

**IN THE COMMON PLEAS COURT OF
OTTAWA COUNTY, OHIO**

Hilary A. Moore,	:	Case No. 02-DRA-064
	:	
	:	
Plaintiff,	:	Judge Paul C. Moon
	:	Magistrate Bruce A. Winters
	:	
	:	
v.	:	<u>DECISION & ORDER; JOINDER OF</u>
	:	<u>THIRD PARTIES</u>
	:	
	:	
John Robert Moore, IV,	:	
	:	
	:	
Defendant.	:	

* * * * *

{¶1} This cause is before this Court upon its Findings of Fact & Conclusions of Law; Decision & Orders (“Decision & Orders”) filed December 29, 2005, in which this Court, *sua sponte*, joined all businesses and property owned in whole or in part by the Defendant or Plaintiff, including, Defendant’s father, John R. Moore, III, who is the majority shareholder of several businesses or property owned in part by Defendant. This **Decision & Order; Joinder of Third Parties** (“Order for Joinder of Third Parties”) is intended to summarize and to clarify, the intent and purpose behind this Court’s decision to join the new third party defendants.

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{¶2} The joinder of the new third party defendants is based on this Court's 257 page decision filed January 4, 2006, which arose out of a Complaint for Divorce filed March 29, 2002. Prior to its determination to join the new third party defendants, this Court reviewed the record, all pleadings, the relevant case law, and the trial testimony of Hilary A. Moore, William Fall, Greg Hendel, John Robert Moore, III, John Robert Moore, IV, James Earl Lay, and Hugh Wheeler, following a final hearing that spanned eight days, numerous trial exhibits,¹ and the transcripts of prior hearings regarding the financial status of the Defendant. As well, this Court reviewed the proposed findings of fact and conclusions of law submitted by the Plaintiff and Defendant.²

{¶3} In its Decision & Orders, this Court found that Defendant had engaged in financial misconduct, including his use of the business enterprises and family members to conceal property and marital assets, and that Defendant's financial misconduct is the only plausible explanation for the dissipation of a marital estate once valued at \$11,000,000.00³ to less than \$2,350,000.00.⁴ Having determined that a constructive trust has arisen by operation of law, this Court appointed a receiver and an attorney to represent the receiver in the execution of his duties as established by this Court.

{¶4} However, to enable the receiver to effectively carry out his duties, it is necessary to join as new third party defendants, all of the businesses and property owned in whole or in part by the Defendant or Plaintiff. As well, it is necessary to also join Defendant's father, John

¹ The exhibits in this case comprise slightly more than three boxes of documents.

² See Civ. R. 52 which states: "* * * [T]he court shall state in writing the conclusions of fact found separately from the conclusions of law. * * * the court, in its discretion, may require any or all of the parties to submit proposed findings of fact and conclusions of law; however, only those findings of fact and conclusions of law made by the court shall form part of the record."

³ See Plaintiff's Exhibits 99, 72, 39 & 38.

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R. Moore, III, because he is a shareholder of several businesses or property owned in partnership with Defendant. As well, it is necessary to join any others having an interest in the properties. In this case, the loan documents from Huntington National Bank reflect that the \$5,000,000.00 loan obtained by Defendant and his father, John R. Moore, III, was secured by the parties' marital assets.⁵

{¶5} In deciding to join all of the businesses and property of the Defendant, this Court considered Defendant's financial misconduct, and as a result of its findings, determined that a constructive trust had arisen by operation of law. As such, the establishment of a trust to prevent Defendant from unjust enrichment and to protect Plaintiff's equity in the marital estate is appropriate, that the appointment of a receiver was necessary, and that appointment of an attorney to represent the receiver was also necessary. Finally, this Court determined that joinder of all of Defendant's business entities, as well as the Huntington National Bank, and John R. Moore, III, as parties to this action was necessary to permit the receiver to carry out his assigned duties.

{¶6} In the case *sub judice*, Defendant's financial misconduct is documented in this Court's Decision & Order at Section IV(F)(1), Property, Division or Disposition; Financial Misconduct, and Section G(1)(i), Support and Education of Minor Children; The Amount Reasonable or Necessary for Child Support.

{¶7} Specifically, this Court found that Defendant engaged in financial misconduct with (i) USB/PaineWebber Accounts; (ii) Pure Force Powerwashing, LLC, (iii) Cove West

⁴ See, Decision & Orders, Section IV(3) (this Court has determined the value of the marital estate to be 2,347,048.50); Plaintiff's at 50.

⁵ Defendant's Exhibit GG.

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Properties; (iv) John R. Moore Rental Properties; (v) Great Lakes Marine Transit, Inc.; (vi) Huntington National Bank Loan; (vii) New England Financial Life Insurance; and (viii) by a pattern of conduct designed to obfuscate or diminish the marital estate.

{¶8} This Court observed that it had “evaluated the evidence of the dissipation of the marital estate and assessed the credibility of the parties, Plaintiff’s expert witnesses and Defendant’s accountant,” in finding “that Defendant has engaged in financial misconduct and that his father, John R. Moore, and the accountant for the businesses, Mr. Ley, facilitated Defendant’s wrongful conduct.”⁶

{¶9} The inclusion of all businesses and property owned by Defendant as new third party defendants flows from this Court’s observation: “In 1998, certain assets of Treasure Cove were sold by Defendant and his father to Marine Max of Ohio, Inc. for \$10,875,000.00.⁷ The proceeds from the sale were divided between Defendant and his father, John R. Moore, III. Plaintiff and Defendant’s 1998 and 1999 tax return reflects that they realized approximately \$3,477,000.00 on the sale, and an additional \$1,381,000.00 long-term capital gain in 1999. Thus, the \$4,858,000.00 Defendant and Plaintiff realized from the sale of certain assets of Treasure Cove, is marital property.”⁸

{¶10} Finding all of the funds used to establish the USB/PaineWebber accounts were either derived from the proceeds of the sale of Treasure Cove, or from marital assets, this Court held that “the use of all of the USB/PaineWebber accounts as assets for the working line of credit

⁶ *Moore v. Moore*, Ottawa County C.P. No. 02-DRA-064, Findings of Fact & Conclusions of Law; Decision & Orders, filed December 29, 2005, at 71.

⁷ Plaintiff’s Exhibit 70 at 7.

⁸ Defendant also received shares of Marine Max stock which he later sold. See Plaintiff’s Proposed Findings of Fact, Conclusions of Law and Orders, at 12.

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used to start up the various businesses destroyed any expectation that the accounts were the separate property of the Plaintiff or Defendant.” As such, this Court found *all* investments with USB/PaineWebber, with the exception of those established for the children, to be marital property.

{¶11} In addition to the various businesses established with the proceeds from Treasure Cove, Defendant has maintained an interest in Treasure Cove, which later did business as Moore Marine, Inc. Defendant acknowledges that following the sale of Treasure Cove, he remained a minority shareholder, and his father, John R. Moore, III, a majority shareholder; they then did business as Moore Marine, Inc. Because this Court has determined that the 198 shares in Treasure Cove were marital property based upon the circumstances of the transaction, the 198 shares in Moore Marine, Inc. are marital property. Because Treasure Cove is one of several entities that own real estate, it is an entity that must be joined to permit an examination of its assets and whether it can be sold, with its proceeds distributed to the Plaintiff as her share of the marital estate.

{¶12} Because the businesses and other property were purchased with the funds derived from the sale of certain assets of Treasure Cove, because the working line of credit established at USB/PaineWebber was for the purpose of providing start-up funds for the various businesses and purchase of property, and because of Defendant’s financial misconduct, this Court must join all businesses and property in order to ensure that assets have not been conveyed from one entity to another and to prevent further transfers that would be detrimental to the Plaintiff.

{¶13} For example, this Court found that Defendant attempted to conceal his two-third interest in Cove West Properties by reducing his capital holding by one-third. Suggesting that

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Defendant owns only one-third of the capital in Cove West Properties, Inc., Mr. Ley testified that the 2001 share “probably was stated wrong and was corrected in the year 2002.” He further testified that Andrea Moore chose “only to be bought out of the physical property * * * at 2542 Northeast Catawba * * *” when her husband died, and that she wanted to retain her ownership in a note so that she could obtain a fixed income on a monthly basis on a go-forward for the life of the note.”⁹ The Court observed that only six years remained on the note, which diminishes that rationale.¹⁰

{¶14} The Court stressed that Defendant did not offer any evidence to support Mr. Ley’s testimony that Andrea Moore sold her interest in the property, observing that Defendant failed to introduce “evidence of a substantial nature which at least counterbalances the presumption”¹¹ of the existence of wrongful scienter.

{¶15} Similarly, this Court found that John R. Moore Rental Properties, which is owned solely by Defendant, concealed proceeds from the lease of the two-acre parcel jointly owned by Defendant and Plaintiff and situated within the real estate located at 2555 N.E. Catawba Road. By reducing the lease income, Defendant attempted to reduce the value of the real estate and to defeat Plaintiff’s distribution of the marital assets. Justifying the decision not to allocate the rental proceeds from Treasure Cove, Defendant’s accountant, Mr. Ley responded, “We use the money in a different way,”¹² suggesting that the change was prompted by the poor “economic conditions and lack of cash flow” from Treasure Cove.¹³

⁹ Trial Transcript, Vol. II, 253: 22-25; 254: 1-3.

¹⁰ See Trial Transcript, Vol. II, 254.

¹¹ *Hammond v. Brown*, 8th Dist. No. 67268, 1995 Ohio App. LEXIS 3975.

¹² Trial Transcript, Vol. I, 119: 21.

¹³ Trial Transcript, Vol. I, 116, 22-24.

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{¶16} Defendant's diversion of the rental income to John R. Moore Rental Properties defeated Plaintiff's distribution of the marital assets by decreasing the value of the real estate. Defendant also profited because the decrease in the marital estate resulted in the property being undervalued, but only for the pendency of the divorce.

{¶17} In addition to Defendant's concealment or dissipation of assets at Cove West Properties and John R. Moore Rental Properties, this Court also found that the Defendant dissipated the assets of Great Lakes Marine Transit, Inc., when he sold the business to Mr. Hugh Wheeler, a former employee. Plaintiff was not made aware of the sale of Great Lakes Marine Transit, Inc. until after it had been completed.

{¶18} The sale of Great Lakes Marine Transit, Inc. was suspect because the purchaser, Mr. Wheeler, had filed for bankruptcy before entering into the lease agreement. Mr. Wheeler acknowledged that he "could not obtain bank financing"¹⁴ and that his ability to pay "would be solely dependent upon how well the business does."¹⁵

{¶19} Finding that the sale of Great Lakes Marine Transit, Inc. under these circumstances defeated Plaintiff's distribution of the marital assets because the lease payments are not guaranteed, the purchase price was not paid in full because it was structured as a lease-purchase agreement, nor was it guaranteed that the Plaintiff or Defendant would receive sufficient payment to offset their loss in this company, this Court emphasized that the sale of the business was made after the Complaint was filed and in contravention of this Court's order of May 1, 2002.

¹⁴ Trial Transcript, Vol. III, 272: 2-3.

¹⁵ Trial Transcript, Vol. III, 272: 8-9.

{¶20} In general, this Court found that the Defendant engaged in financial misconduct when he designed to defeat the distribution of marital assets through the dissipation, destruction, concealment or fraudulent disposition of assets. Defendant’s practice of transferring funds between the various business entities, making payments to family members, their businesses and to personal checking accounts, and drawing from the accounts of the various entities to pay down personal expenses, all constitutes financial misconduct.

{¶21} The record reflects that Defendant wrote checks from the various business entities including Moore Business Consulting, LLC, Moore’s Auto Showcase dba The Auto Connection and Treasure Cove to himself or to others to cover personal expenses or to otherwise conceal or dissipate marital assets. As well, the record also reflects numerous transactions between the various business entities, including loans to Defendant, loans between the entities, and loan obligations of the Defendant.

{¶22} Mr. Hendel’s testimony suggests a pattern of conduct by the Defendant that made the valuation of the business exceedingly difficult. Mr. Hendel testified that he “would not have used the income method under any circumstances” if he was “also valuing the properties based on the appraisals because the appraisals incorporate in there the *income* related to the buildings.”¹⁶ Mr. Hendel stressed that “there were a large number of related party notes and debts and receivables,”¹⁷ and that as he went through the different entities, “I saw notes going up and notes going down and a lot of things that were difficult to explain.”¹⁸

¹⁶ Trial Transcript, Vol. III, 366: 11-14. (Emphasis added).

¹⁷ Trial Transcript, Vol. III, 366: 16-17.

¹⁸ Trial Transcript, Vol. III, 367: 2-3.

{¶23} Mr. Hendel clarified that when he said that he saw notes going up and down, he meant notes from the business entities to the owners, from the owner to the entity, from entity to entity and “even from entities to outsiders.”¹⁹ As well, he observed that “the debt seems to move from one entity to another at different times.”²⁰

{¶24} This Court also found that “the bulk of the financial transactions, including loans from the business entities to the owners, from the owner to the entity, from entity to entity and from entities to unrelated individuals and businesses, were *not* ordinary transactions designed to generate the best tax advantage for the owners.”²¹ Thus, this Court finds that Defendant intentionally defeated Plaintiff’s distribution of the marital assets and profited from the reduced value of the various entities.”²² More importantly, these transactions occurred throughout the pendency of the divorce.

{¶25} This Court found there to be credible evidence that Defendant engaged in financial misconduct utilizing all of his business entities as “part of an elaborate shell game, making it difficult for the evaluator to guess where the money has gone.” As such, it is necessary to join all of the business entities owned in whole, or in part by Defendant, because of his financial misconduct, the possibility that assets may have been transferred from the three entities awarded to Plaintiff, or the possibility that these certain entities have been deliberately burdened with debt so as to make them unattractive or impossible to transfer to the Plaintiff as part of the distribution of the marital estate. As well, it is necessary to join all of the entities at

¹⁹ Trial Transcript, Vol. III, 367: 11-12.

²⁰ Trial Transcript, Vol. III, 367: 12-13.

²¹ See Trial Transcript, Vol. III, 366: 18-22 (Mr. Hendel testified, “Any time that you have a closely held company and transactions between the owners and the company, those transactions are going to be generated to get the best tax advantage for the owners at the time they do them.”)

²² *Kita v. Kita*, 9th Dist. No. 19256, 1999 Ohio App. LEXIS 5545.

this time, to prevent further misconduct and to facilitate the tasks this Court has assigned to the receiver.

{¶26} In dividing the marital estate, based on Defendant’s financial misconduct, this Court held that “An equal division, however, would not be an equitable division in this case, and the actual value of any distribution can not be made by this Court because of the outdated and insufficient information provided by the parties. Most detrimental to this Court’s ability to distribute the marital property is the tangled web of financial misconduct created by the Defendant in order to reduce or deny Plaintiff her equitable share of their assets. However, this Court must make its decision based upon the information admitted into evidence and in the hearing testimony.”²³

{¶27} This Court further held that “To achieve an equitable division of the marital property, a receiver will sell all real estate, pay off bank notes for mortgages on those properties, then add the 2002 value of all the USB/Paine Webber, life insurance, Cornerstone accounts and the value of the businesses without real estate (according to their values in this Decision & Orders). The sum of all assets will be divided equally (50/50). Plaintiff, however, will receive her share in trust from the sale of real estate, while Defendant will be awarded the bank accounts (based upon March 28, 2002 valuation) and the business entities without real estate to constitute a portion of his 50% of the distribution. Of the proceeds from the sale of real estate that would go towards Defendant’s 50% share, Defendant must set aside \$930,879.00 for the lump sum payment of spousal support, child support, attorney fees, fees of the receiver and the attorney for the receiver, etc. Defendant, thus, must bear the cost of the Receiver and the Receiver’s

attorney. Finally, all liabilities other than the bank note for the first mortgage on the real estate properties will be assessed to the Defendant. The evidence clearly shows that much of the liability was created out of Defendant's financial misconduct and that an undetermined amount was created for personal debts. The Plaintiff therefore, should not be responsible for any of such liabilities."²⁴

{¶28} This Court emphasized that "Failure to impose this unequal division of marital liabilities upon the Defendant would be to ignore the impact of his financial misconduct which has jeopardized the possibility of Plaintiff receiving any of her designated shares. Protracted litigation to remove any encumbrance on the assets awarded to Plaintiff or to compel Defendant to remove the encumbrances may certainly result in her receiving far less than her equitable share, if any."²⁵

{¶29} As a result, this Court found the establishment of a trust necessary to protect Plaintiff's equity in the marital estate. The appointment of a receiver is necessary to establish and administer the trust and to carry out the judgment of this Court and the appointment of an attorney to represent the receiver is necessary to assist the receiver in carrying out his duties. Joinder of all businesses and property owned in whole or in part by the Defendant or Plaintiff, including, Defendant's father, John R. Moore, III, who is the majority shareholder of several

²³ *Moore v. Moore*, Ottawa County C.P. No. 02-DRA-064, Findings of Fact & Conclusions of Law; Decision & Orders, filed December 29, 2005, 140-141.

²⁴ *Moore v. Moore*, Ottawa County C.P. No. 02-DRA-064, Findings of Fact & Conclusions of Law; Decision & Orders, filed December 29, 2005, at 144.

²⁵ *Moore v. Moore*, Ottawa County C.P. No. 02-DRA-064, Findings of Fact & Conclusions of Law; Decision & Orders, filed December 29, 2005, at 144-145. Nor can this Court ignore Defendant's financial misconduct during the pendency of this divorce and disregard the very real possibility that Defendant or his father, John R, Moore, III, will take additional steps to dissipate the marital estate or to hinder the transfer of the real estate to Plaintiff.

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businesses or property owned in part by Defendant, is necessary to permit the receiver to efficiently carry out the judgment of this Court.

{¶30} An equitable division of the marital estate cannot be accomplished without joining as parties any person or entity having possession of, or control of, or claiming an interest in the real estate owned by the three entities assigned to Plaintiff. The three entities assigned to Plaintiff by this Court as her equitable share of the marital estate are: (1) John R. Moore Rental Properties; (2) Treasure Cove dba Moore Marine; and (3) The Yacht Center, Inc.

{¶31} In *Huener v. Huener*,²⁶ the Third Appellate Court observed that Civ.R. 75(B)(1) does permit a third-party, who possesses or claims an interest in property from which a party seeks an award of support, to join as a party. An interest includes legal ownership.²⁷ Joinder, however, is within the discretion of the court and its purpose is to allow individuals to join whose interests need to be protected.²⁸

{¶32} In *Gest v. Gest*,²⁹ the Ninth Appellate Court noted that in divorce actions, Civ.R. 75(B)(1) permits the joinder of any person or entity “having possession of, control of, or claiming an interest in property, whether real, personal, or mixed, out of which another seeks an award of spousal support or other support[.]”

{¶33} Thus, pursuant to *Huener* and *Gest*, the individuals and business entities owning the real estate and having possession of, control of, or claiming an interest in the real estate assigned to Plaintiff are proper parties to this action. Here, John R. Moore Rental Properties

²⁶ *Huener v. Huener*, (1995), 110 Ohio App. 3d 322, 674 N.E.2d 389, 1995 Ohio App. LEXIS 4952.

²⁷ *Maher v. Maher* (1978), 64 Ohio App. 2d 22, 24, 410 N.E.2d 1260, 1262.

²⁸ *Ferrari v. Ferrari*, 11th Dist. No. 93-L-058, 1993 Ohio App. LEXIS 6133.

²⁹ *Gest v. Gest*, 9th Dist. No. 96CA006580, 1998 Ohio App. LEXIS 1798.

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manages the two-acre parcel owned by both Plaintiff and Defendant. Although Plaintiff and Defendant are already parties to this action, it is necessary to join Cove West Properties because it may have possession of, or control of, or is claiming an interest in the real estate by virtue of the lease agreement with Treasure Cove.

{¶34} Moore Marine owns the real estate at 2555 N.E. Catawba Road and 6000 Summit Street, Toledo. Moore Marine is owned by Defendant and his father, John R. Moore, III. It is necessary to join John R. Moore, III, as a party because John R. Moore, III, has a majority interest in Moore Marine, which in turn, owns this real estate. Moore Marine is thus also a necessary party.

{¶35} The Yacht Centre, Ltd. owns the real estate at 1991 N.E. Catawba Road, and is owned by both Defendant and his father, John R. Moore, III. It is necessary to join John R. Moore, III, as a party because he has owns 50% of The Yacht Center, Inc., which in turn, is in possession of, or control of, or is claiming an interest in the real estate. The Yacht Center, Inc. is then also a necessary party.

{¶36} Since the real estate used in the operation of the four entities and the ownership interest in the four entities are all at issue in the equitable division of the marital estate, it is necessary to join all individual and corporate parties that possess or claim an interest in the real estate assigned to Plaintiff.

{¶37} Huntington National Bank, as the holder of collateral against the real estate owned by John R. Moore Rental Properties, Moore Marine, The Yacht Centre, Ltd., has possession of, or control of, or is claiming an interest in the real estate by virtue of the

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assignment of the property in exchange for the \$5,000,000.00 loan to Defendant and his father, John R. Moore, III.

{¶38} As well, Cove West Properties, which sold the real estate at 2542 N.E. Catawba Road to Plaintiff and Defendant, is the holder of a promissory note for \$500,000.00. Although Defendant owns a two-thirds interest in Cove West Properties, it is necessary to join the partnership, because it may have possession of, or control of, or is claiming an interest in the real estate by virtue of the promissory note.

{¶39} This Court also finds that because of the “large number of related party notes and debts and receivables,”³⁰ being transferred between the various entities, it is necessary to join all of the entities owned in whole or in part by Defendant. As Mr. Hendel observed, there were notes from the business entities to the owners, from the owner to the entity, from the entity to entity and from entities to outsiders. More importantly, Mr. Hendel testified that “the debt seems to move from one entity to another at different times.”³¹

{¶40} Thus, this Court finds that (1) Treasure Cove Marina, Inc., dba Moore Marine, Inc.; (2) The Yacht Centre, Ltd.; (3) John R. Moore Rental Properties; (4) Moore Business Consulting, LLC; (5) Cove West Properties; (6) Moore’s Auto Showcase, Inc. dba The Auto Connection; (7) Moore’s All Tune & Lube, Inc. dba The Lube Connection; (8) Pure Force Powerwashing, LLC; (9) Great Lakes Marine Transit, Inc.; (10) Great Lakes Marine Transit, LLC; (11) The Huntington National Bank; and (12) John R. Moore, III, are all necessary parties

³⁰ Trial Transcript, Vol. III, 366: 16-17.

³¹ Trial Transcript, Vol. III, 367:12-13.

to this action. As a result, this Court, *sua sponte*, joins these parties to this action pursuant to Civ. R. 75(B)(1).

{¶41} Based on the division of marital assets and liabilities, this Court has determined that Plaintiff is entitled to an equitable share of the marital estate in the amount of \$1,573,105.10. The division and disposition of the marital estate of the parties is listed in Tables 13, 14, and 15 (Section IV(F)(4)) of this Court’s Decision & Orders. The three business entities owning real estate and assigned to Plaintiff shall be placed in a constructive trust under the supervision of a receiver who will implement the Orders of this Court more fully set forth in Section F of this Court’s Decision & Orders.

{¶42} Additionally, Defendant is ordered to comply with the Temporary Orders of this Court filed May 1, 2002, and is specifically directed not to “sell, dispose, encumber or transfer assets of the parties” listed in Table 3 of this Court’s Decision & Orders. Failure to comply will result in contempt of court and possible incarceration.

I. CONCLUSION

{¶43} This Court determined that Defendant engaged in financial misconduct. As a consequence of Defendant’s financial misconduct, this Court has chosen to redistribute the parties’ business interests in the three entities owning real estate. Thus, this Court has appointed a receiver who shall establish a constructive trust and oversee the implementation of this Court’s Orders concerning the division and distribution of Plaintiff’s marital estate and the satisfaction of

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this Court's judgments.³² Yet, the individuals and business entities owning the real estate and having possession of, control of, or claiming an interest in the real estate assigned to Plaintiff are proper parties to this action and must be joined. However, as a result of Defendant's financial misconduct, it is also necessary to join all entities in which Defendant owns an interest in, to prevent the fraudulent transfer of assets, or the fraudulent imposition of additional liabilities, and to facilitate the task of the receiver in carrying out his assigned duties. Accordingly,

{¶44} IT IS ORDERED, ADJUDGED, and DECREED that: (1) Treasure Cove Marina, Inc., dba Moore Marine, Inc.; (2) The Yacht Centre, Inc.; (3) John R. Moore Rental Properties; (4) Moore Business Consulting, LLC; (5) Cove West Properties; (6) Moore's Auto Showcase, Inc. dba The Auto Connection; (7) Moore's All Tune & Lube, Inc. dba The Lube Connection, Inc.; (8) Great Lakes Marine Transit, Inc.; (9) Great Lakes Marine Transit, LLC; (10) Pure Force Powerwashing, LLC; (11) The Huntington National Bank; and (12) John R. Moore, III, are all joined as necessary parties to this action pursuant to Civ. R. 75(B)(1).

{¶45} IT IS FURTHER ORDERED, ADJUDGED, and DECREED that a hearing on the continuation of the receivership created by this Order for the pendency of this action or until further order of this Court is set for Thursday, February 2, 2006, at 8:30 a.m., in Courtroom No. 2 of the Ottawa County Court of Common Pleas, located at County Court House, 315 Madison Ave., Port Clinton, Ohio. The Defendant, new third party defendants, and any other creditors of the Defendant may appear at that hearing and show cause why an order continuing the appointment of a receiver for Defendant's property pending the determination of this action should not be rendered in this action, or why they should not be joined;

³² i.e., child support, spousal support, past due spousal support, uncovered and unreimbursed health care expenses of

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{¶46} IT IS FURTHER ORDERED, ADJUDGED, and DECREED that the Defendant must also serve on all known creditors of Defendant who may have a claim against the assets of the Defendant, a copy of this Order for Joinder of Third Parties. The Service may be by any method guaranteed to effect delivery no later than Wednesday, January 18, 2006, at 5:00 p.m. Failure to comply with this service provision of this Order will result in sanctions in an amount sufficient to compensate any creditor damaged by the failure to receive prompt notice and defend against a continuance of the receivership established by this Order;

{¶47} IT IS FURTHER ORDERED, ADJUDGED, and DECREED that costs of this proceeding is to be paid by Defendant;

{¶48} IT IS FURTHER ORDERED, ADJUDGED, and DECREED that this Court's Order for Joinder of Third Parties serves as both the magistrate's decision and the trial court's judgment adopting the magistrate's decision. Civ.R. 53(E)(4)(c) specifically allows the trial court to adopt a magistrate's decision *immediately* without waiting for objections to be filed: "the court may adopt a magistrate's decision and enter judgment without waiting for timely objections by the parties, but the filing of timely written objections shall operate as an automatic stay of execution of that judgment until the court disposes of those objections and vacates, modifies, or adheres to the judgment previously entered."³³

{¶49} Because of the significance of this case, the trial court has thoroughly reviewed the record, all pleadings, the relevant case law, trial testimony, numerous trial exhibits and the transcripts of prior hearings concerning the financial status of the Defendant.

the children.

³³ *Clendenen v. Fannin Realty, Inc.*, 2002 Ohio 4548, P13 (Ohio Ct. App. 2002)

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{¶50} IT IS FURTHER ORDERED, ADJUDGED, and DECREED that the Clerk of Courts shall send copies of this Order for Joinder of Third Parties to all parties of record or their counsel by regular U.S. Mail.

{¶51} IT IS FURTHER ORDERED, ADJUDGED, and DECREED that the Clerk of Courts shall cause to be served upon the individual new third party Defendant, John R. Moore, III, as set forth in the attached Certificate of Service, by certified mail with a return receipt requested, and by personal service through the Ottawa County Sheriff, a copy of this Order for Joinder of Third Parties. The Clerk shall serve this summons in the manner prescribed by Civil Rule 4.1.

{¶52} IT IS FURTHER ORDERED, ADJUDGED, and DECREED that the Clerk of Courts shall cause to be served upon the new third party Defendant entities, a copy of this Order for Joinder of Third Parties. The Clerk shall serve this summons by certified mail, and by personal service through the Ottawa County Sheriff, in the manner prescribed by Civil Rule 4 through 4.3 and 4.6(A) and (B).

JANUARY 4, 2006

PAUL C. MOON, JUDGE

JANUARY 4, 2006

BRUCE A. WINTERS, MAGISTRATE

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CERTIFICATE OF SERVICE

A copy of the foregoing "Order for Joinder of Third Parties" was delivered by personal service through the Ottawa County Sheriff, in the manner prescribed by Civil Rule 4 through 4.2, this 4th day of January, 2006, to the following:

John R. Moore Rental Properties
John R. Moore, IV
32790 Briarwood Court
Avon Lake, OH 44012
New Third Party Defendant

Treasure Cove Marina, Inc.
John R. Moore, IV, Officer
32790 Briarwood Court
Avon Lake, OH 44012
New Third Party Defendant

Treasure Cove Marina, Inc.
John R. Moore, III, Officer
32790 Briarwood Court
Avon Lake, OH 44012
New Third Party Defendant

Moore Marine, Inc.
James L. Reinheimer, Statutory Agent
208 Madison Street
Port Clinton, OH 43452
New Third Party Defendant (Registration No. 1206847)

Moore Marine, Inc.
John R. Moore, IV, Officer
32790 Briarwood Court
Avon Lake, OH 44012
New Third Party Defendant (Registration No. 1206847)

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Moore Marine, Inc.
J. Earl Ley, Statutory Agent
2742 N. Muncey Ave.
Port Clinton, OH 43452
New Third Party Defendant (Registration No. 470982)

Moore Marine, Inc.
John R. Moore, IV, Officer
32790 Briarwood Court
Avon Lake, OH 44012
New Third Party Defendant (Registration No. 470982)

The Yacht Centre, Ltd.
Mr. James L. Reinheimer, Statutory Agent
208 Madison Street
Port Clinton, OH 43452
New Third Party Defendant (Registration No. LL2432)

The Yacht Centre, Ltd.
John R. Moore, IV, Officer
32790 Briarwood Court
Avon Lake, OH 44012
New Third Party Defendant (Registration No. LL2432)

Cove West Properties
John R. Moore, IV,
32790 Briarwood Court
Avon Lake, OH 44012
New Third Party Defendant

Moore's Auto Showcase, Inc. dba The Auto Connection
James L. Reinheimer, Statutory Agent
208 Madison Street
Port Clinton, OH 43452
New Third Party Defendant (Registration No. 1206845)

COMMON PLEAS COURT OF OTTAWA COUNTY

Moore's Auto Showcase, Inc. dba The Auto Connection
John R. Moore, IV, Officer
32790 Briarwood Court
Avon Lake, OH 44012
New Third Party Defendant

Great Lakes Marine Transit, Inc.
J. Earl Ley, Statutory Agent
2742 N. Muncey Ave.
Port Clinton, OH 43452
New Third Party Defendant (Registration No. 684585)

Great Lakes Marine Transit, LLC
Hugh G. Wheeler, Jr., Statutory Agent
980 Wilcox Road
Port Clinton, OH 43452
New Third Party Defendant (Registration No. 1458572)

The Huntington National Bank
Attn: Toni Gerald Perry
Assistant Vice President
Commercial Real Estate Division
917 Euclid Ave. CM17
Cleveland, OH 44115
New Third Party Defendant

John R. Moore, III
4245 Colony Club Drive
Port Clinton, OH 43452
New Third Party Defendant

(Continued)

COMMON PLEAS COURT OF OTTAWA COUNTY

A copy of the foregoing “Order for Joinder of Third Parties” was delivered by certified mail, in the manner prescribed by Civil Rule 4 through 4.3 and 4.6(A) and (B), this 4th day of January, 2006, to the following:

Frederic E. Matthews, Esq.
Rayle, Mathews & Coon
100 S. Main Street
Bowling Green, OH 43402
Attorney for Plaintiff Hilary A. Moore

Melvin G. Nusbaum, Esq.
Spitzer Building, Suite 840
520 Madison Ave.
Toledo, OH 43604-1387
Attorney for Plaintiff Hilary A. Moore

Martin J. Holmes, Esq.
Martin E. Mohler, Esq.
Shindler, Neff, Holmes, Schlageter & Mohler, L.L.P
1200 Edison Plaza
300 Madison Ave.
Toledo, OH 43604-1556
Attorneys for Defendant John Robert Moore, IV

Bernard H. Niehaus, Esq.
Frantz, Ward LLP
2500 Key Center
127 Public Square
Cleveland, OH 44114-1230
Receiver Appointed by the Ottawa County Court of Common Pleas

John Coppler, Esq.
Flynn, Py and Kruse
115 West Perry Street
Port Clinton, OH 43452
Attorney Appointed by the Ottawa County Court of Common Pleas to Represent Receiver

COMMON PLEAS COURT OF OTTAWA COUNTY

John R. Moore Rental Properties
2542 N.E. Catawba Road
Port Clinton, OH 43452
New Third Party Defendant

John R. Moore Rental Properties
John R. Moore, IV
32790 Briarwood Court
Avon Lake, OH 44012
New Third Party Defendant

Treasure Cove Marina, Inc.
2555 N.E. Catawba Road
Port Clinton, OH 43452
New Third Party Defendant

Treasure Cove Marina, Inc.
904 S.E. Catawba Road
Port Clinton, OH 43452
New Third Party Defendant

Treasure Cove Marina, Inc.
250 S.E. Catawba Road
Port Clinton, OH 43452
New Third Party Defendant

Treasure Cove Marina, Inc.
John R. Moore, IV, Officer
32790 Briarwood Court
Avon Lake, OH 44012
New Third Party Defendant

Treasure Cove Marina, Inc.
6000 Summit Street
Toledo, OH 43611
New Third Party Defendant

COMMON PLEAS COURT OF OTTAWA COUNTY

Moore Marine, Inc.
James L. Reinheimer, Statutory Agent
208 Madison Street
Port Clinton, OH 43452
New Third Party Defendant (Registration No. 1206847)

Moore Marine, Inc.
John R. Moore, IV, Officer
32790 Briarwood Court
Avon Lake, OH 44012
New Third Party Defendant (Registration No. 1206847)

Moore Marine, Inc.
904 S.E. Catawba Road
Port Clinton, OH 43452
New Third Party Defendant (Registration No. 1206847)

Moore Marine, Inc.
6000 Summit Street
Toledo, OH 43611
New Third Party Defendant (Registration No. 1206847)

Moore Marine, Inc.
J. Earl Ley, Statutory Agent
2742 N. Muncey Ave.
Port Clinton, OH 43452
New Third Party Defendant (Registration No. 470982)

Moore Marine, Inc.
John R. Moore, IV, Officer
32790 Briarwood Court
Avon Lake, OH 44012
New Third Party Defendant (Registration No. 470982)

Moore Marine, Inc.
904 S.E. Catawba Road
Port Clinton, OH 43452
New Third Party Defendant (Registration No. 470982)

COMMON PLEAS COURT OF OTTAWA COUNTY

Moore Marine, Inc.
6000 Summit Street
Toledo, OH 43611
New Third Party Defendant (Registration No. 470982)

The Yacht Centre. Ltd.
1991 N.E. Catawba Road
Port Clinton, OH 43452
New Third Party Defendant (Registration No. LL2432)

The Yacht Centre, Ltd.
Mr. James L. Reinheimer, Statutory Agent
208 Madison Street
Port Clinton, OH 43452
New Third Party Defendant (Registration No. LL2432)

The Yacht Centre, Ltd.
John R. Moore, IV, Officer
32790 Briarwood Court
Avon Lake, OH 44012
New Third Party Defendant (Registration No. LL2432)

Cove West Properties
2542 N.E. Catawba Road
Port Clinton, OH 43452
New Third Party Defendant

Cove West Properties
John R. Moore, IV
32790 Briarwood Court
Avon Lake, OH 44012
New Third Party Defendant

Moore's Auto Showcase, Inc. dba The Auto Connection
James L. Reinheimer, Statutory Agent
208 Madison Street
Port Clinton, OH 43452
New Third Party Defendant (Registration No. 1206845)

COMMON PLEAS COURT OF OTTAWA COUNTY

Moore's Auto Showcase, Inc. dba The Auto Connection
250 S.E. Catawba Road
Port Clinton, OH 43452
New Third Party Defendant

Moore's Auto Showcase, Inc. dba The Auto Connection
John R. Moore, IV, Officer
32790 Briarwood Court
Avon Lake, OH 44012
New Third Party Defendant

Great Lakes Marine Transit, Inc.
J. Earl Ley, Statutory Agent
2742 N. Muncey Ave.
Port Clinton, OH 43452
New Third Party Defendant (Registration No. 684585)

Great Lakes Marine Transit, Inc.
250 S.E. Catawba Road
Port Clinton, OH 43452
New Third Party Defendant (Registration No. 684585)

Great Lakes Marine Transit, LLC
Hugh G. Wheeler, Jr., Statutory Agent
980 Wilcox Road
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The Huntington National Bank
Attn: Toni Gerald Perry
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Commercial Real Estate Division
917 Euclid Ave. CM17
Cleveland, OH 44115
New Third Party Defendant

COMMON PLEAS COURT OF OTTAWA COUNTY

John R. Moore, III
4245 Colony Club Drive
Port Clinton, OH 43452
New Third Party Defendant

JANUARY 4, 2006

JOAN MONNETT, CLERK OF COURTS
/DEPUTY CLERK

Note: If there is a party and/or attorney not listed above, but is reflected on the Clerk's Docket as not excused, the Clerk's Office will add them to this page.