

FORM 4

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

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2015CP3900748

ELECTRONICALLY FILED - 2016 Oct 24 9:43 AM - PICKENS - COMMON PLEAS - CASE#2015CP3900748

Kirk Porter

TRI C Construction  
 Company Inc.

**RECEIVED**

MAR 15 2017

SC Court of Appeals

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for:  Plaintiff  Defendant  
 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: The Court denies Defendant's Motion for Summary Judgment.

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)

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

2162  
 Judge Code

10/23/2016  
 Date

**For Clerk of Court Office Use Only**

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

Neal Anthony Collins

Fern Ann Patterson

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**ATTORNEY(S) FOR THE DEFENDANT(S)**

**Court Reporter**

**Harold P. Welborn Pickens County Clerk of Court  
Clerk of Court**

**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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ELECTRONICALLY FILED - 2016 Oct 24 9:43 AM - PICKENS - COMMON PLEAS - CASE#2015CP3900748



Pickens Common Pleas

**Case Caption:** Kirk Porter VS TRI C Construction Company Inc

**Case Number:** 2015CP3900748

**Type:** Order/Form 4

So Ordered

s/Letitia H. Verdin, SC Judge 2162

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF PICKENS )  
 )  
Kirk Porter d/b/a Piedmont Outdoor )  
Advertising, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
Tri-C Construction Company, Inc., )  
 )  
Defendant )  
 )  
\_\_\_\_\_ )  
 )  
 )

IN THE COURT OF COMMON PLEAS  
FOR THE THIRTEENTH JUDICIAL  
CIRCUIT

Case No.: 2015-CP-39-00748

ORDER

**RECEIVED**

MAR 15 2017

SC Court of Appeals

This matter came before the Court on October 4, 2016, as a non-jury trial. The Court finds that Tri-C Construction Company, Inc. ("Defendant") breached the contract entered into with Kirk Porter d/b/a Piedmont Outdoor Advertising ("Plaintiff") on or about August 31, 2009. However, the Court does not find that Defendant's breach was accompanied by fraudulent intent. Thus, the Court awards Plaintiff damages in the amount of \$72,635.13.

**FINDINGS OF FACT AND LAW**

**a. Breach of Contract**

To recover for breach of contract, Plaintiff must prove "the existence of the contract, its breach, and the damages caused by such breach." *W.E. Gilbert & Assocs. v. S.C. Nat'l Bank*, 285 S.C 421, 330 S.E.2d 307, 309 (Ct. App. 1985). As to the first element, the Court finds Plaintiff and Defendant entered into a contract on or about August 31, 2009, with a Letter of Understanding (Exhibit A). The contract specified Defendant was responsible for the cost of deconstructing and reconstructing the billboard, including making it comply with all local laws, as well as loss of revenue after ninety

(90) days. Defendant's partial work performed in accordance with the contract – payment of \$5,800 to Fairway Outdoor Advertising on March 18, 2010, to deconstruct the old billboard, communication between the parties, and soil testing – further evidences a contract was indeed entered into on or about August 31, 2009.

As to the second element, Defendant failed to reconstruct the new billboard and failed to pay Plaintiff for loss of revenue after the ninety (90) day period. The old billboard was deconstructed on March 18, 2010 and the new billboard was not completed until September 18, 2012. The new billboard was leased on October 1, 2012.

As to the third element, Plaintiff incurred damages of \$21,600 for twenty-seven months of lost revenue, \$25,035.13 in expenses for the new billboard, and \$26,000 in pre-judgment interest for a total loss of \$72,635.13.

**b. Statute of Limitations**

The Court finds that Plaintiff's breach of contract claim falls within the three year statute of limitations. The fundamental test for determining whether a cause of action has accrued is whether the party asserting the claim can maintain a cause of action to enforce it. *Matthews v. City of Greenwood*, 305 S.C. 267, 269, 407 S.E.2d 668, 669 (Ct. App. 1991). South Carolina applies the discovery rule to breach of contract actions, which provides that an action accrues on the date the aggrieved party either discovered or could or should have discovered the breach through the exercise of reasonable diligence. *Maher v. Tietex Corp.*, 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct. App. 1998). Here, as previously mentioned, Defendant paid Fairway Outdoor Advertising \$5,800 on March 18, 2010, to deconstruct the old billboard. Further, Defendant communicated with Plaintiff about issues arising under the contract entered into. On July 29, 2010, the first

monthly revenue was due (120 days had run) and Defendant responded to Plaintiff's email saying that invoices were to be sent to Mr. Chris Scott of Tri-C Construction. On August 9, 2010, Defendant emailed both Plaintiff and SCDOT about the new billboard location. On August 19, 2010, Defendant informed Plaintiff that soil testing of the billboard location would be conducted soon and the soil testing report was submitted to Defendant. Defendant paid for the report and sent the report to Plaintiff. Further, in the Letter of Understanding, Defendant and Plaintiff only agreed "Defendant would bear costs for de-constructing and re-constructing" – not to a set payment plan or date(s) of payment. Therefore, the Court finds Plaintiff incurring expenses to reconstruct the billboard and then seeking reimbursement from Defendant upon completion was a reasonable course of action, based on the factual circumstances previously mentioned. As a result, Defendant has failed to show that Plaintiff either discovered, or could or should have discovered the breach through the exercise of reasonable diligence prior to the completion of re-construction of the billboard on September 18, 2012. Thus, Plaintiff's complaint filed on June 16, 2015, falls within the three year statute of limitations.

**c. Action for Breach of Contract Accompanied by Fraudulent Act**

To maintain an action for breach of contract accompanied by fraudulent act, Plaintiff must prove: (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. *Osborn v. Medical Associates of the Medical University of South Carolina*, 278 F. Supp.3d 720, 740 (D.S.C 2003); *RoTec Services, Inc. v. Encompass Services, Inc.*, 359 S.C. 467, 470, 597 S.E.2d 881, 883 (Ct. App. 2004). "The mere fact that a contract was broken does not carry with it the stigma of fraud, bad faith,

malice, or wantonness." *Holland v. Spartanburg Herald-Journal Co.*, 166 S.C. 454, 165 S.E. 203, 208 (1932). The fraudulent act necessary to support a breach of contract with fraudulent intent claim "must be an act done with the intent to deceive." *Save Charleston Foundation v. Murray*, 286 S.C. 170, 181, 333 S.E.2d 60, 67 (Ct. App. 1985).

Plaintiff has failed to satisfy the second or third elements of his claim. Mere partial performance of a contract by Defendant, without allegations of dishonesty or misrepresentations of facts or other tortious acts or significant aggravating circumstances, fails to show fraudulent intent. Plaintiff did not provide evidence to sufficiently establish that Defendant acted with intent to deceive Plaintiff at the formation of the contract. Thus, the Court finds for Defendant as to Plaintiff's claim of breach of contract accompanied by fraudulent intent.

**d. Punitive Damages**

Plaintiff has failed to prove by clear and convincing evidence that his harm was the result of Defendant's willful, wanton, or reckless conduct. Thus, the Court awards no punitive damages.

Accordingly, the Court finds in favor of Plaintiff as to breach of contract and awards damages in the amount of \$21,600 for twenty-seven months of lost revenue, \$25,035.13 in expenses for the new billboard, and \$26,000 in pre-judgment interest for a total award of \$72,635.13.

IT IS SO ORDERED.

**RECEIVED**

MAR 15 2017

**SC Court of Appeals**

\_\_\_\_\_, 2016

Letitia H. Verdin  
13<sup>TH</sup> Judicial Circuit Judge



Pickens Common Pleas

**Case Caption:** Kirk Porter VS TRI C Construction Company Inc

**Case Number:** 2015CP3900748

**Type:** Order/Judgment and Form 4

So Ordered

s/Letitia H. Verdin, SC Judge 2162

Electronically signed on 2016-10-24 11:24:47 page 6 of 6

**RECEIVED**

**MAR 15 2017**

**SC Court of Appeals**

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STATE OF SOUTH CAROLINA  
 COUNTY OF PICKENS  
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 Piedmont Outdoor  
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DEFENDANT(S)

Submitted by:

Attorney for:  Plaintiff  Defendant  
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**IT IS ORDERED AND ADJUDGED:**  See attached order; (formal order to follow)  Statement of Judgment by the Court: Court received Defendant's Motion To Alter Or Amend The Judgment on November 2, 2016. After careful consideration of this matter, the Court denied Defendant's Motion.

**ORDER INFORMATION**

This order  ends  does not end the case.  
 Additional Information for the Clerk: \_\_\_\_\_

**INFORMATION FOR THE JUDGMENT INDEX**

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ELECTRONICALLY FILED - 2017 Feb 07 11:08 AM - PICKENS - COMMON PLEAS - CASE#2015CP3900748

**Circuit Court Judge** **Judge Code** **Date**  
**For Clerk of Court Office Use Only**

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

**Neal A. Collins** 101 NE Main Street, Easley, SC 29640

**Kevin A. Dunlap** 100 Dunbar Street, Suite 206,  
Spartanburg, SC 29316

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**ATTORNEY(S) FOR THE DEFENDANT(S)**

**Court Reporter**

**Harold P. Welborn** Pickens County Clerk of Court  
Clerk of Court

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

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