

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

The Honorable Jocelyn Newman, Chief Judge for Administrative Purposes
The Honorable Joseph M. Strickland
The Honorable L. Casey Manning
The Honorable Robert E. Hood

Case No. 2018-CP-40-01318
Appellate Case No. 2023-001996

Best Choice Roofing & Home Improvement, Inc. Appellant,

v.

Tyler Woods. Respondent.

**RESPONSE IN OPPOSITION TO APPELLANT’S MOTION FOR EXTENSION TO FILE ITS INITIAL
BRIEF AND DESIGNATION OF MATTER**

Respondent Tyler Woods (“Respondent”) respectfully requests that this Court decline to extend the deadline for Appellant Best Choice Roofing & Home Improvement, Inc. (“Appellant”) to file its initial brief because the requested extension would prejudice Respondent. Additionally, as Appellant has failed to timely file the initial brief or order all transcripts of the proceedings below, Respondent requests that the Court dismiss the appeal in full.

I. PROCEDURAL HISTORY

On November 6, 2017, Appellant intentionally sent an unfounded cease-and-desist letter to Respondent’s South Carolina employer on the grounds that Respondent allegedly

violated his employment agreement with Appellant. **Exhibit 1**, Compl., dated March 8, 2018. This resulted in Respondent's termination by his South Carolina employer. *Id.* On March 8, 2018, Appellant then filed a Complaint in the Richland County Court of Common Pleas alleging that Respondent breached the non-compete provision of his employment agreement. *Id.* On June 11, 2018, Respondent filed his Answer and Counterclaim, counterclaiming against Appellant for intentional interference with a business relationship and for filing a frivolous claim under the South Carolina Frivolous Civil Proceedings Sanctions Act ("SCFCPSA"), S.C. Code Ann. § 15-36-10 (1976). **Exhibit 2**, Answer & Countercl., dated June 11, 2018.

On December 17, 2018, nine months after filing the Complaint, Appellant moved the trial court for permission to amend the Complaint to totally abandon all original causes of action in favor of an action sounding in fraud for return of an alleged "relocation" advance. **Exhibit 3**, Mot. to Am. Compl., dated Dec. 17, 2018. The next day, on December 18, 2018, Respondent moved the trial court for summary judgment on the claims and counterclaims in the case. **Exhibit 4**, Mot. for Summ. J., dated Dec. 19, 2018. On January 30, 2019, the trial court heard both Appellant's Motion to Amend the Complaint and Respondent's Motion for Summary Judgment. **Exhibit 5**, Tr. of Hr'g held Jan. 30, 2019. At this hearing, Appellant consented to Respondent's motion for summary judgment because Appellant recognized that it is undisputed that Respondent worked for his South Carolina employer in Irmo, SC, approximately 193 miles from Marietta, GA, where he worked for Appellant, which is not a violation of Respondent's employment agreement with Appellant. *Id.*, p. 10-11.

On February 19, 2019, the trial court issued its Order denying Appellant's Motion to Amend the Complaint and granting summary judgment in favor of Respondent on all claims and counterclaims in the case. **Exhibit 6**, Order Grant. Summ. J. Against Pl. & Den. Pl.'s Mot.

to Am. Compl., dated Feb. 19, 2019. On February 28, 2019, Appellant filed a Motion to Reconsider, Alter, or Amend the trial court's February 19, 2019 Order. **Exhibit 7**, Mot. to Recons., Alt., or Am., dated February 28, 2019.

On March 20, 2019, the trial court issued an amended Order, again finding in favor of summary judgment for Respondent on the claims in the Complaint and denying Appellant's Motion to Amend the Complaint but reversing its decision on summary judgment as to Respondent's counterclaims, ordering the clerk of court to move Respondent's counterclaims forward on the trial docket. **Exhibit 8**, Order Grant. Summ. J. Against Pl. & Den. Pl.'s Mot. to Am. Compl., dated Mar. 20, 2019.

In this amended Order, the trial court found that Appellant is not entitled "to abandon all of its original allegations and to plead previously unraised allegations," and that Respondent would be prejudiced if Appellant was granted leave to amend the Complaint. *Id.*, p. 2.

On March 28, 2019, Appellant filed a Revised Motion to Reconsider, Alter, or Amend the trial court's March 20, 2019 Order, requesting again that the trial court grant Appellant's Motion to Amend the Complaint. **Exhibit 9**, Mot. to Recons., Alt, or Am., dated Mar. 28, 2019. Notably, Appellant did not request that the trial court reconsider, alter, or amend its grant of summary judgment in Respondent's favor in its Revised Motion to Reconsider, Alter, or Amend. *See id.*

On October 22, 2019, the trial court issued its Order denying Appellant's Revised Motion to Reconsider, Alter, or Amend the Complaint. **Exhibit 10**, Order Denying Rev. Mot. to Recons., Alter, or Am., dated Oct. 22, 2022. The appeal of this Order followed. **Exhibit 11**, Notice of Appeal, dated October 22, 2019.

On February 9, 2022, the South Carolina Court of Appeals issued its Order dismissing Appellant's first appeal as based upon an order which is not immediately appealable. **Exhibit 12**, Order Dismissing Appeal, dated Feb. 9, 2022. On March 3, 2022, Respondent filed a motion for costs in the Court of Appeals and on March 16, 2022, the Court of Appeals granted Woods' motion for costs. **Exhibit 13**, Order, dated Mar. 16, 2022.

On April 4, 2022, Respondent filed a Memorandum in Support of its Renewed Motion for Summary Judgment. **Exhibit 14**, Mem. in Supp. Ren. Mot. for Sum. J., dated Apr. 4, 2022. On April 28, 2022, the trial court issued its Order granting Summary Judgment against Appellant as to Respondent's Counterclaims. **Exhibit 15**, Order Granting Sum. J., dated Apr. 28, 2022. Appellant filed a Motion to Alter or Amend that Order, which was denied on July 28, 2022. **Exhibit 16**, Order Den. Mot. to Alt. or Am., dated July 28, 2022. The parties requested that the matter be referred to the Honorable Joseph M. Strickland, Master-In-Equity for Richland County for the limited purpose of receiving evidence, making determinations, and issuing final orders with regard to any remedy sought by Respondent in this action, which was granted on November 1, 2022. **Exhibit 17**, Cons. Order. of Ref. to M-I-E, dated Nov. 1, 2022.

On January 24, 2023, Judge Strickland held a hearing on damages. **Exhibit 18**, Order as to Damages, Mar. 27, 2023. Notably, this is the only hearing throughout the proceedings where a witness gave live testimony. On March 27, 2023, Judge Strickland issued an Order as to Damages, awarding Respondent damages in the amount of \$4,851,235.73 and ordering Appellant to refrain from bringing additional litigation against Respondent absent the posting of a bond to pay Respondent's attorneys' fees and costs in the event Respondent prevails in future litigation. *Id.*

On April 2, 2023, Appellant filed a Motion to Alter or Amend Judge Strickland's Order as to Damages but did not provide a copy to Judge Strickland. **Exhibit 19**, Mot. to Alt. or Am. Order as to Damages, dated Apr. 2, 2023. On July 12, 2023, Judge Strickland issued an order recusing himself from the matter and remanding the case back to Richland County Court of Common Pleas. **Exhibit 20** Order on Recusal, dated July 12, 2023. On July 19, 2023, Appellant filed a Motion to Alter or Amend Judge Strickland's order recusing himself but did not provide a copy to Judge Strickland. **Exhibit 21**, Mot. to Alt. or Am., dated July 19, 2023. On August 30, 2023, Respondent filed a Memorandum in Opposition to Appellant's two motions to alter or amend judgment. **Exhibit 22**, Mem. in Opp. to Mot.'s to Alt. or Am., dated Aug. 30, 2023. In Respondent's memorandum in opposition, he argued that the trial court should deny Appellant's two motions to alter or amend because Respondent did not provide a copy of either motion to the judge within ten days after filing the motion in accordance with Rule 59(g), SCRPC, and also argued that Appellant's arguments were meritless on other bases. *Id.* Appellant did not file a reply to this memorandum nor any memorandum of its own in support of its Motions to Alter or Amend.

On December 6, 2023, The Honorable Jocelyn Newman, Chief Judge for Administrative Purposes for the Fifth Judicial Circuit issued a Form 4 Order denying Appellant's two Motions to Alter or Amend Judgment. **Exhibit 23**, Order Denying to Alt. or Am., dated Dec. 6, 2023. Appellant filed a Notice of Appeal to this Court on December 20, 2023. **Exhibit 24**, Not. of App., dated Dec. 20, 2023.

On January 2, 2024, this Court notified Appellant that the time for ordering a transcript had expired and directed it to file a copy of the letter showing that he had timely ordered the transcript. **Exhibit 25**, Letter to Appellant, dated Jan. 2, 2024. On January 18, 2024, the Court

dismissed Appellant's appeal for failure to order the transcript. **Exhibit 26**, Dismissal, dated Jan. 18, 2024. That same day, Appellant filed a Motion to Reinstate and for an Extension of Time to Request the Transcript. **Exhibit 27**, Mot. to Reins. and for Ext., dated Jan. 18, 2024. In that motion, Appellant explained to the Court that it had requested the transcript of the April 4, 2022 hearing and attached correspondence with Court Administration on January 18, 2024. *Id.* On February 6, 2024 the Court granted Appellant's motion to reinstate the appeal. **Exhibit 28**, Order Reins. App., dated Feb. 6, 2024. On February 9, 2024, Appellant copied Respondent and Court Administration on an email to the Court Reporter requesting the status of the April 4, 2022 transcript. **Exhibit 29**, Appellant email to Court Reporter, dated Feb. 9, 2024. A month later, on March 26, 2024, the Court requested that Appellant provide proof of service of all transcript correspondence within ten days of the letter. **Exhibit 30**, Clerk Letter Req. Corresp., dated Mar. 26, 2024. In response, Appellant provided the Court with emails from January 18, 2024 and February 9, 2024, but provided no evidence of correspondence after the February 9, 2024 email. **Exhibit 31**, Appellant Copies of Corresp., dated Mar. 26, 2024.

Since March 28, 2024, Respondent has requested that Appellant provide an update as to the transcript orders on three separate occasions, but Appellant has not responded to any correspondence. **Exhibit 32**, Resp. Email Corresp. to Appellant. Moreover, as of April 30, 2023, Respondent has not been copied on any further correspondence between Appellant and the court reporter, if any, as required by SCACR 207(a)(1), and to Respondent's knowledge, the April 4, 2022, transcript has not been received by Appellant.

Furthermore, to date, Appellant has failed to order transcripts of the entire proceedings below, as required by SCACR 207(a)(1), as it has failed to request the transcript of the damages hearing of January 25, 2023.

On April 29, 2024, Appellant filed the instant Motion for Extension of Time to file its Initial Brief and Designation of Matter.

II. ARGUMENT

Respondent opposes any extension of time for Appellant to file its initial brief and designation of matter, as Respondent has been subjected to six years of excessive motions practice, delay, and refusal to conform to court rules at both the trial and appellate levels. In fact, Appellant's behavior throughout the litigation has been so problematic that Judge Strickland ordered that Appellant be enjoined from any further litigation against Respondent absent the posting of a bond to pay Respondent's attorneys' fees and costs. **Exhibit 19**, p. 14. The Court should decline to grant Appellant's extension because Appellant has repeatedly failed to abide by the South Carolina Appellate Court Rules and extension will prejudice Respondent. Additionally, the Court should dismiss Appellant's appeal in its entirety for failure to file the initial brief in time and failure to comply the requirements to order all transcripts from the proceedings below.

a. Appellant has failed to comply with South Carolina Appellate Court Rules regarding transcripts and transcript communication.

First, Respondent was blindsided by Appellant's request for an extension based on the purported April 29, 2024 deadline to file its initial brief and designation of matter. Under Rule 208(a)(1), SCACR, the deadline for serving and filing the initial brief of Appellant is due within 30 days of receipt of the transcript. Appellant is required to order a transcript of the entire proceedings below. Rule 207(a)(1), SCACR. The Appellate Court Rules also require that a party contemporaneously furnish all parties, the Officer of Court Administration, and the clerk of the appellate court with copies of all correspondence with the court reporter. Rule 207(a)(1), SCACR. Failure to file the initial brief within 30 days of the receipt of the transcript *requires* the

clerk of the appellate court to sign an order dismissing the appeal, “and the appeal shall not be reinstated except as provided by Rule 260.” Rule 208(a)(4), SCACR.

Here, the last correspondence that Appellant included Respondent on with the court reporter was an email of February 9, 2024. **Exhibit 29.** Respondent has inquired about the status of the transcripts on three separate occasions since Appellant provided copies of court reporter correspondence with the Court on March 28, 2024. **Exhibit 32.** At *no point* since March 28, 2024 has Appellant furnished Respondent with correspondence with the court reporter or notified Respondent of the receipt of *any* transcript. Moreover, at no point has Appellant communicated a failure to receive any transcript under Rule 207(a)(5), SCACR.

Importantly, Appellant has only furnished the Court and Respondent with communications regarding the transcript of the April 4, 2022 hearing. **Exhibit 31.** However, Appellant listed the March 27, 2023 Order as to Damages in his Amended Notice of Appeal. To date, Appellant has not furnished Respondent or the Court with any communication with the court reporter regarding the damages hearing of January 25, 2023. At no point has Respondent consented to ordering less than the full proceedings below. Additionally, this hearing was the sole hearing at which a witness produced live testimony.

Appellant has repeatedly failed to comply with the Appellate Court Rules in ordering the transcripts, and if it *has* received transcripts, it has failed to comply with the Appellate Court Rules mandating Appellant communicate with Respondent regarding the transcripts. Appellant’s repeated failure to order the transcripts or communicate receipt of same to Respondent continues to delay the relief to which Respondent is entitled, and in fact, the relief mandated in the Order of March 23, 2023, which Appellant has failed to effectively stay execution.

b. An extension of time would prejudice Respondent, as Appellants' repeated delay tactics have done for roughly six years.

Second, an extension of time for Appellant to file its initial brief and designation of matter will prejudice Respondent, who has been subjected to Respondent's relentless delay tactics in a frivolous litigation initiated *six years ago* by Appellant. As stated, the Court of Common Pleas granted summary judgment for Respondent as a result of Appellant's baseless pursuit of a non-compete followed by an absolute refusal to acquiesce to repeated court findings that Appellant was in the wrong. The Master-in-Equity ordered Appellant to pay \$4,851,235.73 to Respondent as a result of Appellant's wrongdoing. Respondent has attempted to execute the judgment, but unfortunately, Appellant's dilatory conduct in both the Court of Common Pleas and the Court of Appeals has delayed the execution. **Exhibit 33**, Pet. for Supp. Proceedings, dated Feb. 9, 2024. While Appellant has filed a Motion to Stay the Execution, under S.C. Code § 18-9-130, the judgment of March 23, 2023 is not stayed until Appellant posts bond in the amount of \$4,851,235.73. **Exhibit 34**, Mot. to Stay Ex. of J., dated Dec. 21, 2023. Appellant has failed to post bond.

Furthermore, execution of the judgment has been complicated by the fact that the Master-in-Equity recused himself. **Exhibit 20**. Respondent has diligently attempted to execute the judgment and has requested a status conference with Judge Newman to resolve the issue. **Exhibit 35**, Mot. for Status Con., dated Mar. 18, 2024. Respondent is currently working to schedule that status conference.

To date, the post-judgment interest has accrued to \$471,001.83, amounting to a total value of \$5,322,237.56 that Appellant continues to wrongfully deny Respondent. Appellant's repeated delay tactics continue to deny relief to Respondent. Respondent respectfully requests

that the Court decline to extend Appellant's request to extend the initial deadline and, instead, dismiss the appeal pursuant to Rule 208(a)(4), SCACR.

III. CONCLUSION

For the reasons set forth above, Respondent respectfully requests that this Court deny Appellant's Motion for Extension to File Its Initial Brief and Designation of Matter and to dismiss Appellant's appeal in its entirety for failure to timely order the transcripts of all proceedings below.

Respectfully submitted,

s/ Lydia Robins Hendrix

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May 2, 2024

RECEIVED

May 02 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
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PROOF OF SERVICE

I certify that Respondent's **RESPONSE IN OPPOSITION TO APPELLANT'S MOTION FOR EXTENSION TO FILE ITS INITIAL BRIEF AND DESIGNATION OF MATTER** was served on the following counsel of record for Appellant on May 2, 2024, via electronic mail under Paragraph (d)(1) of Order re: Methods of Electronic Filing and Service under Rule 262 of the South Carolina Appellate Court Rules (As Amended April 24, 2024), Appellate Case No. 2020-000447.

Townes B. Johnson, III (SC Bar No. 74512)
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s/Lydia Robins Hendrix
Lydia Robins Hendrix (SC Bar No. 106334)
Counsel for Respondent

Amy L. Abercrombie

From: Amy L. Abercrombie
Sent: Thursday, May 2, 2024 3:38 PM
To: tjohnson@sc.legal
Cc: Nekki Shutt; Lydia Robins Hendrix
Subject: Appellate Case No. 2023-001966 (Best Choice Roofing v. Woods)
Attachments: 2024-05-02 Response in Opp to Motion for Extension.pdf

Dear Counsel:

I have attached the Respondent's Response in Opposition to Appellant's Motion for Extension to File Its Initial Brief and Designation of Matter which is being filed with the SC Court of Appeals today. The Exhibits can be accessed via the following link:

<https://burnetteshutt.box.com/s/0sfd73hrfmy1ibycvw3olxm1nsscrm5e>

Kind regards,
Amy