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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Case No. 2010-CP-32-3172
APPELLATE CASE NO. 2012-212705

Martha D. Goodwyn,

Respondent,

v.

Shadowstone Media and
Robert Pachaly,

Appellants.

REPLY BRIEF OF APPELLANT

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ARGUMENT

I. WHEN THE JURY AWARDS SUBSTANTIALLY LESS THAN THE AMOUNT SOUGHT A BONA FIDE GOOD FAITH DISPUTE EXISTS

Goodwyn argues that, because she testified that she did not see the hiring letter until after the suit was filed, there could not have been a bona fide good faith reason for not paying her. She assumes the jury believed her testimony. She concludes that the trial court acted within its discretion when it trebled the damages.

Goodwyn fails to explain how the jury awarded her significantly less than she demanded if there was no bona fide good faith dispute. Goodwyn claimed \$5,194 in back wages and \$3,500 in commissions. The jury awarded Goodwyn a total of \$3,444, which is less than the back wages she claimed. Because the jury awarded less than 40% of the amount demanded, it must have determined there was a bona fide dispute; without that determination, it would have either found for Shadowstone or awarded Goodwyn all she asked for or at least the amount she claimed in wages.

Goodwyn correctly argues that, in Ross v. Ligand Pharmaceuticals, Inc., 371 S.C. 464, 639 S.E.2d 460, the court awarded treble damages because the failure to pay was “unilateral and arbitrary” (Respondent brief at 5) and that the pay schedule was “unreasonable since there was no set date when checks would be cut” (Respondent brief at 6). What Goodwyn does not recognize is that in Ross the court awarded Ross 100% of his demand, indicating that there was no bona fide good faith dispute over what was owed.

Goodwyn also argues that, in Mathus v. Brown & Brown of South Carolina, 389 S.C. 299, 698 S.E.2d 773 (2010), the court upheld an award of treble damages. What Goodwyn fails to notice is that the trial court awarded Mathus the full amount

of his demand, indicating that there was no bona fide good faith dispute over what was owed.

Goodwyn's reliance on Ross and Mathus is misplaced. Because the trial court in both Ross and Mathus awarded the full amount of the wages demanded by the respective plaintiffs, there could have been no bona fide good faith dispute over what was owed. Accordingly, those courts were correct in trebling damages. Here, however, the jury declined to award the full amount demanded, indicating that there was a bona fide good faith dispute over what was owed. Further, the jury found that Goodwyn was owed less than half of what she demanded, indicating that Shadowstone had a good reason to dispute payment.

In O'Neal v. Intermedical Hospital of South Carolina, 355 S.C. 499, 585 S.E.2d 529 (Ct.App. 2003) and Rice v. Multimedia, Inc., 318 S.C. 95, 456 S.E.2d 381 (1995), the trial courts awarded substantially less than the full amount demanded by the plaintiffs. The appellate courts found that, even though the plaintiff recovered some damages, trebling damages under those facts would be error, as there was a bona fide good faith dispute over what, if anything, was owed. O'Neal at 509, 532; Rice at 97, 382.

The touchstone for treble damages appears to be: is there a bona fide good faith dispute over what, if anything is owed. Futch v. Mcallister Towing Of Georgetown, Inc., 335 S.C. 598, 518 S.E.2d 591 (1999)(reh'g denied 1999); Rice; O'Neal. When the trial court awards the full amount sought, treble damages follow as a matter of course, unless, as in Futch, there is a legitimate reason to believe otherwise. When the trial court awards significantly less than the amount sought, the

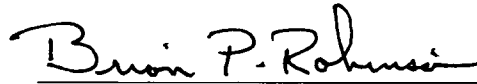
award itself is evidence that a bona fide good faith dispute exists, and treble damages are not awarded. O'Neal at 509, 532; Rice at 99-100, 384.

CONCLUSION

Goodwyn's arguments are founded upon a view of the evidence that ignores the verdict. The fact that the jury awarded significantly less than Goodwyn demanded means there was a bona fide good faith dispute. This appeal should be granted.

Respectfully submitted,

April 18, 2013.



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CERTIFICATE

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APPELLANTS' REPLY BRIEF CERTIFICATION

I certify that the Appellants' Reply Brief conforms to the requirements of Rule 211(b) of the Appellate Court Rules.

April 18, 2013



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