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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Case No. 2019-CP-10-4053

Blind Acre, Inc., Respondent-Appellant,

v.

Stash Storage Holdings, Inc., Appellant-Respondent.

APPELLANT-RESPONDENT STASH STORAGE HOLDINGS, INC.'S INITIAL BRIEF

BEN TRAYWICK LAW FIRM, LLC
Benjamin A.C. Traywick, SC Bar #74027
Alexandra Scott Williams, SC Bar #102862
171 Church Street, Ste 340
Charleston, SC 29401
T: 843-872-1709 | F: 843-695-7839
ben@bentraywicklaw.com
ali@bentraywicklaw.com

Attorneys for Appellant-Respondent

Other Counsel of Record:

G. Rutledge DuRant (SC Bar #: 73944)
RIESEN DURANT LLC
613 Long Point Road, Suite 100
Mount Pleasant, South Carolina 29464
Phone: 843.800.0809 | Fax: 843.767.3282
Email: rutledge@riesendurant.com

Attorney for the Respondent-Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

STATEMENT OF ISSUES ON APPEAL..... 1

 1. WAS THERE REASONABLE EVIDENCE TO SUPPORT THE TRIAL JUDGE’S
 AWARD OF \$937,589.15 ON THE RESPONDENT’S BREACH OF CONTRACT
 CLAIM?..... 1

STATEMENT OF THE CASE..... 1

STANDARD OF REVIEW 1

ARGUMENT 2

 1. Under the terms of the contract, Respondent’s right to payment is defined by the amounts
 invoiced..... 3

 2. Respondent did not invoice for the \$750,000 because it performed no work that would have
 justified invoicing for the \$750,000..... 5

 3. The award includes monthly damages in amounts exceeding the amount Respondent
 invoiced for those months..... 6

CONCLUSION..... 8

TABLE OF AUTHORITIES

Cases

Branche Builders, Inc. v. Coggins,
386 S.C. 43, 47, 686 S.E.2d 200, 202 (Ct. App. 2009)..... 2

Consignment Sales LLC v. Tucker Oil Co.,
391 S.C. 266, 705 S.E.2d 73 (S.C. App. 2011)..... 2

Fuller v. E. Fire & Cas. Ins. Co.,
240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962) 2

Pope v. Gordon,
369 S.C. 469, 474, 633 S.E.2d 148, 151 (2006) 2

Tiger, Inc. v. Fisher Agro, Inc.,
301 S.C. 229, 237, 391 S.E.2d 538, 543 (1989) 1

Townes Associates, Ltd. v. City of Greenville,
221 S.E.2d 773, 266 S.C. 81 (1976) 2

STATEMENT OF ISSUES ON APPEAL

1. WAS THERE REASONABLE EVIDENCE TO SUPPORT THE TRIAL JUDGE'S AWARD OF \$937,589.15 ON THE RESPONDENT'S BREACH OF CONTRACT CLAIM?

STATEMENT OF THE CASE

This is an appeal from the trial judge's award of \$937,589.15 to the Plaintiff/Respondent Blind Acre, Inc. ("Respondent") on its breach of contract claim. Respondent commenced this civil action via filing of the Summons and Complaint on July 31st, 2019, and service thereof on or about September 26th, 2019. Appellant's default was entered on March 23, 2021, and the matter was referred to the Master-in-Equity for Charleston County, the Hon. Mikell Scarborough, who conducted a damages hearing on June 2nd, 2021. On June 15th, 2021, Judge Scarborough issued an order, and entered a corresponding judgment, awarding Respondent \$937,589.15 on its breach of contract claim, and \$1,000,000 in punitive damages.

On June 25th, 2021, Appellant filed a motion to alter or amend the order awarding the contract damages, which—with respect to the contract damages at issue on this appeal—Judge Scarborough denied. Judge Scarborough did alter the Order by retracting the punitive damages award, resulting in an amended order and judgment, both entered on December 30th, 2021, which restated the \$937,589.15 award of contract damages at issue in this appeal. This appeal, which challenges the sufficiency of the evidence supporting the contract damages award, was filed on January 28th, 2022.

STANDARD OF REVIEW

The scope of review for a case heard, as this matter was, by a master-in-equity who enters a final judgment, is the same as that for review of a case heard by a circuit court without a jury. *Tiger, Inc. v. Fisher Agro, Inc.*, 301 S.C. 229, 237, 391 S.E.2d 538, 543 (1989). "An action for breach of contract seeking money damages is an action at law." *Branche Builders, Inc. v. Coggins*,

386 S.C. 43, 47, 686 S.E.2d 200, 202 (Ct. App. 2009). “In an action at law, tried without a jury, the appellate court standard of review extends only to the correction of errors of law.” *Pope v. Gordon*, 369 S.C. 469, 474, 633 S.E.2d 148, 151 (2006). With respect to the trial judge’s findings of fact, this Court may reverse only those it finds to lack reasonable evidentiary support in the record. *Consignment Sales LLC v. Tucker Oil Co.*, 391 S.C. 266, 705 S.E.2d 73 (S.C. App. 2011).

ARGUMENT

Defendant/Appellant Stash Storage Holdings, Inc. (“Appellant”) very respectfully asks the Court to reverse the trial Court’s award of \$937,589.15 to Plaintiff/Respondent Blind Acre, Inc. (“Respondent”), on its breach of contract claim, on the ground that this award does not find reasonable evidentiary support in the record. “This being an action for the breach of contract, the burden was upon the [Respondent] to prove...the damages caused by such breach.” *Fuller v. E. Fire & Cas. Ins. Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962). As detailed herein, the award is for a sum dramatically in excess of Respondent’s recoverable damages, per the evidence and testimony introduced by Respondent in the proceeding below. Lacking support of reasonable evidence, the amount of the award is reversible error. *Townes Associates, Ltd. v. City of Greenville*, 221 S.E.2d 773, 266 S.C. 81 (1976).

The analytical starting point is that the damages award (\$937,589.15)¹ exceeds the aggregate amount Respondent invoiced Appellant (\$187,589.15) by a factor of five (5), per the evidence and testimony introduced by Respondent at the June 2nd, 2021, damages hearing (“Hearing”). The contractual damages award should not have exceeded the invoiced sum of \$187,589.15 because, by the terms of the contract, and by Mr. Holtkamp’s own testimony, the

¹ Per Respondent’s Damages Synopsis, the \$937,589.15 is composed of \$187,589.15 (the total invoiced over the life of the contract, less payments received) along with \$750,000 (\$25,000 per month x 30 un-invoiced months). (See Respondent’s June 2, 2021 Hearing Exhibit #2, at 1.)

invoices were coextensive with—indeed they defined—Respondent’s right to payment under the contract. Accordingly, for the entire amount above \$187,589.15, the award lacks sufficient evidentiary support, and must be reversed.

1. Under the terms of the contract, Respondent’s right to payment is defined by the amounts invoiced.

The record clearly establishes that Respondent’s right to payment is limited to the amounts invoiced. Per Paragraph 5 of the contract, “[Respondent] will be compensated and [Appellant] will be billed as provided in Schedule 3.” (Contract, Ex. 2 to Appellant’s Mot. to Alter or Amend Order filed June 15, 2021, at 2.) Schedule 3, in turn, establishes—via its “Billing and Payment Procedures”—that the amounts owed by Appellant would be based on a monthly invoicing system, under which Respondent would submit an invoice to Appellant for all sums due: “Monthly recurring invoices shall be submitted roughly 30 days in advance and paid by [Appellant] on or before the last day of said month.” (*Id.* at 4.) Late payments, like regular monthly payments, are also defined by reference to the invoices: “Any invoice that is more than 15 days overdue from the date on the invoice shall be subject to a late fee in the amount of 2% of outstanding balance.” (*Id.*) In short, whatever the nature of a given sum owed to Respondent—monthly payment, regular payment, late fee, *etc.*—would be included as a line item on an invoice submitted to Appellant.

Respondent’s actual performance under the contract validates the written agreement’s clear intent to establish this essential link: between Respondent’s submission of an invoice, and its right to payment. As reflected in the invoices submitted at the Hearing, Respondent submitted an invoice for all sums, of all types which could possibly be due under the contract: fees for monthly services, late payment penalties, interest on outstanding balances, one-time services, or otherwise. (June 2,

2021 Hearing Exhibit #3, at 1–19²; Invoices tab of Spreadsheet, June 2, 2021 Hearing Exhibit #4, at 9.).

Respondent’s testimony points to the same conclusion. Mr. Holtkamp, who himself prepared Respondent’s invoices, testified that in doing so his intention was to invoice for all amounts Blind Acre was owed under the contract:

Q. Did you invoice them for everything that was due under the contract?

A. Let me just make sure of the answer. We invoiced for what was in the contract.

That's what we invoiced for. Yes.

(June 2, 2021 Hearing Transcript, 45:1–5.)

It is critical testimony, because it establishes Respondent’s contractual intent and its understanding that the invoices would reflect all sums for which payment by Appellant was due. An unavoidable concomitant: that the \$187,589.15 Respondent invoiced expresses Respondent’s understanding of the amounts it was owed under the contract. Thus, under the plain language of the contract, validated both by Respondent’s invoicing practices and its principal’s testimony, Respondent’s right to payment of a particular sum is created—and Appellant’s corresponding payment obligation triggered—by Respondent’s submission of an invoice to Appellant. No provision of the contract entitles Respondent to payment for un-invoiced amounts.³ Yet the award does precisely that: it awards Respondent \$750,000 of contract damages for amounts which Respondent never invoiced.

² Respondent introduced a complete copy of the invoices at the Hearing, but neither the Court nor the court reporter retained a copy. After representing to this Court that it would work cooperatively with Appellant to identify and agree upon a complete set of the missing exhibits, Respondent has ignored Appellant’s efforts on these lines. As a result, this exhibit is the partial set of invoices that Appellant possesses, Respondent evidently preferring that this Court be denied the opportunity to evaluate the evidence Respondent itself presented at the Hearing.

³ With the sole exception of a single payment, due at contract inception, which Appellant duly paid, per Appellant’s testimony and submittals. (Contract, Ex. 2 to Appellant’s Mot. to Alter or Amend Order filed June 15, 2021, at 1.)

Viewed through the lens of Mr. Holtkamp’s clarifying testimony, the invoices reveal the contractual basis to reject—as logic and equity surely do—the profoundly implausible assertion at the heart of Respondent’s claim: that for six months’ service, the contract entitles Respondent to three years’ payment, transforming a reasonable claim for \$150,000 into an incomprehensible one for \$900,000.

2. Respondent did not invoice for the \$750,000 because it performed no work that would have justified invoicing for the \$750,000.

The record contains no evidence that Respondent rendered services in exchange for the \$750,000 monthly damages it was awarded by the Master. According to Mr. Holtkamp’s testimony, Respondent provided actual services to Appellant for a total of six months, from August 2018 to January 2019, the same six-month period during which Respondent invoiced Appellant for the monthly \$25,000 fee for those services. (June 2, 2021 Hearing Transcript, 27:3–15; *id.* at 45:17 – 47:3)⁴. Thus, for so long as Respondent performed monthly services justifying the \$25,000 fee for services, Respondent invoiced for those services. Once Respondent stopped performing monthly services, Respondent stopped invoicing for them. That Respondent only invoiced for work performed is unsurprising: at the Hearing Mr. Holtkamp agreed that “the \$25,000” is “not a flat rate” but instead is “a fee for services” which “purchases a unit of work by [Respondent] for the benefit of [Appellant].” (*Id.* at 41:8–16.)

Taken together, this evidence clearly indicates that Respondent did not believe itself entitled to the \$25,000 for any period other than when services were delivered, and an invoice submitted. Yet the award includes \$25,000 monthly damages for a further 30 months beyond discontinuation of services and invoicing, totaling \$750,000. (*Id.* at 28:1–12.)

⁴ Respondent’s February 2019 invoice included the \$25,000 charge only because the contract called for monthly payments one month in advance.

3. *The award includes monthly damages in amounts exceeding the amount Respondent invoiced for those months.*

Had Respondent, upon discontinuing services in January 2019, stopped invoicing altogether, that would be one thing: in that scenario, Respondent's position (that it was owed \$25,000 every month for 36 months, whether it provided services or not) might be at least arguably supportable. But Respondent continued invoicing for five months after discontinuing delivery of services, and in none of those five months did Respondent's invoice include the \$25,000 charge for which it was awarded contract damages.

Consider the following features of the invoices:

- a. Respondent submitted invoices to Appellant from August 2018 through June 2019.⁵ (See June 2, 2021 Hearing Exhibit #4, at 9.)
- b. Beginning with the first invoice at contract inception on August 1st, 2018, Respondent's monthly invoices—submitted on or about the 1st of each month—routinely included a \$25,000 line item for “Monthly Agency Services,” i.e. the fees for services Respondent provided under the contract. (See, e.g., June 2, 2021 Hearing Exhibit #3, at 21.)
- c. The \$25,000 line item last appears on the invoice submitted in January 2019, the same month which was the last during which Respondent actually provided services to Appellant. (See, *id.* at 2.)
- d. For the months subsequent to Respondent's discontinuation of its services, its monthly invoices—February, March, April, May and June of 2019—included new charges solely for late payment fees of approximately \$3,000 each (and quite logically omitting demand that Appellant pay for services Respondent was no longer delivering). (June 2,

⁵ The Summons and Complaint were filed in July 2019 and clearly constitute a termination of the contract. (See Complaint, filed July 31, 2019.)

2021 Hearing Transcript 46:13–18; June 2, 2021 Hearing Exhibit #4, at 9; June 2, 2021 Hearing Exhibit #2 at 1.)

If, as the final award supposes, Respondent believed itself entitled to \$25,000 per month—every month, for three years, regardless of whether or not it delivered services to Appellant—why would Respondent omit that charge from its final five invoices? Mr. Holtkamp had no answer for this question on the stand, because there is no answer:

Q. Why didn't you -- if you believed that you were invoicing for everything owed under the contract...why did you stop invoicing the \$25,000 in January and February of 2019?

A. I don't know.

(June 2, 2021 Hearing Transcript 46:22 – 47:3.)

Pressed on this critical point, Mr. Holtkamp entered the realm of absurdity:

Q. So you believed when you were sending invoices in February, March, April, May, and June of 2019, you believed that the invoice should reflect \$25,000 but you just didn't put it on there?

A. Yes.

Q. Is that because you're a nice guy?

A. Pretty much.

(*Id.* at 47:12–18.)

There is little doubt why Mr. Holtkamp refused to answer the question directly: the only answer that would have comported with the evidence would be, that Respondent itself recognized that it was not owed the monthly fee of \$25,000 for those five months. In place of that kind of candor, Respondent asked the Court, two years later, to re-write Respondent's own invoices for

February through June—from approximately \$3,000 each, up to \$25,000 each—and the Court did so. As a result, the final award includes approximately \$100,000 in monthly damages which Respondent’s monthly invoices say was never owed.

A second illustration of the excessiveness of the contractual damages award: final award not only in effect reforms four invoices to include \$25,000 payments not reflected on the actual invoices; and it not only accepts that Respondent, having invoiced for four months without demanding payment of the \$25,000 monthly fee, legitimately believed itself entitled to a further 27 months’ payment after those no-service-fee invoices; but final award also necessitates the conclusion that the contract was in full force—and monthly service fees still accruing—even after Appellant’s first breach in October 2018; even after Respondent discontinued services in January 2019; even after Respondent stopped sending invoicing altogether in June 2019; even after Respondent had sued Appellant in July 2019 and served the Summons and Complaint shortly thereafter; even after the passage of another eighteen months after service; and even up until the June 2, 2021, Hearing. The idea that the contract was in full force and effect throughout that time; that \$25,000 monthly service fees accrued throughout that time; that Respondent reasonably relied on Appellant throughout that time; and that Respondent took the required steps to mitigate its damages during that time, is simply not supported by law or fact.

For these reasons, there is no reasonable evidentiary basis for Respondent to be awarded any sum over and above the amount invoiced, less payment rendered: \$187,589.15, to which the contractual damages award should be reduced.

CONCLUSION

For the reasons stated above, this Court should reverse the trial Court’s award of \$937,589.15 to the Respondent.

Respectfully submitted,

s/ Benjamin A.C. Traywick

Benjamin A.C. Traywick, SC Bar #74027

Alexandra Scott Williams, SC Bar #102862

BEN TRAYWICK LAW FIRM, LLC

171 Church Street, Ste 340, Charleston, SC 29401

T: 843-872-1709 | F: 843-695-7839

ben@bentraywicklaw.com

ali@bentraywicklaw.com

Attorneys for Appellant-Respondent

July 25, 2022

Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
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APPEAL FROM CHARLESTON COUNTY
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Mikell R. Scarborough, Master in Equity

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Blind Acre, Inc., Respondent-Appellant,

v.

Stash Storage Holdings, Inc., Appellant-Respondent.

PROOF OF SERVICE

I hereby certify that on **July 25, 2022** a true and correct copy of the **APPELLANT-RESPONDENT STASH STORAGE HOLDINGS, INC.'S INITIAL BRIEF AND DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL** were served via email (see attached) on all counsel of record as follows:

G. Rutledge DuRant (SC Bar #: 73944)
RIESEN DURANT LLC
613 Long Point Road, Suite 100, Mount Pleasant, South Carolina 29464
Phone: 843.800.0809 | Fax: 843.767.3282
Email: rutledge@riesendurant.com

Attorney for the Respondent-Appellant

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Respectfully submitted,

BEN TRAYWICK LAW FIRM, LLC

By: s/ Alexandra Scott Williams
Benjamin A. C. Traywick (SC Bar No. 74027)
Alexandra Scott Williams (SC Bar No. 102862)
Attorneys for the Appellant-Respondent

July 25, 2022
Charleston, South Carolina



Williams O'Neill, Alexandra <ali@bentraywicklaw.com>

Blind Acre, Inc. v. Stash Storage Holdings, Inc. - Appellate Case No. 2022-000103

Alexandra Williams <ali@bentraywicklaw.com>

Mon, Jul 25, 2022 at 10:27 PM

To: Christina Sojourner <christina@riesendurant.com>, Rutledge DuRant <rutledge@riesendurant.com>

Cc: "Traywick, Ben" <ben@bentraywicklaw.com>, Teresa Cassaro <teresa@bentraywicklaw.com>

Rutledge-

Attached for service upon you please find:

1. APPELLANT-RESPONDENT STASH STORAGE HOLDINGS, INC.'S INITIAL BRIEF
2. DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL
3. DESIGNATED MATERIALS
4. PROOF OF SERVICE

We will be filing the same with the Court via email.

Thank you,
Ali







Alexandra Scott Williams O'Neill, Esquire

Ben Traywick Law Firm, LLC
171 Church Street | Suite 340
Charleston, South Carolina 29401
P | 843.872.1709
F | 843.695.7839
www.bentraywicklaw.com

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4 attachments

-  **22.07.25 INITIAL BRIEF of Stash Storage.pdf**
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-  **22.07.25 DESIGNATION OF MATTER to be incl in Record on Appeal- Stash Storage.pdf**
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-  **22.07.25 DESIGNATED MATERIALS COMBINED - Stash Storage.pdf**
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-  **22.07.25 PROOF OF SERVICE- Stash Storage Initial Brief & Designation.pdf**
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