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

RECORD ON APPEAL
VOLUME I OF II

Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)
Ballard & Watson
226 State Street
West Columbia, South Carolina 29169
Telephone 803.796.9299

ATTORNEYS FOR APPELLANT

Mark B. Goddard (S.C. Bar No. 73965)
R. Hawthorne Barret (S.C. Bar No. 16973)
John B. Kelchner (S.C. Bar No. 13589)
Lindsey M. Behnke (S.C. Bar No. 105719)
Turner Padget Graham & Laney, P.A.
Post Office Box 1473
Columbia, South Carolina 29202
Telephone 803.254.2200

ATTORNEYS FOR RESPONDENTS

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LEXINGTON SC

STATE OF SOUTH CAROLINA)	IN THE FAMILY COURT FOR THE
)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)	C.A. NO.: 2021-DR-32-1578
EMILY P. SMITH,)	
PLAINTIFF,)	**TEMPORARY ORDER**
v.)	
ROBERT TERENCE SMITH,)	
DEFENDANT.)	

Date of Hearing:	August 26, 2021
Presiding Judge:	W. Greg Seigler
Plaintiff's Attorney:	Sheila McNair Robinson
Defendant's Attorney:	Ashby Lawton Jones
Court Reporter:	Sanya Kaiser

This matter came before the Court on August 26, 2021 at 4:30 p.m. The hearing was held via WebEx Virtual Courtroom pursuant to the authority of the South Carolina Supreme Court Order issued on April 30, 2020. The action was commenced by the filing of a Notice of Motion and Motion for Emergency/Expedited Temporary Relief, Summons and Complaint on August 18, 2021. The Honorable Robert E. Newton issued an Order on August 18, 2021 granting the Motion for an expedited hearing. The Defendant was personally served with the pleadings and Order for Expedited Hearing on August 19, 2021, as evidenced by the Affidavit of Service filed with the Court. The time for filing a responsive pleading has not yet passed.

Present at the hearing were the Plaintiff and her attorney, Sheila McNair Robinson. Also present were the Defendant with his attorney, Ashby Lawton Jones. The Court heard oral arguments of counsel and then recessed the hearing to take the matter under advisement. After careful consideration of the affidavit packages submitted by both parties and all information

presented at the hearing, this Court makes the following findings of fact and conclusions of law:

1. Both parties are citizens and residents of Lexington County, South Carolina, having been so in excess of one (1) year prior to the commencement of this action.

2. The Plaintiff and Defendant last resided together as wife and husband in Lexington County, South Carolina.

3. The Plaintiff and Defendant are presently wife and husband, having been married to each other on November 3, 2012. Of this marriage, two (2) children have been born, namely: O. G. S., born in 2014; and O. P. S., born in 2016. No other children have been born of these parties, and no child is expected.

4. This Court finds that the two (2) minor children have resided in South Carolina since birth. South Carolina is therefore the home state of the children pursuant to the Uniform Child Custody Jurisdiction Enforcement Act codified at S.C. Code §63-15-300 et. seq.

5. This Court finds that this Court has subject matter and personal jurisdiction of this action and of these parties. Venue is proper in Lexington County, South Carolina.

6. This Court finds that the Plaintiff has filed this action in which she is seeking a divorce from the Defendant on the basis of habitual drunkenness. The Plaintiff is further seeking an Order requiring the Defendant to vacate the marital home, for an Order granting her exclusive use and possession of the marital home, for sole custody of the children, for supervised visitation between the Defendant and the minor children, for child support, and other ancillary relief. In his affidavit, the Defendant denied the habitual drunkenness allegations and made an oral motion to dismiss the case for lack of jurisdiction since the parties are still residing together. Alternatively, the Defendant requested that the parties have shared custody of the children under a nesting arrangement in the marital home.

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7. This Court finds that South Carolina case law is clear that "habitual drunkenness is the fixed habit of frequently getting drunk; it does not necessarily imply continual drunkenness. Based on this definition, one need not be an alcoholic to be guilty of habitual drunkenness. It is sufficient if the use or abuse of alcohol causes the breakdown of normal marital relations." *Lee v. Lee*, 316 S.E. 2d 435, 437 (Ct. App. 1984), cited in *Curry v. Curry*, 741 S.E. 2d 558 (S.C. App. 2013). Moreover, our Supreme Court has long held that a party may receive temporary relief upon a *prima facie* showing of habitual drunkenness. *Fisher vs. Fisher*, 278 S.E. 2d 780 (1980). This Court finds that to make a *prima facie* showing, the Plaintiff must establish that the Defendant's use of alcohol caused the breakdown of the marriage and that it occurred at or near the time of the filing for divorce. *Bodkin vs. Bodkin*, 694 S.E.2d 230 (Ct. App. 2010) (citing *Epperly vs. Epperly*, 440 S.E. 2d 884 (1994). This Court finds, based upon a review of the affidavit packages, especially the Private Investigative Report of Stillinger Investigations, that the Plaintiff has met her burden of proof in establishing a *prima facie* showing of the Defendant's habitual drunkenness.

8. This Court finds that the Plaintiff is granted exclusive use and possession of the marital home located at 112 John Preston Drive, Lexington, South Carolina. She shall be responsible for all costs associated with this home. The Defendant shall immediately vacate the home, taking with him his clothes, shoes and toiletries.

9. This Court finds that both parties are restrained from selling, mortgaging, destroying, or otherwise disposing of any marital property without prior written consent of both parties or prior Order of the Court. This Court further finds that neither party shall incur any debt in the name of the other party or increase any marital debt during the pendency of this litigation.

10. The Plaintiff shall have temporary sole custody of the two minor children. This Court finds that the Lexington County Department of Social Services issued a Safety Plan on

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August 12, 2021 which requires the Defendant's visitation to be supervised (sight and sound) by the Plaintiff's parents, Ron and Teddie Bishop. This Court finds that the Defendant shall continue to have supervised visitation with the Plaintiff's parents serving as the sight and sound supervisors pending the expedited investigation of the Guardian *ad Litem*, as set forth in full herein below. The Defendant shall be allowed to exercise said visitation at the marital home if he so desires. The Defendant shall also have reasonable telephonic and video contact with the children, and the Plaintiff shall ensure the children are available and are encouraged to speak with the Defendant during these calls.

11. The Defendant shall pay child support to the Plaintiff in the amount of $2,000 per month commencing September 1, 2021 and continuing on the first of each month thereafter. The Defendant shall pay this child support directly to the Plaintiff. In the event that the Defendant is ever more than five (5) days late in making any one child support payment, the Plaintiff may file an affidavit with the Office of the Clerk of Court requiring all future child support payments to be paid through the State Disbursement Unit, together with the applicable surcharge.

12. The Plaintiff shall maintain medical insurance coverage on the minor children. All noncovered medical, dental, counseling, orthodontic, vision and other health-related expenses for the children shall be divided equally between the parties. The Plaintiff shall provide a bill/invoice to the Defendant within ten (10) days of incurrence, and the Defendant shall pay his one-half within ten (10) days of the date the bill/invoice is provided or pursuant to other payment arrangements acceptable with the medical provider.

13. The parenting guidelines and restrictions attached to this Order shall be in full force and effect for both parties. Neither parent shall administer corporal punishment to either minor child.

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14. Michelle Gorski is appointed as the Guardian *ad Litem* for the two (2) minor children. A separate Order of appointment is being issued simultaneously with this Temporary Order. Ms. Gorski is to complete an expedited investigation within forty-five (45) days of the date of this Order. At the conclusion of the expedited investigation a supplemental temporary hearing shall be scheduled. The parties shall equally divide the retainer payable to Ms. Gorski as set forth more fully in the detailed order of appointment.

15. The parties agree that either Lisa Kinon or Kevin Barth shall serve as the mediator in this case.

16. This Court finds that the Defendant shall reimburse the Plaintiff the sum of $6,779.33 in private investigative fees, with this sum being paid directly to the Plaintiff within thirty (30) days of the date of this Order.

16. All other issues shall be held in abeyance pending further Order of the Court.

IT IS THEREFORE ORDERED that the Plaintiff has established a showing of a *prima facie* showing of the Defendant's habitual drunkenness;

IT IS FURTHER ORDERED that the Plaintiff shall have exclusive use and possession of the marital home as set forth in full hereinabove;

IT IS FURTHER ORDERED that the Defendant shall immediately vacate the marital home as set forth herein above;

IT IS FURTHER ORDERED that the Plaintiff shall have sole temporary custody of the minor children, with the Defendant having supervised visitation as set forth more fully herein above;

IT IS FURTHER ORDERED that the Defendant shall pay child support to the Plaintiff in the amount of $2,000 per month as set forth more fully hereinabove;

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IT IS FURTHER ORDERED that the attached parenting guidelines and restrictions shall apply to both parties, and neither shall administer corporal punishment to either minor child;

IT IS FURTHER ORDERED that the Plaintiff shall maintain medical insurance coverage on the minor children, with all noncovered health-related expenses being divided equally between the parties as set forth more fully hereinabove;

IT IS FURTHER ORDERED that Michelle Gorski is appointed as Guardian *ad Litem* for the minor children and she shall conduct an expedited investigation within forty-five (45) days of the date of this Order;

IT IS FURTHER ORDERED that another temporary hearing shall be scheduled at the conclusion of the expedited investigation of the Guardian *ad Litem*;

IT IS FURTHER ORDERED that either Lisa Kinon or Kevin Barth shall serve as the mediator in this case;

IT IS FURTHER ORDERED that the Defendant shall reimburse the Plaintiff the sum of $6,779.33 in private investigative fees, with this sum being paid directly to the Plaintiff within thirty (30) days of the date of this Order;

IT IS FURTHER ORDERED that all other issues shall be held in abeyance pending further Order of the Court.

IT IS SO ORDERED.

W. Greg Seigler
Presiding Judge of the
Family Court for the
Eleventh Judicial Circuit

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Lexington, South Carolina

September 8, 2021

STATE OF SOUTH CAROLINA)	IN THE FAMILY COURT FOR THE
)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)	Case No.: 2021-DR-32-1578
)	
Emily P. Smith,)	
)	
Plaintiff,)	**SECOND SUPPLEMENTAL**
)	**TEMPORARY ORDER**
v.)	
)	
Robert Terence Smith,)	
)	
Defendant.)	
)	

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Date of Hearing:	December 2, 2021
Presiding Judge:	The Honorable Robert E. Newton
Plaintiff's Attorney:	Sheila McNair Robinson, Esquire
Defendant's Attorney:	Ashby Lawton Jones, Esquire
Guardian *ad Litem*:	Michelle S. Gorski
Court Reporter:	Carole Shealy

This matter was before the Court on December 2, 2021 on Defendant's Motion for Emergency/Expedited Relief filed on November 5, 2021. Present and appearing at the appointed time and place were the Plaintiff and her attorney, Sheila McNair Robinson, Esquire. The Defendant and his attorney, Ashby Lawton Jones, Esquire and the Guardian *ad Litem*, Michelle S. Gorski, Esquire were also present.

The record reflects this action was commenced by the filing of a Notice of Motion and Motion for Emergency/Expedited Relief on behalf of the Defendant on November 5, 2021. The request for an emergency or expedited hearing was denied and the matter was set in the ordinary course. Defendant requested an Order granting him reasonable unsupervised visitation and attorney's fees. Plaintiff filed a Return to Defendant's Motion on December 1, 2021, wherein Plaintiff requests that if the Court lifts the

supervision requirement the Court impose specific restrictions. In addition, Plaintiff requests the Court Order an accounting regarding certain financial matters and requests an award of fees, as well. Both parties submitted Affidavits and supporting documents and the Court has considered those materials as well as the arguments of Counsel. In addition, the Guardian ad Litem submitted her Initial Report which the Court has considered. All Motions before the Court were properly served.

These parties have been operating under a Temporary Order issued by the Honorable W. Greg Seigler on September 9, 2021, from a hearing on August 26, 2021. That Order granted Plaintiff sole custody and required the Defendant to have visitation consistent with a DSS Safety Plan that was then in effect that required all of Defendant's visitation to be supervised by Plaintiff's parents. A Supplemental Temporary Order was issued on September 24, 2021, which included parenting restrictions and guidelines omitted from the prior Order.

It is contradicted that shortly after the Temporary Order was issued, Plaintiff's parents became unavailable to provide supervision and the South Carolina Department of Social Services closed its case and terminated the prior Safety Plan. In addition, the prior Order did not set out a specific schedule of visitation and the parties have been unable to agree on a regular schedule. As a result, Defendant has had very limited contact with the children since the last Order. The facts surrounding those issues are highly contested as are allegations regarding respective motives of the parties. However, at the hearing the issue of supervision was no longer contested. The issue in

contest was the amount of visitation and any restrictions, as well as the fees and financial issues.

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Based upon a review of all information submitted, the Court finds it appropriate to lift the supervision requirement and set a specific scheduled parenting time for the Defendant.

I. VISITATION SCHEDULE:

A. REGULAR VISITATION: Father will have visitation commencing on Friday, December 17, 2021, from after school until 6:00 P.M. on Sunday, December 19, 2021. Father will then have the children from 3:00 P.M. on Christmas Day until 6:00 P.M. on New Year's Day. Thereafter, Father will have the children every other weekend from Friday afterschool until the children return to school on Monday morning, and in the off weeks, Father will have the children from after school on Wednesday until they are returned to school on Thursday morning. This schedule will commence with Wednesday, January 5, 2022.

B. HOLIDAY VISITATION:

1. **Christmas Visitation:** The mother shall have one (1) week prior to Christmas in the even years, with such visitation to continue until 3:00 p.m. on December 26th. The father shall have from 3:00 p.m. on December 26th, with such visitation to end at 6:00 p.m. on the last day of visitation. In the odd years, this visitation shall reverse and the father will have the week prior to Christmas and the mother will have the week following Christmas until the children return to school.

2. **Thanksgiving Visitation:** The father shall have Thanksgiving visitation in the even numbered years and the mother shall have visitation in the odd numbered years. Thanksgiving shall commence at 6:00 p.m. on the last day the children are in school or would be in school if they were attending the school

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in the district where they are living and shall end at 6:00 p.m. on the following Sunday.

3. **Easter Break and Spring Vacation:** In the odd years, the father shall have Easter weekend with such visitation commencing the Friday before Easter at 6:00 p.m. and ending at 6:00 p.m. on Easter Sunday in the even years. The mother will have the child/children for the Easter weekend in the even years. The parent who has the Easter weekend shall also have that portion of the Easter break that adjoins the weekend with the exchange of the children to occur at 6:00 p.m. on the Wednesday of the Spring Break.

4. **Mother's Day and Father's Day:** The children shall be with the mother on Mother's Day and with the father on Father's Day from Saturday at 6:00 p.m. until Sunday at 6:00 p.m.

5. **Monday/Friday Holidays or School In Service Days:** As to any other holiday or school in service day which occurs on a Monday or a Friday and which is recognized by the school district in which the children resides, the parent having the children for that weekend may keep the child for these days. Such visitation will start at 6:00 p.m. the day before the holiday or in service day and end at 6:00 p.m. the day of the holiday or in service day depending on whether it occurs on a Friday or Monday.

6. **Religious Holidays:** If the children are being raised in a particular faith which has a major religious holiday not otherwise included in the above time frames, the parents shall alternate visitation with the children from 6:00 p.m. the day prior to the event until 6:00 p.m. the day after the event. However, if the child is required to travel and the holiday starts, for example at sundown, the child may be picked up as soon as school is out as might be reasonably necessary to allow for the child to arrive at the parent's home prior to the required time of commencement of the holiday.

7. **Summer Visitation:** The visiting parent shall have two (2) full weeks during the summer. The weeks shall not be consecutive. He/she shall select these weeks in writing on or before April 15 in each odd numbered year. The custodial parent shall also have two (2) full weeks during the summer with no interruptions in visitation in the odd numbered years and he/she shall give notice by May 1 of the weeks he/she selects. In the even years, the right to have first choice as to selection of weeks shall reverse and the custodial parent will select His/her weeks by April 15 with the visiting parent to select his/her weeks by May 1 of each year. These weeks shall include the party's normal every other weekend visitation period and run from Sunday at 6:00 p.m. to Sunday at 6:00 p.m. unless otherwise agreed. In other words, a week

will not be seven days plus the parties' normal weekend. The visiting parent's failure to select weeks by the deadlines set forth above does mean he/she forfeits visitation, but such visitation will be set by the custodial parent.

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8. **Birthday Visitation:** On each parent's birthday, the children shall be with the parent for a minimum of four (4) hours except for school days when the children shall be with that parent from 5:30 p.m. until 8:00 p.m. (This does not require the parent to take time off from work.) The party not having the child on a child's birthday shall have four (4) hours visitation on a non-school day and two (2) hours visitation on a school day, independent of any activity planned by the party who has care of the child on that day. This visitation shall be at a reasonable time and shall not to conflict with any activity the party who has the child on that day may have planned. All the children shall be together on any of their brother's/sister's birthdays and parent's birthdays.

9. **Fourth of July, Labor Day and Memorial Day:** The mother shall have Labor Day and Memorial Day in the odd numbered years. The father shall have the Fourth of July in the odd numbered years. For Memorial Day and Labor Day such visitation shall commence at 6:00 p.m. on the day prior to the holiday and will continue until 6:00 p.m. on the day of the holiday. On the Fourth of July, such visitation shall commence at 6:00 p.m. the day before the holiday and will continue until 9:30 p.m. on the day of the holiday. In the even years this visitation will reverse and the father will have Memorial Day and Labor Day and the mother will have the Fourth of July weekend.

10. **Halloween:** If the children are participating in Halloween activities, the mother will have visitation with the children from 5:00 p.m. until the children return to school or 9:00 a.m. in the odd numbered years and the father will have the children in even numbered years.

11. **Variation from Schedule:** The parties shall have the right to vary visitation as can be mutually agreed upon. In the event the parties vary from the schedule for any period of time, either party can require both to return to the use of the schedule by giving notice in writing to the other.

2. All parenting guidelines and restrictions previously ordered will remain in full force and effect except that Defendant shall be restrained from consuming any alcohol for twelve (12) hours prior to exercising his time with the children and is absolutely restrained from the consumption of any alcohol during his parenting time.

The Guardian ad Litem is authorized to request drug and alcohol testing at any time and the party must comply within twenty-four (24) hours of the written request.

3. The parties shall enroll in and utilize Our Family Wizard for all non-emergency communications regarding the children.

4. The parties are reminded and admonished by the Court regarding the restraints on disparagement or discussion regarding the litigation with the children or in their presence.

5. Neither party shall allow the children to be in the presence of Father's emancipated daughter without direct supervision.

6. The Court denies Plaintiff's request for a Court ordered accounting.

7. All remaining issues are held in abeyance including request for temporary fess incident to this motion.

IT IS SO ORDERED.

The Honorable Robert E. Newton

Lexington, South Carolina
June 21, 2022.

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STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT
Emily P. Smith et al, Plaintiff vs. Robert T. Smith et al, Defendant.	C/A No.: 2022-CP-32-01419 **ORDER DENYING EMERGENCY APPOINTMENT OF A RECEIVER**

INTRODUCTION

This matter arises out of Plaintiffs' ("Plaintiff") Complaint filed on April 28, 2022 seeking Judicial Dissolution and Winding Up on an LLC owned by the parties, Emergency Temporary Appointment of a Receiver, and asserting tort claims for Conversion, Attempted Tortious Interference with Contract, as well as Imposition of Constructive Trust. The crux of this civil action appears to be Plaintiff's allegation that Defendant is denying her of her rightfully owed income from their jointly owned real estate brokerage, Southern Collection Brokerage LLC, through his actions. Plaintiff contacted this Court on Friday, April 29, 2022, requesting an emergency hearing regarding Plaintiff's Motion for Appointment of a Receiver. A hearing was held on May 5, 2022 in the WebEx virtual courtroom. Desa Ballad, Esquire appeared for the Plaintiff, while Ashby Jones, Esquire and Mark Goddard, Esquire appeared on behalf of the Defendants.

While this civil action was filed case was filed recently, the parties have been actively litigating a highly contested divorce action in the Lexington County Family Court since August 18, 2021, and there appears to be great overlap of the issues. Plaintiff contends that the circuit

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court can and should grant the appointment of a receiver because this dispute is centered around an LLC and the dissolution thereof. Defendants contend that this matter should not be handled by the circuit court because exclusive jurisdiction of the properties and assets owned by the parties remains with the family court, and no divestment of such jurisdiction has occurred. Of particular interest to this Court is whether the relief from harm sought by the Plaintiff could be fully addressed by the family court.

After hearing arguments from counsel and reviewing the parties' submitted documents, the Court hereby denies Plaintiff's Request for Appointment of a Receiver without prejudice.

STANDARD OF REVIEW

"The appointment of a receiver is a drastic remedy, and should be granted only with reluctance and caution." *Midlands Utility, Inc. v. South Carolina Dept. of Health and Environmental Control*, 301 S.C. 224, 391 S.E.2d 535 (1989) citing *Vasiliades v. Vasiliades*, 231 S.C. 366 (1957). Further, "the appointment of receiver rests in the sound discretion of the Court to which application is made." *Andrick Development Corp. v. Maccaro*, 280 S.C. 103, 106, 311 S.E.2d 95, 97 (Ct. App. 1984).

A receiver stands in the shoes of debtor with respect to the property of the latter. *Jeffcoat v. Morris*, 300 S.C. 526, 389 S.E.2d 159 (Ct. App. 1989). A receiver holds the property coming into his or her hands by the same right and title as the person for whose property he or she is receiver. *Id.* A receiver represents the court appointing him, and he is an officer of the court and is the agency through which the Court acts. *Kirven v. Lawrence*, 244 S.C. 572, 137 S.E.2d 764 (1964).

In order to warrant the appointment of a receiver prior to the entry of judgment, four conditions must be met. (1) The Plaintiff must show an apparent right to the property; which is

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(2) the subject of the action; (3) in possession of an adverse party; and (4) in danger of being lost, materially injured, or impaired. S.C. Code Ann. § 15-65-10, *et seq*.

ANALYSIS

To be clear, this case does not involve a mortgage foreclosure, bankruptcy, and/or creditor issue at this time, which would be the typical area involving Receivers. Plaintiff asserts that only the circuit court can provide her relief, however, there appears to be prior South Carolina case law supporting the use of a Receiver in the family court context. In *Whetstone v. Whetstone*, 309 S.C. 227, 420 S.E.2d 877 (Ct. App. 1993), the family court appointed a Receiver to assist in property division, and ultimately approved the Receiver's plan which also involved three corporations in which the family members were stockholders. S.C. Code Ann. § 15-65-10, refers to the circuit court addressing and handling the appointment of receivers; however, much of the case law dealing with the applicability and appointment of receivers involve cases that pre-date the formation of the S.C. Family Court in 1976. While it is clear that the appointment of receiver is in the discretion of the circuit court, such acts appear to be appropriate in the family court in the proper context as well.

Even assuming the Plaintiff's allegations regarding withholding of marital assets or income are true, it appears that the family court has the necessary and proper tools to prevent the dissipation or other improper conduct involving contested marital assets through injunctive relief if so sought. See for example *S.C. Code §20-3-650.* As communicated to the attorneys, this court is solely focused on whether emergency appointment of a Receiver is necessary and proper. This court finds in the negative – emergency appointment is not necessary at this time.

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CONCLUSION

Based upon the arguments of counsel and the pleadings, Plaintiff's Motion for Emergency Appointment of a Receiver is DENIED. The parties are to seek relief from the Family Court directly, and should further proceedings in the Circuit Court be needed, they may be sought by the parties.

IT IS SO ORDERED.

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Lexington Common Pleas

Case Caption: Emily P. Smith , plaintiff, et al VS Robert T. Smith , defendant, et al

Case Number: 2022CP3201419

Type: Order/Other

It Is So Ordered

s/ Walton J. McLeod

ELECTRONICALLY FILED - 2022 Jun 17 12:35 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

STATE OF SOUTH CAROLINA) COUNTY OF LEXINGTON))) Emily P. Smith et al,))) Plaintiff)) vs.)) Robert T. Smith et al,))) Defendant.)	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT C/A No.: 2022-CP-32-01419 **ORDER GRANTING DEFENDANTS' MOTION TO DISMISS**

INTRODUCTION

This matter arises out of Defendants Southern Collection, LLC, Southern Collection Brokerage, LLC, and Terence Smith and Associates, LLC, Motion to Dismiss the Complaint of Plaintiffs Emily P. Smith and Emily P. Smith and Associates, LLC, pursuant to Rule 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure.

FACTUAL BACKGROUND

On August 18, 2021, Plaintiff, Emily P. Smith, filed an action for Divorce in the Lexington County Family Court, seeking to dissolve her marriage with Defendant, Robert T. Smith. The divorce action is still pending in Family Court. Plaintiff, filed this civil action alleging that Defendant is denying her of her rightfully owed income from their jointly owned real estate brokerage, Southern Collection Brokerage LLC. Defendant South Collection was formed by Emily P. Smith and Robert T. Smith for purposes of operating as a real estate company. Emily and Robert were the sole members of Southern Collection and each owned 50% of the distributional interest in the company. On April 27, 2022, the day before this civil action was filed, Plaintiff Emily Smith, filed a Statement of Dissociation with the South Carolina Secretary of State's office from Southern

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Collection. Pursuant to S.C. Code Ann §33-44-603(3), Emily has formally dissociated herself from the business and she is no longer a member of the Company. On April 29, the day after this civil action was filed, Plaintiff Emily P. Smith, filed a Notice of Motion and Motion to Supplement Complaint in the Family Court action, requesting that the Family Court exclude the parties' businesses from the equitable division of the marital assets. The Motion to Supplement Complaint has to be adjudicated by the Family Court.

On April 28, 2022, the Plaintiff also filed an Emergency Motion for Appointment of Receiver in the Circuit Court. The Court denied this motion on May 6, 2022. On May 12, 2022, Defendants, Robert T. Smith and Terence Smith And Associates, LLC, filed Motions to Dismiss the civil action pursuant to Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure.

A hearing was convened on June 3, 2022 where Desa Ballard, Esq., appeared on behalf of the plaintiff, Emily P. Smith and Mark Goddard, Esq., and Ashby Jones, Esq. appeared on behalf of the Defendants.

STANDARD OF REVIEW

Rule 12(b) of the South Carolina Rules of Civil Procedure provides:

> Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state facts sufficient to constitute a cause of action, (7) failure to join a party under Rule 19, (8) another action is pending between the same parties for the same claim. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a cause of action or defense to which an adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that cause of action or defense. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matters outside the

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> pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Under Rule 12(b)(6), SCRCP, a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action. In considering such a motion, the trial court must base its ruling solely on allegations set forth in the complaint. If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then 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). In deciding whether the trial court properly granted the motion to dismiss, the appellate court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. *Gentry v. Yonce*, 337 S.C. 1, 522 S.E.2d 137 (1999). A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom entitle the plaintiff to relief under any theory. *Id*. Furthermore, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. *Toussaint v. Ham*, 292 S.C. 415, 357 S.E.2d 8 (1987).

Pursuant to Rule 12(b)(1), SCRCP, where the movant challenges the power of the court over the subject matter, "[t]he 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). "A defendant may seek dismissal of an action pursuant to Rule 12(b)(8) when another action is pending between the same parties for the same claim." *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 320, 701 S.E.2d 39, 44 (Ct. App. 2010). In considering a motion to dismiss based on lack of jurisdiction, the court may consider evidence outside of the pleadings. *Baird v. Charleston County*, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999).

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ANALYSIS

A. Motion to Dismiss Pursuant to 12(b)(1)

Defendants allege that the complaint should be dismissed pursuant to rule 12(b)(1). The family court has exclusive jurisdiction to hear and determine actions involving all types of "marital litigation." S.C. Code Ann. § 63-3-530(A)(2) grants the family court exclusive jurisdiction to hear and determine actions for "divorce a vinculo matrimonii, separate support and maintenance, legal separation and in other marital litigation between the parties, and for settlement of all legal and equitable rights of the parties in the actions in and to the real and personal property of the marriage..." In addition to marital litigation, the family court also has specific legislative authority to hear and determine additional types of disputes between spouses and former spouses, even if they are presented outside the context of marital litigation. For the family court to properly include property within the marital estate, two factors must coincide. First, the property must be acquired during the marriage" and "[s]econd, the property must be owned on the date of filing or commencement of marital litigation." *Brown v. Odom*, 425 S.C. 420, 437, 823 S.E.2d 183, 191 (Ct. App. 2019) 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 of the date of filing or commencement of marital litigation." S.C. Code Ann. § 20-3-630 (2014).

The allegations contained in Plaintiffs' Complaint pertain directly to ownership and financial interest in Southern Collection Brokerage, LLC. The Defendants argue that membership interests are personal property squarely within the jurisdiction of the Family Court. The Plaintiffs argue that Southern Collection LLC has not been found to be marital property and argues the Family court does not have jurisdiction to distribute nonmarital property contained in a Limited

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Liability Company (LLC). Put another way, Plaintiff asserts the LLC is not, and cannot be, marital property. The Court disagrees with the Plaintiffs contention.

Southern Collection was established by both parties during their marriage and on August 18, 2022, when the divorce action was filed in family court, the parties were the sole owners of the limited liability corporation. The South Carolina Supreme Court held in *Levy v. Carolinian, LLC*, that a "distributional interest in an LLC is personal property and may be transferred in whole or in part." 410 S.C. 140, 146, 763 S.E.2d 594, 597 (2014) (citing S.C. Code Ann §33-44-510(b). Further, our courts have held that distributional interest in property not inherited and obtained during marriages, are considered marital property and subject to equitable distribution in Family Court. *Jackson v. Jackson*, 432 S.C. 415, 434, 853 S.E.2d 344, 354 (Ct. App. 2020). Because the property was owned by both parties at the time the divorce action was filed, jurisdiction has been vested in the family court. The personal property in question in the instant civil action falls squarely within the exclusive jurisdiction of the family court to apportion.

Plaintiff cites to S.C. Code Ann § 33-44-803, which grants the Circuit Court the right to supervise the winding up of a company after dissolution, as the basis for why it should be in Circuit Court. On August 27, 2022, the Plaintiff Emily P. Smith, filed a Statement of Dissociation from Southern Collection, while the Plaintiff is no longer a member, the corporation has not yet been dissolved, thus the application of S.C. Code Ann § 33-44-803 is premature and does not apply to the facts currently at hand.

Based on the foregoing, the court finds that the Family Court is the proper forum for this action and the relief sought therein. It is important to note, that Plaintiff Emily P. Smith requested marital assets be apportioned in family court. There have been several Family Court hearings in the domestic action and several hearings are scheduled in the future, all highly indicative of the

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Family Court establishing jurisdiction in the matter. Plaintiff has not provided the Court with any indication that the Family Court has divested itself of jurisdiction in this matter. Furthermore, in the filing of Plaintiffs pending Motion to Supplement Complaint, Plaintiff essentially concedes that Family Court has jurisdiction over the division of marital assets in requesting such relief from the Family Court.

At the hearing on June 3, 2022, Plaintiff indicated that the they have not received any answers from the family court regarding whether Southern Collection LLC is marital property, however, the issue is presently before the family court and ongoing. [1] At this time, the Family Court has subject matter jurisdiction of the matters asserted and relief sought in Plaintiff's Complaint. Therefore, Defendants' Motion to Dismiss pursuant to Rule 12(b)(1), SCRCP is granted.

B. Motion to Dismiss Pursuant to Rule 12(b)(6)

Even assuming arguendo, the Court had the requisite subject matter jurisdiction in this action, the Court finds this action would also fail on meritorious grounds. In the Complaint, Plaintiff is seeking a judicial dissolution and winding up of Southern Collection, appointment of a receiver, and an accounting of assets of the business. Plaintiff has also brought a cause of action for conversion, the imposition of a constructive trust, and a request for attorneys' fees and costs resulting from this action. "Viewing the evidence in favor of the plaintiff, the motion must be granted if facts alleged in the complaint and inferences reasonably deducible therefrom do not entitle the plaintiff to relief on any theory of the case." *Jarrell v. Petoseed Co.*, 331 S.C. 207, 209, 500 S.E.2d 793, 794 (Ct. App. 1998). "The question is whether in the light most favorable to

[1] This Court recognizes that the Family Courts may determine some assets not to be marital property. Such a determination on certain assets could make the Circuit Court the appropriate forum under the appropriate circumstances, however, that is not the case at this time.

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plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987). The Court finds that the Plaintiff has not set forth sufficient facts to support the multiple causes of action against the Defendants.

As previously held, the Court finds that the family court has the necessary and proper tools to prevent the dissipation or other improper conduct involving contested marital assets.

Conclusion

For the foregoing reasons, Defendants' Motions to Dismiss pursuant to Rule 12(b)(1), and in the alternative Rule 12(b)(6) are **GRANTED without prejudice**. The Court instructs parties to continue seeking relief from the Family Court directly. If upon conclusion of the family court action, further proceedings become necessary in Circuit Court, parties may seek further adjudication.

IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE ON THE FOLLOWING PAGE]

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Lexington Common Pleas

Case Caption: Emily P. Smith , plaintiff, et al VS Robert T. Smith , defendant, et al

Case Number: 2022CP3201419

Type: Order/Dismissal

It Is So Ordered

s/ Walton J. McLeod

ELECTRONICALLY FILED - 2022 Jun 23 10:41 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

STATE OF SOUTH CAROLINA) COUNTY OF LEXINGTON))) Emily P. Smith et al,))) Plaintiff)) vs.) Robert T. Smith et al,))) Defendant.)	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT C/A No.: 2022-CP-32-01419 **AMENDED ORDER GRANTING DEFENDANTS' MOTION TO DISMISS**

INTRODUCTION

This matter arises out of Defendants Southern Collection, LLC, Southern Collection Brokerage, LLC, and Terence Smith and Associates, LLC, Robert T. Smith, Robert B. Smith, and Sherry C. Smith's Motion to Dismiss the Complaint of Plaintiffs Emily P. Smith and Emily P. Smith and Associates, LLC, pursuant to Rule 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure. [1]

FACTUAL BACKGROUND

On August 18, 2021, Plaintiff, Emily P. Smith, filed an action for Divorce in the Lexington County Family Court, seeking to dissolve her marriage with Defendant, Robert T. Smith. The divorce action is still pending in Family Court. Plaintiff, filed this civil action alleging that Defendant is denying her of her rightfully owed income from their jointly owned real estate brokerage, Southern Collection Brokerage LLC. Defendant South Collection was formed by Emily P. Smith and Robert T. Smith for purposes of operating as a real estate company. Emily and Robert

[1] The Court inadvertently excluded Defendants Robert T. Smith, Robert B. Smith and Sherry C. Smith from the dismissal order. This amended order reflects the parties involved.

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were the sole members of Southern Collection and each owned 50% of the distributional interest in the company. On April 27, 2022, the day before this civil action was filed, Plaintiff Emily Smith, filed a Statement of Dissociation with the South Carolina Secretary of State's office from Southern Collection. Pursuant to S.C. Code Ann §33-44-603(3), Emily has formally dissociated herself from the business and she is no longer a member of the Company. On April 29, the day after this civil action was filed, Plaintiff Emily P. Smith, filed a Notice of Motion and Motion to Supplement Complaint in the Family Court action, requesting that the Family Court exclude the parties' businesses from the equitable division of the marital assets. The Motion to Supplement Complaint has to be adjudicated by the Family Court.

On April 28, 2022, the Plaintiff also filed an Emergency Motion for Appointment of Receiver in the Circuit Court. The Court denied this motion on May 6, 2022. On May 12, 2022, Defendants, Robert T. Smith and Terence Smith And Associates, LLC, filed Motions to Dismiss the civil action pursuant to Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure.

A hearing was convened on June 3, 2022 where Desa Ballard, Esq., appeared on behalf of the plaintiff, Emily P. Smith and Mark Goddard, Esq., and Ashby Jones, Esq. appeared on behalf of the Defendants.

STANDARD OF REVIEW

Rule 12(b) of the South Carolina Rules of Civil Procedure provides:

> Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state facts sufficient to constitute a cause of action, (7) failure to join a party under Rule 19, (8) another action is pending between the same parties for the same claim. A motion making any of these defenses shall be made before pleading

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> if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a cause of action or defense to which an adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that cause of action or defense. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Under Rule 12(b)(6), SCRCP, a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action. In considering such a motion, the trial court must base its ruling solely on allegations set forth in the complaint. If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then 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). In deciding whether the trial court properly granted the motion to dismiss, the appellate court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. *Gentry v. Yonce*, 337 S.C. 1, 522 S.E.2d 137 (1999). A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom entitle the plaintiff to relief under any theory. *Id*. Furthermore, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. *Toussaint v. Ham*, 292 S.C. 415, 357 S.E.2d 8 (1987).

Pursuant to Rule 12(b)(1), SCRCP, where the movant challenges the power of the court over the subject matter, "[t]he 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). "A defendant may seek dismissal of an action pursuant to Rule 12(b)(8) when another action is pending between the same parties for the same claim." *Cricket Cove Ventures, LLC v.*

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Gilland, 390 S.C. 312, 320, 701 S.E.2d 39, 44 (Ct. App. 2010). In considering a motion to dismiss based on lack of jurisdiction, the court may consider evidence outside of the pleadings. *Baird v. Charleston County*, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999).

ANALYSIS

A. Motion to Dismiss Pursuant to 12(b)(1)

Defendants allege that the complaint should be dismissed pursuant to rule 12(b)(1). The family court has exclusive jurisdiction to hear and determine actions involving all types of "marital litigation." S.C. Code Ann. § 63-3-530(A)(2) grants the family court exclusive jurisdiction to hear and determine actions for "divorce a vinculo matrimonii, separate support and maintenance, legal separation and in other marital litigation between the parties, and for settlement of all legal and equitable rights of the parties in the actions in and to the real and personal property of the marriage..." In addition to marital litigation, the family court also has specific legislative authority to hear and determine additional types of disputes between spouses and former spouses, even if they are presented outside the context of marital litigation. For the family court to properly include property within the marital estate, two factors must coincide. First, the property must be acquired during the marriage" and "[s]econd, the property must be owned on the date of filing or commencement of marital litigation." *Brown v. Odom*, 425 S.C. 420, 437, 823 S.E.2d 183, 191 (Ct. App. 2019) 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 of the date of filing or commencement of marital litigation." S.C. Code Ann. § 20-3-630 (2014).

The allegations contained in Plaintiffs' Complaint pertain directly to ownership and financial interest in Southern Collection Brokerage, LLC. The Defendants argue that membership interests are personal property squarely within the jurisdiction of the Family Court. The Plaintiffs

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argue that Southern Collection LLC has not been found to be marital property and argues the Family court does not have jurisdiction to distribute nonmarital property contained in a Limited Liability Company (LLC). Put another way, Plaintiff asserts the LLC is not, and cannot be, marital property. The Court disagrees with the Plaintiffs contention.

Southern Collection was established by both parties during their marriage and on August 18, 2022, when the divorce action was filed in family court, the parties were the sole owners of the limited liability corporation. The South Carolina Supreme Court held in *Levy v. Carolinian, LLC*, that a "distributional interest in an LLC is personal property and may be transferred in whole or in part." 410 S.C. 140, 146, 763 S.E.2d 594, 597 (2014) (citing S.C. Code Ann §33-44-510(b). Further, our courts have held that distributional interest in property not inherited and obtained during marriages, are considered marital property and subject to equitable distribution in Family Court. *Jackson v. Jackson*, 432 S.C. 415, 434, 853 S.E.2d 344, 354 (Ct. App. 2020). Because the property was owned by both parties at the time the divorce action was filed, jurisdiction has been vested in the family court. The personal property in question in the instant civil action falls squarely within the exclusive jurisdiction of the family court to apportion.

Plaintiff cites to S.C. Code Ann § 33-44-803, which grants the Circuit Court the right to supervise the winding up of a company after dissolution, as the basis for why it should be in Circuit Court. On August 27, 2022, the Plaintiff Emily P. Smith, filed a Statement of Dissociation from Southern Collection, while the Plaintiff is no longer a member, the corporation has not yet been dissolved, thus the application of S.C. Code Ann § 33-44-803 is premature and does not apply to the facts currently at hand.

Based on the foregoing, the court finds that the Family Court is the proper forum for this action and the relief sought therein. It is important to note, that Plaintiff Emily P. Smith requested

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marital assets be apportioned in family court. There have been several Family Court hearings in the domestic action and several hearings are scheduled in the future, all highly indicative of the Family Court establishing jurisdiction in the matter. Plaintiff has not provided the Court with any indication that the Family Court has divested itself of jurisdiction in this matter. Furthermore, in the filing of Plaintiffs pending Motion to Supplement Complaint, Plaintiff essentially concedes that Family Court has jurisdiction over the division of marital assets in requesting such relief from the Family Court.

At the hearing on June 3, 2022, Plaintiff indicated that the they have not received any answers from the family court regarding whether Southern Collection LLC is marital property, however, the issue is presently before the family court and ongoing. [2] At this time, the Family Court has subject matter jurisdiction of the matters asserted and relief sought in Plaintiff's Complaint. Therefore, Defendants' Motion to Dismiss pursuant to Rule 12(b)(1), SCRCP is granted.

B. Motion to Dismiss Pursuant to Rule 12(b)(6)

Even assuming arguendo, the Court had the requisite subject matter jurisdiction in this action, the Court finds this action would also fail on meritorious grounds. In the Complaint, Plaintiff is seeking a judicial dissolution and winding up of Southern Collection, appointment of a receiver, and an accounting of assets of the business. Plaintiff has also brought a cause of action for conversion, the imposition of a constructive trust, and a request for attorneys' fees and costs resulting from this action. "Viewing the evidence in favor of the plaintiff, the motion must be granted if facts alleged in the complaint and inferences reasonably deducible therefrom do not

[2] This Court recognizes that the Family Courts may determine some assets not to be marital property. Such a determination on certain assets could make the Circuit Court the appropriate forum under the appropriate circumstances, however, that is not the case at this time.

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entitle the plaintiff to relief on any theory of the case." *Jarrell v. Petoseed Co.*, 331 S.C. 207, 209, 500 S.E.2d 793, 794 (Ct. App. 1998). "The question is whether in the light most favorable to plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987). The Court finds that the Plaintiff has not set forth sufficient facts to support the multiple causes of action against the Defendants.

As previously held, the Court finds that the family court has the necessary and proper tools to prevent the dissipation or other improper conduct involving contested marital assets.

Conclusion

For the foregoing reasons, Defendants' Motions to Dismiss pursuant to Rule 12(b)(1), and in the alternative Rule 12(b)(6) are **GRANTED without prejudice**. The Court instructs parties to continue seeking relief from the Family Court directly. If upon conclusion of the family court action, further proceedings become necessary in Circuit Court, parties may seek further adjudication.

IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE ON THE FOLLOWING PAGE]

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Lexington Common Pleas

Case Caption: Emily P. Smith , plaintiff, et al VS Robert T. Smith , defendant, et al

Case Number: 2022CP3201419

Type: Order/Amend

It Is So Ordered

s/ Walton J. McLeod

ELECTRONICALLY FILED - 2022 Jul 20 12:01 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT
Emily P. Smith et al, Plaintiff vs. Robert T. Smith et al, Defendant.	C/A No.: 2022-CP-32-01419 **ORDER DENYING PLAINTIFF'S MOTION TO RECONSIDER**

This matter is before the Court on Plaintiffs Emily P. Smith and Emily P. Smith and Associates, LLC's Motion for Reconsideration. On June 29, 2022, the Plaintiffs filed a Motion for Reconsideration in response to this Court's Amended Order of Dismissal filed on June 23, 2022. On July 6, 2022, Defendants' Robert T. Smith, Southern Collection, LLC, Southern Collection Brokerage, LLC, Terence Smith and Associates, LLC, Robert B. Smith, and Sherry C. Smith, filed a Memorandum in Opposition to Plaintiffs Motion to Reconsider.

After careful consideration of the record in this case and the submissions of counsel, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered.

Accordingly, this Court hereby DENIES Plaintiff's Motion to Reconsider pursuant to Rule 59(e) SCRCP to Alter or Amend Judgment of this Court's Order entered on June 23, 2022. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE PAGE TO FOLLOW]

ELECTRONICALLY FILED - 2022 Jul 20 12:01 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

Lexington Common Pleas

Case Caption: Emily P. Smith , plaintiff, et al VS Robert T. Smith , defendant, et al

Case Number: 2022CP3201419

Type: Order/Other

It Is So Ordered

s/ Walton J. McLeod

The South Carolina Court of Appeals

Emily P. Smith and Emily P. Smith and Associates, LLCS, 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.

Appellate Case No. 2022-001060

The Honorable Walton J. McLeod, IV
Lexington County
Trial Court Case No. 2022CP3201419

ORDER

The Appellants and Respondents move this Court to hold this case in abeyance pending mediation scheduled for January 9, 2023. This motion is Granted. The appellants must provide a status report no later than January 16, 2023, or this appeal will be dismissed.

FOR THE COURT

BY _____
CLERK

Columbia, South Carolina

FILED
Sep 29 2022

cc:
Desa Ballard, Esquire
Harvey M. Watson, III, Esquire
Haley Alyse Hubbard, Esquire
Mark Brandon Goddard, Esquire

Alyssa Rose Iglesias, Esquire
Ashby Lawton Jones, Esquire
John Brian Kelchner, Esquire

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	C.A. NO.: 2021DR3201578
Emily P. Smith,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Robert Terence Smith,	)	PRE-TRIAL ORDER
	)	
Defendant.	)	
	)	
	)	

Date of Hearing:	March 7, 2023
Chief Administrative Judge:	Huntley S. Crouch
Plaintiffs' Counsel:	Sheila Robinson
Defendant's Counsel:	Ashby Jones
Guardian ad Litem:	Michelle Gorski
Court Reporter:	Wendy Wise Derrick

FILED
2023 MAR -7 AM 7:45
LISA MACOMBER
CLERK OF COURT
LEXINGTON SC

This matter is before the court for a pre-trial hearing to address matters necessary for the trial of this action.

IT IS THEREFORE ORDERED, (check all that apply)

☒ Counsel shall exchange updated settlement proposals with Plaintiff's counsel submitting a proposal within six weeks of today and Defense counsel responding with specificity within two weeks of receipt of Plaintiff's proposal. The original letters may be placed in a sealed envelope to be presented to the Court on the issue of attorney's fees and costs.

☒ Counsel shall exchange witness lists not less than thirty (30) days prior to trial. If any witnesses are experts, a copy of the expert's CV shall be attached to the witness list.

☒ All discovery shall be completed not less than forty-five (45) days prior to trial.

☒ Counsel shall exchange a list of all exhibits intended to be introduced at trial with a description sufficient enough to identify the exhibit not less than fifteen (15) days prior to trial.

☒ Updated Financial Declarations shall be exchanged not less than fifteen (15) days prior to trial.

☒ If division of personal property is contested, the parties shall exchange a list of all requested personal property and assigned values not less than forty-five (45) days prior to trial. If after the exchange of lists, they are unable to stipulate as to the value of any personal property, they shall obtain independent appraisals of the property and exchange those appraisals at the in-person meeting not less than five (5) days prior to trial.

☒ Counsel shall meet in person not less than five (5) days prior to trial to review exhibits and stipulate to authenticity and/or admissibility where possible. They shall also attempt to stipulate as to expert witnesses and values of any contested personal property.

☒Counsel shall bring a sufficient amount of copies of any exhibit they introduce at trial in order to provide a copy for opposing counsel, the Guardian ad litem, and a working copy for the Judge's use.

☒ GAL's fee cap is increased without objection to $10,000.00.

☒ 15 days from today to bring the GAL's outstanding balance current and parties are on notice that must comply with the GAL order of appointment as to fees without objection by any party.

☒ Both parties are obtaining new counsel. Failure to obtain counsel prior to trial shall not be grounds for a continuance. Any new counsel shall file a notice of appearance, and any new counsel shall be bound by the time frames set forth herein.

☒ The matter shall be set for 4 days; however, should the child related issues resolve, the parties shall immediately communicate with the CAJ to advise. Counsel agrees if child issues resolve, then 3 days will be sufficient.

The issues before the Court are:

☒Divorce Grounds:
☒Custody
☒Visitation
☒Child Support
☐Educational Expenses
☒Tax dependency exemptions
☐Paternity
☐TPR/Adoption
☒Alimony
☒Equitable Division (Real/Personal/Debt)
☒Transmutation
☐Insurance
☒Restraining Orders
☒Attorney's Fees
☒Guardian Fees
☒Other: Circuit court and appellate issue- business partnership dissolution

AND IT IS SO ORDERED!!!

March 7, 2023
Lexington, SC

Huntley S. Crouch
Chief Administrative Judge, 11th Judicial Circuit

*The terms of this Order are subject to the contempt powers of the Court and are binding at the merits hearing pursuant to SCRCP 16(b) and Schultz v. Schultz unless modified on motion by the chief administrative judge or at the trial to prevent manifest injustice.

*The court can impose sanctions against a party for not complying with the ADR Rules per ADR Rule 10. This order applies to SRL as well; therefore, references to counsel shall include SRL where appropriate.

COPY

FILED
2021 AUG 18 PM 12:27
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

STATE OF SOUTH CAROLINA)
) IN THE FAMILY COURT FOR THE
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT
) C.A. NO.: 2021-DR-32-

EMILY P. SMITH,

PLAINTIFF,

v.

ROBERT TERENCE SMITH,

DEFENDANT.

2021DR3201578

COMPLAINT

Plaintiff, above-named, by and through her undersigned counsel would respectfully show unto this Court as follows:

1. Plaintiff and Defendant are citizens and residents of Lexington County, South Carolina, having been so in excess of one (1) year prior to the commencement of this action.

2. Plaintiff and Defendant last resided together as wife and husband in Lexington County, South Carolina.

3. Plaintiff and Defendant are presently wife and husband, having been married to each other on November 3, 2012. Of this marriage, two (2) children have been born, namely: O. G. S., born in 2014; and O. P. S., born in 2016. No other children have been born of these parties, and no child is expected.

4. Plaintiff is informed and believes that this Court has subject matter and personal jurisdiction of this action and of these parties. Venue is proper in Lexington County, South Carolina.

5. Plaintiff would show that the parties are not currently separated but need to be based on the misconduct of Defendant. Specifically, Plaintiff would show that Defendant has

Written request for a final hearing in this case must be delivered by a party or his/her attorney to the Clerk of Court's office within 365 days of this filing date. Failure to comply with this rule shall result in the dismissal of the case by the Court.

ELECTRONICALLY FILED - 2022 May 04 5:13 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

ELECTRONICALLY FILED - 2022 May 04 5:13 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

would therefore show that she is entitled to a divorce, *a vinculo matrimoni*, from Defendant on the statutory ground of

6.

7.

8. Plaintiff would show that Defendant is able bodied and capable of gainful employment, and he is therefore capable of paying a sum as child support that is commensurate with the South Carolina Child Support Guidelines, both *pendente lite* and permanently.

9. Plaintiff is informed and believes she is entitled to an Order of this Court granting her the exclusive use and possession of the marital residence, both *pendente lite* and permanently,

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as a means of support for herself and the children. Plaintiff further informed and believes that Defendant should be required to immediately vacate the home,

Plaintiff is further informed and believes that Defendant should be required to help maintain all costs and expenses associated with the home, including the mortgage payment, property taxes, property insurance, maintenance, and utilities so as to provide for maintenance and support of Plaintiff and the minor children, both *pendente lite* and permanently.

10. Plaintiff currently maintains medical insurance on the children and she is willing to maintain that coverage so long as such is available to her. Plaintiff is informed and believes Defendant should be required to pay all of the non-covered, non-reimbursed medical expenses for the children, both *pendente lite* and permanently.

11. Plaintiff is informed and believes the parties' assets and debts should be determined and divided accordingly, in kind and/or by cash payment, from those assets held by Plaintiff and Defendant in accordance with §20-3-620, South Carolina Code of Laws, (2012). Plaintiff would show that she has nonmarital assets which should not be subject to equitable division by this Court. Further, Plaintiff would show that Defendant has incurred a large amount of debt without the knowledge of or consent of Plaintiff, and he should be solely responsible for the payment of such.

12. Plaintiff is informed and believes this Court should issue its Mutual Restraining Order restraining and prohibiting Defendant from encumbering, disposing of, hypothecating or otherwise depleting marital assets, both *pendente lite* and permanently.

13. Plaintiff is informed and believes the Court should issue an Order prohibiting Defendant from harassing, bothering, molesting or otherwise interfering with Plaintiff at any time or at any place, both *pendente lite* and permanently.

14. Plaintiff is informed and believes that Defendant is gainfully employed and

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therefore capable of self-support. Plaintiff is therefore informed and believes that Defendant should be barred from any claim for alimony from Plaintiff, both *pendente lite* and permanently.

15. Plaintiff is informed and believes that the Court should appoint a Guardian *ad Litem* to represent the interests of the children in this action in the event that custody and/or visitation becomes contested.

16. Plaintiff is informed and believes that Defendant should be required to pay to Plaintiff a reasonable sum as attorney's fees, PI fees, and costs incurred by Plaintiff in this action.

WHEREFORE, Plaintiff prays that the Court inquire into the matters alleged above, and grant her the following relief:

a. For and Order granting her a divorce, *a vinulo matrimoni*, from Defendant on the

b. For an Order granting Plaintiff sole and exclusive custody of the parties' minor children, both *pendente lite* and permanently;

c. For a supervised visitation schedule between Defendant and children as set forth above, *pendente lite* and permanently;

d. For an Order requiring Defendant to pay child support to Plaintiff based on the South Carolina Child Support Guidelines, both *pendente lite* and permanently;

e. For an Order granting Plaintiff possession of the marital residence and requiring Defendant to pay all costs associated with such, both *pendente lite* and permanently;

f. For an Order requiring Defendant to pay all uninsured medical costs for the minor child, both *pendente lite* and permanently ;

g. For an Order requiring the parties' assets and debts to be determined and divided

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accordingly, in kind and/or by cash payment, from those assets held by Plaintiff and Defendant in accordance with §20-3-620, South Carolina Code of Laws, (2012);

h. For an Order finding Plaintiff's non-marital assets to be excluded from division by this Court;

i. For an Order requiring Defendant to pay for any and all debt he has incurred without Plaintiff's knowledge or consent;

j. For a Restraining Order prohibiting Defendant from encumbering, disposing of, hypothecating or otherwise depleting marital assets, *pendent lite;*

k. For a Restraining Order prohibiting Defendant from harassing, bothering, molesting or otherwise interfering with Plaintiff at any time or at any place, both *pendente lite* and permanently;

l. For an Order barring Defendant from any alimony from Plaintiff, both *pendente lite* and permanently;

m. For an Order appointing a Guardian *ad Litem* to represent the interests of the minor children in this action;

n. For an Order requiring the Defendant to pay to the Plaintiff a reasonable sum as attorney's fees and costs incurred by the Plaintiff in this action;

o. For such other and further relief as this Court may deem just and proper.

ELECTRONICALLY FILED - 2022 May 04 5:13 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

MOORE BRADLEY MYERS LAW FIRM, P. A.

By: _____

SHEILA MCNAIR ROBINSON
1700 Sunset Boulevard (Hwy. 378)
Post Office Box 5709
West Columbia, South Carolina 29171
Telephone: (803) 796-9160
Facsimile: (803) 791-8410
Attorney for Plaintiff

August 18, 2021

COPY

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT FOR THE
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	Case No.: 2021-DR-32-1578
Emily P. Smith,	)	
	)	
Plaintiff,	)	**ANSWER AND COUNTERCLAIM**
	)	**ON BEHALF OF DEFENDANT**
v.	)	
	)	
Robert Terence Smith,	)	
	)	
Defendant.	)	

FILED
NOV -2 PM 4:15
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

TO: THE PLAINTIFF, EMILY P. SMITH, AND HER ATTORNEY, SHEILA MCNAIR ROBINSON, ESQUIRE:

THE DEFENDANT, ROBERT TERENCE SMITH, ANSWERS THE PLAINTIFF'S COMPLAINT AND COUNTERCLAIMS AS FOLLOWS:

1. The Defendant admits the allegations of Paragraphs 1, 2, 3 and 4 of the Plaintiff's Complaint.

2. Defendant denies the allegations of Paragraphs 5, 6 and 7 of Plaintiff's Complaint and demands strict proof thereof.

3. Responding to Paragraph 8 of the Plaintiff's Complaint, Defendant avers he is able bodied and capable of employment. Defendant denies the remainder of Paragraph 8.

4. Defendant denies Paragraph 9, 10 and 11 of Plaintiff's Complaint and demands strict proof thereof.

5. Responding to Paragraphs 12 and 13 of Plaintiff's Complaint, Defendant avers that any such restraints are appropriate and should be mutually applicable to

both parties and that restraints as to assets and debts should be narrowly tailored to fit the needs of the parties' ongoing business concerns.

6. Defendant admits Paragraphs 14 and 15 of Plaintiff's Complaint.

7. Defendant denies Paragraph 16 of Plaintiff's Complaint.

8. Defendant denies subsections a, b, c, d, e and f of the WHEREFORE Paragraph of Plaintiff's Complaint and demands strict proof thereof.

9. Responding to subsection g of the WHEREFORE Paragraph of Plaintiff's Complaint, Defendant admits the parties' marital assets and debts should be equitably apportioned between the parties.

10. Defendant denies subsections h and i of Plaintiff's Complaint and demands strict proof thereof.

11. Responding to subsection j and k of the WHEREFORE Paragraph of Plaintiff's Complaint, Defendant avers that any such restraints are appropriate and should be mutually applicable to both parties and that restraints as to assets and debts should be narrowly tailored to fit the needs of the parties' ongoing business concerns.

12. Defendant admits subsections l and m of the WHEREFORE Paragraph of Plaintiff's Complaint.

13. Defendant denies subsections n and o of the WHEREFORE Paragraph of Plaintiff's Complaint.

FOR A SECOND DEFENSE, BY WAY OF COUNTERCLAIM

14. Defendant is a citizen and resident of the County of Lexington, State of South Carolina.

15. Defendant is informed and believes that Plaintiff is a citizen and resident of the County of Lexington, State of South Carolina.

16. The parties, who have resided in South Carolina for more than one year, were married on November 3, 2012.

17. Two children O.S. (2014) and O.S. (2016) have been born as a result of this marriage. No further children are expected.

REQUEST FOR ORDER OF SEPARATE SUPPORT AND MAINTENANCE

18. Defendant is informed and believes he is entitled to an Order allowing him to live separate and apart from the Plaintiff.

19. There has been no collusion by the parties.

CUSTODY/VISITATION/CHILD SUPPORT/MEDICAL EXPENSES

20. The Defendant is informed and believes the parties should be granted shared custody of the parties' minor children, *pendente lite* and permanently. The Defendant is informed and believes that both parties have been actively involved in the children's lives from an early age and it would be in both children's best interests to continue to have both parents equally involved in their lives in the future.

21. The Defendant requests that the child support be set commensurate with the shared custody guidelines of the South Carolina Department of Social Services' Child Support Guidelines. Defendant is further informed and believes Plaintiff should be ordered to equally contribute to non-covered medical expenses incurred by the minor children.

22. The Defendant is informed and believes the parties should share reasonable, open and liberal visitation with the minor children.

GUARDIAN AD LITEM

23. The Defendant is informed and believes that if Plaintiff contests custody and/or visitation that a Guardian *ad Litem* should be appointed to protect the interests of the minor children.

ALIMONY

24. Defendant avers that Plaintiff is an able bodied persons capable of gainful employment and supporting herself and requests that Plaintiff be barred from alimony on a *pendente lite* and permanent basis.

RESTRAINING ORDER AS TO PROPERTY/PERSON

25. Defendant is informed and believes he is entitled to a Restraining Order against the Plaintiff from alienating, disposing of or borrowing money, or from injuring, damaging, destroying, trading or otherwise liquidating or decreasing in value any assets of the parties' temporarily and permanently. Defendant avers this restraint should be narrowly tailored to fit the needs of the parties' ongoing business concerns.

26. Defendant is informed and believes he is entitled to a temporary and permanent Order restraining and enjoining Plaintiff from harassing, threatening, interfering with, bothering, disrupting, molesting or intimidating Defendant, in any manner whatsoever.

EQUITABLE DIVISION

27. Defendant is informed and believes that he is entitled to equitable division/special equity in the real and personal marital property of the marriage, temporarily and permanently.

28. Defendant is informed and believes that he is entitled to exclusive use and possession of the former marital home and the vehicle currently in his possession on a *pendente lite* and permanent basis.

ATTORNEY'S FEES AND COSTS

29. Defendant has been forced to defend this action because of and due to the actions of the Plaintiff. Plaintiff's actions caused the breakdown of the marriage. Plaintiff has the ability to pay Defendant's attorney fees and costs. Defendant is therefore, informed and believes he is entitled to an Order of this Court requiring Plaintiff to pay all of his attorney's fees, costs, private investigator fees and other expenses, both pendente lite and permanently.

WHEREFORE, Defendant prays that this Court inquire herein and issue its Order, granting the relief requested and for such other and further relief as this Court may deem

[SIGNATURE PAGE FOLLOWS]

KINARD & JONES, LLC

ASHBY LAWTON JONES
ROBERT P. JACKMAN
808 South Lake Drive
Lexington, SC 29072
(803) 359-1003
ATTORNEYS FOR DEFENDANT

Lexington, South Carolina
11-2, 2021

COPY

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT FOR THE
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	C.A. NO.: 2021-DR-32-1578
EMILY P. SMITH,	)	
	)	
PLAINTIFF,	)	**PLAINTIFF'S RETURN TO DEFENDANT'S**
	)	**MOTION FOR EMERGENCY/EXPEDITED**
v.	)	**TEMPORARY RELIEF**
	)	
ROBERT TERENCE SMITH,	)	
	)	
DEFENDANT.	)	

TO: ROBERT TERENCE SMITH, DEFENDANT AND HIS ATTORNEY, ASHBY L. JONES:

The Plaintiff makes a Return to the Motion for Emergency/Expedited Relief filed by the Defendant (scheduled as a regular temporary hearing) as follows:

1.

2. The Plaintiff would show that the Defendant has been dishonest in financial matters, including with the management of the parties' joint real estate business. The Defendant has failed to properly share the profits of the business with the Plaintiff and has

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withheld paychecks from her during the pendency of this action. The Plaintiff is therefore requesting an Order requiring the Defendant to make a complete accounting of all monies paid to and by the real estate company.

3. The Plaintiff would show that the Defendant's conduct brought about the need for this action. He should therefore be responsible for paying a reasonable sum in attorney's fees to the Plaintiff.

4. The Plaintiff would show that this Return will be further based on information provided to the Court at the time of the hearing.

MOORE BRADLEY MYERS LAW FIRM, P. A.

By: _____
SHEILA MCNAIR ROBINSON
1700 Sunset Boulevard
P. O. Box 5709
West Columbia, SC 29171
803/796-9160
Attorney for Plaintiff

West Columbia, South Carolina

December 1, 2021

ELECTRONICALLY FILED - 2022 May 04 5:13 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT FOR
	)	THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	C.A.NO.: 2021-DR-32-1578
Emily P. Smith,	)	
	)	
Plaintiff,	)	**NOTICE OF MOTION AND MOTION FOR SUPPLEMENTAL TEMPORARY AND TO ADD PARTY DEFENDANT**
	)	
v.	)	
	)	
Robert Terence Smith,	)	
	)	
Defendant.	)	
	)	

TO: PLAINTIFF EMILY P. SMITH AND HER ATTORNEY, SHEILA MCNAIR ROBINSON, ESQUIRE:

YOU WILL TAKE NOTICE that Defendant by and through his undersigned counsel, will move before the presiding Judge of the Family Court for the Eleventh Judicial Circuit, at the Lexington County Courthouse, Lexington, South Carolina the _____ day of _____, 2022 at _____ o'clock _____.M., or as soon thereafter as counsel can be heard for an Order granting temporary, *pendente lite* relief including, but not limited to:

1. Adding Southern Collection, LLC as a Party Defendant;

2. Barring and restraining Plaintiff from any further attempts to sabotage Southern Collection, LLC through her actions, words and deeds;

3. Requiring Plaintiff to immediately return all furniture and any other materials removed from the lobby area of Southern Collection, LLC without permission of Defendant, her Broker In Charge;

4. Barring Plaintiff from circumventing any commissions, referrals fees, or any other funds related to Southern Collection, LLC to her personal accounts;

5. Barring Plaintiff from discussing this case on social media in any manner whatsoever;

6. Barring Plaintiff from discussing this case with third parties in any manner whatsoever;

7. Requiring Plaintiff to immediately turn over all devices for examination, as previously requested;

8. Awarding the parties shared week-to-week visitation with the minor children during the summer holiday;

9. Requiring Plaintiff to submit to a psychological examination at her expense and allowing Dr. Marc Harari's previous psychological evaluation to be considered in Plaintiff's examination;

10. Restraining Plaintiff from moving to Raleigh, North Carolina with the minor children;

11. Requiring Plaintiff to pay Defendant's attorney's fees and costs associated with this motion;

12. For such other and further relief that the Court deems necessary and proper.

This motion is based upon the pleadings herein, affidavits, Defendant's financial declaration and any testimony allowed, all to be presented at the hearing on the motion. Defendant is informed and believes conferring with Plaintiff prior to filing this Motion would serve no useful purpose.

KINARD & JONES, LLC

ASHBY LAWTON JONES
ALYSSA ROSE IGLESIAS
808 South Lake Drive
Post Office Box 2678
Lexington, SC 29072
(803) 359-1003
ATTORNEYS FOR DEFENDANT

Lexington, South Carolina
4-27, 2022.

ELECTRONICALLY FILED - 2022 Apr 28 10:02 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF LEXINGTON)	ELEVENTH JUDICIAL CIRCUIT
)	
Emily P. Smith and Emily P. Smith and Associates, LLC,)	Case No.: 2022-CP-32-___
Plaintiffs,)	
vs.)	
)	**EMERGENCY MOTION FOR APPOINTMENT OF RECEIVER**
Robert T. Smith; Southern Collection, LLC; Southern Collection Brokerage, LLC; Terence Smith and Associates, LLC; Robert B. Smith, and Sherry C. Smith,)	
)	
Defendants.)	

TO: **THE DEFENDANTS NAMED ABOVE**

Plaintiff Emily P. Smith (hereinafter "Emily) and Emily P. Smith and Associates LLC (hereafter individually referred to herein as "Emily LLC" and hereinafter collectively referred to herein as "Emily"), by and through their undersigned counsel, move before this Court for an order:

(1) Appointing Jackson Cobb as Receiver over Southern Collection, LLC for purposes of taking possession of and managing the and the company's assets and income pursuant to S.C. Code Ann. § 15-65-10; and for an order

(2) authorizing the Receiver to dissolve Southern Collection, LLC pursuant to S.C. Code Ann. § 33-44-801 and (3), installing the Receiver as managing member of Southern Collection, LLC and to wind up the business and make such accounting as is necessary to distribute the assets pursuant to S.C. Code Ann. § 33-44-803.

This motion is based upon the foregoing authority and the following:

ELECTRONICALLY FILED - 2022 Apr 28 10:02 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

1. Defendant Southern Collection, LLC (hereinafter "the dissolved LLC")[1] is a limited liability company organized and existing pursuant to the laws of the State of South Carolina with its principal place of business in Lexington County.

2. On or about May 25, 2020, Emily and Defendant Robert T. Smith (hereinafter "Defendant Smith") formed the dissolved LLC for purposes of operating a real estate company. They are equal co-owners of the dissolved LLC.

3. On information and belief, there is no operating agreement, but the pattern and practice of the dissolved LLC was to distribute fifty percent of net proceeds and sales commissions to Emily and fifty percent to Defendant Smith, regardless of whether a property was sold by Emily or Defendant Smith, and other sources of their team and/or agents' income were divided equally between the two members.

4. During the summer of 2020, Defendant Smith began forcing Emily out of the dissolved LLC. As evidenced by an initial audit of the dissolved LLC's business accounts from January 1, 2021 to September 30, 2021, **Exhibit B**,[2] Defendant Smith has repeatedly overpaid himself for commissions from the dissolved LLC, taken improper "partner distributions" and withheld commissions due to Emily for at least thirteen property sales generated through the dissolved LLC.

5. On or about October 19, 2021, Defendant Smith formed Southern Collection Brokerage, LLC (hereinafter "Brokerage LLC"). Since that time, Defendant Smith has been conducting the business of the dissolved LLC through Brokerage LLC

[1] Southern Collection LLC is not dissolved, but Emily has filed a statement of disassociation contemporaneously with the filing of the action in order to start the dissolution process. **Exhibit A**.

[2] The audit to date has been done based on information available to Emily, and is obviously incomplete, but tells a dramatic story of repeated and multiple events of misappropriation by Defendant Smith of income and assets of the dissolved LLC solely for his own benefit. Among the responsibilities of the receiver will be to perform an accounting to properly divide the business assets and debts.

ELECTRONICALLY FILED - 2022 Apr 28 10:02 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

without Emily's knowledge or consent. On information and belief, Defendant Smith will continue to operate the dissolved LLC for his sole advantage or as an agent of Southern Collection Brokerage, LLC, of which he is the sole member.

6. On information and belief, Defendant Smith has and continues to control, divert or misappropriate most or all of the income and assets of both their real estate team and the dissolved LLC to himself as unauthorized "partner distributions" or to Brokerage LLC, of which he is the sole owner, with the intent to deprive Emily and Emily LLC.

7. The intentional diversion and misappropriation of the assets of the dissolved LLC by Defendant Smith have occurred without the knowledge or consent of Emily.

8. As co-owner of the dissolved LLC and real estate team, Emily has an interest and is entitled to the assets of the dissolved LLC. Those assets, which are currently in the possession of Defendant Smith, are in danger of being lost or materially injured or impaired. Therefore, the appointment of a Receiver is proper in the instant circumstances.

9. Emily has retained the services of Jackson Cobb, SRA, CCIM, who consents to serving as Receiver over the dissolved LLC for the purpose of dissolving and winding up the business. **Exhibit C**. Attached to this motion as **Exhibit D** is Mr. Cobb's CV in support of his suitability to serve as Receiver.

Wherefore, Plaintiff Emily respectfully requests that this Court order the following relief:

A. Appointment of Jackson Cobb as Receiver over the dissolved LLC, granting the Receiver all powers necessary to marshal the assets of the dissolved LLC, account and hold them in trust for the purpose of dissolving and winding up the business.

ELECTRONICALLY FILED - 2022 Apr 28 10:02 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

B. That the Receiver be authorized to do all things necessary and perform all acts and hire all professionals required to investigate, identify, and attempt to locate all the assets of the dissolved LLC.

C. That the Receiver be authorized to take any and all steps necessary to identify, recover, preserve, manage, liquidate, sell, administer and marshal all of the assets of the dissolved LLC during the pendency and final resolution of this matter.

D. That the Receiver is installed as the sole managing member of Southern Collection, LLC.

E. That the Receiver have the right to reasonable compensation.

F. That costs incurred by the Receiver in carrying out the Receivership be charged against the assets and income due to Defendant Smith resulting from the dissolution of the dissolved LLC.

G. For any other relief as this Court may deem just and proper.

s/ Desa Ballard
Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)

BALLARD & WATSON
226 State Street
West Columbia, South Carolina 29169
Telephone 803.796.9299
desab@desaballard.com
harvey@desaballard.com
haley@desaballard.com

ATTORNEYS FOR PLAINTIFF

April 28, 2022

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

Apr 27 2022
REFERENCE ID: 1028011

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

Filing ID: 220427-1415219

Filing Date: 04/27/2022



STATE OF SOUTH CAROLINA
SECRETARY OF STATE

MEMBERS STATEMENT OF DISSOCIATION FROM A LIMITED LIABILITY COMPANY

The following member of the listed limited liability company hereby files this Statement of dissociation in accordance with Section 33-44-704 of the 1976 S.C. Code of Laws, as amended.

1. Name of the limited liability company from which a member has dissociated:

   Southern Collection, LLC

2. Name of member who has dissociated from the limited liability company:

   Emily P. Smith
   (Name)
   112 John Preston Drive
   (Street Address)
   Lexington, South Carolina 29072
   (City, State, Zip Code)

3. Unless otherwise specified, this statement is effective when endorsed for filing by the Secretary of State. Specify any delayed effective date and time: _____
   (Date)

4. This statement is being filed by:

   [X] a. The dissociating member:

   Signed as Filer: Desa Ballard
   (Signature)
   04/27/2022
   (Date)

   [ ] b. The limited liability company:

   _____
   (Signature)
   _____
   (Date)
   _____
   (Print Name)
   _____
   (Capacity)

Form Revised by South Carolina Secretary of State, August 2016
F0050

SC Secretary of State
Mark Hammond

ELECTRONICALLY FILED - 2022 Apr 28 10:02 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

Apr 27 2022
REFERENCE ID: 1028011

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

ELECTRONICALLY FILED - 2022 Apr 28 10:02 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

MEMBERS STATEMENT OF DISSOCIATION FROM A LIMITED LIABILITY COMPANY

The following member of the listed limited liability company hereby files this Statement of dissociation in accordance with Section 33-44-704 of the 1976 S.C. Code of Laws, as amended.

1. Name of the limited liability company from which a member has dissociated:

   Southern Collection, LLC

2. Name of member who has dissociated from the limited liability company:

   Emily P. Smith
   (Name)

   112 John Preston Drive
   (Street Address)

   Lexington, SC 29072
   (City, State, Zip Code)

3. Unless otherwise specified, this statement is effective when endorsed for filing by the Secretary of State. Specify any delayed effective date and time: _____
   (Date)

4. This statement is being filed by:

   ☑ a. The dissociating member:

   _____
   (Signature)

   _____
   (Date)

   ☐ b. The limited liability company:

   _____
   (Signature)

   _____
   (Date)

   _____
   (Print Name)

   _____
   (Capacity)

Form Revised by South Carolina Secretary of State, August 2016
F0050

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

Apr 27 2022
REFERENCE ID: 1028011

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

Business Name: Southern Collection, LLC

Signature Page for a Secretary of State Business Filing

be completed, scanned, and attached to any business filing where one of the following is true.

- The filing party signs the digital form on behalf of official signee.
- An attorney's signature is required. (Articles of Incorporation for Corporation and Benefit Corporation)

Official Signatures

(Officer, Incorporator, Director, Agent, Partner, etc)
Required for forms where the signee is not present upon online submission and a filing party is providing a digital signing on their behalf. If the provided space is not enough, please attach multiple pages.

Desa Ballard
Name

4.27.2022
Date

Desa Ballard
Signature

Attorney
Title / Position

Emily P. Smith
Name

4.27.2022
Date

Emily P. Smith
Signature

owner
Title / Position

Name

Date

Signature

Title / Position

Name

Date

Signature

Title / Position

Name

Date

Signature

Title / Position

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	Case No.:
	)	
Emily P. Smith and Emily P. Smith and Associates, LLC,	)	
Plaintiffs,	)	**AFFIDAVIT OF CHRISTOPHER LEVENTIS**
vs.	)	
	)	
Robert T. Smith; Southern Collection, LLC; Southern Collection Brokerage, LLC; Terrance Smith and Associates, LLC; Robert B. Smith, and Sherry C. Smith,	)	
Defendants.	)	

PERSONALLY appeared before me Christopher L. Leventis, MAcc, CPA, CVA, CMA, CFE, who, being duly sworn, deposes and states:

1. I am a citizen and resident of South Carolina and I am over the age of 18. This affidavit is sworn on my personal knowledge, unless otherwise stated, and I am competent to testify to the matters stated herein.
2. I am a Certified Public Accountant licensed by the state of South Carolina. I am the sole owner of Leventis Financial, LLC. My curriculum vitae is attached as **Exhibit 1**.
3. I was retained by Emily Smith to assist her and her attorney in the above referenced matter in which I understand Emily seeks to liquidate and dissolve her existing business relationship with Robert Terence Smith (hereinafter "Defendant Smith") known as Southern Collection LLC and recover funds due to her from Southern Collection LLC and third parties.
4. Fees for services rendered are based upon the time required at standard hourly billing rates plus out-of-pocket expenses. My fees are not contingent upon the outcome of this matter.

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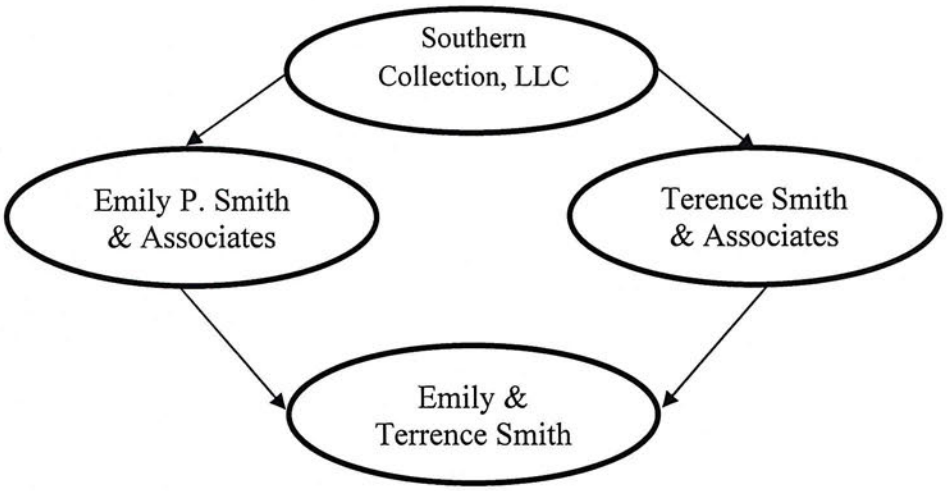
5. My hourly billing rate for this matter is $250.00 and my staff billing rates range from $115.00 to $195.00 per hour.

Background: General Business

6. Emily and Defendant Smith are real estate agents. Their first business together, entitled Purpose Driven Real Estate, LLC, was formed on September 19, 2012. This entity was sold to their third partner in 2020.
7. Following the sale of Purpose Driven Real Estate, LLC, Emily and Defendant Smith formed Southern Collection, LLC (hereinafter "Southern Collection") on May 25, 2020. Upon information and belief, they are equal co-owners of this business.
8. Southern Collection is a franchise of RE/MAX.
9. After discussions with Emily, my understanding is that Southern Collection makes revenue from the following sources:
    I. Sales commissions (operating on both sell and buy side) – revenue resulting from transactions from either Emily or Defendant Smith
    II. Brokerage fees (5% of commissions from Emily, Defendant Smith, and other agents affiliated with Southern Collection) – revenue to cover operating expenses and RE/MAX fees
    III. "Desk fees" – flat, monthly fees from agents within the office including Emily, Defendant Smith, and other agents (payments range from $195 to $695 per agent per month)
    IV. Administrative Fee (fee received from agents by Southern Collection ranging from $199 to $299)

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10. Emily and Defendant Smith each have an S Corporation they individually own. Defendant Smith's is entitled Terence Smith & Associates, LLC, and Emily's is entitled Emily P Smith & Associates, LLC. Income and Expenses flow from Southern Collection to these S Corporations in equal apportionment.
11. Historically, Parties' share of revenue from Southern Collection has been approximately 50/50. Thus, whether a property is listed / sold by Emily or Defendant Smith, each historically receive 50% of the net commissions received (after being reduced by brokerage fees).
12. Historically, a greater portion of the business expenses were deducted on Defendant Smith's S Corporation return.
13. By their nature, S Corporation's are "flow through" entities, meaning their taxable income flows to the owners' individual tax return. Thus, the taxable income from both Emily and Defendant Smith's S Corporations are reported and taxed on their individual tax returns.
14. Below is a flow chart summarizing the above:



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Background: Financial Accounts

15. Below is a summary of Parties' known business bank accounts to include bank, last four digits of the account number, owner, and a description of the purpose of the account as understood from discussions with Emily:

I. BB&T #7324 – Southern Collection commissions account

i. Deposits include all commissions received from a transaction (including Emily, Defendant Smith, and other agents)

ii. The following were historical disbursements from this account:

1. To Emily P Smith & Associates - portion of commissions for Emily's share
2. To Terence Smith & Associates – portion of commissions for Defendant Smith's share
3. To agents – portion of commissions for a particular agent's share when the agent is not Emily or Defendant Smith
4. To BB&T #7316 (operating account) – brokerage fee (5% of commissions)

iii. The following were not historical disbursements:

1. Distributions, withdrawals, or the like to Emily or Defendant Smith aside from commissions

II. BB&T #7316 – Southern Collection operating account

i. The following were historical deposits:

1. Brokerage fees
2. Desk fees

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3. Administrative fees

ii. The following were historical disbursements from this account:

1. General office expenses including, but not limited to, internet, utilities, payroll, supplies, rent, insurance, and RE/MAX fees were historically paid from this account.

iii. After expenses were paid from this account from the monies previously explained, the remaining profit was to be distributed via profit sharing plan. The profit-sharing plan was never put in writing, but was verbally described as allotting the profit as follows:

1. Emily: 35%
2. Defendant Smith: 35%
3. Team Leads: 30%

iv. After conversations with Emily and a review of an email from a team lead, it appears these distributions were not being made. Thus, as co-owners of the business, profits would be allotted as follows:

1. Emily: 50%
2. Defendant Smith: 50%

Initial Review: January 1, 2021, through September 30, 2021

16. I am actively reviewing business accounts and other related information as documents are being produced in this matter. The below findings are from an initial review of the documentation received from January 1, 2021, through September 30, 2021.

17. Net commissions from sales for transactions directly involving Emily or Defendant Smith (not other agents) due to Defendant Smith were $309,397.66 and $309,244.98 to Emily.

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18. A review of the commissions account (BB&T #7324) yielded the following:

    I. Checks to Defendant Smith - $398,919.02

        i. Resulting overpayment of $89,521.36 when comparing commissions due to monies actually received for commissions.

    II. Checks to Emily - $267,974.94

        i. Resulting shortage of ($41,270.04) when comparing commissions due to monies actually received for commissions.

19. Checks written from the commissions account include details on the memo line (most frequently the address of the property the commissions check is written for).

20. Defendant Smith's surplus of $89,521.36 for monies received as compared to monies owed for commissions was primarily driven by the following:

    I. Check #1478 for $35,000.00 – disbursement to Robert T. Smith

    II. Check #7699313 for $15,000.00 – Cash

21. See attached **Exhibit 2** for check #1478 and check #7699313

22. In addition to those larger items, Defendant Smith's surplus was also due to the following:

    I. Overpayment of commissions as compared to the actual commissions due

        i. For example, check #1387 for $7,148.75 was for a property located at 219 Naples. The net commission that was supposed to be received by both Emily and Defendant Smith was $3,063.50 each. Defendant Smith received $4,085.25 over and above the amount due to him and Emily was **not provided** a check for her commissions of $3,063.50.

        ii. See **Exhibit 3** attached.

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II. Defendant Smith paying himself commissions more than once for the same property.

i. For example, check #1156 for $6,822.19 shows properties at 180 Middleton and 679 Pleasant View on the memo line.

ii. Check #1160 for $24,788.56 shows several properties on the memo line, to also include 180 Middleton and 679 Pleasant View.

iii. See attached **Exhibit 4** for these checks.

III. Additional payments for "team bills".

i. The memo line on check #1177 shows $7,195.86 for September team bills.

ii. Historically, team bills were not paid by disbursing funds from the commissions account.

iii. See **Exhibit 5** attached.

23. In addition to the above, check #1323 for $12,246.98 from the commissions account was written to Robert T. Smith in November 2020. The memo line read "profit thru Sept 30". It is currently unknown whether this was for commissions due to Defendant Smith or whether this payment was in excess of commissions due to Defendant Smith. Historically, the memo line stated the properties in which the checks were written for. See **Exhibit 6** attached.

24. Emily's shortage is a result of not being paid commissions from approximately 13 sales in which she was the agent.

25. Emily only received checks with property addresses listed in the memo line. She did not receive any "disbursements".

26. Defendant Smith has been historically in charge of this account.

27. As previously discussed, BB&T #7316 is the operating account for Southern Collection. This account is where brokerage fees, desk fees, and administrative fees are to be deposited. From January 1, 2021, through August 31, 2021, there were a total of $155,362.29 in deposits. These funds were to be used to **cover company expenses** with the remaining profit to be disbursed. Defendant Smith has been historically in charge of this account.

Other Concerns and Conclusion

28. On October 19, 2021, Defendant Smith formed a new entity entitled Southern Collection Brokerage, LLC. It is my belief that there are additional bank / credit card accounts that are currently unknown. See **Exhibit 7** attached.

29. As additional information is received through discovery, I reserve the right to amend this affidavit through writing or direct testimony.

SWORN TO before me this

27th day of April, 2022.

Notary Public for South Carolina

Allyson S. Hurst

Printed Name

My commission expires: 11-16-27

Christopher L. Leventis

Christopher L. Leventis, MAcc, CPA, CVA, CMA, CFE

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Exhibit 1

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Christopher L. Leventis

1913 Bull Street · 803.748.2644
Chris@leventisfinancial.com

PROFESSION

- Leventis Financial, LLC (Financial Litigation Support Services and Business Valuation Firm)

EDUCATION

Master of Accountancy, University of South Carolina, May 2016

- Audit track with a concentration in data analytics

Bachelor of Arts in Accounting, Furman University, May 2013

CERTIFICATIONS AND AWARDS

- Certified Public Accountant (CPA)
- Certified Management Accountant (CMA)
- Certified Valuation Analyst (CVA)
- Certified Fraud Examiner (CFE)
- NACVA and CTI 2019 *40 Under 40 Honoree*

WORK EXPERIENCE

August 2018 – Present

***Owner*; Leventis Financial, LLC**

- Provides services in litigation support to include matrimonial, civil, and criminal law
- Litigation services include, but are not limited to, expert testimony, business valuation, marital estate valuation, lifestyle analysis, hidden income and hidden asset identification, financial statement fraud, wrongful death, lost earnings, and business interruption claims
- Provides services in Business Valuation for purposes including, but not limited to, litigation and ownership disputes, marital dissolution, estate and gift tax, mergers and acquisitions, financial reporting, and business planning

November 2019 – Present

***Board Member & Treasurer;* Palmetto Foundation for Prevention and Recovery**

- Implements financial controls for the non-profit
- Oversees all donation receipts and expense disbursements
- Assists in fundraising efforts as well as growth strategy

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May 2019 – Present

***Board Member;* Bob McNair Institute**

- Help promote entrepreneurism and free enterprise to students and young entrepreneurs
- Assist young companies and ultimately enhance economic growth

June 2017 – April 2018

***Consultant*; Dixon Hughes Goodman**

- Provided services to multiple Fortune 500 companies to include financial planning and analysis, process improvement, process automation, and redevelopment of statutory financial statement models

July 2016 – April 2017

***Accountant*; Burkett, Burkett, and Burkett, CPA**

- Provided services in litigation support and business valuations
- Prepared corporate and individual tax returns
- Provided services in audit (primarily not-for-profit entities)
- Corporate bookkeeping (which includes entity Quickbooks management)

PROFESSIONAL ORGANIZATIONS

- American Academy of Matrimonial Lawyers – Forensics and Business Valuation Division
- American Institute of Certified Public Accountants (AICPA)
- South Carolina Association of Certified Public Accountants
- Institution of Management Accountants (IMA)
- National Association of Certified Valuation Analysts (NACVA)
- Association of Certified Fraud Examiners (ACFE)

SPEAKING ENGAGEMENTS, PUBLISHINGS, & VOLUNTEER WORK

- 2019 Hot Tips from the Coolest Domestic Law Practitioners – Speaker
- *The Value Examiner* by NACVA & CTI (September / October 2020 addition) – Practicing Solo segment feature
- Mentor for the Association of Certified Fraud Examiners

CASES WORKED OR IN PROGRESS

- Brannigan vs. Brannigan – Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Willis vs. Willis - Forensic accounting services related to marital dissolution. Aiken County Family Court, South Carolina, Second Judicial Circuit

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- Bartley vs. Bartley - Forensic accounting services related to marital dissolution. Saluda County Family Court, South Carolina, Eleventh Judicial Circuit
- Davis vs. Davis - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Kay vs. Kay - Forensic accounting services related to alimony modification. York County Family Court, South Carolina, Sixteenth Judicial Circuit
- Smith vs. Smith - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Siddons vs. Siddons - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Barnhouse vs. Barnhouse - Forensic accounting services related to marital dissolution. York County Family Court, South Carolina, Sixteenth Judicial Circuit
- Daly vs. Daly - Forensic accounting services related to marital dissolution. Aiken County Family Court, South Carolina, Second Judicial Circuit
- Reid vs. Reid - Forensic accounting services related to marital dissolution. Lexington County Family Court, South Carolina, Eleventh Judicial Circuit
- Shelton vs. Shelton - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Brantley vs. Brantley - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Pool vs. Pool - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Tarnowska vs. Tarnowska - Forensic accounting services related to marital dissolution. Aiken County Family Court, South Carolina, Second Judicial Circuit
- Atkins vs. Atkins - Forensic accounting services related to marital dissolution. Calhoun County Family Court, South Carolina, First Judicial Circuit
- Jennings vs. Jennings - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Miller vs. Miller - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Hensley vs. Hensley - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Ross vs. Ross - Forensic accounting services related to marital dissolution. Sumter County Family Court, South Carolina, Third Judicial Circuit
- Hayfield vs. Hayfield - Forensic accounting services related to marital dissolution. Aiken County Family Court, South Carolina, Second Judicial Circuit
- Witherspoon vs. Witherspoon - Forensic accounting services related to marital dissolution. Clarendon County Family Court, South Carolina, Third Judicial Circuit
- Riley vs. Riley - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Koenig vs. Koenig - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Lemon vs. Lemon - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit

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- Bittner vs. Chriswell – Forensic accounting services related to economic damages. South Carolina Court of Common Pleas, Charleston County, Ninth Judicial Circuit
- Lobash vs. Lobash - Forensic accounting services related to marital dissolution. Lexington County Family Court, South Carolina, Eleventh Judicial Circuit
- Liles vs. Liles - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Drolshagen vs. Drolshagen - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Melendez vs. Melendez - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Green vs. Green - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Powell vs. Powell - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Stoney vs. Stoney - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Healy vs. Healy - Forensic accounting services related to post-marital dissolution. Florence County Family Court, South Carolina, Twelfth Judicial Circuit
- Green vs. Green - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Bridwell vs. Bridwell - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Griffin vs. Griffin - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Delaney vs. Delaney - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Meisner vs. Meisner - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Danko vs. Danko - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Halfacre vs. Shi - Forensic accounting services related to marital dissolution. Georgetown County Family Court, South Carolina, Fifteenth Judicial Circuit
- Smyth vs. Smyth - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Simmons vs. Simmons - Forensic accounting services related to marital dissolution. Aiken County Family Court, South Carolina, Second Judicial Circuit
- Holmes vs. Holmes - Forensic accounting services related to post-marital dissolution. Florence County Family Court, South Carolina, Twelfth Judicial Circuit
- Lieske vs. Lieske - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Moss vs. Moss - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Waltz vs. Waltz - Forensic accounting services related to marital dissolution. Calhoun County Family Court, South Carolina, First Judicial Circuit

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- Nord vs. Nord - Forensic accounting services related to marital dissolution. Lexington County Family Court, South Carolina, Eleventh Judicial Circuit
- Harling vs. Harling - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Vanderbleek vs. Vanderbleek - Forensic accounting services related to marital dissolution. York County Family Court, South Carolina, Sixteenth Judicial Circuit
- Kelly vs. Kelly - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Richardson vs. Richardson - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Sanders vs. Sanders - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Smith vs. Smith - Forensic accounting services related to marital dissolution. Lexington County Family Court, South Carolina, Eleventh Judicial Circuit
- Haltiwanger vs. Haltiwanger - Forensic accounting services related to marital dissolution. Aiken County Family Court, South Carolina, Second Judicial Circuit
- Pietro vs. Pietro - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Fravel vs. Fravel - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- West vs. West - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Cheatham vs. Cheatham - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Webb vs. Webb - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Ives vs. Ives - Forensic accounting services related to marital dissolution. Sumter County Family Court, South Carolina, Third Judicial Circuit
- Hulsey vs. Hulsey - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Howell vs. Howell - Forensic accounting services related to marital dissolution. Georgetown County Family Court, South Carolina, Fifteenth Judicial Circuit
- Crantford vs. Crantford - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Dickson vs. Dickson - Forensic accounting services related to alimony modification. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Downey vs. Downey - Forensic accounting services related to marital dissolution. Lexington County Family Court, South Carolina, Eleventh Judicial Circuit
- Shumpert vs. Shumpert - Forensic accounting services related to marital dissolution. Lexington County Family Court, South Carolina, Eleventh Judicial Circuit
- Snyder vs. Catalano - Forensic accounting services related to marital dissolution. Beaufort County Family Court, South Carolina, Fourteenth Judicial Circuit
- M&W Transport LLC vs. Concrete Supply Co, LLC – Forensic accounting services related to lost profits. Richland County

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- Amoruso vs. Miller – Forensic accounting services related to lost profits. Charleston County, South Carolina, Ninth Judicial Circuit
- Bittner vs. Chriswell – Forensic accounting services related to lost profits. Charleston County, South Carolina, Ninth Judicial Circuit
- Graybeal vs. Graybeal - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Coggins vs. Calvert - Forensic accounting services related to lost profits. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Guilhamelou vs. Escudero - Forensic accounting services related to lost profits. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Fenchel vs. Fenchel - Forensic accounting services related to marital dissolution. Lancaster County Family Court, South Carolina, Sixth Judicial Circuit
- Arnold vs. Arnold – Forensic accounting services related to guardianship and conservatorship matters. Richland County Probate Court, South Carolina, Fifth Judicial Circuit
- Kane vs. Kane - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Carimi vs. Carimi - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Paige's Property Management vs. RAL Holdings, LLC – Forensic accounting services related to civil litigation. Lexington County, Circuit Court, Eleventh Judicial Circuit
- Gilbert vs. Gilbert – Forensic accounting services related to marital dissolution. Beaufort County Family Court, South Carolina, Fourteenth Judicial Circuit
- Smith vs. Smith - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Lelong v. Lelong – Forensic accounting services related to marital dissolution. Saluda County Family Court, South Carolina, Eleventh Judicial Circuit
- Keppery v. Keppery – Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Hewitt v. Hewitt – Forensic accounting services related to marital dissolution. Lexington County Family Court, South Carolina, Eleventh Judicial Circuit
- Prescott v. Prescott – Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Schneider vs. Schneider - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Borden vs. Borden - Forensic accounting services related to shareholder dispute. Richland County Court of Common Pleas, South Carolina, Fifth Judicial Circuit
- Shumpert vs. Shumpert - Forensic accounting services related to marital dissolution. Lexington County Family Court, South Carolina, Eleventh Judicial Circuit
- Murphy vs. Murphy - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Drew vs. Drew - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Caldwell vs. Caldwell - Forensic accounting services related to marital dissolution. Greenville County Family Court, South Carolina, Thirteenth Judicial Circuit

- Lempesis vs. Leibowitz - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- SeBlonka vs. Westbrook - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Gibson vs. Gibson - Forensic accounting services related to alimony modification. Richland County Family Court, South Carolina, Fifth Judicial Circuit

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Exhibit 2

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SOUTHERN COLLECTION LLC
130 STATE ST
WEST COLUMBIA, SC 29169

1478
67-160/532

DATE 5-25-21

PAY TO THE ORDER OF Robert T. Smith $ 35,000.00

Thirty five thousand + 00/100 DOLLARS

Photo Safe Deposit® Details on back.

BB&T BRANCH BANKING AND TRUST COMPANY
1-800-BANK BBT BBT.com

FOR Disposement

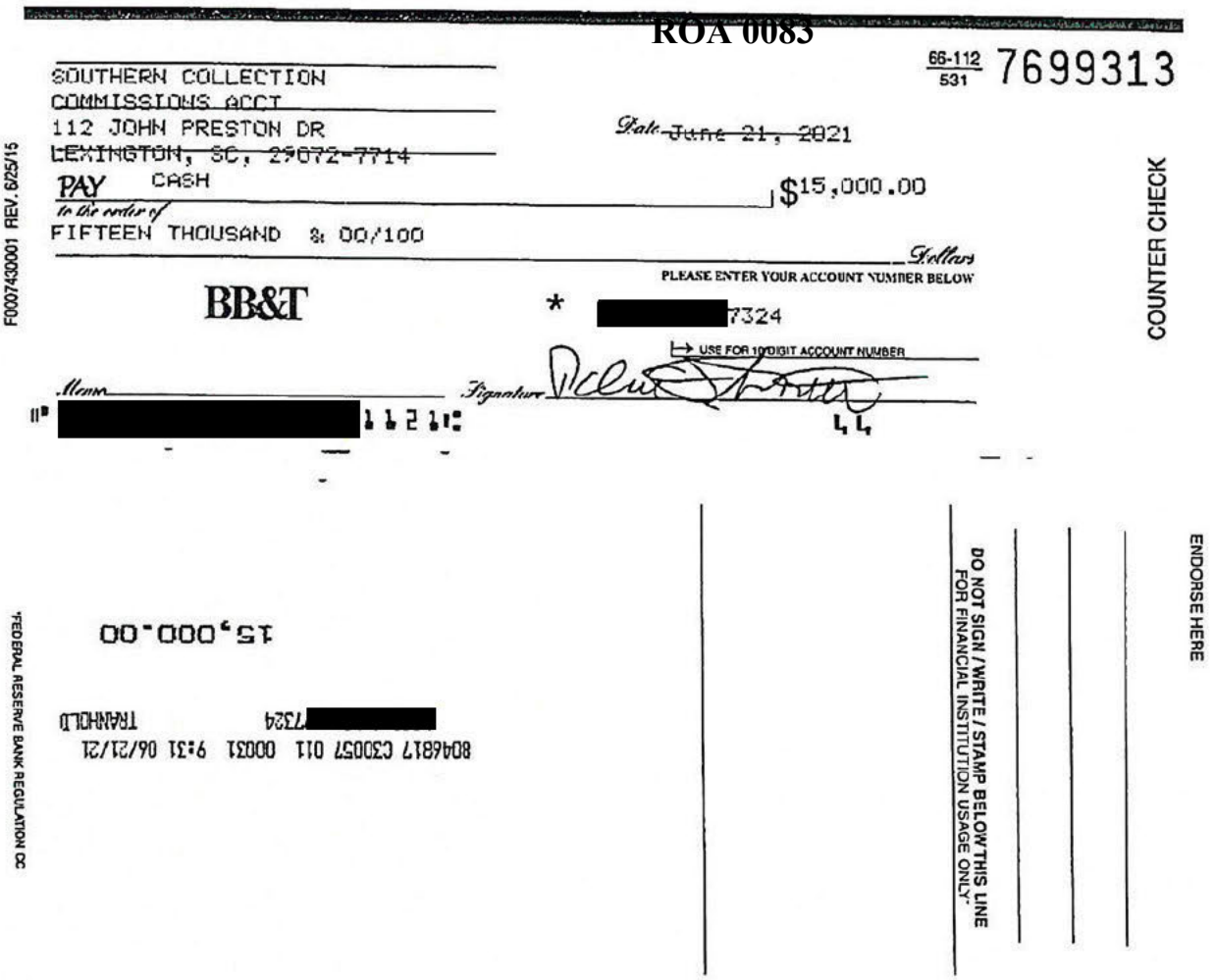
Debra Smith

⑈00001478⑈ ⑆[redacted]7324⑈

ENDORSE HERE

X

CHECK BOX FOR MOBILE REMOTE DEPOSIT



SOUTHERN COLLECTION
COMMISSIONS ACCT
112 JOHN PRESTON DR
LEXINGTON, SC, 29072-7714

66-112 / 531 7699313

Date June 21, 2021

PAY CASH $15,000.00

To the order of
FIFTEEN THOUSAND & 00/100 Dollars

PLEASE ENTER YOUR ACCOUNT NUMBER BELOW

BB&T

* [redacted]7324

USE FOR 10 DIGIT ACCOUNT NUMBER

Memo

Signature

[redacted]

COUNTER CHECK

F0007430001 REV. 6/25/15

ENDORSE HERE

DO NOT SIGN / WRITE / STAMP BELOW THIS LINE
FOR FINANCIAL INSTITUTION USAGE ONLY

15,000.00

[redacted]7324 TRANHOLD

8048817 C30057 011 00031 9:31 06/21/21

"FEDERAL RESERVE BANK REGULATION CC

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Exhibit 3

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SOUTHERN COLLECTION LLC
130 STATE ST
WEST COLUMBIA, SC 29169

1387
67-160/532

DATE 3-11-21

PAY TO THE ORDER OF Terence Smith & Associates LLC $ 7148.75

Seven thousand one hundred forty eight & 75/100 DOLLARS

BB&T BRANCH BANKING AND TRUST COMPANY 1-800-BANK BBT BBT.com

FOR commission Naples

[redacted]

⑈00001387⑈ ⑆[redacted]7324⑈

[redacted] 00001387

[redacted]7324

SOUTHERN COLLECTION LLC

Security Features exceed industry standards and include:
- ImageMatch®: Matching account and check number on back (Patent No. 9,240,080)
- MobileMark®: Mobile Deposit check mark to indicate check has been deposited via mobile device
- The Security Weave® pattern on back designed to deter fraud
- Microprint (MP) lines printed on front and back
- The words "ORIGINAL DOCUMENT" across the back
- Photo Safe Deposit® icon visible on front and back

Do not cash if:
- Any of the features listed above are missing or appear altered
- Fugitive Ink on back looks pink or has disappeared
- Brown stains or colored spots appear on both front and back, and in Chemical Wash Detection Box

Photo Safe Deposit®

ENDORSE HERE

X

☐ CHECK BOX FOR MOBILE REMOTE DEPOSIT

WRITE NAME OF FINANCIAL INSTITUTION ON LINE ABOVE

Exhibit 4

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SOUTHERN COLLECTION LLC
130 STATE ST
WEST COLUMBIA, SC 29169

1156
67-160/532

DATE 8-17-21

PAY TO THE ORDER OF Tecora Smith + Associates LLC $ 6822.19

six thousand eight hundred twenty-two + 19/100 DOLLARS

BB&T BRANCH BANKING AND TRUST COMPANY
1-800- BANK BBT BBT.com

FOR 180 middleton + 679 Pleasant View

Dolores Tinsley

⑈00001156⑈ ⑆[redacted]7324⑈

[redacted] 00001156

[redacted] 7324

SOUTHERN COLLECTION

Security Features exceed industry standards and include:
- ImageMatch™ - Matching account and check number on back - Patent No. 9,210,068
- MobileMark™ - Mobile Deposit check mark to indicate check has been deposited via mobile device
- The Security Weave® pattern on back designed to deter fraud
- Microprint (MP) lines printed on front and back
- The words "ORIGINAL DOCUMENT" across the back
- Photo Safe Deposit® icon visible on front and back

Do not cash if:
- Any of the features listed above are missing or appear altered
- Fugitive Ink on back looks pink or has disappeared
- Brown stains or colored spots appear on both front and back, and in Chemical Wash Detection Box

photo Safe Deposit®

ENDORSE HERE

X

☐ CHECK HERE FOR MOBILE REMOTE DEPOSIT

MUST SIGN IN THE ENDORSEMENT AREA ABOVE

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SOUTHERN COLLECTION LLC
130 STATE ST
WEST COLUMBIA, SC 29169

1160
67-160/532

DATE 8.30.21

PAY TO THE ORDER OF Terence Smith $ 24,788.56

twenty four thousand seven hundred eighty eight & 56/100 DOLLARS

BB&T BRANCH BANKING AND TRUST COMPANY 1-800-BANK BBT BBT.com

FOR 1203 Fair, 601 Main, Carlton Ct 344 Wallace 330 Spring Mist 180 Middleton, 679 Pleasant View

⑈00001160⑈ ⑆[redacted]7324⑈

[redacted]

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Exhibit 5

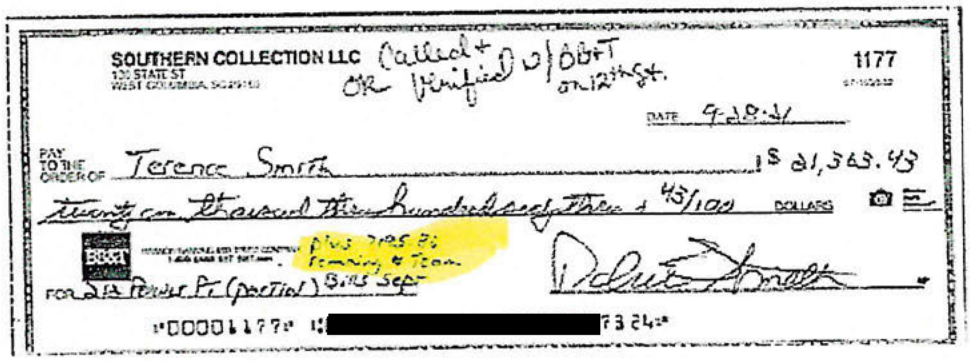
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Front

Back


SOUTHERN COLLECTION LLC
130 STATE ST
WEST COLUMBIA, SC 29169

Called + Verified D/DOFT on 12th St.

1177

DATE 9-28-21

PAY TO THE ORDER OF Terence Smith $ 21,363.43

twenty one thousand three hundred sixty three + 43/100 DOLLARS

BB&T

Plus 285 Pr Framing & Trim

FOR 3A Reroof Pr (partial) Bills Sept

Robert Smith

⑈00001177⑈ ⑆[redacted]⑆ 73 24⑈

- not paid to TS & ASSOC.

Exhibit 6

ELECTRONICALLY FILED - 2022 Apr 28 10:02 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

SOUTHERN COLLECTION LLC
130 STATE ST
WEST COLUMBIA, SC 29169

1323
67-160/532

DATE 11-27-2020

PAY TO THE ORDER OF Robert T. Smith $ 12,246.98

Twelve thousand two hundred forty six & 98/100 DOLLARS

Photo Safe Deposit Details on back

BB&T BRANCH BANKING AND TRUST COMPANY
1-800-BANK BBT BBT.com

FOR Profit Thru Sept 30

⑈0000 1323⑈ ⑆[redacted]⑆ 7324⑈

[redacted]

Security Features Detail on back

ENDORSE HERE

X

☐ CHECK BOX FOR MOBILE/REMOTE DEPOSIT

WRITTEN NOTIFICATION REQUIRED WITHIN 10 DAYS

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Exhibit 7

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South Carolina Secretary of State

Business Entities Online

File, Search, and Retrieve Documents Electronically

Southern Collection Brokerage, LLC

Corporate Information

Entity Type: Limited Liability Company

Status: Good Standing

Domestic/Foreign: Domestic

Incorporated State: South Carolina

Important Dates

Effective Date: 10/19/2021

Expiration Date: N/A

Term End Date: N/A

Dissolved Date: N/A

ROA 0094

ROA 0094

Registered Agent

Agent: Robert T. Smith

Address: 130 State St.
West Columbia, South Carolina 29169

Official Documents On File

Filing Type	Filing Date
Articles of Organization	10/19/2021

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ELECTRONICALLY FILED - 2022 Apr 28 10:02 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON Emily P. Smith and Emily P. Smith and Associates, LLC, Plaintiffs, vs. Robert T. Smith; Southern Collection, LLC; Southern Collection Brokerage, LLC; Terrance Smith and Associates, LLC; Robert B. Smith, and Sherry C. Smith, Defendants.	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT Case No.: **CONSENT TO SERVE AS RECEIVER**

With consent of Plaintiff Emily, through her undersigned counsel, Jackson Cobb, SRA, CCIM of Cobb & Sabbagha Realty consents to serve as receiver over Southern Collection, LLC for purposes of investigating, accounting, taking possession of and managing the company's assets and income to ensure the dissolution and winding up of the business.

WE CONSENT:

Ballard & Watson

Desa Ballard
226 State Street
West Columbia, SC 29169
(803) 796-9299
desab@desaballard.com

Attorney for the Plaintiff

Cobb & Sabbagha

Jackson Cobb
1126 Pine Croft Drive
West Columbia, SC 29170
(803) 794-5152
jcobb@sc.rr.com

April 26 2022



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COBB & SABBAGHA

1126 PINE CROFT DRIVE ▪ WEST COLUMBIA, SC 29170 ▪ (803) 794-5152 ▪ FAX (803) 794-4835

Desa Ballard Esq

April 12, 2022

Ballard & Watson, Attorneys at Law

226 State Street

West Columbia, SC 29169

Ref: Appointment as Receiver

I graduated from the University of South Carolina with a Bachelor of Science in Chemistry Degree in 1970. I worked as a Chemist for Baxter Laboratories in Kingstree, SC and Cardinal Chemical Company in Columbia.

I have been Broker-In-Charge of Cobb & Sabbagha Realty since it's inception in 1972. I am a member of the Columbia Board of Realtors and the South Carolina Chapter of the Appraisal Institute. I hold the professional designations of GRI, SRA, and CCIM.

In my appraisal practice I am a Certified General Appraiser with license number CG 648. I primarily do commercial appraisals for litigation support, estates, and bankruptcy trustees.

In my real estate practice I specialize in bankruptcy properties. I have worked with Chapter 7 Trustees for over 30 years in liquidating bankruptcy assets. I currently work with chapter 7 panel Trustees Robert F. Anderson, Janet B. Haigler, Michelle L. Vieira, and Kevin Campbell. I have been continuously bonded per bankruptcy court requirements since I began working on Chapter 7 cases.

I have served as a Chapter 11 Trustee on several occasions and successfully liquidated the assets involved in those cases.

I have been appointed as Receiver on a variety of cases including liquidating a wine distributorship and managing and liquidating a group of motels in Myrtle Beach.

I am attaching my CV to this letter.

Thank You,

Jackson L. Cobb SRA CCIM

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JACKSON L. COBB, SRA, CCIM
PROFESSIONAL RESUME

Education

Bachelor of Science, Chemistry
University of South Carolina

Professional Designations

Chapter 11 Trustee
U. S. Federal Bankruptcy Court

Real Estate Broker
State of South Carolina

GRI
Graduate of the Realtors Institute

CCIM
Certified Commercial Investment Member

State Certified General Real Estate Appraiser
South Carolina Real Estate Appraiser's Board

Association Memberships

SRA Member of the Appraisal Institute

Columbia Board of Realtors

South Carolina Association of Realtors

National Association of Realtors

Consolidated Multiple Listings

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Major Clients Served

Department of Housing and Urban Development – FHA

NBSC

Midlands National Bank

Small Business Administration

Nationsbank

Robert F. Anderson, Trustee

Ralph C. McCullough II, Trustee

W. Ryan Hovis, Trustee

Michelle Vieira, Trustee

Kevin Campbell, Trustee

Michael Cox, Esquire

James E. Knight, Jr., Esquire

U. S. Bankruptcy Court

First Security Mortgage Corporation

SouthTrust Bank

Carolina First Bank

Burkett, Burkett, Burkett, CPA's

Central Midlands Regional Planning Council

Town of Newberry

Town of Springdale

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Professional and Technical Courses and Examinations Successfully Completed

Real Estate Appraisal Principles
American Institute of Real Estate Appraisers

Basic Valuation Procedures
American Institute of Real Estate Appraisers

Graduate of the Realtors Institute - GRI
Course I
Course II
Course III

Fundamentals of Real Estate Investment and Taxation
Realtors National Marketing Institute

Residential Valuation
American Institute of Real Estate Appraisers

Capitalization Theory and Technique Course A
American Institute of Real Estate Appraisers

Capitalization Theory and Technique Course B
American Institute of Real Estate Appraisers

Introduction to Appraising Real Property
Society of Real Estate Appraisers

Applied Residential Property Valuation
Society of Real Estate Appraisers

Uniform Residential Appraisal Report
Society of Real Estate Appraisers

Narrative Demonstration Report
American Institute of Real Estate Appraisers

Industrial Valuation
American Institute of Real Estate Appraisers

Applied Income Property Valuation 202
Appraisal Institute

Advanced Real Estate Taxation C1103
Commercial Investment Real Estate Council

Standards of Professional Practice
Society of Real Estate Appraisers

The Appraiser as Expert Witness
Society of Real Estate Appraisers

Introduction to Commercial Brokerage C1402
Commercial Investment Real Estate Institute

Market Analysis for Commercial Real Estate C1201
Commercial Investment Real Estate Institute

Decision Analysis for Commercial Real Estate C1301
Commercial Investment Real Estate Institute

Course Concepts Review C1408
Commercial Investment Real Estate Institute

South Carolina State License and Certification Exam Review Seminar
Appraisal Institute

Standards of Professional Practice – Part A
Appraisal Institute

Standards of Professional Practice – Part B
Appraisal Institute

The New Uniform Residential Appraisal Report
Appraisal Institute

Approved Regulations of the Federal Banking Agencies from Lender's Perspective
Appraisal Institute

How to Appraise FHA-Insured Property
Appraisal Institute

Income Valuation of Small, Mixed-Use Properties C600
Appraisal Institute

Cost Valuation of Small, Mixed-Use Properties C610
Appraisal Institute

Sales Comparison Valuation of Small, Mixed-Use Properties
Appraisal Institute

Residential Design and Functional Utility
Appraisal Institute

Standards of Professional Practice Part C
Appraisal Institute

Business Practice and Ethics
Appraisal Institute

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ELECTRONICALLY FILED - 2022 Apr 28 9:39 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF LEXINGTON)	ELEVENTH JUDICIAL CIRCUIT
)	
Emily P. Smith and Emily P. Smith and Associates, LLC,)	Case No.: 2022-CP-32-____
Plaintiffs,)	
vs.)	
)	
Robert T. Smith; Southern Collection, LLC; Southern Collection Brokerage, LLC; Terrance Smith and Associates, LLC; Robert B. Smith, and Sherry C. Smith,)	**SUMMONS**
Defendants.)	

TO: THE ABOVE-NAMED DEFENDANTS AND THEIR ATTORNEYS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served on you, and to serve a copy of your Answer to the said Complaint upon the subscribers at 226 State Street , West Columbia, South Carolina 29169, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in such Complaint.

s/ Desa Ballard
Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)

BALLARD & WATSON
226 State Street
West Columbia, South Carolina 29169
Telephone 803.796.9299
desab@desaballard.com
harvey@desaballard.com
haley@desaballard.com

ATTORNEYS FOR PLAINTIFFS

April 27, 2022

ELECTRONICALLY FILED - 2022 Apr 28 9:39 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
Emily P. Smith and Emily P. Smith and Associates, LLC, Plaintiffs, vs.	)	Case No.: 2022-CP-32-____
Robert T. Smith; Southern Collection, LLC; Southern Collection Brokerage, LLC; Terence Smith and Associates, LLC; Robert B. Smith, and Sherry C. Smith, Defendants.	)	**COMPLAINT (Non-Jury)**

TO: **DEFENDANTS NAMED ABOVE:**

Plaintiff Emily P. Smith (hereinafter referred to as "Emily") and Emily P. Smith and Associates LLC (hereafter individually referred to herein as "Emily LLC" and hereinafter collectively referred to herein as "Emily" and/or "Emily and Emily LLC"), complaining of the defendants herein, would respectfully show unto this Honorable Court:

1. Plaintiff Emily is a citizen and resident in the State of South Carolina, County of Lexington.

2. Plaintiff Emily P. Smith and Associates, LLC (hereinafter "Emily LLC") is a Limited Liability Company organized and existing pursuant to the laws of the State of South Carolina with its principal place of business in Lexington County, of which Emily P. Smith is the sole member.

3. On information and belief, Defendant Robert T. Smith, also known as Terence Smith, (hereinafter "Defendant Smith") is a citizen and resident in the State of South Carolina, County of Lexington.

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4. Defendant Southern Collection, LLC (hereinafter "the dissolved LLC") is a Limited Liability Company organized and existing pursuant to the laws of the State of South Carolina with its principal place of business in Lexington County. Contemporaneously with the filing of this action, Plaintiff Emily P. Smith is filing a statement of disassociation with the South Carolina Secretary of State pursuant to S. C. Code Ann. § 33-44-704 initiating the dissolution of the dissolved LLC.

5. On information and belief, Defendant Southern Collection Brokerage, LLC (hereinafter "Brokerage LLC") is a Limited Liability Company organized and existing pursuant to the laws of the State of South Carolina with its principal place of business in Lexington County. On information and belief, Brokerage LLC is owned solely by Defendant Smith and currently holds assets and income that have been diverted and misappropriated from the dissolved LLC and Emily P. Smith & Associates LLC.

6. On information and belief Defendant Terence Smith and Associates, LLC (hereinafter "Defendant LLC") is a Limited Liability Company organized and existing pursuant to the laws of the State of South Carolina with its principal place of business in Lexington County. On information and belief, Defendant LLC is solely owned by Defendant Smith.

7. On information and belief, Defendant Robert B. Smith is a resident of the State of Virginia. On information and belief this is Defendant Smith's father ("Smith's Father").

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8. On information and belief, Defendant Sherry C. Smith is a resident of the State of Virginia. On information and belief this is Defendant Smith's mother ("Smith's Mother").

FOR A FIRST CAUSE OF ACTION
(Judicial Dissolution and Winding Up)

9. This is an action for judicial dissolution, pursuant to S.C. Code Ann. Section 33-44-801(4) seeking a judicial dissolution and winding up of the assets, debts and affairs of the dissolved LLC and distributions as provided by law including but not limited to the RE/MAX franchise.

10. On information and belief, this Court has subject matter jurisdiction over the matters set forth in this complaint.

11. On information and belief, this Court has personal jurisdiction over the parties to this action. The LLCs formed by the parties which are the subject of the allegations set forth herein require that suit be brought in Lexington County, South Carolina.

12. Plaintiff Emily (License No. 86744) and Defendant Smith (License No. 27039) are both real estate agents. On or about May 25, 2020, the parties formed Southern Collection, LLC ("the dissolved LLC") for purposes of operating a real estate company.

13. The dissolved LLC operated as a franchise of RE/MAX.

14. Plaintiff and Defendant Smith are equal co-owners of the dissolved LCC. On information and belief, there is no operating agreement, but the pattern and practice of the dissolved LLC was to distribute fifty percent of net proceeds to Emily and fifty percent to Defendant Smith, regardless of whether a property was sold by Plaintiff

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Emily or Defendant Smith, or regardless of the other source of their team and/or brokerage agents' income to the dissolved LLC.

15. The dissolved LLC served as broker for various real estate agents, with each agent paying a varying percentage of each real estate commission earned by her to the dissolved LLC for purposes of services rendered by the dissolved LLC.

16. Emily and Defendant Smith each formed their own individual S Corporations through which the net income from the dissolved LLC due to each was paid to Emily and Defendant Smith as their individual income. Emily's S Corp is entitled Emily P. Smith and Associates, LLC ("Emily LLC") and was formed on or about December 29, 2014. Defendant Smith's is entitled Robert Terence Smith and Associates, LLC ("Defendant LLC"), and was formed on or about December 18, 2013.

17. Starting in the Spring of 2020, Defendant Smith began forcing Emily out of the dissolved LLC, closing bank accounts, and diverting income due to Emily. On information and belief, Defendant Smith diverted or misappropriated most or all income and assets of the dissolved LLC to himself as "partner distributions" or to the Brokerage LLC for his sole purposes, with the intent to deprive Emily and Emily LLC.

18. On information and belief, Defendant Smith intentionally created the Brokerage LLC and has diverted the jobs, income and assets of the dissolved LLC to the Brokerage LLC without Emily's knowledge or consent.

19. On information and belief, since on or about October 19, 2021, Defendant Smith has been conducting the business of the dissolved LCC through Brokerage LLC without

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Plaintiff's consent, and misappropriating all assets and income due to Emily. One or more paychecks from the dissolved LLC to Emily LLC have been returned for nonsufficient funds or due to the closure of the bank account.

20. A certified fraud examiner has conducted an audit of the business accounts available to Plaintiffs that are associated with the dissolved LLC. As evidenced by the results of the audit, a copy of which is attached hereto and incorporated herein as **Exhibit A**, Defendant Smith has repeatedly overpaid himself for commissions from the dissolved LLC, taken improper "partner distributions" and withheld commissions due to Emily for at least thirteen property sales generated through the dissolved LLC and has and will continue to operate the dissolved LLC for his sole advantage or as an agent of Brokerage LLC.

21. Since the inception of the dissolved LLC, the bank accounts associated with the dissolved LLC have been controlled by Defendant Smith. On information and belief, not only has Defendant Smith failed to disburse income earned by and due to Emily, but he has also prevented Emily from cashing checks from the dissolved LLC's bank account by either closing the account before Emily is able to cash the checks or stopping payment on checks and instructing closing attorneys to make checks payable to Defendant Smith as Broker in Charge.

22. On information and belief, Defendant Smith handled the finances and taxes for the dissolved LLC. Emily is informed and believes that the dissolved LLC has not filed tax returns since its incorporation in 2020, and that Defendant Smith has accrued a substantial debt on the dissolved LLC's business credit card that he has failed to pay.

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23. On information and belief, Defendant Smith has also taken efforts to subvert Emily's ability to work through the dissolved LLC by unilaterally removing her name and contact information from marketing and advertising, intentionally failing to relay calls to Emily concerning her listings, refusing to share listing appointments through their standard practices, stopping payment on checks payable to Emily and intercepting contacts intended for Emily in an effort to misappropriate her client to himself.

24. On information and belief, Defendant Smith directly and/or indirectly made false and defamatory statements regarding Emily to Emily's clients, potential clients, consumers, vendors, business affiliates, agents, and employees of the dissolved LLC in an effort to diminish the reputation and standing of Emily and retain business for the benefit of Defendants Smith, Brokerage LLC, and Defendant LLC.

25. As a result of Defendant Smith's actions, Emily has sustained substantial damages by way of lost and misappropriated income to herself and the inability to conduct business through the dissolved LLC, effectively shutting Emily out of the dissolved LLC and destroying the business.

26. Defendant Smith has engaged in conduct that makes it not reasonably practicable for Emily to carry on the dissolved LLC's business with Defendant Smith.

27. Defendant Smith has acted, and is acting in a manner that is unlawful, oppressive, fraudulent, and unfairly prejudicial to Emily.

28. For the reasons set forth above, Emily is entitled to judicial dissolution of the dissolved LLC and the winding up of the business, including payment of all funds due to her by redistribution of assets and income to account for the misappropriation

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by Defendant Smith and Brokerage LLC, including income, distributions of assets, and termination of the dissolved LLC's certificate to do business in South Carolina.

FOR A SECOND CAUSE OF ACTION
(Emergency Temporary Appointment of Receiver)

29. Emily realleges and reincorporates each and every paragraph set forth above as fully as if it is stated herein verbatim.

30. On information and belief, Defendant Smith has improperly withheld and diverted income earned by Emily, and misappropriated income and assets from the dissolved LLC in which Emily has a one-half interest.

31. On information and belief, the income and assets of the dissolved LLC that are in the possession of Defendant Smith, Brokerage LLC, and Defendant LLC have been and are in danger of being lost or materially injured.

32. On information and belief, the dissolved LLC is insolvent or in imminent danger of insolvency.

33. For the reasons set forth above, Emily is entitled to the emergency appointment of a receiver to conduct an inventory and accounting, to determine funds due to Emily as a result of misappropriation by Defendant Smith pursuant to S.C. Code Ann. § 15-65-10(1) and to take such action as maybe necessary to equalize and distribute the parties' interest in the dissolved LLC.

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FOR A THIRD CAUSE OF ACTION
(Conversion)

34. Emily realleges and reincorporates each and every paragraph set forth above as fully as if it is stated herein verbatim.

35. In furtherance of building the operations of the dissolved LLC, Emily and Emily LLC expended substantial funds in selecting, designing, and furnishing the physical office of the dissolved LLC as well as curating promotional events to market the dissolved LCC and cultivate clients and referral sources.

36. On information and belief, Defendant Smith, Brokerage LLC, and Defendant LLC have benefited and continue to benefit from clients, referral sources, and sales that were generated through Emily and the dissolved LLC.

37. Emily and Emily LLC also expended more than one hundred thousand dollars ($100,000.00) to purchase inventory for the staging operations of the dissolved LLC, which was solely managed by Emily. Approximately ninety-five percent of the inventory was stored in a warehouse leased by Defendant Smith. The remaining five percent of inventory was stored in a warehouse leased by Emily.

38. On information and belief, Defendant Smith 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.

39. On information and belief, Defendant Smith misappropriated funds, inventory, and assets from the dissolved LLC that were due to Emily and converted those funds, inventory, and assets for the use of operating Brokerage LLC and Defendant LLC.

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40. For the reasons set forth above, Emily is entitled to an order granting judgment against Defendant Smith, Brokerage LCC, and Defendant LLC for all income, inventory, and assets that were converted and misappropriated from the dissolved LLC equal to Plaintiff's one-half interest in the dissolved LLC and the value of all assets and income diverted to Brokerage LLC.

FOR A FOURTH CAUSE OF ACTION
(Attempted Tortious Interference with Contract)

41. Emily realleges and reincorporates each and every paragraph set forth above as fully as if it is stated herein verbatim.

42. On or about April 5, 2022, Emily entered into a contract to sell a home located at 343 DL[1] Drive in Lexington, South Carolina.

43. On information and belief, Defendant Smith had knowledge of the contract between Emily and the owner of 343 DL Drive.[2]

44. On or about April 4, 2022, Emily was present for the initial showing of 343 DL Drive where she met a potential buyer. On information and belief, the potential buyer attempted to contact Emily after viewing the home on Zillow but was unable to as Emily's contact information had been directed to Defendant Smith. The potential buyer then contacted Defendant Smith who inaccurately advised the potential buyer that he and Emily equally represented the seller of 343 DL Drive.

[1] For privacy of the clients of the dissolved LLC, specific property addresses are referred to using initials rather than actual street addresses.

[2] As Broker in Charge of the dissolved LLC, Defendant Smith had knowledge of the contract.

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45. On information and belief, Defendant Smith falsely advised the potential buyer that Emily was not available to show him the home, and instead Defendant Smith showed the home to the potential buyer and secured an offer to purchase, which he then attempted to relay to the seller, Emily's client.[3]

46. On information and belief, Defendant Smith 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 and divert the sale of 343 DL Drive from Emily to himself for his sole benefit.

47. On information and belief, Defendant Smith's actions were willful, malicious, intentional, and unjustified.

48. As a result of Defendant Smith's actions, Emily sustained actual damages by way of substantial loss of earnings and injury to her reputation.

49. For the reasons set forth above, Emily is entitled to a judgement against Defendant Smith for punitive damages.

FOR A FIFTH CAUSE OF ACTION
(Imposition of Constructive Trust)

50. Emily realleges and reincorporates each and every paragraph set forth above as fully as if it is stated herein verbatim.

[3] Although the owner of 343 DL Drive was considered a client of the dissolved LLC, historically, Emily and Defendant Smith kept their individual clients separate. Defendant Smith had not contacted any of Emily's clients to her knowledge before this incident.

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51. On information and belief, Defendant Smith diverted or misappropriated income and assets from the dissolved LLC to himself or the Brokerage LLC. On information and belief, Defendant Smith continues to misappropriate income and assets of the dissolved LLC with the assistance of Defendants Robert B. Smith and Sherry C. Smith.

52. On information and belief, at least forty-thousand dollars ($40,000.00) of office profits belonging to the dissolved LLC are being held in a bank account owned and controlled by Defendant Smith's parents, Defendants Robert B. Smith and Sherry C. Smith. These funds were diverted without the knowledge or consent of Emily.

53. At no point in time were Defendants Robert B. Smith and Sherry C. Smith owners, employees, or agents of the dissolved LLC, nor were they entitled to receive any income or profits generated by the dissolved LLC.

54. On information and belief, 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 dissolved LLC.

55. Defendants B. Smith and C. Smith are wrongfully in possession of profits that belong to Emily and the dissolved LLC.

56. For the reasons set forth above, Emily is entitled to the imposition of a constructive trust against any income or profits of the dissolved LLC held by the Defendants Robert B. Smith and Sherry C. Smith.

57. Emily is also entitled to the imposition of a constructive trust against Brokerage LLC for assets and income that has been diverted from the dissolved LLC.

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FOR A FIFTH CAUSE OF ACTION
(Attorney's Fees and Costs)

58. Emily realleges and reincorporates each and every paragraph set forth above as fully as if it is state herein verbatim.

59. Defendant Smith unilaterally took control of the dissolved LLC, wrongfully diverted income and assets from the dissolved LLC to Brokerage LLC and Defendant LCC, withheld payment from Emily, and effectively destroyed the business he shared with Emily.

60. Through his efforts to shut Emily out of the dissolved LLC and to misappropriate income and assets due to Emily, Defendant Smith acted arbitrarily, vexatiously, and not in good faith.

61. Emily has incurred attorney's fees and costs, and will continue to incur attorney's fees and costs in connection with the pursuit of this action, such that Defendant Smith should be ordered to pay the attorney's fees and costs incurred by Emily in connection with this action.

62. For the reasons set forth above, Emily is entitled to reasonable expenses, including attorney's fees and expert's fees pursuant to S.C. Code Ann. 33-44-702(d).

Wherefore, having fully set forth the grounds for relief requested, Plaintiff Emily Smith prays for an order:

A. Granting a dissolution of Southern Collection, LCC and a winding up of the business;

B. Appointing a receiver immediately following the filing of this action for the purpose of winding up and liquidating the dissolved LLC;

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C. Requiring Defendant Smith to disburse and return all misappropriated income and assets equal to Plaintiff's one-half interest in the dissolved LLC;

D. Granting Plaintiff Emily recovery of all income and assets diverted by Defendant Smith to Brokerage LLC and elsewhere;

E. Awarding Plaintiff Emily a judgment against Brokerage LLC in an amount equal to the income and assets misappropriated from the dissolved LLC;

F. Imposing a judgement against Defendant Smith for punitive damages;

G. Imposing a constructive trust against any income and profits of the dissolved LLC recovered by Defendants Robert B. Smith and Sherry C. Smith;

H. Imposing a constructive trust against Brokerage LLC for assets and income diverted from the dissolved LLC;

I. Awarding reasonable expenses and attorney's fees to Plaintiff Emily; and

J. Such further and other relief as the Court deems just and proper.

Respectfully submitted,

s/ Desa Ballard

Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)

BALLARD & WATSON
226 State Street
West Columbia, South Carolina 29169
Telephone 803.796.9299
desab@desaballard.com
harvey@desaballard.com
haley@desaballard.com

ATTORNEYS FOR PLAINTIFF

April 28, 2022

Exhibit A

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STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON Emily P. Smith and Emily P. Smith and Associates, LLC, Plaintiffs, vs. Robert T. Smith; Southern Collection, LLC; Southern Collection Brokerage, LLC; Terrance Smith and Associates, LLC; Robert B. Smith, and Sherry C. Smith, Defendants.	)	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT Case No.: **AFFIDAVIT OF CHRISTOPHER LEVENTIS**

PERSONALLY appeared before me Christopher L. Leventis, MAcc, CPA, CVA, CMA, CFE, who, being duly sworn, deposes and states:

1. I am a citizen and resident of South Carolina and I am over the age of 18. This affidavit is sworn on my personal knowledge, unless otherwise stated, and I am competent to testify to the matters stated herein.
2. I am a Certified Public Accountant licensed by the state of South Carolina. I am the sole owner of Leventis Financial, LLC. My curriculum vitae is attached as **Exhibit 1**.
3. I was retained by Emily Smith to assist her and her attorney in the above referenced matter in which I understand Emily seeks to liquidate and dissolve her existing business relationship with Robert Terence Smith (hereinafter "Defendant Smith") known as Southern Collection LLC and recover funds due to her from Southern Collection LLC and third parties.
4. Fees for services rendered are based upon the time required at standard hourly billing rates plus out-of-pocket expenses. My fees are not contingent upon the outcome of this matter.

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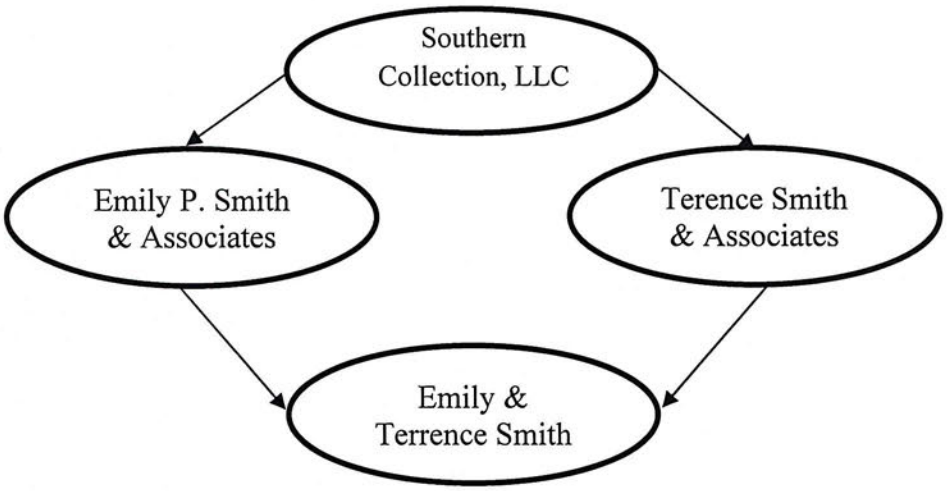
5. My hourly billing rate for this matter is $250.00 and my staff billing rates range from $115.00 to $195.00 per hour.

Background: General Business

6. Emily and Defendant Smith are real estate agents. Their first business together, entitled Purpose Driven Real Estate, LLC, was formed on September 19, 2012. This entity was sold to their third partner in 2020.
7. Following the sale of Purpose Driven Real Estate, LLC, Emily and Defendant Smith formed Southern Collection, LLC (hereinafter "Southern Collection") on May 25, 2020. Upon information and belief, they are equal co-owners of this business.
8. Southern Collection is a franchise of RE/MAX.
9. After discussions with Emily, my understanding is that Southern Collection makes revenue from the following sources:
    I. Sales commissions (operating on both sell and buy side) – revenue resulting from transactions from either Emily or Defendant Smith
    II. Brokerage fees (5% of commissions from Emily, Defendant Smith, and other agents affiliated with Southern Collection) – revenue to cover operating expenses and RE/MAX fees
    III. "Desk fees" – flat, monthly fees from agents within the office including Emily, Defendant Smith, and other agents (payments range from $195 to $695 per agent per month)
    IV. Administrative Fee (fee received from agents by Southern Collection ranging from $199 to $299)

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10. Emily and Defendant Smith each have an S Corporation they individually own. Defendant Smith's is entitled Terence Smith & Associates, LLC, and Emily's is entitled Emily P Smith & Associates, LLC. Income and Expenses flow from Southern Collection to these S Corporations in equal apportionment.
11. Historically, Parties' share of revenue from Southern Collection has been approximately 50/50. Thus, whether a property is listed / sold by Emily or Defendant Smith, each historically receive 50% of the net commissions received (after being reduced by brokerage fees).
12. Historically, a greater portion of the business expenses were deducted on Defendant Smith's S Corporation return.
13. By their nature, S Corporation's are "flow through" entities, meaning their taxable income flows to the owners' individual tax return. Thus, the taxable income from both Emily and Defendant Smith's S Corporations are reported and taxed on their individual tax returns.
14. Below is a flow chart summarizing the above:



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Background: Financial Accounts

15. Below is a summary of Parties' known business bank accounts to include bank, last four digits of the account number, owner, and a description of the purpose of the account as understood from discussions with Emily:

I. BB&T #7324 – Southern Collection commissions account

i. Deposits include all commissions received from a transaction (including Emily, Defendant Smith, and other agents)

ii. The following were historical disbursements from this account:

1. To Emily P Smith & Associates - portion of commissions for Emily's share
2. To Terence Smith & Associates – portion of commissions for Defendant Smith's share
3. To agents – portion of commissions for a particular agent's share when the agent is not Emily or Defendant Smith
4. To BB&T #7316 (operating account) – brokerage fee (5% of commissions)

iii. The following were not historical disbursements:

1. Distributions, withdrawals, or the like to Emily or Defendant Smith aside from commissions

II. BB&T #7316 – Southern Collection operating account

i. The following were historical deposits:

1. Brokerage fees
2. Desk fees

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3. Administrative fees

ii. The following were historical disbursements from this account:

1. General office expenses including, but not limited to, internet, utilities, payroll, supplies, rent, insurance, and RE/MAX fees were historically paid from this account.

iii. After expenses were paid from this account from the monies previously explained, the remaining profit was to be distributed via profit sharing plan. The profit-sharing plan was never put in writing, but was verbally described as allotting the profit as follows:

1. Emily: 35%
2. Defendant Smith: 35%
3. Team Leads: 30%

iv. After conversations with Emily and a review of an email from a team lead, it appears these distributions were not being made. Thus, as co-owners of the business, profits would be allotted as follows:

1. Emily: 50%
2. Defendant Smith: 50%

Initial Review: January 1, 2021, through September 30, 2021

16. I am actively reviewing business accounts and other related information as documents are being produced in this matter. The below findings are from an initial review of the documentation received from January 1, 2021, through September 30, 2021.

17. Net commissions from sales for transactions directly involving Emily or Defendant Smith (not other agents) due to Defendant Smith were $309,397.66 and $309,244.98 to Emily.

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18. A review of the commissions account (BB&T #7324) yielded the following:

    I. Checks to Defendant Smith - $398,919.02

        i. Resulting overpayment of $89,521.36 when comparing commissions due to monies actually received for commissions.

    II. Checks to Emily - $267,974.94

        i. Resulting shortage of ($41,270.04) when comparing commissions due to monies actually received for commissions.

19. Checks written from the commissions account include details on the memo line (most frequently the address of the property the commissions check is written for).

20. Defendant Smith's surplus of $89,521.36 for monies received as compared to monies owed for commissions was primarily driven by the following:

    I. Check #1478 for $35,000.00 – disbursement to Robert T. Smith

    II. Check #7699313 for $15,000.00 – Cash

21. See attached **Exhibit 2** for check #1478 and check #7699313

22. In addition to those larger items, Defendant Smith's surplus was also due to the following:

    I. Overpayment of commissions as compared to the actual commissions due

        i. For example, check #1387 for $7,148.75 was for a property located at 219 Naples. The net commission that was supposed to be received by both Emily and Defendant Smith was $3,063.50 each. Defendant Smith received $4,085.25 over and above the amount due to him and Emily was **not provided** a check for her commissions of $3,063.50.

        ii. See **Exhibit 3** attached.

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II. Defendant Smith paying himself commissions more than once for the same property.

i. For example, check #1156 for $6,822.19 shows properties at 180 Middleton and 679 Pleasant View on the memo line.

ii. Check #1160 for $24,788.56 shows several properties on the memo line, to also include 180 Middleton and 679 Pleasant View.

iii. See attached **Exhibit 4** for these checks.

III. Additional payments for "team bills".

i. The memo line on check #1177 shows $7,195.86 for September team bills.

ii. Historically, team bills were not paid by disbursing funds from the commissions account.

iii. See **Exhibit 5** attached.

23. In addition to the above, check #1323 for $12,246.98 from the commissions account was written to Robert T. Smith in November 2020. The memo line read "profit thru Sept 30". It is currently unknown whether this was for commissions due to Defendant Smith or whether this payment was in excess of commissions due to Defendant Smith. Historically, the memo line stated the properties in which the checks were written for. See **Exhibit 6** attached.

24. Emily's shortage is a result of not being paid commissions from approximately 13 sales in which she was the agent.

25. Emily only received checks with property addresses listed in the memo line. She did not receive any "disbursements".

26. Defendant Smith has been historically in charge of this account.

27. As previously discussed, BB&T #7316 is the operating account for Southern Collection. This account is where brokerage fees, desk fees, and administrative fees are to be deposited. From January 1, 2021, through August 31, 2021, there were a total of $155,362.29 in deposits. These funds were to be used to **cover company expenses** with the remaining profit to be disbursed. Defendant Smith has been historically in charge of this account.

Other Concerns and Conclusion

28. On October 19, 2021, Defendant Smith formed a new entity entitled Southern Collection Brokerage, LLC. It is my belief that there are additional bank / credit card accounts that are currently unknown. See **Exhibit 7** attached.

29. As additional information is received through discovery, I reserve the right to amend this affidavit through writing or direct testimony.

SWORN TO before me this

27th day of April, 2022.

Notary Public for South Carolina

Allyson S. Hurst

Printed Name

My commission expires: 11-16-27

Christopher L. Leventis

Christopher L. Leventis, MAcc, CPA, CVA, CMA, CFE

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Exhibit 1

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Christopher L. Leventis

1913 Bull Street · 803.748.2644
Chris@leventisfinancial.com

PROFESSION

- Leventis Financial, LLC (Financial Litigation Support Services and Business Valuation Firm)

EDUCATION

Master of Accountancy, University of South Carolina, May 2016

- Audit track with a concentration in data analytics

Bachelor of Arts in Accounting, Furman University, May 2013

CERTIFICATIONS AND AWARDS

- Certified Public Accountant (CPA)
- Certified Management Accountant (CMA)
- Certified Valuation Analyst (CVA)
- Certified Fraud Examiner (CFE)
- NACVA and CTI 2019 *40 Under 40 Honoree*

WORK EXPERIENCE

August 2018 – Present

***Owner*; Leventis Financial, LLC**

- Provides services in litigation support to include matrimonial, civil, and criminal law
- Litigation services include, but are not limited to, expert testimony, business valuation, marital estate valuation, lifestyle analysis, hidden income and hidden asset identification, financial statement fraud, wrongful death, lost earnings, and business interruption claims
- Provides services in Business Valuation for purposes including, but not limited to, litigation and ownership disputes, marital dissolution, estate and gift tax, mergers and acquisitions, financial reporting, and business planning

November 2019 – Present

***Board Member & Treasurer;* Palmetto Foundation for Prevention and Recovery**

- Implements financial controls for the non-profit
- Oversees all donation receipts and expense disbursements
- Assists in fundraising efforts as well as growth strategy

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May 2019 – Present

***Board Member;* Bob McNair Institute**

- Help promote entrepreneurism and free enterprise to students and young entrepreneurs
- Assist young companies and ultimately enhance economic growth

June 2017 – April 2018

***Consultant*; Dixon Hughes Goodman**

- Provided services to multiple Fortune 500 companies to include financial planning and analysis, process improvement, process automation, and redevelopment of statutory financial statement models

July 2016 – April 2017

***Accountant*; Burkett, Burkett, and Burkett, CPA**

- Provided services in litigation support and business valuations
- Prepared corporate and individual tax returns
- Provided services in audit (primarily not-for-profit entities)
- Corporate bookkeeping (which includes entity Quickbooks management)

PROFESSIONAL ORGANIZATIONS

- American Academy of Matrimonial Lawyers – Forensics and Business Valuation Division
- American Institute of Certified Public Accountants (AICPA)
- South Carolina Association of Certified Public Accountants
- Institution of Management Accountants (IMA)
- National Association of Certified Valuation Analysts (NACVA)
- Association of Certified Fraud Examiners (ACFE)

SPEAKING ENGAGEMENTS, PUBLISHINGS, & VOLUNTEER WORK

- 2019 Hot Tips from the Coolest Domestic Law Practitioners – Speaker
- *The Value Examiner* by NACVA & CTI (September / October 2020 addition) – Practicing Solo segment feature
- Mentor for the Association of Certified Fraud Examiners

CASES WORKED OR IN PROGRESS

- Brannigan vs. Brannigan – Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Willis vs. Willis - Forensic accounting services related to marital dissolution. Aiken County Family Court, South Carolina, Second Judicial Circuit

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- Bartley vs. Bartley - Forensic accounting services related to marital dissolution. Saluda County Family Court, South Carolina, Eleventh Judicial Circuit
- Davis vs. Davis - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Kay vs. Kay - Forensic accounting services related to alimony modification. York County Family Court, South Carolina, Sixteenth Judicial Circuit
- Smith vs. Smith - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Siddons vs. Siddons - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Barnhouse vs. Barnhouse - Forensic accounting services related to marital dissolution. York County Family Court, South Carolina, Sixteenth Judicial Circuit
- Daly vs. Daly - Forensic accounting services related to marital dissolution. Aiken County Family Court, South Carolina, Second Judicial Circuit
- Reid vs. Reid - Forensic accounting services related to marital dissolution. Lexington County Family Court, South Carolina, Eleventh Judicial Circuit
- Shelton vs. Shelton - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Brantley vs. Brantley - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Pool vs. Pool - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Tarnowska vs. Tarnowska - Forensic accounting services related to marital dissolution. Aiken County Family Court, South Carolina, Second Judicial Circuit
- Atkins vs. Atkins - Forensic accounting services related to marital dissolution. Calhoun County Family Court, South Carolina, First Judicial Circuit
- Jennings vs. Jennings - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Miller vs. Miller - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Hensley vs. Hensley - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Ross vs. Ross - Forensic accounting services related to marital dissolution. Sumter County Family Court, South Carolina, Third Judicial Circuit
- Hayfield vs. Hayfield - Forensic accounting services related to marital dissolution. Aiken County Family Court, South Carolina, Second Judicial Circuit
- Witherspoon vs. Witherspoon - Forensic accounting services related to marital dissolution. Clarendon County Family Court, South Carolina, Third Judicial Circuit
- Riley vs. Riley - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Koenig vs. Koenig - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Lemon vs. Lemon - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit

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- Bittner vs. Chriswell – Forensic accounting services related to economic damages. South Carolina Court of Common Pleas, Charleston County, Ninth Judicial Circuit
- Lobash vs. Lobash - Forensic accounting services related to marital dissolution. Lexington County Family Court, South Carolina, Eleventh Judicial Circuit
- Liles vs. Liles - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Drolshagen vs. Drolshagen - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Melendez vs. Melendez - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Green vs. Green - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Powell vs. Powell - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Stoney vs. Stoney - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Healy vs. Healy - Forensic accounting services related to post-marital dissolution. Florence County Family Court, South Carolina, Twelfth Judicial Circuit
- Green vs. Green - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Bridwell vs. Bridwell - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Griffin vs. Griffin - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Delaney vs. Delaney - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Meisner vs. Meisner - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Danko vs. Danko - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Halfacre vs. Shi - Forensic accounting services related to marital dissolution. Georgetown County Family Court, South Carolina, Fifteenth Judicial Circuit
- Smyth vs. Smyth - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Simmons vs. Simmons - Forensic accounting services related to marital dissolution. Aiken County Family Court, South Carolina, Second Judicial Circuit
- Holmes vs. Holmes - Forensic accounting services related to post-marital dissolution. Florence County Family Court, South Carolina, Twelfth Judicial Circuit
- Lieske vs. Lieske - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Moss vs. Moss - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Waltz vs. Waltz - Forensic accounting services related to marital dissolution. Calhoun County Family Court, South Carolina, First Judicial Circuit

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- Nord vs. Nord - Forensic accounting services related to marital dissolution. Lexington County Family Court, South Carolina, Eleventh Judicial Circuit
- Harling vs. Harling - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Vanderbleek vs. Vanderbleek - Forensic accounting services related to marital dissolution. York County Family Court, South Carolina, Sixteenth Judicial Circuit
- Kelly vs. Kelly - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Richardson vs. Richardson - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Sanders vs. Sanders - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Smith vs. Smith - Forensic accounting services related to marital dissolution. Lexington County Family Court, South Carolina, Eleventh Judicial Circuit
- Haltiwanger vs. Haltiwanger - Forensic accounting services related to marital dissolution. Aiken County Family Court, South Carolina, Second Judicial Circuit
- Pietro vs. Pietro - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Fravel vs. Fravel - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- West vs. West - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Cheatham vs. Cheatham - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Webb vs. Webb - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Ives vs. Ives - Forensic accounting services related to marital dissolution. Sumter County Family Court, South Carolina, Third Judicial Circuit
- Hulsey vs. Hulsey - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Howell vs. Howell - Forensic accounting services related to marital dissolution. Georgetown County Family Court, South Carolina, Fifteenth Judicial Circuit
- Crantford vs. Crantford - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Dickson vs. Dickson - Forensic accounting services related to alimony modification. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Downey vs. Downey - Forensic accounting services related to marital dissolution. Lexington County Family Court, South Carolina, Eleventh Judicial Circuit
- Shumpert vs. Shumpert - Forensic accounting services related to marital dissolution. Lexington County Family Court, South Carolina, Eleventh Judicial Circuit
- Snyder vs. Catalano - Forensic accounting services related to marital dissolution. Beaufort County Family Court, South Carolina, Fourteenth Judicial Circuit
- M&W Transport LLC vs. Concrete Supply Co, LLC – Forensic accounting services related to lost profits. Richland County

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- Amoruso vs. Miller – Forensic accounting services related to lost profits. Charleston County, South Carolina, Ninth Judicial Circuit
- Bittner vs. Chriswell – Forensic accounting services related to lost profits. Charleston County, South Carolina, Ninth Judicial Circuit
- Graybeal vs. Graybeal - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Coggins vs. Calvert - Forensic accounting services related to lost profits. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Guilhamelou vs. Escudero - Forensic accounting services related to lost profits. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Fenchel vs. Fenchel - Forensic accounting services related to marital dissolution. Lancaster County Family Court, South Carolina, Sixth Judicial Circuit
- Arnold vs. Arnold – Forensic accounting services related to guardianship and conservatorship matters. Richland County Probate Court, South Carolina, Fifth Judicial Circuit
- Kane vs. Kane - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Carimi vs. Carimi - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Paige's Property Management vs. RAL Holdings, LLC – Forensic accounting services related to civil litigation. Lexington County, Circuit Court, Eleventh Judicial Circuit
- Gilbert vs. Gilbert – Forensic accounting services related to marital dissolution. Beaufort County Family Court, South Carolina, Fourteenth Judicial Circuit
- Smith vs. Smith - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Lelong v. Lelong – Forensic accounting services related to marital dissolution. Saluda County Family Court, South Carolina, Eleventh Judicial Circuit
- Keppery v. Keppery – Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Hewitt v. Hewitt – Forensic accounting services related to marital dissolution. Lexington County Family Court, South Carolina, Eleventh Judicial Circuit
- Prescott v. Prescott – Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Schneider vs. Schneider - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Borden vs. Borden - Forensic accounting services related to shareholder dispute. Richland County Court of Common Pleas, South Carolina, Fifth Judicial Circuit
- Shumpert vs. Shumpert - Forensic accounting services related to marital dissolution. Lexington County Family Court, South Carolina, Eleventh Judicial Circuit
- Murphy vs. Murphy - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Drew vs. Drew - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Caldwell vs. Caldwell - Forensic accounting services related to marital dissolution. Greenville County Family Court, South Carolina, Thirteenth Judicial Circuit

- Lempesis vs. Leibowitz - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- SeBlonka vs. Westbrook - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Gibson vs. Gibson - Forensic accounting services related to alimony modification. Richland County Family Court, South Carolina, Fifth Judicial Circuit

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Exhibit 2

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SOUTHERN COLLECTION LLC
130 STATE ST
WEST COLUMBIA, SC 29169

1478
67-160/532

DATE 5-25-21

PAY TO THE ORDER OF Robert T. Smith $ 35,000.00

Thirty five thousand + 00/100 DOLLARS

Photo Safe Deposit® Details on back.

BB&T BRANCH BANKING AND TRUST COMPANY
1-800-BANK BBT BBT.com

FOR Disposement

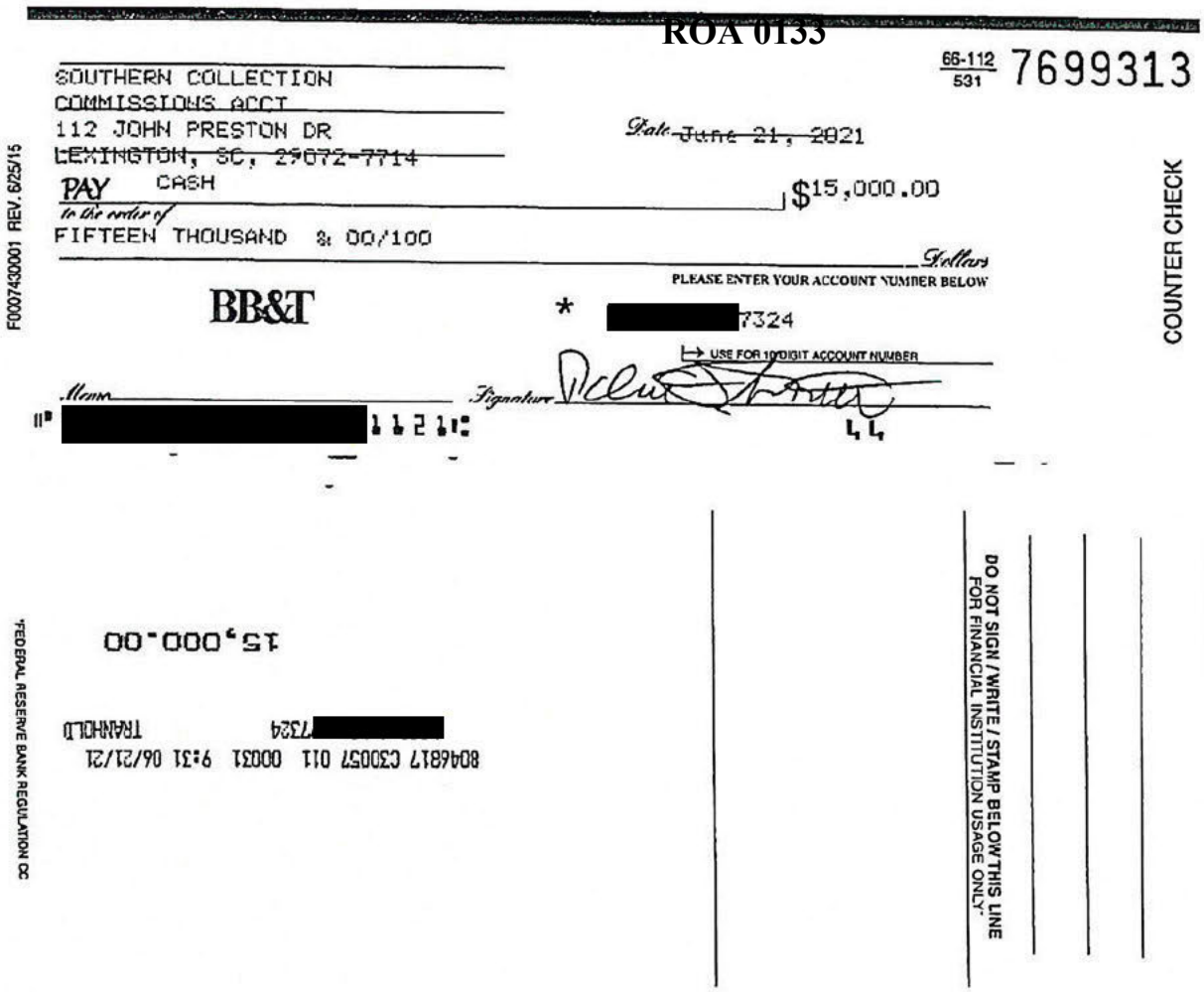
Debra Smith

⑈00001478⑈ ⑆[redacted]7324⑈

ENDORSE HERE

X

☐ CHECK BOX FOR MOBILE REMOTE DEPOSIT



SOUTHERN COLLECTION
COMMISSIONS ACCT
112 JOHN PRESTON DR
LEXINGTON, SC, 29072-7714

66-112 / 531 7699313

Date June 21, 2021

PAY CASH $15,000.00

to the order of
FIFTEEN THOUSAND & 00/100 Dollars

PLEASE ENTER YOUR ACCOUNT NUMBER BELOW

BB&T

* [redacted]7324

USE FOR 10 DIGIT ACCOUNT NUMBER

Memo

Signature

[redacted]

COUNTER CHECK

F0007430001 REV. 6/25/15

ENDORSE HERE

DO NOT SIGN / WRITE / STAMP BELOW THIS LINE
FOR FINANCIAL INSTITUTION USAGE ONLY

15,000.00

TRANHOLD [redacted]7324

8048817 C30057 011 00031 9:31 06/21/21

"FEDERAL RESERVE BANK REGULATION CC

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Exhibit 3

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SOUTHERN COLLECTION LLC
130 STATE ST
WEST COLUMBIA, SC 29169

1387
67-160/532

DATE 3-11-21

PAY TO THE ORDER OF Terence Smith & Associates LLC $ 7148.75

Seven thousand one hundred forty eight & 75/100 DOLLARS

BB&T BRANCH BANKING AND TRUST COMPANY 1-800-BANK BBT BBT.com

FOR commission Naples

[redacted]

[redacted]

SOUTHERN COLLECTION LLC

Security Features exceed industry standards and include:
- ImageMatch®: Matching account and check number on back (Patent No. 9,240,080)
- MobileMark®: Mobile Deposit check mark to indicate check has been deposited via mobile device
- The Security Weave® pattern on back designed to deter fraud
- Microprint (MP) lines printed on front and back
- The words "ORIGINAL DOCUMENT" across the back
- Photo Safe Deposit® icon visible on front and back

Do not cash if:
- Any of the features listed above are missing or appear altered
- Fugitive Ink on back looks pink or has disappeared
- Brown stains or colored spots appear on both front and back, and in Chemical Wash Detection Box

Photo Safe Deposit®

ENDORSE HERE

X

☐ CHECK BOX FOR MOBILE REMOTE DEPOSIT

WRITE NAME OF FINANCIAL INSTITUTION ON LINE ABOVE

Exhibit 4

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SOUTHERN COLLECTION LLC
130 STATE ST
WEST COLUMBIA, SC 29169

1156
67-160/532

DATE 8-17-21

PAY TO THE ORDER OF Tecora Smith + Associates LLC $ 6822.19

six thousand eight hundred twenty-two + 19/100 DOLLARS

BB&T BRANCH BANKING AND TRUST COMPANY 1-800-BANK BBT BBT.com

FOR 180 middleton + 679 Pleasant View

Dolores Smith

⑈00001156⑈ ⑆[redacted]7324⑈

[redacted] 00001156

[redacted] 7324

SOUTHERN COLLECTION

Security Features exceed industry standards and include:
- ImageMatch℠ Matching account and check number on back (Patent No. 9,210,068)
- MobileMark℠: Mobile Deposit check mark to indicate check has been deposited via mobile device
- The Security Weave℠ pattern on back designed to deter fraud
- Microprint (MP) lines printed on front and back
- The words "ORIGINAL DOCUMENT" across the back
- Photo Safe Deposit℠ icon visible on front and back

Do not cash if:
- Any of the features listed above are missing or appear altered
- Fugitive Ink on back looks pink or has disappeared
- Brown stains or colored spots appear on both front and back, and/or Chemical Wash Detection Box

Photo Safe Deposit

☐ CHECK BOX FOR MOBILE REMOTE DEPOSIT

ENDORSE HERE

X

SOUTHERN COLLECTION LLC
130 STATE ST
WEST COLUMBIA, SC 29169

1160
67-160/532

DATE 8-30-21

PAY TO THE ORDER OF Terence Smith $ 24,788.56

twenty four thousand seven hundred eighty eight & 56/100 DOLLARS

BB&T BRANCH BANKING AND TRUST COMPANY 1-800-BANK BBT BBT.com

FOR 1203 Fair, 601 Main, Carlton Ct 344 Wallace 330 Spring Mist 180 Middleton, 679 Pleasant View

⑈00001160⑈ ⑆[redacted]7324⑈

[redacted]

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Exhibit 5

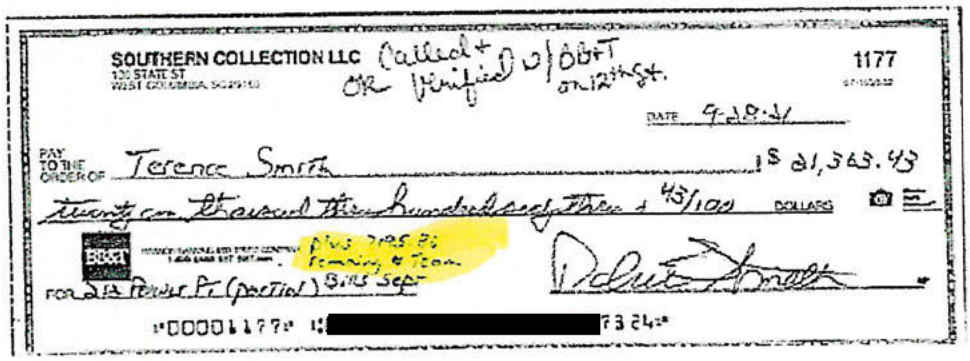
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Front

Back



- not paid to TS & ASSOC.

Exhibit 6

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SOUTHERN COLLECTION LLC
130 STATE ST
WEST COLUMBIA, SC 29169

1323
67-160/532

DATE 11-27-2020

PAY TO THE ORDER OF Robert T. Smith $ 12,246.98

Twelve thousand two hundred forty six & 98/100 DOLLARS

Photo Safe Deposit Details on back

BB&T BRANCH BANKING AND TRUST COMPANY
1-800-BANK BBT BBT.com

FOR Profit Thru Sept 30

Debra Street

⑈0000 1323⑈ ⑆[redacted]⑆ 7324⑈

[redacted]

Security Features Detail in drop-down menu

- Bank name, city, state and zip code
- Check number
- Routing and account numbers
- Dollar amount
- Date
- Payee name
- Authorized signature
- Void pantograph
- Microprint signature line
- Warning Bank Name and Logo Visible from Front and Back

Reverse Side Shows

- Bank name, city, state and zip code
- Endorsement line
- Check number
- Routing and account numbers
- Dollar amount
- Date
- Payee name
- Authorized signature
- Void pantograph
- Microprint signature line
- Warning Bank Name and Logo Visible from Front and Back

ENDORSE HERE

X

☐ CHECK BOX FOR MOBILE/REMOTE DEPOSIT

WRITE NO OTHER INFORMATION IN THIS AREA

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Exhibit 7

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South Carolina Secretary of State

Business Entities Online

File, Search, and Retrieve Documents Electronically

Southern Collection Brokerage, LLC

Corporate Information

Entity Type: Limited Liability Company

Status: Good Standing

Domestic/Foreign: Domestic

Incorporated State: South Carolina

Important Dates

Effective Date: 10/19/2021

Expiration Date: N/A

Term End Date: N/A

Dissolved Date: N/A

ROA 0144

ROA 0144

Registered Agent

Agent: Robert T. Smith

Address: 130 State St.
West Columbia, South Carolina 29169

Official Documents On File

Filing Type	Filing Date
Articles of Organization	10/19/2021

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ELECTRONICALLY FILED - 2022 Jun 02 1:59 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

STATE OF SOUTH CAROLINA)	IN THE FAMILY COURT OF THE
)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)	C.A. NO.: 2021-DR-32-1578
)	
EMILY P. SMITH,)	
)	**NOTICE OF MOTION AND MOTION**
PLAINTIFF,)	**TO SUPPLEMENT COMPLAINT**
)	
VS.)	
)	
ROBERT TERENCE SMITH,)	
)	
DEFENDANT,)	
)	

TO: DEFENDANT ABOVE NAMED: ROBERT TERENCE SMITH and his attorney, ASHBY LAWTON JONES:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through her undersigned counsel, will move before the presiding Judge of the Family Court for the Eleventh Judicial Circuit on the _____ day of _____, 202 at _____ o'clock _____.m., for an Order allowing her to amend and supplement the Complaint in this action. If you fail to appear, the Plaintiff will request the relief sought herein.

The Plaintiff would show the pleadings were filed in this case on August 18, 2021. The parties jointly own a real estate business, Southern Collection, LLC. The parties have established other businesses as well to include Southern Collection Brokerage, LLC, Emily P. Smith & Associates, LLC and Terence Smith & Associates, LLC. The Plaintiff is now seeking relief concerning these businesses in an alternate jurisdiction than Family Court. The Plaintiff is therefore seeking to supplement her previously filed Complaint to request the division of the parties' businesses, Southern Collection, LLC, Southern Collection Brokerage, LLC, Emily P. Smith & Associates, LLC and Terence Smith & Associates, LLC be excluded from the equitable division by the Family Court inasmuch as an action is being filed in Circuit Court for the

ROA 0145

ELECTRONICALLY FILED - 2022 Jun 02 1:59 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

dissolution of the businesses.

The Plaintiff seeks an Order allowing her to amend and supplement the Complaint in this action to encompass the above relief. A copy of the proposed amended pleading is attached. Such Motion shall be based upon the Laws of the State of South Carolina, the South Carolina Rules of Civil Procedure, and the Family Court Rules of Court, including but not limited to South Carolina Rules of Civil Procedure 13(e) and 15(a)(d).

The Plaintiff also requests an award of attorney's fees for having to file this Motion.

MOORE BRADLEY MYERS LAW FIRM, P.A.

By: _____
SHEILA MCNAIR ROBINSON
1700 Sunset Boulevard
P. O. Box 5709
West Columbia, SC 29171
803/796-9160
Attorney for Plaintiff

West Columbia, South Carolina

April 29, 2022

Pursuant to Rule 11 SCRCP which Rule is mandatory in this jurisdiction and which Rule is applicable in the Family Court to this jurisdiction, I hereby certify or affirm that prior to filing the within Notice of Motion, I did contact counsel for Defendant to request compliance of the discovery requests, no responses have been given by Defendant.

_____
Sheila McNair Robinson

ELECTRONICALLY FILED - 2022 May 04 5:13 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON Emily P. Smith and Emily P. Smith and Associates, LLC, Plaintiffs, vs. Robert T. Smith; Southern Collection LLC; Southern Collection Brokerage, LLC; Terence Smith and Associates, LLC; Robert B. Smith, and Sherry C. Smith, Defendants.	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT CASE NO: 2022-CP-32- 1419 **DEFENDANT ROBERT T. SMITH'S MEMORANDUM IN OPPOSITION OF PLAINTIFFS' MOTION FOR APPOINTMENT OF RECEIVER**

Defendant Robert T. Smith, by and through his undersigned attorneys, hereby submit the following Memorandum in Opposition of Plaintiffs' Motion for Appointment of Receiver.

FACTUAL BACKGROUND

Plaintiff Emily P. Smith, hereinafter referred to as "Plaintiff Emily", and Defendant Robert T. Smith, hereinafter referred to as "Defendant Terence", are husband and wife. Plaintiff Emily and Defendant Terence are co-owners of a RE/MAX franchise and the sole members of a Limited Liability Company known as Southern Collection, LLC.

On August 18, 2021, Plaintiff Emily filed for divorce, and the parties have been litigating the highly contested domestic action since then. In her pleadings in the domestic action, Plaintiff Emily requested a division of the marital assets and debts, as well as a Mutual Restraining Order restraining and prohibiting the parties from

ELECTRONICALLY FILED - 2022 May 04 5:13 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

"encumbering, disposing of, hypothecating, or otherwise depleting marital assets … ." Ex. A, Compl. for Divorce, ¶ 11.

In his Answer and Counterclaim, Defendant Terence requested the same specifically requesting that Plaintiff Emily be restrained from "alienating, disposing of or borrowing money, or from injuring, damaging, destroying, trading or otherwise liquidating or decreasing in value any assets … ." Ex. B, Answer and Countercl., ¶ 25. Even further, Defendant Terence requested that this restraint be narrowly tailored to fit the needs of the parties' ongoing real estate business. *See id*. Defendant Terence also requested that the Family Court equitably divide the marital property. *Id*. at ¶ 27.

Following a Temporary Hearing, The Honorable W. Greg Seigler ordered the following:

> 9. This Court find that both parties are restrained from selling, mortgaging, destroying, or otherwise disposing of any marital property without prior written consent of both parties or prior Order of the Court. This Court further finds that neither party shall incur any debt in the name of the other party or increase any marital debt during the pendency of this litigation.

Ex. C, Temp. Order, ¶ 9. On September 21, 2021, Defendant Terence filed a Notice of Motion and Motion for Supplemental Relief regarding visitation and custody of the parties' minor children. In her Return and Cross Motion, Plaintiff Emily requested that the Family Court order an accounting of the parties' marital assets, specifically the parties' real estate business. Ex. D, Return and Cross Mot., ¶ 2. At the hearing for these motions, The Honorable Robert E. Newton denied Plaintiff Emily's request for an accounting of the assets. Ex. E, Second Temp. Order, ¶ 6.

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On April 27, 2022, Plaintiff Emily filed a Members Statement of Dissociation from a Limited Liability Company with the South Carolina Secretary of State. Ex. F. On the same date, Plaintiff filed this action asserting the following causes of actions: 1) judicial dissolution and winding up of the assets, debts, and affairs of the LLC; 2) emergency temporary appointment of receiver; 3) conversion; 4) attempted tortious interference with contract; and 5) imposition of constructive trust. Plaintiff Emily also requested that the Court award her attorney's fees and costs in connection with bringing this action.

On April 29, 2022, Plaintiff Emily filed a Notice of Motion and Motion to Supplement Complaint in the domestic action requesting that the Family Court exclude the parties' businesses from the equitable division of the marital assets. Ex. G, Notice and Motion to Suppl. Compl., 1. Specifically, Plaintiff Emily states the following:

> The parties jointly own a real estate business, Southern Collection, LLC. The parties have established other businesses as well to include Southern Collection Brokerage, LLC, Emily P. Smith & Associates, LLC, and Terence Smith & Associates, LLC. The Plaintiff is now seeking relief concerning these businesses in an alternate jurisdiction that Family Court. The Plaintiff is therefore seeking to supplement her previously filed Complaint to request the division of the parties' businesses, Southern Collection, LLC, Southern Collection Brokerage, LLC, Emily P. Smith & Associates, LLC, and Terence Smith & Associates, LLC be excluded from the equitable division by the Family Court inasmuch as an action is being filed in Circuit Court for the dissolution of the businesses.

Id. at 1-2. A hearing on Plaintiff Emily's Motion to Supplement Complaint has not been scheduled and therefore, this issue has not been heard by the Family Court.

LAW/ANALYSIS

I. Defendant Robert T. Smith was not properly noticed of the application.

South Carolina Code of Laws Title 15, Chapter 65, Section 20 states the following:

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> No receiver of the property of any person or corporation shall be appointed by any court or judge, either in term time or at chambers, without notice of the application for such appointment to the party to the action whose property is sought to be put in the hands of a receiver and to any party to the action in possession of such property claiming an interest therein under any contract, lease or conveyance thereof from the alleged owner. At least four days' notice of the application must be given, unless the court shall, upon it being made to appear that delay would work injustice, prescribe a shorter time.
>
> S.C. Code Ann. § 15-65-20 (2013).

Here, Defendant Terence was not given four days' notice of the Motion for Appointment of Receiver. Defendant Terence was personally served on May 2, 2022. This hearing is scheduled for May 5, 2022, only three days after being served with the Notice. While Plaintiff Emily asserts in her Motion that she is seeking this appointment on an emergency basis, she has not asserted any facts to support this allegation. Nor she has asserted any evidence that a delay in notice would "work injustice" as provided in the statute.

Further, while this memorandum is not submitted on behalf of Defendants Robert B. Smith and Sherry C. Smith, Defendant Terence requests that this Court consider that Defendants Robert B. Smith and Sherry C. Smith have not been served any pleadings in this action, including the Emergency Motion for Appointment of Receiver and Notice of Hearing. Plaintiff Emily asserts that Defendants Robert B. Smith and Sherry C. Smith possess property which are assets of the parties' business and requests that a Receiver take possession of that property. Therefore, Defendants Robert B. Smith and Sherry C. Smith are entitled to proper notice of this Notice and hearing and will be prejudiced shall this Motion be granted without proper notice.

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Thus, this Motion must be denied for lack of notice, not only to Defendant Terence, but to Defendants Robert B. Smith and Sherry C. Smith.

II. The Court of Common Pleas lacks subject matter jurisdiction to appoint a receiver in this matter.

S.C. Code Ann. § 63-3-530 (A)(2) states that the family court has the exclusive jurisdiction to hear and determine actions for divorce, separate support and maintenance, legal separation, and in other marital litigation between parties, and for ***settlement of all legal and equitable rights of the parties in the actions in and to the real and personal property of the marriage*** and attorney's fees, if requested by either party in the pleadings S.C. Code Ann. § 63-3-530 (A)(2) (2013) (emphasis added). "The general rule is that jurisdiction of a court depends on the state of affairs existing at the time it is invoked. If jurisdiction once attaches the person and subject matter of the litigation the subsequent happening of events will not ordinarily operate to out the jurisdiction already attached," *Gilley v. Gilly*, 488 S.E.2d 310, 327 S.C. 8 (1996) (citing *Gardner v. Gardner*, 253 S.C. 296, 170 S.E.2d 372 (1969)). Equitable distribution must be plead by the requesting party before the jurisdiction attaches. *See* S.C. Code Ann. § 20-3-610 (2008).

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 of the date of filing or commencement of marital litigation … regardless of how legal title is held… ." S.C. Code Ann. § 20-3-630(A) (2012).

The law is clear that once a party requests that the marital assets be apportioned in the family, then the family court retains exclusive jurisdiction to divide those assets. In

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this case, Plaintiff Emily requested that the Family Court apportion the marital assets in this case. Further, Defendant Terence counterclaimed requesting the same. Even further, in Plaintiff's Return and Cross Motion filed December 1, 2021, she requested that the Family Court order an accounting of the parties' marital assets, particularly the parties' business conceding that the parties' real estate business is a marital asset. Therefore, the parties' business is already in the exclusive jurisdiction of the Family Court, a real and statutory valid court of this State[1], and cannot be ousted by the Circuit Court pleadings. Further, there have been several hearings in the domestic action, in which the Family Court established its jurisdiction.

Plaintiff Emily seeks a premature division of the marital assets by filing this action in Circuit Court. Defendant Terence voiced an objection and requested Plaintiff Emily dismiss her Circuit Court case, as the Family Court ***has not divested itself of jurisdiction in this matter***. In her response, Counsel for Plaintiff Emily in the Circuit Court matter acknowledges her filing is premature stating the following:

> Sheila Robinson either has or is amending her pleadings to exclude Southern Collections LLC and related corporate matters from the domestic litigation, and the circuit court will have exclusive jurisdiction over this matter.
>
> Ex. H.

Further, in her Motion to Supplement Complaint, Plaintiff Emily admits that the Family Court has jurisdiction over the division of the marital assets and requests that the Family Court divest itself of that jurisdiction to allow the Circuit Court to hear the

[1] In an email exchange regarding this litigation, Counsel for Plaintiffs, Desa Ballad, Esquire, stated the following, "Boy am I glad I don't practice domestic law. ***In real law***, lawyer [sic] are much more pleasant to deal with." Ex. I (emphasis added).

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dissolution of the parties' business. Plaintiff Emily's Motion to Supplement Complaint has not been ruled on, and therefore the Family Court retains exclusive jurisdiction to hear all matters related to the division of the parties' businesses, a marital asset.

Here, Plaintiff Emily is attempting to circumvent the December 2, 2021, ruling of The Honorable Robert E. Newton denying Plaintiff Emily's request for a court ordered accounting of the parties' business by requesting that the Circuit Court appoint a Receiver to do precisely that—an accounting of the parties' business. The Family Court heard oral arguments of both Plaintiff Emily and Defendant Terence regarding the accounting of the monies on the parties' real estate business. Therefore, the parties were both given an opportunity to be heard and litigate this issue.

Secondly, while the court already denied Plaintiff Emily's request for a court order requiring an accounting of the business in Family Court, Plaintiff Emily is not prejudiced in any manner as she has hired an expert witness in the Family Court action for the purposes of evaluating the marital assets, including the parties' business. *See* Ex. J, Pl.'s Answers to Int. This expert, Chris Leventis, has obviously begun the work of preparing an evaluation, as indicated by his affidavit in this action. Plaintiff Emily is a co-owner of the business and has access to any materials she requires for Mr. Levintis to perform this task. Further, if Mr. Leventis lacks any necessary materials, these materials are discoverable in the domestic action.

Defendant Terence also hired an expert witness and plans to supplement his discovery responses in the Family Court action to name said witness. The parties have already conducted extensive written discovery and are attempting to schedule

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mediation. The parties' business, together with all of the marital estate, will be evaluated and apportioned pursuant to the powers of the Family Court. Plaintiff Emily seeks to circumvent this process to divide only one piece of the marital property. Plaintiff seeks to circumvent the exclusive jurisdiction of the Family Court to obtain a quicker or more favorable result than Family Court which is a court of equity. Therefore, Plaintiffs' Motion for Appointment of Receiver must be denied for lack of subject matter jurisdiction as the Family Court has exclusive jurisdiction of the asset in question.

CONCLUSION

For the reasons contained herein, Plaintiffs' Motion for Appointment of Receiver is procedurally deficient. Not only were the Defendants not properly noticed of this Motion, but this Court also lacks the jurisdiction to hear this matter. Further, even if this Court finds that Plaintiffs' Motion is not procedurally deficient, this issue has already been litigated in Family Court, and therefore, Plaintiff is precluding from relitigating this issue in Circuit Court. Accordingly, Defendant Terence respectfully requests this Court deny Plaintiffs' Motion for Appointment of Receiver.

RESPECTFULLY SUBMITTED,

KINARD & JONES, LLC

s/ Ashby L. Jones
ASHBY LAWTON JONES
ALYSSA ROSE IGLESIAS
808 South Lake Drive
Post Office Box 2678
Lexington, SC 29072
(803) 359-1003
ATTORNEYS FOR DEFENDANT
ROBERT T. SMITH

Lexington, South Carolina
May 4, 2022

COPY

FILED
2021 AUG 18 PM 12:27
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

STATE OF SOUTH CAROLINA)	IN THE FAMILY COURT FOR THE
)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)	C.A. NO.: 2021-DR-32-
EMILY P. SMITH,)	
PLAINTIFF,)	2021DR3201573
v.)	**COMPLAINT**
ROBERT TERENCE SMITH,)	
DEFENDANT.)	

Plaintiff, above-named, by and through her undersigned counsel would respectfully show unto this Court as follows:

1. Plaintiff and Defendant are citizens and residents of Lexington County, South Carolina, having been so in excess of one (1) year prior to the commencement of this action.

2. Plaintiff and Defendant last resided together as wife and husband in Lexington County, South Carolina.

3. Plaintiff and Defendant are presently wife and husband, having been married to each other on November 3, 2012. Of this marriage, two (2) children have been born, namely: O. G. S., born in 2014; and O. P. S., born in 2016. No other children have been born of these parties, and no child is expected.

4. Plaintiff is informed and believes that this Court has subject matter and personal jurisdiction of this action and of these parties. Venue is proper in Lexington County, South Carolina.

5. Plaintiff would show that the parties are not currently separated but need to be based on the misconduct of Defendant. Specifically, Plaintiff would show that Defendant has

Written request for a final hearing in this case must be delivered by a party or his /her attorney to the Clerk of Court's office within 365 days of this filing date. Failure to comply with this rule shall result in the dismissal of the case by the Court.

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would therefore show that she is entitled to a divorce, *a vinculo matrimoni*, from Defendant on the statutory ground of

6.

7.

8. Plaintiff would show that Defendant is able bodied and capable of gainful employment, and he is therefore capable of paying a sum as child support that is commensurate with the South Carolina Child Support Guidelines, both *pendente lite* and permanently.

9. Plaintiff is informed and believes she is entitled to an Order of this Court granting her the exclusive use and possession of the marital residence, both *pendente lite* and permanently,

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as a means of support for herself and the children. Plaintiff further informed and believes that Defendant should be required to immediately vacate the home,

Plaintiff is further informed and believes that Defendant should be required to help maintain all costs and expenses associated with the home, including the mortgage payment, property taxes, property insurance, maintenance, and utilities so as to provide for maintenance and support of Plaintiff and the minor children, both *pendente lite* and permanently.

10. Plaintiff currently maintains medical insurance on the children and she is willing to maintain that coverage so long as such is available to her. Plaintiff is informed and believes Defendant should be required to pay all of the non-covered, non-reimbursed medical expenses for the children, both *pendente lite* and permanently.

11. Plaintiff is informed and believes the parties' assets and debts should be determined and divided accordingly, in kind and/or by cash payment, from those assets held by Plaintiff and Defendant in accordance with §20-3-620, South Carolina Code of Laws, (2012). Plaintiff would show that she has nonmarital assets which should not be subject to equitable division by this Court. Further, Plaintiff would show that Defendant has incurred a large amount of debt without the knowledge of or consent of Plaintiff, and he should be solely responsible for the payment of such.

12. Plaintiff is informed and believes this Court should issue its Mutual Restraining Order restraining and prohibiting Defendant from encumbering, disposing of, hypothecating or otherwise depleting marital assets, both *pendente lite* and permanently.

13. Plaintiff is informed and believes the Court should issue an Order prohibiting Defendant from harassing, bothering, molesting or otherwise interfering with Plaintiff at any time or at any place, both *pendente lite* and permanently.

14. Plaintiff is informed and believes that Defendant is gainfully employed and

ELECTRONICALLY FILED - 2022 May 04 5:13 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

therefore capable of self-support. Plaintiff is therefore informed and believes that Defendant should be barred from any claim for alimony from Plaintiff, both *pendente lite* and permanently.

15. Plaintiff is informed and believes that the Court should appoint a Guardian *ad Litem* to represent the interests of the children in this action in the event that custody and/or visitation becomes contested.

16. Plaintiff is informed and believes that Defendant should be required to pay to Plaintiff a reasonable sum as attorney's fees, PI fees, and costs incurred by Plaintiff in this action.

WHEREFORE, Plaintiff prays that the Court inquire into the matters alleged above, and grant her the following relief:

a. For and Order granting her a divorce, *a vinulo matrimoni*, from Defendant on the

b. For an Order granting Plaintiff sole and exclusive custody of the parties' minor children, both *pendente lite* and permanently;

c. For a supervised visitation schedule between Defendant and children as set forth above, *pendente lite* and permanently;

d. For an Order requiring Defendant to pay child support to Plaintiff based on the South Carolina Child Support Guidelines, both *pendente lite* and permanently;

e. For an Order granting Plaintiff possession of the marital residence and requiring Defendant to pay all costs associated with such, both *pendente lite* and permanently;

f. For an Order requiring Defendant to pay all uninsured medical costs for the minor child, both *pendente lite* and permanently ;

g. For an Order requiring the parties' assets and debts to be determined and divided

ELECTRONICALLY FILED - 2022 May 04 5:13 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

accordingly, in kind and/or by cash payment, from those assets held by Plaintiff and Defendant in accordance with §20-3-620, South Carolina Code of Laws, (2012);

h. For an Order finding Plaintiff's non-marital assets to be excluded from division by this Court;

i. For an Order requiring Defendant to pay for any and all debt he has incurred without Plaintiff's knowledge or consent;

j. For a Restraining Order prohibiting Defendant from encumbering, disposing of, hypothecating or otherwise depleting marital assets, *pendent lite;*

k. For a Restraining Order prohibiting Defendant from harassing, bothering, molesting or otherwise interfering with Plaintiff at any time or at any place, both *pendente lite* and permanently;

l. For an Order barring Defendant from any alimony from Plaintiff, both *pendente lite* and permanently;

m. For an Order appointing a Guardian *ad Litem* to represent the interests of the minor children in this action;

n. For an Order requiring the Defendant to pay to the Plaintiff a reasonable sum as attorney's fees and costs incurred by the Plaintiff in this action;

o. For such other and further relief as this Court may deem just and proper.

ELECTRONICALLY FILED - 2022 May 04 5:13 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

MOORE BRADLEY MYERS LAW FIRM, P. A.

By: _____

SHEILA MCNAIR ROBINSON
1700 Sunset Boulevard (Hwy. 378)
Post Office Box 5709
West Columbia, South Carolina 29171
Telephone: (803) 796-9160
Facsimile: (803) 791-8410
Attorney for Plaintiff

August 18, 2021

COPY

STATE OF SOUTH CAROLINA)	IN THE FAMILY COURT FOR THE
)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)	Case No.: 2021-DR-32-1578
Emily P. Smith,)	
)	
Plaintiff,)	**ANSWER AND COUNTERCLAIM**
)	**ON BEHALF OF DEFENDANT**
v.)	
)	
Robert Terence Smith,)	
)	
Defendant.)	
)	

FILED
NOV -2 PM 4:15
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

TO: THE PLAINTIFF, EMILY P. SMITH, AND HER ATTORNEY, SHEILA MCNAIR ROBINSON, ESQUIRE:

THE DEFENDANT, ROBERT TERENCE SMITH, ANSWERS THE PLAINTIFF'S COMPLAINT AND COUNTERCLAIMS AS FOLLOWS:

1. The Defendant admits the allegations of Paragraphs 1, 2, 3 and 4 of the Plaintiff's Complaint.

2. Defendant denies the allegations of Paragraphs 5, 6 and 7 of Plaintiff's Complaint and demands strict proof thereof.

3. Responding to Paragraph 8 of the Plaintiff's Complaint, Defendant avers he is able bodied and capable of employment. Defendant denies the remainder of Paragraph 8.

4. Defendant denies Paragraph 9, 10 and 11 of Plaintiff's Complaint and demands strict proof thereof.

5. Responding to Paragraphs 12 and 13 of Plaintiff's Complaint, Defendant avers that any such restraints are appropriate and should be mutually applicable to

ELECTRONICALLY FILED - 2022 May 04 5:13 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

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both parties and that restraints as to assets and debts should be narrowly tailored to fit the needs of the parties' ongoing business concerns.

6. Defendant admits Paragraphs 14 and 15 of Plaintiff's Complaint.

7. Defendant denies Paragraph 16 of Plaintiff's Complaint.

8. Defendant denies subsections a, b, c, d, e and f of the WHEREFORE Paragraph of Plaintiff's Complaint and demands strict proof thereof.

9. Responding to subsection g of the WHEREFORE Paragraph of Plaintiff's Complaint, Defendant admits the parties' marital assets and debts should be equitably apportioned between the parties.

10. Defendant denies subsections h and i of Plaintiff's Complaint and demands strict proof thereof.

11. Responding to subsection j and k of the WHEREFORE Paragraph of Plaintiff's Complaint, Defendant avers that any such restraints are appropriate and should be mutually applicable to both parties and that restraints as to assets and debts should be narrowly tailored to fit the needs of the parties' ongoing business concerns.

12. Defendant admits subsections l and m of the WHEREFORE Paragraph of Plaintiff's Complaint.

13. Defendant denies subsections n and o of the WHEREFORE Paragraph of Plaintiff's Complaint.

FOR A SECOND DEFENSE, BY WAY OF COUNTERCLAIM

14. Defendant is a citizen and resident of the County of Lexington, State of South Carolina.

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15. Defendant is informed and believes that Plaintiff is a citizen and resident of the County of Lexington, State of South Carolina.

16. The parties, who have resided in South Carolina for more than one year, were married on November 3, 2012.

17. Two children O.S. (2014) and O.S. (2016) have been born as a result of this marriage. No further children are expected.

REQUEST FOR ORDER OF SEPARATE SUPPORT AND MAINTENANCE

18. Defendant is informed and believes he is entitled to an Order allowing him to live separate and apart from the Plaintiff.

19. There has been no collusion by the parties.

CUSTODY/VISITATION/CHILD SUPPORT/MEDICAL EXPENSES

20. The Defendant is informed and believes the parties should be granted shared custody of the parties' minor children, *pendente lite* and permanently. The Defendant is informed and believes that both parties have been actively involved in the children's lives from an early age and it would be in both children's best interests to continue to have both parents equally involved in their lives in the future.

21. The Defendant requests that the child support be set commensurate with the shared custody guidelines of the South Carolina Department of Social Services' Child Support Guidelines. Defendant is further informed and believes Plaintiff should be ordered to equally contribute to non-covered medical expenses incurred by the minor children.

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22. The Defendant is informed and believes the parties should share reasonable, open and liberal visitation with the minor children.

GUARDIAN AD LITEM

23. The Defendant is informed and believes that if Plaintiff contests custody and/or visitation that a Guardian *ad Litem* should be appointed to protect the interests of the minor children.

ALIMONY

24. Defendant avers that Plaintiff is an able bodied persons capable of gainful employment and supporting herself and requests that Plaintiff be barred from alimony on a *pendente lite* and permanent basis.

RESTRAINING ORDER AS TO PROPERTY/PERSON

25. Defendant is informed and believes he is entitled to a Restraining Order against the Plaintiff from alienating, disposing of or borrowing money, or from injuring, damaging, destroying, trading or otherwise liquidating or decreasing in value any assets of the parties' temporarily and permanently. Defendant avers this restraint should be narrowly tailored to fit the needs of the parties' ongoing business concerns.

26. Defendant is informed and believes he is entitled to a temporary and permanent Order restraining and enjoining Plaintiff from harassing, threatening, interfering with, bothering, disrupting, molesting or intimidating Defendant, in any manner whatsoever.

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EQUITABLE DIVISION

27. Defendant is informed and believes that he is entitled to equitable division/special equity in the real and personal marital property of the marriage, temporarily and permanently.

28. Defendant is informed and believes that he is entitled to exclusive use and possession of the former marital home and the vehicle currently in his possession on a *pendente lite* and permanent basis.

ATTORNEY'S FEES AND COSTS

29. Defendant has been forced to defend this action because of and due to the actions of the Plaintiff. Plaintiff's actions caused the breakdown of the marriage. Plaintiff has the ability to pay Defendant's attorney fees and costs. Defendant is therefore, informed and believes he is entitled to an Order of this Court requiring Plaintiff to pay all of his attorney's fees, costs, private investigator fees and other expenses, both pendente lite and permanently.

WHEREFORE, Defendant prays that this Court inquire herein and issue its Order, granting the relief requested and for such other and further relief as this Court may deem

[SIGNATURE PAGE FOLLOWS]

KINARD & JONES, LLC

ASHBY LAWTON JONES
ROBERT P. JACKMAN
808 South Lake Drive
Lexington, SC 29072
(803) 359-1003
ATTORNEYS FOR DEFENDANT

Lexington, South Carolina
11-2, 2021

ELECTRONICALLY FILED - 2022 May 04 5:13 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

FILED
2021 SEP -9 PM 2:35
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT FOR THE
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	C.A. NO.: 2021-DR-32-1578
EMILY P. SMITH,	)	
PLAINTIFF,	)	**TEMPORARY ORDER**
v.	)	
ROBERT TERENCE SMITH,	)	
DEFENDANT.	)	

Date of Hearing:	August 26, 2021
Presiding Judge:	W. Greg Seigler
Plaintiff's Attorney:	Sheila McNair Robinson
Defendant's Attorney:	Ashby Lawton Jones
Court Reporter:	Sanya Kaiser

This matter came before the Court on August 26, 2021 at 4:30 p.m. The hearing was held via WebEx Virtual Courtroom pursuant to the authority of the South Carolina Supreme Court Order issued on April 30, 2020. The action was commenced by the filing of a Notice of Motion and Motion for Emergency/Expedited Temporary Relief, Summons and Complaint on August 18, 2021. The Honorable Robert E. Newton issued an Order on August 18, 2021 granting the Motion for an expedited hearing. The Defendant was personally served with the pleadings and Order for Expedited Hearing on August 19, 2021, as evidenced by the Affidavit of Service filed with the Court. The time for filing a responsive pleading has not yet passed.

Present at the hearing were the Plaintiff and her attorney, Sheila McNair Robinson. Also present were the Defendant with his attorney, Ashby Lawton Jones. The Court heard oral arguments of counsel and then recessed the hearing to take the matter under advisement. After careful consideration of the affidavit packages submitted by both parties and all information

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presented at the hearing, this Court makes the following findings of fact and conclusions of law:

1. Both parties are citizens and residents of Lexington County, South Carolina, having been so in excess of one (1) year prior to the commencement of this action.

2. The Plaintiff and Defendant last resided together as wife and husband in Lexington County, South Carolina.

3. The Plaintiff and Defendant are presently wife and husband, having been married to each other on November 3, 2012. Of this marriage, two (2) children have been born, namely: O. G. S., born in 2014; and O. P. S., born in 2016. No other children have been born of these parties, and no child is expected.

4. This Court finds that the two (2) minor children have resided in South Carolina since birth. South Carolina is therefore the home state of the children pursuant to the Uniform Child Custody Jurisdiction Enforcement Act codified at S.C. Code §63-15-300 et. seq.

5. This Court finds that this Court has subject matter and personal jurisdiction of this action and of these parties. Venue is proper in Lexington County, South Carolina.

6

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7.

8. This Court finds that the Plaintiff is granted exclusive use and possession of the marital home located at 112 John Preston Drive, Lexington, South Carolina. She shall be responsible for all costs associated with this home. The Defendant shall immediately vacate the home, taking with him his clothes, shoes and toiletries.

9. This Court finds that both parties are restrained from selling, mortgaging, destroying, or otherwise disposing of any marital property without prior written consent of both parties or prior Order of the Court. This Court further finds that neither party shall incur any debt in the name of the other party or increase any marital debt during the pendency of this litigation.

10.

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ELECTRONICALLY FILED - 2022 May 04 5:13 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

11.

12. The Plaintiff shall maintain medical insurance coverage on the minor children. All noncovered medical, dental, counseling, orthodontic, vision and other health-related expenses for the children shall be divided equally between the parties. The Plaintiff shall provide a bill/invoice to the Defendant within ten (10) days of incurrence, and the Defendant shall pay his one-half within ten (10) days of the date the bill/invoice is provided or pursuant to other payment arrangements acceptable with the medical provider.

13. The parenting guidelines and restrictions attached to this Order shall be in full force and effect for both parties. Neither parent shall administer corporal punishment to either minor child.

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2021 SEP -9 PM 2:35
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

ELECTRONICALLY FILED - 2022 May 04 5:13 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

14.

15. The parties agree that either Lisa Kinon or Kevin Barth shall serve as the mediator in this case.

16

16. All other issues shall be held in abeyance pending further Order of the Court.

IT IS FURTHER ORDERED that the Plaintiff shall have exclusive use and possession of the marital home as set forth in full hereinabove;

IT IS FURTHER ORDERED that the Defendant shall immediately vacate the marital home as set forth herein above:

IT IS FURTHER ORDERED that the Defendant shall pay child support to the Plaintiff in the amount of $2,000 per month as set forth more fully hereinabove;

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2021 SEP -9 PM 2:35
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

ELECTRONICALLY FILED - 2022 May 04 5:13 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

IT IS FURTHER ORDERED that the attached parenting guidelines and restrictions shall apply to both parties, and neither shall administer corporal punishment to either minor child;

IT IS FURTHER ORDERED that the Plaintiff shall maintain medical insurance coverage on the minor children, with all noncovered health-related expenses being divided equally between the parties as set forth more fully hereinabove;

IT IS FURTHER ORDERED that another temporary hearing shall be scheduled at the conclusion of the expedited investigation of the Guardian *ad Litem*;

IT IS FURTHER ORDERED that either Lisa Kinon or Kevin Barth shall serve as the mediator in this case;

IT IS FURTHER ORDERED that all other issues shall be held in abeyance pending further Order of the Court.

IT IS SO ORDERED.

W. Greg Seigler
Presiding Judge of the
Family Court for the
Eleventh Judicial Circuit

FILED
2021 SEP -9 PM 2:35
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

Lexington, South Carolina

September 8, 2021

STATE OF SOUTH CAROLINA)
) IN THE FAMILY COURT
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

FILED
2021 SEP -8 PM 2:35
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

EMILY P. SMITH,)
Plaintiff,) **JUDGMENT IN A FAMILY COURT CASE**
vs.)
ROBERT TERENCE SMITH,)
Defendant.) Docket No. 2021-DR-32-1578

Submitted by:	**Attorney for** ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant ☐ GAL
Sheila McNair Robinson P.O. Box 5709 West Columbia, SC 29171	

DECISION BY COURT (check all that apply)

☒ This action came to trial, hearing or was resolved by consent and an order was rendered.

☐ This action has been dismissed pursuant to ☐ Rule 12(b), SCRCP ☐ Rule 41(a), SCRCP ☐ Rule 43(k), SCRCP ☐ Family Court Benchmark ☐ Other: ____

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court: ____

☐ Additional information for Clerk:____

ORDER INFORMATION

This is a ☒ Temporary ☐ Final order. If Final, does this order end the case? ☐ Yes ☐ No
Support ☐ is not ordered ☒ is ordered, and it is to be paid ☐ through the court. ☒ directly to the CP.
Case number under which support is paid if different from this one: ____
This order involves the immediate ☐ issuance ☐ dismissal of a bench warrant, or ☐ does not apply.
☐ The following motions are ended by this order (include motion filing date): ____
☐ This order adds or dismisses the following parties to this case:
☐ dismiss ☐ add:____ ☐ dismiss ☐ add:____

INFORMATION FOR THE JUDGMENT INDEX/TRANSCRIPT OF JUDGMENT (§ 20-3-670(B)(1)) **Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information to enroll, indicate "N/A" in one of the boxes below.**		
Judgment In Favor of (List name(s) below)	**Judgment Against (List name(s) below)**	**Judgment Amount to be Enrolled (List amount(s) below)**
		$
		$
		$
If applicable, describe the property, including tax map information and address, referenced in the order: ____		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the South Carolina Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: title abstractors and researchers should refer to the official court order for judgment details.**

ROA 0173

ELECTRONICALLY FILED - 2022 May 04 5:13 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

Family Court Judge | Judge Code 4178 | Date 9/8/21

FOR CLERK OF COURT OFFICE USE ONLY

This judgment was entered on the 9/9/21 and a copy mailed first class or placed in the appropriate attorney's box on _____ to attorneys of record or to parties (when appearing pro se) as follows:

Sheila McNair Robinson
ATTORNEY(S) FOR THE PLAINTIFF(S)

Abby Lawton Jones
ATTORNEYS FOR THE DEFENDANT(S)

Lisa Conner
CLERK OF COURT

Court Reporter: _____

Custodial Parent (if applicable): _____

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STATE OF SOUTH CAROLINA)
) IN THE FAMILY COURT
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

FILED
2021 SEP -9 PM 2:35
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

EMILY P. SMITH)
Plaintiff,) **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**
vs.)
ROBERT TERENCE SMITH)
Defendant.) Docket No. 2021-DR-32-1578

Plaintiff's Attorney:	Defendant's Attorney:
Sheila McNair Robinson, Bar No. 65385	Ashby Lawton Jones, Bar No.
Address:	Address:
P.O. Box 5709, West Columbia SC 29169	303 S. Lake Dr. , Lexington, SC 29072
Phone: 803-796-9160 Fax 803-791-8410	Phone: (803) 359-1003 Fax(803) 359-1378
E-mail: sheila@mbmlawsc.com Other: _____	E-mail: Ashby@kinardand jones.com Other:

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☒ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion:
Estimated Time Needed: Court Reporter Needed: ☐ **YES**/☐ **NO**

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order Temporary Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff /☐ Defendant — September 2, 2021 Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: _____
☒ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☒ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE CODE _____ Date: _____

Judge Signature: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

Custodial Parent (if applicable): _____SCCA 233F (12/2009)

COPY

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT FOR THE
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	C.A. NO.: 2021-DR-32-1578
EMILY P. SMITH,	)	
	)	
PLAINTIFF,	)	**PLAINTIFF'S RETURN TO DEFENDANT'S MOTION FOR EMERGENCY/EXPEDITED TEMPORARY RELIEF**
v.	)	
	)	
ROBERT TERENCE SMITH,	)	
	)	
DEFENDANT.	)	

TO: ROBERT TERENCE SMITH, DEFENDANT AND HIS ATTORNEY, ASHBY L. JONES:

The Plaintiff makes a Return to the Motion for Emergency/Expedited Relief filed by the Defendant (scheduled as a regular temporary hearing) as follows:

1.

2. The Plaintiff would show that the Defendant has been dishonest in financial matters, including with the management of the parties' joint real estate business. The Defendant has failed to properly share the profits of the business with the Plaintiff and has

ELECTRONICALLY FILED - 2022 May 04 5:13 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

withheld paychecks from her during the pendency of this action. The Plaintiff is therefore requesting an Order requiring the Defendant to make a complete accounting of all monies paid to and by the real estate company.

3. The Plaintiff would show that the Defendant's conduct brought about the need for this action. He should therefore be responsible for paying a reasonable sum in attorney's fees to the Plaintiff.

4. The Plaintiff would show that this Return will be further based on information provided to the Court at the time of the hearing.

MOORE BRADLEY MYERS LAW FIRM, P. A.

By: 
SHEILA MCNAIR ROBINSON
1700 Sunset Boulevard
P. O. Box 5709
West Columbia, SC 29171
803/796-9160
Attorney for Plaintiff

West Columbia, South Carolina

December 1, 2021

ELECTRONICALLY FILED - 2022 May 04 5:13 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

FILED
2022 JAN 25 AM 8:51
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

STATE OF SOUTH CAROLINA)	IN THE FAMILY COURT FOR THE
)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)	Case No.: 2021-DR-32-1578
)	
Emily P. Smith,)	
)	
Plaintiff,)	**SECOND SUPPLEMENTAL TEMPORARY ORDER**
)	
v.)	
)	
Robert Terence Smith,)	
)	
Defendant.)	
)	

Date of Hearing:	December 2, 2021
Presiding Judge:	The Honorable Robert E. Newton
Plaintiff's Attorney:	Sheila McNair Robinson, Esquire
Defendant's Attorney:	Ashby Lawton Jones, Esquire
Guardian *ad Litem*:	Michelle S. Gorski
Court Reporter:	Carole Shealy

This matter was before the Court on December 2, 2021 on Defendant's Motion for Emergency/Expedited Relief filed on November 5, 2021. Present and appearing at the appointed time and place were the Plaintiff and her attorney, Sheila McNair Robinson, Esquire. The Defendant and his attorney, Ashby Lawton Jones, Esquire and the Guardian *ad Litem*, Michelle S. Gorski, Esquire were also present.

The record reflects this action was commenced by the filing of a Notice of Motion and Motion for Emergency/Expedited Relief on behalf of the Defendant on November 5, 2021. The request for an emergency or expedited hearing was denied and the matter was set in the ordinary course. Defendant requested an Order granting him reasonable

Plaintiff filed a Return to Defendant's Motion on December 1, 2021,

ELECTRONICALLY FILED - 2022 May 04 5:13 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

In addition, Plaintiff requests the Court Order an accounting regarding certain financial matters and requests an award of fees, as well. Both parties submitted Affidavits and supporting documents and the Court has considered those materials as well as the arguments of Counsel. In addition, the Guardian ad Litem submitted her Initial Report which the Court has considered. All Motions before the Court were properly served.

These parties have been operating under a Temporary Order issued by the Honorable W. Greg Seigler on September 9, 2021, from a hearing on August 26, 2021.

ELECTRONICALLY FILED - 2022 May 04 5:13 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

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CLERK OF COUF
LEXINGTON SC

ELECTRONICALLY FILED - 2022 May 04 5:13 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

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LISA M. SUMMER
CLERK OF COUR
LEXINGTON SC

ELECTRONICALLY FILED - 2022 May 04 5:13 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

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4. The parties are reminded and admonished by the Court regarding the restraints on disparagement or discussion regarding the litigation with the children or in their presence.

6. The Court denies Plaintiff's request for a Court ordered accounting.

7. All remaining issues are held in abeyance including request for temporary fess incident to this motion.

IT IS SO ORDERED.

The Honorable Robert E. Newton

Lexington, South Carolina
January 21, 2022.

FILED
2022 JAN 25 AM 8:51
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

STATE OF SOUTH CAROLINA)
) IN THE FAMILY COURT
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

Emily P. Smith)
Plaintiff,)
vs.) **JUDGMENT IN A FAMILY COURT CASE**
Robert Terence Smith)
Defendant.) Docket No. 2021-DR-32-1578

FILED
2022 JAN 25 AM 8:51
LISA M. EXUM
CLERK OF COURT
LEXINGTON SC

Submitted by:	
Ashby Lawton Jones 808 South Lake Drive Lexington, SC 29072 803-359-1003	**Attorney for** ☐ Plaintiff ☒ Defendant or ☐ Self-Represented Litigant ☐ GAL

DECISION BY COURT (check all that apply)

☐ This action came to trial, hearing or was resolved by consent and an order was rendered.

☐ This action has been dismissed pursuant to ☐ Rule 12(b), SCRCP ☐ Rule 41(a), SCRCP ☐ Rule 43(k), SCRCP ☐ Family Court Benchmark ☐ Other: ____

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court: ____

☐ Additional information for Clerk:____

ORDER INFORMATION

This is a ☐ Temporary ☐ Final order. If Final, does this order end the case? ☐ Yes ☐ No
Support ☐ is not ordered ☐ is ordered, and it is to be paid ☐ through the court. ☐ directly to the CP.
Case number under which support is paid if different from this one: ____
This order involves the immediate ☐ issuance ☐ dismissal of a bench warrant, or ☐ does not apply.
☐ The following motions are ended by this order (include motion filing date): ____
☐ This order adds or dismisses the following parties to this case:
☐ dismiss ☐ add:____ ☐ dismiss ☐ add:____

INFORMATION FOR THE JUDGMENT INDEX/TRANSCRIPT OF JUDGMENT (§ 20-3-670(B)(1)) **Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information to enroll, indicate "N/A" in one of the boxes below.**		
Judgment In Favor of (List name(s) below)	**Judgment Against (List name(s) below)**	**Judgment Amount to be Enrolled (List amount(s) below)**
		$
		$
		$
If applicable, describe the property, including tax map information and address, referenced in the order: ____		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the South Carolina Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: title abstractors and researchers should refer to the official court order for judgment details.**

ROA 0184

ELECTRONICALLY FILED - 2022 May 04 5:13 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

Family Court Judge

ROA 0185

Judge Code 4166

Date 1/21/2022

FOR CLERK OF COURT OFFICE USE ONLY

This judgment was entered on the 1/25/22 and a copy mailed first class or placed in the appropriate attorney's box on _____ to attorneys of record or to parties (when appearing pro se) as follows:

Sheila McNair Robinson

ATTORNEY(S) FOR THE PLAINTIFF(S)

Ashby Lawton Jones

ATTORNEYS FOR THE DEFENDANT(S)

Lisa Comer

CLERK OF COURT

Court Reporter: _____

Custodial Parent (if applicable): _____

FILED
2022 JAN 25 AM 8:51
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

ELECTRONICALLY FILED - 2022 May 04 5:13 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

ROA 0185

ELECTRONICALLY FILED - 2022 May 04 5:13 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE FAMILY COURT
ELEVENTH JUDICIAL CIRCUIT

Emily P. Smith)
Plaintiff,)
vs.)
Robert Terence Smith)
Defendant.)

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Docket No. 2021-DR-32-1578

Plaintiff's Attorney:	Defendant's Attorney:
Sheila McNair Robinson, Bar No. 65385 Address: P.O. Box 5709 West Columbia, SC 29171 Phone: 803-796-9160Fax _____ E-mail: sheila@mbmlawsc.comOther: _____	Ashby Lawton Jones, Bar No. 15900 Address: 808 South Lake Drive Lexington, SC 29072 Phone: 803-359-1003 Fax_____ E-mail: ashby@kinardandjones.comOther: _____

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☒ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Second Supplemental Temporary Order
Estimated Time Needed: _____ Court Reporter Needed: ☐ **YES**/☐ **NO**

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

FILED
2022 JAN 19 PM 3:17
LISA M. COLER
CLERK OF COURT
LEXINGTON SC

_____ _____
Signature of Attorney for ☐ Plaintiff /☐ Defendant Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: $_____
☒ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☒ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE CODE _____ Date: _____

Judge Signature: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

Custodial Parent (if applicable): _____

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

Apr 27 2022
REFERENCE ID: 1028011

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

Filing ID: 220427-1415219

Filing Date: 04/27/2022

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

MEMBERS STATEMENT OF DISSOCIATION FROM A LIMITED LIABILITY COMPANY

The following member of the listed limited liability company hereby files this Statement of dissociation in accordance with Section 33-44-704 of the 1976 S.C. Code of Laws, as amended.

1. Name of the limited liability company from which a member has dissociated:

   Southern Collection, LLC

2. Name of member who has dissociated from the limited liability company:

   Emily P. Smith
   (Name)
   112 John Preston Drive
   (Street Address)
   Lexington, South Carolina 29072
   (City, State, Zip Code)

3. Unless otherwise specified, this statement is effective when endorsed for filing by the Secretary of State. Specify any delayed effective date and time: _____
   (Date)

4. This statement is being filed by:

   [X] a. The dissociating member:

   Signed as Filer: Desa Ballard
   (Signature)
   04/27/2022
   (Date)

   [ ] b. The limited liability company:

   _____
   (Signature)
   _____
   (Date)
   _____
   (Print Name)
   _____
   (Capacity)

Form Revised by South Carolina Secretary of State, August 2016
F0050

SC Secretary of State
Mark Hammond

ELECTRONICALLY FILED - 2022 May 04 5:13 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

ELECTRONICALLY FILED - 2022 May 04 5:13 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE FAMILY COURT OF THE ELEVENTH JUDICIAL CIRCUIT C.A. NO.: 2021-DR-32-1578
EMILY P. SMITH, PLAINTIFF, VS. ROBERT TERENCE SMITH, DEFENDANT,	**NOTICE OF MOTION AND MOTION TO SUPPLEMENT COMPLAINT**

TO: DEFENDANT ABOVE NAMED: ROBERT TERENCE SMITH and his attorney, ASHBY LAWTON JONES:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through her undersigned counsel, will move before the presiding Judge of the Family Court for the Eleventh Judicial Circuit on the _____ day of _____, 202 at _____ o'clock _____.m., for an Order allowing her to amend and supplement the Complaint in this action. If you fail to appear, the Plaintiff will request the relief sought herein.

The Plaintiff would show the pleadings were filed in this case on August 18, 2021. The parties jointly own a real estate business, Southern Collection, LLC. The parties have established other businesses as well to include Southern Collection Brokerage, LLC, Emily P. Smith & Associates, LLC and Terence Smith & Associates, LLC. The Plaintiff is now seeking relief concerning these businesses in an alternate jurisdiction than Family Court. The Plaintiff is therefore seeking to supplement her previously filed Complaint to request the division of the parties' businesses, Southern Collection, LLC, Southern Collection Brokerage, LLC, Emily P. Smith & Associates, LLC and Terence Smith & Associates, LLC be excluded from the equitable division by the Family Court inasmuch as an action is being filed in Circuit Court for the

dissolution of the businesses.

The Plaintiff seeks an Order allowing her to amend and supplement the Complaint in this action to encompass the above relief. A copy of the proposed amended pleading is attached. Such Motion shall be based upon the Laws of the State of South Carolina, the South Carolina Rules of Civil Procedure, and the Family Court Rules of Court, including but not limited to South Carolina Rules of Civil Procedure 13(e) and 15(a)(d).

The Plaintiff also requests an award of attorney's fees for having to file this Motion.

MOORE BRADLEY MYERS LAW FIRM, P.A.

By: _____
SHEILA MCNAIR ROBINSON
1700 Sunset Boulevard
P. O. Box 5709
West Columbia, SC 29171
803/796-9160
Attorney for Plaintiff

West Columbia, South Carolina

April 29, 2022

Pursuant to Rule 11 SCRCP which Rule is mandatory in this jurisdiction and which Rule is applicable in the Family Court to this jurisdiction, I hereby certify or affirm that prior to filing the within Notice of Motion, I did contact counsel for Defendant to request compliance of the discovery requests, no responses have been given by Defendant.

_____
Sheila McNair Robinson

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ELECTRONICALLY FILED - 2022 May 04 5:13 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

Alyssa Iglesias

From: Desa Ballard <desab@desaballard.com>
Sent: Monday, May 2, 2022 4:51 PM
To: Ashby Jones; mgoddard@turnerpadget.com; Sheila Robinson; Liz Sineath; Alyssa Iglesias; Betty Perdue
Cc: Haley Hubbard; Beth Cogan
Subject: RE: Dissolution of Southern Collection LLC, Case No. 2022-CP-32-01419

Thank you for your letter. I emailed Ashby and Mark last night with a copy of the pleadings for delivery to both of you via email this morning at 9:00 am. Beth, my paralegal, re-sent those to you today when we got notice that both emails (to Ashby and Mark) bounced back (because I apparently mis-typed email addresses for both of you). Do not doubt, however, that I sent these to you *prior to* them being served on your client to insure you had them in hand by the time he let you know he had been served. My misspelling of your emails was inadvertent.

Sheila Robinson either has or is amending her pleadings to exclude Southern Collections LLC and related corporate matters from the domestic litigation, and the circuit court will have exclusive jurisdiction over this matter. The family court had already declined to deal with these property issues in the temporary hearing so there is no currently-pending action in which these issues have been addressed.

Judge McCleod has set an emergency hearing on our motion for appointment of receiver for Thursday 1 pm via his virtual courtroom. Beth will be sending notice of that hearing to you shortly.

Jack Cobb has agreed to serve as receiver, as you will see in the motion for appointment of receiver.

Personal service was required, and we served your client at the only place and time we knew he would be. It was not intended to be, nor was it, an intrusive or dramatic moment unless your client elected to make it one.

There was a closing by Gary Pickren on Friday in which your client instructed Gary to send the real estate commission to Southern Collections. I have asked Gary to hold those proceeds in light of the dissolution of Southern Collections.

Please insure that all documentation, emails and texts relevant to the operations of Southern Collections, LLC, Southern Brokerage Collections, LLC, or any other person or entity through which funds that should have been received by Southern Collection LLC are preserved.

Please let me know if you have any other questions. I look forward to working with whichever one of you will be handling the corporate matters, or both if that is the case.

db

From: Ashby Jones <ashby@kinardandjones.com>
Sent: Monday, May 2, 2022 4:33 PM
To: Beth Cogan <Beth@desaballard.com>; mgoddard@turnerpadget.com; Sheila Robinson <sheila@mbmlawsc.com>; Michelle@gorskilawoffice.com; Liz Sineath <lsineath@mbmlawsc.com>; Alyssa Iglesias <alyssa@kinardandjones.com>; Betty Perdue <betty@kinardandjones.com>

ROA 0190

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Ashby Jones

From: Desa Ballard <desab@desaballard.com>
Sent: Tuesday, May 3, 2022 2:59 PM
To: Ashby Jones; Bru Pender; Gary A. Pickren; Cynthia Blair; Rex L. Casterline; Kevin Craig
Cc: sheila@mbmlawsc.com; Haley Hubbard; Beth Cogan; Alyssa Iglesias; Goddard, Mark B.
Subject: RE: Letter from Ashby Jones

Boy am I glad I don't practice domestic law. In real law, lawyer are much more pleasant to deal with.

db

From: Ashby Jones <ashby@kinardandjones.com>
Sent: Tuesday, May 3, 2022 2:57 PM
To: Bru Pender <bru@blaircato.com>; Gary A. Pickren <gary@blaircato.com>; Desa Ballard <desab@desaballard.com>; Cynthia Blair <cynthia@blaircato.com>; Rex L. Casterline <rex@blaircato.com>; Kevin Craig <kevin@blaircato.com>
Cc: sheila@mbmlawsc.com; Haley Hubbard <haley@desaballard.com>; Beth Cogan <Beth@desaballard.com>; Alyssa Iglesias <alyssa@kinardandjones.com>; Goddard, Mark B. <MGoddard@turnerpadget.com>
Subject: RE: Letter from Ashby Jones

While I do not believe the Southern Collection LLC is dissolved, if Mrs. Smith believes she has taken sufficient action to destroy the entity (and all those who are receiving their livelihood through that entity), we will certainly include that in our Petition for Contempt we are filing today or tomorrow. She has absolutely violated a Court Order in the Family Court matter. I am sure Sheila explained this to her before she made this decision.

Ashby Lawton Jones
Fellow, American Academy of Matrimonial Lawyers
Board Certified in Family Law, National Board of Trial Advocacy
Chair, Family Law Section, South Carolina Association for Justice
Kinard and Jones, LLC
808 South Lake Drive
Lexington, South Carolina 29072
(803) 359-1003 Phone
(803) 359-1378 Telefax
ashby@kinardandjones.com
www.kinardandjones.com
www.aaml.org

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STATE OF SOUTH CAROLINA)	IN THE FAMILY COURT FOR THE
)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)	C.A. NO.: 2021-DR-32-1578
EMILY P. SMITH,)	
)	
PLAINTIFF,)	
)	**PLAINTIFF'S ANSWERS**
v.)	**TO DEFENDANTS FIRST SET OF**
)	**INTERROGATORIES TO PLAINTIFF**
ROBERT TERENCE SMITH,)	
)	
DEFENDANT.)	
)	

To Robert Terence Smith and his attorney, Ashby Lawton Jones:

1. State the name and addresses of person(s) known to the Plaintiff and/or her counsel to be witnesses concerning the facts of this matter and indicate whether written or recorded statements have been taken from the witnesses and indicate who has possession, custody or control of such statements.

Christopher Leventis. 1116 Blanding Street, Suite 2B, Columbia, SC 29201. Affidavits have been filed at the temporary hearings in this case.

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Ronald Lockhart, CPA. 5111 Trenholm Road, Columbia, SC 29206. No affidavit has been prepared by Mr. Lockhart.

Ann Lang, CPA, 107 Oak Park Drive, Irmo, SC 29063. No affidavit has been prepared by Mr. Lockhart.

3. List the names and addresses of any expert witnesses whom the Plaintiff expects to use as a witness at the trial of this matter.

ANSWER:

Chris Leventis, 1116 Blanding Street, Suite 2B, Columbia, SC 29201, 803.748.2644, is the CPA who prepared the financial declaration and MAA for Plaintiff.

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF LEXINGTON)	ELEVENTH JUDICIAL CIRCUIT
)	
Emily P. Smith and Emily P. Smith and Associates, LLC,)	Case No.: 2022-CP-32-01419
Plaintiffs,)	
vs.)	
)	
Robert T. Smith; Southern Collection, LLC; Southern Collection Brokerage, LLC; Terrance Smith and Associates, LLC; Robert B. Smith, and Sherry C. Smith,)	**PLAINTIFF'S REPLY TO RESPONSE TO MOTION FOR APPOINTMENT OF A RECEIVER**
Defendants.	

In his opposition to Plaintiff Emily Smith's motion for appointment of receiver (Emily and her solely owned LLC are hereafter referred to herein as "Emily", Robert T. "Terence" Smith (hereafter "Terence") opposes the request on several grounds, none of which have merit.

NOTICE

The pleadings in this action were filed on Friday, April 29, 2022. This Court's staff responded to counsel for Plaintiff's request for an emergency hearing and advised that the Court could accommodate an emergency hearing on May 5, 2022. Counsel is informed and believes this is the first day back for all circuit judges from their annual judicial conference. Defendant was served with all pleadings as well as the Notice of Hearing on Monday May 2, 2022.

While it is true that S.C. Code § 15-65-20 requires four days' notice of a hearing on an appointment of a receiver, this Court can shorten the time for such notice if delay would work an injustice. As established by the filings in this action, Emily and Terence have been in business together under the corporate name Southern Brokerage LLC since

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2020. But, beginning in October 2021, Terence has forced Emily out of the business, deprived her of income due to her, and has misappropriated money from the business, none of which is disputed. Terence is robbing the companies, diverting the company's assets, and starving Emily out. As indicated in Emily's affidavit which will be filed tomorrow morning, the last several paychecks she has received from the company (written by Terence) have either been drawn on closed accounts or been nonnegotiable because of a stop-pay order having been issued. It is undisputed that the corporate entity of which Emily and Terence are equal owners is being destroyed by Terence's malfeasance and theft, and Emily is receiving no income despite her full-time employment.

It is also apparent from the evidence filed to date that Terence has diverted assets owned by and income due to Southern Collections LLC to one or more corporate entities of which Emily is unaware. Emily's interest in her business is being stolen right out from under her.

Terence does not assert any grounds for why one additional day would enable him to present a defense to the emergency motion for appointment of a receiver than he is unable to at present. He has, in fact, filed a response with exhibits well in advance of the hearing.[1]

OTHER DEFENDANTS

Terence argues that the other defendants named, who are his parents, have not yet been served. That is incorrect. Both were personally served with the pleadings on May

[1] The ECF notice acknowledging the filing by Terence's counsel reflects that the Opposition Memorandum with exhibits was filed with the Clerk of Court on May 4, 2022 at 5:15 pm. Opposing counsel was kind enough to provide a copy to Emily's undersigned counsel so she could see it before it is processed by the clerk of court, which would not occur until the morning of May 5, 2022.

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3, 2022 at 6:20 pm by Front Range Legal Process Service. The affidavits of service have not yet been received, but will be filed upon receipt.

More importantly, Emily does not believe Terence's parents have any ownership interest in Southern Collection LLC nor does she have any reason to believe that they have any ownership in any company to which Terence has funneled off the assets of Southern Collection LLC. No receiver is sought as to them. The pleadings seek the imposition of a constructive trust over money Terence has given to them to hide from Emily.

FAMILY COURT JURISDICTION

It is true that Emily and Terence were married and have been involved in domestic litigation since last year. It is also true that Emily's domestic attorney has filed a motion to amend the pleadings to exclude from the prayers for equitable distribution any of the assets and income of Southern Collection LLC.

More importantly, however, is that there has been no finding, no order, and no determination that any of the parties' interest in Southern Collection LLC or any other businesses are marital assets. While Emily's domestic attorney did attempt to obtain temporary relief from the family court as it related to assets Terence has diverted from Southern Collection, the family court declined to do so. Had there been any finding by the family court that Southern Collection LLC was a marital asset, Terence's position may have merit. However, there has been no finding that Southern Collection LLC is a marital asset. Just because the parties initially argued about whether Emily's income from Southern Collection was being diverted, the family court made no finding as to what was, or was not, a marital asset. Nothing about Southern Collection LLC has been addressed by the Family Court at any time.

The circuit court is the exclusive court for dissolution of corporate entities. If two or more of the owners of the corporate entities are married to each other, and if a family court has

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designated some or all of a corporate entity as a marital asset, Terence's position might be worthy of consideration. That is simply not the case here.

The temporary orders of the family court enjoined and restrained the parties from encumbering or selling marital assets, but marital assets were not defined. Since the family court has failed to issue an order determining that Southern Collection LLC is a marital asset, the relief Emily seeks is squarely before this Court.[2]

Terence is incorrect that Emily seeks to obtain a "premature division of the marital assets" by filing this action. Southern Collection LLC has not been determined to be a marital asset. Emily has certain rights as a member of a statutory limited liability corporation, and she has exercised her right as a member of the LLC to take such action as is appropriate to protect her interests in the corporate entity. Emily has exercised her express statutory right to bring corporate issues to the legitimate attention of this Court. Emily's domestic attorney has sought to amend the pleadings to clarify that equitable division in that action *is not* sought as to the corporate interests of the parties, but the request to amend is merely to clarify that this Court will deal with the corporate issues raised in this litigation.

Note also, that this Court was notified by letter from Terence's domestic attorney via email on Monday, May 2, 2022 that emergency relief (apparently attempting to stop tomorrow's hearing) was being sought in the family court. That request for emergency relief was denied, and Emily's counsel notified this Court via email of that denial at 5:07 pm today. Note in the attachment to the undersigned's email to this Court at 5:07 pm that Terence's request for emergency relief in the family court was denied at 8:34 a.m. today, but Terence's counsel did not mention that in their memorandum in opposition filed at 5:15 pm today.

[2] It is not clear why Terence's domestic counsel felt it necessary to advise this Court that she intended to seek a contempt citation against Emily for exercising her lawful rights as an owner of Southern Collection LLC by disassociating and seeking relief in this court. This Court is exactly where corporate issues should be decided.

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Terence's domestic counsel erroneously asserts that "this issue has already been litigated in Family Court," which is not true at all. As noted above, the emergency orders issued in family court did not address the corporate entities and the order enjoining and restraining the parties was a generic provision that did not mention the corporate entities at all. Moreover, the family court lacks jurisdiction to address issues covered by the South Carolina Corporate Code, and also lacks jurisdiction to appoint a receiver over a corporate entity.

This Court has exclusive jurisdiction to appoint a receiver in a corporate matter. S.C. Code Ann. § 15-65-10 ("A receiver may be appointed by the circuit court. . ."**)** (emphasis added). The relief sought here is not available in the family court.

CONCLUSION

Emily's interest in Southern Collection LLC is being squandered, stolen and misappropriated by Terence. She has no income because he closes the company's bank accounts and stops payment on her paychecks. A receiver, specifically one with the sterling qualifications of S. Jackson Cobb, is necessary to stop the bleeding of the corporate entity Southern Collection and to determine if its income and assets have been diverted.

At a minimum, Emily seeks the appointment of a receiver to ensure that whatever is left of Southern Collection LLC, if anything, is preserved so her statutory rights under Title 33 can be protected. If the receiver finds that Terence has successfully misappropriated and stolen the entire company, it will be necessary for Emily to seek further relief from this Court.

Respectfully submitted,

s/ Desa Ballard
Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)

BALLARD & WATSON
226 State Street
West Columbia, South Carolina 29169
Telephone 803.796.9299

desab@desaballard.com
harvey@desaballard.com
haley@desaballard.com

ATTORNEYS FOR PLAINTIFFS

May 4, 2022

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ELECTRONICALLY FILED - 2022 May 05 10:40 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE COURT OF COMMON PLEAS Civil Action No. 2022-CP-32-01419
Emily P. Smith and Emily P. Smith and Associates, LLC,, Plaintiffs, vs. Robert T. Smith, Southern Collection, LLC, Southern Collection Brokerage, LLC, Terence Smith and Associates, LLC, Robert B. Smith and Sherry C. Smith,, Defendants.	**DEFENDANT TERENCE SMITH & ASSOCIATES, LLC'S MEMORANDUM IN OPPOSITION TO PLAINTIFFS' EMERGENCY MOTION FOR APPOINTMENT OF RECEIVER**

Plaintiffs' Emergency Motion for Appointment of Receiver ("Emergency Motion")[1] is nothing more than Plaintiff Emily P. Smith's ("Emily") attempt to circumvent the pending divorce proceeding in Family Court and to force the buyout of her distributional interest in Southern Collection, LLC, ("Southern Collection" or the "Company") prior to the Family Court's apportionment of marital assets in the pending divorce proceeding. Such an attempt should fail as the Family Court currently has exclusive jurisdiction of this matter, which prevents this Court from having subject matter jurisdiction to hear this motion.

Even if this Court asserts jurisdiction to hear this Emergency Motion and despite Plaintiffs' assertions in her Complaint and Emergency Motion that Southern Collection is now a dissolved

[1] S.C. Code Ann. § 15-65-20 provides that at least four days' notice is required to be given before a receiver of a corporation can be appointed by a Court. Defendant was served with the Notice of Hearing on Monday, May 2, 2022. Since the hearing is scheduled for Thursday, May 5, 2022, there is insufficient notice under the statute for the hearing to be held. Plaintiffs' motion is devoid of any arguments as to the "work injustice" necessary to prescribe a shorter time. However, even if the Court considers the notice to have been proper, the Emergency Motion should be denied for the reasons set forth herein.

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company that needs to be wound up, Southern Collection is still an operating Company and will continue to be until such time as there is a judicial decree dissolving the company as required under South Carolina law. While Plaintiffs' Complaint and Emergency Motion asserts that Defendant Robert T. Smith ("Terence") has mismanaged Southern Collection's assets, Defendant Terence Smith & Associates, LLC, denies these allegations. Instead, Defendants intend to prove that it is Emily that has breached her fiduciary duties to the Company, completely overlooks the statutory obligations that Terence has as the broker-in-charge and ignores the reality that she must share in the Company's expenses as well as its profits.

BACKGROUND

Southern Collection is an at-will limited liability company organized and existing under the laws of the State of South Carolina. Terence and Emily are the sole members of Southern Collection and each own 50% of the distributional interests in the Company. Southern Collection does not have an Operating Agreement and the operation and management of the Company are subject to the South Carolina Limited Liability Company Act, S.C. Code §33-44-101, *et seq*. (the "Act"). Emily and Terence, through Southern Collection, have contracted with Re/Max, LLC to operate a Re/Max franchise in West Columbia, South Carolina. Terence serves as the broker-in-charge for Southern Collection.[2]

Terence and Emily were married on November 3, 2012. Emily filed an action for divorce on or about August 18, 2021, in the Lexington County Family Court, Case No.: 2021-DR-32-1578 (the "Divorce Action"). This Divorce Action is still pending.

On April 27, 2022, Plaintiffs filed the instant Complaint seeking Judicial Dissolution of Southern Collection and asserted causes of action for Conversion against Terence and other

[2] S.C. Code Ann. § 40-57-135 outlines the duties of the broker-in-charge.

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Defendants for allegedly misappropriating assets from Southern Collection to his personal or other accounts, Tortious Interference with Contract against Terence and other Defendants for alleged actions related to the sale of a home while both Terence and Emily were working as agents for Southern Collection, and Imposition of a Constructive Trust on Robert B. Smith and Sherry C. Smith, Terrence's parents, for allegedly holding Southern Collection assets in their personal accounts. All causes of action in this instant Complaint relate directly to claims pertaining to the marital asset, Southern Collection.

THIS COURT LACKS SUBJECT MATTER JURISDICTION TO HEAR ANY CLAIMS RELATED TO SOUTHERN COLLECTION, LLC, AS THESE CLAIMS ARE EXCLUSIVELY WITHIN THE JURISDICTION OF THE FAMILY COURT.

S.C. Code Ann. § 63-3-530 (A)(2), states that the Family Court has the *exclusive* jurisdiction to hear and determine actions for divorce, separate support and maintenance, legal separation, and in other marital litigation between parties and for settlement of all legal and equitable rights of the parties in the action in and to the real and *personal property* of the marriage. All of the allegations in Plaintiffs' instant Complaint pertain directly to alleged issues with Emily and Terence's ownership interests in Southern Collection. These membership interests are personal property squarely within the jurisdiction of the Family Court. *See* S.C. Code Ann. § 33-44-501(b) ("A distributional interest in a limited liability company is personal property…").

S.C. Code Ann. § 20-7-473 defines marital property as "[A]ll real and personal property which has been acquired by the parties during the marriage and which is owned as of the date of the filing or the commencement of marital litigation…regardless of how legal title is held." This statute outlines certain exceptions to this rule, however, none of the exceptions apply to the parties. The burden to show an exception under S.C. Code Ann. § 20-7-473 is upon the one claiming the property acquired during the marriage is nonmarital. *See Pool v. Pool,* 3231 S.C. 84, 89-90, 467

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S.E.2d 753, 757 (Ct. app. 1996). It appears undisputed that the Emily and Terence acquired their ownership in Southern Collection during their marriage, and Emily has made no attempt to show the Court why their interest in Southern Collection are not marital assets.

"The general rule is that jurisdiction of a court depends on the state of affairs existing at the time it is invoked. If jurisdiction once attaches to the person and subject matter of the litigation the subsequent happening of events will not ordinarily operate to oust the jurisdiction already attached." *Gilley v. Gilley*, 327 S.C. 8, 488 S.E.2d 310 (1996) (citing *Gardner v. Gardner*, 253 S.C. 296, 170 S.E.2d 372 (1969)). *See also Terry v. Lee*, 308 S.C. 459, 419 S.E.2d 213 (1992)("Separate actions to determine property rights will be considered 'other marital litigation' under §20-7-420(2), thereby vesting exclusive jurisdiction in the family court, if the relief sought is incidental to the decree of divorce."

There are numerous examples that the parties' ownership and issues related to Southern Collection have vested jurisdiction in the Family Court prior to the initiation of this action:

1. In Emily's Complaint in the Divorce Action filed on or about August 18, 2021, she requested the Family Court apportion the marital assets as part of her requested divorce.
2. In Terence's Answer and Counterclaim in the Divorce Action, he also requested the Family Court apportion the marital assets.
3. On or about September 8, 2021, the Family Court entered a Temporary Order restraining both Emily and Terence from "selling, mortgaging, destroying, or otherwise disposing of any marital property without prior written consent of both parties of prior Order of the Court."

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4. In Emily's Return and Cross Motion filed on December 1, 2021, in the Divorce Action, she specifically requests the Family Court order an accounting of the parties' marital assets, including the assets of their real estate business – which is Southern Collection.

5. The parties have participated in discovery and have both engaged experts for the purpose of evaluating marital assets, including Southern Collection, in the Divorce Action.

6. On April 27, 2022, Terence filed a Supplemental Motion for Temporary Relief in the Divorce Action ("Supplemental Motion") seeking, among other unrelated items, to restrain Emily from further attempts to sabotage the Company through her actions, words and deeds, requiring Emily to immediately return all Company property that was removed from the lobby area of Southern Collection, and barring Emily from circumventing any commissions, referrals fees, or funds owed to Southern Collection to her personal accounts. A copy of the Supplemental Motion is attached as **Exhibit A**.

7. On the same day, and likely in response to Terence's filing of the Supplemental Motion, Emily filed a Statement of Dissociation[3] from Southern Collection with the South Carolina Secretary of State's office, and filed the instant action seeking a judicial dissolution of Southern Collection.

8. On April 29, 2022, Emily filed a Motion to Supplement her Complaint in the Divorce Action ("April 29th Motion") that would exclude Southern Collection from

[3] Pursuant to S.C. Code Ann. § 33-44-603, by dissociating from the Company, Emily is no longer a member of the Company, and instead shall be treated as a transferee. Further, she no longer has a right to participate in the management and conduct of Southern Collection.

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the equitable division by the Family Court. A copy of the Motion to Supp. Complaint is attached as **Exhibit B**.

Given that the Divorce Action was filed over eight months prior to the filing of the instant action, it is clear that the Family Court jurisdiction attached to the claims Plaintiffs are asserting in the instant action well before the filing of this Complaint. The April 29th Motion seemingly acknowledges that the Family Court has jurisdiction as to all issues related to Southern Collection as it specifically requests the Family Court to exclude Southern Collection, LLC, Southern Collection Brokerage, LLC, Emily P. Smith & Associates, and Terence Smith & Associates, LLC (all Defendants in the instant action) from the equitable division by the Family Court. Terence did not consent the relief sought in the April 29th Motion and it is believed he takes the position the issue properly rests within the jurisdiction of the Family Court. Both the Supplemental Motion to specifically add Southern Collection as a party to the Divorce Action and the April 29th Motion to exclude Southern Collection from the equitable division in the Family Court are still pending. Until such time the Family Court rules on the pending motions and specifically excludes Southern Collection from equitable division, the Family Court retains exclusive jurisdiction over these claims. Therefore, this Court lacks subject matter jurisdiction to hear this Emergency Motion.[4]

PLAINTIFFS' REQUESTED RELEIF TO APPOINT A RECEIVER IS PREMATURE AS SOUTHERN COLLECITON IS STILL AN ACTIVE COMPANY UNDER SOUTH CAROLINA LAW

The Emergency Motion requests the Court appoint a Receiver over Southern Collection in order to dissolve and wind up the Company. Further, the Emergency Motion and instant Complaint alleges that by filing a statement of dissociation with the South Carolina Secretary of

[4] While Defendant asserts the Court lacks subject matter jurisdiction in this case, in the event the Court believes in has jurisdiction to hear this Emergency Motion, Defendant will address further substantive reasons that the Court should deny Plaintiffs' requested relief.

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State's Office Emily has started the "dissolution process." However, Emily's attempt to link the dissociation to the automatic dissolution of the Company is flawed.

The Act provides that a member is considered to be dissociated from an LLC when the company has "notice of the member's express will to withdraw upon the date of notice or on a later date specified by the member." S.C. Code Ann. § 33-44-601(1). Given that Emily filed the Statement of Dissociation with the South Carolina Secretary of State's office it is undisputed that the Company has notice of her express will to withdraw as a member as of April 27, 2022. However, the filing with Secretary of State's Office is not required to dissociate. The filing's purpose is to simply put third parties on notice of the dissociation in order to reduce the third parties' ability to claim that the Company is bound by the actions of the dissociated member from two years to 90 days. *See* S.C. Code Ann. § 33-44-703 and §33-44-704. The Statement of Dissociation's filing has no direct bearing on whether a company is ultimately dissolved.

The Act outlines the events causing dissolution and winding up of a South Carolina LLC. Since Southern Collections does not have an operating agreement and it is obvious that all members do not consent to dissolution, the only applicable section of the Act that can be used to dissolve an LLC requires both an application by a member or a dissociated member **AND** a judicial decree that either:

> (a) the economic purpose of the company is likely to be unreasonably frustrated;
>
> (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;
>
> (c) it is not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement;
>
> (d) the company failed to purchase the petitioner's distributional

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> interest after giving effect to provisions of the operating agreement modifying or superseding the provisions of Section 33-44-701; or
>
> (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;

S.C. Code Ann. § 33-44-801(4). While Plaintiff has filed the instant Complaint *alleging* certain action that could be sufficient to support a judicial dissolution, Plaintiffs have the burden to prove the allegations to the Court and receive an Order finding these grounds were met before the judicially dissolution can occur.[5]

The Emergency Motion asks the Court to appoint a Receiver to wind up the Company pursuant to S.C. Code Ann. § 33-44-803; however, this statute is only applicable *after* dissolution. There are no provisions under the Act that allow a dissociated member to appoint a receiver *prior* to the dissolution. In the instant case, the dissolution action was just filed and the Defendants have not even been given any opportunity to appropriately respond and challenge the allegations of the Complaint. Defendants believe that after a full trial on the merits of the case, the Court will find that Emily does not meet her burden necessary to dissolve the company under the provisions of S.C. Code Ann. § 33-44-801(4), and therefore, no judicial dissolution would occur.

The requirement to obtain an order from the Court to dissolve a company is a statutory safeguard to the other members from a disgruntled member dissolving a company simply because he/she did not agree with the other member(s)' proper business decisions. After hearing all of the evidence, if the Court denies the petition for the dissolution from the dissociated member, then the dissociated members remedy is having his/her distributional interest purchased by the company for fair value. *See* S.C. Code Ann. 33-44-701(1).

---

[5] Defendant does not believe the issue of judicial dissolution is before the Court in this Emergency Motion.

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Since the Court has not issued an Order to dissolve the Company and that issue is not presently before the Court in the Emergency Motion, it would be premature for the Court to grant Plaintiffs' requested relief to appoint a receive to dissolve the Company and wind up the Company's business and distribute the Company's assets.

THE APPPOINTMENT OF A RECEIVER COULD CAUSE THE COMPANY IRREPARABLE DAMAGE INCLUDING THE LOSS OF ITS FRANCHISEE AGREEMENT AND VALUABLE STAFF AND AGENTS

In June 2020, Southern Collection, Emily and Terence, entered into an agreement with Re/Max, Inc., to operate a Re/Max franchise (the "Re/Max Agreement"). The Re/Max Agreement includes a minimum five (5) year term. As part of the Re/Max Agreement, Re/Max provides certain services, software, and assistance to Southern Collection in exchange for the payment of certain fees. The Re/Max Agreement is a significant asset to Southern Collection and is necessary for the continued operation of the Company.

Section 13(B)(7) of the Re/Max Agreement provides that the Company will be in material default of the essential conditions of this Agreement and Re/Max will have the immediate right to terminate the agreement without providing an opportunity to cure if "you or one of your Owners is declared or judicially determined to be insolvent….or a liquidator, trustee in bankruptcy, custodian, receiver, receiver and manager, sheriff, or any other office with similar powers is appointed temporarily or permanently, either privately or by a court of competent authority for or over you or one of your Owners."

Further, the Company contracts with multiple staff and agents who work under the Southern Collection umbrella. The staff and agents bring in significant commissions to the Company which are necessary to meet the Company's obligations. Given that these staff members

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and agents have multiple options for agencies in the area that they can immediately move their listings to, it is highly unlikely that they would remain with the Company if the Court appoints a receiver to manage, run, and eventually wind-up the Company.

Ultimately, Defendant denies the material allegations of the Complaint and believes this Court will not find sufficient evidence to support a judicial dissolution of the Company under § 33-44-801(4)(a)-(e); however, if the Receiver is appointed even temporarily during the pendency of this litigation, then it is possible, if not likely, the Company's Re/Max Agreement will be terminated and its agents will leave causing potentially unsustainable damages to the Company.

PLAINTIFFS HAVE FAILED TO SHOW SUFFICIENT EVIDENCE THAT THE ALLEGED PROPERTY AT ISSUE IS IN DANGER OF BEING LOST OR MATERIALLY INJURED OR IMPAIRED.

S.C. Code Ann. § 15-65-10(1) states a receiver may be appointed before judgment when a party "establishes 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…[is] in danger of being lost or materially injured or impaired…" The Emergency Motion simply makes a conclusory statement that the alleged assets of the Company are in danger of being lost or materially injured or impaired. This conclusory statement should not serve as a sufficient showing to support the need for the appointment of a Receiver, especially before Defendants are given the right to challenge Plaintiffs' assertions. Considering that the Divorce Action has been ongoing for 8 months and during that time Emily and Terence have continued to work with each other at the Company, there is no new sudden emergency that makes the appointment of the Receiver now immediately necessary.

CONCLUSION

Despite Plaintiffs' assertions, the instant Complaint and the attempt to have a Receiver appointed for Company is Plaintiffs' attempt to further damage the Company and force the early

buyout of her distributional interest in the Company prior to the Family Court's equitable distribution of assets in the Divorce Action. For the reasons contained herein, Defendant respectfully requests the Court deny Plaintiffs' Motion for Appointment of a Receiver.

TURNER PADGET GRAHAM AND LANEY P.A.

By: s/ Mark B. Goddard

Mark B. Goddard, Bar No. 73965
E-Mail: MGoddard@TurnerPadget.com
1901 Main Street
Suite 1700
Columbia, South Carolina 29201
Telephone: (803) 227-4334
Fax: (803) 799-3957

ATTORNEYS FOR DEFENDANT TERENCE SMITH & ASSOCIATES, LLC

May 5, 2022

ELECTRONICALLY FILED - 2022 May 05 10:40 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

EXHIBIT A

ELECTRONICALLY FILED - 2022 May 05 10:40 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE FAMILY COURT
ELEVENTH JUDICIAL CIRCUIT

Emily P. Smith
Plaintiff,
vs.
Robert Terence Smith
Defendant.

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Docket No. 2021-DR-32-1578

Plaintiff's Attorney:	Defendant's Attorney:
Shella McNair Robinson, Bar No. 65385 Address: P.O. Box 5709 West Columbia, SC 29171 Phone: 803-796-9160Fax _____ E-mail: sheila@mbmlawsc.comOther: _____	Ashby Lawton Jones, Bar No. 15900 Address: 808 South Lake Drive Lexington, SC 29072 Phone: 803-359-1003 Fax_____ E-mail: ashby@kinardandjones.comOther: _____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Notice of Motion and Motion for Supplemental Temporary Relief and to Add Party Defendant

Estimated Time Needed: 1 hour Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff /☒ Defendant — Date submitted: 4/27/22

SECTION III: Motion Fee

☒ PAID – AMOUNT: $_____
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE CODE _____ Date: _____

Judge Signature: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

Custodial Parent (if applicable): _____

ELECTRONICALLY FILED - 2022 May 05 10:40 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

STATE OF SOUTH CAROLINA)	IN THE FAMILY COURT FOR
)	THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)	C.A.NO.: 2021-DR-32-1578
Emily P. Smith,)	
)	
Plaintiff,)	**NOTICE OF MOTION AND MOTION FOR SUPPLEMENTAL TEMPORARY AND TO ADD PARTY DEFENDANT**
)	
v.)	
)	
Robert Terence Smith,)	
)	
Defendant.)	
)	

TO: PLAINTIFF EMILY P. SMITH AND HER ATTORNEY, SHEILA MCNAIR ROBINSON, ESQUIRE:

YOU WILL TAKE NOTICE that Defendant by and through his undersigned counsel, will move before the presiding Judge of the Family Court for the Eleventh Judicial Circuit, at the Lexington County Courthouse, Lexington, South Carolina the _____ day of _____, 2022 at _____ o'clock _____.M., or as soon thereafter as counsel can be heard for an Order granting temporary, *pendente lite* relief including, but not limited to:

1. Adding Southern Collection, LLC as a Party Defendant;

2. Barring and restraining Plaintiff from any further attempts to sabotage Southern Collection, LLC through her actions, words and deeds;

3. Requiring Plaintiff to immediately return all furniture and any other materials removed from the lobby area of Southern Collection, LLC without permission of Defendant, her Broker In Charge;

4. Barring Plaintiff from circumventing any commissions, referrals fees, or any other funds related to Southern Collection, LLC to her personal accounts;

ELECTRONICALLY FILED - 2022 May 05 10:40 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

5. Barring Plaintiff from discussing this case on social media in any manner whatsoever;

6. Barring Plaintiff from discussing this case with third parties in any manner whatsoever;

7. Requiring Plaintiff to immediately turn over all devices for examination, as previously requested;

8. Awarding the parties shared week-to-week visitation with the minor children during the summer holiday;

9. Requiring Plaintiff to submit to a psychological examination at her expense and allowing Dr. Marc Harari's previous psychological evaluation to be considered in Plaintiff's examination;

10. Restraining Plaintiff from moving to Raleigh, North Carolina with the minor children;

11. Requiring Plaintiff to pay Defendant's attorney's fees and costs associated with this motion;

12. For such other and further relief that the Court deems necessary and proper.

This motion is based upon the pleadings herein, affidavits, Defendant's financial declaration and any testimony allowed, all to be presented at the hearing on the motion. Defendant is informed and believes conferring with Plaintiff prior to filing this Motion would serve no useful purpose.

KINARD & JONES, LLC

ASHBY LAWTON JONES
ALYSSA ROSE IGLESIAS
808 South Lake Drive
Post Office Box 2678
Lexington, SC 29072
(803) 359-1003
ATTORNEYS FOR DEFENDANT

Lexington, South Carolina
4-27, 2022.

EXHIBIT B

MOORE BRADLEY MYERS

S. Jahue Moore†
James Edward Bradley†
Sheila McNair Robinson
Christian G. Spradley
William H. Edwards
Stanley L. Myers
Jane H. Downey◆
S. Jahue Moore, Jr.
William B. Fortino
Ralph Nichols Riley, Jr.
John C. Bradley, Jr.

Melissa K. Moore
Lester McGill Bell, Jr.
Bryan C. Letteer
Sierra D. Carini
Lawrence D. Turner
Brendan J. Green

Retired
J. Mark Taylor*†
Robert D. Hazel‡
C. David Sawyer, Jr.‡
Billy C. Coleman (1916-2019)

April 29, 2022

Ashby Lawton Jones
Kinard & Jones, LLC
808 S. Lake Drive
Lexington, SC 29072

RE: Emily P. Smith v. Robert Terence Smith
2021-DR-32-1578

Dear Ashby:

Enclosed herewith please find a copy of the Notice of Motion and Motion to Supplement Complaint which is being filed in the above referenced matter. This copy is for your records.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

MOORE BRADLEY MYERS LAW FIRM, P.A.

Sheila McNair Robinson
SMR/sw
Enclosure
cc: Emily P. Smith

ELECTRONICALLY FILED - 2022 May 05 10:40 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

1700 Sunset Boulevard, West Columbia SC 29169 | PO Box 5709, West Columbia SC 29171
TEL 803.796.9160 FAX 803.791.8410 **www.mbmlawsc.com**

†Member of American Board of Trial Advocates *Fellow of the American Academy of Matrimonial Lawyers ◆Certified Specialist in Bankruptcy & Debtor/Creditor Law ‡Retired

EXHIBIT B

ELECTRONICALLY FILED - 2022 May 05 10:40 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE FAMILY COURT
ELEVENTH JUDICIAL CIRCUIT

EMILY P. SMITH, Plaintiff,)
vs.)
ROBERT TERENCE SMITH, Defendant.)

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Docket No.: 2021-DR-32-1578

Plaintiff's Attorney: Sheila McNair Robinson Bar No.: 65385 Address: P.O. Box 5709, West Columbia, SC 29171 Phone: (803) 796-9160 Fax E-mail: sheila@mbmlawsc.com Other:	Defendant's Attorney: Ashby Lawton Jones Bar No.: 15900 Address: 808 South Lake Drive, Lexington, SC 29072 Phone: (803) 359-1003 Fax: E-mail: ashby@kinardandjones.com Other:

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Notice of Motion and Motion to Supplement Complaint
Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ **YES**/☐ **NO**

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff /☐ Defendant — April 29, 2022 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____ Judge Signature: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

Custodial Parent (if applicable): _____

SCCA 233F (12/2009)

ELECTRONICALLY FILED - 2022 May 05 10:40 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

STATE OF SOUTH CAROLINA)) COUNTY OF LEXINGTON))	IN THE FAMILY COURT OF THE ELEVENTH JUDICIAL CIRCUIT C.A. NO.: 2021-DR-32-1578
EMILY P. SMITH,))	**NOTICE OF MOTION AND MOTION TO SUPPLEMENT COMPLAINT**
PLAINTIFF,))	
VS.))	
ROBERT TERENCE SMITH,))	
DEFENDANT,))	

TO: DEFENDANT ABOVE NAMED: ROBERT TERENCE SMITH and his attorney, ASHBY LAWTON JONES:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through her undersigned counsel, will move before the presiding Judge of the Family Court for the Eleventh Judicial Circuit on the _____ day of _____, 202 at _____ o'clock _____.m., for an Order allowing her to amend and supplement the Complaint in this action. If you fail to appear, the Plaintiff will request the relief sought herein.

The Plaintiff would show the pleadings were filed in this case on August 18, 2021. The parties jointly own a real estate business, Southern Collection, LLC. The parties have established other businesses as well to include Southern Collection Brokerage, LLC, Emily P. Smith & Associates, LLC and Terence Smith & Associates, LLC. The Plaintiff is now seeking relief concerning these businesses in an alternate jurisdiction than Family Court. The Plaintiff is therefore seeking to supplement her previously filed Complaint to request the division of the parties' businesses, Southern Collection, LLC, Southern Collection Brokerage, LLC, Emily P. Smith & Associates, LLC and Terence Smith & Associates, LLC be excluded from the equitable division by the Family Court inasmuch as an action is being filed in Circuit Court for the

ELECTRONICALLY FILED - 2022 May 05 10:40 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

dissolution of the businesses.

The Plaintiff seeks an Order allowing her to amend and supplement the Complaint in this action to encompass the above relief. A copy of the proposed amended pleading is attached. Such Motion shall be based upon the Laws of the State of South Carolina, the South Carolina Rules of Civil Procedure, and the Family Court Rules of Court, including but not limited to South Carolina Rules of Civil Procedure 13(e) and 15(a)(d).

The Plaintiff also requests an award of attorney's fees for having to file this Motion.

MOORE BRADLEY MYERS LAW FIRM, P.A.

By: _____
SHEILA MCNAIR ROBINSON
1700 Sunset Boulevard
P. O. Box 5709
West Columbia, SC 29171
803/796-9160
Attorney for Plaintiff

West Columbia, South Carolina

April 29, 2022

Pursuant to Rule 11 SCRCP which Rule is mandatory in this jurisdiction and which Rule is applicable in the Family Court to this jurisdiction, I hereby certify or affirm that prior to filing the within Notice of Motion, I did contact counsel for Defendant to request compliance of the discovery requests, no responses have been given by Defendant.

_____
Sheila McNair Robinson

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT FOR THE
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	Case No.: 2021-DR-32-1578
Emily P. Smith,	)	
	)	
Plaintiff/Respondent,	)	
	)	**PETITION FOR CONTEMPT**
v.	)	**ON BEHALF OF PETITIONER**
	)	
Robert Terence Smith,	)	
	)	
Defendant/Petitioner,	)	
	)	

Petitioner, Robert Terence Smith complaining of Respondent, Emily P. Smith, would respectfully show unto this Court as follows:

That Respondent has willfully and intentionally violated the Temporary Order of this Court executed by the Honorable W. Greg Seigler on September 8, 2021, and filed on September 9, 2021, attached as Exhibit A, due to the following acts and/or omissions:

1. Page 3, Paragraph 9 of the Temporary Order states the following:

This Court finds that both parties are restrained from selling, mortgaging, destroying, or otherwise disposing of any marital property without prior written consent of both parties or prior Order of the Court. This Court further finds that neither party shall incur any debt in the name of the other party or increase any martial debt during the pendency of this litigation.

On **April 27, 2022**, Plaintiff filed an action in the Circuit Court for the County of Lexington, Exhibit B, requesting a judicial dissolution of the parties' real estate business: Southern Collection LLC. Contemporaneously, Plaintiff filed an Emergency Motion for

FILED
2022 MAY 11 PM 1:40
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

Appointment of Receiver (Exhibit C), which was heard on **May 5, 2022**, by the Honorable Walton J. McLeod, IV.[1]

Even more troubling, Plaintiff filed a Members Statement of Dissociation from a Limited Liability Company with the South Carolina Secretary of State on **April 27, 2022** (Exhibit D). Plaintiff seeks to dissolve the parties' company which is a marital asset and requested that the Court appoint a Receiver, the very definition of destroying the marital asset. Of significance, Counsel for Plaintiff in the Circuit Court matter, Desa Ballard, Esquire, takes the position that Southern Collection, LLC was dissolved when Plaintiff filed the Statement of Dissociation (Exhibit E), therefore admitting that her client disposed (or attempted to dispose) of a marital asset.

On **May 1, 2022**, Counsel for Plaintiff requested that Blair Cato Pickren Casterline, LLC hold proceeds from Defendant's **April 29, 2022**, real estate closing pending the Motion for Appointment of Receivership (Exhibit E). Gary Pickren, Esquire, the closing attorney, and a Real Estate Commissioner, raised concerns that if Southern Collection, LLC is dissolved, then there is no brokerage and thus no Broker-in-Charge pursuant to S.C. Code Ann. § 40-57-10, *et. seq.* (Exhibit E). Consequently, destroying the business and leaving all the real estate agents, including Plaintiff and Defendant, without a Broker and unable to perform any acts requiring a Broker license. In response to these concerns, Plaintiff's counsel stated the following: "Emily is covered, but I can't speak for anyone

[1] Plaintiff's Motion to Appoint a Receiver was denied.

else." (Exhibit E). Therefore, Counsel for Plaintiff admits that her client's actions, if successful, destroyed the parties' company, a marital asset.

2. Further, on **May 3, 2022**, Plaintiff made disparaging comments about Defendant during a Broker-In-Charge classroom setting at the Real Estate School for Success. Specifically, Plaintiff accused Defendant of misappropriating funds and violating South Carolina real estate law. Plaintiff goes so far as to mention the family court proceedings in her statements, specifically stating that Defendant's actions regarding the real estate business were "low on my totem pole after family court." (Exhibit F). Plaintiff's comments about Defendant to other members in the real estate community are an attempt to not only defame Defendant and destroy his reputation but also to destroy the parties' real estate business, which is in direct violation of Judge Siegler's September 8, 2021 ruling.

3. Plaintiff has made countless attempts to sabotage the parties' real estate business. On or about October 5, 2021, Plaintiff unilaterally transferred funds from the business account to her personal account causing a commission check to one of the real estate agents to bounce. Despite knowledge that this disbursement of funds was causing the business financial distress and damaging the company's relationship with a loyal and high profit grossing team member, Plaintiff refused to replenish the funds. Even further, Plaintiff harassed this team member via social media and text message regarding this litigation. Ultimately, this real estate agent decided to leave Southern Collection and pursue her profession elsewhere.

This was not the first employee to leave the company due to Plaintiff's actions. In October 2021, Plaintiff's unilateral transfer of all the company's funds to her personal account caused the office manager to quit citing her concerns over the financial issues of the company. (Exhibit G).

4. Further, throughout the month of April 2021, Plaintiff removed all the decorative furniture in the parties' office leaving only the desks and couches. Plaintiff continues to put the parties' company at risk of losing its franchise with RE/MAX and continues to create a hostile work environment for the real estate agents which are vital to the company's livelihood.

5. In May 2022, Plaintiff stopped paying the domain fees for Southern Collection's website (thesmithsellsc.com) causing the website to be "unreachable". (Exhibit H). This website was used in connection with Zillow to connect the business with sellers and buyers. Plaintiff is deliberately sabotaging the parties' business and making it appear to the outside world that Southern Collection is out of business.

6. On May 2, 2022, Plaintiff intercepted a sale from one of Southern Collection's realtors through the Southern Collection Facebook page. A buyer requested a specific realtor, however, Plaintiff responded to the buyer that she would be able to assist. (Exhibit I). Plaintiff, yet again, created an uncomfortable situation for one of the parties' loyal employees, and caused that employee to lose a commission sale.

Defendant reserves the right to add additional infractions occurring after Plaintiff is provided a copy of this Petition as evidence of Plaintiff's willfulness.

WHEREFORE, the Petitioner prays for an Order and Judgment of the Court:

a. Adjudging Respondent to be in willful contempt of court, sanctioning her accordingly by fine, incarceration, and/or service on the public work force, as provided by S.C. Code Ann. §20-7-1350 and other laws of this State;

b. Requiring Respondent to comply with this Court's prior Order;

c. Requiring Respondent to pay the legal fees and costs of Petitioner, filing fees, service of process, witnesses, investigation, travel costs, and the contempt hearing in this action; and

d. Granting to him such additional and ancillary relief as this Court deems just and proper.

KINARD & JONES, LLC

ASHBY LAWTON JONES
ALYSSA ROSE IGLESIAS
808 South Lake Drive
Post Office Box 2678
Lexington, SC 29072
(803) 359-1003
ATTORNEYS FOR PETITIONER

Lexington, South Carolina
5·10, 2022.

VERIFICATION

Robert Terence Smith, being first sworn, deposes and says that he has read and considered the attached Petition for Contempt, that he furnished the information upon which these assertions are based; that the assertions therein are true and correct and based upon his personal knowledge, except for those assertions stated upon information and belief, which he verily believes are true and correct; and that he seeks the relief requested herein.

Robert Terence Smith

SWORN to before me this 10th

day of May, 2022

(L.S.)
Notary Public for South Carolina
Printed Name: Barbara K. Craft
My Commission Expires: Sep 9, 2029

FILED
2022 MAY 11 AM 11:40
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

ROA 0224

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT FOR THE
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	C.A. NO.: 2021-DR-32-1578
EMILY P. SMITH,	)	
PLAINTIFF,	)	**TEMPORARY ORDER**
v.	)	
ROBERT TERENCE SMITH,	)	
DEFENDANT.	)	

FILED
2021 SEP -9 PM 2:35
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

Date of Hearing:	August 26, 2021
Presiding Judge:	W. Greg Seigler
Plaintiff's Attorney:	Sheila McNair Robinson
Defendant's Attorney:	Ashby Lawton Jones
Court Reporter:	Sanya Kaiser

This matter came before the Court on August 26, 2021 at 4:30 p.m. The hearing was held via WebEx Virtual Courtroom pursuant to the authority of the South Carolina Supreme Court Order issued on April 30, 2020. The action was commenced by the filing of a Notice of Motion and Motion for Emergency/Expedited Temporary Relief, Summons and Complaint on August 18, 2021. The Honorable Robert E. Newton issued an Order on August 18, 2021 granting the Motion for an expedited hearing. The Defendant was personally served with the pleadings and Order for Expedited Hearing on August 19, 2021, as evidenced by the Affidavit of Service filed with the Court. The time for filing a responsive pleading has not yet passed.

Present at the hearing were the Plaintiff and her attorney, Sheila McNair Robinson. Also present were the Defendant with his attorney, Ashby Lawton Jones. The Court heard oral arguments of counsel and then recessed the hearing to take the matter under advisement. After careful consideration of the affidavit packages submitted by both parties and all information

ROA 0225

presented at the hearing, this Court makes the following findings of fact and conclusions of law:

1. Both parties are citizens and residents of Lexington County, South Carolina, having been so in excess of one (1) year prior to the commencement of this action.

2. The Plaintiff and Defendant last resided together as wife and husband in Lexington County, South Carolina.

3. The Plaintiff and Defendant are presently wife and husband, having been married to each other on November 3, 2012. Of this marriage, two (2) children have been born, namely: O. G. S., born in 2014; and O. P. S., born in 2016. No other children have been born of these parties, and no child is expected.

4. This Court finds that the two (2) minor children have resided in South Carolina since birth. South Carolina is therefore the home state of the children pursuant to the Uniform Child Custody Jurisdiction Enforcement Act codified at S.C. Code §63-15-300 et. seq.

5. This Court finds that this Court has subject matter and personal jurisdiction of this action and of these parties. Venue is proper in Lexington County, South Carolina.

6. This Court finds that the Plaintiff has filed this action in which she is seeking a divorce from the Defendant on the basis of habitual drunkenness. The Plaintiff is further seeking an Order requiring the Defendant to vacate the marital home, for an Order granting her exclusive use and possession of the marital home, for sole custody of the children, for supervised visitation between the Defendant and the minor children, for child support, and other ancillary relief. In his affidavit, the Defendant denied the habitual drunkenness allegations and made an oral motion to dismiss the case for lack of jurisdiction since the parties are still residing together. Alternatively, the Defendant requested that the parties have shared custody of the children under a nesting arrangement in the marital home.

2021 SEP -9 PM 2:35
TONYA M. GUNNER
CLERK OF COURT
LEXINGTON SC

2

7. This Court finds that South Carolina case law is clear that "habitual drunkenness is the fixed habit of frequently getting drunk; it does not necessarily imply continual drunkenness. Based on this definition, one need not be an alcoholic to be guilty of habitual drunkenness. It is sufficient if the use or abuse of alcohol causes the breakdown of normal marital relations." *Lee v. Lee*, 316 S.E. 2d 435, 437 (Ct. App. 1984), cited in *Curry v. Curry*, 741 S.E. 2d 558 (S.C. App. 2013). Moreover, our Supreme Court has long held that a party may receive temporary relief upon a *prima facie* showing of habitual drunkenness. *Fisher vs. Fisher*, 278 S.E. 2d 780 (1980). This Court finds that to make a *prima facie* showing, the Plaintiff must establish that the Defendant's use of alcohol caused the breakdown of the marriage and that it occurred at or near the time of the filing for divorce. *Bodkin vs. Bodkin*, 694 S.E.2d 230 (Ct. App. 2010) (citing *Epperly vs. Epperly*, 440 S.E. 2d 884 (1994). This Court finds, based upon a review of the affidavit packages, especially the Private Investigative Report of Stillinger Investigations, that the Plaintiff has met her burden of proof in establishing a *prima facie* showing of the Defendant's habitual drunkenness.

8. This Court finds that the Plaintiff is granted exclusive use and possession of the marital home located at 112 John Preston Drive, Lexington, South Carolina. She shall be responsible for all costs associated with this home. The Defendant shall immediately vacate the home, taking with him his clothes, shoes and toiletries.

9. This Court finds that both parties are restrained from selling, mortgaging, destroying, or otherwise disposing of any marital property without prior written consent of both parties or prior Order of the Court. This Court further finds that neither party shall incur any debt in the name of the other party or increase any marital debt during the pendency of this litigation.

10. The Plaintiff shall have temporary sole custody of the two minor children. This Court finds that the Lexington County Department of Social Services issued a Safety Plan on

LISA M. COMER
CLERK OF COURT
LEXINGTON SC
2021 SEP -9 PM 2:35

August 12, 2021 which requires the Defendant's visitation to be supervised (sight and sound) by the Plaintiff's parents, Ron and Teddie Bishop. This Court finds that the Defendant shall continue to have supervised visitation with the Plaintiff's parents serving as the sight and sound supervisors pending the expedited investigation of the Guardian *ad Litem*, as set forth in full herein below. The Defendant shall be allowed to exercise said visitation at the marital home if he so desires. The Defendant shall also have reasonable telephonic and video contact with the children, and the Plaintiff shall ensure the children are available and are encouraged to speak with the Defendant during these calls.

11. The Defendant shall pay child support to the Plaintiff in the amount of $2,000 per month commencing September 1, 2021 and continuing on the first of each month thereafter. The Defendant shall pay this child support directly to the Plaintiff. In the event that the Defendant is ever more than five (5) days late in making any one child support payment, the Plaintiff may file an affidavit with the Office of the Clerk of Court requiring all future child support payments to be paid through the State Disbursement Unit, together with the applicable surcharge.

12. The Plaintiff shall maintain medical insurance coverage on the minor children. All noncovered medical, dental, counseling, orthodontic, vision and other health-related expenses for the children shall be divided equally between the parties. The Plaintiff shall provide a bill/invoice to the Defendant within ten (10) days of incurrence, and the Defendant shall pay his one-half within ten (10) days of the date the bill/invoice is provided or pursuant to other payment arrangements acceptable with the medical provider.

13. The parenting guidelines and restrictions attached to this Order shall be in full force and effect for both parties. Neither parent shall administer corporal punishment to either minor child.

2021 SEP -9 PM 2:35
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

14. Michelle Gorski is appointed as the Guardian *ad Litem* for the two (2) minor children. A separate Order of appointment is being issued simultaneously with this Temporary Order. Ms. Gorski is to complete an expedited investigation within forty-five (45) days of the date of this Order. At the conclusion of the expedited investigation a supplemental temporary hearing shall be scheduled. The parties shall equally divide the retainer payable to Ms. Gorski as set forth more fully in the detailed order of appointment.

15. The parties agree that either Lisa Kinon or Kevin Barth shall serve as the mediator in this case.

16. This Court finds that the Defendant shall reimburse the Plaintiff the sum of $6,779.33 in private investigative fees, with this sum being paid directly to the Plaintiff within thirty (30) days of the date of this Order.

16. All other issues shall be held in abeyance pending further Order of the Court.

IT IS THEREFORE ORDERED that the Plaintiff has established a showing of a *prima facie* showing of the Defendant's habitual drunkenness;

IT IS FURTHER ORDERED that the Plaintiff shall have exclusive use and possession of the marital home as set forth in full hereinabove;

IT IS FURTHER ORDERED that the Defendant shall immediately vacate the marital home as set forth herein above;

IT IS FURTHER ORDERED that the Plaintiff shall have sole temporary custody of the minor children, with the Defendant having supervised visitation as set forth more fully herein above;

IT IS FURTHER ORDERED that the Defendant shall pay child support to the Plaintiff in the amount of $2,000 per month as set forth more fully hereinabove;

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LISA M. COMER
CLERK OF COURT
LEXINGTON SC

5

IT IS FURTHER ORDERED that the attached parenting guidelines and restrictions shall apply to both parties, and neither shall administer corporal punishment to either minor child;

IT IS FURTHER ORDERED that the Plaintiff shall maintain medical insurance coverage on the minor children, with all noncovered health-related expenses being divided equally between the parties as set forth more fully hereinabove;

IT IS FURTHER ORDERED that Michelle Gorski is appointed as Guardian *ad Litem* for the minor children and she shall conduct an expedited investigation within forty-five (45) days of the date of this Order;

IT IS FURTHER ORDERED that another temporary hearing shall be scheduled at the conclusion of the expedited investigation of the Guardian *ad Litem*;

IT IS FURTHER ORDERED that either Lisa Kinon or Kevin Barth shall serve as the mediator in this case;

IT IS FURTHER ORDERED that the Defendant shall reimburse the Plaintiff the sum of $6,779.33 in private investigative fees, with this sum being paid directly to the Plaintiff within thirty (30) days of the date of this Order;

IT IS FURTHER ORDERED that all other issues shall be held in abeyance pending further Order of the Court.

IT IS SO ORDERED.

W. Greg Seigler
Presiding Judge of the
Family Court for the
Eleventh Judicial Circuit

LISA M. CONNER
CLERK OF COURT
LEXINGTON SC
2021 SEP -9 PM 2:35

Lexington, South Carolina

September 8, 2021

STATE OF SOUTH CAROLINA)
) IN THE FAMILY COURT
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT
)

EMILY P. SMITH,) FILED
Plaintiff,) 2021 SEP -9 PM 2:35 **JUDGMENT IN A FAMILY COURT CASE**

vs.) LISA M. COLLIER
ROBERT TERENCE SMITH,) CLERK OF COURT
Defendant.) LEXINGTON SC Docket No. 2021-DR-32-1578

Submitted by:	
Sheila McNair Robinson P.O. Box 5709 West Columbia, SC 29171	**Attorney for** ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant ☐ GAL

DECISION BY COURT (check all that apply)

☒ This action came to trial, hearing or was resolved by consent and an order was rendered.

☐ This action has been dismissed pursuant to ☐ Rule 12(b), SCRCP ☐ Rule 41(a), SCRCP ☐ Rule 43(k), SCRCP ☐ Family Court Benchmark ☐ Other: ____

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court: ____

☐ Additional information for Clerk:____

ORDER INFORMATION

This is a ☒ Temporary ☐ Final order. If Final, does this order end the case? ☐ Yes ☐ No
Support ☐ is not ordered ☒ is ordered, and it is to be paid ☐ through the court. ☒ directly to the CP.
Case number under which support is paid if different from this one: ____
This order involves the immediate ☐ issuance ☐ dismissal of a bench warrant, or ☐ does not apply.
☐ The following motions are ended by this order (include motion filing date): ____
☐ This order adds or dismisses the following parties to this case:
☐ dismiss ☐ add:____ ☐ dismiss ☐ add:____

INFORMATION FOR THE JUDGMENT INDEX/TRANSCRIPT OF JUDGMENT (§ 20-3-670(B)(1))
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information to enroll, indicate "N/A" in one of the boxes below.

Judgment In Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount to be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order: ____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the South Carolina Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: title abstractors and researchers should refer to the official court order for judgment details.**

Family Court Judge _____ Judge Code 4178 Date 9/8/21

FOR CLERK OF COURT OFFICE USE ONLY

This judgment was entered on the 9/9/21 and a copy mailed first class or placed in the appropriate attorney's box on _____ to attorneys of record or to parties (when appearing pro se) as follows:

Sheila McNair Robinson
ATTORNEY(S) FOR THE PLAINTIFF(S)

Abby Lawton Jones
ATTORNEYS FOR THE DEFENDANT(S)

Lisa Conner
CLERK OF COURT

Court Reporter: _____

Custodial Parent (if applicable): _____

STATE OF SOUTH CAROLINA)
) IN THE FAMILY COURT
) ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)
)
EMILY P. SMITH)
Plaintiff,) **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**
vs.)
)
ROBERT TERENCE SMITH)
Defendant.) Docket No. 2021-DR-32-1578

2021 SEP -9 PM 2:35
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

Plaintiff's Attorney:	Defendant's Attorney:
Sheila McNair Robinson, Bar No. 65385	Ashby Lawton Jones, Bar No.
Address:	Address:
P.O. Box 5709, West Columbia SC 29169	303 S. Lake Dr. , Lexington, SC 29072
Phone: 803-796-9160 Fax 803-791-8410	Phone: (803) 359-1003 Fax(803) 359-1378
E-mail: sheila@mbmlawsc.com Other: ____	E-mail: Ashby@kinardand jones.com Other:

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☒ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion:
Estimated Time Needed: Court Reporter Needed: ☐ **YES**/☐ **NO**

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order Temporary Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff /☐ Defendant — September 2, 2021 Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: _____
☒ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☒ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE CODE _____ Date: _____
☐ Other: _____	Judge Signature: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

Custodial Parent (if applicable): _____SCCA 233F (12/2009)

ELECTRONICALLY FILED - 2022 Apr 28 9:39 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF LEXINGTON)	ELEVENTH JUDICIAL CIRCUIT
)	
Emily P. Smith and Emily P. Smith and Associates, LLC,)	Case No.: 2022-CP-32-____
Plaintiffs,)	
vs.)	
)	
Robert T. Smith; Southern Collection, LLC; Southern Collection Brokerage, LLC; Terrance Smith and Associates, LLC; Robert B. Smith, and Sherry C. Smith,)	**SUMMONS**
Defendants.	

TO: THE ABOVE-NAMED DEFENDANTS AND THEIR ATTORNEYS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served on you, and to serve a copy of your Answer to the said Complaint upon the subscribers at 226 State Street , West Columbia, South Carolina 29169, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in such Complaint.

s/ Desa Ballard
Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)

BALLARD & WATSON
226 State Street
West Columbia, South Carolina 29169
Telephone 803.796.9299
desab@desaballard.com
harvey@desaballard.com
haley@desaballard.com

ATTORNEYS FOR PLAINTIFFS

April 27, 2022

ELECTRONICALLY FILED - 2022 Apr 28 9:39 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF LEXINGTON)	ELEVENTH JUDICIAL CIRCUIT
)	
Emily P. Smith and Emily P. Smith and Associates, LLC,)	Case No.: 2022-CP-32-____
Plaintiffs,)	
vs.)	
)	
Robert T. Smith; Southern Collection, LLC; Southern Collection Brokerage, LLC; Terence Smith and Associates, LLC; Robert B. Smith, and Sherry C. Smith,)	**COMPLAINT (Non-Jury)**
Defendants.)	

TO: **DEFENDANTS NAMED ABOVE:**

Plaintiff Emily P. Smith (hereinafter referred to as "Emily") and Emily P. Smith and Associates LLC (hereafter individually referred to herein as "Emily LLC" and hereinafter collectively referred to herein as "Emily" and/or "Emily and Emily LLC"), complaining of the defendants herein, would respectfully show unto this Honorable Court:

1. Plaintiff Emily is a citizen and resident in the State of South Carolina, County of Lexington.

2. Plaintiff Emily P. Smith and Associates, LLC (hereinafter "Emily LLC") is a Limited Liability Company organized and existing pursuant to the laws of the State of South Carolina with its principal place of business in Lexington County, of which Emily P. Smith is the sole member.

3. On information and belief, Defendant Robert T. Smith, also known as Terence Smith, (hereinafter "Defendant Smith") is a citizen and resident in the State of South Carolina, County of Lexington.

ELECTRONICALLY FILED - 2022 Apr 28 9:39 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

- Amoruso vs. Miller – Forensic accounting services related to lost profits. Charleston County, South Carolina, Ninth Judicial Circuit
- Bittner vs. Chriswell – Forensic accounting services related to lost profits. Charleston County, South Carolina, Ninth Judicial Circuit
- Graybeal vs. Graybeal - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Coggins vs. Calvert - Forensic accounting services related to lost profits. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Guilhamelou vs. Escudero - Forensic accounting services related to lost profits. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Fenchel vs. Fenchel - Forensic accounting services related to marital dissolution. Lancaster County Family Court, South Carolina, Sixth Judicial Circuit
- Arnold vs. Arnold – Forensic accounting services related to guardianship and conservatorship matters. Richland County Probate Court, South Carolina, Fifth Judicial Circuit
- Kane vs. Kane - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Carimi vs. Carimi - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Paige's Property Management vs. RAL Holdings, LLC – Forensic accounting services related to civil litigation. Lexington County, Circuit Court, Eleventh Judicial Circuit
- Gilbert vs. Gilbert – Forensic accounting services related to marital dissolution. Beaufort County Family Court, South Carolina, Fourteenth Judicial Circuit
- Smith vs. Smith - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Lelong v. Lelong – Forensic accounting services related to marital dissolution. Saluda County Family Court, South Carolina, Eleventh Judicial Circuit
- Keppery v. Keppery – Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Hewitt v. Hewitt – Forensic accounting services related to marital dissolution. Lexington County Family Court, South Carolina, Eleventh Judicial Circuit
- Prescott v. Prescott – Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Schneider vs. Schneider - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Borden vs. Borden - Forensic accounting services related to shareholder dispute. Richland County Court of Common Pleas, South Carolina, Fifth Judicial Circuit
- Shumpert vs. Shumpert - Forensic accounting services related to marital dissolution. Lexington County Family Court, South Carolina, Eleventh Judicial Circuit
- Murphy vs. Murphy - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Drew vs. Drew - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Caldwell vs. Caldwell - Forensic accounting services related to marital dissolution. Greenville County Family Court, South Carolina, Thirteenth Judicial Circuit

ELECTRONICALLY FILED - 2022 Apr 28 9:39 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

- Lempesis vs. Leibowitz - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- SeBlonka vs. Westbrook - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Gibson vs. Gibson - Forensic accounting services related to alimony modification. Richland County Family Court, South Carolina, Fifth Judicial Circuit

ROA 0238

Exhibit 2

ELECTRONICALLY FILED - 2022 Apr 28 9:39 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

SOUTHERN COLLECTION LLC
130 STATE ST
WEST COLUMBIA, SC 29169

1478
67-160/532

DATE 5-25-21

PAY TO THE ORDER OF Robert T. Smith $ 35,000.00

Thirty Five Thousand + 00/100 DOLLARS

RB&T BRANCH BANKING AND TRUST COMPANY 1-800-BANK BBT BBT.com

FOR Disposement

Debra Stowell

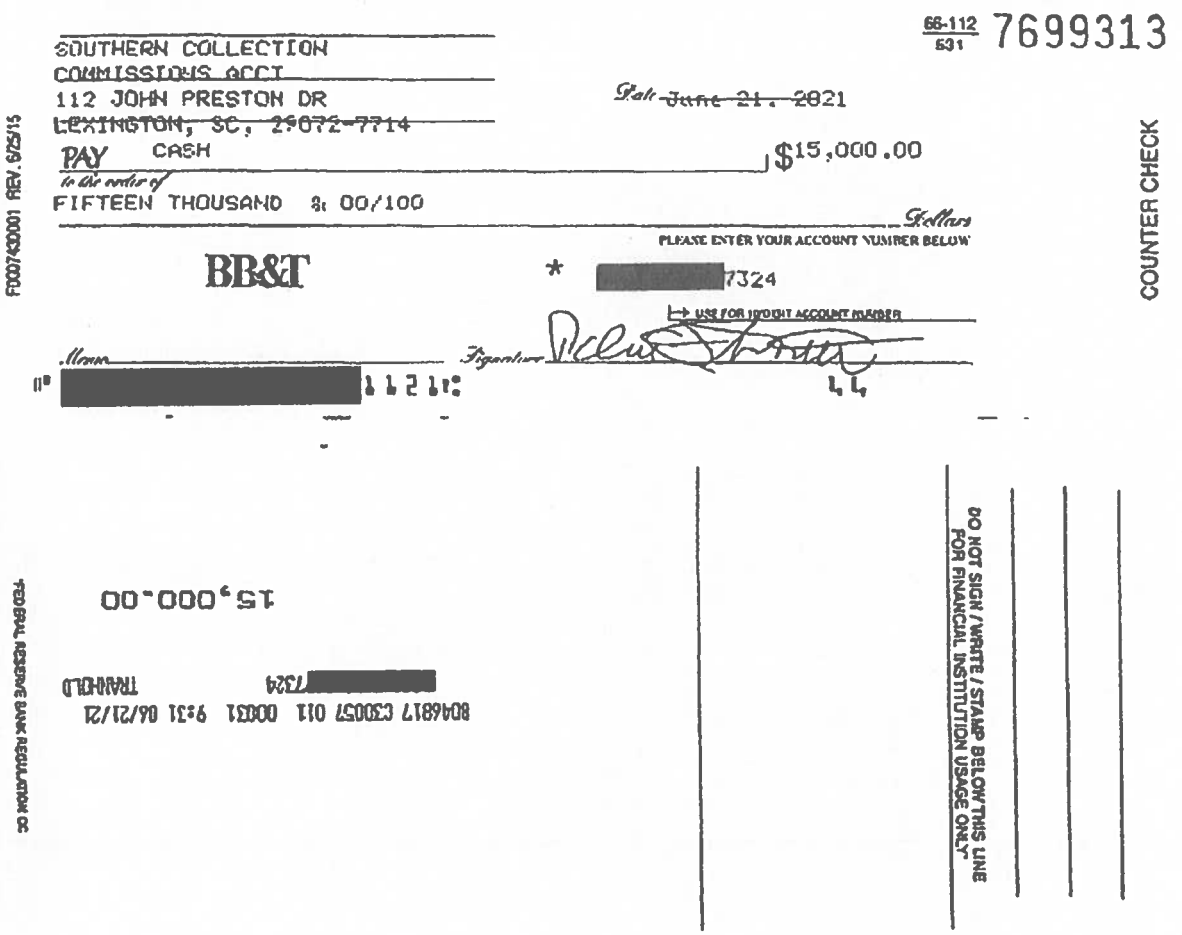
⑈00001478⑈ ⑆[redacted]⑆ 7324⑈

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CHECK BOX FOR MOBILE REMOTE DEPOSIT

ELECTRONICALLY FILED - 2022 Apr 28 9:39 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419



66-112
531 7699313

SOUTHERN COLLECTION
COMMISSIONS ACCT
112 JOHN PRESTON DR
LEXINGTON, SC, 29072-7714

Date June 21, 2021

PAY CASH $15,000.00
to the order of
FIFTEEN THOUSAND & 00/100 Dollars

PLEASE ENTER YOUR ACCOUNT NUMBER BELOW

BB&T * [redacted]7324
USE FOR DEPOSIT ACCOUNT NUMBER

Memo Signature

⑈ [redacted] 1121⑆ 44

COUNTER CHECK

FD007K00001 REV. 6/2/15

ENDORSE HERE

DO NOT SIGN / WRITE / STAMP BELOW THIS LINE
FOR FINANCIAL INSTITUTION USAGE ONLY

15,000.00

TRANDLD [redacted]7324

804817 C30057 011 00031 9:31 04/21/21

FEDERAL RESERVE BANK REGULATION CC

ELECTRONICALLY FILED - 2022 Apr 28 9:39 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

Exhibit 3

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SOUTHERN COLLECTION LLC
130 STATE ST
WEST COLUMBIA, SC 29169

1387
67-160/532

DATE 3-11-21

PAY TO THE ORDER OF Terence Smith & Associates LLC $ 7148.75

Seven thousand one hundred forty eight & 75 DOLLARS

BB&T BRANCH BANKING AND TRUST COMPANY

FOR Commission Naples

⑈00001387⑈ ⑆[redacted]⑆ [redacted]3241⑈

[redacted] 00001387

[redacted]321

SOUTHERN COLLECTION LLC

Security Features exceed industry standards and include
- ImageMatch®: Matching account and check number on back (Patent No. 9,240,089)
- MobileMark®: Mobile Deposit check mark to indicate check has been deposited via mobile device
- The Security Weave® pattern on back designed to deter fraud
- Microprint (MP) lines printed on front and back
- The words "ORIGINAL DOCUMENT" across the back
- Photo Safe Deposit® icon visible on front and back

Do not cash if:
- Any of the features listed above are missing or appear altered
- Fugitive ink on back looks pink or has disappeared
- Brown stains or colored spots appear on both front and back, and in Chemical Wash Detection Box

Photo Safe Deposit®

ENDORSE HERE

X _____

☐ CHECK BOX FOR MOBILE/REMOTE DEPOSIT

WRITE NAME OF FINANCIAL INSTITUTION ON LINE ABOVE

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Exhibit 4

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SOUTHERN COLLECTION LLC
130 STATE ST
WEST COLUMBIA, SC 29169

1156
67-160/532

DATE 8-17-21

PAY TO THE ORDER OF Tessa Smith & Associates LLC $ 6822.19

six thousand eight hundred twenty-two + 19/100 DOLLARS

BB&T BRANCH BANKING AND TRUST COMPANY

FOR 180 Middleton + 679 Pleasant View

Dolores Thrift

⑈0000 1156⑈ ⑆[redacted]7324⑈

[redacted] 1156

[redacted]

SOUTHERN CO[redacted]

Security features exceed industry standards and include:
- ImageMate - Matching account and check number on back
- MobileMark - Mobile Deposit check mark to indicate check has been deposited via mobile device
- The Security Weave® pattern on back designed to deter fraud
- Micropoint (MP) lines printed on front and back
- The words "ORIGINAL DOCUMENT" across the back
- Photo Safe Deposit - icon visible on front and back

Do not cash if:
- Any of the features listed above are missing or appear altered
- Fugitive ink on back looks pink or has disappeared
- Brown stains or colored spots appear on both front and back and in Chemical Wash Detection Box

CHECK 1156 FOR MOBILE HI NOTE DEPOSIT

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SOUTHERN COLLECTION LLC
130 STATE ST
WEST COLUMBIA, SC 29169

1160
67-160/532

DATE 8.30.21

PAY TO THE ORDER OF Terence Smith $ 24,788.56

twenty four thousand seven hundred eighty-eight & 56/100 DOLLARS

BB&T BRANCH BANKING AND TRUST COMPANY 1-800-BANK BBT BBT.com

244 Wallace 330 Spring MAST

FOR 1303 Fair, 601 Main, Carlton Ct 180 Middleton, 679 Pleasant View

⑈00001160⑈ ⑆[redacted]7324⑈

[redacted]

Terence Smith

ELECTRONICALLY FILED - 2022 Apr 28 9:39 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

Exhibit 5

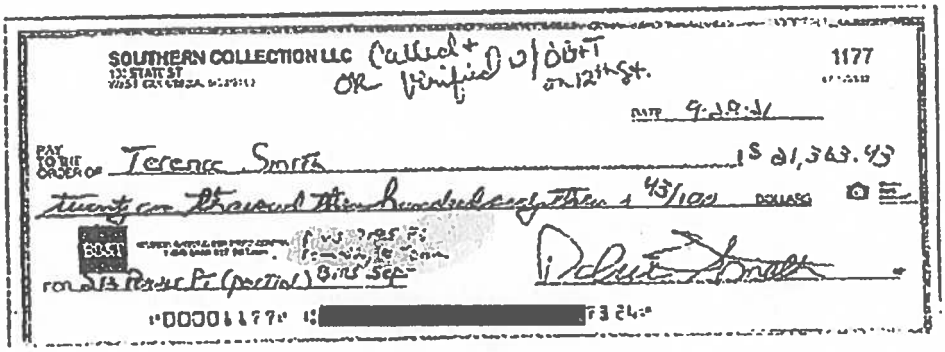
ELECTRONICALLY FILED - 2022 Apr 28 9:39 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

ELECTRONICALLY FILED - 2022 Apr 28 9:39 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419



Front

Back


SOUTHERN COLLECTION LLC
133 STATE ST
WEST COLUMBIA, SC 29169

Called + Verified $/DOFT on 12th St.

1177

DATE 9-28-21

PAY TO THE ORDER OF Terence Smith $ 21,363.43

twenty one thousand three hundred sixty three & 43/100 DOLLARS

FOR 213 Rosser Pl (partial) Bills Sep

⑈001177⑈ ⑆[redacted]⑆ 3 24⑈

- not paid to TS & ASSOC.

Exhibit 6

ELECTRONICALLY FILED - 2022 Apr 28 9:39 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

SOUTHERN COLLECTION LLC
130 STATE ST
WEST COLUMBIA, SC 29169

1323
67-160/532

DATE 11-27-2020

PAY TO THE ORDER OF Robert T. Smith $ 12,246.98

Twelve thousand two hundred forty six & 98/100 DOLLARS

BB&T BRANCH BANKING AND TRUST COMPANY 1-800-BANK BBT BBT.com

FOR profit thru Sept 30

⑈00001323⑈ ⑆[redacted]⑆ 7324⑈

[redacted]

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Exhibit 7

ELECTRONICALLY FILED - 2022 Apr 28 9:39 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

Business Entities Online

File, Search, and Retrieve Documents Electronically

Southern Collection Brokerage, LLC

Corporate Information

Entity Type: Limited Liability Company

Status: Good Standing

Domestic/Foreign: Domestic

Incorporated State: South Carolina

Important Dates

Effective Date: 10/19/2021

Expiration Date: N/A

Term End Date: N/A

Dissolved Date: N/A

ROA 0252

ROA 0252

Registered Agent

Agent: Robert T. Smith

Address: 130 State St.
West Columbia, South Carolina 29169

Official Documents On File

Filing Type	Filing Date
Articles of Organization	10/19/2021

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ROA 0253

ELECTRONICALLY FILED - 2022 Apr 28 10:02 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF LEXINGTON)	ELEVENTH JUDICIAL CIRCUIT
)	
Emily P. Smith and Emily P. Smith and Associates, LLC,)	Case No.: 2022-CP-32-___
Plaintiffs,)	
vs.)	
)	
Robert T. Smith; Southern Collection, LLC; Southern Collection Brokerage, LLC; Terence Smith and Associates, LLC; Robert B. Smith, and Sherry C. Smith,)	**EMERGENCY MOTION FOR APPOINTMENT OF RECEIVER**
Defendants.)	

TO: THE DEFENDANTS NAMED ABOVE

Plaintiff Emily P. Smith (hereinafter "Emily) and Emily P. Smith and Associates LLC (hereafter individually referred to herein as "Emily LLC" and hereinafter collectively referred to herein as "Emily"), by and through their undersigned counsel, move before this Court for an order:

(1) Appointing Jackson Cobb as Receiver over Southern Collection, LLC for purposes of taking possession of and managing the and the company's assets and income pursuant to S.C. Code Ann. § 15-65-10; and for an order

(2) authorizing the Receiver to dissolve Southern Collection, LLC pursuant to S.C. Code Ann. § 33-44-801 and (3), installing the Receiver as managing member of Southern Collection, LLC and to wind up the business and make such accounting as is necessary to distribute the assets pursuant to S.C. Code Ann. § 33-44-803.

This motion is based upon the foregoing authority and the following:

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1. Defendant Southern Collection, LLC (hereinafter "the dissolved LLC")[1] is a limited liability company organized and existing pursuant to the laws of the State of South Carolina with its principal place of business in Lexington County.

2. On or about May 25, 2020, Emily and Defendant Robert T. Smith (hereinafter "Defendant Smith") formed the dissolved LLC for purposes of operating a real estate company. They are equal co-owners of the dissolved LLC.

3. On information and belief, there is no operating agreement, but the pattern and practice of the dissolved LLC was to distribute fifty percent of net proceeds and sales commissions to Emily and fifty percent to Defendant Smith, regardless of whether a property was sold by Emily or Defendant Smith, and other sources of their team and/or agents' income were divided equally between the two members.

4. During the summer of 2020, Defendant Smith began forcing Emily out of the dissolved LLC. As evidenced by an initial audit of the dissolved LLC's business accounts from January 1, 2021 to September 30, 2021, **Exhibit B**,[2] Defendant Smith has repeatedly overpaid himself for commissions from the dissolved LLC, taken improper "partner distributions" and withheld commissions due to Emily for at least thirteen property sales generated through the dissolved LLC.

5. On or about October 19, 2021, Defendant Smith formed Southern Collection Brokerage, LLC (hereinafter "Brokerage LLC"). Since that time, Defendant Smith has been conducting the business of the dissolved LLC through Brokerage LLC

---

[1] Southern Collection LLC is not dissolved, but Emily has filed a statement of disassociation contemporaneously with the filing of the action in order to start the dissolution process. **Exhibit A**.

[2] The audit to date has been done based on information available to Emily, and is obviously incomplete, but tells a dramatic story of repeated and multiple events of misappropriation by Defendant Smith of income and assets of the dissolved LLC solely for his own benefit. Among the responsibilities of the receiver will be to perform an accounting to properly divide the business assets and debts.

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without Emily's knowledge or consent. On information and belief, Defendant Smith will continue to operate the dissolved LLC for his sole advantage or as an agent of Southern Collection Brokerage, LLC, of which he is the sole member.

6. On information and belief, Defendant Smith has and continues to control, divert or misappropriate most or all of the income and assets of both their real estate team and the dissolved LLC to himself as unauthorized "partner distributions" or to Brokerage LLC, of which he is the sole owner, with the intent to deprive Emily and Emily LLC.

7. The intentional diversion and misappropriation of the assets of the dissolved LLC by Defendant Smith have occurred without the knowledge or consent of Emily.

8. As co-owner of the dissolved LLC and real estate team, Emily has an interest and is entitled to the assets of the dissolved LLC. Those assets, which are currently in the possession of Defendant Smith, are in danger of being lost or materially injured or impaired. Therefore, the appointment of a Receiver is proper in the instant circumstances.

9. Emily has retained the services of Jackson Cobb, SRA, CCIM, who consents to serving as Receiver over the dissolved LLC for the purpose of dissolving and winding up the business. **Exhibit C**. Attached to this motion as **Exhibit D** is Mr. Cobb's CV in support of his suitability to serve as Receiver.

Wherefore, Plaintiff Emily respectfully requests that this Court order the following relief:

A. Appointment of Jackson Cobb as Receiver over the dissolved LLC, granting the Receiver all powers necessary to marshal the assets of the dissolved LLC, account and hold them in trust for the purpose of dissolving and winding up the business.

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B. That the Receiver be authorized to do all things necessary and perform all acts and hire all professionals required to investigate, identify, and attempt to locate all the assets of the dissolved LLC.

C. That the Receiver be authorized to take any and all steps necessary to identify, recover, preserve, manage, liquidate, sell, administer and marshal all of the assets of the dissolved LLC during the pendency and final resolution of this matter.

D. That the Receiver is installed as the sole managing member of Southern Collection, LLC.

E. That the Receiver have the right to reasonable compensation.

F. That costs incurred by the Receiver in carrying out the Receivership be charged against the assets and income due to Defendant Smith resulting from the dissolution of the dissolved LLC.

G. For any other relief as this Court may deem just and proper.

s/ Desa Ballard
Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)

BALLARD & WATSON
226 State Street
West Columbia, South Carolina 29169
Telephone 803.796.9299
desab@desaballard.com
harvey@desaballard.com
haley@desaballard.com

ATTORNEYS FOR PLAINTIFF

April 28, 2022

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

Apr 27 2022
REFERENCE ID: 1026011

Mark Hammond

Filing ID: 220427-1415219

Filing Date: 04/27/2022

EXHIBIT
tabbies
A

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

MEMBERS STATEMENT OF DISSOCIATION FROM A LIMITED LIABILITY COMPANY

The following member of the listed limited liability company hereby files this Statement of dissociation in accordance with Section 33-44-704 of the 1976 S.C. Code of Laws, as amended

1. Name of the limited liability company from which a member has dissociated:

   Southern Collection, LLC

2. Name of member who has dissociated from the limited liability company:

   Emily P. Smith
   (Name)
   112 John Preston Drive
   (Street Address)
   Lexington, South Carolina 29072
   (City, State, Zip Code)

3. Unless otherwise specified, this statement is effective when endorsed for filing by the Secretary of State. Specify any delayed effective date and time: _____
   (Date)

4. This statement is being filed by:

   [X] a. The dissociating member:

   Signed as Filer: Desa Ballard
   (Signature)
   04/27/2022
   (Date)

   [ ] b. The limited liability company:

   _____
   (Signature)
   _____
   (Date)
   _____
   (Print Name)
   _____
   (Capacity)

Form Revised by South Carolina Secretary of State, August 2016
F0050

SC Secretary of State
Mark Hammond

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CERTIFIED TO BE A TRUE AND CORRECT COPY
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ORIGINAL ON FILE IN THIS OFFICE

Apr 27 2022
REFERENCE ID: 1028011

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

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STATE OF SOUTH CAROLINA
SECRETARY OF STATE

MEMBERS STATEMENT OF DISSOCIATION FROM A LIMITED LIABILITY COMPANY

The following member of the listed limited liability company hereby files this Statement of dissociation in accordance with Section 33-44-704 of the 1976 S.C. Code of Laws, as amended.

1. Name of the limited liability company from which a member has dissociated:

   Southern Collection, LLC

2. Name of member who has dissociated from the limited liability company.

   Emily P. Smith
   (Name)

   112 John Preston Drive
   (Street Address)

   Lexington, SC 29072
   (City, State, Zip Code)

3. Unless otherwise specified, this statement is effective when endorsed for filing by the Secretary of State. Specify any delayed effective date and time: _____
   (Date)

4. This statement is being filed by:

   ☑ a. The dissociating member:

   _____
   (Signature)

   _____
   (Date)

   ☐ b The limited liability company:

   _____
   (Signature)

   _____
   (Date)

   _____
   (Print Name)

   _____
   (Capacity)

Form Revised by South Carolina Secretary of State, August 2016
F0050

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

Apr 27 2022
REFERENCE ID: 1028011

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

Business Name: Southern Collection, LLC

Signature Page for a Secretary of State Business Filing

This form must be completed, scanned, and attached to any business filing where one of the following is true.

- The filing party signs the digital form on behalf of official signee.
- An attorney's signature is required. (Articles of Incorporation for Corporation and Benefit Corporation)

Official Signatures

(Officer, Incorporator, Director, Agent, Partner, etc)
Required for forms where the signee is not present upon online submission and a filing party is providing a digital signing on their behalf. If the provided space is not enough, please attach multiple pages.

Desa Ballard	4.27.2022
Name	Date
Desa Ballard	Attorney
Signature	Title / Position
Emily P. Smith	4-27-2022
Name	Date
Emily P. Smith	owner
Signature	Title / Position
Name	Date
Signature	Title / Position
Name	Date
Signature	Title / Position
Name	Date
Signature	Title / Position

Scan and Upload this document to the Business Filing System during the filing process.
File must be PDF format.

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EXHIBIT B

ELECTRONICALLY FILED - 2022 Apr 28 10:02 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON Emily P. Smith and Emily P. Smith and Associates, LLC, Plaintiffs, vs. Robert T. Smith; Southern Collection, LLC; Southern Collection Brokerage, LLC; Terrance Smith and Associates, LLC; Robert B. Smith, and Sherry C. Smith, Defendants.	)	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT Case No.: **AFFIDAVIT OF CHRISTOPHER LEVENTIS**

PERSONALLY appeared before me Christopher L. Leventis, MAcc, CPA, CVA, CMA, CFE, who, being duly sworn, deposes and states:

1. I am a citizen and resident of South Carolina and I am over the age of 18. This affidavit is sworn on my personal knowledge, unless otherwise stated, and I am competent to testify to the matters stated herein.
2. I am a Certified Public Accountant licensed by the state of South Carolina. I am the sole owner of Leventis Financial, LLC. My curriculum vitae is attached as **Exhibit 1**.
3. I was retained by Emily Smith to assist her and her attorney in the above referenced matter in which I understand Emily seeks to liquidate and dissolve her existing business relationship with Robert Terence Smith (hereinafter "Defendant Smith") known as Southern Collection LLC and recover funds due to her from Southern Collection LLC and third parties.
4. Fees for services rendered are based upon the time required at standard hourly billing rates plus out-of-pocket expenses. My fees are not contingent upon the outcome of this matter.

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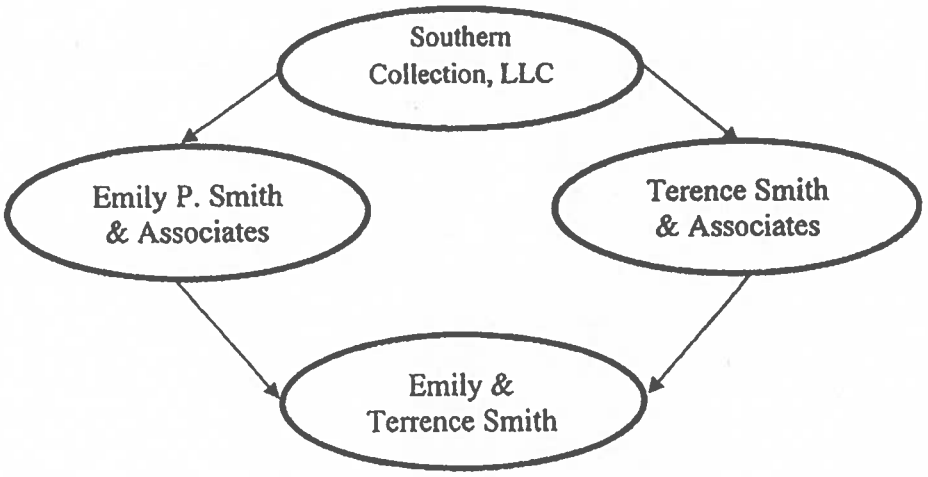
5. My hourly billing rate for this matter is $250.00 and my staff billing rates range from $115.00 to $195.00 per hour.

Background: General Business

6. Emily and Defendant Smith are real estate agents. Their first business together, entitled Purpose Driven Real Estate, LLC, was formed on September 19, 2012. This entity was sold to their third partner in 2020.
7. Following the sale of Purpose Driven Real Estate, LLC, Emily and Defendant Smith formed Southern Collection, LLC (hereinafter "Southern Collection") on May 25, 2020. Upon information and belief, they are equal co-owners of this business.
8. Southern Collection is a franchise of RE/MAX.
9. After discussions with Emily, my understanding is that Southern Collection makes revenue from the following sources:
   I. Sales commissions (operating on both sell and buy side) – revenue resulting from transactions from either Emily or Defendant Smith
   II. Brokerage fees (5% of commissions from Emily, Defendant Smith, and other agents affiliated with Southern Collection) – revenue to cover operating expenses and RE/MAX fees
   III. "Desk fees" – flat, monthly fees from agents within the office including Emily, Defendant Smith, and other agents (payments range from $195 to $695 per agent per month)
   IV. Administrative Fee (fee received from agents by Southern Collection ranging from $199 to $299)

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10. Emily and Defendant Smith each have an S Corporation they individually own. Defendant Smith's is entitled Terence Smith & Associates, LLC, and Emily's is entitled Emily P Smith & Associates, LLC. Income and Expenses flow from Southern Collection to these S Corporations in equal apportionment.
11. Historically, Parties' share of revenue from Southern Collection has been approximately 50/50. Thus, whether a property is listed / sold by Emily or Defendant Smith, each historically receive 50% of the net commissions received (after being reduced by brokerage fees).
12. Historically, a greater portion of the business expenses were deducted on Defendant Smith's S Corporation return.
13. By their nature, S Corporation's are "flow through" entities, meaning their taxable income flows to the owners' individual tax return. Thus, the taxable income from both Emily and Defendant Smith's S Corporations are reported and taxed on their individual tax returns.
14. Below is a flow chart summarizing the above:



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Background: Financial Accounts

15. Below is a summary of Parties' known business bank accounts to include bank, last four digits of the account number, owner, and a description of the purpose of the account as understood from discussions with Emily:

I. BB&T #7324 – Southern Collection commissions account

i. Deposits include all commissions received from a transaction (including Emily, Defendant Smith, and other agents)

ii. The following were historical disbursements from this account:

1. To Emily P Smith & Associates - portion of commissions for Emily's share
2. To Terence Smith & Associates – portion of commissions for Defendant Smith's share
3. To agents – portion of commissions for a particular agent's share when the agent is not Emily or Defendant Smith
4. To BB&T #7316 (operating account) – brokerage fee (5% of commissions)

iii. The following were not historical disbursements:

1. Distributions, withdrawals, or the like to Emily or Defendant Smith aside from commissions

II. BB&T #7316 – Southern Collection operating account

i. The following were historical deposits:

1. Brokerage fees
2. Desk fees

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3. Administrative fees

ii. The following were historical disbursements from this account:

1. General office expenses including, but not limited to, internet, utilities, payroll, supplies, rent, insurance, and RE/MAX fees were historically paid from this account.

iii. After expenses were paid from this account from the monies previously explained, the remaining profit was to be distributed via profit sharing plan. The profit-sharing plan was never put in writing, but was verbally described as allotting the profit as follows:

1. Emily: 35%
2. Defendant Smith: 35%
3. Team Leads: 30%

iv. After conversations with Emily and a review of an email from a team lead, it appears these distributions were not being made. Thus, as co-owners of the business, profits would be allotted as follows:

1. Emily: 50%
2. Defendant Smith: 50%

Initial Review: January 1, 2021, through September 30, 2021

16. I am actively reviewing business accounts and other related information as documents are being produced in this matter. The below findings are from an initial review of the documentation received from January 1, 2021, through September 30, 2021.

17. Net commissions from sales for transactions directly involving Emily or Defendant Smith (not other agents) due to Defendant Smith were $309,397.66 and $309,244.98 to Emily.

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18. A review of the commissions account (BB&T #7324) yielded the following:
    I. Checks to Defendant Smith - $398,919.02
        i. Resulting overpayment of $89,521.36 when comparing commissions due to monies actually received for commissions.
    II. Checks to Emily - $267,974.94
        i. Resulting shortage of ($41,270.04) when comparing commissions due to monies actually received for commissions.
19. Checks written from the commissions account include details on the memo line (most frequently the address of the property the commissions check is written for).
20. Defendant Smith's surplus of $89,521.36 for monies received as compared to monies owed for commissions was primarily driven by the following:
    I. Check #1478 for $35,000.00 – disbursement to Robert T. Smith
    II. Check #7699313 for $15,000.00 – Cash
21. See attached **Exhibit 2** for check #1478 and check #7699313
22. In addition to those larger items, Defendant Smith's surplus was also due to the following:
    I. Overpayment of commissions as compared to the actual commissions due
        i. For example, check #1387 for $7,148.75 was for a property located at 219 Naples. The net commission that was supposed to be received by both Emily and Defendant Smith was $3,063.50 each. Defendant Smith received $4,085.25 over and above the amount due to him and Emily was **not provided** a check for her commissions of $3,063.50.
        ii. See **Exhibit 3** attached.

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II. Defendant Smith paying himself commissions more than once for the same property.

i. For example, check #1156 for $6,822.19 shows properties at 180 Middleton and 679 Pleasant View on the memo line.

ii. Check #1160 for $24,788.56 shows several properties on the memo line, to also include 180 Middleton and 679 Pleasant View.

iii. See attached **Exhibit 4** for these checks.

III. Additional payments for "team bills".

i. The memo line on check #1177 shows $7,195.86 for September team bills.

ii. Historically, team bills were not paid by disbursing funds from the commissions account.

iii. See **Exhibit 5** attached.

23. In addition to the above, check #1323 for $12,246.98 from the commissions account was written to Robert T. Smith in November 2020. The memo line read "profit thru Sept 30". It is currently unknown whether this was for commissions due to Defendant Smith or whether this payment was in excess of commissions due to Defendant Smith. Historically, the memo line stated the properties in which the checks were written for. See **Exhibit 6** attached.

24. Emily's shortage is a result of not being paid commissions from approximately 13 sales in which she was the agent.

25. Emily only received checks with property addresses listed in the memo line. She did not receive any "disbursements".

26. Defendant Smith has been historically in charge of this account.

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27. As previously discussed, BB&T #7316 is the operating account for Southern Collection. This account is where brokerage fees, desk fees, and administrative fees are to be deposited. From January 1, 2021, through August 31, 2021, there were a total of $155,362.29 in deposits. These funds were to be used to **cover company expenses** with the remaining profit to be disbursed. Defendant Smith has been historically in charge of this account.

Other Concerns and Conclusion

28. On October 19, 2021, Defendant Smith formed a new entity entitled Southern Collection Brokerage, LLC. It is my belief that there are additional bank / credit card accounts that are currently unknown. See **Exhibit 7** attached.

29. As additional information is received through discovery, I reserve the right to amend this affidavit through writing or direct testimony.

SWORN TO before me this

27th day of April, 2022.

Christopher L. Leventis

Christopher L. Leventis, MAcc, CPA, CVA, CMA, CFE

Notary Public for South Carolina

Allyson S. Hurst

Printed Name

My commission expires: 11-16-27

Exhibit 1

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Christopher L. Leventis

1913 Bull Street · 803.748.2644
Chris@leventisfinancial.com

PROFESSION

- Leventis Financial, LLC (Financial Litigation Support Services and Business Valuation Firm)

EDUCATION

Master of Accountancy, University of South Carolina, May 2016

- Audit track with a concentration in data analytics

Bachelor of Arts in Accounting, Furman University, May 2013

CERTIFICATIONS AND AWARDS

- Certified Public Accountant (CPA)
- Certified Management Accountant (CMA)
- Certified Valuation Analyst (CVA)
- Certified Fraud Examiner (CFE)
- NACVA and CTI 2019 *40 Under 40 Honoree*

WORK EXPERIENCE

August 2018 – Present

Owner; **Leventis Financial, LLC**

- Provides services in litigation support to include matrimonial, civil, and criminal law
- Litigation services include, but are not limited to, expert testimony, business valuation, marital estate valuation, lifestyle analysis, hidden income and hidden asset identification, financial statement fraud, wrongful death, lost earnings, and business interruption claims
- Provides services in Business Valuation for purposes including, but not limited to, litigation and ownership disputes, marital dissolution, estate and gift tax, mergers and acquisitions, financial reporting, and business planning

November 2019 – Present

Board Member & Treasurer; **Palmetto Foundation for Prevention and Recovery**

- Implements financial controls for the non-profit
- Oversees all donation receipts and expense disbursements
- Assists in fundraising efforts as well as growth strategy

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May 2019 – Present

Board Member; **Bob McNair Institute**

- Help promote entrepreneurism and free enterprise to students and young entrepreneurs
- Assist young companies and ultimately enhance economic growth

June 2017 – April 2018

Consultant; **Dixon Hughes Goodman**

- Provided services to multiple Fortune 500 companies to include financial planning and analysis, process improvement, process automation, and redevelopment of statutory financial statement models

July 2016 – April 2017

Accountant; **Burkett, Burkett, and Burkett, CPA**

- Provided services in litigation support and business valuations
- Prepared corporate and individual tax returns
- Provided services in audit (primarily not-for-profit entities)
- Corporate bookkeeping (which includes entity Quickbooks management)

PROFESSIONAL ORGANIZATIONS

- American Academy of Matrimonial Lawyers – Forensics and Business Valuation Division
- American Institute of Certified Public Accountants (AICPA)
- South Carolina Association of Certified Public Accountants
- Institution of Management Accountants (IMA)
- National Association of Certified Valuation Analysts (NACVA)
- Association of Certified Fraud Examiners (ACFE)

SPEAKING ENGAGEMENTS, PUBLISHINGS, & VOLUNTEER WORK

- 2019 Hot Tips from the Coolest Domestic Law Practitioners – Speaker
- *The Value Examiner* by NACVA & CTI (September / October 2020 addition) – Practicing Solo segment feature
- Mentor for the Association of Certified Fraud Examiners

CASES WORKED OR IN PROGRESS

- Brannigan vs. Brannigan – Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Willis vs. Willis - Forensic accounting services related to marital dissolution. Aiken County Family Court, South Carolina, Second Judicial Circuit

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- Bartley vs. Bartley - Forensic accounting services related to marital dissolution. Saluda County Family Court, South Carolina, Eleventh Judicial Circuit
- Davis vs. Davis - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Kay vs. Kay - Forensic accounting services related to alimony modification. York County Family Court, South Carolina, Sixteenth Judicial Circuit
- Smith vs. Smith - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Siddons vs. Siddons - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Barnhouse vs. Barnhouse - Forensic accounting services related to marital dissolution. York County Family Court, South Carolina, Sixteenth Judicial Circuit
- Daly vs. Daly - Forensic accounting services related to marital dissolution. Aiken County Family Court, South Carolina, Second Judicial Circuit
- Reid vs. Reid - Forensic accounting services related to marital dissolution. Lexington County Family Court, South Carolina, Eleventh Judicial Circuit
- Shelton vs. Shelton - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Brantley vs. Brantley - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Pool vs. Pool - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Tarnowska vs. Tarnowska - Forensic accounting services related to marital dissolution. Aiken County Family Court, South Carolina, Second Judicial Circuit
- Atkins vs. Atkins - Forensic accounting services related to marital dissolution. Calhoun County Family Court, South Carolina, First Judicial Circuit
- Jennings vs. Jennings - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Miller vs. Miller - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Hensley vs. Hensley - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Ross vs. Ross - Forensic accounting services related to marital dissolution. Sumter County Family Court, South Carolina, Third Judicial Circuit
- Hayfield vs. Hayfield - Forensic accounting services related to marital dissolution. Aiken County Family Court, South Carolina, Second Judicial Circuit
- Witherspoon vs. Witherspoon - Forensic accounting services related to marital dissolution. Clarendon County Family Court, South Carolina, Third Judicial Circuit
- Riley vs. Riley - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Koenig vs. Koenig - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Lemon vs. Lemon - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit

ELECTRONICALLY FILED - 2022 Apr 28 10:02 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

- Bittner vs. Chriswell – Forensic accounting services related to economic damages. South Carolina Court of Common Pleas, Charleston County, Ninth Judicial Circuit
- Lobash vs. Lobash - Forensic accounting services related to marital dissolution. Lexington County Family Court, South Carolina, Eleventh Judicial Circuit
- Liles vs. Liles - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Drolshagen vs. Drolshagen - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Melendez vs. Melendez - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Green vs. Green - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Powell vs. Powell - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Stoney vs. Stoney - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Healy vs. Healy - Forensic accounting services related to post-marital dissolution. Florence County Family Court, South Carolina, Twelfth Judicial Circuit
- Green vs. Green - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Bridwell vs. Bridwell - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Griffin vs. Griffin - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Delaney vs. Delaney - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Meisner vs. Meisner - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Danko vs. Danko - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Halfacre vs. Shi - Forensic accounting services related to marital dissolution. Georgetown County Family Court, South Carolina, Fifteenth Judicial Circuit
- Smyth vs. Smyth - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Simmons vs. Simmons - Forensic accounting services related to marital dissolution. Aiken County Family Court, South Carolina, Second Judicial Circuit
- Holmes vs. Holmes - Forensic accounting services related to post-marital dissolution. Florence County Family Court, South Carolina, Twelfth Judicial Circuit
- Lieske vs. Lieske - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Moss vs. Moss - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Waltz vs. Waltz - Forensic accounting services related to marital dissolution. Calhoun County Family Court, South Carolina, First Judicial Circuit

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- Nord vs. Nord - Forensic accounting services related to marital dissolution. Lexington County Family Court, South Carolina, Eleventh Judicial Circuit
- Harling vs. Harling - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Vanderbleek vs. Vanderbleek - Forensic accounting services related to marital dissolution. York County Family Court, South Carolina, Sixteenth Judicial Circuit
- Kelly vs. Kelly - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Richardson vs. Richardson - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Sanders vs. Sanders - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Smith vs. Smith - Forensic accounting services related to marital dissolution. Lexington County Family Court, South Carolina, Eleventh Judicial Circuit
- Haltiwanger vs. Haltiwanger - Forensic accounting services related to marital dissolution. Aiken County Family Court, South Carolina, Second Judicial Circuit
- Pietro vs. Pietro - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Fravel vs. Fravel - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- West vs. West - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Cheatham vs. Cheatham - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Webb vs. Webb - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Ives vs. Ives - Forensic accounting services related to marital dissolution. Sumter County Family Court, South Carolina, Third Judicial Circuit
- Hulsey vs. Hulsey - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Howell vs. Howell - Forensic accounting services related to marital dissolution. Georgetown County Family Court, South Carolina, Fifteenth Judicial Circuit
- Crantford vs. Crantford - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Dickson vs. Dickson - Forensic accounting services related to alimony modification. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Downey vs. Downey - Forensic accounting services related to marital dissolution. Lexington County Family Court, South Carolina, Eleventh Judicial Circuit
- Shumpert vs. Shumpert - Forensic accounting services related to marital dissolution. Lexington County Family Court, South Carolina, Eleventh Judicial Circuit
- Snyder vs. Catalano - Forensic accounting services related to marital dissolution. Beaufort County Family Court, South Carolina, Fourteenth Judicial Circuit
- M&W Transport LLC vs. Concrete Supply Co, LLC – Forensic accounting services related to lost profits. Richland County

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- Amoruso vs. Miller – Forensic accounting services related to lost profits. Charleston County, South Carolina, Ninth Judicial Circuit
- Bittner vs. Chriswell – Forensic accounting services related to lost profits. Charleston County, South Carolina, Ninth Judicial Circuit
- Graybeal vs. Graybeal - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Coggins vs. Calvert - Forensic accounting services related to lost profits. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Guilhamelou vs. Escudero - Forensic accounting services related to lost profits. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Fenchel vs. Fenchel - Forensic accounting services related to marital dissolution. Lancaster County Family Court, South Carolina, Sixth Judicial Circuit
- Arnold vs. Arnold – Forensic accounting services related to guardianship and conservatorship matters. Richland County Probate Court, South Carolina, Fifth Judicial Circuit
- Kane vs. Kane - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Carimi vs. Carimi - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Paige's Property Management vs. RAL Holdings, LLC – Forensic accounting services related to civil litigation. Lexington County, Circuit Court, Eleventh Judicial Circuit
- Gilbert vs. Gilbert – Forensic accounting services related to marital dissolution. Beaufort County Family Court, South Carolina, Fourteenth Judicial Circuit
- Smith vs. Smith - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Lelong v. Lelong – Forensic accounting services related to marital dissolution. Saluda County Family Court, South Carolina, Eleventh Judicial Circuit
- Keppery v. Keppery – Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Hewitt v. Hewitt – Forensic accounting services related to marital dissolution. Lexington County Family Court, South Carolina, Eleventh Judicial Circuit
- Prescott v. Prescott – Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Schneider vs. Schneider - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Borden vs. Borden - Forensic accounting services related to shareholder dispute. Richland County Court of Common Pleas, South Carolina, Fifth Judicial Circuit
- Shumpert vs. Shumpert - Forensic accounting services related to marital dissolution. Lexington County Family Court, South Carolina, Eleventh Judicial Circuit
- Murphy vs. Murphy - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Drew vs. Drew - Forensic accounting services related to marital dissolution. Richland County Family Court, South Carolina, Fifth Judicial Circuit
- Caldwell vs. Caldwell - Forensic accounting services related to marital dissolution. Greenville County Family Court, South Carolina, Thirteenth Judicial Circuit

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- Lempesis vs. Leibowitz - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- SeBlonka vs. Westbrook - Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit
- Gibson vs. Gibson - Forensic accounting services related to alimony modification. Richland County Family Court, South Carolina, Fifth Judicial Circuit

ROA 0276

Exhibit 2

ELECTRONICALLY FILED - 2022 Apr 28 10:02 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

SOUTHERN COLLECTION LLC
130 STATE ST
WEST COLUMBIA, SC 29169

1478
67-160/532

DATE 5-25-21

PAY TO THE ORDER OF Robert T. Smith $ 35,000.00

Thirty five thousand + 00/100 DOLLARS

BB&T BRANCH BANKING AND TRUST COMPANY 1-800-BANK BBT BBT.com

FOR Disposition

Robert T. Smith

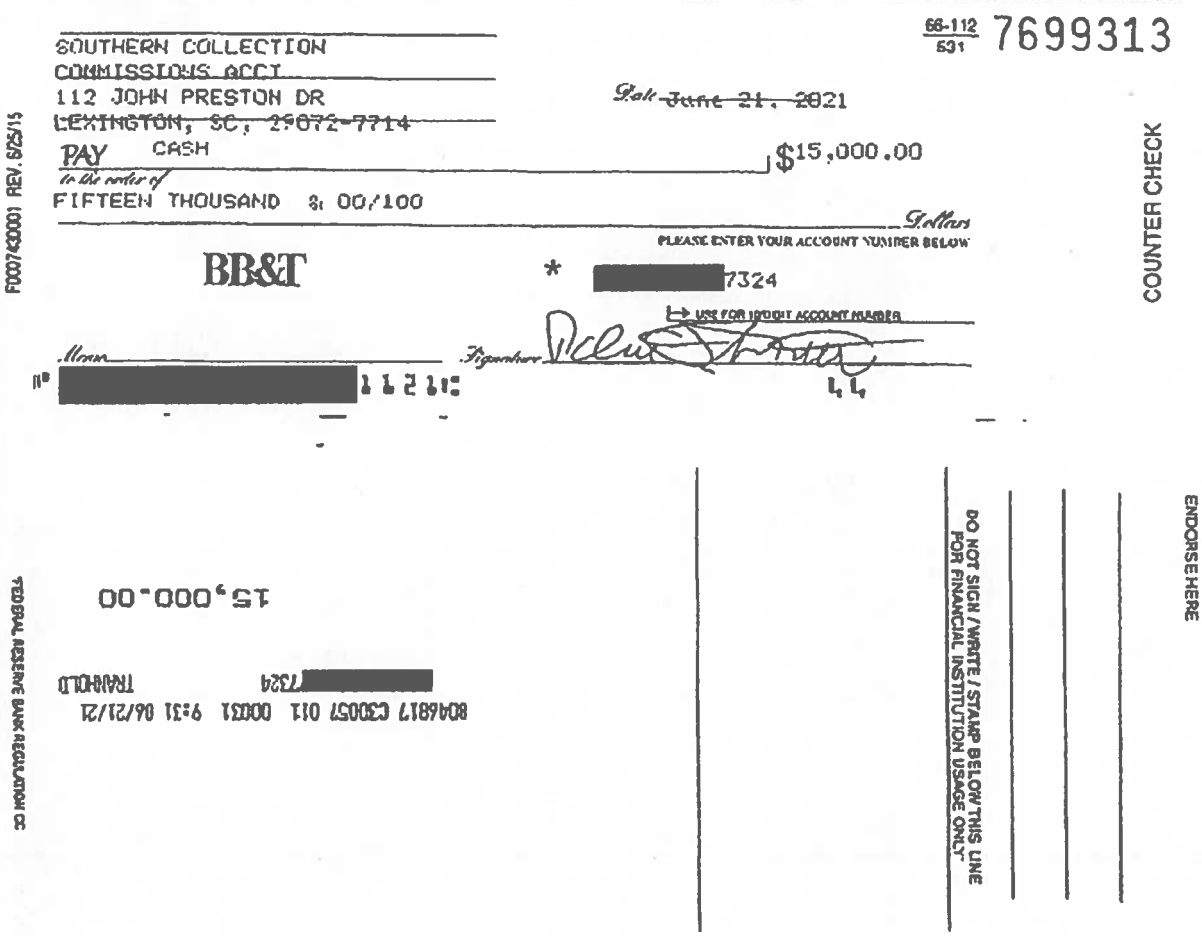
"00001478" [redacted]?324"

CHECK BOX FOR MOBILE REMOTE DEPOSIT

ENDORSE HERE

X

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SOUTHERN COLLECTION
COMMISSIONS ACCT
112 JOHN PRESTON DR
LEXINGTON, SC, 29072-7714

66-112
531
7699313

Date June 21, 2021

PAY CASH $15,000.00
In the order of
FIFTEEN THOUSAND & 00/100 Dollars

PLEASE ENTER YOUR ACCOUNT NUMBER BELOW

BB&T

* [redacted]7324
USE FOR BB&T ACCOUNT NUMBER

Memo

Signature

[redacted]

COUNTER CHECK

FD007430001 REV. 6/25/15

ENDORSE HERE

DO NOT SIGN / WRITE / STAMP BELOW THIS LINE
FOR FINANCIAL INSTITUTION USAGE ONLY

15,000.00

FEDERAL RESERVE BANK REGULATION CC

804817 C30057 011 00031 9:31 06/21/21
[redacted]7324 TRANSOLD

ELECTRONICALLY FILED - 2022 Apr 28 10:02 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

Exhibit 3

ELECTRONICALLY FILED - 2022 Apr 28 10:02 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

SOUTHERN COLLECTION LLC
130 STATE ST
WEST COLUMBIA, SC 29169

1387
67-160/532

DATE 2-11-21

PAY TO THE ORDER OF Terence Smith & Associates LLC $ 7148.75

Seven thousand one hundred forty eight & 75/100 DOLLARS

BB&T BRANCH BANKING AND TRUST COMPANY

FOR Commission Naples

⑈00001387⑈ ⑆[redacted]⑆ [redacted]7324⑈

[redacted] 00001387

[redacted]7321

SOUTHERN COLLECTION LLC

Security Features exceed industry standards and include
- ImageMatch®: Matching account and check number on back (Patent No. 9,210,089)
- MobileMark®: Mobile Deposit check mark to indicate check has been deposited via mobile device
- The Security Weave® pattern on back designed to deter fraud
- Microprint (MP) lines printed on front and back
- The words "ORIGINAL DOCUMENT" across the back
- Photo Safe Deposit® icon visible on front and back

Do not cash if:
- Any of the features listed above are missing or appear altered
- Fugitive ink on back looks pink or has disappeared
- Brown stains or colored spots appear on both front and back, and in Chemical Wash Detection Box

☐ CHECK BOX FOR MOBILE REMOTE DEPOSIT

WRITE NAME OF FINANCIAL INSTITUTION ON LINE ABOVE

ENDORSE HERE

X _____

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Exhibit 4

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SOUTHERN COLLECTION LLC
130 STATE ST
WEST COLUMBIA, SC 29169

1156
67-160/532

DATE 8-17-21

PAY TO THE ORDER OF Tecore Smith & Associates LLC $ 6822.19

six thousand eight hundred twenty-two + 19/100 DOLLARS

BB&T BRANCH BANKING AND TRUST COMPANY

FOR 150 middleton + 679 Pleasant View

Delcie Smith

⑈00001156⑈ ⑆[redacted]7324⑈

[redacted]

SOUTHERN CO[redacted]

Security Features exceed industry standards and include
- ImageMate - Matching account and check number on back
- MobileMark - Mobile Deposit check mark to indicate check has been deposited via mobile device
- The Security Weave - pattern on back designed to deter fraud
- Microprint (MP) lines printed on front and back
- The words "ORIGINAL DOCUMENT" across the back
- Photo Safe Deposit - Icon visible on front and back

Do not cash if:
- Any of the features listed above are missing or appear altered
- Fugitive ink on back looks pink or has disappeared
- Brown stains or colored spots appear on both front and back and in Chemical Wash Detection Box

CHECK THIS FOR MOBILE DEPOSIT

ENDORSE HERE

X

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SOUTHERN COLLECTION LLC
130 STATE ST
WEST COLUMBIA, SC 29169

1160
67-160/532

DATE 8.30.21

PAY TO THE ORDER OF Terence Smith $24,788.56

Twenty four thousand seven hundred eighty eight & 56/100 DOLLARS

BB&T BRANCH BANKING AND TRUST COMPANY 244 Wallace 330 Spring MAST

FOR 203 Fair, 601 Main Carlton Ref 180 middleton, 679 Pleasant View

⑈00001160⑈ ⑆[redacted]7324⑈

[redacted]

Duane Smith

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Exhibit 5

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Front

Back

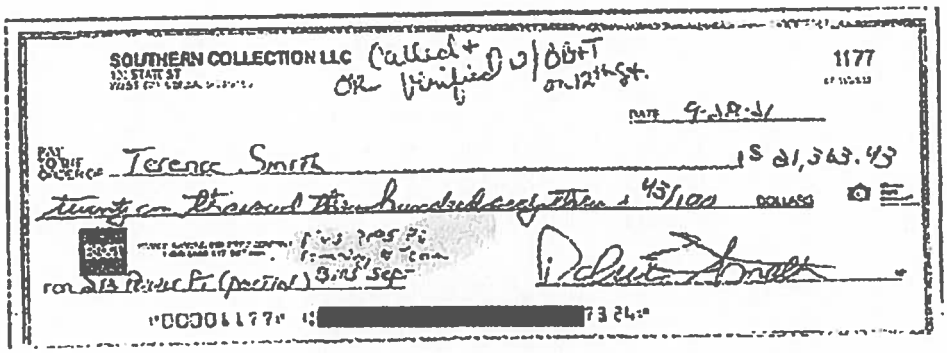

SOUTHERN COLLECTION LLC
1177
Called + Verified 0/DOT on 12th St.
Terence Smith
$ 1,343.43
- not paid to TS & ASSOC.

Exhibit 6

ELECTRONICALLY FILED - 2022 Apr 28 10:02 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

SOUTHERN COLLECTION LLC
130 STATE ST
WEST COLUMBIA, SC 29169

1323
67-160/532

DATE 11-27-2020

PAY TO THE ORDER OF Robert T. Smith $ 12,246.98

Twelve thousand two hundred forty six & 98/100 DOLLARS

BB&T BRANCH BANKING AND TRUST COMPANY
1-800-BANK BBT BBT.com

FOR profit Thru Sept 30

⑈00001323⑈ ⑆[redacted]⑆ 73241⑈

[redacted]

Security Features Detail

ENDORSE HERE

X

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Exhibit 7

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Business Entities Online

File, Search, and Retrieve Documents Electronically

Southern Collection Brokerage, LLC

Corporate Information

Entity Type: Limited Liability Company

Status: Good Standing

Domestic/Foreign: Domestic

Incorporated State: South Carolina

Important Dates

Effective Date: 10/19/2021

Expiration Date: N/A

Term End Date: N/A

Dissolved Date: N/A

ROA 0290

ROA 0290

Registered Agent

Agent: Robert T. Smith

Address: 130 State St.
West Columbia, South Carolina 29169

Official Documents On File

Filing Type	Filing Date
Articles of Organization	10/19/2021

Copyright © 2022 State of South Carolina

EXHIBIT C

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON Emily P. Smith and Emily P. Smith and Associates, LLC. Plaintiffs. vs. Robert T. Smith; Southern Collection, LLC; Southern Collection Brokerage, LLC; Terrance Smith and Associates, LLC; Robert B. Smith, and Sherry C. Smith. Defendants.	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT Case No.: CONSENT TO SERVE AS RECEIVER

With consent of Plaintiff Emily, through her undersigned counsel, Jackson Cobb, SRA, CCIM of Cobb & Sabbagha Realty consents to serve as receiver over Southern Collection, LLC for purposes of investigating, accounting, taking possession of and managing the company's assets and income to ensure the dissolution and winding up of the business.

WE CONSENT:

Ballard & Watson

Desa Ballard
226 State Street
West Columbia, SC 29169
(803) 796-9299
desab@desaballard.com

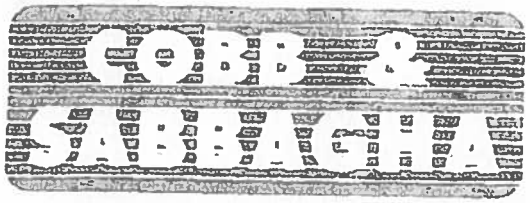
Attorney for the Plaintiff

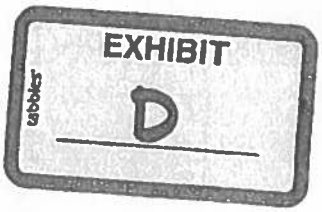
Cobb & Sabbagha

Jackson Cobb
1126 Pine Croft Drive
West Columbia, SC 29170
(803) 794-5152
jcobb@sc.rr.com

April 26 2022

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1126 PINE CROFT DRIVE • WEST COLUMBIA, SC 29170 • (803) 794-5152 • FAX (803) 794-4835

Desa Ballard Esq

April 12, 2022

Ballard & Watson, Attorneys at Law

226 State Street

West Columbia, SC 29169

Ref: Appointment as Receiver

I graduated from the University of South Carolina with a Bachelor of Science in Chemistry Degree in 1970. I worked as a Chemist for Baxter Laboratories in Kingstree, SC and Cardinal Chemical Company in Columbia.

I have been Broker-In-Charge of Cobb & Sabbagha Realty since it's inception in 1972. I am a member of the Columbia Board of Realtors and the South Carolina Chapter of the Appraisal Institute. I hold the professional designations of GRI, SRA, and CCIM.

In my appraisal practice I am a Certified General Appraiser with license number CG 648. I primarily do commercial appraisals for litigation support, estates, and bankruptcy trustees.

In my real estate practice I specialize in bankruptcy properties. I have worked with Chapter 7 Trustees for over 30 years in liquidating bankruptcy assets. I currently work with chapter 7 panel Trustees Robert F. Anderson, Janet B. Haigler, Michelle L. Vieira, and Kevin Campbell. I have been continuously bonded per bankruptcy court requirements since I began working on Chapter 7 cases.

I have served as a Chapter 11 Trustee on several occasions and successfully liquidated the assets involved in those cases.

I have been appointed as Receiver on a variety of cases including liquidating a wine distributorship and managing and liquidating a group of motels in Myrtle Beach.

I am attaching my CV to this letter.

Thank You,

Jackson L. Cobb SRA CCIM

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JACKSON L. COBB, SRA, CCIM
PROFESSIONAL RESUME

Education

Bachelor of Science, Chemistry
University of South Carolina

Professional Designations

Chapter 11 Trustee
U. S. Federal Bankruptcy Court

Real Estate Broker
State of South Carolina

GRI
Graduate of the Realtors Institute

CCIM
Certified Commercial Investment Member

State Certified General Real Estate Appraiser
South Carolina Real Estate Appraiser's Board

Association Memberships

SRA Member of the Appraisal Institute

Columbia Board of Realtors

South Carolina Association of Realtors

National Association of Realtors

Consolidated Multiple Listings

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Major Clients Served

Department of Housing and Urban Development – FHA

NBSC

Midlands National Bank

Small Business Administration

Nationsbank

Robert F. Anderson, Trustee

Ralph C. McCullough II, Trustee

W. Ryan Hovis, Trustee

Michelle Vieira, Trustee

Kevin Campbell, Trustee

Michael Cox, Esquire

James E. Knight, Jr., Esquire

U. S. Bankruptcy Court

First Security Mortgage Corporation

SouthTrust Bank

Carolina First Bank

Burkett, Burkett, Burkett, CPA's

Central Midlands Regional Planning Council

Town of Newberry

Town of Springdale

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Professional and Technical Courses and Examinations Successfully Completed

Real Estate Appraisal Principles
American Institute of Real Estate Appraisers

Basic Valuation Procedures
American Institute of Real Estate Appraisers

Graduate of the Realtors Institute - GRI
Course I
Course II
Course III

Fundamentals of Real Estate Investment and Taxation
Realtors National Marketing Institute

Residential Valuation
American Institute of Real Estate Appraisers

Capitalization Theory and Technique Course A
American Institute of Real Estate Appraisers

Capitalization Theory and Technique Course B
American Institute of Real Estate Appraisers

Introduction to Appraising Real Property
Society of Real Estate Appraisers

Applied Residential Property Valuation
Society of Real Estate Appraisers

Uniform Residential Appraisal Report
Society of Real Estate Appraisers

Narrative Demonstration Report
American Institute of Real Estate Appraisers

Industrial Valuation
American Institute of Real Estate Appraisers

Applied Income Property Valuation 202
Appraisal Institute

Advanced Real Estate Taxation C1103
Commercial Investment Real Estate Council

Standards of Professional Practice
Society of Real Estate Appraisers

The Appraiser as Expert Witness
Society of Real Estate Appraisers

Introduction to Commercial Brokerage C1402
Commercial Investment Real Estate Institute

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Market Analysis for Commercial Real Estate C1201
Commercial Investment Real Estate Institute

Decision Analysis for Commercial Real Estate C1301
Commercial Investment Real Estate Institute

Course Concepts Review C1408
Commercial Investment Real Estate Institute

South Carolina State License and Certification Exam Review Seminar
Appraisal Institute

Standards of Professional Practice – Part A
Appraisal Institute

Standards of Professional Practice – Part B
Appraisal Institute

The New Uniform Residential Appraisal Report
Appraisal Institute

Approved Regulations of the Federal Banking Agencies from Lender's Perspective
Appraisal Institute

How to Appraise FHA-Insured Property
Appraisal Institute

Income Valuation of Small, Mixed-Use Properties C600
Appraisal Institute

Cost Valuation of Small, Mixed-Use Properties C610
Appraisal Institute

Sales Comparison Valuation of Small, Mixed-Use Properties
Appraisal Institute

Residential Design and Functional Utility
Appraisal Institute

Standards of Professional Practice Part C
Appraisal Institute

Business Practice and Ethics
Appraisal Institute

ROA 0297

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

Apr 27 2022
REFERENCE ID: 1028011

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

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STATE OF SOUTH CAROLINA
SECRETARY OF STATE

MEMBERS STATEMENT OF DISSOCIATION FROM A LIMITED LIABILITY COMPANY

The following member of the listed limited liability company hereby files this Statement of dissociation in accordance with Section 33-44-704 of the 1976 S.C. Code of Laws, as amended.

1. Name of the limited liability company from which a member has dissociated:

   Southern Collection, LLC

2. Name of member who has dissociated from the limited liability company.

   Emily P. Smith
   (Name)

   112 John Preston Drive
   (Street Address)

   Lexington, SC 29072
   (City, State, Zip Code)

3. Unless otherwise specified, this statement is effective when endorsed for filing by the Secretary of State. Specify any delayed effective date and time: _____
   (Date)

4. This statement is being filed by:

   ☑ a. The dissociating member:

   _____
   (Signature)

   _____
   (Date)

   ☐ b The limited liability company:

   _____
   (Signature)

   _____
   (Date)

   _____
   (Print Name)

   _____
   (Capacity)

Form Revised by South Carolina Secretary of State, August 2016
F0050

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

Apr 27 2022
REFERENCE ID: 1028011

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

Business Name: Southern Collection, LLC

Signature Page for a Secretary of State Business Filing

This page must be completed, scanned, and attached to any business filing where one of the following is true.

- The filing party signs the digital form on behalf of official signee.
- An attorney's signature is required. (Articles of Incorporation for Corporation and Benefit Corporation)

Official Signatures

(Officer, Incorporator, Director, Agent, Partner, etc)
Required for forms where the signee is not present upon online submission and a filing party is providing a digital signing on their behalf. If the provided space is not enough, please attach multiple pages.

Desa Ballard	4.27.2022
Name	Date
Desa Ballard	Attorney
Signature	Title / Position
Emily P. Smith	4-27-2022
Name	Date
Emily P. Smith	owner
Signature	Title / Position
Name	Date
Signature	Title / Position
Name	Date
Signature	Title / Position
Name	Date
Signature	Title / Position

Scan and Upload this document to the Business Filing System during the filing process.
File must be PDF format.

ELECTRONICALLY FILED - 2022 Apr 28 10:02 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

From: Desa Ballard <desab@desaballard.com>
Date: May 3, 2022 at 10:47:41 AM EDT
To: "Gary A. Pickren" <gary@blaircato.com>, Bru Pender <bru@blaircato.com>, Cynthia Blair <cynthia@blaircato.com>, "Rex L. Casterline" <rex@blaircato.com>, Kevin Craig <kevin@blaircato.com>
Cc: Ashby Jones <ashby@kinardandjones.com>, sheila@mbmlawsc.com, Haley Hubbard <haley@desaballard.com>, Beth Cogan <Beth@desaballard.com>
Subject: RE: Letter from Ashby Jones

Emily is covered, but I can't speak for anyone else.

db

From: Gary A. Pickren <gary@blaircato.com>
Sent: Tuesday, May 3, 2022 10:44 AM
To: Desa Ballard <desab@desaballard.com>; Bru Pender <bru@blaircato.com>; Cynthia Blair <cynthia@blaircato.com>; Rex L. Casterline <rex@blaircato.com>; Kevin Craig <kevin@blaircato.com>
Cc: Ashby Jones <ashby@kinardandjones.com>; sheila@mbmlawsc.com; Haley Hubbard <haley@desaballard.com>; Beth Cogan <Beth@desaballard.com>
Subject: RE: Letter from Ashby Jones

Desa. We are holding the money. The court needs to be reminded of the obligations of §40-57-135. Most lawyers do not understand the workings of §40-57-10 (brokerage/agency laws) unless they represent real estate brokerages. I constantly see attorneys wrongly advising their clients as to direct payment.

There is now a bigger issue that as a real estate commissioner I feel obligated to raise. If the company has in fact been dissolved, who are all of these agents actually working for right now? Under the same statute, all licensees must work under the supervision of a Broker in Charge. The brokerage must also be registered with the Commission. If the company was dissolved, there is no brokerage and thus no Broker in Charge. If that is true, then none of these agents, including the Smiths, are working under the supervision of a Broker and therefore may not perform any acts requiring a license until they are properly associated to a Broker in Charge.

Gary



GARY A. PICKREN
OWNER/ATTORNEY
DIRECT: 803.881.6902
OFFICE: 803.400.8600
GARY@BLAIRCATO.COM



PLEASE NOTE: CERTIFIED CHECKS ARE ONLY ACCEPTED IF IT IS LESS THAN $10,000. OTHERWISE, ALL FUNDS MUST BE WIRED.

From: Desa Ballard <desab@desaballard.com>
Sent: Tuesday, May 3, 2022 10:18 AM
To: Gary A. Pickren <gary@blaircato.com>; Bru Pender <bru@blaircato.com>; Cynthia Blair <cynthia@blaircato.com>; Rex L. Casterline <rex@blaircato.com>; Kevin Craig <kevin@blaircato.com>
Cc: Ashby Jones <ashby@kinardandjones.com>; sheila@mbmlawsc.com; Haley Hubbard <haley@desaballard.com>; Beth Cogan <Beth@desaballard.com>
Subject: RE: Letter from Ashby Jones

All I am asking is that the funds remain in trust until we have the receivership hearing on Thursday. Southern Collection LLC is now dissolved, and Southern Brokerage Collection is a party to the same lawsuit in which the receiver is sought. I doubt very much if an agreement will be reached, this is a very unpleasant business dissolution.

I see nothing in 40-57-136(B) that requires you to make the disbursement of the real estate commission within a specific period after the closing. If a court issues an order that directs where commissions are to be paid that were or are due to Southern Collection on Thursday or shortly after Thursday, you can decide whether you want to comply with the order or not. If the court does not issue an order, we will each have to make our own decisions.

db

From: Gary A. Pickren <gary@blaircato.com>
Sent: Tuesday, May 3, 2022 10:05 AM
To: Bru Pender <bru@blaircato.com>; Desa Ballard <desab@desaballard.com>; Cynthia Blair <cynthia@blaircato.com>; Rex L. Casterline <rex@blaircato.com>; Kevin Craig <kevin@blaircato.com>
Cc: Ashby Jones <ashby@kinardandjones.com>; sheila@mbmlawsc.com; Haley Hubbard <haley@desaballard.com>; Beth Cogan <Beth@desaballard.com>
Subject: RE: Letter from Ashby Jones

Desa: While this firm has no dog in this fight, please understand that *SC Code* §40-57-135(B) holds that an associated licensee may not receive compensation from an activity requiring a real estate license from an entity or person other than the one for which the license is issued. The real estate commission has ruled multiple times on this issue that this means commissions must run through the broker in charge. Regardless what agreement you guys are able to reach, as a Real Estate Commissioner myself this firm will only disburse funds to a Broker in Charge. Please advise.

Gary



GARY A. PICKREN
OWNER/ATTORNEY
DIRECT: 803.881.6902
OFFICE: 803.400.8600
GARY@BLAIRCATO.COM

PLEASE NOTE: CERTIFIED CHECKS ARE ONLY ACCEPTED IF IT IS LESS THAN $10,000. OTHERWISE, ALL FUNDS MUST BE WIRED.

From: Bru Pender <bru@blaircato.com>
Sent: Monday, May 2, 2022 6:32 PM
To: Desa Ballard <desab@desaballard.com>; Cynthia Blair <cynthia@blaircato.com>; Gary A. Pickren <gary@blaircato.com>; Rex L. Casterline <rex@blaircato.com>; Kevin Craig <kevin@blaircato.com>
Cc: Ashby Jones <ashby@kinardandjones.com>; sheila@mbmlawsc.com; Haley Hubbard <haley@desaballard.com>; Beth Cogan <Beth@desaballard.com>
Subject: RE: Letter from Ashby Jones

Desa,

Good afternoon and hope all is well. Thank you for the below email and we did receive the letter from Ashby this afternoon. Upon belief, the commission referenced in Ashby's letter would be for the same property, being to wit: 343 Daylily Drive, Lexington, SC 29072 ("Property") as per your email to Gary Pickren, Esq. in my office. As per my earlier email to Ashby's paralegal, we are holding the commissions from the sale of Property in our escrow account and we will continue to hold pending receipt of an order from the court or specific instructions from counsel of both parties regarding same.

Further and related to the below, I don't believe we have any pending closings involving the below brokerage or any agents within said brokerage prior to the below scheduled hearing, but either I or one my partners will contact you, Ashby, Sheila and any other appropriate parties if anything changes.

Thank you and please email or call if you have any questions or need anything further at this time. Have a great day.



BRU PENDER
OWNER/ATTORNEY
D: 803.881.2002 | O: 803.808.0100

BLAIR CATO PICKREN CASTERLINE, LLC
925 E. MAIN STREET UNIT A, LEXINGTON, SC 29072
BRU@BLAIRCATO.COM | BLAIRCATO.COM

ALANNA - 24 HOUR CUSTOMER SERVICE - TEXT: 803-676-1780

Certified checks are only accepted if it is less than $10,000. Otherwise, ALL FUNDS MUST BE WIRED.

BEWARE!
ONLINE BANKING FRAUD IS ON THE RISE

Wire instructions are sent with every closing transaction and are also available upon request. Please confirm instructions by phone before sending any funds. BLAIR CATO DOES NOT ALTER ITS WIRING INSTRUCTIONS.

This E-mail is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521 and is legally privileged. This transmission may also be protected under the attorney-client privilege, the attorney work product doctrine, and/or other protective orders. This information is confidential and is intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited.

From: Desa Ballard <desab@desaballard.com>
Sent: Monday, May 2, 2022 5:53 PM

To: Bru Pender <bru@blaircato.com>; Cynthia Blair <cynthia@blaircato.com>
Cc: Ashby Jones <ashby@kinardandjones.com>; sheila@mbmlawsc.com; Haley Hubbard <haley@desaballard.com>; Beth Cogan <Beth@desaballard.com>
Subject: Letter from Ashby Jones

Dear Bru and Cynthia:

We represent Emily Smith, who filed articles of disassociation from Southern Collection LLC on Thursday. On Friday we filed an action to dissolve Southern Collection LLC and to have a receiver appointed for winding up the company. A hearing on the motion for appointment of receiver is scheduled for Thursday. Opposing party and counsel were served today.

I have been provided with a copy letter sent to you by Ashby Jones sometime today, and I assume it is the same property I emailed with Gary Pickering about yesterday. A copy of that email is attached.

Please insure that any funds due to Southern Collection LLC or Southern Brokerage Collection LLC remain held in trust until the court has ruled on our motion for appointment of a receiver.

Thanks so much.

db

Desa Ballard
Ballard & Watson
226 State Street
West Columbia, SC 29169
Telephone 803.796.9299
Facsimile 803.796.1066
Email: desab@desaballard.com
Web: desaballard.com

EXHIBIT F
FLASHDRIVE

ROA 0307

From: Terence Smith <rterencesmith@gmail.com>
Sent: Monday, October 25, 2021 5:37 PM
To: Ashby Jones <ashby@kinardandjones.com>; Bob Jackman <bob@kinardandjones.com>
Cc: Goddard, Mark B. <MGoddard@turnerpadget.com>
Subject: Fwd: Heavy heart

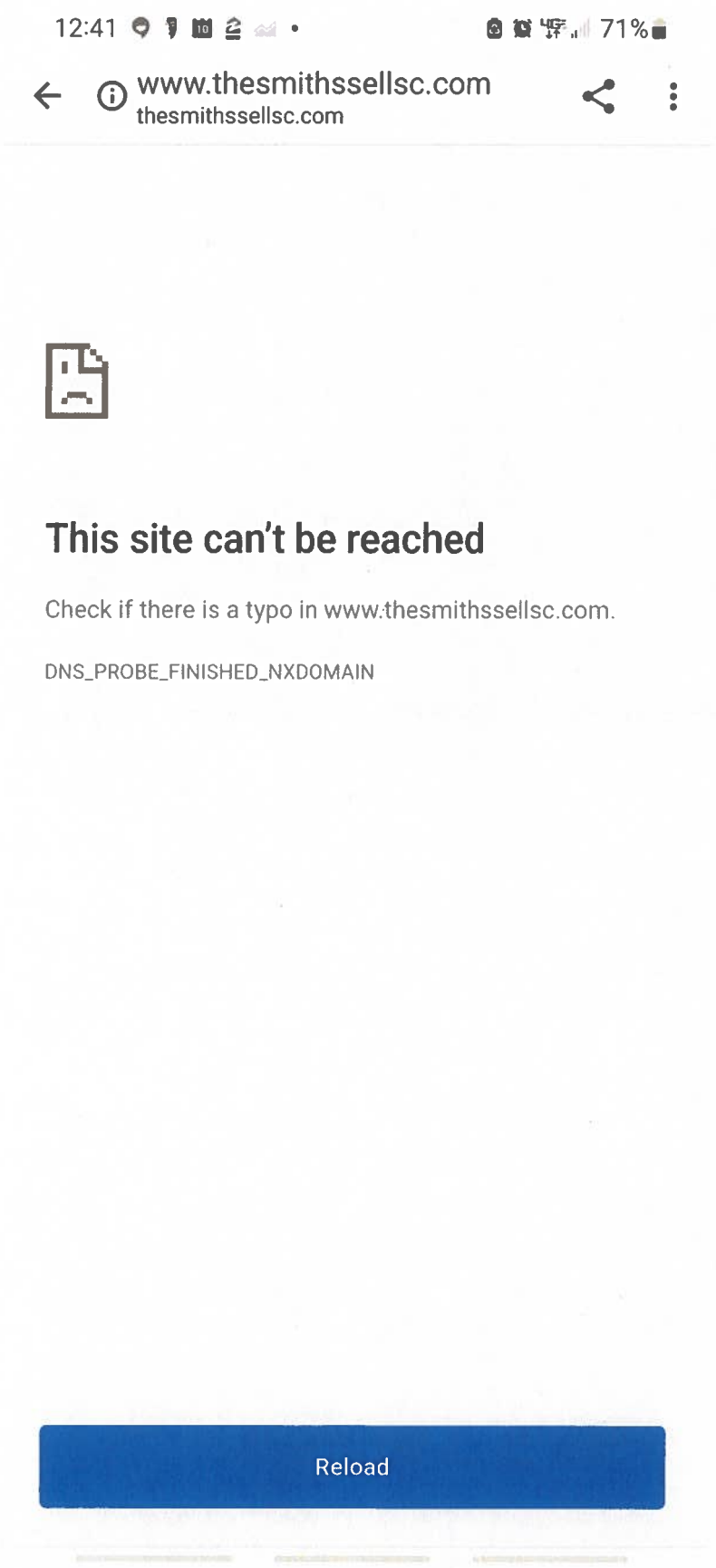
Our office admin (Emilys good friend) quit last week. Emily says it's because Meg "didn't feel comfortable " with what I had her do accounting wise etc. Emily has also reached out over the weekend to the previous admin at my previous company, Remax Purpose Driven over my accounting while I was there. Kristi lives in TN now and is going to call me tonight.

---------- Forwarded message ---------
From: **Meg Brooks (Shaklee) Green Living & Wellness Educator** <megbrookssc@gmail.com>
Date: Mon, Oct 18, 2021, 4:57 PM
Subject: Heavy heart
To: Terence Smith <rterencesmith@gmail.com>, Emily P. Smith <theemilypsmith@gmail.com>

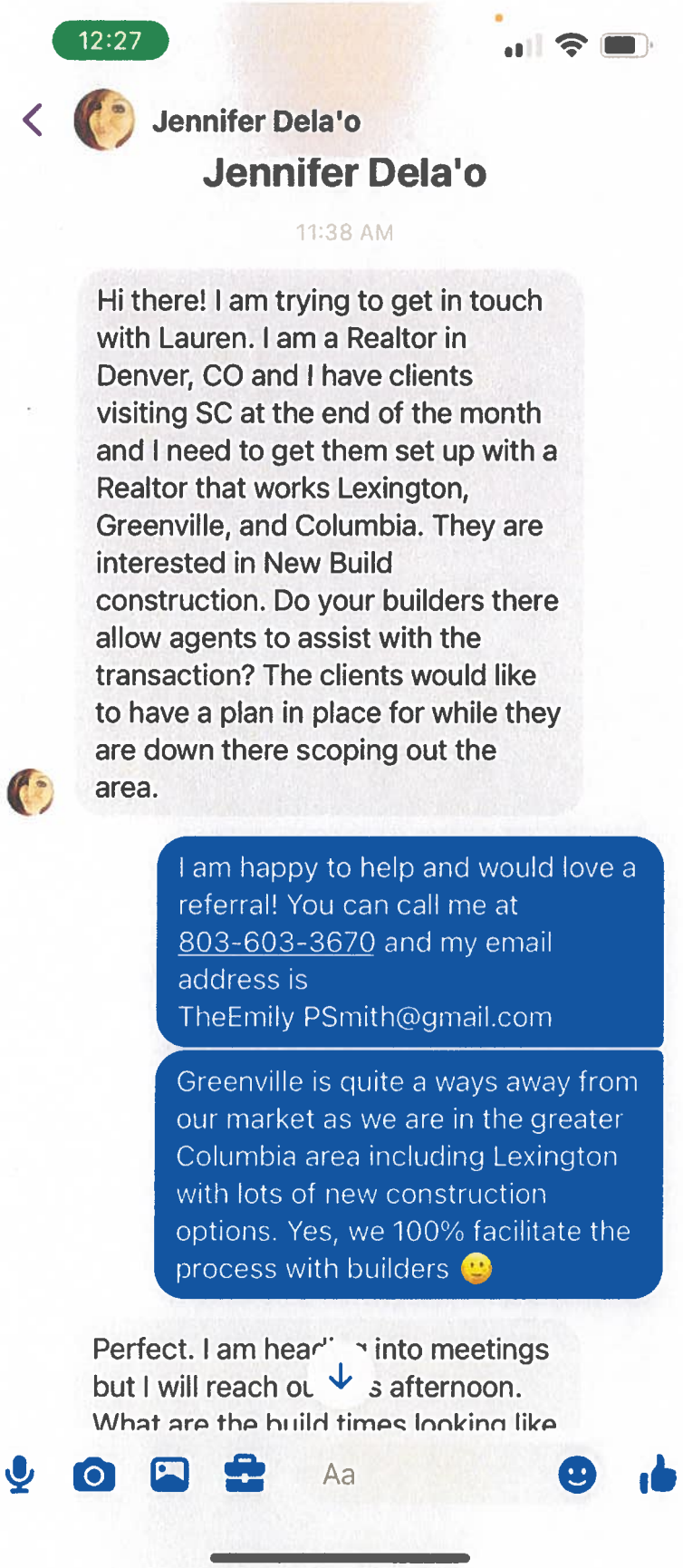
Terence & Emily,
Ever since I learned that y'all were getting divorced, I have had my doubts as to how long I would feel comfortable continuing to work for Remax Southern Collection. I took this position under the impression it would be a low stress part time job - you know that my role as mom comes first, and that I am under a tremendous amount of stress and worry about my dad's declining health, and that I struggle with anxiety even in the best of times. Also, I have become uncomfortable with the current state of the RSC bank accounts and my inability to perform my job effectively since I can no longer see when and if commission checks are being deposited and agent checks are being written and clearing. In addition, being on a group text where the two of you are in disagreement about company finances, etc. is not something I'm ok with. As much as I had hoped this job would be a great fit for me and I would be able to help y'all and the business, it has become unduly stressful for me. Please accept this as my notice of resignation, effective today. I'm very sorry to leave you like this, but my health and mental state has to take priority, and over the weekend I received another job offer from a high school friend that I think will be better for my family.
Meg

Sent from my iPhone

ROA 0309


12:41
71%
www.thesmithssellsc.com
thesmithssellsc.com
This site can't be reached
Check if there is a typo in www.thesmithssellsc.com.
DNS_PROBE_FINISHED_NXDOMAIN
Reload

ROA 0311


12:27
Jennifer Dela'o
Jennifer Dela'o
11:38 AM
Hi there! I am trying to get in touch with Lauren. I am a Realtor in Denver, CO and I have clients visiting SC at the end of the month and I need to get them set up with a Realtor that works Lexington, Greenville, and Columbia. They are interested in New Build construction. Do your builders there allow agents to assist with the transaction? The clients would like to have a plan in place for while they are down there scoping out the area.
I am happy to help and would love a referral! You can call me at 803-603-3670 and my email address is TheEmily PSmith@gmail.com
Greenville is quite a ways away from our market as we are in the greater Columbia area including Lexington with lots of new construction options. Yes, we 100% facilitate the process with builders
Perfect. I am hea into meetings but I will reach ou s afternoon. What are the build times looking like
Aa

12:27

Jennifer Dela'o

Columbia area including Lexington with lots of new construction options. Yes, we 100% facilitate the process with builders 🙂

Perfect. I am heading into meetings but I will reach out this afternoon. What are the build times looking like in that area right now? We are really delayed in Denver metro.
This is what they currently have their eye on.

https://www.eastwoodhomes.com/columbia/lexington-sc/hadleigh-park/cypress-7208-c-hp-015-home-015



Cypress 015 | New Construction Home in Lexington, SC | Eastwood Homes

12:20 PM

I'll check into & email you the updated time on this one. Up to 90 days depending on stage 🙂

Aa

ELECTRONICALLY FILED - 2022 May 12 3:21 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

STATE OF SOUTH CAROLINA)) COUNTY OF LEXINGTON)	IN THE COURT OF COMMON PLEAS Civil Action No. 2022-CP-32-01419
Emily P. Smith and Emily P. Smith and Associates, LLC, Plaintiffs, vs. Robert T. Smith, Southern Collection, LLC, Southern Collection Brokerage, LLC, Terence Smith and Associates, LLC, Robert B. Smith and Sherry C. Smith, Defendants.	**DEFENDANTS SOUTHERN COLLECTION, LLC, SOUTHERN COLLECTION BROKERAGE, LLC, AND TERENCE SMITH & ASSOCIATES, LLC'S MOTION TO DISMISS PURSUANT TO RULE 12(B)(1) AND 12(B)(6) SCRCP**

The Defendants Southern Collection, LLC, Southern Collection Brokerage, LLC, and Terence Smith and Associates, LLC, (collectively "Defendants") by and through their undersigned attorneys, hereby move this Honorable Court for an Order dismissing the Complaint of Plaintiffs Emily P. Smith and Emily P. Smith and Associates, LLC, (collectively "Plaintiffs") pursuant to Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure ("SCRCP.") This Motion is based on the following grounds:

1. Pursuant to S.C. Code Ann. § 63-3-530 (A)(2), this Court lacks subject matter jurisdiction to hear the claims set forth in the Complaint as these claims are currently within the exclusive jurisdiction of the Lexington County Family Court in the divorce action captioned, *Emily P. Smith v. Robert T. Smith*, Case No.: 2021-DR-32-1578.
2. Plaintiffs fail to state a cause of action against Defendants upon which relief can be granted.

This motion is based upon the pleadings, applicable statutes, the South Carolina Rules of Civil Procedure, and any memorandum of law that will be presented to the Court.

ELECTRONICALLY FILED - 2022 May 12 3:21 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

TURNER PADGET GRAHAM & LANEY, P.A.

s/Mark B. Goddard
Mark B. Goddard, S.C. Bar No. 73965
John B. Kelchner, S.C.Bar No. 13589
Post Office Box 1473 (29202)
1901 Main Street, Suite 1700
Columbia, South Carolina 29201
Telephone: 803-227-4334
Telephone: 803-227-4234
Facsimile: 803-400-1542
Facsimile: 803-400-1522
Email: mgoddard@turnerpadget.com
E-mail: jkelchner@turnerpadget.com
ATTORNEYS FOR DEFENDANTS SOUTHERN COLLECTION, LLC, SOUTHERN COLLECTION BROKERAGE, LLC, AND TERENCE SMITH AND ASSOCIATES, LLC

May 12, 2022

ELECTRONICALLY FILED - 2022 May 12 3:43 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)))	IN THE COURT OF COMMON PLEAS Civil Action No. 2022-CP-32-01419
Emily P. Smith and Emily P. Smith and Associates, LLC, Plaintiffs, vs. Robert T. Smith, Southern Collection, LLC, Southern Collection Brokerage, LLC, Terence Smith and Associates, LLC, Robert B. Smith and Sherry C. Smith, Defendants.	))))))))))))	**DEFENDANTS ROBERT T. SMITH, ROBERT B. SMITH, AND SHERRY C. SMITH'S MOTION TO DISMISS PURSUANT TO RULE 12(B)(1) AND 12(B)(6) SCRCP**

Defendants Robert T. Smith, Robert B. Smith, and Sherry C. Smith ("Defendants") by and through their undersigned attorneys, hereby move this honorable Court for an Order dismissing the Complaint of Plaintiffs Emily P. Smith and Emily P. Smith and Associates, LLC ("Plaintiffs") pursuant to Rules 12(b)(1) and (6) of the South Carolina Rules of Civil Procedure ("SCRCP.") This Motion is based on the following grounds:

1. Pursuant to S.C. Code Ann. § 63-3-530 (A)(2), this Court lacks subject matter jurisdiction to hear the claims set forth in the Complaint as these claims are currently exclusively within the jurisdiction of the Lexington County Family Court in the divorce action captioned, *Emily P. Smith v. Robert T. Smith*, Case No.: 2021-DR-32-1578.
2. Plaintiffs fail to state a cause of action upon which relief can be granted.

ELECTRONICALLY FILED - 2022 May 12 3:43 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

This motion is based upon the pleadings, applicable statutes, the South Carolina Rules of Civil Procedure, and any memorandum of law that will be presented to the Court.

KINARD AND JONES, LLC

s/Ashby L. Jones

ASHBY LAWTON JONES
ALYSSA ROSE IGLESIAS
808 South Lake Drive
Post Office Box 2678
Lexington, SC 29072
(803) 359-1003
Ashby@kinardandjones.com
Alyssa@kinardandjones.com
ATTORNEYS FOR DEFENDANTS ROBERT T. SMITH, ROBERT B. SMITH, AND SHERRY C. SMITH

Lexington, South Carolina
May 12, 2022

ELECTRONICALLY FILED - 2022 Jun 01 3:04 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF LEXINGTON)	ELEVENTH JUDICIAL CIRCUIT
)	
Emily P. Smith and Emily P. Smith and Associates, LLC,)	Case No.: 2022-CP-32-01419
Plaintiffs,)	
vs.)	
)	**DEMAND FOR JURY TRIAL**
Robert T. Smith; Southern Collection, LLC; Southern Collection Brokerage, LLC; Terence Smith and Associates, LLC; Robert B. Smith, and Sherry C. Smith,)	
Defendants.)	

Plaintiffs Emily P. Smith and Emily P. Smith and Associates LLC, by and through the undersigned counsel, hereby demand a trial by jury in the above-captioned matter against all Defendants on all factual disputes arising out of each cause of action listed in the Complaint, except the second cause of action, Emergency Temporary Appointment of Receiver.

Respectfully submitted,

s/ Desa Ballard

Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)

BALLARD & WATSON
226 State Street
West Columbia, South Carolina 29169
Telephone 803.796.9299
desab@desaballard.com
harvey@desaballard.com
haley@desaballard.com

ATTORNEYS FOR PLAINTIFF

May 27, 2022

ELECTRONICALLY FILED - 2022 Jun 02 1:59 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON Emily P. Smith and Emily P. Smith and Associates, LLC, Plaintiffs, vs. Robert T. Smith; Southern Collection LLC; Southern Collection Brokerage, LLC; Terence Smith and Associates, LLC; Robert B. Smith, and Sherry C. Smith, Defendants.	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT CASE NO: 2022-CP-32- 1419 **MEMORANDUM IN SUPPORT OF DEFENDANTS ROBERT T. SMITH, ROBERT B. SMITH, AND SHERRY C. SMITH'S MOTION TO DISMISS**

Defendants Robert T. Smith, Robert B. Smith, and Sherry C. Smith, by and through their undersigned attorneys, hereby submit the following Memorandum in Support of their Motion to Dismiss.

FACTUAL BACKGROUND

Plaintiff Emily P. Smith, hereinafter referred to as "Plaintiff Emily", and Defendant Robert T. Smith, hereinafter referred to as "Defendant Terence", are husband and wife. Plaintiff Emily and Defendant Terence are co-owners of a RE/MAX franchise and the sole members of a Limited Liability Company known as Southern Collection, LLC.

On August 18, 2021, Plaintiff Emily filed for divorce, and the parties have been litigating the highly contested domestic action since then. In her pleadings in the domestic action, Plaintiff Emily requested a division of the marital assets and debts, as well as a Mutual Restraining Order restraining and prohibiting the parties from

ELECTRONICALLY FILED - 2022 Jun 02 1:59 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

"encumbering, disposing of, hypothecating, or otherwise depleting marital assets … ." Ex. A, Compl. for Divorce, ¶ 11.

In his Answer and Counterclaim, Defendant Terence requested the same specifically requesting that Plaintiff Emily be restrained from "alienating, disposing of or borrowing money, or from injuring, damaging, destroying, trading or otherwise liquidating or decreasing in value any assets … ." Ex. B, Answer and Countercl., ¶ 25. Even further, Defendant Terence requested that this restraint be narrowly tailored to fit the needs of the parties' ongoing real estate business. *See id*. Defendant Terence also requested that the Family Court equitably divide the marital property. *Id*. at ¶ 27.

Following a Temporary Hearing, The Honorable W. Greg Seigler ordered the following:

> 9. This Court find that both parties are restrained from selling, mortgaging, destroying, or otherwise disposing of any marital property without prior written consent of both parties or prior Order of the Court. This Court further finds that neither party shall incur any debt in the name of the other party or increase any marital debt during the pendency of this litigation.

Ex. C, Temp. Order, ¶ 9. On September 21, 2021, Defendant Terence filed a Notice of Motion and Motion for Supplemental Relief regarding visitation and custody of the parties' minor children. In her Return and Cross Motion, Plaintiff Emily requested that the Family Court order an accounting of the parties' marital assets, specifically the parties' real estate business. Ex. D, Return and Cross Mot., ¶ 2. At the hearing for these motions, The Honorable Robert E. Newton denied Plaintiff Emily's request for an accounting of the assets. Ex. E, Second Temp. Order, ¶ 6.

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On April 27, 2022, Defendant Terence filed a Motion for Supplemental Relief in the Family Court requesting that the court add Southern Collection, LLC as a Party Defendant to the divorce action, as well as seeking other relief related to the parties' business, such as requiring Plaintiff Emily to return all the furniture she removed from the business, as well as barring her from circumventing any commissions, referral fees, or any other funds from the business. A hearing on this motion has not been scheduled.

On April 27, 2022, Plaintiff Emily filed a Members Statement of Dissociation from a Limited Liability Company with the South Carolina Secretary of State. Ex. F. On the same date, Plaintiff filed this action asserting the following causes of actions: 1) judicial dissolution and winding up of the assets, debts, and affairs of the LLC as to Defendants Robert T. Smith, Southern Collection, LLC, Southern Collection Brokerage, LLC, and Terence Smith and Associates, LLC; 2) emergency temporary appointment of receiver as to Defendants Robert T. Smith, Southern Collection, LLC, Southern Collection Brokerage, LLC, and Terence Smith and Associates, LLC; 3) conversion as to Defendants Robert T. Smith, Southern Collection, LLC, Southern Collection Brokerage, LLC, and Terence Smith and Associates, LLC; 4) attempted tortious interference with contract as to Defendants Robert T. Smith, Southern Collection, LLC, Southern Collection Brokerage, LLC, and Terence Smith and Associates, LLC; and 5) imposition of constructive trust as to all defendants. Plaintiff Emily also requested that the Court award her attorney's fees and costs in connection with bringing this action.

On April 29, 2022, Plaintiff Emily filed a Notice of Motion and Motion to Supplement Complaint in the domestic action requesting that the Family Court exclude

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the parties' businesses from the equitable division of the marital assets. Ex. G, Notice and Motion to Suppl. Compl., 1. Specifically, Plaintiff Emily states the following:

> The parties jointly own a real estate business, Southern Collection, LLC. The parties have established other businesses as well to include Southern Collection Brokerage, LLC, Emily P. Smith & Associates, LLC, and Terence Smith & Associates, LLC. The Plaintiff is now seeking relief concerning these businesses in an alternate jurisdiction that Family Court. The Plaintiff is therefore seeking to supplement her previously filed Complaint to request the division of the parties' businesses, Southern Collection, LLC, Southern Collection Brokerage, LLC, Emily P. Smith & Associates, LLC, and Terence Smith & Associates, LLC be excluded from the equitable division by the Family Court inasmuch as an action is being filed in Circuit Court for the dissolution of the businesses.

Id. at 1-2. A hearing on Plaintiff Emily's Motion to Supplement Complaint has not been scheduled and therefore, this issue has not been heard by the Family Court.

On May 3, 2022, Defendant Terence filed an Emergency Motion to Stay the Circuit Proceedings in the Family Court. The Family Court denied the motion on an emergency basis however this motion is scheduled to be heard on July 26, 2022.

On May 5, 2022, this Court heard Plaintiffs' Emergency Motion for Appointment of Receiver, which was ultimately denied on May 6, 2022. In said order, The Honorable Walton J. McLeod, VI states, "it appears that the family court has the necessary and proper tools to prevent the dissipation or other improper conduct involving contested marital assets… ." Ex. H.

On May 11, 2022, citing the misconduct and violations of Judge Newton's Order by Plaintiff Emily, Defendant Terence filed a Petition for Contempt and Rule to Show Cause against Plaintiff Emily in the Family Court. Ex. I. A hearing on this matter has not been scheduled.

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STANDARD OF REVIEW

Rule 12(b) of the South Carolina Rules of Civil Procedure provides:

> Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state facts sufficient to constitute a cause of action, (7) failure to join a party under Rule 19, (8) another action is pending between the same parties for the same claim. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a cause of action or defense to which an adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that cause of action or defense. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgement and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

In evaluating a motion to dismiss, the Court must base its decision solely upon the allegations set forth in the complaint. *Jarrell v. Petoseed Co.. Inc*., 331 S.C. 207, 209, 500 S.E.2d 793, 794 (Ct. App. 1998). "That is, the motion must be granted if the facts alleged in the complaint and the inferences reasonably deducted therefrom do not entitle the Plaintiff to relief on any theory of the case." *Id*. *See also FOC Lawshe Ltd. P'ship v. Int'l Paper Co*., 352 S.C. 408,412. 574 S.E.2d 228,230 (Ct. App. 2002) (quoting Rule 12(b)(6), SCRCP). As such, "[tlhe question to be considered is whether in the light most favorable to the Plaintiff, and with every doubt resolved in its behalf, the complaint states any valid claim for relief." *Holy Loch Distrib., Inc. v. Hitchcock*, 332 S.C. 247, 252, 503 S.E:.2d 787, 790 (Ct.

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App. 1998). *See also Brown v. Leverette*, 291 S.C. 364, 366, 353 S.E.2d 697, 698 (1987) (citation omitted). "The motion cannot be sustained if facts alleged in the complaint and inferences reasonably deducible therefrom would entitle plaintiff to any relief on any theory of the case." *Id.* "All properly pleaded factual allegations are deemed admitted for the purposes of considering a motion for judgment on the pleadings." *FOC Lawshe Ltd. P'ship v. Int'l Paper Co.*, 352 S.C. at 413, 574 S.E.2d at 230.

The question of subject matter jurisdiction is a question of law." *Porter v. Labor Depot* , 372 S.C. 560, 567, 643 S.E.2d 96, 100 (Ct. App. 2007). "This Court reviews all questions of law de novo." *Fesmire v. Digh* , 385 S.C. 296, 302, 683 S.E.2d 803, 807 (Ct. App. 2009) ; see also *Harrell v. Pineland Plantation, Ltd.* , 337 S.C. 313, 320, 523 S.E.2d 766, 769 (1999) ("[T]his Court has the power and duty to review the entire record and decide the jurisdictional facts in accord with the preponderance of the evidence.").

"… [O]ther evidence outside the pleadings may, in certain circumstances, be considered in support of a motion to dismiss based on lack of jurisdiction." *Baird v. Charleston County*, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999), *Swicegood v. Thompson*, 431 S.C. 130, 137-138, 847 S.E. 2d 104, 108 (Ct. App. 2020). The Court may consider matters outside of the pleadings in this case as a motion to dismiss is not an adjudication on the merits. "[W]hen the allegations of the complaint are factually sufficient under Rule 8(a)(1), SCRCP, but do not affirmatively show subject matter jurisdiction, the motion to dismiss may be supported by, and the court may consider, affidavits or other evidence proving lack of jurisdiction. *Woodard v. Westvaco Corp.*, 315 S.C. 329, 433 S.E.2d 890 (Ct.App.1993), vacated on other grounds by 319 S.C. 240, 460 S.E.2d 392 (1995). However,

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the presentation of such evidence does not convert the motion to dismiss into one for summary judgment. Summary judgment is an adjudication on the merits of the case, whereas dismissal for lack of subject matter jurisdiction is not an adjudication on the merits." *Id*.

LAW/ANALYSIS

I. The Complaint should be dismissed pursuant to Rule 12(b)(1) and (6), SCRCP, because original exclusive jurisdiction of this matter properly lies before the South Carolina Family Court.

S.C. Code Ann. § 63-3-530 (A)(2) states that the family court has the exclusive jurisdiction to hear and determine actions for divorce, separate support and maintenance, legal separation, and in other marital litigation between parties, and for ***settlement of all legal and equitable rights of the parties in the actions in and to the real and personal property of the marriage*** and attorney's fees, if requested by either party in the pleadings S.C. Code Ann. § 63-3-530 (A)(2) (2013) (emphasis added). "The general rule is that jurisdiction of a court depends on the state of affairs existing at the time it is invoked. If jurisdiction once attaches the person and subject matter of the litigation the subsequent happening of events will not ordinarily operate to out the jurisdiction already attached," *Gilley v. Gilly*, 488 S.E.2d 310, 327 S.C. 8 (1996) (citing *Gardner v. Gardner*, 253 S.C. 296, 170 S.E.2d 372 (1969)). Equitable distribution must be plead by the requesting party before the jurisdiction attaches. *See* S.C. Code Ann. § 20-3-610 (2008).

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 of the date of filing

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or commencement of marital litigation … regardless of how legal title is held… .” S.C. Code Ann. § 20-3-630(A) (2012).

The law is clear that once a party requests that the marital assets be apportioned in the family, then the family court retains exclusive jurisdiction to divide those assets. In this case, Plaintiff Emily requested that the Family Court apportion the marital assets. Further, Defendant Terence counterclaimed requesting the same. Even further, in Plaintiff’s Return and Cross Motion filed December 1, 2021, she requested that the Family Court order an accounting of the parties’ marital assets, particularly the parties’ business conceding that the parties’ real estate business is a marital asset. Therefore, the parties’ business is already in the exclusive jurisdiction of the Family Court, a real and statutory valid court of this State, and cannot be ousted by the Circuit Court pleadings. Further, there have been several hearings in the domestic action, in which the Family Court established its jurisdiction.

Plaintiff Emily seeks a premature division of the marital assets by filing this action in Circuit Court. Defendant Terence voiced an objection and requested Plaintiff Emily dismiss her Circuit Court case, as the Family Court ***has not divested itself of jurisdiction in this matter***. In her response, Counsel for Plaintiff Emily in the Circuit Court matter acknowledges her filing is premature stating the following:

> Sheila Robinson either has or is amending her pleadings to exclude Southern Collections LLC and related corporate matters from the domestic litigation, and the circuit court will have exclusive jurisdiction over this matter.
>
> Ex. J.

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Further, in her Motion to Supplement Complaint, Plaintiff Emily admits that the Family Court has jurisdiction over the division of the marital assets and requests that the Family Court divest itself of that jurisdiction to allow the Circuit Court to hear the dissolution of the parties' business. Plaintiff Emily's Motion to Supplement Complaint has not been ruled on, and therefore the Family Court retains exclusive jurisdiction to hear all matters related to the division of the parties' businesses, a marital asset.

Secondly, while the court already denied Plaintiff Emily's request for a court order requiring an accounting of the business in Family Court, Plaintiff Emily is not prejudiced in any manner as she has hired an expert witness in the Family Court action for the purposes of evaluating the marital assets, including the parties' business. *See* Ex. K, Pl.'s Answers to Int. This expert, Chris Leventis, has obviously begun the work of preparing an evaluation, as indicated by his affidavit in this action. Plaintiff Emily is a co-owner of the business and has access to any materials she requires for Mr. Levintis to perform this task. Further, if Mr. Leventis lacks any necessary materials, these materials are discoverable in the domestic action.

Defendant Terence has also hired an expert witness for the purposes of evaluating the marital assets, including the parties' business. *See* Ex. L, Def.'s Suppl. Answers to Int. The parties have already conducted extensive written discovery and are attempting to schedule mediation. It is customary for forensic accounting experts to communicate prior to the mediation. The parties' business, together with all the marital estate which includes a significant amount of marital debt, will be evaluated and apportioned pursuant to the powers of the Family Court. Plaintiff Emily seeks to circumvent this process in Family

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Court to divide only one piece of the marital property because she inaccurately believes she may receive a lucrative payout while escaping her obligation to take responsibility for any marital debt.

Even more compelling, Plaintiffs' Complaint fails to reference the parties' divorce action. The relief Plaintiff Emily seeks in this action can be properly adjudicated in Family Court, however she failed to indicate in her pleadings that the business was already in the exclusive jurisdiction of the Family Court. The parties have a pending Motion for Supplemental Temporary Relief in the Family Court which requests that the business be made a Third-Party Defendant to the divorce action, therefore giving the Family Court yet another avenue in which it can establish that is has the exclusive jurisdiction to accomplish the equitable division of that property.

Plaintiff Emily seeks to circumvent the exclusive jurisdiction of the Family Court and bifurcate the issues related to the parties' property division. Defendants ascertain that Plaintiff Emily's motive is to obtain a quicker or more favorable result than she would in Family Court which is a court of equity—one in which considers the misconduct of the parties when apportioning the marital estate.

As it relates to the allegations against Defendants Robert B. Smith and Sherry C. Smith, the Family Court has the necessary and proper tools to ascertain whether the assets being held in Defendants bank account, as alleged by Plaintiffs, is a marital asset of Plaintiff Emily and Defendant Terence. Specifically, the Family Court may order injunctive relief, *see* S.C. Code Ann. § 20-3-650 (2008), or may add Defendants Robert and

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Sherry to the divorce action to accomplish equitable division of the property in their possession. *See* S.C. Code Ann. § 20-3-660 (2008).

It is clear from the applicable case law and statutes, that the issues related to these parties' property division is within the exclusive jurisdiction of the family court. Therefore, Defendants respectfully request that their Motion to Dismiss be granted and that Plaintiffs' Complaint be dismissed. This request is made under Rule 12(b)(1) and 12(b)(6), SCRCP in addition to Rule 12(b)(8), SCRCP, given that judicial economy would be favored by determining all the issues between these parties in one proceeding, specifically an issue that is not within the jurisdiction of this Court.

CONCLUSION

For the reasons contained herein, this Court lacks subject matter jurisdiction to hear the claims set forth in Plaintiffs' Complaint, and therefore Plaintiffs' Complaint fails to state a cause of action upon which relief can be granted. Accordingly, Defendants Robert T. Smith, Robert B. Smith, and Sherry C. Smith respectfully request this Court dismiss Plaintiffs' Complaint with prejudice.

[SIGNATURE PAGE TO FOLLOW]

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RESPECTFULLY SUBMITTED,

KINARD & JONES, LLC

s/Ashby L. Jones
ASHBY LAWTON JONES SC BAR No. 15900
ALYSSA ROSE IGLESIAS SC BAR No. 104167
808 South Lake Drive
Post Office Box 2678
Lexington, SC 29072
(803) 359-1003
Ashby@kinardandjones.com
Alyssa@kinardandjones.com
ATTORNEYS FOR DEFENDANTS ROBERT T. SMITH, ROBERT B. SMITH, AND SHERRY C. SMITH

Lexington, South Carolina
June 2, 2022.

COPY

FILED
2021 AUG 18 PM 12:27
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

STATE OF SOUTH CAROLINA)	IN THE FAMILY COURT FOR THE
)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)	C.A. NO.: 2021-DR-32-
)	
EMILY P. SMITH,)	
)	2021DR3201573
PLAINTIFF,)	
)	
v.)	**COMPLAINT**
)	
ROBERT TERENCE SMITH,)	
)	
DEFENDANT.)	
)	

Plaintiff, above-named, by and through her undersigned counsel would respectfully show unto this Court as follows:

1. Plaintiff and Defendant are citizens and residents of Lexington County, South Carolina, having been so in excess of one (1) year prior to the commencement of this action.

2. Plaintiff and Defendant last resided together as wife and husband in Lexington County, South Carolina.

3. Plaintiff and Defendant are presently wife and husband, having been married to each other on November 3, 2012. Of this marriage, two (2) children have been born, namely: O. G. S., born in 2014; and O. P. S., born in 2016. No other children have been born of these parties, and no child is expected.

4. Plaintiff is informed and believes that this Court has subject matter and personal jurisdiction of this action and of these parties. Venue is proper in Lexington County, South Carolina.

5. Plaintiff would show that the parties are not currently separated but need to be based on the misconduct of Defendant. Specifically, Plaintiff would show that Defendant has

Written request for a final hearing in this case must be delivered by a party or his /her attorney to the Clerk of Court's office within 365 days of this filing date. Failure to comply with this rule shall result in the dismissal of the case by the Court.

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would therefore show that she is entitled to a divorce, *a vinculo matrimoni*, from Defendant on the statutory ground of

6.

7.

8. Plaintiff would show that Defendant is able bodied and capable of gainful employment, and he is therefore capable of paying a sum as child support that is commensurate with the South Carolina Child Support Guidelines, both *pendente lite* and permanently.

9. Plaintiff is informed and believes she is entitled to an Order of this Court granting her the exclusive use and possession of the marital residence, both *pendente lite* and permanently,

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as a means of support for herself and the children. Plaintiff further informed and believes that Defendant should be required to immediately vacate the home,

Plaintiff is further informed and believes that Defendant should be required to help maintain all costs and expenses associated with the home, including the mortgage payment, property taxes, property insurance, maintenance, and utilities so as to provide for maintenance and support of Plaintiff and the minor children, both *pendente lite* and permanently.

10. Plaintiff currently maintains medical insurance on the children and she is willing to maintain that coverage so long as such is available to her. Plaintiff is informed and believes Defendant should be required to pay all of the non-covered, non-reimbursed medical expenses for the children, both *pendente lite* and permanently.

11. Plaintiff is informed and believes the parties' assets and debts should be determined and divided accordingly, in kind and/or by cash payment, from those assets held by Plaintiff and Defendant in accordance with §20-3-620, South Carolina Code of Laws, (2012). Plaintiff would show that she has nonmarital assets which should not be subject to equitable division by this Court. Further, Plaintiff would show that Defendant has incurred a large amount of debt without the knowledge of or consent of Plaintiff, and he should be solely responsible for the payment of such.

12. Plaintiff is informed and believes this Court should issue its Mutual Restraining Order restraining and prohibiting Defendant from encumbering, disposing of, hypothecating or otherwise depleting marital assets, both *pendente lite* and permanently.

13. Plaintiff is informed and believes the Court should issue an Order prohibiting Defendant from harassing, bothering, molesting or otherwise interfering with Plaintiff at any time or at any place, both *pendente lite* and permanently.

14. Plaintiff is informed and believes that Defendant is gainfully employed and

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therefore capable of self-support. Plaintiff is therefore informed and believes that Defendant should be barred from any claim for alimony from Plaintiff, both *pendente lite* and permanently.

15. Plaintiff is informed and believes that the Court should appoint a Guardian *ad Litem* to represent the interests of the children in this action in the event that custody and/or visitation becomes contested.

16. Plaintiff is informed and believes that Defendant should be required to pay to Plaintiff a reasonable sum as attorney's fees, PI fees, and costs incurred by Plaintiff in this action.

WHEREFORE, Plaintiff prays that the Court inquire into the matters alleged above, and grant her the following relief:

a. For and Order granting her a divorce, *a vinulo matrimoni*, from Defendant on the

b. For an Order granting Plaintiff sole and exclusive custody of the parties' minor children, both *pendente lite* and permanently;

c. For a supervised visitation schedule between Defendant and children as set forth above, *pendente lite* and permanently;

d. For an Order requiring Defendant to pay child support to Plaintiff based on the South Carolina Child Support Guidelines, both *pendente lite* and permanently;

e. For an Order granting Plaintiff possession of the marital residence and requiring Defendant to pay all costs associated with such, both *pendente lite* and permanently;

f. For an Order requiring Defendant to pay all uninsured medical costs for the minor child, both *pendente lite* and permanently ;

g. For an Order requiring the parties' assets and debts to be determined and divided

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accordingly, in kind and/or by cash payment, from those assets held by Plaintiff and Defendant in accordance with §20-3-620, South Carolina Code of Laws, (2012);

h. For an Order finding Plaintiff's non-marital assets to be excluded from division by this Court;

i. For an Order requiring Defendant to pay for any and all debt he has incurred without Plaintiff's knowledge or consent;

j. For a Restraining Order prohibiting Defendant from encumbering, disposing of, hypothecating or otherwise depleting marital assets, *pendent lite;*

k. For a Restraining Order prohibiting Defendant from harassing, bothering, molesting or otherwise interfering with Plaintiff at any time or at any place, both *pendente lite* and permanently;

l. For an Order barring Defendant from any alimony from Plaintiff, both *pendente lite* and permanently;

m. For an Order appointing a Guardian *ad Litem* to represent the interests of the minor children in this action;

n. For an Order requiring the Defendant to pay to the Plaintiff a reasonable sum as attorney's fees and costs incurred by the Plaintiff in this action;

o. For such other and further relief as this Court may deem just and proper.

MOORE BRADLEY MYERS LAW FIRM, P. A.

By: _____

SHEILA MCNAIR ROBINSON
1700 Sunset Boulevard (Hwy. 378)
Post Office Box 5709
West Columbia, South Carolina 29171
Telephone: (803) 796-9160
Facsimile: (803) 791-8410
Attorney for Plaintiff

August 18, 2021

ELECTRONICALLY FILED - 2022 Jun 02 1:59 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

COPY

STATE OF SOUTH CAROLINA)	IN THE FAMILY COURT FOR THE
)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)	Case No.: 2021-DR-32-1578
Emily P. Smith,)	
)	
Plaintiff,)	**ANSWER AND COUNTERCLAIM**
)	**ON BEHALF OF DEFENDANT**
v.)	
)	
Robert Terence Smith,)	
)	
Defendant.)	
)	

FILED
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LISA M. COMER
CLERK OF COURT
LEXINGTON SC

TO: THE PLAINTIFF, EMILY P. SMITH, AND HER ATTORNEY, SHEILA MCNAIR ROBINSON, ESQUIRE:

THE DEFENDANT, ROBERT TERENCE SMITH, ANSWERS THE PLAINTIFF'S COMPLAINT AND COUNTERCLAIMS AS FOLLOWS:

1. The Defendant admits the allegations of Paragraphs 1, 2, 3 and 4 of the Plaintiff's Complaint.

2. Defendant denies the allegations of Paragraphs 5, 6 and 7 of Plaintiff's Complaint and demands strict proof thereof.

3. Responding to Paragraph 8 of the Plaintiff's Complaint, Defendant avers he is able bodied and capable of employment. Defendant denies the remainder of Paragraph 8.

4. Defendant denies Paragraph 9, 10 and 11 of Plaintiff's Complaint and demands strict proof thereof.

5. Responding to Paragraphs 12 and 13 of Plaintiff's Complaint, Defendant avers that any such restraints are appropriate and should be mutually applicable to

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both parties and that restraints as to assets and debts should be narrowly tailored to fit the needs of the parties' ongoing business concerns.

6. Defendant admits Paragraphs 14 and 15 of Plaintiff's Complaint.

7. Defendant denies Paragraph 16 of Plaintiff's Complaint.

8. Defendant denies subsections a, b, c, d, e and f of the WHEREFORE Paragraph of Plaintiff's Complaint and demands strict proof thereof.

9. Responding to subsection g of the WHEREFORE Paragraph of Plaintiff's Complaint, Defendant admits the parties' marital assets and debts should be equitably apportioned between the parties.

10. Defendant denies subsections h and i of Plaintiff's Complaint and demands strict proof thereof.

11. Responding to subsection j and k of the WHEREFORE Paragraph of Plaintiff's Complaint, Defendant avers that any such restraints are appropriate and should be mutually applicable to both parties and that restraints as to assets and debts should be narrowly tailored to fit the needs of the parties' ongoing business concerns.

12. Defendant admits subsections l and m of the WHEREFORE Paragraph of Plaintiff's Complaint.

13. Defendant denies subsections n and o of the WHEREFORE Paragraph of Plaintiff's Complaint.

FOR A SECOND DEFENSE, BY WAY OF COUNTERCLAIM

14. Defendant is a citizen and resident of the County of Lexington, State of South Carolina.

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15. Defendant is informed and believes that Plaintiff is a citizen and resident of the County of Lexington, State of South Carolina.

16. The parties, who have resided in South Carolina for more than one year, were married on November 3, 2012.

17. Two children O.S. (2014) and O.S. (2016) have been born as a result of this marriage. No further children are expected.

REQUEST FOR ORDER OF SEPARATE SUPPORT AND MAINTENANCE

18. Defendant is informed and believes he is entitled to an Order allowing him to live separate and apart from the Plaintiff.

19. There has been no collusion by the parties.

CUSTODY/VISITATION/CHILD SUPPORT/MEDICAL EXPENSES

20. The Defendant is informed and believes the parties should be granted shared custody of the parties' minor children, *pendente lite* and permanently. The Defendant is informed and believes that both parties have been actively involved in the children's lives from an early age and it would be in both children's best interests to continue to have both parents equally involved in their lives in the future.

21. The Defendant requests that the child support be set commensurate with the shared custody guidelines of the South Carolina Department of Social Services' Child Support Guidelines. Defendant is further informed and believes Plaintiff should be ordered to equally contribute to non-covered medical expenses incurred by the minor children.

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22. The Defendant is informed and believes the parties should share reasonable, open and liberal visitation with the minor children.

GUARDIAN AD LITEM

23. The Defendant is informed and believes that if Plaintiff contests custody and/or visitation that a Guardian *ad Litem* should be appointed to protect the interests of the minor children.

ALIMONY

24. Defendant avers that Plaintiff is an able bodied persons capable of gainful employment and supporting herself and requests that Plaintiff be barred from alimony on a *pendente lite* and permanent basis.

RESTRAINING ORDER AS TO PROPERTY/PERSON

25. Defendant is informed and believes he is entitled to a Restraining Order against the Plaintiff from alienating, disposing of or borrowing money, or from injuring, damaging, destroying, trading or otherwise liquidating or decreasing in value any assets of the parties' temporarily and permanently. Defendant avers this restraint should be narrowly tailored to fit the needs of the parties' ongoing business concerns.

26. Defendant is informed and believes he is entitled to a temporary and permanent Order restraining and enjoining Plaintiff from harassing, threatening, interfering with, bothering, disrupting, molesting or intimidating Defendant, in any manner whatsoever.

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EQUITABLE DIVISION

27. Defendant is informed and believes that he is entitled to equitable division/special equity in the real and personal marital property of the marriage, temporarily and permanently.

28. Defendant is informed and believes that he is entitled to exclusive use and possession of the former marital home and the vehicle currently in his possession on a *pendente lite* and permanent basis.

ATTORNEY'S FEES AND COSTS

29. Defendant has been forced to defend this action because of and due to the actions of the Plaintiff. Plaintiff's actions caused the breakdown of the marriage. Plaintiff has the ability to pay Defendant's attorney fees and costs. Defendant is therefore, informed and believes he is entitled to an Order of this Court requiring Plaintiff to pay all of his attorney's fees, costs, private investigator fees and other expenses, both pendente lite and permanently.

WHEREFORE, Defendant prays that this Court inquire herein and issue its Order, granting the relief requested and for such other and further relief as this Court may deem

[SIGNATURE PAGE FOLLOWS]

KINARD & JONES, LLC

ASHBY LAWTON JONES
ROBERT P. JACKMAN
808 South Lake Drive
Lexington, SC 29072
(803) 359-1003
ATTORNEYS FOR DEFENDANT

Lexington, South Carolina
11-2, 2021

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FILED
2021 SEP -9 PM 2:35
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT FOR THE
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	C.A. NO.: 2021-DR-32-1578
EMILY P. SMITH,	)	
PLAINTIFF,	)	**TEMPORARY ORDER**
v.	)	
ROBERT TERENCE SMITH,	)	
DEFENDANT.	)	

Date of Hearing:	August 26, 2021
Presiding Judge:	W. Greg Seigler
Plaintiff's Attorney:	Sheila McNair Robinson
Defendant's Attorney:	Ashby Lawton Jones
Court Reporter:	Sanya Kaiser

This matter came before the Court on August 26, 2021 at 4:30 p.m. The hearing was held via WebEx Virtual Courtroom pursuant to the authority of the South Carolina Supreme Court Order issued on April 30, 2020. The action was commenced by the filing of a Notice of Motion and Motion for Emergency/Expedited Temporary Relief, Summons and Complaint on August 18, 2021. The Honorable Robert E. Newton issued an Order on August 18, 2021 granting the Motion for an expedited hearing. The Defendant was personally served with the pleadings and Order for Expedited Hearing on August 19, 2021, as evidenced by the Affidavit of Service filed with the Court. The time for filing a responsive pleading has not yet passed.

Present at the hearing were the Plaintiff and her attorney, Sheila McNair Robinson. Also present were the Defendant with his attorney, Ashby Lawton Jones. The Court heard oral arguments of counsel and then recessed the hearing to take the matter under advisement. After careful consideration of the affidavit packages submitted by both parties and all information

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presented at the hearing, this Court makes the following findings of fact and conclusions of law:

1. Both parties are citizens and residents of Lexington County, South Carolina, having been so in excess of one (1) year prior to the commencement of this action.

2. The Plaintiff and Defendant last resided together as wife and husband in Lexington County, South Carolina.

3. The Plaintiff and Defendant are presently wife and husband, having been married to each other on November 3, 2012. Of this marriage, two (2) children have been born, namely: O. G. S., born in 2014; and O. P. S., born in 2016. No other children have been born of these parties, and no child is expected.

4. This Court finds that the two (2) minor children have resided in South Carolina since birth. South Carolina is therefore the home state of the children pursuant to the Uniform Child Custody Jurisdiction Enforcement Act codified at S.C. Code §63-15-300 et. seq.

5. This Court finds that this Court has subject matter and personal jurisdiction of this action and of these parties. Venue is proper in Lexington County, South Carolina.

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7.

8. This Court finds that the Plaintiff is granted exclusive use and possession of the marital home located at 112 John Preston Drive, Lexington, South Carolina. She shall be responsible for all costs associated with this home. The Defendant shall immediately vacate the home, taking with him his clothes, shoes and toiletries.

9. This Court finds that both parties are restrained from selling, mortgaging, destroying, or otherwise disposing of any marital property without prior written consent of both parties or prior Order of the Court. This Court further finds that neither party shall incur any debt in the name of the other party or increase any marital debt during the pendency of this litigation.

10.

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11.

12. The Plaintiff shall maintain medical insurance coverage on the minor children. All noncovered medical, dental, counseling, orthodontic, vision and other health-related expenses for the children shall be divided equally between the parties. The Plaintiff shall provide a bill/invoice to the Defendant within ten (10) days of incurrence, and the Defendant shall pay his one-half within ten (10) days of the date the bill/invoice is provided or pursuant to other payment arrangements acceptable with the medical provider.

13. The parenting guidelines and restrictions attached to this Order shall be in full force and effect for both parties. Neither parent shall administer corporal punishment to either minor child.

FILED
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LISA M. COMER
CLERK OF COURT
LEXINGTON SC

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14.

15. The parties agree that either Lisa Kinon or Kevin Barth shall serve as the mediator in this case.

16

16. All other issues shall be held in abeyance pending further Order of the Court.

IT IS FURTHER ORDERED that the Plaintiff shall have exclusive use and possession of the marital home as set forth in full hereinabove;

IT IS FURTHER ORDERED that the Defendant shall immediately vacate the marital home as set forth herein above:

IT IS FURTHER ORDERED that the Defendant shall pay child support to the Plaintiff in the amount of $2,000 per month as set forth more fully hereinabove;

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2021 SEP -9 PM 2:35
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

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IT IS FURTHER ORDERED that the attached parenting guidelines and restrictions shall apply to both parties, and neither shall administer corporal punishment to either minor child;

IT IS FURTHER ORDERED that the Plaintiff shall maintain medical insurance coverage on the minor children, with all noncovered health-related expenses being divided equally between the parties as set forth more fully hereinabove;

IT IS FURTHER ORDERED that another temporary hearing shall be scheduled at the conclusion of the expedited investigation of the Guardian *ad Litem*;

IT IS FURTHER ORDERED that either Lisa Kinon or Kevin Barth shall serve as the mediator in this case;

IT IS FURTHER ORDERED that all other issues shall be held in abeyance pending further Order of the Court.

IT IS SO ORDERED.

W. Greg Seigler
Presiding Judge of the
Family Court for the
Eleventh Judicial Circuit

FILED
2021 SEP -9 PM 2:35
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

Lexington, South Carolina

September 8, 2021

STATE OF SOUTH CAROLINA)
) IN THE FAMILY COURT
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

FILED
2021 SEP -8 PM 2:35
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

EMILY P. SMITH,)
Plaintiff,)
vs.)
ROBERT TERENCE SMITH,)
Defendant.)

JUDGMENT IN A FAMILY COURT CASE

Docket No. 2021-DR-32-1578

Submitted by:	**Attorney for** ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant ☐ GAL
Sheila McNair Robinson P.O. Box 5709 West Columbia, SC 29171	

DECISION BY COURT (check all that apply)

☒ This action came to trial, hearing or was resolved by consent and an order was rendered.

☐ This action has been dismissed pursuant to ☐ Rule 12(b), SCRCP ☐ Rule 41(a), SCRCP ☐ Rule 43(k), SCRCP ☐ Family Court Benchmark ☐ Other: ____

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court: ____

☐ Additional information for Clerk:____

ORDER INFORMATION

This is a ☒ Temporary ☐ Final order. If Final, does this order end the case? ☐ Yes ☐ No
Support ☐ is not ordered ☒ is ordered, and it is to be paid ☐ through the court. ☒ directly to the CP.
Case number under which support is paid if different from this one: ____
This order involves the immediate ☐ issuance ☐ dismissal of a bench warrant, or ☐ does not apply.
☐ The following motions are ended by this order (include motion filing date): ____
☐ This order adds or dismisses the following parties to this case:
☐ dismiss ☐ add:____ ☐ dismiss ☐ add:____

INFORMATION FOR THE JUDGMENT INDEX/TRANSCRIPT OF JUDGMENT (§ 20-3-670(B)(1)) **Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information to enroll, indicate "N/A" in one of the boxes below.**		
Judgment In Favor of (List name(s) below)	**Judgment Against (List name(s) below)**	**Judgment Amount to be Enrolled (List amount(s) below)**
		$
		$
		$
If applicable, describe the property, including tax map information and address, referenced in the order: ____		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the South Carolina Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: title abstractors and researchers should refer to the official court order for judgment details.**

ROA 0349

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Family Court Judge _____ Judge Code 4178 Date 9/8/21

FOR CLERK OF COURT OFFICE USE ONLY

This judgment was entered on the 9/9/21 and a copy mailed first class or placed in the appropriate attorney's box on _____ to attorneys of record or to parties (when appearing pro se) as follows:

_____ Sheila McNair Robinson
_____
_____
ATTORNEY(S) FOR THE PLAINTIFF(S)

_____ Abby Lawton Jones
_____
_____
ATTORNEYS FOR THE DEFENDANT(S)

Lisa Conner
CLERK OF COURT

Court Reporter: _____

Custodial Parent (if applicable): _____

ELECTRONICALLY FILED - 2022 Jun 02 1:59 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

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STATE OF SOUTH CAROLINA)
) IN THE FAMILY COURT
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

FILED
2021 SEP -9 PM 2:35
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

EMILY P. SMITH)
Plaintiff,) **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**
vs.)
ROBERT TERENCE SMITH)
Defendant.) Docket No. 2021-DR-32-1578

Plaintiff's Attorney:	Defendant's Attorney:
Sheila McNair Robinson, Bar No. 65385 Address: P.O. Box 5709, West Columbia SC 29169 Phone: 803-796-9160 Fax 803-791-8410 E-mail: sheila@mbmlawsc.com Other: _____	Ashby Lawton Jones, Bar No. Address: 303 S. Lake Dr. , Lexington, SC 29072 Phone: (803) 359-1003 Fax(803) 359-1378 E-mail: Ashby@kinardand jones.com Other:

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☒ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion:
Estimated Time Needed: Court Reporter Needed: ☐ **YES**/☐ **NO**

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order Temporary Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff /☐ Defendant — September 2, 2021 Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: _____
☒ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☒ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE CODE _____ Date: _____
Judge Signature: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

Custodial Parent (if applicable): _____SCCA 233F (12/2009)

COPY

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT FOR THE
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	C.A. NO.: 2021-DR-32-1578
EMILY P. SMITH,	)	
	)	
PLAINTIFF,	)	**PLAINTIFF'S RETURN TO DEFENDANT'S MOTION FOR EMERGENCY/EXPEDITED TEMPORARY RELIEF**
v.	)	
	)	
ROBERT TERENCE SMITH,	)	
	)	
DEFENDANT.	)	

TO: ROBERT TERENCE SMITH, DEFENDANT AND HIS ATTORNEY, ASHBY L. JONES:

The Plaintiff makes a Return to the Motion for Emergency/Expedited Relief filed by the Defendant (scheduled as a regular temporary hearing) as follows:

1.

2. The Plaintiff would show that the Defendant has been dishonest in financial matters, including with the management of the parties' joint real estate business. The Defendant has failed to properly share the profits of the business with the Plaintiff and has

ELECTRONICALLY FILED - 2022 Jun 02 1:59 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

withheld paychecks from her during the pendency of this action. The Plaintiff is therefore requesting an Order requiring the Defendant to make a complete accounting of all monies paid to and by the real estate company.

3. The Plaintiff would show that the Defendant's conduct brought about the need for this action. He should therefore be responsible for paying a reasonable sum in attorney's fees to the Plaintiff.

4. The Plaintiff would show that this Return will be further based on information provided to the Court at the time of the hearing.

MOORE BRADLEY MYERS LAW FIRM, P. A.

By: 
SHEILA MCNAIR ROBINSON
1700 Sunset Boulevard
P. O. Box 5709
West Columbia, SC 29171
803/796-9160
Attorney for Plaintiff

West Columbia, South Carolina

December 1, 2021

ELECTRONICALLY FILED - 2022 Jun 02 1:59 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

FILED
2022 JAN 25 AM 8:51
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

STATE OF SOUTH CAROLINA)	IN THE FAMILY COURT FOR THE
)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)	Case No.: 2021-DR-32-1578
)	
Emily P. Smith,)	
)	
Plaintiff,)	**SECOND SUPPLEMENTAL TEMPORARY ORDER**
)	
v.)	
)	
Robert Terence Smith,)	
)	
Defendant.)	
)	

Date of Hearing:	December 2, 2021
Presiding Judge:	The Honorable Robert E. Newton
Plaintiff's Attorney:	Sheila McNair Robinson, Esquire
Defendant's Attorney:	Ashby Lawton Jones, Esquire
Guardian *ad Litem*:	Michelle S. Gorski
Court Reporter:	Carole Shealy

This matter was before the Court on December 2, 2021 on Defendant's Motion for Emergency/Expedited Relief filed on November 5, 2021. Present and appearing at the appointed time and place were the Plaintiff and her attorney, Sheila McNair Robinson, Esquire. The Defendant and his attorney, Ashby Lawton Jones, Esquire and the Guardian *ad Litem*, Michelle S. Gorski, Esquire were also present.

The record reflects this action was commenced by the filing of a Notice of Motion and Motion for Emergency/Expedited Relief on behalf of the Defendant on November 5, 2021. The request for an emergency or expedited hearing was denied and the matter was set in the ordinary course. Defendant requested an Order granting him reasonable

Plaintiff filed a Return to Defendant's Motion on December 1, 2021,

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In addition, Plaintiff requests the Court Order an accounting regarding certain financial matters and requests an award of fees, as well. Both parties submitted Affidavits and supporting documents and the Court has considered those materials as well as the arguments of Counsel. In addition, the Guardian ad Litem submitted her Initial Report which the Court has considered. All Motions before the Court were properly served.

These parties have been operating under a Temporary Order issued by the Honorable W. Greg Seigler on September 9, 2021, from a hearing on August 26, 2021.

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LEXINGTON SC

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CLERK OF COUR
LEXINGTON SC

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4. The parties are reminded and admonished by the Court regarding the restraints on disparagement or discussion regarding the litigation with the children or in their presence.

6. The Court denies Plaintiff's request for a Court ordered accounting.

7. All remaining issues are held in abeyance including request for temporary fess incident to this motion.

IT IS SO ORDERED.

The Honorable Robert E. Newton

Lexington, South Carolina
January 21, 2022.

FILED
2022 JAN 25 AM 8:51
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

STATE OF SOUTH CAROLINA)
) IN THE FAMILY COURT
COUNTY OF LEXINGTON) ELEVENTH JUDICIAL CIRCUIT

FILED
2022 JAN 25 AM 8:51
LISA M. EXUM
CLERK OF COURT
LEXINGTON SC

Emily P. Smith, Plaintiff,
vs.
Robert Terence Smith, Defendant.

JUDGMENT IN A FAMILY COURT CASE

Docket No. 2021-DR-32-1578

Submitted by:	
Ashby Lawton Jones 808 South Lake Drive Lexington, SC 29072 803-359-1003	**Attorney for** ☐ Plaintiff ☒ Defendant or ☐ Self-Represented Litigant ☐ GAL

DECISION BY COURT (check all that apply)

☐ This action came to trial, hearing or was resolved by consent and an order was rendered.

☐ This action has been dismissed pursuant to ☐ Rule 12(b), SCRCP ☐ Rule 41(a), SCRCP ☐ Rule 43(k), SCRCP ☐ Family Court Benchmark ☐ Other: ____

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court: ____

☐ Additional information for Clerk:____

ORDER INFORMATION

This is a ☐ Temporary ☐ Final order. If Final, does this order end the case? ☐ Yes ☐ No
Support ☐ is not ordered ☐ is ordered, and it is to be paid ☐ through the court. ☐ directly to the CP.
Case number under which support is paid if different from this one: ____
This order involves the immediate ☐ issuance ☐ dismissal of a bench warrant, or ☐ does not apply.
☐ The following motions are ended by this order (include motion filing date): ____
☐ This order adds or dismisses the following parties to this case:
☐ dismiss ☐ add:____ ☐ dismiss ☐ add:____

INFORMATION FOR THE JUDGMENT INDEX/TRANSCRIPT OF JUDGMENT (§ 20-3-670(B)(1)) **Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information to enroll, indicate "N/A" in one of the boxes below.**		
Judgment In Favor of (List name(s) below)	**Judgment Against (List name(s) below)**	**Judgment Amount to be Enrolled (List amount(s) below)**
		$
		$
		$
If applicable, describe the property, including tax map information and address, referenced in the order: ____		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the South Carolina Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: title abstractors and researchers should refer to the official court order for judgment details.**

ROA 0360

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Family Court Judge ROA 0361 Judge Code 4166 Date 1/21/2022

FOR CLERK OF COURT OFFICE USE ONLY

This judgment was entered on the 1/25/22 and a copy mailed first class or placed in the appropriate attorney's box on _____ to attorneys of record or to parties (when appearing pro se) as follows:

Sheila McNair Robinson
ATTORNEY(S) FOR THE PLAINTIFF(S)

Ashby Lawton Jones
ATTORNEYS FOR THE DEFENDANT(S)

Lisa Comer
CLERK OF COURT

Court Reporter: _____

Custodial Parent (if applicable): _____

FILED
2022 JAN 25 AM 8:51
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

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STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE FAMILY COURT
ELEVENTH JUDICIAL CIRCUIT

Emily P. Smith
Plaintiff,
vs.
Robert Terence Smith
Defendant.

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Docket No. 2021-DR-32-1578

Plaintiff's Attorney:	Defendant's Attorney:
Sheila McNair Robinson, Bar No. 65385 Address: P.O. Box 5709 West Columbia, SC 29171 Phone: 803-796-9160Fax _____ E-mail: sheila@mbmlawsc.comOther: _____	Ashby Lawton Jones, Bar No. 15900 Address: 808 South Lake Drive Lexington, SC 29072 Phone: 803-359-1003 Fax_____ E-mail: ashby@kinardandjones.comOther: _____

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☒ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Second Supplemental Temporary Order
Estimated Time Needed: _____ Court Reporter Needed: ☐ **YES**/☐ **NO**

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

FILED
2022 JAN 19 PM 3:17
CLERK OF COURT
LEXINGTON SC

_____ _____
Signature of Attorney for ☐ Plaintiff /☐ Defendant Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: $_____
☒ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☒ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE CODE _____ Date: _____

Judge Signature: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

Custodial Parent (if applicable): _____

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

Apr 27 2022
REFERENCE ID: 1028011

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

Filing ID: 220427-1415219

Filing Date: 04/27/2022

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

MEMBERS STATEMENT OF DISSOCIATION FROM A LIMITED LIABILITY COMPANY

The following member of the listed limited liability company hereby files this Statement of dissociation in accordance with Section 33-44-704 of the 1976 S.C. Code of Laws, as amended.

1. Name of the limited liability company from which a member has dissociated:

   Southern Collection, LLC

2. Name of member who has dissociated from the limited liability company:

   Emily P. Smith
   (Name)
   112 John Preston Drive
   (Street Address)
   Lexington, South Carolina 29072
   (City, State, Zip Code)

3. Unless otherwise specified, this statement is effective when endorsed for filing by the Secretary of State. Specify any delayed effective date and time: _____
   (Date)

4. This statement is being filed by:

   [X] a. The dissociating member:

   Signed as Filer: Desa Ballard
   (Signature)

   04/27/2022
   (Date)

   [ ] b. The limited liability company:

   _____
   (Signature)

   _____
   (Date)

   _____
   (Print Name)

   _____
   (Capacity)

Form Revised by South Carolina Secretary of State, August 2016
F0050

SC Secretary of State
Mark Hammond

ELECTRONICALLY FILED - 2022 Jun 02 1:59 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	IN THE FAMILY COURT OF THE ELEVENTH JUDICIAL CIRCUIT C.A. NO.: 2021-DR-32-1578
EMILY P. SMITH, PLAINTIFF, VS. ROBERT TERENCE SMITH, DEFENDANT,	)	**NOTICE OF MOTION AND MOTION TO SUPPLEMENT COMPLAINT**

TO: DEFENDANT ABOVE NAMED: ROBERT TERENCE SMITH and his attorney, ASHBY LAWTON JONES:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through her undersigned counsel, will move before the presiding Judge of the Family Court for the Eleventh Judicial Circuit on the _____ day of _____, 202 at _____ o'clock _____.m., for an Order allowing her to amend and supplement the Complaint in this action. If you fail to appear, the Plaintiff will request the relief sought herein.

The Plaintiff would show the pleadings were filed in this case on August 18, 2021. The parties jointly own a real estate business, Southern Collection, LLC. The parties have established other businesses as well to include Southern Collection Brokerage, LLC, Emily P. Smith & Associates, LLC and Terence Smith & Associates, LLC. The Plaintiff is now seeking relief concerning these businesses in an alternate jurisdiction than Family Court. The Plaintiff is therefore seeking to supplement her previously filed Complaint to request the division of the parties' businesses, Southern Collection, LLC, Southern Collection Brokerage, LLC, Emily P. Smith & Associates, LLC and Terence Smith & Associates, LLC be excluded from the equitable division by the Family Court inasmuch as an action is being filed in Circuit Court for the

ELECTRONICALLY FILED - 2022 Jun 02 1:59 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

dissolution of the businesses.

The Plaintiff seeks an Order allowing her to amend and supplement the Complaint in this action to encompass the above relief. A copy of the proposed amended pleading is attached. Such Motion shall be based upon the Laws of the State of South Carolina, the South Carolina Rules of Civil Procedure, and the Family Court Rules of Court, including but not limited to South Carolina Rules of Civil Procedure 13(e) and 15(a)(d).

The Plaintiff also requests an award of attorney's fees for having to file this Motion.

MOORE BRADLEY MYERS LAW FIRM, P.A.

By: _____
SHEILA MCNAIR ROBINSON
1700 Sunset Boulevard
P. O. Box 5709
West Columbia, SC 29171
803/796-9160
Attorney for Plaintiff

West Columbia, South Carolina

April 29, 2022

Pursuant to Rule 11 SCRCP which Rule is mandatory in this jurisdiction and which Rule is applicable in the Family Court to this jurisdiction, I hereby certify or affirm that prior to filing the within Notice of Motion, I did contact counsel for Defendant to request compliance of the discovery requests, no responses have been given by Defendant.

_____
Sheila McNair Robinson

ELECTRONICALLY FILED - 2022 Jun 02 1:59 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

ELECTRONICALLY FILED - 2022 May 06 11:38 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419
ELECTRONICALLY FILED - 2022 Jun 02 1:59 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT
Emily P. Smith et al, Plaintiff vs. Robert T. Smith et al, Defendant.	C/A No.: 2022-CP-32-01419 **ORDER DENYING EMERGENCY APPOINTMENT OF A RECEIVER**

INTRODUCTION

This matter arises out of Plaintiffs' ("Plaintiff") Complaint filed on April 28, 2022 seeking Judicial Dissolution and Winding Up on an LLC owned by the parties, Emergency Temporary Appointment of a Receiver, and asserting tort claims for Conversion, Attempted Tortious Interference with Contract, as well as Imposition of Constructive Trust. The crux of this civil action appears to be Plaintiff's allegation that Defendant is denying her of her rightfully owed income from their jointly owned real estate brokerage, Southern Collection Brokerage LLC, through his actions. Plaintiff contacted this Court on Friday, April 29, 2022, requesting an emergency hearing regarding Plaintiff's Motion for Appointment of a Receiver. A hearing was held on May 5, 2022 in the WebEx virtual courtroom. Desa Ballad, Esquire appeared for the Plaintiff, while Ashby Jones, Esquire and Mark Goddard, Esquire appeared on behalf of the Defendants.

While this civil action was filed case was filed recently, the parties have been actively litigating a highly contested divorce action in the Lexington County Family Court since August 18, 2021, and there appears to be great overlap of the issues. Plaintiff contends that the circuit

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ELECTRONICALLY FILED - 2022 Jun 02 1:59 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

court can and should grant the appointment of a receiver because this dispute is centered around an LLC and the dissolution thereof. Defendants contend that this matter should not be handled by the circuit court because exclusive jurisdiction of the properties and assets owned by the parties remains with the family court, and no divestment of such jurisdiction has occurred. Of particular interest to this Court is whether the relief from harm sought by the Plaintiff could be fully addressed by the family court.

After hearing arguments from counsel and reviewing the parties' submitted documents, the Court hereby denies Plaintiff's Request for Appointment of a Receiver without prejudice.

STANDARD OF REVIEW

"The appointment of a receiver is a drastic remedy, and should be granted only with reluctance and caution." *Midlands Utility, Inc. v. South Carolina Dept. of Health and Environmental Control*, 301 S.C. 224, 391 S.E.2d 535 (1989) citing *Vasiliades v. Vasiliades*, 231 S.C. 366 (1957). Further, "the appointment of receiver rests in the sound discretion of the Court to which application is made." *Andrick Development Corp. v. Maccaro*, 280 S.C. 103, 106, 311 S.E.2d 95, 97 (Ct. App. 1984).

A receiver stands in the shoes of debtor with respect to the property of the latter. *Jeffcoat v. Morris*, 300 S.C. 526, 389 S.E.2d 159 (Ct. App. 1989). A receiver holds the property coming into his or her hands by the same right and title as the person for whose property he or she is receiver. *Id.* A receiver represents the court appointing him, and he is an officer of the court and is the agency through which the Court acts. *Kirven v. Lawrence*, 244 S.C. 572, 137 S.E.2d 764 (1964).

In order to warrant the appointment of a receiver prior to the entry of judgment, four conditions must be met. (1) The Plaintiff must show an apparent right to the property; which is

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(2) the subject of the action; (3) in possession of an adverse party; and (4) in danger of being lost, materially injured, or impaired. S.C. Code Ann. § 15-65-10, *et seq*.

ANALYSIS

To be clear, this case does not involve a mortgage foreclosure, bankruptcy, and/or creditor issue at this time, which would be the typical area involving Receivers. Plaintiff asserts that only the circuit court can provide her relief, however, there appears to be prior South Carolina case law supporting the use of a Receiver in the family court context. In *Whetstone v. Whetstone*, 309 S.C. 227, 420 S.E.2d 877 (Ct. App. 1993), the family court appointed a Receiver to assist in property division, and ultimately approved the Receiver's plan which also involved three corporations in which the family members were stockholders. S.C. Code Ann. § 15-65-10, refers to the circuit court addressing and handling the appointment of receivers; however, much of the case law dealing with the applicability and appointment of receivers involve cases that pre-date the formation of the S.C. Family Court in 1976. While it is clear that the appointment of receiver is in the discretion of the circuit court, such acts appear to be appropriate in the family court in the proper context as well.

Even assuming the Plaintiff's allegations regarding withholding of marital assets or income are true, it appears that the family court has the necessary and proper tools to prevent the dissipation or other improper conduct involving contested marital assets through injunctive relief if so sought. See for example *S.C. Code §20-3-650.* As communicated to the attorneys, this court is solely focused on whether emergency appointment of a Receiver is necessary and proper. This court finds in the negative – emergency appointment is not necessary at this time.

ELECTRONICALLY FILED - 2022 May 06 11:38 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419
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CONCLUSION

Based upon the arguments of counsel and the pleadings, Plaintiff's Motion for Emergency Appointment of a Receiver is DENIED. The parties are to seek relief from the Family Court directly, and should further proceedings in the Circuit Court be needed, they may be sought by the parties.

IT IS SO ORDERED.

[ELECTRONIC SIGNATURE PAGE TO FOLLOW]

ELECTRONICALLY FILED - 2022 May 06 11:38 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419
ELECTRONICALLY FILED - 2022 Jun 02 1:59 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

Lexington Common Pleas

Case Caption: Emily P. Smith , plaintiff, et al VS Robert T. Smith , defendant, et al

Case Number: 2022CP3201419

Type: Order/Other

It Is So Ordered

s/ Walton J. McLeod

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT FOR THE
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	Case No.: 2021-DR-32-1578
Emily P. Smith,	)	
	)	
Plaintiff/Respondent,	)	
	)	**PETITION FOR CONTEMPT**
v.	)	**ON BEHALF OF PETITIONER**
	)	
Robert Terence Smith,	)	
	)	
Defendant/Petitioner,	)	
	)	

Petitioner, Robert Terence Smith complaining of Respondent, Emily P. Smith, would respectfully show unto this Court as follows:

That Respondent has willfully and intentionally violated the Temporary Order of this Court executed by the Honorable W. Greg Seigler on September 8, 2021, and filed on September 9, 2021, attached as Exhibit A, due to the following acts and/or omissions:

1. Page 3, Paragraph 9 of the Temporary Order states the following:

This Court finds that both parties are restrained from selling, mortgaging, destroying, or otherwise disposing of any marital property without prior written consent of both parties or prior Order of the Court. This Court further finds that neither party shall incur any debt in the name of the other party or increase any martial debt during the pendency of this litigation.

On **April 27, 2022**, Plaintiff filed an action in the Circuit Court for the County of Lexington, Exhibit B, requesting a judicial dissolution of the parties' real estate business: Southern Collection LLC. Contemporaneously, Plaintiff filed an Emergency Motion for

ELECTRONICALLY FILED - 2022 Jun 02 1:59 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

ELECTRONICALLY FILED - 2022 Jun 02 1:59 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

Appointment of Receiver (Exhibit C), which was heard on **May 5, 2022**, by the Honorable Walton J. McLeod, IV.[1]

Even more troubling, Plaintiff filed a Members Statement of Dissociation from a Limited Liability Company with the South Carolina Secretary of State on **April 27, 2022** (Exhibit D). Plaintiff seeks to dissolve the parties' company which is a marital asset and requested that the Court appoint a Receiver, the very definition of destroying the marital asset. Of significance, Counsel for Plaintiff in the Circuit Court matter, Desa Ballard, Esquire, takes the position that Southern Collection, LLC was dissolved when Plaintiff filed the Statement of Dissociation (Exhibit E), therefore admitting that her client disposed (or attempted to dispose) of a marital asset.

On **May 1, 2022**, Counsel for Plaintiff requested that Blair Cato Pickren Casterline, LLC hold proceeds from Defendant's **April 29, 2022**, real estate closing pending the Motion for Appointment of Receivership (Exhibit E). Gary Pickren, Esquire, the closing attorney, and a Real Estate Commissioner, raised concerns that if Southern Collection, LLC is dissolved, then there is no brokerage and thus no Broker-in-Charge pursuant to S.C. Code Ann. § 40-57-10, *et. seq.* (Exhibit E). Consequently, destroying the business and leaving all the real estate agents, including Plaintiff and Defendant, without a Broker and unable to perform any acts requiring a Broker license. In response to these concerns, Plaintiff's counsel stated the following: "Emily is covered, but I can't speak for anyone

[1] Plaintiff's Motion to Appoint a Receiver was denied.

ELECTRONICALLY FILED - 2022 Jun 02 1:59 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

else." (Exhibit E). Therefore, Counsel for Plaintiff admits that her client's actions, if successful, destroyed the parties' company, a marital asset.

2. Further, on **May 3, 2022**, Plaintiff made disparaging comments about Defendant during a Broker-In-Charge classroom setting at the Real Estate School for Success. Specifically, Plaintiff accused Defendant of misappropriating funds and violating South Carolina real estate law. Plaintiff goes so far as to mention the family court proceedings in her statements, specifically stating that Defendant's actions regarding the real estate business were "low on my totem pole after family court." (Exhibit F). Plaintiff's comments about Defendant to other members in the real estate community are an attempt to not only defame Defendant and destroy his reputation but also to destroy the parties' real estate business, which is in direct violation of Judge Siegler's September 8, 2021 ruling.

3. Plaintiff has made countless attempts to sabotage the parties' real estate business. On or about October 5, 2021, Plaintiff unilaterally transferred funds from the business account to her personal account causing a commission check to one of the real estate agents to bounce. Despite knowledge that this disbursement of funds was causing the business financial distress and damaging the company's relationship with a loyal and high profit grossing team member, Plaintiff refused to replenish the funds. Even further, Plaintiff harassed this team member via social media and text message regarding this litigation. Ultimately, this real estate agent decided to leave Southern Collection and pursue her profession elsewhere.

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This was not the first employee to leave the company due to Plaintiff's actions. In October 2021, Plaintiff's unilateral transfer of all the company's funds to her personal account caused the office manager to quit citing her concerns over the financial issues of the company. (Exhibit G).

4. Further, throughout the month of April 2021, Plaintiff removed all the decorative furniture in the parties' office leaving only the desks and couches. Plaintiff continues to put the parties' company at risk of losing its franchise with RE/MAX and continues to create a hostile work environment for the real estate agents which are vital to the company's livelihood.

5. In May 2022, Plaintiff stopped paying the domain fees for Southern Collection's website (thesmithsellsc.com) causing the website to be "unreachable". (Exhibit H). This website was used in connection with Zillow to connect the business with sellers and buyers. Plaintiff is deliberately sabotaging the parties' business and making it appear to the outside world that Southern Collection is out of business.

6. On May 2, 2022, Plaintiff intercepted a sale from one of Southern Collection's realtors through the Southern Collection Facebook page. A buyer requested a specific realtor, however, Plaintiff responded to the buyer that she would be able to assist. (Exhibit I). Plaintiff, yet again, created an uncomfortable situation for one of the parties' loyal employees, and caused that employee to lose a commission sale.

Defendant reserves the right to add additional infractions occurring after Plaintiff is provided a copy of this Petition as evidence of Plaintiff's willfulness.

WHEREFORE, the Petitioner prays for an Order and Judgment of the Court:

a. Adjudging Respondent to be in willful contempt of court, sanctioning her accordingly by fine, incarceration, and/or service on the public work force, as provided by S.C. Code Ann. §20-7-1350 and other laws of this State;

b. Requiring Respondent to comply with this Court's prior Order;

c. Requiring Respondent to pay the legal fees and costs of Petitioner, filing fees, service of process, witnesses, investigation, travel costs, and the contempt hearing in this action; and

d. Granting to him such additional and ancillary relief as this Court deems just and proper.

KINARD & JONES, LLC

ASHBY LAWTON JONES
ALYSSA ROSE IGLESIAS
808 South Lake Drive
Post Office Box 2678
Lexington, SC 29072
(803) 359-1003
ATTORNEYS FOR PETITIONER

Lexington, South Carolina
5·10, 2022.

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Alyssa Iglesias

From: Desa Ballard <desab@desaballard.com>
Sent: Monday, May 2, 2022 4:51 PM
To: Ashby Jones; mgoddard@turnerpadget.com; Sheila Robinson; Liz Sineath; Alyssa Iglesias; Betty Perdue
Cc: Haley Hubbard; Beth Cogan
Subject: RE: Dissolution of Southern Collection LLC, Case No. 2022-CP-32-01419

Thank you for your letter. I emailed Ashby and Mark last night with a copy of the pleadings for delivery to both of you via email this morning at 9:00 am. Beth, my paralegal, re-sent those to you today when we got notice that both emails (to Ashby and Mark) bounced back (because I apparently mis-typed email addresses for both of you). Do not doubt, however, that I sent these to you *prior to* them being served on your client to insure you had them in hand by the time he let you know he had been served. My misspelling of your emails was inadvertent.

Sheila Robinson either has or is amending her pleadings to exclude Southern Collections LLC and related corporate matters from the domestic litigation, and the circuit court will have exclusive jurisdiction over this matter. The family court had already declined to deal with these property issues in the temporary hearing so there is no currently-pending action in which these issues have been addressed.

Judge McCleod has set an emergency hearing on our motion for appointment of receiver for Thursday 1 pm via his virtual courtroom. Beth will be sending notice of that hearing to you shortly.

Jack Cobb has agreed to serve as receiver, as you will see in the motion for appointment of receiver.

Personal service was required, and we served your client at the only place and time we knew he would be. It was not intended to be, nor was it, an intrusive or dramatic moment unless your client elected to make it one.

There was a closing by Gary Pickren on Friday in which your client instructed Gary to send the real estate commission to Southern Collections. I have asked Gary to hold those proceeds in light of the dissolution of Southern Collections.

Please insure that all documentation, emails and texts relevant to the operations of Southern Collections, LLC, Southern Brokerage Collections, LLC, or any other person or entity through which funds that should have been received by Southern Collection LLC are preserved.

Please let me know if you have any other questions. I look forward to working with whichever one of you will be handling the corporate matters, or both if that is the case.

db

From: Ashby Jones <ashby@kinardandjones.com>
Sent: Monday, May 2, 2022 4:33 PM
To: Beth Cogan <Beth@desaballard.com>; mgoddard@turnerpadget.com; Sheila Robinson <sheila@mbmlawsc.com>; Michelle@gorskilawoffice.com; Liz Sineath <lsineath@mbmlawsc.com>; Alyssa Iglesias <alyssa@kinardandjones.com>; Betty Perdue <betty@kinardandjones.com>

ROA 0376

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STATE OF SOUTH CAROLINA)	IN THE FAMILY COURT FOR THE
)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)	C.A. NO.: 2021-DR-32-1578
EMILY P. SMITH,)	
)	
PLAINTIFF,)	
)	**PLAINTIFF'S ANSWERS**
v.)	**TO DEFENDANTS FIRST SET OF**
)	**INTERROGATORIES TO PLAINTIFF**
ROBERT TERENCE SMITH,)	
)	
DEFENDANT.)	
)	

To Robert Terence Smith and his attorney, Ashby Lawton Jones:

1. State the name and addresses of person(s) known to the Plaintiff and/or her counsel to be witnesses concerning the facts of this matter and indicate whether written or recorded statements have been taken from the witnesses and indicate who has possession, custody or control of such statements.

Christopher Leventis. 1116 Blanding Street, Suite 2B, Columbia, SC 29201. Affidavits have been filed at the temporary hearings in this case.

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Ronald Lockhart, CPA. 5111 Trenholm Road, Columbia, SC 29206. No affidavit has been prepared by Mr. Lockhart.

Ann Lang, CPA, 107 Oak Park Drive, Irmo, SC 29063. No affidavit has been prepared by Mr. Lockhart.

3. List the names and addresses of any expert witnesses whom the Plaintiff expects to use as a witness at the trial of this matter.

ANSWER:

Chris Leventis, 1116 Blanding Street, Suite 2B, Columbia, SC 29201, 803.748.2644, is the CPA who prepared the financial declaration and MAA for Plaintiff.

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	IN THE FAMILY COURT OF THE ELEVENTH JUDICIAL CIRCUIT C.A. NO.: 2021-DR-32-1578
Emily P. Smith, Plaintiff, v. Robert Terence Smith, Defendant.	)	**DEFENDANT'S SUPPLEMENTAL ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES**

TO: EMILY P. SMITH, PLAINTIFF AND HER ATTORNEY, SHEILA MCNAIR ROBINSON, ESQUIRE:

DEFENDANT ANSWERS THE PLAINTIFF'S INTERROGATORIES AS FOLLOWS:

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of the statements.

ANSWER:

a. **Robert Terence Smith**
130 State Street
Columbia, SC 29169

Written Affidavit was previously provided to Plaintiff's Counsel during the parties' Motion for Temporary Relief Hearing. No additional statements have been made.

Mr. Smith is the Defendant and is expected to testify regarding the breakdown of the marriage, his knowledge or the marital estate and the relationship each party has with their children.

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Ms. Jones is the Defendant's attorney and is expected to testify regarding their fees and costs associated with the above captioned litigation.

No written or recorded statements have been taken.

r. **The Defendant reserves the right to call any witness identified by the Plaintiff in her Discovery responses.**

Defendant reserves the right to supplement this response.

3. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

ANSWER: *Allyson DeHart, CPA*
The Hobbs Group, PA
1704 Laurel Street
Columbia, SC 29201

KINARD & JONES, LLC

ASHBY LAWTON JONES
ALYSSA R. IGLESIAS
808 South Lake Drive
Post Office Box 2678
Lexington, SC 29072
(803) 359-1003
ATTORNEYS FOR THE DEFENDANT

Lexington, South Carolina
5/24, 2022.

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STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)))	IN THE COURT OF COMMON PLEAS Civil Action No. 2022-CP-32-01419
Emily P. Smith and Emily P. Smith and Associates, LLC,, Plaintiffs, vs. Robert T. Smith, Southern Collection, LLC, Southern Collection Brokerage, LLC, Terence Smith and Associates, LLC, Robert B. Smith and Sherry C. Smith,, Defendants.	)	**MEMORANDUM IN SUPPORT OF DEFENDANTS SOUTHERN COLLECTION, LCC, SOUTHERN COLLECTION BROKERAGE, LCC AND TERENCE SMITH & ASSOCIATES, LLC'S MOTION TO DISMISS PURSUANT TO RULE 12(B)(1) AND 12(B)(6) SCRCP**

The Defendants Southern Collection, LLC, ("Southern Collection"), Southern Collection Brokerage, LLC, and Terence Smith and Associates, LLC, (collectively "Defendants") by and through their undersigned attorneys, hereby respectfully submit this Memorandum in Support of their Motion to Dismiss the Complaint of Plaintiffs Emily P. Smith and Emily P. Smith and Associates, LLC, (collectively "Plaintiffs") pursuant to Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure ("SCRCP") and aver as follows:

FACTUAL BACKGROUND[1]

Plaintiff Emily P. Smith ("Emily") and Defendant Robert T. Smith ("Terence") married on November 3, 2012. Emily filed an action for divorce on or about August 18, 2021, in the Lexington County Family Court, Case No.: 2021-DR-32-1578 (the "Divorce Action"). A true and accurate

[1] The factual recitations contained herein are taken from Plaintiffs' Complaint. Defendants do not concede that such recitations are accurate but assume them to be true solely for the purposes of the instant motion.

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copy of Emily's Divorce Complaint is attached hereto as **Exhibit A**.[2] The Divorce Action is still pending. Emily has filed a Motion to Amend her Petition in the Divorce Action seeking to remove the parties' interests in Southern Collection from the marital estate. Terence does not consent to this removal. Terence has filed a motion in the Family Court to add Southern Collection as a named party in the Divorce Action. Both of these motions are still pending before the Family Court.

Defendant Southern Collection is organized and existing under the laws of the State of South Carolina and was formed by Emily and Terence for purposes of operating as a real estate company. ¶¶ 4, 12 Compl. Terence and Emily are the sole members of Southern Collection and each own 50% of the distributional interests in the Company.[3] ¶ 14 Compl. Southern Collection operated as a franchise of Re/Max and does not have an Operating Agreement. ¶¶ 13, 14 Compl. Emily and Terence formed their own S Corporations, Plaintiff Emily P. Smith and Associates, LLC ("Emily, LLC") and Defendant Terence Smith and Associates, LLC ("TSA") through which the net income of Southern Collection was to be paid as Terence and Emily's individual income.[4] ¶ 16 Compl.

Plaintiffs allege that Terence began forcing her out of Southern Collection, closing bank accounts, and misappropriating assets and income beginning in Spring 2021. ¶ 17 Compl. Plaintiffs claim that Terence created Defendant Southern Collection Brokerage, LLC

---

[2] In considering motions to dismiss including those under Rule 12(b)(6), courts may consider "documents incorporated in the complaint by reference and matters of which a court may take judicial notice." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322, 127 S. Ct. 2499, 168 L. Ed. 2d 179 (2007); S.C. R. Evid. 201(f)

[3] On April 27, 2022, Emily filed a Statement of Dissociation with the South Carolina Secretary of State's office from Southern Collection. Pursuant to S.C. Code Ann. §33-44-603(3), Emily has dissociated from Southern Collection and she is no longer a member and shall be treated as a transferee.

[4] Emily, LLC and TSA were both formed prior to the formation of Southern Collection.

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("Brokerage") and diverted the jobs, income, and assets of Southern Collection to it while conducting Southern Collection's business through Brokerage without Emily's consent. ¶ 18 Compl. Emily proceeds to make further allegations of wrongdoing involving the diversion of income from Southern Collection and prevention of Emily from conducting business though Southern Collection and contends that Terence's actions justify Southern Collection's dissolution. ¶¶ 19-28 Compl. She further argues that Terence's misappropriation of funds, assets, and inventory support a cause of action against Terence, Brokerage, and TSA for conversion. ¶¶ 35-40 Compl.

Emily's Fourth Cause of Action relates to a specific contract to sell a property in Lexington with which she alleges Terence tortuously interfered. ¶¶ 42-49 Compl. This cause of action is not directed toward Defendants and no damages against Defendants are sought in this claim. ¶ 49 Compl. Emily asserts a constructive trust against Brokerage for the income and assets she alleges Terence misappropriated from Southern. ¶ 57 Compl. Emily seeks an award of attorneys' fees pursuant to S.C. Code Ann. §33-44-702(d) based on the aforementioned allegations. ¶¶ 59-62 Compl. Notably, although Emily LLC is a Plaintiff, Emily is the only Plaintiff seeking relief pursuant to the causes of action set forth in the Complaint. ¶¶ 40, 49, 57, 61, 62, Prayer for Relief ¶¶ A-J Compl.

PLAINTIFFS' COMPLAINT SHOULD BE DISMISSED PURSUANT TO RULE 12(b)(1) SCRCP BECAUSE THE COURT LACKS SUBJECT MATTER JURISDICTION

I. STANDARD OF REVIEW

"A challenge to subject matter jurisdiction should be raised by a motion to dismiss under Rule 12(b)(1), SCRCP." *Ballenger v. Bowen,* 313 S.C. 476, 443 S.E.2d 379, 380 n.2 (1994). "The question of subject matter jurisdiction is a question of law for the Court." *Hammer v. Hammer*, 399 S.C. 100, 104-05, 730 S.E.2d 874, 876 (Ct. App. 2012). "If facts which give rise to a

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jurisdictional issue are in dispute, the court, not a jury, must find the facts." *Chew v. Newsome Chevrolet, Inc.*, 315 S.C. 102, 104, 431 S.E. 2d 631 (Ct. App. 1993.) "The motion may be supported by, and the court may consider, affidavits or other evidence necessary to determine the question of jurisdiction." *Id.*

II. ARGUMENT

S.C. Code Ann. § 63-3-530 (A)(2), states that the Family Court has the ***exclusive*** jurisdiction to hear and determine actions "for [divorce], separate support and maintenance, legal separation, and in other marital litigation between parties, and for settlement of all legal and equitable rights of the parties in the action in and to the real and ***personal property*** of the marriage." S.C. Code Ann. § 20-3-610 defines marital property as "all real and personal property which has been acquired by the parties during the marriage and which is owned as of the date of the filing or commencement of marital litigation…regardless of how legal title is held."

All of the allegations in Plaintiffs' instant Complaint pertain directly to alleged issues with Emily and Terence's ownership interests in Southern Collection or involve their ownership interests in Terence Smith and Associates, LLC, or Emily P. Smith and Associates, LLC. These membership interests are personal property squarely within the jurisdiction of the Family Court. *See* S.C. Code Ann. § 33-44-501(b) ("A distributional interest in a limited liability company is personal property…").

"The general rule is that jurisdiction of a court depends on the state of affairs existing at the time it is invoked. If jurisdiction once attaches to the person and subject matter of the litigation the subsequent happening of events will not ordinarily operate to oust the jurisdiction already attached." *Gilley v. Gilley*, 327 S.C. 8, 488 S.E.2d 310 (1996) (citing *Gardner v. Gardner*, 253 S.C. 296, 170 S.E.2d 372 (1969)). *See also Terry v. Lee*, 308 S.C. 459, 419 S.E.2d 213 (1992)

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("Separate actions to determine property rights will be considered 'other marital litigation' under §20-7-420(2), thereby vesting exclusive jurisdiction in the family court, if the relief sought is incidental to the decree of divorce.")

The facts of the *Gilley* case are analogous to the instant action. In *Gilley*, the wife filed action to partition property held with her husband in the Circuit Court. After the Circuit Court filing, husband filed an action for separate support and maintenance in the Family Court, and moved to dismiss the Circuit Court Complaint. The South Carolina Supreme Court ruled that the Circuit Court properly maintained jurisdiction over the matter because jurisdiction attached in the Circuit Court prior to the filing of the Family Court Complaint. *See* Gilley, 327 S.C. at 10-11, 488 S.E.2d at 312. However, in the instant case, the Divorce Action and the requests for separate support and maintenance were initially made in the Family Court, so it would maintain jurisdiction over the matters.

Further, in *Gilley*, the South Carolina Supreme Court found that although the Family Court has exclusive jurisdiction to apportion marital property, it does not have authority to apportion non-martial property. Since the property at issue in *Gilley* was specifically excluded in the antenuptial agreement between the parties, the property was considered non-marital property. *Id.* There is no such agreement between Emily and Terence in this action, and therefore, the personal property in question is specifically marital property within the exclusive jurisdiction of the Family Court to apportion.

Finally, in *Gilley*, the South Carolina Supreme Court found that the Circuit Court has exclusive jurisdiction in partition actions pursuant to S.C. Code Ann. § 15-61-50, and that the partition of undivided interests is not marital litigation within the jurisdiction of the Family Court. *Gilley*, 327 S.C. at 10, 488 S.E.2d at 312. There is no South Carolina statute that provides the

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same exclusive jurisdiction to the Circuit Court for the relief sought in the Plaintiffs' Complaint. Specifically, no such exclusive jurisdiction is found in the judicial dissolution statute, S.C. Code Ann. § 33-44-801, included in Plaintiffs' Complaint. The only citation to the Circuit Court in Article 8 of the LLC Act is found in S.C. Code Ann. § 33-44-803, which grants the Circuit Court the right to supervise the winding up a company ***after*** dissolution. There has been no judicial finding that a judicial dissolution is necessary in this case. Ultimately, the dissolution action for the alleged bad acts of Terence is what is currently included in the Plaintiffs' Complaint and already before the Family Court.

Ultimately, Plaintiffs' Complaint is trying to get the apportionment of these marital assets outside of the Family Court's consideration of all other marital assets and marital debt. Under Article VII of the S.C. LLC ACT, since Emily dissociated from Southern Collection, an at-will company, then her membership should be purchased by the company if the company is not dissolved. Therefore, if Emily fails to meet her burden to prove Southern Collection should be dissolved under S.C. Code Ann. § 33-44-801, then Southern Collection will be forced to buy her out. Importantly, the Circuit Court is *not* granted exclusive jurisdiction to hear an action to determine the fair value of a distributional interest being purchased under S.C. Code Ann. § 33-44-701. The Family Court can, and will, consider the value of Emily's interests in Southern Collection when apportioning all marital property.

Importantly, it is Emily that ultimately chose the Family Court to have jurisdiction for the issues relating to Southern Collection by filing her Petition for Divorce in the Family Court prior to filing the instant Complaint. She cannot now claim it is unfair to force her to litigate the Southern Collection issues in Family Court, when it was her Petition that vested the Family Court

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with exclusive jurisdiction. If Emily would have filed the instant Complaint prior to filing the Divorce Action, jurisdiction could have been established in the Circuit Court.

There are numerous examples that the parties' ownership and issues related to Southern Collection have vested in the Family Court incidental to the Divorce Action:

1. In Emily's Complaint in the Divorce Action filed on or about August 18, 2021, she requested the Family Court apportion the marital assets as part of her requested divorce.

2. In Terence's Answer and Counterclaim in the Divorce Action, he also requested the Family Court apportion the marital assets.

3. On or about September 8, 2021, the Family Court entered a Temporary Order restraining both Emily and Terence from "selling, mortgaging, destroying, or otherwise disposing of any marital property without prior written consent of both parties of prior Order of the Court."

4. In Emily's Return and Cross Motion filed on December 1, 2021, in the Divorce Action, she specifically requests the Family Court order an accounting of the parties' marital assets, including the assets of their real estate business – which is Southern Collection.

5. The parties have participated in discovery and have both engaged experts for the purpose of evaluating marital assets, including Southern Collection, in the Divorce Action.

6. On April 27, 2022, Terence filed a Supplemental Motion for Temporary Relief in the Divorce Action ("Supplemental Motion") seeking, among other unrelated items, to restrain Emily from further attempts to sabotage the Company through her actions, words and deeds, requiring Emily to immediately return all Company property that was

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removed from the lobby and offices of Southern Collection, and barring Emily from circumventing any commissions, referrals fees, or funds owed to Southern Collection to her personal accounts

7. On the same day, and likely in response to Terence's filing of the Supplemental Motion, Emily filed a Statement of Dissociation[5] from Southern Collection with the South Carolina Secretary of State's office, and filed the instant action seeking a judicial dissolution of Southern Collection.

8. On April 29, 2022, Emily filed a Motion to Supplement her Complaint in the Divorce Action ("April 29th Motion") that would exclude Southern Collection from the equitable division by the Family Court.

Given that the Divorce Action was filed over eight months prior to the filing of the instant action, it is clear that the Family Court jurisdiction attached to the claims Plaintiffs are asserting in the instant action well before the filing of this Complaint. Emily's April 29th Motion seemingly acknowledges that the Family Court has jurisdiction as to all issues related to Southern Collection as it specifically requests the Family Court to exclude Southern Collection, LLC, Southern Collection Brokerage, LLC, Emily P. Smith & Associates, and Terence Smith & Associates, LLC (all Defendants in the instant action) from the equitable division by the Family Court. Terence did not consent the relief sought in the April 29th Motion, and it is believed he takes the position the issue properly rests within the jurisdiction of the Family Court. Both Terence's Supplemental Motion to specifically add Southern Collection as a party to the Divorce Action and Emily's April 29th Motion to exclude Southern Collection from the equitable division in the Family Court are

[5] Pursuant to S.C. Code Ann. § 33-44-603, by dissociating from the Company, Emily is no longer a member of the Company, and instead shall be treated as a transferee. Further, she no longer has a right to participate in the management and conduct of Southern.

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still pending. Until such time the Family Court rules on the pending motions and specifically excludes Southern Collection from equitable division, the Family Court retains exclusive jurisdiction over these claims. Therefore, this Court lacks subject matter jurisdiction to hear this case.

PLAINTIFFS' COMPLAINT SHOULD BE DISMISSED AS TO DEFENDANTS PURSUANT TO RULE 12(b)(6) SCRCP FOR FAILURE TO STATE FACTS SUFFICIENT TO CONSTITUTE A CAUSE OF ACTION

The Court has already disposed of Plaintiffs' second cause of action[6] and Plaintiffs' Fourth Cause of Action pertains solely to Terence. With respect to the remaining causes of action, to varying degrees Plaintiffs do not make clear if they are seeking relief against Defendants, individually or collectively. Therefore, Defendants herein address Plaintiffs' First Cause of Action for Judicial Dissolution, Third Cause of Action for Conversion, Fifth Cause of Action for Constructive Trust, and Sixth Cause of Action for Attorney's Fees and Costs.

I. STANDARD OF REVIEW

"Under Rule 12(b)(6), SCRCP, a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action." *Palmer v. State*, 427 S.C. 36, 46, 829 S.E.2d 255, 260 (Ct. App. 2019). "In considering such a motion, the trial court must base its ruling solely on allegations set forth in the complaint." *Spence* 368 S.C. at 116, 628 S.E.2d at 874. "If the facts and inference drawn from the facts alleged in the Complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper." *Id.* "[T]he court is required to presume

[6] Pursuant to Plaintiffs' Emergency Motion for Appointment of a Receiver that was filed in conjunction with the Complaint, the Court entered an Order Denying Plaintiffs' Emergency Appointment of a Receiver on May 6, 2022 effectively dismissing Plaintiffs' second cause of action.

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all well pled facts, not propositions of law, to be true." *HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 635, 699 S.E.2d 699, 705 (Ct. App. 2010) (emphasis in original). A plaintiff "cannot transform an unsupported proposition of law into a statement of fact. The court ignores "unsupported conclusion[s] which . . . [are] contrary to the admitted facts." *Charleston Cnty. Sch. Dist. v. Laidlaw Transit*, 348 S.C. 420, 426, 559 S.E.2d 362, 365 (Ct. App. 2002).

II. ARGUMENT

A. As to Plaintiff's First Cause of Action (Judicial Dissolution and Winding up)

Through the cause of action for judicial dissolution, Plaintiffs both seek to dissolve Southern Collection pursuant to S.C. Code Ann. § 33-44-801(4). While this statute does provide a mechanism by which a member or disassociated member may seek a dissolution of a limited liability company and winding up of its business, it does not give rise to a separate cause of action directly against the company. The proper real parties in interest for an action for judicial dissolution are the members and dissociated members of the limited liability company, not the limited liability company itself. Therefore, this cause of action should not be directed toward the Defendants as Terence and Emily are the only members of Southern.

It is also clear from the allegations in the Complaint that neither TSA nor Brokerage would have any interest in the dissolution of Southern Collection. While it is unclear whether TSA and/or the Brokerage are purposely included in this cause of action, in the event that Plaintiffs request relief related to these entities, there are no supporting facts or law to include outside entities in the judicial dissolution of another entity. Further, Emily has no standing to request the judicial dissolution of TSA or Brokerage as she is not a member of either entity.

Furthermore, Defendants would reiterate that the assets and income of these entities are all property of the marital estate the distribution of which is already before the Family Court and

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should be equitably divided by the Family Court pursuant to Emily and Terence's filings in the Divorce Action.

Therefore, Plaintiffs' cause of action for judicial dissolution as to Defendants should be dismissed.

B. As to Plaintiff's Third Cause of Action (Conversion)

Plaintiffs seek an order granting judgment against Terence, TSA and Brokerage for conversion of the alleged misappropriated assets, inventory, and income from Southern Collection and the value of all assets and income allegedly diverted to Brokerage. "Conversion is defined as the unauthorized assumption in the exercise of the right of ownership over goods or personal chattels belonging to another to the exclusion of the owner's rights." *Moseley v. Oswald*, 656 S.E.2d 380, 382, 376 S.C. 251, 254, (2008) citing *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 498, 392 S.E.2d 789, 792 (1990). "To establish the tort of conversion, the plaintiff must establish either title to or right to the possession of the personal property." Id, (citing *Crane v. Citicorp Nat'l Servs., Inc.*, 313 S.C. 70, 72, 437 S.E.2d 50, 52 (1993) (superseded by statute on other grounds)).

This cause of action fails against Defendants because Plaintiffs allege that Terence, not Defendants, took the acts necessary to assume the exercise of the right of ownership of the assets, inventory, and income Plaintiffs describe in the Complaint. Specifically, Plaintiffs allege that "Defendant Smith (Terence) took possession of" and "converted" a portion of the staging inventory for his personal use. ¶ 38 Compl. Plaintiffs state that "Defendant Smith (Terence) misappropriated funds, inventory and assets" from Southern and converted them for the use of TSA and Brokerage. ¶ 39 Compl. Plaintiffs do not allege that Defendants assumed or converted these funds, inventory and assets. Assuming Plaintiffs allegations to be true for purposes of this Motion, the conversion by Terence of these items for the benefit of Brokerage and TSA does not

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entitle Plaintiffs to relief for conversion against Defendants, as they did not take the acts to convert or assume the inventory, assets, and income. Because Plaintiffs failed to establish this element to the cause of action of conversion against Defendants, this cause of action must be dismissed as to them.

C. As to Plaintiff's Fifth Cause of Action (Imposition of Constructive Trust)

Plaintiffs argue that Emily is entitled to a constructive trust against Brokerage for the alleged diverted assets and income. They do not seek relief against Southern or TSA in this cause of action. "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)." *SSI Medical Services, Inc. v. Cox*, 301 S.C. 493, 500, 392 S.E.2d 789, 793-794, (1990). "In addition, the standard of proof is high, in that 'to establish a constructive trust, the evidence must be clear, definite, and unequivocal.'" *Carolina Park Assocs., LLC v. Marino*, 400 S.C. 1, 6, 732 S.E.2d 876, 879, (2012) (quoting *Lollis v. Lolis*, 291 S.C. at 530, 354 S.E.2d at 561; citing *Whitmire v. Adams, 273* S.C. at 458-61, 257 S.E.2d at 163-65.) An action for a constructive trust "is resorted to by equity to vindicate right and justice or frustrate fraud." *Whitmire v. Adams*, 273 S.C. 453, 457, 257 S.E.2d 160, 163 (1979).

Plaintiff have not demonstrated sufficient facts showing that the income and assets were paid by accident, mistake or fraud. In addition, they do not specifically allege that they have been acquired through a breach of trust or the violation of a fiduciary duty. The Complaint does not include causes of action for fraud or breach of fiduciary duty. In fact, Plaintiffs do not reference the term fiduciary duty at all in the Complaint. Furthermore, Emily already has means by which

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she could recover any income, assets, and inventory through the Family Court Action. The Family Court will allocate the distribution of these marital assets. As a result, equity does not require that a constructive trust be imposed in the within action. Therefore, this cause of action should be dismissed as to Defendants.

D. As to Plaintiff's Sixth Cause of Action (Attorney's Fees and Costs)

Emily seeks attorneys' fees and costs resulting from the pursuit of this action. Emily appears to seek said fees and costs solely from Terence. ¶ 61 Compl. In which case, this cause of action should be dismissed as to Defendants as Plaintiffs do not seek relief against them. Should this Court determine that Plaintiffs seek relief for recovery of Emily's attorneys' fees and costs against Defendants, this cause of action fails because it was made pursuant to S.C. Code Ann. § 33-44-702(d) and Plaintiffs have not brought an action on behalf of Southern Collection to purchase a distributional interest and, thereby, determine its fair value.

S.C. Code Ann. § 33-44-702 relates to S.C. Code Ann. § 33-44-701 in that it affords a cause of action to determine the fair value of a distributional interest in a limited liability company when the company is purchasing a member's distributional interest upon that member's dissociation. If a cause of action is brought under this section, the Court shall determine the fair value of the interest, specify the terms of the purchase of the interest, and require the dissociated member to deliver an assignment of the interest to the purchaser. S.C. Code Ann. § 33-44-702(a). S.C. Code Ann. § 33-44-702(d) provides that "[i]f the court finds that a party to the proceeding acted arbitrarily, vexatiously, or not in good faith, it may award one or more other parties their reasonable expenses, including attorney's fees and the expenses of appraisers or other experts, *incurred in the proceeding*." S.C. Code Ann. § 33-44-702(d), (emphasis added). The "arbitrary, vexatiously, or not in good faith" conduct discussed in the statute applies to the action to

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determine the fair value of the distribution interest. Plaintiffs have not brought a cause of action under S.C. Code Ann. § 33-44-701 or 702 and therefore, the conduct described cannot apply to the valuation.

S.C. Code Ann. § 33-44-701, or the valuation of the distributional interest, does not apply if there is a cause of action for Judicial Dissolution under Article 8 of the South Carolina Limited Liability Company Act (the "Act"). Article 8 of the Act solely applies to any judicial dissolution actions. Article 8 is void of any provisions for the payment of attorneys' fees related to an action for judicial dissolution.

Furthermore, Plaintiffs assert that Terence, not Defendants, engaged in the conduct that is alleged to be arbitrary, vexatious, or not in good faith. For the reasons, Plaintiffs' cause of action for attorneys' fees and costs must be dismissed as to Defendants.

CONCLUSION

For the reasons set forth above, Defendants respectfully request that the Court grant their Motion to Dismiss, dismiss Plaintiffs' Complaint with prejudice, and grant them further relief the Court deems just and proper.

TURNER PADGET GRAHAM & LANEY, P.A.

s/Mark B. Goddard
Mark B. Goddard, S.C. Bar No. 73965
John B. Kelchner, S.C.Bar No. 13589
Post Office Box 1473 (29202)
1901 Main Street, Suite 1700
Columbia, South Carolina 29201
Telephone: 803-227-4334
Telephone: 803-227-4234
Facsimile: 803-400-1542
Facsimile: 803-400-1522
Email: mgoddard@turnerpadget.com
E-mail: jkelchner@turnerpadget.com
ATTORNEYS FOR DEFENDANTS SOUTHERN

COLLECTION, LLC, SOUTHERN COLLECTION BROKERAGE, LLC, AND TERENCE SMITH AND ASSOCIATES, LLC

June 2, 2022

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LISA M. COMER
CLERK OF COURT
LEXINGTON SC

STATE OF SOUTH CAROLINA)	IN THE FAMILY COURT FOR THE
)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)	C.A. NO.: 2021-DR-32-
EMILY P. SMITH,)	
PLAINTIFF,)	2021DR3201578
v.)	**COMPLAINT**
ROBERT TERENCE SMITH,)	
DEFENDANT.)	

Plaintiff, above-named, by and through her undersigned counsel would respectfully show unto this Court as follows:

1. Plaintiff and Defendant are citizens and residents of Lexington County, South Carolina, having been so in excess of one (1) year prior to the commencement of this action.

2. Plaintiff and Defendant last resided together as wife and husband in Lexington County, South Carolina.

3. Plaintiff and Defendant are presently wife and husband, having been married to each other on November 3, 2012. Of this marriage, two (2) children have been born, namely: O. G. S., born in 2014; and O. P. S., born in 2016. No other children have been born of these parties, and no child is expected.

4. Plaintiff is informed and believes that this Court has subject matter and personal jurisdiction of this action and of these parties. Venue is proper in Lexington County, South Carolina.

5. Plaintiff would show that the parties are not currently separated but need to be based on the misconduct of Defendant. Specifically, Plaintiff would show that Defendant has

Written request for a final hearing in this case must be delivered by a party or his/her attorney to the Clerk of Court's office within 365 days of this filing date. Failure to comply with this rule shall result in the dismissal of this case by the Court.

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would therefore show that she is entitled to a divorce, *a vinculo matrimoni*, from Defendant on the statutory ground of

6.

7.

8. Plaintiff would show that Defendant is able bodied and capable of gainful employment, and he is therefore capable of paying a sum as child support that is commensurate with the South Carolina Child Support Guidelines, both *pendente lite* and permanently.

9. Plaintiff is informed and believes she is entitled to an Order of this Court granting her the exclusive use and possession of the marital residence, both *pendente lite* and permanently,

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as a means of support for herself and the children. Plaintiff further informed and believes that Defendant should be required to immediately vacate the home,

Plaintiff is further informed and believes that Defendant should be required to help maintain all costs and expenses associated with the home, including the mortgage payment, property taxes, property insurance, maintenance, and utilities so as to provide for maintenance and support of Plaintiff and the minor children, both *pendente lite* and permanently.

10. Plaintiff currently maintains medical insurance on the children and she is willing to maintain that coverage so long as such is available to her. Plaintiff is informed and believes Defendant should be required to pay all of the non-covered, non-reimbursed medical expenses for the children, both *pendente lite* and permanently.

11. Plaintiff is informed and believes the parties' assets and debts should be determined and divided accordingly, in kind and/or by cash payment, from those assets held by Plaintiff and Defendant in accordance with §20-3-620, South Carolina Code of Laws, (2012). Plaintiff would show that she has nonmarital assets which should not be subject to equitable division by this Court. Further, Plaintiff would show that Defendant has incurred a large amount of debt without the knowledge of or consent of Plaintiff, and he should be solely responsible for the payment of such.

12. Plaintiff is informed and believes this Court should issue its Mutual Restraining Order restraining and prohibiting Defendant from encumbering, disposing of, hypothecating or otherwise depleting marital assets, both *pendente lite* and permanently.

13. Plaintiff is informed and believes the Court should issue an Order prohibiting Defendant from harassing, bothering, molesting or otherwise interfering with Plaintiff at any time or at any place, both *pendente lite* and permanently.

14. Plaintiff is informed and believes that Defendant is gainfully employed and

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therefore capable of self-support. Plaintiff is therefore informed and believes that Defendant should be barred from any claim for alimony from Plaintiff, both *pendente lite* and permanently.

15. Plaintiff is informed and believes that the Court should appoint a Guardian *ad Litem* to represent the interests of the children in this action in the event that custody and/or visitation becomes contested.

16. Plaintiff is informed and believes that Defendant should be required to pay to Plaintiff a reasonable sum as attorney's fees, PI fees, and costs incurred by Plaintiff in this action.

WHEREFORE, Plaintiff prays that the Court inquire into the matters alleged above, and grant her the following relief:

a. For and Order granting her a divorce, *a vinulo matrimoni*, from Defendant on the

b. For an Order granting Plaintiff sole and exclusive custody of the parties' minor children, both *pendente lite* and permanently;

c. For a supervised visitation schedule between Defendant and children as set forth above, *pendente lite* and permanently;

d. For an Order requiring Defendant to pay child support to Plaintiff based on the South Carolina Child Support Guidelines, both *pendente lite* and permanently;

e. For an Order granting Plaintiff possession of the marital residence and requiring Defendant to pay all costs associated with such, both *pendente lite* and permanently;

f. For an Order requiring Defendant to pay all uninsured medical costs for the minor child, both *pendente lite* and permanently ;

g. For an Order requiring the parties' assets and debts to be determined and divided

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accordingly, in kind and/or by cash payment, from those assets held by Plaintiff and Defendant in accordance with §20-3-620, South Carolina Code of Laws, (2012);

h. For an Order finding Plaintiff's non-marital assets to be excluded from division by this Court;

i. For an Order requiring Defendant to pay for any and all debt he has incurred without Plaintiff's knowledge or consent;

j. For a Restraining Order prohibiting Defendant from encumbering, disposing of, hypothecating or otherwise depleting marital assets, *pendent lite;*

k. For a Restraining Order prohibiting Defendant from harassing, bothering, molesting or otherwise interfering with Plaintiff at any time or at any place, both *pendente lite* and permanently;

l. For an Order barring Defendant from any alimony from Plaintiff, both *pendente lite* and permanently;

m. For an Order appointing a Guardian *ad Litem* to represent the interests of the minor children in this action;

n. For an Order requiring the Defendant to pay to the Plaintiff a reasonable sum as attorney's fees and costs incurred by the Plaintiff in this action;

o. For such other and further relief as this Court may deem just and proper.

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MOORE BRADLEY MYERS LAW FIRM, P. A.

By: _____

SHEILA MCNAIR ROBINSON
1700 Sunset Boulevard (Hwy. 378)
Post Office Box 5709
West Columbia, South Carolina 29171
Telephone: (803) 796-9160
Facsimile: (803) 791-8410
Attorney for Plaintiff

August 18, 2021

ELECTRONICALLY FILED - 2022 Jun 02 10:54 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF LEXINGTON)	ELEVENTH JUDICIAL CIRCUIT
)	
Emily P. Smith and Emily P. Smith and Associates, LLC,)	Case No.: 2022-CP-32-01419
Plaintiffs,)	
vs.)	
)	
Robert T. Smith; Southern Collection, LLC; Southern Collection Brokerage, LLC; Terence Smith and Associates, LLC; Robert B. Smith, and Sherry C. Smith,)	**MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**
Defendants.)	

Plaintiff Emily Smith (Emily and her solely owned LLC are hereafter referred to herein as "Emily") opposes the Motion to Dismiss filed by Defendants, Robert T. "Terence" Smith (hereafter "Terence"), Robert B. Smith, and Sherry C. Smith. The Motion to Dismiss should be denied for the following reasons:

SOUTHERN COLLECTION LLC HAS NOT BEEN FOUND TO BE MARITAL PROPERTY AND FAMILY COURT HAS NO JURISDICTION TO DISTRIBUTE NONMARITAL PROPERTY.

Terence asserts that the Circuit Court lacks subject matter jurisdiction to hear this matter because the Family Court has exclusive jurisdiction over all marital assets in the pending divorce action. It is important to note that the family court is a court of limited jurisdiction and only has exclusive jurisdiction to hear and determine actions pertaining to the real and personal *property of the marriage*.[1] However, in the pending divorce action, there has been no finding, no order, and no determination that any of the parties' interest in Southern Collection LLC ("Southern

[1] "The family court has exclusive jurisdiction to hear and determine actions for divorce, separate support and maintenance, legal separation, and in other marital litigation between the parties, and for settlement of all legal and equitable rights of the parties in action in and to the real and personal *property of the marriage* and attorney's fees, if requested by either party in the pleadings". S.C. Code Ann. Section 63-3-530(A)(2) (emphasis added).

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Collection") or any other corporations are marital property. The family court has not yet asserted jurisdiction over the corporations. Emily attempted to obtain temporary relief in family court as it relates to the assertions that Terence has diverted income from Southern Collection, at which time the family court explicitly declined to grant Emily relief. Instead, the family court issued a generic temporary emergency order that did not in any way address the corporate entities or declare them to be marital assets. Emily's domestic attorney has filed a motion to amend the pleadings to exclude from the prayers for equitable distribution any of the assets and income from Southern Collection.[2]

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 of the date of filing or commencement of marital litigation. S.C. Code Ann. Section 20-3-630(a). The general assumption is that property acquired during the marriage is an asset of the marriage, which is what Terence asserts. However, while Southern Collection was formed by the parties during the marriage, it is a legal entity distinct from Emily and Terence,[3] and neither Emily nor Terence owns or has any transferable interest in the property of Southern Collection.[4] Southern Collection 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 W.Va. 84, 87, 717 S.E.2d 868, 871 (2011) (recognizing that the family court does not have

[2] This hearing, along with opposing counsel's motion to stay this circuit court action, is currently scheduled for August 23, 2022.

[3] "A limited liability company is a legal entity distinct from its members." S.C. Code Ann. 33-44-20.

[4] "A member is not a co-owner of, and has no transferable interest in, property of a limited liability company." S.C. Code Ann. Section 33-44-501(a).

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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*).

Accordingly, the family court has no jurisdiction to hear this matter because Southern Collection has not been determined to be marital property, the family court has not asserted jurisdiction over the corporate entities, and the assets of Southern Collection are nonmarital property outside of the purview of the family court.

ONLY THE CIRCUIT COURT CAN PROVIDE THE RELIEF THAT PLAINTIFF SEEKS, AND FAMILY COURT HAS NO JURISDICTION TO HEAR CORPORATE MATTERS OR CONDUCT JURY TRIALS.

Emily filed the present action in the Circuit Court which she maintains is properly before this Court. The remedies that Emily seeks as a member of a statutory limited liability corporation are exclusive to the Circuit Court. Specifically, Emily seeks a judicial dissolution and winding up of Southern Collection, appointment of a receiver, and an accounting of assets of the business. Recently, the South Carolina Court of Appeals recognized the exclusive jurisdiction of the Circuit Court to hear such matters. *Palmetto Wildlife Extractors, LLC v. Ludy*, No. 5886 (S.C. Ct. App. Jan. 5, 2022). 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*." *Palmetto Wildlife Extractors, LLC v. Ludy*, No. 5886 (S.C. Ct. App. Jan. 5, 2022) (emphasis added). In deciding, the Court focused on the language of S.C. Code Ann. Sections 33-44-803(a) which provides, "*the circuit court*…may order judicial supervision of the winding up," and S.C. Code Ann. Section 15-65-10 which provides "A receiver may be appointment by a *judge of the circuit court*." (Emphasis added). Emily maintains that the family court lacks jurisdiction over the corporate issues and the relief requested in this matter is squarely within the jurisdiction of this Court.

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Even if the Court finds that the dispute between Emily and Terence must be litigated in family court, this action, as it relates to Defendants Robert B. Smith and Sherry C. Smith ("Terence's parents") can only be heard in Circuit Court. Terence's parents are not parties to the domestic action, nor should they be.[5] In her complaint, Emily specifically alleges that Terence's parents are in possession of income and assets that belong to Southern Collection. This is not martial property; therefore, the family court has no jurisdiction to hear this matter and it must remain in Circuit Court.

Additionally, Emily and all parties to the circuit court action have a constitutional right to demand a jury trial on all factual issues. Emily, by and through her counsel, has already demanded a trial by jury on all factual disputes arising out of each cause of action. 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.E2d 262, 263 (2000). The statutes that create the family court do not permit it to hold jury trials, 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) SCRFC. There is no constitutional right to a trial by jury in family court. Removing this matter from Circuit Court to family court is effectively a violation of the parties' constitutional right to a trial by jury.[6]

[5] While the family court may have the authority to join third parties to the domestic action, this authority is limited to situations in which property is alleged to be marital property and is owned by a third party. *In re Sexton*, 298 S.C. at 361, 380 S.C.2d at 384. In the instant case, the property that is in possession of Terence's parents is property of Southern Collection LLC and is not marital property.

[6] The South Carolina Constitution provides that the right to a jury trial shall be preserved inviolate. S.C. Const. art. I, § 14.

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FACTS ALLEGED, AND INFERENCES DEDUCED THEREFROM, ARE SUFFICIENT TO ESTABLISH A CAUSE OF ACTION AGAINST DEFENDANTS.

Defendants argue that this action should be dismissed pursuant to SCRCP 12(b)(6) for failure to state a cause of action upon which relief can be granted. Emily has set forth sufficient facts with supporting documents to state multiple causes of action against the Defendants.

For the reasons set forth above, in addition to the argument to be presented by counsel at the hearing in this matter, Plaintiff Emily Smith respectfully requests an order denying Defendants' Motion to Dismiss.

Respectfully submitted,

s/ Haley Hubbard
Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)

BALLARD & WATSON
226 State Street
West Columbia, South Carolina 29169
Telephone 803.796.9299
desab@desaballard.com
harvey@desaballard.com
haley@desaballard.com

ATTORNEYS FOR PLAINTIFFS

June 2, 2022

ELECTRONICALLY FILED - 2022 Jun 03 9:42 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON Emily P. Smith and Emily P. Smith and Associates, LLC, Plaintiffs, vs. Robert T. Smith; Southern Collection LLC; Southern Collection Brokerage, LLC; Terence Smith and Associates, LLC; Robert B. Smith, and Sherry C. Smith, Defendants.	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT CASE NO: 2022-CP-32- 1419 **DEFENDANTS ROBERT T. SMITH, ROBERT B. SMITH, AND SHERRY C. SMITH'S REPLY TO PLAINTIFFS' MEMORANDUM IN OPPOSITION**

Defendants Robert T. Smith, Robert B. Smith, and Sherry C. Smith, by and through their undersigned attorneys, hereby reply to Plaintiffs' Memorandum in Opposition of Defendants Motion to Dismiss as follows.

ARGUMENT

I. Southern Collection, LLC, as well as the other business entities involved in this lawsuit, are marital property and subject to the jurisdiction of family court.

Plaintiffs Emily P. Smith and Emily P. Smith and Associates, LLC claim that the parties' business, Southern Collection, LLC, is non-marital property not subject to the jurisdiction of the family court. This is false.

Marital property is all real and personal property acquired by the parties during the marriage and owned by one of the parties on the date of filing; however, property acquired by either spouse prior to the marriage is generally nonmarital property and not

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subject to equitable division. S.C. Code Ann. §20-3-630(A)(2)(2014). Property retains its nonmarital character when it is exchanged for other property during the marriage provided it is not transmuted. S.C. Code Ann. §20-3-630(A)(3)(2014). Passive gain in the value of a nonmarital asset during the marriage does not change the nonmarital character of the asset. S.C. Code Ann. §20-3-630(A)(5)(2014). *Johnson v. Johnson*, 296 S.C. 289, 294, 372 S.E.2d 107, 110 (Ct.App.1988).

Once the family court determines that property is nonmarital it lacks jurisdiction and authority to apportion it. S.C. Code Ann. §20-3-630(B)(2014). *See also Bowen v. Bowen*, 327 S.C. 561, 566, 490 S.E.2d 271, 273 (Ct.App.1997) (family court was not permitted to address real estate excluded from the marital estate by a prenuptial agreement). It is error for a family court to include nonmarital property in the marital estate. *Ferguson v. Ferguson*, 300 S.C. 1, 5, 386 S.E.2d 267, 269 (1989) *superseded in part by* S.C. Code Ann. 20-3-130(B)(1).

"A party claiming an equitable interest in property upon divorce bears the burden of proving the property is marital." *McMillan v. McMillan*, 417 S.C. 583, 591, 790 S.E.2d 216, 220 (Ct.App.2016) (citation omitted). "If the party presents evidence to show that the property is marital, the burden shifts to the other spouse to present evidence to establish the property's nonmarital character." *Id.* "If the opposing spouse can show that the property was acquired before the marriage or falls within a statutory exception, this rebuts the prima facie case for its inclusion in the marital estate." *Id.* (citation omitted).

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A party need not present documentary evidence at trial supporting the origin or value of property; rather, uncontradicted testimony will suffice to carry one's burden of proof. *Wilburn v. Wilburn*, 403 S.C. 372, 385-386, 743 S.E.2d 734, 741 (2013).

In the present case, the parties' businesses—Southern Collection, LLC, Emily P. Smith and Associates, LLC, and Terence Smith and Associates, LLC—were all acquired during the marriage. This property, is therefore, presumed to be marital and subject to the exclusive jurisdiction of the family court until that property is determined to be nonmarital. Plaintiff Emily filed for divorce against Defendant Terence and requested that the Family Court divide the parties' marital assets. Defendant Terence counterclaimed for the same. In her Return to Defendant Terence's Motion for Supplement Relief, Plaintiff Emily claims an equitable interest in Southern Collection, LLC, the parties' real estate business which is the subject of this lawsuit. Specifically, Plaintiff Emily requests that the Family Court order an accounting of the parties' business. While the Family Court denied Plaintiff Emily's request, it did not make any determination that the businesses were in fact nonmarital. Therefore, until a final merits hearing in the Family Court in which the Family Court determines whether Southern Collection, LLC, and its subsidiaries, are marital or non-marital, the property is in the exclusive jurisdiction of the family court.

Even further, Plaintiff Emily herself has produced evidence in the Family Court naming and listing the parties' business entities as marital property. In her answers to discovery, Plaintiff Emily produced a Marital Assets Addendum in which under "marital property" she lists all three of the business entities involved in this lawsuit. Exhibit A.

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Plaintiff Emily has claimed an equitable interest in the parties' businesses and accordingly has the burden of proving that is marital property. Plaintiff Emily has begun proving this burden in the Family Court. Plaintiff Emily cannot argue both that the businesses are marital property and subject to division in family court and that the businesses are not marital property and subject to the powers of the circuit court.

Plaintiff Emily has already claimed an equitable interest in Southern Collection, LLC in Family Court, and therefore the family court has exclusive jurisdiction over that property until it determined whether the property is marital or non-marital. The Family Court has made no final determination regarding the status of Southern Collection, LLC and therefore, jurisdiction lies with the Family Court.

CONCLUSION

For the reasons contained herein, this Court lacks subject matter jurisdiction to hear the claims set forth in Plaintiffs' Complaint, and the parties' businesses are marital property, and the family court has exclusive jurisdiction of Southern Collection, LLC.

[SIGNATURE PAGE TO FOLLOW]

RESPECTFULLY SUBMITTED,

KINARD & JONES, LLC

s/Ashby L. Jones
ASHBY LAWTON JONES SC BAR No. 15900
ALYSSA ROSE IGLESIAS SC BAR No. 104167
808 South Lake Drive
Post Office Box 2678
Lexington, SC 29072
(803) 359-1003
Ashby@kinardandjones.com
Alyssa@kinardandjones.com
ATTORNEYS FOR DEFENDANTS ROBERT T. SMITH, ROBERT B. SMITH, AND SHERRY C. SMITH

Lexington, South Carolina
June 3, 2022.

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Preliminary Marital Assets Addendum

Smith vs. Smith

Case No.: 2021-DR-32-1578

DOM: 11/3/2012; DOS: ; DOF:

				Non-Marital				
		Title	Value	Husband Adjustment	Wife Adjustment	Net Equity	Value Date	Notes
	ASSETS							
1	**REAL ESTATE**							
a	112 John Preston Dr., Lexington SC 29072		681,400	-	-	681,400	8/24/2021	zillow estimate
a1	*Guild Mortgage*	W	(419,064)	-	-	(419,064)	4/22/2021	
a2	*Palmetto Citizens*	W	(99,612)	-	-	(99,612)	4/22/2021	
b	1155 Harp Street, Raleigh NC 27604	W	580,000	-	(580,000)	-	5/6/2020	Wife's non-marital property
b1	*Guild Mortgage*		(339,264)	-	339,264	-	4/22/2021	Wife's non-marital property
			403,460	**-**	**(240,736)**	**162,724**		
2	**VEHICLES**							
a	2018 Porsche Cayenne S	W	40,000	-	-	40,000		estimate
a1	*Loan*	W	(36,356)	-	-	(36,356)		
b	2012 Volvo		10,000	-	-	10,000		estimate
			13,644	**-**	**-**	**13,644**		
3	**PERSONAL PROPERTY**							
a	Household Goods, Furnishings, etc.		TBD					
			-	-	-	-		
4	**CHECKING, SAVING, & MM ACCOUNTS**							
a	Palmetto Citizens Checking #5192	W	1,494	-	-	1,494	8/25/2021	
b	True Alliant #7400	W	-	-	-	-	8/25/2021	
b1	*Line of Credit*	W	(75)	-	-	(75)	8/25/2021	
			1,419	**-**	**-**	**1,419**		

ROA 0412

ROA 0412

Preliminary Marital Assets Addendum
Smith vs. Smith
Case No.: 2021-DR-32-1578
DOM: 11/3/2012; DOS: ; DOF:

				Non-Marital				
		Title	Value	Husband Adjustment	Wife Adjustment	Net Equity	Value Date	Notes
5	**LIFE INSURANCE**							
a	State Farm Term Policy	W		-	-	-		$3M policy
b	State Farm Term Policy	H		-	-	-		$2M policy, Emily is beneficiary
			-	-	-	-		
6	**BUSINESS(ES)**							
a	Emily P Smith & Associates, LLC	W		-	-	-		
a1	*BB&T Checking #1070*	W	3,469	-	-	3,469	8/25/2021	
b	Southern Collection	J				-		Brokerage owned 50/50
b1	*BB&T Checking #7316*	J	4,038			4,038	8/25/2021	
c	Terrence Smith & Associates, LLC	H				-		
c1	*Wells Fargo Checking #5468*	H	(734)	-	-	(734)	2/10/2021	
			6,773	**-**	**-**	**6,773**		
7	**OTHER ITEMS**							
a	Federal Taxes owed - Tax Year 2003	H	(3,838)	3,838	-	-	8/6/2018	Amount shown is as of the notice date
b	Federal Taxes owed - Tax Year 2007	H	(23,554)	23,554	-	-	10/7/2019	Amount shown is as of the notice date
c	Federal Taxes owed - Tax Year 2008	H	(15,367)	15,367	-	-	10/28/2019	Amount shown is as of the notice date
d	Federal Taxes owed - Tax Year 2009	H	(7,389)	7,389	-	-	10/7/2019	Amount shown is as of the notice date
e	Federal Taxes owed - Tax Year 2010	H	(19,247)	19,247	-	-	10/7/2019	Amount shown is as of the notice date
f	Federal Taxes owed - Tax Year 2011	H	(17,882)	17,882	-	-	10/28/2019	Amount shown is as of the notice date
g	Federal Taxes owed - Tax Year 2014	J	(46,043)	-	-	(46,043)	10/7/2019	Amount shown is as of the notice date
h	SC DOR - 2020 Filing period	W	(1,959)	-	-	(1,959)	2/4/2021	Amount shown is as of the notice date
			(135,279)	**87,277**	**-**	**(48,001)**		

ROA 0413

ROA 0413

Preliminary Marital Assets Addendum

Smith vs. Smith

Case No.: 2021-DR-32-1578

DOM: 11/3/2012; DOS: ; DOF:

				Non-Marital				
		Title	Value	Husband Adjustment	Wife Adjustment	Net Equity	Value Date	Notes
	DEBTS							
8	**ALL OTHER DEBTS**							
a	Capital One #7089	H	(12,000)	-	-	(12,000)	8/25/2021	
b	Visa #5326	W	(7,160)	-	-	(7,160)	4/22/2021	
c	BB&T CC / Overdraft	W	(8,428)			(8,428)	8/25/2021	
d	American Express #TBD	J						Business account
e	College Foundation Student Loan	W	(5,000)	-	-	(5,000)		
			(32,588)	**-**	**-**	**(32,588)**		
			$ 257,429	**$ 87,277**	**$ (240,736)**	**$ 103,971**		
9	**CHILDREN ITEMS**							
a	BB&T Checking #3113	W	9,915	-	-	9,915	12/31/2020	Olivia's account
b	529 Plan		12,579	-	-	12,579	8/25/2021	Olivia's account
c	529 Plan		12,260	-	-	12,260	8/25/2021	Oliver
			34,754	**-**	**-**	**34,754**		
	FOOTNOTES							

ROA 0414

ROA 0414

ELECTRONICALLY FILED - 2022 Jun 22 4:36 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON)	ELEVENTH JUDICIAL CIRCUIT
Emily P. Smith and Emily P. Smith and Associates, LLC, Plaintiffs,)	Case No.: 2022-CP-32-01419
vs.)	
Robert T. Smith; Southern Collection, LLC; Southern Collection Brokerage, LLC; Terrance Smith and Associates, LLC; Robert B. Smith, and Sherry C. Smith, Defendants.)	**MOTION TO RECONSIDER**

Pursuant to Rule 59 (e), SCRCP, Plaintiffs Emily P. Smith and Emily P. Smith and Associates, LLC (hereafter collectively referred to as "Emily") seeks reconsideration by this Court of its order which was filed on June 17, 2022. In support of the motion, Plaintiffs would show:

1. The Court erred in granting any relief pursuant to Rule 12(b)(6) because it considered material outside the pleadings.
2. The Court erred in finding that the Plaintiff did not set forth sufficient facts to support the multiple causes of action against the Defendants.
3. The Court erred in determining it lacked subject matter jurisdiction over the issues raised by the complaint including judicial dissolution and winding up of Southern Collection, appointment of a receiver, conversion, the imposition of a constructive trust, and a request for attorneys' fees and costs.
4. The Court erred in finding that Southern Collection, LLC, a legal entity separate from both Emily and Terence, is marital property, after determining it lacked jurisdiction to do so.
5. The Court erred in ruling that the property and assets belonging to Southern Collection, LLC, over which it claimed to have no subject matter jurisdiction, is marital property.

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6. The Court erred in ruling that the family court can order the transfer of assets belonging to limited liability company which are nonmarital assets after determining it lacked jurisdiction to address any issue before it.

7. The Court erred in determining the winding up of a limited liability company cannot be conducted in circuit court and the application of S.C. Code Ann. Section 33-44-803 is premature after determining it lacked jurisdiction to address any issue before it.

8. The Court erred in finding 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 after determining it lacked jurisdiction to address any issue before it.

9. The Court erred in finding the family court has subject matter jurisdiction over issues raised by the circuit court complaint, especially as it relates to parties who are not parties to the family court action after determining it lacked jurisdiction to address any issue before it.

10. The Court erred in dismissing the circuit court action as it relates to Defendants Robert B. Smith and Sherry C. Smith (hereafter "Terence's parents") who are not parties to the family court action.

11. The Court erred in dismissing the circuit court action as it relates to the remaining corporate entities named in this matter which are neither marital property nor parties to the family court action, after determining it lacked jurisdiction to address any issue before it.

12. The Court erred in dismissing Plaintiff's action in circuit court and directing the parties to litigate in family court, ultimately denying the parties the right to have a trial by jury on

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the issues raised in the complaint, after determining it lacked jurisdiction to address any issue before it.

13. The Court erred in construing the pleadings in family court in its analysis of subject matter jurisdiction, since subject matter jurisdiction cannot be established in a court by the parties even by agreement and after determining this court lacked jurisdiction to address any issue before it.

14. The Court erred in determining that the family court hearings in the domestic action are highly indicative of the family court having subject matter jurisdiction as it relates to the corporate issues raised in the complaint, after determining it lacked jurisdiction to address any issue before it.

15. The Court erred in determining that a ruling in family court is necessary before the circuit court can assume jurisdiction over the limited liability companies named in the action, after determining it lacked jurisdiction to address any issue before it.

16. The Court erred in directing the parties to continue litigating any matters in family court, in that the court lacks authority to assign jurisdiction to the family court after determining it lacked jurisdiction to address any issue before it.

17. Emily reserves the right to supplement this motion in the event the Court issues any additional orders.

For the reasons set forth above, Emily respectfully seeks reconsideration of the Court's order.

Respectfully submitted,

s/ Haley Hubbard
Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)

BALLARD & WATSON

226 State Street
West Columbia, SC 29169
Telephone 803.796.9299
Facsimile 803.796.1066
desab@desaballard.com
harvey@desaballard.com
haley@desaballard.com

ATTORNEYS FOR PLAINTIFFS

June 22, 2022

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ELECTRONICALLY FILED - 2022 Jun 29 8:02 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF LEXINGTON)	ELEVENTH JUDICIAL CIRCUIT
)	
Emily P. Smith and Emily P. Smith and Associates, LLC,)	Case No.: 2022-CP-32-01419
Plaintiffs,)	
vs.)	
)	
Robert T. Smith; Southern Collection, LLC; Southern Collection Brokerage, LLC; Terrance Smith and Associates, LLC; Robert B. Smith, and Sherry C. Smith,)	**MOTION TO RECONSIDER AMENDED ORDER**
Defendants.)	

Pursuant to Rule 59 (e), SCRCP, Plaintiffs Emily P. Smith and Emily P. Smith and Associates, LLC (hereafter collectively referred to as "Emily") seeks reconsideration by this Court of its amended order which was filed on June 23, 2022. In support of the motion, Plaintiffs would show:

1. The Court erred in granting any relief pursuant to Rule 12(b)(6) because it considered material outside the pleadings.
2. The Court erred in finding that the Plaintiff did not set forth sufficient facts to support the multiple causes of action against the Defendants.
3. The Court erred in determining it lacked subject matter jurisdiction over the issues raised by the complaint including judicial dissolution and winding up of Southern Collection, appointment of a receiver, conversion, the imposition of a constructive trust, and a request for attorneys' fees and costs.
4. The Court erred in finding that Southern Collection, LLC, a legal entity separate from both Emily and Terence, is marital property, after determining it lacked jurisdiction to do so.
5. The Court erred in ruling that the property and assets belonging to Southern Collection, LLC, over which it claimed to have no subject matter jurisdiction, is marital property.

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6. The Court erred in ruling that the family court can order the transfer of assets belonging to limited liability company which are nonmarital assets after determining it lacked jurisdiction to address any issue before it.

7. The Court erred in determining the winding up of a limited liability company cannot be conducted in circuit court and the application of S.C. Code Ann. Section 33-44-803 is premature after determining it lacked jurisdiction to address any issue before it.

8. The Court erred in finding 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 after determining it lacked jurisdiction to address any issue before it.

9. The Court erred in finding the family court has subject matter jurisdiction over issues raised by the circuit court complaint, especially as it relates to parties who are not parties to the family court action after determining it lacked jurisdiction to address any issue before it.

10. The Court erred in dismissing the circuit court action as it relates to Defendants Robert B. Smith and Sherry C. Smith (hereafter "Terence's parents") who are not parties to the family court action.

11. The Court erred in ruling on the merits of the claims raised in the circuit court action after determining it lacked jurisdiction to address any issue before it.

12. The Court erred in dismissing the circuit court action as it relates to the remaining corporate entities named in this matter which are neither marital property nor parties to the family court action, after determining it lacked jurisdiction to address any issue before it.

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13. The Court erred in dismissing Plaintiff's action in circuit court and directing the parties to litigate in family court, ultimately denying the parties the right to have a trial by jury on the issues raised in the complaint, after determining it lacked jurisdiction to address any issue before it.

14. The Court erred in failing to address the parties' right to a trial by jury.

15. The Court erred in construing the pleadings in family court in its analysis of subject matter jurisdiction, since subject matter jurisdiction cannot be established in a court by the parties even by agreement and after determining this court lacked jurisdiction to address any issue before it.

16. The Court erred in determining that the family court hearings in the domestic action are highly indicative of the family court having subject matter jurisdiction as it relates to the corporate issues raised in the complaint, after determining it lacked jurisdiction to address any issue before it.

17. The Court erred in determining that a ruling in family court is necessary before the circuit court can assume jurisdiction over the limited liability companies named in the action, after determining it lacked jurisdiction to address any issue before it.

18. The Court erred in directing the parties to continue litigating any matters in family court, in that the court lacks authority to assign jurisdiction to the family court after determining it lacked jurisdiction to address any issue before it.

19. Emily reserves the right to supplement this motion in the event the Court issues any additional orders.

For the reasons set forth above, Emily respectfully seeks reconsideration of the Court's amended order.

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Respectfully submitted,

s/ Haley Hubbard

Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)

BALLARD & WATSON
226 State Street
West Columbia, SC 29169
Telephone 803.796.9299
Facsimile 803.796.1066
desab@desaballard.com
harvey@desaballard.com
haley@desaballard.com

ATTORNEYS FOR PLAINTIFFS

June 28, 2022

ELECTRONICALLY FILED - 2022 Jul 06 2:00 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF LEXINGTON)	Civil Action No. 2022-CP-32-01419
Emily P. Smith and Emily P. Smith and Associates, LLC,)	
Plaintiffs,)	
vs.)	**DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION TO RECONSIDER AMENDED ORDER**
Robert T. Smith, Southern Collection, LLC, Southern Collection Brokerage, LLC, Terence Smith and Associates, LLC, Robert B. Smith and Sherry C. Smith,,)	
Defendants.)	

Defendants Robert T. Smith ("Terence"), Southern Collection, LLC ("Southern Collection"), Southern Collection Brokerage, LLC, Terence Smith and Associates, LLC, Robert B. Smith, and Sherry C. Smith (collectively "Defendants") by and through their undersigned attorneys, hereby respectfully submit this Memorandum in Opposition to Plaintiffs Emily P. Smith ("Emily"), and Emily P. Smith and Associates, LLC's (collectively "Plaintiffs") Motion to Reconsider the Court's Amended Order filed on June 23, 2022 (the "Order")[1].

RELEVANT FACTS

The following facts are undisputed by the parties:

1. Emily and Terence were married on November 3, 2012.

[1] In the interest of brevity, Defendants are not restating all facts, procedural history and arguments related to their Motion to Dismiss. However, Defendants specifically incorporate by reference all relevant facts, procedural history and arguments outlined in their respective Memorandums in support of their Motions to Dismiss and in the briefing related to Plaintiffs' Motion to Appoint a Receiver.

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2. Emily filed an action for divorce on or about August 18, 2021 in the Lexington County Family Court, Case No.: 2021-DR-32-1578 (the "Divorce Action").

3. In the Divorce Action, Emily and Terence both seek the equitable distribution of marital assets.

4. The Divorce Action is still pending.

5. Southern Collection, LLC, ("Southern Collection") is a limited liability company organized and existing under the laws of the State of South Carolina. Southern Collection's Articles of Organization were filed with the South Carolina Secretary of State's Office on May 5, 2020. Terence and Emily are the sole members of Southern Collection.

6. Plaintiffs filed the instant Complaint on April 28, 2022, alleging causes of action for judicial dissolution and winding up of Southern Collection, appointment of a Receiver for Southern Collection, conversion, attempted tortious interference with contract, and imposition of a constructive trust. All of these causes of action relate directly to issues with the alleged income and assets of Emily, Terence, and/or Southern Collection.

7. On or about April 27, 2022, Emily filed a Statement of Dissociation from Southern Collection with the South Carolina Secretary of State's Office.

STATEMENT OF THE CASE

The Court is very familiar with this case's procedural history and the facts relevant to the Order. For that reason, Defendants will not present a full statement of the case in this response.

All parties to this case were given the opportunity to submit briefs and exhibits in support of or in opposition to Defendants' Motion to Dismiss. After reading and considering all of the briefs submitted by the parties, the Court conducted a thorough hearing and allowed all parties to argue their respective positions. Counsel for Plaintiffs and counsel for Defendants participated in

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the Motion to Dismiss hearing and presented their arguments for their respective clients. In short, the Court's Order dismissing Plaintiffs' Complaint pursuant to Rule 12(b)(1), SCRCP, and in the alternative pursuant to Rule 12(b)(6), SCRCP, was not a snap judgment that now requires the Court to reflect further on this issue. Plaintiffs' motion does not raise any additional arguments to support their view of the case, nor do they cite or discuss any new legal authorities. All arguments raised in the Plaintiffs' motion were presented to the Court at the hearing. Plaintiffs are merely asking the Court to change its mind. For the reasons set forth below, the Court should deny that request.

STANDARD OF REVIEW

"Rule 59(e) in the South Carolina and federal rules of civil procedure is virtually identical." *Elam v. S.C. DOT*, 361 S.C. 9, 602 S.E.2d 772 (2004). A court may "alter or amend the judgment [pursuant to Rule 59(e), FRCP] if the movant shows either (1) an intervening change in the controlling law, (2) new evidence that was not available at trial, or (3) that there has been a clear error of law or a manifest injustice." *Robinson v. Wix Filtration Corp.*, 599 F.3d 403, 407 (4th Cir. 2010). The moving party must satisfy at least one of these three grounds to warrant relief pursuant to Rule 59(e). *Loren Data Corp. v. GXS, Inc.*, 501 Fed. Appx. 275, 285 (4th Cir. 2012). The decision to grant or deny a Rule 59(e) motion is within the sound discretion of the trial court. *Hughes v. Bedsole*, 48 F.3d 1376, 1382 (4th Cir. 1995).

Motions under Rule 59(e) serve a very limited function and are not intended to provide a means for re-litigating the issues already decided. As the United Stated District Court for the District of South Carolina has explained:

> [A] rule 59(e) motion to reconsider is not simply an opportunity to reargue facts and theories upon which a court has already ruled, or a vehicle for presenting theories or arguments that could have been advanced earlier. … It is improper to use such a motion to ask the Court to "rethink what the court has already thought through – rightly or wrongly."

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Middleton v. Motley Rice, LLC, WL 9698892 at *1 (D.S.C. March 23, 2011) (internal citations omitted).

ARGUMENT

Plaintiffs' Motion ultimately states that Court erred in multiple respects in its Order granting Defendants' respective Motions to Dismiss pursuant to Rule 12(b)(1) and 12(b)(6), SCRCP. All of these arguments were previously made by the Plaintiffs in their respective briefing and at the hearing and do not provide any new basis for the Court to alter or amend its Order.

As a threshold matter, Plaintiffs' Motion does not identify any changes in the controlling law or any new evidence that was previously unavailable. Thus, in order to establish a basis for relief, Plaintiffs must demonstrate a "clear error of law" or a "manifest injustice." Plaintiffs' Motion fails to make these showings, and therefore, the Court should deny the motion.

THE COURT DID NOT ERR THAT THE FAMILY COURT HAS EXCLUSIVE JURISDICTION OF THIS CASE.

Plaintiffs' Motion makes multiple arguments that the Court erred in finding that it lacked subject matter jurisdiction to hear this action, and all such claims should be addressed in the Divorce Action pending in Lexington Family Court. "The question of subject matter jurisdiction is a question of law for the Court." *Hammer v. Hammer*, 399 S.C. 100, 104-05, 730 S.E.2d 874, 876 (Ct. App. 2012). "If facts which give rise to a jurisdictional issue are in dispute, the court, not a jury, must find the facts." *Chew v. Newsome Chevrolet, Inc.*, 315 S.C. 102, 104, 431 S.E. 2d 631 (Ct. App. 1993.) While the Plaintiffs want the Court's analysis to end at the decision that it lacked subject matter jurisdiction, the Court must state the facts the support its decision.

"The general rule is that jurisdiction of a court depends on the state of affairs existing at the time it is invoked. If jurisdiction once attaches to the person and subject matter of the litigation

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the subsequent happening of events will not ordinarily operate to oust the jurisdiction already attached." *Gilley v. Gilley*, 327 S.C. 8, 488 S.E.2d 310 (1996) (citing *Gardner v. Gardner*, 253 S.C. 296, 170 S.E.2d 372 (1969)). *See also Terry v. Lee*, 308 S.C. 459, 419 S.E.2d 213 (1992) ("Separate actions to determine property rights will be considered 'other marital litigation' under §20-7-420(2), thereby vesting exclusive jurisdiction in the family court, if the relief sought is incidental to the decree of divorce.")

Once the Divorce Action was filed, S.C. Code Ann. § 63-3-530 (A)(2) controlled and the Family Court had the ***exclusive*** jurisdiction to hear and determine actions "for [divorce], separate support and maintenance, legal separation, and in ***other marital litigation*** between parties, and for settlement of all legal and equitable rights of the parties in the action in and to the real and ***personal property*** of the marriage." (Emphasis added). S.C. Code Ann. § 20-3-610 defines marital property as "all real and personal property which has been acquired by the parties during the marriage and which is owned as of the date of the filing or commencement of marital litigation…regardless of how legal title is held."

Since all of the allegations in Plaintiffs' instant Complaint pertain directly to alleged issues with Emily and Terence's ownership interests in Southern Collection or involve their ownership interests in Terence Smith and Associates, LLC, or Emily P. Smith and Associates, LLC, these allegations are considered "other martial litigation" within the exclusive jurisdiction of the Family Court. While the Plaintiff argues that Southern Collection is a legal entity separate and distinct from its owners, it is clear that all of the arguments in this case relate to the income and assets of Southern Collection. Terence and Emily's rights to this income and assets of Southern Collection originate solely from their ownership of the distributional interest in Southern Collection. These distributional interests are personal property squarely within the jurisdiction of the Family Court.

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See S.C. Code Ann. § 33-44-501(b) ("A distributional interest in a limited liability company is personal property…")

Given that the Divorce Action was filed over eight months prior to the filing of the instant action, it is clear that the Family Court jurisdiction attached to the claims Plaintiffs are asserting in the instant action well before the filing of this Complaint. Emily's Motion filed in the Family Court seemingly acknowledges that the Family Court has jurisdiction as to all issues related to Southern Collection as it specifically requests the Family Court to exclude Southern Collection, LLC, Southern Collection Brokerage, LLC, Emily P. Smith & Associates, and Terence Smith & Associates, LLC (all Defendants in the instant action) from the equitable division by the Family Court. Terence did not consent the relief sought in Emily's Motion, and he believes these issues are currently within the jurisdiction of the Family Court. Terence filed his own Motion in Family Court to specifically add Southern Collection as a party to the Divorce Action. Until such time the Family Court rules on the pending motions and specifically excludes Southern Collection from equitable division, these issues and assets are within the exclusive jurisdiction of the Family Court. Therefore, the Court correctly ruled that it lack subject matter jurisdiction to hear these claims.

THE COURT DID NOT ERR IN FINDING THAT THE FAMILY COURT COULD ADDRESS PLAINTIFFS' JUDICIAL DISSOLUTION REQUEST.

There is no South Carolina statute that provides the exclusive jurisdiction to the Circuit Court for the relief sought in the Plaintiffs' Complaint. Specifically, no such exclusive jurisdiction is found in the judicial dissolution statute, S.C. Code Ann. § 33-44-801. The only citation to the Circuit Court in Article 8 of the LLC Act is found in S.C. Code Ann. § 33-44-803, which grants the Circuit Court the right to supervise the winding up a company ***after*** dissolution. There has been no judicial finding that a judicial dissolution is necessary in this case. Ultimately, the

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dissolution action for the alleged bad acts of Terence is what is currently included in the Plaintiffs' Complaint and already before the Family Court.

Ultimately, Plaintiffs' Complaint is trying to get the apportionment of these marital assets outside of the Family Court's consideration of all other marital assets and marital debt. Under Article VII of the S.C. LLC ACT, since Emily dissociated from Southern Collection, an at-will company, then her membership should be purchased by the company if the company is not dissolved. Therefore, if Emily fails to meet her burden to prove Southern Collection should be dissolved under S.C. Code Ann. § 33-44-801, then Southern Collection will be forced to buy her out. Importantly, the Circuit Court is *not* granted exclusive jurisdiction to hear an action to determine the fair value of a distributional interest being purchased under S.C. Code Ann. § 33-44-701. The Family Court can, and will, consider the value of Emily's interests in Southern Collection when apportioning all marital property.

THE COURT DID NOT ERR RELATING TO PLAINTIFFS' REQUEST FOR A JURY TRIAL.

Plaintiffs argue they are being deprived of their right to a jury trial for the claims in the instant Complaint. Importantly, if such a right exists, it is Emily that divested herself of that right by choosing to file the Divorce Action in Family Court prior to making their request for a jury trial.[2] As is explained above, "[t]he general rule is that jurisdiction of a court depends on the state of affairs existing at the time it is invoked. If jurisdiction once attaches to the person and subject matter of the litigation the subsequent happening of events will not ordinarily operate to oust the jurisdiction already attached." *Gilley v. Gilley*, 327 S.C. 8, 488 S.E.2d 310 (1996). Emily chose to have the Family Court have jurisdiction for the issues relating to Southern Collection by filing

[2] Plaintiffs' Complaint did not make a request for a jury trial. Only after Defendants filed their respective Motions to Dismiss did Plaintiffs file their Jury Trial Demand.

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her Petition for Divorce in the Family Court prior to filing the instant Complaint. She cannot now claim it is unfair to force her to litigate the Southern Collection issues in Family Court, when it was her Petition that vested the Family Court with exclusive jurisdiction and divested her right to a jury trial.

THE COURT DID NOT ERR IN FINDING THAT NON-PARTIES TO THE DIVORCE COULD BE ADDED TO THE DIVORCE ACTION.

If there are third persons or entities that have an ownership interest in the property then the family court has the power to add these third parties to the lawsuit to accomplish the equitable division of that property. South Carolina Code Section 20-3-630 defines marital property as "all real and personal property which has been acquired by the parties during the marriage and which is owned as of the date of filing or commencement of marital litigation … *regardless of how legal title is held* … ." S.C. Code Ann. § 20-3-630(A) (2008) (emphasis added). In order to determine whether the property is marital property, the Family Court has the authority to join the owner of the property as a necessary party to the action. Section 63-3-530(19) provides that the Family Court has exclusive jurisdiction "[i]n furtherance of the complete disposition of cases in the jurisdiction of the court, to bring in and make parties to any proceedings pending in the court any person or persons ... whose presence to the proceedings may be found necessary to a complete determination of the issues therein, or the relief to which the parties thereto ... may be entitled."

The South Carolina Supreme Court held in *Sexton* that:

> [W]hen property is alleged to be marital property, but is owned by a third party, the Family Court has the subject matter jurisdiction to join all persons with a possible interest in the property as parties to the action and to determine if the property constitutes marital property as defined in § 20-7-473. If it is determined that the property is marital property, then the Family Court has the authority to determine the parties' equitable rights therein.

In re Sexton, 298 S.C. 359, 380 S.E.2d 832 (1989), rev'd on other grounds (holding marital property titled in Husband's mother's name can be equitably divided by the family court because

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Husband transferred title to his mother immediately before filing for divorce to keep property out of divorce proceeding).

Accordingly, in order to join a third party in action for equitable distribution, a litigant need only to make allegations to support a contention that property titled in the third party's name in actually marital property. See *Williams v. Williams*, 647 S.E.2d 256, 259 (S.C. App. 2007).

In this case, Plaintiffs have made an allegation that the property in possession of Defendants Robert B. Smith and Sherry C. Smith's possession is marital property. Thus, the Family Court has the authority to join Defendants Robert B. Smith and Sherry C. Smith to the family court action. The Family Court would then make a determination as to whether the property is indeed marital, and if so, apportion it among the parties.

THE COURT DID NOT ERR IN FINDING THAT THE COMPLAINT SHOULD ALTERNATIVELY BE DISMISSED PURSUANT TO RULE 12(B)(6).

Plaintiffs' Motion merely makes the conclusory statement that the Court erred in granting any relief pursuant to Rule 12(b)(6). Since there are no explicit arguments by Plaintiffs to support this conclusory statement, in the interest of brevity, Defendants reiterate and rely on their arguments made in their Memorandums filed in Support of the respective Motions to Dismiss and made at the hearings and believe the Court correctly granted their Motion under those arguments expressed in the briefing and at the hearing.

CONCLUSION

For the reasons set forth above, Defendants respectfully request that the Court deny Plaintiffs' Motion to Reconsider the June 23, 2022 Order granting Defendants' Motion to Dismiss, and grant them further relief the Court deems just and proper.

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TURNER PADGET GRAHAM & LANEY, P.A.

s/Mark B. Goddard
Mark B. Goddard, S.C. Bar No. 73965
John B. Kelchner, S.C.Bar No. 13589
Post Office Box 1473 (29202)
1901 Main Street, Suite 1700
Columbia, South Carolina 29201
Telephone: 803-227-4334
Telephone: 803-227-4234
Facsimile: 803-400-1542
Facsimile: 803-400-1522
Email: mgoddard@turnerpadget.com
E-mail: jkelchner@turnerpadget.com
ATTORNEYS FOR DEFENDANTS SOUTHERN COLLECTION, LLC, SOUTHERN COLLECTION BROKERAGE, LLC, AND TERENCE SMITH AND ASSOCIATES, LLC

KINARD & JONES, LLC

s/Ashby L. Jones
ASHBY LAWTON JONES, SC BAR No. 15900
ALYSSA ROSE IGLESIAS, SC BAR No. 104167
808 South Lake Drive
Post Office Box 2678
Lexington, SC 29072
(803) 359-1003
Ashby@kinardandjones.com
Alyssa@kinardandjones.com
ATTORNEYS FOR DEFENDANTS ROBERT T. SMITH, ROBERT B. SMITH, AND SHERRY C. SMITH

July 6, 2022

RECEIVED
Jul 29 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY
WALTON J. MCLEOD, CIRCUIT COURT JUDGE
Case No. 2022-CP-32-01419

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.

NOTICE OF APPEAL

Appellants Emily Smith and Emily P. Smith and Associates, LLC (hereafter "Appellants") appeal from the trial court's order Granting Defendants' Motion to Dismiss filed June 17, 2022, that was received by Appellants on June 17, 2022, and from the Amended order Granting Defendants' Motion to Dismiss dated June 23, 2022, that was received by the undersigned counsel for Appellants on June 23, 2022. Copies of both orders are attached hereto as **Exhibits A** and **B**, respectively. In addition, Appellants appeal from the order denying Appellants' Motion for Reconsideration dated July 20, 2022, received by counsel on July 20, 2022, a copy of which is attached hereto as **Exhibit C**.

Finally, Appellants appeal the order denying Appellants' Motion for Emergency Appointment of a Receiver, appealable pursuant to S.C. Code Ann. Section 14-3-330(1), dated

May 6, 2022, that was received by Appellants on May 6, 2022. A copy of this order is attached hereto as **Exhibit D**.

s/ Desa Ballard
Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)

BALLARD & WATSON
226 State Street
West Columbia, SC 29169
Telephone 803.796.9299
Facsimile 803.796.1066
desab@desaballard.com
harvey@desaballard.com
haley@desaballard.com

ATTORNEYS FOR APPELLANT

July 29, 2022

Other counsel of record:

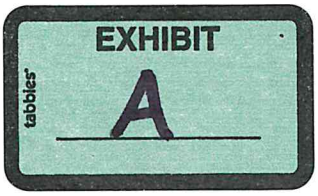
Mark B. Goddard (S.C. Bar No. 73965)
John B. Kelchner (S.C. Bar No. 13589)
Turner Padget Graham & Laney, P.A.
Post Office Box 1473 (29202)
1901 Main Street, Suite 1700
Columbia, South Carolina 29201
Telephone 803.227.4334
Facsimile 803.400.1542
mgoddard@turnerpadget.com
jkelchner@turnerpadget.com

ATTORNEYS FOR RESPONDENTS SOUTHERN COLLECTION, LLC, SOUTHERN COLLECTION BROKERAGE, LLC AND TERENCE SMITH AND ASSOCIATES, LLC

Ashby L. Jones (S.C. Bar No. 15900)
Alyssa R. Iglesias (S.C. Bar No. 104167)
Kinard & Jones, LLC
Post Office Box 2678

808 South Lake Drive
Lexington, South Carolina 29072
Telephone 803.359.1003
Ashby@kinardandjones.com
Alyssa@kinardandjones.com

ATTORNEYS FOR RESPONDENTS ROBERT T. SMITH, ROBERT B. SMITH, AND SHERRY C. SMITH



ELECTRONICALLY FILED - 2022 Jun 17 12:35 PM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT
Emily P. Smith et al, Plaintiff vs. Robert T. Smith et al, Defendant.	C/A No.: 2022-CP-32-01419 **ORDER GRANTING DEFENDANTS' MOTION TO DISMISS**

RECEIVED
Jul 29 2022
SC Court of Appeals

INTRODUCTION

This matter arises out of Defendants Southern Collection, LLC, Southern Collection Brokerage, LLC, and Terence Smith and Associates, LLC, Motion to Dismiss the Complaint of Plaintiffs Emily P. Smith and Emily P. Smith and Associates, LLC, pursuant to Rule 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure.

FACTUAL BACKGROUND

On August 18, 2021, Plaintiff, Emily P. Smith, filed an action for Divorce in the Lexington County Family Court, seeking to dissolve her marriage with Defendant, Robert T. Smith. The divorce action is still pending in Family Court. Plaintiff, filed this civil action alleging that Defendant is denying her of her rightfully owed income from their jointly owned real estate brokerage, Southern Collection Brokerage LLC. Defendant South Collection was formed by Emily P. Smith and Robert T. Smith for purposes of operating as a real estate company. Emily and Robert were the sole members of Southern Collection and each owned 50% of the distributional interest in the company. On April 27, 2022, the day before this civil action was filed, Plaintiff Emily Smith, filed a Statement of Dissociation with the South Carolina Secretary of State's office from Southern

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Collection. Pursuant to S.C. Code Ann §33-44-603(3), Emily has formally dissociated herself from the business and she is no longer a member of the Company. On April 29, the day after this civil action was filed, Plaintiff Emily P. Smith, filed a Notice of Motion and Motion to Supplement Complaint in the Family Court action, requesting that the Family Court exclude the parties' businesses from the equitable division of the marital assets. The Motion to Supplement Complaint has to be adjudicated by the Family Court.

On April 28, 2022, the Plaintiff also filed an Emergency Motion for Appointment of Receiver in the Circuit Court. The Court denied this motion on May 6, 2022. On May 12, 2022, Defendants, Robert T. Smith and Terence Smith And Associates, LLC, filed Motions to Dismiss the civil action pursuant to Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure.

A hearing was convened on June 3, 2022 where Desa Ballard, Esq., appeared on behalf of the plaintiff, Emily P. Smith and Mark Goddard, Esq., and Ashby Jones, Esq. appeared on behalf of the Defendants.

STANDARD OF REVIEW

Rule 12(b) of the South Carolina Rules of Civil Procedure provides:

> Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state facts sufficient to constitute a cause of action, (7) failure to join a party under Rule 19, (8) another action is pending between the same parties for the same claim. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a cause of action or defense to which an adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that cause of action or defense. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matters outside the

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> pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Under Rule 12(b)(6), SCRCP, a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action. In considering such a motion, the trial court must base its ruling solely on allegations set forth in the complaint. If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then 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). In deciding whether the trial court properly granted the motion to dismiss, the appellate court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. *Gentry v. Yonce*, 337 S.C. 1, 522 S.E.2d 137 (1999). A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom entitle the plaintiff to relief under any theory. *Id.* Furthermore, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. *Toussaint v. Ham*, 292 S.C. 415, 357 S.E.2d 8 (1987).

Pursuant to Rule 12(b)(1), SCRCP, where the movant challenges the power of the court over the subject matter, "[t]he 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). "A defendant may seek dismissal of an action pursuant to Rule 12(b)(8) when another action is pending between the same parties for the same claim." *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 320, 701 S.E.2d 39, 44 (Ct. App. 2010). In considering a motion to dismiss based on lack of jurisdiction, the court may consider evidence outside of the pleadings. *Baird v. Charleston County,* 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999).

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ANALYSIS

A. Motion to Dismiss Pursuant to 12(b)(1)

Defendants allege that the complaint should be dismissed pursuant to rule 12(b)(1). The family court has exclusive jurisdiction to hear and determine actions involving all types of "marital litigation." S.C. Code Ann. § 63-3-530(A)(2) grants the family court exclusive jurisdiction to hear and determine actions for "divorce a vinculo matrimonii, separate support and maintenance, legal separation and in other marital litigation between the parties, and for settlement of all legal and equitable rights of the parties in the actions in and to the real and personal property of the marriage..." In addition to marital litigation, the family court also has specific legislative authority to hear and determine additional types of disputes between spouses and former spouses, even if they are presented outside the context of marital litigation. For the family court to properly include property within the marital estate, two factors must coincide. First, the property must be acquired during the marriage" and "[s]econd, the property must be owned on the date of filing or commencement of marital litigation." *Brown v. Odom*, 425 S.C. 420, 437, 823 S.E.2d 183, 191 (Ct. App. 2019) 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 of the date of filing or commencement of marital litigation." S.C. Code Ann. § 20-3-630 (2014).

The allegations contained in Plaintiffs' Complaint pertain directly to ownership and financial interest in Southern Collection Brokerage, LLC. The Defendants argue that membership interests are personal property squarely within the jurisdiction of the Family Court. The Plaintiffs argue that Southern Collection LLC has not been found to be marital property and argues the Family court does not have jurisdiction to distribute nonmarital property contained in a Limited

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Liability Company (LLC). Put another way, Plaintiff asserts the LLC is not, and cannot be, marital property. The Court disagrees with the Plaintiffs contention.

Southern Collection was established by both parties during their marriage and on August 18, 2022, when the divorce action was filed in family court, the parties were the sole owners of the limited liability corporation. The South Carolina Supreme Court held in *Levy v. Carolinian, LLC*, that a "distributional interest in an LLC is personal property and may be transferred in whole or in part." 410 S.C. 140, 146, 763 S.E.2d 594, 597 (2014) (citing S.C. Code Ann §33-44-510(b). Further, our courts have held that distributional interest in property not inherited and obtained during marriages, are considered marital property and subject to equitable distribution in Family Court. *Jackson v. Jackson*, 432 S.C. 415, 434, 853 S.E.2d 344, 354 (Ct. App. 2020). Because the property was owned by both parties at the time the divorce action was filed, jurisdiction has been vested in the family court. The personal property in question in the instant civil action falls squarely within the exclusive jurisdiction of the family court to apportion.

Plaintiff cites to S.C. Code Ann § 33-44-803, which grants the Circuit Court the right to supervise the winding up of a company after dissolution, as the basis for why it should be in Circuit Court. On August 27, 2022, the Plaintiff Emily P. Smith, filed a Statement of Dissociation from Southern Collection, while the Plaintiff is no longer a member, the corporation has not yet been dissolved, thus the application of S.C. Code Ann § 33-44-803 is premature and does not apply to the facts currently at hand.

Based on the foregoing, the court finds that the Family Court is the proper forum for this action and the relief sought therein. It is important to note, that Plaintiff Emily P. Smith requested marital assets be apportioned in family court. There have been several Family Court hearings in the domestic action and several hearings are scheduled in the future, all highly indicative of the

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Family Court establishing jurisdiction in the matter. Plaintiff has not provided the Court with any indication that the Family Court has divested itself of jurisdiction in this matter. Furthermore, in the filing of Plaintiffs pending Motion to Supplement Complaint, Plaintiff essentially concedes that Family Court has jurisdiction over the division of marital assets in requesting such relief from the Family Court.

At the hearing on June 3, 2022, Plaintiff indicated that the they have not received any answers from the family court regarding whether Southern Collection LLC is marital property, however, the issue is presently before the family court and ongoing. [1] At this time, the Family Court has subject matter jurisdiction of the matters asserted and relief sought in Plaintiff's Complaint. Therefore, Defendants' Motion to Dismiss pursuant to Rule 12(b)(1), SCRCP is granted.

B. Motion to Dismiss Pursuant to Rule 12(b)(6)

Even assuming arguendo, the Court had the requisite subject matter jurisdiction in this action, the Court finds this action would also fail on meritorious grounds. In the Complaint, Plaintiff is seeking a judicial dissolution and winding up of Southern Collection, appointment of a receiver, and an accounting of assets of the business. Plaintiff has also brought a cause of action for conversion, the imposition of a constructive trust, and a request for attorneys' fees and costs resulting from this action. "Viewing the evidence in favor of the plaintiff, the motion must be granted if facts alleged in the complaint and inferences reasonably deducible therefrom do not entitle the plaintiff to relief on any theory of the case." *Jarrell v. Petoseed Co.*, 331 S.C. 207, 209, 500 S.E.2d 793, 794 (Ct. App. 1998). "The question is whether in the light most favorable to

[1] This Court recognizes that the Family Courts may determine some assets not to be marital property. Such a determination on certain assets could make the Circuit Court the appropriate forum under the appropriate circumstances, however, that is not the case at this time.

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plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987). The Court finds that the Plaintiff has not set forth sufficient facts to support the multiple causes of action against the Defendants.

As previously held, the Court finds that the family court has the necessary and proper tools to prevent the dissipation or other improper conduct involving contested marital assets.

Conclusion

For the foregoing reasons, Defendants' Motions to Dismiss pursuant to Rule 12(b)(1), and in the alternative Rule 12(b)(6) are **GRANTED without prejudice**. The Court instructs parties to continue seeking relief from the Family Court directly. If upon conclusion of the family court action, further proceedings become necessary in Circuit Court, parties may seek further adjudication.

IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE ON THE FOLLOWING PAGE]

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Lexington Common Pleas

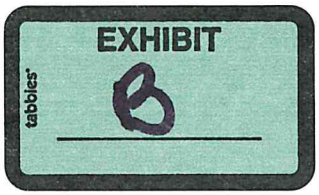
Case Caption: Emily P. Smith , plaintiff, et al VS Robert T. Smith , defendant, et al

Case Number: 2022CP3201419

Type: Order/Dismissal

It Is So Ordered

s/ Walton J. McLeod



ELECTRONICALLY FILED - 2022 Jun 23 10:41 AM - LEXINGTON - COMMON PLEAS - CASE#2022CP3201419

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT
Emily P. Smith et al, Plaintiff vs. Robert T. Smith et al, Defendant.	C/A No.: 2022-CP-32-01419 **AMENDED ORDER GRANTING DEFENDANTS' MOTION TO DISMISS**

RECEIVED
Jul 29 2022
SC Court of Appeals

INTRODUCTION

This matter arises out of Defendants Southern Collection, LLC, Southern Collection Brokerage, LLC, and Terence Smith and Associates, LLC, Robert T. Smith, Robert B. Smith, and Sherry C. Smith's Motion to Dismiss the Complaint of Plaintiffs Emily P. Smith and Emily P. Smith and Associates, LLC, pursuant to Rule 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure. [1]

FACTUAL BACKGROUND

On August 18, 2021, Plaintiff, Emily P. Smith, filed an action for Divorce in the Lexington County Family Court, seeking to dissolve her marriage with Defendant, Robert T. Smith. The divorce action is still pending in Family Court. Plaintiff, filed this civil action alleging that Defendant is denying her of her rightfully owed income from their jointly owned real estate brokerage, Southern Collection Brokerage LLC. Defendant South Collection was formed by Emily P. Smith and Robert T. Smith for purposes of operating as a real estate company. Emily and Robert

[1] The Court inadvertently excluded Defendants Robert T. Smith, Robert B. Smith and Sherry C. Smith from the dismissal order. This amended order reflects the parties involved.

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were the sole members of Southern Collection and each owned 50% of the distributional interest in the company. On April 27, 2022, the day before this civil action was filed, Plaintiff Emily Smith, filed a Statement of Dissociation with the South Carolina Secretary of State's office from Southern Collection. Pursuant to S.C. Code Ann §33-44-603(3), Emily has formally dissociated herself from the business and she is no longer a member of the Company. On April 29, the day after this civil action was filed, Plaintiff Emily P. Smith, filed a Notice of Motion and Motion to Supplement Complaint in the Family Court action, requesting that the Family Court exclude the parties' businesses from the equitable division of the marital assets. The Motion to Supplement Complaint has to be adjudicated by the Family Court.

On April 28, 2022, the Plaintiff also filed an Emergency Motion for Appointment of Receiver in the Circuit Court. The Court denied this motion on May 6, 2022. On May 12, 2022, Defendants, Robert T. Smith and Terence Smith And Associates, LLC, filed Motions to Dismiss the civil action pursuant to Rules 12(b)(1) and 12(b)(6) of the South Carolina Rules of Civil Procedure.

A hearing was convened on June 3, 2022 where Desa Ballard, Esq., appeared on behalf of the plaintiff, Emily P. Smith and Mark Goddard, Esq., and Ashby Jones, Esq. appeared on behalf of the Defendants.

STANDARD OF REVIEW

Rule 12(b) of the South Carolina Rules of Civil Procedure provides:

> Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state facts sufficient to constitute a cause of action, (7) failure to join a party under Rule 19, (8) another action is pending between the same parties for the same claim. A motion making any of these defenses shall be made before pleading

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> if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a cause of action or defense to which an adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that cause of action or defense. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Under Rule 12(b)(6), SCRCP, a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action. In considering such a motion, the trial court must base its ruling solely on allegations set forth in the complaint. If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then 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). In deciding whether the trial court properly granted the motion to dismiss, the appellate court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. *Gentry v. Yonce*, 337 S.C. 1, 522 S.E.2d 137 (1999). A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom entitle the plaintiff to relief under any theory. *Id.* Furthermore, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. *Toussaint v. Ham*, 292 S.C. 415, 357 S.E.2d 8 (1987).

Pursuant to Rule 12(b)(1), SCRCP, where the movant challenges the power of the court over the subject matter, "[t]he 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). "A defendant may seek dismissal of an action pursuant to Rule 12(b)(8) when another action is pending between the same parties for the same claim." *Cricket Cove Ventures, LLC v.*

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Gilland, 390 S.C. 312, 320, 701 S.E.2d 39, 44 (Ct. App. 2010). In considering a motion to dismiss based on lack of jurisdiction, the court may consider evidence outside of the pleadings. *Baird v. Charleston County,* 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999).

ANALYSIS

A. Motion to Dismiss Pursuant to 12(b)(1)

Defendants allege that the complaint should be dismissed pursuant to rule 12(b)(1). The family court has exclusive jurisdiction to hear and determine actions involving all types of "marital litigation." S.C. Code Ann. § 63-3-530(A)(2) grants the family court exclusive jurisdiction to hear and determine actions for "divorce a vinculo matrimonii, separate support and maintenance, legal separation and in other marital litigation between the parties, and for settlement of all legal and equitable rights of the parties in the actions in and to the real and personal property of the marriage..." In addition to marital litigation, the family court also has specific legislative authority to hear and determine additional types of disputes between spouses and former spouses, even if they are presented outside the context of marital litigation. For the family court to properly include property within the marital estate, two factors must coincide. First, the property must be acquired during the marriage" and "[s]econd, the property must be owned on the date of filing or commencement of marital litigation." *Brown v. Odom*, 425 S.C. 420, 437, 823 S.E.2d 183, 191 (Ct. App. 2019) 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 of the date of filing or commencement of marital litigation." S.C. Code Ann. § 20-3-630 (2014).

The allegations contained in Plaintiffs' Complaint pertain directly to ownership and financial interest in Southern Collection Brokerage, LLC. The Defendants argue that membership interests are personal property squarely within the jurisdiction of the Family Court. The Plaintiffs

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argue that Southern Collection LLC has not been found to be marital property and argues the Family court does not have jurisdiction to distribute nonmarital property contained in a Limited Liability Company (LLC). Put another way, Plaintiff asserts the LLC is not, and cannot be, marital property. The Court disagrees with the Plaintiffs contention.

Southern Collection was established by both parties during their marriage and on August 18, 2022, when the divorce action was filed in family court, the parties were the sole owners of the limited liability corporation. The South Carolina Supreme Court held in *Levy v. Carolinian, LLC*, that a "distributional interest in an LLC is personal property and may be transferred in whole or in part." 410 S.C. 140, 146, 763 S.E.2d 594, 597 (2014) (citing S.C. Code Ann §33-44-510(b). Further, our courts have held that distributional interest in property not inherited and obtained during marriages, are considered marital property and subject to equitable distribution in Family Court. *Jackson v. Jackson*, 432 S.C. 415, 434, 853 S.E.2d 344, 354 (Ct. App. 2020). Because the property was owned by both parties at the time the divorce action was filed, jurisdiction has been vested in the family court. The personal property in question in the instant civil action falls squarely within the exclusive jurisdiction of the family court to apportion.

Plaintiff cites to S.C. Code Ann § 33-44-803, which grants the Circuit Court the right to supervise the winding up of a company after dissolution, as the basis for why it should be in Circuit Court. On August 27, 2022, the Plaintiff Emily P. Smith, filed a Statement of Dissociation from Southern Collection, while the Plaintiff is no longer a member, the corporation has not yet been dissolved, thus the application of S.C. Code Ann § 33-44-803 is premature and does not apply to the facts currently at hand.

Based on the foregoing, the court finds that the Family Court is the proper forum for this action and the relief sought therein. It is important to note, that Plaintiff Emily P. Smith requested

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marital assets be apportioned in family court. There have been several Family Court hearings in the domestic action and several hearings are scheduled in the future, all highly indicative of the Family Court establishing jurisdiction in the matter. Plaintiff has not provided the Court with any indication that the Family Court has divested itself of jurisdiction in this matter. Furthermore, in the filing of Plaintiffs pending Motion to Supplement Complaint, Plaintiff essentially concedes that Family Court has jurisdiction over the division of marital assets in requesting such relief from the Family Court.

At the hearing on June 3, 2022, Plaintiff indicated that the they have not received any answers from the family court regarding whether Southern Collection LLC is marital property, however, the issue is presently before the family court and ongoing. [2] At this time, the Family Court has subject matter jurisdiction of the matters asserted and relief sought in Plaintiff's Complaint. Therefore, Defendants' Motion to Dismiss pursuant to Rule 12(b)(1), SCRCP is granted.

B. Motion to Dismiss Pursuant to Rule 12(b)(6)

Even assuming arguendo, the Court had the requisite subject matter jurisdiction in this action, the Court finds this action would also fail on meritorious grounds. In the Complaint, Plaintiff is seeking a judicial dissolution and winding up of Southern Collection, appointment of a receiver, and an accounting of assets of the business. Plaintiff has also brought a cause of action for conversion, the imposition of a constructive trust, and a request for attorneys' fees and costs resulting from this action. "Viewing the evidence in favor of the plaintiff, the motion must be granted if facts alleged in the complaint and inferences reasonably deducible therefrom do not

[2] This Court recognizes that the Family Courts may determine some assets not to be marital property. Such a determination on certain assets could make the Circuit Court the appropriate forum under the appropriate circumstances, however, that is not the case at this time.

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entitle the plaintiff to relief on any theory of the case." *Jarrell v. Petoseed Co.*, 331 S.C. 207, 209, 500 S.E.2d 793, 794 (Ct. App. 1998). "The question is whether in the light most favorable to plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987). The Court finds that the Plaintiff has not set forth sufficient facts to support the multiple causes of action against the Defendants.

As previously held, the Court finds that the family court has the necessary and proper tools to prevent the dissipation or other improper conduct involving contested marital assets.

Conclusion

For the foregoing reasons, Defendants' Motions to Dismiss pursuant to Rule 12(b)(1), and in the alternative Rule 12(b)(6) are **GRANTED without prejudice**. The Court instructs parties to continue seeking relief from the Family Court directly. If upon conclusion of the family court action, further proceedings become necessary in Circuit Court, parties may seek further adjudication.

IT IS SO ORDERED.

[JUDICIAL E-SIGNATURE ON THE FOLLOWING PAGE]

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Lexington Common Pleas

Case Caption: Emily P. Smith , plaintiff, et al VS Robert T. Smith , defendant, et al

Case Number: 2022CP3201419

Type: Order/Amend

It Is So Ordered

s/ Walton J. McLeod

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Sep 28 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY
WALTON J. MCLEOD, CIRCUIT COURT JUDGE
Case No. 2022-CP-32-01419

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.

CONSENT MOTION TO STAY PROCEEDINGS

Appellants Emily P. Smith and Emily P. Smith and Associates, LLC, together with Respondents, jointly move for an order staying proceedings in the above-captioned appeal until after completion of mediation, which is scheduled to reconvene on January 9, 2023.

Respectfully submitted,

s/ Haley Hubbard
Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)

BALLARD & WATSON
226 State Street
West Columbia, SC 29169
Telephone 803.796.9299
Facsimile 803.796.1066
desab@desaballard.com
harvey@desaballard.com
haley@desaballard.com

ATTORNEYS FOR APPELLANTS

September 28, 2022

STATE OF SOUTH CAROLINA	)	Court of Common Pleas
	)	Eleventh Judicial Circuit
COUNTY OF LEXINGTON	)	2022-CP-32-01419

Emily P. Smith and Emily P. Smith and Associates, LLC, Plaintiffs, vs. Robert T. Smith; Southern Collection LLC; Southern Collection Brokerage, LLC; Terrance Smith and Associates, LLC; Robert B. Smith, and Sherry C. Smith, Defendants.	)	Transcript of Record

Lexington, South Carolina
May 5, 2022

B E F O R E:

The Honorable Walton J. McLeod

A P P E A R A N C E S:

Mr.Desa Ballard, Esquire
Attorney for Plaintiff

Ms. Ashby Jones, Esquire
Mr. Mark Goddard, Esquire
Attorney for the Defendants

Recorded by: WebEx

Transcribed by: Lisa Carter, Court Reporter

I N D E X

WITNESSES PAGE

(NO WITNESSES INTRODUCED DURING HEARING)

(EXHIBITS INTRODUCED DURING HEARING)

MS. BALLARD: [indiscernible]... the defendant and there's a group at my office, you can see in the center of the room, my associate, Haley Hubbard, our client, Emily Smith, and Mrs. Smith's domestic lawyer, Sheila Robinson, is there.

THE COURT: So ---

MS. BALLARD: I'm sorry?

THE COURT: So Mr. Goddard has the defendant on this common pleas matter. Does Ms. Jones have the has Ms. Jones have the defendant on the family court matter?

MR. GODDARD: Your Honor ---

MS. JONES: I have the defendant, Terrence Smith in this matter. Mr. Goddard has the defendant, one of the entities listed in this matter. Everyone is not here. We're missing Robert B. Smith and Sherry C. Smith.

THE COURT: Okay. They are joining. Okay.

MS. BALLARD: They -- they -- I don't know that they will be appearing.

THE COURT: Okay.

MS. BALLARD: I understand they got served ---

THE COURT: Let me ---

MS. BALLARD: -- maybe yesterday.

THE COURT: Let me get a little bit of history here.

MS. JONES: Thank you, Your Honor.

THE COURT: I was -- this was Friday afternoon, I don't know a specific time but I wasn't here at the moment.

MS. BALLARD: Right.

THE COURT: I was asked -- my law clerk asked me about doing an emergency hearing, I said we're gonna be out of the office until Thursday, just tell whoever needs a hearing I could do it on Thursday. So I learned a little bit more detail yesterday and I understand there's a bit of a unique quality to this ---

MS. BALLARD: There is.

THE COURT: I've had Mr. Goddard before. This is the first time I've seen Ms. Jones in a hearing. And I recognize there's seems to be a parallel proceeding in family court as well. If I'm not mistaken Ms. Ballard, you're here because you, -- you have an emergency request to appoint a receiver in a civil case that it is also is involved in family court, is that correct?

MS. BALLARD: I'm here requesting the appointment of a receiver in the civil case. There is a pending domestic case in which there have been certain temporary orders issued, but there's been no order of least of which I'm aware. Ms. Robinson can correct me if I'm wrong, that has identified these corporate entities as marital property. These are corporate -- this is a corporation, an LLC, created under Title 33. So we have proceeded seeking relief

for judicial dissolution in accordance with Title 33. I believe the defendants take the position that there's exclusive jurisdiction in family court and I submitted my memo last night explaining why I disagreed with that.

THE COURT: Okay.

MS. BALLARD: And Mr. Cobb is here, who's also here in the white shirt, the purported, purported receiver.

THE COURT: Okay. Well, the LLC, the issue here, is it owned by the plaintiff and the defendant in the family court case or is owned by a group of people ---

MS. JONES: I'll answer that, Your Honor, Yes, it is owned by both plaintiff and defendant. Ms., Ms. Ballard is misstated the law of family court ---

MS. BALLARD: I have not.

MS. JONES: Your Honor, it's not necessary for the court to issue a finding that this LLC that was formed during the marriage is a marital asset. That is a rebuttable presumption in family court and I've set forth in our brief and I'm sure you'll have an opportunity to read it at some point. The statute that indicates all real and personal property acquired during the marriage is marital property. That statute also states that marital properties within the exclusive jurisdiction of the family court.

This family court case has been pending since August

of '21 and this asset has been within the exclusive jurisdiction of family court ever since. We've litigated several hearings where complaints were made about how husband and wife were running the asset. Mrs Smith has sought relief in a hearing in December making some of the same allegations she makes in this case. She was not granted any relief. But the truth is, if she wants to take the position that the asset is non-marital and somehow bring it out of family court, she has to prove that and a final merits hearing. We aren't there yet. We're in the middle of discovery. I've noticed her deposition ---

THE COURT: Okay. When you say a final merits hearing, you mean a final merits hearing before a family court judge?

MS. JONES: Yes, sir. The presumption is that it's marital. It was formed in 2020 and these folks got married in 2012. It is absolutely a marital asset. And I don't really think Mrs. Smith is trying to prove otherwise. What she's wanting to do is have this one marital asset evaluated and divided without the assistance of the family court. That is what she's wanting to do and she's got the cart before the horse, judge. She's -- she's filed all of these actions, but she hasn't gotten permission yet with the family court to even dismiss any of these businesses from the jurisdiction of the family court. In fact, Your

Honor, if you look at the timeline of this case this ---

THE COURT: Well, is that what you've filed or provided? I may not have read everything yet so please ---

MS. JONES: Yes, sir. There is a timeline that I think if you hear it in a linear fashion it becomes even more obvious that what is happening here is, is out of order. First off, the receiver wrote a letter on April 12, 2022 agreeing to serve. On April 26, 2022 the receiver, the proposed receiver, filed a or signed a consent to serve. That was out of order. He cannot even serve until this LLC is dissolved. This LLC is not dissolved. On April 27, 2022, wife, disassociated from the LLC. On April 27, 2022, the same day, I filed a motion in family court to address some issues that are ongoing in the family court case. On April 28th this action was filed. But most significantly, Your Honor, on April 29th, the day after this action was filed, Mrs. Smith's domestic lawyer filed a motion in family court to ask for permission to amend her complaint to ask the court to divest of its jurisdiction over all of these entities. And that is so important, Your Honor, because she's about three or four steps away from even getting to this case. And the first step would be if the family court gives Mrs. Smith permission to amend her complaint which we don't know if they will. That hearing hasn't even been scheduled yet. Presume that they will, Your Honor, presume

that the family court gives Mrs. Smith permission to amend her complaint to seek permission to have the jurisdiction of family court divest itself of these businesses. Well, the next step is the preparation of the amended complaint for which we get to respond. And then after that she has to file a motion to try to convince a family court judge to divest of this one piece of the marital estate and I don't think she's going to be able to do it. But in any case, Your Honor, in the filings before you Mrs. Smith acknowledges that that has not been done.

MS. BALLARD: Your Honor ---

MS. JONES: That jurisdiction remains with the family court. It remains with the family court. And because of that, Your Honor, we believe that under Rule 12(h)(3) which says, "if it appears by suggestion of the parties or otherwise, that the court lacks jurisdiction on the subject matter, the court shall dismiss the action." Your Honor, respectfully this court does not have jurisdiction over this asset. And we believe this should be dismissed. If the court is not willing to do that, we believe this all has to be stayed until the family court completes its job and it's the family courts job to evaluate this entity and divide it fairly. And, you know, Mrs. Smith wants to put the cart before the horse and there's a reason she wants to do that, Your Honor. When the court considers the evaluation of this

asset it is not piecemeal. The family court considers the entire marital estate which is going to include tax liens, back taxes, real property, other personal property. And when the court considers the entire marital estate they have to look at a number of factors. They're 15 factors, Your Honor. And of those factors that the family court considers are: have either of these parties committed marital misconduct ---

THE COURT: You're bringing back horrible flashbacks, Ms. Jones.

MS. JONES: You memorizing them for the bar exam. But one of the most important factors is, have either of these parties committed marital misconduct that impacted the financial condition of the marital estate? And it's our position that that has happened. Of course, that won't be heard if Ms. Ballard allowed to go forward with this because that's not a factor in and what she's trying to do.

THE COURT: Well, Ms. -- and let me let Ms. Ballard speak to this. But you're asking me to appoint a receiver --

MS. BALLARD: Yes.

THE COURT: --- to take over Ms. Jones, -- to take over an LLC that's owned by both you and Ms. Jones' client, is that accurate?

MS. BALLARD: Um, Your Honor, Yes. Southern

Collections LLC is incorporated under Title 33 and as you know the nature of the ownership interest of an LLC is not considered personal property of the owner, it's considered an invisible interest of the whole corporate entity ---

THE COURT: But doesn't family court have the ability to ensure that those assets are protected through their own rules and powers?

MS. BALLARD: No. Because Title 33 gives the circuit court exclusive jurisdiction over issues relating to the management of a corporation and the dissolution of a corporation. It gives us circuit court exclusive jurisdiction to deal with the membership interests in an LLC. The family court has no jurisdiction over that whatsoever which is why I made the point that the nature of the interest in an LLC is not a property interest. It's an indivisible interest that the circuit court has to deal with when one of the parties to the LLC, one of the members of the LLC disassociate that triggers an automatic statutory provision for dissolution of the LLC. The only point that to be dealt with is in circuit court.

MS. JONES: Just not accurate. That just not accurate.

THE COURT: Well, ---

MR. GODDARD: Your Honor, May I ---

THE COURT: Just say -- let me just be very clear -

- I'm not going to make a decision in a hurry right now.

MS. JONES: Good.

THE COURT: I realize we're having a hearing but, frankly I'm in a bit of a disadvantage because this is out of my normal wheelhouse, okay. So this is why we are we're on the record in a WebEx hearing, I really want to have a conversation for now just so I can understand ---

MS. BALLARD: That's fine.

THE COURT: --- exactly what the lay of the land is. Now -- now, I'll get you Mr. Goddard, but my question Ms. Ballard, is I asked if the family court had the ability to, essentially, give you the relief ---

MS. JONES: It don't.

THE COURT: --- now, I recognize the South Carolina Code talks about circuit court when dealing with receivers. I also recognize that virtually all the case law dealing with receivers in reported cases was before the advent of the family court in 1976.

MS. BALLARD: Well, the a statutes ---

THE COURT: Hold on! I'll get to this.

MS. BALLARD: Okay.

THE COURT: There is a case I just saw today that Whetstone vs. Whetstone that deals with the family court appointing a receiver from 1993. It's SC, or excuse me, 309 SC 227. Now, listen, I'm not saying the factual on point,

but makes reference to the family court using a receiver -- and my next question is even if they weren't using a receiver, what is the statute which I mean, y'all are, y'all got me trying to read the family law here which is dangerous ---

MS. BALLARD: You don't have to read the family law --

THE COURT: But what about a sequester or sequestration, is that some other option that the family court can consider for your client at the appropriate time?

MS. BALLARD: Your Honor, the matter has to be heard in the circuit court because of the exclusive jurisdiction provisions in Title 33. The Family Court has exclusive jurisdiction over marital assets. But as I said before there's been no determination that this is a marital asset. There have been allegations ---

THE COURT: But is there a law that says that a corporation or LLC cannot be a marital asset.

MS. BALLARD: No, sir.

MS. JONES: No. And ---

MS. BALLARD: I realized -- if Ms. Jones would let me finish, Your Honor, I realized that I have brought to Your Honor with deepest apologies a collision of Title 33 and the family court. Now, you'll know as well as I did that there are numerous appellate decisions where if the

issue has not been raised, the court has not ruled on it. And the 1993 Whetstone case one would be one of those.

THE COURT: Okay.

MS. BALLARD: The Whetstone case also is one which does not involve an LLC. We have only one statutory procedure for addressing ownership, division, dissolution of an LLC and it has to be in the circuit court. So Ms., Ms. Robinson has, in fact, asked to clarify by a filing in the family court that she is not requesting a division of any, any LLC interest that might be considered owned by the parties because it can't be considered in the family court. That's why she wanted to amend that and make it clear, she filed that motion. But, Your Honor, the fact that the parties were or are married has absolutely nothing to do with the issues that are before you. The issue before you is whether or not my client properly filed a disassociation, which she did from an LLC in which she is a member which she is. And whether or not there's a significant risk of harm of the loss of assets that are owned by the LLC which is the statutory standard for appointment of a receiver.

THE COURT: Cause the harm to the assets.

MS. BALLARD: Well, if you'll see from the affidavits that have been filed include an affidavit ---

MS. JONES: I object ---

THE COURT: I'm just asking -- I'm just asking you, this is Mark, what -- what harm is going to result to these assets?

MS. BALLARD: The corporation, Your Honor, has been essentially rated and my client's flow of income from the corporation has been terminated. So my client's flow of income has been cut off. The family court has not and did not deal with that in the temporary order. And the risk of harm is as we've alleged in the complaint that the assets of this LLC have been and are continuing to be misappropriated into other LLC's or into other entities in which my client doesn't have an interest. So the reason for the urgency is the appointment of a receiver to inventory what assets there are in this LLC. And then to the extent that the receiver determines what the status of the assets in the LLC are. Then we can come back to the court and seek whatever relief we need for that.

THE COURT: Is it your contention at the family court's hands are tied and they have no injunctive or injunctive release they can do or provide to your client?

MS. BALLARD: All I can tell you is what the -- I'm not a domestic attorney, thank goodness. But what I can tell you is Title 33 says exclusive jurisdiction belongs to the circuit court.

THE COURT: Title 33 section what, section what?

MS. BALLARD: I cited that in my reply that I filed last night.

THE COURT: I don't -- I don't -- okay, ---

MS. BALLARD: I don't have that in front of me at the moment.

THE COURT: Title 33 is pretty big, Ms. Ballard.

MS. BALLARD: Well, the exact section number is cited -- Haley, do you have my reply in front of you because I cited the section. This -- I quoted the section that said is exclusively within the jurisdiction of the circuit court.

THE COURT: No, that's -- no, that's Title 15 that you quoted.

MS. BALLARD: No, sir. I also titled, quoted Title 33 or I thought I did.

MR. GODDARD: Your Honor ---

THE COURT: Okay. Ms. Goddard, we've -- we've shut you out completely. We're at the hour we want to hear from you.

MR. GODDARD: --- just briefly and I think it's an important step here. Despite the respectfully Ms. Ballard's position about it being personal, the interest in a, interest in the LLC not being personal property, the statutes expressly states otherwise, 33-44-501(b) says, "a distributional interest in a limited liability company is

personal property." That is what is owed, owned in a LLC. You have a management -- you have a voting interest and you have a distributional interest, but a distributional interest is the financial interest in the company. It is expressly in 33-44-501 (b) that is, that is the individual's personal property. Your Honor, while I didn't see nothing in 33-44, the LLC Limited Liability Company Act that puts the circuit court has exclusive jurisdiction over anything. I do think it is where the dissolution is found. Your Honor, but I think it's important for you to take a wholesale look at everything that's here. This is part of a complaint, okay. The emergency motion is part of a complaint. Obviously, we were just served with the complaint, but it goes without saying, we contest almost all of the allegations in the complaint. However, in looking at the causes of action in the complaint, you have a judicial dissolution of the company, okay. That matter is not before the court today. That's in the merits hearing before the other one. However, the other causes of action are a conversion action specifically as to additional personal property that may be owed by these other entities that absolutely would also be personal property in the, in the family court. The only other cause of action is, ah, of a constructive trust of alleged marital property. All of the causes of action in the complaint are directly related

to the personal property of this company.

Now, judge, I think the case law and the statutory statutes are clear as to the once the jurisdiction attaches in any particular court it stays in that court until it's divested otherwise, 63-3-530 gives the family court exclusive jurisdiction over all marital property. The case law that's out there that's cited in my brief is clear, Your Honor. That goes into any and all actions related to that marital property stays within the family court, Your Honor. And importantly in one of the cases cited it ruled against us or ruled that the family court didn't have jurisdiction because in that case, specifically, it was a partition action which is specifically within the exclusive jurisdiction of the circuit court. And another thing, Your Honor, this is not there. This is a all marital assets. I'll be happy to address otherwise why a receiver is not appropriate under, further appropriate under 801, but that goes into the substantive issues of this case. I think it is clear, Your Honor, that the statutes and case law on point short of Mrs. Smith proving otherwise, these are all marital assets that must be handled in the family court.

THE COURT: Okay. Let me let Ms. Jones speak.

MS. JONES: Yes, sir. Your Honor, I think that the court was asking if Mrs. Smith allegations are true, which we vehemently deny those allegations, if they are true, is

there a remedy to her in family court? And the answer is, yes, there is a remedy. These folks are operating under a couple of temporary orders. And one of those temporary orders has a restraining order against both of them prohibiting both parties from harming any marital asset. If Mrs. Smith believes that Mr. Smith has done that then she can file a contempt action and prove to the court by the standard of a clear and convincing evidence that he has.

In addition, Your Honor, to state that this court has not considered any of these complaints thus far in the family court case, it's just, it's just false. In December of last year, Mrs. Smith presented the family court with a nine paged affidavit, Your Honor, and in that affidavit four and a half pages of it were the same complaints she has in this case and she was not given any relief. Judge Newton ruled on that issue already and she was not given any relief. And she doesn't like that. She wants to remove all of this from the family court and take it to a place that doesn't consider 15 factors that may be harmful to her. And she just can't do it. Personal property is defined in 33-44-501(b) and this is a piece of personal property and family court does have exclusive jurisdiction over it. And Ms. Sheila Robinson's motion to amend her family court complaint filed after this action was filed, doesn't ask the family court to make something clear, Your Honor,

that's, that's misstating what was filed. She is asking the family court to divest of its jurisdiction. She states, "the plaintiff is, therefore, seeking to supplement her previously filed complaint to request the division of the parties businesses," and she named all of them, "be excluded from equitable division by the family court." She knows Ms. Robinson does this work, but she has to ask permission for that and then she has to convince a judge to do that. And one more thing, Your Honor, I don't think a judge will do it and here's why, we're well into discovery in this case. We have both identified experts. I have noticed Mrs. Smith's deposition. There's a pending motion to compel against her. We're scheduling the mediation of this case. We have exchanged documents, Your Honor, called MAA and for the edification of those that don't do family court work is quite simple, it's a spreadsheet. It's a spreadsheet of the marital assets and debts and it's significant to me, Your Honor, Mrs. Smith put on her MAA all these businesses. She knows their marital assets. All of this work has been accomplished and yet we're at the ninth inning of this family court case and she wants you to step in and disrupt this company which I think it's important for the court to understand what this company is. It's a real estate company. And, though, it's owned by husband and wife, there are ten realtors at this company.

Ten realtor. So if Mrs. Smith goal is to dissolve this company, not only is she committing marital financial misconduct which is an element of the equitable division, but she's willing to pull the rug out from under ten other people, their livelihoods. And so I know the court is asking itself why in the world would she do this? Why in the world would Mrs. Smith, when she's spent so much money and time and energy and hired an expert in the family court case, come here? And, Your Honor, the cart is before the horse and I would submit to you the cart hadn't even been constructed yet. Like the temp hasn't been cut for the cart yet, Your Honor.

THE COURT: And the biggest thing I'm want to focus on for the time ,it's just -- you know, obviously it's a family court case, but the plaintiff is arguing that a circuit court can take this action. You and Mr. Goddard disagree ---

MS. JONES: We do.

MS. BALLARD: And I realize this is a novel question, those tend to come to me.

THE COURT: Well, you just said or use the word novel questions ---

MS. BALLARD: It is a novel question.

THE COURT: -- and the question is, can you show me any case in South Carolina jurisprudence that has a circuit

court issuing an order appointing a receiver in a parallel family court setting?

MS. BALLARD: I cannot because this is the first time I'm aware that the request has been made. My point is though that the circuit court cannot treat an LLC member differently just because she is married to another LLC member. An LLC member has certain statutory rights, certain statutory obligations and she has exercised those. And if the court were to decline to allow her exercising and her disassociation and the dissolution of this company to go forward in circuit court, it would be a violation of her equal protection as a, as a corporate owner, corporate member of an LLC. Your Honor, would hear any other case involving members of an LLC and what Mr. Goddard and Ms. Jones are asking you to do is to say, oh, except when the parties are married why wouldn’t she do it over in family court. Your Honor can't do it that way. You've got to look at it as an LLC which is exactly what it is. And we've established significant harm that's already been established to the LLC. We've established, I think, without dispute that Mrs. Smith source of income from the LLC has been completely extinguished. The family court denied preliminary ---

THE COURT: Let me ask this question -- let me ask this question. All right. Assuming that this will be Ms.

Jones's client who's extinct, allegedly extinguishing your client income, that'd be offensive ---

MS. BALLARD: That's correct.

THE COURT: --- that's what you're saying?

MS. BALLARD: Misappropriating it and putting into other businesses. And we're not ---

THE COURT: Listen to me -- assuming that's right. Assuming that's right.

MS. BALLARD: Yes.

THE COURT: And I'm asking this question, unfortunately, not really knowing the answer, but four months, six months from now, you go to trial in family court, you have your final merits hearing, what is to prevent that family court judge from not holding Ms. Jones's client, client accountable for those acts?

MS. JONES: That's absolutely what will happen.

MS. BALLARD: I ---

MS. JONES: If she could prove her case, excuse me, if she can prove her case which we don't believe she can, but if she can prove her case that he is this terrible dishonest person and has diverted all of this money from her, then that is absolutely a factor that the court can consider at the final hearing. But Mrs. Smith doesn't want that to happen, Your Honor, and it's because it's our position, she has done the most harm to this business. And

this is why we have a pending motion to address it.

Your Honor, I want to point out one thing, I did, I did provide the court with a copy of a motion that I filed in family court and Ms. Ballard has alluded to it a little bit. I asked the court to set up an emergency hearing to address the issues that I have presented in the motion I filed April 27th. The court did not grant an emergency hearing. That does not mean they did not grant my relief. In fact, the court is trying to schedule this hearing on an expedited basis. I'm mentioning that, Your Honor, just to let the court know the family court is handling it. The family court is accustomed to these disputes and this is something that family court does every day, but Mrs. Smith ---

THE COURT: But the relief you were seeking -- well, what was a relief you were seeking it? They didn't --

MS. JONES: Well, all kinds of things.

THE COURT: Okay.

MS. JONES: First, Mrs. Smith to be ordered to return all of the property she has stripped from the LLC. Second, to name the LLC as a party to the case so that we can obtain an even better restraining order that she has to abide by. Because it's our position that she is the one who has recently as last Friday instructed real estate lawyers

to wire money to bank accounts that don't belong to her broker in charge which is violative of the law that realtors have to follow. And she -- we believe that she is damaging this company. We've also asked for things like an update to her psychological evaluation. She had a troubling one in December of '20. Your Honor, her mental health is a factor, believe it or not, in the equitable division of this estate, Mrs. Smith's mental health. And, Your Honor, the troubling psych eval needs to be updated because it's our position that her behavior, even in filing this, her behavior is indicative of a real problem with honesty.

THE COURT: Okay.

MS. JONES: So we want all of that to be fleshed out as it has been, Your Honor. We've had several hearings about this case, several. And it's -- the family court is handling it just fine. The only person that doesn't like how it's going is Mrs. Smith.

MS. BALLARD: May I respond, Your Honor.

THE COURT: Sure.

MS. BALLARD: Thank you, Your Honor. Mrs. Smith is a member of an LLC. Mr. Smith is also a member of an LLC. The statutes grant members of the LLC certain rights which Mrs. Smith has exercised which she has a right to exercise and which only this court has a right to rule on. The good news is, you don't have to deal with such things as

psychological evaluations. You don't have to deal with such things as marital fault. You look at this strictly as a corporate action which is exactly what it is. And whatever this court does or doesn't do certainly can be taken into consideration by the family court when the merits hearing of the family court is issue or is gotten to, but Mrs. Smith as a member of an LLC has an absolute right to file her Articles of Disassociation which she did and to request this court to dissolve that company. That's not a violation of any order that's been issued by the family court. There's been no order issued by the family court that I am aware of that has said that this LLC which is not even a party to the domestic action is a marital asset. So I'm sorry that they didn't name Southern Collection, LLC in their family court action, but they didn't.

MS. JONES: We don't have to.

MS. BALLARD: And ---

MS. JONES: We don't have to. It's statutory ---

MR. GODDARD: Your Honor, may I speak briefly.

MS. BALLARD: Your Honor, may I finish ---

THE COURT: Yeah.

MS. BALLARD: Yes, sir.

THE COURT: Let Ms. Ballard finish and then Mr. Goddard, I'll let you jump in and then we're gonna wind things up.

MS. BALLARD: Thank you, Your Honor. There's case law for years where family court's have attempted to bring in third-parties for different reasons. Paramours, for instance, or people who are interfering with the marital relationship in one way or the other. Those uniformly have been turned down. But -- and in this case, it's a very simple question. Is this a corporation whose governance is, is subject to the adjudicatory powers of the circuit court? Yes, it is. Is it -- is there also a marital issue out there? Yes, there is. But it's secondary to the operation of this corporation. This corporation has an absolute right, as do the members of this corporation, to come to this court to seek relief when they are suffering financially or when the damage, damages that are occurring to their membership interest in the LLC. The fact that they're married does not deprive them of that right. and I understand I'm raising a novel question. I do understand that. I would also point out that the case law is uniformed that you don't dismiss on a motion to dismiss when there's a novel question involved. The case law says you don't do that.

THE COURT: The only thing I'm deciding today is whether a emergency order appointing a receiver necessary, that is it?

MS. BALLARD: That's correct. That's correct.

THE COURT: I'm not digging any deeper than that, but I do want to know all the background facts because as I've said, you know, my concerns are, you know, receivers usually deal with judgment creditors, mortgages, bankruptcies, not in play here. I realized now -- Ms. Ballard, before I forget now I looked through your reply again and it's an entirely possible I've missed one of these documents, but I don't see any citation to Title 33 so ---

MS. BALLARD: Well, then -- then, I misspoke. I know that I cited the receivership statute being exclusive to the circuit court which is, again, a remedy that's not available in family court. But it's -- but it is a remedy that's available to my client in her capacity as a member of an LLC.

THE COURT: And to do that point, now, I mean, I know we've, we've -- you've stated your, your point on this, but while there are no cases in South Carolina that y'all have made me aware of which say that circuit court can do exactly what you're asking me to do. There is, at least, a reported case that makes reference to the family court using an appointed receiver. Again -- and that dealt with the parties children and the three corporations in which the family members were stockholders, not an LLC, but

certainly ---

MS. BALLARD: Right.

THE COURT: --- in nature.

MS. BALLARD: Correct.

THE COURT: So, I mean, the way I see it is the answers are no, or yes, or not now, to the questions here today. Ms. Jones -- actually Mr. Goddard, were you up next. I think ---

MR. GODDARD: And I'll let Ms. Jones respond to that issue. I would like to clarify one thing ---

THE COURT: Go ahead.

MS. JONES: Oh, I just wanted to say, Your Honor, that in addition to the opportunity to just dismiss the action because you don't have jurisdiction over the issue, I think it could be appropriate to stay the entire case until the family court completes their work. I don't think the court just needs to rule on the receivership issue because then we still have this complaint hanging out there to attempt to dissolve, although, throughout the complaint Ms. Ballard says that the corporation is already dissolved. It's not. But if, if she were to amend correctly identify that the LLC remains active, now we've got parallel cases that, that we don't have dual jurisdiction to hear. So I would -- I would urge the court to consider just staying all of it until we finish the work of family court.

THE COURT: Okay. Well, the reason I said that Ms. Jones is just frankly I didn't review the complaint. I just reviewed the motion for an emergency appointment because we're here because someone told me there was an emergency. If this were a motion to dismiss, I've give it to the clerk of court and they could schedule it 30 days from now. So that -- even if a stay is an option or even if we didn't have a state today, we could certainly have one in, you know, the normal course of business. But I realized we've heard a lot today. I just wanted to kind of be laser focused on this emergency relief that was granted.

MS. BALLARD: Thank you, Your Honor.

THE COURT: That was requested, excuse me.

MR. GODDARD: May I addressed the due process ---

THE COURT: Sure.

MR. GODDARD: --- obligation?

THE COURT: If you -- if you -- if you think ---

MR. GODDARD: If you’re interested. If not I can ---

THE COURT: Well, I want you -- well, I want you to say what you think needs to said.

MR. GODDARD: Your Honor, while Ms. Ballard argues that this would not be fair to some stock or some member of the LLC, Your Honor, we're not talking about a third-party that's a member of this that would be stuck in family court. These -- both parties are absolutely within the

jurisdiction of the family court because both are the ones that filed the divorce action. You've been asked a couple of times about the ability or the exclusive jurisdiction of the of the circuit court. Nowhere in 33-44 is this the ability to seek dissolution exclusive to the circuit court. The only type, only 33-44-803 does 803(a), does give the circuit court "may order judicial supervision of the winding up of the company." There is a major point of that number (a) that says, "after dissolution." Your Honor, I think it's very important to understand no one has stopped and, in fact, the filing of the statement of this association, all that does, Your Honor, is stops her being a member of the company statutorily. No one has stopped her being a member of the company. No one -- it has not prevented her by order, by the statute, what happens is she is treated as a transferee of the member, of the company. Meaning she's still entitled to all distributions, okay. But she no longer is a voting member.

A statement of disassociation is not, in any way, tied to dissolution. The statement of disassociation is actually a method of notifying third-parties that you are no longer a member. Your Honor, under a disassociated member, typically, could by a third-party could argue that that disassociated member could bind the company for two additional years if it thought it had, had authority. Well,

all the action of filing the statement of disassociation with the Secretary of State's office does it starts that notice provision that third-parties can no longer, no longer has that two year time period, now only has a 90 day time period.

THE COURT: Hold on one second.

(Whereupon, the judge thinks he is having complications with WebEx)

MR. GODDARD: That is the only significance of filing the statement of disassociation with Secretary of State's office. Now, the other part of being a disassociated member in 'At Will Company' is you are -- all the company has to know is you give the express will to want to disassociate. Obviously, that's done by filing it with the Secretary of State's office.

Your Honor, that is step one. What Ms. Ballard has put throughout this and is arguing that has to be done in this is, let's dissolve this company tomorrow. Let's -- let's do a receiver, wind it up and being done. Under the law That's not how it works and she knows that because she filed the complaint, Your Honor. She has to prove 34, under 33-44-801 or some of those, one of those four things that allows the court to then order judicial dissolution.

MS. BALLARD: We've pressed for those ---

MR. GODDARD: Only after that occurs, can the

receiver be appointed to dissolve the company. Your Honor, we are premature on multiple accounts. One of being the exclusive jurisdiction of the family court. But even so we can't have a receiver to wind up the company until there's a finding that the company should be dissolved. What brings this all full circle, Your Honor, and why a stay or something's going to be important -- is what happens by statute, if you dissolve the company and this is an 'At Will Company', if you dissolve the company and the company is not dissolved, it triggers an automatic purchase under 33-44-701. The company's required to purchase the interest.

MS. BALLARD: No.

THE COURT: She's looking for the equitable distribution or purchase in this case by ending this company and ignoring all the factors for the same equitable distribution that would occur in family court. That's the full circle picture of this. If this happens, she's going to try to force the company to purchase her interest under 33-44-701. That's the reason it has to stay in family court, Your Honor, that equitable distribution of assets is purely within the courts remedy.

MS. JONES: He's -- you're right. He's exactly right. He's ---

MS. BALLARD: Your Honor, the matter that I'm in here at the Court of Appeals is about to reconvene ---

MS. JONES: Excuse me!

THE COURT: Stop! Stop!

MS. BALLARD: The matter ---

THE COURT: Ms. Ballard -- Ms. Ballard, she started first and I'll then I'll let you respond.

MS. BALLARD: Well, I'm just trying to tell you ---

MS. JONES: Excuse me.

MS. BALLARD: --- procedure is about to start in the room and I'm, um, ---

THE COURT: What?

MS. BALLARD: I'm at the Court of Appeals and we took a recess in order ---

THE COURT: Oh.

MS. BALLARD: --- to be able to have this hearing and the court reporter is back and the parties are back. I just wanted to let the court know that I won't have this room much longer.

THE COURT: Okay. We'll wrap it up.

MS. JONES: Your Honor, I'll be quick. The -- the MAA I talked about, the spreadsheet that has all the assets and the debts of the marriage, it's very important in family court because what it does is gives a net value of the marital estate and that's what's divided. And what Mrs. Smith is wanting to do is piecemeal all of this -- do we lose her?

THE COURT: Is Ms. Ballard still with us?

MS. JONES: Is she still there? Mrs. Smith would like to piecemeal this and not look at the full spreadsheet because it'll benefit her because there's a great lot of tax debt that these two have incurred over the years and she just can't do that.

THE COURT: No.

MS. JONES: She can't do that -- she can’t strip the family court of one of the most valuable assets of the marriage.

THE COURT: And I don't want to cut Ms. Jones but if I’ve lost Ms. Ballard I don't want to continue -- I see her name but -- she was at the Court of Appeals. She did email us that, but I forgot. She provided me a proposed order. Have y'all done that as well?

MR. GODDARD: No, Your Honor.

THE COURT: And let me -- what I would really like is I've done my own research today, but if there's specific statutory things you wanted to send to me just to bring attention to, you don't have to reargue everything and I'm going to try to get something done as quick as I can.

MS. JONES: We both briefed it, Your Honor.

THE COURT: Okay.

MS. JONES: Have you received a copy of our briefs?

THE COURT: Probably.

MR. GODDARD: And Your Honor, and I was about to say -- we have fully briefed the issues we've argued including the statutory provisions.

THE COURT: I got it. I got it.

MR. GODDARD: Yeah. I'll be happy to prepare a proposed order.

THE COURT: Actually, because this is an emergency relief, I think I can just -- I think I'll just -- maybe not a Form 4, but, you know, the bottom line -- like I said when Ms. Ballard was with us, the answer may just be, 'No, not now'.

MS. JONES: Your Honor, for housekeeping, you have a brief from Mr. Goddard, a brief from me, a reply brief from Ms. Ballard, so there should be three things.

THE COURT: I will work with Ms. Gardner (ph) if we are -- determined we've missed or missing one, we will reach out.

MS. JONES: Thank you.

MR. GODDARD: Thank you so much for your time, Your Honor.

THE COURT: I appreciate y'all -- Mr. Cobb, sorry I didn't hear from you, but appreciate you being here.

MR. COBB: Yes, sir. No problem. Thank you.

THE COURT: All right. I'll be in touch.

MR. GODDARD: Thank you, Your Honor.

THE COURT: Thank y'all.

(CONCLUSION OF HEARING HELD ON MAY 5, 2022)

CERTIFICATE

I, the undersigned Lisa S. Carter, Official Court Reporter for the Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Second Circuit for Lexington County, South Carolina, on the 5th day of May, 2022.

That said proceedings are transcribed to the best of my ability from the audio recording and supporting information.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.

s/ *Lisa S. Carter*

Lisa Carter

Circuit Court Reporter

August 20, 2022