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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Master-In-Equity

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

Appellate Case No. 2019-002047

Independence National Bank…….…….……Respondent,

v.

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

Of whom, David Decarlis is the ……..……..…Appellant.

RESPONDENT'S INITIAL RESPONSE BRIEF

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July 6, 2020

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II. STATEMENT OF THE CASE

Independence National Bank, (*hereinafter* "Plaintiff" or "Independence") obtained a deficiency judgment against David D. Decarlis (*hereinafter* "Defendant" or "Decarlis") and Buncombe Professional Park, LLC on August 2, 2011 in the amount of $491,978.13. Subsequent litigation over several issues ensued throughout the following years. Ultimately, Plaintiff was able to proceed with collecting on the judgment. Plaintiff attempted to locate and personally serve the Defendant with supplemental proceeding filings on twenty-seven occasions over the course of eight months, from October 5, 2018 through May 9, 2019. On May 29, 2019, the lower court issued an Order for Publication, allowing Plaintiff to serve the Defendant through publishing notice of a Rule to Show Cause hearing in the local newspaper.

A Rule to Show Cause hearing was held before the Master in Equity for Greenville County on July 24, 2019. All parties appeared with counsel. The Rule to Show Cause hearing was continued and the court ordered Decarlis be deposed within twenty-one days. On August 10, 2019, Defendant filed a notice of appeal attempting to appeal the Rule to Show Cause Order entered on July 25, 2019. Despite Defendant's attempt to stay the proceedings with the appeal of that interlocutory order, the Master ordered that the Defendant to be deposed on August 12, 2019. That deposition took place on the specified date, after which, a Rule to Show Cause Order was issued on August 27, 2019.

The continued Rule to Show Cause hearing was held on September 20, 2019. During that hearing evidence and live testimony (as detailed more thoroughly below) was presented to the Master primarily focused on the substantial assets Defendant had

attempted to place in an offshore Trust to avoid repaying his creditors, including Independence.

On October 2, 2019, the Plaintiff filed a Motion to Appoint a Receiver looking to have a Receiver put in place to set aside another fraudulent conveyance which is not subject of this appeal and to aid in the satisfaction of Plaintiff's judgment against the Defendant.

The Master issued an October 8, 2019 Order for Repatriation of Assets (the "Repatriation Order") ordering the Defendant to repatriate $902,886.00 in funds (the "Funds" or "Trust Funds") claimed to be held in the name of the Bayview Trust with Capital Security Bank in the Cook Islands back to the United States within fifteen days. (Rep. Order). The Repatriation Order found that Defendant's attempted transfer of over $1 million dollars to the Bayview Trust was a fraudulent conveyance under the Statute of Elizabeth and therefore constituted non-exempt assets over which he had possession and the attendant power and control to repatriate. *Id*.

On October 18, 2019, Defendant filed a Motion to Reconsider the Repatriation Order. (10.18.19 Mot. Recon.). Plaintiff filed a Motion for Contempt on October 29, 2019 after the Defendant failed to abide by the Repatriation Order's directive that he repatriate the Funds within fifteen days. (10.29.19 Mot. Contempt).

On November 6, 2019, the lower court heard both the Motion to Reconsider and the Motion for Contempt. Counsel for each party argued their respective motions during that hearing. 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.

The Master entered the Order Appointing the Receiver on November 12, 2019 appointing Mr. Whelehan to act as the Receiver and empowering him to conduct

independent discovery to investigate the assets of the Defendant and directing he provide written reports to the court every fourteen days. (Rec. Order).

On December 5, 2019, the lower court entered a Form 4 Order Denying Defendant's Motion to Reconsider the Repatriation Order. (12.05.19 Order Den. Recon.).

Thereafter, on December 10, 2019, Decarlis filed his first notice of appeal seeking review of the Order Denying Defendant's Motion to Reconsider entered December 5, 2019 and the Order for Appointment of Receiver entered November 12, 2019. (12.12.19 NOA).

A week later, on December 17, 2019, the Master entered the Order Holding Defendant Decarlis in Contempt of Court (the "December Contempt Order") for failing to abide by the Repatriation Order.

The deadline for appealing both the Repatriation Order and the December Contempt Order passed. Following passage of those appeal deadlines, Plaintiff filed a Motion to Enforce the Contempt Order on February 6, 2020. Defendant filed a Motion Seeking Relief from that Order. (Def. Mot. Relief). The Master considered those filings and issued a February 13, 2020 Order (the "February Contempt Order") reaffirming the contempt findings in the December Contempt Order and imposing the sanctions in that earlier order.

Defendant then filed a second notice of appeal on March 16, 2020, seeking review of the February Contempt Order entered February 13, 2020. (3.16.20 NOA).

A Motion to Consolidate the appeals was filed on April 6, 2020. This Court granted that motion and consolidated the two appeals through an Order dated April 14, 2020.

Of great importance is the fact that the Defendant did not appeal the Repatriation Order or the December Contempt Order; a failure, that as detailed below, renders his entire appeal moot.

III. STATEMENT OF THE FACTS

A. Introduction

This appeal arose out of a long and tortured history of Independence National Bank attempting to collect a duly owed debt from the Defendant Decarlis which he has gone to great lengths to attempt to avoid paying. Plaintiff has, through great efforts, dismantled the façade of impenetrability Defendant erected to not repay what he owes. Those efforts culminated in front of the Honorable Charles Simmons, as the Master in Equity for Greenville County, ordering that Defendant repatriate nearly $1 million dollars which he attempted to stash in a foreign nation through the establishment of a sham Trust to repay his debt. Defendant has failed to comply with the Master's order and rightly been held in contempt for doing so. He did not appeal the Repatriation Order or the December Contempt Order holding him in contempt for failing to repatriate the Funds as directed. Instead, he now attempts to appeal three orders of the lower court to avoid having to repay his debt to the Plaintiff. This latest effort is one of Defendant's last ploys in his long-term scheme to avoid paying Plaintiff on a 2011 deficiency judgment arising from a $1.65 Million Dollar loan from Independence. That endeavor, however, must not and cannot succeed under the law, and Independence respectfully implores this Court to not allow it to do so.

B. The Original Debt – Independence Bank Note for $1.65 Million Dollars

On April 28, 2006, Defendant Decarlis purchased a home at 216 Cleveland St. in Greenville, South Carolina for $610,000. Defendant Buncombe Professional Park, LLC,

through its member Defendant Decarlis, applied for a commercial mortgage loan from Independence in the original principal sum of One Million Six Hundred Fifty Thousand 00/100 Dollars ($1,650,000.00) which was to be used for the refinancing of an existing first mortgage loan with First National Bank of Spartanburg and the establishment of an interest reserve fund to initially service the loan to the Plaintiff. (Amend. Compl. pp. 1-2 & Exhs. A- C). That loan had an eighteen (18) month term making the maturity date March 25, 2009. (Amend. Compl. Exh. A&B). Defendant signed a personal Guaranty on the debt as well as signing one on behalf of Buncombe Professional Park, LLC. (Amend. Compl. Exh. D). On October 21, 2008, Defendant took out a $250,000 HELOC mortgage with Regions Bank with 216 Cleveland Street as the encumbered/secured property.

Defendant wished to have Independence agree to a change in the terms of the loan; specifically, an extension of the maturity date. As part of that process, he submitted a Personal Financial Statement dated March 8, 2009 listing:

i. A total annual income of $456,000;

ii. 216 Cleveland Street property as unencumbered;

iii. 3009 Palm Blvd. property as being encumbered by a mortgage with SunTrust with a balance of approximately $993,000;

iv. $200,000 in deposits at other banking institutions; and

v. A Net Worth of $3,647,000.

(Personal Fin. Statement). The total Net Worth on that Financial Statement included the value of the same real property Defendant associated with the mortgage and note he entered with Royal Blue on the heels of obtaining the loan modification as detailed below. Based on the Personal Financial Statement, Plaintiff agreed to extend the maturity date on the

mortgage and guaranty by one year to March 25, 2010. (Amend. Compl. Exh C - 04.01.09 Change in Terms).

C. Defendant Attempts to Establish Elaborate Obstacles to Collecting the Debt

Sometime in 2009, as the loan was originally becoming due and Decarlis sought and obtained a modification of the maturity date, he retained the Presser Goldstein law firm in Florida to setup an offshore trust in an attempt to place a substantial amount of assets out of reach of his creditors, including Independence. That same year, Attorney Goldstein co-authored and published Asset Protection-A Guide for Professionals and Their Clients, a nearly 300 page guide to asset protection that includes a chapter entitled "Asset Protection a Judge Will Respect" which contains the following passage:

> To summarize, ***instead of being obvious about what we're doing, we are subtle. We use camouflage***. We have a bona fide reason for doing what we're doing besides asset protection. ***We do things so as to be able to prove our inability to repatriate assets if needed***. We have liability insurance that will pay a reasonable amount of the claim, thus ensuring that the plaintiff's attorney get an easy payout, which serves to divert him from the tough and uncertain uphill battle he'll have to wage it he wants any significant portion of the debtor's wealth.

(10.29.19 Memo Supp. Plf. Mot. Contempt p. 6 *quoting* ARNOLD S. GOLDSTEIN & W. RYAN FOWLER, ASSET PROTECTION, p. 255 (Garrett Press 2009))(***emphasis added***).

On April 21, 2009, a Deed of Trust was executed claiming to establish The Bayview Trust (the "Trust"). (P-5 Southpac Trust Info.). Decarlis was designated the Settlor and sole beneficiary of the Trust. (*Id*.; 09.20.19). Southpac Trust International Inc., an entity based in the Isle of Nevis, was named the Trustee. On May 27, 2009, the Bayview Trust was registered in the Cook Islands. The Summary of Assets in the Trust documents reflected an entity value of $10.00 which was the initial settlement of cash placed into a Capital Security Bank ("CSB") account (#**0236) for Bayview. (P-5 Southpac Trust Info.

p. 3). The other two designated assets, 98% of Ellis & Co, LP and a second CSB account (#**0243) were placed into the Trust on June 10 and 11, 2009 respectively. At that time both assets were listed as having zero value. (*See* P-5 Southpac Trust Info. p. 3).

Royal Blue Lending House, LLC was incorporated on or about July 1, 2009 in the Isle of Nevis. Then, on January 1, 2010, Defendant along with two of his single-member LLCs, 3009 Palm Blvd. LLC (a beach house on the Isle of Palms) and TJ Ventures of South Carolina, LLC (an LLC with no assets at the time) entered into a Loan Facility with Royal Blue Lending House, LLC for a sum of One Million and Three Thousand Three Hundred and Thirty-Nine Dollars 12/100 ($1,003,339.12). (P-2 Royal Blue Loan Facility). Shortly thereafter, on February 4, 2010 a Deed of Charge was executed between CSB and Southpac Trust International, Inc. and a Brokerage Agreement entered into by and between CSB, Royal Blue Lending House, LLC, and Southpac Trust International, Inc. Defendant then signed a Promissory Note on February 25, 2010 wherein he promised to pay Royal Blue Lending House, LLC the principal amount of $1,003,339.12 and secured the Note by five real properties that he owned either individually or through a entity in which he was the sole member. (P-4 Promissory Note).

On March 11, 2010, a mortgage was recorded in Greenville County on the Royal Blue loan with 216 Cleveland Street and four other properties listed as being encumbered. The mortgage was also filed in other counties to cover the other properties. On March 12, 2010, Defendant signed an Agreement to Deposit between CSB and Southpac Trust International to fund the CSB accounts listed as Trust assets using the Royal Blue loan funds. The entities signed the Agreement on March 23, 2010. The Royal Blue loan proceeds were then transferred to the CSB account(s) listed as assets of the Trust.

Defendant testified that the Royal Blue loan funds were invested in a long-term interest-bearing CD, the interest from which would go to repay the mortgage payments to Royal Blue and the remainder into the Trust. (09.20.19 Trans. p. 18, lns. 3-13).

Three days after Defendant signed the Agreement to Deposit precipitating the transfer of the Royal Blue loan funds into the Trust, on March 15, 2010, Plaintiff filed a *Lis Pendens* on Decarlis and Buncombe Professional Park, LLC related to its mortgage arising from the 2007 loan. (P-3 Lis Pendens). On March 25, 2010, two days after CSB and Southpac signed the Agreement to Deposit, the Independence loan matured, and Defendants were in default. Plaintiff filed a Complaint on May 14, 2010 against the Defendants, seeking to foreclose on its mortgage and obtain a deficiency judgment. (Compl). An Amended Complaint was filed on April 7, 2011. (Amend. Compl.).

On April 27, 2011, Defendant deeded the 216 Cleveland Street property to his wife and himself as joint tenants in exchange for "$5.00 dollars love and affection." Subsequently, on August 2, 2011, a deficiency judgment was entered against Decarlis and Buncombe Professional Park, LLC for $491,978.13.

In 2016 the Trust made a distribution of $100,000 at Defendant's request to a Spartanburg entity which Defendant said was an investment opportunity for a friend. (09.20.19 Trans. p. 21,ln. 4 - p. 22, ln. 13). The CSB Statement Plaintiff obtained from Defendant's accountant noted that the $100,000 wire transfer was a "transfer out to David" [Decarlis]. (P-6 CSB Statement p. 2)

In 2017 the Trust made a constructive distribution of $631,750 to the Settlor (Defendant Decarlis) to pay off the Royal Blue mortgage. (P-7 3520-A Form).

The $250,000 HELOC mortgage with Regions Bank was marked "Satisfied" on July 29, 2019.

D. Rule to Show Cause Hearing - September 20, 2019

Following entry of the deficiency judgment, issues concerning mortgage priority and the like were litigated. The Defendant continued to refuse to repay his debt to the Plaintiff. Finally, in August of 2018, Independence was able to initiate supplemental proceedings. That proved and has continued to prove a Herculean effort due to the sham roadblocks Defendant attempted to erect through his offshore trust scheme. Ultimately, Plaintiff was able to obtain sufficient evidence to seek to have Defendant repatriate the assets he claimed were held by the Trust but restricted from being distributed to him for repaying his debt to Independence. On September 20, 2019, the Master took up the Rule to Show Cause to determine if Plaintiff was entitled to that relief. The primary issue before the Master was whether Defendant had control over the Funds he claims were held by the Trust and the ability to have them repatriated in order to repay his debt to the Plaintiff.

Defendant claimed that he was unable to have the Trust distribute any of the Funds to him due to the Trust's prohibition on making distributions to the creditors of any settlor or beneficiary. He argued that the Trust and Trustee exclusively possess and control the Funds and their distribution. In an attempt to make his point, soon before the hearing, Defendant made a feigned attempt to request the Trust distribute $350,000 to him for payment of the judgment debt. That request, he knew by design would be rejected due to the language of the Trust governance documents established by his Florida counsel which claimed to prohibit distributions to any creditor of the settlor or beneficiary. He wished the

court to believe that he had put over $1M of his money in the hands of an overseas third party over which he had no control.

At the hearing, Plaintiff presented evidence and testimony that the Master found demonstrated that Defendant in fact had the control over the Funds he claimed to lack. Specifically, Plaintiff was able to show that Defendant used the Trust Funds to pay personal taxes, directed payment of $100,000 in 2016 to fund a local investment opportunity in Spartanburg, South Carolina, and used his personal funds to pay the Trustee. (09.20.19 Trans. pp. 9-27; Plf. Hearing Exhs. 1-8). It was further established that Trust Funds were used to pay off the Royal Blue loan to the Defendant as reflected in a Form 3520-A provided by his accountant which clearly stated that the "Bayview Trust made a constructive distribution in the amount of $631,750 to the settlor [Decarlis] through paying the loan on his behalf." (P-7 Southpac Info.). The two CBS accounts had a value of over $1,400,000 at the time the Repatriation Order was entered. (Rep. Or. p. 2). Thus, the objective evidence presented to the Master demonstrated that the Funds were under Defendant's control. In light of that evidence and common sense, the Master refused to accept Defendant's argument that he was hamstrung from paying his debt to the Plaintiff with Trust Funds because he did not control those assets. The Master ordered Defendant to repatriate $902,876.44 from the Trust to pay his debt to the Plaintiff finding that evidence demonstrated that he has the power to do so and holding that the initial transfer of the Funds to the Trust was a fraudulent conveyance under the Statute of Elizabeth. (Rep. Order).

E. Defendant Held in Contempt by December Order

Defendant failed to abide by the Repatriation Order and was accordingly held in contempt through an Order entered on December 17, 2019 (the "December Contempt

Order"). The Master found that the evidence established Defendant had sufficient access to and control over the Funds he was ordered to repatriate, but willfully refused to abide by attempting to hide behind what the Master deemed a "calculated, elaborate and carefully planned effort started by Defendant many years ago in an attempt to shield and hide assets from a judgment creditor." (Dec. Contempt Order p. 2).

F. No Appeal of the Repatriation Order or the December Contempt Order

As noted above, Defendant did not appeal either the Repatriation Order or the December Contempt Order. Those failures nullify and render moot his arguments on appeal wherein he is attempting to challenge the Order Denying Defendant's Motion to Reconsider the Repatriation Order and the February Contempt Order.

IV. LEGAL ARGUMENTS AND AUTHORITIES

A. Defendant's Failure to Appeal the Repatriation Order and the December Contempt Order Bind Him to Those Rulings as They Are the Law of the Case Rendering His Appeal Moot

A party seeking to appeal an order of a lower court is required to file a notice of appeal within thirty days after they receive written notice of the entry of the order or judgment. SCACR 203(b)(1). "The requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004). Thus, to challenge a lower court's rulings one must file a timely notice of appeal of the order or orders containing the findings and holdings they wish to have the appellate court reverse or modify. Defendant failed to do so in this case.

The Master entered the Repatriation Order on October 8, 2019. Defendant filed a Motion to Reconsider that Order ten days later, thus tolling his deadline for filing an appeal until an order on that motion was entered. The Motion to Reconsider was denied by Order dated December 5, 2019, giving Defendant until January 6, 2020 to file a notice of appeal of the Repatriation Order. The Master entered the December Contempt Order on December 17, 2019. No Rule 59 Motion was filed regarding it, making Defendant's deadline for filing a notice of appeal of that Order January 17, 2020. He did not file any, much less a timely notice of appeal seeking review of either the Repatriation Order or the December Contempt Order.[1]

Defendant filed his first notice of appeal on December 10, 2019 stating that he was appealing the Master's Order Denying Defendant's Motion to Reconsider (the "Reconsideration Order") and the Order for Appointment of Receiver (the "Receiver Order"). (12.12.19 NOA). He filed the second notice of appeal on March 16, 2020, which sought review of the Master's February 13, 2020 Order for Contempt (the "February Contempt Order"). (3.16.20 NOA). Per the Rules, Defendant submitted the Orders referenced with the respective notice of appeal. On brief, Defendant states that "[t]his is an appeal from the Master in Equity's Order Denying the Appellant's Motion for Reconsideration of its order dated October 8th [*sic*], 2020 Order [*sic*] David Decarlis to 'Repatriate' assets held in Bayview Trust and the subsequent Order holding Mr. Decarlis in contempt of that order dated February 13, 2020." (Ap. Br. p. 2). Defendant did not lodge any, much less timely, appeal of either the Repatriation Order or the December Contempt

[1] Defendant filed a Motion for Relief from the December Contempt Order with the lower court on February 6, 2020 in which he recognized that he had not appealed that order within the prescribed 30-day window. (02.06.20 Def. Mot. Relief).

Order. That failure does not only prevent him from seeking appellate review of those orders; it binds him to the findings and holdings within them.

A party that does not appeal from an adverse decision is bound by that decision. *King v. Island Club Apartments*, 2005 WL 7083456, (Ct. App. 2005)(Held that because the Island Club did not appeal the lower court's finding that there was no evidence of a civil conspiracy between King and others, it was bound by that unappealed ruling.); *Charleston Cnty. Sch. Dist. v. South Carolina State Diary Comm'n*, 274 S.C. 250, 252, 262 S.E.2d 901, 902 (1980)(Held the Commission's failure to appeal an order of the lower court finding the contract at issue was valid was bound by that order and its directive.). "It is a fundamental rule of law that an appellate court will affirm a ruling by a lower court if the offended party does not challenge that ruling." *Lindsay v. Lindsay*, 328 S.C. 329, 338, 491 S.E.2d 583, 588 (Ct. App. 1997). "An unappealed order, right or wrong, is considered the law of the case." TOAL, WALKER, & BAKER, Appellate Practice in South Carolina, p. 214 (3rd Ed. 2016); *Carolina Chloride, Inc. v. Richland County*, 394 S.C. 154, 171-72, 714 S.E.2d 869, 878 (2001)(finding the trial judge's unappealed procedural ruling was the law of the case); *Judy v. Martin*, 381 S.C. 455, 674 S.E.2d 151 (2009)(finding circuit court's unchallenged ruling on magistrate court's subject matter jurisdiction was the law of the case). The appellate court is required to affirm an unappealed ruling, right or wrong, because it becomes the law of the case. By not appealing the Repatriation Order or the December Contempt Order, the findings and holdings within them are the law of the case, making them binding upon the Defendant and rendering his arguments on appeal moot.

Specifically, Defendant's entire position on appeal is predicated upon his claim that he has no control over the Funds the court ordered him to repatriate, and therefore the

Master erred in denying his Motion for Reconsideration of its previous ruling ordering him to repatriate those assets and in punishing him for failing to do so through the February Contempt Order. (Ap. Br. pp. 5-19). That same premise underlies his challenge to the Receiver Order, with Defendant arguing the Master erred in appointing the Receiver because he has no control over any collectable assets which could be used to satisfy the judgment debt owed to the Plaintiff. (Ap. Br. pp. 19-20). The orders Defendant failed to appeal, however, both found that he has control over the Funds and the attendant ability to repatriate them. The December Contempt Order found that he willingly failed to abide by the Repatriation Order's directive in contempt of court. Those findings are the law of the case.

1. Order for Repatriation of Assets Entered October 8, 2019

In the Repatriation Order the court concluded that (1) the Defendant has control over the Funds he claims are held in the Trust and the ability to repatriate them; and (2) the transfer of the $1,003,339.12 by the Defendant to the Trust was a fraudulent conveyance under the Statute of Elizabeth. (Rep. Or. p. 4). The Master's specified basis for those conclusions and the holdings themselves in the Repatriation Order eviscerate Defendant's positions on appeal.

a. Defendant is bound by the Master's conclusion that Defendant has control over and can repatriate the Funds claimed to be held in Trust

First, the Master determined that the evidence and testimony presented below established that Defendant has control of the Funds held in the Bayview Trust and the ability to repatriate them. (Rep. Or. pp. 4-5). The Master found that the fact that Defendant managed and controlled the Funds located in the two Cook Island accounts at least until the time he made the beneficiary change less than two years ago, he had been both the

Settlor and beneficiary of the Trust, directed the payment of $100,000 in 2016 from the accounts in the Cook Islands to fund a local investment opportunity of a friend in Spartanburg, South Carolina, used the Trust Funds to pay his personal taxes, and used his own personal funds to pay the Trustee all made it "clear that the Defendant has the means and authority to repatriate the funds to the United States." (Rep. Or. p. 4). That conclusion of law and the evidentiary basis for it as laid out in the Repatriation Order are the very things Defendant seeks to argue was determined in err in the Order Denying Defendant's Motion to Reconsider. (Ap. Br. p. 5-17). That becomes a fool's errand, however, given the fact that he is bound by the finding in the Repatriation Order that he has control over the Funds held in the Trust which he was ordered to repatriate.

On brief, Defendant's headline argument is that the "Master in Equity's conclusion that [he] has control over the Trust is not supported by facts or the law." (Ap. Br. p. 5). Defendant's entire position relies upon this premise. Without control over the Funds, Defendant is beholden to the Trust and its restrictions on distributions which make him unable to comply with the Repatriation Order and, therefore, undeserving of the punishment placed upon him in the February Contempt Order for not doing something he lacks the power to do. (Ap. Br. pp. 5-19). The foundational premise of Defendant's position is impossible for him to establish because the law of the case – that he has control over the Funds – was decided in the Repatriation Order he has failed to appeal. The Master's finding that Defendant has control over the Trust and the legal and evidentiary basis for it in the Repatriation Order are the law of the case and binding upon him. He cannot challenge them by appealing the Order Denying Defendant's Motion to Reconsider that merely affirmed that holding. Furthermore, even if this Court considered his arguments on appeal

and reversed the Order Denying Defendant's Motion to Reconsider, the Repatriation Order would remain intact, unappealable, and binding upon the Defendant. Therefore, this Court's consideration of Defendant's challenges to the finding that he has control of and can repatriate the Funds would serve no purpose because he is bound by the unappealed finding on this issue within the Repatriation Order.

b. Defendant is bound by the Master's conclusion in the Repatriation Order that the transfer of $1,003,339.12 Royal Blue loan funds to the Trust was a fraudulent conveyance under the Statute of Elizabeth

Second, the Repatriation Order concluded that the "admitted gift of $1,003,339.12 by the Defendant to 'The Bayview Trust' was clearly a fraudulent conveyance under the Statute of Elizabeth analysis." (Rep. Or. pp. 2, 5-7). Defendant's failure to appeal that Order makes this conclusion binding upon him. Unlike the issue of whether he has control over the Trust and the Funds discussed above, the record is devoid of any attempt to challenge the fraudulent conveyance finding. Defendant's Motion to Reconsider the Repatriation Order did not address it at all. (*See* 10.18.19 Def. Mot. Recon.). In fact, during the hearing on that motion, Defendant's counsel made a single mention of the fraudulent conveyance finding prompting the Master to ask "Where in the motion is that raised?" which forced the admission that "It wasn't raised in the motion, Your Honor." (11.6.19 Trans. p. 3, lns. 6-18). The Master's subsequent Order Denying Defendant's Motion to Reconsider which Defendant has appealed contains no mention of the fraudulent conveyance finding and nothing in Appellant's Initial Brief addresses or argues for reversal of it.[2] (*See* Recon. Order; Ap. Br. pp. 5-15). Thus, the Master's finding that Defendant's

[2] Appellant's Initial Brief contains only a general passing reference to this finding stating that "[a]ssuming for the sake of argument that the transfer may be a fraudulent transfer to the trust, that is a separate issue from the current location of the assets and Mr. Decarlis' control over them." (Ap. Br. p. 16). He never argues that

transfer of the over $1M loan funds from Royal Blue to the Trust was a fraudulent conveyance is the law of the case and binding upon him.

Fraudulent transfers made in violation of the Statute of Elizabeth are completely and utterly void under the law. The Statute of Elizabeth provides that:

> Every gift, grant, alienation, bargain, transfer, and conveyance of lands . . . for any intent or purpose to delay, hinder, or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties and forfeitures must be deemed and taken . . . to be clearly and utterly void . . . .

S.C. Code Ann. § 27-23-10(A). The unchallenged and binding conclusion within the Repatriation Order that Decarlis' transfer of the initial Royal Blue Funds to the Trust was a fraudulent conveyance renders that transaction "utterly void." That attempted transfer was void *ab initio* under the law. Consequently, the Trust never obtained legal possession and control of those Funds. The fact that the Trust lacked and continues to lack legal possession of the Funds necessarily means their disbursement or transfer to the Defendant or another party at his direction is not prohibited by the Trust instruments as he claims. Those Funds are under his control, and the Trust's rules and prohibitions on distributions Defendant maintains prevented his efforts to comply with the Repatriation Order are inapplicable and irrelevant.

The Repatriation Order directed the Defendant to repatriate $902,876.44 of the Funds within fifteen days of entry. Due to his failure to appeal that Order, the Defendant is bound to abide by the Master's mandate and render his arguments imputing err to the Order Denying the Motion to Reconsider moot.

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the Master erred in deeming the transfer of the $1,003,339.12 to the Trust fraudulent under the Statute of Elizabeth analysis.

2. Order Holding Defendant in Contempt entered December 17, 2019

Defendant also did not appeal the December Contempt Order which contains numerous conclusions of law and findings that are binding upon him and render his arguments on appeal moot. Those include the Master (1) finding the evidence established Defendant has control over the Funds he was ordered to repatriate; [3] (2) concluding the facts established a calculated, elaborate, and carefully planned effort started by the Defendant years prior in an attempt to shield and hide assets from a judgment creditor; (3) holding that the Defendant willfully disobeyed the Repatriation Order by refusing to repatriate the Funds; and (4) determining that Defendant's willful noncompliance warranted holding him in contempt and the imposition of severe punitive sanctions should he continue to be noncompliant. (Dec. Cont. Order pp. 3-4). All those findings are now the law of the case, making them binding on the Defendant, and rendering his arguments the Master erred by holding him in contempt and sanctioning him for it moot.

a. Defendant is bound by the Master's conclusion that he can repatriate the Funds and is in contempt of the Repatriation Order for willfully failing to do so

As noted above, Decarlis appealed the February Contempt Order. That Order merely affirmed that he remained and continued to be in contempt of the Repatriation Order and ordered that the sanctions in the December Contempt Order be imposed upon him. (Feb. Cont. Order p. 2). Defendant argues on appeal that the Master erred in that February Contempt Order by holding him in contempt "for failing to perform an action he could not

[3] That holding was premised upon the Master again finding that the evidence, including what was previously cited in the Repatriation Order, along with two Independent Investigatory Reports by the Receiver and an affidavit of Jay Adkisson, an attorney and expert in offshore trusts both submitted after entry of that earlier order. (Dec. Cont. Or. pp. 2-3).

perform" – repatriating the Funds he claims are held and controlled by the Trust. (Ap. Br. pp. 17-19). That argument can only fail.

First, the February Contempt Order did not hold him in contempt but merely affirmed he remained in contempt and directed the previously specified sanctions within the December Contempt Order be imposed. Second, his position is reliant upon successfully establishing he does not have the power or ability to repatriate the Funds the Master ordered he repatriate. The unappealed December Contempt Order, however, contains clear findings that the Defendant could repatriate the Funds as ordered, had willfully refused to do so in contempt of the court's Repatriation Order and should be punished for his noncompliance. (Dec. Cont. Order). The Defendant is bound by those unappealed rulings, thus rendering moot his argument that the Master erred in the February Contempt Order by holding him in contempt for failing to perform an act he lacked the power to perform.

3. Unappealed Holdings Render Defendant's Challenge to the Receiver Order Moot

Defendant's argument that the Master erred in appointing a Receiver likewise cannot succeed considering the binding rulings which he failed to appeal; namely that he has the power and ability to repatriate the Funds at issue. He argues the Plaintiff did not meet the statutory requirement of showing that the debtor is withholding assets that can be used to satisfy the judgment necessary for the appointment of a Receiver. (Ap. Br. pp. 19-20). That determination, however, was made in the December Contempt Order with the court finding that "the evidence presented establishes Defendant has sufficient access and control to the funds ordered to be repatriated, but has willfully and in clear violation and disregard refused to comply with" the Repatriation Order. (Dec. Contempt Order pp. 2-3).

That being the law of the case makes Defendant's arguments for reversal of the Receiver Order moot and requires dismissal of his appeal or affirmation of the challenged Order.

In sum, Defendant's arguments on appeal that the lower court erred in denying his Motion for Reconsideration, holding him in contempt in the February Contempt Order, and appointing a Receiver are rendered moot because they are predicated upon a position that is contradicted by the findings within multiple orders he failed to appeal. Accordingly, dismissal of Defendant's appeal is warranted, or, in the alternative, affirmation of the challenged orders.

B. The Unchallenged Ruling that Defendant's Transfer of $1,003,339.12 to the Bayview Trust was a Fraudulent Conveyance under the Statute of Elizabeth Prevents him from Establishing the Trust Has Legal Possession of those Funds

As noted above, the Repatriation Order found that Defendant's transfer of $1,003,339.12 to the Bayview Trust was a fraudulent conveyance under a Statute of Elizabeth analysis. (Rep. Order pp. 5-7). Defendant did not challenge that finding in the proceedings below nor has he appealed the Repatriation Order in which the Master deemed that transfer a fraudulent conveyance. Therefore, it is impossible for him to successfully establish that the Bayview Trust obtained and continues to have legal possession of those Funds due to the transfer of those assets being void *ab initio*.[4]

C. The Master Did Not Err in Ruling that the Objective Evidence Demonstrated Defendant Has Control Over the Funds He Was Ordered to Repatriate

[4] "It is a fundamental rule of law that an appellate court will affirm a ruling by a lower court if the offended party does not challenge that ruling." *Lindsay v. Lindsay*, 328 S.C. 329, 338, 491 S.E.2d 583, 588 (Ct. App. 1997). "An unappealed order, right or wrong, is considered the law of the case." TOAL, WALKER, & BAKER, Appellate Practice in South Carolina, , p. 214 (2016)(3rd Ed.); *Carolina Chloride, Inc. v. Richland County*, 394 S.C. 154, 171-72, 714 S.E.2d 8698, 878 (2001)(finding the trial judge's unappealed procedural ruling was the law of the case); *Judy v. Martin*, 381 S.C. 455, 674 S.E.2d 151 (2009)(finding circuit court's unchallenged ruling on magistrate court's subject matter jurisdiction was the law of the case).

In an action in equity referred to a master with direct appeal to the Supreme Court or Court of Appeals, the appellate court may determine facts in accordance with its own view of the preponderance of the evidence. *See, e.g., Fox v. Moultrie*, 379 S.C. 609, 666 S.E.2d 915 (2008). The appellate court is not required to disregard the master's findings, however, as he is in the better position to assess the witnesses' credibility. *Id*. Moreover, the appellant is not relieved of his burden of convincing the appellate court the master committed error in his findings. *U.S. Trust Nat'l Ass'n v. Bell*, 385 S.C. 364, 684 S.E.2d 199 (Ct. App. 2009). Assuming *arguendo* that the Defendant could challenge the Master's finding that the evidence presented below established that he has control over the Funds he was ordered to repatriate, his claims of err in that ruling are resoundingly overcome by objective evidence and rationality.

1. Objective Evidence Demonstrated Defendant's Control of the Trust Funds

The Plaintiff presented the Master with testimony and document evidence that established objective facts demonstrating that the Defendant maintained power and authority over the Trust since its establishment and could repatriate the Funds he was ordered to repatriate. As detailed above, through Defendant's own testimony and the exhibits presented at the September 20, 2019 Rule to Show Cause Hearing, it was shown that the he was designated as the Settlor and sole beneficiary of the Trust when it was established; remains the Settlor to this date; directed $100,000 be distributed for a local investment opportunity in Spartanburg, South Carolina in 2016;[5] claims to have

[5] Tellingly, although it was not addressed below, the $100,000 transfer for investment in Defendant's friend's business in which he claimed to have no interest was itself a violation of the Trust (governance documents) which require the Trust assets to be managed and administered "for the benefit of the Beneficiaries." (*See e.g*. Trust Agr. ¶ 13.1).

relinquished his rights as a beneficiary to non-existent dependents sometime in 2017; paid the Trust from his personal credit card; pays the taxes on the Trust out of his personal assets; and could, under the Trust Agreement provisions itself, repatriate the assets should the claimed prohibitions on him doing so be enforceable. (*See* 09.20.19 Trans. pp. 9-27; Plf. Exhs. 1-8; Adkisson Aff. ¶¶ 7-8). It was further established that Trust Funds were used to payoff the Royal Blue loan to Defendant as reflected in a Form 3520-A provided by his accountant which clearly states that the "Bayview Trust made a constructive distribution in the amount of $631,750 to the settlor (Decarlis) through paying the loan on his behalf." (P-7 Form 3520-A). That is not to mention the circumstances surrounding the establishment of the Trust and its structure that further supported the Master's conclusion that Defendant has control over a million dollars plus of his own assets.

The Bayview Trust was established through a Florida law firm that advertises its practice as asset protection services and whose own book admits that the overseas trusts and legal barriers it sets up for their clients are all an elaborate façade to discourage and prevent collection of outstanding debts.[6] It used all overseas entities to loan, transfer, hold, and administer the Trust assets. This was all done at a time that Defendant owed Plaintiff on its mortgage and right on the heels of him obtaining an extension of the maturity date on the loan. The transfer of the over $1M loan funds from Royal Blue into the Trust was done just days before Plaintiff filed a *Lis Pendens* on Defendants' properties, and less than two weeks prior to the loan's extended maturity date of March 25, 2010. The Trust documents themselves were deliberately written in a manner which made a request for a distribution to satisfy the debt of the settlor or its beneficiaries seemingly impossible. Those

[6] *See supra* pgs. 7-10. As noted in filings below, Presser and Goldstein's web address is www.assetprotectionattorneys.com .

uncontested facts and circumstances gave the Master ample evidence to determine that Defendant had and continues to have power and control over the Funds he claims to be held in the Bayview Trust.

Defendant left much of this evidence unchallenged, and the "countervailing evidence" he did present remained overwhelmingly unconvincing considering the evidence presented by the Plaintiff and common sense. Defendant wished the Master to accept the premise that he established this overseas Trust simply to invest in a foreign CD, a claim supported only by his own testimony, and invited acceptance that the circumstances and timing of it all was simply innocent happenstance. Likewise, he attempted to convince the Master that he had given over control of over $1,000,000 of his own assets to a foreign entity over which he maintained no control. In the proceedings below, as he has on brief, Defendant's main if not sole claim that he has no control over the Trust Funds he was ordered to repatriate is the language of the Trust Agreement itself that he has cited in his filings. (*See* Ap. Br. pp. 10-14). Acceptance of that position requires ignorance of the objective evidence that overwhelmingly establishes this is not the case. It did not carry the day below and cannot do so on appeal.

In reality, the "evidence" Defendant offered to combat the clear conclusion that he has control over the Trust Funds shows that he engaged and is engaging in a calculated and elaborate ruse to avoid paying his debt to the Plaintiff. The barriers he paid to have a law firm deliberately erect to shirk that payment are not legally sufficient to allow Defendant to avoid his obligation to repay his creditor. The public policy implications of allowing such nefarious conduct to win the day is apparent. It would reward malfeasance and allow debtors with adequate means to pay lawyers and others to concoct a legally inadequate

gauntlet to the collection of their assets to avoid paying their creditors. If Trust provisions prohibiting disbursement of funds for the Settlor's or beneficiary's creditors are legally enforceable then anyone could put their funds in a Trust with such a restriction to avoid using their own assets to repay their debts. The Master rightfully did not allow that nor should this Court.

2. Defendant's Other Arguments Imputing Err to the Finding He Has Control of the Trust Funds are Red Herrings

The Defendant puts forth a string of irrelevant and inconsequential arguments to claim the Master erred in finding he has the ability to repatriate the Funds as ordered. (*See* Ap. Br. pp. 5-17).

First, he claims that the Master erred in ordering him to repatriate the funds because they are in the possession of the Trust. (Ap. Br. pp. 5-6). Current possession of the Funds is inconsequential in the first instance because possession does not equate to control. Assets can and often are in the possession of a party with little to no power to control them (*i.e.* a bank holding a customer's funds in a checking account). The relevant inquiry is who has the power to control those funds, and in particular, whether the Defendant has the power to repatriate them. Furthermore, even if possession was relevant, the Trust never legally obtained the Funds due to the transfer of the Royal Blue loan funds being deemed a fraudulent conveyance.

Second, there is no issue concerning jurisdiction as Defendant attempts to argue. (Ap. Br. pp. 14-15). The Master did not need jurisdiction over the Trust or Trustee to order repatriation of the Funds. Instead, he undeniably had personal jurisdiction over the party he ordered to repatriate those assets – the Defendant – which he never did nor could he

ever challenge. The Master was well within his power and authority to order a South Carolina resident judgment debtor to repatriate assets over which that person has control.

Third, Defendant argues that Plaintiff did not establish that he perpetrated a fraud in failing to repatriate the funds. (Ap. Br. pp. 15-16). Defendant did not make this argument below nor challenge the Affidavit of Jay Adkisson (International Trust expert), and it is therefore, not preserved for appellate review. *I'On v. City of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000)("The losing party must first try to convince the lower court it has ruled wrongly and the, if that effort fails, convince the appellate court that the lower court erred. This principle underlies the long-established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments."). Regardless, he does not cite to any authority requiring such a showing nor explain how it reflects err in the Master's finding that he has the ability to repatriate the Funds. In making this argument the Defendant does recognize that Independence presented the expert Affidavit of Jay Adkisson as an International Trust expert. (Ap. Br. pp. 16-17). In that affidavit, Mr. Adkisson explained in detail exactly how the Defendant could repatriate the Funds at issue under the terms of the Trust Agreement even if they were enforceable. (*See* Aff. Adkisson ¶¶ 4-11). Defendant did not object to the submission of the Affidavit nor offer one from another International Trust expert combating Mr. Adkisson's statements.

None of these arguments are adequate to impute err to the Master's finding that the Defendant has the power and ability to repatriate the Funds as ordered. Accordingly, his arguments on appeal fail, and the Master's Orders he has challenged should be affirmed.

D. The Master Did Not Abuse his Discretion by Holding that Defendant Remained in Willful Contempt of the Repatriation Order and Imposing the Sanctions Previously Ordered

The determination of contempt resides in the sound discretion of the trial judge. *Miller v. Miller*, 375 S.C. 443, 454, 652 S.E.2d 754, 760 (Ct. App. 2007). An appellate court should reverse a decision regarding contempt "only if it without evidentiary support or the trial judge has abused his discretion." *Durlach v. Durlach*, 359 S.C. 64, 70, 596 S.E.2d 908, 912 (2004)(*internal citation omitted*). "[A]n appellate court reviews findings of fact in an equity matter taking its own view of the evidence." *Ex parte Gregory*, 378 S.C. 430, 437, 663 S.E.2d 46, 50 (2008). "However, the abuse of discretion standard plays a role in the appellate review of a sanctions award." *Id*. "[W]here the appellate court agrees with the trial court's findings of fact, it reviews the decision to award sanctions, as well as the terms of those sanctions, under an abuse of discretion standard." *Id*.

"Contempt results from the willful disobedience of an order of the court." *Bigham v. Bigham*, 264 S.C. 101, 104, 212 S.E.2d 594, 596 (1975). "A willful act is one which is 'done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or disregard the law.'" *Widman v. Widman*, 348 S.C. 97, 119, 557 S.E.2d 693, 705 (Ct. App. 2001) *quoting Spartanburg County Dep't of Soc. Servs. v. Padgett*, 296 S.C. 79, 82-83, 370 S.E.2d 872, 874 (1988). Where the party "is unable, without fault on this part, to obey an order of the court, he is not to be held in contempt." *Smith-Cooper v. Cooper*, 344 S.C. 289, 301, 543 S.E.2d 271, 277 (Ct. App. 2001).

As explained above, due to Defendant's failure to challenge the Repatriation Order and December Contempt Order, he cannot successfully argue on appeal that the Master holding him in contempt and imposing sanctions was in err. Those decisions were made in the unappealed orders and the Defendant is bound by them. Accordingly, the Defendant's noncompliance with the Repatriation Order could only be deemed willful and deserving of the punishment he has unsuccessfully attempted to challenge through his appeal of the February Contempt Order.

Most pointedly, Defendant's Motion for Relief recognized that affirmation of the Repatriation Order means he is in contempt of it stating that "[e]ither the Order to Repatriate will stand or it will not. If it does, Mr. Decarlis is in contempt. If it does not then he is not in contempt." (02.06.20 Def. Mot. Relief p. 1). Due to his failure to appeal the Repatriation Order it can only "stand" as entered and therefore, as the Defendant himself recognizes, he is undeniably in contempt of that Order, making it impossible to establish that the Master erred by holding him in contempt.

Even if Defendant could challenge the Master's contempt ruling, his argument remains unconvincing. Defendant claims the Master erred in holding him in contempt because he lacked the ability to comply with the Repatriation Order. (Ap. Br. pp. 17-19). As thoroughly discussed above and in the Repatriation Order and December Contempt Order, the evidence presented to and relied upon by the Master to find otherwise demonstrates that the Defendant had the power to obey that Order and willfully choose not to do so. The Master, therefore, rightfully punished the Defendant for his failure to comply with a duly issued order. *See Brandt v. Gooding*, 368 S.C. 618, 628, 630 S.E.2d 259, 264 (2006) *citing* S.C. Code Ann. § 14-5-320 ("It is within the trial court's discretion to punish

by fine or imprisonment all contempt's of authority before the court."). The prohibitions Defendant points to and argues prevented him from complying with the Repatriation Order were of his own deliberate creation for purpose of avoiding repaying his debts to Independence and others. Therefore, assuming *arguendo* that the Trust provisions Decarlis cites as preventing his compliance were in fact legally enforceable barriers to his repatriation of the Funds, they were erected at his direction in a calculated effort to avoid paying his creditors. *See Id*. *citing State ex. rel. McLeod v. Hite*, 272 S.C. 303, 305, 251 S.E.2d 746, 747 (1979)("In addition, courts have the inherent power to punish for offenses that are calculated to obstruct, degrade, and undermine the administration of justice."). The years long, elaborate, and calculated scheme undertaken by the Defendant to avoid paying his debt to the Plaintiff and willful disobedience of an order he has the power to obey justified the Master's punishment.

E. The Master Properly Exercised his Discretion in Appointing a Receiver

Appointment of receiver is within the discretion of the circuit judge and will only be overturned on appeal upon a finding that the lower court abused its discretion in making the appointment. *Midlands Utility, Inc. v. South Carolina Dept. of Health and Envtl Control*, 301 S.C. 224, 391 S.E.2d 535 (1989); *In re Citizens' Exchange Bank of Denmark*, 140 S.C. 471 (1927). Assuming that Defendant could challenge the Master's appointment of the Receiver, his argument for err fails in light of the evidence presented and relied upon below.

Defendant's entire opposition to the Receiver Order is the assertion that the Plaintiff did not demonstrate he was withholding assets that could be used to satisfy the judgment. (Ap. Br. pp. 19-20). As detailed above, it was roundly established that Defendant was

engaged in an elaborate scheme to withhold the Funds he claimed were held in Trust and over which he had no power to use for satisfaction of the judgment debt held by Independence. Thus, his argument for reversal of the Receiver Order necessarily fails.

F. Additional Sustaining Grounds Warrant Affirmation of the Master's Rulings

A Respondent, as "the 'winner' in the lower court—may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court." *I'On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000). "The appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment." *Id*.

1. The Master Could Have Found that the Terms of the Trust Defendant Claimed Prohibited Repatriation May be Altered to Facilitate It

The Master could have ordered the Defendant to use the terms of the Trust itself to mandate repatriation of the fraudulently transferred funds as proposed in the Affidavit of Jay Adkisson. Mr. Adkisson pointed out that the Defendant, as the sole Settlor of the Trust, can easily regain control over the Trust assets in a number of ways.

First, pursuant to Paragraph 9.0 of the Trust under "Settlors Power of Appointment" the Settlor may appoint a "person friendly to him" to have the Trustee distribute the funds to who can then turn the assets over to the Settlor.

> The first way that a settlor could regain control over the Trust assets of the Bayview Trust is to simply appoint a person friendly to him via the power of appointment found in Section 9 of the Bayview Trust document, and then have the Trustee distribute the Trust's assets to that friendly person who can then turn the Trust assets over to the Settlor. Without assets to administer, this would effectively revoke the Bayview Trust.

(Aff. Adkisson p. 2 ¶ 7 discussing Trust Agr. p. 7).

Alternatively, the Master could have ordered the Defendant as the Settlor to regain control over the Trust assets through his power under Paragraph 28.2 to remove the existing trust protector, and appoint whomever the court deemed appropriate as the new Trust Protector. (Aff. Adkisson pp. 2-3 ¶ 8 discussing Trust Agr. ¶¶ 28.2, 25.1, & 25.2). The newly appointed Trust Protector could then appoint a new person or company as Trustee to wind up the assets and distribute them to a person friendly to the Settlor. *Id*. Again, the effect of these actions would be to ultimately lead to revocation of the Bayview Trust. *Id*.

In either scenario, and pursuant to the terms of the Bayview Trust itself, it is abundantly clear that the Defendant maintains control of and has absolute power to direct and dispose of the Funds held in the Trust. He simply does not wish to do so, and that willful noncompliance put in him contempt of the Master's Repatriation Order.

2. The Master Could Have Ruled that the Bayview Trust was Nonexistent Due to the Lack of One of More Essential Elements of a Valid Trust

Here, the Master could have also ordered repatriation of the Funds by finding that the Bayview Trust does not actually exist due to a lack of trust *res* or corpus, or the absence of valid beneficiaries.

"To prove the existence of a trust, the following elements must be shown: (1) a declaration creating the trust, (2) a trust res, and (3) designated beneficiaries." *Foster v. Foster,* 384 S.C. 380, 384, 682 S.E.2d 312, 314 (Ct. App. 2009), aff'd, 393 S.C. 95, 711 S.E.2d 878 (2011) *citing Whetstone v. Whetstone*, 309 S.C. 227, 231, 420 S.E.2d 877, 879 (Ct.App.1992).

First, the Master could have determined that the only assets that the record shows were attempted to be transferred to the Trust was the approximate $1M dollars that the

Master found was fraudulently conveyed. Accordingly, as held by the Master and discussed above, that transfer was void *ab initio* and those funds never transferred to the Trust. Without those funds, the trust has no trust *res* or corpus, a necessary element for the existence of a valid trust.

Second, it is arguable that the Trust has no beneficiaries, thus lacking another essential element necessary for the existence of an actual trust. The Defendant was initially named as the sole beneficiary of the Trust. (P-5 - Trust Info. Sheet; 9.20.19 Trans. pp. 18-20). Sometime in 2017 he named his "dependents" as the beneficiaries of the Trust. (9.20.19 Trans. p. 20, lns. 2-15). The Defendant, however, a man in his late 50s, admitted he has no children or dependents of any kind. *Id*. Defendant making his non-existence dependents the beneficiaries of the Trust, the Master could have determined, nullified its existence to the extent it was found to legitimately exist in the first place.

Therefore, there are additional sustaining grounds upon which the Repatriation Order, and by extension the December Contempt Order, along with the orders Defendant has actually appealed could be based and the latter (appealed orders) affirmed.

V. Conclusion

The Master considered the objective evidence and circumstances surrounding the establishment of the Bayview Trust and correctly determined that the Defendant has the power and authority to repatriate the Trust Funds in order to pay his debt to the Plaintiff. The Master ordered Plaintiff to repatriate those funds in the Repatriation Order and held him in contempt for not doing so by entry of the December Contempt Order. Both of those Orders found that Defendant had the power to repatriate the Funds he claimed to lack and the December Contempt Order determined his failure to do so was a willful violation of

the Master's directive. Defendant's failure to appeal either of those orders makes the findings and conclusions within them the law of the case and binding upon the Defendant. As a consequence, his arguments on appeal are rendered moot and must necessarily fail as they require reversal of the binding holdings contained with the unappealed orders.

Even if Defendant's failure to appeal those orders did not eviscerate his entire appeal, the arguments he presents are unconvincing and do not warrant reversal of the Master's orders which he has put before this Court.

Therefore, for the reasons set forth above, the present appeal should be dismissed in its entirety, or in the alternative, the Master's Order Appointing a Receiver entered November 11, 2019, Order Denying Defendant's Motion to Reconsider entered December 5, 2019, and Order Reaffirming Contempt entered February 13, 2020, should be affirmed.

(signature page to follow)

Respectfully Submitted,

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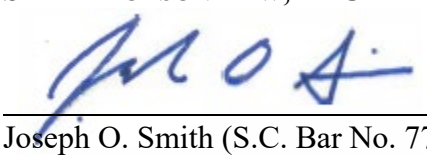

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July 6, 2020
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Master-In-Equity

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

Appellate Case No. 2019-002047

Independence National Bank…….…….…….Respondent,

v.

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

Of whom, David Decarlis is the …….……..…Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Initial Response Brief of Respondent complies with Rule 211(b), SCACR.

(Signature page to follow)

Respectfully Submitted,

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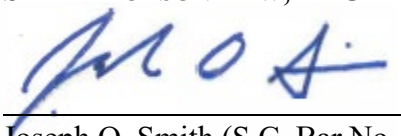

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Of whom, David Decarlis is the ……..……..…Appellant.

PROOF OF SERVICE

I certify that I have electronically served the Initial Response Brief on the below parties on July 6, 2020.

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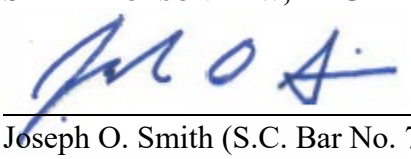

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