

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Aug 23 2022

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Appellate Case No. 2022-000103

Blind Acre, Inc. Respondent-Appellant,

v.

Stash Storage, Holdings, Inc., Appellant-Respondent.

**RESPONDENT-APPELLANT'S RESPONSE BRIEF TO APPELLANT-
RESPONDENT'S INITIAL BRIEF**

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STATEMENT OF ISSUES ON APPEAL

- I. Does the record on appeal contain a sufficient basis to support the trial judge's actual damages award of \$937,589.15?**

SUGGESTED ANSWER: Yes.

ARGUMENT

I. STANDARD OF REVIEW

Under South Carolina law, the trial judge has considerable discretion regarding the amount of damages, both actual and punitive. *Collins Entm't Corp v. Coats & Coats Rental Amusement*, 355 S.C. 125, 584 S.E.2d 120 (Ct.App.2003); *Kuznik v. Bees Ferry Assocs.*, 342 S.C. 579, 538 S.E.2d 15 (Ct.App.2000). Therefore, review on appeal is limited to the correction of errors of law. *Kuznik v. Bees Ferry Assocs.*, 342 S.C. at 611, 538 S.E.2d at 32; *Welch v. Epstein*, 342 S.C. 279, 536 S.E.2d 408 (Ct.App.2000). “Our task in reviewing a damages award is not to weigh the evidence, but to determine if there is any evidence to support the damage award.” *Austin v. Specialty Transp. Services*, 594 S.E.2d 867, 358 S.C. 298 (Ct.App.2004) citing *Hutson v. Cummins Carolinas, Inc.*, 280 S.C. 552, 314 S.E.2d 19 (Ct. App.1984).

“In an action at law, on appeal of a case trial without a jury, the findings of fact of the judge will not be disturbed on appeal unless found to be without evidence which reasonably supports the judge’s findings.” *Mellen v. Lane*, 377.S.C. 261, 659 S.E.2d 236, 243-244 (S.C. App. 2008) citing *Townes Assocs. V. City of Greenville*, 266 S.C. 81, 86 221 S.E.2d 773, 775 (1976).

“The trial judge has considerable discretion regarding the amount of damages, both actual or punitive. Because of this discretion, our review on appeal is limited to the correction of errors of law. Our task in reviewing a damages award is not to weight the evidence, but to determine if there is any evidence to support the damages award. *Mellen*

v. Lane, 377.S.C. 261, 659 S.E.2d 236, 244 (S.C. App. 2008) citing *Austin v. Specialty Transp. Servs., Inc.* 594 S.E.2d 867, 873, 358 S.C. 298, 310-311 (Ct.App.2004).

II. THE AWARD OF ACTUAL DAMAGES IN THE AMOUNT OF \$937,589.15 IS SUPPORTED BY THE EVIDENCE CONTAINED IN THE RECORD

The actual damages award of \$937,589.15 is reasonably supported by the evidence in the record and the award should not be disturbed on appeal. Judge Scarborough correctly determined that the contract at issue in this case called for a sum-certain payment of a \$25,000.00 per month for a term period of 36 months as a minimum monthly agency service fee and that the contract additionally provided for payment, as defined in the contract, above the monthly minimum amount that would be invoiced monthly as determined under the contract, “Master Service Agreement Between Blind Acre., Inc. and Stash Storage Holdings, Inc.,” hereafter “agreement,” which was attached as Exhibit A to the Complaint.

“Where the terms of a contract are clear and unambiguous as a matter of law, is construction is for the court.” *Black v. Freeman*, 274 S.C. 272, 273, 262 S.E.2d 879 880 (1980).

The terms of the agreement are clear and unambiguous. The material terms of the agreement defining compensation, terms of payment and duration of the contract are located on page 1, paragraph 4 (a), “term”. page 2, paragraph 5, “Compensation and Billing Procedure” which references compensation and billing as defined on Schedule 3.

The plain wording of the contract shows that the parties negotiated and agreed to a sum-certain amount of \$25,000.00 that would be paid at a minimum for a term of no less than 36 months.

Unless terminated pursuant to subsection (b) or (c) below, the term of this Agreement shall commence on the date provided in Schedule 1 (“Commencement Date”) and shall continue until terminated by either party upon thirty days prior written notice (“Notice Period”), provided that this agreement may not be

terminated effective prior to the expiration of thirty-six (36) months from the Commencement Date.

(Agreement, Page 1, Paragraph 4(a)).

The minimum sum-certain to be paid of \$25,000 was a material term of the contract, was to be paid on a monthly basis and was agreed to be paid for a fixed term of 36 months.

Schedule 2 provides that the contract would commence on August 1, 2018. Schedule 1 defines “Services Assigned to Agency.”

Schedule 3 provides the material terms for compensation under paragraph 1(a): “Client will pay no less than a monthly agency service fee of \$25,000 in consideration of the services performed by Agency...” (Agreement, Schedule 3).

The basis for the actual damage award was \$187,589.15 (the total invoiced over the life of the contract, less payments received) along with \$750,000.00 (\$25,000 per month x 30 months of the minimum monthly fee from March 1, 2019 through August 1, 2021).¹

In addition to the clear and unambiguous terms of the agreement, Scott Holtkamp, Blind Acre’s agent, testified that the contract being a sum-certain in duration of 36 months with a \$25,000 minimum amount owed per month was a material term of the contract which caused him to agree to the contract in the first place. He testified as follows:

Q. Was there a minimum amount that Blind Acre was owed from Stash Holdings under the terms of this contract per month?

A. Yes, \$25,000.

Q. And so this was a sum-certain contract?

A. Yes.

¹ Stash made two payments toward obligations under the contract in total amount of \$50,000.00 each, represented by payments of \$25,000.00 each on August 31, 2018 and January 18, 2019.

Q. It was unambiguous?

A. Yes.

Q. Was that a material inducement for Blind Acre to sign this contract with 36 months, guaranteed \$25,000 a month?

A: Yes.

Q. On that basis, did you sign this contract?

A: Yes.

(June 2, 2021 Hearing Transcript 9:20-10:8.)

Because the agreement clearly called for a minimum of \$25,000 for a duration of 36 months, Stash's argument fails that the damage award should be limited to the extent of what had been invoiced. The 27 invoices submitted at the hearing contained work that was billed in addition to the minimum \$25,000 per month as well as late fees for the time period occurring from August 1, 2019 through June 15, 2019. (Damages Synopsis)

The invoiced amount of \$237,589 less what had been paid, \$50,000 totaled \$187,589.15. These invoices did not include the monthly minimum \$25,000 for the months of March 1, 2019 through August 1, 2021, which represented 30 months amounting to an additional \$750,000.

CONCLUSION

Judge Scarborough's actual damage award is supported by the evidence in the record and the total damage award was a combination of the remaining balance of the invoices in the amount of \$187,589.15 in addition to the \$750,000 balance reflected in the remaining minimum monthly payments of \$25,000 for the 30 months from March 1, 2019 through August 1, 2021.

Respectfully Submitted,

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PROOF OF SERVICE

I hereby certify that the Respondent Appellant's **RESPONSE BRIEF TO APPELLANT-RESPONDENT'S INITIAL BRIEF, DESIGNATION OF MATTER, AND PROOF OF SERVICE** was served on Appellant-Respondent on August 22, 2022 by emailing (see attached email) a copy of the same to Respondent's counsel of record as follows:

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August 23, 2022

VIA EMAIL: ctappfilings@sccourts.org & msingleton@sccourts.org

The South Carolina Court of Appeals
The Honorable Jenny Abbott Kitchings
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RE: Blind Acre, Inc. v. Stash Storage Holdings, Inc.
Appellate Case No. 2022-000103

Ms. Kitchings,

Enclosed for filing are one copy of each of the following:

1. Respondent-Appellant's Response Brief to Appellant-Respondent's Initial Brief
2. Respondent-Appellant's Designation of Matter for Inclusion in the Record on Appeal;
and
3. Proof of Service

Best Regards,

/s/G. Rutledge DuRant

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