

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM GREENVILLE COUNTY  
COURT OF COMMON PLEAS  
Hon. Robin B. Stillwell, Circuit Court Judge

**RECEIVED**

MAY 20 2019

SC Court of Appeals

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Appellate Case No. 2018-000884

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Ronald Johnson, ..... Respondent,

v.

George H. Brock, Individually, and d/b/a George H. Brock CPA, LLC,  
MILBRO Properties, LLC, Integrative FS, LLC,  
and Diwood Partnership, ..... Appellants.

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APPELLANT'S REPLY

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J. Falkner Wilkes (SC Bar #12893)  
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*Counsel for Appellants*

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## ARGUMENT

### I. FACTS ALLEGED IN THE RESPONDENT'S BRIEF ARE UNSUPPORTED BY THE RECORD AS CITED.

Respondent's argument rests in part on the claim that Appellant Brock signed the Respondent's name to a letter. Specifically, the Respondent alleged that: "Johnson testified that Brock drafted a letter on the Brock CPA firm letterhead dated February 27, 2015, to the list of former clients of Johnson, and signed Johnson's name to it with Johnson's permission. (Plaintiff's Exhibit 2; Tr. Transcript p. 58, lines 1-25.)" (Page 8 of Respondent's Initial Brief). The transcript cited does not support the allegation that Brock signed the letter. Johnson's testimony was that "His person in the office signed my name to it, which I authorized." Tr. p. 58, l. 11-12. Within the cited portion of the transcript Johnson was asked if he signed the letter, to which he answered "I didn't sign it, but I authorized Donna [Carlton] to sign it." Tr. p. 58, l. 22-25. Johnson testified that he reviewed the letter and said "I said, Okay. I said, I think it's fine." Tr. p. 58. Immediately following the portion of the transcript cited by the Respondent Johnson was asked "Okay, *So you sent this letter out*, this was late February. And then you just continued to working full time at Mr. Brock's office; is that correct?" Johnson responded "Yeah, yeah, I just continued to do the problem of the day. Whatever -- whoever needed the help done, that's who I worked with." Tr. p. 59, l. 8-13. Johnson testified that the letter was sent to his former tax clients "letting them know where I went. And if they needed to get ahold of me, how they could get ahold of me." Tr. 59, l 5-7. Also within the cited portion of the transcript Johnson was asked "So this was as soon as y'all discussed this, basically, were y'all immediately trying to get those customers?" T. p. 58, 15-17. Johnson responded "Yeah. As soon as he saw the number of filings

that I had done the previous year, then he was very motivated -- he was very motivated to try to attract clients". T. p. 58. l. 18-21. Johnson's own testimony shows that regardless of who drafted the letter, he had knowledge of the letter, an opportunity to review it prior to mailing, and that he authorized Donna Carlson to sign his name on the letter. Brock did not sign Johnson's name to the letter, nor was the letter drafted, composed, or sent without Johnson's knowledge and consent.

II. RESPONDENT'S ARGUMENT CONFUSES THE MEANS FOR VALUING AND CALCULATION OF PAYMENTS WITH THE OBJECT OF THE ORAL AGREEMENT FOR WHICH THE PAYMENTS WERE TO BE MADE.

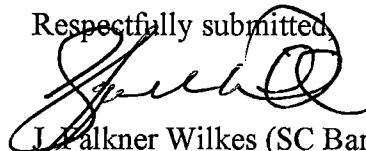
While the Respondent argues that his claim under the oral agreement was one for wages, he describes the claim as an entitlement to "eighty (80) percent of the proceeds earned by the Appellants from clients *that Johnson brought to the Appellant's firm.*" (Resp. Initial Brief, page 6). The Respondent's Complaint alleged that Johnson provided a client list to Mr. Brock with names and addresses for individual and corporate tax clients who had previously used Johnson. (Complaint, pg 2 para 11). That Complaint also states that those clients then receive any of the Appellant's "marketing contact" the same as any of the Appellant's other clients. (Complaint, pg 2 para 11). This makes clear that the Respondent was selling his client list to Brock rather than his labor. When asked by his own counsel how he was compensated for his hours, Johnson responded: "Well, he paid me. He paid me \$30 dollars an hour and I turned in a time sheet every week." (T. p. 59, 14-17; P. Ex. 4). Respondent's own testimony shows that he was compensated for his hours at \$30 an hour. His 'hours' can only be interpreted as his labor. This is completely separate and distinct from the oral agreement which provided for payment in exchange for the Respondent's client list. The time Respondent worked on those or any other client files was

compensated at an hourly rate, and constitutes wages. This is consistent in his accounting for his time which was separate from his calculation of what he was due under the oral agreement. In an attempt to turn the purchase of the client list into a claim for wages the Respondent confuses the means of valuing or calculating installment payments due for the sale of the client list with the manner in which the value and payments were to be determined. While the payments for the sale of the client list may be calculated based on a percentage of certain invoices, the object of the oral agreement remains the sale of the client list, rather than labor. Although the details of the agreement are disputed, the Appellant's own testimony and allegations establish that the object of the agreement was the sale of the Respondent's client list. The means of valuing the amount of each payment is irrelevant and does not turn payments due for a sale into wages.

#### CONCLUSION

Based on the foregoing the Orders of the circuit court should be reversed, the jury verdict set aside, and judgment entered for the Defendants, or in the alternative, the verdict set aside and a new trial granted.

Respectfully submitted



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May 15, 2019.

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CERTIFICATE OF SERVICE

I certify that on May 15, 2019, I served the Appellants' Reply on the Respondent by placing a copy of same in the United States Mail, first class postage prepaid, addressed to counsel of record as indicated below and to others if so indicated:

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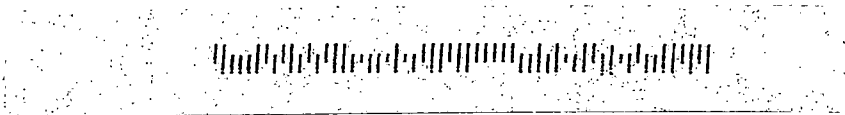
Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Falkner Wilkes". The signature is fluid and cursive, with a large initial "J" and "W".

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May 15, 2019.



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