

# **EXHIBIT 6**

STATE OF SOUTH CAROLIA

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

CASE NO.: 2020-CP-04-01202

Moats Construction, Inc.,  
Plaintiff,**RECEIVED**

Motion/Alter and/or Amend

**Oct 26 2022**Cecil R. Dyar,  
Defendant.,**SC Court of Appeals**

This matter was before the Court pursuant to the Plaintiff's Motion for Reconsideration under Rules 59 and 60 of the South Carolina Rules of Civil Procedure. This case has multiple issues, with the Plaintiff and the Defendant having a dispute over real property located in Anderson County, SC. The property was subject to a mortgage held by the Defendant. The Plaintiff filed suit, alleging that the Defendant was responsible for problems with insurance coverage regarding a building on the subject property. The Defendant counterclaimed for foreclosure.

The Court held its initial hearing on April 13, 2021, in which the Defendant moved for Summary Judgement. At all times, the Plaintiff did not contest the Defendant's right to foreclosure. There was a disagreement between the parties as to the correct amount owed by the Plaintiff on the subject property. The Court ordered that a damages hearing be held so that evidence could be submitted for the Court to consider regarding the issue of the amount owed to the Defendant.

A damages hearing was held on February 24, 2022, with proper notice to the parties. The Plaintiff appeared along with his previous attorney, who moved to be relieved as counsel. The Court directed that the Plaintiff's counsel remain counsel of record until the damages hearing was completed. The Court took testimony, including that of the Plaintiff, and concluded that the Defendant was entitled to a judgement in the amount of **\$250,614.04.**

The Plaintiff retained new counsel, and moved that a new damages hearing be held or that the amount of the judgement be modified. Numerous exhibits were entered into the record by the Plaintiff to show discrepancies in the amounts as set by the Defendant's expert witness. The Defendant argues that this motion is improper, since the Plaintiff had ample opportunity to challenge the amount sought by the Defendant at the damages hearing and failed to do so.

The Court carefully considered the exhibits presented by the parties, the transcripts of the hearing, arguments of counsel, and applicable law. Accordingly, the Court concludes that Plaintiff's motion for reconsideration pursuant to Rule 59(e), SCRPC be denied as there was no misunderstanding or failure to fully consider all arguments and issues at the damages hearing. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). The Court notes that, at this motion for reconsideration, Plaintiff's counsel provided the materials in an organized and understandable manner. The Court may have arrived at a different conclusion regarding the judgement amount had these materials been presented at the damages hearing. However, it appears that none of these calculations were new, or based on information that was not in the Plaintiff's possession at the time of the damages hearing. The Court notes that the Plaintiff had retained an expert at some point in the litigation, although the Plaintiff testified that he disagreed

with the expert's calculations. Plaintiff's counsel at the time informed the Court that the expert was not called to testify at the damages hearing because he "had not yet been paid."

The Court concludes that it will be improper to set aside the judgement and order a new hearing and/or modify the amount of the judgement simply because the Plaintiff has done a much better job now of preparing the evidence/records in his possession than he did at the time of the damages hearing.

Accordingly, the Plaintiff's Motion is DENIED.



Anderson Common Pleas

**Case Caption:** Moats Construction Inc VS Cecil R Dyar

**Case Number:** 2020CP0401202

**Type:** Order/Form 4

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit