

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

Case No. 2018-000209

Lawrence R. Potts, Candace Marie
Potts, and Lanette Zimmerman,

Appellants

v.

Edward E. Yager,

Respondent

INITIAL BRIEF OF RESPONDENT

RECEIVED
MAY 25 2018
SC Court of Appeals

Jenny A. Horne (SC Bar #14179)
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Townes Associates, Ltd. v. City of Greenville,
266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976) 2

STATEMENT OF ISSUE ON APPEAL

Did the trial court err when it entered an Amended Order finding that the Appellants failed to offer credible evidence of the value of their trailer?

STATEMENT OF THE CASE

On July 19, 2012, Plaintiffs brought this action against Defendant alleging that Defendant's conversion of the Plaintiffs' trailer and personal property to his own use was without Plaintiffs' permission and consent. (Complaint.) On September 21, 2012, Defendant answered that despite written notification by him to the Plaintiff regarding Plaintiff's default, Plaintiff took no steps to remedy the default. Defendant considered the trailer abandoned. The failure of Plaintiff to remedy the default constituted an abandonment by him of the subject trailer. (Answer.) A two-day bench trial was held on November 18, 2014 and November 19, 2014, and an Order was entered on January 26, 2015, finding "the testimony of Lawrence and Candace Potts not credible. Particularly, the values assigned to the contents of the trailer is outrageous to the court and is unsubstantiated. As damages remain unproven, this Court finds for the Defendant, Edward Yager."

Plaintiffs appealed the Court's Order and on December 20, 2017, this Court reversed the trial court on the narrow issue of determining the issue of damages. (Opinion at 2.) On remand, the trial judge determined that Plaintiff had not proven any damages.

STATEMENT OF FACTS

The Statement of Facts and the Record on Appeal are set forth in detail in the prior appeal in this case from a bench trial in Dorchester County. Lawrence Potts, Candace Maric Potts, and Lanette Zimmerman, Appellants v. Edward E. Yager, Respondent, Appellate Case No. 2015-001472. On remand, the trial judge made findings of fact with regard to the value of the trailer. The Court found that Mr. Potts failed to provide evidence to corroborate what he paid for the

trailer. (Amended Order, p. 3, para. 15). Further, the Court found in the Amended Order that she found the “testimony offered of the value of the trailer to not be credible.” (Amended Order, p. 4, para. 19).

STANDARD OF REVIEW

In Townes Associates, Ltd. v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976), the court recognized “In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge’s findings. The rule is the same whether the judge’s findings are made with or without, a reference. The judge’s findings are equivalent to a jury’s findings in a law action.” See also Chapman v. Allstate Ins. Co., 263 S.C. 565, 211 S.E.2d 876 (1974).

ARGUMENT

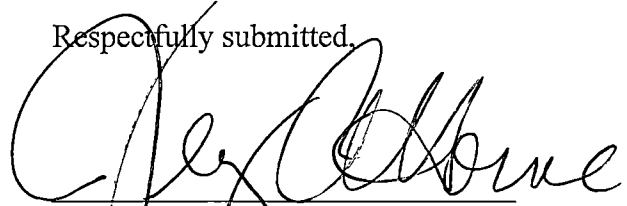
I. The trial court did not err in entering a judgment for Defendant.

In the present case, the Court was both the trier of fact and the arbiter of the law. The trial judge’s factual findings in an action at law, tried without a jury, must be affirmed unless there is no evidence that reasonably supports the trial judge’s findings. “Moreover, we will not disturb the trial judge’s finding of fact that depend on the credibility of witnesses.” Daisy Outdoor Advertising, Co. Inc. v. Dean Abbott, 317 S.C. 14, 16, 451 S.E.2d 394, 395 (Ct. App. 1994), *affirmed in part, and reversed in part*, 322 S.C. 489, 473 S.E.2d 47 (1996). Indeed, in the instant case the court determined as the trier of fact that the testimony offered to establish the value of the trailer was insufficient to prove Appellants’ damages.

CONCLUSION

For the reasons stated above, Respondent respectfully requests this Court to affirm the trial court’s Amended Order finding that Appellants failed to prove the value of the trailer.

Respectfully submitted,



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May 22, 2018

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Carmen T. Mullen, Circuit Court Judge

Case No. 2018-000209

Lawrence R. Potts, Candace Marie
Potts, and Lanette Zimmerman,

Appellants

v.

Edward E. Yager,

Respondent

CERTIFICATE OF SERVICE

(Initial Brief of Respondent)

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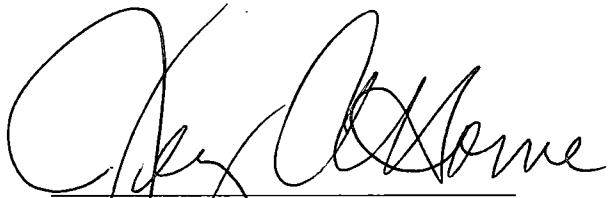
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The undersigned certifies that on the May 22, 2018, she mailed one copy of Respondent's Initial Brief to the South Carolina Court of Appeals Clerk of Court for filing and mailed an additional copy to Appellants addressed to their attorney of record at the following address:

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May 22, 2018

Via U.S. Mail

Jenny Abbott Kitchings, Clerk of Court
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Columbia, South Carolina 29211

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MAY 25 2018

SC Court of Appeals

**Re: Lawrence R. Potts, et al. v. Edward E. Yager
Appellate Case No.: 2018-000209**

Dear Ms. Kitchings:

Enclosed for filing, please find the following items for filing in the matter of *Lawrence R. Potts, Candace Marie Potts, and Lanette Zimmerman v. Edward E. Yager* (Case No.: 2018-209):

- Initial Brief of Respondent
- Respondent's Proofs of Service (Re: Brief of Respondent)

With kind regards, I am

Sincerely,

JENNY HORNE LAW FIRM, LLC

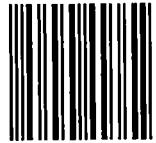

Jenny A. Horne

JAH/lls

Enclosures: As Stated

cc: Michael A. Maucher, Esquire (Via U.S. Mail)
Kevin R. Eberle, Esquire (Via U.S. Mail)

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