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Nov 15 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Master-in-Equity

Mikell R. Scarborough, Master in Equity

Case No. 2023-001562

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

Respondent,

v.

The Broadband Companies,
LLC and Fred Anthony,

Appellants.

REPLY
(MOTION TO CONFIRM EXISTENCE OF AUTOMATIC STAY AND
ENFORCING COMPLIANCE)

Appellants submit this Reply to the Respondents' Return to the Motion to Confirm Existence of Automatic Stay pursuant to Rule 240 SCACR.

First, The Respondents have provided no authority from any rule, statute, or case to counter the arguments in the Appellants' Motion. This is because there is none. What they have submitted is a lot of accusations and frivolous arguments that have no bearing on the issue of whether the service of the Notice of Appeal stays the August 11 Order Appointing the Receiver and the *ex parte* September 25 Supplemental Order¹. The arguments the Respondents have put up in their Return

¹ The "Supplemental Order IN RE Authority of Receiver Previously Appointed" was entered on September 25, 2023 without a hearing and without providing a copy of the proposed order to Dwayne Green, attorney for the Appellants at the time. This order was an extreme expansion of

are nothing more than red herrings, in an attempt to distract the court from the fact that when the Appeal was filed, the Orders Appointing the Receiver were stayed.

Second, the October 26, 2023 Rule to Show Cause makes it clear the only reason for the rule was the claimed failure to cooperate with the receiver. This Rule To Show Cause was drafted by the Counsel for the Respondents, and focuses on the claimed violations of the orders on appeal. A copy of this order is attached as Exhibit "A." The Rule to Show Cause is a clear attempt to punish Mr. Anthony for appealing the orders appointing the receiver. The allegations of other issues of contempt are window dressing, added after the fact in an attempt to preserve the order of contempt from being voided.

Third, the Appellants are intentionally conflating the appeal of the Orders Appointing the Receiver with a non-existent appeal of the underlying judgment, but the defendants are not appealing the underlying judgment and, as their Return shows, they know that.

Fourth, if the Appeal is dismissed, that would only terminate the stay, not make it moot, as the Respondents are arguing. The Respondents are also attempting to argue that

Fifth, the respondents cured all prior contempt as of the August 11 order. The only demands from anyone other than the receiver is from the December 2022 Rule to Show Cause and the Defendant provided all those documents by the August 11 hearing. There is no other written order requiring production of documents other than the orders on appeal. The Respondents want the court to focus on their accusations against Mr. Anthony that he has engaged in "dilatory tactics." This is hard to believe when the Appellants were not served with the supplemental proceedings in this action until December of 2022. There is no evidence of any of the accusations on this record. There have been hearings that were missed by Mr. Anthony, but they were all with cause. Mr. Anthony has

Sixth, the Lower Court made a determination regarding the appeal that it had no authority to make. The matter in question is stayed, and the Master is

the order entered on August 11 and required quick action on behalf of the appellants to protect themselves and other parties named in this order.

without jurisdiction to hold the hearing. Rule 205, SCACR; Arnal, 641 S.E.2d at 422; Tillman, 398 S.C. at 254-

WHEREFORE Appellants pray for an order

1. Finding the Master acted without authority in finding there was no appellate stay;
2. Finding there is a stay;
3. Directing the lower court not to proceed during the pendency of the appeal with matters affected by this appeal;
4. Finding any orders issued regarding the authority of the receiver, especially after the Supplemental Order of September 25, 2023 should be vacated,

Respectfully submitted,

November 15, 2023

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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-10-9857
LLC F/K/A R&R LANDSCAPING)	
INC. AND MARK GONZALEZ,)	
)	
Plaintiff,)	RULE TO SHOW CAUSE
)	CITATION FOR CONTEMPT OF COURT
)	
)	
vs.)	
)	
THE BROADBAND COMPANIES)	
LLC AND FRED ANTHONY,)	
)	
Defendants.)	
)	

Pursuant to a Rule to Show Cause entered on July 26, 2023, this Court 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, 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.

Mr. Anthony appeared with his Counsel, Mr. Dwayne Green, at the August 11, 2023 hearing after failing to appear at an earlier, court-ordered hearing on July 14, 2023.¹ Plaintiffs’ counsel stated that Defendants had not produced all requisite financial documents, which Defendants’ counsel conceded.

¹ This is not the first court-ordered hearing Mr. Anthony has failed to attend, having also failed to appear at a hearing on January 13, 2023.

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.

(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

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.

(H'rng Tr., pp. 20:6 -21:7, emphasis added).

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 Broadband

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:

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 hearing, this Court specifically ruled that it was appointing Mr. Joe Qualey 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 moreso 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 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