

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE
Rockwell Amusements/New England Rides
and Harold Fera, Individually,
Plaintiffs,
v.
Darren Janesky d/b/a Big Round Wheel
Amusements,
Defendant.

IN THE COURT OF COMMON PLEAS
C.A. No.: 2022-CP-11-00818

ORDER FOR DAMAGES

RECEIVED
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SC Court of Appeals

Hearing Date: July 15, 2024 at 9:30 a.m.
Hearing Judge: Grace Gilchrist Knie
Counsel for Plaintiffs: Jason M. Imhoff
Counsel for Defendant: Gregory M. Glover, II

I. PROCEDURAL POSTURE

This matter came before the Court for a hearing on damages after an Entry for Default Judgment was entered and filed in the Office of the Clerk of Court of Cherokee County on January 12, 2024. Defendant, Darren Janesky d/b/a Big Round Wheel Amusements was served with a Notice of Damages hearing via Electronic Mail on June 27, 2024.

Plaintiffs, Rockwell Amusements/New England Rides and Harold Fera, Individually, filed their Complaint on December 12, 2022, alleging breach of contract, negligence/gross negligence misrepresentations, and violation of Unfair Trade Practices Act regarding the sale of a High Lite Ferris Wheel in Cherokee County, South Carolina.

Defendant, Darren Janesky d/b/a Big Round Wheel Amusements was personally served with the Summons and Complaint on December 21, 2022, via process server at 449 North Shelby Street, Blacksburg, South Carolina 29702. More than thirty (30) days elapsed during which no

responsive pleadings were filed by the Defendant. Entry of Default was entered on January 12, 2024.

II. FACTS AS ALLEGED

The facts as presented to the Court are as follows:

Plaintiffs and Defendant entered into an Agreement for the sale of a High Lite Ferris Wheel in Cherokee County, South Carolina. Based upon the terms of the Agreement, Defendant was paid \$300,000 for the Ferris Wheel by Plaintiffs. Plaintiffs contend that Defendant breached the Agreement in multiple ways including, but not limited to: failing to disclose the condition of the Ferris Wheel; failing to disclose that the defects and condition of the Ferris Wheel were previously requested by Plaintiffs; failing to remedy the defects after notice from Plaintiffs. Plaintiffs contend that as a direct and proximate result of the Defendant's breach of the Agreement, the Plaintiffs have suffered actual, consequential, and special damages plus interest in the total amount of \$106,935.75. Plaintiffs further request punitive damages in the amount of \$50,000 and attorney's fees and costs.

III. EVIDENCE AND TESTIMONY

A. Evidence

The Court considered the testimony of Harold Fera the owner of Rockwell Amusements and a native of Rhode Island who traveled to SC for the hearing. The evidence presented to The Court on behalf of the Plaintiffs as Plaintiffs' Exhibit Number One included:

- The Filed Summons and Complaint;
- Affidavit of Service on Defendant, Darren Janesky, filed on January 6, 2023;
- Plaintiff's Motion for Default Judgment;
- Affidavit of Service on Darren Janesky filed January 11, 2024;

- Entry of Default Judgment; Motion for Hearing on Damages against Defendant Darren Janesky D/B/A Big Round Wheel Amusements;
- Report of Ride Nondestructive Testing by the Ultrasonic Method;
- Report of Ride Nondestructive Testing by the Magnetic Particle Method;
- Invoice for Evaluation; Check stub #4860 in the amount of \$700;
- Invoice for Repair \$95,000; Invoice from Aerial NDT Inspection, Inc., \$1,135.75;
- Two pages of receipts for gas and tolls totaling \$1,255.55;
- Paystub for Miguel Mora Ventura \$650; paystub for Jose Uriel Quijano Gonzalez, \$541;
- Paystub for Luis A. Herrera Melgarejo, \$566;
- Paystub for Juan M. Claudio Gabriel,\$650;
- Paystub for Jose Luis Mendez Hernandez, \$600;
- Paystub for Ricardo Hernandez Mendoza, \$650; and
- Wire transfer totaling \$300,000 made on June 9th, 2022, for the purchase of the Ferris Wheel.

B. Testimony

Mr. Fera testified that he sold the Ferris Wheel after it was repaired for \$350,000. Mr. Fera further testified that in order to pursue the breach of contract action, the Plaintiffs were required to obtain the services of legal counsel and that Plaintiffs incurred attorney's fees and costs in the amount of approximately \$5,000.00.

Defendant Darren Janesky d/b/a Big Round Wheel Amusements did not appear or give testimony, but was represented by counsel.

IV. APPLICABLE LAW

The applicable law is as follows:

Rule 12(a), SCRCP, provides: “A defendant shall serve his answer within 30 days after the service of the complaint upon him, unless the Court directs otherwise...” Therefore, absent a Court order, the Defendant must serve an Answer within thirty (30) days of service. The effect of not responding to a Complaint’s allegations is a deemed admittance, other than for the amount of damages. Rule 8(d), SCRCP.

According to Rule 55(a), SCRCP, “When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default upon the calendar (file book).” After an Entry of Default by the Clerk, the party asserting Default Judgment in an unliquidated damages case may then apply to the Court. Rule 55(b)(2), SCRCP. The following procedures must be met in order for the Court to issue a Default Judgment in an unliquidated damages case:

“If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearing or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties if a proper demand therefor has been made pursuant to Rule 38 and not withdrawn, or when and as required by any statute. Pursuant to Rule 5(a), notice of any trial or hearing on unliquidated damages shall also be given to parties in default by first class mail to the last known address of such party whether or not such party has appeared in the action.” Rule 55(b)(2), SCRCP.

After an award of actual damages, if the Court finds that Defendant's conduct was willful, wanton, or reckless, the Court may award the Plaintiff punitive damages. To support an award of punitive damages, the Plaintiff must prove by clear and convincing evidence that the conduct complained of included a consciousness of wrongdoing at the time of the conduct. *Mattison v. Dallas Carrier Corp.*, 947 F.2d 95 (4th Cir. 1991); *Clark v. Cantrell*, 339 S.C. 369, 529 S.E.2d 528 (2000); *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991); S.C. Code Ann. § 15-33-135(2023).

V. FINDINGS

After consideration of the record, arguments made, testimony presented and the applicable law, the Court finds and concludes as follows: that Plaintiffs' Motion for Default Judgment made pursuant to Rule 55, SCRPC filed with the Court on January 11, 2024, should be and is therefore respectfully granted. The Court finds that there has previously been an Entry for Default Judgment as to the Defendant. As such, the Defendant is deemed to have admitted all the allegations listed in the Complaint, and the Court must determine the amount of damages due to Plaintiffs. Plaintiffs have established evidence sufficient to enable the Court to find Defendant in default and award damages. Therefore, the Court finds that Plaintiffs are entitled to Judgment on the breach of contract claim in the amount of One Hundred Six Thousand Nine Hundred Thirty-Five and 75/100ths Dollars (\$106,935.75) in actual damages. The Court also finds that Plaintiffs are entitled to Judgment in the amount of Five Thousand and 00/100ths Dollars (\$5,000.00) for attorney's fees, plus any pre and post judgment interest applicable according to SC Law.

Upon hearing the testimony and receiving evidence concerning the amount of damages, judgment is hereby entered for Plaintiffs, Rockwell Amusements/New England Rides and Harold

Fera, Individually, in the amount of \$106,935.75 for actual damages and \$5,000.00 for attorney's fees and costs for a total of \$111,935.75.

IT IS SO ORDERED.

[Electronic Signature Page to Follow]



Cherokee Common Pleas

Case Caption: Rockwell Amusements/New England Rides , plaintiff, et al VS Darren Janesky , defendant, et al
Case Number: 2022CP1100818
Type: Order/Damages

IT IS SO ORDERED.

S/GRACE GILCHRIST KNIE - 2760