

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS  
CASE NO.: 2020-CP-23-00925

Rory D. Whelehan, in his Capacity as Court-appointed Receiver in the Matter of Independence National Bank v. Buncombe Professional Park, LLC and David DeCarlis s/a David D. DeCarlis, Case No. 2010-CP-23-03860,

Plaintiff,

vs.

David D. DeCarlis a/k/a David DeCarlis and Tiffany Pope DeCarlis a/k/a Tiffany L. DeCarlis,

Defendants.

**ORDER GRANTING RECEIVER'S MOTION TO  
DISMISS DEFENDANT TIFFANY DECARLIS'  
COUNTERCLAIMS**

**RECEIVED**

**Nov 30 2020**

**SC Court of Appeals**

This matter came before the Court on October 28, 2020 upon the Receiver's Motion to Dismiss Defendant Tiffany DeCarlis' Counterclaims, as amended<sup>1</sup> (the "Motion"), in the above-captioned case, pursuant to Rules 12(b)(1) and 12(b)(6), SCRCP, filed by Plaintiff Rory D. Whelehan, in his Capacity as Court-appointed Receiver in the Matter of Independence National Bank v. Buncombe Professional Park, LLC and David DeCarlis s/a David D. DeCarlis, Case No. 2010-CP-23-03860, ("Plaintiff" or "Receiver"). Appearing at the hearing on October 28, 2020 at 2:15 PM were Rory D. Whelehan and Andrew Radeker, counsel for Tiffany DeCarlis.

Upon consideration of the Motion, Receiver's Memorandum in Support of the Motion, and the arguments of counsel, the Court finds as follows:

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<sup>1</sup> The Motion to Dismiss Defendant Tiffany DeCarlis' Counterclaims was filed on August 29, 2020 and amended on October 1, 2020.

1. Plaintiff is the court-appointed Receiver in the matter styled Independence National Bank v. Buncombe Professional Park, LLC and David DeCarlis s/a David D. DeCarlis, Case No. 2010-CP-23-03860.
2. Receiver was appointed by Judge Charles B. Simmons, Jr., Master in Equity for Greenville County, by an Order for the Appointment of Receiver dated November 12, 2019.
3. Receiver filed the instant lawsuit on February 14, 2020 consisting of a single count Complaint seeking to set aside a fraudulent conveyance of real property in Greenville County by Defendant David DeCarlis to his wife, Defendant Tiffany DeCarlis, for no valuable consideration.
4. In her Answer and Counterclaim to the Complaint, Ms. DeCarlis set forth counterclaims for declaratory judgment, abuse of process, and civil conspiracy (collectively, the "Counterclaims").
5. In the case of Barton v. Barbour, the United States Supreme Court stated "It is a general rule that before suit is brought against a receiver leave of the court by which he was appointed must be obtained." Barton v. Barbour, 104 U.S. 126, 128 (1881). This rule is known as the Barton doctrine.
6. Receiver was appointed by Judge Charles B. Simmons, Jr., Master in Equity for Greenville County, by an Order for the Appointment of Receiver dated November 12, 2019, and as a result, the Barton doctrine requires that leave to sue Receiver must be sought and obtained from the Court of Equity.

7. There is no indication or allegation in Ms. DeCarlis' Answer and Counterclaim that leave to sue the Receiver has been sought from the appointing Court of Equity, and no evidence of leave to sue the Receiver was presented at the hearing, and counsel for Ms. DeCarlis acknowledged at the hearing that no leave to sue the Receiver was sought by the appointing Court of Equity.
8. Defendant Tiffany DeCarlis has failed to show that she has sought and obtained leave to sue the Receiver, and as a result she has failed to state facts sufficient to constitute the causes of action asserted in the Counterclaims.
9. Therefore, the Counterclaims must be dismissed.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. Receiver's Motion to Dismiss Defendant Tiffany DeCarlis' Counterclaims is granted, without prejudice, pursuant to the Barton doctrine; and
2. Defendant Tiffany DeCarlis' Counterclaims are dismissed, without prejudice.

AND IT IS SO ORDERED.

JUDGE'S SIGNATURE PAGE TO FOLLOW



Greenville Common Pleas

**Case Caption:** Rory D Whelehan vs. David D Decarlis , defendant, et al

**Case Number:** 2020CP2300925

**Type:** Order/Other

S/R. LAWTON McINTOSH

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