

FORM 4

STATE OF SOUTH CAROLINA FILED-CLERK OF COURT
COUNTY OF GREENVILLE GREENVILLE CO. S.C.
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2303075

Sherman Financial Group
LLC

FM FRI Greenville LLC

2013 DEC 23 PM 1 40

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: [] Plaintiff [] Defendant
[] Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- [] JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
[] DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
[] ACTION DISMISSED (CHECK REASON): [] Rule 12(b), SCRPC; [] Rule 41(a), SCRPC (Vol. Nonsuit);
[] Rule 43(k), SCRPC (Settled); [] Other:
[] ACTION STRICKEN (CHECK REASON): [] Rule 40(j) SCRPC; [] Bankruptcy;
[] Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; [] Other:
[] DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): [] Defendant
[] Affirmed; [] Reversed; [] Remanded; [] Other: [] Self-Represented Litigant

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: [] See attached order; (formal order to follow) [] Statement of Judgment by the Court.

ORDER INFORMATION
This order [] ends; [] does not end the case.
Additional information for the Clerk:
[] Rule 41(e), SCRPC

INFORMATION FOR THE JUDGMENT INDEX
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Table with 3 columns: Judgment in Favor of (List name(s) below), Judgment Against (List name(s) below), Judgment Amount To be Enrolled (List amount(s) below). Includes rows for Plaintiff, Defendant, and Unconsidered Parties.

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge Judge Code Date 12/23/2013

For Clerk of Court Office Use Only

This judgment was entered on 23rd day of december, 2013, and a copy mailed first class or placed in the appropriate attorney's box on 23rd day of december, 2013, to attorneys of record or to parties (when appearing pro se) as follows:

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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

**Paul B. Wickensimer Greenville County Clerk Of
Court - Clerk of Court**

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

Sherman Financial Group, LLC,)
)
Plaintiff,)
)
v.)
)
FM FRI Greenville, LLC,)
)
Defendant.)

C.A. No. 2013-CP-23-03075


ORDER

FILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAID - REGISTERED
2013 DEC 23 AM 11 09

This matter was referred by Order of the Circuit Court dated September 16, 2013. On or about November 13, 2013, this Court entered an Order enforcing the prior Order of Judge Stilwell in which he ordered Sherman Financial Group, LLC ("Sherman" or "Tenant") to make payment of June and July 2013 rent to FM FRI Greenville, LLC ("FM FRI" or Landlord). In that the Tenant had still not paid the rent as directed by Judge Stilwell, this Court ordered that it be paid on or before November 15, 2013. Further, and by consent of the parties, the Court dissolved a certain preliminary injunction and the Court ordered the previously established bond in the amount of \$152,137.76 remain in place through the conclusion of the case or further order of the Court. On or about November 15, 2013, Tenant filed a Motion to Reconsider the November 13, 2013 Order. Before the Court on December 17, 2013 by way of hearing was such motion to reconsider. Landlord opposed such motion. The Motion, as noted below, is denied.

LEGAL ANALYSIS

- A. The Court had the authority to make the rulings in question in the November 13, 2013 Order.**

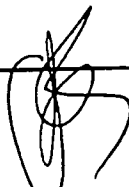


This is a hotly contested lawsuit between two sophisticated LLC's. There are multiple significant and as of now unlitigated issues between the parties arising out of a long-term commercial lease between the parties.

As relates to the narrow issue presented in Tenant's Motion to Reconsider, it is fairly straight forward. Tenant aggressively questions the Court's inherent authority to invoke its contempt powers in the event that Orders of the Court are not complied with. Initially, it is fundamental that a court with proper jurisdiction has the inherent authority to impose, if necessary and appropriate, contempt sanctions in the event its orders are not complied with. The court may punish by fine or imprisonment, at the discretion of the court, all contempts of its authority in any cause or hearing before the same. See, e.g., S.C. Code Ann. § 14-5-320; 15-35-180; Rule 70, SCRPC. The power to punish for contempt is necessarily inherent in all courts. Miller v. Miller, 375 S.C. 443, 455, 652 S.E.2d 754, 760 (Ct. App. 2007). 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. Id.; Ex parte Cannon, 385 S.C. 643, 660-61, 685 S.E.2d 814, 824 (Ct. App. 2009).

B. The Court properly ruled in accordance with the law of the case doctrine.

The previous orders dated July 31, 2013 and August 23, 2013 (the Order denying Tenant's Motion to Reconsider Judge Stilwell's Order of 7/31/2013) are the law of the case. See, e.g., ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997) (unappealed ruling is the law of the case). It is well-settled that a successor judge cannot reverse, overrule, or disregard the rulings of a prior judge. Charleston County Dept. of Social Services v. Father, 317 S.C. 283, 288, 454 S.E.2d 307, 310 (1995). The July 31, 2013 Order signed by Judge Stilwell clearly directs Tenant to bring the rent current by making



full payment of June and July 2013 rent to Landlord. This Court's November 13, 2013 Order enforces the plain language of such prior Order and is both proper and necessary. The fact that the Order of November 13, 2013 states that Tenant may be held in contempt of court simply states the inherent authority noted above. Further, and important to note, is that there is no contempt issue before the Court at this time nor has there been a finding of contempt by the Court relative to Tenants continued nonpayment of rent as directed by Judge Stilwell in his Order filed July 31, 2013. Rather, Tenant argues the Court exceeded its authority by stating that it could be held in contempt for failure to comply with orders of the Court. Such is simply not the law. Despite Tenant's argument, the Court finds that without the ability to enforce its Orders by contempt, the Orders entered thus far become merely advisory with no real enforceability component.

C. The Court acted within the authority granted in S.C. Code Ann. § 27-37-155.

S.C. Code Ann. § 27-37-155(B)(5) declares that "If the court orders that the tenant pay all rent due and accruing as of and during the pendency of the action as provided by Section 27-37-150 and this section, the order may require the payments to be made (a) **directly to the commercial landlord** or to the clerk of court, to be held until final disposition of the case." (Emphasis added). Such is precisely what the Court ordered. S.C. Code Ann. § 27-37-150 indicates that the "**rental for the use and occupancy of the premises involved shall continue to accrue so long as the tenant remains in possession of the premises.**" (Emphasis added). There is no question but that Tenant was in possession of the premises during June and July, 2013. This Court properly applied the statute as written, which evidences the preference of the legislature for direct payment to commercial landlords during the pendency of litigation involving tenancy.



Further, Tenant argues that 27-37-155 provides the sole and exclusive remedy for Landlord and that the Court lacks authority to require payment of rent or enforcement of any such orders by contempt. The Court finds, in light of Judge Stilwell's Order and to the extent he relied upon that Section (as opposed to the clear terms of the lease), such is simply not the case.

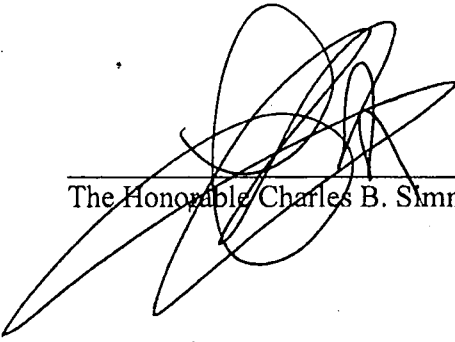
Tenant raises multiple other issues in its Motion to Reconsider. The Court has reviewed them and finds that either they were not raised in front of Judge Stilwell and/or this Court or that they do not change the conclusions set forth herein.

CONCLUSION

Based on the foregoing, it is

ORDERED, ADJUDGED AND DECREED that Tenant's Motion to Reconsider this Court's November 13, 2013 Order is denied.

IT IS SO ORDERED.



The Honorable Charles B. Simmons, Jr.

December 23, 2013
Greenville, South Carolina