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**Aug 18 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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APPEAL PENDING AT THE COURT OF APPEALS

FROM LEXINGTON COUNTY  
WALTON J. MCLEOD, CIRCUIT COURT JUDGE

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Appellate Case No.: 2022-001060

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Emily P. Smith and Emily P. Smith and Associates, LLC, ..... Appellants,

v.

Robert T. Smith; Southern Collection, LLC;  
Southern Collection Brokerage, LLC;  
Terrance Smith and Associates, LLC; Robert B. Smith,  
And Sherry C. Smith, ..... Respondents.

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**REPLY TO RETURN TO  
MOTION TO CERTIFY APPEAL**

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Appellants Emily Smith and Emily P. Smith and Associates, LLC (hereafter collectively referred to herein as “Emily”) respectfully submit this Reply to Respondents Return to Motion to Certify Appeal. For the reasons discussed below, this Court should grant Appellants Motion to Certify Appeal.

**REPLY ARGUMENT**

This appeal presents the novel and important issue of whether members of a corporate entity who happen to be married can seek relief regarding their interests in the corporate entity. Throughout the course of this litigation, Emily has discovered that family courts routinely find themselves involved in corporate issues during the process of marital litigation even though these

issues are squarely within the jurisdiction of the Circuit Court. This is a significant legal issue which warrants certification from this Court.

Emily initially filed an action in Family Court to dissolve her marriage with Respondent Robert T. Smith (hereinafter “Terence”), and she requested equitable distribution in her pleadings. At no time did she or Terence identify any corporate interests as among the property to be divided as part of equitable distribution.

None of the companies they own were made parties to the action in Family Court. During the pendency of the divorce proceedings, it is believed that Terence began shutting Emily out of their jointly owned LLC, Southern Collection, and operating the business through an entirely separate LLC solely owned by Terence, and misappropriating income and assets belonging to Southern Collection. As a result, Emily was unable to work through her business or receive income that she earned, and the business was in danger of ruin. Emily sought relief in the Family Court to address these concerns, however the Family Court explicitly declined to grant any relief related to the LLC. In the pending divorce action, there has been no finding, no order, and no determination that any of the parties’ interest in Southern Collection or any other corporations are marital property. Emily maintains that the Family Court has not asserted jurisdiction over any of the corporations in this matter.

Respondents argue that Southern Collection is marital property that falls under the jurisdiction of the Family Court. The general assumption is that property acquired during a marriage is an asset of the marriage. *See* S.C. Code Ann. § 20-3-630(a). However, while Southern Collection was formed by the parties during the marriage, it is a legal entity distinct from Emily and Terence,<sup>1</sup> and neither Emily nor Terence owns or has any transferable interest in the property

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<sup>1</sup> “A limited liability company is a legal entity distinct from its members.” S.C. Code Ann § 33-44-20.

of Southern Collection.<sup>2</sup> This is also true of the other corporate entities involved in this matter. As such, none of the corporations should be presumed to be assets of the marriage, and the litigation surrounding the corporations should remain in the Circuit Court.

Emily's domestic attorney has filed a motion to amend the Family Court pleadings to expressly exclude from equitable distribution any interest in the parties' corporate entities including Southern Collection. This was done only to clarify that the Circuit Court should handle the corporate issues raised in this litigation. That motion is scheduled to be heard on August 23, 2022.

Respondents claim that the relief that Emily seeks is available to her in Family Court, which is simply not true. When the Family Court declined to grant relief, Emily exercised her rights as a member of a statutory limited liability company and filed an action in Circuit Court seeking a judicial dissolution and winding up of Southern Collection, appointment of a receiver, and an accounting of assets of the business. These remedies are exclusive to the Circuit Court. Emily initially filed a motion in Circuit Court seeking the emergency appointment of a receiver pursuant to S.C. Code Ann. § 15-65-10 which provides, "A receiver may be appointed by *a judge of the circuit court.*" (Emphasis added). It should be noted that the Court referred to the language of this specific statute and S.C. Code Ann. § 33-44-803(a)<sup>3</sup> in holding that the request for the appointment of a receiver, an accounting, and judicial dissolution can "*only be resolved by the circuit court.*" *Palmetto Wildlife Extractors, LLC v. Ludy, No. 5886* (S.C. Ct. App. Jan. 5, 2022) (Emphasis added).

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<sup>2</sup> "A member is not a co-owner of, and has no transferable interest in, property of a limited liability company." S.C. Code Ann. § 33-44-501(a).

<sup>3</sup> "...on application of any member, member's legal representative, or transferee, *the circuit court*, for good cause shown, may order judicial supervision of the winding up." (Emphasis added).

Additionally, Family Court is a court of limited jurisdiction which does not permit jury trials. On June 1, 2022, Emily filed a demand for a jury trial on the causes of action raised in her complaint. Because the trial court judge dismissed Emily's action in Circuit Court with the instruction to litigate these issues in Family Court, Emily has been denied her constitutional right to a trial by jury on these issues. This denial, again, highlights the fact that the relief Emily seeks is only available to her in Circuit Court.

Emily's circuit court action is against two LLCs, governance of which is defined by corporate law and two individuals (Terence's parents) who hold funds generated by Southern Collection LLC, the entity jointly owned by Emily and Terence. None of these issues can be litigated in family court.

It certainly appears that family courts have been using principles of equitable distribution willy-nilly as to corporate property for years, using it to offset marital debt and otherwise treating corporate interests like furniture and cars. Corporate issues must be litigated in the circuit court.

The issues presented by this appeal are significant, and important. Terence and his lawyers have the benefit of all the delays they can get in family court and are taking advantage of it. Emily has rights as a corporate member of an LLC, and she elected to proceed in circuit court to protect her rights. This novel question warrants the attention of this Court.

### **CONCLUSION**

For the reasons set forth above, Emily renews her motion for an order certifying this appeal and asking this Court to issue an expedited briefing schedule so the important legal issues presented by this appeal can be timely addressed.

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Respectfully submitted,

s/ Desa Ballard

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APPEAL PENDING AT THE COURT OF APPEALS

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Appellate Case No.: 2022-001060

Emily P. Smith and Emily P. Smith and Associates, LLC, ..... Appellants,

v.

Robert T. Smith; Southern Collection, LLC;  
Southern Collection Brokerage, LLC;  
Terrance Smith and Associates, LLC; Robert B. Smith,  
And Sherry C. Smith, ..... Respondents.

**PROOF OF SERVICE**

I, Beth Cogan, an employee with Ballard & Watson, do hereby certify that on August 18, 2022, I served a copy of the **Reply to Return to Motion to Certify Appeal**, in the above-captioned case on the following individuals by electronic mail using their email address listed in the Attorney Information System, addressed as follows:

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Beth Cogan, Paralegal

August 18, 2022

## Beth Cogan

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**From:** Beth Cogan  
**Sent:** Thursday, August 18, 2022 4:13 PM  
**To:** Mark B. Goddard; Ashby Jones; Alyssa Iglesias; Betty Perdue; Kelchner, John B  
**Cc:** Desa Ballard; Haley Hubbard; Sheila Robinson  
**Subject:** (Emily P. Smith and Emily P. Smith and Associates, LLC v. Robert T. Smith, et al - Case No. 2022-001060) Ltr to Supreme Court encl Reply to Return  
**Attachments:** 2022 08 18 Ltr to Supreme Court encl Reply to Return.pdf; 2022 08 18 Reply to Return to Motion to Certify Appeal.pdf; 2022 08 18 POS Reply to Return to Motion to Certify.pdf

Good afternoon,  
Please see the attached Reply to Return to Motion to Certify that is being filed today.

Kindest Regards,  
-Beth

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August 18, 2022

Via Email ([suptctfilings@sccourts.org](mailto:suptctfilings@sccourts.org))  
The Honorable Patricia Howard  
Supreme Court Clerk of Court  
Post Office Box 11330  
Columbia, South Carolina 29211

**RECEIVED**  
**Aug 18 2022**  
**SC Court of Appeals**

Re: *Emily P. Smith, et al. v. Robert T. Smith, et al.*  
Appellate Case No.: number not yet assigned

Dear Ms. Howard:

Please find enclosed a Reply to Return to Motion to Certify Appeal. By copy of this letter and as evidenced by the Proof of Service, these filings have been served upon counsel for the Respondents. Thank you for your time in this matter. If you have any questions, please do not hesitate to contact our office.

With warm personal regards, I am,

Sincerely yours,

Desa Ballard  
[desab@desaballard.com](mailto:desab@desaballard.com)

Enclosures

cc: Via Electronic Mail  
SC Court of Appeals  
Mark Goodard, Esquire  
John Kelchner, Esquire  
Ashby Jones, Esquire  
Alyssa Iglesias, Esquire  
Sheila Robinson, Esquire  
Emily Smith

