

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM YORK COUNTY  
Court of Common Pleas

The Honorable Teasa K. Weaver  
Master-in-Equity

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Case No. 2019-CP46-1893

John Godbold,

Appellant,

vs.

Haas Consulting, LLC, Beverly Osborne, individually and on behalf of Waterstone Development, LLC, Storage Solutions, LLC, Crystal Homes, Inc., Coastal Palm Properties, LLC, and Signature Pointe Properties, LLC; James C. Melchers, as Personal Representative of the Estate of William Phillip Murdock, Sr., and Tiffany Marie Melchers, as Personal Representative of the Estate of William Phillip Murdock, Sr.,

Respondents.

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NOTICE OF APPEAL

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Daniel D. D'Agostino appeals the orders of the Honorable Teasa K. Weaver filed December 12, 2023 and January 25, 2024. Appellant received written notice of entry of these orders on December 12, 2023 and January 25, 2024.

February 15, 2024

/s/ Daniel D. D'Agostino  
Daniel D. D'Agostino  
S.C. Bar No.: 65088  
D'AGOSTINO LAW FIRM  
25 West Liberty Street  
York, South Carolina 29745  
dan@ddlplaw.com  
Office: 803-628-6509  
**ATTORNEY FOR APPELLANT**

Other Counsel of Record:

Thomas E. Lydon  
McAngus, Goudelock & Courie, LLC  
P.O. Box 12519  
Columbia, SC 29211  
[tlydon@mgclaw.com](mailto:tlydon@mgclaw.com)  
Attorney for Haas Consulting, LLC

Aaron J. Hayes  
Kenneth B. Wingate  
Matthew J. Myers  
Sweeny, Wingate & Barrow, P.A.  
P.O. Box 12129  
Columbia, SC 29211  
[ajh@swblaw.com](mailto:ajh@swblaw.com)  
[kbw@swblaw.com](mailto:kbw@swblaw.com)  
[mjm@swblaw.com](mailto:mjm@swblaw.com)  
Attorneys for Tiffany Melchers and James Melchers, as Personal Representatives  
of the Estate of William Phillip Murdock, Sr.

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Respondents.

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PROOF OF SERVICE

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I certify that I have served the Notice of Appeal on the following by depositing a copy of it in the United States mail, postage prepaid, on February 15, 2024:

Thomas E. Lydon  
McAngus, Goudelock & Courie, LLC  
P.O. Box 12519  
Columbia, SC 29211  
[tlydon@mgclaw.com](mailto:tlydon@mgclaw.com)  
Attorney for Haas Consulting, LLC

Aaron J. Hayes  
Kenneth B. Wingate  
Matthew J. Myers  
Sweeny, Wingate & Barrow, P.A.  
P.O. Box 12129

Columbia, SC 29211

[ajh@swblaw.com](mailto:ajh@swblaw.com)

[kbw@swblaw.com](mailto:kbw@swblaw.com)

[mjm@swblaw.com](mailto:mjm@swblaw.com)

Attorneys for Tiffany Melchers and James Melchers, as Personal Representatives  
of the Estate of William Phillip Murdock, Sr.

Beverly Osborne, individually and on behalf of Waterstone Development, LLC  
314 Challis Court  
Rock Hill, SC 29732

February 15, 2024

/s/ Daniel D. D'Agostino

Daniel D. D'Agostino

S.C. Bar No.: 65088

D'AGOSTINO LAW FIRM

25 West Liberty Street

York, South Carolina 29745

[dan@ddlplaw.com](mailto:dan@ddlplaw.com)

Office: 803-628-6509

**ATTORNEY FOR APPELLANT**

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Haas Consulting, LLC,  
Plaintiff,

v.

Beverly Osborne, individually and on behalf of  
Waterstone Development, LLC, Storage  
Solutions, LLC, Crystal Homes, Inc., Coastal  
Palm Properties, LLC, and Signature Pointe  
Properties, LLC; James C. Melchers, as  
Personal Representatives of the Estate of  
William Phillip Murdock, Sr.; Tiffany Marie  
Melchers, as Personal Representatives of the  
Estate of William Phillip Murdock, Sr.; John  
Godbold,  
Defendants.

IN THE COURT OF COMMON PLEAS

SIXTEENTH JUDICIAL CIRCUIT

Civil Action No.: 2019-CP-46-01893

**FINAL ORDER**

**INTRODUCTION**

This matter came before the Court upon the Amended Complaint of Haas Consulting, LLC (Receiver), filed on October 2, 2019, seeking a declaratory judgment as to whether certain debts were personal as to above-named Defendant Beverly Osborne (“Osborne”), or whether said debts were payable by the above-named corporate Defendants. Also, before the Court were the Crossclaims of the Defendant Estate of Murdock (“Estate”), filed October 17, 2019, seeking the same declaratory judgment but also claiming affirmative relief against Osborne.

The matter was referred to me and a trial of the matter began on February 7, 2023, and concluded on February 20, 2023. Appearing at trial were John Haas of Haas Consulting, LLC, represented by Thomas E. Lydon of McAngus, Goudelock & Courie, LLC; Tiffany Melchers, as co-Personal Representative of the Estate of William Phillip Murdock, Sr., represented by Kenneth B. Wingate and Aaron J. Hayes of Sweeny, Wingate, and Barrow, P.A.; Beverly Osborne, represented by Patricia M. Lee of The Law Office of David J. McWilliam; and John Godbold, represented by Daniel D. D'Agostino of D'Agostino Law Firm.

Based upon the pleadings, testimony and evidence admitted at the trial, and the arguments of counsel, this Court makes the following findings of fact and conclusions of law:

**FINDINGS OF FACT**

**General Background**

1. William Phillip Murdock, Sr. (“Murdock”), died on October 16, 2015, a resident of York County.
2. Murdock was survived by his wife, Marsha, and three adult children.
3. Murdock’s will dated July 18, 2008 has been probated in the York County Probate Court (Case No. 2015-ES-46-01403) and his daughter, Tiffany Melchers, and son-in-law, James Melchers are the duly-appointed personal representatives of the Estate. The will leaves Murdock’s entire Estate to his wife, Marsha, as sole beneficiary.
4. During his lifetime, Murdock was a real estate developer who formed several businesses with Osborne for the purpose of developing and selling real estate. The businesses included the Defendant companies, Waterstone Development, LLC, Storage Solutions, LLC, Coastal Palm Properties, LLC, and Signature Pointe Properties, LLC (“Signature Pointe”), and one closely-held South Carolina corporation, Crystal Homes Inc., (the “Corporation” or “Crystal Homes”). All Defendant companies hereafter will be referred to as “Entity” or collectively the “Entities.”
5. Murdock’s 50% interest in the Entities represented the vast majority of the value of his Estate at his death.
6. Each LLC Entity was governed by an operating agreement, signed by Murdock and Osborne, which set forth various provisions for the ownership, management, distribution of profits, and transfer or sale of membership interests.
7. The operating agreements for each of the respective LLCs (the “Operating Agreements”) contained uniform provisions across the board, except for the name of the respective entity and the date it was adopted.
8. As provided in Section 8.1 of the Operating Agreements, Osborne served as the tax matters partner for the LLC Entities.
9. Following Murdock’s death, Osborne failed to buy-out Murdock’s interests in the Entities, or wind down the Entities.
10. On June 29, 2016, the Estate initiated an action against Osborne to force a member buy-out in York County Circuit Court under Civil Action No. 2016-CP-46-01979.

11. While this action was pending, Osborne transferred three residential lots owned by the Entities. These transfers, and Osborne’s handling of sale proceeds, are a part of the current controversy.

12. The first transfer occurred on November 30, 2017. Osborne, as President of Crystal Homes, transferred two lots (“Crystal Lakes”) owned by the Corporation to Wellington Title, LLC.

13. Wellington Title’s sole member is Osborne’s husband.

14. Prior to the transfer, Osborne had listed Crystal Lakes for sale at a price of \$49,900.00 each. The deeds regarding this transfer were not recorded until months later.

15. The second transfer involved a property owned by Signature Pointe located at 5177 Greenmeadow Drive, Rock Hill (“Greenmeadow”).

16. On March 9, 2018, Osborne transferred Greenmeadow to Wellington Title, LLC, for \$55,000.00. The fair market value of Greenmeadow was \$65,000.00.

17. A few weeks later, Osborne used proceeds in the amount of \$40,000.00, from the sale of Greenmeadow, to pay the law firm of Gallivan, White, and Boyd, PA on March 26, 2018.

**The Settlement Agreement**

18. On April 16, 2018, the 2016 case was docketed for trial, but ended in settlement.

19. The terms of the settlement (“Settlement”) were read into the record by Amy L.B. Hill of Gallivan, White & Boyd, representing Osborne and the Entities, and Kenneth B. Wingate, on behalf of the Estate.

20. The relevant terms were stated as follows:

- a. MS. HILL: [W]e will put a receiver in place for all of the ... Defendant Entities.
- b. We also agree that the receiver will be put in place to liquidate all of the Defendant Entities ... that Storage Solutions will be sold last unless there is a mutual agreement otherwise.
- c. We also agree that all net proceeds, after payment of all debt, will be divided sixty/forty percent. Sixty percent from the estate of Appellate Murdock, Forty percent to Beverly Osborne.
- d. We also agree that all Entities will be sold and that sixty-forty division will not take place until all of the Entities have been sold. In other words, to the extent an Entity is sold and there are proceeds, those proceeds will be used to pay off other debts of other Entities until such time as there are no other debts and then the division of sixty/forty will take place.”

- e. Further, my client [Osborne] has represented and warranted to the other side that within the last month that there were sold from Crystal Homes. Also, ...the piece of property at Green Meadow and Signature Pointe has been sold.
- f. [Osborne] also represents and warrants to them that there has been no new debt other than maybe perhaps credit card type issues in the past few months. I think that is it.
- g. MR. WINGATE: The only missing piece would be that Ms. Osborne is also indicating and representing that the assets which have been recently sold the net proceeds of those sales were used entirely to pay down debt and were not in any way distributed out of the companies.
- h. MS. HILL: That is correct.
- i. MR. WINGATE: So with that being added we are in full agreement that that embodies the full scope in terms of agreement.

21. The Honorable Daniel D. Hall accepted the terms of the Settlement and filed a Form 4 order on April 17, 2018, directing all parties to comply its terms.

22. On April 25, 2018, (about a week after the Settlement and order), Osborne used Greenmeadow sale proceeds of \$6,300.00 to pay the accounting firm of Dixon Hughes and Goodman.

23. On May 25, 2018, (several months after the execution of the deed, and a little over a month after the Settlement and order), the deed regarding the transfer of Crystal Lakes was recorded.

#### **Appointment of Receiver**

24. As agreed at settlement, the Estate, Osborne and the Entities, through their attorneys, signed a contract engaging the services of Haas Consulting, LLC as receiver (“Receiver Contract”). This contract was executed on June 6, 2018.

25. The relevant terms of the Receiver Agreement are as follows:

- a. The [Receiver] is being retained ... to manage the finances and eventual sales of the assets of the entities.
- b. The engagement will include, but is not limited to:
  - i. Acting as the Entities sole agent in all respects unless otherwise limited herein...

- ii. Managing the Entities' collections of income and payment of debts and expenses including deciding which debts should be paid and at what time with the available cash flow.
  - iii. Paying distributions to the Owners once repayment of all debts of the Entities has occurred, at the rate of 60% to the Estate ... and 40% to Beverly Osborne, unless the Owners mutually agree otherwise in writing and the [Receiver] believes such an early distribution is commercially reasonable.
- c. [The Receiver] will have the authority to hire professionals as needed, such as accountants or even an attorney.

26. After acting as Receiver for the Entities for some time, Haas filed the current action (Civil Action No. 2019-CP-46-01893) seeking guidance from the court on the treatment of certain additional payments being requested by Gallivan, White and Boyd, and Dixon, Hughes and Goodman.

27. An "Order Appointing Haas Consulting, LLC As Receiver" was entered on December 10, 2020.

28. This Order found and held that "Defendant Osborne has failed and refused to cooperate with Haas Consulting, LLC, the result of which is that it is unable to fulfill its duties and obligations under the contract. Therefore, Haas Consulting, LLC has moved that it be named as a court-appointed receiver for the Companies so that it will have all of the powers and duties allowed to receivers under South Carolina law."

29. The Order went on to authorize the Receiver to perform acts and functions including but not limited to the continued management and liquidation of the Entities, the continued operation of the Entities as going concerns until the assets have been liquidated, to obtain information regarding the Entities from third parties, including but not limited to financial institutions and the Internal Revenue Service, to execute and file tax returns on behalf of the Entities, to file quarterly reports with the Court, to obtain full cooperation from the Estate and Osborne, including their turning over to the Receiver all property of the Entities, and to distribute proceeds from the management and liquidation of the Entities in accordance with the terms and conditions of the initial contract and the settlement.

30. The Receiver retained the tax and accounting services of Barb and Company, CPA's, to prepare and file tax returns for the Entities.

31. Osborne refused, despite multiple demands to communicate with or turn over to the Receiver the information his accountants deemed necessary to prepare the tax returns, and therefore Kathryn Moret, the CPA primarily responsible for such returns, obtained transcripts from the Internal Revenue Service, which indicated that Osborne filed the 2017 returns for Crystal Homes and Waterstone Development late, incurring penalties of \$4,609.52 for each entity; she filed the Signature Pointe return for 2018 late, incurring a \$455.67 penalty; she filed no tax returns for Storage Solutions or Waterstone Development for 2018, 2019, or 2020; and she filed no tax returns for Signature Pointe for 2019 or 2020. Penalties and interest are continuing to accrue at this time for all such late or unfiled returns.

32. The certified quarterly reports of the Receiver indicate that Osborne has repeatedly failed to cooperate with him and to turn over to him or his accountants the tax and financial information necessary to prepare and file the tax returns, despite his frequent requests, and in violation of Judge Hall’s order.

33. As a result of Osborne’s actions and inactions as a Certified Public Accountant, the South Carolina Board of Accountancy found that Osborne “acted egregiously, unethically, and unprofessionally in failing to perform accounting work in accordance with the appropriate professional standards” by failing to file tax returns for the Murdock family, and ordered on May 24, 2019, that Osborne be publicly reprimanded, fined, and that her license as a Certified Public Accountant is permanently revoked.

**Default and Requests to Admit**

34. Osborne failed to file an answer or responsive pleading, and an entry of default was entered against Osborne on the Estate’s Crossclaims on January 24, 2020. The Estate’s Notice of Motion and Amended Motion for Judgment by Default was filed and served, properly and timely, on January 18, 2023.

35. By her default, Osborne has admitted the facts alleged by the Estate, including but not limited to:

- a. The Entities were equally owned by Murdock and Osborne;
- b. Upon Murdock’s death, the Estate has continuously owned Murdock’s interest;
- c. Osborne failed to purchase the Estate’s 50% interest as required by statute;
- d. The Estate filed an action in 2016 against Osborne to force a buy-out;

- e. The 2016 lawsuit was settled in April of 2018, and the settlement is a contract between the parties;
- f. As part of the 2018 Settlement, Osborne agreed that all assets would be liquidated by a receiver. Any proceeds would first be used to pay company debts, then distributed 60% to the Estate and 40% to Osborne;
- g. The Settlement contained no reference that payments be made to Gallivan, White and Boyd, PA or Dixon Hughes Goodman, LLP, or to Osborne's legal fees and costs ("Litigation Expenses").
- h. The Settlement did not define "debts of the Entities" to include Osborne's Litigation Expenses.
- i. Osborne, through counsel, represented that there were no new debts of the Entities other than "credit card type issues in the past few months";
- j. Osborne accrued and paid Litigation Expenses, within a month of the Settlement, without use of a credit card;
- k. Osborne could not have intended for the Litigation Expenses to be included as a debt of the Entities;
- l. Osborne provided a statement of assets and liabilities for the Entities in discovery that did not list the Litigation Expenses as a debt;
- m. Osborne never disclosed payments for the Litigation Expenses to the Estate;
- n. Osborne never expressed, outside the Settlement, that she intended for the Litigation Expenses to be covered other than her 40% share of net distributions;
- o. Osborne's litigation expenses are her personal obligations and not properly treated as LLC debts;
- p. The litigation expenses had been incurred not for the benefit of the Entities, but rather to defend her personal interests after Murdock's death;
- q. As part of the settlement, Osborne represented that the net proceeds of the sale of Crystal Lakes and Greenmeadow were used "entirely to pay down debt and were not in any way distributed out of the companies."
- r. Osborne transferred Crystal Lakes and Greenmeadow to her husband's LLC for less than fair market value;
- s. From the Greenmeadow sale proceeds, Osborne paid \$40,000.00 to Gallivan, White and Boyd, PA and \$6,300.00 to Dixon Hughes and Goodman, LLP though neither firm provided services to Signature Pointe.
- t. Osborne fraudulently distributed the Greenmeadow sale proceeds for her personal benefit instead of paying the debt of Signature Pointe;

- u. The proceeds from the sale of the Crystal Lakes were used solely for Osborne’s personal benefit and not for the debts of the Entities.
- v. All three transfers constitute self-dealing;

36. In addition to not answering the Estate’s Crossclaims, Beverly failed to respond to the following from the Estate’s First Set of Requests for Admission, issued pursuant to Rule 36, SCRCF and served properly. These Requests to Admit included, inter alia:

- a. Admit that you transferred 5177 Greenmeadow Drive, Rock Hill, SC from Signature Pointe Properties, LLC for less than fair market value to a limited liability company in which your husband was a member, and without applying the net proceeds to the debts of Signature Pointe Properties, LLC or any of the other Entities.
- b. Admit that you transferred two residential lots from Crystal Homes, Inc. for less than fair market value, if any, to a limited liability company in which your husband was a member, and without applying the net proceeds, if any, to the debts of Crystal Homes, Inc. or any of the other Entities.
- c. Admit that, at the time of the Settlement and afterwards, you have fraudulently concealed your transfers of 5177 Greenmeadow Drive, Rock Hill, SC and the two lots from Crystal Homes, Inc. for less than fair market value and to an entity in which your husband was a member, and without applying the net proceeds to the debts of any of the Entities.
- d. Admit that each of the actions referenced in items [a through c] above is a breach of the Settlement, as well as your fiduciary duties and obligation of good faith and fair dealing to the Entities and the Estate.
- e. Admit that each of the actions referenced in items [a through c] above separately resulted in damages to the Estate in an amount that is equal to the value of your combined interest in Waterstone Development, LLC, Storage Solutions, LLC, Crystal Homes, Inc., Coastal Palm Properties, LLC, and Signature Pointe Properties, LLC.
- f. Admit that you did not intend “debts” of the Entities as provided in the Settlement to include fees and costs incurred by Gallivan, White & Boyd, PA or and Dixon Hughes Goodman, LLP related to the Entities.
- g. Admit that, upon entering the Settlement with the Estate, neither you nor the Entities disclosed to the Estate any “debts” of the Entities except for bank loans and miscellaneous credit cards.
- h. Admit that neither you nor the Entities paid Gallivan, White & Boyd, PA or Dixon Hughes Goodman, LLP by credit card.

- i. Admit that none of the Entities entered into an agreement for services directly with Gallivan, White & Boyd, PA and Dixon Hughes Goodman, LLP.
- j. Admit that you, in your individual capacity, entered an agreement for services with Gallivan, White & Boyd, PA and that your personal counsel William Shillinglaw III entered an agreement for services with Dixon Hughes Goodman, LLP on your personal behalf.

**Partial Settlement**

37. On August 31, 2021, an order was filed that approved a partial settlement (“Partial Settlement”) entered into by Gallivan White and Boyd, Dixon, Hughes and Goodman, the Receiver, the Estate and Godbold. Osborne failed to appear for the mediation that resulted in this agreement.

38. The Partial Settlement provides in relevant part:

The Parties to this action, with the exception of Defendant Beverly Osborne, who is in default and who has not participated in discovery nor the mediation, after due notice, individually and on behalf of the corporate entities herein listed, have mediated their dispute and have resolved the issues of the payment of legal fees of Gallivan, White & Boyd, P.A. and the accounting fees of Dixon Hughes Goodman, LLP related to above-referenced action (the "Lawsuit"). The Parties agree that this is a full and final settlement as to those issues only...

The remaining issues related to the Lawsuit will continue in discussion and thus the mediation is recessed at this time.

39. Pursuant to the partial settlement, the Receiver released \$76,000.00 to the law firm of Gallivan, White and Boyd, P.A., and \$21,000.00 to the accounting firm of Dixon, Hughes and Goodman, LLP, and those parties were dismissed from this action.

**John Godbold**

40. John Godbold was made a party to this action via the filing of the Amended Complaint on October 2, 2019.

41. Godbold is a judgment creditor of Osborne in her personal capacity.

42. Specifically, in Case No. 2019CP4600962, Godbold obtained a default judgment against Osborne in the amount of \$1,072,594.04. This judgment was entered on July 9, 2019, in a civil action that was commenced on March 18, 2019.

43. Judge Hall’s April 17, 2018 Form 4 Order of Judgment approving the Settlement Agreement at issue in this case predates the Godbold judgment by over a year.

44. Godbold has taken the following steps to recover his judgment against Osborne.
  - a. On November 26, 2019, in Case No. 2019CP4600962, Godbold obtained from this Court a Charging Order against “[Osborne Osborne’s] 40% interest in [all 5 Entities] and all of Defendant Osborne’s distributions in [all 5 Entities].”
  - b. On August 13, 2020, in Case No. 2019CP4600962, Godbold obtained from this Court an Amended Charging Order against Osborne Osborne’s interest and distributions in the five Entities, without reference to any percentages.
  - c. On December 16, 2020, in Case No. 2019CP4600962, Godbold obtained from this Court another Charging Order against Osborne’s “interest ... and all of Defendant Osborne’s distributions” from two entities, 901 Properties, LLC and Joslin Partners, LLC. Neither entity is at issue here.
  - d. By order, the Sheriff was authorized to conduct a sale of the following properties located in Rock Hill toward satisfaction of the Godbold Judgment: 320 Oakland Avenue; 128 Oakland Avenue; and 314 Challis Court (Osborne’s residence). The Sheriff did not proceed with a sale at the request of Godbold.

45. At trial, Godbold presented testimony and other evidence related to Crystal Lakes and/or Greenmeadow transfers, and the disbursement of the proceeds. The Estate objected. The ruling was deferred to consider if relevant to Godbold’s lien or lien priority. After further consideration, I find the evidence presented was not relevant. The Estate’s objection is sustained and the evidence offered by Godbold regarding the transfers is excluded.

### CONCLUSIONS OF LAW

#### **Default, Requests for Admission, and Declaratory Judgment**

46. As stated earlier, Osborne, as a defaulting party, is deemed to have admitted the allegations as set for by the Estate in its cross-claims. “The defendant, by waiving a contest and suffering a default to be taken against him, admits the truth of the allegations, set out in the plaintiff’s declaration or complaint.... Hence the default authorizes the entry of any judgment warranted by the facts alleged.” State ex rel. Medlock v. Love Shop, Ltd., 286 S.C. 486, 334 S.E.2d 528 (Ct.App. 1985), citing Gadsden v. Home Fertilizer & Chemical Co., 89 S.C. 483, 487-88, 72 S.E. 15, 17 (1911), quoting Gillian v. Gillian, 65 S.C. 129, 132, 43 S.E. 386, 387 (1903).

47. A request for admission “is admitted unless, within 30 days after service of the request...the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney....” Rule 36(a), SCRCP. “Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission.” Rule 36(b), SCRCP.

48. Osborne has admitted that the fees charged by Gallivan, White & Boyd, PA and Dixon Hughes Goodman, LLP were her personal debts and not the debts of the Entities.

**Breach of Contract / Breach of Obligation of Good Faith and Fair Dealing**

49. To establish a breach of contract claim, a party must show “. . . the existence of a contract, its breach, and the damages caused by such breach.” Branche Builders v. Coggins, 386 S.C. 43, 48, 686 S.E.2d 200, 202 (Ct. App. 2009). An implied covenant of good faith and fair dealing exists in every contract, but this covenant is not an independent and separate cause of action. RoTec Services, Inc. v. Encompass Services, Inc., 359 S.C. 467, 597 S.E.2d 881 (Ct. App. 2004).

50. At settlement, Osborne represented that the net proceeds from the sale of Greenmeadow and Crystal Lakes “were used entirely to pay down debt and were not in any way distributed out of the companies”. She also represented that there was no new debt other than credit card expenses. Moreover, she agreed to engage a receiver for the purpose of liquidating the Entities, and agreed that the proceeds from the sale of the Entities would be used to pay off the debts of the Entities until no debt remained.

51. Instead, Osborne admitted selling the Entity properties for less than fair market value to an LLC solely owned by her husband. Osborne admitted that the sale proceeds were used to pay her personal debts and not any company debt. Osborne admitted that these acts were self-dealing. Osborne failed to disclose this information to the Estate at the April 2018 settlement. This conduct constitutes a breach of the Settlement and the covenant of good faith and fair dealing.

**Breach of Contract Accompanied by a Fraudulent Act**

52. In order to state a claim for breach of contract accompanied by a fraudulent act, the plaintiff must demonstrate (1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract and not merely to its making; and (3) a fraudulent act accompanying the breach. Harper v. Ethridge, 290 S.C. 112, 348 S.E.2d 374 (Ct. App. 1986).

53. A fraudulent act is defined as one of dishonesty or unfair dealing. Id.

54. “The fraudulent act may be prior to, contemporaneous with, or subsequent to the breach of contract, but it must be connected with the breach itself and cannot be too remote in either time or character.” Floyd v. Country Squire Mobile Homes, Inc., 287 S.C. 51,54, 336 S.E.2d 502, 504 (Ct.App.1985).

55. The fraudulent act(s) must be proved by clear and convincing evidence. Armstrong v. Collins, 366 S.C. 204, 621 S.E.2d 368 (Ct. App. 2005).

56. At settlement, Osborne represented that the sale proceeds of Greenmeadow and Crystal Lakes were used to pay company debt, and she represented that aside from credit cards, there was no new Entity debt. Instead, Osborne admitted selling the properties at less than fair market value to her husband’s LLC. Osborne admitted the transfers were self-dealing. Osborne specifically admitted that she *fraudulently* distributed the Greenmeadow sale proceeds for her personal expenses, not company debt. She also admitted to using the sale proceeds of Crystal Lakes to pay personal expenses. Osborne concealed these details from the Estate at settlement. She also failed to disclose at settlement any outstanding debts of the Entities related to attorney or accountant fees. This constitutes fraudulent acts.

Personal debt.

**Breach of Fiduciary Duty**

57. A member of an LLC owes the company and other member(s) a duty of loyalty and a duty of care. S.C. Code Ann. § 33-44-409(a). A duty of loyalty requires the member to hold as trustee for the company any property, profit, or benefit derived by the member. S.C. Code Ann. § 33-44-409(b). A duty of care requires a member refrain from engaging in grossly negligent or reckless conduct, intentional misconduct or a knowing violation of law. S.C. Code Ann. § 33-44-409(c). Both duties incorporate an obligation of good faith and fair dealing. S.C. Code Ann. § 33-44-409(d).

58. Pursuant to Section 10.1 of the Operating Agreement and S.C. Code Ann. § 33-44-801, Signature Pointe was in dissolution at the time of sale of Greenmeadow. Section 3.12 of the Operating Agreement prohibits any distribution if the company’s assets would be less than its liabilities, plus other amounts as may be needed upon dissolution or winding down. Section 10.2(C) of the Operating Agreement and S.C. Code Ann. § 33-44-806(a) provide that during the winding up of an LLC, company assets must be applied toward satisfying its obligations to creditors before members distributions are made.

59. Osborne admitted to selling Greenmeadow at less than fair market value to an LLC owned solely by her husband. Osborne admitted using all sale proceeds to pay her personal debts, not company debts. Osborne concealed the details of the sale of Greenmeadow from the Estate at the Settlement. Osborne admitted this transaction was self-dealing. Funds are still needed to pay Entity expenses, such as tax penalties and preparation. This conduct was a violation of her duty of loyalty, duty of care, and duty of good faith and fair dealing to Signature Pointe and to the Estate.

60. An officer of a corporation shall discharge her duties in good faith, with the care that an ordinarily prudent person in a similar position and circumstances, and in a manner that the officer reasonably believes is in the best interests of the corporation and its shareholders. S.C. Code Ann. § 33-8-420.

61. Osborne, as President of Crystal Homes, sold Crystal Lakes at less than fair market value to her husband's LLC. Osborne admitted this transfer was self-dealing. Osborne admitted the proceeds were used for her personal debt and not for the Corporation. Osborne failed to disclose the details of the sale to the Estate prior to or during the Settlement. This conduct was a breach of the aforementioned duties Osborne owed to the Corporation and the Estate.

### **Tortious Interference with Contract**

~~62.~~ The Estate asserts that Osborne interfered with its contractual rights "with respect to the Settlement and the Entities". However, the facts as pled by the Estate do not support this claim because Osborne was a party to the settlement agreement. See Threlkeld v. Christoph, 280 S.C. 225, 227, 312 S.E.2d 14, 15 (Ct.App.1984)

### **Conversion**

63. The Estate alleged that Osborne converted funds belonging to the Entities causing harm to the Entities and the Estate.

64. "Conversion is the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of their condition or to the exclusion of the rights of the owner." Hawkins v. City of Greenville, 358 S.C. 280, 294, 597 S.E.2d 557, 562 (Ct.App. 2004).

65. To prove conversion, a claimant must establish title to, or right to possession of property at time of conversion. Crave v. Citicorp Nat. Services, Inc., 313 S.C. 70, 73, 437 S.E. 2d 50, 52 (1993).

66. Osborne admitted she used proceeds from the sale of Entity assets (Greenmeadow and Crystal Lakes) to pay her personal expenses. Such actions constitute conversion of those proceeds from the Entities. See Mason v. Mason, 412 S.C. 28, 770 S.E.2d 405 (Ct. App. 2015) (Conversion found when company funds were used to pay personal attorney's fees).

**Damages**

67. The remedy for breach of contract places the plaintiff in as good a position as he would have been in had the contract been performed. Maro v. Lewis, 389 S.C. 216, 697 S.E.2d 684 (Ct.App. 2010).

68. A breach of a settlement agreement constitutes a contempt of court for which the trial court may issue sanctions. Cheap-O's Truck Stop, Inc. v. Cloyd, 350 S.C. 596, 606-09, 567 S.E.2d 514, 519-20 (Ct. App. 2002). Sanctions may include a compensatory payment to restore plaintiff to the same position (or as near as possible) as he would have been prior to the breach. Id.

69. A plaintiff is entitled to damages for harm caused by the breach of a fiduciary duty owed to him or her. Moore v. Moore, 360 S.C. 241, 599 S.E.2d 467 (2004).

70. The measure of damages for conversion is value of the property converted with interest from date of the conversion to the date of trial. King v. All-State Ins. Co., 272 S.C. 259, 251 S.E. 2d 194 (1979).

71. "In all cases of accounts stated and in all cases wherein any sum or sums of money shall be ascertained and, being due, shall draw interest according to law, the legal interest shall be at the rate of eight and three-fourths percent per annum." S.C. Code Ann. § 34-31-20(A).

72. Where there is an obligation to pay money, prejudgment interest is allowed "from the time when, either by agreement of the parties or operation of the law, the payment is demandable, if the sum is certain or capable of being reduced to certainty." Babb v. Rothrock, 310 S.C. 350, 353, 426 S.E.2d 789, 791 (1993). The test is whether or not the measure of recovery is fixed by conditions existing at the time the claim arose. Id.

73. Osborne is liable for the fair market value of Entity assets used for her personal benefit, being \$65,000.00 for Greenmeadow and \$99,800.00 for Crystal Lakes, plus prejudgment interest from the dates of transfer. Additionally, Osborne is liable for the amount of Entity funds used to pay her personal debt as part of the Partial Settlement, being \$97,000.00, plus prejudgment interest is applicable from the date of the order approving the settlement.

74. As shown in the Estate's Damages Summary, the Estate proposes that the Entity funds used for Osborne's personal benefit, plus prejudgment interest, be accounted for as improper self-distributions, and the Estate be awarded 1.5 times that amount. I find and conclude this to be an appropriate accounting of damages for the Entities and the Estate regarding the amounts stated in paragraph 73. The Receiver may account for these amounts against Osborne's share in favor of the Entities, and pay the Estate a distribution in keeping with the settlement and the agreed upon 60/40 split.

75. Due to Osborne being found in contempt for failing to cooperate and assist the Receiver regarding the tax returns, Osborne is fully liable for the amounts expended for tax penalties and accounting fees to resolve the Entity tax returns.

**Punitive Damages**

76. Punitive damages are available for a breach of contract accompanied by fraudulent act, Welborn v. Dixon, 70 S.C. 108, 49 S.E. 232 (1904), for breach of a fiduciary duty as owner of a limited liability company, Jordan v. Holt, 362 S.C. 201, 204-07, 608 S.E.2d 129, 130-32 (2005), and for conversion where the conversion was made recklessly and with conscious indifference to the owner's rights, Long v. Gibbs Auto Wrecking Co., 253 S.C. 370, 171 S.E.2d 155 (1969).

77. "[P]unitive damages serve at least three important purposes: punishment...deterrence...and compensation for the reckless or willful invasion of the plaintiff's private rights." Clark v. Cantrell, 339 S.C. 369, 379, 529 S.E.2d 528 (2000).

78. At least some punitive damages must be awarded where reckless or willful misconduct is involved. Davenport v. Woodside Cotton Mills Co., 225 S.C. 52, 59-60, 80 S.E.2d 740 (1954); Broom v. Se. Highway Contracting Co., 291 S.C. 93, 98, 352 S.E.2d 302, 305 (Ct. App. 1986).

79. The Estate is entitled to punitive damages by reason of Osborne's conduct. In considering such an award, I considered the following: (1) Osborne's degree of culpability; (2) duration of the conduct; (3) Osborne's awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter Osborne or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) Osborne's ability to pay; and finally, (8) "other factors" deemed appropriate. Gamble v. Stevenson, 305 S.C. 104,111-112, 406 S.E.2d 350, 354 (1991); Mitchell, Jr. v. Fortis Ins. Co., 385 S.C. 570, 586-587, 686 S.E.2d

176, 184-185 (2009); see also, Pacific Mutual Life Insurance Company v. Haslip, 499 U.S. 1, 111 S.Ct. 1032, 113 L.Ed.2d 1 (1991).

80. I find that Osborne's conduct demonstrates culpability, awareness and concealment. The economic impact on the Entities and the Estate, and potentially to others similarly situated, warrants a finding of the need for deterrence of future similar conduct. Additionally, I have considered Osborne's ability to pay and the ratio of the actual harm or damages to the punitive damage award given. Given these factors, I conclude that an award of punitive damages of \$300,000.00 to the Estate is appropriate under the circumstances.

**Attorney's Fees**

81. The Estate raises several arguments why an award of attorney's fees should be ordered in this case.

82. The Estate argues that fees are proper pursuant to Rule 37(c), SCRPC. According to Rule 37(c), the party must fail "to admit the genuineness of any document or the truth of any matter". Osborne failed to respond, and the matters are deemed admitted. This section does not apply.

83. The Estate asserts that fees are appropriate as a cost of enforcing the court's ordered settlement. See Cheap-O's Truck Stop, supra at 607, 519. I agree. Osborne's misrepresentations at the Settlement and regarding the debts of the Entities foreseeably resulted in the Estate having to defend against the claims of her attorney and accountant. The Estate was forced to litigate and settle those claims from Osborne's attorneys and accountants in August 2020.

84. Attorney fees may be awarded for defending litigation that is the foreseeable result of defendant's misconduct. Town of Winnsboro v. Weidman-Singleton, Inc., 307 S.C. 128, 414 S.E.2d 118 (1992). Osborne's failure to pay her attorneys and accountants, and concealing this debt at settlement, foreseeably resulted in those same attorneys and accountants seeking payment from the Receiver, which is how this case began.

85. The Estate argues that it is entitled to attorney's fees pursuant to S.C. Code Ann. § 33-44-702(d). I disagree. Sections 33-44-701 and -702 relate to a proceeding in which the Court determines the value of distributional interests of a dissociated member and sets the terms of the purchase (buyout). Section 33-44-702(d) allows the Court to award attorney's fees based upon a party's conduct during that proceeding. Since this suit does not include the court setting the terms of a buyout, section 33-44-702(d) is inapplicable.

Fees  
predates  
Send

86. The Estate asserts it is entitled to attorney’s fees pursuant to S.C. Code Ann. §33-44-1104. “[T]o distinguish a derivative claim from a direct one, the court considers: (1) who suffered the alleged harm, the corporation or the suing stockholders, individually, and (2) who would receive the benefit of any recovery or other remedy, the corporation or the stockholders individually.” Patterson v. Witter, 425 S.C. 213, 232, 821 S.E.2d 677, 687 (2018), citing 19 Am. Jur. 2d Corporations § 1923 (2015). “Direct and derivative claims may be brought simultaneously.” Id., citing 19 Am. Jur. 2d Corporations § 1922 (2015). As discussed above, the Entities and the Estate have suffered harm due to the actions of Osborne, and both are being awarded a means of recovery. I conclude that § 33-44-1104 applies in this case.

87. After due consideration of the nature, extent and difficulty of the legal services rendered, the time and labor necessarily devoted to the case, the professional standing of counsel, the contingency of compensation, the customary fee charged in the locality for similar services, and the beneficial result obtained, I find the attorneys’ fees claimed by the Estate, as testified to by Kenneth Wingate, Esq., are reasonable and appropriate for the work performed and the complexity of the matter at hand.

**Godbold’s Charging Order**

88. Godbold asserts that his charging order requires that the Receiver, in winding down each entity, split the proceeds equally between him and the Estate before any funds are pooled together. Godbold asserts that Osborne’s 50% interest could only be changed by modifying the operating agreements pursuant to section 11.2. Godbold argues neither the Settlement as stated before court, approved by form 4, nor the Receiver Contract comply with section 11.2. I disagree.

89. By the charging order, Godbold has a lien against Osborne’s distributional interests in each LLC Entity. The charging order has no impact on the Corporation, Crystal Homes.

90. A member’s distributional interest is her personal property. See S.C. Code Ann. § 33-44-501(b) (1976). Thus, Osborne was not required to amend the operating agreements to transfer 10% of her distributional interests to the Estate.

91. Nonetheless, I agree with Richard Gleissner, Esq., who was qualified as an expert (without objection) in the areas of, *inter alia*, receiverships, limited liability companies, statutory close corporations, and priority disputes, that the Settlement and the Receiver Contract effectively amended the operating agreements and modified Osborne’s distributional interests pursuant to section 11.2.

92. Since these agreements were entered into well before the issuance of the charging order, Godbold is only entitled to receive the distributional interest to which Osborne was entitled at the time of the issuance of the charging order, which is 40%.

**Priority**

93. Additionally, Godbold argues that any amounts awarded to the Estate in this lawsuit are junior to his charging lien. I disagree and as discussed more below, conclude that the amounts awarded to the Estate have priority over member distributions.

94. "In winding up a limited liability company's business, the assets of the company must be applied to discharge its obligations to creditors, including members who are creditors. Any surplus must be applied to pay in money the net amount distributable to members in accordance with their right to distributions under subsection (b)." S.C. Code Ann. § 33-44-806(a).

95. "No distribution may be made if, after giving it effect: (1) the corporation would not be able to pay its debts as they become due in the usual course of business; or (2) the corporation's total assets would be less than the sum of its total liabilities plus (unless the articles of incorporation permit otherwise) the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution." S.C. Code Ann. § 33-6-400(C).

96. Here, the Estate is a creditor of the Entities because the Entities were a party to the Settlement approved by the Circuit Court. Due to the distributions it did not receive, the Estate is entitled to payment under the Settlement before any amount is distributed to owners. As applied to Crystal Homes, Inc., a statutory close corporation, the Court cannot grant a distribution to a shareholder prior to the payment of the entity's debt.

97. "After application of [33-44-806](a), and if the company is required to maintain capital accounts for its members as contemplated by the Internal Revenue Code, as defined in Chapter 6 of Title 12 and applicable treasury regulations, all remaining cash and other assets must be distributed to the members in accordance with their positive capital account balances, determined after taking into account all capital account adjustments for the taxable year of the company during which the distribution occurs, including adjustments for distributions made pursuant to this section." S.C. Code Ann. § 33-44-806(b).

98. Here, because Sections 4.6 and 4.9 of the LLCs respective operating agreements required the maintenance of capital accounts pursuant to the Internal Revenue Code and Treasury Regulations, each \$1 of value from the LLCs received by Osborne after her Settlement with the Estate entitles the Estate to \$1.50 of distributions.

Not agree

99. "When property of an individual is taken or destroyed in contempt of the court's order, those interested have a right to ask of the court its restoration or payment of its value at the hands of the offender, and the court requires such restoration as part of the punishment." Cheap-O's Truck Stop, supra (quoting Curlee v. Howle, 277 S.C. 377, 287 S.E.2d 915 (1982)). This Court finds that Osborne is in contempt of the Court's April 17, 2018 Order Approving Settlement Agreement.

100. "When the answer of the defendant expressly, or by not denying, admits part of the plaintiff's claim to be just, the court on motion may order such defendant to satisfy that part of the claim and may enforce the order as it enforces a judgment or provisional remedy." S.C. Code Ann. § 15-65-130. The Court finds this statute applicable here, as the Court must fashion a remedy for the Estate to put the Estate in as near a position as it would have enjoyed had the Settlement Agreement never been breached.

No, sitting out?

101. As noted above, Osborne is in default of the Estate's claims regarding her breaches of the Estate's settlement with her (and the Entities) which occurred prior to Godbold's charging lien. Therefore, the Estate should receive the benefit of the Settlement from the assets which are the subject of the settlement.

basis

102. "A receiver may be appointed by a judge of the circuit court, either in or out of court: ... (2) After judgment, to carry the judgment into effect; (3) After judgment, to dispose of the property according to the judgment ...." S.C. Code Ann. § 15-65-10.

103. A receivership order becomes the law of the case upon failure to appeal the same. See S.C. Code Ann. § 14-3-330 (orders appointing a receiver are immediately appealable); Klatt v. Walling, 239 S.C. 17, 20, 121 S.E.2d 233, 234 (1961) (holding that an unappealed order determining partnership assets and appointing a receiver to sell the same became the law of the case); Hotel & Motel Holdings, LLC v. BJC Enterprises, LLC, 414 S.C. 635, 659, 780 S.E.2d 263, 276 (Ct. App. 2015) (holding that an unappealed order appointing receiver was the law of the case).

104. Here, the Circuit Court appointed Plaintiff as receiver for the express purpose of carrying out the Settlement. Godbold was a party to that order and did not appeal the same, making it the law of the case. Consequently, this Court must provide the Estate with the benefit of its Settlement in preference to Osborne as the party breaching the Settlement.

105. "Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter." S.C. Code Ann. § 33-44-104(a).

106. "An equitable lien is a mere floating equity until a judgment or decree subjecting the property to the payment of the debt or claim is rendered, but even though not judicially recognized until a judgment declaring its existence, it relates back to the time it was created by the conduct of the parties." Horry County v. Ray, 674 S.E.2d 519, 523-24 (S.C. Ct. App. 2009) (internal quotations and citations omitted). See also Eleazer v. Hardaway Concrete Co., Inc., 281 S.C. 344, 315 S.E.2d 174 (C. App. 1984) (holding that equitable lien for attorney's fees in securing judgment and recovery related back to time legal services were rendered, in preference to an attachment of the proceeds by the client's creditor).

107. "[A] breach of fiduciary duty may sound in equity if the relief sought is equitable. Restitution and disgorgement are equitable remedies." Verenes v. Alvanos, 387 S.C. 11, 17, 690 S.E.2d 771, 773 (2010) (citation and footnote omitted).

108. Here, Osborne's violations of fiduciary duty entitles the Estate to an equitable lien over the settlement assets to the extent needed to restore the Estate to the benefit of its settlement with Osborne and the Entities.

109. A charging order "provides the exclusive remedy by which a judgment creditor of a member or a transferee may satisfy a judgment out of the judgment debtor's distributional interest in a limited liability company." S.C. Code Ann. § 33-44-504(e). "A charging order is the only remedy by which a judgment creditor of a member or a member's transferee may reach the distributional interest of a member or member's transferee. Under Section 33-44-503(e), the distributional interest of a member or transferee is limited to the member's right to receive distributions from the company and to seek judicial liquidation of the company." Cmt., S.C. Code Ann. § 33-44-504.

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

111. “A distributional interest in a limited liability company is personal property and, subject to Sections 33-44-502 and 33-44-503 [regarding the transferee’s rights in the LLC], may be transferred in whole or in part.” S.C. Code Ann. § 33-44-501(b).

112. “A transferee who does not become a member shall: (1) receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled; (2) receive, upon dissolution, and winding up of the limited liability company's business: (i) in accordance with the transfer, the net amount otherwise distributable to the transferor; ....” S.C. Code Ann. § 33-44-503(e).

113. Prior to Godbold’s lien, Osborne made several changes to her distributional interests through the Settlement Agreement and Receiver Contract, (1) she transferred 10% of her interests to the Estate, (2) she agreed that all Entity debts must be repaid prior to owner distributions, (3) and she agreed that the Receiver would manage “the payment of debts and expenses, including deciding which debts should be paid and at what time with the available cash flow”. Godbold’s lien gives him no greater rights.

114. As a charging lien holder, John Godbold lacks standing to participate in the wind-up of these Entities. See Kriti Ripley, LLC v. Emerald Investments, LLC, 404 S.C. 367, 746 S.E.2d 26 (2013). A mere charging lien holder, by virtue of having nothing more than a charging lien, does not get to choose the amount or frequency of distributions nor litigate concerning another party’s distributions, but rather must accept what if anything is distributed to the judgment debtor. Therefore, I conclude that the Estate’s motion to dismiss Godbold as a party to this action should be granted.

**Res Judicata**

115. Osborne and Godbold argued at trial that the crossclaims of the Estate are barred by the doctrine of res judicata, because the Estate made a motion to reopen the Settlement Agreement in Case 1979, which was denied.

116. Any motion by any party alleging that the Estate’s crossclaims are barred by res judicata is denied.

117. The elements of res judicata are “(1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit.” Judy v. Judy, 393 S.C. 160, 167, 712 S.E.2d 408, 412 (2011) (citation omitted).

118. “Our courts, however, have found that the doctrine of res judicata is not an ‘ironclad’ bar to a later lawsuit. Significantly, the Restatement (Second) of Judgments has recognized exceptions to the application of this doctrine.” *Id.* at 167-68, 712 S.E.2d 412 (citations omitted).

119. These exceptions include “(1) When any of the following circumstances exists, the general rule of § 24 does not apply to extinguish the claim, and part or all of the claim subsists as a possible basis for a second action by the plaintiff against the defendant: (a) The parties have agreed in terms or in effect that the plaintiff may split his claim, or the defendant has acquiesced therein; or (b) The court in the first action has expressly reserved the plaintiff’s right to maintain the second action; or (c) The plaintiff was unable to rely on a certain theory of the case or to seek a certain remedy or form of relief in the first action because of the limitations on the subject matter jurisdiction of the courts or restrictions on their authority to entertain multiple theories or demands for multiple remedies or forms of relief in a single action, and the plaintiff desires in the second action to rely on that theory or to seek that remedy or form of relief.” *Id.* at 168, 712 S.E.2d 412 n.5 (quoting *Restatement (Second) of Judgments* § 26 (1982 & Supp. 2011)).

120. In the present case, Godbold’s res judicata argument must fail for the simple reason that he was not a party to the Estate’s original case against Osborne or its motion to restore that case to enforce the Settlement.

121. Godbold’s and Osborne’s res judicata arguments are denied because it is an affirmative defense which must be raised in a pleading, which both have failed to do. *See* Rule 8(c), SCRCF.

122. Moreover, after denying the Estate’s motion to restore the prior case to enforce the settlement, the Circuit Court has repeatedly affirmed the Estate’s right to pursue the Crossclaims and otherwise enforce the settlement by (1) appointing a Receiver to carry out the terms of the settlement, (2) granting the Estate’s motion to clarify that the Estate was free to pursue default damages on its Crossclaims, and (3) referring the Receivership to the Master-in-Equity for final disposition, including of the Estate’s Crossclaims.

123. In addition, Osborne has waived her right to contest the Estate’s Crossclaims by failing to answer the Crossclaims resulting in her default of those claims.

**ORDER AND INSTRUCTIONS TO RECEIVER**

THEREFORE, IT IS ORDERED:

1. The fees of Gallivan, White & Boyd, PA and Dixon Hughes Goodman, LLP, are DECLARED to be the personal debts of Beverly Osborne.

2. JUDGMENT BY DEFAULT is granted against Beverly Osborne, in favor of the Entities and the Estate, on all claims, except for the claim of Tortious Interference with Contract.

3. Osborne is liable to the Entities as follows:

- a. \$65,000.00 from the sale of Greenmeadow, with prejudgment interest at a rate of 8.75% from the date of transfer (\$32,769.35);
- b. \$99,800.00 from the sale of Crystal Lakes, with prejudgment interest at a rate of 8.75% from the date of transfer (\$52,682.10);
- c. \$97,000.00 for payment of personal debts from the Partial Settlement Agreement, with prejudgment interest at a rate of 8.75% from the date of order (\$27,834.35); and
- d. \$14,284.23 in tax costs and penalties. This amount may be supplemented for additional fees and costs associated with completing the Entities tax returns.

e. The amounts in paragraphs a-d are to be accounted against Osborne's distributional interests.

4. The Estate is awarded 1.5 times the amounts listed above in paragraphs 3(a-c), which totals \$562,628.69.

5. The Estate is awarded punitive damages in the amount of \$300,000.00.

6. The Estate is awarded Attorney's fees in the amount of \$257,103.58, which may be supplemented.

7. The Receiver is ORDERED to disburse funds as follows:

- a. First, to the Estate of Murdock for the amounts stated above in paragraphs 4-6 until those amounts are satisfied in full;
- b. Next, to other Entity debts and liabilities, or supplemental awards ordered under paragraph 9;
- c. Then, to the payment of distributions to the Estate and Osborne according to the 60/40 split.

*Bev's*  
*Th. 1.5x*  
*per*  
*debt*

*1.5x*  
*per 1.5*  
*per 1.5*

d. Any distributions payable to Osborne pursuant to paragraph 7(c) shall be paid to Godbold until his judgment has been satisfied.

8. The Receiver retains the authority granted by court order and its contract with the parties in proceeding to liquidate the Entities and make final distributions. To that end, the Receiver may apply to this court for further orders or instructions as needed.

9. Prior to the Receiver making distributions under paragraph 7(c), the Estate may file a motion requesting to supplement its award to include as follows:

- a. Attorneys' fees incurred from the commencement of trial through present;
- b. Excess receiver fees;
- c. Excess receiver attorneys' fees; and
- d. Excess accountant's fees.

10. Pursuant to the consent Order of Reference and this Court's inherent authority to enforce its own orders, this Court hereby **RETAINS JURISDICTION** over this action for the purpose of carrying out the rulings issued herein.

11. The Court hereby **DENIES** motion(s) to dismiss by Osborne or Godbold.

12. The Estate's claim for Tortious Interference with Contract is **DISMISSED**.

13. The Estate's motion to **DISMISS** Godbold as a party to this action is **GRANTED**.

This has no impact upon the amounts due to Godbold pursuant to paragraph 7(d).

**AND IT IS SO ORDERED.**

**FORM 4**

**STATE OF SOUTH CAROLINA  
COUNTY OF YORK  
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE**

**CASE NO.**

HAAS CONSULTING  
PLAINTIFF(S)

BEVERLY OSBORNE, et al  
DEFENDANT(S)

<b>Submitted by:</b>	Attorney for : <input type="checkbox"/> Plaintiff <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 : \_\_\_\_\_

<b>INFORMATION FOR THE JUDGMENT INDEX</b>		
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)
		\$
		\$
		\$
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.**

Teasa K. Weaver

3084

Master in Equity / Special Circuit Judge

Judge

Date

Code

**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), SCRCP.

**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.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



York Common Pleas

**Case Caption:** Haas Consulting Llc VS Beverly Osborne , defendant, et al  
**Case Number:** 2019CP4601893  
**Type:** Master/Order/Other

So Ordered

s/ Teasa K. Weaver 3084

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP4601893

Haas Consulting Llc  
PLAINTIFF(S)

Beverly Osborne et al  
DEFENDANT(S)

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.
- 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:

A hearing was held before me on January 25, 2024 upon a Motion for a New Trial or to Alter or Amend filed by Defendant John Godbold. After considering the motion, memorandum in opposition, and the arguments presented at the hearing, IT IS ORDERED that the motion is DENIED.

ORDER INFORMATION

This order  ends  does not end the case.  See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/25/2024 .

Waterstone Development Llc  
 Storage Solutions Llc  
 Stanley Osborne  
 Crystal Homes Inc  
 Wellington Title, Llc  
 Coastal Palm Properties Llc  
 Wellington Title Llc  
 Signature Pointe Properties Llc  
 Stanley Osborne

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

FILED ELECTRONICALLY FILED 2024 JAN 25 2:51:45 PM YORK - COMMON PLEAS - CASE# 2019CP4601893

**Court Reporter:**

**E-Filing Note:** 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 judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.

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ELECTRONICALLY FILED DE 20 20 12 10 30 25 14 58 04 PM - YORK - COMMON PLEAS - CASE# 2019CB46018893



York Common Pleas

**Case Caption:** Haas Consulting Llc VS Beverly Osborne , defendant, et al  
**Case Number:** 2019CP4601893  
**Type:** Order/Electronic Form 4

So Ordered

s/ Teasa K. Weaver 3084