

STATE OF NORTH CAROLINA  
DURHAM COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
24 CVS 1535

PATHOS ETHOS, INC.,

Plaintiff,

v.

BRAINTAP INC. d/b/a BRAINTAP  
TECHNOLOGIES and WARD &  
SMITH, P.A.,

Defendants.

**ORDER ON JOINT MOTION TO  
INTERPLEAD FUNDS**

**THIS MATTER** is before the Court on the parties' Joint Motion to Interplead Funds ("Motion," ECF No. 5). The parties jointly request that the Court allow Defendant Ward & Smith, P.A. ("Ward & Smith") to interplead two hundred thousand dollars (\$200,000.00) in escrowed funds (the "Escrowed Funds") pursuant to Rule 22(b) of the North Carolina Rules of Civil Procedure.

The Escrowed Funds are currently held in escrow by Ward and Smith pursuant to an Escrow Agreement, ("Escrow Agreement," ECF No. 3, Ex. 11), executed between Plaintiff Pathos Ethos, Inc. ("Plaintiff"), Ward & Smith, and Defendant BrainTap, Inc. ("BrainTap"). (Mot. ¶ 1.) Under the terms of the Escrow Agreement, Ward & Smith is tasked with releasing the Escrowed Funds to Plaintiff once (i) Plaintiff provides BrainTap with certain files that are at issue in this lawsuit and (ii) BrainTap authorizes Ward & Smith to release the Escrowed Funds. (Mot. ¶ 1.)

The parties jointly acknowledge that this lawsuit has placed Ward & Smith in doubt about the proper disposition of the Escrowed Funds. (Mot. ¶ 3.) Specifically, Plaintiff alleges that BrainTap is in breach of a contract by refusing to direct Ward

& Smith to release the Escrowed Funds, while BrainTap disputes Plaintiff's claimed entitlement to those funds. (Mot. ¶ 3.)

The Escrow Agreement authorizes Ward & Smith to deposit the Escrowed Funds with the *Craven* County Clerk of Superior Court in the event of any doubt as to the proper course of action with respect to the Escrowed Funds. (Mot. ¶¶ 2, 5.) However, all parties now jointly consent to Ward & Smith depositing the Escrowed Funds with the *Durham* County Clerk of Superior Court. (Mot. ¶ 5.)

The Court, in its discretion, **CONCLUDES** that good cause exists for the Motion to be **GRANTED**. Therefore, it is hereby **ORDERED** as follows:

1. The Durham County Clerk of Superior Court shall hereby accept the Escrowed Funds;
2. Following payment of the proceeds into the registry of the Court, Ward & Smith is hereby dismissed from this action without prejudice; and
3. The payment of the Escrowed Funds to the Durham County Clerk of Superior Court shall be a full and complete discharge of Ward & Smith's obligations as escrow agent.

**SO ORDERED**, this the 16th day of April, 2024.

/s/ Mark A. Davis  
Mark A. Davis  
Special Superior Court Judge  
for Complex Business Cases