

State of South Carolina
County of Florence

In Common Pleas Court

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Cadles of West Virginia, LLC,
Petitioner,

DEC 17 2018

SC Court of Appeals

v.

2017-CP-21-1461

Melissa R. Demars,
Respondent.

ORIGINAL

Emergency Hearing held before:
Honorable W. Haigh Porter, Esq.
Master-In-Equity

Monday, November 19, 2018
Florence, South Carolina
10:02 a.m. - 10:45 a.m.

The hearing was taken before Ashley
Rogers, court reporter and Notary Public for the
State of South Carolina, at 181 North Irby Street,
Florence, South Carolina, on Monday, November 19,
2018.

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A P P E A R A N C E S

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For the Petitioner:
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E X H I B I T S

Pg/Ln Ex. Description
(No exhibits proffered.)

**uh-huh = affirmative
huh-uh = negative

1 P R O C E E D I N G S :

2 THE COURT: Gentlemen, correct me if I
3 say something wrong on this, but I believe this is
4 an emergency hearing I accepted in the matter of
5 -- I'm not sure how the pronunciation -- Cadles or
6 Cadles of West Virginia, L.L.C., petitioner,
7 versus Melissa R. Demars, case number
8 2017-CP-21-1461. Is that correct?

9 MR. JERNIGAN: Yes, sir.

10 THE COURT: Okay. Just for the record,
11 let the record reveal that Mr. Jernigan is
12 present. I presume, Mr. Jernigan, that's your
13 client, Ms. Demars.

14 MR. JERNIGAN: Yes, sir, that's
15 Ms. Demars, Your Honor.

16 THE COURT: And that's where --
17 representing her and that Mr. Edward Grimsley of
18 the Columbia bar is present representing the
19 petitioner, Cadles of West Virginia, L.L.C. in a
20 rule to show cause and supplementary proceedings
21 in this case, which was filed recently with the
22 hearing scheduled for December 12th. The matter
23 that's before me today set on emergency hearing at
24 the request of Mr. Jernigan that there's a
25 certain -- actions that have been taken by Cadles

1 of West Virginia, L.L.C. I think that's correct.
2 I've summarized it so far?

3 MR. GRIMSLEY: So far I think and it is
4 Cadles, Your Honor. You are right -- correct on
5 that, yes.

6 THE COURT: Cadles. Mr. Jernigan,
7 you're the one seeking emergency hearing.

8 MR. JERNIGAN: All right, sir. Let me
9 -- let me -- I feel so far -- I'm used to sitting
10 across the table from you. You're so far away.
11 You don't mind if I -- I come up here closer.

12 THE COURT: The deputy is not present,
13 so he's not gonna tackle you.

14 MR. JERNIGAN: That's good. 'Cause I'd
15 submit to it today. Judge, is this -- I -- I had
16 to admit as you're aware, I don't do collection
17 work. And -- and have agreed to try to help
18 Ms. Demars in this mess that -- that happened, I'd
19 say, starting in 2007. Giving you a brief little
20 history just to sort of give you some idea, in
21 2007, while she was a resident of the state of
22 Florida, she took out a note and mortgage with the
23 plaintiff on some property in Dade County.

24 THE COURT: Now, when you say with the
25 plaintiff, is that Cadles?

1 MR. JERNIGAN: Cadles of West Virginia.
2 Was that -- that an assignment or did you buy the
3 note and mortgage or did you...

4 MR. GRIMSLEY: I'm not sure. I just
5 know we are the rightful holder of --

6 MR. JERNIGAN: They got the note and
7 mortgage today. That's -- and -- and -- and
8 that's -- Ms. Demars has been dealing with them
9 all along, not some other corporation or whatnot.
10 But you know how they sell these notes, I guess.
11 So I don't know how -- whether it was originally
12 with Cadles or they bought the paper. She moved
13 to South Carolina some time around March of 2011,
14 got a driver's license. And some time around June
15 of 2011, went to Wachovia Bank at the South Park
16 branch on Irby Street and opened up a South
17 Carolina bank -- well, bank account with them.
18 Obviously, she's a South Carolina resident and
19 opened up a bank account with Wachovia in 2011.
20 After that time, she has subsequently opened up
21 two accounts in her name: A small savings account
22 and another checking account, and then an account
23 in her son's name in which she had to cosign. Her
24 son is Paul. So -- so we're basically dealing
25 with four accounts that was originally opened with

1 Wachovia.

2 These -- these -- these were not
3 Florida banks. In other words, it wasn't like she
4 was -- opened the accounts in Florida then moved
5 to South Carolina and just told the bank to change
6 her address. She instructed -- and these are new
7 accounts, signed everything over. Now we're --
8 Your Honor -- and I'll -- we're all aware that at
9 some point in time Wachovia became Wells Fargo. I
10 don't even know -- I don't even know if she had --
11 if Wells -- Wachovia was even a formed bank back
12 in the 2007s. I'm assuming they were, but,
13 obviously, Wells Fargo is a national bank.

14 Well, at some point in time when she
15 moved, she quit paying on that note and mortgage.
16 Well, on November 17th, 2016, our late friend,
17 Marion Brown, served her with foreclosure papers
18 at her residence in Florence County. She went in
19 to default and a Florida judgment was entered
20 against her on March 16th, 2017. She went -- she
21 didn't contest that Florida judgment, so she got
22 those papers Marion served on her and did nothing.
23 So I can't come in here and contest the
24 origination of the Florida judgment.

25 Now, this is where we get involved and

1 I say, we, the state of South Carolina and this
2 South Carolina court. On December 15th, 2017,
3 again, she was served in South Carolina. And,
4 Judge, that's what's on file here in domestication
5 with -- of a foreign judgment. And it was served
6 -- and it was served on Doris or the -- the clerk
7 of court, Doris O'Hara, excuse me. And -- and
8 that is a recording date of December 15th, 2017,
9 notice of filing of foreign judgment. So she
10 brings these papers to me and I basically -- I
11 didn't know what to do other than, you know, these
12 -- you get full faith and credit, so I basically
13 contested it saying show us that you've got a good
14 judgment. I made my notice of appearance -- I'm
15 looking at here when I filed this thing, January
16 19th -- no, that's -- I think I filed mine, Judge
17 -- it's in the file there. Your Honor --

18 THE COURT: Let me ask -- see if this
19 can help you a little bit. I notice in the court
20 file that on May 16th of '08 -- of 2018, excuse
21 me, a consent to entry of foreign judgment was
22 filed.

23 MR. JERNIGAN: Yes, sir. Mr. Grimsley,
24 at that point, really -- it was January that
25 Mr. Grimsley got involved. I filed my motion to

1 stay. I filed a motion to stay. Mr. Grimsley got
2 involved. We had a hearing before Judge Brown and
3 at that hearing, we agreed to consent to the
4 judgment because it was a valid judgment. We
5 really couldn't contest it. So, again, you have
6 Cadles as a West Virginia -- Cadles of West
7 Virginia submitted themselves to the Court.

8 Mr. Grimsley's involved in this court and they
9 exe--- they filed that judgment. Now, I didn't
10 know this, but I -- somehow or another, I didn't
11 get a copy fo this, but first off, Judge, let me
12 mention Mr. Grimsley. Mr. Grimsley ably and
13 within the laws of what the South Carolina laws
14 allow with regards to supplemental proceedings and
15 collection has ably done his job and has done
16 absolutely nothing wrong or I don't -- I'm not
17 accusing him or his law firm of anything. Okay?
18 So Mr. Grimsley --

19 THE COURT: I will take notice. The
20 Grimsley Law Firm is one of the outstanding law
21 firms of this state and both partners in that firm
22 have appeared before me on numerous occasions with
23 total ability, diligence and good faith.

24 MR. JERNIGAN: And I would agree to
25 that and Your Honor. I made a couple phone calls

1 about this case and mentioned that Mr. Grimsley
2 was involved. One of 'em was Brian Boger, which
3 you know Brian. He does -- he knows Brian. And
4 both of 'em praised Mr. Grimsley. So, again, this
5 has no reflection on him. Now, Mr. Grimsley --
6 and I didn't get a copy of this, they -- Sheriff
7 Barnes did an execution and levy according to the
8 filings on July 30th, 2018. Now, my client tells
9 me she has not received anything in the mail from
10 the Florida action. She has not been served with
11 anything since they filed the -- got a copy when
12 they filed the judgment with Ms. O'Hara in
13 December of 2017. And the sheriff never came to
14 her house. As Mr. Grimsley and I discussed, he
15 probably went online and saw that she didn't have
16 anything and issued a nullable return.

17 Mr. Grimsley on behalf of the
18 plaintiff -- again, Mr. Grimsley on behalf of the
19 plaintiff who has subjected themselves to the
20 jurisdiction of the South Carolina court filed a
21 -- a motion for the supplemental contingent -- in
22 -- you know, for the supplemental proceedings.
23 And Your Honor issued a rule to show cause and
24 that was done, I believe, on October 26th and
25 filed in which there's a hearing that you said --

1 stated on December 12th, 2018. And -- and as
2 we're all aware, but just for the record, what
3 will happen on that date normally is you bring in,
4 you talk to her and you ask her what assets she
5 has and seeing if there's anything that she can
6 put forth to respond to any judgment. Unbeknownst
7 to us, Judge, and I've already forwarded you a
8 copy of a writ of garnishment. Now, in
9 conversation with Mr. Grimsley, he wasn't aware of
10 a writ of garnishment in Florida, neither was Pam
11 Huddy, who was the individual that was -- that's
12 handling this account, was aware that a writ of
13 garnishment was being issued on -- on Wells Fargo
14 bank levying upon her bank account.

15 So this -- I call it a rogue lawyer in
16 Florida, takes it upon himself to bring an action
17 on the Florida judgment to levy on Wells Fargo in
18 Tallahassee. Now, he's located in Fort
19 Lauderdale, but he serves it in Tallahassee. And,
20 apparently, I don't know how Wells Fargo works
21 because Wells Fargo has told me this morning their
22 lawyer said don't come up here. So at some point
23 in time on December 15th, that order hits Wells
24 Fargo bank. I call it a bomb started ticking in
25 her account.

1 Now, when it hit that bank some time on
2 the 15th, the accounts were wiped out. Three of
3 the accounts were wiped out. The -- these -- the
4 little savings account, small checking account and
5 her son's account. Her account didn't have any
6 funds in it at that time. Well, after midnight,
7 Carolina Bank deposited her paycheck through
8 online banking.

9 THE COURT: Carolina Bank?

10 MR. JERNIGAN: Not -- not Carolina --
11 Carolinas Hospital deposited her check -- paycheck
12 if you will, her earnings into that account after
13 midnight. And immediately those funds -- funds
14 were transferred out. So it was just a bomb
15 waiting on money to be deposited in which she had
16 no knowledge of, no notice, nobody's telling her
17 anything. That money goes. She goes to Sam's at
18 around 7:00 that morning to buy something for
19 her -- tries to use her debit card and it doesn't
20 work. At that point in time, she goes -- pulls
21 out her phone and goes to online banking and then
22 finds out that her account is being wiped out.
23 Goes to the bank, the -- the boy at the bank sends
24 me a copy of the writ that he got from the -- from
25 the Florida courts and said, this is what the bank

1 sent me and this is why they did it.

2 Your Honor, I don't know how -- we know
3 what happened and how you proceed in South
4 Carolina with execution and levy. The -- the
5 plaintiff is doing that here and doing that
6 legally. What my -- what my position is is that
7 now they're on notice. And you got this same lady
8 that's handling the account. She's on notice that
9 I'm representing this lady. She's on notice that
10 we have supplemental proceedings in South Carolina
11 on that judgment. So the plaintiff has notice of
12 the South Carolina court, the South Carolina
13 lawyer and I don't get notice of anything based on
14 some action in Florida.

15 I just don't think legally a Florida
16 judgment can be attached to a South Carolina
17 resident's bank account issued to her in South
18 Carolina while an action is pending by the
19 plaintiff in South Carolina wiping out her
20 checking account. I have to admit, I -- I -- it's
21 not like you can go and Shepardize and find a case
22 in South Carolina that this has happened. I'm not
23 aware of any. So, essentially, Judge, I guess
24 that's what I'm trying to do is get this money
25 back in her account somehow, some way.

1 We're gonna have a hearing in December
2 to determine what her assets are or how she can
3 repay, if she can, anything on this judgment, but
4 they -- they've effectively taken and -- I
5 remember an old lawyer, Judge, and I -- he was a
6 former partner of yours. And I thought about this
7 this morning. He was a former partner of yours
8 and he was mad at what the plaintiff's attorney
9 had done to him. And your good friend, the late
10 Jack Nettles, said, my client has been Pearl
11 Harbored by this service. And that's basically
12 what happened to her.

13 THE COURT: Well, Jack Nettles is --
14 it's a wonder that wasn't more strongly worded
15 than that.

16 MR. JERNIGAN: Well, it was -- it was,
17 Judge, but over time I have forgotten what it was.

18 THE COURT: Having known Jack Nettles
19 since 1945 or '46 when he roomed with my older
20 brother, I was well aware of how outspoken he
21 could be.

22 MR. JERNIGAN: While we're on the
23 subject -- and I'm wasting the court reporter's
24 time and paper. Jack Nettles died about five
25 years ago or more. And my good friend -- and he

1 and I tried bunches of cases together, grew up
2 together, law school together, Jack Lawson. And
3 Jack Lawson's a great criminal lawyer, one of the
4 best ones in the history of Florence. Jack and I
5 are -- Lawson and I are sitting at Jack Nettles
6 funeral at Central United Methodist Church against
7 that wall on the side. And the minister was up
8 there talking about Jack, good man, kind man,
9 humble man. And I whispered to Jack, are you sure
10 we're at the right funeral? The description --
11 obviously Jack had changed after he retired.

12 But anyway, digressing, go -- go back
13 on the subject. That's where we are on this
14 thing. And I know Mr. Grimsley can come up here
15 and tell you everything about Florida law and --
16 and how they complied with Florida law, but my
17 position is is that once they filed this action in
18 South Carolina, once they began supplemental
19 proceedings in South Carolina, they have subjected
20 themselves to the -- to the South Carolina courts,
21 the South Carolina laws with regards to, you know,
22 seizures of bank accounts, garnishments if any,
23 and -- and that they have violated South Carolina
24 law and took this money from a bank account that
25 was issued in South Carolina.

1 That -- that's basically it, Judge. I
2 don't -- I don't -- I -- I think I've summarized
3 and given you all the facts I have, but it just
4 ain't right. And I don't know what else to say.
5 But she's out of pocket about 3,000 dollars all
6 total including her son, which, lord, just because
7 her name was on that account. And they wiped that
8 account also. But they basically -- Wells Fargo
9 wiped out every dime in any account that she had
10 with them.

11 THE COURT: That account of the son,
12 was that just in his name or did she have sign --

13 MR. JERNIGAN: She had to sign for it.

14 THE COURT: Seems to me like that's a
15 major problem.

16 MR. JERNIGAN: Well, I think they're
17 all major problems because it -- again, this -- if
18 -- if they had -- I was sitting there thinking if
19 she had just basically opened these accounts 20
20 years ago with Wachovia in -- in Fort Lauderdale
21 and then just went -- came here and said, well,
22 you know, I've always dealt with Wachovia. I just
23 need you to just transfer my address from here to
24 here, I think it'd be a different story. But, you
25 know, if the son's account's problematic just

1 'cause she's on that account, all her -- all of
2 'em are problematic because she's opened them in
3 South Carolina. But at a minimum, the son's money
4 ought -- but the problem is who -- how are they
5 gonna put this money back in there?

6 THE COURT: Thank you, sir.

7 Mr. Grimsley?

8 MR. GRIMSLEY: Thank you, Your Honor.

9 Just in response to Mr. Jernigan on his statement
10 of the rogue attorney in Florida, who's
11 responsible for garnishing the wages and did so by
12 my client, I'd like to simply clarify that he is
13 not a rogue attorney. He is the attorney who
14 obtained the judgment in Florida and so he was in
15 a position to take legal action in Florida to do
16 whatever was necessary in an attempt to collect
17 the debt. Mr. Jernigan -- and I believe he said
18 that he Shepardized and could not find any South
19 Carolina law regarding the garnishment of bank
20 accounts.

21 THE COURT: It's always been my
22 understanding that garnishment is not recognized
23 in the state of South Carolina.

24 MR. GRIMSLEY: Well, it is to this
25 degree, Your Honor. And there are -- there are

1 some cases, and I can't state them this morning,
2 but I think that our South Carolina courts have
3 held that there is an exception to the garnishment
4 of wages. And as an example, I would just say
5 that Joe Jones, who is a debtor against who there
6 is a judgment, is a citizen of South Carolina,
7 resides in South Carolina and works for A.B.C.
8 corporation in Florence County from which he
9 receives wages. In a situation where A.B.C.
10 corporation is in a different state like Florida
11 where wages can be garnished, if the payroll check
12 is issued from the state of Florida in payment of
13 the wages, then our courts in South Carolina have
14 stated that that is a garnishment that can take
15 place.

16 And the reason is that the bank -- that
17 -- that the corporation in Florida where the
18 garnishment is taking place, in effect, is being
19 garnished for debt owed to the judgment debtor in
20 South Carolina. His wages were earned in South
21 Carolina, but the wages had been converted to a
22 debt owed by that corporation to pay him and issue
23 a check in payment of that debt that is owed in
24 South Carolina. And so that is a clear ex---
25 ex--- exception to the garnishment of wages.

1 Now, I know of no cases where the
2 courts have ruled on bank accounts. But bank
3 accounts that are garnished in Florida are
4 garnished on the basis of debt, not the bank
5 account. The bank account has not been garnished.
6 It is the debt. And the reason that it's a debt
7 is that when someone puts money into a checking
8 account or savings account in South Carolina, it
9 immediately becomes a debt owed by Wells Fargo to
10 that customer. And that customer or the third
11 party could base -- based on the check, could go
12 to any Wells Fargo bank anywhere and make a demand
13 for payment of that check because it is a debt
14 owed by the bank, Wells Fargo, to the customer.
15 And the customer can demand that in Florida,
16 Virginia, North Carolina, anywhere else that they
17 want to go to make that demand and the bank has to
18 pay it.

19 Same thing is true for third party. If
20 a check is issued by -- by a customer who has that
21 account to a third party, that third party can go
22 to any Wells Fargo bank and make demand be paid.
23 And it's being paid not on the basis of the
24 checking account; it's being paid on the basis of
25 the debt owed by Wells Fargo to the customer.

1 That being said, and -- and I think I
2 may have received a little more credit from
3 Mr. Jernigan that I deserve, I'm not -- I don't
4 know all the statutory law in Florida. I have
5 briefly looked at it as it regards to garnishment.
6 The garnishment laws in Florida are strictly
7 adhered to. There are very basic requirements.
8 And it's my understanding that what has happened
9 and what normally happens in a garnishment
10 proceeding in Florida is that a motion is filed
11 with the clerk of court or with the court and the
12 court will issue a writ of garnishment as it
13 occurred in this case. That writ of garnishment
14 is served on the bank and the bank freezes the
15 money it's holding as a debt pending resolution
16 by the Florida court.

17 The money cannot be released until
18 there is a final determination by the Court as to
19 whether there are any exemptions that would come
20 in to play, whether personal exemptions or on real
21 property, whether there are -- it's a legitimate
22 debt. And so there are procedures that the law
23 provides that within certain times, certain
24 notices have to be given. But it's my
25 understanding that no notice need be given prior

1 to the writ of garnishment being served on the
2 bank.

3 Once it's served on the bank, then the
4 clock starts to tick as to certain requirements as
5 far as notices, right to file a -- a list of
6 exemptions, an affidavit to challenge the validity
7 of the debt or the judgment. But all those things
8 are determined by the Florida court. And the
9 money will not be released by the bank until there
10 is a resolution by that Florida court. It will
11 continue to be -- it has not been given to my
12 client. It has not been given to the Florida
13 attorney. It has not been given to the sheriff.
14 At least that's my understanding. It remains in
15 the bank where it will be frozen as a levy against
16 that debt until the court makes a final
17 determination. And there is judicial procedure to
18 be followed according to the statute of what both
19 the creditor has to do and what the debtor has to
20 do. But it all has to be done in the Florida
21 court prior to that money being released from the
22 bank in Florida.

23 So basically, Your Honor -- and I
24 respectfully say this, I don't think this court
25 has jurisdiction over the proceeding in Florida.

1 There was a legitimate judgment entered and
2 legitimate writ of garnishment filed with the
3 bank. The money is being held there and from my
4 understanding, it won't be released until the
5 Florida court makes a decision as to whether there
6 are provi--- there are things that would prevent
7 them from ordering that money released by the bank
8 to my client. So I would ask, Your Honor, that --
9 and submit to the court that this is not a matter
10 of -- that really can be addressed by this court
11 regarding the proceedings in the state of Florida.

12 THE COURT: What do you say about the
13 account that's not in her name?

14 MR. GRIMSLEY: That I -- that's
15 something would have to be taken up, Your Honor,
16 in -- in Florida. I -- I don't know. I mean, I
17 don't know -- I think that just a quick read I
18 gave that there are accounts that are held in the
19 name of a third party that can be seized in
20 Florida. I don't know about the husband and wife.
21 The husband and wife is not an issue. So I think
22 that may be a legitimate concern and could be
23 taken up with the Court in Florida. But I don't
24 know. I don't know the exact nature of how the
25 account was opened here and then whose name it

1 really is and who had authority over that account.
2 But I think that that would be addressed by the
3 Florida court. Because from what I read, there
4 are third parties on accounts that -- where those
5 accounts can be seized.

6 THE COURT: You reckon I ought to go
7 down to the local Wells Fargo and close my account
8 with them 'cause they might have a judgment
9 against one of my relatives and try to grab that
10 money?

11 MR. GRIMSLEY: Well, I think, Your
12 Honor, you would be given the opportunity to
13 defend that. I mean, it would depend on the
14 nature of the account. I mean, if it was a
15 husband and wife account, I think that -- I don't
16 know.

17 THE COURT: I never have believed in
18 having anybody else but me on my accounts.

19 MR. GRIMSLEY: Well, I think that's a
20 smart decision for many reasons. But I -- I --
21 Your Honor, I think this is not truly -- as a
22 court in Florida addresses this, it's not a
23 garnishment of bank account. It's a garnishment
24 of a debt. And I --

25 THE COURT: Mr. Jernigan furnished me

1 with a copy of the writ of garnishment. It very
2 clearly uses the word writ of garnishment. And I
3 believe the language here refers to the garnishee.
4 It's clearly garnishment. This is what's both---
5 the first thing that's bothering me, it's my
6 understanding it's basically against public policy
7 in the state of South Carolina for acts of
8 garnishment. I think that's sort of basic policy
9 in this state as it exists today as I understand
10 it. Maybe some -- some exception out there that
11 you outlined but -- that I'm not aware of, but
12 that's causing me some concern. Next thing that's
13 bothering me is they transferred that judgment up
14 here, you had filed the -- went through the
15 proceedings, you got the order from -- making a
16 South Carolina judgment and then turned around
17 through your offices -- pro--- you probably filed
18 a petition for supplemental proceeding. And I
19 think the supplemental proceeding rule to show
20 cause was filed with the Court on October the
21 26th. I'm still not getting used to this
22 e-filing. All I got is an e-file thing. And this
23 morning, I went downstairs and picked up the court
24 file, which doesn't necessarily have everything
25 that's been filed 'cause some of it's e-filed and

1 it takes a day or two sometime for it to reach the
2 thing and I don't have a -- the county has gotten
3 a laptop for me, but the I.T. department hasn't
4 got it programmed and delivered to me, so in the
5 courtroom, I can't pull everything up. But the
6 domesticated judgment -- you went forward with the
7 request for rule to show cause hearing. I set the
8 rule to show cause hearing for December 12th.
9 Now, my backwoods interpretation is that, you
10 know, to some extent they have submitted
11 themselves to the jurisdiction of this court by --
12 by -- by filing this action of supplemental
13 proceeding after having domesticated a judgment.
14 And it seems to me that they jumped the gun, so to
15 speak, by then trying to take a different
16 approach. And it would further seem to me that
17 Wacho--- or Wells Fargo, whether it was through
18 some local office or some other office, without
19 full knowledge, give 'em credit for that, may have
20 jumped the gun. Now, I recognize that Wells Fargo
21 is one of the largest banks in the country. I
22 don't know how many states they have branches in.
23 I bet a lot. But the fact remains based on what
24 Mr. Jernigan says, this lady is a resident of
25 Florence County, South Carolina. She went to

1 Wells Fargo and opened up a bank account in
2 Florence, South Carolina. I bet you five against
3 ten if she pulled out her checkbook out of her
4 purse, it's probably got Florence, South Carolina
5 written on there not Tallahassee or not Fort
6 Lauderdale. I also read the newspapers fairly
7 regularly, take three days two of which is suspect
8 to being worth taking. I'll take that back. They
9 write good -- I take one of 'em to make sure I'm
10 not in the obituary page every day. But it's well
11 known that -- that Wells Fargo -- I mean, it's no
12 big secret Wells Fargo's been accused of a lot of
13 mis-handlings. Paid a lot of fines for it, too,
14 I've noticed in the Wall Street Journal.

15 Somewhere in glancing in the code
16 that's -- looking at the things, I saw a couple of
17 things about the -- the public policy. But I also
18 noticed under the exemptions, I believe that a
19 bank account is subject to a thousand dollar
20 exemption.

21 MR. GRIMSLEY: Yes, sir, that's...

22 THE COURT: The debtor -- section
23 15-41-30 subsection A5, the debtor's aggregate
24 interest in cash and other liquid assets to the
25 extent of a value not exceeding five thousand

1 dollars, except that this exemption is available
2 only to an individual who does not claim a
3 homestead exemption. The term liquid assets
4 includes deposits, securities, notes, drafts,
5 unpaid earnings not otherwise exempt, accrued
6 vacation pay, refunds, prepayments, and other
7 receivables. But then it goes on -- I think it's
8 a thousand dollars -- find where I saw that. It's
9 in here somewhere. I thought I saw it in here for
10 a thousand dollars. Are you familiar with that?

11 MR. GRIMSLEY: I -- I don't know. I
12 mean, I'm not...

13 MR. JERNIGAN: Excuse me, Judge. I
14 also think this has something to do if you were a
15 renter as opposed to a homeowner, you know, 'cause
16 you don't have a homestead exemption. She's just
17 renting.

18 THE COURT: Did she claim a homestead
19 exemption? Well, then I think she's got an
20 exemption of five thousand dollars.

21 MR. JERNIGAN: Yes, sir. And clear---
22 I didn't argue South Carolina law, 'cause clearly
23 what they did could not happen in South Carolina.

24 THE COURT: I understand where you're
25 coming from.

1 MR. GRIMSLEY: Your Honor, If I may...

2 THE COURT: Yeah.

3 MR. GRIMSLEY: I would agree that it
4 did not happen in South Carolina.

5 THE COURT: Do what?

6 MR. GRIMSLEY: It -- this garnishment
7 did not take place in South Carolina and no local
8 Wells Fargo officer in South Carolina was involved
9 as far as I know. I think it was clearly an
10 action on a judgment in Florida again--- that was
11 served on the Wells Fargo bank in Florida. And
12 the money was frozen based on that Florida court
13 order. And there may well be exemptions that
14 would be available, but I think those exemptions
15 have got to be taken up with a Florida court in
16 order to release some or all of that money that's
17 being held, which, clearly, the defendant is
18 entitled to do. That is one of the things that
19 just a quick read of the Florida statute provide
20 is that -- that money being levied and held and
21 frozen is subject to exemptions and also any
22 argument that is not a legitimate judgment or
23 legitimate debt. And there are other factors, but
24 I know that personal exemptions would come in to
25 play.

1 And I would further argue, Your Honor,
2 that we're talking about two different judgments.
3 There is a judgment in South Carolina independent
4 of the judgment that is in Florida. A Florida
5 attorney can execute on the judgment in Florida.
6 I can execute on the judgment in South Carolina.
7 Under no circumstances could the amount received
8 exceed the amount of the judgment.

9 THE COURT: Well, once you submitted it
10 to South Carolina and have the right to proceed as
11 you say -- as you have done with a hearing set for
12 December 12th, I think then, the way I interpret
13 it and I -- I may well be wrong, but the way I
14 interpret it then is you got a judgment in
15 Florida, which they've acknowledged is a valid
16 judgment by the consent order. But once you do
17 that and you then proceed under the supplemental
18 proceeding provisions and set the hearing and all,
19 I think they have then, to some extent, submitted
20 to -- to South Carolina law and where it's --
21 where it's basically against public policy to
22 garnish. I think this court's entitled to say
23 that they're not entitled to garnish. That it --
24 they -- you -- they elected to go under the
25 supplemental proceedings provisions. They made

1 that election, then they're stuck with it is the
2 way I look at it. And I think that -- that Wells
3 Fargo should re--- I don't know whether it's
4 frozen or what they've done to the account, but
5 that that money should be made available to her
6 during the pendency of the December 12th hearing.
7 I don't believe that -- the garnishment of the
8 wages in Florida under the circumstances I've
9 heard today, I don't think that's effective as to
10 these accounts that were enumerated and that Wells
11 Fargo must make those funds available to her. I
12 presume she has mo--- weekly bills she's got to
13 pay. And I think that to whatever extent's
14 necessary that they are to be instructed and
15 ordered and I hear-by order them to release that.
16 Now, the question is, will I really have
17 jurisdiction over Wells Fargo, but I think I do.

18 MR. JERNIGAN: Your Honor, I believe
19 you have jurisdiction over the plaintiff though.
20 You know, 'cause they -- they -- they're the ones
21 that initiated this and they're the ones ought to
22 be responsible for putting the money back in. And
23 -- and my -- I might add --

24 THE COURT: You may interpret my order
25 to read that -- that the petitioner in this case

1 is ordered to instruct Wells Fargo to release any
2 hold, froze--- freezing or whatever term should be
3 proper under the bank terminology. And that the
4 money be made available in its normal course of
5 business to this lady. And that the hearing on
6 December 12th is still scheduled for 2:30 p.m. in
7 this courtroom.

8 MR. JERNIGAN: I might ask also for the
9 cost of this action of us having to come up here,
10 which would be her fee.

11 THE COURT: Take that up at the time of
12 the December 12th hearing.

13 MR. JERNIGAN: That's fine, Your Honor.
14 Thank you.

15 THE COURT: If you'll prepare a short
16 order and get it back to me. I should be in this
17 courtroom most of the day, I think, unfortunately.
18 That concludes today's hearing.

19 MR. JERNIGAN: Thank you, Judge.

20 MR. GRIMSLEY: Thank you, Your Honor.

21
22 (The hearing concluded at 10:45 a.m.)
23
24
25

CERTIFICATE OF REPORTER


State of South Carolina

County of Florence

I, Ashley Rogers, Court Reporter and Notary Public for the State of South Carolina, do hereby certify that the transcript of the foregoing proceedings contains a true record of the hearing in the above-captioned cause.

I further certify that I am neither attorney nor Counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this the 5th day of December, 2018.



Ashley Rogers

MY COMMISSION EXPIRES:
March 15, 2022

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Kristen Townsend

From: Q&A Court Reporting <info@qacourtreportingonline.com>
Sent: Tuesday, November 27, 2018 2:34 PM
To: Kristen Townsend
Subject: Re: Transcript Request 2017-CP-21-1461

Thank you, Kristen! It was a pleasure to speak with you today and I have already let the reporter know to put this into production. I will be sure to email you the transcript and invoice as well as FedEx the sealed Original and hardcopy as soon as I have received it.

Thank you,
Heather

On Tue, Nov 27, 2018 at 2:32 PM Kristen Townsend <ktownsend@driscollsheedy.com> wrote:

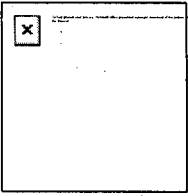
Hi Heather,

Thank you for taking my call today. We needed a copy of the transcript of the hearing for case # 2017-CP-21-1461 that took place on November 19, 2018. We are representing Cadles of West Virginia, LLC in an appeal upon this matter. As discussed, please put the transcript into production. Please let me know once it's ready and we can arrange payment as needed.

Thank you,

Kristen Townsend
Driscoll Sheedy, PA
11520 N. Community House Rd.
Suite 200
Charlotte, NC 28277
704-341-2101
ktownsend@driscollsheedy.com

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December 13, 2018

Honorable Jenny Abbot Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, S.C. 29201

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SC Court of Appeals

Re: Cadles of West Virginia, LLC v. Melissa R. Demars
Appellate Case No.: 2018-002100

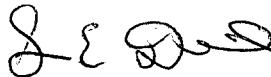
Dear Ms. Kitchings:

Enclosed please find copies of all correspondence with Q&A Court Reporting and a sealed original transcript of the hearing held on November 19, 2018 in the above referenced matter.

With kindest regards, I remain

Respectfully,

DRISCOLL SHEEDY, P.A.



Susan E. Driscoll

cc: John Benetis
Ed Grimsley, Esq.
Rodney C. Jernigan, Esq.

Driscoll SHEEDY

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11520 N. Community House Rd. Ste 200
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