

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

John Michael Barnett,)
)
Plaintiff,)
)
vs.)
)
CNT Foundations, LLC and)
Christopher T. Bedson,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

Case No.: 2021-CP-10-01711

ORDER

RECEIVED
Jan 15 2025
SC Court of Appeals

CASE HISTORY

This case comes before the Court on a referral from Circuit Court. Originally, Plaintiff filed an action in Small Claims Court on November 2, 2020, seeking damages for breach of a contract to construct a foundation for expansion of Plaintiff's house located at 603 Atlantic Street in Mount Pleasant. Plaintiff filed an Amended Complaint on February 18, 2021 after discovering that no permit had been secured by Defendants for the first phase of the work, the reinforcement of the existing foundation of the house. As this complaint alleged damages in excess of the jurisdictional limit of the Small Claims Court, the case was transferred to Circuit Court on March 24, 2021. By agreement of the parties, the case was referred to the Master in Equity of Charleston County by the Circuit Court on February 21, 2024. While the case was still in Circuit Court on September 29, 2021, Plaintiff filed and served an Offer of Judgment pursuant to Rule 68, SCRCPC and offered to accept \$4,000.00 to settle the case. As of the date this case went to trial on September 19, 2024, Defendant had not responded to this offer.

Prior to the start of the trial, the parties agreed that some of the causes of action in the Amended Complaint were resolved and agreed to the dismissal of Christopher T. Bedson as a Defendant. This Court, however, denied Defendants' Motion to amend their Answer which was

filed on September 13, 2024, six days before the scheduled trial date. The Motion sought to add a defense not previously asserted by Defendants under SC Code Sec. 40-59-830 based on what they said was Plaintiff's failure to comply with the written notice requirements set forth in the statute. The Court denied this motion prior to the start of the trial. The Defendants filed a motion on October 4, 2024, seeking to have the Court reconsider the earlier ruling and permit the amendment. In a Form 4 Order denying the motion to reconsider on October 9, 2024, this Court explained that Defendants' motion to amend was filed too late, specifically three years after they knew Plaintiff had already repaired his home. Allowing the amendment right before trial would have prejudiced the Plaintiff in presentation of his case and the motion to amend was, therefore, untimely.

This case went to trial on a single cause of action, the First Cause of Action in the Second Amended Complaint of May 7, 2022. This cause of action alleges that Defendant, CNT Foundations, LLC, did not properly construct the foundation walls to the proper height, but built it too high, and in the wrong location, several inches to the side of the location shown on the plans, causing Plaintiff to incur expenses to adjust for both errors. By the time the case was tried, Plaintiff had sold the house without having to incur expenses to completely correct this error, which left the wall between the two new rooms not aligned as shown on the plans with the existing wall. For this reason, Plaintiff did not pursue damages related to the misaligned walls. The sole damages at issue in the trial were those related to the error in the block height of the foundation wall and the additional costs in building the addition on top of the foundation wall related to the incorrect lateral location of the wall.

Defendant CNT asserted a counterclaim consistently throughout the progress of this case, seeking to recover their attorney's fees and costs related to this case. As explained in detail below, the Court finds that Plaintiff has proven breach of contract by Defendant and is entitled to recover

damages as set forth below as well as the costs provided for in Rule 68, SCRCPP. On Defendant's counterclaim, the Court finds that Defendant is not entitled to recover attorney's fees and costs for the reasons set forth below.

FINDINGS OF FACT

In 2013, the Plaintiff purchased a house built in 1952 located at 603 Atlantic Street in the Old Village section of Mount Pleasant. He hired a contractor to expand the house by adding space on both ends. He contracted to have a two-story garage constructed on his lot in 2015 with the second story set up as an apartment. Both projects gave Plaintiff an understanding of the process of construction of residential structures, although he is not trained in that field and did not directly participate in these two projects. Tr. p. 42, l. 10 – p. 44, l. 2.

When the Town of Mount Pleasant changed the setbacks for the lot at 603 Atlantic in 2018, Plaintiff took the opportunity to plan a second expansion of the house by adding more space to accommodate a growing family. He retained Hans Altenbach to prepare a set of architectural plans for the project. These plans, Plaintiff's Exhibit 2, were admitted into evidence and contain a section of structural engineering plans prepared by William Kroeger at Residential Structures, P. C. Tr. p. 17, l. 3 – 21; 44, l. 7 – p. 45, l. 20. The structural engineering plan sheets follow Altenbach's house design plans and include pagers GN, S1-S3, and SD1.0-SD4.0. Page A1 of Altenbach's design sheets illustrates the addition of two rooms extending from the rear of the existing house, an 8'x 10/5" office and an 11'4.5" x 18' sunroom. Plaintiff acted as his own general contractor and in that capacity secured a building permit from the Town. As required by the Town, a full set of the plans was kept in a box in front of the house for the duration of the project. A set of 8 photographs of the house after completion of the project was admitted as Plaintiff's Exhibit 1 and illustrate the exterior of the expanded house as well as the interior of the

added rooms. Tr. p. 18, l.2 – p. 19, l. 24; p. 50, l. 23 – p. 54, l. 14.

After the Town approved and permitted the project, Plaintiff began retaining subcontractors to perform the work set forth on the Altenbach and Residential Structures plans. In addition to various trades, such as framers and carpenters, he contracted with Defendant CNT Foundations to perform two separate scopes of work. These were set forth in two separate contracts, both executed on September 16, 2019. Tr. p. 45, l. 21 – p. 46, l. 20. The contracts were prepared exclusively by the Defendant and were designated by the number CNT assigned to each estimate it provided to Plaintiff. The contract for estimate 21198 was for reinforcement of the existing house's foundation. Plaintiff's Exhibit 6. There are no issues related to this work, which was completed by CNT prior to commencing work on the foundation for the addition.¹

The contract for estimate 21195 was for the construction of foundation walls for the addition to the house set out in the Altenbach/Residential Structures plans. Plaintiff's Exhibit 5; Tr. p. 83, l. 20 – p. 84, l. 9. It is undisputed that CNT was provided these plans and based their estimate and scope of work on the details specified. Tr. p. 46, l. 18 – p. 47, l. 4. It is undisputed that CNT was working as an independent contractor, not as hired labor. Tr. p. 99, l. 1 – 17. The scope of work was broken down into two parts. The "Footing" work was to consist of: "Excavate, install reinforcing steel, pump, pour and finish continuous footing approximately 80 linear feet." The "CMU" work referring to "concrete masonry units", commonly called concrete blocks, was to consist of: "Install CMU Wall, approximately 80 linear feet and 4 CMU piers 3 courses tall, reinforcement and cells filled according to plans." All witnesses agreed that to properly construct

¹ Originally, Plaintiff asserted causes of action related to the fact, undisputed, that CNT did not secure a permit from the Town authorizing this work. CNT's CEO, Christopher Bedson, testified that the Town did not require a permit for such work. However, in the wake of Plaintiff bringing causes of action related to the lack of a permit, CNT sought and was issued a permit for the reinforcement phase of the work, which the Town inspected. As a result, Plaintiff dismissed the causes of action related to the reinforcement contract.

the CMU walls, it was necessary to determine what the height of the top of the block would be.

Sheet A-4 of the Altenbach plans includes the following note with an arrow pointed to the floor of the additional rooms, “3x4” CDX T&G PLYWOOD SUBFLOOR. SAND/PREP FOR LEVEL FINISH SURFACE TO ALIGN W/EXISTING FINISHED FLOORS.” This note clearly says that the floor of the additional rooms was to be at the same height as the finished floor of the existing house. The Plaintiff and Billy Kroeger both testified that determining the design block height depended on knowing the elevation of the existing house’s finished floor. Using that as the final elevation to be achieved, calculation of the desired block height was possible by subtracting the width of each element the plans showed was to be on top of the CMU block wall. These were a 2x8 sill plate (also referred to as a “mud sill”) and a 2x10 perimeter beam. When the width of those elements and the width of the subflooring for the addition are subtracted from the height of the existing subflooring, that height is where the top of block needed to be to facilitate aligning the floor of the additional rooms with the existing house flooring. Tr. p. 19, l. 25 – p. 24, l. 9; p. 30, l. 1 – p. 31, l. 1; p. 37, l. 3 – p. 39, l. 23.

Christopher Bedson testified for Defendant that the Plaintiff was responsible for showing his contract workers where the height of the top of block was to be. Plaintiff testified that he did this, with the help of his framing subcontractor by making the subtractions of the elements which would be on top of the block from the height of the existing subflooring. Prior to the arrival of the CNT contract labor crew, Plaintiff’s subcontractor had removed the door that led from the existing laundry room outside, along with the landing and the exterior stairs. Plaintiff’s un rebutted testimony is that this clearly revealed the existing house subflooring so that its height could be measured. Tr. p. 52, l. 20 – p. 54, l. 7.; p. 57, l. 17 – p. 58, l. 10. Plaintiff gave the Altenbach/Residential Structures plans to the CNT contract labor crew and marked the desired

block height based on the above calculation with a colored chalk mark on the wall, using a string pulled at the correct height as a guide. Tr. p.59, l. 3 – p. 61, l. 1; p. 61, l. 11 – 22; p. 78, l. 8 – p. 79, l. 17.

Plaintiff's undisputed testimony was that the CNT crew sent to perform the foundation work for the additional rooms spoke little English and were not supervised by anyone from the in-house staff of CNT. The workers told Plaintiff they were not employees of CNT. Tr. p. 58, l. 11 – p. 59, l. 2; p. 74, l. 9 – 22; Plaintiff's Exh. 10. Bedson testified that the crew were likely subcontract labor, "1099 employees", and would have been supervised by a "head man." He did not know who any of these workers were. Tr. p. 150, l.21 – p. 151, l. 5. The only evidence of their work at the project from the Plaintiff who observed them and testified that one of them, who spoke some English, told him they were not CNT employees. Bedson testified he never went to the project while work was performed.

The most detailed description of the steps that would have to be followed to construct the CMU walls was by Bedson. First, a trench must be excavated to a depth to allow 12 inches of concrete to be poured into the trench. The height of the top of footing needed to allow for the 12 inches of concrete and also allow for the three courses of CMU to reach the correct top of block height. After the concrete is poured, the CMU blocks are installed. Bedson acknowledged that if too much concrete is poured into the trench, the CMU wall would end up being too high. Bedson admitted he never went to the site and did not know whether the correct amount of concrete was poured to allow the CMU wall to be built to the correct height. Tr. p. 119, l. 12 – p. 120, l. 14; p. 151, l. 6 – p. 153, l. 18.

Plaintiff was the only witness to describe the conditions on the site after CNT's contract labor completed the CMU wall. He was present the entire time the CNT crew worked on both

contracts. Tr. p. 59, l. 3 - 5. He testified that the CNT crew generally followed the steps Bedson described. Tr. p. 61, l. 2 - 10. Plaintiff found, however, that the CNT crew had built the CMT wall too high by about 2 inches and in the wrong location laterally by several inches. Tr. p. 61, l. 23 - p. 63, l.9; p. 80, l. 8 - 13. His framers saw that if the mud seal was installed as called for in the plans, the structure would be too high to facilitate matching the additional rooms' floors to the height of the existing house floors. He called CNT to report the fact that the CMU wall was too high and in the wrong place, but was told it was not their responsibility. After consultation with his framers and Billy Kroeger, Plaintiff decided that instead of installing the mud seal, they would use a much thinner sheet of copper. After making this decision, he spoke to Bedson, who admits that he offered to pay half of the price of the copper to be used; however, no payment was ever made. Tr. p.63, l. 12 - p. 65, l. 16; p. 67, l. 5 - 11.

Kroeger testified that the copper option was acceptable as an alternative for the mud seal, but was, in his opinion, an inferior type of water proofing to the mud seal. Shortly before trial, Kroeger inspected the CNT foundation wall and saw both that copper was installed instead of the prescribed mud seal and that the wall was constructed several inches off line from where the plans showed it was supposed to be. Tr. p. 24, l. 10 - p. 26, l. 19. Bedson testified that copper was a much too expensive option and suggested that a thinner width plywood would have sufficed. However, while Bedson was given every opportunity to inspect the project, he refused and did not send anyone from CNT to the project site. Other than making some statements to Plaintiff on alternative ways to solve the problem, neither Bedson nor anyone else associated with CNT inspected the foundation work CNT had done or tried to correct the defect caused by the block height being too high. Tr. p. 63, l. 12 - p. 65, l. 3; p. 153, l. 2 - p. 154, l. 22.

When the beam was installed on top of the copper and the CMU block wall, Plaintiff's

framers saw that the height was now so low that additional flooring was required to be installed in order to match the height of the existing house floors as nearly as possible. Tr. p. 65, l. 24 – p. 67, l. 4. Plaintiff testified that the incorrect height of the top of block on the CMU wall required him to spend unanticipated sums for both materials and for additional labor. Bedson noted that Plaintiff's explanation both about how much the CMU wall was too high and about the amounts he spent to correct the problem were not perfectly clear. The Court finds, however, as explained below, that Plaintiff's evidence on both meets the standard of proof by the preponderance of the evidence that: 1) the CMU wall was too high; and 2) that he expended the sums he claims to correct the problem.

Plaintiff did not testify that he measured the height discrepancy, only that he estimated that the wall was some 2.5 inches too high. Bedson is correct that if that was the correct measurement, removing a 2-inch-wide mud seal would still leave the CMU wall too high and not, as Plaintiff has testified it was, now too low to match the existing house floor height. Plaintiff's testimony that the CMU wall was too high is unrebutted by any evidence. Had Bedson or someone from CNT gone to the house and inspected the work their contract workers had performed, we might have an accurate measurement. They did not go to the project site, however, refusing ample opportunity offered to them to do so. It is likely, given the width of the mud seal, that the height discrepancy was less than 2 inches. When the 2-inch mud seal was not installed, this, as Plaintiff explained, led to a height now too low which had to be adjusted for to achieve alignment with the existing house floor elevation.

There is no evidence to support the conclusion that Plaintiff expended additional sums to buy copper and other additional materials and paid for additional labor for no reason. The weight of the evidence supports a finding that the CMU wall was too high, to a degree that required

removal of the mud seal, replacement with copper and as it was now too low, more flooring and labor to match the elevation of the existing house floors. The evidence supports the finding that, whether through inattention or inability to read and understand the project plans provided to them by Plaintiff, the CNT contract labor crew failed to follow both the plans and Plaintiff's identification of where the top of block needed to be for the additional rooms' floor to align with the existing house's floor.

Plaintiff testified that at the same time he discovered the incorrect block height, he also found that part of one of the CMU walls and two piers were constructed in the wrong place, some inches to the left (looking from the existing house toward the location of the additional rooms). The plans at pages SP1, A-1 and S1 show that the wall, a load bearing one, between the rooms being added, the office and the sun room, was to align directly with the wall separating the laundry and the toilet in the existing house. Kroeger inspected the property shortly before trial and confirmed that the CMU wall was not built where it was shown to be on the plans, but several inches shifted to the side. Tr. p. 24, l. 10 – p. 25, l. 14; p. 35, l. 2 – p. 36, l. 18. This left the office/sunroom wall not aligned with the existing wall and several inches into the office space. Plaintiff did not fully correct this problem as it would have been very expensive, he said, and was able to sell the house despite the defect. However, some additional joists that had to be purchased because the ones originally ordered based on the plans were now either too long or too short, and materials to connect the framing to the CMU wall. Plaintiff seeks damages for this error by CNT. Tr. p. 70, l. 2 – p. 71, l. 2.

The undisputed fact that the CNT crew did not follow the plans as to the lateral location of this CMU wall is evidence of a general failure to follow the plans as they were contracted to do. Bedson suggested at trial that the wall of the addition could have been aligned with the existing

wall by placing the wall on the edge of the CMU wall and piers. Not only is this unsupported speculation, since he never went to the project site; CNT would not have been entitled to redesign the project to cover for its failure to follow the plans. In addition, sitting the wall on the edge of the CMU wall and piers would not have alleviated the need to replace some joists which were now either too long or too short because of the incorrect location of part of the wall and the piers.

Plaintiff earlier, through his counsel's letters to both CNT and to CNT's counsel, did, as noted by Bedson, identify only \$1,000 in additional costs to correct the wall height defect. Plaintiff's Exh. 8 and 9. However, in his testimony, Plaintiff produced a list of expenditures from his bank statement of October 8, 2019 to November 4, 2019 on which he identified by a check mark in the right margin those materials purchased for the purpose of correcting the height and lateral location defects of the CMU wall. Plaintiff's Exh. 7; Tr. p. 87, l. 1 – 9; p. 88, l. 12 – p. 89, l. 16. Only the copper purchase for \$586.64 on October 31 is annotated specifically. Plaintiff testified that the materials purchased included copper sheeting, subflooring, additional lumber, additional joists because the block to hold the load bearing wall was in the wrong place causing some joists originally ordered to be too long and some too short, glue to put between the multiple sheets of subflooring, lag bolts and straps to connect the framing to the CMU wall. He also testified that no other work at 603 Atlantic was performed during this time since correcting the CMU wall problems was necessary before any more work could proceed. Tr. p. 67, l. 12 – p. 71, l. 7; p. 94, l. 15 – p. 95, l. 15; p. 95, l. 22 – p. 96, l. 4. Plaintiff's testimony on the amount he spent on labor was unsupported by an invoice or other document, but was based on the amount of extra time it took to accomplish the work and the rate he was paying the crew on the job. His calculation of the amount he spent on additional labor was based on the rate he was paying those workers and the additional time they spent to correct the problems. Tr. p. 69 l.8 -13. Bedson's questioning of

this evidence suffers from the same infirmity as his questioning of the wall height itself. Neither he nor anyone from CNT went to the project site. Bedson has no basis to question what was bought or exactly what was done. Nor did any witness testify that the amount Plaintiff says he spent for additional materials and labor to correct the wall height problem was unreasonable. The Court, therefore, finds that the weight of the evidence supports a finding that Plaintiff paid \$2,000 in labor and \$5,228.56 for materials to correct the CMU wall defects, for a total cost to him of \$7,228.56. Tr. p. 159, l. 16 – 20.

The Court finds that the Plaintiff is not barred by statements by his counsel in letters in February and June of 2020. That is a factor to consider, but in the complete absence of any other evidence is not sufficient to outweigh Plaintiff's otherwise un rebutted testimony. The Court also notes that when the lower sum was conveyed to Plaintiff's counsel, Plaintiff was still in the process of completing the project, while living in the house with his wife and infant son, all conditions that can give rise to incorrect assessment of matters like sums spent. Tr. p. 89, l. 17 – p. 90, l. 17.

CONCLUSIONS OF LAW

The three issues to be resolved by the Court are (1) whether CNT breached its contract with Plaintiff so as to entitle Plaintiff to recover damages proximately caused by the breach; (2) whether the attorney fee and cost recovery clause in CNT's contract is enforceable; and (3) whether Plaintiff is entitled to remedies provided by Rule 68, SCRCF by virtue of his Offer of Judgment filed on September 29, 2021.

I. Breach of Contract

Contractors are required to follow plans and specifications provided to them by the owner. The case of U.S. v. Spearin, 248 U.S. 132 (1918) stands for the proposition that where a contractor follows plans and specifications, he is entitled to rely on their accuracy and not be held liable if there are defects in a construction project resulting from defective plans and

specifications. This principal is known as the “Spearin Doctrine.” However, if a contractor does not follow the plans and specifications provided by the owner, he assumes responsibility for any failure in the work caused by the failure to adhere to the plans and specifications. Failing to follow plans and specification provided by the owners is a breach of contract rendering the contractor liable for all costs the owner incurs as a result.

The Spearin Doctrine is the law in South Carolina as it is throughout the country. In this case, the plans provided to CNT by Plaintiff clearly specified that the floor height of the additional room was to “align” with the height in the existing house. Calculation of the top of block for the CMU wall was clearly possible using the plans’ specification for the elements to be placed on top of the block wall – a mud seal, a beam and subflooring. CNT argues that it was up to Plaintiff to specify where the top of block was to be. Plaintiff acknowledges he did so using the plans and doing the calculation of the distance from the elevation of the subfloor to the top of block by adding up all the widths of these elements. The un rebutted evidence is that CNT’s contract labor simply did the work incorrectly so that the wall was too high. CNT offered no evidence to rebut this. Failure to achieve the specified block height of the CMU wall was a breach of contract. See South Carolina Requests to Charge, Ralph King Anderson, Jr., 19-2, Contract – Breach of Contract – Defined, “When performance of a duty under a contract is due, any nonperformance is a breach. In other words, a party breaches a contract when he does not perform as he agreed to perform under the contract,” citing 17A Am. Jur. 2d *Contracts* Sec. 716 (1991).

Similarly, CNT’s failure to locate the CMU wall where the plans plainly indicated it should be, aligned with the existing wall separating the laundry room and a bathroom, was a clear breach of contract. By providing CNT’s crew the plans, Plaintiff properly informed them

of the exact location of the CMU wall for the load bearing wall in the new rooms. It was unambiguously shown to be aligned perfectly with the existing wall. CNT did not follow the plans and installed the wall inches to the side from where it was supposed to be.

CNT's workers were not servants of Plaintiff. CNT was, under its contract with Plaintiff, an independent contractor responsible for the means and methods they chose to complete the work in accord with the plans and specifications they were required to meet. Creighton v. Coligny Plaza Ltd. Partnership, 334 S.C. 96, 512 S.E.2d 510 (Ct. App. 1998). CNT is, therefore, responsible for the damages Plaintiff incurred as the result of their failure to do so. Hawkins v. Greenwood Development Corp., 328 S.C. 585, 493 S.E.2d 875 (1995), holding that damages are recoverable for breach of contract when they "flow as a natural consequence of the breach." The extra materials Plaintiff was required to purchase and the extra labor required to make adjustments caused by CNT's errors are damages flowing directly from CNT's breach of the contract.

II. CNT'S Counterclaim for Attorney's Fees and Costs

CNT has asserted a counterclaim seeking to recover its attorney's fees and costs from Plaintiff. The addition foundation contract, #21195, at paragraph 23 provides that the Owner must pay all of CNT's attorney's fees and costs regardless of whether CNT prevails or not. The contract for reinforcing the existing foundation contains the same language, although it only mentions arbitration and not litigation. These type of "one way" attorney fee and cost recovery clauses which are not tied to success in the litigation are classic examples of unconscionable contract clauses that are unenforceable.

Paragraph 18 of the contract for the addition's foundation, # 21195, unambiguously requires all disputes to be resolved in binding arbitration in accordance with the rules of the

American Arbitration Association. Neither party ever invoked that clause of the contract. Paragraph 23 does not limit CNT's entitlement to recovery or costs and attorneys to instances in which CNT prevails. It is an absolute requirement. In his testimony, Bedson claimed this clause only entitles CNT to recover fees and costs if it prevails but, as he acknowledged on the stand, there are no such qualifying words in the contract.

"Terms are oppressive when no reasonable person would make them and no fair and honest person would accept them." York v. Dodgeland of Columbia, Inc., 406 S.C. 67, 83 (Ct. App. 2013). The effect of these provisions logically is that no matter how obvious, reckless, and/or wanton a breach is committed by Defendant during performance of the contract, Plaintiff will be forced to pay CNT's fees. Such provisions are in complete contradiction of the public policy of this state. These provisions work to drastically decrease the likelihood that those injured by Defendant will attempt to seek a remedy at all. In short, this provision has a chilling effect on Plaintiff's exercise of his fundamental rights and remedies and would work to isolate Defendant from liability even in cases where Defendant exhibits gross and willful behavior.

Moreover, both contracts' fee recovery clauses are also cast in terms of mandatory arbitration. The South Carolina Supreme Court has held that provisions within an arbitration clause like these that lack mutuality will only be upheld if "the [protections] bore a reasonable relationship to the business risks inherent in secured transactions." Simpson v. MSA of Myrtle Beach, Inc., 373 S.C. 14, 25 (2007). As these contracts and this litigation do not relate to a secured transaction, the lack of mutuality of the fee and cost recovery clause is clearly one-sided and renders this part of the contract a contract of adhesion contrary to public policy in South Carolina. The fact that the parties never invoked arbitration does not change the fact that the fee and cost recovery clauses runs afoul of the Supreme Court mandate in Simpson.

For these reasons, the Court finds that CNT's counterclaim fails as a matter of law in that the contract clause it relies on is unenforceable.

III. Remedies Under Rule 68, SCRPC

On September 29, 2021, Plaintiff filed in Circuit Court an Offer of Judgment pursuant to Rule 68, SCRPC offering to take \$4,000 as final settlement of his claims in this case against CNT. CNT never countered or otherwise responded to this offer. Rule 68, SCRPC allows a party to make an offer of judgment to the opposing party no later than 20 days before the trial date. The rule in pertinent part provides:

(b) Consequences of Non-Acceptance. If an offer of judgment is not accepted and the offeror obtains a verdict or determination at least as favorable as the rejected offer, the offeror shall recover from the offeree:

- (1) any administrative, filing, or other court costs from the date of the offer until the entry of the judgment;
- (2) if the offeror is a plaintiff, eight percent interest computed on the amount of the verdict or award from the date of the offer to the entry of judgment...

As the Court has ruled that Plaintiff is entitled to recover a judgment of \$7,228.56, more than \$3,000 over the amount of his Offer of Judgment, Plaintiff is entitled to eight percent interest on this sum from September 29, 2021 to the date of the entry of judgment. In addition, Plaintiff is entitled to recover, in addition to the above judgment, an amount reflecting administrative, filing and court costs. These include filing fees for any motions or orders filed after September 29, 2021, the Master in Equity Referral Fee, his share of the costs of the mediation ordered by this Court, the costs of making copies for trial, the cost of the trial transcript, and witness fees. Attorney's fees are not recoverable under the rule. Plaintiff's counsel shall file with the Court within 15 days of this Order an application for all such costs and documentation of the costs.

Now, IT IS THEREFORE ORDERED that Plaintiff is awarded the sum of \$7,228.56 to compensate him for damages caused by the Defendant's breach of contract. It is also ORDERED

that such sum be increased by 8 percent per year pursuant to Rule 68, SCRCP calculated from September 29, 2021.

It is also ORDERED that Plaintiff be awarded a sum to compensate him for the expenses provided for in Rule 68, SCRCP incurred after September 29, 2021. I will retain jurisdiction over the application by Plaintiff as provided for herein for an award of these expenses and judgment will be entered for Plaintiff in the total of those expenses and the damages with interest awarded.

It is FURTHER ORDERED that Defendant is denied recovery on Defendant's Counterclaim.

AND IT IS SO ORDERED.

Mikell R. Scarborough
Master in Equity

_____, 2024
Charleston, South Carolina



Charleston Common Pleas

Case Caption: John Michael Barnett VS CNT Foundation , defendant, et al
Case Number: 2021CP1001711
Type: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2024-11-25 11:12:34 page 17 of 17