Case No. 2015-1472

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

On appeal from the Court Common Pleas

Dorchester County

Carmen T. Mullen, Circuit Court Judge

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MAY 11 2016

SC Court of Appeals

LAWRENCE R. POTTS, CANDACE MARIE POTTS, and LANETTE ZIMMERMAN

Appellant

v.

EDWARD E. YAGER,

Respondent

BRIEF OF APPELLANTS

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Statement of the Issue on Appeal

A party is liable for conversion when he asserts ownership of someone else's property without permission. Defendant admitted selling Plaintiffs' trailer for $1,000 without permission to collect a debt, and several witnesses testified without contradiction that it was full of Plaintiffs' belongings valued at over $100,000. Did the trial court err when it equated *imperfect* evidence of the amount of damages with *no evidence* of damages at all and entered a judgment for Defendant?

Statement of the Case

On July 19, 2012, Plaintiffs sued Defendant for the conversion of their property. (R. 10.) On September 21, 2012, Defendant answered. (R. 30.) On January 26, 2015, following a two-day bench trial, the trial court entered judgment for Defendant, finding that there was *no evidence* of damages. Plaintiffs filed their Notice of Appeal of the trial court's verdict on July 1, 2015 (R. 33.)

Statement of Facts

Defendant rents spaces to store the trailers from eighteen-wheelers. (R. 35.) The Potts owned a trailer (R. 79), but they were unable to keep it at their house (R. 77-78). Therefore, they began renting a spot from Defendant, making payments from July 2006 to May 2009. (R. 34, 36-40.) The trailer was already about half full when the Potts placed it at Defendant's business. (R. 75.)

The Potts were sometimes behind on their payments; for example, after making a partial payment in June 2009, they did not pay the balance until May 2010. (R. 41.) Defendant would tell Mr. Potts not to worry and to catch up. (R. 66-67, 133.)

Not long after storing belongings in their trailer, the Potts moved from Ramelias Drive to a new house not far away on Aleene Drive, both in Summerville, South Carolina. (R. 49.) The Potts' son helped move their belongings into the trailer during the move and confirmed that the trailer had been filled with personal property. (R. 109-10.) Mrs. Potts likewise testified that their family items had nearly filled the trailer. (R. 118-19.)

The rental agreement for the parking place had referred to the then-current address of the Potts (R. 52-53), but the Potts told Defendant about their relocation. (R. 49, 98, 100, 103-04, 111, 115-17.) Additionally, business documents were filed with Defendant including tax forms and Mr. Potts' driver's license which included the Potts' new address. (R. 54.)

The Potts had been friends with Defendant, but at some point they had a falling out over payments Defendant owed Mr. Potts for trucking services. (R. 57-65.) Thereafter, even though Defendant did not have title to the Potts' trailer and knew it contained their personal property (R. 111, 120, 137-38, 143), Defendant sold Potts' trailer to collect $1,200 for past due rent without any police or court

involvement (R. 79). He did not even bother to look inside the trailer before selling it. (R. 142.)

Despite admitting he knew the Potts had moved (R. 135), the only notice Defendant sent about his plan to sell their trailer was by regular mail to their old address. (R. 42.) Because they had not lived at their old house for about four years, the Potts never received the August 1, 2011 letter. (R. 56, 148.) No one ever communicated the information to the Potts by other means either. (R. 56-57.) Defendant admitted having a telephone number for the Potts, but he also admitted that he never called them to warn them of his plans. (R. 136.)

Defendant claimed that a man named Tony Mitchell had periodically asked Defendant about buying trailers (R. 139-40); Defendant was not able to find Mr. Mitchell to testify at trial (R. 141). Defendant claimed he sold the Potts' trailer for $1,000 to Mr. Mitchell on October 26, 2011. (R. 37, 79, 149.) Mr. James Proctor, who has no personal relationship with the Potts, was asked to cut the locks off the trailer (R. 105-06) and confirmed that the trailer was about ¾ full (R. 107). The trailer was taken to a local car crushing business where someone named Eli Stein (a man whose identity was a mystery to Defendant (R. 82-83)) sold it for scrap at $0.20 per pound (R. 150-53). Because the trailer still weighed over 21,000 pounds, the seller received $4,352. (R. 82-84; 150-53).

Mr. Potts' refrigerated trailer was 48 feet long, 8 ½ feet wide, 10 feet high, and in good condition. (R. 49-50.) Refrigerated trailers are worth more than others, and Mr. Potts' refrigeration system was in excellent condition. (R. 51.) Robert Geiger, accepted by the court as an expert, offered his professional opinion based on 49 years of experience in the trucking business that the Potts' trailer alone was worth more than $8,000. (R. 44, 46-47, 91, 164.) The trailer might have been worth more than twice that amount, but Mr. Geiger had not been able to see the trailer before it was destroyed (R. 48); he based his opinion on his long experience in the trucking business and on values listed in commercial valuation guides (R. 45-47).

After learning about Defendant's actions, Mr. Potts filed a police report. (R. 81.) The Potts generated a long list of their family's property that had been in the trailer. (R. 68, 102, 122-25, 154-61.) The trailer was full with a lifetime of material ranging from financial records (R. 55) to highly sentimental jewelry and family photos (R. 76, 86, 121, 125-27, 128-32). The tools owned by Mr. Potts alone were valued at about $50,000. (R. 84-85, 101.) For all of the items, the Potts researched the values by searching through catalogs. (R. 73, 84-85, 88.) Some of the items had been bought in the 1980s though. (R. 134.) The accumulated property had a value of over $100,000. (R. 68-74, 87-91, 121-25, 128-31, 154-61.)

Many of the items lost were precious to the Potts. Although the financial loss to the Potts was large, when the nearly full trailer was lost, the Potts suffered a

tremendous emotional toll as well. (R. 80, 92-97, 112-14, 125-27.) During her testimony, Mrs. Potts was reduced to tears over the lost sentimental items. (R. 125.) When asked to assess the loss of family photos and other highly personal items on his wife, Mr. Potts answered, "I can't feel her heart, but I can tell you it's been broken. It's destroyed her heart." (R. 92.) When asked for his own reaction, Mr. Potts responded, "I couldn't believe that one man had that much power to take our lives and rip it to pieces." (R. 89.)

Summary of Argument

Plaintiffs Lawrence and Candace Potts and their daughter lost a lifetime of personal property when Defendant Edward Yager sold their storage trailer and all of its contents for $1,000 to cover past-due rent. Defendant never reduced his claim against the Potts to a judgment or got court approval for his sale. Moreover, Defendant never mailed a notice to the Potts even though he had their address.

Defendant had no legal right to the Potts' trailer or its contents. When he unilaterally sold the trailer in violation of state law, Defendant converted the Potts' property. There was no testimony from any witness disputing any aspect of the conversion claim.

Mr. and Mrs. Potts testified that the trailer contained over $100,000 in household goods, tools, jewelry, and sentimental items, and they produced a long inventory for the police. Four witnesses testified the 48-foot long trailer had been

nearly full. Mr. Potts testified to the value of his trailer alone, and an independent expert on truck valuation agreed that the trailer alone was worth over $8,000.

The trial judge nevertheless ruled the testimony about the damages was incomplete and therefore unpersuasive. For example, the Potts did not have receipts for their lost property; their records were among the things that had been stored in their trailer. The trial court questioned why they did not get proof of purchases from the original vendors, in some cases from decades earlier. The court essentially applied a spoliation rule against the victims of the conversion instead of against the party responsible for the loss of the evidence.

The Potts' property had at least *some* value. Indeed, even Defendant testified that he sold the trailer for $1,000 (without knowing what it contained). Still, the trial court entered a judgment for Defendant, finding that there was *no evidence* of damages, not just lower damages than the Potts claimed.

The fact that the Potts proved the elements of conversion entitled them to a judgment, and the law presumes at least nominal damages. Finding no right to relief in *any* amount and ruling against Plaintiffs was a legal error, and the remedy is a new trial.

Argument

I. The trial court erred in ruling for Defendant based on a lack of testimony about the exact value of the Potts' losses when the undisputed testimony proved that the Potts suffered at least *some* injury.

A. Regardless of the specific value of their damages, the Potts met all three of the necessary elements to be entitled to a judgment on their conversion action.

Conversion is "the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of the condition or the exclusion of the owner's rights." *Hawkins v. City of Greenville*, 358 S.C. 280, 297, 594 S.E.2d 557, 566 (Ct. App. 2004). To recover in an action for conversion, the plaintiff must prove *only* the following: (1) an interest by the plaintiff in the thing converted, *Robinson v. Saxon Mills*, 124 S.C. 415, 117 S.E. 424 (1923); (2) the defendant converted the property to his own use, *Causey v. Blanton*, 281 S.C. 163, 165, 314 S.E.2d 346, 348 (Ct. App. 1984); (3) the use was without the plaintiff's permission, *id.* at 165, 314 S.E.2d at 348.

No evidence was offered to contest the satisfaction of the three necessary elements. First, not even Defendant argued that the Potts lacked an interest in the trailer and personal property; Mr. Potts bought the trailer, and it was titled in his name. (R. 79.) Second, uncontradicted testimony proved that Defendant took it upon himself to seize both the trailer and personal property and sold everything in violation of South Carolina's statutes for $1,000. (Tr. 37, 79, 149-53.) The trailer

was then taken to a car crusher where it was resold for $4,352 in scrap value and destroyed (R. 82-84). Third, not only did the Potts *not* agree to the sale, they did not even learn about the sale until after the fact; Defendant's only effort to notify the Potts of his plans was sending a letter by regular mail to an address he knew they had not occupied for several years. (R. 42, 49, 54, 56, 98, 100, 103-04, 111, 115-17, 135, 148.) Defendant had a telephone number for the Potts, but he never called to warn them of his plans by other means. (R. 56-57; 136.)

This was a case of vigilante distraint. Although a lessor can recover past-due rent through judicial distress, safeguards prevent precisely what Defendant did. For example, notice of the action must be served on a defendant with a known location personally by a constable or sheriff. S.C. Code Ann. § 27-39-210 (2007). A tenant's property cannot be declared abandoned before notice is either delivered or at least posted on the subject premises. S.C. Code Ann. § 27-39-210 (2007). Additional notice has to be given before the actual sale which must be by public auction and not private sale. S.C. Code Ann. § 27-39-320 (2007). Even then, many types of personal property are simply not subject to distraint at all. S.C. Code Ann. § 27-39-230 (2007). Here, without any notice to the Potts of his plans, Defendant seized their personal property, including items that were statutorily off-limits, and sold it off in a private sale at a fraction of what it was worth even as mere scrap.

Defendant's action met all three of the required elements for a conversion, and the trial court erred in entering a judgment in favor of Defendant.

B. The trial court erred in granting a defense verdict based on its concerns about the proof of the Potts' damages.

Nothing in the trial court's Order refutes any of the proof of the three necessary elements. Instead, the trial court took issue *only* with the amount of the resulting damages. The trial court dismissed entirely the testimony of the Potts about the value of their property, noting that they could have done more to substantiate their claims. (R. 6.) Although the trial court noted that an expert witness had valued the trailer itself at several thousand dollars (R. 7), no explanation of any kind was offered to sustain the trial court's decision to utterly dismiss both the Potts' testimony *and* the expert witness's opinion about the trailer's value. *Even Defendant* agreed the trailer was worth at least $1,000 based on his own sale of it at that price. (R. 37, 79, 149.) The trial court's defense verdict on these grounds was an error as a matter of law for several reasons.

1. Even if more than nominal damages were required, the Potts were entitled to a judgment since there was substantial evidence about their losses which the trial court dismissed without good cause.

When liability is established, a party is entitled to at least some damages as a matter of law and certainly when the fact finder had no basis for discrediting testimony about the amount of damages. *Swinton Creek Nursery v. Edisto Farm*

Credit, ACA, 334 S.C. 469, 476-77, 514 S.E.2d 126, 130 (1999) ("When the evidence yields only one inference, a directed verdict in favor of the moving party is proper.").

There must be *some* legitimate reason for questioning the reliability of a witness's testimony, especially where there is nothing contradicting it. In *Page v. Crisp*, 303 S.C. 117, 399 S.E.2d 161 (Ct. App. 1990), a husband and wife both sued the defendants for injuries the wife had sustained. Before trial, the defendants admitted their liability. *Id.* at 118, 399 S.E.2d at 162. At the end of the trial, the jury returned a $44,000 verdict for the wife for her personal injuries but awarded nothing to the husband for his loss of consortium claim. *Id.* at 118, 399 S.E.2d at 162.

The husband appealed, arguing that the jury's verdict was inappropriate given that liability had already been admitted. This Court agreed and began its analysis by noting that damages are *necessarily* proper when liability exists "unless proof completely fails." *Id.* at 118, 399 S.E.2d at 162. This Court recognized that a fact finder does not have to believe testimony when reasonable persons could disagree, but "it is not permitted to disbelieve testimony unless there is good reason for questioning the credibility of the witnesses." *Id.* at 119, 399 S.E.2d at 162. This Court "searched the record and [found] no reason to discredit the husband's testimony." *Id.* at 119, 399 S.E.2d at 162. But regardless of the amount

awarded, "[h]e was entitled to a verdict in some amount *as a matter of law*," *id.* at 119, 399 S.E.2d at 162 (emphasis added), and this Court reversed.

Although credibility is largely within the discretion of the fact finder, that discretion is not unbounded. For instance, when a neutral party, especially an expert, gives an unimpeached statement within his knowledge, the fact finder cannot arbitrarily disregard it: "Undoubtedly the general rule is that the testimony of an unimpeached disinterested witness which concerns facts within the witness' knowledge and competence and is neither improbable nor contradicted in any way by any other evidence in the case, must be taken as true." *Diamond Swimming Pool Co. v. Broome*, 252 S.C. 379, 385, 166 S.E.2d 308, 311 (1969). In that case, an expert's statement of costs was allowed to be discounted only because he could not explain how he arrived at the figures he used. *Id.* at 385, 166 S.E.2d at 311-12.

Apart from expert testimony, owners themselves can testify about (and recover) the replacement costs for their personal property. *Hall v. Seaboard Airline Ry.*, 126 S.C. 330, 119 S.E. 910 (1923). Even when the personal property has no actual market value, "the owner is entitled to recover its actual or reasonable value or its special value to him." *Nelson v. Coleman Co.*, 249 S.C. 652, 659-60, 155 S.E.2d 917, 921 (1967). Indeed, the most personal items a person owns—regular household items and apparel—are simply not subject to valuation through a secondhand market: "Thus, awarding the secondhand market value is not adequate

compensation to the owner. In these cases, courts do not limit damages to secondhand market value, but allow the owner to recover either the actual value of the item or its value to the owner, excluding any fanciful or sentimental value which the owner may place on the item." *Id.* at 660, 155 S.E.2d at 921. The owner's own testimony, even unsupported by additional third-party evidence, is sufficient. *Id.* at 660, 155 S.E.2d at 921.

Every witness who testified agreed that Defendant took valuable property belonging to the Potts. Mr. and Mrs. Potts had stored a lifetime of property in their trailer, filling it nearly to the brim. (R. 76, 109-10, 118-19.) They itemized those things which had been taken by Defendant and researched a value for each item. (R. 73, 88.) The total loss exceeded $100,000. (R. 68-74, 87-91, 121-25, 128-31; 154-61.) Their son, who helped them move their things into the trailer, likewise testified that the trailer was nearly full of personal property. (R. 118-19.) Even the man who cut the locks off the trailer testified it was full of their belongings (R. 107), but he never went into the trailer himself and could not testify about the specific contents from his own knowledge (R. 108). Defendant himself even admitted knowing that the Potts had stored their belongings in the trailer. (R. 111, 120, 137-38, 143.)

Beyond the lost personal property, the trailer itself was clearly shown to have value. Mr. Potts himself valued the trailer at $18,000, but at trial he agreed

that he was seeking only the value from an expert witness (R. 91). Mr. Geiger, a man with almost 50 years of experience in trucking and with no personal ties to the Potts, was recognized as an expert by the trial court and set the value at over $8,000. (R. 44, 46-47, 164.) But most significantly, even Defendant himself recognized that the trailer had value given that he agreed to sell it for $1,000 without having any idea about the value of the property kept inside. (R. 144, 149.) Moreover, the same trailer was immediately resold for more than four times that price to a wholly disinterested party (R. 150-53), further confirming that the trailer had at least *some* value.

Every party to this action and all of the witnesses agreed that the Potts lost an enormous collection of personal property. No one—including Defendant—testified that the total losses could possibly have been less than the $1,000 Defendant sold the property for. When the trial judge disregarded the testimony and punished the Potts for not having done even more to confirm their losses, the trial judge committed a serious error of law.

2. The court's reliance on the lack of evidence from vendors was an error since those papers were the very thing which Defendant sold off, and a strong presumption should have actually been applied against Defendant.

When a party causes a loss of evidence, the court should hold the loss against the spoliator, not the owner of the lost evidence. For over two hundred years, this Court has recognized that a party is entitled to a favorable presumption

about what missing evidence would have shown had the opposing side not had a hand in destroying the evidence. *See Halyburton v. Kershaw*, 1810 WL 298 (S.C. Ct. App. 1810). In that case, the defendants destroyed evidence of a contract that would have led to the construction of a house on a piece of property the plaintiff had later inherited. Although this Court went out of its way to note that the opposing party had not maliciously destroyed the evidence, it nevertheless ruled that the plaintiff was entitled to a strong presumption from the spoliation: "[The plaintiff] would be entitled to the benefit of all the presumptions which could reasonably be raised out of the circumstances for his benefit." *Id.* at *4.

In another early case from this Court, the rule was settled that a party is entitled to a strong presumption about the damages he has sustained when the opposing party is at fault in destroying what would have otherwise been used to prove the amount of those damages. In *Executors of Blake v. Lowe*, 1811 WL 319 (S.C. Ct. App. 1811), the defendant was left certain items in a friend's will, but upon the friend's death, the defendant emptied out the entire contents of the friend's jewelry store. Among the things that the defendant took from the store were the business records, making it impossible to calculate the proper measure of damages. The shop manager could not pinpoint a specific value of the store's contents: "The value put upon the goods in the shop at Blake's death, by the shopman, was a mere guess. He had no inventory; no prices; his eye alone guided

him. He might be greatly mistaken." *Id.* at *3. This Court ruled on appeal, "That if there was any difficulty in discriminating, it arose solely from the unjustifiable and illegal act of Lowe in taking possession of the whole shop and all its contents; and in taking the books of the shop and in cutting out the leaves, and so destroying the evidence which would have *thrown* light on the case. That in odio spoliatoris omnia presumuntur; and that Lowe should be made liable to the utmost extent that the Court could do it." *Id.* at *2.

In contrast, there was at least some reliable testimony upon which to rest an adverse inference from Defendant's spoliation. Not only did Defendant sell the Potts' trailer, he did so without ever even bothering to look inside, much less document what he was selling with a photograph or inventory. (R. 141-42.) Unlike the shop manager in *Lowe*, the Potts were familiar with their belongings and were able to reconstruct a detailed inventory of the trailer. (R. 86, 121, 125-27, 128-32, 154-61.) By searching catalogs, the Potts were able to assign values to those lost items, thereby creating a reliable starting point for the assessment of damages. (R. 73, 84-85, 88.) Moreover, as to the value of the trailer itself, not only did Mr. Potts testify, an expert witness added his opinion based on commercial pricing guides and his 47 years of experience that the trailer was worth over $8,000, possibly much more. (R. 44-48, 91, 164.) At that point, they were entitled to a strong

presumption about their damages since Defendant himself was responsible for the loss of the very documents that might have better proved a specific loss.

The trial court, however, did not rely upon the legal presumption the Potts were entitled to. The trial court erred in failing to fill any gaps in the Potts' proof of damages with a presumption based on Defendant's knowing destruction of the very evidence that might have resolved the trial court's skepticism.

3. The trial court's finding that the Potts had suffered no losses at all—and not just insufficiently quantified losses—was a legal error since at least nominal damages are presumed.

Proof of damages is *not* an essential element to recover a judgment especially since the law presumes at least nominal damages for the invasion of a plaintiff's rights. Not every cause of action requires damages to succeed. *See, e.g.*, *Babcock v. Postal Tel.-Cable Co.*, 117 S. C. 304, 306, 109 S. E. 116, 117 (1921); *Jones v. Atl. Coast Line R.R.*, 108 S. C. 217, 94 S. E. 490 (1917). *Cf. Stevens v. Allen*, 342 S.C. 47, 536 S.E.2d 663 (2000).

In *Save Charleston Foundation v. Murray*, 286 S. C. 170, 178, 333 S. E. 2d 60, 65 (Ct. App. 1985), this Court approved the rule that even when no actual loss has occurred, a party can be liable for at least nominal damages if a technical conversion is shown. There, the parties negotiated the sale of real estate for $375,000, and the Foundation received a promissory note for the price. *Id.* at 173, 333 S.E.2d at 62. When a dispute arose, the parties arbitrated the disagreement,

and the Foundation was awarded about $110,000. *Id.* at 173, 333 S.E.2d at 62. The defendant paid that judgment and asked for the return of its promissory note, but the Foundation refused. *Id.* at 173, 333 S.E.2d at 62. When a second round of litigation began, one of the buyers sued for conversion based on the Foundation's refusal to relinquish the promissory note. *Id.* at 173, 333 S.E.2d at 62.

On appeal, the Foundation argued that its attempt to dismiss the conversion counterclaim should have been granted since the Foundation had already paid the underlying debt, rendering the note valueless. Despite payment, mere retention the note itself could still constitute actionable conversion. *Id.* at 178, 333 S.E.2d at 65. Actual damages from the conversion were not required: "*Even when no actual loss has occurred*, a party can be liable for at least nominal damages if a technical conversion is shown." *Id.* at 178, 333 S.E.2d at 65 (emphasis added).

As explained above, there was no argument whether Defendant took the Potts' property without proper authority and sold it off without their permission. Alone, those findings justified a verdict for the Potts. By equating imperfect proof of the Potts' losses with no evidence at all, the trial court erred in ruling for Defendant since the law presumes at least *some* injury. The Potts were entitled to a judgment regardless of the trial court's beliefs about damages.

C. Because the trial court erred in ruling for Defendant and not merely awarding inadequate relief, the proper remedy is a new trial.

Because the trial court entered a judgment for the defense and not just an award for insufficient damages, the Court must reverse and order a new trial. *See Sandel v. Cousins*, 266 S.C. 19, 22-23, 221 S.E.2d 111, 112 (1975). In *Sandel*, a property owner watched as a work crew began clearing his newly purchased parcel of trees. *Id.* at 22, 221 S.E.2d at 112. There was no testimony showing the damages sustained by the removal of the timber, but at least nominal damages were at stake. *Id.* at 22, 221 S.E.2d at 112. Although the property owner had made out his case against the defendant, the trial court ruled for the defendant "on the grounds that [the plaintiffs] had not proved the amount of their damages." *Id.* at 21, 221 S.E.2d at 111.

The South Carolina Supreme Court heard an appeal following the entry of a nonsuit in favor of the defendant. The Court correctly refined the issue: "[T]he sole issue presented for review was whether there was any evidence warranting submission of the issue of damages to the jury." *Id.* at 22, 221 S.E.2d at 112.

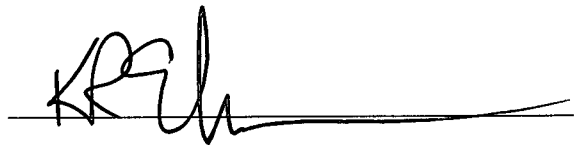
The Supreme Court recognized that there had been no evidence establishing the amount of damages yet agreed there had been evidence to establish *at least some* loss. *Id.* at 22-23, 221 S.E.2d at 112. Given that the plaintiff had proved at least the elements of his case, he was entitled to at least nominal damages. *Id.* at

23, 221 S.E.2d at 112 (citing *Few v. Killer*, 63 S.C. 154, 41 S.E. 85 (1902)). Merely proving a claim for nominal damages would have justified a judgment for the plaintiff, and a ruling for the defense was an error. *Id.* at 23, 221 S.E.2d at 112. Although the plaintiff had already rested by the time of the nonsuit (and therefore closed the door on additional proof of his damages), the South Carolina Supreme Court did not simply reverse and award nominal damages; instead, the Court reversed and remanded for an entirely new trial. *Id.* at 23, 221 S.E.2d at 112.

Likewise, in the present case, there was undisputed evidence that the Potts suffered at least some damage. In fact, the evidence on damages easily eclipsed the record in *Sandel*. While there was no testimony of damages beyond nominal damages in that case, here even Defendant testified that he was able to sell the Potts' trailer for $1,000. (R. 143, 149.) Both Mr. Potts and an expert witness valued the trailer at much more than that (R. 164), and the Potts offered a detailed list of their losses totaling over $100,000 (R. 154-61). However, because the trial court entered a judgment for Defendant, there is no judgment to amend through a *nisi additur* process. Instead, as the Supreme Court did in *Sandel*, the proper remedy is to reverse the decision of the trial court and order a new trial.

Conclusion

For all these reasons, the Court should reverse the decision of the trial court and remand for a new trial.



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