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THE STATE OF SOUTH CAROLINA
In the Supreme Court

S.C. SUPREME COURT

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

In Re: John W. Gardner, The Gardner Law Firm, P.A.,Respondent.

PETITION FOR ORIGINAL JURISDICTION

The undersigned Petitioner brings this matter before the Court pursuant to this Court’s request that any individual who becomes aware of conduct that might constitute the unauthorized practice of law should bring a declaratory judgment action in the Supreme Court’s original jurisdiction to determine the validity of the conduct. *Medlock v. University Health Services, Inc.*, 404 S.C. 25, 28, 743 S.E.2d 830, 831 (2013). The facts presented below raise concern about the conduct of a Florida lawyer.

FACTS

UniFirst Corporation (“UniFirst”), a Massachusetts company with a South Carolina location conducting business in South Carolina and subjecting itself to the personal jurisdiction of South Carolina courts via S.C. Code § 36-2-803 as well as its continuous use of South Carolina courts, solicited business from a South Carolina car dealership. UniFirst sought to provide uniform services to the dealership, and an employee of the dealership signed a document that the car dealership maintains he was not authorized to sign on behalf of the company. UniFirst maintains the document was a 60-month or five (5) year contract resulting in dealership owing liquidated damages for breach of contract. [Exh. 1]

UniFirst alleged there had been a breach of contract and that the car dealership owed it money damages. Car dealership informed UniFirst that the employee who signed the document was not authorized to contractually bind the company, was not authorized to make purchases

without following the company's employee purchase policy, and that the employee had signed an "Employee Policy Addition for Purchases on the Company's behalf" at the commencement of his employment informing him of the process for employees to make any purchases on the company's behalf.

On January 3, 2024, UniFirst directly e-mailed car dealership a "Premature Cancellation Account Form" stating car dealership owed UniFirst "Total Liquidated Damages" of \$50,618.19 plus "Standard Merchandise Total Replacement Cost," in the amount of \$10,199.60, for a grand total of \$60,817.79. [Exh. 2].

Car dealership received a letter from one J.W. "Bill" Gardner of The Gardner Law Firm out of Brandon, Florida dated January 12, 2024, stating the lawyer represented UniFirst "in connection with the referenced debt owed to our client by you." [Exh. 3]. The letter requested Plaintiff "tender full payment of the amount due directly to our client" in the amount of \$60,817.79. The letter contained a "note" in bold and capitalized script that purported to comply with the "Fair Debt Collection Practices Act," writing:

NOTE: PURSUANT TO THE FAIR DEBT COLLECTION PRACTICES ACT, YOU ARE ADVISED THAT THIS LAW FIRM MAY BE DEEMED TO BE A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

The Fair Debt Collection Practices Act only applies to the collection of debt incurred by a consumer primarily for personal, family or household purposes. It does not apply to business-to-business collections or the collection of corporate debt or debt owed for business or agricultural purposes.

Two weeks later, car dealership received a letter dated January 23, 2024, from one John W. Gardner of The Gardner Law Firm out of Brandon, Florida, stating that “UniFirst Corporation has retained this law firm to represent it’s [sic] interest in connection with our client’s claim against Tony T Chrysler for breach of contract damages.” [Exh. 4]. This letter was quite different from the letter received from the very same law firm, on the very same letterhead, and the very same lawyer with just his name written and signed differently than the J.W. “Bill” Gardner on the January 12, 2024 letter, under the guise that the law firm “may be deemed to be a debt collector” in accordance with a federal law that does not even apply to business-to-business debts.

In the January 23, 2024, letter from John W. Gardner, he on behalf of his client UniFirst demanded the car dealership “submit this claim to final and binding arbitration pursuant to the Expedited Procedures of the Commercial Arbitration Rules of the American Arbitration Association.” In lieu of arbitration, Mr. Gardner wrote:

In the alternative, you may tender payment of the sum set forth hereinabove within ten (10) days of the date of this letter. Your payment should be made by check, draft or money order (not cash), paid to the order of “John W. Gardner, Trust Account” and delivered to the address set forth in our letterhead above.

Of note, the balance alleged to have been due UniFirst per the January 23, 2024, letter was now \$65,879.39 – a \$5,061.60 increase from the January 12, 2024, demanded amount of \$60,817.79 – presumptively to account for UniFirst’s attorney fees for Mr. Gardner’s services. Also different was the instruction that if car dealership had any questions, it should contact Mr. Gardner as opposed to the January 12, 2024, instruction that questions need be directed to UniFirst itself. On the instruction of counsel, and due to the undersigned’s concern over an out-of-state lawyer possibly engaging in UPL, Mr. Gardner’s letters were not answered. At the time the letters

were sent and demands made for breach of contract, Mr. Gardner and UniFirst were unaware that car dealership had legal counsel.

On March 18, 2024, Mr. Gardner called the car dealership and was instructed at that time to contact the car dealership's lawyer, the undersigned. Mr. Gardner attempted to call the undersigned at his office and then e-mailed the undersigned, writing:

Mr. Bamberg ... Our office serves as regional contracts **counsel** to UniFirst Corporation. The matter of a dispute with Tony T Chrysler is referred to our office for **representation**.

[]

At your convenience, please advise Tony T Chrysler's response to our initial demand.

[]

UniFirst is committed to finding an amicable resolution of this dispute. You will please see that the parties' Agreement provides for "direct negotiations" before filing for arbitration. The term is not defined, but I would suggest that communication between counsel would suffice.

Further [sic] UniFirst would offer to schedule a virtual meeting with you, your client and our office either with or without a mediator to explore options for resolution. If we are to engage a mediator, we would suggest adrondemand.com, an online **mediation** service that has successfully served our clients in the past. Alternatively, we would suggest a **mediator** referred by the AAA. Or, we will defer to your selection of any mediator you would propose. The cost of the mediator would be split equally by the parties. The mediation will need to occur within no more than 30 days hence.

[Exh. 5], emphasis added. The e-mail was signed "John W. Gardner, Attorney" of 221 East Robertson Street, Brandon, Florida 33511, and any questions were to be directed to him.

On May 14, 2024, Mr. Gardner once again e-mailed the undersigned on behalf of UniFirst, writing:

We have not heard from you in response to our demand for payment. UniFirst is wanting me to get a dialogue open by next **Friday, May 24, 2024** or put the matter in arbitration. In translation, we need a settlement offer by that date or we're filing.

I note that the parties' agreement includes an unspecific **negotiation** requirement. While I do think we have met that prerequisite to arbitration, i [sic] will nevertheless ask if your client would be interested in setting up a virtual mediation conference? I have had a fair amount of success with the mediators available through adrondemand.com.

If so, **mediation** must be scheduled by Friday, May 17, 2024 and conducted on or before Friday, June 7, 2024.

[Exh. 6], emphasis added. The e-mail was signed "John W. Gardner, Attorney" of 221 East Robertson Street, Brandon, Florida 33511, and questions were to be directed to him.

Neither Car dealership, nor the undersigned, ever responded to Mr. Gardner. On June 13, 2024, the undersigned was sent a "Notice to Respondent" for car dealership from Mr. Gardner providing, "[t]his firm represents UniFirst Corporation regarding the referenced debt claimed by our client" and "[p]ursuant to the terms of your May 5, 2023, written agreement with our client, we have submitted this matter to the American Arbitration Association for resolution." [Exh. 7]. This letter ended with the option for car dealership to tender payment in the amount of \$61,229.32 this time, payable to the law firm's trust account and mailed to the law firm's Florida address.

Attached to the June 13, 2024, letter from Mr. Gardner was a "Notice of Rights" not previously included in any prior correspondence, including the January 23, 2024, letter whereby Mr. Gardner represented to car dealership that he was representing UniFirst for breach of contract claims. [See Exh. 7]. The "Notice of Rights" provided that in South Carolina, The Gardner Law Firm attorney was "licensed in Florida, only, participating pursuant to Rule 5.5(c)(3)" of the S.C. Judicial Rules.

Mr. Gardner formally filed for Arbitration with AAA alleging breach of contract and seeking damages, attorney fees, and costs on behalf of UniFirst. [See Exh. 7]. Mr. Gardner improperly served the same on the undersigned, who never responded to Mr. Gardner let alone represented to Mr. Gardner that he was authorized to accept service on behalf of the car dealership. AAA then requested car dealership, through the undersigned, respond to the filed action within a certain time limit. This Petition follows.¹

Rule 5.5(c)(3) permits unlicensed lawyers to provide legal services in South Carolina on a “temporary basis” under four (4) circumstances, none of which appear to apply here, despite Mr. Gardner attempting to engage with car dealership, as counsel for UniFirst, for over half a year. Those four (4) circumstances are as follows:

- a. In association with a SC lawyer who actively participates; or
- b. Related to a pending/potential proceeding with Pro Hac Vice admission or reasonable expectation of Pro Hac Vice; or
- c. ADR related to representation of an existing client in a home jurisdiction; or
- d. Not court or ADR, but otherwise related to the lawyer’s representation of existing clients in their home jurisdiction.

No South Carolina lawyer had actively participated in UniFirst’s claims against dealership. There was also no pending/potential proceeding with Pro Hac Vice admission or reasonable expectation of Pro Hac Vice. Petitioner conducted a review of the South Carolina Public Index filing system for each of the forty-six (46) counties in the state which revealed that neither Mr. Gardner, nor anyone from The Gardner Law Firm, files for Pro Hac Vice admission on UniFirst filings over these type “agreements.” [Exh. 8].

¹ Tony-T Automotive Group, LLC d/b/a Tony T Chrysler Dodge Jeep Ram of Orangeburg, through the undersigned, filed a formal Summons & Complaint against UniFirst Corporation on June 28, 2024, seeking in part, Declaratory Judgment on the contract dispute. 2024-CP-38-00826

Mr. Gardner indicated that The Gardner Law Firm is “regional contract counsel” for UniFirst. UniFirst is not a Florida company but is instead organized and existing under the laws of the State of Massachusetts; and, therefore, Mr. Gardner would not be engaged in the representation of an existing client in a home jurisdiction. Further, if The Gardner Law Firm is “regional contracts counsel” for UniFirst, it and/or Mr. Gardner have presumptively taken these very actions in South Carolina extensively, based on the massive number of filings in South Carolina state court by UniFirst in similar matters. Taking these same pre-litigation actions over-and-over, including demanding South Carolina businesses send checks payable to the law firm trust account and mailed to Florida, or alleging representation of UniFirst for breach of contract, would necessitate S.C. Bar admission. *See* Rule 5.5(b), S.C. R. Prof'l. Cond., Multijurisdictional Practice, prohibiting out-of-state lawyers from other systematic and continuous presence for the practice of law in S.C.; *see also*, Rule 5.5(c)(3).

The undersigned’s review of the South Carolina Public Index filing system for every county in the state has further raised concerns about a possible continuing presence by Mr. Gardner and The Gardner Law Firm – who held it and/or himself out to counsel that he was “regional contracts counsel for UniFirst” – in South Carolina legal matters such that it necessitates he apply for and be granted admission to the S.C. Bar. While all of the filed matters are done via one of two South Carolina law firms with South Carolina licensed lawyers, seeking to either (1) sue for breach of contract or (2) enroll Arbitration Awards for UniFirst as Judgments, if Mr. Gardner is “regional contracts counsel” for UniFirst, he would necessarily be the one engaging in similar actions with other unrepresented and represented South Carolina businesses, and he would be the one who initiates the Arbitration proceedings.

Standard General Commercial Liability insurance policies purchased by South Carolina businesses, such as the policy car dealership had, do not provide coverage for breach of contract claims, nor do they provide defense of the same. As a result, car dealership, and other South Carolina businesses, would be uninsured and out-of-pocket for both the purported breach of contract claims and the costs of hiring attorneys to defend themselves. This effectively leaves many South Carolina businesses subject to UniFirst and Mr. Gardner’s practices displayed here unrepresented, which could explain the unconscionable number of arbitration award filings turned judgments seen across the state.

As a result, an out-of-state lawyer not licensed in South Carolina sending a “debt” collection letter, under the guise of a federal law that does not apply to businesses, seeking settlement payments, demanding a party agree to arbitration or mediation, and worst, formal legal correspondence directly alleging representation in South Carolina on claims for breach of contract damages against the South Carolina businesses—as is the case here—are even more concerning from a public policy perspective.

LEGAL PRINCIPLES

The South Carolina Supreme Court, pursuant to its Original Jurisdiction, is the forum whereby determinations are made as to whether the actions of out-of-state lawyers acting in South Carolina constitutes the Unauthorized Practice of Law in South Carolina. *See In Re Unauthorized Practice of Law Rules Proposed by the SC BAR*, 309 S.C. 304, 422 S.E.2d 123 (1993) (“It is neither practicable nor wise to attempt a comprehensive definition by way of a set of rules. The better course is to decide what is and what is not the unauthorized practice of law in the context of an actual case or controversy.”)

The Court has long held the practice of law is not confined to litigation but encompasses activities and actions in other areas that “entail specialized legal knowledge and ability.” *State v. Buyers Serv. Co.*, 292 S.C. 426, 430, 357 S.E.2d 15, 17 (1987).

The South Carolina Supreme Court recently addressed whether certain actions constitute UPL in a situation also involving uniform service agreements. In *In Re: The Murkin Group, LLC*, Appellate Case No. 2018-002263, Opinion No. 27957 Filed March 18, 2020. The Court reviewed Judge Curtis’ finding that Murkin, a debt collection company hired by Cintas to pursue breaches of contract monies, “went beyond the mere collection of a debt and crossed into UPL” by the following actions, which are very similar here:

1. becoming involved in negotiating a contract dispute between Cintas and Restaurant and interposing itself between the parties for the purpose of negotiating a settlement on behalf of Cintas;
2. purporting to advise Cintas as to what legal action it should take;
3. indicating to Restaurant that it would advise Cintas as to whether to accept a settlement offer;
4. purporting to control the actions of the attorney and claiming it could direct the attorney not to settle the claim or make payment arrangements with Restaurant;
5. threatening to file suit and making specific claims about what types of damages would be recoverable in the lawsuit; and
6. giving legal opinions and interpreting the terms of the contract between Restaurant and Cintas.

CONCLUSION

As in *Murkin*, who characterized its actions as “debt collections,” this Court held that “the true nature of the underlying matter is a contract dispute.” It is undisputed that car dealership and other businesses challenged the validity of a purported contract as well as any alleged breaches of the same. The “liquidated damages” alleged by UniFirst that were being pursued by Mr. Gardner

and The Gardner Law Firm, as out-of-state counsel, were not admitted “debts” but instead a contract dispute, just as in *Murkin*.

The above-cited facts and documents filed as exhibits, paired with *Murkin*, raise a question of whether John W. Gardner and/or The Gardner Law Firm is engaging in the unauthorized practice of law in South Carolina, not solely on these matters, but on every South Carolina matter, past and present, that was and/or is similarly situated. Petitioners contend that making settlement demands, alleging formal representation of UniFirst against a business in South Carolina for breach of contract, demanding arbitrations, mediations, and/or negotiations on behalf of UniFirst, setting arbitrary deadlines on South Carolina counsel and businesses to respond to settlement demands, filing for Arbitration with AAA in this state as “regional contracts counsel” for UniFirst in a multitude of matters, and other actions taken such as seeking attorney fees and cost reimbursement in the form in which it was done may be the practicing of law without a license in South Carolina.

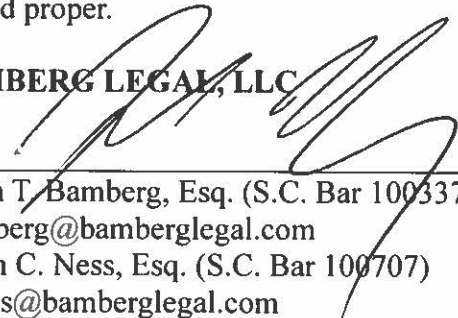
Even if an out-of-state lawyer is authorized under Rule 5.5(c)(3) to provide legal services in South Carolina on a “temporary basis,” Petitioners question whether an out-of-state lawyer and/or law firm acting under rule 5.5(c)(3) is engaged in the unauthorized practice of law in South Carolina and needs to be admitted to the S.C. Bar when Rule 5.5(c)(3) is invoked so numerous in matters on an ongoing basis over the course of time by a “regional contracts counsel” such that it could reasonably be interpreted as no longer being “temporary” but instead consistently.

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Accordingly, the Petitioner respectfully requests that the Court inquire into the matter and make whatever determination the Court may deem just and proper.

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