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December 27, 2012

Via: Hand Delivery

The Honorable Daniel E. Shearouse Clerk of Court South Carolina Supreme Court Post Office Box 11330 Columbia, SC 29211

RE:

T. Travis Medlock, an interested individual v. LegalZoom.com, Inc.

Our File No. 39375/01500

Dear Mr. Shearouse:

Enclosed please find the original and seven copies each of the Order Denying Motion for Summary Judgment and the Order Denying Motion to Establish Facts, both signed by Judge Newman in the above-referenced matter. We would ask that you file the originals and return the clocked-in copies to us via our courier. Pursuant to instructions from Judge Clifton B. Newman, we will submit filed copies to him and to the Richland County Clerk of Court.

B. Rush Smith III

Enclosures

cc:

The Honorable Clifton B. Newman

Jeanette W. McBride, Richland County Clerk of Court

T. Travis Medlock, Esquire John Felder, Jr., Esquire Chad McGowan, Esquire Jordan Calloway, Esquire Cezar E. McKnight, Esquire

Ronnie A. Sabb, Esquire

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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA In The Supreme Court

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

Case No. 2012-208067

Clifton Newman, Special Referee

ORDER DENYING MOTION TO ESTABLISH FACTS

This matter is before me on Petitioner's Motion to Establish Facts. This motion is based on an order of partial summary judgment issued in Janson v. LegalZoom.com, Inc., 802 F. Supp. 2d 1053 (W.D. Mo. 2011), along with information submitted to the Missouri court by the parties in connection with cross motions for summary judgment in that case. The parties appeared for a hearing on the Motion to Establish Facts on September 26, 2012. For the reasons described below, the Motion of the Petitioner to Establish Facts is denied.

Petitioner argues that the *Janson* ruling establishes the facts of this case through the doctrine of collateral estoppel. Collateral estoppel "precludes the same parties, or those in privity, from relitigating issues which were necessarily and unambiguously decided in a previous final judgment." *Norwine v. Norwine*, 75 S.W.3d 340, 343 (Mo. Ct. App. 2002) (citing *Shores v. Express Lending Services, Inc.*, 990 S.W.2d 122 126 (Mo. Ct. App. 1999)); see also South Carolina Property & Cas. Ins. Guar. Ass'n v. Wal-Mart Stores, Inc., 304 S.C. 210, 213, 403

S.E.2d 625, 627 (1991) (collateral estoppel requires that an "issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment").¹ Under the circumstances of this case, the doctrine of collateral estoppel cannot be used to support this motion.

The issues in *Janson* were not determined by a final judgment. *Janson*, 802 F. Supp. 2d 1053. In the Missouri order on which Petitioner relies, the federal district court in Missouri did the following: (a) granted LegalZoom's motion for summary judgment based on federal preemption of claims related to patent, trademark, and copyright issues; (b) denied LegalZoom's summary judgment motion in all other respects; (c) granted the plaintiffs' summary judgment motion as to a unique issue arising under Missouri statutory law. *See id.* at 1069-70. Claims related to patent, trademark, and copyright issues that were before the Missouri Court are not before this Court.

Petitioner argues that the Missouri court's "findings on the specifics of LegalZoom's legal document preparation process was [sic] necessary for the court's conclusion that LegalZoom was not entitled to summary judgment...." (Pet'r's Mot. to Establish Facts 7.) A denial of a motion for summary judgment is not a final judgment, see, e.g., McMahon v. Geldersma, 317 S.W.3d 700, 704 (Mo. Ct. App. 2010); see also Ballenger v. Bowen, 313 S.C. 476, 477, 443 S.E.2d 379, 380 (1994), and thus cannot have preclusive effect.²

Similarly, a partial summary judgment order "reserves or leaves some further question or direction for future determination" and thus cannot be given preclusive effect. *Great Am. Ins.*

¹ Missouri law applies to determine the preclusive effect of the Missouri federal court order. See Semtek Int'l Inc. v. Lockheed Martin Corp., 531 U.S. 497, 508 (Feb. 27, 2001) (finding that, when considering on certiorari a case decided by Maryland's highest court, "[t]his is, it seems to us, a classic case for adopting, as the federally proscribed rule of decision, the law that would be applied by state courts in the State in which the federal diversity court sits."). However, the result is the same under South Carolina or Missouri law.

² LegalZoom correctly observes that in denying its motion for summary judgment, the federal district court construed the facts in the light most favorable to plaintiffs. *See Janson*, 802 F. Supp. 2d at 1057.

Co. v. Jones, 396 S.W.2d 601, 603 (Mo. 1965), cited in Norwine, 75 S.W.3d at 343. The same is true under South Carolina law. See, e.g., Link v. School District of Pickens Cty., 302 S.C. 1, 6, 393 S.E.2d 176, 179 (1990) (noting that while a grant of partial summary judgment may be appealed as an interlocutory order, a party is not required to appeal until after trial as the rights of the parties to the action are not finally determined).

Further, the order of the *Janson* court granting partial summary judgment to plaintiff was "limited to a single issue: whether the papers, documents, or instruments at issue here affect or relate to secular rights." *Janson*, 802 F. Supp. 2d at 1069. The court found that LegalZoom had failed to rebut the plaintiff's argument that secular rights were affected. *See id.* This issue, which has no relevance in South Carolina, arose from Missouri's statutory definition of the practice of law. Missouri's statute governing the practice of law "defines the 'law business' as including 'the drawing or the procuring of or assisting in the drawing for a valuable consideration of any paper, document or instrument affecting or relating to secular rights"

Id. at 1058 (citing Mo. Rev. Stat. § 484.010.2). South Carolina does not have such a statute. Thus, this issue—the only issue decided in the court's order granting Petitioner's motion for partial summary judgment—is immaterial to the case before this Court. The order has no preclusive effect for this additional reason.

Finally, insofar as Petitioner argues that certain depositions and affidavits of LegalZoom witnesses establish the facts in this case, LegalZoom does not dispute the veracity of its witnesses, but disputes the facts as alleged by Petitioner. LegalZoom seeks an opportunity to develop the factual record in this case as Petitioner's claims relate to the products offered in South Carolina.

In the Order appointing the undersigned as Special Referee, I am assigned to "take evidence," "schedule the time and place for the hearings," "set a schedule for discovery as needed," and "issue a report containing proposed findings of fact and recommendations" to the Supreme Court. Guided by these instructions, a status conference was convened, pursuant to which the parties conferred and submitted an agreed-upon scheduling order, which the undersigned subsequently entered. I find that the Motion to Establish Facts should be denied and the matter should proceed as per the scheduling order.

The Motion to Establish Facts is therefore **DENIED**.

AND, IT IS SO ORDERED.

Clifton Newman, Judge

Special Referee

Columbia, South Carolina December 17, 2012

THE STATE OF SOUTH CAROLINA In The Supreme Court

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

T. Travis Medlock, an interested individual, Petitioner/Plaintiff,

LegalZoom.com, Inc., Respondent/
Defendant.

Case No. 2012-208067

Honorable Clifton B. Newman, Special Referee

PROOF/CERTIFICATE OF SERVICE

WIZ DEC 27 PH 3: 33

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for LegalZoom.com, Inc., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Order Denying Motion for Summary Judgment

Order Denying Motion to Establish Facts

Counsel Served:

John G. Felder, Jr. McGowan Hood and Felder LLC 1517 Hampton Street Columbia, SC 29201

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THE STATE OF SOUTH CAROLINA In The Supreme Court

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IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT.

T. Travis Medlock, an interested individual,	Petitioner/ Plaintiff,
v.	,
LegalZoom.com, Inc	Respondent/ Defendant.

Case No. 2012-208067

Clifton Newman, Special Referee

ORDER DENYING MOTION FOR SUMMARY JUDGMENT

This matter is before me on Petitioner's Motion for Summary Judgment. The parties appeared for a hearing on the motion on September 26, 2012. After considering the motion, applicable law, testimony, and arguments of counsel, the Court finds that there exists genuine issues of material fact, and that the Motion for Summary Judgment should be DENIED.

It is therefore ORDERED that the Petitioner's Motion for Summary Judgment is DENIED.

AND IT IS SO ORDERED.

Clifton Newman, Judge

Special Referee

December <u>14</u>, 2012 Columbia, South Carolina