

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
 COUNTY OF RICHLAND)

South Carolina Community Bank,) Civil Action No. 2011-CP-40-07187
)
 Plaintiff,)
)

vs.)

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

ORDER STRIKING DEFENDANT
SALON PROZ, LLC'S
COUNTERCLAIMS

RECEIVED

May 23 2022

SC Court of Appeals

This matter comes before the Court by way of Plaintiff's Motion to Enforce Prior Orders of the Court, for Contempt, and to Strike Defendant Salon Proz, LLC's Counterclaims. A hearing was held in Laurens County, South Carolina on February 28, 2022. A written order from the hearing was issued on March 17, 2022, instructing Plaintiff's counsel to prepare a separate order on the issue of striking Defendant's Counterclaims. All other issues from Plaintiff's Motion have been addressed in the March 17, 2022 Order. Based on the submissions before the Court, oral argument from counsel of record, and testimony of the Court-appointed Receiver Christopher Twitty and the Managing Partner of Salon Proz, LLC, Yvonne Jones, this Court finds that Defendant's counterclaims against Plaintiff should be stricken.

ALLEGATIONS

1. This action arises upon allegations that on July 16, 2009, Defendant Salon Proz, LLC ("Defendant") executed a Note in which it promised to repay the sum of Eight Hundred Sixty-Four Thousand and 00/100 (\$864,000.00), which was secured by a mortgage executed by Defendant, covering real property located at 2901 Two Notch Road, Columbia, SC (the

“Mortgage”); and that Defendant defaulted on the payment obligations under the Note and Mortgage.

2. Plaintiff instituted the current action for foreclosure by filing the Complaint on October 26, 2011.

3. In response, on November 23, 2011, Defendant served a pleading captioned as an “Answer and Counterclaim,” which asserted claims against Plaintiff for (1) Breach of Implied Covenant of Good Faith and Fair Dealing; (2) Slander of Title; (3) Usury Law; (4) Predatory Lending; and (5) Unclean Hands.

4. The parties were previously before this Court and an Order of Appointment was issued by the Honorable Alison Renee Lee on October 1, 2020. The Order of Appointment provided that Christopher Twitty would be appointed as receiver to take charge of the real property, which is subject of this action, and to collect rents, debts, and fees pertaining to the property. Further, the Order of Appointment provided that the Receiver was to maintain all keys, books, records, indices, rental proceeds, bank accounts, funds, deposits, and other tangible items or documents involving the property.

5. Plaintiff alleges that despite repeated requests from Plaintiff’s counsel as well as the Receiver, Defendant refused to provide the Receiver with the documents, rents, and other items as requested and ordered more than one year ago. As a result of Defendant’s violation of the Order of Appointment, Plaintiff filed a Rule to Show Cause on March 10, 2021 (“RTSC”).

6. A hearing on Plaintiff’s RTSC was held before the Honorable Donald B. Hocker on October 25, 2021. On November 5, 2021, Judge Hocker issued his RTSC Order, in which he found Defendant in violation of the Order of Appointment. Judge Hocker further ordered Defendant to fully comply with the Order of Appointment within 30 days, or by December 6, 2021.

7. In its present Motion, Plaintiff alleged that Defendant has continued to violate both the Order of Appointment and the RTSC Order.

8. A hearing on this Motion was held on February 8, 2022. At the hearing, Receiver Twitty testified that Defendant Jones is still contacting tenants, terminating lease agreements without his knowledge or consent, and not allowing him to collect all the rent. He further testified that Defendant Jones has not provided all of the properties keys or documents required under the Order of Appointment and RTSC Order.

9. Plaintiff alleges that Defendant's continuing violations of the Court's Orders have severely prejudiced Plaintiff's fundamental ability to defend itself against Defendant's counterclaims.

10. On March 17, 2022, Judge Hocker issued an Order finding that Defendant Salon Proz, LLC, and its managing partner, Yvonne Jones, have willfully failed to comply with the Order of Appointment and RTSC Orders. The Court imposed sanctions for this failure and ordered that Salon Proz, LLC, and its managing partner, Yvonne Jones, are jointly and individually liable for the payment of attorney's fees/costs in in the amount of \$8,351.57 and payment of Receiver fees in the amount of \$10,292.00, to be paid within forty-five (45) days of the Order. The Court further ruled that (1) the case would be referred to the Richland County Master-in-Equity; (2) that all rental payments from the date of the Order shall be paid to the Receiver with no interference by the Defendant and its managing partner; and (3) that if Defendant and its managing partner has collected any rent since the February 8, 2022 hearing that those shall be reimbursed to the Receiver within fifteen (15) days of the Order.

CONCLUSIONS OF LAW

11. “The power to punish for contempt is inherent in all courts. Its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders, and writs of the courts, and consequently to the due administration of justice.” *McLeod v. Hite*, 272 S.C. 303, 251 S.E.2d 746 (1979); *State v. Goff*, 228 S.C. 17, 88 S.E.2d 788 (1955). The imposition of sanctions “is generally entrusted to the discretion of the trial court.” *QZO, Inc. v. Moyer*, 358 S.C. 246, 255, 594 S.E.2d 541, 546 (Ct. App. 2004).

12. "It is well settled that contempt results from willful disobedience of a court order; and before a person may be held in contempt, the record must be clear and specific as to acts or conduct upon which the contempt is based." *State v. Bevilacqua*, 316 S.C. 122, 129, 447 S.E.2d 213, 217 (Ct. App. 1994)(citing *Whetstone v. Whetstone*, 309 S.C. 227, 420 S.E.2d 877 (Ct. App. 1992)). When appropriate, sanctions may include the striking of party’s pleadings. *See e.g. QZO, Inc. v. Moyer*, 358 S.C. 246 (Striking Defendant’s Answer as a sanction for violating a temporary restraining order). When a sanction “would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction.” *Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 198-99, 511 S.E.2d 716, 719 (Ct.App.1999)

13. In the case at bar, this Court finds that Defendant Salon Proz, LLC and its managing partner, Yvonne Jones, have willfully failed or refused to comply with the Order of Appointment and RTSC Order. This finding is consistent with prior rulings of this Court. The continued failure or refusal to comply with the orders is sufficient to justify the striking of Defendant Salon Proz, LLC’s counterclaims against the Plaintiff. This case has been pending for nearly 11 years and no

mortgage payments have been made in that time. Defendant has had ample opportunity to comply with this Court's orders.

14. Defendant's actions or inaction has caused Plaintiff prejudice by hindering its fundamental ability to defend against the counterclaims. Moreover, Plaintiff has had to expend substantial time, fees, and costs to seek Defendant's compliance with the Court Orders. Plaintiff has proven that court orders and awards of fees and costs are insufficient remedies for Defendant's actions.

NOW, THEREFORE, the Court concludes that, based on the arguments and testimony before the Court, it is appropriate to grant Plaintiff's Motion to Strike Defendant's Counterclaims. The Court hereby **GRANTS** Plaintiff's Motion and **DISMISSES** and **STRIKES** Defendant's counterclaims against Plaintiff, with prejudice.

AND IT IS SO ORDERED.

[Judge's signature page to follow]



Richland Common Pleas

Case Caption: South Carolina Community Bank vs Salon Proz LLC , defendant, et al

Case Number: 2011CP4007187

Type: Order/Other

Circuit Court Judge

s/Donald B. Hocker, Judge Code 2167