

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Gordon G. Cooper, Master-In-Equity

Trial Court Case No. 2014-CP-42-04205

Appellate Case No. 2016-000916

RECEIVED

NOV 03 2016

SC Court of Appeals

Ex Parte Anthony L. Mathis, ...Appellant,

Invacare Corporation, Inc. and all of its subsidiaries, assignors, and
assignees, ... Respondent,

v.

MD Medical, LLC and Gary Day, ...Defendants.

RECORD ON APPEAL

Carlos C. Johnson
Lyles, Darr & Clark, LLC
Post Office Box 5726
Spartanburg, South Carolina 29304-5726
(864) 585-4806
Attorneys for Appellant

Other Counsel of Record:
Bonum S. Wilson, III
Brandon T. Reeser
Wilson & Heyward, LLC
Post Office Box 13177
Charleston, South Carolina 29422
(843) 762-4567

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-42-4205

INVACARE CORPORATION, INC.

MD MEDICAL, LLC AND GARY DAY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Bonum S. Wilson, III, Wilson & Heyward, LLC

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **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 LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below:

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Invacare Corporation, Inc. and all its subsidiaries, assignors and assignees	MD Medical, LLC and Gary Day	\$11,645.61
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

A. Keith Kelly
Circuit Court Judge

2165
Judge Code

21 Jan 2015
Date

For Clerk of Court Office Use Only

This judgment was entered on the 21 day of Jan 20 15 and a copy mailed first class or placed in the appropriate attorney's box on this 23 day of Jan, 20 15 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)

M. Hope Blackley / Clerk of Court, O.C.
CLERK OF COURT

Court Reporter:

2015 JAN 21 PM 1:55
M. Hope Blackley

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMONS PLEAS
	)	
COUNTY OF SPARTANBURG	)	CASE NO. 14-CP-42-4205
INVACARE CORPORATION, INC.)	)	
and all its subsidiaries, assignors and)	)	
assignees,	)	
	)	
Plaintiff,	)	
	)	
v.	)	ORDER OF DEFAULT
	)	
MD MEDICAL, LLC AND	)	
GARY DAY,	)	
	)	
Defendants.	)	
_____	)	

IT BEING MADE TO APPEAR TO ME that the Summons and verified Complaint in the above entitled action have been served on Defendants in the within cause of action, on November 25, 2014 by the Spartanburg County Sheriff's Department and that no notice of appearance, answer or other pleading has been served or received in response thereto by the Plaintiff or an attorney,

NOW THEREFORE, upon the motion of Wilson & Heyward, LLC, attorneys for the Plaintiff, it is

ORDERED that the Defendants are hereby declared to be in default; it is, further,

ORDERED, that the Plaintiff is granted Judgment against the Defendants for the sum of \$10,285.61, plus reasonable attorney's fees of \$1,155.00 and \$205.00 for the costs and disbursements of this action for a total of \$ 11,645.61.

AND IT IS SO ORDERED.

R. Keith Kelly

 PRESIDING JUDGE
 COURT OF COMMON PLEAS
 FOR SPARTANBURG COUNTY

FILED
 2015 JAN 21 PM 1:55
 CLERK OF COURT
 SPARTANBURG COUNTY

21 January, 2015

N MOTION OF:



Bonum S. Wilson, III
Attorney for the Plaintiff

RECEIVED
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
2015 JAN 21 PM 1:55
M. ROSE, CLERK

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMONS PLEAS
COUNTY OF SPARTANBURG) CASE NO. 14-CP-42-4205
Invacare Corporation, Inc. and)
all its subsidiaries,)
assignors and assignees,)
Plaintiff,)
v.) ORDER OF REFERENCE FOR
MD Medical, LLC and Gary Day,) RULE TO SHOW CAUSE
Defendants.)

IT APPEARING from the Petition of the Plaintiff, Invacare Corporation, that a judgment has been rendered against the Defendants, MD Medical, LLC and Gary Day, and execution issued, and a Nulla Bona return has been made on the execution; therefore,

IT IS ORDERED that this matter be referred to the Honorable Gordon B. Cooper, Spartanburg County Master-In-Equity, in compliance with the Petition and this Order at the Office of the Honorable Gordon B. Cooper, Master-in-Equity, 180 Magnolia Street, Spartanburg, South Carolina on the 20th day of July, 2015 at 11:00 o'clock A.m., to be examined and to answer under oath questions propounded by the Plaintiff concerning the Defendants' property, funds, holdings, and/or assets and: TO SHOW CAUSE why any property, assets, accounts, funds, or holdings belonging to the Defendants, which are not exempt from execution, should not be turned over by the Defendants and/or sold or liquidated and the proceeds applied towards satisfaction of the judgment as set out on the Plaintiff's Petition; to SHOW CAUSE why a receiver of property should not be appointed, pursuant to the provisions of S.C. CODE ANN. § 15-39-430, to take charge of any property, assets, accounts, funds or holdings belonging to the Defendants for the purpose of applying them towards the satisfaction of the Plaintiff's judgment; to SHOW CAUSE why charging orders should not be issued, pursuant to the provisions of the South Carolina Limited Liability Company Act, S.C. CODE ANN. § 33-44-504, against the Defendants' distributional interest in the limited liability companies or business that he owns, manages, and controls and, to the extent the companies are single-member limited liability companies, to SHOW CAUSE why a receiver should not be appointed to control the management of the companies, to cause the companies to liquidate or sell their assets, and to distribute the net sales proceeds towards the payment of the Plaintiff's

Masters Cost Paid
Date 6-1-15
\$ 25.00

judgment.

IT IS FURTHER ORDERED that pursuant to S.C. Code Ann. § 15-39-390 and Rule 53, SCRCP, the Master-in-Equity will entertain and rule upon all motions necessary to dispose of this matter, to include but not limited to motions to dismiss, to appoint a Receiver, discovery motions, motions to continue the matter, and to sell all or certain property of the judgment debtor in satisfaction of Plaintiff's debt and has the authority to enter a Final Order.

IT IS FURTHER ORDERED that the Plaintiffs are hereby granted leave to serve and obtain discovery from and/or to depose the Defendants, their employees, agents and representatives and any other person, in the manner provided by the South Carolina Rules of Civil Procedure, either before and after any examination of the Defendants by the Court, concerning the Defendants' property, assets, funds, holdings, and/or financial status. Gary Day and/or a Representative of A-1 Medical, shall appear for the depositions and otherwise fully, completely, and truthfully respond to the discovery in accordance with the South Carolina Rules of Civil Procedure.

IT IS FURTHER ORDERED that the Defendants are temporarily enjoined and restrained from changing, altering, destroying and defacing any documents, records, and/or instruments relating to their property, assets, funds, holdings, and/or financial status, whether held individually or jointly.

IT IS FURTHER ORDERED that the Defendants are temporarily enjoined and restrained from damaging, concealing, encumbering, granting a security interest in, hypothecating, transferring, selling, disposing, alienating, dissipating, disbursing, withdrawing, otherwise disposing of, or removing from the jurisdiction of this Court, and/or otherwise interfering with any property, assets, funds, accounts, and/or holdings, whether held individually and/or jointly (including, but not limited to, any interest in any limited liability company, corporation, or partnership and any cash on hand or in any account held or on deposit with any bank, savings and loan, credit union, broker, money manager, or other financial institution and any funds due the Defendants), which are not exempt by law from execution. Any bank, savings and loan, credit union, broker, money manager, or other financial institution which holds, maintains, or controls any account or asset for or on behalf of the Defendants, which have been served with a copy of this Order, shall hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, disbursement, dissipation, sale or other disposal of any such account funds or asset except upon further Order of this Court.

IT IS FURTHER ORDERED that the Defendants are ordered to deliver copies to the law offices of Wilson & Heyward, P.O. Box 13177, Charleston, South Carolina, 29422 no later than

2015 Jan 5 AM 10:22
#2

fifteen days prior to the above-referenced examination of Gary Day and/or a representative of MD Medical, LLC by the Court and bring originals to the examination of the following:

1. All records concerning all bank accounts owned by Defendants, including, but not limited to, checking account checkbooks, savings account passbooks, and account statements for each such bank account for the past 12 months;
2. An inventory of assets owned in whole or in part by the Defendants, and if any are under lien, a copy of the lien documents;
3. Any certificates of deposit, stock certificates, notes, and bonds owned by Defendants either separately or jointly held with others;
4. Any balance sheets, profit and loss statements or financial statement, audited or unaudited, prepared and issued by or on behalf of the Defendants since June of 2014;
5. List of all entities, corporations, limited liability companies, partnerships, or other companies or enterprises in which the Defendants hold an interest of any type, stating the nature and amount of the interest held by Defendants;
6. All ledgers, books or account, financial records, corporate records, bylaws, operating agreements and any other business records maintained by or for the Defendants and for any affiliated entities, corporations, limited liability companies, or partnerships in which the Defendants hold an interest;
7. Certificates of title to any vehicles, mobile homes, or water craft owned by Defendants either separately or jointly, or in lieu thereof a written statement detailing a description of each item including year, model, serial number, present value, and the amount of any lien therein shall be furnished;
8. Statement of current accounts receivable and accounts payable;
9. List of any property owned by the Defendants which is in the hands of a third party;
10. Any deeds, mortgages, notes, contracts of sale, and settlement of closing statements relating to any real estate transaction involving Defendants since 2014;
11. State and Federal Income Tax Returns for the last 10 years;
12. Any and all books, records, documents, or writings of any type concerning transfers by the Defendants of any property or asset within the last 10 years;
13. Any and all books, records, documents, or writings of any type concerning the financial status of Defendants not herein before specified.

2015 JUN -5 AM 10:22

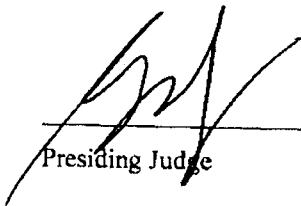
#3
gr

IT IS FURTHER ORDERED that a copy of this Order, and the attached Petition, be personally served as promptly as possible on Defendants, Gary Day and MD Medical, LLC.

IT IS SO ORDERED.

Dated

June 9, 2015



Presiding Judge

2015 JUN -5 AM 10:22

#4


STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMONS PLEAS

CASE NO. 14-CP-42-4205

Invacare Corporation, Inc. and
all its subsidiaries,
assignors and assignees,

Plaintiff,

v.

MD Medical, LLC and Gary Day,
Defendants.

ORDER OF REFERENCE FOR
RULE TO SHOW CAUSE

FILED

2015 AUG 25 AM 9:30

IT APPEARING from the Petition of the Plaintiff, Invacare Corporation, that a judgment has been rendered against the Defendants, MD Medical, LLC and Gary Day, and execution issued, and a Nulla Bona return has been made on the execution; therefore,

IT IS ORDERED that this matter be referred to the Honorable Gordon B. Cooper, Spartanburg County Master-In-Equity, in compliance with the Petition and this Order at the Office of the Honorable Gordon B. Cooper, Master-in-Equity, 180 Magnolia Street, Spartanburg, South Carolina on the 29th day of September, 2015 at 2:30 o'clock p.m., to be examined and to answer under oath questions propounded by the Plaintiff concerning the Defendants' property, funds, holdings, and/or assets and: TO SHOW CAUSE why any property, assets, accounts, funds, or holdings belonging to the Defendants, which are not exempt from execution, should not be turned over by the Defendants and/or sold or liquidated and the proceeds applied towards satisfaction of the judgment as set out on the Plaintiff's Petition: to SHOW CAUSE why a receiver of property should not be appointed, pursuant to the provisions of S.C. CODE ANN. § 15-39-430, to take charge of any property, assets, accounts, funds or holdings belonging to the Defendants for the purpose of applying them towards the satisfaction of the Plaintiff's judgment; to SHOW CAUSE why charging orders should not be issued, pursuant to the provisions of the South Carolina Limited Liability Company Act, S.C. CODE ANN. § 33-44-504, against the Defendants' distributional interest in the limited liability companies or business that he owns, manages, and controls and, to the extent the companies are single-member limited liability companies, to SHOW CAUSE why a receiver should not be appointed to control the management of the companies; to cause the companies to liquidate or sell their assets, and to distribute the net sales proceeds towards the payment of the Plaintiff's

judgment.

IT IS FURTHER ORDERED that pursuant to S.C. Code Ann. § 15-39-390 and Rule 53, SCRCF, the Master-in-Equity will entertain and rule upon all motions necessary to dispose of this matter, to include but not limited to motions to dismiss, to appoint a Receiver, discovery motions, motions to continue the matter, and to sell all or certain property of the judgment debtor in satisfaction of Plaintiff's debt and has the authority to enter a Final Order.

IT IS FURTHER ORDERED that the Plaintiffs are hereby granted leave to serve and obtain discovery from and/or to depose the Defendants, their employees, agents and representatives and any other person, in the manner provided by the South Carolina Rules of Civil Procedure, either before and after any examination of the Defendants by the Court, concerning the Defendants' property, assets, funds, holdings, and/or financial status. Anthony Mathis, DPM, shall appear for the depositions and otherwise fully, completely, and truthfully respond to the discovery in accordance with the South Carolina Rules of Civil Procedure.

IT IS FURTHER ORDERED that the Defendants are temporarily enjoined and restrained from changing, altering, destroying and defacing any documents, records, and/or instruments relating to their property, assets, funds, holdings, and/or financial status, whether held individually or jointly.

IT IS FURTHER ORDERED that the Defendants are temporarily enjoined and restrained from damaging, concealing, encumbering, granting a security interest in, hypothecating, transferring, selling, disposing, alienating, dissipating, disbursing, withdrawing, otherwise disposing of, or removing from the jurisdiction of this Court, and/or otherwise interfering with any property, assets, funds, accounts, and/or holdings, whether held individually and/or jointly (including, but not limited to, any interest in any limited liability company, corporation, or partnership and any cash on hand or in any account held or on deposit with any bank, savings and loan, credit union, broker, money manager, or other financial institution and any funds due the Defendants), which are not exempt by law from execution. Any bank, savings and loan, credit union, broker, money manager, or other financial institution which holds, maintains, or controls any account or asset for or on behalf of the Defendants, which have been served with a copy of this Order, shall hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, disbursement, dissipation, sale or other disposal of any such account funds or asset except upon further Order of this Court.

IT IS FURTHER ORDERED that the Defendants are ordered to deliver copies to the law offices of Wilson & Heyward, P.O. Box 13177, Charleston, South Carolina, 29422 no later than fifteen days prior to the above-referenced examination of Anthony Mathis, DPM by the Court

and bring originals to the examination of the following:

1. All records concerning all bank accounts owned by Defendants, including, but not limited to, checking account checkbooks, savings account passbooks, and account statements for each such bank account for the past 12 months;
2. An inventory of assets owned in whole or in part by the Defendants, and if any are under lien, a copy of the lien documents;
3. Any certificates of deposit, stock certificates, notes, and bonds owned by Defendants either separately or jointly held with others;
4. Any balance sheets, profit and loss statements or financial statement, audited or unaudited, prepared and issued by or on behalf of the Defendants since June of 2014;
5. List of all entities, corporations, limited liability companies, partnerships, or other companies or enterprises in which the Defendants hold an interest of any type, stating the nature and amount of the interest held by Defendants;
6. All ledgers, books or account, financial records, corporate records, bylaws, operating agreements and any other business records maintained by or for the Defendants and for any affiliated entities, corporations, limited liability companies, or partnerships in which the Defendants hold an interest;
7. Certificates of title to any vehicles, mobile homes, or water craft owned by Defendants either separately or jointly, or in lieu thereof a written statement detailing a description of each item including year, model, serial number, present value, and the amount of any lien therein shall be furnished;
8. Statement of current accounts receivable and accounts payable;
9. List of any property owned by the Defendants which is in the hands of a third party;
10. Any deeds, mortgages, notes, contracts of sale, and settlement of closing statements relating to any real estate transaction involving Defendants since 2014;
11. State and Federal Income Tax Returns for the last 10 years;
12. Any and all books, records, documents, or writings of any type concerning transfers by the Defendants of any property or asset within the last 10 years;
13. Any and all books, records, documents, or writings of any type concerning the financial status of Defendants not herein before specified.

IT IS FURTHER ORDERED that a copy of this Order be personally served as promptly as possible on Anthony Mathis, DPM.

IT IS SO ORDERED.

S/ Gordon G. Cooper

Presiding Judge

Dated: August 24th, 2015

2015 AUG 25 AM 9:31
CLERK OF COURT
CLERK OF COURT

A CERTIFIED COPY
M. Hope Beckley
CLERK OF COURT
SPRINGFIELD COUNTY
SPRINGFIELD, MO
DATED: 8/25/15

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014-CP-42-4205

Invacare Corporation, Inc. and All OF It's
Subsidiaries, Assignors and Assignees
PLAINTIFF(S)

MD Medical, LLC and Gary Day

DEFENDANT(S)

Submitted by: Court

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **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 LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : See Attached Order

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
If applicable, describe the property, including tax map information and address, referenced in the order.		

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

DEC 22 2015

12-14-2015
Date

This judgment was entered on the 15 day of Jan., 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 16 day of Dec., 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Charleston, SC 29422

Spartanburg, SC 29306

ATTORNEY FOR DEFENDANT(S)

J.M. Hene Blackley
CLERK OF COURT
Washington, DC

Court Reporter:

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

PAGE 1
This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

2015 DEC 13 PM 2:36
M. HOPE SLOANLEY

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

INVACARE CORPORATION, INC. AND ALL OF ITS
SUBSIDIARIES, ASSIGNORS, AND ASSIGNEES,

Plaintiff,

vs.

MD MEDICAL, LLC AND GARY DAY,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2014-CP-42-4205

ORDER

THIS MATTER CAME BEFORE ME for Supplemental Proceedings pursuant to S.C. Code Ann. § 15-39-430 and S.C. Code Ann. § 33-44-504. Mr. Gary Day appeared *pro se* for examination under oath on July 20, 2015. Dr. Anthony Mathis appeared with counsel for examination under oath on November 19, 2015. Conducting each examination on behalf of Plaintiffs was Brandon T. Reeser of Wilson & Heyward, LLC. Present for Dr. Mathis was Carlos Johnson of Lyles, Darr & Clark, LLP. Having heard the testimony of the witnesses and the arguments of counsel, the Court issues the following Order.

BRIEF PROCEDURAL AND FACTUAL BACKGROUND

MD Medical, LLC was a medical supply business formed in the mid-2000s that sold and leased medical supplies to providers. Mr. Day and Dr. Mathis were shareholders in the company, with Dr. Mathis holding a majority of the issued shares. Dr. Mathis served as President of the company, which was located at 126 Mills Avenue in Spartanburg. Mr. Day served as the company's Vice-President. Dr. Mathis owns the office location and operates his podiatry practice in another suite in that building. MD Medical, LLC entered into a lease with Dr. Mathis in which it would pay him approximately \$600 per month to use the suite.

Invacare Corporation, Inc. ("Plaintiff") is a medical supply company that did business for a number of years with MD Medical, LLC. On September 26, 2013, MD. Medical, LLC



executed a promissory note for \$12,985.61 to make up for a series of late payments owed to the Plaintiff. Mr. Day signed the note on MD Medical, LLC's behalf. MD Medical, LLC made two payments under the note.

The Plaintiff filed its Summons and Complaint against Mr. Day and MD Medical, LLC in this matter on October 24, 2014 to collect the remaining \$10,285.61 remaining on the note. Mr. Day was served in his individual capacity as well as his capacity as an officer of MD Medical, LLC on November 25. No responsive pleading was filed, and judgment in favor of the Plaintiff against both MD Medical, LLC and Mr. Day was entered on January 21, 2015 in the amount of \$11,645.61, which included the original remainder on the note, reasonable attorneys' fees, and costs. This matter was referred to me in June of 2015 for supplemental proceedings.

TESTIMONY OF MR. DAY AND DR. MATHIS

The testimony of the witnesses in this matter demonstrates that in 2014 and 2015, MD Medical, LLC was performing poorly but was aware of its obligations to the Plaintiff. Mr. Day testified that throughout 2013 and 2014, MD Medical, LLC was aware of the note and that it stopped making payments with knowledge of its obligations. In mid-2014, Mr. Day approached Parker Medical Equipment and its owner, Dr. John Petrich, about selling its active hospice contracts and physical assets. After several meetings throughout 2014 and early 2015, Dr. Petrich and Dr. Mathis came to an agreement in which Dr. Mathis would sell MD Medical, LLC's contracts and physical assets to Dr. Petrich as a way to realize some income out of his ownership interest. As part of the sale, Mr. Day would "waive" his interest in the company.

Dr. Mathis testified that Mr. Day had provided him a list of payables in March or April of 2015 that listed MD Medical, LLC's outstanding debts, and Dr. Mathis confirmed that he became aware of MD Medical, LLC's debt to the Plaintiff in mid-March of that year,

approximately two months after the Plaintiff obtained its judgment. On April 1, 2015, Dr. Mathis and Dr. Petrich executed the asset sale. Dr. Mathis testified that he had experience purchasing and leasing medical equipment, and that, in his opinion, there was approximately \$180,000 in inventory in MD Medical, LLC's possession at the time of the sale. Dr. Mathis also sold all of MD Medical, LLC's remaining service contracts, which Mr. Day testified were valuable. In exchange, Dr. Mathis was to receive \$320,000 in total as a result of the sale - \$100,000 was to be paid immediately at the time of sale and the remainder to be paid monthly in installments of approximately \$4,000 - \$4,100.

On April 2, 2015, more than two (2) months after the Plaintiff's judgment was entered against MD Medical, LLC and despite Dr. Mathis' admission and knowledge of the debt, Dr. Mathis testified that he deposited the initial \$100,000 payment into MD Medical, LLC's checking account with Parker Sterling Bank ending in account number 4116. See Exhibit A. He transferred the deposit from the corporate account to his personal money market account the same day. Id. Bank records provided show that for several months before the asset sale, the 4116 account maintained an average balance of less than \$2,000 per billing cycle. See Exhibit B. None of the funds were used to satisfy the outstanding debts of MD Medical, LLC.

Around the time of the asset sale, April 1, 2015, Dr. Mathis opened an additional checking account in MD Medical, LLC's name with Parker Sterling Bank ending in account number 7059. See Exhibit C. Dr. Mathis testified that he would transfer money from the 4116 account into the 7059 account before depositing those funds into his personal money market account. See Id. The records provided as to the 7059 account show that Dr. Mathis transferred over \$15,000 from the 7059 account to himself over the course of three months, which equaled almost all deposits made during that time, until he closed the account. Id. No accounts were

retained by MD Medical, LLC to satisfy debtors.

Dr. Mathis testified that after the asset sale he attempted to use deposits coming into the 4116 account to pay some of the debts that MD Medical, LLC owed. To do so, he would withdraw money from the business accounts and make payments on his personal credit cards.¹ Despite transferring \$100,000 to his personal money market account in early April 2015 and an additional \$15,000 over the next three months, Dr. Mathis testified that MD Medical, LLC ultimately did not have enough in assets after the sale, either physical or liquid, to satisfy all debts that were owed.

LEGAL STANDARD

The Statute of Elizabeth, as codified in Section 27-23-10 of the South Carolina Code of Laws, provides in relevant part:

Every gift, grant, alienation, bargain, transfer, and conveyance of ... goods and chattels ... which may be had or made to or for any intent or purpose to delay, hinder, or defraud creditors and others of their just and lawful ... debts ... must be deemed and taken ... to be clearly and utterly void, frustrate and of no effect, any pretense, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding.

S.C. Code Ann. § 27-23-10 (1976).

Pursuant to this statute, conveyances may be set aside under two conditions: (1) where the transfer is made by the grantor with the actual intent of defrauding his creditors; and (2) where that intent is imputable to the grantee, even though there is valuable consideration; and (2) where a transfer is made without actual intent to defraud the grantor's creditors, but without valuable consideration. Albertson v. Robinson, 371 S.C. 311, 316, 638 S.E.2d 81, 83 (Ct.App.2006). While this Court is unwilling to find that Dr. Mathis intentionally defrauded his creditors, there clearly was no valuable consideration for the withdrawal of all of MD Medical, LLC's funds

¹ Dr. Mathis did not provide any information or records as to his personal credit card or money market accounts.

from its checking accounts after April 1, 2015. Furthermore, where a conveyance is made without an actual intent to defraud but without consideration, the conveyance will stand if the grantor reserves a sufficient amount of property not merely at the time of the transfer, but an amount from which in the final analysis the creditors are able to collect their indebtedness in full. Gardner v. Kirven, 184 S.C. 37, 41, 191 S.E. 814, 816 (1937).

ANALYSIS

The Court finds that, in this case, MD Medical, LLC, as the debtor, received no consideration in the removal of liquid assets from its accounts by the majority shareholder and disposed of its remaining accounts without preserving sufficient funds to satisfy the Plaintiff's judgment against it.

Under the Statute of Elizabeth, a voluntary transfer "will be set aside as a fraudulent conveyance if the grantor was indebted to the plaintiff at the time of the transfer and the grantor failed to retain sufficient property to pay his debt to plaintiff, not merely at the time of the transfer but at the time plaintiff seeks to collect." Future Group II v. Nationsbank, 324 S.C. 89, 96, 478 S.E.2d 45, 48-49 (1996) (internal citations omitted).

In this case, the April 2015 transfer conveyed all of MD Medical, LLC's assets to Dr. Petrich. After the removal of funds from MD Medical, LLC's accounts, MD Medical, LLC had insufficient funds in its existing bank accounts to pay the Plaintiff's debt. In 2013 and 2014, Mr. Day testified that he knew MD Medical, LLC was not making payments to the Plaintiff in accordance with the note it had executed. Additionally, Dr. Mathis testified that he was aware of the debt to the Plaintiff in mid-March 2015, two months after the Plaintiff obtained its judgment and several weeks before the asset sale was executed. While Dr. Mathis was able to pay some debts after the transfer, he testified that he failed to preserve sufficient assets to pay all of its

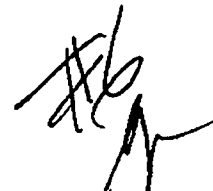
creditors, including the Plaintiff. The Court has not been provided any evidence of how proceeds from the sale were used other than use by Dr. Mathis, but by his own testimony, an insufficient amount was retained for the Plaintiff.

From the testimony offered in this matter, the Court therefore finds that Dr. Mathis was aware of MD Medical, LLC's debt to the Plaintiff at the time of the transfer and failed to retain enough property, assets, or liquid funds to satisfy Invacare's judgment at any time after the asset transfer in April 2015. Therefore, the Court holds that the transfers of funds from MD Medical, LLC to Dr. Mathis were fraudulent transactions as to the Plaintiff, and those transfers are hereby set aside in accordance with Section 27-23-10 of the South Carolina Code of Laws to the extent the transfers did not preserve enough funds to satisfy the Plaintiff's judgment.

Plaintiff's counsel has also moved to attach the funds transferred by Dr. Mathis to satisfy Plaintiff's judgment against MD Medical, LLC. Dr. Mathis' counsel avers that because Dr. Mathis was not a party to the original lawsuit, and thus, that there is no judgment against him, that this Court lacks the power to compel Dr. Mathis to take any action in these proceedings. Counsel's argument, however, is misplaced. As the fund transfer has been set aside, Plaintiff has an ownership interest or a constructive trust in the transferred proceeds. Under Section 15-39-410 of the South Carolina Code, this Court has specific authority to order all MD Medical, LLC funds received by Dr. Mathis under these transactions, even as a third-party, to be applied toward the satisfaction of the Plaintiff's judgment:

The judge may order any property of the judgment debtor, not exempt from execution, in the hands either of himself or any other person or due to the judgment debtor, to be applied toward the satisfaction of the judgment...

S.C. Code Ann § 15-39-410 (1976).

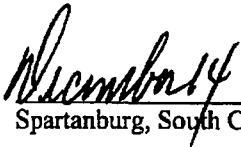
Handwritten signature and initials, possibly "JTB" and "M", in black ink.

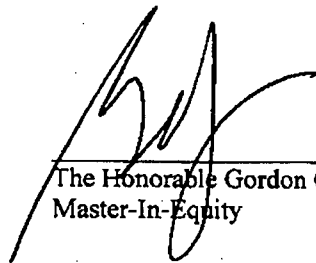
CONCLUSION

In light of the Court's findings of facts and conclusions on law discussed above, it is:

THEREFORE ORDERED that judgment in the amount of \$11,645.61 be entered against Dr. Anthony Mathis, and that Dr. Anthony Mathis is hereby ordered to apply any funds that shall be received pursuant to the terms of his April 2015 agreement with Dr. John Petrich to the satisfaction of Invacare Corporation, Inc.'s January 21, 2015 judgment in the amount of \$11,645.61 until such time as the judgment is satisfied. Further, Dr. John Petrich is hereby ordered to pay the Plaintiff in lieu of Dr. Mathis in accord with the contract between Dr. Petrich and Dr. Mathis.

IT IS SO ORDERED!


_____, 2015
Spartanburg, South Carolina



The Honorable Gordon G. Cooper
Master-In-Equity

2015 DEC 15 PM 2:36
CLERK OF COURT
JANICE STACKEY

#7


Exhibit A

2015 DEC 15 PM 2:36
M. HENRI BLACKLEY

PAGE 85/85

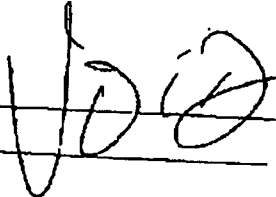
215
3127

2015 DEC 15 PM 2:36

M. HOPE BLACKLEY

NONMEDICAL

10/09/2013 01:02 8648791433

MD MEDICAL LLC 127 MILLS AVE. GREEN, SC 29651-2514		2276 06-17/2/20
PAY TO THE ORDER OF		DATE
		\$
P PARKSTERLING BANK www.parksterlingbank.com		DOLLARS 0
FOR		

Jul 16 15 10:59a

Account Transactions: Park Sterling Bank

p.2

Page 1 of 2

Account Transactions: Park Sterling Bank

ACCOUNT NUMBER: [REDACTED]

DATE: 7/16/15

APPROVED BY: [REDACTED]

MD Medical
Anthony E. Mathis

TRAN CODE: 745

TOTAL AMOUNT: 100000.00

771150002010 01-01-2015
Park Sterling Bank
Charlotte, NC 28255-1700

2015 DEC 15 PM 2:36
M. ROPELAKLEY

Jul 16 15 10:59a

Account Transactions: Park Sterling Bank

p.3

Page 1 of 1

PARK STERLING BANK DEPOSIT TICKET

DATE **4/2/2015**
FROM **MD Medical**

AMOUNT \$ **100000.00**

Park Sterling Bank - a s b c
Charlotte, NC 7043612736

Rollback Print
View Page 50 of 50

2015 DEC 15 PM 2:36
M. HOPE BLACKLEY

Jul 16 15 11:00a

p.9

MD MEDICAL LLC
127 MILLS AVE
GREER SC 29651-2514

Date 4/30/15
Account Number [REDACTED]

Page 2

BUSINESS CHECKING [REDACTED] (Continued)

DATE	DESCRIPTION	AMOUNT
	800-860-8027 OH Card# 9568	
4/02	COLLECTION AMERICAN EXPRESS CCD 4390587947	7.95-
4/02	BKCD M DSC BKCD PROCESSING CCD 273700566931	15.76-
4/02	BKCD M DSC IRN CCD 720000307630	20.50-
4/02	BKCD DEPST BKCD PROCESSING CCD 275000773687	45.00-
4/02	BKCD M DSC BKCD PROCESSING CCD 275000773687	76.14-
4/02	POS DEB 1839 04/01/15 00479901 QUICKTRIP	21.31-
	GREER SC Card# 9568	
4/02	DBT CRD 0203 04/02/15 00099008 7-ELEVEN 36844 GREENVILLE SC Card# 9568	25.27-
4/02	DBT CRD 0204 04/02/15 00071799 PHARMACY BOARD 803-896-4326 SC Card# 9568	70.00-
4/02	DBT CRD 0416 04/02/15 00056341 RGH-INDEPENDENCE 800-860-8027 OH Card# 9568	95.67-
4/02	Miscellaneous Debit	
4/03	DBT CRD 2311 04/02/15 00009360 COMPLETE MEDICAL S 845-533-5073 NY Card# 9568	100,000.00- 1,000.00-
4/03	Transf to Bus Ckg 0004	2,952.38-

M. HOPE SLACKLEY

2015 DEC 15 PM 2:36

Exhibit B

2015 DEC 15 PM 2:36
M. HOPE BLACKLEY

MD MEDICAL LLC
127 MILLS AVE
GREEN SC 29651-2514

Date 12/31/14
Account Number

Page 1

CHECKING ACCOUNTS

Privacy Notice - Federal law requires us to tell you how we collect, share, and protect your personal information. Our privacy policy has not changed and you may review our policy and practices with respect to your personal information at www.parksterlingbank.com or we will mail you a free copy upon request if you call us at (888)411-8196.

BUSINESS CHECKING		ENCLOSURES	22
ACCOUNT #		Statement Dates 12/01/14 thru 12/31/14	
BEGINNING BALANCE	3,316.84	DAYS IN THE STATEMENT PERIOD	31
29 DEPOSITS/CREDITS	19,946.52	AVG BALANCE	2,461.24
74 CHECKS/DEBITS	22,968.00	AVG COLLECTED BALANCE	2,461.24
SERVICE CHARGE	8.00		
INTEREST PAID	.00		
ENDING BALANCE	287.36		

	Total For This Period	Total Year-to-Date
Total Overdraft Fees	\$.00	\$ 2712.00
Total Returned Item Fees	\$.00	\$ 800.00

DEPOSITS AND OTHER CREDITS		
DATE	DESCRIPTION	AMOUNT
12/01	BKCD DEPST BKCD PROCESSING CCD 275000773687	50.00
12/02	HCCLAIMPMT S.C. STATE GROUP CCD 1003932633	127.81

M. HOPE BLACKLEY

DEC 15 PM 2:36

MD MEDICAL LLC
127 MILLS AVE
GREEN SC 29651-2514

Date 1/30/15
Account Number

Page 1

CHECKING ACCOUNTS

BUSINESS CHECKING
ACCOUNT #

BEGINNING BALANCE
26 DEPOSITS/CREDITS
70 CHECKS/DEBITS
SERVICE CHARGE
INTEREST PAID
ENDING BALANCE

287.36
16,245.91
16,080.22
8.00
.00
494.95

ENCLOSURES

Statement Dates 1/01/15 thru 2/01/15
DAYS IN THE STATEMENT PERIOD
AVG BALANCE
AVG COLLECTED BALANCE

14
32
926.07
926.07

	Total For This Period	Total Year-to-Date
Total Previous Year Overdraft Fees		\$3,712.00
Total Previous Year Return Item Fees		\$800.00

DEPOSITS AND OTHER CREDITS

DATE DESCRIPTION AMOUNT
1/05 BKCD DEPST BKCD PROCESSING 324.44
1/05 CCD 275000773687
Payment INVASERV LLC 5,790.00
1/06 CCD 014
HCCLAIMPT BLUE CROSS BLUE 45.70
CCD 1003932633
TRN*1*0000264021*1570287419*BL
USADV-

M. HOPE CLACKLEY

2015 DEC 15 PM 2:36

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SERIALIZED
INDEXED
FILED

MD MEDICAL LLC
127 MILLS AVE
GREER SC 29651-2514

Date 2/27/15
Account Number

Page 1

CHECKING ACCOUNTS

BUSINESS CHECKING

ACCOUNT

BEGINNING BALANCE

23 DEPOSITS/CREDITS

68 CHECKS/DEBITS

SERVICE CHARGE

INTEREST PAID

ENDING BALANCE

444.95

15,481.47

14,756.83

8.00

.00

1,151.59

ENCLOSURES

Statement Dates 2/02/15 thru 3/01/15

DAYS IN THE STATEMENT PERIOD 28

AVG BALANCE 1,886.31

AVG COLLECTED BALANCE 1,886.31

DEPOSITS AND OTHER CREDITS

DATE

DESCRIPTION

AMOUNT

2/02

HCCLAIMPMT CGS ADMIN LLC

94.57

CCD 5293780001

TRN*1*042000010291137*12025522

97-

2/03

HCCLAIMPMT BLUE CROSS BLUE

45.70

CCD 1003932633

TRN*1*00000267000*1570287419*BL

UEADV-

2/03

Deposit

211.36

2/04

Payment INVASERV LLC

5,790.90

CCD 014

2/05

HCCLAIMPMT CGS ADMIN LLC

936.18

CCD 5293780001

TRN*1*042000010341296*12025522

97-

2/05

HCCLAIMPMT Care Improvement

7.35

CCD 203025458

TRN*1*1144554575*1522102846*00

0077682

2/06

HCCLAIMPMT CGS ADMIN LLC

126.85

CCD 5293780001

M. HOPE BLACKLEY

2015 DEC 15 PM 2:36

MD MEDICAL LLC
127 MILLS AVE
GREER SC 29651-2514

Date 4/30/15
Account Number

Page 1

CHECKING ACCOUNTS

BUSINESS CHECKING

ACCOUNT #

BEGINNING BALANCE

16 DEPOSITS/CREDITS

22 CHECKS/DEBITS

SERVICE CHARGE

INTEREST PAID

ENDING BALANCE

570.69
110,981.67
111,167.47
8.00
.00
376.89

ENCLOSURES

Statement Dates 4/01/15 thru 4/30/15

DAYS IN THE STATEMENT PERIOD 30

AVG BALANCE 1,051.92

AVG COLLECTED BALANCE 1,051.92

DEPOSITS AND OTHER CREDITS

DATE

DESCRIPTION

AMOUNT

4/01

HCCLAIMPMT Care Improvement

CCD 203025458

99.28

TRN*1*1150571380*1522102846*00

0077082

4/01

HCCLAIMPMT CGS ADMIN LLC

CCD 5293780001

298.32

TRN*1*042000010892594*12025522

97-

4/02

Payment INVASERV LLC

CCD 014

5,568.25

4/02

Deposit

4/03

HCCLAIMPMT SC HHS FINE COMM

CCD 1003932633

100,000.00

131.18

TRN*1*7735504*1570859576-

Deposit

4/03

HCCLAIMPMT Care Improvement

CCD 203025458

3,265.79

30.77

TRN*1*1151155727*1522102846*00

0077082

4/06

Trsf from Bus Ckg

0006

Confirmation number 406151032

200.00

M. HOPE BLACKLEY

2015 DEC 15 PM 2:36

MD MEDICAL LLC
127 MILLS AVE
GREER SC 29651-2514

Date 5/29/15
Account Number

Page

CHECKING ACCOUNTS

Important Notice Regarding a Change in Terms
Effective July 1, 2015, the following will apply to your account.

Returned Item Fee - \$36/per item

Overdraft Item Fee - \$36/per item

BUSINESS CHECKING
ACCOUNT # [REDACTED]
BEGINNING BALANCE 376.89
5 DEPOSITS/CREDITS 8,848.15
1 CHECKS/DEBITS 8,574.04
SERVICE CHARGE 8.00
INTEREST PAID .00
ENDING BALANCE 643.00

ENCLOSURES
Statement Dates 5/01/15 thru 5/31/15 0
DAYS IN THE STATEMENT PERIOD 31
AVG BALANCE 1,418.98
AVG COLLECTED BALANCE 1,418.98

DEPOSITS AND OTHER CREDITS

DATE	DESCRIPTION	AMOUNT
5/07	SETTLEMENT MERCHANT SERVICE CCD 000275000773687	1,185.20
5/08	MSC DR 5-9 MSC GROUP INC. CCD 476987	2,017.20
5/08	Payment INVASERV LLC CCD 014	5,494.75
5/14	HCCLAIMPMT BLUE CROSS BLUE CCD 1003932633 TRN*1*0001499219*1570287419*40 1-	96.00
5/19	HCCLAIMPMT BLUE CROSS BLUE CCD 1003932633 TRN*1*0001501446*1570287419*40 1-	55.00

M.HOPE BLACKLEY

2015 DEC 15 PM 2:36

SPRINGER, J. L.

Exhibit C

2015 DEC 15 PM 2:36
M. HOFFE ELACKLEY

MD MEDICAL LLC
127 MILLS AVE
GREER SC 29651-2514

Date 5/29/15
Account Number [REDACTED]

Page 7

BUSINESS CHECKING [REDACTED]

(Continued)

DEBITS AND OTHER WITHDRAWALS

DATE	DESCRIPTION	AMOUNT
5/12	Telephone transfer debit to Acct No. [REDACTED] D	8,574.04-
5/29	Service Charge	8.00-SC

DAILY BALANCE SUMMARY

DATE	BALANCE	DATE	BALANCE	DATE	BALANCE
5/01	376.89	5/12	500.00	5/29	643.00
5/07	1,562.09	5/14	596.00		
5/08	9,074.04	5/19	651.00		

2015 DEC 15 PM 2:36
M. HOPE BLACKLEY

PARKSTERLING
BANK

MD MEDICAL LLC
SAVINGS
127 MILLS AVE
GREER SC 29651-2514

Date 4/30/15
Account Number

Page 1

CHECKING ACCOUNTS

BUSINESS CHECKING
ACCOUNT # 17059
BEGINNING BALANCE .00
4 DEPOSITS/CREDITS 2,327.76
1 CHECKS/DEBITS 351.66
SERVICE CHARGE .00
INTEREST PAID .00
ENDING BALANCE 1,976.10

ENCLOSURES
Statement Dates 4/08/15 thru 4/30/15
DAYS IN THE STATEMENT PERIOD 23
AVG BALANCE 1,528.89
AVG COLLECTED BALANCE 1,528.89

DEPOSITS AND OTHER CREDITS

DATE	DESCRIPTION	AMOUNT
4/09	Deposit	400.00
4/13	Telephone transfer credit from Acct No. 116-D	837.00
4/14	Deposit	281.82
4/16	Deposit	808.94

DEBITS AND OTHER WITHDRAWALS

DATE	DESCRIPTION	AMOUNT
4/15	Miscellaneous Debit	351.66

DAILY BALANCE SUMMARY

DATE	BALANCE	DATE	BALANCE
4/08	.00	4/13	1,237.00
4/09	400.00	4/14	1,518.82
		4/15	
		4/16	

M. HOPE BLACKLEY
2015 DEC 15 PM 2:36
BALANCE 1,167.16
1,976.10

PARKSTERLING
BANK

Primary Account • [REDACTED]

Amount \$808.94 Date 4/16/2015

Amount \$281.82 Date 4/14/2015

Amount \$400.00 Date 4/9/2015

2015 DEC 15 PM 2:36
M. HOPE BLACKLEY

PARK STERLING BANK

MD MEDICAL LLC
SAVINGS
127 MILLS AVE
GREER SC 29651-2514

Date 5/29/15
Account Number

Page 1

CHECKING ACCOUNTS

Important Notice Regarding a Change in Terms
Effective July 1, 2015, the following will apply to your account.

Returned Item Fee - \$36/per item

Overdraft Item Fee - \$36/per item

BUSINESS CHECKING
ACCOUNT # 7059
BEGINNING BALANCE 1,976.10
2 DEPOSITS/CREDITS 8,872.74
1 CHECKS/DEBITS 500.00
SERVICE CHARGE .00
INTEREST PAID .00
ENDING BALANCE 10,348.84

ENCLOSURES
Statement Dates 5/01/15 thru 5/31/15
DAYS IN THE STATEMENT PERIOD 31
AVG BALANCE 7,567.31
AVG COLLECTED BALANCE 7,567.31

DEPOSITS AND OTHER CREDITS

DATE	DESCRIPTION	AMOUNT
5/11	Telephone transfer credit from Acct No.	8,574.04
5/11	Deposit	298.70

DEBITS AND OTHER WITHDRAWALS

DATE	DESCRIPTION	AMOUNT
5/06	Transf to Bus Ckg Confirmation number 506150667	500.00

DAILY BALANCE SUMMARY

DATE	BALANCE	DATE	BALANCE
5/01	1,976.10	5/06	1,476.10
		5/11	10,348.84

M. HORTON BLACKLEY

2015 DEC 15 PM 2:36

P
PARKSTERLING
BANK

Primary Account

Amount \$298.70 Date 5/11/2015

2015 DEC 15 PM 2:36
M. HOPE BLACKLEY

P
PARKSTERLING
 BANK

MD MEDICAL LLC
 SAVINGS
 127 MILLS AVE
 GREER SC 29651-2514

Date 6/30/15
 Account Number

Page 1

CHECKING ACCOUNTS

BUSINESS CHECKING

ACCOUNT #

BEGINNING BALANCE

1 DEPOSITS/CREDITS

1 CHECKS/DEBITS

SERVICE CHARGE

INTEREST PAID

ENDING BALANCE

07059
 - 10,348.84
 405.54
 10,000.00
 .00
 .00
 754.38

ENCLOSURES

Statement Dates 6/01/15 thru 6/30/15

DAYS IN THE STATEMENT PERIOD

AVG BALANCE

AVG COLLECTED BALANCE

1
 30
 10,087.71
 10,087.71

DEPOSITS AND OTHER CREDITS

DATE DESCRIPTION

6/01 Deposit

AMOUNT
 405.54

DEBITS AND OTHER WITHDRAWALS

DATE DESCRIPTION

6/29 Transf to Prime ck 0003
 Confirmation number 629150533

AMOUNT
 10,000.00-

DAILY BALANCE SUMMARY

DATE BALANCE

6/01 10,754.38

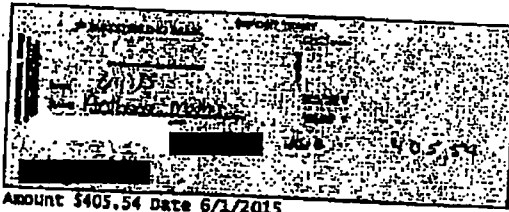
DATE
 6/29

BALANCE
 754.38

2015 DEC 15 PM 2:36
 M. HOPE BLACKLEY

P
PARKSTERLING
BANK

Primary Account [REDACTED]



Amount \$405.54 Date 6/1/2015

2015 DEC 15 PM 2:36
M. HOPE BLACKLEY

PARKSTERLING
BANK

MD MEDICAL LLC
SAVINGS
127 MILLS AVE
GREER SC 29651-2514

Date 7/31/15
Account Number

Page 1

CHECKING ACCOUNTS

BUSINESS CHECKING
ACCOUNT #
BEGINNING BALANCE
1 DEPOSITS/CREDITS
CHECKS/DEBITS
SERVICE CHARGE
INTEREST PAID
ENDING BALANCE

059
754.38
10.29
.00
.00
.00
764.67

ENCLOSURES
Statement Dates 7/01/15 thru 8/02/15
DAYS IN THE STATEMENT PERIOD 33
AVG BALANCE 762.17
AVG COLLECTED BALANCE 762.17

DEPOSITS AND OTHER CREDITS
DATE DESCRIPTION
7/09 Deposit

AMOUNT
10.29

DAILY BALANCE SUMMARY
DATE BALANCE
7/01

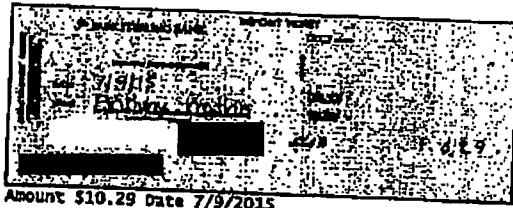
754.38 7/09

BALANCE 764.67

2015 DEC 15 PM 2:36
M. HOPE BLACKLEY

**PARKSTERLING
BANK**

Primary Account: [REDACTED]



Amount \$10.29 Date 7/9/2015

2015 DEC 15 PM 2:36
M. HOPE BLACKLEY



MD MEDICAL LLC
SAVINGS
127 MILLS AVE
GREER SC 29651-2514

Date 8/31/15
Account Number

Page 1

CHECKING ACCOUNTS

BUSINESS CHECKING

ACCOUNT #

BEGINNING BALANCE

1 DEPOSITS/CREDITS

2 CHECKS/DEBITS

SERVICE CHARGE

INTEREST PAID

ENDING BALANCE

059
764.67
5,000.00
5,764.67
.00
.00
.00

ENCLOSURES

Statement Dates 8/03/15 thru 8/31/15

DAYS IN THE STATEMENT PERIOD 29

AVG BALANCE 26.36

AVG COLLECTED BALANCE 26.36

DEPOSITS AND OTHER CREDITS

DATE
8/03

DESCRIPTION

Trsf from Bus Ckg

Confirmation number 803151044

0006

AMOUNT
5,000.00

DEBITS AND OTHER WITHDRAWALS

DATE
8/03

DESCRIPTION

Transf to Prime ck

Confirmation number 803151046

Closing entry - Deposit funds

Acct No. 10002184869

0003

AMOUNT
5,000.00

764.67-

DAILY BALANCE SUMMARY

DATE
8/03

BALANCE

764.67

DATE
8/04

BALANCE

.00

2015 DEC 15 PM 2:36
M. HOPE BLACKLEY

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

Invacare Corporation, Inc., et al.

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014-CP-42-4205

MD Medical, LLC, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other Dismissed without prejudice
- ☐ 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 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:

After consideration, Dr. Anthony Mathis' Motion for Reconsideration is respectfully DENIED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
Invacare Corporation, Inc.	Dr. Anthony L. Mathis	\$11,645.61
		\$
		\$

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

Master-in-Equity: _____

Judge Code

3065

Date

3-30-2016

For Clerk of Court Office Use Only

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

Brandon T. Reeser

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

INVACARE CORPORATION, INC. and
all its subsidiaries,
assignors and assignees,

Plaintiffs,

-vs-

MD MEDICAL, LLC AND GARY DAY,

Defendants.

IN THE COURT OF COMMON PLEAS

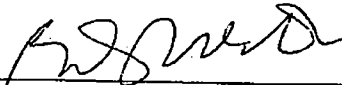
CASE NO.

SUMMONS
(Debt Collection)
Non-Jury

2014-CP-42-4205

TO THE DEFENDANT ABOVE NAMED:

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 pleading to said Complaint upon the subscribers, at their offices at 924 Folly Road, Charleston, South Carolina 29412, or by mail at P.O. Box 13177, Charleston, South Carolina 29422, 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, Plaintiff, Invacare Corporation, will apply to the Court for judgment by default for the relief demanded in the Complaint.


Bonum S. Wilson, III
WILSON & HEYWARD LLC
P.O. Box 13177
Charleston, SC 29422
(843) 762-4567
bwilson@wilsonheyward.com
ATTORNEYS FOR PLAINTIFF

Date: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)
INVACARE CORPORATION, INC. and)
all its subsidiaries,)
assignors and assignees,)
)
Plaintiffs,)
)
-vs-)
)
MD MEDICAL, LLC AND GARY DAY,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS

CASE NO. 14-CP-

COMPLAINT
(Debt Collection)
Non-Jury

2014-CP-42-4205

Plaintiff would respectfully show this Court that:

1. Plaintiffs are corporations domiciled in a state other than S.C., but doing business in South Carolina.

2. That upon information and belief, the Defendant, MD Medical, LLC, is limited liability company registered in the state of South Carolina, and doing business in Spartanburg County, South Carolina.

3. That upon information and belief, the Defendant, Gary Day, is a citizen and resident of the County of Spartanburg, State of South Carolina.

4. Defendants, MD Medical, LLC created an open account with the Plaintiff, and its vice president, Gary Day, executed and delivered to the Plaintiff on behalf of the Defendant a certain promissory note, hereinafter called "note", a copy of which is attached hereto and made part hereof, as Exhibit A, granting the Plaintiff a security interest in sale of goods and merchandise.

sold, held, or leased it, and whereby default on any debt of the Defendants rendered all debts immediately due and payable.

5. That the attached Exhibit A is a true and correct copy of the original Contract.

6. Despite demand, Defendants have failed to make the monthly payments when due and, pursuant to the terms of the Promissory Note, the entire unpaid balances is now due and payable. As of October 7, 2014, the payoff balance due on the account totaled \$10,285.61.

8. By virtue of the Defendants' default, Plaintiff is entitled to judgment against the Defendants for the balance owed.

WHEREFORE, Plaintiff prays for an Order of this Court for a sum certain in the amount of \$10,285.61, prejudgment interest at an annual rate of 15% per annum from the date of the breach of the leases, prejudgment interest on the balance of the open account, expenses and reasonable attorneys fees and such other and further relief as the Court may deem just and proper.



Bonum S. Wilson, III
WILSON & HEYWARD LLC
P.O. Box 13177
Charleston, SC 29422
(843) 762-4567
bwilson@wilsonheyward.com
ATTORNEYS FOR PLAINTIFF

Date: _____

FILED
2014 OCT 24 PM 3:09
CLERK OF COURT
SOUTH CAROLINA

PROMISSORY NOTE\$12,985.61Greer, SCSeptember 26, 2013

FOR VALUE RECEIVED MD Medical, LLC ("Maker") promises to pay to the order of INVACARE CORPORATION and all wholly owned subsidiaries ("Holder"), at 1320 Taylor Street Elyria, Ohio or such other place as Holder may, from time to time, designate in writing, the sum of \$12,985.61 payable as follows:

Eleven (11) payments in the sum of Nine Hundred and 00/100 Dollars (\$900.00); and then

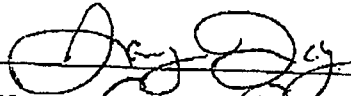
One (1) final payment in the sum of Three Hundred Eighty-Five and 61/100 Dollars (\$385.61).

Said consecutive monthly installments shall commence on the 15th day of October, 2013 and continue on the same day of each calendar month thereafter. Maker shall have a ten (10) calendar day grace period within which time Holder is to have received said monthly installments. After the ten (10) calendar day grace period, Holder shall fax to Maker a written notice of default. Maker will have five (5) calendar days from the date of the written notice of default within which to cure/correct the lack of non-payment. In the event that said default (non-payment) is not corrected/cured within the time specified above Holder may, at its option, without notice or demand, accelerate the maturity of the indebtedness then outstanding under this Note and declare the same to be at once due and payable whereupon it shall be and become immediately due and payable. Maker and any other party liable on this Promissory Note also promise and agree to pay Holder's costs, expenses and reasonable attorneys fees incurred in enforcing and/or collecting on this Promissory Note. Maker and any other party liable on this Note waive presentment for payment, demand, protest, notice of protest, notice of intent to accelerate, notice of acceleration, and further, to the extent allowed by law, waive all benefits of

valuation, appraisal and exemption laws. Holder may, without notice, extend the time of payment of this Promissory Note, postpone the enforcement hereof, grant any other indulgence, add or release any party primarily or secondarily liable hereon and/or release or change any collateral securing this Promissory Note without affecting or diminishing Holder's right of recourse against Maker and any other party liable on this Note, which right is hereby expressly reserved. As used in this Promissory Note, the obligation of each of them shall be joint and several. This Note may not be changed or terminated orally.

The proceeds from the loan evidenced by this Promissory Note are to be used for business purposes only, and no part thereof to be used for primarily consumer, personal, family or household purposes.

MAKER: MD Medical, LLC

BY: 
Printed Name: GARY RAY
Title: VP

VERIFIED STATEMENT OF ACCOUNT

TO: MD Medical, LLC and Gary Day

RE: Inva Account: 101673
Pinn No: 15296

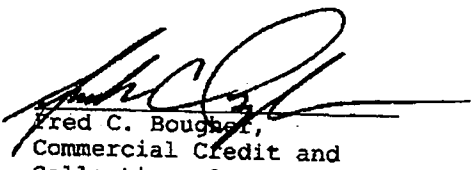
AMOUNT DUE: \$10,285.61

STATE OF OHIO)

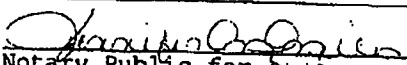
COUNTY OF LORAIN)

AFFIDAVIT

PERSONALLY appeared before me, Fred C. Bougher, who, being duly sworn, deposes and says that he a Commercial Credit and Collections Counsel with Invacare Corporation and that the above statement is true and correct, no part of which has been paid by discount or otherwise.


Fred C. Bougher,
Commercial Credit and
Collections Counsel
INVACARE CORPORATION
P.O. BOX 4028
ELYRIA, OH 44036-2125

SWORN to before me this 14th day
of October, 2014


Notary Public for OHIO
My commission expires: November 2016

2014 OCT 24 PM 3:08
ALHORE ELLIOTT
NOTARY PUBLIC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMONS PLEAS
	)	
COUNTY OF SPARTANBURG	)	CASE NO. 14-CP-42-4205
Invacare Corporation, Inc. and	)	
all its subsidiaries,	)	
assignors and assignees,	)	
	)	
Plaintiff,	)	
	)	
v.	)	PETITION FOR SUPPLEMENTAL
	)	PROCEEDINGS
MD Medical, LLC and Gary Day,	)	
	)	
Defendants.	)	
	)	

Invacare Corporation ("Plaintiff"), by and through their undersigned counsel, hereby submits this Petition for Supplemental Proceedings and would respectfully show that:

1. Plaintiff has obtained judgment against MD Medical, LLC and Gary Day as will appear by reference to that certain judgment entered of record in the office of the Spartanburg County Clerk of Court, South Carolina on January 21, 2015, in case number 2014-CP-42-4205, an execution of judgment was thereafter mailed to the Sheriff of Spartanburg County, Defendant's place of business which resulted in a nulla bona.
2. There is still due and owing to the Plaintiff on said judgment Eleven Thousand Six Hundred Forty Five Dollars and Sixty One Cents (\$11,645.61) the Defendants having failed and refused to satisfy the same.
3. That the Execution of Judgment was served upon Gary Day and MD Medical by the Spartanburg County Sheriff's Department.
4. That Return of the Order was executed by the Spartanburg County Sheriff's Office "Nulla Bona" on May 1, 2015, as more fully appears on Exhibit A attached hereto.
5. The Plaintiff is informed and believes that he is entitled, therefore, to an Order requiring the Gary Day and MD Medical, LLC, to appear before this Court or its appointee and/or referee, at such time and place to be noticed by the Court, to be examined and to answer under oath concerning any property, funds, holdings, and/or assets which it may own in order to locate and ascertain the financial assets of the Defendants for the purpose of satisfying the judgment obtained against the Defendants and to show cause why any property, assets, accounts, funds, or or holdings belonging to the Defendants, which are not exempt from execution, should not be turned over by the Defendants and/or sold or liquidated and the proceeds applied towards

the satisfaction of the Plaintiff's judgment.

6. The Plaintiff is further informed and believes that, in order for there to be a meaningful examination of the Defendants for the purposes enumerated above, he is entitled to an Order requiring the Defendants to produce for inspection in advance of the examination any documents, records, and/or instruments relating to their property, assets, funds, holdings and/or financial status, whether held individually or jointly. Accordingly, prior to and/or after any such examination, the Plaintiff is entitled to an Order allowing him to obtain discovery from and/or to depose the Defendants, employees, agents, and representatives, and any other person, in the manner provided by the South Carolina Rules of Civil Procedure, concerning the Defendants' property, assets, funds, holdings, and financial status.

7. The Plaintiff is further informed and believe that he is entitled to an Order appointing receiver of property, pursuant to the provisions of S.C. CODE ANN. § 15-39-430, to take charge of any property, assets, accounts, funds or holdings belonging to the Defendants for the purpose of applying them towards the satisfaction of the Plaintiff's judgment.

8. The Plaintiff is further informed and believe that he is entitled to the issuance of Charging Orders, pursuant to the provisions of the South Carolina Limited Liability Company Act, S.C. CODE ANN. § 33-44-504, against Defendants' distributional interest in the limited liability companies or businesses that he owns, manages, and controls and, to the extent the companies are single-member limited liability companies, Plaintiff requests the appointment of a receiver to control the management of the companies, to cause the companies to liquidate or sell their assets, and to distribute the net sales proceeds towards the payment of the Plaintiff's judgment.

9. The Plaintiff is further informed and believes that he is entitled to an Order restraining the Defendants from changing, altering, destroying, and/or defacing any documents, records or instruments relating to his property, assets, funds, holdings, and financial status, whether held individually or jointly.

10. The Plaintiff is further informed and believes that he is entitled to an Order restraining from damaging, concealing, encumbering, granting a security interest in, hypothecating, transferring, selling, disposing, alienating, concealing, dissipating, disbursing, withdrawing, otherwise disposing of, or removing from the jurisdiction of this Court, and/or otherwise interfering with any property, assets, funds, accounts, and/or holdings, whether held individually and/or jointly (including, but not limited to, any interest in any limited liability company, corporation, or partnership and any cash on hand or in any accounts held or on deposit with any bank, savings and loan, credit union, broker, money manager, or other financial

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ROSE LACROIX

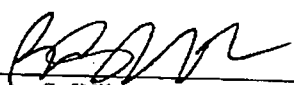
institution and any funds due the Defendants), which are not exempt by law from execution.

WHEREFORE, Plaintiff petitions the Court, pursuant to Rule 69 of the South Carolina Rules of Civil Procedure and S.C. CODE ANN. §§ 15-39-310, -330, -430 & -440, to permit supplementary proceedings against the Defendants, including the issuance of an Order:

- a. requiring Gary Day and/or a representative of MD Medical to appear before this Court and/or its appointee or referee, at such time and place to be noticed by the Court, to be examined and to answer under oath concerning any property, funds, holdings, and/or assets which he may own in order and to show cause why any property, assets, accounts, funds, or holdings belongings to the Defendants, which are not exempt from execution, should not be turned over by the Defendants and/or sold or liquidated and the proceeds applied towards the satisfaction of the Plaintiff's judgment.
- b. allowing the Plaintiff to obtain discovery from and/or to depose the Defendants, their employees, agents, and representatives, and/or any other person or entity, in the manner provided by the South Carolina Rules of Civil Procedure, concerning the Defendants' property, assets, funds, holdings, and/or financial status and any transfers or disposition of same;
- c. requiring the Defendants to produce for inspection in advance of the examination all documents, records, and/or instruments relating to this property, assets, funds, holdings, and/or instruments relating to their property, assets, funds, holdings, and/or financial status, whether held individually or jointly;
- d. enjoining and restraining the Defendants, pendente lite and/or permanently, from changing, altering, destroying and defacing any documents, records and/or instruments relating to their property, assets, funds, holdings and/or financial status, whether held individually or jointly;
- e. enjoining and restraining the Defendants, pendente lite and/or permanently, from damaging, concealing, encumbering, granting a security interest in, hypothecating, transferring, selling, disposing, alienating, concealing, dissipating, disbursing, withdrawing, otherwise disposing of, or removing from the jurisdiction of this Court, and/or otherwise interfering with any property, assets, funds, accounts and/or holdings, whether held individually and/or jointly (including, but not limited to, any interest in any limited liability company, corporation, or partnership and any cash on hand or in any accounts held or on deposit with any bank, savings and loan, credit union, broker, money manager, or other financial

institution and any funds due the Defendants), which are not exempt by law from execution;

- f. directing that any bank, savings and loan, credit union, broker, money manager, or other financial institution which holds, maintains, or controls any account or asset for or on behalf of the Defendants, which has been served with a copy of this Order, shall hold and retain within its control and prohibit the withdrawal, removal, assignment, transfer, disbursement, dissipation, sale, or other disposal of any such account funds or asset except upon further Order of this Court;
- g. directing that any property or assets belonging to the Defendants not exempt from execution be turned over by the Defendants and sold or liquidated and the proceeds applied towards the satisfaction of the Plaintiff's monetary judgment; and
- h. for such other relief as the Court may deem just and proper.


Bonum S. Wilson, III
WILSON & HEYWARD LLC
P.O. Box 13177
Charleston, SC 29422
(843) 762-4567
Bwilson@wilsonheyward.com
ATTORNEYS FOR PLAINTIFF

May 27, 2015

2015 JUN -1 PM 1:16
F. K. DEACAL

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Invacare Corporation, Inc. and All of Its
Subsidiaries, Assignors and Assignees,

Plaintiff,

v.

MD Medical, LLC and Gary Day,

Defendant(s).

IN THE COURT OF COMMON PLEAS

2014-CP-42-4205

**DR. ANTHONY L. MATHIS' MOTION
TO RECONSIDER AND AMEND**

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorneys for Dr. Anthony L. Mathis, hereby moves this Honorable Court for an order pursuant to Rule 52(b) of the South Carolina Rules of Civil Procedure amending this Court's Order dated December 14, 2015 and finding that 1) Dr. Anthony L. Mathis is not personally liable to Plaintiff in any amount, 2) Dr. Anthony L. Mathis is not required to apply any funds to the satisfaction of Plaintiff's January 21, 2015 judgment, 3) Dr. John Petrich is not required to pay Plaintiff, and 4) that Plaintiff is not entitled to any relief against Dr. Anthony L. Mathis or Dr. John Petrich personally without first properly pleading and proving that it is so entitled. Amending this Court's Order dated December 14, 2015 is appropriate because:

- A. The August 24, 2015 Order of Reference for Rule to Show Cause Fails to Properly Notify Dr. Anthony L. Mathis That He May Be Subject To Personal Liability In This Matter and Wholly Fails to Notify Dr. John Petrich Whatsoever.**

"It is an error of law for a court to decide a case on a ground not before it." Griffin v. Capital Cash, 310 S.C. 288, 294, 423 S.E.2d 143, 147 (Ct.App.1992) (citation omitted). "Due process requires that a litigant be placed on notice of the issues which the court is to consider." Bass v. Bass, 272 S.C. 177, 180, 249 S.E.2d 905, 906 (1978). "One of the basic purposes of a

JAN 11 2016

notice of motion is to apprise the opposing party of the relief sought and the grounds therefore.” Turbeville v. Floyd, 288 S.C. 171, 174, 341 S.E.2d 651, 652 (Ct.App.1986) (quoting Skinner v. Skinner, 257 S.C. 544, 549, 186 S.E.2d 523, 526 (1972)). Thus, a court ordinarily may not grant relief beyond the scope of the notice. *Id.* A limited exception to this rule exists when a ground not included in the notice of the motion is nevertheless fully argued before the court without objection. See Salvo v. Hewitt, Coleman & Assocs., 274 S.C. 34, 39, 260 S.E.2d 708, 711 (1979).

This Court’s August 24, 2015 Order of Reference for Rule to Show Cause only notifies Dr. Anthony L. Mathis that he “shall appear for the depositions and otherwise fully, completely, and truthfully respond to the discovery in accordance with the South Carolina Rules of Civil Procedure.” Dr. Mathis was not a party and Plaintiff never served Dr. Mathis with the Complaint nor provided any notification whatsoever to Dr. Mathis of the action and default judgment underlying this matter. The August 24, 2015 Order does not provide any notice that Plaintiff sought to hold Dr. Mathis personally liable for its judgment against MD Medical, LLC and Gary Day nor that Plaintiff sought to require Dr. Mathis to apply any funds to the satisfaction of Plaintiff’s January 21, 2015 judgment. Therefore, such requests for relief were not properly before this Court and this Court’s December 14, 2015 Order should be amended to deny those request.

During the course of the November 19, 2015 hearing, counsel for Dr. Anthony L. Mathis strongly and repeatedly objected to any testimony and references to Dr. Mathis’ personal assets and business affairs beyond his basic identity as a practicing physician and vehemently objected to Plaintiff’s suggestion that Dr. Mathis should be held personally responsible in any way in this matter. Accordingly, this matter does not fall within the limited exception to the notice rule regarding participation without objection and, therefore, this Court’s December 14, 2015 Order should be amended to find that Dr. Anthony L. Mathis is not personally liable to Plaintiff in any

amount and is not required to apply any funds to the satisfaction of Plaintiff's January 21, 2015 judgment.

There is no evidence whatsoever in the record of this case that Plaintiff has served Dr. John Petrich with any form of notification regarding these proceedings. Therefore, this Court's December 14, 2015 Order should be amended to find that Dr. John Petrich is not required to pay Plaintiff.

B. Plaintiff has Failed to Prove Its Requested Relief Falls Under The Statute of Elizabeth and/or South Carolina Code of Laws Section 15-39-410 (1976).

South Carolina Code of Laws Section 27-23-10 (1997) and South Carolina Code of Laws Section 15-39-410 (1976) apply solely to property of a judgment debtor. In this action, Plaintiff, by and through the December 14, 2015 Order, seeks to interfere with a contractual relationship between Dr. Anthony L. Mathis and Dr. John Petrich. Although the record of this case reflects that MD Medical, LLC and Gary Day were indebted to Plaintiff at the time that contract was entered, the Plaintiff has completely failed to establish in any way that said contract is fraudulent in nature or otherwise subject to the provisions of the Statute of Elizabeth as codified and interpreted under South Carolina law.

A clear and convincing evidentiary standard governs fraudulent conveyance claims brought under the Statute of Elizabeth. Oskin v. Johnson, 400 S.C. 390, 396, 735 S.E.2d 39, 463 (S.C. 2012). The testimony of Gary Day and Dr. Anthony L. Mathis clearly establishes that Dr. Anthony L. Mathis was a creditor to MD Medical, LLC by virtue of the numerous loans he made to the company and the company's admission that Dr. Mathis was entitled to repayment of the money lent. Plaintiff has not presented any provision of law that provides Plaintiff's debt has priority over Dr. Mathis' debt. Plaintiff has merely suggested that the money paid pursuant to Dr. Mathis' and Dr. Petrich's contract actually belong to MD Medical, LLC and have been improperly

transferred to Dr. Mathis. As discussed above, South Carolina law does not allow Plaintiff to recover on such mere allegations. Plaintiff must provide proper notice of its claim and prove its claim by clear and convincing evidence. Plaintiff has not provided property notice and has provided no proof whatsoever that the money paid pursuant to Dr. Mathis' and Dr. Petrich's contract actually belongs to MD Medical, LLC.

Neither MD Medical, LLC nor Gary Day are a party to the contract Plaintiff and this Court's December 14, 2105 Order seeks to attack and neither MD Medical, LLC nor Gary Day has a right to demand or receive the money paid under that contract. That money does not belong to MD Medical, LLC and the circumstances underlying this matter do not establish an action of chose. Therefore, Plaintiff has failed to establish that this Court has jurisdiction or authority over that money pursuant to Sections 27-23-10 (1997) and 15-39-410 (1976) and this Court's December 14, 2015 Order should be amended to find that Plaintiff is not entitled to any relief against Dr. Anthony L. Mathis or Dr. John Petrich personally without first properly pleading and proving that it is so entitled.

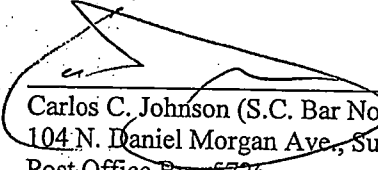
CONCLUSION

Based upon the foregoing arguments and authorities cited herein, Dr. Anthony L. Mathis respectfully requests that this Court amend its Order dated December 14, 2015 and find that 1) Dr. Anthony L. Mathis is not personally liable to Plaintiff in any amount, 2) Dr. Anthony L. Mathis is not required to apply any funds to the satisfaction of Plaintiff's January 21, 2015 judgment, 3) Dr. John Petrich is not required to pay Plaintiff, and 4) that Plaintiff is not entitled to any relief against Dr. Anthony L. Mathis or Dr. John Petrich personally without first properly pleading and proving that it is so entitled.

This motion is based on the pleadings, affidavits, orders, testimony and other evidence in

the record, and the arguments and legal authorities set forth herein and in any memorandum Dr. Anthony L. Mathis files in support of his claims in this action.

LYLES, DARR & CLARK, LLP



Carlos C. Johnson (S.C. Bar No. 70315)
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Post Office Box 5726
Spartanburg, South Carolina 29304-5726
cjohnson@ldclaw.com
Telephone: (864) 585-4806
Facsimile: (864) 585-4810

January 4, 2016
Spartanburg, South Carolina

Attorneys for Dr. Anthony L. Mathis

CLERK OF COURT
SPARTANBURG COUNTY
2016 JAN -6 PM 4:03
M. HOPE BLACKLEY

1	STATE OF SOUTH CAROLINA	)	
		)	
2	COUNTY OF SPARTANBURG	)	COURT OF COMMON PLEAS
			2014-CP-42-4205
3	Invacare Corporation, Inc., and all its	)	
	subsidiaries, assignors and assignees,	)	
4		)	
	Plaintiff(s),	)	
5		)	TRANSCRIPT OF RECORD
	vs.	)	
6		)	
	MD Medical, LLC and Gary Day,	)	
7		)	July 20, 2015
	Defendant(s).	)	Spartanburg, South Carolina
8		)	
	BEFORE:		
9			
	HONORABLE GORDON G. COOPER, Master-in-Equity		
10			
	APPEARANCES:		
11			
	Brandon Reeser, Esquire		
12	WILSON & HEYWARD, LLC		
	Post Office Box 13177		
13	Charleston, South Carolina 29422		
	Attorney for Plaintiff		
14			
	ATTENDING:		
15			
	Gary Day		
16			
17			
18			
19			
20			
21			
			DOROTHY HUNTSINGER
22			Court Reporter
23			
24			
25			

1 THE COURT: We are here on supplementary proceedings in case number 2014-
2 4205, Invacare Corporation, Inc. versus MD Medical, LLC and Gary Day. Counsel, are
3 you ready to proceed?

4 MR. REESER: Yes, Your Honor.

5 THE COURT: Alright.

6 MR. REESER: Your Honor, my name is Brandon Reeser on behalf of the Plaintiff,
7 Invacare Corporation. We obtained a default judgment January 21 of this year against MD
8 Medical, LLC and Gary Day, and the Sheriff returned a nulla bona on executing on that
9 judgment in early May. We filed a Petition for Supplemental Proceedings in this case in
10 late June. I believe Mr. Day was served the last week of June, received notice of this
11 hearing on behalf of himself individually and MD Medical, LLC. He provided us
12 numerous documents personally and relating to the business. We would like the
13 opportunity just to question him on the record in front of the Court if the Court would
14 allow us the opportunity.

15 THE COURT: Alright. Mr. Day, if you would take the stand.

16 MR. DAY: Yes, sir.

17 (WHEREUPON, GARY DAY IS DULY SWORN.)

18 THE COURT: Alright. State your full name for the record.

19 MR. DAY: Gary Day.

20 THE COURT: Alright. Counsel.

21 GARY DAY,

22 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

23 DIRECT EXAMINATION BY MR. REESER:

24 Q. Mr. Day, I am just going to start briefly at the beginning with a little bit of your
25 background. Where do you live?

1 A. I live in Pickens, South Carolina.
2 Q. And what is your address?
3 A. It is 117 Pinnacle Falls Drive.
4 Q. Do you live with anybody at Pinnacle Falls Drive?
5 A. Yes, I live with my wife and my thirty-three year old son who is handicapped.
6 Q. Do you have any other children?
7 A. Yes, sir. We have a thirty year old son who is a game warden in Charleston, South
8 Carolina. And we have a twin who is thirty-three that lives in Seattle, Washington.
9 Q. I will come back a little bit later with some questions about your home, but, what
10 do you do for a living?
11 A. I work in sales and marketing and transition for Parker Medical Equipment.
12 Q. And where is Parker Medical Equipment?
13 A. It is located--- They have two offices. One in Greenville on Augusta Street and
14 one in Woodruff.
15 Q. And which office do you work in?
16 A. Out of the Greenville office.
17 Q. Okay, on Augusta.
18 A. Yes.
19 Q. How long have you been there?
20 A. Since April, when MD Medical sold to Parker.
21 Q. Okay. How long were you with MD Medical?
22 A. For nine years.
23 Q. In what capacity did you work for them?
24 A. I was the manager and ran MD Medical.
25 Q. Was it similar work to what you do now with Parker?

1 A. It's similar, but it was a lot more work because I did the whole thing there, whereas
2 with Parker, I'm just the sales department. I mean, I don't do deliveries and
3 pickups and on-call.

4 Q. Okay. Do you have any ownership interest in Parker?

5 A. No.

6 Q. Did you have any ownership interest in MD Medical?

7 A. Yes.

8 Q. Do you remember how much your ownership was?

9 A. Yes. It was twenty -- twenty-three (23%) percent.

10 Q. And who had the rest of that interest?

11 A. Doctor Mathis.

12 Q. In MD Medical?

13 A. In MD Medical, yes.

14 Q. Okay. And what does Doctor Mathis do?

15 A. He is a podiatrist.

16 Q. Did Doctor Mathis have a title with MD Medical?

17 A. He was the president.

18 Q. Is he currently working for MD Medical?

19 A. No. MD Medical is essentially closed.

20 Q. Do you know who Doctor Mathis works with or for now?

21 A. He works for himself.

22 Q. Does he have a business name?

23 A. It is Anthony L. Mathis, DPM, LLC.

24 Q. Okay. So, he has got his own LLC where he practices podiatry.

25 A. That is correct.

1 Q. Do you know if he has employees?

2 A. Yes.

3 Q. Do you know how many?

4 A. He had two at last count.

5 Q. What kind of practice did he have with MD Medical?

6 A. He worked in the same building. We shared a building and he was the president

7 and, you know, we just talked. He was the advisor.

8 Q. He had seventy-seven (77%) percent of the business interest?

9 A. Yes, that is correct. Yes.

10 Q. Okay. And what kind of practice was MD Medical? Was it a podiatry practice?

11 A. No.

12 Q. Or did y'all do other things?

13 A. It's a medical equipment practice. Medical equipment business.

14 Q. Did you sell or lease medical equipment?

15 A. Both.

16 Q. Okay. You did that for nine years?

17 A. Yes.

18 Q. What was your title with MD Medical?

19 A. I was the vice-president.

20 Q. For those nine years?

21 A. Yes.

22 Q. And Doctor Mathis was the president?

23 A. Yes.

24 Q. Okay. Just let me go back to, I believe in--- I've got a copy of a promissory note

25 dated September 26, 2013, for Twelve thousand, Nine hundred and Eighty-Five

1 Dollars and Sixty-One cents (\$12,985.61) between MD Medical and Invacare
2 Corporation. It has your signature on the second page. Do you remember signing
3 the promissory note?
4 A. Yes.
5 Q. Does that amount sound accurate to you?
6 A. Yes.
7 Q. Okay. Do you remember why that promissory note was signed?
8 A. Yes. Because we had asked for a decrease in payments.
9 Q. Okay. So, you had a previous business relationship with Invacare.
10 A. Yes.
11 Q. I believe there was also a previous note signed back in 2010 for about Forty-Eight
12 thousand (48,000).
13 A. Yes.
14 Q. Is that right?
15 A. Yes.
16 Q. Did you sign that one as well?
17 A. Yes.
18 Q. This additional promissory note was to make up for late payments. Is that right?
19 A. Yes, yes.
20 Q. Do you remember the terms of that promissory note?
21 A. I don't off the top of my head.
22 Q. Okay.
23 MR. REESER: If I may, Your Honor.
24 THE COURT: Alright.
25 **EXAMINATION RESUMED BY MR. REESER:**

1 Q. Does that document I handed to you look like a true and correct copy of the
2 promissory note that you signed?

3 A. Yes.

4 Q. Did you sign that in your capacity as vice-president of MD Medical?

5 A. Yes.

6 Q. Okay. Were any of those payments under that promissory note made?

7 A. Yes, some were, but I don't remember. I don't remember how many.

8 Q. I will represent to you, from what I remember, I think there were two payments of
9 Nine hundred (\$900.00) Dollars made under the terms and then there was a stop
10 order. Do you remember that?

11 A. No, I don't remember the stop order.

12 Q. Okay. Do you know why payments stopped?

13 A. Because our business fell off so drastically during that time.

14 Q. Okay. What happened to the business?

15 A. Well, medicare started cutting back tremendously because of something called
16 competitive bidding so, our income just took a nose dive.

17 Q. Okay. Were there other entities or other debts that were not paid during the course
18 of business?

19 A. Yes.

20 Q. Do you know if they remain unpaid?

21 A. Not a hundred (100%) percent. I don't know, totally. I guess some are paid, but
22 I'm not sure which ones are and which ones aren't.

23 Q. Okay. Back in 2013, was MD Medical aware that these payments were not being
24 made?

25 A. Yes.

1 Q. And through 2014, was it aware that these payments were not being made?
2 A. Yes, but not acutely aware.
3 Q. Were you--- I say I know this is hard to imagine, but did you know that these
4 debts were not being paid?
5 A. Yes, yes.
6 Q. As vice president of MD Medical.
7 A. Yes, yes.
8 Q. Okay. I also have a copy of an asset purchase agreement I'm just going to
9 reference. You said that MD Medical was being sold.
10 A. Yes.
11 Q. Could you tell me a little bit more about that sale?
12 A. Okay. About when it was sold or why it was sold?
13 Q. Everything about it.
14 A. Okay. Probably a year ago, or a little more than a year ago, the writing was on the
15 wall that the DME business was not a thriving business to be in anymore,
16 especially for a very small entity like we were, so, we had -- and just to regress,
17 we had a hospice account and we knew we needed to expand that, so we acquired
18 two more hospice accounts to try to take care of some of the medicare lack of
19 funds, I don't know what else to say, but for the money not coming in, the revenue
20 that we would not get from medicare. We tried to replace some of that for
21 survival, so I went to an old company in Greenville, Parker, and proposed to them
22 that we had these hospice accounts that -- actually they are contracts -- to cover
23 their hospice patients for their medical equipment needs. And that, you know, that
24 was a valuable commodity and that is how this sale actually took place after several
25 meetings with that owner.

1 Q. Do you remember when those meetings were?

2 A. No, I really don't.

3 Q. Okay. Were they last year or were there some this year?

4 A. There were some this year and there were some last year.

5 Q. Okay. Do you know if there were any after January of this year?

6 A. Yes.

7 Q. Okay. And do you remember the terms of that asset purchase agreement?

8 A. No. I don't remember all of the details, no.

9 Q. Okay. The copy I have, admittedly, is not signed. It was a copy you provided me.

10 A. Yes.

11 Q. But that asset purchase has been executed.

12 A. Yes.

13 Q. And who executed that asset purchase?

14 A. That was Doctor Mathis and John Petrich.

15 Q. Were you in--- Did you have any part in that asset purchase or sale?

16 A. Other than orchestrating, you know, the thing, it going on. I don't know how to

17 say that. But anyway, other than being there and just making sure it went well, no.

18 Q. Would it be fair to say that you coordinated the sale?

19 A. Yes, it would.

20 Q. As part of that sale, do you receive any funds?

21 A. No.

22 Q. Okay. Who would receive funds for the sale of the assets?

23 A. Doctor Mathis.

24 Q. Okay. And do you remember how much he was suppose to receive?

25 A. Three hundred Twenty thousand (\$320,000.00) Dollars, plus interest.

1 Q. Plus interest.

2 A. Yes.

3 Q. Okay. Interest tells me that there is probably like monthly payments.

4 A. That's correct. He has a One hundred thousand (\$100,000.00) Dollar down
5 payment that he received on the day of the sale, and he is getting monthly payments
6 for a period of, I think, five years.

7 Q. Okay. On the agreement, the buyer is a fellow named John Petrich.

8 A. Yes.

9 Q. Who is Mr. Petrich?

10 A. He is a pharmacist in Greenville. He owns Parker Road Drug Store and he also
11 owns Parker Medical Equipment.

12 Q. Okay. Did he purchase these assets on behalf of Parker or individually?

13 A. On behalf of Parker.

14 Q. Okay. Even though he is listed as the buyer, he is doing it on behalf of his
15 company.

16 A. That's correct.

17 Q. Okay. And you would not receive any funds out of this sale.

18 A. None.

19 Q. What happens to your --- Under the terms of this agreement, what happens to
20 your ownership interest in MD Medical?

21 A. It was waived. Doctor Mathis acquired that because, you know, I needed to get
22 paid a salary while I was working managing MD Medical and for his investment
23 I really wanted him to receive something from his investment, so.

24 Q. Okay. What was your salary while you were with MD Medical?

25 A. It varied from Forty thousand (\$40,000.00) Dollars up to about Fifty (50) during

1 that time. Fifty-five (55) or Sixty (60) maybe.

2 Q. Was your salary based on sales?

3 A. No.

4 Q. Your contribution?

5 A. No.

6 Q. Was it based on profits?

7 A. No.

8 Q. Who made the decision of how much you got paid?

9 A. He and I.

10 Q. Okay.

11 A. Yes.

12 Q. So you two came together.

13 A. Yes.

14 Q. Did you make the same decision with regard to Doctor Mathis' pay as well?

15 A. Well, we didn't--- He didn't get paid.

16 Q. Okay.

17 A. Because he really didn't actively work there.

18 Q. So, what did he do for MD Medical?

19 A. He just made decisions.

20 Q. He had an ownership interest in the supply company.

21 A. Exactly.

22 Q. Okay. So, this sale represents a buyout of his interest, seventy-seven (77%)

23 percent.

24 A. Yes.

25 Q. Okay. Were there any other officers, directors, employees of MD Medical?

1 A. Yes, yes. My wife worked as an officer up until August of last year.

2 Q. What was her title?

3 A. She was also a vice-president.

4 Q. Okay. Vice-president of---

5 A. Not really. Just vice-president. That was just it. We were very, sort of, informal,

6 but she did primarily billing and receivables was her thing and she also stayed and

7 kept us in compliance with medicare standards.

8 Q. So she held down the office.

9 A. Sir?

10 Q. She held down the office.

11 A. Yes, yes. She worked in the office. That is exactly right.

12 Q. Any other officers?

13 A. No more officers, no.

14 Q. Any other employees?

15 A. Yes.

16 Q. Do you remember how many?

17 A. Well, it varied over the years, but we had generally--- Most of the time we had

18 one driver and one in-office person other than her, and a part time--- That in-

19 office person was a part time person. The drivers were usually full time and a part

20 time cleanup guy that worked a couple of four-hour days a week, so.

21 Q. Does MD Medical currently have any employees?

22 A. No.

23 Q. Do you remember the last time it did have any employees?

24 A. It was just prior to April.

25 Q. Of this year?

1 A. Yes.

2 Q. Okay. Right before the sale.

3 A. Yes.

4 Q. Alright.

5 MR. REESER: Your Honor, I've got a few documents I would just like to walk

6 through. Would I be able to do that sitting down?

7 THE COURT: That is fine.

8 MR. REESER: Thank you.

9 **EXAMINATION RESUMED BY MR. REESER:**

10 Q. Mr. Day, do you remember how many accounts, banking accounts, MD Medical

11 had?

12 A. It had one.

13 Q. Did MD Medical own any stocks, bonds?

14 A. No.

15 Q. What kind of assets does it have?

16 A. What kind of assets?

17 Q. Yes, sir.

18 A. Only the equipment that we were renting was really the only asset we had other

19 than the bank account which, you know, it was an operational bank account.

20 Q. I understand you said that you and Doctor Mathis were in the same building.

21 A. Yes.

22 Q. Do you know who owned that building?

23 A. He does.

24 Q. He does individually?

25 A. Yes.

1 Q. Did MD Medical pay him rent?

2 A. Yes.

3 Q. Do you remember how much that rent was?

4 A. Six hundred (\$600.00) Dollars a month.

5 Q. Okay. And was it that way for nine years or were there---

6 A. Yes, and there were times when we couldn't pay, you know, rent, too, but he, you

7 know, he knew that, so.

8 Q. What would happen whenever you couldn't pay rent?

9 A. Well, nothing other than he would remind me of it and ask questions about where

10 we were.

11 Q. Okay.

12 A. Yeah.

13 Q. Did you ever have to pay back rent?

14 A. Yes.

15 Q. Okay. Do you know of any month in which MD Medical did not pay rent?

16 A. Not off the top of my head, really, no. I don't think we did any this past--- Well,

17 probably March and--- I know March we probably didn't, or February, but the

18 other months, I don't know. You know, I'd be guessing.

19 Q. Okay. And MD Medical does not own any property.

20 A. No.

21 Q. Are the assets that it had gone?

22 A. Yes.

23 Q. And who has possession of those?

24 A. Mr. Petrich and Parker.

25 Q. Parker Medical?

1 A. Yes.

2 Q. Do you know how long he has had possession of those?

3 A. Since April the 1st.

4 Q. Since April the 1st. Is that when this asset purchase was consummated?

5 A. Yes. April the 1st or 2nd and I don't remember, but it was at that--- The first of

6 April.

7 Q. Okay. Do you happen to remember MD Medical's account number?

8 A. At the bank?

9 Q. Yes, sir.

10 A. I think it ended in 4116, but I don't remember the entire account.

11 Q. Okay. I'd just like to show you a deposit slip with an account number at the top.

12 A. Yes.

13 Q. Is that MD Medical's account number?

14 A. It is.

15 Q. Okay. I will just read it briefly into the record. It is 10002274116. And Mr. Day,

16 who did MD Medical bank with?

17 A. With Park Sterling.

18 Q. Park Sterling.

19 A. Yes. They were Capital Bank prior.

20 Q. And did Park Sterling always have MD Medical's business?

21 A. Yes.

22 Q. MD Medical didn't have any other accounts?

23 A. No.

24 Q. How about any credit cards?

25 A. Sir?

1 Q. Any company credit cards?

2 A. We had one with Chase for awhile, but we stopped using it a long time ago.

3 Q. Do you remember when that was?

4 A. I really don't. Probably two years.

5 Q. Do you remember who used it?

6 A. We were using it for gas money and those kind of things.

7 Q. So would a driver have it?

8 A. Yes.

9 Q. Okay. In this particular--- I believe this is a deposit slip for One hundred
10 thousand (\$100,000.00) Dollars.

11 A. Yes.

12 Q. And I believe that went into MD Medical's account on April 2nd?

13 A. Yes.

14 Q. Of this year.

15 A. Yes.

16 Q. Did--- Do you know if MD Medical's checking account here had a normal
17 balance?

18 A. Normal balance?

19 Q. Was is usually around like Thirty thousand (30,000), Forty thousand (40,000), Fifty
20 thousand (50,000)?

21 A. Not generally, in the last year, it probably hasn't, usually. But, you know, there
22 were times when that much came in during the month, but it never got that high.

23 Q. Okay.

24 A. Yeah.

25 Q. And this was the same account that MD Medical would use to pay its debts in the

1 course of business?

2 A. Yes, yes.

3 Q. And it was--- Looking at the records you provided me, it looks like MD Medical
4 was paying its debts in the course of business through April of this year. Is that
5 right?

6 A. Yes.

7 Q. This particular deposit went in, a deposit for One hundred thousand (\$100,000.00)
8 Dollars, went in April 2nd of this year, and the same day, it was withdrawn.

9 A. That is correct.

10 Q. Do you know who withdrew that money?

11 A. Yes. Doctor Mathis.

12 Q. Doctor Mathis had access to MD Medical's checking account?

13 A. Yes.

14 Q. Did anyone else have access to MD Medical's checking account?

15 A. Only me.

16 Q. Do you know how they transferred it?

17 A. I'm not sure whether it was a phone call or whether he went there in person
18 because he had the check and so he went there to deposit the check, I'm certain,
19 because the check was made to him solely.

20 Q. Okay. Do you happen to know Doctor Mathis' checking account number?

21 A. No, I don't.

22 Q. Do you know if Doctor Mathis has made anymore withdrawals from that account?

23 A. Yes.

24 Q. Do you know how much?

25 A. I don't know how much, but they are in the---

1 Q. Okay.

2 A. Should be in those documents I've given you there.

3 Q. I see, for example, there is one in -- dated May 12th, a telephone transfer debit to
4 an account ending 7059, looks like Eighty-Five hundred (\$8,500.00) Dollars.
5 Would that have been Doctor Mathis or would that have been---

6 A. Yes. It would have had to been, yes.

7 Q. You did not transfer that.

8 A. No. I had no access to the account after April. In April, early April, I stopped.
9 You know, didn't have any access.

10 Q. Okay. Did MD Medical allow any of its debtors or -- sorry, excuse me -- any of
11 its creditors to do direct debits? You didn't give that information out to people
12 you did business with; did you?

13 A. Actually, we did have some ACH agreements and withdrawals.

14 Q. Okay. And would those be identified?

15 A. Yes. They are in the---

16 Q. So, I guess if I'm looking at something that says telephone transfer debit, would
17 that be a payment of a debt for the company?

18 A. It -- it -- not on those. Which document--- Are you talking about in a normal
19 statement?

20 Q. Yes, sir.

21 A. Can I ask you that?

22 Q. Yes, sir.

23 A. Yeah, in a normal statement it could be, yes.

24 Q. Okay.

25 A. Yes.

1 Q. But you don't know whose account number that might be?

2 A. The one that you read out?

3 Q. Yes. Most of it is bleeped out, but the last four digits are 7059.

4 A. The ones from April until current were Doctor Mathis'. He did all those. There

5 were no ACH withdrawals because he stopped that immediately in April, the first

6 of April.

7 Q. Okay. So, any withdrawals after April would be Doctor Mathis.

8 A. That's correct.

9 Q. Does this account still exist?

10 A. No. He closed it a week or a week and a half ago.

11 Q. Was it in July? Was it this month?

12 A. Yes.

13 Q. Do you know if he has--- MD Medical has not opened any other accounts.

14 A. No.

15 Q. It has not maintained any other accounts of any kind.

16 A. No.

17 Q. Do you know if Doctor Mathis has opened any other accounts in MD Medical's

18 name?

19 A. I don't think he has in MD Medical's name.

20 Q. Okay. Is anybody in the building where MD Medical was?

21 A. He is still there and some of the equipment is still there. Mr. Petrich is paying rent

22 on that until he moves the equipment out to another location.

23 Q. Okay. So Mr. Petrich has taken over the rent obligations of MD Medical.

24 A. That is correct.

25 Q. Alright. Do you know how often Doctor Mathis is suppose to be paying?

1 A. Monthly.

2 Q. And that was Four thousand (4,000) monthly.

3 A. Thereabouts.

4 Q. Until that Three hundred and Twenty thousand (320,000) is paid off.

5 A. That's correct.

6 Q. I'd like to hand you a document. I believe what you told me is that you generated
7 that document.

8 A. I did, yes.

9 Q. Could you identify that document?

10 A. Yes.

11 Q. What is it?

12 A. Doctor Mathis had asked me for a list of the payables so he could pay the debt out
13 of the proceeds of the sale, and I gave him contact numbers, including yours, and
14 addresses for the accounts that were outstanding so he could make payments on
15 those.

16 Q. Do you remember when you made that list of payables?

17 A. Yes, sir. I gave this to him on April the 15th of this year.

18 Q. After the sale.

19 A. Yes.

20 Q. Okay. And that--- I believe that recognizes Invacare's judgment of Eleven
21 thousand, Six hundred and Forty (\$11,640) something Dollars.

22 A. It is, and it is also designated number one---

23 Q. Okay.

24 A. --- because of the urgency to pay that account.

25 Q. Do you know if any of those debts were paid?

1 A. I honestly--- I think a couple of them were, but I don't know for sure.

2 Q. Okay. Do you know if Invacare's debt was paid?

3 A. I know that was not.

4 Q. Okay. Do you know why it hasn't been paid?

5 A. No. I really don't know that. I asked him, but I don't know why.

6 Q. Do you know if Invacare or any other creditor was told that there was going to be

7 an asset sale or that MD Medical was going to shut its doors?

8 A. Some were that we worked with on a routine basis, yes.

9 Q. Okay.

10 A. Yes.

11 Q. Who would make those calls? Would that be you or Doctor Mathis?

12 A. That would be--- You mean as far as talking to these folks?

13 Q. Yes, sir.

14 A. That would be me. If folks called me, I told them we were going to sell the

15 company. I think I talked with your company about that.

16 Q. Okay. Do you remember when those conversations might have been?

17 A. It was probably a month or so before the sale, you know, when things were looking

18 like it was really going to happen that I actually did that.

19 Q. Would it be fair to say that would be about February or March of this year?

20 A. Probably so.

21 Q. Okay.

22 A. I'm not certain.

23 Q. Mr. Day, I mean absolutely no offense by any of these questions I am about to ask.

24 They are personal.

25 A. That's fine.

1 Q. And like I said, I don't mean anything bad by them. Do you have any personal
2 bank accounts?

3 A. Yes.

4 Q. Do you have any bank accounts associated with any businesses?

5 A. No.

6 Q. Like you were, for lack of a better term, on MD Medical's bank accounts, you
7 could write checks and things like that.

8 A. Right.

9 Q. Do you have those same privileges with any other bank accounts with any other
10 businesses?

11 A. Not with a business, no.

12 Q. Okay. So, you don't have access to Parker's bank account?

13 A. No.

14 Q. So, the only bank account you have an interest in is your personal bank account.

15 A. That's correct.

16 Q. Is that a checking account?

17 A. Yes.

18 Q. Do you have any credit cards?

19 A. Yes. I have a credit card.

20 Q. Do you carry a balance on it?

21 A. Yes.

22 Q. Do you know how much the balance is?

23 A. Yes.

24 Q. How much?

25 A. Probably close to Twelve thousand (\$12,000.00) Dollars.

1 Q. Okay. And how much do you make a year now?

2 A. That's a good question. It has changed a little bit. Probably close to Forty-Eight
3 thousand (48,000) to Fifty thousand (50,000) a year.

4 Q. Do you know how much that is take home? Do you get paid bi-weekly?

5 A. That is take home.

6 Q. Forty-eight thousand (48,000) is take home.

7 A. Yeah.

8 Q. Okay, so your salary is probably a little bit higher.

9 A. A little higher than that. And I do get paid bi-weekly, yes.

10 Q. Do you know how much your paycheck is, take home?

11 A. It varies depending on the number of hours I work.

12 Q. Okay.

13 A. It's usually around Two thousand (\$2,000.00) Dollars.

14 Q. Do you usually work forty (40) hours a week?

15 A. No.

16 Q. How many hours a week do you work?

17 A. Somewhere between twenty (20) and twenty-eight (28).

18 Q. Is that pretty consistent?

19 A. Yes.

20 Q. What did your wife do after she stopped working for MD Medical?

21 A. She opened a small business called Daybreak. It's an adult home care business.

22 Q. Okay. Is she still doing that?

23 A. She is.

24 Q. Does she own that?

25 A. Yes.

1 Q. Do you have any ownership interest in that?

2 A. No.

3 Q. Do you own your home?

4 A. Yes.

5 Q. Do you currently have any kind of liens or anything? Do you have a mortgage
6 outstanding?

7 A. We have a mortgage, yes.

8 Q. How much is your mortgage?

9 A. It is around One hundred Ninety thousand (\$190,000.00) Dollars.

10 Q. Do you know how much--- What was the purchase price of your property?

11 A. Two hundred and Thirteen (213,000) or Fourteen (214,000) thousand, I think.

12 Q. Do you remember when that was purchase was?

13 A. In nineteen--- Excuse me. In 2009, December of '09.

14 Q. And this mortgage, was this the original mortgage? You just purchased the
15 property.

16 A. Yes.

17 Q. And you have One hundred Ninety thousand (190,000) left owing on it?

18 A. Yes.

19 Q. Do you own any other property?

20 A. No.

21 Q. How many cars do you own?

22 A. We have two vehicles.

23 Q. Are they yours and your wife's, or one or the other?

24 A. They are the wife's and the mortgage is, too.

25 Q. Okay. Are you listed on the deed to the house?

1 A. No.

2 Q. What about the titles to the vehicles?

3 A. No.

4 Q. Have you ever been listed on the titles to the vehicles?

5 A. Not on those.

6 Q. How old are those vehicles?

7 A. We have an '04 and an '05.

8 Q. What kind?

9 A. We have an '04 Jeep Liberty and an '05 Dodge pickup truck, Dakota.

10 Q. Okay. Do you have income from any other source other than Parker?

11 A. No.

12 Q. You said you didn't own any other real property. Do you own any boats, ATVs?

13 A. I do have a boat that is a 1958 aluminum fishing boat.

14 Q. Is it a sailboat?

15 A. No. It's an old aluminum fishing boat.

16 Q. Okay. A little flat bottom Jon boat?

17 A. It's a Jon boat, but it's not flat bottom. It's so old it has the big V-hull and has the

18 solid part over the front, you know, the bow.

19 Q. Do you know how much that boat is worth?

20 A. Probably Two (2) or Three hundred (\$300.00) Dollars.

21 Q. Okay.

22 A. Yeah, not very much. It's worth more than that to me, you know.

23 Q. How much does your wife make?

24 A. She really has not drawn a paycheck since she started the business. It's very early

25 on and it's not extremely busy right now.

1 Q. Is that business of hers, is it a separate entity or is it a DBA? Has she incorporated
2 it?
3 A. Yes, it is a DBA. I see what you're saying. It's Holly Springs Holdings DBA
4 Daybreak.
5 Q. Okay. She is incorporated.
6 A. Yes.
7 Q. Do you know how much average, how much a month, you spend out of that
8 checking account?
9 A. Everything pretty much that comes in, so, you know. You are probably looking at
10 Four thousand (\$4,000.00) Dollars a month.
11 Q. Okay. Do you have any savings accounts?
12 A. No.
13 Q. Do you have any retirement accounts?
14 A. Not anymore. We invested that for that business to open it up.
15 Q. Okay. So, you cashed out the retirement funds to put in your wife's business.
16 A. That's correct.
17 Q. Do you know when that was done?
18 A. Probably--- It was last fall. September, October, maybe.
19 Q. Was that retirement account personal or was it through MD Medical?
20 A. It was personal.
21 Q. Okay. Do you have a retirement account with Parker?
22 A. No.
23 Q. Does your wife have a retirement account?
24 A. No.
25 Q. Does your wife have any other bank accounts?

1 A. No.

2 Q. So, the account I have is with SunTrust Bank.

3 A. Yes.

4 Q. It is account number 000710---

5 A. 7073399. I remember that one.

6 Q. I'm assuming that one is yours.

7 A. Yes.

8 Q. And how long have you had that account?

9 A. We had it when SunTrust was American Federal in the '80's, so that is a long time.

10 Q. Now, do these bank records represent most of your personal transactions?

11 A. Yes.

12 Q. Do you have a debit card?

13 A. Yes.

14 Q. Does your wife have a debit card?

15 A. Yes.

16 Q. Do you have any checks?

17 A. Yes.

18 Q. Does your wife have checks?

19 A. Yes.

20 Q. Do you both issue checks and make purchases out of this account?

21 A. Yes.

22 Q. Okay. And this is the only account out of which you make purchases.

23 A. Yes.

24 Q. Do you make any cash purchases or do withdrawals for your cash purchases?

25 A. Yes. We do withdrawals and make cash purchases at times, yes.

1 Q. Would you say that most of your sales are debit, or do you pay mostly with cash
2 when you buy something?

3 A. It's hard to say. It varies, depending on the month and the cash available.

4 Q. Okay. Do you know--- Did Doctor Mathis tell you that this MD Medical bank
5 account was closed?

6 A. He--- Somewhere around the first of April, he had me go to the bank with him
7 and at that time he was going to close the account and I reminded him that we had
8 deposits that were -- automatic deposits that were coming in and if you closed the
9 account then that would hinder the flow of those funds that we were owed for
10 previous sales coming into the account. So, they put a--- I don't know how they
11 do it, but they put a hold on the account so that nothing could come out unless he
12 orchestrated it as a transfer from him, but the deposits could come in. But, no, he
13 didn't tell me he was going to close it last week or...

14 Q. Okay. Because I was just looking at the account activity that you sent me is up
15 through the end of May.

16 A. Okay. Yeah, and it just closed out. I saw it when I was pulling that up actually
17 where it has just closed out with a zero balance.

18 Q. Okay.

19 A. And it says closed on there.

20 Q. Okay. Did you make any investment in MD Medical, any contribution?

21 A. No money. No monetary. Lots of time, but no money, yes.

22 Q. Okay. What about Doctor Mathis?

23 A. Yes.

24 Q. Do you know how much his contribution was?

25 A. His initial investment was Thirty thousand (\$30,000.00) Dollars and I know he

1 added some in, but, you know.

2 Q. What was the basis for your twenty-three (23%) percent ownership?

3 A. To run the company and to get it up and running because he didn't know anything

4 really about that line of business.

5 Q. Now, was that in the form of stock?

6 A. Yeah, it sure was. Yes.

7 Q. Do you know if your stock was part of this asset purchase agreement?

8 A. I don't know.

9 Q. Do you know if you still have that stock?

10 A. I really don't know that.

11 Q. Would you be able to find out?

12 A. Yes.

13 Q. But you were not a party to this asset purchase agreement.

14 A. That is correct.

15 Q. When were you hired by Parker?

16 A. When that sale took place, the first of April.

17 Q. Were you hired by Mr. Petrich?

18 A. Yes.

19 Q. Was that known--- Was it known you were going to go work for him before this

20 asset sale?

21 A. Yes.

22 Q. Was it part of this asset sale?

23 A. No.

24 Q. Okay. He knew the sale was going to take place and he wanted to hire you.

25 A. Yes.

1 Q. Okay.

2 A. Because of the transition. They had not dealt with hospice accounts before and he

3 saw that as an advantage to have me to coordinate that so that his people would

4 understand that line of work, that business.

5 Q. Okay. And I know you have obviously known of Invacare's judgment and debt

6 amount. Does Doctor Mathis know of that amount?

7 A. Yes.

8 Q. Does he know of the judgment?

9 A. Yes.

10 Q. And he knows of the debt?

11 A. Yes.

12 Q. Do you know how long he has known of the judgment?

13 A. Since I received it, because I told him when I first got that first notice, that we

14 received that.

15 Q. That was back in--- That was last year; wasn't it?

16 A. No, it was this year.

17 Q. This year.

18 A. But it was spring maybe or early--- Late winter or early spring.

19 Q. Did Doctor Mathis know that MD Medical had defaulted on the note last year?

20 A. Yes.

21 Q. Okay. Does Mr. Petrich know about any outstanding debts of MD Medical?

22 A. I don't think so, no. Because we were going to pay all those out of the proceeds.

23 Q. But obviously some of those have not been paid.

24 A. That's exactly right.

25 MR. REESER: Your Honor, at this time I would like to request an order from the

1 Court commanding Doctor Petrich, whatever funds he's suppose to pay Doctor Mathis,
2 to direct those funds to Invacare Corp. This sale obviously took place while there were
3 outstanding judgments and other debts for MD Medical, LLC. I would also like for the
4 Court to understand Doctor Mathis is not a party. We would request the Court to order
5 Doctor Mathis to take any of those One hundred thousand (\$100,000.00) Dollar funds that
6 he has withdrawn out of MD Medical's account and apply them to the debt in this case.
7 Further, we would request the Court to ask the Sheriff to seize, for purposes of collection,
8 MD Medical's bank account with Park Sterling Bank in number 10002274116. And also,
9 the SunTrust Bank account of Gary Day, 0007107073399 for purposes of execution to
10 satisfy this judgment, as well as any other property that might become in possession of Mr.
11 Day that could be used to satisfy the default judgment against him.

12 THE COURT: I think you are missing a step here and that is that I think you need
13 to have Doctor Mathis appear here.

14 MR. REESER: We---

15 THE COURT: I don't see that---

16 MR. REESER: There are certainly some things we would like to ask Doctor
17 Mathis. There could be some Statute of Elizabeth issues here.

18 THE COURT: Right.

19 MR. REESER: We would like to--- In this case, we are stuck with a default
20 against MD Medical and Mr. Day. I understand Mr. Day has testified on behalf of MD
21 Medical and himself individually.

22 THE COURT: Well, MD Medical, though, with the seventy-three (73%) percent
23 or whatever ownership, with Doctor Mathis.

24 MR. REESER: Yes, Your Honor.

25 THE COURT: And I think the next step that you need to take is to have him

1 subpoenaed to appear here. There obviously were funds available to pay this debt at the
2 time the money was taken out of that account and I think that is your next step, is to have
3 him appear in this action.

4 MR. REESER: Yes, Your Honor.

5 THE COURT: So, take that step, get him served and let's have him appear for
6 supplementary proceedings as to what happened to--- Because this judgment is against
7 MD Medical, LLC and Mr. Day individually, but from what Mr. Day says, there was
8 money in the account at the time your client's judgment was entered.

9 MR. REESER: Yes, Your Honor.

10 THE COURT: And, as was subsequently--- The account was emptied, to Mr.
11 Day's knowledge. So, I think proper at this point is to bring, or have Doctor Mathis
12 appear and track the funds.

13 MR. REESER: Yes, Your Honor.

14 THE COURT: Alright.

15 MR. REESER: Would the Court grant any execution against Mr. Day individually?

16 THE COURT: No, I'm not going to do that at this point.

17 MR. REESER: Yes, Your Honor.

18 THE COURT: I want to go the other direction because---

19 MR. REESER: There has been money put in.

20 THE COURT: There was money there that was there, that is not there.

21 MR. REESER: Yes, Your Honor.

22 THE COURT: And there was money there at the time the judgment was entered
23 and I, at this point, want to go in that direction. So, I will leave it to you to bring Doctor
24 Mathis in here and find out -- track the funds.

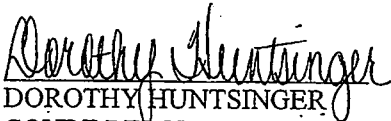
25 MR. REESER: Yes, Your Honor.

1 THE COURT: Alright. Let's do it in that direction.
2 MR. REESER: Thank you so much for the opportunity to put this on the record.
3 I appreciate it.
4 THE COURT: Alright. Mr. Day, you may step down, sir.
5 MR. DAY: Thank you, sir.
6 THE COURT: So, I am going to leave this open with the understanding that you
7 are going to subpoena---
8 MR. REESER: Doctor Anthony Mathis.
9 THE COURT: ---Doctor Anthony Mathis and we will find out how the story went.
10 MR. REESER: Yes, sir.
11 THE COURT: Alright. Gentlemen, have a good day.
12 --- -- END OF RECORD --- --
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STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG) **C E R T I F I C A T E**

I, the undersigned **Dorothy Huntsinger**, Court Reporter for the Office of the Master-in-Equity for the County of Spartanburg, State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of testimony of the proceedings had and evidence introduced at the hearing of the captioned case, before **Honorable Gordon G. Cooper, Master-in-Equity** for Spartanburg County, South Carolina, on the **20th** day of **July, 2015**.

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


DOROTHY HUNTSINGER
COURT REPORTER

August 4, 2015

1 STATE OF SOUTH CAROLINA.

COURT OF COMMON PLEAS

2 COUNTY OF SPARTANBURG

3 INVACARE CORPORATION, INC. AND)
4 ALL ITS SUBSIDIARIES, ASSIGNORS)
AND ASSIGNEES,)

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PLAINTIFF,
-VS-

TRANSCRIPT OF TESTIMONY

MD MEDICAL, LLC AND GARY DAY,
DEFENDANTS.

(2014CP42-4205)

Spartanburg, South Carolina

REFERENCE HELD:

NOVEMBER 19, 2015.

BEFORE:

HONORABLE GORDON G. COOPER,
MASTER-IN-EQUITY FOR SPARTANBURG COUNTY.

WILSON & HEYWARD, LLC,
BY: **BRANDON T. REESER, ESQUIRE**
Attorneys for the Plaintiff.

LYLES, DARR & CLARK, LLP,
BY: **CARLOS JOHNSON, ESQUIRE**
Attorneys for Anthony Mathis.

Sarah Hollis, Court Reporter

1 THE COURT: This is Case Number 2014-43205. Invacare Corporation, Inc., and all its
2 subsidiaries, assignors and assignees, versus MD Medical, LLC and Gary Day. A previous hearing
3 in this case was on July 20, 2015. All right counsel, are we ready to proceed?

4 MR. REESER: Yes, Your Honor.

5 THE COURT: All right. When you are ready.

6 MR. REESER: We ask that Dr. Mathis take the stand.

7 THE COURT: All right. Dr. Mathis.

8 ANTHONY I. MATHIS, BEING DULY SWORN,

9 TESTIFIES AS FOLLOWS:

10 DIRECT EXAMINATION BY MR. REESER.

11 Q. Dr. Mathis my name is Brandon Reeser and I represent a company called Invacare
12 Corporation, Incorporated. For the record would you please state your full name?

13 A. Anthony L. Mathis.

14 Q. And Dr. Mathis where do you live?

15 A. I live in Greenville.

16 Q. What is your address sir?

17 A. It is 408 Cliffview Court, Greer, South Carolina, 29650.

18 Q. How long have you lived at Cliffview Court?

19 A. About eight (8) years.

20 Q. Where did you live before you lived in Cliffview?

21 A. Bennetts Crossing Court.

22 Q. Also in Greer?

23 A. Yes sir.

24 Q. I will call you Dr. Mathis. Dr. Mathis what do you do for a living?

25 A. I am a Podiatrist.

1 Q. How long have you been practicing?
2 A. Approximately 28 years.
3 Q. Where did you go to medical school?
4 A. I went to Temple University.
5 Q. And you have been practicing for 26 years?
6 A. Twenty-eight (28) years.
7 Q. Twenty-eight (28) years.
8 A. Yes.
9 Q. So that has all been in Podiatry?
10 A. Yes sir.
11 Q. Where all have you practiced?
12 A. Well I initially went into the Navy upon graduation in 1988 and 1989. I spent nine (9) years
13 in the United States Navy where I did a residency program where I was trained at Podiatry
14 and foot ankle surgery in Sports Medicine Fellowships and while I was in the Navy, I in turn
15 did a post doctrine program in the California College of Podiatric Medicine out of the
16 University of Southern California and upon completing my residency I went to Bethesda to
17 complete my residency program and then was stationed at Camp Lejeune in North Carolina
18 as a Lieutenant Commander in the Navy.
19 Q. Where do you currently practice?
20 A. I practice at 127 Mills Avenue, Greer, South Carolina.
21 Q. Is this a general practice?
22 A. Yes sir.
23 Q. What is the name?
24 A. Anthony L. Mathis, DPM, LLC.
25 Q. How long have you been practicing at that location?

1 A. Approximately 18 years.
2 Q. Have you ever practiced at any other locations?
3 A. No sir.
4 Q. Have you ever been in any businesses?
5 A. Sir.
6 Q. As a sole owner?
7 A. Yes. In my practice, yes sir.
8 Q. Okay. Are you the sole owner of your practice?
9 A. Yes sir.
10 Q. You said it was an LLC?
11 A. Yes sir.
12 Q. No other members of the LLC other than you?
13 A. No sir. Just me sir.
14 Q. How many employees do you have?
15 A. Four (4).
16 Q. Are they all full time?
17 A. Two (2) are full time and then we have some intermittent that could be it ranges from 3 to
18 4 depending on who wants hours to work. We have some college kids that come in and
19 work part-time.
20 Q. Okay. You said that you have been there for eighteen (18) years?
21 A. Yes sir.
22 Q. All right. How much do you make in a year?
23 MR. JOHNSON: I am going to object to that. Your Honor, this is an examination as to MD
24 Medical not as to Dr. Mathis's personal records.
25 THE COURT: Counsel.

1 MR. REESER: It is MD Medical but I think Dr. Mathis's income certainly has some bearing on
2 this.
3 THE COURT: Well lets go down and we may come back to that.
4 MR. REESER: Thank you, Your Honor.
5 Q. Actually Dr. Mathis tell me about MD Medical. What is MD Medical?
6 A. MD Medical was a medical equipment company that I started with Mr. Gary Day.
7 Q. It only dealt in medical equipment?
8 A. Yes sir.
9 Q. Have you ever been part of any other business, enterprise or organization like MD Medical
10 where you dealt with medical equipment or some form of medical type sales or anything
11 else?
12 A. No sir. I had durable medical equipment licenses when I was practicing in my practice.
13 Q. Okay.
14 A. You know that was just with the practice.
15 Q. Do you still have that license?
16 A. Not any more.
17 Q. When did you lose your license?
18 A. I didn't lose it. MD Medical used it.
19 Q. You just gave it up?
20 A. Right.
21 Q. When was that?
22 A. When we started the business back in 2006, I think is when it was sir.
23 Q. That is when you gave it up?
24 A. Correct.
25 Q. Okay. And who held that license after you gave it up?

1 A. Gary Day and myself. MD Medical.
2 Q. Was it under an individual's name or MD Medical?
3 A. MD Medical.
4 Q. So the entity had a license?
5 A. Yes sir.
6 Q. Have you ever been apart of any other business or owned an ownership interest in any other
7 business?
8 A. I kind of don't understand. Have I been parts of other businesses?
9 Q. Well let me explain the question. You are currently the sole owner of your current practice,
10 right?
11 A. Yes sir.
12 Q. And you had an ownership interest in MD Medical, LLC, correct?
13 A. Yes sir.
14 Q. Okay. What percentage was your ownership?
15 A. Fifty-four (54) percent sir.
16 Q. Okay. You own all of the interest in your current practice?
17 A. Yes sir.
18 Q. And you had fifty four (54) percent interest in MD Medical?
19 A. Yes sir.
20 Q. Have you owned any other interest in any other organizations?
21 A. In some organizations, yes I have.
22 Q. Do you currently have any business interest in any other organizations other than your
23 individual practice?
24 A. I do.
25 Q. What type companies are those?

1 A. Is that relative to MD Medical?
2 THE COURT: Yes, it could be.
3 A. Okay. I am part of the Surgical Center.
4 Q. Okay. How does that business arrangement work?
5 A. It was just that some doctors got together when the Surgical Center was formed and it was
6 just like any other surgical center you invest in the company.
7 Q. So you invested in the company and then you can use the facilities?
8 A. Yes sir.
9 Q. How long have you had an interest there?
10 A. Maybe twelve (12) years.
11 Q. All right. Any others?
12 A. I have been a part with some equitable marketing with vitamin companies but yes like that
13 type of thing. I am just trying to make sure - - you know I am trying to answer the question
14 to what you are asking because that is basically what it was.
15 Q. Okay.
16 A. Little things like that.
17 Q. When was the last time that you had an interest in one of those kinds of companies?
18 A. Probably over the past year with the vitamin company.
19 Q. What was your ownership percentage in that company?
20 A. I don't know. I think it is like maybe eight (8) percent. It has only been up for like a year
21 and a half.
22 Q. Okay. Did you sell your interest?
23 A. No. I don't make any money in it.
24 Q. So you still have your interest in that?
25 A. Correct.

1 Q. Just not making any money?
2 A. Not making any money.
3 Q. Okay. Well how did MD Medical get started?
4 A. Well sir Mr. Gary Day was a durable medical equipment salesperson and he came to the
5 office and we got to know each other and I got to know his family and we got to be pretty
6 good friends. I really trusted Gary. And I trusted his wife as well. And I had my building
7 and I was running my practice out of one-half of my building. So I had another suite next
8 door to it and I said you know I would like to maybe do some durable medical equipment but
9 you know I would like to find somebody that I really trusted over all these years before I even
10 decided to try to even expand in that direction just because I just couldn't find someone that
11 was on the same page that I was as far as trying to be as honest and as true as you could you
12 know to be a partner. So I talked to Gary and I met with his wife and we had talked about
13 doing some durable medical equipment because they had always been pretty diligent - - they
14 were always pretty diligent with me and my practice in giving great care to my patients when
15 I needed cam walkers, when I needed crutches, motorized wheel chairs, wheel chairs, port
16 potties, post-op stuff and equipment they were just really on call. So over the time you get
17 to meet the family and you know his son. I got to know his kids and I got to know his son
18 pretty well. I wrote letters for him to get in the Citadel where I attended and you know it
19 seem like it was just a good fit for me to be able to trust Gary enough to run the company.
20 Q. So Mr. Day was a salesman when he met you?
21 A. Yes sir.
22 Q. He was selling medical equipment?
23 A. Yes sir.
24 Q. Do you remember for what company?
25 A. No, I don't.

1 Q. And how long have you been selling medical equipment or your practice selling medical
2 equipment?
3 A. Well probably when I got to Greer. You know after I got out of the navy. And up to that
4 point until we started MD Medical sir.
5 Q. You said that you own a building. What is the building that you own currently,
6 individually?
7 A. What is the building.
8 Q. Yes sir. And what is its address?
9 A. It 127 Mills Avenue.
10 Q. And you practice out of a portion of that building?
11 A. Yes sir.
12 Q. How many sections of the building are there?
13 A. Two suites.
14 Q. Two suites?
15 A. Suite A and Suite B.
16 Q. And which suite does your practice use?
17 A. Suite A.
18 Q. So did MD Medical run out of Suite B?
19 A. Yes sir.
20 Q. MD Medical never owned a piece of that property?
21 A. No sir.
22 Q. Did MD Medical ever have any interest in that property?
23 A. No sir.
24 Q. Did MD Medical pay you rent?
25 A. Minimally.

1 Q. Okay. Well you provided a lease agreement. How much was MD Medical supposed to pay
2 you in rent?

3 A. Somewhere near - - I think it was close to \$2,000.00 a month.

4 Q. All right. What was your position with MD Medical?

5 A. I really didn't have a title. But I guess I was like the president or the co-president with Gary
6 and his wife was the vice-president.

7 Q. What kind of responsibilities did you have managing MD Medical's day to day business?

8 A. Because I trusted Gary I didn't do any managing on the day to day affairs. Gary said that he
9 knew that particular business and from my knowledge he seem to be proficient at that
10 business because I was pleased with the care that he had given my patients and my office.
11 So I trusted Gary pretty exclusively in running the business. We talked about day to day
12 things that were going on. Like how are things going or what is going on. But for the most
13 part he did all of the day to day operations of that.

14 Q. So were both you and Gary officers of the corporation?

15 A. Yes.

16 Q. Did you all have the same powers as far as being able to sign checks and make deposits,
17 make business deals, sign contracts on behalf of MD Medical?

18 A. Yes sir. But Gary was more efficient in that. You know I was on my side running my
19 practice. So when we had talked about starting MD Medical one of the things was that he
20 was bringing his knowledge to you know what was going on with that side of the business.

21 Q. How much did you invest in the business?

22 A. Initially probably about a hundred thousand dollars.

23 Q. Okay. And that hundred thousand dollars gave you fifty-four (54) percent ownership
24 interest?

25 A. Yes sir.

1 Q. Do you know how much Mr. Day contributed?
2 A. Nothing.
3 Q. So you were the sole influx of cash for the company?
4 A. Yes sir.
5 Q. Do you know if Mr. Day ever made any contributions of cash?
6 A. No sir.
7 Q. Did you make any additional contributions of cash?
8 A. I did sir.
9 Q. How much?
10 A. Specifically I don't know because when it came to my attention - - I received a letter from
11 the IRS stating that you know that Gary had not paid sufficient funds for taxes. So I found
12 out about that probably a little less than a year ago and when I found out about that what I
13 tried to do then was to try to ask him more questions about what is going on with the
14 business, who we owe and what is going on with that. And he would always come over and
15 we would sat down and talk and he would say I just don't understand I think I you know I
16 lost control at some point in time. So I said well how do you feel about that. I said you
17 know I am working on getting things better. So I mean I trusted Gary. I thought that he
18 was doing the right thing but when the IRS statement came that made me a little bit more
19 aware of what was going on.
20 Q. When did you have that conversation with Gary?
21 A. I really don't remember but it had to be within - - well before we sold, before the practice
22 was sold in April. Probably three to six months prior to that.
23 Q. All right. So that would have been back in 2014?
24 A. Yes, somewhere probably near there. Around December maybe. December or January time
25 frame.

1 Q. Tell me about MD Medical's business relationship with Invacare Corporation?
2 A. I didn't know its business relationship with Invacare Corporation. Other than when we sold
3 the practice he gave me a list of companies that he owed money to.
4 Q. And Invacare was one of them?
5 A. Yes sir.
6 Q. Okay. Do you know how much Invacare was owed ?
7 A. Off the top of my head somewhere around Eleven thousand dollars.
8 Q. Okay. Do you know if that amount has been paid?
9 A. No it wasn't paid.
10 MR. REESER: Your Honor, may I approach?
11 THE COURT: All right.
12 Q. Mr. Mathis I am going to hand you a copy of a file document. Do you remember receiving
13 that document?
14 A. Yes sir.
15 Q. I believe that there is an Affidavit of Service filed with a Rule to Show Cause that was
16 originally for September 29th, basically covering this matter. Were you served personally
17 with that document?
18 A. Yes sir. A very nice lady.
19 Q. I believe it was Donna Maranto. Does that name sound familiar?
20 A. I don't know her name but I had a conversation with her.
21 Q. All right. Were you aware that Invacare had initiated an action against MD Medical.
22 And I represent to you that they sued and served Mr. Day on behalf of MD Medical back in
23 2014. Were you aware of that lawsuit?
24 A. No sir.
25 Q. Did Mr. Day ever tell you about that lawsuit?

1 A. No sir.

2 Q. Were you ever aware that a default judgment was rendered against MD Medical?

3 A. No sir.

4 Q. Has anyone ever told you that a default judgment had been rendered against MD Medical?

5 A. When I called the Office and talked to one of your representatives.

6 Q. Okay. Do you remember when that conversation was?

7 A. It had to be some time after April because when we sold the company Gary hands me a list

8 with different entities that he had owed and I attempted to call you guys three or four times.

9 And I think that I even spoke with you once and you said well Gary is the guarantor and it

10 has already been given to the deputy or the sheriff. I don't understand all the terminology

11 for having a Summons or committing a crime because you know I am just not aware of that

12 but you shared that I guess the sheriff's department had something on him for not paying this

13 bill and that was it.

14 Q. The sheriff's department had something on Mr. Day for not paying his bills?

15 A. Yes. Wherever you send these to. When you give a summons. Who do you give these to?

16 Q. The Corporation, MD Medical, LLC?

17 A. Okay.

18 Q. The Corporation is served through its officers?

19 A. So it was like the magistrate or somebody, I don't remember. Somebody said that you know

20 we had to come to Court. So that is when I seen it.

21 Q. When was that?

22 A. Whenever I talked to whomever I talk to at the Invacare office. It was the paralegal

23 department.

24 Q. When did you first become aware of this debt?

25 A. Sometime in April.

1 Q. In April?

2 A. Yes sir.

3 Q. Was that after the sale of the company?

4 A. Yes sir.

5 Q. All right.

6 MR. REESER: Your Honor, if I may approach.

7 THE COURT: All right.

8 Q. Dr. Mathis what is that document?

9 A. This is a document that Mr. Day had given to me.

10 Q. I believe that is a list of debts that he compiled for you that you were speaking of?

11 A. Yes sir.

12 Q. All right. Do you remember when Mr. Day gave that to you?

13 A. Well I don't. It may have been maybe a month before April or April or March time frame.

14 Q. All right.

15 A. Because when I look right here because you know I put down something about the sheriff

16 when I was sharing with you and it was March 13, 2015 when I contacted someone at your

17 office and that is what they shared with me. So it is like two (2) weeks off of April 1st.

18 Q. Is that when you became aware of the debt?

19 A. Yes, it must have been. A couple of weeks before because that is when I think that I wrote

20 that date down and I wrote not responding on the top of it as well and I talked to a Ms. Stacey

21 Barrett, I think and a Wendy Mack and then a Fred Bower. Does that sound right?

22 Q. Is all of that handwriting on that sheet yours?

23 A. That is my handwriting sir.

24 Q. All right. Do you know if those accounts were ever paid?

25 A. Whomever I spoke to said that they were not paid.

1 Q. Okay. But Invacare was not the only debtor listed on that sheet, right?
2 A. That is correct sir.
3 Q. Do you know who those other debtors are?
4 A. I do because of his sheet.
5 Q. Okay. How many other debtors are on that list?
6 A. One, two, three, four, five, six, and seven.
7 Q. Do you know if those seven other creditors were paid?
8 A. Some were.
9 Q. Okay. And who made the decision to pay those?
10 A. I did sir.
11 Q. Did you write the checks that were issued to them for the payment of their debts?
12 A. Yes, I did.
13 Q. When would you have written those checks to pay those creditors off?
14 A. I wrote the dates down on some of these that I paid on. One was like April 20th and I wrote
15 some of the numbers down on the days that - - one was April 28th. And I don't have the
16 dates on the other ones.
17 Q. Okay.
18 A. I am sure we could probably find it if we called the companies.
19 Q. From what you remember you issued the checks from MD Medical to pay those debts?
20 A. I issued the checks that paid those debts.
21 Q. Okay.
22 A. Some were on my American Express. My American Express.
23 Q. Do you remember which ones they were?
24 A. I think the Service Center was on my American Express and the other one may have been
25 with a check.

1 Q. Okay. A personal check?
2 A. A check from my office on the other side.
3 Q. Okay. From your practice?
4 A. Yes sir.
5 Q. So the other five (5) on there do you remember how they were paid?
6 A. The other five (5) were not paid yet.
7 Q. The ones of those five (5) that were paid do you remember how they were paid?
8 A. Yes sir.
9 Q. How were they paid?
10 A. I paid one with the American Express and the other two (2) with checks probably from my
11 practice.
12 Q. So there were only three (3) of them paid?
13 A. Yes.
14 Q. Do you know if the remaining creditors on that list have been paid?
15 A. No, they have not.
16 Q. Who had authority to write checks for MD Medical?
17 A. I believe both Gary and I had authority to write checks.
18 Q. Just generally throughout the course of the business?
19 A. Yes sir.
20 Q. Okay. Do you know how many accounts MD Medical has?
21 A. No, I don't sir.
22 Q. Do you know how many checking accounts and savings account?
23 A. I think that they had one (1) business account.
24 Q. Do you know if it was a checking account or a business account?
25 A. I think it was a business account. A checking account, I think.

1 Q. Okay. Did you have any company credit cards?
2 A. I didn't have any company credit cards but I know that Gary had company credit cards, he
3 and his wife.
4 Q. Have they used them?
5 A. From my recollection they used them.
6 Q. Okay. Do you remember when they stop using them?
7 A. I would think that they stop using them when we sold the business.
8 Q. When did you sell the business?
9 A. April 1.
10 Q. And who did you sell the business to?
11 A. John Petrich.
12 Q. How do you say his last name again, I am sorry?
13 A. I think it is Petrich.
14 Q. P-e-t-r-i-c-h?
15 A. Petrich.
16 Q. And you said that sale went through on April 1st?
17 A. Yes sir.
18 Q. What were the terms of that agreement?
19 A. What do you mean sir?
20 Q. How much was the company being sold for?
21 A. Three hundred twenty thousand (\$320,000.00) dollars.
22 Q. Who was that to be paid to?
23 A. To me, sir.
24 Q. All of it to you?
25 A. Yes sir.

1 Q. How was that \$320,000.00 supposed to be paid?
2 A. Mr. Petrich paid a hundred thousand dollars initially and he was going to pay me Two
3 hundred twenty thousand over the next five years, I think.
4 Q. Two hundred twenty thousand?
5 A. Yes sir.
6 Q. Does he have a payment schedule with you for so much a month?
7 A. Yes sir, so much a month.
8 Q. Okay. How much is he paying you a month?
9 A. I am just going to give a guess it is like forty one hundred dollars a month.
10 Q. Okay. And what does Mr. Petrich do?
11 A. He is a pharmacist.
12 Q. Where does he practice?
13 A. In Greenville.
14 Q. How did you meet Mr. Petrich?
15 A. I met him on the sale of the business.
16 Q. You never met him before that?
17 A. No. We just talked about the business. He knew Gary so we sat down and talked a couple
18 of times and met altogether and I think that I have seen him maybe once or twice outside
19 other than the sale of the business.
20 Q. Did he initiate contact with you or did you initiate contact with him?
21 A. I think it was a mutual thing between he and Gary.
22 Q. Okay. Did Gary get any money as a result of the selling of the business?
23 A. No sir.
24 Q. Why not?
25 A. Because when we had talked about the sale of the business, Gary and I sat down and talked.

1 And all of the proceeds from the business were going to go to me because of the fact that
2 I had never received anything from the business, not any profits at all. And I put up a
3 considerable amount of money to get the practice started.

4 Q. Did you ever pull a salary as an officer of MD Medical?

5 A. No sir.

6 Q. So you never received any financial benefit from the business whatsoever?

7 A. No sir.

8 Q. All right.

9 A. I trusted Gary exclusively.

10 Q. What about rent?

11 A. We had rent for -- I think he paid me rent for about twelve (12) months.

12 Q. He paid you rent or MD Medical paid you rent?

13 A. MD Medical paid.

14 Q. So the company in which you had an ownership interest paid you rent because you owned
15 the building individually?

16 A. Yes sir.

17 Q. All right. So you sold the business for Three hundred twenty thousand (\$320,000.00)
18 Dollars, correct?

19 A. Yes sir.

20 Q. What exactly did MD Medical own? What did you sell? What did Mr. Petrich get in
21 exchange for his \$320,000.00?

22 A. Well you know he got all the equipment in the building. He got all of the contracts from the
23 sale of the business which is a considerable amount. It was probably in inventory I am pretty
24 sure it was over a hundred and eighty thousand dollars worth of inventory in there easily.

25 Q. That was as of the date of the sale?

1 A. Yes sir.

2 Q. What kind of equipment did you all have in MD Medical?

3 A. Concentrators, traders, oxygen tanks, back braces, knee braces, canes, walkers, one
4 motorized wheel chair, mattresses, hospital beds, portable potties, transfer potties, transfer
5 boards, diabetic shoes, compression socks and stockings, braces, everything that you would
6 normally see if you would go to a prosthetic dne company?

7 Q. Okay. Did MD Medical have a warehouse where they could store things or was that kept in
8 the store suite?

9 A. Well they had a little office and then the rest of their building was for storage for the
10 equipment.

11 Q. Okay. So everything MD Medical had in inventory was stored at that location?

12 A. Yes sir.

13 Q. All right. Did MD Medical have any other assets other than what it had in inventory and the
14 contracts?

15 A. That was it.

16 Q. Okay.

17 A. That I know of.

18 Q. Okay. Do you know how much the contracts were?

19 A. No sir.

20 Q. I am assuming that these were contacts to provide medical equipment for a period of time?

21 A. Yes sir. Could I give you an example.

22 Q. Sure?

23 A. Like Amedics. I am sure that you have heard of them if you do medical equipment.
24 Hospice care. I know that is one of our bigger accounts that Gary always talked about. And
25 we provided services to Greenville Hospital System and St. Francis as needed and requested.

1 Q. Okay. Would it be fair for me to characterize these contracts as accounts?
2 A. If you want to call it that. I guess you would call it accounts.
3 Q. Like a sales account?
4 A. You know that was Gary's - - yes, that was his big thing as far as marketing and getting the
5 accounts for MD Medical like he did when he came to see me. So when he came to see me
6 it wasn't an account. He just happen to come through because I liked him because a lot of
7 Reps would come through. So he was the Rep that I liked and when I needed equipment I
8 let Gary bring the equipment to my office for my patients. So I didn't get anything for that.
9 So if this was an account, if that is what you call it I guess it was, but you know he was just
10 delivering a service to that particular entity. And they were billed for that.
11 Q. Did you ever have those contracts before the sale of the business?
12 A. No sir.
13 Q. Did you ever have the inventory valued before the sale?
14 A. No sir. I asked Gary several times did he know what was in inventory and he shared with
15 me that he never did that because he didn't have time. So I said Gary you have to have
16 inventory. I said you have got to know what is going on. So Gary being Gary he said that
17 is how some of this business works.
18 Q. It was your testimony earlier that MD Medical had about a hundred and eight thousand
19 dollars worth of inventory?
20 A. Yes, probably. That is just my guess.
21 Q. Okay.
22 A. You know I am not a durable medical equipment guy.
23 Q. Sure.
24 A. But you know I am a doctor so I recommend that my patients get these particular items and
25 you know if you have diabetic shoes or a wheel chair or a hospital bed. You have an idea

1 what things are and due to the fact that I have been running a business for eighteen (18) years
2 and you know I have to look at my accounts to see what is up and what is down but even
3 with durable medical equipment companies they can be very, very confusing. As you know
4 with different changes and responsibilities for durable medical equipment companies with
5 all of the different laws and the changes for competitive bidding.

6 Q. So would it be fair to say that your experience as a health care professional you have a
7 general idea of how much these items cost?

8 A. Yes sir.

9 Q. So how did you and Mr. Petrich decide on Three hundred twenty thousand for the value of
10 MD Medical?

11 A. That was Gary's value that he placed on the business because again you know I trusted Gary
12 to do all of this and you know out of him doing what he did and having the grand job that he
13 had that I afforded him to live the quality of life that he was living he came up with that
14 figure.

15 Q. Okay. And Mr. Petrich obviously accepted that figure?

16 A. Yes sir. I think he made an offer and of course you have a counter offer and all of that kind
17 of thing but I don't remember but I do remember that was the final figure sir.

18 Q. Okay. But everything settled at Three hundred twenty thousand?

19 A. Yes sir.

20 Q. How was that initial hundred thousand paid to you?

21 A. He wrote a check.

22 Q. He wrote a check to you?

23 A. Yes sir.

24 Q. And what did you do with that check?

25 A. I deposited it in the bank.

1 Q. Deposited it in which bank?
2 A. Parksterling.
3 Q. Which account?
4 A. Money market account.
5 Q. Which account?
6 A. The money market account.
7 Q. A money market account?
8 A. Yes.
9 Q. Do you remember that account number?
10 A. No, I don't.
11 Q. Do you still have that account?
12 A. Yes sir.
13 Q. The account is still opened?
14 A. Yes sir.
15 Q. All right. Do you know who MD Medical banked with?
16 A. Parksterling.
17 Q. Do you remember that bank account number?
18 A. No sir.
19 Q. And did you have authority to withdraw and make deposits to that account?
20 A. Yes sir.
21 Q. When was the last time that you made a withdrawal from or deposited to that account?
22 A. Well what happened was prior to this Gary was having trouble on managing the account and
23 I had several calls from the Bank about bad checks and they were penalizing me for the bad
24 checks. So what we ended up doing was keeping one account open, the initial account of
25 MD Medical and then once Gary was trying to move the accounts receivable we decided to

1 open up another account for MD Medical.

2 Q. Okay.

3 A. And at that point in time that is when I either deposited money or transferred money because

4 Gary said that there was going to be some automatic deposits coming from outstanding

5 balances.

6 Q. Okay. The original account has that account been closed?

7 A. Yes sir.

8 Q. When was it closed?

9 A. I don't remember.

10 Q. Did you close it?

11 A. Yes sir. Well Gary and I closed it together.

12 Q. Okay. And this second account.

13 A. Yes.

14 Q. When was it opened?

15 A. When that account was closed and Gary suggested that as well.

16 Q. Okay. Has that account been closed?

17 A. Yes sir.

18 Q. To your knowledge does MD Medical currently have any active checking or saving accounts

19 or anything like that?

20 A. No sir.

21 Q. Whenever those accounts were closed did they have any balances in them?

22 A. They really didn't. The balances were used to pay off some of the outstanding debts to the

23 different companies and different entities. So that is what that money was used for.

24 Q. So during the early half of this year MD Medical was paying off its debts in the course of

25 business?

1 A. When Gary was supposedly doing that and then when I found out some of the mayhem that
2 was going on with the accounts and the IRS it was suggested from my accountant that I
3 needed to get a little more control over that account.
4 Q. Do you remember the last time that you ever issued a check from one of the MD Medical
5 accounts?
6 A. I didn't write any checks from out of MD Medical's account.
7 Q. You never wrote a check from MD Medical's account?
8 A. No sir, I did not. Again I just trusted Gary exclusively to do that.
9 Q. Those debts on that sheet of paper, those creditors?
10 A. Yes sir.
11 Q. Why did you pay them with your personal funds instead MD Medical's funds that they had
12 in their bank account?
13 A. They didn't have any money in their account.
14 Q. MD Medical didn't?
15 A. No.
16 Q. Okay.
17 MR. REESER: If I may approach, Your Honor.
18 THE COURT: Yes sir.
19 Q. Dr. Mathis, I have got two (2) documents here and I represent to you that they are statements
20 from a bank. At the top of each page each statement list MD Medical, LLC, as the account
21 holder. Do you see that?
22 A. Yes sir.
23 Q. Dr. Mathis it looks like there are two (2) accounts. One that ends in 4116 and one that ends
24 in 7057?
25 A. Yes sir.

1 Q. Do you know the identity of those two (2) accounts?
2 A. Yes sir. What Gary and I decided was if he had some incoming automatic deposits which
3 that is what these appear to be, that when those came in when I paid off these accounts that
4 I was to get that money to put back in my account.
5 Q. Well the 4116 account, I believe is the one that we are looking at. Do you know when that
6 account was opened?
7 A. No sir, I can't tell you that.
8 Q. And the other one the 7057 account?
9 A. I think that is the one that we opened - - -
10 MR. JOHNSON: That is 7059.
11 A. The 7059.
12 Q. It is 59, I am sorry.
13 A. Yes, I think that was opened just prior to the sale of the company.
14 Q. Okay. So you opened this account, you opened the 7059 account?
15 A. Yes sir.
16 Q. During the time of the sale of the company?
17 A. It was somewhere during the time of the sale of the company because Gary stated or Mr. Day
18 stated that there were some account receivables coming in so we would have that you know
19 in order to be able to deposit the checks we needed to have another account so we could
20 receive those transactions.
21 Q. Was there an issue with using the 4116 account?
22 A. I think that if this was the initial account because I didn't know the number to the initial
23 account. I mean we set it up together but you know I didn't write any check out of that but
24 there was a bunch of problems with that and that was brought to my attention via the bank.
25 Q. Did you ever make any deposits to that 4116 account?

1 A. I think that I did at some point in time but I don't remember when but in certain instances
2 when we had some tax problems or when we needed some equipment Gary didn't hesitate
3 to come over and ask me could I get some money in the account and he would try to
4 reimburse me but a lot of times we never got to that reimbursement until we sold the
5 company.
6 Q. Dr. Mathis I have got two (2) documents that I represent to you are deposit slips into that
7 4116 account.
8 A. Okay.
9 Q. Is that dated April 2?
10 A. Yes.
11 Q. Okay. So that is the day after you executed the sale agreement of MD Medical, is that right?
12 A. Yes.
13 Q. To which account is that deposit being made?
14 A. To the 4116 account.
15 Q. Okay. That is MD Medical's?
16 A. Which must be the MD Medical account. Yes sir.
17 Q. How much is deposited?
18 A. A hundred thousand dollars.
19 Q. And do you know where that hundred thousand dollars came from?
20 A. Yes sir.
21 Q. Where did it come from?
22 A. Mr. Petrich.
23 Q. Okay. There is a signature on one of those. Do you know whose signature that is?
24 A. That is mine.
25 Q. All right. So you deposited a hundred thousand dollars into MD Medical's account?

1 A. Yes.

2 Q. What did MD Medical do with that hundred thousand dollars?

3 A. That is when I said that it was deposited into the money market account that I had.

4 Q. Okay. Did anybody have access to the money market account other than you?

5 A. Other than me, no.

6 Q. Okay. Do you remember how you deposited it? Did you write a check? Was it like a

7 mobile deposit or how?

8 A. I don't remember. It may have been a mobile deposit.

9 Q. So you had access to the accounts from your phone or computer?

10 A. Yes sir.

11 Q. And do you remember when you made that withdrawal from the MD Medical account?

12 A. It may have been maybe the next day.

13 Q. Okay. Do you remember making any other withdrawals from that 4116 account?

14 A. It is a possibility that we did when we transferred some of that money out to the new MD

15 Medical account.

16 Q. Okay. So the funds were taken from the 4116 account and placed in the 7059 account?

17 A. Yes sir. That is the way that it would have been you know or either some kind of electronic

18 deposit to maybe the money market account or some outstanding bill that I paid and put the

19 money back.

20 Q. So did you make withdrawals out of the 7059 account?

21 A. Yes sir.

22 Q. And you would make those deposits to the money market account?

23 A. Yes sir.

24 Q. And where else?

25 A. That is it.

1 Q. So that would all go to the money market account?
2 A. Yes sir.
3 Q. Do you know how much you deposited from the 7059 account?
4 A. No sir.
5 Q. Would you be able to get those records?
6 A. Whatever it is it went toward these bills here which didn't cover them because none of them
7 were paid but you know I mean all of them weren't paid. Some are still outstanding. So
8 maybe we can get that for you sir.
9 Q. I guess what I am asking is do you have the bank records that show when you took from
10 either of those accounts and put into your money market account?
11 A. Yes sir. I do.
12 Q. Have you produced those to your attorney?
13 A. Well I am trying to think. I don't think that it was that many transfers so whatever we have.
14 I gave him all that I had from the bank to the other bank.
15 Q. From which bank to which bank?
16 A. From Parksterling.
17 Q. From your money market account?
18 A. Whatever was going on with the MD Medical accounts, you know it was all transactions
19 done within the Parksterling Bank account.
20 MR. JOHNSON: You have those. You sent them to him. You have all of them.
21 A. Right.
22 Q. What I am asking is - - I understand is that 7059 the money market account?
23 A. No sir.
24 Q. What is the money market account?
25 A. That is just my personal account.

1 Q. Because your testimony was that you have been taking money out of both of these accounts
2 and putting it into your money market account. Do you have records that shows how much
3 you have taken out of these two MD Medical accounts and put into your money market
4 account?

5 A. Whatever records you have is what I have been doing. You know it has all been transfers.
6 So the monies that whatever was going toward MD Medical was going towards monies you
7 know that I put out to cover these debts. So that is what Gary and I had said that we were
8 going to try to do but I mean I have been covering the debts the whole time of the business
9 off and on when it was needed.

10 Q. Why didn't you pay my client?

11 A. You know I just went down it and as I called them like up at the top I said not responding so
12 I got no answer so I went to the next account and called and the next account and the
13 accounts that responded to me that is what I did but I didn't spend all day on the phone you
14 know calling those accounts every day.

15 Q. Are you aware that my client has a judgment against MD Medical for a little over Eleven
16 thousand six hundred dollars?

17 A. When Gary gave me this.

18 Q. Are you aware that it obtained that judgment in January 2015?

19 A. Say it again sir?

20 Q. Are you aware that it obtained that judgment in January of 2015?

21 A. I wasn't aware of that, no.

22 Q. But you were aware of that debt in March and April of 2015?

23 A. Yes sir.

24 Q. Now it is November 2015, why haven't you paid my client?

25 A. There is no money in MD Medical.

1 Q. Do you know how much money MD Medical had in either one of those account? Do you
2 have the balance in the checking accounts of MD Medical?

3 A. Again I told you that I trusted Gary and you know he was taking care of that and what ended
4 up happening was the bank called me and brought it to my attention and I don't know how
5 soon but it was probably six (6) months before we sold the business that there was a lot of
6 bounced checks you know and a lot of minus \$32.00 charges. So I asked Gary about that
7 and we sat down and talked about it. I said Gary if you don't have money in that account
8 you can't pay a bill because your bouncing the checks are costing us more money and that
9 is how I found out about a lot of this stuff. Sir you know I liked Gary and I trusted Gary.
10 And we were friends and maybe I was a little too trustworthy but the bottom line was he was
11 at my building and he was running the business and when I found out that there was some
12 discrepancies in the business that is when I stepped in to try to see what I could do to not
13 lose more money.

14 Q. Okay. So why did you agree to sell to Mr. Petrich?

15 A. Because you know Gary did the sale and set it up and thought that would be a good thing to
16 do. He wanted to get out of the business at that time because he felt that you know he was
17 not doing a well enough job in managing the company. I knew that I couldn't sir. You
18 know I have kids in college and you know I am running a practice and doing things like that
19 so we just came to that agreement and it just so happened that Mr. Petrich was looking for
20 an expansion in his DME company. So he had shared it with Gary and Gary shared it with
21 him and then we shared it with each other and that is when we came up with this deal sir.

22 Q. So at the time you wanted to get out of the company?

23 A. At that time I was happy to be able to be afforded the chance to get out of that company.

24 Q. My last question.

25 A. Yes sir.

1 Q. The hundred thousand dollar check that you deposited in the bank account ending in 4116,
2 was that check written to you individually or to MD Medical?
3 A. It was written to me individually sir.
4 Q. Did you assign that check to MD Medical?
5 A. Wherever it was deposited. Whichever checking account that was that is the way it went.
6 So I don't know whether it was the MD Medical account or the 4116 account which I will
7 be happy to try to go through the paperwork and see what that is.
8 Q. But you know the check was made out to you?
9 A. Yes sir.
10 Q. And has Mr. Petrich made payments to you every month according to the agreement?
11 A. Yes sir.
12 Q. All right. Dr. Mathis those are all the questions that I have.
13 A. Thank you sir.
14 THE COURT: Counsel any follow-up?
15 MR. JOHNSON: I do, Your Honor. Just a few.
16 **CROSS EXAMINATION BY MR. JOHNSON.**
17 Q. Dr. Mathis, Mr. Reeser recently was asking you about getting involved in other businesses.
18 I am going to ask you do you like most professional involve yourself in investment
19 opportunities?
20 A. Yes sir.
21 Q. Okay. Are those necessarily businesses or are they just sometimes just opportunities?
22 A. Just opportunities. It is more like opportunities, that is all.
23 Q. Was that confusing to you when Mr. Reeser was asking about that?
24 A. Yes, it was. I didn't really understand it too well.
25 Q. All right. For instance sometimes you may buy and sell a rental property?

1 A. Yes sir.

2 Q. But do you always do that through a business?

3 A. No, I don't.

4 Q. Okay. So was that kind of what your confusion was?

5 A. Yes sir.

6 Q. All right. And I think that you answered that you never wrote any checks out of MD

7 Medical's account?

8 A. No sir.

9 Q. Okay. Did you ever even have a checkbook for the 7059 account of MD Medical?

10 A. No sir.

11 Q. All right. Mr. Reeser was asking you about transferring to the money market and what have

12 you. Was it just that you put money in the account but you had checks to write it from?

13 A. No sir. It was just me making electronic transfers.

14 Q. Okay. So you made - - -

15 A. To my recollection just to clarify I don't know if I put Mr. Petrich's check in MD Medical

16 or whether it went straight to the money market but that would be simple to find.

17 Q. Okay. At some point along the way did you get some advice from your accountant as to

18 how you should handle these accounts for MD Medical and what you have for your practice

19 on that?

20 A. Yes sir.

21 Q. Okay. So when did you get that advice?

22 A. When we found out about the IRS employment tax issue.

23 Q. All right. Lets just be specific. How did you find out about the IRS employment tax issue?

24 A. I received some letters in the mail.

25 Q. All right.

1 A. And then I approached Gary and he shared with me that he had never received a notice.
2 Q. Okay. When you say received a notice did you get levied?
3 A. I did get levied.
4 Q. Okay. So the IRS took money out of your personal account.
5 A. Yes sir.
6 Q. That was owed by MD Medical?
7 A. Yes sir.
8 Q. Okay. Do you remember initially how much money that was?
9 A. Approximately Twenty one thousand & no/100 (\$21,000.00) dollars.
10 Q. All right.
11 MR. JOHNSON: Let me hand you this, Your Honor, if I may.
12 THE COURT: All right.
13 A. It is Twenty one thousand seven hundred ninety one & 59/100 (\$21,791.59) dollars.
14 Q. That money was taken from your account?
15 A. Yes it was sir.
16 Q. So that has been paid because it was taken out of your personal account?
17 A. Yes sir.
18 Q. Okay. Is there also additional amounts that are owed to the IRS?
19 A. Yes sir.
20 Q. Do you know how much those are?
21 A. I think that it is somewhere in the range of maybe Seventy thousand dollars.
22 Q. All right. It is Seventy four thousand dollars?
23 A. Yes sir.
24 Q. Have you been making payments on that debt that was MD Medical's debt?
25 A. When they levied me we did and prior to the sale of the business we had not.

1 Q. Okay. But since then have you been using the funds that you received, for instance, the
2 hundred thousand dollars?
3 A. Right.
4 Q. Part of that money was used to pay the IRS?
5 A. Yes sir.
6 Q. Okay. Was the other part of that money used to pay debts of MD Medical?
7 A. Yes sir.
8 Q. Okay. So you have got a sheet that Mr. Reeser handed you?
9 A. Yes sir.
10 Q. You have marked that. In other words, what has been paid beside it. You wrote on there
11 what has been paid, right?
12 A. Yes sir.
13 Q. On that sheet that you have?
14 A. Yes sir.
15 Q. You have got that sheet here today?
16 A. That is right.
17 Q. All right. Are there other debts out there that Mr. Day didn't tell you about?
18 A. It is possible that there could be sir.
19 Q. Well have you paid other debts that were not on that sheet?
20 A. No, I haven't.
21 Q. Okay. But you have received notices of other debts that are not on that sheet?
22 A. Yes sir.
23 Q. Okay. So there are other debts out there that Mr. Day didn't tell you about?
24 A. Yes sir.
25 Q. The total debts that you paid, the ones that you paid on that sheet do they exceed the amount

1 of money that was in MD Medical's account at the time of the sale of the business?

2 A. Yes sir.

3 Q. Okay.

4 MR. REESER: Which account was that?

5 Q. MD Medical had an account that was 4116, correct?

6 A. Yes sir.

7 Q. And you took all of that money and put it in 7059, correct?

8 A. Correct.

9 Q. The same money?

10 A. Same money.

11 Q. All right. The amount doesn't change from the transfer over does it?

12 A. No it does not sir.

13 Q. And so at the time of May 1, the balance that MD Medical had, this is after the sale, so MD

14 Medical had how much money when it was sold?

15 A. It was Ten thousand three hundred forty eight & 84/100 (\$10,348.84) dollars.

16 Q. Okay. Did the debts that you paid exceed Ten thousand three hundred forty eight & 84/100

17 (\$10,348.84) dollars?

18 A. Yes sir.

19 Q. Okay. But you have also paid this Twenty one thousand dollars and then as we provided

20 Mr. Reeser the records there is an additional of at least Seventy four thousand dollars of tax

21 debt that is still due, correct?

22 A. Correct sir.

23 Q. That has been calculated by the IRS only through a portion of 2014, correct?

24 A. Yes sir.

25 Q. Okay. So there is an additional tax debt that you are sure at some point the IRS is going to

1. come looking for?

2 A. Yes sir.

3 Q. Okay. All right. And you have discussed all of this with your accountant?

4 A. Yes sir.

5 Q. And Mr. Day used the same accountant?

6 A. Yes sir.

7 Q. For MD Medical and for some of his personal accounting, correct?

8 A. Yes sir.

9 Q. Okay. So you all discussed all of that?

10 A. Yes sir.

11 Q. So you said that you put in about a hundred thousand dollars in initial capital, correct?

12 A. Yes sir.

13 Q. All right. So did we provide Mr. Reeser with a spread sheet showing about Sixty five
14 thousand dollars worth of capital that was put in that your accountant had provided you
15 previously?

16 A. Yes sir.

17 Q. Okay. And did we provide Mr. Reeser with another spread sheet of approximately Twenty
18 three thousand dollars that you spent in upfit in preparing that space to run MD Medical?

19 A. Yes sir.

20 Q. Okay. And also there is documentation that as recent as 2014, is that here?

21 A. Yes sir. August of 2014.

22 Q. All right. So as recent as August 2014 you put another Ten thousand & no/100 (\$10,000.00)
23 dollars in?

24 A. Yes sir.

25 Q. Okay. All right. Was this in response to - - was that about the time when you started

1 getting calls from the bank that checks were bouncing and there was no money in the
2 account?
3 A. Yes sir.
4 Q. Okay. All right. So we have provided documentation to Mr. Reeser of approximately a
5 hundred thousand dollars for capital investments?
6 A. Yes sir.
7 Q. Okay. So when you testified there was some more but you didn't know how much?
8 A. Right. Yes sir.
9 Q. Are you referring to the additional amounts that you have paid for taxes? That you paid for
10 the taxes of MD Medical and the additional debts that you paid for the business throughout
11 the years that just weren't calculated with capital investments?
12 A. Yes sir.
13 Q. But you know that those amounts were paid?
14 A. Yes sir.
15 Q. All right. So you have over a hundred thousand dollars in capital investments that you never
16 received any reimbursement for from the company?
17 A. No sir, none at all.
18 Q. You are still facing responsibility for at least an additional Seventy four thousand dollar tax
19 debt for MD Medical?
20 A. Yes sir.
21 Q. That you are being forced to pay personally because MD Medical has no more income?
22 A. Yes sir.
23 Q. Okay. And you have already paid over Twenty thousand dollars in tax debt to the IRS after
24 MD Medical - - well that was actually taken out of your account?
25 A. Yes sir.

1 Q. And also an approximate Thirty eight hundred dollars that you paid to the South Carolina
2 Department of Revenue on behalf of MD Medical?
3 A. Yes sir.
4 Q. All right. There was also an approximate Thirty eight hundred dollars that you paid to the
5 South Carolina Department of Revenue on behalf of MD Medical?
6 A. Yes sir.
7 Q. All right. Was the discussion at the time of the sale of the business that you would receive
8 all of the monies because the IRS at that point was coming at you directly and you had never
9 received any money from the business and that Mr. Day had in fact received draws from the
10 business over the course of the years of approximately One hundred seventy two thousand
11 dollars, well actually a hundred and seventy three thousand dollars?
12 A. Yes sir.
13 Q. In addition to that do you know what he was getting paid for salary?
14 A. No, I don't but I think that it was somewhere around well between he and his wife about
15 Ninety thousand dollars.
16 Q. Okay. And his wife had a ownership interest in the business as well?
17 A. Yes sir.
18 Q. It was you, he and his wife?
19 A. Yes sir.
20 Q. Okay. And his wife did work there?
21 A. Yes sir.
22 Q. All right. So they each received approximately Ninety thousand dollars for 2006 through
23 2014?
24 A. Yes sir.
25 Q. And you didn't receive a dime?

1 A. Not one dime sir.

2 Q. And your accountant has also provided you documentation which we have shared with Mr.
3 Reeser that in addition to those salaries Mr. Day himself took out draws of approximately
4 well over, well actually like a hundred and eighty four thousand because there was almost
5 twelve thousand that we almost missed?

6 A. Yes sir.

7 Q. He took out draws of approximately a hundred and eighty four thousand dollars on top of the
8 approximately Ninety thousand dollars that he was paying he and his wife over the course
9 of the year?

10 A. Right sir.

11 Q. You have received not a dime from the business?

12 A. Nothing sir.

13 Q. Okay. But you had put in at least a hundred thousand dollars in capital and you are now
14 facing a significant amount of money for taxes and other debts?

15 A. Yes sir.

16 Q. All right. Do you believe that it is fair or logical for you to be faced with all of these debts
17 when Mr. Day is not being required to pay any of the debts?

18 A. No sir. I don't think that it is fair at all.

19 Q. All right. Now the Three hundred twenty thousand dollars as you and your accountant have
20 looked at it is that going to be sufficient to cover the potential tax liability and reimburse you
21 for your capital investments in this business?

22 A. No sir.

23 Q. Lets talk about after the close of the business. You mentioned some accounts receivable.
24 Mr. Day told you that there would be some accounts that would come in, is that accurate?

25 A. Yes sir.

1 Q. Did that amount to the number that he told you that it would be?

2 A. Just shortly after April 1, he was working in the office with one or two of his employees and

3 he explained to me that he was tracking some accounts receivable. So we went through

4 April and June and then in July because we weren't getting any types of money, no head way,

5 we weren't receiving the minimum deposits for electronic transfers from the other entities

6 and I just told Gary if you can't get any more we can't get any more so that stopped.

7 Q. And those deposits are reflected in the bank account for 7059 that we provided to Mr.

8 Reeser?

9 A. Yes sir.

10 Q. Okay. And the expenses from those deposits have they been sufficient to pay all of the debts

11 that are due to MD Medical?

12 A. No sir.

13 Q. Have those monies been used for any other purpose than to pay the various debts that were

14 due by MD Medical?

15 A. No other purpose.

16 Q. All right. Did you also incur debt for the payroll during the time that you were attempting

17 to collect those accounts receivable?

18 A. Yes sir.

19 Q. Olay. Now how did that come about? Is that when you and your accountant had some

20 discussion about how to handle that?

21 A. Yes sir. At that time my accountant suggested that maybe I should pay the payroll because

22 it came to my attention that some of the checks that Gary was writing was bouncing and he

23 didn't have enough money to cover the employee's checks which you know being in a

24 business I didn't think that was fair and I had suggested that I try to pay the employees and

25 then as the money came in just reimburse myself for that but that didn't come into a full

1 realization as well.

2 Q. So some of the transfer that Mr. Reeser saw on the accounts that we provided him with were
3 they us e for the purpose of covering this
4 payroll as well?

5 A. Yes sir.

6 Q. Okay. Was that payroll approximately two thousand dollars a month for employees?

7 A. Yes sir.

8 Q. For three (3) months?

9 A. Yes sir.

10 Q. Were the receivables that came into MD Medical were they sufficient to pay all of that
11 payroll?

12 A. No sir.

13 Q. Okay. So was that an additional debt or contribution that you absorbed for MD Medical?

14 A. Yes sir.

15 Q. All right. You mentioned that you might have received approximately a year worth of rent
16 from MD Medical. Was that over the course of time? Was it more than one month? Was
17 it a few months or was it just a block period where you got rent and then you just didn't get
18 any rent at any other times?

19 A. It was just a blocked period.

20 Q. Okay. Was that rent that you received, was it paid at the rental amount as stated in the
21 lease?

22 A. No sir. No sir.

23 Q. All right. How much was it?

24 A. Six hundred & no/100 (\$600.00) dollars.

25 Q. So you got rent of about six hundred dollars for about one year?

1 A. Yes sir.

2 Q. At the time that you agreed to sell MD Medical did you consider yourself to be a creditor to
3 MD Medical? Did you consider that MD Medical owed you money?

4 A. Yes sir.

5 Q. You had provided monies to the company that was attended between you, Mr. and Mrs. Day
6 as the officers, that you would be reimbursed for?

7 A. Yes sir.

8 Q. Okay. And at that point you had never been reimbursed for any of that money?

9 A. None at all sir.

10 Q. If we take a look at the sheet that has the debts on it. Lets just talk about that in a little more
11 specificity as to what you wrote at the top. When you talk about the top is Invacare Corp
12 listed at the top? When you talk about the top was Invacare listed at the top?

13 A. Yes sir.

14 Q. Okay. So that is the one where you tried to call and you didn't get any response?

15 A. Yes sir. Initially.

16 Q. You made those calls yourself?

17 A. Yes sir.

18 Q. Okay. All right. And do you believe that those calls went to Mr. Reeser's law office or do
19 you know where those calls went to?

20 A. Well one of the calls went to 440-329-10, no, no. I am sorry. I think that it is 444-329-
21 6171 and I think that was the direct number to where the business was and what I tried to do
22 then was to share with them who I was after multiple calls and I spoke with the paralegal and
23 she tried to connect me with I think it was Mr. Fred Bougher. And I left several messages
24 with him and I think that he returned my call once and then I called him back and he said that
25 the information that I received either from the paralegal, she had said that Mr. Day was the

1 guarantor and that he had signed the contract saying that he was going to be responsible for
2 any payment of Invacare Corp. So when I talked with Mr. Bougher that is where I got the
3 sheriff's name from. I guess it was already, it was something that was submitted to the
4 Court via the sheriff. So that is what was happening with that and that is basically what
5 happened.

6 Q. When she told you that Mr. Day was the guarantor what did she explain to you?

7 A. I was talking to her and she goes well Mr. Day is responsible for this and so I said that he has
8 mentioned that he may be getting summoned. I don't know when. And she said that he
9 would be responsible.

10 Q. So did you consider from that Mr. Day was taking care of Invacare?

11 A. Yes sir.

12 Q. And you received this after the sale of the company?

13 A. Yes sir.

14 Q. You received this after the lawsuit had been filed?

15 A. Yes sir. Yes sir, I received that afterwards. It had to have been some time in March
16 because I wrote March 13th on the day that I called.

17 Q. All right. And did you understand that Mr. Day had taken care of it or was going to take
18 care of it?

19 A. Yes sir.

20 Q. Okay. So did you then just move to the next debt on the list?

21 A. Yes sir.

22 Q. And begin paying that?

23 A. Yes sir.

24 Q. Has MD Medical exhausted all of its money?

25 A. Yes.

1 Q. The monies that you are receiving directly from the sale of the business do you consider that
2 reimbursement for the money that you invested in the business?

3 A. Yes sir.

4 Q. All right. And also the debts that you expect to face going forward from the IRS and
5 probably the Department of Revenue?

6 A. Yes sir.

7 Q. Okay. And again is that Three hundred twenty thousand dollars going to be sufficient to
8 cover all of the anticipated debts as calculated by your accountant?

9 A. No sir.

10 Q. So you again would be losing additional money because of MD Medical?

11 A. Yes sir.

12 Q. All right. Does that seem fair and equitable to you?

13 A. No sir.

14 Q. And just as a point of reference the rental amount that you received are you certain about that
15 because you had your own little journal that you kept handwritten notes?

16 A. Yes sir.

17 Q. And you have provided copies of that to Mr. Reeser?

18 A. Yes sir.

19 Q. All right. Do you have possession of any banking information regarding MD Medical that
20 we have not provided to Mr. Reeser?

21 A. No sir, I don't.

22 Q. All right. At any point was your medical practice and MD Medical ever joined as partner
23 entities or a subsidiary or anything like that?

24 A. No sir.

25 Q. It has been a completely separate practice?

1 A. Yes sir.
2 Q. And you ran your medical practice?
3 A. Yes sir.
4 Q. And you believed that Mr. Day was running MD Medical?
5 A. I believed that Mr. Day was running MD Medical.
6 Q. And Mr. Day has indeed profited by salary and draws from MD Medical, significantly?
7 A. Yes sir.
8 Q. And I believe that you calculated Ninety thousand dollars that they received over nine (9)
9 years to be close to One million dollars?
10 A. Yes sir.
11 Q. All right. And you again how much did you receive?
12 A. I didn't receive anything sir.
13 Q. All right. Thank you.
14 MR. JOHNSON: Your Honor, I don't have any other questions.
15 THE COURT: Counsel.
16 **REDIRECT EXAMINATION BY MR. REESER.**
17 Q. Dr. Mathis, I remember you said that on that little sheet right there on the desk that you
18 spoke to somebody at Invacare?
19 A. Yes sir.
20 Q. When was that?
21 A. It had to be somewhere around March 13th or maybe March 14th or the next week or the next
22 week. But you know I called several times.
23 Q. Were you aware of the state of litigation between Invacare Corp and MD Medical at that
24 time?
25 A. No sir. I wasn't aware of it until the paralegal had shared with me that because of the

1 outstanding debt that I would be involved with the courts or MD Medical would be involved
2 with the courts.

3 Q. So someone told you that MD Medical would be involved?

4 A. Yes sir.

5 Q. Did you know that MD Medical had already been sued and judgment entered against it at that
6 time?

7 A. No sir.

8 Q. I think that is all the questions I have got for you.

9 A. Thank you sir.

10 THE COURT: All right. You may step down.

11 A. Thank you Judge.

12 MR. REESER: Your Honor, we think that Dr. Mathis's testimony makes it pretty clear that
13 Invacare got its judgment, a judgment by default, they served Mr. Day with the Complaint, for not
14 paying on the note that he had given to Invacare. We initiated suit back in 2014 and default
15 judgment was entered on January 21, 2015. The law enforcement tried to execute on that judgment
16 in February of that year and returned a Nulla Bona. And either way in March, Dr. Mathis knew
17 about this debt, MD Medical's debt to Invacare, and what does he do. He still goes around and sells
18 the company. A company that has a hundred and eighty thousand dollars in inventory that could
19 be used to satisfy the debts of the company. He gets Three hundred twenty thousand dollars for it.
20 And he is paid a hundred thousand dollars, the deposit he gets and funds it right through MD
21 Medical's bank account. And so after he sells the company there are more withdrawals from MD
22 Medical bank account, eight thousand, three thousand, for all times. And he pond these through a
23 personal account that he hasn't provided the records for. We don't have any records on one account
24 that he received grant pay by MD Medical. We don't have any information on any account where
25 he took the money from MD Medical and where he put it. But he has testified you know I was

1 paying debts from my personal account and with my credit card, also. I would certainly consider
2 that relevant to or related to MD Medical in some way. He hasn't provided us with that. I can't
3 verify it. I don't know. But the facts that we know for sure is that both Mr. Day and Dr. Mathis
4 knew about the Invacare judgment. They knew about the debt long before the sale. They went
5 through with the sale. And fondle money through the account to their own personal accounts which
6 they haven't shown us. So Your Honor at this point we would like to ask, well we would ask the
7 Court for an Order that Dr. Mathis put any funds that he has received in accordance with this
8 agreement into a separate account to be paid to my client to payoff its debt. As he said that he will
9 continue receiving money in exchange for his sale of the company over the next I believe one and
10 a half years. That money is rightfully ours. It was a debt incurred in the course of business and I
11 understand that Dr. Mathis paid down other debts and didn't pay others but we do have a judgment
12 against MD Medical. It wasn't a simple loan debt at that point. It was an enforceable debt against
13 his company. And after that time he decided to sell it with all of its assets and then try to escape
14 liability for its debts. Your Honor, we think it is a clear picture of some money flowing into various
15 accounts of Dr. Mathis and Mr. Day. They are taking money and are avoiding paying their debts.
16 Your Honor at this point we would just ask for an order again ordering Dr. Mathis to take these
17 amounts he is paid in accordance with the purchase agreement and use it to satisfy Invacare's debt
18 or Invacare's credit against M. D. Medical.

19 THE COURT: Any response?

20 MR. JOHNSON: I think Mr. Reeser skipped a step, Your Honor. This Order in Reference to the
21 Rule to Show Cause only gives Dr. Mathis notice that he is here for a discovery deposition. He has
22 received absolutely no notice that anyone is seeking any liability against him or that anyone is
23 seeking any money or to order him to do anything other than to do what he just did. Come and tell
24 what he knows about MD Medical and how it ran and why the company is now closed and what the
25 company had at the time that it did close. He has done that. He has satisfied this order. This order

1 does not give Mr. Reeser the right to request and does not authorize the Court to issue any other
2 ruling requiring Dr. Mathis to do anything additionally. Mr. Reeser, if he would like, can file an
3 action against Dr. Mathis. Which he did not do it in this case. That has been clear. Dr. Mathis is
4 not a party to this case. So I don't think that there is any jurisdiction. I respect this Court greatly
5 and we are here today but I think that Mr. Reeser is extending the jurisdiction even with ordering Dr.
6 Mathis to be here with the minimum notice that he had considering that his judgment is only against
7 MD Medical and Gary Day. It is interesting that it doesn't and the reason that I said that, Your
8 Honor, is because as worded it doesn't order Dr. Mathis to be here as a member of MD Medical.
9 It attempts to order him to be here personally which I think that is the extent of the jurisdiction. And
10 so we certainly are way beyond that scope if we are going to allow an order that requires him to do
11 anything personally. The law is clear. The debts are what they are. MD Medical is to pay its
12 debts. It is interesting that - - it makes it more interesting that Invacare sued and got a judgment
13 but that doesn't in fact give them any priority unless we are talking about some type of public sale,
14 Your Honor, but the South Carolina Uniform Limited Liability Company Act makes it very clear that
15 a dissolved company can pay the debts of the owner that it chooses. So Your Honor you know it
16 is unfortunate that when Dr. Mathis actually did try to respond to what Mr. Day gave him but it is
17 unfortunate that as he described it he got what I am going to describe as a run around from Mr.
18 Reeser's company or from his client I guess because they thought that they had some advantage with
19 litigation. Maybe if they had just answered the call then that would have been the time when MD
20 Medical still had \$10,000.00 in its account and it could have made some payment to Invacare. That
21 money is gone. All of the money that is being spent now is Dr. Mathis's money. He was a creditor
22 just like all of these other people. The law allows that. The operating agreement for the LLC which
23 we provided to Mr. Reeser specifically states that the members of the LLC can do business and
24 interact with the LLC as if they were not members of the LLC. As the owner of the building
25 collecting rent was an interaction with the LLC just like any other person would be allowed. It is

1 clear. It is normal. It is natural and it is allowed and discussed in South Carolina Limited Liability
2 Company Act that where members have made loans to the company that they would expect to get
3 it back which is what Dr. Mathis testified to. And Your Honor, you have had a chance to review
4 the Transcript of Mr. Day's testimony and he also agreed that it was expected that Dr. Mathis would
5 at some point get paid back. Those are loans. He was a creditor. He is in line just like everyone
6 else. And if Mr. Reeser or his client wants to actually seek an action well pursue an action against
7 Dr. Mathis, individually, he has no authority for an order against Dr. Mathis. He can sue Mr. Day
8 all day long. He sued Mr. Day. He didn't sue Dr. Mathis. So we would just argue, Your Honor,
9 that Dr. Mathis has fulfilled his obligations under the order that was issued and that should end not
10 only this inquiry of the Court of Dr. Mathis but it also should end any further attempts that Mr.
11 Reeser or his client would make short of filing a law suit, serving Dr. Mathis with a proper notice
12 of what their actual claim is as opposed to suing his business partner and then trying to drag him in
13 at the tail end which I believe there is clear South Carolina law and one of the cases is that the
14 Department of Revenue in fact was involved in, that speaks of that, which is clearly inappropriate
15 under South Carolina law. He has to have notice of the claim against him if he is to answer. And
16 no notice that he has to pay so much to Invacare from his individual funds. We have provided all
17 of the bank records that there ever were for MD Medical. Mr. Reeser pretends that he isn't sure
18 what went where. It is right here. I am not sure why he is not sure of it. But it has been provided
19 to him. And it has been clear that the debts that have been paid by MD Medical with Dr. Mathis
20 paying them as the actual person who paid them but MD Medical's debts have exceeded the money
21 that MD Medical had. We believe that should resolve all issues in the case. If they want to pursue
22 their judgment against Mr. Day that is fine. If they believe some additional receivables might come
23 in to MD Medical that may change their story but as it sits the money that Dr. Mathis receives from
24 the sale you know maybe not perfectly structured in regards to who they wrote checks to or what
25 have you but the intent of the parties there was clear that Dr. Mathis was to be reimbursed for the

1 significant investment he had made. Mr. Day has received a great income of over a million dollars
2 over the years and Your Honor if we calculated Ninety thousand dollars times 9 plus the draws that
3 he took, he and his wife have received well over a million dollars from the company while Dr.
4 Mathis has only incurred debt and we would argue that this Court eventually would have some sort
5 of balance of that scale and that Mr. Reeser's request that Dr. Mathis be ordered to pay anything
6 should be denied. Thank you, Your Honor.

7 MR. REESER: If I may respond briefly?

8 THE COURT: Yes sir.

9 MR. REESER: Your Honor, this is a Court of Equity. And this transaction and this sale between
10 Mr. Petrich and Dr. Mathis after they see the writing on the wall with MD Medical and Mr. Day
11 testified that they knew that this was coming, the action our company was taking, Dr. Mathis knew.
12 But what do they do they put the business up for sale. Liquidated all of its inventory. And don't
13 pay its creditors at the time. They had some judgment creditors at the time. And Your Honor, we
14 believe that this agreement should be set aside here now as a fraudulent transaction. These
15 \$4100.00 payments are apart of that. We don't believe ordering the direction of the money would
16 salvage anything or the undoing of any fraudulent transfer if that is how this Court has found. We
17 seek equity to have our judgment rightfully paid as a judgment creditor.

18 MR. JOHNSON: Of course, Your Honor, if he wants to set it aside there is a legal procedure for
19 that. It is called a Summons and Complaint.

20 THE COURT: Well and I understand what you are saying Mr. Johnson.

21 MR. JOHNSON: Yes sir.

22 THE COURT: But the problem here and lets go off the record.

23 (OFF THE RECORD).

24 (BACK ON THE RECORD).

25 THE COURT: If you would submit a proposed Order and I will consider it with any backup as far

1 as argument and the basis for it Mr. Johnson as well.
2 MR. JOHNSON: Yes sir, Your Honor.
3 THE COURT: And in the meanwhile I am just throwing that out there for you gentlemen to think
4 about. All right.
5 MR. JOHNSON: Yes sir, Your Honor.
6 THE COURT: Gentlemen have a good day and I will expect that when I get it from you.
7 MR. REESER: Thank you, Your Honor.
8 MR. JOHNSON: Thank you, Your Honor.
9 MR. REESER: Is nineteen (19) days, okay.
10 THE COURT: That is fine considering you have got the holidays in between. All right. Have a
11 good day gentlemen.
12 MR. REESER: Thank you, Your Honor.
13 -----END OF HEARING-----
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1 STATE OF SOUTH CAROLINA

2 COURT OF COMMON PLEAS

3 COUNTY OF SPARTANBURG

4

5 CERTIFICATE

6

7 I, the undersigned Sarah Hollis, Court Reporter for the Master-In-Equity for the County of
8 Spartanburg, State of South Carolina, do hereby certify that the foregoing is a true and accurate
9 Transcript of Testimony of the proceedings had at the hearing of the captioned case, before the
10 Honorable Gordon G. Cooper, Master-In-Equity for Spartanburg County, South Carolina, on the 19th
11 day of November, 2015.

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

13

14

Sarah Hollis

15

Sarah Hollis

16

Court Reporter

17 SWORN to before me this

18 2nd day of June, 2016.

19 Spartanburg, South Carolina.

20

21

Sharon L. Winstead

22 Notary Public for South Carolina

23 My Commission Expires: September 7, 2016.

24

25

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF SPARTANBURG

3 INVACARE CORPORATION, INC. AND)
4 ALL ITS SUBSIDIARIES, ASSIGNORS)
AND ASSIGNEES,)

5)
6)
PLAINTIFF,)

7 -VS-)

TRANSCRIPT OF MOTION

8 MD MEDICAL, LLC AND GARY DAY,)

(2014CP42-4205)

9 DEFENDANTS.)

Spartanburg, South Carolina

10

11

REFERENCE HELD:

MARCH 29, 2016.

12

13

B E F O R E:

HONORABLE GORDON G. COOPER,
MASTER-IN-EQUITY FOR SPARTANBURG COUNTY.

14

15

16

WILSON & HEYWARD, LLC,
BY: **BRANDON T. REESER**, ESQUIRE
Attorneys for the Plaintiff.

17

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19

LYLES, DARR & CLARK, LLP,
BY: **CARLOS JOHNSON**, ESQUIRE
Attorneys for Anthony Mathis.

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21

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Sarah Hollis, Court Reporter

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24

25

1 THE COURT: This is Case Number 2014-4205. In the matter of Invacare Corporation, Inc., and
2 all its subsidiaries, assignors and assignees, versus MD Medical, LLC and Gary Day. We are here
3 today on the Motion filed by the attorney for Dr. Anthony Mathis. And that Motion is a Motion to
4 Reconsider. Mr. Johnson are you ready to proceed?

5 MR. JOHNSON: Yes sir, Your Honor.

6 THE COURT: All right.

7 MR. JOHNSON: Your Honor, may it please the Court. I will be brief for the Court's time, this
8 afternoon. Your Honor, we believe this matter is straight forward and clear under the South
9 Carolina law. Your Honor as you stated for the record we are here today on our Motion to
10 Reconsider this Court's order dated December 14, 2015 which arose after an examination before
11 Your Honor under a Supplemental Proceedings arising from a judgment that was entered in the case
12 as captioned. As noted, Your Honor, Dr. Anthony L. Mathis was not a party to the case as
13 captioned. The hearing that was held Your Honor was held pursuant to an Order of Reference and
14 Rule to Show Cause that was issued dated August 24, 2015. Your Honor, the hearing date stated
15 in the Order was continued by agreement of the parties and was not held until a later date, Your
16 Honor, but after that hearing. Your Honor, the December 14, 2015 Order was issued holding Dr.
17 Anthony L. Mathis personally liable for the judgment amount that had been entered in the case as
18 captioned and also requiring Dr. Mathis to apply funds that he may be in possession of toward
19 payment of the judgment and also, Your Honor extending to another gentleman, Dr. John Petrich
20 and requiring him also to submit funds toward the Plaintiff's judgment, toward helping pay the
21 judgment. We filed our Motion, Your Honor, in response to that asking that this Court reconsider
22 the rulings in each of those respects, Your Honor, and hold that in fact Dr. Anthony L. Mathis is not
23 personally liable to the Plaintiff in any amount. That Dr. Anthony L. Mathis is not required to apply
24 any funds to the satisfaction of the Plaintiff's January 21, 2015 judgment. We ask Your Honor also
25 that Dr. John Petrich not be required to pay Plaintiff and that Plaintiff is not entitled to any relief

1 against Dr. Anthony L. Mathis or Dr. John Petrich, personally, without first properly pleading and
2 proving that it is so entitled. We ask that the Court would amend its Order to essentially reverse all
3 of the relief that was granted in the December 14, 2015 Order. Your Honor, we rely as we outlined
4 in our Motion we rely on the law that is stated from the South Carolina Law that our Courts have
5 repeatedly held that it is an error of law for a court to decide a case on a ground not before it. Your
6 Honor, in this particular situation, Dr. Anthony L. Mathis was not served with any pleadings in the
7 original action and had no notice of any request for relief from this Plaintiff as to him personally
8 until actually that hearing date, Your Honor. The hearing that arose from your Order of Reference
9 and Rule to Show Cause only requires that Dr. Anthony L. Mathis appear for depositions and
10 otherwise fully, completely, and truthfully respond to the discover in accordance with the South
11 Carolina Rules of Civil Procedure. Your Honor, we would have no objections to participating in the
12 discovery aspect of the proceedings so we did appear for that limited purpose. It was stated by
13 myself as counsel for Dr. Mathis during the course of that hearing that was the only purpose for
14 which we had agreed to appear. That was the only purpose for which Dr. Mathis had been notified
15 to appear. Your Honor, Dr. Mathis is not required to do anything other than to appear for the
16 purpose of discovery and also to provide some documents and those that he did have access to were
17 provided. So at that point he had complied with this Court's order and had not been given any
18 notice whatsoever Your Honor that any additional or particular relief would be sought from him as
19 an individual. Certainly, Your Honor there was no indication that - - no notice from this Plaintiff,
20 Your Honor, that Dr. Mathis would be sought to be held personally responsible for a judgment they
21 got against two other parties, an entity and another individual, two other parties, Your Honor. So
22 we would just set out in our Motion that is a clear error of law. There was no notice of the grounds
23 for relief in that regard. In regards to personal liability and so if it is not allowable, therefore, for
24 a court to grant such relief. Your Honor, we brought that very clearly under South Carolina law.
25 And I actually, besides printing a copy Your Honor for the Court of the South Carolina Court of

1 Appeals action, *Chart House, Inc. v. Palmetto Bay Club Owners' Association, Inc., and others*, Your
2 Honor, if I may and I would like to extend my argument just a little bit specifically citing for the
3 record in this case. Your Honor I believe the Court will find Page 3 of this action in this particular
4 case, Your Honor, the South Carolina Court of Appeals upheld that ruling of law that it is an error
5 of law for a court to decide a case on a ground not before it. We argue that is the position that Dr.
6 Mathis sits in today. The Court has granted relief against him on a basis that was not before it
7 pursuant to the only document giving rise to his involvement in the case, the Order and Rule to Show
8 Cause. And we would note, Your Honor, that the Court of Appeals even went so far in *Chalk House*
9 to say that where relief is vaguely requested it is still insufficient where the grounds are not
10 specifically set forth over the basis of that relief. The Order that Your Honor issued is the first time
11 that, which Your Honor executed, is the first time that any action on a detail basis or grounds for
12 relief were even presented by this Plaintiff, Your Honor, and therefore, it being evidence to us at that
13 point for the first time that they are relying on the Statute of Fraud, I am sorry Your Honor, The
14 Statute of Elizabeth, and claiming that there was a fraudulent conveyance. Well Your Honor, Dr.
15 Mathis was never given notice of that and never given an opportunity to specifically plead in any
16 response, to plead in response to that claim. Your Honor, he did testify when he was here repeatedly
17 that all of the monies that the LLC had was used to pay debts and any other monies were his monies
18 personally. That should be litigated. If this Plaintiff doesn't agree with that then that is a point that
19 should be litigated. That is not a point that can be conclusively determined in the proceedings that
20 we have here, Your Honor, under the appropriate provisions of South Carolina law. Not only are
21 the parties entitled to have notice of the claims or actions against them Your Honor. If this Plaintiff
22 does intend to rely on a fraudulent conveyance argument Your Honor then they have to prove that
23 by a clear and convincing evidence under South Carolina law. In this case there was definitely
24 contested evidence here. There was not even a presentation in defense from Dr. Mathis. There was
25 no outline and even presentation of the claims from the Plaintiff to even establish what points of

1 evidence had been proven. There was simply questions to Dr. Mathis about what he knew about
2 the status of MD Medical, LLC, and the bank accounts that he was familiar with. You know, there
3 was no presentation of basis for relief and certainly Your Honor there was never established any
4 standard of proof or anything that would even get us close to the heightened burden of clear and
5 convincing evidence, Your Honor, which of course as Your Honor is aware that is even greater than
6 our usual standard of preponderance of the evidence that we most often are required to show in our
7 civil practice. Here in this case the Plaintiff has submitted for this Court an execution that just
8 summarily ignores the clear and convincing evidentiary standard, Your Honor. Also, there are two
9 grounds that the Plaintiff would be required to show in order to prove a fraudulent conveyance and
10 have such a conveyance overturned, Your Honor. If it is conceded in the Order under Your Honor's
11 signature but that is prepared by the Plaintiff so we would believe that to be an admission conceded
12 that there was no fraudulent intent for any of the transactions the Plaintiff requested. The Plaintiff
13 did summarily states that the transactions were done without consideration. Well Your Honor that
14 is absolutely untrue. As Dr. Mathis is responding to the Plaintiff counsel's inquiry, he explained
15 the status of the situation and the considerations that were at play when these parties made the
16 agreement that they made to sale and dispose of the physical assets and he also explained what the
17 consideration and the intent of these parties were and the use of the liquid assets in paying the debts
18 that were available and that they were aware of needing to be paid and where they had gotten
19 response from those crediting parties so that they could pay them. Your Honor, the record of the
20 proceedings involving Dr. Anthony L. Mathis, Your Honor, are absolutely deficiency to support the
21 order that was signed holding Dr. Anthony L. Mathis personally liable, Your Honor. We would just
22 simply ask that the Court would reconsider its Order and set that aside, Your Honor, in its entirety
23 and we will be happy to prepare an order doing that for Your Honor and then requiring this Plaintiff
24 to comply with the proper procedural and due process for South Carolina law and first of all give
25 proper notice of the basis for its claim and its actual request for relief and also, Your Honor, after

1 giving notice they are required to actually prove it by clear and convincing standards, Your Honor.
2 So I think it is inappropriate for this Order to stand. I think it is a clear violation of the due process
3 for this order to stand, Your Honor. And the Plaintiff is not prejudiced in any way because the law
4 requires them to actually properly plead and properly prove their case, Your Honor. So we believe
5 that an order setting aside the previous order of this court, the December 14, 2015 order of this
6 Court, we believe an order setting that aside Your Honor is absolutely proper as a matter of law and
7 certainly under the facts of this case, Your Honor. Thank you.
8 THE COURT: All right. Counsel.
9 MR. REESER: Good afternoon, Your Honor. Brandon Reeser on behalf of Invacare Corporation,
10 Inc. Our position on this Motion is that the Court's order as issued is proper. We believe actually
11 in all respects this case is very simple. Based on Dr. Mathis's testimony the last time we were
12 before Your Honor he says, yes, Invacare is owed a debt. He knows that Invacare has a judgment
13 against MD Medical before he entered this transaction and yet he chooses to do it anyway. And he
14 testifies, yes, I entered into this transaction in April whenever I became aware of this judgment in
15 March. After calling our office. After they received notice of the judgment. And he goes ahead
16 and enters into a transaction by which he sells and Dr. Petrich buys all of MD Medical's physical
17 assets and account contracts. He is selling the assets of the Corporation. I don't believe that there
18 is any testimony in this case that can be more clearer or more convincing than Dr. Mathis's when he
19 is acting on behalf of MD Medical. Your Honor, there was some testimony from Dr. Mathis that
20 he entered into this transaction to receive what he believed to be the value of the business he was
21 owed. I am not sure what basis that was on. He claims it to be a loan. We have no evidence and
22 no documentation has been produced that it was a note. That Mr. Day testified back in July and Dr.
23 Mathis testified they are both shareholders. They have the position as shareholders of MD Medical.
24 It is pretty clear. Probably the only transaction that the Order addresses is a direct transaction from
25 Dr. Petrich to M. D. Medical. In this case Dr. Mathis is selling all of MD Medical's assets. As part

1 of this transaction it is a hundred thousand dollar payment. That payment is put in MD Medical's
2 bank account which records are attached to this Order and have been provided to Dr. Mathis and by
3 Dr. Mathis. And Dr. Mathis takes those funds, that hundred thousand dollars, and he puts it in his
4 personal bank account, he testified. This is a month and a half after my client obtained this
5 judgment. That is the fraudulent transfer in this case. No one at any time sought to nullify this
6 entire contract. Only to the extent that my client is owed money in this case. And Your Honor we
7 believe that is proper. And even though Dr. Mathis claims that he didn't receive any notice of any
8 personal liability or any duty to assume this debt. The notice is in the file, Your Honor. It is very
9 extensive on the matters in which Dr. Mathis has been asked to testify and on which he did testifying
10 in front of the Court including location of the company's properties, assets, why a receiver shouldn't
11 be appointed. It is very extensive. And this Court sits in equity and this Court's equitable powers
12 are very broad. And as much as Dr. Mathis would like to have notice or any third party would like
13 to have notice Your Honor the Court's powers to compel payment of the debt, in this case the money
14 exchanged from Dr. Petrich in exchange for these assets. I mean it is all one contract. That is the
15 property of MD Medical. MD Medical is giving up its assets for cash. So this cash is put into MD
16 Medical's bank account and Dr. Mathis takes it right out and puts it into his own personal account.
17 Your Honor, the statutory authority is pretty clear in Section 15-39-410. This Court can order any
18 property of debtor to be applied toward any creditor debt if it is a third party, in the hands of a third
19 party, in the hands of a party. But Dr. Mathis is saying that we need to notify anyone that has
20 property of the debtor and make them parties to Supplemental Proceedings to see what should be
21 applied to a creditor's debt. Your Honor that is a burden of law that is imposed, a statutory law
22 doesn't impose because in many cases it might be impossible. In most cases it might be impossible.
23 You are asking a creditor to track down all of the property, all of the assets of the company, before
24 they have had an opportunity to ask the Company. To ask Dr. Mathis. To ask Mr. Day. What do
25 you have? What are your assets? That is the point of Supplementary Proceedings. We might not

1 have known what the basis of any claims against Dr. Mathis might be until we have had a chance
2 to talk to him. Mr. Day included. MD Medical included. The point of these proceedings. And
3 your powers in equity by statute are very broad and regardless of notice it is equitable and if there
4 is property of the judgment debtor, of MD Medical, if there is cash that has been paid and is
5 continuing to be paid from Dr. Petrich in exchange for MD Medical's assets after this judgment is
6 entered as a matter of equity those should be applied to my client's debt and that is the extent that
7 this order goes to. The debt was existing. The judgment was existing. There is no secret about
8 that. It was existing almost two (2) months before this transaction was entered into. It just needs
9 to be applied by Dr. Petrich or Dr. Mathis. We are saying that there is pretty clear evidence that Dr.
10 Mathis had access to a hundred thousand dollars at least of the contractual money before we got into
11 Supplemental Proceedings but well after the judgment was entered. I just want that money applied
12 to my client's debt. That is all we have sought in this cast just to satisfy this debt and this Order is
13 tailored, your Order is tailored to grant us just that relief to the extent that we have now. And the
14 extent that property is cash which has been exchanged for assets. In his name, a third party. It was
15 put in Dr. Mathis and Mr. Day. Thank you, Your Honor.

16 THE COURT: All right. Counsel.

17 MR. JOHNSON: Just a brief reply, Your Honor. The point that Mr. Reeser states is so severely
18 clear is the point that has to be litigated. In *Deer Island Lumber Co. v. Virginia-Carolina Chemical*
19 *Co.*, a long time ago, Your Honor, in 1919, the Supreme Court of South Carolina and of course the
20 statutory platform was different then Your Honor but even then the process is the same, Your Honor,
21 as maintained. Then the South Carolina Supreme Court said that where a situation like this one
22 exist it is true that this Plaintiff is allowed to discover where assets are, whether they maybe in the
23 hands of a third party. The current framework says that where assets that belong to the debtor are
24 in the hands of a third party. That is the point that has to be litigated. That is the point that the
25 Supreme Court stated in *Deer Island Lumber Co.*, at 111 S.C. 299. Your Honor, it said that while

1 the Plaintiff be allowed to identify these assets it has to be determined the ownership of the assets.
2 The only evidence in this case is that all of the money that Dr. Anthony Mathis has, Your Honor,
3 are his funds that he likely received in payment of the debts he was owed. Other funds of MD
4 Medical were rightfully paid in payment of other debts. He was not aware of this Plaintiff's
5 judgment until after that judgment was on record Your Honor and the attempt that he made to
6 contact them as he testified was not responded to so they moved forward with paying the debts that
7 they were aware of. If this Plaintiff now believes that those monies truly belonged to MD Medical
8 and that Dr. Tony Mathis improperly you know held onto those monies as his own personal funds
9 that is the point that they have to prove. He doesn't get to come in here and say well it went into
10 their account and then it went into another account. That is fine. There is nothing that establishes
11 this Plaintiff is a priority creditor. They have presented nothing that said that they should have been
12 paid before any other creditor. So his argument it fails. He has to prove that there was some
13 fraudulent conveyance or he has to prove that at least he should have been paid before the other debts
14 were paid. They have not done that, Your Honor. They haven't even attempted to do that. They
15 just want the Court to decide with them because they feel like it should be easy enough to just you
16 know say that amount of money was sufficient. It should be easy enough for them to attribute a
17 portion of that towards their judgment. With that the law doesn't allow this type of situation to
18 resolve where it is easy enough. Your Honor, the law requires that even if they identify funds that
19 may be in the hands of a third party they still have to prove that those funds were owned by the
20 debtor. Mr. Reeser summarily says, oh they were, you know he has MD Medical's money. No he
21 has his money now. He had a debt that has been partially satisfied, just like this Plaintiff had a debt.
22 So our statutory claim of law allows members of the LLC to be debtors of the LLC. He mentions
23 the testimony of Mr. Day and Dr. Mathis and they are both very clearly saying that yes Dr. Mathis
24 put a large amount of his personal money into the company all with the expectation that he would
25 be repaid. That these were loans to this company. If Mr. Reeser wants to challenge the basis for

1 that documentation. He has to make that clear to Dr. Mathis. So Dr. Mathis can then respond to
2 that challenge and that is the point that they have attempted to circumvent here, Your Honor. And
3 that is why the Order of December 15, 2015 should be set aside Your Honor. And this Plaintiff, if
4 they want to seek relief from parties who they didn't sue originally they need to file an action against
5 those parties. That we believe is absolute and clear under the law. Your Honor, I only have one
6 copy of this *Deer Island* case. Right here it says they shall hold fund until the issue of ownership
7 shall be decided, Your Honor. Your Honor, I have marked that case caption because it is an old case
8 and it says the issue of ownership shall be decided - - so that is where we are Your Honor. We have
9 participated in the discovery and Dr. Mathis was honest and accurate in his responses and so if that
10 be the case and this Plaintiff feels like that they have now identified some funds then now the issue
11 of ownership has to be decided before the Statute of Elizabeth can be applied because if these are
12 not the debtor's funds then the Statute of Elizabeth does not apply as codified under South Carolina
13 law. So they had to establish that. And they have to probably present that claim and then prove
14 that claim, Your Honor. And that is our position on that. Thank you.

15 THE COURT: All right.

16 MR. REESER: If I may briefly just for the record. Included in our Order of Reference and Rule
17 to Show Cause we asked for all documentation of all previous loans, any books, any records or any
18 accounts that MD Medical has with any party or Mr. Day or Dr. Mathis. They have not produced
19 any note, any documentation, as far as we are concerned this is just testimony. There is no
20 documentation backing up any creditor argument. But otherwise we say that really doesn't matter,
21 because the money was put in MD Medical's account but it was taken out by Dr. Mathis. That is
22 clear. The bank records are clear. Dr. Mathis's testimony is clear and Mr. Day's testimony is clear.
23 That is the only part of the transaction that the Court's order, oh says or should be reverted, that is
24 it. And only to the extent that my client's judgment has not been paid. The rest of the transaction
25 which involves another Two hundred thousand (\$200,000.00) dollars, that is between Dr. Petrich

1 and that is between Dr. Mathis. I am not seeking to violate or interfere with any kind of contractual
2 relationship and we are not asking the Court to do that. I just want to make very clear what
3 documents we have received and what we have requested just in case there is any question. Thank
4 you.

5 MR. JOHNSON: Your Honor, I say that the order speaks for itself. There has been no reference
6 here for the request of any loan documents, any verification of loan documents. And as to
7 documents pertaining specifically to MD Medical, the documents that Dr. Mathis had in his
8 possession is what he relied on. The agreement that they are questioning is an agreement between
9 Dr. Mathis and Dr. Petrich. If they want to challenge that agreement, Your Honor, simply Your
10 Honor they just have to prove it.

11 THE COURT: Well as I recall I never saw an agreement so I don't know what parties are the - - -

12 MR. REESER: Your Honor, between Dr. Mathis and Dr. Petrich, to sell all of MD Medical's assets.

13 THE COURT: All right.

14 MR. REESER: And I have an unexecuted document provided by Mr. Day.

15 THE COURT: All right.

16 MR. JOHNSON: I am sure I don't have an extra copy, Your Honor, but - - -

17 THE COURT: That is fine. Is MD Medical still or not in existence?

18 MR. JOHNSON: No sir, Your Honor. It is not. It actually is not a South Carolina Corporation
19 it is a Delaware Corporation. So I don't know at this point, Your Honor, if the Delaware counsel
20 actually dissolved the - - well I said corporation but it is a limited liability company. I don't know
21 at this point if the Delaware counsel ever finalized the dissolution process, Your Honor, but I believe
22 that should have happened. It is certainly not doing any business.

23 MR. REESER: Your Honor, I believe that it was dissolved in the spring of last year.

24 MR. JOHNSON: Oh, it was dissolved.

25 MR. REESER: Based on information from the Secretary of State.

1 MR. JOHNSON: All right.

2 THE COURT: The thing that concerned me then and does concern me now and I was lenient with
3 Dr. Mathis as far as not finding fraud at that point as far as the transfer but all of the parties were
4 aware of the outstanding lien or judgment, but the transaction went on anyway. So the only way that
5 I would amend my previous order is to provide a time period for Dr. Mathis to deposit into the MD
6 Medical account sufficient funds to satisfy this judgment and failing that deposit to be made within
7 a certain period of time then a judgment would be entered against Dr. Mathis. Finding that those
8 funds that transferred out were funds of MD Medical.

9 MR. REESER: Your Honor, if I may. Dr. Mathis closed all of MD Medical's account in June of
10 last year.

11 THE COURT: All right.

12 MR. REESER: It currently has no bank account.

13 THE COURT: All right. Well that would be the way that I would take away so to speak or amend
14 that judgment against him personally is to have those funds reappear, either deposit with the Court
15 or take care of it, with some way to put those funds back where they were prior to the transaction.

16 MR. JOHNSON: And if I may, Your Honor, reviewing as was submitted by Plaintiff's counsel the
17 series of bank statements that showed and this is part of why they have to file a lawsuit and there has
18 to be discovery and testimony and points of proof under the theory that they are proceeding because
19 one of the elements that they have to prove is that there were not sufficient assets remaining to
20 satisfy their judgment. The bank accounts, the timing of the accounts that they have actually
21 submitted to the Court that were provided show that there were funds remaining that could have been
22 used to satisfy their judgment. And Mr. Mathis testified that he attempted to communicate with
23 them and at that time they didn't recognize him as being a party to the entity and so he paid other
24 debts. And so you know that is why they have to actually plead and prove it because we should
25 have the opportunity to respond point for point and provide all of those points of defense in relation

1 to whatever particulars they believe were improper. The law doesn't - - I understand the Court's
2 concern. I do. I understand it and it makes sense and you know I will say that there has been a
3 continuing attempt to resolve this matter but even giving maybe the questionable appearance of it,
4 that is not sufficient to support the specific relief that they are requesting. They have to show that
5 questionable appearance actually is fraudulent. They have to prove it by clear and convincing
6 evidence. I mean you know, of course, we have great esteem for this Court. And I understand Your
7 Honor's concern but I don't think that they can get that relief as they presented the circumstances,
8 Your Honor. I think they have to present those circumstances in a more clear and a more specific
9 pattern and there are defenses that Dr. Mathis and the company MD Medical even itself would have
10 had. I mean, he didn't have notice that they were in default. Dr. Mathis's liability, he is not a
11 guarantor. Gary Day was a guarantor. And Gary Day can't avail himself of any personal individual
12 defenses because he was a guarantor. So he is bound to the default judgment. Anthony Mathis
13 was not a guarantor under the underlying contract so he does have defenses available to him that he
14 hasn't to this day had an opportunity to correct.

15 THE COURT: So MD Medical is no longer in existence?

16 MR. REESER: That is correct, Your Honor. Shortly after this transaction was entered into in
17 April. I believe the last account - - MD Medical had an account with Parker Sterling throughout its
18 existence. A new account was opened after Mr. Day left the company in March. Dr. Mathis closed
19 both of those accounts I believe it was between June and August of last year, about three or four
20 months after selling the business. And the records we have of the last few months there was no
21 accounting.

22 THE COURT: All right. Then based on the present status of everything and after considering the
23 argument I am going to deny the Motion for Reconsideration as presented by counsel for Dr. Mathis.

24 Mr. Reeser prepare the Order and send it to Mr. Johnson for his approval.

25 MR. REESER: Yes, Your Honor. Your Honor, is a Form 4, okay?

1 THE COURT: The Form 4 is fine.

2 MR. REESER: All right.

3 THE COURT: That is fine.

4 MR. JOHNSON: I would prefer a detailed order but if that is the Court's determination. Okay.

5 THE COURT: All right.

6 MR. JOHNSON: Thank you, Your Honor.

7 THE COURT: Gentlemen have a good day.

8 MR. REESER: Thank you.

9 -----END OF MOTION-----

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1 STATE OF SOUTH CAROLINA

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COURT OF COMMON PLEAS

3 COUNTY OF SPARTANBURG

4

5

CERTIFICATE

6

7 I, the undersigned Sarah Hollis, Court Reporter for the Master-In-Equity for the County of
8 Spartanburg, State of South Carolina, do hereby certify that the foregoing is a true and accurate
9 Transcript of Record of the proceedings had at the motion hearing of the captioned case, before the
10 Honorable Gordon G. Cooper, Master-In-Equity for Spartanburg County, South Carolina, on the 29th
11 day of March, 2016.

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

13

14



15

Sarah Hollis

16

Court Reporter

17 **SWORN** to before me this

18 2nd day of June, 2016.

19 Spartanburg, South Carolina.

20

21

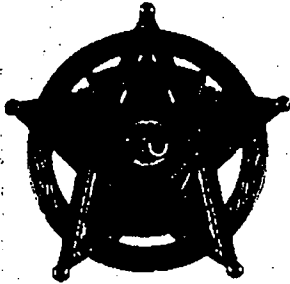


22 Notary Public for South Carolina

23 My Commission Expires: September 7, 2016.

24

25



R 11/14/14

SPARTANBURG COUNTY SHERIFF'S OFFICE
CHUCK WRIGHT SHERIFF
PO BOX 771 SPARTANBURG SC 29304
TEL: (864) 503-4514

CASE NO: 2014-CP-42-4205

87034

LH

State of South Carolina
SPARTANBURG COUNTY

[x] AFFIDAVIT OF SERVICE 11/25/14
[] AFFIDAVIT OF NON-SERVICE

RE: INVACARE CORPORATION, INC. AND ALL ITS SUBSIDIARIES, ASSIGNORS AND ASSIGNEES

-vs.-

GARY DAY, INDIVIDUALLY AND MD MEDICAL, LLC, 127 MILLS AVENUE, GREER, SC 29651

APPEARED BEFORE ME, Officer Hendrix, DEPUTY SHERIFF OF THE SPARTANBURG COUNTY SHERIFF'S OFFICE, DULY SWORN, SAYS THAT HE/SHE SERVED OR ATTEMPTED TO SERVE THE FOLLOWING CIVIL PAPER(S):

CIVIL ACTION COVERSHEET, SUMMONS (DEBT COLLECTION NON-JURY), COMPLAINT (DEBT COLLECTION NON-JURY), PROMISSORY NOTE AND AFFIDAVIT

[] BY DELIVERING TO _____ PERSONALLY

[] BY DELIVERING TO _____ A PERSON OF AGE AND DISCRETION

RESIDING AT THE RESIDENCE OF THE DEFENDANT(S)
[x] BY DELIVERING TO Gary Day - Register Agent AT THE PLACE OF BUSINESS AND LEAVING WITH HIM/HER COPIES OF THE SAME

127 Mills Ave Greer SC

PAPER(S) SERVED AT: [x] ADDRESS ABOVE [] OTHER

SERVED ON 25 DAY OF November, 2014 @ 2:10 PM HOURS
DEPUTY Officer Jana Hendrix (SIGNATURE)

SWORN TO BEFORE ME THIS 25 DAY OF November, 2014

NOTARY PUBLIC FOR SOUTH CAROLINA Deborah C. Dixon

MY COMMISSION EXPIRES 2017

NON-SERVICE RETURN

[] WAS UNABLE TO LOCATE AND SERVICE ON THE DEFENDANT(S) AFTER DILIGENT EFFORTS BY CHECKING ALL RESOURCES AVAILABLE TO SHERIFF'S OFFICE.

[] MOVED [] VACANT [] DECEASED [] INCARCERATED [] REFUSED ANSWER DOOR

[] NO SUCH ADDRESS [] NOT EMPLOYED [] OUT OF COUNTY/STATE

[] OTHER COMMENTS [Signature]

DEPUTY'S SIGNATURE

HOPE BLACKLEY
DEC 12 PM 1:22

92857

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
IN THE COURT OF COMMONS PLEAS
CASE NO: 14-CP-42-4205
EXECUTION OF JUDGMENT

TO THE SHERIFF OF THE COUNTY OF SPARTANBURG

WHEREAS, Judgment was rendered on the 21ST day of January, 2015
OF an action in the COURT OF COMMON PLEAS

Between Invacare Corporation, Inc., plaintiff and MD Medical, LLC and Gary Day, Defendants
in favor of said plaintiff against said defendants for the sum of \$11,645.61 Dollars, as appears to
us by the Judgment Roll in the office of the Clerk of the Court of Common Pleas, County of
Spartanburg.

AND WHEREAS, The said judgment was docketed in the County on the 22nd day of January in
the year 2015 the sum of \$11,645.61 dollars.

THEREFORE, WE COMMAND YOU, that you satisfy the said judgment out of the personal
property of the said judgment debtor within your county; or if sufficient personal property cannot
be found, then out of the real property in your county belonging to such judgment debtor on the
day when the judgment was so docketed in your county, or at any time thereafter in whose hands
so ever the same may be, and duly return this execution according to the Clerk of the Court of
Common Pleas for the county of Charleston.

WITNESS

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2015 FEB 27 AM 10:00
M. HOPE BLACKLEY

M. Hope Blackley
Spartanburg County Clerk of Court

Spartanburg
Court at Charleston the 27th day of February, 2015.

Bonum S. Wilson, III
BONUM S. WILSON, III
ATTORNEY FOR THE PLAINTIFF

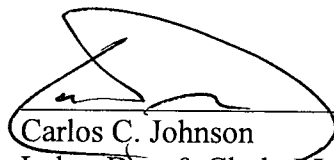
Nulla Bona and Returned to Clerk's
Office 1st day of May 2015

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Certificate of Counsel

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

October 10, 2016



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