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Jul 25 2023
SC Court of Appeals

The State Of South Carolina
In The Supreme Court

Appeal from Spartanburg County
Court of Common Pleas
Hon. J. Mark Hayes, Circuit Court Judge

Consolidated Civil Action No. 2018-CP-42-04297
Appellate Case No. 2023-001094

Cindy Coxie, as Special Administrator for the Estate of
Johnny Coxie,Respondent,

v.

Academy, Ltd., d/b/a Academy Sports and Outdoors; and
Dustan Lawson..... Defendants,

and

Academy, Ltd. d/b/a Academy Sports + Outdoors,Crossclaimant,

v.

Dustan Lawson and Todd Christopher Kohlhepp,Cross-Defendants,

Of which Academy, Ltd. d/b/a Academy Sports +
Outdoors, is theAppellant.

Motion to Transfer or Certify from the Court of Appeals

Appellant Academy, Ltd. d/b/a Academy Sports + Outdoors (“Academy”) moves under Rule 204(b), SCACR to certify these actions for review before determination by the Court of Appeals. Academy filed its Notice of Appeal, as it is required to do, with the Court of Appeals, a copy of which is attached as **Exhibit 1**. This Court has discretion to certify any case pending before the Court of Appeals and transfer the case for review by this Court before it has been determined by the Court of Appeals. *See* Rule 204(b), SCACR.

As discussed below and in Academy's Petition for a Writ of Certiorari previously filed, the Court should certify this case review by this Court for the following reasons:

(1) At issue is the applicability of a federal immunity statute and state qualified privilege to the discovery of records relating to the sale to nonparty, unrelated South Carolinians of over 100,000 firearms over a nine-year period and law enforcement trace requests for any firearms sold at any of the over 260 Academy stores nationwide over a sixteen-year period. Without the immediate appellate review, objections based on this immunity and qualified privilege could be mooted and evade later appellate review.

(2) The absolute immunity under federal law protecting from disclosure law enforcement trace requests and information about firearms sales to consumers presents a novel issue of law that is a matter of significant public interest impacting the rights of consumers to protect the privacy of their firearms purchases and the confidentiality of law enforcement investigations.

(3) The trial court's orders negatively impact nonparties exercising their protected Second Amendment right to buy and own firearms, as well as Academy's right to prevent the unwarranted disclosure of confidential and proprietary commercial information protected under the South Carolina Trade Secrets Act.

(4) Plaintiffs' discovery requests are abusive and seek records not remotely relevant to a resolution of the claims in civil actions subject to a federal immunity statute, the Protection of Lawful Commerce in Arms Act, 15 U.S.C. § 7901 *et seq.*, intended in part to allow firearms licensees to avoid the expense of this type of discovery.

Certification is warranted because this case involves issues of significant public interest and legal principles of major importance, including issues of first impression in South Carolina.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

A thorough recitation of the factual background and procedural history of this matter is provided in the Petition for Writ of Certiorari recently filed by Academy. The below provides a succinct summary for the convenience of the Court.

The trial court's orders on appeal relate to the civil actions filed by the estates of three decedents in the Spartanburg County Court of Common Pleas. In each of these three actions, Plaintiffs allege that a straw purchaser, Dustan Lawson, bought firearms at the Academy stores in Greenville and Spartanburg, provided those firearms to Todd Kohlhepp, and that Kohlhepp used one of those firearms to shoot and kill the three decedents. Plaintiffs contend that Academy should have known that Lawson was secretly buying the firearms for Kohlhepp. Kohlhepp in fact had many sources for obtaining firearms and had in his possession fifteen firearms from sources other than Lawson's purchases at Academy. Additionally, Lawson was not prohibited by federal or state law from buying firearms, and he successfully passed the FBI National Instant Background Check every time he made a firearm purchase from Academy. Lawson also attested in writing during each purchase that he was buying the firearm for himself, with notice that a false answer was punishable as a felony under federal law.

On March 29, 2023, Plaintiffs moved to compel Academy to produce: (1) records for over 100,000 firearms sold to nonparty customers in South Carolina for an eleven-year period; and (2) information about all law enforcement trace requests related to firearms sold at the over 260 Academy stores nationwide for a sixteen-year period. Academy opposed the motion by asserting federal immunity under the Tiahrt Amendment, Pub. Law 112-55, 125 Stat. 552, qualified privilege under the South Carolina Trade Secrets Act, S.C. Code Ann. § 39-8-10 *et seq.*, the need

to protect the privacy of its nonparty-customers exercising their Second Amendment rights, lack of relevance, and undue burden.

The trial court held the first of three hearings on the Motion to Compel on June 26, 2023. It then held a hearing two days later to announce its tentative rulings, though it did not memorialize those rulings in a written order until July 3, 2023. The trial court held another hearing on July 6, 2023 to address the undue burden that the production of the sales and trace records would impose on Academy. It entered its second order on July 10, 2023 requiring Academy to begin producing the records starting at 1:30 p.m. on Tuesday, July 11, 2023.

On July 10, 2023, after the entry of the discovery orders, Academy moved for a stay in the trial court to maintain the *status quo* while it sought immediate appellate review. Academy then filed a Notice of Appeal and an Emergency Verified *Ex Parte* Petition for a Writ of Supersedeas with the Court of Appeals. Academy recently filed a Petition for a Writ of Certiorari seeking a review by this Court of the trial court's discovery orders. On the morning of July 11, 2023, the trial court held an additional hearing with counsel for Plaintiffs and Academy and made an oral ruling that he was granting Academy's motion for a stay of the two discovery orders and requested that a proposed order be submitted for entry in the record.

ARGUMENT

Transfer of a case to the South Carolina Supreme Court is “normally appropriate where the case involves an issue of significant public interest or a legal principle of major importance.” Rule 204(b), SCACR. This proceeding involves such issues and legal principals. As explained more fully in Academy's Petition for Writ of Certiorari, this case implicates the protection of private information regarding the firearms purchases of tens of thousands of nonparty customers as well as the protection of the confidentiality of law enforcement trace requests for firearms sold at more

than 260 Academy stores nationwide. At issue is the application of federal immunity from discovery for this information provided by the Tiahrt Amendment in addition to qualified immunity provided by the South Carolina Trade Secrets Act. These are legal issues of major importance because, among other reasons, the Court's ruling will determine whether private customer information and law enforcement trace requests can be compelled through legal process from the records of federal firearms licensees in South Carolina and could be used as precedent to compel production of these records across the country.

As Academy explains in its Notice of Appeal pending in the Court of Appeals, the trial court's orders are immediately appealable because, among other reasons, compliance with the trial court orders would moot Academy's ability to seek appellate review of the issues involving federal discovery immunity under the Tiahrt Amendment and qualified privilege under the South Carolina Trade Secrets Act, making the orders final. Moreover, the orders affect substantial rights of both Academy and thousands of nonparties who have purchased firearms from Academy. Because Academy has no avenue for meaningful appellate review absent an immediate appeal before the records are produced, the unique circumstances of this case make the discovery orders immediately appealable.

In the event the orders are found not to be immediately appealable, Academy has filed a Petition for a Writ of Certiorari, which only this Court can grant. As the Petition explains, this case presents exceptional circumstances and raises critical issues that both affect the public interest and have a significant impact on the rights of South Carolinians, Academy customers, and Academy. Therefore, even if the orders are not immediately appealable, the issues warrant review by this Court through a Writ of Certiorari.

Academy’s direct appeal and its Petition for Writ of Certiorari create a unique procedural situation. The direct appeal, along with the question of immediate appealability, is pending in the Court of Appeals. The Petition for Writ of Certiorari will be pending in this Court. Judicial economy is best served by *all* the issues—appealability, the writ, and the merits—to be decided by this Court, which is the only proper forum. If the order is deemed immediately appealable, review via the Petition for a Writ of Certiorari becomes unnecessary and the appeal would proceed before this Court. On the other hand, if the orders are determined not to be immediately appealable, then this Court would proceed to consider whether it would nevertheless grant review of the orders by way of an extraordinary writ. Therefore, this Court should certify the appeal under Rule 204, SCACR, so that it can address both appealability and the merits.

CONCLUSION

For the reasons stated above, Academy respectfully requests that the Court grant this motion, certify the case for review by the Supreme Court, and order that jurisdiction over this case be transferred from the Court of Appeals.

[Signature on following page.]

NELSON MULLINS RILEY & SCARBOROUGH LLP

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Attorneys for Academy, Ltd. d/b/a Academy Sports + Outdoors

Columbia, South Carolina
July 11, 2023

Exhibit 1

Notice of Appeal

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SC Court of Appeals

The State Of South Carolina
In The Court of Appeals

Appeal from Spartanburg County
Court of Common Pleas
Hon. J. Mark Hayes, Circuit Court Judge

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and

Academy, Ltd. d/b/a Academy Sports + Outdoors,Crossclaimant,

v.

Dustan Lawson and Todd Christopher Kohlhepp,.....Cross-Defendants,

Of which Academy, Ltd. d/b/a Academy Sports +
Outdoors, is theAppellant.

Notice of Appeal

Defendant-Appellant Academy, Ltd. d/b/a Academy Sports + Outdoors (“Academy”) timely appeals the lower court’s Form 4 Order filed July 3, 2023 (the “Objections Order”), and its Form 4 Order filed July 10, 2023 (the “Production Order”) granting Plaintiffs’ March 29, 2023 Motion to Compel. Academy received written notice of the entry of the Objections Order on July 3, 2023, and the Production Order on July 10, 2023. Copies of the two orders are attached as **Exhibit A.**

As the South Carolina Supreme Court recently reiterated, whether an order is immediately appealable *must be determined on a case-by-case basis*. *Stone v. Thompson*, 826 S.E.2d 868, 870 (S.C. 2019) (emphasis added). Academy recognizes that ordinary discovery orders are not immediately appealable. *See Oncology & Hematology Assocs. of S.C., LLC v. S.C. Dep't of Health & Env't Control*, 692 S.E.2d 920, 925 (S.C. 2010). But these are no ordinary discovery orders.

The orders issued by the Circuit Court require the rolling production, starting at 1:30 p.m. tomorrow, of hundreds of thousands of records of firearms sales and law enforcement trace requests. These records have absolute immunity from discovery under federal law. In particular, the Tiahrt Amendment states that these types of records “shall be immune from legal process [and] shall not be subject to subpoena or other discovery . . . in a civil action in any State.” *See* 2012 Consolidated and Further Continuing Appropriations Act, Pub. L. 112-55, 125 Stat. 552, 609–10. The records are also subject to qualified privilege under the Trade Secrets Act. *See Hartsock v. Goodyear Dunlop Tires N. Am. Ltd.*, 813 S.E.2d 696, 698 (S.C. 2018). Moreover, the records contain sensitive personal information of tens of thousands of nonparty customers who have an expectation that their names, addresses, and personal identifying information as well as the number and types of firearms they purchased would remain confidential. Notably, these voluminous records documenting thousands of unrelated firearms sales and other Academy customers have no relevance to the twelve firearms purchases to one individual at issue in this matter.

Absent intervention by this Court, the impermissible compelled production of these irrelevant and highly sensitive records would moot any later appeal by Academy based on federal immunity and qualified privilege, release highly confidential law enforcement trace request information, and defy the reasonable privacy expectations of tens of thousands of customers. These circumstances support the immediate appeal of the orders. *Cf. State v. Duncan*, 709 S.E.2d

662, 665 n.2 (S.C. 2011) (finding order refusing to enforce immunity in the nature of an appealable injunction).

The orders also affect the substantial rights of Academy and tens of thousands of nonparty customers. These rights will be lost and cannot be vindicated during a later appeal once the production of records has occurred. Moreover, this matter is of great public significance because the requested records subject to the discovery orders relate to the sales of over 100,000 firearms to nonparty consumers as well as numerous law enforcement trace requests, some of which would likely relate to ongoing criminal investigations. These records would include private and highly sensitive customer information, the disclosure of which would defy the privacy expectations of the customers, regardless of the existence of a confidentiality order or other protective steps.

For all of the above reasons, an immediate appeal is appropriate.¹ To the extent the Court has any doubt or concern regarding appealability, Academy respectfully requests the opportunity to provide more fulsome briefing and analysis regarding the propriety of immediate appeal under these circumstances.²

SIGNATURE PAGE ATTACHED

¹ This notice does not provide an exhaustive list of all of the reasons warranting the acceptance of this appeal and the need for appellate intervention at this point in this case. Academy will include all of the reasons in the event the Court requests briefing on the propriety of immediate appeal.

² Academy will be filing a Petition for Writ of Certiorari with the South Carolina Supreme Court and filing a motion to certify and transfer the appeal under Rule 204, SCACR. Academy is also seeking in the Circuit Court a stay of the above-referenced orders, and, if unsuccessful, will be filing an emergency writ of supersedeas pending appeal from the Court of Appeals.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ D. Larry Kristinik

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Attorneys for Academy, Ltd. d/b/a Academy Sports + Outdoors

Columbia, South Carolina
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v.

Dustan Lawson and Todd Christopher Kohlhepp,.....Cross-Defendants,

Of which Academy, Ltd. d/b/a Academy Sports + Outdoors,
is theAppellant

Proof of Service

I, the partner of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant Academy, Ltd. d/b/a Academy Sports + Outdoors, certify that I have served all parties in this action with a copy of the document(s) set forth below by the following methods:

Document(s): **Notice of Appeal**

Counsel/Parties Served:

Via USPS

Todd Christopher Kohlhepp, 00372454
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136 Wilborn Avenue
Ridgeville, SC 29472

Via USPS

Dustan Lawson
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Via Email Only

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(864) 250-2300

Attorneys for Academy, Ltd. d/b/a Academy Sports + Outdoors

Columbia, South Carolina
July 10, 2023

Matt Abee

From: Matt Abee
Sent: Monday, July 10, 2023 4:53 PM
To: mschiavo@motleyrice.com; Mills Ariail; dave@standefferlaw.com
Cc: Robert Cross; Erin Davis; Jenna Klein; jtersteegen@bradyunited.org; crenzulli@renzullilaw.com; Scott Allan; Larry Kristinik; Sam Outten; Matt Bogan; Kelly Taylor; Kevin Werner
Subject: Service Copy: Notice of Appeal and Supersedeas - Coxie (No. 2018-CP-42-04297)
Attachments: 2023.07.10 - Filing Letter - Notice of Appeal and Supersedeas [As Served].pdf
Importance: High

Counsel:

For service on you by email under Supreme Court Order No. 2022-05-06-03, please find:

- Academy's Notice of Appeal
- Academy's Emergency Verified *Ex Parte* Petition for a Writ of Supersedeas

Please feel free to contact me should you have any questions. Thanks.

-Matt

Please note that I will be out of the office August 3–4, 2023.



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July 10, 2023

RECEIVED

Jul 10 2023

SC Court of Appeals

Via Email

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
ctappfilings@sccourts.org

RE: Cindy Coxie v. Academy, Ltd. *et al.*
Consolidated Civil Action No. 2018-CP-42-04297
Our File No. 043449/01506

Dear Ms. Kitchens:

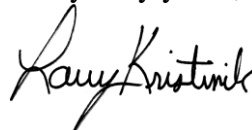
Enclosed for filing on behalf of our client Appellant/Petitioner Academy, Ltd. d/b/a Academy Sports + Outdoors, please find:

- Notice of Appeal
 - Exhibit A
 - Proof of Service

- **Emergency Verified Ex Parte Petition for a Writ of Supersedeas**
 - Verification
 - Exhibits A–C
 - Proof of Service

Please note that our check for \$300.00, for the Notice of Appeal, and Emergency Verified *Ex Parte* Petition for Writ of Supersedeas, is being hand-delivered under separate cover.

Very truly yours,



D. Larry Kristinik

cc: Via Email Only
J. David Standeffer, Esquire (w/no enclosures)

The Honorable Jenny Abbott Kitchings

July 10, 2023

Page 2

R. Mills Ariail, Jr., Esquire

Mary F. Schiavo, Esquire

Erin Davis, Esquire

Robert M. Cross, Esquire

Jenna Tersteegen, Esquire

Via U.S. Mail

Todd Christopher Kohlhepp

Dustan Lawson

Exhibit A

Orders on Appeal

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018-CP-42-04297 (Consolidated)

Cindy Coxie, as Special Administrator for the
Estate of Johnny Coxie
PLAINTIFF(S)

Academy, Ltd., d/b/a Academy Sports and
Outdoors, et al.
DEFENDANT(S)

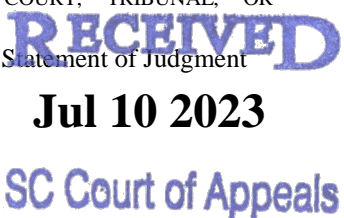
| | |
|-------------------------------|---|
| Submitted by: Robert M. Cross | Attorney for : <input checked="" type="checkbox"/> Plaintiff(s) <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant |
|-------------------------------|---|

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:



ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk :

The Court, having reviewed and considered Plaintiffs’ Motion to Compel filed on March 29, 2023, Defendant Academy, Ltd.’s (“Academy’s”) responsive filings dated June 22 and June 23, 2023 and oral argument by the parties on June 26, 2023, hereby GRANTS Plaintiffs’ Motion to Compel and ORDERS the parties to meet and confer as to potential compromises related to Academy’s burden objections prior to returning to this Court for a status conference on July 6, 2023 at 10 A.M. Academy’s objections to disclosure founded on relevance and the Tiahrt Appropriations Rider are hereby OVERRULED. This ruling is based on the following findings:

1. The information sought by Plaintiffs meets the definition of relevance under South Carolina law at the discovery stage.
2. The Tiahrt Appropriations Rider does not create a privilege for Defendant Academy, Ltd. applicable in this case. The Court notes several points in support of this conclusion. First, Plaintiffs are not seeking information from the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”). Second, privileges applicable in civil litigation are to be narrowly construed. Third, the Court believes that Congress did not intend the Tiahrt Appropriations Rider to apply in these circumstances.
3. The parties have negotiated an extensive Amended Confidentiality Order to address concerns regarding confidentiality. However, to the extent necessary to protect

especially sensitive materials, the parties and the Court may consider additional protective protocols.

4. The Court does not believe that there have been sufficient discussions as to what compromises may be agreeable to alleviate Academy’s burden concerns. The parties, pursuant to S.C.R.P. Rule 11, are directed to negotiate on this point outside of the Court’s presence, prior to a July 6, 2023 status conference to be held by the Court at 10 A.M.

| INFORMATION FOR THE JUDGMENT INDEX | | |
|---|--|--|
| 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, 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) |
| N/A | N/A | N/A |
| 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 SC 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.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

[Court’s electronic signature page to follow.]

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney’s box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Spartanburg Common Pleas

Case Caption: Cindy Coxie , plaintiff, et al VS Academy, Ltd. , defendant, et al

Case Number: 2018CP4204297

Type: Order/Form 4

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132



***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2018CP4204297

Official File Stamp: 07-03-2023 01:56:11 PM
Court: CIRCUIT COURT
Common Pleas
Spartanburg
Case Caption: Cindy Coxie , plaintiff, et al VS Academy, Ltd. , defendant, et al
Document(s) Submitted: Order/Form 4 Order/Form 4
Filed by or on behalf of: J. Mark Hayes, II

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

D. Lawrence Kristinik, III for Academy, Ltd.
Matthew A. Abee for Academy, Ltd.
Robert Mills Ariaail, Jr. for Cindy Coxie
J. David Standeffer for Cindy Coxie
Mary Schiavo for Cindy Coxie
Samuel W. Outten for Academy, Ltd.

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Dustan Lawson for Dustan Lawson
Todd Christopher Kohlhepp #372454 for Todd Christopher Kohlhepp #372454
Dustan Lawson
Academy, Ltd. D/B/A Academy Sports +Outdoors
Scott Charles Allan
John F Renzulli
Christopher Renzulli
Erin Davis
Dustan Lawson for Dustan Lawson
Dustan Lawson for Dustan Lawson, Dustan Lawson
Todd Christopher Kohlhepp #372454 for Todd Christopher Kohlhepp #372454
Jenna M. Tersteegen
Robert M. Cross

STATE OF SOUTH CAROLINA
 COUNTY OF SPARTANBURG
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

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 PLAINTIFF(S)

Academy, Ltd., d/b/a Academy Sports and
 Outdoors, et al.
 DEFENDANT(S)

| | |
|--------------------------------------|--|
| <p>Submitted by: Robert M. Cross</p> | <p>Attorney for : <input checked="" type="checkbox"/> Plaintiff(s) <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant</p> |
|--------------------------------------|--|

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- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

RECEIVED

Jul 10 2023

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk :

SC Court of Appeals

The Court, in furtherance of its Monday, July 3, 2023 Order Granting Plaintiffs' Motion to Compel, ORDERS the following:

1. Academy is ordered to produce all Excel spreadsheets relating to trace data currently in its counsel's possession as soon as possible but no later than Tuesday, July 11, 2023 at 1:30 P.M.
2. In an effort to provide further protection of the privacy rights of non-parties beyond the extensive protections already provided for in the Amended Confidentiality Order, the Court offers Academy two options for how to produce the relevant Excel spreadsheets. First, Academy may redact the customer names and addresses and replace them with unique customer identifiers (such as "Customer 1") sufficient to allow Plaintiffs to perform their analysis of the records. Alternatively, Academy may, produce these spreadsheets with all customer information unredacted and marked "Attorney's Eyes Only."
3. If Academy chooses to produce documents unredacted and under an "Attorney's Eyes Only" designation, Plaintiffs are entitled to insert their own unique customer identifiers prior to sharing any documents with their expert(s).
4. Academy is ordered to produce all trace-related emails on a rolling basis, with the first batch of emails to be produced on or before Friday, July 21, 2023.

5. Academy is ordered to gather the Acquisition and Disposition books for the Greenville and Spartanburg, South Carolina stores (#219 and #215) for the time period of November 2, 2008 to November 6, 2017 and to make them available to Plaintiffs no later than Monday, August 8, 2023.
6. In an effort to provide further protection of the privacy rights of non-parties beyond the extensive protections already provided for in the Amended Confidentiality Order, Academy may redact the customer names and addresses in the Acquisition and Disposition books and replace them with unique customer identifiers (such as "Customer 1") sufficient to allow Plaintiffs to perform their analysis of the records. If this is done, such unique numeric identifiers need to match the numeric identifiers used by Academy to identify specific customers referenced in the relevant trace-related spreadsheets (or other trace-related documents, including, but not limited to, trace-related emails).
7. If production of the requested Acquisition and Disposition records proves too burdensome, the parties may meet and confer as to the possibility of allowing Plaintiffs a reasonable opportunity to inspect the records so as to alleviate Academy's burden.
8. Plaintiffs are entitled to discovery of the Form 4473s in Academy's possession relating to firearm sales at the Greenville and Spartanburg, South Carolina stores (#219 and #215). The parties are ordered to meet and confer as to the issue of burden specifically as it relates to the production of Form 4473s and will provide further input to the Court at the next conference scheduled for Wednesday, July 12, 2023 at 1:30 PM.
9. In addition to further discussion as to the Form 4473 production, the parties are ordered to meet and confer with respect to Academy's production of sales receipts relating to firearm sales at the Greenville and Spartanburg, South Carolina stores (#219 and #215) and the possibility of limiting the time frame for all documents to be produced to the period of November 2, 2008 to November 6, 2017.

| INFORMATION FOR THE JUDGMENT INDEX | | |
|---|--|--|
| 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, 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) |
| N/A | N/A | N/A |
| 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 SC 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.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

[Court's electronic signature page to follow.]

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Spartanburg Common Pleas

Case Caption: Cindy Coxie , plaintiff, et al VS Academy, Ltd. , defendant, et al

Case Number: 2018CP4204297

Type: Order/Form 4

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132



***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2018CP4204297

Official File Stamp: 07-10-2023 01:52:12 PM
Court: CIRCUIT COURT
Common Pleas
Spartanburg
Case Caption: Cindy Coxie , plaintiff, et al VS Academy, Ltd. , defendant, et al
Document(s) Submitted: Order/Form 4 Order/Form 4
Filed by or on behalf of: J. Mark Hayes, II

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

D. Lawrence Kristinik, III for Academy, Ltd.
Matthew A. Abee for Academy, Ltd.
Robert Mills Ariail, Jr. for Cindy Coxie
J. David Standeffer for Cindy Coxie
Mary Schiavo for Cindy Coxie
Samuel W. Outten for Academy, Ltd.

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

Dustan Lawson for Dustan Lawson
Todd Christopher Kohlhepp #372454 for Todd Christopher Kohlhepp #372454
Dustan Lawson
Academy, Ltd. D/B/A Academy Sports +Outdoors
Scott Charles Allan
John F Renzulli
Christopher Renzulli
Erin Davis
Dustan Lawson for Dustan Lawson
Dustan Lawson for Dustan Lawson, Dustan Lawson
Todd Christopher Kohlhepp #372454 for Todd Christopher Kohlhepp #372454
Jenna M. Tersteegen
Robert M. Cross

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Jul 25 2023

SC Court of Appeals

The State Of South Carolina
In The Supreme Court

Appeal from Spartanburg County
Court of Common Pleas
Hon. J. Mark Hayes, Circuit Court Judge

Consolidated Civil Action No. 2018-CP-42-04297
Court of Appeals Case No. 2023-001094

Cindy Coxie, as Special Administrator for the Estate of
Johnny Coxie,Respondent,

v.

Academy, Ltd., d/b/a Academy Sports and Outdoors; and
Dustan Lawson..... Defendants,

and

Academy, Ltd. d/b/a Academy Sports + Outdoors,Crossclaimant,

v.

Dustan Lawson and Todd Christopher Kohlhepp,..... Cross-Defendants,

Of which Academy, Ltd. d/b/a Academy Sports + Outdoors,
is the Petitioner.

Proof of Service

I, the partner of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Defendant Academy, Ltd. d/b/a Academy Sports + Outdoors, certify that I have served all parties in this action with a copy of the document(s) set forth below by the following methods:

Document(s): **Motion to Transfer or Certify from the Court of Appeals**

Counsel/Parties Served:

Via USPS

Todd Christopher Kohlhepp, 00372454
Lieber Correctional Institute
136 Wilborn Avenue
Ridgeville, SC 29472

Via USPS

Dustan Lawson
PO Box 184
Pauline, SC 29374

Via Email Only

Robert Cross, Esquire
rcross @bradyunited.org
Erin Davis, Esquire
edavis@bradyunited.org
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Anderson, SC 29622
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Via Email Only

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Motley Rice, LLC
28 Bridgeside Blvd.
Mt. Pleasant, SC 29464
mschiavo@motleyrice.com

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ D. Larry Kristinik

D. Larry Kristinik
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2 West Washington Street, Suite 400
Greenville, SC 29601
(864) 250-2300

Attorneys for Academy, Ltd. d/b/a Academy Sports + Outdoors

Columbia, South Carolina
July 11, 2023

Matt Abee

From: Matt Abee
Sent: Tuesday, July 11, 2023 3:15 PM
To: 'mschiavo@motleyrice.com'; 'Mills Ariail'; 'dave@standefferlaw.com'
Cc: 'Robert Cross'; 'Erin Davis'; 'Jenna Klein'; 'jtersteegen@bradyunited.org'; 'crenzulli@renzullilaw.com'; 'Scott Allan'; Larry Kristinik; Sam Outten; Matt Bogan; Kelly Taylor; Kevin Werner
Subject: Service Copy: Motion to Transfer or Certify - Coxie (No. 2018-CP-42-04297)
Attachments: Motion to Transfer or Certify - Coxie v. Academy, Ltd..pdf; Exhibit 1 - Notice of Appeal.pdf; Proof of Service - Motion to Transfer or Certify - Coxie v. Academy, Ltd..pdf

Counsel:

For service on you by email under Supreme Court Order No. 2022-05-06-03, please find Academy's Motion to Certify or Transfer from the Court of Appeals.

Please feel free to contact me should you have any questions. Thanks.

-Matt

Please note that I will be out of the office August 3–4, 2023.



MATT ABEE **PARTNER**
matt.abee@nelsonmullins.com

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*Licensed in South and North Carolina.
