

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
THOMASVILLE DIVISION

Filed 10:55 P.M.

NOV 25 2003
Kina Phillips
DEPUTY CLERK U.S. DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA

CHARLES GALBREATH,
and JOYCE GALBREATH,

Plaintiff,

vs.

CIVIL ACTION NO: 6:02-CV-86

JOHN M. WIGGINS and
EMILY WIGGINS

Defendants.

ORDER

It appearing that, on December 11, 2002, plaintiff Charles Galbreath filed a Petition for Judgment on Notes; and for Appointment of Temporary and Permanent Receiver; and for Writ of Possession ("the Petition") in the Superior Court of Decatur County; and

It further appearing that the Petition named John Wiggins and Emily Wiggins as defendants; and

It further appearing that on April 27, 2001, defendant John Wiggins purchased from Roy Simpson and Pamela Simpson (collectively referred to as "the Simpsons") all rights to Construction Permit File SPH-19971120ME, which represented the right to obtain a license to operate radio station WBGE-FM; and

It further appearing that defendant John Wiggins executed to the Simpsons a purchase money note (hereinafter "Note 1") for \$225,000.00; and

It further appearing that to secure repayment of Note 1, defendant John Wiggins executed a security agreement ("the Security Agreement") dated April 27, 2001, in favor

of the Simpsons; and

It further appearing that the security agreement provided that upon default the secured party may declare all obligations secured thereby immediately due and payable and may proceed to enforce payment of the same and exercise all the rights provided by the Uniform Commercial Code as well as other rights and remedies possessed by the secured party; and

It further appearing on August 24, 2002, the Federal Communications Commission issued license File Number BLH-20010518AAK ("the License") covering Construction permit File BPH-19971120ME to defendant John Wiggins to operate radio station WJHW ("the Radio Station"), which call letters have since been changed to WBGE-FM; and

It further appearing that Note 1 provides that if payment of any installment is not made when due the holder of the note may, without notice, exercise the option of treating the remainder of the debt as due and collectible; and

It further appearing that defendant John Wiggins has not made the payment under Note 1 that was due on November 27, 2002; and

It further appearing that the Simpsons accelerated the remainder of the debt on November 27, 2002, and that the debt remains unpaid; and

It further appearing that pursuant to the terms of Note 1, defendant John Wiggins agreed to pay the holder of Note 1 all cost of collection, including 15% of the unpaid principal and interest as attorney's fee, if there was a default in payment of the note and same was collected by an attorney at law; and

It further appearing that on December 3, 2002, the Simpsons transferred to

plaintiff Charles Galbreath all of their rights under Note 1 and the Security Agreement; and

It further appearing on July 10, 2001, defendants John Wiggins and Emily Wiggins gave plaintiff Charles Galbreath a promissory note ("Note 2") for \$225,000.00, with interest as therein provided, due upon demand; and

It further appearing that plaintiff Charles Galbreath demanded payment of Note 2, but defendants John Wiggins and Emily Wiggins have not made any payment; and

It further appearing that on July 10, 2001, defendant John Wiggins executed a security agreement ("Security Agreement 2") to secure repayment of Note 2; and

It further appearing that Security Agreement 2 gave plaintiff Charles Galbreath and plaintiff Joyce Galbreath a security interest in the Radio Station, its Federal Communications Commission license, all personal properties, equipment, transmitters, receivers, office furniture, transmitting towers, books, records, accounts receivable, lease agreements, real properties, and bank accounts; and

It further appearing that the Superior Court of Decatur County appoint a temporary and permanent receiver to take control of the Radio Station and the assets of the Radio Station; and

It further appearing that on December 11, 2002, Judge Cato, Judge of the Superior Court of Decatur County, issued an order appointing Roy Simpson as the temporary receiver of the Radio Station; and

It further appearing that on December 16, 2002, defendant John Wiggins and defendant Emily Wiggins, by and through counsel, filed a Notice of Removal which removed this action to this Court; and

It further appearing that, on or about March 20, 2003, the Petition was amended (the "Amended Petition") to name Joyce Galbreath as a plaintiff and Unique Broadcasting, LLC, as a defendant; and

It further appearing that, on March 24, 2003, defendant John Wiggins acknowledged receipt of a copy of the Petition and Amended Petition; and

It further appearing that, since removing this case to this Court, neither defendant John Wiggins nor defendant Emily Wiggins has filed an answer to the Petition or Amended Petition.

It further appearing that defendant John Wiggins did not file an answer after he acknowledged receipt of both the Petition and Amended Petition; and

It further appearing that, on September 5, 2003, plaintiffs Charles Galbreath and Joyce Galbreath filed a motion seeking a default judgment against defendants John Wiggins and Emily Wiggins; and

It further appearing that, on October 6, 2003, this Court issued an order advising defendants John Wiggins and Emily Wiggins that they had until October 25, 2003, to file a response to the motion for default; and

It further appearing that, to date, no answer has been filed on behalf of either defendant John Wiggins or defendant Emily Wiggins; and

It further appearing that plaintiffs Charles Galbreath and Joyce Galbreath are seeking to recover money damages against defendants John Wiggins and Emily Wiggins and that said damages are liquidated and may be awarded without the necessity of a hearing; and

It further appearing that plaintiffs Charles Galbreath and Joyce Galbreath are

seeking an equitable remedy, specifically, the appointment of a permanent receiver to operate the Radio Station, and, in these circumstances, such an appointment may be made without the necessity of a hearing;

IT IS HEREBY ORDERED that the motion for default judgment of plaintiffs Charles Galbreath and Joyce Galbreath is hereby **GRANTED**; and

IT IS FURTHER ORDERED and **ADJUDGED** that plaintiffs Charles Galbreath and Joyce Galbreath shall have judgment against defendants as follows:

(1) that, as to the promissory note of April 27, 2001, plaintiff Charles Galbreath shall have judgment against John Wiggins in an amount totaling \$244,151.26. Said amount consists of \$203,764.10 in principal, \$13,733.53 in interest through July 31, 2002, and attorney's fees and costs of collection of \$31,845.82;

(2) that interest on the promissory note of April 27, 2001, shall continue to accrue at \$55.83 per day beginning on August 1, 2003, until paid; and

(3) that, as to the promissory note of July 10, 2001, Charles Galbreath and Joyce Galbreath shall have judgment against John Wiggins and Emily Wiggins in an amount totaling \$307,064.00. Said amount consists of \$225,000.00 in principal, \$34,136.69 in interest at 10.67% prior to maturity, \$34,027.34 in interest at 24% post maturity through July 31, 2003, and the cost of collection, including reasonable attorneys fees (calculated per the Georgia statutory standard of 15% of the first \$500.00 of principal and interest and 10% of the principal and interest over that) of \$27,658.85; and

(4) that interest on the promissory note of July 10, 2001, shall continue to accrue at \$147.949 per day beginning August 1, 2003, until paid; and

(5) that Roy Simpson is hereby appointed as Receiver to take possession of and

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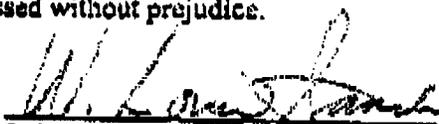
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charge over the collateral and assets of radio station WBGE-FM (the "Radio Station") and the rights of the defendant John Wiggins in the lease of the studio and tower of the Radio Station and that Roy Simpson is ordered, authorized, and directed to manage and operate the Radio Station as fiduciary, to collect the rents and profits derived therefrom, and to maintain and preserve the same until Roy Simpson can sell the Radio Station to a qualified buyer, and

(6) that Roy Simpson shall have access to all places, operations, and records of John Wiggins and Emily Wiggins related to the Radio Station and the assets of the Radio Station;

(7) that Roy Simpson is hereby ordered, authorized, and directed to operate the Radio Station or take such other appropriate action as is necessary to conserve the business assets of the Radio Station in a manner consistent with the rules, regulations, and policies of the Federal Communications Commission ("FCC") until the sale of the Radio Station's assets to a qualified buyer is consummated, as well as make all necessary applications with the FCC in order to effect the proper transfer or assignment of the license of the Radio Station after a qualified buyer is identified, including, but not limited to, signing both the assignor's and assignee's section of an application of FCC form 316 for assignment of the Radio Station's license to Roy Simpson and signing the assignor's section of an application on FCC form 314 for assignment of the Radio Station's license to any purchaser; and

(8) that the claims asserted by plaintiffs Charles Galbreath and Joyce Galbreath against Unique Broadcasting, L.L.C be dismissed without prejudice.



Judge, United States District Court
11/25/03