

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

Trisha Gibbons,)
)
Plaintiff,)
)
-vs-)
)
Aerotek, Inc.,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

ORDER
C.A. # 2018CP4005124

RECEIVED
Jul 30 2020
SC Court of Appeals

This matter came before the Court upon Defendant Aerotek, Inc.'s Motion for Attorneys' Fees and Costs following a jury trial held on January 29-30, 2020 which resulted in a directed verdict in favor of the Defendant. The parties consented to having the hearing by way of telephone conference without a court reporter. Participating in the hearing were Paul Porter for the Plaintiff and William Corum and Patrick Quinn for Defendant.

The Plaintiff filed an action against Schneider Electric USA, Inc. and Aerotek seeking damages for her termination from a temporary job at Schneider Electric due to her absence from work because of a subpoena requiring her attendance at a court proceeding. Ultimately, the Plaintiff settled her claim against Schneider Electric but proceeded against Defendant Aerotek. In the Complaint, the Plaintiff asserted two causes of action against Aerotek: (1) Violation of S.C. Code Ann. § 41-1-70; and, (2) Breach of Contract. The case went to trial on January 29-30, 2020 and at the close of the evidence, Aerotek's Motion for a Directed Verdict was granted and the Plaintiff's Complaint Dismissed. An Order granting the directed verdict was issued on February 3, 2020. On February 13, 2020, Aerotek filed a Motion for Attorneys' fees and costs pursuant to the terms of the "Employment Agreement" between the Plaintiff and Aerotek.

In its Motion, Aeortek seeks attorneys' fees of \$201,450.50 and costs of \$10,365.10 in an action where the Plaintiff was limited to a recovery of approximately \$25,000 under S.C. Code Ann. §41-1-70 (which limits the Plaintiff's recovery to one year's salary). The Court denies Aerotek's Motion for Attorneys' Fees and Costs on 2 separate grounds:

1) In response to the Complaint, Aerotek filed an Answer which set forth several affirmative defenses. The Answer did not contain a counterclaim against the Plaintiff seeking attorneys' fees and the final paragraph contains "boilerplate" language requesting a dismissal of the action and requested that the Court "award Aerotek its attorneys' fees and costs expended." Similar language requesting "attorneys' fees and costs" is included in most pleadings filed with this court, both Complaints and Answers, whether applicable or not. Other than this boilerplate language in the "Wherefore" clause at the conclusion of the Answer, there is no other reference to Aerotek's claim or basis for attorneys' fees. Since Aerotek is seeking a judgment against the Plaintiff for more than \$200,000, the Court finds that the pleadings must comply with Rule 8(a), SCRPC, which requires the pleading contain "a short and plain statement of the facts showing that the pleader is entitled to relief" The Court finds that the Defendant failed to include allegations of any facts supporting its basis for a recovery attorneys' fees and costs and no reference to the provisions of the Employment Agreement. Aerotek cites *Baird Pac West v. Blue Water Sunset Park, Inc.* No 2004-011 (S.C. Ct. App. 2004) in its Memorandum supporting its argument that seeking attorneys' fees is not waived despite the fact this claim is not asserted in its Answer; however, Aerotek's reliance on this case is misplaced. First, the cited case is an unpublished opinion and therefore has no precedential value (Rule (d)(2), SCACR). Secondly, in that case the Court of Appeals found that waiver of attorneys' fees had not occurred because the claim had been asserted in a Motion filed months before the hearing on that issue and opposing counsel did not object to the request for attorneys' fees. Based on the review of the pleadings

and argument of counsel, the Court finds that Aerotek failed to sufficiently plead facts supporting its claim for this relief and put the Plaintiff on proper notice of the basis for the attorneys' fees and costs which it is seeking in the Motion filed after judgment was entered.

2) The Employment Agreement on which Aerotek bases its claim for attorneys' fees and costs was never introduced as evidence. Even though a copy of an employment agreement was attached to Aerotek's Memorandum in Support of its Motion, there was no affidavit from a representative of Aerotek as to the authenticity of the agreement or that it had been signed by the Plaintiff. Nor was the Employment Agreement introduced as evidence during the trial of the case. In opposition to this Motion, Plaintiff filed her affidavit stating that she did not recall signing the Employment Agreement, thus putting the authenticity of the agreement in issue. Therefore, Aerotek has the burden of establishing the terms of the Employment Agreement and that it was signed, physically or electronically, by the Plaintiff. *See, Pee Dee Prod. Credit Ass'n v. Joye*, 284 S.C. 371, 373, 326 S.E.2d 650, 652 (1984) (stating that once the authenticity of a signature is placed in issue, the burden of proof as to the genuineness of the signature is on the party claiming under the signature). Aerotek failed to provide any affidavit authenticating the Employment Agreement in question or confirming that the Plaintiff has signed it electronically as proposed. Since the Plaintiff did not stipulate to the authenticity of this Employment Agreement, the Court finds that Aerotek failed to meet its burden in proving the terms of the Employment Agreement or that it was signed by the Plaintiff.

Based on the grounds set forth above, the Court denies Aerotek's Motion for Attorneys' Fees and Costs.

It is so ordered.

Signature of Judge Gravely on following page



Richland Common Pleas

Case Caption: Trisha Gibbons vs Schneider Electric Usa Inc , defendant, et al

Case Number: 2018CP4005124

Type: Order/Attorney Fees


So Ordered

s/ Honorable Perry H. Gravely, #2755

CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2020, I served a copy of the foregoing document, via United States Mail, postage prepaid, on:

J. Paul Porter
Cromer Babb Porter & Hicks LLC
P.O. Box 11675
Columbia, SC 29211
Attorney for Trisha Gibbons

By: 
Administrative Assistant