

RECEIVED

OCT 18
24 2011

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Opinion No.: 2011-UP-264

David A. Hauge, ... Respondent,

vs.

Adrienne Curran, ... Petitioner.

APPENDIX

Thomas R. Goldstein, Esq.
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
Charleston, S. C. 29415-1121
(843) 554-4291
Attorneys for Petitioner

Mary Leigh Arnold, Esq.
Mary Leigh Arnold, P.A.
749 Johnnie Dodds Blvd.
Suite B
Mt. Pleasant, S. C. 29456
(843) 971-6053
Attorneys for Respondent

INDEX

Opinion Number 2011-UP-264, filed June 7, 2011.....	1
Order denying Petition for Rehearing, filed September 19, 2011	4
Petition for Rehearing filed June 20, 2011	5
Final Brief of Appellant	17
Final Brief of Respondent	30
Record on Appeal	53
Supplemental Record on Appeal	166

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

David A. Hauge & Chidna,
L.L.C., Plaintiffs,

of whom David A. Hauge is, Appellant,

V.

Adrienne Curran, Respondent.

Appeal From Charleston County
Roger M. Young, Circuit Court Judge

Unpublished Opinion No. 2011-UP-264
Submitted April 1, 2011 – Filed June 7, 2011

AFFIRMED IN PART, REVERSED IN PART, and REMANDED

Mary L. Arnold, of Mt. Pleasant, for Appellant.

Thomas R. Goldstein, of Charleston, for Respondent.

PER CURIAM: David Hauge ("Hauge") appeals the trial court's order denying summary judgment and dismissing the action without prejudice pursuant to Rule 12(b)(8), SCRCP. Hauge first argues Adrienne Curran ("Curran") conceded the funds generated from the sale of property owned by Chidna, L.L.C. were not Curran's personal property. Therefore, based on Curran's admission, Hauge argues there is no genuine issue of material fact as to the conversion or breach of fiduciary duty causes of action, and summary judgment should have been granted. Second, Hauge contends the trial court improperly dismissed the South Carolina action because the pending Florida litigation between Hauge and Curran is not another action pending between the same parties for the same claim under Rule 12(b)(8). Finally, Hauge asserts the trial court improperly overruled the prior trial court judge's order denying Curran's motion to dismiss. Pursuant to Rule 220(b)(1), SCACR and the following authorities,¹ we affirm the trial court's decision to deny summary judgment, reverse its decision to dismiss the South Carolina action, and remand the matter for further proceedings.

1. As to whether a genuine issue of material fact exists on the conversion and breach of fiduciary duty causes of action: See Moore v. Weinberg, 383 S.C. 583, 589, 681 S.E.2d 875, 878-79 (2009) (finding conflicting testimony regarding the ownership of an interest in the proceeds from litigation created a genuine issue of material fact as to the conversion claim); Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005) ("Summary judgment is appropriate 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'"); Gadson v. Hembree, 364 S.C. 316, 320, 613 S.E.2d 533, 535 (2005) ("Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law."); Ellis v. Davidson, 358 S.C. 509, 520, 595 S.E.2d 817, 823 (Ct. App. 2004) (stating summary judgment is not proper when genuine issues

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

of material fact exist as to whether a fiduciary duty existed between the parties and, if so, whether such duty was breached); Baughman v. Am. Tel. and Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) (finding summary judgment was improper when plaintiffs had not been afforded a full and fair opportunity to complete discovery).

2. As to whether the trial court properly applied Rule 12(b)(8), SCRCP to dismiss a South Carolina circuit court action on the ground that a similar action is simultaneously pending between the same parties in another jurisdiction: See Poston v. Homes Ins. Co. of N.Y., 191 S.C. 314, 317-18, 4 S.E.2d 261, 262 (1939) ("[A]n action may be pleaded in abatement of a second suit only when between the same parties and in the same jurisdiction and with the same object.") (emphasis added); see also Logan v. Atlanta & C. Air Line R. Co., 82 S.C. 518, 520-21, 64 S.E. 515, 516 (1909) (stating that a pending action in the federal court against the lessee of a railroad for personal injuries is no bar to an action in the state courts against the lessor on the same cause of action because the suits are against different parties and in different jurisdictions); Hill v. Hill, 51 S.C. 134, 137, 28 S.E. 309, 310 (1897) (holding that the pendency of a former suit between the same parties for the same cause and relief is a ground for abatement of a subsequent suit if both suits are pending in the same jurisdiction, but that it is a well-established doctrine that the pendency of another suit in a foreign jurisdiction cannot be grounds for abatement of an action in the domestic forum).
3. In light of our determination that the action was improperly dismissed, we need not address Hauge's remaining exception regarding the allegedly conflicting trial court rulings. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating an appellate court need not address remaining issues when a decision on a prior issue is dispositive).

AFFIRMED IN PART, REVERSED IN PART, and REMANDED.

WILLIAMS, GEATHERS, and LOCKEMY, JJ., concur.

The South Carolina Court of Appeals

David A. Hauge & Chidna, L.L.C., Plaintiffs,

of whom David A. Hauge is, Appellant,

v.

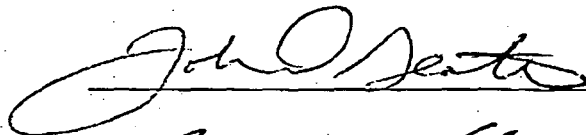
Adrienne Curran, Respondent.

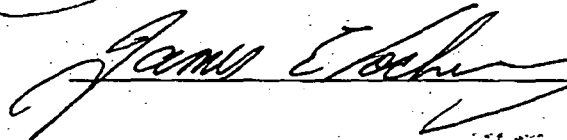
The Honorable Roger M. Young
Charleston County
Trial Court Case No. 2008-CP-10-00324

ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing.
It is, therefore, ordered that the Petition for Rehearing be denied.

 J. Williams

 J. Geathers

 J. Lockemy

Columbia, South Carolina

cc: Mary L. Arnold, Esquire
Thomas R. Goldstein, Esquire

FILED
SEP 19 2011

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Opinion No.: 2011-UP-264

David A. Hauge, ... Appellant,

vs.

Adrienne Curran, ... Respondent.

RESPONDENT'S PETITION FOR REHEARING
RESPONDENT'S PETITION FOR REHEARING *EN BANC*

Thomas R. Goldstein
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
N. Charleston, S. C. 29415-1121
(843) 554-4291
(843) 554-5566 (fax)
tgoldstein@cobblaw.net
Attorneys for Respondent

RECEIVED
JUN 20 2011
SC Court of Appeals

TABLE OF CONTENTS

Introduction	2
Argument	
Argument The Court of Appeals overlooked that the plaintiff/appellant is making mutually exclusive claims for which Rule 12(b)(8) is designed to prevent as is the principle of judicial estoppel.	3
Argument 1 The decision reached in this case is inconsistent with a different panel.	4
Argument 2 <u>Hill v. Hill</u> and <u>Logan v. Atlanta C.</u> are factually distinguishable... 9	
Argument 3 The Court did not consider the elements of judicial estoppel.	11
Conclusion	12

Introduction

Rule 225 of the South Carolina Appellate Court Rules permits a party to seek a rehearing in cases in which the petitioner, here the respondent, can identify a principle of law or fact "overlooked or misapprehended by the court." In addition, Rule 219(a)(1) allows a party to seek a rehearing *en banc* where there exists a lack of uniformity between panels on the same issue. As allowed by these rules, the Respondent identifies three principles of law which the Court overlooked in its June 7, 2011, opinion in this case and shows further that the decision in this case is inconsistent with a

decision by a different panel on the same legal issue. Before turning to these three arguments, it is helpful to review the undisputed facts in the case. As may be seen from the record on appeal and the Opinion under review, the following are undisputed facts.

Undisputed facts

1. David Hauge commenced an action for dissolution of marriage from Adrienne Curran at case No.: 2007-DR-1641-K, filed December 7, 2007, in Monroe County (Key West) Florida. (Supplemental R.O.A. p. 1)
2. 46 days later on January 22, 2008, David Hauge commenced an action for dissolution of the limited liability company called "Chidna, L.L.C.," which is a South Carolina limited liability company with two members: David Hauge and Adrienne Curran, who are the husband and wife in the Florida action. (R.O.A. p. 13) The South Carolina complaint alleges derivative action by a member, breach of fiduciary duty, conversion, unjust enrichment, and injunctive relief. The derivative action is ended because Chidna did not appeal the lower court's order of dismissal, and the Florida court granted the injunctive relief through its August 27, 2008, Standing Temporary Domestic Relations Order. R.O.A. p. 47. ("[A]n unappealed ruling becomes the law of the case and precludes further consideration of the issue on appeal." C-Sculptures, LLC v. Brown __ S.C. __, __ S.E.2d __ (Ct. App. 2011, Opinion No. 4827)
3. In a sworn statement to the Florida court, David Hauge identified Chidna as marital property with a value of \$1,350,000.00. (See Supplemental R.O.A. p. 10)

4. David Hauge asked the Florida court to freeze all marital property, including the Chidna property, which the Florida court did by Order dated August 27, 2008. (See "Standing Temporary Domestic Relations Order" at page 47 of the R.O.A.)

5. The Chidna property frozen in the Florida case is the same Chidna property claimed by Dr. Hauge in the South Carolina case.

6. The parties in the Florida case are the same parties in the South Carolina case. The only members of Chidna, L.L.C. are David Hauge and Adrienne Curran.

Arguments

1.

The decision reached in this case is inconsistent with another Panel's decision on the same legal issue.

The lower court dismissed the South Carolina action without prejudice because the identical parties are litigating the disposition of the same property in Florida. This Court reversed the lower court's dismissal without prejudice of David Hauge's claim because this Court relied upon an 1897 case and a 1909 case that hold a "pleading in abatement" cannot be sustained absent an exact identity of the parties and the subject matter in the same jurisdiction. There are three reasons why the Court's reliance upon these ancient cases is erroneous and for which the respondent should be granted rehearing.

The first reason is that unlike the 1897 and 1909 cases relied upon by the Court, a different panel of this Court analyzed the same issue in a simultaneously pending case. At the same time this case was pending, this Court was deciding a case called

Cricket Cove Ventures, LLC v. Gilland, 390 S.C. 312, 701 S.E.2d 39 (S.C.App. 2010).

The Court issued its opinion in this case on June 7, 2011, and issued its opinion in the Cricket Cove case on August 25, 2010, by a different panel. (The two panels shared two members.)

The question before the Court in both cases was to determine the scope and reach of Rule 12(b)(8). Both panels grounded their analysis upon an analysis of what it means to have the same identity of parties and the same identity of claims. Both cases turn on the application of the Rules of Civil Procedure, which came into effect in 1986. The Rules came into existence for the precise purpose of modifying ancient *ad hoc* rules of pleading, including the old doctrine of "pleading in abatement." When the Supreme Court decided Hill v. Hill¹ in 1897 and Logan v. Atlanta & C. Air Line R. Co.² in 1909, there were no rules of civil procedure, and thus neither case can be cited with authority for the purpose or reach of Rule 12(b)(8) or for the doctrine of judicial estoppel. In 1986, when South Carolina adopted the rules of civil procedure, it articulated the reason: "These rules govern the procedure in all South Carolina courts in all suits of a civil nature whether cognizable as cases at law or in equity. . . . **They shall be construed to secure the just, speedy, and inexpensive determination of every action.**" Rule 1. "Scope of Rules." (emphasis added) There are dozens of learned treatises on the rules of civil procedure, and each and every one emphasizes that the purpose of the rules is exactly as set forth in Rule 1. There is nothing speedy or just, or inexpensive about two people litigating the same dispute over the same property in two

¹ 51 S.C. 134, 28 S.E. 309 (1897)

² 82 S.C. 518, 64 S.E. 515 (1909)

courts, especially where one of the litigants tells one court the property is marital and tells the other court that the same property is non-marital.

In Cricket Cove Ventures, LLC v. Gilland, 390 S.C. 312, 701 S.E.2d 39 (Ct. App. 2010), the trial court dismissed an action for civil conspiracy based on Rule 12(b)(8). A different panel of the Court of Appeals reversed on the ground that parties were not identical and the claims were not identical. In deciding that the identities of the parties were different, this Court noted:

Here, Respondents were sued in their individual capacities in the present action. However, they were sued in their official capacities in the first action. Therefore, the circuit court erred in concluding that the present action and the first action involved the same parties.

This distinction in Cricket Cove is huge, for the plaintiff's claims against the council members as individuals was entirely different from the plaintiff's claims against the same council members as government officials. One suit involved allegations of failure to follow procedure, while the second suit alleged that the council members conspired with third parties to cause harm to the plaintiff. The claims are distinctly different. This is not the case here. Here, Hauge and Curran are husband and wife and the sole members of Chidna—there is no distinction between them as parties. In other words, Hauge is not alleging anything different in the South Carolina case than he is alleging in the Florida case. They are the same case. In each case, he is telling the court that his wife, Curran, mishandled Chidna funds, and that he should receive an adjustment on the distribution for her alleged bad acts. Hauge calls the two actions different things, but what he calls them is immaterial if the thing being labeled by him is the same thing. Like insurance companies and Lewis Carroll, Hauge wants this Court to believe that

Chidna is a wholly different thing in Florida than it is in South Carolina because he employs the expedient of renaming it. This Court has never allowed litigants to adopt solipsistic language as a means to an end: "Like Humpty Dumpty, [insurance companies] have the rare privilege of choosing what their words mean. But unlike Humpty Dumpty, **they should say what they mean in advance, not after the fact.**" Fowler v. Canal Insurance Co., 300 S.C. 420, 389 S.E.2d 301 (Ct. App. 1990), Brooklyn Bridge, Inc. v. S. C. Insurance Co., 309 S.C. 141, 420 S.E.2d 511 (Ct. App. 1992) (emphasis added) Dr. Hauge is not permitted to call the same people or the same claims by different names—**after the fact**—in order to obtain a collateral advantage in pending domestic litigation. No matter how Dr. Hauge characterizes the "dissolution" of Chidna—whether it is as husband and wife or as the members of the limited liability company, he is asking the two courts to divide the same thing between the same people. Moreover, he first identified the parties as husband and wife and identified the thing being divided as marital property, and this Court should not permit him, as Humpty Dumpty does, to rename the parties as anyone other than who they are or the thing being divided as anything other than what it is in order to avoid the reach of Rule 12(b)(8).

Likewise in analyzing the identity of claims in Cricket Cove, this Court held:

The rule has historic ties to a former statute providing a defendant a similar opportunity to demur; our supreme court traditionally interpreted that statute narrowly, stating that it only applied when there was identity of parties, causes of action and relief. We find this approach consistent with modern day practice under rules similar to our Rule 12(b)(8). Accordingly, we interpret the rule narrowly such that *the claim must be precisely or substantially the same in both proceedings* in order for the drastic remedy of dismissal to be appropriate under Rule 12(b)(8). (emphasis in original)

Because the appellant's claim in Cricket Cove involved conspiracy against the individuals, which was not a claim asserted in the first action against the government, this Court found the two actions sufficiently dissimilar so that Rule 12(b)(8) did not apply. The facts in this case, however, demonstrate that it is the same parties litigating over the same property: to wit, the proceeds from the sale of the Chidna real estate. Because there is here an **exact correspondence** in the parties, and an **exact correspondence** in the thing being litigated, and an **exact correspondence** in the relief requested, Rule 12(b)(8) requires dismissal, and the Court's opinion in this case is inconsistent with its decision reached in Cricket Cove. The application of Rule 12(b)(8) does not require that the subject matter be identical so long as it is "substantially similar." Rule 12(b)(8) applies in cases "where the parties, subject matter, and remedies are precisely the same, and it also applies when they are only substantially the same." S.C. Public Serv. Comm'n v. City of Rock Hill, 268 S.C. 405, 408, 234 S.E.2d 228, 229 (1977) citing James F. Flanagan, South Carolina Civil Procedure 96-97 (2d ed. 1996), Beatty v. Liberty Mut. Ins. Group, 893 N.E.2d 1079, 1084 (Ind. App. Ct. 2008) Here, the identities of the parties, the claims, and the remedies are identical. One cannot assert that any of them are "fundamentally and structurally different from each other." S. C. Public Serv. Comm'n, *ibid*. The lower court even protected Dr. Hauge by providing that if the Florida court did not divide Chidna, that he was permitted to re-file his claim in South Carolina. While the respondent concedes that Dr. Hauge uses a different vocabulary in the South Carolina case—Hauge prays for "judgment against the plaintiff for both actual and punitive damages in an amount to be determined by a jury"; (R.O.A. p. 46)—while in the Florida case he asks for distribution of the

parties' assets and liabilities under Florida section 61.075, the Humpty Dumpty vocabulary cannot disguise that the thing being divided is the same in either case. (Supp. R.O.A. p. 1-2) Moreover, the Florida matrimonial statutes—found at page 19 of the Supplemental Record on Appeal—specifically provide for an adjustment of the marital division based on the same misconduct alleged by Dr. Hauge in his South Carolina pleadings, and thus there is an exact correspondence between the relief requested in Florida and the relief requested in South Carolina. Lastly, as discussed more fully in the next section, Dr. Hauge first chose the Florida forum, and he should not be rewarded for subjecting his wife to separate suits over the same dispute.

2.

Hill v. Hill and Logan v. Atlanta C. are factually distinguishable

The second reason that the ancient cases relied upon by this Court cannot serve as a basis to overturn the decision below is the factual distinction—which is not disputed—that the parties and the subject matter in the instant case are identical with the parties and the subject matter in the Florida case. Thus, reliance upon, for example, Hill v. Hill is misplaced, for in Hill, the issue was whether the lower court erred in denying a motion for continuance on the ground that the same action was pending in North Carolina:

The ground of the motion [for continuance] in this case was the pendency of another action between the same parties, for the same cause of action, in North Carolina. **The motion was made after the defendant had announced himself ready for trial, and after the jury had been impaneled.** (emphasis added)

That is an important distinction. More importantly, the North Carolina court **dismissed** the action in North Carolina on the ground that the action belonged in South Carolina: "It seems that an appeal was pending from a judgment of nonsuit against Wells, the North Carolina administrator of J.L. Hill, deceased." Thus, not only were the parties different, but North Carolina dismissed its action so that at the time of the South Carolina trial, the only action then pending was the South Carolina action, which explains why the defendant allowed the case to be called for trial without objection and impaneled a jury before he requested a continuance. By contrast, Judge Young dismissed Dr. Hauge's action without prejudice in order to allow the Florida case, filed first, an opportunity to address the same Chidna issue that Dr. Hauge put before the South Carolina court. Judge Young did exactly what the North Carolina court did in Hill, which is: he eliminated the risk of inconsistent decisions over the same subject matter. Moreover, both David Hauge and Adrienne Curran are citizens and residents of Florida, not South Carolina. Thus, none of the facts involved in the present case are found in either the Hill or the Logan decision. In Logan v. Atlanta & C. Air Line R. Co., the Supreme Court took up the question of whether an injured employee who sued his employer for injuries was conclusive as to the same plaintiff's suit for the same injuries against the lessor. As this Court said in Nelson v. QHG of South Carolina, Inc., 354 S.C. 290, 580 S.E.2d 171 (Ct. App. 2003) (affirmed in part and reversed in part at 362 S.C. 421, 608 S.E.2d 855 (2005):

This holding does not run afoul of either of the cases cited by Thomas W. Phillips, M.D. and Drs. Coker, Phillips, and Haswell, P.A. In Rookard v. Atlanta & Charlotte Air Line R.R., 84 S.C. 190, 65 S.E. 1047 (1909), the plaintiff sued Atlanta for damages which occurred in a railroad crossing accident. Southern Railroad Company, a lessee of Atlanta, was operating the rail line at the time of the accident. The court set

forth the principle that "[a] judgment on the merits in favor of the agent is a bar to an action against the principal for the same cause, because the principal's liability is predicated upon that of the agent." *Id.* at 192, 65 S.E. at 1047. The same principle is espoused in Logan v. Atlanta & Charlotte Air Line R.R., 82 S.C. 518, 64 S.E. 515 (1909): "Where an agent is sued, and, after a trial on the merits, the issue is determined against the plaintiff, the principal, though not a party to the suit, can avail himself of the judgment as a bar when sued by the same plaintiff on the same cause of action." *Id.* at 523, 64 S.E. at 516. However, both of these cases refer to barring liability for the master when the servant is found not liable for the same cause of action brought against the master.

As this record demonstrates, neither of these cases is controlling because it is undisputed that the parties to the Florida and South Carolina actions are the same two people litigating over the exact same property.

3.

The Court did not consider the elements of judicial estoppel.

The third overlooked principle is that that Court did not apply the elements of judicial estoppel. The record in this case demonstrates compelling evidence for each and every element. See pages 14-15 of Respondent's brief for a full discussion of the doctrine of judicial estoppel, citing Cothran v. Brown, 357 S.C. 210, 592 S.E.2d 629 (2004). Dr. Hauge has clearly taken inconsistent positions with the two courts. In Florida, he asserts Chidna is marital property; in South Carolina it is not. He filed the Florida action first. (See Supp. R.O.A. p. 1.) Both actions involve the same parties over the same subject matter; however, like Humpty Dumpty cited above, Dr. Hauge assigns different adjectives to the same noun being litigated. Likewise, Dr. Hauge obtained a beneficial ruling from the Florida court freezing the Chidna property based on his representation that the property is marital. (See R.O.A. p. 47) Dr. Hauge seeks two

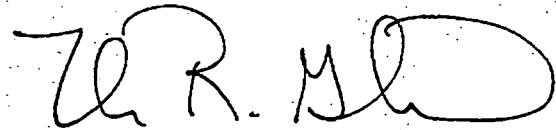
bites at the same apple, and in doing so, he is making an intentional effort to mislead the court. Obviously, Chidna cannot be both marital and not marital property at the same time; therefore, the two positions are inconsistent. These are all the elements of judicial estoppel, and the purpose of Rule 12(b)(8) is to prevent this type of duplicative litigation. None of the cases cited by the Court in the opinion under review stand for the authority to allow Dr. Hauge to assert mutually exclusive legal positions in two states in order to exact additional leverage in on-going domestic litigation.

Conclusion

Based on the foregoing, the Respondent respectfully requests that the Court grant a re-hearing in order to address the issue that is before the Court and sustain the order below dismissing the South Carolina action based upon Rule 12(b)(8) and the doctrine of judicial estoppel. Because the decision reached in this case is inconsistent with the analysis adopted by the panel in Cricket Cove, the Respondent requests that the matter be heard *en banc* in order to give the entire Court an opportunity to harmonize the two decisions.

Respectfully submitted,

June 16, 2011



Thomas R. Goldstein, S. C. Bar 2186
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
Charleston, S. C. 29415-1121
843-554-4291
843-554-5566 (fax)
tgoldstein@cobblaw.net

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Case No. 2008-CP-10-000324

David A. Hauge and CHIDNA, LLC Appellants.

Adrienne Curran Respondent.

FINAL BRIEF OF APPELLANTS

Mary Leigh Arnold, Esquire
Mary Leigh Arnold, P.A.
749 Johnnie Dodds Blvd., Suite B
Mt. Pleasant, South Carolina 29465
(843) 971-6053 (phone)
(843) 971-6055 (fax)
Sammie@maryarnoldlaw.com
Attorney for Appellants

Other Counsel of Record:

Thomas R. Goldstein, Esquire
Belk, Cobb, Infinger & Goldstein, P.A.
2344 Cosgrove Avenue
Charleston, SC 294052
(843) 554-4291 (phone)
(843) 554-5566 (fax)
tgoldstein@cobblaw.net
Attorney for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
QUESTIONS PRESENTED	1
STATEMENT OF THE CASE	1
ARGUMENT	4
A. The Circuit Court improperly dismissed the within action because there the corporate Plaintiff is not a party to the family court proceedings and the issues are not remotely the same between the two cases.	4
1. The corporate Plaintiff has every right to proceed with its causes of action against Respondent.	4
2. The claims asserted in the different actions are not precisely or substantially the same.	5
B. The ruling by Judge Young is in effective the overruling of Judge Dennis' prior denial of Respondents motion to dismiss.	5
C. Respondent has conceded that the subject funds are not her property and that she removed the funds to an account held in her sole name therefore there is no dispute of fact as to conversion or breach of fiduciary duty and summary judgment should have been granted.	6
CONCLUSION	9

TABLE OF AUTHORITIES

CASES

<u>BPS, Inc. v. Worthy</u> , 362 S.C. 319, 608 S.E.2d 155 (Ct. App.2005)	6
<u>Capital City Insurance Company vs. BP Staff, Inc.</u> ; __ S.C. ___, 674 S.E. 2 nd 524 (Ct. App., 2009)	4
<u>Castell v. Stephenson Fin. Co.</u> , 244 S.C. 45, 50-51, 135 S.E.2d 311, 313 (1964)	7
<u>Cook v. Taylor</u> , 272 S.C. 536, 538, 252 S.E.2d 923, 924 (1979)	5
<u>Crane v. Citicorp Nat'l Servs., Inc.</u> , 313 S.C. 70, 73, 437 S.E.2d 50, 52 (1993)	7
<u>Cudd v. Williams</u> , 39 S. C. 452, 18 S. E. 3 (1893)	5
<u>Ellis v. Smith Grading and Paving, Inc.</u> , 294 S.C. 470, 473, 366 S.E.2d 12, 14 (Ct. App. 1988) .	8
<u>Enoree Baptist Church v. Fletcher</u> , 287 S.C. 602, 604, 340 S.E.2d 546, 547 (1986)	5
<u>Hawkins v. City of Greenville</u> , 358 S.C. 280, 297, 594 S.E.2d 557, 566 (Ct. App. 2004)	7
<u>Helms Realty, Inc. v. Gibson-Wall Co.</u> , 363 S.C. 334, 611 S.E.2d 485 (2005)	6
<u>Kirby v. Horne Motor Co.</u> , 295 S.C. 7, 366 S.E.2d 259 (Ct. App.1988)	7
<u>Mackela v. Bentley</u> , 365 S.C. 44, 614 S.E.2d 648 (Ct. App.2005)	7
<u>Owens v. Andrews Bank Trust Co.</u> , 265 S.C. 490, 496, 220 S.E.2d 116, 119 (1975)	7
<u>Oxford Fin. Cos. v. Burgess</u> , 303 S.C. 534, 402 S.E.2d 480 (1991)	8
<u>Regions Bank v. Schmauch</u> , 354 S.C. 648, 667, 582 S.E.2d 432, 442 (Ct. App. 2003)	7
<u>S.C. Public Serv. Comm'n v. City of Rock Hill</u> , 268 S.C. 405, 408, 234 S.E.2d 228, 229 (1977) 4	
<u>State v. Harrelson</u> , 211 S. C. 11, 43 S. E.2d 593 (1947)	6

STATUTES

S.C. Code Ann. §33-44-409	8
S.C. Code Ann. §33-44-501	7

OTHER AUTHORITIES

James F. Flanagan, <u>South Carolina Civil Procedure</u> 96-97 (2d ed. 1996)	4
--	---

QUESTIONS PRESENTED

- I. Did the circuit court err in dismissing the case pursuant to Rule 12(b)(8), when the corporate plaintiff in this case is not a party to referenced family court proceedings and when the issues to be decided in the within action and the family court proceedings are not precisely or substantially the same?
- II. Did the second circuit court err by altering, modifying, and reversing the prior Order of another circuit court judge?
- III. Did the circuit court improperly deny summary judgment when the material issues of fact are undisputed?

STATEMENT OF THE CASE

This action was initiated on January 22, 2008 by David Hauge (hereinafter “Appellant Hauge”), against Adrienne Curran (hereinafter “Respondent”). The Complaint sets forth the following causes of action: (1) derivative action by member; (2) breach of fiduciary duty; (3) conversion; (4) unjust enrichment; and (5) injunctive relief. (R. pp. 13-18) On August 25, 2008, a Notice of Special Appearance to Contest Jurisdiction was filed on behalf of Respondent. (R. pp. 33-34). On September 9, 2008 an Amended Complaint was filed adding as a named Plaintiff, CHIDNA, LLC and asserting all the original causes of action against Respondent. (R. pp. 35-40)

On February 4, 2009, a hearing was held before the Honorable R. Markley Dennis, Jr., on Respondent’s Notice of Special Appearance. During the course of the hearing Judge Dennis stated “the fact that it’s a Family Court matter, I don’t think that prevents her from bringing this action here.” (R. p. 104). On the same day an Order was entered denying Respondent’s Motion to Dismiss. (R. p. 1)

In a joint pleading, on February 18, 2009, Respondent filed what she captioned as a Motion to Dismiss, Answer and Counterclaim. (R. pp. 42-46). The first numbered paragraph contains the basis for the motion to dismiss which asserts "the parties lack sufficient minimum contacts with [three] State of South Carolina for the State of South Carolina to exercise jurisdiction." (R. p. 42). The answer portion of the pleading is a "qualified general denial" that contains no delineated affirmative defense.

Subsequently on April 16, 2009, Appellants' filed a Motion for Summary Judgment. (R. pp. 52-53). On May 14, 2009 Respondent filed an Affidavit with the Court assumedly in opposition to the motion for summary judgment.¹ (R. pp. 64-66). On June 1, 2009 Appellant Hauge submitted an Affidavit in support of Appellants' Motion for Summary Judgment.² (R. pp.

¹ Respondent's Affidavit provides: [M]y husband and I created CHIDNA, LLC, as a limited liability company in Charleston, S.C. for the purpose of owning the relation estate that housed an antiques business, called "The King Street Antiques Mall, which was operated in a building we purchased in 2003, at 495-497 King Street....Several years later, I closed the antique store, liquidated the antiques, and sold the building on March 5, 2007, to T-Mouse 83, LLC for the sum of 2.2 million dollars. The closing took place at Stanley Claypoole's office in North Charleston, and after closing costs and attorney's fees, the net proceeds of the sale were approximately \$1.6 million dollars. Our closing attorney, Ted Hostetter put all of that money in a segregated escrow account at NBSC in Charleston, S.C. on December 12, 2007. On the same day, I transferred this money in an account at the same bank to an account only in my name. (R. pp. 64-66).

²The Affidavit provides: CHIDNA, LLC., as a limited liability company organized under the laws in the state of South Carolina; [Respondent] is a member of the limited liability company formed under South Carolina law under the name of CHIDNA, LLC; CHIDNA, LLC was formed for the purpose of holding and managing a commercial real property located at 495 King Street, Charleston, South Carolina and owned by CHIDNA, LLC.; The sole members of CHIDNA, LLC are Plaintiff [Hauge] and [Respondent]; In or around March 5, 2007 the Company sold the property located at 495 King Street, Charleston, South Carolina for the sum of \$2,200,000.00; The proceeds from the sale of the property were made payable to CHIDNA, LLC. The net proceeds from sale were the approximate amount of \$1,600,000.00 and were held in escrow for a number of months following the closing by Teddy Hostetter, Esquire. Teddy Hostetter, Esquire ultimately transfer the sale proceeds to the account of CHIDNA, LLC at NBSC; As admitted by [Respondent] in her affidavit submitted to this Court, immediately after the proceeds were received by the CHIDNA, LLC, [Respondent], without proper vote or authority or knowledge or consent of the Plaintiff, caused the sale proceeds to be withdrawn from the Company's bank account and deposited into an account in her individual name;

68-70). In response to Appellant Hauge's Affidavit Respondent filed a second Affidavit.³ (R. pp. 71-74).

On April 27, 2009, Appellants' filed a Notice of Hearing wherein Appellants notified Respondent that a hearing would be held on Appellant's motion for summary judgment on June 8, 2009. (R. p. 54). As noticed the hearing was held as scheduled. Oral arguments were made as to Appellants' motion for summary judgment. (R. pp. 86-96). Respondent did not prosecute her motion to dismiss contained with her answer but rather argued issues of fact existed that rendered summary judgment inappropriate. (R. p. 94). On June 29, 2009, the Honorable Roger Young entered an Order submitted on behalf of Respondent. The opening paragraph of the Order acknowledges the matter before the Court was Appellants' motion for summary judgment. Notwithstanding, the Order denied the motion for summary judgment and dismissed the case without prejudice on the grounds the disputed funds are within the jurisdiction of the Florida Family Court.

On July 10, 2009, Appellants filed a Motion for Reconsideration. On August 4, 2009, an Order denying reconsideration was filed. Appellants' timely filed their Notice of Appeal on August 27, 2009.

[Respondent] converted the sale proceeds by taking control of the proceeds, refusing access to them by CHIDNA, LLC, and by depriving the members of their rightful distributional proportion of the proceeds; Plaintiffs have been deprived of the sale proceeds by the intentional transfer of the funds without proper authorization to an account other than an account of the CHIDNA, LLC; The sale proceeds are property of CHIDNA, LLC and are not property of the [Respondent]. (R. pp. 71-74).

³ In the June 22, 2009, Affidavit Respondent conceded the following: The commercial real property located at 495 King Street was David's and my antiques store called "The Antiques Mall." We ran the shop as absentee owners for several years from Florida, but this became too much with my driving back and forth from South Carolina to Florida to unpack inventory and relieve the managers so that they could take vacations...I transferred the money to a separate account held in my name at the same branch of NBSC...I agree with paragraph 13. The money is not my property. (R. p. 73).

ARGUMENT

A.The Circuit Court improperly dismissed the within action because there the corporate Plaintiff is not a party to the family court proceedings and the issues are not remotely the same between the two cases.

1. The corporate Plaintiff has every right to proceed with its causes of action against Respondent.

The circuit court dismissed the within action in its entirety on the grounds that the Florida court has jurisdiction of the disputed funds and “[t]here is obvious danger of duplicative litigation and contrary results over the same dispute.” (R. p. 6). While the Order is void of any reference to SCRCP Rule 12(b)(8) this determination can only be classified as a ruling pursuant to Rule 12(b)(8). As such, it must be reversed because the requirements of the Rule have not been meet.

In South Carolina, dismissal under Rule 12(b)(8) may be proper when there is (1) another action pending, (2) between the same parties, (3) for the same claim. Rule 12(b)(8), SCRCP. As noted in the recent case of Capital City Insurance Company vs. BP Staff, Inc., __ S.C. __, 674 S.E. 2nd 524 (Ct. App., 2009) “[t]he rule has historic ties to a former statute providing a defendant a similar opportunity to demur; our supreme court traditionally interpreted that statute narrowly, stating that it only applied when there was identity of parties, causes of action and relief.” citing, S.C. Public Serv. Comm’n v. City of Rock Hill, 268 S.C. 405, 408, 234 S.E.2d 228, 229 (1977); and James F. Flanagan, South Carolina Civil Procedure 96-97 (2d ed. 1996). Thus, as concluded by this Court the rule should be interpreted narrowly such that the claim must be precisely or substantially the same in both proceedings in order for the drastic remedy of dismissal to be appropriate under Rule 12(b)(8). Capital City Insurance Company vs. BP Staff, Inc., __ S.C. __, 674 S.E. 2nd 524 (Ct. App., 2009).

Here, the second element was not and cannot be met. Again, the Appellant CHIDNA, LLC is not a party to any family court proceedings in Florida. The parties clearly are not the same. CHIDNA, LLC has every right to pursue its claims for any and all damages resulting from the improper removal of funds from its account. The dismissal of the action was improper.

2. The claims asserted in the different actions are not precisely or substantially the same.

Not only has the second element not been met but neither has the third. Here the claims asserted by Appellants include conversion of funds, unjust enrichment and breach of fiduciary duty. There is no similarity between these claims and any claims that could be asserted in the family court proceedings. Even if the Family Court has jurisdiction over the corporate assets, which Appellants have vehemently opposed, at best all the family court has before it is the division of marital property. This does not and cannot include any remedy on behalf of either Appellant for the improper removal of the funds from the corporate account and the breach of fiduciary duty for the misappropriation of funds by the Respondent. Therefore, the dismissal of the action under Rule 12(b)(8), SCRPC principles, was improper.

B. The ruling by Judge Young is in effective the overruling of Judge Dennis' prior denial of Respondents motion to dismiss.

Well recognized is the concept that one circuit court judge is prohibited from overruling or reversing the standing order of another circuit court judge. See Enoree Baptist Church v. Fletcher, 287 S.C. 602, 604, 340 S.E.2d 546, 547 (1986) ("One Circuit Court Judge does not have the authority to set aside the order of another."); Cook v. Taylor, 272 S.C. 536, 538, 252 S.E.2d 923, 924 (1979) (a circuit court judge does not have the authority to reverse another circuit court judge's determination of the proper mode of trial.), see also, Cudd v. Williams, 39 S. C. 452, 18 S. E. 3 (1893)(Judge "did not have the power to set aside the Order of his

predecessor" judge); State v. Harrelson, 211 S. C. 11, 43 S. E.2d 593 (1947) (Order of subsequent Judge reversed as he did not have the "power to review, revise, or reverse the action of another Circuit Judge.")

At the request of the Respondent, her initial motion to dismiss on the ground that a matter was pending between her and Appellant Hauge was heard by Judge Dennis. Judge Dennis denied the motion. Thus, although Respondent to not prosecute a motion to dismiss at the second hearing, she submitted an Order that provided the case be dismissed on the ground a marital dissolution matter was pending between her and Appellant Hauge. The ruling by Judge Young is an impermissible reversal of Judge Dennis' prior ruling. Thus, Judge Young's Order must be vacated.

C. Respondent has conceded that the subject funds are not her property and that she removed the funds to an account held in her sole name therefore there is no dispute of fact as to conversion or breach of fiduciary duty and summary judgment should have been granted.

Rule 56(c) of the South Carolina Rules of Civil Procedure provides that a trial court may grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56, SCRPC; Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334, 611 S.E.2d 485 (2005); BPS, Inc. v. Worthy, 362 S.C. 319, 608 S.E.2d 155 (Ct. App.2005). "A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." David, 367 S.C. at

250, 626 S.E.2d at 5.

Pursuant to S.C. Code Ann. §33-44-501 a member of a limited liability company is not a co-owner of, and has no transferable interest in property of a limited liability company. Here the real property located at 495 King Street, Charleston, South Carolina, was titled in the name of and owned by CHIDNA, LLC. The sale proceeds derived from the sale of the real property owned by CHIDNA, LLC are the personal property of CHIDNA, LLC and not the members of the company. Respondent admits in her Affidavit dated June 3, 2009, page 3 "I agree with paragraph 13, The money is not my property." (R. p. 73). The sale proceeds do not become the personal property of the members until it is distributed by the company to the members. Moreover, Judge Young acknowledged in his Order the funds are property of CHIDNA, LLC by referring to it as "CHIDNA money." (R. p. 6).

Conversion is the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of the condition or the exclusion of the owner's rights." Hawkins v. City of Greenville, 358 S.C. 280, 297, 594 S.E.2d 557, 566 (Ct. App. 2004) (citing Crane v. Citicorp Nat'l Servs., Inc., 313 S.C. 70, 73, 437 S.E.2d 50, 52 (1993) (superseded by statute on other grounds)). Conversion is a wrongful act that emanates by either a wrongful taking or wrongful detention. Kirby v. Horne Motor Co., 295 S.C. 7, 366 S.E.2d 259 (Ct. App. 1988). "Conversion may arise by some illegal use or misuse, or by illegal detention of another's personal property." Regions Bank v. Schmauch, 354 S.C. 648, 667, 582 S.E.2d 432, 442 (Ct. App. 2003) (citing Owens v. Andrews Bank Trust Co., 265 S.C. 490, 496, 220 S.E.2d 116, 119 (1975); Castell v. Stephenson Fin. Co., 244 S.C. 45, 50-51, 135 S.E.2d 311, 313 (1964). A plaintiff may prevail upon a claim for conversion by showing the unauthorized detention of property, after demand. Mackela v. Bentley, 365 S.C. 44, 614 S.E.2d

648 (Ct. App.2005). The plaintiff must show either title or right to possession of the property at the time of conversion. Oxford Fin. Cos. v. Burgess, 303 S.C. 534, 402 S.E.2d 480 (1991).

Here there is no question but that Respondent converted and misappropriated the funds of CHIDNA, LLC. Respondent admitted the funds are not hers. Respondent admitted in her Affidavits filed with the Court she removed the funds from the CHIDNA, LLC bank account. Respondent admitted that she took the funds and had them placed in an account in her total control. Neither CHIDNA, LLC or Appellant Hauge authorized or approved of the acts of Respondent. In fact Appellants demanded the return of the funds which Respondent refused. Indeed Respondent has wrongfully taken and detained personal chattels of CHIDNA, LLC which she is not entitled to and to the exclusion of Appellants. The circuit court improperly denied summary judgment.

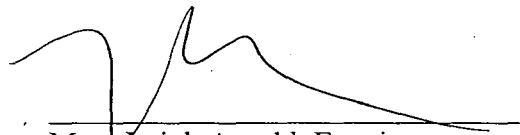
Pursuant to S.C. Code Ann. §33-44-409 Respondent as a co-member of CHIDNA owed Appellants a fiduciary duty to act in good faith. In violation of her fiduciary obligations as set forth in S.C. Ann 33-44-409, Respondent set about a course of self-dealing by wrongfully and fraudulently converting company funds to her own use and control and has otherwise unlawfully and fraudulently diverted and misappropriated company assets of the Company by removing funds from the Company account and placing them into her personal account(s). There being no material issue of fact, the circuit court erred when it found the Appellants were not entitled to summary judgment on their cause of action for breach of fiduciary duty.

Under South Carolina law a party may be unjustly enriched when it has and retains benefits or money which in justice and equity belong to another. Unjust enrichment is an equitable doctrine which permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff. Ellis v. Smith Grading and Paving, Inc., 294 S.C. 470,

473, 366 S.E.2d 12, 14 (Ct. App. 1988). Here again, it is undisputed that Respondnet misappropriated the funds of the CHIDNA, LLC to the detriment of Appellants. As with the other causes of action, there being no issue of material fact, Appellants are entitled to summary judgment on their cause of action for unjust enrichment.

CONCLUSION

The Order of Judge Young should be vacated and the matter returned to circuit court for entry of summary judgment in favor of Appellants.



Mary Leigh Arnold, Esquire
Mary Leigh Arnold, P.A.
749 Johnnie Dodds Blvd., Suite B
Mt. Pleasant, South Carolina 29465
(843) 971-6053 (phone)
(843) 971-6055 (fax)
sammie@maryarnoldlaw.com

Attorney for Appellants

Other Counsel of Record:

Thomas R. Goldstein, Esquire
Belk, Cobb, Infinger & Goldstein, P.A.
2344 Cosgrove Avenue
Charleston, SC 294052
(843) 554-4291 (phone)
(843) 554-5566 (fax)
tgoldstein@cobblaw.net

Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Case No. 2008-CP-10-000324

David A. Hauge and CHIDNA, LLC Appellants,

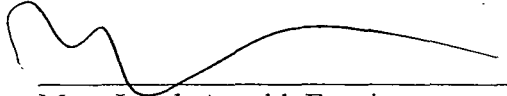
V.

Adrienne Curran Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Brief complies with Rule 211(b), SCACR.

March 18, 2010



Mary Leigh Arnold, Esquire
Mary Leigh Arnold, P.A.
749 Johnnie Dodds Blvd., Suite B
Mt. Pleasant, South Carolina 29465
(843) 971-6053 (phone)
(843) 971-6055 (fax)
Sammie@maryarnoldlaw.com
Attorney for Appellants

Other Counsel of Record:

Thomas R. Goldstein, Esquire
Belk, Cobb, Infinger & Goldstein, P.A.
2344 Cosgrove Avenue
Charleston, SC 294052
(843) 554-4291 (phone)
(843) 554-5566 (fax)
tgoldstein@cobblaw.net
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Case No.: 2008-CP-10-324

David A. Hauge, ... Appellant,

vs.

Adrienne Curran, ... Respondent.

BRIEF OF RESPONDENT

Thomas R. Goldstein
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
N. Charleston, S. C. 29415-1121
(843) 554-4291
(843) 554-5566 (fax)
tgoldstein@cobblaw.net
Attorneys for Respondent

TABLE OF CONTENTS

Table of Authorities.....	3
Reply Statement of Case.....	4
Standard of Review.....	8
Reply to Argument 1	9
Reply to Argument 2	15
Reply to Argument B.....	17
Reply to Argument C.....	18
Additional Sustaining Ground	20
Conclusion	21

TABLE OF AUTHORITIES

<u>Auto Owners Insurance Company v. Rhodes</u> , ____ S.C. ____, 682 S.E.2d 857 (2009).....	21
<u>Bass v. Gopal, Inc.</u> , 384 S.C. 238, 680 S.E.2d 917 (Ct. App. 2009).....	12
<u>Baughman v. American Tel. and Tel. Co.</u> , 306 S.C. 101, 410 S.E.2d 537 (1991) ..	8, 12
<u>Clark v. Key</u> , 304 S.C. 497, 405 S.E.2d 599 (1991).....	8, 11
<u>Hancock v. Mid-South Mgmt., Inc.</u> , 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009)	10
<u>Miller v. Borg-Warner Acceptance Corp.</u> , 279 S.C. 90, 302 S.E.2d 340 (1983).....	8, 11
<u>Nationsbank v. Scott Farm</u> , 320 S.C. 299, 465 S.E.2d 98 (Ct. App. 1995)	10
<u>S. C. Public Serv. Comm'n v. City of Rock Hill</u> , 268 405, 408 S.E.2d 228, 229 (1977)	
<u>Time Warner Cable v. Cons Serv.</u> , 381 S.C. 275, 672 S.E.2d 816 (Ct. app. 2009).....	9
<u>Wade v. Berkeley County</u> , 339 S.C. 495, 529 S.E.2d 734 (Ct. App. 1999), affirmed <i>en banc</i> 339 S.C.513, 529 S.E.2d 734 (Ct. App. 2000) affirmed in part, 348 S.C. 224, 559 S.E.2d 586 (2002).....	8
Other authorities:	
Rule 23(b)(1), S. C. Rules of Civil Procedure	17
Rule 201, S. C. Rules of Evidence	9
Black's Law Dictionary (Fifth Edition)	17

Reply To Appellant's Statement of Case

The appellant's statement omits some essential, undisputed and material procedural history, which is essential to an understanding of the case. Therefore, in order to clarify the appellant's statement of the case, the respondent offers the following:

David Hauge and Adrienne Curran are husband and wife. They married on April 8, 1994, in Charleston and separated in Key West on or about January 18, 2007. (Supplemental R.O.A. page 1 [David H. Hauge's petition for dissolution of marriage]) As husband and wife, in addition to practicing medicine, the parties operated an high end antiques store, called The King Street Antiques Mall, located at 495 King Street in Charleston, South Carolina. The Antiques Mall occupied a parcel of real estate owned by the parties' limited liability company called Chidna, in which the parties each own a 50 per cent interest. (R.O.A. p. 13 [paragraph 5 of plaitniff's complaint]) The owners and several vendors sold antiques at the site, and the parties oversaw the general operation of the business.

In October, 2003, the plaintiff, David Hauge, moved to Key West to practice medicine. His wife, Adrienne, followed shortly afterwards, and the parties continued to manage the antiques business through on-site managers. Ultimately, the parties decided to close the business, which included selling the real estate titled in Chidna. (R.O.A. p. 65 [Curran affidavit]) The parties sold 495 King Street on March 5, 2007, to T-Mouse 83, L.L.C. for \$2,200,000.00. (R.O.A. p. 65 [Curran affidavit]) Ted Hostetter represented the parties at closing. The parties paid the taxes and expenses of the closing, and escrowed the remaining funds in Mr. Hostetter's account until December 15, 2007. At that time, Mr. Hostetter transferred the money against the defendant's express, written wishes to an

NBSC account in the name of Chidna. Thereafter Dr. Curran transferred the money to a separate interest bearing account, and those proceeds remain untouched to this day. (R.O.A. pps. 47, 65 and 72) After the parties closed the antiques business in Charleston, Dr. Hague informed the defendant that he desired a divorce. The parties separated, and Dr. Hauge filed his petition for dissolution of the marriage on December 7, 2007, at case number 2007-DR-1641-K. (Supplemental R.O.A. p. 1)

On page 1 of his petition for divorce, Dr. Hauge alleges that there is marital property, and on page 2 asks that the Family Court distribute the property in accordance with § 61.075 Florida Statutes. (For the court's convenience this statute is included in the record on appeal.) Paragraph 7 of the petition alleges that the plaintiff's financial declaration discloses all the marital property, and on page 6 of that sworn statement, Dr. Hauge identifies Chidna as marital property with a value of \$1,350,000.00. (See Supplemental R.O.A. page 10 [Family Law Financial Affidavit]) At Dr. Hauge's request, the Family Court in Florida issued a "STANDING TEMPORARY DOMESTIC RELATIONS ORDER" on August 27, 2008, which, among other things, required that the parties freeze all assets and not encumber, transfer, or damage them. (R.O.A. p. 47 [order])

On January 22, 2008, the plaintiff/appellant filed suit for dissolution of Chidna at case number 2008-CP-10-324. The caption is David Hauge v. Adrienne Curran. (R.O.A. p. 23 [complaint]) This complaint also seeks punitive damages for various alleged torts. On September 18, 2008, the plaintiff filed a proposed amended complaint, which seeks to change the caption to add Chidna as a party plaintiff. (R.O.A. p. 35 [amended complaint]) Even though the plaintiffs, David Hauge and Chidna are listed as parties in the proposed amended complaint, the lower court never added Chidna, and therefore, only Hauge

appeals the lower court's order. In the South Carolina action, Dr. Hauge alleges that his wife has improperly taken the proceeds from the sale of the King Street building, converted those sums to her own personal use in violation of the parties' operating agreement, and otherwise breached her fiduciary duty to him. On January 22, 2008, when Dr. Hauge filed his complaint in South Carolina, both parties were residents of Monroe County Florida, although Dr. Curran was then serving as medical director aboard the M/V Norwegian Jewel stationed in the Mediterranean Sea. (See Supplemental R.O.A. pps. 15-17 [March, April, May 2008 pay records]) Dr. Hauge alleged that he served Dr. Curran with his South Carolina pleadings on March 7, 2008, when he mailed the pleadings certified mail to Dr. Curran's landlady. (See R.O.A. p. 31 [proof of service]) On July 30, 2008, the plaintiff served the defendant by personal service in Monroe County Florida (Key West).

On June 10, 2008, Dr. Hauge obtained an *ex parte* temporary restraining order, which restrained Dr. Curran from disposing of company assets, and setting a hearing for June 18, 2008 at 9:30, to determine whether the *ex parte* order should of should not remain in effect. (R.O.A. p. 8 [order]) On August 14, 2008, the circuit court entered another *ex parte* restraining order, which required the defendant/respondent to maintain the funds at NBSC until further order of the court and required Dr. Hauge to post a \$1,000.00 bond, which he never did. (R.O.A. p. 10 [order] and page 79 [docket sheet])

After being served on July 30, 2008, the respondent filed a motion to dismiss on August 25, 2008, styled "Notice of Special Appearance to Contest Jurisdiction." R.O.A. p. 33 [notice]) Respondent challenged the personal and subject matter jurisdiction of the Court and asserted further that the same action between the same parties over the same subject is already pending in Florida. After Dr. Hauge filed a proposed amended

summons and complaint on September 18, 2008, (R.O.A. p. 35 [amended complaint]), the defendant's notice of special appearance came before the Honorable R. Markley Dennis on February 4, 2009, who determined that the court had jurisdiction. (R.O.A. p. 1 [order]) Thereafter, Dr. Curran filed her answer along with a motion to dissolve the temporary restraining orders on February 18, 2009. (R.O.A. pps. 42 and 50 [answer and motion]) The answer admits that the parties are in Family Court in Florida and denies the allegations of tort and asserts that the entire proceeds of the sale are intact, less the capital gains taxes and expenses and costs of the sale. (R.O.A. pages 42, 50 and 64 [answer, motion to dissolve restraining order, affidavit])

On April 16, 2009, the plaintiff renewed his motion for summary judgment along with an affidavit in support. (R.O.A. p. 52 and 68 [motion for summary judgment and affidavit]) The plaintiff also relied upon 2 affidavits filed by the defendant. (R.O.A. pages 64 and 71 [affidavits]) The defendant also filed the plaintiff's responses to request for admissions and a written reply to resist the plaintiff's application for summary judgment and to support her motion to dissolve the temporary restraining order. (R.O.A. p. 75 [request for admissions and reply])

On June 8, 2009, the Honorable Roger M. Young took up the plaintiff's motion for summary judgment and the defendant's motion to dissolve the temporary restraining order. The trial court considered all the pleadings, the 3 affidavits, answers to request for admission and other exhibits in evaluating the cross motions. (See p. 68 of R.O.A. for affidavit of Hauge, pps. 64 and 71 for affidavit and reply affidavit of Curran, and p. 47 of R.O.A. and pps. 1-17 of Supplemental R.O.A. for exhibits) On June 15, 2009, Judge Young issued his order, granting the defendant's motion to dissolve the restraining order

and dismissed the plaintiff's case without prejudice on the ground that the dispute is pending in the state of Florida, and that if the State of Florida determines that the money in dispute is not marital property, the appellant can re-file his action and renew his application for relief. (R.O.A. p. 2 [order]) This order says in applicable part: "It may be that Hauge is entitled to 50% of the money, but given that Hauge listed it as a marital asset, that decision is better left to the Florida court handling the divorce so as to avoid duplicative litigation. Hauge cannot submit the disputed funds to the Florida court and get the relief requested there, and then simultaneously ask this court to enter an order potentially at variance with the Florida court."

On July 10, 2009, the appellant filed a motion for reconsideration (R.O.A. p. 56), and the defendant filed a written reply on July 29, 2009. (R.O.A. p. 58) The lower court issued its written order on July 30, 2009, denying plaintiff's motion. This appeal followed on August 27, 2009.

STANDARD OF REVIEW

The plaintiff's application for a restraining order is an injunction and therefore an equitable action. Miller v. Borg-Warner Acceptance Corp., 279 S.C. 90, 302 S.E.2d 340 (1983). On the review from the grant of a preliminary motion, the defendant's motion to dissolve a temporary restraining order, the appellate court is bound by the trial court's findings unless there is no evidentiary support. Clark v. Key, 304 S.C. 497, 405 S.E.2d 599 (1991). As to the plaintiff's motion for summary judgment, it is appropriate when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Mosteller v. County of Lexington, Op. No. 24992 (S.C. Sup.Ct. filed August 23, 1999) (Shearhouse adv. Sh. No. 28 at 13); Young v. South Carolina Dep't. of Corrections, 333 S.C. 714, 511 S.E.2d 413 (Ct. App. 1999); Rule 56(c) SCRCP. In determining whether any triable issue of fact exists, as will preclude summary judgment, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. Strother v. Lexington County Recreation Comm'n., 332 S.C. 54, 504 S.E.2d 117 (1998); Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., Op. No. 3005 (S.C. Ct. App. filed June 1, 1999) Shearhouse

Adv. Sh. No. 20 at 22).

Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Mosteller, *supra*. All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. Vermeer, *supra*. Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991) Wade v. Berkeley County, 339 S. C. 495, 529 S.E.2d 734 (Ct. App. 1999), affirmed *en banc*, 339 S.C. 513, 529 S.E.2d 734 (Ct. App. 2000), affirmed in part, 348 S.C. 224, 559 S.E.2d 586 (2002) (The Supreme Court only took up the issue involving the covenant not to execute on judgment and left intact the discussion on the standard for summary judgment.)

Reply to Argument 1

The lower court correctly found that the Florida action involves the same parties and the same claims and thereby correctly dismissed the action below without prejudice.

The appellant correctly identifies the law on such an action¹ as that taken by the lower court. Citing S. C. Public Serv. Comm'n v. City of Rock Hill, 268 405, 408 S.E.2d 228, 229 (1977), the appellant identifies the controlling factors as: (1) another action pending, (2) between the same parties, (3) for the same claim.

The appellant concedes that at the time Judge Young dismissed the below action without prejudice, that Dr. Hauge filed two actions and that both actions were pending. Likewise, the appellant does not contest that the action in Florida is between the same husband and wife who are the same parties in this appeal. Where the parties part company is on the analysis of element number 2. The appellant says on page 5 of his brief: "The parties clearly are not the same. Chidna, L.L.C. has every right to pursue its claims for any and all damages resulting from the [alleged] improper removal of funds from its account." In short, Dr. Hauge says that because he filed a proposed amended

¹ The appellant never challenges the dissolution of the restraining order. Instead he challenges the dismissal of his action without prejudice.

complaint that seeks to change the caption, that the actions cannot be the same, and therefore, the lower court erred. There are three fatal flaws with Dr. Hauge's argument.

First, Chidna is not a party to this appeal. (See notice of appeal in R.O.A. at page 62) Therefore the potential dissimilar caption argument never arises. Second, Dr. Hauge cannot ask the lower court or this court to disregard the true state of affairs, and in a search for the truth, sometimes the evidence that is not present becomes as important as the evidence that is present. Dr. Hauge argues forcefully that the prospect of a new party, Chidna L.L.C., will be an independent party—as opposed to the couple's alter ego—but yet does not offer Chidna's operating agreement. This omission is telling, for on the one hand, he asserts to this Court that Chidna stands alone, but simultaneously asks this Court to ignore the indisputable fact that Chidna is a family owned limited liability company with two members: David A. Hauge and Adrienne M. Curran, husband and wife. It really is no matter that the operating agreement is absent because Dr. Hauge admits that "the sole members of Chidna, L.L.C. . . . are Plaintiff and Defendant." See ¶ 5 of plaintiff's complaint, R. O. A. p. 13. See ¶ 6 of Dr. Hauge's affidavit: "The sole members of Chidna, LLC (hereinafter the "Company") are Plaintiff and Defendant. (R.O.A. p. 69) (In ¶ 14 of his May 19, 2009, affidavit, Dr. Hauge swears: "The sale proceeds are not property subject to any Order relating to the action for dissolution of marriage by and between Plaintiff Hauge and Defendant." (If this Court grants oral argument on this case, it will be interesting to see how the Court treats this statement, which is demonstrably false.) Courts are not required to accept tortured explanations to defeat indisputable facts. In fact, a party can force a court to take judicial knowledge of commonly known facts, which is not necessary here since the pleadings join the issue. ("A court shall take judicial notice

if requested by a party and supplied with the necessary information.” Rule 201(d) S. C. Rules of Evidence.) Whether a court construes a statute or a contract, the touchstone of any judicial analysis is common sense: “Common sense and good faith are the leading touchstones of construction of the provisions of a contract; where one construction makes the provisions unusual or extraordinary and another construction which is equally consistent with the language employed, would make it reasonable, fair, and just, the latter construction must prevail.” Time Warner Cable v. Cons Serv., 381 S.C. 275, 672 S.E.2d 816 (Ct. app. 2009) Likewise, when a party asserts a fact in a pleading, and the respondent admits the fact, the issue is conclusively established, and the court requires no further proof. Therefore, if Dr. Hauge desired to contest the fact that Chidna something more than an alter ego of a husband and wife, it is his burden to allege it and prove it. However in light of his pleading and the affidavits submitted to the Court, there is no basis to accept Dr. Hauge’s assertion that Chidna is some independent entity whose rights need protecting by him. (We will address the derivative nature of such a claim and how a party asserts one on page 19 below.) The point is that Dr. Hauge is not permitted to ask this Court to overturn a lower court decision because the lower court refuses to accept a false assertion and relies upon the pleadings and affidavits in reaching a decision consistent with the plaintiff’s voluntary choice of forum in Florida. In light of Dr. Hauge’s pleadings, Judge Young had no choice but to find that the same dispute between the same parties is pending in Florida.

Dr. Hauge’s request to the lower court was for an injunction, which is an equitable remedy, Miller v. Borg-Warner Acceptance Corp., 270 S.C. 90, 302 S.E.2d 340 (1983). In reviewing the defendant’s request to dissolve it, the defendant filed a “preliminary motion,”

by which this Court “is bound by the trial court’s findings . . . unless there is no evidentiary support. Clark v. Key, 304 S.C. 497, 405 S.E.2d 599 (1991) (non resident defendant subject to jurisdiction) Since the posture of the case before the Court is something like a summary judgment: “[i]n order to resist a motion for summary judgment, the nonmoving party must come forward with specific facts showing genuine issues necessitating trial.” Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991) Once a party moving for summary judgment carries the initial burden of showing an absence of evidentiary support for the nonmoving party’s case, the nonmoving party may not simply rest on mere allegations or denials contained in the pleadings. *Id.* NationsBank v. Scott Farm, 320 S.C. 299, 465 S.E.2d 98 (Ct. App. 1995). Technically, the defendant’s motion is a “motion to dissolve restraining order,” but it is clear that the lower court applied a summary judgment standard. See Bass v. Gopal, Inc., 384, S.C. 238, 680 S.E.2d 917 (Ct. App. 2009): “However, in footnote 3 of the opinion [Hancock v. Mid-South Mgmt., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009), our Supreme Court stated that in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. However, in footnote 3 of the opinion, the Court was careful to point out that its pronouncement concerning a mere scintilla of evidence was not necessary for its determination of the outcome in the Hancock case. In any event, we must assume any evidence, even a scintilla that is useful to withstand a summary judgment motion must meet the prerequisite of being probative. See McDowell v. Stilley Plywood Co., 210 S.C. 173, 179, 41 S.E.2d 872, 874-75 (1947) Bass v. Gopal, Inc., 384 S.C. 238, 680 S.E.2d 917 (Ct. App. 2009) Probative means genuine. This record reveals that there is no

probative evidence in this case that Chidna L.L.C. is a stand-alone entity, let alone a party to the action. It is nothing more than Drs. Hauge and Curran, husband and wife, and Dr. Hauge's request that two states make a determination on the same subject offends the notion of judicial economy.

Third, as presented to the lower court, the principle of judicial estoppel requires that the decision below be affirmed. Dr. Hauge chose his forum. He chose Florida, and after choosing Florida, he must have assumed that he could bring some additional pressure to bear on his wife by bringing a second action on a second front to wear down his opponent. As Judge Young noted in his order on page 5, in light of the posture created by Dr. Hauge, there now exists the real possibility of inconsistent decisions. A mathematical matrix demonstrates this: Logic requires that Chidna either is or is not marital property—there is no other possible conclusion. Furthermore, the Florida matrimonial court has jurisdiction over Chidna even if the parties only have an "interest" in the business. See Subsection f of § 61.075, Florida General Statutes. Therefore mathematical logic limits the possible outcomes to four:

First, Florida and South Carolina can both determine Chidna is marital property.

Second, Florida and South Carolina can both determine Chidna is not marital property.

Third, Florida could determine it is and South Carolina could disagree.

Fourth, Florida could determine it is not and South Carolina could find that it is.

As the matrix demonstrates, only one of the possible four outcomes (the second) allows South Carolina to address it. If South Carolina cannot divide it, it certainly cannot entertain an application for a judgment arising out of Dr. Curran's alleged misuse of marital

property. A simpler way of saying this is to say that the law does not recognize a tort when married people disagree over how to run their homes.

Under the first and second decisions, the two states' courts are in harmony, but only under 2 would South Carolina have jurisdiction over the subject matter. Decision (1) deprives South Carolina of subject matter jurisdiction. Likewise (3) and (4) do as well. In light of the undisputed fact that Dr. Hauge alleges that Chidna is marital property, and in light of the fact that the defendant agrees, it is inescapable that the lower court correctly ruled to vacate the restraining order and dismiss the case without prejudice. As Judge Young noted, there is a very real possibility of inconsistent judgments, which the above matrix makes clear. Of course, courts are not governed by mathematics, but they are governed by logic and reason, so how does this Court review the order below and decide that the lower court correctly dismissed the action?

The answer is: one looks to Dr. Hauge. Dr. Hauge asked the Florida Court to freeze the Chidna money. In order to do this, he asserted to the Florida matrimonial court that Chidna is a marital asset by which Florida had jurisdiction over the subject matter. See page 3 of his affidavit at the Supplemental Record on Appeal at page 70. He thus chose his forum and obtained the relief he requested. He cannot represent one thing to the Florida court to induce it to grant him relief and then represent the complete opposite thing to the South Carolina court to induce it to grant him inconsistent relief. (For example, if Dr. Hauge got punitive damages in South Carolina against his wife, then the Florida court is bound to make an adjustment for such award in the division of the marital estate?) Dr. Hauge made the representation, induced the court to act and obtained a benefit, notwithstanding his assertion to the contrary in his affidavit. See Cothran v. Brown 357

S.C. 210, 592 S.E.2d 629 (2004):

We now adopt the following elements necessary for the doctrine [of judicial estoppel] to apply: (1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent.

The present case is a textbook example of the kind of shifting position condemned by the Supreme Court in Cothran. Either Chidna is marital property or is not—it cannot be both. Since Dr. Hauge asserted that it is and received a beneficial ruling from the Florida court, which relied upon his assertion, he cannot now complain that he did not mean what he said.

There is no question but that Judge Young correctly ruled and that the decision should be affirmed, especially because Judge Young dismissed Hauge's South Carolina action without prejudice. If he applied to the Florida Court to amend its order and withdrew his representation to that court, then perhaps he could make a colorable claim that the same action is not pending in two courts, but as the matter now stands, Dr. Hauge has asked the judiciary of two states to divide up his and his wife's limited liability company.

REPLY TO ARGUMENT 2

The claims in Florida and South Carolina are the same claims between the same parties.

The appellant asserts a facile argument on page 5 of his brief that the actions cannot be the same because the South Carolina action alleges conversion, unjust enrichment and breach of fiduciary duties. As Dr. Hauge says: "There is no similarity

between these claims and any claims that could be asserted in the family court proceedings.” First, Dr. Hague makes an incorrect statement of Florida law. See § 61.075 Florida General Statutes. Second, Dr. Hauge obfuscates the point. The point is that he put the Chidna matter before the Florida court. Because Florida, like South Carolina, can equitably divide a spouse’s interest in a limited liability company, see Florida General Statute § 61.075, which is similar to South Carolina statute, § 20-3-630, S. C. Code, ann., Florida can adjust the division to compensate Dr. Hauge for any alleged improper acts, including “waste, depletion or destruction of marital assets.” § 61.075(f) Florida General Statutes. Like South Carolina, Florida’s domestic court is the exclusive forum for division of equitable property. See § 26.012 Florida Statutes. Assuming Dr. Hauge could prove “conversion of funds, unjust enrichment and breach of fiduciary duty” of a marital asset—he must ask the Florida court to make an adjustment in his equitable share under § 61.075 (f): “The desirability of retaining any asset, including an interest in a business, corporation, or professional practice, intact and free from any claim or interference by the other party.” Likewise, subsection (f) permits the Florida court to make an adjustment for any “intentional dissipation, waste, depletion, or destruction of marital assets after the filing of the petition or within 2 years prior to the filing of any petition.” This is the identical relief sought by Dr. Hauge in South Carolina. Such an adjustment is equivalent to the punitive damages sought by Dr. Hauge for his allegations of tort. If the Florida court determines that Chidna is marital property, which is what Dr. Hague asserts to this day, this entire conversation about alleged torts is a waste of time because, as argued above, a thing cannot simultaneously be itself and not itself, and Family Court is the exclusive forum for spousal claims. Dr. Hauge alleged Chidna is marital property; the Florida court took him at

his word and issued the order he requested, and now he wants South Carolina to look the other way and ignore his representations to the Florida court and ignore the Florida order. (Another way of saying the same thing is this: if one can assert conversion or breach of fiduciary duty over marital property, then one can demand a jury trial in Family Court.) The lower court refused to be a party to his duplicitous assertions, and there is no reason for this Court to reverse that decision.

REPLY TO ARGUMENT B

Judge Young did not overrule Judge Dennis' prior denial of the respondent's motion to dismiss.

The parties agree that a circuit court judge lacks the authority to overrule another circuit judge. Judge Dennis heard the defendant's application on a "notice of special appearance to contest jurisdiction."² (See R.O.A. p. 33 [notice of special appearance]) Judge Dennis concluded that he could not go outside the four corners of the pleading and denied the motion to dismiss on jurisdictional grounds. (See order of Judge Dennis and statement of Judge Dennis in transcript of hearing at the record on appeal on pps. 103-106.) In other words, he ruled that the court does have jurisdiction based upon his review of what is in the plaintiff's complaint. Judge Dennis refused to look at anything outside the four corners of the plaintiff's complaint. Since the court has jurisdiction, the defendant filed her answer, which included a motion to dismiss on Rule 12(b)(8) and a motion to dissolve the temporary restraining order. To support her motions, the defendant offered exhibits, two affidavits, and answers to request for admissions. The defendant was no longer asking the court to refuse to find jurisdiction; rather, she was asking for affirmative relief,

² Respondent's counsel is aware the "notice of special appearance" is an outdated term and that the new nomenclature is a motion to dismiss. One of the few benefits of aging is the freedom to act old.

which took the matter outside the four corners of the complaint. In taking up the defendant's motion, the lower court considered the affidavits, discovery responses, exhibits and briefs, which is the same as a summary judgment standard. As set forth above in the standard of review for a preliminary motion is a much different standard than that applied by Judge Dennis in finding jurisdiction. Dr. Hauge offered a single affidavit (R.O.A. p. 68) and a memorandum of law, but no exhibits, or other evidence of a genuine issue of material fact. Rather, he chose to stand on legal arguments and his bare assertion that Chidna is not marital property even though he told the Florida court the exact opposite. Judge Young did not overrule Judge Dennis, but reached a decision on a different issue after applying the correct standard to the evidence before him. Even in the motion for reconsideration, Dr. Hauge offered nothing to demonstrate a genuine issue of material fact other than legal arguments.

REPLY TO ARGUMENT C

The respondent has conceded that the funds in question are marital property and properly escrowed in accordance with the Florida Standing Domestic Relations Order.

The appellant's statement regarding the standard is summary judgment is correct but incomplete. The respondent has no quarrel with the appellant's recitation of the standard of review, but the appellant refuses to recognize that the genuine issue of material fact must be **genuine** and supported by **probative** evidence. In its August 2009, opinion in Bass this Court puts the word "genuine" in boldface. (Bass is discussed at page 12 above.) Likewise, the appellant has no quarrel with the appellant's assertion that South Carolina law makes a limited liability company a recognizable entity. But, as appellant will

concede in his reply brief, any action against Chidna by its members is derivative, and this is important. Derivative means: "Coming from another; taken from something preceding; secondary. That which has not its original in itself, but owes its existence to something foregoing. Anything obtained or deduced from another." Black's Law Dictionary Fifth Edition. See Rule 23(b)(1) South Carolina Rules of Civil Procedure for the manner in which a party can bring a derivative action. Even if Dr. Hauge amends the complaint, he is still not suing Chidna "derivatively" because it has taken some corporate action harmful to the members; rather, he is simultaneously suing his wife in two states over the same property. Dr. Hauge only suggests that Chidna might be a party in his amended complaint because he realized that he needs to distinguish this action from the action pending in Florida. The lower court saw through this strategy. Dr. Hauge is saying to the Florida courts: "My wife will not give me my share of marital property." He is saying to the South Carolina courts: "I want punitive damages because my wife will not give me my share of marital property." Thus when the appellant writes on page 7 of his brief: "Respondent admitted the funds are not hers," the appellant deliberately misses the point. Here is what she says in her June 3, 2009 affidavit: "I agree with paragraph 13. The money is not my property. It is not David's either. The money belongs to the two of us, and it is being divided by us in accordance with a divorce action now pending in Florida." (R.O.A. p 73 [affidavit])

This is a far cry from the appellant's suggestion that Dr. Curran's testimony supports his legal theory. Respondent says that the Florida court directed that all the marital property be frozen, and that is exactly what she did—she has followed the Florida decree to the letter, and if she has not, Dr. Hauge can bring any alleged disobedience to

the attention of the Monroe County Family Court and it will take up whatever application Dr. Hauge cares to make. Thus the appellant's reliance on South Carolina law requiring the exercise of fiduciary duty is wide of the mark. The Florida court has directed Dr. Curran what to do, and she has complied. For Dr. Hauge to demand that she disobey the order of the Florida court and turn the money over to him sheds a bright beam upon his motivation in this case. Frankly, it is astonishing that Dr. Hauge invoked the Florida court to freeze the Chidna money and thereafter commenced a separate suit in a foreign state to punish his wife for obeying the Florida Family Court.

ADDITONAL SUSTAINING GROUND

The Plaintiff's claim is not ripe.

As allowed by Rule 220(c), South Carolina Appellate Court Rules, the respondent submits that the lower court's order can be sustained on the additional ground of ripeness. The appellant's claim is not ripe because, rightly or wrongly, Dr. Hauge put the Chidna money in play in the Florida matrimonial court. Even if this Court disagrees with everything the lower court found, it must concede, as the lower court concluded, that there is at least the possibility of inconsistent decisions. Because Dr. Hauge initially invoked Florida as his choice of forum, Dr. Hauge's claims in South Carolina have not arisen. His claims, whatever they may be, are inchoate because after the Florida court agrees with Dr. Hauge and divides Chidna as a marital asset, then there are no claims in South Carolina unless this state creates a new cause of action for interspousal mismanagement. The only way for Dr. Hauge's claims against Dr. Curran to arise is if, and only if, the Florida Court determines that the proceeds from the sale of Chidna's real estate are not marital

property. Therefore, the subject matter has not yet arisen. Moreover, the dismissal is without prejudice, and therefore Dr. Hauge has suffered no injury. Because the lower court dismissed Dr. Hauge's action without prejudice, he is free to re-file it should the Florida courts determine that Chidna is not marital property. Therefore, he has yet to suffer an ascertainable injury or a cognizable claim and therefore lacks standing to bring an action in South Carolina. "A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character." Auto Owners Insurance Company v. Rhodes, ___ S.C. ___, 682 S.E.2d 857 (2009)

Conclusion

The record demonstrates that the lower court correctly concluded that the Florida Court previously took jurisdiction over the parties' marital dispute at appellant's request. In deciding to dissolve the ex parte restraining orders, the lower court determined that the subject matter of those orders is already in control of the Florida court and that action began earlier than the South Carolina case. The lower court correctly found that Dr. Hauge's multiplicity of suits over the same subject matter and between the same parties gave rise to the potential of inconsistent decisions. Therefore, the lower court correctly dismissed the action. Moreover, Dr. Hauge can demonstrate no prejudice by the decision as he is free to re-file his application should the Florida court determine Chidna is not marital property.

Respectfully submitted,

Thomas R. Goldstein
Belk, Cobb, Infinger & Goldstein, P.A.
Attorneys for Respondent
P.O. Box 71121
N. Charleston, SC 29415-1121
843-554-4291; 843-554-5566 fax
tgoldstein@cobblaw.net

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Case No.: 2008-CP-10-324

David A. Hauge, ... Appellant,

vs.

Adrienne Curran, ... Respondent.

CERTIFICATE OF COUNSEL

I certify this final brief complies with Rule 211(b) South Carolina Appellate Court Rules.

Thomas R. Goldstein
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
N. Charleston, S. C. 29415-1121
(843) 554-4291
(843) 554-5566 (fax)
tgoldstein@cobblaw.net

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Case No. 2008-CP-10-000324

David A. Hauge Appellants.

Adrienne Curran Respondents.

RECORD OF APPEAL

Mary Leigh Arnold
Mary Leigh Arnold, P.A.
749 Johnnie Dodds Blvd., Suite B
Mt. Pleasant, South Carolina 29465
(843) 971-6053 (phone)
(843) 971-6055 (fax)
Sammie@maryarnoldlaw.com
Attorney for Appellant

Thomas R. Goldstein, Esquire
Belk, Cobb, Infinger & Goldstein, P.A.
2344 Cosgrove Avenue
Charleston, SC 294052
(843) 554-4291 (phone)
(843) 554-5566 (fax)
tgoldstein@cobbblaw.net
Attorney for Respondent

INDEX

Order of February 4, 2009.....	1
Order of June 29, 2009.....	2
Order of August 4, 2009.....	7
Order of June 10, 2008.....	8
Order of August 19, 2008.....	10
Complaint.....	13
Proof of Service	31
Defendant Notice of Special Appearance August 25, 2008.....	33
Amended Complaint, September 18, 2008.....	35
Defendant Motion To Dismiss February 18, 2009.....	42
Defendant Motion to Dissolve February 18, 2009.....	50
Plaintiff Motion for Summary Judgment April 16, 2009.....	52
Notice of Hearing April 27, 2009.....	54
Plaintiff's Motion for Reconsideration July 10, 2009.....	56
Defendant's Reply to Motion July 29, 2009.....	58
Notice of Appeal August 27, 2009.....	62
Affidavit of Adrienne Curran May 14, 2009.....	64
Affidavit of David A. Hauge June 1, 2009.....	68
Affidavit in Response to David Hauge June 22, 2009.....	71
Response to Request for Admission March 30, 2009.....	75

Charleston County Clerk of Court Docket Sheet.....	78
Hearing Transcript June 8, 2009	86
Hearing Transcript February 4, 2009.....	97
Certificate of Appellant.....	i

COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

FILED

Case No.: 2008-CP-10-000324

versus
2009 FEB -4 PH 3: 16
Adrienne Curran

David A. Hauge

PLAINTIFF(S)

JULIE J. ARMSTRONG
CLERK OF COURT

DEFENDANT(S)

BY _____

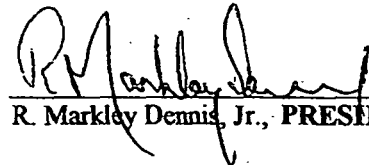
CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and the verdict has been rendered.
- ☒ **DECISION BY 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 _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
- NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING THE 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:

1. Defendant's Motion to Dismiss is Denied based on the Pleadings.
2. Plaintiff's Motion is withdrawn

Dated at Charleston, South Carolina, this 3 day of February, 2009.


R. Markley Dennis, Jr., PRESIDING JUDGE

This judgment was entered on the _____ Day of _____, 20____, and a copy mailed first class 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)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

DAVID A. HAUGE & CHIDNA, L.L.C.,

PLAINTIFFS,

V.

ADRIENNE CURRAN,

DEFENDANT.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2008-CP-10-324

ORDER DENYING SUMMARY
JUDGMENT AND DISMISSING
CASE WITHOUT PREJUDICE

FILED
2009 JUN 29 PM 3:36
JULIE J. ARMSTRONG
CLERK OF COURT

This matter came before this Court on the Plaintiffs' motion for summary judgment, and a hearing was held on June 8, 2009. Appearing on behalf of the Plaintiffs was Mary L. Arnold, Esquire, and on behalf of the Defendant was Thomas R. Goldstein, Esquire. After reviewing the motion, the affidavits submitted by the parties and having heard oral arguments, this Court denies Plaintiffs' Motion for Summary Judgment and dismisses this case without prejudice.

Facts

This action was initiated by CHIDNA, LLC (hereinafter "CHIDNA"), and David Hauge (hereinafter "Hauge"), against Adrienne Curran (hereinafter "Curran"). Hauge and Curran are husband and wife and are currently seeking marital dissolution in the State of Florida. The Complaint sets forth the following causes of action: (1) derivative action by member; (2) breach of fiduciary duty; (3) conversion; (4) unjust enrichment; and (5) injunctive relief. CHIDNA, LLC, is a limited liability company organized under the laws of the State of South Carolina. Hauge and Curran are the sole members of CHIDNA, and each have a respective fifty (50%)

interest.

CHIDNA owned certain commercial real property located at 495 King Street, Charleston, South Carolina. Around March 5, 2007 CHIDNA sold the property located at 495 King Street for the sum of \$2,200,000.00. The net proceeds from sale were approximately \$1,600,000.00 and were held in escrow for a number of months following the closing by Teddy Hostetter, Esquire. Hostetter ultimately transferred the sale proceeds to the account of CHIDNA, LLC at NBSC. Soon after the proceeds were received by CHIDNA, Curran transferred the sale proceeds from CHIDNA's bank account and deposited them into an account in her individual name.

On December 7, 2007, the Plaintiff commenced an action in the Monroe County Court of Common Pleas, Family Division, in Florida for dissolution of their marriage. In Hauge's petition for dissolution of marriage, the Plaintiff filed a financial declaration showing approximately \$1.35 million as a marital asset—which is the fund that is the subject of this suit. He lists it on his financial declaration as "CHIDNA, L.L.C." Thereafter, on August 27, 2008, the Monroe County Court of Common Pleas, Family Division, issued a Standing Domestic Relations Order, which, among other things, directed the parties not to dispose, waste, or disburse funds until further order of the Court. This Domestic Relations Order covers the CHIDNA fund.

On January 22, 2008, the plaintiffs filed suit for dissolution of CHIDNA, LLC. The complaint alleges that the defendant has misapplied money belonging to the limited liability company. Thereafter, Plaintiff filed for Temporary Injunctive Relief enjoining and restraining Curran from disposing, moving, expending, liquidating, transferring or in any way utilizing the subject proceeds, which this Court granted on August 14, 2008. This temporary injunction is the subject of the current action.



Hauge alleges that his wife has improperly taken the proceeds from the sale of the building owned by CHIDNA (hereinafter the "Chidna fund" for convenience) and converted those sums to her own personal use in violation of the parties' operating agreement. In her answer, the defendant denies the allegations of the complaint and asserts that the entire proceeds of the sale are intact, less the capital gains taxes and expenses and costs of the sale.

The Defendant filed a motion to dismiss, answer and a motion to dissolve this Court's restraining order on February 18, 2009. In her motion to dismiss, the defendant contends that the subject matter of this lawsuit - the proceeds of the assets of CHIDNA, L.L.C., - is already subject to the control of the Court of Common Pleas, Family Division, in Monroe County Florida.

Standard of Review

Rule 56(c) of the South Carolina Rules of Civil Procedure provides that a trial court may only grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56 (c), SCRPC; Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334, 611 S.E.2d 485 (2005); BPS, Inc. v. Worthy, 362 S.C. 319, 608 S.E.2d 155 (Ct. App.2005).

Discussion

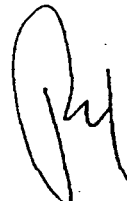
In arguing that this case contains no genuine issue of material fact, Hauge asserts that the affidavits establish that the Chidna money is "corporate" money and therefore not subject to the Florida court, which only has jurisdiction over matters related to his marriage. He argues further that because there is no dispute that the Chidna money is corporate money, he is entitled to at least one-half of the money immediately. This argument fails for several reasons.

First, it is not clear to this Court that Hauge is automatically entitled to ½ of the Chidna money. The parties' operating agreement is not before the Court. As the affidavits establish, Drs. Hauge and Curran, husband and wife, ran an upscale antiques business on King Street. After they moved back to Florida, they closed the business, sold the real estate, paid the closing costs and taxes associated with the sale, and put the remainder of the money in the bank. This is the money in dispute. Apparently, there was no disagreement about this procedure until Dr. Hauge decided to file his divorce action in December, 2007. He then filed his South Carolina suit January 22, 2008. It may be that Hauge is entitled to 50% of the money, but given that Hauge listed it as a marital asset, that decision is better left to the Florida court handling their divorce so as to avoid duplicative litigation. Hauge cannot submit the disputed funds to the Florida court and get the relief requested there, and then simultaneously ask this court to enter an order potentially at variance with the Florida court.

Additionally, as the return to the Plaintiffs' motion for summary judgment points out, Hauge has not yet responded to the defendant's standard interrogatories and request for production. This Court does not even have before it the operating agreement of CHIDNA, L.L.C., so obviously this case is in the earliest stages of discovery, and under such a posture, it is inappropriate to enter a summary judgment. Plaintiff's motion for Summary Judgment is therefore denied.

Defendant's Motion to Dissolve the Temporary Injunction

This brings me to the defendant's motion to dissolve the injunction issued on August 14, 2008. The relief requested by Hauge is to protect the disputed CHIDNA money. Since the Florida court in Monroe County has already issued a Standing Domestic Relations Order, which has the same effect as this Court's August 14, 2008, temporary injunction, and since the Plaintiff invoked



the jurisdiction of the Florida court and asked it for the relief obtained through such order, this Court's August 14, 2008 order covering the disputed funds is no longer necessary and is, therefore, vacated.

Defendant's Motion to Dismiss

Given that the Florida court has jurisdiction of the disputed funds, and the Florida Court has issued a standing order freezing the assets, this case is dismissed without prejudice. If the Florida court rules that the disputed funds are not a marital asset, then either Hauge or Curran may make an application to this Court to issue an order freezing the funds. There is no dispute that Hauge put the issue of the Chidna money before the Florida divorce court when he identified the disputed funds as marital property in his sworn financial declaration, and yet he simultaneously asks this Court to distribute the same money and find Curran in violation of her fiduciary duties as a member of CHIDNA, L.L.C. There is an obvious danger of duplicative litigation and contrary results over the same dispute.

Conclusion

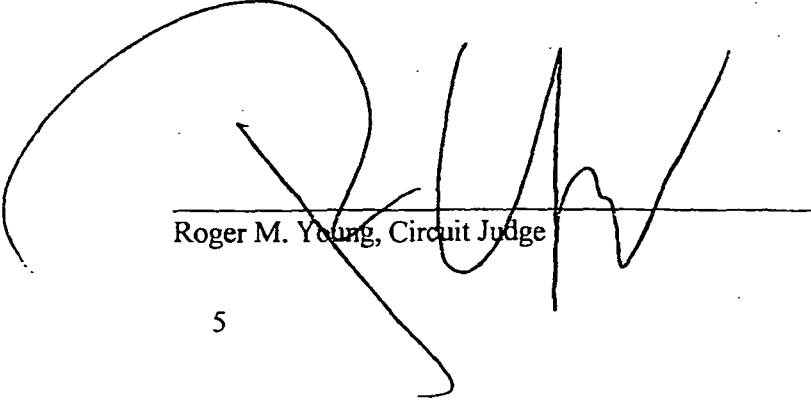
Therefore, based on the pleadings, the affidavits, the responses to requests for admissions and the arguments of counsel, it is hereby ordered:

1. The Plaintiffs' motion for summary judgment is DENIED.
2. This case is DISMISSED without prejudice, allowing the parties to re-file this lawsuit should the Florida court hold that the disputed funds are not a marital asset.

IT IS SO ORDERED!

Charleston, S.C.

6/15, 2009



Roger M. Young, Circuit Judge

IN THE STATE OF SOUTH CAROLINA)

CHARLESTON COUNTY)

DAVID A HAUGE & CHIDNA, L.L.C.,)

Plaintiffs,)

vs.)

ADRIENNE CURRAN,)

Defendant.)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NUMBER 08-CP-10-0324

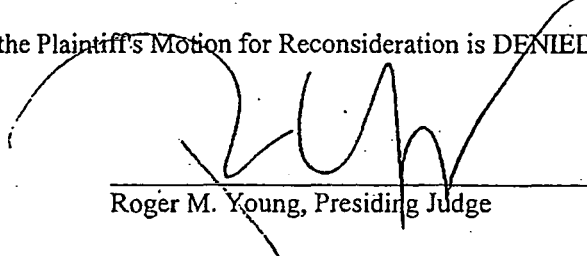
FILED
2009 AUG -4 PM 12:06
JULIE J. ARMSTRONG
CLERK OF COURT

ORDER DENYING
MOTION FOR RECONSIDERATION

This case is before me on Plaintiffs' Motion for Reconsideration of my Order Denying Summary Judgment and Dismissing Case Without Prejudice filed June 29, 2009. Having carefully examined this matter again, I decline to change my Order.

It is therefore ORDERED that the Plaintiff's Motion for Reconsideration is DENIED.

July 30, 2009
Charleston, South Carolina



Roger M. Young, Presiding Judge

00 007

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

08-CP-10-324

David A. Hauge,
Plaintiff,

v.

Adrienne Curran,
Defendant.

2008 JUN 10 PM 3:05
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

TEMPORARY RESTRAINING ORDER

This matter is before the Court on Plaintiffs Motion for a Temporary and Permanent Restraining Order pursuant to Rule 65(b), SCRPC.

IT APPEARING from the Motion of Plaintiff and the verified Complaint that if this Court does not immediately Order the Defendant Adrienne Curran maintain the status quo and or return certain corporate assets of CHIDNA, LLC (hereinafter "Company") that the Plaintiff will be irreparably harmed.

NOW THEREFORE, IT IS ORDERED THAT the Defendant Adrienne Curran is hereby enjoined from taking any action that would waste or otherwise dispose of Company assets and more particularly from transferring, expending or wasting the sale proceeds in the amount of \$1,600,000.00 diverted from the Company's account.

IT IS FURTHER ORDERED, that Defendant Adrienne Curran is Defendant is directed to return the sum of \$1,600,000 to the Company to be held in an interest bearing account until further order of this Court or resolution of the above matter.

IT IS FURTHER ORDERED, that the aforesaid Defendants shall appear before this Court on the 18 day of JUNE, 2008, at 9:30am., in compliance with Rule 65, the said Motion and this Order, at chambers, Charleston County Courthouse, Charleston, South Carolina, to SHOW CAUSE why a Permanent Injunction should not be issued requiring Defendant to maintain the Company assets until further Order of this Court.

Judge Young; ANY bond, to be determined BEFORE
AND IT IS SO ORDERED. *on 6/18/08*

[Signature]
Administrative Judge
Circuit Ct.

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, CP, SS. & FC.

00 008

Charleston, SC
June____, 2008

00 009

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
David A. Hauge,)
Plaintiff,)
v.)
Adrienne Curran,)
Defendant.)

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

08-CP-10-324

RESTRAINING ORDER

FILED
2008 AUG 19 AM 10:32
JULIE J. ARMSTRONG
CLERK OF COURT

This matter came before the Court for hearing on June 18, 2008 on for hearing within ten (10) days of this Court granting Plaintiffs' Motion for a Temporary Restraining Order. Appearing at the time of the hearing was Mary Leigh Arnold, attorney for Plaintiff. Defendant did not appear, however, attorney for Plaintiff presented to the Court a copy of an email from Defendant which acknowledged receipt of the Temporary Restraining Order filed with the Court on June 10, 2008 and notice of the subject hearing. The document was made part of the Court's record. Having reviewed the pleadings and argument presented by Plaintiff, this Court is of the opinion that the Restraining Order should be continued until further order of this Court.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This is an action brought by the Plaintiff under a verified Complaint setting forth a number causes of action including a derivative action, breach of fiduciary duty, conversion, unjust enrichment and injunctive relief. As seen by reference to the Complaint, the Plaintiff and Defendant, estranged spouses, are the sole members of the limited company named CHIDNA, LLC (hereinafter "CHIDNA"). CHIDNA's purpose was to own real estate located at 495 King Street, Charleston, South Carolina. In or around March 5, 2007 the Company sold the property located at 495 King Street, Charleston, South Carolina for the approximate sum of \$2,200,000.00. The net

4

00 010

proceeds from sale in the amount of \$1,600,000.00 were held in escrow for a number of months, nonetheless shortly after the proceeds were received by the Company, Defendant, without proper vote or authority or knowledge or consent of the Plaintiff, caused the sale proceeds to be withdrawn from the Company's bank account and deposited into an account of another company that she is the sole owner of and has complete control over. The proceeds have been held at NBSC in account # 03562940704 00001.

For a preliminary injunction to be granted, the plaintiff must establish that (1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. County of Richland v. Simkins, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct. App. 2002). The facts alleged must be sufficient to support a temporary injunction and the injunction must be reasonably necessary to protect the rights of the moving party. Transcontinental Gas Pipe Line Corp. v. Porter, 252 S.C. 478, 167 S.E.2d 313 (1969). Generally, to obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and an inadequate remedy at law. Roach v. Combined Util. Comm'n, 290 S.C. 437, 442, 351 S.E.2d 168, 170 (Ct.App.1986).

It is well settled that, in determining whether a temporary injunction should issue, the merits of the case are not to be considered, except in so far as they may enable the court to determine whether a prima facie showing has been made. When a prima facie showing has been made entitling plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits. Transcon., 252 S.C. at 481, 167 S.E.2d at 315. "[T]he sole purpose of a temporary injunction is to preserve the status quo...." Powell v. Immanuel Baptist Church, 261 S.C. 219, 221, 199 S.E.2d 60, 61 (1973). "[A] temporary injunction is [used] to preserve the subject of controversy in the condition which it is at the time of the Order until opportunity is offered for full and deliberate investigation and to preserve the existing status during



00 011

litigation...." County Council of Charleston v. Felkel, 244 S.C. 480, 483-84, 137 S.E.2d 577, 578 (1964) (citations omitted). "A temporary injunction is made without prejudice to the rights of either party pending a hearing on the merits, and when other issues are brought to trial, they are determined without reference to the temporary injunction." Helsel v. City of N. Myrtle Beach, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992).

Plaintiff has established all the necessary elements to warrant the issuance of an injunction until a full hearing on the merits on the allegations of the Complaint or until further order of this Court. The purpose of the injunction is nothing more than to maintain the status quo and safeguard the corporate proceeds from disposition until a final hearing on the merits. NOW THEREFORE, IT IS

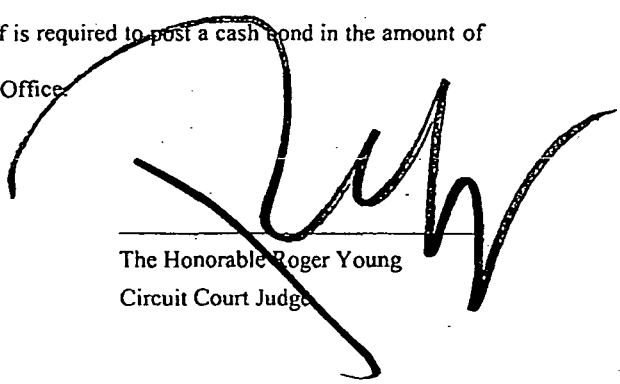
ORDERED that Plaintiff's Motion for a Restraining Order is granted; and it is

FURTHER ORDERED that Defendant is enjoined and restrained from disposing, moving, expending, liquidating, transferring or in any way utilizing the sum of \$1,600,000.00 held at NBSC until further Order of this Court; and it is

FURTHER ORDERED that the Plaintiff is required to post a cash bond in the amount of \$1,000.00 with the Charleston Clerk of Court's Office.

IT IS SO ORDERED.

August 14, 2008
Charleston, SC


The Honorable Roger Young
Circuit Court Judge

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
NINTH JUDICIAL ~~87~~ CP-10- 324
08

David A. Hauge,

Plaintiff,

v.

Adrienne Curran,

Defendant.

COMPLAINT

(BREACH OF FIDUCIARY DUTY
INJUNCTIVE RELIEF)

NON-JURY

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2008 JAN 22 AM 11:42

FILED

The Plaintiff, complaining of the Defendant above-named would allege and show unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. Plaintiff is a member of the limited liability company formed under South Carolina law under the name of CHIDNA, LLC and at all relevant times herein was a citizen and resident of the County of Charleston, State of South, Carolina.

2. Defendant is a member of the limited liability company formed under South Carolina law under the name of CHIDNA, LLC and upon information and belief, at all relevant times herein was a citizen and resident of the County of Charleston, State of South Carolina.

3. This Court has jurisdiction over the parties and subject matter of this case, and venue is proper before this Court.

4. On or about April 21, 2003, the limited liability company named CHIDNA, LLC was formed under South Carolina law for the purpose of holding and managing a commercial real property located at 495 King Street, Charleston, South Carolina.

5. The sole members of CHIDNA, LLC (hereinafter the "Company"), are Plaintiff

00 013

and Defendant.

6. Plaintiff is the single manager identified in the Articles of Organization.

7. In or around March 5, 2007 the Company sold the property located at 495 King Street, Charleston, South Carolina for the approximate sum of \$2,200,000.00.

8. The net proceeds from sale in the amount of \$1,600,000.00 were held in escrow for a number of months, nonetheless shortly after the proceeds were received by the Company, Defendant, without proper vote or authority or knowledge or consent of the Plaintiff, caused the sale proceeds to be withdrawn from the Company's bank account and deposited into an account of another company that she is the sole owner of and has complete control over.

9. In violation of her fiduciary obligations as set forth in S.C. Ann 33-44-409, Defendant set about a course of self-dealing by wrongfully and fraudulently converted large sums of money to her own use and has otherwise unlawfully and fraudulently diverted and disposed of assets of the Company by drafting a large sum of money from the Company which was then deposited into her personal account(s) and/or the accounts of a company solely owned by Defendant.

FOR A FIRST CAUSE OF ACTION
(Derivative Action by Member)

10. That Plaintiff re-alleges by reference the allegations of Paragraphs one through twenty-four above as if fully set out herein.

11. This is a derivative cause of action brought by Plaintiff in the right and for the benefit of Company.

12. Plaintiff is and has been, at all times relevant to this action, a Member of Company.

13. Plaintiff is the owner of fifty percent (50%) of the interest of Company.

14. Defendant, is the owner of fifty percent (50%) of the interest of Company.
15. At all times since the organization of Company, Plaintiff has been designated manager.
16. Plaintiff is informed and believes and alleges on information and belief that Defendant has caused a substantial part if not all of the assets of Company to be deposited or invested or spent to her own personal benefit.
17. Defendant, in using the funds of Company for her personal gain has committed a breach of trust, has diverted a corporate opportunity for personal use, and has deprived Company of funds needed by it for the operation of its business.
18. Although the corporate purpose for which was established was investment and management of certain real property, Defendant has diverted its funds to her own ends in complete disregard of fiduciary obligations to Company and the Plaintiff.
19. As a result of Defendant's actions, Plaintiff has been deprived of the value of his investment. The continuation of these practices alleged will result in the continued diminution of the value of the investment of the members, and threatens its complete loss and the probable insolvency of Company.
20. No demand has been made on Company to institute this action on its own behalf because such demand would be futile.
21. Plaintiff has no adequate remedy at law.

FOR A SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty)

22. Plaintiff incorporates the allegations of the foregoing paragraphs and re-alleges the same herein as if set forth verbatim.
23. Pursuant to the laws of this state, Defendant owed a fiduciary duty to

Plaintiff.

24. Defendant's actions constitute a willful, wanton, and reckless breach of the fiduciary duty owed to Plaintiff.

25. As a direct and proximate result of Defendant's breach of fiduciary duty, Plaintiff has suffered actual damages in an amount to be determined by the trier of fact.

26. As a direct and proximate result of Defendant's breach of fiduciary duty, Plaintiff is entitled to judgement against Defendant for actual and punitive damages.

FOR A THIRD CAUSE OF ACTION
(Conversion)

27. Plaintiff incorporates the allegations of the foregoing paragraphs and re-alleges the same as if set forth verbatim.

28. Defendant has caused monies and assets due and owing Plaintiff to be converted to her own use and profit.

29. Plaintiff is informed and believes the Defendant's conversion of properties and assets entitles Plaintiff to recover from Defendant actual punitive damages in an amount to be determined by the trier of fact.

FOR A FOURTH CAUSE OF ACTION
(Unjust Enrichment)

30. That Plaintiff re-alleges by reference the allegations of Paragraphs one through forty-seven above as if fully set out herein.

31. Through utilization of the aforementioned illegal and unjust acts, Defendant has been unjustly enriched at the expense of and to the detriment of Plaintiff.

32. Plaintiff is informed and believes he is entitled to recover from the Defendants all assets and monies improperly received as a result of her illegal and unjust acts.

FOR A FIFTH CAUSE OF ACTION
(Injunctive Relief)

33. Plaintiff realleges and reaffirms the preceding paragraphs as if set forth herein verbatim.

34. A Temporary and Permanent Restraining Order and Temporary and Permanent Injunction are necessary to preserve the status quo and to prevent the Defendants from continuing to convert corporate assets to her own use, to usurp corporate control of Company and to misapply or waste the corporate assets of Company.

35. Plaintiff would suffer immediate and irreparable harm if the Defendant were allowed to continue to convert corporate assets to her own use, to usurp corporate control of Company, to act in a manner that is illegal, fraudulent, oppressive and unfairly prejudicial to Company and Plaintiff, and to misapply or waste the corporate assets of Company.

36. The issuance of a Temporary and Permanent Restraining Order and Temporary and Permanent Injunction are necessary for the protection of the Plaintiff's rights during the course of this litigation, and the Plaintiff is likely to prevail on both the Complaint for Permanent Injunction and Restraining Order and the merits of the trial of this action.

37. The Plaintiff has no adequate remedy at law.

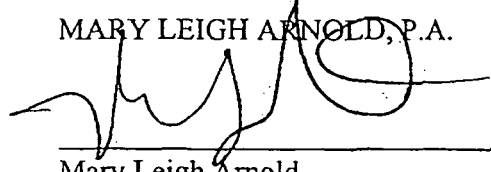
38. That the Plaintiff further request a hearing upon this application for Temporary Injunction within ten (10) days after entry of said Order as required by Rule 65, SCRCPP.

39. Due to the immediate and severe financial hardship imposed by the Defendant upon the Plaintiff, Plaintiff respectfully requests that this court, within its discretion, impose a bond in connection with the Temporary and Permanent Restraining Order and Temporary and Permanent Injunction in the least amount possible.

WHEREFORE, Plaintiff prays as follows:

- a) For judgment against the Defendant for actual, incidental, consequential, treble, and punitive damages; and the and costs of this action, in an amount to be determined at trial;
- b) For an order temporarily and permanently restraining and enjoining the Defendant from transferring, selling, trading, hiding, disposing, collateralizing, and/or decreasing the value of any and all corporate assets and requiring Defendant to return all monies to Company or deposit said monies with a escrow agent to be held until resolution of the above matter.;
- c) For costs of this action including attorney's fees and for such other and further relief as this Court deems just and proper.

MARY LEIGH ARNOLD, P.A.



Mary Leigh Arnold
749 Johnnie Dodds Blvd., Suite B
Post Office Box 265
Mt. Pleasant, South Carolina 29465
(843) 971-6053

ATTORNEY FOR PLAINTIFF

MT. PLEASANT
January 22, 2008

VERIFICATION

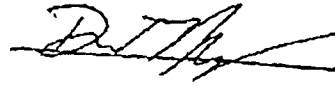
I, _____, having been duly sworn depose and state that I have read the foregoing Verified Complaint for Injunctive and Other Equitable Relief, and that

the information stated therein as factual is true to the best of my information and
belief.

Subscribed to and sworn before me this
_____ day of December, 2007

Notary Public for State of South Carolina
My Commission Exp.: _____

the information stated therein as factual is true to the best of my information and belief.

A handwritten signature in dark ink, appearing to be "D. T. H.", written over a horizontal line.

Subscribed to and sworn before me this
_____ day of December, 2007

Notary Public for State of South Carolina
My Commission Exp.: _____

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

David A. Hauge,

Plaintiff(s),

vs.

Adrienne Curran,

Defendant(s).

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

08
07-CP-10-324

(Please Print)

Submitted By: MARY LEIGH ARNOLD, P.A.

Address: 749 Johnnie Dodds Blvd
Suite B

Mount Pleasant, SC 29465

SC Bar #: 0419

Telephone #: 971-6053

Fax #: 971-6055

Other: _____

E-mail: _____

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|--|--|
| ☐ Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☒ Other (199)
<u>Breach of Contract</u> | ☐ Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Notice/ File Med Mal (230)
☐ Other (299) | ☐ Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | ☐ Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
|---|--|--|--|

- | | | | |
|---|--|---|---|
| ☐ Inmate Petitions
☐ PCR (500)
☐ Sexual Predator (510)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | ☐ Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Other (799) | ☐ Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture (840)
☐ Other (899) | ☐ Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) |
|---|--|---|---|
- ☐ **Special/Complex /Other**
☐ Environmental (600) ☐ Pharmaceuticals (630)
☐ Automobile Arb. (610) ☐ Unfair Trade Practices (640)
☐ Medical (620) ☐ Out-of State Depositions (650)
☐ Other (699)

Submitting Party Signature: _____

Date: _____

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

David A. Hauge

Plaintiff,

vs.

Adrienne Curran,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: ⁰⁸07-CP-10- 324

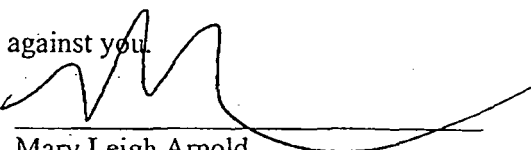
SUMMONS
(BREACH OF FIDUCIARY DUTY
INJUNCTIVE RELIEF)

NON-JURY

FILED
2008 JAN 22 AM 11:42
JULIE J. ARMSTRONG
CLERK OF COURT

08-942-80

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you and to serve a copy of your Answer to said Complaint on the subscribers at her offices, MARY LEIGH ARNOLD, P.A., Post Office Box 265, Mt. Pleasant, South Carolina 29465, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiffs in this action will apply to the Court for the relief demanded in the Complaint and will seek a default judgment against you.


Mary Leigh Arnold
MARY LEIGH ARNOLD, P.A.
(843) 971-6053
Post Office Box 265
Mt. Pleasant, SC 29465-0265

ATTORNEY FOR THE PLAINTIFF

MT. PLEASANT, SC
January 9, 2008

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
NINTH JUDICIAL ~~87~~-CP-10- 324
08

David A. Hauge,

Plaintiff,

v.

Adrienne Curran,

Defendant.

COMPLAINT

(BREACH OF FIDUCIARY DUTY
INJUNCTIVE RELIEF)

NON-JURY

FILED
2008 JAN 22 AM 11:42
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

The Plaintiff, complaining of the Defendant above-named would allege and show unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. Plaintiff is a member of the limited liability company formed under South Carolina law under the name of CHIDNA, LLC and at all relevant times herein was a citizen and resident of the County of Charleston, State of South, Carolina.

2. Defendant is a member of the limited liability company formed under South Carolina law under the name of CHIDNA, LLC and upon information and belief, at all relevant times herein was a citizen and resident of the County of Charleston, State of South Carolina.

3. This Court has jurisdiction over the parties and subject matter of this case, and venue is proper before this Court.

4. On or about April 21, 2003, the limited liability company named CHIDNA, LLC was formed under South Carolina law for the purpose of holding and managing a commercial real property located at 495 King Street, Charleston, South Carolina.

5. The sole members of CHIDNA, LLC (hereinafter the "Company"), are Plaintiff

and Defendant.

6. Plaintiff is the single manager identified in the Articles of Organization.

7. In or around March 5, 2007 the Company sold the property located at 495 King Street, Charleston, South Carolina for the approximate sum of \$2,200,000.00.

8. The net proceeds from sale in the amount of \$1,600,000.00 were held in escrow for a number of months, nonetheless shortly after the proceeds were received by the Company, Defendant, without proper vote or authority or knowledge or consent of the Plaintiff, caused the sale proceeds to be withdrawn from the Company's bank account and deposited into an account of another company that she is the sole owner of and has complete control over.

9. In violation of her fiduciary obligations as set forth in S.C. Ann 33-44-409, Defendant set about a course of self-dealing by wrongfully and fraudulently converted large sums of money to her own use and has otherwise unlawfully and fraudulently diverted and disposed of assets of the Company by drafting a large sum of money from the Company which was then deposited into her personal account(s) and/or the accounts of a company solely owned by Defendant.

FOR A FIRST CAUSE OF ACTION
(Derivative Action by Member)

10. That Plaintiff re-alleges by reference the allegations of Paragraphs one through twenty-four above as if fully set out herein.

11. This is a derivative cause of action brought by Plaintiff in the right and for the benefit of Company.

12. Plaintiff is and has been, at all times relevant to this action, a Member of Company.

13. Plaintiff is the owner of fifty percent (50%) of the interest of Company.

14. Defendant, is the owner of fifty percent (50%) of the interest of Company.
15. At all times since the organization of Company, Plaintiff has been designated manager.
16. Plaintiff is informed and believes and alleges on information and belief that Defendant has caused a substantial part if not all of the assets of Company to be deposited or invested or spent to her own personal benefit.
17. Defendant, in using the funds of Company for her personal gain has committed a breach of trust, has diverted a corporate opportunity for personal use, and has deprived Company of funds needed by it for the operation of its business.
18. Although the corporate purpose for which was established was investment and management of certain real property, Defendant has diverted its funds to her own ends in complete disregard of fiduciary obligations to Company and the Plaintiff.
19. As a result of Defendant's actions, Plaintiff has been deprived of the value of his investment. The continuation of these practices alleged will result in the continued diminution of the value of the investment of the members, and threatens its complete loss and the probable insolvency of Company.
20. No demand has been made on Company to institute this action on its own behalf because such demand would be futile.
21. Plaintiff has no adequate remedy at law.

FOR A SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty)

22. Plaintiff incorporates the allegations of the foregoing paragraphs and re-alleges the same herein as if set forth verbatim.
23. Pursuant to the laws of this state, Defendant owed a fiduciary duty to

Plaintiff.

24. Defendant's actions constitute a willful, wanton, and reckless breach of the fiduciary duty owed to Plaintiff.

25. As a direct and proximate result of Defendant's breach of fiduciary duty, Plaintiff has suffered actual damages in an amount to be determined by the trier of fact.

26. As a direct and proximate result of Defendant's breach of fiduciary duty, Plaintiff is entitled to judgement against Defendant for actual and punitive damages.

FOR A THIRD CAUSE OF ACTION
(Conversion)

27. Plaintiff incorporates the allegations of the foregoing paragraphs and re-alleges the same as if set forth verbatim.

28. Defendant has caused monies and assets due and owing Plaintiff to be converted to her own use and profit.

29. Plaintiff is informed and believes the Defendant's conversion of properties and assets entitles Plaintiff to recover from Defendant actual punitive damages in an amount to be determined by the trier of fact.

FOR A FOURTH CAUSE OF ACTION
(Unjust Enrichment)

30. That Plaintiff re-alleges by reference the allegations of Paragraphs one through forty-seven above as if fully set out herein.

31. Through utilization of the aforementioned illegal and unjust acts, Defendant has been unjustly enriched at the expense of and to the detriment of Plaintiff.

32. Plaintiff is informed and believes he is entitled to recover from the Defendants all assets and monies improperly received as a result of her illegal and unjust acts.

FOR A FIFTH CAUSE OF ACTION
(Injunctive Relief)

33. Plaintiff realleges and reaffirms the preceding paragraphs as if set forth herein verbatim.

34. A Temporary and Permanent Restraining Order and Temporary and Permanent Injunction are necessary to preserve the status quo and to prevent the Defendants from continuing to convert corporate assets to her own use, to usurp corporate control of Company and to misapply or waste the corporate assets of Company.

35. Plaintiff would suffer immediate and irreparable harm if the Defendant were allowed to continue to convert corporate assets to her own use, to usurp corporate control of Company, to act in a manner that is illegal, fraudulent, oppressive and unfairly prejudicial to Company and Plaintiff, and to misapply or waste the corporate assets of Company.

36. The issuance of a Temporary and Permanent Restraining Order and Temporary and Permanent Injunction are necessary for the protection of the Plaintiff's rights during the course of this litigation, and the Plaintiff is likely to prevail on both the Complaint for Permanent Injunction and Restraining Order and the merits of the trial of this action.

37. The Plaintiff has no adequate remedy at law.

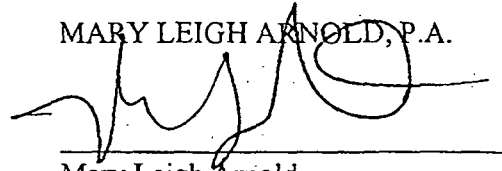
38. That the Plaintiff further request a hearing upon this application for Temporary Injunction within ten (10) days after entry of said Order as required by Rule 65, SCRCPP.

39. Due to the immediate and severe financial hardship imposed by the Defendant upon the Plaintiff, Plaintiff respectfully requests that this court, within its discretion, impose a bond in connection with the Temporary and Permanent Restraining Order and Temporary and Permanent Injunction in the least amount possible.

WHEREFORE, Plaintiff prays as follows:

- a) For judgment against the Defendant for actual, incidental, consequential, treble, and punitive damages, and the and costs of this action, in an amount to be determined at trial;
- b) For an order temporarily and permanently restraining and enjoining the Defendant from transferring, selling, trading, hiding, disposing, collateralizing, and/or decreasing the value of any and all corporate assets and requiring Defendant to return all monies to Company or deposit said monies with a escrow agent to be held until resolution of the above matter.;
- c) For costs of this action including attorney's fees and for such other and further relief as this Court deems just and proper.

MARY LEIGH ARNOLD, P.A.



Mary Leigh Arnold
749 Johnnie Dodds Blvd., Suite B
Post Office Box 265
Mt. Pleasant, South Carolina 29465
(843) 971-6053

ATTORNEY FOR PLAINTIFF

MT. PLEASANT
January 22, 2008

VERIFICATION

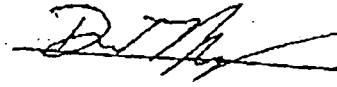
I, _____, having been duly sworn depose and state that I have read the foregoing Verified Complaint for Injunctive and Other Equitable Relief, and that

the information stated therein as factual is true to the best of my information and belief.

Subscribed to and sworn before me this
_____ day of December, 2007

Notary Public for State of South Carolina
My Commission Exp.: _____

the information stated therein as factual is true to the best of my information and belief.

A handwritten signature in dark ink, appearing to be "D. H. [unclear]", written over a horizontal line.

Subscribed to and sworn before me this
_____ day of December, 2007

Notary Public for State of South Carolina
My Commission Exp.: _____

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

David A. Hauge,)

Plaintiff,)

v.)

Adrienne Curran,)

Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL ~~07~~-CP-10-0324
28

PROOF OF SERVICE

FILED
2008 MAY 14 PM 3:38
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

I, Katherine Wozniak, Paralegal for Mary Leigh Arnold, Attorney for Plaintiff, hereby state that on March 7, 2008, I served the Defendant, Adrienne Curran, with a Summons and Complaint in the above-referenced case. The receipt whereof on March 7, 2008, is witnessed below.

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. - Print your name and address on the reverse so that we can return the card to you. - Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature ☒ Agent ☐ Addressee X <i>Katherine Wozniak</i> B. Received by (Printed Name) _____ C. Date of Delivery <u>3/7/08</u> D. Is delivery address different from item 1? ☐ Yes ☒ No If YES, enter delivery address below: _____	
1. Article Addressed to: <i>Adrienne Curran</i> <i>3808 Eagle Ave</i> <i>Key West, FL 33040</i>		3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☒ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.	
2. Article Number (Transfer from service label) <u>7006 3450 0003 2542 2537</u>		4. Restricted Delivery? (Extra Fee) ☐ Yes	

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

Katherine Wozniak
Katherine Wozniak
MARY LEIGH ARNOLD, P.A.

00 031

749 Johnnie Dodds Blvd, Suite B
Mt. Pleasant, S.C. 29464
(843) 971-6053
ATTORNEYS FOR DEFENDANT

April 23, 2008
Mount Pleasant, SC

FILED

2008 AUG 25 AM 9:08

JULIE J. ARMSTRONG
CLERK OF COURT

State of South Carolina)
County of Charleston)
David A. Hauge,)
Plaintiff,)
vs.)
Adrienne Curran,)
Defendant.)

In the Court of Common Pleas

Case No.: 08-CP-10-324

**NOTICE OF SPECIAL APPEARANCE TO
CONTEST JURISDICTION**

TO MARY LEIGH ARNOLD, Attorney for the Plaintiff:

Please take notice that the defendant enters this notice of special purpose for the limited purpose of contesting both the *in personam* and subject matter jurisdiction of the Court. Without submitting to the jurisdiction of the Court, the defendant shows as follows:

The parties are husband and wife, having last lived together as husband and wife in the County of Monroe, State of Florida. The parties are currently separated, and the plaintiff/husband is a citizen and resident of Florida, and the defendant/wife is a citizen and resident of the state of Florida, currently assigned to Hawaii for work. The parties last lived together as husband and wife in Florida, and upon their separation, the plaintiff, David A. Hauge, instituted a marital action currently pending in Monroe County, Florida at case number 2007-DR-1641-K, such action entitled: "David A. Hauge vs. Adrienne Curran." This action requests dissolution of the parties' marriage and an equitable division of the parties' property, including the limited liability company that is the subject matter of this lawsuit. The plaintiff and the defendant were residents of South Carolina from 1992—2003, but since that time, both have been and continue to be residents of Florida. The defendant's only connection with the

08-12517

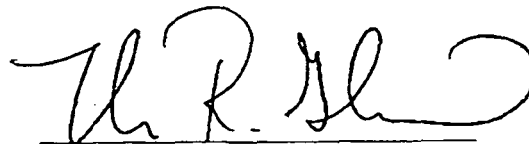
state of South Carolina has been her membership in real estate holdings with the plaintiff, all of which are subject to the marital action now pending in Monroe County, Florida.

In addition, the Court lacks in personam jurisdiction over the defendant. The plaintiff attempted to obtain service over the defendant by sending a summons and complaint certified mail to the defendant, which the defendant never received and which the plaintiff failed to send restricted delivery as required by Rule 4(d)(8) of the South Carolina Rules of Civil Procedure. (The plaintiff's affidavit of service reflects that the plaintiff mailed the pleadings to "Rita Kemp," who is an acquaintance of the defendant. The plaintiff did not mail the pleadings "restricted delivery." See affidavit of service filed May 14, 2008.)

Therefore, because the subject matter of this lawsuit is included in the action currently pending in Monroe County, Florida, such action having been instituted by the plaintiff, David A. Hauge, and because the defendant is not a citizen or resident of the state of South Carolina, the defendant asks that the within action be dismissed for lack of *in pesonam* and subject matter jurisdiction as well as because the exact relief between the same parties over the same subject matter is already pending in an action begun by the plaintiff in Monroe County, Florida. This motion is based on Rule 12(b)(1), lack of subject matter jurisdiction; 12(b)(2), lack of jurisdiction over the person; and 12(b)(3), improper venue; 12(b)(5), insufficiency of service of process; and 12(b)(8), another action is pending between the same parties for the same claim.

Respectfully submitted,

August 18, 2008



Thomas R. Goldstein
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
N. Charleston, S. C. 29415-1121
(843) 554-4291
(843) 554-5566 (fax)
tgoldstein@cobblaw.net

CERTIFICATE OF SERVICE

This is to certify that I have served counsel for all parties in the foregoing matter with a copy of the pleading by:

- ☒ depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon
☐ handing counsel a copy thereof
☐ by facsimile and depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 22nd day of August 2008

BY Thomas R. Goldstein

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
NINTH JUDICIAL ~~CP~~ CP-10- 324
08

David A. Hauge, Chidna, LLC)

Plaintiffs,)

v.)

Adrienne Curran,)

Defendant.)

AMENDED
COMPLAINT

(BREACH OF FIDUCIARY DUTY
INJUNCTIVE RELIEF)

NON-JURY

FILED
2008 SEP 18 PM 3:42
JULIE J. ARMSTRONG
CLERK OF COURT
BY DB

The Plaintiff, complaining of the Defendant above-named would allege and show to this Honorable Court as follows:

PARTIES AND JURISDICTION

1. Plaintiff is a member of the limited liability company formed under South Carolina law under the name of CHIDNA, LLC and at all relevant times herein was a citizen and resident of the County of Charleston, State of South, Carolina.

2. Plaintiff CHIDNA, LLC., as a limited liability company organized under the laws in the state of South Carolina with its principal place of business in Charleston, South Carolina.

3. Defendant is a member of the limited liability company formed under South Carolina law under the name of CHIDNA, LLC and upon information and belief, at all relevant times herein was a citizen and resident of the County of Charleston, State of South Carolina.

4. This Court has jurisdiction over the parties and subject matter of this case, and venue is proper before this Court.

5. On or about April 21, 2003, the limited liability company named CHIDNA, LLC was formed under South Carolina law for the purpose of holding and managing a commercial real

property located at 495 King Street, Charleston, South Carolina.

6. The sole members of CHIDNA, LLC (hereinafter the "Company"), are Plaintiff and Defendant.

7. Plaintiff is the single manager identified in the Articles of Organization.

8. In or around March 5, 2007 the Company sold the property located at 495 King Street, Charleston, South Carolina for the approximate sum of \$2,200,000.00.

9. The net proceeds from sale in the amount of \$1,600,000.00 were held in escrow for a number of months, nonetheless shortly after the proceeds were received by the Company, Defendant, without proper vote or authority or knowledge or consent of the Plaintiff, caused the sale proceeds to be withdrawn from the Company's bank account and deposited into an account of another company that she is the sole owner of and has complete control over.

10. In violation of her fiduciary obligations as set forth in S.C. Ann 33-44-409, Defendant set about a course of self-dealing by wrongfully and fraudulently converted large sums of money to her own use and has otherwise unlawfully and fraudulently diverted and disposed of assets of the Company by drafting a large sum of money from the Company which was then deposited into her personal account(s) and/or the accounts of a company solely owned by Defendant.

FOR A FIRST CAUSE OF ACTION
(Derivative Action by Member)

11. That Plaintiff, Hauge re-allege by reference the allegations of Paragraphs one through twenty-four above as if fully set out herein.

12. This is a derivative cause of action brought by Plaintiff, Hauge in the right and for the benefit of Company.

13. Plaintiff is and has been, at all times relevant to this action, a Member of

Company.

14. Plaintiff is the owner of fifty percent (50%) of the interest of Company.
15. Defendant, is the owner of fifty percent (50%) of the interest of Company.
16. At all times since the organization of Company, Plaintiff has been designated manager.
17. Plaintiff is informed and believes and alleges on information and belief that Defendant has caused a substantial part if not all of the assets of Company to be deposited or invested or spent to her own personal benefit.
18. Defendant, in using the funds of Company for her personal gain has committed a breach of trust, has diverted a corporate opportunity for personal use, and has deprived Company of funds needed by it for the operation of its business.
19. Although the corporate purpose for which was established was investment and management of certain real property, Defendant has diverted its funds to her own ends in complete disregard of fiduciary obligations to Company and the Plaintiff.
20. As a result of Defendant's actions, Plaintiff has been deprived of the value of his investment. The continuation of these practices alleged will result in the continued diminution of the value of the investment of the members, and threatens its complete loss and the probable insolvency of Company.
21. Plaintiff, Hauge has no adequate remedy at law and is entitled , Plaintiff, Hauge is limited to actual, compensatory and punitive damages and attorney fees and cost .

FOR A SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty)

22. Plaintiffs incorporate the allegations of the foregoing paragraphs and re-allege

the same herein as if set forth verbatim.

23. Pursuant to the laws of this state, Defendant owed a fiduciary duty to Plaintiff.

24. Defendant's actions constitute a willful, wanton, and reckless breach of the fiduciary duty owed to Plaintiffs.

25. As a direct and proximate result of Defendant's breach of fiduciary duty, Plaintiffs have suffered actual damages in an amount to be determined by the trier of fact.

26. As a direct and proximate result of Defendant's breach of fiduciary duty, Plaintiffs are entitled to judgement against Defendant for actual and punitive damages, plus attorney's fees and cost .

FOR A THIRD CAUSE OF ACTION
(Conversion)

27. Plaintiffs incorporate the allegations of the foregoing paragraphs and re-alleges the same as if set forth verbatim.

28. Defendant has caused monies and assets due and owing Plaintiffs to be converted to her own use and profit.

29. Plaintiffs are informed and believe the Defendant's conversion of properties and assets entitles Plaintiffs to recover from Defendant actual punitive damages in an amount to be determined by the trier of fact, plus attorney fees and cost.

FOR A FOURTH CAUSE OF ACTION
(Unjust Enrichment)

30. That Plaintiffs re-allege by reference the allegations of Paragraphs one through forty-seven above as if fully set out herein.

31. Through utilization of the aforementioned illegal and unjust acts, Defendant has been unjustly enriched at the expense of and to the detriment of Plaintiff.

32. Plaintiffs are informed and believe they are entitled to recover from the Defendant all assets and monies improperly received as a result of her illegal and unjust acts.

FOR A FIFTH CAUSE OF ACTION
(Injunctive Relief)

33. Plaintiffs reallege and reaffirm the preceding paragraphs as if set forth herein verbatim.

34. A Temporary and Permanent Restraining Order and Temporary and Permanent Injunction are necessary to preserve the status quo and to prevent the Defendants from continuing to convert corporate assets to her own use, to usurp corporate control of Company and to misapply or waste the corporate assets of Company.

35. Plaintiffs will suffer immediate and irreparable harm if the Defendant were allowed to continue to convert corporate assets to her own use, to usurp corporate control of Company, to act in a manner that is illegal, fraudulent, oppressive and unfairly prejudicial to Company and Plaintiff, and to misapply or waste the corporate assets of Company.

36. The issuance of a Temporary and Permanent Restraining Order and Temporary and Permanent Injunction are necessary for the protection of the Plaintiff's rights during the course of this litigation, and the Plaintiff is likely to prevail on both the Complaint for Permanent Injunction and Restraining Order and the merits of the trial of this action.

37. The Plaintiffs have no adequate remedy at law.

38. That the Plaintiffs further request a hearing upon this application for Temporary Injunction within ten (10) days after entry of said Order as required by Rule 65, SCRCR.

38. That the Plaintiffs further request a hearing upon this application for Temporary Injunction within ten (10) days after entry of said Order as required by Rule 65, SCRPC.

39. Due to the immediate and severe financial hardship imposed by the Defendant upon the Plaintiff, Plaintiff respectfully requests that this court, within its discretion, impose a bond in connection with the Temporary and Permanent Restraining Order and Temporary and Permanent Injunction in the least amount possible.

WHEREFORE, Plaintiffs pray as follows:

- a) For judgment against the Defendant for actual, incidental, consequential, treble, and punitive damages, and the and costs of this action, in an amount to be determined at trial;
- b) For an order temporarily and permanently restraining and enjoining the Defendant from transferring, selling, trading, hiding, disposing, collateralizing, and/or decreasing the value of any and all corporate assets and requiring Defendant to return all monies to Company or deposit said monies with a escrow agent to be held until resolution of the above matter.;
- c) For costs of this action including attorney's fees and for such other and further relief as this Court deems just and proper.

MARY LEIGH ARNOLD, P.A.

Mary Leigh Arnold
749 Johnnie Dodds Blvd., Suite B
Mt. Pleasant, South Carolina 29465
(843) 971-6053

ATTORNEY FOR PLAINTIFF

MT. PLEASANT
September 5, 2008

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

DAVID A. HAUGE, CHIDNA, LLC.,
Plaintiff,

v.

ADRIENNE CURRAN,
Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT COURT

CASE NO.: 2008-CP-10-324

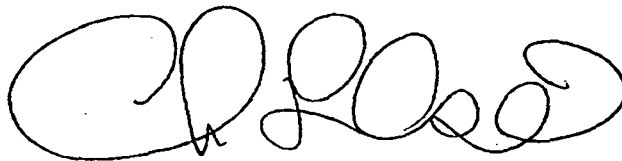
CERTIFICATE OF SERVICE
BY US MAIL

2008 SEP 18 PM 3:42
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

The undersigned hereby certifies that she on the 5th day of September 2008, served by U.S. Mail, postage prepaid a copy of Plaintiff's Amended Complaint, in the above captioned case as follows:

Thomas R. Goldstein, Esq.
2344 Cosgrove Ave.
Charleston, SC 29405-7644
Phone: (843) 554-4291
Fax: (843) 554-5566..



Cheryl L. Case
Paralegal to Mary Leigh Arnold
MARY LEIGH ARNOLD, P.A.
749 Johnnie Dodds Blvd. Suite B
Mt. Pleasant, S.C. 29464
(843) 971-6053

ATTORNEY FOR PLAINTIFF

State of South Carolina)
)
County of Charleston)

David A. Hauge,)
)
Plaintiff,)
vs.)
)
Adrienne Curran,)
)
Defendant.)
_____)

In the Court of Common Pleas

Case No.: 08-CP-10-324

FILED
2009 FEB 18 PM 4:18
JULIE J. ARMSTRONG
CLERK OF COURT
EX

**MOTION TO DISMISS FOR LACK OF JURISDICTION
ANSWER & COUNTERCLAIM
JURY TRIAL DEMANDED**

COMES now the defendant, reserving her right to contest the jurisdiction of the court over the subject matter and her person on the grounds that the parties lack sufficient minimum contacts with the State of South Carolina to give jurisdiction over either, the defendant answers the complaint as follows:

FOR A FIRST DEFENSE BY WAY OF MOTION TO DISMISS

1. The defendant moves for an order of the Court dismissing the complaint on the ground that the state lacks subject matter and in *personum* jurisdiction over the defendant. This motion is based on the fact that neither the plaintiff nor the defendant is a resident of the State of South Carolina. Both are residents of the state of Florida, and neither the plaintiff nor the defendant have been a resident of the state of South Carolina since 2003, when the parties moved as husband and wife to Monroe County Florida. The subject matter of the lawsuit has been placed previously in the hands of the Florida Courts by application of the plaintiff for an order of dissolution of marriage filed in Monroe County Florida at case number 2007-DR-1641-K. Therefore, the parties lack sufficient minimum contacts with three State of South Carolina for the State of South Carolina to exercise jurisdiction.

FOR A SECOND DEFENSE BY WAY OF QUALIFIED GENERAL DENIAL

2. The defendant denies each and every allegation of the complaint that is not otherwise explained, admitted, or qualified below.

3. The defendant denies so much of paragraph 1 as alleges that the plaintiff is a citizen and resident of the County of Charleston, State of South Carolina. The plaintiff is a citizen and resident of the State of Florida, County of Monroe.

4. The defendant denies so much of paragraph 2 as alleges that the defendant is a citizen and resident of the County of Charleston, State of South Carolina. The defendant is a citizen and resident of the state of Florida, County of Monroe.

5. The defendant denies paragraph 3 and shows further that this Court lacks both subject matter jurisdiction and in personum jurisdiction.

6. The defendant admits paragraphs 4, 5, 6, and 7.

7. The defendant admits so much of paragraph 8 as alleges that the parties held the net proceeds from the sale of the King Street property in escrow. The only amounts disbursed were disbursed to the parties' accountant for tax purposes. All other proceeds remain in escrow subject to the control of the Monroe County Family Division Temporary Order issued August 27, 2008 at case number 07-DR-1641-K.

8. The defendant denies paragraph 9.

9. Paragraphs 10, 22, 27, 30, and 33 are re-allegation paragraphs to which the defendant is not required to answer.

10. The defendant denies paragraph 11.

11. The defendant admits paragraph 12.

12. The defendant admits paragraph 13.

13. The defendant admits paragraph 14.
14. The defendant denies paragraph 15, and shows further that CHIDNA, L.L.C. has at all times been jointly owned and operated.
15. The defendant denies paragraphs 16, 17, 18, 19, and 20.
16. The defendant shows that paragraphs 21 and 23 state legal conclusions to which no answer is required.
17. The defendant denies paragraphs 24, 25, 26, 28, 29, 31 and 32.
18. The defendant denies paragraph 34 and shows further:
 - A. The plaintiff obtained a temporary order over the defendant prior to serving her with the summons and complaint on July 30, 2008, and therefore any temporary order issued by the Court over the defendant before she was a party to this case is null and void by operation of law; and
 - B. The Monroe County Court, Family Division, has previously issued its order over the subject matter of this lawsuit, and the subject matter of this lawsuit is controlled by that Court's order, a copy of which is attached hereto as Exhibit 1, and incorporated by this reference. Pursuant to the Full Faith and Credit Clause of the United States Constitution and §§ 15-35-900, *et. seq.* South Carolina Code
19. The defendant denies paragraphs 35, 36, and 37 (which states a legal conclusion).
19. Paragraph 38 does not state an allegation against the defendant.
20. The defendant denies paragraph 39.

FOR A THIRD DEFENSE BY WAY OF COUNTERCLAIM

21. The defendant repeats the above allegations as if set forth here verbatim, and reserving her right to be heard on previously filed jurisdictional motions and the motion contained above, the defendant alleges and shows as follows:

22. The plaintiff and the defendant are husband and wife whose assets are currently controlled by the Monroe County Court, Family Division, as may be seen by reference to the Temporary Order issued by that Court.

21. The plaintiff commenced the action pending in Florida.

23. The plaintiff commenced an almost identical action in South Carolina for the ulterior purpose of attempting to obtain a collateral advantage over the defendant in the pending Florida litigation.

24. Neither the plaintiff nor the defendant is a resident of the State of South Carolina, and the plaintiff chose a distant forum in an effort to harass the defendant.

25. The plaintiff's purpose in maintaining this action is a willful act in the use of court process that is not proper in the regular conduct of the proceedings. The plaintiff instituted a Monroe County Court action, which already controls the subject matter of the lawsuit. The plaintiff's motive in maintaining a second suit over the same subject matter in a distant forum when both parties are residents of Florida is to cause the defendant to incur unnecessary attorney's fees and to harass the defendant when there is no legitimate purpose to the lawsuit where the subject matter of this action is subject to the control of the Florida court.

26. As a direct and proximate result of the plaintiff's actions, the defendant has been forced to spend money defending an unnecessary lawsuit that can have no legitimate purpose.

27. The defendant is informed and believes that she is entitled to judgment against the plaintiff for both actual and punitive damages in an amount to be determined by a jury.

Wherefore, reserving her right to be heard on a motion to dismiss for a lack of minimum contacts, and having fully set forth her answer and counterclaim, the defendant prays that the Court inquire into the matters herein and grant the defendant:

- A. Trial by jury;
- B. Judgment against the plaintiff for both actual and punitive damages in an amount to be determined by a jury;
- C. For costs of this action; and
- D. For such other and further relief as the Court deems just and proper.

Respectfully submitted,

February 14, 2009



Thomas R. Goldstein
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
N. Charleston, S. C. 29415-1121
(843) 554-4291
(843) 554-5566 (fax)
tgoldstein@cobblaw.net

CERTIFICATE OF SERVICE

This is to certify that I have served counsel for all parties in the foregoing matter with a copy of this pleading by:

☒ depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

☐ handing counsel a copy thereof

☐ by facsimile and depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 16th day of FEBRUARY 2009
BY Thomas R. Goldstein

Petitioner,

and

FAMILY DIVISION

Respondent,

000620

RELOCATION OF CHILDREN

Neither party shall permanently remove, cause to be removed, or permit the removal of any minor child of the parties from Monroe County, Florida, without written agreement of both parents or Court order.

6. CHILD CONTACT

If the parties have a child or children, a party vacating the family residence shall notify the other party or the party's attorney, in writing within 48 hours of such a move, and of an address where the relocated party can receive further communication. This provision shall not apply if there is a conflicting Court Order or Injunction for Protection against Domestic Violence.

7. TREATMENT OF CHILDREN

Neither party shall take any action which is intended or would reasonably be expected to result in an alienation of affection by a child for the other parent. Both parents shall encourage the child(ren) to foster respect for the other parent and to encourage visitation with the non-residential parent. Both parents shall assist their child(ren) in having contact with both parties, which is consistent with the habits of the family, personally, by telephone, and in writing unless there is a conflicting Court Order. Please see Rules and Regulations for all Family Court Cases in the 16th Judicial Circuit.

8. COMPLIANCE WITH RULES & REGULATIONS FOR THE 16th JUDICIAL CIRCUIT

All parties are directed to comply with all Rules & Regulations for Family Court for the 16th Judicial Circuit. See attached rules.

9. SANCTIONS

Failure to obey these Orders may be punishable by contempt of Court. If you wish to modify these orders, you must file an appropriate motion with the Clerk of Courts Office in Monroe County.

10. TERM OF ORDER

Upon the initial filing, this order shall be mailed to all parties by the Family Court Case Managers and shall be effective upon receipt of this Order. The foregoing Order shall remain in full force and effect during the pendency of the action unless modified, terminated, or amended by further Order of the Court upon motion of either of the parties.

DONE AND ORDERED at KEY WEST

Monroe County, Florida this 27 day of August, 2018.

David J. Audlin, Jr.

Circuit Court Judge

I HEREBY CERTIFY that a true and correct copy of the Standing Temporary Domestic Relations Order was mailed this
this 27 day of August, 2018 to:

Petitioner _____ Respondent _____ Attorney for Petitioner ☒ Attorney for Respondent ☒

Other _____

[Signature]
Family Court Case Manager

000061

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
dtcobb@hotmail.com

Peggy M. Infinger
pinfinger@cobbblaw.net

Thomas R. Goldstein
tgoldstein@cobbblaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

February 14, 2009

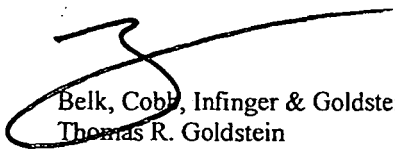
Hon. Julie Armstrong,
Clerk of Court
Charleston County Courthouse
100 Broad Street
Suite 106
Charleston, S. C. 29401

RE: Haugé v. Curran (08-CP-10-324)

Dear Julie,

I enclose an original and an extra copy of the defendant's answer/demand for jury trial, motion to vacate temporary orders, motion cover sheet and our firm's check in the amount of \$25.00. Would you be so kind as to file the originals and return the extra copies mark filed in the envelope provided? By copy of this letter I am serving a copy of these pleadings on opposing counsel. With kind regards, I am

Very truly yours,



Belk, Cobb, Infinger & Goldstein, P.A.
Thomas R. Goldstein

TRG/rt

enclosure: as stated

cc:
Mary L. Arnold, Esq.
Adrienne Curan, M.D.

State of South Carolina)
)
County of Charleston)

In the Court of Common Pleas

Case No.: 08-CP-10-324

David A. Hauge,)
)
Plaintiff,)
)
vs.)
)
Adrienne Curran,)
)
Defendant.)
_____)

**MOTION TO DISSOLVE TEMPORARY
RESTRAINING ORDERS**

FILED
2009 FEB 18 PM 4:18
JULIE J ARMSTRONG
CLERK OF COURT
BY _____

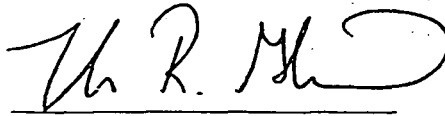
TO MARY LEIGH ARNOLD, Attorney for the Plaintiff:

09-2652
Please take notice that the defendant will move ten days after notice hereof, or as soon thereafter as counsel may be heard, for an order dissolving this Court's *ex parte* orders dated June 10, 2008, and August 19, 2008 (heard June 18, 2008). This motion is based on the ground that the Court entered each order *ex parte* and without notice to the defendant. The defendant did not serve the defendant with pleadings in this case until July 30, 2008, as may be seen by reference to the affidavit of service on file in the case. Therefore, the *ex parte* orders are void as a matter of law. See McSwain v. Holmes, 269 S.C. 293, 237 S.E.2d 363 (1977):

We take this opportunity to advise the Bench and Bar of the disfavor with which we regard *ex parte* orders and the stringent standards of necessity we demand of their issue on review. Not only do such orders deprive this Court of adequate record on appeal but they deny to those deprived an opportunity to be heard in matters which affect them. In an adversary system, *ex parte* orders are reserved for those rare instances where there is no adverse interest or where exigent circumstances clearly require that action be taken before there is time for a full hearing. In the latter instance a full hearing shall take place as soon as possible. . . . Herring v. Retail Credit Co., 266 S.C. 455, 224 S.E.2d 663 (1976).

Respectfully submitted,

February 14, 2009

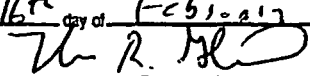


Thomas R. Goldstein
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
N. Charleston, S. C. 29415-1121
(843) 554-4291
(843) 554-5566 (fax)
tgoldstein@cobblaw.net

CERTIFICATE OF SERVICE

This is to certify that I have served counsel for all parties in the foregoing matter with a copy of this pleading by:

- ☒ depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon
☐ handing counsel a copy thereof
☐ by facsimile and depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 16th day of February 2009
BY 

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Case No.: 2007-CP-10-324

David A. Hauge, and CHIDNA, LLC,)
Plaintiffs,)

vs.)

Adrienne Curran,)
Defendant.)

**PLAINTIFF'S
NOTICE OF MOTION AND
MOTION FOR SUMMARY JUDGMENT**

FILED
2009 APR 16 PM 4:16
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO : THOMAS R. GOLDSTEIN, ESQUIRE, ATTORNEY FOR DEFENDANT:

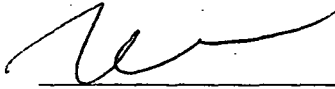
PLEASE TAKE NOTICE that the Plaintiff, David A. Hauge and CHIDNA, LLC,

By its undersigned attorney, will move before the presiding Judge, Ninth Judicial Circuit, Charleston County, Charleston, South Carolina, at such date, time and place as the Court may appoint, more than ten(10) days from hereof, for an Order granting summary judgment against Defendant, Adrienne Currant, and for Plaintiff on the grounds that the pleadings herewith show that there is no genuine issue as to any material fact and that Plaintiff is entitled to judgment as a matter of law.

The Motion is and will be supported by the pleadings herein and any such evidence as may be presented at hearing.

The undersigned hereby certifies and affirms in accordance with Rule 11(a) of the South Carolina Rules of Civil Procedure that consultation with opposing counsel for the purpose of resolving the matter contained herein would serve no useful purpose/or could not be timely held.

PLEASE BE PRESENT TO DEFEND IF SO MINDED.



Mary Leigh Arnold
MARY LEIGH ARNOLD, P.A.
749 Johnnie Dodds Blvd. Suite B
Mt. Pleasant, SC 29464
(843) -971-6053
ATTORNEY FOR PLAINTIFF

April 14, 2009

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she has this 15th day of April, 2009, served by U. S. Mail, postage prepaid a copy of the Plaintiff's Notice of Motion and Motion for Summary Judgement, on opposing counsel in the above captioned case as follows:

Thomas R. Goldstein, Esquire
Belk, Cobb, Infinger & Goldstein, P.A.
Post Office Box 71121
Charleston, SC 29415-1121



Belinda Carlin, Paralegal
749 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29465
(843) 971-6053

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.:2008-CP-10-324

DAVID A. HAUGE AND CHIDNA, LLC,)
Plaintiff,)

vs.)

ADRIENNE CURRAN,)
Defendant.)

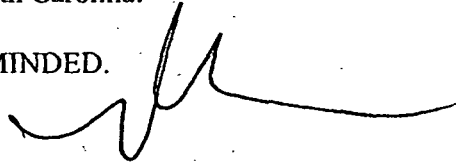
NOTICE OF HEARING

FILED
2009 APR 27 PM 4:27
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

TO: THOMAS GOLDSTEIN, ESQUIRE, ATTORNEY FOR DEFENDANT:

YOU ARE hereby given notice that the PLAINTIFF'S MOTION FOR SUMMARY JUDGEMENT filed on April 16, 2009, has been set for a hearing before The Honorable Judge Roger M. Young, on JUNE 8, 2009, at 10:00 a.m., in Courtroom 3A at the Charleston County Common Pleas Court in Charleston, South Carolina.

PLEASE BE PRESENT IF SO MINDED.



Mar Leigh Arnold
MARY LEIGH ARNOLD, P.A.
1002 Anna Knapp Blvd. Suite 3
Post Office Box 265
Mt. Pleasant, SC 29465-0265
(843) 971-6053

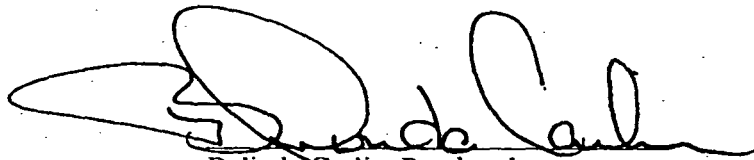
Attorney for Plaintiffs

Mt. Pleasant, SC
April 24th, 2009

CERTIFICATE OF MAILING

The undersigned, Assistant to Attorney Mary Leigh Arnold, Attorney for Defendant, hereby certifies that on this 24th day of April, 2009, she caused a Notice of Hearing for the Motion For Summary Judgement scheduled for June 8, 2009 at 10:00a.m., to be placed in an envelope with first-class postage, prepaid, and mailed to the following:

Thomas R. Goldstein, Esquire
Belk, Cobb, Infinger & Goldstein, P.A.
2344 Cosgrove Avenue
Post Office Box 71121
Charleston, SC 29415-1121



Belinda Carlin, Paralegal

2009 APR 27 PM 4:27
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Case No.: 2008-CP-10-324

David A. Hauge, and CHIDNA, LLC,
Plaintiffs,

vs.

Adrienne Curran,

Defendant.

**PLAINTIFF'S
NOTICE OF MOTION AND
MOTION FOR RECONSIDERATION**

2009 JUL 10 PM 4:07
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

TO : THOMAS R. GOLDSTEIN, ESQUIRE, ATTORNEY FOR DEFENDANT:

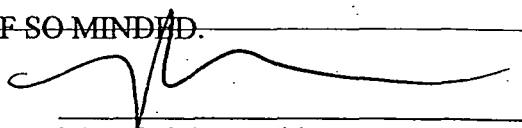
PLEASE TAKE NOTICE that the Plaintiff, David A. Hauge and CHIDNA, LLC.,
By its undersigned attorney, will move before the presiding Judge, Ninth Judicial Circuit, Charleston
County, Charleston, South Carolina, at such date, time and place as the Court may appoint, to
reconsider that certain Order filed June 29, 2009 and received by way of notice on July 6, 2009,
denying Plaintiffs Motion for Summary Judgement and granting Defendant's motion to dismiss
pursuant to the South Carolina Rules and Civil Procedure and common law of South Carolina. The
grounds for such motion are that Defendant failed to proceed or prosecute her motion for dismissal
at time of the hearing and therefore abandoned the motion, this Court incorrectly determined that the
funds of the corporation are martial property, this Court incorrectly determined that corporate
property is before the family court in Florida, this Court incorrect assumed a determination has
been made in Florida that the property is marital, this Court applied the incorrect standard for the
granting of a motion to dismiss and denial of a motion for summary judgment, the Defendant
untimely filed an affidavit at the time of the hearing, the Plaintiff was not given an opportunity to

00 056

present an opposing affidavit to the untimely submitted affidavit and for any other basis set forth in the record in this matter.

The undersigned hereby certifies and affirms in accordance with Rule 11(a) of the South Carolina Rules of Civil Procedure that consultation with opposing counsel for the purpose of resolving the matter contained herein would serve no useful purpose of resolving the matter contained herein would serve no useful purpose /or could not be timely held.

~~PLEASE BE PRESENT TO DEFEND IF SO MINDED.~~



Mary Leigh Arnold
MARY LEIGH ARNOLD, P.A.
749 Johnnie Dodds Blvd, Suite B
Post Office Box 265
Mt. Pleasant, South Carolina 29465
(843) 971-6053

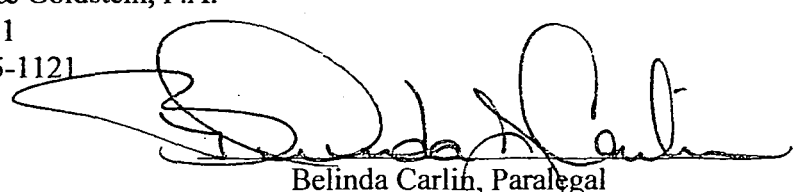
ATTORNEY FOR PLAINTIFFS

Mount Pleasant, South Carolina
July 8th, 2007.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she has this 8th day of July, 2009, served by U. S. Mail, postage prepaid a copy of the Plaintiff's Notice of Motion and Motion for Summary Judgement, on opposing counsel in the above captioned case as follows:

Thomas R. Goldstein, Esquire
Belk, Cobb, Infinger & Goldstein, P.A.
Post Office Box 71121
Charleston, SC 29415-1121



Belinda Carlin, Paralegal

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2008-CP-10-324
DAVID A. HAUGE & CHIDNA, L.L.C.,	)	
	)	
PLAINTIFFS,	)	
	)	
V.	)	DEFENDANT'S REPLY TO
	)	MOTION FOR RECONSIDERATION
ADRIENNE CURRAN,	)	
	)	
DEFENDANT.	)	

DEFENDANT'S REPLY TO
MOTION FOR RECONSIDERATION

2009 JUL 29 PM 2:43
JULI ARMSTRONG
CLERK OF COURT

FILED

The Defendant replies to Plaintiff's motion for reconsideration as follows:

The Plaintiff's motion for reconsideration deliberately misses the point. To illustrate this, here is the briefest summary of admitted, non-controversial facts:

1. The parties are husband and wife.
2. The parties are residents of Florida.
3. David Hauge instituted the two lawsuits that are the subject of this dispute.
4. The Plaintiff chose the forum and the timing of each lawsuit.

With this admitted facts as background, the defect in the Plaintiff's motion for reconsideration is manifest. The Plaintiff chose the forums for the institution of his lawsuit. He instituted a divorce action in the parties' home state of Florida, and he voluntary put the CHIDNA money in play in that lawsuit by filing a sworn financial declaration identifying the money as marital property. The Plaintiff asked for and received a Florida Court declaration that the CHIDNA money is frozen as a marital asset. In other words, the Plaintiff voluntarily put the subject matter of this lawsuit in to the jurisdiction of the Florida courts and obtained the relief he request from the Florida Court. Only after he filed his action in Florida, the Plaintiff filed an action for breach of fiduciary duty in South

Carolina. The Plaintiff identifies the alleged breach as involving the distribution of the same CHIDNA money he identified as a marital asset in Florida. By invoking the Florida jurisdiction, the Plaintiff placed the CHIDNA before the Court there, and when the Florida Court granted the Plaintiff's request and issued a standing domestic relations order freezing the funds, the Plaintiff obtained the relief he requested in the forum he selected. The Plaintiff admits that these funds are the same subject matter over which the Plaintiff claims the Defendant breached her fiduciary duty to him.

The Plaintiff now claims that this Court erred in dismissing his South Carolina suit without prejudice. South Carolina courts have an inherent power to protect the Court from hearing duplicitous claims. In Cothran v. Brown, 357 S.C. 210, 592 S.E.2d 629 (2004) the Supreme Court defined judicial estoppel:

Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding. See Colleton Reg. Hosp. v. MRS Med. Rev. Sys., 866 F. Supp. 896, 900 (D.S.C. 1994). The purpose of the doctrine is to ensure the integrity of the judicial process, not to protect the parties from allegedly dishonest conduct by their adversary. See Hawkins v. Bruno Yacht Sales, 353 S.C. 31, 42, 577 S.E.2d 202, 208 (2003).

In Hayne Fed. Credit Union v. Bailey, 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997), we formally adopted the doctrine of judicial estoppel as it relates to matters of fact, not law. For the following reasons, we reverse the Court of Appeals' application of judicial estoppel.

This Court has not previously explicitly delineated the requirements for the application of judicial estoppel. We now adopt the following elements necessary for the doctrine to apply: (1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally

inconsistent. See Carrigg v. Cannon, 347 S.C. 75, 83, 552 S.E.2d 767, 772 (Ct.App. 2001).

Here, the Plaintiff meets all the elements. He has taken two inconsistent positions: the CHIDNA money is/is not a marital asset. He has adopted the inconsistent positions in the same proceeding; to wit, who gets the CHIDNA money. The Plaintiff was successful with the Florida Court in having it issue its order freezing the funds. The Plaintiff's inconsistent position is part of his effort to mislead the Court—the CHIDNA money cannot simultaneously be and not be a marital asset.¹ And last, obviously, the two positions are inconsistent.

In the Plaintiff's Motion for Reconsideration, the Plaintiff addresses none of these facts and none of the elements of judicial estoppel. Instead the Plaintiff says he was prejudiced because the Court "incorrectly determined that the funds of the corporation are marital property." (Plaintiff's motion, page 1) This Court made no such determination. The Plaintiff did. The Plaintiff cannot file a sworn financial declaration in Florida and then tell the South Carolina Court he did not mean it. In reaching the decision to dismiss the Plaintiff's case without prejudice, all this Court did was assume the Plaintiff was telling the truth in his sworn statements.

Lastly, the Plaintiff claims this Court denied him "an opportunity to present an opposing affidavit to the untimely submitted affidavit." First of all, the Defendant's supplemental affidavit was not untimely at all—it was a response to the Plaintiff's affidavit. Second, and more importantly, the Plaintiff claims he is prejudiced because he was denied an opportunity to file an "opposing" affidavit, but the Plaintiff never requested leave to file a supplemental affidavit, and he has produced no such affidavit to date. We are left, therefore, to speculate as to what such an

¹ Only at the quantum level do we contemplate simultaneous being and not being—Schrodinger's famous cat. In the world of human interaction, a thing and its negation cannot exist harmoniously.

affidavit might say had the Plaintiff bothered to sign one.

This Court did not err in ending this case, especially where it ended the case without prejudice to the Plaintiff. If there are matters remaining unresolved following the Plaintiffs' settlement or trial of his domestic case, he is free to file any action he believes is appropriate, but this Court should not countenance the Plaintiff's effort to litigate the same issue in two states.

For the foregoing reasons, the Defendant respectfully prays for this Court to deny the Plaintiff's motion for reconsideration.

Respectfully submitted,

Charleston, S.C.
July ____, 2009

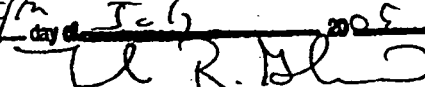


Thomas R. Goldstein
Belk Cobb Infinger & Goldstein, PA
P.O. Box 71121
Charleston, SC 29415-1121

CERTIFICATE OF SERVICE

This is to certify that I have served counsel for all parties in the foregoing matter with a copy of this pleading by:

- ☒ Delivering in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon
- ☐ Delivering counsel a copy thereof
- ☐ Mailing and depositing in the U. S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This: 24th day of July, 2009
BY: 

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Case No. 2008-CP-10-000324

FILED
2009 AUG 27 PM 1:50
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

David A. Hauge Appellants.

Adrienne Curran Respondents.

NOTICE OF APPEAL

David A. Hauge, appeals the Order Denying Summary Judgment and Dismissing Case Without Prejudice of the Honorable Roger M. Young dated June 25, 2009 and Order Denying Motion for Reconsideration of the Honorable Roger M. Young dated August 4, 2009. Appellant received written notice of the orders on July 21, 2009 and August 13, 2009.

MARY LEIGH ARNOLD, P.A.



Mary Leigh Arnold
749 Johnnie Dodds Blvd., Suite B
Mt. Pleasant, South Carolina 29465
(843) 971-6053 (phone)
(843) 971-6055 (fax)
Sammie@maryarnoldlaw.com
Attorney for Appellant

August 18, 2009

Other Counsel of Record:

Thomas R. Goldstein, Esquire
Belk, Cobb, Infinger & Goldstein, P.A.
2344 Cosgrove Avenue
Charleston, SC 294052
(843) 554-4291 (phone)
(843) 554-5566 (fax)
tgoldstein@cobblaw.net

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2008-CP-10-324

DAVID A. HAUGE & CHIDNA, L.L.C.,)

PLAINTIFF,)

V.)

ADRIENNE CURRAN,)

DEFENDANT.)

Affidavit

FILED
2009 MAY 14 PM 2:58
JULIE J. ARMSTRONG
CLERK OF COURT

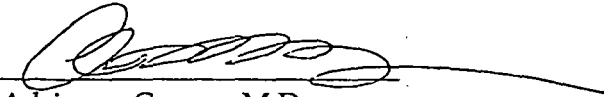
Personally appeared before me, Adrienne Curran being duly sworn, does depose and say: that I am the Defendant in the above entitled action. Davie Hauge is currently my husband, although he has filed a petition for dissolution of our marriage in the Monroe County Court in our home state of Florida. We were married in South Carolina on April 8, 1994. On December 7, 2007, David Hauge served a petition for dissolution of marriage in our home County of Monroe County, Florida at case number 2007-DR-1641-K, such action entitled: "David A. Hauge vs. Adrienne Curran." That litigation is currently pending, and all of our assets are subject to an order of the Court freezing them.

In connection with the domestic litigation, I have, at the request of Dr.. Hauge's attorneys, have assembled and produced volumes of documents detailing every financial transaction involving my husband and me, including, but not limited to all receipts, disbursements and every financial matter related to the operation of Chidna, L.L.C. For the Court's ease in understanding the nature of the dispute, my husband and I created Chidna, L.L.C. as a limited liability company in Charleston, S.C. for the purpose of owning the relation estate that housed an antiques business, called The King

Street Antiques Mall, which we operated in a building we purchased in 2003, at 495-497 King Street. During the course of our marriage, we decided to move back to our current home State of Florida. Several years later, I closed the antique store, liquidated the antiques, and sold the building on March 5, 2007, to T-Mouse 83, L.L.C. for the sum of 2.2 million dollars. The closing took place at Stanley Claypoole's office in North Charleston, and after closing costs and attorney's fees, the net proceeds of the sale were approximately \$1.6 million dollars. Our closing attorney, Ted Hostetter put all of that money in a segregated escrow account at NBSC in Charleston, S. C. on December 12, 2007. On the same day, I transferred this money to an account at the same bank to an account only in my name. The only money I disbursed from this account ever was to our accountant, Noel Beatty, as directed by him (at David's request) in order that he could pay our joint capital gains tax obligations. Other than paying these taxes, all of the money remains intact and remains intact to this day and is subject to the freeze order of the Florida court. Because of the divorce, and that fact that I moved permanently from South Carolina in November 2003, I transferred the money to the First State Bank of the Florida Keys in Key West, Florida (our home), and I have disbursed none of the money other than to pay these taxes. I previously furnished volumes of financial documents detailing financial transactions to Dr. Hauge's attorneys in Florida, and I assume that his attorney in South Carolina is in communication with his attorney in Florida. As the voluminous records I previously produced demonstrate, Dr. Hauge's allegations about a breach of fiduciary duty are groundless. He is aware that all of the proceeds of the sale of the antiques business are untouched except as was necessary to pay taxes. Moreover, all of the proceeds are frozen due to the order of the Monroe County Court at Dr. Hauge's request. Because I have furnished all of the financial information to his attorneys in Florida, Dr. Hauge

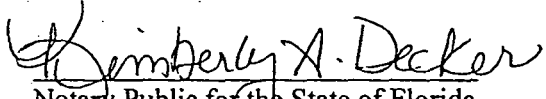
maintains the South Carolina action purely for harassment. The allegations of his complaint are groundless and not supported by any factual evidence.

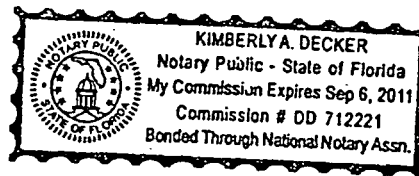
Further your deponent sayeth not.


Adrienne Curran, M.D.

Sworn to before me this

1 day of ^{MAY} April, 2009.


Notary Public for the State of Florida
My Commission expires: 9-6-2011



00 066

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
dicobblaw@hotmail.com

Peggy M. Infinger
pinfinger@cobblaw.net

Thomas R. Goldstein
tgoldstein@cobblaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

May 7, 2009

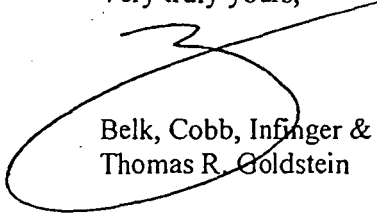
Hon. Julie Armstrong,
Clerk of Court
Charleston County Courthouse
100 Broad Street, Suite 106
Charleston, S.C. 29401

RE: Hauge v. Curran (08-CP-10-324)

Dear Julie,

I enclose the Defendant's affidavit in the above referenced case along with a certificate of mailing. Would you be so kind as to file this affidavit and return a clocked copy to me in the envelope? By copy of this letter, I am serving a copy of the affidavit on opposing counsel. With kind regards, I am

Very truly yours,


Belk, Cobb, Infinger & Goldstein, P.A.
Thomas R. Goldstein

TRG/r

enclosure: as stated

cc: Mary L. Arnold, Esq.
Adrienne Curan, M.D.

00 067

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF COMMON PLEAS
NINTH JUDICIAL 08-CP-10- 324

David A. Hauge, CHIDNA, LLC)
)
Plaintiffs,)
)
v.)
)
Adrienne Curran,)
)
Defendant.)
_____)

AFFIDAVIT OF DAVID A. HAUGE

FILED
2009 JUN -1 PM 2:13
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

STATE OF FLORIDA)
)
COUNTY OF)

PERSONALLY appeared before me, David A. Hauge who, being duly sworn, says as follows:

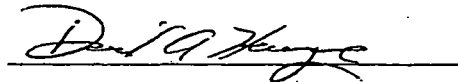
1. He is a named Plaintiff in the within action and is familiar with facts surrounding the with action.
2. Plaintiff is a member of the limited liability company formed on April 21, 2003 under South Carolina law under the name of CHIDNA, LLC which is a named Plaintiff in the within action.
3. CHIDNA, LLC., as a limited liability company organized under the laws in the state of South Carolina.
4. Defendant is a member of the limited liability company formed under South Carolina law under the name of CHIDNA, LLC.
5. CHIDNA, LLC was formed for the purpose of holding and managing a commercial

real property located at 495 King Street, Charleston, South Carolina and owned by CHIDNA, LLC. (SEE ATTACHED DEED).

6. The sole members of CHIDNA, LLC (hereinafter the "Company"), are Plaintiff and Defendant.
7. Plaintiff is the single manager identified in the Articles of Organization.
8. In or around March 5, 2007 the Company sold the property located at 495 King Street, Charleston, South Carolina for the sum of \$2,200,000.00.
9. The proceeds from the sale of the property were made payable to CHIDNA, LLC. The net proceeds from sale were the approximate amount of \$1,600,000.00 and were held in escrow for a number of months following the closing by Teddy Hostetter, Esquire. Teddy Hostetter, Esquire ultimately transfer the sale proceeds to the account of CHIDNA, LLC at NBSC.
10. As admitted by Defendant in her affidavit submitted to this Court, immediately after the proceeds were received by the CHIDNA, LLC, Defendant, without proper vote or authority or knowledge or consent of the Plaintiff, caused the sale proceeds to be withdrawn from the Company's bank account and deposited into an account in her individual name.
11. Defendant converted the sale proceeds by taking control of the proceeds, refusing access to them by CHIDNA, LLC, and by depriving the members of their rightful distributional proportion of the proceeds.
12. Plaintiffs have been deprived of the sale proceeds by the intentional transfer of the funds without proper authorization to an account other than an account of the CHIDNA, LLC.

13. The sale proceeds are property of CHIDNA, LLC and are not property of the Defendant.
14. The sale proceeds are not property subject to any Order relating to the action for dissolution of marriage by and between Plaintiff Hauge and Defendant.
15. In violation of her fiduciary obligations as set forth in S.C. Ann 33-44-409, Defendant set about a course of self-dealing by wrongfully and fraudulently converted large sums of money to her own use and has otherwise unlawfully and fraudulently diverted and disposed of assets of the Company by drafting a large sum of money from the Company which was then deposited into her personal account(s) and/or the accounts of a company solely owned by Defendant.
16. To affiant's knowledge no documents have been produce by Defendant relating to the transactions of CHIDNA, LLC in this matter or any other matter, including the domestic matter.

AFFIANT FURTHER SAYETH NAUGHT.



David A. Hauge

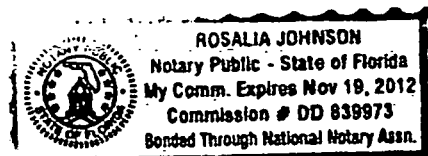
Dated: 5-19-09

Sworn to and subscribed before me
this 19 day of May 2009

Rosalie O. Johnson
Notary Republic for Monroe County, FL

My commission expires: 11-19-2012

Rosalie O. Johnson



STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2008-CP-10-324

DAVID A. HAUGE & CHIDNA, L.L.C.,)

PLAINTIFF,)

V.)

ADRIENNE CURRAN,)

DEFENDANT.)

Affidavit in Response to David Hauge

FILED
2009 JUN 22 PM 3:46
JULIE J. ANTONIO
CLERK OF COURT

Personally appeared before me, Adrienne Curran being duly sworn, does depose and say:

I have previously signed an affidavit in this case. Here I will limit my remarks to the affidavit signed by the plaintiff, David Hauge, dated May 19, 2009.

Paragraphs 1-9 are correct with one correction. In paragraph 5, my husband says: "Chidna, L.L.C. was formed for the purpose of holding and managing a commercial real property located at 495 King Street, Charleston, South Carolina. . . ." This is not exactly correct because it omits an important detail. The commercial real property located at 495 King Street was David's and my antiques store called "The Antiques Mall." David and I moved to Charleston in 1991, and we both thought it would be a great idea, and something different, to own and operate a high-end antiques store in Charleston. We bought the property on King Street to operate "The Antiques Mall." I did most of the work in the store, and it was a successful enterprise, but in 2003, David wanted to move to Florida and practice medicine. For a time, I stayed here and operated the antiques business, but it was not my idea of an ideal marriage to be 900 miles from my husband. We ran the shop as absentee owners for several years from Florida, but this became too much with my driving back and forth from South Carolina to Florida to unpack inventory and relieve the managers so that they could take vacations. As such, we both agreed to close down the antiques store, sell the building,

and continue our relationship as husband and wife in Florida. Therefore, to the extent that my husband's affidavit paints a picture of a company that merely held commercial real estate, it is inaccurate.

Paragraph 10 of my husband's affidavit is completely wrong. After we sold the building, our attorney and our accountant told us that we would be obligated for capital gains tax, which we expected. Prior to paying taxes, David wanted to take a portion of the money and lend it to one of his friends trying to regain their property in Panama. I was never in favor of extending a loan. Despite my objections, he ultimately took money from our personal accounts and lent it to these same friends without my permission. The idea that he would take whatever portion of the money that he saw fit to take, especially to take it out of the United States, made me very nervous, especially when we both knew we had a significant tax bill coming due. As set forth in my husband's affidavit, I transferred the money to a separate account held in my name at the same branch of NBSC. To date, I have paid nothing out of that account other than the capital gains taxes in equivalent amounts for both of us. The money is in short term C.D.'s that are accumulating interest and this interest has not been touched either. My husband has been and is well aware of the tax disbursement and approved it (I sent the tax monies in separate cashier's checks to our joint accountant, Noel Beatty of Charleston, S.C.). The idea that he was kept in the dark on any of these transactions is false. I also retain a copy of an email that I sent to him, that I first had approved by my attorney in Florida, informing him of the movement of the monies to an account in my name immediately after the transaction was made. This same email acknowledged his interest in the monies and gave my personal guarantee that I was not stealing the money, but merely keeping it safe in the bank until such time as we divided it in divorce court. I also sent an email to David's South Carolina attorney, Mary Arnold, in the Spring of 2007, offering to give her this same new account number along with a guarantee that the money was retained in its entirety and was and is safe. Ms. Arnold never responded to me after I sent her this email. A copy of this email is available for review.

Paragraph 11 is likewise ridiculous. As I said above, I have paid nothing out of the proceeds of sale except: taxes to the United States of America and the state of South Carolina. Other than the necessary payment to the aforementioned, all the rest of the money is frozen in the bank account just as my husband wished and as is ordered by the judge handling our divorce in Florida. My husband listed these proceeds as marital property in his financial declaration to the Florida Court, and they are subject to the freeze order issued in Florida upon my husband's request.

Paragraph 12 is also incorrect. The plaintiffs have not been "deprived of the sale proceeds" because the sales proceeds, less taxes, are completely intact and frozen in a Florida bank just as my husband requested in the Florida divorce action.

I agree with paragraph 13. The money is not my property. It is not David's either. The money belongs to the two of us, and it is being divided by us in accordance with a divorce action now pending in Florida.

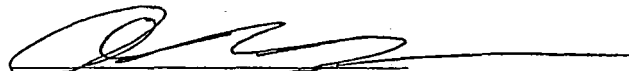
Paragraph 14 is incorrect. In the divorce action, which my husband started, he listed the proceeds of the sale as a marital asset. At his request, the Florida court froze the account. Likewise, in paragraph 16, my husband says that I have not produced any documents related to the sale proceeds in our Florida divorce action. If he really thinks this, I must assume that he is not in communication with his Florida lawyer. (To be fair, he recently changed lawyers in Florida, and perhaps he is not completely up to speed on what I have produced in Florida, but I produced volumes of financial information, including all the financial information about this money and the interest it has made in multiple C.D.'s.) I do not think my husband would intentionally mislead this Court, but his statements in paragraphs 14 and 16 are not correct.

As for paragraph 15, I have done nothing wrong. David left me here in Charleston to hand over the running of the store to the new managers when he moved to Florida. At the time he left to return to Florida, I thought turning over the store, with the goal of eventually selling the building and joining him in Florida is what our marriage needed. He agreed. It was a joint decision to wind down the antiques business. It was a joint decision to sell the building, and it was a joint decision to pay

the costs of the sale and not get thrown in jail for failing to pay taxes when they are due. Shortly after I moved to Florida to join David, he informed me that he did not want to be married to me any more, and it was in connection with his decision to dissolve our marriage that he started making complaints about the proceeds of the sale of the building.

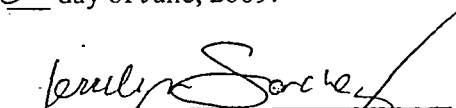
The short response to his affidavit is that the proceeds of the sale are frozen in Florida (in their post tax entirety plus interest earned), subject to the control of the Florida courts in an action begun by my husband to dissolve our marriage and divide our assets. Any assertion that I have mistreated him because I would not go along with his decision to lend our money to a friend of his on a highly speculative investment on a real estate investment in the country of Panama demonstrates the wisdom of the Florida court in freezing the money until we can divide it voluntarily or the court divides it for us.

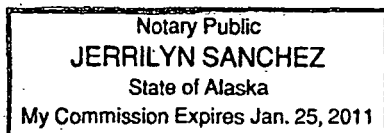
Further your deponent sayeth not.


Adrienne Curran, M.D.

Sworn to before me this

3rd day of June, 2009.


Notary Public for the State of Alaska
My Commission expires: Jan 25, 2011



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	Case No.: 2008-LP-10-324
	)	
DAVID A. HAUGE and CHIDNA, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	PLAINTIFFS RESPONSE TO
	)	DEFENDANT'S REQUEST FOR
	)	ADMISSION
ADRIENNE CURRAN,	)	
	)	
Defendants,	)	
	)	

TO: THOMAS R. GOLDSTEIN, ESQUIRE ATTORNEY FOR DEFENDANT:

Please take notice that the Plaintiff David A. Hauge, by and through his undersigned attorney Mary Leigh Arnold , subject to all pertinent objections to admissibility which may be interposed at trial, makes the following response to Defendant's Request for Admissions dated February 17, 2009:

1. Please admit that at the time of filing the above action the parties are husband and wife.

RESPONSE: Plaintiff admits that the parties were husband and wife at the time of filing the above action and still are, but states that the parties had been separated for over a year prior to the initial filing of this action. Plaintiff further states that the marital status of the parties has nothing to do with the subject action but rather their status as members in CHIDNA, LLC is what is controlling.

- 2.. Please admit that the Plaintiff, David Hauge, commenced an action for dissolution of marriage on December 7, 2007, in Monore County Florida, Case No. 2007-DR-1641-K.

RESPONSE: Admitted.

3. Please admit that at the time Plaintiff instituted the above action he was a citizen and resident of Monroe County Florida.

RESPONSE: The Plaintiff David Hauge admits that he is a resident of Florida, but further states that CHIDNA, LLC, is a Limited Liability Company

organized and existing under the laws of the State of South Carolina with its principal place of business in Charleston, South Carolina.

4. Please admit that at the time Plaintiff instituted the above action the Defendant was a citizen and resident of Monroe County Florida.

RESPONSE: Denied. Plaintiff David Hauge does not know where the Defendant asserts her place of residence is then or now. Plaintiff further states that Defendant is a member in the CHIDNA, LLC, a South Carolina limited liability company, that she controls a bank account located in the County of Charleston that holds assets of CHIDNA, LLC

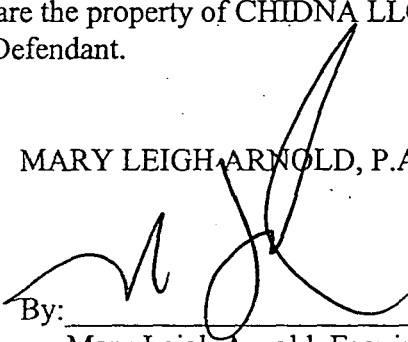
5. Please admit that the Monroe County Court, Family Division, issued a temporary order on August 27, 2008, which enjoined the parties from disposing of any marital assets.

RESPONSE: The Plaintiff admits that the Monroe County Court issued a temporary Order on August 27, 2008, which enjoined the parties from disposing of any marital assets, however the Plaintiff David Hauge believes that the Defendant has been selling some marital assets and keeping the proceeds and further states that the property disposed by Defendant which is the subject matter of this action is not marital property and is the property of CHIDNA, LLC .

6. Please admit that the proceeds of Sale which are the subject matter of this lawsuit are marital assets subject to the control of the Florida order.

RESPONSE: Denied. The proceeds of the Sale are from real property owned by CHIDNA, LLC and are the property of CHIDNA LLC which have been misappropriated by Defendant.

MARY LEIGH ARNOLD, P.A.

By: 

Mary Leigh Arnold, Esquire
749 Johnnie Dodds Blvd. Suite B
Mt. Pleasant, SC 29464
(843) 971-6053
Sammie@maryarnoldlaw.com

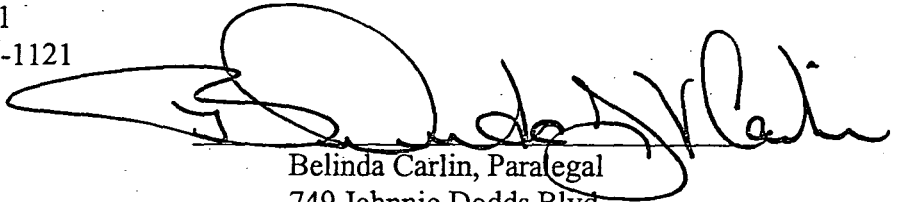
Mt. Pleasant, SC
March 30 2009

00 076

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she has this 30th day of March, 2009, served by U. S. Mail, postage prepaid copies of the Plaintiff's Response to Defendant Request for Admission, in the above captioned case as follows:

Thomas R. Goldstein, Esquire
Belk, Cobb, Infinger & Goldstein, P.A.
Post Office Box 71121
Charleston, SC 29415-1121

A handwritten signature in black ink, appearing to read 'Belinda Carlin', is written over a horizontal line.

Belinda Carlin, Paralegal
749 Johnnie Dodds Blvd.
Mt. Pleasant, SC 29465
(843) 971-6053

CHARLESTON COUNTY *Courts*

CIVIL COURT

HELP • MAIN MENU • FEEDBACK • EXIT

Docket Entries for Case ID -**Year: 2008 Type: CP Location: 10 Number: 000324**[Questions about
this case?](#)**Plaintiff: HAUGE, DAVID A****Defendant: CURRAN, ADRIENNE****Filing Type: CONTRACT-OTHER Judge Code: 2134**

Date	Code	Type	Description / Party	Charge Group	Fee
06/10/2008	ORDER	P	ORDER GRANTING MOTION F/ TEMPORARY RESTRAINING		 
05/14/2008	SERV		PROOF OF SERVICE		
01/22/2008	MMISC	P	MOTION F/ TEMPORARY RESTRAINING ORDER & INJUNCTION ARNOLD, M		 
This motion is closed					
01/22/2008	CPS&C	P	SUMMONS & COMPLAINT		
01/22/2008	RECT		RECEIPT #08-942		

**Report****Selections****Search****Main Menu****Case Filing****Docket****Events****Parties****Property**

NOTE: If you receive a message "No document found" while viewing image document. It means those documents are secured and not accessible through online. You need to visit Clerk of Court Office to lookup those documents.

Copyright ©2010 Charleston County. All Rights Reserved.

00 078

CHARLESTON COUNTY *Courts*

**CIVIL
COURT**
[HELP](#) • [MAIN MENU](#) • [FEEDBACK](#) • [EXIT](#)
Docket Entries for Case ID -
Year: 2008 Type: CP Location: 10 Number: 000324
[Questions about
this case?](#)
Plaintiff: HAUGE, DAVID A
Defendant: CURRAN, ADRIENNE
Filing Type: CONTRACT-OTHER Judge Code: 2134

Date	Code	Type	Description / Party	Charge Group	Fee
08/19/2008	ORDER	P	ORDER GRANTING PLNTFF'S MOTION F/ TEMPORARY		
08/13/2008	*VOID		RECT# 2008-011936 VOIDED DOC #		
				*VOI	25.00
08/13/2008	*RECT		RECT# 2008-011936 AMT: 25.00 DOC #		
				*REC	25.00-
07/01/2008	EVID		EVIDENCE - ONE FOLDER IN CP CABINET		
06/14/2008	FORM4	P	FORM4 IN RE:ORDER 20080610 9990 MAILED FIRST CLASS		


[Repon](#)
[Selections](#)
[Search](#)
[Main Menu](#)
[Case Filing](#)
[Docket](#)
[Events](#)
[Parties](#)
[Property](#)

NOTE: If you receive a message "No document found" while viewing image document. It means those documents are secured and not accessible through online. You need to visit Clerk of Court Office to lookup those documents.

Copyright ©2010 Charleston County. All Rights Reserved.

CHARLESTON COUNTY *Courts*

CIVIL COURT **HELP • MAIN MENU • FEEDBACK • EXIT**

Docket Entries for Case ID -**Year: 2008 Type: CP Location: 10 Number: 000324**[Questions about
this case?](#)**Plaintiff: HAUGE, DAVID A****Defendant: CURRAN, ADRIENNE****Filing Type: CONTRACT-OTHER Judge Code: 2134**

Date	Code	Type	Description / Party	Charge Group	Fee
09/18/2008	AMEND	P	AMENDED CMPLNT & CERT/SERV BY US MAIL		
09/18/2008	MOSUM	P	PLNTFF'S MOT FOR SUM JUDG & CERT/SERV BY US MAIL ARNOLD, M		
This motion is closed				MFEE	25.00
08/26/2008	FORM4	P	FORM4 IN RE:ORDER 20080819 9990 MAILED FIRST CLASS		
08/25/2008	MMISC	D	NOITCE OF SPECIAL APPEARANCE & MOTION TO DISMISS GOLDSTEIN, T		
This motion is closed				MFEE	25.00
08/25/2008	*RECT		RECT# 2008-012517 AMT: 25.00 DOC#	*REC	25.00-

**Report****Selections****Search****Main Menu****Case Filing****Docket****Events****Parties****Property**

NOTE: If you receive a message "No document found" while viewing image document. It means those documents are secured and not accessible through online. You need to visit Clerk of Court Office to lookup those documents.

Copyright ©2010 Charleston County. All Rights Reserved.

CHARLESTON COUNTY *Courts*

**CIVIL
COURT**

HELP • MAIN MENU • FEEDBACK • EXIT

Docket Entries for Case ID -

Year: 2008 Type: CP Location: 10 Number: 000324

[Questions about
this case?](#)

Plaintiff: HAUGE, DAVID A

Defendant: CURRAN, ADRIENNE

Filing Type: CONTRACT-OTHER Judge Code: 2134

Date	Code	Type	Description / Party	Charge Group	Fee
02/10/2009	FORM4		FORM4 IN RE:ORDER 20090204 9990 MAILED FIRST CLASS		
02/09/2009	SERV		RETURN OF SERVICE		
02/04/2009	ORDER		ORDER-DEFNTS MOTION TO DISMISS IS DENIED, PLTFFS		
02/02/2009	LPEND	D	LIS PENDENS & CERT/SERV		
09/19/2008	*RECT		RECT# 2008-013896 AMT: 25.00 DOC #	*REC	25.00-

◀ Prev Top Next ▶

Report

Selections

Search

Main Menu

Case Filing

Docket

Events

Parties

Property

NOTE: If you receive a message "No document found" while viewing image document. It means those documents are secured and not accessible through online. You need to visit Clerk of Court Office to lookup those documents.

Copyright ©2010 Charleston County. All Rights Reserved.

00 081

CHARLESTON COUNTY *Courts*

**CIVIL
COURT**

[HELP](#) • [MAIN MENU](#) • [FEEDBACK](#) • [EXIT](#)

Docket Entries for Case ID -

Year: 2008 Type: CP Location: 10 Number: 000324

[Questions about
this case?](#)

Plaintiff: HAUGE, DAVID A

Defendant: CURRAN, ADRIENNE

Filing Type: CONTRACT-OTHER Judge Code: 2134

Date	Code	Type	Description / Party	Charge Group	Fee
03/20/2009	REPLY	P	PLNTFFS REPLY TO DEFNT'S C/CLAIM & CERT/SERV		
02/19/2009	*RECT		RECT# 2009-002652 AMT: 25.00 DOC #	*REC	25.00-
02/18/2009	CANLP	D	CANCELLATION OF LIS PENDENS		
02/18/2009	MODIS	D	MOTION TO DISMISS, ANSWER, & C/CLAIM & CERT/SERV & GOLDSTEIN, T		
	This motion is closed			MFEE	25.00
02/18/2009	MMISC	D	MOTION TO DISSOLVE TEMPORARY RESTRAING ORDERS & GOLDSTEIN, T (10)		
	This motion is closed			MFEE	25.00



[Report](#)

[Selections](#)

[Search](#)

[Main Menu](#)

[Case Filing](#)

[Docket](#)

[Events](#)

[Parties](#)

[Property](#)

NOTE: If you receive a message "No document found" while viewing image document. It means those documents are secured and not accessible through online. You need to visit Clerk of Court Office to lookup those documents.

Copyright ©2010 Charleston County. All Rights Reserved.

CHARLESTON COUNTY *Courts*

CIVIL COURT **HELP • MAIN MENU • FEEDBACK • EXIT**

Docket Entries for Case ID -

Year: 2008 Type: CP Location: 10 Number: 000324

Questions about
this case?

Plaintiff: HAUGE, DAVID A

Defendant: CURRAN, ADRIENNE

Filing Type: CONTRACT-OTHER Judge Code: 2134

Date	Code	Type	Description / Party	Charge Group	Fee
05/14/2009	AFF	D	AFFIDAVIT OF ADRIENNE CURRAN 		
04/27/2009	NOTH		NOTICE OF HEARING & CERT/MAIL 		
04/17/2009	*RECT		RECT# 2009-006316 AMT: 25.00 DOC # 		
				*REC	25.00-
04/16/2009	RECT		RECEIPT #09-6316		
04/16/2009	MOSUM	P	NOT/MOT FOR SUMMARY JUDGMENT & CERT/SERV ARNOLD, M 		
			This motion is closed	MFEE	25.00



Report

Selections

Search

Main Menu

Case Filing

Docket

Events

Parties

Property

NOTE: If you receive a message "No document found" while viewing image document. It means those documents are secured and not accessible through online. You need to visit Clerk of Court Office to lookup those documents.

Copyright ©2010 Charleston County. All Rights Reserved.

CHARLESTON COUNTY *Courts*

CIVIL COURT [HELP](#) • [MAIN MENU](#) • [FEEDBACK](#) • [EXIT](#)

Docket Entries for Case ID -**Year: 2008 Type: CP Location: 10 Number: 000324**[Questions about
this case?](#)**Plaintiff: HAUGE, DAVID A****Defendant: CURRAN, ADRIENNE****Filing Type: CONTRACT-OTHER Judge Code: 2134**

Date	Code	Type	Description / Party	Charge Group	Fee
07/10/2009	MOREC	P	NOT/MOT FOR RECONSIDERATION & CERT/SERV ARNOLD, M		
			This motion is closed	MFEE	25.00
07/02/2009	FORM4	P	FORM4 IN RE:ORDER 20090629 9990 MAILED FIRST CLASS		
06/29/2009	ORDER	P	ORDER DENYING SUMMARY JUDGMENT & DISMISSING CASE		
06/22/2009	AFF		AFFIDAVIT IN RESPONSE TO DAVID HAUGE		
06/01/2009	AFF		AFFIDAVIT OF DAVID A HAUGE		

[Report](#)[Selections](#)[Search](#)[Main Menu](#)[Case Filing](#)[Docket](#)[Events](#)[Parties](#)[Property](#)

NOTE: If you receive a message "No document found" while viewing image document. It means those documents are secured and not accessible through online. You need to visit Clerk of Court Office to lookup those documents.

Copyright ©2010 Charleston County. All Rights Reserved.

CHARLESTON COUNTY *Courts*

CIVIL COURT

HELP • MAIN MENU • FEEDBACK • EXIT

Docket Entries for Case ID -

Year: 2008 Type: CP Location: 10 Number: 000324

Questions about
this case?

Plaintiff: HAUGE, DAVID A

Defendant: CURRAN, ADRIENNE

Filing Type: CONTRACT-OTHER Judge Code: 2134

Date	Code	Type	Description / Party	Charge Group	Fee
08/27/2009	NOTAP	P	NOTICE OF APPEAL-APPEALING ORDER DENYING SUMMARY		
08/08/2009	FORM4	P	FORM4 IN RE:ORDER 20090804 9990 MAILED FIRST CLASS		
08/04/2009	ORDER	P	ORDER DENYING MOTION FOR RECONSIDERATION		
07/29/2009	REPLY	D	REPLY TO MOTION FOR RECONSIDERATION		
07/15/2009	*RECT		RECT# 2009-011487 AMT: 25.00 DOC #	*REC	25.00-



Report

Selections

Search

Main Menu

Case Filing

Docket

Events

Parties

Property

NOTE: If you receive a message "No document found" while viewing image document. It means those documents are secured and not accessible through online. You need to visit Clerk of Court Office to lookup those documents.

Copyright ©2010 Charleston County. All Rights Reserved.

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON 2008-CP-10-324

DAVID HAUGE and	)	
CHIDNA, LLC,	)	TRANSCRIPT OF RECORD
	)	
Plaintiff,	)	June 8, 2009
	)	
-vs-	)	Charleston, South Carolina
	)	
ADRIENNE CURRAN,	)	
	)	
Defendant.	)	

B E F O R E:

The Honorable Roger M. Young, Sr.

A P P E A R A N C E S:

Mary Leigh Arnold, Esquire
Attorney for the Plaintiff

Thomas Goldstein, Esquire
Attorney for the Defendant

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

1 (June 8, 2009.)

2 THE COURT: All right. Ms. Arnold, you're
3 moving for summary judgment?

4 MS. ARNOLD: Yes, sir.

5 THE COURT: You represent the plaintiff?

6 MS. ARNOLD: I do, Your Honor, plaintiffs.

7 THE COURT: And then, Mr. Goldstein, you're
8 also moving to dismiss and dissolve the temporary
9 restraining order.

10 Oh, this will be good. What do y'all want to
11 tell me?

12 MS. ARNOLD: Your Honor, this is a case that
13 I initiated for the LLC and Dr. Hauge. Dr. Hauge is the
14 plaintiff; Dr. Curran is the defendant. These are
15 presently husband and wife, soon to be former husband and
16 wife. This is an action, corporation, LLC, owned a piece
17 of property, operated an antique store in Charleston,
18 South Carolina.

19 The real estate was sold. The antique store
20 closed down; the real estate was sold. From that real
21 estate, proceeds of about \$1.7 million were derived. I
22 think Danny Hofstetter did the closing on that.

23 Money was held by Mr. Hofstetter for a number
24 of months. They were not disbursed pursuant to
25 LLC agreement. Dr. Curran ultimately, actually, issued

1 the proceeds from his escrow account to the corporation.
2 They were deposited in the corporate account. After they
3 were deposited in the corporate account, Dr. Curran
4 removed -- and there is only two members in the LLC.

5 THE COURT: Have I already dealt with this?

6 MS. ARNOLD: Yes, Your Honor. It's your
7 temporary injunction, took the dollars, moved them from
8 the NBSC account, took them out of the corporate account
9 put them in an account solely in her name. Only a
10 limited amount of those proceeds have been used, and they
11 were used, to my understanding, and this is what
12 Mr. Goldstein tells me, to pay off the capital gains
13 consequences. We brought this action, the corporation
14 and Dr. Hague, in order to get those proceeds back to the
15 corporation to they can then be disbursed pursuant to the
16 operating agreement. You'll see you have several
17 different affidavits in front of the Court that have been
18 filed.

19 We brought an action, a derivative action, a
20 breach of fiduciary duty, conversion, whatnot, whole
21 purpose of it was to get these proceeds back, get them
22 back with the corporation. 2008 taxes can't be done
23 right now, and there are going to be tax consequences
24 because these dollars are actually dollars of the
25 corporation, and it's going to be adverse tax

1 consequences because they weren't disbursed pursuant to
2 the operating agreement, put the dollars back, get them
3 disbursed, and move on.

4 And in my motion for summary judgment --
5 sorry, Your Honor -- again, you have affidavits before
6 you. You have an affidavit before you that admits
7 there's an LLC, admits she's a member of the LLC, admits
8 she took the dollars out of the corporate account, admits
9 she took those dollars and put them in a account that is
10 completely, totally in her control, and she's had control
11 of those proceeds afterwards.

12 I also advise Your Honor I was here before.
13 We had a difficult time originally getting Dr. Curran
14 served. Mr. Goldstein was not here when he moved for an
15 injunction to freeze the accounts because we believed
16 them at the time to be at the NBSC account. I think
17 they're still at NBSC, just a different account, but
18 Dr. Curran has told us those proceedings have been intact
19 since that time period when we got the injunction.

20 I'm here on summary judgment, Judge. I mean,
21 there are counter-affidavits in this case. My client
22 submitted an affidavit; Dr. Curran submitted an
23 affidavit; she's now submitted an affidavit in response
24 to my client's affidavit.

25 Bottom line, Your Honor, there is no material

1 issue of fact. Clearly, these are corporate dollars,
2 LLC moneys. I understand people get confused about what
3 is theirs and what is not theirs, but she has admitted
4 she has taken these dollars, changed from the account,
5 and they're no longer in the possession of corporation
6 and no longer accessible to all the members of the LLC.

7 And so we move for summary judgment. I want
8 summary judgment on liability, Your Honor. I think we
9 would have to come back here at a later date on the issue
10 as to damages on the conversion, the breach of fiduciary
11 for her taking these dollars. This has now been over a
12 year. In excess of \$1 million has been completely in
13 their control, have not been disbursed.

14 I understand they're in an interest bearing
15 account and they have gotten some interest, but I would
16 just move for summary judgment on the liability issue. I
17 don't think it's a disputed fact based upon her affidavit
18 alone that she has submitted to the Court admitting that
19 she's taken the dollars and put them in her control.

20 THE COURT: Mr. Goldstein?

21 MR. GOLDSTEIN: If it please, Your Honor,
22 Tommy Goldstein for the defendant, and at this time I
23 would like to hand up to Your Honor to help keep me on
24 track -- if you don't mind, this is the counter-affidavit
25 of the defendant Dr. Curran, which the clerk's office

1 would not accept because it doesn't bear an original
2 signature.

3 She's in a remote fishing village. She's a
4 medical director in this remote fishing village in remote
5 Alaska, where even when you call on the phone, you have
6 to talk, wait, wait for the response. It's really
7 remote, and the original signature is on the way.

8 Second, Your Honor, I would like to hand up,
9 if I may, an index of exhibits, and it's a timeline, and
10 without getting into the counter affidavits, because they
11 filed affidavits and we filed affidavits and they say one
12 thing and we say another thing, I think it's easier,
13 rather than concentrating on the "you say I say", because
14 this is a husband and wife dispute, they are in divorce,
15 what I would like to do is just call out some dates to
16 Your Honor.

17 On December 7 -- and this is in the index of
18 exhibits I just handed to Your Honor -- on December 7,
19 2007, the plaintiff, Dr. Hauge, filed a petition for
20 dissolution of marriage in Monroe County, Florida. You
21 have that before you. As you can see, he checked box
22 number two in the dissolution of marriage, and he says
23 there are marital assets or liabilities, all marital and
24 nonmarital assets. Liabilities are listed in the
25 financial affidavits.

1 Well, if you turn to his financial affidavit,
2 which is page 15 of the Bates stamped documents, you will
3 see the funds -- I'm sorry. I gave you the wrong page
4 number -- I gave you the correct page number. If you
5 turn to page 15 of Dr. Hauge's financial declaration,
6 which was filed with his divorce, you will see that he
7 has listed as a marital asset the money that is the
8 subject matter of this lawsuit.

9 Now, pursuant to his application to that
10 Florida Court listing the marital assets that he
11 identified, the Florida Court issued an order, which is
12 Bates stamped page 20, and Your Honor has it before you,
13 a standing temporary domestic relations order, which
14 provides in part neither party may conceal from the other
15 any family records and so on and provides that all assets
16 are frozen, so the money is now subject, the same money
17 is now subject, to Your Honor's ex parte order and
18 subject to the Florida order in the divorce.

19 I respectfully suggest that perhaps the
20 proper thing to do would be for Your Honor to consult
21 with the presiding judicial officers. They don't have a
22 Family Court in Florida. They have a Family Court
23 Division of Common Pleas Court, and perhaps Your Honor
24 might want to communicate with that judge and y'all
25 decide.

1 We don't claim the money. We claim that the
2 money is subject to the Court's distribution, if not in
3 that Florida Family Court, then by this Court. My client
4 has not disbursed any money from the account other than
5 the money that she cleared with her husband that was
6 required to be paid to the United States of America and
7 the South Carolina Department of Revenue, plus the
8 attorneys' fees and accounting fees incurred in the costs
9 of the sale. All the other money is intact, preserved,
10 subject to control of the Florida Domestic Relations
11 Court.

12 Now, perhaps Dr. Hague can now explain that
13 they didn't mean to list that money in the Florida
14 divorce Court, but he listed it, and it is definitely
15 subject to the Florida order. If you're not satisfied
16 with that, Your Honor, I have filed, which you have
17 before you, the affidavit in response to the plaintiff's
18 affidavit, and as you can see, my client has corrected
19 several misstatements made by the plaintiff in his
20 affidavit.

21 So, in short, either A, it's already
22 controlled by the Florida Court and you and the judge in
23 Florida got to put your heads together and decide what to
24 do with this money, because, y'all, I got two judges now
25 issuing orders on the same money; or, two, clearly, as

1 evidenced by the counter-affidavit filed in response to
2 the affidavit of the plaintiff, there are genuine issues
3 of material fact, in which case summary judgment would be
4 inappropriate.

5 MS. ARNOLD: Your Honor, short response: I
6 wholeheartedly disagree. It's not between two judges at
7 this point in time. I don't know why it's a common
8 misunderstanding, but these are corporate proceeds.
9 These are proceeds of this LLC.

10 They show the estate was maintained in
11 LLC account, and until they are properly disbursed, then
12 they become individual dollars to the members and are
13 subject, possibly, to a marital action where they're
14 required not to dispose of assets at that point in time.

15 Nonetheless, this LLC had an obligation to
16 file tax returns for 2008, can't do it. Doesn't have
17 control of the dollars. These were LLC dollars, and
18 until they're disbursed and until they're issued to the
19 members, that is whose dollars these are, and now it's
20 inappropriate or it's a breach of fiduciary duty.

21 It goes back to the clerk in this case. I
22 know you're familiar with dealing with corporate property
23 and one partner or different shareholders converting or
24 taking over other property. This is exactly what has
25 happened, and by Dr. Curran taking these corporate

1 dollars without proper resolution and putting them
2 totally and completely in her control. I'm not objecting
3 to the supplemental affidavit that Mr. Goldstein has
4 presented, and it probably wasn't timely.

5 More importantly, in the affidavit herself,
6 Dr. Curran says they aren't her dollars and they aren't
7 Dr. Hague's dollars, and I don't disagree with her. They
8 are the LLC's dollars until there is a proper
9 distribution pursuant to the LLC documents and operating
10 agreement.

11 Thank you, Your Honor.

12 THE COURT: All right. Well, I'm going to
13 have to read through this stuff you gave me this morning,
14 see if I can't come up with something that either works
15 to resolve it or gets it out of my life. So let me see
16 what I can do.

17 MS. ARNOLD: Would it help to do proposed
18 orders?

19 THE COURT: That would be wonderful, by the
20 end of next week.

21 - - -

22 (Whereupon, the proceedings were concluded.)

23 - - -

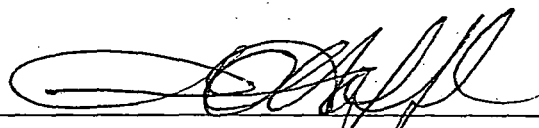
24

25

I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 8th of June 2009.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 8, 2009



Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
David A. Hauge,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 08-CP-10-0324
	)	
Adrienne Curran,	)	
	)	
Defendant.	)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned case was held on February 4, 2009, before The Honorable R. Markley Dennis, Jr. in Courtroom 4B of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by Counsel, as follows:

APPEARANCES:

Mary Leigh Arnold, Esq.
 749 Johnnie Dodds Blvd., Suite B
 Mount Pleasant, SC 29464
 Appearing for Plaintiff

Thomas Goldstein, Esq.
 BELK COBB & GOLDSTEIN
 P O Box 71121
 Charleston, SC 29415
 Appearing for Defendants

DEBORAH GARRISON
Circuit Court Reporter - 9th Judicial Circuit
 Post Office Box 901
 Johns Island, South Carolina 29457
dGarrison@sccourts.org

1 THE COURT: This -- it appears that
2 there is a Motion for summary judgment and a
3 Motion to dismiss. I assume the Motion to
4 dismiss is based on the pleadings, Mr.
5 Goldstein?

6 MR. GOLDSTEIN: That's correct, Your
7 Honor.

8 THE COURT: You filed your Motion
9 first so -- obviously if I dismiss it, then I
10 don't get to summary judgment.

11 MR. GOLDSTEIN: Yes, sir.

12 THE COURT: I'll be happy to hear
13 from you.

14 MR. GOLDSTEIN: Thank you, Your
15 Honor. May it please the court, Judge, I have
16 prepared a set of exhibits and an index, Your
17 Honor. May I approach?

18 THE COURT: Appreciate that. Was the
19 Motion to dismiss on the pleadings?

20 MR. GOLDSTEIN: No, sir, it's a
21 Motion -- it was -- let me tell you what I did.

22 THE COURT: All right.

23 MR. GOLDSTEIN: I ---

24 THE COURT: I mean, I don't have any
25 problem if everybody is in agreement ---

1 MR. GOLDSTEIN: It's -- it's a
2 timeline with supporting documentation.

3 THE COURT: May only concern is this,
4 if it is a Motion to dismiss, then the only
5 thing that I can consider is the four corners of
6 the Compliant. That's it.

7 MR. GOLDSTEIN: Okay. Your Honor,
8 this matter is before the court on a Motion to
9 dismiss on several grounds.

10 THE COURT: All right.

11 MR. GOLDSTEIN: Ms. Arnold was kind
12 enough to take me outside and remind me that
13 because of my age I did it the old way, not the
14 new way. The new way you're supposed to do a
15 12(b)(8) Motion. I called it a Notice of
16 Special Hearing. The case is -- actually lawyer
17 should quit calling it that because now that
18 we've got the new rule, you're supposed to call
19 it a 12(b)(8) Motion.

20 THE COURT: I will convert it to a
21 Motion to dismiss on the pleadings. How about
22 that?

23 MR. GOLDSTEIN: Well, I cited the
24 rule in the Motion, so the rule is cited in the
25 Motion. I just captioned it the old-fashioned

1 way.

2 THE COURT: Okay.

3 MR. GOLDSTEIN: Your Honor, this
4 case is a domestic case arising out of Florida.
5 The plaintiff and defendant are husband and
6 wife. They are currently -- and they're both
7 residents of Florida, the plaintiff is a
8 resident of Florida and the defendant is a
9 resident of Florida. Now, they formerly lived
10 in South Carolina but the left South Carolina
11 in 2006. They owned some property that is
12 located in South Carolina -- the property has
13 been dissolved and liquidated into cash.

14 THE COURT: I don't want to interrupt
15 you -- I'm just looking at the Complaint.
16 There's a cause of action that I see in the
17 Complaint -- I don't know what "derivative
18 action by member" is, that may be one that you
19 need to address only because I am not familiar
20 with it.

21 Breach of fiduciary duty, that's a
22 cause of action that exists in this state, for
23 breach of fiduciary duty.

24 Conversion, a cause of action exists in
25 this state for conversion.

1 Unjust enrichment, a cause of action
2 that exists for that.

3 Injunctive relief, a cause of action
4 would exist for that.

5 You may be entitled to judgment on all
6 of those at some point in time but on the
7 pleadings those are properly -- those are proper
8 actions.

9 MR. GOLDSTEIN: Yes, Your Honor.
10 The basis for my objection is that the court
11 has not acquired jurisdiction over the
12 defendant.

13 THE COURT: I appreciate that but it
14 says that he does and -- I've got to go outside
15 the pleadings to make that call.

16 MR. GOLDSTEIN: Well, ---

17 THE COURT: How do you say -- what
18 do you base that on?

19 MR. GOLDSTEIN: The -- if you look
20 at my Motion to dismiss, I have made reference
21 to the Summons and Complaint which was sent to
22 the defendant by certified mail. That is on
23 file, in the record.

24 THE COURT: Right, I have that. In
25 Key West, Florida.

1 MR. GOLDSTEIN: Correct.

2 THE COURT: Okay.

3 MR. GOLDSTEIN: Okay.

4 MS. ARNOLD: Your Honor, if I could
5 just cut this short -- that's how we served her
6 first and then got an injunction. When we got
7 the injunction from Judge Young freezing
8 assets, I reserved by personal service the
9 Summons and Complaint and the injunction Order
10 on her. So there might have been a technical
11 issue with the first time that we served but we
12 have re-served her since then. Mr. Goldstein
13 has seen the verification from the process
14 server.

15 MR. GOLDSTEIN: Which I am seeing
16 for the very first time.

17 THE COURT: I understand.

18 MR. GOLDSTEIN: Okay, then let me
19 drop down to my second basis.

20 THE COURT: All right.

21 MR. GOLDSTEIN: Under the rules,
22 Judge, you may move to dismiss when there is
23 another action pending between the same parties
24 for the same claim. These parties are
25 currently in Family Court in Florida, in the

1 Sixteenth Judicial Circuit, in an action filed
2 by the plaintiff in this action, as a resident
3 of Florida, and he filed a petition for
4 dissolution of marriage on December 7th, 2007.
5 That matter is currently pending between these
6 two parties.

7 THE COURT: I understand that but
8 that doesn't have a thing to do with civil
9 causes of action for damages for breach of
10 fiduciary duty, conversion, unjust enrichment
11 and injunctive relief. I mean, I -- those --
12 there is nothing wrong with those two actions
13 being maintained simultaneously. There's no
14 conflict.

15 MR. GOLDSTEIN: I understand, Your
16 Honor.

17 THE COURT: There may be overlap, I
18 will concede that. But from the standpoint of
19 the pleadings themselves, the fact that there
20 is a divorce action pending -- okay. That's
21 fine. There may be -- there may be some
22 defenses that could arise out of that, clearly.
23 Those may have -- they may have to be resolved
24 by motions for summary judgment but, again, on
25 the pleadings themselves, the fact that there

1 is a separate action maintained, I can't
2 dismiss it just because -- now, if you tell me
3 that there's a -- if you were to say, 'Judge,
4 there is a cause of action and it tracks this
5 verbatim, same causes of action, in Florida',
6 you're right, I agree with you.

7 MR. GOLDSTEIN: I understand.

8 THE COURT: But the fact that it's a
9 Family Court matter, I don't think that
10 prevents her from bringing this action here.

11 MR. GOLDSTEIN: Well, Your Honor, in
12 light of the return of service which I have
13 just seen, which was not in the file, ---

14 THE COURT: I understand.

15 MR. GOLDSTEIN: -- what I am going
16 to do -- and I've already gleaned Your Honor's
17 ruling ---

18 THE COURT: I don't quarrel with you
19 -- as I tell people, I -- and I don't know, may
20 I -- in fact, I've asked my law clerk to go
21 pull every single case that's been affirmed on
22 a Motion to dismiss on the pleadings to see --
23 maybe I am missing it, because I see them all
24 the time but as I read that rule and as I've
25 read some of the cases, including one that is

1 near and dear to my heart because it involves a
2 decision that I made in Jasper in '97 where I
3 -- I've used it numerous times, and told Bill
4 Howard this recently, uh, -- Bill wrote a
5 dissent in that case to reverse me because --
6 not because of my ruling, because the other
7 two affirmed it. What I was trying to do,
8 unfortunately, was still be a lawyer and
9 expedite. I have a tendency of doing that,
10 that's a fault that I confess.

11 Somehow they figured a way to affirm
12 it, I guess; they didn't go any further. But
13 Bill pointed out something and I remembered it
14 and I've remembered it since. The judge went
15 outside the pleadings to support his ruling
16 and, therefore, he violated the rule. When I
17 read that, I said 'you're right, I did.'

18 So I've done my best to try to stay
19 within the parameters of a Motion to dismiss.
20 That's why I asked the question. You are --
21 and in that case it was a dismissal and somehow
22 they figured a way to get it around that, but
23 -- you may be entitled to it, on all of it,
24 have sound grounds and will win but I can't do
25 it on a Motion to dismiss. I've got to do on

1 summary judgment, so I think -- or some other
2 legal basis. So I can't do it on the
3 pleadings.

4 MR. GOLDSTEIN: I understand, Your
5 Honor.

6 THE COURT: Okay. But I don't
7 quarrel with you for filing the Motion,
8 especially with what you were presented. I
9 don't fault that at all. I would probably do
10 the same thing, too, the misnomer. I confess
11 it's been a long time since I've practiced law
12 but that -- that's okay. I understood what you
13 wanted and I understood what you were trying to
14 ask for. That's fine.

15 MR. GOLDSTEIN: Thank you, Judge.

16 THE COURT: Now, Ms. Arnold, you
17 filed a Motion for summary judgment.

18 MS. ARNOLD: I did, Your Honor.

19 THE COURT: All right, well I am
20 curious. Based on what?

21 MS. ARNOLD: This is a verified
22 Complaint and ---

23 THE COURT: We just talked about
24 that and there was no Answer filed.

25 MS. ARNOLD: There has been no answer

1 as of this point in time.

2 THE COURT: Yeah, but he's going to
3 file one.

4 MS. ARNOLD: Yes, sir.

5 THE COURT: Because he has a right
6 to.

7 MS. ARNOLD: Yes, sir, I agree.

8 THE COURT: There was an argument,
9 and I summarily dismissed it and then I thought
10 about it, 'Well, wait a minute. That's a
11 verified complaint. That's an affidavit. Why
12 can't I ---' -- my law clerk and I were talking
13 about that, oddly enough, this morning and
14 reread the rule. It says based on the
15 pleadings, depositions and affidavits, if any.

16 Where the problem is created and what
17 generally gets us over this hurdle and why we
18 file affidavits is that something has happened
19 that clarifies the issues that are framed by
20 the pleadings.

21 The fact that it is verified, his
22 Answer says 'I didn't do that', so ---

23 MS. ARNOLD: Judge, since Mr.
24 Goldstein hasn't filed an Answer yet, why don't
25 we just hold this matter in abeyance and we can

1 get back ---

2 THE COURT: Why don't you just
3 withdraw that?

4 MS. ARNOLD: I will withdraw the
5 entire ---

6 THE COURT: You can refile it once
7 you've seen what he's said. How about that?

8 MS. ARNOLD: I will.

9 THE COURT: That way you don't have
10 a pending Motion.

11 MS. ARNOLD: No problem.

12 THE COURT: Thank you'all.

13 (CONCLUDED)

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

I, the undersigned, Deborah Garrison,
official court reporter for the 9TH Judicial
Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true,
accurate and complete transcript of the *
Held before The Honorable R. Markley Dennis,
Jr., on *

I further certify that I am neither kin nor
counsel to any of the parties and have no
interest in the outcome of this action.



Deborah Garrison

Circuit Court Reporter

9th Judicial Circuit

Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Case No. 2008-CP-10-000324

David A. Hauge and CHIDNA, LLC Appellants,

V.

Adrienne Curran Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record of Appeal contains all material
proposed to be included by any of the parties and not any other material.

February 11, 2010



Mary Leigh Arnold, Esquire
Mary Leigh Arnold, P.A.
749 Johnnie Dodds Blvd., Suite B
Mt. Pleasant, South Carolina 29465
(843) 971-6053 (phone)
(843) 971-6055 (fax)
Sammie@maryarnoldlaw.com
Attorney for Appellants

Other Counsel of Record:

Thomas R. Goldstein, Esquire
Belk, Cobb, Infinger & Goldstein, P.A.
2344 Cosgrove Avenue
Charleston, SC 294052
(843) 554-4291 (phone)
(843) 554-5566 (fax)
tgoldstein@cobblaw.net
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Case No.: 2008-CP-10-324

David A. Hauge, ... Appellant,

vs.

Adrienne Curran, ... Respondent.

SUPPLEMENTAL RECORD ON APPEAL

Mary L. Arnold
Mary Leigh Arnold, P.A.
749 Johnnie Dodds Blvd.
Suite B
Mt. Pleasant, S. C. 29465
(843) 971-6053
Sammie@maryaronlodlaw.com
Attorneys for Appellant

Thomas R. Goldstein
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
N. Charleston, S. C. 29415-1121
(843) 554-4291
tgoldstein@cobblaw.net
Attorneys for Respondent

INDEX

David Hauge's Petition for Dissolution of Marriage 2007-DR-1641-K	1
David Hauge's Financial Affidavit 2007-DR-1641-K	4
Norwegian Jewel Pay Stubs	15
Florida Statute § 26.012	18
Florida Statute §61.075	19

IN THE CIRCUIT COURT OF THE _____ CIRCUIT _____ JUDICIAL CIRCUIT,
IN AND FOR _____ MONROE _____ COUNTY, FLORIDA

Case No.: 2007-DB-1641-K
Division: _____

DAVID ARTHUR HAUGE

Petitioner,

and

ADRIENNE MARGARET CURRAN, JR.

Respondent.

**PETITION FOR DISSOLUTION OF MARRIAGE
WITH PROPERTY BUT NO DEPENDENT OR MINOR CHILD(REN)**

I, {full legal name} DAVID ARTHUR HAGUE, the
[☒ one only] (☒) Husband (☐) Wife, being sworn, certify that the following statements are true:

1. JURISDICTION/RESIDENCE
(☒) Husband (☐) Wife (☐) Both has (have) lived in Florida for at least 6 months before the filing of this Petition for Dissolution of Marriage.
2. The husband [☒ one only] (☐) is (☒) is not a member of the military service.
The wife [☒ one only] (☐) is (☒) is not a member of the military service.
3. MARRIAGE HISTORY
Date of marriage: {month, day, year} April 8, 1994
Place of marriage: {city, state, country} Charleston, SC
Date of separation: {month, day, year} January 18, 2007 (☒ if approximate)
4. THERE ARE NO MINOR (under 18) OR DEPENDENT CHILD(REN) COMMON TO BOTH PARTIES AND THE WIFE IS NOT PREGNANT.
5. A completed Notice of Social Security Number, Florida Supreme Court Approved Family Law Form 12.902(j), is filed with this petition.
6. THIS PETITION FOR DISSOLUTION OF MARRIAGE SHOULD BE GRANTED BECAUSE:
[☒ one only]
 - a. The marriage is irretrievably broken.
 - b. One of the parties has been adjudged mentally incapacitated for a period of 3 years before the filing of this petition. A copy of the Judgment of Incapacity is attached.

SECTION I. MARITAL ASSETS AND LIABILITIES

[☒ one only]

1. There are no marital assets or liabilities.
2. There are marital assets or liabilities. All marital and nonmarital assets and liabilities are (or will be) listed in the financial affidavits, Florida Family Law Rules of Procedure Form 12.902(b) or (c), to be filed in this case.

[☒ all that apply]

- ☐ a. All marital assets and debts have been divided by a written agreement between the parties, which is attached to be incorporated into the final judgment of dissolution of marriage. (The parties may use Marital Settlement Agreement for Simplified Dissolution of Marriage, Florida Family Law Rules of Procedure Form 12.902(f)(3) or Marital Settlement Agreement for Dissolution of Marriage with No Dependent or Minor Child(ren), Florida Supreme Court Approved Family Law Form 12.902(f)(2).
- ☒ b. The Court should determine how the assets and liabilities of this marriage are to be distributed, under section 61.075, Florida Statutes.
- ☐ c. Petitioner should be awarded an interest in Respondent's property because:

SECTION II. SPOUSAL SUPPORT (ALIMONY)

[☒ one only]

☒ 1. Petitioner forever gives up his/her right to spousal support (alimony) from Respondent.

☐ 2. Petitioner requests that the Court order Respondent to pay the following spousal support (alimony) and claims that he or she has a need for the support that he or she is requesting and Respondent has the ability to pay that support. Spousal support (alimony) is requested in the amount of \$ _____ every () week () other week () month, beginning {date} and continuing until {date or event} _____.
Explain why the Court should order Respondent to pay and any specific request(s) for type of alimony (temporary, permanent, rehabilitative, and/or lump sum): _____

[☒ if applies] () Petitioner requests life insurance on Respondent's life, provided by Respondent, to secure such support.

SECTION III. OTHER

1. [If Petitioner is also the Wife, ☒ one only] () yes () no Petitioner/Wife wants to be known by her former name, which was {full legal name} _____.

2. Other relief {specify}: _____

SECTION IV. PETITIONER'S REQUEST (This section summarizes what you are asking the Court to include in the final judgment of dissolution of marriage.)

Petitioner requests that the Court enter an order dissolving the marriage and:

[☒ all that apply]

- ☒ 1. distributing marital assets and liabilities as requested in Section I of this petition;
- ☒ 2. awarding spousal support (alimony) as requested in Section II of this petition;

3. restoring Wife's former name as requested in Section III of this petition;
 4. awarding other relief as requested in Section III of this petition; and any other terms the Court deems necessary.

I understand that I am swearing or affirming under oath to the truthfulness of the claims made in this petition and that the punishment for knowingly making a false statement includes fines and/or imprisonment.

Dated: December 7, 2007

David Arthur Hauge
 Signature of Petitioner
 Printed Name: David Arthur Hauge
 Address: 615 MCKENNA LANE
 City, State, Zip: KEY WEST, FL 33040
 Telephone Number: 305-393-9549
 Fax Number: _____

STATE OF FLORIDA
 COUNTY OF Monroe

Sworn to or affirmed and signed before me on 12/7/07 by David Arthur Hauge



Erin H. Nevius
 NOTARY PUBLIC or DEPUTY CLERK

ERIN H. NEVIUS
 [Print, type, or stamp commissioned name of notary or deputy clerk.]

Personally known
 Produced identification
 Type of identification produced _____

IF A NONLAWYER HELPED YOU FILL OUT THIS FORM, HE/SHE MUST FILL IN THE BLANKS BELOW: [fill in all blanks]

I, {full legal name and trade name of nonlawyer} _____,
 a nonlawyer, located at {street} _____, {city} _____,
 {state} _____, {phone} _____, helped {name} _____,
 who is the petitioner, fill out this form.

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT,
IN AND FOR MONROE COUNTY, FLORIDA

Case No.: 2007-DR-1641-K
Division: FAMILY DIVISION

DAVID ARTHUR HAUGE

Petitioner,

and

ADRIENNE MARGARET CURRAN,

Respondent.

FAMILY LAW FINANCIAL AFFIDAVIT
(\$50,000 or more Individual Gross Annual Income)

I, {full legal name} DAVID ARTHUR HAUGE, being
sworn, certify that the following information is true:

SECTION I. INCOME

1. Date of Birth: 3/27/61

2. My occupation is: PHYSICIAN

3. I am currently

[☒ all that apply]

☐ a. Unemployed

Describe your efforts to find employment, how soon you expect to be employed, and the pay you expect to receive: _____

☒ b. Employed by: SELF/COASTAL EMPIRE, PA

Address: 3412 DUCK AVENUE

City, State, Zip code: KEY WEST, FL 33040

Telephone Number: 305-295-6790

Pay rate: \$ 800 () every week () every other week () twice a month

() monthly (☒) other: per day to Coastal Empire, PA (Coastal pays \$1,000 per month to Petitioner)

If you are expecting to become unemployed or change jobs soon, describe the change you expect and why and how it will affect your income: _____

☐ Check here if you currently have more than one job. List the information above for the second job(s) on a separate sheet and attach it to this affidavit.

☐ c. Retired. Date of retirement: _____

Employer from whom retired: _____

Address: _____

City, State, Zip code: _____ Telephone Number: _____

LAST YEAR'S GROSS INCOME: Your Income Other Party's Income (if known)
YEAR 2007 \$ 26,000 \$ unknown

PRESENT MONTHLY GROSS INCOME:

All amounts must be MONTHLY. See the instructions with this form to figure out money amounts for anything that is NOT paid monthly. Attach more paper, if needed. Items included under "other" should be listed separately with separate dollar amounts.

1. Monthly gross salary or wages	1. \$ <u>1,000.00</u>
2. Monthly bonuses, commissions, allowances, overtime, tips, and similar payments	2. <u>0</u>
3. Monthly business income from sources such as self-employment, partnerships, close corporations, and/or independent contracts (Gross receipts minus ordinary and necessary expenses required to produce income.) (☐ Attach sheet itemizing such income and expenses.)	3. <u>0</u>
4. Monthly disability benefits/SSI	4. <u>6,890</u>
5. Monthly Workers' Compensation	5. <u>0</u>
6. Monthly Unemployment Compensation	6. <u>0</u>
7. Monthly pension, retirement, or annuity payments	7. <u>0</u>
8. Monthly Social Security benefits	8. <u>0</u>
9. Monthly alimony actually received	
9a. From this case: \$ _____	
9b. From other case(s): _____	Add 9a and 9b
10. Monthly interest and dividends	9. <u>0</u>
11. Monthly rental income (gross receipts minus ordinary and necessary expenses required to produce income) (☐ Attach sheet itemizing such income and expense items.)	10. <u>0</u>
12. Monthly income from royalties, trusts, or estates	11. <u>0</u>
13. Monthly reimbursed expenses and in-kind payments to the extent that they reduce personal living expenses (☐ Attach sheet itemizing each item and amount.)	12. <u>0</u>
14. Monthly gains derived from dealing in property (not including nonrecurring gains)	13. <u>0</u>
Any other income of a recurring nature (identify source)	14. <u>0</u>
15. _____	15. <u>0</u>
16. _____	16. <u>0</u>
17. PRESENT MONTHLY GROSS INCOME (Add lines 1-16) TOTAL:	17. \$ <u>7,890.00</u>

PRESENT MONTHLY DEDUCTIONS:

All amounts must be MONTHLY. See the instructions with this form to figure out money amounts for anything that is NOT paid monthly.

18. Monthly federal, state, and local income tax (corrected for filing status and allowable dependents and income tax liabilities)	
a. Filing Status <u>single</u>	
b. Number of dependents claimed <u>0</u>	
19. Monthly FICA or self-employment taxes	18. \$ _____
20. Monthly Medicare payments	19. <u>200</u>
	20. <u>combined</u>

- ## SECTION II. AVERAGE MONTHLY EXPENSES

HOUSEHOLD:

- Florida Family Law Rules of Procedure Form 12.902(c), Family Law Financial Affidavit (09/06)

25. SUBTOTAL (add lines 1 through 24) 25. \$ 3,190.00

AUTOMOBILE:

26. Monthly gasoline and oil	26. \$ 100
27. Monthly repairs	27. 50
28. Monthly auto tags and emission testing	28. 10
29. Monthly insurance	29. 50
30. Monthly payments (lease or financing)	30. 0
31. Monthly rental/replacements	31. 50
32. Monthly alternative transportation (bus, rail, car pool, etc.)	32. 0
33. Monthly tolls and parking	33. 30
34. Other:	34. 0

35. SUBTOTAL (add lines 26 through 34) 35. \$ 290.00

MONTHLY EXPENSES FOR CHILDREN COMMON TO BOTH PARTIES:

36. Monthly nursery, babysitting, or day care	36. \$ 0
37. Monthly school tuition	37. 0
38. Monthly school supplies, books, and fees	38. 0
39. Monthly after school activities	39. 0
40. Monthly lunch money	40. 0
41. Monthly private lessons or tutoring	41. 0
42. Monthly allowances	42. 0
43. Monthly clothing and uniforms	43. 0
44. Monthly entertainment (movies, parties, etc.)	44. 0
45. Monthly health insurance	45. 0
46. Monthly medical, dental, prescriptions (nonreimbursed only)	46. 0
47. Monthly psychiatric/psychological/counselor	47. 0
48. Monthly orthodontic	48. 0
49. Monthly vitamins	49. 0
50. Monthly beauty parlor/barber shop	50. 0
51. Monthly nonprescription medication	51. 0
52. Monthly cosmetics, toiletries, and sundries	52. 0
53. Monthly gifts from child(ren) to others (other children, relatives, teachers, etc.)	53. 0
54. Monthly camp or summer activities	54. 0
55. Monthly clubs (Boy/Girl Scouts, etc.)	55. 0
56. Monthly access expenses (for nonresidential parent)	56. 0
57. Monthly miscellaneous	57. 0

58. SUBTOTAL (add lines 36 through 57) 58. \$ 0

MONTHLY EXPENSES FOR CHILD(REN) FROM ANOTHER RELATIONSHIP: (other than court-ordered child support)

59. _____	59. \$ 0
60. _____	60. 0
61. _____	61. 0
62. _____	62. 0

63. SUBTOTAL (add lines 59 through 62) 63. \$ 0

MONTHLY INSURANCE:

64. Health insurance, excluding portion paid for any minor child(ren) of this relationship 64. \$ 0
65. Life insurance 65. 0
66. Dental insurance 66. 0
Other:
67. 0
68. 0

69. SUBTOTAL (add lines 64 through 68) 69. \$ 0

OTHER MONTHLY EXPENSES NOT LISTED ABOVE:

70. Monthly dry cleaning and laundry 70. \$ 50
71. Monthly clothing 71. 50
72. Monthly medical, dental, and prescription (unreimbursed only) 72. 450
73. Monthly psychiatric, psychological, or counselor (unreimbursed only) 73. 0
74. Monthly non-prescription medications, cosmetics, toiletries, and sundries 74. 100
75. Monthly grooming 75. 20
76. Monthly gifts 76. 50
77. Monthly pet expenses 77. 0
78. Monthly club dues and membership 78. 0
79. Monthly sports and hobbies 79. 200
80. Monthly entertainment 80. 300
81. Monthly periodicals/books/tapes/CD's 81. 100
82. Monthly vacations 82. see travel
83. Monthly religious organizations 83. 0
84. Monthly bank charges/credit card fees 84. 0
85. Monthly education expenses 85. 100
Other: (include any usual and customary expenses not otherwise mentioned in the items listed above)
86. travel, business & family 86. 2500
87. 0
88. 0
89. 0

90. SUBTOTAL (add lines 70 through 89) 90. \$ 3,920.00

MONTHLY PAYMENTS TO CREDITORS: (only when payments are currently made by you on outstanding balances)

NAME OF CREDITOR(s):

91. 91. \$
92. 92.
93. 93.
94. 94.
95. 95.
96. 96.
97. 97.
98. 98.

99. _____	99. _____
100. _____	100. _____
101. _____	101. _____
102. _____	102. _____
103. _____	103. _____
 104. SUBTOTAL (add lines 91 through 103)	 104. \$ 0
105. TOTAL MONTHLY EXPENSES: (add lines 25, 35, 58, 63, 69, 90, and 104 of Section II, Expenses)	105. \$ 7,400.00

SUMMARY

106. TOTAL PRESENT MONTHLY NET INCOME (from line 27 of SECTION I. INCOME)	106. \$ 7,690.00
107. TOTAL MONTHLY EXPENSES (from line 105 above)	107. \$ 7,400.00
108. SURPLUS (If line 106 is more than line 107, subtract line 107 from line 106. This is the amount of your surplus. Enter that amount here.)	108. \$ 290
109. (DEFICIT) (If line 107 is more than line 106, subtract line 106 from line 107. This is the amount of your deficit. Enter that amount here.)	109. (\$ _____)

SECTION III. ASSETS AND LIABILITIES

A. ASSETS (This is where you list what you OWN.)

INSTRUCTIONS:

STEP 1: In column A, list a description of each separate item owned by you (and/or your spouse, if this is a petition for dissolution of marriage). Blank spaces are provided if you need to list more than one of an item.

STEP 2: If this is a petition for dissolution of marriage, check the box in Column A next to any item that you are requesting the judge award to you.

STEP 3: In column B, write what you believe to be the current fair market value of all items listed.

STEP 4: Use column C only if this is a petition for dissolution of marriage and you believe an item is "nonmarital," meaning it belongs to only one of you and should not be divided. You should indicate to whom you believe the item belongs. (Typically, you will only use Column C if property was owned by one spouse before the marriage. See the "General Information for Self-Represented Litigants" found at the beginning of these forms and section 61.075(1), Florida Statutes, for definitions of "marital" and "nonmarital" assets and liabilities.)

A ASSETS: DESCRIPTION OF ITEM(S) DO NOT LIST ACCOUNT NUMBERS. ✓ the box next to any asset(s) which you are requesting the judge award to you.	B Current Fair Market Value	C Nonmarital (✓ correct column)	
		husband	wife
☒ Cash (on hand)	\$ 100	✓	
☒ Cash (in banks or credit unions)	100,000	✓	
☐			
☐ Stocks/Bonds			
☐			

A ASSETS: DESCRIPTION OF ITEM(S) DO NOT LIST ACCOUNT NUMBERS. ✓ the box next to any asset(s) which you are requesting the judge award to you.	B Current Fair Market Value	C Nonmarital (✓ correct column)	
		husband	wife
☐			
☒ Notes (money owed to you in writing)	57,500	✓	
☐			
☐			
☐ Money owed to you (not evidenced by a note)			
☐			
☐			
☐ Real estate: (Home)			
☐ (Other)			
☐			
☐			
☐			
☐			
☒ Business interests Island Time Unlimited, LLC (27.5%)	15,125	✓	
☐ Chidna, LLC	1,350,000		
☐ King St. Antique Mall, Inc. (Residual Inventory)	50,000		
☐ Slodarns, LLC (82%)	570,000		
☐			
☒ Automobiles 2004 VW Beetle	15,000	✓	
☐			
☐			
☐			
☐ Boats			
☐			
☐			
☐ Other vehicles			
☐			
☐			
☐ Retirement plans (Profit Sharing, Pension, IRA, 401(k)s, etc.)			
☒ David Hauge Sep-IRA	213,000	✓	
☐ Adrienne Curran Roth-IRA	172,000		✓
☐			
☐ Furniture & furnishings in home			
☐			
☐ Furniture & furnishings elsewhere (from sold home & Antique Store)	40,000		

A ASSETS: DESCRIPTION OF ITEM(S) DO NOT LIST ACCOUNT NUMBERS. ✓ the box next to any asset(s) which you are requesting the judge award to you.	B Current Fair Market Value	C Nonmarital (✓ correct column)	
		husband	wife
☐			
☐ Collectibles			
☐			
☒ Jewelry in Respondent's possession	20,000		
☐			
☐ Life insurance (cash surrender value)			
☐			
☐			
☐ Sporting and entertainment (T.V., stereo, etc.) equipment			
☐			
☐			
☐			
☐ Other assets			
☐			
☐			
☐			
☐			
☐			
☐			
☐			
Total Assets (add column B)	\$ 2,602,725		

B. LIABILITIES/DEBTS (This is where you list what you OWE.)

INSTRUCTIONS:

STEP 1: In column A, list a description of each separate debt owed by you (and/or your spouse, if this is a petition for dissolution of marriage). Blank spaces are provided if you need to list more than one of an item.

STEP 2: If this is a petition for dissolution of marriage, check the box in Column A next to any debt(s) for which you believe you should be responsible.

STEP 3: In column B, write what you believe to be the current amount owed for all items listed.

STEP 4: Use column C only if this is a petition for dissolution of marriage and you believe an item is "nonmarital," meaning the debt belongs to only one of you and should not be divided. You should indicate to whom you believe the debt belongs. (Typically, you will only use Column C if the debt was owed by one spouse before the marriage. See the "General Information for Self-Represented Litigants" found at the beginning of these forms and section 61.075(1), Florida Statutes, for definitions of "marital" and "nonmarital" assets and liabilities.)

A LIABILITIES: DESCRIPTION OF ITEM(S) DO NOT LIST ACCOUNT NUMBERS. ✓ the box next to any debt(s) for which you believe you should be responsible.	B Current Amount Owed	C Nonmarital (✓ correct column)	
		husband	wife
☐ Mortgages on real estate: First mortgage on home	\$		
☐ Second mortgage on home			
☐ Other mortgages			
☐			
☐ Charge/credit card accounts			
☐			
☐			
☐			
☐			
☐			
☐ Auto loan			
☐ Auto loan			
☐ Bank/Credit Union loans			
☐			
☐			
☐			
☐ Money you owe (not evidenced by a note)			
☐			
☐ Judgments			
☐			
☐ Other			
☐			
☐			
☐			
☐			
☐			
☐			
Total Debts (add column B)	\$ 0		

C. NET WORTH (excluding contingent assets and liabilities)

Total Assets (enter total of Column B in Asset Table; Section A) \$ 2,602,725.00

Total Liabilities (enter total of Column B in Liabilities Table; Section B) \$ 0

TOTAL NET WORTH (Total Assets minus Total Liabilities)

(excluding contingent assets and liabilities) \$ 2,602,725.00

D. CONTINGENT ASSETS AND LIABILITIES

INSTRUCTIONS:

If you have any **POSSIBLE** assets (income potential, accrued vacation or sick leave, bonus, inheritance, etc.) or **POSSIBLE** liabilities (possible lawsuits, future unpaid taxes, contingent tax liabilities, debts assumed by another), you must list them here.

A Contingent Assets ✓ the box next to any contingent asset(s) which you are requesting the judge award to you.	B Possible Value	C Nonmarital (✓ correct column)	
		husband	wife
☒ owed by Respondent for 1/2 mtg and credit cards paid by Petitioner	\$ 43,428		
☐ after separation			
☒ owed by Respondent for taxes pd by Petitioner on Roth IRA	40,000		
☐			
☐			
Total Contingent Assets	\$ 83,428		

A Contingent Liabilities ✓ the box next to any contingent debt(s) for which you believe you should be responsible.	B Possible Amount Owed	C Nonmarital (✓ correct column)	
		husband	wife
☒ Attorney & Accountant Fees Due	\$ unknown		
☐			
☐			
☐			
☐			
Total Contingent Liabilities	\$ unknown		

E. CHILD SUPPORT GUIDELINES WORKSHEET. Florida Family Law Rules of Procedure Form 12.902(e), Child Support Guidelines Worksheet, **MUST** be filed with the court at or prior to a hearing to establish or modify child support. This requirement cannot be waived by the parties.

[✓ one only]

— A Child Support Guidelines Worksheet **IS** or **WILL BE** filed in this case. This case involves the establishment or modification of child support.

✓ A Child Support Guidelines Worksheet **IS NOT** being filed in this case. The establishment or modification of child support is not an issue in this case.

I certify that a copy of this financial affidavit was: (✓) mailed, () faxed and mailed, or () hand delivered to the person(s) listed below on {date} April 17, 2008.

Other party or his/her attorney:

Name: Adrienne M. Curran, MD

Address: 3808 Eagle Avenue

City, State, Zip: Key West, FL 33040

Fax Number:

I understand that I am swearing or affirming under oath to the truthfulness of the claims made in this affidavit and that the punishment for knowingly making a false statement includes fines and/or imprisonment.

Dated: 4/17/08

David A. Hauge
Signature of Party
Printed Name: _____
Address: _____
City, State, Zip: _____
Telephone Number: _____
Fax Number: _____

STATE OF FLORIDA
COUNTY OF MANATEE

Sworn to or affirmed and signed before me on 4/17/08 by David A. Hauge.



Erin H. Nevius
NOTARY PUBLIC or DEPUTY CLERK
[Print, type, or stamp commissioned name of notary or deputy clerk.]

☒ Personally known.
☐ Produced identification
Type of identification produced _____

IF A NONLAWYER HELPED YOU FILL OUT THIS FORM, HE/SHE MUST FILL IN THE BLANKS BELOW: [fill in all blanks]

I, {full legal name and trade name of nonlawyer} _____,
a nonlawyer, located at {street} _____, {city} _____,
{state} _____, {phone} _____, helped {name} _____,
who is the [☒ one only] _____ petitioner or _____ respondent, fill out this form.

Norwegian Jewel

Curran, Adrienne Margaret
3808 Eagle Avenue
Key West, FL 33040
United States

Month : March 2008
Employee # : 0127154
Position : Doctor
Status : Active
Plan :
Vac Type : 2X1

Description		Amount
Wages		9,632.00
Food Allowances		264.00
Retro Food		8.80
Retro Regular Pay		321.06
Salary Travel Days-DME		385.27
Onboard Account-Jewel		146.70
Union Dues		30.00
US Federal Withholding		2,342.14
Net Pay		58,092.79
Bank Checking Account : 067000438/1010411771		
Nordben Employer Contribution : \$0.00 MTD		
Totals	Month To Date	Year To Date
Taxable Wages	10,611.13	10,611.13
US Federal Withholding	2,342.14	2,342.14

Norwegian Jewel

Curran, Adrienne Margaret
 3808 Eagle Avenue
 Key West, FL 33040
 United States

Month : April 2008
 Employee # : 0127154
 Position : Doctor
 Status : Active
 Plan :
 Vac Type : 2X1

Description		Amount
Wages		9,632.00
Food Allowances		264.00
Onboard Account-Jewel		152.50
Union Dues		30.00
US Federal Withholding		2,141.90
Net Pay		5,774.60
Bank Checking Account : 067000438/1010411771		
Nordben Employer Contribution : \$0.00 MTD		
Totals	Month To Date	Year To Date
Taxable Wages	9,896.00	20,507.13
US Federal Withholding	2,141.90	4,484.04

Norwegian Jewel

Curran, Adrienne Margaret
3808 Eagle Avenue
Key West, FL 33040
United States

Month : May 2008
Employee # : 0127154
Position : Doctor
Status : Vacation Leave
Plan :
Vac Type : 2X1

Description		Amount
Wages		6,100.27
Food Allowances		167.20
Advance Norwegian Jewel		2,000.00
Onboard Account-Jewel		345.62
Union Dues		30.00
US Federal Withholding		1,145.95
Net Pay		5,745.98
Bank Checking Account : 067000438/1010411771		
Nordben Employer Contribution : \$0.00 MTD		
Totals	Month-To-Date	Year-To-Date
Taxable Wages	6,267.47	26,774.60
US Federal Withholding	1,145.95	5,629.99

Florida Statutes

- ☐ **Florida Statutes**
- ☐ **TITLE V JUDICIAL BRANCH**
- ☐ **CHAPTER 26 CIRCUIT COURTS**

26.012 Jurisdiction of circuit court. —

(1) Circuit courts shall have jurisdiction of appeals from county courts except appeals of county court orders or judgments declaring invalid a state statute or a provision of the State Constitution and except orders or judgments of a county court which are certified by the county court to the district court of appeal to be of great public importance and which are accepted by the district court of appeal for review. Circuit courts shall have jurisdiction of appeals from final administrative orders of local government code enforcement boards.

(2) They shall have exclusive original jurisdiction:

(a) In all actions at law not cognizable by the county courts;

(b) Of proceedings relating to the settlement of the estates of decedents and minors, the granting of letters testamentary, guardianship, involuntary hospitalization, the determination of incompetency, and other jurisdiction usually pertaining to courts of probate;

(c) In all cases in equity including all cases relating to juveniles except traffic offenses as provided in chapters 316 and 985;

(d) Of all felonies and of all misdemeanors arising out of the same circumstances as a felony which is also charged;

(e) In all cases involving legality of any tax assessment or toll or denial of refund, except as provided in s. 72.011;

(f) In actions of ejectment; and

(g) In all actions involving the title and boundaries of real property.

(3) The circuit court may issue injunctions.

(4) The chief judge of a circuit may authorize a county court judge to order emergency hospitalizations pursuant to part I of chapter 394 in the absence from the county of the circuit judge; and the county court judge shall have the power to issue all temporary orders and temporary injunctions necessary or proper to the complete exercise of such jurisdiction.

(5) A circuit court is a trial court.

History. — s. 3, ch. 72-404; s. 1, ch. 74-209; s. 1, ch. 77-119; s. 1, ch. 80-399; s. 1, ch. 81-178; s. 22, ch. 81-259; s. 12, ch. 82-37; s. 2, ch. 84-303; s. 5, ch. 91-112; s. 27, ch. 94-353; s. 52, ch. 95-280; s. 3, ch. 98-280; s. 1, ch. 2004-11.

Florida Statutes

- ☐ **Florida Statutes**
- ☐ **TITLE VI CIVIL PRACTICE AND PROCEDURE**
- ☐ **CHAPTER 61 DISSOLUTION OF MARRIAGE; SUPPORT; TIME-SHARING**
- ☐ **PART I GENERAL PROVISIONS**

61.075 Equitable distribution of marital assets and liabilities. —

(1) In a proceeding for dissolution of marriage, in addition to all other remedies available to a court to do equity between the parties, or in a proceeding for disposition of assets following a dissolution of marriage by a court which lacked jurisdiction over the absent spouse or lacked jurisdiction to dispose of the assets, the court shall set apart to each spouse that spouse's nonmarital assets and liabilities, and in distributing the marital assets and liabilities between the parties, the court must begin with the premise that the distribution should be equal, unless there is a justification for an unequal distribution based on all relevant factors, including:

- (a) The contribution to the marriage by each spouse, including contributions to the care and education of the children and services as homemaker.
- (b) The economic circumstances of the parties.
- (c) The duration of the marriage.
- (d) Any interruption of personal careers or educational opportunities of either party.
- (e) The contribution of one spouse to the personal career or educational opportunity of the other spouse.
- (f) The desirability of retaining any asset, including an interest in a business, corporation, or professional practice, intact and free from any claim or interference by the other party.
- (g) The contribution of each spouse to the acquisition, enhancement, and production of income or the improvement of, or the incurring of liabilities to, both the marital assets and the nonmarital assets of the parties.
- (h) The desirability of retaining the marital home as a residence for any dependent child of the marriage, or any other party, when it would be equitable to do so, it is in the best interest of the child or that party, and it is financially feasible for the parties to maintain the residence until the child is emancipated or until exclusive possession is otherwise terminated by a court of competent jurisdiction. In making this determination, the court shall first determine if it would be in the best interest of the dependent child to remain in the marital home; and, if not, whether other equities would be served by giving any other party exclusive use and possession of the marital home.
- (i) The intentional dissipation, waste, depletion, or destruction of marital assets after the filing of the petition or within 2 years prior to

the filing of the petition.

(j) Any other factors necessary to do equity and justice between the parties.

(2) If the court awards a cash payment for the purpose of equitable distribution of marital assets, to be paid in full or in installments, the full amount ordered shall vest when the judgment is awarded and the award shall not terminate upon remarriage or death of either party, unless otherwise agreed to by the parties, but shall be treated as a debt owed from the obligor or the obligor's estate to the obligee or the obligee's estate, unless otherwise agreed to by the parties.

(3) In any contested dissolution action wherein a stipulation and agreement has not been entered and filed, any distribution of marital assets or marital liabilities shall be supported by factual findings in the judgment or order based on competent substantial evidence with reference to the factors enumerated in subsection (1). The distribution of all marital assets and marital liabilities, whether equal or unequal, shall include specific written findings of fact as to the following:

(a) Clear identification of nonmarital assets and ownership interests;

(b) Identification of marital assets, including the individual valuation of significant assets, and designation of which spouse shall be entitled to each asset;

(c) Identification of the marital liabilities and designation of which spouse shall be responsible for each liability;

(d) Any other findings necessary to advise the parties or the reviewing court of the trial court's rationale for the distribution of marital assets and allocation of liabilities.

(4) The judgment distributing assets shall have the effect of a duly executed instrument of conveyance, transfer, release, or acquisition which is recorded in the county where the property is located when the judgment, or a certified copy of the judgment, is recorded in the official records of the county in which the property is located.

(5) If the court finds good cause that there should be an interim partial distribution during the pendency of a dissolution action, the court may enter an interim order that shall identify and value the marital and nonmarital assets and liabilities made the subject of the sworn motion, set apart those nonmarital assets and liabilities, and provide for a partial distribution of those marital assets and liabilities. An interim order may be entered at any time after the date the dissolution of marriage is filed and served and before the final distribution of marital and nonmarital assets and marital and nonmarital liabilities.

(a) Such an interim order shall be entered only upon good cause shown and upon sworn motion establishing specific factual basis for the motion. The motion may be filed by either party and shall demonstrate good cause why the matter should not be deferred until the final hearing.

(b) The court shall specifically take into account and give appropriate

credit for any partial distribution of marital assets or liabilities in its final allocation of marital assets or liabilities. Further, the court shall make specific findings in any interim order under this section that any partial distribution will not cause inequity or prejudice to either party as to either party's claims for support or attorney's fees.

(c) Any interim order partially distributing marital assets or liabilities as provided in this subsection shall be pursuant to and comport with the factors in subsections (1) and (3) as such factors pertain to the assets or liabilities made the subject of the sworn motion.

(d) As used in this subsection, the term "good cause" means extraordinary circumstances that require an interim partial distribution.

(6) As used in this section:

(a)1. "Marital assets and liabilities" include:

a. Assets acquired and liabilities incurred during the marriage, individually by either spouse or jointly by them.

b. The enhancement in value and appreciation of nonmarital assets resulting either from the efforts of either party during the marriage or from the contribution to or expenditure thereon of marital funds or other forms of marital assets, or both.

c. Interspousal gifts during the marriage.

d. All vested and nonvested benefits, rights, and funds accrued during the marriage in retirement, pension, profit-sharing, annuity, deferred compensation, and insurance plans and programs.

2. All real property held by the parties as tenants by the entireties, whether acquired prior to or during the marriage, shall be presumed to be a marital asset. If, in any case, a party makes a claim to the contrary, the burden of proof shall be on the party asserting the claim that the subject property, or some portion thereof, is nonmarital.

3. All personal property titled jointly by the parties as tenants by the entireties, whether acquired prior to or during the marriage, shall be presumed to be a marital asset. In the event a party makes a claim to the contrary, the burden of proof shall be on the party asserting the claim that the subject property, or some portion thereof, is nonmarital.

4. The burden of proof to overcome the gift presumption shall be by clear and convincing evidence.

(b) "Nonmarital assets and liabilities" include:

1. Assets acquired and liabilities incurred by either party prior to the marriage, and assets acquired and liabilities incurred in exchange for such assets and liabilities;

2. Assets acquired separately by either party by noninterspousal gift, bequest, devise, or descent, and assets acquired in exchange for such assets;

3. All income derived from nonmarital assets during the marriage unless the income was treated, used, or relied upon by the parties as a marital asset;

4. Assets and liabilities excluded from marital assets and liabilities by valid written agreement of the parties, and assets acquired and liabilities incurred in exchange for such assets and liabilities; and

5. Any liability incurred by forgery or unauthorized signature of one spouse signing the name of the other spouse. Any such liability shall be a nonmarital liability only of the party having committed the forgery or having affixed the unauthorized signature. In determining an award of attorney's fees and costs pursuant to s. 61.16, the court may consider forgery or an unauthorized signature by a party and may make a separate award for attorney's fees and costs occasioned by the forgery or unauthorized signature. This subparagraph does not apply to any forged or unauthorized signature that was subsequently ratified by the other spouse.

(7) The cut-off date for determining assets and liabilities to be identified or classified as marital assets and liabilities is the earliest of the date the parties enter into a valid separation agreement, such other date as may be expressly established by such agreement, or the date of the filing of a petition for dissolution of marriage. The date for determining value of assets and the amount of liabilities identified or classified as marital is the date or dates as the judge determines is just and equitable under the circumstances. Different assets may be valued as of different dates, as, in the judge's discretion, the circumstances require.

(8) All assets acquired and liabilities incurred by either spouse subsequent to the date of the marriage and not specifically established as nonmarital assets or liabilities are presumed to be marital assets and liabilities. Such presumption is overcome by a showing that the assets and liabilities are nonmarital assets and liabilities. The presumption is only for evidentiary purposes in the dissolution proceeding and does not vest title. Title to disputed assets shall vest only by the judgment of a court. This section does not require the joinder of spouses in the conveyance, transfer, or hypothecation of a spouse's individual property; affect the laws of descent and distribution; or establish community property in this state.

(9) The court may provide for equitable distribution of the marital assets and liabilities without regard to alimony for either party. After the determination of an equitable distribution of the marital assets and liabilities, the court shall consider whether a judgment for alimony shall be made.

(10) To do equity between the parties, the court may, in lieu of or to supplement, facilitate, or effectuate the equitable division of marital assets and liabilities, order a monetary payment in a lump sum or in installments paid over a fixed period of time.

(11) Special equity is abolished. All claims formerly identified as special equity, and all special equity calculations, are abolished and shall be asserted either as a claim for unequal distribution of marital property and resolved by the factors set forth in subsection (1) or as a

claim of enhancement in value or appreciation of nonmarital property.

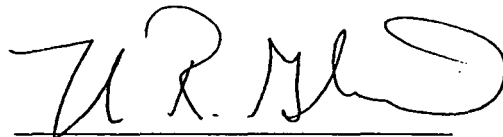
History. — s. 1, ch. 88-98; s. 2, ch. 91-246; s. 3, ch. 93-188; s. 1, ch. 94-204; s. 1, ch. 96-305; s. 1, ch. 2002-244; s. 1, ch. 2008-46.

Copyright © 2010 Loislaw.com, Inc. All Rights Reserved

CERTIFICATE OF COUNSEL

I certify that the Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

March 15, 2010



Thomas R. Goldstein
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
N. Charleston, S. C. 29415-1121
(843) 554-4291
(843) 554-5566 (fax)
tgoldstein@cobbblaw.net