

CAUSE NO. 2024-48085

ATLANTIC WAVE HOLDINGS, LLC
and SECURE COMMUNITY, LLC,

Plaintiff/Judgment-Creditor

v.

CYBERLUX CORPORATION and
MARK D. SCHMIDT, Individually,

Defendant/Judgment Debtors.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

129TH JUDICIAL DISTRICT

**DEFENDANTS' EMERGENCY MOTION TO MODIFY, CORRECT, OR REFORM
ORDER APPOINTING RECEIVER TO EXCLUDE MARK D. SCHMIDT, HIS WIFE,
AND THEIR PROPERTY FROM THE IMPOSITION OF THE RECEIVERSHIP
PURSUANT TO THE COURT'S JANUARY 16, 2025 RULING**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COME Defendants Cyberlux Corporation ("Cyberlux") and Mark D. Schmidt, Individually (collectively "Defendants") and file this Emergency Motion to Modify, Correct, or Reform May 22, 2025 Order Appointing Receiver ("Receivership Order" or "Order") to Exclude Mark D. Schmidt, His Wife, and Their Property (collectively "Schmidt") from the imposition of the Order, pursuant to the Court's January 16, 2025 ruling, and would respectfully show the Court the following:

A. Legal Authorities Supporting Motion to Modify, Correct, or Reform

The Court has authority to grant a Motion to Modify, Correct, or Reform the Order Appointing Receiver. *See* TEX. R. CIV. P. 329b(g) ("Each such motion shall be in writing and signed by the party or his attorney and shall specify the respects in which the judgment should be modified, corrected, or reformed."). Here, the written order does not comport with the Court's ruling, as the parties agreed—and the Court ordered—that no receivership relief was to be rendered against Schmidt. *See Cook v. Cook*, 888 S.W.2d 130, 131 (Tex. App. 1994) ("If the written order

does not comport with the judgment rendered, the parties are entitled to have the order reformed to accurately reflect the action taken by the trial court. *See* TEX. R. CIV. P. 329b(g.); *See also Burrows v. Burrows*, 1998 WL 35277038, at *3 (Tex. App.—Corpus Christi 1998, writ denied) (A judge’s intent to sign the decree in the future goes to its *entry* and not to its *rendition*. *See S & A Restaurant Corp. v. Leal*, 892 S.W.2d 855, 858 (Tex. 1995) (“words used by the trial court must clearly indicate the intent to render judgment at the time the words are expressed”).).

Failing to amend or modify the written order would constitute error because no evidence was adduced to support receivership relief against Schmidt, and because Plaintiffs expressly withdrew their Application as to Schmidt during the January 16, 2025 hearing and—immediately after—the Court orally ruled that Schmidt would not be subject to its forthcoming order. Simply put, the written Order must be corrected because it grants relief on an issue about which the Court received no evidence and was abandoned by Plaintiffs. Additionally, there are several grammatical phrasing errors in the Order that make the relief granted vague and ambiguous.

B. The May 22, 2025, Receivership Order Mistakenly Imposed The Receivership and Turnover on Defendant Mark D. Schmidt, His Wife, and Their Property

During the hearing on Plaintiffs’ Application for Turnover and Receivership (the “Hearing”), Plaintiffs requested relief against Cyberlux, but withdrew their claims against Schmidt and conceded they provided no evidence against Schmidt. Accordingly, this Court ruled from the bench that turnover and receivership relief would be granted against Cyberlux, but **not** Schmidt. Notwithstanding that ruling and Plaintiffs’ withdrawal of those claims, on April 1, 2025, counsel for Plaintiffs submitted a proposed Order Appointing Receiver that included turnover and receivership relief against Schmidt. Defendants promptly objected to inclusion of Schmidt in the proposed order, stating in part:

“Plaintiffs’ Proposed Order greatly exceeds what is shown in the record and statutory authority. It defines ‘Judgment Debtors’ as the Defendants and then purports to appoint a receiver as to ‘Debtor,’ which is not defined, making the Proposed Order impermissibly ambiguous on its face, especially because this Court expressly declined to appoint a receiver as to Defendant Mark Schmidt.”

(Cyberlux’s Counsel’s letter of April 5, 2025, attached as Exhibit 1).

Notwithstanding these objections, Plaintiffs’ representations that they sought an order only against the company, and the Court’s clear direction to exclude Schmidt from Plaintiffs’ proposed order, Plaintiffs submitted an order that included Schmidt. The Court inadvertently signed Plaintiffs’ proposed order on May 22, 2025, and that order is contrary to the Court’s specific ruling at the hearing of January 16, 2025.

Dialogue between the Court and Plaintiffs’ counsel during the Hearing expressly shows that Plaintiffs withdrew their request for a turnover order against Schmidt—and that the Court expressly excluded Schmidt from receivership—and that Plaintiffs presented *no evidence* that would support such relief against Schmidt:

“THE COURT: So we talked a little bit about what specifically the turnover needs to apply to just so we don’t have an issue on its face. In terms of -- she did raise a point regarding Mr. Schmidt. ***We didn’t have anything on Mr. Schmidt; is that right?***”

MR. VARGO [Counsel for Plaintiffs]: ***The turnover is just against the company. It’s not against Mr. Schmidt.***

THE COURT: Okay. So he’s going to be removed?

MR. VARGO: Yes.

THE COURT: So they’re only seeking a turnover regarding the company. ***So in the amended order he’ll be removed.***”

(Reporter’s Record, January 16, 2025, p. 127, ln. 3-16, Exhibit 2 (emphasis added)).¹

¹ See also Exhibit 3, Declaration of A. Pennetti, attesting to record attached as Exhibit 2.

Accordingly, Defendants respectfully request that the Court grant Defendants' Motion to Modify, Correct, or Reform the Order Appointing Receiver. Defendants respectfully show the Court that without this modification and correction, Schmidt would remain subject to the restriction and obligations of the Order Appointing Receiver and Mr. Schmidt's property, which he shares with his spouse, would remain in jeopardy, resulting in irreparable harm with no adequate remedy by appeal.

Defendants suggest the Court correct the Order Appointing Receiver by signing an amendment that states in substance:

"It is Ordered that any and all references to 'Debtor' or 'Debtors' in the Order Appointing Receiver signed on May 22, 2025, shall be construed and understood to refer only to Defendant Cyberlux Corporation and not to Mark D. Schmidt, individually, and that this Order expressly declines to impose a receiver or a turnover order as to Mark D. Schmidt."

Further, Exhibit A to the Order sets forth numerous disclosure requirements. Exhibit A to the Order requires production of records of "defendant" without identifying whether that applies to Cyberlux, Schmidt, or both. Many paragraphs of the 43 paragraphs in Exhibit A imply information must be supplied and/or documents must be produced whether held by a "defendant" a spouse, family member, or persons who have any "co" or joint interest. The language of the categories of documents set forth in Exhibit A indicate that documents from Schmidt might be required to be disclosed. These include the following:

1. The Definition in ¶ 2, p. of the Order provides: "Defendant(s)" or "Judgment Debtor(s)", collectively and individually refers to the following Debtors: (referring to Cyberlux and "Mark D. Schmidt (individually)). This section refers to "Debtors."
2. Other provisions refer to "Debtor" which makes it unclear whether Cyberlux and Schmidt are both referred to when that term is used. See ¶ 7, p. 3.
3. ¶ 8, p. 4 refers to "Debtors" and their leviable property.

4. ¶ 10, p. 4 says Receiver “will have a judicial lien on all non-exempt assets of Debtor and on all non-exempt community assets of the Debtor [].”
5. ¶ 14, p. 5 refers to the Court’s jurisdiction over “Debtor’s” assets and states “[t]he Receivership owns all non-exempt assets of all Debtors [].”
6. ¶ 15, p. 5 states “the Court Appoints Robert W. Berleth as Receiver over each Debtor’s non-exempt assets [].”
7. ¶ 18, p. 6 refers to “Peace Officers Responsibilities” accompanying as Receiver” in locating “Debtor’s assets or records [].”
8. ¶ 19, p. 6 states “Receiver, no Debtor, is the party entitled to possession, sell, liquidate, and otherwise deal with Debtor’s non-exempt property [].”
9. ¶ 19, p. 6 a, b, and c states third parties are to turn over “Debtor’s property and records,” and notify Receiver of existence of “Debtor’s property.”
10. ¶ 20, p. 7 a, states “Each Debtor” is ordered to turn over “items described in Exhibit A.”
11. ¶ 20, p. 7 b, states “No Debtor” may dispose of non-exempt assets without Receiver’s consent.
12. ¶ 20, p. 7 c, states “Debtor” must disclose to Receiver all asset of each “Debtor.” may dispose of non-exempt assets without Receiver’s consent.
13. ¶ 20, p. 7 h, states if “Debtor” objects to “Receiver’s demands” “Debtor” must comply and “Debtors” may seek protection from the Court.
14. ¶ 22, p. 8 states “Receiver” takes any interest of “the Debtor” and controls such interest in any entity.
15. ¶ 25, p. 10 states “Receiver may take possession of Debtor’s non-exempt property [].” See also, ¶ 25, p. 10 q, r, s, and t.
16. ¶ 26, p. 11, states “Receiver may take all actions” to access assets owned by “any Debtor.”
17. ¶ 27, p. 12, says “Receiver may disable or remove non-exempt property [of] a Debtor [].”
18. ¶ 28, p. 12, states “Receiver may assume Debtor’s property is not exempt” and take custody of that property.
19. ¶ 29, p. 12, says as to “Personal Property Rights of Judgment Debtor,” “Receiver must comply with” Tex. R. Siv. P. 679b.

20. ¶ 30, p. 12, provides Receiver must provide “Judgment Debtor” notice of disbursement of funds or sale of property and “Judgment Debtor” may assert an exemption.
21. ¶ 31, p. 13, says “disputes as to whether an asset” is property of “a Debtor” will be settled by the Court.
22. ¶ 34, p. 13, authorizes “Receiver [to] redirect, read, and copy Debtor’s mail [].”
23. ¶ 36, p. 13 authorizes “Receiver [to] obtain credit reports [and the like]” on the “Debtors.”
24. ¶ 36, p. 14 authorizes “Receiver [to] order utilities [and the like] to turn over information [about] Debtor’s whereabouts or non-exempt assets [].”
25. ¶ 37, p. 15 authorizes “Receiver [to] require the attendance of third parties” respecting “Debtor’s assets.”
26. ¶ 39, p. 15 authorizes “Receiver [to] endorse and cash check and negotiable instruments payable to Debtor [].”
27. ¶ 41, p. 16 authorizes “Receiver [to] collect all unclaimed funds belonging to Debtor [].”
28. ¶ 44, p. 16 provides “Receiver” with a specific method of service on Debtor.
29. ¶ 45, p. 16 provides “Receiver may obtain Debtor’s [] drivers license records [].”
30. ¶ 46, p. 17 provides “Debtor” may not serve discovery upon “Receiver.”
31. ¶ 49, p. 17 provides for the method of notice to “Debtor” by the receiver of intended sale or abandonment of property.
32. ¶ 52, p. 18 provides “Receiver does not have to defend or prosecute any litigation regarding the Debtor [].”

See Order, at Exhibit A.

As stated above, Plaintiffs adduced zero evidence that the requirements of the Texas Turnover Statute were met with respect to Schmidt. During the hearing, Plaintiffs conceded that they adduced no such evidence and, further, that they did not seek turnover of or appointment of a receiver over, Schmidt’s assets. Ex. A, p. 127, ln. 3-16. The Court further indicated that Schmidt

would be removed from the Order. It appears that inadvertently did not occur. *Id.* Therefore, the Order must be corrected to comport with the Court’s January 16, 2025 ruling.

C. The Impact of the Order’s Inadvertent Inclusion of Schmidt

Because the Order currently permits the Receiver to take custody of the assets of Schmidt, the Receiver is currently acting to obtain custody of Schmidt’s assets. On June 2, 2025, Charles Schwab & Co., Inc. (“Schwab”) provided notice to Schmidt that Schmidt’s accounts with Schwab, which may encompass his personal brokerage, securities, and related accounts, have been restricted.² Thus, even though Atlantic Wave conceded it produced no evidence of turnover with respect to Schmidt, the parties agreed—and the Court ordered—that Schmidt would not be subject to the Turnover Order, the Turnover Order has caused Schwab to restrict Schmidt’s accounts. The Turnover Order must be modified or corrected to remove Schmidt.

D. Conclusion

Wherefore, premises considered, Defendants respectfully request the Court grant the relief requested above and all other relief to which Defendants are entitled.

(signature on following page)

² A copy of the Schwab notice is attached as **Exhibit 4**.

Respectfully submitted,

/s/ Alexander J. Pennetti

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*Attorneys for Defendants Cyberlux
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CERTIFICATE OF CONFERENCE

On June 2, 2025, the undersigned advised Mr. Berleth, the Receiver appointed by this Court, and Mr. Walton, counsel for Plaintiffs, of its intent to file this Motion. The undersigned did not receive a response.

/s/ Alexander J. Pennetti

Alexander J. Pennetti

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing instrument was served on all counsel pursuant to the Texas Rules of Civil Procedure on June 3, 2025.

/s/ Alexander J. Pennetti

Alexander J. Pennetti

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Filing Code Description: Motion to Modify

Filing Description: Defendants' Emergency Motion to Correct, etc. the Order Appointing Receiver

Status as of 6/4/2025 10:08 AM CST

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