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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Master-in-Equity
The Honorable Charles B. Simmons, Jr.

Case No. 2019-CP-23-07305
Appellate Case No.: 2021-000534

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,

Respondent,

v.

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

Of Whom David D. DeCarlis and Royal Blue Lending House, LLC, are the

Appellants.

RESPONDENT'S RETURN AND OBJECTION TO APPELLANT'S MOTION TO REQUEST
TRANSCRIPT OUTSIDE OF DEADLINES

Respondent 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 ("Respondent" or "Receiver") hereby files this Return

and Objection to Appellant's Motion to Request Transcript Outside of Deadlines (the "Objection"). In support of the Objection, Receiver states as follows:

DAVID DECARLIS DOES NOT HAVE STANDING TO TAKE APPEAL

1. This appeal arises from the entry of a judgment against David DeCarlis ("Mr. DeCarlis") and efforts both prior to and after the appointment of Receiver by Judge Simmons.
2. The judgment expires no earlier than August 2, 2021. Receiver was appointed on November 12, 2019 in the original judgment action case (Case No. 2010-CP-23-03860) (the "Main Case").
3. The Notice of Appeal filed in this case states that Mr. DeCarlis and Royal Blue Lending House, LLC ("Royal Blue"), are appealing the April 19, 2021 Order. Royal Blue alone is appealing the other two orders.
4. The April 19, 2021 Order of Judge Simmons on Receiver's Renewed Motion for Discovery Sanctions related to Royal Blue's failure to comply with discovery requests and an order of the court. The March 15, 2021 Order of Judge Simmons granted in part Receiver's Motion for Discovery Sanctions and directed Royal Blue to provide documents, information, and its representative for a deposition. The August 14, 2020 Order denied Royal Blue's Motion to Dismiss pursuant to Rule 12(b) SCRPC in the Royal Blue Case.
5. Rule 201(b) SCACR states that "Only a party aggrieved by an order, judgment, sentence or decision may appeal."

6. Mr. DeCarlis does not meet this standard for appellate standing because he is not a party aggrieved by any of the three orders appealed, and therefore he should not be given the opportunity to cause additional delay through this motion for relief.
7. It is abundantly clear that each of the orders relates solely to Royal Blue and impacts solely Royal Blue's rights and obligations. While all three orders were directed at Royal Blue, only Mr. DeCarlis has filed the motion for relief out of time to order the transcripts.
8. Mr. DeCarlis is neither aggrieved nor adversely affected by any of the orders, therefore he has no basis to appeal or pursue this Motion to Request Transcript Outside of Deadlines, and it is evident that this is purely a delay tactic, consistent with the history of delays outlined below.
9. Royal Blue has failed to comply with procedures in this appeal by not requesting the transcripts associated with the orders it is appealing, and it has not complied with the Court of Appeals' letter requiring a motion within ten days.
10. Mr. DeCarlis has no basis to pursue relief and transcripts for all three appealed orders on behalf of Royal Blue.
11. As a result, the Court should summarily deny the Motion to Request Transcript Outside of Deadlines.

MR. DECARLIS' PATTERN OF DELAY TACTICS

12. Moreover, since the appointment of Receiver, Receiver has commenced two civil actions, including the underlying action before Judge Simmons. The underlying action, Case NO. 2019-CP-23-07305, may be referred to herein as the "Royal Blue Case".

13. As Judge Simmons found in his March 15, 2021 order entered in the Royal Blue Case, “...virtually every Order issued by every judge in either 2010-CP-23-03860 or 2019-CP-23-07305 has been appealed by Mr. DeCarlis. There is at least a strong inference that Mr. DeCarlis is attempting to delay actions of the Court in order for the ten-year statute of limitations to collect judgments expire[s].”

14. The present Motion to Request Transcript Outside of Deadlines is consistent with the efforts made by Mr. DeCarlis to effectuate delay whenever possible. One need only survey the seven (7) appeals filed either by Mr. DeCarlis or his wife, Tiffany Pope DeCarlis (“Tiffany DeCarlis”), or Royal Blue in the Main Case or the Royal Blue Case since the appointment of Receiver less than two years ago, to wit:

- a. (Appellate Case No. 2020-000990) On July 9, 2020, Mr. DeCarlis appealed Judge Simmons’ order granting Receiver a charging order. Mr. DeCarlis failed to file his appellant’s initial brief (among other things) and the appeal was dismissed for failure to comply with procedure. Conclusion: Appeal dismissed for failure to respect procedure.
- b. (Appellate Case No. 2020-001563) On November 30, 2020, Mr. DeCarlis’ wife, Tiffany DeCarlis, appealed Judge Lawton McIntosh’s order dismissing her counterclaims against Receiver under Rule 12(b) SCRPC. Tiffany DeCarlis recently obtained her third extension of time to file her initial brief. Conclusion: Appellant obtained third extension of time to file initial brief.
- c. (Appellate Case No. 2020-001694) On December 29, 2020, Mr. DeCarlis appealed Judge Simmons’ order dismissing counterclaims against receiver under Rule 12(b) SCRPC. Mr. DeCarlis failed to timely order a transcript and the appeal was dismissed for failure to respect procedure. Conclusion: Appeal dismissed for failure to respect procedure.
- d. (Appellate Case No. 2021-000283) On March 17, 2021, Mr. DeCarlis appealed Judge Simmons’ order denying motion to remand. On June 14, 2021, this Court issued correspondence advising Mr. DeCarlis that the transcript had not been timely ordered and that the appeal was subject to dismissal if no motion to allow late filing was submitted within ten (10) days. On the tenth day, or June

24, 2021, Mr. DeCarlis filed a Motion to File Brief Outside of Filing Deadlines. Conclusion: Appeal subject to dismissal for failure to respect procedure.

- e. (Appellate Case No. 2021-000368) On April 7, 2021, Royal Blue, a co-defendant with Mr. DeCarlis in the Royal Blue Case, appealed an interlocutory discovery order entered by Judge Simmons. Royal Blue withdrew the appeal only after Receiver advised that the order was interlocutory and not subject to appeal without leave of court. Conclusion: Appeal voluntarily dismissed.
- f. (Appellate Case NO. 2021-000534) On May 19, 2021, Mr. DeCarlis and Royal Blue appealed three orders entered by Judge Simmons. This is the present appeal. Despite the notice of appeal seeking review of three orders entered during the course of the receivership, neither Mr. DeCarlis nor Royal Blue timely sought transcripts. As a result, this Court issued correspondence stating that the appeal would be dismissed if no motion to allow relief out of deadlines was filed within ten days. On the tenth day, or July 1, 2021, Mr. DeCarlis (but not Royal Blue) filed a motion to permit relief out of deadlines. While all three orders were directed at Royal Blue, Mr. DeCarlis has filed the motion for relief out of time to order a transcript. Conclusion: Appeal subject to dismissal for failure to respect procedure.
- g. (Appellate Case No. 2021-000704) On July 2, 2021, Mr. DeCarlis appealed Judge Simmons' order granting Receiver's motion to establish sales procedures. This appeal is ten days old. Conclusion: Appeal only eleven days old.

15. Since Receiver's appointment less than two years ago, Receiver has been involved in seven appeals filed by Mr. DeCarlis or his allies. Of the seven appeals, one was voluntarily dismissed. Two were dismissed for failure to comply with procedure. Two are subject to dismissal for failure to comply with procedure. One appeal is on appellant's third extension of time to file initial briefs. The final and seventh appeal is eleven days old.

16. In isolation, any one of these appeals and its corresponding reasons for delay might be subject to some rational explanation. When viewed in context, however, the intent becomes obvious. Mr. DeCarlis and his allies are seeking to use the appellate process

to delay enforcement of the judgment. This Court should not countenance Mr. DeCarlis' delay tactics and summarily deny the Motion to Request Transcript Outside of Deadlines.

Respectfully submitted,

By:


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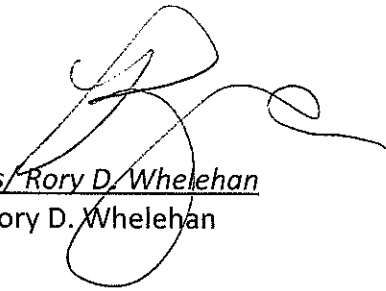
PROOF OF SERVICE

I hereby certify that on July 12, 2021, a copy of the foregoing RESPONDENT'S OBJECTION TO APPELLANT'S MOTION TO REQUEST TRANSCRIPT OUTSIDE OF DEADLINES was (1) served by electronic mail and (2) served by U.S. Mail, first class postage, as follows:

Shawn M. French
1476 Ben Sawyer Boulevard, Suite 3
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Dean A. Hayes
4500 Fort Jackson Blvd.

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/s/ Rory D. Whelehan
Rory D. Whelehan

Greenville, South Carolina
July 12, 2021