

specifically your interest in 90 Hanover Street in Charleston, not exempt from execution, until further order of this Court. (Emphasis added.)

On December 7, 2020, a supplemental proceedings hearing was conducted. Mr. McCutcheon did not appear in court after notice of the hearing. The hearing resulted in this Court's Order, filed January 25, 2021 which specifically states:

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.

As of January 25, 2021, the judgment against Mr. McCutcheon totaled \$19,460.59².

At the March 11, 2021 hearing, Petitioners' counsel informed the Court that he attempted to execute on the accounts at United Bank; however, when he served the bank with the Court's Order to send him money from Mr. McCutcheon's account, United Bank notified him that Mr. McCutcheon had withdrawn all his money from the accounts at United Bank. The court finds this was an attempt by Defendant to conceal his assets so Petitioners could not collect on the judgment.

Petitioners also served Mr. McCutcheon's tenants with a copy of this Court's last Order. (See filed Affidavit of Service.) The tenants have not delivered any money to Petitioners' counsel as required by that Order.

LAW

² This amount included post judgment interest. Since Mr. McCutcheon's actions have extended this matter, post judgment interest shall continue to accrue pursuant to the Parties' contract.

SC Code §15-17-20(4) states, “the defendant may be arrested, as prescribed in this article, in the following cases...(4) When the defendant has removed or disposed of his property or is about to do so with intent to defraud his creditors;”.

A court has the inherent authority to punish conduct "calculated to obstruct, degrade, and undermine the administration of justice..." State ex rel. McLeod v. Hite, 251 S.E.2d 746, 272 S.C. 303 (1979).

FINDINGS

Mr. McCutcheon has continuously avoided involvement in this litigation and has intentionally tried to conceal himself from the court. He has received numerous notifications that this litigation was proceeding; however, he has chosen to avoid coming to court in an effort to avoid the legal process.

Mr. McCutcheon has intentionally violated Judge McCoy's order in transferring and disposing of his assets which were located at United Bank. He has also intentionally violated and interfered with this Court's Order which was designed to satisfy Petitioners' judgment. Mr. McCutcheon's actions were calculated to obstruct, degrade, and undermine the administration of justice. Such conduct shall not be condoned by this Court. I find that Mr. McCutcheon is in contempt of court. I further find that Mr. McCutcheon removed or disposed of his assets in an attempt to defraud Petitioners.

As a result of Mr. McCutcheon's refusal to pay Petitioners' judgment and his efforts to hide his assets to avoid paying the judgment, he has wasted the Court's resources and caused Petitioners to incur additional attorney's fees and costs.³ Therefore, it is

³ Petitioners have made three applications for fees – 1.) before Judge Turner September 11, 2019 - \$5,421.00; 2.) before this Court on December 7, 2020 for \$21,060.00 (covering September 11, 2019 through December 6,2020), and 3.) March 11, 2021 - \$15,522.00 (covering December 7, 2021 through March 11,2021) for a total of 42,003.00. I find that Petitioners' Counsel has satisfied the six Baron Data

ORDERED that Mr. McCutcheon is now in contempt of Court. It is further

ORDERED that Mr. McCutcheon be arrested by an officer of any law enforcement agency. The arresting agency shall notify this Court immediately upon the arrest of Respondent and to likewise notify the attorney for the Petitioners. It is further

ORDERED that Mr. McCutcheon shall then be brought before this Court for further proceedings. It is further

ORDERED that Petitioners may continue to attempt to satisfy the outstanding judgment. If Petitioners locate any other assets of Mr. McCutcheon, real or personal, Petitioners may seek the assistance of the Sheriff to seize and to sell said property to be applied towards the judgment. Any person, business, bank, credit union, or other entity which has assets belonging to Mr. McCutcheon is hereby ordered to deliver those assets to Petitioners' counsel up to the amount of the judgment, including accrued post judgment interest. Any person, business, bank, credit union, or other entity which has notice of this Order shall not turn over or release the assets in his/her/its possession to Mr. McCutcheon until such time as the outstanding amount owed Petitioners is paid. It is further

ORDERED that Plaintiff is hereby granted a constructive trust over Mr. McCutcheon's rental properties and ORDERS that the tenants are directed to pay to Petitioners' counsel, upon written demand, any and all rents they would pay to Mr. McCutcheon. Plaintiff, through its counsel, shall hold the funds in escrow, acknowledge credit to the tenants for their payment of rent, and account for all funds received pending further order of this court. Failure to abide by this order shall be considered contempt of

factors; however, the amount of the debt and the fact that the basis for a fee award is a contract between the Parties, as opposed to a statutory attorney fee provision, allows the Court to reduce the fees awarded.

court punishable by fine and/or imprisonment. It is further

ORDERED that Petitioners are entitled to an additional \$10,000 for the period of December 7, 2020 through March 11, 2021 to go towards their attorney's fees. Thus, the judgment against Mr. McCutcheon now amounts to \$27,219.42. This judgment consists of the original judgment of \$10,340.20, costs incurred during supplemental proceedings of \$733.22, and additional attorney's fees incurred during the supplemental proceedings process of \$16,146.00. Mr. McCutcheon shall also have to pay post judgment interest at eighteen percent per annum as allowed under the contract from September 12, 2019 until payment of the judgment. Post judgment interest shall also accrue on the additional awards against Mr. McCutcheon from the date of their entry in the record until the judgment is paid. It is further

ORDERED that Petitioners prior Motion to Alter or Amend the Judgment is denied.

AND IT IS SO ORDERED!



Charleston Common Pleas

Case Caption: Jessica L Means VS Donald B Mccutcheon , defendant, et al

Case Number: 2019CP1003689

Type: Order/Supplemental Proceedings Order

So Ordered

s/Mikell R. Scarborough 3062