

RECEIVED

May 05 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Hon. Roger M. Young Sr., Circuit Court Judge

Circuit Court Case No. 2019-CP-10-05392
S.C. Court of Appeals Case No. 2022-001795

Kevin Staveley-O-Carroll,

Appellant,

v.

Fenix Automotive, LLC,

Respondent.

INITIAL BRIEF OF APPELLANT

W. Westbrook Wills III (SC Bar No. 76681)
LAW OFFICE OF
W. WESTBROOK WILLS III
PO Box 822
Folly Beach, SC 29439
(843) 805-6300 (telephone)
(866) 922- 8596 (facsimile)
ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

Table of Authorities..... i

Statement of Issues on Appeal..... 1

Statement of the Case..... 1

Standard on Appeal..... 6

Argument..... 7

Conclusion..... 14

TABLE OF AUTHORITIES

S.C. Rules of Civil Procedure

SCRCP, Rule 55(b)(3) 2

SCRCP, Rule 59(e)..... 7

S.C. Supreme Court

Auto Owners Ins. Co. v. Newman, 385 S.C. 187, 191, 684 S.E.2d 541, 543 (2009) 7

BB & T v. Taylor, 369 S.C. 548, 551, 633 S.E.2d 501, 502–03 (2006) 7

Fields v. Reg'l Med. Ctr. Orangeburg, 363 S.C. 19, 25, 609 S.E.2d 506, 509 (2005)..... 14

Harleysville Grp. Ins., Corp. v. Heritage Cmtys., Inc., 420 S.C. 321, 357, 803 S.E.2d 288 (S.C. 2017) 7

Howard v. Holiday, Inc., 271 S.C. 238, 246 S.E.2d 880(1978)..... 9

Limehouse v. Hulsey, 404 S.C. 93, 116, S.E.2d 566, 579 (S.C. 2013)..... 9

Tri-County Ice Fuel Co. v. Palmetto Ice Co., 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990).. 7

S.C. Court of Appeals

Dixon v. Besco Engineering, Inc., 320 S.C. 174, 180, 463 S.E.2d 636 (S.C. App. 1995) 12

Pollard v. County of Florence, 314 S.C. 397, 402, 444 S.E.2d 534, 536 (Ct. App. 1994)..... 7

STATEMENT OF ISSUE ON APPEAL

Whether the trial court abused its discretion in basing its judgment award on its findings of fact as to specific monetary values material to the proper calculation of damages where those factual conclusions are wholly without evidentiary support.

STATEMENT OF THE CASE

This case involves a contract between Kevin Staveley O'Carroll ("Appellant" or "Plaintiff") and Fenix Automotive, LLC ("Respondent" or "Defendant") for the restoration of Appellant's classic 1969 Mercedes 280 SL ("Mercedes"). Appellant alleges the Mercedes was in fair condition in mid 2015 when he delivered it into Respondent's possession and care for the subject restoration work. Respondent performed the initial steps of the restoration pursuant to the parties' agreement, including the complete disassembly of the vehicle, removal and cataloguing of all parts and hardware, and preparation of the vehicle's empty shell for media blasting and bodywork. However, after requesting and collecting a \$20,000 deposit from Appellant to fund the subsequent phases of the restoration work, Respondent performed no further work on the Mercedes, whatsoever, failing either to complete the restoration work per the terms of the contract, or to reassemble the vehicle for its return to Appellant. Moreover, in the multiple years during which Respondent was in possession of the Mercedes for the restoration work, it negligently and carelessly stored the vehicle's disassembled parts and interior elements in piles and plastic bins outdoors, unprotected from the elements, resulting in their total loss.

In October of 2019, Appellant filed his action against Respondent alleging causes of action for breach of contract, negligence, conversion (of Appellant's \$20,000 deposit), and unjust enrichment. [See Complaint]. After proper service of the Summons and Complaint, Respondent failed to answer or otherwise respond. On January 28, 2020, Appellant moved for entry of

default and for default judgment against Respondent, which the trial court granted by its January 29, 2020 Order of Judgment by Default. [See Order of Judgment by Default].

On August 25, 2021, the trial court held a hearing on the issue of damages during which it received evidence and heard testimony from Appellant and Appellant's expert witness Axel Reinert ("Mr. Reinert").¹ [See Transcript of Damages Hearing, August 25, 2021 ("Transcript")]. On August 26, 2021, the trial court entered a Form 4 Order for counsel for Appellant to propose an order for damages to Respondent and the court within ten days, and for counsel for Respondent to present his own proposed order within five days of that. [See Form 4 Order to Submit Proposed Order of Damages, filed August 26, 2021].

On September 10, 2021, counsel for Appellant submitted Appellant's proposed order of judgment for damages to the trial court and opposing counsel. [See Plaintiff's Proposed Order of Judgment for Damages].² On September 17, 2021, counsel for Respondent submitted Respondent's proposed order of judgment for damages to the trial court by e-mail in which he indicated he was attaching "Plaintiff's (Appellant's) proposed order with [counsel for Defendant's (Respondent's)] changes in accordance with the testimony provided by the Plaintiff and his expert, and the information contained in Plaintiff's exhibits . . . which he submitted into evidence." [See Defendant's Proposed Order of Judgment for Damages; see also Counsel for Defendant's September 17, 2021 e-mail attaching Defendant's Proposed Order of Judgment for

¹ At the outset of the damages hearing, the trial court reminded the parties, and noted on the Record, that because Respondent/Defendant was in default, "[a]ll of the allegations are deemed to be admitted and therefore, the plaintiff can introduce evidence, the defendant cannot introduce evidence but can only object to the evidence that plaintiff offers, and may only cross-examine the plaintiff's witnesses. They are not allowed to call any witnesses on behalf of defendant." [Transcript 6:4-14].

² On September 17, 2021, counsel for Appellant submitted to the trial court and to counsel for Respondent a revised proposed order of judgment for damages to include an award of attorney's fees pursuant to SCRCF, Rule 55(b)(3). [See Appellant's Revised Proposed Order of Judgment for Damages]. The trial court declined to award Appellant's attorney's fees as part of the judgment, and Appellant is not appealing that issue.

Damages]. On October 6, 2021, at the request of the trial court, counsel for Appellant and Respondent each also submitted a proposed Form 4 order of judgment setting forth, respectively, their proposed total judgment amount. [See Plaintiff's Proposed Form 4 Order of Judgment; see also Defendant's Proposed Form 4 Order of Judgment].

On October 7, 2021, the trial court entered its Order of Judgment for Damages in the total amount of \$65,239, effectively adopting Respondent's proposed order over that of Appellant. [See Order of Judgment, Hon. Robert M. Young Sr., filed October 7, 2021 ("Order of Judgment")]. Thereafter, on October 14, 2021, Respondent filed a SCRCP, Rule 59 Motion to Alter or Amend Judgment claiming it had made a computational error in its proposed order based on Mr. Reinert's testimony as to the present value of the Mercedes, and asking the trial court to modify the judgment award downward accordingly. [See Defendant's Motion to Alter or Amend Judgment ("Defendant's Rule 59 Motion")]. Respondent also submitted an amended proposed order of judgment and an amended proposed Form 4 order reflecting its proposed corrections. [See Defendant's Amended Proposed Order of Judgment for Damages; see also Defendant's Amended Proposed Form 4 Order].

Upon receipt of Respondent's Rule 59 Motion and amended proposed orders, the trial court e-mailed counsel for the parties to ask if counsel for Appellant had any objections to Respondent's revised calculation of damages and proposed order to alter or amend. [See E-mail from Michael E. Secrist, Law Clerk to the Honorable Robert M. Young Sr. to counsel for the parties, October 14, 2021]. Counsel for Appellant indicated in his response that he objected to the Respondent's calculation of damages, as proposed in both its original and amended proposed orders because such calculations were based on Respondent's incorrect recollection of Mr. Reinert's testimony as to the various monetary values upon which the proper calculation of

damages depends. [See E-mail reply from counsel for Plaintiff to Michael E. Secrist, October 14, 2021].

On October 15, 2021, Appellant also filed a SCRCP, Rule 59 motion to alter, amend, or reconsider the Order of Judgment on the ground that the trial court based its specific findings of fact and calculation of damages on erroneous monetary values supplied by Respondent purporting to be the values to which Mr. Reinert testified, but which values, in fact, conflict with Mr. Reinert's actual testimony. [See Plaintiff's Notice of Motion and Motion to Alter, Amend, and Reconsider ("Plaintiff's Rule 59 Motion")]. Appellant requested a hearing on his Rule 59 motion, and indicated he would submit a memorandum of law and copy of the Transcript to the court in support thereof. [See *id.*].

On October 17, 2021, counsel for Appellant ordered the transcript of Mr. Reinert's testimony from the court reporter for submission to the trial court with his memorandum of law prior to the requested hearing. [See E-mail to Nathalie Williams, Court Reporter, October 15-17, 2021]. However, on November 2, 2021, prior to Appellant receiving the transcript of Mr. Reinert's testimony from the court reporter,³ the trial court entered an order denying Appellant's Rule 59 Motion, without a hearing. [See Order Denying Motion to Alter or Amend a Judgment Pursuant to Rule 59(e)].

On November 17, 2021, Appellant filed his first notice of appealing the trial court's October 7, 2021 Order of Judgment, inclusive of its November 2, 2021 order denying Appellant's Rule 59 motion. [See Notice of Appeal ("Plaintiff's First Notice of Appeal")]. On December 7, 2021, Respondent moved to dismiss Appellant's appeal on the basis that the trial

³ Appellant received the transcript of Mr. Reinert's testimony from the court reporter on December 11, 2021. [See E-mail from Natalie Williams, Court Reporter, attaching transcript, December 11, 2021].

court had yet to rule on Respondent's Rule 59 Motion, which remained pending before it. [See Respondent's Motion to Dismiss]. On January 28, 2022, this Court granted Respondent's Motion to Dismiss [see Order Dismissing Appeal], and on February 17, 2022, remitted the case to the trial court [see Remittitur].

On November 10, 2022, after the trial court still had not ruled on Respondent's Rule 59 motion, counsel for Appellant addressed a letter to the trial judge requesting he rule on the motion, and to suggest that because both Appellant and Respondent's Rule 59 motions both asked the court to alter or amend the judgment amount solely based on the specific testimony of Mr. Reinert as to the subject values, the court could resolve the issue simply by referring directly to the Transcript, which by that time counsel for Appellant had received from the court reporter and enclosed with the letter. Counsel suggested in its correspondence that in ruling on Respondent's Rule 59 motion, the trial court could make such corrections to its findings of fact and calculation of damages in the Order of Judgment as it deemed necessary and appropriate in light of the actual monetary values to which Mr. Reinert testified, as clearly reflected in the Transcript. [See Letter from Plaintiff's counsel to the Hon. Roger M. Young Sr. (with copy to counsel for Defendant), November 10, 2022 ("Plaintiff's Letter to Judge Young"), p. 3].

Further, in his letter, counsel for Appellant directed Judge Young's attention to each instance in which the court made an incorrect finding of fact with regard to Mr. Reinert's specific testimony as to the monetary values upon which the court based its computation of damages. [See *id.*, pp 2-3]. Appellant's counsel also proposed a recalculation of the damages and judgment amount utilizing the exact framework and measures of damage the trial court used in its Order of Judgment, but substituting into the computation the correct values as to which Mr. Reinert actually testified in place of the erroneous values supplied by Respondent and

incorporated by the court into its finding of fact. [See id.].

On November 17, 2022, counsel for Respondent e-mailed the trial court a letter response to Plaintiff's Letter to Judge Young objecting to its submission as an improper attempt to present the court with another motion to reconsider. [See Letter from Counsel for Defendant to the Hon. Roger M. Young Sr. (with copy to counsel for Plaintiff), November 17, 2022 (Counsel for Defendant's Letter to Judge Young); see also E-mail from Counsel for Defendant to Max Mazurek, Law Clerk to the Hon. Roger M. Young Sr., November 17, 2022 (attaching Defendant's Letter to Judge Young)]. On November 18, 2022, the trial court informed counsel for the parties that it was in receipt of both Plaintiff's Letter to Judge Young (with attached exhibits) and Defendant's Letter to Judge Young in response. [See E-mail from Max Mazurek, Law Clerk to the Hon. Roger M. Young Sr. to Counsel for the Parties, November 18, 2022].

On December 5, 2022, the trial court entered a Form 4 order denying Respondent's Rule 59 Motion. [See Order Denying Defendant's Rule 59 Motion]. Despite being in possession of the transcript of Mr. Reinert's testimony, eliminating all doubt as to the values and amounts to which he testified, the trial court made no corresponding modifications to its findings of fact, the calculation of damages, or judgment amount set forth in its Order of Judgment.

On December 13, 2022, Appellant filed a second notice of appeal of the Order of Judgment, inclusive of the trial court's Order denying Appellant's Rule 59 Motion. [See Appellant's Second Notice of Appeal, filed December 13, 2022].

STANDARD ON APPEAL

The issue Appellant raises in the present appeal relates solely to the trial court's erroneous findings of fact as to Mr. Reinert testimony, and the effect of those factual conclusions on its calculation of damages and ultimately the amount of the judgment.

In determining issues related to the trial court's finding of facts, the appellate court reviews orders under an abuse of discretion standard. "In an action at law tried without a jury, the appellate court will not disturb the trial court's findings of fact unless there is no evidence to reasonably support them." Harleysville Grp. Ins., Corp. v. Heritage Cmtys., Inc., 420 S.C. 321, 357, 803 S.E.2d 288 (S.C. 2017) (citing Auto Owners Ins. Co. v. Newman, 385 S.C. 187, 191, 684 S.E.2d 541, 543 (2009); see also BB & T v. Taylor, 369 S.C. 548, 551, 633 S.E.2d 501, 502–03 (2006) (explaining that when a determination lies within the sound discretion of the trial court, the standard of review on appeal is limited to determining whether there was an abuse of discretion).

Likewise, the decision to grant or deny a SCRCP, Rule 59 motion is also within the trial court's discretion, and this Court's review of such decision is under an abuse of discretion standard. See Pollard v. County of Florence, 314 S.C. 397, 402, 444 S.E.2d 534, 536 (Ct. App. 1994)(stating the decision to grant or deny a motion under Rule 59(e), SCRCP, lies within the sound discretion of the trial court).

ARGUMENT

1. The Trial Court abused its discretion by making specific findings of facts related to values material to the proper calculation of damages and judgment amount based on factual conclusions that are without evidentiary support.

An abuse of discretion arises where the judge issuing the order was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support. BB & T v. Taylor, 633 S.E.2d. 501, 503 (S.C. 2006)(citing Tri-County Ice Fuel Co. v. Palmetto Ice Co., 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990).

In the present case, in proving damages for each of his causes of action under the appropriate measure of damage for each, Appellant was required to establish, through Mr.

Reinert's testimony, 1) the value of the Mercedes at the time Appellant delivered it into Respondent's possession, 2) the expected value of the Mercedes had the restoration work been completed, as agreed, and 3) the present value of the Mercedes. During the August 25, 2021 damages hearing, the trial court heard testimony from Appellant and Mr. Reinert with regard to those relevant values and extent of Appellant's loss. [See generally Order of Judgment at pp. 1-2].

Following the damages hearing, the trial court asked each party to submit proposed orders, to include proposed applicable measures and calculation of damages based on the evidence and testimony presented at the hearing. [See Form 4 Order to Submit Proposed Order of Damages]. The proposed orders each party thereafter submitted to the Court contained differing and inconsistent damages calculations due, in large part, to respective counsels' differing recollection of Mr. Reinert's testimony as to the subject values. Ironically, despite Respondent being in default and prohibited from presenting evidence related Mr. Reinert's testimony and Appellant's damages [see Transcript 6:4-14], the trial court, nevertheless, adopted the those values and damages calculations proposed by Respondent, as opposed to those proposed by Appellant, as the basis for its Order of Judgment. [See Order of Judgment; compare Plaintiff's Proposed Order of Judgment for Damages, Defendant's Proposed Order of Judgment for Damages]. In so doing, as further discussed below, the trial court based its calculation of damages and the final amount of judgment on factual conclusions not only for which there is no evidentiary support, but which conclusions are squarely contradicted by the clear evidence of record.

- a. The Trial Court’s finding of fact with regard to the value of Appellant’s Mercedes at the time he delivered it to Respondent is contrary to Mr. Reinert’s testimony and wholly without evidence support in the record.**

Based on the incorrect value supplied by Respondent in its proposed order, the trial court made a specific finding of fact regarding Mr. Reinert’s testimony as to the value of the Mercedes at the time Appellant delivered it to Respondent to perform the subject restoration work. The trial court found “the vehicle was in poor condition and had a value of between \$20,000 and \$25,000, **based on the testimony of Mr. Reinert.**” (emphasis supplied). [See Order of Judgment at pp. 2-3, para. 6]. However, reference to the Transcript clearly reveals Mr. Reinert’s actual testimony was that the Mercedes had a value of between \$42,000 and \$45,000 at the time Respondent took possession of it. [See Transcript at 41:16-17, 42:17-20, and 89:10-20].

Because Mr. Reinert’s testimony was uncontroverted, and because Respondent, who was in default, was not permitted to present any evidence opposing Mr. Reinert’s testimony⁴, the trial court’s factual conclusion with regard to the value of the Mercedes at the time Respondent took possession of it is entirely without support in the record. Further, the trial court’s use of such erroneous value in its calculation of damages also renders the final judgment amount without evidentiary support.

- b. The Trial Court’s finding of fact with regard to the value Appellant’s Mercedes would have had if the restoration work had been performed as agreed is contrary to Mr. Reinert’s testimony and wholly without evidence support in the record.**

Again, an incorrect value supplied by Respondent in his proposed orders figures into the trial court’s findings of fact as to value the Mercedes would have had if Respondent would have

⁴ See Howard v. Holiday, Inc., 271 S.C. 238, 246 S.E.2d 880(1978)(limiting a defendant's participation in a post-default hearing to cross-examination and objection to plaintiff's evidence); see also Limehouse v. Hulsey, 404 S.C. 93, 116, S.E.2d 566,579 (S.C. 2013)(reaffirming Howard).

completed the restoration work anticipated in the parties' contract. Specifically, the trial court found "the Mercedes would have had a value of between \$42,000 and \$120,000 had Defendant restored it as agreed in its contract with Plaintiff." [See Order of Judgment at p. 5, para. 17]. Again, the trial court specifically indicates its findings are "**based on the uncontroverted testimony of Mr. Reinert . . .**" (emphasis supplied). [See *id.*].

Here again, the court's finding of fact as to Mr. Reinert's testimony on the present value of the Mercedes is manifestly incorrect. Reference to the Transcript clearly reveals Mr. Reinert's actual testimony was that the Mercedes would have a value of \$115,000 had Respondent completed the restorations in accordance with the terms of the parties' contract. [See Transcript at 17:1-25].

Having found the Mercedes's expected value within the range specified above, the trial court then used the average of the range (\$81,000) in its calculations under the measures of damage corresponding to Appellant's causes of action, resulting in a differential value of \$34,000.

Because Mr. Reinert's testimony was uncontroverted, the trial court's factual conclusion with regard to the value the Mercedes would have had if the restorations were completed was entirely without evidentiary support in the record. Further, the trial court's use of such erroneous value in its calculation of damages also renders the final judgment amount without evidentiary support.

- c. The trial court's finding of fact with regard to the present value of the Mercedes is contrary to Mr. Reinert's testimony and wholly without evidence support in the record.**

Based on the incorrect value supplied by Respondent in its proposed order, the trial court

made a specific finding of fact regarding Mr. Reinert's testimony as to the present value of the Mercedes. The court found, "based on the uncontroverted testimony of Mr. Reinert," that the Mercedes has a value of \$10,000 in its present condition and state. [See Order of Judgment at p. 5, para. 17]. However, reference to the Transcript clearly reveals Mr. Reinert's actual testimony was that the Mercedes value in its present state is approximately \$2,500. [See Transcript at 42:14-21].

Because Mr. Reinert's testimony was uncontroverted, the trial court's factual conclusion with regard to the value the Mercedes would have had if the restorations were completed was entirely without evidentiary support in the record. Further, the trial court's use of such erroneous value in its calculation of damages also renders the final judgment amount without evidentiary support.

d. The trial court's calculation of damages based on its incorrect factual findings resulted in an improper and incorrect judgment award.

In its Order of Judgment, the trial court sets forth the measure of damages and its damages calculations for each of Appellant's causes of action in its conclusions of law.

1. Breach of Contract

As to damages under Appellant's cause of action for breach of contract, the trial court specifies Appellant "is entitled to the difference between the fair market value of the Mercedes as restored to the agreed upon condition and its present value, minus the difference between the cost of the restoration work and the amount the Plaintiff already paid toward that cost." [See Order of Judgment at p. 8]. The court then plugged the values it erroneously found into the otherwise proper measure of damage formula, which it expressed as follows: $(\$81,000 - \$2,500^5)$

⁵ Interestingly, despite its erroneous finding that the Mercedes had a present value of \$10,000, the trial court used

– (\$65,000 - \$25,825), totaling \$39,325. [See id.]. After adding an additional amount for consequential damages⁶, the court arrived the total amount of \$40,450 as breach of contract damages. [Id. at p. 9].

Using the exact framework as the trial court for calculating damages under Appellant’s cause of action for breach of contract, but substituting in the correct values according to Mr. Reinert’s actual testimony, the damages formula should be expressed as (\$115,000 - \$2,500) – (\$65,000 - \$42,000), totaling \$89,500 (as opposed to \$39,325) for a total amount of \$90,625 for that cause of action.

2. Negligence

As to damages under Appellant’s cause of action for negligence (under a theory of bailment), the trial court correctly that the states the bailor is entitled to be compensated for all losses that are the natural consequence and proximate result of the bailee’s negligence. [See Order of Judgment at p. 9-10 (citing Dixon v. Besco Engineering, Inc., 320 S.C. 174, 180, 463 S.E.2d 636 (S.C. App. 1995)]. Based on the evidence and testimony of record, the trial court properly analyzed and found Respondent was negligent in failing to exercise even slight care in safekeeping Appellant’s property, and that such failure was the proximate cause of Appellant’s loss. [See id. at pp. 10-11].⁷ However, here again, in calculating Appellant’s damages using the proper measure under a theory of negligence, the trial court plugged in the same incorrect values supplied by Respondent purporting to be the values to which Mr. Reinert testified. The trial

the correct present value of \$2,500, as testified to by Mr. Reinert, in the above damages calculation formula.

⁶ The trial court awarded additional amounts totaling \$1,125 as consequential damages related to shipping the vehicle from Respondent’s shop to another location.

⁷ Despite the court’s finding by a standard of clear and convincing evidence that Respondent’s actions in failing to safeguard Appellant’s property constituted a complete departure from industry standards and amounted to a conscious disregard for Appellant’s property, and that such gross negligence resulted in damages which were foreseeable and avoidable, it nevertheless declined to award punitive damages as requested by Appellant.

court specified that “based on the evidence and testimony, at then time Plaintiff delivered the Mercedes to Defendant, the vehicle had a value of between \$20,000 and \$25,000, the average which amounts to \$22,500. Presently the vehicle is worth \$10,000”. [See id. at p. 11]. The trial court then concluded that the damage occasioned to the Mercedes by the negligence of Respondent reduced its value by \$12,500, and Respondent is liable to Appellant in the amount of \$13,625 (after addition of \$1,250 in consequential damages). [See id. at 12].

Using the exact framework and measure as the trial court for calculating damages under Appellant’s cause of action for negligence, but substituting in the correct values according to Mr. Reinert’s actual testimony as to the value of the Mercedes at the time Respondent took possession of it (\$42,000 [see Transcript at 10:20 – 12:19]) and the vehicle’s present value (\$2,500) [see Transcript at 42:14-21]), the damages formula should be expressed as (\$42,000 - \$2,500), totaling \$39,500 (as opposed to \$21,125).

Without modifying any other aspect of the judgment, but simply applying the correct values testified to by Mr. Reinert within the calculation of damages, the total judgment amount should be \$115,414 (as opposed to \$65,239), summarized as follows:

- for breach of contract in the amount of \$90,625;
- for negligence in the amount of \$39,500, reduced by \$90,625 for a total of \$0;
- for conversion in the amount of \$23,095;
- for the return of Appellant’s Mercedes;
- for Appellant’s costs and expenses in the amount of \$1,694.

Importantly, the trial court specifically states in its Order of Judgment that its findings of fact with regard to each of the subject values discussed above were based on Mr. Reinert’s uncontroverted testimony. [See Order of Judgment at p.5, para. 17, p. 2-3, para. 6, and p.11]. By the language of the Order of Judgment, it is clear the trial court intended to use the Mr. Reinert’s testimony as to the subject values as the basis of its findings of fact. It simply used the wrong

numbers. See Fields v. Reg'l Med. Ctr. Orangeburg, 363 S.C. 19, 25, 609 S.E.2d 506, 509 (2005) (an abuse of discretion occurs when a ruling is based on an error of law or a factual conclusion that is without evidentiary support.)

CONCLUSION

Because the trial court's findings of fact with regard Mr. Reinert's testimony as to the various values associated with the Mercedes are inconsistent with Mr. Reinert's actual testimony as reflected by the evidence and testimony, those factual conclusions are entirely without evidentiary support in the record and constitute an abuse of discretion. Likewise, as the trial court relied on its erroneous findings of facts as to the various values to which Mr. Reinert in making its conclusions of law, including its calculation of damages, the final amount of the judgment in favor of Appellant is without evidentiary support in the record, and constitutes an abuse of discretion. Appellant respectfully requests this Court remand case to the trial court with instructions to correct its findings of facts and damages calculations in function of Mr. Reinert's actual testimony, and enter judgment in favor of Appellant in the corrected amount as set out above.

Respectfully submitted,

/s/ W. Westbrook Wills III

W. Westbrook Wills III (SC Bar No. 76681)

LAW OFFICE OF

W. WESTBROOK WILLS III

PO Box 822

Folly Beach, SC 29439

(843) 805-6300 (telephone)

(866) 922- 8596 (facsimile)

ATTORNEY FOR APPELLANT

Other counsel of record:

Robert D. Garfield
Davidson & Lindemann, P.A.
P.O. Box 8568
Columbia, SC 29202-8568
ATTORNEY FOR RESPONDENTS