

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

John Deere Financial, f.s.b., f/k/a
FPC Financial, f.s.b.,
Plaintiff,

vs.

Jerry A. Bruce,
Defendant,

and

Jerry A. Bruce,
Third-Party
Plaintiff,

vs.

Flint Equipment Co.,
Third-Party
Defendant.

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

CASE NUMBER: 2011-CP-23-7943

JUDGMENT AGAINST
FLINT EQUIPMENT COMPANY

Verified

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2013 AUG -2 3 A 10:39

This matter came before the Court after proper notice for a damage hearing on the claim that Flint Equipment Company (hereinafter "Flint") violated the Unfair Trade Practices Act, S.C. Code §39-5-10(a).

The facts admitted by Flint by its default are as follows:

Flint sales and services John Deere machinery out of its Simpsonville, SC location. Third Party Plaintiff Jerry A. Bruce (hereinafter "Bruce") purchased a John Deere track hoe and financed the same through John Deere Financial, f.s.b., f/k/a FPC Financial, f.s.b. (hereinafter "John Deere"). The equipment purchased by Bruce had mechanical problems which resulted in a previous legal difficulty between Flint and Bruce. Bruce prevailed and the Flint manager made comments after the proceeding that Bruce would pay one way or the other.

Subsequently Bruce experienced additional mechanical difficulties with the John Deere track hoe and delivered the same to Flint for repairs. While there, Bruce authorized a 400 hour

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SC Court of Appeals

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service for which he paid.

Without authorization from Bruce, Flint replaced a number of parts on the John Deere track hoe in an attempt to fix the mechanical problem. Eventually the problem was fixed with a \$350 part.

Bruce had a line of credit with John Deere which did not require his signature for charges. Flint charged the disputed repairs and replacement parts on Bruce's credit line without his permission. Bruce contested these charges and eventually John Deere brought suit against Bruce for \$6,476.90 unpaid charges and twenty percent (20%) attorney fee in the amount of \$1,295.38 for a total of \$7,772.28.

At the hearing Bruce produced an additional witness who accused Flint of also padding his bill for the repair of his equipment with unnecessary parts and labor.

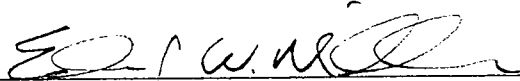
Bruce presented an attorney fee affidavit for attorney fees and costs incurred in the amount of \$8,191.20. Attorney fee charges were not challenged by Flint.

Padding bills and charging such bills on a customer's credit line is an unfair trade practice that affects the public's interest because of its potential for repetition. The Court finds Bruce is entitled to judgment against Flint in the amount of \$7,772.28.

In the exercise of discretion, the Court will treble those damages to \$23,316.84.

The Court finds that an award of attorney fees is appropriate and Bruce is awarded an award of attorney fees of \$8,191.20 for a total judgment of \$31,508.04.

IT IS SO ORDERED.


The Hon. Edward W. Miller,
Judge, Thirteenth Judicial Circuit

Greenville, South Carolina

Date: 7/23/13

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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

John Deere Financial, f.s.b., f/k/a
FPC Financial, f.s.b.,

Plaintiff,

vs.

Jerry A. Bruce,

Defendant,

AND

Jerry A. Bruce,

Third-Party Plaintiff,

vs.

Flint Equipment Co.,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

CASE NUMBER: 2011-CP-23-7943

ORDER

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2013 JUL 25 PM 12:54

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
JERRY A. BRUCE, JR.
COURT REPORTER

WLB

The above entitled matter came before the Court on July 10, 2013 on the dual motion of Flint Equipment Co. ("Flint") to (1) set aside a default judgment under Rule 55(c) and Rule 60(b)(1), S.C.R.C.P. and (2) declare the default judgment void pursuant to Rule 60(b)(4) and Rule 14(a), S.C.R.C.P.

After reviewing the records in this case, the affidavits and briefs submitted to the Court and hearing the arguments of counsel, the Court makes the following findings of fact and conclusions of law:

1. This Court has jurisdiction over the parties and the subject matter of this action.
2. The motion to set aside default judgment is denied.

This action began with the filing of a Complaint by John Deere Financial, f.s.b., FPC Financial, f.s.b. ("John Deere") on or about November 29, 2011. The essence of the Complaint

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[Signature]

was that John Deere had honored the charge by Jerry Bruce ("Bruce") on a credit line for a certain amount. Pursuant to Bruce's agreement with John Deere, John Deere was entitled to recover the amount plus attorney fees.

Bruce timely filed an Answer and on December 6, 2012 Bruce moved to add Flint as a third party defendant pursuant to Rule 14(a), S.C.R.C.P. This matter was heard before the Honorable Leticia H. Verdin on February 5, 2013 and Judge Verdin orally ruled from the bench that Bruce could amend his pleadings and file a third party complaint against Flint.

On February 15, 2013, Judge Verdin filed a Form 4 Order confirming her earlier oral ruling.

On February 8, 2013, Bruce filed his Third Party Complaint against Flint and caused the same to be served by mail to C.T. Corporate Systems, the registered agent for Flint. On February 11, 2013, an agent for C.T. Corporate Systems signed the receipt of certified mail which was the Third Party Complaint against Flint.

Flint acknowledges this acceptance of service and the forwarding of the pleadings to its home office in Georgia where the pleadings were delivered but misplaced or lost.

On April 12, ²⁰¹³~~2013~~, Bruce filed an affidavit of default against Flint with the clerk of court. Eey

On May 30, 2013 the Honorable D. Garrison Hill filed an Order of Default and Order setting damages hearing although no specific damage hearing date was set. On June 4, 2013, Bruce notified Flint of the damages hearing for July 10, 2013. Flint promptly filed motions to set aside the default.

Initially Flint sought to have its motion for default determined by the less strict legal standard of Rule 55(c). Part of its argument for the lesser standard was that the Order of Judge Hill was not an order of default. This interpretation of Judge Hill's Order is misplaced. This

Court finds Judge Hill's Order was for default and therefore the more stringent requirements of Rule (60)(b)(1) must be applied.

The Court finds that Flint has not presented excusable neglect and therefore, good cause for setting aside the default. Flint acknowledges that it is aware of the serious^{NATURE} of lawsuits and pleadings in general. Flint further acknowledges that it has set up a system for reviewing legal pleadings. Flint further acknowledges that it has no knowledge of what happened to the Bruce Third Party Complaint once it was delivered to Flint's home office. As stated by Flint's attorney in open court, the pleading simply disappeared and had not been found. *Em*

It appears to the Court that the pleadings were properly delivered to the home office where personnel were trained to be aware of the seriousness of pleadings and those pleadings were simply lost or misdirected. Therefore, in the exercise of my discretion, I decline to relieve Flint of the default. Sundown v. Intedged Ind., 383 S.C. 601, 681 S.E.2d 885 (2009).

3. The motion to declare the default judgment void is denied.

Initially the Court is concerned over the appropriateness of using a Rule 14 motion to set aside a default judgment on a claim of lack of jurisdiction. Subject matter jurisdiction is the power of a court to hear and determine cases of a general class to which the proceedings in question belong. Dove v. Gold Kist, 314 S.C. 235, 442, S.E.2d 598 (1994). Certainly this Court can hear claims originating in fraud and unfair trade practices between Flint and Bruce.

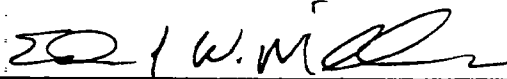
Rule 14 is a procedural rule designed to control what claims can be heard in a particular proceeding. Allowing Flint to raise claims under Rule 14 after a default judgment would allow Flint to contest facts admitted or waived by its default and seems to run contrary to the requirements of Rule 12.

Even if Flint's Rule 14 motion is proper, the Court declines to set aside the default under

the exercise of its discretion. Bruce's claim that Flint charged his credit line for work he did not authorize is admitted by Flint's default and is certainly intertwined with John Deere's claim against Bruce.

For the above reasons, this Court declines to grant Flint's motion to set aside default.

AND IT IS SO ORDERED.



The Hon. Edward W. Miller
Judge, Thirteenth Judicial Circuit

Greenville, South Carolina

Date: 7/23/13

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STATE OF SOUTH CAROLINA NOV 14 2013

JUDGMENT IN A CIVIL CASE

COUNTY OF GREENVILLE SC Court of Appeals CASE NO: 2011CP2307943

IN THE COURT OF COMMON PLEAS

2013 JUL 26 P 12:53

FILED CLERK OF COURT GREENVILLE CO. S.C. PAUL B. WICKENS

John Deere Financial Fsb vs. Jerry A Bruce

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.
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; Statement of Judgment by the Court:

NOTICE

This is a notice to you that an Order Denying Flint Equipment Co.'s Dual Motion To Set Aside Default Judgment And Declare Default Judgment Void in this case has been filed in the Clerk of Court's Office. To obtain a certified copy, you may contact our office by phone (864) 467-8551 or email a request to bklukas@greenvillecounty.org. If you would like a copy via email, please provide a valid email address.

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

Craig Horger Allen Craig H. Allen, P.A. P.O. Box 10854 Greenville, SC 29603

Oscar W. Bannister Bannister & Wyatt, LLC P.O. Box 10007 Greenville, SC 29603 William Joseph Moore Jr. Gertz & Moore, LLP P.O. Box 456 Columbia, SC 29202

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2011CP2307943

John Deere Financial Fsb vs. Jerry A Bruce

FILED CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2013 AUG - 2 10:33

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.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 12(b), SCRCP;
 - Rule 41(a), SCRCP (Vol. Nonsuit);
 - Rule 43(k), SCRCP (Settled);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j) SCRCP;
 - 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; Statement of Judgment by the Court:

NOTICE

This is a notice to you that an Order Judgment Against Flint Equipment Company in this case has been filed in the Clerk of Court's Office. To obtain a certified copy, you may contact our office by phone (864) 467-8551 or email a request to cnohlitt@greenvillecounty.org. If you would like a copy via email, please provide a valid email address.

Dated at Greenville, South Carolina, this 2nd day of August, 2013.

Court Reporter:

PRESIDING JUDGE -

MAILED HARD COPY TO:

Oscar W. Bannister Bannister & Wyatt, LLC P.O.
Box 10007 Greenville, SC 29603

William Joseph Moore Jr. Gertz & Moore, LLP
P.O. Box 456 Columbia, SC 29202

Craig Horger Allen Craig H. Allen, P.A. P.O. Box
10854 Greenville, SC 29603

ATTORNEY(S) FOR THE PLAINTIFF(S)

** Copy to Attorney General's office- Unfair Trade Practice

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

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NOV 14 2013

SC Court of Appeals

Jerry A. Bruce

Flint Equipment Company

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: O. W. Bannister

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

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENS
 2013 AUG 21 A 10:39

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 :

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NOV 14 2013

INFORMATION FOR THE JUDGMENT INDEX

SC Court of Appeals

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)
Jerry A. Bruce	Flint Equipment Company	\$31,508.04
		\$
		\$

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.

Ed W. Moore
 Circuit Court Judge

2170
 Judge Code

7/23/13
 Date

For Clerk of Court Office Use Only

This judgment was entered on the 2 day of Aug, 20 13 and a copy mailed first class or placed in the appropriate attorney's box on this 2 day of Aug, 20 13 to attorneys of record or to parties (when appearing pro se) as follows:

O. W. Bannister
P. O. Box 10007
Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

W. Joseph Moore, Jr.
P. O. Box 456
Columbia, SC 29202

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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.

Lined area for additional information regarding the decision.