

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT  
IN AND FOR LEE COUNTY, FLORIDA  
CIVIL DIVISION

EMERY SMITH,

CASE NO. 15-CA-001620

Petitioner/Counter-Respondent,

-v-

EMCYTE CORP.,

Respondent/Counter-Petitioner

And

PATRICK PENNIE,

Respondent/Counter-Petitioner.

---

**ORDER GRANTING MOTION OF  
RESPONDENT/COUNTER-PETITIONER,  
EMCYTE CORP., TO DECLARE FORFEITURE  
OF OWNERSHIP INTEREST OF EMERY SMITH IN EMCYTE CORP. BASED  
UPON NONCOMPLIANCE AS TO THE FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND FINAL JUDGMENT AS TO COUNTERCLAIM COUNTS I, III, VIII and IX**

THIS MATTER having come before the Court on October 30, 2018 on EmCyte Corp.'s Motion to Declare Forfeiture of Ownership Interest of Emery Smith in EmCyte Corp. Based Upon his Noncompliance as to the Findings of Fact, Conclusions of Law and Final Judgment as to Counterclaim Counts I, III, VIII and IX. An appearance was made at the hearing by Kenneth G.M. Mather of Gunster for EmCyte Corp. ("EmCyte") and by Patrick Pennie, appearing as the corporate representative of EmCyte and on his own behalf. Petitioner, Emery Smith, failed to appear at the hearing.

On May 8, 2018, this Court conducted a trial on EmCyte Corp's Counterclaim Counts I, III, VIII, and IX. After review of the testimony, exhibits, prior orders of this Court and the arguments presented by the parties, this Court entered judgment in favor of EmCyte and against Mr. Smith (the "Judgment"). The Judgment directed Mr. Smith to timely file tax returns and to

disclose specific information and documentation as detailed in the Judgment. The penalties for Mr. Smith's failure to comply with the Judgment were also set forth in the Judgment. Despite timely notice and opportunity to comply, Mr. Smith has failed to do so and EmCyte is therefore entitled to have Mr. Smith's ownership interest in EmCyte forfeited. Further, any right of Mr. Smith to have his interest bought out under the Shareholder's Agreement is also forfeited per the Judgment.

Following review of the file and the pleadings, and upon hearing the arguments and presentations of counsel, and the Court being otherwise duly advised in the premises, it is hereby

**ORDERED** and **ADJUDGED** that a final judgment is entered in favor of EmCyte against Petitioner/Counter-Respondent declaring that Mr. Smith's ownership interest in EmCyte is wholly and completely forfeited.

**IT IS FURTHER ORDERED** and **ADJUDGED** that a final judgment is entered in favor of EmCyte against Petitioner/Counter-Respondent declaring that that any right of Mr. Smith to have his interest bought out under the Shareholder's Agreement is forfeited based upon his total failure to provide the full and complete equitable accounting ordered by the Judgment.

**IT IS FINALLY ORDERED** and **ADJUDGED** that EmCyte is awarded its fees and costs against Petitioner/Counter-Respondent in an amount to be determined by this Court.

DONE AND ORDERED in Chambers at Ft. Myers, Lee County, Florida, on

\_\_\_\_\_, 2018.

\_\_\_\_\_  
Alane C. Laboda, Circuit Judge

The Original of this document was signed  
OCT 20 2018  
by Alane C. Laboda  
Circuit Judge

Copies Furnish to:  
Kenneth G.M. Mather, Esq.  
Andrew W. Lennox, Esq.  
Emery Smith

Kenneth G.M. Mather, Esq.  
Gunster, Yoakley & Stewart, P.A.  
401 E. Jackson Street  
Suite 2500  
Tampa, FL 33602

Andrew W. Lennox, Esq.  
Casey Reeder Lennox, Esq.  
Lennox Law, P.A.  
5100 W. Kennedy Boulevard  
Suite 120  
Tampa, FL 33609

Mr. Emery Smith  
P.O. Box 21767  
El Sobrante, CA 94820

Mr. Emery Smith  
936 30th Street  
Richmond, CA 94804