THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jocelyn Newman, Chief Judge for Administrative Purposes

The Honorable Joseph M. Strickland

The Honorable L. Casey Manning

The Honorable Robert E. Hood

Appellate Case No. 2023-001996

Best Choice Roofing & Home Improvement, Inc…....……..……..Appellant,

v.

Tyler Woods…….…….....……..…Respondent,

APPELLANT'S INITIAL BRIEF

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STATEMENT OF THE CASE

On or about March 8, 2018, Plaintiff/Appellant Best Choice Roofing & Home Improvement, Inc ("BCR") brought this action against Defendant/Respondent Tyler Woods ("Woods") for a breach of non-compete and confidentiality provisions in his employment agreement with BCR. On or about June 11, 2018, Woods filed both his Motion to Dismiss and his Answer and Counterclaims. On July 11, 2018, BCR filed its reply to Woods' counterclaims. After engaging in written discovery, BCR on December 18, 2018, filed a motion to amend the Complaint to withdraw its cause of action for breach of non-compete and confidentiality provision of the employment agreement and add new causes of action against Woods for fraud, negligent misrepresentation, unfair trade practices and conversion. As of December 18, 2018, the case had not been placed on any jury trial rosters and the parties had not mediated.

The next day, on December 19, 2018, Woods filed a motion for Summary Judgment as to Plaintiffs original Complaint and as to its counterclaims. A motion hearing was held on January 30, 2019 before the Honorable Robert E. Hood, and, on February 19, 2019, the Court issued its Order granting Woods' motion for Summary Judgment and denying BCR's Motion to Amend. On February 28, 2019, BCR filed its first motion to Reconsider, Alter or Amend Judge Hood's February 19, 2019 Order. On March 20, 2019, the Court issued a revised Order granting Woods' motion for Summary Judgment and denying BCR's Motion to Amend. On March 28, 2019, BCR filed its second Motion to Reconsider, Alter or Amend and on October 22, 2019, the Honorable Robert E. Hood denied BCR's motion. An appeal ensued, but was dismissed on February 9, 2022 for due to the issue of an order denying a motion to amend not being immediately appealable.

Woods' Motion for Summary Judgment was, thereafter, set for April 4, 2022 before the Honorable L. Casey Manning. On April 28, 2022, the Court issued its Order granting Woods' Motion for Summary Judgment. On May 6, 2022, BCR filed its third Motion to Alter or Amend and on July 29, 2022, the Honorable L. Casey Manning denied BCR's motion.

On November 2, 2022, the Honorable L. Casey Manning ordered this matter to be referred to the Honorable Joseph M. Strickland for the limited purpose of receiving evidence, making determinations, and issue final orders with regard to any remedy sought by Woods in this action and on January 25, 2023 a damages hearing was held. On March 27, 2023, the Honorable Joseph M. Strickland awarded damages to Woods in the amount of $4,851,235.73.

On April 2, 2023, BCR filed its fourth Motion to Alter or Amend and on April 5, 2023 supplemented its motion with the referenced "Exhibit A". On July 12, 2023, the Honorable Joseph M. Strickland recused himself from the matter and, on July 19, 2023, BCR filed its fifth Motion to Alter or Amend. By Form 4 Order dated December 6, 2023, the Honorable Jocelyn Newman, as Chief Judge for Administrative Purposes, denied BCR's fourth and fifth Motions to Alter or Amend. This appeal ensued with BCR's Notice of Appeal dated December 20, 2023 and Amended Notice of Appeal dated December 21, 2023.

STATEMENT OF FACTS

On or about April 19, 2017, Woods entered into an employment agreement with BCR wherein Woods was going to relocate to the Atlanta, Georgia metro area to work for Plaintiff. The employment agreement had a restrictive covenant which stated, that Woods "shall not directly or indirectly engage, own, manage, control, operate, be employed by, participate in, or be connected in any manner with the ownership, management, operation, or control of any

business similar to the type of business conducted by the [BCR] for a period on ONE (1) year and within 100 miles from the present locations of [BCR's] business." Further, in conjunction with Woods' relocation, BCR advanced Woods the sum of $2,500 for relocation expenses. Less than two weeks later, on April 29, 2017, Woods left BCR and moved to Columbia, South Carolina and failed to return to BCR the $2,500 BCR had advanced Woods.

Woods' employment in Columbia, South Carolina was with Premier Roofing. At Premier Roofing, Woods was receiving an hourly wage of $15.63 an hour. On November 6, 2017, the law firm of Busch, Reed, Jones & Leeper, P.C., on behalf of BCR, sent a letter to Premier Roofing informing them of the restrictive covenant in Woods' employment agreement with BCR. At that time and in April, 2017, however, BCR no longer had its operations in August, Geogia within 100 miles of Premier Roofing's location. On November 28, 2017, Premier Roofing terminated Woods.

At no time was evidence presented that showed: 1) that any of BCR's attorney's actions were unreasonable or in violation of South Carolina Code Ann. § 15-36-10(A)(4)(a); 2) BCR's degree of culpability of its conduct; 3) BCR's awareness or concealment of its conduct; 4) the existence of similar past conduct; and 5) whether the punitive damages award was reasonably related to the harm likely to result from such conduct.

Additionally, at the January 25, 2023 damages hearing, the only document Woods presented to support any damages was his Premier Roofing agreement wherein he was receiving an hourly wage of $15.63 an hour. Woods did not present any evidence to support: 1) damage to his reputation; 2) that he was crippled from finding work in the roofing industry; 3) that his termination from Premier had led to health problems; 4) that he had struggled to find jobs to support his family; or 5) that the money he will now make is considerably less than what

would have been otherwise been available to him.

ARGUMENT

I. THE COURT, IN ITS FEBRUARY 19, 2019, MARCH 20, 2019 AND OCTOBER 22, 2019 ORDERS, ERRONEOUSLY FOUND THAT TYLER WOODS WOULD BE PREJUDICED BY BEST CHOICE ROOFING & HOME IMPROVEMENT, INC.'S MOTION TO AMEND BEING GRANTED.

In the Court's February 19, 2019 Order and March 20, 2019 Order, the Court found that Woods would be prejudiced by BCR being granted leave to amend its Complaint under Rule 15, SCRCP. The Court, however, failed to show that Woods would lack either notice or an opportunity to refute BCR's amended claims. *See Parker v. Spartanburg Sanitary Sewer Dist*., 362 S.C. 276 607 S.E.2d 711 (Ct. App. 2005) (*The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it*. (*Citing Tanner v. Florence County Treasurer*, 336 S.C. 552,521 S.E.2d 153 (1999)). Further, as the parties had not engaged in any discovery other than written discovery, had not mediated the case and the case was not on any jury trial dockets as of BCR's filing of its Motion to Amend, it cannot be argued that Woods would not have had notice of the amended claims or the opportunity to refute them. The Court, accordingly, erroneously found that Woods would be prejudiced by BCR being granted leave to amend its Complaint.

II. THE COURT, IN ITS FEBRUARY 19, 2019, MARCH 20, 2019 AND OCTOBER 22, 2019 ORDERS, ERRONEOUSLY FAILED TO FREELY AND LIBERALLY GRANT BEST CHOICE ROOFING & HOME IMPROVEMENT, INC.'S MOTION TO AMEND IN ACCORDANCE WITH SOUTH CAROLINA LAW.

As Woods would suffer no prejudice as a result of the grant of BCR's Motion to Amend, South Carolina law strongly favors the grant of leave to amend. *Id.* (*Leave to amend pleadings pursuant to Rule 15, SCRCP, shall be liberally and freely given when justice so requires and does*

not prejudice any other party. Citing Crestwood Golf Club, Inc. v. Potter, 328 S.C. 201, 493 S.E.2d 826 (1997) *and This rule strongly favors amendments and the court is encouraged to freely grant leave to amend. Citing Jarrell v. Seaboard Sys. R.R.*, 294 S.C. 183, 363 S.E.2d 398 (Ct.App.1987)). In the case at hand, the Court erroneously failed to freely and liberally grant BCR' s Motion to Amend in accordance with long standing South Carolina law. Id.

III. THE COURT, IN ITS APRIL 28, 2022 AND JULY 28, 2022 ORDERS, ERRONEOUSLY FOUND THAT BEST CHOICE ROOFING & HOME IMPROVEMENT, INC. HAD TORTIOUSLY INTERFERED WITH WOODS' CONTRACT WITH PREMIER ROOFING.

A. NO BREACH OF CONTRACT

The elements of a cause of action for tortious interference with an existing contractual relationship are: (1) a contract; (2) knowledge of the contract by the tortfeasor; (3) intentional procurement by the tortfeasor of the contract's breach; (4) absence of justification; and (5) damages. *See DeBerry v. McCain*, 275 S.C. 569, 274 S.E.2d 293 (1981). Woods never proffered any evidence that the contract between Woods and Premier Roofing was actually breached. *See e.g. First Union Mortgage Corp. v. Thomas*, 317 S.C. 63, 451 S.E.2d 907 (Ct. App. 1994) (*Regardless of the defendant's behavior, there must actually be a breach of the underlying contract before there can be an interference with an existing contractual relationship.*). Accordingly, the Court's grant of Summary Judgment on Woods' cause of action for Tortious Interference was erroneous and improper.

B. NO EVIDENCE PRESENTED TO SUPPORT TO ELEMENTS 3 AND 4

Discovery in this matter is needed to determine whether the alleged interference was intentional and/or absent justification. *See e.g. Webb v. Elrod*, 308 S.C. 445, 418 S.E.2d 559 (Ct. App. 1992) (*the good faith exercise of a legal right by a party to a contract provides no basis for*

an action for intentional interference with a contract despite the fact it causes a third party not to perform another contract with the plaintiff) *and See Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69, 74 (1999) ("*summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery*.") The record is devoid of any evidence showing that procurement of the breach, if any, was intentional or that it was not the good faith exercise of a legal right. Accordingly, the Court's grant of Summary Judgment on Woods' cause of action for Tortious Interference was erroneous and improper.

IV. THE COURT, IN ITS APRIL 28, 2022 AND JULY 28, 2022 ORDERS, ERRONEOUSLY FOUND THAT BEST CHOICE ROOFING & HOME IMPROVEMENT, INC. HAD VIOLATED THE SOUTH CAROLINA FRIVOLOUS CIVIL PROCEEDINGS SANCTIONS ACT.

A. STANDARD OF REVIEW

The decision to impose sanctions is one in equity, and thus the appellate court reviews the circuit court's factual findings de novo. If the appellate court agrees with the factual findings, then it reviews the circuit court's decision to impose sanctions and the amount of sanctions for an abuse of discretion. *See Pee Dee Health Care, P.A. v. Estate of Thompson*, 424 S.C. 520, 538 n.11, 818 S.E.2d 758, 768 n.11 (2018) (citations omitted).

B. CAUSE OF ACTION NOT RIPE

The South Carolina Frivolous Civil Proceedings Sanctions Act, § 15-36-10, et seq. (the "FCPSA") does not provide an independent cause of action. *South Carolina Code Ann. § 15-36-10*. It allows a motion for sanctions to be made, following a disposition on the merits. *See Holmes v. E. Cooper Community Hosp., Inc.*, 758 S.E.2d 483, 495 (S.C. 2014) ("*Motions made pursuant to the FCPSA are post-trial motions.*") *and see Carson v. Emerg. MD, LLC*, CV 6:20-1946-HMH, 2020 WL 6489528, at *3 (D.S.C. Nov. 3, 2020) *and Barnhill, et al. v. Swilley, et al.*, No. 2014-CP-26-08367, p. 5 (Horry Cty. Cir. Ct. Mar. 21, 2016) (*dismissing FCPSA claim as unripe*).

Indeed, subsection(C)(1) states that the proper time for the court to consider a request for relief under the act is "[a]t the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict, upon motion of the prevailing party." Accordingly, the Court's grant of Summary Judgment on Woods' cause of action for violation of the South Carolina Frivolous Civil Proceedings Sanctions Act was erroneous and improper.

C. BURDEN NOT MET

Assuming *arguendo* that Woods' cause of action for violation of the South Carolina Frivolous Civil Proceedings Sanctions Act were ripe, which BCR denies, Woods has not presented any evidence showing that any of Plaintiff's attorney's actions were unreasonable or in violation of South Carolina Code Ann. § 15-36-10(A)(4)(a). To the contrary, it was without question reasonable for BCR's attorney to rely on the information disclosed to him regarding the "present location[s] of [BCR] businesses" and to confirm same from the results of an internet search. It was also without question reasonable for BCR's attorney to discontinue the pursuit of BCR's claim for breach of the non-compete once BCR's attorney learned that there was actually not a present location of BCR's business within 100 miles of Woods at the end of Woods' employment period. As such, the Court's grant of Summary Judgment on Woods' cause of action for violation of the South Carolina Frivolous Civil Proceedings Sanctions Act was erroneous and improper.

V. THE COURT, IN ITS MARCH 27, 2023 AND DECEMBER 6, 2023 ORDERS, ERRONEOUSLY FOUND NUMEROUS FINDINGS OF FACT AND SPECULATED AS TO WOODS' DAMAGES.

A. STANDARD OF REVIEW

The decision to impose sanctions is one in equity, and thus the appellate court reviews the circuit court's factual findings de novo. If the appellate court agrees with the factual findings, then

it reviews the circuit court's decision to impose sanctions and the amount of sanctions for an abuse of discretion. *See Pee Dee Health Care, P.A. v. Estate of Thompson*, 424 S.C. 520, 538 n.11, 818 S.E.2d 758, 768 n.11 (2018) (citations omitted).

B. ERRONEOUS AND SPECULATIVE FINDINGS

1) In the Order, the Court erroneously states "On the record in open court, [BCR]'s counsel stated that through attempting to respond to Respondent's written discovery requests, he learned from [BCR], his own client, that the original Complaint was baseless and about the existence of the allegedly purloined "advanced payment" which was the subject of [BCR]'s proposed Amended Complaint. (*Id.*)" when record of the January 30, 2019 hearing does not reflect as such.

2) The clear evidence at the hearing was that Woods was making $15.63/hr (equating to an annual salary of $31,260.00 on a 40/hr work week, 50 work week basis) which is a far stretch from the $70,000 average and $80,000 "on track to make" figures stated in the Order without any evidence supporting it. Further, the $80,000 "on track to make" figure is clearly speculative.

3) The Order goes further to state that Woods "has been unable to return to the roofing industry because of the cloud hanging over his reputation since [BCR] interfered with his employment and earning potential" and that "stain [BCR] 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 [BCR] not frivolously brought a claim against him" which are wholly unsupported by any evidence, purely speculative and rampant conjecture. *See Piggy Park*

Enterprises, Inc. v. Schofield, 251 S.C. 385, 162 S.E.2d 705 (S.C. 1968) (*"the existence or amount of damages cannot be left to conjecture, guess or speculation"*).

4) There was no evidence and there could be no evidence to support the premise that "the money he will now make is considerably less than what would have been available to him had [BCR] not frivolously brought a claim against him" other than speculation. *Id*.

5) There was no competent evidence to support the premise that "stain [BCR] has left on Woods… caused him health problems" as no medical opinion or medical records were submitted or provided. *Id*.

6) Woods did not present any evidence to support the basis for his health problems or the approximate $14,000 in medical expenses.

7) The Order erroneously states that "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" when: (a) The only evidence presented showed that Woods was making $15.63/hr and was not entitled to any bonus; (b) Woods did not present any evidence of his previous earning potential; and the Court's entire rationale and analysis is based on speculation and conjecture. *Id*.

C. CONCLUSION

Based on the foregoing, the Court's Order as to actual damages is clearly erroneous.

VI. THE COURT, IN ITS MARCH 27, 2023 AND DECEMBER 6, 2023 ORDERS, ERRONEOUSLY FOUND THAT THE ATTORNEYS' FEES SOUGHT WERE REASONABLE.

The award of attorneys' fees in the amount of $77,253.73 is not reasonable in consideration of the nature, extent, and difficulty of the legal services rendered in this matter as this case has

more or less been a very drawn out, unjust damages hearing. *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 427 S.E.2d 659 (S.C. 1993). This matter, as it currently stands, was a one-issue case – whether Woods was within 100 miles of a BCR present location – which was resolved with Woods' requests to admit. All of the relevant motion hearing hinged on that fact. There were no depositions. There was no trial. BCR's counsel, unlike Woods' counsel, had to travel from Greenville for each hearing and still did not generate a third of Woods' fees. $77,253.73 is grossly unreasonable in consideration of the nature, extent, and difficulty of the legal services rendered and the award is erroneous.

VII. THE COURT, IN ITS MARCH 27, 2023 AND DECEMBER 6, 2023 ORDERS, ERRONEOUSLY AWARDED PUNITIVE DAMAGES.

A. STANDARD OF REVIEW

The decision to impose sanctions is one in equity, and thus the appellate court reviews the circuit court's factual findings de novo. If the appellate court agrees with the factual findings, then it reviews the circuit court's decision to impose sanctions and the amount of sanctions for an abuse of discretion. *See Pee Dee Health Care, P.A. v. Estate of Thompson*, 424 S.C. 520, 538 n.11, 818 S.E.2d 758, 768 n.11 (2018) (citations omitted).

B. GAMBLE FACTORS ERRONEOUSLY ANALYZED

In accordance with Gamble, to ensure that a punitive damage award is proper, the trial court shall conduct a post-trial review and may 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) as noted in Haslip, "other factors" deemed

appropriate. *See Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (S.C. 1991). "Upon completing its review, dedicated to the postulate that no award be grossly disproportionate to the severity of the offense, the trial court shall set forth its findings on the record." *Id*.

In the matter at hand, the Court did not properly set forth its findings and made erroneous findings regarding BCR's degree of culpability of its conduct, BCR's awareness or concealment of its conduct, the existence of similar past conduct and whether the punitive damages award was reasonably related to the harm likely to result from such conduct. It is undisputed that BCR, itself, did not send the November 6, 2017 letter to Premier Roofing and there is no testimony as to whether BCR even knew the letter had been sent. There was no testimony regarding BCR's awareness or concealment of the conduct. There was no testimony regarding any similar past conduct. There was no analysis that the punitive damages award was reasonably related to the harm likely to result from such conduct and the award shows that it is grossly unrelated to the harm likely to result from such conduct. The Court erroneously used an unsubstantiated revenue figure to analyze BCR's ability to pay.

C. CONCLUSION

Based on *Gamble* and the foregoing, the Court's Order as to punitive damages is clearly erroneous.

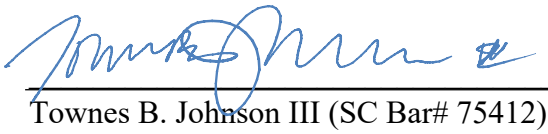
CONCLUSION

For the foregoing reasons, Best Choice Roofing & Home Improvement, Inc. respectfully asks this Court to reverse the Circuit Court's Orders of February 19, 2019 Order, March 20, 2019 and October 22, 2019 and allow Best Choice Roofing & Home Improvement, Inc. to Amend its Complaint; thereby rendering the Court's Orders of April 28, 2022, July 28, 2022, March 27, 2023 and December 6, 2023 moot.

Alternatively, Best Choice Roofing & Home Improvement, Inc. respectfully asks this Court to reverse the Circuit Court's Orders of April 28, 2022, July 28, 2022 and find that Woods has not met his burden of proof to establish his causes of action for tortious interference or violation of the South Carolina Frivolous Civil Proceedings Sanctions Act; thereby rendering the Court's Orders of March 27, 2023 and December 6, 2023 moot.

Alternatively, Best Choice Roofing & Home Improvement, Inc. respectfully asks this Court to reverse the Circuit Court's Orders of March 27, 2023 and December 6, 2023 and find that the awards of actual damages, punitive damages and attorneys' fees were erroneous.

Respectfully submitted,



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