

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Maite D. Murphy, Circuit Court Judge

SC Court of Appeals

Case No. 2013-CP-10-4874
Appellate Case No. 2017-000259

Byrdnest, LLC, Craig Sedmak, Stephanie Sedmak, and
Wesley Nau, Respondents,

v.

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

Of whom

Jonathan Ramaci is, Appellant.

RETURN TO PETITION FOR WRIT OF SUPERSEDEAS

Benjamin A. C. Traywick
SC Bar No. 74027
Alexandra Scott Williams
SC Bar No. 102862
BEN TRAYWICK LAW FIRM, LLC
171 Church Street, Suite 340
Charleston, SC 29401
(843) 872-1709

Attorneys for Respondents

The Respondents respectfully submit this return to Appellant Jonathan Ramaci's Petition for Writ of Supersedeas, filed April 28th, 2017.

Factual and Procedural Background

The motion at hand represents the most recent in a series of efforts on the part of Appellant/Defendant Jonathan Ramaci to prevent the claims against him from proceeding to trial in the Circuit Court. Mr. Ramaci's obstinate resistance to sitting for a deposition extended to the point of his willfully disobeying a court order and being sanctioned. *See* (Motion for Sanctions and Proposed Order, attached as **Exhibit A**). He has asked for and been denied an indefinite stay on the basis of a purported IRS investigation of his apparent tax fraud. (Motion for Indefinite Stay, attached as **Exhibit B**.)

Yet Mr. Ramaci's most ambitious delay tactic is what led to this Court's involvement in the case: he asked the Circuit Court for a form of relief—an injunction which if granted would prohibit one private party from assigning stock ownership to another private party—which was supported by neither fact nor law.¹ (Motion for Permanent Injunction, attached as **Exhibit C**.) One might conclude that the request for an injunction was not supported by logic, either, but that conclusion would ignore the convenient (for Mr. Ramaci) fact that the Circuit Court's no-brainer denial of his motion generated a ground for interlocutory appeal—which is to say, it generated further delay, which has been Mr. Ramaci's sole objective for the last eighteen months of the forty-five-month pendency of the Circuit Court action.

Alas, the ground of appeal Mr. Ramaci has contrived is too narrow for his purpose: the appeal's scope is strictly confined to matters relating to Defendant Billy Ulm's Cross-Claims

¹ Concerning the assignment, Mr. Ramaci already has been denied the non-frivolous remedy he had at his disposal: a motion for summary judgment on the limitations grounds generated by the assignment. (February 21st, 2017 Order of Hon. Maite Murphy, attached as **Exhibit D**.)

against Mr. Ramaci. Recognizing this, Judge Murphy ruled in accordance with her authority that the Plaintiffs' claims are unaffected by the appeal and can proceed to trial during the week of June 5th, 2017. (Appellant's Pet. for Writ of Supersedeas Ex. C, at 3.) Backlit by the incessant delay efforts described above, the Petition before the Court, which without apparent irony proclaims itself to be "in the interest of judicial economy," is unmasked as but the next in Mr. Ramaci's series of efforts to prevent this matter from reaching a conclusion through trial.

Legal Argument and Citation to Authority

- 1. Appellant misapprehends the nature and operation of Rule 241's automatic stay and, as a result, has requested relief which is unavailable, on authority of rules which are inapplicable.**

Appellant erroneously argues that all aspects of the circuit court matter were subject to an "automatic stay" as a result of the notice of appeal. This position misreads Rule 241, which states as a general rule a proposition far narrower: an appeal of an order "acts to automatically stay *matters decided in the order*, judgment, decree or decision on appeal, and to automatically stay *the relief ordered in the appealed order*, judgment, or decree or decision."² Rule 241(a), SCACR (emphasis added). Here, the only "matter decided in the order" was that Mr. Ramaci was not entitled to an injunction; the only "relief ordered in the appealed order" is the denial of an injunction. To whatever extent the denial of an injunction can be stayed, that is the scope of the stay brought about by the notice of appeal in this case.

The Motion's thesis statement discloses its misreading of the Rule: "The grounds for this motion are that the appeal divested the circuit court of jurisdiction over all matters...." (Appellant's Pet. at 2). This statement flies in the face of Rules 241 and 205, which state: "The lower court or

² The Order appealed rules upon an array of motions; Ramaci's appeal, however, by its terms concerns only the denial of injunctive relief, which is the only immediately appealable matter decided in the Order. (February 21st, 2017 Order of Hon. Maite Murphy, **Exhibit D.**)

administrative tribunal retains jurisdiction over matters not affected by the appeal,” and “[n]othing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.” Rules 241(a) & 205, SCACR. No ruling, no determination, no positive action of the Circuit Court was required for the Plaintiffs’ claims to proceed to trial on June 5th; the Circuit Court did not have to overcome or overturn or reverse an “automatic stay” that covered “all matters.” Under the rules and case law, the Circuit Court’s jurisdiction and authority over matters not affected by the appeal has been entirely undisturbed.

Indeed, when one considers this matter in the context of Rule 241 properly-construed, the inescapable conclusion is that supersedeas is not even a remedy available to the Appellant. Supersedeas avails the Appellant not because Rule 241, by its plain terms, makes supersedeas available only in cases involving one of the eleven exceptions to the general rule that appear in Rule 241(b): “*In a case subject to an exception*, any party may move for an order imposing a supersedeas of matters decided in the order, judgment, decree or decision on appeal...” Rule 241(c)(1), SCACR (emphasis added). No exception applies, meaning that this is a case subject to Rule 241’s “general rule”, a scenario in which supersedeas is not available to the Appellant.

Not only is there no authority for supersedeas in a “general rule” scenario like the one at hand, supersedeas would make no sense in a general rule scenario when one considers the purpose of supersedeas within the overall structure of Rule 241. The general rule provides an automatic stay of all matters decided in the order which has been appealed; when a Rule 241(b) exception applies, there is no automatic stay; supersedeas is only available to litigants when an exception applies because *supersedeas has exactly the same effect as the automatic stay* in a “general rule” scenario. *Id.* (“The effect of the granting of a supersedeas is to suspend or stay the matters decided in the order, judgment, decree or decision on appeal...”). Appellant has conceded that no

exception applies; he is in a general rule scenario in which the automatic stay exists and the only relief available is a motion to lift the stay.

Perhaps in recognition that supersedeas is not available, the Appellant cites Rule 241(d)(2), and claims that he is permitted to seek “review of the circuit court’s order lifting the stay.” (Appellant’s Pet. at 2, fn 1.) This, too, is a losing proposition because there is no “circuit court order lifting the stay.” The order in question does nothing more than conclude that the Plaintiffs’ claims are “unaffected by the appeal.” (Appellant’s Pet. Ex. C, at 3) (“After considering the arguments of the parties, the Court finds that Plaintiffs’ claims are unaffected by the appeal of the Order and are to proceed to trial during the June 5th trial term in Charleston.”). Simply put, Judge Murphy did not “lift the stay”: she properly exercised authority that was clearly hers, to conclude that her jurisdiction over the Plaintiffs’ claims has not been disturbed or altered by the appeal. Thus, just as supersedeas does not apply, Rule 241(d)(2)’s procedure for appealing a lifting of the stay is inapplicable.³

2. Even if supersedeas or Rule 241(d)(2) apply, the Appellant loses on the merits of whether the Plaintiffs’ claims are “affected by the appeal”

Judge Murphy made what looks like an easy call: she ruled that the Plaintiffs’ claims under the Securities Act are not affected by whether Billy Ulm’s family trust could be enjoined from assigning to Ulm the rights in securities it owned. On its face, the ruling is entirely uncontroversial. Careful consideration of Appellant’s arguments confirms the gossamer legal underpinnings of an argument which, again, almost certainly has delay at its true, secret heart.

While giving lip service to the principle that supersedeas is an extraordinary remedy—that its purpose is to prevent a “miscarriage of justice”—the Appellant’s legal argument, rests entirely

³ See also Plaintiffs’ Motion to Proceed to Trial Pursuant to Rules 205 and 241, SCACR, **Exhibit E**.

on the factually incorrect, legally meaningless assertion that if Ulm's Cross-Claims are eliminated via the appeal, *the rest of the case will settle*:

Ramaci has argued that the parties were near settlement at the time of the assignment, but the assertion of the improper cross-claims undermined the consummation of that settlement. Ulm's untimely action is the only thing prohibiting the end of the case. A trial of the plaintiffs' claims, therefore, would moot the issues now on appeal. Thus, the entire case must be stayed pending the resolution of this appeal.

(Appellant's Pet. 7.)

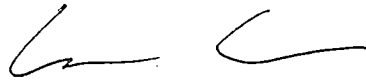
Truly it is a remarkable argument. Among the many missing pieces in this argument, two stand out: first, if Appellants are ready, as they assert, to settle with the Plaintiffs, what is it about Ulm's Cross-Claims that prevents the settlement from happening? One would think that with Appellant putting all of its eggs into the "Ulm's Cross-Claim is preventing settlement" basket, he at least would explain why Ulm's Cross-Claims are preventing settlement: no reason is evident. The second missing piece that leaps to mind is this: how would "[a] trial of the plaintiffs' claims, therefore...moot the issues now on appeal"? *Id.* It most certainly would not; the only way in which the assertion makes any sense at all is if the Court considers failed settlement negotiations to be "an issue on appeal," which they most certainly are not.

Leaving aside the complete legal irrelevance of the fact that "Ramaci has argued" that there was a point in January 2016 in which the parties were "near settlement." Leaving aside that even if true, it has nothing whatsoever to do with whether the Plaintiffs' claims are "affected by the appeal." Leaving aside that there is no authority whatsoever for the proposition that the possibility of settlement supports staying a four-year-old lawsuit. There is this: undersigned counsel, pursuant to his Rule 11 and related obligations, as an officer of the court, certifies by affixing his signature below that there is not and never has been a binding settlement agreement in this case; that the

demand to Appellant's insurance carrier is currently \$3,000,000; that no more than \$775,000 ever has been offered; and that from the Plaintiffs' perspective the likelihood of settlement is controlled in no way, shape or fashion by what happens to Ulm's Cross-Claims.

Again: the operative consideration is the pristine absence of authority for the notion that unconsummated settlement negotiations can be considered an appellate issue which will be rendered moot if the unaffected portions of the case proceed to trial. Yet the Appellant urges the Court to accept—without citing a single case or legal principle—that supersedeas is appropriate because without it, “Ramaci will be severely prejudiced and will face the prospect of trial on claims he was close to resolving before Ulm injected improper cross-claims into the case.” (Appellant's Pet. 7.) Finding no support for the Appellant's arguments in either the governing rules or the facts of the case, the Appellant's petition is improper and a supersedeas order should be denied.

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Attorneys for Respondents

Charleston, South Carolina
May 8, 2017

EXHIBIT A

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
BYRDNES, LLC, CRAIG SEDMAK,)
STEPHANIE SEDMAK, AND WESLEY)
NAU,)
PLAINTIFFS,)
vs.)
JOHN RAMACI, HAVERLY RAMACI,)
RICHARD SCOTT, AND BILLY ULM,)
DEFENDANTS.)

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

**PLAINTIFFS' MOTION TO FOR
SANCTIONS**

FILED
2016 MAR 17 PM 12:15
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

YOU WILL PLEASE TAKE NOTICE, that the Plaintiffs, through their undersigned counsel, will move ten (10) days from the date of service hereof, for an order imposing an appropriate sanction upon Defendant John Ramaci for his refusal to comply with this Court's March 10th, 2016 order that he appear for his properly noticed deposition, set for March 11th, 2016. His willful refusal to comply with the Court's order supports a substantial sanction both under Rule 37, *SCRCP*, and pursuant to the Court's inherent authority to enforce its own orders.

Plaintiffs respectfully suggest this particular instance of Mr. Ramaci's refusal to comply with the discovery process should be viewed, for sanctions purposes, against the backdrop of both Ramaci Defendants' thorough and intertwined refusal to cooperate throughout this litigation. The Plaintiffs had to notice Haverly Ramaci's deposition at least three separate times (Notices of Deposition, Exhibit #1), despite Plaintiffs' counsel's exhaustive attempts to coordinate mutually convenient times with the Ramacis' lawyer at the time. Haverly Ramaci's refusal to cooperate was multi-faceted, and reached a zenith when she moved for a protective order hours before the previously agreed-to deposition time, 10:00 on October 27th, 2014, on the ground that she would

be unavailable due to “work obligations related to an international work project.” (Motion for Protective Order, Exhibit #2.) This turned out to be an outright falsehood: she was at home on the Isle of Palms at the time. (Haverly Ramaci Deposition Testimony, Exhibit #3.) It appears from her testimony that her misrepresentations were designed to cover for her husband, who wound up attending her deposition when she finally gave it.

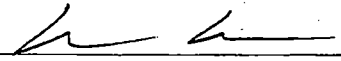
The parties have noticed John Ramaci’s deposition now six times (Notices, Exhibit #4). In fairness, several of these were cancelled by consent of all parties.¹ However, one was cancelled at the request of the insurance carrier just days before the deposition (Exhibit #5); a second was cancelled at the request of new defense counsel one week before the deposition (Exhibit #6); and a third was cancelled on the basis of anticipated settlement terms (Exhibit #7), which ripened into agreed-to settlement terms (Exhibit #8), from which the liability carrier now has backed away (Exhibit #9). As for the March 11th notice which Mr. Ramaci willfully ignored: Plaintiffs’ counsel consulted with Ramaci’s counsel on February 10th and again on February 17th; these consultations led to the notice being sent on February 23rd; Plaintiffs’ counsel was notified not until March 4th that Mr. Ramaci planned not to appear on March 11th (Exhibit #10).

Once again, these acts should be viewed in context: Exhibit #11 is a motion to compel previously filed by the Plaintiffs, which outlines the fact that Mr. Ramaci’s refusal to cooperate in even basic discovery has been an ongoing problem in this case from the very beginning.

In light of the flagrancy of Mr. Ramaci’s refusal to appear despite specific court order, and in light of the long history of similar conduct in this case, the Plaintiffs respectfully request that the Court, in fashioning appropriate relief, consider the full range of sanctions available under Rule 37.

¹ The Plaintiffs wish to be clear that they do not view Mr. Ramaci’s attorneys to be complicit in the conduct described in this motion.

RESPECTFULLY SUBMITTED


Benjamin A. C. Traywick
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875 Lowcountry Boulevard, #204
Mt. Pleasant, South Carolina 29464
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Fax 843-300-1051
ben@traywicklaw.com
Attorneys for the Plaintiffs

3-15-16
Date

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
BYRDNEST, LLC, CRAIG SEDMAK,)
STEPHANIE SEDKAM, AND WESLEY)
NAU,)
)
PLAINTIFFS,)
)
vs.)
)
JOHN RAMACI, HAVERLY RAMACI,)
RICHARD SCOTT, AND BILLY ULM,)
)
DEFENDANTS.)
)
_____)

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

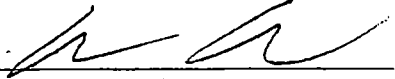
**NOTICE OF DEPOSITION OF HAVERLY
RAMACI**

TO JULIANNE FARNSWORTH AND MARY GODON BAKER, ATTORNEYS FOR THE
DEFENDANTS

You will please take notice that the Plaintiffs, through their undersigned counsel, will take the deposition of Defendant Haverly Ramaci, at the time and place indicated below, pursuant to Rule 30, *SCRCP*, for purposes of discovery, use at trial, and all other purposes permitted under the *South Carolina Rules of Civil Procedure* and *South Carolina Rules of Evidence*.

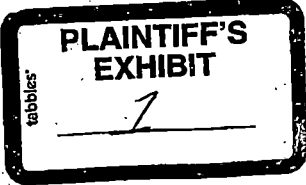
TIME AND PLACE OF DEPOSITION

10:00 A.M., Monday, October 6th, 2014
Traywick & Traywick, LLC
875 Lowcountry Boulevard, Suite 204
Mount Pleasant, South Carolina



David P. Traywick
Benjamin A. Traywick
Meredith Ann Carter
Traywick & Traywick, LLC
P.O. Box 564
Isle of Palms, South Carolina, 29464
Telephone 843-343-5092
dpt@traywicklaw.com
ben@traywicklaw.com
Attorneys for the Plaintiffs

9/24/14
Date



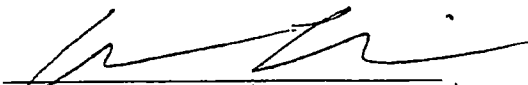
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2013-CP-10-4874
)	
BYRDNES, LLC, CRAIG SEDMAK,)	
STEPHANIE SEDKAM, AND WESLEY)	
NAU,)	
)	
PLAINTIFFS,)	
)	
vs.	)	NOTICE OF DEPOSITION OF HAVERLY
	)	RAMACI
JOHN RAMACI, HAVERLY RAMACI,)	
RICHARD SCOTT, AND BILLY ULM,)	
)	
DEFENDANTS.)	
)	

TO JULIANNE FARNSWORTH AND MARY GODON BAKER, ATTORNEYS FOR THE DEFENDANTS

You will please take notice that the Plaintiffs, through their undersigned counsel, will take the deposition of Defendant Haverly Ramaci, at the time and place indicated below, pursuant to Rule 30, *SCRCP*, for purposes of discovery, use at trial, and all other purposes permitted under the *South Carolina Rules of Civil Procedure* and *South Carolina Rules of Evidence*.

TIME AND PLACE OF DEPOSITION

11:00 A.M., Monday, October 27th, 2014
 Traywick & Traywick, LLC
 875 Lowcountry Boulevard, Suite 204
 Mount Pleasant, South Carolina


 David P. Traywick
 Benjamin A. Traywick
 Meredith Ann Carter
 Traywick & Traywick, LLC
 P.O. Box 564
 Isle of Palms, South Carolina, 29464
 Telephone 843-343-5092
dpt@traywicklaw.com
ben@traywicklaw.com
 Attorneys for the Plaintiffs

10/3/14
 Date

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
BYRDNES, LLC, CRAIG SEDMAK,)
STEPHANIE SEDKAM, AND WESLEY)
NAU,)
)
PLAINTIFFS,)
)
vs.)
)
JOHN RAMACI, HAVERLY RAMACI,)
RICHARD SCOTT, AND BILLY ULM,)
)
DEFENDANTS.)
)

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


**THIRD AMENDED NOTICE OF
DEPOSITION OF HAVERLY RAMACI**

TO JULIANNE FARNSWORTH AND MARY GODON BAKER, ATTORNEYS FOR THE
DEFENDANTS

You will please take notice that the Plaintiffs, through their undersigned counsel, will take the deposition of Defendant Haverly Ramaci, at the time and place indicated below, pursuant to Rule 30, *SCRCP*, for purposes of discovery, use at trial, and all other purposes permitted, under the *South Carolina Rules of Civil Procedure* and *South Carolina Rules of Evidence*.

TIME AND PLACE OF DEPOSITION

10:00 A.M., Monday, November 17th, 2014
Traywick & Traywick, LLC
875 Lowcountry Boulevard, Suite 204
Mount Pleasant, South Carolina



David P. Traywick
Benjamin A. Traywick
Meredith Ann Carter
Traywick & Traywick, LLC
P.O. Box 564
Isle of Palms, South Carolina, 29464
Telephone 843-343-5092
dpt@traywicklaw.com
ben@traywicklaw.com
Attorneys for the Plaintiffs

11/4/2014
Date

STATE OF SOUTH CAROLINA
COUNTY OF Charleston

IN THE COURT OF COMMON PLEAS
Ninth JUDICIAL CIRCUIT

CASE NO.: 2013-CP-10-4874

Byrdnest, LLC et al
Plaintiff,

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

vs.

John Ramaci, et al
Defendant.

Plaintiff's Attorney: <u>Ben Traywick</u> Bar No. _____ Address: <u>P.O. BOX 564</u> <u>ISLE OF PALMS</u> Phone: _____ Fax _____ E-mail: _____ Other: <u>S.C. 29464</u> <u>843 343 5092</u>	Defendant's Attorney: <u>Julianne Farnsworth</u> Bar No. <u>7841</u> Address: <u>10 COCHRAN COURT</u> <u>CHARLESTON, SC</u> Phone: _____ Fax _____ E-mail: _____ Other: <u>29407</u> <u>843 469 1069</u>
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: <u>Protective order</u> Estimated Time Needed: <u>15 minutes</u> Court Reporter Needed: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. <u>Julianne Farnsworth</u> <u>Oct. 27, 2014</u> Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant Date submitted	
SECTION III: Motion Fee	
<input checked="" type="checkbox"/> PAID - AMOUNT: \$ <u>25.00</u> <input type="checkbox"/> EXEMPT: (check reason) <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	



STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CA NUMBER: 2013-CP-10-4874

BYRDNEST, LLC, CRAIG SEDMAK,)
STEPHANIE SEDMAK, AND)
WESLEY NAU,)
)
Plaintiffs,)
)
vs.)
)
JOHN RAMACI, HAVERLY RAMACI,)
RICHARD SCOTT, AND BILLY ULM)
)
)
Defendants.)

FILED
2014 OCT 29 AM 9:56
JULIE J. ARMSTRONG
CLERK OF COURT

**NOTICE OF MOTION AND MOTION FOR PROTECTIVE ORDER
REGARDING DEPOSITION OF DEFENDANT HAVERLY RAMACI**

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 26 (c) (2) of the South Carolina Rules of Civil Procedure, Defendant Haverly Ramaci ("Defendant Ramaci") moves, through her undersigned attorney, before the Presiding Judge of the Ninth Judicial Circuit for a Protective Order quashing Plaintiffs' Notice of Deposition for Monday, October 27, 2014 at 11:00am (A copy of the Deposition Notice is attached hereto as Exhibit A) and requesting that the deposition be rescheduled and taken as soon as possible on a date to be agreed upon by counsel after November 3, 2014.

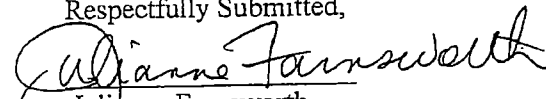
Haverly Ramaci ("Ramaci") is not available for her deposition on October 27th because of work obligations related to an international work project. The attorney for Ramaci had previously informed the attorney for the Plaintiffs that Ramaci would be available for a deposition on October 27th based on calendar information received from Ramaci. However, as the deposition date approached and the attorney for Ramaci contacted Ramaci, Ramaci informed her attorney that there had been a miscommunication when they had earlier talked about deposition dates. If she said she would be available at the "end of October" she had meant to say she would be available around 'the first of November'.

Ramaci's work on her international project ends on November 1, 2014 and she has indicated that she is available for her deposition on any date after November 1st.

Ramaci's attorney communicated the request for the rescheduling of the deposition to the Plaintiffs' attorney in writing before the scheduled deposition. However, the Plaintiffs' attorney insisted that a Motion for a Protective Order be filed in this regard.

Therefore, pursuant to Rule 26 (c) (2) of the South Carolina Rules of Civil Procedure, Defendant Ramaci respectfully requests that her deposition be rescheduled from October 27, 2014 to a date convenient to the Plaintiffs and the co-Defendants after November 1, 2014.

Respectfully Submitted,

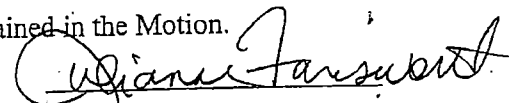

Julianne Farnsworth

FARNSWORTH LAW FIRM LLC
10 Cochran Court
Charleston, South Carolina 29407
Phone: (843) 469-1069
Fax: (866) 728-4603
Email: Julianne@farnsworthlaw.com

ATTORNEY FOR DEFENDANT
HAVERLY RAMCI

ATTORNEY AFFIRMATION OF CONSULTATION

Counsel for the Movant hereby affirms, pursuant to Rule 11 (a) of the South Carolina Rules of Civil Procedure, that prior to the filing of the above Motion for Protective Order, counsel for the Movant communicated in writing with opposing counsel, the attorney for the Plaintiffs, in an attempt in good faith to resolve the matter contained in the Motion.


Julianne Farnsworth

October 27, 2014
Charleston, South Carolina

1 Q. All right. So you're now sworn to
 2 tell the truth, right --
 3 A. **Correct.**
 4 Q. -- to provide truthful responses and
 5 also complete responses, right?
 6 A. **Correct.**
 7 Q. You understand that I'm entitled to
 8 truthful and complete responses to my questions?
 9 A. **Understood.**
 10 Q. Okay. I'm going to just tell you that
 11 I believe that you and Mr. Ramaci have not
 12 cooperated in the discovery process in this case,
 13 okay? And I'm letting you know right now that if
 14 I get the sense that you're not cooperating in my
 15 deposition today, that I'm going to move for
 16 sanctions, okay, and ask that you be held in
 17 contempt. Just letting you know, okay?
 18 A. **Noted. I heard you.**
 19 Q. Very good. All right. Where were you
 20 on October 6th of this year?
 21 A. **October 6th of this year?**
 22 Q. Yeah.
 23 A. **I believe I was on Isle of Palms?**
 24 Q. Okay. Where were you on October the
 25 27th of this year?

1 A. **I believe I was also on the Isle of**
 2 **Palms.**
 3 Q. Okay. What were you doing on those
 4 days on Isle of Palms?
 5 A. **Living.**
 6 Q. Okay. Were you working?
 7 A. **I work, I'm full-time mom.**
 8 Q. Okay. Were you working on anything
 9 other than the admittedly very significant and
 10 important task of being a full-time mom?
 11 A. **And also supporting my husband in the**
 12 **fact that he was out of town during a couple**
 13 **periods of that -- of October.**
 14 Q. Okay. Were you in town generally
 15 during the month of October?
 16 A. **I believe so.**
 17 Q. Were you working on international work
 18 projects during that period?
 19 A. **No. I was supporting my husband in**
 20 **his doing so, in his job.**
 21 Q. And what does that mean?
 22 A. **That he had clients, he had, well,**
 23 **work people coming over from Sketchings, the**
 24 **company that he is working with now consulting**
 25 **for. They were coming to town and he had to be**

1 in Atlanta for a period of time and then they
 2 were also going to be here in Charleston.
 3 Q. When you say you were supporting his
 4 efforts, what, in particular, were you --
 5 A. **We don't have --**
 6 Q. If -- if you'll just let me finish my
 7 answer -- my question before you answer, please.
 8 A. **I'm sorry.**
 9 Q. What, in particular, were you doing to
 10 support your husband's work projects that, just
 11 going straight to the point, prevented you from
 12 appearing for your depositions on October the 6th
 13 and October the 27th?
 14 A. **Because I do not have a nanny. I do**
 15 **not have care. I'm a full-time mother and I work**
 16 **from home every single day and he was not going**
 17 **to be -- like if he is not there -- he is**
 18 **watching our child right now. If he is not**
 19 **there, then -- I'm not there, there is no one to**
 20 **watch or take care of my children.**
 21 (Off-the-Record conversation.)
 22 (Plaintiff's Exhibit 1 was
 23 marked for identification.)
 24 BY MR. TRAYWICK:
 25 Q. I'm going to show you a two-page

1 Exhibit that we're marking as Number 1,
 2 Plaintiff's Exhibit Number 1 and I'd like you to
 3 have a look at those two pages and tell me
 4 whether you've ever seen these documents.
 5 MS. FARNSWORTH: You said this
 6 is Exhibit 1?
 7 MR. TRAYWICK: (Indicating.)
 8 A. **No. I've never seen these.**
 9 Q. Were you aware that you were properly
 10 noticed for a deposition on October 6th and again
 11 on October 27th?
 12 A. **On October 27th, I believe so, but not**
 13 **on the 6th?**
 14 Q. Was Mr. Ramaci in town on October the
 15 6th?
 16 A. **I don't know. I'm not sure.**
 17 Q. Was Mr. Ramaci in town on October the
 18 27th?
 19 A. **I believe so, but I am not certain.**
 20 Q. Okay. Do you know how many times --
 21 well, let me ask you. How many times prior to
 22 today have you met with Mrs. Farnsworth?
 23 A. **Once.**
 24 Q. When was that?
 25 A. **Friday.**



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,

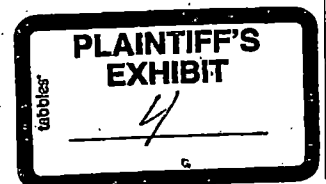
Defendants.

NOTICE OF DEPOSITION
OF
JOHN RAMACI

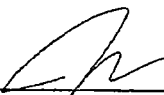
**TO: BENJAMIN A. TRAYWICK, ESQ., COUNSEL FOR PLAINTIFFS AND
JULIANNE FARNSWORTH, ESQ., COUNSEL FOR DEFENDANTS JOHN AND
HAVERLY RAMACI:**

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 30 of the South Carolina Rules of Civil Procedure, Defendants Richard Scott and Billy Ulm, by and through counsel, will take the testimony by deposition upon oral examination of John Ramaci, pursuant to Rule 30 of the South Carolina Rules of Civil Procedure, on August 27, 2015, at 10:00 a.m., before a Notary Public or other officer authorized by law to administer oaths, and thereafter, from day to day as the taking of the deposition may be adjourned, at the law offices of Duffy & Young, LLC, 96 Broad Street, Charleston, South Carolina. You are hereby invited to be present and examine the party if so minded.

[SIGNATURE PAGE TO FOLLOW]



This 26 day of July, 2015 at Charleston, South Carolina.



J. Rutledge Young, III
Julie L. Moore
DUFFY & YOUNG, LLC
96 Broad Street
Charleston, South Carolina 29401
(843) 720-2044 (phone)
(843) 720-2047 (fax)
ryoung@duffyandyoung.com
jmoore@duffyandyoung.com

*Attorneys for Defendants
Richard Scott and Billy Ulm*

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.

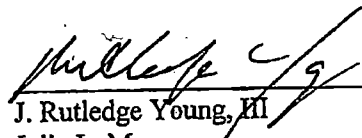
AMENDED
NOTICE OF DEPOSITION
OF
JOHN RAMACI

TO: BENJAMIN A. TRAYWICK, ESQ., COUNSEL FOR PLAINTIFFS AND
JULIANNE FARNSWORTH, ESQ., COUNSEL FOR DEFENDANTS JOHN AND
HAVERLY RAMACI:

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 30 of the South Carolina Rules of Civil Procedure, Defendants Richard Scott and Billy Ulm, by and through counsel, will take the testimony by deposition upon oral examination of John Ramaci, pursuant to Rule 30 of the South Carolina Rules of Civil Procedure, on September 16, 2015, at 10:00 a.m., before a Notary Public or other officer authorized by law to administer oaths, and thereafter, from day to day as the taking of the deposition may be adjourned, at the law offices of Duffy & Young, LLC, 96 Broad Street, Charleston, South Carolina. You are hereby invited to be present and examine the party if so minded.

[SIGNATURE PAGE TO FOLLOW]

This 27th day of August, 2015 at Charleston, South Carolina.



J. Rutledge Young, III
Julie L. Moore
DUFFY & YOUNG, LLC
96 Broad Street
Charleston, South Carolina 29401
(843) 720-2044 (phone)
(843) 720-2047 (fax)
ryoung@duffyandyoung.com
jmoore@duffyandyoung.com

*Attorneys for Defendants
Richard Scott and Billy Ulm*

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.

SECOND AMENDED
NOTICE OF DEPOSITION
OF
JOHN RAMACI

TO: BENJAMIN A. TRAYWICK, ESQ., COUNSEL FOR PLAINTIFFS AND CORY E. MANNING, ESQ. AND ADAM J. HEGLER, ESQ., COUNSEL FOR DEFENDANTS JOHN AND HAVERLY RAMACI:

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 30 of the South Carolina Rules of Civil Procedure, Defendants Richard Scott and Billy Ulm, by and through counsel, will take the testimony by deposition upon oral examination of John Ramaci, pursuant to Rule 30 of the South Carolina Rules of Civil Procedure, on November 10, 2015, at 10:00 a.m., before a Notary Public or other officer authorized by law to administer oaths, and thereafter, from day to day as the taking of the deposition may be adjourned, at the law offices of Nelson Mullins Riley & Scarborough, LLP, 151 Meeting Street, Suite 600, Charleston, South Carolina. You are hereby invited to be present and examine the party if so minded.

[SIGNATURE PAGE TO FOLLOW]

This 12 day of October, 2015 at Charleston, South Carolina.

J. Rutledge Young, III

J. Rutledge Young, III

Julie L. Moore

DUFFY & YOUNG, LLC

96 Broad Street

Charleston, South Carolina 29401

(843) 720-2044 (phone)

(843) 720-2047 (fax)

ryoung@duffyandyoung.com

jmoore@duffyandyoung.com

Attorneys for Defendants

Richard Scott and Billy Ulm

<p>STATE OF SOUTH CAROLINA</p> <p>COUNTY OF CHARLESTON</p> <p>BYRDNEST, LLC, CRAIG SEDMAK, STEPHANIE SEDMAK, AND WESLEY NAU,</p> <p style="text-align: center;">Plaintiff</p> <p style="text-align: center;">v.</p> <p>JOHN RAMACI, HAVERLY RAMACI, RICHARD SCOTT, AND BILLY ULM,</p> <p style="text-align: center;">Defendant</p>	<p>IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO: 2013-CP-10-4874</p> <p style="text-align: center;">NOTICE OF DEPOSITION OF JOHN RAMACI</p>
--	---

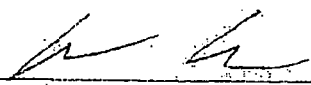
TO: CORY E. MANNING, ESQ., AND ADAM J. HEGLER, ESQ., ATTORNEYS FOR DEFENDANTS JOHN AND HAVERLY RAMACI AND J. RUTLEDGE YOUNG, III. ESQ. AND JULIE L. MOORE, ESQ., ATTORNEYS FOR DEFENDANTS RICHARD SCOTT AND BILLY ULM:

YOU WILL PLEASE TAKE NOTICE that counsel for the Plaintiff will take the deposition of John Ramaci at the time and place indicated below:

Date and Time	January 6 th , 2016 at 9:00 A.M.
Place of Deposition	Traywick & Traywick, LLC 875 Lowcountry Blvd, Suite 204 Mount Pleasant, SC 29464

The deposition will be taken pursuant to Rule 30, *SCRCP*, for discovery, use at trial, and all other purposes permitted under the rules of procedure and evidence.

[SIGNATURE BLOCK ON NEXT PAGE]



David P. Traywick
Benjamin A. Traywick
TRAYWICK & TRAYWICK, LLC
875 Lowcountry Blvd., Suite 204
Mt. Pleasant, SC 29464
843-697-8725
dpt@traywicklaw.com
ben@traywicklaw.com
Attorneys for the Plaintiff

November 18, 2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
BYRDNEST, LLC, CRAIG SEDMAK,)
STEPHANIE SEDMAK, AND WESLEY)
NAU,)
)
PLAINTIFFS,)
)
vs.)
)
JOHN RAMACI, HAVERLY RAMACI,)
RICHARD SCOTT, AND BILLY ULM,)
)
DEFENDANTS.)
)

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

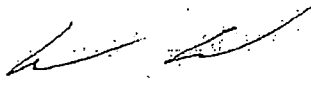
**NOTICE OF DEPOSITION OF
DEFENDANT JOHN RAMACI**

TO: COUNSEL FOR THE DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that counsel for the Plaintiffs will take the deposition of John Ramaci at the time and place indicated below:

Date and Time	March 11, 2016 at 9:30 A.M.
Place of Deposition	Duffy & Young, LLC 96 Broad Street Charleston, SC 29401

The deposition will be taken pursuant to Rule 30, *SCRCP*, for discovery, use at trial, and all other purposes permitted under the rules of procedure and evidence.



David P. Traywick
Benjamin A. Traywick
TRAYWICK & TRAYWICK, LLC
875 Lowcountry Blvd., Suite 204
Mt. Pleasant, SC 29464
843-352-9569
dpt@traywicklaw.com
ben@traywicklaw.com
Attorneys for the Plaintiffs

February 23, 2016

CERTIFICATE OF SERVICE

The undersigned certifies that she caused a copy of the foregoing to be served via email,
to the following:

Julie L. Moore
J. Rutledge Young, III
Duffy & Young
96 Broad St.
Charleston, SC 29401
jmoore@duffyandyoung.com
ryoung@duffyandyoung.com

Adam Hegler
Cory Manning
Nelson Mullins
P.O. Box 11070
Columbia, SC 29211-1070
adam.hegler@nelsonmullins.com
cory.manning@nelsonmullins.com

By: _____

Lisa Risher
Lisa Risher

Date: February 23, 2016.

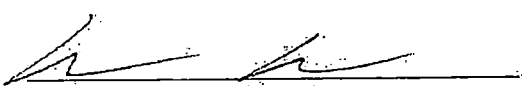
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2013-CP-10-4874
)	
BYRDNEST, LLC, CRAIG SEDMAK,)	
STEPHANIE SEDMAK, AND WESLEY)	
NAU,)	
)	
PLAINTIFFS,)	
)	
vs.	)	NOTICE OF DEPOSITION OF
	)	DEFENDANT JOHN RAMACI
)	
JOHN RAMACI, HAVERLY RAMACI,)	
RICHARD SCOTT, AND BILLY ULM,)	
)	
DEFENDANTS.)	
)	

TO: COUNSEL FOR THE DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that counsel for the Plaintiffs will take the deposition of John Ramaci at the time and place indicated below:

Date and Time	March 25 th , 2016 at 9:30 A.M.
Place of Deposition	Duffy & Young, LLC 96 Broad Street Charleston, SC 29401

The deposition will be taken pursuant to Rule 30, *SCRCP*, for discovery, use at trial, and all other purposes permitted under the rules of procedure and evidence.


 Benjamin A. C. Traywick
 TRAYWICK & TRAYWICK, LLC
 38 Romney Street #103
 Charleston, SC 29403
 Telephone 843-810-3121
ben@traywicklaw.com
 Attorneys for the Plaintiffs

March 14th, 2016

Benjamin A. Traywick

From: Julianne Farnsworth <Julianne@farnsworthlaw.com>
Sent: Monday, August 24, 2015 5:12 PM
To: 'Rutledge Young'; Benjamin A. Traywick
Cc: lsharpe@duffyandyoung.com
Subject: Byrdnest Litigation-Postponement of Jon Ramaci Deposition

Rutledge, I received a call this afternoon from the insurance carrier representative for the Ramaci insurance coverage requesting that Jon Ramaci's deposition be continued from Thursday, August 27th until one day during the week of September 14th. (Mr. Ramaci is available every day that week. I am available every day that week except for Friday, Sept. 18th). I am aware that this is late notice. Neither Mr. Ramaci or I requested the postponement; the request came directly from the carrier.

Hopefully you will be able to accommodate our request for the postponement. I understand you are travelling today but I would appreciate hearing from you at your earliest convenience on Tuesday morning.
Best regards, Julianne

JULIANNE FARNSWORTH
ATTORNEY AT LAW
FARNSWORTH LAW FIRM LLC
P. 843 469 1069 F. 866 728 4603
E. JULIANNE@FARNSWORTHLAW.COM

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Benjamin A. Traywick

From: Cory Manning <Cory.Manning@nelsonmullins.com>
Sent: Thursday, September 10, 2015 7:12 AM
To: Benjamin A. Traywick
Cc: Julianne@farnsworthlaw.com; Rutledge Young; Brian Duffy
Subject: RE: Substitution of Counsel in Byrdnest v. Ramaci et al.
Attachments: Substitution of Counsel.pdf

Ben: I got a bounceback last night because I apparently used the wrong email address for you. Please let me know if you have an issue with the substitution, as we would like to get it on file today. Also, let me know if you are available for a call Friday morning.

Thanks.
Cory

From: Rutledge Young [mailto:ryoung@duffyandyoung.com]
Sent: Wednesday, September 09, 2015 5:28 PM
To: Cory Manning; Brian Duffy; ben@traywick.com
Cc: Julianne@farnsworthlaw.com
Subject: RE: Substitution of Counsel

Cory-

Welcome aboard. A Friday call sounds fine – anytime before noon suits me.

The week of October 12 looks good for me for rescheduling of Ramaci's deposition if that works for you. Happy to discuss more on Friday.

Best,
RY

Rutledge Young
Duffy & Young, LLC
843-720-2044

From: Cory Manning [mailto:Cory.Manning@nelsonmullins.com]
Sent: Wednesday, September 09, 2015 4:53 PM
To: Brian Duffy <bduffy@duffyandyoung.com>; ben@traywick.com; Mary Gordon Baker <mgbaker@duffyandyoung.com>; Rutledge Young <ryoung@duffyandyoung.com>
Cc: Julianne@farnsworthlaw.com
Subject: Substitution of Counsel

Ben, Brian, and Rutledge:

I will be representing Mr. Ramaci and his wife in this matter going forward. Attached is a substitution of counsel I intend to file with the clerk this week. Please let me know if you have an issue with the substitution.



Also, given the timing of things, I am asking for a delay of the deposition of Mr. Ramaci for at least two weeks for two reasons: (1) my father is undergoing a procedure at the Mayo Clinic on September 15 and 16 and I will be in Rochester, MN on those days and (2) I will need to spend some time with Mr. Ramaci before his deposition in order see that he is adequately prepared.

There may be other changes that I will seek regarding scheduling, but I haven't seen a scheduling order in this matter. I am aware, however, that there is a mediation scheduled for November 5, with Bill Howard, so that seems to give us some space.

Please let me know if we can get on a call on Friday morning to discuss this matter and any alternative dates that you might agree to for Mr. Ramaci's deposition.

Thanks in advance for your consideration.

Best regards,
Cory Manning

Nelson Mullins

Cory E. Manning
cory.manning@nelsonmullins.com

Nelson Mullins Riley & Scarborough LLP
Meridian, 17th Floor
1320 Main Street, Columbia, SC 29201
Direct: 803.255.5524 Mobile: 803.466.2737
Fax: 803.255.9163
([View Bio](#))

Confidentiality Notice

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If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify the sender immediately either by phone (800-237-2000) or reply to this e-mail and delete all copies of this message.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 BYRDNEST, LLC, CRAIG SEDMAK,)
 STEPHANIE SEDMAK, and)
 WESLEY NAU,)
)
 Plaintiffs,)
)
 JOHN RAMACI, HAVERLY RAMACI,)
 RICHARD SCOTT, and BILLY ULM,)
)
 Defendants,)
)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT

Civil Action No. 2013-CP-10-4874

CONSENT MOTION TO AMEND
SCHEDULING ORDER

FILED
 2015 DEC 17 AM 11:58
 JULIE ARMSTRONG
 CLERK OF COURT

Pursuant to Rule 16 of the South Carolina Rules of Civil Procedure, Defendants Jonathan Ramaci and Haverly Ramaci, by and through their undersigned attorneys, move this Court for an extension of the deadlines in the current scheduling order. As grounds for this motion, counsel for Defendants Jonathan Ramaci and Haverly Ramaci state that the parties have continued to be involved in settlement negotiations and have recently made progress as to the same. All parties agree that these negotiations would benefit from additional time directed toward the resolution of this matter. Counsel for Plaintiffs and counsel for Defendants Richard Scott and Billy Ulm, by their signatures below, indicate their consent to this motion.

Defendants Jonathan Ramaci and Haverly Ramaci hereby move this Court to extend the current deadlines, and establish the following deadlines for this case:

1. All discovery, including written discovery requests and depositions, shall be completed no later than **March 15, 2016**. (If additional discovery needs to be taken before the scheduled trial of the case, leave of Court can be requested.)
2. All motions, except those relating to the admissibility of evidence at trial, shall be filed no later than **April 15, 2016**.
3. The case shall be set for trial at a date certain after **May 2, 2016**.



Benjamin A. Traywick

From: Cory Manning <Cory.Manning@nelsonmullins.com>
Sent: Friday, January 15, 2016 2:25 PM
To: Benjamin A. Traywick; ryoung@duffyandyoung.com
Cc: jmoore@duffyandyoung.com; Adam Hegler; Jenni Jokerst
Subject: Ramaci--Draft Settlement Agreement
Attachments: Draft Settlement Agreement (Ramaci).docx

SETTLEMENT DISCUSSIONS

All-

This will confirm our agreement as to the big piece of the puzzle—the number, 775,000—let's move on with equal vigor to the details of the settlement. I have attempted to provide an initial draft agreement to start the discussion, which I don't anticipate to be as difficult as getting to the number. I have also circulated this document to AIG.

Cory

Nelson Mullins

Cory E. Manning

Co-Chair, Government Investigations and
White Collar Defense Practice Group

cory.manning@nelsonmullins.com

Nelson Mullins Riley & Scarborough LLP

Meridian, 17th Floor
1320 Main Street, Columbia, SC 29201
Office Direct: 803.255.5524 Mobile: 803-466-2737
Fax: 803.256.7500

www.nelsonmullins.com
([View Bio](#))

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WE SO MOVE:


NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

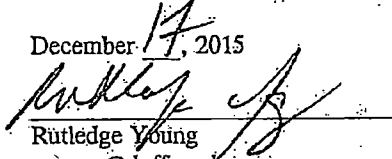
Cory E. Manning, State Bar #14702
E-Mail: cory.manning@nelsonmullins.com
Adam J. Hegler, State Bar #100115
E-Mail: adam.hegler@nelsonmullins.com
Post Office Box 11070
Columbia, SC 29211
(803) 799-2000
*Attorneys for the Defendants Jonathan Ramaci and
Haverly Ramaci*

December 16, 2015

WE SO CONSENT:


Benjamin A. Traywick
David Traywick
Merédith Ann Carter
TRAYWICK LAW OFFICES, LLC
875 Lowcountry Boulevard, Ste 204
Mount Pleasant, SC 29464
Telephone 843-352-9569
dpt@ltraywicklaw.com
ben@traywicklaw.com
Attorneys for the Plaintiffs

December 17, 2015


Rutledge Young
ryoung@duffyandyoung.com
DUFFY & YOUNG, LLC
96 Broad Street
Charleston, South Carolina 29401
(843) 720-2044 (phone)
(843) 720-2047 (fax)
*Attorneys for Defendants Billy Ulin and
Richard Scott*

December 17, 2015

Benjamin A. Traywick

From: Cory Manning <Cory.Manning@nelsonmullins.com>
Sent: Friday, March 11, 2016 4:40 PM
To: Benjamin A. Traywick; Rutledge Young
Cc: Julie Moore; Adam Hegler; Jenni Jokerst
Subject: RE: iCache

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

From: Benjamin A. Traywick [mailto:ben@traywicklaw.com]
Sent: Thursday, March 10, 2016 3:55 PM
To: Cory Manning
Cc: Rutledge Young; Julie Moore; David Traywick
Subject: iCache

Cory- good afternoon. In line with Judge Murphy's order, Mr. Ramaci's deposition is to proceed tomorrow as noticed. I on behalf of the plaintiffs wish to proceed, and am fully prepared to proceed, with the deposition. Rutledge and Julie can speak for themselves of course, but my understanding is that they, on behalf of Scott and Ulm, are fully prepared to proceed. From you I gather that Mr. Ramaci intends not to appear, in contravention of Judge Murphy's order.

If I understand correctly—and I ask you please to confirm—then I will not show up to the deposition site tomorrow for the purpose of creating a record of Mr. Ramaci's non-attendance; based on your representations that he is not going to show, to do so would be a pointless exercise for us all, a waste of time, and would involve all of the parties incurring unnecessary fees and expenses. I do plan to file a motion for sanctions, but I'd rather not have to ask for avoidable costs and fees.

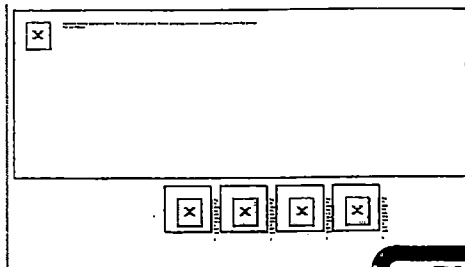
Out of an abundance of caution, I notify you that I do intend to use this email—email being viewed by some lawyers as an informal medium which should not be submitted to the court—to establish the contents hereof, in a written motion and/or at a hearing.

I see that you have proposed March 30th and 31st while I prepared this email. I appreciate it, but those dates do not work for me: that week is spring break for Charleston County schools and I have firm plans to be on vacation with my wife and children that week. I do wish to get the deposition set as soon as possible and appreciate your efforts. Thanks in advance- Ben

Benjamin A.C. Traywick

LITIGATION PARTNER

Benjamin A. C. Traywick | Traywick & Traywick, LLC.
875 Lowcountry Blvd., Suite 204
Mt. Pleasant, South Carolina, 29464
Tel: (843) 810-3121 | fax: (843) 300-1051
Email: ben@traywicklaw.com



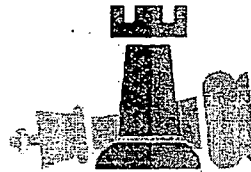
Benjamin A. Traywick

From: Benjamin A. Traywick
Sent: Wednesday, February 10, 2016 6:59 PM
To: Cory Manning
Subject: iCache

Cory- good evening. I feel a very hectic Spring coming on—Spring Break, my fortieth birthday, trial all next week in Moncks Corner, and so on—and would like, if resolution of my claims is not imminent, to schedule Jon Ramaci's deposition. I'd appreciate your providing me with some dates toward the latter part of February or early part of March on which both you and he can appear. Thanks in advance- Ben

Benjamin A.C. Traywick
LITIGATION PARTNER

Benjamin A. C. Traywick | Traywick & Traywick, LLC.
875 Lowcountry Blvd., Suite 204
Mt. Pleasant, South Carolina, 29464
Tel: (843) 810-3121 | fax: (843) 300-1051
Email: ben@traywicklaw.com



**TRAYWICK
& TRAYWICK**



Traywick & Traywick, LLC, P.O. Box 564, I.O.P., S.C. 29451

www.traywicklaw.com



Benjamin A. Traywick

From: Cory Manning <Cory.Manning@nelsonmullins.com>
Sent: Wednesday, February 17, 2016 10:27 AM
To: Benjamin A. Traywick
Subject: Re: Byrdnest, LLC, et al v. John Ramaci, et al - Case number 2013-CP-10-04874

Right now only 7, 9, and 11 work for me. I will get one of those approved by Ramaci.

Sent from my iPhone

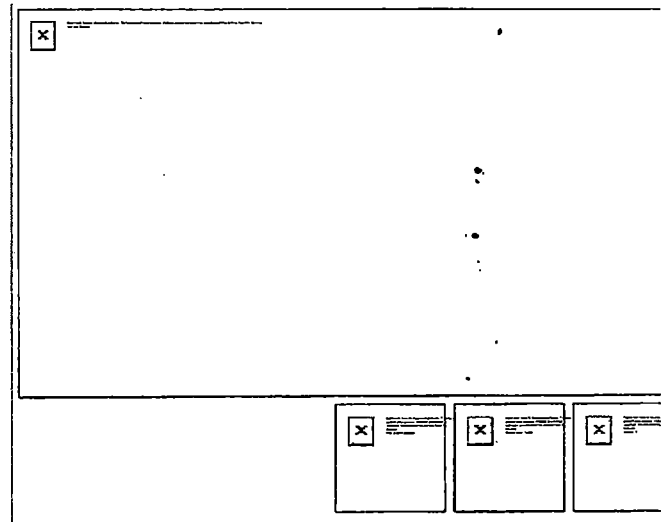
On Feb 17, 2016, at 10:10 AM, Benjamin A. Traywick <ben@traywicklaw.com> wrote:

Julie, Adam, Cory, Rutledge- good morning. I've dropped Judge Murphy's clerk from this email. I plan to notice Jon Ramaci's deposition on one of the following days: March 3rd, 7th, 9th, 10th, 11th. If you would like input on which of these work for you, please hit me with a (preferably private) email. I want to emphasize that, given the posture of this case and the schedule that we have, this deposition must and will go on one of these dates, so I encourage you to be flexible and available on as many of these dates as possible. Thanks in advance. Ben

Benjamin A.C. Traywick

LITIGATION PARTNER

Benjamin A. C. Traywick | Traywick & Traywick, LLC.
875 Lowcountry Blvd., Suite 204
Mt. Pleasant, South Carolina, 29464
Tel: (843) 810-3121 | fax: (843) 300-1051
Email: ben@traywicklaw.com



Traywick & Traywick, LLC, P.O. Box 564, I.O.P., S.C. 29451

www.traywickla

From: Julie Moore [<mailto:jmoore@duffyandyoung.com>]
Sent: Wednesday, February 17, 2016 10:01 AM
To: Cory Manning <Cory.Manning@nelsonmullins.com>; Murphy, Maite Law Clerk (Hope T. Coleman) <mmurphy@cscourts.org>
Cc: Adam Hegler <adam.hegler@nelsonmullins.com>; Lisa Sharpe <lsharpe@duffyandyoung.com>; Benjamin A. Traywick <ben@traywicklaw.com>; Rutledge Young <ryoung@duffyandyoung.com>; Ann Brock <ann.brock@nelsonmullins.com>
Subject: RE: Byrdnest, LLC, et al v. John Ramaci, et al - Case number 2013-CP-10-04874

Ms. Coleman -

Benjamin A. Traywick

From: Cory Manning <Cory.Manning@nelsonmullins.com>
Sent: Friday, March 4, 2016 6:45 PM
To: Benjamin A. Traywick
Subject: Re: Ramaci

Ramaci is not available on Friday 3/11 for deposition.

Sent from my iPhone

On Mar 4, 2016, at 2:04 PM, Cory Manning <Cory.Manning@nelsonmullins.com> wrote:

Thanks, Ben. I understand. Glad to hear you are busy.

No surprise I am sure, but I am probably going to move the court for relief on Monday regarding the schedule and the deposition going forward. I assume that you do not consent. Let me know if otherwise.

CM

From: Benjamin A. Traywick [<mailto:ben@traywicklaw.com>]
Sent: Friday, March 04, 2016 2:02 PM
To: Cory Manning
Subject: RE: Ramaci

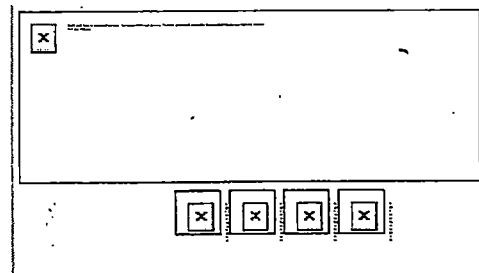
Cory- sorry to have missed you, man: I've got ten million things going on here.

Yes, let's proceed with the deposition; yes, I can get you discovery responses. Have a good weekend my friend- Ben

Benjamin A.C. Traywick

LITIGATION PARTNER

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www.traywicklaw.com

From: Cory Manning [<mailto:Cory.Manning@nelsonmullins.com>]
Sent: Friday, March 4, 2016 10:58 AM
To: Benjamin A. Traywick <ben@traywicklaw.com>
Subject: RE: Ramaci

Are we going forward with the deposition on 3/11?

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

COUNTY OF CHARLESTON)

CASE NO.: 2013-GP-10-4874

Byrdnest, LLC, Craig Sedmak, Stephanie
Sedmak, and Wesley Nau)

MOTION AND ORDER INFORMATION

Plaintiff,)

FORM AND COVERSHEET

vs.)

John Ramaci, Haverly Ramaic, Richard Scott,
and Billy Ulm)

Defendant.)

Plaintiff's Attorney: Ben Traywick, Bar No: 74027 Address: 875 Lowcountry Blvd, Ste 204, Mt. Pleasant, SC 29464 Phone: 843-352-9569 Fax: 843-300-1051 E-mail: ben@traywicklaw.com Other:	Defendant's Attorney: Julianne Farnsworth, Bar No: _____ Address: 10 Cochran Court, Charleston, SC 29407 Phone: _____ Fax: _____ E-mail: _____ Other: _____
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Motion to Compel Estimated Time Needed: 30 minutes Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
<i>M. Carter</i> Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant	May 4, 2015 Date submitted
SECTION III: Motion Fee	
<input checked="" type="checkbox"/> PAID - AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other:	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2013-CP-10-4874
)	
BYRDNES, LLC, CRAIG SEDMAK,)	
STEPHANIE SEDMAK, AND WESLEY)	
NAU,)	
)	
PLAINTIFFS,)	
)	
vs.	)	Plaintiffs' Second Motion to Compel
)	
JOHN RAMACI, HAVERLY RAMACI,)	
RICHARD SCOTT, AND BILLY ULM,)	
)	
DEFENDANTS.)	
)	

TO: JULIANNE FARNSWORTH, ATTORNEY FOR JOHN AND HAVERLY RAMACI

YOU WILL PLEASE TAKE NOTICE that the Plaintiffs, through their undersigned counsel, will move pursuant to Rules 26 and 37, *SCRCP*, for an order compelling Defendants John and Haverly Ramaci to provide meaningful responses to interrogatories and requests for production duly served upon them. These Defendants' responses are inadequate in myriad ways, each of which has been conveyed to their attorney in an effort to resolve or at least to narrow the items in dispute—Exhibit #1—to no avail.

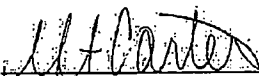
The Plaintiffs filed a motion to compel proper responses on June 6th, 2014 and were heard by the Hon. Markley R. Dennis on September 9th, 2014. Judge Dennis instructed counsel for the Plaintiffs to prepare for Mr. Ramaci's signature an affidavit, in which Mr. Ramaci would swear to the lack of information that his discovery responses indicate.¹ Counsel for the Plaintiff prepared and delivered the affidavit to Ramaci's counsel that same day. (Exhibit #2.) Ramaci's attorney committed to providing the signed affidavit by October 9th, 2014 (Exhibit #3) and supplemental

¹ A further deficiency: the responses were not signed by counsel as required by Rule 11, *SCRCP*.

responses by October 13th, 2014 (Exhibit #4). More than six months later, Ramaci has produced neither.

In the interim, the Plaintiffs have deposed Defendant Haverly Ramaci, who confirmed the existence of numerous items appropriate for electronic discovery: a home office Apple desktop computer, that computer's external hard drive, and an iPad, all of which were in use by Jon Ramaci during the relevant period, i.e. the period during which, as CEO of iCache, Inc., he allegedly absconded with approximately \$800,000 of the Plaintiffs' investment, which had been obtained on false pretenses. Documents, emails and other iCache related material stored on these computers are responsive to the outstanding requests and should be produced.

Given the duration of these Defendants' recalcitrance, the Plaintiffs do request an award of costs and attorney's fees incurred they have incurred as a result.

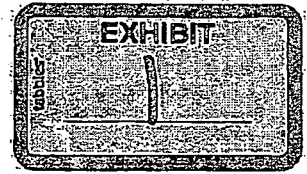


David P. Traywick
Benjamin A. Traywick
Meredith Ann Carter
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Mount Pleasant, SC 29464
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dpt@traywicklaw.com
ben@traywicklaw.com
Attorneys for the Plaintiffs

5/4/2015
Date

4/23/2015

RE Byrdnest, LLC et al v. John Ramaci et al 2013-CP-10-4874.htm



From: Benjamin A. Traywick
Sent: Tuesday, May 20, 2014 5:28 PM
To: Julianne Farnsworth
Cc: David Traywick; Meredith Ann Carter
Subject: RE: Byrdnest, LLC et al v. John Ramaci, et al 2013-CP-10-4874

Julianne: good afternoon. In going through your responses to discovery I have quite a few matters I'll need to take up with the court if we cannot come to some understanding. I suspect—given that I am unsatisfied with virtually every interrogatory response your client has given—that we will not be able to achieve that understanding. As such, unless you can give me firm assurances before Friday of this week, I will file my motion in order to keep the case moving. My concerns:

Interrogatories

#1 and #2- I would appreciate your providing a bit more information about who JoAnne Stadtmueller and Derek Dunn are. In keeping with custom I don't need much here, but I would like to know at least generally who they are.

#3- As I read this response, your guy is saying that he has no documents of any kind that relate to iCache? I'm sorry, Julianne: I trust you without reservation but I do not believe that this can be true.

#4- I understand the uncomfortable position you are in on this question of coverage, but I believe I am entitled to know more than you've provided here. The interrogatory asks for the carrier, address and policy information for any policies that apply "or may apply" to these claims. I think I'm entitled to know what all policies are out there. Once I know that I can handle figuring out the coverage situation with followup RFPs and subpoenas. If your guy's defense is being provided under a reservation of rights, I'd appreciate your providing a copy to me.

#7- The iCache stock table provides only a small portion of the information requested. In addition to the fact that your guy almost certainly does have some of this information in his memory, I don't think it's sufficient to say "Ramaci does not have possession of iCache documents and therefore is not able to respond", because I'm under the impression that you, his attorney, does have the documents. If he needs the records to refresh his memory, I presume that you can provide them.

#8- I'm not aware that "outside the scope of time, place and circumstances of the allegations" is a valid objection. My clients claim in this lawsuit that John Ramaci looted iCache in part to fund other, sometimes similar projects he had going on the side. Once you tell me what side projects he had going, I am going to subpoena those entities to find out if any iCache money (any of my clients' money) went to fund them. What happened to the money, and why, is at the heart of this case, and we're entitled to get into these issues. In response to your confidentiality concern, we are happy to enter into any reasonable confidentiality agreement you may devise, or to take them subject to the confidentiality agreement we already have in place.

#9- I can understand your "legal conclusion" objection on the subject of whether he offered securities. But he certainly can answer a) whether he offered any registered securities, and b) whether he was licensed or registered to sell securities at the time of the iCache transactions.

#10- IP rights is another key issue in this case; your reference to what a document prepared by Mr. Scott "purports" to indicate is not sufficient. I feel sure that your guy has lots of information about IP rights; please provide it.

#11- I ask that you clarify what is ambiguous about a request that the CEO of a tech startup identify the key

intellectual property for the company's business plan, and to state whether the company ever achieved ownership of that property. Whether or not ambiguous, it certainly is not overly broad or unlikely to lead to admissible evidence; given that your guy committed obvious and material misrepresentations on the status of the core IP that was listed in the pitchbook.

#12- I'm not aware that "outside the scope of time, place and circumstances of the allegations" is a valid objection. The claims in the lawsuit are that your guy looted the company for his personal benefit, beginning in 2011. The money trail is central to the case- please provide the requested information.

#13- Concerning your confidentiality concern, we're happy to take it subject to the existing or to a different confidentiality agreement. The exhibits you reference do not provide the information requested; please provide it.

#14, #15, #16 and #17: Please identify what is ambiguous or overly broad about requests that the CEO and acting CFO of the company state what happened to certain investors' money; state when he took allegedly fraudulent deferred compensation, and whether he told any of the plaintiffs that he was (allegedly) owed deferred compensation. Our people were told their investment would go to R&D; we know that it actually went into Ramaci's pocket in the form of "deferred compensation"- again, this is a central issue in the case, just based on the pleadings. So we're entitled to know, and your guy is the only one with answers. Concerning the "reasonably calculated to lead..." objection, what became of the plaintiff's money, and what they were told about what would become of it, in this securities fraud/looting case clearly is not only within the scope of discovery but outrightly relevant. The exhibits you reference do not contain the information requested- please provide it.

#18- There is nothing ambiguous, overly broad or beyond the scope of discovery about this very straightforward question. As you know, the pitchbook that John Ramaci used to lure my people into investing in the company declared that there was an agreement in place. I appreciate that your response admits that this was false; if, however, there is something you are not providing, under the auspices of the objections, I'd ask you please to provide it.

#19 & #20: You lodge no objection to these questions about payroll, but you haven't actually answered the questions: who does your guy think had responsibility for payroll from 2011 until he quit the company, was payroll ever (to his knowledge) established, and if so, when and by whom?

#22- There is nothing ambiguous, overly broad or beyond the scope of discovery about a request that the CEO and CFO of a company state when and by whom audited financials were prepared; this information is at the heart of the case, is clearly discoverable, and is clearly within your guy's knowledge. If the entire set of responsive documents is within the documents already produced, please just say so and we can take it from there.

#23- If your objections to this interrogatory were valid, there would be no such thing as securities fraud/looting cases. We obviously have a right to know what money he took from the company. To the extent any payment on the ledger is responsive to the interrogatory, but has a payee other than "John Ramaci" or "Haverly Ramaci", I would appreciate your identifying those ledger entries.

#24- We're entitled to this information, for the reasons set forth above; we're happy to take the names and information subject to a confidentiality agreement.

Requests for Production

#1- I will evaluate these objections once I have the materials your guy intends to produce. Please let me know when we can expect them.

#10- Your objections are not proper. As I indicated to you, your client's apparent misrepresentations concerning patents applied for and/or owned are central to this case. We also have reason to believe that he was working on related projects—including patent applications—which he had the duty to disclose when soliciting my folks' investment.

#11- Please let me know when you intend to provide these materials. I reiterate our offer to provide a data recovery expert, at our expense, to cull the responsive data from any hardware or other source of which your guy is aware.

#12 and #13- We're entitled to see his tax return and account statements; the relationship between his personal finances and my clients' investment is directly relevant to the case. We'll take them under a confidentiality agreement of your choosing.

#14- Your objections are not proper, and they have no effect on the fact that we're entitled to know what marketing information Ramaci has used certainly for iCache, and also for other companies, as indicated above; we believe he was engaged in projects on related matters, which he had a duty to disclose. A pattern of fraudulent conduct also would be relevant to our claim for punitive damages.

I despise both preparing and receiving these letters, Julianne- we'd love to resolve all of this if we can get some significant cooperation from your guy. Let me know- thanks. Ben

Benjamin A. Traywick
 Traywick & Traywick, LLC
 875 Lowcountry Boulevard, Suite 204
 Mt Pleasant, South Carolina 29464
 (P.O. Box 564, Isle of Palms, SC 29451)
 Telephone: 843-810-3121
 Facsimile 843-300-1051
www.traywicklaw.com

From: Julianne Farnsworth [<mailto:Julianne@farnsworthlaw.com>]

Sent: Tuesday, May 13, 2014 4:12 PM

To: David Traywick; Benjamin A. Traywick; 'Mary Gordon Baker'; bduffy@duffyandyoung.com

Subject: Byrdnest, LLC et al v. John Ramaci, et al 2013-CP-10-4874

David and Ben, Attached please find John Ramaci's Responses to Plaintiff's Interrogatories and Request For Production. I am only serving these pleadings electronically. Please let me know if you would like an additional copy faxed to you or sent to you by mail. Thank you for the additional time to get these to you. I am still in boxes and will probably be so forever. After practicing for 28 years one accumulates a lot of stuff. Let's exchange some dates for depositions soon so we can get on everyone's calendar. All my best, Julianne

JULIANNE FARNSWORTH
 FARNSWORTH LAW FIRM, LLC
 T: (843) 469-1069
 E: Julianne@farnsworthlaw.com

Information contained in this email transmission is privileged, confidential and covered by the Electronic Communications Privacy Act, 18 U.S.C. Sections 2510-2521. If you are not the intended recipient, please do not read, distribute, or reproduce this transmission. If you have received this

4/23/2015

RE:Byrdnes LLC et al v. John Ramaci et al 2013-CP-10-4874.htm

-email in error, please notify us immediately by reply email and delete this message from your system. Thank you in advance for your assistance.

<p>STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON</p> <p>BYRDNEST, LLC, CRAIG SEDMAK, STEPHANIE SEDMAK AND WESLEY NAU,</p> <p>PLAINTIFFS,</p> <p>VS.</p> <p>JOHN RAMACI, HAVERLY RAMACI, RICHARD SCOTT AND BILLY ULM,</p> <p>DEFENDANTS.</p>	<p>IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO. 2013-CP-10-4874</p> <p>AFFIDAVIT OF JOHN RAMACI</p>
--	--

Comes before me, John Ramaci, who, being duly sworn, deposes and says:

1. I am over the age of eighteen years of age and I make this affidavit with personal knowledge of the facts alleged herein:

2. I have no information beyond what I have provided to my attorneys concerning JoAnne Stadtmuller and Derek Dunn and the testimony they are likely to provide in this case. (Interrogatory #1 and #2)

3. I do not have in my possession, or reasonably available to me, any documentary materials of any kind—whether electronic or hard copy—which in any degree or to any extent have as their subject matter iCache, Inc. or its team members, ideas, business operations or products. (RFP #1.)

4. I do not have in my possession, or reasonably available to me any of the following, concerning iCache, Inc.:

- a. correspondence
- b. diagrams
- c. business plans
- d. marketing materials
- e. emails
- f. facsimiles
- g. contracts
- h. financial records
- i. corporate governance documents
- j. notes
- l. memoranda
- m. timelines



- n. tax documents
- o. photographs
- p. videos
- q. spreadsheets
- r. presentations

(RFP #1.)

5. I know of no insurance policy which may provide coverage for the claims against me in this case. (Interrogatory #4.)

6. I am unable to identify any officer, director or other representative of iCache, Inc. who participated in offering stock in iCache, Inc. to Jeff Byrd or Byrdnest, LLC. (Interrogatory #7.)

7. I am unable to identify any officer, director or other representative of iCache, Inc. who participated in offering stock in iCache, Inc. to Craig and Stephanie Sedmak. (Interrogatory #7.)

8. I am unable to identify any officer, director or other representative of iCache, Inc. who participated in offering stock in iCache, Inc. to Wesley Nau. (Interrogatory #7.)

9. I am unable to identify any officer or director of iCache, Inc., or other person, who received a finders fee, commission, bonus or other compensation in connection with the sale of iCache, Inc. stock to Jeff Byrd or Byrdnest, LLC. (Interrogatory #7.)

10. I am unable to identify any officer or director of iCache, Inc., or other person, who received a finders fee, commission, bonus or other compensation in connection with the sale of iCache, Inc. stock to Stephanie or Craig Sedmak. (Interrogatory #7.)

11. I am unable to identify any officer or director of iCache, Inc., or other person, who received a finders fee, commission, bonus or other compensation in connection with the sale of iCache, Inc. stock to Wesley Nau. (Interrogatory #7.)

12. I am unable to state whether I did or did not register securities for sale in South Carolina during my time at iCache, Inc. (Interrogatory #9.)

13. I am unable to state whether I at any time have been licensed or registered to sell securities in South Carolina. (Interrogatory #9.)

14. I am unable to provide any information as to what patent, trademark, copyright or other intellectual property rights are or have been held by iCache, Inc. (Interrogatory #10)

15. By responding to questions about my knowledge of intellectual property held by iCache solely by reference to Exhibit B to Richard Scott's responses to Plaintiffs' initial discovery, I adopt the representations in Exhibit B as being accurate. (Interrogatory #10)

16. I am unable to understand and respond in any way to a request that I identify the core intellectual property required for iCache, Inc.'s product development plan. (Interrogatory #11.)

16. I am unable to state whether iCache, Inc. ever procured ownership of the core intellectual property required for iCache, Inc.'s core intellectual property. (Interrogatory #11.)

17. I am unable to identify the financial institutions at which I have held an account since the beginning of 2011. (Interrogatory #12.)

18. I am unable to provide any information about payments made by iCache, Inc. to me, my family or companies I am affiliated with—during my time as the company's CEO, when I had full access to the company's accounts—other than by referring to Exhibits A, B, C, D and E of Richard Scott's responses to Plaintiffs' initial discovery, despite that these Exhibits are unaudited, *post hoc* data compilations generated by a third party after I left the company. (Interrogatory #13.)

19. I am unable to provide any information—beyond reference to Mr. Scott's Exhibits C, D and E—as to what happened to the \$850,000 the Plaintiffs' invested in iCache, Inc. (Interrogatory #13)

20. I am aware of no fact which supports the idea that the Plaintiffs were informed, prior to or at the time of their purchase of iCache stock, that I was owed deferred compensation by the company. (Interrogatory #16.)

21. In answering Plaintiff Byrdnest, LLC's interrogatories and requests for production, I did not know, and could not reasonably have discovered, that Byrdnest, LLC was a stockholder in iCache, Inc., even though my attorney has in her possession a stock certificate issued to Byrdnest, LLC, as well as an email which shows that I transmitted this stock certificate to Jeff Byrd. (Interrogatory #17.)

22. I am unable to provide any fact which supports the idea that any portion of the Plaintiffs' investment was utilized for product development. (Interrogatory #17)

23. I am unable to state whether Apple, Inc. or any of its subsidiary companies or affiliate companies, ever agreed to market iCache products or designs at Apple retail outlets. (Interrogatory #18.)

24. I am unable to state who had primary responsibility for iCache's employee payroll between January 1st, 2011 and October 25th, 2012. (Interrogatory #19.)

25. I am unable to identify any employee payroll service that was established for iCache, Inc. prior to October 25th, 2012. (Interrogatory #20.)

26. I am entirely unable to identify any details—date, preparer or current whereabouts—of any audited financial statements that I ordered during my time as CEO of iCache, Inc. (Interrogatory #22.)

27. I am unable to identify “the accounting firm that represented iCache, Inc.” that I mentioned in passing in my responses to interrogatories. (Interrogatory #22.)

28. When asked to identify all check and wire payments made from iCache, Inc. to me, I am unable to provide any information beyond referring to Richard Scott’s Exhibit C. (interrogatory #23.)

29. By responding to various requests about iCache’s finances with reference to Exhibits C, D and E to Richard Scott’s responses to Plaintiffs’ initial discovery, I have adopted the accuracy of the data referenced in Exhibits C, D and E. These accurate data include:

- a. That I received \$0 in commissions from the sale of iCache stock in 2010, \$4,000 in commissions from sale of iCache stock in 2011, and \$84,000 in commissions from sale of iCache stock in 2012, for a total of \$88,000 in commissions from sale of iCache, Inc stock from 2010-2012;
- b. That I received \$0 for healthcare from the company in 2010, \$5,604.34 for healthcare from the company in 2011, and \$14,379.15 for healthcare from the company in 2012;
- c. That I received \$5,000 in salary in 2010, \$201,540 in salary in 2011, and \$132,296.50 in salary in 2012, for a total of \$338,836.50 for the period 2010-2012;
- d. That I received \$4,810.10 in personal disbursements in 2010, \$26,376.66 in personal disbursements in 2011 and \$14,499.56 in personal disbursements in 2012, for a total of \$45,686.32 in personal disbursements from the company from 2010-2012;
- e. That I received Western Union transfers from the company \$436 in 2010, \$12,976.50 in 2011 and \$12,317 in 2012, for a total of \$25,729.50 in Western Union transfers from the company from 2010-2012;
- f. That I received personal cash advances from the company totaling \$2,389.20 in 2010, \$9,110.73 in 2011, and \$3,867.73 in 2012, for a total of \$15,367.66 from 2010-2012;
- g. That I made a cash withdrawal from iCache’s account of \$27,500 in 2011;
- h. That iCache, Inc paid my wife, Haverly Ramaci \$6,500 in 2011 and \$2,600 in 2012, for a total of \$9,100 from 2011-2012;
- i. That I received \$18,832.89 from the company in 2010 for a shareholder meeting in Dubai;
- j. That in 2011 I received from the company \$161,533 for miscellany including AP reduction, interest and vacations not taken, and another \$52,000 for these and/or similar items in 2012, for a total of \$213,533 from 2011-2012;

k. That in total I received \$31,468.19 in compensation in 2010, \$455,141.23 in 2011 and \$315,959.94 in 2012, for a total of \$802,569.36 from 2010 to 2012.

30. Beyond the items listed in (a)-(k) of paragraph 29, above, neither I, any family member, nor any company in which I had or have an ownership stake, received any payments of any kind from iCache between 2010 and 2012, including Mobile Life Labs, LLC.

31. I am unable to identify any accountant, financial advisor, wealth manager, tax attorney or other financial professional whose services I have utilized since 2006. (Interrogatory #24.)

John Ramaci

SWORN TO AND ACKNOWLEDGED TO ME

This _____ day of _____, 2014

Notary Public for South Carolina (L.S.)

My Commission Expires: _____

4/23/2015

FW: Byrdnest v. Ramaci.htm

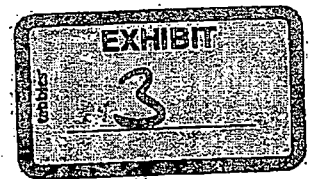
From: Benjamin A. Traywick
Sent: Thursday, April 23, 2015 11:10 AM
To: Benjamin A. Traywick
Subject: FW: Byrdnest v. Ramaci

----- Original message -----

From: Julianne Farnsworth <Julianne@farnsworthlaw.com>
Date: 10/07/2014 10:35 AM (GMT-05:00)
To: "Benjamin A. Traywick" <ben@traywicklaw.com>
Cc:
Subject: Re: Byrdnest v. Ramaci

I hope to have Mr. Ramaci's executed affidavit to you before midday Thursday, Julianne

Sent from my BlackBerry Q10.



4/23/2015

FW: Byrdnest v. Ramaci et al.htm

From: Benjamin A. Traywick
Sent: Thursday, April 23, 2015 11:09 AM
To: Benjamin A. Traywick
Subject: FW: Byrdnest v. Ramaci, et, al

From: Julianne Farnsworth [<mailto:Julianne@farnsworthlaw.com>]
Sent: Friday, October 10, 2014 9:24 AM
To: Benjamin A. Traywick
Subject: Byrdnest v. Ramaci, et, al

Ben, the affidavit you sent to me for Mr. Ramaci to sign was more akin to a Supplemental Interrogatory Request than the affidavit I envisioned when we were before Judge Dennis on your Motion To Compel. Pursuant thereto, when Mr. Ramaci and I were working on responding to it, I started preparing Supplemental Responses to your initial Interrogatories to Mr. Ramaci and to the new questions/interrogatories you included in your affidavit draft. Mr. Ramaci is still going to submit an affidavit pursuant to Judge Dennis' directive but he will submit it along with the Supplemental responses to the First Interrogatories and Supplemental Responses to the Requests for Production. I hope to have the supplemental responses to you by the end of the day today, at the latest on Monday, October 13, 2014.

I look forward to the call with Judge Murphy so we can hopefully find out if we will be able to move the case to the Business Court.

Julianne

JULIANNE FARNSWORTH
FARNSWORTH LAW FIRM LLC
P: 843.469.1069
F: 866.728.4603
E: Julianne@farnsworthlaw.com

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
BYRDNES, LLC, CRAIG SEDMAK,)
STEPHANIE SEDMAK, AND WESLEY)
NAU,)
)
PLAINTIFFS,)
)
vs.)
)
JONATHAN RAMACI, HAVERLY)
RAMACI, RICHARD SCOTT, AND)
BILLY ULM,)
)
DEFENDANTS.)
_____)

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

**ORDER ON PLAINTIFFS' MOTION FOR
SANCTIONS**

This matter is before me on the Plaintiffs' Motion for Sanctions against Defendant Jonathan Ramaci, filed March 17th, 2016. Having considered the parties' submissions and having heard oral argument on February 21st, 2017, I find that sanctions against Mr. Ramaci are appropriate for his violation of my March 10th, 2016 order that he attend the deposition which had been noticed for the following day. I order, as a sanction, that Mr. Ramaci pay to the Plaintiffs \$ _____, which represents a reasonable measure of the attorneys' fees and costs the Plaintiffs have incurred in setting Mr. Ramaci's deposition, as described in the affidavit of Plaintiffs' counsel, Benjamin A.C. Traywick, attached hereto. Mr. Ramaci shall pay this amount within fifteen (15) days of this order.

AND IT IS SO ORDERED.

Hon. Maite Murphy, Circuit Judge
St. George, South Carolina

Date

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
BYRDNEST, LLC, CRAIG SEDMAK,)
STEPHANIE SEDMAK, AND WESLEY)
NAU,)
PLAINTIFFS,)
vs.)
JONATHAN RAMACI, HAVERLY)
RAMACI, RICHARD SCOTT, AND)
BILLY ULM,)
DEFENDANTS.)

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

AFFIDAVIT OF BENJAMIN A.C. TRAYWICK

1. I am over eighteen years of age and make this affidavit with personal knowledge of the facts asserted herein.
2. I have reviewed my fee agreement and billing statements to discern the Plaintiffs' expenses incurred in compelling the deposition of Jonathan Ramaci. The itemized time commitments are as follows:

Hours	Description of professional services
2.7	Numerous emails, telephone calls and correspondence among counsel of record and chambers between 11/30/15 and 3/10/16 in effort to set deposition voluntarily
2.5	Preparation of motion for sanctions and supporting memorandum
1.1	20% of total preparation for and attendance of 2/21/2017 hearing on many motions, the motion for sanctions among them
1.0	Preparation of this order and affidavit
7.3	Total time spent

3. My fee in this matter is a hybrid hourly/contingent fee agreement: I am being paid \$150/hour (slightly more than 1/2 of my typical hourly rate of \$275/hour) as well as 15% of any recovery (slightly less than 1/2 of my typical 33 1/3% contingency fee arrangement). Though the amount of any recovery that may result is of course unknown, my effective hourly rate when the Plaintiffs' claims were tentatively resolved in early 2016 was approximately \$450/hour.

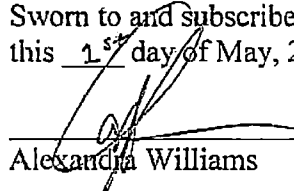
4. For these reasons, I consider \$450/hour to be a fair and reasonable attorney's fees calculation; when multiplied by the 7.3 hours detailed above, I can affirm that my clients have incurred total attorney's fees of \$3,285.00 in pursuing Mr. Ramaci's deposition.
5. My clients also incurred the standard \$25.00 fee to file the motion for sanctions, leaving their total expense at **\$3,310.00**.



Benjamin A.C. Traywick

May 1, 2017
Charleston, South Carolina

Sworn to and subscribed before me
this 1st day of May, 2017



Alexandra Williams

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 9.26.26

EXHIBIT B

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

Byrdnest LLC, Craig Sedmak,) Civil Action No. 2013-CP-10-4874
Stephanie Sedmak, and Wesley Nau,)
)

Plaintiffs,)

vs.)

Jonathan Ramaci, Haverly Ramaci,)
Richard Scott, and Billy Ulm,)
)
Defendants.)

**DEFENDANT JONATHAN
RAMACI'S MOTION FOR
PROTECTIVE ORDER
AND FOR STAY**

2016 APR 26 AM 10:59
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

TO: ATTORNEYS FOR THE ABOVE-NAMED PLAINTIFFS

PLEASE TAKE NOTICE THAT, Jonathan Ramaci ("Ramaci"), through undersigned counsel, respectfully moves this Court pursuant to South Carolina Rules of Civil Procedure 30(j)(3) and 26(c) to enter a protective order upholding his assertion of the Fifth Amendment privilege against self-incrimination. Additionally, Ramaci requests that this Court stay discovery and the trial in this matter until the conclusion of a pending criminal investigation by the Internal Revenue Service (which was instigated by a party to this action) and any proceeding arising from that IRS investigation.

In support of this motion, Ramaci states as follows.

1. On April 20, 2016, Ramaci appeared for his deposition as noticed.
2. During that deposition and on the advice of counsel, Ramaci invoked his Fifth Amendment privilege against self-incrimination and refused to answer any questions except his name and address, due to the above-referenced pending IRS criminal investigation.
3. Ramaci's deposition proceeded, and counsel for Plaintiffs and counsel for Defendants Richard Scott and Billy Ulm each asked questions of Ramaci.
4. The privilege against self-incrimination contained in the Fifth Amendment of the United States Constitution and Article I, Section 12 of the South Carolina Constitution is "an

assurance that an individual will not be compelled to produce evidence or information which may be used against him in a later criminal proceeding." *Grosshuesch v. Cramer*, 659 S.E.2d 112, 117 (S.C. 2008).

5. "The settled law provides that the privilege extends not only to answers that would themselves support a criminal conviction, but also to answers furnishing a link in the chain of evidence needed to prosecute an individual." *Id.* (citing *Hoffman v. United States*, 341 U.S. 479, 486 (1951)) (emphasis added); see also *First Union Nat. Bank v. First Citizens Bank & Trust Co. of South Carolina*, 551 S.E.2d 301, 303 (S.C. Ct. App. 2001) ("It extends not only to answers that would in themselves support a conviction but likewise encompasses those that would furnish a link in the chain of evidence needed to prosecute the witness for a crime.") (citing *United States v. Hubbell*, 530 U.S. 27 (2000)).

6. "Thus, '[c]ompelled testimony that communicates information that may lead to incriminating evidence is privileged even if the information itself is not inculpatory.'" *First Union Nat. Bank*, 551 S.E.2d at 303 (quoting *Hubbell*, 530 U.S. at 38).

7. "The privilege is available even if the risk of criminal prosecution is remote; the witness only has to show that there is a possibility, and not a likelihood, of prosecution." *First Union Nat. Bank*, 551 S.E.2d at 303.

8. Ramaci's assertion of his constitutional privilege must be upheld unless "it clearly appears to the court that he is mistaken." *Grosshuesch*, 659 S.E.2d at 117 (quoting *Hoffman*, 341 U.S. at 486); see also *In re French*, 127 B.R. 434, 439 (Bankr. D. Minn. 1991) ("The asserted privilege must be upheld unless it is 'perfectly clear, from a careful consideration of all the circumstances in the case, that the witness is mistaken, and that the answer[s] cannot possibly have such tendency' to incriminate." (quoting *Hoffman*, 341 U.S. at 488) (emphasis in original)).

9. Ramaci is currently the subject of an ongoing investigation by the Criminal Investigation Division of the IRS related to his involvement with and management of iCache.

10. The investigation was instigated by Richard Scott, a defendant in this matter, who initially submitted an Application for Reward for Original Information (Form 211) and accompanying materials to the IRS on May 9, 2013, but due to an error on the application form, resubmitted the application and accompanying materials on November 5, 2013.

11. Among the materials Mr. Scott submitted to the IRS was an affidavit regarding iCache that discussed many of the circumstances and allegations at issue in this action, including board actions and resolutions, company financial transactions, and financial records related to iCache that occurred or were created between 2009 and early 2013, all of which mirror many of the Plaintiffs' and Defendant Ulm's allegations against Ramaci in this action.

12. Plaintiff Jeff Byrd of Byrdnest, LLC has also voluntarily participated in the investigation by speaking with IRS investigators multiple times and providing them with documents, recordings, and other requested information. (Jeff Byrd 8/13/2015 Dep. at 98:9-101:13.)

13. Mr. Scott's instigation and Mr. Byrd's participation in this criminal investigation of Ramaci by the IRS have put Ramaci's constitutional rights against self-incrimination directly at issue.

14. While Ramaci has cooperated thus far in providing documents and responses to discovery requests, providing sworn deposition testimony related to this action creates a heightened danger of incrimination sufficient to fall within the protection of the Fifth Amendment privilege against self-incrimination. *See Rogers v. United States*, 340 U.S. 367, 374 (1951) (noting that in analyzing a claim of privilege, a court is "required to determine, as it must whenever the privilege is claimed, whether the question presented a reasonable danger of further crimination in light of all the circumstances, including any previous disclosures"); *In re Master Key Litig.*, 507 F.2d 292, 294 (9th Cir. 1974) (noting that "an ordinary witness may 'pick the point beyond which he will not go,' and refuse to answer any questions about a matter already discussed, even if the facts already revealed are incriminating, as long as the answers sought may tend to further incriminate him").

15. The substance of Ramaci's pleading and discovery responses in this case has generally been limited to the circumstances surrounding the negotiation and execution of the settlement agreement and discovery responses that identify potential witnesses and refer to documents already produced by Defendant Scott.

16. Any testimony at a deposition regarding the nature and circumstances alleged in this action would expose Ramaci to a heightened danger of incrimination. Ramaci does not forfeit any Fifth Amendment protections by denying liability in this matter. *See Grosshuesch*, 659 S.E.2d at 118 (stating that "the question when judging the application of the privilege against self-incrimination does not revolve around what defenses a party has asserted in a civil action, but whether there is a reasonable possibility that requiring a party to answer a certain question would provide information that could be used against the party in a criminal proceeding or would lead to the discovery of such information," and finding that a party denying criminal conduct in defense of a claim does not lose the protections against self-incrimination merely by maintaining such defense).

17. As noted above, Ramaci, on the advice of counsel, decided to invoke his Fifth Amendment privilege against self-incrimination and refused to answer any questions except his name and address.

18. Counsel for Ramaci informed counsel for Plaintiffs and counsel for Defendants Scott and Ulm on the evening of April 19 (prior to the deposition) that Ramaci would invoke the Fifth Amendment during his deposition the following day.

19. Good cause exists for this protective order because the criminal investigation by the Criminal Division of the IRS is ongoing.

20. Forcing Ramaci to testify at a deposition in this matter while the IRS investigation is pending would violate his Fifth Amendment privilege against self-incrimination.

21. Therefore, Ramaci now moves this Court for a protective order upholding his assertion of the Fifth Amendment.

22. Additionally, Ramaci requests that this Court stay discovery and the trial of this matter until the conclusion of the IRS investigation and any proceeding arising from the same. *See, e.g., Brumfield v. Shelton*, 727 F. Supp. 282, 284 (E.D. La. 1989) (finding a stay of a civil proceeding to be appropriate where "the facts at issue in both the [civil] suit and the criminal investigation are the same" because "where there is a real and appreciable risk of self-incrimination, an appropriate remedy would be a protective order postponing civil discovery until termination of the criminal action" and defendant faced "a real risk of self-incrimination, since the exact same issues are involved in both matters"). Following the conclusion of the investigation, the parties can petition the Court to lift the stay.

23. Ramaci states that after the conclusion of the IRS investigation and any proceedings arising from the same, he will make himself available for deposition again and answer the questions to which he invoked Fifth Amendment protection.

24. Ramaci further requests that the order provide that motions can be heard during the stay and that the Court refrain from setting a date certain trial until at least 60 days after it lifts the discovery stay.

25. Ramaci's counsel consulted with counsel for the Plaintiffs and counsel for Defendants Ulm and Scott, but they have been unable to reach an agreement as to the substance of this Motion.

26. This Motion is supported by the authorities cited, arguments that will be made at the hearing on the Motion, and such other and further pleadings, authorities, memoranda of law, and documents as may be filed prior to any hearing on this Motion.

WHEREFORE, for the reasons set forth above, Defendant Jonathan Ramaci respectfully requests that this Court enter a protective order for the following relief:

- a. Upholding Ramaci's assertion of the Fifth Amendment right against self-incrimination during his April 20, 2016 deposition;
- b. Staying discovery and the trial of this matter until the conclusion of the IRS matter and any proceedings arising from the same;
- c. Ordering that motions may be heard during the above-referenced stay; and
- d. Ordering that a trial not be set until at least 60 days following the lifting of the above-referenced stay.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Cory E. Manning (SC Bar No. 14702)
E-Mail: cory.manning@nelsonmullins.com
Adam J. Hegler (SC Bar No. 100115)
E-Mail: adam.hegler@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Jonathan and Haverly Ramaci

April 25, 2016

CERTIFICATE OF SERVICE

I, Ann Brock, Paralegal at the law offices of Nelson Mullins Riley & Scarborough LLP, do hereby certify that on this 26th day of April, 2016 I have served all counsel in this action with a copy of the pleading specified below by electronic mail and by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

Pleading: **DEFENDANT JONATHAN RAMACI'S MOTION
FOR PROTECTIVE ORDER AND FOR STAY**

Counsel Served: Benjamin A. Traywick, Esquire
Traywick Law Offices, LLC
Post Office Box 564
Isle of Palms, SC 29451
Attorney for Plaintiffs

Rutledge Young, Esquire
Duffy & Young, LLC
96 Broad Street
Charleston, SC 29401
Attorney for Defendants Richard Scott and Billy Ulm

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2016 APR 26 AM 10:59

FILED



Ann Brock

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

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

BYRDNEST, LLC, CRAIG SEDMAK,
STEPHANIE SEDMAK, and WESLEY
NAU,)

MOTION AND ORDER INFORMATION

Plaintiff,)

FORM AND COVERSHEET

vs.)

JOHN RAMACI, HAVERLY RAMACI,)
RICHARD SCOTT, and BILLY ULM,)

Defendant.)

Plaintiff's Attorney: Benjamin A. Traywick, Bar No. _____ Address: PO Box 564, Isle of Palms, SC 29451 Phone: 843-343-5092 Fax _____ E-mail: ben@traywicklaw.com Other: _____	Defendant's Attorney: Cory Manning, Bar No. 14702 Address: PO Box 11070, Columbia, SC 29201 Phone: 803-799-2000 Fax _____ E-mail: cory.manning@nelsonmullins.com Other: _____
--	--

MOTION HEARING REQUESTED (attach written motion and complete **SECTIONS I and III**)
 FORM MOTION, NO HEARING REQUESTED (complete **SECTIONS II and III**)
 PROPOSED ORDER/CONSENT ORDER (complete **SECTIONS II and III**)

SECTION I: Hearing Information
Nature of Motion: Jonathan Ramaci Motion for Protective Order and for Stay
Estimated Time Needed: 30 minutes Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type
 Written motion attached
 Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.
Signature of Attorney for Plaintiff / Defendant Date submitted _____

SECTION III: Motion Fee
 PAID - AMOUNT: \$ 25 -
 EXEMPT: (check reason) Rule to Show Cause in Child or Spousal Support
 Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRPC)
 Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
 Other: _____

JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
--	---------------------------------

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

MOTION FEE COLLECTED: \$ _____

CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

EXHIBIT C

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

Byrdnest LLC, Craig Sedmak,) Civil Action No. 2013-CP-10-4874
Stephanie Sedmak, and Wesley Nau,)
)

Plaintiffs,)

vs.)

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

Defendants.)
)

**DEFENDANT JONATHAN
RAMACI'S MOTION FOR
PERMANENT INJUNCTION**

FILED
2016 FEB 25 AM 10:52
JULIE J. ARMSTRONG
CLERK OF COURT

TO: ATTORNEYS FOR THE ABOVE-NAMED PLAINTIFFS

PLEASE TAKE NOTICE THAT, as soon as he may be heard, Jonathan Ramaci (“Ramaci”), through undersigned counsel respectfully moves this Court pursuant to South Carolina Rule of Civil Procedure 65 to enter a permanent injunction barring the attempted Assignment of Claims by and between The William L. Ulm, Sr. 2006 Delaware Trust (the “Trust”) and Billy Ulm. Ramaci respectfully requests an order from this Court enjoining the purported Assignment of Claims by the Trust to Billy Ulm or in the alternative, enjoining Ulm from attempting to assert any claims acquired pursuant to the Assignment in this action.

1. On December 21, 2015, Ulm filed a Motion seeking to substitute the Trust as the proper cross-claimant in the claims brought against Ramaci (the “Substitution Motion”).

2. On February 4, 2016, Ramaci filed a memorandum of law in opposition to Ulm’s Substitution Motion, arguing that the substitution was improper under the South Carolina Rules of Civil Procedure and barred by the statute of limitations. On February 4, 2016, Ramaci also filed a Summary Judgment motion as to the cross-claims asserted by Billy Ulm on the basis of the admission in the Substitution Motion that Billy Ulm was not the proper party to prosecute the cross-claims.

3. On February 22, 2016, apparently in response to the arguments and authority in Ramaci's February 4 opposition, counsel for Billy Ulm filed a Memorandum in Opposition to Defendant John [sic] Ramaci's Motion for Summary Judgment as to the Ulm Crossclaims and Motion for Judgment on the Pleadings as to the Ulm Crossclaims, in which counsel abruptly informed the Court and parties to this case that the Trust had executed an Assignment of Claims whereby the Trust assigned its right to prosecute the cross-claims to Billy Ulm on February 19, 2016.

4. On February 24, 2016, Ramaci filed a Reply to Defendant Ulm's Memorandum in Opposition, challenging the purported Assignment of stale claims as improper because the claims are time barred.

5. Ramaci now seeks an order from this Court enjoining the purported Assignment or, in the alternative, enjoining Defendant Billy Ulm from attempting to assert any claims acquired pursuant to the Assignment in this action as his own claims.

6. A party seeking a permanent injunction must demonstrate the following: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction. *Bradacs v. Haley*, 58 F. Supp. 3d 514 (D.S.C. 2014).

7. In South Carolina, the existence of a legal remedy is no obstacle to injunctive relief if the available legal remedy is ineffective because it is impractical, because the threatened acts may continue while a legal action is pending, or because successive actions at law would be necessary to protect plaintiff's rights. *See Kirk v. Clark*, 4 S.E.2d 13 (S.C. 1939).

8. If the Court permits the Assignment and allows Billy Ulm to assert the claims of the Trust in this matter as his own claims, the Ramaci Defendants will be irreparably harmed because they will be forced to continue to litigate this case and incur substantial legal fees.

9. As stated in the parties most recent Consent Motion to Amend Scheduling Order, the parties have continued to be involved in settlement negotiations and have recently made progress as to the same. Indeed, there is a settlement agreement that has been approved by the plaintiffs and with a few relatively non-controversial edits; by Defendant Scott.

10. If Billy Ulm is allowed to insert the time-barred claims of the Trust into this matter as his own claims, the parties' substantial progress toward settlement over the past months will be rendered useless. Indeed, such action may very likely force all of the parties back into a full litigation posture.

11. Ramaci does not have an adequate remedy at law because he will be forced to continue to litigate this matter at substantial cost and effort without the means to recoup either.

12. The balance of hardships weighs in favor of granting the equitable relief requested because continued litigation would impose a burden on all parties to this matter, who have been actively pursuing settlement. On the other hand, any harm resulting from the injunction would be borne by the Trust, who is not, and should not be, a party to this action.

13. The relief sought herein would be in the public interest because it would give effect to the goals of the substantive and procedural law of this state to protect defendants against stale claims and provide continuity and uniformity for the resolution of claims.

14. The procedural subterfuge Ulm pursued with his substitution motion was foiled by Ramaci's arguments and authority in opposition to the same. Now with an eleventh-hour assignment, Ulm attempts to skirt the same authority that foreclosed his substitution.


15. Simply put, Ulm should not be allowed to proceed with the Trust's time-barred claims as if they were his own whether by substitution, assignment, or otherwise.

16. This Motion is supported by the authority cited herein, the arguments that will be made at the hearing on the Motion, and such other and further authority or memoranda of law that is on file or that Ramaci may file prior to or present at any hearing on this Motion.

WHEREFORE, for the reasons set forth above, Ramaci respectfully requests that this Court enter an order enjoining the purported Assignment of Claims by the Trust to Billy Ulm

or in the alternative, enjoining Defendant Billy Ulm from attempting to assert any claims acquired pursuant to the Assignment in this action.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 
Cory E. Manning (SC Bar No. 14702)
E-Mail: cory.manning@nelsonmullins.com
Adam J. Hegler (SC Bar No. 100115)
E-Mail: adam.hegler@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Jonathan and Haverly Ramaci

Columbia, SC
February 24, 2016

CERTIFICATE OF SERVICE

13-cv-10-4874

I, Ann B. Brock, Paralegal at the law offices of Nelson Mullins Riley & Scarborough LLP, do hereby certify that on this 24 day of February, 2016 I have served all counsel in this action with a copy of the pleading specified below by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

Pleading: **DEFENDANT JONATHAN RAMACI'S MOTION FOR PERMANENT INJUNCTION**

Counsel Served: Benjamin A. Traywick, Esquire
Traywick Law Offices, LLC
Post Office Box 564
Isle of Palms, SC 29451
Attorneys for Plaintiffs

Rutledge Young, Esquire
Duffy & Young, LLC
96 Broad Street
Charleston, SC 29401
Attorney for Defendants Richard Scott and Billy Ulm

FILED
2016 FEB 25 AM 10:52
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____



Ann B. Brock
Paralegal

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
1320 Main Street / 17th Floor / Columbia, SC 29201
Tel: 803.799.2000 Fax: 803.256.7500
www.nelsonmullins.com

Ann. B. Brock
Paralegal
Tel: 803.255.5502
ann.brock@nelsonmullins.com

February 24, 2016

Via Hand Delivery on February 25

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

RE: *Byrdnest, LLC, Craig Sedmak, Stephanie Sedmak, and Wesley Nau v. John Ramaci, Haverly Ramaci, Richard Scott, and Billy Ulm*
C/A No.: 2013-CP-10-4874
Our File No.: 47061/01500

Dear Ms. Armstrong:

Enclosed, please find the original and one copy of *Defendant Jonathan Ramaci's Motion for Permanent Injunction* in the above-referenced action. Also enclosed, please find the Motion coversheet and check for filing fee. We would appreciate it if you would please return the clocked copy with our courier. By copy of this letter, we are serving a copy of the same on opposing counsel of record.

Thank you for your kind attention in this matter.

Very truly yours,



Ann. B. Brock
Paralegal

LAB:lab
Enclosure
Cc: Benjamin Traywick, Esquire
Rutledge Young, Esquire

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 BYRDNEST, LLC, CRAIG SEDMAK,)
 STEPHANIE SEDMAK, and WESLEY)
 NAU,)

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

MOTION AND ORDER INFORMATION

Plaintiff,)
 vs.)
)
 JOHN RAMACI, HAVERLY RAMACI,)
 RICHARD SCOTT, and BILLY ULM,)
 Defendant.)

FORM AND COVERSHEET

Plaintiff's Attorney: Benjamin A. Traywick, Bar No. _____ Address: PO.Box 564, Isle of Palms, SC 29451 Phone: 843-343-5092 Fax _____ E-mail: ben@traywicklaw.com Other: _____	Defendant's Attorney: Cory Manning, Bar No. 14702 Address: PO Box 11070, Columbia, SC 29201 Phone: 803-799-2000 Fax _____ E-mail: cory.manning@nelsonmullins.com Other: _____
--	--

MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion for Permanent Injunction
 Estimated Time Needed: _____ Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached
 Form Motion/Order
 I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff / Defendant _____ Date submitted _____

SECTION III: Motion Fee

PAID - AMOUNT: \$ 25.00
 EXEMPT: (check reason) Rule to Show Cause in Child or Spousal Support
 Domestic Abuse or Abuse and Neglect
 Indigent Status State Agency v. Indigent Party
 Sexually Violent Predator Act Post-Conviction Relief
 Motion for Stay in Bankruptcy
 Motion for Publication Motion for Execution (Rule 69, SCRCP)
 Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter: _____
 Other: _____

<p align="center">JUDGE'S SECTION</p> <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
---	---------------------------------

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

MOTION FEE COLLECTED: \$ _____

CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

EXHIBIT D

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

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

Plaintiffs,

v.

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

Defendants.

ORDER

2017 FEB 21 PM 1:18
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

This matter came before the Court on several motions filed by Defendants Johnathan Ramaci and/or Haverly Ramaci: two motions for summary judgment pertaining to crossclaims filed by Defendant Billy Ulm; a motion for judgment on the pleadings pertaining to crossclaims filed by Ulm; a motion for injunctive relief pertaining to crossclaims filed by Ulm; Johnathan Ramaci's motion for summary judgment as to Plaintiffs' claims; Johnathan and Haverly Ramaci's motion for judgment on the pleadings as to certain causes of action in Plaintiffs' Complaint; John and Haverly Ramaci's motion to reopen depositions; and Haverly Ramaci's motion for summary judgment. This Court heard argument from all counsel and has fully considered all issues raised by the memoranda submitted in support of and in opposition to these motions.

Through this order, this Court rules on all issues raised by the operative motions. The Court denies Johnathan Ramaci's motions for summary judgment; denies in part and grants in part the motions for judgment on the pleadings; denies Johnathan Ramaci's motion for injunctive relief;

denies the motion to reopen depositions; and grants in part and denies in part Haverly Ramaci's motion for summary judgment.

FACTUAL BACKGROUND

1. Factual Background as to Plaintiffs' Claims

The Plaintiffs claim, *inter alia*, that Johnathan Ramaci induced the Plaintiffs to invest \$850,000 into a technology startup ("iCache") of which Johnathan Ramaci was Chief Executive Officer. The Plaintiffs allege that their investment was induced by a series of false allegations which appeared in the "pitchbook" and by his oral representations.

Among the misrepresentations the Plaintiffs allege are: the inaccurate and materially incomplete representation that the company was debt-free; and the inaccurate and materially incomplete statement that the company owned all of the critical intellectual property needed to get the product to market. They further allege that Johnathan Ramaci and the Director Defendants, Billy Ulm and Richard Scott, failed to disclose material information which they knew or should have known concerning the company's record-keeping and business operations.

The Plaintiffs assert causes of action for negligence, breach of fiduciary duty, conversion, negligent misrepresentation, fraud, violations of South Carolina's Uniform Securities Act and Unfair Trade Practices Act, and equitable claims under the related doctrines of unjust enrichment, restitution, and constructive trust.

2. Factual Background as to Defendant Ulm's Crossclaims

Defendant Billy Ulm was not only a member of the board of directors but also purchased shares of iCache stock through his trust, The William L. Ulm, Sr. 2006 Delaware Trust ("the Trust") in April and December of 2011. On January 23, 2014, Ulm amended his answer and asserted cross-claims against Johnathan Ramaci, alleging negligent misrepresentation, breach of

fiduciary duty and negligence. Ulm alleges that Johnathan Ramaci induced the Trust's investments, and Ulm's agreement to serve on the board of directors, through a series of direct, false and misleading representations and failures to disclose the true financial and business state of iCache. On February 19, 2016, the Trust assigned all of its rights to prosecute the crossclaims to Ulm via execution of a notarized Assignment of Claims. Pursuant to the Assignment of Claims, the Trust "without recourse, representation or warranty" assigned to Ulm all of its "interests and rights in [the] crossclaims and any other claims [the Trust] has or may have in the litigation." The Trust retained ownership of the subject stock, but as a result of the Assignment of Claims, Ulm was vested with the authority to prosecute the crossclaims in this litigation. The Trust was not made a party to this action.

Johnathan Ramaci has filed several motions to dispose of Ulm's crossclaims. On November 24, 2015, Johnathan Ramaci filed a motion for judgment on the pleadings. On February 4, 2016, Johnathan Ramaci filed a motion for summary judgment on the basis of standing. On February 24, 2016, Johnathan Ramaci filed a motion for injunctive relief seeking to enjoin the Trust's assignments of the crossclaims to Ulm—which had already occurred at the time Johnathan Ramaci filed his motion—or, in the alternative, seeking an order enjoining Ulm from exercising the rights he obtained pursuant to the assignment of the Trust's claims against Johnathan Ramaci, because such claims were time-barred. Based on the injunctive motion, on March 24, 2016, Johnathan Ramaci filed a second motion for summary judgment contending that Ulm's crossclaims are barred by the statute of limitations.

ANALYSIS

I. THE COURT DENIES ALL MOTIONS FOR SUMMARY JUDGMENT FILED BY JOHNATHAN RAMACI AND DENIES IN PART AND GRANTS IN PART HAVERLY RAMACI'S MOTION FOR SUMMARY JUDGMENT.

Summary judgment is only proper where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCPP. An opposing party need only present a mere scintilla of evidence to survive summary judgment in cases where the burden of proof is the preponderance of the evidence standard. *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 673 S.E.2d 801 (2009).

1. The Court denies Johnathan Ramaci's motions for summary judgment as to Ulm's Crossclaims.

a. The Court denies Johnathan Ramaci's motion for summary judgment filed February 4, 2016.

Because the Trust owns the subject iCache stock and Ulm does not, Johnathan Ramaci moves for summary judgment on the claim that Ulm is not the real party in interest and therefore lacks standing to prosecute the crossclaims. The Court finds that the Trust's February 19, 2016 assignment of the crossclaims to Ulm during this case was valid and, thus, Ulm now has standing to prosecute the crossclaims. The Court denies Johnathan Ramaci's February 4, 2016 motion for summary judgment.

Ulm is a real party in interest and has standing to prosecute the crossclaims against Johnathan Ramaci. "Generally, a party must be a real party in interest to the litigation to have standing." *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 28, 630 S.E.2d 474, 479 (2006). Pursuant to South Carolina law the "real party in interest" is one who has a real, actual, material, or substantial interest in the subject matter of the action, as distinguished from one who has only a nominal, formal, or technical interest in, or connection with the action. *Dockside Ass'n v. Detyens, Simmons and Carlisle*, 285 S.C. 565, 330 S.E.2d 537 *aff'd as mod.* 287 S.C. 287, 337 S.E.2d 887 *appeal after remand* 297 S.C. 91, 374 S.E.2d 907 (Ct. App. 1985). Where an action is

brought by one other than the real party in interest, dismissal for lack of subject matter jurisdiction is not the proper remedy. S.C. R. Civ. P 17(a) (“No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed, after objection, for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.”).

The Trust’s assignment of the crossclaims to Ulm was valid under South Carolina law. Our “jurisprudence has long recognized that a [claim for relief] can be validly assigned in either law or equity.” *Moore v. Weinberg*, 373 S.C. 209, 220, 644 S.E.2d 740, 745 (Ct. App. 2007) *aff’d*, 383 S.C. 583, 681 S.E.2d 875 (2009); *Slater Corp. v. S.C. Tax Comm’n*, 280 S.C. 584, 587, 314 S.E.2d 31, 33 (Ct. App. 1984). Here, Ulm, as the assignee of a claim stands in the shoes of the Trust, the assignor, and Ulm has “all the same rights and privileges” as the Trust. *Id.*; *Twelfth RMA Partners, L.P. v. Nat’l Safe Corp.*, 335 S.C. 635, 640, 518 S.E.2d 44, 46 (Ct. App. 1999). The assignment was not required to be executed before the commencement of litigation. *Campus Sweater & Sportswear Co. v. M. B. Kahn Const. Co.*, 515 F. Supp. 64, 84 (D.S.C. 1979) *aff’d sub nom. Campus Sweater & Sportswear Co. v. M. B. Kahn Const. Co.*, 644 F.2d 877 (4th Cir. 1981) (stating “even when the claim is not assigned until after the action has been instituted the assignee is the real party in interest and can maintain the action.”). By virtue of the Trust’s assignment of its claims to Ulm, Ulm is the real party interest with standing to prosecute the crossclaims. Johnathan Ramaci’s motion for summary judgment is therefore denied.

b. *The Court denies Johnathan Ramaci's motion for summary judgment filed March 24, 2016.*

Johnathan Ramaci argues that the relevant statutes of limitation render the Ulm crossclaims time-barred. The Court disagrees and also denies Johnathan Ramaci's second motion for summary judgment.

The Court finds that at the time of the Trust's assignment of the crossclaims to Ulm, the statute of limitations defense did not bar the claims of the assignor Trust because the Ulm crossclaims had already been filed within the three-year statute of limitations prescribed by Section 15-3-530 of the South Carolina Code.¹

An assignor cannot convey to an assignee rights he does not have. *See Moore v. Weinberg*, 373 S.C. 209, 220, 644 S.E.2d 740, 745 (Ct. App. 2007). Johnathan Ramaci relies on a line of cases which neither reflect the law of South Carolina nor present similar factual circumstances. *See generally Murphy*, 657 F. Supp. 2d 683; *U.S. v. Taylor*, 144 F. Supp. 15 (E.D. Pa. 1956); *Vaughan v. Moore*, 366 S.E.2d 518 (1988); *Madison Fund, Inc. v. Midland Glass Co.*, No. 394 CIV.A. 1974, 1980 WL 332958, at *1 (Del. Super. Aug. 11, 1980); *Woolett v. Am. Employers Ins. Co.*, 77 Cal. App. 3d 619, 143 Cal. Rptr. 799 (Ct. App. 1978). In each of these cases, the claims were not filed until *after* the applicable statutes of limitations had run or assignors/assignees who learned of claims at different times. Those cases have no application here and Johnathan Ramaci's motion for summary judgment is denied.

¹ Johnathan Ramaci correctly states that an assignee takes such assignment subject to the same defenses that would be applicable to the assignor. *See, e.g., Chet Adams Co. v. James F. Pedersen Co.*, 418 S.E.2d 337, 338 (S.C. Ct. App. 1992) (“[T]he assignee of a non-negotiable chose in action takes it subject to all equities and defenses which could have been set up against the assignor at the time of the assignment.”).

2. Johnathan Ramaci's Motion for Summary Judgment on the Plaintiffs' Claims is Denied.

Johnathan Ramaci claims that he is entitled to summary judgment on all claims asserted by the Plaintiffs because he has been released from liability for the alleged wrongful conduct via what Johnathan Ramaci asserts is a viable settlement agreement ("Purported Release") under which iCache released him from all liability to the company. The Court finds and concludes that the Purported Release does not support summary judgment. First, there is a triable factual issue as to whether the Purported Release required subsequent shareholder approval, which never was obtained, after being signed by Johnathan Ramaci and Richard Scott. Second, even if consummated, the Purported Release would have no effect on the Plaintiffs' individually-held, pre-investment claims asserted in this lawsuit.

a. A factual issue exists as to whether the Purported Release required subsequent shareholder approval, which never was obtained, in order to be consummated.

The Court finds that there is a genuine issue of fact as to whether the Purported Release was consummated: specifically, though Johnathan Ramaci and Mr. Scott appear to have signed the document, a jury could fairly conclude that consummation of the Purported Release required subsequent shareholder approval, which no evidence in the record indicates was obtained. As Johnathan Ramaci concedes in his memorandum, at page 6, the Purported Release on its face anticipates "an additional shareholder vote". Further, a jury could find both in the body of the Purported Release (agreement effective "upon the authorization and approval of the shareholders") and at Richard Scott's signature (agreement subject to "final shareholder approval") evidence that the Purported Release expresses the intention that the Agreement be contingent upon a full shareholder approval.

Substantial evidence in the record also indicates that the “final shareholder approval” contemplated in the January 22nd, 2013 Purported Release never was obtained. As set forth in the Memorandum in Opposition, Mr. Scott wrote a letter dated January 25th, 2013 to the shareholders to preview the upcoming shareholder meeting, which confirmed his understanding that “subsequent shareholder approval” was required: “During this past month we have finalized and signed a **Settlement and Release Agreement** document between iCache and Jonathan Ramaci. *This agreement must be voted on and approved by a majority of the shareholders for it to take effect.*” The Plaintiffs also cite the agenda for the February 23rd, 2013 shareholder meeting, which includes “Vote on...Ramaci Settlement and Release Agreement” in its action items. At the meeting where the “subsequent shareholder approval” was to be sought, the record reflects that no quorum was achieved, and no vote taken: “[Richard Scott] brought [the Purported Release] to the meeting. He showed it. He proposed a vote on it, and he couldn’t get a quorum at the meeting... [l]ike I said, he signed it subject to shareholder approval.” (Deposition of Jeff Byrd, p. 154, line 8 – p. 155, line 1; Memorandum in Support, Exhibit #2.)

For these reasons, the Court finds the following triable issues of material fact: whether the Purported Release ever became a binding contract; whether the Purported Release required “subsequent shareholder approval”, and whether “subsequent shareholder approval” ever was obtained.

In the alternative, and irrespective of “subsequent shareholder approval”, Johnathan Ramaci argues that his and Richard Scott’s signatures, in and of themselves, constitute full consummation of the Purported Release, because Johnathan Ramaci and Richard Scott were or may have constituted a majority shareholder bloc. Importantly, though, Johnathan Ramaci’s own expert, Prof. Martin McWilliams, has acknowledged what the Plaintiffs argue at page three of their

Memorandum in Opposition: that Richard Scott and Johnathan Ramaci were free to structure the Purported Release such that subsequent shareholder action was required in order for the Purported Release to be valid; and Prof. McWilliams further concedes that, indeed, the Purported Release, on its face, can be construed as calling for such subsequent shareholder action. (Deposition of Martin McWilliams, p. 132-136, Exhibit #1 to Plaintiffs' Supplemental Memorandum in Opposition.)

For these reasons, the question of the Purported Release's enforceability and operation present triable issues, and the motion is denied.

b. The Purported Release, even if enforceable, has no effect on the Plaintiffs' individually held claims.

As a separate and alternative basis for denying the motion, the Court finds that even if the Purported Release is enforceable, it would release only claims held by the Plaintiffs in their capacity as iCache shareholders, because iCache is the only releasing party identified in the Purported Release. Even if the company itself—and, by extension, its shareholders, in their capacity as shareholders—released Johnathan Ramaci, the Plaintiffs themselves, individually, did not: claims they held individually—i.e., not in their capacity as iCache shareholders—would be unaffected because the Plaintiffs never signed—nor even were named in—the Purported Release.

Johnathan Ramaci's memorandum relies on the notion that “[t]he broad language of this release encompasses the Plaintiffs in this case because they are shareholders of the corporation.” (Memorandum in Support, p. 5.) The Court is aware of no authority—and none is cited—for the proposition that a shareholder majority can terminate the rights of private citizens who, after the rights arose, became minority shareholders. Prof. John Freeman, expert for the Plaintiffs, opines that the Purported Release, even if given full effect, would have no effect on these individually held claims. (Deposition of John Freeman, p. 236-238, Exhibit #2 to Plaintiffs' Supplemental

Memorandum in Opposition.) That the Plaintiffs assert causes of action grounded in individually held rights is clear: the Plaintiffs' allege misrepresentations made before the Plaintiffs were shareholders, and therefore give rise to causes of action which are held by the Plaintiffs individually. (Complaint, Paragraphs 13-15; Exhibit #1 to Memorandum in Support.)

For these additional reasons, the motion is denied with respect to all causes of action which are individually held by the Plaintiffs.

c. Johnathan Ramaci's promissory estoppel argument does not support summary judgment because no evidence supports that Byrd or Sedmak made the promises alleged.

Johnathan Ramaci asserts that summary judgment is appropriate because promissory estoppel bars Byrd's and Sedmak's claims. I disagree. Johnathan Ramaci correctly notes that the first element of the defense is "the presence of a promise unambiguous in its terms", but provides no evidence that either Mr. Byrd or Mr. Sedmak made any promise. Johnathan Ramaci appears to discern a "promise" in the Purported Release, a document which neither Mr. Byrd nor Mr. Sedmak either drafted or signed, and in Johnathan Ramaci's assertion in his affidavit that Mr. Sedmak "wanted to obtain control of iCache." The Court finds as a matter of law that neither of these assertions constitutes a promise unambiguous in its terms and deny the motion to the extent it relies on the promissory estoppel.

Based on these findings of fact and conclusions of law, Johnathan Ramaci's motion for summary judgment on all claims by the Plaintiffs is denied.

3. Haverly Ramaci's motion for summary judgment is granted in part and denied in part.

In light of Plaintiffs' counsel's stated consent, I dismiss the Plaintiff's claims against Haverly Ramaci for violations of the South Carolina Uniform Securities Act. Finding that the Plaintiffs have an adequate remedy at law, the Court grants Haverly Ramaci's motion for summary

judgment on the Plaintiffs' unjust enrichment claims. The Court finds that there is a genuine, triable issue of fact concerning the Plaintiffs' conversion and breach of fiduciary duty causes of action, and therefore deny Haverly Ramaci's motion for summary judgment as to these two causes of action.

II. THE COURT DENIES IN PART AND GRANTS IN PART JOHNATHAN RAMACI'S MOTIONS FOR JUDGMENT ON THE PLEADINGS.

1. The Court denies in part and grants in part the motion for judgment on the pleadings as to Ulm's crossclaims.

Johnathan Ramaci argues that Ulm's crossclaims for negligence and breach of fiduciary duty are derivative claims which must be dismissed for failure to comply with the pleading requirements of Rule 23 of the South Carolina Rules of Civil Procedure. Johnathan Ramaci's motion for judgment on the pleadings is denied in part and granted in part.

A shareholder may bring a direct claim against a corporation or its officers and directors "if his loss is separate and distinct from that of the corporation." *Hite v. Thomas & Howard Co.*, 305 S.C. 358, 361, 409 S.E.2d 340, 342 (1991), *overruled on other grounds by Huntley v. Young*, 319 S.C. 559, 560, 462 S.E.2d 860, 861 (1995); *see also Todd v. Zaldo*, 304 S.C. 275, 278, 403 S.E.2d 666, 668 (Ct. App. 1991) ("If an individual stockholder has suffered a particular loss due to mismanagement of a corporation then the stockholder may bring an action for his loss since it is his personal asset."). Because Ulm did not state a cause of action distinct from that of other shareholders, the claim for negligence is an improperly-pled derivative claim. Johnathan Ramaci's motion for judgment on the pleadings is granted as to Defendant Ulm's cross-claim for negligence.

The law in South Carolina is plain. The wrongful inducement of an investment constitutes a separate and distinct injury that allows an investor to bring direct claims against a corporate director or officer. *Bivens v. Watkins*, 313 S.C. 228, 232, 437 S.E.2d 132, 134 (Ct. App. 1993)

("We find [the Plaintiff] has standing to assert some of the causes of action alleged in her complaint, particularly the fraud and negligent misrepresentation causes of action. [Plaintiff] asserts that the actions of [Defendants], as individuals, induced her to invest in and surrender her assets to the new business. Injuries emanating from such an inducement are different from injuries arising from any actions these individuals may have taken as officers, directors, and managers of the new corporation in dissipating or wasting its assets. In that regard, [Plaintiff's] alleged injury is separate and distinct from that of the corporation.").

"An individual action is also allowed if the alleged wrongdoers owe a fiduciary relationship to the stockholder and full relief to the stockholder cannot be had through a recovery by the corporation." *Brown*, 348 S.C at 50, 557 S.E.2d at 685; *see also In re Tri-Star Pictures, Inc., Litig.*, 634 A.2d 319, 327 (Del. 1993), as corrected (Dec. 8, 1993). Finally, those who execute a contract with a corporation may bring a direct action to recover for damages stemming from that contract. *See Lipton v. News Int'l, Plc*, 514 A.2d 1075, 1078 (Del. 1986), *disapproved of by Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031 (Del. 2004).

The Court finds that Ulm seeks damages for Johnathan Ramaci's breaches of fiduciary duty which induced him to invest in iCache. *Id.* Ulm alleges that Johnathan Ramaci's misrepresentations were made directly to Ulm during multiple meetings between Johnathan Ramaci and Ulm, causing Ulm harm distinct from that of other shareholders. Ulm's claim for breach of fiduciary duty is therefore separate and distinct from the claims of other shareholders, which seek redress for diminution in stock value due to Johnathan Ramaci's mismanagement of iCache. Johnathan Ramaci's motion for judgment on the pleadings is therefore denied as to Defendant Ulm's cross-claim for breach of fiduciary duty.

2. The Court denies in part and grants in part the motion for judgment on the pleadings as to certain causes of action in Plaintiffs' complaint.

a. The Plaintiffs' UTPA claims are dismissed.

At oral argument on this matter, Plaintiffs' counsel consented to the dismissal of their Unfair Trade Practices Act claim; accordingly, the Plaintiffs' UTPA claims against the Ramaci Defendants are dismissed.

b. The Plaintiffs' claims against John and Haverly for unjust enrichment, restitution and constructive trust are dismissed.

The Court finds that the Plaintiffs' legal and statutory causes of action afford them a remedy which is as certain, practical, complete, and efficient to attain the ends of justice as would be the remedies afforded under their equitable causes of action: unjust enrichment, restitution, and constructive trust. *Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n*, 379 S.E.2d 119, 123 (S.C. 1989). Because equitable relief is only available where there is no adequate remedy at law, *ZAN, LLC v. Ripley Cove, LLC*, 751 S.E.2d 664, 669 (S.C. App. 2013), the Court finds that the Plaintiffs' equitable causes of action against John and Haverly Ramaci—unjust enrichment, restitution, and constructive trust—are improper, and should be and hereby are dismissed.

c. The Plaintiffs' conversion claim against John and Haverly Ramaci is dismissed.

The Court finds that the Plaintiffs' conversion claim against Johnathan Ramaci is based upon allegations that relate to mismanagement of the company which occurred after the Plaintiffs' investment, and therefore during their time as shareholders. With reference to the legal authorities cited in Ramaci's memorandum, the Court finds that these claims could be brought only in the posture of a shareholder derivative claim. Because the Plaintiffs do not proceed in a derivative posture, I dismiss the Plaintiffs' claims for conversion against Johnathan and Haverly Ramaci.

d. The motion for judgment on the pleadings with respect to the Plaintiffs' negligence and breach of fiduciary duty claims is denied.

The Court finds that the Plaintiffs seek damages under the negligence and breach of fiduciary duty causes of action based on Defendants' alleged wrongful conduct in soliciting the Plaintiffs' investment in iCache. Because these causes of action arose prior to the Plaintiffs' becoming iCache shareholders, these claims were held in the Plaintiffs' individual capacity, and need not have been pursued as shareholder derivative claims. Therefore, viewed in the light most favorable to the Plaintiffs, the Complaint raises an issue of fact that would entitle the Plaintiffs to relief on these claims.

III. THE COURT DENIES JOHNATHAN RAMACI'S MOTION FOR INJUNCTIVE RELIEF AS TO ULM'S CROSSCLAIMS.

On February 24, 2016, Johnathan Ramaci moved to permanently enjoin the assignment of claims by and between Ulm and the Trust. In the alternative, Johnathan Ramaci seeks an order enjoining Ulm from attempting to assert any claims acquired in the assignment in the pending action. The Court denies Johnathan Ramaci's motion for injunctive relief.

An injunction is a drastic equitable remedy courts may use in their discretion in order to prevent irreparable harm to a party. *Hampton v. Haley*, 403 S.C. 395, 409, 743 S.E.2d 258, 265 (2013) (citing *Denman v. City of Columbia*, 387 S.C. 131, 140-41, 691 S.E.2d 465, 470 (2010)). A party is only entitled to injunctive relief if the party demonstrates: (1) it would suffer irreparable harm if the injunction is not granted; (2) a likelihood of success on the merits; and (3) there is an absence of an adequate remedy at law. *See Denman v. City of Columbia*, 387 S.C. 131, 140-41, 691 S.E.2d 465, 470 (2010); *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586-87, 694 S.E.2d 15, 17 (2010). Johnathan Ramaci, as the party seeking the injunction, has the burden of demonstrating facts and circumstances warranting such remedy. *See Strategic Res.*

Co. v. BCS Life Ins. Co., 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). Johnathan Ramaci failed to meet this burden, and his motion is therefore denied.

1. Johnathan Ramaci failed to demonstrate irreparable harm.

The continuation of ongoing litigation to its proper resolution does not constitute irreparable harm. An injunction is not an appropriate remedy for a party who dislikes the fact that an opposing party pursues claims against him. South Carolina courts have only recognized irreparable harm in very limited circumstances. See *Peek v. Spartanburg Reg'l Healthcare Sys.*, 367 S.C. 450, 455, 626 S.E.2d 34, 37 (Ct. App. 2005) (“The complete loss of a professional practice can be an irreparable harm.”); *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 52, 674 S.E.2d 505, 509 (Ct. App. 2009) (injunction warranted where subject actions “interfered with their right to the use and enjoyment of [homeowners’] property”); *Levine v. Spartanburg Reg'l Servs. Dist., Inc.*, 367 S.C. 458, 465, 626 S.E.2d 38, 41-42 (Ct. App. 2005) *holding modified by Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15 (2010) (loss of physician’s referral base and competency due to practice restrictions, which could lead to the loss of her professional practice and career, can be an irreparable harm); see generally *Compton v. S.C. Dep't of Corr.*, 392 S.C. 361, 709 S.E.2d 639 (2011) (state’s failure to destroy inmate records as required by statute constituted irreparable harm, as it would result prevent eligibility for parole); *Parker v. S.C. Dairy Comm'n*, 274 S.C. 209, 215-16, 262 S.E.2d 38, 42 (1980) (granting injunction “to protect the consuming public of South Carolina against irreparable harm” that would result from enforcement of a price-setting order prior to a review of its constitutionality).

Further, as the United States Supreme Court observed when addressing the concept of irreparable harm:

The key word in this consideration is irreparable. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in

the absence of a stay are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.

Sampson v. Murray, 415 U.S. 61, 90 (1974).

Johnathan Ramaci claims “[i]f the Court permits the Assignment and allows Billy Ulm to assert the claims of the Trust in this matter as his own claims, the Ramaci Defendants will be irreparably harmed because they will be forced to continue to litigate this case and incur substantial legal fees.” See Ramaci Motion at ¶ 8. The crossclaims against Johnathan Ramaci have been pending since January of 2014. The Court finds that the persistence of and continued costs of ongoing litigation does not constitute irreparable harm. While the Court acknowledges that litigation is a burden for *any* defendant, litigation itself does not constitute irreparable harm, otherwise all defendants would be irreparably harmed. See *ActiveVideo Networks, Inc. v. Verizon Commc'ns, Inc.*, 694 F.3d 1312, 1337 (Fed. Cir. 2012) (“Litigation costs are undoubtedly undesirable and may take funds away from other endeavors, but they are not an irreparable harm in the injunction calculus. . . Reliance on litigation costs to support a determination of irreparable harm [is] therefore legal error.”); see also *Rogers v. Comprehensive Rehab. Associates, Inc.*, 808 F. Supp. 493, 498 (D.S.C. 1992) (stating that economic losses do not justify the imposition of an injunction). No South Carolina court has held that litigation costs incurred by a defendant constitute irreparable harm, and the Court declines to do so here.

2. Johnathan Ramaci failed to demonstrate a likelihood of success on the merits.

The Court finds that there are numerous genuine issues of material fact regarding the scope of the allegations of Johnathan Ramaci’s misrepresentations and fraud in the inducement of Ulm’s investment. All parties with the exception of the Ramaci Defendants, do not dispute that Johnathan

Ramaci induced Ulm's investment in iCache, Inc. or that the company ultimately failed. There is evidence before the Court that would support the conclusion that Johnathan Ramaci misrepresented the true state of the company to induce both Ulm's and the Plaintiffs' investments. See Ulm Amended Answer and Crossclaims.

The Court finds that Johnathan Ramaci has failed to meet his burden of demonstrating likelihood of success on the merits of Ulm's crossclaims. Further, the Court finds that Johnathan Ramaci does not address this element of injunctive relief in his motion or papers.² See *Atwood Agency v. Black*, 374 S.C. 68, 72, 646 S.E.2d 882, 884 (2007) (ruling that a motion for an injunction will not be granted unless it includes allegations sufficient to meet all required elements of an injunction).

3. Johnathan Ramaci has an adequate remedy at law.

The Court finds that the law affords Johnathan Ramaci an adequate remedy with respect to Ulm's crossclaims. Johnathan Ramaci asserts that he "does not have an adequate remedy at law because he will be forced to continue to litigate this matter at substantial cost and effort without the means to recoup either." See Ramaci Motion at ¶ 11. Johnathan Ramaci's assertion ignores the existence of several remedies available to Johnathan Ramaci—if Johnathan Ramaci's factual arguments or legal assertions are correct, he will win in the defense of the crossclaims. This is an adequate remedy for Johnathan Ramaci.

Ulm has prosecuted these crossclaims against Johnathan Ramaci for more than two years. Throughout the duration of this litigation, Johnathan Ramaci has voraciously defended and challenged the merits of these claims. Ulm's assignment does nothing to change this. The ordinary

² Ramaci argued that the assigned claims are time-barred and that he should be granted judgment as a matter of law on this issue. The Court rejects these grounds in finding that injunctive relief is not warranted.

process of law provides Johnathan Ramaci with several legal remedies to address his contentions with respect to the Trust's assignment of the crossclaims in this litigation to Billy Ulm, two of which Johnathan Ramaci is actively pursuing: 1) Johnathan Ramaci challenges the validity of the assignment; 2) Johnathan Ramaci challenges the application of the statute of limitations; 3) Johnathan Ramaci can defend the merits of Ulm's crossclaims at trial. Any of these measures may provide Johnathan Ramaci with an adequate remedy at law. These are all not only available remedies but also very common litigation vehicles provided by our procedural rules. *See Van Robinson Ins. Agency, Inc. v. Harleysville Mut. Ins. Co.*, 272 S.C. 127, 129, 249 S.E.2d 744, 745 (1978) ("in the absence of some positive provision of the law to the contrary, an injunction will not be granted in cases where there is a choice between the ordinary processes of law and the extraordinary remedy by injunction"). Johnathan Ramaci's motion for injunctive relief is therefore denied.

IV. JOHNATHAN AND HAVERLY RAMACI'S MOTION TO REOPEN DEPOSITIONS, OR IN THE ALTERNATIVE TO REDEPOSE CERTAIN PARTIES IS DENIED.

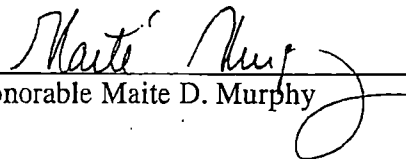
The Court finds no cause in the record of this case to permit the further or additional deposition of the witnesses identified in this motion, and therefore respectfully deny the motion.

CONCLUSION

Johnathan Ramaci has failed to demonstrate the elements necessary to warrant the imposition of a permanent injunction. Johnathan Ramaci's Motion for Permanent Injunction is therefore DENIED. Johnathan Ramaci's Motions for Summary Judgment as to the Ulm Crossclaims are DENIED. Johnathan Ramaci's Motion for Summary Judgment on the Plaintiffs' Claims is DENIED. Johnathan and Haverly Ramaci's Motion for Judgment on the Pleadings as to certain causes of action in Plaintiffs' Complaint is DENIED IN PART and GRANTED IN

PART. Johnathan Ramaci's Motion for Judgment on the Pleadings Pursuant to Rule 12(c) as to the Ulm Crossclaims is DENIED IN PART and GRANTED IN PART. Johnathan and Haverly Ramaci's Motion to Reopen Depositions is DENIED. Haverly Ramaci's Motion for Summary Judgment is DENIED IN PART and GRANTED IN PART.

AND IT IS SO ORDERED.


Honorable Maite D. Murphy

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Byrdnest, LLC, Craig Sedmak, Stephanie Sedmak,
and Wesley Nau,
 Plaintiff)

v.)

John Ramaci, Haverly Ramaci, Richard Scott, And
Billy Ulm
 Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.

2013-CP-10-4874

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Benjamin A. Traywick, Bar No. 74027 Address: 875 Lowcountry Blvd., Suite 204 Mt. Pleasant, SC 29464 phone: 843-352-9569 fax: 843-300-1051 e-mail: ben@traywicklaw.com other:	Defendant's Attorney: Julie L. Moore, Bar No. 78677 Address: 96 Broad Street Charleston, SC 29401 phone: 843-720-2044 fax: 843-720-2047 e-mail: jmoore@duffyandyoung.com other:
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Estimated Time Needed: Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
<i>Julie L. Moore</i> Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	21 21 / 017 Date submitted
SECTION III: Motion Fee	
<input type="checkbox"/> PAID - AMOUNT: <input checked="" type="checkbox"/> EXEMPT: <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support (check reason) <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) <input checked="" type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: <input type="checkbox"/> Other:	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other:	JUDGE _____ CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____	Date Filed: _____

EXHIBIT E

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 BYRDNEST, LLC, CRAIG SEDMAK,)
 STEPHANIE SEDMAK, AND WESLEY)
 NAU,)
)
 PLAINTIFFS,)
)
 vs.)
)
 JONATHAN RAMACI, HAVERLY)
 RAMACI, RICHARD SCOTT, AND)
 BILLY ULM,)
)
 DEFENDANTS.)

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

2017 MAR 24 AM 9:11
 JULIE J. ARMSTRONG
 CLERK OF COURT

FILED

PLAINTIFFS' MOTION PURSUANT TO
 RULES 16 AND 42, SCRPC, AND RULES
 205 AND 241, SCACR, TO SEVER AND TO
 SET FOR TRIAL PLAINTIFFS' CLAIMS
 OR, IN THE ALTERNATIVE, TO LIFT
 AUTOMATIC STAY AND SET
 PLAINTIFFS' CLAIMS FOR TRIAL

YOU WILL PLEASE TAKE NOTICE that the Plaintiffs will move, ten (10) days or as soon thereafter as counsel may be heard, for an order severing (if necessary) the Plaintiffs' claims and setting them for trial in June, 2017, as proposed; announcing that the Court has retained jurisdiction over the Plaintiffs' claims, and that Plaintiffs' claims are unaffected by Defendant Jonathan Ramaci's pending appeal; or, in the alternative, lifting the automatic stay to the extent the Court concludes that it applies to the Plaintiffs' claims, severing them if necessary, and setting them for trial in June, 2017. The Plaintiffs move pursuant to Rules 16 and 42 SCRPC, and Rules 205 and 241 SCACR, and for the reasons set forth below.

I. Under Rule 205, the Plaintiffs' claims should proceed to trial in June, because these claims are "matters not affected by the appeal."

In circumstances like those at hand—i.e., when a litigant appeals just one of dozens of issues in multi-party, multi-claim litigation—Rule 205, SCACR, expresses our judicial system's clear preference that trial courts proceed with the parts of the case that are not related to the appeal.

The Plaintiffs respectfully assert that their claims fall into this category. Here is Rule 205's text:

RULE 205
EFFECT OF APPEAL

Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241. Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.

The language announcing this Court's authority to proceed is unusually blunt: "*Nothing in these rules*" shall be treated as a bar to the Court's hearing matters unrelated to the appeal: not Rule 205's first sentence, which vests exclusive jurisdiction in the appellate courts (for matters at issue in the appeal); nor Rule 241, cited by Ramaci, which enacts an automatic stay (but only, contrary to Ramaci's overly broad interpretation, of the trial court's carrying out or execution of specific relief granted in the order). Read together the Rules' intent is clear: though this Court has no authority to act in respect to the matters actually affected by the appeal, its authority to act in respect to matters not actually affected by the appeal continues unabated.

As Ramaci knows, the only aspect of the Order legitimately under appeal (Exhibit #1: Appeal, with Order attached) is Section III, in which the Court denied Ramaci's motion to enjoin Ulm's Family Trust from assigning its iCache shares to Ulm.¹ We know that the appeal concerns only Section III—and thus can affect only matters related to Section III—because *only Section III is immediately appealable*. See *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 537, 773 S.E.2d 144, 145 (2015)(itemizing the immediately appealable, non-final orders under South Carolina law). *Morrow* identifies, among the exclusive list, the denial of a motion for injunctive relief, which is the subject of Section III. But *Morrow*'s list plainly does not include the

¹ Indeed, the baseless motion for injunctive relief appears to be Ramaci's latest procedural gambit to prevent the case from getting to trial.

Court's rulings in Section I of the Order (denying Ramaci's motions for summary judgment); the Court's rulings in Section II (granting Ramaci's motions for judgment on the pleadings as to certain causes of action; denying it as to others); or the Court's rulings in Section IV (denying another of Ramaci's frivolous motions: that his second attorney be permitted to take the same depositions that his first attorney already had taken).

In seeking to delay the entire case, Ramaci asks the Court to validate his elevation of form over substance: the Notice of Appeal states by its terms that it appeals the Order in its entirety, *ergo* for Rule 205 purposes, the Court should conclude that the appeal might affect matters related to all of the Order's rulings- not just those in Section III. But, to the contrary, the leading case law on Rules 205 and 241 instructs that only the portions of the order actually, substantively at issue in the appeal should be given consideration for Rule 205 purposes. In *Tillman v. Oakes*, the Court of Appeals reversed a trial court, which had declined to act, because it found that the Petitioner's request was a matter affected by the appeal. The Court of Appeals explained the trial court's error:

The order on appeal in this case changed custody from Oakes to Tillman and established Oakes' visitation rights. Tillman's petition relates to Oakes' visitation rights. It would appear at first, therefore, that the appeal affected Oakes' visitation rights, and the family court did not retain the power to proceed. However, answering the question of whether a matter is "affected by the appeal" requires a closer examination of the appeal. Oakes challenges only the custody portion of the order in her appeal... Tillman did not file an appeal. Thus, there is no action the appellate courts could take resolving this appeal that would affect the visitation established in the appealed order...

Tillman v. Oakes, 398 S.C. 245, 728 S.E.2d 45 (Ct. App. 2012).

The *Tillman* court's rationale is directly on point to the matter at hand. As in *Tillman*, in this case the Order appealed makes rulings that concern the Plaintiffs' claims—at Sections I and II—so "it would appear at first" that the Plaintiffs' claims are matters than can be "affected by the

appeal.” But upon the “closer examination of the appeal” that *Tillman* requires, one sees that the appeal does not concern the portions of the Order (Sections I and II) which, were an appellate court to consider them, could affect the Plaintiffs’ claims. We know that the appellate courts will not consider Sections I and II, because those portions of the Order are not immediately appealable. So here, just as in *Tillman*, “there is no action the appellate courts could take resolving this appeal that would affect” the trial court petition, which in this case is the Plaintiffs’ request to proceed promptly to trial on their claims.

Simply put, the only matter the Court of Appeals can or will take up is the Court’s denial of Ramaci’s motion to enjoin the assignment of Ulm’s trust’s shares; thus, for purposes of Rule 205 the only matters in this case that can even theoretically be “affected by the appeal” are the cross-claims of Defendant Ulm against Ramaci. In light of this, the Court should conclude that the Plaintiffs’ claims are matters unaffected by the appeal, and set them for trial in June.

II. Should the Court find that an automatic stay applies, the Court should lift the stay for matters unaffected by the appeal, as contemplated under 241(c) and (d)

A. The automatic stay, to the extent it exists, does not affect the Plaintiffs’ claims, and accordingly does not limit the Court’s ability to set this case for trial.

As an initial matter, Ramaci’s reliance on Rule 241’s automatic stay provision is misplaced and erroneous. First, “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.” *Id.* at 255, 728 S.E.2d at 51. Second, the stay is far less broad than Ramaci asserts: the automatic stay does not freeze the case in time; its effect, far less drastic, is simply that “the appealed order may not be carried out or enforced during the pendency of the appeal.” *Id.* at 257, 728 S.E.2d at 51. In other words, the thing stayed is not the case as a whole, but the hand of a trial court which otherwise would carry out or enforce the specific relief meted out in the order. “This is the purpose

of a stay under Rule 241—to determine whether the appealed order may be carried out or enforced—not to determine whether the action may proceed in the lower court while the appeal is pending.” *Id.* The time-sensitive nature of each of Rule 241’s exceptions to the automatic stay--ejectment orders; orders authorizing the sale of perishable goods; family court orders concerning a child--illustrate that it is the particular relief ordered that is stayed, not the case as a whole. Likewise, the last sentence in 241(a) echoes and reinforces Rule 205’s instruction that trial courts proceed in the ordinary course with matters unaffected by the appeal: “The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.”

Applying these legal principles to the matter at hand, we see that, even if the court finds that the automatic stay exists, it does nothing more than stay the Court’s ability to enforce or to carry out the specific relief granted in Section III of the Order.² Fortunately for those wishing to prosecute this nearly four-year-old case to its conclusion, Section III grants no relief that can be stayed: Section III does nothing beyond simply denying Ramaci’s request for injunctive relief. To the extent Ramaci contends he is entitled to a stay of the Court’s denial of injunctive relief, the Plaintiffs would disagree but ultimately would not care because that injunctive relief, no matter what its status—granted, denied, stayed, appealed, reversed, affirmed, or otherwise—has no effect on the Plaintiffs’ claims. No action the Appellate Court can take in respect to Section III can affect the Plaintiffs’ claims.

B. Even if the automatic stay applies, initially, to the Plaintiffs’ claims, the Court should exercise its prerogative to lift the stay and set the Plaintiffs’ claims for trial.

As set forth above, though the appeal ostensibly is of the entire Order, applicable law limits

² As discussed above, Sections I, II and IV concern matters which are not appealable and which, accordingly, play no part in the appeal and can be ignored for Rule 205 and Rule 241 purposes.

its substance to Section III's denial of Ramaci's motion for injunctive relief.³ Thus, even in the event that the Court finds that Rule 241(a)'s automatic stay applies, initially, to all matters addressed in the Order, Rule 241(c) and (d) provide the mechanism for this Court to lift the stay, when doing so would effectuate the Rules' intent that the trial court proceed with shepherding forward claims which, like the Plaintiffs', have no genuine susceptibility to being "affected by the appeal."

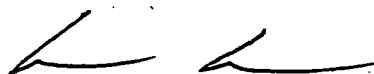
This intention is writ large all over the Rules: not just 205, but in 241(a) (the "automatic stay continues in effect... unless lifted by order of the lower court" which "retains jurisdiction over matters not affected by the appeal"); Rule 241(c) (after the notice of appeal is filed "any party may move for an order lifting the automatic stay"); Rule 241(d)(1), which requires that the motion to lift the stay "must first be made to the lower court... which entered the order or decision on appeal." Case law confirms the propriety of this approach: "[A]n automatic stay under Rules 205 and 241 is not unassailable: a party to the action need only petition... the trial court... for an order lifting the stay." *In Estate of Connor*, Opinion No. 2009-UP-502 (S.C. App. 10/29/2009) (Ct. App. 2009)

The circumstances at hand are the classic instance of why these procedures exist: the Plaintiffs' claims are the very definition of matters which are not affected by the appeal. Plaintiffs' claims are the substance of this case: the subject matter over which tens of thousands of pages of documents have been exchanged, a dozen depositions taken, a dozen motions filed and decided. Ulm's taking assignment of the iCache shares from a Trust, by contrast, is a sideshow, a minimally connected distraction, an essentially unrelated throw-in to the case. In no sense, in no conceivable way do the Plaintiffs' claims—that Ramaci made material misrepresentations in soliciting the Plaintiffs' investment, and that Ulm and Scott, as iCache directors, are jointly responsible—

³ Plaintiffs' counsel respectfully requests that the Court postpone its ruling on this issue until it has had an opportunity to consider Ramaci's appellate brief, in which the appeal's substance will be revealed.

involve or relate to or depend upon whether the Ulm Family Trust could assign iCache shares to Ulm himself. As a result, the only appealable finding or ruling in the Order—the Court’s declining to enjoin the Ulm Family Trust/Ulm assignment—has no bearing whatsoever on the Plaintiffs’ claims. Accordingly, even if as an initial matter the automatic stay applies to the Plaintiffs’ claims—in whole or in part—the Plaintiffs respectfully urge the Court to deploy the authority vested in it by Rule 241(c) and (d); to lift the stay as to the Plaintiffs’ claims; and to set this 2013 civil action for trial in June, as proposed.

BEN TRAYWICK LAW FIRM, LLC



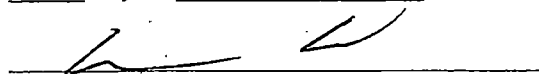
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Attorneys for the Plaintiffs

March 24, 2017
Charleston, South Carolina

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing document was mailed and/or emailed to all counsel of record in this proceeding this 24th day of March, 2017.



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Maite D. Murphy, Circuit Court Judge

Case No. 2013-CP-10-4874

Byrdnest, LLC, Craig Sedmak, Stephanie Sedmak, and
Wesley Nau, Respondents,
v.
Johnathan Ramaci, Haverly Ramaci, Richard Scott, and
Billy Ulm, Defendants,
Of whom
Johnathan Ramaci is, Appellant.

NOTICE OF APPEAL

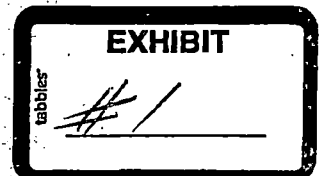
Johnathan Ramaci ("Appellant") appeals the order of the Honorable Maite Murphy filed February 21, 2017 (attached as Exhibit A). Appellant received written notice of entry of this order on February 21, 2017.

NELSON MULLINS RILEY & SCARBOROUGH LLP

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February 27, 2017



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Exhibit A

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

Plaintiffs,

v.

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

Defendants.

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

ORDER

FILED
2011 FEB 21 PM 1:19
SOUTH CAROLINA
CLERK OF COURT

This matter came before the Court on several motions filed by Defendants Johnathan Ramaci and/or Haverly Ramaci: two motions for summary judgment pertaining to crossclaims filed by Defendant Billy Ulm; a motion for judgment on the pleadings pertaining to crossclaims filed by Ulm; a motion for injunctive relief pertaining to crossclaims filed by Ulm; Johnathan Ramaci's motion for summary judgment as to Plaintiffs' claims; Johnathan and Haverly Ramaci's motion for judgment on the pleadings as to certain causes of action in Plaintiffs' Complaint; John and Haverly Ramaci's motion to reopen depositions; and Haverly Ramaci's motion for summary judgment. This Court heard argument from all counsel and has fully considered all issues raised by the memoranda submitted in support of and in opposition to these motions.

Through this order, this Court rules on all issues raised by the operative motions. The Court denies Johnathan Ramaci's motions for summary judgment; denies in part and grants in part the motions for judgment on the pleadings; denies Johnathan Ramaci's motion for injunctive relief;

denies the motion to reopen depositions; and grants in part and denies in part Haverly Ramaci's motion for summary judgment.

FACTUAL BACKGROUND

1. Factual Background as to Plaintiffs' Claims

The Plaintiffs claim, *inter alia*, that Johnathan Ramaci induced the Plaintiffs to invest \$850,000 into a technology startup ("iCache") of which Johnathan Ramaci was Chief Executive Officer. The Plaintiffs allege that their investment was induced by a series of false allegations which appeared in the "pitchbook" and by his oral representations.

Among the misrepresentations the Plaintiffs allege are: the inaccurate and materially incomplete representation that the company was debt-free; and the inaccurate and materially incomplete statement that the company owned all of the critical intellectual property needed to get the product to market. They further allege that Johnathan Ramaci and the Director Defendants, Billy Ulm and Richard Scott, failed to disclose material information which they knew or should have known concerning the company's record-keeping and business operations.

The Plaintiffs assert causes of action for negligence, breach of fiduciary duty, conversion, negligent misrepresentation, fraud, violations of South Carolina's Uniform Securities Act and Unfair Trade Practices Act, and equitable claims under the related doctrines of unjust enrichment, restitution, and constructive trust.

2. Factual Background as to Defendant Ulm's Crossclaims

Defendant Billy Ulm was not only a member of the board of directors but also purchased shares of iCache stock through his trust, The William L. Ulm, Sr. 2006 Delaware Trust ("the Trust") in April and December of 2011. On January 23, 2014, Ulm amended his answer and asserted cross-claims against Johnathan Ramaci, alleging negligent misrepresentation, breach of

fiduciary duty and negligence. Ulm alleges that Johnathan Ramaci induced the Trust's investments, and Ulm's agreement to serve on the board of directors, through a series of direct, false and misleading representations and failures to disclose the true financial and business state of iCache. On February 19, 2016, the Trust assigned all of its rights to prosecute the crossclaims to Ulm via execution of a notarized Assignment of Claims. Pursuant to the Assignment of Claims, the Trust "without recourse, representation or warranty" assigned to Ulm all of its "interests and rights in [the] crossclaims and any other claims [the Trust] has or may have in the litigation." The Trust retained ownership of the subject stock, but as a result of the Assignment of Claims, Ulm was vested with the authority to prosecute the crossclaims in this litigation. The Trust was not made a party to this action.

Johnathan Ramaci has filed several motions to dispose of Ulm's crossclaims. On November 24, 2015, Johnathan Ramaci filed a motion for judgment on the pleadings. On February 4, 2016, Johnathan Ramaci filed a motion for summary judgment on the basis of standing. On February 24, 2016, Johnathan Ramaci filed a motion for injunctive relief seeking to enjoin the Trust's assignments of the crossclaims to Ulm—which had already occurred at the time Johnathan Ramaci filed his motion—or, in the alternative, seeking an order enjoining Ulm from exercising the rights he obtained pursuant to the assignment of the Trust's claims against Johnathan Ramaci, because such claims were time-barred. Based on the injunctive motion, on March 24, 2016, Johnathan Ramaci filed a second motion for summary judgment contending that Ulm's crossclaims are barred by the statute of limitations.

ANALYSIS

- I. **THE COURT DENIES ALL MOTIONS FOR SUMMARY JUDGMENT FILED BY JOHNATHAN RAMACI AND DENIES IN PART AND GRANTS IN PART HAVERLY RAMACI'S MOTION FOR SUMMARY JUDGMENT.**

Summary judgment is only proper where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC. An opposing party need only present a mere scintilla of evidence to survive summary judgment in cases where the burden of proof is the preponderance of the evidence standard. *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 673 S.E.2d 801 (2009).

1. The Court denies Johnathan Ramaci's motions for summary judgment as to Ulm's Crossclaims.

a. The Court denies Johnathan Ramaci's motion for summary judgment filed February 4, 2016.

Because the Trust owns the subject iCache stock and Ulm does not, Johnathan Ramaci moves for summary judgment on the claim that Ulm is not the real party in interest and therefore lacks standing to prosecute the crossclaims. The Court finds that the Trust's February 19, 2016 assignment of the crossclaims to Ulm during this case was valid and, thus, Ulm now has standing to prosecute the crossclaims. The Court denies Johnathan Ramaci's February 4, 2016 motion for summary judgment.

Ulm is a real party in interest and has standing to prosecute the crossclaims against Johnathan Ramaci. "Generally, a party must be a real party in interest to the litigation to have standing." *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 28, 630 S.E.2d 474, 479 (2006). Pursuant to South Carolina law the "real party in interest" is one who has a real, actual, material, or substantial interest in the subject matter of the action, as distinguished from one who has only a nominal, formal, or technical interest in, or connection with the action. *Dockside Ass'n v. Detyens, Simmons and Carlisle*, 285 S.C. 565, 330 S.E.2d 537 *aff'd as mod.* 287 S.C. 287, 337 S.E.2d 887 *appeal after remand* 297 S.C. 91, 374 S.E.2d 907 (Ct. App. 1985). Where an action is

brought by one other than the real party in interest, dismissal for lack of subject matter jurisdiction is not the proper remedy. S.C. R. Civ. P 17(a) (“No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed, after objection, for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.”).

The Trust’s assignment of the crossclaims to Ulm was valid under South Carolina law. Our “jurisprudence has long recognized that a [claim for relief] can be validly assigned in either law or equity.” *Moore v. Weinberg*, 373 S.C. 209, 220, 644 S.E.2d 740, 745 (Ct. App. 2007) *aff’d*, 383 S.C. 583, 681 S.E.2d 875 (2009); *Slater Corp. v. S.C. Tax Comm’n*, 280 S.C. 584, 587, 314 S.E.2d 31, 33 (Ct. App. 1984). Here, Ulm, as the assignee of a claim stands in the shoes of the Trust, the assignor, and Ulm has “all the same rights and privileges” as the Trust. *Id.*; *Twelfth RMA Partners, L.P. v. Nat’l Safe Corp.*, 335 S.C. 635, 640, 518 S.E.2d 44, 46 (Ct. App. 1999). The assignment was not required to be executed before the commencement of litigation. *Campus Sweater & Sportswear Co. v. M. B. Kahn Const. Co.*, 515 F. Supp. 64, 84 (D.S.C. 1979) *aff’d sub nom. Campus Sweater & Sportswear Co. v. M. B. Kahn Const. Co.*, 644 F.2d 877 (4th Cir. 1981) (stating “even when the claim is not assigned until after the action has been instituted the assignee is the real party in interest and can maintain the action.”). By virtue of the Trust’s assignment of its claims to Ulm, Ulm is the real party interest with standing to prosecute the crossclaims. Johnathan Ramaci’s motion for summary judgment is therefore denied.

b. *The Court denies Johnathan Ramaci's motion for summary judgment filed March 24, 2016.*

Johnathan Ramaci argues that the relevant statutes of limitation render the Ulm crossclaims time-barred. The Court disagrees and also denies Johnathan Ramaci's second motion for summary judgment.

The Court finds that at the time of the Trust's assignment of the crossclaims to Ulm, the statute of limitations defense did not bar the claims of the assignor Trust because the Ulm crossclaims had already been filed within the three-year statute of limitations prescribed by Section 15-3-530 of the South Carolina Code.¹

An assignor cannot convey to an assignee rights he does not have. *See Moore v. Weinberg*, 373 S.C. 209, 220, 644 S.E.2d 740, 745 (Ct. App. 2007). Johnathan Ramaci relies on a line of cases which neither reflect the law of South Carolina nor present similar factual circumstances. *See generally Murphy*, 657 F. Supp. 2d 683; *U.S. v. Taylor*, 144 F. Supp. 15 (E.D. Pa. 1956); *Vaughan v. Moore*, 366 S.E.2d 518 (1988); *Madison Fund, Inc. v. Midland Glass Co.*, No. 394 CIV.A. 1974, 1980 WL 332958, at *1 (Del. Super. Aug. 11, 1980); *Woolett v. Am. Employers Ins. Co.*, 77 Cal. App. 3d 619, 143 Cal. Rptr. 799 (Ct. App. 1978). In each of these cases, the claims were not filed until *after* the applicable statutes of limitations had run or assignors/assignees who learned of claims at different times. Those cases have no application here and Johnathan Ramaci's motion for summary judgment is denied.

¹ Johnathan Ramaci correctly states that an assignee takes such assignment subject to the same defenses that would be applicable to the assignor. *See, e.g., Chet Adams Co. v. James F. Pedersen Co.*, 418 S.E.2d 337, 338 (S.C. Ct. App. 1992) (“[T]he assignee of a non-negotiable chose in action takes it subject to all equities and defenses which could have been set up against the assignor at the time of the assignment.”).

2. Johnathan Ramaci's Motion for Summary Judgment on the Plaintiffs' Claims is Denied.

Johnathan Ramaci claims that he is entitled to summary judgment on all claims asserted by the Plaintiffs because he has been released from liability for the alleged wrongful conduct via what Johnathan Ramaci asserts is a viable settlement agreement ("Purported Release") under which iCache released him from all liability to the company. The Court finds and concludes that the Purported Release does not support summary judgment. First, there is a triable factual issue as to whether the Purported Release required subsequent shareholder approval, which never was obtained, after being signed by Johnathan Ramaci and Richard Scott. Second, even if consummated, the Purported Release would have no effect on the Plaintiffs' individually-held, pre-investment claims asserted in this lawsuit.

a. A factual issue exists as to whether the Purported Release required subsequent shareholder approval, which never was obtained, in order to be consummated.

The Court finds that there is a genuine issue of fact as to whether the Purported Release was consummated: specifically, though Johnathan Ramaci and Mr. Scott appear to have signed the document, a jury could fairly conclude that consummation of the Purported Release required subsequent shareholder approval, which no evidence in the record indicates was obtained. As Johnathan Ramaci concedes in his memorandum, at page 6, the Purported Release on its face anticipates "an additional shareholder vote". Further, a jury could find both in the body of the Purported Release (agreement effective "upon the authorization and approval of the shareholders") and at Richard Scott's signature (agreement subject to "final shareholder approval") evidence that the Purported Release expresses the intention that the Agreement be contingent upon a full shareholder approval.

Substantial evidence in the record also indicates that the “final shareholder approval” contemplated in the January 22nd, 2013 Purported Release never was obtained. As set forth in the Memorandum in Opposition, Mr. Scott wrote a letter dated January 25th, 2013 to the shareholders to preview the upcoming shareholder meeting, which confirmed his understanding that “subsequent shareholder approval” was required: “During this past month we have finalized and signed a **Settlement and Release Agreement** document between iCache and Jonathan Ramaci. *This agreement must be voted on and approved by a majority of the shareholders for it to take effect.*” The Plaintiffs also cite the agenda for the February 23rd, 2013 shareholder meeting, which includes “Vote on...Ramaci Settlement and Release Agreement” in its action items. At the meeting where the “subsequent shareholder approval” was to be sought, the record reflects that no quorum was achieved, and no vote taken: “[Richard Scott] brought [the Purported Release] to the meeting. He showed it. He proposed a vote on it, and he couldn’t get a quorum at the meeting... [l]ike I said, he signed it subject to shareholder approval.” (Deposition of Jeff Byrd, p. 154, line 8 – p. 155, line 1; Memorandum in Support, Exhibit #2.)

For these reasons, the Court finds the following triable issues of material fact: whether the Purported Release ever became a binding contract; whether the Purported Release required “subsequent shareholder approval”, and whether “subsequent shareholder approval” ever was obtained.

In the alternative, and irrespective of “subsequent shareholder approval”, Johnathan Ramaci argues that his and Richard Scott’s signatures, in and of themselves, constitute full consummation of the Purported Release, because Johnathan Ramaci and Richard Scott were or may have constituted a majority shareholder bloc. Importantly, though, Johnathan Ramaci’s own expert, Prof. Martin McWilliams, has acknowledged what the Plaintiffs argue at page three of their

Memorandum in Opposition: that Richard Scott and Johnathan Ramaci were free to structure the Purported Release such that subsequent shareholder action was required in order for the Purported Release to be valid; and Prof. McWilliams further concedes that, indeed, the Purported Release, on its face, can be construed as calling for such subsequent shareholder action. (Deposition of Martin McWilliams, p. 132-136, Exhibit #1 to Plaintiffs' Supplemental Memorandum in Opposition.)

For these reasons, the question of the Purported Release's enforceability and operation present triable issues, and the motion is denied.

b. The Purported Release, even if enforceable, has no effect on the Plaintiffs' individually held claims.

As a separate and alternative basis for denying the motion, the Court finds that even if the Purported Release is enforceable, it would release only claims held by the Plaintiffs in their capacity as iCache shareholders, because iCache is the only releasing party identified in the Purported Release. Even if the company itself—and, by extension, its shareholders, in their capacity as shareholders—released Johnathan Ramaci, the Plaintiffs themselves, individually, did not: claims they held individually—i.e., not in their capacity as iCache shareholders—would be unaffected because the Plaintiffs never signed—nor even were named in—the Purported Release.

Johnathan Ramaci's memorandum relies on the notion that "[t]he broad language of this release encompasses the Plaintiffs in this case because they are shareholders of the corporation." (Memorandum in Support, p. 5.) The Court is aware of no authority—and none is cited—for the proposition that a shareholder majority can terminate the rights of private citizens who, after the rights arose, became minority shareholders. Prof. John Freeman, expert for the Plaintiffs, opines that the Purported Release, even if given full effect, would have no effect on these individually held claims. (Deposition of John Freeman, p. 236-238, Exhibit #2 to Plaintiffs' Supplemental

Memorandum in Opposition.) That the Plaintiffs assert causes of action grounded in individually held rights is clear: the Plaintiffs' allege misrepresentations made before the Plaintiffs were shareholders, and therefore give rise to causes of action which are held by the Plaintiffs individually. (Complaint, Paragraphs 13-15; Exhibit #1 to Memorandum in Support.)

For these additional reasons, the motion is denied with respect to all causes of action which are individually held by the Plaintiffs.

c. Johnathan Ramaci's promissory estoppel argument does not support summary judgment because no evidence supports that Byrd or Sedmak made the promises alleged.

Johnathan Ramaci asserts that summary judgment is appropriate because promissory estoppel bars Byrd's and Sedmak's claims. I disagree. Johnathan Ramaci correctly notes that the first element of the defense is "the presence of a promise unambiguous in its terms", but provides no evidence that either Mr. Byrd or Mr. Sedmak made any promise. Johnathan Ramaci appears to discern a "promise" in the Purported Release, a document which neither Mr. Byrd nor Mr. Sedmak either drafted or signed, and in Johnathan Ramaci's assertion in his affidavit that Mr. Sedmak "wanted to obtain control of iCache." The Court finds as a matter of law that neither of these assertions constitutes a promise unambiguous in its terms and deny the motion to the extent it relies on the promissory estoppel.

Based on these findings of fact and conclusions of law, Johnathan Ramaci's motion for summary judgment on all claims by the Plaintiffs is denied.

3. Haverly Ramaci's motion for summary judgment is granted in part and denied in part.

In light of Plaintiffs' counsel's stated consent, I dismiss the Plaintiff's claims against Haverly Ramaci for violations of the South Carolina Uniform Securities Act. Finding that the Plaintiffs have an adequate remedy at law, the Court grants Haverly Ramaci's motion for summary

judgment on the Plaintiffs' unjust enrichment claims. The Court finds that there is a genuine, triable issue of fact concerning the Plaintiffs' conversion and breach of fiduciary duty causes of action, and therefore deny Haverly Ramaci's motion for summary judgment as to these two causes of action.

II. THE COURT DENIES IN PART AND GRANTS IN PART JOHNATHAN RAMACI'S MOTIONS FOR JUDGMENT ON THE PLEADINGS.

I. The Court denies in part and grants in part the motion for judgment on the pleadings as to Ulm's crossclaims.

Johnathan Ramaci argues that Ulm's crossclaims for negligence and breach of fiduciary duty are derivative claims which must be dismissed for failure to comply with the pleading requirements of Rule 23 of the South Carolina Rules of Civil Procedure. Johnathan Ramaci's motion for judgment on the pleadings is denied in part and granted in part.

A shareholder may bring a direct claim against a corporation or its officers and directors "if his loss is separate and distinct from that of the corporation." *Hite v. Thomas & Howard Co.*, 305 S.C. 358, 361, 409 S.E.2d 340, 342 (1991), *overruled on other grounds by Huntley v. Young*, 319 S.C. 559, 560, 462 S.E.2d 860, 861 (1995); *see also Todd v. Zaldo*, 304 S.C. 275, 278, 403 S.E.2d 666, 668 (Ct. App. 1991) ("If an individual stockholder has suffered a particular loss due to mismanagement of a corporation then the stockholder may bring an action for his loss since it is his personal asset."). Because Ulm did not state a cause of action distinct from that of other shareholders, the claim for negligence is an improperly-pled derivative claim. Johnathan Ramaci's motion for judgment on the pleadings is granted as to Defendant Ulm's cross-claim for negligence.

The law in South Carolina is plain. The wrongful inducement of an investment constitutes a separate and distinct injury that allows an investor to bring direct claims against a corporate director or officer. *Bivens v. Watkins*, 313 S.C. 228, 232, 437 S.E.2d 132, 134 (Ct. App. 1993)

“We find [the Plaintiff] has standing to assert some of the causes of action alleged in her complaint, particularly the fraud and negligent misrepresentation causes of action. [Plaintiff] asserts that the actions of [Defendants], as individuals, induced her to invest in and surrender her assets to the new business. Injuries emanating from such an inducement are different from injuries arising from any actions these individuals may have taken as officers, directors, and managers of the new corporation in dissipating or wasting its assets. In that regard, [Plaintiff’s] alleged injury is separate and distinct from that of the corporation.”).

“An individual action is also allowed if the alleged wrongdoers owe a fiduciary relationship to the stockholder and full relief to the stockholder cannot be had through a recovery by the corporation.” *Brown*, 348 S.C at 50, 557 S.E.2d at 685; *see also In re Tri-Star Pictures, Inc., Litig.*, 634 A.2d 319, 327 (Del. 1993), as corrected (Dec. 8, 1993). Finally, those who execute a contract with a corporation may bring a direct action to recover for damages stemming from that contract. *See Lipton v. News Int’l, Plc*, 514 A.2d 1075, 1078 (Del. 1986), *disapproved of by Tooley v. Donaldson, Lufkin & Jenrette, Inc.*, 845 A.2d 1031 (Del. 2004).

The Court finds that Ulm seeks damages for Johnathan Ramaci’s breaches of fiduciary duty which induced him to invest in iCache. *Id.* Ulm alleges that Johnathan Ramaci’s misrepresentations were made directly to Ulm during multiple meetings between Johnathan Ramaci and Ulm, causing Ulm harm distinct from that of other shareholders. Ulm’s claim for breach of fiduciary duty is therefore separate and distinct from the claims of other shareholders, which seek redress for diminution in stock value due to Johnathan Ramaci’s mismanagement of iCache. Johnathan Ramaci’s motion for judgment on the pleadings is therefore denied as to Defendant Ulm’s cross-claim for breach of fiduciary duty.

2. The Court denies in part and grants in part the motion for judgment on the pleadings as to certain causes of action in Plaintiffs' complaint.

a. The Plaintiffs' UTPA claims are dismissed.

At oral argument on this matter, Plaintiffs' counsel consented to the dismissal of their Unfair Trade Practices Act claim; accordingly, the Plaintiffs' UTPA claims against the Ramaci Defendants are dismissed.

b. The Plaintiffs' claims against John and Haverly for unjust enrichment, restitution and constructive trust are dismissed.

The Court finds that the Plaintiffs' legal and statutory causes of action afford them a remedy which is as certain, practical, complete, and efficient to attain the ends of justice as would be the remedies afforded under their equitable causes of action: unjust enrichment, restitution, and constructive trust. *Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n*, 379 S.E.2d 119, 123 (S.C. 1989). Because equitable relief is only available where there is no adequate remedy at law, *ZAN, LLC v. Ripley Cove, LLC*, 751 S.E.2d 664, 669 (S.C. App. 2013), the Court finds that the Plaintiffs' equitable causes of action against John and Haverly Ramaci—unjust enrichment, restitution, and constructive trust—are improper, and should be and hereby are dismissed.

c. The Plaintiffs' conversion claim against John and Haverly Ramaci is dismissed.

The Court finds that the Plaintiffs' conversion claim against Johnathan Ramaci is based upon allegations that relate to mismanagement of the company which occurred after the Plaintiffs' investment, and therefore during their time as shareholders. With reference to the legal authorities cited in Ramaci's memorandum, the Court finds that these claims could be brought only in the posture of a shareholder derivative claim. Because the Plaintiffs do not proceed in a derivative posture, I dismiss the Plaintiffs' claims for conversion against Johnathan and Haverly Ramaci.

d. The motion for judgment on the pleadings with respect to the Plaintiffs' negligence and breach of fiduciary duty claims is denied.

The Court finds that the Plaintiffs seek damages under the negligence and breach of fiduciary duty causes of action based on Defendants' alleged wrongful conduct in soliciting the Plaintiffs' investment in iCache. Because these causes of action arose prior to the Plaintiffs' becoming iCache shareholders, these claims were held in the Plaintiffs' individual capacity, and need not have been pursued as shareholder derivative claims. Therefore, viewed in the light most favorable to the Plaintiffs, the Complaint raises an issue of fact that would entitle the Plaintiffs to relief on these claims.

III. THE COURT DENIES JOHNATHAN RAMACI'S MOTION FOR INJUNCTIVE RELIEF AS TO ULM'S CROSSCLAIMS.

On February 24, 2016, Johnathan Ramaci moved to permanently enjoin the assignment of claims by and between Ulm and the Trust. In the alternative, Johnathan Ramaci seeks an order enjoining Ulm from attempting to assert any claims acquired in the assignment in the pending action. The Court denies Johnathan Ramaci's motion for injunctive relief.

An injunction is a drastic equitable remedy courts may use in their discretion in order to prevent irreparable harm to a party. *Hampton v. Haley*, 403 S.C. 395, 409, 743 S.E.2d 258, 265 (2013) (citing *Denman v. City of Columbia*, 387 S.C. 131, 140-41, 691 S.E.2d 465, 470 (2010)). A party is only entitled to injunctive relief if the party demonstrates: (1) it would suffer irreparable harm if the injunction is not granted; (2) a likelihood of success on the merits; and (3) there is an absence of an adequate remedy at law. *See Denman v. City of Columbia*, 387 S.C. 131, 140-41, 691 S.E.2d 465, 470 (2010); *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586-87, 694 S.E.2d 15, 17 (2010). Johnathan Ramaci, as the party seeking the injunction, has the burden of demonstrating facts and circumstances warranting such remedy. *See Strategic Res.*

Co. v. BCS Life Ins. Co., 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). Johnathan Ramaci failed to meet this burden, and his motion is therefore denied.

1. Johnathan Ramaci failed to demonstrate irreparable harm.

The continuation of ongoing litigation to its proper resolution does not constitute irreparable harm. An injunction is not an appropriate remedy for a party who dislikes the fact that an opposing party pursues claims against him. South Carolina courts have only recognized irreparable harm in very limited circumstances. *See Peek v. Spartanburg Reg'l Healthcare Sys.*, 367 S.C. 450, 455, 626 S.E.2d 34, 37 (Ct. App. 2005) ("The complete loss of a professional practice can be an irreparable harm."); *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 52, 674 S.E.2d 505, 509 (Ct. App. 2009) (injunction warranted where subject actions "interfered with their right to the use and enjoyment of [homeowners'] property"); *Levine v. Spartanburg Reg'l Servs. Dist., Inc.*, 367 S.C. 458, 465, 626 S.E.2d 38, 41-42 (Ct. App. 2005) *holding modified by Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15 (2010) (loss of physician's referral base and competency due to practice restrictions, which could lead to the loss of her professional practice and career, can be an irreparable harm); *see generally Compton v. S.C. Dep't of Corr.*, 392 S.C. 361, 709 S.E.2d 639 (2011) (state's failure to destroy inmate records as required by statute constituted irreparable harm, as it would result prevent eligibility for parole); *Parker v. S.C. Dairy Comm'n*, 274 S.C. 209, 215-16, 262 S.E.2d 38, 42 (1980) (granting injunction "to protect the consuming public of South Carolina against irreparable harm" that would result from enforcement of a price-setting order prior to a review of its constitutionality).

Further, as the United States Supreme Court observed when addressing the concept of irreparable harm:

The key word in this consideration is irreparable. Mere injuries, however substantial, in terms of money, time and energy necessarily expended in

the absence of a stay are not enough. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.

Sampson v. Murray, 415 U.S. 61, 90 (1974).

Johnathan Ramaci claims “[i]f the Court permits the Assignment and allows Billy Ulm to assert the claims of the Trust in this matter as his own claims, the Ramaci Defendants will be irreparably harmed because they will be forced to continue to litigate this case and incur substantial legal fees.” See Ramaci Motion at ¶ 8. The crossclaims against Johnathan Ramaci have been pending since January of 2014. The Court finds that the persistence of and continued costs of ongoing litigation does not constitute irreparable harm. While the Court acknowledges that litigation is a burden for *any* defendant, litigation itself does not constitute irreparable harm, otherwise all defendants would be irreparably harmed. See *ActiveVideo Networks, Inc. v. Verizon Commc'ns, Inc.*, 694 F.3d 1312, 1337 (Fed. Cir. 2012) (“Litigation costs are undoubtedly undesirable and may take funds away from other endeavors, but they are not an irreparable harm in the injunction calculus. . . Reliance on litigation costs to support a determination of irreparable harm [is] therefore legal error.”); see also *Rogers v. Comprehensive Rehab. Associates, Inc.*, 808 F. Supp. 493, 498 (D.S.C. 1992) (stating that economic losses do not justify the imposition of an injunction). No South Carolina court has held that litigation costs incurred by a defendant constitute irreparable harm, and the Court declines to do so here.

2. Johnathan Ramaci failed to demonstrate a likelihood of success on the merits.

The Court finds that there are numerous genuine issues of material fact regarding the scope of the allegations of Johnathan Ramaci’s misrepresentations and fraud in the inducement of Ulm’s investment. All parties with the exception of the Ramaci Defendants, do not dispute that Johnathan

Ramaci induced Ulm's investment in iCache, Inc. or that the company ultimately failed. There is evidence before the Court that would support the conclusion that Johnathan Ramaci misrepresented the true state of the company to induce both Ulm's and the Plaintiffs' investments. See Ulm Amended Answer and Crossclaims.

The Court finds that Johnathan Ramaci has failed to meet his burden of demonstrating likelihood of success on the merits of Ulm's crossclaims. Further, the Court finds that Johnathan Ramaci does not address this element of injunctive relief in his motion or papers.² See *Atwood Agency v. Black*, 374 S.C. 68, 72, 646 S.E.2d 882, 884 (2007) (ruling that a motion for an injunction will not be granted unless it includes allegations sufficient to meet all required elements of an injunction).

3. Johnathan Ramaci has an adequate remedy at law.

The Court finds that the law affords Johnathan Ramaci an adequate remedy with respect to Ulm's crossclaims. Johnathan Ramaci asserts that he "does not have an adequate remedy at law because he will be forced to continue to litigate this matter at substantial cost and effort without the means to recoup either." See Ramaci Motion at ¶ 11. Johnathan Ramaci's assertion ignores the existence of several remedies available to Johnathan Ramaci—if Johnathan Ramaci's factual arguments or legal assertions are correct, he will win in the defense of the crossclaims. This is an adequate remedy for Johnathan Ramaci.

Ulm has prosecuted these crossclaims against Johnathan Ramaci for more than two years. Throughout the duration of this litigation, Johnathan Ramaci has voraciously defended and challenged the merits of these claims. Ulm's assignment does nothing to change this. The ordinary

² Ramaci argued that the assigned claims are time-barred and that he should be granted judgment as a matter of law on this issue. The Court rejects these grounds in finding that injunctive relief is not warranted.

process of law provides Johnathan Ramaci with several legal remedies to address his contentions with respect to the Trust's assignment of the crossclaims in this litigation to Billy Ulm, two of which Johnathan Ramaci is actively pursuing: 1) Johnathan Ramaci challenges the validity of the assignment; 2) Johnathan Ramaci challenges the application of the statute of limitations; 3) Johnathan Ramaci can defend the merits of Ulm's crossclaims at trial. Any of these measures may provide Johnathan Ramaci with an adequate remedy at law. These are all not only available remedies but also very common litigation vehicles provided by our procedural rules. *See Van Robinson Ins. Agency, Inc. v. Harleysville Mut. Ins. Co.*, 272 S.C. 127, 129, 249 S.E.2d 744, 745 (1978) ("in the absence of some positive provision of the law to the contrary, an injunction will not be granted in cases where there is a choice between the ordinary processes of law and the extraordinary remedy by injunction"). Johnathan Ramaci's motion for injunctive relief is therefore denied.

IV. JOHNATHAN AND HAVERLY RAMACI'S MOTION TO REOPEN DEPOSITIONS, OR IN THE ALTERNATIVE TO REDEPOSE CERTAIN PARTIES IS DENIED.

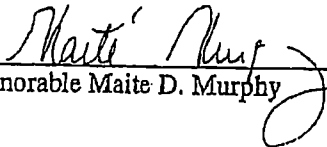
The Court finds no cause in the record of this case to permit the further or additional deposition of the witnesses identified in this motion, and therefore respectfully deny the motion.

CONCLUSION

Johnathan Ramaci has failed to demonstrate the elements necessary to warrant the imposition of a permanent injunction. Johnathan Ramaci's Motion for Permanent Injunction is therefore DENIED. Johnathan Ramaci's Motions for Summary Judgment as to the Ulm Crossclaims are DENIED. Johnathan Ramaci's Motion for Summary Judgment on the Plaintiffs' Claims is DENIED. Johnathan and Haverly Ramaci's Motion for Judgment on the Pleadings as to certain causes of action in Plaintiffs' Complaint is DENIED IN PART and GRANTED IN

PART. Johnathan Ramaci's Motion for Judgment on the Pleadings Pursuant to Rule 12(c) as to the Ulm Crossclaims is DENIED IN PART and GRANTED IN PART. Johnathan and Haverly Ramaci's Motion to Reopen Depositions is DENIED. Haverly Ramaci's Motion for Summary Judgment is DENIED IN PART and GRANTED IN PART.

AND IT IS SO ORDERED.



Honorable Maite D. Murphy

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Maite D. Murphy, Circuit Court Judge

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MAY 09 2017
SC Court of Appeals

Case No. 2013-CP-10-4874
Appellate Case No. 2017-000259

Byrdnest, LLC, Craig Sedmak, Stephanie Sedmak, and
Wesley Nau, Respondents,

v.

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

Of whom

Jonathan Ramaci is, Appellant.

PROOF OF SERVICE

I, the undersigned Legal Assistant of the law offices of Ben Traywick Law Firm, LLC, attorneys for the Respondents, do hereby certify that I have served all counsel in this action with a copy of the Respondents' Return to Petition for Writ of Supersedeas by mailing and/or emailing a copy of the same by U.S. Mail, postage prepaid, to:

J. Rutledge Young, III
Julie Lauran Moore
DUFFY & YOUNG, LLC
96 Broad Street
Charleston, SC 29401

A. Mattison Bogan
Cory E. Manning
Adam J. Hegler
1320 Main Street, 17th Floor
PO Box 11070
Columbia, SC 29211-1070



Antonio Smith
Legal Assistant

May 8, 2017

BENTRAYWICK [B]
LAW [L]

May 8, 2017

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

Re: *Byrdnest, LLC et al v. Jonathan Ramaci, et al*
Civil Action No. 2013-CP-10-04874
Appellate Case No. 2017-000529

RECEIVED

MAY 09 2017

SC Court of Appeals

Dear Ms. Kitchings,

I enclosed the Respondents' Return to Petition for Writ of Supersedeas for filing along with an extra copy to be clocked and returned in the enclosed postage prepaid envelope. After speaking with members of your office, I was given approval to file only the original. Should you have any further questions, please call my office at the number below. Thank you for your assistance in this matter.

Sincerely,



Alexandra Scott Williams

Enclosures