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SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**APPEAL FROM GREENVILLE COUNTY
CIRCUIT COURT**

The Hon. R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2019-000530

Jami Powell and Encore Technology Group, LLC,

Of which Encore Technology Group, LLC is the Appellant,

v.

Clear Touch Interactive, Inc. (a Nevada Corporation),
f/k/a Clear Touch Interactive LLC (a Nevada LLC);

Keone Trask and Tamara Trask, Respondents.

**APPELLANT ENCORE TECHNOLOGY GROUP, LLC'S
PETITION FOR REHEARING
AND MEMORANDUM IN SUPPORT**

Pursuant to SCACR 221, Appellant Encore Technology Group, LLC (“Encore”) respectfully petitions the Court of Appeals for rehearing of the Court’s Opinion No. 2021-UP-418, filed November 24, 2021, in this matter (the “Opinion”). The Opinion affirmed the trial court’s decision not to require Respondent Keone Trask (“Trask”) to pay exemplary damages. The Opinion was based, not on the merits of Encore’s briefs, but on the Court’s Opinion No. 5871 in Appellate Case No. 2018-001444, filed November 24, 2021 (the “Election Decision”), upon which the Court “presume[d] Encore will not elect to recover on the trade secrets claim” against Trask.

For the reasons stated in Encore's Petition for Rehearing of the Election Decision in Appellate Case No. 2018-001444, which is incorporated herein by reference, errors by the Court warrant rehearing and issuance of a new opinion affirming the trial court's decision on Election of Remedies. For the reasons stated in Encore's briefs in this case, which are incorporated herein by reference, Trask should be required to pay exemplary damages on the trade secrets claim under the plain language of S.C. Code Ann. § 39-8-40(C) and *McGee v. Bruce Hosp. Sys.*, 344 S.C. 466, 471-72 n.3, 545 S.E.2d 286, 288-89 n.3 (2001) ("Punitive damages awarded against one tortfeasor do not constitute double recovery with respect to a judgment against another tortfeasor since the purpose of punitive awards is to punish a particular offender rather than to compensate the victim for its injury."). Moreover, contrary to the Opinion, once the trial court's decision on Election of Remedies is affirmed and Trask is required to pay exemplary damages on the trade secrets claim, Clear Touch and Trask will not have paid amounts sufficient to satisfy the judgments against them. Therefore, the Court should also issue a new opinion in this matter, requiring Trask to pay exemplary damages to Encore on the trade secrets claim.

CONCLUSION

For the foregoing reasons, the Court should issue a new opinion requiring Trask to pay exemplary damages to Encore on the trade secrets claim.

Respectfully submitted,

WYCHE, P.A.

BY:  s/ Gregory J. English

Gregory J. English

Rita Bolt Barker

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Attorneys for Respondent/Appellant
Encore Technology Group, LLC

December 9, 2021

Other Counsel of Record:

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v.

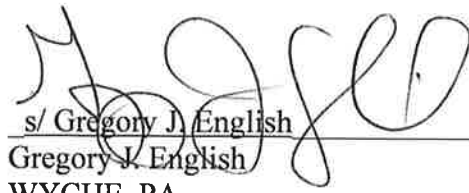
Clear Touch Interactive, Inc. (a Nevada Corporation),
f/k/a Clear Touch Interactive LLC (a Nevada LLC);

Keone Trask and Tamara Trask, Respondents.

PROOF OF SERVICE

I, Gregory J. English, of Wyche, P.A., attorneys for the Appellant in this appeal, do hereby certify that I have this date served upon opposing counsel for the party who has served a brief in this appeal the **APPELLANT ENCORE TECHNOLOGY GROUP, LLC'S PETITION FOR REHEARING AND MEMORANDUM IN SUPPORT** by Email and by first class mail, addressed to the following:

Joseph Owen Smith
Joshua Jennings Hudson
Smith Hudson Law, LLC
200 North Main Street, Suite 301-C
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s/ Gregory J. English

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December 9, 2021

Greg English

From: Greg English
Sent: Thursday, December 9, 2021 2:05 PM
To: Josh Smith; Josh Hudson
Cc: Rita Bolt Barker; Greg English
Subject: FW: Jami Powell (Encore) v. Clear Touch Interactive (2019-000530)
Attachments: 1730_001.pdf

Josh and Josh,

We hereby serve upon you Appellant Encore Technology Group, LLC's Petition for Rehearing in this matter.

Sincerely, Greg



Gregory English | Wyche

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A Lex Mundi Member Firm

From: Spencer, Shelby <sspencer@sccourts.org>
Sent: Wednesday, November 24, 2021 9:58 AM
To: jsmith@smithhudsonlaw.com; jhudson@smithhudsonlaw.com; Greg English <genglish@wyche.com>; Rita Bolt Barker <rbarker@wyche.com>
Cc: McIntosh, Lawton <lmcintosh@sccourts.org>; Falin, Lynn <LFalin@sccourts.org>; Singleton, Mary C. <msingleton@sccourts.org>
Subject: Jami Powell (Encore) v. Clear Touch Interactive (2019-000530)

Dear Counsel,

Attached is a copy of this Court's cover letter and opinion. If you have any questions or concerns, please do not hesitate to contact our office.

Warmly,

Shelby Spencer

Appeals Specialist II

SC Court of Appeals

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