

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE GENERAL COURT OF COMMON
PLEAS SIXTEENTH JUDICIAL CIRCUIT
CASE NO. 2020-CP-46-01145

CAROLINA REAL ESTATE HOLDINGS,
LLC

Plaintiff,

v.

BRILIN ELECTRIC, LLC and W & L
SERVICES, LLC

Defendants.

ORDER ON POST-TRIAL MOTIONS

RECEIVED

Jan 09 2023

SC Court of Appeals

This above referenced matter is before the Court for post-trial motions.

The underlying litigation arises from a commercial Lease relationship between Carolina Real Estate Holdings, LLC (“Plaintiff” or “Landlord”) and Defendant Brilin Electric, LLC (“Defendant” or “Tenant”). After a lengthy trial, the jury was presented a general verdict form that addressed three claims: (1) the Plaintiff’s Breach of Contract claim against the Defendant; (2) the Defendant’s Breach of Contract counterclaim against the Plaintiff; and (3) the Defendant’s counterclaim of a violation of the Unfair Trade Practices Act (“UTPA”). After concluding their deliberations, the jury’s foreperson completed and signed the verdict form. The jury found for the Plaintiff on its breach of contract claim against the Defendant in the amount of \$10,513.88 as actual damages. The jury found for the Defendant on its breach of contract counterclaim against the Plaintiff in the amount of \$4,424.75 as actual damages; and found for the Defendant on its UTPA counterclaim against the Plaintiff in the amount of \$6,089.13 as actual damages. After the verdict was announced, both parties were provided an opportunity to raise any concerns or issues prior to the jury’s dismissal. Hearing nothing from either side, the jury was dismissed.

Post-trial motions were timely filed by both parties. Both parties seek an award of attorney’s fees pursuant to the Lease provision which provides for an award of reasonable attorney’s fees to the prevailing party if litigation over the Lease occurs. Plaintiff also seeks a

JNOV on the jury determination on the UTPA counterclaim; and Plaintiff seeks a *nisi remittitur* as to the dollar amounts awarded on the UTPA (from \$6,089.13 to \$1.00) and the breach of contract claim against the Plaintiff (seeks a reduction in the amount of \$280.00). In addition to an award of reasonable attorney's fees pursuant to the Lease terms, the Defendant also seeks an award of reasonable attorney's fees pursuant to the UTPA. The Defendant also seeks to treble the jury's determination of actual damages of the UTPA award as mandated and required by the statute for willful conduct.

When determining the issue of "prevailing party" this Court has examined the case law offered by both sides and also considered the statutory references made by the parties and those cited in the *Seckinger* case. *Seckinger v. Vessel Excalibur*, 326 S.C. 382, 388, 483 S.E.2d 775, 777-78 (1997). It is very clear to this Court that the Plaintiff is not the prevailing party. The only way the Plaintiff can be considered as the prevailing party is to isolate the jury determination of its award of \$10,513.88 of actual damages and to ignore the rest of the litigation involving the Lease. The jury's verdict, on its face, was clear that it did not want the Plaintiff to leave the courtroom with an award of money. In the jury's wisdom, it made an identical award of \$10,513.88 to the Defendant which it split between the defendant's contract claim and the UTPA claim. While the Plaintiff can and did argue through its motion of JNOV and *Nisi Remittitur* motions that the awards should be reduced, even if granted, the jury's message remains clear. The jury did not wish the Plaintiff to net a recovery of money. While the argument can be made that by awarding the identical amount to the Defendant, the jury also did not wish the defendant to net a recovery, the jury gave the Defendant a sum that was more than what was argued in the defendant's closing. The more logical and reasonable conclusion is that the jury accepted the Defendant's factual theory of the case and viewed the evidence in a manner that favored the

Defendant. Thus, the reasonable conclusion was that the Defendant prevailed in convincing the jury of the truth of the matters it asserted to them. Additionally, even if the Plaintiff's JNOV and *nisi* motions were granted, the Plaintiff still would not meet its burden of it being the prevailing party given the magnitude of the case it brought and actively pursued against the Defendant in relation to the award of damages it made to the Plaintiff. The testimony presented during the trial also supports this Court's conclusion. Given the overall nature of the case, the Defendant is the prevailing party as to the issues arising from the Lease.

It is worth noting that before trial, this Court made repeated attempts to encourage the parties to the litigation to resolve the dispute prior to trial. Both parties proposed informal offers, but neither party made a formal written offer as allowed by the statutes referenced in *Seckinger* (and no formal offer of judgment was made as allowed by the rules of civil procedure). As such, this Court is prohibited from using any settlement demands as a factor in determining the issue of prevailing party. This Court also examined the pleadings and could not find an exact amount demanded by either party. Notwithstanding, this Court's knowledge of the settlement discussions was a factor in determining the reasonableness of the award of attorney's fees as it relates to the work performed by the attorneys in preparing the case.

Because neither party desired to engage the jury with further questions after their verdict was announced, the issue of willfulness is made *de novo* by this Court. This Court's *de novo* review includes the credibility of the witnesses who testified at trial. Accordingly, this Court finds the Defendant has met its burden of establishing willfulness for purposes of the UTPA.

The UTPA, similar to the Lease provision, mandates the award of attorney fees when a willful violation is established. The same attorney fees analysis accomplished herein related to the Lease agreement can also apply to the award of attorney fees for UTPA.

As to the reasonableness amount of the fee, this Court has considered the traditional factors in South Carolina for setting attorney fees. This Court has also considered factors unique to this particular case. Given the dollar amount sought by the Plaintiff if it were determined to be the prevailing party, the amount awarded by this Court falls within the area of reasonableness. Furthermore, the fact that Plaintiff was successful on one of its claims against the Defendant is the primary factor in reducing the full amount sought by Defendant for attorney fees. The quality of legal work performed by all of the attorneys before this Court was of a very high caliber. While both hourly rates listed by the attorneys are reasonable, some consideration was given to the lower rate charged by Plaintiff's counsel. Also, some consideration was given to the fact that some charges appear to be for prelitigation matters. Another factor in not awarding the full amount presented by the defendant for attorney fees is that this Court has trebled the damages for the UTPA claim. In other words, this Court has made a diligent effort to determine a reasonable attorney fee to award in this case.

THEREFORE, it shall be the Order of the Court that:

1. That Defendant's jury award for damages for the Plaintiff's violation of the UTPA be trebled and awarded to the Defendant in the amount of \$18,267.99;
2. The Defendant is entitled to its reasonable attorney's fees of \$58,879.55 and costs of \$3,553.05, totaling \$62,432.60 pursuant to the prevailing party provision contained in section 28(g) of the Lease; and
3. The Plaintiff pay the Defendant's reasonable attorney's fees and costs as the prevailing party, and treble damages resulting from the Plaintiff's violation of the UTPA, in the total amount of \$80,700.59.

AND IT IS SO ORDERED.

HON. MARK J. HAYES
SIXTEENTH JUDICIAL CIRCUIT

November __, 2022
York, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020-CP-46-01145

Carolina Real Estate Holdings, LLC

Brilin Electric, LLC &

Jan 09 2023

PLAINTIFF(S)

W & L Services, LLC

DEFENDANT(S)

Submitted by: Nathan A. White

Attorney for : ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Brilin Electric, LLC	Carolina Real Estate Services, LLC	\$80,700.59
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCp.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Verdict, plus Order on Post-Trial Motions; see attached order.



York Common Pleas

Case Caption: Carolina Real Estate Holdings Llc VS Brilin Electric Llc , defendant,
et al
Case Number: 2020CP4601145
Type: Order/Judgment and Form 4

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132