

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP4203579

Henson, as trustee of Lewis Mason Revocable Trust
d/b/a Mason Motors

Saleh, Miller and Sparkle City Motors

RECEIVED

Jan 02 2025

SC Court of Appeals

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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
- 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:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : See page 2 for additional information. Formal Order to follow.

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)
N/A		\$
		\$
		\$

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

Motion for Reconsideration under the rules of civil procedure. All thirteen (13) have been considered. This Court is not persuaded to alter its prior order. Even if not expressly listed in the Court's prior order each item listed was considered when the prior order was issued. As the fact finder in the previous trial, this court faced a significant task of understanding the recordkeeping of both parties. No outside accountant or bookkeeper was offered—even though the finder of fact was asked to review records that spanned years and involved dollar amounts and transaction amounts that were allegedly in the \$900,000.00 range. Compounding the challenges of understanding the bookkeeping was the challenges of the credibility of the opposing witnesses who were called upon to provide their interpretation of what the journaling, and canceled checks with handwritten notes meant. I did not find either sides case entirely credible—both sides had issues of credibility. Both sides presented a version of the accounting, if true, could logically support the outcome they desired in the case. Understanding the accounting became a “He Said -- She Said” confrontation; however, I, again, found credibility issues with both sides. It is within the guardrails that the law allows the factfinder to believe all, part, or none of a witness's testimony. Also presenting credibility challenges was the history of plaintiff's and Saleh's long term relationship that consistently flowed from valleys to peaks of success and failure -- even though his professional status to engage in the car business had been revoked by the regulatory authorities. In plaintiff's motion, Plaintiff continues to claim that lending money/floor planning through its business using non-automobiles as collateral to finance improvements (driveway, pool, etc.) was proper. I disagree for several reasons, including that most, if not all of the home improvements occurred prior to alleged floor planning with the non-automobile collateral—collateral which was defective in value. Moreover, the plaintiff is not in the business of making home construction loans. The plaintiff operated a used car floor planning and auction business. The finding that the UTPA applies to the transaction in this case will not be altered. But, likewise, this court does not believe that Saleh has met his burden of proof of establishing his damages (the same credibility issues that applies to the plaintiff, applies to the Saleh.

As to defendant's Saleh motion that his lawyer's fees be paid because of the finding that a violation of the UTPA was made in the prior order, this Court will not awarded Saleh's attorney fees—see above discussion. Additionally, subsection (a) of 39-5-140, reflects that the prerequisite for obtaining attorney's fees is that the party seeking them must suffer a loss that is “ascertainable”.

Again, Mr. Talley is asked to prepare a formal order granting his motion. Otherwise the provisions of the prior order will not be altered.

Not part of the motion to reconsider was the issue of attorney fees to be awarded to plaintiff's lawyer. I ask Plaintiff's lawyer to prepare a formal order awarding him the attorney's fees he had previously requested to be paid by Defendant Saleh. Once the order is reviewed and signed, the Court will entertain motion for reconsideration on the issue if any are filed.

Thank you all for your attention and cooperation
SCRCF Form 4C (03/2013)



Spartanburg Common Pleas

Case Caption: Charna Henson, As Trustee VS Nabil E. Saleh , defendant, et al
Case Number: 2018CP4203579
Type: Order/Form 4

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132

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