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Sep 30 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge
Joseph M. Strickland, Master-in-Equity
Casey L. Manning, Circuit Court Judge
Robert E. Hood, Circuit Court Judge

Appellate Case No. 2023-001996
Case No. 2018-CP-23-005208

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

v.

Tyler Woods,.....Respondent.

REPLY TO RESPONSE TO MOTION FOR LEAVE TO FILE RULE 60 MOTION

INTRODUCTION

The Respondent (Woods) filed a two-page response to Appellant’s (BCR Inc.’s) Motion for Leave to File Rule 60 Motion (“Motion for Leave”). Woods’ only objection to the Motion for Leave is that the motion is untimely. This objection is manifestly without merit under this Court’s ruling in *Southeastern Housing Found. v. Smith*, 670 S.E.2d 680, 690-691 (S.C. App. 2008), that a timely 59(e) motion tolls the time for making a Rule 60 motion. This being Woods’ only objection to the Motion for Leave, BCR Inc. respectfully submits this Court should grant the motion forthwith.

REPLY ARGUMENT

The Motion for Leave seeks leave to file a Rule 60(b), SCRCP, motion challenging the “Order as to Damages” entered on March 27, 2023. (See Exh. 1(J) to Motion for Leave). Relying on the one-year time limit imposed by Rule 60(b), SCRCP, Woods summarily argues that the September 23, 2024 Motion for Leave is barred by Rule 60(b)’s one-year time limit. Woods’ argument fails under this Court’s opinion in *Southeastern Housing, supra*.

In *Southeastern Housing*, this Court addressed a factual situation virtually identical to the relevant facts of the present case. The trial court granted summary judgment to the defendant on June 23, 2005, and the plaintiff made a timely 59(e) motion. The trial court denied the 59(e) motion on December 9, 2005, and the plaintiff timely appealed. On June 20, 2006, the plaintiff moved before this Court for leave to file a Rule 60 motion – this Court granted the motion on August 25, 2006 – the plaintiff filed the Rule 60 motion with the trial court less than one month later. See 670 S.E.2d at 690-691.

The defendant in *Southeastern Housing* argued that the Rule 60 motion was untimely, because it was made more than one year after the entry of the order being challenged by the Rule 60 motion. This Court held that the timely made 59(e) motion tolled the time to make a Rule 60 motion until the trial court ruled on the 59(e) motion. The trial court ruled on the 59(e) motion in December 2006 and, therefore, the motion was timely under Rule 60. See 670 S.E.2d at 690-691.

Here, the trial court entered the damages order on March 23, 2023, and BCR Inc. timely made a 59(e) motion on April 2, 2023 (“Motion to Alter or Amend” – copy attached), thereby tolling the time to make a Rule 60 motion. The trial court denied the 59(e) motion on December 6, 2023 (copy of order attached), so the one-year time limit under Rule 60 did not re-commence until December 7, 2023, after having run for only the ten days between the entry of the damages

order (March 23) and the filing of the 59(e) motion (April 2). In other words, the one-year time limit to make a Rule 60 motion does not run until late November 2024. BCR Inc. filed its Motion for Leave on September 23, 2024, well within the one-year time limit and two months after any notice that it had grounds for relief under Rule 60. (See Motion for Leave at 3-9, *passim*).¹

CONCLUSION

Woods’ “timeliness” objection to BCR Inc.’s Motion for Leave is manifestly without merit under *Southeastern Housing*. This is Woods’ only objection. Accordingly, BCR Inc. respectfully requests that this Court grant the Motion for Leave forthwith.²

Respectfully Submitted,

/s/ Robert L. Widener
Robert L. Widener, SC Bar #6089
BURR & FORMAN, LLP
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

September 27, 2024
Columbia, SC

ATTORNEYS FOR APPELLANT

¹ BCR Inc. explained the timeliness of its Rule 60 Motion under *Southeastern Housing* in footnote 1, at page 3 of its Motion for Leave. Woods nevertheless objects to the timeliness of the Rule 60 motion without addressing or mentioning this Court’s controlling opinion in *Southeastern Housing*.

² In his response, Woods falsely accuses BCR Inc. of filing the Motion for Leave “specifically for the purposes of delaying Appellant’s responsibility to file its Reply on September 30, 2024, an effort that has recently been rebuffed by this Court” and, based on this false accusation, Woods seeks sanctions under Rule 269, SCACR. (Wood’s Response at 2; see also *id.* at 3, describing motion as filed “solely to cause delay”). First, the Motion for Leave does not request any delay in or extension for filing BCR Inc.’s reply brief, and the filing of the motion does not automatically stay the time for the reply brief. See Rule 240(b), SCACR (filing of motion does not automatically stay time limits imposed by appellate court rules except for motion to dismiss and motion to be relieved as counsel). Thus, by definition, the motion does not seek to delay the reply brief, and that was not BCR Inc.’s purpose for filing the Motion for Leave. Second, the “rebuffed by this Court” language is misleading, because Woods joined BCR Inc. in seeking the allegedly “rebuffed” extension. On September 13, 2023, BCR Inc. advised this Court that the parties had agreed to mediate this appeal (which mediation is currently scheduled for Monday, September 30, 2024) and therefore requested, *with the consent of Woods’ counsel*, that the time for the reply brief be extended until fourteen (14) days after either party declared an impasse in the mediation. Again, counsel for Woods consented to all of this. On September 20, 2024, with no reference to or discussion of the specific grounds in the consent motion, this Court ordered that the reply brief be filed on September 30, 2024 (ten days from the date of this Court’s order) absent extraordinary circumstances. BCR Inc. will file its Initial Reply Brief as ordered by this Court.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND)	FIFTH JUDICIAL CIRCUIT
)	
Best Choice Roofing & Home Improvement, Inc.,)	C. A. No. 2018-CP-40-01318
)	
Plaintiff,)	
)	
v.)	MOTION TO ALTER OR AMEND
)	
Tyler Woods,)	
)	
Defendant.)	
_____)	

TO: NEKKI SHUTT, ESQ., ATTORNEY FOR DEFENDANT:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, Best Choice Roofing & Home Improvement, Inc. (“Plaintiff”), by and through their undersigned counsel, will move before the Honorable Joseph M. Strickland, Master-in-Equity, at such time and place as is convenient to the Court and counsel, for an Order altering, amending or granting relief from the Order as to Damages filed March 27, 2023 (hereinafter “Order”) pursuant to *South Carolina Rules of Civil Procedure* Rule 59(e). This motion is based on the following:

1. Section E of the Court’s Order is wholly erroneous and an in violation of the Plaintiff’s right to appeal as set forth in the Appellate Court Rules and South Carolina Code. *See e.g.* Rule 201, *SCACR* (“*Appeal may be taken, as provided by law, from any final judgment*”) and *South Carolina Code Ann.* § 14-8-200 (*the Court of Appeals has jurisdiction over any case in which an appeal is taken*).

2. Plaintiff incorporates by reference the arguments from his May 9, 2022 Motion to Alter or Amend herein as if restated verbatim as to the viability of Defendants’ causes of action

for tortious interference and Violation of the South Carolina Frivolous Civil Proceedings Sanctions Act.

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

4. The clear evidence at the hearing was that Defendant Tyler Woods was making \$15.63/hr (equating to an annual salary of \$31,260.00 on a 40/hr work week, 50 work week basis) which is a far stretch from the \$70,000 average and \$80,000 “on track to make” figures stated in the Order without any evidence supporting it. *See Defendant’s Exhibit 2 from the hearing attached hereto as “Exhibit A”.*

5. The Order goes further to state that Defendant Tyler Woods “has been unable to return to the roofing industry because of the cloud hanging over his reputation since Best Choice interfered with his employment and earning potential” and that “stain Best Choice has left on Woods has crippled him from finding work in the roofing industry, caused him health problems, and he has struggled to find jobs to support his family and the money he will now make is considerably less than what would have been available to him had Best Choice not frivolously brought a claim against him” which are wholly unsupported by any evidence, purely speculative and rampant conjecture. *See Piggy Park Enterprises, Inc. v. Schofield*, 251 S.C. 385, 162 S.E.2d 705 (S.C. 1968) (“*the existence or amount of damages cannot be left to conjecture, guess or speculation*”).

6. There was no evidence and there could be no evidence to support the premise that “the money he will now make is considerably less than what would have been available to him had Best Choice not frivolously brought a claim against him” other than speculation.

7. There was no competent evidence to support the premise that “stain Best Choice has left on Woods... caused him health problems” as no medical opinion or medical records were submitted or provided.

8. The Order erroneously states that “the amount Woods has requested in lost wages is not left to conjecture or speculation and is calculated based upon Woods’ previous earning potential and his testimony that he was to be paid both a wage and a commission for his work at Premiere” when:

- a. The only evidence presented showed that Defendant Tyler Woods was making \$15.63/hr and was not entitled to any bonus;
- b. Woods did not present any evidence of his previous earning potential; and
- c. The Court’s entire rationale and analysis is based on speculation and conjecture.

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

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

11. The award of attorneys’ fees in the amount of \$77,253.73 is not reasonable in consideration of the nature, extent, and difficulty of the legal services rendered in this matter as this case has more or less been a very drawn out, unjust damages hearing. *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 427 S.E.2d 659 (S.C. 1993).

12. The Court erroneously finds that Defendant Tyler Woods met his burden to prove that by clear and convincing evidence that punitive damages are appropriate and that the *Gamble* factors are present when:

- a. Plaintiff's culpability and awareness or concealment have not fleshed out in discovery due to the procedural history and posture of this matter;
- b. There was no evidence of similar past conduct;
- c. No nexus between the 10 times damages award and the harm likely to result from the conduct; and
- d. Plaintiff's unsubstantiated revenue having any bearing on it's ability to pay.

See Gamble v. Stevenson, 305 S.C. 104, 112 (1991).

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

CONCLUSION

For the foregoing reasons, the Plaintiff respectfully asks that the Court reconsider its March 27, 2023 Order and award no damages to Defendant. In the alternative, Plaintiff respectfully asks that the Court reconsider

Respectfully submitted this 2nd day of April 2023.

TOWNES B. JOHNSON III, LLC

/s/ Townes B. Johnson III

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Attorneys for Plaintiff

Greenville, South Carolina

Best Choice Roofing & Home Improvement Inc
PLAINTIFF(S)

Tyler Woods
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED** (*CHECK REASON*): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN** (*CHECK REASON*): Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Plaintiff's Motion to Alter or Amend (filed on 4/2/23) is DENIED.
Plaintiff's Motion to Alter or Amend (filed on 7/19/23) is DENIED.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/05/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Richland Common Pleas

Case Caption: Best Choice Roofing & Home Improvement Inc vs Tyler Woods

Case Number: 2018CP4001318

Type: Order/Electronic Form 4

IT IS SO ORDERED.

Jocelyn Newman, Chief Judge for Administrative
Purposes, Court of Common Pleas, 5th Judicial
Circuit

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PROOF OF SERVICE

I, Robert L. Widener, counsel for Appellant, certify that on this 27th day of September, 2024, that a copy of the Appellant’s REPLY TO RESPONSE TO MOTION FOR LEAVE TO FILE RULE 60 MOTION with two attachments was served upon all counsel of record in the above-captioned matter via a copies of the email to this Court filing same at the email addresses listed below:

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September 23, 2024
Columbia, SC

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