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STATE OF SOUTH CAROLINA **SC Court of Appeals** IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT CIVIL ACTION NO. 2016-CP-07-2541

Forum Benefits, LLC,

Plaintiff,

v.

Brian Bannon and Assured Partners, NL

Defendants.

**ORDER GRANTING DEFENDANTS'
MOTION FOR DIRECTED VERDICT
AND AWARDING PREVAILING PARTY
ATTORNEYS' FEES AND COSTS TO
DEFENDANTS**

This case came before the Court for a jury trial beginning October 11, 2021. At the close of Plaintiff's case in chief, Defendants Brian Bannon ("Defendant Bannon") and Assured Partners, NL ("Defendant Assured Partners") made a Motion for Directed Verdict pursuant to Rule 50 of the South Carolina Rules of Civil Procedure to dismiss all of Plaintiff's claims. The Court carefully reviewed Defendants Motion for Directed Verdict and the extensive information and case citations presented to the Court. The Court also reviewed some of the previous filings in the case. On October 14, 2021, the Court granted Defendants' Motion for Directed Verdict on all of Plaintiff's claims.¹ This ruling was placed on the record and is hereby confirmed by this ORDER.²

Defendants subsequently moved for an award of attorneys' fees and costs related to Plaintiff's breach of contract claim and trade secrets claim. The Court granted Defendants' motion for attorneys' fees and costs. Plaintiff subsequently filed a Response to Defendants' Motions for Attorneys' Fees ("Plaintiff's Response"). Defendants then filed a Reply in Support of Defendants'

¹ During the parties' arguments on Defendants' Motion for Directed Verdict, Plaintiff's counsel announced that Plaintiff was voluntarily dismissing Plaintiff's tortious interference claim against Defendants. The Court notes that Plaintiff pursued its tortious interference claim in this matter for approximately five years before suddenly abandoning this claim during the parties' directed verdict arguments.

² The case law discussed and cited by Defendants' counsel during Defendants' Motion for Directed Verdict is hereby incorporated by reference.

Motion for Attorneys' Fees/Costs and the Court's Award of Fees/Costs ("Defendants' Reply"). The Court has reviewed the parties' pleadings and arguments on this issue. This ORDER hereby confirms the Court's award of Defendants' attorneys' fees and costs.

A. DIRECTED VERDICT ON PLAINTIFF'S BREACH OF CONTRACT CLAIM

Defendants' Motion for Directed Verdict on Plaintiff's breach of contract claim against Defendant Bannon is GRANTED for the reasons described by this Court on October 14, 2021. The Court adopts all of Defendants' directed verdict arguments in connection with this claim, incorporates those arguments and attendant case law into this ruling, and holds that Plaintiff's breach of contract claim fails because:

- (1) Plaintiff failed to produce or prove the existence of a signed contract and, therefore, the alleged contract does not satisfy the Statute of Frauds;
- (2) Plaintiff failed to prove that there was a meeting of the minds on the essential terms of the alleged contract;
- (3) Even assuming the alleged contract was signed as Plaintiff alleged, the restrictions relating to the disclosure of confidential information and solicitation of customers expired two years after the employment relationship. Therefore, these restrictions expired at the latest in May of 2015, which was prior to the alleged breaches in this case; and
- (4) Plaintiff failed to establish the required elements of a restrictive covenant agreement which must be strictly construed against the employer under South Carolina law.

B. DIRECTED VERDICT ON PLAINTIFF'S BREACH OF FIDUCIARY DUTY CLAIM

Defendants' Motion for Directed Verdict on Plaintiff's breach of fiduciary duty claim

against Defendant Bannon is GRANTED for the reasons described by the Court on October 14, 2021. The Court adopts all of Defendants' directed verdict arguments in connection with this claim, incorporates those arguments and attendant case law into this ruling, and holds that the Plaintiff's breach of fiduciary duty claim fails because:

- (1) The question of whether a fiduciary exists is a question of law for the Court to decide;
and
- (2) Plaintiff failed to establish any evidence that Defendant Bannon's relationship to Plaintiff as an independent contractor created any type of fiduciary duty to Plaintiff.

C. DIRECTED VERDICT ON PLAINTIFF'S TRADE SECRETS ACT CLAIM

Defendants' Motion for Directed Verdict on Plaintiff's claim under the South Carolina Trade Secrets Act ("SCTSA") against Defendants is GRANTED for the reasons described by the Court on October 14, 2021. The Court adopts all of Defendants' directed verdict arguments in connection with this claim, incorporates those arguments and attendant case law into this ruling, and holds that the Plaintiff's trade secrets claim fails because:

- (1) The facts supporting Plaintiff's trade secrets claim, even taken in a light most favorable to Plaintiff, show that Plaintiff wholly and completely failed to prove the existence of any trade secret information;
- (2) Plaintiff failed to prove that it took efforts that were reasonable under the circumstances to maintain the alleged secrecy of its alleged trade secrets;
- (3) Plaintiff failed to prove that Defendant Bannon (or Defendant Assured Partners) obtained access to Plaintiff's trade secrets by improper means;
- (4) Plaintiff failed to prove that Defendants misappropriated, wrongfully disclosed, or wrongfully used its trade secrets;

- (5) Plaintiff failed to prove any causal link between Defendants' alleged misappropriation of Plaintiff's alleged trade secrets and Plaintiff's alleged damage. Plaintiff failed to prove damages that were proximately caused by Defendants' alleged conduct;
- (6) Plaintiff's alleged damages were wholly speculative and Plaintiff offered no evidence from any clients to establish that clients moved their business from Plaintiff to Defendant Assured Partners because of Defendants' use and/or disclosure of Plaintiff's trade secrets;
- (7) Plaintiff's introduced no evidence showing that Defendant Assured Partners ever had access to or used in any fashion any information of Plaintiff's that could be considered a trade secret; and
- (8) Plaintiff's trade secrets claim was so deficient in every respect that the Court finds that Plaintiff brought its misappropriation of trade secrets claim in bad faith.

D. DIRECTED VERDICT ON PLAINTIFF'S CONVERSION CLAIM

Defendants' Motion for Directed Verdict on Plaintiff's conversion claim against Defendant Bannon is GRANTED for the reasons described by the Court on October 14, 2021. The Court adopts all of Defendants' directed verdict arguments in connection with this claim, incorporates those arguments and attendant case law into this ruling, and holds that the Plaintiff's conversion claim fails because:

- (1) Plaintiff could not prove the elements of a conversion against Defendant Bannon;
- (2) Plaintiff failed to prove that Defendant Bannon converted any property of Plaintiff to the exclusion of Plaintiff's rights as Plaintiff always retained access and rights to the information at issue;
- (3) The property Plaintiff alleged that Defendant Bannon converted was intangible

property which, under South Carolina law, is not properly the subject of a conversion claim; and

- (4) Even if Defendant Bannon converted any of Plaintiff's alleged property, Plaintiff failed to prove any causal link between Defendant Bannon's alleged conversion and Plaintiff's alleged damages.

E. PLAINTIFF'S TORTIOUS INTERFERENCE WITH CONTRACT CLAIM

As referenced in footnote 1 above, during the directed verdict arguments, Plaintiff voluntarily dismissed its tortious interference claim against Defendants. Accordingly, the Court dismissed this claim.

F. AWARD OF DEFENDANTS' ATTORNEYS' FEES AND COSTS

With regard to the issue of awarding attorneys' fees and costs related to Plaintiff's breach of contract claim, the Court has reviewed Plaintiff's Response along with Defendants' Reply on this issue. The alleged contract upon which Plaintiff sued Defendant Bannon states, "In any litigation between the parties related to this Agreement, the prevailing party shall be entitled to recover all reasonable costs and attorney's fees." (Complaint Ex. A, ¶11.).

The Court confirms its ruling and finding that Defendant Bannon is the prevailing party related to this claim. Therefore, the Court GRANTS Defendant Bannon's motion for attorneys' fees and costs. Defendant Bannon is hereby awarded all attorneys' fees and costs incurred by him or paid by Defendant Assured Partners on his behalf and for his benefit in the defense of this case. These attorneys' fees and costs are assessed against and to be paid by Plaintiff.

With regard to the issue of awarding attorneys' fees related to Plaintiff's trade secrets claim, the Court has reviewed Plaintiff's Response along with Defendants' Reply on this issue. The SCTSA states: "If (1) a claim of misappropriation is made in bad faith, (2) a motion to

terminate an injunction is made or resisted in bad faith, or (3) wilful misappropriation exists, the court may award reasonable attorney's fees to the prevailing party.” S.C. Code Ann. §39-8-80. The Court confirms its ruling and finding that the evidence at trial proved that Plaintiff made and pursued this claim against Defendants in bad faith. The Court has also determined that Defendants are the prevailing parties related to this claim. Therefore, the Court GRANTS Defendants motion for attorneys’ fees under the SCTSA. Defendants Bannon and Assured Partners are hereby awarded all of their attorneys’ fees incurred in the defense of this case. These attorneys’ fees and costs are assessed against and to be paid by Plaintiff.

The Court has reviewed the Affidavits of Jeffrey A. Lehrer and William B. Harvey, III for attorneys’ fees and costs. The Court finds these fees and costs reasonable pursuant to the six factors established by the South Carolina Supreme Court in *Taylor v. Medenica*, 331 S.C. 575, 503 S.E.2d 458 (1998). The Court finds that the Affidavit of Jeffrey A. Lehrer provides sufficient support for the reasonableness of the fees and costs sought related to each of these factors.

G. CONCLUSION

It is confirmed and ORDERED that Defendants’ Motion for Directed Verdict is GRANTED in full and all of Plaintiff’s claims have been and are hereby DISMISSED. The Court hereby awards Defendants their attorneys’ fees and costs. JUDGMENT is hereby entered against Plaintiff in the amount of \$484,312.10.

It is so ORDERED.

Dated: _____

_____, County

Judge Bentley Price
Presiding Circuit Court Judge

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016 CP-07-2541

FORUM BENEFITS, LLC

BRIAN BANNON AND
ASSURED PARTNER, NL

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: BRIAN BANNON AND ASSURED PARTNERS,
NL

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

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. See Page 2 for additional information.
- 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:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
BRIAN BANNON AND ASSURED PARTNERS, NL	FORUM BENEFITS, LLC	\$484,312.10

If applicable, describe the property, including tax map information and address, referenced in the order:
N/A

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, 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 judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial before the court. The issues have been tried or heard and a decision rendered.

The Court has GRANTED Defendants' motion for directed verdict on all of Plaintiff's remaining claims.

The Court has GRANTED Defendants' motion for attorneys' fees and costs.

Judgment is hereby entered against Plaintiff.



Beaufort Common Pleas

Case Caption: Forum Benefits Inc , plaintiff, et al VS Brian Bannon , defendant, et al

Case Number: 2016CP0702541

Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766