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
Aug 10 2020
SC Court of Appeals

CRM OF THE CAROLINAS, LLC,

Appellant,

v.

TREVOR W. STEEL,

Respondent.

APPELLANT'S FINAL REPLY BRIEF

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ARGUMENT IN REPLY

I. APPELLANT TIMELY FILED AND SERVED ITS NOTICE OF APPEAL

The Master in Equity filed the Order in this action via electronic filing on March 12, 2020 at 12:37 p.m. (R. p. 20). Therefore, pursuant to the South Carolina Rules of Appellate Procedure, CRM was required to file and serve its Notice of Appeal on or before April 11, 2020. Rule 203(b)(1), SCACR. Since April 11 was a Saturday, CRM was required to file its Notice of Appeal on or before Monday, April 13, 2020. In fact, CRM filed and served its Notice of Appeal on April 3, 2020, a full ten (10) days early. Unfortunately, as can be seen on the Certificate of Service with the Notice of Appeal, the mailing address for Respondent's counsel had an incorrect number. (R. p. 77). Per the Certificate of Service, the Notice of Appeal was served on Respondent's counsel at "Post Office Box 4416" in Pawleys Island, South Carolina. The actual mailing address for Respondent's counsel is "Post Office Box 4413" in Pawleys Island, South Carolina. Therefore, the document was returned to Appellant's counsel and counsel served the document at the correct address the same date it was received from the U.S. Post Office which was April 15, 2020.

There is no dispute, however, that Respondent's counsel had previously received the Notice of Appeal via at least two (2) separate means. First, Respondent's counsel was served the Notice of Appeal via electronic filing from the Georgetown County Clerk of Court on April 3, 2020. (R. p. 78). In addition, the paralegal for Respondent's counsel specifically requested a copy of the Notice of Appeal on April 6, 2020, and the Notice of Appeal was provided to her less than three (3) minutes later. (R. pp. 161-162). Thus, it is indisputable Respondent's counsel had received the Notice of Appeal both via the South

Carolina Court's NEF system on April 3, 2020 and via direct email to his office on April 6, 2020. Moreover, the Notice of Appeal was, in fact, timely served on April 3, 2020, via First Class U.S. mail only with an incorrect digit in the mailing address, even though such service by mail was not necessary as set forth below.

The South Carolina Electronic Filing Policies and Guidelines further supports CRM's position of timely service. Specifically, Section 4(e), titled Electronic Service, specifically addresses the issue. Section 4(e)(3) provides:

> Service of a pleading, motion, or other paper by NEF subsequent to the summons and complaint or other filing initiating a case in complete at the time of the submission of the pleading, motion or other paper for E-Filing, provided a NEF is transmitted by the E-Filing system in accordance with (e (2) of this Section. The act of E-Filing the pleading, motion or other paper is the equivalent of depositing it in the United States Mail under Rule 5(b)(1), SCRCP. The NEF constitutes proof of service under Rule 5(b), SCRCP, and the date of service shall be the date stated in the NEF as the "Official File Stamp." Where notice of the filing of a pleading, motion or other paper is served by a NEF, the E-Filer need not file proof of service, but the E-filer must retain a copy of the NEF as proof of service.

Thus, pursuant to the E-Filing guidelines, the Notice of Appeal was timely filed and served on April 3, 2020 and Respondent's argument to the contrary is without merit and should be dismissed.

Furthermore, Respondent cites the case of *Wells Fargo Bank, N.A. v. Fallon Properties of South Carolina, LLC*, 422 S.C. 211, 810 S.E.2d 856 (2017) in support of its argument. In *Wells Fargo*, the Supreme Court of South Carolina held that notice of entry of an order via e-mail was sufficient to trigger the running of the deadline to file and serve a notice of appeal. Applying the same principal, receipt of the Notice of Appeal via email from the South Carolina Court's NEF System and directly from Appellant's counsel via email, in addition to service via First Class U.S. Mail, should more than sufficiently satisfy

the requirements of the Rules of Appellate Procedure. If the purpose of the Rule is to timely provide notice of an appeal to Respondent and its counsel, there is no dispute such notice and the Notice of Appeal itself was provided to Respondent's counsel on two occasions ten days in advance of the deadline.

II. BOTH OF APPELLANT'S ISSUES WERE PRESENTED AT TRIAL AND RULED UPON BY THE COURT

Respondent argues that CRM did not "preserve" the issues which are now on appeal. CRM raises two (2) issues on appeal, which are the identical issues presented at trial. Specifically, CRM submits the trial court erred in finding Steel did not owe CRM $50,000.00 pursuant to the written contract the parties signed, and that CRM was entitled to attorney's fees. Both of these issues were specifically presented to and ruled upon by the trial court. In fact, these were the only two issues submitted to and ruled upon by the trial court. Respondent has failed to identify the specific issue which is the subject of CRM's appeal which was not preserved for appeal.

Respondent states that CRM did not file any post-trial motions. This is true as none were necessary. South Carolina law is clear that "[P]ost-trial motions are required in two primary circumstances: to preserve issues that have been raised to the trial court but not yet ruled upon or when the trial court grants relief not requested or rules on an issue never raised at trial." Jean Hoefer Toal, et al., *Appellate Practice in South Carolina (2d Ed. 2002),* pp. 59-60; *Elam v. South Carolina Department of Transportation*, 361 S.C. 9, 602 S.E.2d 772 (2004). In fact, South Carolina appellate courts have held that issues are preserved for appeal even when a form order is issued, as long as the issues were raised and argued to the court and the record on appeal contains a transcript of the court proceedings. *Elam,* Id; *Bailey v. Segars*, 346 S.C. 359, 550 S.E.2d 910 (Ct. App. 2001).

Of course, there was no form order issued in this case, but rather the Master in Equity issued a written order outlining the issues, the arguments and his findings with regard to the contract entered into by the parties and the issue of attorney's fees.

Since both arguments were presented to the trial court and ruled upon by the trial court in a written order, the issues were preserved for appeal and Respondent's argument that the issues in this appeal were not "preserved" should be easily dismissed.

III. THE CONTRACT ENTERED BY THE PARTIES WAS NOT AMBIGUOUS AND THE ADDENDUM RECLASSIFYING THE $50,000 PAYMENT AS GOOD WILL RATHER THAN COMPENSATION DID NOT CREATE AN AMBIGUITY OR ALTER STEEL'S OBLIGATION TO REPAY IT IN ANY WAY

Respondent contends there were three (3) "separate" contracts entered into by the parties and that the terms of each were different. This is simply not true and the documents themselves prove otherwise. The Contract of Employment and the Employment Contract Addendum were both dated and signed by the parties on November 10, 2016. The Addendum was signed by Steel and specifically states that he would reimburse CRM the sum of $50,000.00 if he left the employment of the company in less than three (3) years. A new Employment Contract Addendum was signed by the parties on March 3, 2017. Contrary to Respondent's argument, this was not a "new" or separate contract. In fact, paragraph 1 of the March 3, 2017 Addendum signed by Steel specifically states:

> This Employment Contract Addendum dated March 3, 2017 supplements and is made a part of the Employment Contract, dated November 10, 2016, between CRM of the Carolinas, LLC hereby known as "Employer" and Trevor Steel herby [sic] known as "Employee."

Thus, this was not a new or separate contract as argued by Respondent, but clearly intended to be part of the terms of the initial contract, with only the classification of the payment amended.

Respondent argues that the agreement to repay the money was not included in the March 3, 2017 Addendum. Inclusion of that paragraph or obligation was not necessary since the Addendum clearly states the document was a supplement to, and part of, the November 10, 2016 contract. The only "change" or relevance of the March 3, 2017 Addendum, as testified to by Errico, was that the auditors required an amended classification of the $50,000.00 payment to be for goodwill and Steel's client list rather than "compensation." (R. pp. 95-95). The March 3, 2017 Addendum did not supplant or replace the November 10, 2016 agreement and therefore a "new" promise to repay the $50,000.00 was not necessary or required. The fact that the March 3, 2017 Addendum was signed to reclassify the payment from compensation to goodwill does not in any way make the contract between the parties ambiguous or create any doubt. Respondent argues that CRM failed "to offer any semblance of an explanation as to why the language drafted by CRM differs between the two Addenda by the March 3, 2017 Addendum fails to include the identical repayment language contained in the November 10, 2016." (Resp. Brief, pp. 9-10). In fact, CRM offered the exact and accurate explanation as stated above and as testified to by Errico at trial. (R. pp. 95-96). The sole reason the new Addendum was created was because the company's auditors required a re-classification of the $50,000.00 payment and the remaining terms were not repeated because it was not necessary since this was just a supplement and part of the original contract. Since there was no "new" agreement, there was no requirement to include the repayment term yet

again. Steel had already agreed, in writing, to repay the $50,000.00 if he was employed with CRM less than three (3) years, regardless of whether the $50,000.00 was classified as compensation or goodwill.

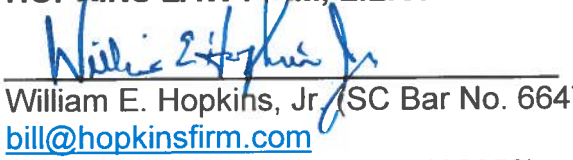
The bottom line, as the unrefuted evidence established, was that Steel voluntarily resigned his employment less than three (3) years after the date he signed the contract and therefore was contractually obligated to repay the $50,000.00 to CRM. Steel failed to repay CRM the $50,000.00 and therefore was clearly in breach of the contract he signed.

The trial court erred in finding Steel was not obligated to repay CRM its $50,000 when Steel resigned from the company less after than 3 years of employment.

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.

HOPKINS LAW FIRM, L.L.C.



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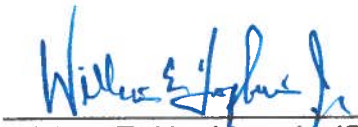
CERTIFICATION OF COUNSEL

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



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