

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
R&R Landscape and Design, LLC and)
Mark Gonzalez)
)
Plaintiff,)
)
vs.)
)
The Broadband Companies, LLC)
and Fred Anthony,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-10-09857

**ORDER DENYING MOTION TO
RECONSIDER:
APPOINTMENT OF RECEIVER,
DEFENDANT’S COMPLIANCE WITH
THE RECEIVER, AND AWARD OF
ATTORNEY’S FEES**

RECEIVED

Jan 11 2024

SC Court of Appeals

THIS COURT HAS reviewed the Motion to Reconsider submitted by Defendants on November 20, 2023 and, having thoroughly reviewed the record, hereby denies the relief requested as set forth herein.

PROCEDURAL HISTORY

Defendants confessed judgment to the Plaintiffs on May 24, 2013 following a hearing on May 15, 2023 wherein Circuit Judge J.C. Nicholson, Jr. ordered the Defendant to execute the Confession of Judgment for \$125,000.00 and pay \$8,000.00 to Defendants within 30 days of the May 30, 2013 Order or the Court would set aside the Settlement Agreement and set the matter for trial. The confession of Judgment was not entered until December 23, 2023.

Plaintiffs instituted Supplemental Proceedings against the Defendants after receiving a Nulla Bona from the Charleston County Sheriff’s Office in 2014. After three hearings had been set and the Defendants were unable to be served, the supplemental proceedings were dismissed without prejudice on September 21, 2015. In 2022, the Defendants were served with the re-filed and verified supplemental proceedings petition dated October 6, 2022. The Court’s first Rule to

Show Cause, entered on October 11, 2022, set the hearing date for December 9, 2022. The Rule specifically provided that the Defendant should show cause why a Receiver should not be appointed pursuant to S.C. Code Ann. Section 15-39-430. Despite the numerous hearings held before this Court over the past year, no challenge to the appointment of a Receiver was made by Defendants to this Court prior to Defendants filing its appeal on September 26, 2023.

The Court appointed Joseph K. Qualey, Esq. as Receiver by Order entered August 11, 2023. The Court's Form Order stated the Receiver had "all authority allowed by statute" and further provided: "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." The Order released Mr. Anthony from a July 26, 2023 contempt finding, provided he made timely payment of attorney's fees before September 5, 2023. The Form Order provided a "formal order to follow" wherein the Court would fully release Mr. Anthony upon payment.

The Court, apprised the Receiver had difficulty obtaining records from the Defendants and their banks, issued a "Supplemental Order In Re: Authority of Receiver Previously Appointed" on September 25, 2023. The Order set forth details regarding the Receiver's authority and specifically noted that the Receiver was appointed by Court Order dated August 11, 2023.

Defendants then filed an appeal to the Court of Appeals from the Supplemental Order on September 26, 2023. Defendants claimed to have never received notice of application of the appointment of Joseph K. Qualey, Esq. as Receiver; however, Defendant and counsel were present at the August 11, 2023 hearing wherein Mr. Qualey was appointed Receiver. No objection to the appointment was raised at that time.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Appointment of the Receiver.

As the Receiver was appointed in the August 11, 2023 Order, Defendant failed to timely serve notice of appeal within thirty days of receiving notice of entry of the Order. Rule 203 (b)(1), SCRPC.

In addition, this Court determined that the Rule 241 (b)(1), SCRPC exception applied in this case. This matter is clearly one for the collection of a money judgment as provided in S.C. Code Ann. Section 18-9-130 as it concerns the enforcement of a money judgment against the Defendants and thus is not subject to the general rule that the service of a notice of appeal acts to automatically stay matters. As an additional ground, the Appointment of a Receiver pursuant to S.C. Code Ann. Section 15-65-10, is allowed after judgment to carry the judgment into effect and to dispose of property “when an execution has been returned unsatisfied and the judgment debtor refuses to apply his property in satisfaction of the judgment.”

2. Authority of the Receiver.

It is well-settled in South Carolina jurisprudence that “a receiver represents the Court appointing him; he is an officer of the Court and is the agency through which the Court acts.” Kirven v. Lawrence, 244 S.C. 572, 137 S.E.2d 764 (1964).

While this Court does not appoint a Receiver in every supplemental proceeding, the Court is vested with that authority, especially after judgment has been rendered, to carry the judgment into effect or to satisfy the judgment when the debtor refuses to do so. *See* S.C. Code Ann. Section 15-65-10.

I find the Defendant Fred Anthony has repeatedly refused to comply with prior Orders of this Court to produce financial documents and to cooperate with the court-appointed Receiver. The

Receiver reported to the Court his difficulty in acquiring records requested from both Defendants and that his findings were that Mr. Anthony's deposition testimony regarding his income was false. In particular, in his deposition Mr. Anthony testified he had received no income; however, the Receiver reported that Mr. Anthony had received \$200,000.00 in income from his co-Defendant The Broadband Companies, LLC. In Defendant's Motion to Reconsider, Defendant acknowledges that he did not comply with the requests from the receiver.

Accordingly, the Court found Defendant Anthony to be in "civil contempt of court" for his failure to cooperate and comply with the Receiver's requests and to be honest with this Court. As stated to Mr. Anthony at the hearing in which he was remanded into custody, he has the keys to his own cell. In the event Mr. Anthony cooperates with this Court's orders, he will be released from jail upon this Court's order. As this Court repeatedly states at supplemental proceedings hearings: "I do not put people in jail for failure to pay, but I do for failure to follow the orders of this Court."

At this juncture, the Defendants' judgment will expire on December 22, 2023; however, the civil contempt sanction will continue until Mr. Anthony complies with this Court's prior Order.

3. Award of Attorneys' Fees.

I further find that the award of attorney's fees in this matter is proper. The Court reviewed the affidavits of counsel as to the attorney's fees and costs incurred and, applying the factors set forth in Baron Data v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989), finds the fees incurred are proper and consistent with the ends of justice and are due largely to Defendants' continued efforts to escape payment of the judgment incurred.

As previously ordered, Defendant Anthony shall pay the 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 to be made.

IT IS THEREFORE ORDERED this Court **DENIES** the Defendant's Motion to Reconsider in all respects.

SIGNATURE PAGE TO FOLLOW



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