

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
Case No. 2021-000266

RECEIVED

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Case No. 2020-CP-10-1819
Jennifer B. McCoy, Circuit Court Judge

Troy Wilson,

Appellant.

v.

Carolina Custom Painting &
Drywall, LLC, and Jamie Singleton,

Respondents.

RECORD ON APPEAL

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Attorney for Appellant

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP1001819

Troy Wilson
PLAINTIFF(S)

Carolina Custom Painting & Drywall Llc et al
DEFENDANT(S)

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.
- ☐ **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:

Appellant's motion for new trial filed June 19, 2020 is Denied at this time without prejudice. The court requests the magistrate file a return within 30 days from the date of this order.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/02/2020 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: 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 judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.



Charleston Common Pleas

Case Caption: Troy Wilson VS Carolina Custom Painting & Drywall Llc ,
defendant, et al
Case Number: 2020CP1001819
Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2020-09-02 13:18:55 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP1001819

Troy Wilson
PLAINTIFF(S)

Carolina Custom Painting & Drywall Llc et al
DEFENDANT(S)

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.
- ☐ **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:

Appellant' Motion for Appeal filed April 14, 2020 is Denied at this time without prejudice. The court requests the magistrate file a return within 30 days from the date of this order.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

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Charleston Common Pleas

Case Caption: Troy Wilson VS Carolina Custom Painting & Drywall Llc ,
defendant, et al
Case Number: 2020CP1001819
Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2020-09-02 13:19:15 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE MAGISTRATE'S COURT
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO. 2018CV1011500709

TROY WILSON,

)
)
) Plaintiff,
)
)

vs.

CAROLINA CUSTOM PAINTING &
DRYWALL, LLC and JAMIE
SINGLETON,

)
)
) Defendants.
)
)

ORDER

FILED IN CHARLESTON COUNTY

SEP 08 2020

NORTH AREA SMALL CLAIMS COURT

9/11
I tried this matter as a bench trial on July 12, 2018. Troy Wilson, the Plaintiff, was represented by David Nauheim and the Defendants, Jamie Singleton (Singleton) and Carolina Custom Paining & Drywall, LLC (Carolina), were represented by Harold Oberman. Plaintiff had sued Defendants for Unpaid Wages under the S.C. Wage Payment Act and for Unjust Enrichment. Defendants answered and counterclaimed, alleging that they had tried to pay Plaintiff, that Plaintiff was responsible for his defective work, that deductions or a setoff from his wages was appropriate, and that there was a bona fide dispute as to whether Plaintiff was owed wages.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Facts)

The relevant facts in this lawsuit are all but undisputed. Immediately before Plaintiff quit his job with Defendants, there was a dispute concerning wages. Singleton testified that Defendant did defective work at 1108 Ocean Club. He only put one (1) coat of paint on the wall and didn't

sand the door frames. Because of this, paint peeled off. This dispute arose before Plaintiff quit and before he claimed wages. Defendant withheld wages from Plaintiff because of this defective work.

Plaintiff does not convincingly dispute this account. In fact, he alleges in his Complaint as follows:

9. On or about October 10, 2017, there was a problem with paint peeling on house that Defendants had recently painted, which had not been sanded properly. Mr. Singleton blamed Mr. Wilson, although he had not been at that job site the day it was sanded. Mr. Singleton told Mr. Wilson orally that he was going to cut his pay from \$18 per hour to \$15 per hour.

10 Mr. Wilson decided to resign and the next day, October 11, 2017, he texted Mr. Singleton that he had made a decision to leave the company.

11. The Defendants owed Mr. Wilson \$432.00 in wages on October 12, 2017, for 24 hours of work at \$18 per hour, which he had completed in the pay period prior to his resignation.

13. On or about October 13, 2017, Mr. Wilson texted Mr. Singleton asking when he wanted him to turn in his uniform. Mr. Singleton called Mr. Wilson. He told him to keep the uniform and that he was not going to pay him his last paycheck, citing the recent paint peeling issue.

14. The next scheduled pay day was October 20, 2017. The Defendants did not pay Mr. Wilson the \$432.00 in wages that were due on that date.

Plaintiff states in his Trial Brief as follows:

On or about October 10, 2017, there was a problem with paint peeling on house that Defendants had recently painted, which had not been sanded properly. Mr. Singleton blamed Mr. Wilson, although he had not been at that job site the day it was sanded. Mr. Singleton told Mr. Wilson orally that he was going to cut his pay from \$18 per hour to

\$15 per hour. Mr. Wilson decided to resign and the next day, October 11, 2017, he texted Mr. Singleton that he had made a decision to leave the company.

Further, there was a course of dealing where deductions would be taken from Plaintiff's payment for defective work. Singleton testified that at the initial hire of an employee, he would give all employees a written document that contained the following language "I understand that I am responsible for materials and labor of any faulty work discovered during inspection." Singleton testified Plaintiff received this document like all other employees. The course of dealing between Plaintiff and Defendants confirm that this was the deal. On March 30, 2015, Plaintiff signed a document that stated he would pay for damaged work: "I, Troy Wilson, a subcontract employee, agree to reimburse Carolina Custom Painting and Drywall \$1,350.00 (one thousand three hundred fifty dollars) for damaged AC condenser at 27 Smith St. Payments of \$150.00 will be deducted from my check weekly starting 3-27-15."

Because of this bona fide dispute over wages, Plaintiff quit. Defendants withheld Plaintiff's last paycheck in the amount of \$432.00 because of the deficient work he had performed and the cost to correct it. I find Defendants were justified to do this.

Plaintiff reported Defendants to the Labor Board. At one point, Defendants were given three days to gather certain documents (Letter 11/3/17). They made the decision that it would be more cost effective to pay Plaintiff his claimed wage, rather than to contest the action before the Labor Board. Defendant testified that he was unaware that Plaintiff could bring an additional suit against him. He believed this payment would end the matter.

Defendants decided to mail Plaintiff his check and they did so within 30 days. Defendants sent Plaintiff his check via certified mail to 160 Stratton Dr., N. Charleston SC, 29420 and Plaintiff acknowledged that was his address. The post office tried to deliver the check on many occasions (envelope) but the check remained unclaimed. Plaintiff blamed his failure to pick up the check on his children. Singleton stated he would continue to try to give Plaintiff his check, but Plaintiff testified he would not accept it.

Singleton testified he believed it would be a bad idea if he tried to contact Plaintiff or deliver the check personally to Plaintiff. There was an ongoing dispute and a confrontation could happen. This Court agrees. Singleton was also justified in wanting to document his attempt to pay by using certified mail.

 Because of Singleton's decision not to contest the matter before the Labor Board, it made certain findings. Singleton believed his decision to send the check to Plaintiff would end the matter, but this was not the case. The findings relevant to this wage dispute is that Defendants failed to "pay Troy Wilson on the scheduled pay-date of 10/20/17 for the amount of \$432.00 (paid in full but paid late)."

Defendants also counterclaimed against Plaintiff. The counterclaims consist of three jobs on which Plaintiff worked. Singleton testified as to 1108 Ocean's Club, outlined above, he was out \$300.00 in materials and approximately \$1,400.00 in labor because of Plaintiff's defective work. At 47 Waterway Island, Singleton testified he had to replace 8 boards at \$104.00 a board and \$400.00 in labor for a total cost to fix of \$1,232.00. Plaintiff admitted he was the supervisor on this job, that there was paint that dripped on the boards, and that the boards had to be replaced. As supervisor, I find Plaintiff ultimately responsible for these costs. At 1509 Jenys, Singleton showed

pictures of Plaintiff's defective work. There was paint on door knobs and other hardware discovered after Plaintiff quit. Eight (8) doors at \$75.00 a piece had to be replaced. Hinges and knobs totaled \$200.00 and labor was \$250.00, or a total of \$1,050.00. I find these counterclaims persuasive and proven.

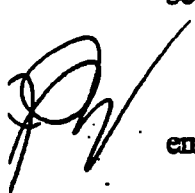
II. FINDING OF FACTS AND CONCLUSIONS OF LAW

A. Plaintiff is Not Entitled to Treble Damages or Attorney's Fees.

Under the Wage Payment Act, though the legislature seeks to protect employees from the unjustified and wilful retention of wages by the employer, they do not want to stifle legitimate wage disputes. Rice v. Multimedia, Inc., 318 S.C. 95, 99, 456 S.E.2d 381, 383 (1995)

1. There was a bonafide dispute as to employee's entitlement to wages.

As noted above, a dispute about Plaintiffs pay arose before Plaintiff quit. Plaintiff quit because of this dispute.

 Temple v. Tec-Fab, Inc., 381 S.C. 597, 675 S.E.2d 414, (2009) states that a finding that an employee is entitled to recover unpaid wages (such as the \$432.00) is not equivalent to a finding that there existed no bona fide dispute as to the employee's entitlement to those wages. Citing O'Neal v. Intermedical Hosp. of South Carolina, 355 S.C. 499, 585 S.E.2d 526 (Ct.App.2003). Just because employee was entitled to recover his wages, this does not mean there was no bona fide dispute.

Temple further states an employee was not entitled to treble damages and attorneys' fees under Payment of Wages Act in light of bona fide dispute as to whether employer owed wages, citing Futch v. McAllister, 335 S.C. 598, 518 S.E.2d 591 (1999).

Plaintiff, in his Trial Brief admits, "An award of treble damages in the discretion of the court. It is not awarded when the employer had a bona fide reason for believing wages were not owed."
(Plaintiff's Trial Brief, p. 5)

Because there was a bona fide dispute as to wages, I do not award treble damages or attorney's fees. Defendants offered their defenses in good faith. The dispute arose before the claim to the Labor Board. Even if I would find that Plaintiff would ultimately prevail on the issue of wrongfully withheld wages (which I do not), I still would not award treble damages or attorney's fees as the wage issue was legitimately disputed in good faith. Plaintiff has presented no credible evidence that the dispute was not bona fide and in his complaint states facts which show it to be bona fide.

2. Discretion.



[T]he statute explicitly provides that the employee "may" recover treble damages. "The use of the word 'may' signifies permission and generally means that the action spoken of is optional or discretionary." State v. Wilson, 274 S.C. 352, 356, 264 S.E.2d 414, 416 (1980). Thus, by using "may", rather than "shall", the legislature has provided that the penalty is discretionary with the judge. This interpretation accords with the purpose of the Wage Payment Act, to wit: to protect employees from the unjustified and wilful retention of wages by the employer. The imposition of treble damages in those cases where there is a bona fide dispute would be unjust and harsh.

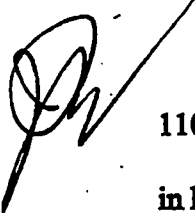
Rice v. Multimedia, Inc., 318 S.C. 95, 99, 456 S.E.2d 381, 383 (1995)

Because I find that there was a bonafide dispute over wages and what Defendants could withhold, I decline to award Plaintiff treble damages and attorneys fees. Additionally, I decline to award treble damages and attorneys fees because Defendants tried to pay the wage and believed he

had satisfied Plaintiff. As pointed out in the case law, a finding that the wage was in fact due does not mean that there was no bona fide dispute.

B. Defendants Legitimately Deducted Amounts From Plaintiff's Wages. Plaintiff is Responsible for the Mistakes He Made on the Job.

Even if I were to treble damages and award attorney's fees (which I do not), this amount would be more than offset by legitimate deductions, set offs, and counterclaims. Though I find Plaintiff to be an employee, the offset from his wages was legitimate. Plaintiff is responsible and accountable for the mistakes he made on the job. The course of dealings between the parties indicate that Plaintiff agreed to the terms as set forth in the document given to workers at the start of their employment, specifically that they would be "responsible for materials and labor on any faulty work." This is reaffirmed by the document of March 30, 2015. Plaintiff never contested this document and continued to work. The specific deductions, set offs and counterclaims follow.

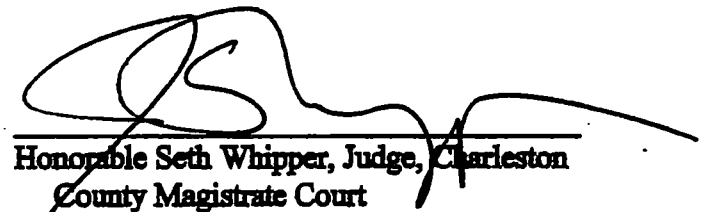


The counterclaims consist of three jobs on which Plaintiff worked. Singleton testified as to 1108 Ocean's Club, outlined above, he was out \$300.00 in materials and approximately \$1,400.00 in labor because of Plaintiff's defective work. At 47 Waterway Island, Singleton testified he had to replace 8 boards at \$104.00 a board and \$400.00 in labor for a total cost to fix of \$1,232.00. Plaintiff admitted he was the supervisor on this job, that there was paint that dripped on the boards, and that the boards had to be replaced. As supervisor, I find Plaintiff ultimately responsible for these costs. At 1509 Jenys, Singleton showed pictures of Plaintiff's defective work. There was paint on door knobs and other hardware discovered after Plaintiff quit. Eight (8) doors at \$75.00 a piece had to be replaced. Hinges and knobs totaled \$200.00 and labor was \$250.00, or a total of \$1,050.00. I find

these counterclaims persuasive and proven. Therefore, I rule for the Defendants in the amount of their counterclaims.

WHEREFORE, I rule for the Plaintiff in the amount of \$432.00. Defendants tried to pay this amount. I do not treble that amount and I do not award attorney's fees. I rule for the Defendants on their counterclaims and set offs in the amount of \$3,982.00. This amount is deducted from any amount Defendants might owe Plaintiffs. However, since I have ruled that Defendants owe Plaintiff only \$432.00, I find a aggregate total judgment for Defendants in the amount of \$3,550.00.

AND IT IS SO ORDERED!



Honorable Seth Whipper, Judge, Charleston
County Magistrate Court

N. Charleston, South Carolina

March 19, 2020

2007singston1067pleadingorder

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
TROY WILSON,)
Plaintiff,)
vs.)
CAROLINA CUSTOM PAINTING &)
DRYWALL LLC and JAMIE SINGLETON,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2020-CP-10-1819

CONSENT ORDER

With the consent of the parties, the deadline for the Magistrate to file his Return is extended until October 15, 2020.

AND IT IS SO ORDERED.

Honorable Jennifer B. McCoy, Judge,
Ninth Judicial Circuit for Charleston County

Charleston, South Carolina

October __, 2020.

WITH THE CONSENT OF:

OBERMAN & OBERMAN, LLC

WITH THE CONSENT OF:

NAUHEIM LAW OFFICE, LLC

s/Harold A. Oberman
Harold A. Oberman, Attorney for the Defendants
60 Markfield Drive, Suite 2
Charleston, SC 29407
(843) 577-7010

s/David A. Nauheim
David A. Nauheim, Attorney for the Plaintiff
103 Collingwood Avenue
Charleston, SC 29407
(843) 834-5084



Charleston Common Pleas

Case Caption: Troy Wilson VS Carolina Custom Painting & Drywall Llc ,
defendant, et al
Case Number: 2020CP1001819
Type: Order/Consent Order

So Ordered

s/Jennifer B. McCoy #2764

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP1001819

Troy Wilson
PLAINTIFF(S)

Carolina Custom Painting & Drywall Llc et al
DEFENDANT(S)

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.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCPP; ☐ Rule 41(a), SCRCPP (Vol. Nonsuit); ☐ Rule 43(k), SCRCPP (Settled);
☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCPP; ☐ 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:

Appellant filed a Motion to Appeal on April 14, 2020, which was heard by this Court on December 8, 2020. Upon careful consideration of the Magistrate Return and arguments from counsel, this court Affirms the Magistrate Court's holding.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/11/2021 .

Case Party Info Protected

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: 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 judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Troy Wilson VS Carolina Custom Painting & Drywall Llc ,
defendant, et al
Case Number: 2020CP1001819
Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2021-02-11 11:19:46 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP1001819

Troy Wilson
PLAINTIFF(S)

Carolina Custom Painting & Drywall Llc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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☐ Other
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- ☐ **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:

This is an AMENDED order to correct the original order, filed on February 11, 2021 to state that this order ends the case. Appellant filed a Motion to Appeal on April 14, 2020, which was heard by this court on December 8, 2020. Upon careful consideration of the Magistrate Return and arguments from counsel, this court Affirms the Magistrate Court's holding.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/16/2021 .

Case Party Info Protected

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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Charleston Common Pleas

Case Caption: Troy Wilson VS Carolina Custom Painting & Drywall Llc ,
defendant, et al
Case Number: 2020CP1001819
Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2021-02-16 11:01:00 page 3 of 3

The South Carolina Court of Appeals

Troy Wilson, Appellant,

v.

Carolina Custom Painting & Drywall, LLC and Jamie
Singleton, Respondents.

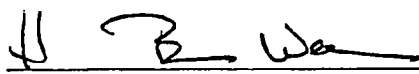
Appellate Case No. 2021-000266

ORDER

The Office of Court Administration notified the Court that no audio recording exists from which a transcript can be prepared in this case. Accordingly, this appeal is remanded to the circuit court for reconstruction of the record.

Counsel for the appellant shall contact opposing counsel and Judge Jennifer B. McCoy within 10 days of the date of this order to schedule such hearings as Judge McCoy deems appropriate. If Judge McCoy determines reconstruction is not possible, she shall immediately notify this Court and all parties. If the record is reconstructed, Appellant's counsel shall immediately notify the Court so that the appropriate appellate timelines can be set.

Appellant's counsel shall provide an update to the Clerk of this Court no later than 30 days from the date of this order, and every 30 days thereafter until Judge McCoy resolves this matter, or the appeal will be dismissed.

 , C.J.
FOR THE COURT

Columbia, South Carolina

FILED
Mar 28 2023

FILED
2023 MAR 30 PM 2:40
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

cc:

David Alan Nauheim, Esquire
Harold Alan Oberman, Esquire
The Honorable Jennifer B. McCoy
The Honorable Julie J. Armstrong

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
TROY WILSON,)
Appellant,)
vs.)
CAROLINA CUSTOM PAINTING)
& DRYWALL LLC, and)
JAMIE SINGLETON,)
Respondents.)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

2020-CP-1001819
COMMON PLEAS NUMBER

No. 2018 CV 1011500709
MAGISTRATE'S COURT NUMBER,
JUDGE JACKSON SETH WHIPPER

STIPULATED ORDER

This matter has been remanded to this Court by the Court of Appeals for reconstruction of the record. The parties have conferred and agree that the reconstructed record may including the following documents from the Circuit Court docket along with all exhibits and attachments:

1. Notice of Civil Appeal
2. Motion/Appeal
3. Notice of Appearance
4. Defendant's Memorandum of Case Law
5. Brief in Support of Appeal from Judgment of Magistrate's Court
6. Motion for New Trial
7. Plaintiff's Reply Brief to Defendant's Memorandum
8. Order-Motion for New Trial Denied
9. Order-Motion for Appeal is Denied at this time
10. Consent Order Extending Time to File Return
11. Magistrate's Return of the Civil Appeal
12. Plaintiff's Second Notice of Civil Appeal
13. Defendant's Memorandum
14. Brief in Support of Second Appeal of Judgment from Magistrate's Court
15. Memorandum in Support of Appellant's Second Motion for New Trial
16. Appellant's Second Motion for New Trial
17. Order Affirming the Magistrate Court's Ruling
18. Amended Order Affirming the Magistrate Court's holding

19. Appeal to Court of Appeals for Order dated 2/26/21 Affirming Magistrate Court's holding
20. Remittitur from Court of Appeals to Circuit Court for Reconstruction of Record

I have reviewed this list. The documents are all in the public index and were before this Court when the appeal from the Magistrate's court was decided by the Circuit Court. Therefore, I find that these documents may properly be in the reconstructed record.

IT IS SO ORDERED on this _____ day of _____.

The Honorable Jennifer B. McCoy

SO STIPULATED AND AGREED this 14th day of August, 2023:

s/ David A. Nauheim
DAVID A. NAUHEIM
NAUHEIM LAW OFFICE, LLC
101 Sycamore Ave.
Charleston, SC 29407
Tel: 843 534-5084
david@nauheimlaw.com

s/ Harold A. Oberman
HAROLD A. OBERMAN
OBERMAN & OBERMAN
60 Markfield Dr., Ste. 2
Charleston, SC 29407
Tel: 843-577-7010
obermanlaw@bellsouth.net



Charleston Common Pleas

Case Caption: Troy Wilson VS Carolina Custom Painting & Drywall Llc ,
defendant, et al
Case Number: 2020CP1001819
Type: Order/Other

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2023-08-16 11:16:12 page 3 of 3

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE MAGISTRATE'S COURT

TROY WILSON,)
Plaintiff,)

No. 2018CV /C/US/2018/001

COMPLAINT

vs.)

CAROLINA CUSTOM PAINTING)
& DRYWALL, LLC, and)
JAMIE SINGLETON, and)
Defendants.)

FILED IN
CHARLESTON COUNTY
APR 19 2018
NORTH AREA
SMALL CLAIMS COURT

Plaintiff Troy Wilson, by and through undersigned counsel, do make the following claims against the Defendants.

PARTIES

1. Plaintiff is a citizen and resident of the County of Charleston, South Carolina.
2. Upon information and belief, Defendant CAROLINA CUSTOM PAINTING & DRYWALL, LLC is a domestic Limited Liability Corporation is licensed to do business in South Carolina and has its principal place of business in Charleston County, South Carolina.
3. Upon information and belief, Defendant JAMIE SINGLETON is the owner and operator of CAROLINA CUSTOM PAINTING & DRYWALL, LLC and an Agent or Officer of said company, within the meaning.

JURISDICTION

4. This Court has subject matter jurisdiction over the claims in this lawsuit under article V § 11 of the South Carolina Constitution and South Carolina Code § 14-5-350.

Exhibit "B"

VENUE

5. Venue is proper in this circuit under South Carolina Code § 15-7-30 because Defendants have established their headquarters in Charleston County, and do conduct business in Charleston County; and the acts or omissions that are the subject of this action occurred in Charleston County, South Carolina.

APPLICABLE LAW

6. This action is brought pursuant to the South Carolina Wage Payment Act (South Carolina Code § 41-10-10, *et seq.*) and the common law of South Carolina.

FACTS

7. The Defendants are contractors that provide painting and drywall services in Charleston County.

8. Defendants hired Plaintiff Troy Wilson approximately two years ago to work as a painter and sheet rocker.

9. On or about October 10, 2017, there was a problem with paint peeling on house that Defendants had recently painted, which had not been sanded properly. Mr. Singleton blamed Mr. Wilson, although he had not been at that job site the day it was sanded. Mr. Singleton told Mr. Wilson orally that he was going to cut his pay from \$18 per hour to \$15 per hour.

10. Mr. Wilson decided to resign and the next day, October 11, 2017, he texted Mr. Singleton that he had made a decision to leave the company.

11. The Defendants owed Mr. Wilson \$432.00 in wages on October 11, 2017, for 24 hours of work at \$18 per hour, which he had completed in the pay period prior to his resignation.

12. On or about October 13, 2017, Mr. Wilson texted Mr. Singleton asking when he wanted him to turn in his uniform. Mr. Singleton called Mr. Wilson. He told him to keep the

uniform and that he was not going to pay him his last paycheck, citing the recent paint peeling issue.

13. The next scheduled pay day was October 20, 2017. The Defendants did not pay Mr. Wilson the \$432.00 in wages that were due on that date.

14. Mr. Wilson made a complaint for unpaid wages to the South Carolina Department of Labor, Licensing and Registration (LLR). LLR investigated and found that the Defendants had violated the South Carolina Wage Payment Act by failing to pay Mr. Wilson \$432.00 in wages on October 20, 2017. LLR cited Defendants \$100.00 for this violation. A copy of the LLR file and citation is attached hereto as Exhibit A.

15. The Defendants falsely represented to LLR that, after being informed of the LLR's investigation on November 3, 2017, they subsequently paid Mr. Wilson \$432.00 in wages on November 8, 2017. They provided LLR a copy of a postal money order made out to Mr. Wilson for this amount, as proof of payment. However, the Defendants never tendered the money order to Mr. Wilson.

16. On January 30, 2018, Mr. Wilson, through undersigned counsel, sent Defendants a certified letter, asking them to pay what he was owed under the S.C. Payment of Wages Act. The letter was returned unclaimed, Exhibit B. As of the date of this Complaint, the Defendants have not paid Mr. Wilson the \$432.00 in wages which are owed.

17. There is no good faith dispute over whether the Defendants owe Mr. Wilson \$432.00 in wages.

FIRST CAUSE OF ACTION
(Unpaid Wages Under the S.C. Wage Payment Act)

18. Plaintiff incorporates by reference all prior allegations into this cause of action.

19. Plaintiff earned wages for the work he performed, as defined under South Carolina Code § 41-10-10, *et seq.*

20. Defendants meet the definition of "employers" under South Carolina law and under the Wage Payment Statute. Plaintiff was an employee of Defendants.

21. Despite efforts by Plaintiff, Defendants knowingly refused to pay all wages due.

22. Defendants' failure to pay Plaintiff wages is willful and in bad faith, and there is no good faith dispute about whether Plaintiff is owed his lawfully earned wages.

23. Plaintiff is entitled to a judgment awarding all wages due, treble damages, pre-judgment interest, post-judgment interest, and reasonable attorneys' fees and costs.

SECOND CAUSE OF ACTION
(Unjust Enrichment/Quantum Meruit)

24. Plaintiff incorporates all allegations of paragraphs above into this cause of action.

25. Plaintiff provided valuable services to Defendants on Defendants' behalf.

26. These services were accepted, used, and enjoyed by Defendants. The services resulted in financial gain and significant income to Defendants.

27. Under the circumstances, Defendants understood and was notified that Plaintiff expected to be paid for the services provided to Defendants.

28. To permit Defendants to retain the benefits of Plaintiff's services without paying him for those services would unjustly enrich Defendants.

29. Plaintiff is entitled to an award of the reasonable value of his services in the form of his final paycheck.

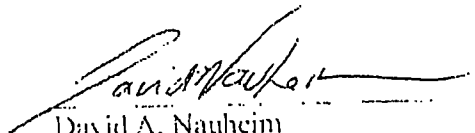
WHEREFORE, Plaintiff requests that this Court enter judgment in his favor and against the Defendants as follows:

- a. Award Plaintiff all unpaid wages;
- b. Award Plaintiff treble damages, costs, and attorneys' fees;
- c. Award Plaintiff all unpaid commissions;

- d. Award Plaintiff such other legal and equitable relief, including pre-judgment and post-judgment interest, as this Court may deem proper.

Respectfully Submitted,

NAUHEIM LAW OFFICE, LLC



David A. Naheim
Attorneys for the Plaintiff
815 Savannah Highway Suite 201B
Charleston, South Carolina 29407
(843) 534-5084

Charleston, South Carolina
April 1, 2018

Exhibit A

S.C. DEPARTMENT OF LABOR, LICENSING AND REGULATION
DIVISION OF INVESTIGATIONS & ENFORCEMENT
OFFICE OF WAGES & CHILD LABOR
 PO BOX 11329, COLUMBIA, SC 29211-1329

CITATION AND NOTIFICATION OF PENALTY

COPY

Carolina Custom Painting & Drywall

5505 Rowsham Place

North Charleston SC 29418

Issuance Date: 1/17/2018

Report #: 2017-1344

Employer #: 1/40

Citation #: 2017-1344

This citation describes alleged violation(s) of 41-10-40 & 41-10-30, South Carolina Code of Laws, 1976, as amended. The penalty (ies) listed below are based on the following violations. You must pay the proposed penalty (ies) pursuant to 41-10-80. This citation and/or civil penalty may be reviewed by requesting, in writing, an Administrative Review. Such requests must be addressed to: Supervisor, South Carolina Department of Labor, Licensing and Regulation, Office of Wages & Child Labor, PO Box 11329, Columbia, SC 29211-1329, and must be mailed within 30 calendar days from receipt of this Citation and Notification of Penalty. To contest this citation before the Administrative Law Court, file your request for a hearing accompanied by the filing fee with the Administrative Law Court, Edgar Brown Building, 1205 Pendleton Street, Suite 224, Columbia SC 29201. This citation concerns application of the South Carolina Payment of Wage Statute and does not necessarily establish all aspects of debts due between the employer and employee.

# OF VIOLATIONS	SECTION (S) VIOLATED	DESCRIPTION	PENALTY
	§41-10-30 (A)	Failed to give written notification as required by law to: as follows:	\$
	§41-10-30 (B)	Failed to keep records of:	\$
	§41-10-30 (C)	Failed to furnish itemized statement to each employee showing:	\$
	§41-10-40 (A)	A warning was previously issued on: Employer failed to pay with a negotiable instrument that was not dated for the pay day(s) in the approximate amount of \$	\$
	§41-10-40 (C)	Withheld or diverted from the wages of wages not required or permitted by state or federal law on or about in the approximate amount of \$	\$
1	§41-10-40 (D)	Failed to pay wages due to Troy Wilson in the approximate amount of \$432.00 by your regular pay day(s) of 10/20/2017	\$100.00

Signature of Chief Investigator

TOTAL OF PENALTY: \$ 100.00

Please make check or money order payable to S.C. Department of Labor, Licensing & Regulation, and indicate citation number on remittance.

WCL-6 (Rev. 6/09)

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATIONS
OFFICE OF WAGES AND CHILD LABOR
WAGES INVESTIGATIVE REPORT

CASE NO.: 2017-1344

OPENED: 20171023

CLOSED: 20180117

FEDERAL ID. NO.:

COMPANY: Custom Carolina Painting & Drywall LLC

REPRESENTATIVE: Jamie Singleton

ADDRESS: 5505 Rowsham Pl. N. Charleston SC

TITLE: owner

CITY: N. Charleston

PHONE: [REDACTED]

STATE: SC ZIP: 29418

FAX:

CORP. NAME:

REPRESENTATIVE:

ADDRESS:

TITLE:

CITY:

PHONE:

FAX:

STATE: ZIP:

WARNING

This section of the warning is issued pursuant to SC Code of Law 41-10-30, for failure to comply with SC code of Law 41-10-30:

A. VIOLATION OF SC 41-10-30(A)

☒ Normal Hours☒ Wages☒ Time of payment☒ Place of payment☒ Deductions from wages☐ Changes made in employment

Without 7 calendar day

Written notice

B. VIOLATION OF SC 41-10-30(B)

☐ Name and/or address of employees☐ Wages paid and/or deductions made
for all employees each payday

C. VIOLATIONS OF SC 41-10-30(C)

☐ Failed to furnish each employee each pay period
an itemized statement showing:☐ Gross pay Deductions made☐ NUMBER OF EMPLOYEES IN SC☐ EMPLOYEES ON SITE

YOU MUST CORRECT THESE VIOLATIONS IMMEDIATELY. FAILURE TO DO SO COULD RESULT IN FINE OF
\$100.00 FOR EACH SUBSEQUENT OFFENSE.

N. Ruano 1/29/17

INVESTIGATOR

Date

COMPANY OFFICIAL

Date

CHILD LABOR	INVESTIGATIVE REPORT SUMMARY	OFFICE USE ONLY
Warning: Yes ☐ No ☐ Date: 1/29/17	Warning: Yes ☒ No ☐ Date: 1/29/17	Citation issued: Yes ☐ No ☐
Citation: Yes ☐ No ☐ Date: 1/29/17	Citation: Yes ☐ No ☐	Date: 1/29/17
Violation Number(s) 1001819	Number of violations alleged	Citation Number: 1001819
Instance 1	Section(s) 30 5 40 1 50 0	Number of Violations:
Instance 2	Instance 1 1 0	Section(s) 30 40 50 61
Instance 3		Instance

Investigator: Parsons
Report Number: 2017-1344
Claimant: Troy Wilson
Type of Complaint: Unpaid Wages

Carolina Custom Painting & Drywall
5505 Rowsham Place
North Charleston, SC 29418

Findings:

The Claimant filed a complaint with this office alleging non-payment of 24 hours at the rate of \$18.00 per hour on the scheduled pay-date of 10/20/17 for the amount of \$432.00.

On 11/3/17, R/I contacted Jamie Singleton, the owner of the company, via the telephone, regarding the wage complaint filed by the claimant. R/I explained the details of the investigation process and requested the time records with matching payroll, terms of employment and company policies to address the alleged allegations of the case. The respondent did not provide written terms of employment. The claimant stated that he was paid weekly on the complaint, and stated that his rate of pay was changed without a seven day notice. The claimant also stated that he was not given the proper tax paperwork. However, the respondent provided a policy and procedures form which stated that the claimant was a 1099 employee. The claimant appears to be misclassified for tax purposes. (See Exhibit E-1-1)

Upon further investigation, on 1/16/18 Investigator Parsons called the claimant and the claimant stated that the respondent provided major equipment such as sealpels, and paint and paint supplies. The employee stated that he did small repairs such as painting and repairing drywall. This appears to be an employee/employer relationship.

The respondent was paid in full for the 10-20-17 pay-date, but paid late on 11/8/17. (See Exhibit E-1-2)

R/I recommends a warning and a citation for failure to pay Troy Wilson on the scheduled pay-date of 10/20/17 for the amount of \$432.00(paid in full but paid late).

Cite this Employer for:

5 violations of SC Section 41-10-30(A).

1 Violations of SC Section 41-10-40(D) a citation for failure to pay Troy Wilson on the scheduled pay-date of 10/20/17 for the amount of \$432.00(paid in full but paid late).

RESIDENTIAL



COMMERCIAL

5505 ROWSHAM PLACE
NORTH CHARLESTON, SC 29418

www.ccpanddrywall.com

POLICIES AND PROCEDURES

1. I understand that I am a 1099 employee / contractor of Carolina Custom Painting and Drywall.
2. I understand that work hours are 7:30 a.m to 4 p.m Monday thru Friday with occasional weekends.
3. I understand that I must have all required work materials at all time and available for inspection.
4. I understand that I am responsible for materials and labor of any faulty work discovered during inspection.
5. I understand that I may be required to take periodic drug screening paid for by company.
6. Proper uniform and shoes are required and must be clean and free of holes.
7. Excessive breaks aren't required by law and will be given at the discretion of the company.
8. Lunch break is from 12 pm to 12:30 p.m.
9. If injured at work, I must submit to an immediate drug screening.
10. Insubordination will result in immediate termination.
- 11. Missing work without a valid excuse will be noted the first time, and terminated the second time.
12. Absolutely no horse playing on the job.
13. All contractors are required to climb 40-foot ladders.
- 14. All company equipment must be cleaned and left on jobsites.
15. Coming to work impaired will result in termination.
16. I understand that theft of any kind (personal, company, or client). will be prosecuted.

NAME: _____

DATE: _____

[Handwritten signature]

THANKS FOR CHOOSING CAROLINA CUSTOM PAINTING AND DRYWALL!

NOTICE OF ENTRY
IN THE COURT OF COMMON PLEAS
FOR THE COUNTY OF CHARLESTON
IN RE: [REDACTED]
DOES: [REDACTED]
VS: [REDACTED]
FILE NO: [REDACTED]
DATE: [REDACTED]

E-1-2

2017-1344

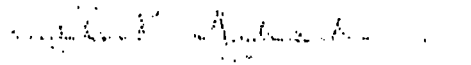
RESIDENTIAL

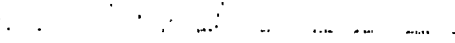


COMMERCIAL

5505 ROWSHAM PLACE
NORTH CHARLESTON, SC 29418

I, Troy Wilson, a subcontract employee, agree to reimburse Carolina Custom Painting and Drywall \$1,350.00 (one thousand three hundred fifty dollars) for damaged AC condenser at 27 Smith St. Payments of \$150.00 will be deducted from my check weekly starting 3-27-15. In the event I am terminated or I quit before final payment, I understand that I forfeit my final check to reduce the balance and assume all legal liability for the remaining balance.

By 

Date 

THANKS FOR CHOOSING CAROLINA CUSTOM PAINTING AND DRYWALL!

Heather Parsons

To: [REDACTED]
Subject: 2017-1344
Attachments: 2017-11-03 (2).pdf

Dear Mr. Singleton,

Please find enclosed a copy of the wage complaint that was filed by Troy Wilson, and an employer record request from this office. Please let me know if you have any questions concerning this matter. Thank you.



Henry D. McMaster
Governor

Emily H. Farr
Director

South Carolina
Department of Labor, Licensing and Regulation

Division of Professional and Occupational Licensing
Office of Investigations and Enforcement



110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329
Phone: (803) 896-4470
FAX: (803) 896-4656

November 3, 2017

Custom Carolina Painting & Drywall LLC
ATTN:
5505 Rowsham Pl. N. Charleston SC
N. Charleston SC 29418

Re: Wage Complaint: 2017-1344
Claimant: Troy F Wilson

Dear Jamie Singleton:

As an investigator, I investigate employee wage claims in order to determine employer's compliance with the South Carolina Payment of Wages Law. This office has received a wage complaint against Custom Carolina Painting & Drywall LLC alleging non-payment of wages of Troy F Wilson for the dates listed on the complaint. Under the South Carolina Payment of Wages Law 41-10-40, this office may institute an investigation of the alleged violation. Please find enclosed a copy of the wage complaint received by this office. You will be required to respond within three business days to this complaint so that I can fully investigate this complaint.

In order to expedite the resolution of these allegations, please provide to me by either email or fax, copies of the following documents:

- 1) A copy of any **WRITTEN TERMS OF EMPLOYMENT** provided to the claimant. These terms would include any written notice of normal working hours, wages agreed upon, time and place of payment, and deduction policies.
- 2) The **Federal Tax ID** number for the business and the number of employees in South Carolina.
- 3) **Time records** for the employee and copy of pay checks that match the time records *Dates: 10/1 17-10/20/17*
- 4) Copy of company's payroll policy and independent contractor form
- 5) Summary of your company's position to each allegation, with supporting documentation, on your company letterhead.

Failure to respond to these allegations will result in our accepting the charges made by the claimant (as stated) as factual and appropriate Warnings/Citations being issued.

Sincerely,

Heather Parsons
Investigator II
(803) 896-4819
Heather.Parsons@llr.sc.gov



Henry D. McMaster
Governor

Emily H. Farr
Director



South Carolina
Department of Labor, Licensing and Regulation

Division of Professional and Occupational Licensing
Office of Investigations and Enforcement



110 Centerville Drive
Post Office Box 11329
Columbia, SC 29211-1329
Phone: (803) 896-4470
FAX: (803) 896-4656

November 1, 2017

Troy F Wilson

[REDACTED]
N. Charleston SC, SC 29420

Re: Employer: Custom Carolina Painting & Drywall LLC
Case No.: 2017-1344

Dear Mr. Wilson:

I am in receipt of your wage complaint. As an Investigator, I investigate employee wage complaints to determine whether an employer is in compliance with the S.C. Payment of Wage Law. If during the investigation it is determined that the employer is in violation of the Wage Payment Statute, the appropriate sanctions will be issued to the employer. You will be notified of the outcome of your case once my investigation is complete.

The Office of Wages and Child Labor does not have the authority to collect your wages or make an employer pay you. You have self-serve rights under Section 41-10-80(C) of the South Carolina Payment of Wages Law.

Section 41-10-80(C) of the Payment of Wages Law states:

"In case of any failure to pay wages due to an employee as required by Subsection 41-10-40 or 41-10-50, the employee may recover in a Civil Action an amount equal to three times the full amount of the unpaid wages, plus costs and reasonable attorney's fees as the court may allow. Any civil action for the recovery of wages must be commenced within three years after the wages become due."

Any action you take in regards to a civil action is independent and separate from the actions and responsibilities of the Department of Labor.

Sincerely,

Heather Parsons
Investigator
(803) 896-4819
Heather.Parsons@llr.sc.gov

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE MAGISTRATE'S COURT
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2018CV1011500709

TROY WILSON,)
Plaintiff,)

vs.)

CAROLINA CUSTOM PAINTING &)
DRYWALL, LLC and JAMIE)
SINGLETON,)
Defendants.)

DEFENDANTS' ANSWER
AND COUNTERCLAIM

Answering the Complaint of the Plaintiff, Troy Wilson, the Defendants, Carolina Custom Painting & Drywall, LLC and Jamie Singleton would show unto this Honorable Court as follows:

1. All allegations not specifically admitted are denied.
2. Defendants admit paragraphs 1 through 5 of Plaintiff's Complaint.
3. Paragraphs 6 requires no response.
4. Defendants deny paragraphs 7 and 8 as they allege that Jamie Singleton hired Plaintiff and that Jamie Singleton individually was involved. Wilson worked for Carolina Custom Painting & Drywall, LLC (The LLC) as an independent contractor.
5. Paragraph 9 is only admitted to the extent that Plaintiff did defective work. The LLC demanded they be compensated for Wilson's defective work.
6. Paragraph 10 is admitted.
7. Paragraph 11 is denied.
8. Paragraph 12 is admitted but additional money was owed to the LLC.

9. Paragraph 13 is denied as there is no set pay day and the LLC was inspecting and fixing the damage caused by Plaintiff.

10. As to paragraph 14, the LLR ruling speaks for itself.

11. Paragraph 15 is denied.

12. Paragraph 16 is denied as it was attempted to pay Plaintiff his wages.

13. Paragraph 17 is denied.

14. Paragraphs 18 and 24 are responded to as set forth in the paragraphs above and below.

15. Paragraphs 19 through 23 and 25 through 29 are denied.

**DEFENDANTS, BY WAY OF FURTHER AND AFFIRMATIVE DEFENSES, AND BY
WAY OF SETOFF AND COUNTERCLAIM, WOULD ALLEGE AS FOLLOWS:**

16. The above paragraphs are set forth here.

17. Plaintiff had a contractual independent contractor relationship with the LLC, not Defendant Singleton.

18. Plaintiff was responsible for all materials and labor of any faulty work he performed that was discovered during inspection.

19. Plaintiff performed faulty work on numerous jobs, including but not limited to:

- a. Ocean Club 1508 (Wild Dunes)
- b. 1509 Jenys Street (Daniel Island)
- c. 47 Waterway Island (IOP)

20. This faulty work cost the Defendants over \$3,800.00 in materials and labor to correct and cost the LLC a relationship with a contractor.

21 . Plaintiff owes Defendants in excess of \$3,800.00 under his contractual arrangement with Defendants and by their prior course of dealings.

22. Defendants pray for judgment in an amount a Court may determine, or for a setoff from Plaintiff's pay as the parties contemplated, or for a setoff from any judgment Plaintiff may receive.

WHEREFORE, Defendants pray Plaintiff's Complaint be dismissed, that they be granted judgment or setoff on their counterclaims, that they be awarded attorney's fees and costs, and for further and other relief as a Court may award.

OBERMAN & OBERMAN, LLC



Harold A. Oberman
60 Markfield Drive, Suite 2
Charleston, SC 29407
(843) 577-7010
ATTORNEYS FOR DEFENDANTS

Charleston, South Carolina

May 21, 2018.

F:\obtsingleton1067\pleading\answer.cc

FILED IN CHARLESTON COUNTY

MAY 21 2018

North Area Small Claims Court

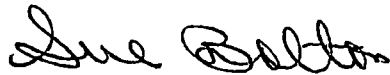
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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON) IN THE MAGISTRATE'S COURT
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO. 2018CV1011500709

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 21st day of May, 2018, a true and correct copy of Defendants' Answer and Counterclaim was delivered by courier to:

David A. Nauheim, Esquire
Nauheim Law Office, LLC
Attorney at Law
815 Savannah Highway
Suite 201B
Charleston, SC 29407



Charleston, South Carolina.

f:\ob\singleton1067\pleadings

FILED IN CHARLESTON COUNTY

MAY 21 2018

North Area Small Claims Court



Judge J. Seth Whipper
Magistrate

NORTH AREA SMALL CLAIMS
COURT

843.202-6610
Fax: 843.202-6620
Lonnie Hamilton, III Public Services
Building
4045 Bridge View Drive
Post Office Box 70235
North Charleston, SC 29415-0235

May 22, 2018

David Alan Nauheim, Esq.
815 Savannah Highway Suite 201 B
Charleston, SC 29407

Harold A. Oberman
60 Markfield Drive, Suite 2
Charleston, SC 29407

RE: TROY WILSON vs. JAMIE SINGLETON, CAROLINA CUSTON PAINTING & DRYWALL,
LLC AND PHILLIP E. JOHNSON
CASE NO: 20178CV1011500709

Notice to All Parties:

A Bench Trial in the above referenced matter has been scheduled for:

FRIDAY, JUNE 22, 2018, AT 10:00 A.M.

If any party does not appear the party's case may be dismissed and a Judgment may be entered against the party who does not appear. If this case is settled out of court, the Plaintiff must notify this court in writing. Any request for a jury trial must be submitted to the Court in writing at least 5 (five) working days prior to the original date of the trial.

Parties representing a business as defined by S. C. Code Ann. §33-1-103, shall be required by the Court to provide a notarized written authorization from the entity's owner or officer of the corporation.

Any witnesses and/or written evidence bearing on this claim should be submitted at the time of trial. Documents or photographs submitted as evidence will not be returned. Please make copies of all documentation that needs to be retained. A WRITTEN, NOTARIZED, OUT OF COURT STATEMENT FROM A WITNESS CANNOT BE USED AS EVIDENCE. A WITNESS MUST APPEAR IN PERSON IN COURT TO TESTIFY.

Please check in at the Small Claims counter prior to entering the courtroom. Please disregard any previous default date given for your appearance.

Sincerely,

Shanice Tyler

Shanice Tyler
Summary Court Specialist

OBERMAN & OBERMAN, LLC
ATTORNEYS AND COUNSELORS AT LAW
60 MARKFIELD DRIVE, SUITE 2
CHARLESTON, SOUTH CAROLINA 29407

MARVIN I. OBERMAN
HAROLD A. OBERMAN

TELEPHONE (843) 577-7010
FACSIMILE (843) 722-7359
EMAIL: obermanlaw@bellsouth.net

May 25, 2018

Shanice Tyler
Summary Court Specialist
Charleston County Small Claims - North
4045 Bridge View Drive
N. Charleston, SC 29405

VIA FACSIMILE

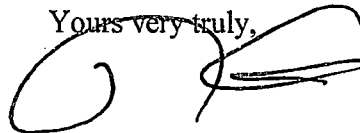
RE: Troy Wilson v. Carolina Custom Painting & Drywall, LLC and Jamie Singleton
Case No. 2018CV1011500709

Dear Shanice or To Whom It May Concern:

I will have a trial before the Master in Equity for Charleston County the week of June 18-22, 2018. Presently, a bench trial has been scheduled with you for 10:00 a.m. on June 22 in the above-referenced case. Because of the possibility of a conflict, I ask for a continuance of this trial date.

Please also note that I will be on vacation July 28th through August 7th, 2018. With warmest personal regards, I remain

Yours very truly,



Harold A. Oberman

HAO/shb

cc: David A. Nauheim, Esquire (VIA EMAIL)

f:\obj\singleton1067\lrcourt.e25



Judge J. Seth Whipper
Magistrate

NORTH AREA SMALL CLAIMS
COURT

843.202-6610
Fax: 843.202-6620
Lonnie Hamilton, III Public Services
Building
4045 Bridge View Drive
Post Office Box 70235
North Charleston, SC 29415-0235

May 29, 2018

David Alan Nauheim, Esq.
815 Savannah Highway Suite 201 B
Charleston, SC 29407

Harold A. Oberman
60 Markfield Drive, Suite 2
Charleston, SC 29407

RE: TROY WILSON VS JAMIE SINGLETON, CAROLINA CUSTOM PAINTING & DRYWALL,
LLC AND PHILLIP E. JOHNSON
CASE NO: 2018CV1011500709

Notice to All Parties:

A Bench Trial in the above referenced matter has been rescheduled for:

FRIDAY, JUNE 29, 2018, AT 10:00 A.M.

If any party does not appear the party's case may be dismissed and a Judgment may be entered against the party who does not appear. If this case is settled out of court, the Plaintiff must notify this court in writing. Any request for a jury trial must be submitted to the Court in writing at least 5 (five) working days prior to the original date of the trial.

Parties representing a business as defined by S. C. Code Ann. §33-1-103, shall be required by the Court to provide a notarized written authorization from the entity's owner or officer of the corporation.

Any witnesses and/or written evidence bearing on this claim should be submitted at the time of trial. Documents or photographs submitted as evidence will not be returned. Please make copies of all documentation that needs to be retained. A WRITTEN, NOTARIZED, OUT OF COURT STATEMENT FROM A WITNESS CANNOT BE USED AS EVIDENCE. A WITNESS MUST APPEAR IN PERSON IN COURT TO TESTIFY.

Please check in at the Small Claims counter prior to entering the courtroom. Please disregard any previous default date given for your appearance.

Sincerely,

Shanice Tyler

Shanice Tyler
Summary Court Specialist

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
TROY WILSON,)
Plaintiff,)
vs.)
CAROLINA CUSTOM PAINTING)
& DRYWALL LLC, and)
JAMIE SINGLETON,)
Defendants.)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

2020-CP- -
COMMON PLEAS NUMBER

No. 2018 CV 1011500709
MAGISTRATE'S COURT NUMBER,
JUDGE JACKSON SETH WHIPPER

NOTICE OF CIVIL APPEAL

The Plaintiff, Troy Wilson, hereby gives notice of appeal from the judgment of the magistrate's court in the above action, to the Circuit Court of Common Pleas, in the county of Charleston. This notice of appeal is made subsequent to personal notice of the judgment which was received on the seventh day of April, 2020. The appellant's exceptions to the judgment of the magistrate are set forth as follows:

- (1) The rulings were contrary to the evidence;
- (2) The rulings were contrary to the law;
- (3) To wit, Court erred by failing to find that:
 - a. Troy Wilson was an employee of Defendants Carolina Custom Painting and Drywall LLC and Jamie Singleton (Defendants);
 - b. Defendants failed to give the Plaintiff written notice of the terms of employment, including the amount of wages, the time and place wages would be paid, and allowable deductions;

- c. That such failure violated the South Carolina Payment of Wages Act. S.C. Code § 41-10-10 et seq ("Payment of Wages Act");
- d. That such failure barred the Defendants from making any deductions to the Plaintiff's wages that were not required by law;
- e. That at the time of the Plaintiff's separation from employment, Defendants owed the Plaintiff \$432 in wages;
- f. That Defendants did not pay the Plaintiff \$432 in said wages due at the time that they were due;
- g. That such failure violated the Payment of Wages Act;
- h. That Defendants' concession in closing argument, that Defendants owed the Plaintiff \$432 in unpaid wages and the only issue was treble damages and attorney's, established the Defendants' liability and damages on the unpaid wages claim in favor of the Plaintiff as a matter of law;
- i. That the South Carolina Department of Labor's (SCDOL) citation of the Defendants for violating the Payment of Wages Act, and Defendants' failure to appeal that determination, also established Defendants' liability as a matter of law on Plaintiff's unpaid wages claim. *Bennett v. South Carolina Dep't of Corrections*, 305 S.C. 310, 408 S.E.2d 230 (1991); *Keiger v. Citgo, Coastal Petroleum, Inc.*, 482 S.E.2d 792, 326 S.C. 369, 327 N. 3 (Ct. App. 1997) (granting summary judgment in favor of plaintiff because "Respondents had paid Keiger the amount the South Carolina Department of Labor determined she was due, and because she had not appealed that determination, she was barred from relitigating it.")

- j. The Defendants did not have a good faith basis for their failure to timely pay the Plaintiff the \$432 in wages due;
- k. That Defendants did not give written notice to the Plaintiff, pursuant to the Payment of Wages Act, as such Defendants were not permitted to deduct from Plaintiff's wages for alleged breakage or faulty work;
- l. That because Defendants did not give said written notice, the Court may not deduct from Plaintiff's claim for faulty work or breakage nor permit a counter-claim by Defendants for the same. *Bennett v. Lambroukos*, 303 S.C. 481, 483, 401 S.E.2d 428 (Ct. App. 1991) (holding it was error for the circuit court to deduct for breakage in a PWA claim, when there was no finding of written notice of a deduction for breakage);
- m. That the employer could not avoid its obligations under the Payment of Wages Act by asserting a deduction against Plaintiff's claim for faulty work or breakage under a quasi-contract or course-of dealing theory. See *Cato v. Mills*, 129 S.E. 203, 132 S.C. 454 (S.C. 1925) (refusing to allow employers to ignore the statute by claiming their employees had by contract or custom waived their statutory right to prompt payment of wages); S.C. Code § 41-10-100 ("No provision of this chapter may be contravened or set aside by a private agreement.");
- n. That for the same reasons, the Defendant was barred from bringing a counter-claim against the Plaintiff for faulty work or breakage;
- o. That since a deduction from wages for alleged faulty work or breakage, without prior written notice, would violate the law, Defendants' may not assert

the same, as a basis for a good faith dispute as to whether the wages were due, when that reason itself would violate the law.

- p. That having violated the Payment of Wages Act, without a good faith basis for disputing that the wages were due, Defendants were liable to the Plaintiff for treble damages, reasonable attorney's fees, and costs in the amount of \$10,276.50. S.C. Code § 41-10-80 (C); *Rice v. Multimedia, Inc.*, 318 S.C. 95, 99 (S.C. 1995).
- q. That in any event, Defendant Singleton was without first-hand knowledge of which employee was responsible for alleged faulty work or breakage, and therefore his testimony attributing the same to the Plaintiff was inadmissible hearsay;
- r. That Defendants offered no receipts or invoices or any other evidence to establish beyond speculation the value of the damages caused by alleged faulty work or breakage, and therefore those damages were too speculative to be awarded. See *Clark v. Cantrell*, 339 S.C. 369, 529 S.E.2d 528 (2000); *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991); *Barnwell v. Barber-Colman Co.*, 301 S.C. 534, 393 S.E.2d 162 (1989); *Whisenant v. James Island Corp.*, 277 S.C. 10, 281 S.E.2d 794 (1981).
- s. That Defendants' attempt to pay the Plaintiff the wages due (after being cited by the SCDOL) did not avoid liability under the Payment of Wages Act, because the attempted payment came after the time that pay was due under S.C. Code § 41-10-50, and in any case the payment was returned undelivered to the Defendant and not received by the Plaintiff;

t. That an error in paragraph 12 of the Plaintiff's Complaint did not establish that fact conclusively in trial, and Plaintiff therefore was permitted to contradict the same with his testimony in trial. *Gary v. Lowcountry Medical Transport*, No. 2016-000222 (May 23, 2018);

(4) The judgment awarded to the Defendants by the Court in the amount of \$3,550.00 is arbitrary because that amount does not accord with any combination of the relief requested by the parties and bears no relation to the evidence.

The Plaintiff reserves the right so supplement this Notice of Appeal once the Magistrate's Return has been received.

Respectfully Submitted,

NAUHEIM LAW OFFICE, LLC

s/ David A. Nauheim
David A. Nauheim
SC Bar #102083
Attorneys for the Plaintiff
PO Box 31458
Charleston, South Carolina
29407 (843) 534-5084

Charleston, South Carolina
April 13, 2020

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Notice of Appeal was served on the following this 13th day of April, 2020 via regular, first-class mail:

Magistrate J. Seth Whipper
North Area Small Claims Court
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive, Suite B146
P.O. Box 70235
North Charleston, SC 29415-0235

Clerk of Court
North Area Small Claims Court
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive, Suite B146
P.O. Box 70235
North Charleston, SC 29415-0235

Harold Alan Oberman
60 Markfield Drive, Suite 2
Charleston, SC 29407



Peggy J. Sheppard
Paralegal
Nauheim Law Office, LLC
PO Box 31458
Charleston, South Carolina 29407
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peggy@nauheimlaw.com

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2020-CP-10-1819
 TROY WILSON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	<u>DEFENDANTS' MEMORANDUM</u>
	)	
CAROLINA CUSTOM PAINTING &	)	
DRYWALL LLC and JAMIE SINGLETON,	)	
	)	
Defendants.	)	
	)	

Plaintiff appeals an unfavorable verdict rendered after trial in magistrates court. He does so without securing a return from the magistrate. Plaintiff is under an absolute obligation to secure a Return, and because he did not ask for one via a Writ of Mandamus, his appeal must be dismissed. As noted in Joyner v. Glimcher Properties, 356 S.C. 460, 589 S.E.2d 762 (Ct. App. 2002), the appellant from the magistrate's court must act with due diligence:

Generally, the magistrate has a duty to complete the return. After the notice of appeal has been filed, "[t]he court below shall thereupon, after ten days and within thirty days after service of the notice of appeal, make a return to the appellate court of the testimony, proceedings and judgment and file it in the appellate court.

Since the magistrate has no duty to provide a copy of the Return to the parties, [Appellant] argues there was no reasonable means for him to ensure that the Return was timely filed. We disagree. [Appellant] was on notice that a Return had not been timely filed when he did not receive a notice in writing from the clerk of the circuit court. Having received no such notice, he should have presumed no Return had been filed and acted accordingly.

Citing S.C.Code Ann. § 18-7-80 (1985), [Appellant] argues the circuit court, by its own order, may compel that a return be made. When an inadequate or defective return has been filed, the burden is on the circuit court to direct the magistrate to file an amended return.

No Return, however, was filed in this case. When there is no return, the appellant from the magistrate's court must act with due diligence and seek a writ of mandamus if necessary to compel the return.

Although some may view the result we reach as harsh, we feel compelled under the current case law to uphold the circuit court's decision to dismiss the appeal for failure to prosecute.

Joyner v. Glimcher Properties, 356 S.C. 460, 589 S.E.2d 762 (Ct. App. 2002).

The court notes that this may be a harsh result, but it is mandated under the case law. Plaintiff has not asked for a Writ of Mandamus as required, nor has he copied defense counsel on any request from the magistrate for a Return. His appeal must be dismissed.

This would be the ultimate outcome of this case even if the appeal was heard. The parties were asked to submit proposed orders in lieu of closing arguments after trial. The judge rendered a verdict of \$3,550.00 for Defendants. This followed the reasoning in Defendants' proposed order. Rather than reprinting those arguments, Defendants attach to this brief that proposed order, which outlines the reasoning behind the magistrate's ruling, much of which was based on the pleadings in the case and Plaintiff's own admissions in those pleadings. The points in Plaintiff's appeal are addressed in full. That Order is incorporated and restated here in full as Exhibit "A".

It is a just result that this appeal be dismissed.

OBERMAN & OBERMAN, LLC

s/Harold A. Oberman

Harold A. Oberman
60 Markfield Drive, Suite 2
Charleston, SC 29407
(843) 577-7010
ATTORNEYS FOR DEFENDANTS

Charleston, South Carolina

June 19, 2020.

f:\ob\singleton1067\appeal\pleading\brief

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE'S COURT
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2018CV1011500709
TROY WILSON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	<u>ORDER</u>
CAROLINA CUSTOM PAINTING &	)	
DRYWALL, LLC and JAMIE	)	
SINGLETON,	)	
	)	
Defendants.	)	
	)	

I tried this matter as a bench trial on July 12, 2018. Troy Wilson, the Plaintiff, was represented by David Nauheim and the Defendants, Jamie Singleton (Singleton) and Carolina Custom Paining & Drywall, LLC (Carolina), were represented by Harold Oberman. Plaintiff had sued Defendants for Unpaid Wages under the S.C. Wage Payment Act and for Unjust Enrichment. Defendants answered and counterclaimed, alleging that they had tried to pay Plaintiff, that Plaintiff was responsible for his defective work, that deductions or a setoff from his wages was appropriate, and that there was a bona fide dispute as to whether Plaintiff was owed wages.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Facts)

The relevant facts in this lawsuit are all but undisputed. Immediately before Plaintiff quit his job with Defendants, there was a dispute concerning wages. Singleton testified that Defendant did defective work at 1108 Ocean Club. He only put one (1) coat of paint on the wall and didn't

Exhibit "A"

sand the door frames. Because of this, paint peeled off. This dispute arose before Plaintiff quit and before he claimed wages. Defendant withheld wages from Plaintiff because of this defective work.

Plaintiff does not convincingly dispute this account. In fact, he alleges in his Complaint as follows:

9. On or about October 10, 2017, there was a problem with paint peeling on house that Defendants had recently painted, which had not been sanded properly. Mr. Singleton blamed Mr. Wilson, although he had not been at that job site the day it was sanded. Mr. Singleton told Mr. Wilson orally that he was going to cut his pay from \$18 per hour to \$15 per hour.

10 Mr. Wilson decided to resign and the next day, October 11, 2017, he texted Mr. Singleton that he had made a decision to leave the company.

11. The Defendants owed Mr. Wilson \$432.00 in wages on October 12, 2017, for 24 hours of work at \$18 per hour, which he had completed in the pay period prior to his resignation.

13. On or about October 13, 2017, Mr. Wilson texted Mr. Singleton asking when he wanted him to turn in his uniform. Mr. Singleton called Mr. Wilson. He told him to keep the uniform and that he was not going to pay him his last paycheck, citing the recent paint peeling issue.

14. The next scheduled pay day was October 20, 2017. The Defendants did not pay Mr. Wilson the \$432.00 in wages that were due on that date.

Plaintiff states in his Trial Brief as follows:

On or about October 10, 2017, there was a problem with paint peeling on house that Defendants had recently painted, which had not been sanded properly. Mr. Singleton blamed Mr. Wilson, although he had not been at that job site the day it was sanded. Mr. Singleton told Mr. Wilson orally that he was going to cut his pay from \$18 per hour to

\$15 per hour. Mr. Wilson decided to resign and the next day, October 11, 2017, he texted Mr. Singleton that he had made a decision to leave the company.

Further, there was a course of dealing where deductions would be taken from Plaintiff's payment for defective work. Singleton testified that at the initial hire of an employee, he would give all employees a written document that contained the following language " I understand that I am responsible for materials and labor of any faulty work discovered during inspection." Singleton testified Plaintiff received this document like all other employees. The course of dealing between Plaintiff and Defendants confirm that this was the deal. On March 30, 2015, Plaintiff signed a document that stated he would pay for damaged work: "I, Troy Wilson, a subcontract employee, agree to reimburse Carolina Custom Painting and Drywall \$1,350.00 (one thousand three hundred fifty dollars) for damaged AC condenser at 27 Smith St. Payments of \$150.00 will be deducted from my check weekly starting 3-27-15."

Because of this bona fide dispute over wages, Plaintiff quit. Defendants withheld Plaintiff's last paycheck in the amount of \$432.00 because of the deficient work he had performed and the cost to correct it. I find Defendants were justified to do this.

Plaintiff reported Defendants to the Labor Board. At one point, Defendants were given three days to gather certain documents (Letter 11/3/17). They made the decision that it would be more cost effective to pay Plaintiff his claimed wage, rather than to contest the action before the Labor Board. Defendant testified that he was unaware that Plaintiff could bring an additional suit against him. He believed this payment would end the matter.

Defendants decided to mail Plaintiff his check and they did so within 30 days. Defendants sent Plaintiff his check via certified mail to 160 Stratton Dr., N. Charleston SC, 29420 and Plaintiff acknowledged that was his address. The post office tried to deliver the check on many occasions (envelope) but the check remained unclaimed. Plaintiff blamed his failure to pick up the check on his children. Singleton stated he would continue to try to give Plaintiff his check, but Plaintiff testified he would not accept it.

Singleton testified he believed it would be a bad idea if he tried to contact Plaintiff or deliver the check personally to Plaintiff. There was an ongoing dispute and a confrontation could happen. This Court agrees. Singleton was also justified in wanting to document his attempt to pay by using certified mail.

Because of Singleton's decision not to contest the matter before the Labor Board, it made certain findings. Singleton believed his decision to send the check to Plaintiff would end the matter, but this was not the case. The findings relevant to this wage dispute is that Defendants failed to "pay Troy Wilson on the scheduled pay-date of 10/20/17 for the amount of \$432.00 (paid in full but paid late)."

Defendants also counterclaimed against Plaintiff. The counterclaims consist of three jobs on which Plaintiff worked. Singleton testified as to 1108 Ocean's Club, outlined above, he was out \$300.00 in materials and approximately \$1,400.00 in labor because of Plaintiff's defective work. At 47 Waterway Island, Singleton testified he had to replace 8 boards at \$104.00 a board and \$400.00 in labor for a total cost to fix of \$1,232.00. Plaintiff admitted he was the supervisor on this job, that there was paint that dripped on the boards, and that the boards had to be replaced. As supervisor, I find Plaintiff ultimately responsible for these costs. At 1509 Jenys, Singleton showed

pictures of Plaintiff's defective work. There was paint on door knobs and other hardware discovered after Plaintiff quit. Eight (8) doors at \$75.00 a piece had to be replaced. Hinges and knobs totaled \$200.00 and labor was \$250.00, or a total of \$1,050.00. I find these counterclaims persuasive and proven.

II. FINDING OF FACTS AND CONCLUSIONS OF LAW

A. Plaintiff is Not Entitled to Treble Damages or Attorney's Fees.

Under the Wage Payment Act, though the legislature seeks to protect employees from the unjustified and wilful retention of wages by the employer, they do not want to stifle legitimate wage disputes. Rice v. Multimedia, Inc., 318 S.C. 95, 99, 456 S.E.2d 381, 383 (1995)

1. There was a bonafide dispute as to employee's entitlement to wages.

As noted above, a dispute about Plaintiffs pay arose before Plaintiff quit. Plaintiff quit because of this dispute.

Temple v. Tec-Fab, Inc., 381 S.C. 597, 675 S.E.2d 414, (2009) states that a finding that an employee is entitled to recover unpaid wages (such as the \$432.00) is not equivalent to a finding that there existed no bona fide dispute as to the employee's entitlement to those wages. Citing O'Neal v. Intermedical Hosp. of South Carolina, 355 S.C. 499, 585 S.E.2d 526 (Ct.App.2003). Just because employee was entitled to recover his wages, this does not mean there was no bona fide dispute.

Temple further states an employee was not entitled to treble damages and attorneys' fees under Payment of Wages Act in light of bona fide dispute as to whether employer owed wages, citing Futch v. McAllister, 335 S.C. 598, 518 S.E.2d 591 (1999).

Plaintiff, in his Trial Brief admits, "An award of treble damages in the discretion of the court. It is not awarded when the employer had a bona fide reason for believing wages were not owed." (Plaintiff's Trial Brief, p. 5)

Because there was a bona fide dispute as to wages, I do not award treble damages or attorney's fees. Defendants offered their defenses in good faith. The dispute arose before the claim to the Labor Board. Even if I would find that Plaintiff would ultimately prevail on the issue of wrongfully withheld wages (which I do not), I still would not award treble damages or attorney's fees as the wage issue was legitimately disputed in good faith. Plaintiff has presented no credible evidence that the dispute was not bona fide and in his complaint states facts which show it to be bona fide.

2. Discretion.

[T]he statute explicitly provides that the employee "may" recover treble damages. "The use of the word 'may' signifies permission and generally means that the action spoken of is optional or discretionary." State v. Wilson, 274 S.C. 352, 356, 264 S.E.2d 414, 416 (1980). Thus, by using "may", rather than "shall", the legislature has provided that the penalty is discretionary with the judge. This interpretation accords with the purpose of the Wage Payment Act, to wit: to protect employees from the unjustified and wilful retention of wages by the employer. The imposition of treble damages in those cases where there is a bona fide dispute would be unjust and harsh.

Rice v. Multimedia, Inc., 318 S.C. 95, 99, 456 S.E.2d 381, 383 (1995)

Because I find that there was a bonafide dispute over wages and what Defendants could withhold, I decline to award Plaintiff treble damages and attorneys fees. Additionally, I decline to award treble damages and attorneys fees because Defendants tried to pay the wage and believed he

had satisfied Plaintiff. As pointed out in the case law, a finding that the wage was in fact due does not mean that there was no bona fide dispute.

B. Defendants Legitimately Deducted Amounts From Plaintiff's Wages. Plaintiff is Responsible for the Mistakes He Made on the Job.

Even if I were to treble damages and award attorney's fees (which I do not), this amount would be more than offset by legitimate deductions, set offs, and counterclaims. Though I find Plaintiff to be an employee, the offset from his wages was legitimate. Plaintiff is responsible and accountable for the mistakes he made on the job. The course of dealings between the parties indicate that Plaintiff agreed to the terms as set forth in the document given to workers at the start of their employment, specifically that they would be "responsible for materials and labor on any faulty work." This is reaffirmed by the document of March 30, 2015. Plaintiff never contested this document and continued to work. The specific deductions, set offs and counterclaims follow.

The counterclaims consist of three jobs on which Plaintiff worked. Singleton testified as to 1108 Ocean's Club, outlined above, he was out \$300.00 in materials and approximately \$1,400.00 in labor because of Plaintiff's defective work. At 47 Waterway Island, Singleton testified he had to replace 8 boards at \$104.00 a board and \$400.00 in labor for a total cost to fix of \$1,232.00. Plaintiff admitted he was the supervisor on this job, that there was paint that dripped on the boards, and that the boards had to be replaced. As supervisor, I find Plaintiff ultimately responsible for these costs. At 1509 Jenys, Singleton showed pictures of Plaintiff's defective work. There was paint on door knobs and other hardware discovered after Plaintiff quit. Eight (8) doors at \$75.00 a piece had to be replaced. Hinges and knobs totaled \$200.00 and labor was \$250.00, or a total of \$1,050.00. I find

these counterclaims persuasive and proven. Therefore, I rule for the Defendants in the amount of their counterclaims.

WHEREFORE, I rule for the Plaintiff in the amount of \$432.00. Defendants tried to pay this amount. I do not treble that amount and I do not award attorney's fees. I rule for the Defendants on their counterclaims and set offs in the amount of \$3,982.00. This amount is deducted from any amount Defendants might owe Plaintiffs. However, since I have ruled that Defendants owe Plaintiff only \$432.00, I find a aggregate total judgment for Defendants in the amount of \$3,550.00.

AND IT IS SO ORDERED!

Honorable Seth Whipper, Judge, Charleston
County Magistrate Court

N. Charleston, South Carolina

August __, 2018.

f:\ob\singleton1067\pleading\order

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
TROY WILSON,)
Appellant,)
vs.)
CAROLINA CUSTOM PAINTING)
& DRYWALL LLC, and)
JAMIE SINGLETON,)
Respondents.)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

2020-CP-1001819
COMMON PLEAS NUMBER

No. 2018 CV 1011500709
MAGISTRATE'S COURT NUMBER,
JUDGE JACKSON SETH WHIPPER

**BRIEF IN SUPPORT OF APPEAL
FROM JUDGMENT OF MAGISTRATE'S
COURT**

NOW COMES the Appellant, Troy Wilson, by and through counsel, and submits the following brief in support of his appeal from the Magistrate's Court:

I. INTRODUCTION

Wage theft, the practice of employers failing to pay the full amount of wages legally due, is a widespread problem affecting millions of American workers, depriving working people of billions of dollars annually. David Cooper and Teresa Kroeger, *Employers steal billions from workers' paychecks each year*, Economic Policy Institute (May 10, 2017). This appeal concerns the South Carolina Wage Payment Act (WPA): a law that exists to protect the most fundamental quid pro quo that underpins our economy: I work for you, you pay me. The PWA is remedial legislation designed to protect working people and assist them in collecting compensation wrongfully withheld. *Dumas v. InfoSafe Corp.*, 463 S.E.2d 641, 320 S.C. 188 (Ct. App. 1995). While the amount involved in this case is not large, the principle is important: The PWA will only protect workers from wage theft if courts will enforce it.

In this case, the Respondents (hereinafter "Carolina Custom Painting") failed to comply with the WPA in any respect: They did not provide the Mr. Wilson with written terms of employment; they made deductions to his pay which were not part of the written terms of employment; and they did not pay him the wages due on his last paycheck. In fact, the South Carolina Department of Labor, Licensing and Registration found five violations of the PWA. [LLR File, Nauheim Dec., Ex. A.]

The case was tried before the magistrate on July 12, 2018. Carolina Custom Painting conceded in their opening statement that Mr. Wilson was due \$432.00 in wages, but made a counter claim for allegedly defective work by Mr. Wilson.

Almost *twenty months* after the trial, the magistrate handed down a Transcript of Judgment on March 19, 2020 awarding Carolina Custom Painting \$3,550.00 on their counterclaim, in direct contravention to the evidence and *Cato v. Mills*, 129 S.E. 203, 132 S.C. 454 (S.C. 1925) and *Bennett v. Lambroukos*, 303 S.C. 481 (S.C. Ct. App. 1991) which prohibit Respondents' counter claim. The were no findings of fact or conclusions of law.

And there is no record for the appeal. After Mr. Wilson filed his Notice of Appeal, the magistrate failed to file his "return" to the appellate court. In addition, Appellant's counsel's staff contacted the magistrate's court and learned that the recording of the hearing had been destroyed 90 days after trial. [Peggy Sheppard Dec.] Not only does that mean there is no record of the trial testimony or objections for appeal; it also means that Judge Whipper decided the case 20 months after trial relying solely on his memory, or his notes, if any. Consequently, if the Court cannot decide this case on the law, it must order a new trial.

The law is clear: An employer must timely pay all wages that are due; an employer may not make a deduction from wages that is not listed in the written terms of employment; and there are no exceptions to this rule through "course of dealings" or similar theories. An

employer's sole remedy for faulty work is to terminate an employee—not to make a claim against them. Judge Whipper's verdict is contrary to the law and the evidence and must be reversed. In the alternative, if the Court cannot decide this matter solely on the law, it must grant a new trial pursuant to S.C. Code § 18-7-60 because there is no evidentiary record to review.¹

II. PROCEDURAL BACKGROUND

On November 3, 2017, the LLR began an investigation into a wage theft complaint against Carolina Custom Painting by Appellant, by requesting certain documents and asking for a response to the allegations. Carolina Custom Painting provided documents and participated in an interview with the LLR investigator. [Nauheim Dec., Ex. A.] On November 17, 2018, the LLR cited Carolina Custom Painting for five violations of the PWA, including the failure to pay Mr. Wilson the wages due. *Id.* The LLR's citation was supported by detailed written findings. *Id.* The citation stated that Carolina Custom Painting had the right to appeal the citation and set for the appeal procedure. *Id.* Carolina Custom Painting chose not to appeal.

This case was filed in the Magistrate's Court for the County of Charleston at No. 2018CV1011500709 on or about April 18, 2018 and tried before Magistrate Judge Jackson Seth Whipper on July 12, 2018. At the court's request, the parties filed post-trial briefs. Judge Whipper handed down a Transcript of Judgment on March 19, 2020, and awarding the Respondents' \$3,550.00 on their counterclaim. This appeal was filed on April 13, 2020 and is now before the court for determination.

Although S.C. Code § 18-7-60 requires the Magistrate to make a return of the testimony, proceedings and judgment and file it with the appellate court, no return has been

¹ The Appellant has filed a motion for new trial contemporaneously with this brief.

filed. In addition, the magistrate's court destroyed the original recording or transcript of the trial, so there is no record of the testimony or objections. [Peggy Sheppard Dec.]

III. FACTUAL BACKGROUND

The Respondent Carolina Custom Painting & Drywall is an LLC owned by Respondent Jamie Singleton. Carolina Custom Painting provides painting and drywall services in the Charleston County area. Carolina Custom Painting hired Appellant Troy Wilson about two years prior to trial to work as a painter and sheet rocker. His hourly rate was \$18.00 per hour.

On or about October 10, 2017, there was a problem with paint peeling on house that Carolina Custom Painting had recently painted, which had not been sanded properly. Mr. Singleton blamed Mr. Wilson, although Mr. Wilson had not been at that job site the day it was sanded. In violation of the PWA, which requires seven days written notice, Mr. Singleton told Mr. Wilson orally that he was going to cut his pay from \$18 per hour to \$15 per hour. Mr. Wilson decided to resign and the next day, October 11, 2017, he texted Mr. Singleton that he had decided to leave the company.

Carolina Custom Painting owed Mr. Wilson \$432.00 in wages on October 11, 2017, for 24 hours of work at \$18 per hour, which he had completed in the pay period prior to his resignation. On or about October 13, 2017, Mr. Wilson texted Mr. Singleton asking when he wanted him to turn in his uniform. Mr. Singleton called Mr. Wilson. He told him to keep the uniform and that he was not going to pay him his last paycheck.² The next scheduled

² The Complaint erroneously says that Mr. Singleton told Mr. Wilson the reason he was not paying him was the paint peeling issue. This was an error, which Mr. Wilson corrected at trial. Mr. Singleton did not give a reason for not paying him.

pay day was October 20, 2017. Carolina Custom Painting did not pay Mr. Wilson the \$432.00 in wages that were due on that date.

Mr. Wilson made a complaint for unpaid wages to the South Carolina Department of Labor, Licensing and Registration ("LLR"). LLR investigated and found five violations of the South Carolina Wage Payment Act, including failing to pay Mr. Wilson wages due in the amount of \$432.00. Carolina Custom Painting had the opportunity to submit documents and tell its side of the story to the investigator, which it did. LLR cited Respondents \$100.00. Respondents chose not to appeal.

Carolina Custom Painting told LLR that, after being informed of the investigation on November 3, 2017, that they subsequently paid Mr. Wilson \$432.00 in wages on November 8, 2017. They provided LLR a copy of a postal money order made out to Mr. Wilson for this amount, as proof of payment. However, the payment, which was mailed to Mr. Wilson via certified mail, was never seen or received by Mr. Wilson and was returned to the Respondents. Carolina Custom Painting made no further effort to pay Mr. Wilson the wages he was due.

On January 30, 2018, Mr. Wilson, through undersigned counsel, sent Carolina Custom Painting a certified letter, asking them to pay what he was owed under the S.C. Payment of Wages Act. The letter was returned unclaimed. To date, Carolina Custom Painting has not paid Mr. Wilson the \$432.00 in wages which are owed. There is no good faith dispute over whether the Carolina Custom Painting owes Mr. Wilson \$432.00 in wages.

The case was tried before Magistrate Judge Jackson Seth Whipper on July 12, 2018. Mr. Singleton, through his attorney, conceded in opening statement that Carolina

Custom Painting does, in fact, owe Mr. Wilson \$432 for wages due. However, Carolina Custom Painting made a counter claim for alleged faulty work by Mr. Wilson.

The only witness for the defense was Respondent Singleton. Mr. Singleton admitted that he was not present when the alleged faulty work was done, and there were multiple workers at each work site. He had no first-hand knowledge of which employee was responsible for the alleged faulty work. His explanation for holding Mr. Wilson responsible despite lack of direct evidence or personal knowledge was that Mr. Wilson was the "foreman." However, Mr. Singleton also testified that he considered Mr. Wilson and his other employee's independent contractors. He did not explain how one independent contractor was responsible for the work of another independent contractor that had been hired by Carolina Custom Painting, not Mr. Wilson.

Mr. Singleton testified that Carolina Custom Painting had sustained damages in the amount of \$3,982 due to faulty work at three different job sites. However, he offered no receipts or invoices or any other evidence to establish beyond speculation the value of the labor and parts that had to be incurred due to the alleged faulty work. Those damages were therefore too speculative to be awarded.

His testimony about these amounts was wildly inflated: it cost \$75 each for door knobs and \$104 each for "boards" that had to be replaced, he claimed. [Respondents' Proposed Order, Nauheim Dec. Ex. B.]³ He testified there was "approximately" \$1,400 in labor at the "1108 Ocean's Club" job to correct paint peeling from door frames. Even if we assume (generously) that Carolina Custom Painting paid its workers \$18 per hour, that

³ After the trial Respondents submitted a proposed Order to the court. Among other things, it recites what Respondents alleged was the testimony at trial. While appellant does not agree with all the Respondents' representations of the trial testimony, where there is a recitation that is adverse to Respondents' position on appeal, the Court may deem it as reliable, for the same reasons an admission against interest is admissible.

means it took 78 hours (1400/18) to sand and repaint door frames—nearly two full weeks of labor. No reasonable trier of fact could believe this testimony.

Despite LLR's finding to the contrary, and clear evidence that Mr. Wilson was treated as an employee in every way,⁴ Carolina Custom Painting contended that Mr. Wilson was an independent contractor. At the close of evidence, the Court found that Mr. Wilson was an employee.

At trial, the Plaintiff submitted a claim for treble damages, reasonable attorneys' fees, and costs in the amount of \$10,276.50.

Magistrate Judge Whipper requested that the parties submit closing arguments in a post-trial brief, which was done. At that time, a paralegal from Appellant's law office requested a transcript or recording of the trial from the court. [Peggy Sheppard Dec.] She was told that the recording was on Judge Whipper's desk and could not be obtained until after he handed down his verdict.

On March 19, 2020, a Transcript of Judgment was rendered by Judge Whipper finding against the Plaintiff and in favor of the Respondents in the amount of \$3,550.00 on the counterclaim made during the trial. There were no findings of fact or conclusions of law.

On April 13, 2020, the Appellant timely filed a Notice of Appeal, and served the same on Judge Whipper and respondents. The magistrate did not make a Return. The paralegal contacted the Magistrate's court again and request a copy of the transcript or recording of the trial. She was told that the recording was destroyed 90 days after the trial. *Id.* There is no record of the trial testimony or exceptions for this Court to rule on. And Judge Whipper had nothing to refresh his memory when he ruled 20 months after trial.

⁴ See Respondents' Policies and Procedures at Exhibit A of Nauheim Dec.

IV. ISSUES ON APPEAL

Mr. Wilson has raised 24 grounds for appeal in his Notice of Appeal. Those exceptions are incorporated herein by reference. Rather than reciting all 24 grounds, the Appellant believes that the issue on appeal can be framed more narrowly as follows:

- A. Whether *res judicata* prevents Respondents from re-litigating issues that have already been litigated with and decided by the LLR, and which were not appealed? **[YES]**.
- B. Respondents conceded in opening statement that they owed Mr. Wilson \$432 in wages. Did the Court err by not awarding Mr. Wilson \$432 in unpaid wages? **[YES]**
- C. Under controlling case law, it is unlawful for an employer to withhold wages based on faulty work, when the employer did not give written notice for such a deduction. Consequently, the reason given by Carolina Custom Painting for withholding wages was unlawful. Is withholding wages for an unlawful reason, a good faith dispute? **[NO]**
- D. When an employer is prohibited under the PWA from making a deduction for faulty work, can he assert a counterclaim for faulty work based on quasi-contract or course of dealings? **[NO]**
- E. The amount of damages cannot be left to conjecture, guess or speculation. Are the damages asserted against Mr. Wilson too speculative, where there is no evidence that Mr. Wilson (and not another worker) was responsible for the alleged faulty work, and no evidence to establish the material or labor costs incurred? **[YES]**
- F. There are no findings of facts and conclusions of law, no Magistrate's Return, no recording or transcript of the trial—there is no record on which the Court can rule. Should the Court cure this deficiency by ordering a new trial? **[YES]**

V. ARGUMENT

Appellate Standard

The circuit court has the authority to hear appeals from the magistrate's court. S.C. Code § 18-7-10. The procedure on appeal is governed by section 18-3-10 through -70. The standard of review is set forth in section 18-7-170 which provides as follows:

Upon hearing the appeal, the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact.

The Court of Appeals has explained that, "[a]s is readily apparent, Section 18-7-170 confers authority upon the Circuit Court to reverse a magistrate's findings of fact when exercising appellate jurisdiction in an appeal from a magistrate's judgment." *Burns v. Wannamaker*, 281 S.C. 352, 357 (S.C. Ct. App. 1984).

The South Carolina Payment of Wages Act.

The Plaintiff brought this action under the South Carolina Wage Payment Act, S.C. Code § 41-10-10, et seq. The Act defines an Employer to include every person, firm, partnership, association, corporation, receiver, or other officer of a court of this State, the State or any political subdivision thereof, and any agent or officer of the above classes employing any person in this State.

Section 41-10-30 of the Act requires every employer to notify each employee in writing at the time of hiring of the normal hours and wages agreed upon, *the time and place of payment*, and the deductions which will be made from the wages, including payments to insurance programs. The employer has the option of giving written notification by posting the terms conspicuously at or near the place of work.

Also, pursuant to this statute, the South Carolina Department of Labor, Licensing and Regulation requires employers to post two employment notices from the South Carolina Department of Labor, Licensing and Regulation in a place or places where employees can see them.

Section 41-40-10 (D) of the Act requires every employer in the State to *pay all wages due at the time and place designated* as required by subsection (A) of Section 41-10-30.

Section 41-10-50 of the Act requires that, when an employer separates an employee from the payroll for any reason, the *employer shall pay all wages due to the employee within forty-eight hours of the time of separation or the next regular payday which may not exceed thirty days.*

Under Section 41-10-60 of the Act, when there is a dispute over wages, the employer shall give written notice to the employee of the amount of wages which he concedes to be due and shall pay the amount *without condition* within the time set by this chapter.

Under Section 41-10-80 (C) of the Act, the employer's failure to pay wages allows the employee to recover in a civil action an amount equal to three times the full amount of the unpaid wages, plus costs and reasonable attorney's fees as the court may allow.

An agent of the company who knowingly violates the act is liable in his or her individual capacity and is a proper party in addition to company. *Dumas v. InfoSafe Corp.*, 463 S.E.2d 641, 320 S.C. 188 (Ct. App. 1995). This makes Mr. Singleton a proper party in addition to Carolina Custom Painting.

A. *Res Judicata prevents Respondents from relitigating issues that were already decided by the LLR and not appealed.*

The trial court erred by not giving holding that the findings of the LLR investigation had precluded Respondents from relitigating those issues. Ordinarily, the decision of an administrative tribunal precludes the relitigation of the issues addressed by that tribunal in a collateral action. *Bennett v. South Carolina Dep't of Corrections*, 305 S.C. 310, 408 S.E.2d 230 (1991). In *Bennett*, our Supreme Court stated: "This Court has repeatedly held that, under the doctrines of *res judicata* and collateral estoppel, the decision of an administrative tribunal precludes the relitigation of the issues addressed by that tribunal in a collateral action." The party asserting preclusive effect must show that the issue was (1)

actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment. *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 555, 684 S.E.2d 779, 782 (Ct. App. 2009).

The Appellant admitted documentary evidence in trial, demonstrating that Carolina Custom Painting actually litigated with the LLR the issue of whether:

- That Mr. Wilson had been misclassified by Carolina Custom Painting as an independent contractor and was in fact an employee;
- That Mr. Wilson was owed \$432 by Carolina Custom Painting no later than his final payday;
- That Carolina Custom Painting failed to pay him the wage due at his next regular payday;
- That Carolina Custom Painting failed to provide written notice of the terms of wages, including the amount of wages, the time and place for payment, and deductions from wages.

In addition, Mr. Singleton testified that he did have a full opportunity to litigate those issues with the LLR. This opportunity is evidence in the LLR record, which was admitted in trial. [Nauheim Dec., Ex. A.] The LLR directly determined these issues and these findings were necessary to the citation it issued. LLR found five violations and cited Mr. Singleton for failing to pay \$432 in unpaid wages. The LLR's ruling was supported by detailed findings of fact. The Appellant asked the magistrate to give all of five findings of the LLR preclusive effect.

In *Keiger v. Citgo, Coastal Petroleum, Inc.*, the trial court granted summary judgment on the Plaintiff's Payment of Wages claim on the grounds that "Respondents had paid Keiger the amount the South Carolina Department of Labor determined she was due, and because she had not appealed that determination, she was barred from relitigating it." 482 S.E.2d 792, 326 S.C. 369, 327 N. 3 (Ct. App. 1997). Likewise, the Magistrate have should given the LLR rulings preclusive effect. The failure to do so was contrary to the law and

should be reversed. This Court should find that the five findings of the LLR have preclusive effect in this litigation.

B. The Magistrate erred by not awarding Mr. Wilson \$432 in damages based on the Respondents' concession in opening statement that they owed Mr. Wilson \$432 in wages due.

In this case the Respondents' attorney in opening statement at trial conceded that they owed the Appellant \$432.00 in unpaid wages. Concessions by the attorney in opening statement are binding on the client. *Collins v. Bisson Moving Storage, Inc.*, 332 S.C. 290 (S.C. Ct. App. 1998) In spite of this, the Magistrate failed to award Mr. Wilson the wages the Respondents conceded were due. This was an abuse of discretion, clear error and should be reversed.

C. The reason given by Respondent for withholding Mr. Wilson's wages violates the PWA and cannot therefore constitute a "good faith dispute" about whether wages are due?

When the reason given by an employer for not paying wages is itself unlawful; it cannot, as a matter of law, constitute a "good faith" dispute about the payment of wages. Carolina Custom Painting says the it did not pay Mr. Wilson the wages due because of cost of remedying the alleged faulty work it held him responsible for. However, the PWA prohibits employers from making deductions that are not listed in the written terms of employment. *Bennett v. Lambroukos*, 303 S.C. 481, 483, 401 S.E.2d 428 (Ct. App. 1991) (holding it was error for the circuit court to deduct for breakage in a PWA claim, when there was no finding of written notice of a deduction for breakage). As well, employers cannot avoid this prohibition in the PWA by arguing that the such a deduction was allowed as part of the parties "course of dealings." *Cato v. Grendel Cotton Mills*, 132 S.C. 454 (S.C. 1925) (refusing to allow employers to ignore a predecessor payment of wages statute by claiming their employees had by custom waived their statutory right to prompt payment of wages).

Therefore, Respondents basis for refusing to pay the wages due was unlawful. While employer's can avoid imposition of treble damages when there is a good faith dispute about what is owed, i.e., a difference on how to *calculate* what is due, the employer's intent to violate the law cannot constitute a "good faith" dispute, even if the employer claims ignorance of the law. See *Oxford Finance Companies, Inc. v. Burgess*, 402 S.E.2d 480, 303 S.C. 534 (1991) (ignorance of the law excuses no man). To hold otherwise would give employers' permission to commit wage theft by "playing dumb."

The central issue in this case is whether Carolina Custom Air had a good faith basis for disputing that wages were due. This is because courts only award treble damages and attorneys' fees when there was no good faith dispute about whether the wages were due. *Rice v. Multimedia, Inc.*, 456 S.E.2d 381, 383, 318 S.C. 95 (1995). Treble damages and attorney's fees under the PWA are discretionary and should only be awarded when the court finds that the employer's retention of wages was unjustified and willful. It should not be awarded when the employer had a bona fide or good faith reason for disputing that the wages were due. *Id.* The decision to award treble damages is made by the court and sounds in equity. *The Father v. South Carolina Dep't of Soc. Servs.*, 353 S.C. 254, 578 S.E.2d 11 (2003).

It is not enough for the employer to assert that there was "a" dispute—he must prove that there was a "good faith" dispute. This means the reason for the dispute must be "valid." *Futch v. McAllister Towing of Georgetown*, 518 S.E.2d 591, 335 S.C. 598 (1999) ("the Legislature did not intend to prevent employers from asserting *valid* defenses or counterclaims") (emphasis added). And the employer's belief must also be "reasonable." *Mathis v. Brown & Brown of SC*, 389 S.C. 299, 316, 698 S.E.2d 773 (2010). The relevant

inquiry is whether the employer had a reasonable, valid good faith basis "at the time" the wages were withheld. *Id.* Later invented reasons for disputing the wages are not relevant.

If the employer's reason for withholding wages would itself violate the law, it cannot as a matter of law, be considered a good faith basis for withholding wages. To hold otherwise, would effectively give employers a license to violate that law simply by claiming ignorance. This would eviscerate the PWA as well as numerous other labor laws that are intended to protect the rights of workers.

There are many cases in which courts have found the employer had a good faith reason to dispute that the wages were due. However, most of these fall into the category of a disagreement about how to calculate compensation, e.g. *Linder v. Paramount Acceptance Corp.*, 291 S.C. 539, 354 S.E.2d 567 (Ct.App.1987) (employer paid the employee hourly wages and commissions upon her discharge, but there was a disagreement on the amount of commission and hourly wages due.); or where the employee has been accused of breach of the duty of loyalty, e.g., *Futch v. McAllister Towing of Georgetown*, 518 S.E.2d 591, 335 S.C. 598 (1999). We are not aware of any case in which a court found that the employer's belief that it could withhold wages in violation of labor law constituted a good faith, valid, reasonable dispute.

The reason Carolina Custom Painting asserts for withholding from Mr. Wilson his wages due was to repay the LLC for the cost of remedying alleged faulty work. However, such a deduction of wages is not allowed where, like here, the employer did not give written notice of this deduction at the time of hiring. S.C. Code § 41-10-40(A); *Bennett v. Lambroukos*, 303 S.C. 481, 483, 401 S.E.2d 428 (Ct. App. 1991) (holding it was error for the circuit court to deduct for breakage in a PWA claim, when there was no finding of written notice of a deduction for breakage). Therefore, for Carolina Custom Painting to withhold

wages based on this basis would explicitly violate the PWA. In addition, as discussed more fully in Section E, *infra*, an employer cannot avoid the prohibitions of the PWA under a course of dealings theory.

Therefore, Carolina Custom Painting's proffered reason for withholding the wages is itself is a plain violation of the PWA. The employer's intent to engage in illegal conduct cannot constitute a "good faith" basis for withholding wages or a "valid defense." To hold otherwise would make the PWA a nullity. There is no dispute that Carolina Custom Painting did not give Mr. Wilson any written notice of the terms of employment, much less notice of any deductions. Therefore, the reason given by Carolina Custom Painting for withholding his pay was unlawful.

The "good faith" defense to treble damages is not an excuse for employers to "play dumb" about their obligations under the law. This Court should rule that Respondents' basis for withholding wages was unlawful and therefore as a matter of law does not constitute a "good faith dispute" and that Respondents are therefore liable to the Plaintiff for treble damages and reasonable attorney's fees and costs, to be determined by this Court.

D. *Respondents are prohibited from asserting a counterclaim for faulty work.*

Respondents argue that Mr. Wilson's right under the PWA to not have unilateral deductions made from his pay is abrogated by course of dealings between Mr. Wilson and Carolina Custom Painting. The argument is foreclosed by *Cato v. Mills*, 129 S.E. 203, 132 S.C. 454 (S.C. 1925).

While this case pre-dates the PWA, it concerned a similar predecessor payment of wages statute, which provided that whenever a corporation discharged a laborer, "the wages which have been earned by the discharged laborer shall become immediately due and payable." *Id.* at 204. The court reasoned that when Cato was hired, that statute formed

part of the contract. *Id.* at 203. Yet when Cato was discharged, Mills refused to pay him his wages due until he vacated housing that had been provided to him by the Corporation. *Id.*

Like here, Mills contended that Cato agreed to waive this right when he accepted employment, because "this practice is a well-understood and universal custom or usage with this defendant." The court rejected this argument, holding that it was against public policy to impliedly waive or contract away his rights under the statute. *Id.* The court held that parties are permitted to make law for themselves only in cases where their agreement do not violate the express provisions of any law[.]” *Id.* (quoting authority). The court’s reasoning is very pertinent to this case:

At, the time of the passage of this act corporations discharged their impecunious employees, no doubt, in many cases, with large families, who had nowhere to go and no means with which to defray their expenses while seeking other employment. They were, under the custom mentioned, compelled to wait until pay day for their wages. In the meantime expenses were mounting, and the situation of the laborer became more precarious each day. The statute in question was passed to remedy this state of affairs. Now, if the object of the statute can be thwarted by custom or contract, then the statute might as well be repealed, because it will not be long before the owner of every factory, mill, or other corporation employing labor, subject to the provisions of the statute, will establish customs and enter into contracts that will completely nullify the statute.

Id. at 205.

Cato v. Mills is alive and well. It was cited by the South Carolina Supreme Court for these principals in *Futch v. McCallister*. And the rule was most recently reiterated by the Court of Appeals in *Ross v. Ligand Pharm*, 371 S.C. 464, 473 n. 1 (S.C. Ct. App. 2006) (“our courts ‘refuse to allow employers to ignore the [PWA] by claiming their employees had by contract or custom waived their statutory right to prompt payment of wages.’ ”)

Cato v. Mills is instructive for a second reason as well. The concurring opinion explains that Mills’ duty to pay Cato his wages upon discharge, was a separate and distinct obligation from Cato’s obligation to vacate the house. *Id.* at 206 (Marion, J. concurring).

Judge Marion reasoned that obligation under the statute was to pay the wages due “immediately.” *Id.* This was a mandatory obligation by statute. *Id.* Therefore, Mills could not refuse to perform this obligation until Cato performed a separate obligation to vacate the house. See also S.C. Code § 41-10-60 (“[T]he employer shall give written notice to the employee of the amount of wages which he concedes to be due and shall pay the amount *without condition* within the time set by this chapter.”)

Similarly, here Respondents obligation under the statute was to pay the wages due within 48 hours or the next payday (not to exceed 30 days). S.C. Code § 41-10-50. Any other dispute between the LLC and Wilson needed to be handled separately. As Judge Marion reasoned, “It is an elementary and fundamental principle of law that no person can by contract relieve himself of a duty which he owes to the public independently of the contract.” *Id.*

This was not a good faith misunderstanding of the law—this was defiance. And it should be treated accordingly. The Court should hold that Respondents are barred from bringing a counterclaim for faulty work and reverse the Magistrate’s ruling awarding the Respondents counterclaim damages as contrary to the law. The Court should further hold that as a matter of law, there was no “good faith” dispute for withholding wages and award treble damages, attorney’s fees and costs.

E. *The magistrates award of damages against Appellant is contrary to the evidence.*

Even if the Respondents could bring a counterclaim for faulty work, which they cannot, there would have to be evidence that (1) Mr. Wilson was responsible for the faulty work, and (2) evidence to establish the amount of damage beyond speculation. The evidence at trial failed in both respects.

At trial, there was only one witness for the defense: Respondent Singleton. He admitted that at each work site where there was alleged faulty work, there had been more than one worker present; that he himself was not present, and that he had no first-hand knowledge of which employee was responsible. His explanation holding Mr. Wilson responsible was that he was allegedly the foreman. But Mr. Singleton was Mr. Wilson's boss, so that logic applies equally to make him responsible.

What is more, Mr. Singleton considered all of his workers independent contractors to Carolina Custom Painting. He did not explain how one independent contractor (Mr. Wilson) could be responsible for the work of another independent contractor, who was hired by Respondent, not Mr. Wilson. There was no direct or circumstantial evidence that any of the alleged faulty work had been performed by Mr. Wilson. It was contrary to the evidence for the Magistrate to find Mr. Wilson responsible for faulty work.

What is more, Respondents offered no receipts or invoices in trial or any other evidence to establish beyond speculation the value of the damages caused by alleged faulty work or breakage and therefore those damages were too speculative to be awarded. See *Clark v. Cantrell*, 339 S.C. 369, 529 S.E.2d 528 (2000); *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991); *Barnwell v. Barber-Colman Co.*, 301 S.C. 534, 393 S.E.2d 162 (1989); *Whisenant v. James Island Corp.*, 277 S.C. 10, 281 S.E.2d 794 (1981). Carolina Custom Painting could have brought invoices and receipts to prove its damages, but did not.

As set forth more fully in the statement of facts, *supra*, Mr. Singleton's testimony about the cost of the labor and parts to remedy the alleged faulty work, was wildly exaggerated and not credible. Without evidence with which to compute the actual amount of damages, any number arrived at was by definition arbitrary, speculative, and not

supported by evidence. The Court should reverse the judgment against Mr. Wilson as contrary to the evidence.

F. *There is no record on which the Court can rule; the only cure is a new trial.*

An appeal of from the magistrate's court must be based on the record below:

The appeal shall be heard by the court upon all the papers in the case, including the testimony on the trial, which shall be taken down in writing and signed by the witnesses, and the grounds of exception made, without the examination of witnesses in court. The appeal shall be heard on the original papers and no copy thereof need be furnished for the use of the court.

S.C. Code § 18-7-130. In addition, the magistrate is required to file a Return with the appellate court, which should consist of "the testimony, proceedings and judgment." S.C. Code § 18-7-60. Here, there is no Magistrate's Return, and there is no record of the testimony or the exceptions made. The only thing that exists are the pleadings and papers filed by the parties.

While the Court could direct the magistrate to file a "further return" under S.C. Code § 18-7-80, the Appellant contends it would be futile in this case. At this point, it has been almost 23 months since the trial. There is no longer a recording or a transcript. The magistrate's failure to file a return, or provide findings of fact and conclusions of law are a clear signal that he does not have the necessary recollection of the trial to do so.

The Appellant submits that the Court has two choices. There are enough uncontested facts that the Court and the issues are such that the Court can rule on this appeal as a matter of law. The Complaint, the trial briefs filed by the parties, the post-trial briefs filed by the parties, constitute a sufficient record upon which for the court to rule on the claims asserted (reserving the issue of attorney's fees, costs and damages in the event the Appellant prevails). The parties could likely agree on a set of stipulated facts if it would be helpful to the Court.

If the Court is not able to rule based on the undisputed facts and the law, or if the parties cannot agree on the uncontested facts, the only way to cure the deficiency in the record is for the Court to order a new trial. The Court has the authority to do so under S.C. Code § 18-7-160, which provides:

Either party may move for a new trial in the appellate court on a case or exceptions, or otherwise, and such motion may be made before or after judgment has been entered; and the provisions of this Code in relation to the proceedings, exceptions to the decisions of the court, making and settling cases and exceptions, motions for new trials and making up the judgment roll in the circuit court are hereby made applicable to all appeals brought up for trial as in this chapter provided.

See also Flanagan, J. et al, *South Carolina Civil Procedure* at 576 (2010 3d Ed.) (“[T]he circuit court has expanded power to grant new trials even in cases of default.”) The Appellant has filed a motion for new trial contemporaneously with this brief as alternative relief. However, Appellant believes that in light of *Cato v. Mills* and *Bennett v. Lambroukos*, the Court can simply strike the counter claim, rule there was no good faith dispute as a matter of law, award treble damages, and set a further hearing on the issue of reasonable attorney’s fees and costs.

V. CONCLUSION

The Magistrate Judge committed numerous errors of law and the verdict is not supported by the evidence. This Court should reverse the judgment of the Magistrate Judge, simply strike the counter claim, rule there was no good faith dispute as a matter of law, award treble damages, and set a further hearing on the issue of reasonable attorney’s fees and costs. In the alternative, the Court should order a new trial to correct the lack of evidentiary record and Magistrate’s Return.

Respectfully Submitted,

NAUHEIM LAW OFFICE, LLC

Charleston, South Carolina
June 19, 2020

s/ David A. Nauheim
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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
TROY WILSON,)
Appellant,)
vs.)
CAROLINA CUSTOM PAINTING)
& DRYWALL LLC, and)
JAMIE SINGLETON,)
Respondents.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2020-CP-1001819
COMMON PLEAS NUMBER

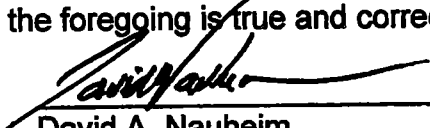
No. 2018 CV 1011500709
MAGISTRATE'S COURT NUMBER,
JUDGE JACKSON SETH WHIPPER

DECLARATION OF DAVID A. NAUHEIM

I, David A. Nauheim, am the attorney for the Plaintiff in the above captioned case. I am submitting this affidavit in support of my client's request for payment of his attorney's fees. I am above eighteen years of age and legally competent to testify in all respects.

1. The facts recited in Appellants Brief in Support of Appeal from Magistrate's Court are true and correct.
2. Attached hereto as Exhibit A is a true and correct copy of the South Carolina Department of Labor, Licensing and Registration's file on its investigation into Mr. Wilson's wage complaint against Carolina Custom Painting. This material was obtained by my office via FOIA request.
3. Attached hereto as Exhibit B is a true and correct copy of the proposed Order submitted by Respondents after the trial.

I declare under penalty of perjury that the foregoing is true and correct.


David A. Nauheim
Attorneys for the Plaintiff
815 Savannah Highway Suite 201B
Charleston, South Carolina 29407
(843) 534-5084

Charleston, South Carolina
June 19, 2020

**S.C. DEPARTMENT OF LABOR, LICENSING AND REGULATION
DIVISION OF INVESTIGATIONS & ENFORCEMENT
OFFICE OF WAGES & CHILD LABOR
PO BOX 11329, COLUMBIA, SC 29211-1329**

CITATION AND NOTIFICATION OF PENALTY

COPY

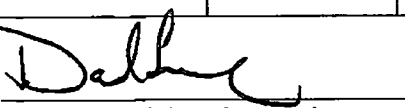
Carolina Custom Painting & Drywall

5505 Rowsham Place

North Charleston SC 29418

Issuance Date:	1/17/2018
Report #:	2017-1344
Employer #:	1/40
Citation #:	2017-1344

This citation describes alleged violation(s) of 41-10-40 & 41-10-30, South Carolina Code of Laws, 1976, as amended. The penalty (ies) listed below are based on the following violations. You must pay the proposed penalty (ies) pursuant to 41-10-80. This citation and/or civil penalty maybe reviewed by requesting, in writing, an Administrative Review. Such requests must be addressed to: Supervisor, South Carolina Department of Labor, Licensing and Regulation, Office of Wages & Child Labor, PO Box 11329, Columbia, SC 29211-1329, and must be mailed within 30 calendar days from receipt of this Citation and Notification of Penalty. To contest this citation before the Administrative Law Court, file your request for a hearing accompanied by the filing fee with the Administrative Law Court, Edgar Brown Building, 1205 Pendleton Street, Suite 224, Columbia SC 29201. This citation concerns application of the South Carolina Payment of Wage Statute and does not necessarily establish all aspects of debts due between the employer and employee.

# OF VIOLATIONS	SECTION (S) VIOLATED	DESCRIPTION	PENALTY
	§41-10-30 (A)	Failed to give written notification as required by law to: as follows:	\$
	§41-10-30 (B)	Failed to keep records of:	\$
	§41-10-30 (C)	Failed to furnish itemized statement to each employee showing:	\$
		A warning was previously issued on	
	§41-10-40 (A)	Employer failed to pay with a negotiable instrument that was not dated for the pay day(s) in the approximate amount of \$	\$
	§41-10-40 (C)	Withheld or diverted from the wages of wages not required or permitted by state or federal law on or about in the approximate amount of \$	\$
1	§41-10-40 (D)	Failed to pay wages due to Troy Wilson in the approximate amount of \$432.00 by your regular pay day(s) of 10/20/2017	\$100.00
 Signature of Chief Investigator WCL-6 (Rev. 6/09)			TOTAL OF PENALTY: \$ 100.00 Please make check or money order payable to S.C. Department of Labor, Licensing & Regulation, and indicate <u>citation number</u> on remittance.

This is to certify that the undersigned has this date served this citation in the above entitled action upon all parties to this cause by depositing a copy herof, in the United States Mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s), to the following address:
5505 Rowsham Place, North Charleston SC 29418
 By: Kay Parnell
 This 17 day of Feb 20 18
 Printed name, title & signature

ELECTRONICALLY FILED - 2020 Jun 19 3:56 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1001819

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATIONS
OFFICE OF WAGES AND CHILD LABOR
WAGES INVESTIGATIVE REPORT

CASE NO.: 2017-1344

OPENED: 20171023

CLOSED: 20180117

FEDERAL ID. NO.:

COMPANY: Custom Carolina Painting & Drywall LLC

REPRESENTATIVE: Jamie Singleton

ADDRESS: 5505 Rowsham Pl. N. Charleston SC

TITLE: owner

CITY: N. Charleston

PHONE: [REDACTED]

STATE: SC

ZIP: 29418

FAX:

CORP. NAME:

REPRESENTATIVE:

ADDRESS:

TITLE:

CITY:

PHONE:

FAX:

STATE:

ZIP:

WARNING

This section of the warning is issued pursuant to SC Code of Law 41-10-80, for failure to comply with SC code of Law 41-10-30:

A. VIOLATION OF SC 41-10-30(A)

☒ Normal Hours

☒ Wages

☒ Time of payment

☒ Place of payment

☒ Deductions from wages

☐ Changes make in employment

Without 7 calendar day

Written notice

B. VIOLATION OF SC 41-10-30(B)

☐ Name and/or address of employees

☐ Wages paid and/or deductions made
for all employees each payday

C. VIOLATIONS OF SC 41-10-30(C)

☐ Failed to furnish each employee each pay period
an itemized statement showing:

☐ Gross pay ☐ Deductions made

☐ NUMBER OF EMPLOYEES IN SC

☐ EMPLOYEES ON SITE

**YOU MUST CORRECT THESE VIOLATIONS IMMEDIATELY. FAILURE TO DO SO COULD RESULT IN FINE OF
\$100.00 FOR EACH SUBSEQUENT OFFENSE.**

N. Russo 1/29/18

INVESTIGATOR

Date

COMPANY OFFICIAL

Date

CHILD LABOR	INVESTIGATIVE REPORT SUMMARY	OFFICE USE ONLY
Warning: Yes ☐ No ☐ Date: Date	Warning: Yes ☒ No ☐ Date: 1/3/18	Citation issued: Yes ☐ No ☐
Citation: Yes ☐ No ☐ Date: Date	Citation: Yes ☒ No ☐	Date: _____
Violation Number(s): Click here to enter text.	Number of violations alleged:	Citation Number: _____ \$ _____
Instance: ☐ 1 st ☐ 2 nd ☐ 3 rd	Section(s) 30 ☐ 5 ☐ 40 ☒ 1 ☐ 50 ☒ 0	Number of Violations:
	Instance ☒ 1 ☒ 1 ☐ 0	Section(s) 30 ☐ 40 ☐ 50 ☐ CL ☐
		Instance ☐ ☐ ☐ ☐

Investigator: Parsons
Report Number: 2017-1344
Claimant: Troy Wilson
Type of Complaint: Unpaid Wages

Carolina Custom Painting & Drywall
5505 Rowsham Place
North Charleston, SC 29418

Findings:

The Claimant filed a complaint with this office alleging non-payment of 24 hours at the rate of \$18.00 per hour on the scheduled pay-date of 10/20/17 for the amount of \$432.00.

On 11/3/17, R/I contacted Jamie Singleton, the owner of the company, via the telephone, regarding the wage complaint filed by the claimant. R/I explained the details of the investigation process and requested the time records with matching payroll, terms of employment and company policies to address the alleged allegations of the case. The respondent did not provide written terms of employment. The claimant stated that he was paid weekly on the complaint, and stated that his rate of pay was changed without a seven day notice. The claimant also stated that he was not given the proper tax paperwork. However, the respondent provided a policy and procedures form which stated that the claimant was a 1099 employee. The claimant appears to be misclassified for tax purposes. (See Exhibit E-1-1)

Upon further investigation, on 1/16/18 Investigator Parsons called the claimant and the claimant stated that the respondent provided major equipment such as scalpels, and paint and paint supplies. The employee stated that he did small repairs such as painting and repairing drywall. This appears to be an employee/employer relationship.

The respondent was paid in full for the 10/20/17 pay-date, but paid late on 11/8/17. (See Exhibit E-1-2)

R/I recommends a warning and a citation for failure to pay Troy Wilson on the scheduled pay-date of 10/20/17 for the amount of \$432.00(paid in full but paid late).

Cite this Employer for:

5 violations of SC Section 41-10-30(A).

1 Violations of SC Section 41-10-40(D) a citation for failure to pay Troy Wilson on the scheduled pay-date of 10/20/17 for the amount of \$432.00(paid in full but paid late).

RESIDENTIAL



COMMERCIAL

5505 ROWSHAM PLACE
NORTH CHARLESTON, SC 29418

www.ccpanddrywall.com

POLICIES AND PROCEDURES

1. I understand that I am a 1099 employee / contractor of Carolina Custom Painting and Drywall.
2. I understand that work hours are 7:30 a.m to 4 p.m Monday thru Friday with occasional weekends.
3. I understand that I must have all required work materials at all time and available for inspection.
4. I understand that I am responsible for materials and labor of any faulty work discovered during inspection.
5. I understand that I may be required to take periodic drug screening paid for by company.
6. Proper uniform and shoes are required and must be clean and free of holes.
7. Excessive breaks aren't required by law and will be given at the discretion of the company.
8. Lunch break is from 12 pm to 12:30 p.m.
9. If injured at work, I must submit to an immediate drug screening.
10. Insubordination will result in immediate termination.
- 11. Missing work without a valid excuse will be noted the first time, and terminated the second time.
12. Absolutely no horse playing on the job.
13. All contractors are required to climb 40-foot ladders.
- 14. All company equipment must be cleaned and left on jobsites.
15. Coming to work impaired will result in termination.
16. I understand that theft of any kind (personal, company, or client), will be prosecuted.

NAME: _____

DATE: _____

EXHIBIT E-1-1

THANKS FOR CHOOSING CAROLINA CUSTOM PAINTING AND DRYWALL!

NORTH CHARLESTON, SC 29420	
Continued from Page	\$3.35
1. Laborer's Union	\$0.00
2. Union dues	\$0.00
3. Union dues	\$0.00
4. Union dues	\$0.00
5. Union dues	\$0.00
6. Union dues	\$0.00
7. Union dues	\$0.00
8. Union dues	\$0.00
9. Union dues	\$0.00
10. Union dues	\$0.00
11. Union dues	\$0.00
12. Union dues	\$0.00
13. Union dues	\$0.00
14. Union dues	\$0.00
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99. Union dues	\$0.00
100. Union dues	\$0.00

EXHIBIT

E-1-2

2017-1344

RESIDENTIAL



COMMERCIAL

5505 ROWSHAM PLACE
NORTH CHARLESTON, SC 29418

www.ccpanddrywall.com

I, Troy Wilson, a subcontract employee, agree to reimburse Carolina Custom Painting and Drywall \$1,350.00 (one thousand three hundred fifty dollars) for damaged AC condenser at 27 Smith St. Payments of \$150.00 will be deducted from my check weekly starting 3-27-15. In the event I am terminated or I quit before final payment, I understand that I forfeit my final check to reduce the balance and assume all legal liability for the remaining balance.

By

Troy Wilson

Date

3-30-15

THANKS FOR CHOOSING CAROLINA CUSTOM PAINTING AND DRYWALL!

Heather Parsons

To:

Subject:

2017-1344

Attachments:

2017-11-03 (2).pdf

Dear Mr. Singleton,

Please find enclosed a copy of the wage complaint that was filed by Troy Wilson, and an employer record request from this office. Please let me know if you have any questions concerning this matter. Thank you.



Henry D. McMaster
Governor

Emily H. Farr
Director

South Carolina
Department of Labor, Licensing and Regulation

Division of Professional and Occupational Licensing
Office of Investigations and Enforcement



110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329
Phone: (803) 896-4470
FAX: (803) 896-4656

ELECTRONICALLY FILED - 2020 Jun 19 3:56 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1001819

November 3, 2017

Custom Carolina Painting & Drywall LLC
ATTN:
5505 Rowsham Pl. N. Charleston SC
N. Charleston SC 29418

Re: Wage Complaint: 2017-1344
Claimant: Troy F Wilson

Dear Jamie Singleton:

As an investigator, I investigate employee wage claims in order to determine employer's compliance with the South Carolina Payment of Wages Law. This office has received a wage complaint against Custom Carolina Painting & Drywall LLC alleging non-payment of wages of Troy F Wilson for the dates listed on the complaint. Under the South Carolina Payment of Wages Law 41-10-40, this office may institute an investigation of the alleged violation. Please find enclosed a copy of the wage complaint received by this office. You will be required to respond within **three business days** to this complaint so that I can fully investigate this complaint.

In order to expedite the resolution of these allegations, please provide to me by either email or fax, copies of the following documents:

- 1) A copy of any **WRITTEN TERMS OF EMPLOYMENT** provided to the claimant. These terms would include any written notice of normal working hours, wages agreed upon, time and place of payment, and deduction policies.
- 2) **The Federal Tax ID** number for the business and the **number** of employees in South Carolina.
- 3) **Time records** for the employee and **copy of pay checks** that match the time records **Dates:** 10/1/17-10/20/17
- 4) **Copy of company's payroll policy and independent contractor form**
- 5) **Summary of your company's position to each allegation, with supporting documentation, on your company letterhead.**

Failure to respond to these allegations will result in our accepting the charges made by the claimant (as stated) as factual and appropriate Warnings/Citations being issued.

Sincerely,

Heather Parsons
Investigator II
(803) 896-4819
Heather.Parsons@llr.sc.gov



Henry D. McMaster
Governor

Emily H. Farr
Director

South Carolina
Department of Labor, Licensing and Regulation

Division of Professional and Occupational Licensing
Office of Investigations and Enforcement



110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329
Phone: (803) 896-4470
FAX: (803) 896-4656

November 1, 2017

Troy F Wilson

N. Charleston SC, SC 29420

Re: Employer: Custom Carolina Painting & Drywall LLC
Case No.: 2017-1344

Dear Mr. Wilson:

I am in receipt of your wage complaint. As an Investigator, I investigate employee wage complaints to determine whether an employer is in compliance with the S.C. Payment of Wage Law. If during the investigation it is determined that the employer is in violation of the Wage Payment Statute, the appropriate sanctions will be issued to the employer. You will be notified of the outcome of your case once my investigation is complete.

The Office of Wages and Child Labor **does not** have the authority to collect your wages or make an employer pay you. You have self-serve rights under Section 41-10-80(C) of the South Carolina Payment of Wages Law.

Section 41-10-80(C) of the Payment of Wages Law states:

"In case of any failure to pay wages due to an employee as required by Subsection 41-10-40 or 41-10-50, the employee **may recover** in a Civil Action an amount equal to three times the full amount of the unpaid wages, plus costs and reasonable attorney's fees as the court may allow. Any civil action for the recovery of wages must be commenced within three years after the wages become due."

Any action you take in regards to a civil action is independent and separate from the actions and responsibilities of the Department of Labor.

Sincerely,

Heather Parsons
Investigator
(803) 896-4819
Heather.Parsons@llr.sc.gov

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CUSTOMER'S RECEIPT

SEE BACK OF THIS RECEIPT
FOR IMPORTANT CLAIM
INFORMATION

Pay to

Address

KEEP THIS
RECEIPT FOR
YOUR RECORDS

NOT
NEGOTIABLE

Year, Month, Day 2017-11-08 Post Office 294111 Amount \$432.00 Clerk 33



POSTAL MONEY ORDER

Serial Number

Year, Month, Day 2017-11-08

U.S. Dollars and Cents

\$432.00

Four Hundred Thirty Two Dollars and 00/100 *****

Amount

Pay to

Tracy Wilson

Clerk 33

Address

[Redacted Address]

From

Carolina Custom Painting

Address

5505 Rowshan Pl

Memo

Pay: 6, 9, 10

N. Charleston, SC 29418

© 2004 United States Postal Service. All Rights Reserved.

SEE REVERSE WARNING - NEGOTIABLE ONLY IN THE U.S. AND POSSESSIONS

E-1-2



SC DEPARTMENT OF LABOR LICENSING AND REGULATION

OFFICE OF WAGES AND CHILD LABOR

Date: 10/20/2017 8:26:48 AM

Case Number: 2017 - 1344

CLAIMANT INFORMATION

Name: Troy F Wilson Mr.

Phone: 8438228253

Email: [REDACTED]

Address: [REDACTED]

City: N. Charleston SC

State: SC

Zip: 29420

Date of Employment: 8/12/2015

Date of Separation: 10/10/2017

Work Status: Quit

EMPLOYER INFORMATION

Company: Custom Carolina Painting & Drywall LLC Phone: 8438100070

Contact Person: Jamie Singleton

Title: Owner

Address: [REDACTED]

N. Charleston SC

City: N. Charleston

State: SC

Zip: 29418

Type of Business: Painting

Number of Employees: 5

ADDITIONAL INFORMATION

Mr Singleton dated that he is going to make our family starve Mr Singleton took my salary a way from me without a 7 day notice he did it right on the spot he didn't pay me over time when I was working 7 days a week some days were over 8 hours. Mr Singleton didn't give me my tax papers to file for taxes.

CLAIM INFORMATION

Employee Occupation: Foreman/Painter

Rate of Pay: 18

Rate Per Job: 18

Rate Other:

DEDUCTIONS:

Federal: N

State: N

FICA: N

Worker Comp.: N

Other: Y

Explanations:

Pay Period: Weekly

Specific Pay Dates: 10/20/2017

Time and Place Of Payment: Different locations and time

Where Work Performed: Daniel's Island Mount Pleasant South Carolina

BASIS OF CLAIM:

Wages: Y

Vacation: N

Commission: N

Bad Check: N

Others: N

Unpaid Hours: 24.00

Unpaid dates: 6,9,10

Debt Amount Owed To Your Employer: 0.00

Net Amount Owed By Employer: 432.00

Date Claimant Requested Wages: 10/20/2017

Claimant Request Wage From: Carolina Custom painting and drywall LLC

Claimant Received Written Notification Regarding Wages From Employer: N

OBERMAN & OBERMAN, LLC
ATTORNEYS AND COUNSELORS AT LAW
60 MARKFIELD DRIVE, SUITE 2
CHARLESTON, SOUTH CAROLINA 29407

MARVIN I. OBERMAN
HAROLD A. OBERMAN

TELEPHONE (843) 577-7010
FACSIMILE (843) 722-7359
EMAIL: obermanlaw@bellsouth.net

August 13, 2018

Honorable Seth Whipper
Judge, Charleston County Small Claims - North
4045 Bridge View Drive
N. Charleston, SC 29405

VIA FACSIMILE
& U.S. MAIL

RE: Troy Wilson v. Carolina Custom Painting & Drywall, LLC and Jamie Singleton
Case No. 2018CV1011500709

Dear Judge Whipper:

Per your instructions from the Bench, I enclose a copy of our proposed Order in the above-captioned matter. I am willing to make changes to conform to your eventual ruling. David and I agreed to send this to you simultaneously today around 5:00 p.m.

With warmest personal regards, I remain

Yours very truly,



Harold A. Oberman

HAO/shb
Enclosure

cc: David A. Nauheim, Esquire (w/enclosure) (VIA EMAIL)

f:\ob\singleton1067\ltr\whipper.h13

ELECTRONICALLY FILED - 2020 Jun 19 3:56 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1001819

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE'S COURT
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2018CV1011500709
TROY WILSON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	<u>ORDER</u>
CAROLINA CUSTOM PAINTING &	)	
DRYWALL, LLC and JAMIE	)	
SINGLETON,	)	
	)	
Defendants.	)	
_____	)	

I tried this matter as a bench trial on July 12, 2018. Troy Wilson, the Plaintiff, was represented by David Nauheim and the Defendants, Jamie Singleton (Singleton) and Carolina Custom Paining & Drywall, LLC (Carolina), were represented by Harold Oberman. Plaintiff had sued Defendants for Unpaid Wages under the S.C. Wage Payment Act and for Unjust Enrichment. Defendants answered and counterclaimed, alleging that they had tried to pay Plaintiff, that Plaintiff was responsible for his defective work, that deductions or a setoff from his wages was appropriate, and that there was a bona fide dispute as to whether Plaintiff was owed wages.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Facts)

The relevant facts in this lawsuit are all but undisputed. Immediately before Plaintiff quit his job with Defendants, there was a dispute concerning wages. Singleton testified that Defendant did defective work at 1108 Ocean Club. He only put one (1) coat of paint on the wall and didn't

sand the door frames. Because of this, paint peeled off. This dispute arose before Plaintiff quit and before he claimed wages. Defendant withheld wages from Plaintiff because of this defective work.

Plaintiff does not convincingly dispute this account. In fact, he alleges in his Complaint as follows:

9. On or about October 10, 2017, there was a problem with paint peeling on house that Defendants had recently painted, which had not been sanded properly. Mr. Singleton blamed Mr. Wilson, although he had not been at that job site the day it was sanded. Mr. Singleton told Mr. Wilson orally that he was going to cut his pay from \$18 per hour to \$15 per hour.

10 Mr. Wilson decided to resign and the next day, October 11, 2017, he texted Mr. Singleton that he had made a decision to leave the company.

11. The Defendants owed Mr. Wilson \$432.00 in wages on October 12, 2017, for 24 hours of work at \$18 per hour, which he had completed in the pay period prior to his resignation.

13. On or about October 13, 2017, Mr. Wilson texted Mr. Singleton asking when he wanted him to turn in his uniform. Mr. Singleton called Mr. Wilson. He told him to keep the uniform and that he was not going to pay him his last paycheck, citing the recent paint peeling issue.

14. The next scheduled pay day was October 20, 2017. The Defendants did not pay Mr. Wilson the \$432.00 in wages that were due on that date.

Plaintiff states in his Trial Brief as follows:

On or about October 10, 2017, there was a problem with paint peeling on house that Defendants had recently painted, which had not been sanded properly. Mr. Singleton blamed Mr. Wilson, although he had not been at that job site the day it was sanded. Mr. Singleton told Mr. Wilson orally that he was going to cut his pay from \$18 per hour to

\$15 per hour. Mr. Wilson decided to resign and the next day, October 11, 2017, he texted Mr. Singleton that he had made a decision to leave the company.

Further, there was a course of dealing where deductions would be taken from Plaintiff's payment for defective work. Singleton testified that at the initial hire of an employee, he would give all employees a written document that contained the following language "I understand that I am responsible for materials and labor of any faulty work discovered during inspection." Singleton testified Plaintiff received this document like all other employees. The course of dealing between Plaintiff and Defendants confirm that this was the deal. On March 30, 2015, Plaintiff signed a document that stated he would pay for damaged work: "I, Troy Wilson, a subcontract employee, agree to reimburse Carolina Custom Painting and Drywall \$1,350.00 (one thousand three hundred fifty dollars) for damaged AC condenser at 27 Smith St. Payments of \$150.00 will be deducted from my check weekly starting 3-27-15."

Because of this bona fide dispute over wages, Plaintiff quit. Defendants withheld Plaintiff's last paycheck in the amount of \$432.00 because of the deficient work he had performed and the cost to correct it. I find Defendants were justified to do this.

Plaintiff reported Defendants to the Labor Board. At one point, Defendants were given three days to gather certain documents (Letter 11/3/17). They made the decision that it would be more cost effective to pay Plaintiff his claimed wage, rather than to contest the action before the Labor Board. Defendant testified that he was unaware that Plaintiff could bring an additional suit against him. He believed this payment would end the matter.

Defendants decided to mail Plaintiff his check and they did so within 30 days. Defendants sent Plaintiff his check via certified mail to 160 Stratton Dr., N. Charleston SC, 29420 and Plaintiff acknowledged that was his address. The post office tried to deliver the check on many occasions (envelope) but the check remained unclaimed. Plaintiff blamed his failure to pick up the check on his children. Singleton stated he would continue to try to give Plaintiff his check, but Plaintiff testified he would not accept it.

Singleton testified he believed it would be a bad idea if he tried to contact Plaintiff or deliver the check personally to Plaintiff. There was an ongoing dispute and a confrontation could happen. This Court agrees. Singleton was also justified in wanting to document his attempt to pay by using certified mail.

Because of Singleton's decision not to contest the matter before the Labor Board, it made certain findings. Singleton believed his decision to send the check to Plaintiff would end the matter, but this was not the case. The findings relevant to this wage dispute is that Defendants failed to "pay Troy Wilson on the scheduled pay-date of 10/20/17 for the amount of \$432.00 (paid in full but paid late)."

Defendants also counterclaimed against Plaintiff. The counterclaims consist of three jobs on which Plaintiff worked. Singleton testified as to 1108 Ocean's Club, outlined above, he was out \$300.00 in materials and approximately \$1,400.00 in labor because of Plaintiff's defective work. At 47 Waterway Island, Singleton testified he had to replace 8 boards at \$104.00 a board and \$400.00 in labor for a total cost to fix of \$1,232.00. Plaintiff admitted he was the supervisor on this job, that there was paint that dripped on the boards, and that the boards had to be replaced. As supervisor, I find Plaintiff ultimately responsible for these costs. At 1509 Jenys, Singleton showed

pictures of Plaintiff's defective work. There was paint on door knobs and other hardware discovered after Plaintiff quit. Eight (8) doors at \$75.00 a piece had to be replaced. Hinges and knobs totaled \$200.00 and labor was \$250.00, or a total of \$1,050.00. I find these counterclaims persuasive and proven.

II. FINDING OF FACTS AND CONCLUSIONS OF LAW

A. Plaintiff is Not Entitled to Treble Damages or Attorney's Fees.

Under the Wage Payment Act, though the legislature seeks to protect employees from the unjustified and wilful retention of wages by the employer, they do not want to stifle legitimate wage disputes. Rice v. Multimedia, Inc., 318 S.C. 95, 99, 456 S.E.2d 381, 383 (1995)

1. There was a bonafide dispute as to employee's entitlement to wages.

As noted above, a dispute about Plaintiffs pay arose before Plaintiff quit. Plaintiff quit because of this dispute.

Temple v. Tec-Fab, Inc., 381 S.C. 597, 675 S.E.2d 414, (2009) states that a finding that an employee is entitled to recover unpaid wages (such as the \$432.00) is not equivalent to a finding that there existed no bona fide dispute as to the employee's entitlement to those wages. Citing O'Neal v. Intermedical Hosp. of South Carolina, 355 S.C. 499, 585 S.E.2d 526 (Ct.App.2003). Just because employee was entitled to recover his wages, this does not mean there was no bona fide dispute.

Temple further states an employee was not entitled to treble damages and attorneys' fees under Payment of Wages Act in light of bona fide dispute as to whether employer owed wages, citing Futch v. McAllister, 335 S.C. 598, 518 S.E.2d 591 (1999).

Plaintiff, in his Trial Brief admits, "An award of treble damages in the discretion of the court. It is not awarded when the employer had a bona fide reason for believing wages were not owed." (Plaintiff's Trial Brief, p. 5)

Because there was a bona fide dispute as to wages, I do not award treble damages or attorney's fees. Defendants offered their defenses in good faith. The dispute arose before the claim to the Labor Board. Even if I would find that Plaintiff would ultimately prevail on the issue of wrongfully withheld wages (which I do not), I still would not award treble damages or attorney's fees as the wage issue was legitimately disputed in good faith. Plaintiff has presented no credible evidence that the dispute was not bona fide and in his complaint states facts which show it to be bona fide.

2. Discretion.

[T]he statute explicitly provides that the employee "may" recover treble damages. "The use of the word 'may' signifies permission and generally means that the action spoken of is optional or discretionary." State v. Wilson, 274 S.C. 352, 356, 264 S.E.2d 414, 416 (1980). Thus, by using "may", rather than "shall", the legislature has provided that the penalty is discretionary with the judge. This interpretation accords with the purpose of the Wage Payment Act, to wit: to protect employees from the unjustified and wilful retention of wages by the employer. The imposition of treble damages in those cases where there is a bona fide dispute would be unjust and harsh.

Rice v. Multimedia, Inc., 318 S.C. 95, 99, 456 S.E.2d 381, 383 (1995)

Because I find that there was a bonafide dispute over wages and what Defendants could withhold, I decline to award Plaintiff treble damages and attorneys fees. Additionally, I decline to award treble damages and attorneys fees because Defendants tried to pay the wage and believed he

had satisfied Plaintiff. As pointed out in the case law, a finding that the wage was in fact due does not mean that there was no bona fide dispute.

B. Defendants Legitimately Deducted Amounts From Plaintiff's Wages. Plaintiff is Responsible for the Mistakes He Made on the Job.

Even if I were to treble damages and award attorney's fees (which I do not), this amount would be more than offset by legitimate deductions, set offs, and counterclaims. Though I find Plaintiff to be an employee, the offset from his wages was legitimate. Plaintiff is responsible and accountable for the mistakes he made on the job. The course of dealings between the parties indicate that Plaintiff agreed to the terms as set forth in the document given to workers at the start of their employment, specifically that they would be "responsible for materials and labor on any faulty work." This is reaffirmed by the document of March 30, 2015. Plaintiff never contested this document and continued to work. The specific deductions, set offs and counterclaims follow.

The counterclaims consist of three jobs on which Plaintiff worked. Singleton testified as to 1108 Ocean's Club, outlined above, he was out \$300.00 in materials and approximately \$1,400.00 in labor because of Plaintiff's defective work. At 47 Waterway Island, Singleton testified he had to replace 8 boards at \$104.00 a board and \$400.00 in labor for a total cost to fix of \$1,232.00. Plaintiff admitted he was the supervisor on this job, that there was paint that dripped on the boards, and that the boards had to be replaced. As supervisor, I find Plaintiff ultimately responsible for these costs. At 1509 Jenys, Singleton showed pictures of Plaintiff's defective work. There was paint on door knobs and other hardware discovered after Plaintiff quit. Eight (8) doors at \$75.00 a piece had to be replaced. Hinges and knobs totaled \$200.00 and labor was \$250.00, or a total of \$1,050.00. I find

these counterclaims persuasive and proven. Therefore, I rule for the Defendants in the amount of their counterclaims.

WHEREFORE, I rule for the Plaintiff in the amount of \$432.00. Defendants tried to pay this amount. I do not treble that amount and I do not award attorney's fees. I rule for the Defendants on their counterclaims and set offs in the amount of \$3,982.00. This amount is deducted from any amount Defendants might owe Plaintiffs. However, since I have ruled that Defendants owe Plaintiff only \$432.00, I find a aggregate total judgment for Defendants in the amount of \$3,550.00.

AND IT IS SO ORDERED!

Honorable Seth Whipper, Judge, Charleston
County Magistrate Court

N. Charleston, South Carolina

August __, 2018.

F:\ob\singleton1067\pleading\order

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
TROY WILSON,)
Appellant,)
vs.)
CAROLINA CUSTOM PAINTING)
& DRYWALL LLC, and)
JAMIE SINGLETON,)
Respondents.)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

2020-CP-1001819
COMMON PLEAS NUMBER

No. 2018 CV 1011500709
MAGISTRATE'S COURT NUMBER,
JUDGE JACKSON SETH WHIPPER

DECLARATION OF PEGGY
SHEPPARD

I, Peggy Sheppard, am a paralegal with the Nauheim Law Office. I am above eighteen years of age and legally competent to testify in all respects.

1. I called the magistrate's court on or about July 31, 2018, just after the trial in this matter, to obtain a transcript of the trial testimony, to assist us in drafting the post-trial brief that had been requested by the court. The court told me that it was "on Judge Whipple's desk" and they could not provide it until the Judge was done with the case.
2. After Judge Whipple handed down the Transcript of Judgment on March 19, 2020, I again called magistrate's court to again request a copy of the transcript or recording of the trial testimony. We were told that a transcript had not been requested within ninety days of the trial date and therefore had been destroyed according to court policy.
3. According to my first phone call to the Court in July of 2018, we could not request a transcript until the Judge "no longer had the file on his desk"—i.e., had rendered a

verdict. Once the verdict was issued, it was past the ninety days and there was no longer a recording available from which a transcript could be made. Accordingly, despite our best efforts, we were not able to obtain a transcript or recording of trial.

I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "Peggy Sheppard", is written over a horizontal line.

Peggy Sheppard
Paralegal
Nauheim Law Office
P.O. Box 31458
Charleston, South Carolina 29417
(843) 534-5084

Charleston, South Carolina
June 19, 2020

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
TROY WILSON,)
)
Appellant,)
)
vs.)
)
CAROLINA CUSTOM PAINTING)
& DRYWALL LLC, and)
JAMIE SINGLETON,)
)
Respondents.)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

2020-CP-1001819
COMMON PLEAS NUMBER

No. 2018 CV 1011500709
MAGISTRATE'S COURT NUMBER,
JUDGE JACKSON SETH WHIPPER

PLAINTIFF'S REPLY BRIEF TO DEFENDANT'S MEMORANDUM

The law on this issue is clear and long established: when a magistrate judge fails to deliver a sufficient return, and the trial testimony was not taken down, ordering a further return would not be effective; the Court must order a trial de novo so the testimony can be taken down. *McKinley Music Co. v. Glymph*, 100 S.C. 200, 202 (S.C. 1915).

McKinley is squarely on point with this case. The plaintiff in *McKinley* sued the defendant in magistrate's court for an unpaid debt. *Id.* at 202. The magistrate ruled in favor of the defendant and the plaintiff appealed to the Circuit Court.

In the Circuit Court, the plaintiff argued that the testimony warranted only one conclusion: judgment against the defendant. *Id.* While some of the testimony from trial had been taken down, the defendant's testimony had not. The Circuit Court was unwilling to rule on an insufficient record and ordered a new trial so that the defendant's testimony could be "taken down."

The plaintiff appealed the order for a new trial but the South Carolina Supreme Court affirmed the Circuit Court. It held that “[i]f the Circuit Court was unwilling to render a final

judgment on the record as presented the Court it was a just exercise of its power to order the case retried.” The Supreme Court reasoned that “[a]n amended or further return by the magistrate would not have been effective to supply testimony which had not been ‘taken down.’ ” *Id.* “A new trial was ordered, amongst other things, to have that testimony taken down by the magistrate.” *Id.*

This is exactly the situation before this Court. There is not a sufficient record on which the Court rule, and requesting a further return from the magistrate would be futile because the testimony was not taken down.

While the holding in *McKinley* at first blush appears to be an affirmation of the Circuit Court’s exercise of discretion, it is more than that. The Supreme Court reasoned “There *must* be a trial *de novo* to have the defendant’s testimony taken down.” *Id.* (emphasis added.) *McKinley* should be read as *requiring* a new trial where, like here, there is an insufficient return and the testimony below has not been taken down.

This case falls squarely within the facts of *McKinley*. Not only is the testimony taken down in the magistrate’s court incomplete, it is actually non-existent. What is more, it has been over 20 months since the trial. Any return from the magistrate will not be effective to supply the testimony that is not “taken down.”

As stated in the Plaintiff’s Brief in Support of Appeal, the trial records of this action were destroyed by the magistrate’s office prior to a decision being rendered. [*Peggy Sheppard Dec.*] As such, it is not feasible for the magistrate to create a sufficient return. No amount of return amendments or further returns would cure this deficiency. Under *McKinley*, a new trial is the proper remedy. Additionally, this remedy is statutorily allowed to the Plaintiff through S.C. Code § 18-7-160.

The Defendant cites *Joyner v. Glimcher Properties*, 356 S.C. 460, 463 (S.C. Ct. App. 2002) for the proposition that the Plaintiff is under an “absolute obligation to secure a Return, and because he did not ask for one, to move for a writ of mandamus and because he did not, *Joyner* requires that the appeal must be dismissed.” This misstates the holding of *Joyner* and misconstrues the facts of this case. And further, *Joyner* is distinguishable.

Joyner was an appeal of a dismissal for failure to prosecute, which is not the issue here. Unlike here, in *Joyner*, the magistrate did not file any return whatsoever. The appellant made no effort to obtain the magistrate’s compliance. When the respondent asked the court for trial date, the appellant did not respond. The respondent then moved to dismiss for *failure to prosecute* and the circuit court dismissed the case. It was only *after* the case was dismissed for the appellant’s own failure to prosecute, that the appellant tried to resurrect it by attempting to reverse the dismissal. The appellant argued that his case should not have been dismissed because the burden was on the circuit court, not him, to compel the magistrate to deliver a return. The Court of Appeals disagreed and affirmed the dismissal.

Joyner is distinguishable because this is not a failure to prosecute case. More importantly, *Joyner* is not about an *insufficient* magistrate’s return; it is a case about when the magistrate fails to file any return whatsoever.

The magistrate in *Joyner* did not issue any return within 30 days of the appeal, as required by S.C. Code § 18-7-70. *Joyner* and other cases¹ hold that when the magistrate does not file a return, “the burden is on the appellant to obtain the magistrate’s compliance, by mandamus if necessary.” *State v. Barbee*, 280 S.C. 328 (S.C. 1984). However, here the magistrate *did* file a return.

¹ *State v. Barbee*, 280 S.C. 328 (S.C. 1984); *State v. Eaves*, 260 S.C. 523 (S.C. 1973)

Joyner is not only irrelevant, but also a writ of mandamus would not be appropriate. A writ of mandamus is used to “compel performance, when refused, of a ministerial duty.” *Plum Creek Development v. City of Conway*, 334 S.C. 30, 39 (S.C. 1999) (citing 55 C.J.S. Mandamus § 3 (1998)). Here, the Magistrate has technically done his duty—he has delivered a return. A writ of mandamus would therefore be inappropriate.

The issue here is that the magistrate’s return was insufficient. This can only be corrected by an order directing the magistrate to deliver a further return (which would be futile), or a new trial, which *would* cure the failure to take down the trial testimony.

Joyner is also distinguishable because there was no suggestion that the testimony was not taken down or that mandamus would have been futile. Therefore, sending the case back to the magistrate could have produced a sufficient return. *Joyner* and its line of cases is therefore both distinguishable and irrelevant.

It is also worth noting that *Joyner* does not hold that an appellant is required to move for a writ of mandamus, as Respondent claims. Rather, it only holds that “[w]hen there is no return, the appellant from the magistrate’s court must act with due diligence and seek a writ of mandamus *if necessary* to compel the return” *Id.* at 403 (emphasis added).

Joyner only requires that the appellant act with due diligence to correct the situation. That could mean moving for mandamus “if necessary” or it could mean some other means of correcting the situation. Here the plaintiff is acting with due diligence as *Joyner* would require (if it was controlling): he is attempting to correct the insufficient return by a new trial, as authorized by S.C. Code § 18-7-160.

And of course, S.C. Code § 18-7-160 explicitly authorizes the Appellant to move for a new trial at any time before or after judgment. It strains credibility for the Respondent to

argue that the Appellant is barred from obtaining a new trial, when he is explicitly entitled to ask for this relief by statute.

Like in *McKinley*, there is no record on which the Circuit Court may rule. And like in *McKinley*, since the testimony in the magistrate's court was not taken down, and the case was tried to the magistrate over 20 months ago, the only way for the Appellant to have the appeal he is entitled to is for the Circuit Court to grant a trial de novo. The Court should therefore order a trial de novo in the Circuit Court.

Respectfully Submitted,

NAUHEIM LAW OFFICE, LLC

s/ David A. Nauheim

David A. Nauheim

Attorneys for the Plaintiff

PO Box 31458

Charleston, South Carolina 29407

(843) 534-5084

Charleston, South Carolina
August 27, 2020

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)	NINTH JUDICIAL CIRCUIT
TROY WILSON,)	<u>2020-CP-100-1819</u>
Plaintiff,)	COMMON PLEAS NUMBER
vs.)	<u>No. 2018 CV 1011500709</u>
CAROLINA CUSTOM PAINTING)	MAGISTRATE'S COURT NUMBER,
& DRYWALL LLC, and)	JUDGE JACKSON SETH WHIPPER
JAMIE SINGLETON,)	PLAINTIFF'S SECOND NOTICE OF
Defendants.)	CIVIL APPEAL

COMES NOW the Plaintiff, Troy Wilson, hereby gives his Second Notice of Appeal from the judgment of the magistrate's court in the above action, to the Circuit Court of Common Pleas, in the county of Charleston.

On April 14, 2020, the Appellant timely appealed the judgement of the Magistrate's Court, which the Plaintiff received on April 7, 2020. The Appellant also moved for a new trial. This Court denied the Appellant's Appeal and Motion for New Trial without prejudice on September 3, 2020 and Ordered the Magistrate deliver a Return within 30 days. A Consent Order was entered on October 14, 2020 extending the deadline for the Magistrate's Return to October 15, 2020. On October 19, 2020 the Magistrate's Return was filed. The Appellant now renew files his second Notice of Appeal from the judgment of the Magistrate's Court. He also renews his Motion for a New Trial.

The appellant's exceptions to the judgment of the magistrate are set forth as follows:

- (1) The rulings were contrary to the evidence;
- (2) The rulings were contrary to the law;

(3) To wit, Court erred by failing to find that:

- a. Defendants failed to give the Plaintiff written notice of the terms of employment, including the amount of wages, the time and place wages would be paid, and allowable deductions;
- b. That such failure violated the South Carolina Payment of Wages Act. S.C. Code § 41-10-10 et seq ("Payment of Wages Act");
- c. That such failure barred the Defendants from making any deductions to the Plaintiff's wages that were not required by law;
- d. That at the time of the Plaintiff's separation from employment, Defendants owed the Plaintiff \$432 in wages;
- e. That said wages were due October 20, 2017, the next scheduled payday.
- f. That Defendants did not pay the Plaintiff \$432 in said wages due at the time that they were due;
- g. That such failure violated the Payment of Wages Act;
- h. That Defendants' concession in closing argument, that Defendants owed the Plaintiff \$432 in unpaid wages and the only issue was treble damages and attorney's, established the Defendants' liability and damages on the unpaid wages claim in favor of the Plaintiff as a matter of law;
- i. That the South Carolina Department of Labor's (SCDOL) citation of the Defendants for violating the Payment of Wages Act, and Defendants' failure to appeal that determination, also established Defendants' liability as a matter of law on Plaintiff's unpaid wages claim as well as SCDOL's factual findings, and the other violations found by SCDOL with regard to numerous violations of SC 41-30-30(A). *Bennett v. South Carolina Dep't of*

Corrections, 305 S.C. 310, 408 S.E.2d 230 (1991); *Keiger v. Citgo, Coastal Petroleum, Inc.*, 482 S.E.2d 792, 326 S.C. 369, 327 N. 3 (Ct. App. 1997) (granting summary judgment in favor of plaintiff because “Respondents had paid Keiger the amount the South Carolina Department of Labor determined she was due, and because she had not appealed that determination, she was barred from relitigating it.”);

- j. That Defendants did contest the matter before the Labor Board and present evidence and that the Labor Board’s findings should therefore have claim and issue preclusive effect;
- k. The Defendants did not have a “bona fide” or “good faith” basis for their failure to timely pay the Plaintiff the \$432 in wages due;
- l. That Defendants did not give written notice to the Plaintiff, pursuant to the Payment of Wages Act, as such Defendants were not permitted to deduct from Plaintiff’s wages for alleged breakage or faulty work;
- m. That because Defendants did not give said written notice, the Court may not deduct from Plaintiff’s claim for faulty work or breakage nor permit a counterclaim by Defendants for the same. *Bennett v. Lambroukos*, 303 S.C. 481, 483, 401 S.E.2d 428 (Ct. App. 1991) (holding it was error for the circuit court to deduct for breakage in a PWA claim, when there was no finding of written notice of a deduction for breakage);
- n. That the employer could not avoid its obligations under the Payment of Wages Act by asserting a deduction against Plaintiff’s claim for faulty work or breakage under a quasi-contract or course-of dealing theory. See *Cato v. Mills*, 129 S.E. 203, 132 S.C. 454 (S.C. 1925) (refusing to allow employers to

ignore the statute by claiming their employees had by contract or custom waived their statutory right to prompt payment of wages); S.C. Code § 41-10-100 ("No provision of this chapter may be contravened or set aside by a private agreement.");

- o. That for the same reasons, the Defendant was barred from bringing a counterclaim against the Plaintiff for faulty work or breakage;
- p. That since a deduction from wages for alleged faulty work or breakage, without prior written notice, would violate the law, Defendants may not assert the same, as a basis for a good faith dispute as to whether the wages were due, when that reason itself would violate the law.
- q. That having violated the Payment of Wages Act, without a good faith basis for disputing that the wages were due, Defendants were liable to the Plaintiff for treble damages, reasonable attorney's fees, and costs in the amount of \$10,276.50. S.C. Code § 41-10-80 (C); *Rice v. Multimedia, Inc.*, 318 S.C. 95, 99 (S.C. 1995).
- r. That in any event, Defendant Singleton was without first-hand knowledge of which employee was responsible for alleged faulty work or breakage, and therefore his testimony attributing the same to the Plaintiff was inadmissible hearsay;
- s. That Defendants offered no receipts or invoices or any other evidence to establish beyond speculation the value of the damages caused by alleged faulty work or breakage, and therefore those damages were too speculative to be awarded. See *Clark v. Cantrell*, 339 S.C. 369, 529 S.E.2d 528 (2000); *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537

(1991); *Barnwell v. Barber-Colman Co.*, 301 S.C. 534, 393 S.E.2d 162 (1989); *Whisenant v. James Island Corp.*, 277 S.C. 10, 281 S.E.2d 794 (1981).

- t. That Defendants' alleged attempt to pay the Plaintiff the wages due (after being cited by the SCDOL) did not avoid liability under the Payment of Wages Act, because the attempted payment came after the time that pay was due under S.C. Code § 41-10-50, and in any case the payment was returned undelivered to the Defendant and not received by the Plaintiff;
- u. That Defendants' attempt to pay the Plaintiff the wages due (after being cited by the SCDOL) precluded an award of treble damages and attorney's fees;
- v. That an error in paragraph 12 of the Plaintiff's Complaint did not establish that fact conclusively in trial, and Plaintiff therefore was permitted to contradict the same with his testimony in trial. *Gary v. Lowcountry Medical Transport*, No. 2016-000222 (May 23, 2018);

(4) The judgment awarded to the Defendants by the Court in the amount of \$3,550.00 is arbitrary because that amount does not accord with any combination of the relief requested by the parties and bears no relation to the evidence.

Respectfully Submitted,

NAUHEIM LAW OFFICE, LLC

s/ David A. Nauheim
David A. Nauheim
Attorneys for the Plaintiff
PO Box 31458
Charleston, South Carolina 29407
(843) 534-5084

Charleston, South Carolina
October 29, 2020

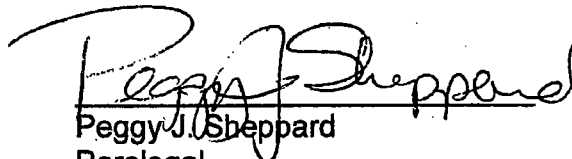
CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Notice of Appeal was served on the following this 30th day of October, 2020 via the court's electronic noticing system and regular, first-class mail:

Magistrate J. Seth Whipper
North Area Small Claims Court
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive, Suite B146
P.O. Box 70235
North Charleston, SC 29415-0235

Clerk of Court
North Area Small Claims Court
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive, Suite B146
P.O. Box 70235
North Charleston, SC 29415-0235

Harold Alan Oberman
60 Markfield Drive, Suite 2
Charleston, SC 29407



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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2020-CP-10-1819
 TROY WILSON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	<u>DEFENDANTS' MEMORANDUM</u>
CAROLINA CUSTOM PAINTING &	)	
DRYWALL, LLC and JAMIE SINGLETON,	)	
	)	
Defendants.	)	
_____	)	

This matter was tried as a bench trial on July 12, 2018. Troy Wilson, the Plaintiff, was represented by David Nauheim and the Defendants, Jamie Singleton (Singleton) and Carolina Custom Paining & Drywall, LLC (Carolina), were represented by Harold Oberman. Plaintiff had sued Defendants for Unpaid Wages under the S.C. Wage Payment Act and for Unjust Enrichment. Defendants answered and counterclaimed, alleging that they had tried to pay Plaintiff, that Plaintiff was responsible for his defective work, that deductions or a setoff from his wages was appropriate, and that there was a bona fide dispute as to whether Plaintiff was owed wages.

I. FINDINGS OF FACT (As Found by the Trial Judge)

As found by the trial judge, the relevant facts in this lawsuit are all but undisputed (Order of September 8, 2020) (Exhibit "A"). Immediately before Plaintiff quit his job with Defendants, there was a dispute concerning wages. Singleton testified that Defendant did defective work at 1108 Ocean Club. He only put one (1) coat of paint on the wall and didn't sand the door frames. Because

of this, paint peeled off. This dispute arose before Plaintiff quit and before he claimed wages. Defendant withheld wages from Plaintiff because of this defective work.

Plaintiff does not convincingly dispute this account. In fact, he alleges in his Complaint (Exhibit "B") as follows:

9. On or about October 10, 2017, there was a problem with paint peeling on house that Defendants had recently painted, which had not been sanded properly. Mr. Singleton blamed Mr. Wilson, although he had not been at that job site the day it was sanded. Mr. Singleton told Mr. Wilson orally that he was going to cut his pay from \$18 per hour to \$15 per hour.

10 Mr. Wilson decided to resign and the next day, October 11, 2017, he texted Mr. Singleton that he had made a decision to leave the company.

11. The Defendants owed Mr. Wilson \$432.00 in wages on October 12, 2017, for 24 hours of work at \$18 per hour, which he had completed in the pay period prior to his resignation.

13. On or about October 13, 2017, Mr. Wilson texted Mr. Singleton asking when he wanted him to turn in his uniform. Mr. Singleton called Mr. Wilson. He told him to keep the uniform and that he was not going to pay him his last paycheck, citing the recent paint peeling issue.

14. The next scheduled pay day was October 20, 2017. The Defendants did not pay Mr. Wilson the \$432.00 in wages that were due on that date.

Plaintiff states in his Trial Brief (Exhibit "C") as follows:

On or about October 10, 2017, there was a problem with paint peeling on house that Defendants had recently painted, which had not been sanded properly. Mr. Singleton blamed Mr. Wilson, although he had not been at that job site the day it was sanded. Mr. Singleton told Mr. Wilson orally that he was going to cut his pay from \$18 per hour to

\$15 per hour. Mr. Wilson decided to resign and the next day, October 11, 2017, he texted Mr. Singleton that he had made a decision to leave the company.

Further, there was a course of dealing where deductions would be taken from Plaintiff's payment for defective work. Singleton testified that at the initial hire of an employee, he would give all employees a written document that contained the following language " I understand that I am responsible for materials and labor of any faulty work discovered during inspection" (Exhibit "D"). Singleton testified Plaintiff received this document like all other employees. The course of dealing between Plaintiff and Defendants confirm that this was the deal. On March 30, 2015, Plaintiff signed a document that stated he would pay for damaged work: "I, Troy Wilson, a subcontract employee, agree to reimburse Carolina Custom Painting and Drywall \$1,350.00 (one thousand three hundred fifty dollars) for damaged AC condenser at 27 Smith St. Payments of \$150.00 will be deducted from my check weekly starting 3-27-15." (Exhibit "E").

Because of this bona fide dispute over wages, Plaintiff quit. Defendants withheld Plaintiff's last paycheck in the amount of \$432.00 because of the deficient work he had performed and the cost to correct it. The trial judge found Defendants were justified to do this.

Plaintiff reported Defendants to the Labor Board. At one point, Defendants were given three days to gather certain documents (Letter 11/3/17) (Exhibit "F"). They made the decision that it would be more cost effective to pay Plaintiff his claimed wage, rather than to contest the action before the Labor Board. Defendant testified that he was unaware that Plaintiff could bring an additional suit against him. He believed this payment would end the matter.

Defendants decided to mail Plaintiff his check and they did so within 30 days. Defendants sent Plaintiff his check via certified mail to 160 Stratton Dr., N. Charleston SC, 29420 and Plaintiff acknowledged that was his address. The post office tried to deliver the check on many occasions (envelope) (Exhibit "G") but the check remained unclaimed. Plaintiff blamed his failure to pick up the check on his children. Singleton stated he would continue to try to give Plaintiff his check, but Plaintiff testified he would not accept it.

Singleton testified he believed it would be a bad idea if he tried to contact Plaintiff or deliver the check personally to Plaintiff. The trial judge found that there was an ongoing dispute and a confrontation could happen and that Singleton was also justified in wanting to document his attempt to pay by using certified mail.

Because of Singleton's decision not to contest the matter before the Labor Board, it made certain findings. Singleton believed his decision to send the check to Plaintiff would end the matter, but this was not the case. The findings relevant to this wage dispute is that Defendants failed to "pay Troy Wilson on the scheduled pay-date of 10/20/17 for the amount of \$432.00 (paid in full but paid late)."

Defendants also counterclaimed against Plaintiff. The counterclaims consist of three jobs on which Plaintiff worked. Singleton testified as to 1108 Ocean's Club, outlined above, he was out \$300.00 in materials and approximately \$1,400.00 in labor because of Plaintiff's defective work. At 47 Waterway Island, Singleton testified he had to replace 8 boards at \$104.00 a board and \$400.00 in labor for a total cost to fix of \$1,232.00. Plaintiff admitted he was the supervisor on this job, that there was paint that dripped on the boards, and that the boards had to be replaced. As supervisor, the trial judge found that Plaintiff ultimately responsible for these costs. At 1509 Jenys,

Singleton showed pictures of Plaintiff's defective work. There was paint on door knobs and other hardware discovered after Plaintiff quit. Eight (8) doors at \$75.00 a piece had to be replaced. Hinges and knobs totaled \$200.00 and labor was \$250.00, or a total of \$1,050.00. The trial judge found these counterclaims persuasive and proven.

II. ARGUMENT

A. Plaintiff is Not Entitled to Treble Damages or Attorney's Fees.

Under the Wage Payment Act, though the legislature seeks to protect employees from the unjustified and wilful retention of wages by the employer, they do not want to stifle legitimate wage disputes. Rice v. Multimedia, Inc., 318 S.C. 95, 99, 456 S.E.2d 381, 383 (1995)

1. There was a bonafide dispute as to employee's entitlement to wages.

As noted above, a dispute about Plaintiffs pay arose before Plaintiff quit. Plaintiff quit because of this dispute.

Temple v. Tec-Fab, Inc., 381 S.C. 597, 675 S.E.2d 414, (2009) states that a finding that an employee is entitled to recover unpaid wages (such as the \$432.00) is not equivalent to a finding that there existed no bona fide dispute as to the employee's entitlement to those wages. Citing O'Neal v. Intermedical Hosp. of South Carolina, 355 S.C. 499, 585 S.E.2d 526 (Ct.App.2003). Just because employee was entitled to recover his wages, this does not mean there was no bona fide dispute.

Temple further states an employee was not entitled to treble damages and attorneys' fees under Payment of Wages Act in light of bona fide dispute as to whether employer owed wages, citing Futch v. McAllister, 335 S.C. 598, 518 S.E.2d 591 (1999).

Plaintiff, in his Trial Brief before the trial judge admits, "An award of treble damages in the discretion of the court. It is not awarded when the employer had a bona fide reason for believing wages were not owed." (Plaintiff's Trial Brief, p. 5)

Because there was a bona fide dispute as to wages, the trial judge did not award treble damages or attorney's fees. He found Defendants offered their defenses in good faith. The dispute arose before the claim to the Labor Board. The trial judge found "Even if I would find that Plaintiff would ultimately prevail on the issue of wrongfully withheld wages (which I do not), I still would not award treble damages or attorney's fees as the wage issue was legitimately disputed in good faith. Plaintiff has presented no credible evidence that the dispute was not bona fide and in his complaint states facts which show it to be bona fide."

2. This Ruling Not Toward Treble Damages or Attorneys' Fees is Well Within the Trial Judge's Discretion and Cannot Be Overturned on Appeal.

[T]he statute explicitly provides that the employee "may" recover treble damages. "The use of the word 'may' signifies permission and generally means that the action spoken of is optional or discretionary." State v. Wilson, 274 S.C. 352, 356, 264 S.E.2d 414, 416 (1980). Thus, by using "may", rather than "shall", the legislature has provided that the penalty is discretionary with the judge. This interpretation accords with the purpose of the Wage Payment Act, to wit: to protect employees from the unjustified and wilful retention of wages by the employer. The imposition of treble damages in those cases where there is a bona fide dispute would be unjust and harsh.

Rice v. Multimedia, Inc., 318 S.C. 95, 99, 456 S.E.2d 381, 383 (1995)

A ruling on treble damages is at the discretion of the trial judge. Regardless of the facts, it is within the trial judge's discretion.

Here, because the trial judge found that there was a bonafide dispute over wages and what Defendants could withhold, he declined to award Plaintiff treble damages and attorneys fees. Additionally, he declined to award treble damages and attorneys fees because Defendants tried to pay the wage and believed he had satisfied Plaintiff. As pointed out in the case law, a finding that the wage was in fact due does not mean that there was no bona fide dispute.

B. Defendants Legitimately Deducted Amounts From Plaintiff's Wages. Plaintiff is Responsible for the Mistakes He Made on the Job.

Even if the trial judge were to treble damages and award attorney's fees (which he did not), this amount would be more than offset by legitimate deductions, set offs, and counterclaims. Though he found Plaintiff to be an employee, the offset from his wages was legitimate. Plaintiff is responsible and accountable for the mistakes he made on the job. The course of dealings between the parties indicate that Plaintiff agreed to the terms as set forth in the document given to workers at the start of their employment, specifically that they would be "responsible for materials and labor on any faulty work." This is reaffirmed by the document of March 30, 2015. Plaintiff never contested this document and continued to work. The specific deductions, set offs and counterclaims follow.

The counterclaims consist of three jobs on which Plaintiff worked. Singleton testified as to 1108 Ocean's Club, outlined above, he was out \$300.00 in materials and approximately \$1,400.00 in labor because of Plaintiff's defective work. At 47 Waterway Island, Singleton testified he had to replace 8 boards at \$104.00 a board and \$400.00 in labor for a total cost to fix of \$1,232.00. Plaintiff admitted he was the supervisor on this job, that there was paint that dripped on the boards, and that the boards had to be replaced. As supervisor, I find Plaintiff ultimately responsible for these costs.

At 1509 Jenys, Singleton showed pictures of Plaintiff's defective work (Exhibit "H"). There was paint on door knobs and other hardware discovered after Plaintiff quit. Eight (8) doors at \$75.00 a piece had to be replaced. Hinges and knobs totaled \$200.00 and labor was \$250.00, or a total of \$1,050.00. The trial judge found these counterclaims persuasive and proven. Therefore, he ruled for the Defendants in the amount of their counterclaims.

CONCLUSION

The trial judge ruled for the Plaintiff in the amount of \$432.00. Defendants tried to pay this amount. As was well within his discretion, he did not treble that amount and he did not award attorney's fees. He ruled for the Defendants on their counterclaims and set offs in the amount of \$3,982.00. This amount was deducted from any amount Defendants might owe Plaintiffs. Since he ruled that Defendants owe Plaintiff only \$432.00, he found an aggregate total judgment for Defendants in the amount of \$3,550.00. This amount should not be overturned on appeal, as there are no errors by the trial judge.

OBERMAN & OBERMAN, LLC

s/Harold A. Oberman

Harold A. Oberman
60 Markfield Drive, Suite 2
Charleston, SC 29407
(843) 577-7010
ATTORNEYS FOR DEFENDANTS

Charleston, South Carolina

December 3, 2020.

f:\ob\singleton1067\appeal\pleading\memo

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
IN THE MAGISTRATE'S COURT
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2018CV1011500709

TROY WILSON,

Plaintiff,

vs.

CAROLINA CUSTOM PAINTING &
DRYWALL, LLC and JAMIE
SINGLETON,

Defendants.

ORDER

FILED IN CHARLESTON COUNTY

SEP 08 2020

NORTH AREA SMALL CLAIMS COURT

I tried this matter as a bench trial on July 12, 2018. Troy Wilson, the Plaintiff, was represented by David Nauheim and the Defendants, Jamie Singleton (Singleton) and Carolina Custom Paining & Drywall, LLC (Carolina), were represented by Harold Oberman. Plaintiff had sued Defendants for Unpaid Wages under the S.C. Wage Payment Act and for Unjust Enrichment. Defendants answered and counterclaimed, alleging that they had tried to pay Plaintiff, that Plaintiff was responsible for his defective work, that deductions or a setoff from his wages was appropriate, and that there was a bona fide dispute as to whether Plaintiff was owed wages.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Facts)

The relevant facts in this lawsuit are all but undisputed. Immediately before Plaintiff quit his job with Defendants, there was a dispute concerning wages. Singleton testified that Defendant did defective work at 1108 Ocean Club. He only put one (1) coat of paint on the wall and didn't

Exhibit "A"

sand the door frames. Because of this, paint peeled off. This dispute arose before Plaintiff quit and before he claimed wages. Defendant withheld wages from Plaintiff because of this defective work.

Plaintiff does not convincingly dispute this account. In fact, he alleges in his Complaint as follows:

9. On or about October 10, 2017, there was a problem with paint peeling on house that Defendants had recently painted, which had not been sanded properly. Mr. Singleton blamed Mr. Wilson, although he had not been at that job site the day it was sanded. Mr. Singleton told Mr. Wilson orally that he was going to cut his pay from \$18 per hour to \$15 per hour.

10 Mr. Wilson decided to resign and the next day, October 11, 2017, he texted Mr. Singleton that he had made a decision to leave the company.

11. The Defendants owed Mr. Wilson \$432.00 in wages on October 12, 2017, for 24 hours of work at \$18 per hour, which he had completed in the pay period prior to his resignation.

13. On or about October 13, 2017, Mr. Wilson texted Mr. Singleton asking when he wanted him to turn in his uniform. Mr. Singleton called Mr. Wilson. He told him to keep the uniform and that he was not going to pay him his last paycheck, citing the recent paint peeling issue.

14. The next scheduled pay day was October 20, 2017. The Defendants did not pay Mr. Wilson the \$432.00 in wages that were due on that date.

Plaintiff states in his Trial Brief as follows:

On or about October 10, 2017, there was a problem with paint peeling on house that Defendants had recently painted, which had not been sanded properly. Mr. Singleton blamed Mr. Wilson, although he had not been at that job site the day it was sanded. Mr. Singleton told Mr. Wilson orally that he was going to cut his pay from \$18 per hour to

\$15 per hour. Mr. Wilson decided to resign and the next day, October 11, 2017, he texted Mr. Singleton that he had made a decision to leave the company.

Further, there was a course of dealing where deductions would be taken from Plaintiff's payment for defective work. Singleton testified that at the initial hire of an employee, he would give all employees a written document that contained the following language "I understand that I am responsible for materials and labor of any faulty work discovered during inspection." Singleton testified Plaintiff received this document like all other employees. The course of dealing between Plaintiff and Defendants confirm that this was the deal. On March 30, 2015, Plaintiff signed a document that stated he would pay for damaged work: "I, Troy Wilson, a subcontract employee, agree to reimburse Carolina Custom Painting and Drywall \$1,350.00 (one thousand three hundred fifty dollars) for damaged AC condenser at 27 Smith St. Payments of \$150.00 will be deducted from my check weekly starting 3-27-15."

Because of this bona fide dispute over wages, Plaintiff quit. Defendants withheld Plaintiff's last paycheck in the amount of \$432.00 because of the deficient work he had performed and the cost to correct it. I find Defendants were justified to do this.

Plaintiff reported Defendants to the Labor Board. At one point, Defendants were given three days to gather certain documents (Letter 11/3/17). They made the decision that it would be more cost effective to pay Plaintiff his claimed wage, rather than to contest the action before the Labor Board. Defendant testified that he was unaware that Plaintiff could bring an additional suit against him. He believed this payment would end the matter.

Defendants decided to mail Plaintiff his check and they did so within 30 days. Defendants sent Plaintiff his check via certified mail to 160 Stratton Dr., N. Charleston SC, 29420 and Plaintiff acknowledged that was his address. The post office tried to deliver the check on many occasions (envelope) but the check remained unclaimed. Plaintiff blamed his failure to pick up the check on his children. Singleton stated he would continue to try to give Plaintiff his check, but Plaintiff testified he would not accept it.

Singleton testified he believed it would be a bad idea if he tried to contact Plaintiff or deliver the check personally to Plaintiff. There was an ongoing dispute and a confrontation could happen. This Court agrees. Singleton was also justified in wanting to document his attempt to pay by using certified mail.



Because of Singleton's decision not to contest the matter before the Labor Board, it made certain findings. Singleton believed his decision to send the check to Plaintiff would end the matter, but this was not the case. The findings relevant to this wage dispute is that Defendants failed to "pay Troy Wilson on the scheduled pay-date of 10/20/17 for the amount of \$432.00 (paid in full but paid late)."

Defendants also counterclaimed against Plaintiff. The counterclaims consist of three jobs on which Plaintiff worked. Singleton testified as to 1108 Ocean's Club, outlined above, he was out \$300.00 in materials and approximately \$1,400.00 in labor because of Plaintiff's defective work. At 47 Waterway Island, Singleton testified he had to replace 8 boards at \$104.00 a board and \$400.00 in labor for a total cost to fix of \$1,232.00. Plaintiff admitted he was the supervisor on this job, that there was paint that dripped on the boards, and that the boards had to be replaced. As supervisor, I find Plaintiff ultimately responsible for these costs. At 1509 Jenys, Singleton showed

pictures of Plaintiff's defective work. There was paint on door knobs and other hardware discovered after Plaintiff quit. Eight (8) doors at \$75.00 a piece had to be replaced. Hinges and knobs totaled \$200.00 and labor was \$250.00, or a total of \$1,050.00. I find these counterclaims persuasive and proven.

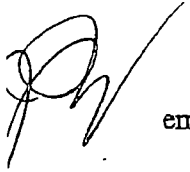
II. FINDING OF FACTS AND CONCLUSIONS OF LAW

A. Plaintiff is Not Entitled to Treble Damages or Attorney's Fees.

Under the Wage Payment Act, though the legislature seeks to protect employees from the unjustified and wilful retention of wages by the employer, they do not want to stifle legitimate wage disputes. Rice v. Multimedia, Inc., 318 S.C. 95, 99, 456 S.E.2d 381, 383 (1995)

1. There was a bonafide dispute as to employee's entitlement to wages.

As noted above, a dispute about Plaintiffs pay arose before Plaintiff quit. Plaintiff quit because of this dispute.



Temple v. Tec-Fab, Inc., 381 S.C. 597, 675 S.E.2d 414, (2009) states that a finding that an employee is entitled to recover unpaid wages (such as the \$432.00) is not equivalent to a finding that there existed no bona fide dispute as to the employee's entitlement to those wages. Citing O'Neal v. Intermedical Hosp. of South Carolina, 355 S.C. 499, 585 S.E.2d 526 (Ct.App.2003). Just because employee was entitled to recover his wages, this does not mean there was no bona fide dispute.

Temple further states an employee was not entitled to treble damages and attorneys' fees under Payment of Wages Act in light of bona fide dispute as to whether employer owed wages, citing Futch v. McAllister, 335 S.C. 598, 518 S.E.2d 591 (1999).

Plaintiff, in his Trial Brief admits, "An award of treble damages in the discretion of the court. It is not awarded when the employer had a bona fide reason for believing wages were not owed." (Plaintiff's Trial Brief, p. 5)

Because there was a bona fide dispute as to wages, I do not award treble damages or attorney's fees. Defendants offered their defenses in good faith. The dispute arose before the claim to the Labor Board. Even if I would find that Plaintiff would ultimately prevail on the issue of wrongfully withheld wages (which I do not), I still would not award treble damages or attorney's fees as the wage issue was legitimately disputed in good faith. Plaintiff has presented no credible evidence that the dispute was not bona fide and in his complaint states facts which show it to be bona fide.

2. Discretion.



[T]he statute explicitly provides that the employee "may" recover treble damages. "The use of the word 'may' signifies permission and generally means that the action spoken of is optional or discretionary." State v. Wilson, 274 S.C. 352, 356, 264 S.E.2d 414, 416 (1980). Thus, by using "may", rather than "shall", the legislature has provided that the penalty is discretionary with the judge. This interpretation accords with the purpose of the Wage Payment Act, to wit: to protect employees from the unjustified and wilful retention of wages by the employer. The imposition of treble damages in those cases where there is a bona fide dispute would be unjust and harsh.

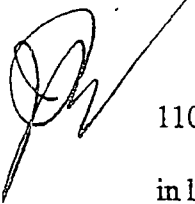
Rice v. Multimedia, Inc., 318 S.C. 95, 99, 456 S.E.2d 381, 383 (1995)

Because I find that there was a bonafide dispute over wages and what Defendants could withhold, I decline to award Plaintiff treble damages and attorneys fees. Additionally, I decline to award treble damages and attorneys fees because Defendants tried to pay the wage and believed he

had satisfied Plaintiff. As pointed out in the case law, a finding that the wage was in fact due does not mean that there was no bona fide dispute.

B. Defendants Legitimately Deducted Amounts From Plaintiff's Wages. Plaintiff is Responsible for the Mistakes He Made on the Job.

Even if I were to treble damages and award attorney's fees (which I do not), this amount would be more than offset by legitimate deductions, set offs, and counterclaims. Though I find Plaintiff to be an employee, the offset from his wages was legitimate. Plaintiff is responsible and accountable for the mistakes he made on the job. The course of dealings between the parties indicate that Plaintiff agreed to the terms as set forth in the document given to workers at the start of their employment, specifically that they would be "responsible for materials and labor on any faulty work." This is reaffirmed by the document of March 30, 2015. Plaintiff never contested this document and continued to work. The specific deductions, set offs and counterclaims follow.

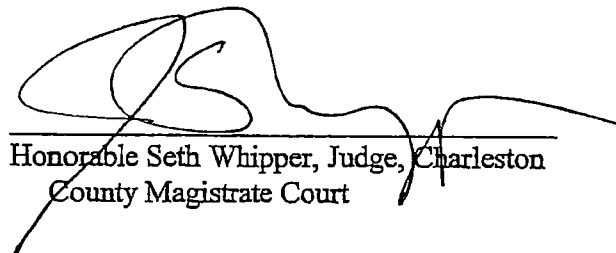


The counterclaims consist of three jobs on which Plaintiff worked. Singleton testified as to 1108 Ocean's Club, outlined above, he was out \$300.00 in materials and approximately \$1,400.00 in labor because of Plaintiff's defective work. At 47 Waterway Island, Singleton testified he had to replace 8 boards at \$104.00 a board and \$400.00 in labor for a total cost to fix of \$1,232.00. Plaintiff admitted he was the supervisor on this job, that there was paint that dripped on the boards, and that the boards had to be replaced. As supervisor, I find Plaintiff ultimately responsible for these costs. At 1509 Jenys, Singleton showed pictures of Plaintiff's defective work. There was paint on door knobs and other hardware discovered after Plaintiff quit. Eight (8) doors at \$75.00 a piece had to be replaced. Hinges and knobs totaled \$200.00 and labor was \$250.00, or a total of \$1,050.00. I find

these counterclaims persuasive and proven. Therefore, I rule for the Defendants in the amount of their counterclaims.

WHEREFORE, I rule for the Plaintiff in the amount of \$432.00. Defendants tried to pay this amount. I do not treble that amount and I do not award attorney's fees. I rule for the Defendants on their counterclaims and set offs in the amount of \$3,982.00. This amount is deducted from any amount Defendants might owe Plaintiffs. However, since I have ruled that Defendants owe Plaintiff only \$432.00, I find a aggregate total judgment for Defendants in the amount of \$3,550.00.

AND IT IS SO ORDERED!



Honorable Seth Whipper, Judge, Charleston
County Magistrate Court

N. Charleston, South Carolina

March 19, 2020

F:\ob\singleton1057\pleading\order

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE MAGISTRATE'S COURT

TROY WILSON,)
Plaintiff,)

No. 2018CV 1615-2020

COMPLAINT

vs.)

CAROLINA CUSTOM PAINTING)
& DRYWALL, LLC, and)
JAMIE SINGLETON, and)
Defendants.)

FILED IN
CHARLESTON COUNTY
APR 19 2018
NORTH AREA
SMALL CLAIMS COURT

Plaintiff Troy Wilson, by and through undersigned counsel, do make the following claims against the Defendants.

PARTIES

1. Plaintiff is a citizen and resident of the County of Charleston, South Carolina.
2. Upon information and belief, Defendant CAROLINA CUSTOM PAINTING & DRYWALL, LLC is a domestic Limited Liability Corporation is licensed to do business in South Carolina and has its principal place of business in Charleston County, South Carolina.
3. Upon information and belief, Defendant JAMIE SINGLETON is the owner and operator of CAROLINA CUSTOM PAINTING & DRYWALL, LLC and an Agent or Officer of said company, within the meaning.

JURISDICTION

4. This Court has subject matter jurisdiction over the claims in this lawsuit under article V § 11 of the South Carolina Constitution and South Carolina Code § 14-5-350.

Exhibit "B"

VENUE

5. Venue is proper in this circuit under South Carolina Code § 15-7-30 because Defendants have established their headquarters in Charleston County, and do conduct business in Charleston County; and the acts or omissions that are the subject of this action occurred in Charleston County, South Carolina.

APPLICABLE LAW

6. This action is brought pursuant to the South Carolina Wage Payment Act (South Carolina Code § 41-10-10, *et seq.*) and the common law of South Carolina.

FACTS

7. The Defendants are contractors that provide painting and drywall services in Charleston County.

8. Defendants hired Plaintiff Troy Wilson approximately two years ago to work as a painter and sheet rocker.

9. On or about October 10, 2017, there was a problem with paint peeling on house that Defendants had recently painted, which had not been sanded properly. Mr. Singleton blamed Mr. Wilson, although he had not been at that job site the day it was sanded. Mr. Singleton told Mr. Wilson orally that he was going to cut his pay from \$18 per hour to \$15 per hour.

10. Mr. Wilson decided to resign and the next day, October 11, 2017, he texted Mr. Singleton that he had made a decision to leave the company.

11. The Defendants owed Mr. Wilson \$432.00 in wages on October 11, 2017, for 24 hours of work at \$18 per hour, which he had completed in the pay period prior to his resignation.

12. On or about October 13, 2017, Mr. Wilson texted Mr. Singleton asking when he wanted him to turn in his uniform. Mr. Singleton called Mr. Wilson. He told him to keep the

uniform and that he was not going to pay him his last paycheck, citing the recent paint peeling issue.

13. The next scheduled pay day was October 20, 2017. The Defendants did not pay Mr. Wilson the \$432.00 in wages that were due on that date.

14. Mr. Wilson made a complaint for unpaid wages to the South Carolina Department of Labor, Licensing and Registration (LLR). LLR investigated and found that the Defendants had violated the South Carolina Wage Payment Act by failing to pay Mr. Wilson \$432.00 in wages on October 20, 2017. LLR cited Defendants \$100.00 for this violation. A copy of the LLR file and citation is attached hereto as Exhibit A.

15. The Defendants falsely represented to LLR that, after being informed of the LLR's investigation on November 3, 2017, they subsequently paid Mr. Wilson \$432.00 in wages on November 8, 2017. They provided LLR a copy of a postal money order made out to Mr. Wilson for this amount, as proof of payment. However, the Defendants never tendered the money order to Mr. Wilson.

16. On January 30, 2018, Mr. Wilson, through undersigned counsel, sent Defendants a certified letter, asking them to pay what he was owed under the S.C. Payment of Wages Act. The letter was returned unclaimed, Exhibit B. As of the date of this Complaint, the Defendants have not paid Mr. Wilson the \$432.00 in wages which are owed.

17. There is no good faith dispute over whether the Defendants owe Mr. Wilson \$432.00 in wages.

FIRST CAUSE OF ACTION
(Unpaid Wages Under the S.C. Wage Payment Act)

18. Plaintiff incorporates by reference all prior allegations into this cause of action.

19. Plaintiff earned wages for the work he performed, as defined under South Carolina Code § 41-10-10, *et seq.*

20. Defendants meet the definition of "employers" under South Carolina law and under the Wage Payment Statute. Plaintiff was an employee of Defendants.

21. Despite efforts by Plaintiff, Defendants knowingly refused to pay all wages due.

22. Defendants' failure to pay Plaintiff wages is willful and in bad faith, and there is no good faith dispute about whether Plaintiff is owed his lawfully earned wages.

23. Plaintiff is entitled to a judgment awarding all wages due, treble damages, pre-judgment interest, post-judgment interest, and reasonable attorneys' fees and costs.

SECOND CAUSE OF ACTION
(Unjust Enrichment/Quantum Meruit)

24. Plaintiff incorporates all allegations of paragraphs above into this cause of action.

25. Plaintiff provided valuable services to Defendants on Defendants' behalf.

26. These services were accepted, used, and enjoyed by Defendants. The services resulted in financial gain and significant income to Defendants.

27. Under the circumstances, Defendants understood and was notified that Plaintiff expected to be paid for the services provided to Defendants.

28. To permit Defendants to retain the benefits of Plaintiff's services without paying him for those services would unjustly enrich Defendants.

29. Plaintiff is entitled to an award of the reasonable value of his services in the form of his final paycheck.

WHEREFORE, Plaintiff requests that this Court enter judgment in his favor and against the Defendants as follows:

- a. Award Plaintiff all unpaid wages;
- b. Award Plaintiff treble damages, costs, and attorneys' fees;
- c. Award Plaintiff all unpaid commissions;

- d. Award Plaintiff such other legal and equitable relief, including pre-judgment and post-judgment interest, as this Court may deem proper.

Respectfully Submitted,

NAUHEIM LAW OFFICE, LLC



David A. Naheim
Attorneys for the Plaintiff
815 Savannah Highway Suite 201B
Charleston, South Carolina 29407
(843) 534-5084

Charleston, South Carolina
April 1, 2018

Exhibit A

S.C. DEPARTMENT OF LABOR, LICENSING AND REGULATION
DIVISION OF INVESTIGATIONS & ENFORCEMENT
OFFICE OF WAGES & CHILD LABOR
 PO BOX 11329, COLUMBIA, SC 29211-1329

CITATION AND NOTIFICATION OF PENALTY

COPY

Carolina Custom Painting & Drywall

5505 Rowsham Place
 North Charleston SC 29418

Issuance Date: 1/17/2018
 Report #: 2017-1344
 Employer #: 1/40
 Citation #: 2017-1344

This citation describes alleged violation(s) of 41-10-20 & 41-10-30, South Carolina Code of Laws, 1976, as amended. The penalty (ies) listed below are based on the following violations. You must pay the proposed penalty (ies) pursuant to 41-10-80. This citation and/or civil penalty may be reviewed by requesting, in writing, an Administrative Review. Such requests must be addressed to: Supervisor, South Carolina Department of Labor, Licensing and Regulation, Office of Wages & Child Labor, PO Box 11329, Columbia, SC 29211-1329, and must be mailed within 30 calendar days from receipt of this Citation and Notification of Penalty. To contest this citation before the Administrative Law Court, file your request for a hearing accompanied by the filing fee with the Administrative Law Court, Edgar Brown Building, 1203 Pendleton Street, Suite 224, Columbia SC 29201. This citation concerns application of the South Carolina Payment of Wage Statute and does not necessarily establish all aspects of debts due between the employer and employee.

# OF VIOLATIONS	SECTION (S) VIOLATED	DESCRIPTION	PENALTY
	§41-10-30 (A)	Failed to give written notification as required by law to: as follows:	\$
	§41-10-30 (B)	Failed to keep records of:	\$
	§41-10-30 (C)	Failed to furnish itemized statement to each employee showing:	\$
	§41-10-40 (A)	A warning was previously issued on Employer failed to pay with a negotiable instrument that was not dated for the pay day(s) in the approximate amount of \$	\$
	§41-10-40 (C)	Withheld or diverted from the wages of wages not required or permitted by state or federal law on or about in the approximate amount of \$	\$
	§41-10-40 (D)	Failed to pay wages due to Troy Wilson in the approximate amount of \$432.00 by your regular pay day(s) of 10/20/2017	\$100.00
TOTAL OF PENALTY: Please make check or money order payable to S.C. Department of Labor, Licensing & Regulation, and indicate <u>citation number</u> on remittance.			\$ 100.00

Signature of Chief Investigator

WCL-6 (Rev. 6/09)

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATIONS
OFFICE OF WAGES AND CHILD LABOR
WAGES INVESTIGATIVE REPORT

CASE NO.: 2017-1344

OPENED: 20171023

CLOSED: 20180117

FEDERAL ID. NO.:

COMPANY: Custom Carolina Painting & Drywall LLC

REPRESENTATIVE: Jamie Singleton

ADDRESS: 5505 Rowsham Pl. N. Charleston SC

TITLE: owner

CITY: N. Charleston

PHONE: [REDACTED]

STATE: SC

ZIP: 29418

FAX:

CORP. NAME:

REPRESENTATIVE:

ADDRESS:

TITLE:

CITY:

PHONE:

FAX:

STATE:

ZIP:

WARNING

This section of the warning is issued pursuant to SC Code of Law 41-10-80, for failure to comply with SC code of Law 41-10-30:

A. VIOLATION OF SC 41-10-30(A)

☒ Normal Hours☒ Wages☒ Time of payment☒ Place of payment☒ Deductions from wages☐ Changes make in employment

Without 7 calendar day

Written notice

B. VIOLATION OF SC 41-10-30(B)

☐ Name and/or address of employees☐ Wages paid and/or deductions made
for all employees each payday

C. VIOLATIONS OF SC 41-10-30(C)

☐ Failed to furnish each employee each pay period
an itemized statement showing:☐ Gross pay Deductions made☐ NUMBER OF EMPLOYEES IN SC☐ EMPLOYEES ON SITE

YOU MUST CORRECT THESE VIOLATIONS IMMEDIATELY. FAILURE TO DO SO COULD RESULT IN FINE OF
\$100.00 FOR EACH SUBSEQUENT OFFENSE.

N. Ruano 1/29/17

INVESTIGATOR

Date

COMPANY OFFICIAL

Date

CHILD LABOR	INVESTIGATIVE REPORT SUMMARY	OFFICE USE ONLY
Warning: Yes ☐ No ☐ Date: _____	Warning: Yes ☒ No ☐ Date: _____	Citation issued: Yes ☐ No ☐
Citation: Yes ☐ No ☐ Date: _____	Citation: Yes ☒ No ☐	Date: _____
Violation Number(s) (Check box to enter)	Number of violations alleged	Citation Number: _____
(1) _____	Section(s) 30 5 _____ 40 1 _____ 50 0 _____	Number of Violations:
Instance 1 _____ 2 _____ 3 _____	Instance 1 _____ 1 _____ 0 _____	Section(s) 30 _____ 40 _____ 50 _____ 61 _____
		Instance _____

Investigator: Parsons
 Report Number: 2017-1344
 Claimant: Troy Wilson
 Type of Complaint: Unpaid Wages

Carolina Custom Painting & Drywall
 5505 Rowsham Place
 North Charleston, SC 29418

Findings:

The Claimant filed a complaint with this office alleging non-payment of 24 hours at the rate of \$18.00 per hour on the scheduled pay-date of 10/20/17 for the amount of \$432.00.

On 11/3/17, R/I contacted Jamie Singleton, the owner of the company, via the telephone, regarding the wage complaint filed by the claimant. R/I explained the details of the investigation process and requested the time records with matching payroll, terms of employment and company policies to address the alleged allegations of the case. The respondent did not provide written terms of employment. The claimant stated that he was paid weekly on the complaint, and stated that his rate of pay was changed without a seven day notice. The claimant also stated that he was not given the proper tax paperwork. However, the respondent provided a policy and procedures form which stated that the claimant was a 1099 employee. The claimant appears to be misclassified for tax purposes. (See Exhibit E-1-1)

Upon further investigation, on 1/16/18 Investigator Parsons called the claimant and the claimant stated that the respondent provided major equipment such as sealpels, and paint and paint supplies. The employee stated that he did small repairs such as painting and repairing drywall. This appears to be an employee/employer relationship.

The respondent was paid in full for the 10-20 17 pay-date, but paid late on 11/8/17. (See Exhibit E-1-2)

R/I recommends a warning and a citation for failure to pay Troy Wilson on the scheduled pay-date of 10/20/17 for the amount of \$432.00(paid in full but paid late).

Cite this Employer for:

5 violations of SC Section 41-10-30(A).

1 Violations of SC Section 41-10-40(D) a citation for failure to pay Troy Wilson on the scheduled pay-date of 10/20/17 for the amount of \$432.00(paid in full but paid late).

RESIDENTIAL



COMMERCIAL

5505 ROWSHAM PLACE
NORTH CHARLESTON, SC 29418

www.ccpanddrywall.com

POLICIES AND PROCEDURES

1. I understand that I am a 1099 employee contractor of Carolina Custom Painting and Drywall.
2. I understand that work hours are 7:30 a.m to 4 p.m Monday thru Friday with occasional weekends.
3. I understand that I must have all required work materials at all time and available for inspection.
4. I understand that I am responsible for materials and labor of any faulty work discovered during inspection.
5. I understand that I may be required to take periodic drug screening paid for by company.
6. Proper uniform and shoes are required and must be clean and free of holes.
7. Excessive breaks aren't required by law and will be given at the discretion of the company.
8. Lunch break is from 12 pm to 12:30 p.m.
9. If injured at work, I must submit to an immediate drug screening.
10. Insubordination will result in immediate termination.
- 11. Missing work without a valid excuse will be noted the first time, and terminated the second time.
12. Absolutely no horse playing on the job.
13. All contractors are required to climb 40-foot ladders.
- 14. All company equipment must be cleaned and left on jobsites.
15. Coming to work impaired will result in termination.
16. I understand that theft of any kind (personal, company, or client). will be prosecuted.

NAME: _____

DATE: _____

E-11

THANKS FOR CHOOSING CAROLINA CUSTOM PAINTING AND DRYWALL!

NORTH CHARLESTON, SC 29400

E-1-2,

2017-1344

RESIDENTIAL



COMMERCIAL

5505 ROWSHAM PLACE
NORTH CHARLESTON, SC 29418

I, Troy Wilson, a subcontract employee, agree to reimburse Carolina Custom Painting and Drywall \$1,350.00 (one thousand three hundred fifty dollars) for damaged AC condenser at 27 Smith St. Payments of \$150.00 will be deducted from my check weekly starting 3-27-15. In the event I am terminated or I quit before final payment, I understand that I forfeit my final check to reduce the balance and assume all legal liability for the remaining balance.

By

Date

THANKS FOR CHOOSING CAROLINA CUSTOM PAINTING AND DRYWALL!

Heather Parsons

To: [REDACTED]
Subject: 2017-1344
Attachments: 2017-11-03 (2).pdf

Dear Mr. Singleton,
Please find enclosed a copy of the wage complaint that was filed by Troy Wilson, and an employer record request from this office. Please let me know if you have any questions concerning this matter. Thank you.



Henry D. McMaster
Governor

Emily H. Farr
Director

South Carolina
Department of Labor, Licensing and Regulation

Division of Professional and Occupational Licensing
Office of Investigations and Enforcement



110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329
Phone: (803) 896-4470
FAX: (803) 896-4656

November 3, 2017

Custom Carolina Painting & Drywall LLC
ATTN:
5505 Rowsham Pl. N. Charleston SC
N. Charleston SC 29418

Re: Wage Complaint: 2017-1344
Claimant: Troy F Wilson

Dear Jamie Singleton:

As an investigator, I investigate employee wage claims in order to determine employer's compliance with the South Carolina Payment of Wages Law. This office has received a wage complaint against Custom Carolina Painting & Drywall LLC alleging non-payment of wages of Troy F Wilson for the dates listed on the complaint. Under the South Carolina Payment of Wages Law 41-10-40, this office may institute an investigation of the alleged violation. Please find enclosed a copy of the wage complaint received by this office. You will be required to respond within three business days to this complaint so that I can fully investigate this complaint.

In order to expedite the resolution of these allegations, please provide to me by either email or fax, copies of the following documents:

- 1) A copy of any WRITTEN TERMS OF EMPLOYMENT provided to the claimant. These terms would include any written notice of normal working hours, wages agreed upon, time and place of payment, and deduction policies.
- 2) The Federal Tax ID number for the business and the number of employees in South Carolina.
- 3) Time records for the employee and copy of pay checks that match the time records Dates: 10/1 17-10/20/17
- 4) Copy of company's payroll policy and independent contractor form
- 5) Summary of your company's position to each allegation, with supporting documentation, on your company letterhead.

Failure to respond to these allegations will result in our accepting the charges made by the claimant (as stated) as factual and appropriate Warnings/Citations being issued.

Sincerely,


Heather Parsons
Investigator II
(803) 896-4819
Heather.Parsons@llr.sc.gov



Henry D. McMaster
Governor

Emily H. Farr
Director

South Carolina
Department of Labor, Licensing and Regulation
Division of Professional and Occupational Licensing
Office of Investigations and Enforcement



110 Centerville Drive
Post Office Box 11329
Columbia, SC 29211-1329
Phone: (803) 896-4470
FAX: (803) 896-4656

November 1, 2017

Troy F Wilson

[REDACTED]
N. Charleston SC, SC 29420

Re: Employer: Custom Carolina Painting & Drywall LLC
Case No.: 2017-1344

Dear Mr. Wilson:

I am in receipt of your wage complaint. As an Investigator, I investigate employee wage complaints to determine whether an employer is in compliance with the S.C. Payment of Wage Law. If during the investigation it is determined that the employer is in violation of the Wage Payment Statute, the appropriate sanctions will be issued to the employer. You will be notified of the outcome of your case once my investigation is complete.

The Office of Wages and Child Labor does not have the authority to collect your wages or make an employer pay you. You have self-serve rights under Section 41-10-80(C) of the South Carolina Payment of Wages Law.

Section 41-10-80(C) of the Payment of Wages Law states:

"In case of any failure to pay wages due to an employee as required by Subsection 41-10-40 or 41-10-50, the employee may recover in a Civil Action an amount equal to three times the full amount of the unpaid wages, plus costs and reasonable attorney's fees as the court may allow. Any civil action for the recovery of wages must be commenced within three years after the wages become due."

Any action you take in regards to a civil action is independent and separate from the actions and responsibilities of the Department of Labor.

Sincerely,

Heather Parsons
Investigator
(803) 896-4819
Heather.Parsons@llr.sc.gov

STATE OF SOUTH CAROLINA	)	IN THE MAGISTRATE'S COURT
	)	
COUNTY OF CHARLESTON	)	
	)	
TROY WILSON,	)	No. 2018 CV 1011500709
	)	
Plaintiff,	)	
	)	PLAINTIFF'S TRIAL BRIEF
vs.	)	
	)	
CAROLINA CUSTOM PAINTING	)	
& DRYWALL LLC, and	)	
JAMIE SINGLETON,	)	
	)	
Defendants.	)	
	)	

Plaintiff Troy Wilson, by and through undersigned counsel, hereby submits his Trial Brief for the above captioned case:

I. FACTS

The Defendant Carolina Custom Painting & Drywall is an LLC owned by Defendant Jannie Singleton. The Plaintiff Troy Wilson was hired by the Mr. Singleton approximately two years ago to work as a painter and sheet rocker. The Defendants provide painting and drywall services in the Charleston County area. Mr. Wilson was hired to perform work at the rate of \$18.00 per hour.

On or about October 10, 2017, there was a problem with paint peeling on house that Defendants had recently painted, which had not been sanded properly. Mr. Singleton blamed Mr. Wilson, although he had not been at that job site the day it was sanded. Mr. Singleton told Mr. Wilson orally that he was going to cut his pay from \$18 per hour to \$15 per hour. Mr. Wilson decided to resign and the next day, October 11, 2017, he texted Mr. Singleton that he had made a decision to leave the company.

The Defendants owed Mr. Wilson \$432.00 in wages on October 11, 2017, for 24 hours of work at \$18 per hour, which he had completed in the pay period prior to his resignation. On or about October 13, 2017, Mr. Wilson texted Mr. Singleton asking when he wanted him to turn in his

uniform. Mr. Singleton called Mr. Wilson. He told him to keep the uniform and that he was not going to pay him his last paycheck, citing the recent paint peeling issue. The next scheduled pay day was October 20, 2017. The Defendants did not pay Mr. Wilson the \$432.00 in wages that were due on that date.

Mr. Wilson made a complaint for unpaid wages to the South Carolina Department of Labor, Licensing and Registration (LLR). LLR investigated and found that the Defendants had violated the South Carolina Wage Payment Act by failing to pay Mr. Wilson \$432.00 in wages on October 20, 2017. LLR cited Defendants \$100.00 for this violation.

The Defendants represented to LLR that, after being informed of the LLR's investigation on November 3, 2017, that they subsequently paid Mr. Wilson \$432.00 in wages on November 8, 2017. They provided LLR a copy of a postal money order made out to Mr. Wilson for this amount, as proof of payment. However, the payment, which was mailed to Mr. Wilson via certified mail, was never received by Mr. Wilson and was returned to the Defendants. The Defendants made no further effort to pay Mr. Wilson the wages he was due.

On January 30, 2018, Mr. Wilson, through undersigned counsel, sent Defendants a certified letter, asking them to pay what he was owed under the S.C. Payment of Wages Act. The letter was returned unclaimed. The Defendants have not paid Mr. Wilson the \$432.00 in wages which are owed. There is no good faith dispute over whether the Defendants owe Mr. Wilson \$432.00 in wages.

II. APPLICABLE LAW

The Plaintiff brings this action under the South Carolina Wage Payment Act, Title 41 – Labor and Industry – Chapter 10 – Payment of Wages – Section 41-10-10, et seq. The Act defines an Employer to include every person, firm, partnership, association, corporation, receiver, or other

officer of a court of this State, the State or any political subdivision thereof, and any agent or officer of the above classes employing any person in this State.

Section 41-10-30 of the Act requires every employer to notify each employee in writing at the time of hiring of the normal hours and wages agreed upon, *the time and place of payment*, and the deductions which will be made from the wages, including payments to insurance programs. The employer has the option of giving written notification by posting the terms conspicuously at or near the place of work.

Also, pursuant to this statute, the South Carolina Department of labor, Licensing and Regulation requires employers to post two employment notices from the South Carolina Department of Labor, Licensing and Regulation in a place or places where employees can see them.

Section 41-40-10 (D) of the Act requires every employer in the State to *pay all wages due at the time and place designated* as required by subsection (A) of Section 41-10-30.

Section 41-10-50 of the Act requires that, when an employer separates an employee from the payroll for any reason, the *employer shall pay all wages due to the employee within forty-eight hours of the time of separation or the next regular payday which may not exceed thirty days*.

Under Section 41-10-60 of the Act, when there is a dispute over wages, the employer shall give written notice to the employee of the amount of wages which he concedes to be due and shall pay the amount without condition *within the time set by this chapter*.

Under Section 41-10-80 (C) of the Act, the employer's failure to pay wages allows the employee to recover in a civil action an amount equal to three times the full amount of the unpaid wages, plus costs and reasonable attorney's fees as the court may allow.

An agent of the company who knowingly violates the act is liable in his or her individual capacity and is a proper party in addition to company. *Dumas v. InfoSafe Corp.*, 463 S.E.2d 641, 320 S.C. 188 (Ct. App. 1995).

III. DISCUSSION

Wage theft, the practice of employers failing to pay workers the full wages to which they are legally entitled, is a widespread and deep-rooted problem that directly harms millions of U.S. workers each year. Employers refusing to pay promised wages, paying less than legally mandated minimums, failing to pay for all hours worked, or not paying overtime premiums deprives working people of billions of dollars annually. It also leaves hundreds of thousands of affected workers and their families in poverty. Wage theft does not just harm the workers and families who directly suffer exploitation; it also weakens the bargaining power of workers more broadly by putting downward pressure on hourly wages in affected industries and occupations. For many low-income families who suffer wage theft, the resulting loss of income forces them to rely more heavily on public assistance programs, unduly straining safety net programs and hamstringing efforts to reduce poverty. Economic Policy Institute. Report by David Cooper and Teresa Kroeger. May 10, 2017.

The Wage Payment Act is remedial legislation designed to protect working people and assist them in collecting compensation wrongfully withheld. *Dumas v. InfoSafe Corp.*, 463 S.E.2d 641, 320 S.C. 188 (Ct. App. 1995). While the amount involved in this case is not large, the principle is important. The Act only protect workers from Wage Theft, if court's will enforce it.

Conduct rewarded is conduct repeated. If treble damages are not awarded against an employer who has withheld wages without any basis, then the employer is no worse off for having violated the act, and there is no deterrent effect; an award of treble damages, costs and attorney's fees is needed for the Act to have deterrent effect intended by the legislature.

The undisputed facts in this case establish that the Defendants are in violation of the South Carolina Wage Payments Act. The Act covers all parties under the employment relationship that existed. As soon as the relationship terminated, the Defendants were required to pay Mr. Wilson all

wages owed to him within 48 hours or the next regular payday, which may not exceed 30 days. This was not done.

This violation of the Act not only entitles Mr. Wilson to the payment of \$432.00, but allows him to collect up to three times that amount, plus costs and attorney's fees. An award of treble damages in the discretion of the court. It is not awarded when the employer had a bona fide reason for believing the wages were not owed. However, it should be awarded when, as here, there was no bona fide dispute over whether the wages were owed, and the employer simply refused to pay.

The Payment of Wages Act has a 30-day safe harbor provision for employers who pay the undisputed amount of wages due with 30 days. However, if an employer pays or attempts to pay outside of the safe harbor period, the employer may be entitled to an offset, but such payment is *not* a defense to the action or to treble damages.

Whether or not the Wage Payment Act applies, the Plaintiff is nevertheless entitled to an award of damages under simple contract law. The Defendants agreed to pay the Plaintiff for his services. The Plaintiff performed the services requested. A failure to award the Plaintiff damages would result in the Defendants being unjustly enriched. The value of the Plaintiff's services was agreed upon by the parties to be \$432.00, and the Plaintiff should be awarded that amount at a minimum.

IV. CONCLUSION

The Court should award \$1,96.00 in damages, plus costs and attorney's fees as set forth in Plaintiff's Request for Attorneys' Fees to be presented at trial. At a minimum, he is entitled to an award of his actual wages in the amount of \$432.00 plus the costs of this action.

Respectfully Submitted,

NAUHEIM LAW OFFICE, LLC

/s/ David A. Nauheim

David A. Nauheim

Attorneys for the Plaintiff

815 Savannah Highway Suite 201B

Charleston, South Carolina 29407

(843) 534-5084

Charleston, South Carolina
July 5, 2018

RESIDENTIAL



COMMERCIAL

5505 ROWSHAM PLACE
NORTH CHARLESTON, SC 29418

www.ccpanddrywall.com

POLICIES AND PROCEDURES

1. I understand that I am a 1099 employee / contractor of Carolina Custom Painting and Drywall.
2. I understand that work hours are 7:30 a.m to 4 p.m Monday thru Friday with occasional weekends.
3. I understand that I must have all required work materials at all time and available for inspection.
4. I understand that I am responsible for materials and labor of any faulty work discovered during inspection.
5. I understand that I may be required to take periodic drug screening paid for by company.
6. Proper uniform and shoes are required and must be clean and free of holes.
7. Excessive breaks aren't required by law and will be given at the discretion of the company.
8. Lunch break is from 12 pm to 12:30 p.m.
9. If injured at work, I must submit to an immediate drug screening.
10. Insubordination will result in immediate termination.
11. Missing work without a valid excuse will be noted the first time, and terminated the second time.
12. Absolutely no horse playing on the job.
13. All contractors are required to climb 40-foot ladders.
14. All company equipment must be cleaned and left on jobsites.
15. Coming to work impaired will result in termination.
16. I understand that theft of any kind (personal, company, or client), will be prosecuted.

NAME: _____

DATE: _____

THANKS FOR CHOOSING CAROLINA CUSTOM PAINTING AND DRYWALL!

Exhibit "D"

RESIDENTIAL



COMMERCIAL

5505 ROWSHAM PLACE
NORTH CHARLESTON, SC 29418
carolinacustompainting@yahoo.com www.ccpanddrywall.com

I, Troy Wilson, a subcontract employee, agree to reimburse Carolina Custom Painting and Drywall \$1,350.00 (one thousand three hundred fifty dollars) for damaged AC condenser at 27 Smith St. Payments of \$150.00 will be deducted from my check weekly starting 3-27-15. In the event I am terminated or I quit before final payment, I understand that I forfeit my final check to reduce the balance and assume all legal liability for the remaining balance.

By Troy Wilson
Date 3-30-15

THANKS FOR CHOOSING CAROLINA CUSTOM PAINTING AND DRYWALL!
Exhibit "E"



Henry D. McMaster
Governor

Emily H. Farr
Director

South Carolina
Department of Labor, Licensing and Regulation

Division of Professional and Occupational Licensing
Office of Investigations and Enforcement



110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329
Phone: (803) 896-4470
FAX: (803) 896-4656

November 3, 2017

Custom Carolina Painting & Drywall LLC
ATTN:
5505 Rowsham Pl. N. Charleston SC
N. Charleston SC 29418

Re: Wage Complaint: 2017-1344
Claimant: Troy F Wilson

Dear Jamie Singleton:

As an investigator, I investigate employee wage claims in order to determine employer's compliance with the South Carolina Payment of Wages Law. This office has received a wage complaint against Custom Carolina Painting & Drywall LLC alleging non-payment of wages of Troy F Wilson for the dates listed on the complaint. Under the South Carolina Payment of Wages Law 41-10-40, this office may institute an investigation of the alleged violation. Please find enclosed a copy of the wage complaint received by this office. You will be required to respond within three business days to this complaint so that I can fully investigate this complaint.

In order to expedite the resolution of these allegations, please provide to me by either email or fax, copies of the following documents:

- 1) A copy of any **WRITTEN TERMS OF EMPLOYMENT** provided to the claimant. These terms would include any written notice of normal working hours, wages agreed upon, time and place of payment, and deduction policies.
- 2) **The Federal Tax ID** number for the business and the **number** of employees in South Carolina.
- 3) **Time records** for the employee and **copy of pay checks** that match the time records *Dates: 10/1/17-10/20/17*
- 4) **Copy of company's payroll policy and independent contractor form**
- 5) **Summary of your company's position to each allegation, with supporting documentation, on your company letterhead.**

Failure to respond to these allegations will result in our accepting the charges made by the claimant (as stated) as factual and appropriate Warnings/Citations being issued.

Sincerely,

Heather Parsons
Investigator II
(803) 896-4819
Heather.Parsons@llr.sc.gov

Exhibit "F"

1005 Pawshaw Pl
N. Charleston, SC 29418

Exhibit "G"

12/12/17
1345 M

~~SENDER~~
12-1-17
Per car

CERTIFIED MAIL



7017 0660 0000 8506 4619

Troy Wilson
160 Strat
North Cha

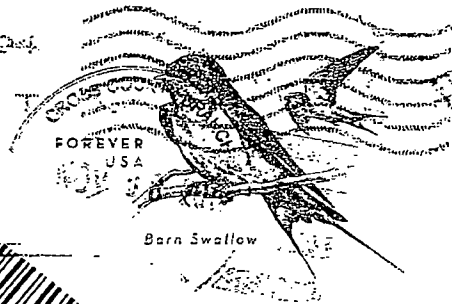
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CHARLESTON SC 294

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Barn Swallow

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RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

SC: 29418

*1554-14141-08-85

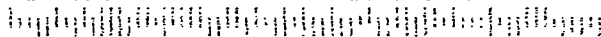
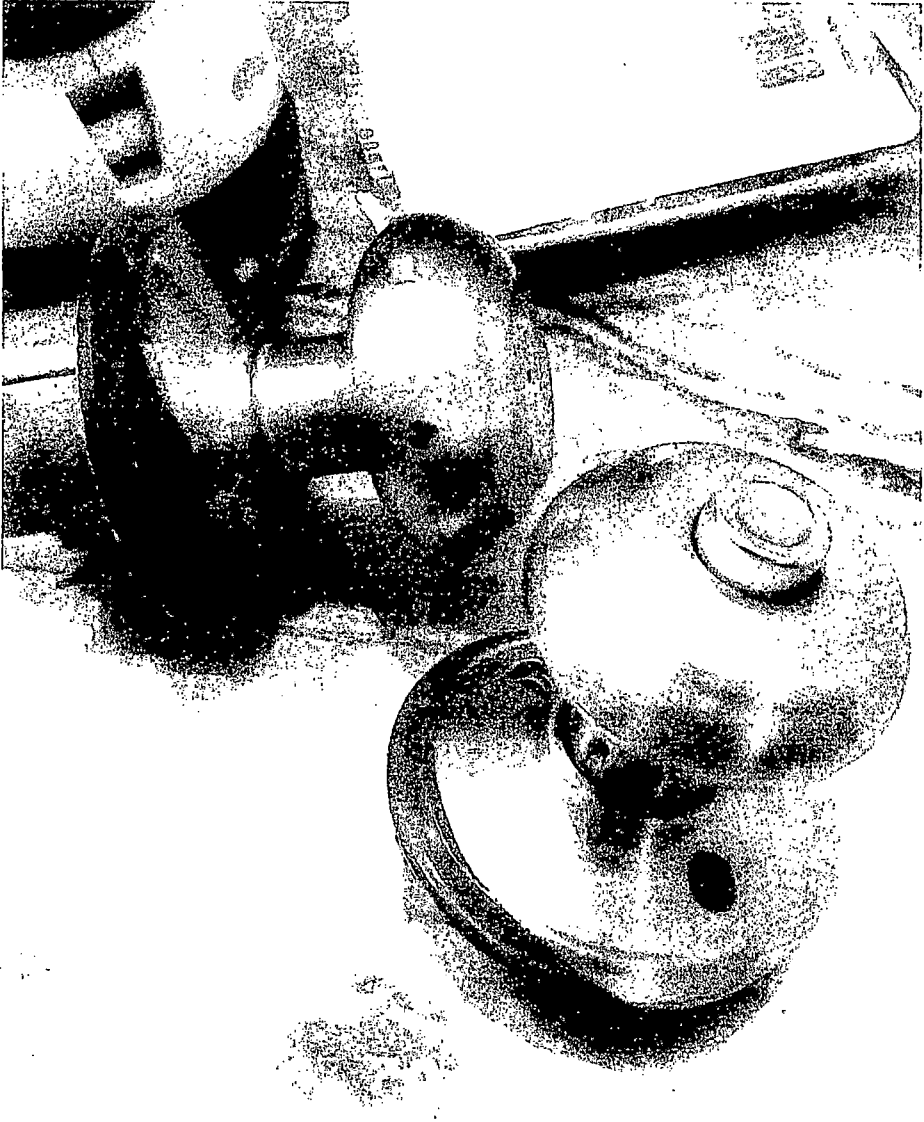
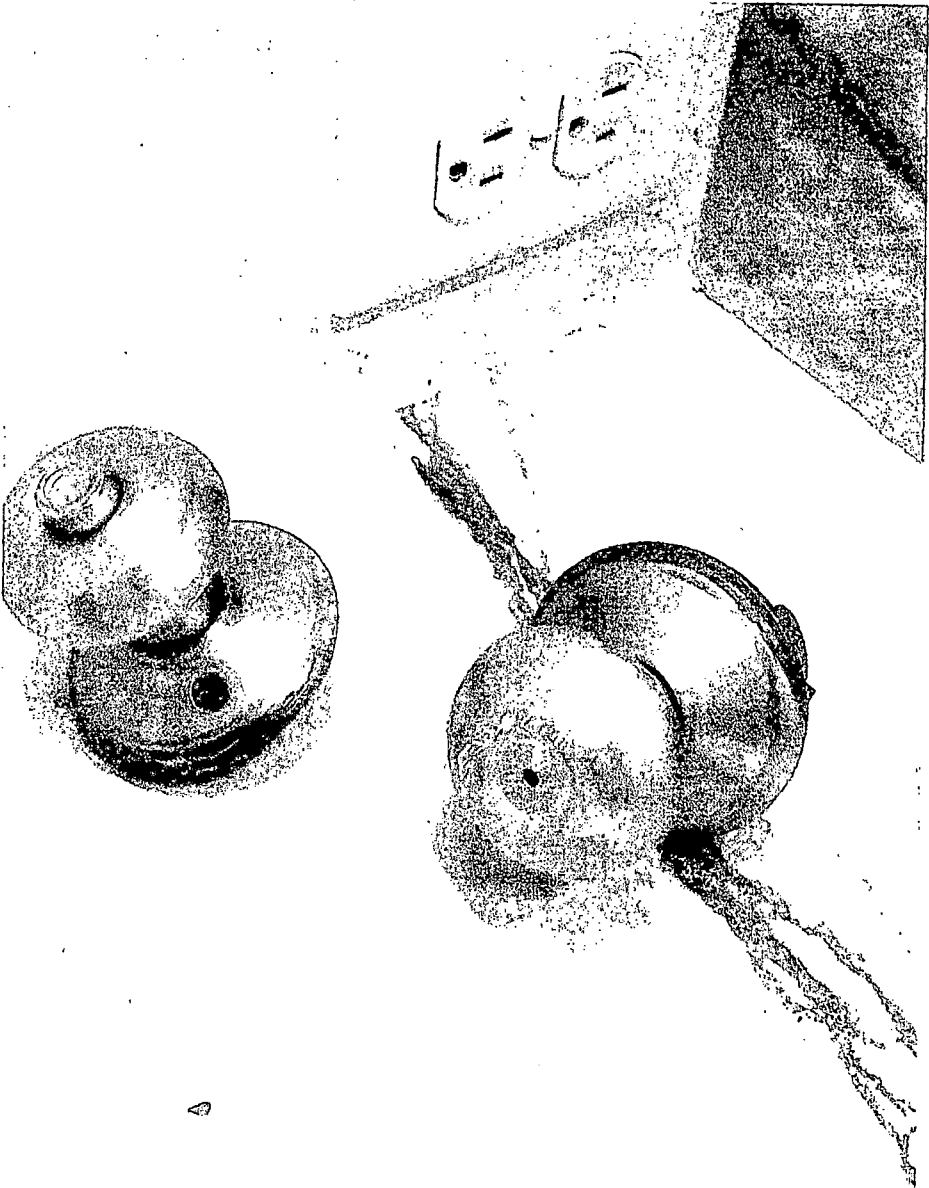




Exhibit "H"









STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
TROY WILSON,)
Appellant,)
vs.)
CAROLINA CUSTOM PAINTING)
& DRYWALL LLC, and)
JAMIE SINGLETON,)
Respondents.)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

2020-CP-1001819
COMMON PLEAS NUMBER

No. 2018 CV 1011500709
MAGISTRATE'S COURT NUMBER,
JUDGE JACKSON SETH WHIPPER

**BRIEF IN SUPPORT OF SECOND
APPEAL FROM JUDGMENT OF
MAGISTRATE'S COURT**

I. INTRODUCTION

Wage theft, the practice of employers failing to pay the full amount of wages legally due, is a widespread problem affecting millions of American workers, depriving working people of billions of dollars annually. David Cooper and Teresa Kroeger, *Employers steal billions from workers' paychecks each year*, Economic Policy Institute (May 10, 2017). This appeal concerns the South Carolina Wage Payment Act (WPA): a law that exists to protect the fundamental quid pro quo that underpins our economy: I work for you, you pay me.

Specifically, this controversy arises from an all too common issue: the employer withholding the last paycheck. The WPA is remedial legislation that exists specifically to redress this kind of employer misconduct: it is designed to protect working people and assist them in collecting compensation wrongfully withheld. *Dumas v. InfoSafe Corp.*, 463 S.E.2d 641, 320 S.C. 188 (S.C. Ct. App. 1995). While the amount involved in this case is not large, the principle is important: The WPA will only protect workers from wage theft if courts will enforce it.

The WPA says that employers may not make deductions from pay unless the written terms of employment given to the employee allow the employer to do so. We are here because the employer is asserting the right to withhold wages—and to *counter claim against the employee*—despite the fact that the Respondents are prohibited from making deductions they did not give notice of.

Respondents failed to comply with the WPA in numerous respects: They did not provide Mr. Wilson with written terms of employment; they made deductions to his pay that were not part of the written terms of employment; and they did not pay him the wages due on his last paycheck. In fact, the South Carolina Department of Labor, Licensing and Registration (LLR) found five violations of the WPA. [Magistrate's Return (hereinafter "Mag. Rtn."), Vol. 1, 43.]

The law is clear: an employer must timely pay all wages that are due and may not make a deduction from wages that is not listed in the written terms of employment. Respondents have produced no evidence that Mr. Wilson was provided the written terms of employment. Without advanced notice of allowable deductions from wages, Respondents "deduction" for alleged faulty work was unlawful.

While Respondents argue that it was the course of dealings to do so, long settled law holds that it violates public policy to allow course of dealings to modify the written terms of employment. *Cato v. Mills*, 129 S.E. 203, 132 S.C. 454 (S.C. 1925); *see also* S.C. Code § 41-10-100 ("No provision of this chapter may be contravened or set aside by a private agreement.")

Unless an employee has agreed to such a deduction in the written terms of employment, the employer's sole remedy for faulty work is to terminate an employee—not to make a claim against them or make an illegal deduction from pay. Judge Whipper's

verdict is contrary to long settled law and must be reversed. Appellant has also brought a contemporaneous motion for new trial alternative relief.

II. PROCEDURAL BACKGROUND

On November 3, 2017, the LLR began an investigation into a wage theft complaint against Carolina Custom Painting by Appellant by requesting documents (including written terms of employment provided to the claimant) and asking for a response to the allegations. [Mag. Rtn., Vol. 1, 23.] Contrary to what Respondent now claims, Carolina Custom Painting did actually litigate the dispute, by providing documents and participated in an interview with the LLR investigator. [*Id.* at p. 45.] However, he was unable to provide the written terms of employment provided to the Claimant. [*Id.*]

On January 17, 2018, the LLR cited Carolina Custom Painting for five violations of the WPA, including the failure to pay Mr. Wilson the wages due and failure to provide written terms of employment. [*Id.* at p. 44.] The LLR's citation was supported by detailed written findings. [*Id.* at pp. 45.] The citation stated that Carolina Custom Painting had the right to appeal the citation and set for the appeal procedure. [*Id.* at 43.] Carolina Custom Painting chose not to appeal.

This case was filed in the Magistrate's Court for the County of Charleston at No. 2018CV1011500709 on April 18, 2018 and tried before Magistrate Judge Jackson Seth Whipper on July 12, 2018. [*Id.* at p. 1.]

At the court's request, the parties filed post-trial briefs. [Mag. Rtn., Vol. 2, 13-47.] Judge Whipper handed down a Transcript of Judgment on March 19, 2020, awarding the Respondents \$3,550.00 on their counterclaim. [Mag. Rtn., Vol. 1, 15.]

Almost twenty months after the trial, the magistrate handed down a Transcript of Judgment on March 19, 2020, awarding Carolina Custom Painting \$3,550.00 on their counterclaim.

Shortly after the judgment was handed down, the Appellant again requested the recording of the trial to serve as the record for appeal. Despite earlier saying that it would remain on Judge Whipple's desk until he finished with the case, now the Magistrate's Court said it had been destroyed 90 days after trial. [Declaration of Peggy Sheppard (Sheppard Decl.), ¶2.]

After Mr. Wilson filed his first Notice of Appeal on April 14, 2020, this Court denied the appeal without prejudice and ordered the Magistrate file a return within 30 days. This deadline was extended to October 15, 2020 by a Consent Order was on October 14, 2020.

Mr. Wilson also moved for new trial on June 19, 2020. The motion was likewise denied by this Court without prejudice.

Mr. Wilson's second appeal is now before this Court. He is also bringing a contemporaneous second motion for new trial.

III. FACTUAL BACKGROUND

The Respondent Carolina Custom Painting & Drywall is an LLC owned by Respondent Jamie Singleton. Carolina Custom Painting provides painting and drywall services in the Charleston County area. Carolina Custom Painting hired Appellant Troy Wilson about two years prior to trial to work as a painter and sheet rocker. His hourly rate was \$18.00 per hour.

On or about October 10, 2017, there was a problem with paint peeling on house that Carolina Custom Painting had recently painted that had not been sanded properly. Mr. Singleton blamed Mr. Wilson, although Mr. Wilson had not been at that job site the day it

was sanded. Mr. Singleton told Mr. Wilson orally that he was going to cut his pay from \$18 per hour to \$15 per hour (in violation of the WPA's mandate that a reduction in pay requires 7 days written notice). Mr. Wilson decided to resign and the next day, October 11, 2017, he texted Mr. Singleton that he had decided to leave the company.

Contrary to what Respondents are now claiming in an attempt to manufacture a "bona fide dispute," Mr. Wilson did not quit over a "dispute over wages." There was no dispute: Respondents cut his pay; Mr. Wilson quit. This controversy arises not over the cut in pay, but over what followed: Respondents' failure to pay Mr. Wilson his last paycheck.

On or about October 13, 2017, Mr. Wilson texted Mr. Singleton asking when he wanted him to turn in his uniform. Mr. Singleton called Mr. Wilson. He told him to keep the uniform and that he was not going to pay him his last paycheck.¹

It is undisputed that Respondents owed Mr. Wilson \$432.00 in wages for work he had completed in the pay period prior to his resignation. It is also undisputed that these wages were due on October 20, 2017. [Findings of Fact and Conclusions of Law, Mag. Rtn., Vol. 1, 8.] And it is further uncontested the Respondents did not pay him on this date. [Id.]

Mr. Wilson made a complaint for unpaid wages to the South Carolina Department of Labor, Licensing and Registration ("LLR"). LLR investigated and found five violations of the South Carolina Wage Payment Act, including failing to pay Mr. Wilson wages due in the amount of \$432.00. [Id. at pp. 24-25.]

Contrary to what Respondents now claim, actually litigated the dispute by submitting documents and telling its side of the story to the investigator. [Id. at pp. 45-47.] LLR cited

¹ The Complaint erroneously says that Mr. Singleton told Mr. Wilson the reason he was not paying him was the paint peeling issue. This was an error, which Mr. Wilson corrected at trial. Mr. Singleton did not give a reason for not paying him.

the Respondents for five violations of S.C. §41-10-30(A) and one violation of S.C. §41-10-40(D)(failure to timely pay wages due). [*Id.* at p. 45.] Respondents chose not to appeal.

The case was tried before Magistrate Judge Jackson Seth Whipper on July 12, 2018. Mr. Singleton, through his attorney, conceded in opening statement that Respondents does, in fact, owe Mr. Wilson \$432 for wages due. However, Respondents made a counter claim for alleged faulty work by Mr. Wilson.²

The only witness for the defense was Respondent Singleton. Mr. Singleton admitted that he was not present when the alleged faulty work was done, and there were multiple workers at each work site. He had no first-hand knowledge of which employee was responsible for the alleged faulty work. His explanation for holding Mr. Wilson responsible despite lack of direct evidence or personal knowledge was that Mr. Wilson was the "foreman." However, Mr. Wilson also testified that he considered Mr. Wilson and his other employee's independent contractors (yet another violation of labor law). He did not explain how one independent contractor was responsible for the work of another independent contractor that had been hired by Respondents, not Mr. Wilson.

Respondents are still trying to dance around this issue: there was no foundation for Respondents testimony that Mr. Wilson was responsible for faulty work because Mr. Singleton was not present and had no firsthand knowledge of which employee did the alleged faulty work. Respondents argue: "Plaintiff admitted he was supervisor on this job, that there was paint that dripped on the boards, and that the boards had to be replaced."

² Mr. Singleton tried to mail Mr. Wilson a check via certified mail after he was cited by LLR, but after the time the wages were due. Mr. Wilson never received the letter it and it was returned. Respondents represented to this Court that Mr. Singleton continued to try to pay but was rebuffed by Mr. Wilson. That is categorically false. It also ignores Mr. Wilson's attempts to settle with Mr. Singleton before filing suit, which was ignored. These events have no relevance to the case. It is improper argument because any settlement efforts are inadmissible and irrelevant under Rule 408. It is also an improper attempt to gain the sympathy of the court by falsely casting Mr. Wilson as a villain who brought this claim for contemptible reasons. The Court should not tolerate this argument by the Respondents and should disregard it.

[Defs' Memo at 7.] What is left unsaid is whether it was Mr. Wilson who dripped the paint on the boards or another employee. There is no competent testimony that any of the faulty work was actually performed by Mr. Wilson.

What is more, Respondents have never been able to produce written terms of employment. Respondents have attempted to gloss over this omission by producing an *unsigned* copy of its "Policies and Procedures," a document which Mr. Singleton claimed was his habit to give to his employees as a matter of routine. He produced this same document to the LLR. [Mag. Rtn., Vol. 1, 46.]

However, that document does not and cannot not constitute the "written terms of employment, because it does not contain the most basic elements required by S.C. Code § 41-10-30: the "wages agreed upon, the time and place of payment, and the deductions which will be made from the wages[.]"

What is more, the document Respondents produced was not signed by the Mr. Wilson, despite having a signature block for acknowledgement by the employee.

To date, Respondents have not produced a copy of written terms of employment that were actually provided to Mr. Wilson or signed by him. And further, Mr. Wilson denies receiving any. This alone is fatal to Respondents counterclaim.

Mr. Wilson testified that Carolina Custom Painting had sustained damages in the amount of \$3,982 due to faulty work at three different job sites. However, he offered no receipts or invoices or any documentary evidence whatsoever to establish beyond speculation the value of the labor and parts that had to be incurred due to the alleged faulty work. As noted above, he did not even have firsthand knowledge of which employee did the alleged faulty work.

His testimony about these amounts was wildly inflated: his *material* costs included \$75 each for interior doorknobs and \$104 each for “boards” that had to be replaced, he claimed. [*Id.* at p. 11.]³

He testified there was “approximately” \$1,400 in labor at the “1108 Ocean’s Club” job to correct paint peeling from door frames. [*Id.* at p. 10.] Even if we assume (generously) that Carolina Custom Painting paid its workers \$18 per hour, that means it took 78 hours (1400/18) to sand and repaint door frames—nearly two full weeks of labor. No reasonable trier of fact could believe this testimony.

Despite LLR’s finding to the contrary, and clear evidence that Mr. Wilson was treated as an employee in every way, Carolina Custom Painting contended that Mr. Wilson was an independent contractor (another example of Respondents flouting labor law). At the close of evidence, the Court found that Mr. Wilson was an employee.

At trial, the Plaintiff submitted a claim for treble damages, reasonable attorneys’ fees, and costs in the amount of \$10,276.50.

Magistrate Judge Whipper requested that the parties submit closing arguments in a post-trial brief, which was done. At that time, on or about July 31, 2018, a paralegal from Appellant’s law office requested a transcript or recording of the trial from the court. [Sheppard Decl., ¶1] She was told that the recording was on Judge Whipper’s desk and could not be obtained until after he was done with the case. [*Id.*]

On March 19, 2020, a Transcript of Judgment was rendered by Judge Whipper finding against the Plaintiff and in favor of the Respondents in the amount of \$3,550.00 on the counterclaim made during the trial. [Mag. Rtn., Vol. 1, 15.]

³ After the trial Respondents submitted a proposed Order to the court. Among other things, it recites what Respondents alleged was the testimony at trial. While appellant does not agree with all the Respondents’ representations of the trial testimony, where there is a recitation that is adverse to Respondents’ position on appeal, the Court may deem it as reliable, for the same reasons an admission against interest is admissible.

On April 13, 2020, the Appellant timely filed a Notice of Appeal, and served the same on Judge Whipper and Respondents. [Mag. Rtn., Vol. 1, 16-21.] The magistrate did not make a Return until after the first appeal was made and this court ordered that the Return be filed.

IV. ISSUES ON APPEAL

Mr. Wilson has raised 24 grounds for appeal in his Notice of Appeal. Those exceptions are incorporated herein by reference. Rather than reciting all 24 grounds, the Appellant believes that the issue on appeal can be framed more narrowly as follows:

- A. Whether *res judicata* prevents Respondents from re-litigating issues that have already been litigated with and decided by the LLR, and which were not appealed? **[YES]**.
- B. Respondents conceded in opening statement that they owed Mr. Wilson \$432 in wages. Did the Court err by not awarding Mr. Wilson \$432 in unpaid wages? **[YES]**
- C. Under controlling case law, it is unlawful for an employer to withhold wages based on faulty work, when the employer did not give written notice for such a deduction. Consequently, the reason given by Carolina Custom Painting for withholding wages was unlawful. Is withholding wages for an unlawful reason a good faith dispute? **[NO]**
- D. When an employer is prohibited under the WPA from making a deduction for faulty work, can he assert a counterclaim for faulty work based on quasi-contract or course of dealings? **[NO]**
- E. The amount of damages cannot be left to conjecture, guess or speculation. Are the damages asserted against Mr. Wilson too speculative, where there is no evidence that Mr. Wilson (and not another worker) was responsible for the alleged faulty work, and no evidence to establish the material or labor costs incurred? **[YES]**

V. ARGUMENT

Appellate Standard

This Circuit Court's review of the law and the facts on a civil appeal from the Magistrate's Court is *de novo*—it is *not* abuse of discretion as Respondents have erroneously claimed. The standard of review is set forth in section 18-7-170 which provides as follows:

Upon hearing the appeal the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact.

This Court is empowered to under S.C. Code § 18-7-170 to make its own findings of fact and reverse the Magistrate's finding. *Hadfield v. Gilchrist*, 343 S.C. 88 (S.C. Ct. App. 2000); *Parks v. Characters Night Club*, 345 S.C. 484 (S.C. Ct. App. 2001) (citing authority). The Court of Appeals has explained that, "[a]s is readily apparent, Section 18-7-170 confers authority upon the Circuit Court to reverse a magistrate's findings of fact when exercising appellate jurisdiction in an appeal from a magistrate's judgment." *Burns v. Wannamaker*, 281 S.C. 352, 357 (S.C. Ct. App. 1984). Therefore, this is Court does not defer to the Magistrate's factual findings.

The circuit court has the authority to hear appeals from the magistrate's court. S.C. Code § 18-7-10. The procedure on appeal is governed by section 18-3-10 through -70.

The South Carolina Wage Payment Act.

The Plaintiff brought this action under the South Carolina Wage Payment Act, S.C. Code § 41-10-10, et seq. The Act defines an Employer to include every person, firm, partnership, association, corporation, receiver, or other officer of a court of this State, the State or any political subdivision thereof, and any agent or officer of the above classes employing any person in this State.

Section 41-10-30 of the Act requires every employer to notify each employee in writing at the time of hiring of the normal hours and wages agreed upon, *the time and place of payment*, and the deductions which will be made from the wages:

Every employer shall notify each employee *in writing* at the time of hiring of the normal hours and wages agreed upon, the time and place of payment, and the deductions which will be made from the wages, including payments to insurance programs. The employer has the option of giving written notification by posting the terms conspicuously at or near the place of work.

Id. (emphasis added).

Section 41-40-10 (D) of the Act requires every employer in the State to *pay all wages due at the time and place designated* as required by subsection (A) of Section 41-10-30.

Section 41-10-50 of the Act requires that:

[W]hen an employer separates an employee from the payroll for any reason, *the employer shall pay all wages due to the employee within forty-eight hours of the time of separation or the next regular payday which may not exceed thirty days.*"

Id. emphasis added.

Under Section 41-10-60 of the Act, when there is a dispute over wages, the employer shall give written notice to the employee of the amount of wages which he concedes to be due and shall pay the amount *without condition* within the time set by this chapter.

Under Section 41-10-80 (C) of the Act, the employer's failure to pay wages allows the employee to recover in a civil action an amount equal to three times the full amount of the unpaid wages, plus costs and reasonable attorney's fees as the court may allow.

Under Section 41-10-100 of the Act, there can be no "private agreements" that contravene or set aside any provision of the Act.

And most relevant to the appeal, Section 41-10-40 states:

An employer shall not withhold or divert any portion of an employee's wages unless . . . the employer has given written notification to the employee of the amount and terms of the deductions as required by subsection (A) of Section 41-10-30.

Id. emphasis added.

An agent of the company who knowingly violates the act is liable in his or her individual capacity and is a proper party in addition to company. *Dumas v. InfoSafe Corp.*, 463 S.E.2d 641, 320 S.C. 188 (Ct. App. 1995). This makes Mr. Singleton a proper party in addition to Carolina Custom Painting.

A. Res Judicata prevents Respondents from relitigating issues that were already decided by the LLR and not appealed.

The trial court erred by not holding that the findings of the LLR investigation had precluded Respondents from relitigating those issues. Ordinarily, the decision of an administrative tribunal precludes the relitigation of the issues addressed by that tribunal in a collateral action. *Bennett v. South Carolina Dep't of Corrections*, 305 S.C. 310, 408 S.E.2d 230 (1991). In *Bennett*, our Supreme Court stated: "This Court has repeatedly held that, under the doctrines of *res judicata* and collateral estoppel, the decision of an administrative tribunal precludes the relitigation of the issues addressed by that tribunal in a collateral action." The party asserting preclusive effect must show that the issue was (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment. *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 555, 684 S.E.2d 779, 782 (Ct. App. 2009).

Respondents claim that Singleton "did not contest the Matter before the labor board[.] [Defs' Memo at 4.] That is plainly untrue, as demonstrated by the LLR's findings, which detail Mr. Singleton's efforts to contest the matter, and by the documents he in fact submitted to the LLR in defense of the wage complaint. [Mag. Rtn. Vol 1, 45-48.] Respondents also claim that he did not appeal because he "believed his decision to send

the check would end the matter.” [Defs’ Memo at 4.] Respondents subjective reason for not appealing is irrelevant to whether the doctrine of *res judicata* applies.

As shown in the Magistrate’s Return, the Appellant admitted documentary evidence in trial, demonstrating that Carolina Custom Painting actually litigated with the LLR the issue of whether:

- Mr. Wilson had been misclassified by Carolina Custom Painting as an independent contractor and was in fact an employee;
- Mr. Wilson was owed \$432 by Carolina Custom Painting no later than his final payday;
- Carolina Custom Painting failed to pay him the wage due at his next regular payday;
- Carolina Custom Painting failed to provide written notice of the terms of wages, including the amount of wages, the time and place for payment, and deductions from wages.

[Mag. Rtn. Vol 1, 42-50.]

In addition, Mr. Singleton testified that he did have a full opportunity to litigate those issues with the LLR. This opportunity is evidenced in the LLR record, which was admitted in trial. The LLR directly determined these issues and these findings were necessary to the citation it issued. LLR found five violations and cited Mr. Singleton for failing to pay \$432 in unpaid wages. The LLR’s ruling was supported by detailed findings of fact. The Appellant asked the magistrate to give all of five findings of the LLR preclusive effect.

In *Keiger v. Citgo, Coastal Petroleum, Inc.*, the trial court granted summary judgment on the Plaintiff’s Payment of Wages claim on the grounds that “Respondents had paid Keiger the amount the South Carolina Department of Labor determined she was due, and because she had not appealed that determination, she was barred from relitigating it.” 482 S.E.2d 792, 326 S.C. 369, 327 N. 3 (Ct. App. 1997). Likewise, the Magistrate should have given the LLR rulings preclusive effect. The failure to do so was contrary to the law and

should be reversed. This Court should find that the five findings of the LLR have preclusive effect in this litigation and appeal.

B. The Magistrate erred by not awarding Mr. Wilson \$432 in damages based on the Respondents' concession in opening statement that they owed Mr. Wilson \$432 in wages due.

In this case the Respondents' attorney in opening statement at trial conceded that they owed the Appellant \$432.00 in unpaid wages. Concessions by the attorney in opening statement are binding on the client. *Collins v. Bisson Moving Storage, Inc.*, 332 S.C. 290 (S.C. Ct. App. 1998) In spite of this, the Magistrate failed to award Mr. Wilson the wages the Respondents conceded were due. This was also a finding by the LLR, that the magistrate should have given preclusive effect. The magistrate's failure to award the Plaintiff \$432.00 in unpaid wages was an abuse of discretion, clear error and should be reversed.

C. The reason given by Respondent for withholding Mr. Wilson's wages violates the WPA and cannot therefore constitute a "good faith dispute" about whether wages are due.

When the reason given by an employer for not paying wages is itself unlawful; it cannot, as a matter of law, constitute a "good faith" dispute about the payment of wages.

Respondents say they did not pay Mr. Wilson the wages due because of the cost of remedying the alleged faulty work it held him responsible for. However, the WPA prohibits employers from making deductions that are not listed in the written terms of employment. S.C. Code § 41-10-40.

It is error for to deduct from wages due when there is no finding of a written notice regarding such deduction. *Bennett v. Lambroukos*, 303 S.C. 481, 483, 401 S.E.2d 428 (Ct. App. 1991) (holding it was error for the circuit court to deduct for breakage in a WPA claim, when there was no finding of written notice of a deduction for breakage).

The Respondents inability to produce written terms of employment that were provided to Mr. Wilson allowing for a deduction for fault work is fatal to their counterclaim.

As well, employers cannot avoid this prohibition in the WPA by arguing that such a deduction was allowed as part of the parties "course of dealings." S.C. Code § 41-10-100 ("No provision of this chapter may be contravened or set aside by a private agreement."); *Cato v. Grendel Cotton Mills*, 132 S.C. 454 (S.C. 1925) (refusing to allow employers to ignore a predecessor payment of wages statute by claiming their employees had by custom waived their statutory right to prompt payment of wages). Therefore, Respondents' basis for refusing to pay the wages due was unlawful. An intent to violate the law cannot constituted a bona fide dispute.

While employers can avoid imposition of treble damages when there is a good faith dispute about what is owed, i.e., a difference on how to *calculate* what is due, the employer's intent to violate the law cannot constitute a "good faith" dispute, even if the employer claims ignorance of the law. See *Oxford Finance Companies, Inc. v. Burgess*, 402 S.E.2d 480, 303 S.C. 534 (1991) (ignorance of the law excuses no man). To hold otherwise would give employers' permission to commit wage theft by feigning ignorance of the law.

The central issue in this case is whether Respondents had a good faith basis for disputing that wages were due. This is because courts only award treble damages and attorneys' fees when there was no good faith dispute about whether the wages were due. *Rice v. Multimedia, Inc.*, 456 S.E.2d 381, 383, 318 S.C. 95 (1995). The award of treble damages and attorney's fees under the WPA is discretionary and should only be awarded when the court finds that the employer's retention of wages was unjustified and willful. It should not be awarded when the employer had a bona fide or good faith reason for

disputing that the wages were due. *Id.* The decision to award treble damages is made by the court and sounds in equity. *Father v. South Carolina Dep't of Soc. Servs.*, 353 S.C. 254, 578 S.E.2d 11 (2003).

It is not enough for the employer to assert that there was “a” dispute—he must prove that there was a “good faith” dispute. This means the reason for the dispute must be “valid.” *Futch v. McAllister Towing of Georgetown*, 518 S.E.2d 591, 335 S.C. 598 (1999) (“the Legislature did not intend to prevent employers from asserting *valid* defenses or counterclaims”) (emphasis added). And the employer’s belief must also be “reasonable.” *Mathis v. Brown & Brown of SC*, 389 S.C. 299, 316, 698 S.E.2d 773 (2010). The relevant inquiry is whether the employer had a reasonable, valid good faith basis “at the time” the wages were withheld. *Id.* Later invented reasons for disputing the wages are not relevant.

If the employer’s reason for withholding wages would itself violate the law, it cannot, as a matter of law, be considered a good faith basis for withholding wages. To hold otherwise, would give employers a license to violate that law simply by feigning ignorance or even a belief that they could violate the law. This would eviscerate the WPA as well as numerous other labor laws that protect the rights of workers; it would reward and incentivize lawlessness.

There are many cases in which courts have found the employer had a good faith reason to dispute that the wages were due. However, most of these fall into the category of a disagreement about how to calculate compensation, e.g. *Linder v. Paramount Acceptance Corp.*, 291 S.C. 539, 354 S.E.2d 567 (Ct.App.1987) (employer paid the employee hourly wages and commissions upon her discharge, but there was a disagreement on the amount of commission and hourly wages due.); or where the employee has been accused of breach of the duty of loyalty, e.g., *Futch v. McAllister*

Towing of Georgetown, 518 S.E.2d 591, 335 S.C. 598 (1999). Plaintiff is not aware of any case in which a court found that the employer's belief that it could withhold *wages in violation of statutory law* constituted a good faith, valid, reasonable dispute.

The reason Respondents assert for withholding from Mr. Wilson his wages due was to repay the LLC for the cost of remedying alleged faulty work. However, such a deduction of wages is not allowed where, like here, the employer did not give written notice of this deduction at the time of hiring. S.C. Code § 41-10-40(A); *Bennett v. Lambroukos*, 303 S.C. 481, 483, 401 S.E.2d 428 (Ct. App. 1991) (holding it was error for the circuit court to deduct for breakage in a WPA claim, when there was no finding of written notice of a deduction for breakage). Therefore, for Respondents to withhold wages based on this basis would explicitly violate the WPA. In addition, as discussed more fully in Section E, *infra*, an employer cannot avoid the prohibitions of the WPA under a course of dealings theory.

Respondents' inability to produce written terms of employment that were provided to Mr. Wilson allowing for a deduction for fault work is fatal to their counterclaim. The bottom line is Respondents never provided Mr. Wilson the written terms of employment and was in fact cited by LLR for this failure. As such, Respondents cannot assert any deduction from wages or by extension, any counterclaim.

What is more, Respondents proffered reason for withholding the wages is itself a plain violation of the WPA. The employer's intent to engage in illegal conduct cannot constitute a "good faith" basis for withholding wages or a "valid defense." To hold otherwise would make the WPA a nullity.

Respondents were unable to produce evidence, either to the LLR or in trial, that Mr. Wilson had received written terms of employment. [Mag. Rtn., Vol. 1, 45.] And he was

unable to produce any written notice of allowable deductions and there is no such evidence in the record on appeal.

In trial, Respondents produced an unsigned copy of a Policies and Procedures form, that he claimed employees are given to sign, but was unable to produce one signed by Mr. Wilson. [Mag. Ret., Vol. 1, 46.] What is more, the LLR cited Mr. Wilson for failing to provide written terms of employment, which the magistrate should have given preclusive effect. Since there was no written notice of a deduction for faulty work, Respondents were precluded by the PWA from making such a deduction from wages. Therefore, the reason given by Carolina Custom Painting for withholding his pay was unlawful.

The “good faith” defense to treble damages is not an excuse for employers to avoid accountability by feigning ignorance about their most basic obligations under state labor law. This Court should rule that Respondent’s basis for withholding wages was unlawful and therefore as a matter of law does not constitute a “good faith dispute,” and that Respondents are therefore liable to the Plaintiff for treble damages and reasonable attorneys’ fees and costs, to be determined by this Court.

D. Respondents cannot counterclaim for faulty work.

Respondents argue that Mr. Wilson’s right under the WPA to not have unilateral deductions made from his pay is abrogated by course of dealings between Mr. Wilson and Carolina Custom Painting. The argument is foreclosed by *Cato v. Mills*, 129 S.E. 203, 132 S.C. 454 (S.C. 1925); see also S.C. Code § 41-10-100 (“No provision of this chapter may be contravened or set aside by a private agreement.”).

While this case pre-dates the WPA, it concerned a similar predecessor payment of wages statute, which provided that whenever a corporation discharged a laborer, “the wages which have been earned by the discharged laborer shall become immediately due

and payable.” *Id.* at 204. The court reasoned that when Cato was hired, that statute formed part of the contract. *Id.* at 203. Yet when Cato was discharged, Mills refused to pay him his wages due until he vacated housing that had been provided to him by the Corporation. *Id.*

Like here, Mills contended that Cato agreed to waive this right when he accepted employment, because “this practice is a well-understood and universal custom or usage with this defendant.” The court rejected this argument, holding that it was against public policy to impliedly waive or contract away his rights under the statute. *Id.* The court held that parties are permitted to make law for themselves only in cases where their agreement does not violate the express provisions of any law[.]” *Id.* (quoting authority). The court’s reasoning is very pertinent to this case:

At the time of the passage of this act corporations discharged their impecunious employees, no doubt, in many cases, with large families, who had nowhere to go and no means with which to defray their expenses while seeking other employment. They were, under the custom mentioned, compelled to wait until pay day for their wages. In the meantime expenses were mounting, and the situation of the laborer became more precarious each day. The statute in question was passed to remedy this state of affairs. Now, if the object of the statute can be thwarted by custom or contract, then the statute might as well be repealed, because it will not be long before the owner of every factory, mill, or other corporation employing labor, subject to the provisions of the statute, will establish customs and enter into contracts that will completely nullify the statute.

Id. at 205.

Cato v. Mills is alive and well. It was cited by the South Carolina Supreme Court for these principals in *Futch v. McCallister*. And the rule was most recently reiterated by the Court of Appeals in *Ross v. Ligand Pharm*, 371 S.C. 464, 473 n. 1 (S.C. Ct. App. 2006) (“our courts ‘refuse to allow employers to ignore the [WPA] by claiming their employees had by contract or custom waived their statutory right to prompt payment of wages.’ ”)

Cato v. Mills is instructive for a second reason as well. The concurring opinion explains that Mills’ duty to pay Cato his wages upon discharge, was a separate and distinct

obligation from Cato's obligation to vacate the house. *Id.* at 206 (Marion, J. concurring). Judge Marion reasoned that obligation under the statute was to pay the wages due "immediately." *Id.* This was a mandatory obligation by statute. *Id.* Therefore, Mills could not refuse to perform this obligation until Cato performed a separate obligation to vacate the house. See also S.C. Code § 41-10-60 ("[T]he employer shall give written notice to the employee of the amount of wages which he concedes to be due and shall pay the amount *without condition* within the time set by this chapter.")

Similarly, here Respondents' obligation under the statute was to pay the wages due within 48 hours or the next payday (not to exceed 30 days). That payday was found to be October 20, 2017 by the LLR. S.C. Code § 41-10-50. Any other dispute between the LLC and Wilson needed to be handled separately. As Judge Marion reasoned, "It is an elementary and fundamental principle of law that no person can by contract relieve himself of a duty which he owes to the public independently of the contract." *Id.*

This was not a good faith misunderstanding of the law—this was defiance. And it should be treated accordingly. The Court should hold that Respondents are barred from bringing a counterclaim for faulty work and reverse the Magistrate's ruling awarding the Respondents' counterclaim damages as contrary to the law. The Court should further hold that as a matter of law, there was no "good faith" dispute for withholding wages and award treble damages, attorney's fees and costs.

E. The magistrates award of damages against Appellant is contrary to the evidence.

Even if the Respondents could bring a counterclaim for faulty work, which they cannot, there would have to be evidence that (1) Mr. Wilson was responsible for the faulty

work, and (2) evidence to establish the amount of damage beyond speculation. The evidence at trial failed in both respects.

At trial, there was only one witness for the defense: Respondent Singleton. He admitted that at each work site where there was alleged faulty work, there had been more than one worker present, that he himself was not present, and that he had no first-hand knowledge of which employee was responsible. His explanation holding Mr. Wilson responsible was that he was allegedly the foreman. But Mr. Singleton was Mr. Wilson's boss, so that logic applies equally to make him responsible.

What is more, Mr. Singleton considered all of his workers independent contractors to Carolina Custom Painting. He did not explain how one independent contractor (Mr. Wilson) could be responsible for the work of another independent contractor, who was hired by Respondent, not Mr. Wilson. There was no direct or circumstantial evidence that any of the alleged faulty work had been performed by Mr. Wilson. It was contrary to the evidence for the Magistrate to find Mr. Wilson responsible for faulty work.

And further, Respondents offered no receipts or invoices in trial or any other documentary evidence to establish beyond speculation the value of the damages caused by alleged faulty work or breakage; those damages were therefore too speculative to be awarded. See *Clark v. Cantrell*, 339 S.C. 369, 529 S.E.2d 528 (2000); *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991); *Barnwell v. Barber-Colman Co.*, 301 S.C. 534, 393 S.E.2d 162 (1989); *Whisenant v. James Island Corp.*, 277 S.C. 10, 281 S.E.2d 794 (1981). Carolina Custom Painting could have brought invoices and receipts to prove its damages but did not.

As set forth more fully above, supra, Mr. Singleton's testimony about the cost of the labor and parts to remedy the alleged faulty work, was wildly exaggerated and not credible.

The Court may use its common sense to conclude that interior doorknobs not cost \$75 and boards do not cost \$104, and it does not take two full weeks to re-sand and repaint door frames. He did not even know who had done the faulty work. Without competent testimony or evidence with which to compute the actual amount of damages, any number arrived at was by definition arbitrary, speculative, and not supported by evidence. The Court should reverse the judgment against Mr. Wilson as contrary to the evidence.

F. CONCLUSION

The Magistrate Judge committed numerous errors of law and the verdict is not supported by the evidence. This Court should reverse the judgment of the Magistrate Judge, simply strike the counter claim, rule there was no good faith dispute as a matter of law, award treble damages, and set a further hearing on the issue of reasonable attorney's fees and costs. In the alternative, the Court should grant Appellant a Trial De Novo in the Circuit Court.

Respectfully Submitted,

NAUHEIM LAW OFFICE, LLC

s/ David A. Nauheim

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Charleston, South Carolina
December 4, 2020

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
TROY WILSON,)
Appellant,)
vs.)
CAROLINA CUSTOM PAINTING)
& DRYWALL LLC, and)
JAMIE SINGLETON,)
Respondents.)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

2020-CP-1001819
COMMON PLEAS NUMBER

No. 2018 CV 1011500709
MAGISTRATE'S COURT NUMBER,
JUDGE JACKSON SETH WHIPPER

DECLARATION OF PEGGY
SHEPPARD

I, Peggy Sheppard, am a paralegal with the Nauheim Law Office. I am above eighteen years of age and legally competent to testify in all respects.

1. I called the magistrate's court on or about July 31, 2018, just after the trial in this matter, to obtain a transcript of the trial testimony, to assist us in drafting the post-trial brief that had been requested by the court. The court told me that it was "on Judge Whipple's desk" and they could not provide it until the Judge was done with the case.
2. After Judge Whipple handed down the Transcript of Judgment on March 19, 2020, I again called magistrate's court to again request a copy of the transcript or recording of the trial testimony. We were told that a transcript had not been requested within ninety days of the trial date and therefore had been destroyed according to court policy.
3. According to my first phone call to the Court in July of 2018, we could not request a transcript until the Judge "no longer had the file on his desk"—i.e., had rendered a

verdict. Once the verdict was issued, it was past the ninety days and there was no longer a recording available from which a transcript could be made. Accordingly, despite our best efforts, we were not able to obtain a transcript or recording of trial.

I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "Peggy Sheppard", is written over a horizontal line.

Peggy Sheppard

Paralegal

Nauheim Law Office

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Charleston, South Carolina 29417

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Charleston, South Carolina
June 19, 2020

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
TROY WILSON,)
Appellant,)
vs.)
CAROLINA CUSTOM PAINTING)
& DRYWALL LLC, and)
JAMIE SINGLETON,)
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IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

2020CP1001819
COMMON PLEAS NUMBER

No. 2018 CV 1011500709
MAGISTRATE'S COURT NUMBER,
JUDGE JACKSON SETH WHIPPER

**APPELLANT'S SECOND MOTION FOR
NEW TRIAL**

COMES NOW the Appellant, Troy Wilson, by and through undersigned counsel, and respectfully moves for a new trial in the circuit court pursuant to S.C. Code § 18-7-60. A memorandum in support of this Motion is being filed contemporaneously with the Motion. This motion is also being filed contemporaneously with the second appeal filed at No. 2020 CP 1001819 from the Judgment by Magistrate Judge Jackson Seth Whipper at No. 2018 CV 1011500709.

Respectfully Submitted, ..

NAUHEIM LAW OFFICE, LLC

s/ David A. Nauheim
David A. Nauheim
Attorneys for the Plaintiff
PO Box 31458
Charleston, South Carolina 29407
(843) 534-5084

Charleston, South Carolina
December 4, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
TROY WILSON,	)	<u>2020-CP-1001819</u>
	)	COMMON PLEAS NUMBER
Appellant,	)	
	)	<u>No. 2018 CV 1011500709</u>
vs.	)	MAGISTRATE'S COURT NUMBER,
	)	JUDGE JACKSON SETH WHIPPER
CAROLINA CUSTOM PAINTING	)	
& DRYWALL LLC, and	)	
JAMIE SINGLETON,	)	MEMORANDUM IN SUPPORT OF
	)	APPELLANT'S SECOND MOTION
	)	FOR NEW TRIAL
Respondents.	)	
	)	

I. INTRODUCTION

The Appellant Wilson has filed an appeal in the case on legal, factual and evidentiary grounds. Unfortunately, however, there is no record of the testimony or proceedings, having been destroyed by the Magistrate's Court. As well, the Magistrate's Return, which was filed 27 months after trial, is cursory and insufficient. Despite that, Wilson believes that the Court can decide the appeal solely based on the legal issues and uncontested facts, not unlike a summary judgment motion. However, in the event that this is insufficient for the Court to perform a meaningful review, the Court must order a new trial, so that the testimony and proceedings can be taken down.

II. PROCEDURAL BACKGROUND/FACTUAL BACKGROUND

Appellant directs the Court to the procedural background and factual background recited in his Brief in Support of his Second Appeal from Magistrate's Court, which was filed contemporaneously with this motion.

III. ARGUMENT

If the Court is unable to decide this matter on legal issues and uncontested facts alone, it should order a new trial, as there is no record of the testimony or proceedings below, and the Magistrate's Return is not sufficient.

The Court has the authority to order a new trial at any time before or after judgment under S.C. Code § 18-7-160, which provides:

Either party may move for a new trial in the appellate court on a case or exceptions, or otherwise, and such motion may be made before or after judgment has been entered; and the provisions of this Code in relation to the proceedings, exceptions to the decisions of the court, making and settling cases and exceptions, motions for new trials and making up the judgment roll in the circuit court are hereby made applicable to all appeals brought up for trial as in this chapter provided.

See also Flanagan, J. et al, *South Carolina Civil Procedure* at 576 (2010 3d Ed.) ("[T]he circuit court has expanded power to grant new trials even in cases of default.)"

An appeal of from the magistrate's court must be based on the record below:

The appeal shall be heard by the court upon all the papers in the case, including the testimony on the trial, which shall be taken down in writing and signed by the witnesses, and the grounds of exception made, without the examination of witnesses in court. The appeal shall be heard on the original papers and no copy thereof need be furnished for the use of the court.

S.C. Code § 18-7-130.

In addition, the magistrate is required to file a Return with the appellate court, which should consist of "the testimony, proceedings and judgment." S.C. Code § 18-7-60.

When a magistrate judge fails to deliver a sufficient return, and the trial testimony and proceedings were not taken down, ordering a further return would not be effective; the Court must order a trial de novo so the testimony can be taken down. *McKinley Music Co. v. Glymph*, 100 S.C. 200, 202 (S.C. 1915).

McKinley is squarely on point with this case. The plaintiff in *McKinley* sued the defendant in magistrate's court for an unpaid debt. *Id.* at 202. The magistrate ruled in favor of the defendant and the plaintiff appealed to the Circuit Court.

In the Circuit Court, the plaintiff argued that the testimony warranted only one conclusion: judgment against the defendant. *Id.* While some of the testimony from trial had been taken down, the defendant's testimony had not. The Circuit Court was unwilling to rule on an insufficient record and ordered a new trial so that the defendant's testimony could be "taken down."

The plaintiff appealed the order for a new trial but the South Carolina Supreme Court affirmed the Circuit Court. It held that "[i]f the Circuit Court was unwilling to render a final judgment on the record as presented to the Court it was a just exercise of its power to order the case retried." The Supreme Court reasoned that "[a]n amended or further return by the magistrate would not have been effective to supply testimony which had not been 'taken down.'" *Id.* "A new trial was ordered, amongst other things, to have that testimony taken down by the magistrate." *Id.*

This is exactly the situation before this Court. There is not a sufficient record on which the Court ruled and requesting a further return from the magistrate would be futile because the testimony was not taken down.

While the holding in *McKinley* at first blush appears to be an affirmation of the Circuit Court's exercise of discretion, it is more than that. The Supreme Court reasoned "There *must* be a trial *de novo* to have the defendant's testimony taken down." *Id.* (emphasis added.) *McKinley* should be read as *requiring* a new trial where, like here, there is an insufficient return and the testimony below has not been taken down.

This case falls squarely within the facts of *McKinley*. Not only is the testimony taken down in the magistrate's court incomplete, it is actually non-existent. The testimony was not taken down in writing or signed by the witnesses, and neither was the grounds for exceptions made, as required by S.C. Code § 18-7-130.

What is more, the Magistrate's Return was filed *27 months after the trial* and without the benefit of a recording of the testimony or proceedings.

As stated in the Plaintiff's Brief in Support of Appeal, the trial records of this action were destroyed by the magistrate's office prior to a decision being rendered. As such, it is not feasible for the Magistrate to create a sufficient return. No amount of return amendments or further returns would cure this deficiency. Under *McKinley*, a new trial is the proper remedy. Additionally, this remedy is statutorily allowed to the Plaintiff through S.C. Code § 18-7-160.

As set forth previously, the Magistrate Judge did not even file a Transcript of Judgment until March 19, 2020, 20 months after the July 12, 2018 trial. An appeal was filed on April 13, 2020. As a result of that appeal, this Court ordered the Magistrate Judge to file a Return. On October 15, 2020, the magistrate finally issued a Return of the Civil Appeal for this case. This was *27 months* after the trial.

Prior to filing the Return, the magistrate's office advised Plaintiff's counsel's office that the recording of the trial had been destroyed 90 days after trial and was not available. In light of these facts, the Return proffered by the Magistrate Judge is wholly unreliable. No Judge can reliably and accurately recall testimony and evidence from a trial that occurred over two years earlier. This is demonstrated by the cursory summary of the testimony in the Magistrate's Return.

One could speculate that the Magistrate may have taken contemporaneous notes of the testimony. However, the brevity of the witness summaries in the return say otherwise. Plainly, the Magistrate either took no notes, or did not have them when he drafted the Magistrate's Return 27 months after trial.

The Court can also infer that the Magistrate's 20-month delay in handing down a verdict, and further delay in delivering a Magistrate's Return after he was served with the Notice of Appeal, is further evidence he did not recall the testimony or proceedings or have any notes.

Furthermore, the findings in the March 19, 2020 Order signed by the Magistrate Judge was a verbatim copy of proposed findings of fact and conclusions of law submitted to the Magistrate by counsel for the Respondents; it is no indicia that the Magistrate experienced a sudden recall of the trial. This, plus the brevity of the Magistrate's Return, make the Return insufficient to serve as the record in the matter.

In *State v. Ladson*, our appellate court set forth the standard used in determining whether an incomplete record on appeal mandates a new trial:

We conclude from *China* and its progeny, combined with a review of the law of other jurisdictions, that our supreme court would require a reconstructed record on appeal to allow for "meaningful appellate review." A new trial is therefore appropriate if the appellant establishes that "the incomplete nature of the transcript prevents the appellate court from conducting a 'meaningful appellate review.' "

373 S.C. 320, 325 (S.C. Ct. App. 2007) (citing *In re D.W.*, 171 N.C.App. 496, 615 S.E.2d 90, 94 (2005); see also *State v. Chanze*, 211 W.Va. 257, 565 S.E.2d 379, 382-83 (2002) (finding criminal defendant is entitled to meaningful appellate review of his lower court proceedings, and if this is not possible from reconstructed record, a new trial is appropriate).

Given the insufficiency of the Return filed by the Magistrate, and lack of a record of the actual testimony at trial or the proceedings, this court cannot make a meaningful review of the evidence and should not rely on it in ruling of this appeal, unless, of course, a ruling can be made as a matter of law. In that case, the only way to cure this defect is to order a new trial, where the testimony and proceedings can be presented again and preserved. The Appellants first choice is for this Court to rule in his favor on the uncontested facts and the law, but if the Court is unable to do so, he requests a Trial De Novo in the alternative.

IV. CONCLUSION

If the Court finds that it is unable to perform a meaningful review in light of the insufficient Magistrate's Return and lack of a record, it should grant a trial De Novo in the Circuit Court so that the testimony and proceedings can be taken down.

Respectfully Submitted,

NAUHEIM LAW OFFICE, LLC

s/ David A. Nauheim

David A. Nauheim

Attorneys for the Plaintiff

PO Box 31458

Charleston, South Carolina 29407

(843) 534-5084

Charleston, South Carolina
December 4, 2020

FORM 1
NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Case No. 2020-CP-100-1819

MAGISTRATE'S COURT
JUDGE JACKSON SETH WHIPPER
Case No. 2018 CV 1011500709

TROY WILSON,

Appellant,

CAROLINA CUSTOM
PAINTING & DRYWALL,
LLC and JAMIE
SINGLETON,

v.

Respondent

NOTICE OF APPEAL

Troy Wilson appeals the Amended Judgment of the Honorable Jennifer B. McCoy dated February 16, 2021 and the Honorable Jennifer B. McCoy's *de facto* denial of Appellant's Motion for New Trial for which no ruling was ever issued prior to the February 16, 2021 Amended Judgment ending the case before the Court of Common Pleas.

March 10, 2021

NAUHEIM LAW OFFICE, LLC

s/ David A. Nauheim
David A. Nauheim
Attorneys for the Plaintiff
PO Box 31458
Charleston, South Carolina
29407
(843) 534-5084

Other Counsel of Record:
Harold Alan Oberman
60 Markfield Dr. #2
Charleston, SC 29407
Attorney for Respondent
(843)577-7010

Attorney for Appellant

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
TROY WILSON,)
Plaintiff,)
vs.)
CAROLINA CUSTOM PAINTING)
& DRYWALL LLC, and)
JAMIE SINGLETON,)
Defendants.)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

2020-CP-100-1819
COMMON PLEAS NUMBER

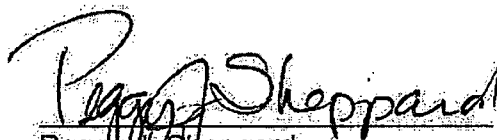
No. 2018 CV 1011500709
MAGISTRATE'S COURT NUMBER,
JUDGE JACKSON SETH WHIPPER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the Notice of Appeal to the South Carolina Court of Appeals was served on the following this 10TH day of March, 2021 via regular, first-class mail:

Judge Jennifer McCoy
Court of Common Pleas
100 Broad Street, Ste. 106
Charleston, SC 29401-2258

Harold Alan Oberman
60 Markfield Drive, Suite 2
Charleston, SC 29407


Peggy U. Sheppard
Paralegal
Nauheim Law Office, LLC
PO Box 31458
Charleston, South Carolina 29407
Ph: (843) 534-5084
Fax: (843) 350-3572
peggy@nauheimlaw.com

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP1001819

Troy Wilson
PLAINTIFF(S)

Carolina Custom Painting & Drywall Llc et al
DEFENDANT(S)

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.
- ☐ **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:

This is an AMENDED order to correct the original order, filed on February 11, 2021 to state that this order ends the case. Appellant filed a Motion to Appeal on April 14, 2020, which was heard by this court on December 8, 2020. Upon careful consideration of the Magistrate Return and arguments from counsel, this court Affirms the Magistrate Court's holding.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

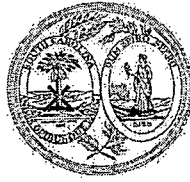
This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/16/2021 .

Case Party Info Protected

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: 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 judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Charleston Common Pleas

Case Caption: Troy Wilson VS Carolina Custom Painting & Drywall Llc ,
defendant, et al
Case Number: 2020CP1001819
Type: Order/Electronic Form 4

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2021-02-16 11:01:00 page 3 of 3

ELECTRONICALLY FILED - 2021 Feb 16 2:01 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1001819
ELECTRONICALLY FILED - 2021 Mar 10 4:38 PM - CHARLESTON - COMMON PLEAS - CASE#2020CP1001819

FORM 1
NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
Mar 11 2021
SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Case No. 2020-CP-100-1819

MAGISTRATE'S COURT
JUDGE JACKSON SETH WHIPPER
Case No. 2018 CV 1011500709

TROY WILSON,

Appellant,

CAROLINA CUSTOM
PAINTING & DRYWALL,
LLC and JAMIE
SINGLETON,

v.

Respondent

NOTICE OF APPEAL

Troy Wilson appeals the Amended Judgment of the Honorable Jennifer B. McCoy dated February 16, 2021 and the Honorable Jennifer B. McCoy's *de facto* denial of Appellant's Motion for New Trial for which no ruling was ever issued prior to the February 16, 2021 Amended Judgment ending the case before the Court of Common Pleas.

March 10, 2021

NAUHEIM LAW OFFICE, LLC

s/ David A. Nauheim
David A. Nauheim
Attorneys for the Plaintiff
PO Box 31458
Charleston, South Carolina
29407
(843) 534-5084

Other Counsel of Record:
Harold Alan Oberman
60 Markfield Dr. #2
Charleston, SC 29407
Attorney for Respondent
(843)577-7010

Attorney for Appellant

RECEIVED

Mar 11 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

TROY WILSON,)

Plaintiff,)

vs.)

CAROLINA CUSTOM PAINTING)
& DRYWALL LLC, and)
JAMIE SINGLETON,)

Defendants.)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

2020-CP-100-1819

COMMON PLEAS NUMBER

No. 2018 CV 1011500709

MAGISTRATE'S COURT NUMBER,
JUDGE JACKSON SETH WHIPPER

CERTIFICATE OF SERVICE

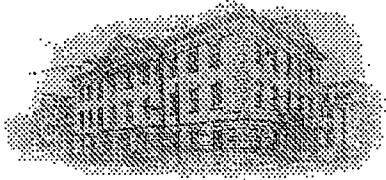
The undersigned hereby certifies that the Notice of Appeal to the South Carolina Court of Appeals was served on the following this 10TH day of March, 2021 via regular, first-class mail:

Judge Jennifer McCoy
Court of Common Pleas
100 Broad Street, Ste. 106
Charleston, SC 29401-2258

Harold Alan Oberman
60 Markfield Drive, Suite 2
Charleston, SC 29407



Peggy U. Sheppard
Paralegal
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peggy@nauheimlaw.com



NAUHEIM LAW OFFICE

ATTORNEYS AND COUNSELORS AT LAW

Post Office Box 31458

CHARLESTON, SOUTH CAROLINA 29417

TEL: 843-534-3064 • FAX: 843-230-3872 • NAUHEIMLAWOFFICE.COM

March 11, 2021

Via Fax: (803) 734-1839

Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RECEIVED

Mar 11 2021

SC Court of Appeals

RE: Troy Wilson v. Carolina Custom Painting & Drywall,
LLC and James Singletary
Notice of Appeal

Dear Ms. Kitchings:

Enclosed for filing please find the following:

- 1) The Notice of Appeal in a Civil Case;
- 2) Certificate of Service showing service on all parties;
- 3) Copy of February 11, 2021 non-final Judgment; and
- 4) Copy of February 16, 2021 final Judgment.

The filing fee will immediately follow via U.S. mail.

If you have any questions, please do not hesitate to contact me.
Thank you for your assistance in this matter.

Very truly yours,

/s/

DAVID A. NAUHEIM
Nauheim Law Office, LLC

DAN/pjs
Enclosures

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Troy Wilson

Case No. 2020-CP-10-01819

Plaintiff

RETURN OF THE CIVIL APPEAL

Ys.

Carolina Custom Painting & Drywall, LLC and Jamie

Singleton

Defendant(s)

This matter is on appeal from the Magistrate Court of Charleston County, South Carolina,
the Honorable Jackson S. Whipper Presiding Judge.

The Plaintiff filed a Summons and Complaint on April 19, 2018.

against the Defendant(s) alleging the following: Plaintiff was hired to work as a painter and sheet rocker.

Defendant reduced his pay saying Plaintiff failed to perform and caused damage.

County Constable served the Defendant on April 22, 2018

@ 5505 Rowsham Place, North Charleston, SC

by Personally delivery . The Defendant answered on May 21,2018

stating: The Plaintiff worked for Carolina Custom Painting & Drywall, LLC as an independent contractor
and demand that they be compensated for Wilson's defective work

The Defendant filed a counterclaim on May 21, 2018 . The matter was heard by Judge
on July 12, 2018 . The ruling was issued in favor of Defendants

on the claim the Court awarded the following: Judgment of \$3,550.00 on the Counterclaim

2020 OCT 19 PM 11:28
JULIE J ARNS TRUMP
CLERK OF COURT
U.S. District Court
Southern District of New York

The Court ruled for the Defendants on the counterclaim, the Court awarded the following
Judgment of \$3,550.00 (see above)

The proceedings were (Check Appropriate Box)

- ☒ Recorded electronically.
☐ Recorded by a court reporter.
☐ Recorded in writing by the judge.

The Notice of Appeal was served upon the Court by Mail on April 20, 2020

The jury list was prepared pursuant to S.C. Code Ann. (Check Appropriate Box)(Answer if Applicable)

- ☐ § 22-2-80. Selection of jury list for a single trial.
☐ § 22-2-90. Selection of jury list for scheduled terms of jury trials.

and the Plaintiff and Defendant(s) were given an opportunity to exercise challenges on

Not Applicable

The Plaintiff called the following witnesses, and a summary of their testimony is attached.

1. <u>Troy Wilson</u>	2. _____
3. _____	4. _____
5. _____	6. _____
7. _____	8. _____
9. _____	10. _____

The Defendant called the following witnesses and a summary of their testimony is attached.

1. <u>Jamie Singleton</u>	2. _____
3. _____	4. _____
5. _____	6. _____
7. _____	8. _____
9. _____	10. _____

The Plaintiff made the following motions. A summary of the Plaintiff's and Defendant's position on each motion and the Court's ruling is attached.

1. <u>Trial : Dismiss Counterclaim (Denied)</u>	2. <u>Trial: Directed Verdict (Denied)</u>
3. _____	4. _____
5. _____	6. _____
7. _____	8. _____
9. _____	10. _____

The Defendant made the following motions. A summary of the Plaintiff's and Defendant's position on each motion and the Court's ruling is attached.

1. <u>Trial: Directed Verdict (Denied)</u>	2. _____
3. _____	4. _____
5. _____	6. _____
7. _____	8. _____
9. _____	10. _____

The Plaintiff offered the following items into evidence.

1. <u>Required Work Place Poster</u>	2. <u>(Withdrawn: Letter)</u>
3. <u>LLR Letter (11/3/2017)</u>	4. <u>Citation and Notification of Penalty</u>
5. _____	6. _____
7. _____	8. _____
9. _____	10. _____

The Defendant raised the following objections to the items that the Plaintiff sought to introduce into evidence:

1. <u>None</u>	2. _____
3. _____	4. _____
5. _____	6. _____
7. _____	8. _____
9. _____	10. _____

A summary of the Defendant's and Plaintiff's position and the Court's ruling on the objection is attached.

The Defendant offered the following items into evidence:

1. <u>LLR Ofc. Wages/Child Labor</u>	2. <u>Returned Letter w/contents (Troy Wilson)</u>
3. <u>(not offered)</u>	4. <u>Summons & Complaint w/attachments</u>
5. <u>Photographs (5 pgs.)</u>	6. _____
7. _____	8. _____
9. _____	10. _____

The Plaintiff raised the following objections to the items that the Defendant sought to introduce into evidence:

1. <u>None</u>	2. _____
3. _____	4. _____
5. _____	6. _____
7. _____	8. _____
9. _____	10. _____

A summary of the Plaintiff's and Defendant's position and the Court's ruling on the objection is attached.

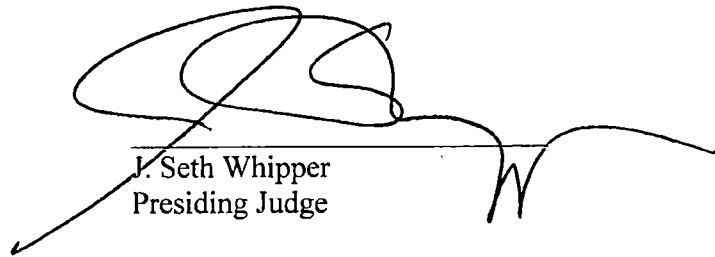
The Court issued the following Judgment Verdict for Defendant on his Counterclaim: \$3,550.00

Attached are copies of the items which are checked.

☒	Summons and Complaint	☐ Other: _____
☐	Summons and Claim and Delivery	
☐	Landlord-Tenant Rule to Show Cause	
☒	Answer	
☐	Counterclaim	
☐	Judgment	
☐	Writ of Ejectment	
☐	Order	
☐	Jury List	
☒	List of witnesses and a summary of their testimony.	
☐	List of motions, a summary of the parties positions and this court's ruling.	
☐	List of items offered into evidence, a summary of objections, and court's ruling.	
☒	Documents and exhibits put into the record.	
☒	Notice of Appeal.	

Signature page

October 14, 2020
North Charleston, SC 29405


J. Seth Whipper
Presiding Judge



J. Seth Whipper
Magistrate

NORTH AREA SMALL CLAIMS
COURT

843.202.6616
Fax: 843.202.6620
Lonnie Hamilton, III Public Services
Building
4045 Bridge View Drive
Post Office Box 60037
North Charleston, SC 29419-0037

October 15, 2020

Wilson vs. Carolina Custom Painting & Drywall, LLC, et al.

2020-CP-10-01819

Appeal

Witness Summaries

Plaintiff

Troy Wilson: worked with Defendants for several years; did agree to pay for damages caused at a job site by his actions; did not receive his pay for the period ending on October 2017 or due October 12, 2017; his children “probably” mishandled his notice of certified mail from the Defendants; he did resign because of the disagreement about “poor workmanship” and his payment being reduced; he was the foreman for the work being performed at 47 Waterway Island; 1509 Jennings was one of his work sites.

Defendants

Jamie Singleton: owner, operator of Carolina Custom Painting & Drywall, LLC; Troy agreed to “poor workmanship” deductions; Troy has been working with him for “several” years; he and Troy had heated argument about the deductions he announced to the workman; he “docked Troy’s payments because of the workmanship issues; he was persuaded by the Labor Board’s inquiry to pay Troy; he sent the payment to Troy’s address shown on the Labor Dept. material; he is willing to pay the \$432.00; Troy owes me for the other money I had to put out correcting his mistakes.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE MAGISTRATE'S COURT
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO. 2018CV1011500709

TROY WILSON,

)
)
) Plaintiff,
)
)

vs.

)
) CAROLINA CUSTOM PAINTING &
) DRYWALL, LLC and JAMIE
) SINGLETON,
)
)

) Defendants.
)
)

ORDER

 I tried this matter as a bench trial on July 12, 2018. Troy Wilson, the Plaintiff, was represented by David Nauheim and the Defendants, Jamie Singleton (Singleton) and Carolina Custom Paining & Drywall, LLC (Carolina), were represented by Harold Oberman. Plaintiff had sued Defendants for Unpaid Wages under the S.C. Wage Payment Act and for Unjust Enrichment. Defendants answered and counterclaimed, alleging that they had tried to pay Plaintiff, that Plaintiff was responsible for his defective work, that deductions or a setoff from his wages was appropriate, and that there was a bona fide dispute as to whether Plaintiff was owed wages.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Facts)

The relevant facts in this lawsuit are all but undisputed. Immediately before Plaintiff quit his job with Defendants, there was a dispute concerning wages. Singleton testified that Defendant did defective work at 1108 Ocean Club. He only put one (1) coat of paint on the wall and didn't

sand the door frames. Because of this, paint peeled off. This dispute arose before Plaintiff quit and before he claimed wages. Defendant withheld wages from Plaintiff because of this defective work.

Plaintiff does not convincingly dispute this account. In fact, he alleges in his Complaint as follows:

9. On or about October 10, 2017, there was a problem with paint peeling on house that Defendants had recently painted, which had not been sanded properly. Mr. Singleton blamed Mr. Wilson, although he had not been at that job site the day it was sanded. Mr. Singleton told Mr. Wilson orally that he was going to cut his pay from \$18 per hour to \$15 per hour.

10 Mr. Wilson decided to resign and the next day, October 11, 2017, he texted Mr. Singleton that he had made a decision to leave the company.

11. The Defendants owed Mr. Wilson \$432.00 in wages on October 12, 2017, for 24 hours of work at \$18 per hour, which he had completed in the pay period prior to his resignation.

13. On or about October 13, 2017, Mr. Wilson texted Mr. Singleton asking when he wanted him to turn in his uniform. Mr. Singleton called Mr. Wilson. He told him to keep the uniform and that he was not going to pay him his last paycheck, citing the recent paint peeling issue.

14. The next scheduled pay day was October 20, 2017. The Defendants did not pay Mr. Wilson the \$432.00 in wages that were due on that date.

Plaintiff states in his Trial Brief as follows:

On or about October 10, 2017, there was a problem with paint peeling on house that Defendants had recently painted, which had not been sanded properly. Mr. Singleton blamed Mr. Wilson, although he had not been at that job site the day it was sanded. Mr. Singleton told Mr. Wilson orally that he was going to cut his pay from \$18 per hour to

\$15 per hour. Mr. Wilson decided to resign and the next day, October 11, 2017, he texted Mr. Singleton that he had made a decision to leave the company.



Further, there was a course of dealing where deductions would be taken from Plaintiff's payment for defective work. Singleton testified that at the initial hire of an employee, he would give all employees a written document that contained the following language "I understand that I am responsible for materials and labor of any faulty work discovered during inspection." Singleton testified Plaintiff received this document like all other employees. The course of dealing between Plaintiff and Defendants confirm that this was the deal. On March 30, 2015, Plaintiff signed a document that stated he would pay for damaged work: "I, Troy Wilson, a subcontract employee, agree to reimburse Carolina Custom Painting and Drywall \$1,350.00 (one thousand three hundred fifty dollars) for damaged AC condenser at 27 Smith St. Payments of \$150.00 will be deducted from my check weekly starting 3-27-15."

Because of this bona fide dispute over wages, Plaintiff quit. Defendants withheld Plaintiff's last paycheck in the amount of \$432.00 because of the deficient work he had performed and the cost to correct it. I find Defendants were justified to do this.

Plaintiff reported Defendants to the Labor Board. At one point, Defendants were given three days to gather certain documents (Letter 11/3/17). They made the decision that it would be more cost effective to pay Plaintiff his claimed wage, rather than to contest the action before the Labor Board. Defendant testified that he was unaware that Plaintiff could bring an additional suit against him. He believed this payment would end the matter.

Defendants decided to mail Plaintiff his check and they did so within 30 days. Defendants sent Plaintiff his check via certified mail to 160 Stratton Dr., N. Charleston SC, 29420 and Plaintiff acknowledged that was his address. The post office tried to deliver the check on many occasions (envelope) but the check remained unclaimed. Plaintiff blamed his failure to pick up the check on his children. Singleton stated he would continue to try to give Plaintiff his check, but Plaintiff testified he would not accept it.

Singleton testified he believed it would be a bad idea if he tried to contact Plaintiff or deliver the check personally to Plaintiff. There was an ongoing dispute and a confrontation could happen. This Court agrees. Singleton was also justified in wanting to document his attempt to pay by using certified mail.



Because of Singleton's decision not to contest the matter before the Labor Board, it made certain findings. Singleton believed his decision to send the check to Plaintiff would end the matter, but this was not the case. The findings relevant to this wage dispute is that Defendants failed to "pay Troy Wilson on the scheduled pay-date of 10/20/17 for the amount of \$432.00 (paid in full but paid late)."

Defendants also counterclaimed against Plaintiff. The counterclaims consist of three jobs on which Plaintiff worked. Singleton testified as to 1108 Ocean's Club, outlined above, he was out \$300.00 in materials and approximately \$1,400.00 in labor because of Plaintiff's defective work. At 47 Waterway Island, Singleton testified he had to replace 8 boards at \$104.00 a board and \$400.00 in labor for a total cost to fix of \$1,232.00. Plaintiff admitted he was the supervisor on this job, that there was paint that dripped on the boards, and that the boards had to be replaced. As supervisor, I find Plaintiff ultimately responsible for these costs. At 1509 Jenys, Singleton showed

pictures of Plaintiff's defective work. There was paint on door knobs and other hardware discovered after Plaintiff quit. Eight (8) doors at \$75.00 a piece had to be replaced. Hinges and knobs totaled \$200.00 and labor was \$250.00, or a total of \$1,050.00. I find these counterclaims persuasive and proven.

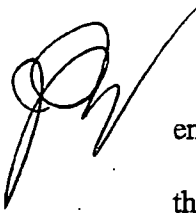
II. FINDING OF FACTS AND CONCLUSIONS OF LAW

A. Plaintiff is Not Entitled to Treble Damages or Attorney's Fees.

Under the Wage Payment Act, though the legislature seeks to protect employees from the unjustified and wilful retention of wages by the employer, they do not want to stifle legitimate wage disputes. Rice v. Multimedia, Inc., 318 S.C. 95, 99, 456 S.E.2d 381, 383 (1995)

1. There was a bonafide dispute as to employee's entitlement to wages.

As noted above, a dispute about Plaintiffs pay arose before Plaintiff quit. Plaintiff quit because of this dispute.



Temple v. Tec-Fab, Inc., 381 S.C. 597, 675 S.E.2d 414, (2009) states that a finding that an employee is entitled to recover unpaid wages (such as the \$432.00) is not equivalent to a finding that there existed no bona fide dispute as to the employee's entitlement to those wages. Citing O'Neal v. Intermedical Hosp. of South Carolina, 355 S.C. 499, 585 S.E.2d 526 (Ct.App.2003). Just because employee was entitled to recover his wages, this does not mean there was no bona fide dispute.

Temple further states an employee was not entitled to treble damages and attorneys' fees under Payment of Wages Act in light of bona fide dispute as to whether employer owed wages, citing Futch v. McAllister, 335 S.C. 598, 518 S.E.2d 591 (1999).

Plaintiff, in his Trial Brief admits, "An award of treble damages in the discretion of the court. It is not awarded when the employer had a bona fide reason for believing wages were not owed." (Plaintiff's Trial Brief, p. 5)

Because there was a bona fide dispute as to wages, I do not award treble damages or attorney's fees. Defendants offered their defenses in good faith. The dispute arose before the claim to the Labor Board. Even if I would find that Plaintiff would ultimately prevail on the issue of wrongfully withheld wages (which I do not), I still would not award treble damages or attorney's fees as the wage issue was legitimately disputed in good faith. Plaintiff has presented no credible evidence that the dispute was not bona fide and in his complaint states facts which show it to be bona fide.

2. Discretion.



[T]he statute explicitly provides that the employee "may" recover treble damages. "The use of the word 'may' signifies permission and generally means that the action spoken of is optional or discretionary." State v. Wilson, 274 S.C. 352, 356, 264 S.E.2d 414, 416 (1980). Thus, by using "may", rather than "shall", the legislature has provided that the penalty is discretionary with the judge. This interpretation accords with the purpose of the Wage Payment Act, to wit: to protect employees from the unjustified and wilful retention of wages by the employer. The imposition of treble damages in those cases where there is a bona fide dispute would be unjust and harsh.

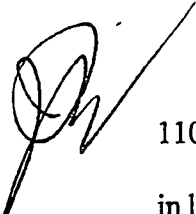
Rice v. Multimedia, Inc., 318 S.C. 95, 99, 456 S.E.2d 381, 383 (1995)

Because I find that there was a bonafide dispute over wages and what Defendants could withhold, I decline to award Plaintiff treble damages and attorneys fees. Additionally, I decline to award treble damages and attorneys fees because Defendants tried to pay the wage and believed he

had satisfied Plaintiff. As pointed out in the case law, a finding that the wage was in fact due does not mean that there was no bona fide dispute.

B. Defendants Legitimately Deducted Amounts From Plaintiff's Wages. Plaintiff is Responsible for the Mistakes He Made on the Job.

Even if I were to treble damages and award attorney's fees (which I do not), this amount would be more than offset by legitimate deductions, set offs, and counterclaims. Though I find Plaintiff to be an employee, the offset from his wages was legitimate. Plaintiff is responsible and accountable for the mistakes he made on the job. The course of dealings between the parties indicate that Plaintiff agreed to the terms as set forth in the document given to workers at the start of their employment, specifically that they would be "responsible for materials and labor on any faulty work." This is reaffirmed by the document of March 30, 2015. Plaintiff never contested this document and continued to work. The specific deductions, set offs and counterclaims follow.

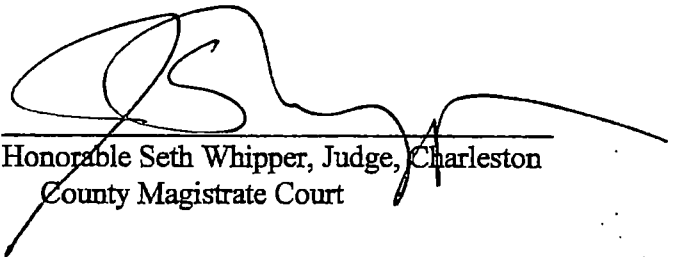


The counterclaims consist of three jobs on which Plaintiff worked. Singleton testified as to 1108 Ocean's Club, outlined above, he was out \$300.00 in materials and approximately \$1,400.00 in labor because of Plaintiff's defective work. At 47 Waterway Island, Singleton testified he had to replace 8 boards at \$104.00 a board and \$400.00 in labor for a total cost to fix of \$1,232.00. Plaintiff admitted he was the supervisor on this job, that there was paint that dripped on the boards, and that the boards had to be replaced. As supervisor, I find Plaintiff ultimately responsible for these costs. At 1509 Jenys, Singleton showed pictures of Plaintiff's defective work. There was paint on door knobs and other hardware discovered after Plaintiff quit. Eight (8) doors at \$75.00 a piece had to be replaced. Hinges and knobs totaled \$200.00 and labor was \$250.00, or a total of \$1,050.00. I find

these counterclaims persuasive and proven. Therefore, I rule for the Defendants in the amount of their counterclaims.

WHEREFORE, I rule for the Plaintiff in the amount of \$432.00. Defendants tried to pay this amount. I do not treble that amount and I do not award attorney's fees. I rule for the Defendants on their counterclaims and set offs in the amount of \$3,982.00. This amount is deducted from any amount Defendants might owe Plaintiffs. However, since I have ruled that Defendants owe Plaintiff only \$432.00, I find a aggregate total judgment for Defendants in the amount of \$3,550.00.

AND IT IS SO ORDERED!



Honorable Seth Whipper, Judge, Charleston
County Magistrate Court

N. Charleston, South Carolina

March 19, 2020

f:\ob\singleton1067\pleading\order

STATE OF SOUTH CAROLINA

2018CV1011500709
CIVIL CASE NUMBER

COUNTY OF CHARLESTON

IN THE MAGISTRATE'S COURT

TRANSCRIPT OF JUDGMENT
FIND FOR DEFENDANT

Names of Parties Against Whom Judgment is Granted	Attorneys
Troy Wilson	David Alan Nauheim 815 Savannah Highway Suite 201B Charleston, SC 29407

Names of Parties To Whom Judgment is Granted	Attorneys
Jamie Singleton 5505 Rowsham Place North Charleston, SC 29418	Carolina Custom Painting & Drywall, Llc 5505 Rowsham Place North Charleston, SC 29418
	Harold Alan Oberman 60 Markfield Drive, Suite 2 Charleston, SC 29407

DAMAGES AND COSTS

Amount of Judgment:	\$3,550.00
Costs:	
Court Costs / Filing Fees	\$0.00
Interest	\$0.00
Attorney Fees	\$0.00
Total Amount of Judgment:	\$3,550.00
Date of Judgment:	March 19, 2020

I, Jackson Seth Whipper, Magistrate in and for the County of Charleston, do hereby certify that the foregoing is a correct transcript of the judgment issued by this Court.

Jackson Seth Whipper
Charleston County Magistrate

March 19, 2020

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
TROY WILSON,)
Plaintiff,)
vs.)
CAROLINA CUSTOM PAINTING)
& DRYWALL LLC, and)
JAMIE SINGLETON,)
Defendants.)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

2020-CP- -
COMMON PLEAS NUMBER

No. 2018 CV 1011500709
MAGISTRATE'S COURT NUMBER,
JUDGE JACKSON SETH WHIPPER

NOTICE OF CIVIL APPEAL

The Plaintiff, Troy Wilson, hereby gives notice of appeal from the judgment of the magistrate's court in the above action, to the Circuit Court of Common Pleas, in the county of Charleston. This notice of appeal is made subsequent to personal notice of the judgment which was received on the seventh day of April, 2020. The appellant's exceptions to the judgment of the magistrate are set forth as follows:

- (1) The rulings were contrary to the evidence;
- (2) The rulings were contrary to the law;
- (3) To wit, Court erred by failing to find that:
 - a. Troy Wilson was an employee of Defendants Carolina Custom Painting and Drywall LLC and Jamie Singleton (Defendants);
 - b. Defendants failed to give the Plaintiff written notice of the terms of employment, including the amount of wages, the time and place wages would be paid, and allowable deductions;

FILED IN CHARLESTON COUNTY

APR 20 2020

NORTH AREA SMALL CLAIMS COURT
223

- c. That such failure violated the South Carolina Payment of Wages Act. S.C. Code § 41-10-10 et seq ("Payment of Wages Act");
- d. That such failure barred the Defendants from making any deductions to the Plaintiff's wages that were not required by law;
- e. That at the time of the Plaintiff's separation from employment, Defendants owed the Plaintiff \$432 in wages;
- f. That Defendants did not pay the Plaintiff \$432 in said wages due at the time that they were due;
- g. That such failure violated the Payment of Wages Act;
- h. That Defendants' concession in closing argument, that Defendants owed the Plaintiff \$432 in unpaid wages and the only issue was treble damages and attorney's, established the Defendants' liability and damages on the unpaid wages claim in favor of the Plaintiff as a matter of law;
- i. That the South Carolina Department of Labor's (SCDOL) citation of the Defendants for violating the Payment of Wages Act, and Defendants' failure to appeal that determination, also established Defendants' liability as a matter of law on Plaintiff's unpaid wages claim. *Bennett v. South Carolina Dep't of Corrections*, 305 S.C. 310, 408 S.E.2d 230 (1991); *Keiger v. Citgo, Coastal Petroleum, Inc.*, 482 S.E.2d 792, 326 S.C. 369, 327 N. 3 (Ct. App. 1997) (granting summary judgment in favor of plaintiff because "Respondents had paid Keiger the amount the South Carolina Department of Labor determined she was due, and because she had not appealed that determination, she was barred from relitigating it.")

- j. The Defendants did not have a good faith basis for their failure to timely pay the Plaintiff the \$432 in wages due;
- k. That Defendants did not give written notice to the Plaintiff, pursuant to the Payment of Wages Act, as such Defendants were not permitted to deduct from Plaintiff's wages for alleged breakage or faulty work;
- l. That because Defendants did not give said written notice, the Court may not deduct from Plaintiff's claim for faulty work or breakage nor permit a counter-claim by Defendants for the same. *Bennett v. Lambroukos*, 303 S.C. 481, 483, 401 S.E.2d 428 (Ct. App. 1991) (holding it was error for the circuit court to deduct for breakage in a PWA claim, when there was no finding of written notice of a deduction for breakage);
- m. That the employer could not avoid its obligations under the Payment of Wages Act by asserting a deduction against Plaintiff's claim for faulty work or breakage under a quasi-contract or course-of dealing theory. See *Cato v. Mills*, 129 S.E. 203, 132 S.C. 454 (S.C. 1925) (refusing to allow employers to ignore the statute by claiming their employees had by contract or custom waived their statutory right to prompt payment of wages); S.C. Code § 41-10-100 ("No provision of this chapter may be contravened or set aside by a private agreement.");
- n. That for the same reasons, the Defendant was barred from bringing a counter-claim against the Plaintiff for faulty work or breakage;
- o. That since a deduction from wages for alleged faulty work or breakage, without prior written notice, would violate the law, Defendants' may not assert

- the same, as a basis for a good faith dispute as to whether the wages were due, when that reason itself would violate the law.
- p. That having violated the Payment of Wages Act, without a good faith basis for disputing that the wages were due, Defendants were liable to the Plaintiff for treble damages, reasonable attorney's fees, and costs in the amount of \$10,276.50. S.C. Code § 41-10-80 (C); *Rice v. Multimedia, Inc.*, 318 S.C. 95, 99 (S.C. 1995).
 - q. That in any event, Defendant Singleton was without first-hand knowledge of which employee was responsible for alleged faulty work or breakage, and therefore his testimony attributing the same to the Plaintiff was inadmissible hearsay;
 - r. That Defendants offered no receipts or invoices or any other evidence to establish beyond speculation the value of the damages caused by alleged faulty work or breakage, and therefore those damages were too speculative to be awarded. See *Clark v. Cantrell*, 339 S.C. 369, 529 S.E.2d 528 (2000); *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991); *Barnwell v. Barber-Colman Co.*, 301 S.C. 534, 393 S.E.2d 162 (1989); *Whisenant v. James Island Corp.*, 277 S.C. 10, 281 S.E.2d 794 (1981).
 - s. That Defendants' attempt to pay the Plaintiff the wages due (after being cited by the SCDOL) did not avoid liability under the Payment of Wages Act, because the attempted payment came after the time that pay was due under S.C. Code § 41-10-50, and in any case the payment was returned undelivered to the Defendant and not received by the Plaintiff;

t. That an error in paragraph 12 of the Plaintiffs Complaint did not establish that fact conclusively in trial, and Plaintiff therefore was permitted to contradict the same with his testimony in trial. *Gary v. Lowcountry Medical Transport*, No. 2016-000222 (May 23, 2018);

(4) The judgment awarded to the Defendants by the Court in the amount of \$3,550.00 is arbitrary because that amount does not accord with any combination of the relief requested by the parties and bears no relation to the evidence.

The Plaintiff reserves the right so supplement this Notice of Appeal once the Magistrate's Return has been received.

Respectfully Submitted,

NAUHEIM LAW OFFICE, LLC

s/ David A. Nauheim
David A. Nauheim
SC Bar #102083
Attorneys for the Plaintiff
PO Box 31458
Charleston, South Carolina
29407 (843) 534-5084

Charleston, South Carolina
April 13, 2020

FILED IN CHARLESTON COUNTY
APR 20 2020
NORTH AREA SMALL CLAIMS COURT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Notice of Appeal was served
on the following this 13th day of April, 2020 via regular, first-class mail:

Magistrate J. Seth Whipper
North Area Small Claims Court
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive, Suite B146
P.O. Box 70235
North Charleston, SC 29415-0235

Clerk of Court
North Area Small Claims Court
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive, Suite B146
P.O. Box 70235
North Charleston, SC 29415-0235

Harold Alan Oberman
60 Markfield Drive, Suite 2
Charleston, SC 29407


Peggy J. Sheppard
Paralegal
Nauheim Law Office, LLC
PO Box 31458
Charleston, South Carolina 29407
Ph: (843) 534-5084
Fax: (843) 350-3572
peggy@nauheimlaw.com

FILED IN CHARLESTON COUNTY
APR 20 2020
NORTH AREA SMALL CLAIMS COURT



Required Work Place Poster



SC Labor Law Abstract

Payment of Wages Act

When an employee is hired, the employer must notify the employee in writing of:

- the wages agreed upon
- the normal hours the employee will work
- the time and place wages will be paid
- the deductions an employer may make from wages, including insurance

Changes to these terms must be in writing at least seven (7) calendar days before they become effective.

Employers must pay employees all wages due each pay period. Employers must also give employees an itemized statement showing gross pay and all deductions made each pay period and maintain records of wages paid for three years.

Employers who violate the Payment of Wages Act are subject to a civil penalty of \$100 for each violation. Employees can recover up to three times the full amount of unpaid wages, costs, and attorney's fees in a civil action.

To report a suspected violation, or for recordkeeping or other questions involving the Payment of Wages Act, or to order a copy of the Payment of Wages Act, please contact the Office of Wages and Child Labor at the address and number listed below.

Child Labor

No employer in this State shall engage in any oppressive child labor practices. Oppressive child labor includes employment of any minor in any occupation declared by the Director of Labor, Licensing and Regulation to be particularly hazardous or detrimental to the health or well being of minors. Oppressive child labor also includes employment of minors who are 14 or 15 years old under the following conditions:

- During school hours
- Before 7 a.m. or after 7 p.m. (9 p.m. during the period of summer break of the school district in which the minor resides)
- More than 18 hours during school weeks
- More than 3 hours on school days
- More than 40 hours in non-school weeks
- More than 8 hours on non-school days

For details involving child labor provisions, please contact the Office of Wages and Child Labor at the address and number listed below.

SC LLR - Office of Wages and Child Labor
P.O. Box 11329
Columbia, South Carolina 29211-1329
(803) 896-4470
www.llronline.com

Right-to-Work

The right to work of a person in South Carolina cannot be denied, interfered with, or abridged because the person belongs – or does not belong – to a labor union. An employer, labor organization, or other person who violates a worker's rights under these provisions is guilty of a misdemeanor, and, upon conviction, must be punished by imprisonment for not less than ten days nor more than thirty days, a fine of not less than one thousand dollars but not more than ten thousand dollars, or both. In addition, the employer, labor organization, or other person is subject to a lawsuit by the aggrieved worker. For more information, call 803-896-4470.

Immigrant Worker

The "South Carolina Illegal Immigration and Reform Act" requires all employers to verify the legal status of new employees and prohibits employment of any worker who is not legally in this country and authorized to work.

After July 1, 2009, all businesses in South Carolina are imputed a South Carolina employment license which permits an employer to hire employees. The imputed employment license remains in effect as long as the business abides by the law.

Effective January 1, 2012, all South Carolina employers are required to enroll in the U.S. Department of Homeland Security's E-Verify program and verify the status of new employees within three business days, using E-Verify. Failure to use E-Verify to verify new hires will result in probation for the employer or suspension/revocation of the employer's business licenses.



Safety and Health Protection on the Job

The State:

Under the South Carolina Occupational Safety and Health Act, the State is responsible for the enforcement of occupational safety and health standards in all workplaces, both public and private, within the state of South Carolina. However, longshoring, shipbuilding, ship repairing and shipbreaking operations covered by the Longshoremen and Harbor Workers' Compensation Act, as amended, remain under federal jurisdiction.

Employers:

Each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or physical harm to his employees, and shall comply with occupational safety and health standards promulgated by the Director of LLR. Employers must report to OSHA all work-related fatalities within 8 hours, and all inpatient hospitalizations, amputations, and losses of an eye within 24 hours. Reporting may be accomplished by telephone at (803)896-7672 or in person at 121 Executive Center Drive, Suite 230, Columbia, SC 29211.

Employees:

Each employee shall comply with occupational safety and health standards and all rules, regulations and orders issued by the director of Labor, Licensing and Regulation which are applicable to his own actions and conduct.

Any employee or his representative may request an inspection of his place or site of employment. Any employee may file a complaint, either verbally or in writing. Complaint forms and filing information may be found on our website or will be provided, upon request, by the South Carolina Department of Labor, Licensing and Regulation.

Employers and employees have the right to participate in inspections by means of bringing to the attention of the inspecting officer possible violations which exist in their area of work and the right to participate in the walk-around inspection. The inspecting officer shall have the right to determine the number of persons participating in the walk-around inspection.

Under state law, when the authorized representative of the employees accompanies the inspecting officer during a walk-around inspection, he shall not suffer any loss of wages or other benefits which would normally accrue to him.

Where there is no authorized representative, the inspecting officer will consult with a reasonable number of employees concerning matters of safety and health in the workplace.

Discrimination:

State and federal laws prohibit discrimination against any employee if he files a complaint or causes any proceeding under or related to this Act or is about to testify in any such proceedings or because of the exercise by any employee on behalf of himself or others of any right afforded under state and federal law. The Director of Labor, Licensing and Regulation or the nearest federal OSHA offices must be notified within thirty (30) days after such discriminatory act occurs. State and local government employees should file such complaints with the Director, South Carolina Department of Labor, Licensing and Regulation. A public sector employee believing that he has been discharged or otherwise discriminated against by any person in violation of Section 41-15-510 may proceed with a civil action pursuant to the provisions contained in Chapter 27, Title 8.

Citations:

Citations listing the alleged violations during an inspection will be mailed to the employer with reasonable promptness. State law requires such citations be promptly posted at appropriate places for employee information for three (3) days, or until the violations are corrected, whichever is later, to warn employees of dangers that may exist.

Penalties:

An employer may be assessed a penalty up to seven thousand (\$7,000) dollars for a non-serious violation.

An employer who receives a citation for a serious violation may be assessed a penalty up to seven thousand (\$7,000) dollars for each such violation.

Any employer who willfully violates an occupational safety and health rule or regulation may be assessed a penalty not more than seventy thousand dollars (\$70,000) for each violation.

Any employer who willfully violates an occupational safety and health rule or regulation and the violation causes death to an employee shall be deemed guilty of a misdemeanor and, upon conviction, be punished by fine, imprisonment or both.

Under a plan approved November 30, 1972 by the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA), the State of South Carolina is providing job safety and health protection for workers throughout the State. Federal OSHA will monitor the operation of this plan to assure that continued approval is merited. Any person may make a complaint regarding the State administration of this plan directly to the Regional Office of OSHA, U.S. Department of Labor, 61 Forsyth Street S.W., Room 6T50, Atlanta, Georgia 30303.

For more information, contact:

SC LLR - Office of OSHA Compliance
P.O. Box 11329
Columbia, South Carolina 29211-1329
(803) 896-7665
www.scosha.llronline.com



Henry D. McMaster
Governor

Emily H. Farr
Director

South Carolina
Department of Labor, Licensing and Regulation

Division of Professional and Occupational Licensing
Office of Investigations and Enforcement



110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329
Phone: (803) 896-4470
FAX: (803) 896-4656

November 3, 2017

Custom Carolina Painting & Drywall LLC
ATTN:
5505 Rowsham Pl. N. Charleston SC
N. Charleston SC 29418

Re: Wage Complaint: 2017-1344
Claimant: Troy F Wilson

Dear Jamie Singleton:

As an investigator, I investigate employee wage claims in order to determine employer's compliance with the South Carolina Payment of Wages Law. This office has received a wage complaint against Custom Carolina Painting & Drywall LLC alleging non-payment of wages of Troy F Wilson for the dates listed on the complaint. Under the South Carolina Payment of Wages Law 41-10-40, this office may institute an investigation of the alleged violation. Please find enclosed a copy of the wage complaint received by this office. You will be required to respond within three business days to this complaint so that I can fully investigate this complaint.

In order to expedite the resolution of these allegations, please provide to me by either email or fax, copies of the following documents:

- 1) A copy of any **WRITTEN TERMS OF EMPLOYMENT** provided to the claimant. These terms would include any written notice of normal working hours, wages agreed upon, time and place of payment, and deduction policies.
- 2) **The Federal Tax ID** number for the business and the **number** of employees in South Carolina.
- 3) **Time records** for the employee and **copy of pay checks** that match the time records **Dates:** 10/1/17-10/20/17
- 4) **Copy of company's payroll policy and independent contractor form**
- 5) **Summary of your company's position to each allegation, with supporting documentation, on your company letterhead.**

Failure to respond to these allegations will result in our accepting the charges made by the claimant (as stated) as factual and appropriate Warnings/Citations being issued.

Sincerely,

Heather Parsons
Investigator II
(803) 896-4819
Heather.Parsons@llr.sc.gov

PLAINTIFF'S
EXHIBIT

3



SC DEPARMENT OF LABOR LICENSING AND REGULATION

OFFICE OF WAGES AND CHILD LABOR

Date: 10/20/2017 8:26:48 AM

Case Number: 2017 - 1344

CLAIMANT INFORMATION

Name: Troy F Wilson Mr.

Phone: 8438228253

Email: [REDACTED]

Address: [REDACTED]

City: N. Charleston SC

State: SC

Zip: 29420

Date of Employment: 8/12/2015

Date of Separation: 10/10/2017

Work Status: Quit

EMPLOYER INFORMATION

Company: Custom Carolina Painting & Drywall LLC Phone: 8438100070

Contact Person: Jamie Singleton

Title: Owner

Address: [REDACTED] N. Charleston SC City: N. Charleston

State: SC

Zip: 29418

Type of Business: Painting

Number of Employees: 5

ADDITIONAL INFORMATION

Mr Singleton dated that he is going to make our family starve Mr Singleton took my salary a way from me without a 7 day notice he did it right on the spot he didn't pay me over time when I was working 7 days a week some days were over 8 hours. Mr Singleton didn't give me my tax papers to file for taxes.

CLAIM INFORMATION

Employee Occupation: Foreman/Painter

Rate of Pay: 18

Rate Per Job: 18

Rate Other:

DEDUCTIONS:

Federal: N

State: N

FICA: N

Worker Comp.: N

Other: Y

Explanations:

Pay Period: Weekly

Specific Pay Dates: 10/20/2017

Time and Place Of Payment: Different locations and time

Where Work Performed: Daniel's Island Mount Pleasant South Carolina

BASIS OF CLAIM:

Wages: Y

Vacation: N

Commission: N

Bad Check: N

Others: N

Unpaid Hours: 24.00

Unpaid dates: 6,9,10

Debt Amount Owed To Your Employer: 0.00

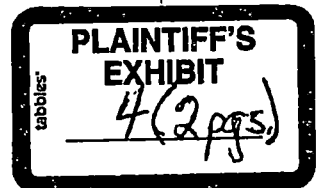
Net Amount Owed By Employer: 432.00

Date Claimant Requested Wages: 10/20/2017

Claimant Request Wage From: Carolina Custom painting and drywall LLC

Claimant Received Written Notification Regarding Wages From Employer: N

**S.C. DEPARTMENT OF LABOR, LICENSING AND REGULATION
DIVISION OF INVESTIGATIONS & ENFORCEMENT
OFFICE OF WAGES & CHILD LABOR
PO BOX 11329, COLUMBIA, SC 29211-1329**



CITATION AND NOTIFICATION OF PENALTY

COPY

Carolina Custom Painting & Drywall

5505 Rowsham Place

North Charleston SC 29418

Issuance Date:	1/17/2018
Report #:	2017-1344
Employer #:	1/40
Citation #:	2017-1344

This citation describes alleged violation(s) of 41-10-40 & 41-10-30, South Carolina Code of Laws, 1976, as amended. The penalty (ies) listed below are based on the following violations. You must pay the proposed penalty (ies) pursuant to 41-10-80. This citation and/or civil penalty maybe reviewed by requesting, in writing, an Administrative Review. Such requests must be addressed to: Supervisor, South Carolina Department of Labor, Licensing and Regulation, Office of Wages & Child Labor, PO Box 11329, Columbia, SC 29211-1329, and must be mailed within 30 calendar days from receipt of this Citation and Notification of Penalty. To contest this citation before the Administrative Law Court, file your request for a hearing accompanied by the filing fee with the Administrative Law Court, Edgar Brown Building, 1205 Pendleton Street, Suite 224, Columbia SC 29201. This citation concerns application of the South Carolina Payment of Wage Statute and does not necessarily establish all aspects of debts due between the employer and employee.

# OF VIOLATIONS	SECTION (S) VIOLATED	DESCRIPTION	PENALTY
	§41-10-30 (A)	Failed to give written notification as required by law to: as follows:	\$
	§41-10-30 (B)	Failed to keep records of:	\$
	§41-10-30 (C)	Failed to furnish itemized statement to each employee showing:	\$
		A warning was previously issued on	
	§41-10-40 (A)	Employer failed to pay with a negotiable instrument that was not dated for the pay day(s) in the approximate amount of \$	\$
	§41-10-40 (C)	Withheld or diverted from the wages of wages not required or permitted by state or federal law on or about in the approximate amount of \$	\$
1	§41-10-40 (D)	Failed to pay wages due to Troy Wilson in the approximate amount of \$432.00 by your regular pay day(s) of 10/20/2017	\$100.00

This is to certify that the undersigned has this date served this citation on the above entitled action upon all parties to this cause by depositing a copy thereof, in the United States Mail, postage paid, or in the Interagency Mail Service address, at the residence of their attorney (s), to the following address: **5505 Rowsham Place, North Charleston, SC 29418**
 By: **[Signature]**
 The **17** day of **Jan**, 2018
 Printed name, title & signature

[Signature]
Signature of Chief Investigator

WCL-6 (Rev. 6/09)

TOTAL OF PENALTY: \$ 100.00
 Please make check or money order payable to S.C. Department of Labor, Licensing & Regulation, and indicate citation number on remittance.

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATIONS
OFFICE OF WAGES AND CHILD LABOR
WAGES INVESTIGATIVE REPORT

CASE NO.: 2017-1344

OPENED: 20171023

CLOSED: 20180117

FEDERAL ID. NO.:

COMPANY: Custom Carolina Painting & Drywall LLC

REPRESENTATIVE: Jamie Singleton

ADDRESS: 5505 Rowsham Pl. N. Charleston SC

TITLE: owner

CITY: N. Charleston

PHONE: [REDACTED]

STATE: SC

ZIP: 29418

FAX:

CORP. NAME:

REPRESENTATIVE:

ADDRESS:

TITLE:

CITY:

PHONE:

FAX:

STATE:

ZIP:

WARNING

This section of the warning is issued pursuant to SC Code of Law 41-10-80, for failure to comply with SC code of Law 41-10-30:

A. VIOLATION OF SC 41-10-30(A)

☒ Normal Hours

☒ Wages

☒ Time of payment

☒ Place of payment

☒ Deductions from wages

☐ Changes make in employment

Without 7 calendar day

Written notice

B. VIOLATION OF SC 41-10-30(B)

☐ Name and/or address of employees

☐ Wages paid and/or deductions made
for all employees each payday

C. VIOLATIONS OF SC 41-10-30(C)

☐ Failed to furnish each employee each pay period
an itemized statement showing:

☐ Gross pay ☐ Deductions made

☐ NUMBER OF EMPLOYEES IN SC

☐ EMPLOYEES ON SITE

**YOU MUST CORRECT THESE VIOLATIONS IMMEDIATELY. FAILURE TO DO SO COULD RESULT IN FINE OF
\$100.00 FOR EACH SUBSEQUENT OFFENSE.**

N. P. Russo 1/29/18

INVESTIGATOR

Date

COMPANY OFFICIAL

Date

CHILD LABOR	INVESTIGATIVE REPORT SUMMARY	OFFICE USE ONLY
Warning: Yes ☐ No ☐ Date: Date	Warning: Yes ☒ No ☐ Date: 1/31/18	Citation issued: Yes ☐ No ☐
Citation: Yes ☐ No ☐ Date: Date	Citation: Yes ☒ No ☐	Date: _____
Violation Number(s): Click here to enter text.	Number of violations alleged:	Citation Number: _____ \$ _____
Instance: ☐ 1 st ☐ 2 nd ☐ 3 rd	Section(s) 30 ☐ 5 ☐ 40 ☒ 1 ☐ 50 ☒ 0	Number of Violations:
	Instance ☒ 1 ☒ 1 ☒ 0	Section(s) 30 ☐ 40 ☐ 50 ☐ CL ☐
		Instance _____

ADDITIONAL INFORMATION

Mr Singleton dated that he is going to make our family starve Mr Singleton took my salary a way from me without a 7 day notice he did it right on the spot he didn't pay me over time when I was working 7 days a week some days were over 8 hours. Mr Singleton didn't give me my tax papers to file for taxes.

CLAIM INFORMATION

Employee Occupation: Foreman/Painter

Rate of Pay: 18

Rate Per Job: 18

Rate Other:

DEDUCTIONS:

Federal: N

State: N

FICA: N

Worker Comp.: N

Other: Y

Explanations:

Pay Period: Weekly

Specific Pay Dates: 10/20/2017

Time and Place Of Payment: Different locations and time

Where Work Performed: Daniel's Island Mount Pleasant South Carolina

BASIS OF CLAIM:

Wages: Y

Vacation: N

Commission: N

Bad Check: N

Others: N

Unpaid Hours: 24.00

Unpaid dates: 6,9,10

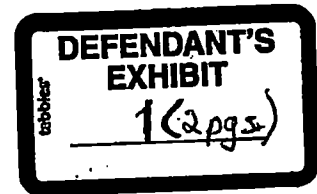
Debt Amount Owed To Your Employer: 0.00

Net Amount Owed By Employer: 432.00

Date Claimant Requested Wages: 10/20/2017

Claimant Request Wage From: Carolina Custom painting and drywall LLC

Claimant Received Written Notification Regarding Wages From Employer: N



SC DEPARMENT OF LABOR LICENSING AND REGULATION

OFFICE OF WAGES AND CHILD LABOR

Date: 10/20/2017 8:26:48 AM

Case Number: 2017 - 1344

CLAIMANT INFORMATION

Name: Troy F Wilson Mr.

Phone: 8438228253

Email: Mrfiggadealmetw21@gmail.com

Address: 160 Stratton Dr.

City: N. Charleston SC

State: SC

Zip: 29420

Date of Employment: 8/12/2015

Date of Separation: 10/10/2017

Work Status: Quit

EMPLOYER INFORMATION

Company: Custom Carolina Painting & Drywall LLC Phone: (843) 810 0070

Contact Person: Jamie Singleton

Title: Owner

Address: 5505 Rowsham Pl. N. Charleston SC

City: N. Charleston

State: SC

Zip: 29418

Type of Business: Painting

Number of Employees: 5

QUALITY PARK 6 1/2 x 9 1/2



 UNITED STATES POSTAL SERVICE		CUSTOMER'S RECEIPT	
SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION NOT NEGOTIABLE	Pay to	KEEP THIS RECEIPT FOR YOUR RECORDS	
	Address		
	Serial Number 24820827197	Year, Month, Day 2017-11-08	Post Office 29411
		Clerk 33	

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only	
For delivery information, visit our website at www.usps.com ®.	
NORTHERN CHARLESTON, SC 29400	
OFFICIAL USE	
Certified Mail Fee \$3.35 Extra Services & Fees (check box, add fee as appropriate) ☐ Return Receipt (hardcopy) \$0.00 ☐ Return Receipt (electronic) \$0.00 ☐ Certified Mail Restricted Delivery \$0.00 ☐ Adult Signature Required \$0.00 ☐ Adult Signature Restricted Delivery \$0.00	0240 33 Postmark Here
Postage \$0.49 Total Postage and Fees \$3.84	11/08/2017
Sent To Street and Apt. No., or PO Box No. City, State, ZIP+4®	
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	

Singleton
 3505 Rowshan Pl
 N. Charleston, SC 29418

NEW
 12/12/17
 1845 M

SENDER
 12-11-17
 For car

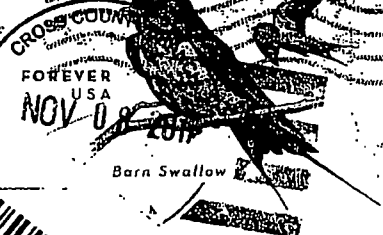
CERTIFIED MAIL



7017 0660 0000 8506 4619

Troy Wilson
 160 Strat
 North Cha

CHARLESTON, SC 29404
 08 NOV 2017



U.S. POSTAGE
 NORTH CHARLESTON, SC 29400

NIXIE 296 CC 1 8612/09/17

RETURN TO SENDER
 NOT DELIVERABLE AS ADDRESSED
 UNABLE TO FORWARD

SC: 29418 *1554-14241-00-35

DEFENDANT'S EXHIBIT

2942038136



KEEP THIS
RECEIPT FOR
YOUR RECORDS

**NOT
NEGOTIABLE**

Address

Serial Number

Year, Month, Day

Post Office

Amount

\$432.00

Clerk

33

24820827197



Serial Number

Year-Month-Day
2011-7-11

294 Post Office

U.S. Dollars and Cents

24820827197

432.00

Four Hundred Thirty Two Dollars and 00/100 *****

Amount

Pay to

Trou Wilson

Clerk

3.3

Address

160 Stratton DR

100

Carolina Custom Paintings

Address:

5505 RowSham Pl

Memo

Pay: 6, 9, 10

N. Charleston SC 29418

© 2008 United States Postal Service. All Rights Reserved.

SEE REVERSE WARNING • NEGOTIABLE ONLY IN THE U.S. AND POSSESSIONS

1000000000000000000

318208271970

CERTIFIED MAIL

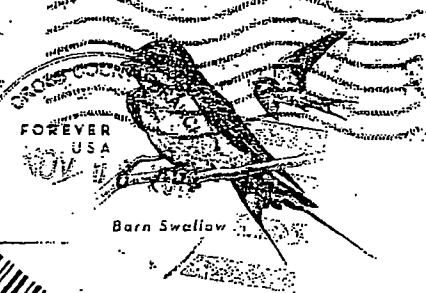
CHARLESTON, SC 29418

08 NOV

11 T



7017 0660 0000 8506 4619



U.S. POSTAGE
NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

Troy Wilson

160 Strat

North Cha

2942088135

NIXIE

295 CC 1

8612/89/17

RETURN TO SENDER
NOT DELIVERABLE
UNABLE TO FORWARD

SE: 29415

*1554-14241-58-25

2005 Newsham PL
N. Charleston, SC 29418

NOV
12/12/17
1845 M

SENDER
12-1-17
per car

11/16



CUSTOMER'S RECEIPT

SEE BACK OF THIS RECEIPT
FOR IMPORTANT CLAIM
INFORMATION

Pay to

Address

KEEP THIS
RECEIPT FOR
YOUR RECORDS

NOT
NEGOTIABLE

Serial Number

Year, Month, Day Post Office Amount Clerk

24820827197

2017-11-08

294111

\$432.00

33

10/10
11/8

CROSS COUNTY
7075 CROSS COUNTY RD
NORTH CHARLESTON
SC

29418-9997
4514850240

11/08/2017 (800)275-8777 10:10 AM

Product Description	Sale Qty	Final Price

BarnSwllw #10 Env	1	\$0.61

(Unit Price:\$0.61)

First-Class Mail Letter	1	\$0.49

(Domestic)
(NORTH CHARLESTON, SC 29420)
(Weight:0 Lb 0.30 Oz)
(Expected Delivery Date)
(Friday 11/10/2017)

Certified 1 \$3.35

(2USPS Certified Mail #)
(70170660000085064619)

Affixed 1 (\$0.49)

Postage
(At Total Amount:\$0.49)

Total \$3.96

Debit Card Remit'd \$3.96

(Card Name:Debit Card)
(Account #:XXXXXXXXXX3615)
(Approval #:
(Transaction #:980)
(Receipt #:016601)
(Debit Card Purchase:\$3.96)
(Cash Back:\$0.00)

Text your tracking number to 28777
(2USPS) to get the latest status.
Standard Message and Data rates may
apply. You may also visit USPS.com
USPS Tracking or call 1-800-222-1811

67017 0660 0000 8506 4619

USPS® Mail Service	
NORTH CHARLESTON, SC 29420	
Certified Mail Fee	\$3.35
Extra Services & Fees (check box, add fee)	\$0.00
☐ Return Receipt (hardcopy)	\$0.00
☐ Return Receipt (electronic)	\$0.00
☐ Certified Mail Restricted Delivery	\$0.00
☐ Adult Signature Required	\$0.00
☐ Adult Signature Restricted Delivery	\$0.00
Postage	\$0.49
Total Postage and Fees	\$3.84
Sent to	11/08/2017
Street and Apt. No., or PO Box	
City, State, ZIP+4	

BRIGHTEN SOMEONE'S MAILBOX. Greeting cards available for purchase at select Post Offices.

Order stamps at usps.com/shop or call 1-800-Stamp24. Go to usps.com/clicknship to print shipping labels with postage. For other information call 1-800-ASK-USPS.

Get your mail when and where you want it with a secure Post Office Box. Sign up for a box online at usps.com/poboxes.

All sales final on stamps and postage
Refunds for guaranteed services only
Thank you for your business

HELP US SERVE YOU BETTER

TELL US ABOUT YOUR RECENT
POSTAL EXPERIENCE

Go to:

<https://postalexperience.com/Pos>

840-5290-0147-003-00018-23013-01

or scan this code with
your mobile device:



or call 1-800-410-7420.

YOUR OPINION COUNTS

=====

CROSS COUNTY
7075 CROSS COUNTY RD
NORTH CHARLESTON

SC
29418-9997
4514850240
017 (800)275-8777 10:10 AM

=====

tion	Sale Qty	Final Price

lw #10	1	\$0.61

it Price:\$0.61)		
ass	1	\$0.49

estic)
(TH CHARLESTON, SC 29420)
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day 11/10/2017)
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	\$3.96

nd Remit'd	\$3.96

d Name:Debit Card)
unt #:XXXXXXXXXXXX3615)
oval #:
saction #:980)
lpt #:016601)
t Card Purchase:\$3.96)
Back:\$0.00)

tracking number to 28777
to get the latest status.
Message and Data rates may
u may also visit USPS.com
king or call 1-800-222-1811.

y? Self-service kiosks offer
easy check-out. Any Retail
can show you how.

Wells Fargo Bank Transaction Receipt

Store #0068257 6

Deposit

Account Number

XXXXXX2612

CHK 00367

Serial #

Number of Checks

1

Check Listing

\$432.00

Total Checks Amount

\$432.00

Total Deposit

\$432.00

Deposit Availability

The full amount of your deposit will
be available on Thursday, 12/14/17

Transaction # 012 0015

09:26AM 12/13/17

Deposit Credit Date: 12/13/17

Thank you for your business.

Enjoy the convenience of

scheduling appointments online at

wellsfargo.com/appointments

Thank you, AISLINN

Bill #: 840-52900147-3-1823013-1
Clerk: 33

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

2018CV1011500709
CIVIL CASE NUMBER

IN THE MAGISTRATE'S COURT

SUMMONS

Troy Wilson

David Alan Nauheim
Nauheim Law Office, LLC
Charleston, SC 29407
8435345084

PLAINTIFF(S)

Vs

Jamie Singleton

5505 Rowsham Place

North Charleston, SC 29418

Carolina Custom
Painting & Drywall, Llc
5505 Rowsham Place
North Charleston, SC
29418

AGENT
Phillip E Johnson

1315 Ashley River Rd.
Ste 204
Charleston, SC 29407

DEFENDANT(S)

TO THE DEFENDANT(S) NAMED ABOVE:

YOU ARE SUMMONED and required to Answer the allegations and present any appropriate Counterclaims/Crossclaims to the attached Complaint/Counterclaim within THIRTY days from the first day after receipt of this Summons. Your Answer must be received by the:

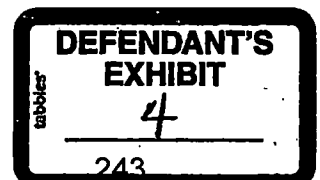
Charleston County
Small Claims - North
4045 Bridge View Drive P. O. Box 70235
North Charleston, SC 29405
Phone: (843) 202-6650 Fax: (843) 202-6652

If you fail to Answer within the prescribed time, a Judgment by Default will be rendered against you for the amount or other remedy requested in the attached Complaint, plus interest and costs. **If you desire a jury trial, you must request one within five (5) business days before the date of trial.** If no jury trial is timely requested, the matter will be heard and decided by the Judge.

READ ATTACHED INSTRUCTIONS CAREFULLY

April 18, 2018

MV 38



STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE MAGISTRATE'S COURT

TROY WILSON,)
)
Plaintiff,)
)
vs.)
)
CAROLINA CUSTOM PAINTING)
& DRYWALL LLC, and)
JAMIE SINGLETON, and)
)
Defendants.)
_____)

No. 2018CV 1011500709

COMPLAINT

FILED IN
CHARLESTON COUNTY
APR 19 2018
NORTH AREA
SMALL CLAIMS COURT

Plaintiff Troy Wilson, by and through undersigned counsel, do make the following claims against the Defendants.

PARTIES

1. Plaintiff is a citizen and resident of the County of Charleston, South Carolina.
2. Upon information and belief, Defendant CAROLINA CUSTOM PAINTING & DRYWALL LLC is a domestic Limited Liability Corporation is licensed to do business in South Carolina and has its principal place of business in Charleston County, South Carolina.
3. Upon information and belief, Defendant JAMIE SINGLETON is the owner and operator of CAROLINA CUSTOM PAINTING & DRYWALL LLC and an Agent or Officer of said company, within the meaning.

JURISDICTION

4. This Court has subject matter jurisdiction over the claims in this lawsuit under article V § 11 of the South Carolina Constitution and South Carolina Code § 14-5-350.

VENUE

5. Venue is proper in this circuit under South Carolina Code § 15-7-30 because Defendants have established their headquarters in Charleston County, and do conduct business in Charleston County; and the acts or omissions that are the subject of this action occurred in Charleston County, South Carolina.

APPLICABLE LAW

6. This action is brought pursuant to the South Carolina Wage Payment Act (South Carolina Code § 41-10-10, *et seq.*) and the common law of South Carolina.

FACTS

7. The Defendants are contractors that provide painting and drywall services in Charleston County.

8. Defendants hired Plaintiff Troy Wilson approximately two years ago to work as a painter and sheet rocker.

9. On or about October 10, 2017, there was a problem with paint peeling on house that Defendants had recently painted, which had not been sanded properly. Mr. Singleton blamed Mr. Wilson, although he had not been at that job site the day it was sanded. Mr. Singleton told Mr. Wilson orally that he was going to cut his pay from \$18 per hour to \$15 per hour.

10. Mr. Wilson decided to resign and the next day, October 11, 2017, he texted Mr. Singleton that he had made a decision to leave the company.

11. The Defendants owed Mr. Wilson \$432.00 in wages on October 11, 2017, for 24 hours of work at \$18 per hour, which he had completed in the pay period prior to his resignation.

12. On or about October 13, 2017, Mr. Wilson texted Mr. Singleton asking when he wanted him to turn in his uniform. Mr. Singleton called Mr. Wilson. He told him to keep the

uniform and that he was not going to pay him his last paycheck, citing the recent paint peeling issue.

13. The next scheduled pay day was October 20, 2017. The Defendants did not pay Mr. Wilson the \$432.00 in wages that were due on that date.

14. Mr. Wilson made a complaint for unpaid wages to the South Carolina Department of Labor, Licensing and Registration (LLR). LLR investigated and found that the Defendants had violated the South Carolina Wage Payment Act by failing to pay Mr. Wilson \$432.00 in wages on October 20, 2017. LLR cited Defendants \$100.00 for this violation. A copy of the LLR file and citation is attached hereto as Exhibit A.

15. The Defendants falsely represented to LLR that, after being informed of the LLR's investigation on November 3, 2017, they subsequently paid Mr. Wilson \$432.00 in wages on November 8, 2017. They provided LLR a copy of a postal money order made out to Mr. Wilson for this amount, as proof of payment. However, the Defendants never tendered the money order to Mr. Wilson.

16. On January 30, 2018, Mr. Wilson, through undersigned counsel, sent Defendants a certified letter, asking them to pay what he was owed under the S.C. Payment of Wages Act. The letter was returned unclaimed. Exhibit B. As of the date of this Complaint, the Defendants have not paid Mr. Wilson the \$432.00 in wages which are owed.

17. There is no good faith dispute over whether the Defendants owe Mr. Wilson \$432.00 in wages.

FIRST CAUSE OF ACTION
(Unpaid Wages Under the S.C. Wage Payment Act)

18. Plaintiff incorporates by reference all prior allegations into this cause of action.

19. Plaintiff earned wages for the work he performed, as defined under South Carolina Code § 41-10-10, *et seq.*

20. Defendants meet the definition of "employers" under South Carolina law and under the Wage Payment Statute. Plaintiff was an employee of Defendants.

21. Despite efforts by Plaintiff, Defendants knowingly refused to pay all wages due.

22. Defendants' failure to pay Plaintiff wages is willful and in bad faith, and there is no good faith dispute about whether Plaintiff is owed his lawfully earned wages.

23. Plaintiff is entitled to a judgment awarding all wages due, treble damages, pre-judgment interest, post-judgment interest, and reasonable attorneys' fees and costs.

SECOND CAUSE OF ACTION
(Unjust Enrichment/Quantum Meruit)

24. Plaintiff incorporates all allegations of paragraphs above into this cause of action.

25. Plaintiff provided valuable services to Defendants on Defendants' behalf.

26. These services were accepted, used, and enjoyed by Defendants. The services resulted in financial gain and significant income to Defendants.

27. Under the circumstances, Defendants understood and was notified that Plaintiff expected to be paid for the services provided to Defendants.

28. To permit Defendants to retain the benefits of Plaintiff's services without paying him for those services would unjustly enrich Defendants.

29. Plaintiff is entitled to an award of the reasonable value of his services in the form of his final paycheck.

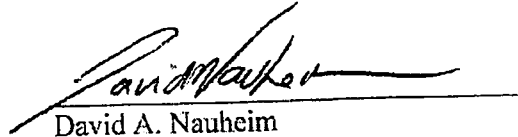
WHEREFORE, Plaintiff requests that this Court enter judgment in his favor and against the Defendants as follows:

- a. Award Plaintiff all unpaid wages;
- b. Award Plaintiff treble damages, costs, and attorneys' fees;
- c. Award Plaintiff all unpaid commissions;

- d. Award Plaintiff such other legal and equitable relief, including pre-judgment and post-judgment interest, as this Court may deem proper.

Respectfully Submitted,

NAUHEIM LAW OFFICE, LLC

A handwritten signature in black ink, appearing to read "David A. Nauheim", is written over a horizontal line.

David A. Nauheim
Attorneys for the Plaintiff
815 Savannah Highway Suite 201B
Charleston, South Carolina 29407
(843) 534-5084

Charleston, South Carolina
April __, 2018

Exhibit A

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATIONS
OFFICE OF WAGES AND CHILD LABOR
WAGES INVESTIGATIVE REPORT

CASE NO.: 2017-1344

OPENED: 20171023

CLOSED: 20180117

FEDERAL ID. NO.:

COMPANY: Custom Carolina Painting & Drywall LLC

REPRESENTATIVE: Jamie Singleton

ADDRESS: 5505 Rowsham Pl. N. Charleston SC

TITLE: owner

CITY: N. Charleston

PHONE: [REDACTED]

STATE: SC ZIP: 29418

FAX:

CORP. NAME:

REPRESENTATIVE:

ADDRESS:

TITLE:

CITY:

PHONE:

FAX:

STATE: ZIP:

WARNING

This section of the warning is issued pursuant to SC Code of Law 41-10-80, for failure to comply with SC code of Law 41-10-30:

A. VIOLATION OF SC 41-10-30(A)

☒ Normal Hours

☒ Wages

☒ Time of payment

☒ Place of payment

☒ Deductions from wages

☐ Changes make in employment

Without 7 calendar day

Written notice

B. VIOLATION OF SC 41-10-30(B)

☐ Name and/or address of employees

☐ Wages paid and/or deductions made
for all employees each payday

C. VIOLATIONS OF SC 41-10-30(C)

☐ Failed to furnish each employee each pay period
an itemized statement showing:

☐ Gross pay ☐ Deductions made

☐ NUMBER OF EMPLOYEES IN SC

☐ EMPLOYEES ON SITE

**YOU MUST CORRECT THESE VIOLATIONS IMMEDIATELY. FAILURE TO DO SO COULD RESULT IN FINE OF
\$100.00 FOR EACH SUBSEQUENT OFFENSE.**

N. Russo 1/29/18
INVESTIGATOR Date

COMPANY OFFICIAL Date

CHILD LABOR	INVESTIGATIVE REPORT SUMMARY	OFFICE USE ONLY
Warning: Yes ☐ No ☐ Date: Date	Warning: Yes ☒ No ☐ Date: 1/3/18	Citation issued: Yes ☐ No ☐
Citation: Yes ☐ No ☐ Date: Date	Citation: Yes ☒ No ☐	Date: _____
Violation Number(s): Click here to enter text.	Number of violations alleged:	Citation Number: _____ \$ _____
Instance: ☐ 1 st ☐ 2 nd ☐ 3 rd	Section(s) 30 ☐ 5 ☐ 40 ☒ 1 ☐ 50 ☐ 0	Number of Violations:
	Instance ☐ 1 ☐ 1 ☐ 0	Section(s) 30 ☐ 40 ☐ 50 ☐ CL ☐
		Instance _____

Investigator: Parsons
Report Number: 2017-1344
Claimant: Troy Wilson
Type of Complaint: Unpaid Wages

Carolina Custom Painting & Drywall
5505 Rowsham Place
North Charleston, SC 29418

Findings:

The Claimant filed a complaint with this office alleging non-payment of 24 hours at the rate of \$18.00 per hour on the scheduled pay-date of 10/20/17 for the amount of \$432.00.

On 11/3/17, R/I contacted Jamie Singleton, the owner of the company, via the telephone, regarding the wage complaint filed by the claimant. R/I explained the details of the investigation process and requested the time records with matching payroll, terms of employment and company policies to address the alleged allegations of the case. The respondent did not provide written terms of employment. The claimant stated that he was paid weekly on the complaint, and stated that his rate of pay was changed without a seven day notice. The claimant also stated that he was not given the proper tax paperwork. However, the respondent provided a policy and procedures form which stated that the claimant was a 1099 employee. The claimant appears to be misclassified for tax purposes. (See Exhibit E-1-1)

Upon further investigation, on 1/16/18 Investigator Parsons called the claimant and the claimant stated that the respondent provided major equipment such as scalpels, and paint and paint supplies. The employee stated that he did small repairs such as painting and repairing drywall. This appears to be an employee/employer relationship.

The respondent was paid in full for the 10/20/17 pay-date, but paid late on 11/8/17. (See Exhibit E-1-2)

R/I recommends a warning and a citation for failure to pay Troy Wilson on the scheduled pay-date of 10/20/17 for the amount of \$432.00(paid in full but paid late).

Cite this Employer for:

5 violations of SC Section 41-10-30(A).

1 Violations of SC Section 41-10-40(D) a citation for failure to pay Troy Wilson on the scheduled pay-date of 10/20/17 for the amount of \$432.00(paid in full but paid late).

RESIDENTIAL



COMMERCIAL

5505 ROWSHAM PLACE
NORTH CHARLESTON, SC 29418

www.ccpanddrywall.com

POLICIES AND PROCEDURES

1. I understand that I am a 1099 employee / contractor of Carolina Custom Painting and Drywall.
2. I understand that work hours are 7:30 a.m to 4 p.m Monday thru Friday with occasional weekends.
3. I understand that I must have all required work materials at all time and available for inspection.
4. I understand that I am responsible for materials and labor of any faulty work discovered during inspection.
5. I understand that I may be required to take periodic drug screening paid for by company.
6. Proper uniform and shoes are required and must be clean and free of holes.
7. Excessive breaks aren't required by law and will be given at the discretion of the company.
8. Lunch break is from 12 pm to 12:30 p.m.
9. If injured at work, I must submit to an immediate drug screening.
10. Insubordination will result in immediate termination.
- 11. Missing work without a valid excuse will be noted the first time, and terminated the second time.
12. Absolutely no horse playing on the job.
13. All contractors are required to climb 40-foot ladders.
- 14. All company equipment must be cleaned and left on jobsites.
15. Coming to work impaired will result in termination.
16. I understand that theft of any kind (personal, company, or client), will be prosecuted.

NAME: _____

DATE: _____

E-1-1
E-1-1

THANKS FOR CHOOSING CAROLINA CUSTOM PAINTING AND DRYWALL!

2017-1344

RESIDENTIAL



COMMERCIAL

5505 ROWSHAM PLACE
NORTH CHARLESTON, SC 29418

www.ccpanddrywall.com

I, Troy Wilson, a subcontract employee, agree to reimburse Carolina Custom Painting and Drywall \$1,350.00 (one thousand three hundred fifty dollars) for damaged AC condenser at 27 Smith St. Payments of \$150.00 will be deducted from my check weekly starting 3-27-15. In the event I am terminated or I quit before final payment, I understand that I forfeit my final check to reduce the balance and assume all legal liability for the remaining balance.

By

Troy Wilson

Date

3-30-15

THANKS FOR CHOOSING CAROLINA CUSTOM PAINTING AND DRYWALL!

Heather Parsons

To: [REDACTED]
Subject: 2017-1344
Attachments: 2017-11-03 (2).pdf

Dear Mr. Singleton,
Please find enclosed a copy of the wage complaint that was filed by Troy Wilson, and an employer record request from this office. Please let me know if you have any questions concerning this matter. Thank you.



Henry D. McMaster
Governor

Emily H. Farr
Director

South Carolina
Department of Labor, Licensing and Regulation

Division of Professional and Occupational Licensing
Office of Investigations and Enforcement



110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329
Phone: (803) 896-4470
FAX: (803) 896-4656

November 3, 2017

Custom Carolina Painting & Drywall LLC
ATTN:
5505 Rowsham Pl. N. Charleston SC
N. Charleston SC 29418

Re: Wage Complaint: 2017-1344
Claimant: Troy F Wilson

Dear Jamie Singleton:

As an investigator, I investigate employee wage claims in order to determine employer's compliance with the South Carolina Payment of Wages Law. This office has received a wage complaint against Custom Carolina Painting & Drywall LLC alleging non-payment of wages of Troy F Wilson for the dates listed on the complaint. Under the South Carolina Payment of Wages Law 41-10-40, this office may institute an investigation of the alleged violation. Please find enclosed a copy of the wage complaint received by this office. You will be required to respond within **three business days** to this complaint so that I can fully investigate this complaint.

In order to expedite the resolution of these allegations, please provide to me by either email or fax, copies of the following documents:

- 1) A copy of any **WRITTEN TERMS OF EMPLOYMENT** provided to the claimant. These terms would include any written notice of normal working hours, wages agreed upon, time and place of payment, and deduction policies.
- 2) **The Federal Tax ID** number for the business and the **number** of employees in South Carolina.
- 3) **Time records** for the employee and **copy of pay checks** that match the time records **Dates:** 10/1/17-10/20/17
- 4) **Copy of company's payroll policy and independent contractor form**
- 5) **Summary of your company's position to each allegation, with supporting documentation, on your company letterhead.**

Failure to respond to these allegations will result in our accepting the charges made by the claimant (as stated) as factual and appropriate Warnings/Citations being issued.

Sincerely,

Heather Parsons
Investigator II
(803) 896-4819
Heather.Parsons@llr.sc.gov



Henry D. McMaster
Governor

Emily H. Farr
Director

South Carolina
Department of Labor, Licensing and Regulation

Division of Professional and Occupational Licensing
Office of Investigations and Enforcement



110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329
Phone: (803) 896-4470
FAX: (803) 896-4656

November 1, 2017

Troy F Wilson

N. Charleston SC, SC 29420

Re: Employer: Custom Carolina Painting & Drywall LLC
Case No.: 2017-1344

Dear Mr. Wilson:

I am in receipt of your wage complaint. As an Investigator, I investigate employee wage complaints to determine whether an employer is in compliance with the S.C. Payment of Wage Law. If during the investigation it is determined that the employer is in violation of the Wage Payment Statute, the appropriate sanctions will be issued to the employer. You will be notified of the outcome of your case once my investigation is complete.

The Office of Wages and Child Labor **does not** have the authority to collect your wages or make an employer pay you. You have self-serve rights under Section 41-10-80(C) of the South Carolina Payment of Wages Law.

Section 41-10-80(C) of the Payment of Wages Law states:

"In case of any failure to pay wages due to an employee as required by Subsection 41-10-40 or 41-10-50, the employee **may recover** in a Civil Action an amount equal to three times the full amount of the unpaid wages, plus costs and reasonable attorney's fees as the court may allow. Any civil action for the recovery of wages must be commenced within three years after the wages become due."

Any action you take in regards to a civil action is independent and separate from the actions and responsibilities of the Department of Labor.

Sincerely,

Heather Parsons
Investigator
(803) 896-4819
Heather.Parsons@llr.sc.gov



CUSTOMER'S RECEIPT

SEE BACK OF THIS RECEIPT
FOR IMPORTANT CLAIM
INFORMATION

NOT
NEGOTIABLE

Pay to
Address

KEEP THIS
RECEIPT FOR
YOUR RECORDS

Year, Month, Day 2017-11-08 Post Office 294111 Amount \$432.00 Clerk 33



POSTAL MONEY ORDER

Serial Number

2017-11-08

U.S. Dollars and Cents

\$432.00

Four Hundred Thirty Two Dollars and 00/100 *****

Amount

Clerk 33

Pay to Treu Wilson

Address

N. Charleston, SC 29430

Memo Pay: 6, 9, 10

From Carolina Custom Painting

Address 5505 Rowshan Pl.

N. Charleston, SC 29418

SEE REVERSE WARNING - NEGOTIABLE ONLY IN THE U.S. AND POSSESSIONS

2 NOV

E-1-2



SC DEPARTMENT OF LABOR LICENSING AND REGULATION

OFFICE OF WAGES AND CHILD LABOR

Date: 10/20/2017 8:26:48 AM

Case Number: 2017 - 1344

CLAIMANT INFORMATION

Name: Troy F Wilson Mr.

Phone: 8438228253

Email: [REDACTED]

Address: [REDACTED]

City: N. Charleston SC

State: SC

Zip: 29420

Date of Employment: 8/12/2015

Date of Separation: 10/10/2017

Work Status: Quit

EMPLOYER INFORMATION

Company: Custom Carolina Painting & Drywall LLC Phone: 8438100070

Contact Person: Jamie Singleton

Title: Owner

Address: [REDACTED]

N. Charleston SC

City: N. Charleston

State: SC

Zip: 29418

Type of Business: Painting

Number of Employees: 5

ADDITIONAL INFORMATION

Mr Singleton dated that he is going to make our family starve Mr Singleton took my salary a way from me without a 7 day notice he did it right on the spot he didn't pay me over time when I was working 7 days a week some days were over 8 hours. Mr Singleton didn't give me my tax papers to file for taxes.

CLAIM INFORMATION

Employee Occupation: Foreman/Painter

Rate of Pay: 18

Rate Per Job: 18

Rate Other:

DEDUCTIONS:

Federal: N

State: N

FICA: N

Worker Comp.: N

Other: Y

Explanations:

Pay Period: Weekly

Specific Pay Dates: 10/20/2017

Time and Place Of Payment: Different locations and time

Where Work Performed: Daniel's Island Mount Pleasant South Carolina

BASIS OF CLAIM:

Wages: Y

Vacation: N

Commission: N

Bad Check: N

Others: N

Unpaid Hours: 24.00

Unpaid dates: 6,9,10

Debt Amount Owed To Your Employer: 0.00

Net Amount Owed By Employer: 432.00

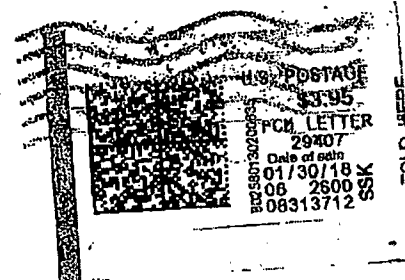
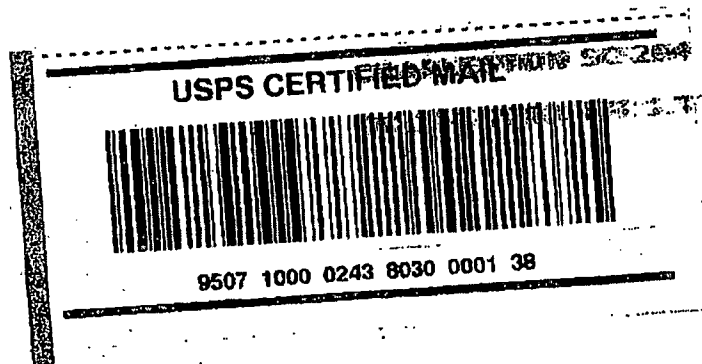
Date Claimant Requested Wages: 10/20/2017

Claimant Request Wage From: Carolina Custom painting and drywall LLC

Claimant Received Written Notification Regarding Wages From Employer: N

Exhibit B

Nauhelm Law Office
815 Savannah Hwy
Suite 201B
Charleston, SC 29407



CV
2-1

CB

Jamie Singleton
Carolina Custom Painting & Drywall
LLC
5505 Rows
North Cha

NIXIE

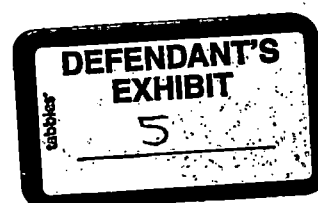
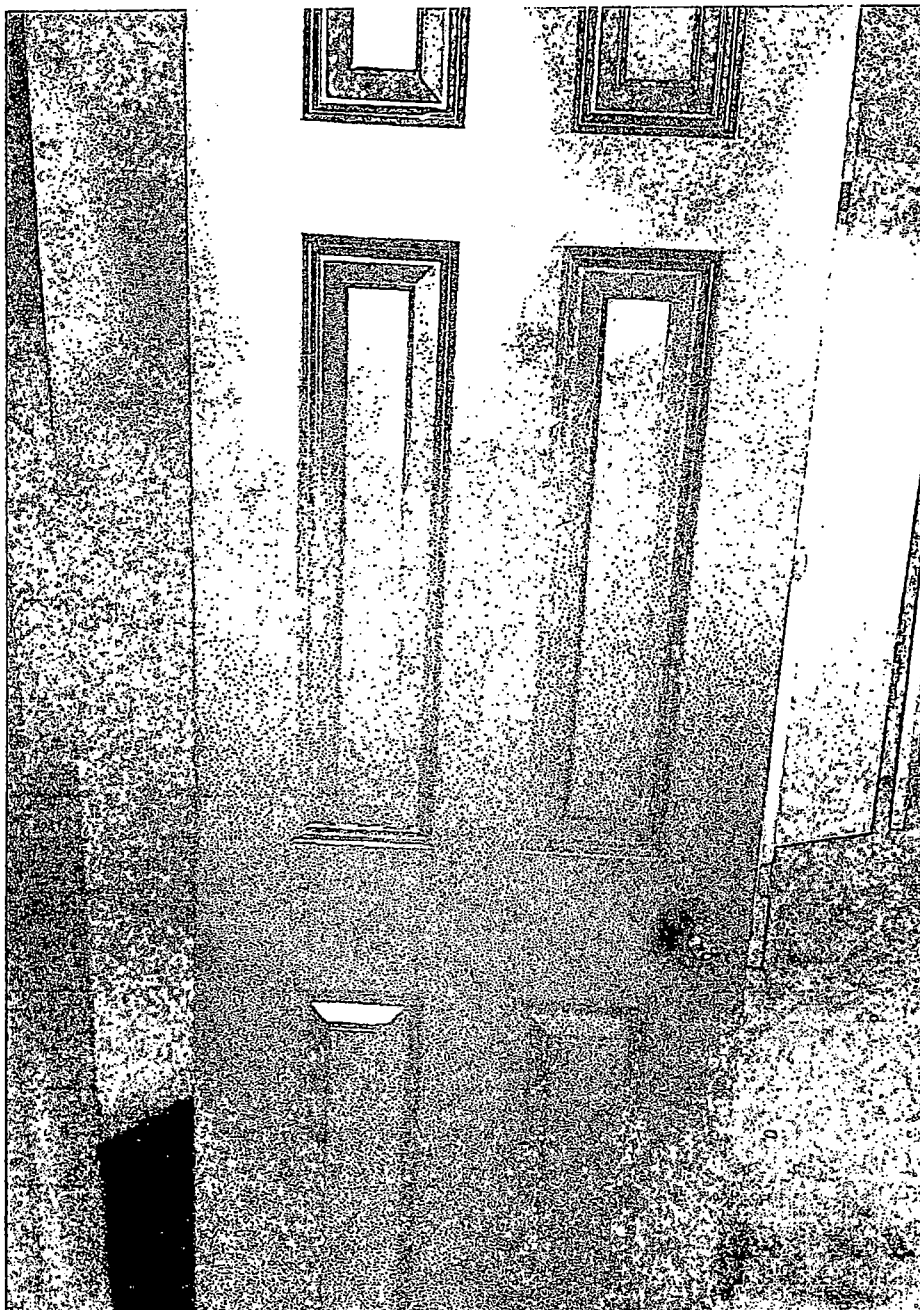
296 SE 1

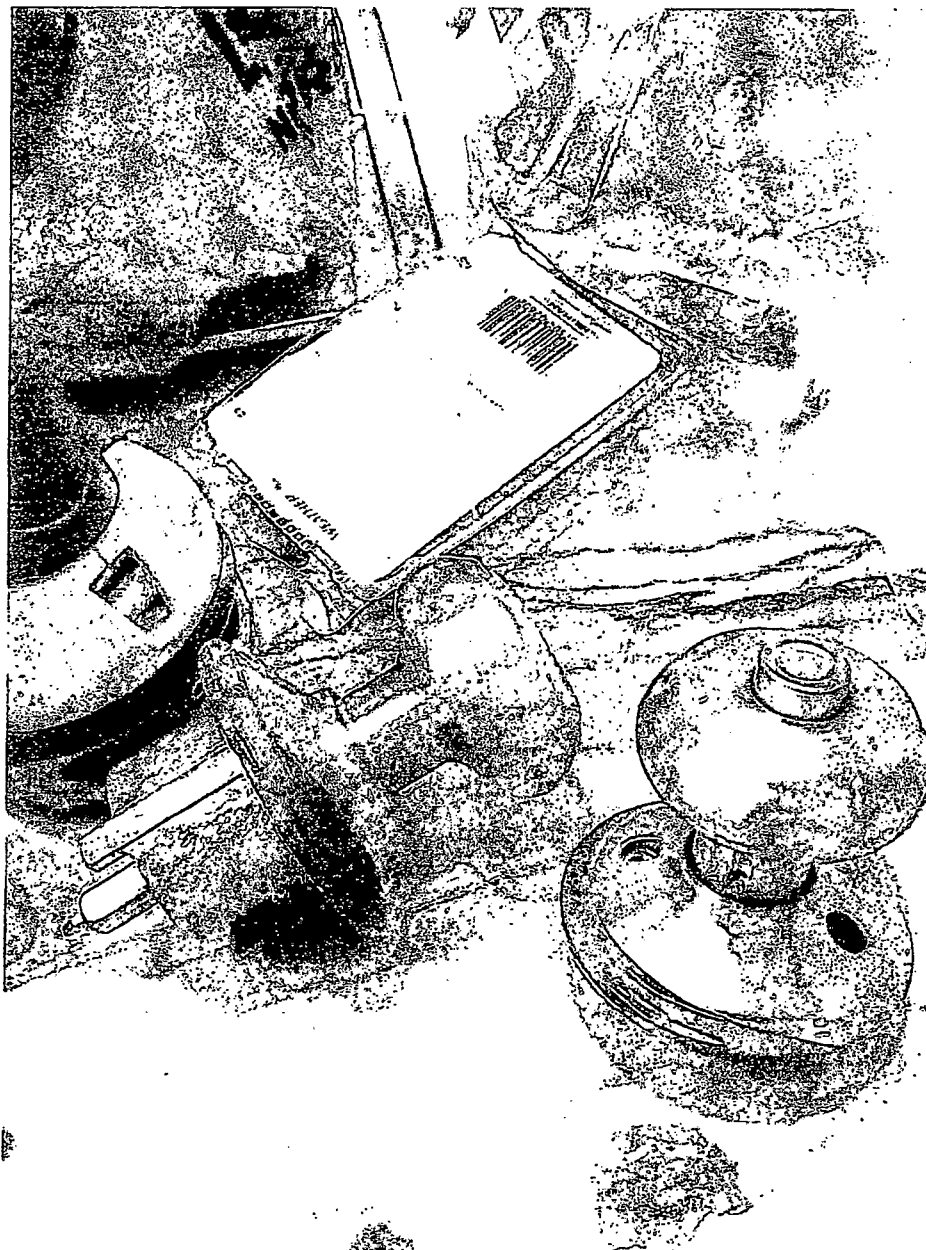
8602/28/18

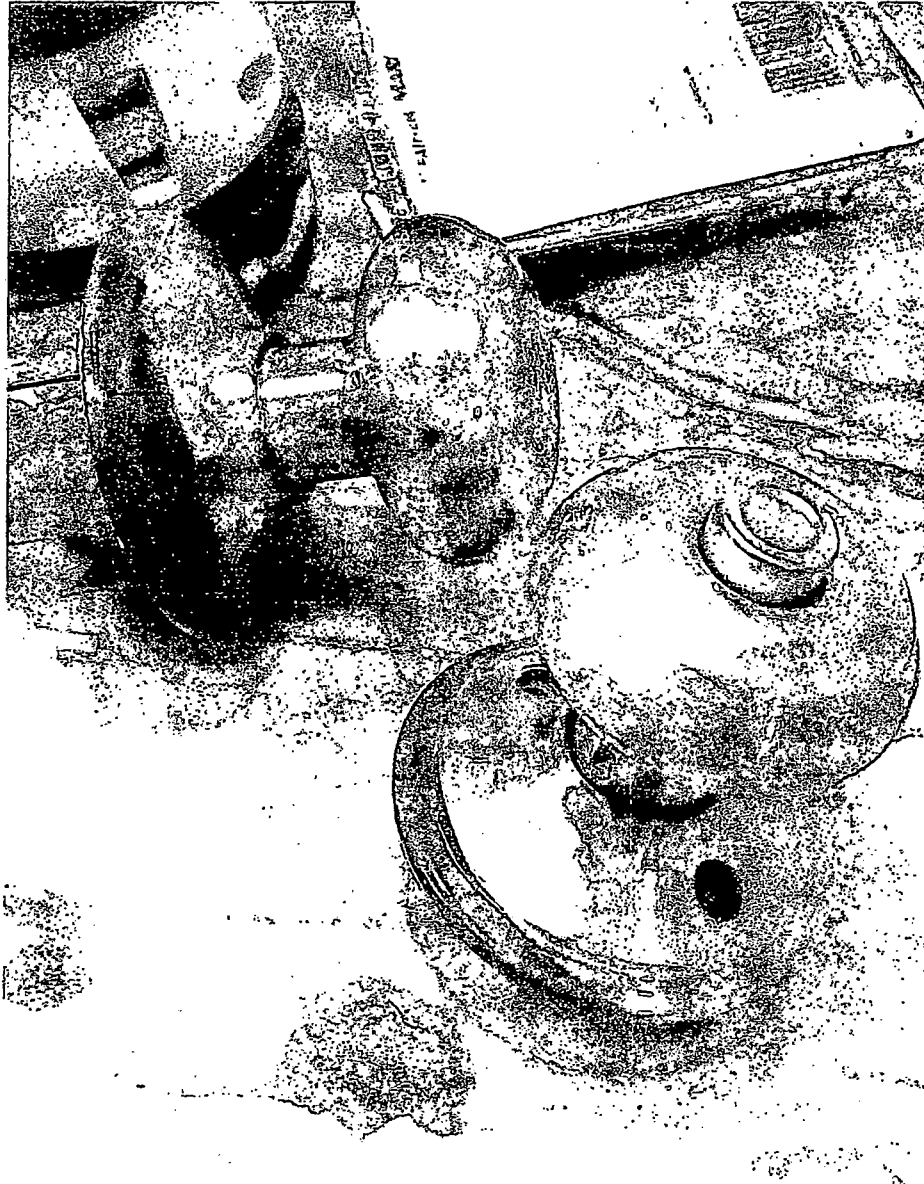
RETURN TO SENDER
UNCLAIMED
UNABLE TO FORWARD

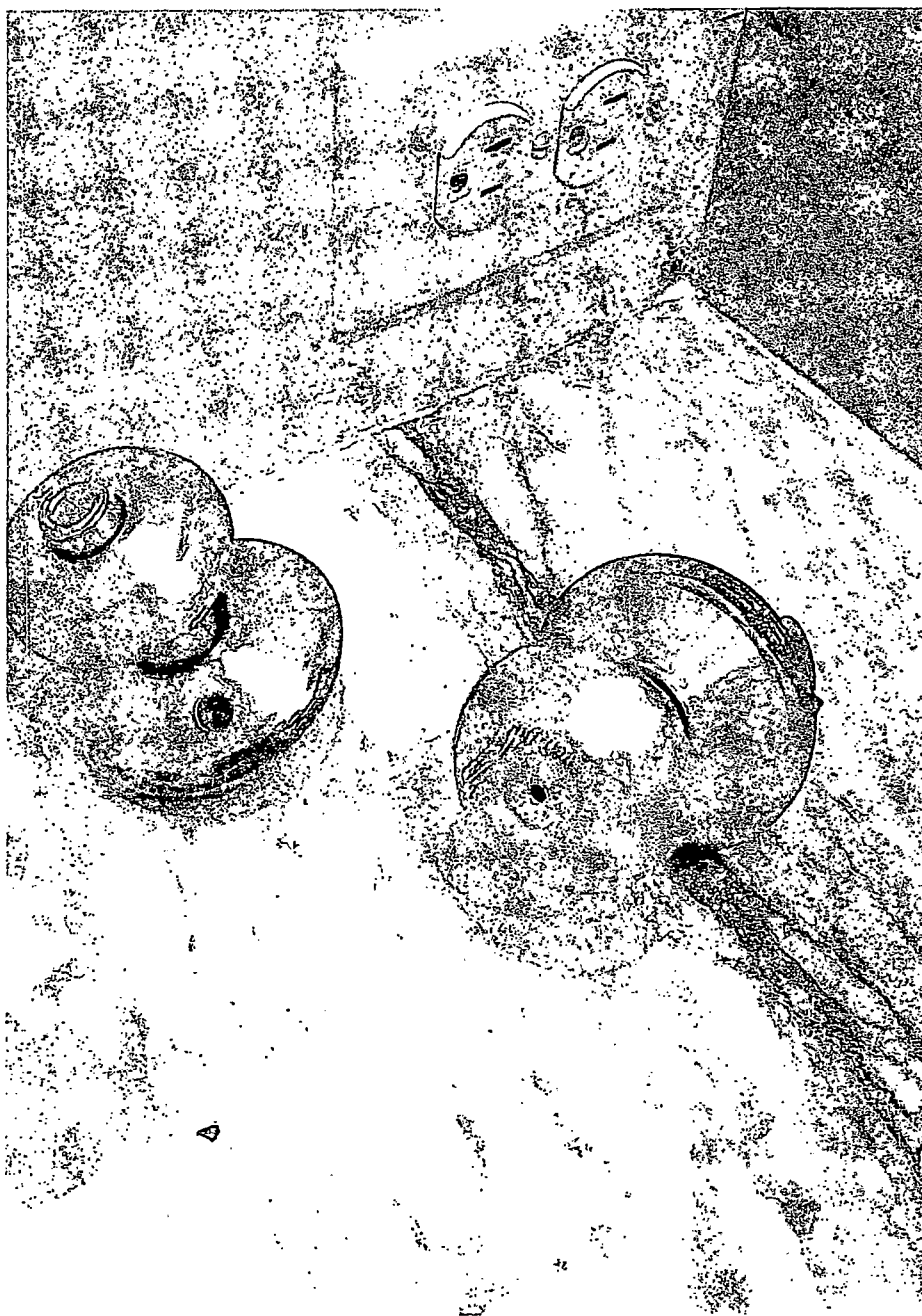
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2940777351

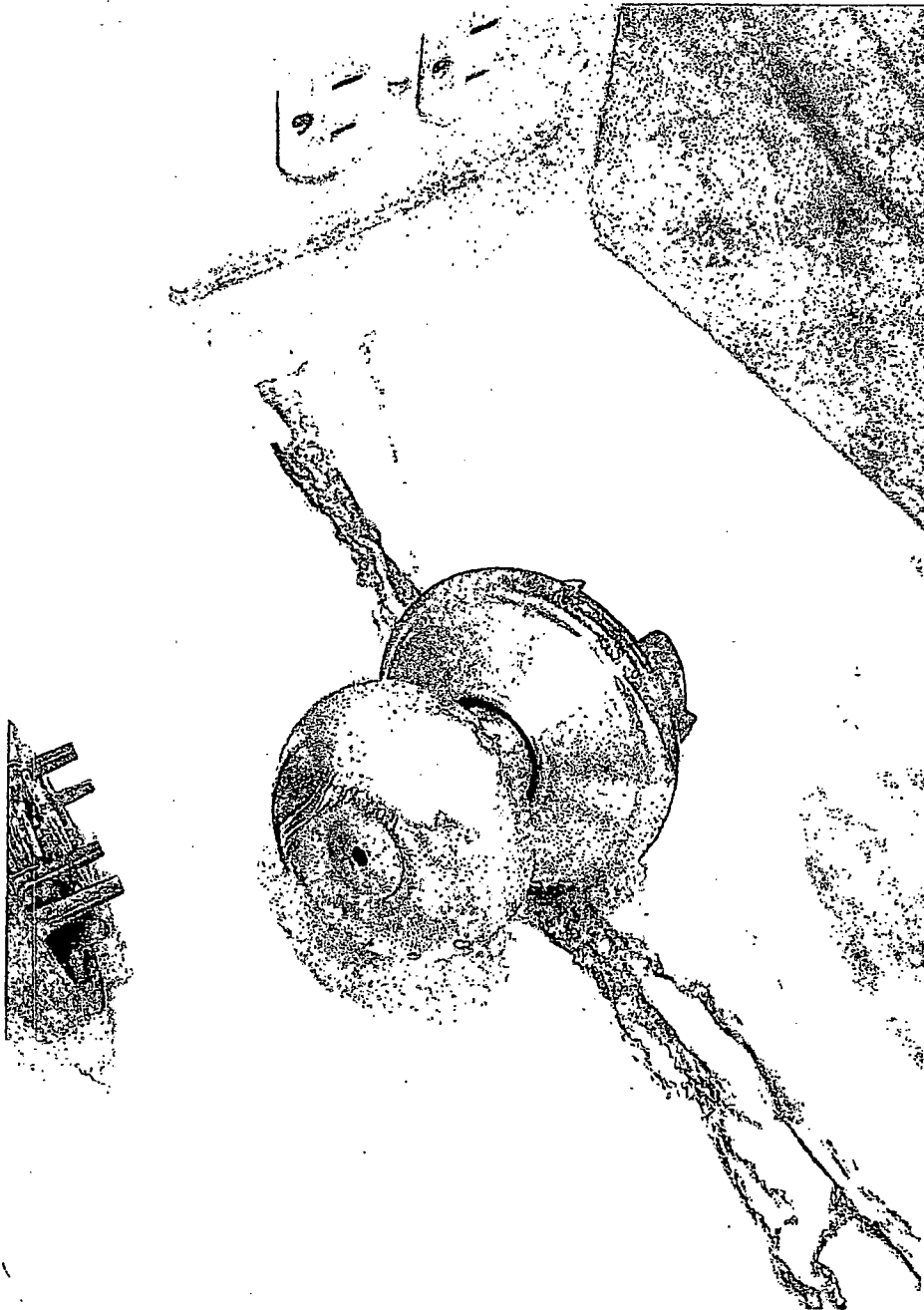
SC: 294077735151 *1654-21798-38-38













Fax

From

DAVID A. NAUHEIM

To

MAGISTRATE COURT

Number of pages

36

Message

Case No. 2018 CV 1011500709

Wilson v. Singleton, et al.

Attached please find for filing the Plaintiff's Post-Trial Memorandum and Closing Argument as well as the Appendix for same. A second fax will follow with the remainder of the documents.

Please contact Peggy J. Sheppard at 731-432-9087 with any questions or concerns. Thank you!

MSG 13'18 PM 4:32

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
TROY WILSON,)
Plaintiff,)
vs.)
CAROLINA CUSTOM PAINTING)
& DRYWALL LLC, and)
JAMIE SINGLETON,)
Defendants.)

IN THE MAGISTRATE'S COURT

No. 2018 CV 1011500709

**PLAINTIFF'S POST-TRIAL
MEMORANDUM AND CLOSING
ARGUMENT**

COMES NOW the Plaintiff and respectfully submits his post-trial memorandum and closing argument.

INTRODUCTION

This case is brought under the South Carolina Payment of Wages Act (PWA). The Plaintiff Troy Wilson asserts that the Defendants violated that Act when they failed to pay him for the hours he worked during his final pay period, at the time those wages were due, and did not have a good faith basis for doing so.

Mr. Wilson made a Wage Complaint to the Department of Labor. The Department investigated and gave Mr. Singleton and the LLC (hereinafter referred to collectively as Mr. Singleton or LLC) an opportunity to present evidence, which they did. The DOL found that Mr. Wilson was an employee, not an independent contractor, and that Mr. Singleton had misclassified Mr. Wilson for the purposes of taxes. The DOL further found that Mr. Singleton had failed to provide written notice of the terms of employment, including the amount of wages, the time and place wages would be paid, and allowable deductions. Finally, the DOL found that Mr. Wilson was owed \$432 at the time of his separation from

employment, and that Mr. Singleton had not timely paid him. The DOL cited him for violating the PWA by failing to pay Mr. Wilson, issued warnings for the five notice violations, and ordered him to correct the deficiencies. Mr. Singleton paid the fine and did not appeal.

Mr. Singleton attempted to send Mr. Wilson a \$432 money order via registered mail, but it was returned, and he made no further attempts to pay. Mr. Wilson testified he was unaware of the attempts by USPS to deliver a certified letter from Mr. Singleton. This suit followed.

Trial in this matter was conducted on July 12, 2018. Mr. Singleton, through his attorney, conceded in opening statement that Mr. Singleton does, in fact, owe Mr. Wilson \$432 for wages due, leaving only the issue of treble damages and attorneys fees. At the close of evidence, the Court found that Mr. Wilson was an employee. The Court then invited the parties to submit briefs on various points of law. Additionally, the Court also allowed that the Parties could submit their closing arguments in the post-trial brief. Accordingly, the Plaintiff respectfully submits this post-trial memorandum and closing argument.

ISSUES OF LAW

1. Whether Defendants are permitted to re-litigate issues that have already been litigated with and decided by the Department of Labor, and which were not appealed. **[NO]**.
2. Under controlling case law, it is unlawful for an employer to withhold wages based on faulty work, when the employer did not give not give written notice for such a deduction. Consequently, the reason given by Mr. Singleton for withholding wages was unlawful. Is withholding wages for an unlawful reason a good faith dispute? **[NO]**
3. When an employer is prohibited under the PWA from making a deduction for faulty work, can he avoid this prohibition by asserting a counterclaim for faulty work based on quasi-contract or course of dealings? **[NO]**
4. Under the WPA, when an employee separates from employment, the employer must pay all wages due within forty-eight hours or the next regular pay day, which may not exceed thirty days. The Defendant did not pay Mr. Wilson within forty-eight hours

or at the next regular payday, but he did attempt to pay within thirty days. Does this attempt to pay satisfy the Defendants' obligations under the PWA? **[NO]**

5. Does an allegation in the Plaintiff's Complaint, which was denied by the Defendants, and which the Plaintiff denied at trial, constitute evidence that the Court may consider in reaching a verdict? **[NO]**
6. The amount of damages cannot be left to conjecture, guess or speculation. Are the damages asserted against Mr. Wilson by the Defendants too speculative, where there are multiple possible reasons for the failure of the work, multiple workers that could be responsible, and no records of the material or labor costs incurred. **[YES]**

ARGUMENT AND AUTHORITY

1. **The Defendant should be barred from re-litigating issues already decided by the Department of Labor.**

Ordinarily, the decision of an administrative tribunal precludes the relitigation of the issues addressed by that tribunal in a collateral action. *Bennett v. South Carolina Dep't of Corrections*, 305 S.C. 310, 408 S.E.2d 230 (1991). In *Bennett*, our Supreme Court stated: "This Court has repeatedly held that, under the doctrines of *res judicata* and collateral estoppel, the decision of an administrative tribunal precludes the relitigation of the issues addressed by that tribunal in a collateral action."

"However, not every factual determination by an administrative agency is entitled to preclusive effect." *Shelton v. Oscar Mayer Foods Corp.*, 325 S.C. 248, 254, 481 S.E.2d 706, 709 (1997). The party asserting preclusive effect must show that the issues was (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment. *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 555, 684 S.E.2d 779, 782 (Ct. App. 2009).

Here, the DOL investigated Mr. Wilson's wage complaint. (Exhibit A to the Complaint; Defense Ex 4.) Mr. Singleton was given an opportunity speak with the investigator, give his side of the story, and submit evidence. *Id.* He chose to not submit a

position letter, but he did submit documentary evidence in opposition to the Wage Complaint. In sum, he had an opportunity to "actually litigate" the prior action and did, in fact, actually litigate it. The DOL found one violation of SC § 41-10-40(D) and cited him for failure to pay Troy Wilson \$432.00 in wages due on his regular pay day. *Id.*

Further, the DOL asked him to provide written terms of employment and he was unable to do so. On that basis, the DOL found five violations of SC § 41-10-30(A), including failure to provide written notice of *deductions* from wages. He was given a warning for the notice violations and instructed to correct the violations immediately. *Id.* These findings of the DOL were necessary to support the citation and warning that the DOL issued Mr. Singleton.

Mr. Singleton was given 30 days to contest the citation before the administrative law court. Instead, he chose to pay the fine. Mr. Singleton admitted these citations in trial testimony. He also admitted that he attempted to pay Mr. Wilson the \$432 via registered mail, but it was returned to him.

In *Keiger v. Citgo, Coastal Petroleum, Inc.*, the trial court granted summary judgment on the Plaintiff's Payment of Wages claim on the grounds that "Respondents had paid Keiger the amount the South Carolina Department of Labor determined she was due, and because she had not appealed that determination, she was barred from relitigating it." 482 S.E.2d 792, 326 S.C. 369, 327 N. 3 (Ct. App. 1997).

Here, the DOL has already determined that Mr. Singleton violated the PWA by failing to pay Mr. Wilson \$432 at his next payday and by failing to give written notice of deductions from wages. He litigated these issues with the DOL and chose not to appeal. He paid the citation and attempted to pay Mr. Singleton the wages. In *Keiger*, this was enough for the trial court to grant summary judgment. It was also conceded by counsel for Defendants in

opening statement, that the Mr. Singleton owed Mr. Wilson \$432.00 in wages. Mr. Singleton should be estopped from re-litigating these issues and this Court should find as a matter of law:

That Mr. Wilson was misclassified by Mr. Singleton and was in fact an employee;

That Mr. Wilson was owed \$432 by Mr. Singleton no later than his final payday;

That Mr. Singleton failed to pay him the wage due at his next regular payday; and

That Mr. Singleton failed to provide written notice of the terms of wages, including the amount of wages, the time and place for payment, and deductions from wages.

This leaves only the issue of treble damages and attorney's fees for the Court to decide.

2. Where the employer's reason for withholding wages would itself violate the law, it cannot be considered a good faith basis for failure to pay wages.

Under long settled and controlling case law, it is unlawful for an employer to deduct for faulty work, when the employer has not given notice of such a deduction. See *Bennett v. Lambroukos*, 303 S.C. 481, 483, 401 S.E.2d 428 (Ct. App. 1991) (holding it was error for the circuit court to deduct for breakage in a PWA claim, when there was no finding of written notice of a deduction for breakage). Mr. Singleton's reason for withholding wages (faulty work) was itself a violation of the PWA. It may be a dispute for an employer to withhold wages for an illegal reason, but an employer's illegal reason for withholding of wages cannot be deemed a "good faith" dispute. Therefore, the Court should find as a matter of law there was no *good faith* dispute.

Here, the DOL already found that there was no written notice of deductions. What is more, Mr. Singleton was unable to provide evidence in trial of written notice of breakage. He provided an undated, unsigned document entitled "policies and procedures," but admitted that that particular document had not been given to Mr. Wilson. He also admitted

he could not find in his file any written notice of deductions to Mr. Wilson. This was the same document he provided to the DOL, and which the DOL did not accept as evidence of notice of written deductions. Therefore, under *Bennett* it would be illegal as a matter of law for Mr. Singleton to deduct for breakage.

The South Carolina Payment of Wages Act is remedial legislation designed to protect working people and assist them in collecting compensation wrongfully withheld. *Dumas v. InfoSafe Corp.*, 463 S.E.2d 641, 320 S.C. 188 (Ct. App. 1995). "A remedial statute should be liberally construed in order to effectuate its purpose." *SC Dept. of Mental Health v. Hanna*, 241 S.E.2d 563, 270 S.C. 210 (1978).

The purpose of the treble damages and attorney's fees under the PWA is to punish the employer who forces the employee to resort to the court in an *unreasonable* or *bad faith* wage dispute. *Rice v. Multimedia, Inc.*, 456 S.E.2d 381, 318 S.C. 95 (1995). *Rice v. Multimedia, Inc.*, 456 S.E.2d 381, 383, 318 S.C. 95 (1995) (emphasis added). Employers therefore withhold wages "at their peril." *Id.* (quoting *Apache East, Inc. v. Wiegand*, 119 Ariz. 308, 580 P.2d 769 (Ct.App.1978)). Our position is that it is unreasonable and bad faith to withhold wages for an illegal reason, even if the employer claims, as Mr. Singleton does, to believe the PWA does not apply to him and his workers.

Treble damages and attorney's fees under the PWA is discretionary and should only be awarded when the court finds that the employer's retention of wages was unjustified and willful. It should not be awarded when the employer had a bona fide or good faith reason for disputing that the wages were due. *Id.* The decision to award treble damages is made by the court and sounds in equity. *The Father v. South Carolina Dep't of Soc. Servs.*, 353 S.C. 254, 578 S.E.2d 11 (2003).

It is not enough for the employer to assert that there was "a" dispute—he must prove that there was a "good faith" dispute. This means the reason for the dispute must be "valid." *Futch v. McAllister Towing of Georgetown*, 518 S.E.2d 591, 335 S.C. 598 (1999) ("the Legislature did not intend to prevent employers from asserting valid defenses or counterclaims") And the employer's belief must also be "reasonable." *Mathis v. Brown & Brown of SC*, 389 S.C. 299, 316, 698 S.E.2d 773 (2010). The relevant inquiry is whether the employer had a reasonable, valid good faith basis "at the time" the wages were withheld. *Id.* Later invented reasons for disputing the wages are not relevant.

For an employer to make a deduction from wages when there has been no written notice of the deduction, is a per se violation of SC § Section 41-10-40(A); *Bennett v. Lambroukos*, 303 S.C. 481, 483, 401 S.E.2d 428 (Ct. App. 1991) (holding that it was error for the circuit court to deduct for breakage in a PWA claim, when there was no finding that the employer had given written notice of a breakage deduction).

Our position is that if employer's reason for withholding wages would itself violate the law, it cannot as a matter of law, be considered a good faith basis for withholding wages. To hold otherwise, would effectively give employers a license to violate that law simply by claiming he or she was unaware of the law, did not understand the law, or thought the law did not apply. This would eviscerate the Payment of Wages Act as well as numerous other labor laws that are intended to protect the rights of workers.

There are many cases in which courts have found the employer had a good faith reason to dispute that the wages were due. However, most of these fall into the category of a disagreement about how to calculate compensation, e.g. *Linder v. Paramount Acceptance Corp.*, 291 S.C. 539, 354 S.E.2d 567 (Ct.App.1987) (The employer paid the employee hourly wages and commissions upon her discharge, but there was a

disagreement on the amount of commission and hourly wages due.); or where the employee has been accused of breach of the duty of loyalty, e.g., *Futch v. McAllister Towing of Georgetown*, 518 S.E.2d 591, 335 S.C. 598 (1999). We are not aware of any case in which a court found that the employer's belief that it could withhold wages in violation of labor law constituted a good faith, valid, reasonable dispute.

The PWA is a "notice statute. It is intended to provide the employee with the information requisite to make an educated decision whether or not to accept employment. The wages, hours, and time and place of payment must be stated." *CAFE v. SC Dept. of Labor, licensing*, 523 S.E.2d 795, 337 S.C. 476 (Ct. App. 1999). Mr. Wilson had a right to know at the time he was offered the employment whether the LLC might potentially force him to shoulder the economic cost when things went wrong on the jobsite, regardless of whether he agreed, so that he could decide whether to accept the position under those terms.

The Defendant claims that Mr. Wilson's right under the WPA to not have unilateral deductions made from his pay is abrogated by "contract" or course of dealings between Mr. Wilson and the LLC. The argument was rejected in *Cato v. Mills*, 129 S.E. 203, 132 S.C. 454 (S.C. 1925).¹

While this case pre-dates the PWA, it concerned a similar predecessor statute, which provided that whenever a corporation discharged a laborer, "the wages which have been earned by the discharged laborer shall become immediately due and payable." *Id.*

¹ It is true that the LLC made Mr. Wilson pay for damage to an air conditioning unit in 2015. However, this was one event—a course of dealing means "a sequence of events." What is more, on that occasion, he was made to sign a contract requiring him to pay off the AC and nothing more. The fact that the LLC asked him to sign a contract about paying for the AC shows that such a thing was *not* a customary, but rather a unique occurrence.

at 204. The court reasoned that when Cato was hired, that statute formed part of the contract. *Id.* at 203. However, when Cato was discharged, Mills refused to pay him his wages due until he vacated housing which had been provided to him by the Corporation. *Id.* at 203.

Like here, Mills contended that Cato agreed to waive this right when he accepted employment, because "this practice is a well-understood and universal custom or usage with this defendant." The court rejected this argument, holding that it was against public policy to impliedly waive or contract away his rights under the statute. *Id.* at 203. The court held that parties are permitted to make law for themselves only in cases where their agreement does not violate the express provisions of any law[.]” *Id.* (quoting authority). The court reasoning is very pertinent to this case:

At, the time of the passage of this act corporations discharged their impecunious employees, no doubt, in many cases, with large families, who had nowhere to go and no means with which to defray their expenses while seeking other employment. They were, under the custom mentioned, compelled to wait until pay day for their wages. In the meantime expenses were mounting, and the situation of the laborer became more precarious each day. The statute in question was passed to remedy this state of affairs. Now, if the object of the statute can be thwarted by custom or contract, then the statute might as well be repealed, because it will not be long before the owner of every factory, mill, or other corporation employing labor, subject to the provisions of the statute, will establish customs and enter into contracts that will completely nullify the statute.

Id. at 205. *Cato v. Mills* is alive and well and was cited by the South Carolina Supreme Court for these principals in *Futch v. McCallister*, *supra*.

Here, the reason the employer asserts for withholding from Mr. Wilson his wages due was to repay the LLC for the cost of remedying a paint peeling issue on a job that had been recently completed. However, such a deduction of wages is not allowed where, like here, the employer did not give written notice of this deduction at the time of hiring. SC

Code § Section 41-10-40(A). Therefore, for the LLC to withhold wages based on this basis would explicitly violate the PWA.

In short, the LLC's proffered reason for withholding the wages is itself a plain violation of the PWA. The employer's intent to engage in illegal conduct cannot constitute a "good faith" basis for withholding wages. To hold otherwise would make the PWA a nullity. This is true even if the employer claims ignorance of the law. *Oxford Finance Companies, Inc. v. Burgess*, 402 S.E.2d 480, 303 S.C. 534 (1991).

Cato v. Mills is instructive for a second reason as well. The concurring opinion explains that Mills' duty to pay Cato his wages upon discharge, was a separate and distinct obligation from Cato's obligation to vacate the house. *Id.* at 206 (Marion, J. concurring). Judge Marion reasoned that obligation under the statute was to pay the wages due "immediately." *Id.* This was a mandatory obligation by statute. *Id.* Mills could not refuse to perform this obligation until Cato performed a separate obligation to vacate the house.

Similarly, here the obligation under the statute was to pay the wages due within 48 hours or the next payday. Any other dispute between the LLC and Wilson needed to be handled separately. As Judge Marion reasoned, "It is an elementary and fundamental principle of law that no person can by contract relieve himself of a duty which he owes to the public independently of the contract." *Id.*

Mr. Singleton also testified that he thought he did not believe he had to follow the PWA because Mr. Wilson was an independent contractor. Yet he required him to wear a uniform with the company's name, set his schedule, provided his supplies, told him when to work or take breaks, and how to do his job, and paid him hourly wages, and decided

when to hire and fire him. He even called Mr. Wilson his "foreman." After the Isle of Palms jobs, he unilaterally (and orally) cut Mr. Wilson's pay from \$18 to \$15. Complaint ¶ 9.²

Mr. Singleton has been a business owner for well over a decade. It strains credulity to accept that Mr. Singleton actually *believed* that Mr. Wilson was, in fact, an independent contractor. Rather, Mr. Singleton knowingly chose to *mischaracterize* Mr. Wilson as an independent contract to save himself the time and expense of complying with labor laws, i.e. withholding for payroll taxes, FICA, unemployment insurance and worker's compensation insurance; and reporting of new hires and E-verify, to name a few. According to Mr. Singleton's own testimony, by deeming Mr. Wilson an independent contractor, he was also exempt from the Payment of Wages Act.

This willful mischaracterization gave Mr. Singleton a major competitive advantage over his competitors. But it also put his employees at great risk. What would happen if they needed to make a Worker's Compensation or Unemployment Claim? How will this impact their Social Security benefits when they retire? It simply *cannot* be construed a "valid," "reasonable," or "good faith" belief that Singleton "believed" Mr. Wilson was independent contractor and therefore the PWA did not apply. Good faith is defined by as:

A state of mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one's duty or obligation, (3) observance of reasonable commercial standards of fair dealing in a given trade or business, or (4) absence of intent to defraud or seek unconscionable advantage.

Black's Law Dictionary 713 (8th ed. 2004). Mr. Singleton's mischaracterization of Mr. Wilson as an independent contractor and his refusal to follow the PWA cannot be construed

² This was yet another violation of the PWA, which requires *seven days written notice* before a reduction in pay. S.C. Code § 41-10-30(A).

as “observance of reasonable commercial standards,” or any other element of good faith for that matter.

As noted above, the PWA is remedial legislation designed to protect working people and assist them in collecting compensation wrongfully withheld. It should be liberally construed in order to effectuate its purpose. This was not a good faith misunderstanding of the law—**this was defiance**. And it should be treated accordingly. The Court should find that there was no good faith dispute for withholding wages and award treble damages and attorney’s fees.

3. **Since there was no notice of deduction, any counterclaim for faulty work would be barred by the PWA, and not allowed under a quasi-contract or course of dealings theory.**

As set forth above, the WPA requires an employer to give an employee notice of deductions at the time of hiring. Any changes must be made seven days prior to their effective date. In this case the employer never, at *any* time, gave Mr. Wilson notice that it would deduct wages based on a claim for faulty workmanship. This should be the end of the discussion. The employer cannot do an “end-run” and circumvent the statute by arguing that there was a quasi-contract or “course of dealings” theory, which in any event would be barred by *Cato v. Mills*. These legal theories might apply to an independent contractor, but as already shown, Mr. Wilson was an employee, not an independent contractor.

Our Court of Appeals has recently reiterated the factors that give rise to a finding of employment versus an independent contractor relationship. *Sellers v. Tech Service, Inc.* 421 S.C. 30, 803 S.E.2d 731 (2017). The Court stated that “the primary consideration in determining whether an employer/employee relationship exists is whether the alleged

employer has the right to control the employee in the performance of the work and the manner in which it is done." The court identified four factors used to determine the right of control: (1) direct evidence of the right or exercise of control; (2) furnishing of equipment; (3) the method of payment; and (4) the right to fire." *Sellers v. Tech Service, Inc. et. al.*, 421 S.C. 30 (2017); 803 S.E.2d 731. All of these factors point unmistakably to the conclusion that Mr. Wilson was an employee of the defendants.

It is axiomatic that the employer bears the risk of poor work quality by the employee. The employer's sole remedy is to terminate or demote the employee. If an employee steals or embezzles from the employer, or intentional or willfully damages the employer's interests, there would be a cause of action. But there is no cause of action against an employee for negligent work performance, for faulty work or for breakage. An action for negligence could potentially lie against an independent contractor, but not against an employee. Therefore, any attempt to bring a counterclaim again Mr. Singleton for purported negligent work quality must be dismissed.

4. **Under the WPA, when an employee separates from employment, the employer must pay all wages due within forty-eight hours or the next regular pay day, which may not exceed thirty days. The Defendants' attempt to pay within thirty days does not satisfy the Defendants' obligations under the PWA.**

The Defendant introduced testimony that he attempted to pay Mr. Wilson the wages due within 30 days. November 14, 2017 was the end of the 30-day period. The attempted payment was mailed on November 8, 2017 via certified mail. The envelope was returned unclaimed and Mr. Wilson testified that he was never aware of the letter.

The time period specified for payment under the PWA is 48 hours or the next pay period. The PWA further provides that the time of payment cannot exceed 30 days. However, the 30-day period only applies as an outer limit *only* when the next regular pay

day is later than 30 days. That was not the case here. It does not create a separate period of time in which payment can be made. Otherwise, the 48-hour rule would be rendered meaningless.

The DOL already found that Mr. Wilson was not paid on the next regular payday. It is irrelevant, therefore, that Mr. Singleton attempted to pay within 30 days. This is true because the payment was due at the next payday, not in 30 days. Any payment made after the next pay day would violate the PWA, even if made within 30 days. Additionally, employers can only avoid liability under the WPA if they actually pay—an “attempt” to pay does not satisfy the statute.

It is undisputed that to this date, Mr. Wilson has not been paid the \$432 due. Therefore, despite the untimely attempt to pay, the fact remains, Mr. Wilson was never paid the wages due. Since the defendants failed to pay Mr. Wilson as required by the PWA, their unsuccessful attempt to mail him an untimely check does not constitute a defense to Plaintiff’s PWA claim.

5. An incorrect statement in the Plaintiff’s Complaint, which was admitted by the Defendants, and which the Plaintiff corrected at trial, does not constitute evidence that the Court may consider in reaching a verdict.

Plaintiff’s Complaint, Paragraph 12, states that “On or about October 13, 2017, Mr. Wilson texted Mr. Singleton asking when he wanted him to turn in his uniform. Mr. Singleton called Mr. Wilson. He told him to keep the uniform and that he was not going to pay him his last paycheck, citing the recent paint peeling issue.” Defendants admitted this paragraph in their Answer, adding that they were owed money.

However, the allegation in the Complaint: that Mr. Singleton had cited “the recent paint peeling issue” was an error—a misunderstanding on the part of the attorney. At trial, the defense failed to establish that Mr. Wilson had verified the accuracy of this particular

allegation in the Complaint. If fact, Mr. Wilson testified in trial that Mr. Singleton had *not* stated a reason for withholding wages, clearing up what was an honest mistake in the Complaint. The Plaintiff asks that the Complaint be deemed changed so as to conform with the testimony. South Carolina Rules of Magistrate's Court Rule 14 ("The court shall be lenient in allowance of changes or amendments to complaints[.]")

The issue of whether a statement made in a complaint can be used as evidence in a trial was recently addressed by our Court of Appeals:

This court has noted "parties are judicially bound by their pleadings unless withdrawn, altered or stricken by amendment or otherwise."

The allegations, statements or admissions contained in a pleading are conclusive as against the pleader and a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts which are admitted by the pleadings are taken as true against the pleader for the purpose of the action.

"Notwithstanding allegations to the contrary in his or her pleadings, a party is not precluded from showing the facts to be as they really are where his or her allegations are due to an honest mistake or ignorance as to the facts."

Gary v. Lowcountry Medical Transport, No. 2016-000222 (May 23, 2018) (internal citations omitted).

Thus, while the Defendants can argue that Mr. Wilson made the allegation in his complaint, he is nevertheless not precluded from explaining the reason for the mistake and correcting the error at trial.

As noted above, the relevant inquiry is whether the employer had a reasonable, valid good faith basis "at the time" the wages were withheld. Later invented reasons for disputing the wages are not relevant. While Mr. Singleton was, no doubt, troubled by the paint peeling on the recent Isle of Palms job, there is no evidence (other than his self-serving testimony) that this was the reason he withheld wages. The reason could have

simply been he withheld the last paycheck "because he could." Or to retaliate against Mr. Wilson for resigning.

In any event, even if the allegation in paragraph 12 is taken as established by the Court, despite the Plaintiff's testimony in trial, the allegation is only evidence of "a" dispute—it does not establish a "good faith" dispute. Therefore, it does not decide the issue of treble damages and attorney's fees.

- 6. The amount of damages cannot be left to conjecture, guess or speculation. The damages asserted against Mr. Wilson by the Defendants are too speculative, where there are multiple possible reasons for the failure of the work, multiple workers that could be responsible, and no records of the material or labor costs incurred.**

The existence, causation and amount of damages cannot be left to conjecture, guess or speculation. In order for damages to be recoverable, they must be proven with a reasonable degree of certainty. See *Clark v. Cantrell*, 339 S.C. 369, 529 S.E.2d 528 (2000); *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991); *Barnwell v. Barber-Colman Co.*, 301 S.C. 534, 393 S.E.2d 162 (1989); *Whisenant v. James Island Corp.*, 277 S.C. 10, 281 S.E.2d 794 (1981).

This issue is rendered moot by the fact that the Defendants are not allowed to bring a claim for "damages" they claim were caused by Mr. Wilson's alleged faulty workmanship. However, in the event that the Court finds this counterclaim can be brought, it should be noted that the Defendants presented almost no proof (1) that damages were the result of faulty work rather than some other reason, (2) that Mr. Wilson was the person (or only person) responsible for faulty work, or (3) that the amount of damages claimed are verifiable and reasonable.

There are many reasons that paint might peel or that a finish might be blotchy. Mr. Singleton admitted in trial that he was the one who supplied the paint and told his worker how to do that job. It could be that *Mr. Singleton* chose a paint that was incompatible with the material to be painted or with the underlying paint. It could be that Mr. Singleton took a short cut and failed follow the manufacturers recommendations or industry practice, and failed to specify the proper prep-work or utilize the correct primer or any primer for that matter. It could be that the temperature and humidity were in the wrong range that day for the paint used. In short, the issues on these jobs may have arisen from something that was not attributable to the faulty work by Mr. Wilson or the other workers. Mr. Singleton has not presented evidence to establish that the causation of the damage was faulty work and not some other reason. This is the first reason his damage claim fails.

Second, Mr. Wilson was not the only person working at these three jobs—Mr. Wilson testified that there were multiple workers. And in most cases, Mr. Singleton was not present and did not have personal knowledge of who did what work (except for the spraying of a door). Therefore, even if the damages were from faulty work, Mr. Singleton cannot prove that Mr. Wilson was the one who did the faulty work. Some or all of the blame may belong to a different worker or workers. The trier of fact is left to guess at the allocation of damages. This is impermissible.

Lastly, Mr. Singleton did not present sufficient evidence of the amount of damages. He asserts there is \$3,800 in damages for three different jobs, but fails to allocate this amount between the three jobs.

He claims this amount was for materials and labor, but fails to provide a single receipt for material. He testified in trial that, since his workers were "independent

contractors," that *he* created "invoices" for them each pay period. Yet Mr. Singleton did not provide a single "invoice" for the labor to correct the \$3,800 in damages.

The only evidence Mr. Singleton offered to support the amount of damages was his own self-serving testimony in trial. He testified that he had to purchase 12 door knobs at \$150 a piece because of paint on the edge he attributed to Mr. Wilson's faulty work. Mr. Singleton admitted photographs of one of the door knobs. It appears to be an ordinary brushed nickel interior knob, which was not even keyed. The Court, as trier of fact, may use common sense and his own ordinary experience to determine that *ordinary interior door knobs do not cost anywhere near \$150 apiece. South Carolina Requests to Charge – Civil, 2009, §1-4*. What is more, the paint on the door knob does not appear to match the paint on the door in question, calling his testimony into question. Mr. Singleton's self-serving testimony on the amount of damages therefore does not establish the amount of damages with "reasonable degree of certainty."

Damages must be proven with a reasonable degree of certainty. *Id.* §13-2. Mr. Singleton's proof has fallen far short of this standard. While this issue should not even be reached in this case, no damages were proved to the requisite degree of certainty and the Defendants' claim for same should be dismissed.

CLOSING ARGUMENT

The South Carolina Required Work Place Poster is like the Ten Commandments for employers. And the Payment of Wages Act, the first law listed on that poster, is the first among all the commandments. It is the most basic, fundamental rule that all employers must know and follow. It is the core principle of the employer-employee relationship: "I work for you, you pay me."

The whole employer-employee system is based on that quid pro quo. You can fire someone for any reason in this state; but you *cannot* refuse to pay them. Without this rule, the system could not function.

Mr. Singleton knew this rule. He just chose not to follow it. He did so, not because he honestly thought Mr. Wilson was an independent contractor, or because he disagreed about the number of hours he owed, or because he felt Mr. Singleton had breached the duty of loyalty. He did so simply because he thought he could get away with it.

Now this rule is in the hands of the Court. This court decides if a man must be paid for his labor. No exceptions. And this court decides, with this verdict, whether employers like Mr. Singleton, who refuse to pay wages, with no good faith basis, will be held accountable to the full extent of the law: with treble damages, attorney's fees, and costs.

The purpose of punitive damages is not only to punish the wrongdoer and deter him from repeating the conduct, but also to deter others from similar conduct in the future. *Gamble v. Stevenson*, 406 S.E.2d 350, 305 S.C. 104 (1991). Wage theft is problem of epic proportion, harming millions of American workers every year, costing them billions of dollars. David Cooper and Teresa Kroeger, *Employers steal billions from workers' paychecks each year*, Economic Policy Institute (May 10, 2017).

If the Court does not award treble damages and attorney's fees, or if the Court allows an employer to counter claim against an employee for purported faulty work, then worker's in this community will be deterred from asserting their rights under the WPA and wage theft will be undeterred.

However, if this Court decides with its verdict that willful wage theft will not be tolerated in Charleston County, employers in this community will hear this message. And perhaps, what happened to Troy Wilson, will not happen to the next worker upon the

separation from employment. We believe the facts, law, evidence and equity require that this Court rule for the Plaintiff and award treble damages and attorney's fees.

Respectfully Submitted,

NAUHEIM LAW OFFICE, LLC

/s/ David A. Nauheim

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Charleston, South Carolina
August 13, 2018

CERTIFICATE OF SERVICE

I, Peggy J. Sheppard, hereby certify that the Plaintiff's Post-Trial Memorandum and Closing Argument, has been served this 13th day of August, 2018, via electronic mail to:

Harold A. Oberman
60 Markfield Drive, Suite 2
Charleston, South Carolina 29407
obermanlaw@bellsouth.net

/s/ Peggy J. Sheppard

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
TROY WILSON,)
Plaintiff,)
vs.)
CAROLINA CUSTOM PAINTING)
& DRYWALL LLC, and)
JAMIE SINGLETON,)
Defendants.)

IN THE MAGISTRATE'S COURT

No. 2018 CV 1011500709

**APPENDIX TO PLAINTIFF'S
POST-TRIAL MEMORANDUM AND
CLOSING ARGUMENT**

APPENDIX

Bennett v. South Carolina Dep't of Corrections, 305 S.C. 310, 408 S.E.2d 230 (1991)

Bennett v. Lambroukos, 303 S.C. 481, 401 S.E.2d 428 (Ct. App. 1991)

Cato v. Mills, 129 S.E. 203, 132 S.C. 454 (S.C. 1925).

South Carolina Required Work Place Poster

Respectfully Submitted,

NAUHEIM LAW OFFICE, LLC

/s/ David A. Nauheim

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408 S.E.2d 230

305 S.C. 310

Willie BENNETT, Appellant,

v.

**SOUTH CAROLINA DEPARTMENT OF
CORRECTIONS, Respondent.**

No. 23442.

Supreme Court of South Carolina.

Heard April 23, 1991.

Decided July 22, 1991.

[305 S.C. 311] Herbert W. Louthian, Jr.,
of Louthian & Louthian, Columbia, for
appellant.

Henry S. Knight, Jr., of Nelson, Mullins,
Riley & Scarborough, Columbia, for
respondent.

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TOAL, Justice:

An Employer facing allegations by an
Employee of retaliatory discharge under § 41-
1-80, S.C.Code, was granted summary
judgment in the circuit court below. We
affirm.

FACTS

Willie Bennett, the Employee, was
discharged from his job with the South
Carolina Department of Corrections. In
response, Mr. Bennett filed a grievance
challenging the discharge, which was denied
by the State Employee Grievance Committee.
Mr. Bennett did not appeal the Committee
decision, and instead brought this action
under § 41-1-80, S.C.Code, alleging that the
Department of Corrections discharged him in
retaliation for his filing Workers'
Compensation claims.

Mr. Bennett conceded in his brief that the
parties, facts, and issues concerning his claim
are the same as those presented before the

Grievance Committee. The Department of
Corrections moved for summary judgment
alleging that the action under § 41-1-80 was
barred by the decision of the Grievance
Committee under the doctrines of collateral
estoppel and res judicata.

[305 S.C. 312] The lower court, in
granting summary judgment, held that the
complaint was barred from consideration by
collateral estoppel and res judicata, and that
the Employee had failed to exhaust his
administrative remedies.

LAW/ANALYSIS

The sole issue on appeal is whether the
doctrines of res judicata and collateral
estoppel can operate to bar an action under §
41-1-80.

The Employee concedes in his brief that
the parties, facts and issues concerning his
claim in this action are the same parties, facts
and issues involved in the grievance
proceeding. This Court has repeatedly held
that, under the doctrines of res judicata and
collateral estoppel, the decision of an
administrative tribunal precludes the
relitigation of the issues addressed by that
tribunal in a collateral action. *Earle v. Aycock*,
276 S.C. 471, 279 S.E.2d 614 (1981) (dealing
specifically with relitigation in circuit court of
issues previously decided by the State
Grievance Committee).

Here, the Employee's sole complaint is
that invocation of issue preclusion for
determinations of the State Grievance
Committee will absolutely bar state
employees from any potential recovery in
circuit court under S.C.Code § 41-1-80.
However, such a bar will only occur where the
State Grievance Committee decides the issues
necessary to bring an action under § 41-1-80
in a manner unfavorable to the employee. If
the employee prevails on those issues before
the Grievance Committee, he may then assert
a claim under S.C.Code § 41-1-80 and offer

the findings of the Grievance Committee as support of his claim.

Here, the Employee did not prevail before the Grievance Committee, and by not appealing their decision, abandoned his only opportunity to gain a favorable ruling on the issues involving his termination. While determinations made by the Grievance Committee may not have precluded additional findings by the circuit court which could have supported the claim under S.C.Code § 41-1-80, those issues are still barred from consideration by collateral estoppel because Employee was afforded a full and fair opportunity to present those issues and have them considered by the Grievance Committee.

[305 S.C. 313] Regardless, the Employee has conceded that the issues before the circuit court are the same as those raised and decided before the Grievance Committee. Hence, the Employee is plainly barred from having those issues relitigated. As a result, he has barred himself from recovery under S.C.Code § 41-1-80, by not obtaining favorable decisions regarding the issues which support his present claim.

The doctrines of res judicata and collateral estoppel do not bar recovery under S.C.Code § 41-1-80 for state employees, but they do bar relitigation of issues which have been decided by or should have been presented to the State Grievance Committee.

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The statutory requirements that state employees bring their grievances before the State Grievance Committee and that they exhaust their administrative remedies before seeking judicial review do not bar the bringing of an action under S.C.Code § 41-1-80, but they do require that the Grievance Committee have the exclusive right to decide those issues subject only to an appeal for judicial review of their decisions. For these

reasons, the decision of the lower court is **AFFIRMED.**

HARWELL, Acting C.J., and CHANDLER and FINNEY, JJ., concur.

ALEXANDER M. SANDERS, Jr., Acting Associate Justice, concurs.

last case

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401 S.E.2d 428
303 S.C. 481, 30 Wage & Hour Cas.
(BNA) 297
JoAnne BENNETT, Appellant,
v.
Nick P. LAMBROUKOS, d/b/a
Piedmont Steak House, Respondent.
No. 1603.
Court of Appeals of South Carolina.
Heard Dec. 11, 1990.
Decided Feb. 4, 1991.

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[303 S.C. 482] Sheila R. Young, of Perrin, Perrin, Mann & Patterson, Spartanburg, for appellant.

Robert A. Hammett, of Burts, Turner, Hammett, Harrison, Rhodes & Thompson, Spartanburg, and Sally G. Calhoun, Greenville, for respondent.

CURETON, Judge:

This is an action to recover unpaid wages under S.C.Code Ann. Section 41-10-80(C) (Supp.1990). JoAnne Bennett was employed by Nick Lambroukos as a dishwasher at his restaurant. She worked at the restaurant for one week. Bennett claimed she was hired at a wage of \$3.35 per hour. Lambroukos claimed Bennett signed a contract for a weekly wage of \$90 with deductions for breakage. At the end of the first [303 S.C. 483] pay period Lambroukos tendered Bennett wages of \$45 representing the alleged contractual weekly wage less deductions for breakage. Bennett refused to accept the money and did not return to work. This suit was instituted.

The magistrate found Bennett was entitled to wages of \$184.25 representing fifty-five work hours at a rate of \$3.35 per hour. This amount was trebled under S.C.Code Ann. Section 41-10-80 (Supp.1990) and attorney fees of \$250 were awarded.

Lambroukos appealed to the circuit court. The circuit court judge found Bennett was entitled to wages of \$184.25 but deducted \$40.91 for breakage. He reversed the magistrate's award of treble damages and attorney fees holding the statute was inapplicable as a matter of law. Bennett has appealed the decision of the circuit court. We reverse the decision of the circuit court and affirm the decision of the magistrate.

Bennett's suit was filed under S.C.Code Ann. Section 41-10-80(C) (Supp.1990). She claimed Lambroukos failed to pay her wages in violation of Section 41-10-40 because Lambroukos did not pay her the wages she was entitled to on payday and he deducted breakage from her pay without written notification to her as required in Section 41-10-30.

The circuit court held the statute was not applicable because the employer was not subject to the minimum wage law. This is an error of law. Sections 41-10-10 through 41-10-110 are not restricted to employers subject to federal minimum wage law. Section 41-10-20 states the

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chapter is applicable to all employers in South Carolina with two exceptions not relevant to this case. "Employers" is defined in Section 41-10-10 to include every person employing any person in this state. Therefore, the statutory scheme is not limited to employers who are required to pay minimum wage.

The magistrate and the circuit court judge agreed about the gross amount of wages due but disagreed over the allowance of a deduction for breakage. We find the circuit court erred in allowing the deduction. The record indicates Bennett was not notified at the time and place of hiring of a deduction for breakage. S.C.Code Ann. Section 41-10-30(A) (Supp.1990). She disputed receiving any notice until payday when she signed two

documents. She testified one document was a tax form and it was placed over the [303 S.C. 484] other document. She also testified she never read the purported contract. Lambroukos testified she signed the written contract allowing the deduction two days after she was hired. This is the same written contract which quoted a weekly salary of \$90. Both the magistrate and circuit court judge rejected the contention that Bennett was hired for a weekly salary of \$90. Because the only evidence of a written notice of deductions is contained in the document which quoted the weekly salary and because both the magistrate and the circuit court found this contract was not the agreement of the parties, it follows there was no evidence to support the circuit court's allowance of deductions for breakage.

The magistrate awarded treble damages and attorney fees under Section 41-10-80(C). The circuit court reversed finding the statute was inapplicable because Lambroukos was not subject to the minimum wage law. We concluded this was error as a matter of law. The magistrate did not err in trebling damages because of the factual findings that Lambroukos violated the statutory provisions. According to his own testimony, he violated Section 41-10-30(A) by failing to give notice of the wage, hours, and deductions in writing at the time of hire. He likewise violated Sections 41-10-40 and 41-10-80. We also conclude the amount of attorney fees awarded by the magistrate was reasonable. See *Prevatte v. Asbury Arms*, --- S.C. ---, 396 S.E.2d 642 (Ct.App.1990). We decline to award additional attorney fees for the appeal to the circuit court as the statute does not provide for them.

The order of the circuit court is reversed.

REVERSED.

SHAW and BELL, JJ., concur.



129 S.E. 203

CATO.

v.

GRENDOL COTTON MILLS.

(No. 11834.)

Supreme Court of South Carolina.

Sept. 10, 1925.

Watts, J., dissenting.

Appeal from Greenwood County Court;
H. C. Tillman, Judge.

Action by J. M. Cato against the Grendel
Cotton Mills. Judgment for plaintiff, and
defendant appeals. Affirmed.

Grier, Park & McDonald, of Greenwood,
for appellant,

R. F. Davis, of Greenwood, for
respondent.

JOHNSON, A. A. J. This action was brought under section 5592 of volume 3, Code 1922, for the recovery of wages alleged to be due plaintiff by defendant, and for the statutory penalty for failure of defendant to pay the same after due demand in writing. The case was tried before a magistrate, who gave judgment for plaintiff for the full amount claimed, less \$18 accrued rent. An appeal was taken from this judgment to the county court for Greenwood county, and resulted in an order of his honor, H. C. Tillman, dismissing the appeal, and affirming the judgment of the magistrate. From this judgment defendant appeals to this court, and alleges error on the part of the county judge by two exceptions:

(1) That his honor erred in holding that the defendant was liable for the penalty under the statute, the error being that plaintiff being in possession of the defendant's house as a part of his compensation, defendant had the right to demand the surrender of

possession of same as a condition precedent to the payment of wages.

(2) That his honor erred in holding that plaintiff's wages were due, within the meaning of the statute, so as to make defendant liable for the penalty for its failure to pay such wages within 24 hours after written demand, notwithstanding that under plaintiff's contract of employment he enjoyed the possession of defendant's house as a part of his compensation; the error being that under such contract, and by virtue of the well-understood custom, defendant was entitled to the surrender of possession of the house, and plaintiff's wages did not become due until such possession was surrendered.

The record shows that on August 13, 1923, plaintiff, Cato, was in the employ of defendant, Grendel Cotton Mills; that on that day he was discharged by defendant; that defendant then owed plaintiff \$19.12; that on September 1, 1923, Cato made written demand on defendant for his wages; that defendant refused to pay until Cato should va-

[129 S.E. 204]

cate the house of defendant then occupied by Cato, defendant alleging that by a custom of the mill a discharged employee is not entitled to his pay until he vacates the house of the company occupied by him.

The section of the Code mentioned supra is as follows:

"When any corporation carrying on any business in this state in which laborers are employed, whose wages, under the business rule or custom of such corporation, are paid monthly or weekly on a fixed day beyond the end of the month or week in which the labor is performed, shall discharge any such laborer, the wages which have been earned by such discharged laborer shall become immediately due and payable. And if not so

last case

paid within twenty-four hours after written demand therefor, then such laborer shall recover in addition thereto a penalty of as much per day for the time said wages shall remain unpaid, not exceeding thirty days, as he was receiving at the time of his discharge."

When the defendant hired Cato, the statute just quoted formed a part of the contract. It wrote the condition that in the event of defendant's discharge his wages became immediately due and payable. But defendant says that plaintiff agreed to waive his statutory rights by accepting employment subject to the condition that his wages should not become due and payable until he vacated plaintiff's house. The evidence adduced to prove this allegation is the statement of the magistrate, in his return, that "this practice is a well-understood and universal custom or usage with this defendant." If it be conceded that the magistrate's finding of fact as to the custom of this defendant was equivalent to a finding that plaintiff, Cato, knew of the custom, and acquiesced in and was bound by it, then his conclusion of law must rest upon the proposition that Cato could not legally waive his right to immediate payment of his wages, or could not, by contract, add to the statute something the Legislature did not see fit to write into it.

The question then arises: Was Cato's right upon discharge to immediate payment of his wages a right he could either expressly or impliedly waive or contract away? The statute the court is called upon to construe was passed, no doubt, to meet an evil prevalent at the time of its passage. We have corporations in this state employing thousands of laborers. Most of these laborers are employed in the cotton mills. Defendant's counsel say in their printed argument, in substance, that most of these employees are impecunious. I think this is true. Some of these corporations employed their help either by the week or month, and if the employee was discharged before his wages became due he had to wait until "pay day" before he could

get his wages. It is easy to picture the consequences to the impecunious laborer of this mode of settlement. To remedy the hardships that, no doubt, followed this practice by corporations, the statute in question was enacted.

To recur to the question hereinbefore propounded: Was Cato's right, upon discharge, to immediate payment of his wages, a right he could either expressly or impliedly waive or contract away? We answer, No; that, in the light of the reason for the enactment of the statute, it would be against public policy to allow him to do so. The following authorities bear upon the question at issue:

"The public policy of the government is to be found in its statutes, and, when they have not directly spoken, then in the decisions of the courts and the constant practice of the government officials, but when the lawmaking power speaks upon a particular subject, over which it has constitutional power to legislate, public policy in such a case is what the statute enacts." *United States v. Trans-Missouri Freight Ass'n*, 166 U. S. 290, 17 S. Ct. 540, 41 L. Ed. 1007.

"Courts must refuse to sustain that which is against the public policy of the state, when such public policy is manifested by the legislative or fundamental law of the state." *People ex rel. Peabody v. Chicago Gas Trust Co.*, 130 Ill. 268, 22 N. E. 798, 8 L. R. A. 497, 17 Am. St. Rep. 319.

"Contracts contravening the established policy of the state cannot be enforced in the courts thereof." *Commonwealth Mut. Fire Ins. Co. v. Hayden*, 60 Neb. 636, 83 N. W. 922, 83 Am. St. Rep. 545.

"Parties are permitted, by contract, to make a law for themselves only in cases where their agreements do not violate the express provisions of any law, nor injuriously affect the interests of the public." *Little Rock & Ft.*

S. Ry. Co. v. Eubanks, 48 Ark. 460, 3 S. W. SOS, 3 Am. St. Rep. 248.

"And it is for the welfare of society that their employers shall not be permitted, under the guise of enforcing contract rights, to abdicate their duties to them. The consequence would be that every railroad company, and every owner of a factory, mill, or mine, would make it a condition precedent to the employment of labor, that the laborer should release all right of action for injuries sustained in the course of the service, whether by the employer's negligence or otherwise." Id. 249.

"The courts of no state will hold valid any contract that is injurious to the public rights of its people, offends their morals, contravenes their policy, or violates a public law." 87 Am. St. Rep. 737.

"An agreement which discloses an intention to contravene a statute is vicious and unenforceable." Id.

A railroad company "cannot make a valid contract whereby it will be exempt from liability for negligence." Wallingford v. Columbia & G. R. Co., 26 S. C. 258, 2 S. E. 19; Johnson v. Charleston & S. F. Ry. Co., 55 S. C. 152, 32 S. E. 2, 33 S. E. 174, 44 L. R. A. 645; Reed v. Southern Ry., 75 S. C. 170, 55 S. E. 218; Kirkland v. Charleston & W. C. Ry., 79 S. C. 276, 60 S. E. 668, 128 Am. St. Rep. 848.

[129 S.E. 205]

Our present Chief Justice delivered the opinions in the Reed and Kirkland Cases, and he bases his decisions on the doctrine of public policy. In Magwood v. Duggan, 1 Hill, Law, 182, we find this:

"It is a universal rule that contracts, which have for their object anything which is repugnant to justice, or against the general policy of the common law, or contrary to the provisions of a statute, are void."

The case of McConnell v. Kitchens, 20 S. C. 430, 47 Am. Rep. 845, was an action on a contract. The consideration of the contract was the purchase price of fertilizers. In discussing the law applicable to the facts of this case, Mr. Justice (afterwards Chief Justice) McIver said:

"Now, while it is true that the Legislature has not, in so many words, declared that it shall not be lawful to sell any commercial fertilizer in this state, unless the regulations above prescribed have been complied with, or that a contract for the sale of such fertilizer, without complying with such regulations, shall be illegal and void, yet it seems to us manifest that the real object of the legislation set out above was to prohibit the sale of commercial fertilizers unless the prescribed regulations are complied with, in order to protect the farming interest from deceit or imposition in the sale of an article which has come to be so extensively, if not universally, used by the farmers of the country, as commercial fertilizers."

Continuing, he says:

"In 2 Benj. Sales, § 825, the writer, after commenting at length upon the cases, deduces the following rules therefrom: 'First. That where a contract is prohibited by statute it is immaterial to inquire whether the statute was passed for revenue purposes only or for any other object. It is enough that parliament has prohibited it, and it is therefore void. Secondly. That where the question is whether a contract has been prohibited by statute, it is material in construing the statute to ascertain whether the Legislature had in view solely the security and collection of the revenue, or had in view, in whole or in part, the protection of the public from fraud in contracts or the promotion of some object of public policy.'"

The court held in this case that, where a party sold prepared agricultural lime in this state without a tag stating the chemical composition of such fertilizer and the date of

analysis, as required by law, and took a note for the purchase price, that the contract was illegal and void. This case is not exactly on all fours with the case we are considering, as the statute in this case provided a penalty for its violation. However, I think the reasoning employed by that eminent jurist, Chief Justice McIver, applicable to the facts of the case we are considering.

This statute has been before this court for construction in several cases. *Wynne v. Seaboard Air Line Ry.*, 96 S. C. 1, 79 S. E. 521, Ann. Cas. 1916B, 133; *Champion v. Hermitage Cotton Mills*, 98 S. C. 418, 82 S. E. 672; *Trammell v. Victor Mfg. Co.*, 102 S. C. 483, 86 S. E. 1057; *Burden v. Woodside Cotton Mills*, 104 S. C. 435, 89 S. E. 474. In the *Trammell* Case the court says:

"We should not overlook the fact that the statute is remedial as well as penal. In so far as it is remedial, it should be construed liberally, to suppress the mischief it was designed to remedy. And, while it is true that, in so far as it is penal, it should be strictly construed to prevent injustice or oppression, the rule of strict construction does not require a narrow, verbal or unreasonably technical construction, such as would defeat the clear intention of the lawmakers"â€"citing *Mills v. Southern Ry.*, 82 S. C. 242, 64 S. E. 238; *Brown v. Atlantic Coast Line R. Co.*, 91 S. C. 377, 74 S. E. 754.

At, the time of the passage of this act corporations discharged their impecunious employees, no doubt, in many cases, with large families, who had nowhere to go and no means with which to defray their expenses while seeking other employment. They were, under the custom mentioned, compelled to wait until pay day for their wages. In the meantime expenses were mounting, and the situation of the laborer became more precarious each day. The statute in question was passed to remedy this state of affairs. Now, if the object of the statute can be thwarted by custom or contract, then the

statute might as well be repealed, because it will not be long before the owner of every factory, mill, or other corporation employing labor, subject to the provisions of the statute, will establish customs and enter into contracts that will completely nullify the statute.

The views herein expressed do not in any way conflict with the decision of this court in the *Wynne* Case. I do not contend that a corporation should be penalized for failure to pay what is not a just debt, nor for the failure to pay, when the discharged laborer, after demanding payment, prevents compliance with the demand by his own conduct, nor to deny or preclude the right of the corporation to interpose any valid counterclaim or defense to the claim of such laborer, but I hold that when a laborer is discharged, and the corporation at that time owes him money, and there is no valid defense to his claim, the corporation cannot interpose as a defense to such claim a custom of, or even a contract with, the corporation whereby the laborer must vacate his house before he will be entitled to his pay. Such a condition would contravene the plain intention of the statute, and, as I have said, be against public policy.

A majority of the court concurring in this opinion, the judgment of this court is that the exceptions be overruled, and the judgment of the county judge affirmed.

GARY, C. J., and MARION, J., concur.

WATTS, J., dissents.

COTHRAN, J., did not participate.

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MARION, J. I concur in the opinion of Mr. Acting Justice JOHNSON, but desire to state the reasons for my conclusion from a slightly different viewpoint.

In the last analysis, appellant's position is this: By virtue of a custom not to pay discharged employees until they vacate the houses furnished them, Cato impliedly contracted that in the event of his discharge his earned wages should become due and payable, not immediately upon his discharge, as the statute (section 5592, vol. 3, Code 1922) requires, but upon or after the vacation of the house furnished him by the Mills as a part of the contract of hiring. It is not disputed that at the time of his discharge the Mills owed Cato a certain sum of money as wages, and that up to the time of such discharge the Mills also owed him the use of the house. At the termination of the contract of employment by Cato's discharge, the obligation of the Mills, imposed in express terms by the statute, was to pay Cato's earned wages immediately, and the obligation of Cato was immediately to vacate the Mills' house. In the absence of a contractual stipulation to that effect, it is entirely clear that, in the face of the express mandate of the statute, the Mills could not postpone the performance of the statutory duty imposed to pay the earned wages until after the discharged employee had performed his obligation to vacate the house.

In that situation, certainly, the Mills would have had no more right to say to Cato, "Perform your obligation to vacate the house, and then we will perform our obligation to pay your earned wages," than Cato would have had to say to the Mills, "You discharge your duty to pay my wages, and then I will discharge my obligation to vacate your house." That the effect of the statute was to make the performance by the employer of the payment of the earned wages an act prior in point of time to the fulfillment of the employee's reciprocal obligation to vacate the house would not seem open to serious question. The language of the statute is that "the wages which have been earned by such discharged laborer shall become immediately due and payable." The duty imposed upon the

corporation to pay immediately upon the discharge, regardless of any reciprocal duty of the employee to vacate the employer's premises or to perform any other act of like nature, is absolute. If, therefore, the Mills in this case had a right to make the wages due Cato payable upon or after his vacation of the house, instead of payable immediately upon or after his discharge, as the statute expressly requires, such right must rest upon the theory that the corporation may lawfully contract so to limit the performance of the absolute duty mandatorily imposed by the statute.

Conceding the very doubtful proposition that the record in this case is sufficient to support a finding of fact that Cato agreed with the Mills that his wages in the event of his discharge should not become due and payable until he vacated the Mills' house, I am clearly of the opinion that the Mills could not, by such contractual stipulation with its employee, relieve itself of the absolute duty imposed by the statute to pay the laborer's earned wages immediately upon his discharge. It is an elementary and fundamental principle of law that no person can by contract relieve himself of a duty which he owes to the public independently of the contract. And even under the view that a master may under some circumstances contract against the performance of duties which attach as a matter of law to the contractual relation of master and servant, it is well settled that the master cannot so contract, where the interest of the public requires the performance of a particular duty, or where, because the parties do not stand on an equal footing, the weaker party is compelled to submit to the stipulation in question. 6 R. C. L. 727, § 132; Johnston v. Fargo, 184 N. Y. 379, 77 N. E. 388, 7 L. R. A. (N. S.) 537, 6 Ann. Cas. 1; Osgood v. Central Vermont R. Co., 77 Vt. 334, 60 A. 137, 70 L. R. A. 930; Hartford Fire Ins. Co. v. Chicago, M. & St. P. R. Co., 70 F. 201, 17 C. C. A. 62, 30 L. R. A. 193.

It is true that the foregoing authorities apply the proposition announced above to contractual exemption from liability for negligence generally, and to the cases cited may be added decisions of our own court to the same effect, such as Wallingford v. Columbia & G. R. Co., 26 S. C. 258, 2 S. E. 19, Johnson v. Charleston & S. Ry. Co., 55 S. C. 152, 32 S. E. 2, 33 S. E. 174, 44 L. R. A. 645, Reed v. Southern Ry., 75 S. C. 170, 55 S. E. 218, and Kirkland v. Charleston & W. C. Ry., 79 S. C. 276, 60 S. E. 668, 128 Am. St. Rep. 848. But between the legal duty of an employer to furnish a safe place to work, for example, and the duty here imposed by statute upon corporate employers to pay discharged laborers their earned wages immediately, there is, in the aspect of the matter having to do with the public's interest in the performance of the two duties, no sound basis for a distinction. The very validity of the statute here in question depends upon the soundness of the view that it is a public measure, enacted in the interest of the public welfare. Wynne v. Seaboard Air Line Ry., 96 S. C. 1, 79 S. E. 521, Ann. Cas. 1916B, 133; Champion v. Hermitage Cotton Mills, 98 S. C. 418, 82 S. E. 672; Trammell v. Victor Mfg. Co., 102 S. C. 483, 86 S. E. 1057; Burden v. Woodside Cotton Mills, 104 S. C. 435, 89 S. E. 474. If so, the duty imposed upon corporate employers by this statute is one charged with a public interest, which is independent of the interests of the individual parties to the contract of employment, and cannot be made the sub-

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ject of contractual barter and sale between the corporate employer and the laborer.

Indeed, the nature of the public interest in the duty imposed upon corporate employers by the statute is well illustrated by the case at bar. No more reasonable ground can be assigned for the enactment of this law than the implied legislative finding of fact that the members of the class of laborers

affected are dependent upon their earned wages, not only for a livelihood, but for the means absolutely essential to enable them, when discharged, to vacate, move their families and household effects, and find employment elsewhere. If Cato had no money with which to move his family and effects elsewhere, the refusal of the Mills to pay his wages practically hog-tied him on the Mills' premises, with the result that, deprived of employment and without means to move, he became automatically liable to the Mills for the rent of his house, which liability in a short time would eat up the small balance of earned wages due him and leave him a financial derelict—a potential menace to, or a public charge upon, society.

Without enlarging here upon the rationale of the law as a matter of public policy, it is sufficient for present purposes to repeat that the duty imposed by this statute upon corporate employers is a public duty in the discharge of which the public has an interest which is independent of the interests of the individual parties to the particular contract of employment in question, and that against the performance of such public duty the contractual stipulation here relied on, under the fundamental principle that private citizens may not by contract abrogate the interest of the public in the discharge of duties imposed by statute, was utterly ineffectual to relieve the Mills of the duty to pay Cato's earned wages immediately upon or after his discharge.

If, after the payment of his wages, Cato had proved recalcitrant in the matter of promptly vacating the Mills' house, the corporation would have had the same remedy that any other employer or landowner in this state has to eject one in unlawful possession of another's premises. If that remedy be ineffectual or inadequate, corrective measures are for the lawmaking power, and not for this court.

Cato v. Mills, 129 S. E. 203, 132 S. C. 454 (S.C., 1925)



SC Department of Labor, Licensing and Regulation (LLR)

Required Work Place Poster



SC Labor Law Abstract

Payment of Wages Act

When an employee is hired, the employer must notify the employee in writing of:

- the wages agreed upon
- the normal hours the employee will work
- the time and place wages will be paid
- the deductions an employer may make from wages, including insurance

Changes to these terms must be in writing at least seven (7) calendar days before they become effective.

Employers must pay employees all wages due each pay period. Employers must also give employees an itemized statement showing gross pay and all deductions made each pay period and maintain records of wages paid for three years.

Employers who violate the Payment of Wages Act are subject to a civil penalty of \$100 for each violation. Employees can recover up to three times the full amount of unpaid wages, costs, and attorney's fees in a civil action.

To report a suspected violation, or for recordkeeping or other questions involving the Payment of Wages Act, or to order a copy of the Payment of Wages Act, please contact the Office of Wages and Child Labor at the address and number listed below.

Child Labor

No employer in this State shall engage in any oppressive child labor practices. Oppressive child labor includes employment of any minor in any occupation declared by the Director of Labor, Licensing and Regulation to be particularly hazardous or detrimental to the health or well being of minors. Oppressive child labor also includes employment of minors who are 14 or 15 years old under the following conditions:

- During school hours
- Before 7 a.m. or after 7 p.m. (9 p.m. during the period of summer break of the school district in which the minor resides)
- More than 18 hours during school weeks
- More than 3 hours on school days
- More than 40 hours in non-school weeks
- More than 8 hours on non-school days

For details involving child labor provisions, please contact the Office of Wages and Child Labor at the address and number listed below:
SC LLR - Office of Wages and Child Labor
P.O. Box 11329
Columbia, South Carolina 29211-1329
(803) 896-4470
www.llr.sc.gov

Right-to-Work

The right to work of a person in South Carolina cannot be denied, interfered with, or abridged because the person belongs - or does not belong - to a labor union. An employer, labor organization, or other person who violates a worker's rights under these provisions is guilty of a misdemeanor, and, upon conviction, must be punished by imprisonment for not less than ten days nor more than thirty days, a fine of not less than one thousand dollars but not more than ten thousand dollars, or both. In addition, the employer, labor organization, or other person is subject to a lawsuit by the aggrieved worker. For more information, call 803-896-4470.

Immigrant Worker

The "South Carolina Illegal Immigration and Reform Act" requires all employers to verify the legal status of new employees and prohibits employment of any worker who is not legally in this country and authorized to work.

After July 1, 2009, all businesses in South Carolina are imputed a South Carolina employment license which permits an employer to hire employees. The imputed employment license remains in effect as long as the business abides by the law.

Effective January 1, 2012, all South Carolina employers are required to enroll in the U.S. Department of Homeland Security's E-Verify program and verify the status of new employees within three business days, using E-Verify. Failure to use E-Verify to verify new hires will result in probation for the employer or suspension/revocation of the employer's business licenses.

Safety and Health Protection on the Job

The State:

Under the South Carolina Occupational Safety and Health Act, the State is responsible for the enforcement of occupational safety and health standards in all workplaces, both public and private, within the state of South Carolina. However, longshoring, shipbuilding, ship repairing and shipbreaking operations covered by the Longshoremen and Harbor Workers' Compensation Act, as amended, remain under federal jurisdiction.

Employers:

Each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or physical harm to his employees, and shall comply with occupational safety and health standards promulgated by the Director of LLR. Employers must report to OSHA all work-related fatalities within 8 hours, and all inpatient hospitalizations, amputations, and losses of an eye within 24 hours. Reporting may be accomplished by telephone at (803)896-7672 or in person at 121 Executive Center Drive, Suite 230, Columbia, SC 29211.

Employees:

Each employee shall comply with occupational safety and health standards and all rules, regulations and orders issued by the director of Labor, Licensing and Regulation which are applicable to his own actions and conduct.

Any employee or his representative may request an inspection of his place or site of employment. Any employee may file a complaint, either verbally or in writing. Complaint forms and filing information may be found on our website or will be provided, upon request, by the South Carolina Department of Labor, Licensing and Regulation.

Employees and employees have the right to participate in inspections by means of bringing to the attention of the inspecting officer possible violations which exist in their area of work and the right to participate in the walk-around inspection. The inspecting officer shall have the right to determine the number of persons participating in the walk-around inspection.

Under state law, when the authorized representative of the employees accompanies the inspecting officer during a walk-around inspection, he shall not suffer any loss of wages or other benefits which would normally accrue to him.

Where there is no authorized representative, the inspecting officer will consult with a reasonable number of employees concerning matters of safety and health in the workplace.

Discrimination:

State and federal laws prohibit discrimination against any employee if he files a complaint or causes any proceeding under or related to this Act or is about to testify in any such proceedings or because of the exercise by any employee on behalf of himself or others of any right afforded under state and federal law. The Director of Labor, Licensing and Regulation or the nearest federal OSHA offices must be notified within thirty (30) days after such discriminatory act occurs. State and local government employees should file such complaints with the Director, South Carolina Department of Labor, Licensing and Regulation. A public sector employee believing that he has been discharged or otherwise discriminated against by any person in violation of Section 41-15-510 may proceed with a civil action pursuant to the provisions contained in Chapter 27, Title 8.

Citations:

Citations listing the alleged violations during an inspection will be mailed to the employer with reasonable promptness. State law requires such citations be promptly posted at appropriate places for employee information for three (3) days, or until the violations are corrected, whichever is later, to warn employees of dangers that may exist.

Penalties:

An employer may be assessed a penalty up to seven thousand (\$7,000) dollars for a non-serious violation.

An employer who receives a citation for a serious violation may be assessed a penalty up to seven thousand (\$7,000) dollars for each such violation.

Any employer who willfully violates an occupational safety and health rule or regulation may be assessed a penalty not more than seventy thousand dollars (\$70,000) for each violation.

Any employer who willfully violates an occupational safety and health rule or regulation and the violation causes death to an employee shall be deemed guilty of a misdemeanor and, upon conviction, be punished by fine, imprisonment or both.

Under a plan approved November 30, 1972 by the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA), the State of South Carolina is providing job safety and health protection for workers throughout the State. Federal OSHA will monitor the operation of this plan to assure that continued approval is merited. Any person may make a complaint regarding the State administration of this plan directly to the Regional Office of OSHA, U.S. Department of Labor, 61 Forsyth Street S.W., Room 6750, Atlanta, Georgia 30303.

For more information, contact:

SC LLR - Office of OSHA Compliance
P.O. Box 11329
Columbia, South Carolina 29211-1329
(803) 896-7665
www.osha-southcarolina.gov

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
TROY WILSON,)
Plaintiff,)
vs.)
CAROLINA CUSTOM PAINTING)
& DRYWALL LLC, and)
JAMIE SINGLETON,)
Defendants.)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

2020-CP- -
COMMON PLEAS NUMBER

No. 2018 CV 1011500709
MAGISTRATE'S COURT NUMBER,
JUDGE JACKSON SETH WHIPPER

NOTICE OF CIVIL APPEAL

The Plaintiff, Troy Wilson, hereby gives notice of appeal from the judgment of the magistrate's court in the above action, to the Circuit Court of Common Pleas, in the county of Charleston. This notice of appeal is made subsequent to personal notice of the judgment which was received on the seventh day of April, 2020. The appellant's exceptions to the judgment of the magistrate are set forth as follows:

- (1) The rulings were contrary to the evidence;
- (2) The rulings were contrary to the law;
- (3) To wit, Court erred by failing to find that:
 - a. Troy Wilson was an employee of Defendants Carolina Custom Painting and Drywall LLC and Jamie Singleton (Defendants);
 - b. Defendants failed to give the Plaintiff written notice of the terms of employment, including the amount of wages, the time and place wages would be paid, and allowable deductions;

- c. That such failure violated the South Carolina Payment of Wages Act. S.C. Code § 41-10-10 et seq ("Payment of Wages Act");
- d. That such failure barred the Defendants from making any deductions to the Plaintiff's wages that were not required by law;
- e. That at the time of the Plaintiff's separation from employment, Defendants owed the Plaintiff \$432 in wages;
- f. That Defendants did not pay the Plaintiff \$432 in said wages due at the time that they were due;
- g. That such failure violated the Payment of Wages Act;
- h. That Defendants' concession in closing argument, that Defendants owed the Plaintiff \$432 in unpaid wages and the only issue was treble damages and attorney's, established the Defendants' liability and damages on the unpaid wages claim in favor of the Plaintiff as a matter of law;
- i. That the South Carolina Department of Labor's (SCDOL) citation of the Defendants for violating the Payment of Wages Act, and Defendants' failure to appeal that determination, also established Defendants' liability as a matter of law on Plaintiff's unpaid wages claim. *Bennett v. South Carolina Dep't of Corrections*, 305 S.C. 310, 408 S.E.2d 230 (1991); *Keiger v. Citgo, Coastal Petroleum, Inc.*, 482 S.E.2d 792, 326 S.C. 369, 327 N. 3 (Ct. App. 1997) (granting summary judgment in favor of plaintiff because "Respondents had paid Keiger the amount the South Carolina Department of Labor determined she was due, and because she had not appealed that determination, she was barred from relitigating it.")

- j. The Defendants did not have a good faith basis for their failure to timely pay the Plaintiff the \$432 in wages due;
- k. That Defendants did not give written notice to the Plaintiff, pursuant to the Payment of Wages Act, as such Defendants were not permitted to deduct from Plaintiff's wages for alleged breakage or faulty work;
- l. That because Defendants did not give said written notice, the Court may not deduct from Plaintiff's claim for faulty work or breakage nor permit a counter-claim by Defendants for the same. *Bennett v. Lambroukos*, 303 S.C. 481, 483, 401 S.E.2d 428 (Ct. App. 1991) (holding it was error for the circuit court to deduct for breakage in a PWA claim, when there was no finding of written notice of a deduction for breakage);
- m. That the employer could not avoid its obligations under the Payment of Wages Act by asserting a deduction against Plaintiff's claim for faulty work or breakage under a quasi-contract or course-of dealing theory. See *Cato v. Mills*, 129 S.E. 203, 132 S.C. 454 (S.C. 1925) (refusing to allow employers to ignore the statute by claiming their employees had by contract or custom waived their statutory right to prompt payment of wages); S.C. Code § 41-10-100 ("No provision of this chapter may be contravened or set aside by a private agreement.");
- n. That for the same reasons, the Defendant was barred from bringing a counter-claim against the Plaintiff for faulty work or breakage;
- o. That since a deduction from wages for alleged faulty work or breakage, without prior written notice, would violate the law, Defendants' may not assert

the same, as a basis for a good faith dispute as to whether the wages were due, when that reason itself would violate the law.

- p. That having violated the Payment of Wages Act, without a good faith basis for disputing that the wages were due, Defendants were liable to the Plaintiff for treble damages, reasonable attorney's fees, and costs in the amount of \$10,276.50. S.C. Code § 41-10-80 (C); *Rice v. Multimedia, Inc.*, 318 S.C. 95, 99 (S.C. 1995).
- q. That in any event, Defendant Singleton was without first-hand knowledge of which employee was responsible for alleged faulty work or breakage, and therefore his testimony attributing the same to the Plaintiff was inadmissible hearsay;
- r. That Defendants offered no receipts or invoices or any other evidence to establish beyond speculation the value of the damages caused by alleged faulty work or breakage, and therefore those damages were too speculative to be awarded. See *Clark v. Cantrell*, 339 S.C. 369, 529 S.E.2d 528 (2000); *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991); *Barnwell v. Barber-Colman Co.*, 301 S.C. 534, 393 S.E.2d 162 (1989); *Whisenant v. James Island Corp.*, 277 S.C. 10, 281 S.E.2d 794 (1981).
- s. That Defendants' attempt to pay the Plaintiff the wages due (after being cited by the SCDOL) did not avoid liability under the Payment of Wages Act, because the attempted payment came after the time that pay was due under S.C. Code § 41-10-50, and in any case the payment was returned undelivered to the Defendant and not received by the Plaintiff;

t. That an error in paragraph 12 of the Plaintiff's Complaint did not establish that fact conclusively in trial, and Plaintiff therefore was permitted to contradict the same with his testimony in trial. *Gary v. Lowcountry Medical Transport*, No. 2016-000222 (May 23, 2018);

(4) The judgment awarded to the Defendants by the Court in the amount of \$3,550.00 is arbitrary because that amount does not accord with any combination of the relief requested by the parties and bears no relation to the evidence.

The Plaintiff reserves the right to supplement this Notice of Appeal once the Magistrate's Return has been received.

Respectfully Submitted,

NAUHEIM LAW OFFICE, LLC

s/ David A. Nauheim
David A. Nauheim
SC Bar #102083
Attorneys for the Plaintiff
PO Box 31458
Charleston, South Carolina
29407 (843) 534-5084

Charleston, South Carolina
April 13, 2020

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Notice of Appeal was served on the following this 13th day of April, 2020 via regular, first-class mail:

Magistrate J. Seth Whipper
North Area Small Claims Court
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive, Suite B146
P.O. Box 70235
North Charleston, SC 29415-0235

Clerk of Court
North Area Small Claims Court
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive, Suite B146
P.O. Box 70235
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Harold Alan Oberman
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CERTIFICATE OF COUNSEL

The undersigned Counsel for Appellant hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

February 26, 2024

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