THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM GEORGETOWN COUNTY
COURT OF COMMON PLEAS

JOE M. CROSBY, MASTER-IN-EQUITY

APPELLATE CASE NO.: 2020-000597

RECEIVED
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SC Court of Appeals

CRM OF THE CAROLINAS, LLC,

Appellant,

v.

TREVOR W. STEEL,

Respondent.

APPELLANT'S FINAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

I. Did the trial court err in finding CRM of the Carolinas, LLC was not entitled to be reimbursed a $50,000 payment to Steel per the clear and unambiguous terms of their agreement when he did not remain employed for three (3) years?

II. Did the trial court err in denying CRM of the Carolinas, LLC's request for attorney's fees?

STATEMENT OF THE CASE

CRM of the Carolinas, LLC (hereinafter "CRM") filed this action on October 11, 2017, via Verified Complaint, asserting causes of action against Trevor W. Steel (hereinafter "Steel") for Breach of Contract, Anticipatory Breach of Contract, Slander *Per Se* and Intentional Interference with Prospective Contractual Relations. (R. pp. 021-034). CRM also filed a Motion for Temporary Restraining Order and a Motion for Temporary Injunction on the same date. (R. pp. 035-063). The Honorable Eugene C. Griffith, Jr. granted the Temporary Restraining Order on October 24, 2017 and the Honorable Larry B. Hyman, Jr. granted the Motion for Temporary Injunction on November 17, 2017. (R. pp. 001-002; 003-013).

Steel filed an Answer and Counterclaim on December 1, 2017 denying the allegations of the Verified Complaint and asserting a counterclaim for breach of contract and wrongful restraint of trade. (R. 064-074). CRM filed a reply to the counterclaims on October 11, 2019. (R. 075-076).

This action was referred to the Master-in-Equity by consent and tried non-jury on October 14, 2019. At the call of the case, Steel abandoned his counterclaims and the case proceeded on CRM's claims. The court issued its Order finding in favor of Steel on March 12, 2020. (R. 017-020). Appellant timely served its Notice of Appeal on April 3, 2020.

FACTS

CRM is a general contractor, mechanical contractor and electrical contractor performing construction and maintenance services in fourteen (14) states, primarily at large resorts and buildings. (R. pp. 89-90). CRM is based in Pawleys Island, South Carolina and is run by Keith Errico. (R. pp. 89-90). Steel owned a pressure washing and painting business in Pawleys Island, called Clean Image, LLC. (R. p. 90). CRM had a pressure washing and painting division but "could never really get it moving forward" and was looking for someone "to partner up with." (R. p. 90). Errico approached Steel about joining CRM and began negotiating an agreement. Steel informed Errico that he had a large amount of debt associated with his business and would need CRM's assistance in satisfying that debt in order to shut down his business and join CRM. (R. p. 91). Specifically, Steel told Errico he needed CRM to pay him Fifty Thousand ($50,000.00) Dollars to pay off the debt on his existing business. (R. p. 91). CRM presented Steel a contract for his signature dated November 10, 2016 to confirm the parties understanding of their arrangement. (R. pp. 139-144)

The Employment Contract provided, *inter alia*, that Steel would be paid an annual salary of $90,000 and would be employed at will, as well as a non-compete and non-solicitation provisions. (R. pp. 139-144). On the same day, November 10, 2016, the parties executed an Employment Contract Addendum. (R. pp. 145-146). This addendum provided that CRM would pay Steel an initial payment of $50,000 which would "be duly earned after 3 years from the date of execution of the Employment Contract." (R. pp. 145-146). The Addendum further provided that "should Employee leave the employment of CRM of the Carolinas, LLC before the expiration of said 3-year period, Employer would

be entitled to be reimbursed for the Fifty Thousand ($50,000.00)." (R. pp. 145-146). CRM had never, in the history of the company, paid anyone that much compensation to join the company. (R. p. 109).

While the Addendum stated the $50,000 was for initial compensation, the actual check stub delivered to Steel dated November 10, 2016 indicates the payment was for "goodwill". (R. pp. 155, 115, 119).

CRM is partially owned by an Employee Stock Ownership Program ("ESOP"). (R. p. 95). As a result, the company's finances and accounting are subject to regular audits. (R. p. 95). After one of the required audits, Errico was instructed CRM needed to reclassify the $50,000 payment to Steel. Specifically, CRM was instructed to recategorize the payment to Steel from "initial compensation" to purchase of the goodwill and the client list of Clean Image, LLC. (R. p. 95). Apparently, whoever performed the audit was unaware the check and check stub presented to Steel on November 10, 2016 did, in fact, indicate the payment was for "goodwill." (R. p. 119). Thus, on March 3, 2017, the parties executed a new Employment Agreement Addendum. This Addendum provided that the original Addendum "incorrectly identified" the $50,000 payment as initial compensation but was now being classified and identified as payment "for the good will and client list of Employee's former company, Clean Image, LLC." (R. p. 147). The Addendum further provided that if the Employee left his employment with CRM he would "be entitled to keep his former company name and client list, excluding any new clients developed during Employee's work for CRM." (R. p. 147). Steel never provided a client list to CRM. (Tr. p. 120).

At the time of the execution of the new Addendum, Steel's performance had been poor, and he had already been written up or disciplined several times. (R. p. 96). After further poor job performance, the CRM manger to whom Steel reported made the decision in May of 2017 to terminate him. (R. pp. 96, 107-108). When he was terminated Errico specifically asked Steel to repay the $50,000. (R. p. 96). Less than a week later, Steel approached Errico, apologized for his poor performance, and assured Errico he could and would do better and promised improvements. (R. pp. 97-98, 114). At the time this division of the business was "bleeding money" and Errico told Steel the company could not afford to continue a $90,000 salary. Errico offered, and Steel accepted, a 50% salary reduction to $45,000, although Steel continued to be eligible for performance incentives bases on the performance of his division. (R. pp. 97-98).

Approximately five to six months later, however, things took an even worse direction. Errico had known or had relationships with the Brittain family and their company, Brittain Resort Management, for over 25 years. (R. p. 98). In fact, Brittain Resort Management was one of CRM's largest clients. Errico had been negotiating a contract with Brittain for between seven and eight months and expected the contract to be signed by Brittain in late September or early October. (R. p. 98).

Instead of receiving a signed contract from Brittain, however, Errico received a call from them expressing great concern. Errico was told that Steel approached the Brittain organization and told them that CRM was not capable of performing the contract, but that he could and that it should give him the business instead. This occurred while Steel was on CRM time and being paid a salary by CRM. Brittain therefore refused to sign the contract with CRM. (R. p. 99). As a direct result of Steel's tortious interference, CRM and

Errico had to spend the next several months renegotiating the contract and "were trying to save face with our clients". Errico testified that in order to get the business, CRM "lowered the compensation and pretty much did the thing pro bono." (R. p. 100).

Steel voluntarily resigned from CRM on October 2, 2017. (R. p. 118). Despite losing six figures on the Brittain deal, CRM and Errico only wanted to get their $50,000 back from Steel, with its attorney's fees, and did not wish to bankrupt him. (r. pp. 100, 103-105).

STANDARD OF REVIEW

"On appeal from an action at law tried without a jury, the appellate court's standard of review extends only to the corrections of errors of law." *Frampton v. S.C. Dep't of Transp.*, 406 S.C. 377, 752 S.E.2d 269, 273-74 (Ct.App. 2014); *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 85-86, 221 S.E.2d 773, 775 (1976). The factual findings of the trial judge will not be disturbed "unless a review of the record discloses there is no evidence which reasonably supports [its] findings." *Id.*

ARGUMENT

I. THE TRIAL COURT ERRED IN FINDING CRM WAS NOT ENTITLED TO BE REPAID ITS $50,000 PAYMENT BY STEEL WHEN HE FAILED TO REMAIN EMPLOYED FOR THREE YEARS PER THE CLEAR AND UNAMBIGUOUS TERMS OF THEIR AGREEMENT.

It is undisputed the parties executed and entered into an agreement. (R. pp. 145-147). The agreement clearly stated that if Steel did not remain employed by CRM for at least 3 years, he would be required to repay the $50,000 payment to him by CRM on November 10, 2016. The court neither found, nor did Steel argue, that any agreement, or any portion thereof, was ambiguous. Steel first attempted to state that his understanding of the agreement was that he did not have to pay the

money back if he quit, which is clearly not stated in the agreement, but then he admitted he did not know what the agreement provided with regard to his requirement to pay the money back.

Q. And you knew the document you signed said if I quit I have to pay the $50,000 back?

A. No, sir. I don't think it said if I quit.

Q. What do you think it said, Mr. Steel?

A. I'm not sure.

(R. p. 118).

The Court's Order contains no explanation at all as to how it determined Steel had no contractual obligation to return the money. "When interpreting a contract, a court must ascertain and give effect to the intention of the parties. *Wallace v. Day*, 390 S.C. 69, 74, 700 S.E.2d 446, 449 (Ct.App. 2010). "To determine the intention of the parties, the court must first look at the language of the contract . . ." *Id. (*citing *C.A.N. Enters., Inc. v. S.C. Health & Human Servs. Fin. Comm'n*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988). The language of the contract could not be any clearer, if Steel was not employed for 3 years, the money would have to be repaid. Steel never disputed the language of the contract or the parties' intention.

Rather, Steel's lone contention and defense to the unambiguous agreement he signed, and seemingly adopted by the Court, is that the reclassification of the payment from compensation to goodwill somehow invalidates the entire agreement. Of course, the evidence in the records reveals that the payment was, in fact, designated as "goodwill" on the check and check stub. (R. p. 155).

The Court's Order makes a factual finding that "[E]licted testimony from the parties

clearly established that the parties altered and amended, through written addendum, the terms of employment, amount and designation of financial compensation, as well as the job requirements and responsibilities on multiple occasions throughout the lifetime of the business relationship between the parties." (R. p. 18). A cursory review of the record will establish there is no evidence to support this finding. There was one addendum addressing the classification of the payment to Steel because someone apparently did not know the check to him was for goodwill. Neither addendum in any way altered or amended Steel's job duties or responsibilities, the terms of his employment or the amount of his financial compensation. There was only one change to Steel's compensation and that was not in any addendum but done orally after he requested Errico give him his job back after being fired. In addition to these facts not being anywhere in the record, the more important question is what effect they could possibly have on the parties' agreement even if they were. The reduction in Steel's salary after his "re-hiring" had no legal effect on the contract he signed to return the $50,000 if he wasn't employed for 3 years and neither Steel nor the Court cite any legal authority supporting such an argument or position.

The sole statement in the Court's Order finding for Steel simply states, "Plaintiff failed to meet the necessary burden of proof to substantiate its claims against the Defendant." (R. p. 19). There is no explanation of which element(s) may not have been proven or established, or even a mention, much less discussion, of the contract at issue or its language. There is no discussion or findings regarding the parties' intentions. There are no factual findings or legal analysis of how the claim failed or why the contract was not enforced. Other than the one conclusory statement, no legal basis or conclusion is

set forth stating the reasoning the contract claim failed. South Carolina Rule of Civil Procedure 52(a) specifically provides, in pertinent part:

> In all actions tried upon the facts without a jury or with an advisory jury, the court shall find facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; . . . Requests for findings are not necessary for purposes of review.
>
> The Order fails to comply with S.C.R.C.P. 52(a).

In finding against CRM on its claim for attorney's fees, the Court finds "the classification of the payment of funds was changed a number of times by the Plaintiff; that on one occasion the change conferred an alleged monetary benefit to the Plaintiff." (R. p. 19). Again, a review of the record will reveal there is no evidence or testimony whatsoever that establishes any "monetary benefit" to CRM by designating the payment as goodwill, which it was from the beginning, rather than compensation. Again, however, the overarching question is what if there was some benefit to CRM? How would CRM's benefit from the changed designation or classification of the payment in any way legally alter Steel's contractual obligation to repay? Neither Steel nor the Court ever offer any legal analysis of how an accounting classification of the payment, or a change thereof, can magically wipe out Steel's undisputed promise to pay the money back.

"When the language of a contract is clear and unambiguous, the determination of the parties' intent is a question of law for the court." *Wallace*, 700 S.E.2d at 449 (citing *Hawkins v. Greenwood Dev. Corp.*, 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct.App. 1997). The trial court committed an error of law in finding that Steel did not intend to pay the money back if he was not employed with CRM for three years, or in finding the change in classification of the payment, even if it did change, somehow alleviated his contractual promise.

The trial court made at least two findings of fact wholly unsupported in the record and made an error of law in finding Steel did not breach his contract with CRM by failing to repay the $50,000.

II. THE TRIAL COURT ERRED IN DENYING CRM'S REQUEST FOR ATTORNEY'S FEES.

In its Verified Complaint, CRM requested an award of attorney's fees and costs in addition to any monetary damages or injunctive relief to which it may be entitled. (R. pp. 29, 32). Specifically, CRM sought declaratory relief in the form of construction of the contract pursuant to South Carolina Code Ann. §15-53-40 and sought an award of attorney's fees as costs pursuant to South Carolina Code Ann. §15-53-100. (R. p. 29). CRM submits its request for attorney's fees was denied as an error of law based upon the trial court's erroneous ruling on the contract issue. If this Court determines the trial court committed an error of law in its construction of an unambiguous contract which clearly evidenced their intent regarding the payback of the $50,000 payment, then it should logically follow that the trial court's ruling denying the fees was also in error.

CRM prevailed in obtaining both a preliminary restraining order and a temporary injunction against Steel. (R. pp. 001-002, 003-013). While there appears to be no appellate opinion definitively holding that attorney's fees are, or are not, recoverable as costs under §15-53-100, there appear to be cases not altogether eliminating the possibility. *See*, *Lollis v. Dutton*, 421 S.C. 467, 807 S.E.2d 723 (Ct.App. 2017); *Cullen v. McNeal*, 390 S.C. 470, 702 S.E.2d 378 (Ct.App. 2010); *South Carolina Elec. & Gas Co. v. Hartough*, 375 S.C. 541, 654 S.E.2d 87 (Ct.App. 2007).

CRM submits that once this Court eliminates the findings of fact without support in the record and correspondingly corrects the error of law regarding the contract construction, it is entitled to an award of attorney's fees as the prevailing party successfully obtaining declaratory and injunctive relief.

CONCLUSION

Based on the forgoing, Appellant respectfully requests the trial court's Order finding for Steel should be vacated or reversed and remanded with instructions to enter judgment in favor of CRM against Respondent in the amount of $50,000, plus attorney's fees and costs in the amount of $6,159.42. Additionally, Appellant would ask that the judgment be reversed for any other reason appearing in the record of the case.

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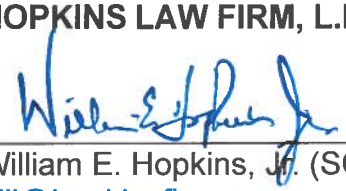

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CERTIFICATION OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

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