

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

South State Bank,

Plaintiff,

v.

C&C Development, LLC; Michael Chaffin;
Chester A. Crockett; Bruce J. Ahmes; S&D
General Contractors, LLC; Col-Cor Industries,
Inc. d/b/a Active Glass and Mirror; First
Electric, Inc.; Wallcraft Construction, Inc. and
Carolina Dirt Works, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
C/A # 2009-CP-26-05915

ORDER COMPELLING APPEARANCE
AND DENYING MOTION TO QUASH

RECEIVED

OCT 09 2019

SC Court of Appeals

On August 27, 2019, this matter came before the Court on cross-motions: to compel discovery (filed by the Plaintiff Bank) and to quash discovery as stayed (filed by the judgment-debtor Defendant Chester A. Crockett). After hearing argument and making a thorough review of the record, the Court concludes that the discovery sought is not stayed; therefore, it grants the motion to compel and directs that the Defendant appear in all capacities¹ for an examination as noticed by Plaintiff forthwith.

PROCEDURAL HISTORY

A money judgment of \$773,471.01 was rendered in this foreclosure matter on March 9, 2010. That money judgment was never appealed and stands as the law of this case. The current proceedings are post-judgment supplemental proceedings – proceedings seeking to collect that unchallenged money judgment. By Order dated June 10, 2019, the Circuit Court disposed of all

¹ See footnote 2 and related text.

pending motions and reaffirmed its referral of the matter to the undersigned for post-judgment supplemental proceedings.

DISCOVERY NOW SOUGHT

Following the Circuit Court's Order of June 10, 2019, the Plaintiff gave notice of the Defendant Crockett's deposition scheduled for July 19, 2019. In addition, Plaintiff gave notice of Depositions under SCRCP 30(b)(6) for representatives of Carolina Forest Rental Properties, LLC (Defendant Crockett is a member), the Crockett Family Trust (Defendant Crockett is or was the trustee), and the Madison Management Group, LLC (Defendant Crockett is a member) – all entities previously identified as related to the individual Defendant Crockett and his finances/assets (he also serves as the registered agent for each).²

Pursuant to the SCRCP, notices of each deposition and subpoenas for each were served requiring both the attendance of someone on July 19, 2019 and the prior production (on July 16, 2019) of information/documents related to finances and assets. All notices and subpoenas were copied to Defendant Crockett's counsel of record by both mail and email. In support of Plaintiff's Motion to Compel, Plaintiff's counsel confirmed no subpoenaed documents had been produced and no appearance was made by Defendant Crockett or any other witness for

² As noted by Plaintiff's Motion to Compel, Crockett appeared once previously for examination (on November 27, 2018). (Transcript Attached to Plaintiff's Motion as Exhibit C). It was during that examination when Crockett and his counsel specifically invited follow-up discovery and subpoenas to the other entities identified above – even suggesting that information would then be forthcoming. In its motion, the Plaintiff Bank provides multiple examples of the debtor Crockett's unwillingness to respond to questions regarding entities clearly related to him because the deposition wasn't noticed for those entities. Notably, while the Court has not awarded Plaintiff attorney's fees in connection with granting this Motion to Compel, it reserves the right to do so if defendant Crockett is not responsive and forthright with regard to future examinations.

deposition on July 19, 2019. Defendant Crockett, through counsel, acknowledged receipt of and awareness of these discovery requests and, in response thereto, filed a Motion to Quash such discovery asserting that an automatic stay triggered by his appeal of this Court's June 10, 2019 Order bars such discovery.³

APPEAL AUTOMATIC STAY NOT APPLICABLE

The judgment-debtor Crockett takes the position that the June 2019 filing of a Notice of Appeal stays all activity in the trial court and prevents this Court from exercising any jurisdiction over the matter. The Court disagrees as the applicable rules provide for no such abstention. SCACR 241 (a) specifically provides that “[t]he lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.” (emphasis added). As noted above the validity of the underlying unappealed 9 year-old money judgment is *not* affected by the instant appeal. Moreover, money judgments and the collection thereof are one of the clear exceptions to the automatic stay generally triggered by an appeal under SCACR 241.⁴ Thus, Plaintiff is entitled to pursue discovery related to the judgment and pursue collection of the judgment.

In addition, the automatic stay, if applicable here at all, is a stay of the June 10, 2019 order – and *not* the March 2010 judgment. Stearns Bank v. Glenwood Falls, 375 S.C. 423, 653 S.E.2d 274 (2007), is squarely on point. In Stearns Bank, the judgment creditor obtained a

³ Plaintiff has filed a Motion to Dismiss the appeal for lack of appealability and the Court of Appeals issued a letter to the Appellant Crockett *sua sponte* expressing concerns with interlocutory appealability of the matter.

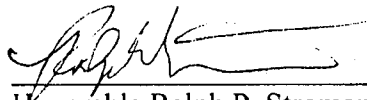
⁴ SCACR 241 provides for clear exceptions to the automatic stay – including “Money judgments as provided in S.C. Code Ann. § 18-9-130.” SCACR 241(b)(1). Our Legislature, in Section 18-9-130(A)(1), provided “notice of appeal from a judgment directing the payment of money does not stay the execution of the judgment unless the presiding judge before whom the judgment was obtained grants a stay of execution.”

default judgment which was not subject to “a direct appeal” and stood as the law of the case. Following default, the debtor used Rule 60 to try and set aside the money judgment; when that effort was denied, the debtor appealed the denial of the Rule 60(b) motion. The Supreme Court noted that while the “no relief” order denying Rule 60 relief might be automatically stayed leaving the status quo in place, the underlying judgment was not -- “An appeal from a 60(b) denial does not stay the original judgment.” Thus, the Supreme Court reversed Circuit Court’s order requiring the bank to post a bond before seeking enforcement of its judgment because the underlying default judgment was not stayed. Moreover, the bond requirements anticipated by the legislature in Section 18-9-130(A)(1) are anticipated from the judgment debtor seeking to specifically stay the *status quo*. This Court has issued no stay of execution and the burden would be upon the judgment debtor to seek any such order and satisfy any bond or surety requirement imposed by the Court after notice and an opportunity for Plaintiff to be heard. Accordingly, Plaintiff is not stayed or prohibited from the discovery sought by the post-judgment subpoenas previously served.

CONCLUSION

Defendant Crockett, individually and in any capacity as a LLC member, trustee, corporate representative, and SCRCP 30(b)(6) designee, is hereby ordered to comply with Plaintiff’s discovery immediately to avoid contempt sanctions. Failure to comply with this Order may also trigger an award of attorney’s fees to Plaintiff.

AND IT IS SO ORDERED.



Honorable Ralph P. Stroman, Special Referee

Conway, South Carolina

September 10, 2019