

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS

Joe Hand Promotions, Inc.,)
)
Plaintiff,)

CASE NO.: 2012-CP-21-01637

vs.)

J. Michael Timmons, Jr. a/k/a John)
Timmons,)
)
Defendant.)

ORDER FOR RECEIVERSHIP

2017 JUL 24 PM 2:15
CLERK OF COURT
FLORENCE COUNTY, SC

FILED

Joe Hand Promotions, Inc.,)
)
Plaintiff,)

CASE NO.: 2012-CP-21-01635

vs.)

John M. Timmons, Jr.,)
)
Defendant.)

RECEIVED
AUG 25 2017
SC Court of Appeals

This supplementary proceedings involves two cases, one on the Plaintiff's Motion to Activate Receivership and Amend Order for Receivership in Case No. 2012-CP-21-01637 ("1637 Case") filed on December 8, 2016; and one on a Rule to Show Cause in Case No. 2012-CP-21-01635 ("1635 Case") filed on March 13, 2017.

A hearing before me on the combined cases was noticed for April 5, 2017. In attendance at the appointed time were Leonard R. Jordan, Jr., attorney for the Plaintiff; the Defendant, J. Michael Timmons, Jr. a/k/a John Timmons a/k/a John M. Timmons, Jr. ("John Timmons"), and his attorney, J. Greg Hendrick; and Ms. Tammy Ham Timmons ("Tammy Timmons"). Tammy Timmons' attorney, Tucker S. Player, attended by telephone. Due to Mr. Player's absence, it was

CERTIFIED: A TRUE COPY

[Signature]
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

decided that the respective arguments would be submitted by briefs, and the hearing was cancelled.

Briefs were submitted to me on behalf of Tammy Timmons and the Plaintiff.

The Plaintiff seeks to collect its Judgment in the 1637 Case, which was issued against Pee Dee Benevolent Society, Inc. d/b/a V a/k/a Club V, J. Michael Timmons, Jr. a/k/a John Timmons, and Charles E. Lamb, in the original amount of \$16,973.40, plus interest at the rate of .18% per annum after June 14, 2012. The Judgment was filed in the Office of the Clerk of Court for Florence County on June 21, 2012. The judgment debt also includes the costs of execution and the supplementary proceedings. Heretofore in that case, an Order for Receivership was issued by me and filed in the Office of the Clerk of Court for Florence County on April 29, 2014. At that time, the Order was expressly suspended due to a settlement being reached by the parties. Subsequently, the judgment-debtors, John Timmons and Charles E. Lamb, filed for bankruptcy protection, and both received discharges in bankruptcy.

AZ
NS
The Plaintiff also seeks to collect its Judgment in the 1635 Case, which was issued against SST Enterprises, LLC d/b/a Dirty Donkey and John M. Timmons, Jr., in the original amount of \$18,098.57, plus interest at the rate of .18% per annum after June 14, 2012. The judgment was filed in the Clerk's Office on June 21, 2012. The judgment debt also includes the costs of execution and the supplementary proceedings.

These proceedings are expressly an *in rem* matter, and there should be no perception that there is any attempt to enforce any claims against either John Timmons or Charles E. Lamb personally. As indicated in the Plaintiff's Motion (in the 1637 Case) and the Rule to Show Cause (in the 1635 Case), these supplementary proceedings are directed solely to the real property known as 2805 Olde Mill Road, Florence, SC 29205, which is owned of record by John

Timmons.

An issue was raised by Tammy Timmons as to whether the Plaintiff's two judgments against John Timmons attach to the said real property; and, if they do, whether they are subordinate to the lien established by Tammy Timmons in 2009 and 2010 in the divorce proceedings (discussed below).

Tammy Timmons claims that the 2010 Decree of Divorce (in Case No. 2009-DR-21-1613), which ended the marriage of Tammy and John Timmons, extinguished the ownership rights to John Timmons in the subject property and that her interest in the property was complete (perfected) when the Decree was entered, two years before the entry of the Plaintiff's two judgments.

#3
HO

I find that the Decree of Divorce did not make it clear that Tammy Timmons' interest in the property was complete (perfected). Instead, its sole relevant provision: "The parties will cooperate in having the home transferred into the sole name of the Wife at such time as she is able to do so," made it clear that John Timmons was to remain the titleholder indefinitely. If that were the parties' intention that Tammy Timmons was to have a complete (perfected) ownership interest in the property, the Decree of Divorce certainly could have made that clear, but it must be assumed that what the Decree said in that regard was precisely what it meant. Nothing can be read into it. The Decree fails to state the conditions for such transfer of title (and it could be that the Wife would have to pay off the existing mortgage loan (or pay other consideration) in conjunction with her receiving the title), and the use of the verb "will cooperate" is far from being ambiguous.

I further find that the actions of both John Timmons (primarily) and Tammy Timmons, after their divorce, made it clear that they intended that John Timmons was to continue to

maintain a vested legal interest in, and to exercise the rights of owner of, the property. The evidence is clear that John Timmons, with Tammy Timmons' approval or acquiescence, maintained, under oath: (a) that he was the fee simple owner of the property without any claim by Tammy Timmons that she had an interest therein (that he was holding title for her); (b) that he was entitled to special taxation on the property as resident-owner; and (c) that he was entitled to deduct mortgage interest as resident-owner.

John Timmons still remains the owner of record of the property more than 6½ years after the divorce was final (and 3 years, more or less, after the filing of the Plaintiff's supplementary proceedings in early-2014 and John Timmons' filing for bankruptcy protection). It is fair to question whether Tammy Timmons ever intended to take title to the property, and I find that Tammy Timmons' failure to demand the title after all this time indicates or implies she is, or may be unable or unwilling to accept (or perform the conditions imposed in order to acquire) the title.

#4
HP
I further find that, even if Tammy Timmons had been in a position to demand the title after the Plaintiff's judgment was filed, the title would have been encumbered by the judgment liens of the Plaintiff, which liens had already attached prior to the property during the time the property was owned of record by John Timmons.

I therefore conclude that the Plaintiff's two judgments constitute enforceable liens upon the property, effective on the date filed and superior to the interest of Tammy Timmons, if any, as John Timmons was the owner of record of the property when the judgments were filed.

There is also a second issue: sanctions heretofore imposed against John Timmons, which remain unpaid, and the Plaintiff's request that additional sanctions be imposed. It appears and I find that the said Order for Receivership filed in Case No. 1637, imposed sanctions against John

Timmons (and others) for contempt of court and that \$1,052.25 of said sanctions remains past-due and owing.

I further find that John Timmons is again in contempt of court, due primarily to Mr. Timmons' failure to pay timely the earlier sanctions, and that additional sanctions should be imposed against Mr. Timmons in the amount of \$500.00. Therefore, Mr. Timmons is required to pay to the Plaintiff's attorney sanctions in the aggregate amount of \$1,552.25, such payment to be paid on or before August 1, 2017.

Based upon the Plaintiff's Motion (in 1637 Case) and the Rule to Show Cause (in 1635 Case) and the arguments made in the briefs submitted on behalf of Tammy Timmons and the Plaintiff, I conclude that the Receivership, as limited to 2805 Olde Mill Road, Florence, SC 29205, should be reactivated; and that a Receiver should be appointed (subject to a delay of at least thirty (30) days).

WHEREFORE, it is ORDERED:

1. That the Receivership is hereby reactivated solely with regard to 2805 Olde Mill Road, Florence, SC 29205.
2. That no less than thirty (30) days after this Order is filed, a Receiver (under this Order) shall be designated and appointed by separate Order, to be issued without the necessity of another hearing. The purpose of this delay in the appointment of a specific person as Receiver is to allow John Timmons an opportunity to settle these supplementary proceedings without adding additional expenses related to the Receivership.
3. That the posting of any bond by the Receiver is held in abeyance until further Order of this Court.
4. That the Receiver is authorized, empowered and directed to marshal, take title to,

liquidate and convert into money the said real property, known as 2805 Olde Mill Road, Florence, SC 29205, which is owned of record by John Timmons, to satisfy the Plaintiff's two (2) judgment debts.

5. That the Receiver may sell, convey and dispose of the said real property, by either public or private sale, in such manner as he deems most beneficial, with due regard to the realization of the true and proper value thereof, and to deposit the proceeds of such sale into a trust account, pending further Order of this Court. No sale shall be made except on advance notice to any person(s) holding or claiming an encumbrance or lien against or affecting the said real property known to the Receiver (unless such encumbrance or lien is to be paid in full from the proceeds of the sale).

6. That the Receiver is not obligated to do so, but if he so elects, he may hold and manage the said real property and may perform all acts necessary or advisable to preserve the value of such real property in order to prevent any irreparable loss, damage or injury or the unauthorized transfer, withdrawal or misapplication thereof, and he may enter into contracts and purchase insurance as deemed advisable or necessary.

7. That John Timmons shall, if requested by the Receiver, provide to the Receiver full and complete access to, and/or exclusive possession of, the said real property.

8. That John Timmons shall cooperate fully with the Receiver in the execution of any legal documents deemed necessary by the Receiver and shall, if requested by the Receiver, furnish such records in connection with the said real property as the Receiver may reasonably require.

9. That the failure of John Timmons to cooperate with the Receiver or to otherwise comply with terms of this Order shall or may make him liable for contempt of court upon

application by the Receiver.

10. That for the purpose of carrying out this Order, the Receiver is hereby authorized to institute, prosecute, compromise or defend suits or actions, at law or in equity, relating to the said real property or any portion thereof; and that the Receiver may employ attorneys in connection with such suits or actions.

11. That the Receiver may, with or without notice, apply to this Court for other and further instructions and for such further power or powers as may be necessary to enable the Receiver to properly carry out the terms of this Order and to fulfill his duties as Receiver.

#7
10
12. That the Receiver is hereby authorized, empowered and directed to employ any professionals, assistants, servants, agents or such other persons as he deems necessary and proper to assist him in executing the duties imposed by this Order, relative to insuring, maintaining, preserving, protecting, valuing, marketing, liquidating and accounting for the said real property on such terms and conditions as the Receiver deems just and beneficial to the performance of the trust of his office; that the Receiver is further authorized to incur and to pay the reasonable value of the services rendered by such persons from any funds received by him as Receiver; and that such expenses shall be deemed to be a court cost, which shall be added to the judgment debt.

13. That the Receiver's compensation (fee), which shall be paid from the net proceeds of the liquidation by him of the said real property and shall be equal to fifteen percent (15%) of the net proceeds (after repayment of expenses) collected through the efforts of the Receiver; and that such fee shall be deemed to be a court cost, which shall be added to the Plaintiff's judgment debts.

14. That the Receiver shall prepare and file with the Court, within ninety (90) days after the date of filing of an Order appointing a specific Receiver (which due date may be

extended by me upon good cause shown), a full and complete report regarding his activities following his appointment as Receiver; that the Receiver shall file with the Court, no later than sixty (60) days after the aforesaid initial report and every sixty (60) day period thereafter, a full and complete report as to his activities subsequent to the preceding reporting period; and that at the conclusion of this action, the Receiver shall file with this Court and forward to the Plaintiff's counsel an accounting reflecting all receipts and disbursements by him during the Receivership.

15. That the Receiver is authorized and empowered to obtain the assistance of the Sheriff's Department of Florence County in performing the duties and responsibilities enumerated herein.

IT IS, FURTHER, ORDERED that John Timmons is again found to be in contempt of court and that he shall, on or before August 1, 2017, pay sanctions, in the amount of \$1,552.25, to Leonard R. Jordan, Jr.

AND IT IS SO ORDERED.

Florence, South Carolina
July 24, 2017

W. Haigh Porter

W. Haigh Porter
Special Referee

2017 JUL 24 PM 2:15
CLERK OF COURT
FLORENCE COUNTY, SC

FILED

CERTIFIED: A TRUE COPY
Dana Rando Ottone
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.