

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

KJR GROUP, LLC d/b/a FLOOR PLAN
VISUALS; FPV GROUP, LLC d/b/a FLOOR
PLAN VISUALS; KOCHAI SHPOON
BECERRA,

CIVIL ACTION NO. 2024-CP-10-00740

Plaintiffs,

**ORDER GRANTING
RULE TO SHOW CAUSE AND
ORDER OF CONTEMPT**

vs.

ARC GROUP, LLC d/b/a ARCDIMENSION;
ABDULLAH ARDA BASCINAR,

Defendants.

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Nov 18 2024

SC Court of Appeals

This matter came before the Court on September 23, 2024, on Plaintiffs KJR Group, LLC d/b/a Floor Plan Visuals, FPV Group, LLC d/b/a Floor Plan Visuals, and Kochai Shpoon Becerra’s (“Plaintiffs”) Petition for Rule to Show Cause as to why Defendants Arc Group, LLC d/b/a Arcdimension and Abdullah Arda Bascinar (“Defendants”) should not be held in civil and criminal contempt of Court for violation of the Court’s Orders, including the Court’s Order confirming the Amended Award of Arbitrator (the “Award”) and the Court’s July 24, 2024 Order of Civil Contempt (the “First Order of Civil Contempt”).

LAW AND ANALYSIS

Contempt results from a “willful disobedience of an order of the court.” *Miller v. Miller*, 375 S.C. 443, 454, 652 S.E.2d 754, 759 (Ct. App. 2007) (quoting *Bigham v. Bigham*, 264 S.C. 101, 104, 212 S.E.2d 594, 596 (1975)). A willful act is one “done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done...with bad purpose either to disobey or disregard the law.” *Id.* at 443, 652 S.E.2d at 759-60 (quoting *Widman v. Widman*, 348 S.C. 97, 119, 557 S.E.2d 693,

705 (Ct. App. 2001)).

It is within the Court’s “discretion to punish by fine or imprisonment all contempts of authority before the court.” *Brandt v. Gooding*, 368 S.C. 618, 628, 630 S.E.2d 259, 264 (2006) (citing S.C. Code Ann. § 14-5-320). This power “is inherent in all courts, and is essential to the preservation of order in judicial proceedings.” *State v. Havelka*, 285 S.C. 388, 389 330 S.E.2d 288, 288 (1985). Courts also “have the inherent power to punish for offenses that are calculated to obstruct, degrade, and undermine the administration of justice.” *Id.* (citing *State ex rel. McLeod v. Hite*, 272 S.C. 303, 305, 251 S.E.2d 746, 747 (1979)). The “major factor in determining whether a contempt is civil or criminal is the purpose for which the power is exercised, including the nature of the relief and the purpose for which the sentence is imposed.” *Miller*, 375 S.C. at 454, 652 S.E.2d at 760 (quoting *Floyd v. Floyd*, 365 S.C. 56, 75, 615 S.E.2d 465, 475 (Ct. App. 2005), *superseded on other grounds by statute*, 2008 S.C. Acts 211, § 1)).

The “purpose of civil contempt is ‘to coerce the defendant to do the thing required by the order for the benefit of the complainant.’” *Poston v. Poston*, 331 S.C. 106, 111, 502 S.E.2d 86, 88 (1998) (quoting *Gompers v. Buck’s Stove & Range Co.*, 221 U.S. 418, 441, 31 S. Ct. 492, 498 (1911)). Civil contempt sanctions are “conditioned on compliance with the court’s order.” *Id.* at 112, 502 S.E.2d at 89 (citing *Hicks on Behalf of Feiock v. Feiock*, 485 U.S. 624, 108 S. Ct. 1423 (1988)).

Incarceration under “certain factual circumstances may be included as a component of civil contempt[,]” when considering the character and purpose of the contempt. *Miller v. Miller*, 375 S.C. 443, 458, 652 S.E.2d 754, 762 (Ct. App. 2007) (quoting *Cheap-O’s Truck Stop, Inc. v. Cloyd*, 350 S.C. 596, 609, 567 S.E.2d 514, 521 (Ct. App. 2002)). Although a sentence of imprisonment has “punitive and deterrent effects,” which is generally indicative of criminal contempt, “it must

be viewed as remedial if the court conditions the release upon the contemnor's willingness to [obey a court's order]." *Id.* (quoting *Shillitani v. U.S.*, 384 U.S. 364, 370, 86 S. Ct. 1531, 1535 (1966)). Thus, imprisonment is civil in nature if "the defendant stands committed *unless and until* he performs the affirmative act required by the court's order." *Poston*, 331 S.C. at 112, 502 S.E.2d at 89 (quoting *Feiock*, 485 U.S. at 663, 108 S. Ct. at 1430) (emphasis added). In *Poston*, the Supreme Court listed several "examples of civil contempt sanctions," two of which include a sentence of imprisonment. *Id.* at 115, 502 S.E.2d at 90. One example stated: "The contemnor is given a jail sentence to be served until he agrees to comply with the prior court order." *Id.*

The parties are subject to an Arbitration Award dated February 6, 2024. The Award requires the Defendants to perform certain acts and enjoins Defendants from continuing to perform certain other acts, including but not limited to ongoing control over the following accounts owned and/or operated by Defendants contain Floor Plan Visuals information and data in violation of the above excerpts of the Award: (1) Defendants' Drop Box accounts; (2) Defendants' QuickBooks accounts; (3) Defendants' website domain, arcdimension.com; and (4) Defendants' ZOHO account. *See* Affidavit of Kochai Shpoon Becerra dated September 23, 2024, at 4-5; Ex. A, pp. 7-9 (referred to as 'Floor Plan Accounts').

Thereafter, on June 3, 2024, the Court issued an Order confirming the Award in this Court and Ordered Defendants to appear before the Court on June 14, 2024 (First RTSC), via a virtual hearing, to present evidence of their compliance with the Award and/or evidence refuting Plaintiffs' Rule to Show Cause and sworn affidavits evidencing Defendants noncompliance with the Award. It was further Ordered that Defendants fully comply with the Award within ten (10) days upon receipt of notice of the Order. Plaintiffs personally served Defendants with this Order on June 3, 2024. However, Defendants failed to comply with any aspect of the Award; did not

attend the hearing on June 14, 2024; and did not otherwise present any evidence of their compliance with the Award.

As a result, on July 24, 2024, the Court issued the First Order of Civil Contempt, which granted Plaintiffs' Petition for Rule to Show Cause and found Defendants in willful contempt of Court. The Court Ordered Defendant Arda Bascinar to thirty (30) days of imprisonment *or* a five hundred dollar (\$500.00) per diem fine, either of which could be purged by Defendants' compliance with the injunctive relief Ordered. The Court also awarded Plaintiffs "recovery of their attorneys' fees incurred, which continue to accrue, in this proceeding from Defendants." First Order of Civil Contempt, at 5. Based on the affidavit of attorneys' fees submitted to the Court, the Court found an award of \$56,918.48 in attorneys' fees and costs was reasonable and appropriate.

In the First Order of Civil Contempt, the Court warned Defendants that "Failure to strictly comply with this Order shall subject Defendants to further sanctions" and "caution[ed] Defendants by noting further continuous and willful refusal to comply with the Award and Orders, including the sanctions imposed by this Order, may be deemed as 'calculated to obstruct, degrade, an undermine the administration of justice.'" *See* First Order of Civil Contempt, at 5 (quoting *Brandt v. Gooding*, 368 S.C. 618, 628, 630 S.E.2d 259, 264 (2006)). Despite this express warning, Defendants failed to comply with the Court's original Order or the first Order of Civil Contempt.

Plaintiffs personally served Defendants with the First Order of Civil Contempt on July 31, 2024. *See* Second RTSC, Ex. 1. On August 26, 2024, Plaintiffs filed another Petition for Rule to Show Cause why Defendants should not be held in civil and criminal contempt of Court for violation of the Court's Orders (the "Second RTSC"). The Second RTSC explained Defendants had "failed and refused to comply with the Arbitration Award, the prior Rule to Show Cause issued by this Court, and the Order of Civil Contempt." *See* Second RTSC, at 3. In particular, Defendants

failed to pay the \$500.00 per diem fine imposed by the First Order of Civil Contempt. As of the date of the Second RTSC, the fine totaled \$31,000. Defendants remain obligated to pay this fine which continues accruing each day until compliance. Also, Defendants failed to reimburse Plaintiffs for their attorney fees in the amount of \$56,918.48. Further, Defendants continued to fail to perform the required acts regarding the Floor Plan Accounts.

The Court set this matter for hearing on September 23, 2024. Defendants were served with the Second RTSC and notice of this hearing on September 20, 2024. Based on the information presented during the hearing and a review of the record and filings, it is clear to the Court that Defendants have been sufficiently warned and were provided proper notice of this proceeding. Further, the evidence is clear and convincing that the Defendants are in willful disobedience of this Court's Order by their failure to comply with any aspect of the Arbitration Order, the First RTSC, First Contempt Order, or the Second RTSC.

After careful consideration of Plaintiffs' Petition for Rule to Show Cause and the arguments presented by counsel at the hearing on September 23, 2024, the Court hereby GRANTS Plaintiffs' Petition for Rule to Show Cause and finds Defendants in civil contempt of court. Because of Defendants continued and repeated refusal to comply with the Award and Court Orders, and Defendants failure to make an appearance, the Court finds that further civil contempt sanctions are appropriate pursuant to S.C. Code § 14-5-320. As more fully set forth herein, the Court finds a conditional sentence of imprisonment is reasonable and appropriate.

IT IS HEREBY ORDERED that Defendants are in willful contempt of Court for their failure to comply with the Arbitration Order, the first RTSC, the first Order of Civil Contempt, and the Second RTSC.

IT IS FURTHER ORDERED that a bench warrant shall be issued for Defendant Abdullah

Arda Bascinar (“Bascinar”) ordering that he shall be taken into custody immediately and shall be held in the Sheriff Al Cannon Detention Center, or other appropriate facility, for thirty (30) days unless or until Defendants fully comply with this Court’s Orders and Award. At such time as Bascinar is incarcerated, the Court shall hold a hearing immediately or as soon as possible thereafter to assess the status of Defendants compliance with this Court’s Orders and Award. If Defendants fail to comply with each and every aspect of the Court Orders and Award, Bascinar shall remain imprisoned for the full thirty (30) days. Thus, for Bascinar to purge his contempt, Defendants must comply with each and every item of relief ordered in the Award which was dated February 6, 2024 (filed on May 31, 2024/June 3, 2024), comply with the first Order of Civil Contempt filed July 24, 2024, and provide the Court with supporting documentation or otherwise provide evidence of each instance of compliance.

FAILURE TO COMPLY WITH THIS ORDER MAY RESULT IN A FINDING OF CONTEMPT WHICH COULD RESULT IN A FINE AND/OR JAIL SENTENCE.

AND IT IS SO ORDERED!

The Honorable Dale E. Van Slambrook
Circuit Court Judge
Ninth Judicial Circuit

October 4, 2024



Charleston Common Pleas

Case Caption: Kjr Group Llc , plaintiff, et al VS Arc Group Llc , defendant, et al

Case Number: 2024CP1000740

Type: Order/Rule To Show Cause

And It Is So Ordered!

s/Dale E. Van Slambrook S.C. Circuit Court Judge
#2781