

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND )

FOR THE FIFTH JUDICIAL CIRCUIT

Best Choice Roofing & Home Improvement, Inc., )

C/A No.: 2018-CP-40-01318

Plaintiff, )

**ORDER AS TO DAMAGES**

v. )

**RECEIVED**

Tyler Woods, )

**Dec 21 2023**

Defendant. )


**SC Court of Appeals**

This matter came before the Court on the motion of Defendant Tyler Woods ("Woods" or "Defendant") for a damages award against Plaintiff Best Choice Roofing & Home Improvement, Inc. ("Best Choice" or "Plaintiff"). Summary judgment has already been entered against Plaintiff on Plaintiff's claims and against Plaintiff on Defendant's counterclaims. (Orders, March 30, 2019, and April 28, 2022.) The Court found Plaintiff liable to Defendant under South Carolina tort law (intentional interference with a contract) and for violation of the South Carolina Frivolous Civil Proceedings Sanctions Act. A hearing on damages was held on January 25, 2023. Present were defense counsel Nekki Shutt, Esq. and Sarah J.M. Cox, Esq. and Plaintiff's counsel Townes Johnson, Esq. Also present was Defendant Tyler Woods and his wife. No representative of Best Choice attended the damages hearing.

Having fully considered all admitted evidence as well as oral and written argument presented to the Court, this Court awards Defendant Tyler Woods damages in the amount of \$4,851,235.73 and the additional remedies outlined herein below.

## FACTS AND RELEVANT PROCEDURAL HISTORY

Defendant Woods is a 29-year-old male who spent 10 years after high school working in the roofing industry. Best Choice is a roofing services company with locations throughout the southeastern and midwestern United States. Woods had worked with Best Choice for four years previously in Kentucky, Virginia, Indiana, and Tennessee. He had just voluntarily left employment with Best Choice in Hendersonville, Tennessee when Best Choice recruited him to come work in its Atlanta, Georgia office. On or about April 17, 2017, Woods moved to Atlanta and began working as a sales manager for Best Choice's Marietta, Georgia location. Best Choice promised Woods compensation and family housing as he had a baby due at the time. Rather than provide family-appropriate housing, Best Choice first put Woods in a Motel 6 and then offered him a room in a bachelor's pad in the suburbs shared with other male co-workers.

 On April 21, 2017, Best Choice asked Woods to sign an Employment Agreement to continue his employment with Best Choice. Section 9 of the Employment Agreement, a Non-Competition and Confidentiality Clause, provided that Woods was not allowed to "directly or indirectly engage, own, manage, control, operate, be employed by, participate in, or be connected in any manner" with a business similar to Best Choice "for a period of ONE (1) year and within 100 miles from *the present location* of employer's business." Violation of the non-competition clause could result in the payment of \$15,000 in liquidated damages. Section 4 of the Employment Agreement further provided that the responsibilities and duties granted to Woods under the agreement would be rendered in Marietta, Georgia, and Section 10 of the agreement provided that Woods' employment for Best Choice was at-will. Finally, Section 18 of the Agreement states that litigation

resulting from the agreement would allow the prevailing party in such litigation to be awarded attorneys' fees and court costs.

Following Best Choice's failure to provide family housing for Woods, as promised. Woods resigned from Best Choice on or about April 29, 2017. Woods then moved to Columbia, South Carolina. Shortly thereafter, Woods began working with Premiere Roofing, LLC ("Premiere") in Irmo, South Carolina. Premiere provides roofing services in the Midlands of South Carolina. Irmo, South Carolina is about 193 miles from Best Choice's location in Marietta, Georgia.

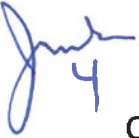
On or about November 6, 2017, Best Choice notified Premiere via a cease-and-desist letter that Woods was in violation of the non-competition clause of his Employment Agreement with Best Choice and threatened to sue Premiere if the company did not terminate Woods. It is undisputed that solely because of the cease-and-desist letter, Premiere terminated Woods' employment on November 20, 2017.

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Just as the alleged non-compete was set to expire, Best Choice filed suit against Woods here in South Carolina on March 8, 2018, alleged breach of the non-competition clause in the amount stipulated by the liquidated damages provision of the Employment Agreement and other damages. (Compl.) Woods filed an Answer and Counterclaim, which contained counterclaims alleging Best Choice's intentional interference with a business relationship and violation of South Carolina Frivolous Civil Proceedings Sanctions Act ("SCFCPSA"), § 15-36-10, et seq. (Answer and Countercl.) On December 14, 2018, Best Choice admitted to Woods that the company did not have an Augusta, Georgia location, nor a Charlotte, North Carolina location, on the date Woods signed the Employment Agreement. As such, Best Choice had no location within 100 hundred miles

of Woods' employer in Irmo, South Carolina on the date Woods signed the Employment Agreement. (D. Exs. 3-4, Best Choice Resp. to D 1<sup>st</sup> RTA and 2<sup>nd</sup> RTA.)

Best Choice has perpetually continued to litigate against Woods for almost five years despite South Carolina court's ruling that its claim is frivolous. On December 17, 2018, nine months after filing its Complaint, Best Choice moved to amend its original complaint against Woods. Therein, Best Choice requested to withdraw and completely abandon its breach of contract claim and instead assert previously unidentified claims of fraud, negligent misrepresentation, conversion, breach of fiduciary duties, and violation of the South Carolina Unfair Trade Practices Act ("SCUTPA") against Woods in connection to money Best Choice advanced to Woods for "relocation expense[s]". It was clear that Best Choice conceded its original claim that Woods breached the non-competition provision of his Employment Agreement.

 On January 30, 2019, the Court heard Best Choice's Motion to Amend the Complaint and Woods's Motions for Summary Judgment and Motion to Deem Admitted Discovery Requests Not Responded To. (Tr. of Hr'g held Jan. 30, 2019, attached as Ex. 4 to Defendant's Memorandum in Support of Summary Judgment.) At this hearing, Plaintiff consented to Woods's motion for summary judgment as Plaintiff recognized that it is undisputed that Woods worked for his South Carolina employer in Irmo, South Carolina, approximately 193 miles from Marietta, GA, where he worked for Plaintiff and that Plaintiff had no locations within 100 miles of Irmo, South Carolina, which is not a violation of Woods's employment agreement with Plaintiff. (*Id.* p. 10-11.) Because there was no longer any doubt Woods had not breached his employment agreement with Plaintiff, Woods withdrew his Motion to Deem Admitted Discovery Requests Not

Responded To at the hearing. (*Id.* p. 3.)

At the hearing on January 30, 2019, the trial court also heard arguments regarding Plaintiff's Motion to Amend. Plaintiff's counsel argued that Woods would not be prejudiced by an order allowing Plaintiff to amend its Complaint because the matter was still in "the written discovery stage." (*Id.* p. 5.) On the record in open court, Plaintiff's counsel stated that through attempting to respond to Respondent's written discovery requests, he learned from Plaintiff, his own client, that the original Complaint was baseless and about the existence of the allegedly purloined "advanced payment" which was the subject of Plaintiff's proposed Amended Complaint. (*Id.*)

On February 19, 2019, the trial court issued its Order denying Plaintiff's Motion to Amend the Complaint and granting summary judgment in favor of Woods on all claims and counterclaims in the case. On February 28, 2019, Plaintiff filed a Motion to Reconsider, Alter, or Amend the trial court's February 19, 2019, Order, requesting that the trial court alter its order to reflect the fact that Plaintiff did not consent to summary judgment being ordered against it on the pending counterclaims, and requesting the trial court reconsider its ruling on Plaintiff's Motion to Amend the Complaint.

On March 20, 2019, this Court issued an amended Order, again finding in favor of summary judgment for Woods on the claims in the Complaint and denying Plaintiff's Motion to Amend the Complaint but reversing its decision on summary judgment as to Woods's counterclaims, ordering the clerk of court to move Woods's counterclaims forward on the trial docket. In this amended Order, this Court found that Plaintiff is not entitled "to abandon all of its original allegations and to plead previously unraised allegations," and that Woods would be prejudiced if Plaintiff was granted leave to amend

the Complaint.

On March 28, 2019, Plaintiff filed a Revised Motion to Reconsider, Alter, or Amend the trial court's March 20, 2019, Order, requesting again that the trial court grant Plaintiff's Motion to Amend the Complaint. Notably, consistent with the fact that Plaintiff consented to summary judgment, Plaintiff did not request that the trial court reconsider, alter, or amend its grant of summary judgment in Woods's favor in its Revised Motion to Reconsider, Alter, or Amend.

On October 22, 2019, the trial court issued its Order denying Plaintiff's Revised Motion to Reconsider, Alter, or Amend the Complaint. Appeal of this Order followed. Plaintiff's appeal was based upon the denial of Plaintiff's Motion to Amend the Complaint. For two and a half years, Best Choice tied Woods up in appellate litigation. Ultimately, the South Carolina Court of Appeals dismissed Plaintiff's appeal on February 9, 2022, finding that per *Baldwin Constr. Co. v. Graham*, 357 S.C. 227, 230, 593 S.E.2d 146, 147 (2004), an order denying a motion to amend is not immediately appealable.

On March 3, 2022, Woods filed a motion for costs in the Court of Appeals and on March 16, 2022, the Court of Appeals granted Woods' motion for costs and ordered Best Choice to pay \$2,502.70 in appellate costs. (Order, admitted as Exhibit 8.) To date, Best Choice has not made this payment.

On April 4, 2022, this Court held a hearing on Woods' Motion for Summary Judgment as to his counterclaims. Afterwards, on April 28, 2022, this Court entered an Order Granting Summary Judgment Against the Plaintiff as to the Counterclaims. Defendant filed a Motion to Alter or Amend this judgement and this Motion was denied on July 28, 2022. This matter was referred to my office for disposition of Defendant's claim

for damages on November 2, 2022.

Having established Best Choice's liability under the SCFCPSA and the Employment Agreement, Defendant Woods seeks actual damages, consequential damages, attorneys' fees, costs, and punitive damages in relation to Plaintiff's intentional interference with Woods' employment contract with Premiere, and sanctions including reasonable attorneys' fees and costs and an injunction preventing Plaintiff from filing further actions against Defendant without first posting a reasonable bond in relation to Plaintiff's bringing a frivolous proceeding against Defendant. To support his claim for damages, Defendant provided evidence to this Court in the form of Defendant's testimony, and the following documentary evidence:

Ex #	Description
1	Best Choice Roofing Employment Contract between Plaintiff and Defendant
2	Premiere Roofing Documents showing existence of employment agreement between Defendant and Premiere Roofing and evidence that Premiere Roofing terminated Defendant solely due to Plaintiff's cease-and-desist letter
3	Plaintiff's Response to Defendant's First Request to Admit
4	Plaintiff's Response to Defendant's Second Request to Admit
5	Best Choice Roofing evidence of solvency in the form of printouts from Best Choice's website and news articles about Best Choice
6	Woods attorneys' fees and costs paid to date
7	Woods total attorneys' fees and costs
8	March 16, 2022 Order granting Appellate Costs to Woods
9	Chart summarizing damages

I find that Defendant has met his burden of proof by clear and convincing evidence that he suffered the damages set forth below and that the damages were due to the harm caused by Plaintiff.

### **A. Actual Damages attributable to Plaintiff's Intentional Interference with a Contract**

A party may prove actual damages if "a reasonable basis of computation is afforded, even though the result may be only approximate, or to adduce evidence which is the best the case is susceptible of under the circumstances, and which will permit a reasonably close estimate of the loss." *Piggy Park Enterprises, Inc. v. Schofield*, 251 S.C. 385, 392 (1968). A review of the evidence presented convinces me that the testimony and evidence presented by the Defendant affords a reasonable basis for the below computation of actual damages.

Defendant Woods testified that he has worked in the roofing industry for 10 years and with diligence worked his way up to manager. Typically, in the roofing industry, Woods could make anywhere from \$70,000 to \$110,000 a year and that he averaged \$70,000 per year. Woods testified that he was on track to make \$80,000 a year with Premiere until his employment was terminated due solely to the interference by Best Choice. The record is clear and undisputed that Premiere's sole reason for Woods' termination was the cease-and-desist letter from Best Choice. Because of the cease-and-desist and the pending litigation to enforce it, Woods has been unable to return to the roofing industry because of the cloud hanging over his reputation since Best Choice interfered with his employment and earning potential. Since high school, Woods had only ever worked in roofing. Woods has also had health problems due to his adjustment of being unemployed.

Woods mitigated his damages. With the need to support his young family, Woods sought employment and finally found work as a cook in a restaurant and a laborer at a

construction company. With his two jobs combined Woods only made \$35,000 to \$40,000 a year depending on his hours; \$40,000 less than what he could have made working with Premiere. Since Best Choice has interfered with Woods' employment, he has missed out on the opportunity to make an average of \$70,000 per year for six years, even after mitigation, totaling \$420,000. The stain Best Choice has left on Woods has crippled him from finding work in the roofing industry, caused him health problems, and he has struggled to find jobs to support his family and the money he will now make is considerably less than what would have been available to him had Best Choice not frivolously brought a claim against him.


I find Defendant Woods' testimony regarding lost wages to be credible. The amount Woods has requested in lost wages is not left to conjecture or speculation and is calculated based upon Woods' previous earning potential and his testimony that he was to be paid both a wage and a commission for his work at Premiere.

Woods also testified that due to his termination, he was hospitalized for anxiety and depression and also received prescriptions and therapy to treat his conditions. Woods testified that he incurred approximately \$14,000 in medical expenses due to Best Choice's actions. I find Defendant Woods' testimony regarding his medical expenses to be credible and based upon his personal knowledge. Defendant Woods testified that he incurred these expenses for a brief psychiatric hospitalization and treatment, and the amount claimed is reasonable and necessary.

**B. Attorneys' Fees and Costs attributable to Plaintiff's Violation of the South Carolina Frivolous Civil Proceedings Sanctions Act**

Woods is entitled to recover consequential costs and attorneys' fees pursuant to

the SCFCPSA. Sanctions for filing a frivolous pleading may be administered when "a reasonable attorney . . . would believe that *under the facts*, his claim was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for [affecting a change of] existing law." § 15-36-10(A)(4)(a)(ii) (emphasis added). Additionally, sanctions may be administered when "a reasonable attorney under the same circumstances would believe that the procurement . . . of a civil cause was intended merely to harass or injure the other party." § 15-36-10(A)(4)(a)(iii). The decision whether to impose such sanctions is a decision in equity, not in law. See *Holmes v. Haynsworth, Sinkler & Boyd, P.A.*, 408 S.C. 620, 641, 760 S.E.2d 399, 410 (2014) (quoting *Father v. S.C. Dep't of Soc. Servs.*, 353 S.C. 254, 260, 578 S.E.2d 11, 14 (2003)).

 In order for a court to grant attorneys' fees and costs under the SCFCPSA, the seeking party has the burden of proving: the other party has procured, initiated, continued, or defended the civil proceedings against him; the proceedings were terminated in his favor; the primary purpose for which the proceedings were procured, initiated, continued, or defended was not that of securing the proper discovery, joinder of parties, or adjudication of the civil proceedings; the aggrieved person has incurred attorneys' fees and court costs; and the amount of the fees and costs set forth in item. *Rutland v. Holler, Dennis, Corbett, Ormond & Garner (Law Firm)*, 371 S.C. 91, 97, 637 S.E. 2d 316, 319 (Ct. App. 2006). It is undisputed that Best Choice initiated a civil suit against Woods and that Woods was granted summary judgment. It is also clear that Woods incurred attorneys' fees and costs in defending himself against Best Choice's allegations. It can be concluded that the purpose of the lawsuit was not any of the above listed reasons because Best Choice knew their claims were not supported by the facts.

The Supreme Court of South Carolina held that sanctions under section 15-36-10 were appropriate when an ophthalmologist had filed a "non-meritorious and baseless lawsuit" and failed to develop evidence to support her claim. See *Holmes* at 643, 760 S.E.2d at 411. In *Holmes*, the court also relied on previous findings that "criteria for Rule 11 sanctions are essentially the same as those for sanctions under [§ 15-36-10]." See *in re Beard*, 329 S.C. 351, 360, 597 S.E.2d 835, 839 (S.C. Ct. App. 2004). In recognition of this precedent, the court upheld sanctions against the ophthalmologist when she filed court documents "without reasonable basis" and without "information and belief [that] there is good ground to support' the claims. See *Holmes* at 644-45, 760 S.E.2d at 412 (quoting SCRCF Rule 11(a)). As the record contained sufficient evidence to conclude that the ophthalmologist filed court documents in violation of § 15-36-10, the Supreme Court of South Carolina affirmed the circuit court's decision to impose sanctions against her. See *Id.* at 645, 760 S.E.2d at 412.



Considering both statutory and case law surrounding the imposing of sanctions under section 15-36-10, Woods is entitled to recover attorneys' fees and costs under the SCFCPSA. As Best Choice brought action against Woods for violating the 100-miles geographic limitation of the non-competition agreement when Best Choice had actual knowledge that Woods worked 193 miles from its Marietta, Georgia location, a reasonable attorney would not believe Best Choice was warranted in bringing this action under existing law. Nor would a reasonable attorney believe a good faith argument existed for affecting the change of existing law as unreasonable geographic limitations in non-competition provision are considered against public policy in South Carolina. See *Standard Register Co.*, at 71, 119 S.E.2d at 542 (citing *Somerset v. Reyner*, 233 S.C.

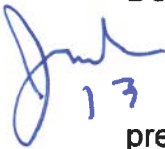
324, 104 S.E.2d 344 (1958)). Similarly, the lack of factual basis for Best Choice's claims renders them non-meritorious and baseless, like the claims sanctioned by the court in *Holmes*. It is inconceivable that Best Choice believed Woods was in actual violation of the non-competition agreement when it instituted its lawsuit against Woods.

As there appears to be no reason rooted in law or fact for Best Choice's action against Woods, a reasonable attorney could believe Best Choice brought the action merely to harass or injure Woods. Indeed, Best Choice's filing of the complaint did injure Woods by causing him to both lose gainful employment with Premiere and to be forced to employ legal counsel at an hourly rate for the duration of the litigation to date. Therefore, Woods should be granted consequential costs and attorneys' fees on this claim that Best Choice filed a frivolous pleading against him in violation of section 15-36-10, including but not limited to "the time required of the prevailing party by the frivolous proceeding, and travel expenses, mileage, parking, costs of reports, and any additional reasonable consequential expenses of the prevailing party resulting from the frivolous proceeding." See § 15-3610(G)(1). In addition to his rights under the SCFCPSA, Woods also has the right under the Employment Contract to attorneys' fees and costs, since he has prevailed in this litigation.

Since Woods was terminated from his employment by Premiere and Best Choice brought lawsuit against Woods, he was forced to employ legal counsel at an hourly rate for the duration of the litigation to date. Testimony and documentary evidence prove that the attorneys' fees and costs associated with this litigation total \$77,253.73. That is what I order.

### C. Punitive Damages attributable to Plaintiff's Intentional Interference with a Contract

Defendant has the burden to prove by clear and convincing evidence that punitive damages are appropriate. S.C. Code Ann. § 15-33-135. To ensure that a punitive damage award is proper, the trial court shall consider the following: (1) defendant's degree of culpability; (2) duration of the conduct; (3) defendant's awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) defendant's ability to pay; and finally, (8) other factors deemed appropriate. See *Gamble v. Stevenson*, 305 S.C. 104, 112 (1991). These factors are present here and support an award of punitive damages to Defendant.

 Plaintiff has been found liable for Intentional Interference with a Contract and has presented no mitigating evidence which would tend to indicate that Plaintiff is not culpable for its actions in pursuing termination of Defendant's employment. Plaintiff was aware at the time that it sent the cease-and-desist letter to Premiere Roofing that Defendant was not in violation of his employment contract with Plaintiff. Plaintiff clearly intended to harm Defendant when it sought his termination. The award of punitive damages sought is 10 times the amount of Defendant's actual damages, which is reasonably related to the harm Plaintiff has caused. Defendant has produced evidence that Plaintiff had approximately \$120M in sales for 2021 and advertised itself as on track to have \$150 million in sales in 2022. I find this to be clear and convincing evidence that Plaintiff has the ability to pay an award of punitive damages and that the award requested is calculated to deter future


conduct.

Due to Plaintiff's intentional conduct in pursuing Defendant's termination from employment, and to deter future conduct, Defendant requests punitive damages 10 times the amount of actual damages. 10 times \$434,000.00 equals \$4,340,000.00. That is what I order.

**D. Appellate Court costs**

The Court of Appeals issued an Order directing me to add its award of appellate costs to the remitter in this action on March 16, 2022. (Order, admitted as Exhibit 8.) I find that this award has not yet been paid and that the costs included in the Court of Appeals' award is included in Defendant's calculation of attorneys' fees and costs attributed to this litigation. Therefore, I do not award any additional appellate court costs.

**E. Injunction**

 To deter future frivolous litigation, Defendant requests an injunction to prevent Plaintiff from bringing additional litigation against Defendant absent the posting of a bond to pay Defendant's attorneys' fees and costs in the event Defendant prevails in future litigation and upon a showing Defendant would be entitled to such fees and costs. That is what I order.

**CONCLUSION**

Based on the foregoing, this Court orders damages and other relief in favor of the Defendant as follows:


1. Judgment for Defendant against Plaintiff be entered for a total of \$4,851,235.73 which includes the following: \$434,000.00 for actual damages to Defendant due to Plaintiff's intentional interference with Defendant's employment

contract; \$75,733.00 for attorneys' fees and \$1,502.73 in costs due to Plaintiff's actions in bringing and maintaining a frivolous claim against Defendant; and \$4.34 million in punitive damages; and,

2. Plaintiff is enjoined from making any future filings against Defendant absent the posting of a bond to pay Defendant's attorneys' fees and costs in the event Defendant prevails in future litigation and upon a showing that Plaintiff would be entitled to such fees and costs.

**AND IT IS SO ORDERED.**

*John*  
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The Honorable Joseph M. Strickland  
Master-In-Equity for  
Richland County, South Carolina

March 27, 2023  
Columbia, South Carolina