

STATE OF NORTH CAROLINA
GRAHAM COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 142

FLEXIBLE FUNDING LTD.
LIABILITY CO.,

Plaintiff,

v.

GRAHAM COUNTY LAND
COMPANY, L.L.C.; NATIONAL
CIVIL, LLC; RANDY JORDAN;
JOHN PRESSLEY; CECIL
PATTERSON; and BUCK
JACKSON,

Defendants.

**ORDER ON RECEIVER'S
EMERGENCY MOTION FOR
FURTHER DIRECTION ON
DISPOSITION OF NATIONAL CIVIL
AUCTION PROCEEDS**

1. Pending is Receiver Alan Weiner's Emergency Motion for Further Direction on Disposition of Proceeds from the Liquidation of Equipment of National Civil, L.L.C. (*See* ECF No. 228.)

Background

2. Shortly after this case began, Defendant Graham County Land Company ("GCLC") went into receivership. Since that time, the Receiver, Alan Weiner, has worked diligently to wind up the company's affairs. (*See* ECF No. 38.)

3. One of GCLC's assets is its majority membership interest in Defendant National Civil, LLC. This means that the Receiver—standing in the shoes of GCLC—effectively controls National Civil even though National Civil is not itself in receivership.

4. In December 2021, after marshalling the property of GCLC, the Receiver moved for an order authorizing him to hold a public auction. The auction items

included not only GCLC's property but also National Civil's. There were a handful of objections from interested parties, including opposition to using the proceeds from the sale of National Civil's property to pay GCLC's creditors at the expense of National Civil's own creditors. In response, the Receiver's counsel proposed moving forward with the auction but conditioning disbursements of the proceeds from the sale of National Civil's property on Court approval. The Court agreed, authorized the auction, and required that "[a]ny and all proceeds generated from [the] sale of assets owned by National Civil . . . shall be held by the Receiver in trust subject to further order(s) by the Court." (ECF No. 110 at ¶ 19(g).)

5. The auction produced \$312,265.84 in net proceeds from the sale of National Civil's property. The Receiver has held the proceeds in trust since that time.

6. On 16 March 2022, Plaintiff Flexible Funding Ltd. Liability Co. moved for a default judgment against National Civil. (*See* ECF No. 173.) Two days later, Volvo Financial Services moved for a default judgment against National Civil in a separate action pending in Guilford County Superior Court. (*See* ECF No. 233 at ¶ 22.)

7. While those default-judgment motions were pending, the Receiver reported that he and National Civil's minority member had agreed to dissolve the company and wind up its affairs. The Receiver moved for an order authorizing him to solicit creditor claims and to distribute National Civil's assets to allowed claimants under N.C.G.S. §§ 57D-6-08 and 57D-6-10. Notice of the motion was served on all parties on the master service list as well as all parties who requested notice through the

Court's electronic filing system in this action. None filed an objection. (*See* ECF Nos. 185, 203.)

8. On 25 April 2022, Volvo obtained a default judgment against National Civil in the Guilford County case. (*See* ECF No. 233 at ¶ 23.)

9. One day later, this Court held a hearing on Flexible Funding's motion for default judgment against National Civil. At that hearing, the Court observed that a default judgment may bear on the pending motion for authority to solicit creditor claims and distribute National Civil's assets. Specifically, the Court advised all parties and interested nonparties to consider "what the effect of a pending judgment against National Civil is on the ability to distribute funds" and invited comment on that issue at the appropriate time. (ECF No. 246 at 25.) Counsel for Volvo attended the hearing. He declined the chance to speak when asked and did not report that his client had obtained a default judgment the day before. (*See* ECF No. 246 at 25.) The Court granted Flexible Funding's motion and entered default judgment against National Civil. (*See* ECF No. 192.)

10. In May 2022, the Court granted the Receiver's motion related to the dissolution and winding-up of National Civil. In that order, the Court authorized the Receiver to solicit creditor claims under section 57D-6-10. But the Court "expressly" refused to

approve of any distributions of cash or other assets of National Civil to creditors until the Receiver has distributed a claims notice, the deadline for submitting a claim has passed, the Receiver has submitted a report to the Court on behalf of National Civil that includes a proposed plan of distribution, and the Court has entered a supplemental order approving a plan of distribution.

(ECF No. 210 at ¶¶ 4, 5.)

11. Weeks later, Volvo took steps to execute its judgment against National Civil and to satisfy its judgment out of the National Civil auction proceeds. On 15 July 2022, it obtained a writ of execution. Then, on 22 August 2022, deputies from the Mecklenburg County Sheriff's Office served the Receiver's counsel with a Notice of Levy on "[a]ny and all accounts and or assets found at your institution up to, but not to exceed \$1,653,107.05." (ECF No. 229.2.) Volvo demanded that the Receiver immediately hand over all auction proceeds being held in trust. (See ECF No. 229.1 at ¶ 7.)

12. In response, the Receiver filed the pending motion. He contends that he cannot comply with both the Notice of Levy and this Court's orders prohibiting the distribution of National Civil's auction proceeds. As a result, he seeks direction from the Court.

13. In an interim order, the Court directed the Receiver to continue to follow previous orders and not to distribute National Civil's auction proceeds. The Court also called for responses from Flexible Funding and Volvo, which have been timely filed. (See ECF Nos. 230, 232, 233.) No other party or nonparty has filed a response. The motion is fully briefed, and the Court held a hearing on 8 November 2022. The motion is now ripe for determination.

Discussion

14. Having considered this matter carefully, the Court concludes that the Notice of Levy is a nullity for at least three reasons and, thus, directs the Receiver to disregard it.

15. First, this Court has “exclusive authority” to supervise the Receiver in the exercise of his duties. N.C.G.S. § 1-507.22. This includes the “authority to determine . . . all matters otherwise arising in or relating to the receivership, the receivership property, the exercise of the receiver’s powers, or the performance of the receiver’s duties.” *Id.*

16. Here, without objection from Volvo, the Court gave the Receiver the power to auction National Civil’s property, wind up its affairs, and solicit creditor claims. The Court also directed the Receiver to hold the auction proceeds in trust and not to disburse them absent “a supplemental order approving a plan of distribution.” (ECF No. 210 at ¶¶ 4, 5; *see also* ECF No. 110 at ¶ 19(g).) Contrary to these orders, the Notice of Levy purports to require the Receiver to disburse the auction proceeds immediately and without this Court’s approval—plainly an infringement of the Court’s exclusive supervisory authority.

17. Volvo argues that National Civil is not in receivership and its assets are not receivership property. That is beside the point. The Receiver’s powers and duties include winding up National Civil and distributing its assets once the Court approves a plan for doing so. *See* N.C.G.S. § 1-507.28(d) (authorizing supervising court to “limit or expand the powers and duties of a receiver”). How the Receiver “exercise[s]” those

“powers” is unquestionably within this Court’s exclusive supervisory authority. *Id.* § 1-507.22. Any order directing the Receiver to distribute the National Civil auction proceeds must come from this Court.

18. Second, the Receivership Order enjoins any person who receives actual notice from interfering with the Receiver’s performance and discharge of his duties. (*See* ECF No. 38 at 11.) Volvo, which is undisputedly bound by this order, improperly interfered with the Receiver’s performance of his duties by attempting to force the Receiver to disburse the National Civil auction proceeds without submitting a plan of distribution and without Court approval. These actions put the Receiver in an untenable position, faced with a choice between violating this Court’s orders or refusing to abide by the instructions of law enforcement officials. The Receivership Order enjoins exactly this sort of meddling with the Receiver’s performance of his duties.

19. Volvo’s interference is made worse by its gamesmanship. Its counsel had notice of every relevant motion and attended every relevant hearing. At no point did Volvo object to giving the Receiver the power to auction National Civil’s property, wind up its affairs, solicit creditor claims, and submit a plan of distribution. Nor did Volvo disclose that it had obtained a default judgment against National Civil and intended to execute that judgment. These actions leave the distinct impression that Volvo planned all along to circumvent the claims process adopted by the Court but voiced no objection to the process in the hopes that National Civil’s other creditors would abide by it.

20. Volvo blames Flexible Funding for triggering a race to the courthouse by filing its motion for default judgment. This concern comes far too late. One purpose of vesting the Receiver with the power to implement a claims process was to protect National Civil's unsecured creditors, including Volvo, and to deal with their claims in an orderly way. Volvo had every chance to express concern about Flexible Funding's actions and to seek appropriate protections *before* the Court endorsed the Receiver's proposed claims process. Volvo is bound by its silence and by the Receivership Order's injunction not to interfere with the Receiver's performance of his duties.

21. Third, even if it were not an impermissible interference with the Receiver's duties, the Notice of Levy is a nullity because it is procedurally defective. Execution "may not be issued against a stranger to the judgment"; it can be issued only against the judgment debtor. *Cornelius v. Albertson*, 244 N.C. 265, 267 (1956) (holding that judgment creditor could not reach by execution the judgment debtor's property held in trust by executor because the executor was not a party to the action). There are ways to reach "property of the judgment debtor in the hands of [a] third person." *Elmwood v. Elmwood*, 295 N.C. 168, 182 (1978). But "[t]hese proceedings are available only after execution is attempted." *Massey v. Cates*, 2 N.C. App. 162, 164 (1968); see N.C.G.S. §§ 1-358, -360; see also *Radiance Cap. Receivables Twenty One, LLC, v. Lancsek*, 2022-NCCOA-789, ¶ 13 (referring to sections 1-358 and 1-360 as the "procedural mechanism[s] to pursue the judgment debtor's property that is in the hands of third parties not party to the suit").

22. Volvo's attempted execution upon accounts held by the Receiver's counsel is a nullity. Neither the Receiver nor the Receiver's counsel is a party to the Guilford County action between Volvo and National Civil. Therefore, Volvo cannot reach by execution the proceeds held in trust by the Receiver, but must attempt to reach the proceeds, if it can, by following the procedures set forth in the North Carolina supplemental proceedings statutes. Volvo has made no such attempt.

Conclusion

23. For these reasons, the Court **GRANTS** the Receiver's request for further direction and **ORDERS** as follows:

- a. The Receiver shall disregard the Notice of Levy.
- b. The Receiver shall not distribute the National Civil auction proceeds until the Receiver submits a proposed plan of distribution and the Court enters a further order approving the proposed plan of distribution.
- c. Volvo is and continues to be enjoined from interfering in any manner with the Receiver's lawful exercise and performance of his duties over the National Civil auction proceeds.

24. Nothing in this Order shall be construed as a final decision on whether Volvo may be entitled to any or all of the auction proceeds. Volvo's claim shall be determined through the Receiver's claims process, just as the claims of National Civil's other creditors will be. In addition, the Court expresses no opinion about whether Volvo may properly levy upon other property belonging to National Civil that is not in the possession of the Receiver.

SO ORDERED, this the 16th day of December, 2022.

/s/ Adam M. Conrad
Adam M. Conrad
Special Superior Court Judge
for Complex Business Cases