, and all arguments of counsel, this Court finds clear and convincing evidence that Defendant Barber willfully, voluntarily, and intentionally violated the Injunction by using information, disclosing information, and initiating communication with leads, clients, prospects, and customers he gained access to or otherwise obtained during his time as an agent and independent contractor with Plaintiffs.

Accordingly, it is ORDERED that Defendant Barber is hereby held in contempt of court for failing to comply with the Injunction and otherwise acting with disregard for the judicial process. Therefore, this Court orders the following:

1. Defendant Barber must turn over all real estate business-related data devices and databases to Plaintiffs for the Plaintiffs' expert, Clark Walton, or some other third-party examiner as agreed upon by the parties, to image, preserve, and conduct a searching and reporting investigation on all file sources, using generally accepted forensic tools and methodologies, within fifteen days of this Order, provided that Mr. Walton or any other such examiner shall produce all information captured first to Defendant Barber's counsel for review and designation of any privileged material subject to the attorney-client privilege, the work product doctrine, or other claim of privilege. Defendant Barber shall have forty-five days from receipt of the results of the examination to conduct a privilege review and otherwise mark documents "Confidential" or "Attorneys' Eyes Only" pursuant to the Stipulated Confidentiality and Protective Order entered May 16, 2022, and produce non-privileged results. If Defendant Barber withholds any documents from production on the basis of any claimed privilege, he shall produce a privilege log containing sufficient detail to inform Plaintiffs' counsel of the general nature of the document(s) withheld and the basis for the claim(s) of privilege. Such a privilege review will be at Defendant Barber's expense, and to the extent necessary for examination of these devices and databases, the parties shall have fifteen days from the date of this Order to agree upon an examination protocol. If the parties determine an examination protocol is necessary and such an agreement cannot be reached between the parties at the expiration of fifteen days from the date of this Order, Plaintiffs will submit a proposed examination protocol order to the Court. The Court affirms and acknowledges that in complying with this Order, Defendants are not

waiving any applicable privileges, and the parties' obligations pursuant to Rule 26(b)(5)(B), SCRCPP, remain;

2. Any and all real estate-related commissions Defendant Barber has received or will receive subsequent to February 7, 2022 are to be held in trust by Defendant Barber until final resolution of this action;
3. Defendant Barber is enjoined from using the databases subject to Paragraph 1 of this Order during the pendency of this action;
4. Plaintiffs' request for attorneys' fees is denied at this time; and
5. The Injunction issued March 31, 2022 remains in full force and effect pending the trial of this case unless otherwise modified or terminated by Court order.

IT IS SO ORDERED.

The Honorable William H. Seals, Jr.
Presiding Judge of the 15th Judicial Circuit

Conway, South Carolina
Dated: January _____, 2023



Horry Common Pleas

Case Caption: HSS Barefoot LLC , plaintiff, et al VS Joel D Barber , defendant, et al

Case Number: 2022CP2601323

Type: Order/Other

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157