

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
H. Hughes Andrews,)
Plaintiff,)
v.)
Quentin S. Broom, Jr.,)
Defendant.)

IN THE COURT OF COMMON PLEAS
Civil Action No. 2008-CP-42-03397

RECEIVED
DEC 18 2018
SOUTH CAROLINA
Court of Appeals
FINAL ORDER
and JUDGMENT

This case came before the Court on a motion filed by the Defendant and a motion filed by the Plaintiff. The Defendant's motion is for JNOV, or, in the alternative, for a new trial, to alter or amend, and for reconsideration. The Plaintiff's motion is for attorney's fees and costs.

The Court conducted a hearing on the motions August 23, 2018.

On September 26, 2018, the Court entered a Form 4 denying the Defendant's motion and granting the Plaintiff's motion. The Form 4 explained this final, formal order would follow.

This has been a difficult case. Yet, after considering all of the parties' filings and arguments, as well as the evidence, the Court remains convinced its prior Order and Judgment is correct.

The judgment entered after the bench trial in this case was based principally on the Court's examination of the circumstances surrounding the Defendant's withdrawal of \$1,020,000 from the parties' business in 2004 and 2005. Business records show the Defendant paid himself \$400,000 on December 31, 2004 and that he made other large payments to himself over the following months.

The evidence also showed, however, that \$325,000 of the first salary payment was borrowed from the Defendant's relatives and from one of the Defendant's other companies. The

evidence further showed that a partner in the Dominican Republic *personally* transferred \$190,000 into the business during this time. The business also owed significant sums for 2003 and 2004 taxes.

In the Court's view, the foregoing evidence proved Tri-Star Communications plainly did not have sufficient income to support the salary Defendant began paying himself on New Year's Eve in 2004.

The outcome of this case turned on a credibility determination, which was a factual dispute. The Plaintiff claimed he did not consent to the Defendant's salary and that circumstances of the loans and salary payments constituted strong evidence of a scheme to cut him out of the business. The Defendant claimed the parties agreed he was entitled to a salary, that he had the authority to set his salary, and that business had been doing well enough to support the salary. As described above, the Court believes the evidence directly refutes the Defendant's argument that the business had sufficient income to support the salary payments he was taking. The Plaintiff presented compelling evidence that the Defendant used his management of Tri-Star for his own benefit in 2004 and 2005 rather than for the benefit of Tri-Star and its other shareholder. The Defendant's explanation was not credible.

I.

The Defendant's motion challenges the admission of various items of evidence during trial. This was a bench trial and the Court elected to admit all evidence before evaluating it in a non-jury setting and giving weight to the evidence as it deemed appropriate. As described above, the outcome of this case ultimately turned on the factual finding that the Plaintiff's evidence was compelling and that the Defendant's explanation for the events was not believable and belied by the company having to borrow much of the money he elected to pay himself.

The Defendant's motion also challenges the award of punitive damages. The Order and Judgment included an amount of punitive damages that was equal to the \$510,000 compensatory award. As stated there, the Court believes the Plaintiff made a compelling case for an award of punitive damages and that a 1 to 1 ratio between compensatory and punitive damages is evidence that the award is within constitutional boundaries and is not excessive.

The Court has considered the criminal penalties for similar misconduct as outlined in the Plaintiff's return to the Defendant's motion. Comparison to civil and criminal penalties can provide evidence that a punitive award is excessive. See *BMW v. Gore*, 517 U.S. 559, 583 (1996). That comparison does not suggest a punitive award of roughly \$500,000 is excessive.

All other arguments on the motion for a JNOV, for a new trial, and for reconsideration not directly mentioned have been considered and are denied. This pertains to all arguments that have been previously raised and decided in prior orders as well as any arguments properly made in the post-trial motion for the first time.

II.

Regarding the Plaintiff's motion for attorney's fees and costs, the first thing the Court must consider is whether the motion is untimely. The Defendant says it is not timely because the petition was due December 2, 2017 and the Plaintiff did not request an extension of that deadline until two days later.

The Defendant says original deadline for the petition to be filed was fifteen days from November 17, 2017, which would be December 2. The Court takes judicial notice that December 2, 2017 was a Saturday. On Monday, December 4, the Plaintiff requested an extension of the deadline. The petition was filed two weeks later, on December 15, 2017. The Court declines to find the petition untimely.

The Plaintiff seeks an award of \$194,306.53 in attorney's fees and costs.¹ The Defendant opposes this motion and says the request for attorney's fees was not adequately pled, not adequately proven, and that the Plaintiff only prevailed in part and should not be granted fees and costs for his "unsuccessful" prior appeal.

First, the Court finds the request for attorney's fees was properly raised. As described in the Form 4, this litigation has been exceptionally lengthy. Litigation began in 2005 when the party who is now the Defendant brought several claims against the party who is now the Plaintiff. The Defendant abandoned those claims shortly before trial. The Court entered an order re-aligning the parties the day after the trial concluded.

The Plaintiff first requested attorney's fees in his amended pleading filed in 2006. This request was repeated in his second amended pleading filed in 2016. In both instances, the request was stated in regards to defending against the Defendant's claims, however, as noted above, from the time this litigation commenced until shortly before trial, the Plaintiff was defending those claims and campaigning determinedly to keep his own claims in court. The Court finds the specific request for attorney's fees provided straightforward notice the Plaintiff was seeking fees and costs.

Second, the Court finds the request for fees was adequately proven. The Defendant argues the Plaintiff did not present evidence that the parties' business—Tri-Star Communications—was a statutory close corporation and that the Plaintiff is therefore not entitled to fees and costs under § 33-18-410(b) (part of the Statutory Close Corporation Supplement). At the hearing, however, the Plaintiff produced a Tri-Star share certificate with the language required by § 33-18-109(a), indicating the company was in fact a statutory close corporation. This had been attached to a previous summary judgment filing filed by the Defendant.

¹ The Form 4 accidentally listed this amount as \$194,406.53.

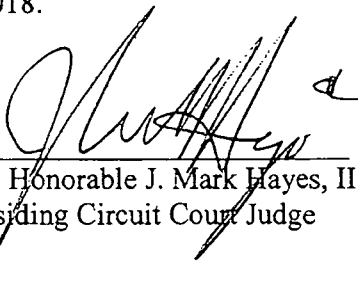
Third and finally, the Court finds the Plaintiff prevailed to a significant extent and that it is appropriate to award the full amount of requested fees and costs. Section 33-18-410(b) allows a successful party to recover "reasonable expenses, including counsel fees." It may be true that the Plaintiff only prevailed in part, and that the prior appeal was "unsuccessful," but those things are true only when speaking in the most formal and technical sense. The Plaintiff proved a scheme to shut him out of \$510,000 in proceeds from the parties' business. The Plaintiff proved the Defendant's conduct was deliberate and reprehensible, justifying an additional award of \$510,000 for a total award of \$1,020,000. The prior appeal was part of the Plaintiff's sustained effort to keep his claims in court; claims the Plaintiff eventually pursued to a successful outcome. The fact that the Plaintiff was not awarded relief for the sale of the video poker machines or additional damages due to the Defendant's income from a subsequent gambling operation in the Dominican Republic does not afford any basis for reducing the fees and costs awarded.

This Court has considered the nature, extent, and difficulty of the services rendered, the time and labor devoted to the case, the professional standing of counsel, the contingency of compensation, customary fees for similar services, and beneficial results obtained. This was an extremely difficult case. It required a great deal of effort to get it to trial and to try it. The hourly rates are reasonable, and the Plaintiff achieved a beneficial result.

All other arguments opposing the Plaintiff's petition for attorney's fees and costs not directly mentioned have been considered and are denied.

Judgment shall be entered in favor of the plaintiff Hugh Andrews against the Defendant Quentin Broom, Jr. in the amount One Million Two Hundred Fourteen Thousand Four Hundred Six and 53/100ths Dollars (\$1,214,406.53).

It is so ordered, this 20 day of November, 2018.



The Honorable J. Mark Hayes, II
Presiding Circuit Court Judge

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2008CP4203397

Quentin S Broom Jr Tri Star Communications Inc	H Hughes Andrews	Quentin S Broom Jr	
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> 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), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit)
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other:

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

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

ORDER INFORMATION

This order ends does not end the case.

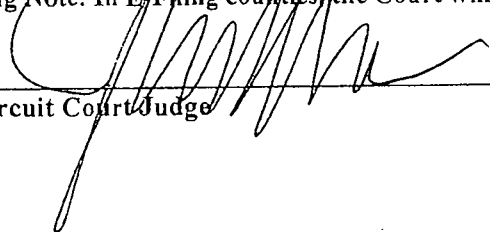
Additional Information for the Clerk: SEE ATTACHED ORDER

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)
HUGHANDREWS	QUENTIN BROOM, JR	1,214,406.53
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.


 Circuit Court Judge

2132
 Judge Code
 11/20/18
 Date

RECEIVED
 DEC 18 2018
 SC Court of Appeals

ELECTRONICALLY FILED - 2018 Nov 20 2:54 PM - SPARTANBURG - COMMON PLEAS - CASE#2008CP4203397

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-Filers 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.
