

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

William F. Tomz and Francis W. Tomz,)
Individually and as Class Representatives,)
)
Plaintiffs,)
)
vs.)
)
Capital Investment Funding, LLC, and)
Arthur M. Field,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2008-CP-23-3665

AMENDED ORDER



On December 17, 2020, this Court entered an order granting the Receiver’s Motion for Declaratory Relief filed December 31, 2019. On December 18, 2020, Defendant Arthur Field (“Defendant Field”) filed a motion to reconsider this order. Defendant¹ Kathryn Taillon (“Defendant Taillon”) filed a motion to reconsider on December 21, 2020. The Receiver filed memoranda in opposition to each of these motions on January 18, 2021. Having carefully reviewed the legal arguments presented by the respective counsel, as well as the exhibits included therewith, for reasons set forth below, the Court denies the respective motions to reconsider filed by these defendants. Although, this Court declines to alter the result reached in its previous order, the Court substitutes this order for its previously issued order. The Court’s alterations in this amended order respond to the well-argued motions of Defendants and the replies of the Receiver.

On October 8, 2013, in the criminal case against Arthur Field [*State v. Arthur Field*, C.A. No. 12-GS-47-08], the Honorable Cordell Maddox ordered, *inter alia*, Field to pay the noteholder/victims \$2,877,711.73 in restitution. On November 1, 2017, the Honorable Cordell

¹ The GSA was approved under the above-captioned case because this was the case that had jurisdiction over the Receiver and the class of noteholders. While Taillon was not a party to the original Tomz case, she was a defendant in one of the pending cases that were settled by way of the GSA: Capital Investment Funding, LLC v. Arthur Field, et al., C.A. No.: 15-CP-23-01263.

Maddox, heard Defendant Field's Motion to Reconsider Restitution (a motion agreed to in the GSA). All parties relevant to the Florida collection action were present and/or represented by counsel. On November 28, 2017, Judge Maddox entered an order modifying Defendant Field's restitution which converted any unpaid balance of restitution at the end of the required probation period into a civil judgment pursuant to S.C.S.A § 17-25-323. Defendant Field completed his probation in 2018 and an Order of Judgement was filed on November 5, 2018, in the amount of \$1,767,634.71, which represented the remaining unpaid balance of restitution.

The Court in the civil case approved the Global Settlement Agreement ("GSA"), as amended by the Addendum, on December 1, 2017. Pursuant to the Global Settlement Agreement ("GSA"), certain payments and property values paid and transferred under the GSA were to be credited towards Field's restitution ordered under *State of South Carolina v. Arthur Field*. The GSA specifically includes the term that "such unpaid balance of restitution may be converted to a civil judgment...." See Exhibit 1 to Receiver's Mot., p. 18, ¶ 1(A)(iv). As such, the GSA incorporates Field's future obligation to continue to pay his restitution ordered by Judge Maddox and does not release CIF's rights to collect under the civil judgment. The original GSA was executed by all parties on or about February 24, 2017. When Field agreed to the Addendum, he specifically recognized that any unpaid portion of his restitution would be converted to a civil judgment and continue to be due as a condition of the GSA. This judgment was contemplated and recognized by the GSA (as amended).

1. The Global Settlement Agreement Did Not Release Defendant Field's Liability or Obligations Due and Owing under His Criminal Restitution.

Both defendants argued that the Global Settlement Agreement ("GSA"), signed by the parties in February 2017 and approved with the Addendum by the Court on December 1, 2017, released all claims by all parties and bars the Receiver's collection action currently pending in the United States District Court in the Middle District of Florida: Capital Investment Funding, LLC

v. Arthur Field and Kathryn Taillon, Case No: 3:19-cv-606-TJC-JRK. A review of the original GSA and its Addendum does not support this contention. The original GSA included the following paragraph related to restitution:

- 8.B. Upon all parties to this Agreement having fully performed their obligations hereunder, no further restitution shall be due from Arthur Field and all restitution obligations of Arthur Field shall be declared SATISFIED IN FULL.

Notably, this paragraph was specifically deleted by the Addendum to the GSA which was signed by Mr. Field and his attorneys. While Ms. Taillon did not sign the Addendum, her counsel was present during the hearing to approve the GSA and the Addendum and raised no objections.² The GSA was approved only with the Addendum addressing restitution and Defendant Field's continuing obligation to satisfy the same. No party to the GSA appealed the December 1, 2017 Order approving the GSA as amended by the Addendum.

A civil settlement agreement, particularly one to which the State was not a party, cannot preclude court-ordered restitution. *See, State v. Morgan*, 417 S.C. 338, 343-44, 790 S.E.2d 27, 30 (2016). Field and Taillon argue the release in the GSA (paragraphs 4 & 5) "released" the restitution or any collection thereof. This cannot be effective as the State was not a party to the agreement. Additionally, the "release" of the obligation of restitution was specifically deleted from the GSA by the Addendum.

Additionally, the collection of the judgment is not a "claim" as contemplated by the GSA, but rather it is the enforcement by an action for collection of what was already owed and ordered. The civil judgment credited Defendant Field for payments already made on the restitution as well

² The Court notes that while there are a few parties who did not sign the Addendum, pursuant to Rule 43(k), SCRCP, the GSA and Addendum were put on the record before Judge Miller.

as payments received due to the GSA. The Court's order amending the GSA, to which Field and Taillon consented³, clearly did not fulfill the requirements of the criminal restitution.

Accordingly, the GSA did not operate as a release of Field's obligations due and owing under his criminal restitution.

2. The Receiver is the Proper Party to Collect on the Outstanding Civil Judgment Arising from Defendant Field's Obligations.

Defendants also argue that, even if the claims were not released, the Receiver is not the proper party who can collect on the civil judgment arising from Field's restitution deficiency. Defendants erroneously conflate criminal restitution with a civil settlement. Criminal restitution and civil settlements are separate and distinct remedies with differing considerations and a civil settlement does not prohibit a court from ordering restitution. *See, State v. Morgan*, 417 S.C. 338, 343-44, 790 S.E.2d 27, 30 (2016).

Defendants argue that the civil judgment for restitution is payable to the victims and the Receiver is not entitled to enforce the judgment. The Order of Judgment was filed with the Clerk for State Grand Jury on November 5, 2018, which converted the remaining balance of restitution owed at the end of Mr. Field's probation into a civil judgment. The Order specifically grants the judgment to Receiver Jerry Saad, as Receiver for Capital Investment Funding. S.C. Code Ann. § 17-25-323(D) and (E) authorizes the judgment creditor (the Receiver in this case) to enforce the civil judgment entered pursuant to 17-25-323 as any other civil judgment. In addition to the fact that the Receiver was involved in the GSA, as the criminal restitution judgment creditor, he is authorized to independently enforce and collect the civil judgment arising from Defendant Field's criminal restitution.

³ While Taillon was not present at the November 27, 2017 hearing to affirmatively consent to the Addendum, Taillon was present and participated in the negotiation of the addendum contents during the restitution modification hearing on November 1, 2016 in *State v. Arthur Fields*, C.A. No.: 12-GS-47-00008. Tr. At 75-76. Further, Taillon's counsel was present at the November 27, 2017 hearing to approve the GSA with the Addendum and raised no objections.

3. The Receiver's Motion does not Require a Separate Action under the South Carolina Declaratory Judgment Act Pursuant to South Carolina Code of Laws § 15-53-10, et seq.

Defendants also argue that the Receiver's motion does not comply with the terms of the South Carolina Uniform Declaratory Judgments Act. [S.C. Code of Laws § 15-53-10, *et seq.*] Although the Receiver couched his motion as being brought under the Declaratory Judgments Act ("SCUDJA"), this Court is not bound by the title of the Receiver's motion, but by its contents and its request. The Receiver's Motion merely seeks to clarify the contents of the GSA which, in essence, is to seek an interpretation of the GSA as it relates to the restitution. By the GSA's terms, this Court retains exclusive jurisdiction regarding interpretation and enforcement of the GSA.⁴ Thus, although the Receiver's motion sought relief under the SCUDJA, the contents of the Receiver's motion are clearly within the ambit of the GSA and this Court's exercise of continuing jurisdiction over its enforcement.

4. Additional Arguments Raised by Defendant Field Have No Merit.

a. This Court Has Subject-Matter Jurisdiction Over the Issues Before the Court.

Defendant Field argues that the Receiver's motion should be dismissed because it improperly attempts to exercise subject-matter jurisdiction over the Florida Homestead statute. Despite Field's argument, this Court makes no ruling or comment on the interpretation or application of the Florida Homestead statute to the particular facts of this case. This Court is simply addressing whether the GSA, the terms of which this court has exclusive jurisdiction to interpret and enforce, allows for the action commenced in Florida. Field and Taillon in their response to Receiver's collection action argue the GSA bars the

⁴ Exclusive judicial assignment is the province of the Chief Justice of the South Carolina Supreme Court who retains the power to assign cases to individual judges as needed. When Judge Miller recused himself from this case, he did so after Field moved for his recusal. Chief Justice Beatty assigned the undersigned to replace Judge Miller pursuant to his authority under the Constitution and laws of South Carolina.

Florida action. This jurisdictional argument requires the interpretation of the GSA by this Court which has exclusive trial jurisdiction to render such. This matter does not require a question of law to be certified to the South Carolina Supreme Court.

b. This Court Has Personal Jurisdiction Over Defendant Field.

Defendant Field argues that this Court does not have personal jurisdiction over him to rule upon the Receiver's motion. Despite the fact that Field misrepresents the timing of his Florida residency to this Court, such is irrelevant to the current motion. Field signed the GSA (including Addendum) and agreed that this Court would have sole and exclusive jurisdiction regarding any dispute related to enforcement, performance, or non-performance. Field thus agreed to this Court's exercise of personal jurisdiction over him and Taillon as it relates to the GSA.

The Receiver's motion seeks to address matters specifically arising from the GSA. Field specifically consented to the jurisdiction of this Court. His residency status before or after consenting to the GSA is irrelevant.

c. The Receiver's Motion is not Precluded by the Clerical Dismissal of this Case.

Field and Taillon both argue that because the Clerk of Court has dismissed this action, the Receiver is required to file a new action and re-serve the parties. The defendants' position ignores the longstanding principle under South Carolina law that a trial court has inherent jurisdiction to enforce settlement agreements entered before it. Kumar v. THIRD GENERATION, INC., 472 S.E.2d 637 (S.C. App. 1995), *citing*, Rock Smith Chevrolet, Inc. v. Smith, 309 S.C. 91, 419 S.E.2d 841 (Ct.App.1992). A motion to enforce the GSA and the Court's Order may be made in the case to which the GSA was approved and the Order entered.

d. The Receiver's Motion is not Barred by Res Judicata, Collateral Estoppel, or Issue Preclusion.

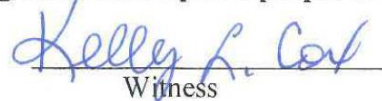
Defendant Field also argues that the Receiver's motion is barred by *res judicata* and collateral estoppel. These legal theories do not apply to the Receiver's action to collect the restitution civil judgment. The collection action is not a new claim, and thus the legal theories argued by Field are not applicable. The GSA did not release or preclude the Receiver's right to collect the remaining restitution, and his collection efforts are not barred by any of the argued legal theories.

e. The Award of Liquidated Damages to the Receiver is Applicable and Warranted.

Field argues that the imposition of liquidated damages was improper. The GSA included a liquidated damages clause to be imposed against any party who seeks to revoke or disqualify any term of this Agreement for any reason:

Subsequent to the execution of this Agreement (and its approval by the Court), should any party file any suit or claim wherein he/she/they/it attempt(s) to revoke or disqualify any term of this Agreement for any reason, the parties agree that the that the prevailing party shall be entitled a minimum of \$250,000.00 as liquidated damages for defending, responding or enforcing the terms of this Agreement. This figure is based upon and derived from the estimated attorney's fees and expenses past litigation has entailed between/among these parties for addressing issues of similar scope and anticipated magnitude. The Court may award a greater sum upon a proper showing by the prevailing party.


Arthur Field


Witness

The obligation to pay restitution was reinforced by its incorporation into the GSA and therefore Field's attempt to argue he is no longer obligated to pay restitution per the GSA is an attempt to disqualify the terms of the GSA. Further, Defendant Field's multiple filings within the state of Florida and his repeated efforts to deny this Court's jurisdiction and to

delay a speedy and just resolution of the matters pending, amply justify the imposition of the \$250,000.00 liquidated damages assessment.

As to the amount, Field specifically agreed to this amount when he negotiated and consented to the terms of the GSA. He cannot now argue that some other value or calculation is required.

As such, the Court finds, as the prevailing party, CIF is entitled to liquidated damages in the amount of \$250,000.00 against Defendant Field, and that such amount should be amended to any collection proceeding and/or judgment against him currently sought to be collected by Capital Investment Funding.

5. Additional Arguments Raised by Defendant Taillon Have No Merit.

a. All Necessary Parties to this Motion Consented to the GSA's Addendum.

Defendant Taillon argues that, because not all parties signed the Addendum, it is not enforceable as to Defendants Field and Taillon, who did consent to its inclusion. The Addendum as noted in the Order approving the GSA only applies to Field and his restitution. The Receiver seeks clarification on whether the GSA releases Field's continuing obligation to pay said restitution. No other parties are necessary to this motion.⁵

During the hearing approving the GSA and Addendum, counsel appeared on behalf of several parties including Taillon. The Order specifically notes that "upon inquiry of this Court, there were no objections to the Addendum." Thus, the GSA, a settlement agreement, became the Order of this Court. For that reason, the requiring of signatures was not a required formality in light of the fact that no one objected to the Addendum. Further, neither the Order approving the GSA, nor the Order approving the Addendum, was ever

⁵ *Supra* note 2.

appealed. It is way too late now to argue there was no voluntary assent to the GSA or the Addendum.

b. The Receiver has the Right to Collect the Judgment and Remains Accountable to this Court for Fulfillment of His Court-Appointed Duties as Receiver.

Defendant Taillon complains that the Receiver has collected but not distributed funds to the victims, per his charge by this Court. The Receiver was tasked with collecting all available assets for the benefit of the victims of CIF. The GSA does not change that. The Receiver remains an officer of the Court with an obligation to collect and administer all assets collected on behalf of CIF. The Receiver is not entitled to “pocket” any proceeds as Taillon suggests. The restitution is owed by Field to his victims and the Receiver was granted the civil judgment to collect and disburse these funds to the victims.

c. Defendant Field’s Payment (or Payments Made on His Behalf) Under the GSA Does Not Prevent the Receiver from Collecting on the Balance Owed on the Civil Judgment Arising from Field’s Restitution Shortage.

Defendant Taillon argues that the Receiver is barred from seeking additional monies from Defendant Field because in some scenarios victims of a crime who reach a civil settlement may be foreclosed from subsequently pursuing claims based upon restitution. Defendant Taillon cites the Wisconsin case, Huml v. Vlazny, 716 N.W.2d 807, 2006 WI 87 (Wis. 2006), in support of this argument. Taillon’s reliance upon this case is misplaced.

The Huml case began by looking at the purpose of criminal restitution and then the language of the settlement agreement. One of the important parts of this opinion outlines three ways to avoid double recovery when there is both criminal restitution and a civil settlement. Specifically, it allows for setoff.

Here, Field received setoff in his restitution from payments made under the GSA to avoid double recovery. With this setoff, there was still a balance of restitution due. Further, as discussed in detail above, the language of the GSA indicates that the obligation of restitution was not released upon approval of the GSA. The continuing obligation to pay restitution does not require further litigation and uncertainty. The obligation of restitution has been known to Field from the beginning and will end upon being paid in full. Any further litigation of this matter comes at Field's denial that he owes any further payments to his victims. Accordingly, the Receiver/victims in this case are not precluded from collecting on the balance of the civil judgment owed by Field under his restitution order.

d. The Civil Judgment was Not a Mere "Insurance Policy."

Taillon argues the agreement to convert the remaining restitution into a civil judgment was an insurance policy if the GSA fell through. This is far from an accurate statement. Restitution was ordered in Field's criminal case to compensate his victims. Further, the payments received in the GSA failed to reach the total amount of restitution ordered, and it was clear from the State and the Court that his remaining obligation would not be considered paid in full upon the approval of the GSA obligations. Nowhere in the record at any time before the Court entering an order approving the GSA (as amended with the Addendum) did Field or Taillon contend the judgment arising from any shortage from Field for his restitution obligations would not be enforceable because such was merely an insurance policy if the parties did not comply with the payments due under the GSA. The plain reading of the GSA and its Addendum, along with the sequence of hearings to obtain final approval, completely contradicts this interpretation.

e. **Judge Miller's Recusal Did Not Necessitate a Dismissal of the Receiver's Motion or This Action.**

Defendant Taillon argues that once Judge Miller had been removed from this case, the Receiver's motion should have been denied because the reason for his retaining jurisdiction was moot. Judge Miller's recusal did not require this case to be dismissed. While the GSA does list Judge Miller as having jurisdiction, it is this Court (not one specific judge) that retains jurisdiction over this matter.

Additionally, Judge Miller's recusal comes after Field's Motion to Recuse and several filed complaints against Judge Miller.

Finally, the undersigned has been appointed by Order of Chief Justice Donald Beatty dated November 9, 2020, to exercise exclusive jurisdiction over this matter. Field may not now claim that because Judge Miller has recused himself this case should now be dismissed. Judge Miller's recusal does not divest this court of jurisdiction.

Conclusion

For reasons stated herein, the motions to reconsider filed by Defendant Field and Taillon are DENIED. This Court's order of December 17, 2020 is reconsidered and this order shall be substituted therefor.

IT IS SO ORDERED!

Jean Hoefer Toal, Chief Justice of the
South Carolina Supreme Court (Retired),
Acting as Circuit Court Judge

March 1, 2021
Columbia, SC



Greenville Common Pleas

Case Caption: William F Tomz , plaintiff, et al vs. Capital Investment Funding Llc ,
defendant, et al
Case Number: 2008CP2303665
Type: Order/Other

So Ordered

Jean H. Toal