

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
CA No. 2022-CP-23-04451

Danny Rose,

Plaintiff,

v.

Robert Rose, Gloria Rose-Ruch, Mary
Margaret Doll Rose, and John Does 1-99

Defendants.

ORDER

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Jul 13 2023

SC Court of Appeals

This matter comes before the Court upon motions by Plaintiff, Danny Rose. Plaintiff seeks sanctions and warrants of attachment for the full amount at issue in this case and further seeks a judgment on the pleadings pursuant to Rule 12(c), SCRPC. For the reasons discussed herein, Plaintiff's motions are GRANTED.

I. Motion for Sanctions

Plaintiff seeks sanctions on Defendants for their failure to comply with the Court's order entered February 24, 2023 relating to Plaintiff's efforts to attach Defendants' property pursuant to S.C. Code Ann. §15-19-10, *et seq.* Plaintiff's motion for attachment was filed in early November 2022 but was not heard until February 16, 2023. At the hearing, Defendants represented to the Court that approximately \$182,000.00 in unencumbered funds was available to satisfy all or a portion of any judgment against Defendants. Despite having had months to prepare the statement of accounts Defendants to provide to the Court and Plaintiff at the hearing, Defendants had no actual documentation to present to the Court at the hearing, but in its Order, the Court afforded Defendants an additional 10 days to provide the statement of unencumbered funds. The Order cautioned Defendants that a failure to provide such a statement would result in attachment of all

property as allowed by statute. Despite the leeway provided to Defendants by the Court, no such statement was provided, resulting in the within motion being filed by Plaintiff. At the hearing of this motion, Defendants conceded they had not complied with the Court's Order.

Accordingly, the Court determines property held by Defendants, to the extent allowable by law, should be subject to attachment by Plaintiff and Plaintiff is hereby authorized to submit Warrants of Attachment to the Court for review and execution. It is further Ordered that Defendants should bear the attorneys' fees and costs incurred by Plaintiff in pursuing this relief in the amount of \$2,337.75 as supported by the Affidavit of Attorney's Fees and Costs submitted by Plaintiff's Counsel.

That affidavit supports that Plaintiff's counsel's rate in this matter is \$250.00/hour and explains counsel's experience in support of his hourly fee. It also details Plaintiff's counsel's hourly rate for new clients presently stands at \$300/hour. Based upon the affidavit and other submissions in this matter, the Court finds \$250.00/hour to be reasonable and commensurate with Plaintiff's counsel's knowledge, professional standing, and experience; the time and labor expended devoted to these matters; the nature, extent, and difficulty of the within matter; and the beneficial results he achieved, as shown in the within Order.

Accordingly, it is hereby Ordered that to the extent allowed by statute, Defendants' property shall be subject to attachment and this Court will issue Warrants of Attachment consistent herewith. It is further ordered that Defendants are required to pay attorneys' fees and costs in the amount of \$2,337.75 directly to Attorney William Young within 30 days from the filing of this Order. A failure to comply shall result in further sanctioning of Defendants.

II. Motion for Judgment on the Pleadings

Rule 12(c), SCRCP, provides “After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.” A motion for judgment on the pleadings “should be granted when it appears the moving party would be entitled to judgment on the merits without regard to what the findings might be on the facts.” *Lowery v. The Wade Hampton Co.*, 270 S.C. 194, 241 S.E.2d 556 (1978).

According to Plaintiff’s Complaint, Defendants wrongfully removed \$225,000 belonging to Plaintiff from a Bank of America checking account and have refused to return the money to him. Plaintiff asserted multiple causes of action against Defendants, including negligence, breach of fiduciary duty, money had and received, conversion, fraud/constructive fraud, negligent misrepresentation, and civil conspiracy. Plaintiff also sought various legal and equitable relief, including an accounting of the funds, an imposition of a constructive trust, and injunctive relief.

At the hearing on this matter, Plaintiff pointed to several admissions within Defendants’ answer: 1) on or about March 9, 2022, Plaintiff deposited the proceeds from the sale of his home into the Bank of America checking account; 2) on or about March 22, 2022, Defendant Robert Rose wired \$175,000 from that account to Defendant Mary Margaret Doll Rose and \$50,000 to Defendant Gloria Rose Ruch; and 3) Plaintiff maintains continued ownership over the funds and assets required. Plaintiff argued these admissions, taken together and in the context of the entirety of the complaint and Defendants’ answer, established Plaintiff’s right to obtain a judgment on the pleadings for the conversion and money had and received causes of action. Defendants did not challenge Plaintiff’s contentions and did not point to any allegations in the answer which would undermine Plaintiff’s argument or which would entitle Defendants to remain in control and custody of Plaintiff’s money and the assets derived therefrom.

A claim for money had and received is an action at law and exists in equity when a defendant has money belonging to the plaintiff which should be repaid to the plaintiff. *Okatie River v. Southeastern Site Prep.*, 353 S.C. 327, 577 S.E.2d 468 (Ct. App. 2003). An action for conversion has been defined as “the unauthorized assumption in the exercise of the right of ownership over goods or personal chattels belonging to another to the exclusion of the owner’s rights.” *Gignilliat v. Gignilliat, Savitz & Bettis, LLP*, 385 S.C. 452, 684 S.E.2d 756 (2009).

Taken at the most basic level, the parties have agreed through their pleadings: 1) Defendants removed Plaintiff’s money from the checking account; 2) Defendants placed this money in bank accounts belonging to Defendants; and 3) the money and any assets derived therefrom continue to belong to Plaintiff. The lack of any dispute concerning these central allegations entitles Plaintiff to judgment on the pleadings for the conversion and money had and received causes of action.

III. Findings

Accordingly, this Court hereby finds as follows:

1. Plaintiff is entitled to attorney’s fees and expenses in the amount of **\$2,337.75**;
2. Warrants of Attachment shall be issued for all property owned by Defendants in accordance with applicable law and the bond currently deposited with the Clerk of Court shall serve as any bond requirement for warrant of attachment;
3. Plaintiff is entitled to judgment against Defendants in the amount of Two hundred forty-seven thousand four hundred ninety-six and 75/100 (**\$247,496.75**) dollars, calculated as follows:
 - a. Two hundred twenty-five thousand and 0/100 (**\$225,000.00**) dollars;

- b. Prejudgment interest in the amount of twenty-two thousand two hundred seventy-seven and 22/100 (**\$22,277.22**) dollars, as provided by S.C. Code §34-31-20(A); and
 - c. Costs in the amount of two hundred nineteen and 53/100 (**\$219.53**) dollars.
- 4. All causes of action **except** money had and received and conversion survive this order and may continue to be prosecuted; and
 - 5. All prior Orders remain in full force and effect except as necessarily altered by the terms of this Order.

The Clark is instructed to enter judgment consistent herewith.

IT IS SO ORDERED!



Greenville Common Pleas

Case Caption: Danny Rose vs. Robert Rose , defendant, et al

Case Number: 2022CP2304451

Type: Order/Other

So Ordered

G.D. Morgan Jr.