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MARION COUNTY SC
SHERRY A. RHODES
CLERK OF COURT

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF MARION	FOR THE TWELFTH JUDICIAL CIRCUIT
PARTNERS 95, LLC and HSGCHG Investments, LLC,	2015-CP-33-280
Plaintiffs,	
v.	**ORDER** (ending action)
Riverdale Funding, LLC and Woodbridge Mortgage Investment Fund 3, LLC	
Defendants.	

The above-captioned matter was referred to the undersigned as Special Referee for Marion County by Order of Reference executed by the Honorable Sherry R. Rhodes, Clerk of Court for Marion County on August 10, 2015, and filed in the Office of the Clerk of Court for Marion County on August 10, 2015. By Order dated December 16, 2015, filed in the Office of the Clerk of Court for Marion County on December 29, 2015, Riverdale Funding, LLC and Woodbridge Mortgage Investment Fund 3, LLC (collectively, "Defendants") were held in default. A default damages hearing was held on February 8, 2016. Present at the hearing were W. Taylor Stanley, Esquire, for the Plaintiffs and Amy L.B. Hill, Esquire for the Defendants. Also present and testifying were Michael W. Tighe, Esquire and Robert D. Hartmann, Sr.

PROCEDURAL HISTORY

This matter was commenced by the filing of the Summons and Complaint on March 17, 2015. Thereafter, Defendants were served via certified mail, return receipt requested, restricted delivery addressed to their registered agent as is evidenced by the Affidavits of Service filed with the Court on April 2, 2015. An Affidavit of Default was filed with the Court on May 8, 2015.

On August 10, 2015, Plaintiffs filed their Notice of Motion and Motion for Order of Reference which was granted by Order of Reference signed by the Honorable Sherry R. Rhodes, Clerk of Court for Marion County on August 10, 2015. After service of a Notice of Hearing, Defendants filed their Objection to Entry of Default or, in the Alternative, Notice of Motion and Motion to Set Aside Entry of Default on November 2, 2015, which was denied by Order dated December 16, 2015. Thereafter, a damages hearing was held on February 8, 2016 before the Honorable Haigh Porter, as Special Referee for Marion County.

To the extent necessary, Findings of Fact shall be construed as Conclusions of Law and Conclusions of Law shall be construed as Findings of Fact. Based on the pleadings, motions, arguments of counsel, testimony and evidence, I find the following:

FINDINGS OF FACT

1. The Summons and Complaint were filed in the Office of the Clerk of Court for Marion County on March 17, 2015.

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2. The Defendants were properly served with the Summons and Complaint pursuant to the Affidavits of Service on file herein.

3. Defendants are in default pursuant to Affidavit of Default filed on May 8, 2015 and Order dated December 16, 2015, filed of record on December 29, 2015.

4. Defendants were notified of the time, date and place of hearing in this matter, as evidenced by the Amended Notice of Hearing and Certificate of Service on file herein.

5. Plaintiff Partners 95, LLC ("Partners") is a limited liability company organized and existing under the laws of the state of Connecticut and doing business, among other locations, in the County of Marion, State of South Carolina.

6. Plaintiff HSGCHG Investments, LLC ("HSGCHG") is a limited liability company organized and existing under the laws of the State of Connecticut and doing business in, among other locations, the County of Marion, State of South Carolina.

7. Defendant Riverdale Funding, LLC ("Riverdale") is a limited liability company organized and existing under the laws of State of Delaware and doing business in the State of South Carolina among other states.

8. Defendant Woodbridge Mortgage Investment Fund 3, LLC ("Woodbridge") is a limited liability company organized and existing under the laws of State of Delaware and doing business in the State of South Carolina among other states.

9. At all times relative hereto, the parties were engaged in a contractual relationship that was to culminate in a loan transaction to be performed in and secured by real property located in the County of Marion, State of South Carolina.

10. On December 9, 2014, Riverdale issued a Loan Commitment letter ("Commitment") to Partners and HSGCHG (collectively, "Plaintiffs").

11. Under the terms of said Commitment, Riverdale agreed to lend Plaintiffs the total sum of One Million Nine Hundred Thousand and 00/100s ($1,900,000.00) dollars at rate of twelve (12%) per annum ("Loan") for the acquisition and development of the below described real property ("Marion Property"):

> All that certain piece, parcel or tract of land lying and being situate South of the City of Marion, Marion Township, Marion County, South Carolina, containing 248.52 acres, more or less, as shown on plat prepared for New World Entertainment, Inc. By Beasly Land Surveying, Inc., dated February 14, 2001 and revised March 26, 2002. The said map as revised is recorded in the Office of the Clerk of Court for Marion County on June 13, 2002 in Plat Book 303 at Page 3 and is incorporated herein by reference. The said tract being bounded as follows, now or formerly, to wit: on the North by lands now or formerly of William H. Lide; on the Northeast and East by lands now or formerly of Paul J. Graves and William L. Cheezem, and others; on the South by lands now or formerly of

Cheezem and others; on the Southwest by US Highway 501 and lands of Atkinson and other; and on the Northeast by lands of William E. Thompson.

LESS AND EXCEPT: All that certain piece, parcel or lot of land containing .066 acres as shown on survey prepared for the City of Marion recorded in the Office of the Clerk of Court for Marion County in Plat Book 304, at Page 6 and a fifty (50) foot temporary easement for construction, the said lot and easement being more fully and completely described in a certain deed of Donald D. Godwin and Jack H. Jones to the City of Marion recorded in the Office of the Clerk of Court for Marion County on April 20, 2002 in Deed Book A-472 at Page 296.

TMS No. 085-00-00-001-000

12. The Commitment further provided that Plaintiffs would pay a commitment fee of $114,000.00 of which $19,000.00 was paid in advance (the "Initial Commitment Fee").

13. The Commitment provided the Initial Commitment Fee was deemed to have been fully earned "upon the execution of this commitment letter and shall be due and payable in full from Borrower (HSGCHG) and/or any Guarantor regardless of whether the Loan closes or not, *so long as the failure to close the Loan is not the result of a default or failure by Riverdale Funding, its successors and assigns,. Should this loan not close as a result of the default or failure by Riverdale Funding, its successors and assigns, said advance commitment fee shall be returned to the Borrower in full without offset.*" (emphasis added).

14. The Initial Commitment Fee was returned by Defendants to Plaintiffs which acknowledges their default.

15. The Commitment further provided that the Loan would be secured by a first priority mortgage, security agreement and assignment of leases and rents on the Marion Property and additional collateral secured by certain property in East Haven Connecticut (the "Connecticut Property").

16. Pursuant to the terms of the Commitment, the Loan was set to close on or before January 12, 2015; however, the parties knew, at the time of the execution of the Commitment,

that Plaintiffs had to close the Loan and purchase the Marion Property no later than December 31, 2014 to avoid a significant price increase.

17. The Commitment further provided various contingencies prior to funding loan, each of which was satisfied by the Plaintiffs.

18. Throughout the month of December 2014, the parties worked together towards closing the Loan including negotiating loan documents, exchanging numerous e-mails about the Loan, and coordination of the Closing which was to take place at the offices of Fidelity National Title Insurance Company in Florida.

19. Prior to Closing, Riverdale transferred and assigned the Commitment to Woodbridge who was to be the owner and holder of the promissory note, mortgage and other loan documents.

20. Woodbridge is a related entity of Riverdale and share common ownership. (Affidavit of Eugene Rubinstein ¶ 2).

21. The Closing was scheduled for December 30, 2014 with recordation to occur on December 31, 2014.

22. Throughout the morning of December 30, 2014, counsel for the Plaintiffs and Defendants exchanged e-mails regarding last minute closing details.

23. Approximately an hour prior to the hour appointed for Closing, Robert Hartmann, guarantor and member of the Plaintiffs, arrived at the Fidelity office to execute the Loan Documents to which all the parties had agreed.

24. Without warning, Defendants, by and through their counsel, instructed the Fidelity office in Florida not to allow the Plaintiffs to sign the documents via an e-mail dated December 30, 2014 12:07 p.m.

25. Immediately following the above-referenced email, counsel for the Plaintiffs, Michael W. Tighe, Esquire contacted Defendants' counsel to inquire as to why the Closing was cancelled.

26. As of the date of the hearing, no response had been received despite numerous emails, telephone calls and correspondence.

27. As a result of the Defendants' failure and refusal to close the transaction as contemplated in the Commitment, Plaintiffs were unable to purchase the Marion Property by December 31, 2014 as agreed in their contract with the Seller.

28. While the Plaintiffs ultimately found another source of funding from Avatar Financial Group (the "Avatar Loan"), the Plaintiffs have suffered damages as a result of Defendants' unexplained and bad faith refusal to fund the Loan and honor the Commitment, including but not limited to fees related to brokers' price opinions, appraisal costs, attorney's fees, liability insurance premiums, and further expense related to signage that was time dependent on the closing of the transaction.

29. As is set forth more fully above, Defendants breached the terms of the Commitment by failing to close the transaction contemplated therein on December 30, 2014.

30. Defendants' intent in breaching the Commitment was fraudulent as evidenced by their behavior leading up to breach including but not limited to their negotiations of the terms of the loan documents, correspondence between counsel, and its failure to communicate with Plaintiffs' counsel after 12:07 p.m. on the day of Closing.

31. There were no contingencies by the Plaintiffs outstanding and the Plaintiffs were ready to close.

32. Defendants were aware that Plaintiffs would incur additional expenses if the Closing failed to occur on December 30, 2014. In light of Defendants education, training and information, Defendants had reason to foresee the probable existence of such circumstances.

33. Prior to the Closing, Plaintiffs entered into the Advantage Sign Contract[1] to obtain signage for the Marion Property.

34. As a result of the Closing failing to occur on December 30, 2014, Advantage Sign Company was unable to perform under the Advantage Sign Contract.

35. As a result of Advantage Sign being unable to perform under the Advantage Sign Contract, Plaintiffs were forced to enter into the Tyson Contract at an additional expense. In addition, the Tyson Sign Contract provides for a sign smaller in size.

36. Leading up to Closing, Plaintiffs incurred various expenses including (a) Broker's Price Opinion on the Connecticut Property; (b) Appraisal on Connecticut Property; (c) Broker's Price Opinion on the Marion Property; (d) Appraisal on the Marion Property; (e) payment of Defendants' counsel fees incurred in the transaction; (f) attorneys' fees with Plaintiffs' counsel, Callison Tighe & Robinson, LLC, associated with the transaction; (g) an increase in the loan broker's commission; (h) additional title examination and abstract work; (i) loan packaging associated with the transaction; (j) wire fee for the loan packaging; and (k) extra liability insurance required by Defendants, not required in the Avatar Loan.

37. As a direct and proximate result of Defendants failure to close the transaction Plaintiffs have suffered the following damages which were substantiated by testimony and evidence presented at the hearing:

[1] Prior to the scheduled closing, Plaintiffs entered into a contract with Advantage LED Signs for a sign dated December 18, 2015 (the "Advantage Sign Contract"). The purchase price of the sign in the Advantage Sign Contract was $350,000.00. As more fully explained above, Plaintiffs thereafter entered into a contract with Tyson Sign Company, Inc. dated February 25, 2015 (the "Tyson Sign Contract"). The purchase price of the sign in the Tyson Sign Contract was $365,803.00.

a.	Broker's Price Opinion on Connecticut Property-	$ 500.00
b.	Appraisal on Connecticut Property -	$2,000.00
c.	Broker's Price Opinion on Marion Property -	$ 750.00
d.	Appraisal on Marion Property-	$2,500.00
e.	Defendants' Counsel fees (Holloren & Sage, LLP)	$500.00
f.	Callison Tighe & Robinson, LLC fees related to Woodbridge/Riverdale Loan-	$10,000.00
g.	Loan Broker Commission increase-	$2,000.00
h.	Additional Title examination and abstract work-	$1,645.50
i.	Loan Packaging fee to Grow Financial -	$495.00
j.	Wire fee for Loan Packaging fee to Grow Financial-	$35.00
k.	Extra liability insurance required by Defendants-	$1,955.70
l.	Difference in Advantage Sign Contract and Tyson Sign Contract-	$15,803.00
TOTAL:		**$38,184.20**

38. Mr. Hartmann requested proof of funds to close the transaction from Defendants. Defendants have failed or refused to provide such proof of funds.

39. Defendants' unexplained and bad faith refusal to fulfill the terms of the commitment, provide proof of funds or otherwise communicate with Plaintiffs lead to the unescapable conclusion that Defendants did not have the funds to close the transaction.

40. If the loan failed to close on December 30, 2014, Defendants knew Plaintiffs could lose in excess of $300,000.00 due to the increased purchase price and that Plaintiffs could incur additional expenses such as those outlined above.

41. Defendants are part of a larger organization with many affiliated companies involved in the mortgage lending business. *See generally,* (Affidavit of Eugene Rubinstein). Therefore, because of Defendants' education, training and experience, Defendants had reason to foresee the probable existence of the expenses incurred by Plaintiffs as a result of Defendants' breach, including but not limited to the sign and those outlined in Paragraphs 36 and 37, above.

CONCLUSIONS OF LAW

A. All parties were properly served with the pleadings herein and that all parties were given proper notice in this matter.

B. This Court has jurisdiction over the parties and the subject matter hereof.

I. Defendants' Default.

C. "[A]n entry of an order of default is an admission of the defaulting party of the well-pleaded allegations of the Complaint." *State ex. rel. Medlock v. Love Shop Ltd.*, 286 S.C. 486, 488, 334 S.E.2d 528, 530 (Ct. App. 1985) *see also e.g. Solley v. Navy Federal Credit Union, Inc.*, 397 S.C. 192, 723 S.E.2d 597 (Ct. App. 2012) ("A defendant in default admits liability but not damages as set forth in the prayer for relief."). "The defendant, by waiving a contest and suffering a default to be taken against him, admits the truth of the allegations set out in the plaintiff's declaration or complaint... Hence the default authorizes the entry of any judgment warranted by the facts alleged." *Id.*, 286 S.C. at 489, 334 S.E.2d at 530 quoting *Gadsden v. Home Fertilizer & Chemical Co.*, 89 S.C. 483, 487-88, 72 S.E. 15, 17 (1911).

D. By failing to answer the Complaint and having an order of default entered against them, the Defendants have admitted liability. Therefore, the default authorizes me to enter judgment warranted by the facts alleged in the Complaint.

II. Plaintiff's Damages on Breach of Contract Accompanied by a Fraudulent Act.

E. The elements of a breach of contract accompanied by a fraudulent act are (1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract and not merely to its making; and (3) a fraudulent act accompanying the breach. *Floyd v. Country Squire Mobile Homes, Inc.*, 287 S.C. 51, 53, 336 S.E.2d 502, 503 (Ct. App. 1985).

F. "The general rule is that for a breach of contract the defendant is liable for whatever damages follow as a natural consequence and a proximate result of such breach."

Branche Builders, Inc., v. Coggins, 386 S.C. 43, 48, 686 S.E.2d 200, 202 (Ct. App. 2009). "In a breach of contract action, damages serve to place the nonbreaching party in the position he would have enjoyed had the contract been performed." Damages are designed to give the nonbreaching party the benefit of his bargain with the breaching party. *South Carolina Fed. Sav. Bank v. Thornton-Crosby Dev. Company, Inc.*, 303 S.C. 74, 77, 399 S.E.2d 8, 11 (Ct. App. 1990). Breach of contract damages normally consist of two distinct elements: (1) out-of-pocket costs actually incurred as a result of the contract; and (2) the gain above costs that would have been realized had the contract been performed. *Collins Entertainment Inv. v. White*, 363 S.C. 546, 559, 611 S.E.2d 262, 268-9 (Ct. App. 2005).

G. "When a plaintiff seeks special damages for breach of contract, he must plead and prove both the fact of damage and the amount of damage with a reasonable degree of certainty." *Thornton-Crosby Dev.*, 303 S.C. at 77, 399 S.E.2d at 11. "The fact of damage is proved by showing (1) that the plaintiff realized an actual loss he would not have incurred but for the defendant's breach of contract and (2) the loss was a natural consequence of the breach which may reasonably be supposed to have been within the contemplation of the parties at the time the contract was made." *Id.* at 77-8. The party claiming special damages must show that the defendant was warned of the probable existence of unusual circumstances or that because of the defendant's own education, training, or information, the defendant had reason to foresee the probable existence of such circumstances. *Stern & Stern v. Timmons*, 310 S.C. 250, 251, 423 S.E.2d 124, 125 (1992). The defendant need not foresee the exact dollar amount of the injury, but must only know or have reason to know the special circumstances so as to be able to judge the degree of probability that damage will result from delayed performance. *Id.* "If the fact of damages is established, the law does not require the amount of damage to be proved with

absolute mathematical certainty; damages may be recovered if there is evidence upon which a reasonable assessment of the loss can be made." *Thornton-Crosby Dev.*, 303 S.C. at 77, 399 S.E.2d at 11; *see also, Collins*, 363 S.C. at 559, 611 S.E.2d at 268-9.

H. South Carolina law has long recognized a plaintiff's right to recover punitive damages for breach of contract accompanied by a fraudulent act. *Floyd v. Country Squire Mobile Homes, Inc.*, 287 S.C. 51, 53, 336 S.E.2d 502, 503 (Ct. App. 1985). Fraudulent intent is normally proved by the circumstances surrounding the breach. *Id.* 287 S.C. at 53, 336 S.E.2d at 503-4. The fraudulent act may be prior to, contemporaneous with, or subsequent to the breach of contract, but it must be connected with the breach itself and cannot be too remote in either time or character. *Id.* A fraudulent act is any act characterized by dishonesty in fact or unfair dealing. *Conner v. City of Forest Acres*, 348 S.C. 454, 466, 560 S.E.2d 606, 612 (2002). "'Fraud' in this sense assumes so many hues and forms, that courts are compelled to content themselves with comparatively few general rules for its discovery and defeat, and allow the facts and circumstances peculiar to each case to bear heavily upon the conscience and judgment of the court or jury in determining its presence or absence." *Id.*

I. Defendants contend that damages related to the sign were not pled and therefore not recoverable. Upon review of the Complaint, I find that Plaintiff sufficiently pled damages related to the Advantage Sign Contract and Tyson Sign Contract. *See* (Compl. ¶ 23). Defendants were well aware that if the transaction failed to close by December 31, 2014, Plaintiffs would incur large sums of additional expenses. Moreover, because of Defendants' own education, training and information, Defendants had reason to foresee the probable existence of Plaintiffs' damages outlined above in Paragraphs 36 & 37, including the sign. Had the transaction between Plaintiffs and Defendants closed on December 31, 2014 as planned,

Plaintiffs would not have suffered the additional damages due to the sign. This loss was the natural consequence of Defendants' breach of contract and was foreseeable by Defendants because of their education, training and information. Furthermore, testimony and evidence were submitted at trial to substantiate an award of $15,803.00 on the sign contract alone.

J. I find and conclude that as a natural consequence and proximate result of Defendants' breach of contract, Plaintiffs have suffered the following actual damages and are entitled to an award therefore:

a.	Broker's Price Opinion on Connecticut Property-	$ 500.00
b.	Appraisal on Connecticut Property -	$2,000.00
c.	Broker's Price Opinion on Marion Property -	$ 750.00
d.	Appraisal on Marion Property-	$2,500.00
e.	Defendants' Counsel fees (Holloren & Sage, LLP)	$500.00
f.	Callison Tighe & Robinson, LLC fees related to Woodbridge/Riverdale Loan-	$10,000.00
g.	Loan Broker Commission increase-	$2,000.00
h.	Additional Title examination and abstract work-	$1,645.50
i.	Loan Packaging fee to Grow Financial -	$495.00
j.	Wire fee for Loan Packaging fee to Grow Financial-	$35.00
k.	Extra liability insurance required by Defendants-	$1,955.70
l.	Difference in Advantage Sign Contract and Tyson Sign Contract-	$15,803.00
TOTAL:		**$38,184.20**

K. Furthermore, based on the circumstances surrounding Defendants' breach, including but not limited to their negotiations of the terms of the loan documents, correspondence between counsel, their failure to communicate with Plaintiffs' counsel after 12:07 p.m. on the day of Closing, and their failure to provide proof of funds lead to the unescapable conclusion that Defendants misrepresented the availability of funds to close the transaction - a fraudulent act. Moreover, by continuing to negotiate the terms of the loan documents and correspondence between counsel, Defendants' fraudulent intent is demonstrated. Therefore, I find and conclude that Plaintiffs have met their burden of proving breach of contract

accompanied by a fraudulent act and are entitled to an award of punitive damages, as more fully set forth below.

III. Punitive Damages.

L. The practice of awarding punitive damages originated in principles of common law to deter the wrongdoer and others from committing like offenses in the future. *Mitchell, Jr. v. Fortis Ins. Co.*, 385 S.C. 570, 584, 686 S.E.2d 176, 183 (2009). "Punitive damages may properly be imposed to further a state's legitimate interests in punishing unlawful conduct and deterring its repetition. The state's interest in awarding punitive damages must remain consistent with the principle of penal theory that the punishment should fit the crime." *Id.* (internal citations and quotations omitted).

M. To receive an award of punitive damages, the plaintiff has the burden of proving by clear and convincing evidence the defendant's misconduct was willful, wanton, or in reckless disregard of the plaintiff's rights. *Lister v. NationsBank of Delaware, N.A.*, 329 S.C. 133, 149, 494 S.E.2d 449, 458 (Ct. App. 1997). "Clear and convincing evidence is that degree of proof which will produce in the mind of the trier of facts a firm belief as to the allegations sought to be established." *Duncan v. Ford Motor Co.*, 385 S.C. 119, 138, 682 S.E.2d 877, 886 (Ct. App. 2009). The amount of damages, remains largely within the discretion of the finder of fact and the trial judge is vested with considerable discretion of the amount of a punitive damages award. *Id.*

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N. There are three "guideposts" a trial court must follow when conducting a post-judgment review of punitive damages awards: (1) reprehensibility, (2) ratio between the actual or potential harm suffered by the plaintiff and the amount of the punitive damages award and (3) comparative penalty awards. *Mitchell*, 385 S.C. at 584, 686 S.E.2d at 183.

O. In regard to the reprehensibility "guidepost," the South Carolina Supreme Court has stated:

> First, any court reviewing a punitive damages award should consider the degree of reprehensibility of the defendant's conduct. Reprehensibility is perhaps the most important indicium of the reasonableness of a punitive damages award. This principle reflects the view that some wrongs are more blameworthy than others. In considering the reprehensibility, a court should consider whether (i) the harm caused was physical as opposed to economic; (ii) the tortious conduct evinced an indifference to or reckless disregard for the health or safety of others; (iii) the target of the conduct had financial vulnerability; (iv) the conduct involved repeated actions or was an isolated incident; and (v) the harm was the result of intentional malice, trickery, or deceit, rather than mere accident.

Mitchell, 385 S.C. at 587, 686 S.E.2d at 185 (internal citations and quotations omitted).

P. The *Mitchell* Court continued with regard to the ratio "guidepost:"

> [T]he Court should consider the disparity between the actual or potential harm suffered by the plaintiff and the amount of the punitive damages award. The ratio of actual or potential harm to the punitive damages award is "perhaps the most commonly cited indicium of an unreasonable or excessive punitive damages award." *[BMW of North America v.] Gore*, 517 U.S. 559, 580, 116 S.Ct. 1589 (1996). Although the Supreme Court has "been reluctant to identify concrete constitutional limits on the ratio between harm, or potential harm, to the plaintiff and the punitive damages award," and has consistently declined to adopt a bright line ratio or simple mathematical test, the Court has remarked that "in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process." *[State Farm v.] Campbell*, 538 U.S. 408, 425, 123 S. Ct. 1513, 1589 (2003). Nevertheless, the Supreme Court has made clear that "there are no rigid benchmarks that a punitive damages award may not surpass," so long as "the measurement of punishment is both reasonable and proportionate to the amount of harm to the plaintiff and the general damages recovered." *Id.* at 425-26, 123 S. Ct. 1513. With this in mind, we note that a court, when determining the reasonableness of a particular ratio of actual or potential harm to a punitive damages award, may consider: the likelihood that the award will deter the defendant from like conduct; whether the award is reasonably related to the harm likely to result from such conduct; and the defendant's ability to pay. Nevertheless, a court may not rely upon these considerations to justify an otherwise excessive punitive damages award.

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Id. at 587-88, 686 S.E.2d at 185. A court need not always compare the punitive damages award to the actual damages award, but may compare it to the potential harm suffered by the plaintiff. *Id.* at 590, 686 S.E.2d at 187.

Q. When addressing comparative penalty awards, a court may consider "the type of harm suffered by the plaintiff or plaintiffs; the reprehensibility of the defendant's conduct; the ratio of actual or potential harm to the punitive damages award; the size of the award; and any other factors the court may deem relevant." *Id.* at 588-89, 686 S.E.2d at 186.

> In reviewing more recent punitive damages awards, South Carolina courts have most often upheld verdicts on the low end of the single-digit spectrum, but have frequently deviated from this norm in cases involving particularly egregious conduct. *See James,* 371 S.C. at 196–97, 638 S.E.2d at 671–72 (upholding a 6.82 to 1 ratio); *Mackela v. Bentley,* 365 S.C. 44, 614 S.E.2d 648 (Ct.App.2005) (upholding a 3.75 to 1 ratio); *Austin v. Specialty Transp. Services, Inc.,* 358 S.C. 298, 594 S.E.2d 867 (Ct.App.2004) (upholding a 2.54 to 1 ratio); *Collins Entertainment Corp. v. Coats & Coats Rental Amusement,* 355 S.C. 125, 584 S.E.2d 120 (Ct.App.2003) (upholding a 9.96 to 1 ratio); *Cock–N–Bull Steak House, Inc. v. Generali Ins. Co.,* 321 S.C. 1, 466 S.E.2d 727 (1996) (upholding a 28 to 1 ratio). *Cf. Atkinson,* 361 S.C. at 170, 604 S.E.2d at 392–93 (overruling a 127 to 1 ratio).

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Id. at 593, 686 S.E.2d at 188 (reviewing comparative penalty awards and holding that a ratio of 9.2 to 1 satisfied due process and comported with South Carolina law).

R. Plaintiffs have met their burden of proving Defendant's misconduct was willful, wanton or in reckless disregard of Plaintiffs' rights. Defendants' actions in continuing to negotiate the loan documents and communicate with counsel leading up to the closing demonstrate Defendants' knew their responsibilities under the Commitment. Furthermore, Defendants breached the terms of the Commitment by failing to close the transaction, all while knowing the repercussions for Plaintiff if the loan failed to close on December 30, 2014. In my discretion, I find that a punitive damages award in the amount of $35,000.00 is appropriate under the circumstances.

S. Turning now to the post-judgment review of punitive damages, Defendants' actions were reprehensible. Without question, Defendants targeted Plaintiffs who Defendants knew were financially vulnerable because of the potential of a substantial price increase. The harm caused by Defendants was the result of intentional malice, trickery or deceit rather than mere accident; they knew their lack of funds to close the transaction and continued to negotiate the loan documents in the face of this fact.

T. Here, actual damages are $38, 184.20, and I have awarded $35,000.00 in punitive damages for a ratio of 0.92:1 punitive damages to actual damages. Moreover, Plaintiffs had a potential harm of over $300,000.00 as a result of Defendants' actions leading to a ratio of punitive damages to potential damages of 0.12:1.

U. In comparison of other punitive damages awards, I find that both a ratio of 0.92:1 punitive damages to actual damages and 0.12:1 punitive damages to potential damages are at the low end of the single-digit spectrum. Based upon the type of harm suffered by Plaintiffs, the reprehensibility of Defendants' conduct, the ratios of harm to punitive damages and the size of the award, I find that the punitive damages awarded is in line with the comparative punitive damages awards.

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V. Therefore, I find that the punitive damages award of $35,000.00 is appropriate in this case and that the punitive damages award meet the Court's post-judgment review of punitive damages.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED as follows:

A. Plaintiffs are entitled to judgment against the Defendants, jointly and severally, for actual damages in the amount of $38,184.20 and punitive damages in the amount of $35,000.00 for a total judgment of $73,184.20.

AND IT SO ORDERED.

Haigh Porter, Special Referee for
Marion County

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April 6, 2016
Florence, South Carolina