

COURT OF COMMON PLEAS  
FOR THE STATE OF DELAWARE  
KENT COUNTY COURTHOUSE  
DOVER, DELAWARE 19901  
PHONE: (302)735-3910

CHARLES W. WELCH, III  
JUDGE

August 1, 2014

Craig T. Eliassen, Esq.  
414 S. State Street  
P.O. Box 497  
Dover, DE 19903  
Attorney for Plaintiff

Mr. Jesse G. Gibson, Jr.  
151 Hemlock Way  
Smyrna, DE 19977  
*Pro Se* Defendant

RE: SunTrust Bank v. Jesse G. Gibson, Jr.  
C.A. No.: CPU5-10-000190

Plaintiff's Motion for Contempt

Dear Mr. Eliassen and Mr. Gibson:

The Court is in receipt of a motion for contempt filed by SunTrust Bank ("SunTrust") against Jesse G. Gibson, Jr. on June 12, 2014. After careful consideration, the Court denies SunTrust's motion.

On February 1, 2010, SunTrust filed a complaint in this Court against Mr. Gibson alleging that he defaulted on an installment sales contract. Mr. Gibson was personally served via special process server on July 15, 2012. On August 15, 2012, SunTrust directed the clerk to enter default judgment against Mr. Gibson as a result of his failure to file an answer. Judgment was entered in the principal amount of \$14,347.33, plus pre-judgment interest in the amount of \$5,286.39, attorney's fees in the amount of \$2,152.10, court costs in the amount of \$156.20 and post-judgment interest at the contract rate of 11.95%.

On February 12, 2014, SunTrust attempted to obtain discovery in aid of execution on its judgment pursuant to Court of Common Pleas Civil Rule 69 by personally serving Mr. Gibson with a subpoena. The subpoena directed Mr. Gibson to appear at SunTrust's counsel's law firm on March 18, 2014, for a deposition. The subpoena also directed Mr. Gibson to bring copies of his financial documents, tax returns, deeds, and motor vehicle titles.

Pursuant to Court of Common Pleas Civil Rule 69, a judgment creditor "may take discovery by deposition, interrogatories, and requests for production, in the manner provided in these Rules." Ct. Com. Pl. Civ. R. 69(aa). The rules for discovery are provided in Court of Common Pleas Civil Rules 26 through 37. Pursuant to Civil Rule 30, a party may orally depose "any person, including a party." Ct. Com. Pl. Civ. R. 30(a). Pursuant to Civil Rule 34, a party may serve a request on another party for any relevant documents or tangible items in their possession. Ct. Com. Pl. Civ. R. 34(a).

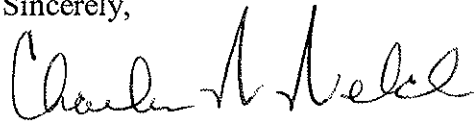
While Court of Common Pleas Civil Rules 30 and 34 authorize discovery on any person, the procedural process for taking discovery differs based on the targeted individual. Civil Rules 30 and 34 outline the process for taking discovery of parties; however, both Civil Rules 30 and 34 direct that discovery of non-parties should be made in accordance with the process outlined in Civil Rule 45. Ct. Com. Pl. Civ. R. 30(a), 34(c). Unlike a party to the case, non-parties are not within the jurisdictional purview of the Court. Therefore, in order to achieve discovery upon non-party individuals, it is necessary to first obtain a subpoena issued by the Clerk of the Court. Ct. Com. Pl. Civ. R. 45(a). Following that line of rationale, the Court may hold a non-party in contempt of a Court order upon their refusal to comply with the subpoena. Ct. Com. Pl. Civ. R. 45(f). However, it is improper for a party to seek discovery from another party via a Civil Rule 45 subpoena. *See Davis v. Town of Georgetown*, 2001 WL 541471, at \*2 (Del. Super. Apr. 27,

2001). Discovery on parties must be made in accordance with the procedures provided in Civil Rules 30 and 34. If a party served with a Civil Rule 30 or 34 discovery request fails to comply, the appropriate action is for the requesting party to file a motion to compel pursuant to Court of Common Pleas Civil Rule 37. Ct. Com. Pl. Civ. R. 37.

In this case, it was improper for SunTrust to seek discovery from Mr. Gibson via a Civil Rule 45 subpoena because Mr. Gibson is a party to this action. Instead, SunTrust should have sought discovery pursuant to the procedures provided in Civil Rules 30 and 34. Assuming that SunTrust complied with the correct procedure for requesting discovery from a party, the appropriate motion to enforce its right to discovery was a motion to compel. As a result, the plaintiff's motion for sanctions is DENIED.

**IT IS SO ORDERED.**

Sincerely,

A handwritten signature in black ink, appearing to read "Charles W. Welch, III". The signature is written in a cursive style with a large initial "C" and "W".

Charles W. Welch, III

CWW: mek