THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

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APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Jocelyn Newman, Circuit Court Judge

Patrick C. Fant, III, Circuit Court Judge

Case No. 2024CP4201687

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Appellate Case No. 2025-001957

Donald Roth,

Respondent,

v.

The River Bend Sportsman's Resort, Inc.; Riverbend Properties, Inc.; Ralph H. Brendle; Paul J. Barnwell; Robert T. Estes; and Paul Lehner,

Appellants.

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# APPELLANTS' INITIAL BRIEF

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## STATEMENT OF ISSUES ON APPEAL

1. Should the judge hearing discovery disputes have stricken the Answer of the Defendants entirely when the Defendants had produced significant information and represented to the Court that they had no further information to provide and with the Plaintiff seeking no further discovery.

2. Should the judge conducting the damages hearing have granted a judgment based solely upon the Plaintiff's representations as to value, without any evidence or expert witnesses or any consideration of debts on the property or other expenses?

## STATEMENT OF THE CASE

This case arises out of a business and property dispute involving a large tract of property in northern Spartanburg County which, for many years, operated as a hunting preserve and gun club. The first established entity was The River Bend Sportsman's Resort, LLC (hereinafter referred to as RSR). Plaintiff was at one time one of the owners of RSR, but later sold his interest back to RSR for twice what he paid. A second entity, Riverbend Properties, Inc. (RP) was formed during this period in which Plaintiff was to be a one-sixth (1/6th) owner, though he never paid anything for its acquisition and none of its expenses or mortgage indebtedness during his ownership.

This suit was filed by the Plaintiff seeking compensation from the sale of the property of RP on or about April 23, 2024, complaining that he did not receive proper notice as well as other causes of action including unfair trade practices. The Defendants admitted that Plaintiff was a shareholder in RP, but denied essentially all other allegations of the Complaint and specifically that Plaintiff was treated unfairly, that Plaintiff was due any more than was tendered when the RP property was sold, as well as any unfair trade practices.

Voluminous discovery was requested by the Plaintiff and a vast amount of information was supplied. There were several hearings held in which the Plaintiff contended that compliance with discovery was not being had and that things were being withheld. As explained to the Plaintiff and to the courts hearing the case in non-jury discovery hearings, Defendants had produced everything they had in discovery and could do no more. The last such hearing was held by Judge Fant on January 8, 2024, and an Order was issued by the Court on April 16, 2025, striking the

Answer of the Defendants. A Motion to Reconsider was filed by the Defendants on April 22, 2025, but was denied by Judge Fant by Order dated May 27, 2025. Notice of Appeal of this Order was filed by Defendants on September 23, 2025.

A hearing was subsequently held on August 5, 2025 before Judge Newman. An order dated August 25, 2025, was issued following a damages hearing and the amount was trebled due to the unfair trade practice allegation, resulting in an Order granting judgment in the amount of Three Million Four Hundred Twelve Thousand Three Hundred Eighty-one and no/100 ($3,412,381.00) Dollars. A Motion to Reconsider was filed August 14, 2025. No ruling has ever been made on this Motion. Out of an abundance of caution Defendants filed a Notice of Appeal as to the Order of Judge Newman on September 23, 2025.

## STANDARD OF REVIEW

In this action decided by judges alone, the *de novo* standard applies and this appellate court can reach its own conclusions.

## ARGUMENT\LAW\ANALYSIS

This case arises out of a business and property dispute involving a large tract of property in northern Spartanburg County which, for many years, operated as a hunting preserve and gun club. The first established entity was The River Bend Sportsman's Resort, Inc. (RSR). This had a number of owners which have changed somewhat over the years as people have bought or sold or passed away. The Plaintiff came to work at RSR sometime after its formation and was offered the opportunity to buy an ownership interest. While he was still employed with RSR, he did purchase an interest. The property of RSR included the hunting lodge itself, gun shooting ranges, sporting

clays, and other improvements to the property which were used in the operation of the business. During his tenure with RSR, the decision was made to purchase an adjoining tract of land. This was purchased in the name of Riverbend Properties, Inc. (RP) and the Plaintiff was given a one-sixth (1/6th) interest in the property. The parties subsequently had a disagreement and Plaintiff sold his interest in RSR (where the lodge and other improvements were located) back to RSR for twice what he paid for his interest. It is to be noted that the Plaintiff never paid anything toward the purchase of the RP property, which was and remained unimproved. There were also mortgages on the RP property which rendered this property without any significant equity. RSR, of which the Plaintiff was no longer an owner, paid all the bills for the RP property, including, but not limited to property taxes, maintenance, and mortgage payments.

Many years later, both properties, RSR and RP, were sold to an outside party. Only then did the Plaintiff come forward asking for a share of the proceeds of RP, which, as stated, had sizeable mortgages and very little equity.

RSR and RP were closely held companies and probably did not observe the corporate formalities as closely as one would want. There were meetings conducted early on but these diminished. Again, the Plaintiff had no ownership interest or right to vote on any issue involving RSR. When the sale occurred, a meeting was held. The owners of RSR and RP were given notice of the hearing and insist that notice was also given to the Plaintiff, although they have admitted to the court throughout discovery that they could not locate such notice. Part of this was due to the fact that the lodge which was originally constructed on the RSR property was demolished and a newer, much larger lodge constructed thereon and the Defendants have consistently contended that they are missing many records that were lost in the course of that transition. The Plaintiff was

entitled to notice of a meeting which was held to transfer the RP property to RSR and Defendants contend this was done. Since the equity in the RP property was very small, the consideration was very small with the recognition that sizeable mortgages would have to be paid at the time of sale.

This suit was filed by the Plaintiff seeking compensation from the sale of the property of RP, complaining that he did not receive proper notice as well as other causes of action including unfair trade practices. Voluminous discovery was requested by the Plaintiff and a vast amount of information was supplied. There were several hearings held in which the Plaintiff contended that compliance with discovery was not being had and that things were being withheld. As explained to the Plaintiff and to the courts hearing the case, there was not an intentional withholding of information but simply that certain documents did not exist whether this was due to the loss of documents during the move from one lodge to the other or simply a failure to keep full records as a large corporation would do. Nonetheless, a great deal of information was provided. The Plaintiff also sought and received a considerable amount of information by subpoena. The Plaintiff never sought or requested any deposition testimonies from any of the Defendants which would have confirmed the lack of documents and information on certain issues.

Nonetheless, Judge Fant issued an order dated April 16, 2025, striking the answer of Defendants.

A hearing was subsequently held to establish the amount of Plaintiff's damages before Judge Newman. An order dated August 25, 2025, was issued following a damages hearing and the amount was trebled due to the unfair trade practice allegation.

From both of these orders, Defendants appeal.

**Order of the Honorable Patrick C. Fant, III dated April 16, 2025**

Defendants respectfully submit that the order of Judge Fant should be reversed. As stated and will be contained in the Designation of Matter, a considerable amount of information was provided. Plaintiff also had information shareholder rights about these matters for years, without complaint, inquiry or dispute. In discovery he never sought depositions from any of the Defendants which would have confirmed the assertions in the many answers to interrogatories, requests for admission and requests to produce which were provided. The fact that the Defendants could not provide information they did not have or did not exist is not a reason to strike their Answer with no proof that this lack of information or documents was intentional or intended to infringe upon the rights of the Plaintiff.

As to this aspect of the case, the case before the Court is remarkably similar to Karppi v. Greenville Terrazzo Co., Inc., 357 S.C. 538, 489 S.E. 2d 679, decided June 30, 1997.

> The imposition of sanctions is generally entrusted to the sound discretion of the Circuit Court. Downey v. Dixon, 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct.App.1987). A trial court's exercise of its discretionary powers with respect to sanctions imposed in discovery matters will be interfered with by the Court of Appeals only if an abuse of discretion has occurred. Clark v. Ross, 284 S.C. 543, 328 S.E.2d 91 (Ct.App.1985). The burden is upon the party appealing from the order to demonstrate the trial court abused its discretion. Clark, 284 S.C. at 570, 328 S.E.2d at 107. An abuse of discretion may be found where the appellant shows that the conclusion reached by the trial court was without reasonable factual support and resulted in prejudice to the rights of appellant, thereby amounting to an error of law. Dunn [*682] v. Dunn, 298 S.C. 499, 502, 381 S.E.2d 734, 735 (1989) (citing Darden v. Witham, 263 S.C. 183, 209 S.E.2d 42(1974).
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> Rule 37 expressly grants the trial court power to order judgment by default for either the violation of a court order, or, upon motion, for a party's failure to respond to certain discovery requests. Rule 37(b)(2)(C) & (d), SCRCP. However, when the court orders default or dismissal, or the sanction itself results in default or dismissal, the end result is nevertheless harsh medicine that should not be administered lightly. See generally Orlando v. Boyd, 320 S.C. 509, 466 S.E. 2d

353 (1996); Baughman v. American Tel. & Tel. Co.,306 S.C. 101, 410 S.E.2d 537 (1991). Before invoking this severe remedy, the trial court must determine that there is some element of bad faith, willfulness, or gross indifference to the rights of other litigants. See Orlando; Baughman. The sanction imposed should be reasonable, and the court should not go beyond the necessities of the situation to foreclose a decision on the merits of a case. Balloon Plantation v. Head Balloons, 303 S.C. 152, 399 S.E.2d 439 (Ct.App.1990). The sanction should be aimed at the specific misconduct of the party sanctioned. Balloon Plantation, 303 S.C. at 154, 399 S.E.2d at 440. Furthermore, whatever sanction is imposed should serve to protect the rights of discovery provided by the Rules of Civil Procedure. Downey, 294 S.C. at 45, 362 S.E.2d at 318; Kershaw Co. Bd. of Educ. v. United States Gypsum Co., 302 S.C. 390, 396 S.E.2d 369 (1990). We reluctantly agree with the appellant that the trial court abused its discretion by ordering the sanction involved in this appeal, because the sanction imposed was unduly harsh under the circumstances, and because the sanction was not limited in scope with regard to the violation by the appellant of the court's order. See Balloon Plantation. The need for the trial court to narrowly tailor its sanction to the offense committed by a party is never more evident than in cases involving multiple parties. Where, as here, multiple parties are involved, the trial court must closely scrutinize the dynamics of the litigation and be extremely cautious before striking the pleadings of a transgressing party because of the effects such action is likely to have on the other parties. Although the trial court made the requisite finding that Ogden Teck "intentionally and willfully violated the Orders of this Court," the court failed to properly tailor its sanction to address the specific violation committed by Ogden Teck vis-a-vis Karppi. In striking Ogden Teck's pleadings in their entirety, including its cross-claim against Terrazzo, the trial court went beyond what was reasonably necessary to redress the wrong that was committed by Ogden Teck. There is no evidence in the record that Terrazzo's rights of discovery have been [**544] violated by Ogden Teck. Neither has Terrazzo moved for any relief due to any alleged misconduct by or on behalf of OgdenTeck. Dismissal of Ogden Teck's potentially meritorious cross-claim against Terrazzo serves no one's interest but Terrazzo's. Terrazzo's discovery rights are simply not the discovery rights that the trial court was properly protecting by imposing the sanction in this case, and it was an abuse of the court's discretion to attempt to do so in this instance.

For all of the reasons set forth in Karppi and Balloon Plantation v Head Balloons, Defendants contend that this was a drastic remedy which should not have been imposed without the clear findings recited in these cases. The Plaintiff failed to pursue any other avenues of discovery which he chose, including but not limited to depositions. Had that revealed deficiencies

in discovery responses, that could have been addressed. Particularly with the unfair trade practice allegations, this drastic remedy should not have been invoked. Defendants can always impeach, at deposition or trial, if further discovered through depositions of parties, bankers, accountants or otherwise, shows that the Defendants were not forthcoming or withheld information which was relevant. Such evidence, if proven, would only enhance Plaintiff's bad faith claims. Plaintiff had every right to pursue such but failed to do so.

**Order of the Honorable Joycelyn Newman dated August 25, 2025**

Ths problem was compounded by the damages hearing which was held before Judge Newman. Obviously, the Defendants had been severely prejudiced by the ruling of Judge Fant striking their Answer. The hearing before Judge Newman, however, failed to recognize that, even though the Defendants found themselves essentially in default, there was no appropriate proof of damages presented. Rule 55 of the SCRCP deals with default judgments. There is no evidence to support that Rule 55 (b) (1) is invoked as there was no proof of liquidated damages or some certain amounts. Consequently, the Plaintiff seeking the default judgment must provide proof of the amount of damages. This principle has been firmly established since Howard v. Holiday Inns, Inc. 271 S.C. 238, 246 S.E. 2d 880 (1978). Many other cases have followed which are cited in the case Jackson v. Midlands Human Resources, 296 S.C. 526, 374 S.E. 2d 505 (1988), further the conclusion reached in Jackson applies directly to this case.

> The burden of proving damages for breach of a contract rests on the plaintiff. Baughman v. Southern Railway Co., 127 S.C. 493, 121 S.E. 356 (1924). Where a plaintiff seeks special damages in addition to his general damages, he must plead and prove both the fact of damage and the amount of damage. Kline Iron & Steel Co. v. Superior Trucking Co., 261

S.C. 542, 201 S.E.2d 388 (1973). If the plaintiff's proof is speculative, uncertain, or otherwise insufficient to permit calculation of his special damages, his claim should be denied. See Piggy Park Enterprises, Inc. v. Schofield, 251 S.C. 385, 162 S.E.2d 705 (1968).

In a default case, the plaintiff must prove by competent evidence the amount of his damages, and such proof must be by a preponderance of the evidence. Howard v. Holiday Inns, Inc., supra. Although the defendant is in default as to liability, the award of damages must be in keeping not only with the allegations of the complaint and the prayer for relief, but also with the proof that has been submitted. Lewis v. Congress of Racial Equality, 275 S.C. 556, 274 S.E.2d 287 (1981); see also Renney v. Dobbs House, Inc., 275 S.C. 562, 274 S.E.2d 290 (1981) (it is incumbent upon the judge to make a judicial determination of the amount recoverable based on the proof). A judgment for money damages must be warranted by the proof of the party in whose favor it is rendered. Wingard v. Lee, 287 S.C. 57, 336 S.E.2d 498 (Ct.App.1985).

In the case of a lost sale of a house, the proper measure of damages is the difference between the contract price and either (1) the fair market value of the house on the date of the breach or (2) the price at which the house is subsequently sold. Bannon v. Knauss, 282 S.C. 589, 320 S.E.2d 470 (Ct.App.1984); Benya v. Gamble, 282 S.C. 624, 321 S.E.2d 57 (Ct.App.1984); Barr v. MacGlothlin, 176 Va. 474, 11 S.E.2d 617 (1940). In this case, the Jacksons presented no evidence from which either differential could be calculated. Therefore, the judge should have denied their claim for special damages. Instead, he awarded them the full price on the Brown contract. This award was clearly excessive. At best, the Jackson's damages were no more than the difference between the price on the Brown contract and the price obtained at the foreclosure sale. By awarding the full contract price without deduction, the judge committed an error of law.

This is exactly what occurred in Jackson where the court simply accepted the gross amount sought by the Plaintiff where the court awarded the full price sought by the Plaintiffs which the Court found to be "clearly excessive" and the Court "committed an error of law." Also see Battle v. Ozmint, No. 2:12-CV-1350-CMC-BHH, 2014 WL 1342616 (D.S.C. Mar.11, 2014) (stating that failure to timely respond to discovery requests does not entitle a party to default judgment).

It is no exaggeration to say that there was no proof of an amount of damages presented at the hearing. The transcript of the hearing makes clear that the only witness presented by the

Plaintiff was the Plaintiff himself. There was no testimony from any real estate appraiser or business expert as to the value of the property and hence the value of his ownership interest. In fact, it was admitted that there were substantial mortgages on the property, but the court refused to take those into consideration, accepting instead the Plaintiff's assertion as to the gross amount of the property when, at best, the amount should have been the net amount following the payment of any other debts such as mortgages, not to mention that the Plaintiff made no accounting for the fact that he had paid nothing for his interest in the property and had never contributed any funds toward payment of mortgages, taxes, insurance, maintenance and any other costs of owning the property. There simply was no basis presented to the court as to what actual damages might be, if any, much less that this gross amount be trebled even in spite of the order of Judge Fant.

## CONCLUSION

Defendants respectfully submit that both rulings as to which they appeal are erroneous. There production of discovery was in good faith. They simply could not produce things they did not have.

There was absolutely no proof on which a court could rely as to the value of the Plaintiff's interest in the property. The court cannot base the judgment amount solely on the Plaintiff's request. The Plaintiff chose not to present any expert testimony establishing a value of the property or a value of his minority ownership interest. Surely either one, had they been presented, would have further recognized the mortgages which existed on the property and which had to be paid before it could be sold. Plaintiff, who had never paid anything toward this property has no right to a windfall as to property for which others have paid all of the expenses for many years. Defendants respectfully submit that both orders should be reversed, that discovery should be

allowed to proceed and if and when the case comes before a court for a damages hearing, proof be presented to support any such judgment.

Respectfully submitted

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