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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Hon. Roger M. Young Sr., Circuit Court Judge

Circuit Court Case No. 2019-CP-10-05392
S.C. Court of Appeals Case No. 2022-001795

Kevin Staveley-O-Carroll,

Appellant,

v.

Fenix Automotive, LLC

Respondent.

APPELLANT'S PETITION FOR REHEARING

LAW OFFICE OF
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ATTORNEY FOR APPELLANT

Pursuant to Rule 221(a), SCACR, Appellant respectfully petitions the Court for a rehearing of this matter, which it decided via Unpublished Opinion No. 2025-UP-186 (S.C. Ct. App., filed June 11, 2025) affirming the circuit court's October 2, 2021 order of judgment for damages. As

explained below, Appellant most respectfully contends the Court overlooked or misapprehended a number of material points.

BACKGROUND

Kevin Staveley-O'Carroll contracted with Fenix Automotive, LLC for the restoration of his 1969 Mercedes 280 SL (the "Mercedes"). (R. p. 107, ¶ 5.) Fenix Automotive performed the initial steps of the restoration pursuant to the parties' agreement, which Dr. Staveley-O'Carroll paid for in full. (R. p. 108, ¶ 8.) However, after requesting and collecting a \$20,000 deposit from Dr. Staveley-O'Carroll to fund the subsequent phases of the restoration, Fenix Automotive failed both to perform the work and to return Dr. Staveley-O'Carroll's deposit. (R. p. 109, ¶¶ 11, 12, and 18.) On top of that, in the multiple years during which Fenix Automotive was in possession of the Mercedes for the restoration work, it carelessly stored the vehicle's disassembled parts and interior elements in piles and plastic bins outdoors, unprotected from the elements, effectively resulting in their total loss. (R. p. 321, lines 5-23.)

Dr. Staveley-O'Carroll filed an action against Fenix Automotive in the Charleston County Court of Common Pleas on October 21, 2019 alleging causes of action for breach of contract, negligence, conversion, and unjust enrichment. (R. p. 107, ¶ 4.) Fenix Automotive failed to answer or otherwise respond to the properly served summons and complaint resulting in the entry of default judgment against it. (*Id.*) On August 25, 2021, the circuit court held a hearing on the issue of damages via WebEx video conference during which it received evidence and heard testimony from Dr. Staveley-O'Carroll and his expert witness Axel Reinert. (R. p. 106.)¹

¹ As Fenix Automotive was in default and default judgment having been entered against it, the circuit court took testimony and received evidence by and on behalf of Dr. Staveley-O'Carroll only, and Fenix Automotive's participation in the hearing was limited to cross-examination and objecting to evidence presented. (R. p. 107, n. 1.)

Following the damages hearing, the circuit court entered a Form 4 order for counsel for Dr. Staveley-O'Carroll to draft a proposed order for damages to submit to counsel for Fenix Automotive and the court within ten days, and then for counsel for Fenix Automotive to present his own proposed order within five days of that. (R. p. 2.)

On September 17, 2021, counsel for Dr. Staveley-O'Carroll prepared and submitted to the court and opposing counsel via e-mail (R. pp. 376-377) a proposed order of judgment for damages setting out the separate measure and calculation of damages relative to each cause of action based on the admitted allegations of the complaint and the damages hearing testimony of Dr. Staveley-O'Carroll and Mr. Reinert as to the respective values of the Mercedes relevant to each such calculation. (R. pp. 21-36.)²

For its proposed order, counsel for Fenix Automotive simply edited Dr. Staveley-O'Carroll's proposed order by, among other things, deleting many of the various values of the Mercedes as testified to by Mr. Reinert, and replacing them with its own values, based on its recollection of the testimony.³ Fenix Automotive then submitted to the circuit court and opposing counsel via e-mail (R. p. 376) both a "redline" copy of its revisions to Dr. Staveley-O'Carroll's proposed order revealing its specific edits, additions, and deletions (R. pp. 37-52,) and a "clean" copy of the same, with the revisions hidden. (R. pp. 53-68.) In addition to changing many of the values provided by Mr. Reinert (R. pp. 41, ¶17; R. pp. 44-5; R. pp. 47-48; R. p. 52,) Fenix Automotive's revisions removed Dr. Staveley-O'Carroll's proposed award of punitive damages

² In addition to the general measure and calculation of damages for each cause of action, Dr. Staveley-O'Carroll's proposed order included a proposed award of punitive damages associated with his claims for gross negligence and willful conversion, and attorney's fees under Rule 55(b)(3).

³ At the time of preparing and submitting their respective proposed orders of judgment for damages to the circuit court, neither counsel for Dr. Staveley-O'Carroll or counsel for Fenix Automotive were yet in possession of a copy of the transcript of the damages hearing and Mr. Reinert's expert testimony.

and attorney's fees. (R. pp. 47-48; R. pp. 50-52.)

On October 7, 2021, the circuit court entered its Order of Judgment for Damages in the total amount of \$65,239 (the "Judgment"), effectively signing Fenix Automotive's proposed order, just as it was submitted. (R. pp. 106-121.) Both parties thereafter filed Rule 59 motions to alter or amend,⁴ which the circuit court denied. (R. pp. 97-101; R. pp. 191-193.)

By notice served on December 13, 2022, this appeal timely followed. (R. pp. 222-224.) In due course, the appeal was briefed and made ready for decision and decided without oral argument via the subject Opinion, filed on June 11, 2025 (the "Opinion"), which affirmed the circuit court's order of judgment for damages. This petition for rehearing timely follows.

STANDARD OF REVIEW

Actions seeking damages for breach of contract and actions for violation of the Payment of Wages Act are actions at law. See McCall v. Ikon, 380 S.C. 649, 657, 670 S.E.2d 695, 700 (2008); Ross v. Ligand Pharmaceuticals, Inc., 371 S.C. 464, 468, 639 S.E.2d 460, 462 (Ct. App. 2006). In an action at law tried without a jury, the trial judge's findings have the force and effect of a jury verdict upon the issues and are conclusive on appeal when supported by competent evidence. See Beheler v. Nat'l. Grange Mut. Ins. Co., 252 S.C. 530, 535, 167 S.E.2d 436, 438 (1969). Accordingly, the Court's scope of review is limited to determining whether the findings are supported by competent evidence and correcting errors of law. Temple v. Tec-Fab, Inc., 381 S.C. 597, 600, 675 S.E.2d 414, 415 (2009); Mathis v. Brown & Brown of South Carolina, Inc., 389 S.C. 299, 698 S.E.2d 773 (S.C. 2010).

⁴ Following the circuit court's entry of Judgment, in connection with Fenix Automotive's Rule 59 motion to alter or amend, counsel for Dr. Staveley-O'Carroll informed the court the substituted values it used in its calculation of damages, purporting to have been those established by Mr. Reinert's testimony, were not the values he testified to, and that he intended to order the transcript of the damages hearing for inclusion with his own motion to alter or amend. (R. pp. 381-382.)

ARGUMENT

Most Respectfully, in holding the circuit court did not abuse its discretion because some evidence in the Record supports its finding that the value the Mercedes would have had if Fenix Automotive performed the restoration work was an average of \$81,000, the Court misapprehended the Mr. Reinert's testimony. Specifically, the Court misconstrued Mr. Reinert's testimony with regard to the average general retail value of like year and model Mercedes (for purposes of valuing the vehicle at the time it was delivered to Fenix Automotive) as evidence applicable to his entirely different testimony regarding the value of the vehicle had it been restored according to the parties' agreement (the "Post-restoration Value"). In so doing, the Court overlooked other points in the Record relevant to the "any evidence" analysis:

a) the language of the Judgment, itself, demonstrates the circuit court clearly intended to apply the specific values of the Mercedes **as testified to by Mr. Reinert** in its calculation of the damages award, as contrasted with making its own determination of the relative values based on the weight it accorded the testimony and evidence presented;

b) the circuit court's finding that the Mercedes would have had an average Post-restoration Value of \$81,000 is directly contradicted by Mr. Reinert's expert testimony, on the whole, and is inconsistent with the Court's other findings; and

c) the circuit court's finding with regard to the Post-restoration Value of the Mercedes was the specific and obvious product of incorrect values supplied by Fenix Automotive in the proposed order it submitted to the circuit court, rather than Mr. Reinert's actual testimony.

I. Mr. Reinert's reference to \$81,000 as "average retail" in the Record is not evidence reasonably supporting the circuit court's finding as to the Post-restoration Value of the Mercedes for the purpose of calculating breach of contract damages.

While cognizant that this Court's task in reviewing a damages award is not to weigh the evidence, but to determine if there is any evidence reasonably supporting the damages award, see Austin v. Specialty Transp. Servs., Inc., 358 S.C. 298, 311, 594 S.E.2d 867,873 (Ct. App. 2004), such determination requires evaluating any such evidence in its full and proper context. Importantly, the Court should evaluate such evidence in light of all other facts and circumstances apparent in the Record. See Edwards v. Ferguson, 175 S.E.2d 224, 226, 254 S.C. 278, 283 (S.C. 1970)("In determining whether there has been an abuse of discretion all of the facts and circumstances must be evaluated.").

Here, this Court held the circuit court did not abuse its discretion in finding the Post-restoration Value of the Mercedes to be an average of \$81,000, because it deemed the finding was supported by the evidence. The Court stated in its Opinion "the expert witness testified he believed the value of the Mercedes had Fenix restored it was approximately \$115,000; however, he also testified the low for the same model of Mercedes was \$47,000 and the average price was \$81,400." (Opinion at p. 2.) However, Mr. Reinert's testimony as to the general range of values he found while researching like year and model Mercedes on Internet auction sites did not pertain to his opinion and testimony as to the Post-restoration Value of Dr. Staveley's specific Mercedes, and is not evidence reasonably supporting the circuit court's finding as to that value.

The subject passage of Mr. Reinert's testimony to which the Court refers in its Opinion is found in the Record at (R. p. 461,) and was given in the context of cross-examination by counsel for Fenix Automotive. In that exchange, after confirming Mr. Reinert's opinion that the Post-restoration Value of the Mercedes would have been "about \$115,000," counsel for Fenix Automotive asked, generally, whether a search of Internet auction sites for like year and model Mercedes would reveal a range of prices anywhere between \$40,000 and \$120,000. (R. pp. 458-

461.)⁵ In response to that general question, Mr. Reinert responded, merely, that in searching Internet auction sites he found similar year and model Mercedes selling for prices ranging between “[l]ow, \$47,200, average retail \$81,400, auction high \$254,600.” (R. p. 461.) Mr. Reinert’s response to that objectionable question was specifically not related to his testimony regarding his opinion as to the Post-restoration Value of the Mercedes.

Mr. Reinert clearly articulated that in his expert opinion the vehicle’s Post-restoration Value would have been approximately \$115,000. (R. p. 295, lines 11-14.) Mr. Reinert never testified his opinion with regard to that Post-restoration Value would have been \$81,000. Moreover, there is no competent or reasonable evidence in the Record that to suggest Mr. Reinert based his opinion as to the Post-restoration Value on a general average of like year and model Mercedes he found on various auction sites, irrespective of the condition or circumstances of sale of those vehicles. Indeed, such a calculation would only possibly yield the average market value for a 1969 Mercedes SL, generally. In fact, had Mr. Reinert intended to use that general price range in calculating for the Post-restoration Value, it bears noting that the average of the prices would be \$150,900, and not \$81,000.

Instead, Mr. Reinert was amply clear about the process he employed in formulating his expert opinion 1) as to the value of the Mercedes when it was delivered to Fenix Automotive (for purposes of calculating negligence damages), and 2) the Post-restoration Value it would have had if Fenix had performed the work as agreed (for purposes of calculating breach of contract expectation damages).

As to the first, both Dr. Staveley-O’Carroll and Mr. Reinert testified the Mercedes was in

⁵ Counsel for Dr. Staveley-O’Carroll objected to the line of questioning, and the court sustained the objection, admonishing counsel for Fenix Automotive that the defendant, in default, was not permitted to put any evidence of its own in the Record. (R. p. 458, line 3- p. 461, line 6.)

good, running condition, except for a having a cracked head, which was a common problem (R. p. 265, line 19 – p. 266, line 19; R. p. 287, line 20 – p. 298, line 3,) and otherwise for him “it’s just an average 120,000 car which, you know, 1969, it’s going to have some wear and tear . . .” (R. p. 290, lines 14-16.) Mr. Reinert further testified not only had Dr. Staveley-O’Carroll’s testimony and his own professional experience informed his opinion of the condition of the Mercedes as delivered to Fenix Automotive, but also Fenix’s own the very detailed description and estimate of the project in which it describes the vehicle as being in overall good condition. (R. p. 289, line 22 – p. 290, line 13.)⁶

With an understanding of the condition of the Mercedes when it was delivered to Fenix Automotive, Mr. Reinert described how he formulated his opinion as to the value of the vehicle at that time, which included using the average price of like year and model Mercedes of similar condition in the marketplace. Mr. Reinert testified as follow:

[s]o, **based on the average price or value of that car at the time** being right around \$55,000 to \$60,000 being in good decent running condition, subtract \$10-\$12,000 to redo the motor and, you know, talking low \$40’s in figure. I think based on vehicles that I see for sale at some of the Mercedes-Benz sites and I see what the cars sell for at all these auctions online now, I think that’s a pretty solid number. You know, in the low 40’s. We could say . . . \$42, 000, somewhere around there. (R. p. 289, lines 4-21)(emphasis supplied.)

Because he was valuing an average 1969 Mercedes with 120,000 miles in decent condition, it was appropriate for him to consider and factor in the average market value of the vehicle at that particular time.

⁶ Illustratively, in direct contradiction of both the admitted allegations of the complaint and Mr. Reinert’s expert testimony, the circuit court also found the Mercedes was in poor condition when delivered to Fenix Automotive and had a value of between \$20,000 and \$25,000. (R. pp. 107-108, ¶ 6.) As further discussed below, these inaccuracies, purporting to be “based on the testimony of Mr. Reinert,” (id.) originated directly from Fenix Automotive’s revisions to Dr. Staveley-O’Carroll’s proposed order.

As to the second, Mr. Reinert's Post-restoration Value opinion of \$115,000 did not relate to just any 1969 Mercedes SL in "average" condition, but rather to Dr. Staveley-O'Carroll's specific 1969 Mercedes SL, which would have been restored to excellent condition. Mr. Reinert testified, "**this was going to be a complete restoration.**" (R. p. 291, lines 9-10)(emphasis supplied.) "This car would probably be a **number two condition**, which is considered excellent, after the extensive work that was discussed was performed, and that would put the car above \$100,000 in value currently." (R. p. 294, lines 13-17)(emphasis supplied.) According to both Dr. Staveley-O'Carroll and Mr. Reinert's uncontroverted testimony, the restoration work agreed to by the parties would render the Mercedes in nearly new condition. (R. p. 266, lines 11-13 ("Not like showroom quality better than it came off the lot, but . . . to drive and in perfect condition."); R. p. 293, lines 22-23 ("a safe reliable car you can get in and drive to any point, the same way you could get in a new car and drive to any point"))).

Mr. Reinert testified the Mercedes, as delivered to Fenix Automotive had a value of approximately \$42,000, and was in average condition at that time. The established facts of Record show the parties intended to put \$65,000 of restoration work into the vehicle (R. p. 113) to render it in excellent, nearly new condition. As such, Mr. Reinert based his opinion as to the Post-restoration Value on the expected post-restoration condition of Dr. Staveley-O'Carroll's specific Mercedes, and not in function of an average general price range for all 1969 Mercedes SLs.

The evidence this Court determined supports the circuit court's findings that the Post-restoration Value was an average of \$81,000 is that Mr. Reinert "also testified the low for the same model of Mercedes was \$47,000 and the average price was \$81,000." (Opinion, at p. 2.) As stated above, Mr. Reinert, in the same sentence, also testified the auction high was \$254,600. It is clear that this range of values is representative vehicles in vastly different conditions. That fact is

particularly evident considering Mr. Reinert valued Dr. Staveley-O'Carroll's Mercedes at \$42,000 when it was delivered to Fenix Automotive in average condition, except for a cracked head. Furthermore, within that range, Mr. Reinert specifies \$81,000 as **the average value** of like year and model Mercedes he found. However, his opinion as to the Post-restoration Value of Dr. Staveley-O'Carroll's specific Mercedes was based on his expert opinion of the market value of a 1969 Mercedes SL in an excellent, nearly new condition. Therefore, Appellant respectfully submits Mr. Reinert's mention of "average retail \$81,000," within a range of values attributable to all like year and model Mercedes he researched, is not evidence reasonably supporting the circuit court's finding that the Post-restoration Value was an average of \$81,000 based on Mr. Reinert's testimony.

This Court also cites to Dixon v. Besco Eng'g., Inc., 320 S.C. 174, 181, 463 S.E.2d 636, 640 (Ct. App. 1995) for the proposition that the circuit court has not abused its discretion when the "amount awarded was comparable to the testimony." However, as discussed above, the circuit court's finding that the Post-restoration Value of Dr. Staveley-O'Carroll's Mercedes was \$81,000, was in no way comparable to the expert's testimony as to that value, which was unequivocally \$115,000.

Furthermore, Dixon involved a negligence action against a defendant in default seeking, *inter alia*, damages for the loss of the plaintiff Dixon's tools. During the damages hearing, the circuit court heard testimony from Dixon regarding the value of his own tools, but no expert testified. The circuit court, finding a property owner familiar with his own property may testify as to their value, awarded damages based on Dixon's testimony. On appeal, the defendant argued the circuit court erred because Dixon failed to provide competent evidence of valuation. Id. In finding the amount of the award comparable to the testimony, the Court of Appeals in Dixon cited

to S.C. State Highway Dep't. v. Grant, 265 S.C. 28, 216 S.E.2d 758 (1975) for the proposition that the “fact finder must determine the weight to be accorded the testimony of the witnesses, and accept or reject their valuation.” Id.

In Grant, the State appealed a verdict of \$15,000 in favor of Grant in a condemnation case. During the trial, two experts testified regarding the value of the land being condemned, one on behalf of the State, and one on behalf of Grant. Both experts valued the land at between \$10,000 and \$11,000. Grant also testified, claiming the market value of his land was \$17,000. On appeal, the Supreme Court affirmed the judgment of \$15,000, finding the “amount awarded was within the range of the witnesses evaluation.” Id. at 30, 760. In so holding, the Supreme Court found the States objections to the admission of Grant’s testimony regarding the value of his land “would go to the credibility of the witnesses and the weight to be given his testimony.” Id. at 30, 759.

Grant, is immediately distinguishable from the present case in that it dealt with an amount awarded that court determined was within the range of several and competing expert valuations. In the present case, due to Fenix Automotive’s default, Mr. Reinert’s testimony as to the Post-restoration Value of the Mercedes is uncontroverted, and is the only evidence in the Record as to that value.

Further, unlike in Dixon where the circuit court’s award of \$7,060 was consistent with Dixon’s testimony that new tools would cost him \$8,305.98, but the same used tools would be ten to fifteen percent less, here, the circuit court’s finding of \$81,000 as Mercedes’s Post-restoration Value is in no way comparable to Mr. Reinert’s \$115,000 estimation.

Appellant respectfully submits that Dixon and Grant are inapposite to the facts, circumstances, and testimony in the present case, and do not support a finding, here, that the circuit

court did not abuse its discretion because its finding (with regard to the Post-restoration Value) was comparable to the testimony.

II. Respectfully, the Court overlooked significant other evidence in Record demonstrating the Court’s misapprehension of the subject testimony of Mr. Reinert as evidence supporting the circuit court’s finding as to the Post-restoration Value of the Mercedes.

As discussed above, in determining whether there has been an abuse of discretion all of the facts and circumstances must be evaluated, and the entire record should be reviewed. Edwards v. Ferguson, 175 S.E.2d 224, 226, 254 S.C. 278, 283 (S.C. 1970). In so doing, this Court should review and consider the following evidence, facts, and circumstances:

a. The language of the circuit court’s order of judgment for damages.

The language of the Judgment, itself, demonstrates the circuit court clearly intended to base its calculation of damages and findings of fact with regard to the specific values of the Mercedes exclusively on Mr. Reinert’s testimony, as contrasted with making its own determination of the relative values based on the weight it accorded the testimony and evidence presented. For example, in its finding of facts the circuit court stated, “[b]ased on the uncontroverted testimony of Mr. Reinert, the Court finds the Mercedes would have had a value of between \$42,000 and \$120,000 had Defendant restored it as agreed in its contract with Plaintiff. Instead, in its present condition and state, the Mercedes currently has a value of \$10,000.” (R. p. 108)(emphasis supplied.).

In the same manner, in finding facts and calculating the damages under Dr. Staveley-O’Carroll’s breach of contract claim, the circuit court stated, “[a]ccording to the uncontroverted testimony of Mr. Reinert, the fair market value for the Mercedes as restored to the agreed “daily driver” condition would have been between \$42,000 and \$120,000, the average of which amounts to \$81,000. (R. p. 113)(emphasis supplied). In fact, the circuit court qualifies each of its findings

with regard to the various values of the Mercedes it used in calculating damages as being based either exclusively on the testimony of Mr. Reinert, or on the testimony of both Mr. Reinert and Dr. Staveley-O'Carroll.

The circuit court, in no instance, indicates in the Judgment it was basing its findings of fact and damages calculations on anything other than the evidence and testimony presented by Mr. Reinert and Dr. Staveley O'Carroll. Indeed, there was no other evidence or testimony. Neither does the circuit court include language in the Judgment indicating it was in any way modifying the relevant values of the Mercedes (for purposes of calculating damages) in function of the weight and credibility it accorded the testimony.

The language of the circuit court's Judgment clearly demonstrates the circuit court fully intended to find and calculated damages based on the various values of the Mercedes as testified to by Mr. Reinert, and it simply used the wrong figures.

b. The circuit court's finding that the Mercedes would have had an average Post-restoration Value of \$81,000 is directly contradicted by Mr. Reinert's expert testimony, on the whole, and is inconsistent with this Court's findings regarding other misstated figures in the Judgment.

As to the Post-restoration Value of the Mercedes, critical in the calculation of damages under Dr. Staveley-O'Carroll's breach of contract cause of action, the circuit court found, "[a]ccording to the uncontroverted testimony of Mr. Reinert, the fair market value for the Mercedes as restored to the agreed 'daily driver' condition would have been between \$42,000 and \$120,000, the average of which amounts to \$81,000." (R. p. 113.) However, nowhere in the Record does Mr. Reinert ever testify that value would have been between \$42,000 and \$120,000. Reference to the transcript of his testimony clearly demonstrates Mr. Reinert's actual, uncontroverted testimony as to the Post-restoration Value of the Mercedes was that it was between \$100,000 and \$120,000 (R. p. 294, lines 22-25,) then settling on \$115,000 as the number. (R. p. 295, lines 3-14.)

Moreover, this Court determined the circuit court abused its discretion as to its finding of the value of the Mercedes at the time Dr. Staveley-O'Carroll delivered it to Fenix Automotive. (Opinion at p. 2.) The Court correctly determined the circuit court erred in finding the "as delivered" value to be an average of \$22,500 based on the testimony of Mr. Reinert, when the Record demonstrated Mr. Reinert's actual testimony as to that value was \$42,000.⁷

The circuit court's finding that the Post-restoration Value of the Mercedes would have been between \$42,000 and \$120,000 is inconsistent with the value this Court determined should have been its finding with regard to its "as delivered" value. Clearly, a vehicle with an established pre-restoration value of \$42,000 will have a greater value than \$42,000 after undergoing an established \$65,000 of restoration work. Particularly where the uncontroverted testimony of the expert is that such restoration work would certainly put the vehicle above \$100,000 in value. (R. p. 294, lines 13-17.)

c. The circuit court's finding with regard to the value the Mercedes would have had, post-restoration, was the specific and obvious product of incorrect values supplied by Fenix Automotive in the proposed order it submitted to the circuit court.

If, in the Judgment, the circuit court clearly intended to find facts and calculate damages based on the values as provided in the uncontroverted testimony of Mr. Reinert and Dr. Staveley-O'Carroll, how then did it come up the different values it used in their place? Reference to Fenix Automotive's "redlined" revisions to Dr. Staveley-O'Carroll's Proposed Order of Judgment for Damages, in the Record at (R. pp. 37-52) answers the question. In each instance in which the circuit court's findings and calculation of damages misstate values purporting to be those as

⁷ The Court determined the circuit court's error as to the value of the Mercedes at the time Dr. Staveley-O'Carroll delivered it to Fenix Automotive was harmless because it affected only the damages calculation for his Negligence cause of action, which would be reduced to zero with the election of remedies. (Opinion at p. 3)

testified to by Mr. Reinert, the incorrect substituted values came, verbatim, from Fenix Automotive's revisions to Staveley-O'Carroll's proposed order. Those include the circuit court's incorrect findings this Court has already determined were error. The tracking feature showing the step-by-step revisions in Fenix Automotive's "redlined" version of the proposed order is revealing.

On page 5 of the "redlined" proposed order, with respect to Mr. Reinert's testimony on the Mercedes Post-restoration Value, Fenix Automotive deleted the \$115,000 figure Dr. Staveley-O'Carroll proposed, and inserted the \$42,000 figure in its place. (R. p. 41, ¶ 7.) In the same paragraph, in the sentence, "[i]nstead, in its present condition and state, the Mercedes currently has a value of _____," Fenix Automotive deleted Dr. Staveley-O'Carroll's proposed \$2,500 figure, and substituted \$10,000 in its place. (Id.) Those changes are reflected, verbatim, in the Judgment at page 5, ¶ 17. (R. p. 110.)

On page 8 of the "redlined" proposed order, in the sentence, "[a]ccording to the uncontroverted testimony of Mr. Reinert, the fair market value for the Mercedes as restored to the agreed "daily driver" condition, would have been between _____ and \$120,000, the average of which amounts to _____", Fenix Automotive again deleted Dr. Staveley-O'Carroll's proposed \$115,000 value in the first blank, and substituted \$42,000 in its place. In the second blank, Fenix Automotive deleted Dr. Staveley-O'Carroll's \$117,500 value, and substituted \$81,000 in its place. (R. p. 44.) On the same page, Fenix Automotive changed the damages calculation in the proposed order to reflect the substitution of values it made above. In the sentence "Plaintiff's actual damage resulting from Defendant's breach of contract can, therefore, be expressed as (_____ - \$2,500) - (\$65,000 - \$25,825) and totals _____," Fenix Automotive deleted Dr. Staveley-O'Carroll's figure of \$117,000 in the first blank, and substituted \$81,000 in its place. (R. p. 44.) Fenix Automotive deleted Dr. Staveley-O'Carroll's figure of

\$75,825 in the second blank, and substituted \$39,325 in its place. (Id.) Those changes are reflected, verbatim, in the Judgment at page 8. (R. p. 113.)

On page 16 of the “redlined” proposed order, Fenix Automotive changed each of the judgment amounts, but for breach of contract from \$76,950 to \$40,450, and for a total judgment amount from \$198,341.47 (inclusive of proposed attorney’s fees and punitive damages) to \$65,239. (R. p. 52). Those changes are reflected, verbatim, in the Judgment at page 16. (R. p. 121.)

CONCLUSION

For the above reasons, Appellant most respectfully requests this Court grant a rehearing of the above-captioned appeal with regard to the points indicated herein and reconsider its affirmance of the lower court’s order of judgment for damages.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
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APPEAL FROM CHARLESTON COUNTY
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PROOF OF SERVICE

I certify that I have served the foregoing *Appellant's Petition for Rehearing* upon the Respondent by e-mail and by depositing a copy in the United States Mail, postage prepaid, on July 15, 2025 addressed to Respondent's attorney of record, Damien A. Sobieraj, Esq., Cooper River Legal Services, LLC, P.O. Box 2439, Mt. Pleasant, SC 29465.

[Signature on following page]

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July 15, 2025

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VIA US MAIL

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**Re: Kevin Staveley-O'Carroll v. Fenix Automotive, LLC Appellate Case No.:
2022-001795: Appellant's Petition for Rehearing**

Dear Clerk:

Attached please the following items:

1. Appellant's Petition for Rehearing; and
2. Proof of Service

I have copied Damien Sobieraj, Esq. with copies this letter and the above-listed pleadings for service of the same upon Respondent. I have also put a check in the mail today in the amount of \$50.00 for the filing fee associate this Petition in the amount of \$50.00, a copy of which is herewith attached.

Very truly yours,



W. Westbrook Wills III

Enclosures (as stated)

cc: Damien Sobieraj, Esq.