

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
CLARKSBURG

BRIDGESTONE AMERICAS TIRE OPERATIONS, LLC,
doing business as GCR Tires and Service, a
Delaware corporation,

Plaintiff,

v.

CIVIL ACTION NO. 1:21CV14
(KLEEH)

PRISTINE CLEAN ENERGY, LLC, a West Virginia
limited liability company, and
WILLIAM K. ABRAHAM
its personal guarantor,

Defendants.

MEMORANDUM OPINION AND ORDER
GRANTING PLAINTIFF'S MOTION FOR ORDER REQUIRING DEFENDANT TO
APPEAR AND ANSWER DISCOVERY IN AID OF EXECUTION [ECF NO. 42]

Pending before the Court is Plaintiff Bridgestone Americas Tire Operations, LLC d/b/a GCR Tires and Service's *Motion for Appointment of Special Commissioner to Conduct Proceedings Pursuant to W. Va. Code § 38-5-1 in Aid of Execution Against Defendant Pristine Clean Energy, LLC* [ECF No. 42]. For the reasons discussed below, the Court grants the motion.

I. BACKGROUND

On January 28, 2021, Plaintiff Bridgestone Americas Tire Operations, LLC d/b/a GCR Tires and Service ("Plaintiff") filed a complaint against Defendants Pristine Clean Energy, LLC ("Pristine") and William K. Abraham ("Abraham") (together,

**MEMORANDUM OPINION AND ORDER
GRANTING PLAINTIFF'S MOTION FOR ORDER REQUIRING DEFENDANT TO
APPEAR AND ANSWER DISCOVERY IN AID OF EXECUTION [ECF NO. 42]**

"Defendants") alleging breach of contract, unjust enrichment, and damages in the amount of \$499,224.82. Compl., ECF No. 1. Plaintiff moved for summary judgment against Defendants, arguing that it is entitled to judgment as a matter of law because Defendants failed to respond to Plaintiff's requests for admission. ECF No. 18. Defendants' failure to respond to Plaintiff's requests for admission established a breach and damages owed by Pristine, or Pristine's guarantor, Abraham. ECF No. 18. The Court granted Plaintiff's motion and entered summary judgment for Plaintiff on the Complaint against Defendants, jointly and severally, in the total amount of \$499,224.82. ECF No. 22. The Clerk entered judgment in favor of Plaintiff pursuant to the Memorandum Opinion and Order. ECF No. 23.

A writ of execution was issued by the Clerk of the Court to Defendants on December 15, 2021, and the United States Marshals Service served the writ of execution on February 14, 2022. ECF Nos. 27, 28, 29. Neither Defendant Abraham nor Pristine responded to the writ. Because the Plaintiff has not been able to secure goods or chattels to successfully satisfy its judgment, the plaintiff requests the issuance of a summons for Defendant Pristine, by corporate representative, to appear for deposition and produce the requested documents in aid of execution in accordance with federal and state law. ECF No. 42. Additionally,

MEMORANDUM OPINION AND ORDER
GRANTING PLAINTIFF'S MOTION FOR ORDER REQUIRING DEFENDANT TO
APPEAR AND ANSWER DISCOVERY IN AID OF EXECUTION [ECF NO. 42]

the plaintiff requests that a commissioner be named to facilitate discovery if necessary and that all costs and fees incurred in conducting such discovery be paid by Defendant Pristine. ECF No. 42.

II. LAW

Rule 69(a) of the Federal Rules of Civil Procedure governs the execution of judgments.

A money judgment is enforced by a writ of execution, unless the court directs otherwise. The procedure on execution—and in proceedings supplementary to and in aid of judgment or execution—must accord with the procedure of the state where the court is located, but a federal statute governs to the extent it applies. . . . In aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person—including the judgment debtor—as provided in these rules or by the procedure of the state where the court is located.

Fed. R. Civ. P. 69(a). Pursuant to West Virginia Code § 38-5-1, a debtor may be required "to appear before a commissioner in chancery . . . to answer upon oath such questions as shall be propounded at such time and place by counsel for the execution creditor, or by the commissioner." While the federal court system does not have a commissioner in chancery, see U.S. Foodservice, Inc. v. Almost Heaven Ribs, Inc., No. 3:11cv595, 2012 WL 1567189, *1, *2-3 (S.D.W. Va. Apr. 30, 2012), 28 U.S.C. § 636(b)(3) provides the magistrate judge, upon assignment, "additional duties as are not inconsistent with the constitution and laws of the United

**MEMORANDUM OPINION AND ORDER
GRANTING PLAINTIFF'S MOTION FOR ORDER REQUIRING DEFENDANT TO
APPEAR AND ANSWER DISCOVERY IN AID OF EXECUTION [ECF NO. 42]**

States.” Accordingly, the magistrate judge may conduct a hearing pursuant to West Virginia Code § 38-5-1 and Rule 69(a) of the Federal Rules of Civil Procedure and may also order the debtor to assign personal property to the United States Marshal for the purpose of satisfying a judgment. Chicago Pneumatic Tool Co. v. Stonestreet, 107 F.R.D. 674, 677 (S.D.W. Va. 1985).

III. DECISION

Pursuant to Rule 69(a) and Plaintiff's request, this Court appoints United States Magistrate Judge Michael J. Aloï to serve as a “commissioner” to conduct a hearing as described by West Virginia Code § 38-5-1. The Clerk is **DIRECTED** to issue a summons pursuant to Rule 4 of the Federal Rules of Civil Procedure upon Defendant Pristine Clean Energy to identify a corporate representative and appear before Magistrate Judge Aloï on **June 24, 2022, at 10:00 a.m.**, at the Magistrate Judge's Courtroom on the Third Floor of the United States Courthouse, 500 West Pike Street, Clarksburg, West Virginia, to answer upon oath questions submitted by the plaintiff as Exhibit 1 to its motion and attached as Appendix 1 to this Memorandum Opinion and Order, and such further questions as shall be propounded by counsel for the plaintiff or by Magistrate Judge Aloï. The Clerk is **DIRECTED** to attach a copy of this Memorandum Opinion and Order and Appendix 1 to the summons issued to Defendant Pristine Clean Energy.

MEMORANDUM OPINION AND ORDER
GRANTING PLAINTIFF'S MOTION FOR ORDER REQUIRING DEFENDANT TO
APPEAR AND ANSWER DISCOVERY IN AID OF EXECUTION [ECF NO. 42]

At the hearing, Pristine's corporate representative shall produce all documents relating to the discovery requests stated in Appendix 1 and convey or assign to the United States Marshal for the Northern District of West Virginia all money, bank notes, securities, evidence of debt or other personal property, tangible or intangible, as may be ordered by Magistrate Judge Aloï for the enforcement and payment of the judgment including interest and costs outstanding in the above matter.

It is so **ORDERED**.

The Court **DIRECTS** the Clerk to transmit copies of this Memorandum Opinion and Order to counsel of record and to United States Magistrate Judge Michael J. Aloï.

DATED: June 7, 2022



THOMAS S. KLEEH, CHIEF JUDGE
NORTHERN DISTRICT OF WEST VIRGINIA