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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
The Honorable George M. McFaddin Jr.
Presiding Judge, Fifteenth Judicial Circuit

Case No.: 2024-CP-26-01211
Appellate Case No. 2025-001035

Smarthomeenterprise LLC,.....Respondent,

v.

Lifetime Energy LLC and Logan Jacob Smith..... Appellants.

APPELLANTS' REPLY BRIEF

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I. RESPONDENT MISCHARACTERIZES THE ISSUE IN THIS CASE AS ONE OF TECHNICAL OBJECTIONS TO THE COMPLETION OF SERVICE INSTEAD OF ONE OF WHETHER OR NOT APPELLANT WAS EVER ACTUALLY SERVED AS ATTESTED TO BY THE PROCESS SERVER.

Respondent seeks to frame the issue in this case in such a manner that allows Respondent to avoid the overwhelming evidence tending to show the testimony of Mr. Spicer to be mistaken, at a minimum, as to the date of the interaction with Appellant Smith. Respondent asserts that "*Appellant cannot defeat service by refusing to accept service of process once service is attempted and the documents are made available*" (Appellant's Brief p. 16). Appellant Smith does not deny that to be the case. Mr. Spicer did not claim that Appellant Smith refused service. Mr. Spicer's testimony was that he completed service by identifying himself and handing the Complaint to Logan Smith who accepted the document without issue. Moreover, he claims he did this on April 7, 2024.

Unfortunately for Respondent, Mr. Spicer's testimony was directly contradicted by witnesses and documentary evidence thus making his credibility a critical issue in this case. Respondent argues that the Mr. Spicer's testimony should be viewed as more credible than the cumulative testimony of Appellant Smith and three (3) corroborating witnesses[1]. Even assuming that this was a reasonable conclusion regarding the question of whether Mr. Spicer identified himself before Appellant Smith returned to the inside of the residence and handed him the Complaint, it would require a complete disregard of the facts to conclude that the interaction occurred on April 7, 2024.

Respondent asserts that Appellant Smith's airline receipt, Airbnb reservation, and dinner receipt showing his presence in Houston Texas on April 7, 2025 "*do not conclusively establish*

[1] Respondent does not present anything from the lower court which provides a basis to doubt the veracity or credibility of these three witnesses.

Appellant Smith's precise whereabouts at the specific time Mr. Spicer testified he personally served Appellant Smith, nor do they foreclose the possibility of Appellant Smith's presence or access to the residence." (p. 13) While this may be technically true, insofar as nearly anything can be classified as "*possible*", the argument requires the Court to disregard the only reasonable and logical inference which can be drawn from the evidence which is that the interaction did not occur April 7, 2024, but instead on April 6, 2024.

When an affidavit of service contains, at least some errors, it raises doubts as to the credibility of the of the remaining allegations. The case of *Richardson Const. Co. v. Meek Eng'g & Const., Inc.,* 274 S.C. 307, 262 S.E.2d 913 (1980) provides guidance. In *Richardson*, the Supreme Court examined a situation in which a default judgment was entered against a party that denied ever being served admittedly contained an error, namely the omission of the Complaint. Though the Court's ruling in that case focused on the manner of service, the acknowledged incorrect factual assertion from the Plaintiff in the affidavit was noted by the Court in its decision.

In this case, it is clear that the interaction between Appellant Smith and Mr. Spicer could not have happened on April 7, 2024, as asserted by Mr. Spicer. When that is combined with the fact that the photograph provided does not show the completed service that Mr. Spicer says occurred later, and the corresponding testimony of Appellant Smith and the three witnesses, there exists sufficient evidence to doubt the reliability of the remainder Mr. Spicer's testimony.

II. RESPONDENT'S FAILURE TO PROVIDE A CALCULATION OF THE DAMAGES AMOUNT BOLSTER'S APPELLANT'S ASSERTION THAT THE DAMGES IN THIS CASE WERE UNLIQUIDATED

The Parties agree that contractual provision which gives rise to Respondent's claim for breach of contract involves a commission structure which is outlined in the independent contractor agreement. That commission structure involved taking the "*proceeds of the sale above $2.15 per watt base price minus the cost of financing or additional adder, if any*".

Though Respondent contends in its Initial Brief that the damages are "*derived from straightforward arithmetic*" (Appellants' Initial Brief p. 21), a straightforward arithmetic calculation that leads to the damages awarded by the lower court is absent both in the record of the lower court and in Respondent's Initial Brief. There is nothing in the record reflecting the sales that Respondent completed. There is nothing in the record reflecting how those sales compare to the threshold of $2.15 per watt base price. There is nothing in the record addressing costs of financing or any additional adder. In short, the damages awarded by the lower court is derived solely from Respondent's assertion that that is the amount owed.

Awarding damages based upon such a conclusory assertion of the amount owed is exactly what the Court in *Beckman Concrete Contractors Inc. v. United Fire & Gas Co*., 360 S.C. 127, 600 S.E. 2d 76 (Ct. App. 2004) rejected. Here, just as in *Beckman*, the Respondent asks the Court to treat the damages as liquidated merely because they have made a demand for a specific dollar amount. The complex commission structure outlined in the agreement is dissimilar to contractual claims in which the original contract contained a fixed price such as in a mortgage foreclosure or mechanic's lien action. As such, Appellants would have been entitled to damages even if Respondent had set forth a calculation of damages that included the missing portions of the commission structure. Respondent's failure to include such information simply shows that the damages award lacked any evidentiary basis and thus cannot be considered unliquidated.

CONCLUSION

For all of the foregoing reasons, and upon all of the foregoing authorities contained in this reply brief and in Appellants' Initial Brief, this Court should reverse the lower court's entry of default and for damages against the Appellants. Alternatively, should this Court not elect not to

reverse the finding of default, this court should vacate the entry of damages against the Appellants and remand the case to the lower court for a damages hearing.

Respectfully submitted this 12th day of January 2026

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