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**Aug 28 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

The Honorable Perry H. Gravely, Circuit Court Judge

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Appellate Case No. 2022-00176

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Jason Snow,

Appellant,

v.

William Alexander

Respondent.

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RESPONDENT'S FINAL BRIEF

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## STATEMENT OF ISSUES ON APPEAL

- I. There is not sufficient non-speculative evidence in the record to reasonably support a jury verdict of damages.
- II. Evidence other than speculation is required to prove damages.

## STATEMENT OF THE CASE

Appellant, Jason Snow, brought an action against Respondent, William Alexander, for damages arising out of a contract for sale of a month-to-month oral lease of a restaurant known as Pumpkintown Café' in the Greenville County Circuit Court, Case Number 20190CP-23-2022.

The case was tried on September 19 and 20, 2022 before a jury and presided over by the Honorable Perry H. Gravely. At the close of the case, respondent moved for a directed verdict. ROA p. 168 l. 11-24. The Court denied the motion. ROA p. 168 l. 2 - p 169 l.1.

At the close of the trial, the jury returned a verdict in favor of the Plaintiff in the amount of \$445,000.00. ROA p. 33 l. 19-p. 33 l.2.

After the jury was dismissed, the Defendant moved to set aside the verdict due to the speculative nature of the damages. ROA p. 33 l.25 – p. 33 l.1. The Court treated the Motion as a Motion for Judgment Not Withstanding the Verdict under Rule 50 of SCRCF and granted the Motion to Set Aside the Jury verdict. ROA p. 34 l.1-23 - p. 34 l. 1.1, Order/JNOV, p. 1.

The Plaintiff filed a Motion to Alter or Amend on October 3, 2022. That Motion was denied on November 15, 2022. Order, ROA p. 5.

## FACTS

The Respondent is the Leasee of a restaurant known as the Pumpkintown Café' since 2017. Tr. p. 31. 10-13. Respondent and Appellant entered into a contract to sell the Pumpkintown Café' on August 2019. ROA p. 41-1. 21-24. The contract was reduced to writing and signed. ROA p. 342.1.1-21 – p. 42 1. 16-24.

Respondent informed Appellant that Respondent did not own the building and had an oral month-to-month lease. ROA p. 66.1. 18-25.

Appellant never obtained a written or oral lease signed by the building property owner. ROA p. 89 21-22.

Respondent refused to sell the business and lease to appellant. ROA p. 50 1. 8-19.

Respondent still operates the restaurant. ROA p. 55 1. 20-25, ROA p. 56 1-6.

## STANDARD OF REVIEW

As stated in Rule 50(b) of the SCRCPP, “whenever a motion for directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motions.”

The Defendant had moved for a directed verdict on the grounds that the evidence regarding the Plaintiff's damages were speculative and did not provide a basis for the jury to return a verdict in the Plaintiff's favor. When considering a Motion for JNOV, “the trial court

must view all evidence in the light most favorable to the non-moving party; and if the evidence is susceptible of more than one reasonable inference, the motion must be denied.” Ludlam v. School Dist. of Greenville County, 317 S.C. 509 (Ct. App 1995).

In Drew Co. Inc. v. Ledwith-Wolfe Associates, Inc., 296 S.C. 207 (1988), the South Carolina Supreme Court set aside a jury verdict in favor of a plaintiff because the Plaintiff’s claim for lost profits was “unsupported by any particular standard or fixed method of establishing net profits, were wholly insufficient to provide the jury with a basis for calculating profits lost with reasonable certainty.” In Drew Co. the Court found that, as a matter of law, the Plaintiff’s “proof was insufficient to merit submission to the jury” and the Court set aside the jury verdict based on the “speculative” damages. In the matter before this Court, the Court found that the Plaintiff’s proof was insufficient to merit submission to the jury and any verdict was based on speculation or conjecture.

## ARGUMENT

I. There is not sufficient non-speculative evidence in the record to reasonably support a jury verdict of damages.

Appellant sought damages for Respondent’s breach of contract. The claim sought loss of future profits from the operation of Pumpkintown Café’. The Appellant sought lost profits for an undetermined amount of time in the future.

The evidence offered by the Appellant as to future profits was very limited.

The Appellant provided no testimony, lay or expert, explaining his claim of loss of future

profits.

Appellant relied on Respondent's tax return for 2018 showing a loss for the year. ROA p. 52 1. 23 – p. 53 1.4, Tax Return for 2018, Exhibit P3, p. 256.

A cash register tape showing \$379,238.17 that Respondent testified was inaccurate. ROA p. 52 1. 17-22. No testimony was offered to counter Respondent's assertion the register tape was inaccurate. ROA p. 54 1. 3-5. Exhibit P2, p. 255.

Appellant also offered a summary of purported cash register receipts from January to July without a year designated for the same. ROA p. 149 1. 9-14. The Appellant offered no testimony or explanation to show a basis for them in establishing their accuracy or their applicability in establishing damages. Appellant offered no evidence, lay or expert or otherwise, showing Appellant would have had the same of similar income, nor whether Appellant would have similar expenses upon his taking the lease. Appellant failed to provide any evidence of his plan for operating the restaurant. Appellant failed to provide any evidence of how far into the future the claimed lost profits would continue. Appellant had not secured a written lease from the owners of the building and as such was at the whim of the owners who only gave oral, month-to-month lease in the past. Appellant had no testimony concerning how a month-to-month lease would affect any future profits. No testimony, expert or otherwise, was offered to explain how what was presented and whether it was evidence of profits Appellant could reasonable expect.

As stated in Rule 50(b) of the SCRCPP, "whenever a motion for directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motions."

The Appellant made no offer of testimony, lay or expert, for what impact the COVID Pandemic, which occurred during the first year of such operation, would have on a restaurant operations and profits.

II. Plaintiff, Jason Snow, presented no evidence of his claimed loss that wasn't speculative. Even the lease had not been obtained from the owners of the property. Drew Co. Inc. v. Ledwith-Wolfe Associates, Inc. 296 SC 207 (1988)

Appellant failed to provide proof of damages with "reasonable certainty" and sought to have jurors speculate on damages.

In Drew Co. Inc. v. Ledwith-Wolfe Associates, Inc., 296 S.C. 207 (1988), the South Carolina Supreme Court set aside a jury verdict in favor of a plaintiff because the Plaintiff's claim for lost profits was "unsupported by any particular standard or fixed method of establishing net profits, were wholly insufficient to provide the jury with a basis for calculating profits lost with reasonable certainty." In Drew Co. the Court found that, as a matter of law, the Plaintiff's "proof was insufficient to merit submission to the jury" and the Court set aside the jury verdict based on the "speculative" damages. In the matter before this Court, the Court found that the Plaintiff's proof was insufficient to merit submission to the jury and any verdict was based on speculation or conjecture.

#### CONCLUSION

For the reasons stated the Judgment of the Circuit Court should be upheld.

August 23, 2023

Respectfully submitted,  
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