

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF PRINCE WILLIAM

WHITBECK & ASSOCIATES, P.C.

Plaintiff,

v.

Case No. CL71003

WESLEY C. SMITH,

and

CHERI SMITH,

Defendants.

NOTICE AND MOTION

PLEASE TAKE NOTICE that on Friday, December 1, 2006, the Co-defendant, Cheri Smith has filed her position concerning the distribution of the marital funds now held by the clerk of the Court and has moved the Court to disburse those funds.

CO-DEFENDANT'S POSITION AND MOTION

THIS matter had come before this Court upon the Motion to Amend Complaint and Complaint for Interpleader by the Plaintiff, Whitbeck and Associates, P.C., on November 17, 2006. The co-defendant, Cheri Smith, by counsel, hereby files her position concerning the distribution of funds from the escrow account in question. The co-defendant, Cheri Smith, moves the Court to order the Clerk of the Court to disburse the funds now held by him and formerly held in escrow by John Whitbeck, Esquire, in accordance with the terms of the Final Divorce Order (copy attached) (pp. 14-18 and attached chart) for Chancery Case No. 53360, entered by this Court on June 9, 2006.

In support of her position concerning the distribution of the funds and her Motion, Ms. Smith states:

1. The money escrowed with the Clerk of the Court represents the balance of the Smith's marital funds which had been held by John Whitbeck, Esquire, in his trust account.
2. As a result of an Order entered by this Court on November 17, 2006, the above mentioned funds were deposited by Mr. Whitbeck with the Clerk of the Circuit Court for the County of

Prince William.

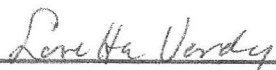
3. The distribution of all marital property was decided by this Court during the Smith's divorce case and set forth in the Final Divorce Order, Chancery Case Number 53360, entered by this court on June 9, 2006.
4. There exists no reason why the balance of the escrow account should not be distributed as ordered in the Final Divorce Decree.
5. The Court will please not that the Guardian *ad litem*, Ronald Fahy, Esquire, has been paid his fee per the Court's Order from the marital assets held by Mr. Whitbeck. This payment was issued by Mr. Whitbeck, per the agreement of the parties. Therefore, the amount of one thousand, three hundred and nineteen dollars and fifty cents (\$1,319.50) was deducted from the escrow funds prior to their deposit with the Clerk of the Court and is not at issue at this time.

Wherefore, it is the position of co-defendant, Cheri Smith, and her motion that the Court issue an order instructing the Clerk of the Court to distribute the remaining escrow funds now held by him as ordered in the Final Divorce Order, which is as follows:

- A. A check in the amount of twenty four thousand two hundred and thirty three dollars and forty-four cents (\$24,233.44) which represents the remaining balance of his portion of the marital assets shall be issued to Mr. Wesley C. Smith.
- B. A check in the amount of one hundred and four thousand five hundred dollars and forty-four cents (\$104,500.44) which represents the combined amount of the marital debt which the court has ordered Ms. Cheri Smith to pay from the marital assets which amount to thirty thousand two hundred and sixty-seven dollars (\$30,267.00) and her portion of the distribution of the marital assets which is seventy-four thousand, two hundred and thirty-three dollars and forty-four cents. (\$74, 233.44), shall be issued to Ms. Cheri Smith

I ASK FOR THIS:

Cheri Smith
By Counsel



Loretta Vardy, Esquire
VSB No. 26225
12388 Silent Wolf Drive
Manassas, VA 20112
Phone: 703-791-6078
Fax: 703-791-7957
Counsel for Cheri Smith

CERTIFICATION OF NOTICE

This is to certify that on the 1st day of December 2006, , a true copy of the foregoing Notice and Motion was mailed postage prepaid to the following:

Wesley Smith
5347 Landrum Rd APT 1
Dublin, VA 24084
Co-defendant

John C. Whitbeck, Jr. VAB # 47525
Whitbeck & Associates, P.C.
116-E Edwards Ferry Road
Leesburg, VA 20176
(703) 777-1795
(703) 777-9079 facsimile
Counsel for the Plaintiff

Ronetta Vandy