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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

J. Cordell Maddox, Circuit Court Judge

Case No. 2013-CP-23-05424

Shadia Hewitt,..... Respondent,

v.

The Shaw Corporation d/b/a Shaw's Pharmacy and
Charles Cleburn Turner,..... Defendants,

of whom The Shaw Corporation d/b/a Shaw's Pharmacy
is the..... Appellant.

INITIAL REPLY BRIEF OF APPELLANT

January 25, 2019

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LEGAL ARGUMENT

Respondent's Initial Brief restates large portions of her earlier Motion for Partial Summary Judgment and the Court's Order Granting Partial Summary Judgment, including the argument that a ruling from the South Carolina Department of Labor, Licensing and Regulation ("LLR") was binding upon Appellant in Respondent's subsequent lawsuit against Respondent. Respondent appears to be seeking to relitigate an issue which is not before this Court, which is whether the LLR's findings as to *whether wages were owed* are preclusive. What the Respondent fails to adequately address is the issue before this Court, which is whether the lower court erred by awarding treble damages *because a bona fide dispute existed* about whether wages were owed to Respondent.

As Appellant argued in its Initial Brief, citing numerous applicable authorities, the lower court's award of treble damages was an error of law and fact because a bona fide dispute existed about whether wages were due to Respondent. Respondent's only substantive argument regarding this issue is that "[t]he Appellant never advocated that the wages were not due to the Respondent until his Affidavit appeared" and therefore "there is and was never a genuine dispute that the Appellant owed this amount to the Respondent." However, the LLR document relied upon by Respondent expressly stated: "Once [Hewitt's paycheck] was cashed [Turner] *would always give it to Ms. Hewitt even though it would not always be on the scheduled pay date.*" (Ex-

hibit A to Order Granting Plaintiff's Motion for Partial Summary Judgment, p. 2) (emphasis added). Thus, the LLR's own documentation, which the Respondent relies upon, acknowledges the existence of a bona fide dispute rendering treble damages inappropriate.

Further, Appellant has maintained from the outset of this case that no wages were due to Respondent. Paragraph 12 of Defendants' Answer and Counterclaims states: "Defendants further state affirmatively that Plaintiff *was paid all salary and expenses due to her.*" (See Answer at ¶12, p.3) (emphasis added.) Likewise, Paragraph 9 of the "Additional Defenses" portion of Defendants' Answer and Counterclaims states: "Plaintiff's Cause of Action against Defendants for violation of the South Carolina Payment of Wages Act, S.C. Code Ann. §41-10-10, et seq., is barred *because Defendants paid all wages due to Plaintiff.*" (Answer, ¶9 of Additional Defenses, p. 6) (emphasis added). Therefore, Appellant's argument that Respondent "never advocated that the wages were not due to the Respondent until after his Affidavit appeared" is unsupported by the evidence.

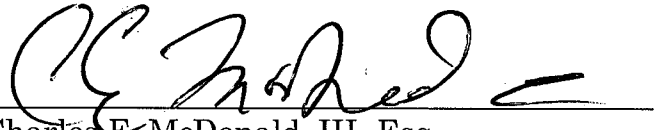
Respondent also fails to offer any evidence or argument to suggest the trial court even considered whether a bona fide dispute existed. Instead, and as noted in Appellant's Initial Brief, the trial court awarded treble damages in summary fashion, without any discussion of whether a bona fide dispute existed, simply stating that Respondent's unpaid wages "should be trebled, pursuant to the above-referenced code section." An award of treble damages

is not automatic under South Carolina law as the trial court summarily determined. As Appellant has previously noted, the language in the lower court's order is virtually identical to the circuit court's language in *Temple v. Tec-Fab, Inc.* that back wages "will be trebled as required by statute..." which the Supreme Court held was erroneous. *Temple v. Tec-Fab, Inc.*, 381 S.C. 597, 599-600, 675 S.E.2d 414, 415-416 (2009). The trial court's award of treble damages with no finding or discussion of whether a bona fide dispute existed constitutes reversible error.

CONCLUSION

For the foregoing reasons, Appellant again requests that this Court reverse the portion of the circuit court's Order Granting Plaintiff's Motion for Partial Summary Judgment granting treble damages and/or the circuit court's denial of the portion of Defendants' Motion to Reconsider arguing that treble damages were inappropriate.

Respectfully submitted,



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Dated: January 25, 2018

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of whom The Shaw Corporation d/b/a Shaw's Phar-
macy is the Appellant.

PROOF OF SERVICE

I certify that I have served the Initial Reply Brief of Appellant on this date by sending to Respondent's attorney of record a copy of the same via first class mail, properly addressed, postage prepaid to the following address: W. Benjamin McClain, Jr., Esq., 300 E. Washington Street, Suite I, Greenville, SC 29607.

January 25, 2019



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January 25, 2019

VIA CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: *Shadia Hewitt v. The Shaw Corporation*
Case No. 2018-001603

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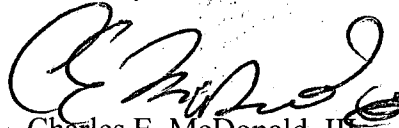
Dear Ms. Kitchings:

Please find enclosed for filing the original and one copy of (1) Initial Reply Brief of Appellant and Proof of Service and (2) Appellant's Designation of Matter to be Included in the Record on Appeal and Proof of Service. Please file the original and return the time stamped copy in the self-addressed, stamped envelope provided.

A copy of these filings is being served on Appellee's counsel Ward Benjamin McClain, Jr.

If you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,



Charles E. McDonald, III
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Attorney for Appellant

cc: Ward Benjamin McClain, Jr. (w/encl.)

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