

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

CASE NO.: 2019-CP-23-07305

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,

ORDER

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May 19 2021

SC Court of Appeals

Petitioner,

vs.

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

Respondents.

This matter came before the Court on March 4, 2021 upon the Motion to Enforce Discovery Sanctions (the “Motion”) 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 March 4, 2021 at 2:00 PM were Rory D. Whelehan for the Receiver, Dean Hayes for Royal Blue Lending House, LLC, and Shawn M. French for David DeCarlis, TJ Ventures of South Carolina, LLC, and 3009 Palm Blvd., LLC.

Upon consideration of the Motion, the statement of the Court at the outset of the hearing, the documents filed and provided, and the arguments of counsel, the Court finds as follows:

1. Receiver served the Discovery Requests on Royal Blue through its counsel, Mary Caskey, on September 22, 2020. Royal Blue’s responses were due on or before November 6, 2020.

2. Ms. Caskey withdrew as counsel for Royal Blue on November 4, 2020, and on December 4, 2020 Dean Hayes filed a Notice of Appearance as new counsel for Royal Blue.
3. As of December 2, 2020, Royal Blue had not served answers, objections, or responses to the Discovery Requests, and Receiver filed a Motion to Compel.
4. The hearing on the Motion to Compel was held on January 11, 2021 at 9:30 AM via Zoom. Receiver, Mr. Hayes, and Mr. French attended the hearing via Zoom.
5. On January 19, 2021, this Court entered an Order granting Receiver's Motion to Compel and directing Royal Blue to respond to Receiver's Discovery Requests fully and completely on or before January 25, 2021 or incur sanctions of \$500.00 per day starting January 26, 2021 until Royal Blue fully and completely responds to Receiver's Discovery Requests.
6. On January 25, 2021, Receiver received Royal Blue's responses to the Discovery Requests.
7. Upon Receiver's review of Royal Blue's responses, Receiver concluded that the responses were incomplete.
8. Receiver consulted with counsel for Royal Blue over ten (10) days regarding Receiver's questions and concerns with Royal Blue's responses.
9. On February 2, 2021, Mr. Hayes served Royal Blue's Amended Answers to Receiver's First Set of Interrogatories ("Amended Responses") and noted that Royal Blue had no further documents to provide.

10. Upon Receiver's review of the Amended Responses and correspondence with Mr. Hayes thereafter, Receiver concluded that the responses remained incomplete, and sought relief from this Court through the instant Motion.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. Receiver's Motion is granted in part; and
2. Royal Blue is directed to make Frank Evelyn as the sole designee of Royal Blue¹ available for a deposition on or before March 25, 2021. No extension will be allowed or granted; and
3. At least seven (7) days prior to the deposition of Frank Evelyn, Royal Blue is directed to provide to Receiver the following documents and records²:
 - a. emails, letters, account statements, payment advices, credit notices, or other documents that evidence communications or correspondence by and between Royal Blue, or anyone on its behalf, and David DeCarlis or anyone on his behalf;
 - b. emails, letters, account statements, payment advices, credit notices, or other documents that evidence communications or correspondence by and between Royal Blue, or anyone on its behalf, and Bayview Trust or anyone on its behalf;
 - c. emails, letters, account statements, payment advices, credit notices, or other documents that evidence communications or correspondence by and between Royal Blue or anyone on its behalf, and any other party relating to the loan transaction

¹ Upon inquiry by the Court, the Court concludes that there are no possible designees for Royal Blue other than Mr. Evelyn since Mr. Evelyn is the only natural person employed, associated, or otherwise affiliated with Royal Blue with knowledge of the facts of this case.

² While not specifically addressed during the January 11, 2021 hearing, the Court requires the below documentation due to the issue of whether said loan actually occurred and the documentation related thereto, including origination, transfer of funds and transfers thereafter.

between Royal Blue and David DeCarlis comprising the subject matter of this action;

- d. any and all documents relating to information and release price amounts that Royal Blue required to release the several properties that were originally subject to the Mortgage;
- e. cancelled checks, electronic records of checks, bank statements, wire transfer confirmations, ACH documents, HUD statements, and any other documents substantiating and evidencing that money was transferred in exchange for the releases of the properties that were originally subject to the Mortgage;
- f. bank names and bank account numbers evidencing the specific bank account(s) from which money was withdrawn and into which money was deposited upon each release of property from the Mortgage;
- g. cancelled checks, electronic records of checks, bank statements, wire transfer confirmations, ACH documents, HUD statements, and any other document relating to, evidencing, and substantiating the initial disbursement of loan proceeds to David DeCarlis or anyone on his behalf;
- h. cancelled checks, electronic records of checks, bank statements, wire transfer confirmations, ACH documents, and any other document relating to, evidencing, and substantiating each and every credit or payment made by or on behalf of David DeCarlis on the Royal Blue account statement for the loan to David DeCarlis;
- i. bank names, bank account numbers, and related documents evidencing the specific bank account(s) from which money was withdrawn and into which bank account

money was deposited 1) at the original funding of the loan and 2) at each and every payment made by or on behalf of David DeCarlis toward the loan; and

- j. mortgage interest statements provided by or on behalf of Royal Blue to David DeCarlis or anyone on his behalf.
4. The Court withholds any determination of whether the Receiver is entitled to attorney fees and costs relative to the present motion and whether sanctions will be imposed.

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)