



premises as an Asian grocery store. However, a security deposit of \$23,200 was due upon signing of the lease. Defendants never made payment of the security deposit. Defendants also never commenced any material work to upfit the premises. Therefore, the Court finds that the lease was in breach no later than year-end of 2021. Payments for the lease were to commence June 1, 2022, at a \$16,000 per month (\$12 per square foot per year) as minimum rent plus \$6,000 per month in additional rent. The lease had a ten-year term.

Nazario Paragano appeared on behalf of Plaintiff to provide testimony.<sup>1</sup> Per the details provided by Plaintiff's attorney, Plaintiff is claiming that the full amount of rent for ten years is required to be paid and is owed as damages. These items total \$2,209,968 in minimum rent, \$720,000 in additional rent, \$146,000 in late fees, and \$8,357 in attorneys' fees and costs.

Despite the default in payment of the security deposit upon commencement of the lease, Plaintiff failed to list the property for rent with a real estate broker until July 2023, more than six months after the default by the Defendants.

Mr. Paragano testified that there have been two offers to rent the space at \$12.00 per square foot, but that the negotiations did not lead to an executed contract for lease of the premises. He also testified that Piggly Wiggly offered to rent the space at \$6.00 per square foot, but Plaintiff refused the offer and refused to negotiate further. There have not been any attempts to list the property for less than \$12.00 per square foot or to negotiate a price at less than \$12.00 per square foot.

Mr. Paragano further testified that the tenant previously in the space prior to Defendants left equipment and other furniture for use for a grocery store, which was also the intended use of

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<sup>1</sup> Plaintiff filed two affidavits following the hearing: (1) an affidavit concerning damages from Mr. Paragano and (2) an affidavit of attorneys' fees from Plaintiff's counsel. As both were permitted post-hearing, which does not allow for Defendants to cross-examine, these documents were not considered by the Court in relation to this Order.

the Defendants. Mr. Paragano testified that Defendants purchased the equipment and furniture for \$100,000. He further testified that the equipment and furniture remained on the premises, and that Plaintiff had not taken any steps to assert a landlord's lien or otherwise sell the equipment and furniture to mitigate damages.

### **LEGAL ANALYSIS**

“A defendant in default admits liability but not the damages . . . .” *Solley v. Navy Fed. Credit Union, Inc.*, 397 S.C. 192, 203, 723 S.E.2d 597, 603 (Ct. App. 2012) (citing *Renney v. Dobbs House, Inc.*, 275 S.C. 562, 566, 274 S.E.2d 290, 292 (1981)). “[T]he defaulting defendant has conceded liability. However, a defaulting defendant does not concede the [a]mount of liability.” *Solley*, 397 S.C. at 203, 723 S.E.2d at 603 (quoting *Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 242, 246 S.E.2d 880, 882 (1978)). Even “[i]n a default case, [therefore,] the plaintiff must prove . . . the amount of his damages, and such proof must be by a preponderance of the evidence.” *Solley*, 397 S.C. at 204, 723 S.E.2d at 603 (citation omitted). “[T]he principle that a plaintiff must prove his damages even when the defendant is in default applies to all damages claims in default cases.” *Wells Fargo Bank, N.A. v. Marion Amphitheatre, LLC*, 408 S.C. 87, 90, 757 S.E.2d 557, 559 (Ct. App. 2014).

Plaintiff seeks a declaratory judgment that the lease is terminated. Per the allegations in the Complaint, the lease has been terminated as of July 24, 2022. However, the Defendants were in default as of January 1, 2022, some six months earlier.

An action for breach of contract seeking damages is one at law. *Sterling Dev. Co. v. Collins*, 309 S.C. 237, 240, 421 S.E.2d 402, 404 (1992). Under the contract claim the injured party can recover actual damages for the direct and natural consequences of the breach, or for damages that were within the contemplation of the contracting parties. *Collins Music Co. v.*

*Smith*, 332 S.C. 145, 147, 503 S.E.2d 481, 482 (Ct. App. 1998). Plaintiff, however, has failed to mitigate its damages. A party injured by the acts of another is required to do those things a person of ordinary prudence would do under the circumstances, but the law does not require him to exert himself unreasonably or incur substantial expense to avoid damages. *Tri-Continental Leasing Corp. v. Stevens, Stevens & Thomas, P.A.*, 287 S.C. 338, 338 S.E. (2d) 343 (Ct. App. 1985). A party who has suffered injury or damage from the actionable conduct of another is under a duty to make all reasonable efforts to minimize the damages incurred. *Newman v. Brown*, 228 S.C. 472, 480, 90 S.E.2d 649, 653 (1955) (“It is the undoubted general rule that it is the duty of the owner of the property, which is injured by . . . another, to use reasonable means to minimize the damages.”). To the extent that it reasonably could have so minimized those damages and failed to do so, a plaintiff is not entitled to recover from the other party. *M. C. Heath & Co. v. Postal Telegraph-Cable Co.*, 87 S.C. 219, 234, 69 S.E. 283, 287-288 (1910). In other words, one cannot recover any damages that might have been avoided by the use of reasonable care and diligence. In addition, the plaintiff bears the burden of proving by the preponderance of the evidence that he is entitled to compensatory damages. *See Clark v. Cantrell*, 339 S.C. 369, 529 S.E.2d 528 (2000); *Whisenant v. James Island Corp.*, 277 S.C. 10, 281 S.E.2d 794 (1981) (in order for damages to be recoverable, evidence should enable fact finder to determine amount thereof with reasonable certainty and cannot be left to conjecture, guess, and speculation).

First, when the security deposit was not paid, Plaintiff was on notice that Defendants were unlikely to perform under the lease, and furthermore were on notice of the Defendants’ default under the lease. The reasonable step following such a default, which clearly establishes that Defendants would not be fulfilling the terms of the lease, would have been for Plaintiff to re-

list the property for rent at that time, rather than waiting six months to do so. Second, Plaintiff had opportunities to negotiate terms with a new, replacement tenant. The obligation to take reasonable steps to mitigate of damages requires not only the listing of the property so a new tenant can be signed to take the space, but also to consider having a tenant who will pay less per square foot for the space. The opportunity existed to lease the space at \$6.00 per square foot. It is unknown if other potential tenants would have leased at a rate somewhere between \$6.00 and \$12.00, but it is reasonably certain that interest would increase at lower prices.

A period of twelve months from the initial default is more than a reasonable amount of time to find a new tenant. The first six months of the tenancy had no payments required, so no damages occurred during the first six months. During the second six month period, a total of \$96,000 in minimum rent and \$36,000 in additional rent were due. However, this must be reduced by the amount that could have been obtained from Piggly Wiggly at \$6.00 per square foot plus additional rent that would also have been recovered from that tenant (which presumably would have been the same amounts to be paid by Defendants under the lease). In addition, monthly late charges do not accrue for each month after the lease has already been in default. This reduces the additional rent in full, and also reduces the minimum rent in half, to \$48,000.

In addition, Plaintiff could have taken steps to deem the personal property abandoned and to sell it to further reduce damages. Allowing setoff “prevents an injured person from obtaining a double recovery for the damage he sustained, for it is almost universally held that there can be only one satisfaction for an injury or wrong.” *Riley v. Ford Motor Co.*, 414 S.C. 185, 195, 777 S.E.2d 824, 830 (2015) (citation omitted) (*quoting Rutland v. S.C. Dep’t Transp.*, 400 S.C. 209, 216, 734 S.E.2d 142, 145 (2012)). At a minimum, 33% of the value of the personal property, of \$100,000, could have been attained on resale, further reducing damages by \$33,000.

The Court finds that the lease has terminated. However, Plaintiff failed to properly mitigate damages. The lease does allow for the recovery of reasonable attorneys' fees and costs. While attorneys' fee affidavits were submitted following the hearing, they do not detail what amounts are included in the costs incurred. Furthermore, the Defendants are not responsible for Plaintiff's decision to switch attorneys. Based on the amount awarded as damages herein of \$15,000, a reasonable amount of attorneys' fees and costs is \$3,000, for a total award to Plaintiff against the Defendants of \$18,000. Therefore, based on the preponderance of the evidence presented concerning damages, the Court awards judgment in favor of Plaintiff in the amount of \$18,000.00.

IT IS SO ORDERED.

**FORM 4**

**STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE**

**CASE NO. 2022-CP-10-04219**

1001 Harborview, LLC,

Philip Tran and Quyen Tiet

PLAINTIFF(S)

DEFENDANT(S)

**Submitted by:** Lawrence M. Hershon

**Attorney for :**  Plaintiff  Defendant  
or  
 Self-Represented Litigant

**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.  See Page 2 for additional information.
- 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: Master-in-Equity's Order and Judgment Regarding Foreclosure of Judgment Lien and Sale

**ORDER INFORMATION**

This order  ends  does not end the case.

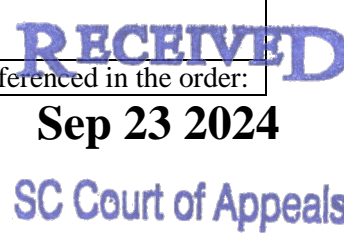
Additional Information for the Clerk :

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
1001 Harborview, LLC	Philip Tran	\$18,000.00
1001 Harborview, LLC	Quyen Tiet	\$18,000.00
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:



The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

**Note: Title abstractors and researchers should refer to the official court order for judgment details.**

**E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

\_\_\_\_\_  
**Circuit Court Judge**

\_\_\_\_\_  
**Judge Code**

\_\_\_\_\_  
**Date**

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ATTORNEY(S) FOR THE DEFENDANT(S)**

\_\_\_\_\_  
**CLERK OF COURT**

**Court Reporter:** \_\_\_\_\_

**E-Filing Note: In E-Filing counties, 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.**

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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Charleston Common Pleas

**Case Caption:** 1001 Harborview, Llc VS Philip Tran , defendant, et al

**Case Number:** 2022CP1004219

**Type:** Order/Judgment and Form 4

So Ordered

s/Jennifer B. McCoy #2764