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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Circuit Court

The Honorable R. Lawton McIntosh, Circuit Court Judge

Case No. 2015-CP-23-5757

Appellate Case No. 2018-001444

RECEIVED
AUG 21 2018
SC Court of Appeals

Encore Technology Group, LLC.....Respondent/Appellant,

v.

Keone Trask and Clear Touch Interactive, Inc.....Appellants/Respondents.

MOTION TO STAY

Appellants/Respondents, Keone Trask (“Trask”) and Clear Touch Interactive, Inc. (“Clear Touch”) (*collectively* “Defendants” or “Appellants”), through their undersigned counsel, respectfully move this Court pursuant to SCACR 241 and other applicable law for an Order staying the Receiver Order of the Honorable R. Lawton McIntosh dated July 23, 2018 which was appealed on August 2, 2018 during the pendency of this appeal. Defendants make this Motion and seek a stay because the Receiver Order violates the law and is an unnecessary overreach by empowering the Receiver to:

1. Garnish and control Keone Trask’s protected compensation received for his personal services in violation of S.C. Code Ann. § 15-39-410 and other applicable law;

2. Have access to and dominion over Clear Touch's finances and assets in violation of S.C. Code Ann. § 15-41-35(A)(13) because the company is 100% owned by an IRA whose assets cannot be utilized to satisfy the judgment against Mr. Trask;
3. Have access to and dominion over Clear Touch's finances and assets even though the company has paid the entirety of the judgment against it into the Court under SCRCP 67 and Keone Trask has no personal ownership interest in the company;
4. Unlawfully restrict what Keone Trask may do with exempt assets that cannot be utilized to satisfy the judgment against him in violation of S.C. Code Ann. §§ 15-39-410 and 440 and other applicable law; and
5. Attempt to gain access to and exercise dominion over Keone Trask's wife (Tamara Trask) personal assets and finances that cannot be utilized to satisfy the judgment against her husband.

Therefore, staying the Receiver Order during the pendency of this appeal is the only way to prevent multiple and continuous violations of South Carolina law from occurring for over a year or more while this matter goes through the appellate process.

FACTUAL AND PROCEDURAL BACKGROUND

Clear Touch Interactive is a supplier of interactive touch panels which it sells to Resellers who then sell the products to end user customers, primarily in the K-12 education market. Encore is a Value-Added Reseller for a wide range of information technology products, including interactive panels. The action below arose out of Trask's employment with Encore and his relationship and involvement with Clear Touch before, during, and after his tenure with the company.

From 1999 through the fall of 2012, Trask worked for Computer Software Innovations

(“CSI”) in a variety of roles, including Chief Technology Officer and foresaw a shift in classroom technology away from projectors and whiteboards and to interactive touch panels. On August 24, 2012, Trask established Clear Touch, LLC as a Nevada entity with the notation that it may one day be a manufacturer or supplier of interactive touch panels. Trask set about identifying potential manufacturers and exploring the Clear Touch opportunity. Shortly after Clear Touch was established, a new opportunity arose due to the acquisition of CSI by a company called Harris. Trask and others at CSI learned that Harris was interested in only a portion of the CSI business and planned to eliminate the technology reseller and cloud services division. Trask and other current and former Encore executives, saw an opportunity to spin off that division into a new entity leading to the incorporation of Encore Technology Group, LLC on September 27, 2012. The idea was for Encore to purchase the technology reselling and cloud services division of CSI and continue with that business as a newly minted entity. Trask and others solicited prospective investors, ultimately resulting in Todd Newnam purchasing all ownership interests in Encore and acquiring the technology reselling and cloud services division of CSI as planned.

Operational management and control of Clear Touch was transferred from Trask to his mother Kathy Cruse on or around October 4, 2012; which was reflected by the LLC’s Annual List of Managers filing for the period of August 2012 to August 2013.

Due to his experience and expertise in the technology market, Encore hired Trask as its Chief Business Development Officer on or about February 18, 2013. At that time, Trask executed a Non-Disclosure and Non-Solicitation Agreement (the “Agreement”) containing multiple provisions meant to restrict his post-employment activities including non-solicitation of customers and non-piracy of employees clauses and broad non-disclosure/confidentiality provisions prohibiting use or disclosure of “Company Data and Trade Secrets.” The Agreement also

contained a “Business Opportunity” provision which stated in part that:

During the term of this Agreement, if Employee becomes aware of any project, investment, venture, business or other opportunity...that is similar to, competitive, with, related to, or in the same field as Company...then Employee shall so notify Company immediately of such Opportunity and shall use Employee’s good-faith efforts to cause the Company to have the opportunity to explore, invest in, participate in, or otherwise become affiliated with such Opportunity.

Interactive panels were an emerging technology in the spring of 2013, and there were few options on the market. Trask brought Clear Touch to Encore as a potential panel supplier. The company chose to begin selling Clear Touch interactive panel products and entered a Reseller Agreement on April 24, 2013. Under the Reseller Agreement, Clear Touch supplied Encore interactive panels and accessories which it in turn sold to end user customers at a markup. Following execution of the Reseller Agreement, Encore began to market and sell Clear Touch products within its larger suit of product offerings, primarily in the K-12 education markets. Encore’s business model and strategy was and is to be a Value-Added Reseller and a one-stop shop for the public sector’s IT needs. As such, it offers an array of technology products, with interactive panels accounting for less than 5% of Encore’s overall business during Trask’s time at the company through last year.

On January 15, 2014, Trask notified Encore of his intention to leave the company effective February 14, 2014. Encore encouraged Trask to stay through the end of March. On January 21, 2014, Clear Touch was converted from an LLC to a corporation resulting in a change of operational control from Cruse to Trask. Encore ultimately terminated Trask on April 25, 2014 and he immediately went to work for Clear Touch.

Encore and Clear Touch continued to do business following Trask’s departure. In October 2014 Trask disclosed his interest in Clear Touch to Encore leadership. Encore continued to sell Clear Touch products into 2015. Events unfolded over the course of the Spring and Summer that

year which led to Encore's termination of its reseller relationship with Clear Touch on September 11, 2015 and the filing of the underlying lawsuit a week later.

At the end of July 2015 Clear Touch terminated Jimmy Higginbotham for cause. Soon thereafter, Higginbotham contacted Encore executive Todd Newnam and informed him that Trask had an interest in Clear Touch before and during his tenure at Encore and suggested the company look into it. Encore took that advice, researched the historical ownership of Clear Touch through public corporate filings and discovered that Kathy Cruse was Keone Trask's mother. At that point Encore decided it would end its relationship with Clear Touch but did not inform Clear Touch of its decision right away. Rather, the company established a reseller relationship with another panel supplier, ViewSonic and worked to position them to replace Clear Touch. On September 11, 2015, Encore notified Clear Touch it was terminating the relationship.

A week later Encore filed an action against Clear Touch and Keone Trask alleging numerous causes of action, all arising out of Trask not disclosing his relationship with Clear Touch while an employee of Encore in violation of various common law and contractual obligations to the company, misappropriation of company trade secrets and company data, and defamatory statements concerning Encore, as alleged in the Complaint. That case was litigated for two years culminating, in a week-long trial in September 2017.

The jury returned verdicts for Encore on seven of nine claims. Following post-trial motions judgment was entered on April 2, 2108 by Final Order and Judgment against Clear Touch in the amount of approximately \$1.7 million dollars and against Keone Trask individually for over \$7 million dollars when the actual and punitive damages were added together. The Final Order allowed the Defendants to pay their respective judgments into the Court under SCRCP 67 pending resolution of any appeal. Defendants timely appealed the Final Order following denial of their

Rule 59 Motions.

Clear Touch paid the entire judgment against it into the Court by April 17, 2018. Since entry of the Final Order, Encore has taken several different avenues in what it claims to be an effort to recover the judgment against Keone Trask. Encore has intervened in another matter, filed a separate lawsuit, and attempted to initiate supplemental proceedings at one point.

Encore also filed a Motion for the Appointment of a Receiver on May 21, 2018 seeking to have a Receiver take control and possession of Keone Trask's assets, including those which are not collectable to satisfy a judgment under the applicable law, during the pendency of any appeal. The Motion further sought to have the Receiver oversee and potentially control Clear Touch's finances and assets, those of Keone Trask's wife Tamara Trask, and others, even though Mr. Trask is the only party with a judgment outstanding against him and without regard to whether those assets can be used to satisfy that judgment. Encore presented the affidavit of its CEO Todd Newnam and documents related to two property transfers in support of its Receiver Motion. One was a transfer of real property to a third party unaffiliated with Trask and in which he has no interest in November 2017. The other was a conveyance of his primary residence to a Family Trust done for estate planning purposes in or around May 2017. Encore, pointing to the timing of these transactions, sought to have the Court infer that those conveyances were fraudulent and evidenced a need for a Receiver. The lower court heard the Receiver Motion on June 12, 2018 and thereafter granted it.

Encore provided the lower court with a proposed order to which Defendants objected on multiple grounds. (Exh. A). The circuit court adopted Encore's proposed order in its entirety and entered the Order Appointing a Receiver on July 23, 2018 (the "Receiver Order"). (Exh. B). The Receiver Order directs the Receiver to take possession and control of certain assets, property, and

records relating to Trask's assets along with those "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...." as well as Clear Touch company records, among other things. (Receiver Or. p. 5-6). Its broad and general language could be interpreted to extend the Receiver's power well beyond the confines of the law and in direct contravention of various statutory protections afforded judgment debtors and their assets. The Receiver Order attempts to give the Receiver the ability to oversee and control not only Trask's exempt assets but also potentially those of other parties against which no judgment is outstanding and whose assets cannot be utilized to satisfy the individual judgment against Keone Trask.

Therefore, Defendants filed a timely appeal of the Receiver Order on August 2, 2018. The next day, Defendants filed a Motion to Continue the Receiver Order with the circuit court seeking a continuance of its implementation pending resolution of the present Motion.¹ The circuit court granted the Motion for Continuance holding that the Receiver would refrain from taking possession, custody, and control of any items or assets pending this Court's disposition of the Motion to Stay. It allowed the Receiver to pursue the information and documents encompassed in the Receiver Order; a process that is ongoing to date.

LEGAL ARGUMENTS AND ANALYSIS

"The appointment of a receiver is a drastic remedy, and should be granted only with reluctance and caution." *Richland County v. South Carolina Dept. of Revenue*, 422 S.C. 292, 313 (2018) citing *Midlands Util., Inc., v. S.C. Dep't Health & Envl. Control*, 301 S.C. 224, 228 (1989). "As a rule, a receiver will not be appointed during the process of a case, unless there is the strongest reason...and there is a danger the property will be materially injured before the case is

¹ At the time there was no appellate case number making it impossible for Defendants to have filed a Motion to Stay with this Court prior to submitting the Motion for Continuance.

determined.” *Id.* (internal citations omitted). Here, the appointment of the Receiver and adoption of the Receiver Order reflect the absence of such caution and empower the Receiver to violate South Carolina law and oversee and/or control assets that cannot be used to satisfy the judgment against Keone Trask.

A. The Receiver Order Violates the Law

Various portions of the Receiver Order violate the law and should not be implemented until this Court has the opportunity to evaluate and correct those errors on appeal. The alternative is having Mr. Trask, Clear Touch, and third parties bearing some relationship to him, including his wife Tamara Trask who is not a party to the litigation, remain under the oversight and control of an overly empowered Receiver who has dominion over assets that cannot be utilized to satisfy the judgment against Mr. Trask. Such a situation does nothing to accomplish the purpose of a Receivership which is the protection and preservation of assets that may be utilized to satisfy a judgment, and instead serves only to intimidate and harass both the parties impacted by it (Keone Trask and Clear Touch) along with anyone and anything related to them.

1. The Receiver Order Unlawfully Allows Control and Garnishment of Trask’s Wages

Statutory exemptions on what may not be utilized to satisfy a judgment in South Carolina are construed liberally in favor of the debtor. *First Citizens Bank & Tr. Co., Inc., v. Blue Ox, LLC*, 422 S.C. 461, 468-68 (Ct. App. 2018)(Exemptions in the Homestead Act “are to be construed in favor of the debtor....”); *In re Holt*, 497 B.R. 817, 825 (Bankr. D.S.C. 2013)(“As a general proposition, the exemptions provided under South Carolina law are construed liberally in favor of debtors.”); *In re Riley*, 486 B.R. 711, 716 (Bankr. D.S.C. 2013)(providing exemptions under South Carolina law are generally construed liberally in favor of debtors.).

South Carolina explicitly prohibits a judgment creditor from seeking to satisfy its judgment

with the earnings the debtor receives for his personal services:

The judge may order any property of the judgment debtor, not exempt from execution, in the hands either of himself or any other person or due to the judgment debtor, to be applied toward the satisfaction of the judgment, except that the earnings of the debtor for his personal services cannot be so applied.

S.C. Code Ann. § 15-36-410. Those earnings for personal services include the debtor's wages which may be made up of a salary, commission payments and/or bonuses the debtor receives for his work.² The Receiver Order however empowers the Receiver to possess and control Keone Trask's earnings, including his bonus and commission payments, and cap his accumulation of such exempt payments in violation of S.C. Code. § 15-36-410 because those assets cannot be used to satisfy the judgment against him.

The Receiver Order directs Trask to surrender and deliver to the Receiver the "Property" defined as "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..., and all assets of Trask in Clear Touch...*and all assets and property that Trask hereafter receives or acquires, directly or indirectly, legally or equitably, while the Order is in effect.*" (Receiver Or. p. 5 ¶ 2)(*emphasis added*). It does not require surrender of "Exempt Property" which is only defined as "property exempt from execution or levy (for example the homestead exemption)." *Id.* The Receiver Order directs that "all funds or other property that are received by Trask, except for Exempt Property, shall be delivered to the Receiver." (Receiver Or. p. 5 ¶ 2-3).³

² Our courts and legislature include a person's wages as "earnings of the debtor for his personal services." See *Jarrott v. South Carolina Empl. Sec. Comm'n*, 290 S.C. 533, 536 (1986); *Garrett v. Mutual Ben. Life Ins. Co. of N.J.*, 239 S.C. 574, 578 (1962); *Toner v. South Carolina Empl. Comm'n*, 2005 WL 7083464 at *3-4 (Bankr. D.S.C. 1999); S.C. Code § 41-27-380. All these authorities put wages under the umbrella of earnings for personal services. Earnings for personal services include other compensation outside the standard hourly or salary wage such as commission payments and bonuses.

³ The overbreadth of these sections is problematic in and of themselves, and could be utilized by the Receiver to

The Receiver Order runs afoul of the statutory prohibition on wage garnishment by differentiating “Exempt Property” from “Exempt Earnings” to empower the Receiver to exercise dominion over Trask’s earnings received for his personal services, stating in relevant part that:

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...which shall be the amount of his exempt earnings (“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 the income derived from passive sources, such as investment income or return on capital.”); *Matthews v. Matthews*, 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.

(Receiver Or. p. 5 ¶ 8; p. 6-7 ¶ 2-4).

First, the Receiver should not be empowered to have oversight or control over the salary Trask receives from his employment because that income cannot be used to satisfy the judgment against him under S.C. Code. § 15-36-410. Second, the Receiver Order unlawfully attempts to carve out Trask’s commission payments and bonuses from the Exempt Earnings based upon inapplicable and distinguishable case law cited for propositions for which they do not stand. (Receiver Or. p. 6-7). *See In re Davis*, 1999 WL 33486078, *3 (Bankr. D.S.C. 1999)(Bankruptcy court held that S.C. Code § 15-36-410 did not exempt the earnings of the debtor because he earned them as an independent contractor; not because they were commission payments. “[E]arnings of

oversee or control assets or property which may never be utilized to satisfy the judgment against Trask.

the debtor for his personal services” should not include earnings of an independent contractor such as Mr. Davis.”); *Matthews v. Matthews*, 207 S.C. 170, 178 (1945)(Holding disability benefits do not represent “earnings of the debtor for his personal services.”). These cases do not support the notion that Trask’s commission payments or bonuses fall outside the realm of “earnings of the debtor for his personal services” and consequently the protection of S.C. Code § 15-36-410. The Receiver Order however relies on these cases and deems Trask’s commission payments and bonuses as “passive income” (investment income) not entitled to the statutory exemption. Passive income is not compensation for the debtor’s personal services but return on money or other assets invested in a particular enterprise whereas commission payments and year-end bonuses are part and partial of a person’s compensation for doing his job. The latter income is shielded from execution or levy to satisfy a judgment under South Carolina law, and the Receiver Order violates that protection by allowing the Receiver to exercise dominion and control over those payments.

The Receiver Order violates the statutory prohibition on wage garnishment in a multitude of ways and gives the Receiver power to oversee and possess Trask’s income that cannot be used to satisfy the judgment against him. Therefore, staying execution of the Receiver Order during the appeal ensures that the Receiver is not empowered to violate the law for years to come.

2. The Receiver Order Unlawfully Restricts Trask’s Power Over Exempt Assets

The Receiver Order unlawfully attempts to both cap Trask’s accumulation of his Exempt Earnings and overly restrict his ability to encumber Exempt Property.

The Court may forbid transfer or disposition of non-exempt property pursuant to S.C. Code Ann. § 15-39-440 which states that “[t]he judge may also, by order, forbid a transfer or other disposition of the property of the judgment debtor not exempt from execution and any interference therewith.” The Receiver Order however unlawfully prohibits Trask from

interest in the company before any of its assets could potentially be used to satisfy the judgment against him individually. Trask having no personal ownership interest in Clear Touch prevents the company's assets from being used to satisfy the judgment against him.

Second, because Clear Touch is 100% owed by an IRA, even though Trask is the beneficiary of that fund, its assets are exempt from being used to satisfy the judgment against him under S.C. Code Ann. § 15-41-30.

The following real and person property of a debtor domiciled in this State is exempt from attachment, levy, and sale under any mesne or final process issued by a court:

...

The debtor's right to receive individual retirement accounts as described in Sections 408(a) and 408(A) of the Internal Revenue Code, individual retirement annuities as described in Section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in Section 408(c) of the Internal Revenue Code. A claimed exemption may be reduced or eliminated by the amount of a fraudulent conveyance into the individual retirement account or other plan... The interest of an individual under a retirement plan shall be exempt from creditor process and is an exception to Section 15-41-35. The exemption provided in this section shall be available whether such individual has an interest in the retirement plan as a participant, beneficiary, contingent annuitant, alternate payee, or otherwise.

S.C. Code Ann. § 15-41-30(A)(13). This exemption shields any assets owned by the IRA from being utilized to satisfy the judgment against Trask. Those assets include those of Clear Touch which are 100% owned by the IRA.

Thus, Clear Touch's assets cannot be utilized to satisfy the judgment against Mr. Trask, and because it has paid the entirety of the judgment against it into the Court, there is no legal grounds or reasonable practical basis for allowing the Receiver to have access to and control over Clear Touch's finances and assets.

4. The Receiver Order's Broad Language May be Utilized to Unlawfully Grant Access to and Control over Tamara Trask's Personal Finances and Assets

Tamara Trask's personal assets, in which her husband has no interest, cannot be utilized to

satisfy the judgment against him. Tamara Trask was not a party to the litigation and no judgment was awarded against her. At this point, there has been no showing or indication that Mr. Trask unlawfully or fraudulently conveyed assets to his wife. Without such a showing there can be no basis for the Receiver overseeing or controlling Tamara Trask's financial affairs and assets, yet the Receiver believes that the Order's overly broad language empowers him to delve into the financial affairs of Mrs. Trask, and other family members, simply because they are related to Keone Trask. (*See* Receiver Or. p. 8)(Stating as part of the Receiver's powers he may "Gather all books and records of Trask, and subpoena or otherwise require production of books and records of third parties...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."). Such broad language the Receiver has already used to claim he may delve into the financial affairs of Tamara Trask or other third parties merely because they are related to Keone Trask and nothing more. Unlawful overreach and unwarranted invasion into one of the most private aspects of a person's life should not be allowed in the absence of a compelling justification. In this context, that justification would be some indication that Keone Trask fraudulently or otherwise unlawfully transferred collectible assets to the family member in question. The Receiver Order casts that safeguard aside and potentially gives the Receiver unfettered access to anyone's financial affairs simply because they are related to Mr. Trask as the judgment debtor. Something more should be required and the Receiver Order's conspicuous failure to provide it warrants the Court staying its implementation to ensure that it cannot be utilized to unlawfully invade third parties' affairs without a reasonable and identifiable basis for doing so.

B. If the Receiver Order is Not Stayed in its Entirety Encore is Sufficiently Protected by Oversight Alone

Trask and Clear Touch maintain that the Receiver Order is not necessary at this time and should be stayed pending resolution of this appeal. However, if the Court is inclined not to stay the Receiver Order in its entirety, then Defendants contend it should be stayed at least in part by suspending the portions directing the Receiver take possession, custody, and control of assets and staying the provisions within it that violate the law as detailed above. This arrangement allows third party oversight of Trask's collectable assets without illegal and unnecessary intrusion into the business and personal affairs of those who do not have an outstanding judgment against them. Under this arrangement the Receiver maintains oversight of those assets which may be utilized to satisfy the judgment against Keone Trask individually and nothing more. Encore is more than protected by such an arrangement and Clear Touch and Trask's family members are not unnecessarily subjected to the oversight and control of their assets which cannot be utilized to satisfy the judgment against the only party who has an outstanding judgment against him – Keone Trask.

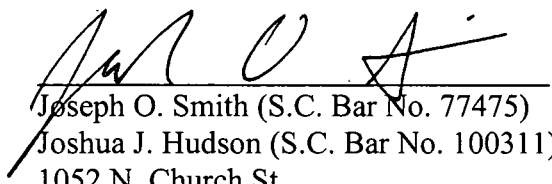
CONCLUSION

Appointing a Receiver to exercise dominion over a judgment debtor's assets should be done only with serious contemplation and caution. The Receiver Order dispatches with that necessary hesitancy and empowers the Receiver to intrude the most private aspects of businesses and third parties who owe nothing to Encore. It is a premature and unnecessary overreach that empowers the Receiver to violate South Carolina law in numerous respects. Staying its implementation during this appeal is necessary to stop multiple and continuous illegal actions from taking place for a year or more at the least while this matter is on appeal.

WHEREFORE, Trask and Clear Touch respectfully request that the Court stay the implementation of the Receiver Order during the pendency of this appeal for the reasons set forth above. Alternatively, if the Court is not inclined to stay the Receiver Order in its entirety, then Trask and Clear Touch request that the Court order the provisions of it directing the Receiver to take possession, custody, and control of any assets or property be stayed for the duration of the Appeal.

Respectfully Submitted,

ROE CASSIDY COATES & PRICE, P.A.


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August 17, 2018
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Circuit Court

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The Honorable R. Lawton McIntosh, Circuit Court Judge AUG 21 2018

SC Court of Appeals

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Encore Technology Group, LLC.....Respondent/Appellant,

v.

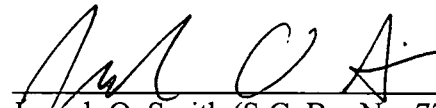
Keone Trask and Clear Touch Interactive, Inc.....Appellants/Respondents.

PROOF OF SERVICE

I certify that I have served the Motion to Stay on the above-named Respondent/Appellant by depositing a copy of it in the United States Mail, postage prepaid, on August 17, 2018, addressed to counsel of record as follows.

Gregory J. English
Rita Bolt Barker
WYCHE, P.A.
Post Office Box 728
Greenville, SC, 29602
Attorneys for Respondent/Appellant

ROE CASSIDY COATES & PRICE, P.A.


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August 17, 2018
Greenville, South Carolina



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August 17, 2018

VIA U.S. MAIL

Honorable Jenny Abbott Kitchings
Clerk of Court
S.C. Court of Appeals
Post Office Box 11629
Columbia, SC 29211

**Re: *Encore Technology Group LLC v. Keone Trask and Clear Touch Interactive, Inc.,
f/k/a Clear Touch Interactive, LLC***
C.A. No. 2015-CP-23-05757
Appellate Case No. 2018-001444
RCCP 2626.0001A

Dear Madam Clerk:

Enclosed for filing, please find the original and six copies of the Motion to Stay the Receiver Order with regard to the above-referenced case, along with the filing fee of \$25.00 and Proof of Service.

By copy of this correspondence, we are serving counsel for the Respondent with a copy of the same.

If you have any questions or concerns, please do not hesitate to contact me.

With kind regards, I am

Sincerely,

ROE CASSIDY COATES & PRICE PA



Joseph O. Smith

JOS/ads
Enclosures (*as stated*)

cc: Gregory English
Rita Barker

RECEIVED
AUG 21 2018
SC Court of Appeals

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p 864 349 2600
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THE STATE OF SOUTH CAROLINA
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Encore Technology Group, LLC.....Respondent/Appellant,

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Keone Trask and Clear Touch Interactive, Inc.....Appellants/Respondents.

MOTION TO STAY

Exhibit A

Objections to Encore's Proposed Receiver Order Submitted to the Court

JOSEPH O. "JOSH" SMITH
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JSMITH@ROECASSIDY.COM



August 1, 2018

Clerk of Court, Greenville County
Thirteenth Judicial Circuit

**Re: *Encore Technology Group LLC v. Keone Trask and Clear Touch Interactive, Inc.,
f/k/a Clear Touch Interactive, LLC***
C.A. No. 2015-CP-23-05757
RCCP 2626.0001

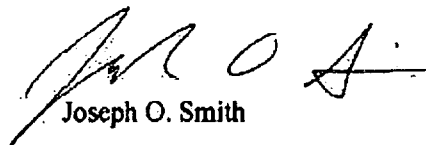
Dear Madam Clerk:

Defendants in the above-referenced matter are submitting this correspondence and the attached "Exhibit A" for entry into the public record in this matter.

On June 23, 2018, the Court entered an Order Appointing a Receiver (the "Order") in this matter. That Order was drafted and submitted to the Court by the Plaintiff. Prior to the entry of that Order, the Court allowed Defendants to submit objections and a "redline" markup reflecting and explaining its objections to the Order. That correspondence and redline is attached hereto as "Exhibit A." Defendants respectfully request that the Clerk enter this letter and the attached Exhibit A into the record for this matter.

Best Regards,

ROE CASSIDY COATES & PRICE, P.A.



Joseph O. Smith

Respectfully submitted,

s/ Joseph O. Smith

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Joshua J. Hudson, S.C. Bar #100311

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Attorney for the Defendants

August 1, 2018

Greenville, South Carolina

From: Josh Smith
Sent: Friday, July 06, 2018 4:26 PM
To: McIntosh, Lawton Secretary (Tammy Jennings); Greg English
Cc: McIntosh, Lawton Law Clerk (Clair Hollingsworth); Sarah E. Beasley; Josh Hudson; Rita Bolt Barker; Peggy Lathan
Subject: RE: Motions to Appoint Receiver and to Quash Subpoenas - Encore vs. Trask & Clear Touch
Attachments: image001.gif; ATT00001.htm; Order Appointing Receiver - Encore vs. Trask - (Defendant Redline).docx; ATT00002.htm

Judge McIntosh,

Attached is Defendant's redline to Encore's proposed Order Appointing a Receiver. I've made note in the comments concerning the basis for many of the redlines where needed, or hopefully where I thought helpful. To that end, I have also listed some of the primary issues dealing with portions of the proposed order that violate the law or offer inaccurate statements of it to circumvent the restrictions on what can be done and utilized to satisfy a judgment in SC.

Violation(s) of Law

p. 5 paras. 8, 1 - Attempt to have Receiver possess and control Trask's "income" which includes his "earnings...for his personal services" that are exempt from levy or use to satisfy the judgment against him per S.C. Code 15-39-410.

p. 6 para. 2 - Attempt to have Receiver control and possess except assets and property in violation of S.C. Code 15-41-30(A)(13) [CLICK ON COMMENT TO SEE FULL OBJECTION/COMMENT]

p. 6-7 para. 4 - Attempt to have Receiver possess and control Trask's exempt income (under 15-39-410) by empowering him to possess and control commission and bonus payments, and cap Trask's accumulation of such exempt payments for his personal services all in violation of S.C. Code 15-39-410

Inaccurate Statement(s) of Law

p. 4-5 para. 6 - insertion of entire quote makes case law quotation accurate in context

p. 6-7 para. 4 - Law cited addresses passive income (i.e. investment income) and therefore inapplicable to commission and bonus payments to which it is offered to apply. The latter payments are not passive income but rather payments received by the debtor for his personal services and therefore not subject to levy or attachment in order to satisfy the judgment per 15-39-410.

I appreciate the opportunity to submit our redline objections and will provide anything further the Court needs.

Best Regards,

Joseph O. "Josh" Smith
email jsmith@roecassidy.com
direct 864-404-3140

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

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;
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- 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.

Commented [JS1]: Untrue statement. Evidence at trial was that Encore arranged Higginbotham to be hired by Clear Touch and Gallant left on his own accord.
Commented [JS2]: Inaccurate statement.

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, SCRPC, 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.~~

Commented [JS3]: Untrue statement. Trask requested an extension to reply which Encore refused to give.

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 upon application for and the Court's issuance of a charging order placing a lien on a judgment creditor's distributional 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 and the appointment of a receiver will not change any existing contractual relation or right of action thereon," 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 non-exempt 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 non-exempt assets and income of Trask until their appeal of the Judgment is resolved.

2. Within ten-fifteen (15) 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 non-exempt assets, property, and records relating to those assets, property, and non-exempt 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") owned by Trask, and all

Commented [J54]: Insertion to make clear the Receiver's ability to receive an LLC member's distributions requires application for and issuance of a charging order under the statute and is not a power the Court can simply give a Receiver.

Commented [J55]: Edit incorporating actual quote rather than snippets.

Commented [J56]: "Income" encompasses exempt earnings. S.C. Code § 15-39-410 states "The judge may order any property of the judgment debtor, not exempt from execution in the hands either of himself or any other person or due to the judgment debtor, to be applied toward the satisfaction of the judgment, except that the earnings of the debtor for his personal services cannot be so applied." "Income" alone would encompass those exempt earnings such as Trask's wages. The deletion is necessary to keep the Receiver from possessing or controlling exempt assets which cannot be utilized to satisfy the judgment. Our courts and legislature include a person's wages as earnings of the debtor for his personal services. *Jarrott v. S.C. Employment Sec. Comm'n.*, 290 S.C. 533, 536 (1986); *Garrett v. Mutual Ben. Life Ins. Co. of N.J.*, 239 S.C. 574, 578 (1962); *Toner v. S.C. Employment Sec. Comm'n.*, 2005 WL 7083464 at *3-4 (Bankr. D.S.C. 1999); S.C. Code § 41-27-380. All these authorities put wages under the umbrella of earnings for personal services, along with other compensation outside normal wages such as commission payments and bonuses.

Commented [J57]: Same comment as immediately above. This violates the clear statutory exemption for earnings of the debtor for personal services.

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, assets, and income that is exempt from execution or levy for the purpose of satisfying the Judgment against Trask (for example, the homestead exemption; see S.C. Code § 15-41-10 *et seq.*) ("Exempt Property") and records related to such Exempt Property. As to such Exempt Property, Trask shall not dispose of or encumber such property beyond the statutory amount of the applicable exemption pertaining to such Exempt Property. 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 2015) 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

Commented [JS8]: Clear Touch is 100% owned by an IRA of which Trask is a beneficiary. Due to the ownership structure and applicable law, Clear Touch assets cannot be controlled by the Receiver or utilized to satisfy the Judgment against Trask.

S.C. Code § 15-41-30(A)(13) exempts from attachment, levy, and sale under any mesne or final process issued by a court. The debtor's right to receive individual retirement accounts, as described in Sections 408(a) and 408A of the Internal Revenue Code, individual retirement annuities as described in Section 408(b) of the Internal Revenue Code, and accounts established as part of a trust described in Section 408(c) of the Internal Revenue Code. A claimed exemption may be reduced or eliminated by the amount of a fraudulent conveyance into the individual retirement account or other plan. For purposes of this item, Internal Revenue Code has the meaning provided in Section 12-6-40(A). The interest of an individual under a retirement plan shall be exempt from creditor process and is an exception to Section 15-41-35. The exemption provided by this section shall be available if, whether such individual has an interest in the retirement plan as a participant, beneficiary, contingent annuitant, alternate payee, or otherwise. This includes any assets in or owned by the IRA that owns Clear Touch and of which Trask is a beneficiary.

Clear Touch has paid the judgment against it in full to the Court and therefore the Receiver has not legal ground or reason to possess or control the company's assets.

Formatted: Font: Italic

Commented [JS9]: Cannot prohibit encumbering Exempt Property below or up to the amount of the applicable statutory exemption.

Commented [JS10]: Attempt to possess and control exempt assets in the form of Trask's earnings in violation of § 15-39-410.

~~Touch, See In re Davis, 1999 WL 33486078 *3 (Bankr. D.S.C. Ma. 28, 1999) (earnings for personal services are to be distinguished from the proceeds of a business earned 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

Commented [JS11]: Inapplicable law and misstatement of law. Commission and bonus payments to debtor are encompassed in the exemption for "the earnings of the debtor for his personal services" which are statutorily prohibited from being used to satisfy a judgment under § 15-39-410. This language violates the law by empowering the Receiver to possess and control exempt assets based upon inapplicable case law cited for a proposition in which it does not stand. The case law cited addresses "investment income" (investment income) that is not connected to earnings a debtor receives for his personal services. Earnings for personal services include bonus and commission payments which are exempt from use to satisfy a judgment under S.C. Code § 15-39-410. Attempt to have Receiver possess and control Trask's commission and bonus payments in violation of § 15-39-410.

Commented [JS12]: Receiver has no grounds to oversee, possess, or control any exempt assets.

Commented [JS13]: Violates law by empowering Receiver to control exempt assets. Receiver cannot control exempt assets. Statutory section cited is inapplicable: § 15-41-30(A)(5) affords a debtor a \$5,000 exemption for his interest in cash and other liquid assets. Under that section "The term 'liquid assets' includes deposits, securities, notes, drafts, unpaid earnings not otherwise exempt." Again, these earnings are exempt and the Receiver controlling them a violation of the law.

- 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 as necessary to identify property and assets that can be utilized to satisfy the Judgment against Trask, 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 of property that can be utilized to satisfy the Judgment against him within the last three years, 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 not to include bank, brokerage, trust, or any other accounts of Clear Touch or those which contain Exempt Property or assets which cannot be levied or utilized for executing the judgment against 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 while this Order is in effect 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.

Commented [JS14]: Edits in this subparagraph necessary to prevent unlawful overreach by Receiver into the assets and business of Trask's family members and Clear Touch, neither of which hold assets that can be utilized to satisfy the judgment against Trask.

8. Without further Order of the Court, the Receiver shall be entitled to payment of reasonable 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.

Commented [JS15]: Attempt to make Trask liable for Encore's attorney's fees incurred in collecting the Judgment in absence of a legal ground for doing so.

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, Defendants, or Defendants' 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 but shall not take any action(s) to hinder the obligation(s) owed by Trask to creditors who have priority over Plaintiff as a judgment creditor.

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 taken under and in compliance with 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~~ fifteen (15) business days, the appropriate County Sheriff is hereby ordered to take all necessary and legal 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, and Plaintiff, its respective agents, partners, managers, employees, assignees, heirs, representatives, affiliates or related entities and all other persons acting in concert with them who have actual 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 and the Plaintiff 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~~ non-exempt property and/or assets 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.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Circuit Court

The Honorable R. Lawton McIntosh, Circuit Court Judge

Case No. 2015-CP-23-5757

Appellate Case No. 2018-001444

Encore Technology Group, LLC.....Respondent/Appellant,

v.

Keone Trask and Clear Touch Interactive, Inc.....Appellants/Respondents.

MOTION TO STAY

Exhibit B

Receiver Order

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

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Plaintiff,

vs.

KEONE TRASK and CLEAR TOUCH
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Defendants.

IN THE COURT OF COMMON PLEAS

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ORDER APPOINTING RECEIVER

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.

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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

Type: Order/Other

S/R. LAWTON McINTOSH

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