

604039

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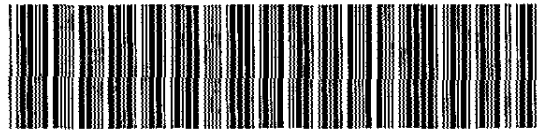
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FINAL DECLARATORY JUDGMENT (Court Order)
filed 2/2/11 rescinding merger filed 12/30/10
effective date 12/31/10. Merging Surgicare Center, Inc.
(K4115) into Eye Centers of Florida, P.A.
(604039).



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02/02/11--01007--003 **35.00

FILED
2011 FEB -2 A 11:59
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

*Amend
Tlewis
2/2/11*

Baker Hostetler

January 31, 2011

**VIA CERTIFIED MAIL,
RETURN RECEIPT REQUESTED**

Ms. Karon Beyer
Department of State
Division of Corporations
P.O. Box 6327
Tallahassee, FL 32314

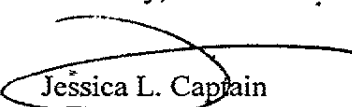
Re: Surgicare Center, Inc. v. Eye Centers of Florida, P.A.
(Final Declaratory Judgment)
Our File No.: 043272-1

Dear Ms. Beyer,

Enclosed is an executed copy of the Final Declaratory Judgment rescinding the merger of Surgicare Center, Inc. with and into Eye Centers of Florida, P.A. effective December 31, 2010. Please rescind the Articles of Merger and restore Surgicare Center, Inc. and Eye Centers of Florida, P.A. to the status quo ante existing prior to the inadvertent filing of the Articles of Merger. Enclosed also is a check in the amount of \$35.00 for the filing fee of the Final Declaratory Judgment. Please return a copy of the Final Declaratory Judgment to me in the enclosed pre-paid, return envelope once the same has been recorded.

Of course, if you should have any questions, please do not hesitate to telephone me.

Sincerely,


Jessica L. Captain

JLC
Enclosures

cc: Sharon P. Dill (w/o enclosures via e-mail: Sharon.Dill@ecof.com)

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043272, 000001, 103708725.1

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

SURGICARE CENTER, INC.,
a Florida corporation,

Plaintiff,

vs.

CASE NO: 11-CA-000243

EYE CENTERS OF FLORIDA, P.A.,
a Florida professional corporation,

Defendant.

FILED
2011 FEB -2 A 11:58
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

FINAL DECLARATORY JUDGMENT

THIS CAUSE having come before the Court on the Joint Stipulation for Entry of Final Declaratory Judgment entered into by and between the Plaintiff, SURGICARE CENTER, INC., ("Surgicare"), and the Defendant, EYE CENTERS OF FLORIDA, P.A. ("ECOF"), and the Court having reviewed the file and otherwise being fully advised in the premises, hereby **FINDS:**

1. On December 30, 2010, effective December 31, 2010, certain Articles of Merger (the "Articles of Merger") were filed with the Florida Department of State Division of Corporations (the "Department") merging Surgicare with and into ECOF, rendering ECOF the surviving corporation.

2. The Articles of Merger contained inaccuracies, were defectively executed, and were inadvertently filed with the Department. These defects included, but were not necessarily limited to, the following: (a) the Plan of Merger was not adopted and approved by the sole shareholder of Surgicare or the sole shareholder of ECOF; (b) Surgicare had not taken any acts

to merge with and into ECOF; and (c) the Articles of Merger were defectively executed using a signature stamp, without the consent of the parties, due to a miscommunication.

3. The parties unsuccessfully attempted to correct or amend the Articles of Merger with the Department, but were unsuccessful in so doing.

4. Due to the mutual mistakes and misunderstandings of the parties and the fact that the parties are no longer able to correct or amend Articles of Merger without Court order, the parties require the Court to declare their rights, status and other equitable and legal relations, and, pursuant to Chapter 86, Florida Statutes, and Florida law, the Court may render declaratory judgments on the existence or non-existence of any immunity, power, privilege or right. The Court may also provide additional, alternative, coercive, subsequent and supplemental relief in the same action, including rescission.

5. Pursuant to Section 86.021, Florida Statutes, any person or entity may have determined a declaration of rights, status or other equitable or legal relations thereunder, including the Plaintiff and Defendant in the above-styled matter.

6. Based on the facts set forth in Surgicare's Complaint, which have been admitted to by ECOF in its Answer, and due to the Joint Stipulation for Entry of Final Declaratory Judgment filed by the parties, it is hereby

ORDERED AND ADJUDGED:

✓ 7. The Articles of Merger attached to the Complaint as Exhibit "A", effective ✓
December 31, 2010, are hereby retroactively **RESCINDED**.

8. Surgicare and ECOF shall be restored to the *status quo ante* existing prior to the inadvertent filing of the Articles of Merger.

9. The shareholders of Surgicare and ECOF shall keep and retain the same ownership interest in each respective corporation that each owned before December 31, 2010.

10. The Court retains jurisdiction to enter further supplemental relief that may be required to enforce or complete this Court's Final Declaratory Judgment.

11. This case is hereby dismissed, with prejudice. Each of the parties shall bear their own attorneys' fees, expenses, and costs in this matter.

DONE AND ORDERED in Chambers in Lee County, Florida, on this ____ day of January, 2011.

ORIGINAL SIGNED

JAN 27 2011

MICHAEL T. MCHUGH
CIRCUIT JUDGE

MICHAEL T. MCHUGH
Circuit Court Judge

Copies furnished to:

C. Berk Edwards, Esq.

Michael S. Vitale, Esq.

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