

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

Tracy Ward
907 West Street
Laurel, DE 19956
Pro Se Defendant

Theodore A. Perry
4 Maryland Ave.
Delmar, MD 21875
Pro Se Defendant

RE: SunTrust Bank v. Tracy Ward and Theodore A. Perry
C.A. No.: CPU5-10-002229

Plaintiff's Motion for Contempt

Dear Mr. Eliassen and Ms. Ward:

The Court is in receipt of a motion for contempt filed by SunTrust Bank ("SunTrust") against Tracy Ward on June 26, 2014. After careful consideration, the Court denies SunTrust's motion.

On October 5, 2010, SunTrust filed a complaint in this Court against Ms. Ward alleging that she defaulted on an installment sales contract. On October 8, 2010, service was perfected on Ms. Ward. On March 21, 2012, SunTrust directed the clerk to enter default judgment against Ms. Ward as a result of her failure to file an answer. Judgment was entered in the amount of \$4,691.00, plus post-judgment interest at 7.95%.

On April 23, 2014, SunTrust personally served Ms. Ward with a subpoena. The subpoena directed Ms. Ward to appear at SunTrust's counsel's law firm on June 25, 2014, for a deposition. It also directed her to bring copies of her 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- 37. Pursuant to Rule 30, a party may orally depose "any person, including a party." Ct. Com. Pl. Civ. R. 30(a). Pursuant to 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).

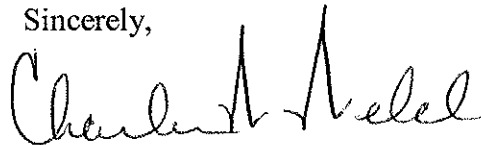
While Court of Common Pleas Rules 30 and 34 authorize discovery on any person, the procedural process for taking discovery differs based on the targeted individual. Rules 30 and 34 outline the process for taking discovery of parties; however, both Rules 30 and 34 direct that discovery of non-parties should be made in accordance with the process outlined in 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 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 Rules 30 and

34. If a party served with a 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 Ms. Ward via a Rule 45 subpoena because Ms. Ward is a party to this action. Instead, SunTrust should have sought discovery pursuant to the procedures provided in 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 cursive script, appearing to read "Charles W. Welch, III".

Charles W. Welch, III

CWW: mek