THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

Appellate Case No. 2018-000884

Ronald Johnson, ... Respondent,

v.

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

BRIEF OF APPELLANTS

J. Falkner Wilkes (SC Bar #12893)
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 (facsimile)

Counsel for Appellants

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SC Court of Appeals

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3. Did the trial court err in denying the Defendant's motion for JNOV as to the Defendant's counter-claim for breach of contract?

4. Did the trial court err in awarding attorney fees and costs under the Payment of Wages Act where there was a finding of a good faith dispute?

5. Did the trial court err in awarding attorney fees and costs under the Payment of Wages Act under the facts of the case?

STATEMENT OF THE CASE

Respondent, Ron Johnson initiated this case by the filing of a pro se Summons and Complaint on March, 24, 2016. Robert C. Wilson entered an appearance on behalf of the Appellants and filed an Answer and Counterclaim on April 5, 2016. Respondent filed an Answer to the Appellants' Counterclaim on April, 22, 2016. Attorney Kenneth F. Norsworthy, Jr., appeared on behalf of the Respondent. Pursuant to an Order granting leave to amend his Complaint the Respondent filed an Amended Complaint on May 5, 2017. The Appellants filed an Answer and Counterclaim June 20, 2017. The case proceeded to a jury trial on January 11, 2018, the Hon. Robin B. Stilwell presiding. At trial the Respondent's case was submitted to the jury on breach of contract and failure to pay wages under the Payment of Wages Act. The Appellants counterclaim was submitted to the jury on breach of contract and intentional interference with a prospective contractual relation. The jury returned a verdict in favor of the Respondent and awarded the Respondent $9,036 dollars.

The Respondent filed a post trial motion for treble damages and attorney fees and costs under the Payment of Wage Act. The Appellants timely filed post trial motions for judgment notwithstanding the verdict and for a new trial and new trial absolute. The court issued an Order on Post-Trial Motions denying the Appellants' motions, denying Respondent treble damages and awarding Respondent attorney fees and costs. Appellant's filed a timely Motion to Alter or Amend on the issue of attorney fees and costs and addressing other issues not addressed in the court's Order on Post-Trial Motions. The court denied the Appellant's Motion to Alter or Amend. The Appellants timely filed their notice of appeal. Subsequent to the filing of the notice of appeal J. Falkner Wilkes substituted as counsel for Appellants.

STATEMENT OF THE FACTS

Appellant George Brock, CPA owns an accounting and tax practice in Greenville, South Carolina. R. 211-213. Brock hired Respondent Ron Johnson in the beginning of 2015. R. 214. Appellants MILBRO, Diwood, and Integrative are corporations in which Brock owns or has a partial interest. R. 221-225; 251. Johnson did not have an employment agreement, commission agreement, or otherwise with any of the corporate defendants (MILBRO, Diwood, or Integrative). R. 150. The corporate defendants have nothing to do with Johnson's employment. R. 221; 221-225.

Johnson was paid hourly wages at $30 per hour for his work at Brock's practice. R. 11; 117. Johnson accounted for his time which he submitted to Brock for payment, and Brock timely paid Johnson for all of the time that he submitted. R. 134-135.

Subsequent to Johnson's being hired Johnson proposed an arrangement whereby Brock and Johnson would share in fees received on any of Johnson's former clients that came to Brock's firm. R. 253. According to Johnson they reached an oral agreement. R. 132. Although a dispute later arose over the terms of the agreement Johnson admitted that the agreement covered multiple years and provided that each year that Johnson brought in new clients that he would receive 80% of any fees from those clients. R. 427; 133; 138; In the present case Johnson sought recovery of $9036 dollars which was 80% of the revenues from the former clients for 2015 which was the first year under the agreement (2015). R. 60-61; 396. In 2015 twelve of Johnson's former clients came to him at Brock's practice in 2015. R. 269;295. Johnson performed the work for those clients for which he was paid wages at $30 per hour. R. 252.

Johnson claimed the agreement provided that each year that Johnson brought in new

clients he would receive 80% of any fees from those clients, and that after their first year those clients would become Brock's clients. Johnson claimed he was entitled to immediate payment of the 80% as the fees were received in addition to the wages he was paid to work on their files. At $30 per hour Johnson's wage equaled approximately 50 to 60 percent of the total revenue bought in from the twelve former clients in 2015. R. 133; 138; 219; 252-253; 270; 290; 427 133; 138. According to Brock's understanding the agreement required him to pay Johnson only if any of those twelve clients came back in 2016 and became Brock's client. R. 119-224; 253. Of the twelve, only one returned in 2016, from which Brock received $300 in fees. R. 220-221. This dispute over the terms and timing of payment under the agreement led to what Johnson termed a "falling out". R. 73. Johnson admitted that he later agreed that Brock could pay him the $9,036 on April 30, 2016. R. 79-80.

Also in 2015 Brock began marketing his practice with the intent to retire. R. 73; 214-215; 306; 421. While still employed by Brock and disgruntled over the falling out, Johnson began doing things intended to hurt Brock's practice in an attempt to coerce Brock in regards to their dispute. R. 214-215. Johnson stole Brock's tax software package along with ten years worth of Brock's data. R. 238-239. Johnson stole Brock's confidential client information including client's bank account numbers and other personal data. R. 160; 240-242; 376. Johnson also sent solicitation letters to clients in an attempt to keep them from returning to Brock's practice and have them instead bring their work to Johnson individually. R. 219; 246-247; 250; 287-290.

During the time in 2015 that Brock was trying to sell his practice to another CPA (Stokes) Johnson made derogatory remarks about Brock and revealed Brock's confidential information to one of Brock's peers (Wheeler). R. 215; 308-309. Among other things, Johnson told Wheeler

that Brock wasn't able to pay his bills. R. 140. This information was disclosed to Stokes during his negotiations with Brock for the sale of Brock's practice. R. 215; 249-250. Brock's negotiations with Stokes stalled. R. 215. In 2016 Stokes and Brock began negotiating again for the sale of the practice that should have closed in July of 2016. R. 215. Stokes testified that some of the information Johnson had disclosed raised concerns about the value of Brock's business and became a factor in the negotiations and ultimate sale of the practice to Stokes. R. L317-321. As a result Brock lost the opportunity for an up-front cash sale of his practice for $370,000. R. 227-229. The subsequent contract for an asset purchase in 2016 resulted in substantially less favorable terms and a loss of $67,000 over the original price contemplated in 2015. R. 227-235; 238; 243-245; 312-313; Def. Ex. 3, 4 (oversized exhibits).

The Plaintiff proceeded to the jury on the causes of breach of contract and failure to pay wages. The Defendants' case by way of counter-claim was submitted under breach of contract and intentional interference with a prospective contractual relation. R. 360-364. The jury returned a verdict for the Plaintiff and awarded damages of $9036. Verdict. Finding that a good faith dispute existed over the wage issue the trial court denied the Plaintiff treble damages under the Payment of Wage Act but awarded Plaintiff attorneys in the amount of $25,000 dollars and costs of $2035.79.

ARGUMENT

I. THE COURT ERRED IN DENYING THE DEFENDANTS' MOTION FOR JNOV AS TO PLAINTIFF'S "WAGE" CLAIMS.

The court erred in failing to grant the defendants' motion where the plaintiff sought recovery of money under an agreement as to potential future clients, and thus not wages within the Payment of Wage Act. Johnson was an employee of Appellant George Brock's accounting and tax practice and paid on an hourly basis. Johnson regularly submitted his time to Brock for payment of wages. Johnson admitted that Brock had paid him for all of the time that Johnson had submitted. It was subsequent to being hired as an hourly employee that Johnson suggested what is best described as a sales leads agreement for any of Johnson's former clients that came to Johnson at Brock's practice. In 2015 twelve of Johnson's former clients had work performed by Johnson at Brock's practice. Johnson was paid his hourly wage of $30 per hour for all of the time he spent working for those clients. Johnson claims therefore are based entirely on the sales leads agreement and not his work or wages. Johnson's claims therefore fall outside of the Payment of Wages Act.

> "[T]he purpose of the Payment of Wages Act is "to protect employees from the unjustified and willful retention of wages by the employer." Rice, 318 S.C. at 98, 456 S.E.2d at 383. The Act itself defines the term "wages" as follows:
>
> "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. Funds placed in pension plans or profit sharing plans are not wages subject to this chapter."

Mathis v. Brown Brown of S.C, 389 S.C. 299, 318 (S.C. 2010). The court therefore erred in denying the Defendants' motions for JNOV under the Payment of Wages Act.

The court further erred in denying the Defendants' motion where there record reveals no evidence to support the verdict as to the corporate defendants. The evidence shows no connection between Johnson's claims and the corporate defendants. Johnson was hired by Brock as an hourly employee at Brock's accounting and tax practice. Johnson admitted that he had no employment agreement, commission agreement, or otherwise with any of the corporate defendants (MILBRO, Diwood, or Integrative). The corporate defendants were not shown to be employers of Johnson, nor parties to the sales leads agreement. To be subject to the Payment of Wage Act the corporate defendants would have to be an employer as defined in the Act: "Employer" means every person, firm, partnership, association, corporation, receiver, or other officer of a court of this State, the State, or any political subdivision thereof, and any agent or officer of the above classes employing any person in this State. S.C. Code Ann. § 41-10-10(1). There is no evidence that Johnson was employed by any of the corporate defendants or performed any services for them. As a result, the record fails to support a verdict under the Payment of Wages Act against the corporate defendants in this case. The court therefore erred in denying the Defendants' motions as to the corporate defendants.

The court further erred in failing to grant the Defendants' motion where there is uncontroverted evidence of Johnson's disloyalty. "It is implicit in any contract for employment that the employee shall remain faithful to the employer's interest throughout the term of employment. An employee has a duty of fidelity to his employer." Lowndes Products, Inc. v. Brower, *et al.*, 259 S.C. 322, 191 S.E.2d 761 (1972). The record shows that Johnson, disgruntled over the dispute as to the amount and timing of the under their sales leads agreement, engaged in a series of disloyal acts intended to coerce and intimidate Brock. Johnson could have left Brock's

employee but chose instead to remain and use his position of trust to perpetrate numerous disloyal acts. "The general rule is that an employee is not entitled to any compensation for services performed during the period he engaged in activities constituting a breach of his duty of loyalty even though part of those services may have been properly performed." Futch v. McAllister Towing of Georgetown, 335 S.C. 598, 607-8 (S.C. 1999)

In addition to numerous disloyal acts Johnson also solicited clients while he was still Brock's employee. Our supreme court has said that solicitation of an employer's customers likely will constitute a violation of the duty of loyalty in almost every case:

> This Court also has held that solicitation of an employer's customers is a breach of the duty of loyalty, particularly when combined with other acts or plans aimed at competing with the employer. *See* Lowndes Products, Inc. v. Brower 259 S.C. 322,335-39,191 S.E.2d 761,767-70 (1972) (key employees who contacted and met with investors and a customer of current employer to lay plans to start a competing textile company, who left their employer without notice, and who leased space and ordered materials to build manufacturing equipment were guilty of disloyalty, and owed damages to employer); Ocean Forest Co. v.Woodside, 184 S.C. 428, 442-44, 192 S.E. 413,420 (1937) (an agent hired to collect a single debt who diverted the money to his own use was guilty of disloyalty to the principal; therefore, he was not entitled to his commission); *accord Restatement (Second) of Agency, §§ 387 and 393 (1958); 30 C.J.S. Employer-Employee Relationship §§ 110-113* (1992); *3 C.J.S. Agency §§ 271-287* (1973).

Futch v. McAllister Towing of Georgetown, 335 S.C. 598, 606 (S.C. 1999). Given the un-controverted evidence of Plaintiff's disloyalty, especially the solicitation of clients, the court erred in denying the Defendants' motion to as to the Plaintiff's claims under both breach of contract and the Payment of Wages Act.

Given the court's finding that there was a good faith dispute over the sales leads agreement it is unclear whether the parties ever reached a true meeting of the minds sufficient to form a binding agreement:

> "A contract is an obligation which arises from actual agreement of the parties manifested by words, oral or written, or by conduct. Gaskins v. Blue Cross-Blue Shield of South Carolina, 271 S.C. 101, 145 S.E.2d 598 (1978). South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between the parties with regard to all essential and material terms of the agreement. Hughes v. Edwards, 265 S.C. 529, 220 S.E.2d 231 (1975). "In order for a contract to be valid and enforceable, the parties must have a meeting of the minds as to all essential and material terms of the agreement. Player v. Chandler, 299 S.C. 101, 105, 382 S.E.2d 891, 894 (1989). In addition, the Statute of Frauds requires that a contract that cannot be performed within one year be in writing and signed by the parties. S.C. Code Ann. § 32-3-10 (1991)."

Davis v. Greenwood School Dist. 50, 365 S.C. 629, 634 (S.C. 2005).

To the extent that an oral contract was formed it falls within the Statute of Frauds and thus unenforceable. 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).

> 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.

Roberts v. Gaskins, 327 S.C. 478, 484-85 (S.C. Ct. App. 1997).

Johnson admitted that the sales leads agreement was a multi year contract. The trial court, instead of looking at the scope and terms of the agreement, considered only that Johnson limited his demand to revenues received in 2015, the first year the agreement was in effect. While Johnson may have sought damages only for 2015, the contract remained a multi-year agreement that could not be performed within a year and thus subject to the Statute of Frauds. The court therefore erred in denying the defendants' motion for JNOV as to all of Johnson's claims.

II. THE COURT ERRED IN AWARDING ATTORNEY FEES AND COSTS UNDER WAGE ACT WHERE A GOOD FAITH DISPUTE OVER THE PAYMENT OF WAGES EXISTED.

Standard of Review

"When reviewing [an attorney fee award] such an award, "this court can take its own view of the facts." Ross v. Ligand Pharm., Inc., 371 S.C. 464, 471, 639 S.E.2d 460, 464 (Ct.App.2006); *see also* O'Neal v. Intermedical Hosp. of S.C., 355 S.C. 499, 509–511, 585 S.E.2d 526, 532 (Ct.App.2003) (reversing an award of treble damages because, based on the court's review of the record, "a bona fide dispute existed as to whether and to what extent [the employee] was entitled to payment")." Goodwyn v. Shadowstone Media, Inc., 408 S.C. 93, 98, 757 S.E.2d 560, 563 (Ct. App. 2014).

Discussion

The Plaintiff's case was submitted to the jury under a cause for breach of contract and failure to pay wages pursuant to S.C. Code Section 41-10-10 *et seq* (Payment of Wages Act). The jury returned a general verdict for the Plaintiff and awarded damages in the amount of $9,036 dollars. The Plaintiff did not object to the form of the verdict nor request a specific finding afterwards as to which ground the award was based. To the extent that the verdict represents wages, and this court determines that the Payment of Wages Act applies, the trial court's award of attorney fees and costs remains error.

Generally, attorneys' fees and costs are not recoverable unless authorized by contract or statute. Blumberg v. Nealco, Inc. , 310 S.C. 492, 493, 427 S.E.2d 659, 660 (1993). As an exception to the general rule reasonable attorney fees and costs are recoverable under the Wage Act. S.C. Code Section 42-10-80(c). Subsequent to the verdict and citing the Payment of Wages

Act the Plaintiff submitted a motion for treble damages, attorney fees, and costs. As part of its Order on Post Trial Motions the court denied the Plaintiff's request for treble damages but awarded attorney fees in the amount of $25,000 along with costs of $2035.79. In applying Section 41-10-80(c) the trial court expressly found that there was a good faith dispute regarding the wages at issue. Despite the existence of a good faith dispute over the wages at issue the court awarded attorney fees. This was an error of law.

> "In Rice v. Multimedia, Inc., 318 S.C. 95, 98, 456 S.E.2d 381, 383 (1995), [our supreme court] held that the imposition of treble damages in those cases where there is a bona fide dispute would be unjust and harsh." *Id.* The Court explained:
>
> The Payment of Wages Act provides that when an employer fails to pay wages, an employee may recover "an amount equal to three times the full amount of the unpaid wages, plus costs and reasonable attorney's fees as the court may allow." § 41–10–80(C). An award of treble damages and attorney's fees is appropriate only when "there [i]s no good faith wage dispute" because "an employer should not be penalized ... for failure to pay wages upon assertion of a valid defense to payment." Rice v. Multimedia, Inc., 318 S.C. 95, 98–99, 456 S.E.2d 381, 383 (1995). Thus, the trial court must determine whether "a bona fide dispute" exists as to an employee's entitlement to wages before awarding treble damages or attorney's fees. Temple v. Tec–Fab, Inc., 381 S.C. 597, 600–01, 675 S.E.2d 414, 415–16 (2009).

Goodwyn v. Shadowstone Media, Inc., 408 S.C. 93, 98, 757 S.E.2d 560, 563 (Ct. App. 2014) .

In Rice our supreme court said: "[T]here are some wage disputes when the issue may involve a valid close question of law or fact which should properly be decided by the courts. We do not believe the legislature intended to deter the litigation of reasonable good faith wage disputes; we do believe the legislature intended to punish the employer who forces the employee to resort to the court in an unreasonable or bad faith wage dispute." Rice, 318 S.C. at 99, 456 S.E.2d at 384). In Rice the court reversed an award of treble damages but allowed attorney fees to stand. However, subsequent to its holding in Rice the good faith rule was applied to treble

damages and attorney fees alike: "We reinstate the jury's verdict for Futch of $4,200, the wages Employer refused to pay him. However, we decline to reinstate the award of treble damages and attorney's fees because there was a bona fide dispute about whether Employer owed Futch any wages." Futch v. McAllister Towing of Georgetown, 335 S.C. 598, 612 (S.C. 1999). Under Futch it was error for the trial court to award attorney fees where a good faith dispute existed, especially when viewed in light of Johnson's acts of numerous acts of employee disloyalty.

III. THE COURT ERRED IN DENYING THE DEFENDANTS' MOTION FOR JNOV AS TO THE DEFENDANT'S CLAIMS AGAINST THE PLAINTIFF.

Standard of Review

"When reviewing the trial court's ruling on a motion for a directed verdict or JNOV, this Court applies the same standard as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party. Elam v. S.C. Dep't of Transp., 361 S.C. 9, 27–28, 602 S.E.2d 772, 782 (2004). The trial court must deny a motion for a directed verdict or JNOV if the evidence yields more than one reasonable inference or its inference is in doubt. Strange v. S.C. Dep't of Highways & Pub. Transp., 314 S.C. 427, 445 S.E.2d 439 (1994). Moreover, "[a] motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict." Gastineau v. Murphy , 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998). In deciding such motions, neither the trial court nor the appellate court has the authority to decide credibility issues or to resolve conflicts in the testimony or the evidence. Welch v. Epstein, 342 S.C. 279, 300, 536 S.E.2d 408, 419 (2000)." Maybank v. BB&T Corp., 787 S.E.2d 498, 512 (S.C. 2016)

Discussion

By way of counterclaim Brock sought damages from the Johnson based on Johnson's intentional interference with the sale of Brock's business to Stokes.

> "To recover on a cause of action for intentional interference with prospective contractual relations, we hold 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. Lsom, 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, 302 S.C. 265, 266 (S.C. 1990).

The record shows that Johnson became disgruntled after a dispute arose over the terms and timing of payments under the sales leads agreement. As a result of what he termed a "falling out" Johnson embarked on a series of acts intended to coerce Brock and gain advantage in the sales leads agreement dispute. These included Johnson intentionally interfering in Brock's attempt to sell the practice and stealing Brock's tax software and ten years of data, confidential information, client files containing bank account numbers, date of births, and other private data. It included soliciting Brock's clients to leave Brock and come to Johnson individually for their tax related work. It also included making disparaging remarks about Brock in a way that would reach Stokes who was engaged at the time in sale negotiations with Brock. When Johnson initiated suit against Brock he included every corporation he could find that Brock had an interest

in even though they had no connection to Johnson's employment or the sales leads agreement. Stokes testified that Johnson's actions became a factor in the negotiations.

Johnson's series of disloyal acts and intimidation had a substantial detrimental effect on the negotiations which forced Brock to sell the practice at a reduced price ($67,000 less) and on less favorable terms. Given the evidence no reasonable jury could have reached the same verdict in this case. Viewing all evidence and inferences in Johnson's favor the record in this case shows Johnson's intentional interference with Brock's prospective contractual opportunity to sell his practice. The court therefore erred in denying the defendants' motion for JNOV as to the defendants' claims against Johnson.

IV. THE COURT ERRED IN DENYING THE DEFENDANTS' MOTIONS FOR A NEW TRIAL AND NEW TRIAL ABSOLUTE.

Standard of Review

The grant or denial of new trial motions rests within the discretion of the trial judge and his decision will not be disturbed on appeal unless his findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law. Chapman v. Upstate RV Marine, 364 S.C. 82, 88-89 610 S.E.2d 852, 856 (Ct.App. 2005) (*citing* Vinson v. Hartley, 324 S.C. 389, 405, 477 S.E.2d 715, 723 (Ct.App. 1996)); Trivelas v. S.C. Dep't of Transp., 357 S.C. 545, 553, 593 S.E.2d 504, 508 (Ct.App. 2004).

Discussion

Under the "thirteenth juror" doctrine, a trial judge may grant a new trial absolute when he finds the evidence does not justify the verdict. This ruling has also been termed a granting of a

new trial upon the facts. See Gastineau v. Murphy, 323 S.C. 168, ——, 473 S.E.2d 819, 827 (Ct.App.1996). In the present case the evidence fails to support the jury's verdict against the defendants. Given the record, the verdict in favor of the plaintiff can only be the result of passion, caprice, or prejudice. "The failure of the trial judge to grant a new trial absolute in this situation amounts to an abuse of discretion and on appeal this court will grant a new trial absolute. Stevens, 336 S.C. at 452, 520 S.E.2d at 631. " Howard v. Roberson, 376 S.C. 143, 154 (S.C. Ct. App. 2007).

At trial the plaintiff offered the testimony of Brock's ex-employee Donna Carlson. Carlson worked with Johnson at Brock's in 2015. During her testimony, both direct and on cross-examination, Carlson took every question as an opportunity to paint Brock as a bad character. Over the Defendants' objection, and despite the court's efforts, Carlson repeatedly injected character testimony that was irrelevant to the issues and highly prejudicial to Brock. 164. The impropriety of Carlson's testimony was so apparent that the court *sua sponte* stopped Carlson, struck all of her testimony up to that point, and had plaintiff's counsel start over on his direct examination of her. R. 166-167. After the re-start Carlson continued at every opportunity to cast Brock as a bad person to the jury. On redirect the court again had to stop Carlson in mid-sentence as she continued to inject inflammatory and irrelevant comments. R. 179. As a result of Carlson's inflammatory comments the verdict in this case was the result of passion, caprice, or prejudice. This is especially evident in light of the record as a whole. There was no evidence establishing any relevant connection between the corporate defendants and Johnson. Johnson admitted that he no employment agreement, commission agreement, or otherwise with any of the corporate defendants (MILBRO, Diwood, or Integrative), yet the jury returned a verdict against them. Such

verdict can therefore only be the result of passion, caprice, or prejudice. The verdict against Brock individually was equally unsupported by the record. The record shows numerous acts of disloyalty on the part of Johnson while in Brock's employ, including the solicitation of Brock's clients. The record also shows Johnson's intentional interference with the sale of Brock's practice and its effect on the sale. In light of the record, the jury's verdict can only be the result of passion, caprice, or prejudice. The verdict being unsupportable by the facts, the court erred in denying the Defendants' motions for a new trial and new trial absolute.

CONCLUSION

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

Respectfully submitted,

J. Falkner Wilkes (SC Bar #12893)
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
(864) 271-6035 (facsimile)
Counsel for Appellants

January 2, 2019.

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Certificate

I certify that the Final Brief and Reply of Appellant are in compliance with Rule 211(b).

Respectfully submitted,

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Counsel for Appellants

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