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

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.

Consolidated with
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.

APPELLANT ENCORE TECHNOLOGY GROUP, LLC'S INITIAL BRIEF

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II. **Did the Circuit Court err in modifying the Final Order and Judgment so that two Defendants had to pay only one award of exemplary damages, even though the jury found that both Defendants had violated the South Carolina Trade Secrets Act with a willful, wanton, or reckless disregard of Encore's rights?**

III. **Did the Circuit Court err in dismissing Encore from the Powell Case, after previously finding that Encore had a right to intervene, based upon the Circuit Court's improper modification of the Final Order and Judgment?**

STATEMENT OF THE CASE

Encore Technology Group v. Keone Trask and Clear Touch Interactive, Inc.
(Case No. 2015-CP-23-05757/Appellate Case No. 2018-001444)

Facts

Appellant Encore Technology Group, LLC ("Encore") paid Respondent Keone Trask ("Trask") nearly $200,000 per year to serve as its director of product development and locate suppliers for Encore's products, including interactive panels for K-12 schools. (Trial Transcript ("Transcript"), p. 100, l.8-p. 101, l.9; p. 302, l.21-p. 303, l.18; p. 852, ll. 19-24; p. 853, ll. 4-7; Plaintiff's Exhibit 1) Instead of working solely for Encore, Trask formed a side company, Clear Touch Interactive, Inc., f/k/a Clear Touch Interactive, LLC ("Clear Touch"), to sell panels to and divert profits from Encore while he was on Encore's payroll. (Plaintiff's Exhibit 3; Transcript, p. 844, l.16-p. 845, l.10) Evidence at trial demonstrated that Trask:

- Did not disclose to Encore his involvement in Clear Touch while he was an employee of Encore (Transcript, p. 329, l.9-p. 330, l.13; p. 332, ll.20-24; p. 368, l.19-p. 370, l.22; Plaintiff's Exhibits 8, 83; Final Order and Judgment, p. 33);
- Listed his mother—who used her maiden name—as owner of Clear Touch to hide his affiliation with Clear Touch (Transcript, p. 122, ll.14-22; p. 127, ll.15-21; p. 295, l.1-p. 296, l.17; Final Order and Judgment, p. 33);
- Had the true suppliers of the interactive panels Encore was buying remove their labels from panels and replace them with Clear Touch labels to hide the suppliers' identities from Encore (Transcript, p. 122, ll.23-25; p. 127, ll.7-14; p. 128, ll.1-8; p. 334, l.18-p. 335, l.25; p. 337, l.9-p. 339, l. 9; Plaintiff's Exhibits 5, 39, 40, 43; Final Order and Judgment, p. 33);
- Marked up the suppliers' prices that Clear Touch charged to Encore (Transcript, p. 128, ll.9-18; p. 339, l.10-p. 341, l.10; Plaintiff's Exhibit 44; Final Order and Judgment, p. 33);

- Had Encore send its checks to Clear Touch to a Nevada post office box and forwarded them back to South Carolina (Transcript, p. 123, ll. 14-19; p. 127, ll.22-25; p. 317, l. 9-p. 320, l.2; Final Order and Judgment, p. 34);
- Had his wife, Tamara Trask, work for Clear Touch but pose to Encore under the false name "Amy Andrews" to hide the Trasks' affiliation with Clear Touch (Transcript, p. 123, l.1; p. 312, l.1-p. 317, l.8; p. 325, l.19-p. 328, l.17; p. 769, ll.14-19; Plaintiff's Exhibits 4, 26, 27, 29, 33, 34; Final Order and Judgment, p. 34);
- While at conferences for Encore, worked to sign resellers for Clear Touch by initially leading them to believe Encore was an owner of Clear Touch (Transcript, p. 252, l.4-p. 262, l.24; p. 341, l.11-p. 342, l.3; Plaintiff's Exhibits 48, 78, 79, 80; Final Order and Judgment, p. 34);
- Got Encore's employees, Leo Gallant and Jimmy Higginbotham, to sign non-disclosure agreements—including one on the day Trask left Encore—so that he could disclose his ownership of Clear Touch but prevent them from disclosing same to Encore and thereby induce them to work for Clear Touch and its benefit while on Encore's payroll (Transcript, p. 123, l.20-p. 125, l.15; p. 321, l.14-p. 325, l.18; Plaintiff's Exhibits 15, 32; Final Order and Judgment, p. 34); and
- Permanently deleted incriminating e-mails (Transcript, p. 364, l.21-p. 366, l.19; p. 619, l.20-p. 621, l.9; p. 632, ll.2-8; p. 855, l. 17-p. 858, l.21; Plaintiff's Exhibits 73, 79; Final Order and Judgment, p. 34).

In addition to these actions, Trask and Clear Touch misappropriated Encore's trade secrets and utilized them to take away business from Encore. Specifically, as an employee of Encore, Trask learned that Leon County Schools in Florida had preferences to purchase specific interactive

panels at specific prices, and along with Clear Touch utilized these trade secrets to take away the sales from Encore and make them directly from Clear Touch, costing Encore $424,945 in lost profits. (Plaintiff's Exhibits 10.H, 53, and 58; Transcript pp. 310, l.9-311, l.25; 354, l.1-359, l.3.)

Procedural History

After uncovering Trask's actions, Encore filed its Complaint on September 18, 2015, asserting, among others, causes of action against Trask and Clear Touch (collectively, "Defendants") for misappropriation of trade secrets. (Complaint, pp. 10-12) At the conclusion of trial that occurred September 25-29, 2017, the jury entered verdicts of $7,052,023 in damages against Trask, including $3,377,023 in actual damages and $3,675,000 in punitive damages. (Verdict Form) Specifically, these verdicts found that (1) Trask had breached his duty of loyalty to Encore ($375,733 actual and $175,000 punitive damages), (2) breached his fiduciary duties to Encore ($675,361 actual and $1,500,000 punitive damages), (3) diverted profits from Leon County Schools in breach of his contract with Encore ($424,945 actual damages), (4) misappropriated trade secrets regarding Leon County Schools from Encore in violation of the South Carolina Trade Secrets Act ($424,945 actual damages and willful violation of the Trade Secrets Act), and (5) breached his contract accompanied by fraudulent acts ($1,476,039 actual and $2,000,000 punitive damages). (Verdict Form)

Against Clear Touch the jury rendered two verdicts: (1) one for tortious interference with Encore's contractual relations in the amount of $424,945 in actual damages and $500,000 in punitive damages, and (2) the other for violation of the South Carolina Trade Secrets Act in the amount of $424,945 in actual damages and willful violation of the Trade Secrets Act). (Verdict Form)

On October 9, 2017, Encore filed and served its Motion for Judgment, in which it asked the Circuit Court to enter judgments in the foregoing amounts plus $849,890 in exemplary damages, two times the actual damages, against each of Trask and Clear Touch, based upon the jury's findings of both parties' willful violation of the Trade Secrets Act. (Verdict Form; Plaintiff's Motion for Judgment, p. 7)

On April 2, 2018, the Circuit Court entered a Final Order and Judgment in favor of Encore against Trask in the amount of $7,917,468.40 and against Clear Touch in the amount of $1,715,335. (Final Order and Judgment, pp. 10-11) The Court awarded $849,890 in exemplary damages against each of Trask and Clear Touch, based upon the jury's findings of both defendants' willful violations of the Trade Secrets Act. (Final Order and Judgment, p. 4) Pursuant to the Final Order and Judgment, Clear Touch's payment of the full amount of the judgment against it would reduce Trask's judgment liability by $865,445, to $7,052,023.40. (Final Order and Judgment, p. 11, n.3 ("Because the jury determined that both Defendants were liable for misappropriation of Trade Secrets, Defendants are jointly and severally liable to Encore for the actual damages of $424,945, the attorneys' fees of $345,600, and the costs and expenses of $94,900, or a total of $865,445 on this claim. Therefore, payment by one Defendant of this amount on this claim will reduce the other Defendant's liability for this claim. Each Defendant, however, will owe exemplary damages of $849,890 for this claim because each engaged in willful, wanton, and reckless disregard of the Plaintiff's rights."))

In April 2018, Clear Touch made deposits with the Greenville County Clerk of Court totaling $1,715,335, including actual damages of $424,945, attorneys' fees of $345,600, costs and expenses of $94,900, and exemplary damages against it of $849,890 for violation of the Trade Secrets Act, entitling Trask to a credit of $865,445 and leaving Trask responsible for $7,052,023

plus post-judgment interest at 8.5% per annum from April 2, 2018. (Clerk's Email dated January 3, 2019, Defendants' Hearing Exhibit 4)

On July 23, 2018, the Circuit Court entered an Order Appointing Receiver (the "Receivership Order") to monitor and preserve the non-exempt assets of Trask. The Receivership Order also made Trask liable for the Receiver's fees and costs as well as Encore's fees and costs of collection. (Receivership Order, p. 9, ¶ 8 ("Without further Order of the Court, the Receiver shall be entitled to payment of professional fees and expenses incurred by the Receiver. While Trask's appeal remains pending, Receiver's fees and expenses shall be paid by Plaintiff. If the Judgment is affirmed in whole or in part, Plaintiff shall be entitled to reimbursement of such payments from Trask's assets in addition to the Judgment and the legal, accounting, and other costs of collecting same."))

Defendants appealed the Final Order and Judgment and the Receivership Order on July 23, 2018.

On January 3, 2019, Trask made a deposit with the Greenville County Clerk of Court totaling $6,600,769.58. (Clerk's Email dated January 3, 2019; Defendants' Hearing Exhibit 4) That left Trask responsible for $904,515.38 on the Final Order and Judgment (exemplary damages under the Trade Secrets Act of $849,890 plus post-judgment interest on that amount from April 2, 2018), plus the Receiver's fees and costs, and Encore's fees and costs of collecting the judgment, for a total of $1,233,143.53.

Trask then moved to dissolve the Receivership Order, which motion the Circuit Court considered at a February 7, 2019 hearing. In response to Trask's motion, the Circuit Court modified its Final Order and Judgment to rule that, because Clear Touch had paid exemplary damages, Trask was not obligated to pay the exemplary damages assessed against him for his

willful violation of the Trade Secrets Act. (Order Staying Receivership, pp. 4-5) Trask deposited the Receiver's fees and costs,[1] and the Receivership was stayed.

Jami Powell and Encore v. Clear Touch, Trask, and Tamara Trask
(Case No. 2017-CP-23-06520/Appellate Case No. 2019-000530)

Jami Powell, a purported owner of Clear Touch, brought a case against Trask, Tamara Trask, and Clear Touch seeking to undo a conversion of Clear Touch from an LLC owned by Trask individually with others to a corporation owned by Trask's ostensible "retirement plan" (the "Powell Case"). (Powell Complaint) The Circuit Court allowed Encore to intervene as a plaintiff in the Powell Case because of Encore's interest in the outcome. Specifically, if the conversion of Clear Touch to a corporation were ruled to be invalid, Trask would own a membership interest that could be attached to satisfy Encore's judgment. As explained by the Circuit Court:

> [D]isposition of this action may impair or impede [Encore's] ability to protect [its] interest. Although Encore may be able to assert the same claims in a separate action, such proceedings would be inefficient and risk inconsistent rulings. As in *Berkeley Electric*, if the Court rules in this action that Keone's conversion was valid, it could be extremely difficult for Encore to collaterally attack that ruling. Allowing Encore to intervene in this action is the best way to ensure that disposition of this action does not impair or impede Encore's ability to protect its interest in collecting its Judgment and that Encore's claims and the common claims in this action are resolved efficiently and consistently.

(Order Granting Motion to Intervene by Encore Technology Group, LLC, pp. 2-3)

In light of Clear Touch's and Trask's deposits with the Clerk of Court, the defendants in the Powell Case moved to dismiss Encore as a party. (Motion to Dismiss, Powell Case) The Circuit Court held that "Encore should be dismissed as a party to this action because it no longer has any interest in the outcome of the claims in this case and as a result lacks the necessary standing to pursue its claims." (Order on Motion to Dismiss, Powell Case, p. 1) Specifically, the Court

[1] The Circuit Court ordered Trask to deposit the Receiver's fees and costs. (Order Staying Receivership, p. 9)

dismissed Encore from the Powell Case on the basis that "because [Encore] can recover the $849,890 in exemplary damages under the Trade Secrets Act from only one Defendant, the Defendants [Trask and Clear Touch] have paid the entire balance of the judgments against them into the Court, fully securing their outstanding debt to Encore resulting from the verdict, and therefore Encore has no standing to remain a party to this action." (Order on Motion to Dismiss, Powell Case, p. 5)

Encore appealed both the Order Staying Receivership and the Order on Motion to Dismiss in the Powell Case on March 25, 2019, and the Court consolidated Encore's appeals.

STANDARD OF REVIEW

In an appeal based on an error of law, the Court reviews de novo, owing no deference to the lower court's decision. *Carolina First Bank v. BADD, LLC*, 414 S.C. 289, 292, 78 S.E.2d 106, 108 (2015). Statutory interpretation is a question of law subject to de novo review. *Hueble v. S.C. Dept. of Natural Resources*, 416 S.C. 220, 228, 785 S.E.2d 461, 465 (2016).

ARGUMENT

I. The Circuit Court lacked jurisdiction to modify the Final Order and Judgment while it was on appeal to the Court of Appeals, so that such modification was null and void.

Defendants appealed the Final Order and Judgment to this Court on July 23, 2018. In January 2019, they asked the Circuit Court to modify that Final Order and Judgment so that, instead of each Defendant owing exemplary damages for willful violation of the Trade Secrets Act, Clear Touch's payment of exemplary damages would be credited to Trask. The Circuit Court, however, lacked subject matter jurisdiction to so modify the Final Order and Judgment at that point.

"Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal..." and the lower court can rule only on "matters not affected by the appeal." Rule 205, SCACR; *Bunkum v. Manor Props.*, 321 S.C. 95, 98-99, 467 S.E.2d 758, 760

(Ct. App. 1996). When a court acts without subject matter jurisdiction, the action is void and has no effect. *Id.* (*citing DeWitt v. S.C. Dept. of Highways & Pub. Transp.*, 274 S.C. 184, 187, 262 S.E.2d 28, 30 (1980)). The Final Order and Judgment assessing exemplary damages against both Trask and Clear Touch, once appealed, could not be modified by the Circuit Court, because the Circuit Court was without jurisdiction to do so.

Counsel for Encore argued this to the Circuit Court, to no avail:

> MR. ENGLISH: Mr. Smith has appealed this order to the Court of Appeals, so under Rule 205 of the Appellate Court Rules, that issue is before the South Carolina Court of Appeals right now, and it has exclusive jurisdiction over that question. ...
>
> Mr. Smith has also appealed the order appointing the receiver and has also asked the Court of Appeals to stay the receivership and the Court of Appeals has denied Mr. Smith's motion. So, both the final judgment and order and the receivership order are pending before the Court of Appeals.
>
> THE COURT: Okay.

(Hearing on Motion to Dissolve Receivership, Transcript, pp. 17-19) Despite the pending appeal of the Final Order and Judgment, the Court altered the Final Order and Judgment to eliminate the exemplary damages award as to each of Trask and Clear Touch. (Order Staying Receivership, pp. 4-5) Because the Final Order and Judgment was on appeal at the time, the Court lacked jurisdiction to make this alteration. Accordingly, the Court's modification of the Final Order and Judgment was null and void.

II. The Circuit Court erred in modifying the Final Order and Judgment so that two Defendants had to pay only one award of exemplary damages, even though the jury found that both Defendants had violated the South Carolina Trade Secrets Act with a willful, wanton, or reckless disregard of Encore's rights.

Even if the Circuit Court had jurisdiction to modify the Final Order and Judgment, it was an error of law to do so. In its modification, the Circuit Court construed the South Carolina Trade

Secrets Act in a manner that is inconsistent with both the plain language of the statute and well-settled law regarding punitive damages.

A. The South Carolina Trade Secrets Act unambiguously allows the Circuit Court to award exemplary damages in the amount of twice *any award* and, because there were two separate awards—one against Trask and one against Clear Touch—the Court's initial award of exemplary damages against each of Trask and Clear Touch was proper.

The Circuit Court held that the Trade Secrets Act is "clear and unambiguous" in limiting exemplary damages to double any award of actual damages, no matter how many awards of actual damages against multiple defendants there are. (Order Staying Receivership, p. 8) Encore does not dispute that the Act is "clear and unambiguous," but it clearly permits exemplary damages awards that double each award against each defendant.

The South Carolina Trade Secrets Act authorizes "(A) [a] complainant to recover actual damages for misappropriation of trade secrets," and "(C) [u]pon a finding of willful, wanton, or reckless disregard of the plaintiff's rights, the court may award *separate* exemplary damages in an amount not exceeding twice *any award* made under subjection (A)." S.C. Code § 39-8-40 (emphasis added). In other words, if a jury renders a verdict resulting in awards against two defendants, the statute clearly authorizes the Court to award separate exemplary damages against each defendant. If the General Assembly had intended the Circuit Court's interpretation, it would have limited total exemplary damages to twice "actual damages" instead of twice "any award."

The jury found that both Trask and Clear Touch had misappropriated Encore's trade secrets and caused Encore actual damages and that both defendants acted with willful, wanton, or reckless disregard of Encore's rights. (Verdict Form at 4 ("As to [Encore's] violation of South Carolina Trade Secret Act claim *against Defendants Keone Trask and Clear Touch Inc.*, we the jury unanimously find ... for the Plaintiff in the amount of ... $424,945 actual damages.... Was the *Defendants'* conduct in violating the South Carolina Trade Secrets Act committed by the

Defendants in a willful, wanton, or reckless disregard of Plaintiff's rights? x YES")) (emphasis added) The jury verdict resulted in two awards, one against Clear Touch and one against Trask. Accordingly, the Circuit Court should have assessed separate exemplary damages against each defendant. This is what the Circuit Court initially, and correctly, did. (Final Order and Judgment, p. 4, 11 n.3 ("Because the jury determined that both Defendants were liable for misappropriation of Trade Secrets, ... [e]ach Defendant ... will owe exemplary damages of $849,890 for this claim because each engaged in willful, wanton, and reckless disregard of the Plaintiff's rights."))

B. The Circuit Court's modified interpretation of the South Carolina Trade Secrets Act must be rejected as contrary to the law regarding the purpose of exemplary damages—to punish an individual wrongdoer's actions.

The Court must "reject a statutory interpretation when to accept it would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention." *Unisun Ins. Co. v. Schmidt*, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000). "The Legislature is presumed to enact legislation with reference to existing law, and there is a strong presumption that it does not intend by statute to change common law rules." *Hoogenboom v. City of Beaufort*, 315 S.C. 306, 318 n.5, 433 S.E.2d 875, 884 n.5 (Ct. App. 1992), *adhered to on reh'g* (Apr. 29, 1993). Accordingly, a "statute is not to be construed in derogation of common law rights if another interpretation is reasonable." *Id.; Doe v. Marion*, 361 S.C. 463, 473, 605 S.E.2d 556, 561 (Ct. App. 2004), *aff'd*, 373 S.C. 390, 645 S.E.2d 245 (2007) (internal citations omitted). The Circuit Court's modified interpretation of the Trade Secrets Act would lead to an illogical result that is inconsistent with not only the language of the statute but also the common law's established policy justifications for punitive damages like the exemplary damages permitted under the Trade Secrets Act.

The South Carolina Supreme Court has ruled that defendants held jointly and severally liable for actual damages under a claim are still each separately liable for punitive damages. In

McGee v. Bruce Hosp. Sys., 344 S.C. 466, 545 S.E.2d 286 (2001), following the death of a patient caused by negligent treatment, the personal representative for the patient's estate brought suit against two doctors and others. The jury returned a verdict of actual and punitive damages against the first doctor and the second doctor was dismissed. *Id.* at 469, 287. After the first doctor satisfied the judgment, the lower courts ruled that plaintiff could not recover punitive damages from the second doctor because the plaintiff had received damages for the patient's death and could not recover any additional damages under "the principle that there can be only one satisfaction for an injury or a wrong." *Id.* The personal representative appealed the ruling on the question of whether he could seek punitive damages against the respondent second doctor. *Id.* at 470, 287-88.

The Supreme Court held that while the first doctor's payment of actual damages satisfied the respondent second doctor's obligation to pay actual damages, punitive damages were to be treated differently and each doctor could be assessed separate punitive damages awards. *Id.* at 471-72, 288-89. The Court explained:

> While it is almost universally held that there can be only one satisfaction for an injury or wrong, allowing petitioner to seek punitive damages against respondent will not result in petitioner having a double recovery. Although [the first doctor] has paid the punitive damages levied against him, those punitive damages do not reflect the amount of punitive damages for which a jury may find that respondent is responsible.

Id. at 461-72, 288-89 (internal quotations omitted). The Supreme Court based its decision on the rationale that "[p]unitive damages awarded against one tortfeasor do not constitute double recovery with respect to a judgment against another tortfeasor since the purpose of punitive awards is to punish a particular offender rather than to compensate the victim for its injury." *Id.* at n.3; *see also Beerman v. Toro Mfg. Corp.*, 615 P.2d 749, 755 (Hawaii Ct. App. 1980); *Medearis v. Miller*, 306 N.W.2d 200, 204 (N.D. 1981); *Burgess v. Porterfield*, 469 S.E.2d 114, 119 (W. Va. 1996).

Instead of following *McGee,* the Circuit Court relied upon a misunderstanding of the holding in *Smith v. Strickland*, 314 S.C. 192, 442 S.E.2d 207 (Ct. App. 1994). In that case, decided before *McGee*, the Court of Appeals addressed an award to plaintiffs against multiple defendants on four causes of action for the same injury, the same actual damages, and punitive damages under three of the causes of action. The plaintiffs argued that, although they had to elect an award of actual damages under one cause of action, they could add the punitive damages awards from three causes of action for each defendant, and the Court disagreed. The issue here—whether each defendant could be required to pay punitive damages awarded under one cause of action elected by plaintiffs—was not raised or addressed. If it had been, the Court undoubtedly would have, like the *McGee* court, held that each defendant was responsible to pay punitive damages, even after the actual damages award was satisfied.

Because it misinterpreted *Smith* and failed to follow *McGee*, the Circuit Court failed to interpret the Trade Secrets Act consistent with common law, which was error. Faced with two ways to interpret the statute, the Circuit Court should not have chosen the one "in derogation of common law rights" because "another interpretation is reasonable." *Doe*, 361 S.C. at 473, 605 S.E.2d at 561 (internal citations omitted); *see also S. Glass & Plastics Co. v. Duke*, 367 S.C. 421, 430, 626 S.E.2d 19, 23 (Ct. App. 2005) (interpreting statute consistent with "the principles of common law"); *Hoogenboom*, 315 S.C. at 318, 433 S.E.2d at 884 (holding a statute "must be construed with reference to ... well settled [common law] rules").

The Circuit Court's determination that the Trade Secrets Act allows no more than one exemplary damages award of double the actual damages for all defendants—no matter how many defendants are found to have acted in willful violation of the statute—is inconsistent with both the statutory language and the common law principle that punitive damages awards are intended to

punish all offenders separately for their acts. There is no such limitation in the Trade Secrets Act, nor would it be consistent with the rules of statutory construction to assume the General Assembly intended to depart from common law principles and include such a limitation. Under the Circuit Court's interpretation, multiple defendants could work together to misappropriate another party's trade secrets, but each would not face its own punishment through exemplary damages. Instead, all of the defendants, no matter how numerous, would face only a fraction of such damages, or, if paid by one defendant, the others would face no punishment at all. Because such a result would be absurd and defeat the legislative intent to punish trade secret thieves separately, and it is wholly inconsistent with South Carolina common law on punitive damages, such interpretation must be rejected.

III. The Circuit Court erred in dismissing Encore from the Powell Case, after previously finding that Encore had a right to intervene, based upon the Circuit Court's improper modification of the Final Order and Judgment.

The Circuit Court originally, and correctly, held that Encore had standing to intervene in the Powell Case because of Encore's interest in protecting assets that could be used to satisfy its judgment against Trask—*i.e.*, Trask's membership interest in Clear Touch as a limited liability company. But then the Circuit Court incorrectly dismissed Encore from the Powell Case based upon the Circuit Court's improper modification of the Final Order and Judgment, concluding that "because [Encore] can recover the $849,890 in exemplary damages under the Trade Secrets Act from only one Defendant, the Defendants [Trask and Clear Touch] have paid the entire balance of the judgments against them into the Court, fully securing their outstanding debt to Encore resulting from the verdict, and therefore Encore has no standing to remain a party to this action." (Powell Case, Order Granting Defendants' Motion to Dismiss, p. 5) Stated another way, the Circuit Court's error in determining that Trask and Clear Touch could be liable for only one exemplary damages award under the Trade Secrets Act, despite the jury's finding of willful behavior by both of them,

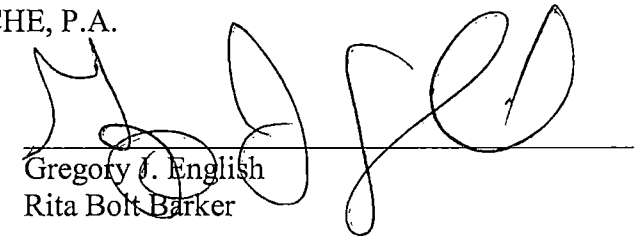
resulted in another error by the Circuit Court when it determined that Encore's judgment was fully secured and Encore no longer had standing in the Powell Case. Because, however, both Trask and Clear Touch owe separate exemplary damages under the Trade Secrets Act, the judgment has not been secured and Encore has standing in the Powell Case to protect its interest in the shortfall between what Trask owes and what he has deposited. The Circuit Court's order dismissing Encore from the Powell Case should therefore be reversed.

CONCLUSION

The Circuit Court erred in modifying the Final Order and Judgment once it had been appealed and then misconstrued the South Carolina Trade Secrets Act, resulting in an improper reduction in exemplary damages due to Encore, incorrect staying of the Receivership Order, and incorrect dismissal of Encore from the Powell Case. The Circuit Court should have followed its original judgment that Encore was entitled to separate awards of exemplary damages from each of Trask and Clear Touch, leaving the Receiver in place and permitting Encore to remain in the Powell Case until such amount was deposited. Accordingly, the Order Staying Receivership and the Order Granting Defendants' Motion to Dismiss Encore from the Powell Case should both be reversed.

Respectfully submitted,

WYCHE, P.A.

BY: 

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June 24, 2019

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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CIRCUIT COURT

The Hon. R. Lawton McIntosh, Circuit Court Judge

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PROOF OF SERVICE

I, Gregory J. English, of Wyche, P.A., attorneys for the 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 INITIAL BRIEF** by first class mail, addressed to the following:

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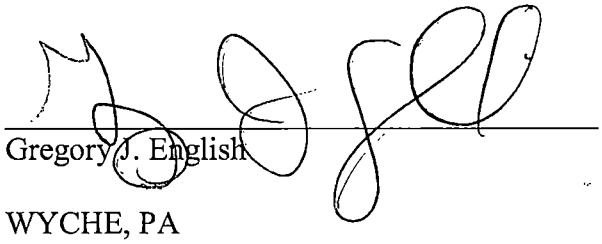

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June 24, 2019

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June 24, 2019

BY FIRST CLASS MAIL

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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.*, Appellate Case No. 2019-000530

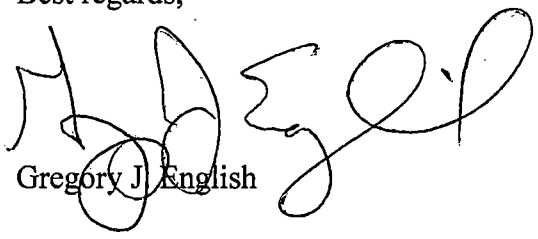
Dear Ms. Kitchings:

Enclosed please find an original and one copy of Appellant Encore Technology Group, LLC's Initial Brief and Designation of Matter in the above-referenced appeal, along with Proof of Service for same. Please return a file-stamped copy of these documents to us in the self-addressed, stamped envelope provided.

By copy of this letter, we are serving one copy of these documents on all parties to this appeal.

Thank you for your assistance.

Best regards,



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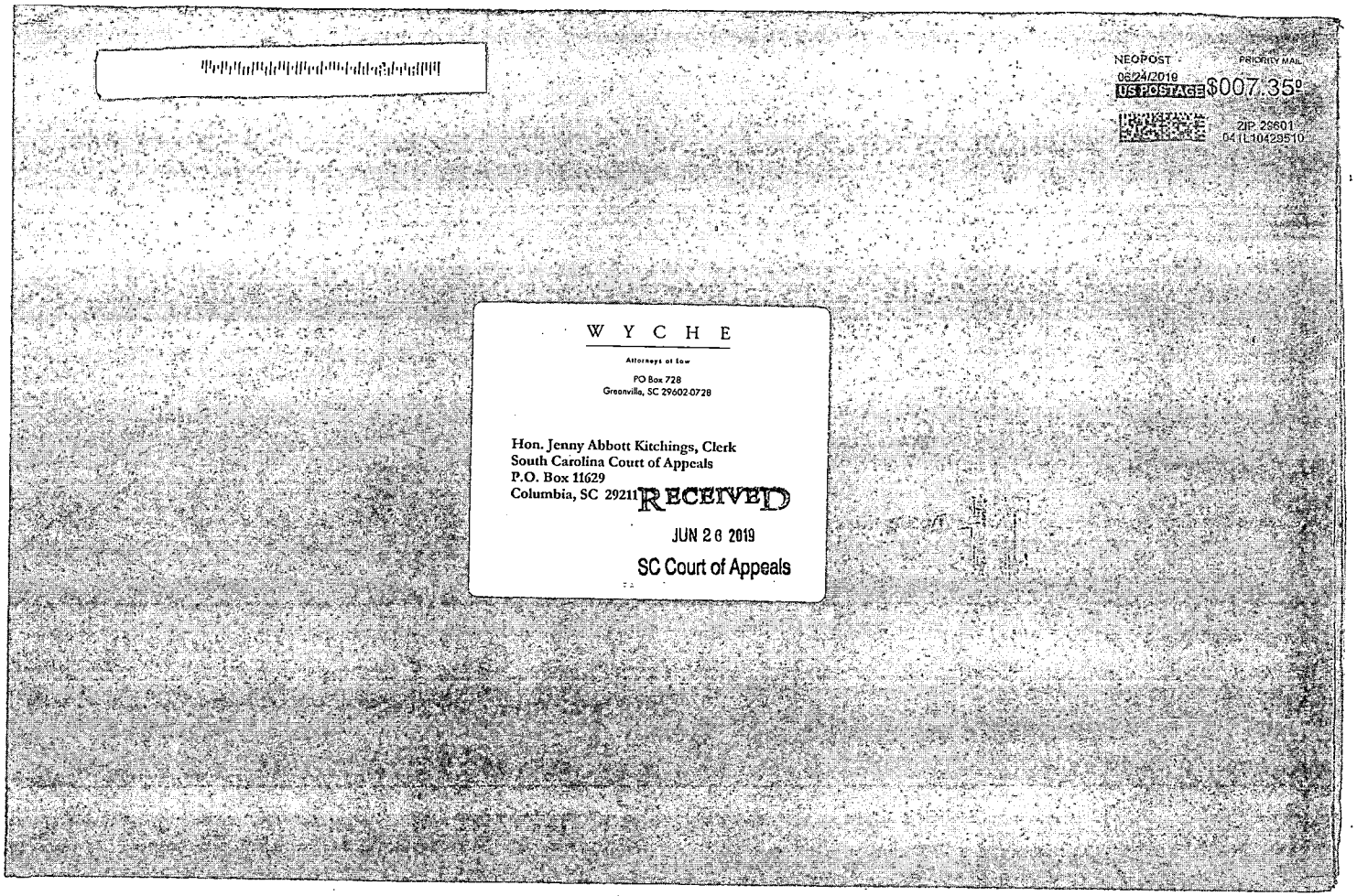
GJE/sc

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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