

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY  
CIRCUIT COURT

The Hon. R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2019-000530

**RECEIVED**  
APR 18 2019  
SC Court of Appeals

Jami Powell and Encore Technology Group, LLC,  
of which Encore Technology Group, LLC is the ..... Appellant,

v.

Clear Touch Interactive, Inc. (a Nevada Corporation),  
f/k/a Clear Touch Interactive LLC (a Nevada LLC);  
Keone Trask and Tamara Trask, ..... Respondents.

**APPELLANT ENCORE TECHNOLOGY GROUP, LLC'S  
MOTION TO CONSOLIDATE**

Appellant Encore Technology Group, LLC (“Encore”) hereby moves, pursuant to Rule 240, SCACR, to consolidate its appeal of that certain Order Granting Defendants’ Motion to Dismiss of the Honorable R. Lawton McIntosh dated February 27, 2019, in this case (the “Dismissal Order”), which Encore appealed on March 25, 2019, with Encore’s appeal of that certain Order Staying Receivership of the Honorable R. Lawton McIntosh dated March 8, 2019, in Circuit Court Case No. 2015-CP-23-5757 (the “Deposit Order”), which Encore also appealed on March 25, 2019, in Appellate Case No. 2018-001444, and that all briefing deadlines in both such appeals be held in abeyance until an order is entered on this motion setting a briefing schedule.

In support of this motion, Encore states as follows:

1. Appellate Case No. 2018-001444 was commenced in 2018 when Respondents Keone Trask (“Trask”) and Clear Touch Interactive, Inc. (“Clear Touch”) filed and served a Notice of Appeal from a Final Order and Judgment dated April 2, 2018 (the “Judgment”) and an Order Appointing Receiver dated July 23, 2018 (the “Receivership Order”). Encore cross-appealed the Judgment.

2. After several extensions, the parties filed and served their initial appellant briefs and designations of matter on March 13, 2019.

3. While the Judgment was being appealed, the Circuit Court entered the Deposit Order and the Dismissal Order, which attempted to substantively modify the Judgment, even though this Court had, and continues to have, exclusive jurisdiction over the Judgment pursuant to the appeals.

4. Specifically, the Circuit Court concluded that footnote 3 of the Judgment should be changed to make both Trask and Clear Touch jointly and severally liable for exemplary damages under the South Carolina Trade Secrets Act and to give Trask credit for Clear Touch’s deposit with the Greenville County Clerk of Court for such damages. *See* Deposit Order at 7 (“Encore’s argument relies upon a footnote in the [Judgment] that states ‘Each Defendant, however, will owe exemplary damages of \$849,890 for [the Trade Secrets] claim ....’ Encore is mistaken and Defendants’ liability for all aspects of the Trade Secrets award must be joint and several ....”); at 9 (“Accordingly, Trask’s calculation of his judgment liability ... correctly credited him for Clear Touch’s payment of the Trade Secret award and the Defendants have paid the entirety of the judgments against them into the Court.”).

5. Likewise, based upon its modification of the Judgment, the Circuit Court dismissed Encore's complaint in the case that is the subject of this appeal, Circuit Court Case No. 2017-CP-23-06520. *See* Dismissal Order at 5 ("The Court finds that, because it can recover the \$849,890 in exemplary damages under the Trade Secrets Act from only one Defendant, the Defendants have paid the entire balance of the judgments against them into the Court, ... and therefore Encore has no standing to remain a party to this action.").

6. Because Encore's appeals of both the Deposit Order and the Dismissal Order involve the same substantive issue (*i.e.*, whether liability for exemplary damages under the Trade Secrets Act is joint and several, so that one guilty Defendant gets credit for payment by another), those appeals should be consolidated.

7. Likewise, because the initial briefs and designations of matter concerning the 2018 Judgment and Receivership Order have already been drafted and filed, and the appeals of the Deposit Order and Dismissal Order arose after them, the issues should be separated and the subject of separate briefs.

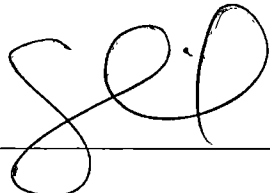
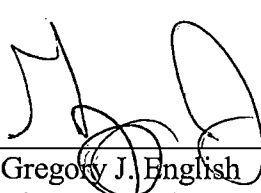
For the foregoing reasons, Encore requests that the Court consolidate its appeals of the Deposit Order and the Dismissal Order, and that all briefing deadlines be held in abeyance until an order is entered on this motion setting a briefing schedule. Encore also respectfully suggests that these appeals be consolidated under this Appellate Case No. 2019-000530 to avoid confusion with the 2018 orders and appeals.

The undersigned has consulted with counsel for Appellants/Respondents Keone Trask and Clear Touch Interactive, Inc. f/k/a Clear Touch Interactive, LLC and received consent to this consolidation.

Respectfully submitted,

WYCHE, P.A.

BY:



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Rita Bolt Barker

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(864) 242-8200

Attorneys for Respondent/Appellant  
Encore Technology Group, LLC

April 15, 2019

Other Counsel of Record:

Joseph Owen Smith  
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Post Office Box 10529  
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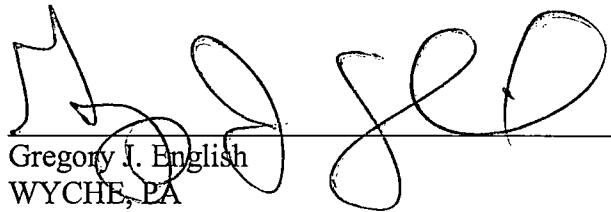
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**PROOF OF SERVICE**

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I, Gregory J. English, of Wyche, P.A., attorneys for the Respondent/Appellant in the within  
action, do hereby certify that I have this date served upon opposing counsel the foregoing  
**APPELLANT ENCORE TECHNOLOGY GROUP, LLC'S MOTION TO  
CONSOLIDATE** by first class mail, addressed to the following:

Joseph Owen Smith  
Joshua Jennings Hudson  
Roe Cassidy Coates & Price PA  
Post Office Box 10529  
Greenville, SC 29603

A handwritten signature in black ink, appearing to read 'Gregory J. English', is written over a horizontal line. The signature is stylized with large loops and a sharp initial 'G'.

Gregory J. English  
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Attorneys for Respondent/Appellant  
Encore Technology Group, LLC

April 15, 2019

W Y C H E

Attorneys at Law

April 15, 2019

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SC Court of Appeals

BY FIRST CLASS MAIL

Hon. Jenny Abbott Kitchings, Clerk  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

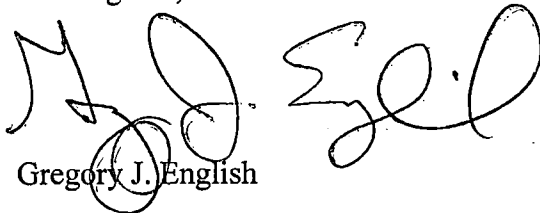
Re: Jami Powell & Encore Technology Group, LLC vs. Clear Touch Interactive, Inc., et al.,  
Case No. 2017-CP-23-06520, Appellate Case No. 2019-000530

Dear Ms. Kitchings:

Enclosed please find an original and seven copies of Appellant Encore Technology Group, LLC's Motion to Consolidate, along with the Proof of Service and filing fee 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)  
Joshua J. Hudson, Esq. (by mail)  
Keith Munson, Esq. (by mail)  
Mr. Todd Newnam (by e-mail)

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