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S.C. SUPREME COURT

Exhibit A

Order Denying Estate's Motions to Quash and Motion to Compel

JUN 21 2023

PROBATE JUDGE
LEXINGTON COUNTY, SC

STATE OF SOUTH CAROLINA)
) IN THE PROBATE COURT
COUNTY OF LEXINGTON)

In the Matter of: Estate of Herbert Rivers) Civil Action No. 2020-ES-32-01119
Anderson, Jr.)
)

**ORDER DENYING ESTATE’S MOTIONS
TO QUASH AND MOTION TO COMPEL**

_____)
This matter comes before the Court by way of three motions filed by The Estate of Herbert Rivers Anderson, Jr. (“the Estate”): (1) Motion to Compel as to Stephen Wilkinson, as Trustee of George B. Buchanan, Jr. Irrevocable Family Trust Dated 15th Day of July, 2001 (“Buchanan Trust”); (2) Motion to Quash Subpoenas to Manly-Garvin and Herbert R. Anderson, Jr. Construction, Inc. (“Anderson Construction”); and (3) Motion to Quash Subpoena Duces Tecum to Timothy Burke (collectively, “Motions”). An in-person hearing was duly noticed for June 6, 2023, at 11:30 a.m., and counsel for all involved parties were present and heard on all Motions. After reviewing the parties’ submissions, relevant exhibits, applicable statutory and case law, the Court hereby DENIES all of the Motions in full.

I. Motion to Compel

The Estate’s Motion to Compel relates to the Buchanan Trust’s objections to discovery requests that seek documents and information related to the 2012 foreclosure action that resulted in a final order of judgment in February 2013. More specifically, the Estate’s position is that it is entitled to conduct discovery into the foreclosure case to see if there is any evidence of a fraud on the foreclosure court that could result in a challenge to the final judgment.

Once the foreclosure judgment was obtained, the Buchanan Trust filed an action against the guarantors of the mortgage, which included Mr. Anderson. Mr. Anderson filed a timely answer and also asserted counterclaims for fraud related to the foreclosure proceedings and sale of

collateral. However, at the trial of the guarantor action, Mr. Anderson voluntarily dismissed his fraud counterclaims. The Buchanan Trust prevailed at trial and obtained an order of judgment against Mr. Anderson, which is the basis of the claim against the Estate. Mr. Anderson did not appeal the judgment.

This Court finds that the Buchanan Trust's objections to the Estate's discovery requests were proper under the doctrine of *res judicata* and, therefore, the Motion to Compel is denied in full. "*Res judicata* bars a subsequent suit by the same parties on the same issues." *Johnson v. Greenwood Mills, Inc.*, 317 S.C. 248, 250-51, 452 S.E.2d 832, 833 (1994). *Res judicata* is shown if (1) the identities of the parties are the same as a prior litigation; (2) the subject matter is the same as the prior litigation; and (3) there was a prior adjudication of the issue by a court of competent jurisdiction. *Id.*

In this case, all of the elements of *res judicata* are present: (1) Mr. Anderson was a party to the guarantor action and was represented by counsel; (2) the subject matter of the guarantor action and the Buchanan Trust's claim in the present Probate Court case are the same: the debt owed by Mr. Anderson as a result of the defaulted loan; and (3) by dismissing his counterclaims for fraud in the guarantor action, the issue was raised and finally concluded when the trial court issued its final order against Mr. Anderson.

While *res judicata* precludes a subsequent lawsuit by the same parties on the same issues, it also bars subsequent efforts to conduct discovery on those same issues that were presented and finally decided. It is not proper for the Estate to use the discovery process in this Probate Court matter to conduct discovery and possibly re-litigate issues from a Circuit Court case that was concluded in 2017. If the Estate believes it has grounds for setting aside the 2013 foreclosure judgment, it has recourse under Rule 60(b), S.C.R.Civ.P. However, this Court holds that the

Buchanan Trust's discovery objections are proper, and this type of discovery may not be conducted in the instant case. Accordingly, the Estate's Motion to Compel is denied in full.

II. Motions to Quash

a. Motion to Quash Subpoenas to Manly-Garvin and Anderson Construction

On March 23, 2023, the Buchanan Trust served separate documents subpoenas to Manly-Garvin – the accountants for various corporate entities listed in the Inventory and Appraisalment – and Anderson Construction. Earlier in the case, on February 24, 2021, Manly-Garvin was served with an identical documents subpoena and provided full and complete responsive documents without any objection or motion to quash from the Estate. At that time, Manly-Garvin could only produce financial records up through 2020. In serving the March 23, 2023 subpoena, the Buchanan Trust requested the same documents so that it could obtain records generated after Manly-Garvin's earlier subpoena response, i.e., those from 2021 through the present.¹ These records are clearly relevant to the matters at issue in this case as shown by the lack of any objection or motion to quash the 2021 subpoena.

On the same date, the Buchanan Trust served a documents subpoena on Anderson Construction. According to the Estate's own disclosures, it owns a 90% interest in Anderson Construction. The March 23, 2023, subpoena to Anderson Construction seeks financial records, contracts or agreements, and documents related to any construction activity or sales. Given the Estate's ownership interest in this company, these documents are clearly related to the Buchanan Trust's claim and issues raised in this case.

¹ To the extent there is any question about the scope of the March 23, 2023, subpoena to Manly-Garvin, it shall be limited to responsive documents that have not been previously provided in response to the February 24, 2021, subpoena.

b. Motion to Quash Subpoena Duces Tecum to Timothy Burke

On March 23, 2023, the Buchanan Trust served a Subpoena Duces Tecum and Notice of Deposition on Timothy Burke, the real estate broker who has a listing agreement with the Estate. The subpoena seeks documents related to the marketing and sales of real property identified in the listing agreement between Mr. Burke and the Estate. The Subpoena and Notice of Deposition also set a deposition of Mr. Burke so that the Buchanan Trust could examine him regarding his role and actions as the listing agent. This Subpoena and Notice of Deposition clearly seek documents and testimony relevant to the Buchanan Trust's claim and issues present in this case.

c. Grounds for the Estate's Motions to Quash

The Estate identifies the same four grounds in support of both Motions to Quash. However, none of these bases warrants the quashing of the three subpoenas described above.

The Estate first states that “the Buchanan Trust does not have an allowed claim in the Probate Estate and until it has an allowed claim, it has no standing to issue subpoenas in the Probate Estate.” As an initial point, there is no authority in the Rules of Probate Code that a creditor who is a party to a pending case must have an allowed claim before it can serve a subpoena or notice of deposition. On the contrary, Rule 45(a) expressly allows attorneys for parties to “issue and sign a subpoena on behalf of a court in which the attorney is authorized to practice.” Moreover, this Court finds that the Buchanan Trust has an allowed claim as a matter of law. Section 62-3-806(a) requires the Personal Representative to provide written notice of any disallowance its claim by no later than fourteen months after the death of the decedent.² In this case, Mr. Anderson died on November 2, 2018, which made the deadline for disallowance January 2, 2020. However, no such

² See also, Catherine H. Kennedy, S. Alan Medlin, *2013 Amendments to the S.C. Probate Code*, S.C. Law. 32, 42 (January 2014); S. Alan Medlin, *The South Carolina Probate Code Patched and Refurbished: Version 2013*, 65 S.C. L.Rev. 81, 124 (2013).

written notice has been provided as of the date of the June 6, 2023, hearing. Accordingly, the Buchanan Trust's claim is deemed allowed as a matter of law.

The Estate's second ground for its Motions to Quash is that because the Buchanan Trust objected to discovery requests, it cannot conduct discovery. There is no legal support for this position. Moreover, because the Estate's Motion to Compel these discovery responses is denied (*see* Section I above), this argument is moot.

The third basis for the Estate's Motion to Quash is that the requests contained in the two subpoenas and notice are "overly broad and overly burdensome." As discussed above regarding each of the subpoenas, the Court disagrees and finds the scope of these requests are reasonable and proper.

The last basis for the Estate's Motion to Quash is that the subpoenas "require[] the disclosure of privileged or otherwise protected matters." However, to the extent the subpoenas seek sensitive or confidential information – such as tax returns, financial statements, etc. – they can be designated as "Confidential" pursuant to the Consent Confidentiality Order entered by this Court on March 29, 2021. Finally, this Court finds that there is insufficient evidence that any documents requested by the subpoenas are subject to any privilege, such as the attorney-client privilege or work product doctrine. To the extent the Estate has any such objections as to specific documents in the future, it can raise them at the appropriate time as required by the Rules.

III. Conclusion

Based on the foregoing, the Estate's Motion to Compel and Motions to Quash are denied in full. The Buchanan Trust may again serve subpoenas and the notice of deposition in accordance with this ruling.

AND IT IS SO ORDERED.



The Hon. Daniel R. Eckstrom
Probate Court Judge

June 21, 2023.

Exhibit B

August 31 Letter from Wesley Few

WESLEY D. FEW, LLC

ATTORNEY AT LAW

P.O. Box 9398

Greenville, SC 29604

E: wes@wesleyfew.com | O: 864-527-5906 | M: 864-404-7792

August 31, 2023

Via E-mail: billy.mcgee@nelsonmullins.com

Thomas William McGee, III, Esquire

1320 Main Street, 17th Floor

Columbia, SC 29201

RE: In the Matter of: Estate of Herbert R. Anderson, Jr., 2020-ES-32-1119
Our File No.: 00349-001

Billy,

Thank you for sending me the June 27, 2023 Order. The company is in the process of gathering and updating information necessary to comply with the order. As you are probably aware, the company's assets consist primarily of equipment and vehicles / trucks, as well as some land. Valuation of the land ought not be too difficult, and could likely be arranged through an available commercial real estate appraiser. As I understand it, pretty much all equipment is Komatsu and is financed when purchased through Linder Machinery, and the vehicles through Ford Motor Credit. Some of the equipment is old and likely only carries value as scrap / salvage. The company will also provide updated information on current contracts, employees, etc.

The priority of the company right now is to accurately identify and describe all the equipment and vehicles (with any corresponding lien amounts). As soon as we have an accurate list of those assets, and respective liabilities, we will plan to make that available to the estate and to your client. The company has also engaged a third-party equipment appraiser, Terry Howe & Associates, 1129 Locust Hill Road, Greer, South Carolina 29651. Once that is done, we can address any other information your client believes it might need.

Your client or its representatives are also welcomed to visit the company's offices to view and inspect equipment or vehicles on the property. Kenny Anderson would need to be present for that to walk them through and explain the age and condition of some items. He is going to be on vacation from this Friday to next Friday, but could likely work a visit like that into his schedule most any other time. Most of the equipment is off-site right now at two job sites: (1) Spinx site: 1943 Montague Ave. Ext, Greenwood SC 29649, and (2) Trolley Run Subdivision, Tarton Pass, Aiken, SC 29801.

Sincerely Yours,



Wesley D. Few

WDF/cgy

Exhibit C

October 31 Letter from Richard Gleissner

GLEISSNER LAW

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October 31, 2023

Via Email (wes@wesleyfew.com) and first class mail

Wesley D. Few, Esquire
Wesley D. Few, LLC
Post Office Box 9398
Greenville, SC 29604

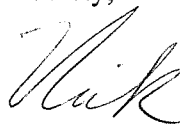
Re: In the matter of: Estate of Herbert Rivers Anderson, Jr.
Case No.: 2020-ES-32-01119

Dear Wes:

Ken Wingate, Esquire and I had a meeting with the attorneys for the Buchanan Trust this day. They indicated that Herbert Anderson, Jr. Construction, Inc. (the "Construction Company") was not cooperating in their discovery demands concerning the valuation of the Construction Company. On behalf of the estate of Herbert Rivers Anderson, Jr. (the "Estate") and its personal representative, Charles Schulze, I must stress the need for you all to cooperate with the Orders of the Probate Court in this matter.

Please feel free to contact our office with any questions or concerns. Thank you for your consideration and cooperation.

Sincerely,



Richard R. Gleissner

RG/atc

cc: Charles Schulze; Ken Wingate, Esquire; Billy McGee, Esquire (via email only)