

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Charles B. Simmons, Jr., Master in Equity

Case No. 2015-CP-23-05935

Jeanne A. Burton, Trustee,Appellant,

v.

Triad Grading, LLCRespondent.

**MOTION AND APPLICATION
FOR A PRELIMINARY INJUNCTION**

To the Honorable Donald W. Beatty, Chief Justice of the South Carolina Supreme Court:

Pursuant to Rule 240, SCACR, the Appellant, Jeanne A. Burton, Trustee (“Appellant”), respectfully requests the issuance of a preliminary injunction to preserve the status quo pending resolution of the appeal filed by Appellant contemporaneously with this application, by prohibiting the lower court from releasing certain funds of Respondent Triad Grading, LLC (“Respondent”) being held at South State Bank.

Background

On or about April 15, 2015, an Order of Judgment by Default was entered by the United States Bankruptcy Court for the Middle District of Tennessee against Respondent in the amount of \$170,654.42 (inclusive of pre-judgment interest) and post-judgment

interest at the rate allowed by law. On or about September 30, 2015, Order of Judgment by Default was enrolled in the Court of Common Pleas for Greenville County, South Carolina under Judgment Roll No.: 2015CP2305935. On or about February 7, 2017 an Execution was issued against Respondent and that Execution was returned Nulla Bona on or about May 24, 2017.

On or about January 24, 2018, upon petition from Appellant, the Honorable Charles B. Simmons, Jr. ordered supplemental proceedings in accordance with the provisions of §15-39-310, et seq., Code of Laws of South Carolina, 1976, as amended. On or about April 11, 2018 Supplemental Proceedings were held and on April 26, 2018, the Court issued an order finding that Respondent had monies, not exempt from execution, in four (4) separate accounts with financial institutions and found that Respondent had certain property not exempt from execution. The Court's April 26, 2018 order ordered that:

- 1) Respondent was forbidden from transferring, disposing or otherwise interfering its assets (including the Accounts and Property listed herein) in accordance with South Carolina Code Ann. § 15-39-440;
- 2) that Respondent's four (4) accounts and property may ultimately be applied toward the satisfaction of Petitioner's judgment against Respondent in accordance with South Carolina Code Ann. § 15-39-410 and the Petitioner is entitled to levy against the Accounts and Property. However, prior to such time, the Court has directed the parties to engage in substantive settlement discussions; and

- 3) the appointment of an investigative receiver for Respondent's assets, in accordance with South Carolina Code Ann. § 15-39- 430, is appropriate, but such receiver shall be named in a subsequent order from this Court upon Petitioner's submission of same

The Court's April 26, 2018 was thereafter served on South State Bank and South State Bank froze at least \$170,654.42 in Respondent's account with South State Bank. Following a hearing on June 6, 2018, the Court issued an order dated June 18, 2018 wherein the Court lifted and set aside its April 26, 2018 Order upon Respondent's posting cash, a sufficient surety bond or pledging real property located in this County with the Greenville County Clerk of Court in an amount or unencumbered value of not less than the judgment amount of \$170,654.42. Thereafter, Appellant and Respondent agreed that it would be sufficient collateral for \$175,000.00 to be frozen in an account at South State Bank on the condition that the frozen funds not be released until subsequent order from the Court. \$175,000.00 (the 'Frozen Funds") was thereafter from in an account with South State Bank.

On September 12, 2018 a hearing was held and the Court decided that, in an effort to keep Respondent a going concern, Appellant was immediately entitled to only 18% of the Frozen Funds, representing Respondent's profit margin, and that Respondent was to pay Appellant the sum of \$10,000 on the 15th of each month until Appellant's judgment was satisfied. The Court further ordered that the remaining 82% of the Frozen Funds be given back to Respondent, that Appellant was not entitled to any collateral or security to secure its judgment against Respondent and that Appellant was subject to the risk of not being able to collect in the future should Respondent not remain a going concern.

Discussion

Courts traditionally consider four factors in determining whether to issue a preliminary injunction: “probability of success on the merits,” “the risk of irreparable harm, the balance of the equities, and the public interest.” *E.g., Pharmaceutical Research & Mfrs. of Am. v. Walsh*, 538 U.S. 644, 670 (2003).

First, Appellant is highly probable to succeed on the merits. Appellant has a valid, uncontestable judgment against Respondent which deserves full faith and credit under Article 4, Section 1 of the United States Constitution. Further, Appellant has found, through Supplemental Proceedings, non-exempt property, specifically the \$175,000 being held at South State Bank, which is able to be levied upon and is being held as collateral for Appellant’s judgment.

Second, Appellant will be irreparably harmed if it is not able to levy upon the \$175,000 being held at South State Bank and those funds are not longer being held as collateral for Appellant’s judgment. South Carolina Code Ann. § 15-39-410 allows for the execution and levy against non-exempt property of the judgment debtor, such as Respondent, and if the monies are released to Respondent as the Court has decided, the likelihood that Appellant will ever be able to satisfy its judgment is in doubt.

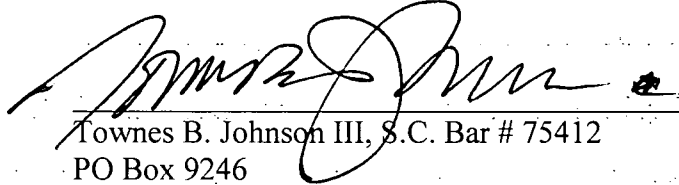
Finally, the Court’s place is not to pick winners and losers; but rather, the Court is required to sit impartially and discharge its duties in accordance with the law. It is well known that equity follows the law. *Smith v. Barr*, 375 S.C. 157, 164, 650 S.E.2d 486, 490 (Ct. App. 2007). Accordingly, it is an abuse of the Court’s discretion to set a precedent wherein the Court decides that the continued viability of a judgment debtor,

such as Respondent, is a greater right than of a judgment creditor to collect on a valid judgment against a judgment debtor's non-exempt property in accordance with South Carolina Code Ann. § 15-39-410. Such a precedent renders judgments worthless and is against the public interest.

Discussion

For the foregoing reasons, Appellant respectfully requests the issuance of a preliminary injunction enjoining the Court from releasing the Frozen Funds, thereby preserving the status quo pending resolution of the related appeal filed by Appellant contemporaneously with this application.

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September 13, 2018
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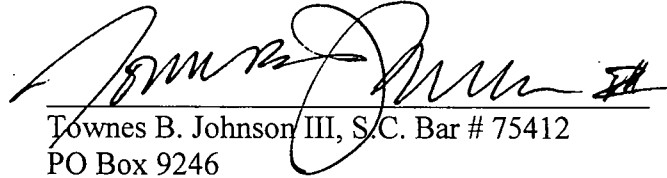
PROOF OF SERVICE

I certify that I have served the foregoing Notice of Appeal and Motion and Application for a Preliminary Injunction on the above named Respondent by depositing a copy of it in the United States Mail, postage prepaid, on September 12¹³, 2018, addressed to counsel of record as follows.

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