

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Robert E. Hood

Case No. 2018-CP-40-01318

Appellate Case No. 2019-001811

Best Choice Roofing & Home Improvement, Inc.,..... Appellant,

v.

Tyler Woods,.....Respondent.

INITIAL BRIEF OF APPELLANT

Townes B. Johnson III (SC Bar# 75412)
TOWNES B. JOHNSON III, LLC
PO BOX 9246
GREENVILLE, SC 29604
PH: (864) 757-4899

Attorney for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE..... 2

STATEMENT OF FACTS 2

ARGUMENT..... 3

 I. THE COURT ERRONEOUSLY FOUND THAT TYLER WOODS WOULD BE
 PREJUDICED BY BEST CHOICE ROOFING & HOME IMPROVEMENT, INC.’S
 MOTION TO AMEND BEING GRANTED. 3

 II. THE COURT ERRONEOUSLY FAILED TO FREELY AND
 LIBERALLY GRANT BEST CHOICE ROOFING & HOME
 IMPROVEMENT, INC.’S MOTION TO AMEND IN
 ACCORDANCE WITH SOUTH CAROLINA LAW.....3

TABLE OF AUTHORITIES

Statutes

South Carolina Rules of Civil Procedure, Rule 15(a) 3

Cases

Parker v. Spartanburg Sanitary Sewer Dist., 362 S.C. 276 607 S.E.2d 711 (Ct. App. 2005).....3

Tanner v. Florence County Treasurer, 336 S.C. 552, 521 S.E.2d 153 (1999).....3

Crestwood Golf Club, Inc. v. Potter, 328 S.C. 201, 493S.E.2d 826 (1997).....4

Jarrell v. Seaboard Sys. R.R., 294 S.C. 183, 363 S.E.2d 398 (Ct. App. 1987).....4

STATEMENT OF ISSUES ON APPEAL

- I. THE COURT ERRONEOUSLY FOUND THAT TYLER WOODS WOULD BE PREJUDICED BY BEST CHOICE ROOFING & HOME IMPROVEMENT, INC.'S MOTION TO AMEND BEING GRANTED.

- II. AS DEFENDANT WOULD SUFFER NO PREJUDICE, PLAINTIFF'S MOTION TO AMEND SHOULD BE FREELY GIVEN.

STATEMENT OF THE CASE

On or about March 8, 2018, Plaintiff/Appellant Best Choice Roofing & Home Improvement, Inc (“BCR”) brought this action against Defendant/Respondent Tyler Woods (“Woods”) for a breach of non-compete and confidentiality provisions in his employment agreement with BCR. On or about June 11, 2018, Woods filed both his Motion to Dismiss and his Answer and Counterclaims. On July 11, 2018, BCR filed its reply to Woods’ counterclaims. After engaging in written discovery, BCR on December 18, 2018, filed a motion to amend the Complaint to withdraw its cause of action for breach of non-compete and confidentiality provision of the employment agreement and add new causes of action against Woods for fraud, negligent misrepresentation, unfair trade practices and conversion. As of December 18, 2018, the case had not been placed on any jury trial rosters and the parties had not mediated.

The next day, on December 19, 2018, Woods filed a motion for Summary Judgment as to Plaintiff’s original Complaint and as to its counterclaims. A motion hearing was held on January 30, 2019 before the Honorable Robert E. Hood, and, on February 19, 2019, the Court issued its Order granting Woods’ motion for Summary Judgment and denying BCR’s Motion to Amend. On February 28, 2019, BCR filed its motion to Reconsider, Alter or Amend Judge Hood’s February 19, 2019 Order. On March 20, 2019, the Court issued a revised Order granting Woods’ motion for Summary Judgment and denying BCR’s Motion to Amend. On March 28, 2019, BCR filed a Revised Motion to Reconsider, Alter or Amend and on October 22, 2019, the Honorable Robert E. Hood denied BCR’s motion. This appeal ensued.

STATEMENT OF FACTS

On or about April 19, 2017, Woods entered into an employment agreement with BCR wherein Woods was going to relocate to the Atlanta, Georgia metro area to work for Plaintiff. In

conjunction with Woods' relocation, BCR advanced Woods the sum of \$2,500 for relocation expenses. Less than two weeks later, on April 29, 2017, Woods left BCR and moved to Columbia, South Carolina and failed to return to BCR the \$2,500 BCR had advanced Woods.

ARGUMENT

I. THE COURT ERRONEOUSLY FOUND THAT TYLER WOODS WOULD BE PREJUDICED BY BEST CHOICE ROOFING & HOME IMPROVEMENT, INC.'S MOTION TO AMEND BEING GRANTED.

In the Court's February 19, 2019 Order and March 20, 2019 Order, the Court found that Woods would be prejudiced by BCR being granted leave to amend its Complaint under Rule 15, SCRPC. The Court, however, failed to show that Woods would lack either notice or an opportunity to refute BCR's amended claims. *See Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276 607 S.E.2d 711 (Ct. App. 2005) (*The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it. (Citing Tanner v. Florence County Treasurer*, 336 S.C. 552, 521 S.E.2d 153 (1999))). Further, as the parties had not engaged in any discovery other than written discovery, had not mediated the case and the case was not on any jury trial dockets as of BCR's filing of its Motion to Amend, it cannot be argued that Woods would not have had notice of the amended claims or the opportunity to refute them. The Court, accordingly, erroneously found that Woods would be prejudiced by BCR being granted leave to amend its Complaint.

II. THE COURT ERRONEOUSLY FAILED TO FREELY AND LIBERALLY GRANT BEST CHOICE ROOFING & HOME IMPROVEMENT, INC.'S MOTION TO AMEND IN ACCORDANCE WITH SOUTH CAROLINA LAW.

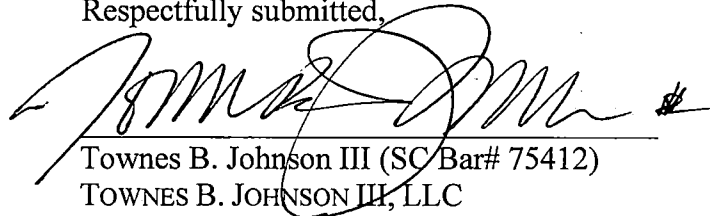
As Woods would suffer no prejudice as a result of the grant of BCR's Motion to Amend, South Carolina law *strongly* favors the grant of leave to amend. *Id.* (*Leave to amend pleadings pursuant to Rule 15, SCRPC, shall be liberally and freely given when justice so requires and does*

not prejudice any other party. Citing Crestwood Golf Club, Inc. v. Potter, 328 S.C. 201, 493 S.E.2d 826 (1997) and This rule strongly favors amendments and the court is encouraged to freely grant leave to amend. Citing Jarrell v. Seaboard Sys. R.R., 294 S.C. 183, 363 S.E.2d 398 (Ct.App.1987)). In the case at hand, the Court erroneously failed to freely and liberally grant BCR's Motion to Amend in accordance with long standing South Carolina law. Id.

CONCLUSION

For the foregoing reasons, Best Choice Roofing & Home Improvement, Inc. respectfully asks this Court to reverse the Circuit Court's Orders February 19, 2019 Order, March 20, 2019 and October 22, 2019 and allow Best Choice Roofing & Home Improvement, Inc. to Amend its Complaint.

Respectfully submitted,



Townes B. Johnson III (SC Bar# 75412)

TOWNES B. JOHNSON III, LLC

PO BOX 9246

GREENVILLE, SC 29604

PH: (864) 757-4899

Attorney for Appellant

January 23, 2020
Greenville, SC

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Appellate Case No.: 2019-001811

Best Choice Roofing & Home Improvement, Inc.....Appellant,

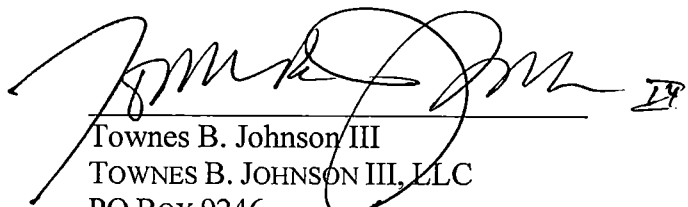
v.

Tyler Woods.....Respondent.

PROOF OF SERVICE

The undersigned hereby certifies that a true copy of Appellant Best Choice Roofing & Home Improvement, Inc.'s Motion to File Out of Time and Appellant Best Choice Roofing & Home Improvement, Inc.'s Initial Appellant's Brief in the above-referenced case has been served on all parties of record by mailing a copy of same in the United States mail, postage prepaid this 23rd day of January 2020, addressed as follows:

Nekki Shutt, Esq.
Burnette Shutt & McDaniel, P.A.
P.O. Box 1929
Columbia, SC 29202


Townes B. Johnson III
TOWNES B. JOHNSON III, LLC
PO BOX 9246
GREENVILLE, SC 29604
PH: (864) 757-4899



January 23, 2020

Townes B. Johnson III
(864) 757-4899
tjohnson@sc.legal

Via Facsimile and Federal Express

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

**Re: Best Choice Roofing & Home Improvement, Inc vs. Tyler Woods
Appellate Case No. 2019-001811**

Dear Ms. Kitchings:

Enclosed, please find the following in the above-referenced matter:

- (1) the original and two (2) copies of Initial Brief of Appellant;
- (2) the original and two (2) copies of Appellant's Designation of Matter;
- (3) the original and six (6) copies of Appellant's Motion to File Out of Time;
- (4) a motion fee in the amount of \$50.00;
- (5) Proof of Service

Please send me a filed copy in the enclosed prepaid envelope.

Sincerely,



Townes B. Johnson, III

cc: Nekki Shutt, Attorney for Respondent

ORIGIN ID:GSPA (864) 757-4899
TOWNES JOHNSON
TOWNES B. JOHNSON III, LLC
PO BOX 9246

GREENVILLE, SC 29604
UNITED STATES US

SHIP DATE: 23JAN20
ACTWGT: 0.25 LB
CAD: 111311213/NET4220

BILL SENDER

TO HONORABLE JENNY ABBOTT KITCHINGS
SC COURT OF APPEALS
1220 SENATE STREET

566L2JDF82/FE4A

COLUMBIA SC 29201

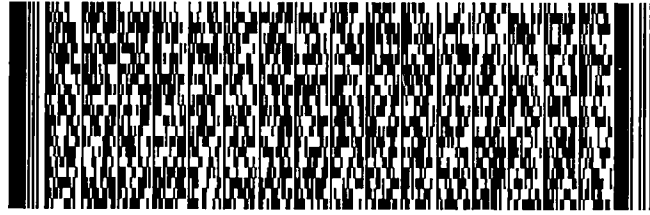
(803) 734-1890

REF:

INV:

PO:

DEPT:

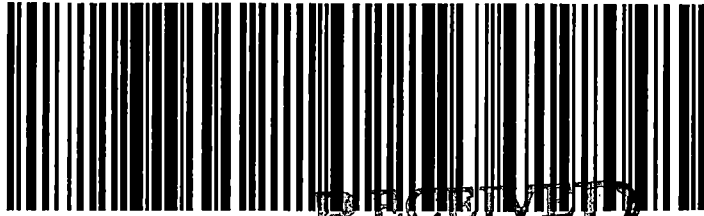


FRI - 24 JAN 10:30A
PRIORITY OVERNIGHT

TRK# 7775 9217 2485
0201

XH USCA

29201
SC-US CAE



RECEIVED

JAN 24 2020

SC Court of Appeals

After printing this label:

1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our ServiceGuide. Written claims must be filed within strict time limits, see current FedEx Service Guide.