

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

ENCORE TECHNOLOGY GROUP, LLC,

Plaintiff,

vs.

KEONE TRASK and CLEAR TOUCH
INTERACTIVE, INC., f/k/a CLEAR
TOUCH INTERACTIVE, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2015-CP-23-05757

ORDER APPOINTING RECEIVER

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AUG 06 2018

SC Court of Appeals

This matter came before the Court for a hearing upon Plaintiff Encore Technology Group, LLC (“Plaintiff”)’s Motion to Appoint Receiver for Defendant Keone Trask (“Trask”). The motion was heard by the Court on June 12, 2018. Counsel for all parties were present.

Upon reviewing the record, the evidence, and the applicable law and hearing statements and representations of counsel, I find that Plaintiff’s Motion to Appoint Receiver should be granted and a receiver should be appointed with authority to pursue discovery from Defendants and third parties, require the production of documents and other evidence, and take possession of Trask’s non-exempt assets and secure them while Trask’s appeal is pending, upon threat of contempt and sanctions by this Court for willful failure to cooperate with the receiver.

FINDINGS OF FACT

1. On April 2, 2018, the Court entered a Final Order and Judgment in favor of Encore against Defendant Keone Trask (“Trask”) in the amount of \$7,917,468.40 (the “Judgment”).

2. The Judgment required Trask to pay \$7,917,468.40 to Encore. Trask has failed to pay any portion of this amount. Although the Clerk of Court issued an Execution against Property of Trask on April 13, 2018, it has not been satisfied, in whole or in part.

3. Trask filed a motion pursuant to Rule 59, SCRCP, for Reconsideration of the Judgment and intends to appeal the Judgment, necessitating the preservation of Trask's property during the pendency of the appeal.

4. The Judgment includes \$2,952,078 in actual damages and \$4,524,890 in punitive and exemplary damages. In doubling the actual damages under the Trade Secrets Act to award \$849,890 in exemplary damages, the Court noted the case of misappropriation was one of the most egregious this Court has ever seen. Judgment at 4.

5. Defendants moved to stay execution of the Judgment, but the Court denied a stay. In support of its denial, the Court noted that evidence was presented at trial from which one could conclude or infer that the Defendants were engaged in an involved scheme to hide from Encore the truth of Trask's breaches of fiduciary duties, duties of loyalty, and contract and cannot be expected to fulfill their legal duties. Therefore, the Court determined it would not be appropriate to stay execution of the judgment. Judgment at 33-34. Specifically, evidence at trial indicated that Trask:

- Did not disclose his involvement in Clear Touch to Encore while he was an employee of Encore;
- Transferred his ownership in Clear Touch to his mother to hide his affiliation;
- Got Encore to sign a Reseller Agreement and had his mother sign for Clear Touch;
- Had the true suppliers remove their labels from panels and replace them with Clear Touch labels to hide the suppliers' true identities from Encore;

- Marked up the prices of the panels from the suppliers to Encore;
- Had Encore send its checks to a Nevada post office box and forwarded them back to South Carolina;
- Had his wife, Tamara Trask, email Encore as “Amy Andrews”;
- While at conferences for Encore, worked to sign resellers for Clear Touch by initially leading them to believe Encore was an owner of Clear Touch;
- Got Encore’s employees, Leo Gallant and Jimmy Higginbotham, to sign non-disclosure agreements so that he could induce them to leave Encore by disclosing his ownership of Clear Touch but prevent them from disclosing same to Encore; and
- Permanently deleted incriminating e-mails.

Id.

6. During the pendency of this case, on May 12, 2017, Trask transferred real estate from his individual ownership into the “Trask Family Trust” of which he and his wife are the trustees.

7. Trask is the President and sole Director of his corporation, Defendant Clear Touch Interactive, Inc., f/k/a Clear Touch Interactive, LLC (“Clear Touch”), and exercises ownership and control in ways that will only be clear following discovery.

8. Instead of cooperating in discovery, Trask moved to quash subpoenas Encore issued pursuant to Rules 34, 45, and 69, SCRCP, to his CPA and Clear Touch’s third-party administrator, CatchFire Funding. Trask has also refused to provide to Encore documents requested in post-Judgment discovery.

9. Trask previously admitted to Encore that he owns several rental properties in several counties. The public records of Greenville County and Anderson County, South

Carolina, show that Trask is connected with fifteen (15) properties, which appear to be residential rental properties, either individually or through Carolina Home Partners LLC, a company of which Trask is manager. The records of Oconee County show that Trask transferred ten (10) duplexes in November 2017, shortly after the jury verdicts in this case were rendered, at a sales price of approximately one-half of what the buyer was able to mortgage the properties for. Encore records from when Trask was an employee indicate he had three bank and/or brokerage accounts. Only a receiver can effectively preserve the net rental and investment income from these assets and preserve them so that they are available to apply to the Judgment.

10. Plaintiff seeks for the Court to appoint L. Walt Tollison, III, Esq., as receiver for Trask.

CONCLUSIONS OF LAW

1. The foregoing Findings of Fact are denominated Conclusions of Law to the extent that they constitute the same.

2. The Judgment was granted in favor of Encore and has not been satisfied.

3. A receiver may be appointed after judgment to carry the judgment into effect. *See* S.C. Code Ann. § 15-65-10(2).

4. A receiver may be appointed after judgment to preserve the judgment debtor's property during the pendency of an appeal. *See* S.C. Code Ann. § 15-65-10(3).

5. A receiver may be appointed after judgment when an execution has been returned unsatisfied and the judgment debtor refuses to apply his property in satisfaction of the judgment. *See* S.C. Code Ann. § 15-65-10(3).

6. A receiver may be appointed to receive any distributions due to or to become due to the judgment debtor from a limited liability company in which the judgment debtor has a

membership interest. *See* S.C. Code Ann. § 33-44-504(a). Likewise, a receiver may receive other payments due a judgment debtor and “stands in the shoes of the debtor with respect to property of the latter,” as well as his “contractual relation[s].” *Jeffcoat v. Morris*, 300 S.C. 526, 389 S.E.2d 526 (Ct. App. 1989), *overruled on other grounds by United Carolina Bank v. Caroprop, Ltd.*, 316 S.C. 1, 4 (1994).

7. South Carolina law allows for the appointment of a Receiver under the facts of this case.

8. The Court concludes that Encore is entitled to the appointment of a receiver in order to ascertain by investigation and to take possession of and secure assets and income of Trask until the appeal is resolved.

NOW, THEREFORE, based upon the foregoing findings of fact and the conclusions of law, IT IS THEREFORE ORDERED that:

1. L. Walt Tollison, III, Esq. (“TOLLISON”) is hereby appointed as Receiver to ascertain by investigation and to take possession of and secure assets and income of Trask until their appeal of the Judgment is resolved.

2. Within ten (10) business days following the entry of this Order, and on an ongoing basis as long as this Order remains in effect, Trask shall surrender and deliver possession to TOLLISON all of the assets, property, and records relating to assets, property, and income that he may possess, own or control, directly or indirectly, legally or equitably, including but not limited to all shares of stock of Clear Touch Interactive, Inc., f/k/a Clear Touch Interactive, LLC (“Clear Touch”), and all assets of Trask in Clear Touch, all records of Clear Touch that relate to or may lead to the discovery of assets, property, and income of Trask, and all assets and property that Trask hereafter receives or acquires, directly or indirectly, legally or

equitably, while the Order is in effect (all of the foregoing herein referred to as the “Property”), with the exception of property that is exempt from execution or levy (for example, the homestead exemption) (“Exempt Property”). As to such Exempt Property, Trask shall not dispose of or encumber such property beyond the statutory amount of the exemption. If such property is already encumbered such that the owner’s equity in the property is less than the amount of the exemption, the owner shall not further encumber or dispose of the property. All documents of Clear Touch shall be produced subject to the Confidentiality Order in this case, which the Receiver shall acknowledge he has read and will follow.

3. Effective as of and from the date of the entry of this Order, all funds or other property that are received by Trask, except for Exempt Property, shall be delivered to the Receiver and deposited with a bank of Receiver’s choice or otherwise secured by Receiver pending resolution of Trask’s appeal.

4. The evidence presented at trial indicated that the regular, historical salary Trask has received from Encore and Clear Touch is approximately \$200,000.00 per year, *see* Plaintiff’s Exhibits 10.G and 10.I (showing Trask’s wages of \$190,512 in 2013) and 10.J (showing Trask’s wages from Clear Touch of \$163,496 in 2015), which shall be the amount of Trask’s exempt earnings (the “Exempt Earnings”). The Exempt Earnings shall not include commissions or bonuses based upon Clear Touch’s performance as opposed to Trask’s personal services to Clear Touch. *See In re Davis*, 1999 WL 33486078, *3 (Bankr. D.S.C. May 28, 1999) (“earnings for personal services are to be distinguished from the proceeds of a business carried on by the debtor; the legislative intent being to protect the fruit of someone’s labor for the benefit of his family, rather than income derived from passive sources, such as investment income or return on capital.”); *Mathews v. Mathews*, 207 S.C. 170, 35 S.E.2d 157 (1945) (indicating that “earnings of

the debtor for his personal services” are limited to wages and ordinary salaries necessary for the use of a family supported wholly or partly by his labor). The Exempt Earnings shall be deposited in a separate account controlled by Trask but for which the Receiver shall receive monthly statements from the bank and be a co-signer (the “Exempt Earnings Account”). Any amounts accumulated in the Exempt Earnings Account above the \$5,000.00 amount set forth in S.C. Code Ann. § 15-41-30(A)(5), and any other amounts due Trask from Clear Touch, shall be delivered to the Receiver and deposited by him into the bank account referenced in Paragraph 3. Any dispute over such amounts shall be brought promptly to the Court.

5. The Receiver will be and hereby is authorized and directed to take immediate possession of Trask’s assets and to exercise full control over Trask’s assets, except for Exempt Property, provided that Receiver shall not sell or dispose of such assets until further order of this Court, and the Receiver in so doing will have all powers generally available to Receivers under the laws of the State of South Carolina, and will have, among others, the following specific powers:

(a) The power and authority to take possession of property owned or leased by Trask. All parties in possession of any such property are to surrender it to the Receiver upon demand. This property shall include, but not be limited to the following;

- i Real Property
- ii Goods
- iii Inventory
- iv Equipment
- v Chattel Paper and Accounts
- vi Securities and Instruments, including but not limited to Stocks, Membership Interests, Bonds, and Promissory Notes

- vii Investment Property
- viii Contracts and other Documents
- ix Deposit Accounts
- x Commercial Tort Claims
- xi Money
- xii Letter of Credit Rights
- xiii General Intangibles
- xiv Supporting Obligations
- xv All Cash or Equivalents, Savings Accounts, Brokerage Accounts, any other bank accounts of Trask; and
- xvi All proceeds and products, including but not limited to rent, of above.

This property shall not include Exempt Property.

(b) Gather all books and records of Trask, and subpoena or otherwise require production of books and records of third parties, including but not limited to a list of all aliases Trask has used, a list of all family members and entities with which he is affiliated, and historical records showing any asset transfers or dispositions by Trask, family members, or affiliated entities and all salary, dividend, distribution, and other compensation payments to Trask, his family members, or any entity with which he is affiliated, to determine the existence and amount of all Trask's rights, debts and obligations together with all their assets;

(c) To control all bank, brokerage, and trust accounts owned by or for the benefit of Trask. No other person shall have any authority or control over any funds in the accounts, including but not limited to authority or control to disburse funds;

(d) With respect to any insurance coverage in existence or obtained, the Receiver shall be named as an additional insured on the policies for the period that the Receiver shall be in possession of the property insured;

(e) The Receiver is hereby authorized to demand and receive any dividends or distributions due to or to become due to Trask from any corporation or limited liability company in which Trask has a direct or indirect ownership or membership interest, including but not limited to Clear Touch; and any such corporation or limited liability company is hereby directed and enjoined, upon receipt of this Order, to make such distribution(s) only to the Receiver while this Order is in effect.

6. Plaintiff and Receiver shall have no obligation to pay for accrued wages, benefits, and taxes, payroll or other amounts, accrued in advance of the date of this Order, whether currently due or owing.

7. The Receiver will furnish to the Court and to the parties quarterly statements itemizing property that has been secured by Receiver pursuant to this Order. Such report will be filed within thirty (30) days after the end of each calendar quarter, the first such report to be due thirty days after the end of the first quarter after this Order is entered and quarterly thereafter. The parties to this litigation will be entitled to inspect the books and records of the Receiver concerning assets held by it pursuant to this Order at reasonable times and with reasonable notice, subject to the Confidentiality Order in this case.

8. Without further Order of the Court, the Receiver shall be entitled to payment of professional fees and expenses incurred by the Receiver. While Trask's appeal remains pending, Receiver's fees and expenses shall be paid by Plaintiff. If the Judgment is affirmed in whole or in part, Plaintiff shall be entitled to reimbursement of such payments from Trask's assets in addition to the Judgment and the legal, accounting, and other costs of collecting same. Receiver's professional fees shall be charged at \$325 per hour for Receiver's time and at such lesser rates as he ordinarily charges for paralegal time. All photocopies and facsimile charges along with necessary out-of-pocket expenses (including travel and lodging) will be billed at cost.

All fees and expenses of the Receiver shall be accounted for in the Quarterly Statement of Operations.

9. The Receiver will have such additional powers as are provided by law and as this Court may from time to time direct.

10. No person or entity shall file suit against the Receiver, Plaintiff, or Plaintiff's counsel for actions taken in compliance with this Order.

11. The Receiver shall have no personal liability in connection with any liabilities, obligations, liens or amounts owed to any creditors or claimants of Trask.

12. The Receiver and his employees, agents, and attorneys shall have no personal liability or obligation and shall have no claim asserted against them in connection with the Receiver's actions under this Order.

13. The Receiver may, in its discretion, notify this Court and the parties to this action that the Receivership is not practical, and upon such notice all duties of the Receiver shall terminate except with regard to liabilities which arise prior to the date of the notice. The Court may then appoint a new Receiver to take any and all such other action as it deems appropriate. Receiver shall turn over all of the assets and records secured pursuant hereto to any successor receiver appointed by the Court and shall file a final accounting with the Court.

14. In the event that Trask fails to turn over the property and other items required by this Order within ten (10) business days, the appropriate County Sheriff is hereby ordered to take all necessary actions and appropriate force to give full effect to the terms of this Order.

15. All persons who receive notice of this Order are enjoined from interfering with the powers and duties of the Receiver.

16. All providers of insurance with respect to the Property are prohibited and enjoined from cancelling such insurance policies provided that the Receiver pays the applicable premiums for any prospective exposure going forward under the receivership, and such premiums may be paid from assets secured by the Receiver pursuant to this Order.

17. The receiver is not responsible for filing any federal, state, or local tax returns including those relating to any activities during the receivership, but is entitled to collect any tax refunds payable to Trask.

18. The Receiver and the parties to this case may at any time apply to this Court for instructions or orders and for further powers necessary to enable the Receiver to perform the Receiver's duties properly.

19. IT IS FURTHER ORDERED that pending further Order of this Court, Trask and his respective agents, partners, managers, employees, assignees, heirs, representatives, affiliates or related entities and all other persons acting in concert with them who have actual or constructive knowledge of this Order, and their agents and employees, shall not:

A. Commit Waste:

Trask shall not commit or permit any waste of the Property or any part thereof, or suffer or commit or permit any act on the Property or any part thereof in violation of law, or remove, transfer, encumber or otherwise dispose of any of the Property or the fixtures presently on the Property or any part thereof.

B. Cash or Credit Card Receipts:

Trask shall not discount or in any other way divert or use any of the monies from the Property, including, but not limited to, rents, cash from sales, or credit card receipts.

C. Interfere with Receiver:

Trask shall not directly or indirectly interfere in any manner with the discharge of the Receiver's duties under this Order or the Receiver's possession of the Property;

D. Transfer or Encumber the Property:

Trask shall not expend, disburse, transfer, assign, sell, convey, devise, pledge, mortgage, create a security interest in, encumber, conceal or in any manner whatsoever deal in or dispose of the whole or any part of the Property, including, but not limited to, the cash, rents inventory, and fixtures without prior Court Order; and

E. Impair Preservation of Property or Plaintiff's Interest:

Trask shall not do any act which will, or which will tend to impair, defeat, divert, prevent or prejudice the preservation of the Property, or the preservation of Plaintiff's interest in the Property. Trask is further enjoined from making any payments or transfers of funds or property to or from any affiliates, insiders, directors, officers, family members, or any other person or entity controlled by or otherwise related to any affiliates, insiders, directors, and/or officers.

IT IS SO ORDERED.



Greenville Common Pleas

Case Caption: Encore Technology Group LLC vs. Keone Trask , defendant, et al
Case Number: 2015CP2305757
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S/R. LAWTON McINTOSH

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