

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Bruce Schultze,)
)
Plaintiff,)
)
v.)
)
Stephen A. Brown, Individually)
and as manager of Pure Market)
Solutions, LLC, Pure Market)
Solutions, LLC, SLK, LLC,)
and John Doe,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2016-CP-40-2760

ORDER FOR DAMAGES

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JEANNETTE W. MCCRIBB
C.C.P. & G.S.
RICHLAND COUNTY
FILED

This case came before the court on November 7, 2017 with two pending matters: (1) Plaintiff's Rule to Show Cause and For Additional Sanctions and (2) Plaintiff's Damages Hearing.¹ This Court continued Plaintiff's Rule to Show Cause and For Additional Sanctions to allow for personal service on Defendant Stephen A. Brown. The following Order addresses an award of actual and punitive damages to Plaintiff. The Plaintiff, Bruce Schultze was represented by Joseph M. McCulloch and Kathy R. Schillaci. Although Defendant Brown did not appear, he and the named corporate defendants were represented by Frank Barton, Esq.

FINDINGS OF FACT AND ACTUAL DAMAGES

This Court finds that Judge Toal issued an Order on February 13, 2017 compelling discovery from Defendants. In addition, Judge Manning issued an Order on June 16, 2017 striking Defendants' answer, entering default, and rendering judgment on liability in favor of Plaintiff. The only issue this Court determined is the amount of

¹ Defendant also argued a Motion to Continue the hearings from November 7, 2017, which the Court Denied.

damages owed to Plaintiff. This Court makes the following findings as to Plaintiffs award of actual damages in the amount of \$400,000.00.

This Court reviewed the admissions of allegations of the Complaint and testimony at the hearing. Plaintiff testified that Defendant Brown approached Plaintiff about investing in and becoming a 50/50 partner in Pure Market Solutions, LLC ("PMS") with Defendant Brown serving as the managing partner. Defendant Brown represented to Plaintiff that the purpose of his investment was for marketing of an energy drink. Plaintiff testified he provided furniture and funds for the purchase of an RV that PMS would utilize for marketing purposes. After providing \$400,000 to Defendant Brown, in support of the PMS business venture, Plaintiff requested business information and access to financial and other records and received promises from Defendant Brown that such information and records would be produced. When limited records were eventually provided to Plaintiff by Defendant Brown, specifically tax returns that were two years late, the records showed an additional partner not approved or known to Plaintiff and decreasing ownership shares as to Plaintiff, with no explanation for the decrease.

In October 2014, the Plaintiff learned from a new franchise holder that PMS was no longer the authorized distributor of the energy drink, a fact never made known to the Plaintiff by Defendant Brown, the PMS manager. Plaintiff made requests to Defendant Brown for business records and information, which were unanswered by Defendant Brown. Plaintiff filed suit on April 29, 2016. This Court finds that the causes of action contained in Plaintiff's Complaint are admitted as supported by Defendants' default, stricken answer, and the testimony of Plaintiff. Further, Defendant Brown did not appear to the damages hearing to refute Plaintiff's testimony concerning his damages.

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At the hearing, the Plaintiff presented checks in the total amount of \$400,000 written to Defendant SLK, LLC. SLK, LLC is a company owned and managed by Defendant Brown and Defendant PMS. Based on the testimony and documentation presented, this Court is persuaded that Plaintiff has established actual damages in the amount of \$400,000 representing investment monies. While there was testimony that Plaintiff received approximately \$30,000 from Defendant Brown at some point, these amounts in no way reduce the damages amount owed. According to Plaintiff's testimony, these amounts could have been profits and Defendant Brown failed to produce an accounting for the monies (even after an accounting was requested).

PUNITIVE DAMAGES

In addition to the award of \$400,000 in actual damages, this Court finds that an award of \$150,000 in punitive damages is appropriate based on the facts and testimony presented. According to Gamble v. Stevenson, 305 S.C. 104, 406 S.E.2d 350 (1991):

In South Carolina, punitive damages are allowed in the interest of society in the nature of punishment and as a warning and example to deter the wrongdoer and others from committing like offenses in the future. Moreover, they serve as a vindication of private rights when it is proved that such have been wantonly, willfully, or maliciously violated. Lastly, punitive damages may be awarded only upon a finding of actual damages.

Id., 305 S.C. at 110-111, 406 S.E.2d at 354. For an award of punitive damages, the plaintiff has the burden of proving by "clear and convincing evidence the defendant's misconduct was willful, wanton, or in reckless disregard of the plaintiff's rights." Austin v. Specialty Transp. Servs., Inc., 358 S.C. 298, 313, 594 S.E.2d 867, 875 (Ct. App. 2004).

"A conscious failure to exercise due care constitutes willfulness." McCourt ex rel. McCourt v. Abernathy, 318 S.C. 301, 308, 457 S.E.2d 603, 607 (1995). This Court finds

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there is clear and convincing evidence of Defendants' reckless, willful, and wanton behavior based on the testimony and evidence.

Here, the Court conducted a post-judgment review and considered the following factors: (1) the defendants degree of culpability; (2) the 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 (8) other factors deemed appropriate. Id., 305 S.C. at 111-112, 406 S.E.2d at 354; *see also* BMW of North America v. Gore, 517 U.S. 559 (1996); State Farm Mut. Auto Ins. Co. v. Campbell, 538 U.S. 408 (2003). "[T]he trial court is not required to make findings of fact for each factor to uphold a punitive damage award." McGee v. Bruce Hosp. Sys., 321 S.C. 340, 346, 468 S.E.2d 633, 637 (1996).

Here, the Court finds that the testimony and exhibits establish clear and convincing evidence of conscious wrongdoing by Defendant Brown individually and through the corporate defendants. Initially, it should be noted that Defendant Brown's failure to comply with the Court Orders on behalf of himself and the corporate defendants has resulted in limited discovery and documentation. Based on the available documentation and testimony, the Court has considered the harm to Plaintiff and Defendant Brown's culpability.

Defendant Brown, as manager of PMS, sold a partnership in the company without discussing it with Plaintiff, failed to communicate with his business partner (the Plaintiff), and the Plaintiff learned of the loss of the through a third party as opposed to Defendant Brown as managing partner. As to awareness and concealment, Defendant

Brown has failed for a number of years to provide appropriate and timely tax documentation and business information resulting in Plaintiff having to file multiple extensions. Even when confronted with the Orders of this Court requiring the production of documents, Defendant Brown has failed to provide the documentation. The Court has considered whether the award is reasonably related to the harm likely to result from such conduct and likelihood the award will deter the defendant or others from like conduct.

Based on a consideration of the above factors, this Court is persuaded that an award of \$150,000 in punitive damages as to identified Defendants, Stephen A. Brown, PMS, LLC, and SKL, LLC is appropriate.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

- 1) Plaintiff is entitled to a judgment in actual damages against, Stephen A. Brown, Pure Market Solutions, LLC, and SLK, LLC jointly and severally, in the amount of \$400,000 in actual damages;
- 2) After awarding actual damages, this Court has conducted a post-judgment review and awards \$150,000 in punitive damages in favor of Plaintiff as against Stephen A. Brown, Pure Market Solutions, LLC, and SLK, LLC, jointly and severally.
- 3) Defendant, Stephen A. Brown is compelled to attend Plaintiff's Rule to Show Cause and For Additional Sanctions, or be held in contempt of court.

AND IT IS SO ORDERED.

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The Honorable DeAndrea G. Benjamin
Presiding Circuit Court Judge, Fifth Judicial Circuit

This 22 day of November, 2017

Columbia, South Carolina