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ESTATE PLANNING FIRM
OF
HILTON HEAD, LLC

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FAX

FEB 28 2019
SC Court of Appeals

Date: February 27, 2019

To: Attn: Clerk of Court
South Carolina Court of Appeals


Fax #: (803) 734-1839

From: Jay A. Mullinax, Esq., Attorney for Non-Party

Subject: Appellate Case No. 2018-002188
Ron Orlosky v. Law Office of Jay A. Mullinax, LLC

Total Pages: 8 (Including this one)

Note: As discussed with Elizabeth, enclosed please find Non-Party's Motion for Emergency Order to Stay Execution of Property Pending Appeal of Amalgamation and the Statute of Elizabeth. The original, six copies and Proof of Service will be mailed tomorrow, February 28, 2019.


ESTATE PLANNING FIRM OF HILTON HEAD, LLC
Lauren Koresdoski, Paralegal to Jay A. Mullinax, Esq.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, III, Master-In-Equity

Appellate Case No. 2018-002188

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SC Court of Appeals

Ron Orlosky in his capacity as Personal
Representative of the Estate of Debora
L. Orlosky, and in his capacity as Trustee
of the Debora Laura Orlosky Revocable
Trust

Respondent

v.

Law Office of Jay A. Mullinax, LLC

Appellant

**NON-PARTY'S MOTION FOR EMERGENCY ORDER TO STAY EXECUTION OF
PROPERTY PENDING APPEAL OF AMALGAMATION AND THE STATUTE OF
ELIZABETH, AND MEMORANDUM IN SUPPORT OF THE MOTION**

Pursuant to the South Carolina Appellate Court Rules: Rule 240, Estate Planning Firm of Hilton Head, LLC, a Non-Party to this case, by and through undersigned counsel, hereby moves for an emergency Order to stay the execution of property against the Non-Party pending the appeal of Amalgamation and the Statute of Elizabeth¹.

¹ This Motion should not be construed in a way as to limit portions of the lower court's Order and/or Amended Order that the Appellant is appealing.

MEMORANDUM IN SUPPORT

As a brief review: The Honorable Marvin H. Dukes, III issued an Order on November 15, 2018. On November 19, 2018, the Appellant filed a Motion pursuant to South Carolina Rules of Civil Procedure: Rule 59(e). Because the effectiveness of the Rule 59(e) (SCRCP) Motion was in question, the Appellant filed a Notice of Appeal within the appropriate thirty (30) day suspense, on December 10, 2018. On December 28, 2018, the lower court indicated its acceptance of the Rule 59(e) (SCRCP) Motion and scheduled a hearing concerning issues surrounding that Motion for February 1, 2019. Due to the lower court's acceptance of the Rule 59(e) (SCRCP) Motion, on February 6, 2019 this Honorable Court issued an Order holding the appeal in abeyance pending the lower court's consideration of the Rule 59(e) (SCRCP) Motion. On February 8, 2019, The Honorable Marvin H. Dukes, III issued the Amended Order. **(Exhibit A)**

On February 27, 2019, the Beaufort County Sheriff's Office levied on the Operating Account owned by Estate Planning Firm of Hilton Head, LLC's (Non-Party) due to Judge Dukes Amended Order dated February 8, 2019.

In determining whether this Court should issue an Order, the Appellate Court should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot. In this instance, if the Court allows the judgment creditor to execute the judgment against a non-party to the case (Estate Planning Firm of Hilton Head, LLC), prior to the appeal being decided, then the firm will cease to operate and any future Court of Appeals decision on amalgamation and the Statute of Elizabeth becomes moot.

At present, the judgment creditor has frozen all operating accounts of the non-party firm and the firm must cease conducting business until this Court stays such execution. The effect of a

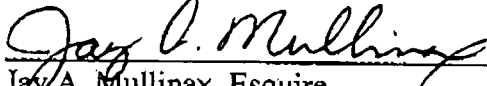
law firm's accounts shows that immediate and irreparable injury, loss or damage will result before the opposing party can respond.

CONCLUSION

For the foregoing reasons, the Non-Party respectfully prays that this Honorable Court grant this Motion and issue an Emergency Order declaring that execution on the above referenced Order, as it applies to the Estate Planning Firm of Hilton Head, LLC (a non-party to this case), is stayed pending appeal on Amalgamation and the Statute of Elizabeth, the Appointment of a Receiver, and any other part of the lower court's Order.

Respectfully Submitted,

February 27, 2019



Jay A. Mullinax, Esquire
SC Bar No. 68293
Estate Planning Firm of Hilton Head, LLC
2 Park Lane, Suite 303
Hilton Head Island, SC 29928
(843) 785-6101
Attorney for Non-Party

EXHIBIT "A"

A

ELECTRONICALLY FILED - 2019 Feb 08 11:46 AM - BEAUFORT - COMMON PLEAS - CASE#2010CP0704146

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT)
)
 RON ORLOSKY in his capacity as)
 Personal Representative of THE)
 ESTATE OF DEBORA L. ORLOSKY,)
 and in his capacity as Trustee of the)
 DEBORA LAURA ORLOSKY)
 REVOCABLE TRUST,)
)
 Plaintiff,)
)
 vs.)
)
 THE LAW OFFICE OF JAY A.)
 MULLINAX, LLC,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2010-CP-07-4146

AMENDED ORDER
(revised post 59(e) motion)

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SC Court of Appeals

This Order revises and amends that certain Order of this Court filed November 15th, 2018 (November Order) after a 59(e) hearing on February 1st, 2019. This Order shall substitute and replace in full the November Order.

This matter came before me on May 7, 2018, on Plaintiff's Motion Under the Statute of Elizabeth and to Set Aside, Motion for Appointment of a Receiver, and Motion for Rule to Show Cause. The Plaintiff's motions are granted as follows.

AMALGAMATION & THE STATUTE OF ELIZABETH

The Plaintiff argues that Jay A. Mullinax ceased operating his law firm under the name The Law Office of Jay A. Mullinax, LLC, and began operating his law firm under the name Estate Planning Firm of Hilton Head, LLC, for the purpose of avoiding the former entity's obligation to pay its debt to the Plaintiff (Jay A. Mullinax, individually, is not a judgment debtor). The Plaintiff further argues that The Law Office of Jay A. Mullinax, LLC, and Estate Planning Firm of Hilton Head, LLC, are essentially the same continuing operation and, therefore, Estate Planning Firm of Hilton Head, LLC, is obligated to pay The Law Office of Jay A. Mullinax, LLC's debt to the Plaintiff. I agree.

In deciding whether a successor entity is an amalgamation of a judgment debtor, South Carolina law dictates an examination of several factors constituting "indicia of amalgamation" such as shared locations, telephone numbers, officers, and employees. See, Magnolia N. Prop. Ass'n., Inc. v. Heritage Communities, Inc., 397 S.C. 348, 725 S.E.2d 112 (S.C. App. 2012) (citing, Kincaid v. Landing Dev. Corp., 289 S.C. 89, 344 S.E.2d 869 (S.C. App. 1986)). The result of a finding of amalgamation is that the assets of both entities are subject to collection by the judgment creditor.

In this case, the record is clear that Estate Planning Firm of Hilton Head, LLC, operates at the same location; uses the same telephone number; employs the same staff; has the same sole

member; markets using a nearly identical website; and, is the successor counsel to some of the same clients, as The Law Office of Jay A. Mullinax, LLC. Because The Law Office of Jay A. Mullinax, LLC, and Estate Planning Firm of Hilton Head, LLC, are an amalgamation, as a matter of equity the debts of the former are transferred to the latter.

In addition, I find that the formation of Estate Planning Firm of Hilton Head, LLC, was for the express and deliberate purpose of avoiding the lawful debt The Law Office of Jay A. Mullinax, LLC, owed to the Plaintiff. The Defendant's sole member and counsel, Jay A. Mullinax, acknowledged in his testimony in these proceedings, that he decided to cease practicing law through The Law Office of Jay A. Mullinax, LLC, and resume practicing law through Estate Planning Firm of Hilton Head, LLC, because he learned that the Plaintiff intended to collect the judgment. This evidence is sufficient to set aside what was essentially the conveyance of the law practice of sole practitioner Jay A. Mullinax from The Law Office of Jay A. Mullinax, LLC, to Estate Planning Firm of Hilton Head, LLC. See, Durham v. Blackard, 313 S.C. 432, 348 S.E.2d 259 (S.C. App. 1993)

Based on the foregoing, I find that both The Law Office of Jay A. Mullinax, LLC, and Estate Planning Firm of Hilton Head, LLC, are obligated to pay the debt of the Plaintiff.

APPOINTMENT OF A RECIEVER

Based on the foregoing, I find that appointment of a receiver for both The Law Office of Jay A. Mullinax, LLC, and Estate Planning Firm of Hilton Head, LLC, is appropriate. If the parties have not notified this Court of a full and final settlement of the Plaintiff's debt within forty-five days of the date of this Order, I will appoint a receiver.

RULE TO SHOW CAUSE

On September 26, 2017, the Court ordered the Defendant to bring certain documents to a Show Cause hearing on October 18, 2017. The Defendant's sole member and counsel, Jay A. Mullinax, produced some of the required documents, but most were heavily redacted. The Defendant did not produce other records as ordered. Following the Show Cause hearing, the Defendant provided some additional records to the Court.

At the hearing on January 31, 2018, this Court ordered the Defendant to produce certain documents that were subject to the September 26, 2017, Order; to produce unredacted or less redacted versions of certain documents; and, to produce copies of certain documents to the Plaintiff that had been delivered to the Court. The Court specified that the Defendant produce certain documents, with only client names redacted, no later than February 15, 2018, and that the Defendant produce other certain documents no later than March 2, 2018. A formal Order to Compel Production and Protective Order was issued on February 14, 2018. On February 15, 2018, the Defendant filed a Motion for Reconsideration seeking more time to produce the required documents. On March 6, 2018, the Court denied the Defendant's Motion for Reconsideration. The Defendant failed to produce any of the records that were the subject of the February 14, 2018, Order to Compel Production and Protective Order until the date of the motion hearing on May 7, 2018.

Based on the foregoing, I find that the Defendant (which, by way of amalgamation includes the Estate Planning Firm of Hilton Head, LLC) is in civil contempt for repeatedly failing to comply

with the Orders of this Court. I find that the attorney's fees and costs associated with the Plaintiff's Motion for Rule to Show Cause as set forth in the Affidavit of Barbara M. Seymour are fair and reasonable.¹

IT IS THEREFORE ORDERED:

1. That Plaintiff may seek to collect his judgment from The Law Office of Jay A. Mullinax, LLC, and Estate Planning Firm of Hilton Head, LLC, or either of them, and that the Clerk of Court shall, upon application by Plaintiff's counsel, issue an Execution against the property of those firms which may be sent to the Beaufort County Sheriff for levy and execution.
2. That Plaintiff may direct that the Beaufort County Sheriff levy on the operating accounts of The Law Office of Jay a Mullinax, LLC and/or Estate Planning Firm of Hilton Head, LLC located at the Bank of America.
3. That Defendant produce to this Court, with a copy to counsel for the Plaintiff, a complete accounting of income and expenses and assets and liabilities for Estate Planning Firm of Hilton Head, LLC, within fifteen days of the date of this order;
4. That Defendant produce to this Court, with a copy to counsel for the Plaintiff, all tax records, bank statements, and bookkeeping records of Estate Planning Firm of Hilton Head, LLC, with the redaction of client names only, within fifteen days of the date of this order;
5. That the production of records pursuant to this Order shall be subject to this Court's previous Supplemental Order of Protection, filed on May 15, 2018;
6. That the appointment of a receiver be held in abeyance pending compliance with this Order and further determination of this Court;
7. That the Defendant may purge civil contempt by payment to the Plaintiff in the amount of \$6,170.34 for reasonable attorney's fees and costs within fifteen days of the date of this Order; and,

SO ORDERED.

Marvin H. Dukes, III
Master-in-Equity

¹ The Plaintiff has sought attorney's fees and costs associated with his Motion to Compel and Motion for Rule to Show Cause only. This Order does not preclude the Plaintiff from seeking reimbursement of additional attorneys' fees and costs incurred in connection with these proceedings with an appropriate motion.

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SC Court of Appeals



Beaufort Common Pleas

Case Caption: Ron Orlosky , plaintiff, et al VS Law Office Of Jay A Mullinax Llc ,
defendant, et al
Case Number: 2010CP0704146
Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

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