

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF HORRY )  
 )  
 LaBruce Properties, LLC, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Beverly P. Davidson and Charles D. )  
 Thomas d/b/a Backyard Retreat, Inc., )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
 CASE NO.: 2009-CP-26-8718

ORDER DISMISSING COUNTERSUITS

FILED  
 Horry County  
 2014 MAR 20 AM 11:14  
 MELANIE HUGGINS-WARD  
 CLERK OF COURT

Plaintiff's attorney: Frank H. DuRant  
 Defendants' attorney: Marshall Biddle  
 Date of hearing: March 17, 2014

This matter was referred to me with finality pursuant to the Order of the Honorable Larry B. Hyman, Circuit Court Judge. The Plaintiff leased two commercial spaces to the Defendants pursuant to a written lease agreement. The Defendants failed to pay the rental and the Plaintiff filed suit to eject them and to collect the unpaid rental. The case was transferred from the Magistrate Court when the Defendants voluntarily left the premises. The Defendants filed a written Answer and "Countersuit" where they claimed defensive setoffs against the Plaintiff's claims. The Plaintiff's motion for summary judgment was granted by Judge Steven John and judgment was awarded against the Defendants in the amount of \$43,928.00 on July 6, 2011. This judgment was not appealed.

On September 13, 2011, Judge John denied the Defendants pro se motion for reconsideration. At that hearing, the Defendants requested that the Court decide whether the "countersuit" survived the summary judgment issued by the Court. Judge John required in the 9/13/11 Order that the Defendants to file and serve appropriate legal requests for the Court to

consider whether the "setoff" or countersuit survived within 30 days or they would be deemed "abandoned." No motion was filed by the Defendants on this specific legal issue of the survivability of the "countersuit," although the Defendants did file a motion for summary judgment.

No payment has been made on the judgment. The Defendants, on a pro se basis, contacted the scheduling Clerk and had the case placed on the non-jury roster for the purposes of their "countersuit." The Plaintiff's claim against the Defendants was reduced to judgment on July 6, 2011, when the Defendants failed to timely and properly serve and file any affidavits opposing the Plaintiff's motion for summary judgment. The Defendants allege that they can separately assert their "countersuit" claim as a separate cause of action that survived the granting of judgment against them. The Plaintiff moved to dismiss the claim as being res judicata, as to issue and claim preclusion.

At the hearing, the Plaintiff properly objected to any testimony being presented by the Defendant concerning the validity or the amount of the judgment rendered by the Court. Notwithstanding this proper objection, the Defendant presented testimony from the Plaintiff and the Defendants on these issues. Based upon the testimony and evidence received, I find the following as matters of fact and conclusions of law:

1. That judgment was properly rendered against the Defendants on July 6, 2011 and is not subject to challenge at this hearing.
2. That I have examined the written "countersuit" filed with the Court and I hold, as a matter of law, that the defense is a set-off or defensive pleading and not a separate claim for monetary damages against the Plaintiff.

3. That the Defendants failed to present any testimony or evidence to support their \$8,800.00 claim against the Plaintiff based upon cracks in the floor and ants and the Plaintiff's use of the parking lot. These claims were abandoned by the Defendants when they failed to present any testimony to support the claim or any damages therefrom.

4. That the written lease did not require the Plaintiff to credit the Defendants with the \$6,784.00 cost the Defendants incurred in up-fitting the building for their use and is an improper claim for setoff.

5. That the Defendants failed to present any credible testimony to support a setoff based upon the signs placed at the premises. The Defendants elected not to place a lighted sign on the building. The Plaintiff placed a sign pole with power on the premises as required by the lease. These Defendants are not entitled to rental credit for what they voluntarily chose to do or not do at the leased premises.

6. That the amount of rent due under the lease was judicially determined when summary judgment was granted to the Plaintiff. Despite this holding, I did not believe the Defendants' testimony that they did not get "credit" for cash payments made to the Plaintiff

7. That I conclude as a matter of law that the Defendants did owe rental for the term of the lease ending on June 30, 2009. The written lease requires the payment of rental during the term of the lease and would require the Plaintiff to credit rent received during this period from a third party. It is undisputed that no rental was received. These issues were judicially decided by the Court in 2011 and are not subject to challenge now.


8. That the Plaintiff admitted that it made a \$3,000.00 error in computing the amount of rental due from the Defendants, as no rental was due for the month of July 2009. The Plaintiff

has agreed to reduce its judgment by such amount. Based upon such agreement, the rental will be reduced, nunc pro tunc, in such amount.

Based upon the foregoing, it is therefore Ordered that the Plaintiff's motion to dismiss the countersuit of the Plaintiff is granted as the claim was determined judicially when summary judgment was granted; and were furthermore abandoned when not properly brought before the Court. Even if the Plaintiff's motion was not granted, I have reviewed the evidence and testimony, and I find for the Plaintiff on the claims made and asserted in the Countersuit.

Based upon the consent of the Plaintiff, it is ordered, nunc pro tunc, that the judgment awarded be reduced by the sum of \$3,000.00 to correct an inadvertent error made by the Plaintiff in the amount of rental due. The Judgment, except as the reduction in the amount, shall remain in full force and effect.

AND IT IS SO ORDERED.

  
RALPH STROMAN  
Special Master

March 20, 2014  
Conway, South Carolina

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

JUDGMENT IN CIVIL CASE

CASE NO. 2009 CP-26-8718

LABRUCE PROPERTIES, LLC

BEVERLY P. DAVIDSON, ET AL

*PAID*  
 4/25/11

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: FRANK H DURANT

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(c), 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 (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 : AMOUNT OF JUDGMENT AWARDED ON JULY 6, 2011 TO BE REDUCED TO \$37,639.56, NUN PRO TUNC, PLUS ATTORNEYS FEES OF \$839.56 AND INTEREST FROM JULY 6, 2011 FROM THIS BALANCE

**INFORMATION FOR THE JUDGMENT INDEX**

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)
LABRUCE PROPERTIES, LLC	BEVERLY P DAVIDSON AND CHARLES D. THOMAS, JOINTLY AND SEVERALLY	\$37,639.56 PLUS \$839.56, PLUS INTEREST FROM 7/6/11 AT THE RATE FOR JUDGMENTS
		\$
		\$

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.

*Durant*  
Circuit Court Judge  
*Special Referee*

*2015*  
Judge C

*March 20, 2014*  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of MARCH, 2014 and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 2014 to attorneys of record or to parties (when appearing pro se) as follows:

FRANK H DURANT  
PO BOX 960  
MYRTLE BEACH, SC 29578  
ATTORNEY(S) FOR THE PLAINTIFF(S)

MARSHALL BIDDLE  
4012 POTAL WAY, SUITE A  
MYRTLE BEACH, SC 29579  
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.