

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
First Citizens Bank and Trust)
Company, Inc.,)
)
Petitioner,)
)
v.)
)
Ronald D. Taylor and Ted D. Smith,)
)
Respondents.)
)

IN THE COURT OF COMMON PLEAS

Case No.:2014-CP-23-04097

ORDER

RECEIVED
AUG 14 2017
SC Court of Appeals

This matter came before me on June 23, 2017, on two Motions filed by the Petitioner, First Citizens Bank and Trust company, Inc. ("First Citizens"). The Petitioner, First Citizens was represented by Joey R. Floyd. The Respondent, Ted D. Smith ("Ted D. Smith"), was represented by Randall S. Hiller. Smith Family, LLC, WHS Properties and Wanda H. Smith were also represented at the hearing by Randall S. Hiller.¹

PROCEDURAL HISTORY

First Citizens filed a civil action against Respondents on July 28, 2014, seeking to collect money owed to First Citizens. On October 6, 2015, an Order of Judgment was entered against the Respondents in the amount of \$74,843.23 ("the Judgment"). The Defendants filed an appeal and the Court of Appeals affirmed the decision of the Trial Court on November 9, 2016. No further appeal was taken by the Respondents and the Judgment became a final Judgment. Thereafter, First Citizens initiated these Supplemental Proceedings to collect on its Judgment. To date, Ted D. Smith has not made any payments toward the Judgment nor has he made any effort to pay First Citizens. As of June 23, 2017, taking into account all post-Judgment interest, the Judgment amount is \$84,824.77.

This matter was referred to me by way of an Order of Reference from the Honorable Perry H. Gravely, dated and filed on November 10, 2016. A Supplemental Proceedings hearing was held

¹ The Judgment is against both Ted D. Smith and Ronald D. Taylor; however, the issues raised/addressed in First Citizens' Motions and the relief being pursued by First Citizens relates to First Citizens' efforts to execute on assets of Ted D. Smith.

before me on January 23, 2017, and Counsel for Petitioner requested that this Court hold these proceedings open so that additional discovery could be conducted. After conducting additional discovery, Counsel for the Petitioner filed two Motions with the Court: (1) Motion to Join Additional Parties to these Supplemental Proceedings and (2) Motion to Execute on Funds/Assets held in the name of Smith Family, LLC, WHS Properties, LLC and/or Wanda H. Smith. These two motions were heard by this Court on June 23, 2017.

THE JANUARY 23, 2017 SUPPLEMENTAL PROCEEDINGS HEARING
AND POST-JUDGMENT DISCOVERY

After the initial Supplemental Proceedings hearing on January 23, 2017, Counsel for First Citizens engaged in post-Judgment discovery by examining various bank accounts and the banking activities of Ted D. Smith. Based on the documents provided to and reviewed by this Court, it does not appear that Mr. Smith is in any danger of becoming a ward of the State.

During the Supplemental Proceedings hearing on January 23, 2017, Ted D. Smith testified, under oath, as follows:

- a. That he was retired (Transcript p. 3, lines 8-11).²
- b. He had no bank account (Transcript p. 3-4, lines 22-1)
- c. He did not have any other sources of income. (Transcript p. 3, lines 17-18).
- d. His wife only had one bank account at United Community Bank. (Transcript p. 9, lines 14-17).
- e. Affirmed that there were no other accounts, bank accounts, financial accounts that had not been talked about during the January 23, 2017 supplemental proceedings hearing. (Transcript p. 13, lines 2-4).

After the January 23, 2017, Supplemental Proceedings hearing, Counsel for First Citizens transmitted two subpoenas (on different dates) to United Community Bank seeking banking records. Counsel for Ted D. Smith (who is also Counsel for Smith Family, LLC, Wanda H. Smith and WHS Properties, LLC) filed two separate Motions to Quash the subpoenas. The United Community Bank documents provide a significant amount of information relating to the banking activities of Ted D. Smith.

² References to "Transcript" refer to the Supplemental Proceedings Hearing Transcript on January 23, 2017.

In particular, there are four transactions, totaling \$81,026.76, that Ted D. Smith has admitted, under oath during his deposition, that he deposited his personal funds into the Smith Family, LLC bank account. The four transactions are as follows:

- (a) March 23, 2016 – **\$15,789.27** Final distribution of \$15,664.27 from his Mother's estate and a payment from the Personal Rep. of his Mother's estate (\$125.00).
- (b) July 14, 2016 - **\$16,800.00** Commission payment as a Broker/Broker in Charge.
- (c) August 17, 2016 - **\$20,250.00** Commission payment as Broker/Broker in Charge
- (d) October 27, 2016 - **\$28,187.49** Payment to Ted D. Smith for managing construction.

Counsel for First Citizens attached a copy of each of these transactions to the Memorandum in Support of his Motion to Execute. Additionally, Counsel for First Citizens provided the Court with the deposition transcripts of Ted D. Smith and Wanda H. Smith. *See* Deposition Transcript of Ted D. Smith pp 101-102, lines 20-21 and p. 105, lines 1-24, where Ted D. Smith admits that he deposited his personal funds into Smith Family, LLC's bank account at United Community Bank.

REMEDIES/RELIEF REQUESTED BY FIRST CITIZENS

First Citizens argues that the four transfers set forth above should be set aside pursuant to the Statute of Elizabeth, S.C. Code Ann. § 27-23-10(A), S.C. Code § 15-39-410, and the basic principles of equity given the prior sworn testimony of this Defendant, the misleading testimony of the debtor and the continued acts of the debtor that have resulted in delay of collection of the judgment. Counsel for First Citizens has also asked for this Court to make a finding that the bank accounts at United Community Bank should be deemed to be the bank accounts of Ted D. Smith given the banking activities/usage of the accounts by Ted D. Smith, the prior testimony of Ted D. Smith and the deposition testimony of Ted D. Smith and Wanda H. Smith.

HOLDING/RULING

After reviewing the Memorandum submitted by Counsel for First Citizens, the caselaw provided to this Court by Counsel for Ted D. Smith (and the other third parties), the Supplemental Proceedings hearing transcript and the deposition transcripts of Ted D. Smith and Wanda H. Smith, I find that it is appropriate to grant First Citizens Motion to add Smith Family, LLC, WHS Properties, LLC and Wanda H. Smith to these Supplemental Proceedings for the limited purpose of having jurisdiction and authority over the above assets. For the reasons set forth herein, I also find that the four aforementioned deposits by Ted D. Smith of his admitted personal funds into the bank account of Smith Family, LLC. at United Community Bank is cash that Smith Family, LLC holds control and possession of and that First Citizens is entitled to set aside the transfer of those admitted personal funds into the Smith Family, LLC bank account. The four deposits by Ted D. Smith, totaling \$81,026.76, which was deposited into Smith Family, LLC is subject to execution because the evidence establishes Smith Family, LLC currently has more than sufficient funds to transfer and pay over to First Citizens this money since the testimony of Mr. Smith himself is that these funds were personal funds his and it is clear that these funds should not have been deposited into the bank account of Smith Family, LLC.

This Court declines, as proposed by Plaintiff, to seize or proceed against other assets of Smith Family, LLC, WHS Properties, LLC or Wanda H. Smith in this supplemental proceeding. Rather, based upon substantive due process rights of these parties, the Court is of the opinion that such relief is more appropriately sought through Plaintiff bringing an independent action against them.

As this Court ordered from the Bench on June 23, 2017, Smith Family, LLC is hereby ordered to pay Counsel for First Citizens \$81,026.76 (the funds are to be made payable to First Citizens Bank and Trust Company, Inc.) on or before July 14, 2017. Smith Family, LLC can decide how/where it wants to retrieve the cash in order to pay First Citizens. Notably, Smith Family, LLC has \$100,000.00 in silver that it is holding in accordance with the Consent Order entered in this case on June 1, 2017. Additionally, the Consent Order entered by this Court on June 1, 2017 regarding the silver³ purchased by Smith Family, LLC shall remain in full force and

³ During the deposition of Ted D. Smith, Mr. Smith admitted that Smith Family, LLC had purchased \$135,374.00 in silver. Deposition of Ted D. Smith p. 84-85, lines 23-13. Wanda H. Smith was not aware of any purchases of gold or silver. Deposition of Wanda H. Smith p. 20-21, lines 15-6.

effect until this Court issues a ruling on part two of First Citizens' Motion to Execute. If Smith Family, LLC elects to liquidate the silver to pay First Citizens (and actually tenders the payment of \$81,026.76 to Counsel for First Citizens), Smith Family, LLC shall maintain the remaining \$18,973.24 of silver and Smith Family, LLC shall not sell, dispose, or otherwise transfer the silver without further order of this Court.

LAW

If a judgment is unsatisfied, a judgment creditor may initiate supplementary proceedings in order to discover assets of the judgment debtor. *Johnson v. Service Mgmt.*, 319 S.C. 165, 167, 458 S.E.2d 900 (1995) (citing S.C. Code Ann. § 15-39-410). Supplementary proceedings aid in discovery and “furnish a means of reaching, in aid of the judgment, property beyond the reach of an ordinary execution...” *Id.* (quoting *Lynn v. International Brotherhood of Fireman & Oilers*, 228 S.C. 357, 362, 90 S.E.2d 204, 206 (1955)). It has long been held that “after conducting supplementary proceedings, the trial court may order non-exempt property of the judgment debtor in the hands of a third party...to be applied toward satisfaction of the judgment.” *Id.* at 168, 459 S.E.2d at 902; *see also Deer Island Lumber Co. v. Virginia-Carolina Chem. Co.*, 111 S.C. 299, 97 S.E. 833 (1919) (holding a judgment creditor may reach funds in the hands of a third party through supplementary proceedings). The aforementioned cases, along with S.C. Code §§ 27-23-10(A) and 15-39-410, provide the basis for which First Citizens is entitled to the funds of Ted D. Smith being held by Smith Family, LLC. Mr. Smith testified that he has not had a bank account since 2008 – when “everything went to pot.”⁴ In other words, since his financial situation deteriorated he has not used a personal bank account.

The Statute of Elizabeth provides that:

Every gift, grant, alienation, bargain, transfer, and conveyance of lands, tenements, or hereditaments, goods and chattels or any of them, or of any lease, rent, commons, or other profit or charge out of the same, by writing or otherwise, and every bond, suit, judgment, and execution which may be had or made to or for any intent or purpose to delay, hinder, or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties, and forfeitures must be deemed and taken (only as against that person or persons, his or their heirs,

⁴ See Deposition of Ted D. Smith, p. 102, lines 19-22 and Supplemental Proceedings Hearing transcript, pp. 3-4, lines 21-1.

successors, executors, administrators and assigns, and every one of them whose actions, suits, debts, accounts, damages, penalties, and forfeitures by guileful, covinous, or fraudulent devices and practices are, must, or might be in any ways disturbed, hindered, delayed, or defrauded) **to be clearly and utterly void, frustrate and of no effect, any pretense, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding.**

S.C. Code § 27-23-10(A) (emphasis added).⁵ In *Durham v. Blackard*, the Court of Appeals, interpreting the Statute of Elizabeth, held that conveyances can be set aside in two instances:

First, where the challenged transfer was made for a valuable consideration, it will be set aside if the plaintiff establishes that (1) the transfer was made by the grantor with the actual intent of defrauding his creditors; (2) the grantor was indebted at the time of the transfer; and (3) the grantor's intent is imputable to the grantee. Second, where the transfer was not made on a valuable consideration, no actual intent to hinder or delay creditors must be proven. Instead, as a matter of equity, the transfer will be set aside if the plaintiff shows that (1) the grantor was indebted to him at the time of the transfer; (2) the conveyance was voluntary; and (3) the grantor failed to retain sufficient property to pay the indebtedness to the plaintiff in full—not merely at the time of the transfer, but in the final analysis when the creditor seeks to collect his debt.

Durham v. Blackard, 313 S.C. 432, 437, 438 S.E.2d 259, 262 (Ct. App. 1993). Furthermore, it is well-settled that “where a conveyance to a family member or close relative is attacked on account of its voluntary character, the law imposes a duty of the transferee to establish both a valuable consideration and the bona fides of the transaction by clear and convincing evidence.” *First State Sav. & Loan Ass’n v. Nodine*, 291 S.C. 445, 450, 354 S.E.2d 51, 54 (1987) (citing *Coleman v. Daniel*, 261 S.C. 198, 199 S.E.2d 74 (1973)).

The transactions where Ted D. Smith decided to deposit his personal funds into the Smith Family, LLC bank account are clearly transfers without valuable consideration. Mr. Smith testified that the Smith Family, LLC bank account was simply an account that he chose to

⁵ While claims brought pursuant to the Statute of Elizabeth often involve transfers of real property, the language of the statute and South Carolina case law demonstrates that the Statute of Elizabeth is also applicable when a debtor transfers money or assets. See S.C. Code § 27-23-10(A); *Carr v. Guerard*, 365 S.C. 151, 616 S.E.2d 429 (2005); *Dufresne v. Regency Realty, Inc.*, 295 S.C. 1, 366 S.E.2d 256 (Ct. App. 1987) (overruled on other grounds).

deposit the funds since he did not have a bank account.⁶ Under South Carolina law, "consideration...may consist either in some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other." *Furman Univ. v. Waller*, 124 S.C. 68, 117 S.E. 356, 358 (1923). The testimony from both Mr. Smith and his wife clearly establishes that the transfers were not based on valuable consideration. The transferee (Smith Family, LLC) cannot meet the burden of establishing valuable consideration and the bona fides of the alleged fraudulent transfers. Therefore, the transfers of these specific and clearly identified transfers should be set aside. *See Durham*, 313 S.C. at 437, 438 S.E.2d at 262.

Even assuming, *arguendo*, that there was consideration for the transfers, the evidence and testimony reveals that the transfers are fraudulent because the transfers were made with the actual intent of defrauding his creditors. Mr. Smith testified during the Supplemental Proceedings that he did not have any bank accounts and there were no other bank accounts. Moreover, Mr. Smith was indebted to First Citizens at the time of the transfers and his intent is imputable to Smith Family, LLC since he has, and has had at all times, exclusive control over the bank accounts of Smith Family, LLC. In determining whether a debtor acted with the requisite intent to establish a fraudulent conveyance, courts evaluate the particular circumstances of the transfer for "badges of fraud." *Coleman v. Daniel*, 261 S.C. 198, 209, 199 S.E.2d 74, 79 (1973) ("Certain circumstances so frequently attend conveyances to defraud creditors that they are recognized and referred to as 'badges of fraud.' The badges tend to excite suspicions as to the Bona fides of a challenged conveyance."). The presence of one or more badge of fraud creates a rebuttable presumption of intent to defraud. *See Royal Z Lanes, Inc. v. Collins Holding Corp.*, 337 S.C. 592, 596, 524 S.E.2d 621, 623 (1999). In *Coleman*, our Supreme Court stated the following regarding the badges of fraud:

The facts which are recognized indicia of fraud are numerous, and no court could pretend to anticipate or catalog them all. Among the generally recognized badges of fraud are the insolvency or indebtedness of the transferor, lack of consideration for the conveyance, relationship between the transferor and the transferee, the pendency or threat of litigation, secrecy or concealment, departure from the usual method of business, the transfer of the

⁶ Deposition of Ted D. Smith, p. 105, lines 20-24.

debtor's entire estate, the reservation of benefit to the transferor, and the retention by the debtor of possession of the property.

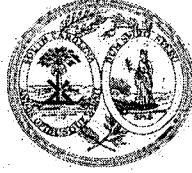
Coleman v. Daniel, 261 S.C. at 209, 199 S.E.2d at 79 (1973) (citing 37 Am.Jur.(2d), Fraudulent Conveyances, § 10 (1968)); *see also In re Jones*, 397 B.R. 765, 770 (Bankr. D.S.C. 2008); *In re Ducate*, 369 B.R. 251 (Bankr. D.S.C. 2007). The circumstance of Defendant's transfers to Smith Family, LLC meet every single badge of fraud listed above. Although the presence of a single factor, i.e., badge of fraud, may cast suspicion on the transferor's intent, the confluence of several in one transaction generally provides conclusive evidence of an actual intent to defraud." *Gilchinsky v. Nat'l Westminster Bank*, 732 A.2d 482, 490 (1999). Here, Defendant was (1) purportedly insolvent at all times and was indebted to First Citizens at the time of the transfers; (2) his funds were transferred to a bank account in which he exercises complete control, i.e. he has a close relationship with the LLC and his wife did not know that the bank accounts at United Community Bank even existed, (3) transferred funds while the judgment was filed of record; (4) he failed to mention the transfers during the first supplemental proceedings hearing in spite of his active involvement with the accounts, failed to identify the bank accounts at United Community Bank on a personal financial statement, i.e. secrecy and concealment; (5) reserved the benefit of the funds by using the money in Smith Family, LLC to pay his personal expenses and transferring money in United community Bank, as necessary (he retained all the benefits) and (6) he had possession of the money at all times since he was the only person involved with the banking activities of the bank accounts at United Community Bank. The presence of all badges of fraud surrounding Defendant's transfers more than establishes the "actual intent to hinder, delay, or defraud" First Citizens from collecting on its judgment.

Establishing that a debtor acted with actual intent to hinder, delay or defraud a creditor is rarely proven by direct evidence. *In re Schmit*, 71 B.R. 587, 590 (Bankr. D. Minn. 1987). It is typically inferred from the facts and circumstances of the debtor's conduct. *Id.*; *see also Farmers Co-op. Ass'n v. Strunk*, 671 F.2d 391, 395 (10th Cir.1982) ("Fraudulent intent of course may be established by circumstantial evidence, or by inferences drawn from a course of conduct."). The Respondent's explanation for the transfers is simple – he had no other bank account so he used the Smith Family, LLC bank account.

CONCLUSION

First Citizens' motion to add the other parties (Smith Family, LLC, WHS Properties, LLC and Wanda H. Smith) to this Supplemental Proceeding is hereby granted for the limited reasons set forth above. Additionally, in accordance with the Statute of Elizabeth, S.C. Code § 27-23-10(A), and S.C. Code § 15-39-310, Smith Family, LLC is hereby directed to tender a check to Counsel for First Citizens in the amount of \$81,026.76 on, or before, July 14, 2017. Smith Family, LLC can either liquidate the silver or find an alternative source of cash to issue this payment to Counsel for First Citizens. Moreover, this Court finds the case of *Ex Parte Dibble*, 279 SC 592 (Ct.App. 1983) particularly instructive. In *Dibble*, the Court of Appeals stated that "Courts have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible." *Id.* at 595. In light of the prior testimony during the January 23, 2017 Supplemental Proceedings Hearing, the deposition testimony of Ted D. Smith, the deposition testimony of Wanda H. Smith and the actions of Ted D. Smith relating to the aforementioned deposits into the Smith Family, LLC bank account, that were only discovered through extensive and likely expensive discovery efforts, it would be inherently unjust to prevent First Citizens from recovering the \$81,026.76 that Mr. Smith deposited into the account of Smith Family, LLC after the entry of First Citizens Judgment against Ted D. Smith.

ELECTRONIC SIGNATURE PAGE OF JUDGE TO FOLLOW



Greenville Common Pleas

Case Caption: First Citizens Bank And Trust Company Inc vs. Ronald D Taylor ,
defendant, et al
Case Number: 2014CP2304097
Type: Order/Supplemental Proceedings Order

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
First Citizens Bank and Trust)
Company, Inc.,)
)
Petitioner,)
)
v.)
)
Ronald D. Taylor and Ted D. Smith,)
)
Respondents.)
)

IN THE COURT OF COMMON PLEAS

Case No.: 2014-CP-23-04097

ORDER

RECEIVED
AUG 14 2017
SC Court of Appeals

This matter came before me on July 26, 2017.¹ Presently, there are two motions pending in this matter. On July 7, 2017, Randall S. Hiller (counsel for defendants) filed a *Motion to Alter and/or Amend Order Dated July 5, 2017* (referred to herein as "*Motion to Alter and/or Amend*"). Among other things, the Order dated July 5, 2017, added additional parties (Smith Family, LLC, WHS Properties, LLC and Wanda H. Smith) for the limited purpose of these Supplemental Proceedings and required Smith Family, LLC to tender a check to Counsel for First Citizens Bank and Trust Company, Inc. ("First Citizens") in the amount of \$81,026.76 on, or before, July 14, 2017.² Plaintiff contends that Smith Family, LLC failed to comply with this Court's Order directing Smith Family, LLC to tender the proceeds to Counsel for First Citizens on, or before July 14, 2017. On July 15, 2017, Joey R. Floyd (Counsel for First Citizens Bank and Trust Company, Inc.) filed a *Motion to Compel Ted D. Smith and/or Smith Family, LLC to Pay the Money Judgment to Plaintiff, Pay the Money in to Court Or, In the Alternative, To Appoint A Receiver to Take Control of Assets and Pay the Money In to Court* (referred to herein as "*First Citizens' Motion to Compel*").

¹ Counsel for the interested parties agreed to have the current motion heard by way of a telephone conference (there was no need for a record to be made of the hearing - the Order of this Court would suffice for the record.)

² Pursuant to a Consent Order filed June 1, 2017, Ted D. Smith and Smith Family, LLC agreed to not sell, dispose of or otherwise encumber gold and silver purchased with a value in excess of \$100,000 pending resolution of the ownership issue of these assets. In that same Order, Ted D. Smith and Smith Family, LLC agreed that Smith had deposited personal funds of \$81,026.76 into the Smith Family, LLC bank account.

HOLDING

After carefully considering the motion filed by Mr. Hiller, along with the argument presented by Mr. Hiller to this Court on July 26, 2017, this Court denies the *Motion to Alter and/or Amend*. This Court will hold *First Citizens' Motion to Compel* in abeyance, to provide Smith Family, LLC until August 9, 2017, to pay the money in to Court or reach some amicable compromise with Counsel for First Citizens regarding the payment of the \$81,026.76. In the event that Smith Family, LLC has not paid the money in to Court and/or reached some compromise with Counsel for First Citizens regarding the payment of the \$81,026.76, to be held in a trust account or some alternative account, this Court will schedule and hear *First Citizens' Motion to Compel* as soon thereafter as reasonably possible.³

REASONING

The primary thrust of the *Motion to Alter and/or Amend* filed by counsel for defendants is a “due process” argument. To be more specific, Smith Family, LLC maintains that it did not have the opportunity to present testimony and evidence. See ¶ 7 of *Motion to Alter and/or Amend*.

If a judgment is unsatisfied, a judgment creditor may initiate supplementary proceedings in order to discover assets of the judgment debtor. *Johnson v. Service Mgmt.*, 319 S.C. 165, 167, 458 S.E.2d 900 (1995) (citing S.C. Code Ann. § 15-39-310). Supplementary proceedings aid in discovery and “furnish a means of reaching, in aid of the judgment, property beyond the reach of an ordinary execution...” *Id.* (quoting *Lynn v. International Brotherhood of Fireman & Oilers*, 228 S.C. 357, 362, 90 S.E.2d 204, 206 (1955)). It has long been held that “after conducting supplementary proceedings, the trial court may order non-exempt property of the judgment debtor in the hands of a third party...to be applied toward satisfaction of the judgment. *Id.* at 168, 459 S.E.2d at 902 (citing S.C. Code Ann. § 15-39-410; *Lynn*, 228 S.C. at 362, 90 S.E.2d at 206); *see*

³ Issues relative to 15-41-30 exemptions that Smith may be entitled to, if any, will be addressed at a later date.

also *Deer Island Lumber Co. v. Virginia-Carolina Chem. Co.*, 11 S.C. 299, 97 S.E. 833 (1919) (holding a judgment creditor may reach funds in the hands of a third party through supplementary proceedings).⁴ (citing *Jackson v. Farmers State Bank*, 481 N.E.2d 396 (1985)) (“It is clear that the court has jurisdiction to set aside a fraudulent conveyance in the context of proceedings supplemental to execution.”).

As a preliminary matter, the transfers by Ted D. Smith to Smith Family, LLC, as framed in this Court’s Order dated July 5, 2017, were transfers of cash from Ted D. Smith to Smith Family, LLC. The cash deposited by Ted D. Smith into the bank account of Smith Family, LLC was never the property of Smith Family, LLC. Smith Family, LLC was merely holding the cash of Ted D. Smith – cash that should not have been deposited into the bank account of Smith Family, LLC. As a practical matter, Smith Family, LLC did not have any ownership rights in the cash that was transferred without reason or justification by Smith to Smith Family, LLC during the times in question. Taking into account the prior sworn testimony of Ted D. Smith at the first Supplemental Proceedings and the uncontradicted evidence that Ted D. Smith exercised complete control of the bank accounts (Wanda H. Smith, the purported owner of Smith Family, LLC did not even know where Smith Family, LLC banked), this Court has an obligation to seize the assets on behalf of the Judgment creditor. Notably, the United States Supreme Court has accurately described a judgment execution by describing it as follows: “An execution is the fruit and end of the suit, and is very aptly called the life of the law. The suit does not terminate with the judgment; and all proceedings on the execution, are proceedings in the suit.” *Bank of United States v. Halstead*, 23 U.S. 51, 64 (U.S. Mar. 2, 1825).

It would be fundamentally unfair to First Citizens to allow the judgment debtor, Ted D. Smith, to have deposited in excess of \$80,000.00 in the Smith Family, LLC bank

⁴ See Also *Dewey v. West Fairmonty Gas Coal Company*, 1233 U.S. 329, 332-33, 8 S.Ct. 148, 150 (1887); *Nat’l Mar. Servs. V. Straub*, 776 F.3d 783, 787 (11th Cir. 2015), *Epperson v. Entm’t Express, Inc.*, 242 F.3d 100, 103-07 (2d. Cir. 2001); *Thomas, Head & Greisen Empl. Trust v. Buster*, 95 F.3d 1449, 1453-55 (9th Cir. 1996). *Linson v. Polymer Engineering, Inc. Health Care Ben. Plan for Employees*, 1991 U.S. Dist. LEXIS 16773, * 5, 1991 WL 243313 (N.D. Ind. 1991). *Rutherford v. Kessel*, 560 F.3d 874, 879 (8th Cir. 2009). All of these cases from various jurisdictions support First Citizens’ position that a separate action is not necessary.

account and provide no remedy to First Citizens when Ted D. Smith maintains that he now has no assets with which to respond to the Judgment of First Citizens. Smith Family, LLC has a significant amount of assets, has been actively involved in real estate and is currently involved in yet another "real estate deal" to build a building with various partners/parties. In terms of Smith Family, LLC's ability to present evidence and testimony, this Court notes that depositions were taken in conjunction with the Supplemental Proceedings, and Counsel for Smith Family, LLC participated in the depositions. Moreover, Mr. Hiller presented this Court with his arguments and had the opportunity to present evidence at the Motions hearing on June 23, 2017, if Smith Family, LLC wanted to present evidence. However, in light of the prior sworn testimony at the January 23, 2017 Supplemental Proceedings hearing, the admissions by Ted D. Smith in his deposition, along with the deposition testimony of Wanda H. Smith, it is difficult to imagine what, if any, evidence or testimony that Smith Family, LLC and/or Ted D. Smith could have presented to dissuade this Court from finding the deposit of Ted D. Smith's personal funds into the bank account of Smith Family, LLC as being fraudulent transfers.

This Court continues to believe that the case of *Ex Parte Dibble*, 279 SC 592 (Ct. App. 1983) is on point - "Courts have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible." *Id.* at 595. In light of the testimony and actions of the judgment debtor, Ted D. Smith, the just result is that the fraudulent transfers to Smith Family, LLC must be paid over to Ted D. Smith's judgment creditor, First Citizens.

CONCLUSION

For the reasons provided herein, the *Motion to Alter and/or Amend* filed by Mr. Hiller, Counsel for Ted Smith and Smith Family, LLC, is hereby denied. This Court will hold *First Citizens' Motion to Compel* in abeyance and hereby directs Smith Family, LLC to tender a check to Counsel for First Citizens in the amount of \$81,026.76 on, or before, August 9, 2017. Again, as this Court provided in its July 5, 2017 Order, Smith Family, LLC can either liquidate the silver or find an alternative source of cash to issue this

payment to Counsel for First Citizens. In the event that Smith Family, LLC fails to pay the \$81,026.76 to tender a check payable to First Citizens on, or before, August 9, 2017, this Court will hear and rule on *First Citizens' Motion to Compel* as soon as reasonably possible thereafter.

ELECTRONIC SIGNATURE PAGE OF JUDGE TO FOLLOW



Greenville Common Pleas

Case Caption: First Citizens Bank And Trust Company Inc vs. Ronald D Taylor ,
defendant, et al
Case Number: 2014CP2304097
Type: Master/Order/Other

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)