

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Independence National Bank,

Plaintiff,

vs.

Buncombe Professional Park, LLC and
David DeCarlis s/a David D. DeCarlis

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2010-CP-23-03860

**ORDER FOR THE APPOINTMENT
OF RECEIVER**

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SC Court of Appeals

THIS MATTER was before the court on November 6, 2019 pursuant to Defendant's Motion to Reconsider and Plaintiff's Motion to Hold Defendant in Contempt and Plaintiff's Motion to Appoint a Receiver in this matter. The Defendant was not present. The Defendant's counsel, Shawn French, Esq was present. Plaintiff was represented at the hearing by Aaron J. Angell, Esq. and Kevin D. Beck, Esq.

FINDINGS OF FACT

The following facts were introduced at the November 6, 2019 Rule to Show Cause Hearing:

- A) Following the September 20, 2019 Rule to Show Cause Hearing, Plaintiff filed its Motion to Appoint a Receiver on October 2, 2019.
- B) On October 8, 2019, based on its findings from the September 20, 2019 hearing, this Court Ordered the Defendant Repatriate Nine Hundred and Two Thousand Eight Hundred Seventy-Six Dollars and Forty-Four Cents (\$902,876.44) of the Funds held in the Bayview Trust Account in the Cook Islands within fifteen (15) days. The Repatriation Order granted Plaintiff the right to file a Motion for civil

contempt, including the possibility of incarceration should the Defendant fail to comply.

- C) Defendant filed his Motion to Reconsider the Order for Repatriation of the Funds on October 18, 2019.
- D) Plaintiff filed its Motion to Hold Defendant in Contempt for his failure to comply with this Court's Order along with Plaintiff's Memo in Support of Motion on October 29, 2019.
- E) This court heard the Defendant's Motion to Reconsider and the Plaintiff's Motion to Hold Defendant in Contempt and Plaintiff's Motion to Appoint a Receiver and arguments therein.
- F) Also, present at the hearing was Rory Whelehan, Esq. who was duly sworn and presented testimony as to his qualifications to serve as a receiver. Plaintiff's Counsel submitted Mr. Whelehan's affidavit and curriculum vitae to the Court as "**Exhibit 1**", without objection. Plaintiff's Counsel and Defendant's Counsel examined Mr. Whelehan along with this Court. Mr. Whelehan was determined to be qualified by this Court as both competent and qualified to serve as Receiver in this matter.

CONCLUSIONS OF LAW

In light of the evidence, testimony and arguments submitted by the Parties, this Court hereby issues the following Orders

IT IS HEREBY ORDERED, pursuant to §15-65-10 of the *South Carolina Code of Laws*, that Rory Whelehan, Esq. is **Appointed as Receiver** in this matter. Mr. Whelehan (hereinafter referred to as "Receiver") shall maintain a duty of impartiality and act as an agent

and officer of this Court and not on behalf of either attorney. The Receiver is hereby granted the authority to conduct independent discovery to investigate the assets of the Defendant, including, but not limited to the Defendant's residence at 216 Cleveland Street in Greenville, SC and the Defendant's beach house (titled in the name of the Defendant's single-member LLC "3009 Palm Blvd, LLC") located at 3009 Palm Blvd in Isle of Palms, SC. The Receiver shall provide a written report via email to this Court every fourteen (14) days, specifying his activity, fees and findings and cc both counsel for the Plaintiff and the Defendant in his written report to this Court.

IT IS FURTHER ORDERED that Plaintiff's counsel and Defendant's counsel are hereby Ordered to cooperate with the Receiver and are to furnish any and all records, papers, or other documents that the Receiver may request in the course of his investigation on behalf of this Court. Failure by any party and/or their counsel to cooperate with the Receiver or otherwise comply with the requests of the Receiver may be subject to being held in contempt of court upon application by the Receiver.

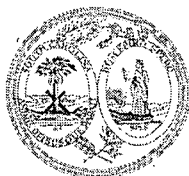
IT IS FURTHER ORDERED that the Receiver shall have all powers, authority, duties and obligations as is customary according to receivership under South Carolina law.

IT IS FURTHER ORDERED that Defendant's Motion to Reconsider filed on October 18, 2019 and heard by this Court on November 6, 2019 is taken under advisement.

IT IS FURTHER ORDERED that Plaintiff's Motion to Hold the Defendant in Contempt filed on October 29, 2019 and heard by this Court on November 6, 2019 is taken under advisement.

AND IT IS SO ORDERED.

SIGNATURE PAGE TO FOLLOW:



Greenville Common Pleas

Case Caption: Independence National Bank vs. Buncombe Professional Park Llc ,
defendant, et al
Case Number: 2010CP2303860
Type: Master/Order/Other

And It Is So Ordered!

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