

**RECEIVED**  
**Oct 28 2021**  
**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
The Honorable L. Casey Manning

---

Circuit Court Case No. 2015-CP-40-07268  
Appellate Case No. 2021-00898

---

Jimmy Helms.....Respondent,

v.

Debbie Willing.....Appellant.

---

**RESPONDENT’S RETURN TO APPELLANT’S  
MOTION TO ENFORCE AUTOMATIC STAY AND IN THE ALTERNATIVE  
MOTION FOR AN ORDER LIFTING AUTOMATIC STAY**

---

This matter arises out of an appeal filed by Appellant Debbie Willing of an Order of the Honorable L. Casey Manning entered into on June 21, 2021 and Judge Manning’s subsequent Order denying Appellant’s Motion for Reconsideration dated July 19, 2021. Appellant has moved pursuant to South Carolina Appellant Court Rules 240 and 241 for an Order enforcing the automatic stay provisions of Rule 241(a) and to “desist representing to others that he is the legal title holder of the Property, pending Appeal.” For the reasons set forth below, the Respondent submits that Appellant is not entitled to the relief sought in her motion as the automatic stay provisions of Rule 240 and Rule 241 are not applicable to the Court’s Judgment. In the event that the Court does determine that Rule 240 and Rule 241 are applicable, Respondent would move

before the Court pursuant to Rule 240(c) for an Order lifting any automatic stay that the Court may find applicable to this case.

### **BACKGROUND**

The underlying action in this case was commenced on December 15, 2015, by the filing of a Summons and Complaint by the Respondent Jimmy Helms (“Respondent”) brought against Appellant Debbie Willing (“Appellant”) alleging that the parties were engaged in an ongoing partnership and that the partnership property should be divided (Order of the Honorable L. Casey Manning, dated June 21, 2021 (Attachment “A”). Respondent’s Complaint also sought recovery under causes of action for breach of fiduciary duty and conversion. One of the issues in this case involved the ownership of properties, including a piece of property located at 812 Meeting Street and 820 Meeting Street.

This matter was tried before Judge Manning on July 13, 2020, and July 14, 2020. The Court took in testimony from the parties as well as forensic evidence. After hearing the evidence presented before him, Judge Manning found the Appellant owned certain properties and that Respondent owned certain properties (Order of Judge Manning dated June 21, 2021). The Court determined and ruled that the property located at 812 Meeting Street and 820 Meeting Street were held as partnership property. In equitably dividing this partnership property, the Court found and ruled that Respondent owns title to the 812 Meeting Street and the 820 Meeting Street properties (Order of Judge Manning dated June 21, 2021). Appellant timely filed a Notice of Appeal and this matter is presently before the Court.

Appellant moved for an Order pursuant to Rule 240 and 241 of the South Carolina Rules of Appellant Procedure after Respondent’s counsel contacted the individual/entity operating a

service station on the property requesting rent paid each month by the tenant in order to operate a business on the property. This request forms the basis of Appellant's Motion.

### ARGUMENT

Rule 241(a) provides that as a "general rule" the service of a notice of appeal in a civil matter acts to stay all matters decided in the underlying order. Rule 241(b) sets forth a number of exceptions to the automatic stay. Respondent argues that no exceptions apply and that the automatic stay provisions of Rule 240(a) should be enforced by this Court.

Judge Manning's Order clearly provides that Respondent holds title of the Meeting Street properties. Rule 240(b)(3) and Rule 240(b)(4) specifically provides that the automatic stay provision of Rule 240(a) does not apply to judgments that direct the conveyances of instruments provided for in South Carolina Code Section 18-9-160 or judgments directing the sale or delivery of possession of real property pursuant to South Carolina Code Section 18-9-170. Judge Manning's Order clearly provides that title of the Meeting Street properties is held by Respondent and not Appellant. Appellant's argument that this judgement does not direct transfer of ownership/title from Appellant to Respondent ignores the clear language contained in Judge Manning's Order. Contrary to the argument of Appellant, this case clearly falls under the exceptions contained in Rule 241(b) of the South Carolina Rules of Appellant Procedure.

Respondent also asks this Court to issue an Order for Respondent to "desist representing to others that he is the legal title owner of the property, pending this appeal." Until the Court reverses the Lower Court's Order, there is a valid Court Order to this effect. Respondent submits that this request is akin to requesting that this Court issue some type of declaratory or injunctive

relief, which is outside the scope of any motion allowed under the rules cited by Appellant in her Brief.

In the alternative, if the Court finds that the exceptions of Rule 241(b) do not apply, the Respondent would move before the Court for an Order lifting any Automatic Stay pursuant to Rule 241(c) of the South Carolina Rules of Appellate Procedure. Judge Manning's Order provides that Respondent, and not Appellant holds legal title to the Meeting Street properties. Appellant, who does not hold title per Judge Manning's Order is collecting rents on a piece of property that she no longer owns. It would be unequitable for the Appellant to continue to collect these rents during the pendency of this appeal.

Respondent respectfully requests that this Court issue its Order denying the Appellant's Motion to Enforce Automatic Stay. In the alternative, if the Court does find and rule that the Automatic Stay provisions of Rule 241(a) apply, Respondent moves for an Order of this Court lifting any automatic stay to allow him to begin to collect rents on property that the Court has ruled he has title to (pending the ultimate outcome of this appeal).

Respectfully submitted,

October 28, 2021

s/S. Jahue Moore  
S. Jahue Moore, SC Bar # 4063  
Moore Bradley Myers Law Firm, P.A.  
P.O. Box 5709  
West Columbia, SC 29171  
(803) 796-9160  
jake@mbmlaw.com  
Attorney for Respondent

**ATTACHMENT A**

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )  
JIMMY HELMS, )  
Plaintiff, )  
v. )  
DEBBIE WILLING, )  
Defendant. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

C/A No.: 2015-CP-40-07268

**ORDER**

**PROCEDURAL HISTORY**

This action was commenced on December 15, 2015 by the filing of a Summons and Complaint. The complaint alleged (1) that the parties were engaged in a partnership and that the partnership property should be divided, (2) a breach of fiduciary duty by Defendant, and (3) conversion by Defendant. A bench trial was held on July 13 and 14, 2020 with S. Jahue Moore, Esq. appearing on behalf of Plaintiff and Lakesha Jeffries, Esq. appearing on behalf of Defendant. The court considered all filings and testimony when making its conclusions of law, including the reports (hereinafter Forensic Report) prepared by the forensic accountant Marcus B. Hodge, CPA/ABV/CFF, MBA, CFE, of ASC Forensic.

This is an action which involves title and interest in the following real estate and property: 1900 Oceola Drive, 1904 Oceola Drive, 1905 Oceola Drive, 812 Meeting Street, 820 Meeting Street, 809 Shull Street, and 185 Harbor Watch; payments made by Viral Patel for the convenience store located at 812 and 820 Meeting Street; proceeds from a lawsuit of \$100,000; and a deposit account valued at \$86,620.48. This Court finds that both Parties have had sufficient time, over the course of the six years this action has been pending, to have all real estate and property appraised and valued to support their opinions.

**CONCLUSIONS OF FACT AND LAW**

The court finds that the Defendant owns the disputed properties of 1900 Oceola, 1904 Oceola, 809 Shull, and 185 Harbour Watch. According to the Forensic Report, the real estate listed above was purchased by the Defendant. The conclusions of the Forensic Report and the testimony of the parties show that the real estate listed above was not only purchased by the Defendant but the Defendant also paid mortgages and bills associated with the properties.

The court finds that the Plaintiff owns the disputed property at 1905 Oceola. According to the Forensic Report, 1905 Oceola was purchased by the Plaintiff on May 4, 2010 and that Plaintiff sold the property on May 15, 2017. There is no evidence from the Forensic Report or the parties testimony that 1905 Oceola was claimed by the Defendant or that the Defendant shared in the profits or losses associated with the property.

According to the Forensic Report, Plaintiff purchased 812 Meeting Street on May 1, 2002 and Defendant purchased 820 Meeting Street on August 27, 2004. Subsequently, Plaintiff transferred 812 Meeting Street to Defendant for \$5.00 on January 6, 2006. L&D Enterprises, LLC's alias was Jimmy's Mini Mart, located on both 812 Meeting Street and 820 Meeting Street.

The Plaintiff and Defendant testified that they worked at Jimmy's Mini Mart in various capacities, with Defendant retaining the purported legal title to the Meeting Street properties through Defendant's management of L&D Enterprises. The Forensic Report notes that both Plaintiff and Defendant were authorized signers on L&D Enterprises accounts and that when the property was sold to Viral Patel, Mr. Patel believed the seller to be both Plaintiff and Defendant.

The court finds that the disputed property was held as partnership property. Under the common law, a partnership is a "voluntary contract between two or more competent persons to place their money, effects, labor and skill, or some or all of them, in lawful commerce or business,

with the understanding that there shall be a proportional sharing of the profits and losses between them. *Black's Law Dictionary* 1120 (6th ed. 1990). To determine whether a partnership exists, the following tests are used: (1) the sharing of profits and losses; (2) community of interest in capital or property; and (3) community if interest in control and management. *Moore v. Moore*, 360 S.C. 241, 599 S.E.2d 467 (Ct. App. 2004). A partnership may be found to exist by implication from the parties' conduct. *Stephens v. Stephens*, 213 S.C. 525, 50 S.E.2d 577 (1948); see also *Wyman v. Davis*, 223 S.C. 172, 74 S.E.2d 694 (1953) (a partnership agreement may be implied and without express intention). *Corley v. Ott*, 326 S.C. 89, 92, 485 S.E.2d 97, 99 (1997).

The parties have sought an equitable division of disputed property. The court finds that Plaintiff holds legal title to 812 Meeting Street and 820 Meeting Street. The court finds that it would be inequitable to divide the Meeting Street properties as they operate as joint property for Jimmy's Mini Mart, now Jimmy's Citgo.

The court finds that Plaintiff and Defendant are each entitled to one half of the sale amount for Jimmy's Mini Mart/Jimmy's Citgo and one half of the settlement amount from the Lexington County lawsuit. The combined amount from the Forensic Report is \$208,335.00.

The court finds that Plaintiff and Defendant are each entitled to one half of the Deposit Account funds, valued at \$86,620.48 by the Forensic Report, as the money was acquired as partnership funds during the period of co-habitation by Plaintiff and Defendant.

AND IT IS SO ORDERED.

---

THE HONORABLE L. CASEY MANNING  
CHIEF ADMINISTRATIVE JUDGE  
FIFTH JUDICIAL CIRCUIT

\_\_\_\_\_, 2021  
Columbia, South Carolina



Richland Common Pleas

**Case Caption:** Jimmy Helms vs Debbie Willing

**Case Number:** 2015CP4007268

**Type:** Order/Other

So Ordered

s/L. Casey Manning, 2061

**RECEIVED**  
**Oct 28 2021**  
**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

The Honorable L. Casey Manning

Appellate Case No. 2021-00898

Jimmy Helms, .....Respondent,

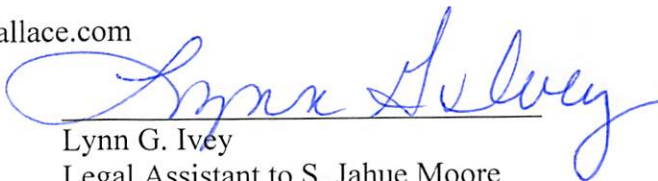
v.

Debbie Willing, .....Appellant.

**PROOF OF SERVICE**

I, Lynn G. Ivey, an employee of the Moore Bradley Myers Law Firm, P.A., certify that I have served the Respondent's Return to Appellant's Motion to Enforce Automatic Stay and in the Alternative Motion for an Order Lifting Automatic Stay on the Appellant by depositing a copy of same in the United States Mail, postage prepaid and via electronic mail (email), on October 28, 2021, addressed to their attorney of record as follows:

Ainsley F. Tillman, Esquire  
715 King Street  
Charleston, SC 29403  
Ainsley.Tillman@FordWallace.com

  
Lynn G. Ivey  
Legal Assistant to S. Jahue Moore