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September 27, 2018

Via Facsimile and U.S. Mail

Ms. Claire Allen
Deputy Clerk
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211
(803) 734-1839

RE: E. Perry Burrus v. Jennifer R. Bergmann
Appellate Case No.: 2016-000802

Dear Ms. Allen:

Please allow this letter to respond to the letter from the Court dated August 31, 2018. Ms. Bergmann's Bankruptcy is still pending, however, the adversary action my client filed was tried and has been concluded. In my opinion, the underlying forgery claims – which were dismissed by the lower court and are currently the subject of the appeal – are no longer at issue as Judge Duncan found that Perry Burrus individually "failed to establish by a preponderance of the evidence that a debt for money, property, services, or an extension, renewal, or refinancing of credit is owed to him personally." Duncan Order at 12 (Attached as Exhibit A). The way I interpret Judge Duncan's Order is that E. Perry Burrus' individual debts, including debts that might arise from forgery, were discharged by the bankruptcy. Therefore, the merits of the appeal are now moot.

Unfortunately, I do not think that ends the analysis. At the time Bankruptcy was filed by Ms. Bergmann, a Motion for Sanctions and Contempt of Court had been filed against Ms. Bergmann. See Motion for Sanctions and Contempt of Court (Attached as Exhibit B). A hearing had been scheduled and the matter had been heard by The Honorable Marvin H. Dukes, III. The parties were awaiting a written Order on this Motion from the Court. When Ms. Bergmann filed for Bankruptcy, Judge Dukes entered an Order staying the case. The Order staying the case is attached as Exhibit C.

While my client no longer individually seeks a financial recovery because of the contemptuous conduct, the Court still needs to resolve the Motion for Contempt of Court on its merits. Pursuant to 11 U.S. § 362 (b), "the filing of a petition . . . does not operate as a stay . . . of the commencement or continuation of a criminal action *or proceeding* against the debtor . . . ." (emphasis added). The question is, is the Motion for Contempt for criminal or civil contempt of court such that it can proceed despite the pending Bankruptcy.

It is my understanding that the determination of whether contempt is civil or criminal depends on the underlying purpose of the contempt ruling. The major factor in determining whether a contempt is civil or criminal is the purpose for which the power is exercised, including the nature of the relief and the purpose for which the sentence is imposed. The purpose of civil contempt is to coerce a defendant to do the thing required by the Order for the benefit of the complainant. The primary purposes of criminal contempt are to preserve the Court's authority and to punish for disobedience of its Orders. If it is for civil contempt the punishment is remedial, and for the benefit of the complainant. But if it is for criminal contempt the sentence is punitive, to vindicate the authority of the Court.

Here, Dr. Burrus no longer seeks to coerce anything from Defendant Bergmann, and the Order for Contempt is most assuredly to preserve the Court's authority and to punish for disobedience of its Orders. The contempt allegations involve misrepresentation made "to the Court." See Motion for Sanctions and Contempt (Attached as B).

Accordingly, I believe the proper procedure would be for the Court of Appeals to dismiss the appeal as moot and remand the case to Judge Dukes so that he may enter an Order on the Motion for Contempt of Court.

Please note that I am copying Marshall L. Horton, Esquire on this letter; however, he has informed me that he no longer represents Ms. Bergman.

If you have any questions or need additional information, please do not hesitate to contact me.

With kindest regards, I remain

Cordially,

J. Ashley Twombley

cc: Marshall L. Horton, Esquire
Lindsay Yoas Goodman, Esquire
Ms. Jennifer R. Bergmann

A

EXHIBIT A

UNITED STATES BANKRUPTCY COURT

DISTRICT OF SOUTH CAROLINA

In re, Jennifer Rogers Bergmann, Debtor.	C/A No. 16-02250-DD Adv. Pro. No. 16-80113-DD Chapter 7 **ORDER**
E. Perry Burrus, III, Lake Como, LLC, Plaintiffs, v. Jennifer Rogers Bergmann, Defendant.	

Jennifer Rogers Bergmann ("Defendant") filed a voluntary petition for relief under chapter 7 of the bankruptcy code on May 4, 2016. E. Perry Burrus III and Lake Como, LLC ("Plaintiffs") filed a complaint asserting causes of action under 11 U.S.C. § 523(a)(2), (4), and (6) arguing Plaintiffs' claims are non-dischargeable. Trial was held on May 30-June 1, 2018. Jurisdiction is premised upon 28 U.S.C. §§ 1334 and 157(a). Venue is proper under 28 U.S.C. § 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I) and 157(b)(2)(J).

FACTS

1. Defendant, the debtor in the underlying case, is an individual and resident of South Carolina.
2. Plaintiff, E. Perry Burrus, III is a resident of South Carolina.
3. Lake Como, LLC is a South Carolina Limited Liability Company. Burrus is one of the members of Lake Como.

4. Defendant filed a voluntary petition for relief under chapter 7 of the bankruptcy code on May 4, 2016, and listed Plaintiffs as creditors with unknown balances in her schedules.

5. Defendant was the manager of two manager-managed limited liability companies, namely Docks Shell, LLC ("Docks") and Sand Hill Stations of Bluffton, LLC ("Sand Hill") (collectively the "LLCs"). Both LLCs were engaged in the business of owning and operating gas stations in Beaufort County, South Carolina.

6. Defendant formed, held a financial interest in and controlled JTKT, LLC and JK Developers LLC.

7. Sand Hill was established on May 17, 2010. The initial members of Sand Hill were JK Developers, LLC, Timothy Dolnik, and Edward LeGrand Lowther. The initial capital contribution called for by the Operating Agreement was $474,500, including $400,000 from JK Developers. Dolnik contributed $74,500 in cash. Lowther's capital contribution was made in the form of agreeing to provide a lien on property to secure a company loan.

8. Charles Scarminach drafted the operating agreements for Sand Hill and Docks. Mr. Scarminach testified that Defendant provided him with the information for the operating agreements, including the amount of capital contribution for each member.

9. Burrus and his wife, a relative of Defendant, approached Defendant in April 2011 about investing in a gas station business.

10. Docks was created on August 22, 2012. Docks' operating agreement indicated capital contributions of:

    a. JTKT, LLC: $225,000

b. J2R2, LLC: $110,000

c. Lake Como, LLC: $110,000

d. Trust Holding Company, LLC: 110,000

JTKT was owned by Defendant. J2R2 was owned by Mr. and Mrs. Rodgers, Defendant's Father and Step-Mother. Trust Holding Company was owned by Charles Aimar, Defendant's Step-Uncle.

11. Burrus testified that before Lake Como invested in Docks, Defendant told him Sand Hill was successful and that Defendant would be investing her own money into Docks.

12. Sand Hill purchased Lowther's membership interest on February 17, 2013. Sand Hill transferred a membership interest to Lake Como on March 6, 2013. Lake Como agreed to purchase the membership interest for $150,000. $50,000 was payable upon execution of the membership transfer agreement. Upon full payment of the $150,000, Sand Hill would transfer a 20% membership interest in Sand Hill to Lake Como.

13. Sand Hill's operating agreement required a unanimous vote by the members to admit a new member. Timothy Dolnick testified that he did not know that Sand Hill had redeemed Lowther's membership interest or that the membership interest had been purchased by Lake Como.

14. Burrus testified that Defendant indicated to him that Sand Hill was successful and profitable, and that the partners were taking approximately $25,000-$30,000 per year in cash distribution though profit sharing. In an email to Burrus discussing Burrus' potential investment into Sand Hill, Defendant stated that Sand Hill owned real

estate valued at $2.9 million, the business was valued at $750,000, and the debt on the entire company was $1.7 million.

15. The LLCs' operating agreements required approval by 100% of the membership interest for "any borrowing by the Company under any loan or series of related loans in excess of Fifty Thousand and No/100 ($50,000.00) Dollars," and for "any contract or transaction between the Company and the Manager or between the Company and any other limited liability company, corporation, partnership, association, or other organization which the Manger is the Manger, or officers or shareholders, or members thereof or have a financial interest therein [sic]."
16. Defendant testified that both Sand Hill and Docks constantly had cash flow issues and the bank accounts were over drafted on numerous occasions. Defendant testified that she constantly took out loans from friends and family to supplement the cash flow. Defendant testified that she also moved money between Sand Hill and Docks accounts as needed to cover expenses.
17. Defendant testified that to pay back these loans she often wrote checks from Sand Hill and Docks accounts to herself or other LLCs that she owned. She would then cash the check and repay the loan.
18. Between June 26, 2014 and July 28, 2014, Defendant wrote checks to JTKT, LLC from Sand Hill's account totaling $536,875.42.
19. Between January 2, 2013 and December 23, 2013, Defendant wrote checks to herself from Docks' account totaling $522,453.81.
20. Each member of Docks and Sand Hill testified Defendant never approached them for approval of a transaction or series of transactions between Docks or Sand Hill and

Defendant or companies controlled by or in which Defendant participated as member, officer, shareholder or manager.

21. Defendant signed Burrus' name on numerous personal guarantees. After Burrus was contacted by creditors who claimed he had personally guaranteed the accounts, Burrus hired an attorney and contested these debts. He also testified that he did not personally pay any of the debts stemming from personal guarantees signed by Defendant. Burrus testified that he incurred an unspecified sum for attorney fees in defending the guaranty claims.

22. On February 3, 2015, Burrus filed a lawsuit against Defendant seeking damages caused by Defendant signing Burrus' name on the personal guarantees. On February 11, 2016, the Beaufort County Court of Common Pleas dismissed the lawsuit on the grounds that South Carolina law does not recognize a civil cause of action for forgery. Burrus appealed the dismissal to the South Carolina Court of Appeals on the ground that South Carolina law should recognize such a cause of action. The appeal was stayed upon the filing of Defendant's bankruptcy petition.

ANALYSIS

Plaintiffs seek a determination that Defendant is not entitled to discharge any debt owed to them pursuant to 11 U.S.C. §§ 523(a)(2), (a)(4), and (a)(6). The plaintiff has the burden of proving an objection to dischargeability under § 523 by a preponderance of the evidence. *See Grogan v. Garner*, 498 U.S. 279, 111 S.Ct. 654 (1991). Once the plaintiff makings a *prima facie* case, the burden of proof shifts to the debtor to offer credible evidence to satisfactorily explain his conduct. *See Farouki v. Emirates Bank Int'l, Ltd.*, 14 F.3d 244, 249-50 (4th Cir. 1994) (holding the burden of proof shifts in actions under § 727);

see also Winston-Salem City Employees' Federal Credit Union v. Casper, 466 B.R. 786, 793 (Bankr. M.D.N.C. 2012) (applying the burden shifting framework to § 523(a)). "The exceptions to discharge were not intended and must not be allowed to swallow the general rule favoring discharge." *In re Bleam*, 356 B.R. 642, 647 (Bankr. D.S.C. 2006) (quoting *In re Cross*, 666 F.2d 873 (5th Cir.1982)). Thus, exceptions to discharge are narrowly construed.

A. Section 523(a)(4)

Section 523 of the bankruptcy code prohibits the discharge of an individual debtor from any debt for fraud or defalcation while acting in a fiduciary capacity. See 11 U.S.C. § 523(a)(4). In order for Plaintiffs to prevail under § 524(a)(4), it must be proved (1) that the debt in issue arose while Defendant acted in a fiduciary capacity and (2) the debt arose from her fraud or defalcation. *See Pahlavi v. Ansari* (*In re Ansari*), 113 F.3d 17, 20 (4th Cir.1997) ("In order to prove a debt is non-dischargeable under § 523(a)(4) of the Bankruptcy Code, a creditor must prove the debtor committed '[1] fraud or defalcation {2} while acting in a fiduciary capacity.'").

Plaintiffs allege Defendant owe Plaintiffs a debt arising from her fraud or defalcation while acting in a fiduciary capacity. Plaintiffs seek the determination of non-dischargeability as to the initial investment, other monies allegedly removed from the LLCs by Defendant, and other sums. Plaintiffs allege 11 U.S.C. § 523(a)(4) prohibits discharge of this indebtedness. Specifically, Plaintiffs allege that there was a fiduciary relationship between Plaintiffs, as a member of the LLCs, and Defendant, as manager of the LLCs. Lake Como was a member of the LLCs, Burrus was not.

1. Defalcation

"Defalcation" is an intentional breach of trust and misappropriation of funds. *See Bullock v. BankChampaign, N.A.*, 569 U.S. 267, 273-74, 133 S.Ct. 1754, 1759 (2013). "Where the conduct at issue does not involve bad faith, moral turpitude, or other immoral conduct, the term requires an intentional wrong. We include as intentional not only conduct that the fiduciary knows is improper but also reckless conduct of the kind that the criminal law often treats as the equivalent." *Id.* "Where actual knowledge of wrongdoing is lacking, we consider conduct as equivalent if the fiduciary 'consciously disregards' (or is willfully blind to) 'a substantial and unjustifiable risk' that his conduct will turn out to violate a fiduciary duty." *Id.* Defalcation "may be used to refer to *nonfraudulent* breaches of fiduciary duty." *Id.* 569 U.S. at 275, 133 S.Ct. 1760.

"Although the Court [in *Bullock*] stated that 'fraud' and 'defalcation' should be 'treated similarly,' it does not follow that defalcation requires a finding of fraud.... treating 'defalcation' and 'fraud similarly means only that 'defalcation' must require something more than negligence." *In re Cobham*, 551 B.R. 181, 199 (E.D.N.C. 2016).

Plaintiffs provided evidence of numerous payments from accounts belonging to Docks and Sand Hill to Defendant's personal accounts or accounts of companies owned by Defendant. These payments constitute defalcation, because they were a misappropriation of company funds; she paid funds to herself and her other companies in contravention of the operating agreements. The state of mind requirement imposed by the Supreme Court in *Bullock* was established in this case. Defendant's conduct and the circumstances surrounding her conduct show the Defendant acted with actual knowledge that her actions were improper. The operating agreement for both Docks and Sand Hill required approval of

100% of the membership interest for "any contract or transaction between the Company and the Manager or between the Company and any other limited liability company, corporation, partnership, association, or other organization which the Manger is the Manger, or officers or shareholders, or members thereof or have a financial interest therein." Defendant know this because she directed the drafting of the operating agreements and they made clear to Defendant that any transaction between herself and any other limited liability company that she owned, required approval of 100% of the membership interest.

Defendant provided no justification or explanation for the transactions that was supported by credible evidence. Defendant testified that the transfers were likely to repay loans made to the LLCs from various parties, and that it was easier to transfer the money to herself prior to repaying the loans. Defendant offered no evidence of these alleged loans, other than her own testimony. Further, even if these transactions were for the repayment of loans, the transactions were still a breach of the operating order. The other members of Docks and Sand Hill testified that Defendant never approached them for approval of these transactions which they suggest constitute at minimum a conflict of interest.

The Court finds Lake Como is owed a debt arising from Defendant's defalcation, by misappropriating funds of Docks and Sand Hill with knowledge that the transactions violated a fiduciary duty.

2. Fiduciary Capacity

"An actionable defalcation for purposes of applying § 523(a)(4) arises only in the context of a fiduciary relationship and apart from its existence within the bounds of a fiduciary relationship, defalcation has no meaning under the Bankruptcy Code." *Bleam*, 356 B.R. at 649. The definition of "fiduciary" for purposes of §523(a)(4) is controlled by federal

common law. *See Id.* "Under the federal common law, the term 'fiduciary' is limited to instances involving express or technical trusts." *In re Aman*, 498 B.R. 592, 603 (Bankr. N.D.W.V. 2013). A "technical or express trust requires there be a 'fiduciary duty' with trust-type obligations that are imposed under state or common law." *Id.* at 604. The existing precedent in the United States Court of Appeals for the Fourth Circuit requires this narrow interpretation of fiduciary. *See Kubota Tractor Corp. v. Strack (In re Strack)*, 524 F.3d 493 (4th Cir. 2008).

While the definition of fiduciary duty is found in federal law, resort to state law is appropriate to determine whether a trust obligation exists. *See Bleam*, 356 B.R. at 649. "The existence of a state statue or common law doctrine imposing trust-like obligations on a party may, at least in some circumstances, be sufficient to create a technical trust relationship for purposes of section 523(a)(4)." *Aman*, 498 B.R. at 604 (quoting 4 *Colliers on Bankruptcy* ¶ 523.10[1][d] (Alan N. Resnick & Henry J. Sommer, eds. 15th ed. Rev. 2009)).

In *In re Frain*, the Seventh Circuit exempted from discharge a debt owed by a majority shareholder of a closely-held corporation to two minority shareholders incurred when the majority shareholder, as chief operating officer, paid shareholder distributions before shareholder loans, in violation of the shareholder agreement between the parties. 230 F.3d 1014 (7th Cir. 2000). The court found the debtor owed the minority shareholders a fiduciary duty, focusing on the practical realities of how the shareholder agreement placed the debtor in "considerable" or "substantial" ascendency over the minority shareholders. *Id.* at 1017-18.

In *In re McKnew*, the court addressed the dischargeability of a debt arising out of a chapter 7 debtor's misconduct, in his capacity as manager responsible for day-to-day operations of a factoring company, by making excessive and unauthorized draws of salary and misusing funds reserved for purchase of accounts receivable. *See In re McKnew*, 270 B.R. 593 (Bankr. E.D.Va. 2001). The court in *McKnew* examined the law of Virginia concerning the relationship of managers and members of a limited liability company to the company to assist in the determination as to whether the debtor acted in a fiduciary capacity for § 523(a)(4) purposes. The court determined that "no provisions of the Virginia L.L.C. Act appear to impose any trust upon funds contributed to a limited liability company for capital or otherwise, nor do provisions in any manner address the relationship between a manager and the monies of a limited liability company." *Id.* at 629. The court held no fiduciary relationship existed between the debtor and the company, because the Virginia L.L.C. Act did not impose a trust relationship concerning the monies of a limited liability company.

Unlike in *McKnew*, the South Carolina Uniform Limited Liability Company Act does impose a trust relationship concerning the monies of a limited liability company. S.C. Code Ann. § 33-44-409(h)(2) states "In a manger-managed company: (2) a manager is held to the same standards of conduct prescribed for members in subsections (b) through (f)." Section 33-44-409(b)(1) imposes a duty of loyalty and requires a manger "(1) to account to the company and to hold as **trustee** for it any property, profit, or benefit derived by the member in the conduct...of the company's business...." (emphasis added). Therefore, there is a specific statutory imposition of a trust relationship.

Defendant was the manager of Docks and Sand Hill. The South Carolina Code imposed a trust relationship between Defendant, as manager, the LLCs, and the other members of the LLCs. As a manager of Docks and Sand Hill, Defendant owed a fiduciary duty to the members. While that duty did not arise from an "express" trust, it did arise from a special relationship created by statute and the operating agreements where Defendant was entrusted with certain powers and assets of the companies. In light of a manager's obligation to hold company property, profit or benefit in trust for the company, an obligation accepted by Defendant when she became the manager of the LLCs, the Court finds Defendant served in a fiduciary capacity. Lake Como was a member of the LLCs, but Burrus was not. Defendant owed the duty to Lake Como, not Burrus.

Having concluded Plaintiffs demonstrated by a preponderance of the evidence that a fiduciary relationship existed between Lake Como and Defendant, Defendant committed defalcation while acting in that fiduciary capacity, and Lake Como's debt resulted from the Defendant's defalcation, the debt is nondischargeable pursuant to 11 U.S.C. § 523(a)(4).

B. Sections 523(a)(2) and (6)

a. Lake Como

Plaintiffs also seek a determination that their debt is not dischargeable, pursuant to 11 U.S.C. § 523(a)(2) and (6). A determination of the dischargeability pursuant to § 523(a)(2) and (6) is unnecessary as to Lake Como, as the Court has determined the debt is nondischargeable pursuant to § 523(a)(4). Additionally, the existence of any other debt to Lake Como is not supported by evidence of a specific debt due to Lake Como from Defendant or the LLCs she managed.

b. Burrus

Burrus seeks a determination that a debt is owed to him resulting from Defendant signing his name to personal guarantees, and that the debt is not dischargeable, pursuant to 11 U.S.C. § 523(a)(2). The bankruptcy code excepts from discharge any "money...to the extent obtained by...use of a statement in writing that is materially false, respecting the debtor's or an insider's financial condition; on which the creditor to whom the debtor is liable for such money...services, or credit reasonably relied; and that the debtor caused to be made or published with intent to deceive." 11 U.S.C. § 523(a)(2)(B).

Burrus argues that Defendant submitted materially false writings to vendors of the companies she managed when she submitted personal guarantees with Burrus' forged signature as part of applications for credit, goods, money or services. Burrus further argues that the vendors reasonably relied on the documents respecting the financial condition of the companies and its members, the documents were published with the intent to deceive. Burrus is not the creditor to whom the debtor is liable for such money, the vendors would be the proper party.

Burrus failed to establish by a preponderance of the evidence that he is personally owed a debt. There was testimony that Burrus had to hire an attorney to avoid liability for the debts under the personal guarantees. However, there was no evidence of what was paid to the attorney. Burrus argues he was damaged in that his credit was harmed, but produced no evidence of a debt stemming from that damage. Burrus filed a lawsuit in state court regarding the forgeries, but it was dismissed as South Carolina law does not recognize a civil cause of action for forgery. Burrus argues Defendant made false misrepresentation to him that induced him to invest in the LLCs, but Lake Como invested in the LLCs not

Burrus. The Court finds that Burrus failed to establish by a preponderance of the evidence that a debt for money, property, services, or an extension, renewal, or refinancing of credit is owed to him personally.

CONCLUSION

Based on the foregoing, Lake Como's objection to the discharge of its investments under 11 U.S.C. § 523(a)(4) is granted.

AND IT IS SO ORDERED.

FILED BY THE COURT
06/25/2018

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA

Entered: 06/26/2018

David R. Duncan
Chief US Bankruptcy Judge
District of South Carolina

EXHIBIT B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
E. Perry Burrus, M.D.,	)	Civil Action No.: 2015-CP-07-00239
	)	
Plaintiff,	)	
	)	
vs.	)	**NOTICE OF MOTION AND MOTION FOR SANCTIONS, FOR CONTEMPT OF COURT, AND TO AMEND COMPLAINT**
	)	
Jennifer R. Bergmann,	)	
	)	
Defendant.	)	
	)	

TO: MARSHALL L. HORTON, ESQUIRE, ATTORNEY FOR DEFENDANT JENNIFER BERGMANN:

YOU WILL PLEASE TAKE NOTICE that the above named Plaintiff, E. Perry Burrus, M.D., (Burrus) by and through his undersigned attorney, hereby moves this Court for an Order sanctioning Defendant, Jennifer R. Bergmann (Bergmann), holding her in contempt of Court for willful violations of a Court ordered Injunction filed on February 6, 2015, and allowing Plaintiff to amend his complaint to include a new cause of action for fraud.

Background

In late November and December 2014, creditors of Sand Hill Stations of Bluffton, LLC, and Docks Shell, LLC, began contacting Plaintiff Burrus alleging that they had personal guarantees signed by Burrus and demanding that Burrus pay the past due debts of the LLCs. Burrus knew that he had not signed personal guarantees for the companies that had contacted him and knew that he had not authorized anyone to sign his name to any personal guarantees. (Verified Complaint filed 2/3/15) (Exhibit A).

Defendant Bergman was the Manager of both LLCs and was thought to be the person forging Burrus' name. On December 12, 2014, Burrus wrote Bergmann, demanding that she stop signing Burrus' name:

> First, it is our understanding that you have been signing Dr. Burrus' name to various vendor agreements with Docks Shell and Sand Hill Stations wherein Dr. Burrus purports to personally guarantee various debts/obligations of the LLCs. You do not have the authority to sign Dr. Burrus' name to any document, and we are demanding that you cease and desist in doing so.

(12/12/14 Letter to Jennifer Bergmann) (Exhibit B). Burrus also demanded that Bergmann provide a list of each instance in which she had signed Burrus' name. Bergmann refused to provide a list of each instance in which she had signed Burrus' name.

On December 30, 2014, Burrus wrote Bergmann again demanding that she provide a list "of each instance in which Ms. Bergmann has signed Dr. Burrus's name to any document of any kind." (12/30/14 Letter to Meredith Bannon) (Exhibit C). Bergman refused to provide the requested list.

On January 6, 2015, Burrus again demanded that Bergmann provide "a list of each instance in which Ms. Bergmann has signed Dr. Burrus's name to any document of kind. If she has not signed Dr. Burrus's name, please let us know immediately as someone else is signing his name for the benefit of Docks Shell." (1/6/15 Letter to Meredith Bannon) (Exhibit D). Bergmann still refused to provide the list. Burrus had no option other than to file a lawsuit.

On February 3, 2015, Burrus filed a verified Summons and Complaint against Bergmann. In the Complaint, Burrus alleged that Bergmann had forged his name to contracts and personal guarantees related to the two LLCs Bergmann managed and that creditors of the LLCs were now seeking payment from Burrus personally based upon the forged personal guarantees. In the lawsuit, he requested that the Court enter an order requiring Bergmann to list each instance in

which she signed Burrus' name so that Burrus could attempt to mitigate the damage caused to him personally by Bergmann, and enter an order enjoining Bergmann from signing Burrus' name in the future. (Verified Complaint filed 2/3/15) (Exhibit A).

On February 3, 2015, the Court entered a temporary restraining order against Bergmann restraining her from signing Burruss name, and a hearing to convert the TRO into an injunction was set for February 6, 2015. (2/3/15 TRO) (Exhibit E).

Prior to a hearing on Plaintiff's injunction, Bergmann (through her counsel) contacted Burrus and agreed not to sign his name and to provide the requested list. Burrus was absolutely unwilling to take Bergmann's word, and insisted that the Court enter an order requiring Bergmann to provide the list and enjoining her from signing Burrus's name.

On February 6, 2015, the Honorable Marvin Dukes, III entered the following order, which was placed on file with the Beaufort County Clerk of Court:

> **Bergmann has represented to counsel and the Court** that the instances where she signed Dr. Burrus' name, although she contends it was with permission, were as follows:
>
> a. Bishopville Oil Agreement
>
> b. Pawnee Leasing
>
> c. Ascentium Capital (possibly – not sure).

(2/6/15 Injunction Order) (Exhibit F).

Burrus detrimentally relied on the representation made by Bergmann to her counsel, to the undersigned counsel, and the Court. Specifically, after the Court order was entered, both LLCs or the assets of the LLCs were sold (or otherwise shut down), and Burrus relied on the list the Court ordered Bergmann to provide to make sure that all creditors holding documents to which his name was forged were paid off with the proceeds from the sale of each LLC. This was

of critical importance because paying off the creditors holding documents to which Burrus' name was forged cleared Burrus' name individually from any and all debt associated with the LLCs related to forged signatures.

On November 13, 2015, Burrus took the deposition of Bergmann. During the deposition, Bergmann was specifically questioned about the Order for Injunction and was asked to confirm under oath that the representations she had previously made to the Court identifying where she had signed Burrus' name were true, correct and complete. Bergmann was also specifically asked about her obligation to provide truthful and correct information in response to the Court's order and was also provided a copy of the Court order in question:

> Q: Okay. And did you take the obligation of the court's order seriously?
>
> A: Yes, I did.
>
> Q: And did you list the places where you'd signed Dr. Burrus' name on page two?
>
> A: Yes.
>
> Q: And is that, in fact, the list of **all the places** where you signed Dr. Burrus' name?
>
> A: Yes.

(Burrus Dep. I, page 153, lines 10-18) (Exhibit G) (emphasis added).

It has recently come to Burrus' attention that Bergmann was not truthful with the Court and that she misrepresented to the Court instances where she signed Burrus' name. Specifically, Bergmann failed to inform the Court that she signed Burrus' name to a personal guarantee with Direct Capital Corporation, and moreover, that she fraudulently submitted a photocopy of Burrus' driver's license to Direct Capital Corporation. Burrus has now been contacted by counsel for Direct Capital Corporation, seeking to hold him personally liable for past due amount

in excess of $14,400 based on the forged personal guarantee, and threatening litigation related to the same. (12/22/15 Letter from Direct Capital Corporation and Guaranty) (Exhibit H).[1] Bergmann did not include Direct Capital Corporation in her representations to the Court, or in her sworn testimony.

In addition, Burrus was also contacted by H.T. Hackney Co., which sought to hold Burrus personally liable for a past due amount owed, based on yet another forged personal guarantee. Bergmann also fraudulently submitted a photocopy of Burrus' driver's license to H.T. Hackney Co. (H.T. Hackney Documents dated 3/21/14) (Exhibit I). Neither Direct Capital nor H.T. Hackney was listed by Bergmann in her representations to the Court or in her deposition.

Legal Analysis

Contempt is the willful disobedience of a court order. E.g., Ex parte Cannon, 385 S.C. 643, 660, 685 S.E.2d 814, 824 (Ct. App. 2009). "The power to punish for contempt is inherent in all courts. Its existence is essential to the preservation of order in judicial proceedings, and to the enforcement of the judgments, orders and writs of the court, and consequently to the due administration of justice." Curlee v. Howle, 277 S.C. 377, 382, 287 S.E.2d 915, 917 (1982). Courts also "[h]ave the inherent power to punish for offenses that are calculated to obstruct, degrade, and undermine the administration of justice." Cannon, 385 S.C. at 660, 685 S.E.2d at 824. Possible sanctions for contempt include, but are not limited to, payment of a fine or damages to the complainant, payment of a fine to the court, and/or a jail sentence. Poston v. Poston, 331 S.C. 106, 502 S.E.2d 86 (1998).

Bergmann willfully violated the Court's Order by failing to disclose that she signed

[1] Although the letter is dated 12/22/15, Burrus did not receive the letter until approximately seventeen (17) days before the filing of this Motion.

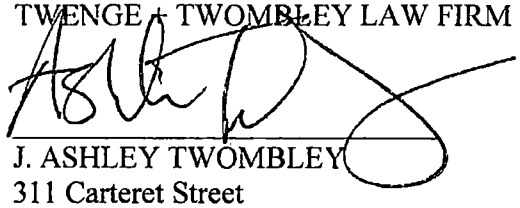
Burrus' name to personal guarantees with Direct Capital Corporation and H.T. Hackney. Because of Bergmann's willful violation, Burrus has suffered injuries and damages including but not limited to defending and litigating claims that are now being made by Direct Capital Corporation's attempts to collect the over $14,400 debt from Burrus personally.

Conclusion

Burrus respectfully requests that this Court exercise its discretion and issue a fair and equitable sanction against Bergmann, including but not limited to attorney fees associated with this motion and with defending against Direct Capital Corporation's attempts to collect debt from Burrus personally. In addition, Burrus requests that he be allowed to amend/supplement his complaint in this action to include a cause of action for fraud related to his reliance on the fraudulent representations made by Bergmann to the parties and to the Court in the Court's February 6, 2015 order.

The undersigned counsel also certifies pursuant to Rule 11, SCRCP, that consultation with opposing counsel would serve no useful purpose.

TWENGE + TWOMBLEY LAW FIRM

BY: 

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Beaufort, South Carolina

February 16, 2016

EXHIBIT C

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO.: 2015-CP-07-239
	)	
E. PERRY BURRUS, M.D.,	)	
	)	
Plaintiff,	)	**ORDER**
	)	
vs.	)	
	)	
JENNIFER R. BERGMANN,	)	
	)	
Defendants.	)	
	)	

The Court had previously taken under advisement Plaintiff's Motion for Sanctions, for Contempt of Court and to Amend Complaint and Plaintiff's Motion Pursuant to Rule 60, SCRCP. After a hearing on the motions on April 13, 2016, but prior to the Court issuing a ruling, Defendant Bergmann filed for Chapter 7 bankruptcy. The bankruptcy filing by Bergmann automatically stays all proceedings in this case pursuant to 11 U.S. Code § 362 of the Bankruptcy Code. Accordingly, the ruling on Plaintiff's Motion for Sanctions, for Contempt of Court and to Amend Complaint and Plaintiff's Motion Pursuant to Rule 60, SCRCP, is hereby stayed pending further direction from the bankruptcy court.

AND IT IS SO ORDERED

MARVIN H. DUKES, III
Master-in-Equity and Special Beaufort County
Circuit Court Judge

Beaufort, South Carolina

May 24, 2016

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Ms. Claire Allen
Deputy Clerk
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211