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 FINAL RESPONSE BRIEF

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STATEMENT OF ISSUES ON APPEAL

I. Is the issue of whether the record contains some evidence supporting punitive damages is relevant?

II. Was the trial judge's order on the Rule 59(e) motion erroneous or prejudicial to Respondent-Appellant?

III. In addition to the issues above, Appellant-Respondent incorporates by reference the issues on appeal detailed in its Initial Brief.

COUNTER-STATEMENT OF THE CASE

This is an appeal from the trial judge's award of $937,589.15 to Respondent-Appellant Blind Acre, Inc. ("Respondent-Appellant") on its breach of contract claim. Blind Acre 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-Respondent Stash Storage Holdings, Inc.'s ("Appellant-Respondent") default was entered on March 23rd, 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-Appellant $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 (Ct. App. 2011).

ARGUMENT

1. Whether the record contains some evidence supporting punitive damages is irrelevant.

Respondent-Appellant asks this Court to rule that the existence of any evidence—on the basis of which the trial judge might have awarded punitive damages—in effect obligated the trial judge to do so- a plainly insupportable position. To get there, Respondent-Appellant begins with the wrong question: "Was there a basis in the record to support the trial judge's punitive damage award of $1,000,000.00 in his order of June 15th, 2021?" (Respondent-Appellant's Initial Brief, p. 5.) It is the wrong question because the answer controls neither the trial court's discretion whether to award punitive damages, nor this Court's discretion whether to affirm or deny. Regardless of whether the record contained some evidence supporting punitive damages, the salient inquiry is this: did the trial judge have the discretion ultimately to decline to award them, as he did via his order granting Appellant-Respondent's Motion to Alter or Amend under Rule 59(e), *SCRCP*?

Given the uniquely high burden of proof required for punitive damages, and the factfinder's

broad discretion on the matter, there can be little doubt that the trial judge acted within his discretion. The "clear and convincing evidence" standard for proof of punitive damages is "the highest burden of proof known to the civil law." *Austin v. Specialty Transp. Servs., Inc.*, 358 S.C. 298, 313, 594 S.E.2d 867, 875 (Ct. App. 2004). Given the sky-high evidentiary burden, it is fitting that our appellate courts afford the trial judge's decision on punitive damages the broad latitude afforded by the "abuse of discretion" standard of review. *Kuznik v. Bees Ferry Assocs.*, 342 S.C. 579, 612, 538 S.E.2d 15, 33 (Ct. App. 2000). An abuse of discretion occurs when the trial court's findings are wholly unsupported by the evidence, or the conclusions reached are controlled by an error of law. *Wright v. Craft*, 372 S.C. 1, 640 S.E.2d 486 (Ct. App. 2006).

The trial court's broad discretion regarding damages is founded in bedrock principles of our judicial system. "The trial court, which heard the evidence and is more familiar with the evidentiary atmosphere at trial, possesses a better-informed view of the damages than [the appellate court]. *Krepps v. Ausen*, 324 S.C. 597, 608, 479 S.E.2d 290, 295-96 (Ct.App.1996). "Because the appellate court lacks the opportunity for direct observation of the witnesses, it should accord great deference to [circuit] court findings where matters of credibility are involved." *Lollis v. Dutton*, 421 S.C. 467, 807 S.E.2d 723 (Ct. App. 2017). For these reasons, appellate courts "do not weigh the evidence, but determine if any evidence supports the award." *Oaks At Rivers Edge Prop. Owners Ass'n, Inc. v. Daniel Island Riverside Developers*, LLC, 420 S.C. 424, 803 S.E.2d 475 (Ct. App. 2017).

Against this backdrop of expansive trial-level discretion, itself afforded expansive appellate deference, Respondent-Appellant's focus on whether evidentiary support exists for the trial court's initial ruling (to award punitive damages) is misplaced, for two reasons. First, to accept Respondent-Appellant's rationale requires us to strip the trial judge of his discretion—insisted

upon by case after case after case; those cited above are of course a tiny fraction of the entire body of law—and replace it with a heretofore unknown "punitives by appellate fiat" regime that flips the existing framework on its head. It is telling that Respondent-Appellant cites no authority to support the proposition that underlies its position in this matter: i.e., that the existence of "any evidence" supporting punitive damages mandates an award of punitive damages. To the contrary, it is well settled that it was the trial judge's prerogative to determine whether an award of punitive damages was appropriate: in light of all the circumstances, all the evidence, and the trial court's own assessment of witness credibility, all viewed through the prism of the "clear and convincing evidence" standard. The trial judge ultimately decided not to award punitive damages, as was its plainly established right to do.

Second, Respondent-Appellant's argument, if endorsed by this Court, would strip the trial court of its power under Rule 59(e) to modify its prior rulings. The law imposes no requirement that an amended judgment be entirely consistent with its original draft. Indeed, by definition an altered or amended judgment will diverge in some respects from its original, pre-alteration form. Yet Respondent-Appellant seizes upon the trial Court's pre-alteration ruling and asks this Court to dictate an outcome in conformity with that initial ruling. To endorse this viewpoint would endorse judicial neutering of Rule 59.

2. The trial judge's order on the Rule 59(e) motion is neither erroneous nor prejudicial to Respondent-Appellant.

Respondent-Appellant's request that this Court jettison the trial judge's decision rests on fatally flawed positions, which will be addressed in turn. First:

> Unlike the Order of June 15, 2021 stating the basis for the award of punitive damages, there was no information or clarification in the December 30, 2021 Order concerning why the significant amount of punitive damages, or even any amount of punitive damages, were no longer warranted.

(Respondent-Appellant's Initial Brief, p. 7). Implicit in this argument is the erroneous notion that

the findings in the initial order possessed, even after being altered, ongoing legal significance, which they clearly did not. The trial court retained jurisdiction to alter his original rulings—including abandoning those it had reconsidered—and exercised his jurisdiction to do just that. To play the amended findings off against the original ignores that once abandoned, elements of the original order have no significance. If we accept that the trial court was free to announce, in its original ruling, that "there is no basis in the record to support a punitive damages award," then, very respectfully, it follows unavoidably that the trial court was free to announce that same proposition in ruling on the Rule 59(e) motion.

Second:

> The Order did not state that the judge was simply using his discretion to reconsider the award, but rather held that there was "no basis in the record," which, in effect, means that his previous award was in error. However, there was no explanation concerning what the judge believed no longer amounted to the basis for a punitive damages award.

(Respondent-Appellant's Initial Brief, p. 14.) As a preliminary matter, it is obvious that, in using his discretion to reconsider the punitive damages award, the trial judge was under no obligation to "state that [he] was simply using his discretion to reconsider the award." More substantively, for a trial court, upon reconsideration, to modify its initial conclusion regarding punitive damages, most certainly does not "mean that the previous award was in error." This proposition further exhibits Respondent-Appellant's excessive emphasis on the purported existence of "some evidence" that would support punitive damages. Assuming, *arguendo*, the existence of some evidence or some support for a punitive damages award, the factfinder certainly is under no obligation to award them. There is nothing obligatory about punitive damages, which are in the broad discretion of the factfinder: one factfinder could look at a hypothetical record containing evidence of reckless conduct and validly award punitives, while a second factfinder could look at

the exact same record, and rule with equal validity that no punitives are warranted. Likewise, there is no error in a trial court, upon reconsideration, modifying its initial impression of whether it has a punitives case before it. As to the assertion that the trial court owed an "explanation" for refusing punitive damages, no citation is given, because no supporting authority exists. See, *Woodson v. DLI Props., LLC*, 406 S.C. 517, 527, 753 S.E.2d 428, 433 (2014) (citing Rule 52, *SCRCP*, for the proposition that findings of facts and conclusions of law on motions are not required for appellate review).

Third:

> This appeal does not concern an appeal of the trial judge's discretion. This appeal concerns the trial judge's ruling that there was "no basis in the record to support the $1,000,000 punitive damages award. (Order of June 15, 2021.)

(Respondent-Appellant's Initial Brief, p. 14-15.) Contrary to these assertions, this appeal as an initial matter most assuredly does concern the trial judge's discretion: whether the trial court abused that discretion is the applicable standard of review. To the substance of the argument: the Respondent-Appellant's error in this instance is in imposing a narrow interpretation of the trial court's ruling that is unjustifiable under applicable principles. First, the order can and should be construed in light of the governing principles at hand: specifically, the fact that to decline punitive damages, the trial court needn't have found that there was "no support" in the record. Thus, the orders and judgments, taken together, reflect simply that the trial court did not deem punitive damages to be supported by this record, under governing principles, *e.g.* the need for clear and convincing evidence of willful and reckless conduct.

Second, even accepting the hyper-narrow view of the trial court's ruling advanced by Respondent-Appellant, there is nothing erroneous about concluding that there is "no support" for punitive damages in this record. In outlining what it views to be "support for" punitive damages,

in its Initial Brief , Respondent-Appellant relies exclusively on the testimony of Scott Holtkamp. But the judge was free to downgrade the importance or credibility of that testimony, or to reject it altogether. See *S.C. Dep't of Soc. Servs. v. Forrester*, 282 S.C. 512, 516, 320 S.E.2d 39, 42 (Ct. App. 1984) ("[T]he credibility of testimony is a matter for the finder of fact to judge.") In a bench trial, "the judge, as the finder of fact, may believe all, some, or none of the testimony, even when it is not contradicted…Because the appellate court lacks the opportunity for direct observation of the witnesses, it should accord great deference to [circuit] court findings where matters of credibility are involved." *Hoyler v. State*, 428 S.C. 279, 833 S.E.2d 845 (Ct. App. 2019) (internal quotations omitted).

Under these authorities, the trial court was well within its right to conclude there was no support for punitive damages. Given that the record manifestly affords the factfinder room to refuse punitive damages, there certainly is no prejudice in the rulings issued by the trial court. *Watts v. Bell Oil Co. of Ocean Drive, Inc.*, 266 S.C. 61, 63, 221 S.E.2d 529, 530 (1976) (holding a trial court will only be reversed when the record shows not only error but also prejudice).

CONCLUSION

For the reasons stated above, this Court should affirm those portions of the trial court's December 30, 2021 order that removed the award of punitive damages to the Respondent-Appellant.

Respectfully submitted,

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CERTIFICATION OF APPELLANT-RESPONDENT

The undersigned hereby certifies that the Appellant-Respondent's Final Response Brief complies with Rule 211(b), *SCACR*.

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