

**RECEIVED**

**Jul 16 2021**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas, Business Court Program

R. Lawton McIntosh, Circuit Court Judge

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Case No. 2019-CP-23-00998  
Appellate Case No. 2021-000365

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McMillan Pazdan Smith, LLC, ..... Plaintiff-Respondent,

v.

Donza H. Mattison, ..... Defendant-Appellant,

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APPELLANT’S VERIFIED PETITION FOR STAY PENDING APPEAL  
OR FOR WRIT OF SUPERSEDEAS

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Pursuant to Rule 241(c)(1), SCACR, Appellant, Donza H. Mattison, by and through her undersigned counsel, hereby files this Verified Petition for Stay Pending Appeal or for Writ of Supersedeas. Appellant requests a stay of the Circuit Court’s Order of February 12, 2021, requiring her to tender her membership units to Plaintiff, during the pendency of her appeal of that Order. The grounds for this motion are as follows: (1) such a stay or writ is necessary to preserve jurisdiction of the appeal or to prevent contested issues in the appeal from becoming moot; (2) such a stay or writ is necessary to protect Appellant’s contractual rights under the Severance Agreement and General Release, signed on December 5, 2017, and the Respondent LLC’s Operating Agreement to receive distributions in the regular course of Respondent’s business; and (3) such stay or writ is necessary

to preserve Appellant's rights to protect her investment in the Respondent LLC, to vote of matters affecting the management of the LLC, and to continue to request and receive information about the financial performance of the LLC during the pendency of the appeal, as provided in the Operating Agreement and the South Carolina Limited Liability Company Act of 1996, as amended, S.C. Code Ann. § 33-44-101 et seq.

Appellant further requests that the stay or writ of supersedeas be granted without the requirement of a bond (or the posting of a minimal bond), because Respondent already has possession of Appellant's capital investment in the firm and, as such, has been enjoying the use of the available equity that Appellant holds in the LLC during pendency of this action. In other words, Respondent owes Appellant money; the appeal and continued proceedings in the case will merely determine exactly how much is owed to Appellant.

The motion is further supported by the Memorandum of Law filed contemporaneously herewith.

Respectfully submitted,

s/ David E. Rothstein  
David E. Rothstein, SC Bar No. 66295  
Rothstein Law Firm, PA  
1312 Augusta Street  
Greenville, SC 29605  
(864) 232-5870 (Office)  
(864) 241-1386 (Facsimile)  
[drothstein@rothsteinlawfirm.com](mailto:drothstein@rothsteinlawfirm.com)

Attorney for Appellant, Donza H. Mattison

July 16, 2021

Greenville, SC.

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McMillan Pazdan Smith, LLC, ..... Plaintiff-Respondent,

v.

Donza H. Mattison, ..... Defendant-Appellant,

---

APPELLANT’S MEMORANDUM OF LAW IN SUPPORT OF VERIFIED PETITION  
FOR STAY PENDING APPEAL OR FOR WRIT OF SUPERSEDEAS

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Appellant, Donza H. Mattison, by and through her undersigned counsel, hereby submits this Memorandum of Law in Support of her Verified Petition for Stay Pending Appeal or for Writ of Supersedeas. Pursuant to Rule 241(c)(1), SCACR, Appellant requests a stay of the Circuit Court’s Order of February 12, 2021, requiring her to tender her membership units to Respondent, during the pendency of her appeal of that Order. The grounds for this motion are as follows: (1) such a stay or writ is necessary to preserve jurisdiction of the appeal or to prevent contested issues in the appeal from becoming moot; (2) such a stay or writ is necessary to protect Appellant’s contractual rights under the Severance Agreement and General Release, signed on December 5, 2017, and the Respondent LLC’s Operating Agreement to receive distributions in the regular course of Respondent’s business; and (3) such stay or writ is necessary to preserve Appellant’s rights to protect

her investment in the Respondent LLC, to vote of matters affecting the management of the LLC, and to continue to request and receive information about the financial performance of the LLC during the pendency of the appeal, as provided in the Operating Agreement and the South Carolina Limited Liability Company Act of 1996, as amended, S.C. Code Ann. § 33-44-101 et seq.

Following the Circuit Court’s Order of February 12, 2021, which required Appellant to tender her membership units in the LLC to Respondent within 10 days and required Respondent to pay Appellant for those shares within another 10 days, and following the Circuit Court’s Form 4 Order of March 17, 2021, denying Appellant’s Motion for Reconsideration, on March 29, 2021, Respondent’s corporate counsel, Richard Few, took it upon himself to deliver to Appellant’s counsel a check dated March 24, 2021, for the purchase of all of Appellant’s 2,035.34 membership units in Respondent MPS, along with a Membership Interest Redemption and Purchase Agreement (hereinafter “Redemption Agreement”), purporting to be effective as of March 1, 2021. (A true and accurate copy of the cover letter, Redemption Agreement, and check are attached hereto as Exhibit A).

The Redemption Agreement would have terminated Appellant’s right to pursue an appeal of the Circuit Court’s orders of February 12 and March 27, 2021, based on the following language: “as of the Effective Date [i.e., March 1, 2021], [Appellant] Seller hereby assigns, transfers, conveys, and delivers to the Company all of the legal and beneficial right, title and interest in and to the Redeemed Interests.” (Redemption Agreement, at 1, ¶ 1) (emphasis added). One of those rights would have been Appellant’s ability to pursue an appeal relating to the Circuit Court’s order regarding the valuation of her units. The Redemption Agreement also included an integration clause, which provides, “This Agreement contains the entire understanding of the parties hereto with regard

to the subject matter contained herein, and supersedes all prior agreements or understandings between the parties hereto. This Agreement will not be amended or supplemented except by a written instrument signed by the Company and Seller.” (Redemption Agreement, at 1, ¶ 4). Although Mr. Few’s cover letter indicated that the Redemption Agreement had already been “executed by the Chief Executive Officer of MPS” (Few Letter, at 1), the document received by Appellant’s counsel was unsigned. Mr. Few’s letter also stated, “I believe you will find the attached Agreement to be straightforward.” (Id.).

On April 1, 2021, Appellant filed the second Notice of Appeal in this case, challenging the Circuit Court’s order granting summary judgment in favor of Respondent and requiring Appellant to sell her interests in MPS back to the company for the price stated in the valuation report of HDH Advisors, as well as the order denying Appellant’s motion for reconsideration. Also on April 1, 2021, the undersigned sent an email to Mr. Few, with copies to Respondent’s counsel in this case, stating in part, “Earlier today, I served a Notice of Appeal from Judge McIntosh’s orders of February 12, 2021 and March 17, 2021, to the South Carolina Court of Appeals. As I read Rule 241(a), SCACR, I believe the service of the notice of appeal automatically stays the order that Ms. Mattison tender her shares to MPS within 10 days. Please let me know if you disagree with my interpretation of the rule, think one of the exceptions in Rule 241(b) applies, or if MPS decides to file some type of motion to lift the stay or for supersedeas.” (A true and accurate copy of the email of April 1, 2021 is attached hereto as Exhibit B).

On April 5, 2021, Respondent’s Counsel Sam Outten responded by email stating, in part, “We believe that several of the exceptions contained in SCACR 241(b) apply, including subsections (2), (3) and (8). To be clear, Ms. Mattison is no longer a member of MPS pursuant to Judge

McIntosh's Order of February 12, 2021." (A true and accurate copy of the email of April 5, 2021 is attached hereto as Exhibit C).

On April 6, 2021, the undersigned responded to Mr. Outten's email of April 5, 2021. In the email of April 6, 2021, the undersigned enclosed red-lines to the proposed Redemption Agreement that would preserve Appellant's "rights to continue with the appeal and any subsequent litigation over the derivative action and the value of her shares, without having to file a motion for supersedeas to delay the consummation of her dissociation from MPS. She wants to make absolutely clear that her negotiation of the check and the assignment of her membership units to MPS will not render her appeal moot." (A true and accurate copy of the email of April 6, 2021 is attached hereto as Exhibit D). The April 6 email also asked when Ms. Mattison could expect to receive her pro rata share of the firm's profits from 2020, which based on her K-1 appeared to be approximately \$5.15 million, which would be a record high level of profit for the firm since its inception in late 2009. The undersigned also demanded the information required by S.C. Code Ann. § 33-44-701(b), which requires the company to provide a statement of the company's assets and liabilities and the latest available balance sheet and income statement. (Exhibit D).

The undersigned followed back up with Mr. Outten and Mr. Few on April 9, 2021 and again on April 14, 2021, about the proposed red-lines to the Redemption Agreement and the email of April 6, 2021. Finally, on April 16, 2021, Mr. Few sent an email with additional red-lines to the Redemption Agreement and refusing to provide the financial information required by S.C. Code Ann. § 33-44-701(b), asserting that Sections 33-44-603 and -503 negated her rights to receive the financial information requested. (A true and accurate copy of the email of April 16, 2021 is attached hereto as Exhibit E). Mr. Few also indicated that the company did not plan to make any

distributions of the 2020 profits of the firm: “No other distributions are being made or are planned by the Board at this time.” (Exhibit E) (emphasis added).

Because MPS is a Subchapter S corporation for tax purposes, its members are personally liable for taxes on the company’s profits in proportion to their ownership interests through pass-through taxation. Accordingly, Appellant is liable for per pro-rata share of the tax liability on the more than \$5 million in profits that the firm earned in 2020; yet, because the firm has announced that it is not distributing those profits to its members “at this time,” Appellant would be liable for the company’s taxes on those profits without her actually receiving any cash flow from those profits from which to pay the taxes. In other words, Respondent is unfairly trying to force Appellant to bear the financial burdens of ownership through the end of 2020 without her realizing any of the benefits. Of course, Appellant is particularly concerned that immediately after her shares are finally redeemed, Respondent will make retroactive distributions of the 2020 profits to the remaining members of the LLC.

Appellant filed a Motion with the Circuit Court for Stay Pending Appeal or for Writ of Supersedeas four days later on April 20, 2021. After an off-the-record telephone conference about the motion on May 19, 2021, the Circuit Court allowed Appellant to submit additional briefing of the motion by May 26, 2021, and allowed Respondent to file a reply brief by June 3, 2021. On June 7, 2021, the Circuit Court entered a Form 4 order denying the motion for stay and requesting Respondent’s counsel to submit a proposed order. (A copy of the Form 4 Order is attached hereto as Exhibit G). On June 22, 2021, the Circuit Court entered the formal, written Order Denying Motion for Stay Pending Appeal or for Writ of Supersedeas. (A copy of the Order of June 22, 2021 is attached hereto as Exhibit H).

### **III. Discussion**

Rule 241 of the South Carolina Appellate Court Rules governs stays and writs of supersedeas in appeals of civil actions. Pursuant to Rule 241(c)(1), SCACR, “In a case subject to an exception, any party may move for an order imposing a supersedeas of matters decided in the order, judgment, decree or decision on appeal after the service of the notice of appeal.” Rule 241(c)(1), SCACR. Similarly, Rule 62(d), SCRCR, provides, “When an appeal is taken, a party, by giving a supersedeas bond, may obtain a stay subject to the exceptions contained in subdivision (a) of this rule and the South Carolina Appellate Court Rules.” Rule 62(d), SCRCR. Appellant agrees that this matter appears to fall within one or more exceptions to the automatic stay in civil appeals set forth in Rule 241(b), specifically subsections (b)(2), for “[j]udgments directing the assignment or delivery of documents or personal property as provided in S.C. Code Ann. § 18-9-150”; and subsection (b)(3), for “[j]udgments directing the execution of conveyances or other instruments as provided in S.C. Code Ann. § 18-9-160.” Rule 241(b), SCACR.

There is no express deadline for filing the motion for stay or for writ of supersedeas. Rule 241(c)(1) rule merely provides that it can be filed “after the service of the notice of appeal.” Rule 241(c)(1), SCACR. Appellant was not dilatory in filing the motion with the Circuit Court on April 20, 2021, only four days after the discussions between counsel broke down about the language in the Redemption Agreement and after Appellant was notified that the company did not intend to make any distributions of the firm’s record profits from 2020 “at this time.” Nor has Appellant been dilatory in filing the instant motion before the Court of Appeals. Nevertheless, Respondent cannot show any prejudice or harm that would befall it because of the timing of Appellant’s motion.

Next, Rule 241(c)(2), SCACR provides, “In determining whether an order should issue

pursuant to this Rule, the lower court . . . should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.” Rule 241(c)(2), SCACR. The stay requested here is necessary to prevent the appeal from becoming moot, because the document Respondent originally proposed for Appellant to sign to redeem her shares in Respondent LLC would have done just that, by assigning all legal rights or interests in Appellant’s ownership shares of the company back to the company, effective as of March 1, 2021, one month before the notice of appeal was filed. Respondent’s counsel’s statement in his cover letter that the Redemption Agreement was “straightfoward” (Exhibit B) appears to have been an effort to lull Appellant’s counsel into a trap in having Appellant to sign the Redemption Agreement without careful review, which presumably would have waived her ability to file the appeal from the underlying order.

Respondent’s brief in opposition to the Motion for Stay Pending Appeal filed with the Circuit Court was based on a misplaced reliance on federal caselaw interpreting Rule 62(d) of the Federal Rules of Civil Procedure, which applies only to appeals from an order granting or denying an injunction (either preliminary, interlocutory, or final). For example, where a plaintiff seeks a TRO or preliminary injunction that is denied by the trial court, the plaintiff can appeal immediately to the court of appeals. To win a stay pending that appeal, the plaintiff appellant would have to make the same showing as was necessary to obtain the TRO or preliminary injunction in the first place. The state analog to Fed. R. Civ. P. 62(d) is actually Rule 62(c), SCRCF, which is similarly titled “Injunction Pending Appeal.” Here, Defendant’s motion for stay or supersedeas in the Circuit Court was not based on Rule 62(c), SCRCF, but was instead based on Rule 62(d), SCRCF, which

incorporates by reference the standard in Rule 241 of the South Carolina Appellate Court Rules.<sup>1</sup> Accordingly, the caselaw argued by Respondent and relied upon by the Circuit Court under Fed. R. Civ. P. 62(d), setting forth the preliminary injunction standard and describing such a stay as “extraordinary relief” does not apply here.

The first case cited by Respondent is Hilton v. Braunskill, 481 U.S. 770 (1987), which was an appeal from a writ of habeas corpus ordering a criminal defendant to be released from custody pending re-trial. The case turned on the application of Rules 23(c) and (d) of the Federal Rules of Appellate Procedure. Id. at 772. The four-part test discussed in Hilton (and quoted by Plaintiff’s brief), was for obtaining a stay of an injunction (Fed. R. Civ. P. 62(c)), not for other types of appeals.

Similarly, the case of George Sink Injury Lawyers v. George Sink II Law Firm LLC, No. 2:19-cv-01206-DCN, 2019 WL 6318778 (D.S.C. Nov. 26, 2019), involved a request to stay the granting of a preliminary injunction. The quotation from District Judge Norton’s Order, which is set forth in Respondent’s brief, that “A stay of this kind is considered extraordinary relief for which the moving party bears a heavy burden,” addressed a motion to stay an injunction issued under Fed. R. Civ. P. 62(d).

The applicable standard for an appeal from a judgment other than an injunction is much more lenient and falls within the discretion of the court to protect the various parties’ interests during the appeal. See, e.g., Stearns Bank Nat’l Assoc. v. Glenwood Falls, LP, 375 S.C. 423, 426, 653 S.E.2d 274, 276 (2007) (“Whether to grant such a stay rests in the court’s discretion ‘on such conditions for the security of the [creditor] as are proper . . . .’”) (quoting Rule 62(b), SCRCF); see also In re Decker, 322 S.C. 212, 471 S.E.2d 459 (1995) (granting writ of supersedeas in appeal for civil

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<sup>1</sup>The analog in the federal system is Fed. R. App. P. 8(a).

contempt order freeing appellant from incarceration pending appeal because of novel legal questions presented in appeal).

Here, the granting of Appellant's motion for stay pending appeal will preserve the status quo that has existed since December 5, 2017, when the parties signed the Severance Agreement. The Severance Agreement specifically provides that Appellant "shall receive distributions as described in the September 30, 2015 Operating Agreement based on [Appellant's] distribution rights thereunder. The distribution[s] will be paid in the regular course of Company's business, and at the time other Members receive a distribution." (Severance Agreement, at 2, ¶ 2(e)) (copy attached hereto as Exhibit F). The Severance Agreement further provides that "Nothing in this Agreement is intended to have any effect on [Appellant's] ownership rights or interests upon dissociation." (Severance Agreement, at 8, ¶ 13). Finally, the Severance Agreement states, "[Appellant] is not waiving rights or claims that may arise after the date this Agreement is executed, nor is [Appellant] waiving any rights or claims relating to her financial interests as a member or owner of the Company." (Severance Agreement, at 10, ¶ 19(j)) (emphasis added).

One of Appellant's continuing rights as an owner of the Company is the right to receive distributions in the normal course of business while she remains a record member/owner of the Company. Section 8.1(a)(ii) of the original MPS Operating Agreement from September 25, 2009, provides, "Second, after the Distributions described in SECTIONS 8.1(a)(I) [i.e., tax distributions] and at such times as determined by the Company, the Company shall distribute any remaining Available Cash to all the Members pro rata in proportion to their respective Financial Rights." (MPS

Operating Agreement, at 17, ¶ 8.1(a)(ii) (excerpts attached hereto as Exhibit I).<sup>2</sup>

Respondent recognized record profits in 2020 of approximately \$5.15 million, according to the K-1 that Appellant received.<sup>3</sup> The company's purported decision not to issue distributions of profits to its members for 2020 "at this time" can only be explained as a deliberate effort to harm Appellant financially, which would be a clear violation of the Severance Agreement and the implied covenant of good faith and fair dealing inherent in that contract, as well as in the company's 2015 Amended and Restated Operating Agreement partially referenced therein.

Because the Circuit Court refused to award pre-judgment interest to Appellant in this case based on the valuation of her membership units from the date those units should have been redeemed in early 2018, it is only fair for Appellant to continue to receive the return on her capital investment in the company from that date until the conclusion of the case. Appellant's capital investment in MPS has remained on the firm's balance sheet and has been available for use by the company in continuing to generate income since this conflict arose. In other words, Appellant is willing to leave her investment in MPS, where it currently is, pending the outcome of the appeal in this case.

If the Court does not allow the stay as requested by Appellant and she were later to win the

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<sup>2</sup>Appellant contends that the 2009 MPS Operating Agreement is the only operable document because she never signed any later proposed amendments. According to the original Operating Agreement, any amendment that affects a member's financial or voting rights must receive unanimous consent of all members to become effective. (MPS Operating Agreement, at 8, Sec. 4.2(d)(i). (Attached hereto within Exhibit I). Even the purported Amended and Restated Operating Agreement of September 30, 2015, which Appellant never signed to indicate her consent, contains essentially the same provision regarding distributions of company profits, only estimate and final tax distributions are separated into two different sub-sections. (See Amended and Restated Operating Agreement, at 20, Sec. 8.1(a)(iii)) (excerpts attached hereto as Exhibit J).

<sup>3</sup>If Respondent distributed all of its 2020 profits to its members, Appellant's 2.28% ownership interest in the firm at the end of 2020 would entitle her to over \$117,000 in distributions for 2020.

appeal, it would be very difficult (if not impossible) to calculate the losses that Appellant would have sustained in the interim because of missed distributions. In addition, the Court potentially would have to order members of MPS to disgorge to Appellant a portion of the distributions they might have received in the interim, which could be further complicated if additional members bought or sold membership units while the appeal is pending. Furthermore, because MPS is treated as an S-Corp. for tax purposes, if Appellant prevails on her appeal and the effective date of her buy-out is continued until the conclusion of the litigation, she could potentially be held liable for substantial adverse income tax consequences through pass-through taxation. Additionally, if the Court does not grant the stay and if Appellant were to prevail on her appeal, all member of MPS would be required to file amended tax returns for every year, which could lead to substantial expense by Respondent's and the members' accountants, with amended K-1s.

On the other hand, if the valuation of Appellant's membership units is a true reflection of the firm's fair market value, there should be absolutely no detriment to Respondent in allowing Appellant's investment capital to remain in the firm while the appeal is pending. Moreover, there is no potential threat of harm to Respondent in allowing Appellant to retain her statutory rights as a member of the firm while the appeal of this case is pending. Throughout this litigation, Appellant has conducted herself in a professional and courteous manner and has never attempted to disrupt the normal business operations of the company. While Appellant's investment capital remains in MPS, she should have the same rights as any other member to receive information about the firm's operations, to vote on matters submitted to the members, and to participate in called member meetings.

Because Respondent could not be harmed in any way by the issuance of the stay or writ of

supersedeas requested, Appellant also requests that the stay or writ of supersedeas be granted without the requirement of a bond (or with the posting of a minimal bond), because Respondent already has possession of Appellant's capital investment in the firm and, as such, has been enjoying the use of the available equity that Appellant holds in the LLC. In other words, there is no question that Respondent owes Appellant money in this case; the appeal and continued proceedings in the case will merely determine exactly how much (if any) additional money is owed to Appellant.

For all of the foregoing reasons, Appellant requests that this Court stay the Circuit Court's order requiring Appellant to tender her membership units to Respondent while the appeal of this matter is pending.

In the alternative, Appellant would request leave of court to deliver to the lower court Appellant's membership units or to place those units into the custody of a court-appointed officer or receiver to hold them in trust pending the outcome of the appeal and to abide by the judgment of the appellate court, as provided in S.C. Code Ann. §§ 18-9-150 or 18-9-160, which would appear to reinstate the automatic stay pending the appeal in this matter.

Respectfully submitted,

s/ David E. Rothstein  
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1312 Augusta Street  
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Attorney for Appellant, Donza H. Mattison

July 16, 2021  
Greenville, SC

**Index of Exhibits**

| Exhibit | Description   |
|---------|---|
| A.      | Cover letter and draft Redemption Agreement (March 29, 2021)  |
| B.      | Rothstein letter of April 1, 2021 to Few  |
| C.      | Outten email of April 5, 2021 to Rothstein  |
| D.      | Rothstein email of April 6, 2021 to Outten and Few  |
| E.      | Few email of April 16, 2021 to Rothstein  |
| F.      | Severance Agreement and General Release (Dec. 5, 2017)  |
| G.      | Form 4 Order (June 7, 2021)   |
| H.      | Order Denying Stay (June 22, 2021)  |
| I.      | Excerpts from MPS Operating Agreement (Sept. 25, 2009)  |
| J.      | Excerpts from purported Amended and Restated Operating Agreement of MPS (Sept. 30, 2015) (never signed by all members of LLC) |

## **Exhibit A**



Richard L. Few, Jr.

*Partner*

t: 864.577.6363

f: 864.242.9888

864.242.9888

richardfew@parkerpoe.com

Atlanta, GA  
Charleston, SC  
Charlotte, NC  
Columbia, SC  
Greenville, SC  
Raleigh, NC  
Spartanburg, SC  
Washington, DC

March 29, 2021

**Via Hand Delivery**

David E. Rothstein, Esq.  
Rothstein Law Firm, PA  
1312 Augusta Street  
Greenville, SC 29605

**Re: Donza H. Mattison- Purchase of Membership Units in McMillan Pazdan Smith, LLC**

Dear David:

As you may be aware, I am corporate counsel to McMillan Pazdan Smith, LLC ("MPS"). In that capacity, I have been requested by MPS to address the redemption and purchase of the membership units in MPS owned by your client, Donza H. Mattison. MPS has informed me about the litigation between Ms. Mattison and MPS involving the purchase of these units, which has been pending as Case No. 2019-CP-23-00998 in the Court of Common Pleas for the Thirteenth Judicial Circuit (the "Pending Action"). In that regard, I have been provided with copies of the Order Granting Motion for Summary Judgment dated February 12, 2021 and Order Denying Reconsideration dated March 17, 2021 from Judge Lawton McIntosh (collectively, the "Order") in the Pending Action.

Under the terms of the Order, Judge McIntosh required Ms. Mattison to "tender her membership units to MPS within ten (10) days of the date of this Order. Within ten (10) days of Mattison tendering her units, MPS shall provide payment to Mattison for her membership units as instructed by this Order." MPS has not received any tender of units by Ms. Mattison as of today, the deadline for such tender, and neither MPS nor its counsel in the Pending Action, Sam Outten, have received any communication from Ms. Mattison or you concerning the tender.

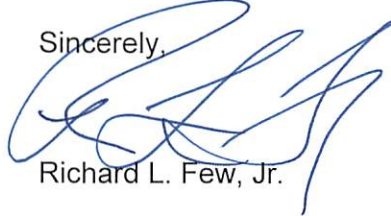
In any event, MPS is ready, willing and able to perform its obligations in compliance with the Order. I have enclosed herewith a check payable to Ms. Mattison from MPS in the amount of \$267,647.21 as tender of payment in full for the purchase price of her membership units. I have also attached two original counterparts of the proposed Membership Interest Purchase and Redemption Agreement ("Redemption Agreement") executed the Chief Executive Officer of MPS for execution by Ms. Mattison. I believe you will find the attached Agreement to be straightforward.

PPAB 6213250v1

March 29, 2021  
Page 2

I would appreciate you obtaining Ms. Mattison's signature to the attached Agreement to one counterpart of the Agreement and returning it to me in the enclosed envelope.

Sincerely,

A handwritten signature in blue ink, appearing to be "RLF", written over the word "Sincerely,".

Richard L. Few, Jr.

RLF  
Enclosures

## MEMBERSHIP INTEREST REDEMPTION AND PURCHASE AGREEMENT

This Membership Interest Redemption and Purchase Agreement ("Agreement") is made and entered into effective as of March 29, 2021 (the "Effective Date") by and between **Donza H. Mattison** ("Seller") and **McMillan Pazdan Smith, LLC**, a South Carolina limited liability company (the "Company").

**WHEREAS**, Seller is the owner of 2,035.34 units of Membership Interest of the Company; and

**WHEREAS**, Seller shall sell and transfer, and Company shall redeem from Seller, all of her Membership Interest (the "Redeemed Interests"), as more further set forth below.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties hereto, intending to be legally bound, hereby agree as follows:

1. **Transfer of Membership Units.** Upon the terms and subject to the conditions of this Agreement, as of the Effective Date, Seller hereby assigns, transfers, conveys and delivers to the Company all of the legal and beneficial right, title and interest in and to the Redeemed Interests. As of the Effective Date, Seller relinquishes the right to receive from the Company any distributions, allocations of profits and losses and capital accounts relating to the Redeemed Interests. Notwithstanding the foregoing, Seller shall still have the right to receive any distributions, allocations of profits and losses and capital accounts relating to his remaining units of Membership Interest of the Company.

2. **Consideration.** The total consideration to be paid by the Company to Seller for the Redeemed Interests shall be Two Hundred Sixty Seven Thousand Six Hundred Forty Seven and 21/100ths Dollars (\$267,647.21) to be paid in cash or other immediately available funds upon the execution of this Agreement.

3. **Representations and Warranties.** Seller hereby represents, warrants and covenants that Seller has full legal title to the Redeemed Interests, free and clear of all liens, claims and encumbrances.

4. **Entire Agreement; Amendments.** This Agreement contains the entire understanding of the parties hereto with regard to the subject matter contained herein, and supersedes all prior agreements or understandings between the parties hereto. This Agreement will not be amended or supplemented except by a written instrument signed by the Company and Seller.

5. **Miscellaneous.** This Agreement will be governed by the laws of the State of South Carolina, without giving effect to its conflict of law principles. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument. The representations, warranties and covenants made by Seller in this Agreement will survive the execution and delivery of this Agreement and the consummation of the transactions contemplated herein. This Agreement will be binding upon and inure to the benefit of the parties and their respective permitted assigns, heirs and legal representatives. Nothing in this Agreement, expressed or implied, is intended or will be construed to confer upon any person other than the parties (and their respective permitted assigns, heirs and legal representatives) any right, remedy or claim under or by reason of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this Membership Interest Purchase and Redemption Agreement as of the 1<sup>st</sup> day of March, 2021.

**SELLER:**

\_\_\_\_\_  
**Donna H. Mattison**

**COMPANY:**

**McMillan Pazdan Smith, LLC**

\_\_\_\_\_  
By: Chad C. Cousins  
Its: CEO

63563

**MCMILLAN PAZDAN SMITH, LLC  
GREENVILLE OPERATING ACCOUNT**

P.O. BOX 8922  
GREENVILLE, SC 29604  
864-242 2033

UNITED COMMUNITY BANK

64-1284/611

CHECK DATE March 24, 2021

PAY Two Hundred Sixty Seven Thousand Six Hundred Forty Seven and 21/100 Dollars

TO Donza Mattison  
[Redacted]

AMOUNT 267,647.21



*[Handwritten Signature]*  
AUTHORIZED SIGNATURE



⑈063563⑈ [Redacted]

Details on Back  
Security Features Included

**MCMILLAN PAZDAN SMITH, LLC**

63563

Check Date: 3/24/2021

| Invoice Number       | Date      | Voucher  | Amount       | Discounts | Previous Pay | Net Amount |
|----------------------|-----------|----------|--------------|-----------|--------------|------------|
| 03.24.2021           | 3/24/2021 | 00149299 | 267,647.21   |           |              | 267,647.21 |
| Donza Mattison       |           |          | <b>TOTAL</b> |           |              | 267,647.21 |
| UCB Gvllle Operating | 1         | 39012    |              |           |              |            |

## **Exhibit B**

**From:** drothstein@rothsteinlawfirm.com  
**Sent:** Thursday, April 1, 2021 8:30 PM  
**To:** 'richardfew@parkerpoe.com'  
**Cc:** 'Sam Outten'; 'Tom Keim'; 'Lorry Miller'  
**Subject:** McMillan Pazdan Smith, LLC v. Donza Mattison

| <b>Tracking:</b> | <b>Recipient</b>           | <b>Read</b>            |
|------------------|----------------------------|------------------------|
|                  | 'richardfew@parkerpoe.com' |                        |
|                  | 'Sam Outten'               |                        |
|                  | 'Tom Keim'                 |                        |
|                  | 'Lorry Miller'             |                        |
|                  | 'Donza Mattison'           |                        |
|                  | Lorry Miller               | Read: 4/2/2021 7:29 AM |

Richard. I received the packet from your office on Monday, March 29, 2021, with the proposed Membership Interest Redemption and Purchase Agreement, along with the check from MPS for \$267,647.21 to Ms. Mattison. The draft Agreement is not acceptable to Ms. Mattison as written, because it would likely preclude her from challenging Judge McIntosh's order granting summary judgment in favor of MPS on its declaratory judgment action, which was granted without any meaningful opportunity for discovery.

Earlier today, I served a Notice of Appeal from Judge McIntosh's orders of February 12, 2021 and March 17, 2021, to the South Carolina Court of Appeals. As I read Rule 241(a), SCACR, I believe the service of the notice of appeal automatically stays the order that Ms. Mattison tender her shares to MPS within 10 days. Please let me know if you disagree with my interpretation of the rule, think one of the exceptions in Rule 241(b) applies, or if MPS decides to file some type of motion to lift the stay or for supersedeas.

In the meantime, if you, Mr. Outten, or Mr. Keim would like to discuss the case further, please feel free to call me or email me. Also, please let me know if you would like to send a courier to my office to pick up the check from MPS. Thanks, Dave.

David E. Rothstein  
*Certified Specialist in Employment and Labor Law*  
Rothstein Law Firm, PA  
1312 Augusta Street  
Greenville, SC 29605  
(864) 232-5870 (office)  
(864) 241-1386 (fax)  
[drothstein@rothsteinlawfirm.com](mailto:drothstein@rothsteinlawfirm.com)  
[www.rothsteinlawfirm.com](http://www.rothsteinlawfirm.com)

## **Exhibit C**

**From:** Bobbie Schilder <bobbie.schilder@nelsonmullins.com> on behalf of Sam Outten <sam.outten@nelsonmullins.com>  
**Sent:** Monday, April 5, 2021 2:43 PM  
**To:** David Rothstein  
**Cc:** Tom Keim; Richard L. Few Jr. (richardfew@parkerpoe.com); Sam Outten; Miles Coleman  
**Subject:** McMillan Pazdan Smith, LLC v. Donza H. Mattison - C.A. No. 2019-CP-23-00998

David,

This will respond to your email of Thursday, April 1, 2021.

In the first paragraph you state that the draft Agreement is not acceptable because it would preclude Ms. Mattison from challenging Judge McIntosh's Order granting summary judgment. On behalf of MPS, we do not agree with that. If the Court of Appeals reverses the Order granting Summary Judgment to MPS on its declaratory judgment claim, then Ms. Mattison may well have a right to pursue her claim for the value of her equity, depending on the wording of the remand Order.

In the second paragraph you state that you believe that the service of the Notice of Appeal stays the Order that Ms. Mattison tender her shares to MPS. MPS does not agree with that. We believe that several of the exceptions contained in SCACR 241(b) apply, including subsections (2), (3) and (8).

To be clear, Ms. Mattison is no longer a member of MPS pursuant to Judge McIntosh's Order of February 12, 2021.

I am happy to discuss any of these issues with you at your convenience.

Best,

Sam



---

SAMUEL W. OUTTEN **PARTNER**  
sam.outten@nelsonmullins.com

GREENVILLE ONE | SUITE 400  
2 W. WASHINGTON STREET | GREENVILLE, SC  
T 864.373.2299 F 864.373.2925  
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## **Exhibit D**

**From:** drothstein@rothsteinlawfirm.com  
**Sent:** Tuesday, April 6, 2021 5:58 PM  
**To:** 'Few, Jr., Richard L.'; 'Sam Outten'  
**Cc:** 'Tom Keim'; 'Lorry Miller'  
**Subject:** RE: McMillan Pazdan Smith, LLC v. Donza Mattison  
**Attachments:** Mattison--MCMILLAN PAZDAN Membership Interest Purchase and Redemption Agreement--DER Redlines.doc

| <b>Tracking:</b> | <b>Recipient</b>       | <b>Read</b>            |
|------------------|------------------------|------------------------|
|                  | 'Few, Jr., Richard L.' |                        |
|                  | 'Sam Outten'           |                        |
|                  | 'Tom Keim'             |                        |
|                  | 'Lorry Miller'         |                        |
|                  | 'Donza Mattison'       |                        |
|                  | Lorry Miller           | Read: 4/7/2021 7:37 AM |

Sam and Richard. After looking back at Rule 241(b), SCACR and the referenced statutes, I think Sam may be right about the exceptions to the automatic stay. Attached please find my requested red-lines to the Membership Interest Redemption and Purchase Agreement, which will allow Ms. Mattison to preserve her rights to continue the appeal and any subsequent litigation over the derivative action and the value of her shares, without having to file a motion for supersedeas to delay the consummation of her dissociation from MPS. She wants to make absolutely clear that her negotiation of the check and the assignment of her membership units to MPS will not render her appeal moot. In addition, under Section 2(e) of the Severance Agreement, she is entitled to receive any distributions made for 2020 profits, along with her pro-rata tax liability for the first quarter of 2021, at the same time other members receive them. Based on the K-1 she recently received, the net profits of the firm appear to be approximately \$5.15 million from last year. Please let me know when she can expect a check and a distribution statement for the 2020 profits of the firm. Finally, as I read S.C. Code Ann. § 33-44-701(b), Ms. Mattison is entitled to receive a statement of the company's assets and liabilities, as well as the company's latest available balance sheet and income statement. Please forward those documents to me as soon as possible. If the attached red-lines are acceptable, I should be able to secure Ms. Mattison's signature before the end of the week. If you have any questions or would like to discuss this matter further, please feel free to call me or email me. Thanks, Dave.

David E. Rothstein  
*Certified Specialist in Employment and Labor Law*  
Rothstein Law Firm, PA  
1312 Augusta Street  
Greenville, SC 29605  
(864) 232-5870 (office)  
(864) 241-1386 (fax)  
[drothstein@rothsteinlawfirm.com](mailto:drothstein@rothsteinlawfirm.com)  
[www.rothsteinlawfirm.com](http://www.rothsteinlawfirm.com)

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**From:** Few, Jr., Richard L. <richardfew@parkerpoe.com>  
**Sent:** Tuesday, April 6, 2021 12:56 PM  
**To:** drothstein@rothsteinlawfirm.com  
**Cc:** 'Sam Outten' <sam.outten@nelsonmullins.com>; 'Tom Keim' <tkeim@fordharrison.com>; 'Lorry Miller' <lmiller@rothsteinlawfirm.com>  
**Subject:** RE: McMillan Pazdan Smith, LLC v. Donza Mattison

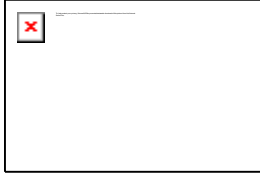
Dave: Word version of Purchase Agreement is attached per your request.

Richard

---

**Richard Few, Jr.**

Partner



110 East Court Street | Suite 200 | Greenville, SC 29601  
Office: 864.577.6363 | Fax: 864.242.9888 | [vcard](#) | [map](#)

Visit our website at  
[www.parkerpoe.com](http://www.parkerpoe.com)

---

**From:** [drothstein@rothsteinlawfirm.com](mailto:drothstein@rothsteinlawfirm.com) <[drothstein@rothsteinlawfirm.com](mailto:drothstein@rothsteinlawfirm.com)>  
**Sent:** Tuesday, April 6, 2021 12:38 PM  
**To:** Few, Jr., Richard L. <[richardfew@parkerpoe.com](mailto:richardfew@parkerpoe.com)>  
**Cc:** 'Sam Outten' <[sam.outten@nelsonmullins.com](mailto:sam.outten@nelsonmullins.com)>; 'Tom Keim' <[tkeim@fordharrison.com](mailto:tkeim@fordharrison.com)>; 'Lorry Miller' <[lmiller@rothsteinlawfirm.com](mailto:lmiller@rothsteinlawfirm.com)>  
**Subject:** RE: McMillan Pazdan Smith, LLC v. Donza Mattison

**\*\*\*Caution: External email\*\*\***

---

Richard. Can you please send me the MS Word version of the Membership Interest Redemption and Purchase Agreement, so I can send you some proposed red-lines to the document? Thanks, Dave.

David E. Rothstein  
*Certified Specialist in Employment and Labor Law*  
Rothstein Law Firm, PA  
1312 Augusta Street  
Greenville, SC 29605  
(864) 232-5870 (office)  
(864) 241-1386 (fax)  
[drothstein@rothsteinlawfirm.com](mailto:drothstein@rothsteinlawfirm.com)  
[www.rothsteinlawfirm.com](http://www.rothsteinlawfirm.com)

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**From:** [drothstein@rothsteinlawfirm.com](mailto:drothstein@rothsteinlawfirm.com) <[drothstein@rothsteinlawfirm.com](mailto:drothstein@rothsteinlawfirm.com)>  
**Sent:** Thursday, April 1, 2021 8:30 PM  
**To:** 'richardfew@parkerpoe.com' <[richardfew@parkerpoe.com](mailto:richardfew@parkerpoe.com)>  
**Cc:** 'Sam Outten' <[sam.outten@nelsonmullins.com](mailto:sam.outten@nelsonmullins.com)>; 'Tom Keim' <[tkeim@fordharrison.com](mailto:tkeim@fordharrison.com)>; 'Lorry Miller' <[lmiller@rothsteinlawfirm.com](mailto:lmiller@rothsteinlawfirm.com)>  
**Subject:** McMillan Pazdan Smith, LLC v. Donza Mattison

Richard. I received the packet from your office on Monday, March 29, 2021, with the proposed Membership Interest Redemption and Purchase Agreement, along with the check from MPS for \$267,647.21 to Ms. Mattison. The draft Agreement is not acceptable to Ms. Mattison as written, because it would likely preclude her from challenging Judge

McIntosh's order granting summary judgment in favor of MPS on its declaratory judgment action, which was granted without any meaningful opportunity for discovery.

Earlier today, I served a Notice of Appeal from Judge McIntosh's orders of February 12, 2021 and March 17, 2021, to the South Carolina Court of Appeals. As I read Rule 241(a), SCACR, I believe the service of the notice of appeal automatically stays the order that Ms. Mattison tender her shares to MPS within 10 days. Please let me know if you disagree with my interpretation of the rule, think one of the exceptions in Rule 241(b) applies, or if MPS decides to file some type of motion to lift the stay or for supersedeas.

In the meantime, if you, Mr. Outten, or Mr. Keim would like to discuss the case further, please feel free to call me or email me. Also, please let me know if you would like to send a courier to my office to pick up the check from MPS. Thanks, Dave.

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## **Exhibit E**

**From:** Few, Jr., Richard L. <richardfew@parkerpoe.com>  
**Sent:** Friday, April 16, 2021 3:27 PM  
**To:** drothstein@rothsteinlawfirm.com  
**Cc:** Sam Outten; 'Tom Keim'; Miles Coleman  
**Subject:** McMillan Pazdan Smith- Membership Interest Purchase Agreement with Donza Mattison  
**Attachments:** MCMILLAN PAZDAN Membership Interest Purchase and Redemption Agreement (Mattison).DOC;  
McMillan Pazdan Smith Mattison Membership Interest Purchase Agreement (comparison).docx

David: Thank you for providing the revised version of the Membership Interest Purchase Agreement. I have reviewed these revisions with the company and Sam Outten and attach another revised version for your review. Most of your comments were accepted, although I have moved the references to the Pending Lawsuit to a separate paragraph. I changes the references slightly to indicate the company's intent as to the effect of the Agreement and payment on the Pending Lawsuit.

With respect your question about distributions by the company, I understand that Ms. Mattison has already been sent a K-1 for 2020 and a tax distribution check for that year based on the tax distributions authorized by the Board. With respect to 2021, I understand that the company is making 1st quarter estimated tax payments to members and Ms. Mattison will be receiving that payment along with a statement for reconciliation of that amount. No other distributions are being made or are planned by the Board at this time.

With respect to the request for the items under Section 33-44-701(b), I read that statute as requiring these to be provided within thirty days following the date of dissociation and accompany an offer to purchase a dissociated member's interest. These were delivered back in 2018 with the original offer, so need not be provided again. According to Section 33-44-603 and 33-44-503, once Ms. Mattison was dissociated, she is no longer a member of the company and then has the status of a transferee of a member and has no rights to access financial information of the company. Excerpts of these statutes are set forth below for convenience.

I trust the attached revised Agreement will be acceptable for execution by Ms. Mattison. If so, we would appreciate receiving a scanned copy of her signature page and one original sent to my address. Let me know if you have any questions.

Regards,

Richard

SECTION 33 44 603. Effect of member's dissociation.

Upon a member's dissociation:

(1) in an at will company, the company must cause the dissociated member's distributional interest to be purchased under Article 7;....

(3) the member's right to participate in the management and conduct of the company's business terminates, except as otherwise provided in Section 33 44 803, and the member ceases to be a member and is treated the same as a transferee of a member;

SECTION 33 44 503. Rights of transferee.

(d) A transferee who does not become a member is not entitled to participate in the management or conduct of the limited liability company's business, require access to information concerning the company's transactions, or inspect or copy any of the company's records.

---

**Richard Few, Jr.**

Partner



110 East Court Street | Suite 200 | Greenville, SC 29601  
Office: 864.577.6363 | Fax: 864.242.9888 | [vcard](#) | [map](#)

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## **Exhibit F**

## **SEVERANCE AGREEMENT AND GENERAL RELEASE**

This Severance Agreement and General Release (“Agreement”) is made by and between McMillan Pazdan Smith, LLC (“Company”), which term includes all affiliated companies and all Released Parties as defined below, where appropriate) and Donza H. Mattison (“Employee”).

**WHEREAS**, Employee and Company mutually agree that Employee’s employment with the Company will end effective February 12, 2018;

**WHEREAS**, the Company and Employee do not anticipate that there will be any disputes between them or legal claims arising out of Employee’s separation from employment, but nevertheless, desire to ensure a completely amicable parting and to settle fully and finally any and all differences or claims that might arise out of Employee’s employment;

**THE PARTIES HEREBY AGREE**, in consideration of the foregoing and the following terms, conditions, and obligations, as follows:

1. **Employment Ended.** The parties agree that Employee’s employment with the Company (and any and all of its affiliates) will voluntarily end on February 12, 2018. Employee shall thereafter no longer be employed by Company in any capacity, and Employee shall not represent to any third party that Employee retains any employment or other relationship with Company.

2. **Membership and Severance Terms.**

- (a) Beginning November 20, 2017, and continuing through a maximum end date of February 12, 2018, Employee will be placed on Family Medical Leave Act (“FMLA”) Leave provided Employee submits appropriate FMLA paperwork in a timely fashion.
- (b) During Employee’s FMLA Leave, Employee will be paid 120 hours of Paid Time Off (“PTO”). In addition, Employee will receive pay for normal Company Holidays during the FMLA Leave period to include Thanksgiving Day, the Day after Thanksgiving, Christmas Eve, Christmas Day, and New Year’s Day. In the event FMLA Leave is not approved for any period of time between November 20, 2017 and February 12, 2018, Employee will still receive PTO pay and Holiday pay as described above.
- (c) Employee shall receive a minimum of 23 weeks of Severance pay at her current salary. If Long Term Disability (LTD) benefits are not approved by the end of the 23<sup>rd</sup> week, Employee shall receive an additional seven (7) weeks of severance pay. Severance payments will begin upon expiration of the PTO pay described in Paragraph (b) above. Employee’s receipt of LTD benefits will not otherwise affect the amount of Severance pay.



- (d) Employee will be paid a bonus of \$15,000 for 2017, plus Company-paid matching 401(k) contribution of 4% for year 2017. The bonus will be paid at the same time payments are made to similarly situated employees of Company.
- (e) Employee shall receive distributions as described in the September 30, 2015 Operating Agreement based on Employees distribution rights thereunder. The distribution will be paid in the regular course of Company's business, and at the time other Members receive a distribution.
- (f) With regard to Employee's application for disability benefits, the Company agrees to confirm Employee's job duties and responsibilities including on-site observations and inspections of large construction sites.
- (g) Company will transfer ownership of the life insurance policy Company currently holds on Employee's life according to the policy terms on or about February 12, 2018. The Company will have no premium payment or other responsibilities regarding the policy once ownership is transferred. Employee may designate whomever she chooses to be the beneficiary of such policy.
- (h) During Employee's FMLA Leave, Company will continue to provide Employee with insurance benefits at the same level as if Employee was actively at work. Upon the end of Employee's FMLA Leave or February 12, 2018, Company will provide Employee insurance continuation benefits as required by Federal law.
- (i) By executing this Agreement, Employee resigns Employee's employment voluntarily effective February 12, 2018. All Company documents will reflect that Employee voluntarily resigned in good standing. Employee agrees not to apply for employment with Company at any point in the future. Company agrees to positively announce Employee's resignation including thanking Employee for over 23 years of dedicated service to the Company.
- (j) The parties agree that Employee's dissociation from Company shall be treated as a Proper Dissociation with no penalty or reduction on the value of her financial rights. The parties agree that the value of Employee's membership units shall be mutually determined in early 2018 following the close of YR2017, with Company providing access to all current and prior year financial reports, tax returns, and other financial information as requested by Employee's Counsel. The Proper Dissociation will be handled separately from this Agreement and will be done in accordance with the September 30, 2015 Operating Agreement.



3. **Cooperation.** Employee agrees to cooperate reasonably with the Company and all of its affiliates and/or the Released Parties, as defined below (including its and their outside counsel), in connection with the contemplation, prosecution, and defense of all phases of existing, past and future claims or litigation about which the Company believes the Employee may have knowledge or information. Employee further agrees to make herself available at mutually convenient times during and outside of regular business hours as reasonably deemed necessary by the Company's counsel. Employee agrees to appear without the necessity of a subpoena to testify truthfully in any legal proceedings in which the Company calls her as a witness. Employee will be compensated for any time spent in connection with any such claims or litigation, including any required travel, at an effective hourly rate based on her last regular base salary with the Company. Employee further agrees that she shall not voluntarily provide information to or otherwise cooperate with any individual or entity that is contemplating or pursuing litigation against any of the Released Parties or that is undertaking any investigation or review of any of the Released Parties' activities or practices; provided, however, that Employee may participate in or otherwise assist in any investigation or inquiry conducted by the Equal Employment Opportunity Commission or any analogous state agency.

4. **General Release of Claims.** Employee hereby releases and forever discharges the Company, its subsidiaries, business units, affiliates, and parent companies, past and present, , its predecessors and successors and its respective managers, officers, directors, employees, agents, legal counsel, and assigns, past and present (hereinafter referred to collectively as the "Released Parties") from any and all known and unknown claims of action that Employee may have against the Released Parties arising from or in connection with: (a) the terms and conditions of her employment with the Company; (b) the termination of her employment from the Company; and (c) any conduct, actions or omissions, known or unknown, by the Released Parties occurring on or before the date Employee executes this Agreement. This release, and the term "claim" or "claims" as used in this Agreement, include all benefits, grievances, proceedings, investigations, hearings, charges, complaints, claims, demands, actions, causes of action, and suits of whatever nature, whether known or unknown, fixed, absolute or contingent, matured or unmatured, asserted or unasserted, however arising, and whether legal, equitable or administrative. The released claims include Employee's attorney fees, court costs, wages, back pay, front pay, severance pay, compensatory damages, punitive damages, general damages, special damages, penalties, benefits of any sort, liquidated damages, costs and disbursements, expert fees, injunctive relief, equitable relief, declaratory relief, interest, reinstatement, future employment, and any other legally recoverable category of damages or relief that Employee has ever had, or now has, or may claim to have, against the Company. It is expressly intended, understood, and agreed that the claims released by Employee shall include, by way of example and without limitation, all claims arising under federal, state or local statute, ordinance, common law, regulation, equity or other sources, whether known or unknown, based upon:

- (a) Actual or alleged defamation, invasion of privacy, injury to credit, personal inconvenience, damage to Employee's personal reputation, outrage, distress, humiliation, loss of standing and prestige, personal injury, bodily injury, tort, loss of consortium, intentional or negligent infliction of



emotional distress, abuse of process, retaliation, negligence, fraud, extortion, or other common law causes of action or other compensation for bodily injury.

- (b) Failure to provide benefits or pay wages or commissions, including actual or alleged violations of the South Carolina Human Affairs Law, the South Carolina Payment of Wages Act, common law and any and all other applicable state, county or local codes, statutes, ordinances or regulations.
- (c) Actual or alleged violations of anti-discrimination laws, including, but not limited to, any and all claims of age, disability, race, color, sex, national origin, ancestry, religion, genetic information, or other discrimination, retaliation or harassment;
- (d) Actual or alleged violations of the federal Age Discrimination in Employment Act, as amended, the Civil Rights Acts of 1866, 1871, and 1964, Section 1981 of Title 42 of the U.S. Code, Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, all federal and state executive orders including Executive Order 11246, the Uniformed Services Employment and Reemployment Rights Act of 1994, the Equal Pay Act, the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, the Family and Medical Leave Act, the Fair Labor Standards Act, the Genetic Information Nondiscrimination Act of 2008, the Worker Adjustment and Retraining Notification Act, the Pregnancy Discrimination Act, state and local wage-hour laws and regulations, and the federal Employee Retirement Income Security Act, including, but not limited to, claims under Company-sponsored severance and termination pay plans, if any (provided, however, that nothing in this Agreement affects any claims relating to Employee's pending or anticipated claims for short-term or long-term disability benefits or to any claims relating to coverage for any ERISA-governed plan for health, dental, or vision insurance);
- (e) Actual or alleged violations of any other federal or state codes, laws, ordinances, regulations or case law which prohibit employment discrimination, retaliatory termination of employment, wrongful discharge, and employment termination in violation of public policy;
- (f) Actual or alleged breach of express and implied contract, breach of contract accompanied by a fraudulent act, breach of implied covenant of good faith and fair dealing, interference with contract, promissory estoppel, and claims under the Operating Agreement or any other operating agreement, any employment agreement, handbook or policy relating to her employment or separation of employment; and



- (g) Actual or alleged violations of the National Labor Relations Act and the Labor Management Relations Act.

*Employee agrees and understands that any claims she may have under the aforementioned statutes, or any other federal, state or local law ordinance, rule or regulation, are effectively waived and released by this Agreement. Employee represents that she knows of no claim that she has that has not been released by this paragraph. This release does not extend to claims which is a matter of law cannot be waived. Employee acknowledges and understands that this paragraph is intended to prevent her from making any claim against the Released Parties regarding any matter or incident relating to or arising from the Operating Agreement, other operating agreements, the employment relationship or its termination that occurs up to the date Employee executes this Agreement; provided, however, that nothing in this Agreement shall have any effect on Employee's rights and remedies relating to her dissociation from the Company.*

5. **Covenant Not to Sue.** Employee hereby covenants and agrees not to file, commence or initiate any suit, grievance, demand or cause of action against the Released Parties based upon or relating to any of the claims released and forever discharged pursuant to this Agreement. If Employee breaches this covenant not to sue, she hereby agrees to pay all of the reasonable costs and attorney fees actually incurred by the Released Parties in defending against such breaching conduct, together with such other and further damages as may result, directly or indirectly, from that breach. Moreover, Employee agrees that she will not persuade or instruct any person to file a suit, claim or complaint on her behalf based on a claim released in this Agreement with any state or federal court or administrative agency against the Released Parties. Employee expressly agrees not to commence or file any class action, including any class arbitration against Company, or serve in any representative capacity in any class action, including class arbitration, against or involving the Company. In accordance with 29 C.F.R. § 1625.23(b), nothing in this covenant not to sue is intended to preclude Employee from challenging the validity of this Agreement under the Older Workers Benefit Protection Act, 29 U.S.C. § 626(f), with respect to claims under the Age Discrimination in Employment Act, and the Company shall not be entitled to recover any consideration paid under this Agreement, damages or its attorney fees and costs resulting from such challenge.

6. **Non-Interference.** Nothing in this Agreement shall interfere with Employee's right to file a charge, cooperate or participate in an investigation or proceeding conducted by the Equal Employment Opportunity Commission, or other federal or state regulatory or law enforcement agency. However, the consideration provided to Employee in this Agreement shall be the sole relief provided to Employee for the claims that are released by her herein. To the maximum extent permitted by law, Employee agrees that Employee will not seek and waives any right to accept any relief or award from any charge or action against the Released Parties before any federal, state or local administrative agency or federal, state or local court, whether filed by Employee or on Employee's behalf with respect to any claim or right released in this Agreement.



7. **No Admission of Wrongdoing or Liability.** Nothing contained in this Agreement shall constitute, or be construed as or is intended to be, an admission or an acknowledgment by the Company or the Released Parties of any wrongdoing or liability, all such wrongdoing and liability being expressly denied.

8. **Confidentiality and Nondisclosure Provisions.** Employee agrees to maintain absolute confidentiality and secrecy concerning the terms of this Agreement and will not reveal or disseminate by publication in any manner whatsoever this document or any matters pertaining to it to any other person except as required by legal process. This confidentiality provision does not apply to communications necessary between Employee's immediate family members or legal and financial planners or tax preparers who are also bound by this confidentiality provision. Employee also agrees to honor and remains obligated under any confidentiality agreement(s) that Employee entered into with the Company or the Released Parties, and nothing in this Agreement shall be deemed to limit, void, abrogate or lessen any otherwise existing obligation of the Employee to keep confidential any trade secret or confidential information belonging to the Company, including, but not limited to, any such contractual or common law confidentiality obligations Employee owes to the Company.

9. **Restrictive Covenants Obligations.** Nothing in this Agreement shall void, abrogate or lessen any otherwise existing obligation of Employee to refrain from solicitation of the Company's employees or customers, including, but not limited to, the obligations contained in statutory or common law, or those contained in the Confidentiality and Non-solicitation Agreement effective on September 30, 2009, with the Company or referenced in other written agreements with the Company.

10. **Non-Disparagement.**

- (a) Employee agrees not to make any statements, written or verbal, or cause or encourage others to make any statements, written or verbal, including, but not limited to, any statements made via social media, on websites or in blogs, that defame, disparage or in any way criticize the personal or business reputation, practices, products, management or conduct of the Company, or any of the Released Parties. Employee acknowledges and agrees that this prohibition extends to statements, written or verbal, made to anyone, including, but not limited to, the news media, competitors, vendors, employees (past and present), customers, clients, governmental agencies, educational institutions, and associated professional organizations. Employee further understands and agrees that this paragraph is a material provision of this Agreement and that any breach of this paragraph shall be a material breach of this Agreement, and that the Company would be irreparably harmed by violation of this provision.
- (b) The Company agrees that its officers, Managers, and members will not make any statements, written or verbal, or direct any third party to make



any statements, written or verbal, including, but not limited to, any statements made via social media, on websites or in blogs, that defame or disparage the personal or business reputation, practices or conduct of the Employee. Nothing herein prevents disclosure, in the sole discretion of the Company and its management, of this Agreement and discussion of Employee's employment with and separation of employment from the Company and the circumstances regarding such separation from the Company (i) by and among employees and agents of Company and the Released Parties or (ii) to or in response to any governmental entity or in response to material provision of this Agreement and that any breach of this paragraph shall be a material breach of this Agreement, and that the Employee would be irreparably harmed by violation of this provision.

11. **Disclosure.** Employee acknowledges and warrants that she is not aware of, or that she has fully disclosed to the Company, any matters for which Employee was responsible or which came to Employee's attention as an employee of the Company that might give rise to, evidence or support any claim of illegal conduct, regulatory violation, unlawful discrimination, or other cause of action against the Company.

12. **Company Property.**

- (a) All records, files, lists, including computer-generated lists, data, drawings, documents, equipment, keys, building access or parking passes, credit card, and similar items relating to the Company's business that Employee generated or received from the Company remain the Company's sole and exclusive property. Employee agrees to promptly return to the Company all property of the Company in her possession. Employee further represents that she has not copied or caused to be copied, printed out, or caused to be printed out any documents or other material originating with or belonging to the Company, except in the ordinary course of Employee's employment with the Company. Employee additionally represents that she will not retain in her possession any such documents or other material originating with or belonging to the Company. Employee agrees not to delete Company information or any other electronic information from Employee's computer or other devices belonging to the Company before or after the Effective Date. Employee further agrees not to access the Company's computer system or other electronic systems following the Effective Date. Employee may retain documents relating to her ownership or membership in the Company or her financial rights or interests in the Company for her own personal, tax, or business purposes.
- (b) Any and all social media and other online accounts and profiles created or used by Employee on behalf of Company or otherwise for the purpose of promoting or marketing Company or similar business purposes, including



such profiles and accounts featuring or displaying Company's name and trademarks ("Company Social Media Accounts") belong solely to Company. As of the Effective Date, Employee agrees to cease accessing, using, updating or modifying any and all Company Social Media Accounts.

- (c) Upon the separation of Employee's employment, Company will retain ownership and control of all Company Social Media Accounts created or used during the course of Employee's employment with the Company, including all related data and information. Prior to the Effective Date, Employee agrees to provide to Company the log-in information, including usernames and passwords, for each Company Social Media Account that Employee created, used or managed. Employee also agrees to assist Company, both prior to and after the Effective Date (as may be necessary), with the transition and maintenance of each Company Social Media Account created or used by Employee during the course of her employment with the Company, including providing information that may be necessary to ensure that Company is able to access the Company Social Media Accounts.

13. **No Other Compensation Due.** Employee acknowledges and agrees that neither the Company nor any of the Released Parties owes Employee any wages, salary, stock options, bonus, accrued vacation or sick leave, benefits, paid time off, notice pay, severance pay, commissions, equity or ownership, incentive pay, salary, reimbursement, expenses, deferred compensation, or other compensation in any amount whatsoever, including, but not limited to, any compensation pursuant to the Operating Agreement and any other agreement, other than as expressly agreed to herein. Employee agrees that to the extent that Employee is otherwise due any such amounts or compensation or expenses of any nature, the Company's obligation to pay these amounts is satisfied and subsumed in full by the Severance Pay. The parties shall each bear their own costs and their own attorney fees in connection with this Agreement. Nothing in this Agreement is intended to have any effect on Employee's ownership rights or interests upon dissociation.

14. **No Other Considerations.** Employee affirms that the only consideration for the signing of this Agreement is that set forth in this Agreement and that no other promises or assurances of any kind have been made to Employee by the Company, the Company's attorneys, or any other person, as an inducement to sign this Agreement relating to her employment with, or separation of Employment from, the Company. The consideration for this Agreement tendered and herewith accepted is solely by way of settlement, compromise, and final disposition of disputed claims, and it is therefore specifically agreed that this Agreement shall forever be a final and complete bar to and full satisfaction of Employee's claims and suits for injuries or damages of whatsoever nature resulting from the aforesaid matters.

15. **No Assignment.** Employee hereby represents and warrants that Employee has not assigned, transferred or conveyed to any individual or entity any alleged right, claim or cause of

action of any kind which is included within the above releases. Employee further represents and warrants that Employee is aware of no lien or other encumbrance on Employee's rights, claims, and causes of action, and that Employee is entitled to receive from the Company payment of the full amount of the proceeds due to Employee under this Agreement.

16. **No Reinstatement.** Employee agrees that she will not seek reinstatement or reemployment with Company of its affiliates. In the event that Employee violates this provision, Company shall have the right to reject Employee's application without recourse by Employee, and such rejection shall not constitute retaliation or violation under federal or state statutory or common law. If, in violation of this provision, Employee applies for and is inadvertently given employment by Company, Company has the right to terminate her employment without recourse.

17. **Breach of Agreement.** If either party brings a claim for breach of the terms of this Agreement, the prevailing party shall be entitled to its reasonable attorney fees and expenses incurred in prosecuting or defending such an action.

18. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of Employee and the Company, and their officers, directors, employees, agents, legal counsel, heirs, successors and assigns.

19. **Warranties/Representations.** Employee hereby warrants and represents that:

- (a) Throughout her employment, she was fully and appropriately compensated for all hours worked in accordance with the Fair Labor Standards Act and other applicable law, if any;
- (b) Employee has been provided with all leave to which she is entitled under the Company policy and applicable law including, but not limited to, the Family and Medical Leave Act;
- (c) Employee has carefully read and fully understands the comprehensive terms and conditions of this Agreement and the releases set forth herein;
- (d) Employee is executing this Agreement knowingly and voluntarily, without any duress, coercion or undue influence by the Company, its representatives or any other person;
- (e) Employee has consulted with legal counsel of her own choice before executing this Agreement;
- (f) Employee has no pending claim, complaint, grievance or any document with any federal or state agency or any court seeking money damages or relief against the Company;



- (g) The Severance Pay recited above constitutes good and valuable consideration;
- (h) Employee is fully satisfied with the terms and conditions of this Agreement including without limitation the consideration paid to her by the Company;
- (i) Employee has not made a claim for workers' compensation related to her employment with the Company, and that she is currently unaware of any injury or illness that would support such a claim; and
- (j) Employee is not waiving rights or claims that may arise after the date this Agreement is executed, nor is Employee waiving any rights or claims relating to her financial interests as a member or owner of the Company.

20. **Entire Agreement; Severability of Terms.** This Agreement contains the entire agreement and understanding of the parties with respect to the subject-matters addressed herein and supersedes and replaces all prior discussions or negotiations between the parties or their counsel. The terms of this Agreement are severable, such that if any provision of this Agreement is found to be invalid, unlawful, or unenforceable by any judge or arbitrator, the other provisions of this Agreement will remain in full force and effect. Any invalid, unlawful, or unenforceable term will be stricken from the Agreement, and the remainder of the Agreement will survive to the fullest extent possible.

21. **Compliance with the Older Workers Benefit Protection Act.** To comply with the Older Workers Benefit Protection Act of 1990, the Company has advised Employee of the legal requirements of that Act, and this Agreement fully incorporates those legal requirements by reference and as follows:

- (a) This Agreement is written in layman's terms, and Employee hereby represents to the Company that Employee understands and comprehends its terms;
- (b) Employee is hereby advised, and has had an opportunity, to consult with an attorney to review this Agreement prior to executing it.
- (c) This Agreement specifically refers to rights and claims arising under the Age Discrimination in Employment Act;
- (d) Employee does not waive any rights or claims that result from events occurring after the date this Agreement is executed by Employee;
- (e) Employee hereby acknowledges that Employee is receiving consideration beyond anything of value to which Employee already is entitled;



- (f) Employee has twenty-one (21) days from Employee's receipt hereof (the Offer Date) to consider this proposed Agreement. Employee's failure to accept this proposed Agreement by close of business on the twenty-first day following Employee's receipt of this Agreement may be deemed rejection off its terms; and
- (g) Employee has the right to revoke this Agreement for seven (7) days following Employee's signing of this Agreement, and after the expiration of that seven (7) days the executed Agreement shall be of full validity, force, and effect. To exercise this right, Employee is required to deliver written notice to the Company prior to expiration of this right to revoke, and such revocation is not valid or effective unless and until the written notice of same is received by the Company, at the address (physical or email) or facsimile number specified at the end of this Agreement, within the revocation period. Otherwise, such revocation shall be invalid and ineffective and this Agreement shall be deemed accepted.

22. **Neutral Reference.** Employee agrees to refer all requests for employment references from the Company directly and exclusively to the Company's HR Manager (currently Jamie Kemp). Employee further understands that, in accordance with the Company's policy on employment references, the Company will provide only the dates of Employee's employment, positions held, and the salary earned by Employee. Company will provide a letter of reference for Employee, on Company letterhead, addressed "To Whom it May Concern" in language mutually agreed to by the parties.

23. **Governing Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of South Carolina, without regard to the choice of law principles. This Agreement may be enforced only in a court of competent jurisdiction in Greenville County, South Carolina, and the parties hereby consent and submit themselves to the exclusive venue and personal jurisdiction of said court with respect to all such disputes and controversies whether or not Employee is then residing in South Carolina.

24. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by facsimile or other electronic means shall have the same force and effect as the delivery of an original executed counterpart of this Agreement.

Handwritten signature and initials in black ink, appearing to be 'JMK' and 'CC'.

**THIS IS A LEGALLY ENFORCEABLE AGREEMENT.**

**Dated:**

H. Lorraine Miller  
Witness

Donza H. Mattison  
EMPLOYEE - DONZA H. MATTISON

**Dated:** December 5, 2017

**McMILLAN PAZDAN SMITH, LLC**

**By:** 

**Name:** Chad C. Cousins

**Title:** COO / Principal

**Address:** Suite 200 400 Augusta St.  
Greenville, SC 29601

**E-mail:** ccousins@mcmillanpazdanSmith.com

**Facsimile:** \_\_\_\_\_

WSACTIVELLP:9483873.1

## **Exhibit G**

**FORM 4**

**STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE  
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE**

**CASE NO. 2019 CP-23-00998**

MCMILLAN PAZDEN SMITH, LLC  
PLAINTIFF(S)

DONZA MATTISON  
DEFENDANT(S)

|                      |   |
|----------------------|---|
| <b>Submitted by:</b> | <b>Attorney for :</b> <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant<br>or<br><input type="checkbox"/> Self-Represented Litigant |
|----------------------|---|

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

**DEFENDANT'S MOTION TO STAY IS DENIED. MR. OUTTEN TO PREPARE A FORMAL ORDER CONSISTENT WITH HIS ARGUMENTS AND BRIEFINGS IN THIS MATTER.**

This order  ends  does not end the case.

| <b>INFORMATION FOR THE JUDGMENT INDEX</b>  |  |  |
|--|--|--|
| 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, indicate "N/A" in one of the boxes below. |  |  |
| Judgment in Favor of<br>(List name(s) below)   | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|  |  | \$   |
|  |  | \$   |
|  |  | \$   |
| 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 SC 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.**

**E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

|                            |                   |             |
|----------------------------|-------------------|-------------|
| <b>Circuit Court Judge</b> | 2155              | <b>Date</b> |
|                            | <b>Judge Code</b> |             |

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**

\_\_\_\_\_  
**CLERK OF COURT**

**Court Reporter:**

**E-Filing Note:** In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Greenville Common Pleas

**Case Caption:** McMillan Pazdan Smith LLC , plaintiff, et al vs. Donza H Mattison ,  
defendant, et al  
**Case Number:** 2019CP2300998  
**Type:** Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

## **Exhibit H**

|                                       |   |  |
|---------------------------------------|---|--|
| STATE OF SOUTH CAROLINA               | ) |  |
|                                       | ) | IN THE COURT OF COMMON PLEAS             |
| COUNTY OF GREENVILLE                  | ) | THIRTEENTH JUDICIAL CIRCUIT              |
| McMillan Pazdan Smith, LLC,           | ) | Civil Action No. 2019-CP-23-00998        |
|                                       | ) |  |
| Plaintiff/Counter-Defendant,          | ) |  |
|                                       | ) |  |
| vs.                                   | ) |  |
|                                       | ) |  |
| Donza H. Mattison,                    | ) |  |
|                                       | ) |  |
| Defendant/Counterclaimant.            | ) | <b><u>ORDER DENYING MOTION FOR</u></b>   |
|                                       | ) | <b><u>STAY PENDING APPEAL OR FOR</u></b> |
|                                       | ) | <b><u>WRIT OF SUPERSEDEAS</u></b>        |
|                                       | ) |  |
| Donza H. Mattison, in a Derivative    | ) |  |
| Capacity on Behalf of McMillan Pazdan | ) |  |
| Smith, LLC,                           | ) |  |
|                                       | ) |  |
| Third-Party Plaintiff,                | ) |  |
|                                       | ) |  |
| vs.                                   | ) |  |
|                                       | ) |  |
| Rondald G. Smith, Joseph M. Pazdan,   | ) |  |
| Brad B. Smith, and Chad C. Cousins,   | ) |  |
|                                       | ) |  |
| Third-Party Defendants.               | ) |  |
|                                       | ) |  |

Donza Mattison (“Mattison”) filed a Motion for Stay Pending Appeal or for Writ of Supersedeas (“Motion to Stay”) on April 20, 2021 requesting a stay of this Court’s February 12, 2021 Order that required Mattison to tender her membership units to McMillan Pazdan Smith, LLC (“MPS”). The Motion to Stay was briefed and came before the Court for a telephone hearing on May 19, 2021. Samuel W. Outten appeared on behalf of MPS. David E. Rothstein appeared on behalf of Mattison. Supplemental briefing was conducted following the telephone hearing pursuant to a request by Mattison’s counsel. Having heard the arguments and reviewed the submissions of the parties, Mattison’s Motion to Stay is hereby DENIED.

## **FACTUAL AND PROCEDURAL BACKGROUND**

This case has an extensive factual and procedural history that is unnecessary to fully recount herein. Relevant to this Order, on February 12, 2021, the Court granted summary judgment in MPS's favor on MPS's declaratory judgment claim relating to the valuation of Mattison's membership units in MPS. The ruling resolved all of Mattison's counterclaims, which also related to the value of her units. *See* Order at 4 (Feb. 12, 2021) (noting that the only "remaining issue before the Court, raised both in MPS's claim and in Mattison's counterclaims, is the value of Mattison's equity interest in MPS").

Specifically, the Order answered the question of how the value of Mattison's membership units should be calculated. *Id.* at 9 ("[T]he value of Mattison's 2,035.34 membership units are to be determined by applying the per unit price from the 2017 valuation conducted by HDH."). The Order also established a deadline for Mattison to tender her membership units as she had agreed to do in an enforceable Severance Agreement, and set a deadline for MPS to pay her for them. *See id.* ("Mattison shall tender her membership units to MPS within ten (10) days of the date of this Order," and, within ten days after that, "MPS shall provide payment to Mattison for her membership units as instructed by this Order.").

On February 22, 2021, Mattison filed a Motion to Alter or Amend or for Reconsideration of Summary Judgment Order on Plaintiff's Declaratory Judgment Action. Mattison's Motion to Reconsider was denied by Form 4 Order on March 17, 2021. Mattison did not tender her shares at that time or at any time thereafter and remains in possession of the shares. On April 1, 2021, Mattison filed her Notice of Appeal. On April 21, 2021, Mattison filed the instant Motion to Stay, seeking a stay or a supersedeas of the February 12, 2021 Order. Mattison filed her Motion to Stay shortly after she learned that MPS would not be making membership distributions of profit for the

first quarter of 2021. The parties fully briefed the issues presented by the Motion to Stay, and the Motion is ripe for adjudication.

### **STANDARD OF REVIEW**

Rule 241, SCACR, permits a party to move “for an order imposing a supersedeas of matters decided in the order, judgment, decree or decision on appeal after service of the notice of appeal.” Rule 241(c)(1), SCACR; *see also* Rule 62(d), SCRCP (“When an appeal is taken, a party, by giving a supersedeas bond, may obtain a stay subject to the exceptions contained in . . . the South Carolina Appellate Court Rules.”). A motion for a stay or supersedeas is directed to the trial court in the first instance. *See* Rule 241(d)(1), SCACR.

“Whether to grant such a stay rests in the court’s discretion[.]” *Stearns Bank Nat. Ass’n v. Glenwood Falls, LP*, 375 S.C. 423, 426, 653 S.E.2d 274, 276 (2007). South Carolina state courts have not provided guidance as to how a court should exercise such discretion, and therefore, the Court may look to federal law. *Gardner v. Newsome Chevrolet-Buick, Inc.*, 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991) (“Since our Rules of Procedure are based on the federal Rules, where there is no South Carolina law, we look to the construction placed on the Federal Rules of Civil Procedure.”); *see also* Comments to Rule 62, SCACR (noting that “Rule 62 is drawn from the Federal Rule”).

Federal courts analyze four factors when considering whether to grant a stay under Rule 62(d), FRCP: (1) whether the movant has a substantial likelihood of success on the merits on appeal, (2) whether the movant will be irreparably injured absent a stay, (3) whether the non-movant will be substantially injured if a stay is granted, and (4) the public interest. *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). “A stay of this kind is considered extraordinary relief for which the moving party bears a heavy burden.” *George Sink Injury Lawyers v. George Sink II*

*Law Firm LLC*, 2:19-cv-01206-DCN, 2019 WL 6318778, at \*3 (D.S.C. Nov. 26, 2019) (quoting *Ohio Valley Envtl. Coal., Inc. v. Pruitt*, CIVIL ACTION NO. 3:15-01271, 2017 WL 1712527, at \*2 (S.D. W. Va. May 2, 2017)).

### **RULING**

As an initial matter, the Court finds that the automatic stay does not apply to the Court's February 12, 2021 Order. "As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision." Rule 241(a), SCACR. That general rule, however, is subject to certain exceptions, *see* Rule 241(b), SCACR, which plainly encompass the Order and judgment Mattison seeks to stay. Specifically, the automatic appellate stay does not apply to (1) money judgments, (2) judgments directing the assignment or delivery of documents or personal property, (3) judgments directing the execution of conveyances or other instruments, or (4) an appeal from an order granting an injunction. *See* Rule 241(b)(1)–(3), (8); *see also* S.C. Code Ann. §§ 18-9-130, -150, and -160. Accordingly, the Court's Order and judgment of February 12, 2021, which direct the tender of Mattison's shares (*e.g.*, the delivery of documents or personal property) in exchange for a payment of a sum affirmed by the Order (which is akin to a money judgment) is not stayed automatically on appeal.

First, Mattison has not demonstrated that a stay is necessary to preserve jurisdiction over this matter or to prevent the issues from becoming moot. *See* R. 241(c)(2), SCACR. Instead, Mattison raised a number of issues not presently before the Court and sought relief not raised by her pleadings. The Court may not consider matters that are not before the Court and is without jurisdiction to award relief Mattison never requested in her pleadings. *See Goddard v. Fairways Dev. Gen. P'ship*, 310 S.C. 408, 412, 426 S.E.2d 828, 831 (Ct. App. 1993) ("Issues on which the

trial judge never ruled and which were not raised in post-trial motion are not properly before [the Court of Appeals].”). The issues and relief sought by Mattison cannot be granted by this Court, by the court of appeals, or any court as she failed to raise them in her complaint, never amended the complaint, and has therefore waived those claims.

Furthermore, applying the standard set forth in *Hilton v. Braunskill*, the Court finds that there is no basis to issue a discretionary stay. Mattison has failed to carry her burden and demonstrate (1) that she is likely to succeed on the merits of her appeal, (2) that she will be irreparably harmed in the absence of a stay, (3) that MPS will not be substantially injured if a stay is granted, or (4) that the public interest weighs in favor of a stay. In fact, Mattison presented no arguments as to any of these factors. As a result, the record is devoid of argument from Mattison upon which the Court could conclude that this discretionary standard has been met. Moreover, the Court finds MPS’s arguments regarding the *Hilton* factors persuasive and finds that each factor weighs against issuing a stay.

The February 12, 2021 Order presented a narrow ruling addressing the amount of money Mattison is owed for her membership units, based on well-established principles of contract law in South Carolina. *See* Order at 4 (Feb. 12, 2021) (noting that the only “remaining issue before the Court, raised both in MPS’s claim and in Mattison’s counterclaims, is the value of Mattison’s equity interest in MPS”). Mattison has not demonstrated that she is likely to succeed on appeal, and the Court is not convinced she is likely to succeed on appeal. However, even if Mattison is successful on appeal, the evidence and arguments before the Court demonstrate that in the absence of a stay, Mattison will not be irreparably harmed. As argued by MPS, regardless of the outcome of the appeal, the parties can easily be placed in their correct positions through payments or

repayments of money, which is not the type of injury that forms the basis of irreparable harm or justifies the issuance of a stay.

For the reasons set forth above, Mattison’s Motion to Stay is hereby denied. The Court has carefully weighed and considered each of Mattison’s allegations, claims, and arguments asserted in her written submissions and oral arguments but finds them unpersuasive or legally incorrect. Accordingly, the Court’s February 12, 2021 Order is not stayed pending appeal, and MPS and Mattison are required to comply with the February 12, 2021 Order. Therefore, Mattison must tender her membership units to MPS within ten (10) days of the date of this Order. Within ten (10) days of Mattison tendering her units, MPS shall provide payment to Mattison for her membership units, as instructed by the February 12, 2021 Order.

AND IT IS SO ORDERED.

\_\_\_\_\_  
R. Lawton McIntosh, Presiding Judge  
Tenth Judicial Circuit

Anderson, South Carolina

\_\_\_\_\_, 2021



Greenville Common Pleas

**Case Caption:** McMillan Pazdan Smith LLC , plaintiff, et al vs. Donza H Mattison ,  
defendant, et al  
**Case Number:** 2019CP2300998  
**Type:** Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

# **Exhibit I**

# **McMillan Pazdan Smith, LLC**

(a South Carolina limited liability company)

## **OPERATING AGREEMENT**

**September 25, 2009**

### **NOTICE**

THE MEMBERSHIP UNITS OF MCMILLAN PAZDAN SMITH, LLC (THE "UNITS") HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), THE SECURITIES LAWS OF ANY STATE, OR ANY OTHER APPLICABLE SECURITIES LAWS IN RELIANCE UPON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND SUCH LAWS. THE UNITS MAY BE ACQUIRED FOR INVESTMENT ONLY, AND SUCH UNITS MAY NOT BE OFFERED FOR SALE, PLEDGED, HYPOTHECATED, SOLD, ASSIGNED OR TRANSFERRED AT ANY TIME EXCEPT IN COMPLIANCE WITH (1) THE SECURITIES ACT, ANY APPLICABLE STATE SECURITIES LAWS, AND ANY OTHER APPLICABLE SECURITIES LAWS, AND (2) THE TERMS AND CONDITIONS OF THIS OPERATING AGREEMENT. THE UNITS WILL NOT BE TRANSFERRED OF RECORD EXCEPT IN COMPLIANCE WITH SUCH LAWS AND THIS OPERATING AGREEMENT. PURCHASERS OF THE UNITS WILL BE REQUIRED TO BEAR THE RISK OF THEIR INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

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SCHEDULE A – MEMBER INFORMATION

6.8 Scope of Duties. A Manager is relieved of liability imposed by law or this Agreement for violation of the standards prescribed by this Article VI to the extent of the managerial authority delegated to the Members by this Agreement.

## **ARTICLE VII** **Accounting and Tax Elections**

7.1 Accounting Decisions. All decisions as to accounting matters, except as specifically provided to the contrary herein, shall be made by the Management Committee.

7.2 Taxable Year and Tax Accounting Methods. Unless otherwise required by the Code, Treasury Regulations or the Internal Revenue Service, the Company's taxable and fiscal years shall be the calendar year, and the books of account of the Company shall be maintained on a cash basis consistently applied and shall show all items of income and expense. Subject to Section 7.4 hereof, all elections required or permitted to be made by the Company under the Code shall be made by the Management Committee.

7.3 Tax Returns. Not later than the time required by law, the Management Committee shall prepare and file or cause to be prepared and filed for each fiscal year, all federal, state, and local income tax returns required of the Company.

7.4 Tax Elections.

(a) The Company shall make the following elections for federal income tax purposes:

(i) To treat as an expense for federal income tax purposes all amounts incurred for real estate taxes, interest and other charges that may, in accordance with applicable law and regulations, be considered as an expense;

(ii) To deduct expenses incurred in organizing the Company ratably over a sixty (60) month period as provided in Section 709 of the Code; and

(iii) To be treated as a corporation taxed under Subchapter S of the Code unless otherwise decided under Section 4.2(c).

(b) In the event of a Distribution of Company Property to a Member or a Transfer, whether during life or at death, by a Member of all or any part of his Units, the Company shall determine whether to elect pursuant to Section 754 of the Code, and in accordance with applicable law and regulations, to adjust the basis of the assets of the Company pursuant to Sections 734 and 743 of the Code.

## **ARTICLE VIII** **Interim Distributions and Allocations**

8.1 Distributions.

(a) All Distributions of cash or other property, except Distributions upon the Company's dissolution (which shall be governed by SECTION 9.6), shall be made in the following order and priority:

(i) Tax Distributions. First, to the extent the Company has Available Cash and the Company agrees to make a Distribution pursuant to this SECTION 8.1(a)(i), the Company shall distribute to each Member within ninety (90) days of the end of each fiscal year of the Company an

amount equal to the excess, if any, of (A) the product of (1) the estimated net taxable income allocated to such Member for the fiscal year then ended (on Schedule K-1), multiplied by (2) the Maximum Effective Tax Rate, over (B) any previous Distributions by the Company to the Members with respect to said previous fiscal year. Distributions made pursuant to this SECTION 8.1(a)(i) shall be deemed to constitute an advance (without interest) against any Distributions provided for in SECTION 8.1(a)(ii).

(ii) Other Distributions of Available Cash. Second, after the Distributions described in SECTION 8.1(a)(i) and at such times as determined by the Company, the Company shall distribute any remaining Available Cash to all the Members pro rata in proportion to their respective Financial Rights.

(b) Notwithstanding anything herein to the contrary, no Distribution to any Member may be made if, after giving effect to the Distribution, either (a) the Company would not be able to pay its debts as they become due in the ordinary course of business, or (b) the Company's total assets would be less than the sum of its total liabilities plus the amount that would be needed if the Company were to be dissolved, wound up and terminated at the time of the Distribution, to satisfy the preferential rights upon dissolution, winding up and termination of Members whose preferential rights are superior to those receiving the Distribution. The provisions of Section 33-44-406 of the Act shall apply in construing this Section 8.1.

8.2 Calculation of Profits and Losses. The Profits and Losses of the Company for each fiscal year or other period shall be the taxable income or loss of the Company for such year or period determined in accordance with the Code.

8.3 Allocation of Profits and Losses. The Profits and Losses of the Company for any fiscal year of the Company shall be allocated among the Members in accordance with their Financial Rights. Upon termination of the Company or upon liquidation of any Member's Membership Interest, Distributions shall be made in accordance with the positive Capital Account balances of the Members after taking into account all Capital Account adjustments for the year during which such termination or liquidation occurs.

8.4 Tax Item Allocation. Unless otherwise specially allocated herein, whenever a proportionate part of Profits or Losses is charged or credited to the Capital Account of a Member, every item of income, gain, loss, deduction, credit, allowance or tax preference entering into the computation of such Profits or Losses or applicable to the period during which such Profits or Losses were realized shall be considered credited or charged, as the case may be, to such Capital Account in the same proportion. In the event of a Transfer of Financial Rights in the Company at any time other than at the end of the Company's tax year, the distributive share of Profits and Losses and any items of Company income, gain, loss, deduction, credit or tax preference attributable to the transferred Financial Rights shall be apportioned for income tax purposes between the transferor and transferee in accordance with the number of days in the taxable year of the Company that each was the owner of such Financial Rights.

## **ARTICLE IX**

### **Dissolution, Winding Up, and Termination**

9.1 Dissolution. The Company shall dissolve, its affairs shall be wound up, and the Company shall terminate upon the first to occur of the following:

(a) The written consent of the Management Committee and a Required Interest of the Members;

## **Exhibit J**

**WRITTEN CONSENT IN LIEU OF A SPECIAL MEETING OF  
THE MEMBERS OF  
MCMILLAN PAZDAN SMITH, LLC**

The undersigned, being all of the members of McMillan Pazdan Smith, LLC, a South Carolina limited liability company (the "Company"), hereby approve and adopt the following resolutions by this written consent in accordance with the provisions of South Carolina law, said resolutions to have the same force and effect as if they had been unanimously adopted at a duly convened meeting of the Members of the Company.

WHEREAS, in order to incorporate the terms of that certain First Amendment to the Operating Agreement of the Company adopted on July 11, 2012, the terms of the Second Amendment to the Operating Agreement of the Company adopted on January 1, 2014, and to adjust certain other provisions related to distributions and governance, the Members of the Company desire to amend and restate the Operating Agreement of the Company in its entirety;

NOW, THEREFORE, BE IT RESOLVED, that the Management Committee has recommended to the Members and the Members hereby adopt the Amended and Restated Operating Agreement of McMillan Pazdan Smith, LLC, attached hereto as Exhibit A (the "Operating Agreement").

FURTHER RESOLVED, that this written consent shall be placed in the record book of the Company.

[Signature Page to Follow]

IN WITNESS WHEREOF, the undersigned, being the members of McMillan Pazdan Smith, LLC, have executed this Written Consent to be effective as of the 30<sup>th</sup> day of November, 2015.


**MEMBERS:**

  
\_\_\_\_\_  
Ron G. Smith

  
\_\_\_\_\_  
Joseph M. Pazdan

  
\_\_\_\_\_  
Brad B. Smith

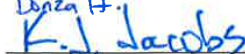
  
\_\_\_\_\_  
Chad Cousins

  
\_\_\_\_\_  
Donald L. Love, Jr.

  
\_\_\_\_\_  
Richard Cullen Pitts

  
\_\_\_\_\_  
Lisa Marie Lanni

\_\_\_\_\_  
~~Donna L. Mattison~~

  
\_\_\_\_\_  
K.J. Jacobs

  
\_\_\_\_\_  
Karen Calhoun

  
\_\_\_\_\_  
David Moore

\_\_\_\_\_  
~~Paulette Meyers~~

  
\_\_\_\_\_  
Harry Ballard

**EXHIBIT A**

**AMENDED AND RESTATED OPERATING AGREEMENT**

Attached hereto.

# **McMillan Pazdan Smith, LLC**

**(a South Carolina limited liability company)**

## **AMENDED AND RESTATED OPERATING AGREEMENT**

**September 30, 2015**

### **NOTICE**

**THE MEMBERSHIP UNITS OF MCMILLAN PAZDAN SMITH, LLC (THE "UNITS") HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), THE SECURITIES LAWS OF ANY STATE, OR ANY OTHER APPLICABLE SECURITIES LAWS IN RELIANCE UPON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND SUCH LAWS. THE UNITS MAY BE ACQUIRED FOR INVESTMENT ONLY, AND SUCH UNITS MAY NOT BE OFFERED FOR SALE, PLEDGED, HYPOTHECATED, SOLD, ASSIGNED OR TRANSFERRED AT ANY TIME EXCEPT IN COMPLIANCE WITH (1) THE SECURITIES ACT, ANY APPLICABLE STATE SECURITIES LAWS, AND ANY OTHER APPLICABLE SECURITIES LAWS, AND (2) THE TERMS AND CONDITIONS OF THIS AMENDED AND RESTATED OPERATING AGREEMENT. THE UNITS WILL NOT BE TRANSFERRED OF RECORD EXCEPT IN COMPLIANCE WITH SUCH LAWS AND THIS AMENDED AND RESTATED OPERATING AGREEMENT. PURCHASERS OF THE UNITS WILL BE REQUIRED TO BEAR THE RISK OF THEIR INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.**

GREENVILLE 1425710.1

CONFIDENTIAL

MPS\_000125

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| 12.16   | Effective Date .....            | 30        |
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SCHEDULE A – MEMBER INFORMATION

**AMENDED AND RESTATED  
OPERATING AGREEMENT  
OF  
MCMILLAN PAZDAN SMITH, LLC**

THIS AMENDED AND RESTATED OPERATING AGREEMENT (this "Agreement") of McMillan Pazdan Smith, LLC, a South Carolina limited liability company (the "Company"), is made and entered into and shall be effective as of the 30th day of September, 2015, by and among the undersigned parties.

WITNESSETH:

WHEREAS, the Company was formed on August 19, 2009 by the filing of a Articles of Organization with the South Carolina Secretary of State and the then members entered into the McMillan Pazdan Smith, LLC Operating Agreement on September 25, 2009 (the "Original Agreement"); and

WHEREAS, the undersigned Members desire to amend certain provisions of the Original Agreement to revise certain distribution rights and, in connection therewith, the parties hereto desire to amend and restate the Original Agreement in its entirety.

NOW, THEREFORE, for and in consideration of the mutual promises and agreements herein made and intending to be legally bound hereby, the parties hereto agree as follows:

---

**ARTICLE I**  
**Definitions**

Whenever used in this Agreement, or any amendment hereof, the following terms shall have the meanings set forth below and shall include the plural as well as the singular:

"Act" shall mean the South Carolina Uniform Limited Liability Company Act of 1996, Sections 33-44-101 et. seq. of the Code of Laws of South Carolina (1976), as amended, and any corresponding provisions of future laws.

"Agreement" shall mean this Amended and Restated Operating Agreement of McMillan Pazdan Smith, LLC and any amendments made thereto from time to time.

"Articles of Organization" shall mean the Articles of Organization filed with the South Carolina Secretary of State by which the Company was organized as a South Carolina limited liability company pursuant to the Act, as amended or restated from time to time in accordance with this Agreement.

"Capital Account" shall mean the account established and maintained for each Member on the books of the Company pursuant to ARTICLES VII and VIII hereof.

"Capital Contribution" or "Contribution to Capital" shall mean the amount of cash and net fair market value (at the time of the contribution) of any property contributed to the Company by or on behalf of each Member.

"Code" shall mean the Internal Revenue Code of 1986, as amended, and any corresponding provisions of future laws.

"Company" shall mean McMillan Pazdan Smith, LLC, a South Carolina limited liability company.

whether to elect pursuant to Section 754 of the Code, and in accordance with applicable law and regulations, to adjust the basis of the assets of the Company pursuant to Sections 734 and 743 of the Code.

**ARTICLE VIII**  
**Interim Distributions and Allocations**

8.1 Distributions.

(a) All Distributions of cash or other property, except Distributions upon the Company's dissolution (which shall be governed by SECTION 9.6), shall be made in the following order and priority:

(i) Estimated Tax Distributions. First, to the extent the Company has Available Cash, the Company shall distribute within fifteen (15) days of the end of each fiscal quarter of the Company an amount equal to the excess, if any, of (A) the product of (1) the estimated Profits of Company for the fiscal period then ended, multiplied by (2) the Maximum Effective Tax Rate, over (B) any previous Distributions by the Company to the Members with respect to that fiscal year, to all the Members pro rata in proportion to their respective Financial Rights during the fiscal year.

(ii) Final Tax Distributions. Second, to the extent the Company has Available Cash and the Company has not made sufficient distributions under SECTION 8.1(a)(i) to cover a Member's net taxable income allocated to such Member for the fiscal year then ended (on Schedule K-1), the Company shall distribute to each Member within ninety (90) days of the end of each fiscal year of the Company an amount equal to the excess, if any, of (A) the product of (1) the estimated Profits allocated to such Member for the fiscal year then ended, multiplied by (2) the Maximum Effective Tax Rate, over (B) any previous Distributions by the Company to the Members with respect to said previous fiscal year, including any Distributions made under SECTION 8.1(a)(i).

(iii) Other Distributions of Available Cash. Finally, after the Distributions described in SECTIONS 8.1(a)(i) and 8.1(a)(ii) and at such times as determined by the Company, the Company shall distribute any remaining Available Cash to all the Members pro rata in proportion to their respective Financial Rights.

(b) Notwithstanding anything herein to the contrary, no Distribution to any Member may be made if, after giving effect to the Distribution, either (a) the Company would not be able to pay its debts as they become due in the ordinary course of business, or (b) the Company's total assets would be less than the sum of its total liabilities plus the amount that would be needed if the Company were to be dissolved, wound up and terminated at the time of the Distribution, to satisfy the preferential rights upon dissolution, winding up and termination of Members whose preferential rights are superior to those receiving the Distribution. The provisions of Section 33-44-406 of the Act shall apply in construing this Section 8.1.

8.2 Calculation of Profits and Losses. The Profits and Losses of the Company for each fiscal year or other period shall be the taxable income or loss of the Company for such year or period determined in accordance with the Code.


8.3 Allocation of Profits and Losses. The Profits and Losses of the Company for any fiscal year of the Company shall be allocated among the Members in accordance with their Financial Rights. Upon termination of the Company or upon liquidation of any Member's Membership Interest, Distributions shall be made in accordance with the positive Capital Account balances of the Members after taking into account all Capital Account adjustments for the year during which such termination or liquidation occurs.

8.4 Tax Item Allocation. Unless otherwise specially allocated herein, whenever a proportionate part of Profits or Losses is charged or credited to the Capital Account of a Member, every



Supporting Memorandum of Law prepared by my attorney, David E. Rothstein, and I know the contents thereof. I hereby verify that all statements in the Petition are true based on my own, personal knowledge, or I reasonably believe them to be true based upon information available to me.

FURTHER AFFIANT SAYETH NOT.

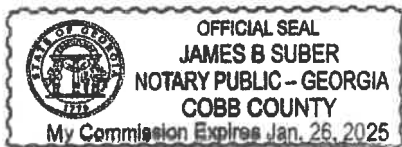
  
Donza H. Mattison

SWORN to and subscribed before me,

this 16 day of July, 2021

  
\_\_\_\_\_  
Notary Public for ~~South Carolina~~ Georgia (L.S.)

My commission expires: 07/26/2025



**RECEIVED**

**Jul 16 2021**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas, Business Court Program

R. Lawton McIntosh, Circuit Court Judge

---

Case No. 2019-CP-23-00998  
Appellate Case No. 2021-000365

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McMillan Pazdan Smith, LLC, ..... Plaintiff-Respondent,

v.

Donza H. Mattison, ..... Defendant-Appellant,

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PROOF OF SERVICE

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I certify that I have served the Verified Petition for Stay Pending Appeal or for Writ of Supersedeas, along with the Memorandum of Law and all Exhibits on Respondent, McMillan Pazdan Smith, LLC, by email and by depositing these documents in the United States Mail, postage prepaid (as indicated below), on July 16, 2021, addressed to their following attorneys of record: Samuel W. Outten and Miles Coleman, Nelson Mullins Riley & Scarborough LLP, 2 W. Washington St., Suite 400, Greenville, SC 29601 (mail and email); Thomas H. Keim, Jr. Ford Harrison, 100 Dunbar St., Suite 300, Spartanburg, SC 29306 (email only); and A. Mattison Bogan, Nelson Mullins Riley & Scarborough, LLP, 1320 Main St., 17<sup>th</sup> Floor, Columbia, SC 29201 (email only).

July 16, 2021

s/ David E. Rothstein  
David E. Rothstein, SC Bar No. 66295  
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Greenville, SC 29605  
[drothstein@rothsteinlawfirm.com](mailto:drothstein@rothsteinlawfirm.com)  
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July 16, 2021

**VIA EMAIL ([ctappfilings@sccourt.org](mailto:ctappfilings@sccourt.org))  
AND U.S. MAIL**

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

**RECEIVED**

**Jul 16 2021**

**SC Court of Appeals**

Re: McMillan Pazden Smith, LLC v. Donza H. Mattison etc.  
Appellate Case No. 2021-000365

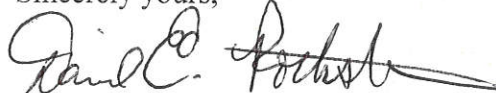
Dear Ms. Kitchings:

Enclosed please find the following documents for filing in the above-referenced case: (1) Appellant's Verified Petition for Stay Pending Appeal or for Writ of Supersedeas; (2) Memorandum of Law in Support of Appellant's Verified Petition for Stay Pending Appeal or for Writ of Supersedeas, with Exhibits A-J; (3) Proof of Service; and (4) Verification by Appellant, Donza H. Mattison. Please file these documents and return a stamped copy to my for my records. I am also enclosing a check for the filing fee of \$50.00 with the original of this letter that is being sent by regular mail.

I believe that this matter can be presented to a single judge of the Court of Appeals for a final order. This matter was first presented to Judge McIntosh, and his orders denying the motion are attached to the Memorandum as Exhibits G and H.

If you have any questions or need anything else, please do not hesitate to call me or email me.

Sincerely yours,

  
David E. Rothstein

Enclosures

cc: Samuel W. Outten, Esq. (via email only)  
Thomas H. Keim, Jr., Esq. (via email only)  
H. Mattison Bogan, Esq. (via email only)