

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER  
GILBERT ANTHONY E. VALDEZ,  
  
Plaintiff,  
  
vs.  
  
JOHN P. MURRAY d/b/a JOHNNY'S  
MARINE,  
  
Defendant.

IN THE COURT OF COMMON PLEAS  
FOR THE FIRST JUDICIAL CIRCUIT  
CASE NO.: 2024-CP-18-01640

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT**

**RECEIVED**  
**Mar 18 2025**  
**SC Court of Appeals**

THIS MATTER came before the Court on February 18, 2025, on Plaintiff Gilbert Anthony E. Valdez's Motion for Summary Judgment against Defendant John P. Murray d/b/a Johnny's Marine. After reviewing the pleadings, evidence, affidavits, exhibits, discovery, and applicable law, and considering Defendant's failure to respond to Plaintiff's discovery requests, the Court finds that Plaintiff's motion should be granted in full.

**FINDINGS OF FACT**

Defendant John P. Murray is the owner, officer, director, and person in active control of Johnny's Marine. Prior to October 12, 2021, Defendant offered to sell Plaintiff a 1997 Bayliner, identified by Hull ID No. BL2A22EUB797, and represented to Plaintiff that he was in the process of repairing the boat. Defendant assured Plaintiff that the boat would be fully repaired and delivered to Plaintiff in Tybee Island by Christmas 2021. Plaintiff agreed to purchase the boat based on these representations.

On October 12, 2021, Plaintiff purchased the 1997 Bayliner from Defendant for \$50,000, financing the purchase through Navy Federal Credit Union. On the same day, Defendant issued Plaintiff a \$10,000 check, effectively reducing the purchase price to

\$40,000. Plaintiff relied on Defendant's assurances and proceeded with the purchase in good faith. Defendant deposited the \$50,000 check into his bank account the following day.

Despite repeated assurances from Defendant, the boat was not delivered by Christmas 2021. Over the ensuing months, Plaintiff made numerous inquiries regarding the status of the delivery, to which Defendant provided various excuses but never delivered the boat. Frustrated by Defendant's failure to perform, Plaintiff formally demanded the return of his \$40,000. Defendant refused to refund Plaintiff's payment and kept the boat. Plaintiff has continued to make payments on his loan from Navy Federal Credit Union.

As a proximate result of Defendant's actions, Plaintiff has been damaged in the loss of his \$40,000 payment, the loss of \$15,771.58 paid to Navy Federal Credit Union as interest on the loan, and the loss of \$1,176.99 for property taxes.

## **CONCLUSIONS OF LAW**

### **1. Summary Judgment Standard**

Under Rule 56(c), SCRCP, summary judgment is appropriate where there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Kitchen Planners, LLC v. Friedman, 440 S.C. 456, 892 S.E.2d 297 (2023). Given that Defendant has failed to respond to Plaintiff's Requests for Admissions, and under Rule 36, SCRCP, these facts are deemed admitted, eliminating any genuine factual dispute.

### **2. Breach of Contract**

To establish a breach of contract, Plaintiff must show the existence of a valid

contract, a breach, and damages. Fuller v. Eastern Fire & Cas. Ins. Co., 240 S.C. 75, 124 S.E.2d 602 (1962). The undisputed evidence demonstrates that Plaintiff and Defendant entered into a contract for the sale of the 1997 Bayliner, Plaintiff paid \$40,000, and Defendant failed to deliver the boat. This constitutes a material breach, entitling Plaintiff to his actual damages.

The \$40,000 purchase price paid by Plaintiff is a sum certain. SC Code. Ann. §34-31-20 mandates prejudgment interest accrue on a sum certain at 8.75% per annum. The interest from October 12, 2021 through February 18, 2025 is \$13,036.48. Therefore, Plaintiff is entitled to his actual damages of \$69,985.00.

### **3. Revocation of Acceptance**

Under S.C. Code Ann. § 36-2-608, a buyer may revoke acceptance when a seller's failure to cure a defect substantially impairs the value of the goods. Plaintiff rightfully revoked acceptance because Defendant failed to deliver the boat as promised, thereby rendering the purchase agreement void. Therefore, Plaintiff is entitled to his actual damages of \$69,985.00.

### **4. Conversion**

Defendant's wrongful, undisputed, intentional exercise of the right of ownership over Plaintiff's money and the boat to the exclusion of Plaintiff's rights constitutes conversion. SSI Med. Servs., Inc. v. Cox, 301 S.C. 493, 392 S.E.2d 789 (1990). Defendant is responsible for the damages that flow from his wrongful conduct. Therefore, Plaintiff is entitled to his actual damages of \$69,985.00.

### **5. Negligent Misrepresentation**

Defendant's false representations to the Plaintiff to sell and deliver a boat breached

Defendant's duty of care to communicate truthful information. Plaintiff, like other purchasers, have the right to rely on the representations made by a seller such as Defendant. Plaintiff is entitled to his pecuniary loss resulting from Defendant's conduct in the amount of \$69,685.

## **6. Fraud**

Defendant made false representations of important facts to Plaintiff regarding the repair and delivery of the boat. Defendant knew his representations were false. He intended for Plaintiff to rely on those representations. Plaintiff did not know the representations were false. He was justified in relying on those representations and he did rely on them. This constitutes fraud King v. Oxford, 282 S.C. 307, 318 S.E.2d 125 (Ct. App. 1984). Therefore, Plaintiff is entitled to actual damages of \$69,985.00.

## **7. Violation of the South Carolina Unfair Trade Practices Act (SCUTPA)**

Defendant engaged in unfair and deceptive acts and practices in the conduct of his boat business. Defendant's conduct has the capacity to repeat as he sells boats to the public. S.C. Code Ann. § 39-5-10 *et seq.* Plaintiff's actual damages are \$69,685. Defendant's unfair and deceptive conduct was willful and knowing under the UTPA, justifying treble damages. Defendant's actions and conduct warrant treble damages of \$209,955.00.

## **8. Punitive Damages**

Under S.C. Code Ann. § 15-32-510 *et seq.*, punitive damages are appropriate under Plaintiff's conversion, negligent misrepresentation, and fraud claims. Clear and convincing evidence establishes Defendant's willful, wanton, or reckless conduct. Defendant's intentional misrepresentations and his deliberate retention of Plaintiff's funds

support an award of punitive damages. Taking someone's money is reprehensible. In a criminal setting, someone could face a great deal of jail time. Pursuant to S.C. Code Ann. § 15-32-530(A), punitive damages may be awarded in an amount up to three times the compensatory damages or \$500,000, whichever is greater. Plaintiff has proven entitlement to punitive damages of \$209,955.00 under his conversion, negligent misrepresentation, and fraud claims. Punitive damages assessed against Defendant satisfies our State's punitive damages cap and federal law regarding the ratio of actual to punitive damages.

#### **9. Attorney's Fees**

Under SCUTPA, Plaintiff is entitled to reasonable attorney's fees and costs. The Court shall determine reasonable attorney's fees and costs upon submission of a fee petition.

### **ORDER**

The Court hereby finds and orders as follows:

1. Plaintiff's Motion for Summary Judgment is GRANTED on all claims.
2. Plaintiff is awarded actual damages in the amount of \$69,985.00 on all claims.
3. Plaintiff is awarded treble damages under SCUTPA for a total award of \$209,955.00.
4. Plaintiff is awarded punitive damages in the amount of \$209,955.00 on his conversion, negligent misrepresentation, and fraud claims.
5. Plaintiff is entitled to reasonable attorney's fees under SCUTPA, to be determined upon submission to the Court of an affidavit of attorney's fees and costs and any other documentation counsel deems appropriate.

6. After the determination of attorney's fees and costs, Plaintiff shall elect his remedy as permitted under the law.

IT IS SO ORDERED.



Dorchester Common Pleas

**Case Caption:** Gilbert Anthony E Valdez VS John P Murray , defendant, et al

**Case Number:** 2024CP1801640

**Type:** Order/Summary Judgment

So Ordered

S. Bryan Doby, Circuit Court Judge, No. 2784