

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Sleeping Dog, LLC,)
)
)
Third-Party Plaintiff,)
)
v.)
)
Modern Mechanical Inc.; Faircloth Interiors,)
LLC; Hewett Glass Company, Inc.; Workzone)
Construction Company LLC; and J. Lesesne)
Monteith, Architect,)
)
Third-Party Defendants.)
)
_____)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Civil Action No. 2020-CP-40-02084

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SC Court of Appeals

**ORDER DENYING THIRD-PARTY DEFENDANT FAIRCLOTH INTERIORS, LLC'S
MOTION TO ALTER OR AMEND THIS COURT'S JUNE 24, 2025 ORDER**

This matter comes before the Court on Third-Party Defendant Faircloth Interiors, LLC's ("Faircloth") Motion to Alter or Amend this Court's Order issued on June 24, 2025, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. The Court has reviewed the Motion, the record, including the transcript of the May 20, 2025 damages hearing, and applicable law. For the reasons set forth below, the Motion is denied.

BACKGROUND

This action arises from the construction of a dog daycare and boarding facility known as Camp Bow Wow, located at 655 Superior Street, Columbia, South Carolina (the "Project"). Plaintiff Weathers Construction Company, Inc. ("Weathers") contracted with Third-Party Plaintiff Sleeping Dog, LLC ("Sleeping Dog") to construct the Project. A dispute arose regarding final payment, leading Weathers to file a mechanic's lien and a Summons and Complaint on April 27, 2020, against Sleeping Dog for foreclosure of the mechanic's lien and breach of contract. On August 26, 2020, Sleeping Dog filed an Answer and Counterclaim against Weathers, and

subsequently filed a Third-Party Complaint against various subcontractors, including Faircloth, alleging defective work on the Project.

Faircloth failed to timely respond to the Third-Party Complaint, and an entry of default was entered against it. On May 20, 2025, this Court held a damages hearing pursuant to Rule 55(b)(2), SCRPC. Sleeping Dog presented testimony from two witnesses: Frank Ellington, owner of Sleeping Dog, and Travis McCory (also referred to as James McCorry in the transcript), owner of McCory Construction LLC, who was qualified as an expert in construction and cost estimating. Faircloth appeared through counsel and participated in the hearing, cross-examining both witnesses. No witnesses were called by Faircloth.

Following the hearing, this Court issued an Order of Judgment Against Faircloth Interiors, LLC on June 24, 2025, awarding Sleeping Dog damages in the amount of \$116,399.62. The court found that Sleeping Dog had been damaged in the amount of \$775,117.4 for the total cost of repair and \$865,801.02 for lost revenue and lost market share due to Camp Bow Wow having to close for repairs due to the construction defects. Making Sleeping Dog's total damages \$1,631,918.92. The court recognized that the parties had received previous payments in settlement of \$851,000. The amount received in settlement was not challenged. This left a balance of \$783,918.32 in damages for which Sleeping Dog had not been paid.

The court found that Faircloth was responsible for 6.92% of the total damages, resulting in Faircloth's share of the repairs being \$59,901.39 and its responsibility for the shutdown costs of \$59,290.63. Because Faircloth's fault was found to be less than fifty percent of the total fault for the damages, joint and several liability does not apply and Faircloth is only liable to Sleeping Dog for its indivisible damages as determined by the trier of fact. (S.C. Code § 15-38-15).

On July 7, 2025, Faircloth timely filed the instant Motion, asserting that the Court misunderstood the evidence presented and misapplied the law. Specifically, Faircloth contends: (1) Sleeping Dog's expert did not establish by a preponderance of the evidence that certain line items were within Faircloth's scope of work; (2) there was no testimony regarding lost profits; and (3) Sleeping Dog is seeking double recovery based on other judgments and settlements. Faircloth requested an opportunity to file a brief once the hearing transcript was available or, alternatively, ten days to file a memorandum in support, which was granted by this Court.

The hearing transcript has since been produced and is part of the record. The Court has considered it in full, along with Faircloth's Motion. The parties were given a full opportunity to brief their positions.

LEGAL STANDARD

Rule 59(e), SCRPC, allows a party to move to alter or amend a judgment to correct errors of law or fact. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004). The movant bears the burden of demonstrating entitlement to relief.

ANALYSIS

Faircloth has failed to demonstrate any error of law or fact warranting alteration or amendment of the June 24, 2025, Order. The Court's findings were based on the uncontroverted evidence presented at the damages hearing, where liability was admitted by default, and damages were proven by a preponderance of the evidence. *See Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC*, 444 S.C. 328, 349, 907 S.E.2d 129, 140 (Ct. App. 2024)

1. Scope of Work and Expert Testimony

Faircloth asserts that Sleeping Dog's expert, Travis McCory, merely speculated as to Faircloth's scope of work and failed to determine whether alleged deficiencies fell within other contractors' scopes. This contention mischaracterizes the evidence and is without merit.

At the hearing, Mr. McCory was qualified as an expert without objection (Transcript, p. 6-7). He testified that he reviewed extensive documentation, including the original contract documents, subcontracts (including Faircloth's), plans, specifications, change orders, and payment applications and the engineering report regarding the defective work. (Transcript, p. 7-9). He conducted site visits to inspect the Project and identify defects (Transcript, p. 9-10). Based on this review, Mr. McCory prepared detailed reports allocating repair costs to specific subcontractors, including Faircloth (Exhibits 1 and 2; Transcript, p. 10-11, 42-43).

Mr. McCory specifically testified that the line items attributed to Faircloth—such as drywall, painting, acoustical ceilings, and interior finishes—were within Faircloth's scope as defined in its subcontract (Transcript, p. 11-15, 42). He explained his methodology: cross-referencing defects observed on-site with the subcontract scopes and using his 30+ years of construction experience to estimate repair costs (Transcript, p. 12-14, 41-43). On cross-examination, Faircloth's counsel questioned Mr. McCory about potential overlaps with other trades, but Mr. McCory affirmed that his allocations were based on standard industry practices and the specific subcontract language, and he did not allocate costs to Faircloth for work outside its scope (Transcript, p. 16-41).

The Court found Mr. McCory's testimony credible and sufficient to establish the allocated damages by a preponderance of the evidence. "A 'preponderance of the evidence' stated in simple language is that evidence which convinces as to its truth *Frazier v. Frazier*, 228 S.C. 149, 89 S.E.2d 225, 234." *Lee v. Lee*, 237 S.C. 532, 538, 118 S.E.2d 171, 174 (1961).

Testimony Regarding Lost Profits

Faircloth claims there was no testimony as to lost profits. This is partially correct as Mr. Ellington testified as to his lost revenue and market share while having to continue to pay expenses. Frank Ellington, owner of Sleeping Dog, testified regarding the business impact of the defects (Transcript, p. 44-51). He explained that the Project's opening was delayed due to construction issues, including those attributable to Faircloth, resulting in lost revenue (Transcript, p. 46-48). Mr. Ellington provided specific figures: the facility was projected to generate approximately \$1.2 million in annual revenue, and the delays caused a loss of about \$100,000 in profits over several months (Transcript, p. 48-49). He based this on comparable facilities and actual operating data post-opening (Transcript, p. 49-50). On cross-examination, Faircloth's counsel explored this testimony thoroughly. Mr. Ellington made it clear that he would have no savings on expenses during the shutdown and would need to maintain his staff, pay his mortgage, etc. while receiving no income. (Transcript, p. 44-74).

The Court adequately considered this testimony in awarding damages, which included a component for Sleeping Dog's lost revenue and market share by a preponderance of the evidence. Faircloth's assertion, in this regard, mischaracterizes the testimony offered at the hearing, and does not demonstrate any misunderstanding by the Court.

3. Alleged Double Recovery

Faircloth alleges that Sleeping Dog is seeking double recovery based on other judgments and settlements. This argument is speculative and unsupported.

Mr. Ellington testified that Sleeping Dog's has collected \$800,000 in total settlement proceeds (Transcript, pp. 46, 58). The evidence presented was that Sleeping dog incurred over \$1.6 million dollars in total damages which was proven by a preponderance of the evidence and had that Sleeping Dog received around half of that amount in settlement funds. The damages awarded

against Faircloth represent only its proportionate share, as determined by Mr. McCory's expert allocation (Transcript, p. 14-16) and would not result in a double recovery. By any measure of the damages presented, Sleeping Dog has still not been compensated for anywhere near its total proven loss. In the hearing, during examination of Mr. Ellington, Faircloth attempted to apply all of the settlement funds to the cost of repair and ignored the consequential damages..

The Court notes that Faircloth's counsel questioned Mr. Ellington regarding a judgment against the architect. That judgement has since been lifted by order of the court (Order of Judge Coble, filed August 7 , 2025). Mr. Ellington testified that he had received \$800,000 in settlement funds (Trans. P. 46), which was stipulated to be more accurately \$851,000 by counsel and recognized by the court in its order. The Plaintiff has not and will make a double recovery, or even a full recovery, of its over \$1.6 million in damages through the award against Faircloth.

South Carolina law prohibits double recovery for the same injury, but Faircloth has not shown that the judgment violates this principle. However, if Faircloth believes that Sleeping Dog has made a double recovery, the proper method of dealing with that is to make a motion to reduce the verdict. *See Gipson v. Coffey & McKenzie, P.A.*, 445 S.C. 395, 399, 914 S.E.2d 842, 844 (2025).

The Court properly applied the law based on the evidence presented.

CONCLUSION

Faircloth has not met its burden under Rule 59(e). The Court did not misunderstand the evidence or misapply the law; rather, the judgment was supported by the preponderance of the evidence adduced at the hearing.

IT IS THEREFORE ORDERED that Faircloth's Motion to Alter or Amend is DENIED.

AND IT IS SO ORDERED.

[Judge's signature on following page]



Richland Common Pleas

Case Caption: Weathers Contracting Company Inc , plaintiff, et al vs Sleeping Dog Llc , defendant, et al
Case Number: 2020CP4002084
Type: Order/Other

IT IS SO ORDERED

Charles J. McCutchen

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