

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF CHARLESTON
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2008- CP-10-6117

Kathryn Dawson, et al.
 PLAINTIFF(S)

George Christodal, Jr., et al.
 DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

FILED
 2014 APR 15 PM 1:32
 JULIE J. ARBUSTRENG
 CLERK OF COURT

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 _____
- 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: **The Defendant George Christodal's Motion to Alter or Amend the Court's order of October 25, 2013, filed on November 7, 2013, came before this Court for rehearing on April 8, 2014. After further review of the parties' arguments, the Court AFFIRMS its prior order of October 25, 2013, attached hereto as Exhibit A.**

ORDER INFORMATION

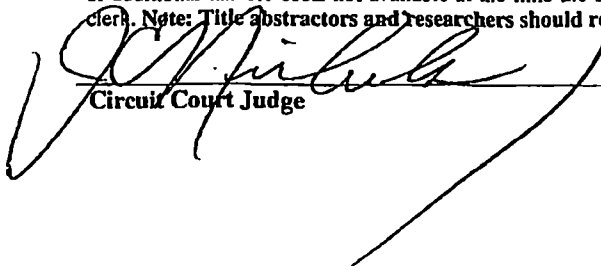
This order ends does not end the case.
 Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Plaintiff Kathryn Dawson	Defendant George Christodal, Jr.	\$30,486.62
If applicable, describe the property, including tax map information and address, referenced in the order: _____ _____		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


 Circuit Court Judge

2117
 Judge Code

4/14/14
 Date

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MAY 13 2014
 Page 1

Exhibit A

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2008-CP-10-6117

Kathryn Dawson a/k/a
Kathryn Huffstetler
PLAINTIFF(S)

George Christodal, Jr.
DEFENDANT(S)

Submitted by: _____	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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2013 OCT 23 PM 4:29
FILED
CLERK OF COURT

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.
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- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- 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.

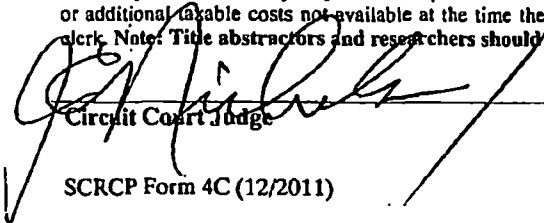
IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk : _____

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		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order: _____		

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Circuit Court Judge

2117
Judge Code

10/23/13
Date

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 KATHRYN DAWSON a/k/a)
 KATHRYN HUFFSTETLER,)
)
 Plaintiff,)
)
 vs.)
)
 GEORGE CHRISTODAL, JR.)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 OF THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2008-CP-10-6117

ORDER

FILED
 2013 OCT 25 PM 4:29
 JULIE J. ARISTIDES
 CLERK OF COURT
 BY _____

This matter came before Court for non-jury trial on October 10, 2012. Present at the time of the hearing were: Mary Leigh Arnold, attorney for Plaintiff; Kathryn Dawson, Plaintiff (hereinafter "Dawson"); Stan Barnett, attorney for Defendant; George Christodal, Jr., Defendant (hereinafter "Christodal") and Craig Elwood, witness for Defendant. After careful consideration of the pleadings, testimony and evidence submitted by the parties, the Court finds as follows:

SUMMARY OF PROCEEDINGS

On October 27, 2008, Dawson (formerly known as Kathryn Huffstetler) filed a Summons and Complaint against Christodal. The Complaint consists of two causes of action: (1) violation of the South Carolina Payment of Wage Act (the "Act") pursuant to S.C. Code Ann. §41-10-10, et seq; and (2) breach of contract. On December 3, 2008, Christodal filed an Answer. Within the Answer Christodal admitted certain allegations of the Complaint asserting he was "an officer or managing agent of Swan Development, LLC" (Complaint ¶ 3, Answer ¶3). Christodal's Answer asserted two affirmative defenses: (1) failure to state a claim; and (2) breach of a contract condition. (Answer ¶¶ 21 and 23).

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MAY 13 2014

SC Court of Appeals

The Court docket reflects that on April 18, 2011, an Order (Form 4) was entered as a result of the case resolving as advised by counsel. On August 2, 2011, Dawson filed a Motion to Reopen the within matter "due to Defendant's failure to consummate the negotiated settlement." (Motion to Reopen). On February 2, 2012, an Order granting Dawson's motion to reopen the case was filed.

The majority of facts were undisputed by the parties. Dawson stated at the commencement of the case she was not pursuing a claim for breach of contract and was limiting the relief she sought to violation of the S.C. Payment Wage Act. Thus, the issues before the Court were: whether the financial hardship caused by the onset of the down turn in the economy precluded personal liability; and whether Christodal established his second defense of breach of a confidentiality provision of an agreement in order to avoid responsibility for the failure to pay wages under S.C. Code Ann. §41-10-10, et seq.

FINDINGS OF FACT

- 
1. Dawson was an employee of Swan Development, LLC (hereinafter "Swan") from 2002 until mid-2007. During the course of her employment she perform multiple functions including, sales, booking keeping, general clerical and check writing functions.
 2. Christodal, as admitted in pleadings and through his own testimony that he was an officer, manager and minority owner of Swan at all relevant times.
 3. Dawson and Christodal had a personal relationship during the course of employment.¹
 4. In May of 2007, Dawson and Christodal agreed Dawson's employment with Swan would end. Dawson and Christodal agreed to certain terms and memorialized the

¹ Christodal gave a great deal of focus on the fact that the parties had a personal relationship. While this Court will refrain from making any comments about the wisdom or lack thereof the parties engaging in such behavior, the Court finds that this issue has no relevancy as to matters and hand and particularly the defenses asserted.

responsibilities and obligations of the parties for the remainder of the term of employment and payment of wages.

5. Dawson and Swan entered into an Agreement on May 23, 2007 (hereinafter "Agreement" and Plaintiff's Exhibit 1). The Agreement states in pertinent part:

1. Kathryn Huffstetler [Plaintiff] shall continue as a full-time employee of Swan until a new employee is hired to take over her responsibilities, but in no event shall her employment continue beyond July 31, 2007.
2. During the period of full-time employment, Kathryn Huffstetler shall be paid \$500.00 a week.
3. Upon the date of hire of the new employee, [Plaintiff] shall remain a full-time employee for an additional four (4) weeks from the day of hiring of the new employee. . . to train the new employee. . .
4. During the four (4) week transitional period, Kathryn Huffstetler shall be paid \$500.00 a week.
5. After the four (4) week transitional period has elapsed, then Swan agrees to pay to [Plaintiff] \$2000.00 a month for twelve (12) months as severance pay, for a total of \$24,000.00.
7. Kathryn Huffstetler has been given access to or an opportunity to inspect certain confidential and proprietary documents relating to the business and financial matters of Swan. The information contained in the documents was heretofore unknown to Kathryn Huffstetler and the documents were heretofore inaccessible to Kathryn Huffstetler. As a condition of this Agreement, Kathryn Huffstetler is required to agree to maintain confidentiality concerning any information concerning Swan and George M. Christodal, Jr., for the protection of Swan and George M. Christodal, Jr. In consideration of this Agreement's terms, Kathryn Huffstetler hereby agrees that the confidential and proprietary information which is subject to protection hereunder includes: financial statements of Swan and George M. Christodal, Jr., (both internal and CPA-generated); tax returns; loan application documents, bank account information, credit reports, asset/liability portfolios, etc.; and any negotiations, communications or documents pertaining thereto (hereinafter referred to, in whole and/or in part, as "Confidential Information"). . . . Kathryn Huffstetler acknowledges and agrees that she has breached this Agreement if any person or entity can prove that it has received, directly or indirectly, Confidential Information from her.
8. Swan, Kathryn Huffstetler, and George M. Christodal, Jr., agree to a mutual release from any all prior agreements, oral or written, if any.

6. The Agreement was executed by Christodal as manager of Swan.

7. It was undisputed Dawson received all wages due and owing under Paragraphs 2

and 4 for her continued full time employment.

8. It is undisputed that Dawson was paid all that is due her for salary and under Paragraph 5 of the Agreement except for \$20,000. It was undisputed that two payments of \$2000.00 were made and that the last payment under Paragraph 5 was made in August 2007 leaving a balance due and owing of \$20,000 beginning September 2007.

9. It was undisputed the Dawson and Christodal communicated via email after payments had ceased. Dawson made demand for payment. (Plaintiff's Exhibit 2.) Christodal acknowledged payments were due. Christodal informed Dawson payments would resume if Swan's financial condition improved.

10. Christodal called as a witness on his behalf Craig Elwood a business associate. Elwood testified that he had a conversation with Dawson after her employment had ended which he claimed that Dawson told him that Christodal did not pay his taxes and that he and Swan often did not pay their bills. Elwood claimed that Dawson warned him that he would not get paid either.

11. Christodal did not dispute that Dawson was owed money under the Agreement.

12. Christodal testified that, as he had stated in the emails, Swan did not have the income or assets to fund continued payments to Dawson after August of 2007.

CONCLUSIONS OF LAW

The South Carolina Payment of Wages Act provides "every employer in the State shall pay wages when due..." S.C. Code Ann. § 41-10-40(A) (Supp. 2003). It further provides in pertinent part:

S.C. Code Ann. § 41-10-10:

- 1) "Employer" means every person, firm, partnership, corporation. . . of this State. . . and any *agent or officer* of the above classes employing any person in this State.

- 2) "Wages" means all amounts at which labor rendered is recompensed, whether the amount is fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the amount. . . . which are due to an employee under any employer policy or employment contract.


S.C. Code Ann. § 41-10-40:

- (C) An employer shall not withhold or divert any portion of an employee's wages unless the employer is required or permitted to do so by state or federal law. . . .

S.C. Code Ann. § 41-10-80:

- (C) In case of any failure to pay wages due to an employee as required by Section 41-10-40 or 41-10-50 the employee may recover in a civil action an amount equal to three times the full amount of the unpaid wages, plus costs and reasonable attorney's fees as the court may allow.

Here it was undisputed that Dawson meets the statutory definition of an employee, and Swan was an employer under the Act. Indeed it was further undisputed that Dawson was not paid wages pursuant to her employment contract.

 Christodal did not challenge that he personally fell within the definition of employer as set forth in the Act; rather, he asserted that he is not personally liable for the failure of payment of wages because he claims he did nothing to prevent Dawson from being paid. In Dumas v. Infosafe Corp., 463 S.E.2d 641, 645 (Ct. App 1995), the South Carolina Court of Appeals held that:

[T]he legislature intended to impose individual liability on agents or officers of a corporation who knowingly permit their corporation to violate the Act. To hold otherwise would require us to ignore the words 'and any agent or officer of the above classes.' These would have appeared in the definition of 'employer' in every version of the Act since its first enactment in 1938.

Christodal qualifying as an employer under the Act is subject to its impositions and, therefore, is liable less some defense. Christodal claims he lacks liability because he did nothing to prevent payment. Rather, the failure to pay arose out of Swan's lack of assets with the outset

of the recession of 2007. As to Christodal's first assertion, Christodal provided this Court with no statutory authority or cited any case law which provides that an alleged lack of resources or funds constitutes a defense to failure to pay wages under the Act. This argument is unconvincing. The lack of financial resources simply does not create a viable defense for the failure to pay wages any more than it would generally provide for a defense to payment of amounts admittedly owed.

Again, Christodal acknowledged Dawson is owed the sum of \$20,000.00. As an alternative defense for the failure to pay the sums owed, Christodal asserts payment was withheld due to Dawson's alleged violation of a confidentiality provision in the Agreement. First, this Court notes this argument, in part, contradicts Christodal's argument he did nothing to prevent payment. This argument, in essence, asserts payment due and owing was withheld based upon a claimed breach. That is distinctly different from the assertion he did nothing to prevent payment. To the contrary, it is an acknowledgment of an intentional withholding albeit a claimed valid ground.

As to Christodal's claim of a breach of the confidentiality provision of the Agreement, parties have the right to make their own contracts. Torrington Co. v. Aetna Cas. & Sur. Co., 264 S.C. 636, 643, 216 S.E.2d 547, 550 (1975); MailSource, LLC v. M.A. Bailey & Assoc., 356 S.C. 363, 369, 588 S.E.2d 635, 638-39 (Ct. App. 2003). A court must enforce an unambiguous contract according to its terms, regardless of the contract's wisdom or folly, or the parties' failure to guard their rights carefully. Ellis v. Taylor, 316 S.C. 245, 248, 449 S.E.2d 487, 488 (1994); Jordan v. Security Group, Inc., 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993); and Torrington Co. v. Aetna Cas. & Sur. Co., 264 S.C. 636, 643, 216 S.E.2d 547, 550 (1975) (stating "[T]he parties have a right to make their own contract and it is not the function of this Court to rewrite it

or torture the meaning of a policy to extend coverage never intended by the parties."). Succinctly stated, a court has no authority to rewrite a contract and impose unwanted obligations and terms under the guise of specific performance or judicial construction. See, e.g., Lewis v. Premium Inv. 351 S.C. 167, 171, 568 S.E.2d 361, 363 (2002) ("It is not the function of the court to rewrite contracts for parties."); E. Bus. Forms, Inc. v. Kistler, 258 S.C. 429, 189 S.E.2d 22 (1972) (finding the court may not make a new agreement for the parties into which they did not voluntarily enter).

Christodal attempts to employ the testimony of Elwood to establish a violation of the confidentiality provision to avoid liability for non-payment. Irrespective of the credibility of Elwood, his testimony did not establish such a claim. The contract provisions are clear. In order to have violated the provision, Dawson had to divulge confidential information which the terms of the contract provide are: "financial statements of Swan and George M. Christodal, Jr., (both internal and CPA-generated); tax returns; loan application documents, bank account information, credit reports, asset/liability portfolios, etc.: and any negotiations, communications or documents pertaining thereto (hereinafter referred to, in whole and/or in part, as "Confidential Information")." Elwood's testimony, if credible, was in regard to a remark made by Dawson about Defendants' propensity or lack thereof to pay monies owed. This is not a violation of the Agreement. No evidence was entered that attempted to assert Dawson divulged financial statements or other specified items. Thus, Christodal's defense fails and he is liable for the unpaid amounts.

Our supreme court has held that a trial court has the discretion to decide whether or not to award treble damages: "If there is a dispute over unpaid wages, the employer acts at his peril and the court in its discretion may award treble damages when the withholding was unreasonable

and there was no good faith wage dispute.” Rice v. Multimedia Inc., 318 S.C. 95, 99, 456 S.E.2d 381, 383 (1995) (citation omitted). Citing Rice, the Court of Appeals reiterated that the statute’s explicit statement that the employee “may” recover treble damages indicates the matter is committed to the trial court’s discretion. O’Neal v. Intermedical Hosp., 355 S.C. 499, 585 S.E.2d 526 (Ct. App. 2003). This Court does not find the treble damages are warranted in this instance.

“The law allows prejudgment interest on obligations to pay money from the time when, either by agreement of the parties or operation of law, the payment is demandable, if the sum is certain or capable of being reduced to certainty.” Babb v. Rothrock, 310 S.C. 350, 353, 426 S.E.2d 789, 791 (1993). Here, the sum due and owing to Dawson of \$20,000.00 was undisputed therefore Dawson is entitled to prejudgment interest on that amount financial statements of Swan and George M. Christodal, Jr., (both internal and CPA-generated); tax returns; loan application documents, bank account information, credit reports, asset/liability portfolios, etc.: and any negotiations, communications or documents pertaining thereto (hereinafter referred to, in whole and/or in part, as “Confidential Information”).

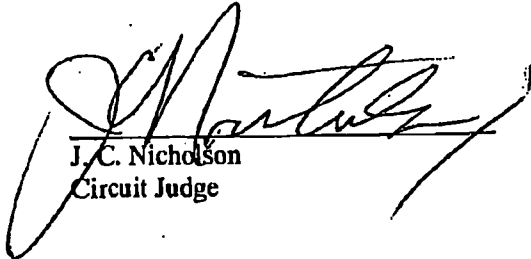
Based on the above this Court finds and concludes Dawson is entitled to judgment against Christodal. Now therefore it is

ORDERED that Plaintiff have judgment against the Defendant under her claim pursuant to S.C. Code Ann. § 41-10-10, et seq. in the amount of Twenty Thousand and No/100 (\$20,000.00) dollars; and it is

FURHTER ORDERED that Plaintiff is entitled to pre-judgment interest at the legal rate from September 1, 2007, until September 30, 2013, in the amount of \$10,648 for a total judgment award of \$30,486.62; and it is

FURTHER ORDERED that Plaintiff's claim for treble damages is denied.

IT IS SO ORDERED.



J.C. Nicholson
Circuit Judge

JN
October
~~September~~ 23, 2013
Charleston, South Carolina