

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

Lawrence Potts, Candace Potts and  
Lanette Zimmerman,

Plaintiff,

v.

Edward Yager,

Defendant.

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*Michael Graham*  
CLERK OF COURT  
DORCHESTER COUNTY )

IN THE COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

Civil Action No. 2012-CP-18-01764

AMENDED ORDER

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SC Court of Appeals

THIS MATTER originally came before the Court as a bench trial on November 18-19, 2014 in Dorchester County on Plaintiffs' complaint alleging causes of action for conversion and negligence against the Defendant. An Order was issued on January 15, 2015 finding for the Defendant. Plaintiffs' Motion to Amend was denied by Order dated June 3, 2015. Plaintiffs appealed and this matter is now before the Court upon remand from the South Carolina Court of Appeals to reconsider the issue of damages. Having fully considered the record in the subject case, this Court's Order dated January 15, 2015 is hereby amended to include additional findings of fact and conclusions of law.

**FINDINGS OF FACT**

1. On July 1, 2006, a Personal Property Rental Agreement ("agreement") was entered into between Plaintiff Lawrence Potts ("Mr. Potts") and Defendant Edward Yager ("Defendant").
2. Defendant is the President of All Transportation Services, Inc., a trucking and storage company located in Summerville, South Carolina.

3. The agreement permitted Mr. Potts to store a 1984 Forty-eight foot (48 ft) refrigerated utility trailer ("trailer") on Defendant's property for Fifty dollars (\$50.00)<sup>1</sup> a month. The agreement reflects Mr. Potts address as 107 Ramelias Drive, Summerville, South Carolina 29483.
4. Mr. Potts and his wife, Candace Potts ("Mrs. Potts"), moved from 107 Ramelias Drive to 108 Aleene Drive, Summerville, 29485 in October 2007.<sup>2</sup> It was at that time that Plaintiffs claim to have placed a significant amount of their personal property inside the trailer. There is a dispute as to whether or not the Defendant was aware of Plaintiffs' new address, however, Defendant acknowledged that All Transportation Services had knowledge of Mr. Potts' address on Aleene Drive.
5. Plaintiff Mr. Potts paid through November 2009 and then failed to make his monthly payment for twenty months thereafter and as such was in default under the agreement.
6. Mr. Potts admits to being in default on the agreement.
7. For twenty months Defendant and his employees called Mr. Potts monthly regarding his default status attempting to collect payment and were repeatedly told he would be in soon to pay but Mr. Potts never made another payment after November 2009.
8. On August 1, 2011, in accordance with section eight of the agreement, Defendant mailed a letter to Mr. Potts at the Ramelia Drive address informing him of Defendant's intent to cancel the lease due to Mr. Potts' default. The letter provided the requisite seven days' notice and opportunity to cure with payment of the twelve-hundred dollars (\$1,200.00) arrears by August 8, 2011. Additionally, the letter put Mr. Potts on notice that failure to take

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<sup>1</sup> Testimony established that this amount was increased over time to Sixty Dollars (\$60.00) per month but was discounted when paying in cash.

<sup>2</sup> The Certificate of Title for the subject trailer was issued on October 22, 2007 and reflects Plaintiffs Potts' address as 107 Ramelias Drive, Summerville, South Carolina.

corrective action would result in the property being considered abandoned and sold as-is thirty days thereafter. Defendant testified the letter was never returned undeliverable.

9. Defendant testified that for four months prior to the letter being sent, Defendant repeatedly called Mr. Potts and Mr. Potts failed to return his calls. After sending the letter, Mr. Potts waited approximately sixty days before taking action and during that time did not hear from Plaintiffs.

10. Mr. Potts acknowledges having received calls from the Defendant regarding the debt.

11. Defendant sold the trailer on October 26, 2011 to Tony Mitchell for one thousand dollars (\$1,000.00).

12. On October 28, 2011, two days after the trailer was sold, Mr. Potts testified that he and his wife went to All Transportation with twelve hundred dollars (\$1,200.00) to pay the back rent in full.

13. Mrs. Potts testified that they had no idea the trailer was sold and it was just coincidence that after twenty months, she and her husband went to Defendant's property with payment in full, intending to move the trailer to a new yard where Mr. Potts could park for free.

14. This Court finds Plaintiffs received Defendant's August 1, 2011 letter based on their testimony that they arrived at Defendant's property on October 28, 2011 with the exact amount referenced in the letter and testimony that the subject letter was never returned undeliverable.

15. Mr. Potts testified he paid ninety-five hundred dollars (\$9,500.00) in cash for the trailer but was unable to provide evidence to corroborate that amount.

16. Mr. Potts testified to several pages of items allegedly stored in the trailer at the time it was sold and estimates the value of the trailer and the items therein to be one hundred fifty-three thousand, nine hundred and five dollars and eleven cents (\$153,905.11).
17. Mrs. Potts testified that the jewelry she wore on a regular basis was mistakenly placed in the trailer during the move from the Ramelias address and that despite having been back to Defendant's property, never went back in the trailer after the October 2007 move to retain her jewelry or anything else. Mrs. Potts further testified that their family struggled after their trucking business closed down in 2009 and were unable to pay their bills.
18. Evidence established that there were items located in the trailer at the time it was sold. However, I find the values associated with the items in the trailer not credible. Plaintiffs produced no evidence of payment for the items claimed nor pictures to memorialize the items or documentation to establish their true value.
19. Robert Geiger testified as an expert with over 49 years of experience in the trucking industry. He estimated the value of the trailer as being eight thousand six dollars and twenty-five cents (\$8,006.25). According to Mr. Geiger, this amount is thirty-two percent of the value reflected in the NADA and Commercial Trailer Blue Book for a 2003 model with the same description, the value of which is twenty-two thousand, eight hundred seventy-five dollars (\$22, 875.00). Mr. Geiger further testified that he had not seen the trailer and that he was unable to say how he came up with the aforementioned percentage. I find the testimony of the value of the trailer to not be credible.
20. Mr. Potts testified that he last visited Defendant's property wherein the subject trailer was stored in April 2009 and did not return again until October 28, 2011.

## CONCLUSIONS OF LAW

21. Conversion is defined as the unauthorized assumption in the exercise of the right of ownership over goods or personal chattels belonging to another to the exclusion of the owner's rights. *SSI Med. Servs., Inc. v. Cox*, 301 S.C. 493, 498, 392 S.E.2d 789, 792 (1990). To establish the tort of conversion, the plaintiff must establish either title to or right to the possession of the personal property at the time of conversion. *Crane v. Citicorp Nat'l Servs., Inc.*, 313 S.C. 70, 72, 437 S.E.2d 50, 52 (1993).
22. Abandonment is a complete defense to conversion. The question of abandonment of property is one of intention and must be determined from all surrounding facts and circumstances. *Historic Charleston Foundation v. Krawcheck*, 313 S.C. 500, 443 S.E.2d 401 (S.C. App. 1994). To constitute abandonment, it must appear that there was a discontinuance of use with the intent to relinquish right to use property. *Id.* There is no need for an express declaration of the intent to abandon. The intent may be ascertained from the acts of the owner or holder. *Southern Silica Min. & Mfg. Co. v. Hoefler*, 215 S.C. 480, 56 S.E. 2d 321 (1949). To determine whether property or a right was intended to be abandoned, it is proper to consider the nature of the property or right in question, the conduct of the owner in relation to it, whether the property or right is being adversely used by another and the lapse of time and nonuse. *Id.*
23. Abandonment of property can arise from a single act or a series of acts. *Witt v. Poole*, 182 S.C. 110, 188 S.E. 496 (1936). To show abandonment there must be a clear and unmistakable alternative act or a series of acts that have as their purpose an illustration or a repudiation of ownership. *Id.* However, any act incompatible with the nature or exercise of a right is sufficient to extinguish it. *Taylor v. Hampton*, 15 S.C.L. (4 McCord) 96 (1827).

24. Based on the facts and circumstances in this case, the Plaintiffs relinquished possession of the trailer and its contents prior to the Defendant's sale on October 26, 2011.

25. Plaintiffs' intent to abandon the property is demonstrated by their failure to access the trailer and its contents after October 2007 despite testimony regarding the plethora of items located therein and the value of those items (both intrinsic and extrinsic). Additionally, Plaintiffs did not even visit the property where the trailer was located after April 2009 to ensure the well-being of the trailer and its contents and failed to pay the monthly fee to secure the rental space where the trailer was located after November 2009. Plaintiff were aware of the default and on or about April 2011 stopped taking Defendant's calls and no longer bothered to make promises of payment. Plaintiffs had notice of Defendant's intent to consider the property abandoned and yet still failed to take any action to secure the property until almost sixty days after the letter and a full twenty four months<sup>3</sup> after defaulting on the agreement.

26. Plaintiffs' failure to ensure the safety and security of the trailer and its contents is inconsistent with the nature of ownership and is sufficient to establish repudiation of all rights associated therewith and despite appearing on October 2011, a right once abandoned may not be revived absent the consent of both parties. *Southern Silica Min. & Mfg. Co. v. Hoefler*, 215 S.C. 480, 56 S.E.2d 321 (1949).

27. Plaintiffs abandoned the trailer and its contents along with any interest thereto prior to Defendant's sale of the trailer and as such Plaintiffs' claims fail as a matter of law and they are not entitled to actual or punitive damages in the instant case.

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<sup>3</sup> Time may serve as an indication of intent to abandon, however, the passage of time is not an essential element to abandonment. *Holly Hill Lumber Co. v. Grooms*, 198 S.C. 118, 16 S.E. 2d 816 (1941).

**CONCLUSION**

Based on the foregoing, this Court finds for the Defendant, Edward Yager.

**AND IT IS SO ORDERED.**



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Carmen T. Mullen, Presiding Judge  
Fourteenth Judicial Circuit

This 13 Day of January, 2018.