

89234

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

RECEIVED
MAR 08 2019
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

**ESTATE PLANNING FIRM OF HILTON HEAD, LLC'S (A NON-PARTY) MOTION
TO DISMISS APPEAL OR, IN THE ALTERNATIVE, TO STAY EXECUTION OF
PROPERTY PENDING APPEAL AND MEMORANDUM IN SUPPORT OF THE
MOTION**

Pursuant to Rule 240, SCACR, Estate Planning Firm of Hilton Head, LLC, a Non-Party to this case, by and through its undersigned counsel, hereby moves for an Order to dismiss Estate Planning Firm of Hilton Head, LLC, ("EP Firm") from this case and from any and all obligations under the lower court's Order dated November 15, 2018 and Amended Order dated February 8, 2019 and to order the immediate return of the funds already seized from EP Firm (a Non-Party). Alternatively, EP Firm moves this Court to stay the execution of the Order against EP Firm's

property pending a final decision on appeal, and to require the immediate return of the funds already seized from EP Firm. In support of this motion, EP Firm would respectfully show the following:

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)** The Amended Order states, *among other things*¹, "Because [Appellant] and [EP Firm], are an amalgamation, as a matter of equity the debts of the former are transferred to the latter." However, EP Firm has not been joined as a party.

Pursuant to Rule 12(b)(2), (4), (5), and (7), SCRCP, the lower court lacks jurisdiction over EP Firm for failing to provide EP Firm proper due process, failing to require service of a Summons to the Non-Party, and failing to require the Respondent to join EP Firm as a party under Rule 19, SCRCP.

¹ This Motion should not be construed in a way as to limit which portions of the Amended Order are being appealed.

Pursuant to Rule 60(b)(4), SCRPC, allows relief from an Order to be granted on the grounds that the Order is void. A void order is one rendered in the absence of proper due process or jurisdiction. Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 561 S.E.2d 659 (Ct. App. 2002). Generally, a person against whom a judgment or order is taken without notice may rightly ignore it and may assume that no court will enforce it against his person or property. Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 561 S.E.2d 659 (Ct. App. 2002) (citing Tryron Fed. Sav. & Loan Ass'n v. Phelps, 307 S.C. 361, 362, 415 S.E.2d 397, 398 (Ct. App. 1992))

At present, the judgment creditor (Respondent), has seized and frozen the operating account of EP Firm, and the firm has ceased conducting business. The firm cannot purchase supplies, adequately file documents in Court, pay employees, pay employment taxes, or pay for any services such as electricity, telephone, and internet. The effect of the firm's account being seized and frozen shows that immediate and irreparable injury, loss or damage has resulted without proper due process. Thus, the Court should order that all funds that have already been seized from EP Firm, should be immediately returned.

Alternatively, EP Firm moves this Court to stay the execution of the order against EP Firm's property pending a final decision on appeal, and require the immediate return of the funds already seized from EP Firm.

On February 27, 2019, the Beaufort County Sheriff's Office levied on the operating account owned by EP Firm due to Judge Dukes' Amended Order dated February 8, 2019.

In determining whether this Court should issue an Order dismissing the case or staying the execution of the lower court's order against the property of EP Firm, 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 (Respondent) to execute a judgment against EP Firm 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 will be moot.

At present, the judgment creditor (Respondent) has seized and frozen the operating account of EP Firm and the firm must cease conducting business until this Court stays execution of the judgment against EP Firm. The effect of the seizure of EP Firm's account shows that immediate and irreparable injury, loss or damage will result before the opposing party can respond.

EP Firm is not a party to this case and is a separate entity from Appellant in form and substance. EP Firm was established in 2017, filed its own Article of Incorporation with the Secretary of State, obtained its own Employer Identification Number, State Withholding Number, business license and purchased its own property.

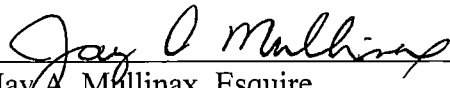
CONCLUSION

For the foregoing reasons, EP Firm respectfully prays that this Honorable Court expeditiously grant this Motion and dismiss EP Firm from any and all obligations under the lower court's Order dated November 15, 2018 and Amended Order dated February 8, 2019 and order all funds that have already been seized from EP Firm, be immediately returned. Alternatively, issue an emergency Order declaring that execution of property on the above referenced Orders, as it applies to EP Firm, is stayed pending appeal and all funds that have already been seized from EP Firm, be immediately returned.

(Signature page to follow.)

Respectfully Submitted,

March 7, 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



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)

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.



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

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

RECEIVED
MAR 08 2019
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

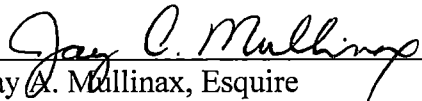
PROOF OF SERVICE

I, Jay A. Mullinax, hereby certify that I have served one (1) copy of Non-Party's Motion to Dismiss Appeal or, in the Alternative, to Stay Execution of Property Pending Appeal and Memorandum in Support of the Motion upon Respondent's counsel and Appellant's counsel by depositing a copy in the United States Postal Service, first class postage prepaid, and addressed as follows:

John R.C. Bowen, Esquire
Laughlin & Bowen, P.C.
P.O. Drawer 21119
Hilton Head Island, SC 29925
Attorney for Respondent

Jay A. Mullinax, Esquire
Law Office of Jay A. Mullinax, LLC
2 Park Lane, Suite 303
Hilton Head Island, SC 29928
Attorney for Appellant

March 7, 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



ESTATE PLANNING FIRM
OF
HILTON HEAD, LLC

March 7, 2019

RECEIVED

MAR 08 2019

SC Court of Appeals

VIA FEDEX

Ms. Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: 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. The Law Office of Jay A. Mullinax, LLC, Appellant.
Case No.: 2018-002188.

Dear Ms. Kitchings:

Enclosed please find a money order in the amount of Fifty Dollars (\$50.00) for the filing fee of a Motion; an original and seven (7) copies of Estate Planning Firm of Head, LLC's (a Non-Party) Motion to Dismiss Appeal or, in the Alternative, to Stay Execution of Property Pending Appeal and Memorandum in Support of the Motion; and Proof of Service.

Please disregard Estate Planning Firm of Hilton Head, LLC's previous faxed copy of the Motion for Emergency Order to Stay Execution dated February 27, 2019.

We would appreciate it if you could please file the originals and return a clocked copy of Estate Planning Firm of Head, LLC's (a Non-Party) Motion in the self-addressed, stamped envelope provided. If you have any questions, please do not hesitate to contact our office. Thank you for your time and attention to this matter.

Very truly yours,

ESTATE PLANNING FIRM OF HILTON HEAD, LLC

Jay A. Mullinax, Esquire

/Enclosures

JAM:lnk

cc: John R.C. Bowen, Esq. (via USPS)
Jay A. Mullinax, Esq. (Counsel for Appellant; via USPS)

*Navigating the Way
to Leaving Your Legacy*

ORIGIN ID:HHHA (843) 785-6101
LAUREN KORESOSKI
ESTATE PLANNING FIRM OF HILTON HEAD
2 PARK LANE
SUITE 303
HILTON HEAD ISLAND, SC 29928
UNITED STATES US

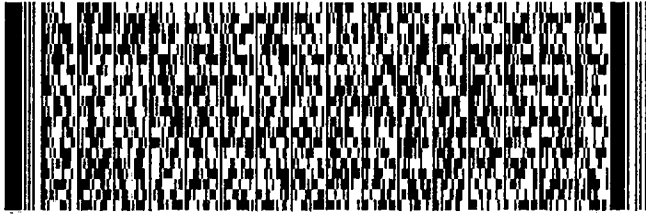
SHIP DATE: 07MAR19
ACTWGT:
CAD: 113562357/INET4100
BILL SENDER

TO JENNY ABBOTT KITCHINGS, CLERK
SC COURT OF APPEALS
1220 SENATE ST

555J146D323AD

COLUMBIA SC 29201

(843) 785-6101 REF:
INV: DEPT:
PO:

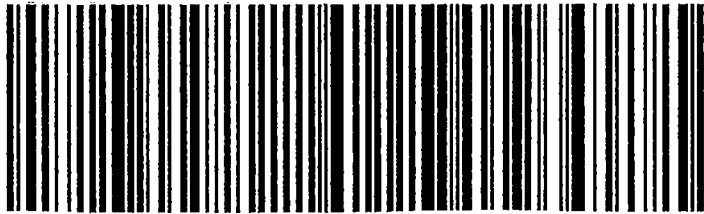


FRI - 08 MAR 3:00P
STANDARD OVERNIGHT

TRK# 7746 4476 9237
0201

XH USCA

29201
SC-US CAE



RECEIVED
MAR 08 2019
SC Court of Appeals

After printing this label:

1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number. Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.