

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Perry H. Gravely, Circuit Court Judge
Edward W. Miller, Circuit Court Judge

Common Pleas Case No. 2017-CP-2303720

Appellate Case No. 2018-000207

DARRIN VANDER TOORN,

Respondent,

v.

Appellants.

BILLETER RECRUITING,
LLC, and WILLIAM
ANCAR,

RECORD ON APPEAL

Howard W. Anderson III (#100329)
LAW OFFICE OF
HOWARD W. ANDERSON III, LLC
P.O. Box 661
176 E. Main St.
Pendleton, SC 29670
howard@hwalawfirm.com
864-643-5790 (p)
Counsel for Appellants

Peter A. Rutledge (#15899)
RUTLEDGE LAW, LLC
66 Faris Circle
Greenville, SC 29605
(864) 906-2521
peter@prutlaw.com
Counsel for Respondent

RECEIVED
SEP 17 2018
SC Court of Appeals

INDEX TO RECORD ON APPEAL

Orders

Order of July 12, 2017.....	1
Order of September 12, 2017.....	3
Order of November 15, 2017.....	6

Judgments

Default Judgment of January 23, 2018.....	9
---	---

Pleadings

Complaint.....	15
Motion for Entry of Default.....	31
Motion for Default Judgment.....	32
Motion to Set Aside Default.....	38
Notice of Appeal.....	46
Amended Notice of Appeal.....	47

Transcripts

Transcript of Nov. 8, 2017 (motion to set aside default hearing).....	49
Transcript of December 5, 2017 (damages hearing).....	76

Certificate

Attorney Certificate.....	Certificate
---------------------------	-------------

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

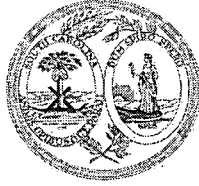
Darrin Vander Toorn,	)	Case Number: 2017-CP-23-03720
Plaintiff,	)	
vs.	)	ENTRY OF DEFAULT
Billeter Recruiting, LLC, and William Ancar,	)	
Defendants.	)	

THIS MATTER comes before the Clerk of Court upon Motion of the Plaintiff for entry of default pursuant to Rule 55, SCRCP.

It appears that the Summons and Complaint were served on the Defendants in this cause of action more than thirty (30) days ago as may be seen by the records filed with the Clerk. No Answer, Motion, or other responsive pleading has been received or served in response thereto as may be seen by reference to the Affidavit of Default filed by Plaintiff.

THEREFORE IT IS ORDERED, pursuant to Rule 55 and upon motion of Plaintiff, the Defendants Billeter Recruiting, LLC, and William Ancar, are hereby adjudged and declared to be in default.

IT IS SO ORDERED.



Greenville Common Pleas

Case Caption: Darrin Vander Toorn vs. Billeter Recruiting Llc , defendant, et al

Case Number: 2017CP2303720

Type: Order/Entry of Default

So Ordered

s/ Robin B. Stilwell 2158

Electronically signed on 2017-07-12 14:11:38 page 2 of 2

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

Darrin Vander Toorn,	)	Case Number: 2017-CP-23-03720
Plaintiff,	)	
vs.	)	ORDER OF JUDGMENT
	)	BY DEFAULT
Billeter Recruiting, LLC, and William Ancar,	)	
Defendants.	)	

It appears from the pleadings on file in this matter that the Defendants were served with the Summons and Complaint on June 9, 2017, and having made no appearance or response to the Complaint, Defendants were put into Default by the Clerk of Court on July 12, 2017, as supported by the Affidavit of Default filed by Plaintiff's counsel.

Based on the facts contained before me contained in the Complaint, the Affidavit of Liquidated Damages, and the Motion for Judgment by Default, and in light of the fact that the Defendants have made no objection to this motion after having at least ten (10) days' notice, I find that the Defendants owe to the Plaintiff the payment of One Hundred Four Thousand Three Hundred Seventy-Six and eighty-one 100ths (**\$104,376.81**) Dollars.

I also find based on the Affidavit of Plaintiff's counsel that Defendants owe to the Plaintiff payment of attorneys' fees in the amount of Five Thousand Three Hundred Fifty-Five (**\$5,355.00**) Dollars, plus costs of Four Hundred Three (**\$403**) Dollars for filing fees and service of process costs in this action.

I also find that Plaintiff shall be permitted to return to this Court in a supplemental proceeding to seek an award of additional attorneys' fees for any amounts incurred in domesticating the judgment

in the State of Louisiana, conducting supplemental proceedings there, and any additional efforts to collect the judgment against the Defendants, pursuant to S.C. Code Ann § 41-10-80(C).

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Plaintiff, Darrin Vander Toorn, have judgment against Defendants Billeter Recruiting, LLC, and William Ancar, in the amount of One Hundred Ten Thousand One Hundred Thirty-Four and eighty-one 100ths **(110,134.81)**, Dollars, together with post-judgment interest on the sum total thereof accruing hereafter at the maximum legal rate.

AND IT IS SO ORDERED.



Greenville Common Pleas

Case Caption: Darrin Vander Toorn vs. Billeter Recruiting LLC , defendant, et al
Case Number: 2017CP2303720
Type: Order/Judgment by Default and Form 4

Denied. See e-file comments

Denied s/Robin. B. Stilwell

Electronically signed on 2017-09-12 13:00:14 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2017CP2303720

Darrin Vander Toorn

Billeter Recruiting LLC

William Ancar

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

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. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ 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:

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)

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.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

2755

Circuit Court Judge

Judge Code

Date

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 2/17)

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on to attorneys of record or to parties (when appearing pro se) as follows:

Peter Andrew Rutledge Smith Moore Leatherwood LLP P.O.
Box 87 Greenville, SC 29602

Devon Marc Puriefoy 1011 E. Washington Street Greenville,
SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk of
Court - Clerk of Court

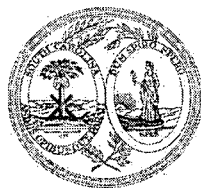
Court Reporter:

E-Filing Note: In E-Filing counties, 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 judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

This matter comes before the Court upon Defendant's Motion to Set Aside Default. At the hearing on November 8, 2017, the Defendant's attorney argued that the Default should be set aside because of defendant's health issues and other grounds, but no affidavits or sworn testimony were presented supporting this argument or any other basis to set aside the default. The Court finds that the Defendant failed to show good cause to set aside the Default and the Defendant's Motion is denied. The Plaintiff had filed a Motion for Damages, but it did not appear that proper notice of the hearing had been provided as required by Rule 55, SCRCP and therefore this Motion shall be rescheduled with notice to all parties.



Greenville Common Pleas

Case Caption: Darrin Vander Toorn vs. Billeter Recruiting LLC , defendant, et al
Case Number: 2017CP2303720
Type: Order/Form 4

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2017-11-15 10:38:35 page 3 of 3

II. Damages Evidence and Defendants' Participation at the Hearing.

Plaintiff, Darrin Vander Toorn advised the Court that he seeks damages under his Payment of Wages Act Cause of Action against both Defendants, Billeter Recruiting, LLC ("Billeter") and William Ancar ("Ancar"). Plaintiff testified under oath that he was employed by Defendants Billeter and Ancar under an Employment Agreement that promised Sixty-Thousand (\$60,000) Dollars, a Twelve Thousand (\$12,000) Dollar signing bonus, together with commissions equaling ten (10%) percent of the gross revenues from clients listed in the Employment Agreement. The Sixty-Thousand Dollar contract price was to be paid in equal amounts of Ten Thousand (\$10,000) Dollars per month, on the 15th of each month. The Employment Agreement is an exhibit to the Complaint and the compensation terms appear in paragraph 4 thereto. The signing bonus and commissions appear in paragraph 5.

Mr. Vander Toorn testified that he had not been paid the May 2017 payment of \$10,000 and the June payment of 10,000. He also seeks pre-judgment interest on those payments at a rate of 8.75% in the amount of \$1,750. Together, the unpaid salary and pre-judgment interest total **\$21,750.**

Mr. Vander Toorn testified, based on documents he reviewed both while he was employed and thereafter, including a text message from Ancar, emails from customers, and documents received from a subpoena issued in this action, that revenues to Billeter for which he is entitled to commissions amount to \$110,514. Counsel for Defendants conceded they do not dispute these revenues. Mr. Vander Toorn testified that he is entitled to commissions in the amount of \$11,051.40. He also seeks pre-judgment interest on those payments at a rate of 8.75% in the amount of \$966. Together, the unpaid commissions and pre-judgment interest total **\$12,017.40.**

Plaintiff therefore asked the Court for total damages and pre-judgment interest in the amount of **\$33,767.40**. At the hearing, and as pled in the Complaint, Plaintiff also sought a trebling of the award, based upon allegations of willfulness that are pled with specificity and in detail. Under the South Carolina Payment of Wages Act, Plaintiff is entitled to treble damages (and attorney's fees, discussed below), particularly when the failure to pay has been willful. S.C. Code Ann § 41-10-80(C). Thus, Plaintiff seeks treble damages in the amount of **\$101,302.20**.

Defendants participated in the hearing by vigorously cross-examining the Plaintiff. However, and with some latitude from the Court, Defendants exceeded the scope of direct examination and attempted to elicit testimony from Mr. Vander Toorn regarding a range of defenses that were waived by operation of the Default. They did not present evidence that contradicted the accuracy of the damages presented by the Plaintiff. By way of example, counsel for Defendants pursued lines of questioning regarding 1) whether the signing bonus should have been an offset for unpaid salary; 2) whether the aforementioned June payment constituted "wages" as "recompense for labor rendered" under the Act (S.C. Code Ann. § 41-10-10 (2)); 3) whether any commissions were due at all for various fact-intensive reasons; and 4) whether Defendants had a good faith basis not to have paid any of the amounts owed, and thus to avoid a discretionary finding of willfulness, because Ancar believed the Plaintiff had engaged in some type of fraud during his employment. These were all defense theories that were foreclosed by reason of the Default, not evidence contradicting Plaintiff's damages.

These efforts were simply misplaced by Defendants in default, at a hearing concerning damages. It is well settled law in South Carolina that a defendant's participation in a damages hearing following default judgment is limited to cross-examination and objection to *plaintiff's* evidence. Limehouse v. Hulsey, 404 S.C. 93, 744 S.E.2d 566 (2013). This is true because were it

not the case, there would be no practical effect of a Default. *See Roche v. Young Bros., Inc., of Florence*, 332 S.C. 75, 81, 504 S.E.2d 311, 314 (1998) (“It is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff’s allegations and to have conceded liability.”). Here, Defendants did not object to or contest that Plaintiff had not been paid the sums he testified he was not paid. Defendants did not object to or contest that Billeter received the revenues entitling him to the commissions to which Plaintiff testified; instead they conceded those were accurate revenues. And as far as Plaintiff’s well-pled allegations of willfulness are concerned, Defendants were not permitted to offer defenses at a damages hearing in the first place, and their Default is deemed an admission of those allegations in any case. Therefore, there is nothing over which this Court must exercise discretion, and a trebling of the award and an award of attorneys’ fees is appropriate. As set forth above, that amount is **\$101,302.20**.

III. Attorney’s Fees and Costs.

Counsel for the Plaintiff relies upon an Affidavit seeking fees in the amount of \$5,355.00, filing fees in the amount of \$243.80, and other costs in the amount of \$160.00 that is already in the record. The total amount of fees and costs awarded is therefore **\$5,758.80**.

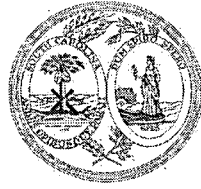
Defendants did not object to the amount of fees during the hearing. Although the matter of the filing fees (\$243.80) and costs (\$160.00) were not addressed in the hearing, because they were included in the Affidavit submitted by Plaintiff’s counsel, were not objected to by Defendants, and are de minimus, I find they are appropriate to include in the award of judgment.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Plaintiff, Darrin Vander Toorn, have judgment against Defendants Billeter Recruiting, LLC, and William Ancar, in the amount of One Hundred Seven Thousand Sixty-One and zero 100ths (**\$107,061.00**), Dollars,

together with post-judgment interest on the sum total thereof accruing hereafter at the maximum legal rate.

AND IT IS SO ORDERED.

Signature Page to Follow



Greenville Common Pleas

Case Caption: Darrin Vander Toorn vs. Billeter Recruiting LLC , defendant, et al

Case Number: 2017CP2303720

Type: Order/Default

So Ordered

s/ Edward W. Miller

Electronically signed on 2018-01-22 16:20:42 page 6 of 6

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

Darrin Vander Toorn,

Plaintiff,

vs.

Billeter Recruiting, LLC, and William Ancar,

Defendants.

C.A. No.: 2017-CP-23-_____

SUMMONS
(Jury Trial Demanded)

TO: THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscribers at their offices, 350 Mohawk Drive, 202 Greenville, SC 29609, within thirty days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within this period of time, judgment by default will be rendered against you for the relief demanded in the Complaint.

s/Peter A. Rutledge

Peter A. Rutledge (SC Bar #15899)

Phone: (864) 906-2521

350 Mohawk Drive, 202

Greenville, SC 29609

Email: peter@prutlaw.com

Dated: June 8, 2017

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Darrin Vander Toorn,

Plaintiff,

vs.

Billeter Recruiting, LLC, and William Ancar,

Defendants.

C.A. No.: 2017-CP-23-_____

COMPLAINT
(Jury Trial Demanded)

The plaintiff, Darrin Vander Toorn (“Vander Toorn”), complaining of the defendants, Billeter Recruiting, LLC (“Billeter”), and William Ancar (“Ancar”), would respectfully show unto the Court as follows:

1. Vander Toorn is a citizen of Canada and a legal resident of the State of South Carolina, County of Greenville.
2. Billeter is a foreign limited liability corporation registered to do business in South Carolina currently in good standing with the South Carolina Secretary of State.
3. Ancar is a citizen and resident of the State of Louisiana.
4. Venue is proper in this Court under S.C. Code Ann. § 15-7-30(D).
5. This Court has jurisdiction over Billeter and Ancar under the Long-Arm statute, S.C. Code, §§ 36-2-802, 803.
6. Ancar is upon information and belief a disabled veteran and operates Billeter Recruiting, LLC, and Billeter Professional Solutions as Service-Disabled Veteran Owned Small Businesses under applicable rules.
7. Ancar is the president of defendant Billeter, and upon information and belief, its organizer and a member of the limited liability company.

8. Since approximately 2013, Mr. Vander Toorn has worked for companies in roles that required him to develop specific and unique staffing plans to supply welders and boilermakers to power plants in Texas, Louisiana, Mississippi, Alabama, and Georgia. In this capacity, he developed deep contacts in the industry with Fluor (Southern Company), Fluor (NRG), and Day-Zimmerman.

9. In July 2016, Ancar approached Mr. Vander Toorn to recruit him to join a forthcoming staffing company that would market highly skilled welders to targeted industries. Mr. Vander Toorn came highly recommended by Woodie McDuffie of Fluor NRG. In furtherance of his efforts to persuade Mr. Vander Toorn to join Ancar, he represented to Mr. Vander Toorn in a July 25, 2016 email that Ancar and his companies were well-capitalized, including up to one million dollars earmarked partially for salaries.

10. Mr. Vander Toorn was persuaded and left a good job with NES Global Talent to join Billeter. The negotiations between Ancar and Mr. Vander Toorn resulted in an employment agreement dated January 3, 2017 (the "Agreement"), wherein Mr. Vander Toorn was employed as Billeter's vice president working directly under Ancar as the company's president for a six-month term. See Exhibit A.

11. Under the Agreement, Mr. Vander Toorn was obligated to provide contracts to Billeter with Fluor (Southern Company), Fluor (NRG), and Day-Zimmerman, in addition to using his best efforts in his role as vice president. Mr. Vander Toorn has fulfilled those obligations fully and faithfully.

12. Under the Agreement, Ancar and Billeter were obligated, among other things, to pay to Mr. Vander Toorn a signing bonus of \$12,000.00; a salary of \$10,000.00 per month, to be paid on the 15th of each month; plus, commissions on gross profits under the schedule set forth in

paragraph 5 of the Agreement. The signing bonus was subject to repayment only if Mr. Vander Toorn failed to obtain any contracts for Billeter during the term. *See* Agreement, paragraph 5.

13. Billeter qualified to do business in South Carolina with the Secretary of State's office January 31, 2017.

14. Billeter and Ancar did not make Mr. Vander Toorn's April salary payment timely, but instead missed the April 15, 2017 payment date.

15. Ancar attempted to justify nonpayment because by that date the contracts Mr. Vander Toorn had obtained for Billeter were not performing to Ancar's liking and he was unhappy. However, Ancar's wife who handles payroll for Billeter, Brandi Ancar, assured Mr. Vander Toorn that the missed April 15th payroll was merely an oversight that would not again be repeated.

16. The Agreement does not permit Billeter and Ancar to withhold salary payments or to condition their payments on the performance of any contracts.

17. Ancar and Billeter's misconduct and dishonesty regarding the withholding of the April salary payment was a willful breach of the Agreement to pay salary, which constitutes "wages" under South Carolina law. S.C. Code Ann. § 41-10-10 (2).

18. Notwithstanding their attempts to avoid paying the agreed upon salary, Ancar and Billeter acknowledged their obligations and ultimately paid the April salary payment, on or about April 21, 2017, nearly a week later than agreed upon under the Agreement.

19. Billeter and Ancar missed Mr. Vander Toorn's May 15, 2017 payroll.

20. Mr. Vander Toorn asked Ancar about the missed payment in a telephone conversation May 16, 2017.

21. During the May 16, 2017 conversation, Ancar requested a one-time concession that Billeter and Ancar be permitted to delay Mr. Vander Toorn's May payroll until Billeter received a payment from Fluor, even though Mr. Vander Toorn's Agreement does not condition his salary on Billeter's receipts of payments from customers.

22. During the May 16, 2017 conversation, Ancar explained to Mr. Vander Toorn that Ancar was just a regular guy trying to provide for his family.

23. During the May 16, 2017 conversation, which lasted forty minutes, Ancar also expressed how pleased he was with Mr. Vander Toorn's performance and dangled the possibility of a longer-term relationship between Billeter and Mr. Vander Toorn that would include an ownership position in the company, after the expiration of the term of the Agreement on June 30, 2017.

24. Thereafter, Mr. Vander Toorn began following up on unpaid invoices with customers to determine why they were not being paid and whether they could be paid more quickly. These were duties that more properly belonged to Brandi Ancar.

25. As a direct result of Mr. Vander Toorn's efforts, Billeter received a payment from Fluor in excess of \$47,000.00 on May 26, 2017.

26. Billeter and Ancar nonetheless still have not paid Mr. Vander Toorn his May 2017 salary.

27. Instead, Ancar took an expensive weekend-long vacation, May 26-28, 2017, in New Orleans during which he posted videos of his lavish trip on Facebook.

28. Ancar and Billeter's misconduct and dishonesty regarding the withholding of the May salary payment was a willful breach of the Agreement to pay salary, which constitutes "wages" under South Carolina law. S.C. Code Ann. § 41-10-10 (2).

29. On May 26, 2017, the same day that Fluor made the very payment that Ancar said would result in a payment to Mr. Vander Toorn of his May 2017 salary, Ancar sent to Mr. Vander Toorn an email asserting that his Agreement was “suspended” because Ancar was unable to clear Mr. Vander Toorn from some alleged contract breaches and/or fraud that were under investigation.

30. Under the Agreement, there is no such provision for a “suspension.” Mr. Vander Toorn’s final payment of \$10,000.00 will thus become due and owing June 15, 2017. *See* paragraph 12, Agreement.

31. The unlawful attempt to avoid past and future payments of Mr. Vander Toorn’s salary, which constitutes “wages,” are willful breaches of his contract and of South Carolina law.

32. Before resorting to this litigation, Mr. Vander Toorn sought a resolution of this dispute by complaint to the South Carolina Department of Labor, Licensing and Regulation. *See* S.C. Code Ann § 41-10-70. In response to his complaint, Ancar falsely asserted to an investigator that the \$12,000.00 signing bonus was instead paid in satisfaction of Mr. Vander Toorn’s May 2017 salary obligation. Of course, this is demonstrably untrue under the terms of the Agreement and by reference to each salary payment that had been paid timely, which had taxes and other withholdings deducted.

33. Ancar’s false statements to a South Carolina official exhibit willfulness and a willful disregard of his obligations as an employer obligated to pay wages under South Carolina law. As president of Billeter, Ancar’s misconduct is imputed to Billeter such that Billeter has committed willful violations of South Carolina law together with Ancar.

34. Ancar and Billeter have continuing obligations as employers of Mr. Vander Toorn to pay commissions after the term of the Agreement. Thus, the commission's obligations "survive" the Agreement.

**FOR A FIRST CAUSE OF ACTION
(Breaches of Contract)**

35. The foregoing allegations are incorporated into this cause of action.

36. The Agreement is a valid, binding contract fully supported by consideration.

37. Mr. Vander Toorn has performed fully his obligations under the contract.

38. Billeter has failed to perform its obligations under the contract and has therefore breached the contract in several material ways as set forth above.

39. The Agreement obligated Billeter to refrain from any conduct that would prevent Mr. Vander Toorn from enjoying the benefits of the Agreement—the implied covenant of good faith and fair dealing that inheres in every contract entered into or to be performed in South Carolina. Billeter breached the covenant of good faith and fair dealing as set forth above.

40. Mr. Vander Toorn has suffered damages as the direct and proximate results of the breaches of Billeter.

41. Mr. Vander Toorn is entitled to an award of actual and consequential damages as the direct and proximate results of Billeter's breaches in amounts to be determined by the trier of fact.

**FOR A SECOND CAUSE OF ACTION
(Breaches of Contract Accompanied by Fraudulent Acts)**

42. The foregoing allegations are incorporated into this cause of action.

43. The Agreement is a valid, binding contract fully supported by consideration.

44. Mr. Vander Toorn has performed fully his obligations under the contract.

45. Billeter has failed to perform its obligations under the contract and has therefore breached the contract in several material ways as set forth above.

46. Billeter's breaches are also accompanied by fraudulent acts, including but not limited to the following:

- a. Lying to Mr. Vander Toorn by saying he would be paid his May 2017 salary once Billeter was finally paid by Fluor;
- b. Dishonestly holding out the hope of an ownership interest in Billeter to quell immediate concerns of non-payment of salary and to induce Mr. Vander Toorn to chase down unpaid invoices which duties were Brandi Ancar's;
- c. Purporting to "suspend" the Agreement when no such suspension exists under the Agreement, and by embroiling Mr. Vander Toorn in some sham investigation, as mere pretext to avoid a contractual obligation to pay salary and thus "wages," as well as continuing commissions;
- d. Lying to an investigator with the South Carolina Department of Labor, Licensing, and Regulation regarding the effect of Mr. Vander Toorn's signing bonus on the obligation to pay salary, thereby thwarting and interfering with a statutorily established dispute resolution process (S.C. Code Ann § 41-10-70).

47. Mr. Vander Toorn has suffered damages as the direct and proximate results of the breaches of Billeter committed by Ancar as its president.

48. Mr. Vander Toorn is entitled to an award of actual, consequential, and punitive damages as the direct and proximate results of Billeter's breaches in amounts to be determined by the trier of fact.

**FOR A THIRD CAUSE OF ACTION
(Violations of the Payment of Wages Act)**

49. The foregoing allegations are incorporated into this cause of action.

50. Billeter and Ancar are each an “employer” under the South Carolina Payment of Wages Act (the “Act”). S.C. Code Ann. § 41-10-10 (1).

51. The salary Billeter and Ancar became obligated to pay Mr. Vander Toorn constitutes “wages” as recompense for labor rendered under the Act. S.C. Code Ann. § 41-10-10 (2).

52. Billeter and Ancar have failed to pay wages as set forth above and have therefore committed violations of the Act.

53. Billeter and Ancar are therefore liable for their violations of the Act.

54. Billeter and Ancar’s violations of the Act are willful as set forth above, particularly in their various acts of dishonesty and fraud and in dishonesty to the investigator in the informal resolution procedure contemplated by S.C. Code Ann § 41-10-70.

55. Mr. Vander Toorn has been directly and proximately damaged by Billeter and Ancar’s violations of the Act.

56. Mr. Vander Toorn is entitled to an award of his actual and consequential damages, in amounts to be determined by the trier of fact.

57. Mr. Vander Toorn is entitled to an award of treble damages, as the result of Billeter and Ancar’s willful violations of the Act, in amounts to be determined by the Court. S.C. Code Ann § 41-10-80(C).

58. Mr. Vander Toorn is entitled to an award of his reasonable attorneys’ fees, as the result of Billeter and Ancar’s willful violations of the Act, in amounts to be determined by the Court. S.C. Code Ann § 41-10-80(C).

WHEREAS, having fully pled, the plaintiff is entitled to the following relief:

1. An award of his actual and consequential damages in amounts to be determined by the trier of fact under his First Cause of Action;
2. An award of his actual, consequential, and punitive damages in amounts to be determined by the trier of fact under his Second Cause of Action;
3. An award of his actual and consequential damages in amounts to be determined under his Third Cause of Action, together with an award of treble damages and reasonable attorneys' fees to be determined by the Court; and
4. Such other and further relief as this Court deems just.

s/Peter A. Rutledge

Peter A. Rutledge (SC Bar #15899)

Phone: (864) 906-2521

350 Mohawk Drive, 202

Greenville, SC 29609

Email: peter@prutlaw.com

June 8, 2017



EMPLOYMENT CONTRACT

This Employment Contract (this "Contract") is made effective as of January 03, 2017, by and between Billeter Recruiting LLC of 241 Churchill Downs Dr. Bush, Louisiana, 70431 and Darrin Vander Toorn of 23 Fundy Court, Simpsonville, South Carolina, 29681.

A. Billeter LLC is engaged in the business of Recruiting. Darrin Vander Toorn will primarily perform the job duties at the following location: 23 Fundy Court, Simpsonville, South Carolina.

B. Billeter LLC desires to have the services of Darrin Vander Toorn.

C. Darrin Vander Toorn is an at will employee of Billeter Recruiting LLC. Either party is able to terminate the employment agreement at any time.

Terms:

Dollar: United States valued currency

Gross Profit: The value that remains after all expenses are deducted from an invoiced payment

Direct Hire: To recruit, screen, and tests candidates for employment with a contractor other than Billeter Recruiting LLC. Direct Hire does not include management, payroll, accounting, training, or any other business operation the makes Billeter Recruiting LLC responsible for the on-site liability of the contracted employees provided.

*All contracts provided by Darrin Vander Toorn under this Agreement are Direct Hire Agreements. Any contracts other than Direct Hire Agreements will require a separate contract.

Therefore, the parties agree as follows:

1. EMPLOYMENT. Billeter Recruiting LLC shall employ Darrin Vander Toorn as a(n) Vice President. Darrin Vander Toorn shall provide to Billeter Recruiting LLC the following services: Work directly for the President William A. Ancar. Provide Supervision over personnel assigned

to Darrin Vander Toorn from Billeter Recruiting LLC. Generate Sales(1a) and Mediate contracts with the companies (Provided in 1a) on a commission basis. Provide contracted personnel needed to satisfy these contract(s) requirements. Read and understand the Scope of Work(provided by the client) prior to fulfilling it. Ensure that all candidates meet the minimum requirements to satisfy their scope of work. Maintain a healthy and positive relationship with all clients. Billeter Recruiting LLC assigns to Darrin Vander Toorn. The duties provided above are the minimum duties for this position. Many more task may be required by Darrin Vander Toorn. Darrin Vander Toorn accepts and agrees to such employment, and agrees to be subject to the general supervision, advice and direction of Billeter Recruiting LLC and Billeter Recruiting LLC's President. Darrin Vander Toorn shall also perform (i) such other duties as are customarily performed by an employee in a similar position, and (ii) such other and unrelated services and duties as may be assigned to Darrin Vander Toorn from time to time by Billeter Recruiting LLC.

a. Contract And/Or Contracts to be provided by Darrin Vander Toorn: Fluor-Southern Companies, Fluor-NRG, Day-Zimmermen.

b. Quality Control is used in a form that describes the process of providing quality to the clients. This is but not limited to Certification, Education, Behavior, Past Performance, Punctuality, Dependability, and much more.

2. BEST EFFORTS OF EMPLOYEE. Darrin Vander Toorn agrees to perform faithfully, industriously, and to the best of Darrin Vander Toorn's ability, experience, and talents, all the duties that may be required by the express and implicit terms of this Contract, to the reasonable satisfaction of Billeter Recruiting LLC. Such duties shall be provided at such place(s) as the needs, business, or opportunities of Billeter Recruiting LLC may require from time to time.

3. OWNERSHIP OF SOCIAL MEDIA CONTACTS. Any social media contacts, including "followers" or "friends," that are acquired through accounts (including, but not limited to email addresses, blogs, Twitter, Facebook, YouTube, or other social media networks) used or created on behalf of Billeter Recruiting LLC are the property of Billeter Recruiting LLC.

Darrin Vander Toorn may keep all "followers" of "friends" he has acquired before this agreement and with any site not affiliated with Billeter LLC.

4. COMPENSATION OF EMPLOYEE. As compensation for the services provided by Darrin Vander Toorn under this Contract, Billeter Recruiting LLC will pay Darrin Vander Toorn a six month salary of \$60,000 payable monthly on the fifteenth day of each month and subject to applicable federal, state, and local withholding.

5. COMMISSION PAYMENTS. In addition to the payments under the preceding paragraph, Billeter Recruiting LLC will make commission payments to Darrin Vander Toorn based on Gross Profits contracts he provide. This commission will be paid 30 days after the payment of any invoice from a client provided by Darrin Vander Toorn.

A. Accounting. Billeter LLC shall maintain records in sufficient detail for purposes of determining the amount of the commission. Billeter LLC shall provide to Darrin Vander Toorn a written accounting that sets forth the manner in which the commission payment was calculated.

1. Darrin Vander Toorn will also be paid a bonus of \$12,000 Dollars on the day his employment begins with Billeter Recruiting LLC. This \$12,000 Dollars is to be repaid to Billeter Recruiting LLC if no contract is provided within the term of this Agreement. This \$12,000 Dollars will be paid in full within a period of 3-months or will be subject to a penalty and/or injunction.

2. Darrin Vander Toorn will be paid a commission of 10% of Gross Profit for all contracts he sells for Billeter with a value 500,000 dollars and below.

3. Darrin Vander Toorn will be paid a commission of 15% of Gross Profit for all contracts he sells for Billeter with a value 500,001 dollars up to 2,000,000.

4. Darrin Vander Toorn will be paid a commission of 20% of Gross Profit for all contracts he sells for Billeter with a value 2,000,001 and above.

5. Darrin Vander Toorn's commission will survive the life of the contract and/or contracts he provides to Billeter for the term Billeter services these contracts.

6. RECOMMENDATIONS FOR IMPROVING OPERATIONS. Darrin Vander Toorn shall provide Billeter Recruiting LLC with all information, suggestions, and recommendations regarding Billeter Recruiting LLC's business, of which Darrin Vander Toorn has knowledge, that will be of benefit to Billeter Recruiting LLC.

7. CONFIDENTIALITY. Darrin Vander Toorn recognizes that Billeter Recruiting LLC has and will have information regarding the following:

- product design
- processes
- technical matters
- trade secrets
- copyrights
- customer lists
- prices
- costs
- discounts
- business affairs
- future plans

and other vital information items (collectively, "Information") which are valuable, special and unique assets of Billeter Recruiting LLC. Darrin Vander Toorn agrees that Darrin Vander Toorn will not at any time or in any manner, either directly or indirectly, divulge, disclose, or

communicate any Information to any third party without the prior written consent of Billeter Recruiting LLC. Darrin Vander Toorn will protect the Information and treat it as strictly confidential. A violation by Darrin Vander Toorn of this paragraph shall be a material violation of this Contract and will justify legal and/or equitable relief.

8. UNAUTHORIZED DISCLOSURE OF INFORMATION. If it appears that Darrin Vander Toorn has disclosed (or has threatened to disclose) Information in violation of this Contract, Billeter Recruiting LLC shall be entitled to an injunction to restrain Darrin Vander Toorn from disclosing, in whole or in part, such Information, or from providing any services to any party to whom such Information has been disclosed or may be disclosed. Billeter recruiting LLC shall not be prohibited by this provision from pursuing other remedies, including a claim for losses and damages.

9. CONFIDENTIALITY AFTER TERMINATION OF EMPLOYMENT. The confidentiality provisions of this Contract shall remain in full force and effect for a 5 year period after the voluntary or involuntary termination of Darrin Vander Toorn's employment. During such 5 period, neither party shall make or permit the making of any public announcement or statement of any kind that Darrin Vander Toorn was formerly employed by or connected with Billeter Recruiting LLC.

10. NON-COMPETE AGREEMENT. Darrin Vander Toorn recognizes that the various items of Information are special and unique assets of the company and need to be protected from improper disclosure. In consideration of the disclosure of the Information to Darrin Vander Toorn, Darrin Vander Toorn agrees and covenants that during his or her employment by Billeter Recruiting LLC and for a period of 2 years following the termination of Darrin Vander Toorn's employment, whether such termination is voluntary or involuntary, Darrin Vander Toorn will not directly or indirectly engage in any business competitive with Billeter Recruiting LLC.

This covenant shall apply to the geographical area that includes anywhere in the United States. Directly or indirectly engaging in any competitive business includes, but is not limited to: (i) engaging in a business as owner, partner, or agent, (ii) becoming an employee of any third party that is engaged in such business, (iii) becoming interested directly or indirectly in any such business, or (iv) soliciting any customer of Billeter Recruiting LLC for the benefit of a third party that is engaged in such business. Darrin Vander Toorn agrees that this non-compete provision will not adversely affect Darrin Vander Toorn's livelihood.

This Agreement does give Darrin Vander Toorn an exception to Clause 10 for the companies listed below(10a)

- a. Companies accepted for competition are
 - 1. Fluor
 - 2. Day and Zimmerman
 - 3. Chicago Bridge and Industries

11. EMPLOYEE'S INABILITY TO CONTRACT FOR EMPLOYER. Darrin Vander Toorn shall not have the right to make any contracts or commitments for or on behalf of Billeter Recruiting LLC without first obtaining the express written consent of Billeter Recruiting LLC.

12. TERM/TERMINATION. Darrin Vander Toorn's employment under this Contract shall be for 6 months, beginning on January 03, 2017.

Termination does not supersede Clause 5 Paragraph B Line 5(5B5) which states:

Darrin Vander Toorn's commission will survive the life of the contract and/or contracts Darrin Vander Toorn provide(s) to Billeter Recruiting LLC for the term Billeter Recruiting LLC services the contracts.

13. COMPLIANCE WITH EMPLOYER'S RULES. Darrin Vander Toorn agrees to comply with all of the rules and regulations of Billeter LLC.

14. NOTICES. All notices required or permitted under this Contract shall be in writing and shall be deemed delivered when delivered in person or on the third day after being deposited in the United States mail, postage paid, addressed as follows:

Employer:

Billeter Recruiting LLC
William Ancar
President
241 Churchill Downs Dr
Bush, La 70431

Employee:

Darrin Vander Toorn
23 Fundy Court
Simpsonville, South Carolina 29681

Such addresses may be changed from time to time by either party by providing written notice in the manner set forth above.

15. ENTIRE AGREEMENT. This Contract contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Contract supersedes any prior written or oral agreements between the parties.

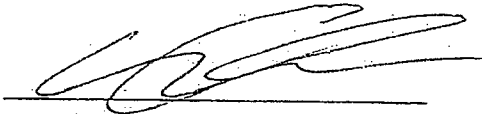
16. AMENDMENT. This Contract may be modified or amended, if the amendment is made in writing and is signed by both parties.

17. SEVERABILITY. If any provisions of this Contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid or enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

18. WAIVER OF CONTRACTUAL RIGHT. The failure of either party to enforce any provision of this Contract shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Contract.

19. APPLICABLE LAW. This Contract shall be governed by the laws of the State of Louisiana.

20. SIGNATORIES. This Contract shall be signed by William A. Ancar, President on behalf of Billeter Recruiting LLC and by Darrin Vander Toorn in an individual capacity. This Contract is effective as of the date January 3, 2017.



William A. Ancar, President
Billeter LLC

Date: Dec 13, 2016



Darrin Vander Toorn

Date: December 13, 2016

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

Darrin Vander Toorn,	)	
	)	Case Number: 2017-CP-23-03720
Plaintiff,	)	
	)	
vs.	)	MOTION FOR ENTRY OF DEFAULT
	)	
Billeter Recruiting, LLC, and William Ancar,	)	
	)	
Defendants.	)	

Plaintiff, Darrin Vander Toorn, respectfully requests that the Clerk of Court enter default on Plaintiff's Complaint against Defendants, Billeter Recruiting, LLC, and William Ancar, pursuant to Rule 55, SCRCF. This Motion for Entry of Default is supported by Plaintiff's Affidavit of Default against Defendant, filed herewith on July 11, 2017, a copy of which is in the record.

s/Peter A. Rutledge
Peter A. Rutledge (SC Bar #15899)
(864) 906-2521
350 Mohawk Drive, 202
Greenville, SC 29609
peter@prutlaw.com

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

Darrin Vander Toorn,	)	Case Number: 2017-CP-23-03720
Plaintiff,	)	
vs.	)	
Billeter Recruiting, LLC, and William Ancar,	)	MOTION FOR ORDER OF
Defendants.	)	JUDGMENT BY DEFAULT

TO THE DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that Plaintiff, by and through his undersigned attorney, will move at such time and place as may be directed by the Court for an Order and Judgment as follows:

1. Finding that Defendants were in default as of July 12, 2017;
2. Granting damages against the Defendants in the amount of **\$34,792.27** as of July 12, 2017, set forth in the Affidavit of Liquidated Damages; and treble damages against the Defendants in the amount of **\$104,376.81**; plus, post-judgment interest thereafter as calculated as follows:

Liquidated Damages As of July 12, 2017	Treble Damages calculation	Post-judgment interest calculation
\$34,792.27	\$104,376.81	\$7,828.26

3. Granting Plaintiff an award of attorneys' fees incurred to date and costs as set forth in the Affidavit of Attorneys' Fees and Costs attached hereto.
4. Permitting the Plaintiff to return to this Court in a supplemental proceeding to seek an award of additional attorneys' fees for any amounts incurred in domesticating the judgment in the

State of Louisiana, conducting supplemental proceedings there, and any additional efforts to collect the judgment against the Defendants, pursuant to S.C. Code Ann § 41-10-80(C).

Any objection to this Motion must be filed with the Clerk of Court in the above County within ten (10) days after the postmark on the envelope, which is the date this Motion and Attorneys' Fee Affidavit were mailed to the Defendants.

s/Peter A. Rutledge
Peter A. Rutledge (SC Bar #15899)
(864) 906-2521
350 Mohawk Drive, 202
Greenville, SC 29609
peter@prutlaw.com

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS	
COUNTY OF GREENVILLE		
Darrin Vander Toorn,	)	Case Number: 2017-CP-23-03720
Plaintiff,	)	
vs.	)	AFFIDAVIT OF LIQUIDATED
Billeter Recruiting, LLC, and William Ancar,	)	DAMAGES
Defendants.	)	

PERSONALLY, appeared before me, Darrin Vander Toorn, who, being duly sworn, deposes and states that he is over the age of eighteen, has personal knowledge of the matters set forth herein, and further states as follows:

1. I am the plaintiff in this action and have suffered damages as set forth herein.
2. Under the employment agreement dated January 3, 2017 (the "Agreement"), that is discussed in and attached to the complaint in this matter, I was employed as Billeter's vice president working directly under William Ancar, the company's president, for a six-month term.
3. Under the Agreement, the defendants are obligated, among other things, to pay me a salary of \$10,000.00 per month, to be paid on the 15th of each month; plus, commissions on gross profits under the schedule set forth in paragraph 5 of the Agreement.
4. As of the date of this affidavit, the defendants have not paid me my salary payments for the months of May 2017 in the amount of \$10,000, nor for June 2017 in the amount of \$10,000. Because those amounts can be ascertained and were then due, I am entitled to be paid pre-judgment interest at the rate of eight and three fourths percent on them in the amount of \$1,750.

5. Under the Agreement, I was entitled to commissions totaling ten (10%) percent on gross profits (Billeter uses the term gross profits to mean gross revenues) received from my customers. As of the date of this affidavit, the defendants have received the following sums from the following customers about which I am aware: 1) Fluor Daniel: \$47,000; and Day & Zimmerman: \$52,929. I have attached to this affidavit text messages confirming the defendants' receipt of these sums. Additional revenues were earned from those sites for the month of June that I conservatively estimate at \$20,000. Those total revenues are \$119,929, entitling me to commissions from those payments of \$11,992.90. Because those amounts can be ascertained and were then due, I am entitled to be paid pre-judgment interest at the rate of eight and three fourths percent on them in the amount of \$1,049.37.

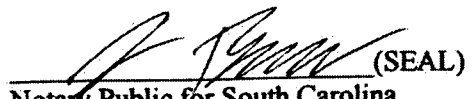
6. However, the defendants' obligations to pay commissions survive the Agreement, and I am entitled to receive commissions into the future because of future payments they receive from customers covered by my Agreement.

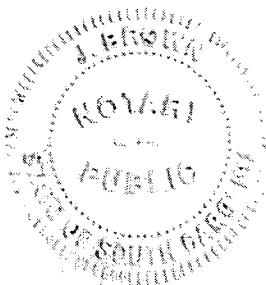
7. Therefore, as of the date of this Affidavit, the defendants owe me the liquidated amount of \$34,792.27.

FURTHER AFFIANT SAYETH NOT.


Darrin Vander Toorn

SWORN to before me this the
19th day of ~~July 2017~~ August 2017

 (SEAL)
Notary Public for South Carolina
My commission expires: 12-31-2020



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

Darrin Vander Toom,	)	Case Number: 2017-CP-23-03720
Plaintiff,	)	
vs.	)	
Billeter Recruiting, LLC, and William Ancar,	)	AFFIDAVIT OF
Defendants.	)	PLAINTIFF'S COUNSEL
	)	PETER A. RUTLEDGE

PERSONALLY appeared before me, Peter A. Rutledge, who after being duly sworn, deposes and states as follows:

1. My name is Peter A. Rutledge. I am over the age of eighteen. The statements in this affidavit are based upon my personal knowledge.
2. I am counsel for the plaintiff in the above-captioned case.
3. Plaintiff has incurred \$5,355.00 in reasonable and customary legal fees based on 17.85 hours at a rate of \$300 per hour. I have provided a general explanation of the time spent on tasks below.
4. Consultation and communications with the plaintiff, 7.9 hours.
5. Drafting correspondence to defendants, 1.3 hours.
6. Drafting pleadings, including research into causes of action, jurisdiction, and potential remedies, and drafting proposed orders, 8.65 hours.
7. Plaintiff has incurred costs from filing fees in the amount of \$243.80.
8. Plaintiff has incurred costs of service of process of \$160.00.

[SIGNATURE AND NOTARY SEAL ON FOLLOWING PAGE]

FUTHER AFFIANT SAYETH NOT.


Peter A. Rutledge, S.C. Bar #15899
ATTORNEYS FOR PLAINTIFF

SWORN to before me this the
28 day of August 2017

 (SEAL)
Notary Public for South Carolina
My commission expires:
2-1-2026

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
	)	
Darrin Vander Toorn	)	
	)	
Plaintiff,	)	
	)	MOTION TO SET ASIDE ENTRY OF
v.	)	DEFAULT AND ENLARGE ANSWER
	)	DEADLINE
Billeter Recruiting, LLC,	)	
and William Ancar	)	
Defendant.	)	
_____	)	

Defendants, by and through their undersigned counsel, hereby files this Motion to Set Aside this Court's entry of default pursuant to Rule 55(c) of the South Carolina Rules of Civil Procedure ("SCRCP") and request an Order of this Court enlarging the answer deadline pursuant to Rule 6(c) of the SCRCP.

INTRODUCTION

Plaintiff filed this action electronically on June 8, 2017 in Greenville County, South Carolina. On June 9, 2017 Plaintiff served both Billeter Recruiting, LLC, and William Ancar individually, via personal service in St. Tammany County, Louisiana. On July 11, 2017 Plaintiff moved this Court for an entry of default due to Defendants' failure to answer Plaintiff's Complaint. On July 12, 2017 this Court ordered the Entry of Default in favor of Plaintiff; however, this Court denied Plaintiff's September 1, 2017 Motion for Order of Judgment by Default, pending a hearing on all relevant issues.

Although Defendants have not filed an answer to date, their failure to do so was not an act of bad faith, or even neglect, but rather the inadvertent result of miscommunications between

themselves and their long-time counsel located in Louisiana due to a disability Defendant Ancar suffers from that affects his short-term memory.

Based on the foregoing, Defendants respectfully requests this Court to set aside entry of default and enlarge the answer deadline.

STANDARD OF REVIEW

Under Rule 55(c) of the SCRCPP, a circuit court may set aside an entry of default merely for “good cause shown.” SCRCPP 55(c); *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607–08, 681 S.E.2d 885, 888 (2009). This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice. *Id.* Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501–02 (Ct.App.1989). The court’s consideration of these factors is to be “liberally construed” to promote justice and, perhaps more importantly, dispose of cases on the merits rather than on a technicality. *See generally Bage v. Southeastern Roofing Co. of Spartanburg, Inc.*, 373 S.C. 457, 471, 646 S.E.2d 153, 160 (Ct.App.2007), *cert. granted* (Mar. 20, 2008).

It is important to note that because this Court denied Plaintiff’s Motion for an Order of Judgment by Default, Defendants are not subject to the more rigorous excusable neglect standard promulgated under SCRCPP Rule 60(b). *Id.* (Citing *Lolatchy v. Arthur Murry, Inc.*, 816 F.2d 951, 953 (4th Cir. 1987)). In fact, South Carolina courts have taken nearly every opportunity to

reassert the basic legal premise that the standard for granting relief under Rule 60(b) is more rigorous than under Rule 55(c), and that an entry of default may be set aside for reasons that would be insufficient to relieve a party from a default judgment. *Sundown Operating Co. v. Intedger Indus., Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009).

ARGUMENT.

A. Defendants' Delay in Responding to Plaintiff's Complaint was Inadvertent and Immediately Remedied Once Discovered

When analyzing the timing prong of a motion to set aside the entry of default, the court's have almost unanimously looked at the cause of the delay, rather than the duration of the delay itself. *See generally Williams v. Vanvolkenburg*, 312 S.C. 373, 374–75, 440 S.E.2d 408, 409 (Ct. App. 1994); *See also Rodriguez v. Gutierrez*, 391 S.C. 323, 332, 705 S.E.2d 94, 99 (Ct. App. 2011). *Vanvolkenburg* and *Gutierrez* find support for their holdings, i.e. that the inquiry into the timeliness of a motion to set aside the entry in default is centered on the why, rather than the how long, in the seminal case of *U.S. v. Moradi*. There, the court found that “whether a party has taken “reasonably prompt” action, of course, must be gauged **in light of the facts and circumstances of each occasion** and the exercise of discretion by the trial judge will not be disturbed lightly. *United States v. Moradi*, 673 F.2d 725, 727 (4th Cir. 1982) (Emphasis added).

The inherent issues resulting from the amount of time that has elapsed between the filing of this action and the filing of this Motion, as it relates to the timing prong of this analysis, is not lost on Defendants; however, the cause of the rather significant delay is multifaceted. As pointed out in Plaintiff's Complaint, Defendant Ancar is a disabled veteran that suffers from severe

short-term memory loss. On June 8, 2017 Defendant Ancar was served a Summons and Complaint both individually and as President of Billeter Recruiting, LLC.

Immediately following receipt of the Summons and Complaint, Defendant Ancar contacted longtime legal counsel based out of Louisiana and informed him that counsel needed to be retained in South Carolina as a result of the filed lawsuit, or so he thought. Due to his disability, Defendant Ancar truly cannot say with any degree of certainty what took place during the conversation. More than two (2) months after the deadline for Defendants' responsive pleadings, Defendant Ancar's wife, by pure happenstance, stumbled upon the Summons and Complaint and began questioning Defendant about the status of the matter. Defendant Ancar could recall very little about the lawsuit but was still under the mistaken belief that he had informed Louisiana counsel to retain South Carolina representation. Immediately thereafter Louisiana counsel was contacted, at which time Ms. Ancar was informed that no such conversation had even taken place, and Defendant Ancar was, and always had been, responsible for retaining counsel to defend the action, a fact that was completely lost on Defendant. Upon quick review of the record by his hometown counsel, Defendant Ancar was informed that default proceedings has been instituted against him and his business. Within seventy-two (72) hours of Ms. Ancar becoming aware of the lawsuit, Defendants retained counsel.

It is clear that Defendants' failure to answer Plaintiff's Complaint was not merely the result of forgetfulness, but rather, was a direct result of Defendant Ancar's medically recognized short-term memory loss, which was the leading cause of his designation as a disabled veteran.

For the foregoing reasons the entry of default should be set aside and Defendants granted an opportunity to defend this action on the merits.

B. Defendants have a Meritorious Defense

In making a determination as to whether the defense of a defaulting party is meritorious, “all that is necessary to establish the existence of a ‘meritorious’ defense is a presentation or proffer of evidence, which, if believed, would permit either the Court or a jury to find for the defaulting party.” *Cousar v. M&R Carriers 1, Inc.*, No. CV 6:16-865-HMH, 2016 WL 3087008, at *1 (D.S.C. June 2, 2016) (Citing *U.S. v. Moradi*, 673 F.2d at 727). The Court further stated that “[t]raditionally, we have held that relief from a judgment of default should be granted where the defaulting party acts with reasonable diligence in seeking to set aside the default and tenders a meritorious defense.” *Id.* In applying this rule of law the Court reversed the District Court’s order denying Defendants’ motion to set aside default judgment - even taking into consideration the heightened standard under Rule 60(b). *See Id.*

In the present matter, Plaintiff has asserted claims for breach of contract, breach of contract accompanied by fraudulent act, and violation of South Carolina Payment of Wages Act stemming from an employment contract dated January 3, 2017. However, it is Defendant’s position that each and every one of Plaintiff’s claims are legally impermissible due to conduct both preceding and following the execution of the contract for employment. In fact, Defendant has already been made aware of numerous individuals willing to attest to acts of the Plaintiff that would rise to the level of breach of contract, fraud, and intentional misrepresentation in its own right.

Additionally, immediately following the institution of this action, Defendant Ancar contacted his Louisiana counsel, however, as a direct result of his severe short-term memory

loss, Defendant Ancar simply could not remember that he was in fact tasked with seeking South Carolina legal counsel. It was not until Ms. Ancar stumbled upon Plaintiff's Summons and Complaint that Defendant's memory was partially refreshed as to the action that had been filed against him.

In the present matter, there is no question Defendants are not only able to defend the allegations lodged by Plaintiff, but also maintains a number of likely successful counterclaims. Defendants' ability to meritoriously defend the action instituted against them, coupled with facts supporting their position that they acted with reasonable diligence, supports a finding of this Court that the meritorious defense standard set forth in U.S. v. Moradi has been satisfied.

Based on the foregoing, Defendants would submit they are entitled to an Order of this Court setting aside the entry of default.

C. Plaintiff Will Not Be Prejudiced by Setting Aside Entry of Default

Whether a nonmoving party would be prejudiced by the setting aside of an entry of default has been scarcely addressed with any specificity in the courts of South Carolina; however in the instances where the degree of prejudice to the nonmoving party has been measured in the context of a motion to set aside entry of default, our courts tend to make such determinations on the basis of whether "further delay" would in some way prejudice the opposing party. *Wilder v. Blue Ribbon Taxicab Corp.*, 396 S.C. 139, 143, 719 S.E.2d 703, 705 (Ct. App. 2011). In analyzing this method of review, the Fourth Circuit has found that in the context of a motion to set aside an entry of default, as in other contexts, delay in and of itself does not constitute prejudice to the opposing party. *Colleton Preparatory Acad., Inc. v. Hoover Universal, Inc.*, 616

F.3d 413, 419 (4th Cir. 2010); *See also, e.g., Indigo America, Inc. v. Big Impressions, LLC*, 597 F.3d 1, 4 (1st Cir.2010).

Other federal circuits have addressed this issue much more directly, holding that “[p]rejudice does not arise from the fact that the defaulting party will be permitted to defend the litigation on the merits.” *Emmons v. Emmons*, 349 B.R. 780, 789 (W.D. Mo. 2006). Rather, the court's granting of a motion to set aside entry of default judgment must prejudice the nonmoving party in a more concrete way, such as loss of evidence, increased difficulties in discovery, or greater opportunities for fraud or collusion. *See Johnson v. Dayton Electric Mfg. Co.*, 140 F.3d 781, 785 (8th Cir. 1998).

Here, in utilizing the rationale of the Eighth Circuit, it must be taken into consideration that there has been no discovery conducted to date in this matter; or that counsel for Defendants is unaware of the loss of, or even the potential for loss of evidence, or a greater opportunity for fraud or collusion which will result if the default in this case is set aside.

Although Defendants’ responses were rendered quite some time after the required date of filing, immediately following Defendants’ realization that their counsel in Louisiana was not making efforts to retain local counsel in South Carolina to defend the action, Defendants retained counsel and Plaintiff received prompt notice of the same.

Therefore, in light of the binding and persuasive jurisprudence on the issue of prejudice in the context of granting a motion to set aside a default judgment, the present case poses no threat that prejudice could attach to setting aside Plaintiff’s entry of default judgment.

Conclusion

In light of the liberal standard for granting a motion to set aside a default judgment, adopted by this Court, counsel for Defendants respectfully requests that this Court set aside Plaintiff's request for entry of default as, consistent with the requirements of Rule 55(c) of the SCRCF, Defendants have demonstrated that entry of such default would be improper. Defendants also respectfully seek an Order of this Court enlarging the answer deadline so as to allow Defendant to adequately defend against Plaintiff's allegations.

Respectfully Submitted
this 17th day of October, 2017

TRULUCK THOMASON, LLC

s/Devon M. Puriefoy
Devon Puriefoy
SC Bar No.: 102097
1011 E. Washington Street
Greenville, SC 29601
Phone: (864) 331-1751
Facsimile: (864) 331-1751
Email: devon@truluckthomason.com

Attorney for Defendants

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

Darrin Vander Toorn

Plaintiff,

v.

**Billeter Recruiting, LLC,
and William Ancar
Defendant.**

NOTICE OF APPEAL

Please take notice that Defendant's, Billeter Recruiting, LLC and William Ancar, hereby appeals to the S.C. Court of Appeals from this Court's judgment dated January 23, 2018.

Respectfully Submitted
this 29th day of January, 2018

TRULUCK THOMASON, LLC

s/Devon M. Puriefoy
Devon Puriefoy
SC Bar No.: 102097
1011 E. Washington Street
Greenville, SC 29601
Phone: (864) 331-1751
Facsimile: (864) 331-1751
Email: devon@truluckthomason.com

Attorney for Defendants

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge
(Perry H. Gravely, Circuit Court Judge)

Common Pleas Case No. 2017-CP-2303720

Appellate Case No. 2018-000207

DARRIN VANDER TOORN,

Respondent,

v.

BILLETER RECRUITING,
LLC, and WILLIAM
ANCAR,

Appellants.

AMENDED NOTICE OF APPEAL¹

Billeter Recruiting LLC and William Ancar appeals the final judgment of the Honorable Edward W. Miller, Circuit Court Judge, dated January 23, 2018. Appellant received written notice of entry of this judgment on January 23, 2018. Billeter

¹ This notice amends the notice of appeal dated January 29, 2018.

Recruiting LLC and William Ancar also appeal the non-moot interlocutory order of the Honorable Perry H. Gravely of November 15, 2017, which merged into the aforementioned final judgment, *see* S.C. Code § 14-3-330(1) (“[I]f no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from.”).

Dated: February 21, 2018

s/Howard W. Anderson III
Howard W. Anderson III
SC Bar No. 100329

LAW OFFICE OF
HOWARD W. ANDERSON III, LLC
P.O. Box 661
176 E. Main St.
Pendleton, SC 29670
howard@hwalawfirm.com
864-643-5790 (p)
864-332-9798 (f)
Counsel for Appellants
**Lead Counsel on Appeal*

Other counsel of record:

Devon Marc Puriefey
Truluck Thomason, LLC
1011 E. Washington St.
Greenville, SC 29601
devon@truluckthomason.com
864-331-1781 (p)
864-751-5818 (f)
Counsel for Appellants

Peter A. Rutledge
Rutledge Law, LLC
350 Mohawk Dr., Suite 202
Greenville, SC 29609
peter@prutlaw.com
864-906-2521 (p)
Counsel for Respondents

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)

Darrin Vander Toorn,)
)
 Plaintiff,)
 v.) Case No. 17-CP-23-3720
)
Billeter Recruiting LLC and)
William Ancar,)
)
 Defendants.)

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on November 8, 2017, before The Honorable Perry H. Gravely in Court of Common Pleas for Greenville, South Carolina; attended by counsel as follows:

APPEARANCES:

Peter Rutledge, Esq.
Two West Washington Street
Greenville, South Carolina 29601
...Appearing for Plaintiff

Devon Puriefoy, Esq.
TRULOCK THOMASON
1101 East Washington Street
Greenville, South Carolina 29601
... Appearing for Defendant

Deborah Garrison
Circuit Court Reporter – 13th Judicial Circuit
P O Box 27145
Greenville, South Carolina 29616
dgarrison@sccourts.org
Record on Appeal Page 49 of 101

1

2

3

4

5

THE COURT: This is Toorn v. Billeter,
and I'll hear the defendant's Motion to set
aside the default first, since obviously that
would make sense.

6

7

8

9

MR. PUREIFOY: Thank you, Your Honor.
My name is Devon Puriefoy, I'm here on behalf
of William Ancar and Billeter Recruiting,
L.L.C.

10

11

12

13

14

As you stated, Your Honor, we are here
today on two separate Motions, Defendant's
Motion to set aside a default judgment as
well as the Plaintiff's Motion for an Order
entering default.

15

16

17

Your Honor, just very quickly, by way of
procedural background, this case was filed
electronically on June 8th, 2017.

18

19

20

21

On June 9th, 2017, Defendant William
Ancar was served personally as well as in his
capacity as president of Billeter Recruiting,
L.L.C.

22

23

The Answer deadline was on July 10th,
2017.

24

25

On July 11th, Plaintiff's Motion for an
entry of default resulted from Defendant's

1 failure to respond.

2 Your Honor, it was on September 1st,
3 2017, that the plaintiff moved for an Order
4 entering judgment. Judge Stilwell denied
5 that. That Order is pending a hearing on
6 that Motion, and that's why we are here
7 today.

8 Your Honor, as I said, Mr. Ancar was
9 served with a summons and complaint on June
10 9th, 2017. For over two-and-a-half months no
11 answer was filed in the case, no action was
12 taken in the case. No answer was filed, no
13 responsive pleadings whatsoever by Mr. Ancar.

14 In late September of 2017, Mr. Ancar's
15 wife, by pure happenstance, stumbled on a
16 Summons & Complaint that had been served on
17 her husband. When she addressed her husband
18 and questioned him about the Summons &
19 Complaint, he had no recollection of having
20 ever received it, signing for it, ever taking
21 any action to protect his interest in the
22 filing or to assert any defenses based on the
23 allegations set forth.

24 It is important to note now, Your Honor,
25 that his failure to respond or his inability

1 to recall ever being served process,
2 responding to the pleadings, seeking counsel
3 to respond to the pleadings wasn't just a
4 lapse in memory or in judgment. It wasn't a
5 mistake, it wasn't forgetfulness. It was a
6 direct result, Your Honor, of the fact that
7 the defendant has been found a disabled
8 veteran. He suffered a traumatic brain
9 injury during military service in 2009, I
10 believe. As a result of this traumatic brain
11 injury he suffers from severe short-term
12 memory loss. When asked by his wife about
13 these pleadings, he had absolutely no
14 recollection of ever having received them.

15 At that moment he was in the process of
16 dealing with a divorce in Louisiana. He
17 thought that potentially he had reached out
18 to his divorce attorney to seek some legal
19 guidance. They reached out to that divorce
20 attorney at that time and they were made
21 aware that no attempts had ever been made to
22 contact that attorney, nor had that attorney
23 ever assumed any responsibility for finding
24 local counsel to file any responsive
25 pleadings in South Carolina, to defend this

1 action.

2 Immediately upon that realization, the
3 parties went out to corporate counsel that
4 they had in Louisiana, who did a quick search
5 on the public index and realized that not
6 only was there in fact a Summons & Complaint
7 filed but that there was also an entry of
8 default.

9 Within days, the defendants made a trip
10 from Louisiana to South Carolina and sought
11 counsel from our offices.

12 Your Honor, the defense filed this Motion
13 pursuant to 55(c) of the South Carolina Rules
14 of Civil Procedure. Pursuant to Rule 55(c),
15 the only thing that the defendants need to
16 show in order to prevail on a Motion to set
17 aside a default is that there is good cause
18 shown to set aside that default.

19 Although the courts have established an
20 exhaustive list of what constitutes or does
21 not constitute good cause, the courts have
22 described good cause as an mutable standard
23 that varies from situation to situation,
24 which means that each situation has to be
25 viewed based on the totality of the

1 circumstances and the facts as presented in
2 that particular situation.

3 Your Honor, I believe the facts in this
4 particular situation do give rise to good
5 cause. It wasn't just a lapse in judgment,
6 it wasn't mere forgetfulness. I wish the
7 courts had dispelled those arguments. Uh,
8 I believe the plaintiffs argue and rely in
9 their brief in opposition that was filed
10 yesterday on a Regions Bank case that
11 essentially stands for the proposition ---

12 THE COURT: Let me ask you this, am
13 I supposed to accept your argument as
14 testimony?

15 MR. PURIEFOY: In what regard, Your
16 Honor?

17 THE COURT: I mean, do you have
18 anything supporting your ---

19 MR. PURIEFOY: I do, Your Honor.

20 THE COURT: Has that been filed with
21 the court, as far as affidavits or anything?

22 MR. PURIEFOY: Your Honor, no
23 filings have been made. There was just a
24 notice of appearance and Motion to set aside.

25 I have a -- I have requested documents

1 from my client regarding his medical
2 condition. I received only a single document
3 yesterday. He's in the process of getting
4 the remaining documents from the VA.

5 THE COURT: Do you not think that
6 something that we should have here for this
7 hearing?

8 MR. PURIEFOY: Excuse me, Your Honor?

9 THE COURT: Isn't that something that
10 you think that we should have for this
11 hearing?

12 MR. PURIEFOY: I was unaware that any
13 live testimony was going to be taken.

14 THE COURT: I mean, an affidavit or
15 something that ---

16 MR. PURIEFOY: Yeah.

17 THE COURT: --- would support ---

18 MR. PURIEFOY: Yeah, yeah. I have a
19 copy of a medical report from, uh, the VA.
20 This was back in ---

21 THE COURT: Is it in the form of an
22 affidavit?

23 MR. PURIEFOY: It's not, Your Honor.
24 These are just notes that were taken from the
25 VA that he was in possession of. He's

1 requested formal documentation of his medical
2 records. He's just not received it yet, Your
3 Honor.

4 THE COURT: I mean, if it is not in the
5 form of an affidavit, I'm not sure that the
6 court can consider it.

7 MR. PURIEFOY: Well, ---

8 THE COURT: Unless you consent.

9 MR. RUTLEDGE: No, Your Honor, I
10 don't.

11 MR. PURIEFOY: Your Honor, in terms
12 of an affidavit from the VA or any medical
13 provider, nothing has been provided yet. As
14 I stated, my client is in the process of
15 getting all ---

16 THE COURT: How about an affidavit from
17 your client supporting all of that?

18 MR. PURIEFOY: There has been no
19 affidavit from him, Your Honor.

20 THE COURT: All right. Sorry to cut
21 you off, I just wanted to clarify that.

22 MR. PURIEFOY: Your Honor, as I was
23 stating, the standard -- as I was setting
24 forward, because courts prefer to dispose of
25 cases on merits rather than on procedural

1 technologies (sic), Rule 55(c) Motions,
2 unlike Rule 60 Motions, are granted much more
3 liberally so long as there is a showing of
4 good cause. I believe that the facts as
5 presented in this particular case epitomize
6 what the courts would consider to be good
7 cause.

8 There was a delay, Your Honor, there's no
9 question from the date that the responsive
10 pleadings were due on July 10th to
11 approximately October 17th when I made my
12 notice of appearance. It's not lost on the
13 defendants that that is a substantial delay.

14 However, I don't believe that there ever
15 would have been any responsive pleadings
16 whatsoever but for the wife stumbling on this
17 Summons & Complaint.

18 I believe that -- that but for that there
19 would be a hearing going on right now in
20 their absence and an entry of a \$100,000-some
21 thousand dollar judgment against them.

22 Again, Your Honor, it's not a situation
23 where the defendant merely forgot to respond
24 to some pleadings nor did he entrust a third
25 party to do so. He suffers from a traumatic

1 brain injury that has caused severe memory
2 loss. As a direct result thereof, he was
3 unable to respond or failed to respond to the
4 pleadings that were set forth against him.

5 THE COURT: But the Court has nothing
6 to consider to confirm that. All I've got is
7 that somebody didn't answer. You're saying
8 'well, he forgot about it.' It could be
9 that 'oh, I forgot it, my wife found it a
10 hundred days later.'

11 MR. PURIEFOY: Yes, Your Honor, and
12 that's why that I think it's important to
13 note that the VA has declared him to be
14 suffering from this short-term memory loss.

15 THE COURT: I don't have any ---

16 MR. PURIEFOY: I understand.

17 THE COURT: --- information on that
18 that I can accept.

19 MR. PURIEFOY: We don't have anything
20 in our possession yet, Your Honor, to support
21 that. Although I believe that you'd be
22 satisfied in a week, a week's time, with all
23 the records that will be provided by the VA
24 that would support that he does in fact
25 suffer from this short-term memory loss.

1 THE COURT: Anything else?

2 MR. PURIEFOY: Your Honor, to the
3 extent that the Court finds that good cause
4 has been shown, there is a three-part test
5 that the Court has to consider in making a
6 determination as to whether they are going to
7 set aside a default:

8 The timing of the Motion; whether
9 there are any meritorious defenses; and any
10 prejudice that would be suffered by the
11 defendant.

12 I think that I've kinda discussed the --
13 about the delay in this defense, there is no
14 question that there was about a two-and-a-
15 half month delay between the filing of this
16 action and the responsive pleading, uh, and
17 my appearance in this case. However, that
18 was due to his medical condition.

19 As to meritorious defenses, we are in the
20 process of collecting affidavits from a
21 number of individuals that were contacted by
22 the plaintiff that would testify and assert
23 that during his time with Billeter Recruiting
24 that he had a number of breaches, including
25 the use of confidential business information

1 for the purposes of gaining financially from
2 those. Uh, -- the standard for meritorious
3 defenses ---

4 THE COURT: Again, let me -- I mean, I
5 know that's a cause but we're here for a
6 Motion to set aside a default.

7 MR. PURIEFOY: Correct.

8 THE COURT: I mean, at what point do
9 you think that these affidavits are going to
10 need to be filed?

11 MR. PURIEFOY: Well, the affidavits,
12 Your Honor, is simply for meritorious
13 defenses. It has nothing ---

14 THE COURT: Isn't that one of the
15 things that you have to show to set aside a
16 default?

17 MR. PURIEFOY: That's correct, Your
18 Honor, and I think that for purposes of
19 today's hearing the fact that those
20 affidavits are in the process of -- there's
21 been no -- we haven't had a chance to respond
22 to the allegations in the Complaint. There
23 have been no affirmative affidavits that have
24 been drafted as we have been simply preparing
25 this Motion today.

1 The fact that there are affidavits that
2 are in the process of being prepared, as well
3 as the fact that there is testimony that can
4 be elicited if this case were allowed to
5 proceed should be enough to satisfy the
6 standard of a meritorious defense, which
7 simply requires the showing that an
8 allegation made by the defaulting party, if
9 believed, would be enough for a judge or jury
10 to find on the defendant's behalf.

11 THE COURT: But don't you need that
12 affidavit here today to show me that there is
13 a meritorious defense so that I could set
14 aside your default, so that you can go
15 forward.

16 MR. PURIEFOY: Your Honor, that would
17 likely be helpful for today's hearing. We
18 are simply not in possession of those
19 documents right now. Coordinating with our
20 clients in Louisiana has been difficult, to
21 say the least. We are in the process of
22 getting, like I said, the VA records as well
23 as his affidavits.

24 THE COURT: All right.

25 MR. PURIEFOY: Nothing further.

1 THE COURT: Mr. Rutledge?

2 MR. RUTLEDGE: Thank you, Your Honor.

3 May it please the Court, I think your
4 questions are the right ones. There is
5 simply nothing in the record for the Court to
6 find good cause. Argument of counsel is not
7 evidence.

8 The story that we're getting, in brief,
9 is confusing at best anyway. Even if we took
10 the representations of counsel at face value,
11 what are likely to get, if they ever can
12 substantiate these claims, are facts that
13 fall directly in the *Regions Bank v.*
14 *Sutherland* (sic) where a 79-year-old who
15 believed, based on a telephone conversation,
16 that a codefendant's lawyer was going to file
17 an Answer on his behalf, and was mistaken
18 about that, went into default. The Court
19 said that was not good cause.

20 We might find ourselves falling within
21 the Lotto Manor (phonetic) case in which the
22 Court said that losing the pleadings was not
23 good cause. It sounds like Mr. Ancar put the
24 pleadings somewhere in the house until his
25 wife stumbled across them. That's not going

1 to be good cause either.

2 We're probably going to find ourselves
3 somewhere close to the facts in the *Star*
4 *Trust* case, where the president of the
5 Superior Company, who suffered from
6 depression argued that he had begun to
7 misplace things and missed deadlines because
8 of the depression which had caused some
9 problems. Of course that wasn't good cause
10 either.

11 Moreover, if we're going to get
12 documentation of a disability that has
13 existed since 2009, then Mr. Ancar is the
14 person who is supposed to be in the very best
15 position to protect himself from whatever
16 deficits that he might have resulting from
17 this disability. He's got the obligation to
18 protect himself.

19 He's the president of two staffing
20 companies. These staffing companies put
21 welders into job sites that are currently
22 focused on disaster relief in Florida and
23 Texas. He micromanages these contracts.
24 He manages the online recruiting and tracking
25 system for these welders.

1 He personally negotiates contracts with
2 customers.

3 He personally negotiated the contract
4 with my client, the employment agreement that
5 we are here about today.

6 He's got employees who directly report to
7 him. He has a separate charter boat business
8 called PrezCharters and is personally
9 responsible, is my understanding, for
10 marketing, sales and maintenance of that
11 boat.

12 So I think holistically that this is a
13 gentleman who, notwithstanding whatever his
14 disability might be, is responsible for quite
15 a bit and should be held to the standard of
16 whatever his lawyer told him to do on the
17 phone.

18 I understand -- in his brief, Mr.
19 Puriefoy does make the point that his client
20 supposedly immediately called the lawyer.
21 Whatever happened in that telephone
22 conversation, they did not file an Answer.

23 So this is not good cause. There's never
24 been a cause.

25 I will address one or two of the Wham

1 factor as well. A hundred days passed since
2 the time that the defendant should have filed
3 a responsive pleading. In that period, we
4 don't know what, if anything, their evidence
5 preservation efforts have been.

6 We don't know what witnesses that we
7 could have identified by written discovery.
8 We do know that three key witnesses, one each
9 from Fluor Daniel, CB&I and Zimmerman have
10 each retired in that period. So their
11 availability is at least in some doubt now
12 that this matter went into default.

13 We think that denying their Motion today
14 is the right result. And we think that
15 denying their Motion also if it is ever
16 renewed will also be.

17 Thank you, Your Honor.

18 THE COURT: Anything in response?

19 MR. PURIEFOY: Your Honor, just very
20 quickly in response to the Regions Bank
21 matter, I believe in plaintiff's brief that
22 -- they relied very heavily on this. In the
23 Regions Bank case, Your Honor, the question
24 that was presented before the Court was
25 whether or not the defaulting party's

1 reliance on a third party to answer a
2 complaint on his behalf constituted good
3 cause. That is simply not the same fact
4 pattern that we have -- that we are facing
5 today.

6 The fact pattern that we are facing
7 today, although it may not have been
8 articulated as artfully as it should have
9 been in the brief, what happened in this
10 particular situation, Your Honor, was when --
11 upon finding out about this Complaint &
12 Summon being filed, his wife stumbling upon
13 it, the defendant realized that he was in a
14 legal battle that was being handled in Family
15 Court in Louisiana. He simply was hoping
16 that maybe he had reached out to that
17 attorney and discussed this matter with them
18 as soon as he found out about it. It was
19 just the case that he had not. He had not
20 entrusted this attorney to do anything on his
21 behalf. There's no -- there's been no
22 allegations that he relied on any promises
23 made by this attorney, which would put this
24 outside the purview of the Regions Bank case.

25 Again, we understand, Your Honor, that a

1 hundred days has passed. There is no
2 question that that is not -- there has been a
3 delay in the filing of this -- of my notice
4 of appearance or any responsive pleadings
5 whatsoever.

6 However, because Rule 55 Motions are very
7 liberally granted so long as there's some
8 showing of good cause, which is on a case by
9 case basis, we would submit that setting
10 aside the default and allowing the case to
11 proceed on the merits is the correct finding.

12 THE COURT: After hearing the
13 arguments, I don't feel like there is
14 anything for the Court to consider. I don't
15 believe that there has been any showing for
16 good cause, so I am going to deny your Motion
17 to set aside the default.

18 Now we will go to the damages hearing.

19 MR. PURIEFOY: Yes, Your Honor, as
20 far as going into the damages hearing, we
21 would request that this matter be continued.
22 Rule 55 requires that notice be sent to the
23 defaulting party at least three days prior to
24 the hearing. There has been no notice that
25 has been given to my clients. The notice was

1 given to me. My notice of appearance was
2 filed on October 17th. A notice of hearing
3 was sent out -- I confirmed with Mr. Lopez
4 this morning -- on October the 5th of 2017,
5 which would have gone directly to the
6 plaintiff.

7 I spoke with the plaintiff yesterday.
8 There was no certificate of notices gone out
9 regarding this damages hearing. I wasn't --
10 it wasn't until 4:00 o'clock yesterday that I
11 realized that the damages hearing was also
12 going to be heard today, Your Honor.

13 THE COURT: Mr. Rutledge?

14 MR. RUTLEDGE: Actually a little
15 different story, I've not received a notice
16 of this hearing. Mr. Lopez and I originally
17 agreed that this hearing -- that the damages
18 hearing was going to be set for November 6th
19 at 9:30. I was told that I was going to get
20 an e-mail notice of that hearing. I had been
21 waiting for that.

22 When I learned, Judge, that the damages
23 hearing was set for today was when Mr.
24 Puriefoy told me that on the phone, when he
25 called me and told me that he was

1 representing the defendants. At that point
2 it seemed superfluous for me to give him
3 notice by First Class mail of a hearing that
4 he'd told me was going to occur. I certainly
5 couldn't have written directly to his clients
6 because of Rule 4.1

7 As a practical matter, the notice
8 requirement in Rule 55 is a fairness
9 requirement that just because someone may
10 have gone into default doesn't mean that they
11 might not be entitled to come and defend
12 against a damages presentation.

13 But more importantly that notice
14 obligation is for damages that are
15 unliquidated. Say in a personal injury case
16 where you are going to argue about pain and
17 suffering, medicals, lost income. Our
18 damages are really more in the way of
19 liquidated damages. Our damages are in the
20 way of what was due under a contract. For
21 example, the two salary payments that Mr.
22 Ancar didn't pay. And the commission
23 payments, which are easily computable using
24 a math problem.

25 So I'm not sure that that notice

1 requirement even actually applies in this
2 situation where the defendants have actual
3 notice of the date and time of this hearing;
4 told me about it, uh, and we're not even
5 talking about unliquidated damages in the
6 first place.

7 MR. RUTLEDGE: May I respond, Your
8 Honor?

9 THE COURT: Yes.

10 MR. PURIEFOY: My first conversation
11 with Mr. Rutledge occurred on October 17th,
12 which was the day that we were retained by
13 Billeter Recruiting. It was at that time
14 that I informed him that we were in fact
15 going to be representing them, Mr. Ancar and
16 his company.

17 I received electronic notice from the
18 Greenville County Clerk of Court on October
19 17th scheduling the defendant's Motion to set
20 aside -- scheduled for today at 10:30.

21 Once more, I spoke with Mr. Lopez again
22 this morning to confirm that it wasn't an
23 oversight on my behalf. He confirmed that
24 the notice for hearing for the damages was
25 sent out on October 5th, 2017, which would

1 have been twelve days prior to ---

2 MR. RUTLEDGE: We talked on the 10th.

3 MR. PURIEFOY: If my conversation
4 with Mr. Rutledge was on the 10th, Your Honor,
5 I apologize. My notice was received from
6 the court on October 17th. That is the only
7 notice that I've ever received regarding the
8 hearings in this case.

9 What's more, the notice -- per Mr. Lopez
10 -- went out to Mr. Rutledge on October 5th,
11 2017, which was twelve days prior to my
12 clients retaining the services of our office.

13 As it relates to Mr. Rutledge's argument
14 that notice wasn't required, notice isn't
15 required if you are dealing with a situation
16 where there are liquidated damages for a sum
17 certain. Your Honor, Courts have typically
18 held that you are only dealing with
19 liquidated damages when there is a very easy
20 way to calculate what those damages are going
21 to be.

22 More importantly, there is a finding that
23 damages are to be unliquidated when there is
24 a dispute over the amount. This isn't a
25 contractual agreement. There was no

1 liquidated damages provision in the contract
2 that was executed between the plaintiff and
3 defendant. The plaintiff's classification of
4 the damages as liquidated is simply based on
5 his allegation that there is an easier means
6 by which to calculate what that number is. I
7 don't necessarily agree with that, Your
8 Honor, based on the fact that there is a
9 dispute over whether or not those monies are
10 owed.

11 Furthermore, the plaintiff is moving for
12 treble damages, Your Honor. Treble damages
13 is not liquidated damages by any means, that
14 is a statutory relief under the payment of
15 wages. That is not an easily calculated
16 number. First the court must determine what
17 those wages are before you even get to what a
18 treble damage award is.

19 I believe that this falls more squarely
20 within unliquidated damages. There were
21 never agreed-upon damages per the contract.
22 It was never set forth what any damages would
23 be in the event of any default.

24 For those reasons, Your Honor, I believe
25 that we fall within 55(b)(2) which requires

1 notice of the hearing on damages, which we
2 never received. Unless the plaintiff can
3 show otherwise, we maintain that position.

4 THE COURT: I realize this is not the
5 Clerk's obligation, but what do we have that
6 shows ---

7 CLERK: We show electronic notice on --
8 for the -- on 10/5 for the default.

9 MR. RUTLEDGE: Steve (sic), that's
10 not in our case file, though; is it?

11 CLERK: It was electronically sent on
12 10/5.

13 MR. RUTLEDGE: I don't have it.

14 THE COURT: Well, I mean, -- if someone
15 had -- if a party gets a judgment -- let me
16 -- "the party shall be served with written
17 notice" of the application of these three
18 things. I guess the question is, do we have
19 written notice? I realize that y'all had a
20 conversation but since we're talking about a
21 significant amount of damages, I think that I
22 have to adhere very closely to the Rules. It
23 says "written notice" -- do we have written
24 notice of this hearing?

25 CLERK: No, Your Honor.

1 THE COURT: I think I have some issues
2 with going forward with it.

3 MR. RUTLEDGE: Understood.

4 THE COURT: So that matter will be set
5 as soon as convenient. Do you want us to do
6 a Form 4 on the denial of the Motion?

7 MR. RUTLEDGE: Whatever your
8 preference is, Judge.

9 THE COURT: We will do a Form 4.

10 MR. RUTLEDGE: Thank you.

11 THE COURT: Okay. Thank you.

12 (HEARING CONCLUDED)

13

14

15

16

17

18

19

20

21

22

23

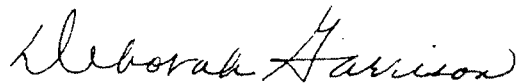
24

25

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF GREENVILLE)

I, the undersigned Deborah Garrison,
Circuit Court Reporter for the 13th Judicial
Circuit, hereby certify that the foregoing is a
complete and accurate transcript of the hearing
held in the within action heard on November 8,
2017, before The Honorable Perry H. Gravely;

I further certify that I am neither kin nor
counsel to any of the parties and have no interest
in the outcome of this action.



Deborah Garrison

Greenville, South Carolina

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)

DARRIN VANDER TOORN,)
 Plaintiff,)

 Vs.) CASE NO. 2017-CP-23-3720

BILLETER RECRUITING, LLC))
and WILLIAM ANCAR,)
 Defendants.)

DECEMBER 5, 2017

GREENVILLE, SOUTH CAROLINA

HONORABLE EDWARD W. MILLER, JUDGE

A P P E A R A N C E S:

BY: PETER A. RUTLEDGE, ESQUIRE

Attorney for the Plaintiff

BY: DEVON PURIEFOY, ESQUIRE

Attorney for the Defendants

KATHERINE F. TIBBS

REGISTERED PROFESSIONAL REPORTER

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
----------------	---------------	--------------	-----------------	----------------

DARRIN VANDER TOORN				
----------------------------	--	--	--	--

Mr. Rutledge	6			
--------------	---	--	--	--

Mr. Puriefoy		10		
--------------	--	----	--	--

Ruling of the Court		25		
---------------------	--	----	--	--

Certificate of Reporter		26		
-------------------------	--	----	--	--

E X H I B I T S

	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EX</u>
1				
2				
3	D-1	Contract		22
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1 THE COURT: Okay. What do y'all want to tell me?

2 MR. RUTLEDGE: Good morning, Your Honor. My name is
3 Peter Rutledge and I'm here on behalf of Darrin Vander
4 Toorn. In the case of Vander Toorn against Billeter
5 Recruiting and William Ancar and we're here today to ask
6 the Court to hear evidence of damages in a case that is
7 in default and ultimately award us a judgement.

8 A little procedural history for the Court, we filed
9 this action on June the 8th of this year, 2017. Served
10 it on June 9th on the defendants. They reside in
11 Louisiana. And after the matter went unanswered for 30
12 days, around about July 11th, we moved for an entry of
13 default.

14 Later in the summer we asked the chief
15 administrative judge to consider giving us an order -- a
16 judgement by default on the papers. Judge Stilwell
17 thought that it needed a hearing and we asked the Court
18 to set the matter for a hearing. That matter was
19 ultimately set for a hearing on November 8th of this
20 year, just last month. And, Judge, at the same time,
21 the defendants ended up realizing that they were in
22 default and hired the Truluck law firm and they filed a
23 motion to set aside the entry of default which was
24 simultaneously set for the same day.

25 Judge Gravely heard that motion, Judge, the motion

1 to set aside the entry of default and he denied the
2 motion and kept these defendants in default and we
3 continued the motion for the damages portion and that's
4 what we're hearing today.

5 We're proceeding under the cause of action that we
6 filed under the South Carolina Payment of Wages Act,
7 Your Honor. We are going to put up evidence of damages
8 under an employment contract which constitute wages
9 under the Payment of Wages Act and then take some
10 testimony from some witnesses and make some argument to
11 the Court from that.

12 And -- so if the Court would like to hear from us,
13 we would like to call some witnesses.

14 THE COURT: Yeah.

15 MR. RUTLEDGE: I'd like to call Darrin Vander Toorn
16 to the stand, Your Honor.

17 THE COURT: All right. Come on around and put your
18 left hand on the bible and raise your right hand.

19 DARRIN M. VANDER TOORN,
20 being first duly sworn, was examined and testified as
21 follows:

22 THE CLERK: Have a seat. And please state your full
23 name for the record.

24 MR. VANDER TOORN: Darrin Michael Vander Toorn.

25 THE COURT: Spell that last name for us.

1 MR. VANDER TOORN: Last name is two words. Vander,
2 V-A-N-D-E-R. Next one is Toorn, T-O-O-R-N.

3 DIRECT EXAMINATION BY MR. RUTLEDGE:

4 Q Darrin, in this lawsuit, you -- you're seeking
5 damages from unpaid salary and commissions; is that
6 correct?

7 A Correct.

8 Q And when you worked for Billeter Recruiting, did
9 you work under an employment agreement?

10 A Yes, I did.

11 Q And tell the Court what were your compensation
12 terms under that agreement?

13 A There was a \$12,000 signing bonus and then 10,000 a
14 month for six months, plus ten percent commission on the
15 gross profit I brought into the company.

16 Q Okay. Let's talk about the salary component first.
17 At this juncture, how much in salary has gone unpaid?

18 A Just this salary component would be two months, so
19 20,000.

20 Q Okauy. And which months are those?

21 A May and June of 2017.

22 Q Okay. So this point you have \$20,000 in unpaid
23 salary; is that correct?

24 A That's correct.

25 Q Okay. And are you also asking for prejudgement

1 interest on those sums?

2 A Yes, I am.

3 Q Okay. Tell the Court what your compensation
4 agreement was with regard to commissions?

5 A It was ten percent of the gross profit of all the
6 contracts I brought in.

7 Q Okay. And so through the course of dealing with
8 Billeter, what were the names of the companies upon
9 which you earned commissions?

10 A It would have been Fluor, Day and Zimmerman, CB&I.

11 Q Okay. And at this point in time which companies
12 generated revenues to Billeter for which you're claiming
13 commissions?

14 A Fluor and Day and Zimmerman.

15 Q Okay. And you reviewed the documents from Fluor
16 that we received pursuant to subpoena, did you not?

17 A Yes, I did.

18 Q Okay. And for the Fluor NRG contract, how much in
19 revenues do you believe that Billeter received through
20 August?

21 A \$51,500.

22 Q Okay. And for the Fluor Southern Company?

23 A 6,085.

24 Q Okay. And then for -- let's talk about the Day and
25 Zimmerman commissions real quick. How much do you

1 believe that Billeter received in revenues for the Day
2 and Zimmerman contract?

3 A 52,929.

4 Q All right. Now, if I total that up and told you
5 that number was \$110,514, does that sound about right?

6 A Yes, it does.

7 Q And so your unpaid commissions then for that total
8 are \$11,051.40; is that correct?

9 A That's correct.

10 Q And you're seeking prejudgement interest on that
11 number as well?

12 A Yes, I am.

13 Q So if we total up with prejudgement interest, the
14 unpaid salary, and the unpaid commissions, if I told you
15 that my math worked out to \$33,767.40, does that sound
16 about right?

17 A Yes, it does.

18 Q And you're also seeking troubled damages and
19 attorney's fees in this case; is that correct?

20 A That is correct.

21 Q The documents that you have in front of you --

22 THE COURT: Say that again, 33,767.40?

23 MR. RUTLEDGE: And .40, yes, Your Honor.

24 THE COURT: And that's a combination of salary,
25 commissions, and prejudgement interest?

1 MR. RUTLEDGE: That's correct, Your Honor. If I
2 could hand up this calculation that --

3 THE COURT: Well, show it to opposing counsel.

4 MR. RUTLEDGE: I've given it to him.

5 THE COURT: Okay.

6 MR. RUTLEDGE: And that's my math for what an
7 English major's math is worth.

8 THE COURT: Okay. Go ahead.

9 Q And just so that we're clear, the Fluor numbers
10 that you're aware of, you were aware of those numbers
11 both while you were still an employee of Billeter, but
12 also as the result of the documents that we subpoenaed;
13 is that correct?

14 A That is correct.

15 Q And how have you come by the knowledge of the
16 \$52,000 number from Day and Zimmerman?

17 A That was e-mailed to me when I was still employed
18 by Day and Zimmerman.

19 Q Okay.

20 MR. RUTLEDGE: And, Your Honor, I do have an
21 attorney fee affidavit on file with the court. We're
22 not seeking any additional fees from that date. That
23 was as of August of this year. Counsel has a copy of
24 that as well.

25 THE COURT: Okay. What was that amount?

1 MR. RUTLEDGE: That is \$5,355.

2 THE COURT: Okay. All right.

3 MR. RUTLEDGE: Please answer any questions that
4 Mr. Puriefoy has for you.

5 MR. VANDER TOORN: Thank you.

6 CROSS EXAMINATION BY MR. PURIEFOY:

7 Q All right. Mr. Vander Toorn, you stated that you
8 entered into an employment contract with Billeter. I
9 think that occurred on January 3rd of 2017; is that
10 correct?

11 A That would have been -- maybe the start day of the
12 first day of the contract signed prior to that.

13 Q The day the contract went into effect was on
14 January 3rd?

15 A Could have been, yeah.

16 MR. PURIEFOY: Your Honor, if I may provide a copy?

17 THE COURT: Yes.

18 Q And, Mr. Toorn, do you recognize the document that
19 I've just given to you?

20 A Yes, I do.

21 MR. PURIEFOY: Your Honor, this is a copy of the
22 employment agreement if you would like a copy.

23 THE COURT: Okay. I mean, we're hear to talk about
24 damages.

25 Q Mr. Toorn, the employment contract that was entered

1 into on January 3rd were for you to provide services to
2 Billeter Recruiting; is that correct?

3 A That is correct.

4 Q And the pay structure was for salary and
5 commissions; correct?

6 A That's correct.

7 Q And you were to be paid on the 15th of every month;
8 is that correct?

9 A Yeah, it moved around a little bit in the
10 beginning, but I believe we landed on that.

11 Q Okay. Now, on January 3rd the date of this
12 contract was executed, you were given a \$12,000 signing
13 bonus that was to be repaid if no contracts were brought
14 to Billeter; is that correct?

15 A Correct.

16 Q And then on January 13th you were also advanced
17 \$10,000 for one month's pay because you needed money to
18 live off of. It was my understanding that you were
19 purchasing a house at the time and you were advanced
20 \$10,000 in salary?

21 A My first month's salary by the letter in the
22 contract would have been January 15th, so that sounds
23 right. It was paid on the 15th of each month.

24 Q But your -- the salary that you received in
25 January, the contract was for you to provide services to

1 Billeter Recruiting; correct?

2 A Yes.

3 Q Okay. So on the 15th you would have provided about
4 ten days worth of service?

5 A No, we had a conversation about that and the
6 month's pay was paid on the 15th of every month. So
7 January's pay was paid on January 15th. And February's
8 pay was paid on February 15th, roughly.

9 Q Okay. And you received pay on February 15th or
10 roughly February 15th?

11 A As far as I know, but I don't know the exact day.

12 Q But you received your salary pay for February?

13 A Correct.

14 Q And you received your salary pay for March?

15 A Correct.

16 Q And you received your salary pay for April?

17 A Correct.

18 Q Now, you did not receive a salary pay for May?

19 A Or June.

20 Q May or June. Now, the services that you provided
21 were from January to February, February to March, March
22 to April, April to May. I think that your complaint
23 states that on May 26th you were sent a suspension
24 letter by the defendant in this case --

25 MR. RUTLEDGE: Your Honor, I'm just going to object.

1 We're here to talk about damages. And let me just
2 finish my objection. The law's pretty clear that a
3 defendant can participate in the damages hearing about
4 the numbers. He can't advance defenses that have been
5 foreclosed by way of a default.

6 THE COURT: I understand.

7 MR. RUTLEDGE: Okay.

8 MR. PURIEFOY: Your Honor, just quickly. The
9 damages in this case are governed by the contract. The
10 Plaintiff's Complaint relies on the contract itself to
11 establish his entitlement to damages. We have to be
12 guided by the contract terms itself to determine whether
13 or not the numbers presented are in fact --

14 THE COURT: Go ahead.

15 Q So, Mr. Toorn --

16 A Vander Toorn.

17 Q Mr. Vander Toorn, excuse me. I think you just
18 stated that you were not compensated your May salary or
19 your June salary. On May 26th you received a suspension
20 letter from the Defendants suspending you without pay
21 pending an investigation into some allegations of
22 wrongdoing and a number of other things; correct?

23 A There's no stipulation for any suspension in my
24 contract. So what somebody says and what is actual --
25 is actually real is two totally different things.

1 Q Sure. I'm not asking you to admit that the
2 contract stated that there was a suspension clause
3 because there certainly wasn't. What I'm asking you is
4 on May 26th you received a communication that you were
5 suspended, right, wrong, or indifferent; correct?

6 A And to contact a lawyer in Louisiana if I had any
7 questions which I did.

8 Q Okay. Now, Mr. Vander Toorn, within approximately
9 seven to ten days of that suspension, isn't it true that
10 you sought alternate employment with, I believe it was
11 --

12 MR. RUTLEDGE: Objection, Your Honor. This is
13 mitigation defense.

14 THE COURT: Well, I'm going to let him ask it.
15 Okay. Thanks.

16 MR. PURIEFOY: One second. I beg the Court's
17 indulgence.

18 Q Was it Crowder Contractors?

19 A You're saying within ten days I sought new
20 employment?

21 Q Correct.

22 A Yeah. I mean, I wasn't getting paid anymore and I
23 was owed money and I needed to pay for -- I'm just an
24 average guy trying to provide for my family.

25 Q Sure. You would have gotten -- or you would of --

1 I believe you were employed through Crowder Construction
2 within at least a couple of weeks of the suspension
3 letter going out?

4 A No, that's incorrect actually.

5 Q When did you first --

6 A I don't have my exact day in front of me, but
7 that's not correct.

8 Q If I told you that there was a Facebook post with
9 your e-mail with Crowderusa.com recruiting welders on
10 June 22nd, would that sound about; correct?

11 A June 22nd sounds about right.

12 Q All right. Now, I think you testified on direct
13 examination to Mr. Rutledge's questions that you were
14 entitled to these salaries for two months and commission
15 payments. So just to clear up the salary issue, no
16 services -- no additional services were provided to
17 Billeter Recruiting after May 26th; is that correct?

18 A I think all services that were asked from me were
19 provided, yes.

20 Q Up until that date; correct?

21 A Up until the end of June if he would have asked me
22 I would have provided services. There's no provision
23 for a suspension, so not providing services was not my
24 call.

25 Q But my question to you is, Mr. Vander Toorn, is

1 after May 26th when the suspension, again, right, wrong,
2 or indifferent was given to you, you no longer provided
3 any services to the Defendants; is that correct?

4 A I wasn't asked to.

5 Q Okay. Now, as to the commissions, you testified on
6 direct examination that you were entitled to commissions
7 for contracts that you brought into Billeter Recruiting;
8 correct?

9 A Correct.

10 Q Okay.

11 A Well, and it was listed by client as well which
12 Fluor was definitely one of my clients...

13 Q Sure.

14 MS. TIBBS: Excuse me?

15 A It was listed by client actually Fluor, Day and
16 Zimmerman, and CB&I.

17 Q And you would not have been entitled to commissions
18 on any contracts that you did not bring to Billeter;
19 correct?

20 A Well, I would have to go through my agreement, but
21 it's by Fluor, no, I am entitled to anything brought in
22 by Fluor.

23 Q Are you entitled to everything that was brought in
24 by Fluor or everything that you brought in by Fluor?

25 A The agreement is quite clear, it's Fluor during my

1 time of employment, so, yes.

2 Q So it's your position here today that the contract
3 that was entered into on January 3rd allowed you to
4 collect on every single Fluor contract with Billeter
5 regardless of whether you were responsible for bringing
6 that contract in or not?

7 A Correct. Everything that came from Fluor came on
8 my behalf.

9 Q So you did provide those contracts to Billeter?

10 A Exactly. When it came to -- when I entered the NRG
11 contract as well, that's what I was told by Bill Ancar
12 was that they've never done the work in Texas and that's
13 where most of the work was done, so I had to get
14 involved to get that contract out of Texas or at least
15 the agreements to get the people inside of Texas well.
16 He's talking about some small bit of work he did in
17 Louisiana which we didn't do any work in Louisiana while
18 I was employed it was just in Texas which was a separate
19 part as well.

20 Q So is it fair to say that there were essentially
21 two contracts that were brought by Fluor, the NRG
22 contract and the Southern Company contract; correct?

23 A And Day and Zimmerman.

24 Q Just Fluor for right now. Those two contracts?

25 A Yeah.

1 Q Now, were you aware that the NRG contract that
2 you're claiming commissions to at this hearing was in
3 existence in 2016 -- in April 6th of 2016?

4 A I'm aware that there was a revision to it, but it
5 had to be renewed and also Texas had to be added to it
6 which I had to do.

7 Q But I'm asking, you are aware that this was a
8 pre-existing contract, the NRG contract was a contract
9 that Billeter had prior to you becoming an employee of
10 --

11 A All contracts within Fluor expire every year, so
12 that one you're talking about in 2016 would have expired
13 and it was renewed based on my efforts, yes.

14 Q And so, again, the original contract, the 2016
15 contract was before you got involved; correct?

16 A It expired before I got involved.

17 Q Now, the Fluor, the Southern Company contract,
18 that's also a contract that you're claiming commission
19 payments on; correct?

20 A Yes, I am.

21 Q Okay. Now, are you familiar with the company
22 Skilled Trade Solutions?

23 A Yes, I am.

24 Q Okay. And Skilled Trade Solutions, are you aware
25 that they also had an agreement with Billeter Recruiting

1 to recruit and to bring contracts to Billeter
2 Recruiting?

3 A I'm aware that Ron Weathered the principal of STS
4 was involved as well.

5 Q Okay. And were you aware of a or do you recall a
6 July 26th e-mail that was sent by you to the Defendants
7 where you detail the pre-existing contracts verses
8 contracts that you planned on bringing in for purposes
9 of commissions?

10 A Possibly. Do you have a copy of that?

11 MR. PURIEFOY: I do, Your Honor.

12 Q If you'll look at this July 26th correspondence,
13 Mr. Vander Toorn, you'll see this is essentially
14 discussing what the business structure --

15 A That's correct.

16 Q -- is going to look like. And it looks like
17 numbered paragraph 1, you state, "William Ancar has an
18 agreement in place with Fluor which specifies Fluor NRG
19 as a client and has an existing relationship." And then
20 it goes on to talk about a number of other things.
21 That's under William Ancar section.

22 Under the "Ours" section you state, "Existing
23 contracts and relationships with Fluor Southern Company
24 and Fluor Luminant with the scope of supplying welders
25 and other craft workers."

1 A I think that also the sentence above that
2 reconfirms what I just said which is the same scope and
3 conditions as yours, but with the Texas plants as well.

4 Q Correct. And then the fourth numbered paragraph
5 says, "The existing business name is Skilled Trade
6 Solutions." Are you an owner of Skilled Trade
7 Solutions?

8 A Not at all.

9 Q So these would be contracts that the owner of
10 Skilled Trade Solutions Ron Weathered would have been
11 responsible for bringing to Billeter Recruiting;
12 correct?

13 A Yeah, I had the contracts with my previous employer
14 which was not STS. Ron set up STS and at that point
15 hadn't done any work. But he is the principal and he is
16 a retiree of Fluor, he didn't need my help to get his
17 contracts.

18 Q Right. So per your e-mail, the Fluor Southern
19 Company contract as well as the Day and Zimmerman
20 contract were contracts that were actually procured by
21 STS; correct?

22 A No.

23 Q They were not. Despite your e-mail specifically
24 stating that this existing business name relating to
25 these two contracts is STS to which you have no

1 ownership interest?

2 A I have no ownership interest at all in STS. But
3 the way this goes is you're talking about in July of
4 2016. So we're talking in contacts with July of 2016.
5 All of those contracts with Fluor with every division
6 whether it's NRG or Southern Company expire at the end
7 of every year and they have to be renewed. And I was
8 involved directly. And had I known we were going to
9 talk about this, I would have brought my e-mails --

10 THE COURT: I've allowed a lot of latitude, so put
11 an end to it.

12 MR. PURIEFOY: Sure. Your Honor, I have no further
13 questions for this witness.

14 THE COURT: Okay. All right. Any redirect?

15 MR. RUTLEDGE: I don't think so, sir. Thank you.

16 THE COURT: Okay. You can stand down. Thank you.
17 Okay. Anything else?

18 MR. RUTLEDGE: I don't think so, Judge. Thank you.

19 THE COURT: All right. Do you have anything to
20 dispute the numbers? Specifically numbers.

21 MR. PURIEFOY: Yes, so specifically numbers, Your
22 Honor. So the Plaintiff is seeking \$20,000 as a result
23 of failure --

24 THE COURT: Do you have any evidence? I will allow
25 you to put something up to dispute --

1 MR. PURIEFOY: So the contract itself, Your Honor.

2 So numbers, the \$20,000 that they're claiming --

3 THE COURT: So are you offering that into evidence?

4 You haven't done that.

5 MR. PURIEFOY: I am, Your Honor.

6 THE COURT: Do you have any objection to the

7 contract being entered?

8 MR. RUTLEDGE: It's an exhibit to the Complaint.

9 It's fine, yeah. And just what I would point out is --

10 THE COURT: Let him finish his --

11 (WHEREUPON, Defendant's Exhibit Number One was
12 marked and entered)

13 THE COURT: All right.

14 MR. PURIEFOY: So I'll just keep it short, Your
15 Honor. The contract itself calls for the payment of
16 \$10,000 per month for a period of six months.

17 Plaintiffs are claiming \$20,000 in damages as a result
18 of the failure to pay those amounts despite no services
19 having been provided. However, the numbers included in
20 this contract, Your Honor, was a provision granting to
21 the Plaintiff a \$12,000 signing bonus which was to be
22 repaid within three months of the expiration of this
23 contract in the event no contracts were brought to
24 Billeter Recruiting.

25 I don't think there's any evidence that any

1 contracts were in fact brought to Billeter Recruiting.
2 So I believe, Your Honor, that the Defendants would be
3 entitled to an offset of this \$20,000 by the \$12,000
4 that they advanced to Mr. Vander Toorn in January.

5 As to the commission payments, Your Honor. Although
6 we would submit that those commissions were absolutely
7 not brought in by Mr. Vander Toorn, those numbers are
8 what the numbers are and we're not going to dispute the
9 amounts that were brought in under those contracts.
10 Although, we do dispute whether or not Mr. Vander Toorn
11 was responsible for procuring those contracts.

12 And then as for the troubled damages, Your Honor,
13 which is where the majority of the damages in this case
14 comes in. That is the issue that's squarely within the
15 Court's jurisdiction and discretionary call by the
16 judge. However, what the Court's have directed us on
17 the issue of troubled damages is that the imposition is
18 only proper when there is no bonafided dispute as to
19 whether or not wages are in fact do and owing.

20 So my argument for the payment of wages is twofold,
21 Your Honor. First, I don't believe troubled damages in
22 this particular situation are warranted. The reason why
23 the wages were not paid was because Mr. Ancar believed
24 that Mr. Vander Toorn was engaging in fraudulent conduct
25 as an employee of his company. He was not paid because

1 services were no longer being provided under the terms
2 of the contract. It states that the contract could be
3 terminated at any time. Mr. Ancar's thinking at this
4 time is because the contract has been terminated and
5 Mr. Vander Toorn has sought alternative employment, he
6 was no longer entitled to those funds.

7 Secondly, Your Honor, I believe we may be getting
8 into a situation that falls outside the scope of payment
9 of wages to begin with. The wages that the Plaintiff is
10 seeking for May would fall within that period if it's
11 determined that he was in fact providing services and is
12 entitled to wages for that month.

13 However, June, the last month that he provided
14 absolutely no services to Mr. Vander Toorn would
15 constitute -- or to Mr. Ancar would constitute
16 prospective wages. Those are wages that were not
17 earned. South Carolina requires a showing that the
18 wages be earned before they are due and owing under the
19 Payment of Wages Act. If they are not earned at the
20 time they're being sought for damages they're considered
21 prospective and fall outside the scope.

22 So I would submit to the Court that in the event
23 that they do award damages to the Plaintiffs as it
24 concerns the salary, the \$10,000 for May would be the
25 only wages under the Act and \$10,000 in June would be

1 prospective and fall outside of that scope.

2 Therefore -- and then obviously, Your Honor, we
3 would resubmit our arguments on the troubled damages. I
4 do not believe that they're appropriate in this
5 situation. There was no nefarious or malicious intent
6 in failing to pay those sums. It was simply the
7 services were no longer being provided. So under the
8 terms of the contract or so Mr. Ancar thought, he no
9 longer had an obligation to pay Mr. Vander Toorn.

10 THE COURT: Okay. Well, you're arguing toward the
11 merits of the defense which has already been ruled that
12 -- it's already been a judgement entered. So I'm going
13 to award the \$101,302.20 plus the attorney's fee figure
14 of 5300 something. Whatever it was in the affidavit.
15 Ask you to submit a proposed order.

16 MR. PURIEFOY: So just for clarification, Your
17 Honor. You're awarding the troubled damages in this
18 case?

19 THE COURT: Yes, sir, I am.

20 MR. PURIEFOY: Okay.

21 THE COURT: Okay. Thank you.

22 MR. RUTLEDGE: Thank you, Judge.

23 - - -END OF REQUESTED TRANSCRIPT OF RECORD- - -

24

25

CERTIFICATE OF REPORTER

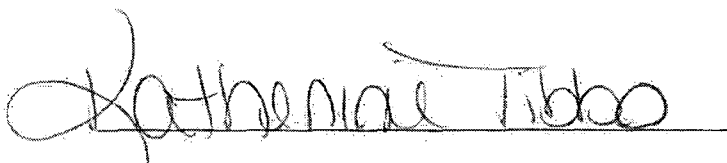
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, KATHERINE F. TIBBS, Registered Professional Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 5th of December, 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 22, 2018

A handwritten signature in cursive script, reading "Katherine F. Tibbs", is written over a horizontal line.

Katherine F. Tibbs

Registered Professional Reporter

Attorney Certificate

Counsel for appellants certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



Howard W. Anderson III
SC Bar No. 100329

RECEIVED

SEP 17 2018

SC Court of Appeals

Certificate