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

Case No. 2018-CP-40-01318

Appellate Case No. 2023-001996

Best Choice Roofing & Home Improvement, Inc.

Appellant,

vs.

Tyler Woods

Respondent.

INITIAL BRIEF OF RESPONDENT

Nekki Shutt (SC Bar No. 8784)
Sarah J.M. Cox (SC Bar No. 104316)
Lydia Robins Hendrix (SC Bar No. 106334)
BURNETTE SHUTT & McDANIEL, P.A.
Post Office Box 1929
Columbia, SC 29202
T: 803.904.7912
F: 803-904-7910
NShutt@BurnetteShutt.law
SCox@BurnetteShutt.law
LHendrix@BurnetteShutt.law

ATTORNEYS FOR RESPONDENT

August 5, 2024
Columbia, South Carolina

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

STATEMENT OF ISSUES ON APPEAL

I. Is Appellant Best Choice Roofing & Home Improvement, Inc. ("Appellant") entitled to appellate review of the trial court's order denying Appellant's Motion to Amend its Complaint when the trial court provided two grounds for denying Appellant's Motion and Appellant has only appealed one ground for denial?

II. Did the trial court rule correctly in finding that, as a matter of law, Appellant was not entitled to amend its Complaint to abandon all original claims and substitute a new cause of action?

III. Did the trial court abuse its discretion in finding that Respondent Tyler Woods ("Respondent") would be prejudiced if Appellant was allowed to amend its Complaint to abandon all original claims and substitute a new cause of action nine months after the initiation of a baseless lawsuit which was dismissed on summary judgment with consent of Appellant?

IV. Did the trial court properly find no genuine issue of material fact that could oppose the conclusion that Appellant intentionally interfered with Respondent's employment contract when Respondent produced argument and evidence in support of the elements of the same and Appellant produced no argument or evidence in opposition?

V. Did the trial court properly find no genuine issue of material fact that could oppose the conclusion that Appellant had violated the South Carolina Frivolous Proceedings Sanctions Act (the "Act") in procuring the initiation of a frivolous lawsuit against Respondent by lying to its counsel about the present location of its businesses?

VI. Is Appellant entitled to appellate review of the trial court's order on damages when the trial court denied its Motion to Alter or Amend the order on damages on two grounds and Appellant has only appealed one ground for denial?

VII. Did the trial court abuse its discretion in awarding damages to Respondent to compensate for Appellant's intentional interference with Respondent's employment contract when Respondent produced evidence to support each category of damages and Appellant did not make any contemporaneous objection to any of Respondent's evidence or provide any conflicting evidence?

VIII. Did the trial court abuse its discretion in awarding attorney's fees to Respondent for violation of the Act even though Respondent allegedly incurred more attorney fees than Appellant?

IX. Did the trial court abuse its discretion in determining that Respondent met his burden by clear and convincing evidence that punitive damages are appropriate because it is uncontested that Appellant intentionally interfered in

Respondent's employment contract and that Appellant has the ability to pay an award of punitive damages, and the punitive damages award is reasonably related to the harm caused by Appellant because it is ten times the amount of actual damages?

INTRODUCTION

The word of an attorney has enormous power. Here, on the word of an attorney, a blue-collar man lost his job, was blackballed from working in his field, and suffered tremendous emotional and financial harm. On the word of another attorney, that same blue-collar man has been forced to expend time, effort, and tens of thousands of dollars in attorney's fees to defend himself from a lawsuit. When the word of an attorney has the power to destroy lives, it is crucial for represented parties to be held responsible for what they tell their attorneys in order to achieve such destruction.

Appellant Best Choice Roofing & Home Improvement, Inc. ("Appellant") lied to its attorneys at least twice. First, Appellant lied to its attorney to get Respondent Tyler Woods ("Respondent") fired from his job. Then, Appellant lied to a different attorney to procure the instant frivolous lawsuit against Respondent. Both lies caused tremendous harm to Respondent, and Respondent has turned to the legal process to attempt to hold Appellant responsible for its lies. Thankfully for Respondent, although slow and painful, the process has worked. The trial courts have seen through Appellant's lies and found for Respondent at every turn, holding that Appellant indeed must compensate Respondent for the damage its lies have wrought.

Appellant, now that it has been ordered to pay damages to Respondent, wants to avoid responsibility for the harm it caused with its lies. It complains that, although it was given ample opportunity to present a defense against Respondent's allegations but did not, it should be afforded another chance to do so. It wants to amend its complaint to substitute the frivolous claim it put forth against Respondent, well after the frivolous claim has been dismissed as a matter of law with Appellant's consent. It wants to use its

attorneys to try, through this appeal, to undo the judgment levied against it by a court that heard Respondent's evidence without objection from Appellant. Through this appeal, Appellant is attempting to avoid all responsibility for the damages it has caused by lying to its attorneys without also suffering the brain damage of active participation in the legal process.

Four accomplished and learned circuit court judges have examined this case. Four accomplished and learned circuit court judges have ruled that no, Appellant's lawsuit against Respondent was not based in fact or law. Yes, Appellant got Respondent fired by lying to its attorney. Yes, Appellant brought a frivolous lawsuit against Respondent by lying to its attorney. And no, Appellant should not achieve a do-over six years into litigation simply because it believes that through a simple stroke of an attorney's pen, Appellant can have everything it wants and suffer no consequences for the great harm it has caused Respondent.

This Honorable Court is charged with analyzing and undoing the errors made by the lower courts. No errors were made here. The lower courts, all four of them, saw right through Appellant for what it is: a litigant who has spent years lying to its attorneys and is now attempting in bad faith to undo the legal mechanism that links it to the harm those lies caused to Respondent.

It is insufficient for Appellant to baldly claim that "the trial court(s) got it wrong" to warrant this Court to grant Appellant an entire do-over of the whole six-year-long affair. Appellant has had multiple opportunities to mitigate the harm it has caused Respondent or provide a shred of evidence that it is not responsible for the same. It has not availed itself of a single one.

Appellant has never called a witness. Appellant has never presented documentary evidence of any kind. Appellant has never submitted testamentary evidence of any kind, neither through testimony, affidavit, declaration, or otherwise. No representative from Appellant other than its attorney has ever even shown up at court at the multiple hearings in this matter. Of course, there is no requirement that Appellant litigate in these specific ways, but by doing nothing but continue to pay an attorney to try to avoid being held responsible for its lies, Appellant has shown this honorable Court and the lower courts exactly how seriously it takes responsibility for the emotional, reputational, and financial harm it has caused Respondent and exactly why it should be held fully responsible for the same.

STATEMENT OF THE CASE

Respondent is a roofing estimator who has worked in the roofing industry for over ten years. (R.p.____; Answer and Countercl. ¶¶ 26, 27.) Appellant is a roofing services company. (R.p.____; Resp. Memo in Supp. of Mot. for Summ. J.) On or about April 17, 2017, Respondent began working as a sales manager for Appellant's Marietta, Georgia location. (R.p.____; Answer and Countercl., ¶¶ 29-30.) He had worked previously for the company, but in 2017, he relocated to Georgia for this new position. (R.p.___; Answer and Countercl. ¶¶ 28, 29.) He and his wife were expecting their first child and wanted a stable place to reside. (R.p.___; Answer and Countercl. ¶ 40.)

On April 21, 2017, several days after Respondent began work for Appellant, Appellant asked Respondent to sign an Employment Agreement to continue his employment with Appellant. (R.p.____; Compl., Ex. A BCR Employment Agreement.) The Employment Agreement included a Non-Competition and Confidentiality Clause that provided that

Respondent 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 Appellant "for a period of ONE (1) year and within 100 miles from *the present location* of [Appellant's] business." (R.p.____; *Id.*, Section 9 (emphasis added).) Violation of the non-competition clause could result in the payment of $15,000.00 in liquidated damages. (*Id.*) The Employment Agreement further provided that the responsibilities and duties granted to Respondent under the Employment Agreement would be rendered in Marietta, Georgia. (R.p.____; *Id.*, Section 4.)

Respondent left his position with Appellant on or about April 29, 2017 after a dispute about suitable family housing promised by Appellant. (R.p.____; Answer and Counterclaim, ¶¶ 39-42.) Respondent relocated himself and his young family to Columbia, South Carolina. (R.p.____; *Id.* at ¶ 44.) Shortly thereafter, Respondent began working with Premiere Roofing, LLC (Premiere) in Irmo, South Carolina. (R.p.____; *Id.* ¶ 45.) Premiere provides roofing services in the Midlands of South Carolina, including the cities of Irmo, Columbia, Newberry, Sumter, and Orangeburg. (*See* PREMIERE ROOFING, roofteam.com (last visited July 23, 2024).) Irmo, South Carolina is about 193 miles from Appellant's location in Marietta, Georgia. (R.p._____; Answer and Counterclaim, ¶ 46.)

On November 6, 2017, Appellant directed its attorney to send an unfounded cease-and-desist letter to Respondent's new South Carolina employer, Premiere Roofing, on the grounds that Respondent allegedly violated the non-competition provision of his employment agreement with Appellant by working for a competitor allegedly within 100 miles of Appellant's locations. (R.p____; *Id.*, ¶ 47.) Appellant's threat caused Respondent's South Carolina employer to terminate Respondent. (R.p.____; *Id.* ¶ *48*.)

On March 8, 2018, unsatisfied with getting Respondent fired, Appellant directed its attorney to file a Complaint in the Richland County Court of Common Pleas alleging that Respondent breached the non-compete provision of his employment agreement by working for a competitor within 100 miles of Appellant's location. (R.p.____; Compl.) On June 11, 2018, Respondent filed his Motion to Dismiss the Complaint. (R.p.____; Mot. to Dismiss.) On the same date, Respondent filed his Answer and Counterclaim, counterclaiming against Appellant for intentional interference with a business relationship and notifying Appellant of his intent to seek sanctions for filing a frivolous claim under the South Carolina Frivolous Civil Proceedings Sanctions Act (the "Act"), S.C. Code Ann. § 15-36-10 (1976). (R.p.___; Answer and Counterclaims.)

Respondent served initial interrogatories and requests for production on Appellant on May 30, 2018. (R.p.____; Mot. to Compel.) In these discovery requests, Respondent specifically requested that Appellant "[d]escribe the consideration [Appellant] contends supports the employment contract." (R.p.____; *Id.* at Int. 12.) Appellant did not initially respond to these requests, and Respondent filed a Motion to Compel Discovery Responses on September 7, 2018. (R.p.____; Mot. to Compel.) Finally, on October 30, 2018, Appellant responded to the interrogatories and asserted that Appellant had an Augusta location. (R.p.___; Tr. of Hr'g held Jan. 30, 2019, p. 8.) In the meantime, Respondent served Requests to Admit on Appellant on July 24, 2018, requesting Appellant admit that Respondent never worked for Premiere or another roofer within 100 miles of any of Appellant's locations. (R.p.___; Notice of Mot. and Mot. to Deem Admitted Requests for Admission Not Responded to By Pl.) On October 3, 2018, the trial court

ordered Appellant to respond to Respondent's interrogatories and requests for production within 10 days or the Court would dismiss its Complaint. (R.p.____; Form 4 Order.)

On November 16, 2018, Respondent filed a Motion to Deem Admitted Requests for Admission Not Responded To, as Appellant had not responded to Respondent's Requests for Admission within the required time under the Rules of Civil Procedure. (R.p.___; Mot. to Deem Admitted Requests for Admission not Responded to By Pl.) Ultimately, Appellant answered and admitted that Appellant in fact had no locations in Augusta, Georgia or Charlotte, North Carolina. (R.p.___; Tr. of Hr'g, p. 8.)

On December 17, 2018, nine months after filing the Complaint, Appellant moved the trial court for permission to amend the Complaint pursuant to Rule 15, SCRCP, "to conform the allegations to the facts of the case," and totally abandon all original causes of action in favor of an action sounding in fraud for return of an alleged "relocation" advance. (R.p.____; Mot. to Am. Compl.) The next day, on December 18, 2018, Respondent moved the trial court for summary judgment on the claims and counterclaim in the case. (R.p.____; Mot. for Summ. J.)

On January 30, 2019, Respondent filed his memorandum in opposition to Appellant's motion to amend the Complaint. (R.p.__; Mem. In Opp. to Pl.'s Mot. to Amend the Compl.) In this memorandum, Respondent argued that he would be prejudiced if Appellant was allowed to amend its Complaint to abandon all original causes of action in favor of an entirely new cause of action. (R.p.__; *Id.*) Respondent argued that since the proposed Amended Complaint is so drastically different from the original, Respondent had no notice of the new issues and no opportunity to refute the new issues. (R.p.__; *Id.*) Respondent further argued that since Appellant had notice of the alleged claims in the

proposed Amended Complaint at the time it filed its original Complaint but chose not to include them in its original Complaint or in a timely motion to amend the Complaint, attempting to amend at this juncture was an attempt to avoid liability for a frivolous claim. (R.p.____; *Id.* pp. 4-5.) Finally, Respondent argued that leave to amend the Complaint should not be granted because the motion to amend was filed solely in an attempt to avoid liability for interfering with Respondent's employment and for filing a frivolous lawsuit. (R.p.___; *Id*.)

On January 30, 2019, the trial court heard Appellant's Motion to Amend the Complaint and Respondent's Motions for Summary Judgment and Motion to Deem Admitted Discovery Requests Not Responded To. (R.p.___; Tr. of Hr'g held Jan. 30, 2019.) At this hearing, Appellant consented to Respondent's motion for summary judgment, as Appellant recognized that it is undisputed that Respondent worked for his South Carolina employer in Irmo, SC, approximately 193 miles from Marietta, Georgia, where he worked for Appellant and that Appellant had no locations within 100 miles of Irmo, South Carolina; which is on its face not a violation of Respondent's employment agreement with Appellant. (R.p.____; *Id.* p. 10-11.) Because there was no longer any doubt Respondent had not breached his employment agreement with Appellant, Respondent withdrew his Motion to Deem Admitted Discovery Requests Not Responded To at the hearing. (R.p.____; *Id.* p. 3.)

At the hearing on January 30, 2019, the trial court also heard arguments regarding Appellant's Motion to Amend. Appellant's counsel argued that Respondent would not be prejudiced by an order allowing Appellant to amend its Complaint because the matter was still in "the written discovery stage." (R.p.____; *Id.* p. 5.) Appellant's counsel stated that

through attempting to respond to Respondent's written discovery requests, he learned from Appellant, his own client, that the original complaint was baseless and about the existence of the allegedly purloined "advanced payment," which is the subject of Appellant's proposed Amended Complaint. (R.p.____; *Id.*)

Respondent's counsel argued that the reason that the stage of litigation was stalled in written discovery was because Appellant refused to cooperate in responding to discovery and in the scheduling of depositions and mediation. (R.p.___; *Id.* p. 14.) Respondent's counsel also argued that Respondent would indeed be prejudiced if Appellant were granted leave to amend its Complaint because Respondent had already defended himself against a baseless lawsuit for almost 10 months and would lack notice and opportunity to refute the new claims. (R.p.____; *Id.* p. 13-14.)

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. (R.p.____; Order Grant. Summ. J. Against Pl. & Den. Pl.'s Mot. to Am. Compl.) On February 28, 2019, Appellant 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 Appellant did not consent to summary judgment being ordered against it on the pending counterclaims, and requesting the trial court reconsider its ruling on Appellant's Motion to Amend the Complaint. (R.p.____; Mot. to Recons., Alter, or Am.)

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 Counterclaim forward on the trial docket. (R.p.____; Order Grant. Summ. J. Against Pl. & Den. Pl.'s Mot. to Am. Compl.)

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 even if it was otherwise entitled to amendment, Respondent would be prejudiced if Appellant was granted leave to amend the Complaint. (R.p.____; *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. (R.p.____; Mot. to Recons., Alter, or Am.) Notably, consistent with the fact that Appellant consented to summary judgment, 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. (R.p.____; *Id*.)

On October 22, 2019, the trial court issued its Order denying Appellant's Revised Motion to Reconsider, Alter, or Amend the Complaint. (R.p.____; Order Denying Revised Mot. to Recons.) Appeal of this Order followed. (R.p.____; Notice of Appeal dated October 22, 2019.)

On February 9, 2022, this Court dismissed Appellant's first appeal on the basis that the order appealed was not an immediately appealable order. (R.p.____; Order.) On March 3, 2022, Respondent filed a Motion for Costs in this Court seeking the costs of the appeal. (R.p.___; Motion for Costs.) On March 16, 2022, this Court issued an Order taxing

the costs of the first appeal to Appellant. (R.p.___; Order.) To date, Appellant has not paid these costs.

After the appeal concluded, this matter was remitted to the circuit court for disposal of Respondent's counterclaim. (R.p.___; Remittitur.) On April 4, 2022, Respondent filed his Memorandum in Support of Renewed Motion for Summary Judgment on his counterclaim for Intentional Interference with a Contract and for sanctions against Appellant under the Act, attaching an Affidavit of Respondent, along with several other pieces of documentary evidence. (R.p.___; Mem. in Supp. of Summ. J.) Notably, Appellant filed no memorandum in opposition to summary judgment, nor any other evidence.

On April 4, 2022, a hearing was held on the matter before The Honorable L. Casey Manning. (R.p.___; Transcript.) During this hearing, the trial court heard argument from counsel regarding both summary judgment on the Counterclaim for Intentional Interference with a Contract and on the issue of sanctions against Appellant for violation of the Act. (R.p.___; *Id.*) Although notified of its right to provide evidence to counter Respondent's claims, Appellant provided none, relying solely on argument. (R.p.___; *Id*.) Appellant's only argument at the hearing against Respondent's Counterclaim for Intentional Interference with a Contract was a bare request for further discovery. (R.p.___; *Id.* p. 18, l. 2-4.) Appellant made no arguments in its defense against Respondent's request for sanctions, instead admitting that Appellant had lied to its counsel to procure a frivolous lawsuit against Respondent, and arguing that the matter of sanctions was not ripe for consideration even though the trial court was considering the matter over three

years since Appellant's frivolous cause of action was dismissed in March 2019. (R.p.___; *Id.* p. 8, l. 20-23.)

On April 28, 2022, the trial court issued its order granting Respondent's motion for summary judgment. (R.p.___; Order.) On May 6, 2022, Appellant filed a Motion to Alter or Amend, again arguing that further discovery was needed on Respondent's counterclaim for Intentional Interference with a Contract and again arguing that Respondent's counterclaim for frivolous proceedings sanctions was untimely. (R.p.___; Motion to Alter or Amend.) Again, Appellant provided no affidavit or evidence of his own to ask for further discovery nor submitted any evidence to argue against being held liable for violation of the Act. (R.p.___; *Id.*) Appellant's Motion to Alter or Amend was denied on July 28, 2022. (R.p.___; Order.) On November 1, 2022, with the consent of all parties, this matter was referred to The Honorable Joseph M. Strickland, Master-In-Equity for Richland County, to conduct a damages hearing at the request of Appellant. (R.p.___; Consent Or. of Reference to Master-In-Equity.)

On January 25, 2023, the Master-In-Equity held a bench trial on damages. (R.p.___; Tr. of Hearing.) Appellant presented no witnesses nor evidence and no corporate representative attended the trial. (R.p.___; *Id.*) Respondent, on the other hand, provided live testimony and eight exhibits regarding his damages. (R.p.___; *Id.* p. 2-3.) Appellant did not make any contemporaneous objections to any of Respondent's documentary evidence, object to Respondent's testimony on the attorney's fees he incurred, object to the evidence submitted related to punitive damages, or object to any of Respondent's testimony on the basis of speculation or conjecture.

On March 27, 2023, the Master-In-Equity ordered Judgment for Respondent in the amount of $4,851,235.73, including $434,000.00 for actual damages to Respondent due to Appellant's intentional interference with Respondent's employment contract; $75,733.00 for attorneys' fees and $1,502.73 in costs due to Appellant's actions in bringing and maintaining a frivolous claim against Respondent; and $4.34 million in punitive damages. (R.p.___; Order.) Additionally, the Master-In-Equity enjoined Appellant from making any future filings against Respondent absent the posting of a bond to pay Respondent's attorneys' fees and costs in the event Respondent prevails in future litigation and upon a showing that Appellant would be entitled to such fees and costs. (R.p.___; *Id*.)

On April 2, 2023, Appellant filed a Motion to Alter or Amend but failed to provide a copy to the Court in accordance with Rule 59(e), SCRCP. (R.p.___; Motion to Alter or Amend.) Appellant argued in this Motion to Amend that the evidence presented to the trial court was insufficient to support the trial court's ruling on damages, that the award of attorney's fees was excessive, and that the trial court did not properly analyze the issue of punitive damages. (R.p.___; *Id.*)

On July 12, 2023, Master-In-Equity issued an Order Recusing Judge Strickland and Remanding the Case back to Richland County Court of Common Pleas. (R.p.___; Order.)

On July 19, 2023, Appellant filed a second Motion to Alter or Amend with respect to the July 12, 2023, Recusal Order. (R.p.___; Motion to Alter or Amend.) Again, Appellant failed to provide a copy to the Court in accordance with Rule 59(e), SCRCP.

On August 30, 2023, Respondent filed a memorandum in opposition to Appellant's Motions to Alter or Amend, arguing that Appellant's Motions were procedurally deficient since Appellant had not copied the trial court on the Motions in accordance with Rule 59(e), SCRCP, that Appellant had abandoned his arguments on the sufficiency of Respondent's evidence by failing to make contemporaneous objections to the same, and that Respondent established by clear and convincing evidence that punitive damages were appropriate. (R.p.___; Memo. in Opp. to Motions to Alter or Amend.)

On December 5, 2023, the trial court issued an Order denying both of Appellant's Motions to Alter or Amend. (R.p.___; Order.) This appeal followed.

ARGUMENT

I. February 19, 2019 and March 20, 2019 Orders

Appellant first appeals the trial court's February 19, 2019 and March 20, 2019 orders denying Appellant's Motion to Amend its Complaint on the grounds that the trial court erred in finding that Respondent would be prejudiced if Appellant was granted leave to amend its Complaint. Because Appellant has only appealed one of the two grounds for denial of the Motion to Amend its Complaint, Appellant is not entitled to appellate review of the orders. Even if it was entitled to appellate review, Appellant has failed to show that the trial court abused its discretion in denying the Motion to Amend Complaint.

a. Appellant is not entitled to appellate review of the trial court's orders denying Appellant's Motion to Amend its Complaint because the trial court provided two grounds for denying Appellant's Motion and Appellant has only appealed one ground for denial.

Where a party fails to argue an issue in its brief, it is not preserved for appellate review. *See e.g. Jinks v. Richland Cnty.,* 355 S.C. 341, 585 S.E.2d 281 (2003) (finding issue on appeal abandoned because the party failed to argue the issue in the body of the

brief); *Langehans v. Smith*, 347 S.C. 348, 554 S.E.2d 681 (Ct. App. 2001) (noting the failure to argue an issue precludes appellate review). "Under the two[-]issue rule, whe[n] a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case." *Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010) (emphasis added).

On February 19, 2019, the trial court issued an order granting Respondent summary judgment on all claims and counterclaims and denying Appellant's Motion to Amend its Complaint. (R.p.___; Order.) On February 28, 2019, Appellant filed a Motion to Reconsider, Alter or Amend the Order arguing that the trial court had erroneously ruled on Respondent's counterclaims without argument, among other issues. (R.p.___; Motion to Reconsider, Alter or Amend.) On March 20, 2019, the trial court issued a revised Order granting summary judgment in Respondent's favor on Appellant's claims, denying summary judgment on the counterclaims without prejudice because the parties did not argue the same, and again denying Appellant's Motion to Amend its Complaint. (R.p.___; Order.) In both Orders, the trial court denied Appellant's Motion to Amend its Complaint on two separate grounds: on the ground that Respondent would be prejudiced if Appellant was allowed to amend its complaint, and on the ground that "[Appellant] is not entitled to leave to amend the Complaint under Rule 15, SCRCP now to abandon all of its original allegation and to plead previously unraised allegations." (R.p.___; Orders.)

Appellant has appealed the trial court's finding of prejudice but has not raised the issue of whether under the circumstances, Appellant was entitled to amend the Complaint under Rule 15, SCRCP, a legal conclusion that does not contemplate prejudice to either party. Initial Brief of Appellant, Statement of the Issues on Appeal. Instead, Appellant has

argued only that the trial court erroneously found that Respondent would be prejudiced if Appellant was granted leave to amend the complaint and made the conclusory argument that the trial court "erroneously failed to freely and liberally grant [Appellant's] Motion to Amend in accordance with long standing South Carolina law" because Respondent would allegedly suffer no prejudice. *Id.* pp. 5-6. Because Appellant has not appealed the issue of whether Appellant was entitled to an amendment which would replace the entire complaint under Rule 15, SCRCP, it is now the law of the case. Therefore, Appellant is not entitled to appellate review of the trial court's orders denying its Motion to Amend the Complaint.

b. The trial court did not err in finding that Appellant was not entitled as a matter of law to amend its Complaint under the circumstances, and Respondent would be prejudiced if Appellant was allowed to amend its Complaint to abandon all original claims and substitute an entirely new cause of action nine months after the initiation of an otherwise baseless lawsuit that was dismissed on summary judgment with consent of Appellant.

If this Court finds that Appellant has the right to appellate review of the trial court's denial of its Motion to Amend, it remains that Appellant is not entitled to amend its Complaint to replace all of its original allegations and cause of action with entirely new facts and causes of action under Rule 15, SCRCP, and that the trial court did not abuse its discretion in finding that Respondent would be prejudiced if Appellant was allowed to amend its Complaint nine months after the filing of the initial action.

i. Standard of Review

A motion to amend is within the sound discretion of the trial judge and the opposing party has the burden of establishing prejudice. *Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry*, 403 S.C. 623, 632, 743 S.E.2d 808, 812 (2013) (internal citation omitted).

"Prejudice occurs when the amendment states a new claim or defense which would require the opposing party to introduce additional or different evidence to prevail in the amended action." *Ball v. Canadian Am. Exp. Co.*, 314 S.C. 272, 275, 442 S.E.2d 620, 622 (Ct. App. 1994).

Per Rule 15(a), SCRCP, "a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party," once 30 days has passed after the filing of a pleading.

However, a trial court has no authority to allow a party to amend a pleading with an "amendment" which substitutes the original complaint with a "wholly unrelated cause of action." *Greenville Cmty. Hotel Corp. v. Alexander Smith, Inc.*, 230 S.C. 239, 95 S.E.2d 262 (1956). "[T]he term 'amendment' connotes alteration, improvement or correction, and negates the destruction or elimination of the original," therefore allowing an "amendment" which does destroys the original is outside the trial court's authority. *Mylin v. Allen-White Pontiac, Inc.*, 281 S.C. 174, 180, 314 S.E.2d 354, 357–58 (Ct. App. 1984).

In *Greenville Cmty. Hotel Corp.*, the plaintiff sued the defendant for breach of warranty regarding allegedly defective carpeting it had purchased from the defendant for one of its hotels in Greenville. *See Greenville Cmty. Hotel Corp. v. Alexander Smith, Inc.*, 230 S.C. 239, 241-243 (1956). The plaintiff then amended its complaint with the trial court's permission to replace the allegations regarding the carpeting to refer to carpeting purchased from the defendant for a different hotel owned by the plaintiff. *Id*. at 243-244. The South Carolina Supreme Court held that the trial court has the power to allow amendments when a plaintiff makes the mistake of "supposing one of his rights has been

invaded in a transaction" and then discovers another or different right was invaded. *Id.* at 245. However, as a matter of law, it cannot allow amendments to replace one lawsuit with another. *Id.*

ii. Discussion

The trial court here both stated that as a matter of law, Appellant was not entitled to an amendment that replaced the entire Complaint and that, even if it was, the trial court found in its discretion that Respondent would be prejudiced if Appellant was allowed to abandon all his previous claims in favor of an entirely new cause of action based on entirely different facts. (R.p.____; Order Granting Summ. J. Against Pl. and Den. P.'s Mot. to Am. Compl., p. 2.) As required under the law, trial court based this ruling upon the evidence, the pleadings, and the parties' arguments. (R.p.____; *Id.*, p. 1.)

As stated above, Appellant did not appeal the trial court's ruling that it did not have the authority to allow an amendment that completely replaced the Complaint, instead focusing solely on the issue of prejudice. Initial Br. of Appellant, p. 3. Here, just as in *Greenville Cmty. Hotel Corp.,* the parties named in the complaint are the same, but the transactions upon which these two complaints are based are wholly unrelated. Appellant requested that the trial court allow it to abandon all original claims in its Complaint and substitute different facts and a different cause of action. (R.p.____; Mot. to Am. Compl.) The original Complaint contained a single cause of action for breach of the Employment Agreement between Appellant and Respondent. (R.p.____; Compl.) The proposed Amended Complaint totally abandons this cause of action and replaces it with allegations sounding in fraud regarding a single $2500.00 "relocation" payment made by Appellant to Respondent. (R.p.____; Mot. to Am. Compl.) The proposed amendment to the

Complaint would not have improved, altered, or corrected the Complaint, but would have destroyed the original Complaint, and the trial court correctly determined that Appellant was not entitled to the amendment. The trial court simply did not have the authority to allow the proposed "amendment."

Further, the trial court ruled correctly on the issue of prejudice. In this appeal, Appellant incorrectly argues that the trial court's decision was in error because in finding that Respondent would be prejudiced, the trial court "failed to show that [Respondent] would lack either notice or an opportunity to refute [Appellant's] claims." Initial Br. of Appellant, p. 3. Appellant argues that because "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 [Appellant's] filing of its Motion to Amend, it cannot be argued that Respondent would not have notice of the amended claims and an opportunity to refute them." *Id.*, p. 3. This is a misstatement of the law.

As stated above, prejudice can occur when an amendment states a new claim or defense that would require the opposing party to introduce additional or different evidence to prevail. *Ball,* 314 S.C. 272, 275 (Ct. App. 1994). To prevail in the original Complaint, Respondent was required to show that he did not breach the non-competition provision in the Employment Agreement. Respondent was able to do so by proving that he did not work within 100 miles of Appellant's location after he left Appellant's employ. (R.p.____; Mem. In Supp of Summ. J.)

In contrast, Appellant's proposed Amended Complaint included three causes of action, all involving the Respondent's intentions towards a $2,500.00 "relocation fee." (R.p.____; Mot. to Am. Compl.) To prevail in this amended action, Respondent would

have needed to produce evidence regarding his acceptance of this alleged relocation advance, his move to Georgia, and the facts surrounding his decision to leave Appellant's employ. Since this is an entirely new theory of the case and entirely separate evidence from that which was required to prevail in the Complaint, the trial court is correct that Respondent would have been prejudiced if Appellant was allowed to file its proposed Amended Complaint.

As Appellant argued before the trial court, before Appellant filed its Motion to Amend, Respondent had been vigorously defending the original Complaint's solitary, unfounded claim for more than nine months. (R.p.____; Tr. of Hr'g, p. 14.) While Appellant argues that the parties had not engaged in any discovery other than written discovery and had not mediated the case, as Respondent pointed out before the trial court, Respondent had tried to schedule both mediation and depositions with Appellant and it was *Appellant* who delayed the discovery and mediation process. (R.p.____; *Id.*) There were also six motions filed, heard, or resolved during that time period. (R.p.___; Tr. of Hr'g held Jan. 30, 2019, p. 8.)

While the trial court stopped short of finding that Appellant's attempt to amend its Complaint at this late stage was in bad faith[1], there is evidence in the record that this is the case. As Respondent argued in his Memorandum in Opposition to Appellant's Motion to Amend the Complaint, Appellant filed its Motion to Amend the Complaint in an

[1] In its original February 19, 2019 Order Granting Summary Judgment, the trial court referred to Plaintiff's effort to replace the original Complaint with an entirely new set of facts and causes of action "a transparent attempt to avoid liability." (R.p.___; Order.) This phrase was missing from the amended Order dated March 20, 2019. (R.p.___; Order.)

ultimately futile attempt to delay liability for filing a baseless lawsuit against Respondent.[2] (R.p.____; Mem. In Opp. to Appellant's Mot. to Am. the Compl., p. 4.) As stated above, Appellant filed a Complaint that it eventually agreed was utterly unfounded (after its hand was forced through Respondent's discovery requests and motions), and Respondent has counterclaimed for frivolous proceedings sanctions. (R.p.____; Answer and Countercl., ¶ 51-54.)

Therefore, it was proper for the trial court to refuse to allow Appellant to amend its Complaint as requested, and the trial court's Order should be upheld by this Court.

II. April 28, 2022 and July 28 2022 Orders

The trial court ruled correctly in its April 28, 2022 and July 28, 2022 Orders granting summary judgment to Respondent on Respondent's counterclaim for Intentional Interference with a Contract and on Respondent's request for frivolous proceedings sanctions against Appellant because Appellant produced no evidence to oppose summary judgment on the counterclaim for Intentional Interference with a Contract and provided no mitigating evidence or argument regarding Respondent's request for frivolous proceedings sanctions against Appellant.

[2] Appellant's counsel admitted the same at the July 11, 2024 hearing on the matter of Appellant's Motion to Stay Execution that "if the Motion to Amend is granted, all of this goes away," referring to orders on appeal.

a. The trial court properly found that there is no genuine issue of material fact which could oppose the conclusion that Appellant intentionally interfered with Respondent's employment contract because Respondent produced argument and evidence sufficient to establish the elements of the same and Appellant produced no argument or evidence in opposition.

i. Standard of review.

"The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). "When a motion for summary judgment is made and supported as provided [Rule 56, SCRCP], an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him." Rule 56(e), SCRCP. (emphasis added)

When reviewing a summary judgment motion, the appellate court applies the same standard which governs the circuit court under Rule 56(c), SCRCP: summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). In determining whether a triable issue of fact exists, the evidence and all factual inferences drawn from it must be viewed in a light most favorable to the nonmoving party. *Sauner v. Pub. Serv. Auth.*, 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003). The moving party has the initial burden of demonstrating the absence of a genuine issue of material fact. *Baughman v. American Telephone & Telegraph Co*., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). "Once the moving party carries its initial burden, the opposing party must do more than rest upon the mere allegations or denials of his

pleadings, but must, by affidavit or otherwise, set forth specific facts to show that there is a genuine issue for trial." *Lord v. D & J Enterprises, Inc.*, 407 S.C. 544, 553, 757 S.E.2d 695, 699 (2014) (citing *Baughman*, 306 S.C. at 115, 410 S.E.2d at 545; Rule 56(e), SCRCP).

ii. Discussion

As recognized by the trial court, Respondent is entitled to summary judgment on his counterclaim for Intentional Interference with a Contract because he produced sufficient evidence to establish the elements of his claim and Appellant produced no evidence in opposition whatsoever.

i. Respondent produced evidence sufficient to establish that the elements of his claim for Intentional Interference with Contractual Relationships and Appellant produced no evidence in opposition, therefore Respondent is entitled to summary judgment in his favor.

"It is well settled that interference by a third party with contractual relationships, without justification, is a violation of a primary legal right." *Keels v. Powell*, 207 S.C. 97, 100, 34 S.E.2d 482, 484 (1945). Intentional interference with a contractual relationship is found when 1) a contract exists; 2) the third-party wrongdoer has knowledge of the existing contract; 3) the wrongdoer intentionally induces a party to the contract to breach the contract; 4) the wrongdoer has no justification in inducing said breach; and 5) a party to the contract is damaged by the induced breach. *Kinard v. Crosby*, 315 S.C. 237, 240, 433 S.E.2d 835, 837 (1993).

It is undisputed that an employment contract existed between Respondent and Premiere and that Appellant had knowledge of the contract. (R.pp.___; Compl. ¶ 4; Ans. and Countercl. ¶ 45.) Even Respondent and Premiere did not have a written employment

contract, it is established in South Carolina law that "[a]ll at-will employment relationships, whether they are memorialized in a written contract stipulating the at-will nature of the employment or orally formed simply out of circumstance, are contractual relationships. *Hall v. UBS Fin. Servs*., 435 S.C. 75, 85, 866 S.E.2d 337, 341 (2021). "[W]here a third party induces an employer to discharge an employee who is working under a contract terminable at will, but which employment would have continued indefinitely except for such interference, a cause of action arises in favor of the employee against the third person." *Id.* at 88-89, 866 S.E.2d at 343 (quoting *Todd v. South Carolina Farm Bureau Mut. Ins. Co.*, 283 S.C. 155, 163-64 321 S.E.2d 602, 607 (1985)). Premiere has openly stated in discovery and in court that the sole reason for Respondent's termination was the cease-and-desist letter from Appellant. (R.pp.___; Mem. in Supp. of Mot. for Summ. J, Ex. 1.) Therefore, contrary to Appellant's assertion in its Initial Brief, Respondent has indeed proffered sufficient evidence that Appellant's actions triggered the breach of the underlying at-will contract between Respondent and Premiere.

Contrary to Appellant's assertion that Respondent provided no evidence of the third and fourth elements of Intentional Interference with a Contract, Respondent did produce such evidence in the form of Appellant's delivery of a cease-and-desist letter to Premiere and the commencement of this litigation by Appellant shows that it had knowledge of the contract between Premiere and Respondent and approved the actions taken by its attorneys. (R.pp.___; *See* Compl. ¶¶ 1-6; Ans. and Countercl. ¶ 47.) Therefore, the elements of contract existence and wrongdoer knowledge are satisfied.

It is undisputed that when Appellant induced Premiere to breach its employment contract with Respondent, it did so intentionally. Appellant sent a letter to Premiere on

November 6, 2017, specifically demanding that Premiere refuse to allow Respondent to continue to work for Premiere and threatening legal action against Premiere if it did not comply.[3] (R.pp.___; Mem. in Supp. of Mot. for Summ. J, Ex. 2.)

Appellant has never provided any justification for why it procured the breach of Respondent's employment contract with Premiere. It is axiomatic that when a third party falsifies information to procure a breach of contract, that third party has intentionally interfered with said contract. *See Todd*, 287 S.C. at 193, 336 S.E.2d at 473 (1985). In *Todd,* a third party fabricated the existence of an informant to support the accusation that its former employee had leaked confidential information, and this was sufficient to validate a jury finding that the third party intended to cause a breach of the agent's contract with his current employer. *Id*. at 193, 336 S.E.2d at 473. Here, Appellant intentionally falsified information to procure the breach of Respondent's contract with Premiere; therefore, this element of intentional interference with a contractual relationship is met.

The letter Appellant sent to Premiere states plainly that Respondent was in violation of his employment contract with Appellant because his work was in "direct violation of the terms of the aforementioned Restrictive Covenant Agreement [which requires that Respondent shall not directly or indirectly work for any business similar to [Appellant] for a period of one year and within 100 miles of [Appellant's] location as of

[3] Elsewhere in its brief, Appellant argues that "It is undisputed that [Appellant], itself, did not send the November 6, 2017 letter to Premiere Roofing and there is no testimony as to whether [Appellant] even knew the letter had been sent." Appellant's Initial Brief, p. 12. This is disingenuous, at best. The letter itself states that it was sent by Appellant's Georgia counsel on Appellant's behalf. (R.pp.____; Mem. in Supp. of Mot. for Summ. J, Ex. 2.) Further, Appellant's counsel stated at the January 30, 2019 hearing that "My understanding is the Atlanta law firm was told [that there was an office in Augusta, GA at the time Respondent was employed] and the letter that they sent to [Respondent's] employer was based on that information, as well." (R.p.____; Tr. of Hr'g p. 11:1-8.)

April 21, 2017.]" (R.pp.___; Mem. in Supp. of Mot. for Summ. J, Ex. 2.) This was wholly false. Appellant admitted in discovery that Appellant did not have an Augusta or Charlotte, North Carolina location on April 21, 2017. (R.pp.___; Mem. in Supp. of Mot. for Summ. J, Ex. 3.) Appellant also admitted in discovery that Respondent had never worked within 100 miles of Premiere's location in Columbia, South Carolina. (R.pp.___; Mem. in Supp. of Mot. for Summ. J, Ex. 5.) Simply put, Appellant intentionally falsified its claim that Respondent was in breach of his employment agreement at the time it directed its counsel to send a letter to Premiere regarding Respondent.

Finally, it is undisputed that Respondent has suffered damages as a result of the breach of contract induced by Appellant. Respondent has testified via affidavit that he has lost wages, incurred medical bills that are directly connected to his loss of employment with Premiere, and incurred attorney's fees and costs. ((R.pp.___; Mem. in Supp. of Mot. for Summ. J, Ex. 6.) Appellant has proffered not a shred of evidence to counter Respondent's affidavit. Therefore, there is no dispute that Respondent has been damaged by Appellant's intentional interference with his contractual relationship with Premiere.

Because there exists no issue of material fact to contest the conclusion that Appellant intentionally interfered with Respondent's contractual relationship with Premiere, Appellant is liable to Respondent for its intentional interference with Respondent's employment contract. As such, Respondent is entitled to actual, consequential, and punitive damages as well as attorney's fees and costs associated with Appellant's unlawful interference with his contractual relationship with Premiere pursuant to the contract itself. (R.p.__; Mem. in Supp. of Mot. for Summ. J., Ex. 1, p. 6.)

ii. Appellant is not entitled to further discovery on Respondent's cause of action for Intentional Interference with Contractual Relationships.

Appellant argues that further discovery is needed to support the conclusion that Appellant's "procurement of the breach [of Respondent's contract] if any, was intentional or that it was not the good faith exercise of a legal right." Respectfully, Appellant has missed its opportunity to request further discovery on this issue and is not entitled to the same.

If Appellant wished for further opportunities for discovery before summary judgment was proper, it must set forth in an affidavit "that [it] cannot for reasons stated present by affidavit facts essential to justify his opposition" for the trial court to be able to order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had." Rule 56(f), SCRCP. Appellant submitted no affidavits or any evidence of any kind to oppose summary judgment, and certainly did not submit an affidavit which would indicate to the trial court that further discovery was necessary. Further, Appellant made no arguments and presented no alleged facts which could lead to the conclusion that further discovery would be likely to be fruitful. Therefore, Appellant is not entitled to further discovery on this matter and the matter must be decided based upon what was before the trial court at the time of the summary judgment hearing.

If Appellant wishes to argue that its actions were justified, Appellant has the burden to provide evidence that its act was justified. It has not done so. Appellant asserted several defenses in its Reply to Respondent's Counterclaims, and "good faith exercise of a legal right" was not one of them. (R.p.___; Reply, p. 5-6.) At no point has Appellant or its counsel ever described in any way how its acts could have been justified and even in

its initial brief, Appellant points to the absence of evidence of any defense against this cause of action. (Appellant's Initial Brief, p. 7.)

Further, even if the burden to provide facts to establish the absence of justification was on Respondent, he has met this burden. Respondent produced a letter sent by Appellant to Respondent's employer alleging that Respondent was in violation of his non-compete and clearly states that the basis for the alleged violation is that Respondent was working within 100 miles from the present location of Appellant's businesses at the time he signed the agreement. (R.pp.___; Mem. in Supp. of Mot. for Summ. J, Ex. 2.) This is plainly false, as Irmo, South Carolina, is 193 miles from the closest location. The reasonable conclusion is that there is no justification for Appellant's actions. If there had been justification for Appellant's act in inducing Respondent's employer to terminate his employment, the time to produce evidence regarding the same was in discovery or by affidavit at the summary judgment stage.

It would be absurd if an aggrieved party was required to establish not only the facts needed to prove its own case, but also the absence of facts which could be theoretically used to defend the interfering party. It is the Appellant's burden to set forth its defenses, and it did not even attempt to meet this burden. It cannot now complain that the trial court erroneously found for Respondent. The trial court found properly for Respondent and this Court should uphold its decision and find that there is no genuine issue of material fact which would oppose the conclusion that Appellant intentionally interfered with Respondent's employment contract with Premiere Roofing and is therefore liable for damages arising from the same.

b. The trial court properly found that there is no genuine issue of material fact which could oppose the conclusion that Appellant had violated the Act in procuring the initiation of a frivolous lawsuit against Respondent by lying to its counsel about the present location of its businesses

As recognized by the trial court, Respondent is entitled to a ruling sanctioning Appellant for Violation of Act because the matter of Appellant's violation of the Act was ripe when the trial court considered it and because Respondent produced sufficient evidence to establish Appellant's violation while Appellant produced no mitigating evidence or argument in opposition whatsoever, instead admitting that Appellant lied to its attorneys to procure a frivolous action against Respondent in breach of the Act.

i. Respondent's motion for sanctions for violation of the Act against Appellant was ripe when the trial court considered it.

Appellant accurately notes that the issue of sanctions under the Act is not ripe until there is a disposition on the merits of the frivolous claim and that"[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, the court shall proceed to determine if the claim or defense was frivolous." S.C. Code Ann. § 15-36-10(C)(1) (emphasis added). The Act goes on to provide:

> "[a] person is entitled to notice and an opportunity to respond before the imposition of sanctions pursuant to the provisions of this section. A court or party proposing a sanction pursuant to this section shall notify the court and all parties of the conduct constituting a violation of the provisions of this section and explain the basis for the potential sanction imposed. Upon notification, the attorney, party, or pro se litigant who allegedly violated subsection (A)(4) has thirty days to respond to the allegations as that person considers appropriate including, but not limited to, by filing a motion to withdraw the pleading, motion, document, or argument or by offering an explanation of mitigation."

S.C. Code Ann. § 15-36-10(D).

Put another way, the Act requires the following conditions to occur for sanctions to be imposed for violation of the Act: 1) the underlying frivolous claim must be concluded in the defendant's favor, 2) the aggrieved party must move the court for sanctions and must notify the court and all parties of the conduct constituting the violation, and 3) the defending party has thirty days to respond to the allegations after being notified of the same. *Id.*

Here, every part of the Act's requirements were met prior to consideration of the issue by the trial court:

1) On October 22, 2019, the underlying frivolous claim was concluded in Respondent's favor when the trial court denied Appellant's Revised Motion to Reconsider the trial court's order granting summary judgment to Respondent on its claim for intentional interference with a contract. (R.p.___; Order.)
2) On May 29, 2019, Respondent moved the trial court to consider the issue of sanctions against Appellant for violation of the South Carolina Frivolous Proceedings Sanctions Act, describing the conduct which constitutes a violation of the Act and referencing Respondent's Memorandum in Support of Damages Award for the same, filed May 24, 2019. (R.p.___; Renewed Notice of Mot. and Mot. for Summ. J.)
3) On April 28, 2022, almost three years after the frivolous claim concluded[4], the trial court considered the issue of frivolous proceedings sanctions. (R.p.___; Tr. of Hearing.)

[4] This case was interrupted in 2019 by Appellant's first appeal. *See Best Choice Roofing & Home Improvement, Inc. v. Tyler Woods,* Appellate Case No, 2019-001811.

Therefore, Respondent's Motion for Summary Judgment on his n was first considered by the trial court on April 4, 2022, a little less than three years after Appellant was put on notice of Respondent's motion for sanctions.[5] Respondent filed a Memorandum in Support of its Motion for Summary Judgment on April 4, 2022, again setting forth the grounds for its motion and revising the damages information to include updated attorney fees. (R.p.___; Mem. in Supp. of Mot. for Summ. J.) Again, although almost three years had passed after Appellant was notified of Respondent's intention to pursue sanctions under the Act, providing ample notice and opportunity to respond to Respondent's request for sanctions, Appellant utterly failed to produce any argument, evidence, or any other response to Respondent's request.

Appellant's arguments during the April 28, 2022 hearing focused solely on whether Appellant's counsel was liable for filing a frivolous claim. Appellant's counsel argued that "[w]hat was represented to me as a reasonable attorney when I took on this case, is that [Appellant] was operating out of Augusta, Georgia, which at that time was within that 100-mile range of Irmo where [Respondent] was employed," and that "**granted, I was lied to, Your Honor, the location in Augusta ended up not being a current location**," "So, I think any attorney in my shoes would look at those facts and feel comfortable bringing this claim not as a basis to harass anyone or for any frivolous purpose." (R.pp.___; Tr. of Hearing, pp. 7-9.) By arguing that Appellant lied to counsel to procure the initiation of the

[5] Respondent filed a Memorandum in Support of its Motion for Summary Judgment on April 4, 2022, again setting forth the grounds for its motion and updating the damages information to include updated attorney fees. (R.p.____; Mem. in Supp. of Motion for Summ. J.)

instant lawsuit, Appellant did not just fail to defend itself, Appellant conceded that it procured the initiation of a frivolous proceeding in violation of the Act.

Appellant produced no argument that could lead the trial court to find that it had not lied to its attorney to procure the instant lawsuit. The trial court was persuaded by Appellant's admission that it lied to its attorney to procure a frivolous lawsuit and found that Appellant should be sanctioned for violating the Act.

In its Initial Brief, Appellant cites three cases to argue that the trial court prematurely considered sanctions for violation of the Act. Initial Brief of Appellant, pp. 7-8. None of the three are availing to Appellant.

First, Appellant cites *Holmes v. E. Cooper Community Hosp., Inc*., 408 S.C. 138, 758 S.E.2d 483 (2014) ("*Holmes I*"). In *Holmes I*, as here, the issue of the plaintiff's violation of the Act was first brought up to the trial court by way of a counterclaim. *See Holmes v. E. Cooper Comm. Hosp., Inc.,* Case No. 2010-CP-10-03410, Record on Appeal p. 31. As here, after summary judgment was entered in the defendant's favor on the plaintiff's claims on July 29, 2011, the prevailing defendant moved the trial court to consider the previously notified frivolous proceedings sanctions issue. *Id.,* Corrected Appendix pp. 55-72. Further, as here, the plaintiff was represented by counsel at the time she filed her frivolous lawsuit, and the plaintiff alone was sanctioned for violating the Act, not her counsel. *Id.*

Appellant also cites *Carson v. Emergency MD, LLC*, a federal district court case. In *Carson*, a federal court applied the federal standard for a 12(b)(6) motion to dismiss to the defendant's counterclaim for violation of the Act, finding that it was properly a post-trial matter, and dismissing it without prejudice. *Carson*, C.A. No. 6:20-1946-HMH, 2020

U.S. Dist. LEXIS 205627, at *9 (D.S.C. Nov. 3, 2020). Presumably the lack of prejudice attached is because the federal court recognized that the matter of sanctions still may need to be adjudicated after the case in chief is concluded. Regardless, the case is unavailing to Appellant because here, the issue of sanctions was not considered until the underlying claim had been dismissed.

Indeed, in a recent case referencing *Carson,* the federal court dismissed a claim for violation of the Act without prejudice, plainly stating that "[i]f needed, defendants will be permitted to raise their . . . claim [for violation of the Act] at the close of this case, assuming the statute is applicable and the prerequisites of § 15-36-10(C)(1) have been met." *Walker-Davis v. Unique Caring Found., Inc.,* 9:23-cv-00156-DCN, 2023 U.S. Dist. LEXIS 71814, at *7 (D.S.C. Apr. 24, 2023).

Finally, Appellant cites *Barnhill, et al. v. Swilley, et al.*, to illustrate its argument that a counterclaim based on the Act is not ripe, which is a case that has not concluded as of the drafting of this brief. In *Barnhill*, while the trial court dismissed a counterclaim for violation of the Act on a motion for summary judgment, the underlying claims have still not been adjudicated. *Barnhill*, No 2014-CP-26-08367, p. 5 (Horry Cty. Cir. Ct. Mar. 21, 2016). Therefore, it is not possible under the Act for frivolous proceeding sanctions to be analyzed by that court in *Barnhill*, since the issue is not yet ripe to be considered.

Because all of the Act's requirements were met when the trial court considered whether Appellant violated the South Carolina Frivolous Civil Proceedings Sanctions Act, this matter was ripe to be considered by the trial court and Appellant is not entitled to judgment in its favor.

ii. Respondent met his burden with regard to Appellant's violation of the South Carolina Frivolous Proceedings Sanctions Act.

Appellant next complains that Respondent did not present any evidence to the trial court which would show that any of Appellant's counsel's actions were unreasonable or in violation of S.C. Code Ann. § 15-36-10(A)(4)(a). This argument is unavailing to Appellant because Appellant makes no argument whatsoever, and has never made any argument at any stage of the proceedings that Appellant's own actions were reasonable under the circumstances.

Sanctions for filing a frivolous pleading against a party 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." S.C. Code Ann. § 15-36-10(A)(4)(a)(ii) (emphasis added). Additionally, sanctions may be administered against a party 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." *Id.* at (A)(4)(a)(iii). The decision whether to impose such sanctions is a decision in equity, not in law. *Holmes v. Haynsworth, Sinkler & Boyd, P.A.*, 408 S.C. 620, 641, 760 S.E.2d 399, 410 (2014) ("*Holmes II*"). Sanctions under § 15-36-10 are appropriate when a party causes an attorney to file a "non-meritorious and baseless lawsuit" and fails to develop evidence to support its claim. *See Holmes II*, 408 S.C at 643, 760 S.E.2d at 411. The 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 *Holmes II,* the Court upheld sanctions against a party when she filed court documents "without reasonable basis" and without "information and belief [that] there [was] good ground to

support" the claims. *Holmes II*, 408 S.C at 644-45, 760 S.E.2d at 412 (quoting SCRCP Rule 11(a)).

The South Carolina Supreme Court has explicitly held that "sanctions may be awarded under section 15-36-10 regardless of whether or not the case has been tried to verdict so long as the trial court finds by a preponderance of the evidence that the party should be sanctioned under the terms of the FCPSA." *Holmes I*, 408 S.C. 138, 153 (emphasis added). "A 'preponderance of the evidence' stated in simple language is that evidence which convinces as to its truth." *Lee v. Lee*, 237 S.C. 532, 538 (1961).

In the instant case, the trial court found that the evidence was in favor of a finding of sanctions for violation of the Act beyond a preponderance of the evidence, finding that there was no genuine issue of material fact which could oppose the conclusion that Appellant violated the Act. This conclusion is a much stronger conclusion than a preponderance finding.

As Appellant has openly admitted, there is no good ground to support Appellant's claim for breach of contract, and no reasonable attorney would believe that under the facts of the case, Appellant's claim for breach of contract was warranted at the time it was filed. Appellant's Initial Brief, p. 8. The basis of the frivolous claim asserted in the Complaint is the lie that that Respondent worked within 100 miles of Appellant's location which existed at the time that Respondent signed his employment contract. (R.p.__; Compl. ¶ 4.) Yet Appellant acknowledged as early as July 11, 2018, that Respondent worked in Irmo, South Carolina for Premiere. (R.pp.___; Ans. and Countercl. ¶ 45, Pl's Reply to Countercl. ¶ 23.)

A reasonable attorney would inquire whether Appellant had a location within 100 miles of Premiere at the time Respondent signed his employment contract (a fundamental element of this claim) before filing suit. Indeed, Appellant's counsel conceded this point at the April 28, 2022 hearing, explaining that "what was represented to me as a reasonable attorney when I took on this case is that [Appellant] was operating out of Augusta, Georgia which at that time was within the 100 mile range of Irmo where [Respondent] was employed . . . [t]hat was the basis of bringing this action." (R.p.___; Tr. of Hr'g 8:4-8.) Appellant's counsel further stated that he "[g]oogled the address . . . and verified it was within 100 miles and that's how I proceeded, Your Honor. So I think any attorney in my shoes would look at those facts and feel comfortable bringing this claim not as a basis to harass anyone or for any frivolous purpose." (R.p.___; Tr. of Hr'g 9:12-18.)

As Appellant argued at the hearing, there was no basis rooted in law or fact for Appellant's lawsuit against Respondent and a reasonable attorney would not have filed the case if he had known it was based on a lie. Therefore, the trial court rightly granted summary judgment for Respondent on his petition for violation of S.C. Code Ann. § 15-36-10.

Appellant's conclusory argument here is that "it was without question reasonable for [Appellant's] attorney to rely on the information disclosed to him regarding the 'present location[s] of [Appellant's] businesses' and to confirm same from the results of an internet search." Appellant's Initial Brief, p. 8. To the extent that Appellant's argument here was offered as "an explanation of mitigation," it did not convince the trial court and should not convince this Honorable Court.

Appellant's argument is essentially that Appellant lied to its attorney to procure the lawsuit. However, Appellant does not explain how this relieves Appellant from liability under the Act. This is, of course, because it does not. The Act provides specifically for sanctions to be assessed against a party for violating the Act. S.C. Code Ann. § 15-36-10(G)(a). Indeed, Respondent has filed this cause of action against Appellant, not its attorney. It would be an absurd result if a party could procure a frivolous lawsuit by lying to its attorney, and then escape liability for the same by the attorney making a self-serving argument that the party lied to the attorney.

As discussed above, Appellant had over four years to produce a scintilla of evidence as to the reasonableness of its actions in bringing the instant lawsuit against Respondent and did not do so. Appellant's actions in filing a frivolous lawsuit are on their face unreasonable as they are not based in fact or law. Appellant has never produced any evidence or argument to contradict this conclusion.

III. March 27, 2023 and December 6, 2023 Orders

The trial court did not abuse its discretion in its March 27, 2023 and December 6, 2023 Orders awarding damages to Respondent in the form of actual damages and punitive damages for Intentional Interference with Respondent's employment contract and in the form of attorney's fees and costs incurred by Respondent to defend against Appellant's frivolous lawsuit against him.

a. The trial court did not abuse its discretion in awarding damages to Respondent to compensate for Appellant's intentional interference with Respondent's employment contract when Respondent produced evidence to support each category of damages and Appellant did not make any contemporaneous objection to any of Respondent's evidence or provide any conflicting evidence.

Appellant argues that the Master-In-Equity, in its Orders dated March 27, 2023, and the trial court, in its Order dated December 6, 2023 denying Appellant's Motion to Alter or Amend the March 27, 2023 Order "erroneously found numerous findings of fact and speculated as to [Appellant's] damages." (R.p.___; Order.) Appellant has both applied the incorrect standard of review to the issue, and its alleged "erroneous and speculative" findings do not provide any basis for this Court to find that the Master-In-Equity abused his discretion in determining Respondent's damages as a matter of law. Therefore, this Court should affirm these Orders.

i. Standard of review of order on damages

A trial judge "has considerable discretion regarding the amount of damages," and it is the task of the trial judge to weigh the credibility of the evidence. *Solley v. Navy Fed. Credit Union, Inc.*, 397 S.C. 192, 203, 723 S.E.2d 597, 602 (Ct. App. 2012) (citing *Austin v. Specialty Transp. Servs, Inc.*, 358 S.C. 298, 310-11, 594 S.E.2d 867, 873 (Ct. App. 2004)). Because "[t]he effect and influence of testimony must depend on the minds of those who are to be governed by it," it is up to the judge in a bench trial to determine the credibility and weight of witness testimony. *State v. Wardlaw*, 170 S.C. 116, 120, 169 S.E. 840, 841 (1933); *see Solley*, 397 S.C. at 203, 723 S.E.2d at 602. Appellate review of a damages award is thus "limited to the correction of errors of law… and [the appellate court's] task in reviewing a damages award is not to weigh the evidence, but to determine if there is **any evidence** to support the damages award. *Solley*, 397 S.C. at 203, 723 S.E. at 602 (emphasis added).

ii. Discussion

There is ample evidence in the court's record to support the damages award at issue here. The matter of damages was considered by the Master-In-Equity on January

25, 2023. Appellant presented no witnesses nor evidence. Respondent, on the other hand, personally testified and provided eight exhibits to the Master to support his claim for damages. Appellant failed to make contemporaneous objections to any of "Findings" it now takes issue with on appeal, therefore Appellant has not preserved any arguments against the sufficiency of Respondent's evidence for appellate review.

Appellant appears to take issue with seven "Erroneous and Speculative Findings" made by the Master-in-Equity in his Order. Importantly, Appellant's "erroneous and speculative findings" are all regarding evidence to which Appellant did not object at trial. Objections not raised in the trial court cannot be relied on in the appellate court. *Wilson v. Clary,* 212 S.C. 250, 47 S.E.2d 618 (1948). The duty is on the litigant to make a timely objection in order to preserve the right of review. *Parks v. Morris Homes Corp.,* 245 S.C. 461, 141 S.E.2d 129 (1965). A contemporaneous objection is required to properly preserve an error for appellate review. *State v. Hoffman,* 312 S.C. 386, 440 S.E.2d 869 (1994). The failure to make an objection at the time evidence is offered constitutes a waiver of the right to object.)). *See also Ball v. Canadian Am. Express Co.,* 314 S.C. 272, 442 S.E.2d 620 (Ct. App. 1994)(failure to object at trial waives right to object on appeal). Since Appellant's counsel made no objections to any of the evidence regarding which he now complains in his brief, he has waived those objections.

Although Appellant failed to preserve his evidentiary arguments for appellate review, in an abundance of caution, Respondent will address each of Appellant's "Erroneous and Speculative Findings" in turn.

First, Appellant complains that the Master-In-Equity erroneously described Appellant's counsel's behavior during a January 30, 2019 hearing in the facts section of

the Order and that "record of the January 30, 2019 hearing does not reflect as such". (Appellant's Initial Brief, p. 5) Appellant makes no mention of why this is relevant to Respondent's damages or how specifically this was in error.

Furthermore, the statement "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" is reflected in the January 30, 2019, transcript. (R.p.___; Pl.'s Mot. to Alt. or Am. of April 3, 2023, ¶ 3) The transcript reflects the following:

> MR. JOHNSON: Your Honor, this case was originally filed as a straight breach of contract of an employment agreement based on a liquidated damages provision, and this case was referred to me through one of my classmates in law school who was in Atlanta.
>
> Some bad information was passed to him and that was conveyed to me, and the complaint was drafted on those bad facts, Your Honor.
>
> Through discovery we have learned that those facts have changed . . .

(R..p.___; Tr. of Hr'g held Jan. 30, 2019, p. 4.) The record objectively reflects the Court's statement that Appellant's counsel learned that the Complaint had no merit in the discovery process.

Regardless of whether this was correct or not, Appellant's relationship with its attorney is not relevant to determining what damages Respondent suffered due to Appellant's actions in inducing Respondent's employer to terminate his employment (for which task Appellant used an attorney licensed in Georgia, not Appellant's current South Carolina counsel.) (R.p.___; Mem. in Supp. of Mot. for Summ. J., Ex. 2.)

Second, Appellant complains that Respondent presented "no evidence" to support the Master's finding that Respondent would have made $80,000.00 a year at Premiere

Roofing had Appellant not induced Premiere to terminate his employment. This assertion is puzzling because Respondent provided evidence in the form of sworn testimony at the damages hearing that his compensation at Premiere "was tracking $80,000 [yearly] there, that was with my commissions and sales. But I was making $2,500 a month in salary." (R.p.___; Tr. p. 28:1-11.) Appellant has waived any argument as to this evidence's competency or speculative nature because Appellant's counsel did not make a contemporaneous objection to this testimony. Therefore, Appellant's second complaint fails.

Third, Appellant complains broadly that Respondent's testimony about his damages is "wholly unsupported by any evidence, purely speculative and rampant conjecture." Appellant's Initial Brief, p. 9. However, again, Appellant did not contemporaneously object to Respondent's testimony on his damages. Respondent testified that:

> My livelihood was taken away from me. It was a situation where, not only did this letter get me fired, but Irmo is a small town, just as Columbia is. There's, there's not a hundred different roofing companies, there's a handful. They all know each other. They all go to conferences together. So when this black cloud was put over me, everybody was aware of what was going on. So me working for another roofing company really wasn't an option. I reached out to three different ones. One of them straight up told me, it's not gonna happen. Two just didn't return my phone call. With that being said, within the industry, just using Premiere as an example, when I was hired there, he made, Mr. Robinson, made one call to the supply house that I was using when I was working in Tennessee it was a 30-second phone call and I was hired because it was simply the amount of work that I was – that—what I was actually doing, it was very quick for them to say, yeah, this guy is somebody you want to hire. So based on what I was able to do, it shouldn't have been an issue to get a job. It, it was based solely on this bad reputation now that I had, and the fear that some of these other companies may have had with being hit with the same letter.
>
> (R.p.___; Tr. of Hearing, pp. 34:17-25-35:1-22.)

Appellant did not object to this testimony and has therefore waived any objection to the evidence on the basis of speculation or conjecture. Since there is evidence in the record that supports the Master's damages findings that Respondent suffered reputational harm, health problems, and lost wages, and this Court's review is limited to the "any evidence" standard of review, this Court should uphold the damages order.

Fourth, Appellant argues that "there could be no evidence to support the premise" that Respondent has lost wages due to Appellant's actions "other than speculation." Initial Brief of Appellant, p. 10. Respondent testified in detail as set forth above that due to Appellant's actions in intentionally interfering with his employment contract, his livelihood was taken away from him. (R.p.___; Tr. of Hearing, pp. 34:17-25-35:1-22.) Respondent not only provided testimony that Appellant's acts harmed him, but he also provided a basis for the conclusion that he suffered lost wages due to Appellant's acts specifically: in the roofing industry, his name was under a "black cloud." *Id.* Since Appellant again did not object to this testimony, and since Respondent provided a basis for the conclusion that he had lost wages due to Appellant's actions, this "finding" does not require reversal of the damages order.

Fifth and sixth, Appellant complains that no medical opinion or medical records were submitted or provided to support Respondent's contention that Appellant's acts caused him health problems and complains that Respondent "did not present any evidence to support the basis for his health problems or the approximate $14,000 in medical expenses. Initial Brief of App., p. 10. Respondent testified that he suffered medical harm due to the experience of being terminated unjustly from his employment. (R.p.___; Tr. of Hearing, p. 34:6-13.)

Again, Appellant made no specific contemporaneous objection to the same on the basis of conjecture or speculation. Appellant did make a contemporaneous hearsay objection to Respondent's testimony on his medical bills as follows:

> Q: And how much were your medical bills, related to getting treatment?
>
> OBJECTION BY MR. JOHNSON:
> MR. JOHNSON: Objection, Your Honor.
>
> THE COURT: What grounds?
>
> MR. JOHNSON: They're—I mean, this is hearsay. There's no documentary evidence of any medical bills in this entire case.
>
> THE COURT: Okay. Ms. Shutt?
>
> MS. SHUTT: Your Honor, I mean, I – as I read the case law, he's allowed to testify as to the medical bills that he incurred related to his illness. We did do some discovery, we were granted summary judgment, so, I mean, this is part of his damages.
>
> THE COURT: Okay Objection overruled.

(R.p.___; Tr. of Hr'g, pp. 36:23-25-37:1-13.)

Appellant did not appeal the court's determination on its hearsay objection. Now, Appellant appears to be making an argument that Respondent's testimonial evidence is speculative, but without making a specific contemporaneous objection to the same, Appellant has not preserved the matter for appellate review.

Finally, Appellant complains that the trial court's order on damages is clearly erroneous because "the [trial court's] entire rationale and analysis is based on speculation and conjecture" because it contends that Respondent did not produce evidence of his lost wages. Again, Appellant did not make a contemporaneous objection to the evidence presented at the hearing on wages, therefore it cannot now complain that the trial court's analysis of unobjected-to facts is erroneous. Respondent indeed presented evidence of

lost wages. Respondent testified that he was to receive commissions at Premiere Roofing as a part of his compensation structure. (R.p.___; Tr. of Hr'g 28:5-11.) Respondent also presented evidence of his previous earning potential in the form of testimony, to which Appellant did not object, stating that prior to working for Respondent, "the rate I was paid at was anywhere from 70 to $110,000." (R.p.___; Tr. of Hr'g, 18:9-13). Since Appellant did not object to any of this testimony, it is not entitled to appellate review of the trial court's reliance on the evidence presented by Respondent to make its ruling.

b. The trial court did not abuse its discretion in awarding attorney's fees to Respondent for violation of the Act even though Respondent allegedly incurred more attorney fees than Appellant.

On April 28, 2022, the trial court issued sanctions against Appellant for violation of the Act in the form of attorney fees and costs. (R.p.___; Order.) The matter of the amount of said sanctions was referred to the Master-In-Equity for Richland County by express request of the parties specifically so that Respondent could be questioned on the stand per Appellant's request. (R.p.___; Tr. of Hr'g, 12:9-14.)

i. Standard of Review

This Court analyzes the amount of sanctions to be awarded for violation of the Act under the abuse of discretion standard. *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). Here, the Master-in-Equity did not abuse his discretion in awarding the amount of $77,253.73 in attorney's fees and costs as sanctions for violation of the Act.

ii. Discussion

On March 27, 2023, the Master-In-Equity heard testimony and evaluated evidence and ordered Appellant to pay $77,253.73 in attorney's fees and costs for bringing and

maintaining a frivolous lawsuit against Respondent in violation of the South Carolina Frivolous Proceedings Sanctions Act. The basis for this award was the testimony of Respondent, who testified that he had incurred "roughly $76,000.00" in attorney fees, which was supported by the attorney fee affidavit Respondent entered into evidence. (R.p.___; Tr. of H'rg, Ex. 7.) Appellant entered no objection to this testimony or to the attorney fee affidavit. (R.p.___; *Id.* 46:20.) Later, during closing arguments, Appellant's counsel stated, "I'm not contesting the affidavit or the time, I'm just saying that the matter at hand, there's no way it should have gotten to this point, Your Honor. It's not reasonable in light of the case." (R.p.___; *Id.* 91:15-20.)

Appellant's sole argument in its Initial Brief against the award of attorney's fees and costs in this case is that the award is "not reasonable in consideration of the nature, extent, and difficulty of the legal services rendered in [the] matter." Appellant's Initial Brief, p. 10. Assuming that Appellant intended to make an argument that the Master abused his discretion in awarding fees, Appellant fails to describe how the fees awarded are unreasonable, instead simply stating that Appellant's counsel "did not generate a third of [Respondent's] fees" in the case. *Id.* p. 11. Without an explanation of how Appellant believes the trial court abused its discretion on the matter of the amount of sanctions, Appellant has abandoned this argument.

c. The trial court did not abuse its discretion in determining Respondent met his burden that punitive damages are appropriate because it is uncontested that Appellant intentionally interfered in Respondent's employment contract and that Appellant has the ability to pay an award of punitive damages, and the punitive damages award is reasonably related to the harm caused by Appellant.

Finally, Appellant argues that the trial court erred in its finding of clear and convincing evidence of the appropriateness of punitive damages. However, Appellant

waived its objection to Respondent's request for punitive damages by failing to make a contemporaneous objection to the same, and Respondent produced clear and convincing evidence to justify the award of punitive damages.

i. Standard of Review

As stated previously, the Court has considerable discretion in determining the amount of damages, and in this matter, the weight and credibility of the evidence is for the Court to determine. *Solley*, 397 S.C. at 203, 723 S.E.2d at 602; *Wardlaw*, 170 S.C. at 120, 169 S.E. at 841.

ii. Discussion

Here, the trial court, in its discretion, determined that Respondent has met his burden by providing clear and convincing evidence that punitive damages are appropriate under S.C. Code Ann. § 15-33-135. The March 27 Order reflects the Court's full consideration of each of the *Gamble* factors. *See Gamble v. Stevenson*, 305 S.C. 104, 112, 406 S.E.2d 350, 354 (1991). Accordingly, the Court examined: (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*, 305 S.C. at 112, 406 S.E.2d at 354. Further, by failing to raise a contemporaneous objection to plaintiffs' request for punitive damages a party waives any objection to the propriety of punitive damages. *Washington v. Whitaker,* 317 S.C. 108, 451 S.E.2d 894 (1994).

Appellant made no contemporaneous objection to Respondent's request for punitive damages, merely arguing in his closing that "there is nothing in the record that show that the conduct was willful, wanton, or reckless, to allow for punitive damages in this case." (R.p.___; *Id*. 89:23-90:1.) Therefore, Appellant has waived any objection to Respondent's request for punitive damages, disqualifying the matter from appellate review.

Now on appeal, Appellant contends that its own culpability and awareness or concealment of its own acts have not been fleshed out in discovery. This argument was not brought up to the trial court and is therefore abandoned. This argument also fails on its face, as the record has borne out both culpability and awareness, as evinced by Appellant's counsel's statements on the record that there was no basis for the initial claims. No further discovery is necessary to "flesh out" Appellant's culpability when it has openly admitted the baselessness of its claims, and its own admission has provided the clear and convincing evidence of culpability.[6]

Second, Appellant complains about the lack of evidence of past conduct. Again, it cannot make this argument for the first time on appeal when it did not bring it up to the trial court. Regardless, as Appellant acknowledges, the *Gamble* test is not comprised of elements, but factors. The *Gamble* court explains that the Court "may consider" the factors and may even consider "other factors" as appropriate. *Gamble*, 305 S.C. at 112, 406 S.E.2d at 354. Therefore, a failure to find evidence of past conduct is not necessary for the award of punitive damages, and neither is it dispositive.

[6] Here again Appellant requests additional discovery without providing any basis for what said discovery would find, why it had not been produced to the court previously, or any other information which could allow the trial court to rule in its favor.

Third, Appellant complains that there is a lack of a nexus between the damages award and the harm likely to result from the conduct. Again, this was not brought up to the trial court and therefore it is an abandoned argument that cannot be made for the first time on appeal. This is a case of baseless and protracted litigation initiated by a multi-million-dollar company against a working-class former employee. (R.p.___; Tr. of H'rg, Ex. 2.) As argued to the trial court, the award of actual damages in the amount of $434,000 may not adequately deter a company from future baseless litigation against potential defendants of far lesser means. Accordingly, there is a reasonable nexus between the award of ten times the actual damages in an amount of $4,340,000 as a means of deterring a company of such means from future wrongful conduct. (R.p. ___; Tr. of Hr'g, 86:11-25.) The trial court clearly found that ten times the damages is a reasonable nexus between the damages award and the harm likely to result from future conduct. (R.p.___; Order, pp. 7-8.)

Finally, Appellant alleges that its "unsubstantiated" revenue has no basis on its ability to pay. Unfortunately, Appellant has hoisted itself by its own petard, creating a trail of clear and convincing evidence for its ability to pay and refusing to object to such evidence when it was admitted in court. Despite the attempt to avoid accountability, Appellant has made a range of admissions on its own website and in various media outlets pointing to its ability to pay. These admissions include, *inter alia*, a report of over $120,000,000 in sales in 2021. (*Id*.) It is entirely disingenuous to attempt to walk back these admissions in appeal when, once more, Appellant failed to object to a single piece of evidence of its ability to pay an award of punitive damages during the January 25, 2023 hearing.

CONCLUSION

As described above, multi-million-dollar Best Choice Roofing & Home Improvement, Inc. lied to its attorneys to procure the intentional breach of roofing salesman Tyler Woods' employment contract and then lied to its attorneys to procure a frivolous lawsuit against Mr. Woods. Mr. Woods was damaged tremendously on multiple fronts by Appellant's lies, and for this and the reasons set forth above, Respondent Tyler Woods respectfully requests that this Court affirm the trial court's orders, deny Appellant's appeal, remit this matter to the trial court for supplemental proceedings, and issue any other such order at it deems just.

Respectfully submitted,

s/ Sarah J.M. Cox
Nekki Shutt (SC Bar No. 8784)
Sarah J.M. Cox (SC Bar No. 104316)
Lydia Robins Hendrix (SC Bar No. 106334)
BURNETTE SHUTT & McDANIEL, P.A.
Post Office Box 1929
Columbia, SC 29202
T: 803.904.7912
F: 803-904-7910
NShutt@BurnetteShutt.law
SCox@BurnetteShutt.law
LHendrix@BurnetteShutt.law

ATTORNEYS FOR RESPONDENT

August 5, 2024

Columbia, South Carolina