THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM BERKELY COUNTY
COURT OF COMMON PLEAS

The Honorable Bentley D. Price
Circuit Court Judge

Appellate Case No. 2023-001832
Case No.: 2018-CP-08-2423

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200 River Landing Drive Phase I Condominium Association, Inc., and Steven Garcia and Janis Zomber, individually and on behalf of all others similarly situated.....Respondents,

v.

Watkins Service, Inc., First Exteriors, LLC, Getulio Perela Chagas, FBM Construction, LLC d/b/a Fernando Monteiro, and John Doe Subcontractors or Material Suppliers 12-50.....Defendants,

Of which Getulio Perela Chagas is the Appellant.

FINAL REPLY BRIEF OF APPELLANT

August 19, 2024

s/Christopher C. Mingledorff
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

A $22,479,523.00 judgment against Appellant, a single laborer who worked for a third-tier subcontractor is a harsh and unwarranted outcome which is not in relation to the evidence.

STATEMENT OF CASE

The project at issue includes the design and construction of 5 condominium buildings, consisting of 94 residential units commonly known as "200 River Landing." (R. p. 125, lines 10-15). Appellant is one of 57 defendants. (R. pp. 122-160). The Plaintiffs generically alleged Appellant along with the other defendants "performed various portions of the Joint Repair Scope of Work, including, but not limited to installation of windows and related flashings, handrails, guardrails and columns, fire stops, metal awnings, deck sheathing, balcony ceilings, balcony waterproofing and related flashings." (R. p. 129, lines 10-17).

Subsequent to the Second Amended Complaint, the Plaintiffs made no further pleading with regard to the scope of work of Appellant at the 200 River Landing project. Likewise, at the October 18, 2023 Damages Hearing the Plaintiffs presented no evidence with regard to Appellants' actual scope of work at the 200 River Landing project. (R. pp. 161- 187). On October 25, 2023, the trial court entered the $22,479,523.00 Judgment in favor of the Plaintiffs and against Appellant, a single laborer (the "Judgment"). (R. pp. 41-45).

ARGUMENT

In 2014, the Court noted the "line of cases" in which the South Carolina Supreme Court "criticized trial courts for awarding default damages in the inflated amounts sometimes found in the prayer for relief in a complaint." *Wells Fargo Bank, N.A. v. Marion Amphitheatre, LLC*, 408 S.C. 87, 90 (Ct.App. 2014). The Court further noted "[i]t is common knowledge ... that in a tort action the amount stated in the prayer for relief often bears little relation to the amount which the plaintiff is entitled to recover." 408 S.C. at 90.

Here, the Judgment is a harsh and unwarranted result which is not supported by the pleadings, the evidence or testimony at the Hearing. The Judgment is equal to the amount pled by the Plaintiffs, only less amounts recovered via settlement. Neither the Plaintiffs nor the trial court made an attempt to distinguish between or otherwise delineate damages fairly and equitably attributable to the work performed by Appellant.

The amount of damages presented by the Plaintiffs at the Hearing are the exact same damages which the Plaintiffs sought to repair the entirety of 200 River Landing, all 5 Condominium Buildings and 94 residential units. Appellant is an individual alleged to have worked as a third tier (or lower) subcontractor, at some unknown alleged point in time. The Judgment is harsh and unwarranted. The Plaintiffs' Second Amended Complaint provides no support for the Judgment. The Judgment, therefore, bears little relation to the amount which the Plaintiffs are entitled to recover and is so greatly out-of-proportion to the wrongs alleged in the pleadings it respectfully should be set-aside by this Court.

The Judgment does not identify any damages attributable to Appellant. (R. pp. 41-45). The Judgment does not identify what amount of the settlement proceeds paid by Watkins and ACR (those who the Plaintiffs allege hired Appellant) are attributable to Appellant. (R. pp. 41-45). The Judgment

is not a "fair verdict and judgment" which has been "closely scrutinized."

As noted in *Wells Fargo*, "[i]t is common knowledge ... that in a tort action the amount stated in the prayer for relief often bears little relation to the amount which the plaintiff is entitled to recover." 408 S.C. at 90. The Judgment does not identify any evidence related to damages attributable to the work allegedly performed by Appellant. The Judgment, therefore, bears little relation to the amount which the Plaintiffs are entitled to recover and is so greatly out-of-proportion to the wrongs alleged it respectfully should be set-aside by this Court.

CONCLUSION

For all of the foregoing reasons, Appellant request the Judgment be set aside.

August 19, 2024

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