

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Robert E. Hood

Appellate Case No. 2019-001811

RECEIVED

Oct 22 2020

SC Court of Appeals

Best Choice Roofing & Home Improvement, Inc.,..... Appellant,

v.

Tyler Woods,.....Respondent.

RECORD ON APPEAL

Townes B. Johnson III (SC Bar# 75412)
TOWNES B. JOHNSON III, LLC
PO Box 9246
GREENVILLE, SC 29604
PH: (864) 757-4899
Attorney for Appellant

Nekki Shutt, Esq.
Sarah J.M. Cox, Esq.
Burnette Shutt & McDaniel, P.A.
P.O. Box 1929
Columbia, SC 29202
Attorney for Respondent

INDEX

ORDERS

Form 4, October 3, 2018.....	1
Order Granting Respondent’s Motion for Summary Judgment and denying Appellant’s Motion to Amend Complaint, filed February 19, 2019.....	4
Order Granting Respondent’s Motion for Summary Judgment and denying Appellant’s Motion to Amend Complaint, filed March 20, 2019.....	8
Order denying Appellant’s Motion to Alter or Amend, filed October 22, 2019.....	11

PLEADINGS

Appellant’s Summons and Complaint, filed March 8, 2018.....	14
Respondent’s Motion to Dismiss, filed June 11, 2018.....	34
Respondent’s Answer and Counterclaim, filed June 11, 2018.....	36
Respondent’s Motion to Compel, filed September 7, 2018	44
Respondent’s Notice of Motion and Motion to Deem Admitted Requests for Admission Not Responded to By Plaintiff, November 16, 2018.....	65
Appellant’s Motion to Amend, filed December 18, 2018.....	72
Respondent’s Motion for Summary Judgment, filed December 19, 2018.....	80
Respondent’s Memorandum in Support of Motion for Summary Judgment, filed January 24, 2019.....	82
Respondent’s Motion in Opposition of Plaintiff’s Motion to Amend the Complaint, filed January 30, 2019.....	118
Appellant’s Motion to Reconsider, Alter or Amend, filed February 28, 2019.....	127
Appellant's Motion to Alter or Amend, filed March 28, 2019.....	130

TRANSCRIPTS

Transcript of Hearing, January 30, 2019.....	132
--	-----

OTHER MATERIAL

Cease and desist letter sent from Appellant to Respondent’s former employer,
dated November 6, 2017.....148

Notice of Appeal, dated October 22, 2019.....150

CERTIFICATES

Certificate of Counsel.....152

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP4001318

Best Choice Roofing & Home Improvement Inc
PLAINTIFF(S)

Tyler Woods
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Matter taken under advisement. Plaintiff, Best Choice Roofing & Home Improvements, Inc. agrees to respond to discovery within 10 days or the lawsuit will be dismissed. Judge will hold this case open for 10 days to allow Plaintiff time to respond.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/03/2018 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Richland Common Pleas

Case Caption: Best Choice Roofing & Home Improvement Inc vs Tyler Woods

Case Number: 2018CP4001318

Type: Order/Electronic Form 4

So Ordered

s/DeAndrea Gist Benjamin, #2161

Electronically signed on 2018-10-03 11:26:47 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Best Choice Roofing & Home
Improvement, Inc.,

Plaintiff,

v.

Tyler Woods,

Defendant.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

C.A. No. 2018-CP-40-01318

**ORDER GRANTING SUMMARY
JUDGMENT AGAINST PLAINTIFF AND
DENYING PLAINTIFF'S MOTION TO
AMEND COMPLAINT**

This matter came before the Court on three motions: (1) the motion of Defendant Tyler Woods (Defendant) for entry of summary judgment and damages pursuant to Rule 56(a)-(b), SCRCP, against Plaintiff Best Choice Roofing & Home Improvement, Inc. (Plaintiff); (2) on the motion of Plaintiff for leave to amend its Complaint pursuant to Rule 15, SCRCP; and, (3) on motion of Defendant to Deem Admitted Requests for Admissions not Responded to. A hearing was held on January 30, 2019. Present was defense counsel Nekki Shutt, Esq., and Plaintiff's counsel Townes Johnson, Esq. At the hearing, Defendant withdrew his Motion to Deem Admitted filed on November 16, 2018 with opposing counsel's consent.

Having fully considered all admitted evidence, memoranda of law, as well as oral and written argument presented to the Court, Plaintiff's motion to amend the Complaint is denied and Defendant's motion for summary judgment is granted with Plaintiff's consent.

Based upon the pleadings and evidence, I find as follows:

1. Defendant would be prejudiced by Plaintiff being granted leave to amend

the Complaint under Rule 15, SCRPC at this juncture in the proceedings.

2. Defendant did not work within 100 miles of the location where he worked for Plaintiff when Plaintiff sent a cease-and-desist letter to Defendant's South Carolina employer or when Plaintiffs filed its Complaint against Defendant.

3. Plaintiff sent a cease-and-desist letter on November 30, 2017, to Defendant's South Carolina employer, Premier Roofing, on the unfounded grounds that Defendant violated his employment agreement with Plaintiff.

4. Plaintiff's claim that Defendant breached the non-competition provision of the employment agreement was not grounded in fact or law.

5. This case involves a third party's intentional interference with the business relationship of an employee and his employer as well as the filing of a frivolous lawsuit in light of the Plaintiff's untenable claim of breach of contract against Defendant. As relief, Defendant seeks damages including but not limited to lost wages, loss of reputation, attorney's fees, costs, and expenses under various causes of action including the South Carolina Frivolous Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10(G).

8. There is overwhelming, uncontested evidence that Defendant did not breach the non-competition provision of his employment contract with Plaintiff.

9. There is credible, uncontested evidence that Plaintiff intentionally interfered with Defendant's business relationship with his South Carolina employer by issuing an unfounded cease-and-desist letter and causing Defendant to lose his job.

10. There is also credible, uncontested evidence that Plaintiff filed a frivolous lawsuit as defined by the South Carolina Frivolous Proceedings Sanctions Act, S.C.

Code Ann. § 15-36-10, *et seq.*

11. Plaintiff is not entitled to leave to amend the Complaint under Rule 15, SCRCP now to abandon all of its original allegations and to plead previously unraised allegations in a transparent attempt to avoid liability.

12. Defendant is entitled to summary judgment under Rule 56, SCRCP as to the Complaint as there is not even a scintilla of evidence in favor of Plaintiff.

13. Plaintiff consents to summary judgment being granted to Defendant on the allegations in the Complaint.

14. Defendant is also entitled to summary judgment under Rule 56, SCRCP, as to his Counterclaim against Plaintiff for Intentional Interference with a Business Relationship (Answer and Counterclaim, ¶¶ 1-50) and for Violation of the South Carolina Frivolous Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10, *et seq.* (*Id.*, ¶¶ 1-24, 51-54.)

Based upon the foregoing and for good cause shown,

IT IS ORDERED Plaintiff's motion to amend the Complaint is denied.

IT IS FURTHER ORDERED that the Clerk of Court enter Summary Judgment in favor of Defendant against Plaintiff as to the Complaint and dismiss the Complaint with prejudice.

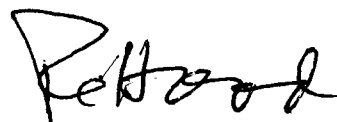
IT IS FURTHER ORDERED that the Clerk of Court enter Summary Judgment in favor of Defendant against Plaintiff as to the Counterclaims.

IT IS FURTHER ORDERED that as Defendant's Counterclaim seeks for unliquidated damages in the form of actual, incidental, consequential, and punitive damages, that this Court must set a separate damages hearing to receive such live

testimony as the parties may offer on the sole issue of damages. The Clerk of Court shall set a time for said hearing and provide notice to the parties.

IT IS ALSO ORDERED Plaintiff is entitled to recover attorney's fees and costs in an amount to be determined upon Defendant's filing of petition after damages have been determined.

IT IS SO ORDERED.



The Honorable Robert E. Hood
Presiding Judge
Fifth Judicial Circuit

2/14, 2019
C. M. H., South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Best Choice Roofing & Home
Improvement, Inc.,

Plaintiff,

v.

Tyler Woods,

Defendant.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

C.A. No. 2018-CP-40-01318

**ORDER GRANTING SUMMARY
JUDGMENT AGAINST PLAINTIFF AS
TO THE COMPLAINT AND DENYING
PLAINTIFF'S MOTION TO AMEND
COMPLAINT**

This matter came before the Court on three motions: (1) the motion of Defendant Tyler Woods (Defendant) for entry of summary judgment and damages pursuant to Rule 56(a)-(b), SCRCP, against Plaintiff Best Choice Roofing & Home Improvement, Inc. (Plaintiff); (2) on the motion of Plaintiff for leave to amend its Complaint pursuant to Rule 15, SCRCP; and, (3) on motion of Defendant to Deem Admitted Requests for Admissions not Responded to. A hearing was held on January 30, 2019. Present was defense counsel Nekki Shutt, Esq., and Plaintiff's counsel Townes Johnson, Esq. At the hearing, Defendant withdrew his Motion to Deem Admitted filed on November 16, 2018 with opposing counsel's consent.

Having fully considered all admitted evidence, memoranda of law, as well as oral and written argument presented to the Court, Plaintiff's motion to amend the Complaint is denied and Defendant's motion for summary judgment as to the Complaint is granted with Plaintiff's consent. This Court did not hear oral argument on Defendant's motion for entry of summary judgment and damages in his favor as to his Counterclaims pursuant to Rule 56(a)-(b), SCRCP and, therefore, that part of defense's motion is

denied without prejudice.

Based upon the pleadings and evidence, I find as follows:

1. Defendant would be prejudiced by Plaintiff being granted leave to amend the Complaint under Rule 15, SCRCP at this juncture in the proceedings.
2. Defendant did not work within 100 miles of the location where he worked for Plaintiff.
3. Defendant, accordingly, did not breach the non-competition provision, Section 9, of said employment agreement with Plaintiff.
4. Plaintiff is not entitled to leave to amend the Complaint under Rule 15, SCRCP now to abandon all of its original allegations and to plead previously unraised allegations.
5. Defendant is entitled to summary judgment under Rule 56, SCRCP as to the Complaint as there are no material facts in dispute.
6. Plaintiff consents to summary judgment being granted to Defendant on the original causes of action in the Complaint.

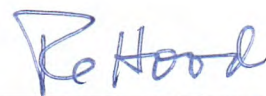
Based upon the foregoing and for good cause shown,

IT IS ORDERED Plaintiff's motion to amend the Complaint is denied.

IT IS FURTHER ORDERED that the Clerk of Court shall enter Summary Judgment in favor of Defendant against Plaintiff as to the Complaint and dismiss the Complaint with prejudice.

IT IS FURTHER ORDERED that Defendant's Motion for Summary Judgment as to the Counterclaims is denied without prejudice. The Clerk of Court shall move Defendant's Counterclaim forward on the trial docket.

IT IS SO ORDERED.



The Honorable Robert E. Hood
Presiding Judge
Fifth Judicial Circuit

3/19, 2019
W. J. [illegible], South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP4001318

Best Choice Roofing & Home Improvement Inc
PLAINTIFF(S)

Tyler Woods
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

Plaintiff's Revised Motion to Reconsider is denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/22/2019 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Richland Common Pleas

Case Caption: Best Choice Roofing & Home Improvement Inc vs Tyler Woods

Case Number: 2018CP4001318

Type: Order/Electronic Form 4

So Ordered

s/ R.E. Hood #2164

Electronically signed on 2019-10-22 13:44:11 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Best Choice Roofing & Home Improvement, Inc.,	)	C. A. No. 2018-CP-____ - _____
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Tyler Woods,	)	
	)	
Defendant.	)	
_____	)	

TO THE ABOVE NAMED DEFENDANT(S):

YOU ARE HEREBY summoned and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscribers at their offices, PO Box 9246, Greenville, South Carolina 29604, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court and judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully submitted this 1st day of March 2018,

TOWNES B. JOHNSON III, LLC

/s/ Townes B. Johnson III

Townes B. Johnson III (SC Bar# 75412)

PO Box 9246

Greenville, South Carolina 29604

PH: (864) 757-4899

tjohnson@sc.legal

Attorneys for Plaintiff

Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Best Choice Roofing & Home Improvement, Inc.,	)	C. A. No. 2018-CP-____ - _____
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Tyler Woods,	)	
	)	
Defendant.	)	
_____	)	

COMES NOW, the plaintiff, Best Choice Roofing & Home Improvement, Inc. ("Plaintiff"), complaining of the defendant, Tyler Woods ("Defendant"), and would show the following:

1. Plaintiff is an Tennessee corporation with its principal office located at 224 Old Shackle Island Road, Hendersonville, Tennessee 37075.

2. Upon information and belief, Defendant is a resident of the State of South Carolina, County of Richland, and is subject to the venue and jurisdiction of this Court.

3. Defendant entered into an Employment Agreement with Plaintiff, a true and correct copy of which is attached hereto and marked as "**Exhibit A**". Under Section 9 of the Employment Agreement entitled "Non-Compete and Confidentiality", Defendant agreed that should he "directly or indirectly engage, own, manage, control, operate, be employed by, participate in, or be connected in any manner with the ownership, management, operation, or control of any business similar to the type of business conducted by [Plaintiff] for a period of ONE (1) year and within 100 miles from the present location of [Plaintiff's] business" that he would pay to Plaintiff the sum of Fifteen Thousand and 0/100ths Dollars (\$15,000.00).

4. Defendant began employment with Premiere Roofing, LLC within one year and conducts business within said One Hundred (100) miles and whom is a direct competitor of

Plaintiff. As such, the aforementioned liquidated damage clause of the Employment Agreement has been triggered.

5. Defendant is indebted to the Plaintiff pursuant to said contract in the amount of Fifteen Thousand and 0/100ths Dollars (\$15,000.00), plus prejudgment interest at the legal rate, plus post-judgment interest at the legal rate, plus reasonable attorney's fees pursuant to the aforementioned Agreement.

6. Plaintiff has made numerous demands upon Defendant for payment of the amounts owed to Plaintiff as prayed for in this Complaint, but to date, said demands have either been ignored or gone unanswered. All of these demands were made prior to the initiation of this lawsuit. Plaintiff, therefore, hereby makes a demand for attorney's fees and cost of litigation.

WHEREFORE, Plaintiff hereby prays for the following relief:

- (a) Judgment against Defendant Tyler Woods in the amount of Fifteen Thousand and 0/100ths Dollars (\$15,000.00), together with attorneys' fees, costs, and interest;
- (b) Attorneys' fees;
- (c) Pre-judgment interest;
- (d) Costs of this action;
- (e) Such other and further relief that this Court deems just and proper.

Respectfully submitted this 1st day of March 2018,

TOWNES B. JOHNSON III, LLC

/s/ Townes B. Johnson III

Townes B. Johnson III (SC Bar# 75412)

P.O. Box 9246

Greenville, SC 29604

PH: (864) 757-4899

tjohnson@sc.legal

Attorneys for Plaintiff

Greenville, South Carolina



Rev 2/16/2017

EMPLOYMENT AGREEMENT

This Employment Agreement (the "Agreement") dated as of 4/19/17 (the "Effective Date") is made by and between Best Choice Roofing Southeast, LLC. - TN Corporation, (the "Employer") and Tyler Woods, (the "Employee"). The Employer and the Employee may be referred to individually as a "Party" or collectively as the "Parties".

RECITALS

WHEREAS, the Employer is engaged in the business of ROOFING AND HOME IMPROVEMENT; and

WHEREAS, the Employer desires to employ the Employee, and the Employee wishes to enter into such employment, on the terms and conditions set forth in this Agreement; and

WHEREAS, each Party is duly authorized and capable of entering into this Agreement.

NOW, THEREFORE, in consideration of the mutual acts and promises, covenants, agreements, representations, and warranties hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1 EMPLOYMENT.

The Employer hereby employs, engages, and hires the Employee on a full-time basis, and the Employee hereby accepts this employment subject to the terms and conditions of this Agreement. The Employee agrees and understands that [s]he is an employee "at will," and nothing herein shall be interpreted to mean that the Employee is anything other than an employee at will. The Employee's employment may be terminated by either Party at any time pursuant to Section 12 hereof.

2 TERM.

The term of this Agreement shall begin on 4/19/17 and continue until terminated by either Party in accordance with the provisions of Section 12 of this Agreement or by law. The period during which the Employee is employed pursuant to this Agreement shall be referred to as the "Employment Period."

3 COMPENSATION.

Subject to the terms and conditions of this Agreement, the Employee shall be compensated for his services as follows:

- (a) Base Salary. The Employer shall pay the Employee an annual base salary of \$ 400.00 (the "Salary"), payable in equal \$ 10,800.00 (weekly, biweekly, semi-monthly) installments at the end of each such period during the Employment Period. The Salary may be subject to such increases as may from time to time be determined by the [President] of the Employer. Employer makes no promises regarding the number of hours it will ask Employee to work in any given time period; Employee understands that the number of hours may vary with the needs of Employer.

OR (put "NA" through A or B if not applicable)

- (b) Hourly Wage. Employer shall pay the Employee an hourly wage of \$ _____. The hourly wage may be subject to such increases as may from time to time be determined by the [President] of the Employer. The pay periods, pay structure and information applicable to Overtime hours are referenced and explained in the Employee Handbook. No overtime without pre-approval from HR or Corporate officers. Employer makes no promises regarding the number of hours it will ask Employee to work in any given time period; Employee understands that the number of hours, as well as the work schedule may vary with the needs of Employer.
- (c) Monthly Bonus. Employee may receive a monthly bonus (paid first pay period after the 5th of the following month) for the below:

DOES THIS EMPLOYEE QUALIFY FOR A BONUS PACKAGE YES NO (circle one).

Bonus Tiers:

% 1 will be paid on the total net sales (net sales defined as gross sales, minus decking invoices, supplemental funds, tarping invoices, all credits and DRP or incentives provided to the accounts as well as the deduction of personal sales, General Managers or members of Corporate) equal to or in excess of \$ 100k.

% 2 will be paid on the total net sales (net sales defined as gross sales, minus decking invoices, supplemental funds, tarping invoices, all credits and DRP or incentives provided to the accounts as well as the deduction of personal sales, General Managers or members of Corporate) equal to or in excess of \$ 200k.

% 3 will be paid on the total net sales (net sales defined as gross sales, minus decking invoices, supplemental funds, tarping invoices, all credits and DRP or incentives provided to the accounts as well as the deduction of personal sales, General Managers or members of Corporate) equal to or in excess of \$ 300k.

% 4 will be paid on the total net sales (net sales defined as gross sales, minus decking invoices, supplemental funds, tarping invoices, all credits and DRP or incentives provided to the accounts as well as the deduction of personal sales, General Managers or members of Corporate) equal to or in excess of \$ 400k.

% — will be paid on the total net sales (net sales defined as gross sales, minus decking invoices, supplemental funds, tarping invoices, all credits and DRP or incentives provided to the accounts as well as the deduction of personal sales, General Managers or members of Corporate) equal to or in excess of \$ —.

Bonuses are paid on the first pay date after the 5th on the following month.

Bonuses are subject to fines assessed by the company. These fines are as follows:

\$50 reduction for a Certificate of Completion with a "3" rating or less

\$500 reduction for a BBB complaint

Bonus Reduction Forms submitted and approved by Management. Bonus Reduction Forms will reduce the amount of the net sales.

General Managers Only

When a customer has a balance that becomes 90 or more days delinquent, the amount of that contract will be removed from "bonusable revenue" in terms of bonuses, forgoing the reason or when the job was sold.

When bonuses are calculated (on or shortly after the 1st of each month), any customer who has a warranty or has unfinished work that has aged more than 10 days, the revenue from that customer's contract will be reduced from "bonusable revenue".

- (d) Tax Withholding. All sums payable to the Employee under this Agreement shall be reduced by all federal, state, local and other withholdings and similar taxes and payments required by applicable law.
- (e) Commissions. Employee will be allowed to earn commission(s). Attached to this Agreement is "Exhibit A", which defines and explains the Commission pay structure.

DOES EMPLOYEE'S JOB TITLE WARRANT COMMISSION? CIRCLE ONE YES NO

4 RESPONSIBILITIES AND DUTIES.

The Employee's responsibilities shall include (but shall not be limited to) the following: (the "Services").

Sales Manager Atlanta

From time to time, the Employer may revise the nature of the Employee's Services. The Employee will promptly and faithfully comply with all reasonable instructions, directions, requests, rules, and regulations made or issued by the Employer, and the Employee will perform the Services conscientiously and in a timely manner in and to the best of the Employee's abilities at all times, when and wherever required or desired by the Employer and pursuant to the express and implicit terms of this Agreement, to the reasonable satisfaction of the Employer. Such duties shall be rendered at Marietta, GA and at such other place or places as the Employer shall in good faith require or as the interest, needs, business, or opportunity of the Employer shall require.

5 OTHER EMPLOYMENT.

The Employee shall devote all of his time and attention solely to the Employer's business and interest. During the Employment Period, the Employee shall not engage, directly or indirectly, in any other business activity, regardless of whether it is pursued for gain or profit; provided, however, nothing contained in this Section 5 shall be deemed to prevent or to limit the right of the Employee to invest his money in real estate or in other companies if such investment does not oblige the Employee to assist in the operation of the affairs of such companies.

6 EXPENSES.

The Employer shall reimburse the Employee for all business expenses actually and properly incurred by the Employee in connection with his duties under this Agreement in accordance with the Employer's normal policies. The reimbursement of such expenses shall be subject to the Employee's provision to the Employer of receipts, statements, and vouchers to the Employer's satisfaction.

7 CONFIDENTIALITY.

During and after the Employment Period, except as permitted by the Employer or required by law, the Employee shall not divulge or appropriate to his own use or to the use of others any secret or confidential information or knowledge pertaining to or otherwise affecting the Employer's business including but not limited to any of its customer lists, products, services, costs, profits, markets, sales, trade secrets, or other information not readily available to the public without regard to whether any of the above will be deemed confidential, material, or important. The Parties stipulate that, as between them, such matters are important, material, and confidential and affect the effective and successful conduct of the Employer's business, and the Employer's good will, and that any breach of the terms of this Section 8 shall be deemed a material breach of this Agreement.

8 NON-SOLICITATION.

During the Employment Period and for a period of ONE (1) year thereafter, the Employee shall not:

- canvass or solicit the business of (or procure or assist in the canvassing or soliciting of) any client, customer, or employee of the Employer who is known to the Employee as a result of his association with the Employer during the Employment Period for the purposes of competing with the Employer;
- accept (or procure or assist the acceptance of) any business from any client, customer, or employee of the Employer known to the Employee as a result of his association with the Employer during the Employment Period for the purposes of competing with the Employer; provided, however, that the Employer may consent to such competition in writing; or
- otherwise contact, approach, or solicit (or procure or assist in the contacting, approaching, or soliciting of) any entity known to the Employee through his association with the Employer before the Effective Date in such a way as may cause detriment to the Employer.

9 NON-COMPETITION AND CONFIDENTIALITY

At the end of the Employment Period, by expiration or termination, the Employee shall not directly or indirectly engage, own, manage, control, operate, be employed by, participate in, or be connected in any manner with the ownership, management, operation, or control of any business similar to the type of business conducted by the Employer for a period of ONE (1) year and within 100 miles from the present location[s] of the Employer's business. If the Employee actually breaches or threatens to breach the terms of this Section 10, the Employer shall be entitled to a preliminary restraining order and injunction restraining the Employee from violating its provisions. Nothing in this Agreement shall be construed to prohibit the Employer from pursuing any other available remedies for such breach or threatened breach, including the recovery of damages from the Employee.

Training will be provided to Employee from Company at a significant expense to the Company. During this training and throughout the Employee's employment, Employee will have access to proprietary information pertaining to Company's business model. It is agreed that, forgoing the reason, upon the termination of Employee's employment for any reason, Employee may not use or disclose to anyone or any entity the information gained from training or employment by the Company. It is furthermore acknowledged that all information disclosed during training is to be considered proprietary. The definition of "use" shall be defined as utilizing any information gained during training/Employment which Employee subsequently uses or attempts to use for the benefit of Employee or any other entity or person(s) Employee may have any type of business relationship with.

The harm accruing to the Company by virtue of Employee's breach of the restrictive covenant set out in this Section cannot be calculated at this time. For this reason, Employee and the Company mutually agree that in the event of Employee's breach of this Section, the Company shall be entitled to liquidated damages of \$15,000.00. It is agreed and stipulated that such payment will be made to and received by Company as liquidated damages for the breach and/or early termination of this agreement and shall not be paid as a penalty.

10 AT WILL EMPLOYMENT

This is an at will employment (where provided by law). Either party may terminate this agreement without notice to the other party. Nothing in the Employer's policies, actions, or this document shall be construed to alter the at will nature of Employee's status with Employer, and Employee understands that Employer may terminate his/her Employment at any time for any reason or for no reason, provided it is not terminated in violation of State or Federal law.

11 TERMINATION.

The Company shall not by reason of the termination of the agreement be liable to the other for compensation, of present or prospective profits on sales or anticipated sales, or on account of expenditures, or on bonus payments, commissions or other compensation other than earned salary or hourly wages.

12 RETURN OF PROPERTY.

At the end of the Employment Period or at any time on the Employer's request, the Employee agrees to return to the Employer, retaining no copies or notes, all documents relating to the Employer's business including, but not limited to, reports, abstracts, lists, correspondence, information, computer files, computer disks, and all other materials and all copies of such material, obtained by the Employee during his employment with the Employer.

13 FURTHER ASSURANCES.

Each Party hereto shall cooperate and take such further action as may be reasonably requested by the other Party in order to carry out the terms and purposes of this Agreement and any other transactions contemplated herein.

14 ARBITRATION.

Any controversy or claim arising out of this Agreement or Employment with the Company (with exception to sections 7, 8, 9, 10 and 22), or the breach, termination, or invalidity of this Agreement shall be settled by arbitration in the County of Sumner, Tennessee in accordance with then governing rules of Tennessee. The arbitrator(s) shall be bound by the Agreement and shall interpret the Agreement in accordance with the applicable laws of the United States and the internal laws of the state of Tennessee. Any award, order, or judgment made pursuant to such arbitration shall be deemed final and shall be entered and enforced in any court of competent jurisdiction.

15 NOTICE.

Any notice or other communication provided for herein or given hereunder to a Party hereto shall be in writing and shall be given in person, by overnight courier, or by mail (registered or certified mail, postage prepaid, return receipt requested) to the respective Party at the following address:

If to the Employer:

Best Choice Roofing Southeast LLC.
115 Hazel Path Suite 4.
Hendersonville, TN 37075

If to the Employee:

110 Ferguson Rd
La Vergne, TN
37080

16 SUCCESSORS AND ASSIGNS.

Employment Agreement: Best Choice Roofing Southeast LLC. Page 5 of 17.

Employee Initials TW

This Agreement shall apply to all work performed by the Employee for the Employer, including any of its past, present, or future affiliates or subsidiaries, and shall be binding on the Employer's assigns, executors, administrators, and other legal representatives. This Agreement shall inure to the benefit of the Employer's successors and assigns. The Employee acknowledges that his services are distinctive and personal, and that he therefore may not assign his rights or delegate his duties or obligations under this Agreement.

17 NO IMPLIED WAIVER.

The failure of either Party to insist on strict performance of any covenant or obligation under this Agreement, regardless of the length of time for which such failure continues, shall not be deemed a waiver of such party's right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation under this Agreement shall constitute a consent or waiver to or of any other breach or default in the performance of the same or any other obligation.

18 GOVERNING LAW.

This Agreement shall be governed by the laws of the state of Tennessee. If litigation results from or arises out of this Agreement or the performance thereof, the Parties agree to reimburse the prevailing Party's reasonable attorneys' fees, court costs, and all other expenses, whether or not taxable by the court as costs, in addition to any other relief to which the prevailing Party may be entitled.

19 COUNTERPARTS/ELECTRONIC SIGNATURES.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. For purposes of this Agreement, use of a facsimile, e-mail, or other electronic medium shall have the same force and effect as an original signature.

20 SEVERABILITY.

- (a) Whenever possible, each provision of this Agreement, will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed, and enforced in such jurisdiction as if such invalid, illegal, or unenforceable provisions had never been contained herein.
- (b) [If the restrictions against solicitation in Section 8 or against competition contained in Section 10 of this Agreement shall be determined by a court of competent jurisdiction to be unenforceable because they extend for too long a period of time or over too great a geographical area, or because they are too expansive in any other respect, Sections 8 and 9 shall be interpreted to extend only over the maximum period of time for which they may be enforceable and over the maximum geographical areas as to which they may be enforceable, and to the maximum extent in all other respects as to which they may be enforceable, all as determined by such court in such action.]

21 HOLD HARMLESS AND INDEMNIFICATION.

The Employee shall hold the Company harmless and indemnify for any and all damages whether to person or property caused by the Employee, and which arise from misrepresentation or negligence of Employee, its agents, employees and representatives.

22 EMPLOYEE HANDBOOK

By accepting this Agreement, Employee acknowledges he/she has been given a copy of Best Choice Roofing's Employee Handbook or has been instructed where to locate the Employee Handbook, outlining most of the Employer's policies. He/she also acknowledges that he/she has been instructed of his/her Human Resources contact person and that he/she has been notified where to find the Company's Handbook at the location(s) which Employee renders services.

23 NON DISPARAGEMENT

During the Term and thereafter, Employee agrees to take no action which is intended, or would reasonably be expected, to harm the Company, it's Employees or it's or their reputation or which would reasonably be expected to lead to unwanted or unfavorable publicity to the Company.

24 CELL PHONE USAGE

The Employer does not permit it's Employees to use, in any way, their personal or work communications device while in or operating any type of vehicle.

25 ENTIRE AGREEMENT.

This Agreement constitutes the final, complete, and exclusive statement of the understanding of the Parties with respect to the subject matter hereof, and supersedes any and all other prior understandings, both written and oral, between the Parties. It may not be changed orally but only by an agreement in writing signed by the Party against whom enforcement of any waiver, change, modification, extension, or discharge is sought.

26 HEADINGS.

Headings in this Agreement are for convenience only and shall not be used to construe meaning or intent.

27 INTERPRETATION CLAUSE.

Employee agrees that Employer has given Employee the opportunity to have this document reviewed by an attorney. The parties negotiated the terms herein.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

EMPLOYER: Best Choice Roofing Southeast LLC (Corporate Only)

EMPLOYEE:

Name: _____

Name: Tyler Woods

Signature: _____

Signature: [Signature]

Date: _____

Date: 4-21-17

Employment Agreement: Best Choice Roofing Southeast LLC. Page 7 of 17.

Employee Initials TW

EXHIBIT D
EMPLOYEE "PAY AGREEMENT"

13 - 5 % of contract total will be paid to the salesperson for:

1. Obtaining a signed Contingency Agreement between the property and any other necessary documents.
2. Attending scheduled meeting with the homeowner's insurance adjuster to point out damage and present a copy of the signed Contingency Agreement. You will not be acting as an adjuster. You will merely be there to act as a technical advisor and will discuss the need to repair or replace damaged components (if any). If you are unable to attend, let the office know and we will arrange someone else to be there from the company. If you fail to make this appointment, commission can be reduced by 40%.
3. Obtaining a signed contract as well as any other necessary documents, as well as the collection of first check (endorsed by ALL parties). At this time, commission will be paid to the salesperson on the following pay period (see below), unless the check must be endorsed by a third party such as a lien holder (mortgage company etc.). If a check must be endorsed by another party, commission will be paid once all endorsements have been completed and the check(s) is/are received at the local branch.
4. After completion of the job, a Certificate of Completion must be taken to the homeowner in order to have the homeowner(s) sign and returned to the office promptly.
5. Pick up the final payment and any additional monies and/or documentation required from the homeowner(s).

If the Employee is unable to fulfill the 1-5 obligations above, any commission paid on those jobs will be reimbursed back to Best Choice Roofing Southeast LLC. Items 1-5 represent 20% of commission each. In order to get 100% of commission, all 5 activities above must be completed. If an Employee is paid and fails to complete all 5 activities above, he/she agrees to reimburse Best Choice Roofing Southeast LLC for any overpayment.

13 % commission will be paid when the same type of shingle (3 tab, architectural etc) is replaced with the exact style of material OR the Employee charges AT LEAST \$15 per square upgrade charge for "Architectural Shingles" and at least \$25 per square for OC Artisan/Duration/TruDefinition shingles. Metal roofing, Owens Corning products not listed in this paragraph or other brands of roofing upgrade pricing (other than Owens Corning) must be approved by a member of branch management or Corporate in writing or the Employee may be liable for costs.

11 % commission will be paid to the salesperson if the customer's shingles are upgraded at no charge to the customer.

9 % commission will be paid to the salesperson if a credit or DRP/DAP over the amount of \$500 is given to a customer

50% Lead PHL + DAP of \$1186.00
NOTE: On work orders deemed to be less profitable, 5% of the net contract value will be paid to the Employee. Any form of payment received by the salesperson MUST be brought into the office the same day it is picked up. A delay in receipt of funds by the office may reduce your commission on that job.

Best Choice Roofing Southeast LLC has partnered with Storm Leads Inc. (telemarketing company) to provide quality leads. You are not obligated to accept ANY lead, as leads MAY be OFFERED to you. If you accept the lead, you will be charged. The charge for leads is \$20 per lead and \$50 per lead if you fail to report the result of that lead within 24 hours directly to Storm Leads Inc. and/or a member of branch management.

Commission will be paid to the Employee upon receipt of funds for that job. Commissions will only be paid on jobs with minimum Collection of ACV payment, or equivalent. If funds are not released from the insurance company for

Employment Agreement: Best Choice Roofing Southeast LLC. Page 8 of 17.

Employee Initials TW

any reason, Employee will be liable for the costs.

DEDUCTIBLE SPLIT

Employee will be eligible for \$ 300 when the ENTIRE deductible is collected and paid in full by the homeowner. Employee will not be paid this money until the full deductible is collected. If a contract is written as a cash job, no deductible split will be paid. This only applies on full roof approvals. The total job cost used to calculate % commission will be reduced by \$500 if a deductible split is paid.

OVERHEAD AND PROFIT

Overhead and profit collected on jobs will be split 65 / 35 with the salesperson upon receipt of overhead and profit in full. If this money is used to cover other expenses, no split will be made on the overhead and profit. This money is split if included in scope of work. If a contract is written as a cash job, no Overhead and Profit split will be paid. This only applies on full roof approvals. If Overhead and Profit is not paid by the carrier (notwithstanding the reason), Employee will not be paid a split.

If below signed Employee requests measurements of a house (or if measurements are not provided by Independent Contractor), Independent Contractor may be charged \$30 for these measurements.

If an insurance company does not pay for items needed or requested by the customer, you must use the cash price sheet to determine what the homeowner must pay to replace these items. If you cannot receive additional money from the homeowner for these items you will be charged the prices reflected on the cash price sheet or cost incurred, whichever is greater. On ALL jobs installed by Best Choice Roofing Southeast LLC, all pipe boots and ventilation and skylights and all flashing MUST be replaced. These items must be paid for by the insurance company or the homeowner or the Employee will be liable for the costs to replace these items.

CASH DEALS

If a cash deal is written, the amount of material sold is to be explicitly stated on the contract. If, based on the Independent Sales Contractor's measurements, the job was measured short or material was left off of the cash estimate, the Independent Sales Contractor will be responsible for paying the costs incurred to finish the job. Commissions on cash deals are not paid until the job is paid in full.

COUPONS

Independent Sales Contractors must honor any coupon presented by a homeowner with approval from the management of the branch or Corporate office. These coupons will not yield commission on the coupon amount. If the coupon is used towards a deductible, no deductible split will be honored on the coupon amount. These coupons cannot be used towards an upgraded warranty.

FINANCING

Commissions pertaining to any amount financed by Best Choice Roofing Southeast LLC will be paid once the entire finance agreement has been paid. Best Choice Roofing Southeast LLC can finance deductibles ONLY. Upgrades and additional work cannot be financed by Best Choice Roofing Southeast LLC. In the event the finance term exceeds four (4) months, NO commission will be paid on that amount. In the event the finance term is in excess of four (4) months, the finance amount will be treated as a credit and the rules governing the payment on credits will apply. If the Employee does not charge the external financing fee of 3%, the Employee will be charged back that amount.

NON RECOVERABLE DEPRECIATION

In the instance the contracted homeowner has non recoverable depreciation that is not being paid by the homeowner, Employee's commission will be negotiated.

Employment Agreement: Best Choice Roofing Southeast LLC. Page 9 of 17.

Employee Initials TW

DENIALS

Best Choice Roofing Southeast LLC, at its sole discretion, may choose to involve other people(s) to assist a homeowner on a denial that occurred with the Independent Employee. In the instance that Company elects to do so, Employee's commission will be reduced by 3% to offset the costs incurred to settle any claim the Company feels needs other people(s) involved in.

COMMISSION SPLITS

Best Choice Roofing Southeast LLC understands that there are occasions where commission may be shared with one or more than one rep/Employee. The rep/Employee that originated the Contingency has the sole discretion on who and how to split commissions, given the original rep/Employee is still under contract/employed with Best Choice Roofing Southeast LLC. However, Best Choice Roofing Southeast LLC cannot process splits for more than two Employees/ reps. If more than two Employees/ reps were involved, and you are the original rep, you must determine how to compensate the other reps/ Employees.

CREDITS

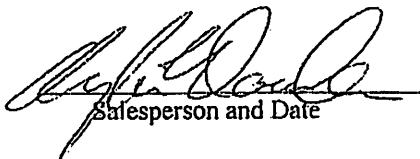
No commission will be paid on credits. The credit amount will be backed out of the net job cost. If a credit exceeds \$500, commission will be reduced to 7%. This section will also apply to financing terms in excess of four months or financing on items other than deductibles.

CANCELLED PORTIONS OF A CONTRACT OR CONTRACT CANCELLATION

If Best Choice Roofing Southeast LLC elects not to complete a portion or even all of the work on a contract, Best Choice Roofing Southeast LLC will not pay commissions on the work Best Choice Roofing Southeast LLC will not complete, all or part of the contract.

PAYMENTS FROM CUSTOMERS

Any payment must be IMMEDIATELY turned into the office. Failure to do so will give grounds for Best Choice Roofing Southeast LLC to terminate this Independent Sales Contractor Agreement. If funds are accepted from a homeowner, the Independent Sales Contractor will be fully liable for the payment, collection costs (if incurred) as well as court costs and attorney's fees if Best Choice Roofing Southeast LLC has to pursue Independent Sales Contractor to obtain payment. Best Choice Roofing Southeast LLC also has the right to notify law enforcement in the proper jurisdiction prior to any other action if funds are accepted by the below signed rep and not immediately turned into the office. For this paragraph, "immediately" is defined as, within 24 hours. . If a customer fails to satisfy their balance within 90 days, Sales Rep will lose or repay back commission, regardless of the reasoning



Salesperson and Date

Best Choice Roofing Southeast LLC and Date

Receipt of Best Choice Roofing Employee Handbook

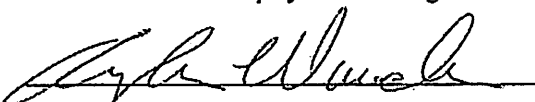
The Employee Handbook (sometimes referred to as a Personnel Policy Manual, or the "Manual") is a compilation of personnel policies, practices and procedures currently in effect at Best Choice Roofing, an equal opportunity employer. The Manual handbook and the information within it are confidential.

This handbook is designed to introduce employees to the organization, familiarize you with Company policies as they pertain to you as an employee, provide general guidelines on work rules, disciplinary procedures and other issues related to your employment, and to help answer many of the questions that may arise in connection with your employment.

This handbook and any other provisions contained herein do not constitute a guarantee of employment or an employment contract, express or implied. You understand that your employment is "at-will" and that your employment may be terminated for any reason, with or without cause, and with or without notice. Only the CEO or other authorized representative(s) of Best Choice Roofing has the authority to enter into a signed written agreement guaranteeing employment for a specific term. This handbook is intended solely to describe the present policies and working conditions at Best Choice Roofing. This handbook does not purport to include every conceivable situation; it is merely meant as a guideline and, unless laws prescribe otherwise, common sense shall prevail. Of course, federal, state and local laws will take precedence over Best Choice Roofing policies when applicable.

Personnel policies are applied at the discretion of Best Choice Roofing. Best Choice Roofing reserves the right to change, withdraw, apply or amend any of our policies or benefits, including those covered in this handbook, at any time. Best Choice Roofing may notify you of such changes via email, posting on the Company's intranet, portal or website, or via a printed memo, notice, amendment to or reprinting of this handbook, but may, in its discretion, make such changes at any time, with or without notice and without a written revision of this handbook.

By signing below, you acknowledge that you have received a copy of Best Choice Roofing's Employee Handbook, and understand that it is your responsibility to read and comply with the policies contained within it and any revisions made to it. Furthermore, you acknowledge that you are employed "at-will" and that this handbook is neither a contract of employment nor a legal document.



Signature

4-21-17

Date

Tyler Woods

Please print your full name

Please sign and date one copy of this notice and return it to Human Resources to humanresources@bestchoiceroofing.net. Retain a second copy for your reference.

Receipt of Harassment Policies

As described in the Harassment Policy and the Sexual Harassment Policy, harassment is prohibited at Best Choice Roofing.

By signing below, you acknowledge that you have received a copy of Best Choice Roofing's Harassment Policy and Sexual Harassment Policy, and understand that it is your responsibility to read and comply with both policies and any revisions made to them.



Signature

4-21-17

Date

Tyler Woods

Print your full name

CODE OF BUSINESS ETHICS AND CONDUCT

AS AN EMPLOYEE OF BEST CHOICE ROOFING ("COMPANY"), you are required to read the Company's Code of Business Ethics and Conduct ("Code") and then complete and sign the attached Certificate of Compliance. You may also be periodically asked to re-affirm compliance with the Code, as the Company deems appropriate.

It is important that you respond honestly and completely to the statements that follow. When you respond, it is implied that you are answering for yourself and for any family member or relative.

If you, a family member or relative are not in compliance with any of the areas described below, attach an explanation of your situation. If you are not sure about how to interpret a statement, or question whether you are in compliance, contact the Legal Department.

Should future changes face you in conflict with the Code, you must immediately notify the Legal Department in writing of the conflict.

Conflicts of Interest

- | | | |
|---|---|--|
| 1) I have not accepted any financial compensation (e.g., salaries, fees, commission, rebates or monetary rewards) from anyone doing business with the Company, including franchisees, suppliers, distributors, cooperatives, contractors, consultants, or any third-party vendor. | ☐ True (without exception) | ☐ Other (explain) |
| 2) I have not offered or received favors, or any preferential treatment from anyone doing business with the Company that may result in financial gain or that violate any law or the Code. | ☐ True (without exception) | ☐ Other (explain) |
| 3) I have not received more than \$200 worth of gifts or entertainment (not including meals) in any 12-month period from a single business source or more than \$500 in a 12-month period from all combined sources. | ☐ True (without exception) | ☐ Other (explain) |
| 4) I have not conducted Company business with a family member or relative, or with any business affiliated with a family member or relative. | ☐ True (without exception) | ☐ Other (explain) |
| 5) I do not directly supervise or have a position that influences or controls any aspect of a family member's or significant other's employment (including, but not limited to, promotions, salary or discipline) with the Company. | ☐ True (without exception) | ☐ Other (explain) |
| 6) I am not financially indebted to, and do not have any obligation to any competitors, vendors, suppliers, franchisees, distributors, joint venture partners, cooperatives, consultants, or other people or firms doing business with the Company. | ☐ True (without exception) | ☐ Other (explain) |

 TW

7) I do not own any stock, or have any other ownership interests in a competitor or, or any firm having a financial relationship with, the Company or its affiliates except as permitted in the Code.

☐ True (without exception) ☐ Other (explain)

8) I have not, to the best of my knowledge, become involved in a conflict of interest in violation of the Code.

☐ True (without exception) ☐ Other (explain)

Confidentiality

1) I have not communicated any proprietary information of the Company, including, but not limited to, trade secrets, marketing strategies, products, technology, development plans, unpublished financial, personnel or salary data to any unapproved person or entity.

☐ True (without exception) ☐ Other (explain)

2) I have not received any confidential information about a competitor or anyone else in a matter that might violate the Code.

☐ True (without exception) ☐ Other (explain)

3) I have not exchanged so-called inside information with anyone outside the Company except as authorized by the Company's General Counsel.

☐ True (without exception) ☐ Other (explain)

4) I have not used inside information for personal gain.

☐ True (without exception) ☐ Other (explain)

Government Relations

1) I have not made any unauthorized political contributions on behalf of the Company, nor have I used Company property for personal political activities. ☐ True (without exception) ☐ Other (explain)

2) I have not lobbied on behalf of the Company, without advance approval, or lobbied for any personal issues while on Company time. ☐ True (without exception) ☐ Other (explain)

3) I have not violated any rules regarding government contracts, reporting investigations. ☐ True (without exception) ☐ Other (explain)

4) I have not made any payments to a government official or third party in violation of the Code. ☐ True (without exception) ☐ Other (explain)

Commercial Transactions & Competition

1) I have not engaged in any commercial agreement(s) which are not in accordance with Company guidelines or entered into any commercial agreement(s) beyond the level of my authority. ☐ True (without exception) ☐ Other (explain)

Accurate Records

1) I have reported all financial and other information accurately and promptly. ☐ True (without exception) ☐ Other (explain)

General

1) I have not violated any other section of the Code. ☐ True (without exception) ☐ Other (explain)

2) I have read and understand all Company policies regarding proper conduct and am complying with them. ☐ True (without exception) ☐ Other (explain)

Please attach a separate sheet if you need more space to explain an answer to any of the statements.

CODE OF BUSINESS ETHICS AND CONDUCT CERTIFICATE OF COMPLIANCE

Woods Tyler W
 Last Name (Please Print) First Name Middle Initial

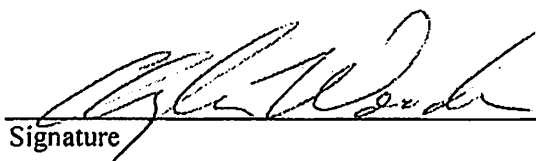
Atlanta
 Department Name / Branch

015-72-9926
 Employee ID Number / Social Security Number

I acknowledge that I have received and read the Best Choice Roofing Code of Business Ethics and Conduct and that I have answered the statements completely and truthfully.

I agree to abide by the provisions of the Code while employed by the Company, and will not use any confidential or proprietary information after I leave the Company. I will notify the Legal Department, in writing, if something happens to change my answers to any of the statements in this Certificate or that places me in conflict with the Code.

I also understand that signing this Certificate and complying with the Code does not guarantee my continued employment or alter my status as an At-Will Employee.

 4.21.17
 Signature Date

Tyler Woods
 Print Name

Please return this Certificate as instructed by the Company.

NOTE: Incomplete Certificates will be returned to the employee for completions. In addition, the refusal to complete this Certificate could result in discipline which may include termination.

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	FIFTH JUDICIAL CIRCUIT
Best Choice Roofing & Home Improvement, Inc.,	C.A. No. 2018-CP-40-01318
Plaintiff,	NOTICE OF MOTION AND DEFENDANT'S MOTION TO DISMISS THE COMPLAINT
v.	
Tyler Woods,	
Defendant.	

YOU WILL PLEASE TAKE NOTICE that Defendant Tyler Woods ("Defendant"), by and through his undersigned attorneys, will move as soon as practicable before this Honorable Court to dismiss the Complaint because Plaintiff has failed to state any claim upon which relief can be granted pursuant to Rule 12(b)(6), SCRPC in that non-competition clause in the Employment Agreement is unenforceable because it is overly broad, not narrowly tailored geographically, not supported by consideration, unnecessary for the protection of Plaintiff's legitimate interest, unduly harsh and oppressive in curtailing Defendant's ability to earn a livelihood, and not reasonable. This motion is based upon the pleadings filed in this matter, the Rules of the Court, a forthcoming memoranda of law, and any other information this Court accepts or is submitted by the Defendant as a part of the hearing on this matter.

[SIGNATURE ON THE NEXT PAGE]

Respectfully Submitted,

/s Nekki Shutt

Nekki Shutt (SC Bar No. 8784)
BURNETTE SHUTT & McDANIEL, PA
912 Lady Street, Second Floor (29201)
PO Box 1929
Columbia, South Carolina 29202
Tel. (803) 904-7912
Fax (803) 904-7910
NShutt@BurnetteShutt.Law

ATTORNEYS FOR DEFENDANT

Columbia, South Carolina

June 11, 2018

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Best Choice Roofing & Home
Improvement, Inc.,

Plaintiff,

v.

Tyler Woods,

Defendant.

IN THE COURT OF COMMON PLEAS

OF THE FIFTH JUDICIAL CIRCUIT

C.A. No. 2018-CP-40-01318

ANSWER AND COUNTERCLAIM

(Jury trial demanded)

Defendant Tyler Woods ("Defendant") hereby submits his Answer and Counterclaim in response to the Complaint filed by Best Choice Roofing & Home Improvement, Inc. ("Plaintiff") and would respectfully show unto this Court as follows:

FOR A FIRST DEFENSE

1. Defendant denies each and every allegation of the Complaint not herein specifically admitted, denied, qualified, or explained.

2. Defendant admits the allegations of Paragraph 1 of the Complaint upon Information and belief.

3. Defendant admits the allegations of Paragraph 2 of the Complaint.

4. Defendant admits so much of the allegations of Paragraph 3 of the Complaint as allege that an Employment Agreement is attached to the Complaint, but denies the language quoted by Plaintiff is accurate and defers to the document as the best evidence thereof. Defendants denies the remaining allegations of Paragraph 3.

5. Defendant denies the allegations of Paragraph 4 of the Complaint as stated.

Answering further, the Employment Agreement is not valid because it, among other things, is overbroad and not supported by consideration. Moreover, even if said Employment Agreement were valid, which Defendant denies, he has not breached it because he worked for Defendant in Atlanta and Marietta, Georgia. Thereafter, he went to work for another roofing company located in Columbia, South Carolina – which is much further than the overbroad 100-mile geographic limitation.

6. Defendant denies the allegations of Paragraph 5 of the Complaint.

7. Defendant denies the allegations of Paragraph 6 of the Complaint as stated.

8. Defendant denies the allegations contained in Plaintiff's un-numbered prayer for relief.

FOR A SECOND DEFENSE
(Reservation)

9. Defendant specifically reserve the right to assert additional defenses, affirmative defenses, counterclaims, cross-claims, and third-party claims, and to amend the allegations set forth in this pleading, as such may become available or apparent, as discovery in this matter and this matter proceed. Having asserted the defenses herein, Defendant does not assume the responsibility to meet any burden of proof otherwise imposed on the Plaintiff by statute or a common law.

FOR A THIRD DEFENSE
(Failure to State a Claim)

10. The Complaint fails to state a claim against Defendant upon which relief can be granted and, accordingly, the Complaint should be dismissed pursuant to Rule 12(b)(6), SCRCP.

FOR A FOURTH DEFENSE

11. Plaintiff's claims are barred in whole or in part by the doctrine of setoff.

FOR A FIFTH DEFENSE

12. Defendant denies that Plaintiff is entitled to any requested relief according to the doctrine of unclean hands.

FOR A SIXTH DEFENSE

13. To the extent the Employment Agreement is binding, Defendant is entitled to an award of attorney's fees if he prevails in this litigation.

FOR A SEVENTH DEFENSE

(No Damages)

14. Plaintiff has suffered no damages and, as such, is not entitled to any relief from Defendant in this case.

FOR AN EIGHTH DEFENSE

(Failure to Mitigate)

15. If Plaintiff suffered any damages for which this Defendant is found liable, and the same is expressly denied, Plaintiff has failed to mitigate, avoid, and reduce said damages, and, therefore, any recovery by Plaintiff should be limited to the extent Plaintiff has failed to mitigate its damages alleged in the Complaint.

FOR A NINTH DEFENSE

(Unconscionability)

16. The non-compete clause of the Employment Agreement, which Plaintiff seeks to enforce, is unconscionable and unenforceable.

FOR A TENTH DEFENSE

17. Defendant did was he was required to do under the Employment

Agreement, but Plaintiff failed to provide the housing it promised Defendant so he was prevented and excused from being bound by the agreement and does not owe the money Plaintiff is demanding.

FOR AN ELEVENTH DEFENSE

18. Under the Rule of *Contra Proferentem*, ambiguities in a contract are construed against the drafter.

19. Plaintiff drafted the Employment Agreement.

20. Defendant in good faith construed “the present location[s] of the Employer’s business” in Section 9 as where Plaintiff worked for Plaintiff.

21. At no time did Defendant work for Plaintiff within 100 miles of Columbia, South Carolina.

22. The term “present locations[s]” is not defined in the Employment Agreement.

23. Ambiguities in the Employment Agreement must be construed against Plaintiff.

FOR A TWELFTH DEFENSE

24. The non-competition clause in the Employment Agreement is unenforceable because it is overly broad, not narrowly tailored geographically, not support by consideration, unnecessary for the protection of Plaintiff’s legitimate interest, unduly harsh and oppressive in curtailing Defendant’s ability to earn a livelihood, and not reasonable.

**FOR A THIRTEENTH DEFENSE
AND BY WAY OF A FIRST COUNTERCLAIM**
(Intentional interference with a Business Relationship)

25. The allegations in Paragraphs 1 through 24 not inconsistent herewith are hereby realleged as fully as if set forth here verbatim.

26. Defendant is a roofing professional who currently lives in Irmo, South Carolina with his wife and their newborn baby.

27. Defendant is 29 years old, and he has been working in the roofing industry for 10 years.

28. Defendant has performed work for Plaintiff in the past, but never in South Carolina.

29. Most recently, Plaintiff recruited Defendant to move to Atlanta to work in the Atlanta/Marietta area for Plaintiff.

30. Defendant began working for Plaintiff as a sales manager at Plaintiff's Marietta, Georgia location on or about April 17, 2017.

31. Plaintiff did not ask Defendant to execute the Employment Agreement on his first day of employment.

32. In fact, it was not until April 21, 2017, that Plaintiff asked Defendant to execute the Employment Agreement.

33. Plaintiff did not give Defendant any new consideration to sign the Employment Agreement on April 21, 2017.

34. The only consideration Defendant received to sign the Employment Agreement was continued employment.

35. Plaintiff did not sign the Employment Agreement.

36. Paragraph 4 of the Employment Agreement states that the employee's "duties shall be rendered at Marietta, Georgia . . ."

37. Paragraph 10 of the Agreement, titled "At Will Employment" provides that "[e]ither party may terminate this agreement without notice to the other party."

38. Paragraph 18 of the Agreement also grants "attorneys' fees, costs, and all other expenses, whether or not taxable by the court as costs," to the prevailing party in any litigation.

39. Prior to commencing work for Plaintiff, Defendant was promised by Plaintiff that Plaintiff would reimburse Defendant for Defendant's choice of housing in the Atlanta area.

40. Upon commencing work for Plaintiff, Defendant discovered that Plaintiff had deceived him and rather than having his choice of housing – for his wife and soon-to-arrive newborn – he found that he relegated to choosing between a poorly-maintained Motel 6 in the Atlanta area or given the option of living with a relative of an employee an hour outside the city.

41. Defendant worked for Plaintiff exclusively in the Marietta, Georgia area during the time period between April 17, 2017 through April 29, 2017.

42. Defendant had no choice but to leave his employment with Plaintiff on or about April 29, 2017, in accordance with his rights under the Agreement.

43. During the two weeks that Defendant worked for Plaintiff, Defendant received no training from Plaintiff.

44. Defendant relocated himself and his young family to Columbia, South Carolina.

45. Several weeks later, Defendant began employment with Premier Roofing LLC, a roofing company located in Irmo, South Carolina ("Premier").

46. Irmo, South Carolina is approximately 193 miles from Marietta, Georgia as the crow flies.

47. On or about November 30, 2017, Premier received a cease and desist letter from Plaintiff, wrongfully alleging that Defendant had breached the non-competition clause in the Employment Agreement and threatening to sue Premier if Premier did not terminate Defendant's employment.

48. Due solely to this letter from Plaintiff, Premier terminated Defendant's employment.

49. As a direct and proximate result of Plaintiff's interference with Defendant's employment contract with Premier, Defendant has suffered and continues to suffer actual damage, consequential damages, attorneys' fees, lost opportunity, and costs.

50. Defendant seeks actual damages, consequential damages, attorneys' fees, costs, punitive damages, and all other relief.

**FOR A FOURTEENTH DEFENSE
AND BY WAY OF A SECOND COUNTERCLAIM**
(Violation of the South Carolina Frivolous Civil Proceedings Sanctions Act,
§ 15-36-10, et seq.)

51. The allegations in Paragraphs 1 through 50 not inconsistent herewith are hereby realleged as fully as if set forth here verbatim.

52. Plaintiff has violated the South Carolina Civil Proceedings Sanctions Act in failing to abide by all of its requirements attendant with the filing of a lawsuit based on a claim which is clearly not warranted under existing law and the facts of the case.

53. As a result of the same, Defendant has suffered losses, including but not

limited to lost wages and reputational loss.

54. Defendant is entitled to sanctions against Plaintiff including reasonable attorney's fees and costs of defending this frivolous lawsuit.

PRAYER FOR RELIEF

Defendant prays for relief as follows:

- A. Complaint be dismissed with prejudice;
- B. Plaintiff recovers nothing from Defendant;
- C. Award such actual, incidental, consequential damages, and punitive as Defendant may be entitled to;
- D. Prejudgment interest;
- E. Sanctions against Plaintiff and his counsel;
- F. Defendant be awarded attorney's fees and costs of this action; and
- G. Such other and further relief as deemed just and proper.

Respectfully Submitted,

/s Nekki Shutt

Nekki Shutt (SC Bar No. 8784)
 BURNETTE SHUTT & McDANIEL, PA
 912 Lady Street, Second Floor (29201)
 PO Box 1929
 Columbia, South Carolina 29202
 Tel. (803) 904-7912
 Fax (803) 904-7910
NShutt@BurnetteShutt.Law

ATTORNEY FOR DEFENDANT

Columbia, South Carolina

June 11, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Best Choice Roofing & Home Improvement, Inc.,	)	C/A No.: 2018-CP-40-01318
	)	
Plaintiff,	)	
	)	
vs.	)	DEFENDANT'S NOTICE OF
	)	MOTION AND MOTION TO
	)	COMPEL RESPONSES TO
	)	INTERROGATORIES AND
Tyler W. Woods,	)	REQUESTS FOR PRODUCTION
	)	OF DOCUMENTS
	)	
Defendant.	)	

YOU WILL PLEASE TAKE NOTICE that as soon after the service hereof as counsel may be heard, Defendant Tyler W. Woods ("Defendant") in the above-referenced matter, by and through their undersigned counsel, will move this Honorable Court for an Order, pursuant to Rule 37, SCRCP, requiring Plaintiff Best Choice Roofing & Home Improvement, Inc., ("Plaintiff") to fully and completely respond to the Defendant's discovery requests.

On May 30, 2018, the Defendant served upon the Plaintiffs the following discovery requests via first class u.s mail:

1. Defendant's First Set of Continuing Interrogatories to Plaintiff, and
2. Defendant's First Set of Continuing Requests for Production of Documents to Plaintiff.

Copies of the First Set of Continuing Interrogatories and First Set of Continuing Requests for Production are attached as **Exhibits A and B** and are incorporated herein by reference. Responses to these discovery requests were due on July 5, 2018.

On July 23, 2018, counsel for the Defendant communicated via email with counsel for the Plaintiff regarding the Plaintiffs' overdue response. (**Exhibit C.**) On August 1, 2018, counsel for Plaintiff communicated via email with counsel for Defendant asking for additional time to respond. (**Exhibit D.**) On August 14, 2018, the Defendant communicated via email with the Plaintiff regarding the overdue responses and asked that the Plaintiff provide complete responses to the Defendant's requests by no later than close of business on August 17, 2018. A copy of this email is attached as **Exhibit E** and is incorporated herein by reference. As of the date of this Motion to Compel, the Plaintiff has not provided Defendant with any substantive responses to discovery requests.

Based upon the foregoing, Defendant hereby seeks an Order of this Court (1) compelling the Plaintiff to respond completely and fully to all aforesaid discovery requests and (2) requiring the Plaintiff to pay the Defendant's reasonable expenses, including attorney's fees, incurred in obtaining such Order.

By: s/Nekki Shutt
Nekki Shutt, Esq. (SC Bar No. 8784)
BURNETTE SHUTT & MCDANIEL, PA
P.O. Box 1929
912 Lady Street, Second Floor
Columbia, South Carolina 29202
Ph: 803-904-7912
Fax: 803-904-7910
nshutt@burnetteshutt.law

ATTORNEYS FOR DEFENDANT

September 7, 2018
Columbia, South Carolina

Rule 11 Affirmation

I hereby certify that, prior to filing the within Motion, I have communicated with opposing counsel in a good faith attempt to resolve this matter.

By: s/Nekki Shutt
Nekki Shutt, Esq.

September 7, 2018
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Best Choice Roofing & Home Improvement, Inc.,	)	C/A No.: 2018-CP-40-01318
	)	
Plaintiff,	)	CERTIFICATE OF SERVICE
	)	
vs.	)	
	)	
Tyler W. Woods,	)	
	)	
Defendant.	)	

I, Traci Wolfe, of Burnette Shutt McDaniel, PA, do hereby certify that I have served a copy of the following as indicated hereinbelow, by emailing and mailing a copy of same on the date below by First Class United States Mail, postage prepaid, addressed to the following:

DOCUMENT SERVED: Defendant Tyler W. Woods Notice of Motion and Motion to Compel Plaintiffs' Responses to Defendants First Set of Discovery Requests

PARTIES SERVED: Townes B. Johnson, III, Esq.
Townes B. Johnson, III, LLC
Post Office Box 9246
Greenville, SC 29604


Traci B. Wolfe, Paralegal
Burnette Shutt & McDaniel, PA

September 7, 2018
Columbia, South Carolina

EXHIBIT A & B



BURNETTE SHUTT MCDANIEL

Moving law forward.

Nekki Shutt - Partner

Direct: 803-904-7912

nshutt@burnetteshutt.law

*Certified Specialist in Employment and Labor
Law by the South Carolina Supreme Court*

BURNETTE SHUTT & MCDANIEL, PA

912 Lady Street | PO Box 1929 | Columbia, SC 29201

O: 803.850.0912 F: 803.904.7910

burnetteshutt.law

May 30, 2018

Townes B. Johnson, III, Esq.

Townes B. Johnson, III, LLC

Post Office Box 9246

Greenville, SC 29604

Re: Best Choice Roofing & Home Improvement, Inc., vs. Tyler W. Woods
C.A. No.: 2018-CP-40-01318
Our File No.: 18138.001

Dear Townes:

Enclosed please find Defendant's First Set of Continuing Interrogatories and Defendant's First Requests for Production of Documents, which I hereby serve upon you by mail.

With kindest personal regards, I am

Sincerely yours,

Nekki Shutt

Enclosures

NS/dr

CC: Mr. Tyler Woods (w/ encl.) (via email only)

ELECTRONICALLY FILED - 2018 Sep 07 3:38 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4001318

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Best Choice Roofing & Home Improvement, Inc.,	)	C/A No.: 2018-CP-40-01318
	)	
Plaintiff,	)	DEFENDANTS' FIRST SET OF
	)	REQUESTS FOR PRODUCTION OF
vs.	)	DOCUMENTS TO PLAINTIFF
	)	
Tyler W. Woods,	)	
	)	
Defendant.	)	

TO: **TOWNES B. JONES, III, ESQ., ATTORNEY FOR PLAINTIFF:**

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, Defendant, above-named, hereby requests that Plaintiff respond within thirty (30) days after the service hereof to the following request, to-wit, that Plaintiff produce and permit the undersigned attorney for said Defendant to inspect, copy or photograph each of the following documents or things, which may be in the possession, custody or control of the Plaintiff or its attorneys:

1. Each and every document identified by Plaintiff in response to Interrogatory No. 4 served contemporaneously with this request.
2. Each and every document identified by Plaintiff in response to Interrogatory No. 5 served contemporaneously within this request.
3. Any and all statements, bill, or invoices which touch on or concern the damages the Plaintiff claims in the Complaint.
4. Any and all statements concerning the facts alleged in the Complaint which are in the possession, custody or control of Plaintiff.
5. Any and all documents which reflect any damages claimed by Plaintiff.

6. Produce Defendants personnel file from work for Plaintiff.
7. Produce all timekeeping records Plaintiff maintained on Defendant.
8. Produce all pay records Plaintiff Maintained for Defendant's work with Plaintiff.



Nekki Shutt, Esq.
BURNETTE SHUTT & MCDANIEL, PA
P.O. Box 1929
912 Lady Street, Second Floor
Columbia, South Carolina 29202
Ph: 803-904-7912
Fax: 803-904-7910
nshutt@burnetteshutt.law

ATTORNEYS FOR DEFENDANT

Columbia, South Carolina

May 30, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Best Choice Roofing & Home Improvement, Inc.,	)	
	)	C/A No.: 2018-CP-40-01318
Plaintiff,	)	
	)	
vs.	)	DEFENDANTS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF
	)	
Tyler W. Woods,	)	
	)	
Defendant.	)	

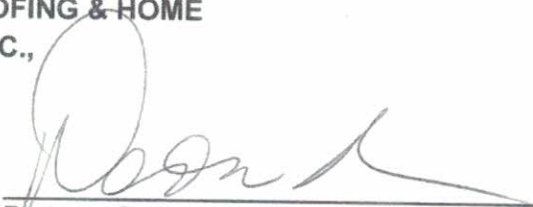
I hereby certify that I have served a copy of the following as indicated herein below, by emailing and mailing a copy of same on the date below by First Class United States Mail, postage prepaid, addressed to the following:

DOCUMENT SERVED: Defendants' First Set of Requests For Production of Documents to Plaintiff

PARTIES SERVED:

TOWNES B. JOHNSON, III, ESQ.
TOWNES B. JOHNSON, III, LLC
Post Office Box 9246
Greenville, SC 29604

**ATTORNEY FOR PLAINTIFF
BEST CHOICE ROOFING & HOME
IMPROVEMENT, INC.,**


 Deonna G. Rogers, Case Assistant
 Burnette Shutt & McDaniel, PA

Columbia, South Carolina

May 30, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Best Choice Roofing & Home Improvement, Inc.,	)	C/A No.: 2018-CP-40-01318
	)	
Plaintiff,	)	DEFENDANT FIRST SET OF
	)	CONTINUING INTERROGATORIES
vs.	)	TO PLAINTIFF
	)	
Tyler W. Woods,	)	
	)	
Defendant.	)	

TO: **TOWNES B. JONES, III, ESQ., ATTORNEY FOR PLAINTIFF:**

Now comes Defendant, in the above-styled action, and serves these Interrogatories upon the Plaintiff, as an opposite party, and requests that they be answered fully in writing and verified, all in accordance with Rule 33 of the South Carolina Rules of Civil Procedure. Each interrogatory is addressed to the personal knowledge of the Plaintiff, as well as to the knowledge and information of the Plaintiff's attorneys, investigators, agents, employees, and other representatives. When a question is directed to the Plaintiff, the question is also directed to the aforementioned persons. These interrogatories shall be deemed continuous so as to require supplemental answers if the person to whom these interrogatories are addressed obtains further information between the time the answers are served and the time of trial.

DEFINITIONS

As used herein, the terms listed below are defined as follows:

1. "Document" means every writing or record of every type and description that is or has been in your possession, control or custody or of which you have knowledge, including but not limited to, correspondence, memoranda, tapes, stenographic or handwritten notes, studies,

publications, books, pamphlets, pictures, drawings and photographs, films, microfilms, voice recordings, maps, reports, surveys, minutes or statistical computations.

2. "Persons" means any natural person, corporation, partnership, proprietorship, association, organization or group of persons.

3. "Complaint" refers to the Plaintiff's Complaint in the above-styled action.

4. (a) "Identify" with respect to any "person" or any reference to stating the "identity" or any "person" means to provide the name, home address, home telephone number, business name, business address, business telephone number, and a description of each such person's connection with the events in question.

(b) "Identify" with respect to any "document" or any reference to stating the "identification" of any "document" means to provide the title and date of each such document, the name and address of the party or parties responsible for the preparation of each such document, the name and address of the party who requested or required the preparation or on whose behalf it was prepared, the name and address of the recipient or recipients of each such document, the present location of any and all copies of each such document, and the name and address of any and all persons who have custody or control of each such document or copies thereof.

INTERROGATORIES

1. Identify the full name, date of birth, social security number and driver's license number of the Best Choice Roofing & Home Improvement, Inc.,

2. Give the names, addresses, and telephone numbers of persons known to the party or counsel to be witnesses concerning the facts of this case, and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

3. For each person identified in Interrogatory No. 2 above, set forth a summary sufficient to inform Defendant of the important facts known to or observed by such witnesses, and the nature and extent of the issues upon which said witnesses intend to testify.

4. Set forth a list of photographs, plats, sketches, statements, or other prepared documents in possession of the party that relate to the claim or defenses in this case.

5. Set forth a list of any and all exhibits which Plaintiff intends to use at the trial of this case, and specify its use, i.e., direct, indirect, circumstantial, or demonstrative evidence, etc.

6. Identify each and every injury which Plaintiff alleges suffering as a result of the occurrence outlined in the Complaint; and with respect to each, identify whether or not: (a) the alleged injury aggravated or accelerated a pre-existing problem; (b) the alleged injury is, at the current time, healed, partially healed or getting worse; (c) whether the alleged injury causes pain; and (d) any limitations on the plaintiff's physical or mental capabilities as a result of said injury.

7. State whether Plaintiff has ever been involved in previous civil litigation as a plaintiff, state whether or not an action was instituted or if Plaintiff obtained a settlement prior to filing an action, the name and caption of any such action, the forum, the state where the lawsuit was filed, the nature of any such action or pre-action settlement, the date of any such action or pre-action settlement, and injuries complained of by Plaintiff from any such action or pre-action settlement.

8. State whether Best Choice Roofing & Home Improvement, Inc., has ever been involved in previous civil litigation as a Defendant, state whether or not an action was instituted or if Defendant obtained a settlement prior to filing an action, the name and caption of any such action, the forum, the state where the lawsuit was filed, the nature of any such action or pre-action settlement, the date of any such action or pre-action settlement, and injuries complained

of by Defendant from any such action or pre-action settlement.

9. Set forth an itemized statement of all damages claimed to have been sustained by Plaintiff, and including all monetary losses as a result of the occurrence as outlined in the Complaint.

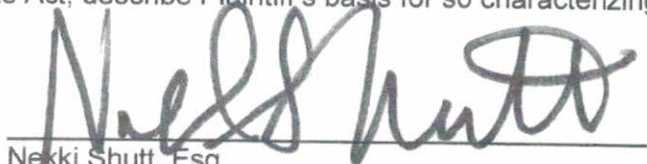
10. List the names and addresses of all expert witnesses whom the Plaintiff proposes to use as a witness at the trial of this case, and provide a summary of the opinions which the expert is expected to give and a statement of the facts relied upon by the expert in reaching each opinion.

11. List all Cities and States where Defendant Performed work for Plaintiff.

12. Describe the consideration Plaintiff contends supports the employment contract.

13. Identity (as defined in definitions section) any customer or Plaintiff with whom Defendant had contact and whose address is within 100 miles of Columbia, South Carolina.

14. If Plaintiff maintains that Defendant was properly characterized as exempt from overtime pay under the Fair Labor Standards Act, describe Plaintiff's basis for so characterizing him.



Nekki Shutt, Esq.
BURNETTE SHUTT & MCDANIEL, PA
P.O. Box 1929
912 Lady Street, Second Floor
Columbia, South Carolina 29202
Ph: 803-904-7912
Fax: 803-904-7910
nshutt@burnetteshutt.law

ATTORNEYS FOR DEFENDANT

Columbia, South Carolina

May 30, 2018

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Best Choice Roofing & Home
Improvement, Inc.,

Plaintiff,

vs.

Tyler W. Woods,

Defendant.

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

C/A No.: 2018-CP-40-01318

**DEFENDANT FIRST SET OF
CONTINUING INTERROGATORIES
TO PLAINTIFF**

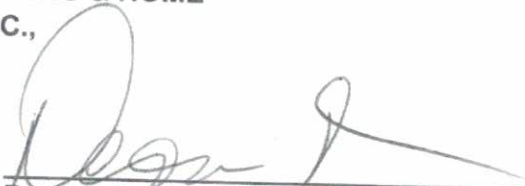
I hereby certify that I have served a copy of the following as indicated herein below, by emailing and mailing a copy of same on the date below by First Class United States Mail, postage prepaid, addressed to the following:

DOCUMENT SERVED: Defendant First Set of Continuing Interrogatories to Plaintiff

PARTIES SERVED:

TOWNES B. JOHNSON, III, ESQ.
TOWNES B. JOHNSON, III, LLC
Post Office Box 9246
Greenville, SC 29604

**ATTORNEY FOR PLAINTIFF
BEST CHOICE ROOFING & HOME
IMPROVEMENT, INC.,**


Deonna G. Rogers, Case Assistant
Burnette Shutt & McDaniel, PA

Columbia, South Carolina

May 30, 2018

EXHIBIT C

Traci B. Wolfe

To: Townes Johnson
Subject: RE: Best Choice v. Woods

On Mon, Jul 23, 2018 at 1:29 PM, Nekki Shutt <nshutt@burnetteshutt.law> wrote:

Dear Townes,

I tried to reach you by telephone several times today, but the calls would not go through. My phone system said the calls were "Held." I wasn't given the opportunity to leave a voicemail message. I've never seen a message like that so wanted to let you know. I don't know if the issue is on your end or mine.

I am writing to following up on the discovery requests I served by mail on May 30, 2018. Your client's responses were due on July 5, 2018. I don't have any record of receiving them, though. Can you please get me your client's outstanding discovery responses on or before August 1, 2018 so we my client can avoid the necessity and costs of filing a motion to compel?

Thanks much.

My best,

Nekki

7-23-18



BURNETTE SHUTT MCDANIEL
Moving law forward.

Nekki Shutt, Esq.

PARTNER

Burnette Shutt & McDaniel, PA
[912 Lady Street, Second Floor](#)

PO Box 1929
Columbia, SC 29202

P 803.904.7912
F 803.904.7910
E nshutt@burnetteshutt.law

CONFIDENTIAL COMMUNICATION: The information contained in this message may contain legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or duplication of this transmission is strictly prohibited. If you have received this communication in error, please notify us by telephone or email immediately and return the original message to us or destroy all printed and electronic copies. Nothing in this transmission is intended to be an electronic signature nor to constitute an agreement of any kind under applicable law unless otherwise expressly indicated. Intentional interception or dissemination of electronic mail not belonging to you may violate federal or state law.

IRS CIRCULAR 230 NOTICE: Any federal tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending any transaction or matter addressed in this communication.

ELECTRONICALLY FILED - 2018 Sep 07 3:38 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4001318

EXHIBIT D

Traci B. Wolfe

To: Townes Johnson
Subject: RE: Best Choice v. Woods

From: Townes Johnson <tjohnson@sc.legal>
Sent: Wednesday, August 01, 2018 1:04 PM
To: Nekki Shutt <nshutt@burnetteshutt.law>
Subject: Re: Best Choice v. Woods

Nekki -

I'm still working on getting these and would ask for some additional time prior to you filing a motion.

Thanks,

Townes

Townes B. Johnson III

 **TOWNES B. JOHNSON III, LLC**

ATTORNEY AT LAW

(O) [864-757-4899](tel:864-757-4899) | (C) [864-325-2528](tel:864-325-2528) | (E) tjohnson@sc.legal

Mailing: PO Box 9246 | Greenville, SC 29604

Physical: [Bank of America Building, Suite 302](#)

[Website](#) | [Blog](#) | [vCard](#)

PRIVILEGED AND CONFIDENTIAL: This electronic message (including any attachments) is intended only for the use of the individual or entity to which it is addressed and may contain information that is attorney-client privileged, may be confidential work product, or may be exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is wrongful, is strictly prohibited, and may subject you to civil liability. If you have received this communication in error, please immediately notify us by telephone at [864-757-4899](tel:864-757-4899) or by return e-mail, and destroy any copies (electronic, paper, or otherwise) that you may have of this communication.

DEBT COLLECTOR: This firm collects debts for mortgage lenders and other creditors. Any information obtained will be used for that purpose. However, if you have previously received a discharge in bankruptcy, this message is not and should not be construed as an attempt to collect a debt, but only as an attempt to enforce a lien.

IRS CIRCULAR 230 NOTICE: Any statements regarding tax matters made herein, including any attachments, are not formal tax opinions by this firm, cannot be relied upon or used by any person to avoid tax penalties, and are not intended to be used or referred to in any marketing or promotional materials. Moreover, any tax advice contained in this e-mail or any attachment hereto is not intended to be used, and cannot be used, to avoid penalties posed under the Internal Revenue Code.

EXHIBIT E

Traci B. Wolfe

To: Townes Johnson
Subject: RE: Best Choice v. Woods

Dear Townes,

It's been two weeks. I haven't received your client's discovery responses. I'm following up.

If I don't receive the discovery responses by close of business on Friday, August 17, 2018, I will be forced to file a motion to compel and to see fees and costs.

Please let me hear from you.

My best,
Nekki
8-14-18



Nekki Shutt, Esq.
PARTNER

Burnette Shutt & McDaniel, PA
912 Lady Street, Second Floor
PO Box 1929
Columbia, SC 29202

P 803.904.7912
F 803.904.7910
E nshutt@burnetteshutt.law

CONFIDENTIAL COMMUNICATION: The information contained in this message may contain legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or duplication of this transmission is strictly prohibited. If you have received this communication in error, please notify us by telephone or email immediately and return the original message to us or destroy all printed and electronic copies. Nothing in this transmission is intended to be an electronic signature nor to constitute an agreement of any kind under applicable law unless otherwise expressly indicated. Intentional interception or dissemination of electronic mail not belonging to you may violate federal or state law.

IRS CIRCULAR 230 NOTICE: Any federal tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending any transaction or matter addressed in this communication.

ELECTRONICALLY FILED - 2018 Sep 07 3:38 PM - RICHLAND - COMMON PLEAS - CASE#2018CP4001318

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
Best Choice Roofing & Home Improvement, Inc.,	)	C/A No.: 2018-CP-40-01318
	)	
	)	
Plaintiff,	)	DEFENDANT'S NOTICE OF
	)	MOTION AND MOTION TO DEEM
vs.	)	ADMITTED REQUESTS FOR
	)	ADMISSION NOT RESPONDED TO
	)	BY PLAINTIFF
Tyler W. Woods,	)	
	)	
Defendant.	)	
	)	

TO: TOWNES B. JONES, III, ESQ., ATTORNEY FOR PLAINTIFF:

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, Defendant Tyler W. Woods ("Defendant") request an Order of the Court Deeming Admitted those certain Requests for Admission not responded to by Plaintiff, attached hereto as **Exhibit A**.

This Motion is based upon the applicable Statutory and Case Law of the State of South Carolina and upon the South Carolina Rules of Civil Procedure and shall be supplemented by such Memoranda as appropriate.

In accordance with Rule 11, SCRCP, counsel certifies that communication with Plaintiff's counsel has been made in a good faith attempt to resolve this matter and further communication with Plaintiff's counsel prior to the filing of this motion would serve no useful purpose.

[Signature Block on Next Page.]

s/ Nekki Shutt

Nekki Shutt, Esq.
BURNETTE SHUTT & MCDANIEL, PA
P.O. Box 1929
912 Lady Street, Second Floor
Columbia, S.C. 29202
Ph: 803-904-7912
Fax: 803-904-7910
nshutt@burnetteshutt.law

ATTORNEYS FOR DEFENDANT

November 16, 2018

Columbia, South Carolina

Exhibit A



BURNETTE SHUTT MCDANIEL

Moving law forward.

Nekki Shutt - Partner

Direct: 803-904-7912

nshutt@burnetteshutt.law

Certified Specialist in Employment and Labor

Law by the South Carolina Supreme Court

BURNETTE SHUTT & MCDANIEL, PA

912 Lady Street | PO Box 1929 | Columbia, SC 29202

O: 803.850.0912 F: 803.904.7910

burnetteshutt.law

July 24, 2018

Townes B. Johnson, III, Esq.

Townes B. Johnson, III, LLC

Post Office Box 9246

Greenville, SC 29604

Re: Best Choice Roofing & Home Improvement, Inc., vs. Tyler W. Woods
C.A. No.: 2018-CP-40-01318
Our File No.: 18138.001

Dear Townes:

Enclosed please find Defendant's First Set of Requests to Admit, which I hereby serve upon you by mail.

With kindest personal regards, I am

Sincerely yours,

Nekki Shutt

Enclosures

NS/sjmc

CC: Mr. Tyler Woods (w/ encl.) (via email only)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Best Choice Roofing & Home Improvement, Inc.,	)	C/A No.: 2018-CP-40-01318
	)	
Plaintiff,	)	DEFENDANT'S FIRST SET OF
	)	REQUESTS TO ADMIT
vs.	)	TO PLAINTIFF
	)	
Tyler W. Woods,	)	
	)	
Defendant.	)	

TO: **TOWNES B. JONES, III, ESQ., ATTORNEY FOR PLAINTIFF:**

Now comes Defendant, in the above-styled action, and serves these Requests to Admit upon the Plaintiff, as an opposite party, and requests that they be answered fully in writing and verified, all in accordance with Rule 36 of the South Carolina Rules of Civil Procedure. Each request to admit is addressed to the personal knowledge of the Plaintiff, as well as to the knowledge and information of the Plaintiff's attorneys, investigators, agents, employees, and other representatives. When a question is directed to the Plaintiff, the question is also directed to the aforementioned persons.

REQUESTS

1. Admit that Plaintiff or its lawyer drafted the Employment Agreement which is attached to the Complaint as Exhibit A.
2. Admit that during the time period between April 17, 2017 through April 29, 2017, Defendant did not work for Plaintiff within 100 miles of Columbia, South Carolina.
3. Admit that the term "present location[s]" is not defined in the Employment Agreement which is attached to the Complaint as Exhibit A.

4. Admit that Defendant has performed work for Plaintiff at other locations prior to April 2017 and that none of those locations were within 100 miles of Columbia, South Carolina.
5. Admit that Defendant has never worked for Plaintiff in the state of South Carolina.
6. Admit that Defendant began work for Plaintiff in the Atlanta, Georgia area on April 17, 2017.
7. Admit that Plaintiff asked Defendant to execute the Employment Agreement on April 21, 2017.



Nekki Shutt, Esq.
BURNETTE SHUTT & MCDANIEL, PA
P.O. Box 1929
912 Lady Street, Second Floor
Columbia, South Carolina 29202
Ph: 803-904-7912
Fax: 803-904-7910
nshutt@burnetteshutt.law

ATTORNEYS FOR DEFENDANT

Columbia, South Carolina

July 24, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Best Choice Roofing & Home Improvement, Inc.,	)	
	)	C/A No.: 2018-CP-40-01318
	)	
Plaintiff,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
Tyler W. Woods,	)	
	)	
Defendant.	)	

I hereby certify that I have served a copy of the following as indicated herein below, by mailing a copy of same on the date below by First Class United States Mail, postage prepaid, addressed to the following:

DOCUMENT SERVED: Defendant's First Set of Requests to Admit to Plaintiff

PARTIES SERVED:

TOWNES B. JOHNSON, III, ESQ.
TOWNES B. JOHNSON, III, LLC
Post Office Box 9246
Greenville, SC 29604

**ATTORNEY FOR PLAINTIFF
BEST CHOICE ROOFING & HOME
IMPROVEMENT, INC.**



Tammie Jackson, Case Assistant
Burnette Shutt & McDaniel, PA

Columbia, South Carolina

July 24, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Best Choice Roofing & Home Improvement, Inc.,	)	C. A. No. 2018-CP-40-01318
	)	
Plaintiff,	)	
	)	MOTION TO AMEND
v.	)	
	)	
Tyler Woods,	)	
	)	
Defendant.	)	
	)	

COMES NOW, the plaintiff, Best Choice Roofing & Home Improvement, Inc., by and through its counsel, and pursuant to Rule 15 of the South Carolina Rules of Civil Procedure, hereby moves the Court to enter an order granting the Plaintiff leave to file an Amended Complaint to withdraw its cause of action for breach of non-compete and confidentiality provision of the employment agreement and to add new causes of action against Tyler Woods for fraud, negligent misrepresentation, unfair trade practices and conversion. In support of the motion, the Plaintiff would show the following:

1. Plaintiff seeks leave to file an Amended Complaint to conform the allegations to the facts of the case. A copy of the Amended Complaint is attached hereto as “**Exhibit A**” and made a part hereof by reference.

2. The amendment to the complaint is necessary to enable the Plaintiff to properly achieve the ends of justice.

3. This motion to amend is not the result of delay, bad faith, or dilatory motive on the Plaintiff’s part.

Respectfully submitted this 17th day of December 2018,

TOWNES B. JOHNSON III, LLC

/s/ Townes B. Johnson III

Townes B. Johnson III (SC Bar# 75412)

P.O. Box 9246

Greenville, SC 29604

PH: (864) 757-4899

tjohnson@sc.legal

Attorneys for Plaintiff

Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Best Choice Roofing & Home Improvement, Inc.,	)	C. A. No. 2018-CP-40-01318
	)	
Plaintiff,	)	
	)	AMENDED COMPLAINT
v.	)	
	)	
Tyler Woods,	)	
	)	
Defendant.	)	
	)	

COMES NOW, the plaintiff, Best Choice Roofing & Home Improvement, Inc. ("Plaintiff"), complaining of the defendant, Tyler Woods ("Defendant"), and would show the following:

1. Plaintiff is a Tennessee corporation with its principal office located at 224 Old Shackle Island Road, Hendersonville, Tennessee 37075.
2. Upon information and belief, Defendant is a resident of the State of South Carolina, County of Richland, and is subject to the venue and jurisdiction of this Court.
3. On or about April 19, 2017, Defendant entered into an employment agreement with Plaintiff, wherein Defendant was going to relocate to the Atlanta, Georgia metro area to work for Plaintiff.
4. In conjunction with Defendant's relocation, Plaintiff advanced Defendant the sum of \$2,500 for relocation expenses.
5. Upon information and belief, Defendant absconded with the \$2,500 advanced to him and deceitfully used those funds to relocate to South Carolina and seek a different opportunity instead of relocating to the Atlanta, Georgia metro area to work for Plaintiff.

EXHIBIT A

6. Upon information and belief, at the time Defendant took Plaintiff's advance, Defendant knew he was relocating to South Carolina and not Atlanta and knew he was not going to be working for Plaintiff.

7. By contracting with Plaintiff, Defendant owed Plaintiff a duty to truthfully and accurately communicate with Plaintiff regarding his intentions.

8. As the direct and proximate result of Defendant's deceit and failure to communicate truthfully and accurately, Plaintiff has been damaged in an amount to be determined at trial.

9. Jurisdiction and venue are proper in this court.

**FOR A FIRST CAUSE OF ACTION
(Fraud)**

10. Plaintiff realleges the foregoing paragraphs consistent with this cause of action as if fully restated verbatim herein.

11. In negotiating the employment agreement and relocation advance with Plaintiff, Defendant represented he would use the advance provided by Plaintiff to relocate to the Atlanta, Georgia metro area and work for Plaintiff.

12. The representations Defendant made regarding the relocation were material.

13. Defendant knew the representations were false.

14. Defendant made the representations with knowledge of their falsity and with a reckless disregard for their falsity.

15. Defendant intended that the representations be acted upon.

16. Plaintiff was ignorant of the falsity of Defendant's representations and relied on the representations' truth.

17. Plaintiff was right to rely on the representations' truth.

18. As a consequent and proximate result of Defendant's fraud, Plaintiff has suffered a pecuniary loss in the form of actual, consequential and special injuries, including, but not limited to the costs associated with bringing this action and attorney's fees, for which Plaintiff hereby sues.

**FOR A SECOND CAUSE OF ACTION
(Negligent Misrepresentation)**

19. Plaintiff realleges the foregoing paragraphs consistent with this cause of action as if fully restated verbatim herein.

20. In negotiating the employment agreement and relocation advance with Plaintiff, Defendant represented he would use the advance provided by Plaintiff to relocate to the Atlanta, Georgia metro area and work for Plaintiff.

21. Defendant knew the representations were false.

22. Defendant had a pecuniary interest in making the representations.

23. Defendant owed Plaintiff a duty of care to see that the truthful information was communicated to Plaintiff.

24. Defendant breached their duty by failing to exercise due care.

25. Plaintiff justifiably relied upon Defendant to communicate truthful information and justifiably relied upon Defendant's representations.

26. As a direct and proximate result of the Plaintiff's reliance upon Defendant's misrepresentations, Plaintiff has suffered a pecuniary loss in the form of actual, consequential and special injuries, including, but not limited to the costs associated with bringing this action and attorney's fees, for which Plaintiff hereby sues.

27. Upon information and belief, Defendant's conduct was willful and intentional and, accordingly, warrants an award of punitive damages.

**FOR A THIRD CAUSE OF ACTION
(Violation of the South Carolina Unfair Trade Practices Act)**

28. Plaintiff realleges the foregoing paragraphs consistent with this cause of action as if fully restated verbatim herein.

29. Upon information and belief, Defendant fraudulently and deceptively induced Plaintiff to advance Defendant monies under false pretenses.

30. As a result of Defendant's fraudulent and deceptive acts, Plaintiff advanced Defendant a relocation advance which Defendant accepted and used to relocate to South Carolina.

31. These fraudulent and deceptive acts have led to great expense to Plaintiff.

32. Defendant's conduct creates the potential for repetition of these fraudulent, unfair and deceptive acts.

33. Since these fraudulent and deceptive acts can easily be repeated with other potential employers, it is offensive to public policy.

34. As a proximate cause of Defendant's fraudulent and deceptive acts, Plaintiff has been damaged and is entitled to a judgment against Defendants in an amount to be determined at trial, including treble damages, for which Plaintiff hereby sues.

**FOR A FOURTH CAUSE OF ACTION
(Conversion)**

35. Plaintiff realleges the foregoing paragraphs consistent with this cause of action as if fully restated verbatim herein.

36. Upon information and belief, Defendant, under false pretenses, took Plaintiff's advance for Plaintiff own use.

37. Defendant's use of the advance to relocate to South Carolina was without the express or implied permission of Plaintiff.

38. As a direct and proximate result of Defendant's conduct, Plaintiff has suffered actual, consequential and special injuries, including costs and attorneys' fees associated with prosecuting this litigation.

39. Upon information and belief, Defendant's conduct was willful and so outrageous as to warrant an award of punitive damages.

**FOR A FIFTH CAUSE OF ACTION
(Breach of Fiduciary Duties)**

40. Plaintiff realleges the foregoing paragraphs consistent with this cause of action as if fully restated verbatim herein.

41. As part of Defendant's employment, Plaintiff necessarily reposed a special trust in Defendant.

42. Upon information and belief, Defendants received monies which it knew or should have known were being advanced to further Defendant's employment with Plaintiff in the Atlanta, Georgia metro area and which Defendant had a duty to use those funds for that purpose.

43. Defendant was bound to act in good faith and with due regard to the interests of Plaintiff.

44. Defendant breached his fiduciary duty to Plaintiff by accepting the relocation advance and using those monies to relocate to South Carolina and seek a different opportunity.

45. As a direct and proximate result of Defendant's breach of his fiduciary duties, Plaintiff suffered actual, consequential and special injury, including costs and attorney's fees.

46. Upon information and belief, Defendants' conduct was willful and so outrageous as to warrant an award of punitive damages.

WHEREFORE, Plaintiff hereby prays for the following relief:

- (a) Judgment against Defendant in an amount to be determined at trial, together with attorneys' fees, costs, and interest;
- (b) Attorneys' fees;
- (c) Punitive damages;
- (d) Special damages;
- (e) Treble damages;
- (f) Costs of this action;
- (g) Such other and further relief that this Court deems just and proper.

Respectfully submitted this 17th day of December 2018,

TOWNES B. JOHNSON III, LLC

/s/ Townes B. Johnson III

Townes B. Johnson III (SC Bar# 75412)

P.O. Box 9246

Greenville, SC 29604

PH: (864) 757-4899

tjohnson@sc.legal

Attorneys for Plaintiff

Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Best Choice Roofing & Home
Improvement, Inc.,

Plaintiff,

v.

Tyler Woods,

Defendant.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

C.A. No. 2018-CP-40-01318

**DEFENDANT'S NOTICE OF MOTION AND
MOTION FOR SUMMARY JUDGMENT**

YOU WILL PLEASE TAKE NOTICE that, Defendant, Tyler Woods, ("Defendant") will move, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for an Order granting Summary Judgement in his favor against Plaintiff Best Choice Roofing & Home Improvement ("Plaintiff") on the grounds that there is no genuine dispute as to any material fact, and Woods is entitled to judgment as a matter of law. The motion is supported by the pleadings and discovery on file and such oral argument that the Court may allow. Defendant Wood is entitled to judgement in his favor on the following grounds:

1. The record evidence shows that the non-competition provision in the Employment Agreement between Plaintiff Best Choice and Defendant Woods is unenforceable as the provision does not protect Best Choice's legitimate business interests, is not reasonably limited with respect to geographic area, is unduly harsh and oppressive to Woods' efforts to earn a livelihood, was not supported by valuable consideration, and is unreasonable pursuant to public policy.
2. The record shows that Woods did not breach the Employment Agreement even if it is enforceable.
3. Therefore, Defendant Woods did not breach the contract as a matter of law.

4. There is no basis in law or fact for Plaintiff's Complaint, so the Court should dismiss the Complaint and grant summary judgment for Defendant on his Counterclaims.

CONCLUSION

Based upon the foregoing, Defendant respectfully requests that this court grant summary judgment in his favor as to Defendant claim of Breach of Contract. This Motion is based on the pleadings filed in this matter, any deposition or discovery taken before the hearing on this Motion, the Rules of Court, Defendant Wood's memoranda of law and any exhibits thereto, and any other information this Court may accept, or Defendant Woods may submit as part of the hearing on this matter.

Respectfully submitted,

s/ Nekki Shutt

Nekki Shutt (SC Bar No. 8784)
BURNETTE SHUTT & McDANIEL, PA
912 Lady Street, Second Floor (29201)
PO Box 1929
Columbia, South Carolina 29202
Tel. (803) 904-7912
Fax (803) 904-7910
NShutt@BurnetteShutt.Law

ATTORNEYS FOR DEFENDANT

December 19, 2018
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
Best Choice Roofing & Home Improvement, Inc.,	)	C/A No.: 2018-CP-40-01318
	)	
	)	
Plaintiff,	)	DEFENDANT'S MEMORANDUM IN
	)	SUPPORT OF MOTION FOR
v.	)	SUMMARY JUDGMENT
	)	
Tyler Woods,	)	
	)	
Defendant.	)	

On December 19, 2018, Defendant Tyler Woods ("Woods") filed and served a Motion for Summary Judgment as to Plaintiff's claim against him. This Memorandum is offered in support of said motion. Woods is entitled to summary judgment as a matter of law pursuant to Rule 56(a)-(b), SCRPC, as there exists no genuine issue of material fact that Woods did not violate the non-competition provision of his employment contract with Plaintiff Best Choice Roofing & Home Improvement, Inc. (Best Choice). First, Woods is entitled to summary judgment as a matter of law in light of the draft Amended Complaint filed by Best Choice on December 18, 2018 wherein Best Choice withdrew its untenable breach of contract claim against Woods. Second, there exists no genuine issue of material fact that Woods did not breach his employment agreement with Best Choice by violating the 100-mile geographic limitation in the non-competition provision because Woods never worked at a Best Choice location within 100 miles of his challenged place of employment in Irmo, South Carolina. And third, there are no genuine issues of material fact disputing the conclusions that Best Choice intentionally interfered with Woods' business relationship with his new employer and that Best Choice filed a frivolous civil lawsuit in an attempt to enforce the non-competition

provision. As such, Woods seeks summary judgment in his favor on all aforementioned claims, as well as damages, attorneys fees, and costs.

FACTS AND RELEVANT PROCEDURAL HISTORY

Defendant Woods is a twenty-nine-year-old roofer who has worked in the industry for ten years. (Answer and Countercl. ¶ 27.) Best Choice is a roofing services company with locations throughout the southeastern and midwestern United States, including Tennessee, Georgia, North Carolina, and Florida. (BEST CHOICE ROOFING, <https://www.bestchoiceroofing.com/locations.html> (last visited Dec. 18, 2018).) Notably, Best Choice has no locations in South Carolina. (*Id.*) On or about April 17, 2017, Woods moved to Atlanta, Georgia and began working as a sales manager for Best Choice's Marietta, Georgia location. (Ans. and Countercl. ¶¶ 29-30.)

On April 21, 2017, Best Choice asked Woods to sign an Employment Agreement to continue his employment with Best Choice. (*Id.* at ¶¶ 32-34.) Section 9 of the Employment Agreement, a Non-Competition and Confidentiality Clause, provided that Woods was not allowed to “directly or indirectly engage, own, manage, control, operate, be employed by, participate in, or be connected in any manner” with a business similar to Best Choice “for a period of ONE (1) year and within 100 miles from *the present location* of employer's business.” (Compl. Ex. A BCR Employment Agreement p. 4 [attached as **Ex. 1**] (emphasis added).) Violation of the non-competition clause could result in the payment of \$15,000 in liquidated damages. (**Ex. 1**) Section 4 of the Employment Agreement further provided that the responsibilities and duties granted to Woods under the agreement would be rendered in Marietta, Georgia, and Section 10 of the agreement provided that Woods' employment for Best Choice was at-will. (*Id.* at p.

3, 5.) Finally, Section 18 of the Agreement states that litigation resulting from the agreement is governed by Tennessee law and that the prevailing party in such litigation will be awarded attorney's fees and court costs. (*Id.* at p. 6.)

Following Best Choice's failure to honor the terms of a housing agreement with Woods, Woods left his position with Best Choice on or about April 29, 2017. (Ans. and Countercl. ¶¶ 39-42.) Woods relocated himself and his young family to Columbia, South Carolina. (*Id.* at ¶ 44.) Shortly thereafter, Woods began working with Premier Roofing, LLC (Premier) in Irmo, South Carolina. (*Id.* at ¶ 45.) Premier provides roofing services in the Midlands of South Carolina, including the cities of Irmo, Columbia, Newberry, Sumter, and Orangeburg. (PREMIER ROOFING, <http://www.premiereroofingcolumbia.com> (last visited Dec. 18, 2018).) Irmo, South Carolina is about one hundred and ninety-three (193) miles from Best Choice's location in Marietta, Georgia. (Ans. and Countercl. ¶ 46.)

On or about November 30, 2017, Best Choice notified Premier via a cease-and-desist letter that Woods was in violation of the non-competition clause of his Employment Agreement with Best Choice and threatened to sue Premier if the company did not terminate Woods. (*Id.* at ¶ 47.) It is undisputed that solely because of this letter, Premier terminated Woods' employment with the company. (*Id.* at ¶ 48.) Thereafter, Best Choice filed suit against Woods seeking to collect damages for the alleged breach of the non-competition clause in the amount stipulated by the liquidated damages provision of the Employment Agreement. (Compl. ¶¶ 5-6.) Woods' filed an Answer and Counterclaim, which contained counterclaims alleging Best Choice's intentional interference with a business relationship and violation of South Carolina's

Frivolous Proceedings Sanctions Act, § 15-36-10, et seq. (Ans. and Countercl. ¶¶ 25-54.) On December 14, 2018, Best Choice admitted to Woods that the company did not have an Augusta, Georgia location; nor a Charlotte, North Carolina location on the date Woods signed the Employment Agreement. (**Ex. 2**, P.'s Resp. to 2nd Req. to Admit ¶¶ 1-2.) As such, Best Choice had no location within one hundred miles of Woods' employer in Irmo, South Carolina.

Furthermore, on December 17, 2018, Best Choice moved to amend their original complaint against Woods. (P.'s Mot. Amend Compl. p. 1.) Therein, Best Choice withdraws and completely abandons its breach of contract claim and instead, disingenuously, asserts heretofore unidentified claims of fraud, negligent misrepresentation, conversion, breach of fiduciary duties, and violation of the SC Unfair Trade Practices Act (SCUTPA) against Woods in connection to money Best Choice advanced to Woods for "relocation expense[s]". (*Id.* at Ex. A ¶¶ 10-46.) Therefore, Best Choice no longer intends to press its original claim that Woods breached the non-competition provision of his employment agreement.

ARGUMENT

I. Motion for Summary Judgment to Dismiss Plaintiff's Breach of Contract Claim

A. Best Choice has withdrawn the breach of contract claim by amending its initial complaint to abandon the claim.

Woods is entitled to summary judgment pursuant to Rule 56, SCRCP as Best Choice intends to withdraw and abandon its claim that Woods breached his employment contract with the company, as shown by its December 17, 2018 motion to amend its Complaint. (P.'s Mot. Amend Compl.) When deciding on a motion for summary judgment, the court must view the evidence and reasonable inferences in the

light most favorable to the non-moving party. (See *Knight v. Austin*, 396 S.C. 518, 522, 722 S.E.2d 802, 804 (2012).) When the pleadings, depositions, affidavits, and discovery viewed in this light show no genuine issue of material fact, the court shall grant summary judgment in favor of the moving party. (See *id.* at 521-522, 722 S.E.2d at 804.) In ruling on a motion for summary judgment, the court may not make any finding that is inconsistent with facts established by a pleading. (*Bates v. City of Columbia*, 301 S.C. 320, 322, 391 S.E.2d 733, 734 (Ct. App. 1990).) Here, there exists no genuine issue of material fact to be determined by a jury as Best Choice has recognized the untenable nature of the breach of contract claim and sought to remove the issue from contention. When viewed in the light most favorable to Best Choice as the non-moving party, this intent of Best Choice to withdraw the breach of contract claim shows that Woods is entitled to judgment as a matter of law on this issue. Should the court grant the motion to amend the Complaint, which defense objects to, then the court will be unable to rule on the breach of contract claim under *Bates* because Best Choice removed the relevant events from the facts of the case. As such, Woods is entitled to summary judgment on the breach of contract claim as Best Choice no longer intends to assert the viability of the claim against him.

B. The choice of law clause in the Employment Agreement should not be honored as the result would be contrary to South Carolina public policy.

There exists no genuine issue of material fact that Woods did not violate his Employment Agreement with Best Choice because the agreement is unenforceable under South Carolina law. A non-competition agreement that is unenforceable for any reason is considered to be against South Carolina public policy. (See *Standard Register*

Co. v. Kerrigan, 238 S.C. 54, 71, 119 S.E.2d 533, 542 (1961) (citing *Somerset v. Reyner*, 233 S.C. 324, 104 S.E.2d 344 (1958)).) Therefore, the Tennessee choice of law provision is also unenforceable. A choice of law provision in a contract will not be upheld when applying foreign law will result in an outcome that violates South Carolina public policy. (See *Skywaves I Corp. v. Branch Banking and Trust Company*, 423 S.C. 432, 448-49, 814 S.E.2d 643, 652 (Ct. App. 2018) (quoting *Nucor Corp. v. Bell*, 482 F.Supp.2d 714, 728 (D.S.C. 2007)).) Specifically, a non-competition agreement will not be enforced, even when interpreted under foreign law, if the agreement is invalid as a matter of law or contrary to South Carolina public policy. (*Fay v. Total Quality Logistics, LLC*, 419 S.C. 622, 630, 799 S.E.2d 318, 323 (Ct. App.2017).)

In the instant case, enforcing the Choice of Law provision in the Employment Agreement to apply Tennessee law would result in an outcome contrary to South Carolina public policy because Woods employment agreement was not supported by sufficient consideration under South Carolina law. A non-competition agreement entered into without sufficient consideration will be deemed unenforceable. (See *Poole v. Incentives Unlimited, Inc.* 345 S.C. 378, 382, 548 S.E.2d 207, 209 (2001).) Contrary to South Carolina law, a Tennessee court may recognize continued employment to be sufficient consideration for upholding an employment agreement when the continued employment has been acted upon. (See *Cent. Adjustment Bureau, Inc. v. Ingram*, 678 S.W.2d 28, 34-35 (Tenn. 1984).) In *Ingram*, the Supreme Court of Tennessee enforced a non-competition provision of an employment agreement between a collection agency and three of its former salesmen. (See *id.* at 35.) Despite the salesmen receiving no consideration besides continued employment at the time each signed his respective

non-competition agreement, the court held that the salesmen's employment for an appreciable period of time and voluntary termination transformed their continued employment into sufficient consideration for the agreement. (See *id.* at 31, 35.) As such, each salesman was liable for damages to the agency arising from his violation of the non-competition agreement. (See *id.* at 30, 36.)

Therefore, even assuming *arguendo*, and applying the Tennessee Choice of Law provision in the employment agreement between Best Choice and Woods would result in a violation of South Carolina public policy as South Carolina does not consider continued employment to be sufficient consideration to uphold a non-competition agreement. (See *Poole* at 382, 548 S.E.2d at 209; *Riedman Corp. v. Jarosh*, 290 S.C. 252, 253, 349 S.E.2d 404,405 (1986).) In *Poole*, the Supreme Court of South Carolina held that a non-competition agreement was unenforceable against a travel agent when she was offered no change in "duties, position, or salary" for signing the agreement. (See *Poole* at 382, 548 S.E.2d at 208.) As such, the court held that the agent's non-competition agreement was supported by nothing other than the agent's continued at-will employment and was therefore unenforceable for lack of valuable consideration. (See *id.*)

It follows that the foreign law of Tennessee should not be applied to determine the enforceability of the non-competition agreement between Best Choice and Woods because the result would violate South Carolina public policy. Like the salesmen in *Ingram*, Woods was given no consideration besides continued employment in exchange for signing his employment agreement with Best Choice. Also similar to the salesmen, Woods remained employed by Best Choice for an appreciable amount of time after

signing the agreement and terminated his employment voluntarily. If Tennessee law was applied to these facts, Woods' non-competition agreement may be upheld despite Woods receiving no change in duties, position, or salary for signing the agreement. Because this outcome would be contrary to South Carolina law as established in *Poole*, the choice of law provision of Woods' employment agreement with Best Choice cannot be upheld and South Carolina law must apply to determine the validity of Woods' non-competition agreement.

C. Woods is entitled to summary judgment because he did not commit a breach of the employment agreement with Best Choice.

Even if the non-competition provision could be upheld as an enforceable employment agreement between Woods and Best Choice, Woods employment with Premier did not violate the plain language of his employment agreement with Best Choice. Therefore, there exists no genuine issue of material fact that Woods did not breach the terms of the contract. "Where an agreement is clear on its face and unambiguous, the court's only function is to interpret its lawful meaning" (See *Stevens and Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 577, 762 S.E.2d 696, 700 (2014) (quoting *Miles v. Miles* 393, S.C. 111,117, 711 S.E.2d 880, 883 (2011)).) Breach of contract must be established by three elements: "1) a binding contract entered into by the parties; 2) breach or unjustified failure to perform the contract; and 3) damage as a direct and proximate result of the breach." (See *King v. Carolina First Bank*, 26 F.Supp 510, 517 (D.S.C. 2014) (applying South Carolina state contract law).)

Contrarily, the facts of the case do not satisfy these three elements for finding a breach of Woods' employment contract. Both parties stipulate that the employment

agreement containing the non-competition agreement was entered into on April 21, 2017 and bound the parties to the extent that the employment agreement is legally enforceable. (See Compl. ¶ 3; Ans. and Countercl. ¶¶ 32-34.) However, the facts of the case do not establish that a breach or unjustified failure to perform the contract occurred. Section 9 of the employment contract provides that Woods agreed to not compete with Best Choice in any manner “for a period of ONE (1) year and within 100 miles from *the present location* of employer’s business.” (Compl. Ex. A BCR Employment Agreement p. 4 [Ex. 1] (emphasis added).) Further, Section 4 of the agreement provides that Woods would perform his duties and responsibilities under the contract at Best Choice’s Marietta, Georgia location. (See *id.* at 3.) Irmo, South Carolina — where Woods was working for his new employer Premier when Best Choice attempted to enforce the 100-mile geographic limitation against him — is 193 miles away from this Marietta, Georgia location. (Ans. and Countercl. ¶ 46.) Therefore, Woods did not breach the plain and unambiguous meaning of the non-competition agreement when he began working for Premier in Irmo, SC.

Moreover, Best Choice has admitted that it operated no other locations within 100 miles of Irmo, SC on the date Woods entered into the employment agreement. Notably, Best Choice admits that its Augusta, Georgia and Charlotte, North Carolina locations were not operational on April 21, 2017. (Ex. 2, P.’s Resp. to 2nd Req. Admit ¶¶ 1-2.) As such, it is impossible for Best Choice to prove that Woods breached the employment contract by violating the 100-mile geographic limitation in the non-competition provision by working for Premier. As no such breach occurred, Best Choice cannot maintain its breach of contract claim against Woods. Finally, Best Choice is not entitled to damages

from Woods when no breach of contract exists. Therefore, Woods is entitled to summary judgment on Best Choice's breach of contract claim because there is no genuine issue of material fact that he did not breach the non-competition provision of his employment agreement with Best Choice.

II. Motion for Summary Judgment to Grant Defendant's Claims of Intentional Interference with a Business Relationship and Violation of the S.C. Frivolous Civil Proceedings Sanctions Act

A. Woods is entitled to judgment as a matter of law because Best Choice intentionally interfered with Woods' business relationship with his employer, Premier Roofing

There exists no genuine issue of material fact that Best Choice intentionally interfered with Woods' business relationship with Premier Roofing by wrongfully sending a cease-and-desist letter that resulted in the termination of Woods' employment with Premier. "It is well settled that interference by a third party with contractual relationships, without justification, is a violation of a primary legal right." (*Keels v. Powell*, 207 S.C. 97, 100, 34 S.E.2d 482, 484 (1945).) Intentional interference with a contractual relationship is found when 1) a contract exists; 2) the third-party wrongdoer has knowledge of the existing contract; 3) the wrongdoer intentionally induces a party to the contract to breach the contract; 4) the wrongdoer has no justification in inducing said breach; and 5) a party to the contract is damaged by the induced breach. (See *Kinard v. Crosby*, 315 S.C. 237, 240, 433 S.E.2d 835, 837 (1993).)

In this case, the first two elements necessary to finding intentional interference with a contractual relationship are satisfied by the undisputed factual conclusions that an employment contract existed between Woods and Premier and that Best Choice had knowledge of this contract. First, both Woods and Best Choice admit on the record that

such a contract existed. (See Compl. ¶ 4; Ans. and Countercl. ¶ 45.) Second, Best Choice's delivery of a cease-and-desist letter to Premier and the commencement of this litigation by Best Choice proves that it had knowledge of the contract between Premier and Woods. (See Compl. ¶¶ 1-6; Ans. and Countercl. ¶ 47.) Best Choice could not have undertaken either of these actions without knowledge that such a contract existed. Therefore, the elements of contract existence and wrongdoer knowledge are satisfied.

With reference to the remaining elements of the intentional interference test, the Supreme Court of South Carolina held that a jury could find a third party interfered with an insurance agent's employment contract when the third party falsified information to procure the breach of the contract. (See *Todd v. South Carolina Farm Bureau Mut. Ins. Co.*, 287 S.C. 190, 193, 336 S.E.2d 472, 473 (1985).) In *Todd*, the third party, Equifax, falsely claimed to have informant-provided information that the insurance agent was hindering an arson investigation being conducted by Equifax on behalf of the agent's employer. (See *id.* at 192, 336 S.E.2d at 473.) As a result of the false claim, the agent was asked by Equifax to take a polygraph test; the agent's refusal to take the test directly led to the agent's employer terminating his employment. (See *id.*) The Supreme Court of South Carolina held that Equifax's accusation that the agent leaked information and the fabrication of an informant to support this accusation were facts sufficient to validate a jury finding that Equifax intended to cause a breach of the agent's contract with his employer. (*Id.* at 193, 336 S.E.2d at 473.) Therefore, Equifax was liable to the agent for actual and punitive damages resulting from the breach of the employment contract. (See *id.* at 193, 336 S.E.2d at 474.)

Similarly, Best Choice is liable for damages to Woods because there is no issue of material fact that Best Choice intentionally interfered with Woods' employment contract with Premier. Like Equifax, Best Choice intentionally interfered with Woods' employment contract by making a false accusation to Woods' employer. Woods' employment with Premier was terminated when Best Choice falsely informed Premier that Woods was violating a non-competition agreement, like the agent in *Todd* was terminated when Equifax falsely accused him of leaking information. Moreover, Best Choice also had no justification for inducing the breach of the contract by Premier. Just as Equifax knowingly provided false information to the agent's employer to induce the breach of contract, so did Best Choice knowingly provide Premier with false information of Woods' alleged breach. In moving to amend its Complaint to withdraw the accusations that Woods violated the non-competition provision of his contract, Best Choice concedes that it cannot succeed on the merits of that claim and, thus, had no justification for bringing the claim at the commencement of the case.

Finally, Woods has suffered actual and consequential damages as a result of the contract breach induced by Best Choice, including, but not limited to, lost wages and reputational loss, and loss of opportunity. Therefore, there exists no issue of material fact that Best Choice is liable to Woods for its intentional interference with Woods' employment contract. As such, Woods is entitled to actual, consequential, and punitive damages as well as attorney's fees and costs associated with Best Choice's unlawful interference with his contractual relationship.

B. Best Choice filed violated the South Carolina Frivolous Proceedings Sanctions Act, § 15-36-10, et seq. in its attempt to enforce the employment agreement because Woods did not violate the plain language of the agreement.

There also exists no issue of material fact that Best Choice filed a frivolous pleading when it alleged in its Complaint that Woods violated the non-competition provision of his employment agreement by working outside of the geographical limitations of the provision. Sanctions for filing a frivolous pleading may be administered when “a reasonable attorney . . . would believe that *under the facts*, his claim was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for [affecting a change of] existing law.” (§ 15-36-10(A)(4)(a)(ii) (emphasis added).) Additionally, sanctions may be administered when “a reasonable attorney under the same circumstances would believe that the procurement . . . of a civil cause was intended merely to harass or injure the other party.” (§ 15-36-10(A)(4)(a)(iii).) The decision whether to impose such sanctions is a decision in equity, not in law. (See *Holmes v. Haynsworth, Sinkler & Boyd, P.A.*, 408 S.C. 620, 641, 760 S.E.2d 399, 410 (2014) (quoting *Father v. S.C. Dep’t of Soc. Servs.*, 353 S.C. 254, 260, 578 S.E.2d 11, 14 (2003).)

The Supreme Court of South Carolina held that sanctions under section 15-36-10 were appropriate when an ophthalmologist had filed a “non-meritorious and baseless lawsuit” and failed to develop evidence to support her claim. (See *Holmes* at 643, 760 S.E.2d at 411.) In *Holmes*, the court also relied on previous findings that “criteria for Rule 11 sanctions are essentially the same as those for sanctions under [§ 15-36-10].” (See *In re Beard*, 329 S.C. 351, 360, 597 S.E.2d 835, 839 (S.C. Ct. App. 2004).) In

recognition of this precedent, the court upheld sanctions against the ophthalmologist when she filed court documents “without reasonable basis” and without “information and belief [that] there is good ground to support” the claims. (See *Holmes* at 644-45, 760 S.E.2d at 412 (quoting SCRPC Rule 11(a)).) As the record contained sufficient evidence to conclude that the ophthalmologist filed court documents in violation of § 15-36-10, the Supreme Court of South Carolina affirmed the circuit court’s decision to impose sanctions against her. (See *id.* at 645, 760 S.E.2d at 412.)

Considering both statutory and case law surrounding the imposing of sanctions under section 15-36-10, there exists no issue of material fact that Best Choice is liable for sanctions under the statute for filing a frivolous pleading against Woods. As Best Choice brought action against Woods for violating the 100-miles geographic limitation of the non-competition agreement when Best Choice had actual knowledge that Woods worked 193 miles from its Marietta, Georgia location, a reasonable attorney would not believe Best Choice was warranted in bringing this action under existing law. Nor would a reasonable attorney believe a good faith argument existed for affecting the change of existing law as unreasonable geographic limitations in non-competition provision are considered against public policy in South Carolina. (See *Standard Register Co.*, at 71, 119 S.E.2d at 542 (citing *Somerset v. Reyner*, 233 S.C. 324, 104 S.E.2d 344 (1958)).) Similarly, the lack of factual basis for Best Choice’s claims renders them non-meritorious and baseless, like the claims sanctioned by the court in *Holmes*.

As there appears to be no reason rooted in law or fact for Best Choice’s original action against Woods, a reasonable attorney could believe Best Choice brought the action merely to harass or injure Woods. Indeed, Best Choice’s filing of the original

complaint did injure Woods by causing him to both lose gainful employment with Premier and to be forced to employ legal counsel at an hourly rate for the duration of the litigation to date. Therefore, Woods should be granted summary judgment on his claim that Best Choice filed a frivolous pleading against him in violation of section 15-36-10. As a result, Woods should also receive the statutory costs and attorney's fees afforded to him for Best Choice's violation of the Act, including but not limited to "the time required of the prevailing party by the frivolous proceeding, and travel expenses, mileage, parking, costs of reports, and any additional reasonable consequential expenses of the prevailing party resulting from the frivolous proceeding." (See § 15-36-10(G)(1).)

CONCLUSION

Based on the foregoing argument, Woods is entitled to summary judgment on all aforementioned claims under Rule 56, SCRPC. Additionally, Woods should be awarded damages, attorney's fees, and costs of this action.

Respectfully Submitted,

s/ Nekki Shutt

Nekki Shutt (SC Bar No. 8784)
BURNETTE SHUTT & McDANIEL, PA
912 Lady Street, Second Floor (29201)
Post Office Box 1929
Columbia, S.C. 29202
Telephone: (803) 904-7912
Facsimile: (803) 904-7910
NShutt@BurnetteShutt.Law

ATTORNEYS FOR DEFENDANT

Columbia, South Carolina

January 24, 2019

EXHIBIT 1



Rev 2/16/2017

EMPLOYMENT AGREEMENT

This Employment Agreement (the "Agreement") dated as of 4/19/17 (the "Effective Date") is made by and between Best Choice Roofing Southeast, LLC. - TN Corporation, (the "Employer") and Tyler Woods, (the "Employee"). The Employer and the Employee may be referred to individually as a "Party" or collectively as the "Parties".

RECITALS

WHEREAS, the Employer is engaged in the business of ROOFING AND HOME IMPROVEMENT; and

WHEREAS, the Employer desires to employ the Employee, and the Employee wishes to enter into such employment, on the terms and conditions set forth in this Agreement; and

WHEREAS, each Party is duly authorized and capable of entering into this Agreement.

NOW, THEREFORE, in consideration of the mutual acts and promises, covenants, agreements, representations, and warranties hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1 EMPLOYMENT.

The Employer hereby employs, engages, and hires the Employee on a full-time basis, and the Employee hereby accepts this employment subject to the terms and conditions of this Agreement. The Employee agrees and understands that [s]he is an employee "at will." and nothing herein shall be interpreted to mean that the Employee is anything other than an employee at will. The Employee's employment may be terminated by either Party at any time pursuant to Section 12 hereof.

2 TERM.

The term of this Agreement shall begin on 4/19/17 and continue until terminated by either Party in accordance with the provisions of Section 12 of this Agreement or by law. The period during which the Employee is employed pursuant to this Agreement shall be referred to as the "Employment Period."

3 COMPENSATION.

Subject to the terms and conditions of this Agreement, the Employee shall be compensated for his services as follows:

- (a) Base Salary. The Employer shall pay the Employee an annual base salary of \$ 400.00 (the "Salary"), payable in equal \$ 10,000.00 (weekly, biweekly, semi-monthly) installments at the end of each such period during the Employment Period. The Salary may be subject to such increases as may from time to time be determined by the [President] of the Employer. Employer makes no promises regarding the number of hours it will ask Employee to work in any given time period; Employee understands that the number of hours may vary with the needs of Employer.

OR (put "NA" through A or B if not applicable)

- (b) ~~Hourly Wage.~~ Employer shall pay the Employee an hourly wage of \$ _____. The hourly wage may be subject to such increases as may from time to time be determined by the [President] of the Employer. The pay periods, pay structure and information applicable to Overtime hours are referenced and explained in the Employee Handbook. No overtime without pre-approval from HR or Corporate officers. Employer makes no promises regarding the number of hours it will ask Employee to work in any given time period; Employee understands that the number of hours, as well as the work schedule may vary with the needs of Employer.
- (c) Monthly Bonus. Employee may receive a monthly bonus (paid first pay period after the 5th of the following month) for the below:

DOES THIS EMPLOYEE QUALIFY FOR A BONUS PACKAGE YES NO (circle one).

Bonus Tiers:

% 1 will be paid on the total net sales (net sales defined as gross sales, minus decking invoices, supplemental funds, tarping invoices, all credits and DRP or incentives provided to the accounts as well as the deduction of personal sales, General Managers or members of Corporate) equal to or in excess of \$ 100k.

% 2 will be paid on the total net sales (net sales defined as gross sales, minus decking invoices, supplemental funds, tarping invoices, all credits and DRP or incentives provided to the accounts as well as the deduction of personal sales, General Managers or members of Corporate) equal to or in excess of \$ 200k.

% 3 will be paid on the total net sales (net sales defined as gross sales, minus decking invoices, supplemental funds, tarping invoices, all credits and DRP or incentives provided to the accounts as well as the deduction of personal sales, General Managers or members of Corporate) equal to or in excess of \$ 300k.

% 4 will be paid on the total net sales (net sales defined as gross sales, minus decking invoices, supplemental funds, tarping invoices, all credits and DRP or incentives provided to the accounts as well as the deduction of personal sales, General Managers or members of Corporate) equal to or in excess of \$ 400k.

% — will be paid on the total net sales (net sales defined as gross sales, minus decking invoices, supplemental funds, tarping invoices, all credits and DRP or incentives provided to the accounts as well as the deduction of personal sales, General Managers or members of Corporate) equal to or in excess of \$ —.

Bonus will match Tony tiers for 90 days. He will bonus on his team only.

Bonuses are paid on the first pay date after the 5th on the following month.

Bonuses are subject to fines assessed by the company. These fines are as follows:

\$50 reduction for a Certificate of Completion with a "3" rating or less

\$500 reduction for a BBB complaint

Bonus Reduction Forms submitted and approved by Management. Bonus Reduction Forms will reduce the amount of the net sales.

General Managers Only

When a customer has a balance that becomes 90 or more days delinquent, the amount of that contract will be removed from "bonusable revenue" in terms of bonuses, forgoing the reason or when the job was sold.

When bonuses are calculated (on or shortly after the 1st of each month), any customer who has a warranty or has unfinished work that has aged more than 10 days, the revenue from that customer's contract will be reduced from "bonusable revenue".

- (d) Tax Withholding. All sums payable to the Employee under this Agreement shall be reduced by all federal, state, local and other withholdings and similar taxes and payments required by applicable law.
- (e) Commissions. Employee will be allowed to earn commission(s). Attached to this Agreement is "Exhibit A", which defines and explains the Commission pay structure.

DOES EMPLOYEE'S JOB TITLE WARRANT COMMISSION? CIRCLE ONE YES NO

4 RESPONSIBILITIES AND DUTIES.

The Employee's responsibilities shall include (but shall not be limited to) the following: (the "Services").

Sales Manager Atlanta

From time to time, the Employer may revise the nature of the Employee's Services. The Employee will promptly and faithfully comply with all reasonable instructions, directions, requests, rules, and regulations made or issued by the Employer, and the Employee will perform the Services conscientiously and in a timely manner in and to the best of the Employee's abilities at all times, when and wherever required or desired by the Employer and pursuant to the express and implicit terms of this Agreement, to the reasonable satisfaction of the Employer. Such duties shall be rendered at Marietta, GA and at such other place or places as the Employer shall in good faith require or as the interest, needs, business, or opportunity of the Employer shall require.

5 OTHER EMPLOYMENT.

The Employee shall devote all of his time and attention solely to the Employer's business and interest. During the Employment Period, the Employee shall not engage, directly or indirectly, in any other business activity, regardless of whether it is pursued for gain or profit; provided, however, nothing contained in this Section 5 shall be deemed to prevent or to limit the right of the Employee to invest his money in real estate or in other companies if such investment does not oblige the Employee to assist in the operation of the affairs of such companies.

6 EXPENSES.

The Employer shall reimburse the Employee for all business expenses actually and properly incurred by the Employee in connection with his duties under this Agreement in accordance with the Employer's normal policies. The reimbursement of such expenses shall be subject to the Employee's provision to the Employer of receipts, statements, and vouchers to the Employer's satisfaction.

7 CONFIDENTIALITY.

During and after the Employment Period, except as permitted by the Employer or required by law, the Employee shall not divulge or appropriate to his own use or to the use of others any secret or confidential information or knowledge pertaining to or otherwise affecting the Employer's business including but not limited to any of its customer lists, products, services, costs, profits, markets, sales, trade secrets, or other information not readily available to the public without regard to whether any of the above will be deemed confidential, material, or important. The Parties stipulate that, as between them, such matters are important, material, and confidential and affect the effective and successful conduct of the Employer's business, and the Employer's good will, and that any breach of the terms of this Section 8 shall be deemed a material breach of this Agreement.

8 NON-SOLICITATION.

During the Employment Period and for a period of ONE (1) year thereafter, the Employee shall not:

- canvass or solicit the business of (or procure or assist in the canvassing or soliciting of) any client, customer, or employee of the Employer who is known to the Employee as a result of his association with the Employer during the Employment Period for the purposes of competing with the Employer;
- accept (or procure or assist the acceptance of) any business from any client, customer, or employee of the Employer known to the Employee as a result of his association with the Employer during the Employment Period for the purposes of competing with the Employer; provided, however, that the Employer may consent to such competition in writing; or
- otherwise contact, approach, or solicit (or procure or assist in the contacting, approaching, or soliciting of) any entity known to the Employee through his association with the Employer before the Effective Date in such a way as may cause detriment to the Employer.

9 NON-COMPETITION AND CONFIDENTIALITY

At the end of the Employment Period, by expiration or termination, the Employee shall not directly or indirectly engage, own, manage, control, operate, be employed by, participate in, or be connected in any manner with the ownership, management, operation, or control of any business similar to the type of business conducted by the Employer for a period of ONE (1) year and within 100 miles from the present location[s] of the Employer's business. If the Employee actually breaches or threatens to breach the terms of this Section 10, the Employer shall be entitled to a preliminary restraining order and injunction restraining the Employee from violating its provisions. Nothing in this Agreement shall be construed to prohibit the Employer from pursuing any other available remedies for such breach or threatened breach, including the recovery of damages from the Employee.

Training will be provided to Employee from Company at a significant expense to the Company. During this training and throughout the Employee's employment, Employee will have access to proprietary information pertaining to Company's business model. It is agreed that, forgoing the reason, upon the termination of Employee's employment for any reason, Employee may not use or disclose to anyone or any entity the information gained from training or employment by the Company. It is furthermore acknowledged that all information disclosed during training is to be considered proprietary. The definition of "use" shall be defined as utilizing any information gained during training/Employment which Employee subsequently uses or attempts to use for the benefit of Employee or any other entity or person(s) Employee may have any type of business relationship with.

The harm accruing to the Company by virtue of Employee's breach of the restrictive covenant set out in this Section cannot be calculated at this time. For this reason, Employee and the Company mutually agree that in the event of Employee's breach of this Section, the Company shall be entitled to liquidated damages of \$15,000.00. It is agreed and stipulated that such payment will be made to and received by Company as liquidated damages for the breach and/or early termination of this agreement and shall not be paid as a penalty.

10 **AT WILL EMPLOYMENT**

This is an at will employment (where provided by law). Either party may terminate this agreement without notice to the other party. Nothing in the Employer's policies, actions, or this document shall be construed to alter the at will nature of Employee's status with Employer, and Employee understands that Employer may terminate his/her Employment at any time for any reason or for no reason, provided it is not terminated in violation of State or Federal law.

11 **TERMINATION.**

The Company shall not by reason of the termination of the agreement be liable to the other for compensation, of present or prospective profits on sales or anticipated sales, or on account of expenditures, or on bonus payments, commissions or other compensation other than earned salary or hourly wages.

12 **RETURN OF PROPERTY.**

At the end of the Employment Period or at any time on the Employer's request, the Employee agrees to return to the Employer, retaining no copies or notes, all documents relating to the Employer's business including, but not limited to, reports, abstracts, lists, correspondence, information, computer files, computer disks, and all other materials and all copies of such material, obtained by the Employee during his employment with the Employer.

13 **FURTHER ASSURANCES.**

Each Party hereto shall cooperate and take such further action as may be reasonably requested by the other Party in order to carry out the terms and purposes of this Agreement and any other transactions contemplated herein.

14 **ARBITRATION.**

Any controversy or claim arising out of this Agreement or Employment with the Company (with exception to sections 7, 8, 9, 10 and 22), or the breach, termination, or invalidity of this Agreement shall be settled by arbitration in the County of Sumner, Tennessee in accordance with then governing rules of Tennessee. The arbitrator(s) shall be bound by the Agreement and shall interpret the Agreement in accordance with the applicable laws of the United States and the internal laws of the state of Tennessee. Any award, order, or judgment made pursuant to such arbitration shall be deemed final and shall be entered and enforced in any court of competent jurisdiction.

15 **NOTICE.**

Any notice or other communication provided for herein or given hereunder to a Party hereto shall be in writing and shall be given in person, by overnight courier, or by mail (registered or certified mail, postage prepaid, return receipt requested) to the respective Party at the following address:

If to the Employer:

Best Choice Roofing Southeast LLC.
115 Hazel Path Suite 4.
Hendersonville, TN 37075

If to the Employee:

[Redacted]
31000

16 **SUCCESSORS AND ASSIGNS.**

Employment Agreement: Best Choice Roofing Southeast LLC. Page 5 of 17.

Employee Initials TW

This Agreement shall apply to all work performed by the Employee for the Employer, including any of its past, present, or future affiliates or subsidiaries, and shall be binding on the Employer's assigns, executors, administrators, and other legal representatives. This Agreement shall inure to the benefit of the Employer's successors and assigns. The Employee acknowledges that his services are distinctive and personal, and that he therefore may not assign his rights or delegate his duties or obligations under this Agreement.

17 NO IMPLIED WAIVER.

The failure of either Party to insist on strict performance of any covenant or obligation under this Agreement, regardless of the length of time for which such failure continues, shall not be deemed a waiver of such party's right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation under this Agreement shall constitute a consent or waiver to or of any other breach or default in the performance of the same or any other obligation.

18 GOVERNING LAW.

This Agreement shall be governed by the laws of the state of Tennessee. If litigation results from or arises out of this Agreement or the performance thereof, the Parties agree to reimburse the prevailing Party's reasonable attorneys' fees, court costs, and all other expenses, whether or not taxable by the court as costs, in addition to any other relief to which the prevailing Party may be entitled.

19 COUNTERPARTS/ELECTRONIC SIGNATURES.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. For purposes of this Agreement, use of a facsimile, e-mail, or other electronic medium shall have the same force and effect as an original signature.

20 SEVERABILITY.

- (a) Whenever possible, each provision of this Agreement, will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed, and enforced in such jurisdiction as if such invalid, illegal, or unenforceable provisions had never been contained herein.
- (b) [If the restrictions against solicitation in Section 8 or against competition contained in Section 10 of this Agreement shall be determined by a court of competent jurisdiction to be unenforceable because they extend for too long a period of time or over too great a geographical area, or because they are too expansive in any other respect, Sections 8 and 9 shall be interpreted to extend only over the maximum period of time for which they may be enforceable and over the maximum geographical areas as to which they may be enforceable, and to the maximum extent in all other respects as to which they may be enforceable, all as determined by such court in such action.]

21 HOLD HARMLESS AND INDEMNIFICATION.

The Employee shall hold the Company harmless and indemnify for any and all damages whether to person or property caused by the Employee, and which arise from misrepresentation or negligence of Employee, its agents, employees and representatives.

22 EMPLOYEE HANDBOOK

By accepting this Agreement, Employee acknowledges he/she has been given a copy of Best Choice Roofing's Employee Handbook or has been instructed where to locate the Employee Handbook, outlining most of the Employer's policies. He/she also acknowledges that he/she has been instructed of his/her Human Resources contact person and that he/she has been notified where to find the Company's Handbook at the location(s) which Employee renders services.

23 NON DISPARAGEMENT

During the Term and thereafter, Employee agrees to take no action which is intended, or would reasonably be expected, to harm the Company, it's Employees or it's or their reputation or which would reasonably be expected to lead to unwanted or unfavorable publicity to the Company.

24 CELL PHONE USAGE

The Employer does not permit it's Employees to use, in any way, their personal or work communications device while in or operating any type of vehicle.

25 ENTIRE AGREEMENT.

This Agreement constitutes the final, complete, and exclusive statement of the understanding of the Parties with respect to the subject matter hereof, and supersedes any and all other prior understandings, both written and oral, between the Parties. It may not be changed orally but only by an agreement in writing signed by the Party against whom enforcement of any waiver, change, modification, extension, or discharge is sought.

26 HEADINGS.

Headings in this Agreement are for convenience only and shall not be used to construe meaning or intent.

27 INTERPRETATION CLAUSE.

Employee agrees that Employer has given Employee the opportunity to have this document reviewed by an attorney. The parties negotiated the terms herein.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

EMPLOYER: Best Choice Roofing Southeast LLC (Corporate Only)

Name: _____

Signature: _____

Date: _____

EMPLOYEE:

Name: Tyler Woods

Signature: [Signature]

Date: 4-21-17

Employment Agreement: Best Choice Roofing Southeast LLC. Page 7 of 17.

Employee Initials TW

EXHIBIT D
EMPLOYEE "PAY AGREEMENT"

13 - 5 % of contract total will be paid to the salesperson for:

1. Obtaining a signed Contingency Agreement between the property and any other necessary documents.
2. Attending scheduled meeting with the homeowner's insurance adjuster to point out damage and present a copy of the signed Contingency Agreement. You will not be acting as an adjuster. You will merely be there to act as a technical advisor and will discuss the need to repair or replace damaged components (if any). If you are unable to attend, let the office know and we will arrange someone else to be there from the company. If you fail to make this appointment, commission can be reduced by 40%.
3. Obtaining a signed contract as well as any other necessary documents, as well as the collection of first check (endorsed by ALL parties). At this time, commission will be paid to the salesperson on the following pay period (see below), unless the check must be endorsed by a third party such as a lien holder (mortgage company etc.). If a check must be endorsed by another party, commission will be paid once all endorsements have been completed and the check(s) is/are received at the local branch.
4. After completion of the job, a Certificate of Completion must be taken to the homeowner in order to have the homeowner(s) sign and returned to the office promptly.
5. Pick up the final payment and any additional monies and/or documentation required from the homeowner(s).

If the Employee is unable to fulfill the 1-5 obligations above, any commission paid on those jobs will be reimbursed back to Best Choice Roofing Southeast LLC. Items 1-5 represent 20% of commission each. In order to get 100% of commission, all 5 activities above must be completed. If an Employee is paid and fails to complete all 5 activities above, he/she agrees to reimburse Best Choice Roofing Southeast LLC for any overpayment.

13 % commission will be paid when the same type of shingle (3 tab, architectural etc) is replaced with the exact style of material OR the Employee charges AT LEAST \$15 per square upgrade charge for "Architectural Shingles" and at least \$25 per square for OC Artisan/Duration/TruDefinition shingles. Metal roofing, Owens Corning products not listed in this paragraph or other brands of roofing upgrade pricing (other than Owens Corning) must be approved by a member of branch management or Corporate in writing or the Employee may be liable for costs.

11 % commission will be paid to the salesperson if the customer's shingles are upgraded at no charge to the customer.

9 % commission will be paid to the salesperson if a credit or DRP/DAP over the amount of \$500 is given to a customer

50% Lead PHL + DAP of \$1186.00+
NOTE: On work orders deemed to be less profitable, 5% of the net contract value will be paid to the Employee. Any form of payment received by the salesperson MUST be brought into the office the same day it is picked up. A delay in receipt of funds by the office may reduce your commission on that job.

Best Choice Roofing Southeast LLC has partnered with Storm Leads Inc. (telemarketing company) to provide quality leads. You are not obligated to accept ANY lead, as leads MAY be OFFERED to you. If you accept the lead, you will be charged. The charge for leads is \$20 per lead and \$50 per lead if you fail to report the result of that lead within 24 hours directly to Storm Leads Inc. and/or a member of branch management.

Commission will be paid to the Employee upon receipt of funds for that job. Commissions will only be paid on jobs with minimum Collection of ACV payment, or equivalent. If funds are not released from the Insurance company for Employment Agreement; Best Choice Roofing Southeast LLC. Page 8 of 17.

Employee Initials TW

any reason, Employee will be liable for the costs.

DEDUCTIBLE SPLIT

Employee will be eligible for \$ 300 when the ENTIRE deductible is collected and paid in full by the homeowner. Employee will not be paid this money until the full deductible is collected. If a contract is written as a cash job, no deductible split will be paid. This only applies on full roof approvals. The total job cost used to calculate % commission will be reduced by \$500 if a deductible split is paid.

OVERHEAD AND PROFIT

Overhead and profit collected on jobs will be split 65,35 with the salesperson upon receipt of overhead and profit in full. If this money is used to cover other expenses, no split will be made on the overhead and profit. This money is split if included in scope of work. If a contract is written as a cash job, no Overhead and Profit split will be paid. This only applies on full roof approvals. If Overhead and Profit is not paid by the carrier (notwithstanding the reason), Employee will not be paid a split.

If below signed Employee requests measurements of a house (or if measurements are not provided by Independent Contractor), Independent Contractor may be charged \$30 for these measurements.

If an insurance company does not pay for items needed or requested by the customer, you must use the cash price sheet to determine what the homeowner must pay to replace these items. If you cannot receive additional money from the homeowner for these items you will be charged the prices reflected on the cash price sheet or cost incurred, whichever is greater. On ALL jobs installed by Best Choice Roofing Southeast LLC, all pipe boots and ventilation and skylights and all flashing MUST be replaced. These items must be paid for by the insurance company or the homeowner or the Employee will be liable for the costs to replace these items.

CASH DEALS

If a cash deal is written, the amount of material sold is to be explicitly stated on the contract. If, based on the Independent Sales Contractor's measurements, the job was measured short or material was left off of the cash estimate, the Independent Sales Contractor will be responsible for paying the costs incurred to finish the job. Commissions on cash deals are not paid until the job is paid in full.

COUPONS

Independent Sales Contractors must honor any coupon presented by a homeowner with approval from the management of the branch or Corporate office. These coupons will not yield commission on the coupon amount. If the coupon is used towards a deductible, no deductible split will be honored on the coupon amount. These coupons cannot be used towards an upgraded warranty.

FINANCING

Commissions pertaining to any amount financed by Best Choice Roofing Southeast LLC will be paid once the entire finance agreement has been paid. Best Choice Roofing Southeast LLC can finance deductibles ONLY. Upgrades and additional work cannot be financed by Best Choice Roofing Southeast LLC. In the event the finance term exceeds four (4) months, NO commission will be paid on that amount. In the event the finance term is in excess of four (4) months, the finance amount will be treated as a credit and the rules governing the payment on credits will apply. If the Employee does not charge the external financing fee of 3%, the Employee will be charged back that amount.

NON RECOVERABLE DEPRECIATION

In the instance the contracted homeowner has non recoverable depreciation that is not being paid by the homeowner, Employee's commission will be negotiated.

Employment Agreement: Best Choice Roofing Southeast LLC. Page 9 of 17.

Employee Initials TW

DENIALS

Best Choice Roofing Southeast LLC, at its sole discretion, may choose to involve other people(s) to assist a homeowner on a denial that occurred with the Independent Employee. In the instance that Company elects to do so, Employee's commission will be reduced by 3% to offset the costs incurred to settle any claim the Company feels needs other people(s) involved in.

COMMISSION SPLITS

Best Choice Roofing Southeast LLC understands that there are occasions where commission may be shared with one or more than one rep/Employee. The rep/Employee that originated the Contingency has the sole discretion on who and how to split commissions, given the original rep/Employee is still under contract/employed with Best Choice Roofing Southeast LLC. However, Best Choice Roofing Southeast LLC cannot process splits for more than two Employees/ reps. If more than two Employees/ reps were involved, and you are the original rep, you must determine how to compensate the other reps/ Employees.

CREDITS

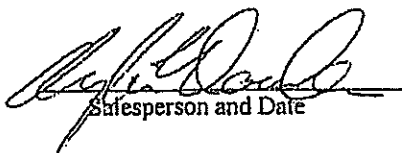
No commission will be paid on credits. The credit amount will be backed out of the net job cost. If a credit exceeds \$500, commission will be reduced to 7%. This section will also apply to financing terms in excess of four months or financing on items other than deductibles.

CANCELLED PORTIONS OF A CONTRACT OR CONTRACT CANCELLATION

If Best Choice Roofing Southeast LLC elects not to complete a portion or even all of the work on a contract, Best Choice Roofing Southeast LLC will not pay commissions on the work Best Choice Roofing Southeast LLC will not complete, all or part of the contract.

PAYMENTS FROM CUSTOMERS

Any payment must be IMMEDIATELY turned into the office. Failure to do so will give grounds for Best Choice Roofing Southeast LLC to terminate this Independent Sales Contractor Agreement. If funds are accepted from a homeowner, the Independent Sales Contractor will be fully liable for the payment, collection costs (if incurred) as well as court costs and attorney's fees if Best Choice Roofing Southeast LLC has to pursue Independent Sales Contractor to obtain payment. Best Choice Roofing Southeast LLC also has the right to notify law enforcement in the proper jurisdiction prior to any other action if funds are accepted by the below signed rep and not immediately turned into the office. For this paragraph, "immediately" is defined as, within 24 hours. . If a customer fails to satisfy their balance within 90 days, Sales Rep will lose or repay back commission, regardless of the reasoning


Salesperson and Date

Best Choice Roofing Southeast LLC and Date

Receipt of Best Choice Roofing Employee Handbook

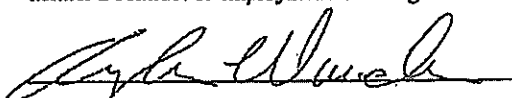
The Employee Handbook (sometimes referred to as a Personnel Policy Manual, or the "Manual") is a compilation of personnel policies, practices and procedures currently in effect at Best Choice Roofing, an equal opportunity employer. The Manual handbook and the information within it are confidential.

This handbook is designed to introduce employees to the organization, familiarize you with Company policies as they pertain to you as an employee, provide general guidelines on work rules, disciplinary procedures and other issues related to your employment, and to help answer many of the questions that may arise in connection with your employment.

This handbook and any other provisions contained herein do not constitute a guarantee of employment or an employment contract, express or implied. You understand that your employment is "at-will" and that your employment may be terminated for any reason, with or without cause, and with or without notice. Only the CEO or other authorized representative(s) of Best Choice Roofing has the authority to enter into a signed written agreement guaranteeing employment for a specific term. This handbook is intended solely to describe the present policies and working conditions at Best Choice Roofing. This handbook does not purport to include every conceivable situation; it is merely meant as a guideline and, unless laws prescribe otherwise, common sense shall prevail. Of course, federal, state and local laws will take precedence over Best Choice Roofing policies when applicable.

Personnel policies are applied at the discretion of Best Choice Roofing. Best Choice Roofing reserves the right to change, withdraw, apply or amend any of our policies or benefits, including those covered in this handbook, at any time. Best Choice Roofing may notify you of such changes via email, posting on the Company's intranet, portal or website, or via a printed memo, notice, amendment to or reprinting of this handbook, but may, in its discretion, make such changes at any time, with or without notice and without a written revision of this handbook.

By signing below, you acknowledge that you have received a copy of Best Choice Roofing's Employee Handbook, and understand that it is your responsibility to read and comply with the policies contained within it and any revisions made to it. Furthermore, you acknowledge that you are employed "at-will" and that this handbook is neither a contract of employment nor a legal document.


Signature

4-21-17
Date

Tyler Woods

Please print your full name

Please sign and date one copy of this notice and return it to Human Resources to humanresources@bestchoiceroofing.net. Retain a second copy for your reference.

Receipt of Harassment Policies

As described in the Harassment Policy and the Sexual Harassment Policy, harassment is prohibited at Best Choice Roofing.

By signing below, you acknowledge that you have received a copy of Best Choice Roofing's Harassment Policy and Sexual Harassment Policy, and understand that it is your responsibility to read and comply with both policies and any revisions made to them.



Signature

4-21-17

Date

Tyler Woods

Print your full name

CODE OF BUSINESS ETHICS AND CONDUCT

AS AN EMPLOYEE OF BEST CHOICE ROOFING ("COMPANY"), you are required to read the Company's Code of Business Ethics and Conduct ("Code") and then complete and sign the attached Certificate of Compliance. You may also be periodically asked to re-affirm compliance with the Code, as the Company deems appropriate.

It is important that you respond honestly and completely to the statements that follow. When you respond, it is implied that you are answering for yourself and for any family member or relative.

If you, a family member or relative are not in compliance with any of the areas described below, attach an explanation of your situation. If you are not sure about how to interpret a statement, or question whether you are in compliance, contact the Legal Department.

Should future changes face you in conflict with the Code, you must immediately notify the Legal Department in writing of the conflict.

Conflicts of Interest

- | | | |
|---|---|--|
| 1) I have not accepted any financial compensation (e.g., salaries, fees, commission, rebates or monetary rewards) from anyone doing business with the Company, including franchisees, suppliers, distributors, cooperatives, contractors, consultants, or any third-party vendor. | ☐ True (without exception) | ☐ Other (explain) |
| 2) I have not offered or received favors, or any preferential treatment from anyone doing business with the Company that may result in financial gain or that violate any law or the Code. | ☐ True (without exception) | ☐ Other (explain) |
| 3) I have not received more than \$200 worth of gifts or entertainment (not including meals) in any 12-month period from a single business source or more than \$500 in a 12-month period from all combined sources. | ☐ True (without exception) | ☐ Other (explain) |
| 4) I have not conducted Company business with a family member or relative, or with any business affiliated with a family member or relative. | ☐ True (without exception) | ☐ Other (explain) |
| 5) I do not directly supervise or have a position that influences or controls any aspect of a family member's or significant other's employment (including, but not limited to, promotions, salary or discipline) with the Company. | ☐ True (without exception) | ☐ Other (explain) |
| 6) I am not financially indebted to, and do not have any obligation to any competitors, vendors, suppliers, franchisees, distributors, joint venture partners, cooperatives, consultants, or other people or firms doing business with the Company. | ☐ True (without exception) | ☐ Other (explain) |

7) I do not own any stock, or have any other ownership interests in a competitor or, or any firm having a financial relationship with, the Company or its affiliates except as permitted in the Code. ☐ True (without exception) ☐ Other (explain)

8) I have not, to the best of my knowledge, become involved in a conflict of interest in violation of the Code. ☐ True (without exception) ☐ Other (explain)

Confidentiality

1) I have not communicated any proprietary information of the Company, including, but not limited to, trade secrets, marketing strategies, products, technology, development plans, unpublished financial, personnel or salary data to any unapproved person or entity. ☐ True (without exception) ☐ Other (explain)

2) I have not received any confidential information about a competitor or anyone else in a matter that might violate the Code. ☐ True (without exception) ☐ Other (explain)

3) I have not exchanged so-called inside information with anyone outside the Company except as authorized by the Company's General Counsel. ☐ True (without exception) ☐ Other (explain)

4) I have not used inside information for personal gain. ☐ True (without exception) ☐ Other (explain)

Government Relations

- 1) I have not made any unauthorized political contributions on behalf of the Company, nor have I used Company property for personal political activities. ☐ True (without exception) ☐ Other (explain)
- 2) I have not lobbied on behalf of the Company, without advance approval, or lobbied for any personal issues while on Company time. ☐ True (without exception) ☐ Other (explain)
- 3) I have not violated any rules regarding government contracts, reporting investigations. ☐ True (without exception) ☐ Other (explain)
- 4) I have not made any payments to a government official or third party in violation of the Code. ☐ True (without exception) ☐ Other (explain)

Commercial Transactions & Competition

- 1) I have not engaged in any commercial agreement(s) which are not in accordance with Company guidelines or entered into any commercial agreement(s) beyond the level of my authority. ☐ True (without exception) ☐ Other (explain)

Accurate Records

- 1) I have reported all financial and other information accurately and promptly. ☐ True (without exception) ☐ Other (explain)

General

1) I have not violated any other section of the Code. ☐ True (without exception) ☐ Other (explain)

2) I have read and understand all Company policies regarding proper conduct and am complying with them. ☐ True (without exception) ☐ Other (explain)

Please attach a separate sheet if you need more space to explain an answer to any of the statements.

CODE OF BUSINESS ETHICS AND CONDUCT CERTIFICATE OF COMPLIANCE

Woods Tyler W
Last Name (Please Print) First Name Middle Initial
Atlanta
Department Name / Branch
Employee ID Number / Social Security Number

I acknowledge that I have received and read the Best Choice Roofing Code of Business Ethics and Conduct and that I have answered the statements completely and truthfully.

I agree to abide by the provisions of the Code while employed by the Company, and will not use any confidential or proprietary information after I leave the Company. I will notify the Legal Department, in writing, if something happens to change my answers to any of the statements in this Certificate or that places me in conflict with the Code.

I also understand that signing this Certificate and complying with the Code does not guarantee my continued employment or alter my status as an At-Will Employee.

[Signature] 4-21-17
Signature Date

Tyler Woods
Print Name

Please return this Certificate as instructed by the Company.

NOTE: Incomplete Certificates will be returned to the employee for completions. In addition, the refusal to complete this Certificate could result in discipline which may include termination.

EXHIBIT 2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Best Choice Roofing & Home Improvement, Inc.,	)	C. A. No. 2018-CP-40-01318
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Tyler Woods,	)	
	)	
Defendant.	)	
	)	

PLAINTIFF’S RESPONSES TO DEFENDANT’S SECOND REQUESTS TO ADMIT

TO: NEKKI SHUTT, ESQ., COUNSEL FOR DEFENDANT TYLER WOODS:

COMES NOW, the Plaintiff Best Choice Roofing & Home Improvement, Inc. (hereinafter “Plaintiff”), by and through its undersigned counsel and pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, responds to Defendant’s Requests to Admit as follows:

REQUESTS TO ADMIT

1. Admit that Best Choice Roofing and Home Improvement, Inc. did not have an Augusta location on April 21, 2017.

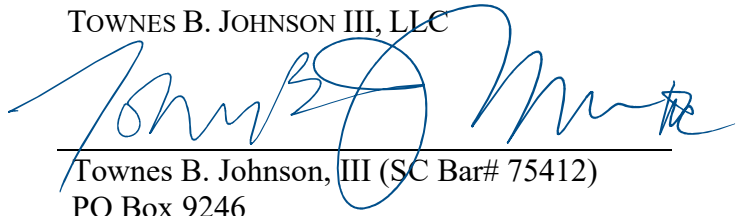
RESPONSE: Admitted.

2. Admit that Best Choice Roofing and Home Improvement, Inc. did not have a Charlotte, North Carolina location on April 21, 2017.

RESPONSE: Admitted.

Respectfully submitted this 14th of December, 2018.

TOWNES B. JOHNSON III, LLC



Townes B. Johnson, III (SC Bar# 75412)

PO Box 9246

Greenville, South Carolina 29604

PH: (864) 757-4899

tjohnson@sc.legal

Attorneys for Plaintiffs

Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Best Choice Roofing & Home
Improvement, Inc.,

Plaintiff,

v.

Tyler Woods,

Defendant.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

C.A. No. 2018-CP-40-01318

**DEFENDANT'S MEMORANDUM IN
OPPOSITION OF PLAINTIFF'S MOTION
TO AMEND THE COMPLAINT**

Plaintiff Best Choice Roofing and Home Improvement, Inc. (Best Choice) should not be given leave to amend its original complaint under Rule 15, SCRPC. Best Choice has moved to amend their complaint under the Rule to withdraw and abandon their sole prior claim that Woods breached his employment contract with the company and replace it with claims of fraud, negligent misrepresentation, conversion, breach of fiduciary duties, and violation of the SC Unfair Trade Practices Act (SCUTPA). Woods contends that Best Choice's motion to amend the complaint should not be granted as justice does not so require and doing so will prejudice Woods by unnecessarily extending the length of litigation and allowing Best Choice to escape liability for bringing a frivolous claim against Woods. Additionally, the claims brought against Woods in the amended complaint are unfounded when viewed in light of the facts of the case. As such, Best Choice's request for leave to amend the complaint should be denied.

Discussion

A. Best Choice's motion to amend the complaint should be denied because allowing leave to amend the complaint will prejudice Woods

Granting Best Choice's motion to amend the complaint will prejudice Woods in this litigation. In requests to amend a pleading more than thirty days after the filing of the original complaint, leave shall not be freely given when amending the complaint would prejudice another party in the litigation. (See SCRCP 15(b).) The analysis of granting leave to amend the complaint centers on "the underlying facts and circumstances relied upon by the plaintiff" (See *Patton v. Miller*, 420 S.C. 471, 490, 804 S.E.2d 252, 262 (2017) (quoting *Forman v. Davis*, 371 U.S. 178, 182 (1962).) Under Rule 15, SCRCP, prejudice is established when the amended pleading is accompanied by a lack of notice of the new issue to be tried and a lack of opportunity to refute the new issue. (See *Pool v. Pool*, 329 S.C. 324, 329, 494 S.E.2d 820, 823 (1998).) The prejudice contemplated in Rule 15 is present when the non-moving party is disadvantaged in defending the merits of a claim because the claim was not included in the original pleading or timely motion to amend. (See *Patton* at 491, 804 S.E.2d 252, 262-63.)

First, Woods would be prejudiced by allowing Best Choice to amend the original complaint because the amended complaint is so drastically different from the original that Woods had no notice of the new issues raised and no opportunity to refute such issues. Best Choice filed the original complaint against Woods on March 8, 2018 (Original Compl. p. 1.) and did not move to file an amended complaint until December 17, 2018 (Pl.'s Mot. Amend Compl. p. 2.) — more than nine months later. In those ensuing months, Woods retained counsel at an hourly rate and has been vigorously

pursuing justice for the unfounded claims in the original complaint. The sole claim included in the original complaint was a breach of contract claim arising from Woods' alleged violation of a non-competition clause in his employment agreement with Best Choice. (Orig. Compl. p. 2.) The original complaint contains no reference to any of the claims raised in the amended complaint, nor any indication that Best Choice intended to raise additional claims relating to fraud, conversion, or any other cause of action against Woods. Notably, a plain reading of the amended complaint reflects a complete withdrawal and abandonment of the prior claims Best Choice raised against Woods. Therefore, Woods had no notice of these newly raised issues and thus no opportunity to refute, which precludes Best Choice from being granted leave to amend the complaint.

Additionally, the prejudice Woods would encounter as a result of the granting of Best Choice's motion to amend the complaint is the very type barred by Rule 15, SCRCp. As the court made clear in *Patton*, prejudice arises when the non-moving party is disadvantaged by the introduction of an issue that was not included in the original complaint or *timely* motion to amend. (At 491, 804 S.E.2d at 262-63 (emphasis added).) It follows that Best Choice's failure to include the claims raised in the amended complaint in the original complaint or in a timely motion to amend will prejudice Woods. Woods will be disadvantaged by the amended complaint because the factual bases of the claims raised therein were available to Best Choice at the time it filed the original complaint, yet Best Choice chose to not raise such claims in that complaint or in a timely motion to amend the complaint. As such, Woods did not have notice of these claims and did not have opportunity to refute them. Therefore, Best Choice's current

motion to amend the complaint more than nine months after filing the original complaint prejudices Woods and therefore should not be granted.

B. Leave to amend the complaint should not be granted because Best Choice will escape liability for filing a frivolous claim in the original complaint.

Second, Best Choice's motion to amend the complaint should not be granted as the motion was filed in an attempt to avoid liability for interfering with Woods' employment and filing a frivolous lawsuit by way of the original complaint. First, Best Choice's attempt to enforce the non-competition provision of its employment agreement with Woods unlawfully interfered with Woods employment with his new employer in South Carolina. (See Def.'s Br. Mot. Dismiss p.11.) Woods' April 2017 employment agreement with Best Choice explicitly stated that Woods was barred from working within 100 miles of the present location of Best Choice's business for one year. (See Orig. Compl. Ex. A BCR Employment Agreement p. 4.) Under this agreement, Woods worked for Best Choice in Marietta, Georgia. (*Id.* at p. 3.) When Woods began employment with Premier Roofing LLC (Premier) in Irmo, South Carolina, Best Choice issued a cease-and-desist letter to Premier on November 30, 2017 notifying the company that Woods was in violation of his employment agreement, despite Best Choice's Marietta location being 193 miles away from Premier's location. (See Orig. Compl. ¶ 4; D.'s Ans. and Countercl. ¶ 5, ¶¶ 46-47.) As a direct result of the cease-and-desist letter, Premier terminated Woods employment with the company. (Ans. and Countercl. ¶ 48.) Therefore, Best Choice's blatant misrepresentation and disregard for the terms of its contract with Woods can be amounted to an interference with Woods business relationship with Premier.

Following this interference, Best Choice also filed the present action against Woods for breach of the employment agreement on the same unfounded grounds that Woods violated the 100-mile geographic limitation in the non-competition provision. As Premier is located 193 miles from the Best Choice location where Woods was employed in Marietta, Georgia, this action was filed as a frivolous lawsuit. (See S.C. Code Ann. § 15-36-10 et. seq.) Under South Carolina law, sanctions for filing a frivolous lawsuit may be administered when “a reasonable attorney . . . would believe that *under the facts*, his claim was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for [affecting a change of] existing law.” (§ 15-36-10(A)(4)(a)(ii) (emphasis added).) Additionally, sanctions may be administered when “a reasonable attorney under the same circumstances would believe that the procurement . . . of a civil cause was intended merely to harass or injure the other party.” (§ 15-36-10(A)(4)(a)(iii).)

Therefore, as the agreed-upon terms of Woods’ employment agreement with Best Choice do not provide a factual basis for Best Choice to bring action against Woods for working 193 miles away from its Marietta, Georgia location, a reasonable attorney would not believe Best Choice was warranted in bringing this action under existing law. Nor would a reasonable attorney believe a good faith argument existed for affecting the change of existing law as unreasonable geographic limitations in non-competition provision are considered against public policy in South Carolina. (See *Standard Register Co.*, at 71, 119 S.E.2d at 542 (citing *Somerset v. Reyner*, 233 S.C. 324, 104 S.E.2d 344 (1958)).) As there appears to be no reason rooted in law for Best Choice’s original action against Woods, a reasonable attorney could believe Best Choice brought the action merely to harass or injure Woods. Indeed, Best Choice’s filing

of the original complaint did injure Woods by causing him to both lose gainful employment with Premier and to employ counsel at an hourly rate for the duration of the litigation to date. Therefore, Best Choice's original complaint against Woods should be viewed as a filing of a frivolous lawsuit. As the amended complaint abandons Best Choice's original breach of contract claim, Best Choice should not be granted leave to amend the complaint to escape liability by removing the frivolous claims.

C. Best Choice should not be permitted to amend its complaint because the claims it substitutes are not supported by fact.

Finally, Best Choice should not be granted leave to amend the complaint because the newly alleged claims being brought against Woods are not supported by the facts of the case. In the amended complaint, Best Choice falsely claims that Woods intentionally used the \$2,500 advanced to him by Best Choice for "relocation expenses" to "seek a different opportunity" instead of relocating to Georgia. (See P.'s Mot. Amend Compl., Ex. A ¶¶ 4-5.) Best Choice relies upon the contention that Woods used the \$2,500 in such a manner as factual proof of fraud, negligent misrepresentation, violation of the SCUTPA, conversion, and breach of fiduciary duties. (See *id.* at ¶¶ 112-15, 20-21, 29-30, 36-37, 42, 44.) However, the actual order of events leading up to Woods termination of employment with Best Choice refutes the claim that Woods knowingly accepted the \$2,500 with intentions of using the money for reasons other than relocating to Georgia. Those events are as follows:

1. Woods, a 29-year-old roofing professional, was recruited by Best Choice to move to the Atlanta, Georgia area and work for the company in the Atlanta/Marietta area. (See Ans. and Countercl. ¶¶ 27, 29.)

2. Prior to the employment period in question, Woods had worked for Best Choice in a different location. (See *id.* at ¶ 28.)
3. At the time of the employment offer, Woods' wife was heavily pregnant. (See *id.* at ¶ 40.)
4. Woods accepted Best Choice's offer of employment in Marietta, Georgia on the condition that he would be reimbursed by Best Choice for his choice of housing in the Atlanta area. (See *id.* at ¶ 39.)
5. Woods began working for Best Choice in Marietta, Georgia on April 17, 2017. (See *id.* at ¶ 30.)
6. Upon commencing work with Best Choice, Woods discovered that Best Choice would not comply with the agreement to reimburse Woods for his choice of housing. (See *id.* at ¶ 40).
7. Rather than allowing Woods to choose housing, Best Choice gave Woods two choices of housing for himself, his expecting wife, and their soon-to-be newborn child:
 - i. A room in a poorly maintained Motel 6 in the Atlanta area; or
 - ii. A single room in the home of the relative of Best Choice employee who lived one hour outside of Atlanta. (See *id.*)
8. Realizing that these housing options would not possibly sustain the needs of his young, growing family, Woods terminated his employment with Best Choice effective April 29, 2017 and relocated his family to South Carolina. (See *id.* at ¶ 41-42, 44.)

As shown by the preceding events, Woods did not accept Best Choice's offer of relocation expenses with the intention of using them to take a different employment opportunity in South Carolina. Rather, Best Choice's actions in not complying with the agreement to reimburse Woods for his housing choice in the Atlanta area required Woods to seek the opportunity in South Carolina. By offering Woods only the impossible choice of moving his wife and soon-to-be newborn baby into either a single room in a Motel 6 or a single room in the home of another family, Best Choice gave Woods no other option besides terminating his employment and relocating his family to a more affordable area. Therefore, the claim that Woods accepted the \$2,500 with the preconceived intention of moving to South Carolina is unfounded; Woods did not know he would be placed in the position to make that decision until Best Choice rescinded on their promise to allow him to choose his housing in the Atlanta area. As such, Best Choice's claims that are based upon Woods intention of "absconding" with the \$2,500 cannot be sustained under the facts of the case, and thus Best Choice should not be allowed leave to amend the complaint to substitute such claims as the sole causes of action.

Conclusion

For the foregoing reasons, Woods requests that Best Choice not be granted leave to amend its complaint under Rule 15, SCRCP because justice does not so require, and such leave would prejudice Woods in the current litigation. Additionally, Best Choice should not be allowed to amend the complaint to substitute factually unsupported claims and to escape liability for the prior frivolous lawsuit contained in the original complaint.

Respectfully submitted,

s/Nekki Shutt

Nekki Shutt, Esq.
BURNETTE, SHUTT, & MCDANIEL, PA
P.O. Box 1929
912 Lady Street, Second Floor
Columbia, South Carolina 29202
Ph: 803-904-7912
Fax: 803-904-7910
nshutt@burnetteshutt.law

ATTORNEYS FOR DEFENDANT

Columbia, South Carolina

January 30, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Best Choice Roofing & Home Improvement, Inc.,	)	C. A. No. 2018-CP-40-01318
	)	
Plaintiff,	)	
	)	MOTION TO RECONSIDER,
v.	)	ALTER OR AMEND
Tyler Woods,	)	
	)	
Defendant.	)	
	)	
	)	

TO: NEKKI SHUTT, ESQ., ATTORNEY FOR DEFENDANT:

YOU WILL PLEASE TAKE NOTICE that the plaintiff, Best Choice Roofing & Home Improvement, Inc. ("Plaintiff"), by and through their undersigned counsel, will move before the Honorable Robert E. Hood, Circuit Court Judge, at such time and place as is convenient to the Court and counsel, for an Order altering, amending or granting relief from the Order granting Summary Judgment against Plaintiff and denying Plaintiff's Motion to Amend Complaint filed February 19, 2019 (hereinafter "Order") pursuant to *South Carolina Rules of Civil Procedure* Rule 59(e). This motion is based on the following:

1. The portion of Defendant's Motion for Summary Judgment related to its counterclaims against Plaintiff was not brought forth at the hearing held on January 30, 2019 and, accordingly, was erroneously ruled upon.
2. There are numerous material facts in dispute as it relates to Defendant's counterclaims and, accordingly, summary judgment is not proper.
3. Discovery in this matter is still ongoing and, accordingly, summary judgment is not proper.

4. In the Order, the Court erroneously states that Plaintiff consented to the portion of Defendant's Motion for Summary Judgment related to its counterclaims when no consent was actually given.
5. In the Order, the Court erroneously rules that Defendant would be prejudiced by Plaintiff's Motion to Amend being granted when neither the Court of the Defendant has shown that Defendant would lack notice or an opportunity to refute Plaintiff's new claims. *See Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276 607 S.E.2d 711 (Ct. App. 2005) (*The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it. (Citing Tanner v. Florence County Treasurer*, 336 S.C. 552, 521 S.E.2d 153 (1999))).
6. As Defendant would suffer no prejudice pursuant to South Carolina law, Plaintiff's Motion to Amend should be freely given. *Id.* (*Leave to amend pleadings pursuant to Rule 15, SCRPC, shall be liberally and freely given when justice so requires and does not prejudice any other party. Citing Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 493 S.E.2d 826 (1997) *and This rule strongly favors amendments and the court is encouraged to freely grant leave to amend. Citing Jarrell v. Seaboard Sys. R.R.*, 294 S.C. 183, 363 S.E.2d 398 (Ct.App.1987)).
7. As the Plaintiff's Motion to Amend should be freely given, the Defendant's Motion for Summary Judgment as it relates to Plaintiff's Complaint is moot.

CONCLUSION

For the foregoing reasons, the Plaintiff respectfully requests that the Court reconsider its February 19, 2019 Order and grant Plaintiff's Motion to Amend, deny Defendant's Motion for

Summary Judgment as it relates to Defendant's counterclaim and deem Defendant's Motion for Summary Judgment as it relates to Plaintiff's Complaint as moot.

Respectfully submitted this 28th day of February, 2019.

TOWNES B. JOHNSON III, LLC

/s/ Townes B. Johnson III

Townes B. Johnson III (SC Bar# 75412)

PO Box 9246

Greenville, South Carolina 29604

PH: (864) 757-4899

tjohnson@sc.legal

Attorneys for Plaintiff

Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
	)	
Best Choice Roofing & Home Improvement, Inc.,	)	C. A. No. 2018-CP-40-01318
	)	
Plaintiff,	)	
	)	REVISED MOTION TO RECONSIDER,
v.	)	ALTER OR AMEND
	)	
Tyler Woods,	)	
Defendant.	)	
	)	

TO: NEKKI SHUTT, ESQ., ATTORNEY FOR DEFENDANT:

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, Best Choice Roofing & Home Improvement, Inc. ("Plaintiff"), by and through their undersigned counsel, will move before the Honorable Robert E. Hood, Circuit Court Judge, at such time and place as is convenient to the Court and counsel, for an Order altering, amending or granting relief from the Order denying Plaintiff's Motion to Amend Complaint filed March 19, 2019 (hereinafter "Order") pursuant to *South Carolina Rules of Civil Procedure* Rule 59(e). This motion is based on the following:

1. In the Order, the Court erroneously rules that Defendant would be prejudiced by Plaintiff's Motion to Amend being granted when neither the Court of the Defendant has shown that Defendant would lack notice or an opportunity to refute Plaintiff's new claims. *See Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276 607 S.E.2d 711 (Ct. App. 2005) (*The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it. (Citing Tanner v. Florence County Treasurer, 336 S.C. 552, 521 S.E.2d 153 (1999)).*

2. As Defendant would suffer no prejudice pursuant to South Carolina law, Plaintiff's Motion to Amend should be freely given. *Id.* (*Leave to amend pleadings pursuant to Rule 15, SCRPC, shall be liberally and freely given when justice so requires and does not*

prejudice any other party. Citing Crestwood Golf Club, Inc. v. Potter, 328 S.C. 201, 493 S.E.2d 826 (1997) and This rule strongly favors amendments and the court is encouraged to freely grant leave to amend. Citing Jarrell v. Seaboard Sys. R.R., 294 S.C. 183, 363 S.E.2d 398 (Ct.App.1987)).

CONCLUSION

For the foregoing reasons, the Plaintiff respectfully that the Court reconsider its March 19, 2019 Order and grant Plaintiff's Motion to Amend.

Respectfully submitted this 27th day of March, 2019.

TOWNES B. JOHNSON III, LLC

/s/ Townes B. Johnson III

Townes B. Johnson III (SC Bar# 75412)

PO Box 9246

Greenville, South Carolina 29604

PH: (864) 757-4899

tjohnson@sc.legal

Attorneys for Plaintiff

Greenville, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
County of Richland	)	2018-CP-40-01318
	)	
BEST CHOICE ROOFING & HOME	)	
IMPROVEMENT,	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
TYLER WOODS,	)	
	)	
DEFENDANT,	)	

January 30, 2019
Columbia, South Carolina

BEFORE:

THE HONORABLE ROBERT E. HOOD, JUDGE.

APPEARANCES:

TOWNES B. JOHNSON, ESQ.
Attorney for the Plaintiff

NEKKI SHUTT, ESQ.
Attorney for the Defendant

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S

INDEX OF EXHIBITS:

(There were no exhibits introduced.)

INDEX OF WITNESSES:

(There were no witnesses called.)

1 THE COURT: Okay. All right. So we're on the record
2 in 2018-CP-40-3138, Best Choice Roofing vs. Tyler Woods.
3 Mr. Johnson is here for the plaintiff?

4 MR. JOHNSON: Yes, Your Honor.

5 THE COURT: All right.

6 MR. JOHNSON: My apologies. I had a little car issue
7 this morning.

8 THE COURT: I didn't even realize you were late, so
9 you didn't bother me in any way, shape, or form.

10 And Nekki Shutt?

11 MS. SHUTT: Yes, Your Honor.

12 THE COURT: Did I say that right?

13 MS. SHUTT: Yes.

14 THE COURT: All right.

15 MS. SHUTT: It's Necky like neck.

16 THE COURT: Necky, I'm sorry.

17 MS. SHUTT: That's very close, Your Honor.

18 THE COURT: I apologize. Okay. All right. So we
19 have plaintiff's motion to amend, a defendant's motion to
20 deem admitted, request for admission not responded, and a
21 defense motion for summary judgment; is that right?

22 MS. SHUTT: Well, Your Honor, I am withdrawing -- by
23 agreement, I am withdrawing the motion to deem admitted
24 the request to admit.

25 THE COURT: Okay.

1 MS. SHUTT: So we just have the two motions today.

2 THE COURT: All right. Let's do the motion to amend
3 first.

4 MR. JOHNSON: Thank you, Your Honor. May it please
5 the Court.

6 THE COURT: Yes, sir.

7 MR. JOHNSON: Townes Johnson on behalf of the
8 plaintiff, Best Choice Roofing.

9 Your Honor, this case was originally filed as a
10 straight breach of contract of an employment agreement
11 based on a liquidated damages provision, and this case was
12 referred to me through one of my classmates in law school
13 who was in Atlanta.

14 Some bad information was passed to him and that was
15 conveyed to me, and the complaint was drafted on those bad
16 facts, Your Honor.

17 Through discovery we have learned that those facts
18 have changed and -- Your Honor, some new circumstances
19 have come to light. Specifically -- and I'll give you a
20 little bit of background. Mr. Woods was an employee of
21 Best Choice Roofing in Tennessee. He agreed to move to
22 the Atlanta area to continue working for Best Choice
23 Roofing.

24 In conjunction with that, my clients advanced him
25 \$2,500 for living expenses and relocation fees and

1 whatnot. Mr. Woods stayed in Atlanta all of seven days
2 and then relocated here to South Carolina, Your Honor, and
3 through -- and anyway, and through the discovery process I
4 learned about this advance payment and the lack of
5 repayment thereof, and I learned that the claims under the
6 employment agreement no longer carried any weight, Your
7 Honor.

8 So this motion to amend drops the original breach of
9 contract cause of action, and it adds in causes of action
10 related to Mr. Woods' withholding of the 2500 and not
11 giving that back and -- and potential fraud,
12 misrepresentation and related to -- related to that
13 behavior, Your Honor. So that is the motion to amend.

14 You know, this -- so under 15 and the amendment is,
15 obviously, to conform to the proof, and that's Harvey vs.
16 Strickland, SE 2002, 385 SC 303 (phonetic) says should be
17 liberally allowed when prejudicing the opposing party will
18 not result.

19 And Your Honor, as you know, in Rule 15, prejudice
20 under Rule 15 is the lack of notice that the issue is
21 going to be tried and the lack of opportunity to refute
22 it.

23 Your Honor, we're still in the written discovery
24 phase of this litigation. We will have mediation
25 scheduled soon and potentially depositions, and so there

1 will be no prejudice to the defendants --

2 THE COURT: Okay.

3 MR. JOHNSON: -- in defending this cause of action.

4 THE COURT: All right. Hold on one second.

5 (Pause.)

6 All right. Do you want to be heard on the motion to
7 amend, Ms. Shutt?

8 MS. SHUTT: Yes, Your Honor, and it would be helpful
9 to be heard on the motion for summary judgment.

10 THE COURT: That's fine.

11 MS. SHUTT: Do you have the briefing I submitted, or
12 should I hand up a copy?

13 THE COURT: I do but if you have a copy --

14 MS. SHUTT: Certainly.

15 THE COURT: -- that would be helpful for me to read.
16 I have it all on the computer.

17 MS. SHUTT: My staff said summary judgment for the
18 judge, so that's the right copy.

19 THE COURT: They're smart.

20 MS. SHUTT: They're smart.

21 May it please the Court, Your Honor. My name is
22 Nekki Shutt. I represent Tyler Woods in this case. Tyler
23 is a 29 year old who has spent his entire life in the
24 roofing business. He worked for Best Choice since 2012 in
25 various states, and in 2017 they called him and said would

1 you come and work for us in Atlanta.

2 You know, basically the negotiation was yes, I'll
3 come but my wife is pregnant. We're very pregnant. We're
4 about to have a baby. We need a place to stay, so housing
5 was part of the deal.

6 There was a \$25 -- \$2,500 sign-on bonus. Tyler moved
7 from Tennessee to take this job. When he got there, he
8 was given the choice of a Motel-6 in a bad neighborhood or
9 staying in the room of another employee's house in -- you
10 know, in the outer rim of Atlanta neither of which were
11 acceptable for him and his new family.

12 He stayed -- I think it's two more -- between two and
13 three weeks there. That was an untenable situation. He
14 moved to Columbia where he had some family support.

15 Columbia is 183 miles from Atlanta. Best Choice was
16 not satisfied with the fact that he left, and so they sent
17 a cease and desist letter to his new employer. He got a
18 job with a roofing company here.

19 We sent a subpoena to them. They have shown in their
20 files that the only reason that Mr. Woods was terminated
21 was the cease and desist letter from Mr. Townes' client
22 saying that he was breaching a non-compete, and they
23 didn't want to get involved in that. So he lost his job
24 as his baby was about to be born.

25 Not satisfied with having caused him to lose his job,

1 they then filed this lawsuit in March of last year. I've
2 had repeated conversations with opposing counsel about
3 this being a groundless lawsuit. The employment agreement
4 clearly states that there is a non-compete, but you have
5 to be 100 miles away. It's 183 miles here.

6 We've done -- we've been forced to do a number --
7 we've done motions. We've had to compel every piece of
8 discovery we have gotten out of the plaintiffs. They
9 refused to submit to depositions.

10 They have -- when, you know, pressed on this issue
11 because we filed a counterclaim back. They filed a 505.
12 We did two sets for request to admit. Finally, the answer
13 came out of them after we, you know, moved to compel and
14 to deem them admitted was that they admitted that they
15 didn't have any offices within 100 miles. Nothing in
16 Charlotte, nothing in Augusta as they had previously
17 maintained to Judge Benjamin when we had our motion to
18 dismiss.

19 At that point, I said this is a baseless lawsuit.
20 This is a frivolous lawsuit. Let my client go. He is 29.
21 I -- I'm not being paid either, Your Honor. You know, he
22 gave me what he could, and I have had to stick with him
23 because I think he's right and I couldn't abandon the kid.

24 But once it was very clear that this was a baseless
25 lawsuit, and in 23 years that I've been doing this, I've

1 never seen a plaintiff behave this way, but they totally
2 abandoned all of the facts in their claim and in order to
3 avoid Frivolous Sanctions Proceeding Act, they have
4 totally created new facts and all of these new causes of
5 action.

6 So they have, in essence, abandoned all the previous
7 facts and the previous breach of contract cause of action
8 and now brought in these tort causes of action which is a
9 thinly veiled way to avoid liability with the Frivolous
10 Sanctions Proceeding Act.

11 I don't think -- we would ask the Court not to let
12 them amend. I mean, my client would definitely be
13 prejudiced. He is trying to pay a lawyer on an hourly
14 basis. We have engaged in written discovery, two sets of
15 requests to admit, two motion hearings. This is our third
16 motion hearing.

17 It would certainly prejudice him if he had to go back
18 and retread that ground on -- you know, and certainly, the
19 plaintiff has had an opportunity to assert these facts
20 before. I mean, they sent a cease and desist letter to my
21 client and to his new employer. They filed a lawsuit. I
22 filed a counterclaim. They filed a reply.

23 At no time did they mention this \$2,500 thing at all.
24 There is no piece of writing that they can show us that
25 says there was a contract that if, you know, your client

1 took the relocation fee that if he didn't stay more than a
2 day or didn't stay more than a week or more than a month
3 or more than a year he had to pay any of it back.

4 He showed up there in good faith, did not get what he
5 was promised, had a family to feed and a new baby on the
6 way and, you know, moved where he had some family support.

7 So now to let them amend, you know, almost a year
8 later would be patently unjust, Your Honor, and is not
9 what Rule 15 allows. Rule 15 allows you to look at the
10 facts and circumstances and justice and we're prejudiced.

11 Certainly, this -- this client who is trying to pay
12 me hourly to defend him, defend brand new allegations,
13 would not -- you know, would certainly be prejudiced, and
14 it is untrue that he would not be.

15 So we have a dueling motion for summary judgment,
16 Your Honor. The summary judgment and the motion to amend
17 were filed about the same time. You know, we've asked for
18 summary judgment on their claim on their first lawsuit
19 altogether.

20 THE COURT: The breach of contract?

21 MS. SHUTT: Yeah.

22 THE COURT: Okay.

23 MS. SHUTT: And I mean, they've abandoned that. I
24 don't know that Mr. Townes is going to -- Mr. Johnson,
25 sorry, Mr. Johnson is going to fight that at all.

1 MR. JOHNSON: No, Your Honor. That was part of
2 the -- I had bad information. I did. As it related -- I
3 was told that there was an office in Augusta at the time
4 that Mr. Woods was employed.

5 My understanding is the Atlanta law firm was told
6 that same information, and the letter that they sent to
7 Mr. Woods' employer was based on that information, as
8 well.

9 You know, Your Honor, as it relates to this, what
10 Ms. Shutt calls a relocation fee, there is a big dispute
11 about that. The checks themselves say draw on them, and
12 it was not a relocation fee of any sort.

13 It was -- it was to help him get established in
14 Atlanta, and he just took the money and moved to Columbia.
15 But there's a huge disagreement of the facts on that side
16 of it.

17 THE COURT: All right.

18 MS. SHUTT: I don't think we disagree at all as far
19 as our discovery. It's clear that he started on -- he
20 received this, this \$2,500 for moving expenses,
21 relocation, whatever is a draw, whatever it was on
22 April 14th, 2017.

23 His first day at work was 4/17/2017 in Atlanta, and
24 his last day was the 29th. So I mean, he worked two weeks
25 there, and there was -- I mean, there is no piece of paper

1 the plaintiff can offer to say that he had to pay anything
2 back. I mean, this is all souped up to avoid some type of
3 liability.

4 MR. JOHNSON: Well, Your Honor, and I adamantly
5 disagree with that, but that's -- that's neither here nor
6 there. I mean, actually it needs to be flushed out in
7 litigation. That's the whole point of getting to the
8 actual facts of what transpired. I don't think those
9 dates are accurate.

10 One of the checks was written, I believe, April 21st.
11 I think the other one was written April 19th. So you
12 know, I don't think that those dates are accurate as far
13 as when the checks were deposited or I think written by my
14 client, Your Honor.

15 But as far as the initial complaint, as soon as I
16 learned that they did not have a location as I was
17 previously told in Augusta, I moved to amend to drop the
18 claim. I think that's what a reasonable attorney in that
19 situation would do. Ms. Shutt filed summary judgment a
20 couple days thereafter, Your Honor.

21 As far as the Frivolous Proceedings Act, you know --

22 THE COURT: That's not even before me at this point
23 in time, so you don't -- I'm -- I don't -- I don't have
24 any impression that you did anything wrong, Mr. Johnson.
25 So you don't need to worry about that with me.

1 Clients sometimes give bad information to lawyers,
2 and they turn the facts into situations that are more
3 beneficial to them. So I'm not saying you did anything
4 wrong.

5 The issue before me at this point in time is the
6 motion to amend.

7 Does anybody else want to be heard on the motion to
8 amend?

9 MR. JOHNSON: Well, and quickly I would just say that
10 the prejudice of additional attorneys fees is not the
11 prejudice that's involved in Rule 15.

12 Rule 15 is very clear that the prejudice involved is
13 lack of notice and the lack of opportunity to review, and
14 in this case especially since we haven't done depositions
15 we're not on the trial docket as far as I know. I mean,
16 there can't be any prejudice under Rule 15.

17 THE COURT: When was the case filed? That's the one
18 question that I --

19 MR. JOHNSON: March 1st.

20 THE COURT: Of 2018?

21 MR. JOHNSON: Yes, sir.

22 THE COURT: Okay. All right.

23 Anything else, Ms. Shutt?

24 MS. SHUTT: Yes, Your Honor. I have to disagree with
25 Mr. Johnson on prejudice.

1 So, you know, prejudice means lack of notice. Lack
2 of notice, if he was filed -- this was filed in March
3 of 2018, there is not one sentence or one word about this
4 in that complaint.

5 That -- this did not appear at all until their
6 original claim totally evaporated, and it only evaporated
7 because I kept filing motions to compel because I was not
8 getting answers out of them.

9 And the only reason we didn't have depositions so far
10 is because they have not -- they have refused to give me
11 dates. We are past due for doing mediation, and they have
12 refused, refused, to come to mediation.

13 Frankly, Your Honor, I don't want my client to have
14 to spend more time, more time and resources on any of
15 that. He is entitled to be -- let go. He has not had
16 notice of this, so amending the pleadings, you know, ten
17 months after you filed them to try to rescue something is
18 not notice.

19 THE COURT: Okay. All right.

20 MS. SHUTT: Thank you.

21 THE COURT: All right. I'll let you all know by the
22 end of week. You'll get an email from my clerk with my
23 ruling in it, and then we'll get the proposed orders and
24 get it knocked out.

25 MS. SHUTT: Okay. Thank you, Your Honor.

1 THE COURT: Thank you both very much.

2 MR. JOHNSON: Thank you, Judge.

3 (Whereupon, the proceedings were concluded.)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the
5th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of Common Pleas for
Richland County, South Carolina, on the 30th day of
January, 2019.

March 8, 2019

Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

BUSCH, REED, JONES & LEEPER, P.C.

A PROFESSIONAL CORPORATION

Attorneys at Law

639 Whitlock Avenue

Marietta, Georgia 30064

TEL: (770) 424-1934

FAX: (770) 424-5205

Copy

James C. Busch (*Of Counsel*)
Chad K. Reed (*also admitted in NC and TN*)
M. Boyd Jones (*also admitted in AL*)
Jeffrey S. Leeper (*also admitted in FL and TX*)
Nicole A. Burgess-Busch
Cory C. Close
Jason D. Hergenroether
Philip C. Barnes
Ashley L. Yagla
Brent M. Kaufman
John K. Schultz
Lauren M. Wajsman
Diane M. Busch (*Of Counsel*)

Reply to: Brent M. Kaufman
bkaufman@buschreed.com

November 6, 2017

Premiere Roofing
10029 Broad River Road
Irmo, South Carolina 29063

Re: Restrictive Covenant Agreement with Best Choice Roofing and Tyler Woods

To Whom It May Concern:

My law firm represents Best Choice Roofing and it has come to my attention that a former employee of my client, Mr. Tyler Woods, is engaging in employment which is in direct violation of a Restrictive Covenant Agreement which he entered with my client on May 12, 2016.

The Agreement provides, among other provisions, that Mr. Woods "shall not directly or indirectly engage, own, manage, control, operate, be employed by, participate in, or be connected in any manner with the ownership, management, operation, or control of any business similar to the type of business conducted by the Employer for a period of **ONE (1)** year and within **100** miles from the present locations of the Employer's business."

It is my understanding that Mr. Woods began working with Premiere Roofing within days following his unexpected departure from Best Choice Roofing and that his work with Premiere Roofing is in direct violation of the terms of the aforementioned Restrictive Covenant Agreement. Best Choice Roofing is suffering substantial business losses and other damages and will continue to suffer these damages so long as Mr. Woods continues his wrongful conduct.

Best Choice Roofing hereby demands that Mr. Woods immediately cease and desist from further violation of this Agreement. Further, in the event that Premiere Roofing continues to allow Mr. Woods to perform work in any capacity henceforth, it will be deemed an active participant in this wrongful conduct, and will be subject to civil liability and damages. Additionally, to the extent that Mr. Woods has communicated any customers lists or any other business information

Copy

associated with his prior employment with Best Choice Roofing, my client demands that any such information be immediately reported to my office, with full details as to any communications which may have occurred through the use of that information.

I have been directed to immediately pursue legal action including, but not limited to, a Temporary Restraining Order and further injunctive relief against both Premiere Roofing and Mr. Woods in the event either or both refuse or fail to immediately cease and desist from this wrongful conduct and otherwise cooperate by providing information necessary to mitigate any further harm to my client. Additionally, the Agreement provides that the "Employee and the Company mutually agree that in the event of Employee's breach of this Section, the Company shall be entitled to liquidated damages of \$15,000.00." Per the Agreement, Mr. Woods must immediately make a payment of \$15,000.00 to Best Choice Roofing for his violation.

I urge you to respond immediately to this letter and directly take all action necessary to remedy this circumstance.

Very truly yours,

BUSCH, REED, JONES & LEEPER, P.C.



Brent M. Kaufman
For the firm

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Robert E. Hood, Master in Equity

Case No. 2018-CP-40-01318

Best Choice Roofing & Home Improvement, Inc.....Appellant,

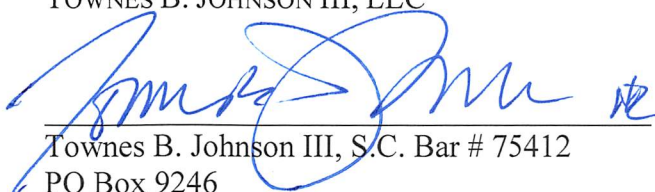
v.

Tyler Woods Respondent.

NOTICE OF APPEAL

Best Choice Roofing & Home Improvement, Inc., appeals the decision of the Honorable Robert E. Hood on October 22, 2019. Appellant received notice of the October 22, 2019 decision on October 22, 2019.

TOWNES B. JOHNSON III, LLC



Townes B. Johnson III, S.C. Bar # 75412

PO Box 9246

Greenville, S.C. 29604

(864)-757-4899

tjohnson@sc.legal

Attorneys for the Appellant

October 22, 2019
Greenville, South Carolina

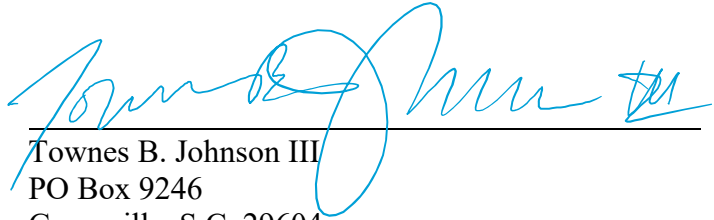
Other Counsel of Record:

Nekki Shutt, Esq.
Burnette Shutt & McDaniel, PA
Post Office Box 1929
Columbia, SC 29202
803-904-7912-office
NShutt@BurnetteShutt.Law
Attorneys for the Respondent

Certificate of Counsel

The undersigned hereby certified that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

October 22, 2020



Townes B. Johnson III
PO Box 9246
Greenville, S.C. 29604
(864) 757-4899
tjohnson@sc.legal
Attorneys for the Appellant

RECEIVED

Oct 22 2020

SC Court of Appeals