

VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

WHITBECK & ASSOCIATES, P.C.,

Plaintiff,

v.

WESLEY C. SMITH,

and

CHERI SMITH,

Defendants.

Case No. CL71003

AMENDED COMPLAINT FOR INTERPLEADER

COMES NOW the Plaintiff, Whitbeck & Associates, P.C., by counsel, and requests this Honorable Court enter an Order grant such relief as set forth below, and states as follows:

1. The Plaintiff, Whitbeck & Associates, P.C. ("the Firm") is a Virginia Professional Corporation, in good standing, organized in and licensed to conduct business in the Commonwealth of Virginia.
2. The Defendants, Wesley C. Smith and Cheri Smith ("the Defendants") are natural persons who reside in the Commonwealth of Virginia.
3. The Firm is a law office engaged in the business of providing professional legal services, and the undersigned is formerly counsel for the Defendant, Wesley C. Smith in his divorce case currently pending in this Court.
4. Pursuant to the written Escrow Agreement of the Defendants dated December 12, 2003 and in accordance with subsequent Court Orders, the Firm has maintained the proceeds from the sale of the Defendants' residence.

5. After various distributions of the aforesaid proceeds pursuant to the Orders of this Court, the Firm had proceeds totaling \$130,053.38 in its Account as of July 7, 2006.

6. Pursuant to the written agreement of the Defendants dated July 7, 2006, \$1,319.50 was disbursed to pay the fees of the Guardian *ad litem* appointed in the Defendants' divorce case.

7. The Firm seeks leave from this Court to deposit with the Clerk of this Court the sum of \$128,733.88, representing the remaining proceeds from the sale of the Defendants' residence.

8. The Firm does not own any part of the said sum of \$128,733.88, nor does the Firm claim any interest whatsoever in the same.

9. The Firm has been notified that the Defendants' are claiming ownership and/or entitlement to various amounts of the aforesaid proceeds, and that the division of the aforesaid proceeds remains in dispute.

10. The Firm has little or no personal knowledge as to the justice or right of the respective claims of any of the Defendants, and that there is no way by which the claims to the said sum may be determined to the Firm's protection, save by the intervention of a court of equity.

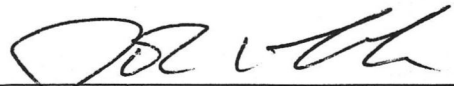
11. The adverse claims by the Defendants to the aforesaid proceeds, as above set forth, are derived from and are dependent upon a common source, to-wit: the Final Decree of Divorce entered by this Court concerning the parties, and, upon information and belief, a subsequent appeal that has been filed.

12. Since the respective claims of the Defendants have arisen pursuant to the Final Decree of Divorce, the Firm has sought, but without success, to obtain an agreement with the

Defendants named herein as to how and to whom the aforesaid proceeds should be distributed, and the Defendants' desire the proceeds be made available.

WHEREFORE, the Firm requests this Honorable Court enter an Order providing that (1) The Firm be granted leave to deposit with the Clerk of this Court \$128,733.88 in funds as set forth above, and that the Clerk thereafter maintain said funds; (2) that the Firm be forever discharged from any and all liability to the Defendants and to each of them, and to any person or persons claiming by, through, or under them, upon or by virtue of the proceeds hereinabove referred to; (3) that a temporary restraining order may be issued against the Defendants and each of them enjoining the Defendants from instituting against the Firm any further proceedings in any court on account of their several claims as hereinabove described and that a time and place be set after due notice to the Defendants for a hearing upon the issue as to whether the injunction shall be made permanent; (4) that after the hearing the injunction shall be made permanent against the Defendants and each of them and shall be amplified and modified as the necessities of the Firm may require; (5) that the Escrow Agreement of the Defendants dated December 12, 2003 be rescinded and declared void; (6) that the court costs of the Firm and a reasonable fee for the Firm's attorneys be allowed to it out of the amount deposited by it, and the Firm may have such other and further relief as the nature of the case may require and to equity may seem meet.

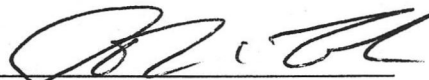
Respectfully submitted
WHITBECK & ASSOCIATES, P.C.
by Counsel



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Counsel for the Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of this pleading was served via first class mail this 17th day of November, 2006 to the Defendants, Wesley C. Smith, 5347 Landrum Road, Apartment 1, Dublin, Virginia 24084-5603 and Cheri Smith, 8350 Greensboro Drive, #111, McLean Virginia 22102.



John C. Whitbeck, Jr.