

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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JUL 09 2021

SC 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.: 2021-000283

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,

Respondents,

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 is the

Appellant.

OBJECTION TO MOTION TO FILE BRIEF OUTSIDE OF FILING DEADLINES

Rory D. Whelehan, in his capacity as the 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

Objection to Motion to File Brief Outside of Filing Deadlines (the "Objection"). In support of the Objection, Receiver states as follows:

1. This appeal arises from the entry of a judgment against David D. DeCarlis and efforts both prior 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 2010-CP-23-03860) (the "Main Case").

3. Since the appointment of Receiver, Receiver 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".

4. As Judge Simmons found in his March 15, 2021 order entered in the Royal Blue matter below, "...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 DeCarlis is attempting to delay actions of the Court in order for the ten-year statute of limitations to collect judgments expire[s]."

5. The present Motion to File Brief Outside of Filing Deadlines is consistent with the efforts made by DeCarlis to effectuate delay whenever possible. One need only survey the seven (7) appeals filed either by DeCarlis or his wife, Tiffany Pope DeCarlis, or Royal Blue Lending House, LLC ("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, DeCarlis appealed Judge Simmons' order granting Receiver a charging order. DeCarlis failed to file his appellant's initial brief (among other things) and the appeal was dismissed for failure to respect procedure.

Conclusion: Appeal dismissed for failure to respect procedure

- b. (Appellate Case No. 2020-001563) On November 30, 2020, DeCarlis' wife, Tiffany Pope DeCarlis appealed Judge Lawton McIntosh's order dismissing counterclaims against Receiver under Rule 12(b). Tiffany DeCarlis just 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, DeCarlis appealed Judge Simmons' order dismissing counterclaims against Receiver under Rule 12(b). 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, DeCarlis appealed Judge Simmons' order denying motion to remand. This is the instant appeal and subject of this Objection. On June 14, 2021, this Court issued correspondence advising DeCarlis that the transcript had not been timely ordered and that that 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, DeCarlis filed the instant Motion to File Brief Outside of Filing Deadlines. The motion states that the order was entered without hearing and thus no transcript exists. This is true. DeCarlis filed his motion to remand. Judge Simmons denied the motion to remand within days and the appeal was filed within days of the denial order. DeCarlis knew or should have known that no transcript existed because the motion, order, and notice of appeal were all filed in less than one week.

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 DeCarlis in the Royal Blue Case appeals an interlocutory discovery order entered by Judge Simmons. Royal Blue withdraws appeal only after Receiver advises that 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, DeCarlis and Royal Blue Lending House, LLC appealed three orders entered by Judge Simmons including (i) order entered on August 14, 2020 denying Royal Blue's motion to dismiss claims asserted by Receiver; (ii) order entered on March 15, 2021 granting Receiver's motion to enforce discovery sanctions; and (iii) order entered on April 19, 2021 granting Receiver's renewed motion for contempt and sanctions against Royal Blue. Despite the notice of appeal seeking review of three orders entered during the

course of the receivership, neither 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 deadline was filed within ten (10) days. On the *tenth* day, or July 1, 2021, DeCarlis (but not Royal Blue) filed a motion to permit relief out of deadline. While all three orders were directed at Royal Blue, DeCarlis has filed the motion for relief out of time to order a transcript. Receiver will timely file a response to that motion.

Conclusion: Appeal subject to dismissal for failure to respect procedure

- g. (Appellate Case No. 2021-000704) On July 2, 2021, DeCarlis appealed Judge Simmons' order granting Receiver's motion to establish sales procedures. This appeal is only four days (4) old.

Conclusion: Appeal is only four (4) days old

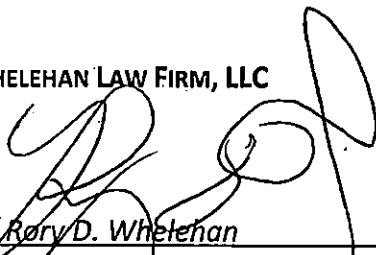
6. Since Receiver's appointment less than two years ago, Receiver has been involved in seven appeals filed by DeCarlis or his allies. Of the seven appeals, one was voluntarily dismissed. Two were dismissed for failure to respect procedure. Two are subject to dismissal for failure to respect procedure.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

7. In isolation, any of these appeals and their corresponding reasons for delay might be subject to some rational explanation. When viewed in context, however, the intent becomes obvious. DeCarlis and his allies are seeking to use the appellate process to delay enforcement of the judgment. This Court should not countenance DeCarlis' delay tactics and should summarily deny the Motion to File Brief Outside of Filing Deadlines.

WHEREFORE, Receiver respectfully prays unto this Court that DeCarlis' Motion to File Brief Outside of Filing Deadlines be denied and for such other and further relief as this Court deems just and proper.

DATED: July 6, 2021

WHELEHAN LAW FIRM, LLC


/s/ Rory D. Whelehan

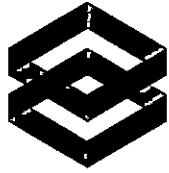
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CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2021, a copy of the foregoing Objection to Motion to File Brief Outside of Filing Deadlines was (1) served by electronic mail and (2) served by United States Mail, first class postage, as follows:

Shawn M. French
1476 Ben Sawyer Boulevard, Suite 3
Mount Pleasant, SC 29464



Whelehan Law Firm, LLC

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July 6, 2021

JUL 09 2021

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of Court
The South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: 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-23-03869 v. Royal Blue Lending House, LLC, et al.
Appellate Case No. 2021-000283

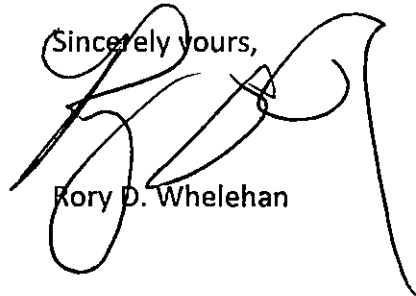
Dear Ms. Kitchings:

In connection with the above-referenced appeal, I enclose one (1) original and six (6) copies of the Objection to Motion to File Brief Outside of Filing Deadlines (the "Objection"). The Objection is filed on behalf of the Respondent.

I also emailed the Objection to the Court's email address at ctappfilings@sccourts.org. Please let me know if you have any questions regarding the filing or if I need to provide you with any further information.

With best regards.

Sincerely yours,



Rory D. Whelehan

/rdw
Enclosures
cc: Mr. Shawn M. French

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SHIP TO: The Honorable Jenny Abbott Kitchings
The South Carolina Court of Appeals
Clerk of Court
PO Box 11629
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