

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-10-2444

Stow Away Storage, LLC and MSC MTP, LLC
PLAINTIFF(S)

George W. Sisson, et al
DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or
	<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), 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
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

FILED
2017 MAY -5 PM 1:20
JULIE J. ARMSTRONG
CLERK OF COURT

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: Plaintiff's Motion to Reconsider filed on 4/21/17 is respectfully denied without a rehearing.

RECEIVED

ORDER INFORMATION

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

MAY 24 2017

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.

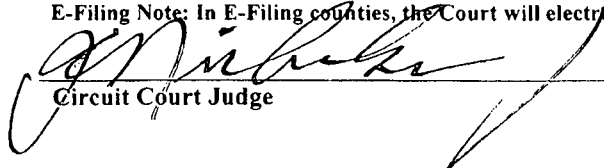
SC Court of Appeals

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.


Circuit Court Judge

2117
Judge Code

5/4/17
Date

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-10-2444

Stow Away Storage, LLC
PLAINTIFF(S)

George W. Sisson, et al.
DEFENDANT(S)

FILED
2017 APR 14 BY 3:00
JULIE J. HARRIS
CLERK OF COURT

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

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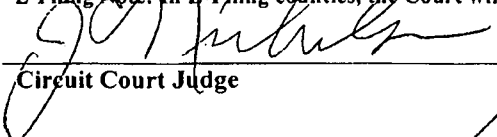
MAY 24 2017

SC Court of Appeals

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)
Stow Away Storage, LLC	George W. Sisson, 4.0, LLC, The Sisson Foundation Limited Partnership, Sweetgrass Hardware, Inc., and Timarand, Inc.,	\$20,382.41
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.


Circuit Court Judge

2117
Judge Code

3/27/17
Date

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Stow Away Storage, LLC)
)
 Plaintiff,)
)
 vs.)
)
 George W. Sisson, 4.0, LLC,)
 The Sisson Foundation Limited Partnership,)
 Sweetgrass Hardware, Inc., and)
 Timarand, Inc.,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 CIVIL ACTION NO.: 2011-CP-10-2444

ORDER ON DAMAGES

RECEIVED

MAY 24 2017

SC Court of Appeals

BY
 JULIE J. ARMSTRONG
 CLERK OF COURT
 2017 APR 14 PM 3:01

FILED

THIS MATTER CAME BEFORE THE COURT on November 9, 2016, following a remittitur of the matter from the Court of Appeals, for a hearing of the remainder of the case regarding any potential damages to be awarded to Plaintiff for actual damages, for Plaintiff's demand for punitive damages, for Plaintiff's demand for attorneys' fees, and for Defendants' Motion to Quash a deposition notice. The Court filed an Order on November 10, 2016 as to the Motion to Quash. The Court also gave Plaintiff ninety (90) days to submit any further information to the Court as to damages.

Upon oral arguments and review of the memoranda, the evidence presented at the damages hearing, and the further items provided to the Court from Plaintiff, the Court will award actual damages in the amount of Twenty Thousand Three Hundred and Eighty-Two and 41/100 (\$20,382.41) Dollars for the installation of a gate and construction and landscaping costs during the time in which the Court finds that Defendants were burdening the easement at issue. The Court denies the request for attorneys' fees and punitive damages.

FINDINGS OF FACT AND CONCLUSIONS OF LAW


This case came before this Court for trial on August 14, 2013, regarding the interpretation of that certain Access Easement (the "Easement") granted by the Plaintiff Stow Away Storage to the Defendant George W. Sisson on October 17, 2000 (Order, Nov. 25, 2013). At that trial, this Court bifurcated the issues to determine if the Easement has been in any way unduly burdened by Defendants, including Sweetgrass Hardware, Inc., due to persons accessing its business by way of the Easement from Highway 17. (*Id.*) The Court left open any issue of damages for a later hearing. (*Id.*) Sweetgrass Hardware obtained a License Agreement (the "License Agreement") in 2008 to use the Easement from Defendant 4.0 LLC as signed by Defendant George Sisson. (*Id.*) This Court ruled that there had been an increase in the Easement even though the language of the Easement specifically stated that any assignment "shall not be deemed an unlawful increase or burden on [Stow Away's] property." (*Id.*) The Court ordered that there was a material increase on the servient estate, that Plaintiff had the right to deny access of traffic entering the Easement from Highway 17, that Defendant Sisson could use the Easement, and that Defendants were restrained from interfering with any ability to shut off traffic. (*Id.*)

Nowhere in this Court's Order was there any finding of breach of contract accompanied by any fraudulent act as Plaintiff now claims in seeking to have this Court award punitive damages and attorneys' fees. (*Id.*)

Defendants appealed this Court's Order. (Unpublished Op. No. 2016-UP-014). The South Carolina Court of Appeals affirmed this Court's Order by way of its Unpublished Opinion dated January 13, 2016. (*Id.*) In that Unpublished Opinion, the Court of Appeals made numerous citations to the case of *Rhett v. Gray*, 401 S.C. 478, 736 S.E.2d 873 (2012).

After the case was remitted, Plaintiff served Notices of Deposition on April 1, 2016, for Sweetgrass Hardware, Inc., and George Sisson. Defendants moved to quash those notices on April 5, 2016. This Court granted the Motion to Quash and ordered that Defendant produce a monetary amount received for the use of the Easement. (Order, June 17, 2016). On July 14, 2016, Defendants responded with their Reply to the Court's Order and advised there was no money exchanged for the use of the Easement. At the November 9, 2016 hearing, the Court gave Plaintiff ninety (90) days to submit any further information to the Court as to damages. On January 23, 2017, Plaintiff provided the Court with an Appraisal Report prepared by Raymond L. Murphy that asserts Plaintiff's contention that rent should have been paid by Defendants for their use of the easement. The Report is attached to this Order as *Court's Exhibit 1*.

DAMAGES

 Plaintiff has requested actual damages, punitive damages, and attorneys' fees. Plaintiff's Itemized List of Damages is attached as *Court's Exhibit 2*.

1. Actual Damages

Plaintiff is entitled to actual damages for the construction and landscaping costs and gate installation in the amount of Twenty Thousand Three Hundred and Eighty-Two and 41/100 (\$20,382.41) Dollars. That amount represents the actual damages and cost to halt the crossing of the easement by the Defendants during the time at issue. No other awardable damages have been shown as a result of Defendant's actions.

On January 23, 2017, Plaintiff provided the Court with an Appraisal Report and a letter asserting that monthly rent should have been paid by Defendants for use of the easement amounting to Thirteen Thousand One Hundred and Twenty-Four Dollars (\$13,124.00). (See *Court's Exhibit 1*). No money was exchanged for use of the easement. (See Defendant's July 18th

Reply attached as *Court's Exhibit 3*). Plaintiff cannot retroactively collect rent for sixty-eight (68) months according to a Report of what could have hypothetically been collected at the time.


2. Punitive Damages

This Court finds there has been no willful, wanton or outrageous conduct that would justify the award of punitive damages in this case. *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991). Defendants were acting under the terms of the easement and the License Agreement. Regardless of whether or not the license turned out to be valid, they believed it was. There are no findings of breach of contract by any fraudulent act as referenced by the Plaintiff in its Brief to this Court. (Order, November 25, 2013). Without any finding of willful, wanton, or reckless conduct by this Court, there can be no award of punitive damages. *Id.* There was no evidence presented or ruled upon by this Court to warrant any punitive damage award as there must be at least a finding of recklessness or some wanton conduct to warrant such an award. *S.C. Farm Bureau Mut. Ins. Co. v. Love Chevrolet*, 324 S.C. 149, 478 S.E.2d 57 (1996). Here, the Defendants were acting on their interpretation of the easement and the License Agreement without any willful, wanton, or reckless actions on their part.

3. Attorneys' Fees and Equitable Indemnity

Plaintiff has requested Ninety-Seven Thousand Six Hundred and Ninety-Two 30/100 Dollars (\$97,692.30) and counting in attorneys' fees. (Court's Exhibit 2). Generally, attorneys' fees in South Carolina are not recoverable unless authorized by contract or statute. *Baron Data Sys., Inc. v. Loter*, 297 S.C. 382, 383, 377 S.E.2d 296 (1989). In the case cited extensively by the Plaintiff in support of its position that it is entitled to attorneys' fees, *Town of Winnsboro v. Wideman-Singleton, Inc.*, 307 S.C. 128, 414 S.E.2d 118 (1992), the Court allowed a party to recovery attorneys' fees and costs expended in defending the negligence of another when the other

party negligently performed on its contract, which led to having to defend an action brought by a third party. *Id.* That case arose in the context of negligence with a claim for equitable indemnification due to the acts of another party. *Id.* The case of *Addy v. Bolton*, 257 S.C. 28, 183 S.E.2d 708 (1971) relied upon in the *Town of Winnsboro* case also arose in the context of negligence where an owner recovered costs for a contractor who set fire to a building. *Id.* Neither the *Town of Winnsboro* case nor the *Addy* case arose from the interpretation of the use of an easement or other contract.



There is no right to attorneys' fees in a case interpreting an easement. In *Rhett v. Gray*, 401 S.C. 478, 736 S.E.2d 873 (2013), landowners brought an action against their neighbor to enforce rights in an easement. The trial court found that the Rhetts were not entitled to attorneys' fees due to Mr. Gray's having placed them in a position to bring suit. *Id.* at 497, 736 S.E.2d at 883. This is the same situation. The Court of Appeals specifically analyzed both the *Town of Winnsboro* and *Addy* cases in *Rhett v. Gray*, *id.* The Court of Appeals went through a lengthy discussion of indemnity creating the right to seek attorneys' fees which must arise from a special relationship between the parties. *Id.* 401 S.C. at 498 -499; 736 S.E.2d at 873. The Court of Appeals determined that in an easement dispute, such cases are distinguishable from those arising out of implied indemnity, and, subsequently, upheld the denial of attorneys' fees. *Id.* This case, too, arises out of an easement dispute with no claims or causes of action for implied indemnity. The special relationship needed between parties for indemnity to apply is not present in this case. Arguably, allowing a Plaintiff to recover attorneys' fees in a case such as this one would open the door for all prevailing parties to assert they were forced to bring or defend a lawsuit and are entitled to attorneys' fees. Accordingly, any claim for attorneys' fees in this case should be denied.

THEREFORE, IT IS ORDERED that the Plaintiff has an award and judgment for actual

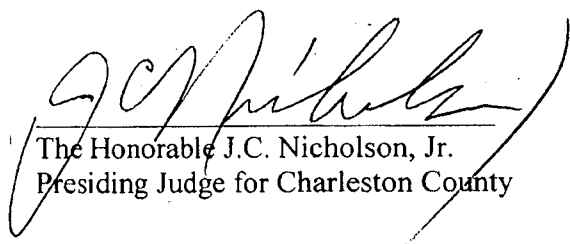
damages in the sum of Twenty Thousand Three Hundred and Eighty-Two and 41/100 (\$20,382.41) Dollars for the installation of a gate, construction, and landscaping costs during the time in which the Plaintiff claims the Defendants improperly burdened the easement; and it is further

ORDERED that the Plaintiff's claims for punitive damages are denied as there was no evidence of any willful, wanton or reckless conduct on the part of the Defendants who were acting under their interpretation of the terms of the easement and their interpretation of the terms of the License Agreement which they thought was a valid contract authorizing their crossing the easement; and it is further

ORDERED, that the Plaintiff is not entitled to an award of attorneys' fees as equitable indemnity is inapplicable to the facts and circumstances giving rise to this matter and there is no contract or statute that would authorize any award of attorneys' fees in favor of the Plaintiff.

IT IS SO ORDERED!

Charleston, South Carolina
March 22, 2017



The Honorable J.C. Nicholson, Jr.
Presiding Judge for Charleston County