

STATE OF SOUTH CAROLINA ) IN THE COUNTY OF COMMON PLEAS  
COUNTY OF GREENVILLE ) CASE NO: 2019-CP-23-07305

Rory D. Whelehan, as Receiver, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Royal Blue Lending House, LLC, et al, )  
 )  
Defendants. )  
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**RECEIVED**  
**May 19 2021**  
**SC Court of Appeals**

ORDER

This matter is back before the Court pursuant to Receiver’s Renewed Motion for Contempt and Sanctions filed on March 26 2021. As more fully explained below, the motion is granted.<sup>1</sup>

A brief recitation of the relevant background of this case is critical to understand the necessity of the Court’s ruling.

**HISTORY OF 2010-CP-23-03860**

This action arises out of a judgment entered against Buncombe Professional Park, LLC (an LLC owned by David DeCarlis) and David DeCarlis in the amount of \$491,978.13 on August 2, 2011. The judgment arose out of a mortgage foreclosure action brought by Independence National Bank and followed the sale of certain real property by the Court. In that underlying action, based upon a closing attorney mistake, a second mortgage on the property held by DeCarlis was not satisfied at closing. The uncontroverted evidence at the foreclosure

<sup>1</sup> This Order is issued pursuant to authority as Special Circuit Court Judge pursuant to Order of the Chief Justice of the South Carolina Supreme Court and/or Master in Equity.

hearing was that the parties intended that Independence National Bank would, in exchange for its loan of \$1.65 million, hold a first mortgage position. Instead of agreeing to subordinate his previously recorded second mortgage, DeCarlis argued that his second mortgage had now become a first mortgage and held priority over the Independence National Bank \$1.65 million mortgage. The trial court ruled in favor of Independence. Thereafter, Buncombe and DeCarlis appealed. The trial court's Order was ultimately upheld as set forth in *Independence Nat. Bank v. Buncombe Professional Park, LLC*, 769 SE2d 663 (SC) 2015. See, also *Independence Nat. Bank v. Buncombe Professional Park, LLC*, 741 SE2d 572 (SC App. 2013).

Once the above appeals were resolved, which took some 4 years, and in an effort to collect the debt, Independence obtained an execution against real property on April 16, 2015 and August 7, 2018.

After hearings related to the discovery of assets and at the request of Independence, the Court appointed a Receiver to locate and marshal any assets of Buncombe and DeCarlis through an Order filed November 12, 2019. This Order was appealed by Defendants. Thereafter, Defendants appealed the Court's Order filed December 17, 2019 finding them in contempt of Court for failure to repatriate assets. See, also Order filed February 13, 2020. Thereafter, a charging Order issued by the Court was filed on June 9, 2020. Defendants have also appealed this Order.

Thereafter, on February 4, 2021, the Court of Appeals issued a remittitur for failure of Defendants to submit briefs relative to the appeal filed July 10, 2020. Thus, in 2010-CP-23-03860, the current issues remaining on appeal are appointment of a Receiver and the contempt/repatriate assets Order.

Turning back to the facts in the underlying lawsuit (2010-CP-23-03860), while Buncombe and DeCarlis were delinquent on the mortgage payments, and shortly prior to Independence instituting suit, DeCarlis established a trust, Bayview Trust, located in the Cook Islands, which is a series of islands in the South Pacific. DeCarlis was the settlor and sole beneficiary of this Trust. The Bayview Trust was to administer trust funds it purportedly held in the form of a CD of over \$1,000,000.00 funded by a loan from Royal Blue Lending LLC (an entity organized in the Isle of Nevis, a small Caribbean Island) executed by DeCarlis. The Trust would then purportedly use proceeds from the CD to pay off the mortgage debt to Royal Blue Lending, LLC. DeCarlis admits that both the Trust and the Royal Blue loan were established in consultation with a Florida law firm identified on its website as [assetprotectionattorneys.com](http://assetprotectionattorneys.com); which is a law firm specializing in “protecting” assets from creditors. See, 9/20/2019 Transcript, p. 17. As part of the Royal Blue loan, DeCarlis mortgaged multiple pieces of real property he owned in South Carolina, including his primary residence and beach house on the Isle of Palms. The promissory note executed between DeCarlis and Royal Blue was executed February 25, 2010 and the mortgage was recorded on March 11, 2010. Independence filed its Lis Pendens in the mortgage foreclosure action on March 11, 2010. Despite significant documentary evidence to the contrary, according to DeCarlis, the indebtedness to Royal Blue is still outstanding.

As established by testimony noted above, DeCarlis admits that the Bayview Trust was initially established by him and he was the sole beneficiary. Approximately two years ago, DeCarlis testified that he changed the beneficiary from himself to his dependents. DeCarlis has also admitted that he has no dependents.

DeCarlis also admitted that over the last several years, at his direction, Bayview Trust funded a loan of \$100,000.00 for a local investment opportunity of a friend of his in Spartanburg,

South Carolina. See, 9/20/2019 Transcript, p. 21-23. DeCarlis has also admitted that Bayview Trust, at his direction, has funded his payment of personal taxes and his personal credit card use. See, 9/20/2019 Transcript, p. 25-26. However, DeCarlis testified that, despite his ability to obtain funds from Bayview Trust as noted above, Bayview Trust has refused to allow him access to funds to enter into a compromised settlement of the outstanding judgment debt owed to Independence.

### **RECEIVER'S ACTIONS**

The Receiver instituted the present independent action seeking collection of assets in 2019-CP-23-07305. On December 29, 2020, DeCarlis filed an appeal to an Order granting Receiver's motion to dismiss certain counterclaims filed against the Receiver by DeCarlis. Then, on March 17, 2021, DeCarlis appealed the Order denying his motion to remand to the circuit court.

The Receiver also instituted an action found at 2020-CP-23-00925 seeking to collect assets. On November 3, 2020, Tiffany DeCarlis, the wife of David DeCarlis, filed an appeal to an Order granting Receiver's motion to dismiss counterclaims filed against him.

### **ISSUES INVOLVING ROYAL BLUE**

In the present action pending before the Court (2019-CP-23-07305), the Receiver, in his efforts to locate assets, brought this action against Royal Blue. DeCarlis asserts that Royal Blue Lending House, LLC loaned him \$1,003,339.12. As noted, Royal Blue is located outside of the U.S.A. and on the Isle of Nevis.<sup>2</sup> As part of that transaction, Royal Blue initially held a 1st mortgage interest on a single member limited liability company owned by DeCarlis, consisting of five (5) properties, including his residence in Greenville and a beach house on the Isle of

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<sup>2</sup> It is uncontroverted that Royal Blue is not licensed or registered to do business in South Carolina nor in the U.S.A. See, Receiver Affidavit filed 12/18/2019.

Palms, South Carolina. The Royal Blue mortgage was recorded March 11, 2010 in the Greenville County ROD Office. The Lis Pendens in the action in 2010-CP-23-03860 was also filed March 11, 2010. The Bayview Trust, with Defendant serving as both the settlor and the sole beneficiary, was established May 27, 2009 and then purportedly funded sometime after March 11, 2010 with the Royal Blue loan proceeds. According to testimony, the Trust has a value of over \$1,400,000.00.

The Receiver served discovery requests on Royal Blue through its counsel. The responses were due on or before November 6, 2020. Prior to filing responses, Royal Blue's initial counsel withdrew from representation on November 4, 2020 and on December 4, 2020 Royal Blue retained new counsel.

In that no discovery had been produced, a hearing on Receiver's motion to compel was held on January 11, 2020. Following that hearing, the Court issued an Order filed January 19, 2020, granting Receiver's motion to compel and directing Royal Blue to respond to the discovery requests fully and completely on or before January 25, 2021 or incur sanctions of \$500.00 per day starting January 6, 2021 until such time as Royal Blue fully and completely responded to Receiver's discovery requests.

On March 4, 2021, pursuant to Receiver's motion to enforce discovery sanctions, the matter was before the Court yet again with Receiver contending that Royal Blue had not fully complied with discovery requests. Following this hearing, the Court issued an Order filed March 11, 2021<sup>3</sup> directing that Royal Blue provide the specifically designated materials and documents at least seven (7) days prior to the deposition of the designated representative of Royal Blue.

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<sup>3</sup> The Order filed March 11, 2021 was also inadvertently filed again on March 15, 2021.

Further, in this Order, the Court noted that Royal Blue's counsel designated Frank Evelyn as the sole designee of Royal Blue. See, 3/4/2021 Transcript, p. 9.

The Receiver scheduled and properly noticed Frank Evelyn's deposition for March 24, 2021. Royal Blue never provided to Receiver the Court ordered discovery documents. Further, the designated designee of Royal Blue did not appear for the Court ordered deposition. At no point prior to the date and time designated by the Court did Royal Blue ever object to the production of the documents nor the lack of availability of Mr. Evelyn nor file a motion to alter or amend the March 11, 2021 Order.

At the hearing held on April 7, 2021, counsel for Royal Blue asserted that he had attempted to communicate with the Receiver regarding scheduling the deposition of Mr. Evelyn, but that, based on communication difficulties with his client, he was unable to effectively do so as to the scheduling. However, there was never any substantive explanation or basis presented to the Court for Royal Blue to have not complied with the clear language of the Court's Order dated March 11, 2021 regarding production of full and complete discovery documents, nor the failure of Mr. Evelyn to appear at the deposition. Further, while Royal Blue attorney made some attempts at communication with the Receiver, it is clear that neither the Court nor the Receiver were ever advised that Mr. Evelyn would not appear for the Court ordered deposition. Rather, counsel for Royal Blue now appears to argue that the appeal filed by DeCarlis on March 17, 2021 impacted the ability of this Court to address issues relative to the March 11, 2021 Order. The Court is of the opinion that, even if such issue had been raised prior to time for production of the required documents or the deposition, the assertion would have been summarily dismissed.

During arguments for sanctions held April 7, 2021, counsel for Royal Blue also advised the Court that an appeal to the March 11, 2021 Order had been filed less than two (2) hours prior to the hearing held on April 7, 2021.

Critical to note is that this is not an issue involving only discovery abuses or production of documents or scheduling a deposition. Rather, it is squarely dealing with the integrity and enforceability of a clear and specific Court Order. The March 11, 2021 Order set forth specific time frames and documents and deposition schedule based upon the history of the case and the blatant unwillingness of Royal Blue to produce documents necessary for Receiver to continue in his inquiry. Further, the DeCarlis appeal filed March 17, 2021 in no way impacts the issues relative to Royal Blue and the Order filed March 11, 2021. Nor does the March 17, 2021 appeal by DeCarlis in any manner whatsoever deprive this Court of the jurisdiction to proceed in the action relative to the Royal Blue issues.

The Court finds that Royal Blue has failed and refused to comply with the clear language of the Order filed March 11, 2021. Further, the arguments now presented by Royal Blue's attorney were never raised at the hearing on March 4, 2021 nor following the Order filed March 11, 2021. In fact, the arguments were never presented to the Court until **after** the time had expired for both the production of documents and requiring the designee specifically named by Royal Blue's attorney to appear for a Court ordered deposition.

It is likewise critical to note that during the course of proceedings in 2010-CP-23-03860, documents have been presented to the Court by Independence National Bank's counsel that the debt due to Royal Blue has been repaid in full. See, 9/20/2019 Transcript p. 24. Also, the Receiver's amended Petition filed January 10, 2020, Exhibit I from DeCarlis's CPA shows full repayment of the Royal Blue loan on February 3, 2017 via a payment of \$631,750.00. DeCarlis

contends that there has not been a repayment and that the documents must have been issued in error. See, 9/20/2019 Transcript, p. 23, p. 26. Further, the Receiver has presented a fully executed Release on the Isle of Palms note and mortgage, but never publicly recorded, on behalf of Royal Blue and signed by Frank Evelyn dated May 23, 2012. See, Receiver's Affidavit Ex. A, 4/7/2021, p. 83.

The Court ordered documents to be produced by Royal Blue and the deposition of the representative designated by their attorney for the deposition are absolutely critical for the Receiver and for this Court to determine the heavily contested facts involved herein. Quite simply, if the documents and testimony of the Royal Blue representative had effectively established what DeCarlis contends, then the analysis and the case involved herein would necessarily end. However, conversely, if the Royal Blue indebtedness has been paid, as the documents presented from DeCarlis's CPA and the Release dated May 23, 2012 state, or if the Royal Blue loan was simply a sham done to "protect" assets, then DeCarlis has perjured himself. And, such perjury would in no way be impacted by any time constraints found in 15-59-30.

In totality of the record, the Court finds that Royal Blue has intentionally and willfully violated the clear language of the Order filed March 11, 2021. Thus, Royal Blue Lending House, LLC is hereby found and held in civil and criminal Contempt of Court. The Court also strikes the Answer filed by Royal Blue in light of Royal Blue's blatant refusal to comply with an Order of this Court. See, *Griffin Grading and Clearing v. Tire Service Equip.*, 511 SE2d 716 (SC App. 1998).

Civil contempt must be shown by clear and convincing evidence, which is the case herein. Further, criminal contempt must be shown beyond a reasonable doubt. Likewise, such has clearly been established herein. See, *DiMarco v. DiMarco*, 713 SE2d 631 (SC 2011).

Contempt results from the willful disobedience of a Court Order and the record presented to the Court herein clearly and specifically reflects and establishes the civil and criminal contemptuous conduct. See, *Ex parte Cannon* 685 SE2d 814 (2009).

As relates to the civil contempt of Court, the Court enforces the conditions of the Order filed March 11, 2021 and imposes the ongoing sanctions of \$500.00 per day, starting January 26, 2021 up through the date of this Order being filed, that being 79 days. This amounts to \$39,500.00 and shall be payable within 21 days to the Greenville County Clerk of Court. As relates to criminal contempt the Court necessarily has the inherent power to punish for contempt. In fact, criminal contempt is essential to the preservation of order in judicial proceedings and to the enforcement of judgments, orders and directives of the Court. Otherwise, there can be no due administration of justice. Without this inherent power, court orders become merely suggestions and requests that a party such as Royal Blue would have no compulsion to otherwise honor. And, as noted above, Royal Blue never voiced any objections to the Court ordered production of the documents or the deposition during the March 4, 2021 hearing and never raised any objections to the Order filed March 11, 2021, until it filed its appeal to that Order less than two (2) hours prior to the April 17, 2021 hearing.<sup>4</sup> Royal Blue simply chose to willfully violate the clear Order of the Court and then challenge this Court to enforce its Order. And, it willingly forfeited its opportunity to provide evidence to the Receiver and this Court that DeCarlis has not perjured himself. It has also willingly forfeited its right to provide any proof of the substantive validity of the note, mortgage or balance that may actually be due.

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<sup>4</sup> Orders involving discovery are typically not immediately appealable. *Sanders v. Savannah Highway Automotive Co.*, 852 SE2d 744 (SC App. 2020).

As relates to sanctions, the Court awards the Receiver attorneys' fees and costs in the amount of \$16,607.73. See, Receiver Aff. Ex. G 4/7/2021. See, *Ex parte Cannon*, *id.* Royal Blue shall pay this amount to the receiver within 21 days.

Notwithstanding the above, in that Royal Blue has chosen not to present any evidence or proof as to the validity in any regard of the purported loan and mortgage entered into between it and DeCarlis or any of his solely owned LLCs or any payments and balance that may be due, the Court directs that the ROD for Greenville County shall cancel the mortgage recorded March 11, 2010 in the Greenville County ROD Office and that the ROD for Charleston County shall cancel the mortgage recorded May 4, 2010 in Book 0120, Page 421. As part of the cancellation, the respective RODs shall note the cancellation is being done pursuant to this Order.<sup>5</sup>

The Receiver has also requested fees and costs from Royal Blue's attorney based upon failure of Mr. Evelyn to appear at the deposition. The Receiver maintains, even though there was some amount of contact from Royal Blue's attorney, that since there was an Order in place compelling the deposition, he necessarily had to prepare for and appear at the deposition or run the risk of being sanctioned for failure to comply with the Order filed March 11, 2021. However, Royal Blue obviously chose a different approach in choosing to not comply with the March 11, 2021 Order.

In light of the fact that Mr. Evelyn was under Order to appear for his deposition and that Royal Blue never filed a motion to amend the Order of March 11, 2021, or otherwise contact the Court, the Court finds the Receiver's request appropriate and grants the same. Based upon the

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<sup>5</sup> As an additional basis for ordering cancellation, the Court takes notice that according to the South Carolina Secretary of State, Royal Blue is not registered to do business in South Carolina. Further, and as relates to the Charleston County real property, the unrecorded Release executed by Royal Blue shows Royal Blue released its mortgage lien against DeCarlis and 3009 Palm Blvd., LLC on May 23, 2012. See, Receiver's Aff., Ex A, p. 83, 4/7/2021. Finally, the exhibit from DeCarlis CPA shows the Royal Blue debt has been paid off. See, Transcript 9/20/2019, p. 24.

Receiver's Affidavit filed April 7, 2021, the Court awards the Receiver \$3,410.00 in attorneys' fees and \$269.00 in costs, with the same to be paid by the law firm of McCabe, Trotter & Beverly directly to the Receiver within 21 days of this Order.<sup>6</sup> Such relief is mandated based upon the unique and compelling facts of this case. And, the fees and costs would not have been incurred by the Receiver had Royal Blue filed a substantive motion seeking to delay or reschedule the deposition or raised a substantive basis why the deposition should not be held.

The Court also notes that, as with the October 8, 2019 Order dealing with sanctions for contempt and the possible perjury of Mr. DeCarlis, as well as the findings, conclusions and directives contained herein, are in no way impacted by any applicable period for collection of judgments as found in 15-39-30. Rather, the contempt findings and Orders must necessarily extend beyond any period for collection of judgments in order to protect the integrity, sanctity and validity of Orders of the Court. Otherwise, contempt Orders being allowed to expire at the same time as the judgment collection period would result in unequal, unfair and inherently diminished authority and sanctity of the judicial process and the rule of law that our system of justice must all necessarily operate under.

Therefore, it is Ordered, Adjudged and Decreed as follows:

1. That Royal Blue Lending House, LLC is hereby held in both civil and criminal contempt of Court.
2. As for the civil contempt, the Clerk of Court's Office shall enter a judgment against Royal Blue in the amount of \$39,500.00, with said funds being payable to the Greenville County Clerk of Court's Office within 21 days.

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<sup>6</sup> While arguably Receiver is entitled to a greater award, the Court allows only the 3/19/2021 charge of \$560.00, the 3/20/2021 charge of \$300.00, the 3/22/2021 charge of \$2,500.00 and costs of 3/23/2021 and 4/6/2021 of \$269.00. All were reasonably and necessarily incurred relative to Evelyn's Court ordered deposition.

3. As to the criminal contempt, the Court finds that the Clerk of Court's Office shall enter a judgment against Royal Blue in the amount of \$16,607.73 with said funds being paid to Receiver within 21 days.
4. The law firm of McCabe, Trotter & Beverly shall pay to the Receiver the amount of \$3,679.00 as reasonable attorney fees and expenses relative to the deposition that was Court ordered for March 24, 2021. Said amount to be paid within 21 days.
5. That the Greenville County ROD shall immediately cancel the Royal Blue mortgage recorded March 11, 2010 in Book MO 5072 at Page 5776-5782 in the Greenville County ROD Office and the Charleston County ROD shall immediately cancel the mortgage recorded May 4, 2010 in Book 0120 at page 421 in the Charleston County ROD Office.
6. That Receiver shall serve certified copies of this Order on both ROD Offices.

AND IT IS SO ORDERED.

JUDGE'S ELECTRONIC 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)