

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

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Appellate Case No. 2014-002574

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Joseph Anthony Gelotte,

Respondent,

v.

Davis Roofing and Maintenance, LLC, and Jerry Davis, Appellants.

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INITIAL REPLY BRIEF OF APPELLANTS

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**SC Court of Appeals**

## TABLE OF CONTENTS

Table of Contents.....	i
Table of Cases .....	ii
Argument.....	1
Conclusion.....	2

TABLE OF CASES

O'Neal v. Intermedical Hospital of S.C., 355 S.C. 499, 585 S.E.2d 526 (Ct.App.2003)..... 1

## ARGUMENT

*The lower court's award of treble damages and attorney's fees was erroneous because the parties had a bona fide dispute over the wages that the Appellant owed the Respondent.*

In his Complaint, the Respondent claimed that the Appellant owed him approximately eleven thousand dollars (\$11,000) in unpaid wages. (Complaint). At trial, the Respondent claimed that the Appellant owed him \$11,730.68 in unpaid wages. In its June 19, 2014 Order, the lower court held that “there is no evidence of any bona fide dispute over the non-payment of these [\$11,730.68 of unpaid] wages.” In his Brief, the Respondent claims \$10,730.68 is the actual amount of unpaid wages.

The Respondent admits in his Brief that the lower court's calculation of “undisputed” wages and Plaintiff's Exhibit 2, which the Respondent used to support the amount of unpaid wages, was wrong. “Respondent agrees this oversight is an error (the trial judge awarded treble damages based upon a balance of \$11,730.68), and concedes he was actually paid \$21,280.00 of the \$32,010.68 total, leaving a corrected balance of \$10,730.68.” Respondent's Brief, p. 2. This is important because, as the Respondent states in his argument supporting the lower court's award of treble damages, “A bona fide dispute exists when the employer and employee disagree ‘as to whether and to what extent payment is due,’ often evidenced by ‘conflicting testimony.’ O'Neal v. Intermedical Hospital of S.C., 355 S.C. 499, 508-510, 585 S.E.2d 526, 531-532 (Ct.App.2003).” Respondent's Brief, p. 4.

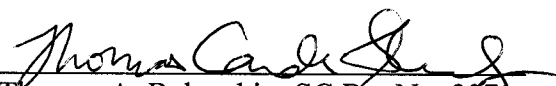
The Appellants and Respondent at least agree that the lower court's calculation of undisputed wages was off by \$1,000.

The Appellants have not argued that the Respondent had a BB&T bank account as the Respondent suggested in his Brief. Respondent's Brief, p. 3. The BB&T check cashing account would belong to the food mart where the Respondent cashed the \$7,500 check and the \$6,300 check that he claimed to have torn up, but later claimed on his 2011 tax return. (Trial Transcript p. 40, lines 13 through 16; p. 41, lines 2 through; p. 35, lines 3 through 9; p. 41, lines 8 through 13). The \$7,500 check, the \$6,300 check, and the \$1,000 check, which check the parties agree the Respondent received, were not included in the lower court's calculation of unpaid wages. Clearly, the parties disagree over "to what extent payment [was] due" pursuant to O'Neal.

#### CONCLUSION

For the foregoing reasons, the Appellants respectfully submit that this Court should reverse the judgment of the lower court, hold that the Respondent owes the Appellants \$3,069.32, or, in the alternative, that there existed a bona fide dispute over the non-payment of wages that precluded the Respondent from receiving an award of treble damages and attorney's fees.

Respectfully Submitted,

  
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February 27, 2015

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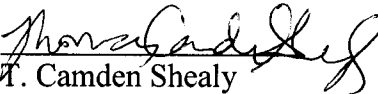
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PROOF OF SERVICE

I, the undersigned attorney for the Appellants, Davis Roofing and Maintenance, LLC, and Jerry Davis, do hereby certify that I have served the Clerk of Court for the South Carolina Court of Appeals and all counsel in this action with a copy of the Initial Reply Brief of the Appellants and a Proof of Service by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

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