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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
First Judicial Circuit

_____

The Honorable S. Bryan Doby, Circuit Judge

_____

Appellate Case No.: 2025-00534

_____

Gilbert Anthony E. Valdez, ... Respondent,

v.

John P. Murray d/b/a Johnny's Marine,..... Appellant.

_____

BRIEF OF RESPONDENT

_____

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STATEMENT OF ISSUES ON APPEAL

1. Whether Appellant's arguments are properly preserved for appellate review where the issues were not raised to or ruled upon by the circuit court.

2. Whether the circuit court properly exercised its discretion in striking irrelevant and improper portions of Appellant's Answer under Rule 12(f), SCRCP.

3. Whether the circuit court correctly deemed Appellant's Requests for Admission admitted where they were properly served, Appellant failed to respond, and failed to seek leave to respond out of time.

4. Whether the circuit court correctly granted summary judgment where no genuine issue of material fact existed and the undisputed evidence established Appellant's liability as a matter of law.

5. Whether the circuit court's award of treble and punitive damages was proper where the undisputed facts demonstrated intentional, willful, and knowing misconduct, and the damages awarded complied with statutory and constitutional limits.

STATEMENT OF THE CASE

This case arises from Appellant John P. Murray's sale of a boat he never delivered. On October 12, 2021, Murray, doing business as Johnny's Marine, sold Respondent Gilbert A. Valdez a 1997 Bayliner for $50,000, issued a $10,000 rebate check, and promised to deliver the boat to Valdez by Christmas 2021. (R. pp. 51-54; R. pp. 80-81.) Valdez financed the purchase through Navy Federal Credit Union and paid the full purchase price. (R. pp. 51-53; 55-57.)

Murray accepted the funds, failed to deliver the boat, ignored repeated requests for delivery for almost three years, and refused to refund the $40,000 purchase price. (R. pp. 51-53; R. pp. 80-81.) Murray still possesses the boat. (R. p. 102, lines 10-24.)

Valdez's suit asserted revocation of acceptance, breach of contract, conversion, negligent misrepresentation, fraud, and violation of the South Carolina

Unfair Trade Practices Act ("SCUTPA"). (R. pp. 13-20.) Murray, proceeded pro se, filed a five-paragraph Answer generally denying liability but also inserting irrelevant allegations concerning settlement offers, a supposed altercation in July 2024, and claims about a different boat. (R. p. 22.)

On December 4, 2024, Valdez served Interrogatories, Requests for Production, and Requests for Admission by both regular mail and email. (R. pp. 63-83.) Murray did not respond.

On December 27, 2024, Valdez moved to strike Murray's Answer, or alternatively, to strike the improper allegations. (R. pp. 32-34.) On January 31, 2025, Valdez filed his unanswered Requests for Admission and affidavit in support of his contemporaneously filed Motion for Summary Judgment. (R. pp. 35-36; 51-53; 80-82.)

Both motions were heard on February 18, 2025. Murray appeared pro se but submitted no sworn evidence, affidavits, or exhibits. The Honorable S. Bryan Doby granted the Motion to Strike except for the first sentence of the Answer, a general denial, and granted summary judgment on all causes of action. The court found actual damages of $69,985, treble damages of $209,955 under SCUTPA, and punitive damages of $209,955 under the common law tort claims. (R. pp. 2-4; 5-11.)

Valdez moved for attorney's fees on February 26, 2025. Murray filed this appeal on March 18, 2025. Valdez moved to lift the automatic stay so the lower court could rule on the outstanding fee motion. That motion was granted on April 21, 2025. The fee motion was heard May 7, 2025, and the circuit court's Order

awarding attorney's fees was filed May 13, 2025. Murray did not appeal that order. Valdez filed his election of remedies October 29, 2025. (R. pp. 85-86.)

SUMMARY OF ARGUMENT

A pro se litigant is held to the same procedural and substantive standards as a licensed attorney. State v. Burton, 356 S.C. 259, 265 n.5, 589 S.E.2d 6, 9 n.5 (2003). Murray failed to meet those standards at every stage of this case. He did not properly answer the Complaint, ignored discovery, specifically Valdez's Requests for Admission, avoided communication with Valdez and the court, and filed no motions or other documents to preserve or protect his rights.

Murray's Answer did not comply with the South Carolina Rules of Civil Procedure. It contained "immaterial, scandalous, and irrelevant" allegations, including references to settlement discussions and events unrelated to the transaction at issue. The circuit court properly struck that material under Rule 12(f), SCRCP, leaving his general denial. Murray has shown no prejudice from that ruling.

Murray was properly served with Requests for Admission by mail and email. He admitted he was aware of them yet never moved to strike for nonservice nor did he seek leave to respond out of time. His service argument was never raised or ruled upon below and is therefore not preserved for appeal.

There is no genuine issue of material fact. Murray admitted receiving Valdez's money, failing to deliver the boat, and refusing to return the funds. These undisputed facts establish Valdez's claims as a matter of law.

Finally, Murray failed to preserve any challenge to the damages awarded.

He presented no argument or evidence below concerning treble or punitive damages, intent or willfulness, or any due process claim. Each of these issues is unpreserved and without merit.

The circuit court's orders striking improper material, deeming the Requests for Admission admitted, and granting summary judgment with treble and punitive damages are fully supported by the record and should be affirmed in all respects.

STANDARD OF REVIEW

In reviewing the grant of a summary judgment motion, the appellate court applies the same standard which governs the trial court: summary judgment is proper when "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP; Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 114-15, 410 S.E.2d 537, 545 (1991). Under Rule 56(c), SCRCP, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial. Baughman, 306 S.C. at 115, 410 S.E.2d at 545 (holding a party opposing summary judgment "must...'do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with 'specific facts showing that there is a genuine issue for trial.'" (quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87, 106 S. Ct. 1348, 1356, 89

L. Ed. 2d 538, 552 (1986); Kitchen Planners, LLC v. Friedman, 440 S.C. 456, 892 S.E.2d 297 (2023). "On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below." Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001); accord Williams v. Chesterfield Lumber Co., 267 S.C. 607, 610, 230 S.E.2d 447, 448 (1976).

"A motion to strike is addressed to the sound discretion of the [circuit court] and will not be disturbed in the absence of a clear showing of prejudicial error." S.C. Dep't of Health & Envtl. Control v. Fed-Serv Indus., Inc., 294 S.C. 33, 39, 362 S.E.2d 311, 314-15 (Ct. App. 1987); Skywaves I Corp. v. Branch Banking & Trust Co., 814 S.E. 2d 643 (Ct. App. 2018).

1. MANY OF APPELLANT'S ARGUMENTS ARE NOT PRESERVED FOR REVIEW.

A. Issues Not Raised to or Ruled Upon by the Circuit Court Are Waived.

It is axiomatic that an issue must be both raised to and ruled upon by the trial court to be preserved for appellate review. Moreover, an objection must be sufficiently specific to inform the trial court of the point being urged by the objector. Wilder Corp. v. Wilke, 330 S.C. 71, 497 S.E.2d 731 (1998). South Carolina does not recognize a "plain error" rule. A contemporaneous objection must be made to preserve an argument for appellate review. An appellant bears the burden of properly preserving all issues for review. Washington v. Whitaker, 317 S.C. 108, 451 S.E.2d 894 (1994); *Jean Hoefer Toal, Shahin Vafai & Robert A. Muckenfuss, Appellate Practice in South Carolina* 55 (2d ed. 2002).

When a trial court issues only a general ruling, a party must move under Rule 59(e), SCRCP, to obtain a specific ruling to preserve the issue for appeal. Noisette v. Ismail, 304 S.C. 56, 58, 403 S.E.2d 122, 124 (1991). The burden rests squarely on litigants to monitor their case and ensure that issues are properly raised and ruled upon. See McCall v. A-T-O, Inc., 276 S.C. 143, 276 S.E.2d 529 (1981) ("Lack of familiarity with legal proceedings is not an excuse."); H. Lightsey & J. Flanagan, *South Carolina Civil Procedure* 400 (2d ed. 1985); Goodson v. American Bankers Ins. Co. of Florida, 368 S.E.2d 687, 295 S.C. 400 (Ct. App. 1988) (the court will not hold a layman to any lesser standard than is applied to an attorney.)

B. Murray Failed to Preserve His Appellate Issues.

Murray's brief identifies four alleged errors:

1. That the circuit court erred in deeming Requests for Admission admitted because South Carolina law favors decisions on the merits;
2. That the court erred by striking portions of his Answer instead of liberally construing it;
3. That the court erred in granting summary judgment despite purported factual disputes; and
4. That the court erred in awarding both treble and punitive damages.

None of these arguments were raised to the circuit court or ruled upon. Murray did not move to withdraw or amend the deemed admissions under Rule 36(b), SCRCP, did not object to the order striking a portion of his Answer, did not file a Rule 59(e) motion challenging summary judgment, and did not move under Rules 52, 59, or 60 for clarification or reconsideration. Having failed to present or preserve any of these issues, Murray cannot raise them for the first time on appeal. Lucas v. Rawl Family Ltd. P'ship, 359 S.C. 505, 511, 598 S.E.2d 712, 715 (2004).

C. A Pro Se Litigant Is Held to the Same Standard as Counsel.

Murray's pro se status below does not relieve him of his obligation to comply with substantive and procedural rules. State v. Burton, 356 S.C. 259, 265 n.5, 589 S.E.2d 6, 9 n.5 (2003) ("A pro se litigant who knowingly elects to represent himself assumes full responsibility for compliance with the substantive and procedural requirements of the law."). The circuit court provided Murray ample opportunity to participate, respond to discovery, and seek legal assistance; his failure to do so cannot now be converted into appellate error.

D. Murray's Arguments on Appeal Differ from His Stated Issues.

Even if any issues had been preserved, Murray's appellate brief fails to argue the same points identified in his *Statement of Issues on Appeal*. For example, he claims the RFAs were improperly served, a different argument than the issue presented, which alleged that "precedent favors decisions on the merits." Raising one issue and arguing another does not preserve either. See Rule 208(b)(1)(B), SCACR; State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691 (2003); Fields v. Melrose Ltd. P'ship, 312 S.C. 102, 439 S.E.2d 283 (Ct. App. 1993) (An issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate court.); Jones v. Lott, 387 S.C. 339, 692 S.E.2d 900 (Ct. 2010).

E. The Appeal Should Be Dismissed or the Judgment Affirmed for Lack of Preservation.

Because none of the issues presented were properly raised or ruled upon below, and because the arguments made on appeal differ from those listed in the statement of issues, this appeal presents nothing for review. As South Carolina

appellate courts consistently hold, "This Court cannot address an issue not raised to the trial court." Wilder Corp., 330 S.C. at 76, 497 S.E.2d at 733. Accordingly, the appeal should be dismissed, or in the alternative, the circuit court's judgment should be affirmed on the ground that no preserved issue exists for review.

2. THE CIRCUIT COURT PROPERLY STRUCK IRRELEVANT AND IMPROPER MATERIAL FROM MURRAY'S ANSWER.

The circuit court acted well within its discretion in striking the irrelevant and improper allegations from Murray's Answer. Contrary to Murray's characterization, the court did not strike his entire pleading. The February 18, 2025 Order expressly left intact the first sentence, Murray's general denial of liability, thereby preserving his right to contest the allegations of the Complaint. The only portions removed were those wholly unrelated to the subject matter of this action, including:

(1) references to alleged settlement offers by Murray,

(2) inflammatory claims about an altercation occurring two-and-a-half years after the transaction at issue, and

(3) accusations involving a completely different boat sale.

These matters had no connection to whether Murray wrongfully retained Valdez's payment for the 1997 Bayliner that was never delivered. The allegations were therefore properly stricken under Rule 12(f), SCRCP, which authorizes a court to strike "any insufficient defense or any redundant, immaterial, impertinent or scandalous matter." Furthermore, Murray has not alleged nor shown prejudicial error.

A. The Court Did Not Strike the Pleading but Merely Excised Irrelevant and Impertinent Matter

Murray's assertion that his "Answer was struck" misrepresents the record.

The court's order plainly left the general denial intact. Murray retained the ability to deny liability, to contest damages, and to defend on the merits. He was not prevented from presenting a defense or offering proof at any later stage. The excision of irrelevant, immaterial, and scandalous matter does not amount to striking the entire pleading. Rule 12(f), SCRCP.

B. Murray Demonstrated No Prejudice or Relevance

Murray has never identified how any stricken material related to the issues framed by the pleadings, namely, whether he took Valdez's money and failed to deliver the purchased boat. His brief merely asserts that his facts were important but does not connect any stricken allegation to an element of Valdez's claims. Unsupported generalizations do not establish prejudice or reversible error. See Watts v. Bell Oil Co. of Ocean Drive, Inc., 266 S.C. 61, 63, 221 S.E.2d 529, 530 (1976) (holding a trial court will only be reversed when the record shows not only error but also prejudice); Wells Fargo Bank, NA, v. Smith, 398 S.C. 487, 730 S.E.2d 328 (Ct. App. 2012).

C. Liberal Construction Does Not Excuse Irrelevant or Scandalous Allegations

While pleadings are construed liberally to achieve substantial justice, especially for pro se litigants, liberal construction does not mean a defendant may include anything he wishes. Even under a relaxed standard, a pleading must contain "short and plain" statements of defenses relating to the controversy. Rule 8(b), SCRCP. The circuit court properly concluded that the removed content was neither short nor plain and bore no relation to the issues raised in the Complaint. Allegations about settlement offers, unrelated disputes, and personal altercations

are not protected by the principle of liberal construction.

D. The Issue Is Not Preserved

Finally, Murray never moved to amend his Answer. A litigant who fails to request leave to amend waives any challenge to the court's exercise of discretion. Having chosen not to seek amendment, Murray cannot now complain that his Answer should have been treated differently.

The circuit court's limited order was a proper exercise of its authority under Rule 12(f), SCRCP. The stricken allegations were immaterial, prejudicial, and unrelated to the claims arising from Murray's retention of Valdez's money. The court preserved Murray's general denial, afforded him the opportunity to defend, and caused him no prejudice. Its ruling should therefore be affirmed.

3. THE CIRCUIT COURT PROPERLY DEEMED MURRAY'S REQUESTS FOR ADMISSION ADMITTED

The circuit court correctly deemed the Requests for Admission ("RFAs") admitted under Rule 36(a), SCRCP. Murray was served with discovery by traditional mail and email and failed to respond within the time prescribed by the Rules. (R. pp. 82-83.) His belated claim of improper service is procedurally barred and substantively without merit.

A. Murray's Argument on Appeal Does Not Match His Stated Issue and Is Therefore Waived

Murray's *Statement of Issues on Appeal* asserts that the circuit court erred in deeming the RFAs admitted "because South Carolina precedent favors decisions on the merits." Yet his brief abandons that claim and instead argues that the RFAs were never properly served. An appellant may not raise one issue in his statement of issues and argue a different one in the body of his brief. Issues not

argued consistent with the statement of issues are waived. *See* Rule 208(b)(1)(B), SCACR; State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691 (2003).

B. The Issue Was Not Preserved Below

Even if the Court were to consider the service argument, it was never raised to or ruled upon by the circuit court. Murray did not move to set aside or withdraw the admissions, nor did he file a motion asserting lack of service or requesting leave to respond out of time. A party must both raise an issue and obtain a ruling to preserve it for appeal. Wilder Corp. v. Wilke, 330 S.C. 71, 497 S.E.2d 731 (1998). Because Murray neither objected to service nor sought relief under Rule 36(b), SCRCP, the issue is not preserved for appellate review.

C. The RFAs Were Properly Served Under Rule 5, SCRCP

Even if preserved, the record demonstrates that service was proper. A cover letter accompanying the RFAs shows service by regular mail to the same address listed in Murray's Answer, satisfying Rule 5(b)(1), SCRCP[1]. (R. p. 83.) A copy was also sent by email, providing an additional method of notice. (R. p. 82.) Murray's own statements at the hearing confirm that he was aware of the RFA, he admitted discussing the RFA with an attorney prior to the hearing. (R. 103:9-13.) Having received and ignored proper service, Murray cannot now claim surprise or unfairness. He likewise received the hearing notice by mail and appeared at the hearing, further confirming that mail service to that address was effective.

D. Murray's Failure to Respond Constituted Binding Admissions

[1] At the time of the Summary Judgment Hearing, the Clerk of Court had not been notified of any change of address by Murray. (R. pp. 107:23-108:1.)

Rule 36(a), SCRCP, provides that matters in a request for admission are deemed admitted unless answered or objected to within thirty days. Once admitted, the matter is "conclusively established." Rule 36(b), SCRCP. The circuit court thus properly relied on Valdez's unanswered RFAs in granting summary judgment. Murray's inaction, despite having notice and an opportunity to respond, left no genuine dispute of material fact for trial.

E. Murray Cannot Invoke Rule 36(b) After Ignoring His Procedural Remedies

If Murray believed justice required withdrawal or amendment of the admissions, Rule 36(b) provided a remedy. He never invoked it. A litigant who fails to seek relief under Rule 36(b) cannot later complain that the court relied on deemed admissions. Murray simply sat on his rights and now complains.

The Requests for Admission were properly served, properly deemed admitted, and properly relied upon by the circuit court. Murray's inconsistent appellate argument is waived, unpreserved, and meritless. The circuit court's ruling should be affirmed.

4. NO GENUINE ISSUES OF MATERIAL FACT EXISTED TO PRECLUDE SUMMARY JUDGMENT

A. The Standard Under Rule 56, SCRCP

Summary judgment is appropriate when "there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *Rule 56(c), SCRCP*; Kitchen Planners, LLC v. Friedman, 440 S.C. 456, 892 S.E.2d 297 (2023). Once the moving party meets its burden, the nonmoving party must present specific facts showing a genuine issue for trial, not mere allegations or

conclusory denials. Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 114-15, 410 S.E.2d 537, 545 (1991).

Murray presented no affidavits, testimony, or admissible evidence in opposition to summary judgment. His unsworn statements at the hearing and assertions regarding unrelated boats and settlement discussions are insufficient to create a triable issue of fact.

B. Murray's Own Admissions Establish Liability

The undisputed record shows: (1) Valdez paid Murray $50,000, later reduced to $40,000, for a 1997 Bayliner; (2) Murray accepted the funds; (3) Murray promised to deliver the boat; and (4) Murray neither delivered the boat nor refunded Valdez's payment. Murray admitted each of these facts at the hearing and through his unanswered Requests for Admission, which are deemed admitted under Rule 36(a), SCRCP. As the circuit court held, Murray's admissions eliminated any genuine factual dispute. (R. p. 6.)

Even in his own appellate brief, Murray acknowledges that he still has not delivered the boat to Valdez, that the vessel is not complete, and he has not returned Valdez's money. (Respondent's Brief p. 8.)

C. The Issues Murray Raises Are Immaterial to the Breach

Murray's references to a "second boat" and to purported later negotiations do not create material factual disputes. The second boat was not part of the original transaction or an issue raised in Valdez's complaint and therefore, is irrelevant to Murray's representations about and failure to deliver the Bayliner or his failure to refund Valdez's money. See Rule 401, SCRE (evidence must be relevant to a fact

of consequence).

Likewise, Murray's statements that the boat was "90 percent ready" or that he had "a lot of work invested" are immaterial. The only material questions are whether he accepted payment and whether he failed to deliver the boat or return Valdez's money. Those facts are conclusively established through Murray's admissions, failing to respond to the RFA (R. pp. 80-82.) and his admissions at the hearing (R. pp. 101:3-4; 102:5-6; 102:19-21.), and Valdez's affidavit. (R. pp. 51-53.)

D. Settlement Offers and Negotiations Are Inadmissible

Murray's reliance on his alleged offer to return $25,000 is also misplaced. Settlement negotiations cannot be used to create factual disputes or to avoid summary judgment. Rule 408, SCRE expressly excludes evidence of compromise offers or negotiations when offered to prove liability or the amount of a claim. Thus, his proposed settlement is inadmissible and irrelevant to the questions in this case.

E. The Record Supports the Circuit Court's Findings

The circuit court correctly found that given Murray's failure "to respond to Plaintiff's Requests for Admissions…these facts are deemed admitted, eliminating any genuine factual dispute." (R. p. 6.) Murray failed to participate in discovery, to submit any affidavits, or to identify any specific factual issue requiring a trial. In short, there was nothing for a jury to decide. The undisputed evidence established Valdez's claims as a matter of law.

The circuit court properly found that no genuine issue of material fact existed. Murray admitted the essential elements of liability, presented no

competent evidence to the contrary, and relied on immaterial matters and inadmissible settlement communications. The order granting summary judgment should therefore be affirmed.

5. THE AWARD OF TREBLE AND PUNITIVE DAMAGES WAS PROPER, NOT EXCESSIVE, AND DID NOT VIOLATE DUE PROCESS

A. Murray's Arguments Are Procedurally Barred and Not Preserved

Theories not presented to the circuit court and not ruled upon, are not preserved for review. Wilder Corp. v. Wilke, 330 S.C. 71, 497 S.E.2d 731 (1998). An appellant cannot raise new arguments in the body of a brief that do not correspond to the issues listed in the statement of issues. Rule 208(b)(1)(B), SCACR; State v. Dunbar, 356 S.C. 138, 587 S.E.2d 691 (2003). "Moreover, an objection must be sufficiently specific to inform the trial court of the point being urged by the objector." Wilder Corp. v. Wilke, 330 S.C. 71, 497 S.E.2d 731 (Ct. 1997).

Murray's *Statement of Issues on Appeal* alleges that the circuit court erred by awarding exemplary damages at the summary judgment stage, that intent and willfulness are jury questions, and that duplicative punitive remedies raise due process concerns. Yet, his argument section diverges entirely by touching on intent, willfulness, burden of proof, offset, and constitutional claims, none of which were raised below or developed in his appellate brief. The deficiency is further compounded as these "issues" are stated in a conclusory manner without discussion or context.

Accordingly, this Court should decline to consider Murray's undeveloped and unpreserved arguments.

B. Treble and Punitive Damages Were Properly Supported by Undisputed Evidence

The circuit court ruled on Valdez's six causes of action. The court awarded exemplary damages on the appropriate causes of action based on unrefuted evidence of willful and deceptive conduct. The court found that Murray intentionally retained Valdez's $40,000, repeatedly misrepresented the status of the boat, and continued to withhold both the boat and Valdez's money for more than three years. Those undisputed facts satisfy the "willful, wanton, or reckless" standard for punitive damages under S.C. Code Ann. §15-32-510 *et seq*. and establish a "willful and knowing" violation under the Unfair Trade Practices Act, S.C. Code Ann. §39-5-140(a). Nothing in the record suggests the circuit court imposed duplicative punishment.

C. Murray's Due Process Argument Is Unsupported and Inapplicable

Murray claims, without elaboration, that duplicative punitive remedies raise "constitutional due process concerns." Murray never raised these issues to the circuit court. His brief never identifies what those concerns are, how they apply here, or what constitutional provision was violated. Such conclusory references do not preserve a constitutional issue for review. *See* State v. Byram, 326 S.C. 107, 485 S.E.2d 360 (1997) (constitutional arguments must be raised and ruled upon to be preserved).

If Murray is claiming the award is excessive, due process limits punitive damages when the ratio of punitive to actual damages is grossly disproportionate. BMW of N. Am., Inc. v. Gore, 517 U.S. 559 (1996). Here, the circuit court's punitive award of $209,955 precisely matched the treble damages amount, a 3:1 ratio, well

within both federal and South Carolina limits. *See* S.C. Code Ann. §15-32-530(A) (punitive damages may be up to three times compensatory damages or $500,000, whichever is greater). The award therefore comports fully with due process.

D. Murray's "Offset" and "Jury Question" Claims Are Meritless

Murray's suggestion that "intent and willfulness are jury questions" ignores that the undisputed, deemed-admitted facts conclusively established intent. Murray admitted he received Valdez's money, failed to deliver the boat, and refused to refund the payment. Courts may determine intent as a matter of law when the evidence allows only one reasonable inference. See Brinkman v. Weston & Sampson Eng'rs, Inc., 435 S.C. 354, 867 S.E.2d 460 (Ct. App. 2021).

Murray's newly raised "offset" theory fares no better. Murray never pled offset as an affirmative defense, never quantified the alleged offset, and never presented evidence that the incomplete boat had any value. Raising this for the first time on appeal is improper and cannot defeat summary judgment.

E. The Election of Remedies Issue Is Moot

The circuit court's order expressly permitted Valdez to elect his remedy after attorney's fees were determined. Murray appealed before that process was completed. Valdez has since filed his election of remedies with the Dorchester County Clerk of Court, electing his conversion claim for actual and punitive damages and his UTPA claim for attorney's fees and costs. (R. pp. 85-86.) Austin v. Stokes-Craven Holding Corp., 387 S.C. 22, 691 S.E.2d 135 (2010). Accordingly, the issue of duplicative recovery is now moot.

F. The Cases Cited by Murray Are Inapposite

None of Murray's cited authorities support reversal. Futch v. McAllister Towing, 335 S.C. 598, 518 S.E.2d 591 (1999), involved a jury verdict, not summary judgment, and did not address willfulness or duplicative remedies. Clark v. Cantrell, 339 S.C. 369, 529 S.E.2d 528 (2000), addressed comparative negligence and evidentiary issues, not the standard for or the propriety of awarding punitive damages on summary judgment. Gamble v. Stevenson, 305 S.C. 104, 406 S.E.2d 350 (1991), discussed judicial review of jury-awarded punitive damages, not duplicative statutory and common-law remedies.

Murray's argument regarding treble and punitive damages is procedurally defective, unsupported by the record, and substantively meritless. The circuit court's award was based on undisputed facts, authorized by statute, and well within constitutional limits. The judgment should be affirmed in all respects.

CONCLUSION

The circuit court correctly applied the law. Murray's failure to respond to discovery, failure to offer any evidence, and willful retention of Valdez's funds warranted summary judgment and the resulting damages. The circuit court's Orders should be affirmed in full.

Respectfully submitted,

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Gilbert Anthony E. Valdez, ... Respondent,

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_____

CERTIFICATE OF COUNSEL

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I certify that the Brief of Respondent in this matter complies with Rule 211(b), SCACR.

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