

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
SEP 04 2018
SC Court of Appeals

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

v.

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

REPLY TO RETURN TO MOTION TO STAY

Appellants/Respondents, Keone Trask (“Trask”) and Clear Touch Interactive, Inc. (“Clear Touch”) (*collectively* “Defendants” or “Appellants”), through their undersigned counsel, respectfully reply to Encore Technology Group, LLC’s (“Encore,” “Plaintiff,” or “Respondent”) Return to Motion to Stay.

FACTS

Encore begins its Return by listing what it, again, claims are the reasons the jury rendered its verdict and which are noted in the Receiver Order at issue herein. Those “reasons” are pulled directly from the Final Order and Judgment in this matter that is also currently under appeal, partly because it contains inaccurate statements and needlessly and without any ascertainable basis attributes nefarious motives or acts to otherwise inane actions. These items are unnecessary,

vitriolic, and are being utilized by Encore and other competitors to unfairly compete with Clear Touch in the marketplace. They invade the province of the jury and act as a *post hoc* finder of fact in the absence of any legal authority allowing it to do so, without citation to evidence supporting the determinations, and by turning a blind eye to Encore's presentation of its case at trial.

Encore argues that Appellants "chose" not to support their motion with an affidavit. A factual affidavit is not necessary when dealing with questions of law. Thus, the circumstances did not require an affidavit and Appellants' Motion included the documents necessary for this Court to evaluate the legal questions at issue. With regard to the facts that Respondent alleges are false, presented in the Return out of context, Appellants would simply pray that this Court accept its Motion in its entirety and not take Encore's bait to ignore the troubling way it has chosen to attempt to collect the judgment.

While Appellants take issue with Respondent's continued barrage of intentional and petty jabs aimed at Trask ("subterfuge," "dishonesty," "lying," "stealing"), the focus here should be on the overreach and unlawfulness of the Receivership Order. Respondent chooses to use antagonistic vernacular to shift the focus of this appeal and the pending Motion, to portray the circumstances as requiring complete control of Clear Touch, a party that has already paid its judgment into the Court, to prevent Trask from most assuredly committing fraud. It then goes further by alleging that Trask has not produced any documents regarding his assets to Encore, when Encore filed for a receiver before Trask had the opportunity to do so.¹ Respondent's actions up to this point have not

¹ Respondent served discovery requests in aid of judgment on Appellants on April 13, 2018, with a Motion to Reconsider, among numerous other matters, still pending between these parties. Respondent filed its Motion for Appointment of a Receiver on May 21, 2018, choosing not to communicate in any way with Appellant's counsel about the status of Appellant's discovery responses prior to doing so. Encore submitted an affidavit in support of its Receiver Motion executed on May 14, 2018. Encore not even inquiring about the discovery responses and instead having its CEO execute a four-page affidavit to use in support of its receiver motion reflect Respondent's true intent – to have a Receiver oversee and control Trask's assets and those of its competitor Clear Touch even though it paid the judgment against it into the Court and Trask does not own a personal share in the business.

been about the collection of a judgment. They have been about getting as much information as possible about Clear Touch, a direct competitor. Respondent did, in fact, get a large judgment against Trask, which it makes note of multiple times in its Return, but a large judgment and unrestrained anger does not allow a party to circumvent the collection laws of this State.

ARGUMENT

A. The Receiver Order Violates the Law

The Respondent's arguments on *In re Davis*, No. C/A 99-00358-W, 1999 WL 33486078 (Bankr. D.S.C. May 28, 1999), et al is misguided. First, the Respondent completely ignores the fact that the Receiver Order, as currently written, empowers the Receiver to have oversight and control over the salary Trask receives from his employment which cannot be used to satisfy the judgment against him under S.C. Code. § 15-36-410. Second, the Respondent fails to address the actual language in the Receiver Order, which relies on these cases to deem Trask's commission payments and bonuses as "passive income" (investment income) not entitled to the statutory exemption. As Appellants have previously addressed, but Respondent ignored in its Return, 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 him to exercise dominion and control over those payments. Again, 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.

1. The Receiver Order Unlawfully Restricts Trask's Power Over Exempt Assets

Respondent argues that the Receiver Order does not overly restrict the Receiver's ability to encumber Exempt Property. Then, in the very next paragraph, Respondent states that "Trask has failed to identify – by affidavit or otherwise – any partially-exempt asset that he has a legitimate need to transfer or further encumber." In other words, Respondent wants to restrict the exempt property without saying it is restricted. Again, this prohibition violates S.C. Code Ann. § 15-39-440 and is an unlawful restriction of what a judgment debtor may do with property not available for satisfaction of the judgment against him. Respondents, through the Receiver Order, seek to empower the Receiver to exercise control over as much of Trask's life as possible without regard to whether it is necessary for the protection of collectible assets. That consideration must be the guiding principle in evaluating the proper scope of the Receiver Order, and it is essential that a Receiver's powers be narrowly tailored to serve the legitimate purpose of protecting collectible assets. When, as here, the Receiver is empowered to go beyond protection of collectible assets and impose upon a person, his spouse, and a business simply because they bear a connection to the judgment debtor, it runs afoul of the law. Trask did not lose the protections of this State's laws because a judgment was rendered against him. Respondent wishes to portray him as undeserving of those protections; however, the rule of law must prevail to protect everyone equally without regard to anyone's opinion as to the individual's character. Mr. Trask is not the villain Encore portrays, but even if he were, it would not strip him of the legal protections disregarded by the Receiver Order.

Likewise, the Receiver Order's attempt to limit the accumulation of Trask's earnings is unlawful, and Respondent can point to no authority that holds otherwise. These funds being *exempt* from execution as detailed previously prohibits the imposition of any control or limitation

on their accumulation, transfer, or disposition by the judgment debtor. Therefore, there is no legal or justifiable reason for the Receiver to oversee or control those funds other than to further Respondent's mission of invading Trask's life as much as the Court will allow it to do so.

2. The Receiver Order Unlawfully Affords the Receiver Access to Clear Touch's Assets and Financials

Respondent argues that the Receiver Order only allows the Receiver *standard discovery* concerning Clear Touch. Clear Touch paid the judgment against it in full into Court under SCRCP 67 as of April 17, 2018. Therefore, Trask would need to have a personal ownership interest in the company before any of its assets could potentially be used to satisfy the judgment against him individually. Trask has no personal ownership interest in Clear Touch which prevents the company's assets from being used to satisfy the judgment against him. Clear Touch is owned 100% by an IRA and its assets are exempt from being used to satisfy the judgment against Trask under S.C. Code Ann. § 15-41-30. Despite that fact, because of the overbreadth of the Receiver Order, the Receiver has already demanded the following of Clear Touch (i.e., a "Trask Entity"):

1. List each entity, included but not limited to each company, corporation, partnership, P.A., LLC, holding company, trust, DBA ("Trask Entities") that Trask has – in whole or in part – owned, controlled, a member/beneficiary/employee of since January 2013. For each, provide a detailed inventory of assets of each Trask Entity and, if any are under lien, a copy of the lien documents;
2. List of all personal property owned in whole or in part by Trask and/or Trask Entities since January 2013 with a value at the time owned in excess of \$1,000.00.
3. Documents prepared for a bank or lender, including but not limited to credit applications, loan applications, written appraisals, financial statements, and lists of assets concerning Trask or Trask Entities dated or created on or after January 1, 2013;
4. Leases concerning Trask or Trask Entities;
5. List of all bank and/or financial accounts in the name of Trask and/or Trask Entities or to which Trask and/or Trask Entities have (or had) signatory power since January 2013;
6. List of all vehicles, including but not limited to, automobiles, boats, motorhomes, and trailers owned in whole or in part by Trask and/or Trask Entities since January 2013, and if any are under lien, a copy of the lien documents;
7. List all real property (detailed addresses/tax map numbers) owned in whole or in part, directly or indirectly by Trask and/or Trask Entities since January 2013, and, if mortgaged, a copy of the mortgage documents;
8. Federal and State income tax returns for the years 2013 to present for Trask and/or Trask Entities, including all schedules and back up documents;

9. List of all stocks, bonds, notes, mortgages, or securities of any nature owned in whole or in part by Trask and/or Trask Entities since January 2013;
10. List all broker accounts concerning Trask or Trask Entities dated or created on or after January 1, 2013 for accounts of which the party, Trask's spouse, or his child is a trustee, owner or beneficiary;
11. Records of any partnership interests held by Trask and/or Trask Entities;
12. All ledgers, books of account, and business records maintained by or for Trask and/or Trask Entities;
13. List of any and all policies of insurance owned by Trask and/or Trask Entities or that are made payable to Trask and/or Trask Entities, in whole or in part;
14. Any and all records showing indebtedness and accounts receivable owed to Trask and/or Trask Entities, in whole or in part;
15. Detailed list (and related records) of any sale, transfer, or gift of property, real or personal, made by Trask and/or Trask Entities from January 2013 to present;
16. Any and all other documents or information pertaining in any way to real estate, personal property, business interests, and any other assets owned in whole or in part by Trask and/or Trask Entities since January 2013;
17. Any and all records concerning any trust in which Trask and/or Trask Entities have (or had since January 2013) an interest and/or for which Trask and/or Trask Entities is a beneficiary, including any trust agreement and amendments thereto, and any documents indicating the assets of said trust;
18. List of all major credit cards in the name of and/or used by Trask and/or Trask Entities since January 2013;
19. List of all credit lines and/or credit instruments in the name of and/or used by Trask and/or Trask Entities since January 2013;
20. List all current and former sources of income, revenue and/or cash that Trask and/or Trask Entities have received, accessed, or benefitted from since January 2013;
21. Wage statements, including but not limited to W-2s and 1099s, concerning Trask or Trask Entities since January 1, 2013;

Subsequent to these requests, the Receiver demanded the following:

- All QuickBooks stored financial data and records for Clear Touch, Inc. for the years 2017 to present; to be separated into 2017 and 2018.
- A list of all bank accounts and credit cards for the company for the years 2017-present.
- Access to Clear Touch's online QuickBooks for real time monitoring.

As if this were not enough, counsel for the Respondent chose to chime in with an email response to the presumably neutral Receiver on August 21, 2018, indicating, "We think it would be good to get financial documents for 2016 also. Can you call the banks to see if they can get you those?" (Exh. A).

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

The Respondent is correct, the Receiver Order does not unlawfully grant access to and

control over just Tamara Trask's personal finances and assets, it unlawfully grants access to and control over indeterminable "third parties," including all of Trask's family members. Just as with Clear Touch, the Respondent references what it refers to "standard discovery." Tamara Trask was not a party to the litigation and no judgment was awarded against her. Consequently, she is not bound to respond to discovery requests. However, the Receiver Order unlawfully allows it. The Receiver Order gives the Receiver unfettered access to anyone's financial affairs simply because they are related to Trask as the judgment debtor. Again, because of the overbreadth of the Receiver Order, the Receiver has already demanded the following of Tamara Trask:

1. General Information
 - a. Full Name
 - b. Date of Birth
 - c. Social Security Number
 - d. Current Home Address
 - e. Current Mailing Addresses to include all PO Boxes
 - f. Current Other/Former Addresses
 - g. Current Other/Former Mailing Addresses to include PO Boxes
 - h. Full name, age, and relationship of others in household
 - i. Any and all aliases or previous names
2. Contact Information
 - a. All current phone numbers (land line and cellular)
 - b. All former phone numbers (land line and cellular)
 - c. Email addresses used for any purpose since January 2013; Identify emails most often used for personal and business
3. Background Information
 - a. Marital status
 - b. Education
 - c. Employment History

Produce the following information to the Receiver:

22. A detailed inventory of all assets owned -- in whole or in part -- by Tamara Trask ("Mrs. Trask") from January 2013 forward. For each asset, advise if currently owned. If not currently owned, provide date of sale (or transfer) and persons or entities to whom each asset was transferred, including the amount paid and all associated paperwork for each sale or transfer.
23. List each entity, included but not limited to each company, corporation, partnership, P.A., LLC, holding company, trust, DBA ("Mrs. Trask Entities") that Mrs. Trask has -- in whole or in part -- owned, controlled, a member/beneficiary/employee of since January 2013. For each, provide a detailed inventory of assets of each Mrs. Trask Entity and, if any are under lien, a copy of the lien documents;

24. List of all personal property owned in whole or in part by Mrs. Trask and/or Mrs. Trask Entities since January 2013 with a value at the time owned in excess of \$1,000.00.
25. Documents prepared for a bank or lender, including but not limited to credit applications, loan applications, written appraisals, financial statements, and lists of assets concerning Mrs. Trask or Mrs. Trask Entities dated or created on or after January 1, 2013;
26. Leases concerning Mrs. Trask or Mrs. Trask Entities;
27. List of all bank and/or financial accounts in the name of Mrs. Trask and/or Mrs. Trask Entities or to which Mrs. Trask and/or Mrs. Trask Entities have (or had) signatory power since January 2013;
28. List of all vehicles, including but not limited to, automobiles, boats, motorhomes, and trailers owned in whole or in part by Mrs. Trask and/or Mrs. Trask Entities since January 2013, and if any are under lien, a copy of the lien documents;
29. List all real property (detailed addresses/tax map numbers) owned in whole or in part, directly or indirectly by Mrs. Trask and/or Mrs. Trask Entities since January 2013, and, if mortgaged, a copy of the mortgage documents;
30. Federal and State income tax returns for the years 2013 to present for Mrs. Trask and/or Mrs. Trask Entities, including all schedules and back up documents;
31. List of all stocks, bonds, notes, mortgages, or securities of any nature owned in whole or in part by Mrs. Trask and/or Mrs. Trask Entities since January 2013;
32. List all broker accounts concerning Mrs. Trask or Mrs. Trask Entities dated or created on or after January 1, 2013 for accounts of which the party, Trask's spouse, or his child is a trustee, owner or beneficiary;
33. Records of any partnership interests held by Mrs. Trask and/or Mrs. Trask Entities;
34. All ledgers, books of account, and business records maintained by or for Mrs. Trask and/or Mrs. Trask Entities;
35. List of any and all policies of insurance owned by Mrs. Trask and/or Mrs. Trask Entities or that are made payable to Mrs. Trask and/or Mrs. Trask Entities, in whole or in part;
36. Any and all records showing indebtedness and accounts receivable owed to Mrs. Trask and/or Mrs. Trask Entities, in whole or in part;
37. Detailed list (and related records) of any sale, transfer, or gift of property, real or personal, made by Mrs. Trask and/or Mrs. Trask Entities from January 2013 to present;
38. Any and all other documents or information pertaining in any way to real estate, personal property, business interests, and any other assets owned in whole or in part by Mrs. Trask and/or Mrs. Trask Entities since January 2013;
39. Any and all records concerning any trust in which Mrs. Trask and/or Mrs. Trask Entities have (or had since January 2013) an interest and/or for which Mrs. Trask and/or Mrs. Trask Entities is a beneficiary, including any trust agreement and amendments thereto, and any documents indicating the assets of said trust.
40. List of all major credit cards in the name of and/or used by Mrs. Trask and/or Mrs. Trask Entities since January 2013.
41. List of all credit lines and/or credit instruments in the name of and/or used by Mrs. Trask and/or Mrs. Trask Entities since January 2013.
42. List all current and former sources of income, revenue and/or cash that Mrs. Trask and/or Mrs. Trask Entities have received, accessed, or benefitted from since January 2013.
43. Wage statements, including but not limited to W-2s and 1099s, concerning Mrs. Trask or Mrs. Trask Entities since January 1, 2013;
44. List all gold, silver, other precious metals, crypto currencies or any other currencies purchased or held directly or indirectly by Trask since January 2013.

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

The Respondent uses this last section to again resort to vitriol against Trask, tell half-truths about Trask's document production thus far, and make wholly unsupported post-judgment allegations. Respondent ends its Return by quoting the Receiver Order it drafted and that was entered in its entirety despite Appellants' objections. Nothing in Appellants' Motion argues that Encore and the Court should just "trust" Trask. This State has protections for fraudulent transfers and procedural safeguards in supplementary proceedings that protect from a disposal of assets subject to judgment. The Receiver Order goes well beyond that type of protection, however, which is what has necessitated the subsequent Appeal and Motion at issue.

CONCLUSION

Appointing a Receiver to exercise dominion over a judgment debtor's assets should be done only with serious contemplation and caution. Holding a judgment does not entitle a party to a carte blanche attack on disinterested parties without proper supplementary proceedings or due process. The Receiver Order disregards the necessary hesitancy and empowers the Receiver to intrude into the most private aspects of businesses and third parties who owe nothing to Respondent. 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 during a lengthy appeal's process.

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 and in its Motion. Alternatively, if the Court is not inclined to stay the Receiver Order in its entirety, then Trask and Clear Touch respectfully 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 31, 2018
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
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The Honorable R. Lawton McIntosh, Circuit Court Judge

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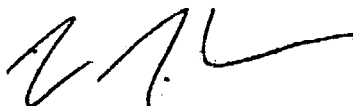
Keone Trask and Clear Touch Interactive, Inc.....Appellants/Respondents.

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 31, 2018, addressed to counsel of record as follows.

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Rita Bolt Barker
WYCHE, P.A.
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Greenville, SC, 29602
Attorneys for Respondent/Appellant

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August 31, 2018
Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Circuit Court

The Honorable R. Lawton McIntosh, Circuit Court Judge

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Appellate Case No. 2018-001444

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

v.

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

REPLY

Exhibit A

8.21.18 Email from Respondent Directing Receiver

Josh Smith

From: Greg English <genglish@wyche.com>
Sent: Tuesday, August 21, 2018 9:11 AM
To: 'Stacy Nixon'; Josh Smith; Walt Tollison; Lauren Price; Rita Bolt Barker; Melissa Duncan
Cc: Greg English
Subject: RE: Document Requests

We think it would be good to get financial documents for 2016 also. Can you call the banks and see if they can also get you those?

Thanks, Greg



Gregory English | Wyche

44 East Camperdown Way | Greenville, SC 29601-3512
Phone: (864) 242-8247 | Fax: (864) 235-8900
genglish@wyche.com | www.wyche.com/genglish | vCard

A Lex Mundi Member Firm

From: Stacy Nixon [mailto:nixon.traskreceiver@gmail.com]
Sent: Monday, August 20, 2018 1:05 PM
To: jsmith@roecassidy.com; Greg English <genglish@wyche.com>; Walt Tollison <walt.tollison@thetollisonlawfirm.com>; Lauren Price <lauren.price@thetollisonlawfirm.com>; Rita Bolt Barker <rbarker@wyche.com>; Melissa Duncan <melissa.duncan@thetollisonlawfirm.com>
Subject: Document Requests

Please see the attached letters which were sent today.

--

Stacy B. Nixon
Financial Forensic Investigations
The Tollison Law Firm

This e-mail may contain privileged or confidential information.

If the e-mail was not intended for you, please:

- (i) delete the e-mails and any attachments
- (ii) destroy any copies that may have been made
- (iii) do not use, copy or distribute the contents in any form
- (iv) notify the sender by return e-mail or call.

No privilege is waived by inadvertent transmission.

Thank you.

August 31, 2018

VIA U.S. MAIL

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

RECEIVED
SEP 04 2018
SC Court of Appeals

**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 Appellants/Respondents, Keone Trask and Clear Touch Interactive, Inc.'s Reply to Return to Motion to Stay the Receiver Order with regard to the above-referenced case, along with Proof of Service.

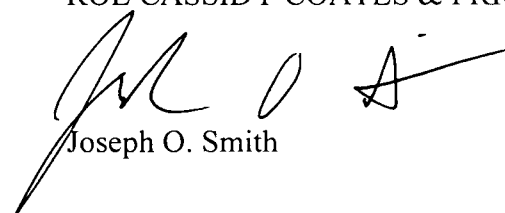
By copy of this correspondence, we are serving counsel for the Respondent with a copy of the same.

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