

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

Hilary A. Moore,	:	Case No. 02-DRA-064
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Plaintiff,	:	Judge Paul C. Moon
	:	Magistrate Bruce A. Winters
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	:	
v.	:	<b><u>DECISION &amp; ORDER; APPOINTMENT</u></b>
	:	<b><u>OF RECEIVER &amp; ATTORNEY</u></b>
	:	
	:	
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 January 4, 2006, in which this Court, *sua sponte*, appointed a receiver and an attorney to represent the receiver. This **Decision & Order; Appointment of Receiver & Attorney** (“Order for Receiver & Attorney”) is intended to summarize and to clarify, the intent and purpose behind this Court’s decision to appoint a receiver and to appoint an attorney to represent the receiver. As well, this Order will set forth the compensation for the receiver including the requirement of bond, and the compensation for the attorney appointed to represent the receiver.

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{¶2} The appointment of a receiver and the appointment of an attorney to represent the receiver are based on this Court's 257 page decision filed January 3, 2006, which arose out of a Complaint for Divorce filed March 29, 2002. Prior to its determination to appoint a receiver and a attorney to represent the receiver, 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 Ley, and Hugh Wheeler, following a final hearing that spanned eight days, 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.<sup>1</sup>

{¶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 \$11,000,000.00<sup>2</sup> to less than \$2,350,000.00.<sup>3</sup> For the foregoing reasons, this Court appointed a receiver and an attorney to represent the receiver in the execution of his duties as established by this Court.

{¶4} In determining the division of the marital property and the allocation of marital assets and debts, this Court considered Defendant's financial misconduct, and as a result of its findings, determined that a constructive trust has arisen by operation of law. As such, the establishment of a trust to prevent Defendant from unjust enrichment and to protect Plaintiff's

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<sup>1</sup> 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."

<sup>2</sup> See Plaintiff's Exhibits 99, 72, 39 & 38.

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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.

{¶5} 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.

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

{¶7} 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. Based on the foregoing reasons, this Court finds 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."<sup>4</sup>

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<sup>3</sup> 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.

<sup>4</sup> *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.

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{¶8} For example, “Defendant’s refusal to testify in response to the evidence offered against him concerning the application of a loan from Huntington National Bank in the amount of \$5,000,000.00, coupled with this Court’s determination that Defendant engaged in financial misconduct lead this Court to infer that Defendant knowingly and intentionally participated in the loan application process, and that he has either misrepresented his assets to Huntington National Bank, or to Plaintiff and this Court.”<sup>5</sup>

{¶9} In determining that it must impute Defendant’s income pursuant to R.C. 3119.01(C)(11)(a)(i)-(x), this Court held, “Based on this Court’s determination that the Defendant has engaged in financial misconduct, the record reflecting a sharp decrease in Defendant’s income since the Complaint was filed, and conflicting evidence about Defendant’s actual income, this Court finds the level of income claimed by the Defendant to be implausible.”<sup>6</sup>

{¶10} As a result of Defendant’s financial misconduct, this Court observed that “the accuracy of Defendant’s income tax returns is suspect because the income tax returns prepared by Brady, Ware & Schoenfeld, Inc. were based in part on the internal balance sheets prepared for the various businesses by Defendant’s accountant, Mr. Ley. Although this Court has found the original internal balance sheets to be more ‘reliable’ than the revised balance sheets because Mr. Ley failed to ‘describe the specific changes between the internal balance sheet and the revised

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<sup>5</sup> *Moore v. Moore*, Ottawa County C.P. No. 02-DRA-064, Findings of Fact & Conclusions of Law; Decision & Orders, filed December 29, 2005, at 91-92.

<sup>6</sup> *Moore v. Moore*, Ottawa County C.P. No. 02-DRA-064, Findings of Fact & Conclusions of Law; Decision & Orders, filed December 29, 2005, at 161.

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balance sheet.’ The internal balance sheets are also suspect because of Defendant and Mr. Ley’s conduct in consistently reducing the value of the marital assets.”<sup>7</sup>

{¶11} 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.”<sup>8</sup>

{¶12} 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

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<sup>7</sup> *Moore v. Moore*, Ottawa County C.P. No. 02-DRA-064, Findings of Fact & Conclusions of Law; Decision & Orders, filed December 29, 2005, at 173.

<sup>8</sup> *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.

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."<sup>9</sup>

{¶13} 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."<sup>10</sup>

{¶14} As a result, this Court found the establishment of a trust necessary to protect Plaintiff's equity in the marital estate. Thus, 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.

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<sup>9</sup> *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.

<sup>10</sup> *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.

**1) Receivership and Appointment of a Receiver**

{¶15} Receivership is the appointment of an independent officer of the court, called a receiver, to take charge of property during litigation. The receiver's duty is to receive and preserve the property when the court thinks neither litigant should hold it. Receivership is merely ancillary or auxiliary to the main action. The action may be prosecuted to final judgment, either with or without such proceedings. These auxiliary proceedings are merely intended to secure the means for satisfying the final judgment in case the plaintiff should succeed in the action, and they can only be resorted to where the special circumstances exist which the law prescribes as the grounds for their institution.<sup>11</sup>

{¶16} Pursuant to R.C. 2735.01, a court may appoint a receiver to carry out the judgment or dispose of property.<sup>12</sup> R.C. 2735.04 permits a receiver to take and keep possession of property, receive rents, and generally do such acts respecting the property as the court authorizes.<sup>13</sup> A court may also "exercise its sound discretion to limit or expand a receiver's powers as it deems appropriate."<sup>14</sup> As well, a receiver is permitted to hold and sell property without holding a hearing on the matter.<sup>15</sup>

{¶17} It has long been recognized that the trial court is vested with sound discretion to appoint a receiver.<sup>16</sup> In *State ex rel Celebreeze v. Gibbs*,<sup>17</sup> the Ohio Supreme Court stated, "A

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<sup>11</sup> *Cincinnati, Sandusky and Cleveland Railroad Co. v. Sloan* (1876), 31 Ohio St. 1.

<sup>12</sup> R.C. 2735.01(C) and (D).

<sup>13</sup> *Golick v. Golick* (1983), 9 Ohio App. 3d 106, 107-108, 458 N.E.2d 459. See *Josselson v. Josselson* (1988), 52 Ohio App. 3d 60, 68, 557 N.E.2d 835.

<sup>14</sup> *State ex rel Celebreeze v. Gibbs* (1991), 60 Ohio St.3d 69, 73, 573 N.E.2d 62, 67.

<sup>15</sup> *Golick v. Golick* (1983), 9 Ohio App. 3d 106, 108, 458 N.E.2d 459.

<sup>16</sup> *Parker v. Tobias*, 10<sup>th</sup> Dist. No. 01AP-1306, 02AP-15, and 02AP-144, 2002 Ohio 3340, 2002 Ohio App. LEXIS 3311; *State ex rel Celebreeze v. Gibbs* (1991), 60 Ohio St.3d 69, 73, 573 N.E.2d 62, 66.

<sup>17</sup> *State ex rel Celebreeze v. Gibbs* (1991), 60 Ohio St.3d 69, 73, 573 N.E.2d 62, 67.

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court in exercising its discretion to appoint or refuse to appoint a receiver must take into account all the circumstances and facts of the case, the presence of conditions and grounds justifying the relief, the ends of justice, the rights of all the parties interested in the controversy and subject matter, and the adequacy and effectiveness of other remedies.”

{¶18} In *Gorby v. Gorby*,<sup>18</sup> the Second Appellate Court affirmed the appointment of a receiver in a divorce action, finding that “there was evidence from which the trial court could find, as it did, in the entry appointing the receiver, ‘that the [defendant] has a right to an interest in the marital property of the parties and that such property must be protected because the evidence reveals the fact that it is in danger of being lost, materially injured, hidden, or wasted.”

{¶19} In the case *sub judice*, Plaintiff has an interest in the marital property and that property must be protected. In *Saferin v. Mach Enterprises, Ltd.*,<sup>19</sup> the Sixth Appellate Court held that the trial court properly appointed a receiver when it “concluded that irreparable harm could be caused to the business if appellants continued to control it, especially in light of the fact that appellants may be fraudulently retaining business profits.”<sup>20</sup> Defendant’s financial misconduct, as well as his disregard for the orders of this Court is well documented. This Court finds clear and convincing evidence that the appointment of the receiver is necessary for the preservation of Plaintiff’s rights.<sup>21</sup> Moreover, this Court’s Decision & Orders is certainly adverse to Defendant and his father, John R. Moore, III. And because of the contempt shown by

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<sup>18</sup> *Gorby v. Gorby*, 2<sup>nd</sup> Dist. No. 87CA57, 1988 Ohio App. LEXIS 2291.

<sup>19</sup> *Saferin v. Mach Enterprises, Ltd.*, 6<sup>th</sup> Dist. No. L-85-070, 1985 Ohio App. LEXIS 8842.

<sup>20</sup> See *Railway Co. v. Jewett* (1882), 37 Ohio St. 649. See also, *Real Estate Capital Corp. v. Thunder Corp.* (1972), 31 Ohio Misc. 169, 287 N.E.2d 838, 1972 Ohio Misc. LEXIS 192.

<sup>21</sup> *Malloy v. Malloy Color Lab., Inc.* (1989), 63 Ohio App.3d 434, 436, 579 N.E.2d 248, 249.

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Defendant and his father toward Plaintiff and this Court throughout the pendency of this divorce, irreparable loss would occur if the receiver were not immediately appointed without notice.<sup>22</sup>

{¶20} Appointment of a receiver is necessary to effectuate the sale of the real estate to achieve an equitable division of the marital property, and to carry out the judgment of this Court. Some of the particular actions the receiver is empowered to perform include: (1) take possession of the property; (2) preserve the property; (3) sell the property; and (4) bring and defend actions.

{¶21} In other words, the receiver is authorized to take the business entities into his possession, along with its books, records, accounts, properties and holdings; collect its debts; prosecute its claims (and defend as necessary), hiring an attorney for this purpose; sell realty and personalty; and all other acts that may be necessary to effectuate the purpose herein. As well, in the appointment of a receiver, the court costs include the expenses of the custody and preservation of the property taken by the receiver, including, but not limited to: (1) the receiver's salary; (2) the receiver's attorney; (3) the receiver's accountant; and (4) any other services which would not be necessary if a receiver had not been appointed.<sup>23</sup>

{¶22} Specifically, the receiver is to take the necessary steps to obtain clear title to the real estate at 1991 N.E. Catawba Road, 2542 N.E. Catawba Road, 2555 N.E. Catawba Road, 6000 Summit Road, and 250 S.E. Catawba Road. The fee simple values of the properties are:

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<sup>22</sup> *Real Estate Capital Corp. v. Thunder Corp.* (1972), 31 Ohio Misc. 169, 287 N.E.2d 838, 1972 Ohio Misc. LEXIS 192.

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**Table 1**

<b>Description</b>	<b>Fee Simple Value as of December 31, 2002</b>
John R. Moore Rental Properties, 2542 N.E. Catawba Road	\$700,000.00 <sup>24</sup>
Treasure Cove dba as Moore Marine, Inc., 2555 N.E. Catawba Road	\$1,243,750.00 <sup>25</sup>
Treasure Cove dba Moore Marine, Inc., 6000 Summit Street	\$323,375.00 <sup>26</sup>
The Yacht Centre, Ltd., 1991 N.E. Catawba Road	\$2,050,000.00 <sup>27</sup>
Moore Business Consulting, LLC, 250 S.E. Catawba Road	\$950,000.00 <sup>28</sup>
<b>Total</b>	<b>\$5,267,125.00</b>

{¶23} The receiver shall, if necessary, conduct or direct an independent accounting of the assets and liabilities of the four entities and prepare for sale Defendant's ownership share of the real estate owned by Treasure Cove dba Moore Marine, The Yacht Center, Inc., and Moore Business Consulting, LLC. The receiver shall maintain the four entities so that the collection of rents and income continues until a sale is negotiated.

{¶24} Defendant or interested third parties may negotiate a fair market purchase of the real estate owned by Treasure Cove dba Moore Marine, The Yacht Center, Inc., and Moore Business Consulting, LLC. The cash proceeds from the sale of the real estate at 2555 N.E. Catawba Road, 6000 Summit Road, 1991 N.E. Catawba Road, and 250 S.E. Catawba Road shall be placed in a trust with the proceeds being applied to satisfy the judgments of this Court.

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<sup>23</sup> *Real Estate Capital Corp. v. Thunder Corp.* (1972), 31 Ohio Misc. 169, 287 N.E.2d 838, 1972 Ohio Misc. LEXIS 192, at syllabus.

<sup>24</sup> Defendant owns 100%

<sup>25</sup> Based on Defendant's 49.75% share (\$2,500,000.00 – 49.75%).

<sup>26</sup> Based on Defendant's 49.75% share (\$650,000.00 – 49.75%).

<sup>27</sup> Based on Defendant's 50% share (\$4,100,000.00 – 50%)

<sup>28</sup> Plaintiff and Defendant each own 50% of Moore Business Consulting, LLC. Thus, the value given is for 100% of the real estate.

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{¶25} If the receiver should find that there are significant assets not listed here or a significant increase in the actual value of the four entities owning real estate, equity demands that this matter shall be returned to this Court for re-distribution of the marital estate.

{¶26} The totality of the circumstances in this case reflects that this Court's action is necessary, but is also balanced against other factors such as Defendant's child support obligations, spousal support obligations, and past due support.

{¶27} Clearly, an equitable division of the marital estate depends on the sale of the real estate of Treasure Cove, The Yacht Centre, Ltd, and Moore Business Consulting, LLC. This Court retains jurisdiction to modify the division and disposition of the marital estate for five years because of Defendant's financial misconduct, and in the event that additional funds or assets are uncovered.

{¶28} In addition to the establishment of a trust and appointment of a receiver, it is necessary for this Court to facilitate the task of the receiver by appointing an attorney to represent the receiver, as well as joining any person or entity having possession of, or control of, or claiming an interest in the real estate owned by the four entities assigned to Plaintiff as her equitable share of the marital estate.

{¶29} With respect to the distribution of the marital estate, this Court appoints Mr. Bernard H. Niehaus, Esq., as Receiver ("Receiver") of all of the businesses and property owned in whole or in part by the Defendant or Plaintiff, including, but not limited to the certain properties set forth in Table 1, that have been awarded to Plaintiff as her equitable share of the marital estate. The Receiver is to take immediate possession of the assets and accounts, to hold

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and manage the assets and accounts, and to collect all proceeds therefrom and all accounts coming due thereon, and to obtain clear title to all real estate and to prepare for sale certain real estate. As well, the Receiver shall ensure that the properties are unencumbered pursuant to this Court's orders herein for the benefit of Plaintiff and the three minor children within 60 days of this Court's Decision & Orders. Upon application and for good cause, this Court shall grant Receiver additional time to effectuate transfer of the assets to Plaintiff.

{¶30} The Receiver will be compensated at the rate of \$250.00 per hour. The Receiver shall submit a monthly statement to the Court of his hourly expenses and administrative expenses related to the execution of his duties, such as attorney fees, accounting fees, phone expenses, mileage, copying, storage, and other reasonable administrative fees. The Receiver shall seek prior approval of this Court for any expense over \$2,500.00, unless, in the reasonable judgment of the Receiver, a delay would result in irreparable loss.

{¶31} Costs of the Receiver shall be paid by the Defendant, and payment shall be made within 28 days after this Court's approval of Receiver's application for payment of fees. Receiver may apply for payment of fees on a monthly basis or other reasonable payment schedule. Failure to comply with the judgment of this Court and pay Receiver within the designated time period shall constitute contempt of court and significant incarceration is possible.

{¶32} The Receiver is required to execute a bond in such sum as the Court directs pursuant to R.C. 2735.03.

**2) Appointment of Attorney to Represent Receiver**

{¶33} Subsequent to the appointment of a receiver, this Court also appoints an attorney to represent the receiver in the course of this proceeding.<sup>29</sup>

{¶34} This Court appoints Mr. John Coppler, Esq. as the attorney (“Attorney”) representing the Receiver. The Attorney will be compensated at the rate of \$175.00 per hour. The Attorney shall submit a monthly statement to both the Receiver and this Court, of his hourly expenses and out-of-pocket expenses related to the execution of his duties, such as mileage, copying, storage, research, and other reasonable fees. The Attorney should seek prior approval of the Receiver for any expense over \$500.00, unless, in the reasonable judgment of the Attorney, any delay would result in irreparable loss.

{¶35} Costs of the Attorney for the Receiver shall be paid by the Defendant, and payment shall be made within 28 days after this Court’s approval of Attorney or Receiver’s application for payment of attorney’s fees. The Attorney or Receiver may apply for payment of Attorney’s fees on a monthly basis or other reasonable payment schedule. Failure to comply with the judgment of this Court and pay Attorney or Receiver the Attorney’s fees within the designated time period shall constitute contempt of court and significant incarceration is possible.

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<sup>29</sup> See *Real Estate Capital Corp. v. Thunder Corp.* (1972), 31 Ohio Misc. 169, 287 N.E.2d 838, 1972 Ohio Misc. LEXIS 192.

**I. CONCLUSION**

{¶36} Based on the division of marital assets and liabilities, this Court found that Plaintiff is entitled to an equitable share of the marital estate in the amount of \$1,573,105.10. This Court further held that the four business entities owning real estate and assigned to Plaintiff shall be placed in a trust under the supervision of a receiver who will implement the Orders of this Court more fully set forth in Section IV(F) of this Court's Decision & Orders.

{¶37} 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 trust and oversee the implementation of this Court's Orders concerning the division and distribution of Plaintiff's marital estate and the satisfaction of this Court's judgments.<sup>30</sup> Yet, the establishment of a trust and appointment of a receiver does not preclude Defendant or other interested third parties from exploring a buyout of Plaintiff's share of the property, so long as the judgments of this Court are satisfied, and Defendant has not concealed other assets or misrepresented the assets of the marital estate. Accordingly,

{¶38} IT IS ORDERED, ADJUDGED, and DECREED that Mr. Bernard H. Niehaus, Esq. of Cleveland, Ohio, is appointed Receiver and that he shall establish a trust for the purpose of preventing Defendant from unjust enrichment as a result of his financial misconduct as well as ensuring an equitable division of the marital estate and to carry out the judgments of this Court;

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<sup>30</sup> i.e., child support, spousal support, past due spousal support, uncovered and unreimbursed health care expenses of the children.

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{¶39} IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Mr. Bernard H. Neihaus, Esq. shall be compensated at the rate of \$250.00 per hour for reasonable receiver's fees and as otherwise established herein this Order for Receiver & Attorney;

{¶40} IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Mr. Bernard H. Niehaus, Esq. shall post a bond in the sum of \$10,000.00, with sureties to be approved by the Court, conditioned that the receiver will well and truly perform the duties of receiver and will duly account for all moneys and properties that may come into the receiver's hands, and that the receiver will abide by and perform all things that the receiver will be directed to do so by this Court;

{¶41} IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Mr. John Coppler, Esq. of Port Clinton, Ohio, is appointed Attorney to represent Receiver;

{¶42} IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Mr. John Coppler, Esq. shall be compensated at the rate of \$175.00 per hour for reasonable attorney's fees and as otherwise established herein this Order for Receiver & Attorney;

{¶43} 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 Wednesday, January 25, 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;

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{¶44} 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 Receiver & Attorney. 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;

{¶45} IT IS FURTHER ORDERED, ADJUDGED, and DECREED that all amounts due or potentially due to Plaintiff are to be placed in trust pursuant to this Court's division and distribution of the marital estate and as more fully described in this Court's Decision & Orders;

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

{¶47} IT IS FURTHER ORDERED, ADJUDGED, and DECREED that this Court's Order for Receiver & Attorney 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."<sup>31</sup>

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<sup>31</sup> *Clendenen v. Fannin Realty, Inc.*, 2002 Ohio 4548, P13 (Ohio Ct. App. 2002)

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

**{¶49} IT IS FURTHER ORDERED, ADJUDGED, and DECREED that the Clerk of Courts shall send copies of this Order for Receiver & Attorney to all parties of record or their counsel by regular U.S. Mail.**

**{¶50} 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 Receiver & Attorney. The Clerk shall serve this summons in the manner prescribed by Civil Rule 4.1.**

**{¶51} 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 Receiver & Attorney. The Clerk shall serve this summons by certified mail with a return receipt requested, 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

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PAUL C. MOON, JUDGE

JANUARY 4, 2006

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BRUCE A. WINTERS, MAGISTRATE

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**CERTIFICATE OF SERVICE**

A copy of the foregoing "Order for Receiver & Attorney" was delivered by personal service through the Ottawa County Sheriff, in the manner prescribed by Civil Rule 4 through 4.2, this 4<sup>th</sup> 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)*

COMMON PLEAS COURT OF OTTAWA COUNTY

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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

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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

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A copy of the foregoing “Order for Receiver & Attorney” was delivered by certified mail, in the manner prescribed by Civil Rule 4 through 4.3 and 4.6(A) and (B), this 4<sup>th</sup> 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

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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

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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  
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6000 Summit Street  
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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  
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COMMON PLEAS COURT OF OTTAWA COUNTY

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

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  
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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*

COMMON PLEAS COURT OF OTTAWA COUNTY

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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)*

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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*New Third Party Defendant (Registration No. 1458572)*

COMMON PLEAS COURT OF OTTAWA COUNTY

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Assistant Vice President  
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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*

A copy of the foregoing “Order for Receiver & Attorney” was delivered by regular mail, this 4<sup>th</sup> day of January, 2006, to the following:

Ottawa County Child Support Enforcement Agency  
8043 W. State Route 163, Suite 200,  
Oak Harbor, Ohio 43449

Ottawa County Sheriff’s Office  
315 Madison Street  
Port Clinton, Ohio 43452

JANUARY 4, 2006

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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.