

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS
Civil Case Number: 2013-CP-42-05437

Joseph Anthony Gelotte,)
)
Plaintiff,)

ORDER

-vs-

C.A. No.: 2011-CP-42-4630

Davis Roofing and Maintenance,)
LLC, and Jerry E. Davis)
)
Defendants.)

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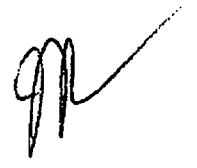
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SC Court of Appeals

This matter came before the court on May 7, 2014 for a trial on the merits. Plaintiff was present at the hearing with his attorney, Mr. Donald C. Coggins, Jr., Esq. The defendant was not present at the hearing but was represented by counsels of record Mr. Larry Eugene Gregg II, Esq. and Mr. T. Camden Shealy, Esq. Prior to taking testimony, defense counsel requested the hearing to be continued because the defendant was not present. The motion was denied.

After ruling on the request for continuance, the case proceeded with a trial on the merits. This is a claim for unpaid wages in the nature of unpaid commissions. As admitted by the defendant in his assertion of a counterclaim, there was an employment relationship between the defendant and plaintiff, the terms of which were expressed in an e-mail from March 5, 2011.

The terms of the relationship, as described in the March 5, 2011 email, were that Mr. Davis would be both a roofing salesman and a sales trainer. The agreement specified that Mr. Davis would advance Mr. Gelotte \$1,500 dollars per week and settle up with him on his commission once per month between the first and the tenth of each month. Commission would be 20 percent of the net profit after all expenses have been totaled and subtracted from the job.



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SPARTANBURG COUNTY

The e-mail also stated that Mr. Gelotte was to receive vehicle compensation and compensation for other expenses such as office supplies and equipment.

The plaintiff was the only witness called at the hearing. The plaintiff appeared to the court to be credible while on the witness stand, and the plaintiff's testimony was further supported by a detailed accounting of the work he performed, the pay he did receive, and the additional pay he should have received from the defendant. Despite any inconsistencies revealed during cross-examination, the greater weight of the evidence clearly supports the plaintiff's position that he was hired to be a roofing salesman and he was to be paid in accordance with the agreement set forth in the confirming email.

The detailed and credible accounting of the jobs sold and commissions owed stands in stark contrast to the description of the manner in which the plaintiff and other employees were often paid. It was explained to the court that employees were often paid in cash and no company records were presented to the contrary. Accordingly, the court infers that no such records were maintained or only minimally maintained.

The plaintiff testified that all interactions between himself and Mr. Davis were personal dealings. They would meet every week or so and Mr. Davis would pay with cash for the agreed upon base pay or advance against commissions. On a couple of occasions, Mr. Davis had him endorse back a check for part of the prior cash payments. The plaintiff was never paid by company check as part of the company payroll. In addition, the plaintiff never received a Form W-2 or Form 1099 from Davis Roofing and Maintenance, LLC. Unlike all other employees of the company, the plaintiff apparently had a personal agreement with the defendant, an agreement which was not managed by the company.



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CLERK OF SUPERIOR COURT

Therefore, as owner of Davis Roofing and Maintenance, LLC., the individual defendant, Mr. Davis, is responsible as an employer under the Payment of Wages Act, S.C. Code Ann. § 41-10-10(1). Defendant Davis was an "agent or officer... employing any person in [South Carolina]" under § 41-10-10(1), thus he is personally liable for the violations of the Payment of Wages Act. See Dumas v. InfoSafe Corp., 320 S.C. 188, 195, 463 S.E.2d 641, 645 (Ct. App. 1995).

Section 41-10-40 of the Act generally requires an employer to timely pay all wages due. S.C. Code Ann. § 41-10-40. The Act defines "wages" as "all amounts ... which are due to an employee under any ... employment contract." S.C. Code Ann. § 41-10-10(2). The defendant failed to timely pay all wages due to the plaintiff in this case, thus Mr. Gelotte may recover an amount "equal to three times the full amount of the unpaid wages, plus costs and reasonable attorney's fees as the court may allow." S.C. Code Ann. § 41-10-80.

After reviewing the evidence and considering the testimony of the plaintiff, the court has determined that the plaintiff is entitled to an award of \$11,730.68. This amount is the difference between the wages and commissions the plaintiff was owed (\$32,010.68), and the wages and commissions that the plaintiff received (\$20,280.00). Because there is no evidence of any bona fide dispute over the non-payment of these wages, the plaintiff is also entitled to treble damages under the Act, totaling to an award of \$35,192.04. This is three times the amount of the unpaid wages owed to the plaintiff.

The plaintiff is also entitled to attorney's fees under S.C. Code Ann. § 41-10-80. Because no affidavit regarding attorney's fees was presented at the hearing, the court will leave the record open for a period of ten (10) days for plaintiff to submit an affidavit specifying the attorney's fees. The court will submit a supplemental order regarding the fees.



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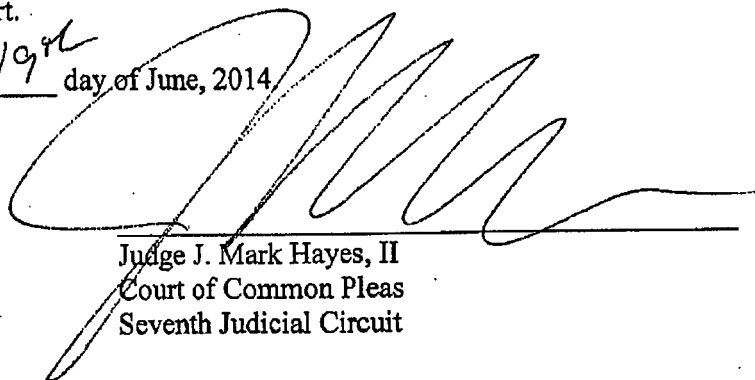
IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

(1) Plaintiff shall have judgment against the defendants herein, and each of them, in the amount of \$35,192.04. This amount represents three (3x) times the amount due Plaintiff for unpaid wages.

(2) Plaintiff is also entitled to reasonable attorney's fees for the prosecution of this action. Plaintiff's counsel is directed to forward to this court an affidavit specifying the attorney's fees and costs of this case within ten (10) days from the date of this Order.

(3) Plaintiff will be awarded his reasonable attorney's fees and the costs of this action by Supplemental Order of this Court.

IT IS SO ORDERED this 19th day of June, 2014.



Judge J. Mark Hayes, II
Court of Common Pleas
Seventh Judicial Circuit

Spartanburg, South Carolina

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| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | |
| COUNTY OF SPARTANBURG |) | C.A. No.: 2011-CP-42-04630 |
| |) | |
| Joseph Anthony Gelotte, |) | |
| |) | |
| Plaintiff, |) | FINAL ORDER |
| |) | |
| -vs- |) | |
| |) | |
| Davis Roofing and Maintenance, |) | |
| LLC, and Jerry E. Davis, |) | |
| |) | |
| Defendant. |) | |

This matter is now before the court upon Plaintiff's request for statutorily authorized attorney's fees and costs, and upon Defendant's motion to reconsider, alter, or amend this court's prior judgment. For the reasons that follow, Plaintiff's request is granted and Defendants' motion is denied.

I. BACKGROUND

This case was heard on May 5th, 2014. Neither the defendant nor a representative of his company was present. Defendant's attorney requested a continuance, but because no proper reason was given for the defendant not being present, the request was denied. The only evidence taken was Mr. Joseph Gelotte's testimony and the exhibits introduced during his examination and cross-examination. These exhibits included Defendant Davis's email regarding employment terms, Gelotte's spreadsheet of jobs sold and commissions due, Mr. Gelotte's spreadsheet of jobs in progress when he ended his employment with Davis, and Davis's checks made payable to Gelotte. This evidence was uncontroverted and received without objection.

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 SOUTH CAROLINA

II. APPLICABLE LAW

Defendant requests a motion to reconsider, alter, or amend pursuant to South Carolina Rules of Civil Procedure 52(b) 59(e), and 60.

i. Rule 52(b)

Rule 52(b) provides, in pertinent part:

Upon motion of a party made not later than 10 days after receipt of written notice of entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly, and the motion may be made with a timely motion for a new trial, S.C.R. Civ. P. 52(b).

ii. Rule 59

Rule 59 provides, in pertinent part:

(a) Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the State; and (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in the courts of the State. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment. S.C.R. Civ. P. 59(a).

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order. S.C.R. Civ. P. 59(e).

iii. Rule 60

Rule 60 provides, in pertinent part:

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been

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discovered in time to move for a new trial under Rule 59(b)....S.C.R. Civ. P. 56

III. SUMMARY OF ARGUMENTS

A. Defendants motion to reconsider, alter, or amend

The underlying facts and nature of Plaintiff's claims are set out in this Court's initial order dated June 19, 2014 and will not be repeated here. In this motion, Defendants specifically state that such is being filed "for the correction of the manifest errors of law and fact" contained in this court's prior Order. However, no specific errors are articulated in the motion. Instead, Defendants ask the court to consider three issues:

1. Whether the Plaintiffs representation to the IRS that he received income from two checks was an admission;
2. Whether a bona fide dispute existed as to unpaid wages because the Plaintiff claimed that he was never paid by check yet the Plaintiff endorsed two cashed checks with his signature, the checks listed the Plaintiffs driver license number, and the Plaintiff represented to the IRS that he had received income from the two checks; and
3. Whether the court should have held that the Plaintiff was overpaid by the defendants using the preponderance of the evidence standard.

Based on the statement of these three issues, Defendants seek a ruling that reverses the findings in the [prior] Order and holds that the Defendants overpaid the Plaintiff."

B. Plaintiff's response to motion to reconsider, alter, or amend

Plaintiff first argues that all issues not addressed in the motion are waived. Accordingly, the only properly addressed issues in defendants' motion are the three specifically named. All other issues are forever waived, because it is now more than ten

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days since notice of judgment. Next, Plaintiff Gelotte addresses each of Defendants' arguments in turn.

First, Gelotte argues that he never represented to the IRS that he received income from two checks. Instead, he signed and returned the checks with the understanding that the checks were documentation of earlier cash payments. Gelotte does not deny that he received cash payments in an amount equal to the two checks; however, more compensation was owed. The additional compensation due was established by uncontroverted evidence at trial.

Similarly, Plaintiff's response to Defendant's second argument focuses on the uncontroverted trial evidence. Gelotte argues that there is no bona fide dispute as to the unpaid wages. Gelotte's position is that the checks he received were only documentation of the earlier cash advances against commissions, and do not create any bona fide dispute as to the additional wages due. Gelotte reported to the IRS income equal to the two checks. But there is no evidence that Gelotte received these checks in addition to the earlier cash payments.

Furthermore, Gelotte argues that he was usually paid the agreed weekly advance, and when Davis refused to pay the additional commissions due under their agreement, Gelotte resigned. There is no evidence whatsoever of record to contradict this position. Evidence of a bona fide dispute is "conflicting testimony," or a "failure to manifest mutual assent regarding terms of payment." See *Goodwyn v. Shadowstone Media, Inc.*, 757 S.E. 2d 560, 563 (S.C. Ct. App. 2014); see *O'Neal v. Intermedical Hospital of S.C.*, 585 S.E. 2d 526, 531-532 (S.C. Ct. App. 2003). Given these definitions, Gelotte's position is that there is no dispute without conflicting evidence.

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SECRETARY
STATE OF SOUTH CAROLINA

In addition, Gelotte argues that subsequent representations made to the IRS have no impact on his claim, because the relevant time for determination is when the wages were withheld. *Mathis v. Brown and Brown*, 698 S.E. 2d 773, 781-782. So even if his representation to the IRS was an admission—it is immaterial to this proceeding and meaningless.

Lastly, Gelotte argues that there is no credible evidence that he was overpaid by Davis. The uncontroverted evidence to the contrary is more than enough to meet the preponderance standard in Gelotte's favor.

IV. FINDINGS ON DEFENDANTS' MOTION

Based on the Court's review of the pleadings, evidence of record, and the arguments above, the court cannot grant the present motion. Moreover, the court believes that the record is sufficient and no further briefing or oral argument would assist the court in ruling on this matter. The court finds that the plaintiff made a credible presentation both by his testimony and the exhibits introduced into evidence. By contrast, Defendant Davis' unexcused absence prevented him from presenting testimony which may have been helpful to his company and himself. Not only does the court find that no manifest error of law has occurred, the Court specifically finds that its prior Order is supported by the greater weight of the evidence.

V. PLAINTIFF'S REQUEST FOR ATTORNEY FEES AND COSTS

Plaintiff's Complaint in this action contains a second cause of action brought pursuant to the South Carolina Payment of Wages Act in which Plaintiff requests attorney's fees and costs as allowed by the statute. At the time of trial on May 5, 2014, Plaintiff's counsel requested, and was granted, leave to file an affidavit in support of the



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request for fees and costs. In this Court's Order of June 19, 2014, the Court specifically found that Plaintiff was entitled to an award of attorney's fees pursuant to S.C. Code Annot. §41-10-80. Counsel was given ten (10) days from the date of the Order to submit an affidavit in support of such fees.

Plaintiff's counsel submitted his affidavit as to attorney fees dated June 10, 2014. Attached as Exhibit A was the counter-signed engagement letter evidencing an agreement as to a 35% contingency fee with a minimum fee of \$3,500.00. An itemized time and expense billing statement was attached as Exhibit B. As per that statement, counsel had spent 42.10 hours on this matter valued at \$14,735.00, together with costs advanced of \$1,105.97. Based upon the Court's award of \$35,192.04, a 35% contingency fee would equate to \$12,317.21.

Based upon the fee agreement with the Plaintiff, the documented expenditure of more than 40 hours on this matter, the successful result obtained, and counsel's recognized experience and standing in this area of the law, the court finds that an award of attorney's fees in the amount of \$12,317.21 is both reasonable and appropriate.

VI. FINAL ORDER

Based upon the foregoing, the Final Order of the court in this matter is as follows:

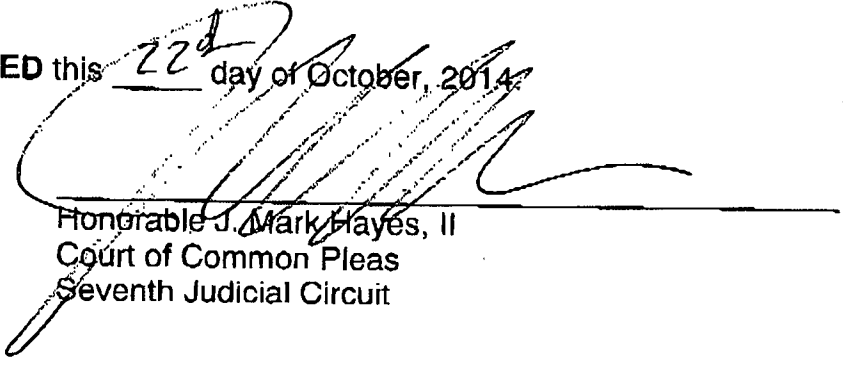
- (1) Plaintiff is granted judgment against the Defendants herein, and each of them, in the amount of Thirty-five thousand one hundred ninety-two and 04/100 (\$35,192.04) Dollars (representing three times the amount of unpaid wages proven and as allowed by the applicable statute);
- (2) Plaintiff is also granted judgment against the Defendants herein, and each of them, for the further sum of Twelve thousand three hundred seven and 21/100 (\$12,317.21) Dollars (representing reasonable attorney's fees as allowed by the applicable statute); and

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- (3) Plaintiff is also granted judgment against the Defendants herein, and each of the, for the further sum of Two hundred seventy-one and 72/100 (\$271.72) Dollars for the costs of this action pursuant to Rule 54(d) and (e), SCRPC.

AND IT IS SO ORDERED this 22^d day of October, 2014.



Honorable J. Mark Hayes, II
 Court of Common Pleas
 Seventh Judicial Circuit

Spartanburg, South Carolina

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 M. HOPE BLANKLEY

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-42-04630

Joseph Anthony Gelotte

Davis Roofing and Maintenance, LLC

PLAINTIFF(S)

and Jerry E. Davis

DEFENDANT(S)

Submitted by: Donald C. Coggins, Jr.

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(a), 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 :

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) |
|--|---|--|
| Joseph Anthony Gelotte | Davis Roofing and Maintenance, LLC and Jerry E. Davis | \$47,780.97 |
| | | \$ |
| | | \$ |

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.

Circuit Court Judge

Judge Code

Date

2132

10-22-14

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Donald C. Coggins, Jr.,
Harrison, White, Smith & Coggins, P.C.
P.O. Box 3547
Spartanburg, SC 29304

ATTORNEY(S) FOR THE PLAINTIFF(S)

Larry E. Gregg, II
T. Camden Shealy
1989 S. Pine Street
Spartanburg, SC 29301

ATTORNEY(S) FOR THE DEFENDANT(S)

M. Lopez Blackledge
CLERK OF COURT

Debbie Greene DC

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.

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M. LOPEZ BLACKLEDGE
CLERK OF COURT