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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Donald B. Hocker, Circuit Court Judge

Appellate Case No. 2022-000704

South Carolina Community Bank,..... Respondent,

vs.

Salon Proz, LLC, Columbia Empowerment Zone, Inc. d/b/a The Columbia Empowerment Zone, and Frank Mitchell, Defendants,

Of whom Salon Proz, LLC is the..... Appellant.

RESPONDENT'S RETURN TO APPELLANT'S PETITION FOR REHEARING OR REHEARING *EN BANC*

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INTRODUCTION

Respondent South Carolina Community Bank ("SCCB") submits this Return in defense of the Court's Opinion affirming the circuit court's order sanctioning Appellant Salon Proz, LLC ("Salon Proz") and Yvonne Jones, Salon Proz's managing member, for admitted and repeated willful violations of two separate circuit court orders.

This case was originally filed by SCCB on October 26, 2011 as a foreclosure of commercial real property in Richland County located at 2901 Two Notch Road, Columbia, South Carolina ("Subject Property"). After SCCB learned that property taxes were not being paid on the Subject Property, SCCB sought an Order appointing a receiver for the Subject Property. On October 2, 2020, the Honorable Alison Lee appointed a Receiver ("Receivership Order"). The Receivership Order instructed the Receiver to "take charge of the real property, which is subject of this action and to collect rent, debts, and any fees pertaining to the property… The Receiver will maintain all keys, books, records, indices, rental proceeds, bank accounts, funds, deposits, and other tangible items or documents involving the property." (R. pp. 014; Receivership Order).

Salon Proz and Yvonne Jones willfully failed to comply with the Receivership Order, and SCCB filed a Rule to Show Cause in March 2021. The Honorable Donald B. Hocker found that Salon Proz had failed to comply with the Receivership Order and ordered compliance within thirty days. (R. pp. 021; Rule to Show Cause Order). Despite this Order, Salon Proz continued to violate the Receivership Order and was also in violation of Judge Hocker's Rule to Show Cause Order by contacting tenants, not allowing the Receiver to collect all rent due, and failing to provide the Receiver with all information required under the Receivership Order. Because of these repeated violations, SCCB filed a Motion to Enforce Prior Orders of the Court in December 2021. (R. pp. 101; Pl. Mot. to Enforce).

On March 22, 2022, Judge Hocker ordered that "the Defendant, Salon Proz, LLC, and its managing partner, Yvonne Jones, have willfully failed to comply with the [Receivership Order and Rule to Show Cause Order]." (R. pp. 002; March 22 Order, p. 2). This Order sanctioned Salon Proz and Yvonne Jones for the admitted violations and ordered payment of attorney fees and Receiver's fees. (*Id.*). Further, the case was referred to the Richland County Master-in-Equity and ordered "all rental payments from this date forward shall be paid to the Receiver and there shall be no interference by the Defendant and its managing partner." (*Id.*). On March 29, 2022, Judge Hocker issued an Order Striking Salon Proz's Counterclaims based on the repeated misconduct at issue. (R. pp. 004; March 29 Order). The March 22 and March 29 Orders form the basis of Salon Proz's present appeal and Petition.

STANDARD FOR REHEARING

Rule 221(a), SCACR, authorizes a party who believes the Court overlooked or misapprehended points of law or fact to petition the Court for rehearing. The petition for rehearing must state "the points supposed to have been overlooked or misapprehended by the court," Rule 221(a), SCACR, so as "to aid the court in deciding correctly a case heard by it." *Arnold v. Carolina Power & Light, Co.*, 168 S.C. 163, 167 S.E. 234, 238 (1933). "The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time." *Kennedy v. S.C. Retirement Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) (citation omitted). In sum, the losing party may not be granted rehearing just because it disagrees with the Court's decision; rather, the losing party must point out overlooked or misapprehended points of law or fact. Appellant's Petition does not meet this standard.

ARGUMENT

1. The Court Properly Issued Sanctions Against Salon Proz and Yvonne Jones.

a. The Appellant misinterprets the trust and importance of the Receivership Order.

Most of Appellants misguided arguments stem from a misreading or misunderstanding of the Receivership Order. As quoted in the panel opinion, the Receivership Order requires the Receiver to:

> ***take charge of the real property***, which is subject of this action and to collect rent, debts, and any fees ***pertaining to the property***. The Receiver is to ***take charge of the property*** including the building used for a hair and nail salon. The Receiver will maintain all keys, books, records, indices, rental proceeds, bank accounts, funds, deposits, and other tangible items or documents ***involving the property***.

(R. pp. 014; Order Appointing Receiver (emphasis added)). Based on the Receivership Order, the Receiver was charged with collecting rents for the *Subject Property*. The Receiver's duties were **not** limited to collecting rents of Salon Proz (the entity owning the property) and were explicitly extended to the Subject Property as a whole. This is only logical, as the note and mortgage that are the subject of the underlying foreclosure action attached to the Subject Property regardless of the legal entity that had a lease or sub-lease and that was responsible for collecting rents. Any other conclusion would permit and encourage the type of gamesmanship that Salon Proz and Ms. Jones tried to foist upon SCCB, the Receiver, and the circuit court—avoiding legal obligations like complying with court orders and/or paying a receiver through the creation of sham corporate entities.

b. The panel opinion properly affirmed the exercise of jurisdiction and sanctioning of Salon Proz and Yvonne Jones.

Notably, Appellant has failed to cite any legal authority indicating that the panel opinion acted improperly. Instead, the Appellant only cites generic case law for the proposition that a court

cannot issue an order that affects a party's rights unless the court has personal jurisdiction over the party. This argument fails for a number of reasons.

First, stemming from Appellant's misinterpretation of the Receivership Order, Appellant fails to acknowledge that an action for foreclosure "is a proceeding in personam as well as in rem." *Bartles v. Livingston*, 282 S.C. 448, 454, 319 S.E.2d 707, 711 (Ct. App. 1984) (citing *Perpetual Building & Loan Association v. Braun*, 270 S.C. 338, 242 S.E.2d 407 (1978); *Anderson v. Pilgram*, 30 S.C. 499, 9 S.E. 587 (1889)). "Actions in rem are prosecuted to enforce a right to things," whereas "actions in personam are those in which an individual is charged personally." *The Sabine*, 101 U.S. 384, 388 (1879). "Because in rem actions adjudicate rights in specific property before the court, judgments in them operate against anyone in the world claiming against that property." *R.M.S. Titanic, Inc. v. Haver*, 171 F.3d 943, 957 (4th Cir. 1999). The concept of *in rem* jurisdiction further explains how and why the Receivership Order extended to the Subject Property as a whole.

Second, Ms. Jones, as the sole member of Salon Proz, LLC, consistently acted on behalf of Salon Proz to willfully disobey the Court's Orders. The circuit court's authority to sanction Salon Proz and Ms. Jones also arises from its authority to act *sua sponte* in issuing sanctions for contempt, and it had a legal basis for acting against Ms. Jones under the single business enterprise theory. "All courts have the inherent power to punish for contempt." *Ex parte Cannon*, 385 S.C. 643, 660, 685 S.E.2d 814, 824 (Ct. App. 2009). "[J]udges have the authority to *sua sponte* use contempt proceedings to preserve the authority and dignity of their courts." *McEachern v. Black,* 329 S.C. 642, 649, 496 S.E.2d 659, 662–63 (Ct. App. 1998) (citing *State v. Blanton*, 278 S.C. 597, 300 S.E.2d 286 (1983); *Long v. McMillan*, 226 S.C. 598, 86 S.E.2d 477 (1955); 17 C.J.S. Contempt § 63 (1963) ("The court, without complaint, may of its own motion, institute proceedings to punish

for offenses against its dignity and authority, although the contempt was not, strictly speaking, committed in the presence of the court.")).

Here, "the record [] clearly and specifically reflect[ed] the contemptuous conduct" on the part of Salon Proz. *Eaddy v. Oliver*, 345 S.C. 39, 42, 545 S.E.2d 830, 832 (Ct. App. 2001). Specifically, SCCB "ma[d]e a prima facie showing by pleading an order and demonstrating noncompliance" through its previous Rule to Show Cause and through ample witness testimony and documentation, and the respondent here failed "to establish [a] defense and inability to comply" when it failed to put forth any credible testimony in its defense. *Id.*

Furthermore, the panel opinion properly applied the single business enterprise theory in relation to Office Suites, LLC and/or The Event Hall, LLC because Jones, as the sole partner of each entity, was using their corporate structures to evade liability and defraud SCCB, the Receiver, and the Court. As noted by the panel opinion, South Carolina law allows courts to disregard separate entity status when there is evidence, as here, of "bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of the entities' legal distinctions." *Pertuis v. Front Roe Restaurants, Inc.*, 423 S.C. 640, 655, 817 S.E.2d 273, 281 (2018). "[W]hen the notion of legal entity is used to protect fraud, justify wrong, or defeat public policy, ***the law will regard the corporation as an association of persons***." *Id.* (citation omitted).

In this case, there is a plethora of evidence in the record showing bad faith and wrongdoing and supporting the circuit court's award of sanctions: Ms. Jones is the sole partner of all three entities; the leases between Salon Proz and Office Suites, LLC and/or The Event Hall, LLC were for well below market value (and thus substantially lower than the value of the sub-leases); there was no clear testimony or evidence related to the maintenance of separate and distinct bank accounts for the three entities; and Ms. Jones lacked credibility regarding her management of the

three entities. In sum, the totality of the evidence presented to the circuit court plainly established that the various entities were being used improperly and fraudulently, thus justifying the panel's opinion finding that it was appropriate to disregarding separate entity status.

Lastly, there is substantial precedent throughout the country supporting the proposition that nonparties to a lawsuit, such as Ms. Jones in her individual capacity, can be sanctioned. For example, in *1319 Third Ave. Realty Corp. v. Chateaubriant Rest. Dev. Co.*, LLC, 57 A.D.3d 340, 341, 870 N.Y.S.2d 249, 250 (2008), the court affirmed a finding of contempt against "the sole owner and principal of plaintiff" even though he was "not a party to the action" because it was undisputed that he "was aware of the mandates contained" in the order and deliberately defied them. The New York court noted that it would "def[y] credulity" to claim that he was unaware of the orders. *Id.* Other courts in New York have reached similar conclusions. *See Tishman Constr. Corp. v. United Hisp. Constr. Workers, Inc.*, 158 A.D.3d 436, 437, 71 N.Y.S.3d 21, 22 (2018) (finding that the lower court properly exercised jurisdiction to sanction an individual for contempt who signed an agreement on behalf of a corporation where the evidence presented at the contempt hearing demonstrated that the individual himself violated the court's mandates).

In addition to these cases from New York, federal courts have similarly held that non-parties can and should be sanctioned and/or held in contempt when they knowingly violate court orders. Most notably, the Supreme Court has long recognized that a person "not a party to the suit, [may be] guilty of contempt for violation of an order of that court, made in such suit, and imposing a fine for such contempt." *Bessette v. W.B. Conkey Co.*, 194 U.S. 324, 325, 24 S.Ct. 665, 48 L.Ed. 997 (1904). And Judge Learned Hand explained that, while no court can make a decree that binds "the world at large," a non-party "may be punished if he either abet[s] the defendant or [is] legally identified with him." *Alemite Mfg. Corp. v. Staff*, 42 F.2d 832, 833 (2d Cir.1930). More recently,

the Eighth Circuit has noted, "[i]t is well-settled that a court's contempt power extends to non-parties who have notice of the court's order and the responsibility to comply with it." *Chicago Truck Drivers v. Bhd. Lab. Leasing*, 207 F.3d 500, 507 (8th Cir. 2000).

There are numerous examples of federal and state courts throughout the country confirming that nonparties can be held in contempt and/or sanctioned for knowingly violating court orders. *See, e.g.*, *Additive Controls & Measurement Sys., Inc. v. Flowdata, Inc.*, 96 F.3d 1390, 1395 (Fed. Cir. 1996) ("[T]he prohibition against entering an injunction against non-parties does not mean that non-parties may not be held in contempt of court for violating injunctions directed at others."); *Fox Corp. v. Media Deportes Mexico, S. de R.L. de C.V.*, 808 F. Supp. 3d 642, 657 (S.D.N.Y. 2025) ("The law is clear that a nonparty may be punished for contemptuous conduct so long as the nonparty is either 'legally identified' with a party or abets the contemptuous conduct of a party, and so long as the nonparty had 'actual notice,' whether by 'personal service or otherwise,' of the relevant court order." (citation omitted)). *Bootery, Inc. v. Cumberland Creek Props., Inc.*, 271 Ga. 271, 272, 517 S.E.2d 68, 69 (1999) ("In Georgia and the majority of foreign jurisdictions, the violation of a court's order by one who was not a party to the proceedings can be punished as a contempt only if it is 'alleged and proved that the contemnor had actual notice of the order for disobedience of which he is sought to be punished.'" (citation omitted)); *In re Paternity of N.T.*, 961 N.E.2d 1020, 1023 (Ind. Ct. App. 2012) ("One not a party who has knowledge of a court order but nevertheless aids, conspires with, and abets a party to an action in violating a court order entered therein, may be punished for contempt." (citation omitted)); *Com. Wharf E. Condo. Ass'n v. Bos. Boat Basin, LLC*, 93 Mass. App. Ct. 523, 533, 106 N.E.3d 1114, 1123 (2018) (noting that "a nonparty may be held in contempt for counseling, aiding, abetting, or otherwise acting in concert with a party in violating an order"); *In re Contempt of Pavlos-Hackney*, 343 Mich. App. 642, 668,

997 N.W.2d 511, 528 (2022) ("Because individuals who are officially responsible for the conduct of a corporation's affairs are required to obey a court order directed at the corporation, these same individuals may be sanctioned if they fail to take appropriate action within their power to ensure that the corporation complies with the court order." (citations omitted)).

Thus, the proposition that a nonparty can be held in contempt and/or sanctioned for knowingly violating a court order, especially when that nonparty is closely related or in privity with a party to the action such as Ms. Jones, is unremarkable and appears to be a nearly universal rule across American jurisprudence. Accordingly, Appellant's technical and legal distinctions between Ms. Jones and Salon Proz and suggestion that rehearing is warranted because the court lacked personal jurisdiction over Ms. Jones are wholly without merit.

c. Office Suites, LLC and The Event Hall, LLC were never sanctioned, and the Appellant misinterprets the record on appeal and the panel's opinion by suggesting that they were.

In part of Appellant's first argument for rehearing, Appellant claims, in part, that the lower count never obtained personal jurisdiction over Office Suites, LLC and/or The Event Hall, LLC. However, it is clear from the March 22 and March 29 Orders that the circuit court never directly sanctioned these entities. Thus, any claim that the panel opinion was in error because of improper sanctions against Office Suites, LLC and the Event Hall, LLC is completely misguided and does not serve as a basis for rehearing. Regardless, and as discussed above, had it desired to do so, the circuit court would have been well within its authority to sanction Office Suites, LLC and/or The Event Hall, LLC under the single enterprise theory and/or because the entities were closely related to and acting in concert with Salon Proz through Ms. Jones.

2. <u>The Court's Striking of Salon Proz's Pleadings Was Procedurally Proper.</u>

Appellant argues that rehearing should be granted because the procedural prerequisites to sanction Salon Proz were not present. More specifically, Appellant claims that sanctions were inappropriate because there were no contempt proceedings brought by a rule to show cause. Appellant appears to be selectively reviewing and interpreting the record, as there was a verified Rule to Show Cause Petition filed on March 10, 2021, with a subsequent hearing held. (R. 058).

Moreover, imposing sanctions of these kinds is well within the broad discretion of the court. *QZO, Inc. v. Moyer*, 358 S.C. 246, 255, 594 S.E.2d 541, 546 (Ct. App. 2004). A trial court's decision to impose such sanctions shall not be disturbed unless the trial court abused its discretion. *Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co*., 334 S.C. 193, 198, 511 S.E.2d 716, 718 (Ct. App. 1999). In fact, sanctions can be imposed without a formal finding of contempt. Rule 37 of the SCRCP allows courts to impose sanctions for failure to comply with discovery orders, or other court orders or directives. *See QZO, Inc.*, at 252, 594 S.E.2d at 544 (upholding the striking of a party's pleadings based on that party's failure to comply with a temporary restraining order, intentional defiance of the court's order, and willful destruction of evidence).

Thus, there was nothing procedurally improper about the circuit court's imposition of sanctions in this case.

3. <u>The Law of the Case Did Not Bar Reference to the Master-in-Equity.</u>

Appellant next argues that rehearing should be granted because it is the law of the case that Salon Proz is entitled to a jury trial because the case was referred to the master-in-equity when the counterclaims were still pending (i.e., before the counterclaims were stricken). Appellant's argument places form over substance and would create unnecessary inefficiencies. Because the striking of the counterclaim was proper, Salon Proz is not entitled to a jury trial and the referral to

the master-in-equity was appropriate. In fact, Salon Proz does not attempt to argue that the referral is inappropriate if the counterclaims were properly stricken. Instead, Appellant makes a technical argument that the *timing* was off by a matter of days. As an initial matter, it is not clear from the record on appeal whether the referral was actually made. There is clearly an Order indicating that the case will be referred, but there is no indication that the referral was effectuated due to this pending appeal. Regardless, even if the court were to find that the timing was backwards, the solution would be a reversal, remand, and then a subsequent referral. Such procedural hijinks would be a complete waste of judicial resources.

Lastly, Appellant attempts to invoke the law of the case doctrine in its argument related to the referral being in error. Notably, this Appellant failed to argue law of the case to the panel and this argument is therefore waived.

4. Appellant's Logical Scrutiny Argument is Without Legal Support and the Sanctions Imposed Were Substantively Appropriate.

The court properly exercised its discretion in determining what sanctions to issue, and there is no recognized legal doctrine or "logical scrutiny" standard that the court must adhere to in making such a decision. The court has discretion to evaluate the record and determine if sanctions are appropriate. *Karppi v. Greenville Terazzo Co., Inc*, 327 S.C. 538, 542, 489 S.E.2d 679, 681 (Ct. App. 1997) ("The imposition of sanctions is generally entrusted to the sound discretion of the Circuit Court."). "An abuse of discretion may be found where the appellant shows that the conclusion reached by the trial court was without reasonable factual support and resulted in prejudice to the rights of the appellant, thereby amounting to an error of law." *Id.*

Here, there is more than enough factual support to warrant sanctions of this nature such that there was no error of law. *See Griffin Grading and Clearing, Inc. v. Tire Service Equipment Mfg. Co., Inc.*, 334 S.C. 193, 198, 511 S.E.2d 716, 718 (Ct. App. 1999) (stating that there are some

instances where striking pleadings is an appropriate sanction). Salon Proz and Ms. Jones willfully refused to comply with multiple court orders while the suit has been pending for over eleven years, causing undue delay and expense to SCCB as well as wasting the court's time. When SCCB was forced to expend time and resources in trying to chase down Salon Proz and Ms. Jones to make them adhere to the court orders, it is inherently true that such a failure to comply with these orders causes SCCB prejudice by hindering SCCB's ability to spend those same resources defending itself against the counterclaims. Such deliberate refusal to comply with multiple court orders over an excessive period of time is the court's basis for sanctions, not a failure to pay mortgage payments like Appellant suggests.

Additionally, there is a direct connection between Salon Proz counterclaims and the misconduct of Salon Proz and Mr. Jones. Two of Salon Proz's counterclaims are slander of title and unclean hands. Salon Proz and Ms. Jones were participating in precisely the same conduct that Salon Proz was accusing SCCB of by misrepresenting to tenants the legal status of the Subject Property (thereby effecting its marketability) and by attempting to defraud SCCB by participating in inequitable and inappropriate conduct. It is entirely logical to strike counterclaims that were directly encompassed and/or called into question by Salon Proz's own conduct.

Accordingly, because Appellant's argument related to "logical scrutiny" is without legal or factual merit, it does not justify rehearing.

CONCLUSION

For the reasons detailed above, Appellant's Petititon for Rehearing or Rehearing *En Banc* should be denied.

[Signature Page Follows]

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PROOF OF SERVICE

I certify that I have served the foregoing Return to Appellant's Petition for Rehearing or Rehearing *En Banc* on the date given below by emailing it to counsel for the Appellant at the address(es) noted below.

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