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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY
WALTON J. MCLEOD, CIRCUIT COURT JUDGE

Appellate Case No. 2022-001060

Emily P. Smith,Appellant,

v.

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

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. Did the Trial Court err in dismissing the complaint pursuant to Rule 12(b)(6), SCRCF when the complaint set forth sufficient facts to support causes of action against the Defendants?
- II. Did the Trial Court err in dismissing the complaint for lack of subject matter jurisdiction pursuant to Rule 12(b)(1), SCRCF when the circuit court has exclusive jurisdiction over corporate issues, including judicial dissolution and appointment of receivers?
- III. Did the Trial Court err in concluding that the Family Court is the proper forum to oversee the dissolution and winding up of a limited liability company and appointment of a receiver when the LLC had not been determined to be marital property?
- IV. Did the Trial Court err in dismissing the circuit court action as it relates to Defendants Robert B. Smith and Sherry C. Smith?
- V. Did the Trial Court err by instructing the parties to litigate the matter in Family Court when Plaintiff demanded a jury trial?

STATEMENT OF THE CASE

Emily and Respondent Robert T. Smith (hereinafter referred to as “Terence”) are married and have been involved in domestic litigation since August 18, 2021, when Emily filed for divorce. (Lexington Family Court, Case No.: 2021-DR-32-1578). The parties are both real estate agents and they formed Southern Collection, LLC (hereinafter referred to as “the LLC”) for the purposes of operating a real estate company. (Complaint). In the domestic action, Emily requested that the Family Court order an accounting of the parties’ real estate business due to Emily’s concerns that Terence was misappropriating money, however that request was denied. (Second Supplemental Temporary Order).

After being denied relief by the Family Court, Emily filed suit on April 27, 2022, asserting her rights as a member of a limited liability company, seeking a judicial dissolution and winding up of the LLC, emergency temporary appointment of receiver, and imposition of constructive trust. (Complaint). The lawsuit also sought damages and relief for conversion and attempted tortious interference with contract. (Id.). Contemporaneously with the filing of this action, Emily filed a statement of disassociation with South Carolina Secretary of State to initiate the dissolution of the LLC. (Statement of Disassociation).

On April 28, 2022, Emily filed an Emergency Motion for Appointment of Receiver which was heard on May 5, 2022. The Honorable Walton McLeod denied the motion by Order dated May 6, 2022, holding that the Family Court could appoint a receiver. (Order Denying Motion for Receiver).

On May 12, 2022, the Defendants and defendant corporations filed separate motions to dismiss the action, pursuant to Rules 12(b)(1) and 12(b)(6), SCRCPP. (MTD). On June 1, 2022, Emily filed a formal demand for a jury trial. (Demand for Jury Trial). The Honorable Walton J.

McLeod heard oral arguments on the motions to dismiss on June 3, 2022. On June 17, 2022, Judge McLeod issued an order granting the motions to dismiss filed by the Defendants and defendant corporations. (Order Granting D. MTD). On June 22, 2022, Emily filed a Motion to Reconsider the order. (MTR). Judge McLeod issued an Amended Order Granting Defendants' Motion to Dismiss on June 23, 2022. (Amended Order).¹ Emily then filed a Motion to Reconsider the Amended Order on June 29, 2022. (MTR Amended Order). No hearing was held on either Motion to Reconsider, however the Defendants filed a Joint Memorandum in Opposition to the Motion on July 6, 2022. On July 20, 2022, Judge McLeod issued an order denying Emily's Motion to Reconsider. On July 29, 2022, Appellant Emily Smith served the Notice of Appeal in this matter.

FACTUAL BACKGROUND

This case arises from a dispute between members of a corporate entity who are involved in litigation in Family Court. Emily and Respondent Robert T. Smith ("Terence") are married and have been involved in a highly contested domestic action since August 18, 2021. Emily and Terence formed a limited liability company, Southern Collection LLC (the "LLC") on May 25, 2020, for purposes of operating a real estate brokerage. (Complaint). When the LLC was operational, Emily worked as salesperson and Terence was the broker in charge. (Id.) Emily and Terence were the sole members of the LLC, and each party owned fifty (50) percent of the distributional interest in the company. (Id.) Emily and Terence each formed their own individual S Corporations through which the net income from the LLC was paid to each party as their individual income. (Id.) Emily's S Corporation is Appellant Emily P. Smith and Associates, LLC,

¹ The Amended Order was filed to reflect the dismissal of all the Defendants involved as Defendants Robert T. Smith and Sherry C. Smith were inadvertently excluded from the Order filed on June 17, 2022.

and Terence's is Respondent Terence Smith and Associates, LLC (hereinafter referred to as "Terence LLC").

After initiating the divorce proceedings on August 18, 2021, Emily retained a certified fraud examiner to conduct an audit of the LLC's business accounts and the accounts associated with Emily and Terence's individual S Corporations. (Complaint). The results of the audit revealed that Terence had been withholding commissions Emily earned, overpaying himself, and diverting income to a separate LLC, Respondent Southern Collection Brokerage ("Brokerage LLC"), which was solely owned by Terence and formed after Emily filed for divorce. (Id.). It was also discovered that Terence's parents, Respondents Robert B. Smith and Sherry C. Smith, were in possession of office profits belong to the LLC without Emily's knowledge or consent. (Id.).

On April 27, 2022, Emily filed a statement of disassociation with the South Carolina Secretary of State pursuant to S.C. Code Ann. § 33-44-704 to initiate the dissolution of the LLC. (Statement of Disassociation). She also filed an action in circuit court seeking judicial dissolution of the LLC pursuant to S.C. Code Ann. § 33-44-801(4). (Complaint).

On April 28, 2022, Emily filed an Emergency Motion for Appointment of Receiver in attempt to protect the assets of the LLC.² (Emergency Motion for Appointment of Receiver). Judge McLeod denied Emily's request to appoint a receiver over the LLC, finding that "While it is clear that the appointment of receiver is in the discretion of the circuit court, such acts appear to appropriate in the family court in the proper context as well." (Order Denying Motion for Receiver).

² Emily had previously requested that the Family Court order an accounting of the LLC which was denied. However, when the request was made, none of the corporate entities were parties to the domestic action.

On April 29, 2022, Emily’s counsel in the domestic action filed a Motion to Supplement Complaint in the Family Court action, requesting that the family court exclude the LLC and the Defendant companies from the equitable division of the marital assets. (Motion to Supplement Complaint).

On May 12, 2022, the Defendants filed a Motion to Dismiss the action pursuant to Rules 12(b)(1) and 12(b)(6), SCRPC. (Defendants’ Motion to Dismiss). Ultimately, Judge McLeod dismissed the circuit court action finding that the LLC was marital property within the exclusive jurisdiction of the family court to apportion, and holding that Emily had not set forth sufficient facts to support the causes of action against the Defendants. (Amended Order). Emily subsequently filed this appeal.

On September 28, 2022, the parties to this appeal filed a joint Consent Motion to Stay Proceedings until the completion of mediation in the domestic action that was scheduled for January 9, 2023. (Consent Motion to Stay Proceedings). This motion was granted by the Court on September 29, 2022, and it was ordered that the appeal be held in abeyance until January 9, 2022, with a status report to follow no later than January 16, 2023. (Order Granting Abeyance). The scheduled mediation was cancelled by counsel for Terence who had not completed the taxes for the LLC, which was a prerequisite for reconvening the mediation, and the Court ordered that the appeal no longer be held in abeyance.

STANDARD OF REVIEW

“An appellate court applies the same standard of review as the trial court when reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRPC.” *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). “In deciding whether the trial court properly granted the motion to

dismiss, this Court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief.” *Flateau v. Harrelson*, 355 S.C. 197, 584 S.E.2d 413 (S.C. App. 2003). “In considering such a motion, the trial court must base its ruling solely on allegations set forth in the complaint.” *Spence v. Spence*, 368 S.C. 106, 628 S.E.2d 869 (S.C. 2006). “If the facts and inferences drawn from the facts alleged in complaint, viewed in the light most favorable to the plaintiff would entitle the plaintiff to relief on any theory, the grant of a motion to dismiss for failure to state a claim is improper.” *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999).

Pursuant to Rule 12(b)(1), SCRCP, where the movant challenges the power of the court over the subject matter, “the question of subject matter jurisdiction is a question of law for the court.” *Chew v. Newsome Chevrolet, Inc.*, 315 S.C. 102, 104, 431 S.E.2d 631, 631 (Ct. App. 1993). The Court is “free to decide questions of law with no deference to the trial court.” *Id.*

ARGUMENT

I. The Trial Court erred in dismissing the complaint pursuant to Rule 12(b)(6), SCRCP when the complaint set forth sufficient facts to support causes of action against the Defendants.

A complaint must contain “a short and plain statement of the facts showing that the pleader is entitled to relief.” Rule 8, SCRCP. Emily set forth such a statement in the pleadings, and for that reason, the trial court erred in granting the Defendants’ Motion to Dismiss. Each cause of action is addressed in turn below.

a. Judicial Dissolution and Winding Up

For a first cause of action, Emily sought relief in the form of a judicial dissolution and winding up of the jointly owned LLC pursuant to S.C. Code Ann. § 33-44-801(4). Section 33-44-801(4) provides in relevant part:

“A limited liability company is dissolved, and its business must be wound up...(4) on application by a member or a dissociated member, upon entry of a judicial decree that...(b) another member has engaged in conduct relating to the company’s business that makes it not reasonably practicable to carry on the company’s business with that member; (e) the managers or members in control of the company have acted, are acting, or will act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the petitioner.”

The complaint contains several paragraphs clearly stating the allegations that Terence, the only other member of the LLC, was engaging in conduct meeting the criteria described above that triggered the necessary dissolution and winding up of the LLC. The complaint specifically alleges the following: “On information and belief, Defendant [Terence] Smith diverted or misappropriated most or all income and assets of the LLC to himself as ‘partner distributions’ or to Brokerage LLC for his sole purposes, with the intent to deprive Emily...” (Complaint ¶ 17). “[Terence] intentionally created the Brokerage LLC and has diverted the jobs, income and assets of the LLC to the Brokerage LLC without Emily’s knowledge or consent.” (Id. at ¶ 18). “...since on or about October 19, 2021, Defendant [Terence] Smith has been conducting the business of the LLC through Brokerage LLC without Plaintiff’s consent, and misappropriating all assets and income due to Emily.” (Id. at ¶ 19). “Defendant [Terence] Smith...remov[ed] her name and contact information from marketing and advertising, intentionally fail[ed] to relay calls to Emily concerning her listings, refus[ed] to share listing appointments through their standard practices, stopp[ed] payment on checks payable to Emily and intercept[ed] contact intended for Emily...” (Id. at para).

In support of the allegations, Emily included as an exhibit to the complaint an affidavit and audit report compiled by a certified fraud examiner which demonstrated that Terence had “repeatedly overpaid himself for commission from the LLC, taken improper ‘partner distributions’ and withheld commission due to Emily for at least thirteen property sales generated through the LLC.” (Id. at ¶ 20; Exhibit A).

When viewed in a light most favorable to Emily, the complaint more than established a cause of a claim entitling her to judicial dissolution and winding up of the LLC. Accordingly, the trial court erred in dismissing the complaint and this cause of action pursuant to Rule 12(b)(6), SCRPC.

b. Emergency Temporary Appointment of Receiver

For a second cause of action, Emily sought the temporary appointment of a receiver to conduct an inventory and accounting of the LLC to protect the assets of and her interest in the LLC, pursuant to S.C. Code Ann. § 15-65-10(1).

“A receiver may be appointed by a judge of the circuit court, either in or out of court (1) Before judgment, on the application of either party, when he established an apparent right to property which is the subject of the action and which is in the possession of an adverse party and the property, or its rents and profits, are in danger of being lost or materially injured or impaired.” S.C Code Ann. § 15-65-10(1).

The complaint sets forth more than sufficient facts to establish Emily’s right to the profits and assets of the LLC and demonstrate that the property was in danger of being lost or materially injured by Terence.

c. Conversion

For a third cause of action, Emily sought an order granting judgment against Terence and Respondents Terence LLC and Brokerage LLC for conversion of the misappropriated assets, inventory, and income from the LCC ad the value of all assets and income diverted to Brokerage LLC. (Complaint). Conversion is defined as “the unauthorized assumption in the exercise of the right of ownership over goods or person chattels belonging to another to the exclusion of the owner’s rights.” *SSI Medical Servs., Inc. v. Cox*, 301 S.C. 493, 392 S.E.2d 789 (1990). “Conversion may arise by some illegal use or misuse, or by illegal detention of another’s chattel.” *Id.* To prevail

on a conversion action, “the plaintiff must show either title or right to possession of the property at the time of conversion.” *Oxford Finance Cos., Inc. v. Burgess*, 303 S.C. 534, 402 S.E.2d 480 (1991).

Emily’s complaint alleges that Terence “took possession of approximately ninety-five percent of the staging inventory purchased by Emily and wrongfully converted it for his personal use to furnish his home without Emily’s knowledge or consent.” (Complaint ¶ 38) (Emphasis added). Emily further alleged that Terence “misappropriated funds, inventory, and assets from the LLC that were due to Emily and converted those funds, inventory, and assets for the use of operating Brokerage LLC and [Terence] LLC.” (Id. at ¶ 39). The pleadings clearly established that Respondents Terence, Brokerage LLC, and Terence LLC assumed possession of property belonging to Emily without her authorization, and when viewed in a light most favorable to Emily, the facts alleged entitle her to relief under a theory of conversion. For those reasons, the trial court erred in dismissing the action for conversion under 12(b)(6), SCRPC.

d. Attempted Tortious Interference with Contract

For a fourth cause of action, Emily sought an order granting judgment against Terence for attempted tortious interference with a contract. The elements of a cause of action for tortious interference with contract are “(1) existence of a valid contract; (2) the wrongdoer’s knowledge thereof; (3) his intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages.” *DeBerry v. McCain*, 275 S.C. 569, 274 S.E.2d 293 (S.C. 1981).

Emily’s complaint alleged and pleaded each of the required elements to sustain a cause of action for tortious interference with contract against Terence. Specifically, the complaint alleged that “Emily entered into a contract to sell a home,” and that Terence “had knowledge of the contract

between Emily and the owner” of the home. (Complaint ¶¶ 42-43). Further, “the potential buyer attempted to contact Emily...but was unable to as Emily’s contact information had been directed to [Terence],” and that Terence “falsely advised the potential buyer that Emily was not available to show the home...instead [Terence] showed the home to the potential buyer and secured an offer to purchase, which he then attempted to relay to...Emily’s client.” (Id. at ¶¶ 44-45). Terence “intentionally and maliciously misled Emily’s client and customer about his involvement in the transaction to cause a breach in the contract between Emily and her client...” (Id. at ¶ 46). Lastly, Emily’s complaint alleged that she “sustained actual damages by way of substantial loss of earnings and injury to her reputation.” (Id. at ¶48).

The complaint met the pleading requirements of Rule 8, SCRCP and established a cause of action for tortious interference with contract. As such, the trial court erred by dismissing the action for under 12(b)(6), SCRCP.

e. Imposition of Constructive Trust

For a fifth cause of action, Emily sought the imposition of a constructive trust against Respondents Robert B. Smith and Sherry C. Smith, and Respondent Brokerage LLC. “A constructive trust arises whenever a party has obtained money which does not equitably belong to him and which he cannot in good conscience retain or withhold from another who is beneficially entitled to it as where money has been paid by accident, mistake of fact, or fraud, or has been acquired through a breach of trust or the violation of a fiduciary duty.” *Wolfe v. Wolfe*, 215 S.C. 530, 56 S.E.2d 343 (1949).

In her complaint, Emily specifically alleged that “at least forty-thousand dollars of office profits belonging to the LLC are being held in a bank account owned and controlled by...Robert

B. Smith and Sherry C. Smith.” (Complaint ¶ 52). The complaint further alleged that Respondents Robert and Sherry were not “owners, employees, or agents of the LLC, nor were they entitled to receive any income or profits generated by the LLC.” (Id. at ¶ 53). The complaint also stated that “the business funds were paid to Defendants Robert B. Smith and Sherry C. Smith in an effort to secrete them from an accounting of assets and income of the LLC.” (Id. at ¶54).

As it pertains to Brokerage LLC, the complaint sets forth the specific allegations establishing a claim for imposition of constructive trust in paragraphs 17-20, which were also incorporated into the cause of action. (Id. at ¶ 50). When viewed in a light most favorable to Emily, the facts alleged entitle her to relief under a theory imposition of constructive trust against Respondents Robert, Sherry, and Brokerage LLC. For those reasons, the trial court erred in dismissing the action for conversion under 12(b)(6), SCRPC.

II. The Trial Court erred in dismissing the complaint for lack of subject matter jurisdiction pursuant to Rule 12(b)(1), SCRPC when the circuit court has exclusive jurisdiction over corporate issues, including judicial dissolution and appointment of receivers.

Members of limited liability companies established under South Carolina law have statutory rights which enable them to seek a dissolution of a jointly owned limited liability company. Emily, a member of the LLC, filed a complaint in circuit court seeking a judicial dissolution and winding up of the LLC, appointment of a receiver, and an accounting of the assets of the business, which are remedies that are exclusive to the circuit court. The trial court dismissed the circuit court action, finding that the family court Family courts, however, are of limited jurisdiction³ and lack jurisdiction over the LLC or its corporate affairs, all of which are governed by statute.

³ See S.C. Code Ann. § 63-3-530 (2010).

Recently, the South Carolina Court of Appeals recognized the exclusive jurisdiction of the circuit court to hear such matters. *Palmetto Wildlife Extractors, LLC v. Justin Ludy & First Cmty. Bank Corp.*, 435 S.C. 690, 869 S.E.2d 859 (S.C. App. 2022). In that case, the Respondents, who were involved in arbitration, requested the dissolution of a limited liability company pursuant to § 33-44-801 and they requested that a receiver be appointed pursuant to § 15-65-10. *Id.* The Court held that the request for the appointment of a receiver, an accounting, and judicial dissolution cannot be sent to arbitration because those issues can “only be resolved by the *circuit court.*” *Id.* (emphasis added). In deciding, the Court focused on the language of S.C. Code Ann. § 33-44-803(a) which provides, “the *circuit court*...may order judicial supervision of the winding up,” and S.C. Code Ann. § 15-65-10 which provides “A receiver may be appointed by a *judge of the circuit court.*” (Emphasis added).

Similarly, Emily sought the judicial dissolution and winding up of the LLC pursuant to § 33-44-801(4), and she also requested, through the complaint and a separate motion, that the court appoint a receiver over the LLC pursuant to § 15-65-10. (Complaint; Emergency Motion for Appointment of Receiver). However, the trial court denied Emily’s requests and dismissed the action in circuit court, finding that it lacked jurisdiction and that “the Family Court has subject matter jurisdiction of the matters asserted and relief sought in Plaintiff’s Complaint.” (Amended Order Granting MTD). While *Palmetto Wildlife Extractors* concerned parties involved in arbitration, its holding is clear that requests for appointment of a receiver, and accounting, and judicial dissolution can “*only be resolved by the circuit court.*” 435 S.C. 690, 869 S.E.2d 859 (S.C.

App. 2022) (Emphasis added). It should follow that such matters cannot be resolved by the family court or a judge of the family court.⁴

III. The Trial Court erred in concluding that the Family Court is the proper forum to oversee the dissolution and winding up of a limited liability company and appointment of a receiver when the LLC had not been determined to be marital property.

The family court is a court of limited jurisdiction to hear and determine actions pertaining to the real and personal property of the marriage. S.C. Code Ann. § 63-3-530(A)(2). When the domestic action was filed on August 18, 2021, Emily requested equitable distribution in the pleadings. However, none of the Respondent LLCs were made parties to the action in family court, and at the time that the circuit court action was filed, there had been no finding, no order, and no determination that Emily or Terence's interests in the LLC or any other corporate entities were marital property. (Affidavit of Sheila Robinson).

Marital property is defined as all real and personal property which has been acquired by the parties during the marriage and which is owned as the date of filing or commencement of marital litigation. S.C. Code Ann. § 20-3-630(a). While the LLC was formed by the parties during the marriage, it is a legal entity distinct from Emily and Terence, and neither Emily nor Terence owns or has any transferable interest in the property of the LLC. See S.C. Code Ann. § 33-44-501(a). The LLC should not be presumed to be an asset of the marriage because it is by statute, a wholly separate legal entity apart from Emily or Terence.

Other courts have recognized the unique nature of a member's ownership in a limited liability company and have held that family court does not have the authority to distribute assets belonging to a limited liability company because those assets are nonmarital. *Whittaker v. Whittaker*, 228

⁴ Had the Court intended to extend this authority to the family court, it would have held so specifically.

W.Va 84, 87, 717 S.E.2d 868, 871 (2011) (recognizing that the family court does not have jurisdiction to order a limited liability company to transfer its assets.) See also, *Whaley v. Whaley*, 261 So.3d 386, 394-95 (Ala. Civ. App. 2017) (citing *Whittaker*).⁵

Ultimately, the family court exercised no jurisdiction over the Respondent LLCs since none of the LLCs were made parties to the domestic action, the family court had not issued any rulings regarding any of the LLCs, nor had it recognized them as marital property. Therefore, the trial court erred in finding that the family court had jurisdiction to oversee the dissolution and winding up of an LCC which was not determined to be marital property.

IV. The Trial Court erred in in dismissing the circuit court action as it relates to Defendants Robert B. Smith and Sherry C. Smith.

In the circuit court action, Emily sought the imposition of constructive trust against Respondents Robert and Sherry alleging that “at least forty-thousand dollars of office profits belonging to the LLC are being held in a bank account owned and controlled by...Defendants Robert B. Smith and Sherry C. Smith.” (Complaint).

At the time that the circuit court action was filed, neither Robert or Sherry were parties to the domestic action, nor was the LLC adjudged to be marital property. Defendants argued that the family court had the authority to add Robert and Sherry to the domestic action to accomplish equitable division of the property in their possession pursuant to S.C. Code Ann. § 20-3-660. (Ind. Defs. Memo in Support). The trial court dismissed the circuit court action as it related to Respondents Robert and Sherry, finding that the “Family Court has subject matter jurisdiction of

⁵ While *Whittaker* and *Whaley* are opinions from outside South Carolina, Appellant cites to them as persuasive authority.

[sic] the matter asserted and relief sought in Plaintiff's Complaint." (Amended Order Granting MTD).

While the family court may have the authority to join third parties to a domestic action, this authority is limited to situations in which property is alleged to be marital property and is owned by a third party. *See* S.C. Code Ann. § 20-3-660. In this case, the LLC had not been found to be marital property falling within the jurisdiction of the family court. Therefore, the office profits of the LLC which were in were wrongfully in possession of Respondents Robert and Sherry were not marital property to be apportioned by the family court. The circuit court action as it related to Respondents Robert and Sherry, involved non-marital property and was properly before the circuit court. Therefore, the trial court erred in dismissing the complaint and specific cause of action against Respondents Robert and Sherry.

V. The Trial Court erred by instructing the parties to litigate the matter in Family Court when Plaintiff demanded a jury trial.

Rule 38(a), SCRCF provides, "The right of trial by jury as declared by the Constitution or as given by a statute of South Carolina shall be preserved to the parties inviolate. Issues of fact in an action for the recovery of money only or of specific real or personal property must be tried by a jury, unless a jury trial be waived."

The family court is a statutory court created by the legislature and therefore is of limited jurisdiction. *State v. Graham*, 340 S.C. 352, 255, 532 S.E.2d 262, 263 (2000). The statutes that create the family court do not permit it to hold jury trial, and the family court rules require that "all hearings in the family courts shall be conducted by the court *without* a jury." Rule 9(a), SCRCF. (Emphasis added).

The circuit court action asserted multiple causes of action seeking the recovery of money and assets belonging to Emily and the LLC, which “*must* be tried by a jury.” Rule 38(a), SCRPC. (Emphasis added). Additionally, on June 3, 2022, Emily filed a formal demand for jury trial, pursuant to Rule 38(b), SCRPC, requesting a trial by jury on all factual disputes arising out of each cause of action. (Demand for Jury Trial). By dismissing the circuit court action and instructing the parties to litigate the matter in family court, the trial court effectively denied Emily her constitutional right to have a trial by jury.

CONCLUSION

For the reasons set forth above, this Court should reverse the judgment of the trial court and allow this case to proceed on its merits.

Respectfully submitted,

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