

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
15 CVS 21379

PROGRESS BUILDERS, LLC,

Plaintiff,

v.

SHANNON KING, MONARCH
PROPERTIES, LLC, and MONARCH
ETSU, LLC,

Defendants.

**ORDER ON MOTION FOR ENTRY OF
AN ORDER REQUIRING
DEFENDANT/JUDGMENT DEBTOR
TO APPEAR AND SHOW CAUSE AND
ORDER CONCERNING
DEFENDANT'S CIVIL CONTEMPT**

1. **THIS MATTER** is before the Court upon Plaintiff Progress Builders, LLC's ("Plaintiff") Motion for Entry of an Order Requiring Defendant/Judgment Debtor Shannon King ("Defendant") to Appear and Show Cause as to Why She Should Not Be Held in Contempt (the "Motion") in the above-captioned case.

2. On May 3, 2017, this Court entered an Order and Opinion on Plaintiff's Motion for Summary Judgment (the "Judgment"), awarding Plaintiff summary judgment against Defendant in the principal amount of \$125,881.62, plus post-judgment interest at the legal rate.

3. Plaintiff attempted to execute on the Judgment, but an execution issued to Union County against Defendant's property was returned partially unsatisfied.

4. On or about January 11, 2018, Plaintiff served Defendant with post-judgment interrogatories and requests for production of documents (the "Discovery Requests"). Defendant failed to timely respond to the Discovery Requests. On May 4, 2018, the Court entered an order (the "May 4, 2018 Order") requiring Defendant to respond to the Discovery Requests.

5. Although Defendant responded to Plaintiff's Discovery Requests following the May 4, 2018 Order, Defendant's responses were inadequate in several respects. As a result, Plaintiff moved the Court for entry of an order requiring Defendant to appear and show cause why she should not be held in contempt of the May 4, 2018 Order.

6. The Court found that there was probable cause to believe Defendant was in civil contempt and entered an order requiring Defendant to appear and show cause at a July 23, 2018 hearing why she should not be held in civil contempt. The Court also ordered Defendant to produce and make available for inspection at the July 23, 2018 hearing all documents requested by Plaintiff. The time of the hearing was communicated to Defendant by the Court's law clerk through e-mail, and Defendant was served with the Court's Order to Appear and Show Cause and Notice of Hearing using the North Carolina Business Court's electronic filing system.

7. Defendant did not appear at the July 23, 2018 hearing as ordered. Counsel for Plaintiff was present and informed the Court that Defendant's production remained incomplete in a number of ways.

8. Based upon the record, the Court found that the May 4, 2018 Order remained in force, that the purpose of the order would still be served by compliance with the order, that Defendant's noncompliance with the May 4, 2018 Order was willful, and that Defendant was able to comply with the May 4, 2018 Order or could have taken reasonable measures that would have enabled her to comply with the order.

9. The Court therefore entered a Civil Contempt Order finding and concluding that Defendant was in civil contempt of the Court's May 4, 2018 Order. The Court ordered Defendant to appear at a previously scheduled examination in Union County concerning supplemental proceedings in this action and further provided that Defendant could purge herself of the continuing civil contempt by delivering the documents outstanding under the Discovery Requests to Plaintiff's counsel at the Special Proceedings Office at the Union County Judicial Center at 12:00 PM on July 25, 2018, two hours before the supplemental examination. The Court included in the Civil Contempt Order a list of those documents that Defendant would, at a minimum, be required to produce. The Court further stated that if Defendant did not purge herself of civil contempt, the Court intended to enter an order for her arrest.

10. Defendant appeared at the July 25, 2018 supplemental examination before the Honorable J.R. Rowell and produced some, but not all, of the responsive documents needed to purge herself of contempt.

11. Following the supplemental examination, Plaintiff's counsel drafted a motion requesting the entry of a charging order. After reaching out to Defendant by e-mail to obtain her position on Plaintiff's motion (as required by Business Court Rule 7.3), Plaintiff's counsel learned that Defendant had been involved in a serious automobile accident on or about August 7, 2018 and had been hospitalized as a result. Plaintiff's counsel thereafter held the matter in abeyance but periodically checked on Defendant's status and recovery to determine whether Defendant was able to participate in the litigation.

12. After nearly sixth months, during which Plaintiff's counsel's inquiries were repeatedly met with representations by Defendant, or those purporting to act on her behalf, that Defendant lacked the capacity to make legal decisions and could not advise Plaintiff's counsel as to her position on Plaintiff's motion, Plaintiff moved the Court for entry of a charging order against Defendant's interests in several identified LLCs pursuant to N.C.G.S. § 57D-5-03.

13. In an effort to accommodate Defendant's injury and her status as a *pro se* litigant, the Court entertained several e-mails from Defendant, or those purporting to act on her behalf, which appeared to request that the Court stay proceedings in this matter, or briefing on Plaintiff's motion, as a result of Defendant's injuries. Plaintiff's counsel was copied on these e-mails. In response, the Court extended the deadlines for Defendant to respond to Plaintiff's motion for a charging order several times. The Court continuously ruled, however, that it would require Defendant to provide the Court with a sworn affidavit from a medical professional, subsequently required to be Defendant's treating doctor, explaining Defendant's lack of capacity to participate in this litigation if Defendant wished the Court to consider her e-mails as a request for a stay of proceedings or the briefing of Plaintiff's motion. After being provided numerous extensions to produce such testimony, Defendant failed to provide a sworn affidavit from any medical professional.

14. On April 16, 2019, the Court granted Plaintiff's motion and entered a Charging Order against Defendant. In relevant part, the Charging Order provided:

According to the Secretary of State, Defendant Shannon King is the manager of King Realty Advisors, LLC; KRG, LLC; and Shannon King Holdings, LLC

and, in her capacity as such, she is hereby **DIRECTED** to file with the Court and the Clerk of Mecklenburg County Superior Court, within fifteen (15) days of being served with this Charging Order, a report showing the amount which is now due or may become due or distributable to Defendant Shannon King by reason of her economic interest in those entities and any other such interest in those entities that she owns.

. . . .

Defendant Shannon King, as the manager of King Realty Advisors, LLC; KRG, LLC; and Shannon King Holdings, LLC, is hereby further **ORDERED** and **DIRECTED** to file with the Court and the Clerk of Mecklenburg County Superior Court, within fifteen (15) days of being served with this Charging Order, a sworn statement reporting to the Court all amounts distributable or payable to Defendant Shannon King at the time of service of this Charging Order and at all subsequent times attributable to any interest owned in the LLCs. In such sworn answer and report Defendant Shannon King shall state the value, at the time of service of this Charging Order and at all subsequent times, of both the capital and income accounts attributable to the interests of Defendant Shannon King in each of the respective LLCs.

(Charging Order ¶ 67(c), (e), ECF No. 62.)

15. On June 10, 2019, Plaintiff filed its present Motion with the Court. Plaintiff accompanied its Motion with a brief and supporting affidavit from Plaintiff's counsel. Plaintiff seeks the entry of an order requiring Defendant to appear and show cause why she should not be held in contempt of the Charging Order. Particularly, Plaintiff contends that there is probable cause to believe that Defendant has willfully violated the Charging Order, despite being able to comply with its terms, and that this violation amounts to civil contempt. In support of this position, Plaintiff's counsel's affidavit states, "upon information and belief," that Defendant has not filed (i) "a report showing the amount which is now due or may become due or distributable to Defendant . . . by reason of her economic interest in" the LLCs mentioned in the Charging Order or (ii) "a sworn statement reporting to the Court all amounts

distributable or payable to Defendant . . . at the time of service of [the] Charging Order and at all subsequent times attributable to any interest owned in the LLCs.” (Archer Aff. ¶ 12, ECF No. 64.1 (quoting Charging Order ¶ 67(c), (e)).) As a result, Plaintiff’s counsel also affirms that Defendant has not complied with the Charging Order’s directive that Defendant, “[i]n such sworn answer and report[,] . . . state the value, at the time of service of [the] Charging Order and at all subsequent times, of both the capital and income accounts attributable to the interests of Defendant . . . in each of the respective LLCs.” (Archer Aff. ¶ 11 (quoting Charging Order ¶ 67(e)).)

16. Following the filing of Plaintiff’s Motion, Defendant e-mailed Plaintiff’s counsel, copying the Court’s law clerk, stating that she should not be held in contempt and attaching a pdf file containing a notarized and sworn document titled “Affidavit of Shannon King” (the “Affidavit”) that bore a Mecklenburg County filing stamp dated April 30, 2019. In the Affidavit, Defendant declares under oath as follows:

Shannon King Holdings, KRG LLC, King Realty Advisors, Monarch Properties LLC and Monarch ETSU, LLC does [sic] not have any cash value. Shannon King Holdings, KRG LLC, King Realty Advisors, Monarch Properties LLC and Monarch ETSU, LLC do not have an [sic] open bank accounts. All LLC’s [sic] will administratively dissolve. There is no money that is distributable to Shannon King or any of these entities.

(King Aff. ¶ 3.)

17. After receiving Defendant’s e-mail and attached affidavit, the Court’s law clerk, under the Court’s direction, responded to Defendant, with a copy to opposing counsel, and reminded Defendant that all parties to this action “have agreed to use the Business Court’s electronic filing and service system,” (Case Management Order 3, ECF No. 16), and that the Charging Order directed Defendant to file a sworn

statement both with the Clerk of Mecklenburg County Superior Court and the Court. The Court's law clerk therefore asked Defendant to electronically file with the Business Court any document related to this case that she had filed with the Clerk of Court's office.

18. A review of the Mecklenburg County Clerk of Superior Court's records demonstrates that Defendant did indeed file the Affidavit with the Clerk of Court's office on April 30, 2019. According to Defendant, she mailed a copy of the Affidavit to Plaintiff's counsel using the United States Postal Service that same day.

19. Responding to the Court's request that she file the Affidavit electronically, Defendant also represented that she had been unable to access the Business Court's electronic docket and asked the Court's law clerk for assistance in using the electronic filing system.

20. Plaintiff's counsel, replying to Defendant's further e-mails and copying Defendant, informed the Court that he had not noticed the Affidavit attached to Defendant's earlier e-mail, that he had not been made aware that Defendant had filed the Affidavit with the Clerk of Court's office, and that he had not received the Affidavit by mail. Plaintiff's counsel further asserted that the Affidavit did not meet the requirements of the report or sworn statement Defendant was ordered to file under the Charging Order.

21. Plaintiff's counsel also raised concerns about Defendant's production at the July 25, 2018 supplemental examination, stating that Defendant had failed to produce critical documents and that, incidentally, those documents which had not

been produced would have contained the same information that Defendant had failed to provide under the Charging Order's directives. Plaintiff's counsel contends that Defendant's repeated failures to obey the Court's orders has deprived Plaintiff of information it is entitled to receive and has left Plaintiff unable to verify Defendant's financial condition or the condition of her LLCs.

22. "To initiate a proceeding for civil contempt under [N.C.G.S.] § 5A-23(a), an interested party must move the trial court to issue an order or notice to the alleged contemnor 'to appear at a specified reasonable time and show cause why he should not be held in civil contempt.'" *Young v. Mastrom, Inc.*, 149 N.C. App. 483, 484, 560 S.E.2d 596, 597 (2002) (quoting N.C.G.S. § 5A-23(a).) The order or notice can only be issued upon "a finding by the judicial official of probable cause to believe there is civil contempt." *Id.* "Probable cause refers to those facts and circumstances within [the judicial official's] knowledge and of which he has reasonably trust-worthy information which are sufficient to warrant a prudent man in believing that the alleged contemnor is in civil contempt." *Id.* at 484–85, 560 S.E.2d at 597 (internal quotation marks omitted).

23. Civil contempt for failure to comply with a court order requires, among other elements, that "[t]he noncompliance by the person to whom the order is directed is willful[.]" N.C.G.S. § 5A-21(a)(2a). "Willful," as used in the statute, means "disobedience which imports knowledge and a stubborn resistance," that is, "more than an intention to do a thing" or a "deliberation or conscious choice" but also a "bad

faith disregard for authority and the law.” *Hancock v. Hancock*, 122 N.C. App. 518, 523, 471 S.E.2d 415, 418 (1996) (internal quotation marks omitted).

24. Plaintiff contends that Defendant has violated three specific provisions of the Charging Order: (i) filing with the Clerk of Court and the Court “a report showing the amount which is now due or may become due or distributable to Defendant Shannon King by reason of her economic interest in those entities and any other such interest in those entities that she owns,” (ii) filing with the Clerk of Court and the Court “a sworn statement reporting to the Court all amounts distributable or payable to Defendant Shannon King at the time of service of [the] Charging Order and at all subsequent times attributable to any interest owned in the LLCs,” and (iii) providing in the sworn statement or report “the value, at the time of service of [the] Charging Order and at all subsequent times, of both the capital and income accounts attributable to the interests of Defendant Shannon King in each of the respective LLCs.” (Charging Order ¶ 67(c), (e).)

25. As to these requirements, the Court notes that Defendant’s Affidavit states that “[t]here is no money that is distributable to Shannon King or any of these entities,” that Defendant’s LLCs do “not have any cash value” and “do not have [any] open bank accounts,” and that the LLCs “will administratively dissolve[.]” (King Aff. ¶ 3.) While not couched in the precise language used by the Charging Order, the contents of the Affidavit do not support a finding of probable cause that Defendant was acting in bad faith and disregarding the requirements of the Charging Order when she chose to respond as she did in her Affidavit. Rather, Defendant’s affidavit

appears to reflect an attempt to communicate that there are no amounts distributable to Defendant, that there will be no amounts distributable to Defendant, and that the LLCs at issue lack anything of value, which would imply that any capital and income accounts attributable to the interests of Defendant are likewise of no value. The contents of the Affidavit thus do not provide a basis to find probable cause of willful noncompliance. *See Hancock*, 122 N.C. App. at 523, 471 S.E.2d at 418.

26. Plaintiff also points out that Defendant did not electronically file a copy of her Affidavit with the Court. That is true. Defendant did not file her Affidavit with the Court using the Business Court's electronic filing system, despite the provision in the Court's April 18, 2016 Case Management Order noting that all parties to this case have agreed to use the Business Court's electronic filing and service system, (Case Management Order 3), and despite the Charging Order's clear direction that Defendant file her sworn statement and report with "*the Court* and the Clerk of Mecklenburg County Superior Court," (Charging Order ¶ 67(c), (e) (emphasis added)). Nevertheless, the Court cannot ignore that Defendant timely filed her Affidavit with the Mecklenburg County Clerk of Superior Court, e-mailed a scanned image of a file-stamped copy of the Affidavit to Plaintiff's counsel and the Court, and subsequently asked the Court's law clerk to assist her in using the Court's electronic filing system to file the Affidavit. Admittedly, these actions do not follow the black-letter of the Court's Charging Order. They also fail to comply with the Business Court Rules and do not demonstrate a proactive attempt to comply with all provisions of the Charging Order. Nevertheless, particularly considering that Defendant is proceeding *pro se*,

the Court cannot conclude that Defendant's imperfect effort to comply with the Charging Order permits a finding that probable cause exists that Defendant was acting in bad faith and with the intention of violating the Charging Order.

27. Consequently, on these facts, the Court finds and concludes that probable cause does not exist to believe Defendant is in civil contempt of the Charging Order. The Court will therefore deny the Motion.

28. The above notwithstanding, the Court has concerns with Defendant's conduct in this case. In particular, the Court takes seriously Plaintiff's contentions that it still has not been provided information responsive to its previous Discovery Requests and the possibility that Defendant has failed to purge herself of the Court's previous Civil Contempt Order. The Court thus resolves *sua sponte* to include in this Order further directions to resolve this ongoing issue.

29. **WHEREFORE**, the Court hereby **ORDERS** as follows:

- a. The Court **FINDS** and **CONCLUDES**, on this record, that probable cause does not exist to believe that Defendant is in civil contempt of the Charging Order. Plaintiff's Motion is therefore **DENIED**.
- b. In the exercise of the Court's discretion, the Court further **ORDERS** Defendant Shannon King to review the Business Court's eFiling User Manual (located online at: <https://www.nccourts.gov/documents/publications/efiling-user-manual>) and take necessary steps to ensure that she can electronically file using the Business Court's electronic filing system in the future. On this

occasion, in order to ensure that the record is complete, the Court shall file Defendant's Affidavit on the Court's electronic docket. Defendant will be expected to comply with the Business Court Rules for all future filings.

c. In the exercise of the Court's discretion, the Court further **ORDERS** as follows:

i. Plaintiff shall, no later than July 31, 2019, file with the Court a list of the responsive documents Plaintiff contends Defendant was required to provide to Plaintiff to purge herself of the Court's Civil Contempt Order but has not yet produced. Plaintiff shall file with this list a position statement of no more than 1,750 words concerning Defendant's compliance with the May 4, 2018 Order.

ii. Defendant shall file, no later than August 14, 2019, a position statement of no more than 1,750 words responding to Plaintiff's list and position statement described in the preceding subparagraph and stating whether Defendant believes she has complied with the May 4, 2018 Order and the reasons for her belief.

d. The Court reminds Defendant that "[a] person who is found in civil contempt may be imprisoned as long as the civil contempt continues," subject to the other provisions of N.C.G.S. § 5A-21. Should the Court determine that Defendant has not purged herself of the Court's Civil

Contempt Order, the Court will take appropriate steps to address Defendant's civil contempt, which may include the issuance of an order for Defendant's arrest.

- e. Separately from the above, Defendant may file a motion or notice of compliance seeking to purge herself of the civil contempt found in the Civil Contempt Order at any time upon Defendant's full compliance with that Order or the May 4, 2018 Order.

SO ORDERED, this the 17th day of July, 2019.

/s/ Louis A. Bledsoe, III
Louis A. Bledsoe, III
Chief Business Court Judge