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Order on Scott Toberman's Motion for Declaratory Relief and the GEF Partnerships' Motion for an Order Compelling Toberman to Pay Funds (SCOTT TOBERMAN)

Elizabeth E. Long
Superior Court of Fulton County

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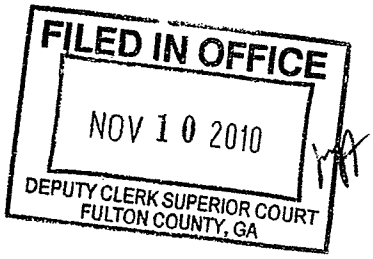
DRJ

ORIGINAL

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

SCOTT TOBERMAN,	*	Civil Action File No. 2007-CV- 131894
Plaintiff,	*	
v.	*	
LAROSE LIMITED PARTNERSHIP, *et al.*	*	
Defendants,	*	
LAROSE LIMITED PARNTERSHIP, *et al.*	*	
Counterclaim Plaintiffs,	*	
v.	*	
SCOTT TOBERMAN, *et al.*	*	
Counterclaim Defendants.	*	



ORDER ON SCOTT TOBERMAN'S MOTION FOR DECLARATORY RELIEF AND THE GEF PARTNERSHIPS' MOTION FOR AN ORDER COMPELLING TOBERMAN TO PAY FUNDS

This case is before the Court on Scott Toberman's Motion for Declaratory Relief and the GEF Partnerships' Motion to Compel Toberman to Pay Funds. After reviewing the briefs submitted on the motions, the Court finds as follows.

In July 2008, the parties entered into a settlement agreement (the "Settlement Agreement"), and a stipulated judgment based on that Settlement Agreement was entered. A dispute between the parties has arisen as to monies to be paid by Toberman to the GEF Partnerships pursuant to the Settlement Agreement. Specifically, in July 2010 Toberman received a federal tax refund in the amount of $79,290.76 based on his 2006 federal tax return which he did not file until 2010. Toberman argues that he is entitled to $69,039.00 of his 2006 federal tax refund and the GEF Partnerships are entitled to $10,251.76 per paragraph 3(e) of the Settlement Agreement which provides, among other things, that "In any given year during the existence of the Stipulated Judgment including any renewal period, the [GEF Partnerships] shall not be entitled to garnish, levy upon, collect or otherwise enforce the Stipulated Judgment against (i) the first $50,000 of Scott Toberman's gross receipts from any source for the year or (ii) more than 35% of Scott Toberman's

gross receipts from any source over $50,000 for the year." According to this provision, Toberman calculates that he is entitled to the first $50,000 of his 2006 federal tax refund and that the GEF Partnerships are entitled to 35% of his tax refund above $50,000. In other words, Toberman calculates that his federal tax refund was $79,290.76 less his annual exemption of $50,000 which leaves $29,290.76 of which the GEF Partnerships are entitled to collect 35% which is $10,251.76. In contrast, the GEF Partnerships argue that the 2006 tax refund which Toberman received in July 2010, is a pre-settlement asset that should be paid in its entirety to the GEF Partnerships

In July 2010, Toberman used $10,000 of his federal tax refund to pay a federally-imposed fine related to a criminal matter and moved this Court for leave to deposit the remaining $69, 290.76 of his federal tax refund into the Court. The Court permitted Toberman to pay those funds into Court and the parties have subsequently each filed motions as to how those funds should be divided pursuant to the Settlement Agreement.

The construction of a contract is a question of law for the Court. O.C.G.A. § 13-2-1. Settlement agreements are contracts and "it is well-established that the usual rules of contract construction" apply to settlement agreements. Gonzalez v. Crocket, 287 Ga. 430, 433 (2010).

The Court finds that Toberman, under paragraph 3(e) of the Settlement Agreement, is entitled to $50,000 of exempt funds from any source. The Court further finds that the federal tax refund which Toberman recently received, despite being based on his 2006 tax return, is not a pre-settlement asset because there is no indication that at the time of the settlement in 2008 that any party knew Toberman would be entitled to a tax refund. However, $10,000 of the $50,000 exempt funds has been paid on Toberman's behalf to the U.S. District Court.

The GEF Partnerships also argue that they are entitled to $14,204.87 from other assets that Toberman concealed. Specifically, the GEF Partnerships argue that Toberman received funds from the sale of two antique guns that should have been transferred to the GEF Partnerships as pre-settlement assets and that Toberman had $10,500 in a bank account to which he was not entitled. The Court finds that the GEF

Partnerships are entitled to all of the proceeds of Toberman's antique guns as those were pre-settlement assets ($8,585.20 - $722.69 = 7,862.51). However, the Court finds that the $10,500 that Toberman had in a separate bank account are exempt funds that Toberman is entitled to from "persons other than his spouse, up to a limit of $25,000 per year in the aggregate" pursuant to paragraph 3(e) of the Settlement Agreement.

The Court finds the calculations to be as follows:

Amount in Clerk's Office: $69,290.76

Amount to GEF Partnerships:

35% of $29,290.76	$10,251.77
Antique guns	+ $ 7,862.51
	$18,114.28

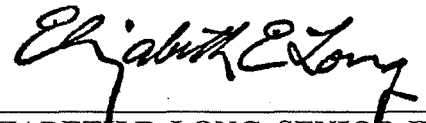
Amount to Toberman:

2010 Exempt funds	$50,000
Less exempt funds used for fine	- $10,000
Remaining 2010 exempt funds	$ 40,000
65% of remaining $29,290.76	+ $ 19,038.99
	$59,038.99
Less antique guns	- $ 7,862.51
	$51,176.48

Accordingly, the Clerk of Fulton Superior Court is hereby ORDERED to pay the GEF Partnerships $18,114.28 using the address listed below and Toberman $51,176.48 plus any accrued interest using the address listed below.

If any further tax refund is received by Toberman in 2010, the GEF Partnerships are entitled to 35% thereof.

SO ORDERED this 10th day of November, 2010.



ELIZABETH E. LONG, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

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