THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Greenville County
Greenville County Circuit Court
Hon. Robin B. Stilwell, Family Court Judge, Presiding

Appellate Case No. 2018-000884

Ronald Johnson,.....Respondent,

Versus

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

RESPONDENT'S FINAL BRIEF

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SC Court of Appeals

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STATEMENT OF THE CASE

The Respondent adopts the statement of the case submitted by the Appellants in their Brief, but does not adopt the statement of the facts submitted by the Appellants in their Brief.

ARGUMENT

I. I. The Trial Court did not err in denying the Defendants' Motion for JNOV as to Plaintiff's Wage Claims.

The Trial Court did not err in denying the Defendants' Motion for JNOV as to Plaintiff's Wage Claims. This Court reviews a JNOV ruling in an action at law using the same yardstick as the trial court: presuming credibility of the evidence, the appellate court measures it in the light most favorable to the non-moving party and gauges whether there is enough evidence as to each element of the claim to allow a rational jury to find in the Plaintiff's favor. If there is sufficient evidence, the motion must be denied, for when reviewing a JNOV ruling, neither trial nor appellate courts may second-guess jury verdicts supported by reasonable evidence. S.C. Const. art. V, § 5 ; *Welch v. Epstein , 342 S.C. 279, 300, 536 S.E.2d 408, 419 (2000); Morin v. Innegrity, LLC, 424 S.C. 559, 819 S.E.2d 131 (S.C. App., 2018).* In the case at bar, there is substantial evidence in the record to support the Plaintiff's claims that he was entitled to "wages" pursuant to the Wage Claim Act, S.C. Code Ann. § 41-10-10(2), which is defined as:

> "Wages" means all amounts at which labor rendered is recompensed, whether the amount is fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the amount and includes vacation, holiday, and sick leave payments which are due to an employee under any employer policy or employment contract."

Contrary to the assertion of the Appellants in Brief, the Plaintiff did not seek recovery of monies under an agreement as to potential future clients, but rather sought wages of eighty (80) percent of the proceeds earned by the Appellants from clients that Johnson brought to the Appellants' CPA firm. The record of this case also clearly establishes that the parties had a valid oral contract for work to be performed by Johnson, and the terms of his employment. Appellant George Brock hired Johnson to work in his CPA practice, initially to be a full-time employee in

February, 2015. (R. p. 49, lines 2-8; 17-19.) According to Johnson, The Appellant Brock thought that with Johnson's background of tax preparation and history of successful settlement of accounts with the IRS that Johnson would be utilized through the remainder of 2015, past the completion of the tax season. (R. p. 49, lines 2-8.) The Appellant Brock agreed to pay Johnson the sum of thirty dollars ($30.00) per hour, with established work times, establish an email account under Brock's company name, allow him the use of his tax software, provide to him a desk assigned to Brock's CPA firm, and make a request for Johnson's photograph to put on the bio of the Brock firm. (R. p. 49, lines 9-16.) Johnson testified that he pretty much became an employee of the firm pursuant to the agreement of the parties. (R. p. 49, lines 15-16.) Johnson worked for Brock preparing taxes, addressing IRS or tax problems, and conducting research regarding tax code issues for the firm. (R. p. 50, lines 4-9.) Subsequent to Johnson going to work full-time for Brock, Johnson informed Brock that he had some friends for whom he had prepared income tax returns in the past. (R. p. 50, lines 13-18.) Johnson testified that he expressed concern about how he would "deal with" these friends when they called him for tax preparation, due to the fact that he was working for Brock. (R. p. 50, lines 17-20.) Johnson also testified that he may be contacted by clients of his former employer, for the purpose of Johnson preparing income tax returns. (R. p.51, lines 1-5.) Johnson testified that it was ***Brock*** that came to him and said that if people came to his firm as a result of Johnson working there, that he would be willing to pay Johnson eighty (80) percent of their invoices for the first year, and then after that, Brock would not owe Johnson any further monies regarding these specific clients. (R. p. 51, lines 6-10.) Johnson accepted Brock's offer, and tendered a spreadsheet of clients that Johnson believed may be interested in his tax preparation services, which included family members as well as clients at his former firm. (R. p. 54, lines 9-16; Plaintiff's Exhibit 1.)

Johnson testified that Brock was pleased – really infatuated with the list, and put the list on his internal in-house computer system. (R. p. 54, lines 14-18.) Johnson testified that Brock drafted a letter on the Brock CPA firm letterhead dated February 27, 2015, to the list of former clients of Johnson, and signed Johnson's name to it with Johnson's permission. (Plaintiff's Exhibit 2; R. p. 58, lines 1-25.) Johnson introduced Plaintiff's Exhibit 4, which is a timesheet of Johnson's time, which included time for work done for the clients pursuant to Johnson and Brock's "80 percent" agreement. (Exhibit 4; R. p. 60, lines 9-25; p. 61, lines 1-2.)

Johnson kept track of the "80 percent" clients on the timesheet, and kept a running total of the amount owed to him by Brock pursuant to their agreement. (R. p. 61, lines 12-16.) The time sheets were submitted to Brock on a weekly basis. (R. p. 63, line 1; Exhibit 4.) Brock delayed in paying Johnson the monies owed to him pursuant to the submitted timesheets, and at one point could not afford to pay Johnson for his work. (R. p. 70, lines 22-25.) Brock cut Johnson's time starting around the first of November, wherein Johnson was working two (2) days a week. The parties' original agreement was that Johnson would work at least four (4) days a week following tax season through the end of December. (R. p. 71, lines 1-20.) Johnson testified that a reason Brock was unable to pay Johnson his wages owed was that he was renovating an old house. (R. p. 72, lines 1-15.) Kris Langville, a former employee of Brock at the time of trial, testified that Brock was having problems with his finances toward the end of 2015 because he was paying the contractors to remodel the house across the street from his business, his rental properties were not rented, and some clients weren't paying bills. (R. p. 183, lines 19-25; p. 184, lines 1-4.) Johnson testified that Brock did not pay him his eighty percent (80%) due pursuant to their agreement reached prior to tax season in 2015. (R. p. 72, lines 22-25.) Johnson brought up this issue to Brock in October or November of 2015. (R. p. 73, lines

13-15.) Johnson testified that Brock told him he would pay him the monies owed to him, $9,036.00, but would not commit to when he would pay Johnson. (R. p. 73, lines 21-24; p. 76, lines 5-17.) Johnson submitted approximately forty-five (45) timesheets to Brock during his employment, including sheets for the monies due under the "80 percent" agreement, but Brock never paid him the full amount due pursuant to their agreement. (R. p. 74, lines 6-11.) Johnson sent Brock correspondence demanding payment of the monies due, and Brock called him the next day admitting that he understood about the "9,000 thing being due," and committed to paying Johnson by the end of April, 2016. (Plaintiff's Exhibit 7; R. p. 78, lines 16-25; p. 80, lines 1-8.) Brock agreed to put his commitment to pay Johnson by April 30, 2016, in writing, however he refused to sign the agreement drafted by Johnson. (Plaintiff's Exhibit 8; R. p. 81, lines 14-18; p. 82, lines 22-25.) Pursuant to these specific and clear facts as presented by Johnson, he and Brock had a contractual relationship established for the payment of monies for the clients brought to the firm by Johnson's previous business associations. There can be little doubt in reviewing this record that Brock failed to pay Johnson the wages due pursuant to the contractual relationship, and the trial court did not err in denying the Appellant's JNOV on Johnson's wage claim.

The Appellants argue in brief that Johnson is not entitled to the payment of wages due to the alleged breach of loyalty by Johnson to Brock. The case law cited by the Appellants is wholly inapplicable to the case at bar. In Lowndes Products, Inc. v. Brower, et al, 259 S.C. 322, 191 S.E.2d 761 (S.C. 1972) – a case primarily regarding the improper dissemination of trade secrets of the employer and alleged breach of loyalty for such by the employees -- the court held that absent a contrary agreement, an employee has a right to compete with his employer following the termination of his employer. The court further held that although an employee has

the privilege of making pre-termination plans to compete with his employer, an employee is disloyal if he solicits *his employer's* customers. (emphasis added.) The clients of interest in the present litigation were clients that Johnson brought to Brock – not vice versa. The record of this case establishes that Johnson did not commit a disloyal act against the Appellants. Johnson sent letters in January, 2016 to close friends who he had brought to the Brock firm– immediately prior to the termination of his employment with Brock on or about February 2016 – to protect their interests given the fact that the testimony established that Brock intended to sell his business. (Plaintiff's Exhibit 16; R. p. 96, lines 1-25; p. 97, lines 1-17.) The Appellant's argument lacks merit, as Johnson did not breach any alleged duty of loyalty to Brock.

Further, the Appellants' argument that there is no evidence to support the jury's verdict against the corporate defendants in this matter is also without merit. Johnson testified that he named the LLCs in his lawsuit due to the fact that Brock kept everything away from himself personally, and operated through LLCs and a partnership. (R. p. 104, lines 11-15.) Johnson further testified that Brock had told him that the way you get away from judgments or loan liabilities is to put them into LLCs and then walk away from the LLCs and close them and the liabilities go away. (R. p. 105, lines 3-12.) Johnson testified to a specific instance wherein Brock had neglected to file a tax return for an LLC, and incurred penalties, and dissolved the LLC. (R. p. 108, lines 16-24.)

Lastly, the agreement between Johnson and Brock does not violate the Statute of Frauds, and the Appellants' assertion of such has no merit. The Statute of Frauds provides that all agreements not to be performed within one year from their making, shall be in writing and signed by the party to be charged. S.C.Code Ann. § 32-3-10(5) (1991). An oral agreement, including an oral modification, will be barred by the Statute of Frauds if it is incapable of being

performed within one year. *Player v. Chandler, 299 S.C. at 105, 382 S.E.2d at 894.* The agreement reached by the parties was clearly applicable solely to the tax season of year 2015, and specifically permitted Brock to keep one-hundred-percent (100%) of any future revenues received from clients brought to the firm by Johnson.

The trial court did not err in denying the Appellants' JNOV motion, and the trial court's ruling should be affirmed.

II. The Trial Court did not err in awarding Attorney's Fees and Costs under the Wage Act.

The Payment of Wages Act specifically permits litigants to recover attorney's fees in the sound discretion of the trial court, and the court's decision in the case at bar should not be disturbed on appeal. S.C. Code Ann. § 41-10-80(C) permits an employee to recover costs and reasonable attorney's fees as the court may allow. There is nothing in the language of the statute that bars a litigant from recovering attorney's fees and costs in a circumstance in which a judge denies the award of treble damages. In Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598 (S.C. 1999) – a case that rejects a bright-line rule that the breach of loyalty by an employee requires forfeiture of all compensation -- the court reversed the award of treble damages and attorney's fees in a claim pursuant to the Wage Claim Act. However, the Supreme Court did not establish a bright-line rule requiring the reversal of an attorney's fee award, which is in the discretion of the trial court pursuant to the statute promulgated by the legislature. Further, Johnson successfully defended a counterclaim by all Defendants, and won on all points at trial. Therefore, the trial court did not err in awarding attorney's fees and costs under the Wage Act, and its decision should not be disturbed on appeal.

III. The Trial Court did not err in denying the Defendant's Motion for JNOV as to the Defendant's Claims against the Plaintiff.

The Trial Court did not err in denying the Defendant's Motion for JNOV as to the Defendant's Claims against the Plaintiff for intentional interference with prospective contractual relations. To recover on a cause of action for intentional interference with prospective contractual relations, the plaintiff must prove: (1) the defendant intentionally interfered with the plaintiff's potential contractual relations; (2) for an improper purpose or by improper methods; (3) causing injury to the plaintiff. *See Leigh Furniture and Carpet Co. v. Isom, 657 P.2d 293 (Utah 1982); see also Blake v. Levy, 191 Conn. 257, 464 A.2d 52 (1983); Straube v. Larson, 287 Or. 357, 600 P.2d 371 (1979); Restatement (Second) of Torts § 766B and 767 (1977).* If a defendant acts for more than one purpose, his improper purpose must predominate in order to create liability. *See Harsha v. State Savings Bank, 346 N.W.2d 791 (Iowa 1984); Leigh Furniture, supra.* As an alternative to establishing an improper purpose, the plaintiff may prove the defendant's method of interference was improper under the circumstances. *See Duggin v. Adams, 234 Va. 221, 360 S.E.2d 832 (1987) for an extensive discussion of improper methods. Crandall Corp. v. Navistar Intern. Transp. Corp., 395 S.E.2d 179, 302 S.C. 265 (S.C., 1990)*

The record of this case does not establish that any action of Johnson caused interference with a business opportunity for Brock. The key witness on this point was Stephen Stokes, a CPA who negotiated to buy Brock's business at the end of 2015: Stokes testified that he entered into negotiations with Brock in November of 2015. (R. p. 306 (Day 2), lines 9-18.) Stokes testified that during the negotiations, he received news that there was a dispute with an employee at the Brock firm from Gary Wheeler, a friend in the CPA business. (R. p. 308 (Day 2), lines 15-20; p. 309 (Day 2), lines 1-6.) Stokes testified that Wheeler told Stokes that he had talked to Ron

Johnson, and that Ron was unhappy with some things that happened with George....comments about he didn't get paid for something he was owed. (R. p. 309 (Day 2), lines 7-15.) Stokes discussed this with Brock, and felt a little bit better, but was concerned that there was "still something going on." (R. p. 309 (Day 2), lines 16-20.) Stokes testified that the concerns he had about the information relayed by Wheeler were the affect on the value of the business, and that a potential employee was no longer going to be a potential employee. (R. p. 317 (Day 2), lines 18-22.) Stokes further testified that the deal to purchase Brock's business *did not fall through* based on the information from Wheeler. (R. p. 318 (Day 2), lines 5-10; p. 319 (Day 2), lines 3-10.) Stokes testified that he and Brock stopped discussing the deal for awhile, but didn't necessarily say they were putting the deal on hold for any reason, and that there were no other members of the business community as far as the CPA practice goes to whom Johnson had said disparaging things about Brock. (R. p. 320 (Day 2), lines 9-22; p. 321 (Day 2), lines 1-6.) Clearly, the negotiations between Stokes and Brock were unaffected by information provided to Stokes by Wheeler.

Despite allegations by Brock that Johnson intentionally interfered with a business opportunity by introducing sales contracts into the record of this case, this allegation is wholly without merit. Johnson testified that he introduced Plaintiff's Exhibits 6A and B to establish that pursuant to the proposed sale of Brock's business that Brock would be compensated for the invoices from clients that Johnson brought into the firm – despite the fact that had nothing to do with the agreement reached between Johnson and Brock. (R. p. 101, lines 6-21.) The exhibits were directly related and relevant to the complaint filed by Johnson. Further, the testimony established that Johnson did not put this information on the internet, contrary to the assertions of Appellants.

Further, there is no evidence in the record of this case that Johnson "stole" software from Brock, as alleged by the Appellants in brief. In fact, Johnson testified that he was given authority to have access to software to conduct work for Brock. (R. p. 49, lines 9-16.) The parties also entered into a consent order, in which the parties agreed that they are prohibited from such access of using other parties' – opposing party's software, internet, computer databases, including email correspondence. (R. p. 287 (Day 2), lines 24-25; R. p. 288 (Day 2), lines 1-6.) The consent order further provided that Plaintiffs will provide evidence to counsel for Defendants of the irrevocable deletion of all Drake – Drake data and software for the year 2005 through 2015 within thirty (30) days. (R p. 288 (Day 2), lines 22-25.) Lastly, attached to the consent order was documentation that Johnson purchased the software in 2016. (R. p. 290 (Day 2), lines 9-16.) The Appellants' argument lacks merit, and the trial court's denial of the Appellants' JNOV motion should not be disturbed on appeal.

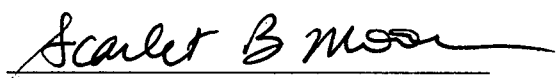
IV. The Trial Court did not err in denying the Defendants' Motions for a New Trial and New Trial Absolute.

The testimony of Donna Carlson was not as the Appellants' have portrayed in their Brief, and certainly not such as would cause a jury verdict based on passion, caprice nor prejudice, justifying a new trial in this matter. Carlson testified that Brock could be very disrespectful and would constantly attack people in the workplace. (R. p. 164, lines 19-25.) She further testified that Brock would say things that were very degrading to her, and very disrespectful. (R. p. 166, lines 1-2.) The Court struck the foregoing testimony and instructed the jury regarding his ruling. (R. p. 166, lines 8-21.) Subsequently, Carlson testified that after Johnson filed his lawsuit, Brock was focused on Johnson and how he was going to destroy him and him coming after Johnson. (R. p. 167, lines 6-11.) Carlson further testified that Brock asked her to sign an affidavit for the lawsuit with information that Carlson did not know was true. (R. p. 167, lines 15-18.) The Court properly found that Carlson's testimony regarding the affidavit directly related to the impasse and/or disagreement between the parties to this lawsuit, and therefore relevant for the jury's consideration, and more probative than prejudicial under a Rule 403 evidentiary analysis. (R. p. 170, lines 1-7.) The Appellants' argument lacks merit, and this Honorable Court should affirm the trial court denial of the Appellants' motion for new trial and new trial absolute.

CONCLUSION

The Respondent, Ronald Johnson, respectfully prays that this Honorable Appellate Court will affirm the Orders of the Circuit Court and the jury verdict in this matter, dismiss this appeal with prejudice, deny the Appellant's request for a new trial, and for any further relief as deemed appropriate by this Court.

Respectfully Submitted,



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CERTIFICATE OF COUNSEL

I certify that the Final Brief of Respondent complies with Rule 210(g).

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