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THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

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APR 18 2019
SC Court of Appeals

Appellate Case No. 2018-001444

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

v.

Keone Trask and Clear Touch Interactive, Inc.,
f/k/a Clear Touch Interactive, LLC,.....Appellants/Respondents.

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

Respondent/Appellant Encore Technology Group, LLC (“Encore”) hereby moves, pursuant to Rule 240, SCACR, to consolidate its 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 appealed on March 25, 2019, with Encore’s appeal of that certain Order Granting Defendants’ Motion to Dismiss of the Honorable R. Lawton McIntosh dated February 27, 2019, in Circuit Court Case No. 2017-CP-23-06520 (the “Dismissal Order”), which Encore appealed on March 25, 2019, in Appellate Case No. 2019-000530, 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. This Appellate Case was commenced in 2018 when Appellants/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 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.

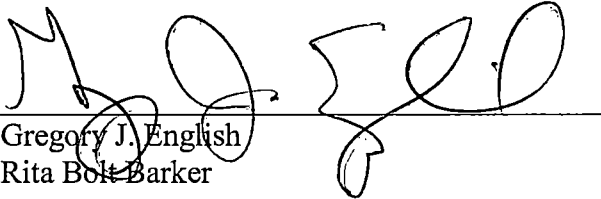
For the foregoing reasons, Encore requests that the Court consolidate its appeals of the Deposit Order and the Dismissal Order, and that all briefing deadlines be held in abeyance until an order is entered on this motion setting a briefing schedule. Encore also respectfully suggests that these appeals be consolidated under 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:



Gregory J. English
Rita Bolt Barker

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Attorneys for Respondent/Appellant
Encore Technology Group, LLC

April 15, 2019

Other Counsel of Record:

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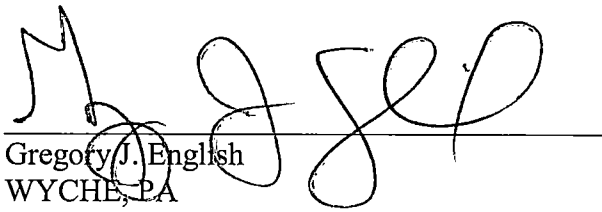
v.

Keone Trask and Clear Touch Interactive, Inc.,
f/k/a Clear Touch Interactive, LLC,.....Appellants/Respondents.

PROOF OF SERVICE

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 **RESPONDENT/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 and cursive.

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

BY FIRST CLASS MAIL

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

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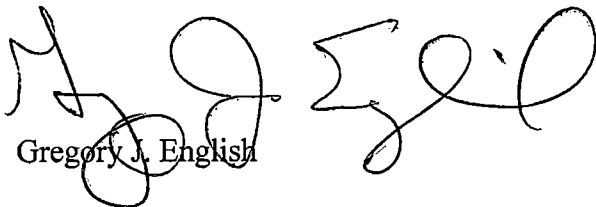
Re: Encore Technology Group, LLC vs. Keone Trask, et al., Case No. 2015-CP-23-5757
Appellate Case No. 2018-001444

Dear Ms. Kitchings:

Enclosed please find an original and seven copies of Respondent/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)
Mr. Todd Newnam (by e-mail)

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