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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough
Master-in-Equity

Appellate Case No. 2023-001562

The Broadband Companies, LLC, and
Fred Anthony,

Appellants

v.

R&R Landscape and Design, LLC, f/k/a
R&R Landscape, Inc., and Mark Gonzalez

Respondents.

RESPONDENTS' RETURN TO
APPELLANTS' AMENDED MOTION
TO CONFIRM EXISTENCE OF AUTOMATIC STAY

Pursuant to Rule 240 of the South Carolina Appellate Court Rules and this Honorable Court's instructions, dated November 8, 2023, Respondents R&R Landscape and Design, LLC and Mark Gonzalez, through their undersigned counsel, hereby submit the instant Return to Appellant's Motion.¹

Appellants' Motion provides a distorted and incomplete account of the procedural history in this case. Appellants have a long, documented history of engaging in dilatory tactics, including

¹ Respondents also filed a Motion to Dismiss Appeal on November 2, 2023, which if granted would render the Appellants' motion moot. Accordingly, Respondents hereby incorporate the arguments set forth in the Motion to Dismiss as an additional basis for denying the Appellants' motion.

leaving the state, evading service, not appearing for court-ordered supplemental proceedings hearings, failing to produce documents, evading questions at a court-ordered deposition, and now, more recently, failing to cooperate with the court-appointed receiver. The lower court's *Supplemental Proceedings Order – Finding Defendants in Contempt of Court*, filed November 9, 2023, provides a detailed account of the procedural history in this case and sets forth **separate and distinct grounds** for finding Appellants in Contempt of Court, which notably includes grounds that have nothing to do with the appointment or authority of a receiver. (Order, attached hereto as Exhibit A).

These separate and distinct grounds include Defendant Fred Anthony's repeated failure to be truthful and forthcoming about his salary, businesses, and bank accounts; his repeated failure to provide Plaintiffs with adequate financial documents and information so as to allow them the opportunity to collect on their judgment; and his willful failure to comply with the prior orders of the court, each of which required him to furnish Plaintiffs with adequate financial records and information. (Order, Exhibit A). Appellants notably failed to appeal any of the lower court's prior orders, each of which are specifically identified under the procedural history section of this latest contempt order, and serve as an independent basis for Mr. Anthony's contempt.

As a **separate and distinct** ground for contempt, the Court also found Mr. Anthony in direct contempt for his willful failure to cooperate with the court-appointed Receiver. (Order, Exhibit A, p. 9). In rendering its decision, the lower court took note that Mr. Anthony had filed a Notice of Appeal without having bothered to raise even a single objection as to Mr. Qualey's appointment or authority as receiver with the lower court. (Order, Exhibit A, p. 8). As the Court observed, "it appears to this Court that Mr. Anthony is engaging in further actions to impede Plaintiffs from collecting on their judgment, and that this Appeal has been filed for the impermissible purpose of

delay.” (Rule to Show Cause, Exhibit B, p. 6).

On November 6, 2023, the lower court held a hearing wherein it heard three separate motions: 1) A Rule to Show Cause filed, *inter alia*, due to Appellants’ repeated failure to produce adequate financial documents and information to Plaintiffs; 2) a Motion to Lift Stay to the extent one was deemed necessary; and 3) a Motion for Sanctions filed against Appellants for engaging in repeated, dilatory tactics designed to “run out the clock” on Respondents’ ability to collect on their judgment. (Hearing Transcript, attached hereto as Exhibit C).

I. **The Master in Equity had Authority to hold Mr. Anthony in Contempt of Court.**

Appellants’ Motion erroneously contends that the lower court lacked jurisdiction to hold Mr. Anthony in contempt. This is incorrect. As a preliminary matter, Rule 241(a), SCRCF, specifically states, “The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including authority to enforce any matter not stayed by the appeal.” Here, the only two orders on appeal are (1) an order appointing Joseph Qualey, Esquire as receiver and (2) a subsequent formal order setting forth his authority. As set forth above, Mr. Anthony was found in contempt of court for multiple reasons, including reasons which had nothing to do with the orders on appeal. Specifically, the lower court found Mr. Anthony in willful contempt of court for failing to comply with its prior orders, which had repeatedly commanded him to provide adequate financial documents and information to the Plaintiffs. (Order, Exhibit A, pp. 8-9). Each of these orders preceded the appointment of Mr. Qualey as Receiver. The Court also took note that Mr. Anthony had testified at his deposition that he had received no income, but that the receiver later identified nearly \$400,000.00 in income over the preceding two to three years, further demonstrating Mr. Anthony’s lack of truthfulness with the Plaintiffs and the lower court. (Hearing Tr., Exhibit C, p. 36:10-15).

II. The Appeal does not automatically stay the lower court proceedings.

As the Master-in-Equity noted at the hearing, and Appellants' counsel was forced to concede, the present case involves multiple exceptions to the general rule involving automatic stays:

The Court [to Appellants' counsel]: Well, let's read Rule 241 and read the four exceptions following the first sentence, that you cite in your memo.

Exception 1 is the money judgment.

Mr. Green: Correct.

The Court: Isn't that what we have here?

Mr. Green: Yes, Your Honor.

The Court: So money judgment is not staying on appeal. That's Number 1.

Read Number 2.

Mr. Green: "In determining whether an order should issue"—I'm sorry. "(2), judgments directing the assignment or delivery of documents of personal property."

The Court: All right. I've ordered that as well. So that's not stayed.

(Hearing Transcript, pp. 10:15 – 11:5, attached as Exhibit C.)

As the Court properly noted, and Appellants' counsel conceded, the present appeal is subject to exceptions to the general rule pursuant to Rule 241(b)(1) and (b)(2), SCRCF. Accordingly, Appellant's Motion should be denied.

III. Respondents' Motion to Lift Stay was properly filed with the lower court.

Next, Appellants motion contends that Respondents should have filed their motion to lift stay directly with the Court of Appeals, and not the lower court. Appellants contention is without merit. Rule 241(d)(1), SCRCF, specifically states, "Except where extraordinary circumstances make it

impracticable, an application for an order lifting the automatic stay or for supersedeas must first be made with the lower court or administrative tribunal which entered the order or decision on appeal.”

That is precisely what Respondents did despite the fact that there was not even an automatic stay in place. Appellants’ contention that Respondents failed to follow the proper procedures for seeking a stay, including filing a client verification with the Court prior to the hearing, is also contracted by the Record. (See Plaintiffs’ Verification, attached hereto as Exhibit D).

Conclusion

For each of the foregoing reasons, Respondents respectfully request that this Honorable Court deny Appellants’ Amended Motion to Confirm Existence of Automatic Stay and Enforcing Compliance. The Motion should be denied because the Master in Equity had authority to hold Mr. Anthony in contempt of court. Mr. Anthony was found in contempt of court for multiple reasons, including reasons which had nothing to do with the orders on appeal. The Motion should also be denied because, as Appellants’ counsel conceded at the hearing, the present appeal is subject to exceptions to the general rule pursuant to Rule 241(b)(1) and (b)(2), SCRCF. Finally, Respondents’ Motion to Lift Stay was properly filed with the lower court pursuant to Rule 241(d)(1).

[Signature on following page]

Respectfully submitted,

THE LAW OFFICE OF JESSE SANCHEZ, LLC

s/Jesse Sanchez

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November 13, 2023
Mount Pleasant, South Carolina

Attorney for Respondents R&R Landscape and Design,
LLC and Mark Gonzalez

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough
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The Broadband Companies, LLC, and
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EXHIBITS TO
RESPONDENTS' RETURN TO
APPELLANTS' AMENDED MOTION
TO CONFIRM EXISTENCE OF AUTOMATIC STAY

1. Exhibit A – Supplemental Proceedings Order – Finding Defendants in Contempt of Court, filed November 9, 2023.
2. Exhibit B – Rule to Show Cause – Citation for Contempt of Court, filed October 26, 2023.
3. Exhibit C – Supplemental Proceedings Hearing Transcript, dated November 6, 2023
4. Exhibit D – Verification of Plaintiffs in Support of Motion to Lift Stay, filed November 6, 2023.

Respectfully submitted,

THE LAW OFFICE OF JESSE SANCHEZ, LLC

s/Jesse Sanchez

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Attorney for Respondents
R&R Landscape and Design, LLC and Mark Gonzalez

November 13, 2023
Mount Pleasant, South Carolina

EXHIBIT A

(Supplemental Proceedings Order – Finding Defendants in Contempt of Court, filed November 9, 2023.)

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	FOR THE NINTH JUDICIAL CIRCUIT
)	
R&R LANDSCAPE AND DESIGN)	CASE NO.: 2010-CP-10-09857
LLC F/K/A R&R LANDSCAPING)	
INC. AND MARK GONZALEZ,)	
)	
Plaintiff,)	SUPPLEMENTAL PROCEEDINGS
)	ORDER – FINDING DEFENDANTS IN
)	CIVIL CONTEMPT OF COURT
)	
vs.)	
)	
THE BROADBAND COMPANIES)	
LLC AND FRED ANTHONY,)	
)	
Defendants.)	
)	

A HEARING was held in the above-captioned case on **November 6, 2023 at 11:30 A.M.** pursuant to Plaintiff’s Rule to Show Cause and Citation for Contempt of Court filed on October 26, 2023. Present at the hearing were Plaintiffs’ counsel, Jesse Sanchez, Esq.; Defendant Fred Anthony, individually, and on behalf of the Broadband Companies, LLC; Defendants’ counsel Dwayne Green, Esq.; the court-appointed Receiver, Joseph Qualey, Esq.; and the Receiver’s associates, Zac Smith, Esq. and William C. Kennedy, Esq. This Court also heard arguments pursuant to Plaintiffs’ Motion to Lift Stay and Motion for Sanctions, filed October 25, 2023, which are addressed by way of a separate order.

Plaintiffs sought to hold Mr. Anthony in Contempt for his repeated failure to produce financial documents and information, which Plaintiffs have been requesting since December of 2022, and which this Court has on numerous occasions ordered him to produce. As set forth below, Mr. Anthony has a long, documented history of violating and evading this Court’s orders, and has, until now, been spared a finding of contempt.

PROCEDURAL HISTORY

Pursuant to an Order dated December 12, 2022, Defendants The Broadband Companies LLC and Fred Anthony, were ordered to appear before this Court on January 13, 2023, to answer questions under oath concerning their respective assets, to produce certain documents, and to show cause why their property should not be applied toward satisfaction of the Judgment set out in the Plaintiffs' Petition for an examination of Defendants. Defendants were duly served with a copy of the Order to appear but failed to personally appear and to comply with the Order.

Pursuant to an Order dated February 1, 2023, Defendants were then ordered to appear before me on March 10, 2023, to answer questions under oath and to produce the documents set forth in the December 12, 2022 Order. Defendant Fred Anthony appeared along with his Counsel and for that reason was not held in contempt. However, Defendants did not produce any of the court-ordered documents.

Pursuant to an Order filed March 23, 2023, Defendants were again ordered to provide to the McCarty Law Firm the documents set forth in the December 12, 2022 Order. Defendants were duly served with a copy of the March 23, 2023 Order.

On April 27, counsel for Plaintiffs and Defendants corresponded with this Court with regards to scheduling Supplemental Proceedings in this matter. The Court offered a hearing date of June 9, 2023, which counsel for Plaintiffs accepted, but counsel for Defendants objected to because it conflicted with his daughter's summer vacation. As a result, on that same date, April 27, 2023, the Court offered a hearing date of July 14, 2023, which Counsel for Plaintiffs and Counsel for Defendants both agreed to via email to the Court. Consequently, a hearing for Supplemental Proceedings was scheduled for July 14, 2023.

On May 5, 2023, Counsel for Plaintiffs filed an Affidavit in Support of Rule to Show Cause on the grounds that Defendants had failed to comply with this Court's December 16, 2022, February 2, 2023, and March 23, 2023 Orders having failed to produce all of the documents commanded to be produced therein. As a result, an Order was issued by this Court on May 16, 2023 commanding that Defendants appear before it on July 14, 2023—the same date that Supplemental Proceedings had already been scheduled and agreed to by the parties.

On July 14, 2023, Counsel for Plaintiffs appeared for the previously-scheduled and agreed to hearing for Supplemental Proceedings, and the hearing on the Rule to Show Cause. Neither Defendants nor Defendants' Counsel appeared at the hearing. Instead, this Court received an email from the Defendant Fred Anthony, which did not copy Plaintiffs, stating that he was unable to attend the hearing due to an undisclosed medical condition affecting his ability to drive and because Mr. Green was under an Order of Protection, which was obtained *after* agreeing to attend the July 14, 2023 hearing. The Court did not hold Defendants in contempt at that time, but rather continued the hearings until August 11, 2023 at 10:00AM.

Pursuant to a Rule to Show Cause entered on July 26, 2023, this Court, again, ordered that Defendant Fred Anthony, individually and on behalf of the Broadband Companies, LLC, appear before this Court on August 11, 2023 to show cause as to why he should not be held in contempt of court for repeatedly failing to produce financial documents and provide relevant financial information, which Plaintiffs have been requesting since December of 2022, and which this Court has on numerous occasions ordered him to produce.

Mr. Anthony appeared with his Counsel, Mr. Dwayne Green, at the August 11, 2023 hearing after failing to appear at the earlier, court-ordered hearing on July 14, 2023. Plaintiffs'

counsel argued that Defendants had not produced all requisite financial documents, which Defendants' counsel conceded.

THE COURT: The question is whether or not it's been produced. And it has not yet been produced, correct?

MR. GREEN: It has not yet produced.

(August 11, 2023 H'rng Tr., p. 12:5-8).

Defendant, through his counsel, then assured the Court that he would cooperate in producing copies of cancelled checks and other financial documents requested by Plaintiffs' counsel.

MR GREEN: [...] But what I've been trying to do is, with the Anthonys' cooperation, get what they need. And it's my belief, and I can represent that to the Court, that between going to the bookkeeper who did the checks, who had knowledge of all the accounts, that that is the place where opposing counsel could find the documentation.

THE COURT: Well, my concern is that should have been disclosed before now. I don't know when that came out. But here we are ten months into this process. I don't know when you got into it, Mr. Green. But if that's where the answers lie then that's who should be referred to rather than hanging around out there. Because it's pretty apparent what's going on here, you know. I don't think there's any question about that.

MR. GREEN: What I can do, Your Honor, even though I wasn't working with Shawn French at the time, I can apologize on behalf of the defendant in that I can tell you as I've told opposing counsel anything that we have that will help get the information that they need, there's no attempt to delay. There's no attempt to stop them from getting that information.

THE COURT: I would tend to disagree with that statement.

(August 11, 2023 H'rng Tr., pp. 20:6 -21:7).

This Court also heard argument relating to Mr. Anthony's uncooperative behavior and evasive answers at a court-ordered deposition, held earlier that week on August 9, 2023. Mr. Anthony appeared at the deposition, but then claimed he could not remember basic facts concerning himself and the Broadband Companies. For example, after initially refusing to identify friends and family he had borrowed money from, Mr. Anthony stated he could not remember their last names or contact information. (Depo Tr. pp. 20-26). Mr. Anthony also testified that he could not remember which banks he and Broadband Companies dealt with. For example:

Q. Okay. Other than the two banks you identified do you have any bank deposits anywhere at other lending institutions?

A. Well, that information was provided to you guys months ago which you do have in your possession. So I'm not understanding the question.

Q. Do you have or do you do business with any other banks in the area besides the two you've already identified?

A. I don't remember.

Q. You don't know?

A. I don't know and I don't remember. Okay. What I know is you were provided with the last three years of banks statements and documentation from the previous attorney as well as the current attorney.

Q. I understand that you provided documents, but you're here to give your oral testimony today. Now, we can do it today like this or we can wait and do it in front of the judge and he'll instruct you to answer. I'm easy either way if you want to do it that way—

A. Your choice.

Q. -- but in this case here I think -- I think if you want to take some time to confer with your attorney about this I think this would be the best way to handle it.

A. I don't need that.

Q. Okay. All right. So your testimony is, you don't remember what banks, if any, that you have current relationships with in this area other than the two you've previously identified?

A. I gave you an answer to the two banks that I aggressively deal with. The other two I can't recall at this point.

Q. Okay. So there are at least two more?

A. I can't answer that. There could be three.

(Depo Tr., pp. 19:9 to 20:21).

After evading a series of questions from Plaintiffs' counsel, Mr. Anthony and his attorney, Mr. Green, informed the parties that Mr. Anthony was under the influence of a prescribed pain reliever and muscle relaxer, which could affect his memory and ability to answer questions. Despite having knowledge of his condition, neither Mr. Anthony nor his attorney informed Plaintiffs' counsel of this alleged incapacity prior to the convening of the deposition so as to afford them the opportunity to reschedule it for a time where such alleged incapacity would not be present. As a result, Plaintiffs' counsel expended time and expense which could have been avoided.

This Court notes that Mr. Anthony's repeated failures to follow this Court's orders evidence more than an alleged incapacity to answer questions at the time of the deposition, but also a demonstrated disregard for the judicial process, indicative of his wish to "run out the clock" in an attempt to prevent Plaintiffs' from collecting on their judgment.

At the August 11, 2023 hearing, this Court specifically advised Mr. Anthony of its intent to hold him in contempt of court for violations of prior court orders, but then offered him one last opportunity to cooperate with Plaintiffs. Specifically, the Court ruled that it was appointing Joe Qualey, Esq. as Receiver and made it abundantly clear that Defendants' cooperation with the Receiver was paramount:

THE COURT: All right. Well, let me just tell you. When I came in here this morning, it was my full intention to hold you in contempt for failure to comply and probably send you off to the jail. Okay? That was my thought process when I came in here this morning.

And as I read through the record, it told me more so to do that. Okay? But what I'm going to do is I'm going to order the appointment of a receiver. I'm going to name Mr. Joe Qualey to be your receiver. He moves fast and gets stuff done. You've got a limited amount of time to get these things done. What I will need is -- I will do a form order. What I need is y'all to set forth what documentation and evidence that you have so he knows where the bank is, what it is.

Y'all asked him for the records. I haven't gotten any kind of response from any bank as to whether or not they're going to comply. But I'm assuming they should be based upon what you've told me this morning. Then he's entitled to meet with the book keeper, Ms. Roche. I need y'all to provide her name and address so they can go over there and poke around in the records.

And then, Mr. Anthony, he's going to be calling you and talking to you and he's going to be inquiring of the status of whatever is going on. I need you to cooperate with him because the receiver is an arm of the Court. If the receiver tells me Mr. Anthony is not cooperating with me, I'm going to issue a rule and/or order for arrest and get your attention however I can. Okay? That's what I'm going to do. I just wanted you to know that. I'm not going to do that today. But I need you to cooperate with him. Y'all need to communicate and go from there.

(August 11, 2023 H'rg Tr., pp. 25:24-27:19). Emphasis added.

Defendant's counsel notably **made no objection** to Mr. Qualey's appointment as receiver at the hearing. On August 11, 2023, this Court entered a Supplemental Proceedings Order, formally appointing Mr. Joseph Qualey as receiver, and advising Mr. Anthony as follows: **"Mr. Anthony is to fully cooperate with the Receiver and is cautioned that he could be held in contempt for failure to do so which could result in monetary sanctions and/or incarceration."** Mr. Anthony did not seek reconsideration of this Order pursuant to Rule 59(e), SCRPC. Thereafter, on September 25, 2023, this Court entered a formal order setting forth Mr. Qualey's

authority as receiver. Defendants did not seek reconsideration of this Order either. Instead, Appellants filed a Notice of Appeal as to the two Orders without having raised even a single issue as to Mr. Qualey's appointment or authority as receiver to this Court.

Contrary to Defendants' contention at the present hearing, the September 25, 2023 order was not an *ex parte* order. Defendants and their attorney were in fact present at the August 11, 2023 hearing appointing Mr. Qualey as receiver. They raised no objection to his appointment at the hearing. This Court's August 11, 2023 order appointed Mr. Qualey as Receiver and specifically advised the parties: "Formal Order to Follow." That is precisely what the September 25, 2023 Order is: a formal order, which Appellants were specifically advised would be forthcoming. It is not under, any reasonable interpretation, an *ex parte* order.

On November 3, 2023, the court-appointed Receiver filed an affidavit setting forth his efforts to obtain financial information from Defendants and stating that his requests had been met with inadequate and/or incomplete answers, if not entirely ignored. Moreover, despite Mr. Anthony's claims of being "broke," Mr. Qualey discovered that Mr. Anthony had, in actuality, received salary in excess of \$200,000 from the Broadband Companies. This is in stark contrast to Mr. Anthony's deposition testimony, where he claimed to have received no salary at all. Mr. Anthony has failed to provide both the Receiver and the Plaintiffs with adequate financial information, including but not limited to, failing to account for approximately \$438,691.00 he personally received in income.

FINDINGS

Defendant has appeared before this Court on several occasions over the past year in this supplemental proceedings matter. Each hearing has resulted in an order requiring Defendant to produce financial documents.

The Court finds there is clear and convincing evidence that the Defendant, Fred Anthony, has not been truthful or forthcoming about his salary, businesses, and bank accounts, and that he has repeatedly failed to provide Plaintiffs with adequate financial documents and information so as to allow them the opportunity to collect on their judgment.

The Court finds by clear and convincing evidence that the Defendant, Fred Anthony, is in direct contempt of court by his willful failure to comply with the prior orders of this court to furnish adequate financial records and information to Plaintiffs. In Re: Combis, 439 S.C. 485, 888 S.E. 2d 1 (Ct. App. 2023).

As a separate and distinct ground for contempt, the Court also finds by clear and convincing evidence that the Defendant, Fred Anthony, is in direct contempt of court by his willful failure to cooperate with the court-appointed Receiver. Id.

IT IS ORDERED, ADJUDGED AND DECREED that Defendant, Fred Anthony, is in civil contempt of court due to his actions and inactions. As such, Mr. Anthony shall be transported to the Charleston County Detention Center where he shall be held in confinement until December 23, 2023, or until such time as he purges himself from contempt upon (1) payment of attorney's fees to Plaintiffs' counsel as set forth in their filed affidavits, (2) payment to Plaintiff's counsel for costs they have incurred from services rendered by the Court-appointed Receiver, Joseph Qualey, Esquire **and** (3) upon providing Plaintiffs' counsel with copies of all checks (and wire transfers) paid to and received by Fred Anthony, the Broadband Companies, and any all companies of which Mr. Anthony holds an interest for the past four (4) years.

Specifically, Mr. Anthony shall pay The Law Office of Jesse Sanchez, LLC, \$12,663.23 in attorneys' fees and costs, and \$11,925.00, which Plaintiffs' counsel have incurred in billings from

the court-appointed receiver, and finally \$6,063.30 in attorneys' fees and costs incurred by Brian Knowles, P.C., for a total of **\$30,651.53** in payments.

Counsel for Plaintiffs shall be required to file an affidavit with the Clerk of Court upon Mr. Anthony's satisfaction of the above requirements, so as to allow for his release.

IT IS SO ORDERED.

Mikell R. Scarborough,
Master in Equity, Charleston County

Charleston, South Carolina
November __, 2023



Charleston Common Pleas

Case Caption: Rr Landscape & Design L L C Etc , plaintiff, et al VS Broadband
Companies Llc The Etc , defendant, et al

Case Number: 2010CP1009857

Type: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

EXHIBIT B

(Rule to Show Cause – Citation for Contempt of Court,
filed October 26, 2023)

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MR. GREEN: It has not yet produced.

(H'rng Tr., p. 12:5-8).

Defendant, through his counsel, then assured the Court that he and his Wife, Donna Marie Seltzer, would cooperate in producing copies of cancelled checks and other financial documents requested by Plaintiffs' counsel.²

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² Defendants' Wife Donna Marie Seltzer, was present in the Court room, sitting next to Mr. Anthony and his counsel. This Court notes that Ms. Seltzer has been present at all prior court hearings before it, and was present at Mr. Anthony's Court-ordered deposition on August 9, 2023.

Companies. For example, after initially refusing to identify friends and family he had borrowed money from, Mr. Anthony stated he could not remember their last names or contact information. (Depo Tr. pp. 20-26). Mr. Anthony also testified that he could not remember which banks he and Broadband Companies dealt with. For example:

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Y'all asked him for the records. I haven't gotten any kind of response from any bank as to whether or not they're going to comply. But I'm assuming they should be based upon what you've told me this morning. Then he's entitled to meet with the bookkeeper, Ms. Roche. I need y'all to provide

her name and address so they can go over there and poke around in the records.

And then, Mr. Anthony, he's going to be calling you and talking to you and he's going to be inquiring of the status of whatever is going on. I need you to cooperate with him because the receiver is an arm of the Court. If the receiver tells me Mr. Anthony is not cooperating with me, I'm going to issue a rule and/or order for arrest and get your attention however I can. Okay? That's what I'm going to do. I just wanted you to know that. I'm not going to do that today. But I need you to cooperate with him. Y'all need to communicate and go from there.

(H'rg Tr., pp. 25:24-27:19).

Defendant's counsel notably **made no objection** to Mr. Qualey's appointment as receiver at the hearing. On August 11, 2023, this Court entered a Supplemental Proceedings Order, formally appointing Mr. Joseph Qualey as receiver, and advising Mr. Anthony as follows: **"Mr. Anthony is to fully cooperate with the Receiver and is cautioned that he could be held in contempt for failure to do so which could result in monetary sanctions and/or incarceration."** Mr. Anthony's attorney did not appeal this Order appointing Mr. Qualey as Receiver within thirty (30) days of its issuance.

It appears Mr. Anthony and his attorney have not been cooperative with the Receiver and has:

- Failed to timely provided answers to the Receiver as requested.
- Failed to answer all requests of the Receiver fully, completely, and honestly.
- Failed to cooperate on setting dates for depositions.
- Attempted delay after delay in order to run out the clock on the judgement.
- Mr. Green has refused to accept service on behalf of his clients.
- Mr. Green, after acknowledging Mr. Qualey's role as Receiver, has appealed the Order appointing the Receiver and Supplemental Order (untimely) in an attempt to delay Receivers task of enforcing judgement.
- Mr. Green has refused to cooperate with the service of subpoenas duces tecum.
- Mr. Anthony has failed to be forthright about his salary and bank account.
- Mr. Anthony has failed to inform the Receiver as to what has happened to the ~\$200,000 dollars he has received in compensation from Broadband in the last 18 months
- Mr. Anthony has failed to show where these funds were transferred, though he claims they were invested "back into the business" and
- Mr. Anthony has refused to provide names for those who he claims to be living off of during this alleged time of financial crisis

Additionally, on October, 3, 2023, Mr. Anthony, through his Counsel, filed a Notice of Appeal of the August 11, 2023 Supplemental Proceedings Order and this Court's September 25, 2023 Supplemental Orders further setting forth Mr. Qualey's wide powers as Receiver. It appears that Mr. Anthony, through his counsel, now maintains that Mr. Anthony need not cooperate with this Court or the receiver as a result of this appeal, which he claims automatically stays all proceedings.

Considering Mr. Green's failure to object to Mr. Qualey's appointment at the August 11th hearing and his failure to appeal the August 11, 2023 Supplemental Order within thirty (30) days, and Mr. Anthony's repeated failure to comply with the Court's prior orders, it appears to this Court that Mr. Anthony is engaging in further actions to impede Plaintiffs from collecting on their judgment, and that his Appeal has been filed for the impermissible purpose of delay. In addition to the Rule to Show Cause scheduled below, this Court will hold a hearing on that date to address the lifting of any alleged stays related to Mr. Anthony's appeal.

Based on the foregoing, and the previously filed affidavits by Plaintiffs' counsel,

IT IS ORDERED, ADJUDGED AND DECREED that Defendants Broadband Companies LLC and Fred Anthony appear before me at **11:30 a.m. on November 6, 2023** at 100 Broad Street, Courtroom 2A, Charleston, South Carolina 29401, to SHOW CAUSE, if they can, on why they should not be held in contempt of Court for such disobedience and comply with each of the following:

1. Produce each and every one of the records previously ordered for them to produce to pursuant to this Court Order dated December 12, 2022, and all subsequent Orders concerning The Broadband Companies, LLC, Fred Anthony, Individually, and any and all other business(es) in which Mr. Anthony has an ownership interest in; and
2. Provide a satisfactory and justifiable reason for their continued failure to comply with this Court's Orders dated December 12, 2022, March 23, 2023, May 16, 2023, August 11, 2023, and September 25, 2023, including their most recent failure to cooperate with Mr. Qualey, whom this Court appointed as Receiver in this case, without objection from Mr. Anthony; and

IT IS ORDERED, ADJUDGED AND DECREED that Defendants are to produce each and every one of the records previously ordered for them to produce pursuant to this Court's Orders dated December 12, 2022, March 23, 2023, and May 16, 2023, concerning The Broadband Companies, LLC, Fred Anthony, Individually, and any and all other business(es) which Mr. Anthony has an ownership interest in; and produce any and all documents requested by the Receiver.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED the documents are to be produced by 12:00 PM on November 3, 2023.

IF YOU DO NOT APPEAR AS ORDERED, THE COURT WILL ISSUE A BENCH WARRANT FOR YOUR ARREST.

Let a copy of this Order be forthwith served upon the Defendants.

IF YOU DO NOT APPEAR AS ORDERED, YOU WILL BE HELD IN CONTEMPT OF COURT WHICH COULD RESULT IN A FINE AND/OR JAIL SENTENCE.

The Honorable Mikell R. Scarborough
Master in Equity
Charleston County Ninth Judicial Circuit

Charleston, South Carolina
October ____, 2023



Charleston Common Pleas

Case Caption: Rr Landscape & Design L L C Etc , plaintiff, et al VS Broadband Companies Llc The Etc , defendant, et al

Case Number: 2010CP1009857

Type: Order/Rule To Show Cause

So Ordered

s/Mikell R. Scarborough 3062

EXHIBIT C

(Supplemental Proceedings Hearing Transcript, November 6, 2023)

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON FOR THE NINTH JUDICIAL CIRCUIT
3 CASE NUMBER 2010-CP-10-09857
4

5 R&R Landscape and Design, LLC, f/k/a)
6 R&R Landscape Inc., and Mark)
7 Gonzalez,)
8) Supplemental
9 Plaintiffs,) Proceeding
10) Hearing
11 vs.)
12) November 6th,
13 Fred Anthony,) 2023
14)
15 Defendant.)
16
17
18

19 Hearing before the Honorable Mikell R.
20 Scarborough, reported by Josie Allen Boehm, Registered
21 Professional Reporter and Notary Public, at 100 Broad
22 Street, Courtroom 2A, Charleston, South Carolina,
23 November 6th, 2023 commencing at 11:16 a.m.
24
25

APPEARANCES

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1 THE COURT: So this is an ongoing
2 supplemental proceeding action. I've been reviewing
3 the record in this thing to try and figure it out.
4 It's got a fairly tortured history since the last
5 year.

6 Apparently there were supplemental
7 proceedings in 2014 and 2015 that were dismissed that
8 were resurrected October 11 of last year.

9 This Court issued a rule to show cause
10 requiring Mr. Anthony to appear and answer questions
11 under oath. Again, the Court issued a rule to show
12 cause December 12th of 2022, and following that,
13 issued its order of January 17, 2023.

14 Follow-up order, formal order, submitted
15 January 26 ordered that any funds in possession of the
16 defendant and Broadband Companies was to be paid over
17 to plaintiff. Following that, a rule to show cause
18 was issued February 1 of 2023 for a hearing that took
19 place March 10 of 2023.

20 Following that, an order was entered March
21 the 23rd of 2023 ordering the production of documents
22 by March the 25th of 2023. Thereafter, a rule to show
23 cause for contempt was issued for failure to follow
24 the January and March hearing requirements on May the
25 16th of 2023.

1 We held a hearing on July the 14th of 2023
2 and an order was issued January 24 of 2023. One
3 second. At that time, plaintiff's counsel appeared
4 July 24th. The defendant did not appear.

5 Defendant was ordered to appear for a
6 deposition to be held, and the next hearing was set
7 for August the 11th of 2023. We had lots of hearings
8 on August the 11th.

9 We had the hearing, and the Court issued its
10 form order in supplemental proceedings. At that time,
11 Mr. Anthony appeared with his counsel.

12 Mr. Qualey was appointed as the Court's
13 receiver with all authority allowed by the statute,
14 and he was specifically authorized to receive and
15 review all records of the defendant, Broadband
16 Companies, to include the LLC and IT and any companies
17 in which Mr. Anthony may have an interest. He was
18 also to meet with the bookkeeper to review any records
19 that they would have.

20 "Mr. Anthony is to fully cooperate with the
21 receiver and failure to do so could result in monetary
22 sanctions or incarceration." He was released from
23 contempt of court upon payment of attorneys' fees due
24 from the July 26th, '23 order provided payment was
25 made by the 5th of September.

1 The Court's form order -- and for some
2 reason, and I don't know why, but that order was
3 thereafter issued on September the 25th which was
4 called a supplemental order and referenced the
5 authority of the receiver previously appointed.

6 Receiver was appointed August 11th at that
7 hearing and then -- and I restated the authority of
8 the receiver pursuant to the statute which is
9 15-65-10. The receiver post-judgement is essentially
10 an arm of the Court.

11 Then I find a notice of appeal of the
12 appointment of the receiver on the 26th. The receiver
13 was appointed at the hearing by the Court, and the
14 allegation I received from the memo today, Mr. Green,
15 was that it was an ex parte order.

16 Would you explain that to me?

17 MR. GREEN: Yes. May it please the Court,
18 Your Honor. Dwayne Green on behalf --

19 THE COURT: How would it be an ex parte order
20 if we were all in the courtroom together and I
21 appointed the receiver?

22 MR. GREEN: The supplemental order --

23 THE COURT: Supplemental order, to my way of
24 thinking, has no basis upon it whatsoever. I had
25 already stated what the receiver's authority was in

1 the prior order.

2 MR. GREEN: And we're responding to the
3 supplemental order. We had received no --

4 THE COURT: You never received notice of the
5 order, written order?

6 MR. GREEN: We got the first order, the form
7 order. We got that. We received the full written
8 order on the 25th and then appealed on the 26th.

9 THE COURT: And so what have you taken issue
10 with on the September 25th order that you apparently
11 did not appeal from the August 11th order --

12 MR. GREEN: Your Honor --

13 THE COURT: -- when you were present at the
14 hearing?

15 MR. GREEN: Yes, Your Honor. Once we read
16 the full supplemental order, it sought things that
17 were outside of the jurisdiction, particularly Donna
18 Marie Seltzer, who was dismissed with prejudice by
19 Judge Simpson (ph). I have a copy of that order.

20 There's a case law we provided to the Court
21 that says when a form order is sent and then a full
22 order, the full order being on the 25th having all of
23 the details that the form order did not, that's
24 immediately appealable.

25 That was appealed. And the case law also

1 states that upon appealing acceptance of that by the
2 Court of Appeals, it was accepted, an automatic stay
3 automatically is placed on the case.

4 THE COURT: You're staying what the
5 supplemental authority of the receiver was, correct?
6 Isn't that what you're staying?

7 MR. GREEN: Your Honor --

8 THE COURT: I want to make sure the record is
9 clear. There was no appeal of the appointment of the
10 receiver?

11 MR. GREEN: Your Honor, my understanding as I
12 read the law, and, again, this is something I guess
13 the Court of Appeals is going to decide, is when a
14 form order -- and I have a case that I can hand up to
15 the Court that states this.

16 When a form order is first -- I believe it
17 may be actually a court order from this Court. When a
18 form order is sent and then a further order expanding,
19 the full order that we received on the 25th of
20 September, that is appealable and so it appeals the
21 entire appointment.

22 The point we made immediately upon filing
23 that is that we did not -- there's a procedure that's
24 set forth on when a receiver is to be appointed, and
25 it can't be appointed without notice to the defendant.

1 When I was in court on the 11th, there was
2 the appointment of a receiver. I received no notice
3 or anything that that was coming. So that the --

4 THE COURT: You were in the courtroom and the
5 Court ordered the appointment of the receiver and your
6 statement is you got no notice?

7 MR. GREEN: Until the written notice. We got
8 the written, full notice of the full order. So we had
9 the original notice, and we complied with it.

10 I have two other things I would like to take
11 exception with. I was the point of contact so far as
12 connecting with the receiver.

13 THE COURT: Okay.

14 MR. GREEN: I have two affidavits that
15 everything the receiver asked, we met him, spoke to
16 him, directed him to the receiver -- I'm sorry, to the
17 bookkeeper, complied in every way.

18 And I have the affidavits where we asked is
19 there anything else you need? That was up until the
20 filing of the appeal.

21 The appeal is very clear, Your Honor, that
22 once you file the appeal, an automatic stay -- and I
23 have the rule that says which orders are automatically
24 appealable, the appointment of the receiver being one
25 of those.

1 So the question that the other side has is
2 whether that was timely. We have a case that says
3 where there's a form order followed by a more
4 expansive order, that expansive order sets the time
5 from which you plan.

6 And, again, there's actually an appeals case
7 pending now and plaintiffs have asked to dismiss that
8 appeal. So that's right now. The return is due on
9 November 7th. So we're still in the midst of an
10 appeal while -- after this appeal was when the rule to
11 show cause was filed. That was in October.

12 Again, the -- so the Court of Appeals filed
13 an acceptance, and we sent that to the Court also
14 October 3rd saying the appeal is pending.

15 We had to send another fee. We had to do
16 some other things to cure some things that were
17 needed. But during this entire time -- and I sent
18 this notice to opposing counsel, I think it was Jesse
19 Sanchez as well, that the appeal was still pending.
20 It's still pending today.

21 So the question is whether or not my client
22 is, after fully complying up until the filing of the
23 appeal, whether or not we could be held in contempt
24 for not supplying further information during the stay.

25 And the existence of a stay under the rule is

1 also something to be determined by the Appellate
2 Court.

3 So if the other side is true or is accurate
4 and this is a frivolous appeal, it will be dismissed
5 by the Court of Appeals in no time if there's no basis
6 for it or it's untimely.

7 But we believe the case law supports that the
8 stay is automatic, it's automatically appealable, and
9 there's a certain process that the plaintiff must
10 perform as articulated in Rule 241 that they have to
11 do with certain things in order to ask the Appellate
12 Court to lift the stay, and that applies to lower
13 court. And that's very -- if I can read that, Your
14 Honor, that's all --

15 THE COURT: Well, let's read Rule 241 and
16 read the four exceptions following the first sentence,
17 what you cite in your memo.

18 Exception number 1 is the money judgement.

19 MR. GREEN: Correct.

20 THE COURT: Isn't that what we have here?

21 MR. GREEN: Yes, Your Honor.

22 THE COURT: So money judgement is not staying
23 on appeal. That's number 1.

24 Read number 2.

25 MR. GREEN: "In determining whether an order

1 should issue" -- I'm sorry. "(2), judgements
2 directing the assignment or delivery of documents of
3 personal property."

4 THE COURT: All right. I've ordered that as
5 well, so that's not stayed. How about number 3?

6 MR. GREEN: "Judgements directing the
7 execution of conveyances or other instruments as
8 provided."

9 THE COURT: Well, if we get past 2, we might
10 get to 3, but that's not stayed on an appeal. How
11 about number 4?

12 MR. GREEN: "Judgements directing the sale or
13 delivery of possession of real property as provided in
14 S.C. Code Annotated 18-9-220 *[sic]*."

15 THE COURT: Okay. So, again, apparently
16 there's not been enough discovery done that I know of
17 to answer questions 3 and 4, but clearly 1 and 2 have
18 monetary judgement and we've ordered all the produced
19 documents.

20 I'm looking at Mr. Qualey's affidavit online
21 saying that prior to your appeal on September 15th, he
22 got responses. They were, quote, "inadequate,
23 incomplete, or denied in part or in full and/or were
24 ignored."

25 MR. GREEN: Your Honor, I have an affidavit

1 with correspondence apparently after that order where
2 we were in constant contact. I can hand that up with
3 a copy to the other side.

4 And this is an affidavit from myself, Your
5 Honor. I was in constant contact with Mr. Qualey, and
6 I have documentation to show that.

7 May we approach, Your Honor?

8 THE COURT: Provide it to opposing counsel if
9 you haven't already done so.

10 MR. GREEN: And just to explain what Your
11 Honor is reading, I've known the receiver for several
12 years, had his text number. He was kind enough to
13 accept my text, and I asked him on an ongoing basis
14 can I set up something with Francina Roche.

15 I also have her affidavit, Your Honor where
16 she made herself available to the receiver at all
17 times.

18 THE COURT: I see that.

19 MR. GREEN: And there was no attempt to evade
20 Mr. Qualey, not to answer his questions. And I think
21 Mr. Qualey will agree that up until the filing of the
22 appeal and the acceptance by the Court of Appeals --

23 THE COURT: That's not what his affidavit of
24 November 3 says. That's just last week.

25 Are you still communicating with Ms. Roche or

1 anybody else?

2 MR. QUALEY: No, because I didn't find it
3 necessary. What I did find compelling is what she
4 forwarded and what I have that shows that Mr. Anthony
5 received, in 2021 until present, a salary of \$438,691.

6 Once I got information from Ms. Roche that
7 Mr. Anthony had received that much money from the
8 company, I then wanted to figure out how the company
9 was generating that money, where that money came from,
10 where the money went into his accounts, and what he
11 did with the money.

12 And we were -- we got stiff-armed. I sent
13 specific questions to Mr. Green, and I said --
14 originally when we started talking, I was like, well,
15 what are they living off of? And the answer was, oh,
16 the largesse of friends and family.

17 And I'm like, well, must be some pretty good
18 friends and family. Because my job was to take over
19 the company. The first thing I was trying to do was
20 figure out where is the company, what is it doing, how
21 is it generating money if at all.

22 And they kept telling me it's not generating
23 any money, that friends and family are supporting
24 them, now only for it to come out that in three and a
25 half years, he got \$438,000, which is plenty of money

1 to pay off this judgement, Your Honor.

2 All right. So then I asked specific
3 questions, and I said, in fact, the company is very
4 much alive. This is what I'm telling Mr. Green.

5 Has he received any salary? And we got an
6 answer. It says: Fred received no salary from 2013
7 to 2021.

8 Well, that's clearly not true.

9 "Any salaries were reinvested into the
10 company."

11 I wanted to figure out what that meant,
12 because this is not a sticks and bricks company. We
13 went and found the address, and it was a mailbox
14 pick-up. Okay.

15 So I asked to take his deposition, and they
16 basically said no. The issue with the supplemental
17 order, which we submitted, was to reaffirm the judge's
18 previous order of my authority, also to set forth some
19 of the particulars of what we could do in the event
20 that the company was in imminent danger of declaring
21 bankruptcy.

22 Because I'm looking at what's going on, and I
23 can't figure out where the money is from. But the
24 other aspect of it, which really was kind of a focus,
25 was getting access to Donna Marie Seltzer, who is

1 Mr. Anthony's wife. And, frankly, Mr. Green can't
2 speak as to that about her because he does not
3 represent her, so that's gone.

4 The only thing you did, Your Honor, in the
5 supplemental order was to confirm what you had done
6 previously.

7 But procedurally, I'm going to let these guys
8 argue, and I'm going to say a few more things if you
9 want to bear with me.

10 THE COURT: Let me ask a question first off.
11 You have gotten some information but very little; is
12 that a fair assessment?

13 MR. QUALEY: That's right.

14 THE COURT: Spoke with Ms. Roche. Ms. Roche
15 says she's no longer an accountant but just a
16 bookkeeper for Mr. Anthony's business?

17 MR. QUALEY: Right. She was very forthcoming
18 and gave me the information that allowed me to see how
19 much money he's made in the last three years.

20 So she is a bookkeeper and does the
21 withholding. That's all.

22 THE COURT: That's all she does?

23 MR. QUALEY: That's all she does.

24 THE COURT: All right.

25 MR. QUALEY: I got like four pieces of paper

1 from her which was --

2 THE COURT: She's not an accountant?

3 MR. QUALEY: Oh, no. Not an accountant. So
4 trying to get to the bottom -- and, you know, I asked
5 questions about whether they owned real estate, and
6 it's just very dead-end answers, which is also one of
7 the exceptions you were talking about, Your Honor. I
8 want to take his deposition to find out what exactly
9 is going on with the money.

10 We also tried to serve Donna Marie Seltzer,
11 and she apparently is avoiding service. We had to
12 hire somebody up in the Myrtle Beach area, and so
13 we're causing expenses.

14 A lot of this, a lot of my time and expense
15 and money, is because of their not being forthcoming.
16 I don't think it's fair nor equitable that
17 Mr. Sanchez's client has to continue to pay me to try
18 to bust through their nonresponsiveness, Your Honor,
19 frankly.

20 But there's money. They generated a lot of
21 money. I asked whether they had any business going,
22 and she said no.

23 Apparently this is a business where they get
24 minority contracts and then they get subs and they
25 send the subs out to do the work and then they get the

1 money, and whatever happens to the money after that,
2 nobody seems to know, except he got \$430,000 in three
3 years.

4 So, Your Honor, my charge was to get to the
5 bottom of it. I had a hard time doing it because they
6 won't let me.

7 I want to reference you back to your original
8 order where he was supposed to cooperate. I have seen
9 none of that. And he was cautioned that he could be
10 held in contempt. I think that's appropriate.

11 I think monetary sanctions, whether sanctions
12 or paying some of the fees for us, I think that's
13 appropriate. Incarceration, I certainly would not
14 take that off the table, Your Honor.

15 THE COURT: Mr. Sanchez?

16 MR. SANCHEZ: Your Honor, I'd like to address
17 a few points about the procedural status of this case.

18 As Your Honor aptly noted, there was a
19 hearing on August 11th. That was a hearing where
20 Mr. Qualey was appointed. Mr. Green and his client
21 were in the courtroom. They did not object.

22 Your Honor issued an order that very same day
23 appointing Mr. Qualey saying listen to Mr. Qualey.
24 He's an arm of this Court.

25 They did not file for a motion for

1 reconsideration of that order. They did not file an
2 appeal for that order.

3 Let's assume for a moment that they are
4 correct that they could have waited until September
5 25th when the formal order was entered. Well, the
6 formal order was entered. They didn't file a motion
7 for reconsideration.

8 What that means is despite now appealing the
9 appointment of the receiver in his authority, they
10 have never at any instance in time prior to today
11 raised an issue as to that appointment or as to that
12 authority.

13 And we do have a pending motion for the Court
14 of Appeals to dismiss it. And the grounds for that
15 motion, which I think have a bearing on this hearing
16 to the extent that it shows an unreasonable lack of
17 cooperation.

18 And the law, there is a case, *Pye v. State of*
19 *Fox*, 2006 Supreme Court case. Right off the bat: It
20 is well-settled that an issue cannot be raised for the
21 first time on appeal but must have been raised and
22 ruled upon by the trial court to be presented.

23 That never happened. The time for seeking
24 reconsideration expired. So they're appealing issues
25 that have never been raised in this court, which is

1 why, in our opinion, it's a frivolous appeal.

2 The Court of Appeals will deal with that.
3 But let's take Mr. Qualey off the table for a second
4 and look at what Your Honor pointed out in Rule 241.

5 I'd like to read a part of the rule, Rule 241
6 (a) which says: The lower court or administrative
7 tribunal retains jurisdiction over matters not
8 affected by the appeal including the authority to
9 enforce any matters not stayed by the appeal.

10 So Mr. Green's contention that this stays
11 everything is not true, and as Your Honor pointed out,
12 there's certain exceptions as well.

13 I was able to obtain a transcript from the
14 very helpful court reporter here, and I would like to
15 read just one paragraph of that because I think it's
16 informative of where we are here today.

17 And that's page 25 of -- this is the August
18 11th hearing, page 25 of that transcript. This is the
19 Court speaking.

20 The Court says: All right. Well, let me
21 just tell you. When I came here this morning, it was
22 my full intention to hold you in contempt for failure
23 to comply and would probably send you off to the jail.
24 Okay? That was my thought process when I came in here
25 this morning. And as I read through the record, it

1 told me moreso to do that. Okay? But what I'm going
2 to do is I'm going to order the appointment of a
3 receiver.

4 And then further down, this is speaking
5 directly to the defendant, the Court said: And then,
6 Mr. Anthony, he's going to be calling you and talking
7 to you and he's going to be inquiring of the status of
8 whatever is going on. I need you to cooperate with
9 him because the receiver is an arm of the Court. If
10 the receiver tells me Mr. Anthony is not cooperating
11 with me, I'm going to issue a rule and order for
12 arrest and get your attention however I can. That's
13 what I'm going to do. I just want you to know that.
14 I'm not going to do that today, but I need you to
15 cooperate with him. You all need to communicate and
16 go from there.

17 So there are a number of issues. And if I
18 could just take a step back, Your Honor, the three
19 things in front of this Court today, the first is a
20 rule to show cause, second is a motion to lift the
21 stay, and the third is the motion for sanctions.

22 Our issue with the rule to show cause is they
23 said they were going to provide us with information
24 about his income. They said they were going to
25 provide us with canceled checks. That's all in the

1 record in the transcript from the last hearing, which
2 I'm happy to pass up to Your Honor.

3 THE COURT: And have you received any of
4 that?

5 MR. SANCHEZ: I have personally not received
6 any of that, and I have had communication with the
7 receiver to ask if he's received any of that, and he
8 hasn't received any of that.

9 THE COURT: None of that has been received,
10 Mr. Qualey?

11 MR. QUALEY: We get some checks or not, Zac?

12 MR. SMITH: Your Honor, we received some
13 records from various financial institutions. We have
14 received tax information from Ms. Roche.

15 To my knowledge, we have received no copies
16 of any canceled checks, whether money came in or money
17 went out. So that was one thing that Mr. Qualey was
18 looking for specifically upon receiving information of
19 his salary is to try to find the flow of money, and we
20 could not, but the information we got upon request
21 determined where the money was going once it came to
22 Mr. Anthony.

23 THE COURT: Okay. All right.

24 MR. SANCHEZ: Your Honor, continuing on that
25 point, we had a deposition, court-ordered deposition

1 of Mr. Anthony. And that deposition, I'm not sure if
2 Your Honor recalls, we showed up at our office.
3 Mr. Anthony came there with his wife and his attorney
4 and we started asking him questions --

5 THE COURT: And claimed to be under the
6 influence, right?

7 MR. SANCHEZ: Correct.

8 THE COURT: I got you.

9 MR. SANCHEZ: But some of the questions, he
10 chose to answer. And one of the questions we asked
11 is -- this is page 16 of the deposition, line 19.

12 "Okay. Where are you getting your income
13 from at this point to pay your bills with?"

14 "I'm currently not on salary and haven't been
15 for almost a year."

16 Question, "I understand. My question is
17 where are you receiving income from?"

18 Answer, "I'm not receiving income from
19 anywhere."

20 Question, "So how you pay your bills?"

21 "I just told you. It's debited from
22 Broadband Companies account."

23 Mr. Anthony claims that he hasn't received a
24 salary in over a year, and yet what the receiver has
25 found is that that's not true. He received funds, and

1 we don't know where they went. They were supposedly
2 reinvested back in the company. We'd like to know how
3 it was reinvested back in the company.

4 I'd like to touch on two points, and I'll
5 move on quickly from here on because I know I am
6 begging the Court's indulgence.

7 Broadband Companies has two employees in
8 addition to Mr. Anthony. One is Donna Marie Seltzer,
9 his wife, and the other name is Ned *[sic]* Bailey.

10 THE COURT: Who?

11 MR. SANCHEZ: A gentleman by the name of Ned
12 *[sic]* Bailey. And so one of the things that we asked
13 at the deposition was, well, how much money are these
14 folks making? Because the company seems to be making
15 money, even though you claim it doesn't, and we want
16 to know how much money they're making.

17 And this was his answer on page 4, line 18,
18 "There are employees, yes."

19 "And what are their names?"

20 "Neil Bailey and Donna Seltzer."

21 Question, "Got it. And are they paid a
22 salary?"

23 Answer, "They are."

24 "What are their payments? What are their
25 salaries?"

1 "I can't answer that right now."

2 "You don't know?"

3 "I don't know."

4 "Okay. Is that information that you can get
5 your attorney to give us?"

6 "I can."

7 So what we're dealing with, Your Honor, is --
8 and Your Honor went through the history of this case.
9 We filed rule after rule in this case.

10 If there's no money, fine. There's no money.
11 But we need the defendant's cooperation. And right
12 now, he knows he's got a judgement that's going to
13 expire at the end of December of this year that we've
14 been going after hard for a total of a year.

15 And I think Your Honor will acknowledge that
16 we've been diligent in doing that in so far as filing
17 motions with this Court. And so it's clear to us that
18 this is just one last ditch effort to run out the
19 clock.

20 So for purpose of our rule to show cause, we
21 think that cause is -- there's cause to be shown that
22 he has not complied with the Court's previous orders,
23 that even if the order appointing the receiver is
24 stayed, he's still not in compliance with those
25 previous orders, and that what this Court intended to

1 do back on August 11th when it went out of its way to
2 say, okay, I'm going to appoint a receiver and he's
3 going to help y'all get to the bottom of this, he did
4 not like that offer from the Court and instead has
5 chosen to appeal that appointment despite never
6 raising any issues to this Court.

7 So our position is based off all the previous
8 orders and all the previous requests, including those
9 requests made prior to the filing of the notice of
10 appeal, that he continues to be in violation of the
11 Court's orders. That's the first one.

12 The second one deals with the motion to lift
13 stay, and I touched on that earlier. As Your Honor
14 knows, there was no hearing addressing the complaints
15 about the receiver. There's no motion to
16 reconsideration.

17 And I find it telling that in none of
18 Mr. Green's memoranda they address this fact. What
19 issues can you possibly appeal when you never raised
20 an issue in the first place?

21 The Court of Appeal has limited circumstances
22 where it might have original jurisdiction the Supreme
23 Court does. It's a court of review. It has to review
24 what happened here.

25 How can it review an objection that never

1 even occurred in the first place? And that's why we
2 believe so strongly that this is a frivolous appeal
3 filed for the impermissible purpose of delay.

4 And there are two ways we can go after that.
5 I assure Mr. Green that we will ask pursuant to the
6 appellate court rules for sanctions with the Court of
7 Appeals once the case is resolved one way or another.

8 But there's another thing, which is if you
9 tell the Court here that you're going to help and
10 you're going to do, quote, "I've been trying to do
11 this with the Anthonys' cooperation to get what they
12 need. I can apologize on behalf of the defendant in
13 that I can tell you as I have told opposing counsel
14 that anything we have that we will get them the
15 information they need. There's no attempt to delay.
16 There's no attempt to stop them from getting that
17 information."

18 THE COURT: And what was my response to that?

19 MR. SANCHEZ: Your response was, "I would
20 tend to disagree with that statement."

21 THE COURT: And I did, and I do.

22 MR. SANCHEZ: And that's where we are in
23 terms of the motion to lift stay. Our position is to
24 the extent there is even a stay in place, and we do
25 not concede that there's a stay in place, but to the

1 extent there's a stay in place, this Court has
2 authority under 241 (d)(3) I believe to lift the stay.

3 If it's an issue with that and they want to
4 enforce the stay, they can take that up with the Court
5 of Appeals. But this Court has jurisdiction to lift
6 any stays to the extent they exist.

7 And that brings us to our third motion, Your
8 Honor, which is the motions for sanctions. I will say
9 to the Court I know a lot of people in Charleston
10 County. It is not the habit of attorneys to pursue
11 sanctions against other attorneys. It just doesn't
12 happen.

13 And if Your Honor looks at the transcript
14 from the last hearing, I said: Your Honor, I have no
15 reason to believe Mr. Green is causing any of these
16 delays. I think it's 100 percent his client, et
17 cetera, et cetera.

18 I respect Mr. Green. It's been a pleasure to
19 deal with him one on one. But if you're going to say
20 I'm going to give you everything you need and then
21 you're going to try to, in the receiver's words,
22 stiff-arm us and say, well, we're not going to give
23 you anything because these issues aren't appealed. By
24 the way, we never raised those issues in the first
25 place, but we're still going to appeal it and

1 everything is stayed, then for us, it puts us in a
2 difficult position.

3 We have a client who's a disabled vet who got
4 a confession of judgement saying that he's owed a
5 certain amount of money. They left the state. They
6 evaded service for a long time. I finally got
7 involved in the case, and we've had some traction
8 since then, but we're nowhere to be.

9 And so I leave it to the Court's discretion
10 on what those sanctions would be to the extent the
11 Court wants to impose them.

12 One thing that I'm reminded of because I have
13 been doing some research on Unfair Trade Practices
14 Act. And obviously that's the statute, and when
15 there's an abuse of trade practice and there's an
16 abuse of how to handle things, the Court is entitled
17 to treble damages.

18 I don't know if the Court will consider this,
19 but it seems to me that they're just trying to run out
20 the judgement. We're obviously not entitled to treble
21 damages in this case, but I would ask the Court to
22 consider if not two times the amount of the current
23 judgement, one time the amount of the current
24 judgement in sanctions.

25 And the reason being if we get to December

1 and they've managed to abuse the process to run out
2 the clock, they will still be on the hook for that
3 amount.

4 And I think that from an equitable
5 perspective -- and, Your Honor, I see you're thinking
6 about it -- it's certainly possible.

7 So that's where we are today. And we would
8 just ask that, A, Mr. Anthony be held in contempt of
9 court; B, to the extent this Court deems a stay is
10 there, to lift it; and, C, we'd ask for sanctions
11 against Mr. Anthony and Mr. Green.

12 THE COURT: One of my orders ordered him to
13 pay you some fees. Have those been paid?

14 MR. SANCHEZ: Yes, sir. He's paid those.

15 THE COURT: And how much was that?

16 MR. GREEN: I think it was roughly around
17 \$15,000 or something to that effect.

18 THE COURT: That has been paid during the
19 process?

20 MR. SANCHEZ: Yes, sir.

21 THE COURT: Okay. Mr. Green?

22 MR. GREEN: Your Honor, if we may be heard.
23 And, again, this is just to make sure we protect the
24 record.

25 I take vigorous exception to the allegation

1 that we did not participate with Joe Qualey. That's
2 completely on me. I have factual affidavits of how
3 two things happened. When we had the deposition --

4 THE COURT: You stopped when you filed the
5 appeal, though, right?

6 MR. GREEN: With Qualey. But we still were
7 communicating with him.

8 But these sworn affidavits show, Your Honor,
9 that as the point of contact, there was a question.
10 Where can I get these checks? Because Mr. Anthony
11 said I do not have knowledge of all the paychecks.
12 Ms. Roche did the payroll.

13 Mr. Qualey was directed to the bookkeeper and
14 the accountant. If you go back and look at that
15 transcript, they were given both names. And on the
16 text, I say I don't have this information, but here is
17 where you can find it.

18 Your Honor, to your question that was skipped
19 past, there were allegations that we did not
20 cooperate. We have two factually sworn affidavits
21 that people who did not have the information showed
22 the receiver. Here is the accountant's name. That
23 was in a sworn deposition. Here is Ms. Roche's
24 affidavit.

25 I called Mr. Qualey. He will admit to this,

1 I believe, that I called him and said can you meet
2 with Ms. Roche today? I helped arrange that.

3 And any information he got was information we
4 provided. So her affidavit and my last statement, if
5 you need anything else, please let me know.

6 Aside from that, Your Honor, there was no
7 other communications. I have that entire text chain.

8 So if I'm speaking to the receiver -- again,
9 not my client, me -- and I say here are the two people
10 who have the information. They're available. They
11 swear on an affidavit that they spoke to Mr. Qualey
12 and were available, that's providing information.

13 I also have a zip drive which was used by
14 Mr. Jesse Sanchez at the deposition which has all of
15 the bank statements that they have. I have another
16 copy of that. We have that at all times.

17 So to Your Honor's questions, was there
18 cooperation, absolutely. If he had asked me or
19 Ms. Roche or the accountant was there more information
20 we can get, we would have definitely responded.

21 So at least putting this on the record, we
22 responded to everything that Mr. Qualey asked. There
23 was nothing that Mr. Anthony said no to.

24 Your Honor, I was out of the country for two
25 weeks, gave notice to the other side. Anything I

1 could not respond to when I was out of town, that was
2 that.

3 Your Honor, I just want to also speak --
4 there is an automatic stay, and I have the case law
5 that says automatic stay automatically comes for the
6 appointment of a receiver if there's not notice given
7 as prescribed by the statute.

8 THE COURT: Is that a pre-judgement receiver
9 or a post-judgement receiver?

10 MR. GREEN: My understanding is
11 post-judgement receiver.

12 THE COURT: Let's talk about the case, then.
13 My understanding is pre-judgement, you would have that
14 remedy, but post-judgement, you absolutely do not.

15 MR. GREEN: Okay.

16 THE COURT: That's my understanding. The
17 judgement has been rendered. There was no appeal, or
18 any appeal of the judgement has run, correct?

19 As I tell everybody that comes in
20 supplemental proceedings, I take the judgement as
21 being valid. It may be on appeal if it's a money
22 judgement, but exception number 1 says you can still
23 pursue that money judgement while it's on appeal
24 because there is no stay of a money judgement. That's
25 what we've got here.

1 MR. GREEN: And, Your Honor, we have been
2 fully cooperative. Again, if we have all the --
3 they've had subpoenas to all of the banking
4 institutions. They've asked questions on those.
5 They've asked the bookkeeper. They have the
6 information of the accountant. We don't know what
7 else to possibly give.

8 Second, Your Honor, whether or not there's a
9 stay, we believe that that is something that will be
10 decided by the Court of Appeals very shortly.

11 The rule to show cause, everything, was filed
12 during what we understand from the reading of the law
13 is a stay.

14 So, again, no disrespect to Mr. Qualey, we
15 were responding to everything he said. Even
16 afterwards, we were in contact with him. Here's the
17 accountant. Here's the bookkeeper. That's sworn
18 facts in the record to say, hey, he didn't comply when
19 we have sworn affidavits from everyone who had the
20 information saying please give us what else you need.
21 That's a question of fact that, again, we believe that
22 we can show we were in constant contact in applying
23 everything.

24 Also, I brought boxes to Mr. Sanchez's
25 office. I saw, I think it was, Jeremy. His brother's

1 a member of the bar. We have independent witnesses
2 that we brought information in compliance.

3 Secondly, whether or not there's a question
4 for the stay, we'll leave that to the Court of
5 Appeals.

6 And, third, with regard to any sanctions, if
7 Mr. Anthony is doing everything through his attorney
8 to comply, which he was -- the only thing -- the only
9 reason they filed the rule to show cause and
10 everything was after we filed the appeal.

11 It was after the filing of the appeal that
12 changed the rule to show cause and all these other
13 questions by the receiver. We're challenging the
14 appointment of the receiver, and the Court of Appeals
15 will see that's immediately appealable without -- if
16 the notice -- and that's the point we've made, the
17 notice ahead of time.

18 We were fine and said we were fine giving all
19 information. The supplemental order sought to go
20 after parties that were not part of this case.

21 THE COURT: Well, then, that would apply to
22 those people, would it not?

23 MR. GREEN: Correct. Correct. And we stand
24 here ready, again, with the same information,
25 everything that we have.

1 THE COURT: All right. But following the
2 appeal, y'all stopped cooperating with the receiver?

3 MR. GREEN: I was still in contact with him
4 after that.

5 THE COURT: All right. I'm going to let
6 Mr. Qualey respond.

7 MR. QUALEY: Let me just address specifically
8 what Dwayne was talking about. I was out chasing
9 things down and trying to find information, and I
10 wrote specific questions to him. And September 25th:
11 Dwayne, please respond to my last e-mail and also
12 provide the following.

13 I asked for specific things. Account
14 information from all accounts from which Mr. Anthony
15 received his salaries for years '21 through '23, a
16 full accounting of what Mr. Anthony did with those
17 salary checks, which now we know add up to \$480,000.

18 Did he deposit them into an account? If so,
19 provide us with deposit slips, deposit record slips,
20 or did he cash the checks and endorse them over to
21 some other party? Please let me know that. Please
22 provide all information related to the flow of these
23 funds. Further, let me know when I can take his
24 deposition.

25 That's September 25th. I get a response.

1 "Joe, I am working on the same and appreciate your
2 follow-up."

3 That's on you, Dwayne. You were working on
4 those things, not sending me around to different
5 minions. Okay? I came to you asking you because I
6 would rather get information from a member of the bar
7 than from a bookkeeper up on Spring Street.

8 So I asked you to give me this stuff. Didn't
9 give me a day for deposition, and then filed.

10 THE COURT: I didn't miss the fact that at
11 his deposition, he stated that he had no income and
12 that the receiver has found that he's had over
13 \$400,000 of income in the last two or three years,
14 correct?

15 MR. SANCHEZ: Yes, sir.

16 THE COURT: Okay. I think I've heard enough.
17 What is the judgement amount? What was the
18 original judgement amount?

19 MR. SANCHEZ: Original judgement was
20 \$125,000, which with post-judgement interest at 11 and
21 a half percent is currently \$266,977.74 as of today.

22 THE COURT: And so what do you seek for
23 sanctions?

24 MR. SANCHEZ: I ask double the amount
25 currently accrued.

1 THE COURT: Okay. All right. Well, I don't
2 know if I can do that, but I can award sanctions
3 because I think clearly there's been an attempt to
4 delay this process.

5 What's the date of the judgement, December
6 what?

7 MR. SANCHEZ: December 23rd, 2013.

8 THE COURT: So it expires December 22.

9 All right. As to the motion to lift the
10 stay, I frankly don't believe that there is a stay
11 because the -- it's a money judgement from which is
12 appealed. The appeal actually has to do with the
13 receiver's duties, not the appointment of the
14 receiver. That clock had run.

15 August 11 would have been 9/10, and so the
16 appointment of the receiver is not timely.
17 Mr. Green's argument is, well, it affects his duties
18 and therefore I can get it, but he doesn't -- he's not
19 challenging I don't believe the appointment of the
20 duties of the receiver. It goes after people he
21 doesn't represent, so I don't know that I understand
22 that logic, either.

23 But to the extent that you, the moving party,
24 needs to move before the lower court to lift the stay,
25 I'm going to grant that. Y'all can let the Court of

1 Appeals know that I've done that. So the stay is
2 lifted.

3 The sanctions are going to be whatever
4 attorneys' fees, expenses that have been accrued by
5 the receiver in the pursuit of this judgement as part
6 of an award, and the same goes, Mr. Sanchez, for you.
7 Attorneys' fees -- y'all just need to put together an
8 affidavit, and I will issue an order. I do believe
9 this Court has jurisdiction to do that because an
10 appeal only stays that which is appealed. Only thing
11 that's being appealed is actions of the receiver as it
12 relates to some third party.

13 Now, that gets us back to what I think is the
14 significant issue for this Court today, and that's the
15 rule to show cause and whether or not Mr. Anthony is
16 in contempt.

17 You read from the transcript of the hearing
18 that I had previously read, and that's why I said what
19 was my response. Because I frankly didn't believe you
20 then, and I don't believe you now.

21 Mr. Anthony, when we were here last in August
22 at least, what Mr. Sanchez read into the record was
23 what I believed. Okay? You needed to cooperate.

24 I understand you've got an attorney. Your
25 attorney is doing the best job he can for you. But I

1 was that close to putting you in jail in August. I am
2 going to do that today. Okay?

3 The only decision that I have tried to make
4 this morning is whether or not your contempt is civil,
5 to which you have the keys to the jail, or criminal.

6 And criminal contempt doesn't get you
7 satisfied, doesn't get you any expenses paid. And so
8 that sort of begs the question.

9 My finding of criminal contempt is usually a
10 finding of 90 days in the jail. That's going to put
11 you in the jail over the holidays. That's not my goal
12 in life.

13 But a finding of civil content by definition
14 means that you have the keys to your own jail cell.
15 That's what that means.

16 The Court is required to find civil contempt
17 by clear and convincing evidence, and I am clearly
18 convinced that this has been an attempt to ride out
19 the time period. I indicated that in August, and I
20 believe that today.

21 I find the contempt to be direct in that it
22 has delayed the administration of justice. I'm going
23 to cite you to the case of *Brandt v. Gooding*, 368 S.C.
24 618.

25 In that case, the contempting party had

1 presented a fraudulent document to the Court, and the
2 Court found that that was enough to hold them in
3 contempt of court.

4 Direct contempt is contentious conduct in the
5 presence of the Court. This is a Chief Justice Toal
6 order, by the way. And it is direct contempt if it
7 interferes with judicial proceedings, shows disrespect
8 for the Court, or hampers the parties or the
9 witnesses.

10 I find that to be the case. Direct contempt
11 occurs in the Court's presence and may be immediately
12 adjudged and sanctioned summarily. Courts have taken
13 liberal expansive view of the present court
14 requirements and includes depositions as judicial
15 proceedings within the presence of the Court.

16 I cannot reconcile the inconsistent
17 statements that have been given in this case, and I
18 cannot sanction the behavior of the process. And as I
19 indicated, this is about where we were -- maybe I
20 should have done it in August. Maybe we wouldn't be
21 here. But I thought the appointment of a receiver
22 would get us to the result we needed.

23 Probably the leading case on contempt is the
24 case of *Curlee v. Howell*. It's from 1982. It must be
25 proven by clear and convincing evidence, as I've

1 stated, and from the willful disobedience of a court
2 order. The record must be clear and specific as to
3 acts of conduct upon which the contempt is based, and
4 I think we have made that record today.

5 So it is on that basis, then, Mr. Anthony
6 that I'm going to find you are in contempt. I'm going
7 to ask the sheriff to put you under arrest and take
8 you to the Charleston County Detention Center where
9 you will be held until such time as you can purge
10 yourself from contempt, which is going to be the
11 payment of the sanctions which the Court is going to
12 award -- and y'all have to get me an affidavit of what
13 that is -- and/or you produce the documents that have
14 been requested so they can locate the funds or you can
15 pay the funds or y'all can settle it.

16 Mr. Green?

17 MR. GREEN: I have those documents, Your
18 Honor, and then I would like to read into the order
19 what the proper petition is for lifting a stay which
20 the plaintiffs did not follow. And if we may just
21 read that into the record to preserve it for appeal,
22 it does state in Rule 241 that if they were going to
23 appeal for a lifting of the stay, they need to have --

24 THE COURT: You have the cart before the
25 horse. You're the one that filed that you have an

1 automatic stay. I find that you do not have an
2 automatic stay.

3 MR. GREEN: Just wanted to clarify that. And
4 we do have that this is a re -- this is all the
5 documents he already received, but we're sending
6 again, everything he has, all the bank documents,
7 which were produced.

8 So if they have the documents and then tell
9 this Court that they do not, that's something for the
10 Court of Appeals to look at.

11 But we have submitted this. The case that we
12 were going to submit, Your Honor, speaks to -- and
13 that's *State v. Cooper* 342 S.C. 389 and also 536 SE 2d
14 870.

15 It does state that a form order is not one
16 you would -- you can wait until the final order and
17 that the proper process for lifting the stay --

18 THE COURT: Is that a criminal case you
19 referred to?

20 MR. GREEN: Yes, Your Honor.

21 THE COURT: All right. Let me say this for
22 the record. I didn't really understand why I got that
23 supplemental order because I thought the order itself,
24 the Court's form order, was pretty direct. Cited to
25 the statute, said the receiver had all the authority

1 he needed.

2 But my understanding is you've appealed that
3 order on the basis that it sought something outside of
4 the record, in other words, outside of Broadband
5 Companies, outside of Mr. Anthony. To that extent, it
6 was appealed. That was my understanding.

7 MR. GREEN: That's not correct, Your Honor.
8 Just so we can clarify on the record, there were
9 certain procedures as with the lifting of a stay that
10 the plaintiff has to go through in order to request
11 that a receiver be appointed. That was not done in
12 this case.

13 THE COURT: Didn't you wait a little late for
14 that?

15 MR. GREEN: Relying on this case, which I
16 believe is solid case law --

17 THE COURT: Let me pin you down on exactly
18 what you're saying. You're saying to lift the stay
19 has certain criteria?

20 MR. GREEN: No, I'm saying -- well, that --

21 THE COURT: To appoint the receiver, what
22 would be that criteria to appoint a receiver?

23 MR. GREEN: I want to get the language very
24 correct.

25 THE COURT: All right. You're now claiming

1 the Court didn't have the authority to appoint a
2 receiver is what you're telling me?

3 MR. GREEN: Without giving proper notice to
4 the defendant, correct.

5 THE COURT: Okay. And when did you plan to
6 bring that to this Court's attention?

7 MR. GREEN: Your Honor, we didn't realize --
8 again, we differ in our reading of the supplemental
9 order.

10 The initial order just asked for information,
11 which we were supplying, continuous supply having this
12 here today.

13 The language of the supplemental order went
14 beyond that. And that extra language in the written
15 order is what we appealed which goes back to the
16 appointment.

17 So once we saw all of the language in that
18 supplemental order that was beyond the pale, we looked
19 back and saw whether or not any notice -- was the
20 appointment of the receiver done correctly.

21 And there's a statement, and I will review
22 it, that no receiver can be appointed without certain
23 steps being followed, and that's in chambers, anything
24 else like that.

25 So we're very clear, Your Honor, that those

1 procedures weren't followed. That's what we raised in
2 our --

3 THE COURT: Okay. All right.

4 MR. GREEN: So we think that we can show
5 clearly that they did not follow the proper procedure
6 before the appointment of the receiver.

7 THE COURT: At least four days' notice of the
8 application must be given, unless the Court shall,
9 upon it being made to appear that delay would work
10 injustice, prescribe a shorter time.

11 Is that the statute?

12 MR. GREEN: I believe that's the one --

13 THE COURT: 15-65-20. Clearly, we're running
14 out of time because you have about two months to get
15 this thing resolved. That's why I appointed the
16 receiver in August. I understand what you're saying.

17 MR. SANCHEZ: Your Honor, may I make two very
18 quick points? I know the Court has spent a lot of
19 time with us today already.

20 The first point is this whole question about
21 notice ahead of time wasn't raised on August 11,
22 wasn't raised at a motion for reconsideration. The
23 time for seeking reconsideration has now expired. I
24 think that addresses that argument there.

25 And then I want to thank Your Honor for

1 ruling with us in terms of sanctions. I understand
2 it's the attorneys' fees. I would ask if Your Honor
3 would consider that in addition to the attorneys' fees
4 that they be required to produce canceled checks for
5 all of these transactions that they have not produced.

6 Mr. Green says we've got a disc drive there.
7 I don't need the same disc drive again. It doesn't
8 tell me where the money came from or where it went.
9 There's no checks there. There's nothing there
10 telling me who got this money, who's it being endorsed
11 over, none of that.

12 I would say if he holds the keys to his own
13 cell that part of those keys be give us the checks.

14 THE COURT: All right. I'm going to let
15 y'all work that part out. Okay? If y'all are
16 satisfied, you let me know. I'll sign an order
17 releasing him from the jail.

18 That's the benefit of civil contempt. It's
19 not time served, it's until such time as it is
20 resolved.

21 MR. GREEN: And we will hand this over.

22 THE COURT: I understand.

23 MR. GREEN: We do believe, Your Honor, that
24 if there is a stay in place, that seeking contempt and
25 a rule to show cause during the stay is violative of

1 the stay, and we want to put that on the record.

2 THE COURT: Okay. Very good.

3 Mr. Anthony, what would you like to say?

4 FRED ANTHONY: First of all, Your Honor, I
5 disagree with Mr. Sanchez, his complaint that we have
6 not complied with the requests. I have documentation,
7 binders, 25 pounds of paper that Mr. Green delivered
8 to his office and we immediately began to reply
9 December 19th of last year.

10 We hired --

11 THE COURT: I don't think that's been
12 established in this courtroom yet.

13 FRED ANTHONY: Well, we hired Mr. Shawn
14 French initially to represent --

15 THE COURT: Well, that might be another
16 matter for another day.

17 All right. I appreciate you being here. I
18 am sorry to do that to you. I think y'all got some
19 work to be done.

20 MR. GREEN: May we put the timeline into the
21 record of the responses they gave me? This is the
22 responses where they supplied all of the information.

23 THE COURT: Y'all hand that over to them so
24 y'all can respond to it.

25 MR. SANCHEZ: I don't know whether it's

1 accurate or not, Your Honor.

2 THE COURT: Just upload it. If you want to
3 mark it, you can.

4 (Exhibit Number 1 was marked for
5 identification.)

6 THE COURT: Thank you all.

7 (Off the record at 12:17 p.m. November 6th,
8 2023.)

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COURT REPORTER'S CERTIFICATE

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I DO HEREBY CERTIFY THAT THE TESTIMONY
CONTAINED IN SAID HEARING WAS, BY ME, REDUCED TO
WRITING IN THE PRESENCE OF SAID WITNESS BY MEANS OF A
COMPUTERIZED TRANSCRIPTION. THE SAID HEARING IS A
TRUE AND ACCURATE TRANSCRIPT OF THE WHOLE OF THE
TESTIMONY GIVEN BY SAID WITNESS, AS AFORESAID.

I DO FURTHER CERTIFY THAT I AM NOT CONNECTED
BY BLOOD OR MARRIAGE WITH ANY OF THE PARTIES OR THEIR
ATTORNEYS OR AGENTS, AND THAT I AM NOT AN EMPLOYEE OF
EITHER OF THEM, NOR INTERESTED DIRECTLY OR INDIRECTLY
IN THE MATTER OF CONTROVERSY EITHER AS COUNSEL,
ATTORNEY, AGENT, OR OTHERWISE.

SIGNED THIS THE 8TH DAY OF NOVEMBER 2023.

Josie Boehm

JOSIE ALLEN BOEHM

My Commission Expires 10/18/32

EXHIBIT D

(Verification of Plaintiffs in Support of Motion to Lift Stay,
filed November 6, 2023)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough
Master-in-Equity

Appellate Case No. 2023-001562
Circuit Court Case No. 2010-CP-10-9857

The Broadband Companies, LLC, and
Fred Anthony,

Appellants

v.

R&R Landscape and Design, LLC, f/k/a
R&R Landscape, Inc., and Mark Gonzalez

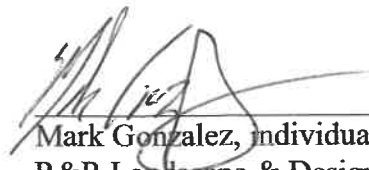
Respondents.

VERIFICATION

I, Mark Gonzalez, individually and on behalf of R&R Landscape & Design, LLC, hereby verify the information contained in Respondent's Motion to Lift Stay and for Sanctions Against Defendants and Defendant's Attorney is correct.


Appellants have failed to comply with this Court's prior orders commanding that Defendants produce financial records to Plaintiffs and continues to engage in dilatory tactics aimed to "run out the clock."


[Signature on following page]


Mark Gonzalez, individually and on behalf of
R&R Landscape & Design, LLC

FURTHER AFFIANT SAYETH NOT.

Sworn and Subscribed before Me This 6 day of November, 2023.

 Signature
Lisa A Zatorski Print Name

Notary Public for NC
My Commission Expires: 3-19-26
 Signature



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough
Master-in-Equity

Appellate Case No. 2023-001562

The Broadband Companies, LLC, and
Fred Anthony,

Appellants

v.

R&R Landscape and Design, LLC, f/k/a
R&R Landscape, Inc., and Mark Gonzalez

Respondents.

PROOF OF SERVICE

I, the undersigned, certify that I have served Respondents' *Return to Appellants' Motion to Confirm Existence of Automatic Stay* and corresponding *Exhibits* via electronic mail on Dwayne Green, Esquire, and Shawn M. French, Esq., Counsel for Appellants The Broadband Companies, LLC, and Fred Anthony, at their AIS-designated email address (dwayne@greenlawsc.com and shawn@thefrenchlawfirm.com) on November 13, 2023.

Pursuant to Rule 262(C)(3), SCACR, and the Order of The Supreme Court of South Carolina, RE: Methods of Electronic Filing Under Rule 262 of the South Carolina Appellate Court Rules (As Amended May 6, 2022), a copy of the aforementioned email correspondence to counsel is

attached.

THE LAW OFFICE OF JESSE SANCHEZ, LLC

s/Jesse Sanchez

Jesse Sanchez, Esquire (SC Bar No. 101906)

751 Johnnie Dodds Boulevard, Suite 200

Mount Pleasant, SC 29464

jesse@jessesanchezlaw.com


(843) 814-8181

Attorney for Respondents

Mount Pleasant, South Carolina

November 13, 2023



From: **Jesse Sanchez** jesse@jessesanchezlaw.com 
Subject: Re: R&R Landscape and Design, LLC, and Mark Gonzalez, Respondents, v. The Broadband Companies, LLC and Fred Anthony, Appellants. Appellate Case No. 2023-001562
Date: November 13, 2023 at 11:32 PM
To: Dwayne Green dwayne@greenlawsc.com, ShawnM French, Sr. shawn@thefrenchlawfirm.com
Cc: Keith McCarty ikeithmccarty@gmail.com, Brian Knowles brian@knowlesinternational.com

Dwayne and Shawn,

Attached for service, please find Respondents' Return to Appellants' Motion to Confirm Existence of Automatic Stay, Exhibits, and corresponding Cover Letter, all of which are being filed momentarily with the South Carolina Court of Appeals via OneDrive electronic submission.

Regards,

Jesse

PLEASE NOTE WE HAVE A NEW ADDRESS:

Jesse Sanchez
The Law Office of Jesse Sanchez, LLC
751 Johnnie Dodds Blvd., Suite 200
Mount Pleasant, SC 29464
Office: (843) 804-4753
Direct: (843) 814-8181
Fax: (843) 284-3953
jesse@jessesanchezlaw.com

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**Gonzalez Letter to Kitchings
111323.pdf**



**RR Landscape v Broadband -
Respondents Return to...**
128 KB



**Exhibits to Respondents Return
to Appellants Motion re Stay.pdf**
1.6 MB



November 13, 2023

VIA ONEDRIVE ELECTRONIC SUBMISSION
AND U.S. First Class Mail

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211



RECEIVED

Nov 13 2023

SC Court of Appeals

RE: R&R Landscape and Design, LLC, and Mark Gonzalez, Respondents,
v. The Broadband Companies, LLC and Fred Anthony, Appellants.
Appellate Case No. 2023-001562

Dear Ms. Kitchings:

Enclosed for filing please find the following:

- (1) Respondents' Return to Appellants' Motion to Confirm Existence of Automatic Stay,
- (2) Exhibits to Respondents' Return to Appellants' Motion to Confirm Existence of Automatic Stay, and
- (3) Proof of Service

Thank you for your assistance with this matter. Should you have any questions or wish to discuss the filing, please do not hesitate to contact me directly.

Sincerely,

s/Jesse Sanchez

Jesse Sanchez (SC Bar No. 101906)

Enclosures (as stated)

Cc: Dwayne Green, Esq. (Via Email Only)
Shawn M. French, Esq. (Via Email Only)
I. Keith McCarty, Esq. (Via Email Only)
Brian M. Knowles, Esq. (Via Email Only)

THE LAW OFFICE OF JESSE SANCHEZ, LLC

751 Johnnie Dodds Blvd., Suite 200, Mount Pleasant, SC 29464 P: 843.814.8181 F: 843.284.3953
jesse@jessesanchezlaw.com jessesanchezlaw.com