

Case No. 2018-00209

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

On appeal from the Court Common Pleas

Dorchester County

Carmen T. Mullen, Circuit Court Judge

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LAWRENCE R. POTTS, CANDACE **RECEIVED**  
MARIE POTTS, and LANETTE ZIMMERMAN APR 25 2018  
Plaintiffs-Appellants SC Court of Appeals  
v.  
EDWARD E. YAGER,  
Defendant-Appellee

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## INITIAL BRIEF OF APPELLANTS

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## **Statement of the Issue**

1. An opinion by this Court settles all issues that could have been raised during the appeal. In an earlier appeal, this Court rejected Defendant's argument that his destruction of Plaintiffs' property had not been a conversion, reversed the trial court's defense verdict, and remanded only for the entry of a judgment awarding the value of Plaintiffs' trailer. On remand, the trial court instead entered a defense verdict on new grounds that this Court had deemed waived. Did the trial court err in disregarding the instructions from this Court and entering a new judgment based on a new basis?

## **Statement of the Case**

On July 19, 2012, Plaintiffs sued Defendant for the conversion of their property. (Compl.) On September 21, 2012, Defendant answered and asserted abandonment of Plaintiffs' property as a defense. (Answer.) On January 26, 2015, following a two-day bench trial, the trial court entered judgment for Defendant, finding that there was *no evidence* of damages. (First Order.)

On appeal, Plaintiffs showed that, while the witnesses might have disagreed about the value of the contents of the trailer, every witness who testified about the destruction of Plaintiffs' trailer agreed that the trailer itself had been worth several thousand dollars. Defendant tried to argue on appeal that, even if there had been

evidence of the trailer's value, the trailer had been abandoned, and no damages could be justified. (Brief of Resp. at 2.)

On December 20, 2017, this Court reversed the trial court on the basis that no testimony suggesting that the trailer had been valueless. (Opinion at 2.) This Court remanded the case for a review only of the valuation of the trailer: "We reverse and remand for consideration of any damages that may be due in relation to disposal of Potts' trailer alone." (Opinion at 2.)

This Court refused to entertain the additional sustaining grounds that Defendant had been legally entitled to destroy Plaintiffs' property:

We also recognize [Defendant] argues on appeal that he had the legal right to sell [Plaintiffs'] property and, therefore, [Plaintiffs'] claim for conversion should be dismissed as a matter of law. However, he fails to specifically raised, as an additional sustaining ground, that he did not convert [Plaintiffs'] property. Accordingly, we decline to address whether a conversion occurred in this matter.

(Opinion at 2.) This Court ended with the unambiguous instruction to the trial court: "Accordingly, we reverse and remand to the trial judge to reconsider damages in light of uncontroverted evidence of value of the trailer." (Opinion at 6.)

On remand, however, the trial court did not follow this Court's instructions. Instead, the trial judge entered a new defense verdict on the grounds that Defendant had had the legal right to sell Plaintiffs' property. Therefore, the trial

court again ruled for Defendants, and a timely appeal of the trial court's new verdict was taken. (Not. of App.)

### Argument

**I. The trial court erred in disregarding this Court's instructions and entering a new judgment on alternate grounds that this Court had already rejected in an effort to sidestep this Court's unambiguous ruling.**

“The doctrine of the law of the case prohibits issues which have been decided in a prior appeal from being relitigated in the trial court in the same case.” *Ross v. Med. Univ. of S.C.*, 492 S.E.2d 62, 68 (S.C. 1997). “The law of the case applies both to those issues explicitly decided and to those issues which were necessarily decided in the former case.” *Id.* “Matters decided by the appellate court cannot be reheard, reconsidered, or relitigated in the trial court, even under the guise of a different form.” *Ackerman v. McMillan*, 477 S.E.2d 267, 268 (S.C. Ct. App. 1996).

In *Argoe v. Three Rivers Behavioral Health, LLC*, 799 S.E.2d 73, 74 (Ct. App. 2017), a woman was involuntarily committed after the Probate Court found that she was a danger to herself. Her challenge to the Probate Court order was time-barred and, since the impropriety of the Probate Court order was a linchpin of her claims against the hospital, the lower court granted summary judgment to the hospital.

Upon remand, the patient amended her complaint to assert a new theory, medical malpractice. The new theory also required a showing that the Probate Court had erred, but the trial court ruled that the first appeal had already established that the Probate Court order was correct. Because res judicata prevented the patient from attacking the Probate Court order even indirectly, the trial court again granted summary judgment on the basis of res judicata.

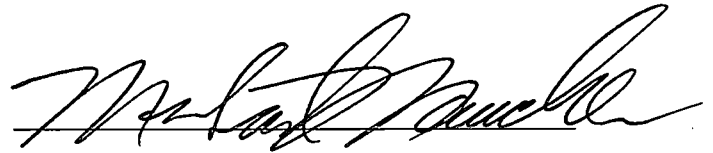
The policy behind the law of the case is to “promote[ ] the finality and efficiency of the judicial process by protecting against the agitation of settled issues.” *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 816 (1988) (quotation marks omitted). “The rule of the law of the case is a rule of practice, based upon sound policy that when an issue is once litigated and decided, that should be the end of the matter.” *United States v. U.S. Smelting Ref. & Mining Co.*, 339 U.S. 186, 198 (1950).

In this case, the impropriety of Defendant’s action has already been resolved and the only reason for an initial defense verdict was the supposed lack of evidence of damages. However, on appeal, this Court reversed that ruling and correctly noted that the unanimous testimony of the witnesses had been that Plaintiffs’ trailer itself had value and that a ruling in Plaintiffs’ favor should have been entered. (Opinion.)

Defendant already had the chance to argue the alternative basis that Plaintiffs had abandoned the trailer, but Defendant failed to do so. As a result, the trial court could not take it upon itself to enter a new defense verdict on those same alternative grounds that Defendant failed to advance during the first appeal.

### **Conclusion**

For all these reasons, the Court should reverse the decision of the trial court and remand this case to a new judge for further proceedings.



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Plaintiffs-Appellants

v.

EDWARD E. YAGER,  
Defendant-Appellee

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**CERTIFICATE OF SERVICE**  
**(Initial Designation of Matter)**

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The undersigned certifies that on April 23, 2018, he mailed one copy of Appellants' Initial Designation of Matter and one copy of Appellants' Initial Brief to the South Carolina Court of Appeals Clerk of Court for filing and mailed an additional copy to Respondent addressed to his attorney of record at the following address:

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April 23, 2018

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The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
P.O. Box 11629  
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RE: Lawrence R. Potts, Candace Marie Potts, and Lanette Zimmerman v. Edward E. Yager  
Trial Court Case No. 2012-CP-18-1764  
Appellate Court Case No. 2015-001472

Dear Ms. Kitchings:

Enclosed for filing are the following:

- (1) Appellants' Initial Designation of Matter;
- (2) Initial Brief of Appellants; and
- (3) Certificate of Service

Sincerely,

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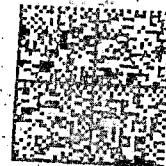
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