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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas The Honorable Alex Kinlaw, Jr., Circuit Court Judge

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Appellant Case No. 2024-000521
Civil Action Case No. 2023-CP-23-02709

Everett Homes, LLC ……Respondent

v.

Jermaine LeClerc …….. Appellant

FINAL BRIEF OF RESPONDENT

Pursuant to Rule 211(a), SCACR, I certify that Appellant's Final Brief complies with Rule 211(b), SCACR.

Respectfully submitted,

s/ Wendell L. Hawkins
Wendell L. Hawkins (S.C. Bar #: 13583)
Wendell L. Hawkins, PA
9 Buena Vista Way, Ste B. Greenville, SC 29615
(864) 848-9370 (Ph) (864) 243-8137 (Fax)
wlh@wlhawkinslawfirm.com
Attorneys for Respondents

August 17, 2024
Greenville, South Carolina

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COUNTER-STATEMENT OF THE CASE

On or about May 29, 2022, Appellant and Respondent entered into a contract for the purchase and sale of 222 W. Mountainview Avenue in the City of Greenville, Sout Carolina bearing Greenville County Tax Map number 0177.00-04-003.00 (the "Contract"). This property is better described as:

> All that certain piece, parcel or lot of land, together with all improvements thereon, situate, lying and being in the County of Greenville, State of South Carolina being shown and designated as Tract A, on a plat entitled "John Asher," prepared by Stie Design, Inc. dated February 4, 2019 and being recorded in Plat Book 1336, Page 2 in the register of Deeds Office of Greenville County, South Carolina, reference being made to said plat being hereby made for a more complete property description.
>
> This being a portion of the same property conveyed to Jermaine Appellant by deed of Everett Homes, LLC dated July 29, 2022 and recorded on August 8, 2022 in the Register of Deeds Office for Greenville County, South Carolina in Deed Book 2665 at Page 224.
>
> TMS# 0177.00-04-003.00 (hereinafter "Tract A" or the "Property") (See, Am. Comp.; Ex. A)
> (R. pp.__)

A closing on Tract A was held in the law offices of Nelson & Galbreath, LLC on or about August 4, 2022 (the "Closing"). Appellant's counsel errantly conveyed Tract A and B to Appellant (the "Deed" (R. pp. 67-70). Appellant's counsel acknowledged the error in that certain correspondence dated May 2, 2023 (the "Letter")(R. p.71). Appellant's counsel also errantly calculated the tax prorations giving Appellant credit for the estimated unpaid taxes on Tract A plus Tract B. Those estimated taxes were the combination of the 2021 Tract A bill of $6,414.06 and the Tract B bill of $1,063.17. Appellant was errantly credited $625.19 which was owed to Appellant. Appellant paid the 2022 taxes for Tract B in the amount of $1,076.27. After the offset of the sums described above ($625.19), Respondent owed Appellant $451.08 which was tendered with the service of the

Amended Summons & Complaint. On or about October 14, 2022 Appellant noticed Respondent's subcontractors using water from his home at 222 W. Mountainview Ave. to build the house at 220 W. Mountainview Ave. and Respondent paid Appellant's entire water bill for the month. Such assertions and actions would be inconsistent with Appellant's claim of ownership of 220 W. Mountainview Ave.. (R. pp. 74-75). Appellant sold 222 W. Mountainview Ave., Tract A, on or about May 1, 2023 at which time he discovered that Tract B had been errantly conveyed to him. At that time, Appellant maliciously placed a stop work order on 222 W. Mountainview Ave. (R. p.20). Respondent filed its initial Complaint on May 27, 2023 and its Amended Complaint on May 30, 2023 for the sole purpose of adding a cause of action for unjust enrichment. That is the only difference between the original Complaint and the Amended Complaint and regardless of whichever one was served, the ruling of the trial court was based on the Slander of Title cause of action which was contained in both of the Complaints.

The Complaint (or Amended Complaint) was served via commercial carrier pursuant to SCRCP, Rule 4(d)(9) upon Appellant's mother, Betty LeClerc at 275 SW Lost River Rd. Stuart, FL 34997. (R. pp. 221 -226). Respondent's check for the tax proration that was sent with the Complaint was cashed by the Appellant on or about July 12, 2023 and bears the signature of the Appellant. (R. pp. 181-182). Respondent's damages hearing was docketed for November 28, 2023 and Respondent timely served Appellant at the same location where the Summons and Complaint were served at which time Appellant obtained counsel. Appellant's counsel filed a Motion to be Relieved from Default on November 21, 2023 and filed his Memorandum in Support on November 27, 2023; just one day prior to the hearing. The parties argued their positions and the trial court denied the Motion for Relief from Judgment from the bench and moved into the damages hearing. Prior to issuing an Order on the damages, Appellant filed its motion to reconsider which was

eventually denied. The Court issued the Order on Appeal on March 5, 2024.

ARGUMENT

I. THE TRIAL COURT ENTERED DEFAULT ON A PROPERLY SERVED AMENDED COMPLAINT.

Appellant appears to make the argument that the Amended Complaint was never served on Respondent. There is no proof of that in the record. Respondent filed its Amended Complaint on May 30th, 2023. (R. pp. 50-75). The Certificate of Service filed with the Clerk of Court shows that the Commercial Carrier picked up the Summons and Complaint on June 5, 2023 and served the Summons and Complaint on June 7, 2023. (R. pp. 221- 226). Granted the Certificate of Service says there was a "Summons and Complaint" rather than a "Amended Summons and Complaint," served, but such distinction is a clerical error, if an error at all. Nevertheless, the Amended Summons and Complaint only contains an additional cause of action for Unjust Enrichment and Respondent's damages hearing was for its legal cause of action of Slander of Title, so regardless of which of the Summons and Complaints was served, either was sufficient for the hearing on the Slander of Title cause of action. There was never a "new cause of action for damages" as Appellant claims; there was simply a new cause of action for Unjust Enrichment which was never an issue before the court.

Furthermore, the Order of Default Judgment makes it perfectly clear that the only issue remaining for the court to determine was the damages on the Slander of Title issue. ("Order of Default") (R. pp. 1-6). So if the case proceeded on that issue alone, there would be no prejudice to the Appellant.

The most overwhelming argument against Appellant's argument on this issue is that the issue was never raised at the hearing level. An issue not raised at trial cannot be raised for the first

time on appeal. *Helms v. T & L Building Contractors, Inc*., 287 S.C. 605, 340 S.E.2d 548 (1986). For the foregoing reasons, the Court should dismiss this issue on appeal.

II. THE TRIAL COURT PROPERLY ENTERED DEFAULT JUDGMENT AND DENIED RELIEF FROM DEFAULT JUDGMENT

The trial court properly denied relief from default judgment. Appellant properly stated the portion of Rule 4(9)(d) SCRCP that provides, "[a]ny such default or judgment by default shall be set aside pursuant to Rule 55(c) or Rule 60(b) if the ***defendant demonstrates to the court*** that the delivery receipt was signed by an unauthorized person."(emphasis added). Appellant correctly cites *Graham Law Firm, P.A. v. Makawi*, 396 S.C. 290, 721 S.E.2d 430 (2012) as well for the general rule that even service by certified mail has to be upon an authorized person. The difference in *Makawi* is that Makawi presented affidavits at the hearing which asserted that the persons signing for service were unauthorized. *Id*. at 298. Respondent, in the instant case, presented no evidence at the hearing on the motion to set aside default judgement. In *Makawi,* the Court ruled that once the defendant presented such evidence, only then is the plaintiff required to come forward with evidence which rebuts the defendant's affidavits. The trial court erred, however, in that it denied Graham's request for discovery and cross-examination prior to a ruling which was dispositive in nature. *Id.* at 298-299, 721 S.E.2d at 434-435. The *Makawi* Court also points out that "[w]hen the civil rules on service are followed, there is a presumption of proper service." *Id*. at 434, citing *Roche v. Young Brothers, Inc.,* 318 S.C. 207, 211, 456 S.E.2d 897, 900 (1995). "Once the plaintiff has demonstrated compliance with the rules, the defendant can rebut an inference that service was effected only by showing that the return receipt was signed by an unauthorized person." Rule 4(d)(8), SCRCP. *Id*. at 434. Again, in the instant case on appeal, the Appellant presented no evidence at the hearing to rebut the presumption of proper service and this fact was pointed out to the court in oral argument. (R. p.193 line 15 - p.12 line 13). Appellant's

counsel's arguments at the hearing (being the contents of his memorandum in support) were not evidence. "It is well settled that statements by counsel are not evidence." *Ex parte Morris*, 367 S.C. 56, 64, 624 S.E.2d 491, 496 (2006). "It is well settled that counsel's statements regarding the facts of a case and counsel's arguments are not admissible evidence . . .." *Landry v. Landry,* 430 S.C. 153, 163, 843 S.E.2d 491,496 (2020). Because the Appellant presented no evidence at the hearing of his mother's lack of authority, the burden of rebuttal was never upon the Respondent and the court properly denied relief from default.

III. THE TRIAL COURT PROPERLY AWARDED RESPONDENT $47,916.67 IN ACTUAL DAMAGES AS THE EVIDENCE SUPPORTED THE AWARD AND RESPONDENT PROPERLY PLEAD FOR PRE-JUDGEMNT INTEREST

A. Standard of Review-Sections III and IV

An action in tort for damages is an action at law." *Longshore v. Saber Sec. Servs., Inc.,* 365 S.C. 554, 560, 619 S.E.2d 5, 9 (Ct.App.2005). In an action at law, the appellate court corrects errors of law, but affirms the special referee's factual findings unless no evidence reasonably supports those findings. *Roberts v. Gaskins,* 327 S.C. 478, 483, 486 S.E.2d 771, 773 (Ct.App.1997). The trial court's findings are equivalent to a jury's findings in a law action. *King v. PYA/Monarch, Inc.,* 317 S.C. 385, 389, 453 S.E.2d 885, 888 (1995). Questions regarding credibility and weight of evidence are exclusively for the trial court. *Id.* "The trial judge has considerable discretion regarding the amount of damages, both actual or punitive. Because of this discretion, our review on appeal is limited to the correction of errors of law. Our task in reviewing a damages award is not to weigh the evidence, but to determine if there is any evidence to support the damages award." *Austin v. Specialty Transp. Servs., Inc.,* 358 S.C. 298, 310–11, 594 S.E.2d 867, 873 (Ct.App.2004)

B. Argument

Appellant argues that Respondent had no damages other than attorney's fees. In it's first argument, Appellant advances a position that the *Solley* case holds that the only actual damages a plaintiff/land owner can suffer in a Slander of Title case are (1) if it is forced to sell for less than what the property is worth; (2) if a land owner is not able to sell the home at all; or (3) if a land owner is unable to obtain a loan. The defendant/respondent in *Solley* argued that "[w]here a party did not attempt to do anything that actually caused them to suffer a loss, their sole remedy in a slander of title action is to recover their reasonable attorney's fees and costs of litigation." *Solley v. Navy Federal Credit Union, Inc*., 397 S.C. 192, 210-211, 723 S.E.2d 597, 606-07. (Ct. App. 1995) One would assume that there could be a case where an owner of either improved or unimproved real property wasn't trying to sell the property or obtain a loan, but merely trying to remove the slanderous publication for any future sales or re-finances and that would validate this "snip it" from the opinion. That was not the case here. The Respondent was trying to complete a one-million dollar house to sell in his normal course of business and the Appellant intentionally and without legal justification caused a stop work order to be placed on the Property and refused to re-convey the Property to the Respondent when asked by his own counsel. (R. p. 45). Respondent was precluded from completing the house for five months and lost the use of cash money he had invested in the house so Appellant's argument that Respondent's sole damages were the attorney's fees and costs to solve the problem is flawed. *Solley* also says, however, "[s]pecial damages recoverable in a slander of title action are the pecuniary losses that result 'directly and immediately from the effect of the conduct of third persons, including impairment of vendibility or value caused by disparagement, and the expense of measures reasonably necessary to counteract the publication, including litigation.' " *Id. at 604* citing *Huff v. Jennings,* 319 S.C. 142, 150-51, 459 S.E.2d 886, 892 (Ct.App.1995). (quoting 50 Am.Jur.2d *Libel & Slander* § 560; citing

Restatement (Second) of Torts § 633). Respondent testified that he lost the use of his money and that is what his damages were based on. (R. p. 202, line 24 – p. 203, line 18). This was clearly a pecuniary loss. To the extent it has any bearing on pecuniary loss, despite Appellant's assertion that Respondent did not plead for pre-judgment interest, Respondent did request pre-judgment interest in Paragraph 25 of its Complaint (R. p. 31) and in paragraph 25 of its Amended Complaint (R. p. 56.). It is also important to note that the Court's language in *Solley* was not intended to be an exhaustive list of the only types of pecuniary loss that can flow from a slander of title case. The Court used the language "i.e." meaning "for example." If the Court wanted to say "these are the only pecuniary losses that could ever be suffered," the Court was certainly able to choose those words. Respondent was prevented from selling the house until such time as the Property was reconveyed to Respondent and Respondent was able to finish the house. If Appellant would not have gone so far as to place a stop work order on the construction, the Respondent's house would have been able to sell a lot earlier than it did and Respondent's damages would be less.

There is also the more fundamental issue that Appellant is barred from seeking relief from the award of actual damages because the methodology in calculating the damages was articulated in the Respondent's Affidavit of Damages (R. pp.228-241) filed with the trial court and in oral argument. The Appellant never objected to the methodology at the trial level. Because Appellant never objected to the methodology at the hearing, it is the law of the case. An issue not raised at trial cannot be raised for the first time on appeal. *Helms v. T & L Building Contractors, Inc*., 287 S.C. 605, 340 S.E.2d 548 (1986). For the foregoing reasons, the Court should deny relief on this issue.

Lastly, the standard of review requires only that the Court determine if there is any evidence to support the damages award. *See*, *Hutson v. Cummins Carolinas, Inc*., 280 S.C. 552, 314S.E.2d 19 (Ct.App. 1984). Based on the foregoing arguments, the Court should uphold the trial court's award of actual damages.

IV. THE TRIAL COURT PROPERLY AWARDED RESPONDENT $143,750.01 IN PUNITIVE DAMAGES AS THE EVIDENCE SUPPORTED THE AWARD

"In South Carolina, punitive damages are allowed in the interest of society in the nature of punishment and as a warning and example to deter the wrongdoer and others from committing like offenses in the future. *Laird v. Nationwide Ins. Co.,* 243 S.C. 388, 396, 134 S.E.2d 206, 210 (1964). Moreover, they serve as a vindication of private rights when it is proved that such have been wantonly, willfully or maliciously violated. *Harris v. Burnside,* 261 S.C. 190, 196, 199 S.E.2d 65, 68 (1973). Lastly, punitive damages may be awarded only upon a finding of actual damages. *Carroway v. Johnson,* 245 S.C. 200, 139 S.E.2d 908 (1965)." *Gamble v. Stevenson*, 305 S.C. 104, 110–11, 406 S.E.2d 350, 354 (1991) (internal quotations omitted). In any civil action where punitive damages are claimed, the plaintiff has the burden of proving such damages by clear and convincing evidence. S.C. Code Ann. § 15-33-135.

In *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350, 354 (1991), the Court wrote:

> "Hereafter, to ensure that a punitive damage award is proper, the trial court shall conduct a post-trial review and may consider the following: (1) defendant's degree of culpability; (2) duration of the conduct; (3) defendant's awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) defendant's ability to pay; and finally, (8) as noted in *Haslip,* "other factors" deemed appropriate. Upon completing its review, dedicated to the postulate that no award be grossly disproportionate to the severity of the offense, the trial court shall set forth its findings on the record." Id. at 354.

Appellant asserts that the trial court did not did not consider the *Gamble* factors. The record reveals otherwise. While no one will ever know what went on in the trial judge's head or his processes in his "post-trial review" of the award (the judge made his own award), there was ample evidence in the record whereby the trial court could contemplate the *Gamble* factors in determining his award. Prior to the awards made, the court had the following items at his disposal for consideration: (1) the Summons and Complaint with Exhibits (R. pp. 25-49) and Amended Summons and Complaint with Exhibits (R. pp. 50-75); (2) Plaintiff's Memorandum in Opposition to Defendant's Motion for Relief from Entry of Default Judgment and Motion to Dismiss (with Exhibits: Letter from Nelson and Galbreath requesting Appellant to sign the Quit Claim Deed along with the Quit Claim Deed; (R. pp. 115-150); Forewarn Screenshot showing 275 SW Lost River Rd. Stuart Florida as Respondent's residence from 02/07/2009-Current (R. p.145); Greenville County Register of Deeds Index showing the filing of the Order of Default Judgment and the search of Everett Homes showing no reconveyance of Lot B back to Respondent)(R. pp. 146-150); (3) the Affidavit of Damages with Exhibits A-D. (R. pp. 228-241); (4) the Affidavit of Attorney's fees (R. pp. 242-243); (5) a Revised Affidavit of Attorney's Fees; (R. pp.244-246) (6) the Motion to Reconsider with Exhibits (R. pp.88-114); (6) the Memorandum in Opposition to Plaintiff's Motion to Reconsider with Exhibits, (R. pp. 151-184); and (7) the Judge's recollection of oral argument.

Considering the factors one-by-one, Defendant's degree of culpability was definitely on the record. It was uncontroverted that the Appellant's own closing attorney sent Appellant a letter explaining the mistake along with a quit-claim deed so that Appellant could easily rectify the situation. (R. pp.45). That letter was obviously ignored. There was evidence of the Appellant's malicious filing of a Stop Work Order on the Respondent's property which prevented Respondent

from working on the house under construction for sale. There was evidence on the record that Appellant made misrepresentations to the court about his place of abode.[1]

Appellant obviously engaged in his nefarious conduct way beyond what was reasonable among decent and honest people. Appellant refused to cooperate even after he received the letter from Nelson & Galbreath requesting him to sign the quit claim deed and even after that, failed to remove the stop work order. Respondent could only get the stop work order lifted when he got the title back in his name which required the Order of Default to be filed at the Register of Deeds which occurred on August 2, 2023. (R. p.206,151 lines 1-7). These actions also demonstrate the third prong of the *Gamble* factors regarding Appellant's awareness of his wrongful conduct. There is no evidence on the record regarding prior conduct, but the *Gamble* factors are not all required to be considered and the language of *Gamble* simply said that the judge ***may*** consider the various factors in its award of punitive damages. It is quite likely that the punitive award will deter Appellant from engaging in future like conduct meeting the 5th *Gamble* factor for consideration. The award is reasonably related to the harm likely to result from such conduct. Luckily for Appellant, Respondent had no debt on the house under construction, but in a similar situation with

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1. Defendant obviously received the letter of Nelson and Galbreath at 275 SW Lost River Rd. Stuart, FL 34997 because he tried to introduce the quit claim deed in the Motion for Relief from Default Judgment. That was the same quit claim deed that accompanied the May 2, 2023 letter. (R. pp. 45-47). Defendant cashed the check that accompanied the service of the Summons and Complaint (R. pp.182). The Appellant made a representation that his address was 9172 Carrington Ave. Parkland, FL 33078 as depicted on his driver's license. (Memo is Supp. Motion to Reconsider p. 1) (R. p.88-92). That Property was sold on February 17, 2021 (Memo in Opp. Motion to Reconsider Ex. B. (R. p. 159-160). The Appellant claimed 275 SW Lost River Rd. Stuart, FL as his primary residence for tax purposes for the relevant years of 2021, 2022, and 2023. (R. pp. 161-180). The Appellant was registered to vote at the SW Lost River Rd. Address (R. p.171). Appellant texted Respondent regarding Respondent's workers using Appellants water to work on Respondents house which is inconsistent with a claim of ownership in the Respondent's property. (R. pp. 48-49)

a builder having to carry debt on such an endeavor for five additional months could be financially devastating. Appellant defaulted which prevented discovery on his ability to pay, but there was evidence that the Appellant was allowing his mother to live in a $1,323,580.00 tax valued house (R. p. 165) while allegedly leasing an apartment for $3,676.00 a month (R. pp.94-103). There was also evidence in the record that the Appellant was a doctor. (R. p. 71). The court was also free to consider any other factors deemed appropriate as noted in *Gamble*. Having discussed all of this, it is still important to note that the Gamble factors are not an eight-pronged test, rather just merely a suggestion of the factors the court ***may*** consider.

Appellant also argues there is no evidence to demonstrate that the trial court used discretion in his award, yet the Order on Appeal is heavily reasoned. The court recognized its burden of discretion in its Order. The court wrote, "[b]ecause the Defendant is in default, punitive damages are deemed proven by admission, however the award of punitive damages are at the sound discretion of the court." (Order p.9-10) (R. pp.21-22). The *Solley* court specifically noted that, "[b]ecause the bank defaulted, all allegations are deemed admitted." *Id.* at 212, 608. The Respondent's Complaint (and Amended Complaint) averred that, "Defendant's Actions have been inconsistent with the rightful ownership of the Property and are, in fact, right out egregious, spiteful and outrageous." (R. p.29, p. 54) Those allegations were admitted by default. The Respondent's Complaint (and Amended Complaint) also averred that, "Defendant has published and continues to wrongfully publish, with malice, a false statement that is derogatory to Plaintiff's title which has caused actual and special damages to the Plaintiff in the form of diminished value of the property of basic worthlessness, a loss of marketability, a time loss use of money and the attorney's fees and costs associated with this action. (R. pp.30-31, pp. 55-56) Those allegations were admitted by default and a contributing factor to punitive damages. The Plaintiff's Complaint goes on to

say, "[d]efendant's actions in the failure to cooperate with a reconveyance and return the Plaintiff to the status quo amounts to unjustifiable reckless, willful, wanton, malicious and conscionable wrong doing which entitles Plaintiff to punitive damages. (R. p. 31 & p. 56). Those unanswered allegations are admitted. Every allegation as they may apply to the *Gamble* factors were admitted by default and the Order on Appeal clearly displays the trial court's awareness of the behaviors of Appellant that influenced its decision in the punitive award. The court even recognized that the Defendant intentionally "rubbed salt in the wounds of Plaintiff without care or concern for a fellow man." (R. p. 21).

V. THE TRIAL COURT PROPERLY AWARDED RESPONDENT $18,304.26 IN ATTORNEY'S FEES AS THE EVIDENCE SUPPORTED THE AWARD OF THE FEES

A. Standard of Review

There are six factors to consider in determining an award of attorney's fees: 1) nature, extent, and difficulty of the legal services rendered; 2) time and labor devoted to the case; 3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained. *Blumberg v. Nealco, Inc*., 310 S.C. 492, 494, 427 S.E.2d 659, 660 (1993) ". . . [O]n appeal, an award for attorney's fees will be affirmed so long as sufficient evidence in the record supports each factor. *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997).

B. Argument

Appellant seeks review of the award of attorney's fees in this action. In *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997), the Court discussed an appeal of an award of attorney's fees and the factors the trial court should consider in an award of attorney's fees. The Court wrote,

> ". . . the court should consider the following six factors when determining a reasonable attorney's fee: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. *Blumberg, supra.* Further, on appeal, an award for attorney's fees will be affirmed so long as sufficient evidence in the record supports each factor. *Id.*" *Id*. at 308, 760.

Appellant's argument is based on the notion that because the title issues were resolved upon the filing of the Order of Default Judgment and the filing of that Order with the Register of Deeds, no fees should be allowed beyond that point. While that may have been the case if the Defendant would have left well enough alone, that Order was attacked by the filing of the Motion for Relief from Default Judgment making it necessary to incur more expense because of the negligence of the Defendant in answering the Complaint (or Amended Complaint). At the hearing on the Motion for Relief from Default Judgment, Respondent's counsel submitted an Affidavit of Attorney's Fees. (R. pp. 242-243). In that Affidavit, Respondent's counsel pointed out to the court that of the $13,462.00 in attorney's fees, $6,177.50 was directly attributable to defending the Motion for Relief from Default Judgment, which was an action to vacate the very award the Appellant now claims should have ended the "fee meter". (R. pp. 244-245). The argument is non-sensical in that if the Respondent failed to defend the motion and incurred no fees, the trial court would have granted the motion and the parties would be back in litigation incurring more fees. Appellant cannot have its cake and eat it too.

The issue now turns to whether or not there was sufficient evidence to support each factor of the *Jackson v. Speed* analysis.

(1) The nature, extent, and difficulty of the case

Although not a factually difficult case, the case became necessary because of the actions and inactions of Appellant. In fact, the Appellant's behavior in this case was so reprehensible, the

court even wrote in its opinion the Appellant's actions were "willful, wanton, reckless, malicious and conscionably wrong." The court also wrote,

> "Plaintiff further introduced evidence through the Stop Work Order that Defendant knowingly, spitefully and without common decency compounded Plaintiff's injuries by placing a Stop work Order on the Plaintiff's property. In essence, the Defendant rubbed salt in the wounds of the Plaintiff without care or concern for a fellow man. (R. pp. 20-21)

The difficulty in the case came at the effort expended in exposing all of the Defendant's misrepresentations and the intricacy of SCRCP, Rule 4(d)(9) and common law interpretations and guidance. While most in the courtroom were quick to agree that the Appellant could only be substitute served if Appellant actually lived where his mother was served, Respondent's counsel successfully provided case law which debunked that myth. Respondent's counsel cited *Fassett v. Evans* 364 S.C.42, 610 S.E.2d 841 (Ct. App. 2005) which states,

> "[a]lthough many courts look to the defendant's intention to return as evidence regarding the location considered one's dwelling or abode, the Fourth Circuit Court of Appeals has noted that the defendant's intent is not in and of itself a test but merely an indication ***"as to whether or not it is likely in a particular case that the one served will actually receive notice of the commencement of the action and thus be advised of the duty to defend.***" citing *Karlsson v. Rabinowitz,* 318 F.2d 666, 668 (4th Cir.1963) (finding no set definition of dwelling or place of abode and that it must be determined by the facts of the particular case) (***emphasis added).*** *Id.* at 47-48, 844.

Furthermore, counsel successfully shifted the burden upon Appellant to prove that his mother was in fact unauthorized to accept service and further made the argument that Appellant came into court with no evidence whatsoever.

Counsel also dug deep into the Martin County records to show Appellant claimed 275 SW Lost River Road Stuart FL 34997 as his primary residence for the purposes of taxation and even got ahold of Appellant's voting registration address showing the same address. Respondent's counsel was also required to write two extensive briefs as a result of Appellant's default, motion

for relief from default judgment and motion to reconsider. The case lasted for approximately one year and required the filing of a Summons and Complaint, an Amended Summons and Complaint, service, a military database search and affidavit of non-military service, the preparation of an affidavit of default, an order of default, a damages affidavit two fee affidavits and eventually drafting the Order on Appeal. If not for the Defendant's post default efforts to undo what had already been done, Respondent would have only incurred $7,284.50 in fees and costs. (R. pp. 242-243). Respondent's counsel incurred $6,177.50 in fees and costs to defend the Motion for Relief from Default and the reminder of the fees were incurred to defend the Motion for Reconsideration.

(2) The time necessarily devoted to the case

All time billed was for time devoted to the case. This was not a contingency case and Respondent was required to pay counsel.

(3) Professional standing of counsel

Respondent's counsel has always been in good standing with the S.C. Bar and has been in good standing for the entire 27 years of practice.

(4) Contingency of compensation

This was not a contingency case.

(5) Beneficial results obtained

Respondent's counsel obviously procured a favorable result. The Summons and Complaint were filed on May 27, 2023 and Respondent had its Order filed on August 1, 2023. Respondent had his property back within approximately 60 days after filing.

(6) Customary legal fees for similar services

As stated in Respondent's Fee Affidavits, counsel billed at $350.00 which is a relatively low hourly rate compared most lawyers with as much experience.

The court specifically addressed the factors of *Jackson v. Speed* as evidenced in its Order. (R. pp. 22-23).

CONCLUSION

For the foregoing reasons, the Court should dismiss this appeal.

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas The Honorable Alex Kinlaw, Jr., Circuit Court Judge

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Appellant Case No. 2024-000521
Civil Action Case No. 2023-CP-23-02709

Everett Homes, LLC ……Respondent

v.

Jermaine LeClerc …….. Appellant

CERTIFICATE OF COUNSEL

Pursuant to Rule 211(a), SCACR, I certify that Respondent's Final Brief complies with Rule 211(b), SCACR.

Respectfully submitted,

s/ Wendell L. Hawkins
Wendell L. Hawkins (S.C. Bar #: 13583)
Wendell L. Hawkins, PA
9 Buena Vista Way, Ste B. Greenville, SC 29615
(864) 848-9370 (Ph) (864) 243-8137 (Fax)
wlh@wlhawkinslawfirm.com
Attorneys for Respondents

August 17, 2024
Greenville, South Carolina