THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2011-CP-10-2444

Stow Away Storage, LLC,.....Appellant,

v.

George W. Sisson, 4.0 LLC, The Sisson Foundation Limited Partnership, Sweetgrass Hardware, Inc. and Timarand, Inc.....Respondents.

RESPONDENTS' FINAL BRIEF

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II. THE TRIAL COURT PROPERLY DENIED ANY AWARD OF PUNITIVE DAMAGES WHERE THERE WAS NO PROOF OF WILLFUL, WANTON, OR RECKLESS CONDUCT AND WHERE THE DEFENDANTS BELIEVED THEY WERE ACTING UNDER THE TERMS OF A VALID AND ENFORCEABLE LICENSE AGREEMENT WHERE THE RESPONDENTS BELIEVDE THEY HAD A RIGHT TO USE THE EASEMENT.

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STATEMENT OF THE CASE

On April 4, 2011, the Plaintiff, Stow Away Storage, LLC, filed a declaratory judgment action as to the effectiveness of an easement agreement (the "Access Easement" or "Easement Agreement") between Stow Away Storage, LLC and George W. Sisson (R. pp. 114-176). Additionally, Stow Away Storage, LLC sought to obtain a permanent injunction regarding use of the easement, alleged tortious interference with contract as to a certain license agreement (the "License Agreement") obtained by Sweetgrass Hardware, Inc. from 4.0, LLC, and action for equitable indemnity as to 4.0, LLC and Sisson Foundation. (*Id.*) Stow Away sought an injunction against Sweetgrass Hardware as to the use of an easement agreement previously entered into by Stow Away and George W. Sisson. (*Id.*) The Defendants, George W. Sisson, 4.0, LLC, The Sisson Foundation Limited Partnership and Sweetgrass Hardware, Inc. filed an Answer and Counterclaim asserting that the Easement Agreement contained no restrictions and allowed the easement to be used as contemplated. (R. pp. 176-188). Stow Away filed a Reply to Counterclaim asserting that the assignment of the Access Easement was improper. (R. pp. 189-194).

Stow Away Storage, LLC moved for and obtained an Order of Default and Judgment against the Defendant, Timarand, Inc., as it failed to answer or otherwise respond. (R. pp. 7-8). Upon notification of the Order of Default, the Defendant, Timarand, Inc., attempted to file a timely Answer and Counterclaim asserting the same rights as the other Defendants under the Easement Agreement and License Agreement. (R. pp. 200-212). In response to the Order of Default and Judgment, the Defendant, Timarand, Inc., filed a Motion to Reconsider Pursuant to Rule 59(e) SCRCP and Motion to Lift Default Judgment Pursuant to Rule 60(b) SCRCP. (R. pp. 213-220). The Defendant, Timarand,

Inc.'s Motion to Reconsider and Motion to Lift Default Judgment was heard on Friday, January 11, 2013 by the Honorable Kristi Harrington. The Motion to Reconsider and Motion to Lift Default Judgment was denied. (R. pp. 11-12).

Stow Away Storage, LLC filed a Motion for Temporary Injunction and Motion for Partial Summary Judgment and Permanent Injunction as to the Defendant Sweetgrass Hardware, Inc.'s use of the Access Easement. (R. pp. 221-228). The Motion was heard by the Honorable J. Markley Dennis on February 11, 2013. Judge Dennis denied Stow Away's Motion for Injunction and Partial Summary Judgment. (R. pp. 13-14).

The Defendants, George W. Sisson, 4.0, LLC, The Sisson Foundation Limited Partnership, and Sweetgrass Hardware, Inc. filed a Motion for Summary Judgment as to the assignment of the Access Easement to Sweetgrass Hardware, Inc. (R. pp. 335-408). The Motion for Summary Judgment was not heard separately by the trial court. The matter went to trial before the Honorable J.C. Nicholson, Jr. on August 14, 2013. Judge Nicholson ruled in favor of Stow Away, granting Stow Away the right to shut off traffic entering and/or crossing the Easement for the purpose of entering the Defendant Sweetgrass Hardware, Inc.'s property and asserting that the License Agreement was improper because it materially increased the burden on the servient estate, thus expanding the dominant estate and materially increasing the scope of the Easement. (R. pp. 15-26).

Judge Nicholson bifurcated the issues regarding the easement as opposed to the issues surrounding any damages to be awarded. (R. pp. 974-975).

The Defendants, George W. Sisson, 4.0, LLC, The Sisson Foundation Limited Partnership, and Sweetgrass Hardware, Inc., by their counsel, received Judge Nicholson's Order on December 3, 2013. The Defendants filed a Motion to Reconsider the Order on

December 4, 2013. (R. pp. 409-416). Judge Nicholson denied the Defendants' Motion to Reconsider by an Order dated December 10, 2013 and filed December 11, 2013. (R. pp. 27-30).

The Defendants, George W. Sisson, 4.0, LLC, The Sisson Foundation Limited Partnership, and Sweetgrass Hardware, Inc., by their counsel, received the Order Denying Motion to Reconsider on December 17, 2013. The Defendants filed their Notice of Appeal on January 14, 2014. (R. pp. 419-443).

On January 13, 2016, this Court denied that appeal by Order issued in the case of *Stow Away Storage v. Sisson*, Unpublished Opinion No. 2016-UP-014.

The case was then remanded to the trial court for further proceedings.

The Plaintiff served several notices of deposition after the case was remanded, which the Defendants moved to quash on two separate occasions. (R. pp. 458-463).

On November 6, 2016, the Court heard the remainder of the case regarding any potential damages to be awarded to the Plaintiff as actual damages, the Plaintiff's demand for punitive damages, the Plaintiff's demand for attorneys' fees, and the Defendants' Motion to Quash a Deposition. (R. pp. 38-44; R. pop. 1059-1109)

On April 14, 2017, Judge Nicholson filed an Order on Damages. (R. pp. 38-44) In that Order, Judge Nicholson awarded only actual damages, denying the demand for punitive damages, attorneys' fees, and alleged claims for any other damage. (*Id*).

The Plaintiff filed its Motion to Reconsider which was denied by Order dated May 5, 2017. (R. p. 113)). This appeal followed on May 19, 2017.

STATEMENT OF FACTS

The Plaintiff, Stow Away Storage, LLC (hereinafter "Stow Away"), is a South Carolina limited liability company which owns two adjoining tracts of land on the north side of U.S. Highway 17 North in Mt. Pleasant, South Carolina. (R. pp. 117-118). The Defendant, George W. Sisson, is a resident of Charleston County and the former owner of the real property now owned by Stow Away. (R. p. 118). The Defendant, 4.0, LLC, is a South Carolina limited liability company with George W. Sisson as its sole member. (*Id.*) 4.0, LLC owns a ninety-nine percent (99%) interest in the 5.862 acre tract of land abutting the Plaintiff's property on the east. (*Id.*) The Defendant, The Sisson Foundation Limited Partnership (hereinafter "Sisson Foundation"), is a South Carolina limited partnership created by George W. Sisson. (R. p. 119). The Sisson Foundation owns the remaining one percent (1%) interest in the 5.862 acre tract of land abutting the Plaintiff's property on the east. (*Id.*) The Defendant, Sweetgrass Hardware, Inc., is a corporation organized and existing under the laws of the State of South Carolina and operates a hardware store as the tenant on the 1.93 acre tract owned by Timarand, Inc. (*Id.*) The Defendant, Timarand, Inc., is a corporation organized and existing under the laws of the State of South Carolina, and the owner of a 1.93 acre tract of land to the east of the tract owned by the Defendants, 4.0, LLC and Sisson Foundation. (R. p. 120).

Mr. Sisson entered in to an agreement for an access easement (hereinafter "Access Easement" or "Easement Agreement") with Stow Away on October 17, 2000, involving property on Highway 17 North in Mt. Pleasant, South Carolina, at the intersection of Porchers Bluff Road. (R. pp. 924-932). This was a non-exclusive easement that had been

used by all owners and tenants of the property for over fifteen years without dispute or challenge.

In exchange for the Access Easement, Mr. Sisson agreed to abandon the pre-existing access to his property under an encroachment permit granted to Mr. Sisson by the South Carolina Department of Transportation (hereinafter the "SCDOT"). (R. p. 1000; R. pp. 914-932).

The SCDOT required the new Access Easement between Stow Away and Mr. Sisson so that the pre-existing Encroachment Permit granted to Mr. Sisson could be abandoned. (R. pp. 914-919).

> Grantee [Sisson] does hereby agree to **abandon and terminate any rights** Grantee may have to access U.S. Highway 17 by any means other than the Access Easement. It is **specifically understood and agreed by Grantee** that the grant of the Access Easement **shall terminate any rights** Grantee may have to access Grantee's property **from U.S. Highway 17 by any means other than the Access Easement.**

(R. pp. 924-932)(emphasis added).

The Easement Agreement is a "...non-exclusive and perpetual easement....for the purposes of access, ingress, and egress by any and all pedestrian and passenger and delivery vehicular means between Grantee's property and U.S. Highway 17." (*Id.*). The Easement Agreement stated that it "...shall entitle all parties to enjoy the benefits hereby granted and shall **not** be deemed to be **an unlawful increase or burden** upon the Grantor's property or Grantee, as applicable." (*Id.*) (emphasis added).

Frank Fletcher is the owner of Sweetgrass Hardware, a hardware store on the property owned by Timarand, Inc. (R. pp. 1041-1042). Contrary to the Plaintiff's assertion, Timarand did not approach Stow away requesting any extension of any easement: they were approached about property to the south, which is a constant

misrepresentation with no bearing on the appeal. The SCDOT required this change. (R. pp. 914-915).

After the opening of the hardware store, customers of Sweetgrass utilized the access over Sisson's pre-existing easement granted by the SCDOT. (R. pp. 15-26; R. pp. 1042-1043).

The SCDOT eventually shut-off the pre-existing access, and customers of Sweetgrass began to utilize the Access Easement granted by Stow Away to Mr. Sisson. (R. pp. 15-26).

By correspondence dated August 20, 2008, counsel for Stow Away contacted the President of Sweetgrass demanding that he notify his customers to cease using the Access Easement to reach the hardware store. (R. pp. 15-16; R. pp. 934-935). In response to the August 20, 2008 correspondence, counsel for Sweetgrass advised that Sweetgrass is an assignee of Mr. Sisson and entitled to the full benefit of the Easement. (R. pp. 15-16; R. pp. 936-937).

On November 13, 2008, 4.0, LLC and Sweetgrass memorialized their assignment of the non-exclusive, perpetual Access Easement by way of a License Agreement. (R. pp. 15-16)(R. pp. 947-950). From 2008 to the present, the Plaintiff, by and through its members, employees, representatives and agents, without cause of legal basis, attempted to block the use of the Access Easement by the Defendants. (R. pp. 176-188). Sweetgrass did not "encourage" anyone to use the access. In fact, the access was used in what Sweetgrass and Sisson believed to be in compliance with the Easement's own language stating that it could be assigned without increasing the burden, since that was the very language contained in the Access Easement.

The Plaintiff installed a locking gate on the driveway of the Access Easement in an attempt to block access to Sweetgrass. (R. pp. 176-188). By blocking access to Sweetgrass via the locking gate, Stow Away created significant safety concerns for the SCDOT. (R. pp. 951-952). The SCDOT took issue with the locked gate installed on the Access Easement because it encouraged motorists to incorrectly utilize the pre-existing easement from Mr. Sisson which was abandoned as part of the new Easement Agreement. (R. p. 951)). By correspondence dated June 19, 2009, the SCDOT advised that access to the Easement must **not** be blocked and that "it is essential that access to this drive entrance remains unimpeded." (R. p. 952)(emphasis added).

The SCDOT created a dedicated turn lane going north on Highway 17 into the Plaintiff's property at the location of the Easement to control traffic. (R. p. 1046). The Plaintiff continued to reject instruction from the SCDOT, as well as local law enforcement, to keep the gate unlocked and open. (R. pp. 176-188).

The matter came before Judge Nicholson again on November 9, 2016, for the issue of damages only due to his bifurcation of the damages claim at the time of the original trial. (R. pp. 1062-1108). Initially, the Court had problems with awarding **any** damages:

> THE COURT: --- I understand all that. One of the reasons I ruled that it was an excessive use of an easement at the time because of the additional traffic. But equate that to damage for me. That's my problem, okay and that's what I'm having trouble with. How have you been monetarily damaged because I gave you injunctive relief.
>
> MS. TILLMAN: That's correct
>
> THE COURT: So, the problem I'm having with your damage issue is you got injunctive relief if they want to use it or if they don't want to sue it that's up to them. How you can you be damaged since I have stopped the excess traffic by the injunctive relief.

(R. p. 1065).

In asking about damages, counsel responded that any damages were from the installation of a gate and landscaping. (R. pp. 1065-1066). Counsel also expressed that she thought the Plaintiff was entitled to punitive damages, too, from the Defendant Sweet Grass. (R. p. 1066; R. p. 1068). The Court disagreed, recognizing that there was a License Agreement between the Defendants which gave them the belief that they were operating within their rights, destroying any claim that there was willful or wanton conduct. (R. p. 1069). There were no findings of willful conduct on the part of Judge Nicholson at trial, in his first Order, or in his Order on Damages. (R. p. 38).

Counsel also sought to obtain attorneys' fees from the Court, too. (R. p. 1068). The only theory of recovery for attorneys' fees was under one of equitable indemnification. (*Id*).

The Plaintiffs sold the property in question for Five Million ($5,000,000.00) Dollars. (R. p. 964). At that time, any claim for damages terminated. (R. p. 1094)

STANDARD OF REVIEW

This is an action in equity, and appellate courts will review factual findings and legal conclusions in an equitable action *de novo*. *Lewis v. Lewis*, 392 S.C. 381, 386, 709 S.E.2d 650, 652 (2011); *Townes Assoc. Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976) "De novo review permits appellate court fact-finding, notwithstanding the presence of evidence supporting the trial court's findings." *Lewis, id.* 392 S.C. at 390, 709 S.E.2d at 654. However, under this broad standard of review, the appellate court is not required to disregard the factual findings of the trial court or ignore the fact that the trial court is in a better position to assess the credibility of the witnesses. *Pinckney v. Warren*, 344 S.C. 382, 387, 544 S.E.2d 620, 623 (2001).

ARGUMENT

I. THE TRIAL COURT PROPERLY DENIED ANY AWARD OF ATTORNEYS' FEES WHERE THE PLAINTIFF COULD NOT RELY ON ANY CONTRACT OR STATUTE APPLICABLE TO THIS MATTER, WHERE THERE WAS NO NEGLIGENCE CLAIM FOR EQUITABLE INDEMNIFICATION DUE TO THE ACTS OF ANOTHER PARTY, AND WHERE THIS COURT HAS SPECIFICALLY RULED THERE ARE NO RIGHTS TO ATTORNEYS' FEES IN CASES INTERPRETING EASEMENTS

The trial court properly denied any requests for attorneys' fees by the Plaintiff where there are no contract or statute applicable to the matter providing for attorneys' fees and there was no claim for equitable indemnification made. This Court has specifically held there are no rights to attorneys' fees in cases interpreting easements. *Rhett v. Gray*, 401 S.C. 478, 736 S.E.2d 873 (Ct. App. 2012). Contrary to the naked assertions of the Plaintiff, there are no causes of action for equitable indemnification in this case despite the Plaintiff's best efforts to bootstrap such a claim knowing it has no claim for attorneys' fees. (R. pp. 114-175).

At no time where there every any claims for equitable indemnification this case made by the Plaintiff in any pleading before this Court. (R. pp. 114-175; R. p. 108). There was no finding in the Court's original Order that there was any breach of contract, either. (R. pp. 15-26; R. p. 1083).

In an attempt to color this matter in a way to create some right to attorneys' fees, the Plaintiff has asserted time and again that somehow the Defendants caused this lawsuit to be filed allowing some form of equitable indemnity. That is revisionist history at its finest. Where there is no contract or statute, there is no right to recover attorneys' fees. *Baron Data Syst., Inc. v. Loter*, 297 S.C. 382, 377 S.E.2d 296 (1989). The Plaintiffs cannot point to a single contract or statute anywhere in the six year long history of this case that

would allow for the award of attorneys' fees. None exists. The Plaintiff sued to have the easement interpreted, not to assert a claim for equitable indemnification. (R. p. 114-175)

Despite knowing that there is no contract or statue to support any award of attorneys' fees, the Plaintiff continues to beat its tired drum of misinterpretation of cases allowing for equitable indemnification and attorneys' fees. Chiefly, the Plaintiff quotes the seminal equitable indemnity case of *Town of Winnsboro v. Wideman-Singleton, Inc.*, 307 S.C 128, 414 S.E.2d 118 (1992). In that case, the Court allowed a party to recover fees when defending the negligent acts of another when that party had performed under the terms of a contract which led to having to DEFEND against actions brought by a third party. *Id.* (emphasis added). That case arose out of negligence arising out of the acts of another. *Id.* Neither the *Town of Winnsboro* case nor *Addy v. Bolton*, 257 S.C. 28, 183 S.E.2d 708 (1971), arose in the context of an easement dispute. Those cases arose when someone had to defend due to the acts of a third party, not when someone brought a direct action as a Plaintiff, as in this matter. As in *Rhett v. Gray*, 401 S.C. 478, 736 S.E.2d 873 (Ct. App. 2012), the instant case involves the interpretation of an easement. This Court held in *Rhett* that attorneys' fees would not be awarded due to the other party simply having placed someone in a position of having to bring a lawsuit. This is the exact same set of facts complained of here: the Plaintiff claims because it had to bring suit, it should be entitled to fees. The law of this State disagrees. *Rhett v. Gray*, *id.*

As Judge Nicholson noted at the hearing in November, 2016:

> THE COURT: My experience on equitable indemnification has always been when the defendant has been sued and then you come in and ask the court to indemnify them. In this case, you're the plaintiff; you did the suing. Now your argument is you were obligated to bring in a third party because that was the person overburdening the easement.

MS. TILLMAN: Right

THE COURT: Why would that – do you think it should apply in that situation where all the cases is [sic] when the defendant has been sued. And he said well from an equitable standpoint they should indemnify me.

(R. p. 1086).

There was no third party complaint or third party action in this case. The Plaintiff sued all of the Defendants directly. (R. pp. 114-175).

In its Order, the trial court correctly relied upon *Addy v. Bolton*, 257 S.C. 28, 183 S.E.2d 708 (1971) in addition to the *Town of Winnsboro* case. In *Addy v. Bolton*, there was an award of fees because the party was "put to the necessity of defending". *Id.* at 709. Here, the Plaintiff was just not put to any "necessity of defending"; it was the party complaining. The *Addy v. Bolton* elements for attorneys' fees cited by the Plaintiff cannot be met: 1) there is no breach of contract by a defendant; 2)there is no third party dispute as the Plaintiff has sued all of the Defendants directly and 3) the attorneys' fees do not arise due to a third party dispute. A reading of the *Addy* case and the prior Orders of Judge Nicholson demonstrate clearly that the Plaintiff has made a leap of logic in trying to bootstrap its claim for fees. The Plaintiff chose to sue without a contract or statute providing for fees. There is no third party claim requiring the "necessity of defending" which is a requirement for any equitable claim for attorneys' fees according to *Addy.* Regardless, no such claim was pled at any time, rendering the Plaintiff's entire fallacious argument moot. Again, there is no breach of contract, no third party claim, no fees arising because of a breach.

To adopt the Plaintiff's interpretations of the *Town of Winnsboro* and *Addy* cases would mean that long held South Carolina law should be disregarded.[1] To adopt the tortured interpretation, which goes against the plain English meaning of the words in the case, would be to hold that any Plaintiff who sues more than one party would be able to claim some tangential third-party claim entitling the Plaintiff to attorneys' fees due to the Defendant's direct actions giving rise to the Plaintiff's direct causes of action. This is not the law of South Carolina. The Respondents would request that this Court take notice that not once does the Plaintiff make reference anywhere in its Initial Brief to the long held law that there must be a contract or statute to provide fees. *Baron Data Sys., id.*, 297 S.C. at 383; 377 S.E.2d 296.

The Plaintiff knows that easement interpretation cases do not give rise to attorneys' fees. In spite of that knowledge, the Plaintiff fails to make mention of this Court's holding in *Rhett v. Gray, id.*, 401 S.C. 478, 736 S.E.2d 873 (Ct. App. 2012). In *Rhett,* the Master in Equity for Beaufort County found that the Rhetts were not entitled to attorneys' fees due to the actions of the Defendant Mr. Gray. *Id.* The Rhetts contended that because they had to bring a lawsuit, they should be awarded fees. *Id.* at 497, 736 S.E.2d at 883. As Judge Nicholson found in his Order, this is an identical situation. (Order, 4/14/17). This Court went through an exhaustive analysis of *Addy* and *Town of Winnsboro* in the *Rhett* case. *Id.* at 401 S.C. 478, 736 S.E.2d 873 (Ct. App. 2012). Such cases arising from easement disputes are distinguishable from *Addy* and *Town of Winnsboro. Id.* This Court upheld the denial of an award of attorneys' fees in that case, as well it should in this case. As Judge Nicholson wrote: to allow a Plaintiff to recover fees in a case such as this one, would open

[1] The Plaintiff should make its motion to argue against precedent pursuant to Rule 217 SCACR due to its strained interpretation of long held law.

the door for all prevailing parties to assert they were forced to defend a lawsuit and would then be entitled to attorneys' fees. That flies in the face of this Court's ruling in *Rhett*.

II. THE TRIAL COURT PROPERLY DENIED ANY AWARD OF PUNITIVE DAMAGES WHERE THERE WAS NO PROOF OF WILLFUL, WANTON, OR RECKLESS CONDUCT AND WHERE THE DEFENDANTS BELIEVED THEY WERE ACTING UNDER THE TERMS OF A VALID AND ENFORCEABLE LICENSE AGREEMENT WHERE THE RESPONDENTS BELIEVDE THEY HAD A RIGHT TO USE THE EASEMENT

The trial court property found there was no proof of willful, wanton or outrageous conduct to warrant the award of punitive damages. There is no evidence of willful conduct where the parties were acting under the terms of a License Agreement that they believed to be valid. (R. p. 42). The Court clearly took into consideration the testimony of Frank Fletcher at trial. Mr. Fletcher is the owner of Sweet Grass Hardware who believed he was using the easement area under the terms of the License Agreement. (R. pp. 1041-1049)). There were no findings of any breach contract accompanied by any fraudulent act or other willful conduct warranting any award of punitive damages. *S.C. Farm Bureau Mut. Ins. Co. v. Love Chevrolet*, 324 S.C. 149, 478 S.E.2d 57 (1996). There were no findings in the Court's November 22, 2013 Order nor its April 14, 2017 Order that would provide for an award of punitive damages. (R. pp. 15-16; R. pp. 38-44).

At the time of the hearing in November, 2016, Judge Nicholson re-iterated that he found the easement had been unduly burdened as to the License Agreement but not as is held by Mr. Sisson. (R. p. 1076). Until the trial court or any other court advised that the use of the easement was improper, there was no belief that what the Defendants were doing was anything but proper, legal, and provided for by the Access Easement and by the License Agreement. (R. pp. 15-26); R. pp. 1077-1078). Judge Nicholson advised that Mr.

Fletcher thought he had a right to use the easement, destroying any claim of willfulness. (R. p. 1067-1068).

The Plaintiff sites a self-serving letter from counsel advising that the use was allegedly improper. (Brief, p. 12). That letter from counsel is not evidence nor conclusive proof of anything other than an advocate's position. (Brief, p. 12, f.n. 6). Again, other than counsel's assertion, there is absolutely no evidence of any willful, wanton, or reckless conduct. The Plaintiff and its counsel fail to make one reference to *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991), the touchstone case for punitive damages in South Carolina. They make no reference to it, as they must know that the *Gamble* analysis required of them to justify any award of punitive damages would fail on its face as the *Gamble* factors cannot be satisfied.

III. THE TRIAL COURT CORRECLTY EXCLUDED ANY LOST RENTS FROM ANY DAMAGES CALCULATION WHERE THE PLAINTIFF FAILED TO DEMONSTRATE ANY ACTUAL LOST RENTS, BUT, INSTEAD SUBMITTED A POST-TRIAL APPRAISAL REPORT REGARDING SPECULATIVE POTENTIAL LOST RENTS WITHOUT ANY PROOF THAT RENTS WERE DENIED THE PLAINTIFF

Despite its claims, this case did not arise out of a breach of contract nor were there any claims for breach of contract pled. (R. pp. 114-175). There were not motions made to amend to assert any causes of action for breach of contract which would allow for any type of consequential damages. (R. p. 971-1109). Without asserting a claim for damages due to a breach of contract, the Plaintiff has waived any claims as to consequential damages or for any alleged interference with any contractual relationships. These blanket assertions

were raised for the first time in the Appellant's brief and not directly ruled upon by Judge Nicholson.

CONCLUSION

The trial court properly denied awarding punitive damages where there was no evidence presented of willful, wanton, reckless conduct. The trial court property denied an award of attorneys' fees where there is no contract or statute providing for the award of such fees. Further, the trial court correctly determined that equitable indemnification had no bearing on this matter to award any attorneys' fees so that the court's order should be affirmed.

Mt. Pleasant, South Carolina
Feb. 20, 2018

Respectfully submitted,

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CERTIFICATION OF COUNSEL PURSUANT
TO RULE 211(b) SCACR

I certify that I have served the Respondent's Final Brief and that it is in compliance with Rule 211(b) SCACR in that no changes were made excepting references to the Record on Appeal and correction of typographical errors and misspellings.

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