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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2022-000704

South Carolina Community Bank,………………………………………… Respondent,

vs.

Salon Proz, LLC, Columbia Empowerment Zone, Inc. d/b/a The Columbia Empowerment Zone, and Frank Mitchell, Defendants,

Of whom Salon Proz, LLC is the…………………………………………. Appellant.

FINAL BRIEF OF RESPONDENT

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COUNTER-STATEMENT OF ISSUES ON APPEAL

1. Did the circuit court correctly issue an order against Yvonne Jones, the sole-member of Salon Proz, LLC, for interfering with the court's orders?

2. Did the circuit court correctly order the Receiver to be paid all rent arising out of the property that the Receiver was previously ordered to take charge over?

3. Did the circuit court properly exercise its discretion in issuing sanctions against Salon Proz after it admitted to not complying with the court's orders?

4. Did the circuit court correctly refer this case to the master-in-equity when the only remaining claims are equitable in nature?

5. Does this Court have authority to determine whether removal of the Receiver is appropriate when there has been no final order on this issue and there is currently a Motion to Remove Receiver pending in the circuit court?

COUNTER-STATEMENT OF THE CASE

This appeal arises from a circuit court order sanctioning Appellant Salon Proz, LLC ("Salon Proz") and Yvonne Jones, Salon Proz's managing member, for admitted and repeated willful violations of two separate circuit court orders.

This case was originally filed by Respondent South Carolina Community Bank ("SCCB") on October 26, 2011 as a foreclosure of commercial real property in Richland County located at 2901 Two Notch Road, Columbia, South Carolina ("Subject Property"). After SCCB learned that property taxes were not being paid on the Subject Property, SCCB sought an Order appointing a receiver for the Subject Property. On October 2, 2020, the Honorable Alison Lee appointed Christopher Twitty (the "Receiver") as Receiver. Judge Lee's Order instructed the Receiver to "take charge of the real property, which is subject of this action and to collect rent, debts, and any fees pertaining to the property… The Receiver will maintain all keys, books, records, indices, rental proceeds, bank accounts, funds, deposits, and other tangible items or documents involving the property." (R. pp. 014; Order Appointing Receiver).

In March 2021, approximately five months after Judge Lee's Order of Appointment was issued, Salon Proz filed for bankruptcy. (R. pp. 016; order noting bankruptcy stay). On August 20, 2021, an order voluntarily dismissing the bankruptcy proceeding was issued. (R. pp. 018; Order lifting bankruptcy stay). Despite this brief bankruptcy stay, Salon Proz failed to comply with Judge Lee's Order of Appointment in the five months before filing for bankruptcy and in the next year and half after. In Response to Salon Proz's failure to comply with Judge Lee's Order, SCCB filed a Rule to Show Cause in March 2021, for which the Honorable Donald B. Hocker found that Salon Proz had failed to comply with the Order of Appointment and ordered compliance within thirty days. (R. pp. 021; Rule to Show Cause Order). Despite this Order, Salon Proz continued to violate

the Order of Appointment and was also in violation of Judge Hocker's Rule to Show Cause Order by contacting tenants, not allowing the Receiver to collect all rent due, and failing to provide the Receiver with all information required under Judge Lee's Order. Because of these repeated violations, SCCB filed a Motion to Enforce Prior Orders of the Court in December 2021. (R. pp. 101; Pl. Mot. to Enforce).

A hearing on SCCB's Motion was held on February 8, 2022. At this hearing, Judge Hocker heard testimony from Pastor Frederick of tenant Midtown Fellowship, the Receiver, and Yvonne Jones. (R. pp. 166-171, 181-193; Feb. 8 Hearing Transcript). After the hearing was conducted, on March 22, 2022, Judge Hocker Ordered that "the Defendant, Salon Proz, LLC., and its managing partner, Yvonne Jones, have willfully failed to comply with the [Order of Appointment and Rule to Show Cause Order]." (R. pp. 002; March 22 Order, p. 2). This Order sanctioned Salon Proz and Yvonne Jones for the admitted violations and ordered payment of attorney fees and Receiver's fees. (*Id*.). Further, the case was referred to the Richland County Master-in-Equity and ordered "all rental payments from this date forward shall be paid to the Receiver and there shall be no interference by the Defendant and its managing partner." (*Id*.). On March 29, 2022, Judge Hocker issued an Order Striking Salon Proz's Counterclaims based on the repeated misconduct at issue. (R. pp. 004; March 29 Order). The March 22 and March 29 Orders form the basis of Salon Proz's present appeal.

STANDARD OF REVIEW

For nonjury actions such as this one, the "trial court's findings of fact . . . should not be disturbed on appeal unless they are without evidentiary support." *Hunt v. Forestry Comm'n*, 358 S.C. 564, 569, 595 S.E.2d 846, 848–49 (Ct. App. 2004) (emphasis added). Moreover, "the imposition of sanctions is generally entrusted to the sound discretion of the [c]ircuit [c]ourt."

Downey v. Dixon, 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct. App. 1987). Indeed, such decisions should only be reversed "if it is without evidentiary support or the trial judge has abused his discretion. *Durlach v. Durlach*, 359 S.C. 64, 70, 596 S.E.2d 908, 912 (2004) (*quoting Stone v. Reddix–Smalls*, 295 S.C. 514, 516, 369 S.E.2d 840 (1988) "An abuse of discretion may be found where the appellant shows that the conclusion reached by the trial court was without reasonable factual support and resulted in prejudice to the rights of appellant, thereby amounting to an error of law." *Karppi v. Greenville Terrazzo Co., Inc.*, 327 S.C. 538, 542, 489 S.E.2d 679, 681–82 (Ct. App. 1997) (citing *Dunn v. Dunn*, 298 S.C. 499, 502, 381 S.E.2d 734, 735 (1989)). The burden is on the party appealing the imposition of sanctions to demonstrate that the trial judge abused his or her discretion. *Barnette v. Adams Bros. Logging*, 355 S.C. 588, 593, 586 S.E.2d 572, 575 (2003).

ARGUMENT

1. The Court Properly Issued Sanctions Against Salon Proz's Managing Member.

As stated above, the March 22 Order issued by the circuit court found that both Salon Proz and its managing member, Yvonne Jones, had willfully failed to comply with the court's orders and imposed sanctions for such conduct. (R. pp. 002-3; March 22 Order, p. 2). The Court, after consideration of the evidence presented to it, recognized that the actions described in the Rule to Show Cause, Motion to Enforce, and other records of the Court were taken by Yvonne Jones alone. (R. pp. 002-3; March 22 Order, p. 2). Ms. Jones, as the sole member of Salon Proz, LLC, consistently acted on behalf of Salon Proz to willfully disobey the Court's Orders. The actions by Ms. Jones were only taken and authorized based on her capacity as Salon Proz's Managing Member.

Allowing Ms. Jones to use Salon Proz's entity status to escape liability for her actions results in injustice to both SCCB and the Court. Through her personal actions, Ms. Jones' apparent belief that she was above any Order this Court issued was made clear. Prior contempt orders

against Salon Proz only did not alter Ms. Jones' conduct or lead her to comply with the orders in any way. Accordingly, Ms. Jones should not now be permitted to escape the repercussions of her disobedience by hiding behind the entity status of Salon Proz.

2. **The Court Properly Ordered That All Rent Arising Out Of The Property Be Paid To The Receiver.**

In Judge Lee's October 2020 Order, the Receiver was appointed to "take charge of the real property, which is subject of this action and to collect rent, debts, and any fees pertaining to the property." (R. pp. 014; Order Appointing Receiver). Salon Proz argues that the Receiver is not entitled to the rent owed to two other entities – The Event Hall, LLC and Office Suites, LLC ("Third Party Entities") – because they are separate entities and not named parties to the present action. (Initial Brief of Appellant, p. 20-21). However, South Carolina law will allow courts to disregard such separate entity status when there is evidence of the entities' intertwining *along with* evidence of "bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of the entities' legal distinctions." *See Pertuis v. Front Roe Restaurants, Inc.*, 423 S.C. 640, 655, 817 S.E.2d 273, 280 (2018).

Here, the Third Party Entities and Salon Proz share the same members and registered agent. The registered address for the Third Party Entities is the address of the Subject Property. Salon Proz, instead of leasing rental space at the Subject Property to tenants directly (i.e. Midtown Fellowship), formed the Third Party Entities and entered into leases with them. The lease between Salon Proz and Event Hall, LLC, for example, is for $1,000 per month. However, the lease between Event Hall, LLC, and Midtown Fellowship is for a substantially higher sum. Thus, it is apparent that Salon Proz is using these separate entities in a bad faith attempt to circumvent the Court from collecting that rent and hinder SCCB's right to the true rental proceeds. (R. pp. 041; Complaint,

Exhibit C – Assignment of Rents, Leases, Profits and Security Deposits).[1] Recognizing the Third Party Entities as wholly separate from Salon Proz would result in clear injustice because Salon Proz would be permitted to unfairly circumvent the Court's orders and SCCB would not able to collect rent it is entitled to under the agreement between SCCB and Salon Proz. Additionally, as established by Judge Lee's Order appointing the Receiver, the rents at issue in this litigation are in danger of being lost if they are not collected by the Receiver. Accordingly, the circuit court properly found that all rent arising out of the Subject Property should be paid to the Receiver.[2]

3. The Imposition Of Sanctions By The Circuit Court Was Proper And The Sanctions Imposed Were Appropriate In Nature.

a. The circuit court properly exercised its authority to enforce prior orders of the Court.

Based on Salon Proz's admitted and repeated violations of the lower court's orders, the circuit court properly found adequate cause to issue sanctions. "The imposition of sanctions is generally entrusted to the sound discretion of the Circuit Court." *Karppi v. Greenville Terrazzo Co.*, 327 S.C. 538, 542, 489 S.E.2d 679, 681 (Ct. App. 1997)(citing *Downey v. Dixon*, 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct.App.1987)). "Courts are vested by their very creation with the power to preserve order in judicial proceedings and to enforce judgments and orders." *Ex parte Jackson*, 381 S.C. 253, 258, 672 S.E.2d 585, 587 (Ct. App. 2009). Moreover, a court's inherent power to punish conduct that is "calculated to obstruct, degrade, and undermine the administration

[1] By executing the Assignment of Rents, Leases, Profits, and Security Deposits, Salon Proz knew that upon default, any rent made payable to it could be collected by SCCB. This fact further evidences willful intent by Salon Proz to circumvent those contractual obligations.

[2] In the event the Court is persuaded by Salon Proz's argument and precludes the Receiver from collecting rent from Event Hall, LLC and Office Suites, LLC's sublettors, it is important to note that the lease between Salon Proz and these entities states: "[i]n the event Tenant shall sublease the Premises in accordance herewith for rentals in excess of those rentals payable hereunder, Tenant shall pay to Landlord monthly in advance as Additional Rent hereunder, one-half of all such excess rent." Thus, despite Salon Proz's contention to the contrary, the Receiver is entitled to additional rent beyond the listed amount in Third Party Entities' leases.

of justice" cannot be abridged. *State ex rel. McLeod v. Hite*, 272 S.C. 303, 305, 251 S.E.2d 746, 747 (1979).

Repeatedly throughout it's brief, Salon Proz argues that any noncompliance with the circuit court's orders arose out of "desperation" to preserve the Subject Property because the Receiver was not fulfilling his duties. (Initial Brief of Appellant, p. 23). However, any "desperation" Salon Proz found itself in was the product of its own actions. For example, Salon Proz refused to transfer utilities into the Receiver's name, yet then claimed that it had disobey the court's order and collect rent so that it could pay those utilities. (R. pp. 177, Feb. 8 Hearing Transcript, p. 19 ln. 24 – p. 20 ln. 10; *see also* Initial Brief of Appellant, p. 18). Further, any contention that Salon Proz was "lulled" into believing it had complied with the Receiver's request is simply not reasonable. (Initial Brief of Appellant, p. 18). Salon Proz had actual knowledge that it was not in compliance from multiple sources, including (1) Receiver's numerous requests; (2) SCCB's filing of both the Rule to Show Cause and Motion to Enforce; (3) Receiver's affidavit submitted for the Motion to Enforce hearing; and (4) the Receiver's testimony at the hearing on the Motion to Enforce. (R. pp. 58, 101, 159; Pl. Rule to Show Cause; Pl. Motion to Enforce; Feb. 8 Hearing Transcript).

Despite this knowledge, Salon Proz continuously failed to provide the necessary information, failed to voluntarily transfer the utilities into the Receiver's name, and failed to provide all rent to the Receiver. Instead, Salon Proz affirmatively instructed tenants to pay rent to it instead of the Receiver. These deliberate and intentional actions were clearly in violation of the circuit court's orders. Accordingly, the circuit court properly exercised its inherent power to issue sanctions to enforce its orders in an effort to insure that Salon Proz's egregious conduct did not continue.[3]

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[3] Salon Proz's argument that the "lower court's orders assume, wrongly, that SCCB is entitled to victory in this case," and that the circuit court "assumed that, since a bank bought a foreclosure action, it must be entitled to win it," are

b. The sanctions imposed by the circuit court were appropriate in nature and not unduly harsh.

Despite Salon Proz's contention otherwise, the sanctions imposed by the circuit court were not "inappropriately harsh." (Initial Brief of Appellant, p. 24). "A sanction which results in a default or dismissal is harsh punishment which should be imposed only if there is some showing of willful disobedience or gross indifference to the rights of an adverse party." (*Karppi v. Greenville Terrazzo Co*., 327 S.C. 538, 547, 489 S.E.2d 679, 684 (Ct. App. 1997). As stated in Plaintiff's Response in Opposition to Defendant's Motion to Reconsider, "[Salon Proz's] actions in the case *sub judice* clearly evidence willful disobedience of this Court's orders, for which the sanctions imposed were properly within the discretion of this Court." (R. pp. 294; Pl. Resp. Opp. Mot. to Reconsider, p. 3)(*See Moyer*, 358 S.C. at 257)(striking Appellant's pleadings based on intentional defiance of the Court's Temporary Restraining Order and willful destruction of evidence after finding the Appellant lacked credibility)(*see also Griffin*, 334 S.C. at 199, 511 S.E.2d 716, 719)(while noting that striking the Answer is a "harsh sanction," the court found that no less drastic sanction would be effective when four prior Orders had been issued without meaningful compliance by the defendant).

Salon Proz was afforded ample opportunity to comply with the circuit court orders. Judge Lee issued the Order Appointing the Receiver in October 2020, with which Salon Proz failed to comply. Because of this willful failure, SCCB filed a Rule to Show Cause, for which Judge Hocker found Salon Proz in contempt and instructing it to comply with the Receiver's requests within thirty days. Still, Salon Proz did not comply. SCCB was then forced to file **yet another**

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wholly without merit. Nothing in the March 22 or March 29 Orders contain any assumption or statement that could logically lead to that conclusion. In fact, the lower court encouraged Salon Proz to refinance this loan to avoid foreclosure altogether. (R. pp. 003; March 22 Order, p. 3). Moreover, reference to the Master-in-Equity does not dispose SCCB of its burden of proof, which SCCB recognizes it will be required to fulfill.

motion to seek enforcement of the Court's **two** prior orders. As in *Griffin*, Salon Proz received a clear warning in the Rule to Show Cause Order that it would bear consequences if it continued to disobey the Orders. Yet Salon Proz completely disregarded those warnings and continued its willful disobedience and gross indifference to the rights of SCCB and the powers of the Court. In fact, Salon Proz even disregarded the Court's warnings and rulings in the February 8 hearing at dispute in this appeal by continuing to contact tenants and instruct them to pay her directly. Thus, the circuit court's decision to impose sanctions to enforce its prior orders was appropriate and the sanctions imposed were not "harsh" in light of Salon Proz's willful disobedient conduct.

c. The circuit court considered proper evidence in issuing the March 22 and March 29 Orders.

Salon Proz argues that the Court was not presented any evidence to support its findings in the March 22 and March 29 Orders. (Initial Brief of Appellant, p. 23-24). This is simply untrue. In its March 22 Order, the Court specifically references testimony of the Receiver, testimony of the Salon Proz Managing Partner, argument from counsel, as well as various documents and Ms. Jones' affidavit. Appellate courts typically give deference to the trial judge's determination of witness credibility absent an abuse of discretion. (*See* Woodall v. Woodall, 322 S.C. 7, 12, 471 S.E.2d 154, 158 (1996)(applying abuse of discretion standard "because the judge was in a unique position to observe the parties as well as to judge the credibility of the witnesses and resolve the conflicts in their testimony"); *see also Halbersberg v. Berry*, 302 S.C. 97, 394 S.E.2d 7 (Ct. App. 1990)("When, as here, there is conflicting evidence on an issue, it is up to the court as trier of facts to judge credibility."). The fact that the Court did not accept Salon Proz's version of the facts does not provide a basis to overturn the Court's decision. For example, the following testimony provided by the Receiver is proper evidence to support the circuit court's order:

Mr. McGee: … your ordered duties pursuant to Judge Lee's order include taking charge of the property and collect rents, debts and any fees pertaining to the property. To maintain keys, books, records, rental proceeds, bank accounts, funds, deposits, and other tangible items regarding the property, is that right?

Mr. Twitty: Correct.

Mr. McGee: And as of your, as of this affidavit, it says that she has not provided you with all of those things, is that right?

Mr. Twitty: Correct.

Mr. McGee: And is, this affidavit, has she provided you with anything that was, that had not been provided as the time you signed this affidavit through today?

Mr. Twitty: No.

…

Mr. McGee: … And I think you said one of the first discussions that you had with Ms. Jones after you were appointed in October of 2020 was to have the utilities turned over, transferred to your name ---

Mr. Twitty: Correct.

Mr. McGee: --- is that right?

Mr. Twitty: Correct.

Mr. McGee: Did she cooperate in doing that?

Mr. Twitty: No.

Mr. McGee: Did you ask her more than once?

Mr. Twitty: I'm certain I did. I asked her of many items more than once.

Mr. McGee: Okay. Has she provided the keys, all the keys ---

Mr. Twitty: I've gotten one key, the first day I got one key to the front door, but I have no other keys to the suites or to Midtown Fellowship space or any of the other interior doors.

> **Mr. McGee**: Since October of 2020, has she provided you with all the rent from the subject property each month?
>
> **Mr. Twitty**: I don't think so.
>
> **Mr. McGee**: Okay. And to your knowledge, has she told other tenants at the property not to pay you directly?
>
> **Mr. Twitty**: Apparently so. I mean, obviously with The Event Hall that was the case.
>
> **Mr. McGee**: And so in so far as the utilities are concerned, when she did not cooperate in having them put in your name, I think you testified a minute ago that you provided a copy of Judge Lee's order to Dominion, is that right?
>
> **Mr. Twitty**: Correct.
>
> **Mr. McGee**: And is that how you got the water and electricity over into your name?
>
> **Mr. Twitty**: It is.
>
> **Mr. McGee**: Okay, And since, and since that time, the utilities were put in your name as the Court appointed receiver, have you paid all utility bills that have come due?
>
> **Mr. Twitty**: To the best of my knowledge.

(R. pp. 177-179; Feb. 8 Hearing Transcript, p. 19 ln. 6 – p. 21 ln. 8.).

Being in the best position to judge the credibility of witnesses at the hearing on this matter, Judge Hocker's March 22 Order expressly states "[q]uite frankly, the testimony of Ms. Jones was not credible other than her admission that she in fact did collect some rent herself in order to 'pay bills.'" (R. pp. 001-002; March 22 Order, p. 1-2). Moreover, the circuit court specifically notes that the Receiver's testimony "supported the Plaintiff's position." (R. pp. 001; March 22 Order, p. 1). The Receiver's testimony, Mr. Jones testimony, and the documents provided by all parties was

proper evidence that the circuit court considered to make the final determination on this matter. Accordingly, the circuit court's conclusions were reasonable based on the evidence presented.[4]

4. The Circuit Court Properly Referred This Matter To The Master-in-Equity Because All Remaining Claims Were Equitable In Nature.

Rule 53(b) of the South Carolina Rules of Civil Procedure states that "[i]n an action where the parties consent, in a default case, or an action for foreclosure, some or all of the causes of action in a case may be referred to a master or special referee by order of a circuit judge or the clerk of court." S.C.R.Civ.P. 38(b) further provides that "[a]ny party may demand a trial by jury of any issue triable of right by a jury…." (emphasis added). Thus, "the relevant question in determining the right to a trial by jury is whether an action is legal or equitable; there is no right to trial by jury for equitable actions." *Lester v. Dawson*, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997). "A mortgage foreclosure is an action in equity." *U.S. Bank Trust Nat'l Ass'n v. Bell*, 385 S.C. 364, 373, 684 S.E.2d 199, 204 (Ct. App. 2009).

The only claim asserted by SCCB in this action is one for foreclosure. Because a mortgage foreclosure is an action in equity, Salon Proz is not entitled to a jury trial on that claim. *Id*. While true that "counterclaims – including those raised in equitable actions – may, at times, be entitled to a jury trial," Judge Hocker properly struck Salon Proz's counterclaims in the present action based on its admitted and repeated failure to comply with the Court's orders. *Wachovia Bank, Nat. Ass'n v. Blackburn*, 407 S.C. 321, 328, 755 S.E.2d 437, 441 (2014); *see also* R. pp. 001-009; March 22 Order and March 29 Order). Because the only remaining claims are equitable in nature,

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[4] Although Salon Proz argues that the circuit court took certain assertions emailed to the court by SCCB "as fact," there is nothing in the March 22 order that indicates the assertions in SCCB's email were considered at all in the final determination. In fact, the reference to SCCB's email is included in a footnote *after* the Court describes the evidence it considered in making its ruling. (R. pp. 002; March 22 Order, p. 2, n. 1).

and because Salon Proz does not have a right to a jury trial on the foreclosure claim, this Court should uphold the circuit court's reference of this matter to the Master-in-Equity.

5. Salon Proz's Argument Regarding It's Motion To Terminate Receivership Is Not Ripe For Review.

a. Salon Proz's Motion to Terminate Receivership is not ripe for review because the circuit court has not made a final decision regarding the motion.

"Generally, only final judgments are appealable." *Tillman v. Tillman*, 420 S.C. 246, 248, 801 S.E.2d 757, 759 (Ct. App. 2017). "'Final judgment' is a term of art referring to the disposition of all issues in the case." *Doe v. Howe*, 362 S.C. 212, 216, 607 S.E.2d 354, 356 (Ct. App. 2004). A final judgment is one that ends the action and leaves the court with nothing to do but enforce the judgment by execution. *Good v. Hartford Acc. & Indem. Co*., 201 S.C. 32, 41–42, 21 S.E.2d 209, 212 (1942). Although some exceptions to the final judgment rule are set forth in S.C. Code Ann. § 14-3-330 (providing for the appeal of certain interlocutory orders), still none of those exceptions make this issue ripe for appeal.

Salon Proz claims it made an oral "motion" at the February 8, 2022 hearing before Judge Hocker (Initial Brief of Appellant, p. 32). However, "motion" overstates the true sentiment of Salon Proz's communications with the Court. Instead, counsel for Salon Proz stated the following in his closing argument to the court:

> "So we note that there, that, there's no contempt, there's noncompliance, but all noncompliance is not contempt. **If anything, we'd move to terminate their receivership.** And we've shown that during the time that Mr. Twitty's been the receiver, he's collected rent in order to pay utilities and didn't pay them, they were in danger of being shut off…"

(R. pp. 194-5; Transcript Feb. 8 hearing p. 36 ln. 24 – p. 37 ln. 5.).

However, even if this Court construes counsel's comment in passing as a true oral motion, Judge Hocker did not rule on it. The Court's orders contain no mention that the Salon Proz made a motion to terminate the Receiver, nor was a decision regarding the Receivership made. (R. pp. 001-009; March 22 Order and March 29 Order).

Moreover, on August 23, 2022, Salon Proz filed a formal "Motion to Terminate Receivership or to Remove and Replace Receiver" with the circuit court. SCCB filed its opposition to that Motion on September 1, 2022. To date, no hearing on this motion has been held and it is currently pending in the circuit court. Because there has been no final decision on Salon Proz's motion to terminate the receiver, this issue is not ripe for appeal. *See Tillman*, 420 S.C. at 248, 801 S.E.2d at 759.

b. Even if Salon Proz's Motion to Terminate Receivership is considered ripe for review, there is still no evidence to support terminating the Receiver.

Even if a formal motion was made and ruled upon, Salon Proz has still failed to submit any credible evidence that the Receivership should be terminated in this action. "The appointment of a receiver and the revocation of such appointment rests in the discretion of the Court*." Kirven v. Lawrence*, 244 S.C. 572, 579, 137 S.E.2d 764, 767 (1964)(*citing Vasiliades v. Vasiliades*, 231 S.C. 366, 98 S.E.2d 810). A Receiver "is appointed for the benefit of all parties interested, and will not, therefore, be discharged merely on the application of the party at whose instance he was appointed." *Donaldson v. Johnson*, 3 S.C. 216, 221 (1872) (quoting *Bainbraidge vs. Blair*, 3 Beav., 421, 3 Ch. Eq. Dig., Tit., "Receiver," 2499).

Judge Allison Lee appointed the Receiver in this matter pursuant to S.C. Code Ann. § 15-65-10, which authorizes appointment where "the property which is the subject matter of the action is in the possession of the adverse party, and where the property, or its rents and profits, are in

danger of being lost or materially injured or impaired." *Id.*; *see also Andrick Dev. Corp. v. Maccaro*, 280 S.C. 103, 106, 311 S.E.2d 95, 97 (Ct. App. 1984).

Judge Lee found these requirements were met in 2020, the requirements were present at the hearings in dispute in the present appeal, and the same would be true today if the Receivership was terminated. The record reflects Salon Proz's willingness to continuously violate the Court's orders. Over the span of several years, Salon Proz withheld information that it was required to produce and it interfered with the Receiver's duties by contacting tenants directly and instructing them to disobey the Receiver's requests. Thus, Salon Proz's actions surely show the same risk of material injury to the Subject Property if the Receivership is terminated. Therefore, even if the this issue was ripe for appeal – which it clearly is not – there is insufficient evidence to terminate the Receiver.

CONCLUSION

For the reasons detailed above, this Court should affirm the circuit court's March 22 and March 29 Orders and allow this matter to proceed before the master-in-equity.

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May 22, 2023
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2022-000704

South Carolina Community Bank,………………………………………… Respondent,

vs.

Salon Proz, LLC, Columbia Empowerment Zone, Inc. d/b/a The Columbia Empowerment Zone, and Frank Mitchell, Defendants,

Of whom Salon Proz, LLC is the………………………………………… Appellant.

PROOF OF SERVICE

I certify that I have served the foregoing Initial Brief of Respondent on the date given below by emailing it to counsel for the Appellant at the address(es) noted below.

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May 22, 2023