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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
The Honorable R. Scott Sprouse

Case No. 2020-CP-04-01202
Appellate Case No. 2022-001527

Moats Construction, Inc.,

Appellant,

v.

Cecil R. Dyar,

Respondent.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. Moats Construction, Inc. initiated this action and requested a jury trial on its legal claims. Was it error for the circuit court to grant summary judgment on Cecil Dyar's equitable counterclaim and end the case without affording Moats the opportunity to conduct discovery and present its legal claims to a jury?

- II. Moats Construction, Inc. initiated this action and asserted legal claims against Cecil Dyar for breach of contract and negligence. Dyar counterclaimed for foreclosure. Where both parties' claims arise out of their rights and duties under the same contract, was it error for the circuit court to grant summary judgment on the equitable foreclosure claim before the legal claims were heard and determined?

- III. In a foreclosure action, was it error for the circuit court to award damages to "reimburse" a claimant for amounts of taxes and insurance the claimant never paid, to award damages for interest charges not provided for in the contract of sale, and to award damages for late payment penalties where the parties modified the terms of payment?

INTRODUCTION AND STATEMENT OF THE CASE

In 2011, Moats Construction, Inc. (hereinafter, “Moats”) and Cecil Dyar (hereinafter, “Dyar”) entered into a bond for title for Moats to purchase from Dyar a commercial/industrial property located in Anderson, South Carolina. After the end of the initial five-year term of the agreement, Moats continued to make payments and sought to establish a net balance owed to Dyar taking into consideration amounts Dyar owed to Moats for: (1) Dyar storing heavy equipment inside the building on the property; (2) Dyar failing to remove pallets from the property as agreed and Moats incurring this expense; (3) Dyar allowing liens to be placed on the property by City of Anderson; and (4) Dyar failing to pursue an insurance claim for roof damages from a 2017 hurricane. Ultimately, the parties could not agree on a balance owed and Moats brought suit to establish these amounts.

On June 2, 2020, Moats filed a complaint against Dyar asserting causes of action for breach of contract, negligence, accounting and set-off, and specific performance, all arising out of the parties’ performance of a 2011 Agreement for Sale and Purchase of Real Property (hereinafter, the “Agreement”), wherein Moats agreed to purchase property from Dyar located at 300-600 W. Orr Street, Anderson, South Carolina (the “Property”). (Compl. pp. 4-6 and Exhibit A thereto). On June 23, 2020, Dyar answered the complaint and asserted a counterclaim for foreclosure. (Answer and Counterclaim p. 4).¹ A reply to Dyar’s counterclaim was not timely filed, and Dyar’s counsel filed an affidavit of default on February 15, 2021. On February 18, 2021, Dyar moved for judgment on the pleadings or, in the alternative, for summary judgment. (Mot. Judgment Pleadings

1. Dyar had previously filed a complaint against Moats in November 2019 for default of the Agreement but he did not complete service on Moats and instead asserted a counterclaim in this action.

or Summary Judgment). On February 22, 2021, Moats's then-counsel moved for enlargement of time to reply to Dyar's counterclaim. (Mot. Enlargement).

On April 13, 2021, the circuit court held a hearing on Dyar's motion for summary judgment. (Transcript Summary Judgment (Apr. 13, 2021)). On May 4, 2021, the circuit court granted Dyar's motion for summary judgment by Form 4 Order, directing that a formal order follow, as well as a damages hearing. (Form 4 Order Summary Judgment). The court did not rule on Moats's motion for enlargement of time to file a reply to counterclaim. On May 7, 2021, Moats moved for reconsideration of the Form 4 Order granting summary judgment, in part on the basis that it prevented Moats from pursuing its legal claims for breach of contract and negligence against Dyar. (Mot. Reconsider ¶ 1 (May 7, 2021)). On June 10, 2021, the circuit court entered its formal Order Granting Defendant's Motion for Summary Judgment. (Order Summary Judgment (Jun. 10, 2021)). On June 18, 2021, Moats filed an amended motion to reconsider and amend judgment, again raising the argument that it was prevented from moving forward on its legal claims against Dyar. (Amend Mot. Reconsider ¶ 1 (June 18, 2021)).

On February 4, 2022, Moats's then-counsel moved to be relieved. On February 24, 2022, the circuit court held a damages hearing on Dyar's foreclosure counterclaim for which it had previously granted summary judgment. (Transcript Damages Hearing (Feb. 24, 2022)). At the hearing, Moats's counsel was directed to remain in the case until the order setting damages was entered. (Transcript Damages 55:6-13). On April 11, 2022, the circuit court issued a Form 4 Order awarding damages to Dyar and directing a formal order to follow. (Form 4 Order Damages (April 11, 2022)). On July 20, 2022, the circuit court held a hearing on the proposed order on damages, Moats's motions to reconsider summary judgment, Moats counsel's motion to be relieved, and Moats's new counsel's motion for status conference. (Transcript Hearing (July 20,

2022)). Moats's new counsel brought to the court's attention certain errors in the damages calculation in the proposed order and requested that the damages hearing be reopened and Moats be allowed to present testimony from a licensed CPA on these errors. (Transcript Hearing 6:23-7:8). The court denied Moats's request to reopen the damages hearing and directed that all such errors be addressed in a motion to alter or amend. (Transcript Hearing 14:7-24).

On July 21, 2022, the circuit court: (1) issued a Form 4 Order denying Moats's motions for reconsideration of the order granting summary judgment, (Form 4 Order Denying Reconsideration Summary Judgment (July 21, 2022)); (2) granted Moats's former counsel's motion to be relieved; and, (3) issued an Order Granting Defendant's Motion for Damages and Judgment of Foreclosure and Sale, setting damages as of April 1, 2022, at \$250,614.04, (Order Damages Foreclosure p. 5 (Jul. 21, 2022)). On July 29, 2022, as directed by the court, Moats moved to alter or amend the order on damages and foreclosure, contending that the principal and interest due under the Agreement should be reduced by approximately eighty-three thousand dollars, and again asking the circuit court to allow Moats's legal claims to be pursued prior to Dyar's equitable counterclaim for foreclosure and sale of the Property. (Mot. Alter Amend Order on Damages Foreclosure (July 29, 2022)).

On September 8, 2022, the circuit court held a hearing on Moats's motion to alter or amend the order on damages and foreclosure. (Mot. Alter Amend Hearing Transcript (Sept. 8, 2022)). On October 4, 2022, the circuit court issued an order denying Moats's motion to alter or amend. (Order Motion/Alter and/or Amend (Oct. 4, 2022)). On October 10, 2022, the Master-in-Equity for Anderson County entered a Notice of Sale. (Notice Sale (Oct. 10, 2022)). On October 26, 2022, Moats filed a notice of appeal.

On November 23, 2022, the circuit court entered a Consent Order and Satisfaction of Judgment, reflecting that Moats paid the full amount of the judgment to Dyar of \$266,466.49, as adjusted for interest, costs, and attorney's fees from the July 21, 2022 order on damages. (Order Satisfaction of Judgment (Nov. 23, 2022)).

This appeal followed, and Moats now seeks restitution of certain amounts paid to Dyar under the judgment, and a remand to pursue its legal claims against Dyar related to: (1) Dyar's failure to pursue an insurance claim for roof damages from a 2017 hurricane, leaving the property uninsurable; and (2) Dyar's failure to remove equipment from the Property, which interfered with Moats's exclusive possession of the Property. (Compl. ¶¶ 6-8, 10-12, 14-15). These legal claims should offset, or result in restitution of, amounts Moats already paid to Dyar to satisfy the judgment. When the circuit court granted summary judgment and foreclosure to Dyar, Moats was prevented from continuing discovery and presenting its legal claims to a jury. This was error.

STATEMENT OF THE FACTS

In 2011, Moats Construction, Inc. and Cecil Dyar entered in an Agreement for Sale and Purchase of Real Property (the "Agreement") for Moats to purchase from Dyar the real property located at 300-600 W. Orr Street Anderson, South Carolina (the "Property"), for \$250,000.00. (Agreement ¶¶ 1, 2). Moats agreed to make a down payment of \$37,500.00 and finance the \$212,500.00 balance at six percent interest over five years, equating to a monthly payment of \$4,108.22. (Agreement ¶ 3). The Agreement also required a monthly escrow payment of \$405.00, reflecting Moats's responsibility to pay real property taxes and casualty insurance, and making the total combined monthly payment \$4,513.22. (Agreement ¶¶ 3(c), 5, 14). The Agreement did not include provisions for charging interest on top of accrued interest (compounding interest), or charging interest on accrued late payment penalties.

Modifications of the Agreement

After entering the Agreement, Dyar and Moats modified its terms in three significant ways: (1) insurance coverage; (2) payment of taxes; and (3) payment terms.

First, the Agreement required Moats to insure the Property, (Agreement ¶ 14); however, the parties modified this provision when they agreed that Dyar would continue to insure the Property under his prior company's name, Anderson Steel Processing, Inc., and that Moats would reimburse Dyar for insurance premiums. (Moats Aff. ¶¶ 8-9). This practice continued for seven years until the February 2017-2018 policy period, when Moats paid premiums directly to the insurance carrier. (Moats Aff. ¶ 9). Moats did not renew the insurance policy after the insurance carrier paid only \$3.31 towards a roof damage claim caused by Hurricane Irma in September 2017. (Moats Aff. ¶¶ 10-12). The Property has been uninsured since 2018, and neither Moats nor Dyar have paid premiums to insure the Property. (Moats Aff. ¶ 12).

Second, the Agreement required Moats to pay real property taxes directly to Anderson County. (Agreement ¶ 5). The parties modified this provision and Dyar agreed to pay such taxes directly to the county and be reimbursed by Moats. (Moats Aff. ¶¶ 6-7, Ex. 1 thereto). This practice continued through 2015. Beginning with the 2016 tax year, Moats began paying all real property taxes directly to Anderson County rather than through Dyar. (Moats Aff. ¶ 7, Ex. 1 thereto (2015-2020 tax bills)).

Third, the Agreement required Moats to pay monthly installments of \$4,513.22, (Agreement ¶ 3); however, after six months of payments, the parties modified the payment terms. (Pruett-Lange Spreadsheet Ex. 1 Damages Hearing). Dyar permitted Moats to make irregular payments, which it did for the next six and a half years, through May 2018. (Transcript Damages 40:17-21; 51:2-52:20; Pruet-Lange Spreadsheet Ex. 1 Damages Hearing). Even though the

Agreement included a 5% late payment penalty, (Agreement ¶ 12), Dyar never asserted his right to a late payment penalty and he assented to the modified payment structure as reflected by the parties' course of dealing over six and a half years, where Dyar: (1) accepted Moats's modified payments—larger or smaller than the monthly amount set forth in the Agreement; (2) never declared Moats in default; (3) never terminated the contract; (4) never notified Moats that any payment was late or that a late pay penalty would be assessed; and (5) sought to extend the Agreement another five years. (Damages Hearing Tr. 28:19-24, 40:19-21; Moats Dep. 100:24-103:14, Attach to Mem Opp'n Summ. J.).

Agreement's Expiration April 2016

At the end of the Agreement's five-year term in April 2016, the principal balance on the loan according to Dyar's bookkeeper was \$148,228.71—Moats having paid Dyar over \$195,000.00 through April 2016, of which approximately \$26,000 was for taxes and insurance, over \$100,000 (40%) toward the purchase price, and the balance for interest and late payment penalties, which are disputed.² (Pruett-Lange Spreadsheet Ex. 1 Damages Hearing). In addition to the more than \$195,000 paid to Dyar between May 2011 and April 2016, Moats paid an additional \$35,000 between May 2016 and May 2018. (Pruett-Lange Spreadsheet Ex. 1 Damages Hearing).

On or about July 1, 2016, Dyar unilaterally signed an extension of the Agreement to March 16, 2021; however, Moats testified at the damages hearing that he never received a copy of this proposed extension. (Damages Hearing Ex. 3, at 5; Damages Hearing Transcript 30:8-32:19).

2. Moats contends that Dyar's bookkeeper failed to account for a \$3,000.00 cash payment in February 2013. If such payment is included, the principal balance as of April 2016 is \$144,602.68 and Moats would have paid more than \$105,000 in principal. See Section II(D), *infra*. The principal balance further reduces if late payment penalties and certain erroneous interest charges are excluded from Pruett-Lange's calculation. See Section II(E), (F), *infra*.

Moats had no intention of agreeing to an extension because he wanted to reach an agreement with Dyar on a full payoff amount considering numerous issues with the Property, including: (1) Dyar's failure to remove heavy equipment stored inside the building on the Property, which hindered Moats's use and enjoyment of the Property for more than five years; (2) Dyar's failure to clean-up pallets on the property as agreed; (3) Dyar's failure to pay certain fees and resolve resultant liens placed on the Property by the City of Anderson that were sent to Dyar's attention as the listed property owner; and, (4) disputed access with the nearby railroad owner that forced Moats to hire legal counsel and incur professional fees for surveying and appraisal. (Damages Hearing Transcript 23:9-18; 24:10-14; 28:3-29:8; 31:7-8; 40:1-15; 51:22-52:3). Moats requested a payoff from Dyar that fully accounted for these issues so that Moats could pay off the balance and become the owner of record and more effectively address the railroad access issue and the City of Anderson liens; however, the parties could not agree on a payoff amount. (Damages Hearing Tr. 28:14-29:3).

Before the parties could reach agreement on a payoff amount, in September 2017, Hurricane Irma damaged the building's roof. (Moats Aff. ¶ 10; Damages Hearing Tr. 24:15-19). The insurance company denied the full amount of the claim and only paid \$3.31. (Moats Aff. ¶ 10). Moats requested that Dyar, as the insured, contest the claim payment amount, but Dyar refused to do so. (Damages Hearing Tr. 24:15-19).

The parties never reached agreement on a final payoff amount and Moats filed this action in June 2020 to resolve the parties' dispute.

STANDARD OF REVIEW

“Whether a party is entitled to a jury trial is a question of law.” *Wachovia Bank, Nat. Ass'n v. Blackburn*, 407 S.C. 321, 328, 755 S.E.2d 437, 441 (2014) (quoting *Verenes v. Alvanos*, 387 S.C. 11, 15, 690 S.E.2d 771, 772 (2010) (internal quotation marks omitted)). “Appellate courts

may decide questions of law with no particular deference to the circuit court’s findings.” *Id.* (citation omitted).

“A mortgage foreclosure is an action in equity.” *Wachovia Bank*, 407 S.C. at 328, 755 S.E.2d at 440-41 (quoting *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 248, 489 S.E.2d 472, 475 (1997) (internal quotation marks omitted)). An appellate court “review[s] factual findings and legal conclusions in an equitable action de novo.” *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 248, 715 S.E.2d 348, 352 (Ct. App. 2011). “In an appeal from an action in equity tried by a judge, appellate courts may find facts in accordance with their own views of the preponderance of the evidence.” *Wachovia Bank*, 407 S.C. at 328, 755 S.E.2d at 441; *see also Matter of Estate of Kay*, 423 S.C. 476, 482, 816 S.E.2d 542, 545 (2018) (recognizing that in equitable matters, “the appellate courts of this state may take their own view of the preponderance of the evidence”).

ARGUMENT

I. Moats was Entitled to a Jury Trial on Its Legal Claims Before the Entry of Foreclosure and Sale.

Moats initiated this action and requested a jury trial on its legal claims for breach of contract and negligence. As such, it was entitled to a jury trial on its legal claims first, before the court held a hearing on Dyar’s foreclosure counterclaim to set damages and order a sale of the Property. Instead, the circuit court granted summary judgment on Dyar’s equitable counterclaim, set damages, and ordered that the Property be sold. Consequently, Moats was prevented from having a jury hear its legal claims. This was error.

Moats was entitled to a jury trial before the entry of foreclosure because: (1) it initiated this action and demanded a jury trial on its legal claims; and (2) all claims asserted by Moats and Dyar are logically related to the Agreement and, as such, the legal claims must be tried before the

equitable claims.

A. Moats Initiated this Action, Asserted Legal Claims, and Demanded a Jury Trial.

The circuit court erred when it effectively denied Moats's right and demand for a jury trial. Moats initiated this action, asserted legal causes of action against Dyar, and demand a jury trial. (Compl. 1). Moats sought a jury trial to establish the value of its legal claims for breach of contract and negligence against Dyar, and then requested the court to set-off those amounts against any amount still owing Dyar under the Agreement to purchase the Property. (Compl. ¶¶ 14-15). The circuit court effectively prevented Moats from moving forward on its legal claims and jury trial after it granted summary judgment on Dyar's foreclosure counterclaim and moved forward to set damages and order a sale of the Property. (Order Summary Judgment pp. 5-6). The court's order setting damages and ordering foreclosure ended the case without Moats's legal claims ever being heard. (Form 4 Order Damages (indicating that this order "ends" the case)). As such, the court erroneously prevented Moats from pursuing its legal claims against Dyar.

It is well established that a plaintiff has a right to demand a jury trial for legal causes of action. "The South Carolina Constitution provides that the right of trial by jury is to be 'preserved inviolate.'" *Lester v. Dawson*, 327 S.C. 263, 267, 491 S.E.2d 240, 242 (1997) (quoting S.C. Const. art. I, § 14). Whether a jury trial right exists depends on "whether an action is legal or equitable; there is no right to trial by jury for equitable actions." *Id.* Where, as here, a case combines both legal and equitable claims, "the legal issues are for determination by a jury and the equitable issues are for determination by the court." *Bateman v. Rouse*, 358 S.C. 667, 673, 596 S.E.2d 386, 389 (Ct. App. 2004) (citing *Floyd v. Floyd*, 306 S.C. 376, 379, 412 S.E.2d 397, 398-99 (1991)). When a complaint raises both legal and equitable claims, the legal claims are tried first and the jury's factual findings are binding on the court sitting in equity. *Johnson v. South Carolina Nat. Bank*,

292 S.C. 51, 55, 354 S.E.2d 895, 897 (1987).

Moats's causes of action against Dyar for breach of contract and negligence are legal causes of action, and, as such, Moats was entitled to a jury determination of these claims. *Sterling Development Co. v. Collins*, 309 S.C. 237, 241, 421 S.E.2d 402, 404 (1992) ("An action for breach of contract seeking money damages is an action at law."); *Blue v. Harrelson*, No. 2004-UP-656, 2004 WL 6339711, at *2 (Ct. App. 2004) (action for negligence seeking damages is an action at law (citing *Advance Int'l, Inc. v. North Carolina Nat'l Bank of South Carolina*, 316 S.C. 266, 271, 449 S.E.2d 580, 583 (Ct. App. 1994), *aff'd in part and vacated in part*, 320 S.C. 532, 466 S.E.2d 367 (1996))).

The lower court erred when it granted summary judgment on Dyar's equitable counterclaim for foreclosure and prevented Moats from moving forward with discovery and a jury trial on its legal claims. Moats raised this issue to the circuit court before the entry of foreclosure in its briefing in opposition to summary judgment, (Mem. Opp'n Default J. and Mot. Summ. J. at 6-7); in moving the court to reconsider its order granting summary judgment, (Mot. Reconsider & Amend ¶ 1 (May 7, 2021); Am. Mot. Reconsider & Amend at 2, 5 (June 19, 2021)); and, finally, in moving the court to reconsider its order entering damages, foreclosure and sale, to allow Moats to proceed with a jury trial of its legal claims, (Mot. Alter Amend 14-15 (July 29, 2022)). In each instance, the circuit court denied Moats's request and the case ended without a jury, or anyone, hearing Moats's legal claims. The case ended upon entry of the court's order setting damages, judgment of foreclosure, and sale. (Order Damages Foreclosure Sale). This was error.

B. Moats's Legal Claims Were Logically Related to Dyar's Foreclosure Counterclaim and Should Have Been Tried First.

Even if Moats's legal claims had arisen in the procedural posture that is perhaps more common in foreclosures—as a defendant asserting counterclaims in response to an action to

foreclose on real property—Moats’s legal claims would have satisfied the criteria for compulsory counterclaims and should have been given the priority to be heard and decided ahead of Dyar’s equitable foreclosure claim. It was error for the lower court to refuse to hold the foreclosure in abeyance pending the completion of discovery and a jury’s resolution of Moats’s legal claims.

Where a case has both equitable and legal claims, and those claims have common issues, the South Carolina Supreme Court has directed that the legal claims be resolved prior to the equitable claims:

We . . . hold that where a complaint is equitable and the counterclaim is legal and compulsory, the trial judge has two options. He may either order separate trials pursuant to Rule 42(b) or may order the claims tried in a single proceeding. In making this determination, caution should be taken to assure that, under the circumstances of the case, a joint trial will not deprive a party of his right to a full jury trial of legal issues.

Moreover, *when issues common to both legal and equitable claims are to be tried in a single proceeding, legal issues are to be determined first*, and the findings of the jury are binding on the sitting judge, as trier of the equitable claims.

...

If separate trials are ordered, the judge must determine which issues are to be tried first. If there are factual issues common to both claims, absent the “most imperative circumstances,” *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 79 S.Ct. 948, 3 L.Ed.2d 988 (1959), the “at law” claim must be tried first.

Johnson, 292 S.C. at 55-56, 354 S.E.2d at 897 (emphasis added) (internal citations omitted).

If a legal claim is compulsory, it must be tried ahead of equitable claims. *Johnson*, 292 S.C. at 56, 354 S.E.2d at 897. A claim is compulsory if it arises out of the same transaction or occurrence. *North Carolina Federal Sav. and Loan Ass’n v. DAV Corp.*, 298 S.C. 514, 517, 381 S.E.2d 903, 905 (1989); Rule 13(a), SCRPC. The South Carolina Supreme Court has directed that courts use the logical relationship test to evaluate whether a claim is compulsory, which asks whether “there is any logical relationship between the claim and the counterclaim.” *Id.* at 518,

381 S.E.2d at 905.

Here, Moats's legal claims and Dyar's equitable counterclaim all arise out of and relate to the Agreement. The Agreement required Moats to keep casualty insurance on the Property throughout the term of the Agreement. (Agreement ¶ 14). However, the parties modified this provision early-on during the term of the Agreement, whereby Dyar assumed the responsibility for keeping the Property insured through an existing policy on the building, and Moats agreed to pay policy premiums to Dyar. (Compl. ¶ 6; Moats Aff. ¶¶ 8-9). In its complaint, Moats asserted legal claims for breach of contract, contending that Dyar breached this modified term of the Agreement by failing to exercise good faith and fair dealing to keep the property insured when Dyar failed to pursue an insurance claim in 2017 that would have kept the building insurable after a 2017 hurricane damaged the roof. (Compl. ¶¶ 6-7). Moats also alleged that Dyar breached the Agreement by failing to turn over exclusive possession of the Property to Moats when Dyar left numerous pieces of equipment on the Property that interfered with Moats's exclusive possession, and entitled Moats to recover the reasonable rental value for the lost use of property. (Compl. ¶ 8).

Moats also asserted a legal claim against Dyar for negligence. (Compl. ¶¶ 9-12). Moats contended that Dyar was negligent in failing to pursue insurance coverage for the 2017 hurricane damage to the Property. (Compl. ¶¶ 10-12). In undertaking to maintain insurance coverage on the Property, Dyar undertook a duty to pursue insurance claims for damage to the building on Moats's behalf. (Compl. ¶ 10). Moats contended that Dyar breached this duty when he settled a roof damage claim for \$3.31 where the estimated repairs were in excess of \$100,000. (Transcript Summary Judgment 11:3-25).

Dyar's duty to keep the Property insured and pay for continuing insurance coverage is

directly at issue as part of Dyar's counterclaim seeking reimbursement for insurance premiums. As part of his foreclosure counterclaim, Dyar sought, and was awarded, amounts for insurance premiums. (Pruett-Lange Spreadsheet Ex. 1 Damages Hearing; Order Damages at 5). Moats's legal claims arise out of the parties' decision to modify the Agreement's insurance provision, whereby Dyar was responsible for maintaining insurance on the property, with all its consequent obligations as a named insured such as pursuing insurance claims, and Moats contends Dyar breached these obligations. (Moats Aff. ¶¶ 8-9). Additionally, as part of their claims, both Moats and Dyar sought a final determination of the net amount owed under the Agreement. (Compl. ¶ 19; Ans. Counterclaim ¶¶ 22-23). As such, there is clearly a logical relationship between Moats's claims for breach of contract and negligence and Dyar's counterclaim to foreclose on the Agreement.

This is similar to other South Carolina cases finding a logical relationship between legal and equitable claims. In *Plantation Federal Bank v. Gray*, 401 S.C. 507, 737 S.E.2d 515 (Ct. App. 2013), the bank brought an action to foreclosure on a mortgage secured by a vacant lot owned by Gray. *Plantation Federal*, 401 S.C. at 508-09, 737 S.E.2d at 516. Gray asserted legal counterclaims for, inter alia, breach of contract, breach of fiduciary duty, and unfair trade practices, arising out of her allegations that the bank wrongfully declared Gray in default, wrongfully accelerated the note and mortgage, and fraudulently induced her to enter the note and mortgage. *Id.* at 511, 737 S.E.2d at 517. The bank successfully argued to the master that its foreclosure action should proceed immediately ahead of the jury trial on Gray's legal claims to avoid continued carrying costs, and that Gray's legal claims should be bifurcated and moved into circuit court. *Id.* at 510, 737 S.E.2d at 516-17. Gray objected to the master permitting the bank's counterclaim to be adjudicated before her legal claims and appealed on this basis. *Id.* at 510-511, 737 S.E.2d at

517. The South Carolina Supreme Court agreed, holding that the master erred in permitting the bank's foreclosure to proceed ahead of Gray's compulsory legal counterclaims. *Id.* ("Gray's counterclaims must be tried first absent the most imperative circumstances." (citing *Johnson*, 292 S.C. at 56, 354 S.E.2d at 897) (internal quotation marks omitted)); *see also*, *First-Citizens Bank and Trust Co. of South Carolina v. Hucks*, 305 S.C. 296, 298, 408 S.E.2d 222, 223 (1991) (finding logical relationship between action for declaration of rights under a trust agreement and legal counterclaim for breach of trust agreement and breach of fiduciary duty); *North Carolina Federal*, 298 S.C. at 518, 381 S.E.2d at 905 ("Clearly there is a logical relationship between the enforceability of the note which is the subject of the foreclosure action and the validity of the purported oral agreement which, if performed, would have avoided default on the note by the joint venture.").

Accordingly, the circuit court erred when it misapplied the legal-equitable claim priority framework and granted summary judgment on Dyar's equitable counterclaim for foreclosure, and ordered a sale of the Property before a jury determination on Moats's legal claims.

II. The Circuit Court Awarded Damages that Penalized Moats and Gave a Windfall to Dyar.

The circuit court's July 21, 2022 order setting damages, judgment of foreclosure, and sale, included a number of errors that penalized Moats and enriched Dyar by giving him a windfall. These errors were brought to the court's attention in Moats's motion to alter or amend, but the court denied Moats's request to remit the damages award. This was error.

Foreclosure is an action in equity. *Wachovia Bank*, 407 S.C. at 328, 755 S.E.2d at 441. "Equity will not enforce a penalty for breach of contract." *Lewis v. Premium Inv. Corp.*, 351 S.C. 167, 172, 568 S.E.2d 361, 363 (2002). "Equity does not favor forfeitures or penalties and will relieve against them when practicable in the interest of justice." *Id.* (quoting *Lane v. New York Life*

Ins. Co., 147 S.C. 333, 374, 145 S.E. 196, 209 (1928) (internal quotations marks omitted)). “A party may be unjustly enriched when it has and retains benefits or money which in justice and equity belong to another.” *Anderson Cnty. v. Preston*, 427 S.C. 529, 543, 831 S.E.2d 911, 918 (2019). “In an appeal from an action in equity tried by a judge, appellate courts may find facts in accordance with their own views of the preponderance of the evidence.” *Wachovia Bank*, 407 S.C. at 328, 755 S.E.2d at 441.

During the foreclosure damages hearing, Dyar called Joshua Pruett-Lange (“Pruett-Lange”) to testify to the amounts owed to Dyar under the Agreement. (Damages Hearing Transcript 16-18). Pruett-Lange was Dyar’s longtime bookkeeper and not a licensed CPA. (Mot. Alter Amend Damages 2; Damages Hearing 16:14-22).

Moats was penalized and Dyar enriched with a windfall when the circuit court set damages based on Pruett-Lange’s testimony but failed to adjust the amount of damages for the following errors in Pruett-Lange’s calculations:

- (1) Pruett-Lange’s spreadsheet contained date column errors resulting in Pruett-Lange testifying to the wrong month-end balance and a windfall to Dyar of \$7,887;
- (2) Pruett-Lange’s calculation erroneously reimbursed Dyar for real property taxes paid by Moats, resulting in a \$18,648 windfall to Dyar;
- (3) Pruett-Lange’s calculation erroneously reimbursed Dyar for insurance premiums that either Moats paid or neither party paid, resulting in a \$13,738 windfall to Dyar;
- (4) Pruett-Lange mistakenly eliminated a \$3,000 cash payment from February 2013, resulting in a \$5,141 windfall to Dyar;
- (5) Pruett-Lange’s calculation included interest charges on accrued interest, late fees, and insurance premiums, which have no basis in the Agreement, resulting in a \$9,505 windfall to Dyar;
- (6) Pruett-Lange’s calculation included late fee charges even though the parties modified the payment terms of the Agreement, and the Agreement was never extended beyond April 2016, resulting in late fee charges of \$28,433 that are a windfall to Dyar.

All totaled, these errors resulted in Moats being penalized and Dyar receiving a windfall of over \$83,000.

Prior to the sale of the Property, Moats decided to pay the judgment in full, along with additional amounts accrued interest and fees, instead of obtaining a bond to hold the sale in abeyance pending this appeal. (Order Satisfaction of Judgment). Accordingly, Moats requests restitution of these windfalls he has already paid to Dyar.

A. Pruett-Lange's Spreadsheet Contains Errors in the Date Column that Resulted in a Windfall Payment to Dyar.

During the damages hearing, Pruett-Lange testified that as of February 1, 2022, the amount due under the Agreement was \$222,415.95, as reflected in row 136 of his spreadsheet. (Damages Hearing Def.'s Exhibit 1; Damages Hearing 18:10-13). The Damages Order adopted this figure as the amount of "Principal and Interest due as of February 1, 2022." (Damages Order at 5).

However, Pruett-Lange's spreadsheet contains an error in the Date column, which caused him to testify as to the amount due as of August 1, 2022, not as of February 1, 2022. This error is reflected in Table 1 below. Pruett-Lange's date column begins to err at payment number 124, which Pruett-Lange reflects as May 1, 2021, when it should have been August 1, 2021, because payment number 123 was July 1, 2021. Pruett-Lange's date column is then wrong the for rest of his spreadsheet, and additional errors show up in his Date field, such as skipping from September 1, 2021, directly to May 1, 2022, an eight-month gap in time.

When Pruett-Lange testified that the Balance was \$222,415.95 as of February 1, 2022, the correct Balance under his spreadsheet should have been payment number 130, which is \$214,528.12, a \$7,887.83 difference. Accordingly, the court should have reduced the "Principal and Interest due as of February 1, 2022" (hereinafter, "Principal & Interest Due") by \$7,887.83.

Table 1:

PMT No.	Joshua Pruett-Lange		Corrected Date		Balance
120	April 1, 2021		April 1, 2021		201,895.12
121	May 1, 2021		May 1, 2021		203,130.25
122	June 1, 2021		June 1, 2021		204,371.57
123	July 1, 2021		July 1, 2021		205,619.08
124	May 1, 2021		August 1, 2021		206,872.84
125	June 1, 2021		September 1, 2021		208,132.86
126	July 1, 2021		October 1, 2021		209,399.19
127	August 1, 2021		November 1, 2021		210,671.84
128	September 1, 2021		December 1, 2021		211,950.86
129	May 1, 2022		January 1, 2022		213,236.28
130	June 1, 2022		February 1, 2022		214,528.12
131	July 1, 2022		March 1, 2022		215,826.42
132	October 1, 2021		April 1, 2022		217,131.21
133	November 1, 2021		May 1, 2022		218,442.53
134	December 1, 2021		June 1, 2022		219,760.40
135	January 1, 2022		July 1, 2022		221,084.86
136	February 1, 2022		August 1, 2022		222,415.95

B. Pruett-Lange Erroneously Included Real Estate Taxes Paid by Moats in the Amount of Principal & Interest Due, Resulting in a Windfall to Dyar.

Pruett-Lange’s calculation of Principal and Interest Due, adopted by the circuit court, is overstated by more than eighteen thousand dollars because it “reimburses” Dyar for \$15,616.35 in real property taxes that he never paid and adds \$3,031.74 in accumulated interest charges on top of these erroneous amounts. The result is a windfall and unjust enrichment to Dyar and penalty to Moats, which equity does not recognize and will relieve “when practicable in the interest of justice.” *Lewis*, 351 S.C. at 172, 568 S.E.2d at 363. As such, this error should be corrected.

Pursuant to the Agreement, property taxes were the responsibility of Moats. (Agreement ¶ 5). However, the parties modified this term of the Agreement by their course of performance throughout the first five years of the Agreement whereby Dyar paid real property taxes and was reimbursed from the periodic payments made by Moats. (Moats Aff. ¶¶ 6-7, Ex. 1 thereto (2015-

2020 tax bills)). Beginning with the 2016 tax year, Dyar no longer paid real property taxes and instead Moats paid all real property taxes directly to Anderson County. This change is reflected in the public records of real property tax receipts from Anderson County for the 2015-2020 tax years. (Moats Aff. ¶¶ 6-7, Ex. 1 thereto (2015-2020 tax bills)). As reflected by the Anderson County tax receipts, Dyar paid the 2015 tax year on January 2016. (Moats Aff. ¶¶ 6-7, Ex. 1 thereto (2015 tax receipt)). Beginning with the 2016 tax year, Moats paid all real property taxes through 2020 directly to Anderson County. (Moats Aff. ¶¶ 6-7, Ex. 1 thereto (2016-2020 tax receipts)).

Russell Moats testified at the damages hearing that Dyar was responsible for property taxes during the five years of the Agreement, and that as of March 31, 2016, real property taxes for 2016 had not been paid. (Transcript Damages Hearing 39:17-40:10). This is consistent with the information reflected on Anderson County's tax receipts. (Moats Aff. ¶¶ 6-7, Ex. 1 thereto (2015-2020 tax receipts)). No other person testified at the damages hearing as to real property taxes.

Accordingly, property taxes from 2016 onward should be removed from Pruett-Lange's calculation along with all related interest charges. Otherwise, Dyar will have been "reimbursed" for taxes he did not pay and receive interest that he did not earn, which would unjustly enrich Dyar by giving him a windfall. This penalizes Moats by making it pay a second time for real property taxes along with additional amounts for erroneous interest charges. *Lewis*, 351 S.C. at 172, 568 S.E.2d at 363 ("Equity will not enforce a penalty for breach of contract." (internal citations omitted)).

The total amount of tax payments included in Pruett-Lange's spreadsheet that Moats paid

directly to Anderson County is \$15,616.35.³ The Property Tax Adjustment spreadsheet attached as Exhibit E to Moats's motion to alter or amend reflects the calculation to adjust these Taxes out of the Balance owed along with related interest. (Mot. Alter Amend Ex. E).

First on Exhibit E, the taxes paid by Moats are removed from the Balance column to arrive at an Adjusted Balance. (Mot. Alter Amend Ex. E). Next, the Adjusted Balance is used to calculate Adjusted Interest, which is then subtracted from Pruett-Lange's Interest calculation to get a Difference in interest charges each month. The Running Total Overcharged Interest column then adds up the amount of Difference in interest for each month, resulting in a total overcharge of \$3,031.74 as of payment number 130 on February 1, 2022. Adding this Overcharged Interest to the taxes paid by Moats of \$15,516.35, results in a total overcharge of \$18,648.09, which is also reflected in the difference as of February 1, 2022, between the Balance and Adjusted Balance columns. (Mot. Alter Amend Ex. E, Payment No. 130 (\$214,528.12 - \$195,880.03 = \$18,648.09)).

Accordingly, the Principal & Interest Due should be reduced by \$18,648.09 and this amount should be ordered as restitution to Moats. Otherwise, Dyar will receive a windfall and be unjustly enriched, and Moats will be penalized. *Lewis*, 351 S.C. at 172, 568 S.E.2d at 363 ("Equity will not enforce a penalty for breach of contract." (internal citation omitted); *Preston*, 427 S.C. at 543, 831 S.E.2d at 918 ("A party may be unjustly enriched when it has and retains benefits or money which in justice and equity belong to another.")).

C. Pruett-Lange Erroneously Included Insurance Premiums Paid by Moats, or Not Paid at All, in the Principal & Interest Due Resulting in a Windfall to Dyar.

Pruett-Lange's calculation of the Principal & Interest Due is also overstated by more than

3. This is calculated by adding the Taxes reflected on payment numbers 66-130 (3,329.58 + 3,329.58 + 4,498.15 + 4,459.04). (Pruett-Lange Spreadsheet Ex. 1 Damages Hearing).

thirteen thousand dollars because it “reimburses” Dyar for \$11,326.05 in insurance premiums that Dyar never paid, and then adds \$2,412.58 in interest charges for these amounts erroneously calculated as past due. The result is a windfall for Dyar and a penalty to Moats. As such, this error should be corrected and restitution ordered.

Pursuant to the Agreement, insurance was the responsibility of Moats. (Agreement ¶ 14). However, the parties modified this provision of the Agreement such that Dyar retained insurance on the property and Moats reimbursed Dyar for insurance premiums. (Moats Aff. ¶¶ 8-12). Dyar no longer paid insurance premiums after April 2016. (Moats Aff. ¶¶ 8-12). Moats paid the insurance premium for the February 2017 to February 2018 policy year. (Moats Aff. ¶¶ 8-12 and Ex. F thereto (Vendor Payment History and Receipts)). Then, Moats no longer paid insurance on the property after receiving notice that the insurance company would not cover damage from Hurricane Irma in September 2017. (Moats Aff. ¶¶ 10-11). The property has been uninsured since this time and Dyar is not entitled to reimbursement for insurance premiums he didn’t pay, beginning with the December 2016 amount listed on the Pruett-Lange spreadsheet. (Moats Aff. ¶ 12). Dyar provided no evidence at the damages hearing that he paid insurance premiums on the property for which he was owed reimbursement.

The calculation to adjust insurance premiums out of Principal & Interest Due is included on Exhibit G to Moats’s Motion to Alter or Amend. (Mot. Alter or Amend Ex. G). The insurance premiums paid by Moats, or not paid at all, is removed from the Balance column to arrive at the Adjusted Balance column. (Mot. Alter or Amend Ex. G). Next, the Adjusted Balance is used to calculate Adjusted Interest column, which is then subtracted from Pruett-Lange’ Interest calculation to get a Difference for interest each month. The Running Total Overcharged Interest column adds up the amount of overcharged interest for each month, resulting in a total overcharge

as of payment number 130, as of February 1, 2022, of \$2,412.58. Adding this Overcharged Interest to the \$11,326.05 of insurance premiums that Dyar did not pay, results in a total downward adjustment in the Balance of \$13,738.63, which is also reflected in the difference as of February 1, 2022, between the Balance and Adjusted Balance columns. (Mot. Alter or Amend Ex. G, Payment No. 130 (\$214,528.12 - \$200,789.49 = \$13,738.63).⁴

Accordingly, the Principal & Interest Due should be reduced by \$13,738.63 and this amount ordered as restitution. Otherwise, Dyar will receive a windfall and Moats will be penalized. *Lewis*, 351 S.C. at 172, 568 S.E.2d at 363 (“Equity will not enforce a penalty for breach of contract.” (internal citation omitted)); *Preston*, 427 S.C. at 543, 831 S.E.2d at 918 (“A party may be unjustly enriched when it has and retains benefits or money which in justice and equity belong to another.”).

D. Pruett-Lange Erroneously Removed a Cash Payment from February 2013.

Prior to the damages hearing, in Pruett-Lange’s previous iteration of his spreadsheet, he included a \$3,000 cash payment made by Moats to Dyar in February 2013. (Damages Hearing Exhibit 2). This payment is reflected as payment number 22 Pruett-Lange’s prior spreadsheet. (Damages Hearing Exhibit 2). Russell Moats testified to this \$3,000 cash payment during the damages hearing. (Damages Hearing 25:13-16, 44:16-18). Dyar also testified in his deposition that Moats paid him \$3,000 cash in February 2013. (Deposition Cecil Dyar 22:11-15 (Nov. 23, 2021), attached as Ex. I to Moats’s Mot. Alter Amend). At the damages hearing, there was no testimony refuting this \$3,000 cash payment, and as such it should be deducted from the Principal & Interest Due along with related interest charges. Otherwise, Dyar will be paid this amount twice

4. Note that the Adjusted Balance column is isolated and adjusted here for insurance payments only, it does not reflect a cumulative adjustment for all of Appellant’s arguments.

and receive a windfall and be unjustly enriched and Moats will be penalized. *Lewis*, 351 S.C. at 172, 568 S.E.2d at 363 (“Equity will not enforce a penalty for breach of contract.” (internal citation omitted)).

The adjustment for this cash payment is reflected in Exhibit J to Moats’s Motion to Alter or Amend. (Mot. Alter or Amend Ex. J). Starting with payment number 22, the Adjusted Balance column takes into account the \$3,000 payment. Thereafter, the Adjusted Interest column calculates interest based off of this lower Adjusted Balance through February 1, 2022. The Difference column is the amount of interest that was overcharged by Pruett-Lange and the final column tallies up the total overcharged interest. The final page of Exhibit J, payment number 130, reflects that when this \$3,000 payment is added as a valid payment, the total Principal & Interest Due drops by an additional \$2,141.10 in interest, for a total difference of \$5,141.20. (Mot. Alter or Amend Ex. J). Accordingly, \$5,141.20 should be deducted from Principal & Interest Due.

E. Pruett-Lange Erroneously Charged Interest on Accrued Interest, Accrued Late Fees, and Accrued Insurance Premiums.

Pruett-Lange erroneously calculated monthly interest charges on: (1) the running balance of accrued interest, (2) accrued late charges, and (3) accrued insurance premiums. As demonstrated below in Table 2, Pruett-Lange applied monthly interest charges to accrued interest, accrued late fees, and accrued insurance premiums by including all of these amounts in the Balance column. The Agreement does not contain provisions permitting compound interest (interest charged on top of accrued interest), interest to be charged on top of late charges, or interest to be charge on insurance premiums. Simple interest and the late charge itself are representative of payments not received on time. Adding additional interest on top of these amounts is not supported by the Agreement and simply penalizes Moats and gives a windfall to Dyar.

Pruett-Lange’s interest calculation is reflected in Table 2 below:

Table 2

Pmt. No.	Date	Interest	Late Charge	Taxes	Insurance	Balance
65	1-Sep-16	685.63	225.66			138,036.31
66	1-Oct-16	690.18	225.66	3,329.58		142,281.73
67	1-Nov-16	711.41	225.66			143,218.80
68	1-Dec-16	716.09	225.66		2,265.21	146,425.76
69	1-Jan-17	732.13	225.66			147,383.55

As shown by Table 2, Pruett-Lange’s Interest calculation is the previous month’s Balance—which includes accrued interest, accrued late payments, and accrued insurance premiums—multiplied by the monthly interest factor of .5%.⁵ For example, for payment number 66, interest is equal to \$138,036.31 x .5%, or \$690.18.

The Agreement contains a provision for charging interest on the late payment of taxes if Dyar paid taxes prior to receiving reimbursement from Moats. (Agreement ¶ 15). If the parties had intended that interest be charged on accrued interest, on top of accrued late charges, or on top of accrued insurance premiums, they could have included such a provision in the Agreement as they did for late payment of taxes.

A court reviewing a written contract must discern:

[T]he intention of the parties and the meaning[, which] are gathered primarily from the contents of the writing itself, or, as otherwise stated, *from the four corners of the instrument, and when such contract is clear and unequivocal, its meaning must be determined by its contents alone; and a meaning cannot be given it other than that expressed.* Hence words cannot be read into a contract which import an intent wholly unexpressed when the contract was executed.

Park Regency, LLC v. R & D Dev. of the Carolinas, LLC, 402 S.C. 401, 412, 741 S.E.2d 528, 534 (Ct. App. 2012) (emphasis added) (citations omitted).

The absence in the Agreement of a such a provision indicates that the parties decided not

5. The monthly interest factor is calculated by taking the annual percentage rate of 6% and dividing by 12. Pruett-Lange’s spreadsheet reflects this number on page 1. (Damages Hearing Exhibit 1).

to charge interest on these additional amounts. As such, compound interest, interest charged on late fees, and interest charged on insurance premiums should be removed from the total debt owed to Dyar.

Exhibit K to Moats's Motion to Alter or Amend calculates this overcharge.⁶ (Mot. Alter or Amend Ex. K). First on Exhibit K, the Pruett-Lange spreadsheet Balance column is divided into Loan Principal Balance and Accrued Taxes, both of which are subject to interest charges. Then, an Adjusted Balance for Interest is calculated by adding the Loan Principal Balance with Accrued Taxes. Adjusted Interest is then calculated based on the Adjusted Balance for Interest column. The difference between Pruett-Lange's Interest calculation and Adjusted Interest is calculated for each month in the Difference column, and then summed in the final column labeled Running Total Overcharged Interest. Where the Balance column and Loan Principal Balance columns are equal, such as payment number 10, the next month's interest charge is identical and the Difference column is zero. This additionally shows that the Balance column includes amounts beyond just the loan principal and taxes.

As of February 1, 2022, payment number 130, the running total of overcharged interest is \$9,505.44. In other words, Pruett-Lange, by computing compound interest, interest on top of late fees, and interest on top of insurance premiums, overinflated the amount of interest owed by Moats in the amount of \$9,505.44.

Because the Agreement only provides for interest charges on the principal balance of the loan and taxes paid by Dyar, this \$9,505.44 overcharge should be removed from the total owed to Dyar. If not, this will be another instance where Dyar will receive a windfall and Moats will be

6. Attachment K, and all other spreadsheets provided as attachments are abbreviated for purposes of being legible. Appellant offered to provide the court with the underlying excel spreadsheets that reflect all underlying data.

penalized. *Lewis*, 351 S.C. at 172, 568 S.E.2d at 363 (“Equity will not enforce a penalty for breach of contract.” (internal citation omitted)).

F. Pruettt-Lange Erroneously Included Late Fees in His Calculation.

Late charges should not be added to the total amount owed by Moats because Dyar and Moats modified the Agreement’s payment terms. As Dyar testified in his deposition, he assented to the modified payments made by Moats. (Mot. Alter or Amend, Ex. I (Dep. Cecil Dyar 21:16-22:1)). Moreover, there is no evidence that Dyar ever provided notice to Moats of late charges or requested Moats to pay late charges under this new payment arrangement.

The parties clearly modified the payment amounts and due dates by their course of performance throughout the five years of the Agreement. (Damages Hearing Tr. 28:19-24, 40:19-21; Moats Dep. 100:24-103:14, Attach to Mem Opp’n Summ. J.). Dyar only now seeks to add late charges to inflate the amount owed by Moats. Moreover, there is no evidence that the Agreement extended beyond April 2016. Documents introduced during the damages hearing reflect only Dyar’s signature on the Agreement extension. (Damages Hearing Def. Ex. 3). Russell Moats testified that he did not agree to the extension while the parties had outstanding disputes on the amount owed. (Damages Hearing 31:5-8). Under no circumstances is there a basis to continue charging late fees beyond April 2016.

Late fees charged during the term of the Agreement amount to \$12,636.96. Late charges after April 2016 amount to \$15,796.20. Together, late charges amount to \$28,433.16. Once the payment terms of the Agreement were modified by the parties to make payment due dates open ended, there was no longer any basis for Dyar to charge late fees unless the parties reached a different understanding. Accordingly, late charges of \$28,433.16 should be removed from the total debt owed by Moats.

G. Summary of Adjustments to Principal & Interest Due.

Taking all of these errors together, Principal & Interest Due should be adjusted as follows:

Principal & Interest Due as of February 1, 2022	\$ 222,415.95
Adjustments:	
Incorrect Month	\$ (7,887.83)
Property Taxes Paid by Moats	\$ (18,648.09)
Insurance Paid by Moats or Not Paid by Dyar	\$ (13,738.63)
February 2013 \$3,000 Cash Payment	\$ (5,141.10)
Erroneous Interest Calculation	\$ (9,505.44)
Late Fees Incorrectly Applied	\$ (28,433.16)
Adjusted Principal & Interest Due	\$ 139,061.70

These adjustments more accurately reflect the amount owed on the Agreement between Moats and Dyar, before set-off for Moats's legal claims. Dyar did not challenge the substance of any of these erroneous charges, either in its opposition brief or at the hearing on the same. As such, Dyar presented no competing testimony or evidence to explain or challenge any of these errors identified by Moats. Any attempt to do so now would be too late.

If the original amount of \$222,415.95 is permitted to stand without restitution, it will result in a significant windfall to Dyar of over \$80,000, and a corresponding penalty to Moats, which is contrary to equitable principles. As such, restitution should be ordered to account for these erroneous charges paid by Moats, as well as to account for the additional amounts of interest Moats paid to Dyar to satisfy the judgment. (Order Satisfaction of Judgment).

CONCLUSION

Moats initiated this action, asserted legal claims against Dyar, and demanded a jury trial. As such, Moats had a right to have a jury hear and decide his legal claims before Dyar's equitable foreclosure claim was determined. This is the opposite of what happened when the circuit court ruled on Dyar's equitable foreclosure claim, set damages, order a sale of the Property, and ended

the case before Moats could pursue its legal claims. This was error and Moats requests a remand for a jury trial on its legal claims.

Moats's legal claims and Dyar's equitable claims are all logically related and arise under the same Agreement. As such, Moats's legal claims are compulsory and should have been tried ahead of Dyar's equitable claims. The circuit court's failure to allow Moats's legal claims to be heard and decided prior to Dyar's equitable claim was error and Moats requests a remand for a jury trial on its legal claims.

Finally, Moats identified over eighty-thousand dollars of erroneous charges included in the circuit court's order setting the amount of Principal and Interest due to Dyar. Moats properly raised these errors to the circuit court but was denied relief. As it stands, Dyar has been unjustly enriched by receiving a windfall of more than eighty-thousand dollars and Moats has been penalized. Equity will not enforce a penalty and will relieve against them when practicable and in the interest of justice. This is such a case that warrants correction of these windfalls and penalties. Because Moats has already paid these amounts, it requests an order of restitution to require Dyar to repay these windfalls along with additional interest paid to satisfy the judgment.

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Columbia, South Carolina
December 28, 2022

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Dec 28 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas
The Honorable R. Scott Sprouse

Case No. 2020-CP-04-01202
Appellate Case No. 2022-001527

Moats Construction, Inc.,

Appellant,

v.

Cecil R. Dyar,

Respondent.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellant and Appellant's Designation of Matter to Be Included in the Record on Appeal on James W. Logan, Jr., counsel for Respondent Cecil R. Dyar, by email sent to his primary e-mail address listed in the Attorney Information System, logan@loganandjolly.com on December 28, 2022. See attached email.

/s/ David L. Paavola
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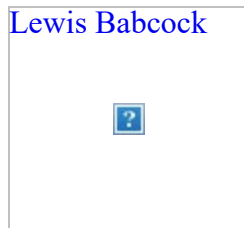
December 28, 2022

From: [David L. Paavola](#)
To: [Jim Logan](#)
Cc: [David L. Paavola](#); [Pat K. McCright](#)
Subject: Moats Construction Inc. v. Cecil Dyar - Initial Brief & Designation of Matter
Date: Wednesday, December 28, 2022 4:14:17 PM
Attachments: [20221228 Moats Construction Initial Brief.pdf](#)
[20221228 Moats Construction Designation of Matter for Record on Appeal.pdf](#)
[20221228 Proof of Service.pdf](#)

Jim,

Attached is Moats Construction, Inc.'s Initial Brief and Designation of Matter to be included in Record on Appeal for service in accordance with Rule 262, SCACR. These documents will be filed in the Court of Appeals shortly.

Sincerely,



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Attorney

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December 28, 2022

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Dec 28 2022

SC Court of Appeals

Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211
ctappfilings@sccourts.org

Re: Moats Construction, Inc. v. Cecil R. Dyar
Case No. 2020-CP-04-01202
Appellate Case No. 2022-001527
Our File Number 22-106

Dear Ms. Kitchings:

Enclosed for filing please find the Initial Brief of Appellant, Appellant's Designation of Matter to Be Included in the Record on Appeal, and Proof of Service in the above referenced matter.

If you have any questions, please do not hesitate to contact our office.

Sincerely,

A handwritten signature in blue ink, appearing to read 'D. Paavola', written over a light blue horizontal line.

David L. Paavola

DLP:pkm
Enclosure

cc: James W. Logan, Jr., Esq.
logan@loganandjolly.com