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Elizabeth E. Long
Superior Court of Fulton County

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

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

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DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GA

ORDER ON SCOTT TOBERMAN'S MOTION TO COMPEL GEF PARTNERSHIPS TO RETURN FUNDS

This case is before the Court on Scott Toberman's Motion to Compel GEF Partnerships to Return Improperly Garnished Exempt Funds to Scott Toberman. After reviewing the briefs submitted on the motion and the pertinent parts of the record, the Court finds as follows.

On July 17, 2008, the parties entered into a settlement agreement ("Settlement Agreement") pursuant to which the Court entered a Stipulated Order and Judgment ("Judgment") the following day. Under the terms of the Judgment, the Court retained jurisdiction to enforce the Settlement Agreement for a period of two years, through and including July 18, 2010. On July 15, 2010, following a dispute between Mr. Toberman and GEF Partnerships over the allocation of a 2006 federal tax refund in accordance with the parties' Settlement Agreement, Mr. Toberman sought and received permission to deposit the funds at issue into the Court's registry. Thereafter, the Court exercised its remaining jurisdiction to determine the allocation of such funds under the terms of the Settlement Agreement and entered an order setting forth the distribution of the funds between the

parties on November 10, 2010 (the "November Order"). In determining the amount to which each party was entitled, the Court offset the amount disbursed to Mr. Toberman by the amount of certain assets that Mr. Toberman failed to turn over to GEF Partnerships as required under the Settlement Agreement. Specifically, the Court held that GEF Partnerships was entitled to the proceeds of the sale of two antique guns and offset the amount disbursed to Mr. Toberman accordingly. The Court declined, however, to deduct $6,342 from the amount distributed to Mr. Toberman in favor of GEF Partnerships because the Court ruled that such funds, as part of an undisclosed bank account holding $10,500, were entitled to exemption under the Settlement Agreement. Now Mr. Toberman asks the Court to exercise its jurisdiction to compel GEF Partnerships to return $4,147, which Mr. Toberman contends that GEF Partnerships had improperly garnished from the account prior to the Court's November Order.

The Court declines to consider Mr. Toberman's motion because it lacks jurisdiction over the instant dispute. The Court finds that the issue of whether the funds were properly subject to garnishment was adjudicated in a prior proceeding and therefore, not a proper matter for this Court's consideration. On August 18, 2009, Judge Iannazzone of the State Court of Gwinnett County entered an order, following a hearing on the matter, denying Mr. Toberman's traverse of GEF Partnerships's garnishment and ordering that the garnished funds at issue here be released to GEF Partnerships. If Mr. Toberman wanted to appeal that order, he was required to file an application for appeal with the Court of Appeals within 30 days of the order. See O.C.G.A. § 5-6-35. Mr. Toberman may not circumvent his failure to do so by soliciting the aid of this Court, which does not have appellate jurisdiction over this dispute.

Moreover, even if Mr. Toberman's request did not amount to an impermissible appeal, the Court lacks jurisdiction to address this dispute for the independent reason that pursuant to the express terms of the Judgment, the Court's jurisdiction to enforce the parties' Settlement Agreement expired on July 18, 2010, leaving this Court without authority to adjudicate to whom the money should go in

accordance with the Settlement Agreement. Finally, to the extent that Mr. Toberman is asking the Court to reconsider the distribution of funds among the parties as set forth in the November Order, the Court finds that the time to reconsider its ruling has passed. See Masters v. Clark, 269 Ga. App. 537 (2004) (holding that a trial court lacked authority to grant motion to reconsider a judgment that was filed after expiration of the term of court in which judgment was issued). The Fulton County Superior Court term in which the November Order was entered ended on December 31, 2010. O.C.G.A. § 15-6-3.

Accordingly, for the reasons set forth above, Mr. Toberman's Motion is hereby DENIED.

SO ORDERED this 2nd day of March, 2011.

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

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