

92018

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

The Honorable Robert E. Hood, Circuit Court Judge

RECEIVED

JAN 28 2020

SC Court of Appeals

Case No. 2018-CP-40-01318  
Appellate Case No. 2019-001811

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

v.

Tyler Woods. .... Respondent.

RESPONDENT'S MOTION TO DISMISS APPEAL

Respondent Tyler Woods ("Respondent") respectfully moves this Court to dismiss the appeal of Best Choice Roofing & Improvement, Inc. ("Appellant") because the underlying order Appellant seeks to appeal is not immediately appealable.

I. RELEVANT PROCEDURAL HISTORY

The issues that are the subject of this appeal arose in response to the trial court's Order denying Appellant's Revised Motion to Reconsider, Alter or Amend. See Exhibit 8, Order Den. Revised Mot. to Recons., dated Oct. 22, 2019<sup>1</sup>.

<sup>1</sup> For the Court's convenience, Respondent has included the referenced orders, motions, and transcript as exhibits to this motion, retaining and continuing the numbering set forth in Appellant's Designation of Matter.

On November 6, 2017, Appellant intentionally sent an unfounded cease-and-desist letter to Respondent's South Carolina employer on the grounds that Respondent allegedly violated his employment agreement with Appellant. See Exhibit 1, Compl., dated March 8, 2018. This resulted in Respondent's termination by his South Carolina employer. See *id.* On March 8, 2018, Appellant then filed a Complaint in the Richland County Court of Common Pleas alleging that Respondent breached the non-compete provision of his employment agreement. See *id.* On June 11, 2018, Respondent filed his Answer and Counterclaim, counterclaiming against Appellant for intentional interference with a business relationship and for filing a frivolous claim under the South Carolina Frivolous Civil Proceedings Sanctions Act ("SCFCPSA"), S.C. Code Ann. § 15-36-10 (1976). See Exhibit 9, Answer & Countercl., dated June 11, 2018.

On December 17, 2018, nine months after filing the Complaint, Appellant moved the trial court for permission to amend the Complaint to totally abandon all original causes of action in favor of an action sounding in fraud for return of an alleged "relocation" advance. See Exhibit 2, Mot. to Am. Compl., dated Dec. 17, 2018. The next day, on December 18, 2018, Respondent moved the trial court for summary judgment on the claims and counterclaims in the case. See Exhibit 3, Mot. for Summ. J., dated Dec. 19, 2018. On January 30, 2019, the trial court heard both Appellant's Motion to Amend the Complaint and Respondent's Motion for Summary Judgment. See Exhibit 10, Tr. of Hr'g held Jan. 30, 2019. At this hearing, Appellant consented to Respondent's motion for summary judgment because Appellant recognized that it is undisputed that Respondent worked for his South Carolina employer in Irmo, SC, approximately 193 miles from

Marietta, GA, where he worked for Appellant; which is not a violation of Respondent's employment agreement with Appellant. See *id.* p. 10-11.

On February 19, 2019, the trial court issued its Order denying Appellant's Motion to Amend the Complaint and granting summary judgment in favor of Respondent on all claims and counterclaims in the case. See Exhibit 4, Order Grant. Summ. J. Against Pl. & Den. Pl.'s Mot. to Am. Compl., dated Feb. 19, 2019. On February 28, 2019, Appellant filed a Motion to Reconsider, Alter, or Amend the trial court's February 19, 2019 Order. See Exhibit 5, Mot. to Recons., Alter, or Am., dated February 28, 2019.

On March 20, 2019, the trial court issued an amended Order, again finding in favor of summary judgment for Respondent on the claims in the Complaint and denying Appellant's Motion to Amend the Complaint, but reversing its decision on summary judgment as to Respondent's counterclaims, ordering the clerk of court to move Respondent's counterclaims forward on the trial docket. See Exhibit 6, Order Grant. Summ. J. Against Pl. & Den. Pl.'s Mot. to Am. Compl., dated Mar. 20, 2019.

In this amended Order, the trial court found that Appellant is not entitled "to abandon all of its original allegations and to plead previously unraised allegations," and that Respondent would be prejudiced if Appellant was granted leave to amend the Complaint. *Id.* p. 2.

On March 28, 2019, Appellant filed a Revised Motion to Reconsider, Alter, or Amend the trial court's March 20, 2019 Order, requesting again that the trial court grant Appellant's Motion to Amend the Complaint. See Exhibit 7, Mot. to Recons., Alter, or Am., dated Mar. 28, 2019. Notably, Appellant did not request that the trial court

reconsider, alter, or amend its grant of summary judgment in Respondent's favor in its Revised Motion to Reconsider, Alter, or Amend. See *id.*

On October 22, 2019, the trial court issued its Order denying Appellant's Revised Motion to Reconsider, Alter, or Amend the Complaint. See Ex. 8. The appeal of this Order followed. See Exhibit 11, Notice of Appeal, dated October 22, 2019.

## II. ARGUMENT

### A. The October 22, 2019 Order is not immediately appealable because it simply denies Appellant the opportunity to file an amended pleading and does not end the case.

Appellant appeals the Court of Common Pleas' October 22, 2019 Order. See Ex. 11. This order is not immediately appealable because it is an interlocutory order.

The jurisdiction of the Court of Appeals "is appellate only, and the [C]ourt shall apply the same scope of review that the Supreme Court [of South Carolina] would apply in a similar case." S.C. Code Ann. § 14-8-200 (Supp. 2013).

Section 14-3-330 of the South Carolina Code (1976 & Supp. 2013) sets forth the scope of the Court of Appeals' appellate jurisdiction, which does not include interlocutory orders unless certain exceptions apply. S.C. Code Ann. § 14-3-330. The only circumstances in which an interlocutory order is immediately appealable are if the order:

- (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action;
- (b) grants or refuses a new trial; or,
- (c) strikes out an answer or any part thereof or any pleading in any action.

*Baldwin Const. Co. v. Graham*, 357 S.C. 227, 230, 593 S.E.2d 146, 147 (2004). The denial of a motion to amend a pleading is not immediately appealable because it is not a ruling on the substantive contents of the pleading and does not end the action or strike a pleading, it merely refuses to allow a pleading's filing. *Id.*

Here, Appellant's action ended on March 20, 2019, when the trial court issued its order granting summary judgment to Respondent the claims in the Complaint. See Ex. 6. Appellant did not move the trial court to reconsider its grant of summary judgment in favor of Respondent on Appellant's claims, nor does Appellant seek to appeal said grant of summary judgment to this Court. Appellant merely moved the trial court to reconsider its denial of Appellant's motion to amend its Complaint to abandon all of its original claims and completely replace them with new claims. See Ex. 7. Now, Appellant appeals the trial court's October 22, 2019 Order which denied Appellant reconsideration of the trial court's denial of Appellant's request to amend its Complaint. See *id.* As in *Baldwin*, this Order is interlocutory and does not end the action; it merely denies the Appellant the opportunity to amend a pleading because to do so would prejudice Respondent. See *id.* Therefore, the trial court's October 22, 2019 Order is not immediately appealable, and this Court should dismiss Appellant's appeal of said Order with prejudice.

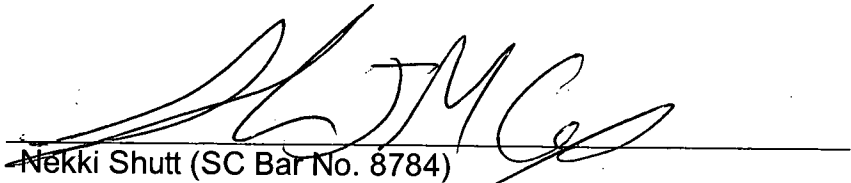
### III. CONCLUSION

Because motions to amend pleadings are not immediately appealable, this Court lacks jurisdiction to consider Appellant's appeal of the circuit court's October 22, 2019 Order. Accordingly, Respondent respectfully moves for this Court to dismiss this appeal with prejudice.<sup>2</sup>

---

<sup>2</sup> Appellant filed a Motion to File Out of Time with this Court on January 23, 2020, requesting to be allowed to file its Initial Brief out of the prescribed time limits of the South Carolina Appellate Court Rules. In its Motion to File Out of Time, Appellant acknowledges that it received a transcript of the underlying hearing on November 5, 2019. Accordingly, per Rule 208, SCACR, Appellant's Initial Brief was due within thirty (30) days, a due date of December 5, 2019. Appellant waited until January 23, 2020 to move for permission to file its Initial Brief out of time. Respondent was not consulted before Appellant filed this Motion to File Out of Time, however Respondent neither opposes nor consents to this Motion.

Respectfully submitted,



~~Nekki Shutt (SC Bar No. 8784)~~  
Sarah J.M. Cox (SC Bar No. 108314)  
BURNETTE SHUTT & McDANIEL, PA  
912 Lady Street, Second Floor (29201)  
PO Box 1929  
Columbia, South Carolina 29202  
Tel. (803) 904-7912  
Fax (803) 904-7910  
NShutt@BurnetteShutt.Law  
SCox@BurnetteShutt.Law

**ATTORNEYS FOR RESPONDENT**

Columbia, South Carolina

January 28, 2020

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM RICHLAND COUNTY

The Honorable Robert E. Hood, Circuit Court Judge

---

Case No. 2018-CP-40-01318  
Appellate Case No. 2019-001811

---

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

v.

Tyler Woods, ..... Appellant.

---

**RESPONDENT'S MOTION TO DISMISS APPEAL  
INDEX TO EXHIBITS**

---

- EXHIBIT 1:** Appellant's original Complaint, dated March 8, 2018
- EXHIBIT 2:** Appellant's Motion to Amend Complaint, dated December 17, 2018
- EXHIBIT 3:** Respondent's Motion for Summary Judgment, dated December 19, 2018
- EXHIBIT 4:** Order Granting Summary Judgment Against Plaintiff and Denying Plaintiff's Motion to Amend Complaint, dated February 19, 2019
- EXHIBIT 5:** Appellant's Motion to Reconsider, Alter, or Amend, dated February 28, 2019
- EXHIBIT 6:** Order Granting Summary Judgment Against Plaintiff and Denying Plaintiff's Motion to Amend Complaint, dated March 20, 2019
- EXHIBIT 7:** Appellant's Motion to Reconsider, Alter, or Amend, dated March 28, 2019

- EXHIBIT 8:** Order Denying Revised Motion to Reconsider, dated October 22, 2019
- EXHIBIT 9:** Respondent's Answer and Counterclaim, dated June 11, 2018
- EXHIBIT 10:** Transcript of Record of hearing in front of The Honorable Robert E. Hood on January 30, 2019
- EXHIBIT 11:** Appellant's Notice of Appeal, dated October 22, 2019

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
The Honorable Robert E. Hood, Circuit Court Judge

Case No. 2018-CP-40-01318  
Appellate Case No. 2019-001811

RECEIVED  
JAN 28 2020  
SC Court of Appeals

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

v.

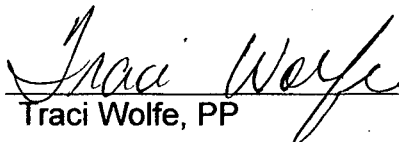
Tyler Woods, ..... Appellant.

CERTIFICATE OF SERVICE

I do hereby certify that I have served a copy of the following as indicated herein below, by mailing a copy of same by first class U.S. Mail postage pre-paid on the date below to the following:

DOCUMENT SERVED: Respondent's Motion to Dismiss Appeal

PARTIES SERVED: Townes B. Johnson III, Esq.  
P.O. Box 9246  
Greenville, South Carolina 29604  
**Attorneys for Appellant**

  
\_\_\_\_\_  
Traci Wolfe, PP

Columbia, South Carolina

January 28, 2020

# EXHIBIT 1

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Best Choice Roofing & Home Improvement, Inc.,	)	C. A. No. 2018-CP- _____
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Tyler Woods,	)	
	)	
Defendant.	)	
	)	

**TO THE ABOVE NAMED DEFENDANT(S):**

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, PO Box 9246, Greenville, South Carolina 29604, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court and judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted this 1<sup>st</sup> day of March 2018,

TOWNES B. JOHNSON III, LLC

/s/ Townes B. Johnson III

Townes B. Johnson III (SC Bar# 75412)

PO Box 9246

Greenville, South Carolina 29604

PH: (864) 757-4899

tjohnson@sc.legal

Attorneys for Plaintiff

Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Best Choice Roofing & Home Improvement, Inc.,	)	C. A. No. 2018-CP-_____ - _____
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Tyler Woods,	)	
	)	
Defendant.	)	

---

COMES NOW, the plaintiff, Best Choice Roofing & Home Improvement, Inc. ("Plaintiff"), complaining of the defendant, Tyler Woods ("Defendant"), and would show the following:

1. Plaintiff is an Tennessee corporation with its principal office located at 224 Old Shackle Island Road, Hendersonville, Tennessee 37075.
2. Upon information and belief, Defendant is a resident of the State of South Carolina, County of Richland, and is subject to the venue and jurisdiction of this Court.
3. Defendant entered into an Employment Agreement with Plaintiff, a true and correct copy of which is attached hereto and marked as "Exhibit A". Under Section 9 of the Employment Agreement entitled "Non-Compete and Confidentiality", Defendant agreed that should he "directly or indirectly engage, own, manage, control, operate, be employed by, participate in, or be connected in any manner with the ownership, management, operation, or control of any business similar to the type of business conducted by [Plaintiff] for a period of ONE (1) year and within 100 miles from the present location of [Plaintiff's] business" that he would pay to Plaintiff the sum of Fifteen Thousand and 0/100ths Dollars (\$15,000.00).
4. Defendant began employment with Premiere Roofing, LLC within one year and conducts business within said One Hundred (100) miles and whom is a direct competitor of

Plaintiff. As such, the aforementioned liquidated damage clause of the Employment Agreement has been triggered.

5. Defendant is indebted to the Plaintiff pursuant to said contract in the amount of Fifteen Thousand and 0/100ths Dollars (\$15,000.00), plus prejudgment interest at the legal rate, plus post-judgment interest at the legal rate, plus reasonable attorney's fees pursuant to the aforementioned Agreement.

6. Plaintiff has made numerous demands upon Defendant for payment of the amounts owed to Plaintiff as prayed for in this Complaint, but to date, said demands have either been ignored or gone unanswered. All of these demands were made prior to the initiation of this lawsuit. Plaintiff, therefore, hereby makes a demand for attorney's fees and cost of litigation.

WHEREFORE, Plaintiff hereby prays for the following relief:

- (a) Judgment against Defendant Tyler Woods in the amount of Fifteen Thousand and 0/100ths Dollars (\$15,000.00), together with attorneys' fees, costs, and interest;
- (b) Attorneys' fees;
- (c) Pre-judgment interest;
- (d) Costs of this action;
- (e) Such other and further relief that this Court deems just and proper.

Respectfully submitted this 1<sup>st</sup> day of March 2018,

TOWNES B. JOHNSON III, LLC

/s/ Townes B. Johnson III

Townes B. Johnson III (SC Bar# 75412)

P.O. Box 9246

Greenville, SC 29604

PH: (864) 757-4899

tjohnson@sc.legal

*Attorneys for Plaintiff*

Greenville, South Carolina



Rev 2/16/2017

EMPLOYMENT AGREEMENT

This Employment Agreement (the "Agreement") dated as of 4/19/17 (the "Effective Date") is made by and between Best Choice Roofing Southeast, LLC, a TN Corporation, (the "Employer") and Tyler Woods (the "Employee"). The Employer and the Employee may be referred to individually as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, the Employer is engaged in the business of ROOFING AND HOME IMPROVEMENT; and

WHEREAS, the Employer desires to employ the Employee, and the Employee wishes to enter into such employment, on the terms and conditions set forth in this Agreement; and

WHEREAS, each Party is duly authorized and capable of entering into this Agreement.

NOW, THEREFORE, in consideration of the mutual acts and promises, covenants, agreements, representations, and warranties hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1 EMPLOYMENT.

The Employer hereby employs, engages, and hires the Employee on a full-time basis, and the Employee hereby accepts this employment subject to the terms and conditions of this Agreement. The Employee agrees and understands that [s]he is an employee "at will," and nothing herein shall be interpreted to mean that the Employee is anything other than an employee at will. The Employee's employment may be terminated by either Party at any time pursuant to Section 12 hereof.

2 TERM.

The term of this Agreement shall begin on 4/19/17 and continue until terminated by either Party in accordance with the provisions of Section 12 of this Agreement or by law. The period during which the Employee is employed pursuant to this Agreement shall be referred to as the "Employment Period."

3 COMPENSATION.

Subject to the terms and conditions of this Agreement, the Employee shall be compensated for his services as follows:

(a) Base Salary. The Employer shall pay the Employee an annual base salary of \$ 400.00 (the "Salary"), payable in equal \$ 10,800 (weekly, biweekly, semi-monthly) installments at the end of each such period during the Employment Period. The Salary may be subject to such increases as may from time to time be determined by the [President] of the Employer. Employer makes no promises regarding the number of hours it will ask Employee to work in any given time period; Employee understands that the number of hours may vary with the needs of Employer.

Employee Initials TW

EXHIBIT A

OR (put "NA" through A or B if not applicable)

(b) ~~Hourly Wage~~. Employer shall pay the Employee an hourly wage of \$ \_\_\_\_\_. The hourly wage may be subject to such increases as may from time to time be determined by the [President] of the Employer. The pay periods, pay structure and information applicable to Overtime hours are referenced and explained in the Employee Handbook. No overtime without pre-approval from HR or Corporate officers. Employer makes no promises regarding the number of hours it will ask Employee to work in any given time period; Employee understands that the number of hours, as well as the work schedule may vary with the needs of Employer.

(c) Monthly Bonus. Employee may receive a monthly bonus (paid first pay period after the 5<sup>th</sup> of the following month) for the below:

DOES THIS EMPLOYEE QUALIFY FOR A BONUS PACKAGE YES NO (circle one).

Bonus Tiers:

% 1 will be paid on the total net sales (net sales defined as gross sales, minus decking invoices, supplemental funds, tarping invoices, all credits and DRP or incentives provided to the accounts as well as the deduction of personal sales, General Managers or members of Corporate) equal to or in excess of \$ 100k.

% 2 will be paid on the total net sales (net sales defined as gross sales, minus decking invoices, supplemental funds, tarping invoices, all credits and DRP or incentives provided to the accounts as well as the deduction of personal sales, General Managers or members of Corporate) equal to or in excess of \$ 200k.

% 3 will be paid on the total net sales (net sales defined as gross sales, minus decking invoices, supplemental funds, tarping invoices, all credits and DRP or incentives provided to the accounts as well as the deduction of personal sales, General Managers or members of Corporate) equal to or in excess of \$ 300k.

% 4 will be paid on the total net sales (net sales defined as gross sales, minus decking invoices, supplemental funds, tarping invoices, all credits and DRP or incentives provided to the accounts as well as the deduction of personal sales, General Managers or members of Corporate) equal to or in excess of \$ 400k.

%      will be paid on the total net sales (net sales defined as gross sales, minus decking invoices, supplemental funds, tarping invoices, all credits and DRP or incentives provided to the accounts as well as the deduction of personal sales, General Managers or members of Corporate) equal to or in excess of \$     . Bonus will match Tony tiers for 90 days!

Bonuses are paid on the first pay date after the 5<sup>th</sup> on the following month. He will bonus on his team only.

Bonuses are subject to fines assessed by the company. These fines are as follows:

\$50 reduction for a Certificate of Completion with a "3" rating or less

\$500 reduction for a BBB complaint

Bonus Reduction Forms submitted and approved by Management. Bonus Reduction Forms will reduce the amount of the net sales.

Employee Initials TW

**\*General Managers Only\***

When a customer has a balance that becomes 90 or more days delinquent, the amount of that contract will be removed from "bonusable revenue" in terms of bonuses, forgoing the reason or when the job was sold.

When bonuses are calculated (on or shortly after the 1<sup>st</sup> of each month), any customer who has a warranty or has unfinished work that has aged more than 10 days, the revenue from that customer's contract will be reduced from "bonusable revenue".

- (d) **Tax Withholding.** All sums payable to the Employee under this Agreement shall be reduced by all federal, state, local and other withholdings and similar taxes and payments required by applicable law.
- (e) **Commissions.** Employee will be allowed to earn commission(s). Attached to this Agreement is "Exhibit A", which defines and explains the Commission pay structure.

DOES EMPLOYEE'S JOB TITLE WARRANT COMMISSION? CIRCLE ONE YES NO

**4 RESPONSIBILITIES AND DUTIES.**

The Employee's responsibilities shall include (but shall not be limited to) the following: (the "Services").

Sales Manager Atlanta  
\_\_\_\_\_  
\_\_\_\_\_

From time to time, the Employer may revise the nature of the Employee's Services. The Employee will promptly and faithfully comply with all reasonable instructions, directions, requests, rules, and regulations made or issued by the Employer, and the Employee will perform the Services conscientiously and in a timely manner in and to the best of the Employee's abilities at all times, when and wherever required or desired by the Employer and pursuant to the express and implicit terms of this Agreement, to the reasonable satisfaction of the Employer. Such duties shall be rendered at Marietta, GA and at such other place or places as the Employer shall in good faith require or as the interest, needs, business, or opportunity of the Employer shall require.

**5 OTHER EMPLOYMENT.**

The Employee shall devote all of his time and attention solely to the Employer's business and interest. During the Employment Period, the Employee shall not engage, directly or indirectly, in any other business activity, regardless of whether it is pursued for gain or profit; provided, however, nothing contained in this Section 5 shall be deemed to prevent or to limit the right of the Employee to invest his money in real estate or in other companies if such investment does not oblige the Employee to assist in the operation of the affairs of such companies.

**6 EXPENSES.**

The Employer shall reimburse the Employee for all business expenses actually and properly incurred by the Employee in connection with his duties under this Agreement in accordance with the Employer's normal policies. The reimbursement of such expenses shall be subject to the Employee's provision to the Employer of receipts, statements, and vouchers to the Employer's satisfaction.

**7 CONFIDENTIALITY.**

During and after the Employment Period, except as permitted by the Employer or required by law, the Employee shall not divulge or appropriate to his own use or to the use of others any secret or confidential information or knowledge pertaining to or otherwise affecting the Employer's business including but not limited to any of its customer lists, products, services, costs, profits, markets, sales, trade secrets, or other information not readily available to the public without regard to whether any of the above will be deemed confidential, material, or important. The Parties stipulate that, as between them, such matters are important, material, and confidential and affect the effective and successful conduct of the Employer's business, and the Employer's good will, and that any breach of the terms of this Section 8 shall be deemed a material breach of this Agreement.

**8 NON-SOLICITATION.**

During the Employment Period and for a period of ONE (1) year thereafter, the Employee shall not:

- canvass or solicit the business of (or procure or assist in the canvassing or soliciting of) any client, customer, or employee of the Employer who is known to the Employee as a result of his association with the Employer during the Employment Period for the purposes of competing with the Employer;
- accept (or procure or assist the acceptance of) any business from any client, customer, or employee of the Employer known to the Employee as a result of his association with the Employer during the Employment Period for the purposes of competing with the Employer; provided, however, that the Employer may consent to such competition in writing; or
- otherwise contact, approach, or solicit (or procure or assist in the contacting, approaching, or soliciting of) any entity known to the Employee through his association with the Employer before the Effective Date in such a way as may cause detriment to the Employer.

**9 NON-COMPETITION AND CONFIDENTIALITY**

At the end of the Employment Period, by expiration or termination, the Employee shall not directly or indirectly engage, own, manage, control, operate, be employed by, participate in, or be connected in any manner with the ownership, management, operation, or control of any business similar to the type of business conducted by the Employer for a period of ONE (1) year and within 100 miles from the present location[s] of the Employer's business. If the Employee actually breaches or threatens to breach the terms of this Section 10, the Employer shall be entitled to a preliminary restraining order and injunction restraining the Employee from violating its provisions. Nothing in this Agreement shall be construed to prohibit the Employer from pursuing any other available remedies for such breach or threatened breach, including the recovery of damages from the Employee.

Training will be provided to Employee from Company at a significant expense to the Company. During this training and throughout the Employee's employment, Employee will have access to proprietary information pertaining to Company's business model. It is agreed that, forgoing the reason, upon the termination of Employee's employment for any reason, Employee may not use or disclose to anyone or any entity the information gained from training or employment by the Company. It is furthermore acknowledged that all information disclosed during training is to be considered proprietary. The definition of "use" shall be defined as utilizing any information gained during training/Employment which Employee subsequently uses or attempts to use for the benefit of Employee or any other entity or person(s) Employee may have any type of business relationship with.

The harm accruing to the Company by virtue of Employee's breach of the restrictive covenant set out in this Section cannot be calculated at this time. For this reason, Employee and the Company mutually agree that in the event of Employee's breach of this Section, the Company shall be entitled to liquidated damages of \$15,000.00. It is agreed and stipulated that such payment will be made to and received by Company as liquidated damages for the breach and/or early termination of this agreement and shall not be paid as a penalty.

**10 AT WILL EMPLOYMENT**

This is an at will employment (where provided by law). Either party may terminate this agreement without notice to the other party. Nothing in the Employer's policies, actions, or this document shall be construed to alter the at will nature of Employee's status with Employer, and Employee understands that Employer may terminate his/her Employment at any time for any reason or for no reason, provided it is not terminated in violation of State of Federal law.

**11 TERMINATION.**

The Company shall not by reason of the termination of the agreement be liable to the other for compensation, of present or prospective profits on sales or anticipated sales, or on account of expenditures, or on bonus payments, commissions or other compensation other than earned salary or hourly wages.

**12 RETURN OF PROPERTY.**

At the end of the Employment Period or at any time on the Employer's request, the Employee agrees to return to the Employer, retaining no copies or notes, all documents relating to the Employer's business including, but not limited to, reports, abstracts, lists, correspondence, information, computer files, computer disks, and all other materials and all copies of such material, obtained by the Employee during his employment with the Employer.

**13 FURTHER ASSURANCES.**

Each Party hereto shall cooperate and take such further action as may be reasonably requested by the other Party in order to carry out the terms and purposes of this Agreement and any other transactions contemplated herein.

**14 ARBITRATION.**

Any controversy or claim arising out of this Agreement or Employment with the Company (with exception to sections 7, 8, 9, 10 and 22), or the breach, termination, or invalidity of this Agreement shall be settled by arbitration in the County of Sumner, Tennessee in accordance with then governing rules of Tennessee. The arbitrator(s) shall be bound by the Agreement and shall interpret the Agreement in accordance with the applicable laws of the United States and the internal laws of the state of Tennessee. Any award, order, or judgment made pursuant to such arbitration shall be deemed final and shall be entered and enforced in any court of competent jurisdiction.

**15 NOTICE.**

Any notice or other communication provided for herein or given hereunder to a Party hereto shall be in writing and shall be given in person, by overnight courier, or by mail (registered or certified mail, postage prepaid, return receipt requested) to the respective Party at the following address:

If to the Employer:

Best Choice Roofing Southeast LLC.  
115 Hazel Path Suite 4.  
Hendersonville, TN 37075

If to the Employee:

110 Ferguson Rd  
La Vergne, TN  
37050

**16 SUCCESSORS AND ASSIGNS.**

This Agreement shall apply to all work performed by the Employee for the Employer, including any of its past, present, or future affiliates or subsidiaries, and shall be binding on the Employer's assigns, executors, administrators, and other legal representatives. This Agreement shall inure to the benefit of the Employer's successors and assigns. The Employee acknowledges that his services are distinctive and personal, and that he therefore may not assign his rights or delegate his duties or obligations under this Agreement.

**17 NO IMPLIED WAIVER.**

The failure of either Party to insist on strict performance of any covenant or obligation under this Agreement, regardless of the length of time for which such failure continues, shall not be deemed a waiver of such party's right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation under this Agreement shall constitute a consent or waiver to or of any other breach or default in the performance of the same or any other obligation.

**18 GOVERNING LAW.**

This Agreement shall be governed by the laws of the state of Tennessee. If litigation results from or arises out of this Agreement or the performance thereof, the Parties agree to reimburse the prevailing Party's reasonable attorneys' fees, court costs, and all other expenses, whether or not taxable by the court as costs, in addition to any other relief to which the prevailing Party may be entitled.

**19 COUNTERPARTS/ELECTRONIC SIGNATURES.**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. For purposes of this Agreement, use of a facsimile, e-mail, or other electronic medium shall have the same force and effect as an original signature.

**20 SEVERABILITY.**

- (a) Whenever possible, each provision of this Agreement, will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed, and enforced in such jurisdiction as if such invalid, illegal, or unenforceable provisions had never been contained herein.
- (b) [If the restrictions against solicitation in Section 8 or against competition contained in Section 10 of this Agreement shall be determined by a court of competent jurisdiction to be unenforceable because they extend for too long a period of time or over too great a geographical area, or because they are too expansive in any other respect, Sections 8 and 9 shall be interpreted to extend only over the maximum period of time for which they may be enforceable and over the maximum geographical areas as to which they may be enforceable, and to the maximum extent in all other respects as to which they may be enforceable, all as determined by such court in such action.]

**21 HOLD HARMLESS AND INDEMNIFICATION.**

The Employee shall hold the Company harmless and indemnify for any and all damages whether to person or property caused by the Employee, and which arise from misrepresentation or negligence of Employee, its agents, employees and representatives.

**22 EMPLOYEE HANDBOOK**

Employee Initials   TW

By accepting this Agreement, Employee acknowledges he/she has been given a copy of Best Choice Roofing's Employee Handbook or has been instructed where to locate the Employee Handbook, outlining most of the Employer's policies. He/she also acknowledges that he/she has been instructed of his/her Human Resources contact person and that he/she has been notified where to find the Company's Handbook at the location(s) which Employee renders services.

**23 NON DISPARAGEMENT**

During the Term and thereafter, Employee agrees to take no action which is intended, or would reasonably be expected, to harm the Company, it's Employees or it's or their reputation or which would reasonably be expected to lead to unwanted or unfavorable publicity to the Company.

**24 CELL PHONE USAGE**

The Employer does not permit it's Employees to use, in any way, their personal or work communications device while in or operating any type of vehicle.

**25 ENTIRE AGREEMENT.**

This Agreement constitutes the final, complete, and exclusive statement of the understanding of the Parties with respect to the subject matter hereof, and supersedes any and all other prior understandings, both written and oral, between the Parties. It may not be changed orally but only by an agreement in writing signed by the Party against whom enforcement of any waiver, change, modification, extension, or discharge is sought.

**26 HEADINGS.**

Headings in this Agreement are for convenience only and shall not be used to construe meaning or intent.

**27 INTERPRETATION CLAUSE.**

Employee agrees that Employer has given Employee the opportunity to have this document reviewed by an attorney. The parties negotiated the terms herein.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date first above written.

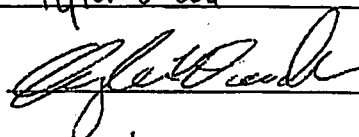
**EMPLOYER: Best Choice Roofing Southeast LLC (Corporate Only)**

**EMPLOYEE:**

Name: \_\_\_\_\_

Name: Tyler Woods

Signature: \_\_\_\_\_

Signature: 

Date: \_\_\_\_\_

Date: 4-21-17

**EXHIBIT D**  
**EMPLOYEE "PAY AGREEMENT"**

13 - 5 % of contract total will be paid to the salesperson for:

1. Obtaining a signed Contingency Agreement between the property and any other necessary documents.
2. Attending scheduled meeting with the homeowner's insurance adjuster to point out damage and present a copy of the signed Contingency Agreement. You will not be acting as an adjuster. You will merely be there to act as a technical advisor and will discuss the need to repair or replace damaged components (if any). If you are unable to attend, let the office know and we will arrange someone else to be there from the company. If you fail to make this appointment, commission can be reduced by 40%.
3. Obtaining a signed contract as well as any other necessary documents, as well as the collection of first check (endorsed by ALL parties). At this time, commission will be paid to the salesperson on the following pay period (see below), unless the check must be endorsed by a third party such as a lien holder (mortgage company etc.). If a check must be endorsed by another party, commission will be paid once all endorsements have been completed and the check(s) is/are received at the local branch.
4. After completion of the job, a Certificate of Completion must be taken to the homeowner in order to have the homeowner(s) sign and returned to the office promptly.
5. Pick up the final payment and any additional monies and/or documentation required from the homeowner(s).

If the Employee is unable to fulfill the 1-5 obligations above, any commission paid on those jobs will be reimbursed back to Best Choice Roofing Southeast LLC. Items 1-5 represent 20% of commission each. In order to get 100% of commission, all 5 activities above must be completed. If an Employee is paid and fails to complete all 5 activities above, he/she agrees to reimburse Best Choice Roofing Southeast LLC for any overpayment.

13 % commission will be paid when the same type of shingle (3 tab, architectural etc) is replaced with the exact style of material OR the Employee charges AT LEAST \$15 per square upgrade charge for "Architectural Shingles" and at least \$25 per square for OC Artisan/Duration/TruDefinition shingles. Metal roofing, Owens Corning products not listed in this paragraph or other brands of roofing upgrade pricing (other than Owens Corning) must be approved by a member of branch management or Corporate in writing or the Employee may be liable for costs.

11 % commission will be paid to the salesperson if the customer's shingles are upgraded at no charge to the customer.

9 % commission will be paid to the salesperson if a credit or DRP/DAP over the amount of \$500 is given to a customer

50% Lead PHL + DAP of \$1186.00+  
NOTE: On work orders deemed to be less profitable, 5% of the net contract value will be paid to the Employee. Any form of payment received by the salesperson MUST be brought into the office the same day it is picked up. A delay in receipt of funds by the office may reduce your commission on that job.

Best Choice Roofing Southeast LLC has partnered with Storm Leads Inc. (telemarketing company) to provide quality leads. You are not obligated to accept ANY lead, as leads MAY be OFFERED to you. If you accept the lead, you will be charged. The charge for leads is \$20 per lead and \$50 per lead if you fail to report the result of that lead within 24 hours directly to Storm Leads Inc. and/or a member of branch management.

*Commission will be paid to the Employee upon receipt of funds for that job. Commissions will only be paid on jobs with minimum Collection of ACV payment, or equivalent. If funds are not released from the insurance company for*

any reason, Employee will be liable for the costs.

**DEDUCTIBLE SPLIT**

Employee will be eligible for \$ 300 when the ENTIRE deductible is collected and paid in full by the homeowner. Employee will not be paid this money until the full deductible is collected. If a contract is written as a cash job, no deductible split will be paid. This only applies on full roof approvals. The total job cost used to calculate % commission will be reduced by \$500 if a deductible split is paid.

**OVERHEAD AND PROFIT**

Overhead and profit collected on jobs will be split 65,135 with the salesperson upon receipt of overhead and profit in full. If this money is used to cover other expenses, no split will be made on the overhead and profit. This money is split if included in scope of work. If a contract is written as a cash job, no Overhead and Profit split will be paid. This only applies on full roof approvals. If Overhead and Profit is not paid by the carrier (notwithstanding the reason), Employee will not be paid a split.

If below signed Employee requests measurements of a house (or if measurements are not provided by Independent Contractor), Independent Contractor may be charged \$30 for these measurements.

If an insurance company does not pay for items needed or requested by the customer, you must use the cash price sheet to determine what the homeowner must pay to replace these items. If you cannot receive additional money from the homeowner for these items you will be charged the prices reflected on the cash price sheet or cost incurred, whichever is greater. On ALL jobs installed by Best Choice Roofing Southeast LLC, all pipe boots and ventilation and skylights and all flashing MUST be replaced. These items must be paid for by the insurance company or the homeowner or the Employee will be liable for the costs to replace these items.

**CASH DEALS**

If a cash deal is written, the amount of material sold is to be explicitly stated on the contract. If, based on the Independent Sales Contractor's measurements, the job was measured short or material was left off of the cash estimate, the Independent Sales Contractor will be responsible for paying the costs incurred to finish the job. Commissions on cash deals are not paid until the job is paid in full.

**COUPONS**

Independent Sales Contractors must honor any coupon presented by a homeowner with approval from the management of the branch or Corporate office. These coupons will not yield commission on the coupon amount. If the coupon is used towards a deductible, no deductible split will be honored on the coupon amount. These coupons cannot be used towards an upgraded warranty.

**FINANCING**

Commissions pertaining to any amount financed by Best Choice Roofing Southeast LLC will be paid once the entire finance agreement has been paid. Best Choice Roofing Southeast LLC can finance deductibles ONLY. Upgrades and additional work cannot be financed by Best Choice Roofing Southeast LLC. In the event the finance term exceeds four (4) months, NO commission will be paid on that amount. In the event the finance term is in excess of four (4) months, the finance amount will be treated as a credit and the rules governing the payment on credits will apply. If the Employee does not charge the external financing fee of 3%, the Employee will be charged back that amount.

**NON RECOVERABLE DEPRECIATION**

In the instance the contracted homeowner has non recoverable depreciation that is not being paid by the homeowner, Employee's commission will be negotiated.

Employee Initials TW

**DENIALS**

Best Choice Roofing Southeast LLC, at it's sole discretion, may choose to involve other people(s) to assist a homeowner on a denial that occurred with the Independent Employee. In the instance that Company elects to do so, Employee 's commission will be reduced by 3% to offset the costs incurred to settle any claim the Company feels needs other people(s) involved in.

**COMMISSION SPLITS**

Best Choice Roofing Southeast LLC understands that there are occasions where commission may be shared with one or more than one rep/Employee. The rep/Employee that originated the Contingency has the sole discretion on who and how to split commissions, given the original rep/Employee is still under contract/employed with Best Choice Roofing Southeast LLC. However, Best Choice Roofing Southeast LLC cannot process splits for more than two Employees/ reps. If more than two Employees/ reps were involved, and you are the original rep, you must determine how to compensate the other reps/ Employees.

**CREDITS**

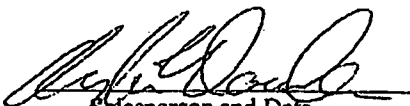
No commission will be paid on credits. The credit amount will be backed out of the net job cost. If a credit exceeds \$500, commission will be reduced to 7%. This section will also apply to financing terms in excess of four months or financing on items other than deductibles.

**CANCELLED PORTIONS OF A CONTRACT OR CONTRACT CANCELLATION**

If Best Choice Roofing Southeast LLC elects not to complete a portion or even all of the work on a contract, Best Choice Roofing Southeast LLC will not pay commissions on the work Best Choice Roofing Southeast LLC will not complete, all or part of the contract.

**PAYMENTS FROM CUSTOMERS**

Any payment must be IMMEDIATELY turned into the office. Failure to do so will give grounds for Best Choice Roofing Southeast LLC to terminate this Independent Sales Contractor Agreement. If funds are accepted from a homeowner, the Independent Sales Contractor will be fully liable for the payment, collection costs (if incurred) as well as court costs and attorney's fees if Best Choice Roofing Southeast LLC has to pursue Independent Sales Contractor to obtain payment. Best Choice Roofing Southeast LLC also has the right to notify law enforcement in the proper jurisdiction prior to any other action if funds are accepted by the below signed rep and not immediately turned into the office. For this paragraph, "immediately" is defined as, within 24 hours. . If a customer fails to satisfy their balance within 90 days, Sales Rep will lose or repay back commission, regardless of the reasoning

  
Salesperson and Date

\_\_\_\_\_  
Best Choice Roofing Southeast LLC and Date

## Receipt of Best Choice Roofing Employee Handbook

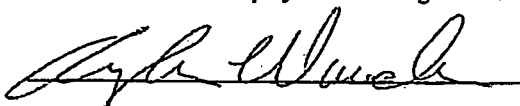
The Employee Handbook (sometimes referred to as a Personnel Policy Manual, or the "Manual") is a compilation of personnel policies, practices and procedures currently in effect at Best Choice Roofing, an equal opportunity employer. The Manual handbook and the information within it are confidential.

This handbook is designed to introduce employees to the organization, familiarize you with Company policies as they pertain to you as an employee, provide general guidelines on work rules, disciplinary procedures and other issues related to your employment, and to help answer many of the questions that may arise in connection with your employment.

This handbook and any other provisions contained herein do not constitute a guarantee of employment or an employment contract, express or implied. You understand that your employment is "at-will" and that your employment may be terminated for any reason, with or without cause, and with or without notice. Only the CEO or other authorized representative(s) of Best Choice Roofing has the authority to enter into a signed written agreement guaranteeing employment for a specific term. This handbook is intended solely to describe the present policies and working conditions at Best Choice Roofing. This handbook does not purport to include every conceivable situation; it is merely meant as a guideline and, unless laws prescribe otherwise, common sense shall prevail. Of course, federal, state and local laws will take precedence over Best Choice Roofing policies when applicable.

Personnel policies are applied at the discretion of Best Choice Roofing. Best Choice Roofing reserves the right to change, withdraw, apply or amend any of our policies or benefits, including those covered in this handbook, at any time. Best Choice Roofing may notify you of such changes via email, posting on the Company's intranet, portal or website, or via a printed memo, notice, amendment to or reprinting of this handbook, but may, in its discretion, make such changes at any time, with or without notice and without a written revision of this handbook.

By signing below, you acknowledge that you have received a copy of Best Choice Roofing's Employee Handbook, and understand that it is your responsibility to read and comply with the policies contained within it and any revisions made to it. Furthermore, you acknowledge that you are employed "at-will" and that this handbook is neither a contract of employment nor a legal document.

  
Signature

4-21-17  
Date

Tyler Woods

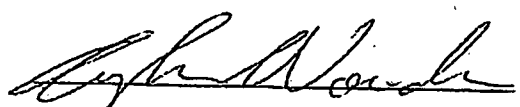
Please print your full name

Please sign and date one copy of this notice and return it to Human Resources to [humanresources@bestchoiceroofing.net](mailto:humanresources@bestchoiceroofing.net). Retain a second copy for your reference.

## Receipt of Harassment Policies

As described in the Harassment Policy and the Sexual Harassment Policy, harassment is prohibited at Best Choice Roofing.

By signing below, you acknowledge that you have received a copy of Best Choice Roofing's Harassment Policy and Sexual Harassment Policy, and understand that it is your responsibility to read and comply with both policies and any revisions made to them.



Signature

4-21-17

Date

Tyler Woods

Print your full name

## CODE OF BUSINESS ETHICS AND CONDUCT

AS AN EMPLOYEE OF BEST CHOICE ROOFING ("COMPANY"), you are required to read the Company's Code of Business Ethics and Conduct ("Code") and then complete and sign the attached Certificate of Compliance. You may also be periodically asked to re-affirm compliance with the Code, as the Company deems appropriate.

It is important that you respond honestly and completely to the statements that follow. When you respond, it is implied that you are answering for yourself and for any family member or relative.

If you, a family member or relative are not in compliance with any of the areas described below, attach an explanation of your situation. If you are not sure about how to interpret a statement, or question whether you are in compliance, contact the Legal Department.

Should future changes face you in conflict with the Code, you must immediately notify the Legal Department in writing of the conflict.

### Conflicts of Interest

- 1) I have not accepted any financial compensation (e.g., salaries, fees, commission, rebates or monetary rewards) from anyone doing business with the Company, including franchisees, suppliers, distributors, cooperatives, contractors, consultants, or any third-party vendor.  True (without exception)  Other (explain)
- 2) I have not offered or received favors, or any preferential treatment from anyone doing business with the Company that may result in financial gain or that violate any law or the Code.  True (without exception)  Other (explain)
- 3) I have not received more than \$200 worth of gifts or entertainment (not including meals) in any 12-month period from a single business source or more than \$500 in a 12-month period from all combined sources.  True (without exception)  Other (explain)
- 4) I have not conducted Company business with a family member or relative, or with any business affiliated with a family member or relative.  True (without exception)  Other (explain)
- 5) I do not directly supervise or have a position that influences or controls any aspect of a family member's or significant other's employment (including, but not limited to, promotions, salary or discipline) with the Company.  True (without exception)  Other (explain)
- 6) I am not financially indebted to, and do not have any obligation to any competitors, vendors, suppliers, franchisees, distributors, joint venture partners, cooperatives, consultants, or other people or firms doing business with the Company.  True (without exception)  Other (explain)

7) I do not own any stock, or have any other ownership interests in a competitor or, or any firm having a financial relationship with, the Company or its affiliates except as permitted in the Code.  True (without exception)  Other (explain)

8) I have not, to the best of my knowledge, become involved in a conflict of interest in violation of the Code.  True (without exception)  Other (explain)

**Confidentiality**

1) I have not communicated any proprietary information of the Company, including, but not limited to, trade secrets, marketing strategies, products, technology, development plans, unpublished financial, personnel or salary data to any unapproved person or entity.  True (without exception)  Other (explain)

2) I have not received any confidential information about a competitor or anyone else in a matter that might violate the Code.  True (without exception)  Other (explain)

3) I have not exchanged so-called inside information with anyone outside the Company except as authorized by the Company's General Counsel.  True (without exception)  Other (explain)

4) I have not used inside information for personal gain.  True (without exception)  Other (explain)

**Government Relations**

1) I have not made any unauthorized political contributions on behalf of the Company, nor have I used Company property for personal political activities.  True (without exception)  Other (explain)

2) I have not lobbied on behalf of the Company, without advance approval, or lobbied for any personal issues while on Company time.  True (without exception)  Other (explain)

3) I have not violated any rules regarding government contracts, reporting investigations.  True (without exception)  Other (explain)

4) I have not made any payments to a government official or third party in violation of the Code.  True (without exception)  Other (explain)

**Commercial Transactions & Competition**

1) I have not engaged in any commercial agreement(s) which are not in accordance with Company guidelines or entered into any commercial agreement(s) beyond the level of my authority.  True (without exception)  Other (explain)

**Accurate Records**

1) I have reported all financial and other information accurately and promptly.  True (without exception)  Other (explain)

**General**

1) I have not violated any other section of the Code.  True (without exception)  Other (explain)

2) I have read and understand all Company policies regarding proper conduct and am complying with them.  True (without exception)  Other (explain)

**Please attach a separate sheet if you need more space to explain an answer to any of the statements.**



## **EXHIBIT 2**

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Best Choice Roofing & Home Improvement, Inc.,	)	C. A. No. 2018-CP-40-01318
	)	
Plaintiff,	)	
	)	
v.	)	<b>MOTION TO AMEND</b>
	)	
Tyler Woods,	)	
	)	
Defendant.	)	

---

COMES NOW, the plaintiff, Best Choice Roofing & Home Improvement, Inc., by and through its counsel, and pursuant to Rule 15 of the South Carolina Rules of Civil Procedure, hereby moves the Court to enter an order granting the Plaintiff leave to file an Amended Complaint to withdraw its cause of action for breach of non-compete and confidentiality provision of the employment agreement and to add new causes of action against Tyler Woods for fraud, negligent misrepresentation, unfair trade practices and conversion. In support of the motion, the Plaintiff would show the following:

1. Plaintiff seeks leave to file an Amended Complaint to conform the allegations to the facts of the case. A copy of the Amended Complaint is attached hereto as “**Exhibit A**” and made a part hereof by reference.
2. The amendment to the complaint is necessary to enable the Plaintiff to properly achieve the ends of justice.
3. This motion to amend is not the result of delay, bad faith, or dilatory motive on the Plaintiff’s part.

Respectfully submitted this 17<sup>th</sup> day of December 2018,

TOWNES B. JOHNSON III, LLC

/s/ Townes B. Johnson III

Townes B. Johnson III (SC Bar# 75412)

P.O. Box 9246

Greenville, SC 29604

PH: (864) 757-4899

tjohnson@sc.legal

*Attorneys for Plaintiff*

Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Best Choice Roofing & Home Improvement, Inc.,	)	C. A. No. 2018-CP-40-01318
	)	
Plaintiff,	)	
	)	
v.	)	<b>AMENDED COMPLAINT</b>
	)	
Tyler Woods,	)	
	)	
Defendant.	)	
	)	

COMES NOW, the plaintiff, Best Choice Roofing & Home Improvement, Inc. (“Plaintiff”), complaining of the defendant, Tyler Woods (“Defendant”), and would show the following:

1. Plaintiff is a Tennessee corporation with its principal office located at 224 Old Shackle Island Road, Hendersonville, Tennessee 37075.
2. Upon information and belief, Defendant is a resident of the State of South Carolina, County of Richland, and is subject to the venue and jurisdiction of this Court.
3. On or about April 19, 2017, Defendant entered into an employment agreement with Plaintiff, wherein Defendant was going to relocate to the Atlanta, Georgia metro area to work for Plaintiff.
4. In conjunction with Defendant’s relocation, Plaintiff advanced Defendant the sum of \$2,500 for relocation expenses.
5. Upon information and belief, Defendant absconded with the \$2,500 advanced to him and deceitfully used those funds to relocate to South Carolina and seek a different opportunity instead of relocating to the Atlanta, Georgia metro area to work for Plaintiff.

6. Upon information and belief, at the time Defendant took Plaintiff's advance, Defendant knew he was relocating to South Carolina and not Atlanta and knew he was not going to be working for Plaintiff.

7. By contracting with Plaintiff, Defendant owed Plaintiff a duty to truthfully and accurately communicate with Plaintiff regarding his intentions.

8. As the direct and proximate result of Defendant's deceit and failure to communicate truthfully and accurately, Plaintiff has been damaged in an amount to be determined at trial.

9. Jurisdiction and venue are proper in this court.

**FOR A FIRST CAUSE OF ACTION  
(Fraud)**

10. Plaintiff realleges the foregoing paragraphs consistent with this cause of action as if fully restated verbatim herein.

11. In negotiating the employment agreement and relocation advance with Plaintiff, Defendant represented he would use the advance provided by Plaintiff to relocate to the Atlanta, Georgia metro area and work for Plaintiff.

12. The representations Defendant made regarding the relocation were material.

13. Defendant knew the representations were false.

14. Defendant made the representations with knowledge of their falsity and with a reckless disregard for their falsity.

15. Defendant intended that the representations be acted upon.

16. Plaintiff was ignorant of the falsity of Defendant's representations and relied on the representations' truth.

17. Plaintiff was right to rely on the representations' truth.

18. As a consequent and proximate result of Defendant's fraud, Plaintiff has suffered a pecuniary loss in the form of actual, consequential and special injuries, including, but not limited to the costs associated with bringing this action and attorney's fees, for which Plaintiff hereby sues.

**FOR A SECOND CAUSE OF ACTION  
(Negligent Misrepresentation)**

19. Plaintiff realleges the foregoing paragraphs consistent with this cause of action as if fully restated verbatim herein.

20. In negotiating the employment agreement and relocation advance with Plaintiff, Defendant represented he would use the advance provided by Plaintiff to relocate to the Atlanta, Georgia metro area and work for Plaintiff.

21. Defendant knew the representations were false.

22. Defendant had a pecuniary interest in making the representations.

23. Defendant owed Plaintiff a duty of care to see that the truthful information was communicated to Plaintiff.

24. Defendant breached their duty by failing to exercise due care.

25. Plaintiff justifiably relied upon Defendant to communicate truthful information and justifiably relied upon Defendant's representations.

26. As a direct and proximate result of the Plaintiff's reliance upon Defendant's misrepresentations, Plaintiff has suffered a pecuniary loss in the form of actual, consequential and special injuries, including, but not limited to the costs associated with bringing this action and attorney's fees, for which Plaintiff hereby sues.

27. Upon information and belief, Defendant's conduct was willful and intentional and, accordingly, warrants an award of punitive damages.

**FOR A THIRD CAUSE OF ACTION  
(Violation of the South Carolina Unfair Trade Practices Act)**

28. Plaintiff realleges the foregoing paragraphs consistent with this cause of action as if fully restated verbatim herein.

29. Upon information and belief, Defendant fraudulently and deceptively induced Plaintiff to advance Defendant monies under false pretenses.

30. As a result of Defendant's fraudulent and deceptive acts, Plaintiff advanced Defendant a relocation advance which Defendant accepted and used to relocate to South Carolina.

31. These fraudulent and deceptive acts have led to great expense to Plaintiff.

32. Defendant's conduct creates the potential for repetition of these fraudulent, unfair and deceptive acts.

33. Since these fraudulent and deceptive acts can easily be repeated with other potential employers, it is offensive to public policy.

34. As a proximate cause of Defendant's fraudulent and deceptive acts, Plaintiff has been damaged and is entitled to a judgment against Defendants in an amount to be determined at trial, including treble damages, for which Plaintiff hereby sues.

**FOR A FOURTH CAUSE OF ACTION  
(Conversion)**

35. Plaintiff realleges the foregoing paragraphs consistent with this cause of action as if fully restated verbatim herein.

36. Upon information and belief, Defendant, under false pretenses, took Plaintiff's advance for Plaintiff own use.

37. Defendant's use of the advance to relocate to South Carolina was without the express or implied permission of Plaintiff.

38. As a direct and proximate result of Defendant's conduct, Plaintiff has suffered actual, consequential and special injuries, including costs and attorneys' fees associated with prosecuting this litigation.

39. Upon information and belief, Defendant's conduct was willful and so outrageous as to warrant an award of punitive damages.

**FOR A FIFTH CAUSE OF ACTION  
(Breach of Fiduciary Duties)**

40. Plaintiff realleges the foregoing paragraphs consistent with this cause of action as if fully restated verbatim herein.

41. As part of Defendant's employment, Plaintiff necessarily reposed a special trust in Defendant.

42. Upon information and belief, Defendants received monies which it knew or should have known were being advanced to further Defendant's employment with Plaintiff in the Atlanta, Georgia metro area and which Defendant had a duty to use those funds for that purpose.

43. Defendant was bound to act in good faith and with due regard to the interests of Plaintiff.

44. Defendant breached his fiduciary duty to Plaintiff by accepting the relocation advance and using those monies to relocate to South Carolina and seek a different opportunity.

45. As a direct and proximate result of Defendant's breach of his fiduciary duties, Plaintiff suffered actual, consequential and special injury, including costs and attorney's fees.

46. Upon information and belief, Defendants' conduct was willful and so outrageous as to warrant an award of punitive damages.

WHEREFORE, Plaintiff hereby prays for the following relief:

- (a) Judgment against Defendant in an amount to be determined at trial, together with attorneys' fees, costs, and interest;
- (b) Attorneys' fees;
- (c) Punitive damages;
- (d) Special damages;
- (e) Treble damages;
- (f) Costs of this action;
- (g) Such other and further relief that this Court deems just and proper.

Respectfully submitted this 17<sup>th</sup> day of December 2018,

TOWNES B. JOHNSON III, LLC

/s/ Townes B. Johnson III

Townes B. Johnson III (SC Bar# 75412)

P.O. Box 9246

Greenville, SC 29604

PH: (864) 757-4899

tjohnson@sc.legal

*Attorneys for Plaintiff*

Greenville, South Carolina

# EXHIBIT 3

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Best Choice Roofing & Home Improvement, Inc.,

Plaintiff,

v.

Tyler Woods,

Defendant.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

C.A. No. 2018-CP-40-01318

**DEFENDANT'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**

YOU WILL PLEASE TAKE NOTICE that, Defendant, Tyler Woods, ("Defendant") will move, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for an Order granting Summary Judgement in his favor against Plaintiff Best Choice Roofing & Home Improvement ("Plaintiff") on the grounds that there is no genuine dispute as to any material fact, and Woods is entitled to judgment as a matter of law. The motion is supported by the pleadings and discovery on file and such oral argument that the Court may allow. Defendant Wood is entitled to judgement in his favor on the following grounds:

1. The record evidence shows that the non-competition provision in the Employment Agreement between Plaintiff Best Choice and Defendant Woods is unenforceable as the provision does not protect Best Choice's legitimate business interests, is not reasonably limited with respect to geographic area, is unduly harsh and oppressive to Woods' efforts to earn a livelihood, was not supported by valuable consideration, and is unreasonable pursuant to public policy.
2. The record shows that Woods did not breach the Employment Agreement even if it is enforceable.
3. Therefore, Defendant Woods did not breach the contract as a matter of law.

4. There is no basis in law or fact for Plaintiff's Complaint, so the Court should dismiss the Complaint and grant summary judgment for Defendant on his Counterclaims.

**CONCLUSION**

Based upon the foregoing, Defendant respectfully requests that this court grant summary judgment in his favor as to Defendant claim of Breach of Contract. This Motion is based on the pleadings filed in this matter, any deposition or discovery taken before the hearing on this Motion, the Rules of Court, Defendant Wood's memoranda of law and any exhibits thereto, and any other information this Court may accept, or Defendant Woods may submit as part of the hearing on this matter.

Respectfully submitted,

s/ Nekki Shutt

---

Nekki Shutt (SC Bar No. 8784)  
BURNETTE SHUTT & McDANIEL, PA  
912 Lady Street, Second Floor (29201)  
PO Box 1929  
Columbia, South Carolina 29202  
Tel. (803) 904-7912  
Fax (803) 904-7910  
[NShutt@BurnetteShutt.Law](mailto:NShutt@BurnetteShutt.Law)

**ATTORNEYS FOR DEFENDANT**

December 19, 2018  
Columbia, South Carolina

# EXHIBIT 4

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Best Choice Roofing & Home Improvement, Inc.,

Plaintiff,

v.

Tyler Woods,

Defendant.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

C.A. No. 2018-CP-40-01318

**ORDER GRANTING SUMMARY JUDGMENT AGAINST PLAINTIFF AS TO THE COMPLAINT AND DENYING PLAINTIFF'S MOTION TO AMEND COMPLAINT**

This matter came before the Court on three motions: (1) the motion of Defendant Tyler Woods (Defendant) for entry of summary judgment and damages pursuant to Rule 56(a)-(b), SCRPC, against Plaintiff Best Choice Roofing & Home Improvement, Inc. (Plaintiff); (2) on the motion of Plaintiff for leave to amend its Complaint pursuant to Rule 15, SCRPC; and, (3) on motion of Defendant to Deem Admitted Requests for Admissions not Responded to. A hearing was held on January 30, 2019. Present was defense counsel Nekki Shutt, Esq., and Plaintiff's counsel Townes Johnson, Esq. At the hearing, Defendant withdrew his Motion to Deem Admitted filed on November 16, 2018 with opposing counsel's consent.

Having fully considered all admitted evidence, memoranda of law, as well as oral and written argument presented to the Court, Plaintiff's motion to amend the Complaint is denied and Defendant's motion for summary judgment as to the Complaint is granted with Plaintiff's consent. This Court did not hear oral argument on Defendant's motion for entry of summary judgment and damages in his favor as to his Counterclaims pursuant to Rule 56(a)-(b), SCRPC and, therefore, that part of defense's motion is

denied without prejudice.

Based upon the pleadings and evidence, I find as follows:

1. Defendant would be prejudiced by Plaintiff being granted leave to amend the Complaint under Rule 15, SCRCP at this juncture in the proceedings.
2. Defendant did not work within 100 miles of the location where he worked for Plaintiff.
3. Defendant, accordingly, did not breach the non-competition provision, Section 9, of said employment agreement with Plaintiff.
4. Plaintiff is not entitled to leave to amend the Complaint under Rule 15, SCRCP now to abandon all of its original allegations and to plead previously unraised allegations.
5. Defendant is entitled to summary judgment under Rule 56, SCRCP as to the Complaint as there are no material facts in dispute.
6. Plaintiff consents to summary judgment being granted to Defendant on the original causes of action in the Complaint.

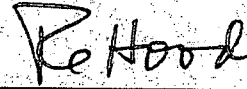
Based upon the foregoing and for good cause shown,

**IT IS ORDERED** Plaintiff's motion to amend the Complaint is denied.

**IT IS FURTHER ORDERED** that the Clerk of Court shall enter Summary Judgment in favor of Defendant against Plaintiff as to the Complaint and dismiss the Complaint with prejudice.

**IT IS FURTHER ORDERED** that Defendant's Motion for Summary Judgment as to the Counterclaims is denied without prejudice. The Clerk of Court shall move Defendant's Counterclaim forward on the trial docket.

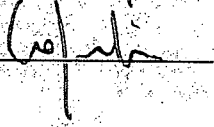
IT IS SO ORDERED.



The Honorable Robert E. Hood  
Presiding Judge  
Fifth Judicial Circuit

3/19

2019



South Carolina

# EXHIBIT 5

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Best Choice Roofing & Home Improvement, Inc.,	)	C. A. No. 2018-CP-40-01318
	)	
Plaintiff,	)	
	)	
v.	)	<b>MOTION TO RECONSIDER,</b>
Tyler Woods,	)	<b>ALTER OR AMEND</b>
	)	
Defendant.	)	
	)	
	)	

**TO: NEKKI SHUTT, ESQ., ATTORNEY FOR DEFENDANT:**

YOU WILL PLEASE TAKE NOTICE that the plaintiff, Best Choice Roofing & Home Improvement, Inc. ("Plaintiff"), by and through their undersigned counsel, will move before the Honorable Robert E. Hood, Circuit Court Judge, at such time and place as is convenient to the Court and counsel, for an Order altering, amending or granting relief from the Order granting Summary Judgment against Plaintiff and denying Plaintiff's Motion to Amend Complaint filed February 19, 2019 (hereinafter "Order") pursuant to *South Carolina Rules of Civil Procedure* Rule 59(e). This motion is based on the following:

1. The portion of Defendant's Motion for Summary Judgment related to its counterclaims against Plaintiff was not brought forth at the hearing held on January 30, 2019 and, accordingly, was erroneously ruled upon.
2. There are numerous material facts in dispute as it relates to Defendant's counterclaims and, accordingly, summary judgment is not proper.
3. Discovery in this matter is still ongoing and, accordingly, summary judgment is not proper.

4. In the Order, the Court erroneously states that Plaintiff consented to the portion of Defendant's Motion for Summary Judgment related to its counterclaims when no consent was actually given.
5. In the Order, the Court erroneously rules that Defendant would be prejudiced by Plaintiff's Motion to Amend being granted when neither the Court of the Defendant has shown that Defendant would lack notice or an opportunity to refute Plaintiff's new 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))*).
6. As Defendant would suffer no prejudice pursuant to South Carolina law, Plaintiff's Motion to Amend should be freely given. *Id.* (*Leave to amend pleadings pursuant to Rule 15, SCRCF, 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)*).
7. As the Plaintiff's Motion to Amend should be freely given, the Defendant's Motion for Summary Judgment as it relates to Plaintiff's Complaint is moot.

### CONCLUSION

For the foregoing reasons, the Plaintiff respectfully requests that the Court reconsider its February 19, 2019 Order and grant Plaintiff's Motion to Amend, deny Defendant's Motion for

Summary Judgment as it relates to Defendant's counterclaim and deem Defendant's Motion for Summary Judgment as it relates to Plaintiff's Complaint as moot.

Respectfully submitted this 28<sup>th</sup> day of February, 2019.

TOWNES B. JOHNSON III, LLC

/s/ Townes B. Johnson III

Townes B. Johnson III (SC Bar# 75412)

PO Box 9246

Greenville, South Carolina 29604

PH: (864) 757-4899

[tjohnson@sc.legal](mailto:tjohnson@sc.legal)

*Attorneys for Plaintiff*

Greenville, South Carolina

# EXHIBIT 6

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Best Choice Roofing & Home  
Improvement, Inc.,

Plaintiff,

v.

Tyler Woods,

Defendant.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

C.A. No. 2018-CP-40-01318

**ORDER GRANTING SUMMARY  
JUDGMENT AGAINST PLAINTIFF AS  
TO THE COMPLAINT AND DENYING  
PLAINTIFF'S MOTION TO AMEND  
COMPLAINT**

This matter came before the Court on three motions: (1) the motion of Defendant Tyler Woods (Defendant) for entry of summary judgment and damages pursuant to Rule 56(a)-(b), SCRCP, against Plaintiff Best Choice Roofing & Home Improvement, Inc. (Plaintiff); (2) on the motion of Plaintiff for leave to amend its Complaint pursuant to Rule 15, SCRCP; and, (3) on motion of Defendant to Deem Admitted Requests for Admissions not Responded to. A hearing was held on January 30, 2019. Present was defense counsel Nekki Shutt, Esq., and Plaintiff's counsel Townes Johnson, Esq. At the hearing, Defendant withdrew his Motion to Deem Admitted filed on November 16, 2018 with opposing counsel's consent.

Having fully considered all admitted evidence, memoranda of law, as well as oral and written argument presented to the Court, Plaintiff's motion to amend the Complaint is denied and Defendant's motion for summary judgment as to the Complaint is granted with Plaintiff's consent. This Court did not hear oral argument on Defendant's motion for entry of summary judgment and damages in his favor as to his Counterclaims pursuant to Rule 56(a)-(b), SCRCP and, therefore, that part of defense's motion is

denied without prejudice.

Based upon the pleadings and evidence, I find as follows:

1. Defendant would be prejudiced by Plaintiff being granted leave to amend the Complaint under Rule 15, SCRCP at this juncture in the proceedings.
2. Defendant did not work within 100 miles of the location where he worked for Plaintiff.
3. Defendant, accordingly, did not breach the non-competition provision, Section 9, of said employment agreement with Plaintiff.
4. Plaintiff is not entitled to leave to amend the Complaint under Rule 15, SCRCP now to abandon all of its original allegations and to plead previously unraised allegations.
5. Defendant is entitled to summary judgment under Rule 56, SCRCP as to the Complaint as there are no material facts in dispute.
6. Plaintiff consents to summary judgment being granted to Defendant on the original causes of action in the Complaint.

Based upon the foregoing and for good cause shown,

**IT IS ORDERED** Plaintiff's motion to amend the Complaint is denied.

**IT IS FURTHER ORDERED** that the Clerk of Court shall enter Summary Judgment in favor of Defendant against Plaintiff as to the Complaint and dismiss the Complaint with prejudice.

**IT IS FURTHER ORDERED** that Defendant's Motion for Summary Judgment as to the Counterclaims is denied without prejudice. The Clerk of Court shall move Defendant's Counterclaim forward on the trial docket.

IT IS SO ORDERED.

*Re Hood*

The Honorable Robert E. Hood  
Presiding Judge  
Fifth Judicial Circuit

*3/19*

2019

*[Signature]*

South Carolina

# EXHIBIT 7

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Best Choice Roofing & Home Improvement, Inc.,	)	C. A. No. 2018-CP-40-01318
	)	
Plaintiff,	)	
	)	
v.	)	<b>REVISED MOTION TO RECONSIDER,</b>
	)	<b>ALTER OR AMEND</b>
	)	
Tyler Woods,	)	
Defendant.	)	
_____	)	

**TO: NEKKI SHUTT, ESQ., ATTORNEY FOR DEFENDANT:**

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, Best Choice Roofing & Home Improvement, Inc. (“Plaintiff”), by and through their undersigned counsel, will move before the Honorable Robert E. Hood, Circuit Court Judge, at such time and place as is convenient to the Court and counsel, for an Order altering, amending or granting relief from the Order denying Plaintiff’s Motion to Amend Complaint filed March 19, 2019 (hereinafter “Order”) pursuant to *South Carolina Rules of Civil Procedure* Rule 59(e). This motion is based on the following:

1. In the Order, the Court erroneously rules that Defendant would be prejudiced by Plaintiff’s Motion to Amend being granted when neither the Court of the Defendant has shown that Defendant would lack notice or an opportunity to refute Plaintiff’s new 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))*).

2. As Defendant would suffer no prejudice pursuant to South Carolina law, Plaintiff’s Motion to Amend should be freely given. *Id.* (*Leave to amend pleadings pursuant to Rule 15, SCRCF, 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)).*

### **CONCLUSION**

For the foregoing reasons, the Plaintiff respectfully that the Court reconsider its March 19, 2019 Order and grant Plaintiff's Motion to Amend.

Respectfully submitted this 27<sup>th</sup> day of March, 2019.

TOWNES B. JOHNSON III, LLC

/s/ Townes B. Johnson III

Townes B. Johnson III (SC Bar# 75412)

PO Box 9246

Greenville, South Carolina 29604

PH: (864) 757-4899

[tjohnson@sc.legal](mailto:tjohnson@sc.legal)

*Attorneys for Plaintiff*

Greenville, South Carolina

# EXHIBIT 8

Best Choice Roofing & Home Improvement Inc  
PLAINTIFF(S)

Tyler Woods  
DEFENDANT(S)

**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.
- 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:

Plaintiff's Revised Motion to Reconsider is denied.

**ORDER INFORMATION**

This order  ends  does not end the case.

See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/22/2019 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

**Court Reporter:**

**E-Filing Note:** 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 judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

---



Richland Common Pleas

**Case Caption:** Best Choice Roofing & Home Improvement Inc vs Tyler Woods

**Case Number:** 2018CP4001318

**Type:** Order/Electronic Form 4

So Ordered

s/ R.E. Hood #2164

Electronically signed on 2019-10-22 13:44:11 page 3 of 3

# EXHIBIT 9

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Best Choice Roofing & Home Improvement, Inc.,

Plaintiff,

v.

Tyler Woods,

Defendant.

IN THE COURT OF COMMON PLEAS  
OF THE FIFTH JUDICIAL CIRCUIT

C.A. No. 2018-CP-40-01318

**ANSWER AND COUNTERCLAIM**  
(Jury trial demanded)

Defendant Tyler Woods ("Defendant") hereby submits his Answer and Counterclaim in response to the Complaint filed by Best Choice Roofing & Home Improvement, Inc. ("Plaintiff") and would respectfully show unto this Court as follows:

**FOR A FIRST DEFENSE**

1. Defendant denies each and every allegation of the Complaint not herein specifically admitted, denied, qualified, or explained.

2. Defendant admits the allegations of Paragraph 1 of the Complaint upon Information and belief.

3. Defendant admits the allegations of Paragraph 2 of the Complaint.

4. Defendant admits so much of the allegations of Paragraph 3 of the Complaint as allege that an Employment Agreement is attached to the Complaint, but denies the language quoted by Plaintiff is accurate and defers to the document as the best evidence thereof. Defendants denies the remaining allegations of Paragraph 3.

5. Defendant denies the allegations of Paragraph 4 of the Complaint as stated.

Answering further, the Employment Agreement is not valid because it, among other things, is overbroad and not supported by consideration. Moreover, even if said Employment Agreement were valid, which Defendant denies, he has not breached it because he worked for Defendant in Atlanta and Marietta, Georgia. Thereafter, he went to work for another roofing company located in Columbia, South Carolina – which is much further than the overbroad 100-mile geographic limitation.

6. Defendant denies the allegations of Paragraph 5 of the Complaint.
7. Defendant denies the allegations of Paragraph 6 of the Complaint as stated.
8. Defendant denies the allegations contained in Plaintiff's un-numbered prayer for relief.

**FOR A SECOND DEFENSE**  
(Reservation)

9. Defendant specifically reserves the right to assert additional defenses, affirmative defenses, counterclaims, cross-claims, and third-party claims, and to amend the allegations set forth in this pleading, as such may become available or apparent, as discovery in this matter and this matter proceed. Having asserted the defenses herein, Defendant does not assume the responsibility to meet any burden of proof otherwise imposed on the Plaintiff by statute or a common law.

**FOR A THIRD DEFENSE**  
(Failure to State a Claim)

10. The Complaint fails to state a claim against Defendant upon which relief can be granted and, accordingly, the Complaint should be dismissed pursuant to Rule 12(b)(6), SCRCP.

**FOR A FOURTH DEFENSE**

11. Plaintiff's claims are barred in whole or in part by the doctrine of setoff.

**FOR A FIFTH DEFENSE**

12. Defendant denies that Plaintiff is entitled to any requested relief according to the doctrine of unclean hands.

**FOR A SIXTH DEFENSE**

13. To the extent the Employment Agreement is binding, Defendant is entitled to an award of attorney's fees if he prevails in this litigation.

**FOR A SEVENTH DEFENSE**

(No Damages)

14. Plaintiff has suffered no damages and, as such, is not entitled to any relief from Defendant in this case.

**FOR AN EIGHTH DEFENSE**

(Failure to Mitigate)

15. If Plaintiff suffered any damages for which this Defendant is found liable, and the same is expressly denied, Plaintiff has failed to mitigate, avoid, and reduce said damages, and, therefore, any recovery by Plaintiff should be limited to the extent Plaintiff has failed to mitigate its damages alleged in the Complaint.

**FOR A NINTH DEFENSE**

(Unconscionability)

16. The non-compete clause of the Employment Agreement, which Plaintiff seeks to enforce, is unconscionable and unenforceable.

**FOR A TENTH DEFENSE**

17. Defendant did was he was required to do under the Employment

Agreement, but Plaintiff failed to provide the housing it promised Defendant so he was prevented and excused from being bound by the agreement and does not owe the money Plaintiff is demanding.

**FOR AN ELEVENTH DEFENSE**

18. Under the Rule of *Contra Proferentem*, ambiguities in a contract are construed against the drafter.

19. Plaintiff drafted the Employment Agreement.

20. Defendant in good faith construed “the present location[s] of the Employer’s business” in Section 9 as where Plaintiff worked for Plaintiff.

21. At no time did Defendant work for Plaintiff within 100 miles of Columbia, South Carolina.

22. The term “present locations[s]” is not defined in the Employment Agreement.

23. Ambiguities in the Employment Agreement must be construed against Plaintiff.

**FOR A TWELFTH DEFENSE**

24. The non-competition clause in the Employment Agreement is unenforceable because it is overly broad, not narrowly tailored geographically, not supported by consideration, unnecessary for the protection of Plaintiff’s legitimate interest, unduly harsh and oppressive in curtailing Defendant’s ability to earn a livelihood, and not reasonable.

**FOR A THIRTEENTH DEFENSE  
AND BY WAY OF A FIRST COUNTERCLAIM**  
(Intentional interference with a Business Relationship)

25. The allegations in Paragraphs 1 through 24 not inconsistent herewith are hereby realleged as fully as if set forth here verbatim.

26. Defendant is a roofing professional who currently lives in Irmo, South Carolina with his wife and their newborn baby.

27. Defendant is 29 years old, and he has been working in the roofing industry for 10 years.

28. Defendant has performed work for Plaintiff in the past, but never in South Carolina.

29. Most recently, Plaintiff recruited Defendant to move to Atlanta to work in the Atlanta/Marietta area for Plaintiff.

30. Defendant began working for Plaintiff as a sales manager at Plaintiff's Marietta, Georgia location on or about April 17, 2017.

31. Plaintiff did not ask Defendant to execute the Employment Agreement on his first day of employment.

32. In fact, it was not until April 21, 2017, that Plaintiff asked Defendant to execute the Employment Agreement.

33. Plaintiff did not give Defendant any new consideration to sign the Employment Agreement on April 21, 2017.

34. The only consideration Defendant received to sign the Employment Agreement was continued employment.

35. Plaintiff did not sign the Employment Agreement.

36. Paragraph 4 of the Employment Agreement states that the employee's "duties shall be rendered at Marietta, Georgia . . ."

37. Paragraph 10 of the Agreement, titled "At Will Employment" provides that "[e]ither party may terminate this agreement without notice to the other party."

38. Paragraph 18 of the Agreement also grants "attorneys' fees, costs, and all other expenses, whether or not taxable by the court as costs," to the prevailing party in any litigation.

39. Prior to commencing work for Plaintiff, Defendant was promised by Plaintiff that Plaintiff would reimburse Defendant for Defendant's choice of housing in the Atlanta area.

40. Upon commencing work for Plaintiff, Defendant discovered that Plaintiff had deceived him and rather than having his choice of housing – for his wife and soon-to-arrive newborn – he found that he relegated to choosing between a poorly-maintained Motel 6 in the Atlanta area or given the option of living with a relative of an employee an hour outside the city.

41. Defendant worked for Plaintiff exclusively in the Marietta, Georgia area during the time period between April 17, 2017 through April 29, 2017.

42. Defendant had no choice but to leave his employment with Plaintiff on or about April 29, 2017, in accordance with his rights under the Agreement.

43. During the two weeks that Defendant worked for Plaintiff, Defendant received no training from Plaintiff.

44. Defendant relocated himself and his young family to Columbia, South Carolina.

45. Several weeks later, Defendant began employment with Premier Roofing LLC, a roofing company located in Irmo, South Carolina ("Premier").

46. Irmo, South Carolina is approximately 193 miles from Marietta, Georgia as the crow flies.

47. On or about November 30, 2017, Premier received a cease and desist letter from Plaintiff, wrongfully alleging that Defendant had breached the non-competition clause in the Employment Agreement and threatening to sue Premier if Premier did not terminate Defendant's employment.

48. Due solely to this letter from Plaintiff, Premier terminated Defendant's employment.

49. As a direct and proximate result of Plaintiff's interference with Defendant's employment contract with Premier, Defendant has suffered and continues to suffer actual damage, consequential damages, attorneys' fees, lost opportunity, and costs.

50. Defendant seeks actual damages, consequential damages, attorneys' fees, costs, punitive damages, and all other relief.

**FOR A FOURTEENTH DEFENSE  
AND BY WAY OF A SECOND COUNTERCLAIM**  
(Violation of the South Carolina Frivolous Civil Proceedings Sanctions Act,  
§ 15-36-10, et seq.)

51. The allegations in Paragraphs 1 through 50 not inconsistent herewith are hereby realleged as fully as if set forth here verbatim.

52. Plaintiff has violated the South Carolina Civil Proceedings Sanctions Act in failing to abide by all of its requirements attendant with the filing of a lawsuit based on a claim which is clearly not warranted under existing law and the facts of the case.

53. As a result of the same, Defendant has suffered losses, including but not

limited to lost wages and reputational loss.

54. Defendant is entitled to sanctions against Plaintiff including reasonable attorney's fees and costs of defending this frivolous lawsuit.

**PRAYER FOR RELIEF**

Defendant prays for relief as follows:

- A. Complaint be dismissed with prejudice;
- B. Plaintiff recovers nothing from Defendant;
- C. Award such actual, incidental, consequential damages, and punitive as Defendant may be entitled to;
- D. Prejudgment interest;
- E. Sanctions against Plaintiff and his counsel;
- F. Defendant be awarded attorney's fees and costs of this action; and
- G. Such other and further relief as deemed just and proper.

Respectfully Submitted,

/s Nekki Shutt

Nekki Shutt (SC Bar No. 8784)  
BURNETTE SHUTT & McDANIEL, PA  
912 Lady Street, Second Floor (29201)  
PO Box 1929  
Columbia, South Carolina 29202  
Tel. (803) 904-7912  
Fax (803) 904-7910  
NShutt@BurnetteShutt.Law

**ATTORNEY FOR DEFENDANT**

Columbia, South Carolina

June 11, 2018

# EXHIBIT 10

STATE OF SOUTH CAROLINA )  
County of Richland )  
  
BEST CHOICE ROOFING & HOME )  
IMPROVEMENT, )  
  
PLAINTIFF, )  
  
vs. )  
  
TYLER WOODS, )  
  
DEFENDANT, )

COURT OF COMMON PLEAS  
2018-CP-40-01318

TRANSCRIPT OF RECORD

January 30, 2019  
Columbia, South Carolina

BEFORE:

THE HONORABLE ROBERT E. HOOD, JUDGE.

APPEARANCES:

TOWNES B. JOHNSON, ESQ.  
Attorney for the Plaintiff

NEKKI SHUTT, ESQ.  
Attorney for the Defendant

KAREN AMBROZIAK  
Official Court Reporter

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1 THE COURT: Okay. All right. So we're on the record  
2 in 2018-CP-40-3138, Best Choice Roofing vs. Tyler Woods.  
3 Mr. Johnson is here for the plaintiff?

4 MR. JOHNSON: Yes, Your Honor.

5 THE COURT: All right.

6 MR. JOHNSON: My apologies. I had a little car issue  
7 this morning.

8 THE COURT: I didn't even realize you were late, so  
9 you didn't bother me in any way, shape, or form.

10 And Nekki Shutt?

11 MS. SHUTT: Yes, Your Honor.

12 THE COURT: Did I say that right?

13 MS. SHUTT: Yes.

14 THE COURT: All right.

15 MS. SHUTT: It's Necky like neck.

16 THE COURT: Necky, I'm sorry.

17 MS. SHUTT: That's very close, Your Honor.

18 THE COURT: I apologize. Okay. All right. So we  
19 have plaintiff's motion to amend, a defendant's motion to  
20 deem admitted, request for admission not responded, and a  
21 defense motion for summary judgment; is that right?

22 MS. SHUTT: Well, Your Honor, I am withdrawing -- by  
23 agreement, I am withdrawing the motion to deem admitted  
24 the request to admit.

25 THE COURT: Okay.

1 MS. SHUTT: So we just have the two motions today.

2 THE COURT: All right. Let's do the motion to amend  
3 first.

4 MR. JOHNSON: Thank you, Your Honor. May it please  
5 the Court.

6 THE COURT: Yes, sir.

7 MR. JOHNSON: Townes Johnson on behalf of the  
8 plaintiff, Best Choice Roofing.

9 Your Honor, this case was originally filed as a  
10 straight breach of contract of an employment agreement  
11 based on a liquidated damages provision, and this case was  
12 referred to me through one of my classmates in law school  
13 who was in Atlanta.

14 Some bad information was passed to him and that was  
15 conveyed to me, and the complaint was drafted on those bad  
16 facts, Your Honor.

17 Through discovery we have learned that those facts  
18 have changed and -- Your Honor, some new circumstances  
19 have come to light. Specifically -- and I'll give you a  
20 little bit of background. Mr. Woods was an employee of  
21 Best Choice Roofing in Tennessee. He agreed to move to  
22 the Atlanta area to continue working for Best Choice  
23 Roofing.

24 In conjunction with that, my clients advanced him  
25 \$2,500 for living expenses and relocation fees and

1 whatnot. Mr. Woods stayed in Atlanta all of seven days  
2 and then relocated here to South Carolina, Your Honor, and  
3 through -- and anyway, and through the discovery process I  
4 learned about this advance payment and the lack of  
5 repayment thereof, and I learned that the claims under the  
6 employment agreement no longer carried any weight, Your  
7 Honor.

8 So this motion to amend drops the original breach of  
9 contract cause of action, and it adds in causes of action  
10 related to Mr. Woods' withholding of the 2500 and not  
11 giving that back and -- and potential fraud,  
12 misrepresentation and related to -- related to that  
13 behavior, Your Honor. So that is the motion to amend.

14 You know, this -- so under 15 and the amendment is,  
15 obviously, to conform to the proof, and that's Harvey vs.  
16 Strickland, SE 2002, 385 SC 303 (phonetic) says should be  
17 liberally allowed when prejudicing the opposing party will  
18 not result.

19 And Your Honor, as you know, in Rule 15, prejudice  
20 under Rule 15 is the lack of notice that the issue is  
21 going to be tried and the lack of opportunity to refute  
22 it.

23 Your Honor, we're still in the written discovery  
24 phase of this litigation. We will have mediation  
25 scheduled soon and potentially depositions, and so there

1 will be no prejudice to the defendants --

2 THE COURT: Okay.

3 MR. JOHNSON: -- in defending this cause of action.

4 THE COURT: All right. Hold on one second.

5 (Pause.)

6 All right. Do you want to be heard on the motion to  
7 amend, Ms. Shutt?

8 MS. SHUTT: Yes, Your Honor, and it would be helpful  
9 to be heard on the motion for summary judgment.

10 THE COURT: That's fine.

11 MS. SHUTT: Do you have the briefing I submitted, or  
12 should I hand up a copy?

13 THE COURT: I do but if you have a copy --

14 MS. SHUTT: Certainly.

15 THE COURT: -- that would be helpful for me to read.  
16 I have it all on the computer.

17 MS. SHUTT: My staff said summary judgment for the  
18 judge, so that's the right copy.

19 THE COURT: They're smart.

20 MS. SHUTT: They're smart.

21 May it please the Court, Your Honor. My name is  
22 Nekki Shutt. I represent Tyler Woods in this case. Tyler  
23 is a 29 year old who has spent his entire life in the  
24 roofing business. He worked for Best Choice since 2012 in  
25 various states, and in 2017 they called him and said would

1 you come and work for us in Atlanta.

2 You know, basically the negotiation was yes, I'll  
3 come but my wife is pregnant. We're very pregnant. We're  
4 about to have a baby. We need a place to stay, so housing  
5 was part of the deal.

6 There was a \$25 -- \$2,500 sign-on bonus. Tyler moved  
7 from Tennessee to take this job. When he got there, he  
8 was given the choice of a Motel-6 in a bad neighborhood or  
9 staying in the room of another employee's house in -- you  
10 know, in the outer rim of Atlanta neither of which were  
11 acceptable for him and his new family.

12 He stayed -- I think it's two more -- between two and  
13 three weeks there. That was an untenable situation. He  
14 moved to Columbia where he had some family support.

15 Columbia is 183 miles from Atlanta. Best Choice was  
16 not satisfied with the fact that he left, and so they sent  
17 a cease and desist letter to his new employer. He got a  
18 job with a roofing company here.

19 We sent a subpoena to them. They have shown in their  
20 files that the only reason that Mr. Woods was terminated  
21 was the cease and desist letter from Mr. Townes' client  
22 saying that he was breaching a non-compete, and they  
23 didn't want to get involved in that. So he lost his job  
24 as his baby was about to be born.

25 Not satisfied with having caused him to lose his job,

1 they then filed this lawsuit in March of last year. I've  
2 had repeated conversations with opposing counsel about  
3 this being a groundless lawsuit. The employment agreement  
4 clearly states that there is a non-compete, but you have  
5 to be 100 miles away. It's 183 miles here.

6 We've done -- we've been forced to do a number --  
7 we've done motions. We've had to compel every piece of  
8 discovery we have gotten out of the plaintiffs. They  
9 refused to submit to depositions.

10 They have -- when, you know, pressed on this issue  
11 because we filed a counterclaim back. They filed a 505.  
12 We did two sets for request to admit. Finally, the answer  
13 came out of them after we, you know, moved to compel and  
14 to deem them admitted was that they admitted that they  
15 didn't have any offices within 100 miles. Nothing in  
16 Charlotte, nothing in Augusta as they had previously  
17 maintained to Judge Benjamin when we had our motion to  
18 dismiss.

19 At that point, I said this is a baseless lawsuit.  
20 This is a frivolous lawsuit. Let my client go. He is 29.  
21 I -- I'm not being paid either, Your Honor. You know, he  
22 gave me what he could, and I have had to stick with him  
23 because I think he's right and I couldn't abandon the kid.

24 But once it was very clear that this was a baseless  
25 lawsuit, and in 23 years that I've been doing this, I've

1 never seen a plaintiff behave this way, but they totally  
2 abandoned all of the facts in their claim and in order to  
3 avoid Frivolous Sanctions Proceeding Act, they have  
4 totally created new facts and all of these new causes of  
5 action.

6 So they have, in essence, abandoned all the previous  
7 facts and the previous breach of contract cause of action  
8 and now brought in these tort causes of action which is a  
9 thinly veiled way to avoid liability with the Frivolous  
10 Sanctions Proceeding Act.

11 I don't think -- we would ask the Court not to let  
12 them amend. I mean, my client would definitely be  
13 prejudiced. He is trying to pay a lawyer on an hourly  
14 basis. We have engaged in written discovery, two sets of  
15 requests to admit, two motion hearings. This is our third  
16 motion hearing.

17 It would certainly prejudice him if he had to go back  
18 and reread that ground on -- you know, and certainly, the  
19 plaintiff has had an opportunity to assert these facts  
20 before. I mean, they sent a cease and desist letter to my  
21 client and to his new employer. They filed a lawsuit. I  
22 filed a counterclaim. They filed a reply.

23 At no time did they mention this \$2,500 thing at all.  
24 There is no piece of writing that they can show us that  
25 says there was a contract that if, you know, your client

1 took the relocation fee that if he didn't stay more than a  
2 day or didn't stay more than a week or more than a month  
3 or more than a year he had to pay any of it back.

4 He showed up there in good faith, did not get what he  
5 was promised, had a family to feed and a new baby on the  
6 way and, you know, moved where he had some family support.

7 So now to let them amend, you know, almost a year  
8 later would be patently unjust, Your Honor, and is not  
9 what Rule 15 allows. Rule 15 allows you to look at the  
10 facts and circumstances and justice and we're prejudiced.

11 Certainly, this -- this client who is trying to pay  
12 me hourly to defend him, defend brand new allegations,  
13 would not -- you know, would certainly be prejudiced, and  
14 it is untrue that he would not be.

15 So we have a dueling motion for summary judgment,  
16 Your Honor. The summary judgment and the motion to amend  
17 were filed about the same time. You know, we've asked for  
18 summary judgment on their claim on their first lawsuit  
19 altogether.

20 THE COURT: The breach of contract?

21 MS. SHUTT: Yeah.

22 THE COURT: Okay.

23 MS. SHUTT: And I mean, they've abandoned that. I  
24 don't know that Mr. Townes is going to -- Mr. Johnson,  
25 sorry, Mr. Johnson is going to fight that at all.

1 MR. JOHNSON: No, Your Honor. That was part of  
2 the -- I had bad information. I did. As it related -- I  
3 was told that there was an office in Augusta at the time  
4 that Mr. Woods was employed.

5 My understanding is the Atlanta law firm was told  
6 that same information, and the letter that they sent to  
7 Mr. Woods' employer was based on that information, as  
8 well.

9 You know, Your Honor, as it relates to this, what  
10 Ms. Shutt calls a relocation fee, there is a big dispute  
11 about that. The checks themselves say draw on them, and  
12 it was not a relocation fee of any sort.

13 It was -- it was to help him get established in  
14 Atlanta, and he just took the money and moved to Columbia.  
15 But there's a huge disagreement of the facts on that side  
16 of it.

17 THE COURT: All right.

18 MS. SHUTT: I don't think we disagree at all as far  
19 as our discovery. It's clear that he started on -- he  
20 received this, this \$2,500 for moving expenses,  
21 relocation, whatever is a draw, whatever it was on  
22 April 14th, 2017.

23 His first day at work was 4/17/2017 in Atlanta, and  
24 his last day was the 29th. So I mean, he worked two weeks  
25 there, and there was -- I mean, there is no piece of paper

1 the plaintiff can offer to say that he had to pay anything  
2 back. I mean, this is all souped up to avoid some type of  
3 liability.

4 MR. JOHNSON: Well, Your Honor, and I adamantly  
5 disagree with that, but that's -- that's neither here nor  
6 there. I mean, actually it needs to be flushed out in  
7 litigation. That's the whole point of getting to the  
8 actual facts of what transpired. I don't think those  
9 dates are accurate.

10 One of the checks was written, I believe, April 21st.  
11 I think the other one was written April 19th. So you  
12 know, I don't think that those dates are accurate as far  
13 as when the checks were deposited or I think written by my  
14 client, Your Honor.

15 But as far as the initial complaint, as soon as I  
16 learned that they did not have a location as I was  
17 previously told in Augusta, I moved to amend to drop the  
18 claim. I think that's what a reasonable attorney in that  
19 situation would do. Ms. Shutt filed summary judgment a  
20 couple days thereafter, Your Honor.

21 As far as the Frivolous Proceedings Act, you know --

22 THE COURT: That's not even before me at this point  
23 in time, so you don't -- I'm -- I don't -- I don't have  
24 any impression that you did anything wrong, Mr. Johnson.  
25 So you don't need to worry about that with me.

1           Clients sometimes give bad information to lawyers,  
2           and they turn the facts into situations that are more  
3           beneficial to them. So I'm not saying you did anything  
4           wrong.

5           The issue before me at this point in time is the  
6           motion to amend.

7           Does anybody else want to be heard on the motion to  
8           amend?

9           MR. JOHNSON: Well, and quickly I would just say that  
10          the prejudice of additional attorneys fees is not the  
11          prejudice that's involved in Rule 15.

12          Rule 15 is very clear that the prejudice involved is  
13          lack of notice and the lack of opportunity to review, and  
14          in this case especially since we haven't done depositions  
15          we're not on the trial docket as far as I know. I mean,  
16          there can't be any prejudice under Rule 15.

17          THE COURT: When was the case filed? That's the one  
18          question that I --

19          MR. JOHNSON: March 1st.

20          THE COURT: Of 2018?

21          MR. JOHNSON: Yes, sir.

22          THE COURT: Okay. All right.

23          Anything else, Ms. Shutt?

24          MS. SHUTT: Yes, Your Honor. I have to disagree with  
25          Mr. Johnson on prejudice.

1           So, you know, prejudice means lack of notice. Lack  
2 of notice, if he was filed -- this was filed in March  
3 of 2018, there is not one sentence or one word about this  
4 in that complaint.

5           That -- this did not appear at all until their  
6 original claim totally evaporated, and it only evaporated  
7 because I kept filing motions to compel because I was not  
8 getting answers out of them.

9           And the only reason we didn't have depositions so far  
10 is because they have not -- they have refused to give me  
11 dates. We are past due for doing mediation, and they have  
12 refused, refused, to come to mediation.

13           Frankly, Your Honor, I don't want my client to have  
14 to spend more time, more time and resources on any of  
15 that. He is entitled to be -- let go. He has not had  
16 notice of this, so amending the pleadings, you know, ten  
17 months after you filed them to try to rescue something is  
18 not notice.

19           THE COURT: Okay. All right.

20           MS. SHUTT: Thank you.

21           THE COURT: All right. I'll let you all know by the  
22 end of week. You'll get an email from my clerk with my  
23 ruling in it, and then we'll get the proposed orders and  
24 get it knocked out.

25           MS. SHUTT: Okay. Thank you, Your Honor.

1 THE COURT: Thank you both very much.

2 MR. JOHNSON: Thank you, Judge.

3 (Whereupon, the proceedings were concluded.)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25



# EXHIBIT 11

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

The Honorable Robert E. Hood, Master in Equity

Case No. 2018-CP-40-01318

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

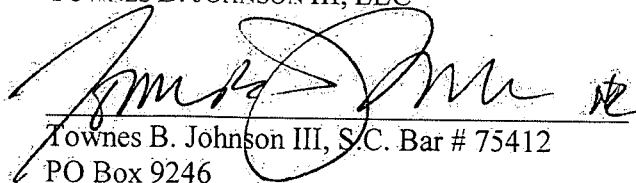
v.

Tyler Woods .....Respondent.

**NOTICE OF APPEAL**

Best Choice Roofing & Home Improvement, Inc., appeals the decision of the Honorable Robert E. Hood on October 22, 2019. Appellant received notice of the October 22, 2019 decision on October 22, 2019.

TOWNES B. JOHNSON III, LLC



Townes B. Johnson III, S.C. Bar # 75412

PO Box 9246

Greenville, S.C. 29604

(864)-757-4899

[tjohnson@sc.legal](mailto:tjohnson@sc.legal)

*Attorneys for the Appellant*

October 22, 2019  
Greenville, South Carolina

**Other Counsel of Record:**

Nekki Shutt, Esq.  
Burnette Shutt & McDaniel, PA  
Post Office Box 1929  
Columbia, SC 29202  
803-904-7912-office  
NShutt@BurnetteShutt.Law  
**Attorneys for the Respondent**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

The Honorable Robert E. Hood, Master in Equity

Case No. 2018-CP-40-01318

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

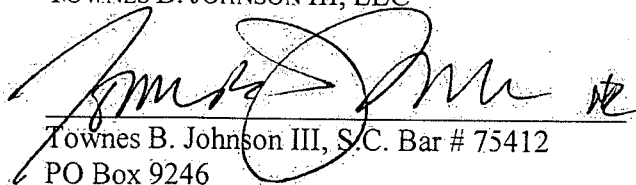
v.

Tyler Woods .....Respondent.

**NOTICE OF APPEAL**

Best Choice Roofing & Home Improvement, Inc., appeals the decision of the Honorable Robert E. Hood on October 22, 2019. Appellant received notice of the October 22, 2019 decision on October 22, 2019.

TOWNES B. JOHNSON III, LLC



Townes B. Johnson III, S.C. Bar # 75412

PO Box 9246

Greenville, S.C. 29604

(864)-757-4899

[tjohnson@sc.legal](mailto:tjohnson@sc.legal)

*Attorneys for the Appellant*

October 22, 2019  
Greenville, South Carolina

**Other Counsel of Record:**

Nekki Shutt, Esq.  
Burnette Shutt & McDaniel, PA  
Post Office Box 1929  
Columbia, SC 29202  
803-904-7912-office  
NShutt@BurnetteShutt.Law  
**Attorneys for the Respondent**



**BURNETTE SHUTT MCDANIEL**

Moving law forward.

**BURNETTE SHUTT & MCDANIEL, PA**  
912 Lady Street | PO Box 1929 | Columbia, SC 29202  
O: 803.850.0912 F: 803.904.7910  
burnetteshutt.law

**Sarah J.M. Cox - Attorney**  
803.904.7930  
[scox@burnetteshutt.law](mailto:scox@burnetteshutt.law)

January 28, 2020

**VIA HAND DELIVERY**

The Honorable Jenny Abbott Kitchings  
Clerk, 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**  
**BSM Case No.: 18138.001**

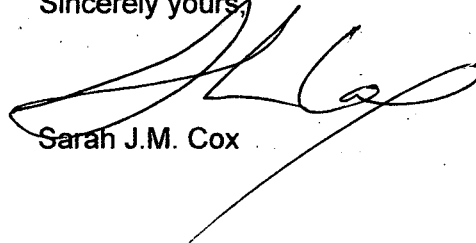
Dear Ms. Kitchings:

Enclosed for filing please find the original and seven (7) copies of Respondent's Motion to Dismiss Appeal, and Proof of Service in the above-referenced action, along with this firm's check in the amount of \$50.00 for the filing fee. Please file the original and return one (1) of the clocked-in copies to my courier delivering same.

By copy of this letter, I am serving same upon all parties of record.

With kind regards, I am

Sincerely yours,



Sarah J.M. Cox

SJC/tbw

Enclosures

cc: Nekki Shutt, Esq. (via email) (w/attachments)  
Townes B. Johnson, III, Esq. (via U.S Mail) (w/attachments)  
Tyler Woods, (via email) (w/attachments)

**RECEIVED**

JAN 28 2020

SC Court of Appeals