

On August 2, 2019, Judge Turner heard Mr. McCutcheon's motion.

On August 9, 2019, Judge Turner filed his Order in Small Claims Court setting aside the May 23, 2019 judgment.

On August 25, 2019, Judge Turner sent a letter to the Parties specifically to the Defendant at the address he supplied to the court scheduling a bench trial for September 11, 2019.

On September 11, Mr. McCutcheon again failed to appear for his hearing. Judge Turner found in favor of Petitioners in the amount of \$10,340.20. Judge Turner filed his Transcript of Judgment with the Small Claims Court on September 11. That Transcript was then filed with the Charleston County Clerk of Court on October 3, 2019.

On September 17, Judge Turner denied Mr. McCutcheon's Motion for a New Trial.

On October 21, the Charleston County Clerk of Court filed Judge Turner's August 9, 2019 Order vacating his May 23, 2019 Order awarding Petitioners \$6,823.20.

After the filing of the October 21 Order, the effective Order from Judge Turner's office regarding the merits of the case was the Transcript of Judgment filed September 11, 2019 awarding Petitioners \$10,340.20.

Petitioners attempted to have the September 11 judgment enforced by the Sheriff, but the execution was returned *nulla bona*.

On February 25, 2020, the clerk of court filed the Honorable Jennifer B. McCoy's Rule to Show Cause, Order, and Order of Reference which referred this matter to the Master. A hearing was set on several occasions; however, the matter was continued based on the difficulty of serving Mr. McCutcheon and the COVID-19 pandemic.

This matter came before the Court on September 11, 2020. Mr. McCutcheon did

not appear. Petitioners explained their attempts to serve Mr. McCutcheon. These included sending notice of the hearing to Mr. McCutcheon by regular and by certified mail. The Post Office did not return the regular mail, but it did return the unclaimed certified mail. Petitioners also attempted service using a process server. While Mr. McCutcheon informed Judge Turner his address was 90 Hanover Street, Apt. A in Charleston, the process server found that Mr. McCutcheon was not living there.

At the September 11, 2020 hearing, the Court instructed Petitioners to serve Mr. McCutcheon by publication. The matter was continued until December 7, 2020.

Petitioners published notice of the hearing in the newspaper. Petitioners also sent notice to Mr. McCutcheon by regular and certified mail. Again, the regular mail did not come back. The certified mail was not claimed. After the September 11, 2020 hearing, Mr. McCutcheon, on two occasions, sent petitioners' attorney a copy of the October 21, 2019 Order vacating the May 23, 2019 judgment. The Order was all that was in the envelope. The envelope had a return address of 90 Hanover Street, Apt A, Charleston, SC 29403 the same address Defendant provided to Judge Turner.

On December 7, 2020, the Court and Petitioners' attorney discussed notice to Mr. McCutcheon of the hearing. First, Mr. McCutcheon was served by publication. Second, Mr. Moskos provided the court with an affidavit of attorney's fees. Attached to the affidavit were 58 exhibits. These exhibits contained numerous letters to Mr. McCutcheon at 90 Hanover Street, Apt A, Charleston, SC. These letters were sent by Petitioner's counsel and the Small Claims Court. There were at least four exhibits (Exhibits 2, 5, 55, and 56) which indicate that Mr. McCutcheon's address is 90 Hanover Street as these documents came from him.

Based on the Court's record, I find that Mr. McCutcheon was served and did receive notice of the December 7 hearing.

Petitioners presented the Court with an affidavit from United Bank which stated that Mr. McCutcheon has sufficient funds in his accounts to satisfy the judgment against him. I further find that Mr. McCutcheon has several bank accounts with sufficient cash to satisfy the outstanding judgment. He also has a residence at 90 Hanover St. which could be used to satisfy the outstanding judgment. He also has tenants who are paying him rent that could go towards the judgment.

I find Petitioners are entitled to their underlying judgment, post judgment interest at 18% per annum, costs for these proceedings, and additional attorney's fees.

Post judgment interest runs at 18% per annum per the Parties' contract. Renaissance Enterprises, Inc. v. Ocean Resorts, Inc., 483 S.E.2d 796, 326 S.C. 460 (Ct. App. 1998). Post judgment interest began accruing on September 12, 2019, the day after the judgment was filed in Small Claims Court. Interest from September 12, 2019 until December 7, 2020 equals \$2,384.73. For everyday thereafter interest shall accrue at the rate of six dollars and two cents (\$6.02) until the judgment is paid or until the filing of this Order, whichever comes first. Once this Order is filed, post judgment interest will have to be recalculated to take into account the new judgment amount at 7.25% starting January 15, 2021.

Since September 11, 2019, Petitioners have incurred several costs in attempting to collect the outstanding judgment. I find that Petitioners are entitled to \$589.66 for the additional costs they have paid.

In Small Claims Court, Petitioners made a claim for and received an award of

attorney's fees pursuant to the Parties' contract. Petitioners requested additional attorney's fees in the amount of \$21,060.00 incurred from September 11, 2019 through December 6, 2020.

The Court has reviewed Petitioners' counsel's affidavit of attorney's fees and finds that Mr. McCutcheon has made collecting the outstanding judgment very difficult by hiding from Petitioners and the Court. Mr. McCutcheon's efforts to hide from Petitioners and the Court have also needlessly wasted Petitioners' and the Court's resources as multiple hearings have had to be scheduled and great effort and expense has had to be made and has been incurred to provide Mr. McCutcheon with notice of the proceedings. The time listed by Mr. Moskos, 54.0 hours, is reasonable based on Mr. McCutcheon's actions and the legal requirements of notice imposed on Petitioners to get to this point. Counsel's efforts have resulted in a judgment against Mr. McCutcheon and evidence of resources available to satisfy the judgment. This is an excellent result. Should Mr. McCutcheon not pay the attorney's fees incurred, Petitioners would be responsible for the outstanding fees which they likely could pay. Petitioners' counsel is a long standing, respected member of the Bar. I further find that a fee of \$390 to \$450 per hour is a reasonable fee for this area for civil litigation.

Nonetheless, I find that the original amount of \$3,787.50 owed to Petitioners, is a small amount when compared to the \$26,481.00 requested by Petitioners to cover the fees in the Small Claims Court (\$5,421.00) and in going through the Supplemental Proceedings process (\$21,060.00). Thus, I think it is equitable to award Petitioners \$6,146.40 in additional attorney's fees. Therefore, it is,

ORDERED that Petitioners' judgment be increased by \$2,384.73 for post judgment

interest from September 12 until December 7, 2020. Post judgment interest shall continue to accrue by \$6.02 per day until the judgment is paid or the date of the filing of this Order arrives. At that time, the post judgment interest will need to be recalculated. Petitioners shall also receive additional costs of \$589.66 and additional attorney's fees of \$6,146.00. The total judgment shall be \$19,460.59 which consists of 1) the original judgment of \$10,340.20, 2) post judgment interest of \$2,384.73, 3) additional costs \$589.66, 4) additional attorney's fees of \$6,146.00. At the time of payment, additional post judgment interest is to be added to the judgment in the amount of \$6.02 per day from December 8 until this Order is filed. It is further,

ORDERED that United Bank turn over to C. Steven Moskos, PA the sum of \$19,460.59, with the additional interest stated above, from Mr. McCutcheon's account ending in 9135, the Senior Checking account. If account 9135 no longer has sufficient money to satisfy the outstanding judgment, United Bank is to pay money from the account ending in 2070, the Free Business Checking account. United Bank is to continue issuing money from Mr. McCutcheon's accounts until the judgment is paid or the funds are depleted.

Should the United Bank accounts fail to satisfy the outstanding judgment, the Sheriff is directed to sell the residence at 90 Hanover St. to satisfy the judgment. Additionally, the tenants located at 90 Hanover St. are directed to pay to C. Steven Moskos, PA any and all rents that they would pay to Mr. McCutcheon until such time as the house is sold or the judgment is satisfied.

AND IT IS SO ORDERED.



Charleston Common Pleas

Case Caption: Jessica L Means VS Donald B Mccutcheon

Case Number: 2019CP1003689

Type: Order/Supplemental Proceedings Order

So Ordered

s/Mikell R. Scarborough 3062