

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APR 08 2019  
SC Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
CIRCUIT COURT

The Hon. R. Lawton McIntosh, Circuit Court Judge

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Case No. 2015-CP-23-5757

Appellate Case No. 2018-001444

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

v.

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

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**RETURN TO APPELLANTS' MOTION FOR  
EXTENSION OF LENGTH OF INITIAL BRIEF**

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Appellants/Respondents Keone Trask (“Trask”) and Clear Touch Interactive, Inc. (“Clear Touch”) (collectively, “Appellants”) filed a motion dated January 8, 2019, for an extension of the length of their initial brief. On January 14, 2019, the Court ordered Appellants to file their proposed brief, at which time the Court would consider their motion. The Court also ordered that all other appellate deadlines would be held in abeyance pending a decision by the Court on the motion to exceed the page limit. *Id.* Appellants served their initial brief on March 13, 2019, and an amended initial brief on March 15, 2019. Appellants’ amended initial brief is 100 pages.

Respondent Encore Technology Group, LLC (“Encore”) objects to Appellants’ motion and amended initial brief on the grounds that such brief contains numerous moot and irrelevant issues and therefore does not need to exceed the page limit set forth in Rule 208(b)(5) of the

South Carolina Appellate Court Rules. In the event the Court grants Appellants' motion to exceed the page limit, Encore requests that its initial brief be allowed to exceed the page limit by the same number of pages. Encore also requests that the order ruling on the motion identify Encore's deadline to respond to whatever Appellants' brief the Court allows.

Specifically, Appellants' amended initial brief (the "Brief") contains numerous moot and irrelevant issues, such as the following:

1. **The Brief addresses a Receivership Order that has been stayed and is moot for purposes of this appeal.** Issue 9 and pages 19 and 87-89 of the Brief lodge numerous complaints against an Order Appointing Receiver entered on July 23, 2018, by the Honorable R. Lawton McIntosh (the "Receivership Order") to monitor and preserve the non-exempt assets of Trask. On page 87 at note 33 of the Brief, however, Appellants note that the "Receivership Order has now been stayed following Defendants['] depositing the full amount of the judgments against them into the Court." The order staying the receivership is the subject of separate appeals pursuant to notices of appeal served by Encore on March 25, 2019. Accordingly, there is no basis for the Brief to challenge the Receivership Order.

2. **The Brief addresses discovery disputes resolved in the 2015 Case solely to try to resurrect the 2017 Case for "policy reasons."** Issue 10 and pages 20-26 and 92-97 of the Brief rehash discovery disputes that were resolved in Case No. 2015-CP-23-5757 (the "2015 Case") solely to try to justify the filing, and overcome the dismissal, of Case No. 2017-CP-23-05862 (the "2017 Case"). The essence of the Brief's argument is that Encore's discovery responses in the 2015 Case "necessitated the filing of [the 2017 Case] because they robbed Clear Touch of the ability to fully and fairly litigate the causes of action asserted in [the 2015 Case]." Brief at 92. Specifically, Appellants complain that "Encore's actions, including withholding of

evidence in the [2015 Case], prevented Clear Touch from pursuing its claims as counterclaims in [the 2015 Case].” Brief at 94.

Appellants’ argument is belied by the undisputed facts that (1) they received the subject “evidence” in May 2017 – four months before trial of the 2015 Case – Brief at 23 (“The May 31 production contained documents that for the first time alerted Clear Touch to the possibility that it may have one or more claims against Encore ....”), and (2) they never filed a motion to amend their pleadings to assert such counterclaims, instead only requesting – and receiving – multiple continuances of the trial. The Court need not pore over details of the parties’ discovery disputes in the 2015 Case that have no bearing in that case and instead are detailed only to try to avoid application of the doctrine of *res judicata* to the 2017 Case for “policy reasons.” Brief at 95.

3. **The Brief’s arguments that the order dismissing the 2017 Case contains language not in the Form 4 do not merit consideration.** Issue 11 and pages 97-99 of the Brief complain that the Court dismissed the 2017 Case under Rule 13, SCRCR, even though that language was not in the Circuit Court’s Form 4 orders directing Encore to prepare a formal order. Appellants even include their email objections to the proposed order and responses to the Circuit Court. Appellants, however, cite no authority for the proposition that a Form 4 order must set forth every detail of the proposed order because there is none. Such arguments and emails should be removed from the Brief and designation of matter.

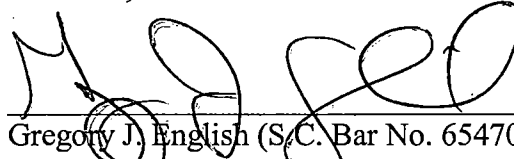
4. **With the extraneous and improper arguments and matter removed, Appellants should be able to comply with the page limit of Rule 208(b)(5), SCACR.**

For the foregoing reasons, Encore requests that Appellants’ motion for extension of the length of their Brief be denied. If the Court grants Appellants’ motion, Encore requests that its initial brief be allowed to exceed the page limit by the same number of pages and that the order

ruling on the motion identify Encore's deadline to respond to whatever Appellants' brief the Court allows.

Respectfully submitted,

WYCHE, P.A.

A handwritten signature in black ink, appearing to read 'Gregory J. English', written over a horizontal line.

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Rita Bolt Barker (S.C. Bar No. 77600)

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Attorneys for the Respondents

April 4, 2019

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY  
CIRCUIT COURT  
The Hon. R. Lawton McIntosh, Circuit Court Judge

Case No: 2015-CP-23-5757  
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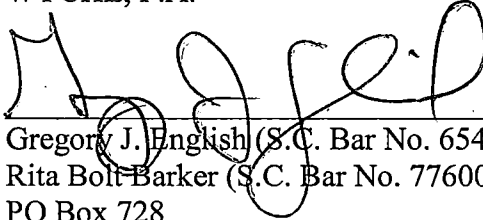
Keone Trask and Clear Touch Interactive, Inc..... Appellants/Respondents.

**PROOF OF SERVICE**

I hereby certify that I have served the foregoing Return to Appellants' Motion for Extension of Length of Initial Brief on the above-named Appellants by depositing a copy of it in the U.S. mail, first class postage prepaid, addressed to their counsel of record as follows:

Joseph O. Smith, Esq.  
Joshua J. Hudson, Esq.  
Roe Cassidy Coates & Price, P.A.  
1052 N. Church Street  
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WYCHE, P.A.



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April 4, 2019

W Y C H E

Attorneys at Law

April 4, 2019

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BY FIRST CLASS MAIL

Hon. Jenny Abbott Kitchings, Clerk  
South Carolina Court of Appeals  
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Columbia, SC 29211

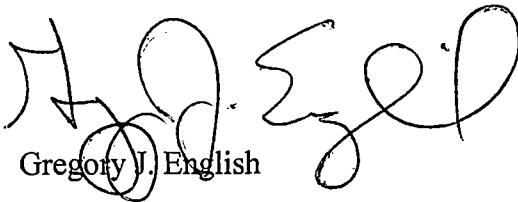
Re: Encore Technology Group, LLC vs. Keone Trask, et al., Case No. 2015-CP-23-5757  
Appellate Case No. 2018-001444

Dear Ms. Kitchings:

Enclosed please find an original and seven copies of the Return to Appellants' Motion for Extension of Length of Initial Brief in the above-referenced case, along with the Proof of Service and for same. Please return a file-stamped copy of these documents to us in the self-addressed, stamped envelope provided.

Thank you for your assistance.

Best regards,



Gregory J. English

(864) 242-8247  
genglish@wyche.com

GJE/sc

Enclosures

cc: Joseph O. Smith, Esq. (by mail and e-mail)  
Joshua J. Hudson, Esq. (by mail and e-mail)  
Mr. Todd Newnam (by mail and e-mail)

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