

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Marvin H. Dukes, III, Master in Equity

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Case No. 2015-CP-07-2599

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CGBS Residential, LLC,

Respondent,

v.

Christopher Briggs,

Appellant.

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Appellant.

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BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

1. DID THE TRIAL COURT ERR IN FINDING THAT APPELLANT, WHO FAILED TO ANSWER THE COMPLAINT AND WAS IN DEFAULT, WAS LIABLE TO RESPONDENT FOR DAMAGES RESULTING FROM APPELLANT'S ALLEGED ORDERING OF BUILDING MATERIALS WHEN RESPONDENT FAILED TO PROVE AT THE DAMAGES HEARING FOLLOWING DEFAULT THAT APPELLANT HAD MADE ANY SUCH ORDER?

## STATEMENT OF THE CASE

On October 29, 2015, Respondent CGBS Residential, LLC (hereinafter “CGBS”) brought an action alleging, among other things, Breach of Contract against Appellant Christopher Briggs (hereinafter “Briggs”). Briggs failed to answer, default was entered against Briggs, a hearing to determine damages took place on July 27, 2016, and judgment was entered on August 25, 2016. CGBS was awarded forty-six thousand four hundred thirty-eight dollars and forty-seven cents (\$46,438.47) for damages purportedly resulting from Briggs’s ordering building materials on CGBS’s account at Grayco hardware store. On September 26, 2016, counsel for CGBS was served with the Notice of Appeal.

## FACTS

On or about March 26, 2015, Briggs and CGBS entered into a construction management agreement (hereinafter “Agreement”) by which Briggs engaged CGBS to act as a construction manager and perform the duties of a construction manager in connection with the construction of a house being built by Briggs. Subsequent to the execution of the Agreement, the parties reached an oral agreement that allowed Briggs to order building materials on CGBS’s account at Grayco Building Center (hereinafter “Grayco”), a hardware store in Beaufort, South Carolina. CGBS’s complaint alleges that Briggs ordered material from Grayco on CGBS’s account, failed to pay Grayco or reimburse CGBS for materials ordered, and left CGBS with forty-two thousand six hundred eleven dollars and seventy-five cents (\$42,611.75) due on its Grayco account as a result of Briggs’s orders. (Complaint, ¶¶ 4 -6). CGBS further alleges that Briggs breached its contract by “failing to indemnify, defend and hold CGBS harmless from Grayco’s claim for \$42,611.75 on CGBS’s account with Grayco for materials ordered by Briggs in the construction project.”

(Complaint, ¶ 9).

During the hearing to determine the amount of damages following the entry of default, held on July 27, 2016, CGBS presented testimony of two Grayco employees, Jeremy M. Walling and Melinda A. Shuman, and submitted numerous Grayco invoices. (Plaintiff's Exhibits 6 and 7). The total of the payment requested in the invoices was the same as the amount alleged to have been ordered by Briggs, forty-two thousand six hundred eleven dollars and seventy-five cents (\$42,611.75). However, neither employee could offer any testimony that showed that the items shown on the invoices were ordered by Briggs. Each of the invoices identified the person who made the order. (Transcript, pp. 35-37, 44-45; Plaintiff's Exhibits 6 and 7). The only people identified as having made orders were Mike Thorpe and Andy Banks. (Plaintiff's Exhibits 6 and 7). Mr. Thorpe is the owner of CGBS and Mr. Banks is an employee of CGBS. (Transcript, pp. 46, 77).

Mr. Thorpe and Mr. Banks also testified, but neither identified any orders that Briggs had made at Grayco. (Transcript, pp. 68-72, 77-79).

In its Order, issued August 25, 2016, the Court found that the "total amount presented as due and owing by Grayco for materials either delivered to the Defendant's job site or picked up for use at the Defendant's job site, on the Plaintiff's account, plus interest to the date of the hearing, was \$46,438.47." (Order, p. 7). The Court also found that "[i]n addition to the Agreement, the parties made an oral agreement allowing the Defendant to order materials on CGBS's account at Grayco Building Center so long as he made timely payments for those materials ordered on CGBS's account," that "[p]ursuant to this agreement, Defendant purchased or caused to be purchased those items and materials," "Plaintiff failed to pay for the items ordered on CGBS's account," and, therefore, "the Plaintiff is entitled to a judgment against the Defendant for the total amount of the

outstanding Grayco bill of \$46,438.47.” (Order, p. 7-8)

## ARGUMENT

- I. BECAUSE RESPONDENT FAILED TO SHOW THAT APPELLANT ORDERED ANY BUILDING MATERIALS ON RESPONDENT’S ACCOUNT, IT IS PRECLUDED FROM RECOVERING PURSUANT TO ITS CLAIM THAT ITS DAMAGES AROSE FROM APPELLANT’S ORDERING BUILDING MATERIALS ON RESPONDENT’S ACCOUNT.

In all cases, other than those involving liquidated damages or sum certain amounts, “the party entitled to a judgment by default shall apply to the court therefor.” Rule 55(b)(2) SCRPC. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages . . . , the court may conduct such hearing or order such references as it deems necessary and proper . . .” *Id.* A default is a concession of liability but not of the amount of damages. Howard v. Holiday Inns, Inc., 271 S.C. 238, 246 S.E.2d 880 (1978), James F. Flanagan, South Carolina Civil Procedure § 55.B.2, (3d ed. 2014). The complaint’s prayer for relief may not bear any relationship to actual damages suffered so the plaintiff must prove the damages. *Id.*

Upon inspection of the complaint in this case, it is clear that the damages sought by the CGBS arose from Briggs’s alleged ordering of materials from Grayco on CGBS’s account and then failing to pay for those materials. (Complaint, pp. 2 – 6). By failing to respond to the complaint, Briggs conceded that he had ordered materials on the Grayco account and had failed to pay for them. However, his failure to answer was not a concession of the amount of the damages. For that amount to be established it was necessary for CGBS to show, at the damages hearing, the orders made by Briggs on its account. CGBS failed to do so, only presenting invoices for items that had been ordered by Mike Thorpe or Andy Banks.


As such, CGBS failed to prove the amount of damages as required by Rule 55(b)(2) SCRPC

and Howard. Since CGBS failed to prove the amount of damages arising from Briggs's alleged purchase of building materials, the court below erred in awarding CGBS forty-six thousand four hundred thirty-eight dollars and forty-seven cents (\$46,548.47) as set out on pages 7, 8, and 9 of its order.

#### CONCLUSION

In its complaint, CGBS sought damages arising from Briggs's alleged ordering materials on CGBS's account and failing to pay for them. Briggs failed to reply to the complaint and default was entered against him. At the damages hearing following the default, CGBS failed to prove that Briggs ordered any materials on CGBS's account. Despite this failure, the court below awarded CGBS damages for Briggs's failure to pay on CGBS's account after ordering materials thereon. For the reasons stated, this Court should reverse the judgment of the court below.

Respectfully submitted,



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December 7, 2016

THE STATE OF SOUTH CAROLINA  
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Appellant.

CERTIFICATE OF SERVICE

I certify that I have served the counsel below with the Brief of Appellant and Designation of Matter to Be Included in Record on Appeal by depositing a copy of it in the United States Mail, postage prepaid, on December 7, 2016, addressed James J. Wegmann, 6 Professional Village Circle, Beaufort, South Carolina 29907.

December 7, 2016

  
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December 7, 2016

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

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Re: CGBS Residential, LLC v. Christopher Briggs  
Case No. 2015-CP-07-2599

Dear Ms. Kitchings:

Enclosed herewith for filing please find an original and copies of the Brief of Appellant, Appellant's Designation of Matter to be Included in the Record on Appeal, and a Certificate of Service. Also enclosed are fifteen (15) copies of the record on appeal. Please file these documents and return a filed, time-stamped copy of the Brief of Appellant, Appellant's Designation of Matter to be Included in the Record on Appeal, and Certificate of Service to me in the enclosed self-addressed envelope.

Thank you for your attention to this matter. Please do not hesitate to contact me if you have any questions.

With warmest regards,

  
Benjamin T. Coppage

cc: Jim Wegmann  
Enclosures