

STATE OF SOUTH CAROLINA

COUNTY OF BARNWELL

Martha M. Fountain and Curtis Fountain,

Plaintiffs,

vs.

Fred's, Inc. and Wildevco, LLC,

Defendants,

vs.

Tippins-Polk Construction, Inc. and Rhoad's
Excavating Services, LLC,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Civil Action No. 2010-CP-06-101

ORDER

RHONDA D. NEELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

2016 AUG - 1 AM 11:26

FILED FOR RECORD

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MAR 21 2017

SC Court of Appeals

This matter is before the Court upon the trial of the third-party claim of Fred's Stores of Tennessee, Inc., incorrectly identified as Fred's, Inc. ("Fred's") and Wildevco, LLC ("Wildevco") against Tippins-Polk Construction, Inc. ("Tippins-Polk") in the above-referenced matter.¹ Wildevco and Fred's each assert a claim of equitable indemnification² for damages sustained by them as a result of alleged faulty construction by Tippins-Polk of the subject Fred's store formerly located in Williston, South Carolina. The trial of the case proceeded in open court before this Judge on June 6, 2016 through June 7, 2016. For the reasons set forth herein, the Court enters judgment in favor of Wildevco and Fred's.

¹ As set forth herein below, all claims in the underlying case between Plaintiffs and Defendants were resolved by settlement. Tippins-Polk also filed fourth-party claims against two of its subcontractors, Southern Asphalt and Rhoad's Excavating. Summary judgment was granted in favor of Southern Asphalt in July of 2014. Rhoad's Excavating did not appear and an order of default was entered against it in July of 2013.

² Wildevco and Fred's also brought claims for negligence, breach of contract, and breach of warranty but prior to the trial of this matter agreed to proceed only on the claim of equitable indemnification.

APPLICABLE LAW

In order to recover on a claim of equitable indemnity, the party seeking indemnification must show that: 1) the third party against whom indemnification is sought was at fault in causing the plaintiff's damages in the underlying action; 2) that the party seeking indemnification has no fault for the plaintiff's damages; and 3) the party seeking indemnification incurred expenses that were necessary to protect its interest in defending against the plaintiff's claims. *See Stoneledge at Lake Keowee Owners' Ass'n v. Clear View Constr., LLC*, 413 S.C. 615, 625, 776 S.E.2d 426, 432 (Ct. App. 2015) (citing *Inglese v. Beal*, 403 S.C. 290, 299, 742 S.E.2d 687, 692 (Ct. App. 2013); *Walterboro Cmty. Hosp. v. Meacher*, 392 S.C. 479, 485, 709 S.E.2d 71, 74 (Ct. App. 2011)). Where, as here, a party seeking equitable indemnification settles the underlying claims against it, the innocent party may recover the cost of settling the case if it makes the following showing: 1) the settlement is bona fide, with no fraud or collusion by the parties; 2) the decision to settle is a reasonable means of protecting the innocent party's interest; and 3) the amount of the settlement is reasonable in light of the third party's estimated damages and the risk and extent of defendant's exposure if the case is tried. *See Otis Elevator v. Hardin Constr. Co. Group*, 316 S.C. 292, 297, 450 S.E.2d 41, 44 (1994) (citing *Griffin v. Van Norman*, 302 S.C. 520, 524, 397 S.E.2d 378, 380 (Ct. App. 1990)). In making this showing, the indemnitee is not required to prove the plaintiff's actual ability to recover the amount paid in settlement so long as the party seeking indemnification proves that it was *potentially* liable to the plaintiff in the underlying case. *See Otis Elevator*, 316 S.C. at 297, 450 S.E. 2d at 44.

FINDINGS OF FACT

Based on a review of the pleadings and considering the evidence presented at trial, including the deposition submissions of the parties, witness testimony, as well as exhibits, the Court makes the following findings of fact:

1. Wildevco is a development company and owns the property in Williston, South Carolina where the subject Fred's store was located and operated during the relevant time period. Pursuant to the Lease Agreement between Wildevco and Fred's, Wildevco agreed to have a Fred's store constructed on the premises and to lease the property to Fred's for a ten-year period commencing in 2005. The Lease Agreement included conceptual drawings for the Fred's facility.

2. Thaddeus "Tad" Barber is a partner in Wildevco and was responsible for overseeing the project. Mr. Barber graduated from Clemson University with a Bachelor of Science degree in Financial Management, obtained a Master of Business Administration from the University of South Carolina and is a commercial real estate broker. He has no education or formal training in construction, engineering or architecture.

3. Wildevco hired Tippins-Polk as the general contractor for the Fred's project. Wildevco hired architects Chris Booker & Associates to prepare architectural drawings based on the conceptual drawings provided by Fred's and hired the engineering firm of Hass and Hilderbrand, Inc. to prepare the site plans for the premises. Those drawings and plans were then provided to Tippins-Polk and the facility was constructed with Tippins-Polk acting as the general contractor.

4. The Construction Agreement between Wildevco and Tippins-Polk provided, *inter alia*, that Tippins-Polk was to execute the entire work described in the Contract Documents, which consisted of the Construction Agreement, the drawings furnished by Chris Booker & Associates and the site plans furnished by Hass & Hilderbrand, Inc.

5. The site plans provided for construction of the entrance of the store such that the sidewalk was to be flush or even with the parking lot and the entranceway area of the store. While the testimony indicated that there may have been some potential areas of confusion in the drawings and plans, including a possible discrepancy between the architectural drawings and the site plans, the site plans obligated the "contractor [to] notify the engineer for a review should discrepancies be discovered at the site or on the drawings." At no time did Tippins-Polk contact Hass & Hilderbrand to report any discrepancy or to request clarification with regard to the drawings and plans or the manner in which the Fred's store was to be constructed.

6. Rather than constructing a sidewalk that was flush with the parking lot and store entrance in accordance with the site plans, Tippins-Polk constructed an elevated sidewalk with a curb and curb ramp. In addition, the curb and ramp as constructed were defective as the curb did not comply with applicable building codes and/or industry standards for minimum height as the curb height was less than four (4) inches. Further, the flare on the right side of the curb ramp where Plaintiff Martha Fountain tripped extended into the walkway leading to the entrance doors of Fred's, which likewise did not comply with either the site plans or applicable standards.



7. During the construction process, Tad Barber and a representative of Fred's went to the premises periodically to ensure that construction of the premises was progressing. Neither Mr. Barber nor the Fred's representative conducted inspections to determine whether the construction specifically comported with the site plans nor were either trained or qualified to conduct such an inspection.

8. Following inspection by a Barnwell County Building Inspector, Barnwell County issued a certificate of occupancy for the Fred's store and the premises was ultimately turned over to Fred's as lessee, which opened the store in or about October 2005.

9. During the period between October 2005 and March 10, 2010, Wildevco properly maintained the premises but, did not discover the defect in the subject sidewalk curb and curb ramp.

10. During the period between October 2005 and March 10, 2010 Fred's employees completed routine inspections of the premises for trip hazards.

11. During the period between October 2005 and March 9, 2010 Fred's had no other incidents involving a patron tripping over the curb or curb ramp at the store where Mrs. Fountain tripped and fell.

12. On March 10, 2010, Martha Fountain tripped over the curb ramp and fell, sustaining injuries to her head, wrist and elbow. The injuries resulted in Mrs. Fountain having to undergo several surgeries, including the implantation and removal of hardware in her hand/wrist.

13. As a result of the injuries, Mrs. Fountain missed time from work and was unable to return to her prior employment due to lifting restrictions imposed by her injuries.

14. Mrs. Fountain is unable to perform many activities that she was able to perform prior to the accident, including sewing, playing the piano as well as lifting and grasping certain objects. The accident had a negative impact on Mrs. Fountain's marriage, causing financial strain and taking an emotional toll on both Mrs. Fountain and her husband.

15. In 2010, Mr. and Mrs. Fountain filed a lawsuit against Fred's and Wildevco alleging negligence as a result of the construction defect. Mrs. Fountain claimed over Ninety Thousand and 00/100 Dollars (\$90,000.00) in medical damages and lost wages. Mr. Fountain filed a loss of consortium claim for which he also sought damages.

16. Wildevco and Fred's filed third-party claims against Tippins-Polk for equitable indemnification, negligence, breach of contract and breach of warranty. Prior to trial, Wildevco and Fred's elected to proceed solely on the claim of equitable indemnification.

17. Mr. and Mrs. Fountain settled their claims against Wildevco and Fred's prior to the scheduled trial of the matter, for a total sum of Two Hundred Ninety Thousand and 00/100 Dollars (\$290,000.00). Wildevco paid Two Hundred Fifty



Thousand and 00/100 Dollars³ (\$250,000.00) of the total settlement amount and Fred's paid Forty Thousand and 00/100 Dollars (\$40,000.00).

18. Wildevco incurred legal fees and costs in defending the claims by Martha and Curtis Fountain in the total amount of \$55,418.30. Fred's incurred legal fees and costs in defending the claims by Martha and Curtis Fountain in the total amount of \$36,691.82.

CONCLUSIONS OF LAW

Based on a review of the pleadings and considering the evidence presented at trial, including the deposition submissions of the parties, witness testimony, as well as exhibits, the Court makes the following conclusions of law based on the preponderance of the evidence:

1. A special relationship existed between Fred's and Tippins-Polk based on Tippins-Polk's agreement to construct a facility for a Fred's retail store with knowledge that the Fred's facility would be open for business to the public, as well as its selection as general contractor based on its prior construction of at least one other Fred's store. Thus, Tippins-Polk had a duty to Fred's to exercise due care in the construction of the subject Fred's premises.

2. Wildevco exercised due care and acted reasonably and with prudence with regard to the development of the Fred's facility and exercised due care and acted reasonably and with prudence with regard to the maintenance of the facility up to and including the date of Mrs. Fountain's accident on March 10, 2010.

³ The settlement payment of \$250,000.00 was paid on Wildevco's behalf by its insured, as were its legal fees and costs. As the insured, the damages, fees and costs paid on behalf of Wildevco are attributed to Wildevco herein for purposes of Wildevco's equitable indemnification claim.

3. Wildevco was without fault and was an innocent party with regard to both the construction of the Fred's premises and its inspection and maintenance of the premises. Wildevco did not breach any duty owed to Mrs. Fountain in its actions with regard to the construction and, thereafter, the inspection and maintenance of the Fred's facility as the defects were such that could not reasonably have been discovered by Wildevco

4. Fred's was without fault and was an innocent party with regard to both the construction of the premises and its inspection and maintenance of the premises. Fred's did not breach any duty owed to Mrs. Fountain in its actions with regard to the construction and, thereafter, the inspection and maintenance of the Fred's facility as the defects were such that could not reasonably have been discovered by Fred's.

5. Wildevco and Fred's reasonably relied on Tippins-Polk as the general contractor to ensure that the premises was built in accordance with the drawings and site plans, free from latent defects.

6. Engineers and architects were employed by Wildevco to render drawings and site plans for the premises and Tippins-Polk had a duty to construct the premises in accordance with those drawings and plans. By a preponderance of the evidence, Tippins-Polk did not construct the premises in accordance with the applicable drawings and plans.

7. Tippins-Polk breached its contractual obligation and its duty of care to Wildevco and Fred's in failing to construct the premises free of latent defects. *See Fields v. J. Haynes Waters Builders, Inc.*, 376 S.C. 545, 658 S.E.2d 80 (2008) (citing *Rutledge v. Dodenhoff*, 254 S.C. 407, 175 S.E.2d 792 (1970); *Lane v. Trenholm Bldg. Co.*, 67 S.C.

497, 229 S.E.2d 728 (1976); and *Kennedy v. Columbia Lumber & Mfg. Co., Inc.*, 299 S.C. 335, 384 S.E.2d 730 (1989).

8. The construction defects, for which Tippins-Polk is solely responsible, were the sole proximate cause of Mrs. Fountain's injuries after she tripped on the subject curb ramp and fell at the Fred's store on March 10, 2010. Thus, Tippins-Polk was solely at fault in causing Martha and Curtis Fountain's damages in the underlying action and Wildevco and Fred's were without fault in causing their damages.

9. Wildevco and Fred's incurred expenses that were necessary to protect their interests in defending against Plaintiffs' claims. The expenses incurred by Wildevco and Fred's were reasonable and necessary to protect their interests in defending against the claims of Mr. and Mrs. Fountain in the underlying case.

10. The settlement entered into between Wildevco and Fred's and the Plaintiffs in the underlying case was bona fide and without fraud or collusion by the parties.

11. The decision made by Wildevco and Fred's to settle the underlying case with the Plaintiffs was a reasonable means of protecting their interest.

12. The amount of the settlement of Two Hundred Ninety Thousand and 00/100 Dollars (\$290,000.00) is more than reasonable in light of the estimated damages alleged by Martha Fountain of over Ninety Thousand and 00/100 Dollars (\$90,000.00), including the nature of the injuries she sustained, the medical expenses, lost wages, permanent injuries and resulting physical limitations she suffered, as well as the damages alleged by her husband Curtis Fountain.



13. The amount of the settlement is also reasonable in light of the risk and extent of Wildevco and Fred's exposure if the Plaintiffs' underlying claims proceeded to trial.

14. Wildevco and Fred's are entitled to recover from Tippins-Polk on their respective claims of equitable indemnification.

WHEREFORE, it is hereby ORDERED:

a. That judgment be entered against Tippins-Polk in favor of Wildevco, LLC in the total sum of Three Hundred Five Thousand, Four Hundred Eighteen and 30/100 Dollars (\$305,418.30) as indemnification for the portion of the settlement paid by or on behalf of Wildevco, LLC to the Plaintiffs Martha and Curtis Fountain in the underlying action and for legal fees and costs incurred by Wildevco, LLC in defending the underlying action by the Plaintiffs.

b. That judgment be entered against Tippins-Polk in favor of Fred's, Inc. in the total sum of Seventy Six Thousand Six Hundred Ninety-One and 82/100 Dollars (\$76,691.82) as indemnification for the portion of the settlement paid by Fred's, Inc. to the Plaintiffs Martha and Curtis Fountain in the underlying action and for legal fees and costs incurred by Fred's, Inc. in defending the underlying action by the Plaintiffs.

c. That post-judgment interest shall accrue in accordance with the applicable statutory rate.

IT IS SO ORDERED, this 27 day of July, 2016.



The Honorable Doyet A. Early, III
Circuit Court Judge

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2010CP0600101

Martha M Fountain, et al	Curtis Fountain	Fred's Inc Et Al Tippins-Polk Construction, Inc. Rhoad's Excavating Services, LLC	Llc Wildevco Southern Asphalt, LLC
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> 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), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit);
 Rule 43(k), SCRCP (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRCP; Bankruptcy; Other: _____
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

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MAR 21 2017

SC Court of Appeals

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:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: See Attached Order

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)
Wildevco, LLC	Tippins-Polk	\$305,418.30
Fred's	Tippins-Polk	76,691.82

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.**

S// Woyet H. Early, III
Circuit Court Judge

0136
Judge Code

8/1/16
Date

For Clerk of Court Office Use Only

This judgment was entered on July 27, 2016, and a copy mailed first class or placed in the appropriate attorney's box on August 1, 2016, to attorneys of record or to parties (when appearing pro se) as follows:

R. Steven Chandler PO Box 948 Bamberg, SC 29003
Mark David Ball PO Box 457 101 Mulberry St. Hampton,
SC 29924

Morgan S. Templeton PO Box 1200 Charleston, SC 29402
O. Carlisle Edwards Jr. PO Box 650007 Mt. Pleasant, SC
29465
Peden Brown McLeod Jr. 145 King Street, Suite 300
Charleston, SC 29401
Matthew Clark LaFave PO Box 1149 Columbia, SC 29202
Regina Hollins Lewis 3700 Forest Drive, Suite 400
Columbia, SC 29204

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Constance B. Mansfield

Court Reporter: Bethanie Creppon/Amanda Haffenden

Constance B. Mansfield - Deputy 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.

STATE OF SOUTH CAROLINA
COUNTY OF BARNWELL

Martha M. Fountain and Curtis Fountain,

Plaintiffs,

vs.

Fred's, Inc. and Wildevco, LLC,

Defendants,

v

Tippins-Polk Construction, Inc. and Rhoad's
Excavating Services, LLC,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Civil Action No. 2010-CP-06-101

ORDER

RHONDA D. MCELVEEN
CLERK OF COURT
BARNWELL COUNTY, S.C.

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MAR 21 2017

SC Court of Appeals

This matter is before the Court upon the Third-Party Defendant Tippins-Polk's Motion to Make Additional Findings and Motion to Reconsider and/or Amend. Third-Party Plaintiffs Wildevco, LLC and Fred's, Inc. each filed responses in opposition to the Motion and a hearing was held in open court on September 12, 2016. After due consideration of the Motion, responses thereto, and oral argument presented by all of the parties, the Court finds that there exists no basis pursuant to Rules 52(b) or 59(e), SCRPC, or otherwise, to reconsider its prior decision in this matter or to alter or amend the Order filed in this matter on August 1, 2016. Accordingly, the Motion to Make Additional Findings and Motion to Reconsider and/or Amend are hereby DENIED.

IT IS SO ORDERED, this 6 day of Feb 2016, 2017.

The Honorable Doyet A. Early, III
Judge, Second Judicial Circuit

Bamberg, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2010CP0600101

Martha M Fountain, et al	Curtis Fountain	Fred's Inc Et Al Tippins-Polk Construction, Inc. Rhoad's Excavating Services, LLC	Llc Wildevco Southern Asphalt, LLC
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> 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), SCRCP;
 - Rule 41(a), SCRCP (Vol. Nonsuit);
 - Rule 43(k), SCRCP (Settled);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j) SCRCP;
 - Bankruptcy;
 - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 - Other: MAR 21 2017
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 - Affirmed;
 - Reversed;
 - Remanded;
 - Other: _____

RECEIVED
 MAR 21 2017
 SC Court of Appeals

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:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: Order Denying Tippins-Polk's Motion to Reconsider....Amend.

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.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

2136

2/15/2017

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on **February 13, 2017**, and a copy mailed first class or placed in the appropriate attorney's box on **February 15, 2017**, to attorneys of record or to parties (when appearing pro se) as follows:

R. Steven Chandler PO Box 948 Bamberg, SC 29003
Mark David Ball PO Box 457 101 Mulberry St. Hampton,
SC 29924

not mailed
not mailed

Morgan S. Templeton PO Box 1200 Charleston, SC 29402
O. Carlisle Edwards Jr. PO Box 650007 Mt. Pleasant, SC 29465
Peden Brown McLeod Jr. 145 King Street, Suite 300
Charleston, SC 29401
Matthew Clark LaFave PO Box 1149 Columbia, SC 29202
Regina Hollins Lewis Gaffney Lewis & Edwards, LLC 3700
Forest Drive, Suite 400 Columbia, SC 29204

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Constance B. Mansfield

Court Reporter

Constance B. Mansfield - Deputy Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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.
