

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
CAREY GRAHAM AND)
RODNEY A. CHARDUKIAN,)
)
PLAINTIFFS,)

VS.)

MALCOLM M. BABB, BRENDA)
R. BABB, CABLE PLUS OF)
CAROLINA, INC., SOUTH BAY)
LAKES CABLE PARTNERSHIP,)
SOUTHBRIDGE CABLE)
TELEVISION, LLC, AND)
RENAISSANCE ENTERPRISES,)
INC., NOW KNOWN AS CONDO)
SERVICES, INC.)
)
DEFENDANTS.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2004-CP-26-3498

ORDER

FILED
HORRY COUNTY
2013 MAR 14 AM 11:04
MELANIE HUGGINS-WARD
CLERK OF COURT

Date of hearing: February 14, 2013
Appearances: Frank H. DuRant, Attorney for the Plaintiffs
William I. Diggs, Attorney for Renaissance
Brenda R. Babb, Pro-se

The matter came before me for Supplemental Proceedings as the Plaintiffs have obtained a judgment against the Defendants, Brenda R. Babb and Condo Services, Inc., which remains unsatisfied. The Defendants Babb and Condo have submitted discovery responses to the Plaintiffs, which the Court has examined. The Defendant, Brenda Babb, has testified that she does not have any bank accounts with monies available to satisfy the Plaintiffs' judgment. She testified that the only asset she has is the ownership interest she has in the entities that are named as Defendants in this matter. This ownership interest is subject to the express provisions of Judge Cothran's judgment that no dividend or distribution from Babb's ownership interest will be paid to the Defendant, Brenda R.

Babb, unless and until the judgment is satisfied in full. The Plaintiffs have requested that the Court order the sale of the Babb interest in Cable Plus of South Carolina, Inc., which consists of a 50% stock ownership in the corporation, and the 50% ownership interest as a Member held by Brenda R. Babb in Southbridge Cable Television, LLC. Since the only other shareholder/member in the two entities is the Plaintiff Graham, I have granted the request of the Plaintiffs.

The Sheriff has returned the execution against Babb unsatisfied. I hereby attach the stock interest of the Defendant Babb in Cable Plus of South Carolina, Inc., a closely held South Carolina corporation, which is a 50% stock interest in such corporation and the membership interest of the Defendant Brenda R. Babb, which is a 50% membership interest, in Southbridge Cable Television, LLC, a South Carolina Limited Liability Company, which the Master in Equity ¹ shall sell at public auction to the highest bidder at the next regular sales day for judicial sales, according to the manner established by law for sales in execution of a judgment. The interests shall be sold collectively, and the interest to be purchased, shall be expressly subject to the conditions contained in Judge Cothran's Judgment, to wit: that the Purchaser shall not be entitled to receive any dividends or distributions upon the stock interest or on the membership interest purchased, unless and until the Plaintiffs' judgment against the Defendants Brenda R. Babb and Condo Services, Inc. is paid and satisfied in full. Plaintiff Graham in his capacity as President of Cable Plus and as the other Member of Southbridge is directed to

¹ The Master In Equity for Horry County, the Honorable Cindy Graham Howe, recused herself from hearing this matter as she had represented Babb in an earlier proceeding. As the public sale of the property is a ministerial duty for the Master, Judge Howe has agreed to conduct the sale pursuant to the terms of my order and the Notice of Sale

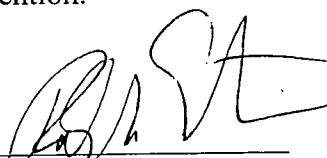
issue evidences of ownership to the successful purchaser equal to a 50% ownership interest in each entity. The Plaintiffs shall be entitled to bid at such sale and apply any bid amount, if they are the successful bidders, as a credit to the judgment debt due from the Defendants.

In the case of Graham, et al., vs. Stephen Eric Robinson, 2011-CP-26-4556, I have rendered judgment that the Defendant Brenda Babb fraudulently transferred two parcels of real property to Mr. Robinson, and declared that such transfers were void and a nullity. I will, by separate legal notice, sell the aforesaid parcels of land to the highest bidder, in the manner provided by law for sales of real estate to satisfy judgments.

The Defendant Babb testified that she had just received \$21,000.00 from payment of a promissory note, which was secured by a mortgage, and that she “cashed” the check. It is Ordered that the Defendant Babb shall make payment to Plaintiffs’ attorney, Frank H. DuRant, within 10 days of the date of this Order, of the \$21,000.00 paid, or I shall hold a hearing, upon four days notice, for such Defendant to show cause why she should not be held in contempt for her actions.

The Plaintiffs have informed the Court that they are continuing research of bank accounts held by the Defendants, which were not disclosed in discovery. If such information is forthcoming, the Plaintiffs’ attorney shall notify the Court and the Defendants for any requested and further Court intervention.

AND IT IS ORDERED.



RALPH STROMAN
Special Master

March 4, 2013
Conway, South Carolina

Copies to: Frank H. DuRant, PO Box 960, Myrtle Beach, SC Attorney for Plaintiffs
William I. Diggs, 1700 Oak St., Suite D, Myrtle Beach, SC 29577
Brenda Babb, Pro-se, Post Office Box 4800, Calabash, NC 28467

STATE OF SOUTH CAROLINA)
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COUNTY OF Horry)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2004-CP-26-3498

CAREY GRAHAM AND)
RODNEY A. CHARDUKIAN,)
)
PLAINTIFFS,)

VS.)

ORDER DENYING MOTION OF
DEFENDANTS BABB & CONDO

MALCOLM M. BABB, BRENDA)
R. BABB, CABLE PLUS OF)
CAROLINA, INC., SOUTH BAY)
LAKES CABLE PARTNERSHIP,)
SOUTHBRIDGE CABLE)
TELEVISION, LLC, AND)
RENAISSANCE ENTERPRISES,)
INC., NOW KNOWN AS CONDO)
SERVICES, INC.,)
)
DEFENDANTS.)

FILED
Horry COUNTY
2013 MAR 14 AM 11:05
MELANIE HUGGINS-WARD
CLERK OF COURT

Date of Hearing: February 14, 2013
Appearances: Frank H. DuRant, Attorney for the Plaintiffs
William I. Diggs, Attorney for the Defendant Condo
Brenda R. Babb, Pro se

Nature of Motion

The Defendants Brenda Babb and Condo Services filed this Motion for Declaratory Judgment on February 1, 2012 for the "Interpretation of Supplemental Agreement and Contract," which is the written fee agreement of the Plaintiffs with their attorney, Frank H. DuRant, in this matter. The Motion was briefed and argued at the supplemental proceedings hearing. Declaratory Judgments are governed by S.C. Code Ann. 15-52-10, et seq., and follow the common law in providing a mechanism to determine the rights of a party under a contract or deed that is disputed. I have examined the entire case file of the Court. A declaratory judgment action is not

appropriate in a final litigated dispute as those issues could have been decided at the trial of the case.

Plaintiffs employed Frank H. DuRant as their attorney in this derivative action against the Defendants in 2004. The moving parties have lost the case on the merits and have filed three unsuccessful civil appeals. The Plaintiffs' fee agreement with Frank H. DuRant was submitted to the Honorable R. Ferrell Cothran, Circuit Court Judge, during the trial on the merits. According to the Judgment, Judge Cothran examined and approved the agreement and directed that DuRant would have a lien against any recovery for the amount of the judgment entered and for 40% of any future revenues generated by the cable television systems owned by the Defendants South Bay Lakes Cable Partnership, Cable Plus and Southbridge. This part of the Judgment was not appealed by the Defendants.

DISCUSSION

The Defendants have alleged that the Judgment did not award "attorneys fees" against the Defendants. The Judgment clearly states attorney's fees were not awarded against the Defendants Babb and Condo because there was no statute or contract that permitted attorney's fees to be awarded against the Defendants Babb and Condo. The Plaintiffs, in their derivative capacities for Cable Plus, South Bay Lakes and Southbridge, did enter into a written fee agreement with Attorney DuRant for a contingency fee that applied to any judgment recovered against the Defendants and from any future revenues received by the entities owning the cable television rights. The Court examined and approved the contingency fee agreement entered by the Plaintiffs and there was no appeal of this portion of the judgment.

The Judgment provides that DuRant is to receive 40% (the increase from one third to 40% of the recovery was due to the appeal by the Defendants) of any recovery from the

\$997,000.00 judgment and 40% of any future revenue that the entities shall receive from the sale of cable television revenues. The Order states that the “attorneys fees shall be a lien against any recovery in this case and any future recovery or revenues of Cable Plus, South Bay Lakes Cable Partnership and Southbridge Cable and shall be paid when income is received by the Receiver or Graham.... In the event that Babb, due to her ownership interests in the Entities, receives funds before this Judgment is satisfied, Graham shall be entitled to apply any amount due to Babb as credit against the Judgment of the Court.” This is the law of the case.

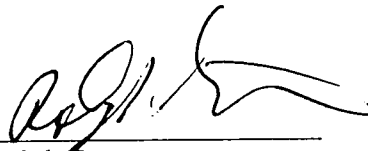
After three unsuccessfully Appeals, Defendant Babb refuses to acknowledge that the cable television rights do not belong to her personally, but to the Defendant entities. She does hold a percentage “ownership” in these entities, but her interest is subject to the Plaintiffs’ unpaid judgment. The Judgment provides that as to Condo Services: “Since there was never a transfer of the legal rights from the Entities to Babb and Condo, Condo shall have no ownership interest in the property converted or rights wrongfully taken” and that Graham “should receive and disburse the receipts from the Receiver, Babb and Condo, and Time Warner for the monies due under the TWC/Condo contract, and for any amounts due from Time Warner (or any other provider) for post July 1, 2010 services due the owners.”

This is another belated attempt by Babb and Condo to seek review of a matter already decided by Court, which was not appealed. There is no collateral attack allowed by a litigant to a Court proceeding and the Court’s Judgment is res judicata as to all issues submitted and ruled upon by the Court.

CONCLUSION

It is therefore Ordered, Adjudged and Decreed that the Defendants’ request for a Declaratory Judgment as to the issue of attorneys fees is respectfully denied as these issues were

judicially determined at the hearing on the merits. There is no justiciable controversy before the Court. The Plaintiff shall be awarded their taxable costs and expenses, including the costs of the Court Reporter.



Ralph Stroman
Special Master

Conway, South Carolina
March 14, 2013