

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

FILED

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

2015 DEC 16 A 11 CP No. 2011-CP-32-1109

Adele J. Pope,

BETH A. CANNIGG
CLERK OF COURT
LEXINGTON, SOUTH CAROLINA

vs.

Gloria P. Corley, Gail P. Corley,
as Personal Representative of the Estate
of Samuel M. Corley, Patricia C. Grant,
as Trustee of the M.L. Corley Marital
Trust, and Andra R. Williams,

Defendants.

ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AGAINST DEFENDANTS
ANDRA R. WILLIAMS, ESTATE OF
SAMUEL M. CORLEY, AND M.L.
CORLEY MARITAL TRUST

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SEP 30 2016

SC Court of Appeals

THIS MATTER CAME BEFORE THE COURT on Plaintiff's motion for summary judgment against Defendants Andra R. Williams; Gail P. Corley, as Personal Representative of the Estate of Samuel M. Corley; and Patricia C. Grant, as Trustee of the M.L. Corley Marital Trust. A hearing was held on November 12, 2015. Present at the hearing were Adam T. Silvernail, counsel for Plaintiff; Charlie M. Pender, Counsel for Defendants Gail P. Corley, as Personal Representative of the Estate of Samuel M. Corley (the "Estate") and Patricia C. Grant, as Trustee of the M.L. Corley Marital Trust (the "Corley Trust"); Timothy D. Quinn, Esquire, counsel for Defendant Andra R. Williams ("Williams"); and Steven R. Anderson, Esquire, counsel for Defendant Gloria P. Corley ("Gloria").

Plaintiff commenced this action against Gloria on March 21, 2011. Samuel M. Corley and the Corley Trust were made Defendants by virtue of certain obligations discussed below. On August 21, 2013, Plaintiff was awarded judgment against Gloria in the amount of \$248,673, plus interest of \$42.21 per day. She was also awarded additional attorneys' fees for collection. The

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judgment, in part, related to \$672,500 of distributions made to Gloria in 2012 from the Corley Trust. As of the date of this Order, less than \$50,000 of the principal amount of the 2013 judgment has been paid. Only approximately \$70,000 remains under control of a Receiver appointed herein for Gloria. No assets remain in Gloria's name.

Substantial facts relevant to the Amended Complaint have been established by prior final Orders in this case, excerpts of which are set out below.

From the Order of the Honorable Frank R. Addy, Jr., Dated May 14, 2013

This case was commenced by the filing of a Summons and Complaint on March 21, 2011. Pope sought to enforce her rights under a fee contract dated August 28, 1998 (the "fee contract") and an Agreement Among Successors dated January 22, 1999 (the "Corley Agreement").

Under the fee contract, Plaintiff is entitled to:

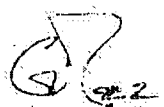
ONE-THIRD (1/3) OF ALL GROSS MONIES OR PROPERTY [Mrs. Corley receives] from [her] husband's Estate or Trust and/or his family in excess of \$7,500 per month (\$90,000 per year) FOR THE REST OF [Mrs. Corley's] LIFE OR RECEIVED BY [her] ESTATE. . . .

Additionally, the Corley Agreement included the following provision:

**ARTICLE VI
IRREVOCABLE DESIGNATION BY SPOUSE
OF
AGENT TO RECEIVE PROCEEDS**

1. Except for the monthly \$7,500 payments, which shall be made directly to her, Mrs. Corley irrevocably designates Adele J. Pope as her agent to receive and disburse all amounts payable to her under the Will, the Marital Trust and/or this Agreement.

Both of these contracts had been in force for more than a



decade at the time this litigation began, and both had been honored until Mrs. Corley's agent [Andra R. Williams]¹ attempted to circumvent both in early 2011.

From the Order of the Honorable Edgar W. Dickson, Dated August 21, 2013

On a few occasions [between 1999 and 2011], Trustee [Samuel M. Corley] made the check out directly to Mrs. Corley rather than to Plaintiff as agent for Mrs. Corley. The Trustee always delivered the checks to Plaintiff. Aside from these minor mistakes, Trustee fully complied with the agreement until after this suit was filed. On those instances where the check was improperly made out, Mrs. Corley signed the check and endorsed it to Plaintiff's trust account instead of returning the check to Trustee and delaying payment. Plaintiff would then disburse the check according to the agreement.

After the settlement, through 2010, Mrs. Corley-- after payments to Plaintiff-- retained at least \$125,000 per year. Plaintiff received annual payments of approximately \$18,333. The contingency fee paid to Plaintiff each year was less than 15% of the \$145,000 she secured for Mrs. Corley.

In 2012, more than a year after this action was commenced, the Trustee and Mrs. Corley's attorney-in-fact reached an agreement to terminate Mrs. Corley's payments under the Corley Agreement in exchange for a lump sum paid to Mrs. Corley in 2012. Despite the pendency of this action, to which both Mrs. Corley and Trustee are parties, Trustee made one or more substantial distributions to Mrs. Corley in contravention of the Corley Agreement which he had honored for more than a decade.

No notice was given to Plaintiff or this Court of the 2012 agreement, and Plaintiff's counsel discovered the agreement in the Probate Court in August 2012.

The 2012 agreement purports to terminate Mrs. Corley's interest in the Trust in exchange for a single, immediate payment of \$650,000. According to the terms of the 2012 agreement, Mrs. Corley had already received \$22,500 from the Trust in 2012. Thus, the total amount distributed to Mrs. Corley by the Trust in 2012 was \$672,500.

¹ Defendant Williams has held a recorded Durable General Power of Attorney for Gloria since prior to the commencement of this action.



The Fee Agreement provides that Plaintiff's fee will be ONE-THIRD (1/3) OF ALL GROSS MONIES OR PROPERTY you receive from your husband's Estate or Trust and/or his family in excess of \$7,500 per month, and Plaintiff has consistently taken the position that she is entitled to a corresponding fee from the proceeds received by Mrs. Corley in 2012.

Instead of the customary \$55,000 lump-sum payment to Mrs. Corley in 2012, the Trustee distributed \$650,000 to Mrs. Corley in exchange for Mrs. Corley's relinquishing her rights under the Corley Agreement to any future payments. This amount was distributed in addition to \$22,500 in monthly payments to Mrs. Corley, so that Mrs. Corley received \$672,500 in distributions in 2012.

I. The Amended Complaint Against Williams, the Estate and the Corley Trust, and Plaintiff's Motion for Summary Judgment

Plaintiff filed a motion to amend her complaint to assert her cause of action for tortious interference with contract against Samuel M. Corley, individually and as Trustee of the M.L. Corley Marital Trust, and Andra R. Williams in June 2013. The Court granted her motion on March 17, 2015, and all defendants were served with the Amended Complaint.

By motion dated July 27, 2015, Plaintiff sought summary judgment in her favor on her cause of action for tortious interference with contract against Defendants Estate of M.L. Corley, M.L. Corley Marital Trust and Andra R. Williams (collectively "Defendants"). For the reasons set forth below, the Court finds that there is no genuine issue of material fact, and Plaintiff's motion for summary judgment is **GRANTED** as to Defendants Estate of Sam Corley, Corley Trust and Andra R. Williams. The full extent of the damages, however, should be determined at a subsequent damages hearing.

A. Summary Judgment is Ripe

As an initial matter, Defendants argue that summary judgment is premature, and they

should be given further opportunity to conduct discovery herein pursuant to Rule 56(f). I find that they have not made a showing sufficient under Rule 56(f) to delay the summary judgment in this nearly five-year-old action. See *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003) ("[T]he nonmoving party must demonstrate the likelihood that further discovery will uncover additional relevant evidence and that the party is not merely engaged in a fishing expedition." (internal quotation marks omitted)); *Guinan v. Tenet Healthsystems of Hilton Head, Inc.*, 383 S.C. 48, 54-55, 677 S.E.2d 32, 36 (Ct. App. 2009) ("A party claiming summary judgment is premature because they have not been provided a full and fair opportunity to conduct discovery must advance a good reason why the time was insufficient under the facts of the case, and why further discovery would uncover additional relevant evidence and create a genuine issue of material fact.")

The Amended Complaint herein was served in March 2015, and the motion for summary judgment was filed on July 27, 2015. The only discovery conducted by any Defendant between March 2015 and November 12, 2015 was the Plaintiff's second deposition, conducted November 6, 2015. At the hearing, no Defendant identified any specific discovery which was needed to shed further light on the facts of this case, and I find that there is no cause to delay summary judgment for further discovery.

B. Defendants' Tortious Interference with Plaintiff's Contract with Gloria P. Corley

The elements of a cause of action for tortious interference with contract are: (1) existence of a valid contract; (2) the wrongdoer's knowledge thereof; (3) his intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages. *Collins Entertainment Corp. v. Coats and Coats Rental Amusement*, 355 S.C. 125, 584 S.E.2d 120 (Ct. App. 2003).



Defendants concede that elements one and two of tortious interference are met here. This Court has conclusively found that a valid, enforceable contract existed between Plaintiff and Gloria P. Corley, and it is undisputed that all Defendants were aware of that contract and Plaintiff's efforts to enforce it at the time the 2012 agreement was reached.

As to element three, the undisputed evidence herein shows that Defendant Williams and Sam Corley met in early 2012 with the express purpose of negotiating a payment to Gloria without notice to or involvement by Plaintiff, whose lawsuit to enforce her contract with Gloria was then pending and in which Gloria, Sam, and the Corley Trust had appeared through counsel. The 2012 Agreement makes specific reference to the pending action and purports to allow Sam and the Corley Trust to utilize Gloria's funds in defending themselves against Plaintiff's claims.

Williams has testified that the purpose of the 2012 agreement, as stated by both her counsel and counsel for Sam and the Corley Trust, was to avoid further payment to Plaintiff under her contract with Gloria. The agreement was reached without notice to Plaintiff, and the Probate Court proceeding to approve the 2012 Agreement took place with no notice to Plaintiff and other interested persons in the 1999 Corley Agreement which it purported to modify. The 2012 Agreement was presented to the Probate Court as a consent order in an estate which had been closed since 2000.

Defendants' intent to deprive Plaintiff of the funds due to her under her fee contract and the 1999 Corley Agreement is clearly demonstrated by Williams' deposition testimony and supported by email correspondence among Defendants' agents in the record. No Defendant has provided evidence to controvert or overcome Williams' testimony.

The Estate and the Corley Trust argue that their participation in the 2012 Agreement was a result of their then-counsel's scheme to obtain the settlement funds for unrelated purposes. In



support of that argument, Defendants offer affidavits of David W. Siddons, Esquire, and R. Keith Dooley, CPA. Viewed in the light most favorable to these Defendants, these affidavits show that Richard Breibart promoted the 2012 Agreement in order to secure funds for himself. Neither, however, suggests that the agreement signed on March 26, 2012 or the \$600,000 payment made in September 2012 was other than the voluntary and intentional act of Sam Corley, individually² and on behalf of the Corley Trust.

Instead, Siddons' affidavit shows that the 2012 Agreement was not consummated until three (3) months after Breibart was suspended, and that Sam and Siddons "worked tirelessly" to carry out the terms of the 2012 Agreement during those months. Notably, Plaintiff filed documents in this action asserting her entitlement to a portion of the funds prior to the lump-sum payment of approximately \$600,000 being made to Gloria in September 2012.

The evidence before me, viewed in the light most favorable to Defendants, indicates that Defendants entered the 2012 Agreement, and Sam Corley and the Trust delivered the funds directly to Gloria, with knowledge and intent to deprive Plaintiff of the funds. The direct evidence, including the testimony of Andra R. Williams and contemporaneous correspondence among several attorneys involved in the 2012 Agreement, entirely supports Plaintiff's argument that the 2012 Agreement was reached for the purpose of avoiding further payment to Plaintiff.

While Sam Corley never testified on the matter before his death, I find that the circumstances and admissible direct evidence clearly indicate that the conception and consummation of the 2012 Agreement were intended by Williams, Sam Corley and the Corley Trust to avoid payment of Gloria's contractual obligations to Plaintiff.

² Sam Corley, individually, was a guarantor of payments made under the 1999 Corley Agreement, as well as an individual beneficiary of 1/4 of the Corley Trust assets at Gloria's death.

The evidence shows that Defendants worked to harm Plaintiff. The documents before this Court include correspondence wherein the Defendants agreed to meet without Plaintiff; reached an agreement without notice to Plaintiff; worked to ensure that approval by the Probate Court was secured without notice to Plaintiff; and delivered \$672,500 to Gloria, which Williams then put into her own bank account; and which are now not available to pay Plaintiff's valid judgment against Gloria. Further, months after Breibart was suspended from the practice of law, correspondence among counsel for Defendants stated that, at the time of the 2012 Agreement, Defendants expected Plaintiff to argue that they worked to "screw [Plaintiff] out of a fee." [Exhibit D to Plaintiff's Motion for Summary Judgment] The indemnification language in the 2012 Agreement purported to provide a fund to defend Sam and the Corley Trust against the anticipated claim that they had interfered with Plaintiff's fee contract.

As to element four, the Corley Defendants assert that there were "legitimate business purposes" which justified the 2012 Agreement. Sam's Estate and the Corley Trust argue that the 2012 agreement served the purpose of accelerating the Corley children's receipt of over \$1.2 million each in assets which would otherwise have been held by the Corley Trust until Gloria's death. The fact that each of M.L. Corley's four children (not the children of Gloria) received approximately \$1.2 million in 2012 rather than at Gloria's death, anticipated by actuarial tables to be in 2020, cannot be viewed as a legitimate business purpose for interfering with Plaintiff's fee contract.

Sam's estate and the Corley Trust further argue that a tax levy had been issued as a result of Gloria's non-payment of income taxes. The only support for this proposition is the November 9, 2015 Affidavit of David W. Siddons, Esquire, which refers to a notice of levy received by Mr. Corley in July of 2012. This does not show a legitimate business purpose for the 2012

Agreement or interference with Plaintiff's contract, since the notice was received four months after the 2012 Agreement was reached. Further, payments totaling approximately \$600,000 were made to Gloria after the date on which Mr. Siddons states that Sam received the notice.

Courts have recognized a privilege which protects an interfering party from liability where there was justification or a legitimate business purpose for the interference. Justification does not, however, exist in every instance in which a benefit inured to the interfering party.

This privilege is "lost if exercised for a wrong purpose," which "exists where the act is done other than as a reasonable and bona fide attempt to protect the interest of the defendant which is involved." In assessing whether a defendant's conduct is justified, courts examine the following factors: the circumstances surrounding the interference, the actor's motive or conduct, the interests sought to be advanced, the social interest in protecting the freedom of action of the actor, and the contractual interests of the other party. *English Boiler & Tube, Inc. v. W.C. Rouse & Son, Inc.*, 172 F.3d 862 (4th Cir. 1999) [internal citations omitted]

Defendants' argument may show justification for Gloria, Sam and the Trust to renegotiate the 1999 settlement agreement in some manner. Nonetheless, there is no showing of justification for secretly reaching the agreement and specifically structuring and carrying it out to thwart Plaintiff's then-pending action to enforce her contractual rights.

As to element five, the previous Orders in this matter, as well as the Receiver's Reports showing that Gloria's funds were nearly depleted prior to the Receiver's appointment, show that Plaintiff has been damaged by the conduct of Defendants Williams, the Estate and the Corley Trust. The direct delivery of \$672,500 to Gloria in 2012, and actions taken by said Defendants thereafter, thwarted Plaintiff's collection of approximately \$193,000 which was due her from the 2012 payment. Had Plaintiff been given notice of the 2012 negotiations or agreement, or had Sam and the Corley Trust delivered the amount in excess of \$90,000 to Plaintiff as required

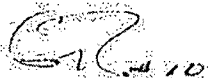
under the 1999 Corley Agreement which Sam individually guaranteed, Defendants' 2012 Agreement alone would not have deprived Plaintiff of the amount she was due in 2012. Instead, the secret agreement and payments to Gloria, rather than to Plaintiff, have forced Plaintiff to pursue further litigation and collection of her \$248,673 judgment for more than three additional years.

C. Liability of Defendant Williams

Williams argues that she cannot be held liable for her actions in reaching and executing the 2012 Agreement. Initially, Williams argues that she became a party to Plaintiff's fee contract with Gloria as a result of her status as agent for Gloria under the Durable Power of Attorney. An agent is only immune from liability for tortious interference with its principal's contract when the agent is acting within the scope of its agency. *Dutch Fork Development Group II, LLC v. SEL Properties, LLC*, 406 S.C. 596, 753 SE 2d 840 (2012). It is axiomatic that Attorneys-in-Fact must always act for the benefit of the principal, so acting otherwise is outside the scope of an Attorney-in-Fact's agency.

Williams confirmed in her deposition that she does not believe the 2012 Agreement was beneficial to Gloria, and she formed this belief very shortly after entering into it. It is undisputed, however, that all funds payable to Gloria under the 2012 Agreement were promptly deposited directly into Williams' own accounts. She testified that she spent \$50,000 on a down payment for her new home from these funds and, shortly thereafter, spent another \$35,000 of these funds to install a pool and landscaping at her new home. It is further undisputed that Gloria has never lived in the home into which Williams invested Gloria's funds. Finally, it is undisputed that by 2015 most of Gloria's funds had been spent.

Williams also argues that the "exculpation clause" in the Durable General Power of



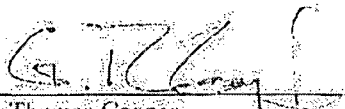
Attorney immunizes her from liability. A review of that clause, found in Article IV, §A of the Power of Attorney document, shows that its purpose is to exculpate an Attorney-in-Fact from liability for failures to act, such as where the Attorney-in-Fact is unaware of the existence of the document creating her agency. In this case, Plaintiff seeks damages against Williams for actions, rather than inactions, and nothing in the Power of Attorney precludes her liability.

Conclusion

For the reasons set forth above, I find that Plaintiff is entitled to summary judgment on her cause of action for tortious interference with contract against Defendants Estate of Samuel M. Corley, M.L. Corley Marital Trust, and Andra R. Williams. Although I conclude that Plaintiff was damaged by Defendants' conduct, a damages hearing will be necessary to determine the exact amount of those damages, including consideration of punitive damages.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff's motion for summary judgment is **GRANTED** as to Defendants Gail P. Corley, as Personal Representative of the Estate of Samuel M. Corley; Patricia C. Grant, as Trustee of the M.L. Corley Marital Trust; and Andra R. Williams. A damages hearing shall be set to determine the amount due to Plaintiff herein.

AND IT IS SO ORDERED.



G. Thomas Cooper
Circuit Judge for the Eleventh Circuit

COLEMAN, South Carolina

December 10, 2015

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STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Case No. 2011-CP-32-1109

Adele J. Pope,)
)
)
Plaintiff)
vs.)

**ORDER DENYING DEFENDANTS
ESTATE OF SAMUEL M. CORLEY,
M.L. CORLEY MARITAL TRUST AND
ANDRA R. WILLIAMS' MOTION TO
RECONSIDER**

Gloria P. Corley, Gail P. Corley,)
as Personal Representative of the Estate)
of Samuel M. Corley, Patricia C. Grant,)
as Trustee of the M.L. Corley Marital)
Trust, and Andra R. Williams,)
Defendants.)

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SC Court of Appeals

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BETH A. CARRICO
CLERK OF COURT
LEXINGTON, SC

This matter comes before the Court by way of Defendants', Estate of Samuel M. Corley, by Gail P. Corley, its personal representative, M.L. Corley Martial Trust, by Patricia C. Grant, its successor trustee, and Andra R. Williams ("Defendants"), Motion to Reconsider pursuant to Rule 59(e), SCRPC. Specifically, Defendant asks this Court to reconsider its Order Granting Plaintiff's Motion for Summary Judgment filed December 16, 2015.

After careful consideration of the record in this case and the submissions of the parties, this Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby **DENIES** Defendants' Motion under Rule 59(e), SCRPC, to Reconsider this Court's Order filed December 16, 2015. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

IT IS SO ORDERED.



G. Thomas Cooper, Jr., Judge
Fifth Judicial Circuit

Columbia, South Carolina

January 29, 2016

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STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
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Adele J. Pope,)
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) Plaintiff,)
)
) vs.)
)
Gloria P. Corley, Gail P. Corley,)
as Personal Representative of the Estate)
of Samuel M. Corley, Patricia C. Grant,)
as Trustee of the M.L. Corley Marital)
Trust, and Andra R. Williams,)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
Case No. 2011-CP-32-1109

ORDER GRANTING JUDGMENT AGAINST
DEFENDANTS ANDRA R. WILLIAMS,
ESTATE OF SAMUEL M. CORLEY AND
M.L. CORLEY MARITAL TRUST

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CLERK OF COURT
LEXINGTON, SOUTH CAROLINA

THIS MATTER CAME BEFORE THE COURT for a determination of damages owed to Plaintiff from Defendants Andra R. Williams; Gail P. Corley, as Personal Representative of the Estate of Samuel M. Corley; and Patricia C. Grant, as Trustee of the M.L. Corley Marital Trust. By Order of the Honorable G. Thomas Cooper, dated December 10, 2015, the Court granted Plaintiff's motion for summary judgment against the Defendants as to liability for Plaintiff's claim for tortious interference with contract. That Order included extensive findings of fact regarding the actions of the various parties and, further, directed that a separate damages hearing be held.

The damages hearing was held pursuant to that Order on April 18, 19 and 20, 2016. Counsel present at the hearing were: Adam T. Silvernail, counsel for Plaintiff; Charlie M. Pender, Counsel for Defendants Gail P. Corley, as Personal Representative of the Estate of Samuel M. Corley (the "Estate") and Patricia C. Grant, as Trustee of the M.L. Corley Marital Trust (the "Corley Trust"); and Timothy D. Quinn, Esquire, counsel for Defendant Andra R. Williams ("Williams"). The Court heard testimony from Plaintiff, Gail P. Corley, David W.

Siddons, Esquire, Dwight Corley and Andra R. Williams, and approximately twenty (20) exhibits were presented. In addition, the following affidavits were presented in conjunction with the summary judgment and damages proceedings:

1. Affidavit of Adele J. Pope, dated August 21, 2012;
2. Affidavit of Adele J. Pope in Support of Motion for Summary Judgment as to Defendants Estate of Samuel Corley, the M.L. Corley Marital Trust and Andra R. Williams, dated July 22, 2015;
3. Supplemental Affidavit of Adele J. Pope Supporting Actual Damages and Punitive Damages Against Corley and Marital Trust for Intentional Interference with Contract, dated August 14, 2015;
4. Affidavit of Adele J. Pope in Support of Judgment for Actual and Punitive Damages as to the Estate of Samuel M. Corley, the M.L. Corley Marital Trust and Andra R. Williams, dated February 8, 2016;
5. Affidavit of Adam T. Silvernail, dated February 8, 2016;
6. Affidavit of James B. Richardson, Jr., dated February 9, 2016; and
7. Affidavit of Daryl L. Williams, dated February 12, 2016.

The affidavits of Plaintiff dated August 21, 2012; July 22, 2015; and August 14, 2015 were presented and considered by Judge Cooper without objection in the November 12, 2015 hearing on Plaintiff's motion for summary judgment. The Affidavit of Adam T. Silvernail sets forth the basis for Plaintiff's attorneys' fees incurred since the 2013 judgment, and the Affidavits of James B. Richardson, Jr. and Daryl L. Williams (submitted in lieu of testimony by consent of the parties) give opinions that the fees and costs incurred are reasonable.

Based on the evidence presented at the hearing and within the record of this matter, the Court makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This action was filed on March 21, 2011. Plaintiff sought damages against Gloria P. Corley ("Gloria") for breach of a contract for services. Certain declaratory relief was also sought against Samuel M. Corley, individually ("Sam") and as Trustee of the Corley Trust. On August 21, 2013, the Honorable Edgar W. Dickson entered judgment in the amount of \$248,673.87, plus additional interest, attorneys' fees and costs until collected, against Gloria P. Corley on Plaintiff's claim for breach of contract (the "2013 judgment"). On June 15, 2013, Plaintiff moved to amend her complaint to assert a cause of action for against Sam, Individually and as trustee of the Corley Trust, and Williams for tortious interference with Plaintiff's contract with Gloria. By Order of the Honorable R. Lawton McIntosh dated March 17, 2015, Plaintiff's motion to amend was granted.

Central to the interference with Plaintiff's contract with Gloria, as found by Judge Cooper, was an agreement reached by Sam, the Corley Trust and Williams in March 2012 and a large payment made to Gloria several months later (the "2012 Agreement"). The 2012 Agreement and payment were made without notice to this Court or Plaintiff, whose counsel discovered the Agreement as it was being implemented.

Under the 2012 Agreement, \$650,000 was to be paid to Gloria to satisfy both Gloria's interest in the Corley Trust and a \$50,000 payment Williams was to receive from the Corley Trust at Gloria's death. According to the 2012 Agreement, the payment was based on actuarial tables showing that Gloria's life expectancy was 8.29 years.

The language of 2012 Agreement (first memorialized in a short, handwritten document and later developed into a formal agreement) shows clearly that the parties to

that agreement intended that Plaintiff not be paid any portion of the \$672,500¹ given to Gloria in 2012, even though one-third (1/3) of the amount over \$90,000 was due under Gloria's contract with Plaintiff. A substantial portion of the \$650,000 was used to pay attorneys' fees for Gloria, Williams, Sam and the Corley Trust. Approximately \$522,000 was immediately deposited into Williams' accounts. Before the end of 2012, about \$1.28 million was distributed to Sam from the Corley Trust, and about \$3.8 million was distributed to his siblings from the Corley Trust. On May 18, 2015, Sam died, and Gail P. Corley, as Personal Representative of the Estate of Samuel M. Corley, and Patricia C. Grant, as Trustee of the Corley Trust, were substituted as Defendants herein.

On December 10, 2015, the Honorable G. Thomas Cooper granted Plaintiff summary judgment against Sam's Estate, the Corley Trust and Williams as to tortious interference with Plaintiff's contractual rights with Gloria and directed a damages hearing. Judge Cooper's Order fully recounts the facts supporting the judgment against these Defendants. It is the duty of this Court to determine and assess the damages to Plaintiff resulting from these Defendants' interference. Based on the evidence before me, I find that the following actual and punitive damages are due Plaintiff from Defendants Williams, the Corley Trust and Sam's Estate.

I. Actual Damages

In a claim for tortious interference with a contract, the injured party can recover as actual damages the pecuniary loss of the benefits of the contract and consequential losses for which the interference is the legal cause. *Collins Music Co., Inc. v. Smith*, 335 S.C. 145, 148, 503 S.E.2d 481, 482 (Ct. App. 1998).

¹ As found by Judge Dickson in the 2013 judgment, in 2012 Gloria had received \$22,500 in regular monthly payments from the Corley Trust prior to receiving the \$650,000.

I find that the actual damages to Plaintiff are as set out in the Order of the Honorable Edgar W. Dickson, dated August 21, 2013. Judge Dickson found that the damages to Plaintiff for Gloria's breach of her contract were \$248,673.87, plus daily interest of \$42.21 and reasonable additional attorneys' fees and costs incurred in collection. Based on the evidence presented by affidavit and testimony, the amounts currently due on the judgment are:

Original Judgment Amount	\$248,674
Interest to 4/18/16 (\$42.21 daily)	\$ 42,337
Costs to 4/18/16	\$ 5,869
Costs of Receivership	\$ 6,098
Attorneys' Fees to 4/18/16	<u>\$ 82,500</u>
Total Actual Damages	\$385,478

Judge Cooper has found that Gloria's breach of the contract occurred as a result of intentional interference by Andra, Sam and the Corley Trust, and so all three are jointly and severally liable for the actual damages set out above.

Attorneys' fees and costs totaling \$94,467 have been necessarily incurred since July 15, 2013 in Plaintiff's efforts to collect the sums due her as a result of Gloria's breach of her contract with Plaintiff. Plaintiff has made all reasonable efforts to collect from Gloria, who had sufficient funds to pay the judgment at the time it was rendered. As a result of the interference by Defendants Williams, the Corley Trust and Sam, however, most of Gloria's funds were dissipated before any substantial portion of the judgment could be paid.

The attorneys' fees and costs incurred herein since July 15, 2013 have been necessary to protect Plaintiff's rights under the contract and judgment, and all Defendants were aware that the 2012 Agreement would likely create further litigation. The total fees requested are reasonable under the applicable factors. Plaintiff presented the affidavits of

James B. Richardson, Jr., Esquire and Daryl L. Williams, Esquire, which support the reasonableness of the attorneys' fee and cost request. In addition to being awarded under Judge Dickson's Order, the attorneys' fees and costs incurred in this action are also consequential damages caused by Andra, Sam and the Corley Trust's interference. See *Addy v. Bolton*, 257 S.C. 28, 183 S.E.2d 708 (1971).

I find that the total actual damages to Plaintiff for Defendants' tortious interference with her contract with Gloria are **\$385,478**.

II. Punitive Damages

Plaintiff has requested an award of punitive damages as a result of the Defendants' intentional interference with Plaintiff's contractual rights with Gloria. The South Carolina Courts have approved awards of punitive damages where the conduct in question was willful, intentional, or with reckless disregard of the plaintiff's contractual rights. (*Collins Entertainment Corp. v. Coats and Coats Rental Amusement*, 355 S.C. 125, 584 S.E.2d 120 (Ct. App. 2003)). Although other cases have indicated that the interference must be "aggravated" and "unjustified,"² I find that both standards are met by the evidence presented with regard to Defendants' conduct herein. Plaintiff is therefore entitled to an award of punitive damages against Defendants.

I have carefully reviewed the Order of Judge Cooper, considered the testimony and reviewed the relevant affidavits, exhibits and other documents in the record as to the willful, aggravated, and unjustified conduct of Defendants Sam Corley, the Corley Trust and

² *Todd v. S.C. Farm Bureau Ins. Co.*, 276 S.C. 284, 294, 278 S.E.2d 607, 611-12 (1981), on remand, 283 S.C. 155, 321 S.E.2d 602 (Ct. App. 1984), *rev'd in part*, 287 S.C. 190, 336 S.E.2d 472 (1985).

Williams. I find and conclude that the following factors justify a substantial award of punitive damages:

1. Willful, wanton, unjustified conduct by said Defendants, without regard to the rights of Plaintiff;
2. Conduct which took place over more than four (4) years;
3. Intentional attempts by said Defendants to conceal their actions from Plaintiff;
4. The likelihood that a substantial award will deter similar action by other litigants; and
5. Said Defendants have the ability to pay the award.

Set forth below are the facts within the record supporting each factor, which together justify a substantial award of punitive damages.

(1) defendant's degree of culpability

The 2012 Agreement was reached just over a year after Plaintiff filed this suit, and all Defendants were aware of Plaintiff's efforts to enforce her contract with Gloria. Andra Williams testified that she reached the 2012 Agreement based on her understanding that it would avoid further payment to Plaintiff. David W. Siddons, Esquire, who represented the Corley Trust and Sam as its Trustee, testified that he was served with Plaintiff's August 21, 2012 affidavit which set out in detail her claim to a portion of the \$650,000 payment to Gloria which was provided for in the 2012 Agreement. Nonetheless, Siddons testified that his client proceeded with delivering the funds directly to Gloria approximately a month after receiving the affidavit.

All Defendants anticipated that Plaintiff would claim entitlement to funds paid to Gloria under the 2012 agreement, as evidenced by the handwritten settlement outline signed by Andra and Sam, individually and for the Corley Trust, which includes a specific provision that \$50,000 will be "kept liquid" pending an outcome of this action. The 2012 Agreement, as set out in its final form, clarifies that \$50,000 of Gloria's funds will be held to

pay Sam and the Corley Trust's defense costs and indemnify them in this action. Addressing Sam and the Corley Trust's attorney by email, Andra's attorney later confirmed that this "litigation fund" was created based on their expectation that Plaintiff would claim that "Sam and Gloria conspired to screw [Plaintiff] out of a fee." Sam and the Corley Trust's attorney later wrote Andra's attorney about the scheduling of a hearing in the Probate Court, indicating that he thought Andra's attorney might want to "wait until [Plaintiff] is out of [Andra's attorney's] life," but that they could proceed with the hearing if needed. The contemporaneous correspondence shows that Defendants worked to avoid Plaintiff learning of the 2012 payment while delivering it directly to Andra and Gloria.

Further showing the culpability of the interfering Defendants is the substantial benefit each of Andra, Sam and the Corley Trust received as a result of the 2012 transactions. Despite testifying that she had misgivings about the 2012 Agreement on March 27, 2012, Andra signed a detailed agreement on April 19, 2012 and deposited Gloria's entire net proceeds of the 2012 Agreement into her own bank account in September 2012. Thereafter, she used the funds to make a \$50,000 down payment on a new home and, subsequently, spent more than \$35,000 to install a pool and landscaping around that home. Gloria has never lived in the home, despite Andra's use of her funds to buy and improve it. At the time the Receiver was appointed herein, only about \$70,000 of the \$650,000 remained, all of it contained in accounts titled solely to Andra.

Sam, individually, and the Corley Trust's beneficiaries have received great financial benefits from the 2012 Agreement. According to Siddons' testimony and the Form 709 Gift Tax Return he prepared, each of Gloria's step-children received over \$1.2 million in property more than 8 years before they would have if Gloria lived out her statutory life

expectancy. They also avoided the obligation to continue paying her at least \$145,000 per year during that time.

The evidence shows clearly and convincingly that Defendants knew of Plaintiff's claim to a portion of the 2012 payment, but nonetheless proceeded with secretly delivering it to Andra. To do so during this pending action for enforcement of the contract shows a high degree of reprehensibility.

(2) Duration of the Conduct

Andra, Sam and the Corley Trust came together in March 2012 to jointly interfere with Plaintiff's contract with Gloria. Sam and the Corley Trust "worked tirelessly" to carry the 2012 Agreement into effect into the Fall of 2012, according to Siddons' affidavit and his live testimony. In late 2012, Andra's lawyer selected counsel for Sam and the Corley Trust, who she advised Siddons would "work well against our common enemy." Thereafter, Sam and the Corley Trust's counsel was paid with Gloria's funds as Plaintiff sought to recover those same funds in this action. In December of that year, the Corley Trust's attorney wrote to Andra's attorney regarding an upcoming hearing in the Probate Court, stating that he thought "it would be wise to hold off until Adele is out of your life."

In August 2015, Sam's Estate and the Corley Trust engaged a lawyer to threaten a malpractice claim against Plaintiff's counsel and demand his immediate withdrawal from representing Plaintiff herein. This demand appears to have been calculated to deprive Plaintiff of her counsel in this action, and no evidence was presented to substantiate the claim or refute Plaintiff's concerns.

Gloria had sufficient funds to pay Plaintiff's 2013 judgment against her at the time it was entered. Nonetheless, Andra, Sam and the Corley Trust continued their efforts to delay

this matter for over two additional years. Their joint conduct has been recurring during the 4 years since 2012.

(3) Defendant's Awareness or Concealment

Andra, Sam and the Corley Trust were aware of Plaintiff's contract with Gloria, as well as this litigation in which Plaintiff sought to enforce her rights thereunder. Instead of advising Plaintiff or the Court that Gloria would receive a lump-sum payment from the Trust, Andra, Sam and the Corley Trust engaged in secret settlement negotiations; reached a settlement which clearly anticipates that Plaintiff would be forced into further litigation in order to protect her rights under her contract with Gloria; and then sought Probate Court approval within an Estate proceeding which had been closed since 2000. The emails exchanged among counsel for Andra, Sam and the Corley Trust show that all took an interest in reaching the 2012 Agreement without notice to Plaintiff.

As to Andra, Sam and the Corley Trust's awareness, it is important to note that Plaintiff filed an affidavit herein immediately after discovery of the 2012 Agreement, in which she took the position (later vindicated in Judge Dickson's 2013 judgment) that she was entitled to a portion of the funds Gloria would receive under the 2012 Agreement. The evidence shows clearly that Sam and the Corley Trust nonetheless delivered over \$600,000 to Gloria after being put on notice that Plaintiff was entitled to a portion of those funds.

(4) Existence of Similar Past Conduct

Andra caused this litigation to be commenced by taking the 2010 annual payment check from Plaintiff in March 2011. Plaintiff promptly filed suit to enforce the contract, and Gloria, Sam and the Corley Trust were named Defendants herein. Despite being on notice

of Plaintiff's action to enforce the contract, Andra, Sam and the Corley Trust reached and carried out an agreement to cause Gloria to again breach the contract in 2012.

(5) Likelihood the Award Will Deter the Defendant or Others from Like Conduct

Because Andra has received the benefit of over \$500,000 and Sam and the other Corley Trust beneficiaries have received a total of more than \$5,000,000 over eight (8) years earlier than expected, a substantial punitive damage award is warranted to deter these Defendants and others from similar conduct in the future. The Defendants secretly reached the 2012 Agreement during Plaintiff's litigation and proceeded with the delivery of the funds directly to Gloria after being put on actual notice of Plaintiff's claim to a portion of those funds. I find this conduct to be willful and wanton; for any litigant to undertake the actions as these Defendants have is clearly in contravention of the rights of others, here Plaintiff. As has happened in this case, such conduct leads to more protracted litigation and defeats judicial economy in resolving questions pending before the Courts.

(6) Whether the Award is Reasonably Related to the Harm Likely to Result from Such Conduct

As shown in this case, Plaintiff has suffered nearly \$400,000 in actual damages as a result of the acts of Defendants during Plaintiff's action to enforce her contractual rights. The 2012 Agreement and related transactions were distressing for Plaintiff, but enriched Andra, Sam and the Corley Trust's beneficiaries collectively by several million dollars.

(7) Defendants' Ability to Pay

The record in this matter shows that Andra has made a substantial down payment on a new home with a pool, and she continues to own an interest in property near Lake

Murray.³ She may have an expectancy from her mother, as well, despite having already received most of her mother's funds from the 2012 Agreement. Sam's Estate is valued at around \$6 million, according to his widow's testimony and a sworn Probate Court filing admitted into evidence. The Corley Trust held properties valued at over \$5 million in 2012, as set out on the Gift Tax Return admitted into evidence and confirmed by Siddons' testimony.

Even a substantial punitive damage award will leave the Defendants with a collective gain as a result of the 2012 transactions.

(8) Other Factors Deemed Appropriate

More than a year into this litigation, in which Sam and the Corley Trust were Defendants and Andra was acting as Attorney-in-Fact for Gloria, these Defendants gathered together to secretly craft an agreement which anticipated Plaintiff's claims to a portion of its proceeds. To further aggravate the circumstances, \$50,000 of Gloria's funds which had been diverted from Plaintiff were set aside to pay the costs incurred by Sam and the Corley Trust in their effort to avoid payment to Plaintiff.

Amount of Punitive Damages

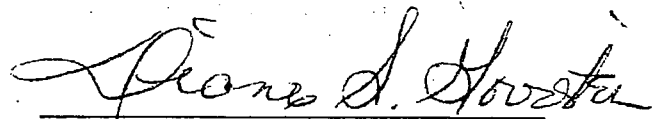
I find that the conduct of Sam Corley, the Corley Trust and Andra Williams was aggravated and unjustified, willful, wanton and devoid of any consideration of the rights of Plaintiff. A substantial punitive damage award is appropriate after review of the relevant factors. Taking all of those factors into account, I find that Defendants should pay to Plaintiff, jointly and severally punitive damages in the amount of two and one-half (2 1/2) times Plaintiff's actual damages, which amount is **\$963,710.63**.

³ Although Andra testified that her former home was still "tied up in" her divorce, no evidence was presented to show that she does not own an interest in that property.

This is well within the range of punitive damages awards approved in recent reported South Carolina cases, which have held that punitive damages awards of between five (5) and ten (10) times' the actual damages awarded in tortious interference cases were appropriate and constitutional. See, e.g., *Kinard v. Crosby*, 315 S.C. 237, 433 S.E.2d 835 (1993); *Collins Music Co. v. Terry*, 303 S.C. 358, 400 S.E.2d 783 (Ct.App. 1991); *Collins Entm't Corp. v. Coats Rental Amusement*, 355 S.C. 125, 584 S.E.2d 120 (Ct.App. 2003), *aff'd*, 368 S.C. 410, 629 S.E.2d 635 (2006). Two and one-half times actual damages is therefore a very conservative amount, the least amount which this court believes will accomplish the goals of a punitive damage award.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment be entered for Plaintiff against Defendants Gail P. Corley, as Personal Representative of the Estate of Samuel M. Corley; Patricia C. Grant, as Trustee of the M.L. Corley Trust; and Andra R Williams, jointly and severally, for actual damages in the amount of **\$385,478** and punitive damages in the amount of **\$963,710.63**, for a total award to Plaintiff of **\$1,349,173.00**, plus interest at the judgment rate from the date of this Order.

AND IT IS SO ORDERED.



Diane S. Goodstein
Circuit Judge for the Eleventh Circuit

St George, South Carolina

July 15, 2016

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STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

) FILED IN THE COURT OF COMMON PLEAS
) Case No. 2011-CP-32-1109
2016 SEP 26 PM 3:43

Adele J. Pope,

Plaintiff

vs.

Gloria P. Corley, Gail P. Corley,
as Personal Representative of the Estate
of Samuel M. Corley, Patricia C. Grant,
as Trustee of the M.L. Corley Marital
Trust, and Andra R. Williams,
Defendants.

BETH A. CARTER
CLERK OF COURT
LEXINGTON, SC

COPY

**ORDER DENYING MOTION OF
ESTATE OF SAMUEL M. CORLEY AND
M.L. CORLEY MARITAL TRUST
FOR A NEW TRIAL**

RECEIVED

SEP 30 2016

SC Court of Appeals

THIS MATTER CAME BEFORE THE COURT on the motion of Defendants Estate of Samuel M. Corley and M.L. Corley Marital Trust for a new trial on damages in this matter.

After careful consideration of the record in this case and the submissions of the parties, this Court finds no reason to grant a new trial in this matter. Accordingly, this Court hereby **DENIES** the motion of Defendants Estate of Samuel M. Corley and M.L. Corley Marital Trust to vacate this Court's July 15, 2016 Order and convene a new trial on damages pursuant to Rule 59(a), SCRCP.

AND IT IS SO ORDERED.

A. George
South Carolina

8-26, 2016

Diane Schaffer Goodstein
Diane Schaffer Goodstein
Circuit Judge for the Eleventh Circuit

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

FILED
IN THE COURT OF COMMON PLEAS
2016 SDP - 6 Case No. 2011-CP-32-1109

COPY

BETH A. CARRICO
CLERK OF COURT
LEXINGTON SC

Adele J. Pope,

Plaintiff

vs.

Gloria P. Corley, Gail P. Corley,
as Personal Representative of the Estate
of Samuel M. Corley, Patricia C. Grant,
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ORDER DENYING MOTION OF
ESTATE OF SAMUEL M. CORLEY AND
M.L. CORLEY MARITAL TRUST
FOR A NEW TRIAL

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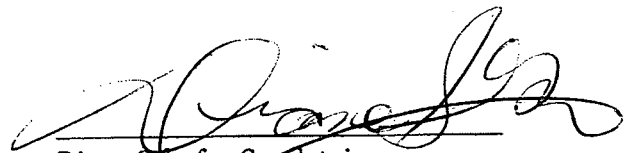
SEP 30 2016

SC Court of Appeals

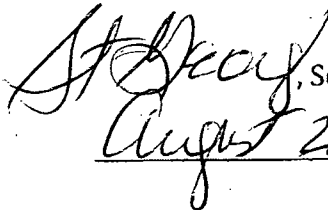
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AND IT IS SO ORDERED.



Diane Schafer Goodstein
Circuit Judge for the Eleventh Circuit


Adele J. Pope, South Carolina
August 26, 2016