THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

J. Cordell Maddox, Jr., Circuit Court Judge

APPELLATE CASE NUMBER: 2022-000242
TRIAL COURT CASE NUMBER: 2019-CP-04-00927

Joyce Porter and Edith Durham,.....Respondents,

V.

Jimmy L. Davis, Inc. and Jimmy L. Davis, Individually,.....Appellants.

APPELLANTS' FINAL BRIEF

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STATEMENT OF THE CASE

Joyce Porter and Edith Durham, Plaintiffs, filed a civil suit in the Anderson County Court of Common Pleas on May 16, 2019, against Jimmy L. Davis, Inc. and Jimmy L. Davis, individually, Defendants. (R. pp. 46-63). Thereafter, Plaintiff's attorney filed two affidavits of service executed by Michael McNamara on June 3, 2019. Both affidavits of service were executed on May 26, 2019, and stated that both Defendants had been personally served on May 22, 2019, at 4:06 p.m. EDT at 2900 Highway 153, Piedmont, South Carolina, 29673. (R. pp. 64-65).

The Plaintiffs filed an affidavit of default, affidavit of non-military service, and motion for entry of default with the Clerk of Court for Anderson County on July 2, 2019. A certificate of service was also filed stating the same had been mailed to both Defendants by first class mail, with postage prepaid, to 2900 Highway 153, Piedmont, SC 29673. An order of entry of default granting Plaintiff's motion was executed on July 9, 2019. (R. pp. 66-74).

On August 19, 2019, Plaintiffs filed a motion for entry of default judgement against both Defendants, together with an affidavit of attorney's fees and costs. A certificate of service by mail was filed on that same date stating that both Defendants were served with the motion for default judgement, affidavit of attorney's fees, and proposed order granting default judgement by first class mail, with postage prepaid, addressed to 2900 Highway 153, Piedmont, SC, 29673 on August 19, 2019. (R. pp. 75-79).

A damages hearing was scheduled pursuant to Plaintiffs' motion for Tuesday, October 22, 2019, at 10:00 a.m. on the non-jury, motion roster in the Anderson County Court of Common Pleas. The Plaintiffs' attorney filed a certificate of service on September 24, 2019, that both

Defendants had been served with the notice of the hearing via certified US mail, postage pre-paid, addressed to the following address: 2900 Highway 153, Piedmont, SC, 29673. (R. p. 81). The Anderson County Clerk of Court also mailed hearing notices to the Defendants at this same address. (R. pp. 82-83).

The damages hearing was held as scheduled, and the Defendants were not present. The hearing proceeded with both Defendants absent. An order granting a default judgement against both Defendants in the amount of Four Hundred, Seventy-Seven Thousand, Three Hundred and 75/100ths Dollars ($477,300.75) Dollars was signed by the Honorable Letitia H. Verdin on November 2, 2019. (R. pp. 8-10).

The Defendants filed and served a notice of special appearance and motion to dismiss and to set aside the entry of default and the default judgement on December 30, 2019. A notice of motion and motion to stay was filed and served by the Defendants' attorney at the same time. (R. pp. 84-86).

The Defendants' motions to dismiss or, in the alternative, to stay execution and set aside the default were scheduled before, and heard by, the Honorable R. Scott Sprouse on August 31, 2020. The Plaintiffs' motion to execute was also heard at that time. After reviewing the case file, the affidavits of both parties, hearing testimony presented by both parties, and reviewing exhibits introduced into evidence at the hearing, Judge Sprouse issued his order dated September 3, 2020, and his supplemental order dated September 22, 2020. He denied Defendants' motion to set aside the default. Further, based upon improper notice of the damages hearing, Judge Sprouse granted the Defendants' motion to stay execution, vacated the judgement, and ordered that a new damages hearing be scheduled with notice to all parties. (R. pp. 19-29).

The new damages hearing was scheduled before the Honorable J. Cordell Maddox, Jr. on July 28, 2021. After the presentation of evidence by the Plaintiffs at the damages hearing, Judge Maddox issued his order dated February 1, 2022, awarding Plaintiffs damages against the Defendants in the amount of $143,391.76. (R. pp. 33-45). This appeal followed.

SEPARATE STATEMENT OF FACTS

Joyce Porter and Edith Durham (hereinafter Porter and Durham) on or about August 16, 2017, entered into a contract with Jimmy L. Davis, Inc. and Jimmy L. Davis (collectively hereinafter Davis) for the construction of a house on one of the two lots which Joyce D. Porter, aka Carolyn J. Porter, had purchased in Creekwalk Subdivision on August 15, 2017. She purchased Lot 1 containing 0.74 of an acre and Lot 3 containing 0.76 of an acre for a total purchase price of $25,000.00. On August 16, 2017, Joyce D. Porter conveyed Lot 3 containing 0.76 of an acre to Jimmy L. Davis, Inc. for the stated consideration of $12,500.00. Porter and Durham's home was to be constructed on Lot 1 located at 102 Creekwalk Drive, Anderson, South Carolina.

The total contract price to construct the home was $315,968.00, and an initial payment or deposit was paid on August 16, 2019, to Jimmy L. Davis, Inc. in the amount of $94,790.40. No further payments were made by Porter and Durham.(R. pp. 156-157). The construction of the home according to Porter and Durham was to be completed by Thanksgiving, 2017. Porter and Durham terminated Davis in mid-October, 2017, while the house was under construction. It is unclear what the stage of construction was at that point (R. pp. 177-180) . However, the lot had been cleared, and graded, a building permit obtained, a septic tank permit obtained, temporary water and power installed, the foundation completed or partially completed, and trusses, framing materials, and other building materials on site.

Subsequent to terminating Davis, Joyce D. Porter sold and conveyed the Lot at 103 Creekwalk Drive in Creekwalk Subdivision to Candace Cochran on December 12, 2017, for the stated consideration of $12,500.00. (. R. pp. 173-174). The day prior, December 11, 2017, Jimmy L. Davis, Inc., had sold and conveyed its lot at 104 Creekwalk Drive in the Creekwalk Subdivision to Candace Cochran for the stated consideration of $12,500.00. (R. p. 175). Therefore, both lots were sold for the original purchase price paid by Porter.

On January 3, 2018, Porter and Durham and Davis entered into a Settlement Agreement and Release to resolve all issues between them related to the residential construction project at 102 Creekwalk Drive in Creekwalk Subdivision. It stated that the issues settled related to the "timelines of the framing work" as well as what Davis alleges to be improper termination by Porter/ Durham". (R. pp. 193-196). By their agreement, Davis agreed to pay a total settlement of $25,000.00 with $1,000.00 paid upon the execution of the agreement followed by five equal consecutive monthly installments of $1,000.00 and a final balloon payment of the balance due on or before June 30, 2018. (R. pp. 193-196). Davis paid the initial payment of $1,000.00. No further payments were made by Davis.

Porter and Durham filed a summons and complaint against Davis on May 16, 2019, alleging causes of action for breach of the construction contract, breach of the settlement agreement, negligence, fraud, constructive fraud and negligent misrepresentation. (R. pp. 46-63). This resulted in a default judgement against Defendants in the amount of $477,300.75 on November 4, 2019. (R. pp. 8-10).

Davis always maintained that his first knowledge of the Porter and Durham action and the default judgement was when he received a writ of execution from the Sheriff's Office on or about December 22, 2019. (R. pp. 90-94). On December 23, 2019, Davis' attorney filed a notice

of appearance to obtain all filed records relating to the Porter and Durham action. On December 30, 2019, counsel for Davis moved to dismiss and/ or to set aside the default and to stay the execution. (R. pp. 84-89).

The Covid-19 pandemic significantly delayed the scheduling of an evidentiary hearing on Davis' motion. A motion/ evidentiary hearing was held on August 31, 2020, and the parties were allowed to present affidavits, exhibits, live testimony, and to introduce exhibits into evidence at the hearing. By order dated September 3, 2020, the trial court denied Davis' motion to dismiss and to set aside the default, but it vacated its previous order granting a default judgement since Davis clearly and without dispute was not given proper notice of the damages hearing as required by Rule 5(a), **SCRCP**. (R. pp. 19-29).

The damages hearing was held on July 28, 2021, and the trial court issued its order regarding damages on February 1, 2022. (R. pp. 33-44).

ARGUMENTS

Standard of Review

(As to Issue I)

The trial court's findings of fact regarding the validity of service of process are reviewed by the appellate court under an abuse of discretion standard. *Fassett v. Evans,* 364 S.C. 42, 610 S.E.2d 841 (Ct. App. 2004) and *Clark v. Key,* 304 S.C. 497, 500, 405 S.E.2d 599, 601 (S.C. 1991). An abuse of discretion arises where the court issuing the order was controlled by an error of law or where the order is based upon factual conclusions that are without evidentiary support or where there is no evidence reasonably supporting the findings. In re Estate of *Weeks,* 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct. App. 1997); *Tri- County Ice & Fuel Co. v. Palmetto Ice Co.,* 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990); and *Richardson Construction Company, Inc. v. Meek Engineering and Construction, Inc., 274* S.C. 307, 262 S.E.2d 913 (S.C. 1980).

ISSUE 1: DID THE TRIAL COURT ERR IN FAILING TO SET ASIDE THE ENTRY OF DEFAULT?

APPELLANTS (collectively hereinafter Davis) filed their motion to vacate the default judgement and to dismiss within days after receiving notice of the writ of execution. Jimmy L. Davis denied that he had any notice of the Respondents' (hereinafter Porter and Durham) action prior to receiving the writ of execution. Defendant, Jimmy L. Davis, owner of Jimmy L. Davis, Inc., flatly and unequivocally denied that he was personally served with the summons and complaint on May 22, 2019, at 4:06 p.m. at 2900 Highway 153, Piedmont, South Carolina. This

was the site of a B.P. Station/ convenience store that was under renovation and which and was almost completed. Davis denied that he was present at that location on that date (R. pp. 90-94). Substantial evidence in the form of affidavits, sworn testimony, a google maps tracer on Davis cell phone, and other documentary evidence was introduced into evidence at the evidentiary hearing establishing that Jimmy L. Davis was not present at the location of the alleged service all day on May 22, 2019. It is uncontested that all subsequent notices were sent to this improper address, and it was not Davis' mailing address or his business mailing address. (R. pp. 90-103).

Under Rule 4(d)(1) and (3), **SCRCP,** Service shall be made as follows:

"4(d)(1) Individuals. Upon an individual… by delivering a copy of the summons and complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy to an agent authorized by appointment or by law to receive service of process."

" 4(d)(3) Corporations and Partnerships. Upon a corporation… by delivering a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process."

A judgement is void if the court acts without personal jurisdiction, *Thomas & Howard Co.v. T.W. Graham & Co.,* 318 S.C. 286, 291, 457 S.E.2d 340, 343 (S.C. 1995), and the court acquires personal jurisdiction by service of the summons. *Ex parte S.C. Department of Revenue,* 350 S.C. 404, 407, 566 S.E.2d 196, 198 (Ct. App. 2002). Service under Rule 4, **SCRCP**, serves two purposes, to-wit: it confers personal jurisdiction on the court, and it assures the defendants of reasonable notice of the action. *Roche v. Young Bros, Inc. of Florence,* 318 S.C. 207, 209, 456 S.E.2d 897, 899 (1995). Service of process or waiver of that service is necessary to satisfy the due process requirements of the United States Constitution. **U.S.C.A.** Const. Amend. 14.

A presumption of proper service arises when the **South Carolina Rules of Civil Procedure** regarding proper service are followed, *Moore v. Simpson,* 322 S.C. 518, 523, 473 S.E.2d 64, 66 (Ct. App. 1996), and an affidavit of service creates a legal presumption of proper service which cannot be overcome by mere denial of service by a defendant. *Richardson Construction. Co. v. Meek Engineering and Construction,* 274 S.C. 307, 311, 262 S.E.2d 913, 916 (1980). However, the presumption is rebuttable and may be impeached by extrinsic evidence. **See** *Richardson* Id.

Regarding the factual issue presented in this case, the Appellants presented substantial evidence that they were not personally served with the summons and complaint, and they did not rely on a mere denial of service. Appellants' evidence effectively impeached the affidavits of service and was compelling.

Jimmy L. Davis, owner of Jimmy L. Davis, Inc., did not testify due to his severe hearing impairment. However, he filed his affidavit (R. pp. 90-94). In his affidavit, he verified that the business address of his construction company was 245 Welpine Road, Pendleton, South Carolina 29670, where it had been located for approximately forty years. He received business mail at this address and, also, at PO Box 5057, Anderson, South Carolina 29623, until the Post Office burned on April 19, 2020. (R. p. 90).

Jimmy L. Davis denied that he was personally served with the summons and complaint on Wednesday, May 22, 2019, at 4:06 p.m. at 2900 Highway 153, Piedmont, South Carolina. This was the site of a BP Station/ convenience store where he was doing renovation work (R. p. 90). He gave a detailed accounting of where he was that day from approximately 3:00 p.m. until after 4:30 p.m. He specifically remembered this day because of a conversation he had with his office manager, Anna McWhite, about a puppy that had been returned to her, and this was

verified by the Google Maps History and Tracer on his cell phone that verified he was at the office at 4:06 p.m. on May 22, 2019. (R. p. 91). He depended on this phone in his business, and it was always on his person. Jimmy L. Davis departed his office at approximately 4:30 p.m. that date with two workers, Howard Wetherman and Robert Dempsey, to go to another job site at the Overlook Condominiums off of Clemson Boulevard in Anderson, South Carolina. (R. p. 90). He further swears that the first knowledge he had of this action was when he received the notice of a writ of execution from the Anderson County Sheriff's Office at his home on or about Sunday, December 22, 2019. (R. pp. 91-92).

Anna D. McWhite, Jimmy L. Davis" office coordinator" and "go-to" girl executed an affidavit (R. pp. 95-98) and a supplemental affidavit. (R. pp. 99-103). She further testified at the evidentiary hearing held on August 31, 2020. (R. pp. 112-128).

Anna D. McWhite testified that she is responsible for scheduling work and that Jimmy L. Davis left with equipment on the morning of May 22, 2019, at approximately 6:30 a.m. to go to a job site at 607 Emily Lane, Piedmont, South Carolina, where he was working with a subcontractor, Co-Con, LLC, working on repairs for an apartment building and retention pond. He had pulled a skid steer and track-hoe to this job site, and he was there the entire day from approximately 7:00 a.m. until sometime before 3:30 p.m. (R. pp. 113-118) when he returned to his office. This was confirmed by the Google Maps Tracer on on Davis' cell phone and by an invoice from Co-Con that was received at 7:46 p.m. on May 22, 2019, for work done at 607 Emily Lane. (R. pp. 198-200). The invoice from Co-Con, LLC . verified that on May 22, 2019, Davis was billed by Co-Con, LLC for nine hours of work for two employees and five hours of work for another employee at 607 Emily Lane. The owner of Co-Con verified that Davis was at

the Emily Lane job site from 8:00 a.m. until around 3:00 p.m. (R. pp. 103 and 198) except when he left for lunch.

Anna D. McWhite testified that Davis was at the office on Welpine Road by 4:00 p.m. She remembered this specific date because of a conversation she had with Davis over a puppy that had been returned to her. This was confirmed by the Google Maps Tracer on her cell phone and the Google Map Tracer on Jimmy L. Davis' cell phone. (R. pp. 117-118). She further testified that she had a conversation with Davis about the project at the Overlook Condominiums where she had been earlier that day. (R. pp. 118-119). Anna McWhite confirmed that Davis left with two employees for the Overlook Condominiums at about 4:30 p.m on May 22, 2019, where he was for approximately two hours. This was again confirmed by the Google Maps Tracer on Davis' cell phone. McWhite had confirmed her memory of events by office records, invoices, a telephone log maintained at the office, and the Google Maps Tracer on Davis' cell phone and her cell phone. (R. pp. 113-120). Anna D. McWhite's affidavits and testimony verified and confirmed that Davis was at his office on Welpine Road from sometime prior to 3:30 p.m. until around 4:30 p.m. on May 22, 2019, and not at the BP Station job site. Her testimony further verified and confirmed that no work was scheduled at the BP Station job site on that date, and it was near completion. (R. pp. 116-117).

Michael McNamara testified for the Respondents regarding his affidavits of service which were not executed until May 26, 2019, four days after the alleged service. (R. pp. 64-65). He further executed an independent affidavit that was filed with the Court. (R. pp. 104-105). McNamara testified that he and "others in his company" had served Davis on a "couple of occasions" prior to May 22, 2019, and that he knew what Davis looked like. (R. pp. 132-133).

McNamara testified that he went to the BP Station job site at 2900 Highway 153, Piedmont, South Carolina, on May 22, 2019, and that there were several vehicles there including a small white pickup truck with "Jimmy L. Davis" on the side. (R. pp. 133-134). He further testified that there "were upwards of 5, 10 people at the job site". McNamara testified he left the "papers" with Davis and departed. According to the affidavit of service and McNamara's testimony, this was at 4:06 p.m.

McNamara submitted no independent records, logs, mileage records, or phone records to verify that he was at BP Station job site on May 22, 2019 at 4:06 p.m. He did not recall whether or not he had contacted Davis' office on that date (R. pp. 139-140), and he could not specifically state where he had obtained the information that Davis was at the job site. (R. pp. 139-140). He presented no independent evidence that could verify his affidavit of service.

It is obvious that Davis was not at BP Station job site on May 22, 2019. He had left for Emily Lane that morning with a skid steer and a track-hoe, which are large pieces of construction equipment. McNamara did not describe seeing a trailer with equipment being pulled by Davis' truck. McNamara specifically testified that he had spoken with Anna McWhite "on one occasion at least", and "she would typically tell me where Mr. Davis was on any particular day." (R. pp. 139-140). This was contradicted by Anna McWhite's testimony that she would give process servers Davis' number so they could call him to make arrangements. (R. pp. 120-121). She further executed a supplemental affidavit dated September 4, 2020, stating that she had never seen Mr. McNamara before the evidentiary hearing on August 31, 2020, and that she had never spoken to him. (R. pp. 99-103). She further testified that, based upon twenty-six years working as an office manager for various physicians, she was familiar with privacy and safety issues. McWhite testified that she had never disclosed Davis' physical location to anyone when he was

not in the office. She would either give his cell phone number or business card so that he could be contacted. (R. p. 99).

Davis presented substantial evidence that he was working at 607 Emily Lane, another job site, on the date of alleged service and that no work was conducted at the BP Station on that date. He was working at Emily Lane with a subcontractor who had three employees there. This is corroborated by independent evidence, the invoice from Co-Con. He further presented compelling evidence that he was at his office on Welpine Road at the time of the alleged service. This included detailed testimony and verification of his location through Google Maps Tracer. (Both Davis' and McWhite's cell phone were present at the evidentiary hearing and available for inspection.)

The trial court erred when it found Davis had not presented sufficient evidence to justify overturning the default. Davis' testimony and evidence was substantial and compelling, effectively impeaching the affidavit of service and the McNamara's testimony.

Rule 55(c), **SCRCP**, provides: "For good cause shown the court may set aside an entry of default and, if judgment by default has been entered, may set it aside in accordance with Rule 60(b)." Relief from a default judgment can be granted according to the standards of Rule 60(b), **SCRCP**, and requires a timely motion and showing of mistake, inadvertence, surprise or excusable neglect; newly discovered evidence; fraud, misrepresentation, or other misconduct of the adverse party; or the judgment is void. Relevant factors to be considered under both Rule 55(c) and Rule 60(b) include the promptness with which relief is sought; the reasons for the failure to act promptly; the existence of meritorious defenses; and the prejudice to other parties. See *New Hampshire Insurance Company v. Bey Corporation*, 312 SC 47, 435 S.E. 2d 377 (Ct. App. 1993). However, the "good cause" standard for granting relief from an entry of default is

more lenient than the standard for granting relief from a judgment. *Bage LLC v. Southeastern Roofing Co. of Spartanburg, Inc.*, 373 S.C. 457, 646 S.E.2d 153 (Ct. App. 2007).

The trial judge did not address whether or not "good cause" existed to grant relief under Rule 55(c), **SCRCP,** and he did not make a "good cause" analysis. This constituted error. See *Bage* Id. And *Wham v. Shearson Lehman Brothers, Inc.*. 298 S.C. 462, 381 S.E.2d 499 (Ct. App. 1989). Public policy favors disposing of a case after a trial on the merits and the "good cause" standard under Rule 55(c) should be "liberally construed to promote justice and dispose of cases on the merits." *Dixon v. Besco Engineering*, 320 S.C. 174, 178, 463 S.E.2d 636, 638 (Ct. App. 1995).

Standard of Review

(As to Issue II)

This is an action at law. In an action at law, the Court of Appeals' jurisdiction extends to the correction of errors of law, and a factual finding of the trial judge will not be disturbed unless a review of the record discloses that there is no evidence which reasonably supports the trial judge's findings of fact. *Solley v. Navy Federal Credit Union*, Inc., 397 S. C. 192, 723 S.E.2d 597 (Ct. App. 2012). This is an abuse of discretion standard.

There is a different appellate review standard when punitive damages are awarded in a default damages case. See *Mitchell Jr. v. Fortis Insurance Company*, 385 S.C. 570, 686 S.E.2d 176 (S.C. 2009).

ISSUE II: WAS THE TRIAL COURT'S AWARD OF DAMAGES SUPPORTED BY THE EVIDENCE?

The Appellants reiterate their position that the entry of default should have been set aside and, therefore, the Court lacked personal jurisdiction to proceed with a damages hearing. In the alternative, Appellants argue that the trial judges' award of $143,391.76 actual damages was not supported by the evidence.

In a default case, the Plaintiff must prove the amount of his/her damages, and such proof must be by preponderance of the evidence. *Wells Fargo Bank, N.A. v. Marion Amphitheatre, LLC*, 408 S.C. 87, 757 S.E.2d 557 (Ct. App. 2014). The case of *Howard v. Holliday Inns, Inc.*, 271 S.C. 238, 246 S.E.2d 880 (1978), established the defendant's limited right to participate in a damages hearing. *Howard* allowed damages to be determined with "... defense counsel's participation limited to cross-examination and objection to plaintiff's evidence." In the case of *Lawton Limehouse v. Paul H. Hulsey*, 404 S.C. 93, 744 S.E.2d 566 (2013), the Supreme Court

affirmed and adopted the procedures set forth in *Howard,* for a default damages hearing. The defaulting party is deemed to have admitted the plaintiff's allegations and to have conceded liability. At the default hearing, the plaintiff must prove by competent evidence the amount of his or her damages, and the proof of damages must be by a preponderance of the evidence. *Id.* Again, the defendant's participation is limited to cross-examination and objections to plaintiff's evidence. Appellants maintain that Respondents did not prove by competent evidence the trial judge's award of actual damages in the amount of $143,391.76.

The trial judge's award of damages included as one component part the entire construction contract deposit of $93,790.40 made by Porter and Durham. Porter and Durham made no further payments. The deposit was made on August 16, 2017, the date the construction contract was signed. (R. pp. 155-156) Porter and Durham unilaterally terminated the construction contract in mid-October, 2017. (R. p. 177). The record reflects that Davis had completed substantial work at the time of termination, including clearing and grading the lots, obtaining building and septic tank permits, installing temporary water and power, construction of a foundation, and the purchase of special trusses and other framing materials delivered to the job site in anticipation of initiating the framing stage of the construction. (R. pp. 178-184). No evidence was presented by Porter and Durham as to the value of the labor and materials up to the point of termination, and Davis was precluded from introducing testimony or evidence.

Porter and Durham and Davis entered into a Settlement Agreement and Release dated January 3, 2018, ostensibly settling all issues and disputes. (R. pp. 193-196). This agreement was entered into less than three months after the unilateral termination of the construction contract. Porter and Durham's attorney prepared the agreement, and Davis was self-represented. The agreement recites that it was entered into to settle all disputes between the parties including

"timeliness of the framing work" and "improper termination by Porter/Durham". (R. pp. 193-196). This establishes, without question, that Davis had meritorious defenses.

By their agreement, Porter and Durham accepted $25,000.00 in full and final settlement of the alleged breach of the construction contract. This clearly provides evidence of Porter and Durham's damages and should have been given more weight by the trial court, and the trial courts' award of damages with without evidentiary support. This agreement conclusively settled the issue of the amount of damages.

Another component of the damages was $1,003.00 for alleged costs incurred by Durham and Porter in obtaining new house design plans. (R. pp. 160-163). A check in the amount of $1,003.00 payable to Gordon Perkins for house plans was introduced into the evidence. The check is dated November 6, 2017, and the check and testimony of Durham reflect that the plans were ordered and acquired after the mid-October termination. (R. p. 202). Therefore, these damages are clearly unrelated to any causes of action contained in the unverified complaint, and the trial court's award of these damages is without evidentiary support.

Another component of the trial court's award of damages includes $602.00 for moving expenses. (R. pp. 164-165). Durham's testimony (R. pp. 164-165) and the invoice introduced into evidence (R. p. 203) established that the moving expenses were incurred on June 19, 2017. This expense was incurred by Porter and Durham after they sold their prior residence and before they entered into a construction contract with Davis on August 16, 2017. Therefore, it is unrelated to any of the causes of action contained in the complaint, and therefore, the award of these damages is without evidentiary support.

The trial court awarded $1,320.00 storage fees paid by Porter and Durham and allegedly incurred while looking for alternate housing (R. p. 42). Durham was unclear as to what period of

time the storage fees were for. She simply stated eleven months (R. p. 164). She presented no evidence that this was in anyway related to Davis' alleged breach of contract. Porter and Durham obviously incurred storage expenses after they sold their prior residence and prior to entering into the construction contract with Davis. Therefore, there is lack of evidentiary support that this was related to the alleged breach of contract by Davis.

Finally, the damages awarded by the trial court included $12,500.00 for the alleged lost value for the resale of Durham's lot. (R. p. 42). This finding is without evidentiary support.

It is uncontroverted that Joyce D. Porter purchased lots 1 and 3 of Creekwalk Subdivision from Candice Lynn Green Cochran on August 15, 2017, for $25,000.00. (R. p. 161 and pp. 204-207). Porter testified that she purchased one lot which was subdivided. (R. p. 161). This testimony was not accurate; she purchased two (2) lots. One day after purchasing both lots on August 16, 2017, Durham conveyed Lot 3 to Jimmy L. Davis for $12,500.00. (R. pp. 208-211). Therefore, she only had $12,500.00 invested in the "building lot". Porter deeded her "building lot", Lot 1, back to Candice Cochran on December 12, 2017, for $12,500.00(R. pp. 212-215). Durham owned Lot 1 for only four months, and she sold it back to the original grantor for the amount she paid for it. There is no evidentiary support that she lost any money on her lot. (It should, also, be noted that Jimmy L. Davis, Inc. reconveyed his Lot 3 back to Candice Cochran on December 11, 2017, for the stated consideration of $12,500.00, further establishing this was the fair market value of both lots). (R. pp. 216-219).

CONCLUSION

Based upon the foregoing points and authorities, the Appellants respectfully request that the Court reverse the trial court's order denying the Appellants' motion to overturn the default and allow the Appellants to file an answer or appropriate pleadings and to defend on the merits.

November 11, 2022

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certifies that the Appellants' Final Brief and Final Reply Brief comply with Rule 211(b) of the South Carolina Appellant Court Rules.

November 28, 2022

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