

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

FILED

IN THE FAMILY COURT FOR THE
NINTH JUDICIAL CIRCUIT

Lori Dandridge Stoney,

2020 DEC 7 4 PM 12: 59

JUDGMENT IN A
FAMILY COURT CA

RECEIVED

May 24 2021

vs.
Richard S.W. Stoney, Sr.,

Plaintiff
JULIE J. ARMSTRONG
CLERK OF COURT

Defendant. *WR* Docket No. 2019-DR-10-3326

SC Court of Appeals

Submitted by: Peter G. Currence McDougall, Self, Currence & McLeod, LLP	Attorney for <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant <input type="checkbox"/> GAL

DECISION BY COURT (check all that apply)

- This action came to trial, hearing or was resolved by consent and an order was rendered.
- This action has been dismissed pursuant to Rule 12(b), SCRCP Rule 41(a), SCRCP
 Rule 43(k), SCRCP Family Court Benchmark
 Other: _____

IT IS ORDERED AND ADJUDGED: See attached order; Statement of Judgment by the Court:

Additional information for Clerk: _____

ORDER INFORMATION

- This is a Temporary Final order. If Final, does this order end the case? Yes No
 Support is not ordered is ordered, and it is to be paid through the court. directly to the CP.
 Case number under which support is paid if different from this one: _____
 This order involves the immediate issuance dismissal of a bench warrant, or does not apply.
 The following motions are ended by this order (include motion filing date): _____
 This order adds or dismisses the following parties to this case:
 dismiss add: _____ dismiss add: _____

INFORMATION FOR THE JUDGMENT INDEX/TRANSCRIPT OF JUDGMENT (§ 20-3-670(B)(1)) Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information to enroll, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment in Favor of (List name(s) below)	Judgment in Favor of (List name(s) below)
Lori D. Stoney Equitable Division \$1,191,491.60		
Lori D. Stoney Attorney Fees \$300,000.00		
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the South Carolina Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: title abstractors and researchers should refer to the official court order for judgment details.**

[Signature]
Family Court Judge

072
Judge Code

11/30/2020
Date

FOR CLERK OF COURT OFFICE USE ONLY

This judgment was entered on the _____ and a copy mailed first class or placed in the appropriate attorney's box on _____ to attorneys of record or to parties (when appearing pro se) as follows:

Peter G. Currence
McDougall, Self, Currence & McLeod, LLP
Post Office Box 90860
Columbia, SC 29290-1860

ATTORNEY(S) FOR THE PLAINTIFF(S)

Jesse Sanchez
98 1/2 Broad Street, Suite B
Charleston, SC 29401

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: _____

Custodial Parent (if applicable): _____

FILED

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE FAMILY COURT FOR THE
NINTH JUDICIAL CIRCUIT

2020 DEC -4 PM 12: 59

JULIE J. ARMSTRONG
CLERK OF COURT

Lori Dandridge Stoney,

Plaintiff,

BY *KCR*)

vs.

Richard S.W. Stoney, Sr.,

Defendant.

FINAL ORDER

Docket No.
2019-DR-10-3326

Plaintiff's Attorney: Peter G. Currence

Hearing Dates: September 28-30, 2020
and October 1-2, 5-7, 2020

Defendant's Attorney: Jesse Sanchez

Judge: A. E. Morehead, III

Guardian ad Litem:

Court Reporter: Sharon Vizer

This matter came before the Court for a final hearing on the merits on September 28, 2020 through October 7, 2020. Plaintiff appeared personally with her attorney, Peter G. Currence. Defendant appeared personally with his attorney, Jesse Sanchez.

I have reviewed the record and the file in this matter, considered the extensive history in this case, the affidavits, the exhibits and supporting documentation submitted by each party to the Court, have listened to the testimony and the arguments of counsel, and I find as follows:

1. Plaintiff and Defendant are citizens and residents of Charleston County South Carolina and have been for more than one year immediately prior to the commencement of this action.

2. Plaintiff and Defendant were married on October 12, 1996. They have one child, a daughter, who was born in 1999. The parties separated on March 9, 2009.

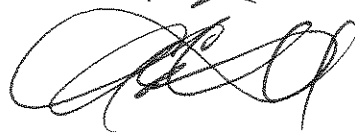
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[Handwritten Signature]

3. This action was filed by the Plaintiff on April 23, 2009, under the original case number, 2009-DR-10-1638. The parties' daughter was about nine and a half years old at the time. Venue was transferred to Orangeburg County and the case was assigned docket number 2009-DR-38-521. This case was originally tried from March 28, 2009 through April 2, 2009 and from May 23 through May 27, 2009. On July 18, 2011, an INTERIM ORDER was issued, divorcing the parties on the ground of one-year continuous separation, despite the Plaintiff's request that the divorce be granted on the ground of Defendant's adultery.

4. On September 16, 2011, a FINAL ORDER was issued, addressing child custody, child support, spousal support, insurance, equitable division, and attorney's fees.

5. Plaintiff appealed the trial court's INTERIM ORDER and FINAL ORDER. The Court of Appeals issued its first Opinion filed July 27, 2016. Defendant and Intervenor filed Motions for Rehearing, which were denied on September 9, 2016. Defendant and Intervenor petitioned for Certiorari to the Supreme Court. The Supreme Court issued two Opinions for Certiorari and remanded the case to the Court of Appeals to address the standard of review.

6. The Court of Appeals issued its second Opinion (the "2018 Opinion") filed August 29, 2018. The 2018 Opinion granted the Plaintiff a divorce on the ground of adultery, reversing the lower court order, which had previously granted the parties a divorce on the no-fault ground of one year continuous separation. The 2018 Opinion remanded the issues of an outstanding contempt issue, alimony, child support, life insurance, equitable division and attorney's fees and costs to the trial court. Defendant and Intervenor again filed Motions for rehearing, which were denied on September 9,

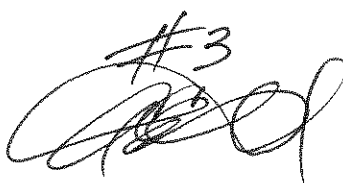
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2018. Defendant and Intervenor again petitioned for Certiorari to the Supreme Court. Both petitions were denied by Order dated June 28, 2019 and the Remittitur was filed on July 2, 2019.

7. Upon remand, The Honorable Randall E. McGee changed venue back to Charleston County by ORDER CHANGING VENUE (By Agreement of All Parties) dated September 16, 2019. The Honorable Wayne M. Creech was appointed the Chief Administrative Judge to oversee the matter. The ORDER DESIGNATING COMPLEX CASE dated November 5, 2019, issued by Judge Creech ordered that the case be assigned to one judge. By ORDER dated November 12, 2019, Chief Justice Donald W. Beatty vested the undersigned with exclusive jurisdiction as the Family Court Judge to hear and dispose of this case.

8. This Court first had a conference call with the attorneys involved in this matter on January 2, 2020. At the time, Peter G. Currence, Esquire represented the Plaintiff, Kate Schmutz, Esquire represented the Defendant, and Jerry Theos, Esquire represented the Third Party Intervenor, Theodore D. Stoney, Jr. Because of the various schedules of the attorneys and the court, it took some time to set the hearings on a number of motions and contempt hearings. They were initially set to be heard March 26, 2020. However, due to COVID-19 shutting down the court, they had to be postponed. The court then conferred further with the attorneys. Mr. Currence wanted the hearings to go forward via WebEx. However, Mr. Theos wanted them heard in person due to the complexity of the case.

9. The hearing date was therefore not able to be reset until June 16, 2020 at which time the following motions and Rules to Show Cause were heard:

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- i. Motion to Compel Compliance with Subpoena *duces tecum*, filed August 19, 2019 regarding non-party Haynsworth, Sinkler, Boyd, P.A.;
- ii. Plaintiff's Motion for *Pendente Lite* Relief filed September 3, 2019;
- iii. Plaintiff's Motion to Compel Discovery to Defendant, Richard Stoney filed February 3, 2020;
- iv. Plaintiff's Motion to Compel Discovery to Third Party Intervenor, Theodore Stoney, Jr. filed February 3, 2020;
- v. Plaintiff's Petitions for Rule to Show Cause and Supplemental Petition for an Order and Rule to Show Cause filed March 6, 2020;
- vi. Rule to Show Cause filed March 5, 2020 and March 27, 2020;
- vii. Theodore Stoney's Motion to Dismiss Intervenor, Theodore D. Stoney, Sr. Pursuant to SCRCP 24(A), filed March 16, 2020
- viii. Theodore Stoney's Motion to Strike Plaintiff's Supplemental Answer to Third Party Intervenor's Complaint and Motion to Dismiss and Strike Plaintiff's Counterclaim to Third Party Intervenor Theodore Stoney's Complaint in Lieu of Answer filed April 13, 2020;
- ix. Plaintiff's Second Supplemental Motion for *Pendente Lite* Relief filed April 24, 2020;
- x. Motion for Joinder of Parties Pursuant to Rule 19 SCRCP filed March 25, 2020; and
- xi. Motion to Appoint Sequestrator and/or Interim Management regarding The Boathouse at Breach Inlet and 101 Palm Boulevard (LLC).

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10. Ms. Schmutz was relived as counsel for Defendant Richard Stoney by Order dated May 27, 2020, and Defendant appeared *pro se* at the June 16, 2020 hearing. This Court heard the motions and rules and found Defendant Richard Stoney in contempt with regard to two rules and ordered that he be immediately incarcerated, pending his purging his contempt in those matters. Defendant Richard Stoney wanted time to comply and purge his contempt, and Plaintiff Lori Stoney graciously told the Court that she had no objection to him having until June 19, 2020 (3 additional days) to comply. Thereafter, the Court amended its Order to allow for this. Defendant complied with one Contempt Order and purged his contempt by paying \$5,071 in attorney fees to Plaintiff's attorney, but on June 19, 2020 he appealed the other Contempt Order, which involved having transferred an interest in a marital asset. He was ordered to pay \$125,000 to Plaintiff's attorney, to be held in escrow, until such time as the issues between the parties were resolved.

11. Chief Judge Lockemy initially granted Defendant a temporary stay as to the requirement that he report to the Charleston County Detention Center on June 19, 2020, but subsequently that stay was dismissed and lifted effectively two weeks from the date of his Order. One day before the contempt order was to go into effect, Defendant Richard Stoney appealed the Order to the Supreme Court by filing a Petition for Supersedeas and a Petition for Certiorari. Chief Justice Beatty initially granted a temporary stay of the sentence on July 23, 2020.

12. This Court also issued various Orders on the Motions and Rules heard on June 16, 2020, including an Order allowing Third Party Intervenor, Theodore D. Stoney, Jr. (hereinafter "Brother") to be dismissed as a party in this case. From that point forward, the case proceeded with the Plaintiff and Defendant as the only parties. The

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SUPPLEMENTAL TEMPORARY ORDER, *inter alia*, denied Plaintiff's request to add certain parties, which also resolved Plaintiff's MOTION FOR JOINDER OF PARTIES PURSUANT TO RULE 19 SCRCP, denied Plaintiff's request for the transfer of 101 Palm Boulevard and Two Island Marina and denied Plaintiff's request that a Sequestrator be appointed to assume operations of the Boathouse at Breach Inlet (BHBI). The Court ordered Defendant to pay unallocated payments of \$3,000 per month to Plaintiff with a final allocation of these payments to be made at the final hearing and ordered Defendant to pay \$100,000 to Plaintiff, \$50,000 on July 10, 2020 and \$50,000 on August 10, 2020, without prejudice as to its characterization at a final hearing. Defendant was to provide monthly financials, if prepared, to Plaintiff. The issue of the outstanding fees and costs owed to McKay and Amos was held in abeyance until the final hearing.

13. On August 19, 2020, while the Supreme Court's stay on the contempt order was in effect, this Court heard four (4) additional motions including a MOTION TO COMPEL DISCOVERY TO DEFENDANT RICHARD S.W. STONEY, SR. filed July 16, 2020, a MOTION TO COMPEL DISCOVERY TO DEFENDANT RICHARD S.W. STONEY, SR. filed July 22, 2020, a MOTION TO COMPEL COMPLIANCE BY A NON-PARTY TO A SUBPOENA DUCES TECUM filed August 10, 2020 (BHBI), and a MOTION TO COMPEL COMPLIANCE BY A NON-PARTY TO A SUBPOENA DUCES TECUM filed August 10, 2020 (Ellis Creek Fish Camp, LLC). The Court heard three (3) additional Petitions for Rules to Show Cause as follows: 1) an ORDER AND RULE TO SHOW CAUSE filed on July 22, 2020 based upon a CONTEMPT PETITION dated July 21, 2020, alleging that Defendant violated the TEMPORARY ORDER filed June 29, 2009 (hereinafter the "2009 ORDER") by failing to maintain life insurance in existence without

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change of beneficiary, and that Defendant violated the SUPPLEMENTAL TEMPORARY ORDER filed June 29, 2020 (hereinafter "2020 ORDER") by failing to provide information on the insurance policies as set forth in the 2020 ORDER; 2) an ORDER AND RULE TO SHOW CAUSE filed July 16, 2020, based upon a CONTEMPT PETITION dated July 11, 2020, which alleged Defendant violated the 2020 ORDER by (1) failing to pay \$50,000 to Plaintiff by July 10, 2020, (2) failing to provide copies of insurance policies and trust documents, and (3) failing to provide financial information regarding the entities in which he has an interest; and 4) an ORDER AND RULE TO SHOW CAUSE issued on August 12, 2020, based upon a CONTEMPT PETITION dated August 11, 2020 which alleged Defendant violated the 2020 ORDER by (1) failing to pay \$50,000 to Plaintiff by August 10, 2020 and (2) failing to pay Plaintiff \$3,000 on August 1, 2020. Capers Barr, Esquire, made a special appearance to represent Defendant Richard Stoney at the August 17, 2020 court ordered mediation and with regard to the three (3) Petitions for Rules to Show Cause being heard on August 19, 2020.

14. Following the August 19, 2020 hearings, the Court issued an ORDER ON MOTIONS TO COMPEL filed September 11, 2020, in which it held that "[i]t is clear that much of the information obtained by Plaintiff comes from subpoenas to third parties, and not from Defendant. The Defendant has not complied with Interrogatories and Requests for Production...." The court further held that "[i]f Plaintiff is forced to obtain information through third parties that Defendant says doesn't exist or he could not get it, then the court will sanction him as provided by Rule 37 SCRPC, and he will not be permitted to present any claims or defenses to those particular issues."

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15. As to the Rule to Show Cause filed July 22, 2020, Defendant was not found in willful contempt for failing to maintain life insurance but was ordered to immediately designate Plaintiff as beneficiary of \$1,000,000 on one of his existing life insurance policies. As to the Rules to Show Cause filed July 16 and August 12, 2020, for failing to pay attorney's fees in the amount of \$50,000 on July 10th and \$50,000 on August 10th, the court did not find Defendant in contempt, noting that Defendant already had the requirement to pay \$125,000 which was on appeal and under temporary supersedeas by the Supreme Court. Therefore the Court found that there was uncertainty as to whether Defendant could pay \$100,000 in attorney's fees. However, Defendant was held in contempt for failing to make the \$3,000 payment to Plaintiff and went directly to jail. Within hours, he had purged that contempt and was back out of jail.

16. On August 25, 2020, in an Order signed by all five (5) Justices, the Supreme Court denied Defendant Richard Stoney's Petitions for Supersedeas and Certiorari. Thereafter, the trial court gave Defendant Richard Stoney five (5) days to comply with the contempt Order or report to the Charleston County Detention Center. Defendant did comply and reported to CCDC to begin his ninety (90) day jail sentence as ordered.

17. Jesse Sanchez, Esquire, filed a Notice of Appearance on behalf of the Defendant dated August 26, 2020. Also on August 26, 2020, Defendant filed DEFENDANT RICHARD STONEY'S RULE 60(B)(5) MOTION FOR RELIEF FROM CONTEMPT ORDER (FILED 06/16/20) AND CONTEMPT ORDER (TRANSFER OF ASSETS) (FILED 06/29/20) with the trial court. The court held an emergency hearing via WebEx on September 2, 2020, at which time Defendant's counsel presented a new proposal from the Defendant to get certain property back into the marital estate and asked

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that this Court purge Defendant's contempt. Thereafter, this Court found Defendant had complied with this proposal, purged his contempt, and he was released from jail.


18. At the September 2nd, 2020 hearing, this Court also heard Defendant Richard Stoney's August 31, 2020 Motion to Compel, alleging that Plaintiff had not complied with his discovery. This Court denied Defendant's motion, finding that Plaintiff had complied with discovery. The Court notes that Defendant testified on October 6, 2020, during the trial of this matter, that he had filed no motions to compel against Plaintiff, which was not accurate. He must have forgotten this Motion which was heard while he was in jail.

19. The issues sent back to this Court on remand by the Court of Appeals required this court to: 1) address a contempt issue not addressed previously by the trial court, 2) determine Defendant Richard Stoney's income, 3) do an alimony analysis, 4) do a child support analysis, 5) address whether Defendant should maintain life insurance for security for support, 6) consider equitable division, including assessing any special equity in assets, and 7) address attorneys' fees and costs and allocation of litigation expenses.

20. The Final Hearing began on September 28, 2020 and concluded on the afternoon of October 6, 2020. This Court then reconvened with the Parties and their counsel to present this Court's rulings from that Final Hearing, on October 7, 2020.

OUTSTANDING CONTEMPT ISSUE

21. The outstanding contempt issue that was sent back to the trial court has been heard. This Court found Mr. Stoney in contempt for failing to pay attorney's fees required by prior orders that were not addressed by the court during the previous trial. Mr. Stoney complied with the contempt orders after the June 16, 2020 hearing.

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DEFENDANT RICHARD STONEY'S INCOME

22. Of major importance is a determination of Defendant Richard Stoney's income, which has been tremendously difficult. The 2011 Final Order, relying solely on his Financial Declarations, held that Defendant made \$100,000 per year. Defendant earns substantially more than his salary, as noted in Footnote 15 to the 2018 Court of Appeals Opinion, "Husband filed only two financial declarations, one in June of 2009 and one in January of 2010, each reflecting his income to be \$8,333 per month. These financial declarations include only the income Husband received from Crew Carolina. They in no way accurately reflect the disbursements paid directly to certain creditors on Husband's behalf, to Husband to cover certain personal expenses, or to Husband (or others for Husband) to fund other business concerns." (Footnote 15).

23. As is not unusual with many business owners, the evidence reflects that Defendant mainly paid personal expenses not included in his Financial Declarations, through his businesses, primarily through Crew Carolina, which he used as his personal checking account. It is undisputed that both parties received substantial benefits through the businesses, including expenses of the then minor child, such as private school and horse riding expenses, cellular phone bills, a vacation home in the North Carolina mountains, renovations of homes, upkeep of homes and properties, vacations, shopping, horse/polo expenses, legal fees for closings, as well as "comped" meals and catering, and payments on Husband's life insurance. Everything was basically paid through Crew Carolina, and when this is considered, Defendant's income or earnings were substantial. The Court is cognizant that many sole proprietors in a business sometimes do that, and notes that it is extremely difficult to separate what is business from what is personal.

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24. Bank statements and other exhibits admitted into evidence reflect that, prior to the 2011 trial and continuing until the present, there have been hundreds of thousands of dollars of business checks written either to Defendant for cash, or to "cash" for which Defendant provided no documentation as to the use of those funds. He testified that most of it was tip money for the employees. As a result, separating business and personal expenses was extremely difficult.

25. It is also undisputed that Crew Carolina and all of these businesses had a very complicated bookkeeping system, including with regard to the accounting of amounts "due to" and "due from" various businesses and individuals. For example, there is in evidence a running account of what Theodore Stoney has put in and taken out of the companies. It would be impossible for the Court to review all of the records, particularly given the nine (9) years that have passed since the first trial in this matter. There may have been a similar account for both Richard Stoney and Lori Stoney, but notwithstanding what is on paper, the Court notes that there is a problem when somebody says he is only grossing \$8,000 a month but is spending \$30,000 a month. Therefore, it is impossible to know whether there has been a full accounting of Defendant's personal income and expenses.

26. It is further undisputed by everyone's testimony that these two parties had a lavish and extravagant lifestyle while they were together. There is also evidence that it is possible they were living beyond their means and were overextended; however, while the Court cannot put a determinate figure on it, the bottom line is that Defendant's income is substantially more than what he represented in his Financial Declarations submitted to the Court in the first trial and during the course of this second trial.

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27. Ironically, every time Defendant files a Financial Declaration, he shows that his expenses, obligations and debts far exceed his income. However, as stated before, quite often when someone is spending substantially more on a monthly basis than he says he is making, there is a problem. Plaintiff's expert, Mark Hobbs, CPA, testified about his analysis of Defendant's income tax returns and other documents. Mr. Hobbs testified that he was unable to make a determination as to Defendant's income; however, in such cases he looks to cash flow as the best measure of an individual's income and he opined that Defendant's income was substantial.

28. While the Court cannot put a determinate figure on Defendant's income, the Court finds that Defendant's income is substantially more than what he is now showing the Court in his new 2020 Financial Declarations filed in this case. In this remanded case, Defendant has filed two Financial Declarations. The first was a Financial Declaration filed for the June 16, 2020 hearing, which was prepared by Christopher Leventis, a CPA out of Columbia, and the second one Defendant filed for the Final Hearing. The first Financial Declaration prepared by the CPA in June showed Defendant making \$24,980 per month, or just under \$300,000 per year. Comparatively, the income included on his October Financial Declaration decreased to \$19,484 per month, or \$233,808 per year. In June, Defendant claimed his net income was over \$20,000 per month and his expenses were listed at \$13,000 per month, indicating he had \$7,000 per month left over, so this Court ordered him to pay the Plaintiff \$3,000 per month, without a determination as to whether that would be for alimony, payment of K-1 income that Plaintiff has not received but has been taxed on, or an advance on equitable division. Defendant then immediately filed a

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request for another hearing saying that he had left off a number of debts and did not have ability to pay Plaintiff \$3,000 per month.

29. Exhibits in evidence show Defendant said at the time of the 2011 trial that he owed his brother, Theodore Stoney, over \$2,000,000. On June 12, 2020, Defendant asserted that debts to his brother were over \$4,000,000 and at trial they were still at \$4,000,000.

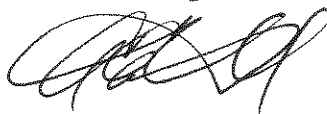
30. For the purpose of the issues the Court needs to address, this Court is making a finding that many payments through Crew Carolina were for personal expenses for both parties and their daughter and they should be considered when evaluating alimony, child support and equitable division.

ALIMONY

31. The issue of alimony requested by the Plaintiff was sent back to this Court for a proper analysis. The Court, having considered all relevant factors contained in SC Code Ann. 20-3-130 *et. seq.* makes the following findings of fact and conclusions of law as to alimony:

- (1) *The duration of the marriage together with the ages of the parties at the time of the marriage and at the time of the divorce or separate maintenance action between the parties.*

In this case, the duration of marriage from the date of the marriage until the date of filing of the action was twelve years and six months. Plaintiff was 29 years old when married, 42 years old when the case was filed, 44 years old at the time of the divorce and she is now 53 years old. Defendant was 44 years old when married, 57 years old when the case was filed, 59 years old at the time of the divorce and he is now 68 years old. This was the first marriage for Plaintiff and the second marriage for Defendant.

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(2) *The physical and emotional condition of each spouse.*

Both appear to be in good physical condition. The Court notes they both had a tremendous polo hobby during the course of their marriage. There is no evidence of any emotional problems on the part of either party.

(3) *The educational background of each spouse, together with need of each spouse for additional training or education in order to achieve that spouse's income potential.*

Both parties have law degrees. Neither party is in need of further training to achieve his or her income potential.

(4) *The employment history and earning potential of each spouse.*

When first married, both parties practiced law. Defendant ultimately phased out of practicing law and into the restaurant business. While the Court cannot put a determinate figure on Defendant's income, it is significant. In certain years Defendant's K-1 income from BHBI alone has been in excess of \$500,000. In spite of the difficulty ascertaining Defendant's income, the Court finds that it is substantially more than the \$20,000 per month or even \$24,980 per month that he reflected on the Financial Declarations he filed in this case in 2020. Many payments through Crew and BHBI were for personal expenses for both parties and their daughter, and also for Defendant's benefit since the initial litigation, and those payments should be considered in his income for the purpose of alimony.

Plaintiff's exhibit number 34 reflects that Plaintiff as a solo-practicing attorney averaged \$68,309 per year following the parties' divorce in July 2011 until 2017, the year she got a job with the Andrews Law Firm. That is a total of sixty-five (65) months.

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When she went to work for the Andrews Law Firm in March 2017, she had a base salary of \$100,000 plus discretionary bonuses. Plaintiff earned \$160,737 in 2017, \$145,000 in 2018, and \$182,500 in 2019. She has only earned her base salary in 2020.

(5) *The standard of living established during the marriage.*

As otherwise addressed herein, as testified to by the parties and witnesses, the parties lived an extravagant life, including horses and polo and extensive travel. They made many trips to foreign countries; France, Spain, and other places in the United States, however, they were possibly living beyond their means.

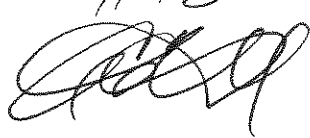
The Court, as noted above, also finds that many payments through Crew and BHBI were for personal expenses for Defendant Stoney and/or the parties and their daughter and should be considered in his income for the purpose of alimony.

(6) *The current and reasonably anticipated earnings of both spouses.*

As stated above, Plaintiff currently earns a base salary of \$100,000 plus discretionary bonuses working for a law firm. She has not received a bonus in 2020 and her employment with Andrews Mediation and Law Firm is ending November 30, 2020, through no fault of her own. Plaintiff has demonstrated an ability to earn a substantial income having earned, as stated above, \$160,737 in 2017, \$145,000 in 2018, and \$182,500 in 2019.

(7) *The current and reasonably anticipated expenses and needs of both spouses.*

Plaintiff's monthly expenses as stated on her Financial Declaration are \$10,937. Defendant's monthly expenses as stated on his Financial Declaration on his September 2020 Financial Declaration, are \$16,740, which includes his \$3,000 per month temporary

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support obligation to Wife and \$3,600 per month he purportedly pays for the emancipated child's college. The monthly expenses do not include all of his debt obligations.

- (8) *The marital and non-marital properties of the parties, including those apportioned to him or her in the divorce or separate maintenance action.*

The marital estate is worth \$2,978,679. Defendant is receiving 60%, or 1,787,207.40 and Plaintiff is receiving 40%, or \$1,191,471.60. Plaintiff has no non-marital assets. As set forth herein, Defendant owns a \$2,500,000 non-marital interest in Kensington Plantation and at the date of filing owned a half interest in six properties on King Street and John Street in Charleston which had substantial value and positive rental income.

- (9) *Custody of the children, particularly where conditions or circumstances render it appropriate that the custodian not be required to seek employment outside the home, or where the employment must be of a limited nature.*

Plaintiff was granted sole custody of the nine year old minor child, who is now emancipated. This impacted her ability to work, particularly during the years that the child was very ill, beginning in the latter part of 2013.

- (10) *Marital misconduct or fault of either or both parties, whether or not used as a basis for a divorce or separate_maintenance decree if the misconduct affects or has affected the economic circumstances of the parties or contributed to the breakup of the marriage.*

The Court of Appeals granted Plaintiff a divorce on the ground of adultery, finding that he had committed adultery. During the trial of this case, the Defendant testified that adultery broke up his first marriage. Defendant's infidelity was a factor in the breakup of this marriage and clearly affected Plaintiff's economic circumstances.

- (11) *The tax consequences to each party as a result of the particular form of support awarded.*

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The Court notes that the lump sum alimony to be received by Ms. Stoney, which is discussed below, will be non-taxable income to her, and the payments will not be deductible for Mr. Stoney.

(12) *The existence and extent of any support obligation from a prior marriage or for any other reason of either party.*

Neither party has a prior support obligation or award of prior support.

(13) *Such other factors the court considers relevant.*

There are no other factors the Court deems relevant.

32. The alimony statute allows for different types of alimony, including periodic that can be modified, lump sum, reimbursement and rehabilitative. After considering all of these factors and the evidence, it is clear that Plaintiff is entitled to spousal support. If this Court had heard this case in 2011, this Court would probably have awarded Plaintiff periodic alimony. Under the case law, if there was then a substantial change of circumstance, it would have been incumbent on the Defendant to file for a modification. But in this trial years later, this Court has the benefit of 20/20 hindsight. When the case was filed, Plaintiff had not worked a lot. The evidence reflected that in the thirteen (13) years prior to the separation of the parties, she had earned around \$40,000 per year. There is also evidence that Defendant had told Plaintiff to limit her work during the marriage to be available to travel and do other things with him, as a family, although Defendant testified otherwise on the witness stand.


33. During the first trial Plaintiff was denied alimony and awarded \$821 per month in child support based on the trial court's findings as to Defendant's income. At the time of the divorce, Plaintiff returned to practicing law full time. Plaintiff's Exhibit 34 shows that from 2012 until 2016, she averaged about \$68,309 per year. Beginning in 2013, the

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Parties' daughter became very ill and continued to experience serious health issues over the years that limited Plaintiff's ability to work. In March 2017, Plaintiff got a job with the Andrews Law Firm earning \$100,000 per year and discretionary bonuses. In 2017 she earned \$160,737, in 2018 she earned \$145,000, and in 2019 she earned \$182,500. In 2020, she has earned only her \$100,000 salary. At the time she obtained this job and was making a good living, Defendant would have been in a position to ask for a reduction in or termination of alimony based on substantial change of circumstances. The Court further notes that Plaintiff's job is ending effective November 30, 2020, due to the firm restructuring and not due to any fault on the part of the Plaintiff. Since we are now in 2020 and have actual knowledge of Plaintiff's post-divorce employment history, it is immaterial to this Court whether the spousal support awarded to the Plaintiff is designated as lump sum alimony or rehabilitative alimony.

34. To award lump sum alimony, however, there must be special circumstances. The undersigned has never tried a case that was eleven (11) years old and considers the situation with this case to be special circumstances. There was also a period of sixty-five (65) months when Plaintiff needed rehabilitation; she had not been practicing law full time during the marriage and needed to get back on her feet. Therefore, the Court finds that Plaintiff is entitled to alimony of \$3,000 per month from July 2011 when the parties were divorced until she went to work in her current job in 2017 and began earning a base salary of \$100,000 per year plus bonuses.

35. Plaintiff's Exhibit 34 reflects that she averaged \$68,309 per year as a self-employed attorney while trying to get back on her feet and caring for a very sick child. Defendant has been paying Plaintiff \$3,000 per month in unallocated support since July

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2020 per the SUPPLEMENTAL TEMPORARY ORDER. Had Plaintiff received an additional \$3,000 per month, or \$36,000 per year, during those 65 months she was trying to get back on her feet, her income would have increased to \$104,309 per year.

36. The parties were divorced on July 18, 2011, and the Plaintiff began earning over \$100,000 in 2017. Therefore, Defendant shall pay Plaintiff lump sum, non-modifiable alimony equivalent to \$3,000 per month for the 5 months in 2011 and the subsequent 5 years, for a total of sixty-five months, or \$195,000. Defendant started paying that on July 1st and the Court is giving him credit for those payments. Therefore, starting with the July 1, 2020 payment, he is required to pay Plaintiff \$3,000 per month in non-modifiable, non-taxable lump sum alimony for a total of sixty-five (65) months, totaling five (5) years and five (5) months. Assuming all payments are timely made, the last payment will be due on November 1, 2025.

37. Plaintiff asked that the payments be made by automatic deposit on the first of each month, but Defendant asked to be allowed to have a check in hand to Plaintiff by the first of each month. The Court will allow Defendant to pay by check to Plaintiff no later than the first of each month (in hand to Plaintiff by the first of the month, not mailed by the first of the month). However, if Defendant makes a late payment, or if any payment is returned for insufficient funds, Plaintiff may file an affidavit with the court to have the payments made through the court, with the applicable fee added (currently 5%).

38. Based on his Financial Declarations, the Defendant has the ability to make these monthly payments, even with his debt obligations. The Court is denying Plaintiff's request that the Defendant be required to pay post-judgement interest on the alimony and

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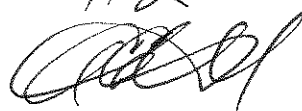

denying her request that she be reimbursed for the tax liability that she has incurred on her K-1 income from BHBI.

LIFE INSURANCE

39. Per a prior order, this Court required Defendant to maintain at least \$1,000,000 in life insurance for the benefit of the Plaintiff under one of his two existing policies, and he has done that, covering Ms. Stoney for \$1,000,000 under the \$3,000,000 policy. He shall continue to maintain this insurance until he has met all of his obligations as set out below with regard to equitable division of the marital estate and attorneys' fees. Once he has done so, Defendant can lessen the insurance from \$1,000,000 to \$200,000, solely to secure payment of the lump sum alimony. Upon his payment in full of the sums required for equitable division, as well as for the lump sum alimony, Defendant will no longer have an obligation to maintain life insurance for the benefit of the Plaintiff. Defendant shall immediately take whatever actions are necessary to allow Plaintiff to confirm the required coverage directly with the insurance company at any time, until the life insurance coverage is no longer required and provide Plaintiff with proof he has done so and contact information for the insurance company.

CHILD SUPPORT

40. The parties' daughter was 9 years old when this case was filed and 11 years old at the time of the divorce. Having found that the Defendant made substantially more than \$100,000 per year, this Court could not use a quantitative amount to run the child support calculations. The 2011 Final Order required Defendant to pay only \$821 per month, based on the finding that Husband's income was only \$100,000 per year. If Defendant's income had been properly calculated by the trial court at the 2011 trial, his

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child support would have been substantially higher than what was erroneously ordered. However, there is also evidence that Defendant paid substantially more than the court-ordered support for his daughter.

41. Ms. Stoney acknowledged that per the June 2009 Temporary Order, Defendant kept the child insured and paid her out of pocket healthcare expenses for a period of time until mid-2017, including transportation and lodging for various visits to doctors in New York and Maryland when their daughter was seriously ill and being treated by specialist who deal with Lyme Disease. With these trips he also covered many of the Plaintiff's expenses. Another example was Defendant placing a pony for their daughter, not at Kensington, but at a private barn, from the time he was relieved of this obligation by Temporary Order during the first case, until the divorce was final. The additional money he has paid, including since the daughter was emancipated, is sufficient. Since 2017, both parties have been actively involved with the daughter's support. Due to her illness, the daughter has not been able to take a full course load every semester, and at times has had to withdraw from classes completely. Defendant has been paying daughter's tuition at the College of Charleston, has paid most of the cost for her housing while in college, and for her car, car insurance and cellular phone. The Court notes that in June 2020, Defendant's Financial Declaration said he was paying \$2,800 per month in total for daughter's expenses. Then, on his October 2020 Financial Declaration, this figure jumped by \$800, to \$3,600 per month. The Court does not know if those figures are accurate, but as previously indicated the changes in his Financial Declarations seem to make his income and expenses "wash out". Mr. Stoney is paying the expenses of daughter noted above, so this Court is not going to order back child support from 2011


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through her emancipation. Additional funds have been previously paid by both parties, and this Court hopes that both parties will continue to support their daughter through her completion of college.

EQUITABLE DIVISION

42. The equitable division statute, South Carolina Code Ann. § 20-3-620 (B) (2014) enumerates the factors this Court must consider when equitably dividing the marital estate. This Court primarily used the Marital Asset Addendum (“MAA”) prepared by Plaintiff’s expert, Mr. Hobbs (Plaintiff’s Exhibit 5), to assist in arriving at the valuation of the marital estate. Mr. Hobbs provided to the Court supported financial information and documents to justify the MAA.

43. The Court is thankful for Plaintiff hiring Mr. Hobbs and placing his analysis into evidence. Without this analysis, the Court would have had little information to rely upon in that Defendant attempted to use the analysis of court-appointed CPA Tracy Amos which was submitted in the 2011 trial, without having Ms. Amos appear to testify and be available for cross-examination. The appellate court found that the way the entire analysis of the financial situation was handled at the first trial was incorrect. Both the Defendant and Defendant’s brother testified that they agreed with Ms. Amos’ analysis used by the trial court in issuing the first Final Order. Both Richard Stoney and Ted Stoney stated that Ms. Amos reached those values after talking to them and their accountant, Ms. Sebastian. However, the Court of Appeals found certain things regarding Defendant’s Brother and debts to have been improperly analyzed in the first case, which is one of the reasons the case was remanded.

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44. When Tracy Amos' analysis was not allowed since she was not present to testify, the Defendant attempted to call another CPA along with another witness regarding values. For the following reasons, the Court did not allow the testimony of James Carroll or Ellison Thomas, CPA, which testimony was proffered by the Defendant. The parties went through extensive discovery and depositions were taken. Mr. Thomas was hired by Defendant to assist with mediation, but not in preparation for trial. Then, suddenly, as evidence was coming out in the trial, Defendant tried to put up these witnesses to "pit" against or contradict other witnesses' testimony, when no notice and no depositions were able to be taken and no information was given or produced until after the trial began and after Plaintiff's expert had testified. Therefore, the Court did not allow it, as that simply was not fair.

MARITAL ASSETS AND DEBTS

(1) Accounts. At the date of filing, Plaintiff had a Carolina First checking account valued at \$1,820. Husband had a SCBT checking account valued at \$3,200, a Money Market account valued at \$50,794, and a Bloomberg IRA valued at \$2,000.

(2) Whole Life Insurance. At the date of filing, Defendant had an AIG whole life insurance policy. The net cash value of this policy, with the loans against the policy factored in, was \$48,918. Husband cashed in this policy in 2012.

(3) Business Entities and Properties.

a. The Boathouse at Breach Inlet, LLC. At the date of filing, Husband owned 70% of this marital entity, Plaintiff owned 5%, and 5% was in an irrevocable trust for the parties' daughter, with Plaintiff as the Trustee. Husband has controlled not only the interest in his name but also that in the Plaintiff's name and in trust for

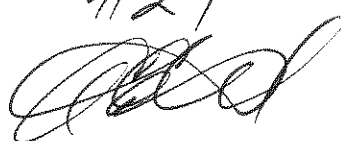
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daughter. Mr. Hobbs valued this entity at \$3,000,000 and valued the parties' seventy-five (75%) marital interest at \$2,250,000. The Court notes that Defendant's Financial Declaration dated June 16, 2020 listed a value of \$2,568,747 for this entity. The Court accepts Mr. Hobbs' expert opinion as to the value of this entity and the marital interest in the entity.

b. Stoney Atlantic, LLC: At the date of filing, this marital asset, Defendant's single member limited partnership (described as a "shell company" by Mr. Hobbs), had a book value of negative \$258 (excluding the property at 101 Palm, which is addressed under "Properties"). \$258 of a 2005 Carolina First debt was allocated on the Defendant's books to this entity.

c. Crew Carolina, LLC: At the date of filing, this marital asset, Defendant's single member LLC, had a book value of \$237,046. (\$807,400 negative net asset value excluding intercompany debt (hereinafter "ID"), add \$1,958,123 net ID on books, less \$323,912 "due to" Defendant Richard Stoney, less \$337,265 "due to" Theodore Stoney, less \$252,500 "due to" Tommy Westfeldt). The \$572,500 amount "due to" Westfeldt was paid down with marital funds by \$320,000 during the pendency of the initial action, to \$252,000, with \$270,000 from the sale of Carolina's Restaurant. The Court notes that \$451,261.74 of the 2005 Carolina First debt was allocated to this entity on the Defendant's books and is included in these figures.

d. Carolina Catering, LLC: Defendant's marital single member marital LLC, closed during the pendency of this action. It had a \$8,146 net asset value

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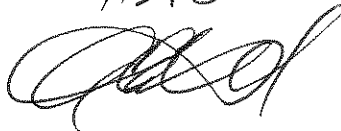
excluding Intercompany Debt (ID), less \$581,788 net ID on books, less \$1,212 “due to” Richard Stoney, for a book value of negative \$574,854.

e. Blue Water Management, LLC: At the date of filing, Defendant's single member marital LLC had a book value of negative \$973,840 (\$19,378 net asset value excluding ID, less \$105,531 net ID on books, less a \$887,687 “due to” Richard Stoney.).

f. Two Island Marina, LLC: At the date of filing, Defendant's single member LLC had \$0 net asset value with \$8,667 net ID on books, less \$37,376 “due to” Richard Stoney, for a book value of negative \$28,709.

g. The Boathouse at East Bay, LLC (hereinafter “BHEB”): Defendant owned 72% of this restaurant entity, which closed prior to the date of filing of this case. This entity has a negative \$113,828 net asset value less \$388,716 net ID on books, and \$26,135 “due from” Richard Stoney, for a book value of negative \$476,409. The court notes that \$140,383.82 of the 2005 Carolina First loan was allocated on the books for this entity.

h. Carolina's, LLC: Defendant owned 65% of Carolina's, LLC, a restaurant that Defendant sold for \$550,000 during the pendency of the original case. \$270,000 of the proceeds were applied to the debt owed to Westfeldt, as set out under Crew Carolina, LLC. The 65% of net asset value excluding intercompany debt was \$88,989, 65% of the net intercompany debt on the books was \$402,288, and \$19,718 for 65% of “due from” Richard Stoney on Defendant's books. Defendant Stoney received additional payments from the purchaser of

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\$99,755 in or about July 2011. The book value of 65% of this entity is negative \$193,826.

i. The Boathouse on Lake Julian, LLC (hereinafter "BHLJ"): Defendant owned 88% of this restaurant entity, which closed prior to the date of filing of this case. \$474,792.78 of the 2005 Carolina First debt was allocated on the books to this entity. The value of this entity is \$0, although the Court notes that there was a \$28,802 total "due from" Richard Stoney allocated on the books of this entity. (Plaintiff's Exhibit 5, line 2.k.2.)

j. The Boathouse at Ellis Creek, LLC (hereinafter "BHEC"): The Husband was 65% owner of this marital restaurant entity, which restaurant opened in February 2009 and burned in March 2009. In 2009, approximately \$770,000 in insurance proceeds were received by Defendant Stoney as a result of the fire, for business interruption and property. There was an adjustment made by Mr. Hobbs for \$674,503 for expenses that were claimed by Defendant, but were alleged by Plaintiff to be unsupported, as well as \$95,285 in additional insurance funds that were received but not accounted for by Defendant. This Court finds the net value is \$112,150.

k. Choto Restaurant, LLC: Choto Restaurant, LLC was Defendant's single member LLC related to a marital restaurant project in Knoxville, Tennessee that closed prior to the date of filing of this case. At the time of the first trial, Defendant had obtained summary judgment against a former partner. However, Defendant did not respond to Requests to Produce or written communications from Plaintiff's attorney requesting information on this lawsuit. Pursuant to Rule 37


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SCRCP and the ORDER ON MOTION TO COMPEL, this Court precluded Defendant from introducing any testimony or evidence on this issue and accepted Plaintiff's value of \$250,000 for this asset, based on the evidence presented by Plaintiff.

l. J & S Fish and Cumberland & East Bay: Defendant started discussing this project with Keith Jones prior to the date of filing and invested a significant amount of funds, approximately \$66,000, in the project from Crew, a marital asset, shortly after the date of filing. The value of the Defendant's 47.35% share of J & S Fish, LLC (the restaurant management company), which owned 75% of Cumberland and East Bay, LLC (the Amen Street restaurant) is \$535,000.

m. Clouter Point, LLC: Husband entered into this investment in 2007, with his brother, his sister, and a family friend. At that time, Defendant Stoney incurred mortgage indebtedness of \$713,725 associated with this property. There is no evidence that the loan proceeds were used for a marital purpose and not used for this investment. The property sold in May 2009, at which time Husband received \$482,711 for his interest and paid \$282,143 toward the debt. Wife asserts that she would accept that property is also non-marital, provided that the debt is non marital. The Court accepts Husband's claim that the property is non-marital and finds the associated debt is also non-marital.

n. 38 Romney, LLC: Defendant and his brother Theodore Stoney were the members of this LLC, which owned 38 Romney Street, a property that sold in 2012 for \$700,000. There were \$70,000 in net proceeds to Husband, less \$36,254 net ID on the books. The value of Husband's marital interest is \$33,746.

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o. Lake Julian, LLC: Defendant and his brother owned the Lake Julian restaurant property in the name of Lake Julian, LLC. The property was surrendered to the lender for a deed in lieu of foreclosure and a payment of \$100,000 from each of Defendant and his Brother. Brother also made payments to the lender to satisfy obligations pursuant to the Forbearance Agreement, which said Agreement is addressed herein below. The court accepts Mr. Hobbs' book value for this entity, the debt for which is discussed in more detail herein.

p. Holly Lake, LLC: Husband was a 50% owner of this LLC, which owned a 50% interest in a North Carolina vacation home. Defendant Stoney received \$84,458 from the sale of this home during the pendency of this action.

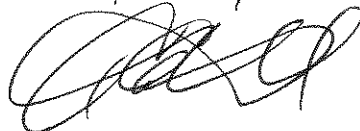
q. 2 Wharfside Street: The closing statement reflects that the marital home at 2 Wharfside Street was sold in October 2011 for \$870,000, shortly after the Final Order from the first trial was entered. The First Federal (first) mortgage was \$631,824, the (second) mortgage with Wells Fargo (a business debt) was \$478,733, and a (third) mortgage with Yaschik (for the boat slip at the marital home also owned by the Parties) was \$67,248, commission and closing costs were \$23,678, for a net deficit of \$341,482. Defendant's counsel pointed out, and Plaintiff agreed, that the marital home had appraised for \$1,500,000. However, prior to the first trial, the trial court gave Brother the right to control the sales price of the marital home and the marital home sold for a \$341,482 loss.

r. Boat Slip: This property was sold by the Defendant after the parties divorced. It had a value of \$49,000, with a \$1,177 adjustment for closing costs, for a net value of \$47,823.


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s. 101 Palm Boulevard: At the date of filing of this action, this marital property was in the name of the Defendant individually. After the first trial, Defendant transferred the property into the name of his single member LLC, 101 Palm, LLC. Plaintiff's appraiser valued this property at \$4,385,000 (\$685,000 for the marina and \$3,700,000 for the restaurant property). There is ample other evidence to support this value. Defendant valued the property at \$4,500,000 on financial statements and in communications with others about a sale of the property. Neither party has done anything to increase or decrease the value of the property since the date of filing of this action, and it is appropriate to use the current value of the property. The First Federal mortgage balance at the date of filing was \$1,720,009. The second mortgage to Westfeldt is addressed as a debt under Crew Carolina and is therefore not repeated here. Defendant has increased the debt on the property since the date of filing. The current first mortgage balance, with Charleston Capital, is \$1,812,018 and accrued interest on that mortgage is \$141,870. There is also a second mortgage with Thomas Westfeldt, which is listed on line 5(c)(4) of Plaintiff's Exhibit number 5. As discussed below, it is unclear to this Court how much interest is due on this mortgage. However, for purposes of valuing the marital estate, the net value of the marital portion of this property is \$2,665,000.

t. 549 East Bay Street, LLC: This property was owned by Defendant with his brother Theodore Stoney and sold on September 20, 2010. The value of Defendant's 50% interest is \$41,509. The debts related to this property are further discussed herein.

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u. Kensington Plantation: Defendant and Brother inherited this property from their grandfather. The Court finds that Defendant's 50% interest in this property is valued at \$2,500,000, per numerous financial statements provided to several banks by Defendant, one of which valued it at \$6,000,000. At the date of filing, there was a \$400,000 debt on this property owed solely by Defendant to Charleston Capital and a pre-marital First Federal mortgage. The net value of Defendant's interest in this property is \$2,100,000. At trial, Plaintiff took the position that for various reasons, Defendant's share of this property had been transmuted into marital property, including that the property was used in support of the marital businesses, substantial improvements to the property were made by the parties during the marriage, and the Defendant used the property to collateralize joint debt, specifically the funds used to satisfy the "2005 loan" referenced herein, which Defendant asserted was marital debt. Analyzing the transmutation/special equity issue, there is no dispute but that the Kensington property was initially non-marital. When Defendant took the loan from Charleston Capital, he had a non-marital mortgage and received non-marital money. When he took that cash and put it into their marital business, he transmuted that cash into marital property. In order to avoid transmutation of Kensington, had the Defendant serviced that mortgage with income derived from the King Street properties, which is also non-marital, there would have been no transmutation; however, if he had paid the mortgage out of income from marital businesses, Plaintiff would have had a stronger argument for transmutation or at least a special equity in the \$400,000. But let us see what actually happened; payments were not

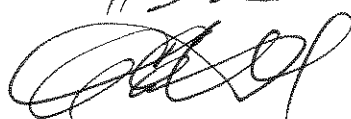
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made on the loan and with the high interest rate, the debt rose to over \$900,000, and brother, Ted Stoney, stepped in and took out a loan and paid off this non-marital mortgage with non-marital money. Additionally, the Court notes that this property has been in the Stoney family for generations. Defendant testified that there was never any intent for this property to be marital. The Court finds this property to be non-marital, but also finds that the indebtedness collateralized by the property is non-marital.

v. 430, 432, 434, and 436 King Street: At the date of filing of this action, title to these four buildings was held 50% by Defendant and 50% by Brother. However, Defendant owned one-third (1/3) of these four (4) properties and his Brother owned two-thirds (2/3). The parties were in agreement that these four buildings, along with two others, (a) were purchased during the marriage and (b) that Defendant used approximately \$102,000 in funds from the sale of inherited property to exchange into the properties. Over the next thirteen (13) years, multiple mortgages on the properties were obtained and payments on them were made by the Defendant and his brother. During the pendency of the first action, Defendant and brother executed documents purporting to give brother the Defendant's share of the buildings (initially, 430, 432 and 436 King in 2010, then 434 King in 2011, shortly before the first trial), without advance notice to Plaintiff. At the time of the first trial, based on limited information available to her, Plaintiff took the position that if the properties were non-marital, any related debt was also non-marital. Defendant maintained that his interest in the properties was non-marital, but the related debt was marital. At the time of this trial, Plaintiff maintained that marital

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funds from marital businesses were used to pay the mortgages and expenses of these buildings over the years and therefore the buildings were marital property. Again analyzing the concept of transmutation, it is not disputed by Plaintiff that the Defendant and his brother had inherited property from their father, and that from the sale of that building, they did a "1031 exchange" to buy six (6) properties, two (2) John Street properties (which were sold during the marriage) and the four (4) King Street properties. Husband's contribution through the exchange was \$102,000, during the marriage. At the first trial, the Plaintiff's position, as reflected on her 2011 asset addendum, which was introduced as Defendant's Exhibit 8, was that she would accept the non-marital character of these properties, as long as the associated debt was also deemed non-marital. However, at the time, Defendant and his brother, who was a party at the time, asserted that the related debts were marital, including the Ameris Bank mortgage. Analyzing the transmutation issue, the King Street properties were initially non-marital. Defendant took out a mortgage on a non-marital asset, so that is a non-marital mortgage. As a result of that mortgage, Defendant received funds that were non-marital. If he had used those funds to purchase another property and kept it separate, it would (initially at least) be non-marital. However, when he took that cash and put it into their marital business, he transmuted that cash into marital property. However, in this case, there is a non-marital asset and a non-marital debt. Had Defendant started taking marital funds to pay that debt, there would be evidence of a special equity in property or transmutation. However, the Court finds that very little, if any, marital money was used to pay on those debts. Therefore, the court concludes that the

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King Street properties are non-marital, and the debts collateralized by the properties are also non-marital.

(4) Personal Property. The parties presented little information about the value of the Webber Cove boat with motor and trailer, the handmade wooden boats, and the polo ponies all of which were kept by the Defendant or any other personal property. Defendant testified that there are three wooden boats, all being stored by the boat builder, John Martin, which boats Defendant testified are in "pristine condition". Plaintiff sold a car during the pendency of the case at a value of \$5,000 and traded another car in. She also sold a horse trailer. There was artwork that was previously located at Carolina's Restaurant, which was identified and valued by Defendant in a document prepared by Defendant's former Controller, Chip Robinson, that was admitted into evidence. Defendant testified that Plaintiff has had possession of one of the pieces, by West Fraser, called "Queen Street Nocturnal" and also a John Doyle painting. Plaintiff testified that she has only ever had possession of the West Fraser painting "Queen Street Nocturnal" and that Defendant has had control of the other pieces. Defendant acknowledged some pieces were sold by him, but he provided no documentation and no other information to the Plaintiff or to the Court.

45. The Court will now make additional findings including as to the marital or non-marital character of various assets and their values, which shall be the Final Order of the Court. First, Defendant attempted to challenge Mr. Hobbs for having provided three different drafts of the MAA within the week prior to trial, drafts which had significantly different and higher values than the final MAA. As reflected in Defendant's Exhibit 1, on the Monday before trial, Mr. Hobbs' draft MAA valued the marital estate at approximately

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\$8,800, 000. Then, two days later, per Defendant's Exhibit No. 1, Mr. Hobbs amended his draft MAA to value the estate at a little over \$12,000,000. Then, at trial, Mr. Hobbs' final MAA (Plaintiff's Exhibit 5) valued the marital estate at approximately \$6,000.000.

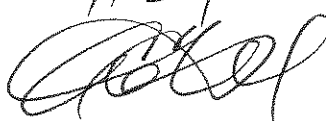
46. However, Mr. Hobbs explained that the MAA was still a work in progress at the time of his deposition. Furthermore, the Court commends Mr. Hobbs, who, after being deposed by Defendant, made appropriate adjustments, based upon information he received during his deposition. The Court accepted Mr. Hobbs' values.

47. During the course of this trial, arguments were presented as to whether certain assets and/or debts should be deemed marital or non-marital.

48. The Court finds, based on the evidence presented and the statements of both parties, that Clouter Point, the King Street properties and Kensington Plantation are non-marital and that the debts on those properties are also non-marital. Therefore, none of those properties, nor the related debts are being factored into the value of the marital estate.

49. As to 430, 432, 434 and 436 King Street, there is no question, and it is not in dispute, that both Ted Stoney and Richard Stoney, through an inherited building from their father, performed a 1031 exchange to purchase the two lots on John Street and the four pieces of property on King Street. Ms. Stoney acknowledged as much and even stipulated in her marital asset addendum from the first trial, entered as Defendant's Exhibit 8 in the present trial, that the property was non-marital as long as the debt was also designated as non-marital.


50. The Court notes that after this litigation started, multiple promissory notes were created and signed between Defendant and his brother, encumbering the King

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Street properties and Kensington. Subsequently, instead of Defendant and his brother paying off that debt, which was non-marital, Brother assumed that debt in purchasing Defendant's 33% non-marital interest.

51. The Court further notes that on April 23, 2009, when this case was filed, the King Street properties were jointly titled, Defendant and his brother each having a 50% undivided interest in the non-marital property. During the first trial, when the LLCs for these properties were organized, documents were filed by Defendant and his brother forming four (4) LLCs (one for each of the properties), reducing Defendant's titled interest from 50% to 33%, and then transferring Defendant's interests in the properties/LLCs to Defendant's brother, including the transfer of Defendant's interest in 434 King just weeks prior to the start of the first trial. Plaintiff acknowledged Husband only had a 33% interest in the King Street properties, but contended she was entitled to an interest in the 33%. Defendant and his brother purported that brother assumed the King Street debt in consideration of Defendant giving up his 33%. The Court finds that the King Street properties and the related debts are non-marital.


52. As to Kensington Plantation, there is no question, but that Defendant and his brother inherited the property. There is also no question that Defendant, through Crew, and other marital businesses, has spent substantial sums on Kensington. However, those substantial sums basically took care of the parties' toys, their hobbies and their involvement occurring on the property. The parties were both actively involved in horses and polo and kept their horses at Kensington. Owning horses requires hiring people to care for them. Monies were paid out of the businesses and otherwise for "grooms" to care for the horses, veterinary expenses, horse related travel costs, as well as for other

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employees who were used at Kensington to occasionally fix or paint something on the property. Those actions, however, provide insufficient evidence of transmutation or a special equity in Kensington. Defendant asserted that his interest in Kensington was non-marital, but the debts related to Kensington were marital. Plaintiff asserted that if the property was non-marital, the debts were as well. The Court finds that Kensington and the debts collateralized by Kensington are non-marital.

53. As to the restaurant known as the Boathouse at Ellis Creek, the evidence shows that the restaurant burned down, and that after the parties divorced Mr. Stoney set up the Ellis Creek Fish Camp restaurant entity on the property. At trial, Plaintiff contended that she was entitled to an interest in the Fish Camp. Plaintiff's Exhibit 5 clearly shows that Plaintiff received an interest in the Boathouse at Ellis Creek, and even in the insurance proceeds that were not accounted. The Court therefore finds that Plaintiff received her equitable interest in that property even though it unfortunately burned, and therefore, Plaintiff is not entitled to an interest in the Ellis Creek Fish Camp restaurant entity. Defendant, however, does maintain a significant interest in that restaurant, and he is receiving income from that entity, which he shows on his financial declaration.

54. As to J & S Fish/Cumberland and East Bay ("Amen Street"), this Court finds that Plaintiff has a special equity interest. There is clear evidence that the project was underway prior to the date of filing, as shown through the Defendant's testimony and a lengthy document dated April 22, 2009 referencing "J & S Fish" ("J & S" stands for "Jones and Stoney"). Evidence was presented in Plaintiff's Exhibit Number 5 that shortly after this case was filed, checks for \$66,000 were written out of Crew Carolina to assist with starting the restaurant. In fact, of the \$66,000, four checks totaling \$58,000 were written

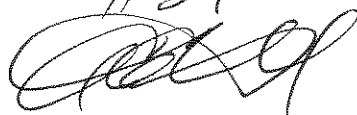
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in a three week period from July 15, 2009 to August 7, 2009. Therefore, because Defendant Stoney used those marital funds from a marital asset to acquire his interest in Amen Street, this Court is including all of his interest in Amen Street in the marital estate.

55. As to Personal Property, Ms. Stoney testified to selling certain items during this litigation, the horse trailer, a sofa, etc. Polo ponies were also sold. Boats were identified, but not really valued. Defendant testified that the wooden boats are in pristine condition and represented that they are worth \$6,000, which is what he put on his Financial Declaration prepared on June 12th by Mr. Leventis. However, the Court has not used that figure in computing the marital estate. Plaintiff testified that Defendant got the majority of the personal property, and that even though the personal property has not been equitably divided, she is willing to call it a wash. The Court is using the values placed on that artwork by Defendant as set out on Exhibit 5 by Mr. Hobbs. The Court does note that Plaintiff received one (Fraser) painting worth \$15,000 from the "Carolina's art". For purposes of equitable division, Mr. Stoney will be deemed to have received the remaining paintings, valued at \$101,250.

56. The Court also points out that it did not take into consideration the substantial tax benefits that Defendant received from all of the write offs put into evidence. It was clearly shown through the testimony and exhibits that Defendant was to stop allocating "due to's" and "due from's" across different businesses, and especially in 2007, since other investors who were involved in these businesses had not approved this.

57. The figures that were shown as owed to and from related parties continued to climb and there was a substantial jump in those figures from 2008 to 2009, as shown on Plaintiff's Exhibit 6, that were eventually written off. As shown on Defendant's tax

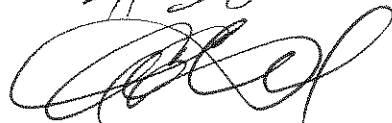
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returns, starting in 2010, he was able to write that off as a loss, getting a tax deduction of over \$300,000 in 2010, over \$1,000,000 in 2011, \$1,200,000 in 2012, and a little less than \$1,000,000 in 2013. Defendant has received these substantial tax benefits, while Plaintiff has received none. When you look at this and the other points made herein about the personal property, the Court is comfortable with the values Defendant himself placed on the Carolina's artwork.

DEBTS

58. Plaintiff's Exhibit 5 submitted by Mr. Hobbs sets out the various debts. Defendant and his Brother testified about the debts along with brother's expert who put Defendant's Exhibits 14, 15 and 16 into evidence, with regard to seven (7) debts Defendant and Theodore Stoney contended are marital debts for which the parties should both be responsible.

59. With regard to Lake Julian, LLC, Defendant and his brother obtained a mortgage together (the "2003 loan") to buy the land and build the restaurant, which was a business decision Defendant and his Brother made. The Plaintiff and the Defendant borrowed money (the "2005 loan"), some of which was for the BHLJ furniture, fixtures and equipment, which was also a business decision. The 2005 loan initially obtained by Plaintiff and Defendant, was collateralized by a North Carolina mountain house, the BHBI, the BHEB, and Defendant's interest in Kensington Plantation. Subsequently, the brother's interest in Kensington was added. It was a business decision to create the Lake Julian restaurant and Defendant and his Brother were both involved. Those were marital assets and marital debts. When they decided to close the business, since numerous assets were securing the loans, including Kensington Plantation, Defendant and his


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brother entered into a Forbearance Agreement. They made a business decision to resolve the 2003 and 2005 loans by each paying \$100,000 for a total of \$200,000, by signing a Deed in Lieu of Foreclosure, and by paying a negotiated amount to fully satisfy the 2005 loan. Theodore Stoney testified that he paid over \$1,174,000.

60. Mr. Hobbs testified that the negotiated amount of \$1,150,000 was paid by Theodore Stoney to satisfy the 2005 loan, which had a balance at the time of \$1,428,093 per Plaintiff's Exhibit 37, and that the Deed in Lieu of Foreclosure and \$200,000 was paid by Defendant and his brother to satisfy the 2003 Note.

61. Oddly, between April 2009 and the time of the first trial in 2011, all of these promissory notes and mortgages were created between Defendant and his Brother. Theodore Stoney indicated that he was trying to simply codify in writing what had occurred. However, as reflected in Plaintiff's Exhibit 7, all of the debts were on the books of the various business entities.

62. Defendant, through his Controller at the time, Chip Robinson, made a business decision to put that \$1,174,000 debt on the books and to allocate it to various entities to be carried on the books. That allocation is reflected on Plaintiff's Exhibit 7. The bank statement is dated December 24, 2008 and, on cross-examination by Mr. Sanchez, Mr. Robinson specifically stated that the decision was made at the time the mortgage was paid off. Defendant's Financial Declaration from the June 2020 hearing shows this exact amount. It was allocated, as a business decision, among businesses that Defendant's brother, Theodore Stoney, was also involved in, as he had an interest in the BHEB, the BHBI, the BHLJ, and Lake Julian, LLC. It is all business debt and accordingly carried on the business books.

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63. In June 2010, after the action was filed, before the case came to trial, the Defendant signed a promissory note saying he owed his brother the \$1,174,000. However, the debt was already on the business books as being owed by the businesses to Theodore Stoney.

64. After the first trial, in January 2012, while the case was on appeal, Defendant signed a mortgage to his Brother on his 50% interest in Kensington for this debt/amount. The Court hopes that Defendant stays in the good graces of his brother, as he has personally signed notes and a mortgage to his brother.

65. Plaintiff has done none of this. This is all on the business books as the result of a business decision made. While it is a marital debt, it has already been considered in the values placed on the various business entities noted herein. As shown in Theodore Stoney's own documents, when looking at the second promissory note, he loaned money to the business and made substantial monetary contributions to the businesses, which is all documented and shown on the books to be due and payable to Theodore Stoney. While it was already on the books of the various entities, Defendant signed promissory notes stating he personally owes this money to his brother.

66. The debt alleged by Defendant and brother regarding the King Street properties pertains to debt related to those properties, which properties and debt the Court has determined are non-marital.

67. As to the debt related to the marital home, designated as loans four and five on Defendant's Exhibit 14, Brother paid off the mortgage on the parties' marital home, which represented a shortfall when the property sold. At trial, Defendant and Brother claimed that he was entitled to this amount. Defendant and Brother also asserted that

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Brother was entitled to the regime fees he paid on behalf of the parties. However, this Court notes that it was Richard Stoney who fell behind in the regime fees and that the June 29, 2009 Temporary Order, issued during the first trial, had required Richard Stoney to pay these regime fees. During this trial, Plaintiff's financial expert, Mr. Hobbs, testified that the debt related to the marital home has been properly accounted for on Exhibit 5 and shall be the sole responsibility of the Defendant.

68. As to the 549 East Bay property, where the Boathouse at East Bay was situated and ultimately closed, Brother Theodore Stoney claimed that he is owed by the parties for the 1031 exchange proceeds he put up for the property and did not get back when the business sold at a loss. Brother also claimed he was entitled to reimbursement from the parties for half of the fees he paid to the court-appointed experts, McKay and Amos, during the first trial.

69. Defendant's brother sought to intervene in this case and became a party. As the trial court noted, the appointment of Tracy Amos was intended to benefit Defendant's brother as well as the Plaintiff and Defendant. Furthermore, the evidence reflects that Defendant and his brother purchased the East Bay property for \$2,723,000 and they sold it for \$2,900,000, so the court is curious as to why there was a deficiency. The closing statement reflects that, after the initial purchase of the property, Defendant and Brother borrowed an additional \$600,000 and put a second mortgage on this property. No testimony was provided to the Court as to the use of those funds, which were presumably used for upfit, improvements to the property, or something related to the property. When the property sold, however, the settlement statement shows that

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nothing had been paid on that second mortgage. There had been no reduction of that mortgage, with \$599,396 still owed.

70. The evidence also showed that \$87,000 was paid to Vanguard Development Group, LLC, for which there is no explanation as to whether that paid off a debt or not. Theodore Stoney undoubtedly retained some kind of interest in that building, or has some kind of arrangement with the group, the LLC which purchased the property.

71. It is undisputed that Mr. Ted Stoney received all of the proceeds from the sale, while Defendant received no proceeds. It appears that Mr. Ted Stoney received over \$300,000 but took \$263,000 and contributed it back to the group that purchased the property. This possibly indicates he may have maintained an interest in the property. Regardless, there is no question that the debt listed by Brother as to the 549 East Bay property is listed on Plaintiff's Exhibit 5 at line 6(e)(5), so it's already been allocated.

72. As to the alleged \$360,000 debt brother, Theodore Stoney, claimed he is owed from the parties, all of the testimony from Brother and Defendant's expert, Ronald Burkett, CPA, reflect that this money was put on Crew Carolina's books by Defendant. Defendant and his Brother both testified the business books were accurate and that they trusted the former Controller, Chip Robinson, who kept the books. In conclusion, the Court finds that the debts alleged by Brother to be owed to him by Richard and Lori Stoney are on the books of the various entities and fully accounted for in those entities.

73. As to the \$247,952 of the 2005 loan for Lake Julian that was allocated to Plaintiff and Defendant, the Crew Balance Sheets lists money "due to/due from" Theodore Stoney, however, the Court was unable to find evidence of a "due to-due from" Richard and Lori Stoney that was allocated to the various entitles. Both Defendant Stoney and

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Ted Stoney testified that they trusted the controller, Chip Robinson, and testified they knew the books were accurate, However, it may have been there, so the Court notes this is the only allocation of marital debt that is not accounted for under Plaintiff's Exhibit Number 5, and is, therefore, is not accounted for in the marital estate.

DIVISION OF MARITAL ESTATE

74. Having determined the value of the marital estate, the Court is required to determine the percentage to apportion to each party by considering the direct and indirect contributions by each party. Defendant provided most of the direct contributions toward obtaining the marital estate through his hard work and also his family members. His brother, Ted Stoney, has contributed substantially in creating this marital estate.

75. Plaintiff worked as a lawyer, however, some of the testimony would lead this court to believe that Defendant encouraged Plaintiff to not work full time so that they could spend more time together. It was also stipulated that Plaintiff assisted Defendant in the operation of the restaurant and business and that was also reflected in Defendant's Exhibit 18 regarding the cookbook. The exhibits that were put into evidence showing the financial earnings of both Mr. Stoney and Ms. Stoney, including Plaintiff's exhibits, show that the amount of money that Mr. Stoney earned was substantially greater than Ms. Stoney. The parties' direct contributions are not in dispute.

76. As to indirect contributions, both parties provided indirect contributions. With regard to their minor child, Plaintiff probably provided greater indirect contributions during the 12 to 13 years that the parties were married, which includes 9 ½ to 10 years of marriage after the child was born. The testimony shows that a nanny started working almost immediately after the parties' daughter was born for two years and that her primary

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function was to look after the daughter. The nanny even went to France with them and Mr. Stoney paid for that. Sarah Stewart testified that for two years (until the child was 2 years old) when she began working as Defendant's office assistant, she was the nanny for the minor child, and that during those two years, her primary function was to help with the child to allow the parties to work and do other things.

77. After considering all of the direct and indirect contributions of the parties, the Court does not find that there should be a 50/50 division between them. The evidence shows that Mr. Stoney's contributions were greater than Ms. Stoney's contributions, both directly and indirectly. Accordingly, the Court finds that it would be more appropriate to perform a 60/40 split of the marital estate, with Mr. Stoney receiving 60% and Ms. Stoney receiving 40%.

78. In Plaintiff's Exhibit 5, Mr. Hobbs valued all of the assets at \$6,353,675. As previously discussed in paragraph 73 his figure did not include the allocation for the Lake Julian loan to the parties amounting to \$247,952. That reduces the assets to \$6,105,723. Exhibit 5 included the non-marital assets involving Clouter Point, Kensington Plantation and the 4 King Street properties. By taking out their values along with their non-marital debts, the value of the marital estate is \$2,978,679. Defendant should receive 60%, or \$1,787,207.40 and Plaintiff should receive 40%, or \$1,191,471.60.

79. Considering that Plaintiff has received a total of \$21,820 for her bank account (\$1,820), the car (\$5,000), and one (Fraser) painting (\$15,000), the Court finds that Defendant owes Plaintiff \$1,169,651.60 to accomplish the 60/40 division of marital property.

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80. Cash to Plaintiff: This Court orders that Defendant shall pay Plaintiff \$1,169,651.60 for her share of the marital estate, on or before January 15, 2021, through the office of McDougall, Self, Currence and McLeod, LLP, 791 Greenlawn Drive, Suite 4, Columbia, South Carolina 20209.

81. Division of Other Personal Property: Per the Defendant's testimony, there are three (3) pristine handmade wooden boats in storage that need to be divided. Plaintiff shall have her pick of one of the three boats and Defendant shall retain the other two as his property. Defendant shall immediately supply Plaintiff with the contact information for the person storing the boats and notify the person storing the boats of the requirements of this Order. Each party shall retain all other personal property in his or her respective possession.

PERSONAL AND BUSINESS

82. This division requires that Defendant retain his interests in all business entities and assets that are listed on Plaintiff's Exhibit 5, which requires that he also assume all business and personal debts listed on Plaintiff's Exhibit 5, including, but not limited to the deficit on the sale of the marital home, and that he indemnify and hold Plaintiff harmless for any and all liability or responsibility therefore.

83. This Court wants to make it perfectly clear that Defendant is specifically responsible for all debts that are owed to his brother, Theodore Dubose Stoney, Jr. Defendant acknowledged those debts by signing promissory notes and a mortgage to his brother making him personally responsible for them. Further, as stated above, these are business debts which are on the books of the entities that Defendant is receiving, and which are reflected on Plaintiff's Exhibit 5. Defendant shall hold Plaintiff harmless and

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indemnify her for any and all liability or financial exposure, including legal fees she might incur, which might arise from these debts to Theodore Stoney.

84. For clarification, Defendant's brother is not a party to this action, although he was a party in the initial suit. Therefore, he may not be legally bound by the conclusions or findings in this Order. He intervened in the original case primarily to protect Kensington, the King Street properties and certain debts he asserted were owed to him by the parties. While he pursued it in the first case, in this litigation, Brother did not really pursue the King Street debts very much, possibly because he had received in excess of \$5,000,000 in selling to the Halls organization some of that asset, but he did pursue these other debts, primarily the debt at Lake Julian. Ultimately, the Court has determined these debts were all business decisions and business debts. They were included in the marital estate, but in this division, the Court finds that Defendant received those assets and is responsible for those debts. He listed those debts to his brother on his Financial Declaration. During the first trial, Defendant signed notes to his brother and has also given his brother a mortgage. Ms. Stoney has signed no debts or obligations to Mr. Theodore Stoney.

85. In his testimony, Mr. Theodore Stoney indicated that, depending on how this case turned out, he might possibly go after (i.e. sue) Ms. Stoney to pursue payment by her of certain debts. Plaintiff strongly opposed Brother being dismissed as a party for this very reason. While he had intervened in the first trial, Brother had sought to be dismissed as a party in the second trial. Brother testified that he had sought to be dismissed as an intervenor because of the amount of money had spent on this case, testifying that as an Intervenor in the initial case, he paid over \$45,000 to his former

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attorney, Charles Williams. He also testified that he paid \$100,000 to attorney Jerry Theos to get him out of this case, and that he paid over \$30,000 to CPA Ronald Burkett who testified in this case. In total, Brother testified that he spent close to \$200,000 in this matter.

86. The Court does not know what Brother might have up his sleeve or what he and Mr. Stoney are contemplating, but this Court wants it to be clear that Defendant shall be solely responsible for those debts to Mr. Ted Stoney under this equitable distribution and that Ms. Stoney will have no liability. The Court does not know whether Defendant and his brother are concocting anything, such as having Defendant transfer all of his assets and property to his brother so that Defendant can then try to assert that he has no assets with which to hold Plaintiff harmless if Brother were to sue Plaintiff. Notwithstanding the foregoing, Mr. Richard Stoney knows the contempt powers of this Court. The Court wants this Order to clearly reflect that Defendant shall be solely responsible for any and all debts owed to or alleged to be owed to his brother, Theodore DuBose Stoney, Jr., and/or his wife Pauline Stoney. This Court has put Defendant in jail twice for not complying with orders.

The undersigned does not know whether he will hear this case in the future, but wants any judge who might hear this matter in the future to have the ability to look at this Court's findings on the record, so that if Defendant attempts to not indemnify and hold Plaintiff harmless, Defendant could potentially face contempt and sanctions, including being sentenced to prison for up to one year, being fined, being required to perform community service or any combination of these three. This Court does not want that to happen, but this case needs to be over. It has been going on far too long; it needs to be over for good,

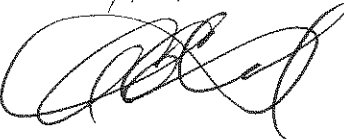
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and this Court wants to stop all the “smoke and mirrors” between Defendant and his brother.

87. In that regard, this Court hopes that this case is not appealed and that the parties can somehow equitably divide their marital estate and address these issues. However, if by chance this case is appealed, the undersigned wants the record to reflect that this Court listened to all the evidence and was called upon to judge the credibility and demeanor of the witnesses. Demeanor does not show up on a piece of paper in a transcript. Sometimes credibility does come across when looking at the evidence and documents presented. However, the Court notes that the Defendant’s demeanor totally changed when he was cross examined by Plaintiff’s counsel. His demeanor on direct with his own attorney was totally different than his demeanor on cross with Plaintiff’s attorney. On cross examination, Defendant became very evasive, played dumb, did not know figures, and could not answer questions. That is what this Court observed in his demeanor. During that testimony, Defendant also made a very interesting comment. The Court notes that when Plaintiff’s counsel was cross examining Defendant with regard to discrepancies and the disputes on the figures and evaluations that he made the statement, “With ink you can put any number on a piece of paper.” That is a true statement. With ink, you can put any number on a piece of paper.

ATTORNEYS’ FEES AND COSTS

88. Pursuant to *E.D.M v. T.A.M.*, 307 S.C. 471, 415 S.E. 2d 812, 816 (1992), the Court has considered the following factors in determining whether to award attorney’s fees and costs to Plaintiff:

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- (1) Each party's ability to pay his or her own fees: As stated herein, Defendant's income and earning capacity are substantially greater than that of Plaintiff. Plaintiff has no savings or other resources from which to pay fees. Her current employment is ending on November 30, 2020, and she has not yet obtained other employment. Her experience gained with the Andrews Law Firm hopefully will enable her to obtain similar employment.
- (2) The beneficial results obtained: In the first case, Plaintiff was denied alimony, received no division of property based upon Husband and Intervenor's claim that the assets had a negative net value, and she was denied attorneys' fees. She appealed, and in this trial, she established that Defendant's income is substantially higher than \$100,000 annually which he asserted at the first trial. She prevailed on the issue of alimony and established that the net assets in the marital estate are quite valuable, at close to \$3,000,000.
- (3) The parties' respective financial conditions: Defendant has a superior financial condition, as he has significant non-marital property, including the King Street properties, Kensington, and potentially a 25% interest in RuRu's and Flying Biscuit, while Plaintiff has none. He has an interest in on going restaurants in Amen Street and Ellis Fish Camp. Defendant is receiving 60% of the marital estate and income producing assets, which will result in Defendant continuing to have a significantly higher income than the Plaintiff.

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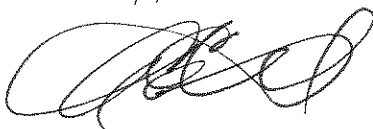

(4) The effect of the fee on each party's standard of living: Requiring Plaintiff to pay all her legal fees and costs would reduce her equitable division award by almost half, which would not be fair. Similarly, it would not be fair to require Defendant to pay all of Plaintiff's legal bills as he had a legitimate right to defend the claims asserted by Plaintiff, especially the equitable distribution claims that Plaintiff was making on non-marital assets like Kensington and the King Street properties. Defendant does, however, have the assets necessary to comply with this order and pay a portion of Plaintiff's legal bills as set forth below. The negative affect on Plaintiff's standard of living that would result should she be required to pay her own attorney's fees would be devastating, as it would deplete substantially all of her liquid assets, and, unlike Defendant, she is not in a position to replenish those liquid assets.

89. In determining the amount of attorney's fees to be awarded to Plaintiff's attorney, the Court considered the factors in *Glasscock v. Glasscock*, 304 S.C. 158, 161, 403 S.E. 2d 313, 315 (1991).

a. The nature, extent and difficulty of this case: As is evident from the procedural history and findings in this Order, this case was complex, spanning eleven years, numerous motion hearings, two trials, and appeals to both the Court of Appeals and Supreme Court. Since the undersigned's appointment in this case in November of 2019, he has heard hearing after hearing, including motions to compel, motions to join, motions to dismiss, motions to strike, contempt rules, and motions for supplemental relief.

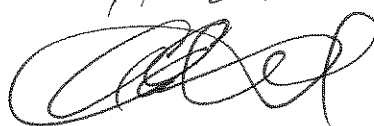
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b. Time Devoted: In the initial case, Plaintiff's counsel had to spend considerable time working on custody and visitation issues, due to Defendant's consistently inappropriate behavior, including through the first trial, as those issues had not been resolved by agreement. The Court of Appeals noted that in the first case Defendant was in willful contempt with regard to four petitions and one supplemental petition for rules to show case, he was evasive and uncooperative with discovery, and he denied the existence of relevant documents that Plaintiff subsequently discovered. In this remanded case, Defendant has been held in willful contempt three times and was evasive and uncooperative in discovery, as evidenced by his failure to completely respond, or to respond at all, to multiple discovery requests and subpoenas, and he was evasive on cross examination at trial. This Court notes that the majority of the information obtained by Plaintiff in preparation for trial had to be gathered through subpoenas, as opposed to being provided by Defendant, as it should have been. Plaintiff's counsel's time devoted to this case was in large part necessitated by Defendant's conduct and behavior, and the time Plaintiff's counsel devoted to this case was reasonable. As evidenced by the fee affidavits submitted by the parties' attorneys, both attorneys have spent a considerable amount of time preparing for and trying this case, particularly Plaintiff's attorney who also served as her lawyer during the first trial. The Court thanks Mr. Stoney for getting an attorney to help him in the trial of this matter, as opposed to trying

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the case himself, and appreciates what Mr. Sanchez has done in a very short amount of time to help Mr. Stoney conclude this case.

- c. Professional standing of attorneys: Both attorneys are well-known and highly regarded in the legal community.
- d. Contingency of compensation: Plaintiff has received notice that as of November 30, 2020, her job with Andrews Mediation and Law Firm is ending. Hopefully, she can get a comparable job with a firm, or can work for herself and continue to make what she has been making. To take Plaintiff's equitable division award and cut it in half for legal fees and costs would be unfair. It is highly unlikely that Plaintiff would be able to pay her attorneys and the other litigation costs owed without depleting most of her liquid assets. On the other hand, Defendant's earning capacity is substantially greater than Plaintiff's and he is receiving 60% of the marital assets, which he can leverage, and he earns a much greater income.
- e. Beneficial Results: In the first case, Plaintiff got sole custody of the minor child. However, she lost her home, was denied alimony, received minimal child support, received no division of property based on the claim that the marital estate had a negative value, and was denied attorneys' fees. She appealed, and in this trial, she established that Defendant's income is substantially more than the \$100,000 he initially asserted, or the \$233,000-300,000 he asserted in this case, and she prevailed on the issue of alimony and life insurance. Defendant's core argument to the trial court has been that the marital debt exceeds the value of the marital assets and that the

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parties owed brother, Theodore Stoney \$4,000,000. Plaintiff prevailed on these issues and proved that the assets in the marital estate, net of debts, are quite valuable, at close to \$3,000,000 and that the debts owed to Brother were otherwise accounted for on the books of various entities.


- f. Customary Fee: Brother testified that as an Intervenor in the initial case, he paid over \$45,000 to attorney Charles Williams, that he paid attorney Jerry Theos \$100,000 to get out of this case, and that he paid CPA Ronald Burkett over \$30,000 in this case. Plaintiff has incurred over \$500,000 in fees and costs over the course of the two cases and two lengthy trials, including \$400,000 in fees to Mr. Currence, a little over \$19,000 to Mr. Paul Tinkler, who initially served as Plaintiff's lawyer, expert fees, private investigator fees to establish adultery, and other litigation fees in excess of \$54,000, for total costs and fees in excess of \$500,000. Defendant presented no evidence regarding his fees when he had an attorney in first action. In this case, Defendant paid \$10,000 to attorney Kate Schmutz and unknown sums to a law firm in Columbia who handled the appeal of the Contempt Order. He testified that he owes attorney Capers Barr \$200,000 from a civil shareholder derivative suit he was recently involved in. However, for unknown reasons, Defendant's June 2020 Financial Declaration stated that he owed Mr. Barr \$125,000. Mr. Barr, as noted above, made a special appearance in this case and represented Mr. Stoney regarding three contempt rules and at mediation, but this Court does not know how much money Mr. Stoney incurred with regard to this representation. Mr.

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Sanchez's bill reflects that in the four (4) months and one (1) week of his involvement, Defendant has incurred \$75,000 in fees from him. Mr. Currence got involved in this case ten (10) years ago, in 2010, and has been involved throughout the first case and this remanded case, including two lengthy trials. Mr. Currence has billed for his time at \$350 per hour and Mr. Sanchez at \$300 per hour. Plaintiff's attorney's fees and Defendant's attorney's fees are well in line with customary fees for similar cases.

90. Considering the above factors, Plaintiff should be awarded attorney's fees and costs. However, as noted above, Plaintiff's total fees are in excess of \$500,000, and it would not be fair to require Defendant to pay the entire amount, as he had a legitimate right to defend equitable division claims regarding Kensington and the King Street properties, and he is getting a larger percentage of the marital estate, based upon his direct and indirect contributions. Plaintiff is receiving equitable division and alimony, which Defendant has denied she was entitled to throughout this litigation and while Defendant prevailed on some issues, the overall results obtained were substantially beneficial to Plaintiff.

91. When considering all the factors, including the beneficial results obtained, the parties' financial conditions, and Defendant's conduct in this litigation, in discovery and at trial, as noted by this Court and the Court of Appeals, I find it appropriate that Defendant shall reimburse Plaintiff \$300,000 for her attorneys' fees and costs, with the same being paid through the office of McDougall, Self, Currence and McLeod, LLP, 791 Greenlawn Drive, Suite 4, Columbia, South Carolina 20209. Ms. Stoney will be responsible for the balance of her attorney fees and costs. The Court further finds that

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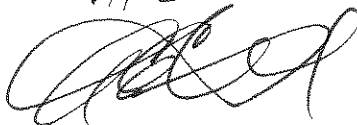
this award of attorney's fees is a domestic support obligation and is not part of the equitable apportionment.

92. In response to this Court's question regarding how Defendant would propose that the marital assets be divided, Defendant testified that he could pay Plaintiff \$600,000 in ninety (90) days. That is nearly \$600,000 less than what this Court has since ordered him to pay Plaintiff as part of equitable division.

93. The Court has also considered what Defendant is getting in this equitable division award.

(1) He is getting all of the income producing properties/entities.

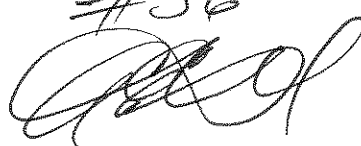
(2) He is getting Plaintiff's five (5%) interest in BHBI. She will no longer have an interest in BHBI. On this note, the Court finds that Defendant shall also be required to immediately have prepared at his expense and provide Plaintiff with whatever documentation is required to transfer her interest to Defendant, such that it can be executed immediately and before the end of the 2020 calendar year, so that Plaintiff has no tax liability related to the BHBI for the tax year 2020. Defendant shall direct his CPA that the Defendant, rather than the Plaintiff, shall receive the K-1 for 100% of the income related to the 5% that has remained in Plaintiff's name until now, for the year 2020. If for any reason it is not possible for this to be effectuated, such that Plaintiff does not get a BHBI K-1 for 2020, Defendant shall be responsible for timely paying 100% of any and all tax liability resulting from any BHBI K-1 for 2020 issued to her, which shall be calculated by Plaintiff's CPA, including, but not limited to any liability resulting from the K-1 income

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and any liability that results from that K-1 income pushing her into a higher tax bracket.

(2) With this division, Defendant will hold a 65% interest in BHBI, which includes the five (5%) percent distributional interest in BHBI that he brought back into the marital estate to purge himself of the contempt sanctions. This Court does not know what these interests in BHBI are worth other than looking at past experience. Based upon how much Defendant has previously sold interests for, and Mr. Hobbs' valuation, each of those five (5%) percent interests should be worth at least \$125,000. In 2010, Defendant transferred a ten (10%) interest in BHBI for \$250,000. He also transferred a five (5%) percent interest to Michael Cox for \$125,000 in 2014. That transfer was returned to purge the Defendant's Contempt Order. Defendant now has a sixty-five (65%) interest in the BHBI, of which just twenty (20%) percent could be worth \$500,000.

(3) Defendant also has an interest in J & S Fish/Cumberland & East Bay/Amen ("Amen Street") which he has diluted since the filing of this action. His brother confirmed, and documentation reflects, that the Defendant transferred twenty (20%) percent of Amen to Mr. Upton for \$160,000, ten (10%) percent to Keith Jones for \$250,000 and five (5%) percent to his brother for \$125,000, but he still maintains an interest in Amen Street. What is not shown on Defendant's Financial Declaration submitted at this trial is any income from J & S Fish/Cumberland & East Bay/Amen Street. However, the 2018 and 2019 schedule K-1's and other evidence reflect that

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Defendant has received substantial funds from Amen Street. The Court notes that with COVID, he might not receive funds from Amen this year, but those are income producing properties in which he has an interest.

Husband represented on his June 2020 Financial Declaration that he has a 25% interest in two restaurants that were opened after the parties divorced, "RuRu's" and "Flying Biscuit". However, he testified that his interest has not been determined and he has not received a return on his interest.

(4) In summary, Defendant has sufficient available assets that he will continue to own or have an interest in, which give him the ability to comply with this Order. Whether he chooses to leverage his stock interest in the Boathouse at Breach Inlet, Amen, Ellis Creek Fish Camp, 101 Palm Boulevard, or whatever other interest he has, this Court finds that Mr. Stoney has the ability to comply with this Final Order.

94. This case has been going on for too long and needs to be over. Therefore, the Court is giving Defendant until January 15, 2021 to pay Ms. Stoney her equitable distribution of \$1,169,651.60, plus the contribution toward her attorney's fees of \$300,000. It is up to Defendant how to accomplish this. In summary, Defendant has the ability to leverage his business interests and/or 101 Palm Boulevard in order to satisfy all, or a substantial portion, of his attorneys' fee and equitable division obligations to Plaintiff by January 15, 2021.

95. A *lis pendens* shall immediately be placed on the 101 Palm Boulevard property, which can be lifted once Defendant's equitable division and attorneys' fees payments to Plaintiff are satisfied. Defendant may only further encumber or transfer an

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interest in 101 Palm Boulevard if the purpose is to obtain a loan or sell an interest in the property to satisfy his equitable division and attorney's fee obligation. The *lis pendens* is to ensure that the bank or other lender/purchaser is aware that the *lis pendens* is to protect this compliance with Defendant's equitable division and attorneys' fee obligations. Notwithstanding the foregoing, Plaintiff shall cooperate and will not interfere with Defendant's ability to sell, encumber, or otherwise re-finance 101 Palm Boulevard in order to satisfy his equitable distribution and attorney's fee obligations under this Final Order. Plaintiff shall cause the Lis Pendens to be lifted in order to allow Defendant to effectuate any of the above transactions.

96. As to 101 Palm Boulevard, Defendant discussed the trap and problems with the Charleston Capital (hereinafter "CCC") loan, and he testified that this litigation required him to pay the exorbitant interest and fees that he is paying. The CCC loan, as noted in trial, started with a ten (10%) interest rate and a default rate of eighteen (18%) percent. Mr. Stoney testified that he was waiting for this case to end, so as to have the ability to obtain a more conventional loan at closer to four (4%) percent. By ending this case, Defendant should be able to do just this, which will substantially lower his mortgage payment. Accordingly, Defendant Stoney shall be allowed to use leverage on 101 Palm Boulevard in order to satisfy all or a portion of his equitable division and attorney's fee obligations.

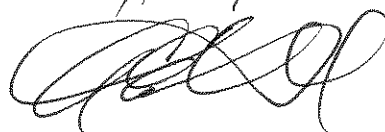
97. If, however, Defendant Stoney does not fulfill his equitable division and attorney's fee obligation by Friday, January 15, 2021, Ms. Lori Stoney shall have the authority to sell that property. Specifically, it is the Order of this Court that if Defendant does not pay Plaintiff her equitable distribution payment of \$1,169,651.60, plus his

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required \$300,000 contribution towards her attorneys' fees, on or before January 15, 2021, then Plaintiff shall have the authority to sell the 101 Palm Boulevard property, which is a marital asset. Plaintiff shall have complete control over the sale of this property, to include selecting the realtor and working with the realtor to show the property. Under these circumstances, Defendant shall not interfere with, or otherwise obstruct, or try to preclude in any way the sale of the property and shall timely, upon presentment, sign all necessary documents to facilitate the listing and sale of the property.

98. 101 Palm Boulevard has been appraised for \$4,385,000 and the evidence reflects that Mr. Stoney's opinion of its value is \$4,500,000. The CCC loan balance is roughly \$2,000,000, of which principle is approximately \$1,812,000 and interest is approximately \$192,000. Additionally, the balance on the Tommy Westfeldt second mortgage is \$252,000, and there has been testimony that this second mortgage has accrued interest. Given the existence of a \$1,000,000 assignment to Mr. Westfeldt on Mr. Stoney's \$3,000,000 life insurance policy, the total amount owed to Mr. Westfeldt may be as high as a million dollars. However, even if all of the foregoing amounts are owed, assuming that 101 Palm Boulevard sells for the appraised value, Defendant should net in excess of \$1,000,000 after the debt and capital gains as estimated by Mr. Hobbs are paid. This Court really doesn't want Defendant Stoney to be forced to sell the 101 Palm Boulevard property, but notes that even after paying off the first and second mortgages, there should be a sufficient balance to almost satisfy Defendant Stoney's obligations of equitable distribution and attorney's fees.

99. The Court agrees with the Defendant that it would be totally improper and unmanageable to grant Ms. Stoney a deed to the 101 Property, thereby making Ms.

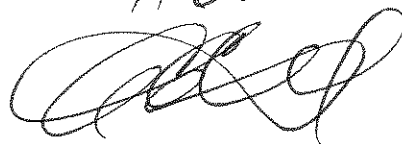
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Stoney his landlord for the Boathouse at Breach Inlet. With this litigation having gone on for over 11 years, and the parties' demonstrated inability to get along during those years, Ms. Stoney should not be his landlord.

100. Therefore, this Court finds that Defendant shall comply with the requirements of this Final Order and pay the Plaintiff \$300,000 towards her attorney's fees and her share of the equitable division, because, if he does not, the 101 Palm Boulevard property, will be sold, with Ms. Stoney in control, in order to satisfy Defendant's equitable division and attorneys' fee obligations.

101. The Court is concerned about the bankruptcy issue raised by Plaintiff's counsel at the time the Court issued its oral ruling, on the record, in this matter, and the Court did not take that into consideration in this decision. However, Defendant has been talking about bankruptcy for eleven (11) years, while BHBI has continued to prosper for these eleven (11) years. Further, the Defendant now has indicated that he has no intention of putting this asset into bankruptcy.

102. In order to help protect Plaintiff's entitlement to the attorneys' fees and equitable division payments he owes Plaintiff, in addition to the lis pendens, discussed above, Plaintiff shall be entitled to place a third mortgage on the property to cover Defendant's attorney's fee and equitable distribution obligations to her, even before the present Order has been drafted, signed and filed. As the third mortgage holder, however, Plaintiff shall fully cooperate with Defendant's efforts to refinance this property, as it relates to Defendant's efforts to comply with this Order. In addition, Defendant shall not, in his capacity as the single member of 101 Palm Boulevard, LLC or as the majority

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interest holder in BHBI, be permitted to enter into a new lease on the property until the attorney's fee and equitable division payments are paid to Plaintiff.

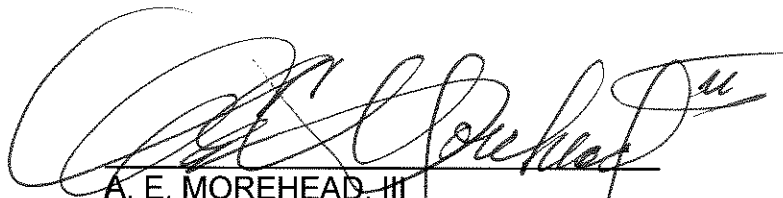
103. Defendant requested that the 5% interest in BHBI held in trust for the parties' daughter be transferred to the daughter since she recently turned 21 years old. The parties shall take the appropriate steps to transfer the 5% interest presently held in trust for their emancipated daughter directly to their daughter and Plaintiff will no longer act as Trustee or have any involvement with that 5%.

NOW, THEREFORE, based upon the foregoing, it is

ORDERED that the findings of this Court as set forth hereinabove be and hereby are made into the Final Order of this Court, in each and every particular; and, it is further

ORDERED that this Order shall be effective immediately upon execution, with the exception of the immediate requirement noted herein that Plaintiff shall immediately, before entry of this order, place a third mortgage on 101 Palm Boulevard.

AND IT SO ORDERED.


A. E. MOREHEAD, III
FAMILY COURT JUDGE FOR THE
NINTH JUDICIAL CIRCUIT

November 30, 2020
Florence, South Carolina