

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
In the Court of Common Pleas for the Ninth Circuit

RECEIVED

The Honorable Maite D. Murphy, Circuit Court Judge

MAY 08 2017

SC Court of Appeals

Appellate Case No. 2013-CP-10-4874

Byrdnest, LLC, Craig Sedmak, Stephanie Sedmak, and
Wesley Nau..... Plaintiffs

v.

John Ramaci, Haverly Ramaci, Richard Scott, and Billy
Ulm Defendants

Of which John Ramaci is Appellant

AND

Of whom Bill Ulm is Respondent

RETURN TO APPELLANT'S PETITION FOR SUPERSEDEAS

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Attorneys for Richard Scott and Billy Ulm

Billy Ulm and Richard Scott, defendants in the underlying case, oppose Appellant John Ramaci's Petition for Supersedeas. The trial court's decision to set the plaintiffs' claims for trial was plainly within its discretion because not only are those claims unaffected by Ramaci's appeal, they have absolutely nothing to do with the issue on appeal. Ulm and Scott respectfully ask the Court to deny Ramaci's petition so that the plaintiffs' claims may proceed to trial as scheduled.

Ramaci's primary justification for seeking a writ of supersedeas is that he "was close to resolving" his claims with plaintiffs before he lost a motion to enjoin the assignment of Ulm's crossclaims. (*See* Ramaci Petition at 7.) A case is either resolved or it is not. Claiming to be "close to resolving" a case is the equivalent of saying that a woman is *almost* pregnant or saying that Hillary Clinton was *close* to becoming President. The contention that potential settlement of some claims with some parties in a matter could justify the unusual and extraordinary remedy Ramaci asks this Court to impose is nonsensical.

BACKGROUND

On February 21, 2017, the trial court issued an order ("the Order") addressing various pending motions. On February 27, 2017, Ramaci filed a notice of intent to appeal the Order ("the Appeal"). On March 29, 2017, Ramaci filed his initial appellate brief on March 29, 2017. Ulm filed a motion to dismiss the appeal on April 6, 2017 contending, among other things, that the Appeal was filed by Ramaci solely as an attempt to delay the trial of this matter. Ramaci filed a return on April 14, 2017. The motion is currently pending.

On March 7, 2017, the trial court notified the parties that a term of court was available for the trial of this matter the week of June 5, 2017 through June 9, 2017. The

trial court requested briefing from the parties in response to Ramaci's contention that the entire case was stayed pending the outcome of the Appeal. After considering all briefing,¹ the trial court informed the parties on April 21, 2017 that the plaintiffs' claims would be tried during the June term of court.

In yet another attempt to delay the resolution of this matter, Ramaci has now petitioned this Court for a writ of supersedeas to stay the entire case pending the outcome of the appeal.

ARGUMENT

I. The plaintiffs' claims are matters unaffected by the Appeal.

After the Appeal was filed, the trial court had to determine whether the plaintiffs' claims were affected by Ramaci's appeal of the denial of his motion for injunctive relief as to Ulm's crossclaims. The trial court determined that the plaintiffs' claims are unaffected and should proceed. The decision in *Tillman v. Oakes* is instructive as to how a trial court is to proceed when only a portion of a matter is on appeal:

When a party appeals an order, two questions may arise as to the effect of the appeal: (1) what is the effect of the appeal on matters decided in the order . . . and (2) what is the effect of the appeal on the power of the lower court to proceed with the underlying action while the appeal is pending.

398 S.C. 245, 255, 728 S.E.2d 45, 50 (Ct. App. 2012).

The first *Tillman* question is governed by Rule 241 of the South Carolina Appellate Court Rules. *Id.* "The purpose of a stay under Rule 241—[is] to determine whether the appealed *order* may be carried out or enforced—not to determine whether the *action* may

¹ In his Petition, Appellant neglects to mention that Defendants Richard Scott and Billy Ulm also submitted briefing to the court in support of the plaintiffs' claims being set for trial on June 5, 2017. (See Ramaci Petition at 4-5.)

proceed in the lower court while the appeal is pending.” *Id.* at 255, 238 S.E.2d at 51 (emphasis in original). Whether the Order denying Appellant’s motion for injunctive relief is currently enforceable was not before the trial court and had no bearing on whether the rest of the matter was properly set for trial. Appellant’s reliance on the stay provision of Rule 241 is misplaced and does not support the granting of a supersedeas.

Instead, the proper focus for the trial court was on the second *Tillman* question which is governed by Rule 205 of the South Carolina Appellate Court Rules. *Id.* at 255, 238 S.E.2d at 51. Pursuant to Rule 205, while the trial court does not have the power to proceed with matters actually affected by the Appeal, the trial court “**is specifically allowed to proceed with matters not affected by the appeal.**” Rule 205, SCACR (emphasis added).² Because the Appeal does not affect the plaintiffs’ claims against all defendants the court properly set the plaintiffs’ claims for trial.

a. *The trial of the plaintiffs’ claims will not render the sole issue of the Appeal moot.*

The only question that will be decided in the Appeal is whether the trial court erred in refusing to enjoin the assignment of claims by and between Ulm and Ulm’s Trust.³ As such, the resolution of the Appeal could only affect Ulm’s crossclaims and, in the meantime, the status quo of Ulm’s crossclaims and Ramaci’s defenses to those claims is preserved entirely. *See Graham v. Graham*, 301 S.C. 128, 130, 390 S.E.2d 469, 470 (1990)

² The *Tillman* court explained, “Thus, the existence or nonexistence of a stay under Rule 241 does not control the [trial] court’s power to proceed with the action and address matters not affected by the appeal. Rather, the lower court’s power to proceed is determined by whether the issue sought to be litigated in the lower court during the appeal is a ‘matter affected by the appeal’ under Rules 205 and 241(a).” *Id.* at 255-56, 238 S.E.2d at 51 (emphasis added).

³ This point is further illustrated in Ramaci’s Initial Brief filed with the Court on March 29, 2017.

(discussing the appropriate use of a supersedeas is to “preserve the status quo pending the determination of the appeal . . .”).

Further, the disposition of the Appeal does not currently—and will not ever—have any bearing on the plaintiffs’ claims against the defendants. The outcome of the Appeal will not eliminate any of the plaintiffs’ claims, will not eliminate any of the defenses to the plaintiffs’ claims, and will not decide the admissibility of proof to be offered by any party at trial. Because this is so plainly true, the trial court was within its discretion in setting the plaintiffs’ claims for trial.

In support of petition, Ramaci loosely contends that the appeal affects the plaintiffs’ claims because Ulm’s claims are based on the same underlying facts and circumstances as the plaintiffs’ claims. (Petition at 7.) The trial court considered this issue—along with the issue of judicial economy—and made the determination that is simply not true. In light of the trial court’s rulings on Ramaci’s summary judgment motions, the claims remaining concern only the defendants’ solicitations of the investment in iCache. Each party’s claim is different and each claim will require distinct proof as to: 1) when the representations regarding iCache were made, 2) who made such representations, 3) when and how each investor received and relied on the representations in the iCache pitch book, 4) the diligence exercised in vetting the investment opportunity, 5) when the investment decision was made and 6) how much money was invested.

In order to prevail, each individual investor—whether aligned as a plaintiff or as a crossclaimant—will have to prove the facts and circumstances of Ramaci’s representations. Additionally, the plaintiffs allege that Defendants Ulm and Scott were

also complicit in Ramaci's representations and will have to demonstrate proof of those contentions as well.

The events and representations that led to the plaintiffs' investment are different than those that led to Ulm's. For example, the plaintiffs invested in 2012 after a series of meetings in Charleston which Ulm did not attend or know about. Ulm purchased iCache stock in April and December of 2011 after a series of meetings with Ramaci—none of which the plaintiffs attended. Further, Ramaci has gone to great lengths throughout the underlying litigation to demonstrate that Ulm's position as an iCache director make the facts and circumstances of his decision to invest very different than the decisions of the plaintiffs.

The Appeal does not affect the plaintiffs' claims because the plaintiffs' claims are unique from Ulm's crossclaims.⁴ Thus, pursuant to Rule 205 of the South Carolina Appellate Court Rules, the trial court was within its discretion in setting the plaintiffs' claims for trial as matters "not affected by the appeal." Rule 205, SCACR.

b. *The potential settlement of plaintiffs' claims does not justify staying the entire case pending the outcome of the Appeal.*

Ramaci states: "Unless this Court grants Ramaci's request for supersedeas, Ramaci will be severely prejudiced and will face the prospect of a trial on claims he was close to

⁴ Ramaci is not entitled to wait on the possibility that all the claims against him may be resolved in a single trial. "In short, trials of all issues in the case in a single proceeding is not a mode of trial to which parties are entitled to as a matter of right." *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 73 (2000). Even if no appeal were pending, the trial court would have been acting within its discretion to separate the trial of Ulm's crossclaims from the trial of the plaintiffs' claims. Bifurcation would be warranted due to the complexity of the case as well as the potential confusion of the issues and Ulm's position as both a defendant and a crossclaimant.

resolving before Ulm injected improper cross-claims into the case.” (See Petition at 7.) This bears precise quotation because it is preposterous.

Ramaci always has a choice—at any time—to settle any claims alleged against him. Equally true, the plaintiffs have a choice—at any time—to settle any claims. Parties either settle their dispute or they do not—there is no in between scenario. See Rule 43(k), SCRCF. Further, it was Ramaci's counsel who informed all parties that any previous settlement offers were rescinded over a year ago on March 11, 2016. (See *Exhibit A*: March 11, 2016 Email). It is inaccurate for him to now contend that settlement was eminent.

All parties to litigation face the prospect of trial. Not only is a right to trial the fundamental concept of our justice system, it is protected by the Bill of Rights. See U.S. Const. amend. VII. By definition, proceeding to a civil trial on the merits of a dispute is fair and such a prospect should not support a request for a writ of supersedeas. Even assuming he could demonstrate prejudice, Ramaci's argument would require the Court to make multiple unreasonable assumptions: *if* the Court were to grant a supersedeas, and *if* Ramaci prevails on his appeal, and *if* the plaintiffs were amenable to settlement, and *if* he could otherwise dispose of Ulm's crossclaims, then, and only then, could Ramaci avoid the prospect of trial.

Ramaci repeatedly states throughout his petition that Ulm filed improper and untimely crossclaims. These statements are inaccurate. This action commenced on August 15, 2013. Ulm originally answered on November 14, 2013 and amended his answer to assert crossclaims against Ramaci on January 23, 2014. (See *Exhibit B*: Ulm's Amended Answer and Crossclaims at 8-12). Ramaci has been aware of and actively litigating the claims filed against him for more than three years.

II. The Appeal and Ramaci's Petition were filed to delay the trial of this matter.

The only conclusion that can be drawn from Ramaci's insistence that the entire action must be stayed pending the outcome of his appeal is that the Appeal was filed only for the purpose of delay. Respondent Billy Ulm currently has a motion to dismiss the appeal pending for this very reason.⁵

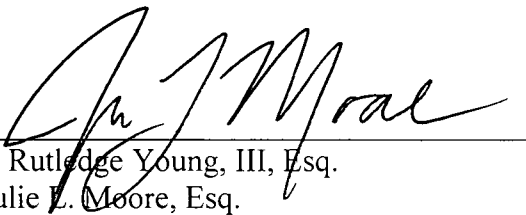
In the Appeal, Ramaci creatively dresses up a plain legal issue of whether an assignment of claims was valid as a request for injunctive relief for the sole purpose of navigating around the prohibition on interlocutory appeals. As the court detailed in the Order, irreparable harm—an essential element for injunctive relief—has been recognized in very limited circumstances. Ramaci argues that he will be irreparably harmed by incurring costs in defense of Ulm's crossclaims. This is true of every defendant in every case and has never been found to constitute irreparable harm. *See Renegotiation Bd. v. Bannerkraft Clothing Co.*, 415 U.S. 1, 24 (1974) (“[m]ere litigation expense, even substantial and unrecoverable cost, does not constitute irreparable injury”).

It is clear that the ultimate goal of the Appeal is to prevent Ulm's crossclaims from ever reaching trial. If Ramaci is ultimately successful on appeal, he will undoubtedly renew previous motions for summary judgment by contending Ulm lacks standing to pursue claims properly belonging to the Ulm Trust. It is disingenuous for Ramaci to attempt to have it both ways. Ramaci cannot delay this entire matter by contending that the plaintiffs' claims and Ulm's crossclaims must be tried together when his plain tactic is to use the outcome of the appeal to dispose of Ulm's crossclaims entirely.

⁵ For a full discussion of Ramaci's use of the Appeal as a delay tactic, please review Respondent's Motion to Dismiss the Appeal filed on April 7, 2017.

CONCLUSION

Defendants Ulm and Scott respectfully request that the Court deny Ramaci's Petition for Supersedeas so that this matter may proceed to trial during the June 5, 2017 term of court.



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Attorneys for Richard Scott and Billy Ulm

May 5, 2017
Charleston, South Carolina

EXHIBIT A

From: [Cory Manning](#)
To: [Benjamin A. Traywick](#); [Rutledge Young](#)
Cc: [Julie Moore, Rode](#); [Adam Hegler](#); [Jenni Jokerst](#)
Subject: RE: iCache
Date: Friday, March 11, 2016 4:40:28 PM

Folks:

I have been instructed to make clear that any settlement agreement/proposal that had been on the table is now withdrawn in case anyone thought otherwise.

Cory

EXHIBIT B

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2013-CP-10-4874

BYRDNES, LLC, CRAIG SEDMAK,
STEPHANIE SEDMAK, AND WESLEY
NAU,

Plaintiffs,

v.

JOHN RAMACI, HAVERLY RAMACI,
RICHARD SCOTT, AND BILLY ULM,

Defendants.

DEFENDANT BILLY ULM'S AMENDED
ANSWER AND CROSS-CLAIMS

FILED
CLERK OF COURT
JAN 23 AM 9:10
BY

COMES NOW Billy Ulm ("Ulm"), by and through counsel, and amends his answer to
Plaintiffs' Complaint as follows:

GENERAL DENIAL

Defendant Ulm denies all allegations of the Complaint not specifically admitted herein.

FIRST DEFENSE AND ANSWER

1. Defendant Ulm is without knowledge and information sufficient to form a belief as to the allegations of Paragraph 1, and therefore denies same and demands strict proof thereof.
2. Defendant Ulm is without knowledge and information sufficient to form a belief as to the allegations of Paragraph 2, and therefore denies same and demands strict proof thereof.
3. Defendant Ulm admits that he is a resident of Georgia and that Richard Scott is a resident of Florida, but is without knowledge and information sufficient to form a belief as to the remaining allegations of Paragraph 3, and therefore denies same and demands strict proof thereof.
4. Defendant Ulm denies the allegations of Paragraph 4.
5. Defendant Ulm denies the allegations of Paragraph 5.

6. Defendant Ulm is without knowledge and information sufficient to form a belief as to the allegations of Paragraph 6, and therefore denies same and demands strict proof thereof.

7. Defendant Ulm admits that he was a director of iCache, Inc. for some period of time. Defendant Ulm denies the remaining allegations of Paragraph 7.

8. Defendant Ulm is without knowledge and information sufficient to form a belief as to the allegations of Paragraph 8, and therefore denies same and demands strict proof thereof.

9. Defendant Ulm is without knowledge and information sufficient to form a belief as to the allegations of Paragraph 9, and therefore denies same and demands strict proof thereof.

10. Defendant Ulm denies that he offered or sold any securities. Defendant Ulm denies that he knew or should have known or had a duty to know that Ramaci and/or iCache, Inc. were making misstatements and/or omissions concerning material facts in connection with the offer and sale of securities. Defendant Ulm is without knowledge and information sufficient to form a belief as to the remaining allegations of Paragraph 10, and therefore denies same and demands strict proof thereof.

11. Defendant Ulm is without knowledge and information sufficient to form a belief as to the allegations of Paragraph 11, and therefore denies same and demands strict proof thereof.

12. Defendant Ulm is without knowledge and information sufficient to form a belief as to the allegations of Paragraph 12, and therefore denies same and demands strict proof thereof.

13. Defendant Ulm is without knowledge and information sufficient to form a belief as to the allegations of Paragraph 13, and therefore denies same and demands strict proof thereof.

14. Defendant Ulm is without knowledge and information sufficient to form a belief as to the allegations of Paragraph 14, and therefore denies same and demands strict proof thereof.

15. Defendant Ulm is without knowledge and information sufficient to form a belief as to the allegations of Paragraph 15, and therefore denies same and demands strict proof thereof.

16. Defendant Ulm denies that he knew and/or ought to have known that Ramaci was making misstatements of material facts and/or omissions of material fact in connection with the sale of securities. Defendant Ulm denies that he knew of the “deferred compensation” at the times alleged in Paragraph 16. Defendant Ulm is without knowledge and information sufficient to form a belief as to the remaining allegations of Paragraph 16, and therefore denies same and demands strict proof thereof.

17. Defendant Ulm denies that he was aware of misconduct and unlawful acts and incompetence prior to the sale of securities to the Plaintiffs. Defendant Ulm denies that he knew that Ramaci and iCache, Inc. were concealing the true facts concerning the company in connection with the sale of securities to Plaintiffs and others. Defendant Ulm is without knowledge and information sufficient to form a belief as to the remaining allegations of Paragraph 17, and therefore denies same and demands strict proof thereof.

18. Defendant Ulm denies the allegations of Paragraph 18.

FIRST CAUSE OF ACTION

19. Defendant Ulm restates his responses to Paragraphs 1-18 as if fully set forth herein.

20. Defendant Ulm denies the allegations of Paragraph 20.

21. Defendant Ulm denies the allegations of Paragraph 21.

SECOND CAUSE OF ACTION

22. Defendant Ulm restates his responses to Paragraphs 1-21 as if fully set forth herein.

23. Defendant Ulm denies the allegations of Paragraph 23.

24. Defendant Ulm denies the allegations of Paragraph 24.

THIRD CAUSE OF ACTION

25. Defendant Ulm restates his responses to Paragraphs 1-24 as if fully set forth herein.

26. Defendant Ulm denies the allegations of Paragraph 26.

27. Defendant Ulm denies the allegations of Paragraph 27.

28. Defendant Ulm denies the allegations of Paragraph 28.

FOURTH CAUSE OF ACTION

29. Defendant Ulm restates his responses to Paragraphs 1-28 as if fully set forth herein.

30. Defendant Ulm denies the allegations of Paragraph 30.

31. Defendant Ulm denies the allegations of Paragraph 31.

FIFTH CAUSE OF ACTION

32. Defendant Ulm restates his responses to Paragraphs 1-31 as if fully set forth herein.

33. Defendant Ulm denies the allegations of Paragraph 33.

34. Defendant Ulm denies the allegations of Paragraph 34.

35. Defendant Ulm denies the allegations of Paragraph 35.

36. Defendant Ulm denies the allegations of Paragraph 36.

SIXTH CAUSE OF ACTION

37. Defendant Ulm restates his responses to Paragraphs 1-36 as if fully set forth herein.

38. The allegations of Paragraph 38 are not directed against this Defendant and therefore do not need to be answered. To the extent that a response is required, Defendant Ulm denies the allegations of Paragraph 38.

39. The allegations of Paragraph 39 are not directed against this Defendant and therefore do not need to be answered. To the extent that a response is required, Defendant Ulm denies the allegations of Paragraph 39.

40. The allegations of Paragraph 40 are not directed against this Defendant and therefore do not need to be answered. To the extent that a response is required, Defendant Ulm denies the allegations of Paragraph 40.

41. The allegations of Paragraph 41 are not directed against this Defendant and therefore do not need to be answered. To the extent that a response is required, Defendant Ulm denies the allegations of Paragraph 41.

42. Defendant Ulm denies the allegations of Paragraph 42.

SEVENTH CAUSE OF ACTION

43. Defendant Ulm restates his responses to Paragraphs 1-42 as if fully set forth herein.

44. Defendant Ulm denies the allegations of Paragraph 44.

45. Defendant Ulm denies the allegations of Paragraph 45.

46. Defendant Ulm denies the allegations of Paragraph 46.

47. Defendant Ulm denies the allegations of Paragraph 47.

EIGHTH CAUSE OF ACTION

48. Defendant Ulm restates his responses to Paragraphs 1-47 as if fully set forth herein.

49. The allegations of Paragraph 49 are not directed against this Defendant and therefore do not need to be answered. To the extent that a response is required, Defendant Ulm denies the allegations of Paragraph 49.

50. The allegations of Paragraph 50 are not directed against this Defendant and therefore do not need to be answered. To the extent that a response is required, Defendant Ulm denies the allegations of Paragraph 50.

51. The allegations of Paragraph 51 are not directed against this Defendant and therefore do not need to be answered. To the extent that a response is required, Defendant Ulm denies the allegations of Paragraph 51.

52. Defendant Ulm denies the allegations of Paragraph 52.

SECOND DEFENSE

53. The injuries and damages sustained by the Plaintiffs, if any, were due to and caused by and were the direct and proximate result of the negligence, carelessness or recklessness of the Plaintiffs, and recovery should be barred or reduced in proportion to Plaintiffs' negligence as provided by law.

THIRD DEFENSE

54. Defendant Ulm states that the allegations set forth in the Complaint are barred, in whole or in part, by the doctrine of unclean hands.

FOURTH DEFENSE

55. Plaintiffs' Complaint should be dismissed for failure to state a claim upon which relief can be granted.

FIFTH DEFENSE

56. Plaintiffs' Complaint, to the extent that it seeks punitive or exemplary damages, violates the rights of this Defendant to procedural due process under the Fourteenth Amendment to the United States Constitution and the Constitution of the State of South Carolina, and, therefore, fails to state a cause of action upon which either exemplary or punitive damages can be awarded.

SIXTH DEFENSE

57. Defendant Ulm states that the allegations set forth in this Complaint should be barred by the business judgment rule.

SEVENTH DEFENSE

58. Defendant Ulm states that he did not have knowledge, and in the exercise of reasonable care, could not have known of the existence of the conduct by reason of which liability is alleged to exist.

EIGHTH DEFENSE

59. Defendant Ulm was not enriched by any action of the Plaintiffs, but rather suffered a loss of all of his investment in the company as well.

NINTH DEFENSE

60. Plaintiffs' claims are barred in whole or in part by the doctrines of waiver and estoppel.

TENTH DEFENSE

61. Plaintiffs' claims should be dismissed for lack of personal jurisdiction over Defendant Ulm.

ELEVENTH DEFENSE

62. Defendant Ulm reserves the right to amend this Answer and assert such additional defenses as supported by fact and law following discovery.

**TWELFTH DEFENSE AND FIRST CROSS-CLAIM AGAINST JOHN RAMACI
(Negligent Misrepresentation)**

63. Defendant Ulm purchased shares of iCache stock in April and December of 2011. Ramaci was the founder, Chief Executive Officer, member of the Board of Directors and majority shareholder of iCache for the time period relevant to the cross claims. Ramaci communicated with Defendant Ulm prior to both stock purchases to solicit Defendant Ulm's investment.

64. Ramaci owed a duty of due care to Defendant Ulm and owed a duty to communicate fully and truthfully with Defendant Ulm when he promoted and sold stock in iCache to Defendant Ulm and others. In the management of iCache, Ramaci had a duty to act in good faith and in the best interest of the company and to communicate fully and truthfully.

65. During the meetings in which Ramaci promoted the sale of stock in iCache, Ramaci made false and misleading misrepresentations, and failed to disclose material facts, to Defendant Ulm to induce him to purchase the stock. Defendant Ulm justifiably relied on the false and misleading representations to make the decision to invest in April and December of 2011.

66. Ramaci breached a duty of care in soliciting the purchase of shares in iCache by making false and misleading representations and failing to disclose material facts.

67. Ramaci was negligent, reckless, willful and wanton in his material statements and omissions and had a pecuniary interest as founder, Chief Executive Officer, director and majority shareholder in making the negligent misrepresentations.

68. Ramaci proximately caused the entire loss of Defendant Ulm's investment, entitling Defendant Ulm to recover actual and punitive damages, lost profits, lost business opportunities, consequential and incidental damages, all in an amount to be determined at trial.

THIRTEENTH DEFENSE AND SECOND CROSS-CLAIM AGAINST JOHN RAMACI
(Breach of Fiduciary Duty)

69. Defendant Ulm realleges every prior paragraph of the Cross-Claim as fully as if set forth here verbatim.

70. Pursuant to S.C. Code Ann. §§ 33-8-300 and 33-8-420 and common law, Ramaci was a fiduciary with regard to the shareholders of iCache, as an officer and director of iCache. Investors, including Defendant Ulm, placed a special confidence in Ramaci and expected him to act in good faith.

71. Ramaci breached his fiduciary duties to Defendant Ulm by making false and misleading representations and failing to disclose material facts to induce Defendant Ulm to purchase stock in iCache in April and December of 2011. Ramaci also violated his fiduciary duties in the management of iCache. Ramaci breached his fiduciary duties in many particulars, including, but not limited to:

- a) failing to keep adequate financial records;
- b) converting iCache funds;
- c) failing to keep the board of directors and shareholders informed of the true status of iCache operations and financial condition;
- d) refusing to conduct an audit and accounting of company financials despite requests by shareholders and directors; and
- e) diverting company funds to entities and people who were not creditors in order to benefit himself; and

f) in other such particulars as may be proven at trial.

72. Certain of Ramaci's wrongful actions described above were intentional, willful and with reckless disregard of the rights of Defendant Ulm.

73. As a proximate result of Ramaci's breaches of his fiduciary duties, Defendant Ulm suffered financial and other losses, and therefore is entitled to recover actual and punitive damages, lost profits, lost business opportunities, consequential and incidental damages, all in an amount to be determined at trial.

FOURTEENTH DEFENSE AND THIRD CROSS-CLAIM AGAINST JOHN RAMACI
(Negligence)

74. Defendant Ulm realleges every prior paragraph of the Cross-Claim as fully as if set forth here verbatim.

75. Ramaci owed a duty of care to Defendant Ulm, a shareholder of iCache, to act in good faith and in the best interest of iCache and its shareholders. Ramaci held himself out to be knowledgeable, successful, trustworthy and experienced in the fields of engineering and business. Ramaci breached his duty in many particulars, including, but not limited to:

- a) failing to keep adequate financial records;
- b) converting approximately \$600,000 of iCache funds without proper authority and at a time when iCache could not afford it;
- c) failing to keep the board of directors and shareholders informed of the true status of iCache operations;
- d) refusing to conduct an audit and accounting of company financials despite requests by shareholders and directors; and
- e) diverting company funds to entities and people who were not creditors in order to benefit himself; and

f) in other such particulars as may be proven at trial.

76. As a proximate result of Ramaci's failure to discharge his duties in a competent, trustworthy and lawful manner, Defendant Ulm has suffered financial and other losses, and therefore is entitled to recover actual and punitive damages, lost profits, lost business opportunities, consequential and incidental damages, all in an amount to be determined at trial.

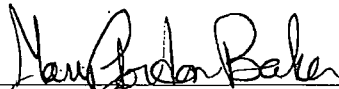
PRAYER FOR RELIEF

WHEREFORE, Billy Ulm prays the Court to:

- i. Enter an order declaring that Plaintiffs shall have and recover nothing from Defendant Ulm;
- ii. Tax the costs of this action against Plaintiffs;
- iii. Provide such other relief in this action as may be just and proper; and
- iv. Provide for a jury trial as to all issues in all claims so triable.

This 3 day of January, 2014 at Charleston, South Carolina.

Respectfully submitted,



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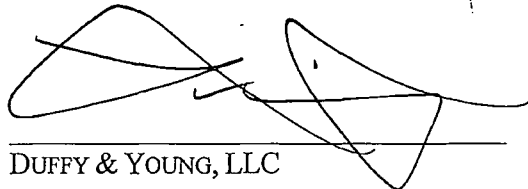
CERTIFICATE OF SERVICE

I hereby certify that the foregoing **DEFENDANT BILLY ULM'S AMENDED ANSWER AND CROSS-CLAIMS** has been served upon each of the parties to this action by depositing same in the United States mail, postage prepaid, in an envelope(s) addressed as follows:

David P. Traywick, Esq.
Benjamin A. Traywick, Esq.
Traywick Law Offices, LLC
PO Box 564
Isle of Palms, SC 29451
Attorneys for Plaintiffs

Julianne Farnsworth, Esq.
Farnsworth Law Firm, LLC
176 Croghan Spur Road, Suite 203
Charleston, SC 29407
*Attorneys for Defendants Haverly Ramaci
and John Ramaci*

This 23rd day of January, 2014



DUFFY & YOUNG, LLC

2014 JAN 23 AM 9:20
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
In the Court of Common Pleas for the Ninth Circuit

The Honorable Maite D. Murphy, Circuit Court Judge

Appellate Case No. 2013-CP-10-4874

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SC Court of Appeals

Byrdnest, LLC, Craig Sedmak, Stephanie Sedmak,
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John Ramaci, Haverly Ramaci, Richard Scott, and
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Of which John Ramaci is Appellant

AND

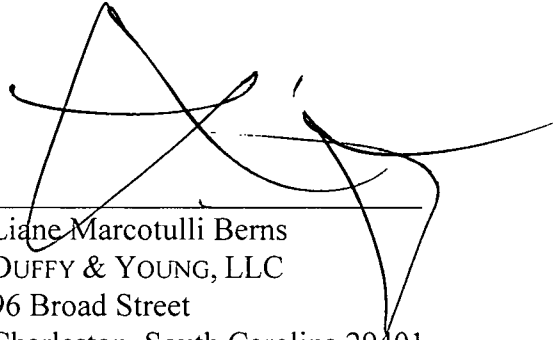
Of whom Billy Ulm is Respondent

PROOF OF SERVICE

I, Liane Marcotulli Berns, paralegal for Duffy & Young, LLC, certify that I have served the **RETURN TO APPELLANT'S PETITION FOR SUPERSEDEAS** on Appellant by U.S. mail on May 5, 2017 by depositing a copy of it to their attorneys of record as shown below:

Cory E. Manning, Esq.
Adam J. Hegler, Esq.
Nelson Mullins Riley & Scarborough, LLP
1320 Man Street, 17th Floor
Columbia, SC 29201
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May 5, 2017
Charleston, South Carolina

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ATTORNEYS AT LAW

May 5, 2017

VIA U.S. MAIL

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Byrdnest, LLC v. Ramaci
Civil Aciton No.: 2013-CP-10-4874
Appellate Case No.: 2017-000529

RECEIVED
MAY 08 2017
SC Court of Appeals

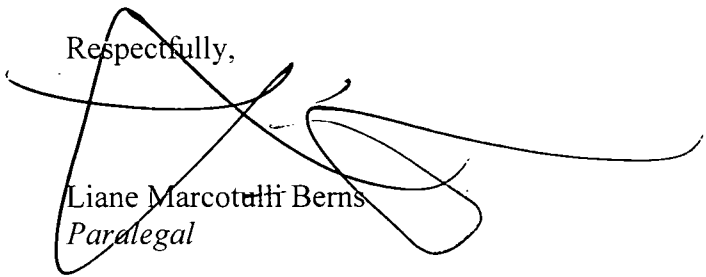
Dear Ms. Kitchings:

Enclosed for filing please find one original and seven copies of Bill Ulm's Return to Appellant's Petition for Supersedeas in the above-referenced matter, as well as one original and one copy of the Proof of Service of our Return.

Please file the originals and return a file-stamped copy to me of the Return and Proof of Service in the enclosed self-addressed stamped envelope.

I appreciate your assistance in this matter. Should you have any questions or concerns, please do not hesitate to contact me.

Respectfully,


Liane Marcotulli Berns
Paralegal

Enclosures

cc: Cory E. Manning, Esq.
Adam J. Hegler, Esq.
Benjamin A. Traywick, Esq.

AS

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