

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

RECEIVED

IN RE: SAMUEL CHURCH,

JUN 15 2020

Debtor

SC Court of Appeals

JAMES RAY SMITH and
SUZUKI OF ANDERSON, INC.,

C/A No.: 2019-CP-23-05580

Plaintiffs,

-vs.-

**ORDER DENYING MOTION
TO QUASH**

SAMUEL CHURCH,

Defendant.

This matter came on for hearing before me on the 27th day of May, 2020 pursuant to a Motion to Quash filed by the Defendant on April 28, 202 in regard to certain subpoenas issued on behalf of the Plaintiffs in the above-captioned matter.

Present at the hearing were Daniel L. Draisen, Esq., attorney for the Plaintiffs, Defendant Samuel Church and his attorney, Joseph Lyles, Esq. Having reviewed the pleadings, the memoranda, the documentation filed by the parties, having heard fully the arguments of counsel and considered the applicable law, Defendant's Motion is **DENIED**.

In his Motion, Defendant asserts several bases for the request to quash subpoenas Plaintiffs seek to have issued by the Clerk of Court for Fulton County, Georgia to Emma Loyal, Defendant's daughter. Among those, the Defendant asserts that the Court lacks jurisdiction over a Georgia resident, that the statute of limitations has run on Plaintiffs' claims in regard to certain transfers Plaintiffs alleged to be fraudulent, that the assets for which information is sought were transferred

by a Georgia resident, to a Georgia Trust and then to a Georgia, LLC such that Plaintiffs would have no action against those assets in the instant matter, and that requiring the Defendant's daughter to participate in a deposition and/or discovery would be inconvenient and unduly burdensome, would serve no legitimate purpose, and that same is being interposed by Plaintiffs merely to harass the Defendant.

The matter pending before the Court is in the nature of supplemental proceedings wherein the Plaintiffs seek to obtain payment of a judgment entered into and given by the Defendant to the Plaintiffs on August 16, 2010 as part of Defendant's bankruptcy case before the United States Bankruptcy Court. In an effort to discover what income and assets the Defendant has (or may have) Plaintiffs seek to have Georgia subpoenas (not South Carolina) issued to one (1) of Defendant's adult children for the purpose of conducting discovery into the transfer of assets which Plaintiffs believe should and would now belong to the Defendant debtor.

The Defendant's daughter, Emma Church Loyal, as is admitted in Defendant's Motion is the current Trustee of the Frances Evelyn Brown Church Living Trust. Pursuant to the Trust Agreement attached to Defendant's Motion as Exhibit C, "Upon the death of FRANCES EVELYN BROWN CHURCH, Trust income in the amount deemed appropriate by the Trustee may be distributed at least annually to SAMUEL THOMAS CHURCH, during his lifetime." It is also undisputed that Sam Church is not deceased.

As to Defendant's assertions of lack of jurisdiction, I find, pursuant to SC Code, Ann., Section 15-47-100, et seq. "Uniform Interstate Depositions and Discovery Act" and Georgia Code, Section 24-13-110, et seq., that both states adhere to the "Uniform Interstate Depositions and Discovery Act." Accordingly, South Carolina litigants may seek the issuance of a subpoena

from the State of Georgia to a citizen and resident of that jurisdiction for the purposes of conducting depositions and discovery related to a matter pending in South Carolina.

With regard to Defendant's other assertions regarding the statute of limitations, that the assets belonged to a Georgia resident such that Plaintiffs have no action against those assets in the instant matter, and that requiring the Defendant's daughter to participate in a deposition and/or discovery would be inconvenient and unduly burdensome, I find that Plaintiffs' efforts to issue subpoenas to the Defendant's daughter in Georgia are in the form of discovery to determine if assets of the Defendant are in the hands of a third party. I find that such discovery efforts are reasonable and appropriate under the facts and circumstances of this case, and that such discovery is permissible. I further find that Defendant has not waived and may raise defenses as to the relevance or admissibility of any evidence obtained by the Plaintiffs by way of this discovery process.

Based on the foregoing, Defendant's Motion is, and same is hereby, **DENIED**.

IT IS SO ORDERED.

JUDGE'S SIGNATURE PAGE TO FOLLOW



Greenville Common Pleas

Case Caption: James Ray Smith , plaintiff, et al vs. Samuel Church , defendant, et al
Case Number: 2019CP2305580
Type: Master/Order/Other

And It Is So Ordered!

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

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