

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

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,

Petitioner,

vs.

Royal Blue Lending House, LLC, David D. DeCarlis, Individually; TJ Ventures of South Carolina, LLC; and 3009 Palm Blvd., LLC,

Respondents.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2019-CP-23-07305

**ORDER GRANTING RECEIVER'S
MOTION TO DISMISS
COUNTERCLAIMS OF TJ
VENTURES OF SOUTH
CAROLINA, LLC, AND 3009 PALM
BLVD., LLC**

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Dec 29 2020

SC Court of Appeals

This matter came before the Court on November 12, 2020 upon the Receiver's Motion to Dismiss Counterclaims of TJ Ventures of South Carolina, LLC, and 3009 Palm Blvd., LLC (the "Motion") in the above-captioned case, pursuant to Rule 12(b)(6), SCRCPP, filed by 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"). With agreement of the parties, the hearing was held by Zoom. Appearing remotely at the hearing on November 12, 2020 at 3:00 PM were Rory D. Whelehan and Shawn M. French, counsel for TJ Ventures of South Carolina, LLC, and 3009 Palm Blvd., LLC (collectively, the "LLCs").

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

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. This Court appointed Receiver by an Order for the Appointment of Receiver dated November 12, 2019.
3. Receiver filed this action on December 17, 2019, and the Second Amended Verified Petition was filed on June 18, 2020.
4. The LLCs filed an Answer and Counterclaim (the “Answer”) asserting counterclaims for abuse of process and civil conspiracy (collectively, the “Counterclaims”).
5. The attorney for the LLCs raised an objection to the Court’s authority and jurisdiction to hear this motion. The LLCs have filed a Motion to Remand after the filing of this Motion to Dismiss on the basis of the Jury Demands as well as the issues of Subject Matter Jurisdiction and Authority. The counsel for the parties to this matter agreed to have this Motion to Remand heard later, provided the issues as to the jurisdiction would be heard at the hearing on the Motion to Dismiss. I find that the court does have the authority and jurisdiction to hear and rule on this Motion to Dismiss.
6. 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.
7. In some jurisdictions, the requirement of prior leave to sue a receiver applies even in the case of a “separate lawsuit filed in the same court that appointed the receiver.” Considine v. Murphy, 227 Ga. 164, 167, 773 S.E.2d 176, 178 (Ga. 2015). (*See also* Links v. Connecticut River Banking Co., 66 Conn. 277, 284, 33 A. 1003, 1004, (Conn. 1895), “A receiver appointed by judicial authority cannot, in the absence of a statute to

- the contrary, be subjected to suit without the leave of the court whose officer he is, granted in the cause in which he was appointed.”).
8. Based on the application of the Barton doctrine, leave to sue Receiver must be sought from the court and action in which Receiver was appointed.
 9. There is no indication or allegation in the Answer that leave to sue the Receiver has been sought, and no evidence of leave to sue the Receiver was presented at the hearing.
 10. The LLCs have failed to show they have sought and obtained leave to sue the Receiver.
 11. Therefore, the Counterclaims must be dismissed.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. Receiver’s Motion to Dismiss Counterclaims of TJ Ventures of South Carolina, LLC, and 3009 Palm Blvd., LLC, is granted; and
2. The Counterclaims of TJ Ventures of South Carolina, LLC, and 3009 Palm Blvd., LLC, are dismissed.

AND IT IS SO ORDERED.

JUDGE’S SIGNATURE PAGE TO FOLLOW



Greenville Common Pleas

Case Caption: Rory D Whelehan , plaintiff, et al vs. Royal Blue Lending House LLC
, defendant, et al
Case Number: 2019CP2307305
Type: Master/Order/Other

And It Is So Ordered!

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