

Case No. 2018-000209
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

LAWRENCE R. POTTS, CANDACE
MARIE POTTS, and LANETTE ZIMMERMAN

Appellants

v.

EDWARD YAGER,

Respondent

RECORD ON APPEAL

RECEIVED

JUN 20 2018

SC Court of Appeals

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ATTORNEYS FOR APPELLANTS

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STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO.: 2012-CP-18-1764

LAWRENCE R. POTTS, CANDACE)
MARIE POTTS, and LANETTE)
ZIMMERMAN,)

Plaintiffs,)

vs.)

EDWARD E. YAGER,)

Defendant.)

**COMPLAINT
CONVERSION/NEGLIGENCE**

CLERK OF COURT
DORCHESTER COUNTY

2012 JUL 19 PM 3:47

NOTIFIED COPY

The Plaintiffs, above-named, complaining of acts of the Defendant, above-named, allege as follows:

ONE: That the Plaintiffs', Lawrence R. and Candace Marie Potts are citizens and residents of County of Dorchester, State of South Carolina.

TWO: That the Plaintiff, Lanette Zimmerman is the daughter of Plaintiffs', Lawrence R. and Candace Marie Potts, and lives in the state of Colorado.

THREE: That the Plaintiffs', Lawrence R. and Candace Marie Potts are the owners of a 1984 Forty-Eight (48 ft.) foot refrigerated utility trailer. A copy of the South Carolina Certificate of Title for the subject trailer is attached as Exhibit A and incorporated by reference.

FOUR: That the Plaintiffs', Lawrence R. and Candace Marie Potts, and their daughter (Plaintiff Lanette Zimmerman) stored a significant amount of their personal property in the subject trailer, including but not limited to; tools, furniture, Harley Davidson

motorcycle frames and parts, tool boxes, welding equipment, electrical equipment, clothing, kitchen appliances, an upright freezer, auto and truck parts, personal and financial documents, wedding albums, and wedding certificates. An interim/preliminary list of stored items of Plaintiffs' Lawrence R. and Candace Marie Potts is attached as Exhibit B and incorporated by reference. A interim/preliminary list of personal property of Plaintiff, Lanette Zimmerman with evaluations is attached as Exhibit C and incorporated by reference.

FIVE: That since approximately 2004, the subject trailer of Plaintiffs' Lawrence R. and Candace Marie Potts has been stored by agreement between the Plaintiffs and the Defendant at the Defendant's business known as "All Transportation Services," which is physically located at 1837 N. Main Street, Suite 1, Summerville, SC 29483.

SIX: That Plaintiffs' Lawrence R. and Candace Marie Potts and the Defendant had an agreement for monthly storage charges for the subject trailer, whereby Plaintiffs' Lawrence R. and Candace Marie Potts either paid the Defendant Sixty (\$60.00) Dollars per month by check payable to the Defendant, or in lieu of a check, the Defendant would accept Fifty (\$50.00) Dollars in cash.

Over the years, the course of dealing between the Plaintiffs' Lawrence R. and Candace Marie Potts and the Defendant would be that the Plaintiffs' would occasionally pay rent several months in advance and they would occasionally pay rent several months in arrears.

SEVEN: That the Plaintiffs', Lawrence R. and Candace Marie Potts utility trailer that was used for storage of their belongings was secured with two heavy pad locks.

EIGHT: That the Defendant was aware that the subject trailer was used by the Plaintiffs', Lawrence R. and Candace Marie Potts and Lanette Zimmerman for the storage of their personal household items and belongings.

NINE: That on or about early November of 2011, the Plaintiffs', Lawrence R. and Candace Marie Potts went to the Defendant's business where their trailer was stored. The purpose of their trip that day was to pay the Defendant Nine Hundred (\$900.00) Dollars in back due rent. When the Plaintiffs' arrived at the Defendant's place of business (All Transportation Services, 1837 N. Main Street, Suite 1, Summerville, SC 29483,) the Plaintiffs', Lawrence R. and Candace Marie Potts noticed that their trailer was missing from the facility.

TEN: The Defendant advised the Plaintiffs' that their trailer was no longer there, because the Defendant had sold the Plaintiffs' trailer to satisfy back storage rent that he was owed. Thereafter, the Defendant provided to the Plaintiffs' a South Carolina Department of Motor Vehicle's Bill of Sale dated October 26, 2011, for sale of the Plaintiffs' trailer to Tony Mitchell of Ladson, South Carolina, for One Thousand (\$1000.00) Dollars. That Bill of Sale is attached as Exhibit D and incorporated by reference.

ELEVEN: The Defendant advised the Plaintiffs' that when their trailer was sold on October 26, 2011, to Tony Mitchell it was empty.

TWELVE: That after learning that their trailer had been sold without their authorization to Tony Mitchell, the Plaintiff, Lawrence R. Potts contacted Mr. Mitchell to determine if he still owned the trailer. At that time, Mr. Potts learned that the trailer had been sold for scrap and that the proceeds totaled Four Thousand Three Hundred Fifty-Two (\$4,352.00). A copy of documents from Don's Car Crushing in Ladson, South Carolina, is attached as Exhibit E and incorporated by reference.

THIRTEEN: That the Plaintiff, Lawrence R. Potts believes that the fair actual value of the wrongfully converted trailer is ~~Eighteen Thousand (\$18,000.00) Dollars~~.

FOURTEEN: That at no time did the Defendant ever contact the Plaintiffs', and advise them that the items stored in the trailer were gone/missing. At no time prior to the Defendant's disposition of the Plaintiffs' assets and personal belongings did the Defendant ever contact the Plaintiffs'. At all times, the Defendant had the Plaintiff, Lawrence R. Potts cell phone number, and at all times the Plaintiffs', Lawrence R. and Candace Marie Potts lived at 108 Aleene Drive, Summerville, SC 29485. The Defendant had been to the Plaintiffs', Lawrence R. and Candace Marie Potts home on prior occasions.

FIFTEEN: That during the nine months that rent was unpaid, the Plaintiff, Lawrence R. Potts stopped by the Defendant's facility/place of business on numerous occasions, either as a social visit to say hello or to explain that his finances were tough, but

that he intended to eventually get caught up and pay all back due rent. On these occasions, the Defendant was always in agreement with the payment arrangements, and the Defendant advised the Plaintiff, Lawrence Potts, that he knew that the Plaintiff would pay him when he had money.

SIXTEEN: That the Defendant converted the Plaintiffs' trailer and personal property to his own use.

SEVENTEEN: That the Defendant's conversion of the Plaintiffs' trailer and personal property to his own use was without the Plaintiffs' permission and consent.

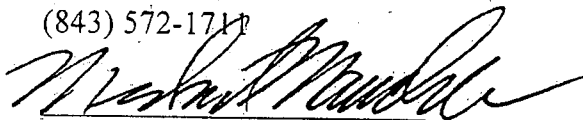
EIGHTEEN: That the Defendant failed to exercise ordinary care or the degree of care, which would have been exercised by a person of ordinary care and prudence in the protection of the Plaintiffs' property, which was a direct and proximate cause of the injuries and damages suffered by the Plaintiffs' herein. Said acts being in violation of the laws and statutes of the State of South Carolina.

NINETEEN: That as a direct and proximate result of aforesaid acts of the Defendant, the Plaintiffs' suffered the loss of their property and have incurred emotional distress as a result of said negligence on the part of the Defendant.

TWENTY: That the Plaintiffs' believe that they are entitled to a Judgment against the Defendant for such actual and punitive damages as try or fact may find.

WHEREFORE, the Plaintiffs' are informed and believe they are entitled to a Judgment against the Defendant for a such sum of actual and punitive damages as try or fact may find, together with the costs of disbursements of this action, for such other and further relief as the Court may deem just, equitable and proper.

DeLuca & Maucher
Attorneys-at-Law
Post Office Box 9
Goose Creek, SC 29445
(843) 572-1711


Michael A. Maucher

This 12 day of July 2012

Goose Creek, South Carolina

STATE OF SOUTH CAROLINA
CERTIFICATE OF TITLE
OF A VEHICLE

VEHICLE ID NUMBER	YEAR MAKE	MODEL	NEW/USED	
1UYVS2483EU994401	1984 UTII	REE	USED	
BODY STYLE	DATE ISSUED	ODOMETER	WEIGHT	TITLE NUMBER
TL	10-22-2007		9000	770810182629206
VEHICLE BRAND(S)				
EXEMPT				

FULL NAME OF OWNER(S)
POTTS, LAWRENCE ROBT OR
POTTS, CANDACE MARIE
107 RAMELIAS DR
SUMMERVILLE SC 294834813

CUSTOMER NUMBER: 025103931

Clayton Adams
CLERK OF COURT
ORCHESTER COUNTY

CERTIFIED COPY
JAN 20 19 2008

THE SOUTH CAROLINA DEPARTMENT OF MOTOR VEHICLES HEREBY CERTIFIES THAT THE PERSON HEREIN IS REGISTERED BY THIS DEPARTMENT AS THE LAWFUL OWNER OF THE VEHICLE DESCRIBED SUBJECT TO THE LIENS, IF ANY, HEREIN SET FORTH.

MARCIA S. ADAMS
EXECUTIVE DIRECTOR

MARK SANFORD
GOVERNOR

SEE IN A SAFE PLACE BY INTERIOR OR EXTERIOR REVOIDS THIS TITLE

038604607

- STORED ITEMS IN 1984 UTILITY REEFER -

BICYCLES - TWO - 26" ^{SCHWINN} CRUISERS MALE + FEMALE	EA #14
" " - TWO - 26" ^{MONGOOSE} MTN. - 18 SPD. -	EA #239.00
TOOL BOXES - ROLL AWAY - SNAP-ON W/TOOLS	\$50.641.65
TORQUE WRENCH 1 IN.	\$1327.00
H/D ECONOMY SHOP PRESS - 20 TON - CAP.	\$1800.00
STARRETT ^{INSIDE DEPTH.} DIAL INDICATORS - .0001 - 0.200" ^{MAGNETIC BASE}	\$28.00
MITUTOYO ^{O.D.} MAGNETIC BASE - .0001 - 0.200"	\$10.00
WESTWARD - M.B. DIAL IND.	\$90.00
STARRETT - IND. CONTACT POINT SET	\$129.90
WESTWARD - CHROME MAG. SET	\$149.90
STARRETT MICROMETER SET 0 - 12" ^{12 PC.}	\$3500.24
STARRETT " " 0 - 6" ^{W/SPANNER}	\$1581.00
TELESCOPING GAUGE SET - 5 PC. -	\$255.50
" " 5 PC. 5/16 - 6"	\$285.50
STEEL SQUARE SET 4 PC. -	\$815.50
DIAL VERNIER CALIPER SET - STARRETT	\$497.50
" " 0 - 12" SLC. WHITE	\$289.50
" " 0 - 6" " "	\$149.75
STANLEY I BEAM 48" LEVEL	\$96.50
" " MAG. TORPEDO - 9"	\$44.85
LUPKIN 100' REEL TAPE -	\$94.95
BRASS WEIGHTS - 1.5 LBS.	\$65.50
" " 2 LBS	\$103.50
" " 3.8 LBS	\$182.00
AMPCO SET OF 3 - FIRING HAMMERS -	\$113.50
ALUMINUM RAMP 40" X 20' - 95.69 LB.	\$1913.75
MOTORS MANIPULATOR SET - 65" HARD BACK	\$3995.00

CERTIFIED COPY
 19 JUL 19 PM 3:48
 DEPT. OF REVENUE
 CHICAGO, ILL.

- 3- WORK BELT TOOL POUCHES LEATHER 3 @ - \$19.99
- 1- ESTWING FRAMING HAMMER 28 oz. - \$31.99
- 4- CRAFTSMAN! IND. H D VISE - 4 @ \$129.99
- 2- " " 2 TON FLOOR JACKS 2 @ \$239.99
- 1- " " 4 TON FLOOR JACKS \$209.99
- 2- " " ALUMINUM FRAMING SQUARES 2 @ \$14.99
- 2- " " COMBINATION SPEED SQUARES 2 @ \$12.99
- 3- IRWIN CHALK LINES 3 @ \$4.99
- 1- CRAFTSMAN WALL SCANNER \$59.99
- 1 " " STUD FINDER \$19.99
- 3 " " FLOOR CREEPERS 3 @ \$29.99
- 2 " " 3 PC. CURVED BAR SET 2 @ \$39.99
- 3 " " 100' EXTENSION CORDS 3 @ \$79.99
- 1 " " 4 CYCLE SPEED START WIRE WELDER \$219.99
- 1 " " 4 CYCLE BLOWER - \$169.99
- 2 " " 16" CHAIN SAWS 2 @ \$84.99
- 1- SCHUMACHER BATTERY CHARGER ^{300 AMP} WHEELS \$199.99
- 1- TRIANGULAR TOOL BOX METAL \$249.99
- 1- G.P.I. HAND PUMP LIQUID \$169.99
- 1- PORTABLE GARAGE 13 X 20 X 12 \$499.99
- 3- OIL CATCHER BUCKETS 3 @ \$10.00
- 4- CAULK GUNS 4 @ \$4.99
- 1- HONDA PRESSURE WASHER ^{3000 PSI} \$479.99
- 1- GENERATOR BRIGGS & STRATTON GAS ^{6000 WTS} \$699.99
- 2- FURNITURE DOLLIES 2 @ \$22.99
- BOLT CUTTER 36" \$59.99
- " " 24" "
- " " 16" "
- C CLAMPS ASST. SIZES SET 12 EA - \$12.99
- 2- VISE ^{LARIN} 2 @ \$39.99 4" 2 @ \$39.99

6 - WRANGLER DENIM SHIRTS	6 LARGE	6 @ \$29.99
6 - WRANGLER OUNCHED DENIM	6 LARGE	6 @ \$34.99
6 - WRANGLER ^{BLUE} WORK SLICKS 33 X 32 P/P		6 @ \$34.99
4 - FLANNEL SHIRTS - FEMALE - 4 SMALL		4 @ \$21.99
6 - LADIES BLUE JEANS - WORK SIZE 3		6 @ \$19.99
2 - LADIES WORK ^{BLACK - BROWN} BOOTS - 5 1/2		2 @ \$89.99
2 - MENS WORK BOOTS - 11 1/2 - BLACK - BROWN		2 @ \$99.99
2 - HI-LIFT MANUAL JACKS		2 @ \$89.99
20 CHILTONS & MOTORS MANUALS		
1 - PUSH MOWER HUSKEY 21"		\$249.99
1 - FLOOR HEATER - ^{FORCED AIR - MASTER} KEROSENE		\$199.99
4 - BOW SAWS - VARIOUS SIZES -		4 EA @ \$6.99
6 - BOW SAW BLADES		6 @ \$3.49
1 - WELDER ^{HOBBART} STICK MATE LX		\$499.99
1 - WELDER ^{JOBSMART} - MIG FLUX CORE 125		\$229.99
1 - WELDING HELMET ^{HOBBART} - AUTO DARKENING		\$69.99
2 - WELDER CARTS		2 @ \$109.99
1 - SET VICTOR CUTTING TORCHES ^{GAS PONY} CUTSKILL		\$299.99
1 - S/S MEAT GRINDER		\$99.99
2 - SETS OF 4 - 8 - ^{10 X 15} E-T MGB WHEELS ^{10 X 16} ALUMINUM -		\$179.99
4 - EA - 11 R - 24.5" ALUMINUM RIMS - FREIGHTLINER ^{SLOTS}		4 @ \$215.00
4 - EA - 11 R - 245 STEEL WHEELS		4 @ \$99.99
1 - CRAFTSMAN BENCH GRINDER W/ WIRE WHEEL		\$169.99
1 - " " ELECTRIC SANDER - BELT DRIVEN		\$89.99
1 - " " 7 1/4" CIRCULAR SAW		\$129.99
1 - " " 10" ^{JOB SAW} TABLE SAW		\$229.99
1 - " " 260 PC TOOL SET		\$299.99
2 - " " FLEXI - RACKS		2 @ \$149.99
1 - " " TOOL COMBO SET		\$259.99

SANDS LEVEL 48"	\$88.39
36"	\$62.99
SANDS LEVEL 2 CASES - 36" 48" - EA -	\$26.99
COPPER SQUARE -	\$25.99
SUNBEAM - 12 PC. STAND MIXER W/STAINLESS BOWLS	\$429.96
SEARS 30" GLASS TOP STOVE -	\$174.99
" " 24.7 CU. FT. FREEZE -	\$94.95
CRAFTSMAN - AIR TOOL SET -	\$129.99
NORTHLAND EXPRESS WOODBURNING STOVE -	\$1098.00
S-K GAS POWERED 11 HP. AIR COMP. 30 GAL. -	\$2460.08
CRAFTSMAN 1/2 IMPACT WRENCH -	\$161.99
" " AIR TOOL KIT -	\$199.99
REV TECH EVO 110" ENGINE -	\$4689.99
S+S 93" P-SERIES ENGINE	\$8274.99
WISHBONE RIGID P/H FRAME -	\$2034.99
MYT 180 RIGID FRAME -	\$1106.99
PRIMO BELT DRIVE CONVERSION OLD STYLE -	\$2988.99
COMPENSATING 25T MAIN DRIVE ASS. -	\$199.99
KICKER KIT - OLD STYLE -	\$154.99
EARLY - OUTER PRIMARY COVER -	\$109.00
" " INNER PRIMARY COVER	\$74.99
PRIMO - KICK ARM & BEAM	\$56.99
REAR SPROCKET - 51T -	\$44.99
STARTER CLUTCH W BEARING	\$74.99
TRAWNY PULLEY 34T .415" OFFSET -	\$49.99
CLUTCH SPRING SET - 3 EA. -	\$34.99
KICKER COVER - 3 EA. -	\$33.99
TRAWNY SPROCKET 21T 3 EA. -	\$22.99
" " 22T 3 EA. -	\$28.99
" " 23T 3 EA. -	\$28.99
" " 22T 2 EA. -	\$22.99

- 3 - RIVERA CHAIN STROCKET - 49T CHROME - 3 EA. - \$47.99
- 4 - CLUTCH PUSH ROD KITS - 4 EA. - \$34.99
- 4 - CONNY TIN PRIMARY COVER SCREEN SETS - 4 EA. - \$16.99
- 3 - INNER PRIMARY MOUNTING HARDWARE SETS - 3 EA. - \$28.99
- 1 - BARRETT BULLET CLUTCH SET - \$57.99
- 1 - RIVERA PRIMO BELT DRIVE - KICK START - \$52.99
- 3 - SIFTON KICKER GEAR & SUFT - 3 EA. - \$6.99
- 2 - INTERNAL " " KITS - 3 EA. - \$134.99
- 3 - RIVERA PRIMO PRIMARY BELTS - 130T X 13/4" 3 EA. \$113.99
- 4 - TAPERED MOTOR SPROCKETS - 4 EA. - \$12.99
- 6 - CLUTCH MAIN SHAFT NUTS - 6 EA. - \$9.99
- 4 - BELT PULLEYS & SPROCKET SPACERS - 4 EA. - \$14.99
- 2 - TRANNY MOUNT KITS - B/D MATCHING - 2 EA. - \$34.99
- 1 - VENTED PRIMARY COVER - CHROME - 1 - \$19.99
- 3 - ENGIVE TO PRIMARY STACERS - 3 EA. - \$36.99
- REV TECH - 6 SPD. OD. TRANNY \$92.99
- 2 - 4 SPD INNER PRIMARY BEARINGS - 2 EA. \$16.99
- 5 - OIL PUMP CHAIN OIL ADS SCREWS - 5 EA. - \$16.99
- 6 - REAR AXEL ADS SETS - 6 EA. - \$9.99
- 4 - CLUTCH LEVER RODS - S/S - 4 EA. - \$4.99
- 2 - RIVERA PRO CLUTCH COVERS CHROME - 4 EA. \$39.99
- 8 - ROCKER CLUTCH - PADDAL STRINGS - 8 EA. - \$18.99
- 8 - MOUNTROCK BOOSTER ASSEMBLY KITS - 2 EA. - \$33.99
- 2 - FRONT RIVERA NUTS RIVERA PRIMO - 2 EA. - \$4.99
- 2 - HEAVY DUTY TRANNY D SPROCKETS - 19T - 2 EA. - \$24.99
- 8 - POLYURETHANE HANDLE BAR BEARINGS - 8 EA. - \$16.99
- 8 - MOUNTROCK B SPRINGS - 2 EA. - \$25.99
- 2 - REV TECH CLOSE RATIO - 4 ST ^{KICK START} TRANNYS - 2 EA. - \$99.99
- 2 - JOCKEY SHIFTER LEVER KITS - 2 EA. - \$106.99

REAR DRIVE SPROCKET - 46 T	-	-	\$54.99
" " - 48 T	-	-	\$54.99
" " - 51 T	-	-	\$54.99
REV TECH - 5 STD. TRANNY W/KICKER	-	2 EA.	\$1239.99
2 MOUSE TRAP COVERS	-	2 EA.	\$23.99
3 PRIMARY CHAIN ADJ. KITS	-	3 EA.	\$44.99
4 TRANNY FILLER PLUGS	-	4 EA.	\$13.99
2 " " ADJ. PLATES	-	2 EA.	\$19.99
4 THROW OUT BEARING KITS	-	4 EA.	\$23.99
2-DAYCO PONTNER 1.5" FINAL BELT DRIVES	-	2 EA.	\$177.99
3-BARNETT KEVLAR REPLACEMENT CLUTCH DISC.	-	3 EA.	\$114.99
4-CLUTCH CABLE RELEASE BRACKET	-	4 EA.	\$23.99
4 TRANNY MOUNT KITS	-	4 EA.	\$23.99
2-ROCKER CLUTCH KITS	-	2 EA.	\$19.99
6-CLUTCH ADJ. SCREW RETAINING RING	-	6 EA.	\$1.99
3-RACJET-TOP DUST SHIELD & SHIFTER LEVER SET	-	3 EA.	\$19.99
3-DIRECT DRIVE FRONT SPROCKET 24T	-	3 EA.	\$99.99
2-PORT HOLE - DORBY COVERS	-	2 EA.	\$69.99
1-BARNETT REPLACEMENT CLUTCH KIT	-		\$94.99
2-EARLY CLUTCH RELEASE LEVERS	-	2 EA.	28.99
4-TRANNY SPROCKET 23 T	-	4 EA.	\$28.99
4-MAGNETIC DRAIN PLUGS	-	4 EA.	\$8.99
4-CLUTCH RELEASE FINGERS	-	4 EA.	\$19.99
2-KICK START - HEAVY DUTY COVERS	-	2 EA.	\$89.99
1-TUNER PRIMARY ELECTRIC START COVER			\$306.99
1 OUTER " " COVER			\$224.99
2-CLUTCH CABLE RELEASE BRACKETS	-	2 EA.	\$26.99
4 " " CLAMPS	-	4 EA.	\$43.99
3- 22T TRANNY SPROCKETS - HARDENED	-	3 EA.	\$28.99
2-PRIMO BRUTE BELT DRIVE KIT W/STD. FRONT PULLEY			\$145.99

- 1 - AIR COMPRESSOR HONDA - GAS - 1/2" - 8 GAL. - \$999.99
- 2 - SUIT GATES FOR F/B - 5 GAL TANKS - 2 EA. - \$39.99
- 2 - RACKET TOP ASSEMBLY - FOR 4 STR. - 2 EA. - \$289.99
- 2 - FLOKAL SQUASH BLOSSOM JEWELRY NECK 2 EA. \$447.99
- 2 - LADIES VEST - S. BLACK - BROWN 2 EA. - \$89.00
- 1 - LADIES JACKET W/ENGRAVED ROSES - M. - 1 - \$110.00
- 1 - LADIES CHAPS - BLACK L. - 1 - \$119.00
- 2 - LADIES PANTS - BLACK - BROWN - SMALL - 2 EA. \$149.00
- 1 - LEATHER PURSE W/ENGRAVED ROSES - - 1 - \$49.99
- 1 - MENS LEATHER DUSTIER - BLACK - - 1 - \$299.99
- 1 MENS LEATHER VEST 6 POCKETS - - 1 - \$300.00
- 4 HELMETS - MALE & FEMALE - 4 @ 100.00 - \$400.00
- 2 - LEATHER CHAPS ^{GUNSLINGER - CRAZY HORSE} MALE BLACK - BROWN - 2 EA. \$163.99
- 1 - CERAMIC ^{SWAN - DUCK STYLE} CANNISTERS 14 PC SET - \$400.00
- 1 - SCULLY OSTRICH TRIM LEATHER BLAZER - \$599.99
- 2 - HATS - STETSON DRIFTERS - BUFFALO FUR - 2 - \$159.00
- 2 - HATS - 4X ASPEN FUR FELT - WESTERN 2 - \$129.00
- 15 - 2X2X2 - BOXES OF PACKED JEANS - TOPS - BLOUSES - SWEATERS
- SOCKS - LINGERIE - BRAS - WINTER / FALL CLOTHING - VALUE
- UNKNOWN - BELTS - JACKETS - COATS - VALUE UNKNOWN -
- JEWEL & NECKLACE - RING BOXES CONTAINING -
- 1 ~~1 CARAT~~ DIAMOND ENGAGEMENT RING - 14 K YELLOW G. - \$2199.00
- 1 CARAT DIAMOND RING GUARD FOR ENGAGE - RING 14 K YELLOW G. - \$1159.00
- 1 CARAT DIAMOND CLUSTER SWIRL BAND - 14 K YELLOW G. \$1059.00
- AGUAMARINE BRIDGE RING W/DIAMOND ACCENTS 14K. - \$639.99
- TWO TONE GOLD HEART & TEARDROP EARRINGS 14K - \$99.99
- TWO TONE GOLD DANGLING VINTAGE BEAD EARRINGS 14K - \$219.99
- 2 PR. TEEPEE CREEPERS - FEMALE HITOP - REG. - 2 EA. - \$61.99
- " " MALE HITOP - REG. 2 EA. \$82.98
- 1 - SENTRY SAFE - TITLES - BIRTH CERTIFICATES (IMPORTANT MOTORCYCLES - CAR & TRUCK) DOCUMENTS 2 \$179.99

LEATHER
GARMENTS

2 - CRAFTSMAN 1/2" IMPACT WRENCHES 2 @ \$139.99
1 - " " 16 GAL. SHOP VAC - ELECTRIC POWER \$119.99
1 - ROCKWELL 7 1/2" WORM DRIVE 1/2" POWER SAW - \$249.99

FAMILY PICTURES - FROM BIRTH THRU HIGH SCHOOL:

WIFE'S PARENTS RELATIVES - WIFE & I BOTH TOGETHER

PRESTO 1781 23 QT. COOKER/CANNER \$109.99

AMERICAN JOURNEY 5 PC. BEDROOM SET - WHT OAK \$449.00

1 PC - AMOIRE ^{3 REMOVABLE SHELVES} W/2 DRAWERS - WHT OAK \$599.00

~~1 - KENMORE UPRIGHT FREEZER - \$899.00~~

~~1 - KENMORE FLAT TOP BLACK GLASS STOVE - \$499.00~~

5 PC SET - LEATHER - LV ROOM ^{BROWN} \$2499.00

ASHLEY LEATHER SECTIONAL ^{BLACK} \$1755.00

1 LEATHER RECLINER ^{BLACK} \$699.00

2 MATCHING CHERATO 40" LAMPS \$386.00

1 - MAHOGRANY BOX - 18" x 4" x 8" ^{BIRMINGHAM 1949 ENGRAVED GERMANY} - PRICELESS BIRTH GIFT

- ALL OF MY FATHER'S ELECTRICAL TOOLS FROM WHEN HE

PASSED ON - ~~2~~ MANY TO LIST - EXT. CORDS

TOO MANY OTHER NICK-NACKS - SETS OF GLASSES -

POTS & PANS - JEWELRY - WORK TOOLS -

G.M. PERFORMANCE 290 HP DUAL QUAD POWER PACK
ENGINE - ^{124995 29K8} DIS-ASSEMBLED - \$3759.99

^{80A 1236392 CHEVY} S/B HEADS - DOUBLE HUMP PATRIOT PERFORMANCE \$435.99

B/B. HEADS 2 SETS CHEVY \$2163.98

3-SET PYREX ^{ASST.} BOILERS SETS - 3 EA. \$69.99 \$209.97

1984 UTILITY REEFER TRAILER W/ TIRES & RIMS
VALUE OF TRAILER W/ REEFER UNIT \$1800.00

I.r.potts

From: "LANETTE ZIMMERMAN" <lanettezimmerman@msn.com>
 To: "lpotts12" <lpotts12@bellsouth.net>
 Sent: Sunday, March 04, 2012 11:57 PM
 Subject: Regarding the property that was stolen
 To whom it may concern:

My name is Lanette Zimmerman. I had stored several household and personal belongings in my father's (Lawrence Potts) trailer. Below is a list of those items.

- 3 Baby books (my childrens birth history) (\$priceless)
- 1 Green hope chest containing my childhood photos, wedding photos, and trophies (\$priceless)
- 1 living room couch (\$300)
- 1 living room chair (\$100)
- 5 piece hand made porcelain canister set (\$300)
- 1 hand made porcelain cake plate (\$125)
- 5 piece cast iron cooking set (\$175)
- 1 set of Corell dishware (\$40)
- 3 Silver Collectors Disney spoons (\$90)
- 3 Disney Lithographs (\$150)
- 1 California King water bed (\$100)
- Assorted photos and paintings of my children (\$400)
- Assorted Little Tykes toys (\$250)
- 1 32in console tv (\$200)
- Assorted clothing (\$300)
- 1 Little Tykes Cottage bed (\$200)
- 1 washer (\$100)
- 1 dryer (\$100)
- 1 Set of Dress Green US Army Uniform (\$400)

I am sure there are more items that I can name at this time due to the fact that this is already a very emotional lose to me.

For any reason you need to speak to me, you can reach me at 720-469-6693

Thank you,

Lanette Zimmerman

Clayton M. Adams
 CLERK OF COURT
 DORCHESTER COUNTY

2012 JUL 19 PM 3:48

FILED COPY



South Carolina Department of Motor Vehicles

BILL OF SALE (Must Be Typed or Printed in Black Ink)

FOR DEPARTMENT USE ONLY	
Check One:	
<input type="checkbox"/>	Purchase License Plate
<input type="checkbox"/>	Transfer License Plate _____

I. EDWARD E. YAGER

Seller

1837 NORTH MAIN ST. SUMMERVILLE S.C 29483
 Street City State Zip Code

state that on the 26TH day of OCTOBER Yr. 2011 the following vehicle:

MAKE UTILITY MODEL NONE BODY TYPE 48FT REEFER YEAR 1983

VEHICLE IDENTIFICATION NO. 1UYV52483EU994401 LICENSE NO. N. ONE

was sold to TONY MITCHELL

Buyer

LADSON S.C.
 Street City State Zip Code

And the above described vehicle is free of all liens and encumbrances in the buyer's name except:

NONE

(List here any mortgages, liens, or encumbrances)

Sale price of vehicle	\$ <u>\$1,000.00</u>
Less trade-in	\$ <u>ZERO</u>
Taxable Total	\$ <u>\$1,000.00</u>

Clerk of Court
 GORCHESLER COUNTY
[Signature]

2012 JUL 19 PM 3:48

XERO COPY

Federal and State law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

I state that the odometer now reads N.A. (no tenths) miles and to the best of my knowledge that it reflects the ACTUAL MILEAGE of the vehicle described herein, UNLESS one of the following statements is checked.

STOP! DO NOT check one of the following unless it applies.

- _____ 1. I hereby certify that to the best of my knowledge the odometer reading reflects the amount of mileage in EXCESS of its mechanical limits.
- _____ 2. I hereby certify that the odometer reading is NOT the actual mileage. WARNING: ODOMETER DISCREPANCY.

WARNING: Federal and state law requires that you state the mileage in connection with the transfer of ownership. Failure to complete or providing a false statement may result in fines and/or imprisonment.

[Signature] 10-26-11
 Signature(s) of Buyer(s) Date

[Signature] 10-26-11
 Signature(s) of Seller(s) Date

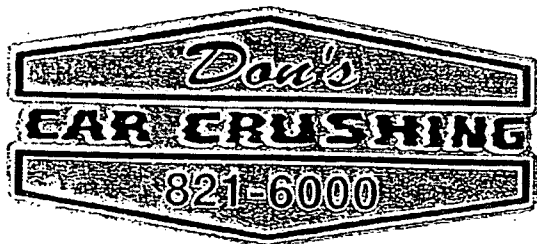
TONY MITCHELL
 Hand Print Name(s) of Buyer(s) 843-200-2805

EDWARD E. YAGER
 Hand Print Name(s) of Seller(s)

Return to: South Carolina Department of Motor Vehicles
 P.O. Box 1498
 Blythewood, S.C. 29016-0024

ANY ALTERATION OR ERASURE VOIDS THIS DOCUMENT.
ORIGINALS MUST BE SUBMITTED TO THE DEPARTMENT.

2012 JUL 19 PM 3:48



Cheryl Deaton
CLERK OF COURT
DORCHESTER COUNTY

Don's Car Crushing (Ladson)

Parts Car

Scrap Car

Date Order Written

10/27/11

Order Written By

Scott

Stock Number

59251

Customer Name

Eley Stein

Address

217 Cary Lane Rd

City/State

Ladson SC

Customer Phone Number

843 209-6682

Vehicle Year Make/Model

83 Utility van

Vehicle Identification Number

1UY VS2483 EU9944 01

Tow Vehicle Type

Prop ch

Tow Vehicle Tag #

1000

Driver Identification # (S.C. DL)

Driver Contact Number

Missing Parts	Deductions \$
Body Part Hood	\$10.00
Body Part Trunk Lid	\$10.00
Bumper -Front/Cover	\$10.00
Fender all or Any	\$10.00 ea.
Bumper - Rear/cover	\$10.00
Catalytic Converter	\$25.00
Doors any all	\$15.00 ea.
Alternator	\$5.00
A/C Compressor	\$5.00
Interior Parts	\$10.00 ea.
Engine	\$30.00
Transmission	\$15.00
Rear Differential	\$15.00
Head Lights	\$5.00 ea.
Tail Lights	\$5.00 ea.
Tires and Wheels	\$5.00 ea.
Side Glass	\$5.00 ea.
Windshield F/R	\$10.00 ea.
Excessive Trash	\$25.00

Incoming Inventory

Catalytic Converter Count	N/A
Aluminum Wheel Count	N/A
If Steel Wheels Check Here	N/A
Battery (Circle one) Yes No	N/A
Hazardous Materials: Deductions	
Tanks ie Propane etc:	\$30.00 ea
Spray Paint Cans	\$5.00 ea
Oils or Lubricants	\$15.00 ea
Solvents	\$15.00 ea

Price Paid for Vehicle	20k
Less Deductions (-)	
Tow Rate \$ (+)	
All In \$ (Total) (=)	

BILL OF SALE

For and in consideration of 20k dollars, receipt of which is acknowledged, and the removal of the above described vehicle from my property, I agree to sell and convey all rights, title and interest in the following motor vehicle to Don's Car Crushing, Inc.

I hereby acknowledge to Don's Car Crushing, Inc. that I have the full legal title to the above motor vehicle, and that there are no liens, claims or encumbrances of any kind against the motor vehicle. I agree to indemnify and hold harmless Don's Car Crushing, Inc., its employees and agents from and against all claims, losses and liability, including but not limited to attorney's fees, arising or resulting from any injury or damage received or sustained by myself or others or my property occurring in the process of removing the above motor vehicle from my property. In the event that any action should be brought contesting my legal right to sell the above vehicle, I agree to hold harmless, indemnify and defend Don's Car Crushing, Inc. from any such action.

Signed _____

Witness Scott

Print Name _____

Date 10/29/11

Date 10/27/11

SCDL _____

Ticket Listing

11/4/2011

1:46:55PM

From: 10/1/2011 To: 11/4/2011
 Items Reported In: tn

Ticket #	Date	Truck	Cust. ID	Mat'l ID	Quantity		\$/Unit	Revenue			Total
					Net	Units		Mat'l	Tax	Misc.	
57989	10/12/11	RED TRUGENERAL	PU1UPSTL		15.03		13.50	hw	\$4058.10		\$4058.10
58020	10/12/11	WHT TRUGENERAL	PU1CARS		10.27		13.50	hw	\$2772.90		\$2772.90
58089	10/13/11	BIG TRUGENERAL	PU1UPSTL		6.16		13.00	hw	\$1601.60		\$1601.60
58768	10/21/11	SILVER TGENERAL	PU1SCRAP		0.65		13.00	hw	\$169.00		\$169.00
58768	10/21/11	SILVER TGENERAL	PU1ELEMTR			1740.00	0.30	lb	\$522.00		\$522.00
58768	10/21/11	SILVER TGENERAL	PU1ALCL			153.00	0.65	lb	\$99.45		\$99.45
58768	10/21/11	SILVER TGENERAL	PU1BATT			2.00	6.00	EA	\$12.00		\$12.00
58768	10/21/11	SILVER TGENERAL	PU1BRASS			95.00	1.60	lb	\$152.00		\$152.00
58768	10/21/11	SILVER TGENERAL	PU1COBB			175.00	3.10	lb	\$542.50		\$542.50
58768	10/21/11	SILVER TGENERAL	PU1CO2			450.00	2.50	lb	\$1125.00		\$1125.00
58768	10/21/11	SILVER TGENERAL	PU1CO1INS			157.00	1.65	lb	\$259.05		\$259.05
58768	10/21/11	SILVER TGENERAL	PU1ELEMTR			27.00	0.30	lb	\$8.10		\$8.10
59251	10/27/11	WHT TRUGENERAL	PU1ALDRT			21760.00	0.20	lb	\$4352.00		\$4352.00
59362	10/28/11	WHITE TGENERAL	PU1SCRAP		2.27		14.00	hw	\$635.60		\$635.60
59417	10/29/11	WHITE TGENERAL	PU1SCRAP		2.01		14.00	hw	\$562.80		\$562.80
59420	10/29/11	WHITE TGENERAL	PU1CO1			12.00	2.50	lb	\$30.00		\$30.00
59420	10/29/11	WHITE TGENERAL	PU1CO2INS			10.00	1.30	lb	\$13.00		\$13.00
59420	10/29/11	WHITE TGENERAL	PU1ALRIM			18.00	0.80	EA	\$14.40		\$14.40
59420	10/29/11	WHITE TGENERAL	PU1ACRADDR1			7.00	0.75	lb	\$5.25		\$5.25
59420	10/29/11	WHITE TGENERAL	PU1CO2INS			31.00	1.30	lb	\$40.30		\$40.30
59420	10/29/11	WHITE TGENERAL	PU1CO2INS			96.00	1.30	lb	\$124.80		\$124.80
Ticket Total					54.67				\$22218.25		\$22218.25

STEPHENS JEROME

59242	10/27/11	LN10130	008694543	SCRAP	0.44		13.00	hw	\$114.40		\$114.40
59242	10/27/11	LN10130	008694543	ALCANS		60.00	0.65	lb	\$39.00		\$39.00
Ticket Total					0.44				\$153.40		\$153.40

STEPHENS, JEROME

57737	10/08/11	TAN CHE	GENERAL	PU1CARS	2.57		13.00	hw	\$668.20		\$668.20
57787	10/09/11	LN10130	008694543	SCRAP	0.71		13.50	hw	\$191.70		\$191.70
58023	10/12/11	LN10130	008694543	CARS	2.03		13.00	hw	\$527.80		\$527.80
58398	10/17/11	LN10130	008694543	CARS	1.84		13.00	hw	\$478.40		\$478.40
Ticket Total					7.15				\$1866.10		\$1866.10

STEWART, STONEY

59150	10/26/11	LN10915	008920098	ALCL		10.00	0.55	lb	\$5.50		\$5.50
Ticket Total									\$5.50		\$5.50

STEWART, JAMES

59547	10/31/11	RED PICL	GENERAL	PU1ALDRT		24.00	0.20	lb	\$4.80		\$4.80
59547	10/31/11	RED PICL	GENERAL	PU1WHSESCR		460.00	0.11	lb	\$50.60		\$50.60
59547	10/31/11	RED PICL	GENERAL	PU1WHSESCR		16.00	0.11	lb	\$1.76		\$1.76
Ticket Total									\$57.16		\$57.16

ion's Car Crushing - Ladson
10 Royle Road

Ticket No :59251
Date :10/27/11
Phone :(843)821-6000
Fax :(843)871-8262

Ladson, SC 29456

Customer: GENERAL PUBLIC
TEIN, ELY
General Public

Truck : WHTRUCK
Location: LDSN Ladson Yard
Container ID
Seal ID 0
Gross: 0 lb Scale 1 In 2:14 pm
Tare: 0 lb Scale 1 Out 12:00 am
Net: 0 lb
21760.000 lb

Weigh Master: GAINEY GAINEY

Driver:

Remarks: Have a great day!!!

Material \$ 4352.00
Delivery \$ 0.00
Misc \$ 0.00
Tax \$ 0.00
Total \$ 4352.00
Received \$ 4352.00
Check # 29419

MATERIAL	QTY	UNIT-\$	DELIVERY-\$	MISC-\$	TAX-\$	TOTAL-\$
ALDRT Aluminum Dirty	21760.000	lb	0.20			4352.00
						\$4352.00

Conway
1101 White Sands Rd.
Holly Hill, SC 29059
Ph: (803) 496-9917
Fax: (803) 496-9917



Jackson
510 Ragsdale Rd
Jackson, SC 29116
Ph: (843) 871-6630
Fax: (843) 871-6630

Holly Hill
1101 White Sands Rd.
Holly Hill, SC 29059
Ph: (803) 496-9917
Fax: (803) 496-9917

Hemingway
PO Box 189
Hemingway, SC 29554
Ph: (843) 558-2212
Fax: (843) 558-3670

Sellers
3137 Blentice Drive
Sellers, SC 29592
Ph: (843) 423-8007
Fax: (843) 423-8087

St. Matthews
150 Coakley Road
St. Matthews, SC 29135
Ph: (803) 655-7141



WEIGHT TICKET

Incoming: _____
Outgoing: _____
Net: _____

Date: _____
Carrier: _____
Received From: _____
Booking #: _____
Material: _____
Received By: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
CASE NO. 2012-CP-18-1764

LAWRENCE R. POTTS, CANDACE)
MARIE POTTS and LANETTE)
ZIMMERMAN,)

Plaintiff,)

v.)

EDWARD E. YAGER,)

Defendant.)

ANSWER

The Defendant would Answer the Complaint of the Plaintiffs as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not hereinafter specifically admitted, qualified, or explain, is denied.
2. With respect to Paragraphs 1 and 2, the Defendant lacks sufficient information to form a belief as to those allegations, and therefore denies the same.
3. Paragraph 3 is admitted.
4. With respect to Paragraph 4, the Defendant lacks sufficient information to form a belief as to those allegations, and therefore denies the same.
5. With respect to Paragraph 5, the Defendant would admit that the trailer was stored on Defendant's property at the address indicated with Defendant's agreement with Plaintiff, Lawrence R. Potts, but would deny the remaining allegations.
6. With respect to Paragraph 6, the Defendant would admit that he had an agreement with the Plaintiff, Lawrence R. Potts, to store the trailer for the sum of Sixty (\$60.00) Dollars per month. The Defendant would also admit that over the years the Plaintiff would sometimes pay in advance and sometimes in arrears. The Defendant would affirmatively allege that the Plaintiff made no payments after November, 2009. The remaining allegations are denied.
7. With respect to Paragraph 7, the Defendant lacks sufficient information to form a belief

FOR A THIRD DEFENSE

19. Each and every allegation of the First and Second Defenses above are repeated herein as fully as if set out verbatim.
20. That on August 1, 2011, the Defendant notified the Plaintiff, Lawrence Potts, in writing, that as of that date he was twenty (20) months in arrears, and that the sum of One Thousand Two Hundred (\$1200.00) Dollars was past due. He notified the Plaintiff of his default, and that if the delinquency was not corrected, the trailer would be deemed abandoned, and would be sold. Despite written notification by the Defendant to the Plaintiff, the Plaintiff took no steps to remedy the default. The Defendant considered the trailer abandoned, and sold it on October 26, 2011. The failure of the Plaintiff to remedy the default constituted an abandonment by him of the subject trailer.

WHEREFORE, having fully Answered the Complaint of the Plaintiffs, the Defendant would pray that it be dismissed, and for such other and further relief as is proper.

CHELLIS AND FRAMPTON, P.A.

BY: 

John G. Frampton, Esquire
Post Office Box 430
Summerville, SC 29484
Phone: (843) 871-7765
Fax: (843) 875-6657
jgf@chellisandframpton.com

Summerville, South Carolina

9/21, 2012

(12-5278)

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2012CP1801764

Lawrence R Potts Lanette Zimmerman	Candace Marie Potts Edward E Yager
CERTIFIED COPY <u>1-26-2015</u> <i>Cheryl Abraham</i> Clerk of Court	

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <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: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 - Affirmed;
 - Reversed;
 - Remanded;
 - Other:

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:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

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)

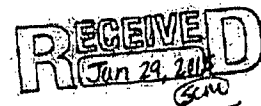
If applicable, describe the property, including tax map information and address, referenced in the order:

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.**

Carmen T. Mullen
 Circuit Court Judge

2142
 Judge Code

1/26/2015
 Date



STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

THE FIRST JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
Case No.: 2012-CP-18-1764

Lawrence Potts and Candace Potts)
Plaintiffs,)

vs.)

Edward Yager,)
Defendant.)
_____)

ORDER

CERTIFIED COPY

1-26-2015
Cheryl Abraham
Clerk of Court
Dorchester County

This matter came before the Court as a bench trial on November 18-19, 2014 in Dorchester County. Present at the bench trial were Michael Maucher, attorney for the Plaintiff, Lawrence Potts, and Jenny Horne, attorney for the Defendant, Edward Yager. After considering the evidence presented at trial and the arguments of counsel, the Court makes the following Findings of Fact:

FINDINGS OF FACT

1. On July 1, 2006, a Personal Property Rental Agreement was entered into between Edward Yager (hereinafter "Yager") and Lawrence Potts (hereinafter "Potts") with Potts listed address at Ramelias Drive. Yager is the President of All Transportation Services, Inc., a trucking and storage company located in Summerville, South Carolina. The agreement permitted Potts to store a forty-foot trailer with All Transportation Services. Potts paid through November 2009 and then did not make a payment for twenty months following. Potts was in default under the Agreement.

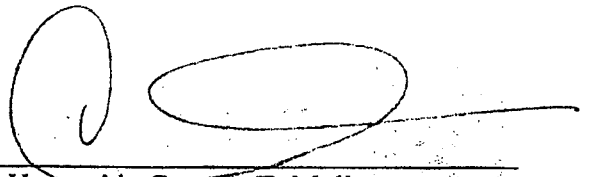
2. An employee of All Transportation Services, Donna Quattlebaum (hereinafter "Quattlebaum"), testified that either Yager or herself called Potts monthly

7. James Proctor testified, as an expert in the trucking business. He states he has been in trucking since at least 1993 and is a mechanic and that the value of the trailer was \$5,000. Proctor testified when the trailer was opened - there was furniture, washer and dryer and mounted bull horns in the trailer. Proctor then sent his mechanic in to look to see if there was anything of value to him and he did not. Proctor did not accept Tony Mitchell's offer to take all the contents of the trailer for \$50. Among the items Potts allege was in the trailer was a Snap-On tool box. Proctor testified a Snap-On tool box would be at least 6-7 feet tall and 8 feet wide and the value would be \$8,000 - \$10,000 dollars and that any mechanic would understand the value and states neither he nor his mechanic saw any such Snap-On tool box.

8. Troy Potts, the son of Lawrence and Candace Potts, testified he and five friends moved his parents things from the Ramelias home to the trailer at All Transportation. Those three days of the move in 2007 were the only time he had ever been in the trailer.

9. Candace Potts, wife of Lawrence Potts, testified that the jewelry she wore on a regular basis was mistakenly placed in the trailer during the move from the Ramelias home and realized it on the third day of the move in 2007. Mrs. Potts testified she never went back in the trailer after the October 2007 move to retain her jewelry or anything else. Mrs. Potts further testified their family struggled after their trucking business closed down in 2009 and were unable to pay their bills.

10. Mrs. Potts further testified it never occurred to her to sell any of the items in the trailer to pay the back due rent to All Transportation or other bills. She testified



The Honorable Carmen T. Mullen
Presiding Judge, First Judicial Circuit

Beaufort, South Carolina

January 15, 2015



**JENNY HORNE
LAW FIRM LLC**

JENNY HORNE LAW FIRM, LLC
Attorneys and Counselors at Law
133 East 1st North Street, Suite 5
Summerville, SC 29483

Jenny A. Horne*

*Also admitted in North Carolina

Telephone: (843) 873-1721

Facsimile: (843) 875-4696

<http://www.jennyhornelaw.com>

May 20, 2016

Via U.S. Mail

Jenny Abbott Kitchings, Clerk of Court
The South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

**Re: Lawrence R. Potts, et al. v. Edward E. Yager
Appellate Case No.: 2015-001472**

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.: 2015-1472):

- Respondent's Final Brief (14 Bound Copies, 1 Unbound Copy)
- Respondent's Proofs of Service (Re: Final Brief of Respondent and Rule 211 Certificate)
- Respondent's Rule 211 Certificate of Compliance

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)

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. 2015-001472

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

Appellants

v.

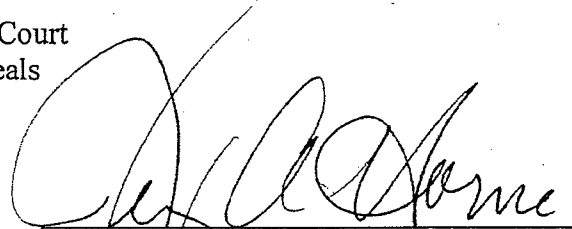
Edward E. Yager,

Respondent

PROOF OF SERVICE
(Final Brief of Respondent and Rule 11 Certificate)

I certify that on May 20, 2016, I mailed one copy of **Final Brief of Respondent and Rule 211 Certificate** to Jenny Abbott Kitchings, Clerk of Court for the South Carolina Court of Appeals, by depositing a copy of same in the United States Mail, postage prepaid, addressed as follows:

Jenny Abbott Kitchings, Clerk of Court
The South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211



Jenny A. Home (SC Bar #14179)
133 East 1st North Street, Suite 5
Summerville, South Carolina 29483
(843) 873-1721
ATTORNEY FOR RESPONDENT

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

Conclusion4

STATEMENT OF ISSUE ON APPEAL

Plaintiffs' allege that the trial judge erred in finding that the plaintiffs could not prove any damages in entering judgment for Defendant.

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. (R.10.) 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. (R.30.) 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' post-trial motion was denied on June 3, 2015. (R.3.)

STATEMENT OF FACTS

Plaintiff Lawrence R. Potts and Defendant Edward E. Yager (Defendant) entered into a rental agreement on July 1, 2006 for the rental of a parking space located at 1837 North Main Street, Summerville, SC 29483. (R. 35-36.) Under the terms of this rental agreement, Plaintiff agreed to make regular payments of \$50.00 per month in addition to his \$50.00 security deposit. (R. 36.) Plaintiff also agreed that if he failed to "abide by the obligations of this agreement, including the obligation to make rental payments when due, [Defendant] shall have the option to cancel this agreement by providing 7 days written notice to the renter." (R. 98.) The agreement

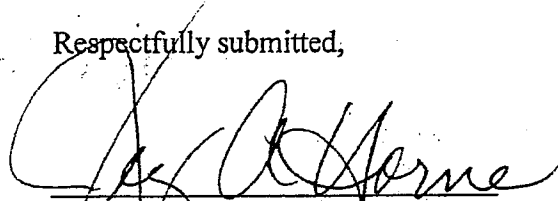
Because the parties did not amend the contract, under the unambiguous terms of the parties' agreement the Plaintiff defaulted on the contract and Defendant was within his rights to terminate the contract pursuant to paragraph 8 as a matter of law. Under the parties' agreement, when Mr. Potts failed to "abide by the obligations of [the] agreement . . . [Defendant Yager] [had] the option to cancel [the] agreement by providing 7 days written notice to [Mr. Potts.]" (R. 145, ¶8). Alternatively, the agreement could also have been terminated within thirty days by providing written notice to the other party. (R. 145, ¶11). Here, Defendant provided plain, written notice to the Plaintiff at Plaintiff's last-known address. (R. 148.) This letter was sent to the address provided by the Plaintiff on the parties' contract, 107 Ramelias Drive, Summerville, SC 29483. (R. 145, R. 148.)

Because Defendant sent proper notice to the Plaintiffs of his intent to terminate the contract and cure the deficiency through sale of property to the last known address, which was plainly written on the parties' contract, Defendant's actions were supported by the plain agreement of the parties. See Pinckney v. Pettijohn Builders, Inc., 289 S.C. 405, 407, 346 S.E.2d 533, 534 (Ct. App. 1986) (upholding judgment in favor of Defendant lessors who sold a delinquent lessee's property to recoup unpaid rent). (R. 145, R. 148.) Furthermore, the contract specifically absolves Defendant of any liability for harm that comes to Plaintiffs' property. (R. 145, ¶6). Because Defendant had the legal right to sell Plaintiffs' property, and the parties agreed that Defendant would not be liable for any harm that came to the Plaintiffs' property, no breach occurred and Plaintiffs' claims for conversion should be dismissed as a matter of law.

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jenny A. Horne". The signature is written in a cursive style with a large initial "J".

Jenny A. Horne (SC Bar #14179)
JENNY HORNE LAW FIRM, LLC
133 East 1st North Street, Suite 5
Summerville, South Carolina 29483
(843) 873-1721

ATTORNEY FOR RESPONDENT

May 20, 2016



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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December 20, 2017

Mr. Michael Allan Maucher, Esquire
PO Box 9
Goose Creek SC 29445

Mrs. Jenny Anderson Horne, Esquire
133 East 1st North St.
Suite 5
Summerville SC 29483

Mr. Kevin Roger Eberle, Esquire
367 President Street
Charleston SC 29403

Re: Lawrence Potts v. Edward Yäger
Appellate Case No. 2015-001472

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: The Honorable Carmen T. Mullen

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Lawrence Potts, Candace Marie Potts, and Lanette
Zimmerman, Appellants,

v.

Edward E. Yager, Respondent.

Appellate Case No. 2015-001472

Appeal From Dorchester County
Carmen T. Mullen, Circuit Court Judge

Unpublished Opinion No. 2017-UP-464
Heard October 5, 2017 – Filed December 20, 2017

REVERSED AND REMANDED

Michael Allan Maucher, of DeLuca & Maucher, LLP, of
Goose Creek, and Kevin Roger Eberle, of Charleston, for
Appellants.

Jenny Anderson Horne, of Jenny Horne Law Firm, LLC,
of Summerville, for Respondent.

PER CURIAM: Lawrence R. Potts (Potts), Candace Potts (Candace), and the
Potts' daughter, Lanette Zimmerman, (collectively, Appellants) appeal the trial
judge's denial of their claim for conversion against Edward E. Yager (Respondent)

following a bench trial. Appellants argue on appeal the trial judge erred in ruling in favor of Respondent based on the judge's finding of a failure of evidence to support damages. We reverse and remand for reconsideration of any damages that may be due in relation to disposal of Potts' trailer alone.

1. As to Appellants' argument in their brief that they met all the necessary elements to be entitled to a judgment on their conversion action based upon

Respondent's failure to follow the proper statutory guidelines, we decline to address the same. Appellants do not raise a separate issue in this regard, but only argue it in conjunction with their argument of error in the trial judge's finding that damages were not proven. *See* Rule 208(b)(1)(B), SCACR ("Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal."). Further, there is no argument of counsel before the trial judge, nor any briefs submitted to the trial judge, in the record before us. The record contains absolutely nothing to show the parties' trial positions or any law in support of their positions concerning whether there was in fact a conversion of the property under the facts of this case. The trial judge also made no mention whatsoever on the validity of Appellants' conversion claim in her order. Rather, she resolved the matter solely on the basis of damages, and that is the only issue Appellants raise to us on appeal.

We also recognize Respondent argues on appeal that he had the legal right to sell Appellants' property and, therefore, Appellants' claim for conversion should be dismissed as a matter of law. However, he fails to specifically raise, as an additional sustaining ground, that he did not convert Appellants' property. Accordingly, we decline to address whether a conversion occurred in this matter. *See I'on, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000) ("[A] respondent may abandon an additional sustaining ground . . . by failing to raise it in the appellate brief."); *id.* ("The appellate court may review respondent's additional reasons and, *if convinced it is proper and fair to do so*, rely on them or any other reason appearing in the record to affirm the lower court's judgment." (emphasis added)); *id.* ("An appellate court may not rely on Rule 220(c), SCACR, when the reason does not appear in the record, or when the court believes it would be *unwise or unjust to do so in a particular case*. It is within the *appellate court's discretion* whether to address any additional sustaining grounds." (emphases added)); *id.* 338 S.C. at 420 n.9, 526 S.E.2d at 723 n.9 ("The appellate court may or may not wish to address [a respondent's additional sustaining] grounds when it reverses the lower court's decision.").

2. As to whether the trial judge erred as a matter of law in granting a defense verdict based upon Appellants' proof of damages, we find no error as relates to the

trial judge's determination concerning the contents of the trailer, but we do find error in finding no damages at all given evidence concerning value of the trailer itself.¹ We disagree with Appellants' argument that the trial judge improperly dismissed evidence as related to the items allegedly stored inside the trailer. The credibility of the parties in this action at law, tried without a jury, is in the province of the trial judge. *See Moore v. Benson*, 390 S.C. 153, 162, 700 S.E.2d 273, 278 (Ct. App. 2010) ("An action for conversion is an action at law."); *Jordan v. Judy*, 413 S.C. 341, 348, 776 S.E.2d 96, 100 (Ct. App. 2015) (noting the factual findings of a trial judge in a law action are equivalent to those of a jury, and "[q]uestions regarding credibility and the weight of the evidence are exclusively for the trial [judge]"). This court's scope of review is limited to correcting errors of law and determining whether the trial judge's findings are properly supported by competent evidence. *Mathis v. Brown & Brown of S.C., Inc.*, 389 S.C. 299, 307, 698 S.E.2d 773, 777 (2010); *see Jordan*, 413 S.C. at 347-48, 776 S.E.2d at 100 ("On appeal of an action at law tried without a jury, [an appellate court] will not disturb the trial [judge's] findings of fact unless no evidence reasonably supports the findings."). Here, there is competent evidence to support the trial judge's determination concerning damages regarding items inside the trailer. First, the trial judge made clear that the testimony of Potts and Candace in this regard lacked credibility. She cited the fact that Candace testified that she mistakenly left jewelry she wore every day in the trailer in 2007 and never went back to retrieve it. The trial judge also noted the testimony concerning a Snap-On tool box being in the trailer, and found witness James Proctor or his mechanic would have noticed something of that size and value when they looked inside the trailer. Aside from the lack of credibility,

¹ Appellants were not required to raise in a post-trial motion the general argument that the trial judge erred in finding for Respondent based upon her determination that damages were not proved. Notably, Rule 52(b) of the South Carolina Rules of Civil Procedure—dealing with findings made by a court—provides in part as follows: "When findings of fact are made in actions tried by the court without a jury, *the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the trial court an objection to such findings or has made a motion to amend them* or a motion for judgment." Rule 52(b), SCRCF (emphasis added). Appellants' assertion that the trial judge erred in finding damages were not proven is a challenge to the sufficiency of the evidence to support the judge's findings, and any arguments challenging the trial judge's finding as being unsupported by the evidence is preserved. Thus, Appellants' specific challenge to the trial judge's failure to find damages in the face of uncontroverted evidence is properly preserved in spite of not having been raised in a motion to amend.

there is evidence from Proctor that he observed some of the contents in the trailer and additionally had another individual climb further into the trailer to look at the items, but he thereafter declined to pay even \$50 for all of the contents. Further, Respondent testified Proctor informed him there was nothing of any value inside the trailer. Thus, there is some evidence that the contents had no value.

Nonetheless, we agree with Appellants that, beyond the alleged contents, the *only* evidence is that the trailer itself was clearly shown to have value, and the trial judge, therefore, erred in concluding "damages remain unproven." Evidence was presented at trial from Appellants' expert witness that the trailer had a fair market value of \$8,006.25. The trial judge noted in her order that Proctor testified as an expert, and he valued the trailer at \$5,000.² There is also evidence that, the day after Respondent sold the trailer, it was thereafter sold to a car crushing company for \$4,352. Finally, at a very minimum, there is evidence Respondent sold the trailer for \$1,000. Though the trial judge acknowledged in her order that the trailer was sold for \$1,000, and that at least one expert valued it at \$5,000, she made no finding regarding any value for the trailer itself. Rather, she concentrated on the Appellants' lack of credibility as to the contents and the values of the alleged contents inside the trailer in determining that "damages remain unproven." Because the only evidence is that the trailer had value, we find no competent evidence supports the trial judge's finding that damages were unproven.

3. As to Appellants' assertion the trial judge erroneously relied on a lack of evidence from vendors because they were entitled to an adverse inference against the spoliator—Respondent—and the trial judge failed to rely on this legal presumption, we find this argument is not preserved.³ There is nothing to suggest

² The record on appeal includes a limited amount of testimony from Proctor, and does not include evidence to support this finding by the trial judge. However, neither Appellants nor Respondent challenge this finding by the trial judge on appeal.

³ While Appellants may properly challenge on appeal the sufficiency of the evidence to support the trial judge's findings without having raised such in a post-trial motion, this specific argument does not challenge the sufficiency of the evidence. Rather, it is a challenge against the failure of the trial judge to consider a legal concept. See *Noisette v. Ismail*, 304 S.C. 56, 58, 403 S.E.2d 122, 123-24 (1991) (holding, in a declaratory judgment action tried without a jury, because the trial judge did not explicitly rule on the insurer's argument that Noisette failed to prove Ismail was a permissive user and the insurer failed to show it made a motion

Appellants ever made a spoliation argument to the trial court. Further, it was not ruled upon by the trial judge. See *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 563, 567, 762 S.E.2d 693, 695 (2014) ("Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide the Court with a platform for meaningful appellate review."); *Id.* ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." (quoting *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998))); *Life of Georgia Ins. Co. v. Bolton*, 333 S.C. 406, 412, 509 S.E.2d 488, 491 (Ct. App. 1998) (holding an issue that was not ruled upon by the master-in-equity was not preserved where no post-trial motion was filed to bring the matter to the master's attention).

4. We likewise find Appellants' argument concerning nominal damages is not preserved for our review. Appellants argue on appeal the trial judge's finding that they suffered no losses at all, and not just insufficiently quantified losses, amounted to legal error because at least nominal damages are presumed.⁴ As with the spoliation argument, this argument is not preserved. There is nothing to indicate Appellants ever raised this to the trial judge, and the trial judge never ruled on the same.

5. Finally, contrary to Appellants' assertion, our reversal of the trial judge's determination concerning damages does not warrant a new trial. Citing *Sandel v. Cousins*, 266 S.C. 19, 221 S.E.2d 111 (1975), Appellants maintain this court should reverse and remand for a new trial. There, our supreme court held the trial judge erred in granting a nonsuit when it should have submitted the issue of damages to the jury. *Id.* at 22-23, 221 S.E.2d at 112. This case is clearly distinguishable from *Sandel*, inasmuch as *Sandel* involved a jury trial, whereas this matter was tried before a trial judge sitting without a jury. In *Sandel*, the trial was improperly ended at the close of the appellants' case and before the jury could consider the matter. *Id.* at 21, 221 S.E.2d at 111. Here, the trial judge, sitting without a jury, did not prematurely end the trial, but heard all of the evidence and

to amend or alter judgment on that ground, the issue was not properly before the Court of Appeals and should not have been addressed).

⁴ Again, Appellants are not directly challenging the sufficiency of the evidence to support the trial judge's findings concerning damages by this assertion. Rather, they are arguing error in the trial judge's failure to consider this legal argument in her determination of damages.

deliberated. Though we find the trial judge erred in finding Appellant's damages were unproven since—assuming Respondent converted Appellants' property—there is evidence of damage in the sale of the trailer, a remand for reconsideration of such damages does not require a new trial before this trial judge.

We decline to find, as proposed by Respondent, that the trial judge possibly determined there were no damages due Appellants based upon a set-off of rent owed to Respondent against the value of the trailer. Though she recognized evidence concerning value in the trailer, she never made a determination of that value. Further, she never made any determination concerning whether Respondent's sale of the property was legally permissible, which—if it was—would preclude recovery of any damages by the Appellants and, in turn, any need for a set-off. Most importantly, the trial judge never discussed a set-off, and did not find there were no damages due to Appellants. Rather, she found damages were "unproven." To find the trial judge set-off any damages for the trailer against rent due to respondent would require this court to engage in speculation and conjecture. See *In re Treatment & Care of Luckabaugh*, 351 S.C. 122, 132-33, 568 S.E.2d 338, 343 (2002) ("Trial courts, sitting without juries in an action at law, write their findings specially and separately: 'to allow a reviewing court to determine from the record whether the judgment—and the legal conclusions which underlie it represent a correct application of the law. The requirement for appropriately detailed findings is thus not a mere formality or a rule of empty ritual; it is designed instead to dispose of the issues raised by the pleadings and to allow the appellate courts to perform their proper function in the judicial system.'" (quoting *Coble v. Coble*, 300 N.C. 708, 712, 268 S.E.2d 185, 189 (N.C. 1980))); *id.* at 133-34, 568 S.E.2d at 343-44 (declining to speculate on how the lower court viewed the ultimate facts when confronted with contradictory evidence, finding the absence of factual findings made the appellate court's task of reviewing the court order impossible because the reasons underlying the decision were left to speculation and determining review of the record by the appellate court could not "save the order from its deficiencies due to the contradictory testimony presented below.") Accordingly, we reverse and remand to the trial judge to reconsider damages in light of uncontroverted evidence of value of the trailer.

REVERSED AND REMANDED.

LOCKEMY, C.J., and HUFF and HILL, JJ., concur.

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP1801764

Lawrence R Potts
Lanette Zimmerman

Candace Marie Potts

Edward E Yager

CERTIFIED COPY
2018 FEB - 1 PM 2:21

Christy Graham
CLERK OF COUNTY
DORCHESTER COUNTY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 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:

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:

ORDER INFORMATION

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

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)

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.

Carmen T. Mullen
Circuit Court Judge

2143
Judge Code

2/1/2018
Date

For Clerk of Court Office Use Only

This judgment was entered on 2/1/2018, and a copy mailed first class or placed in the appropriate attorney's box on 2/1/2018, to attorneys of record or to parties (when appearing pro se) as follows:

Michael Allan Maucher PO Box 9 Goose Creek, SC 29445

Jenny Anderson Horne 133 East 1st North St. Suite 5
Summerville, SC 29483

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Cheryl Graham - Clerk of Court

Court Reporter

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

The original Order is amended to reflect additional findings of fact and conclusions of law as directed by the SC Court of Appeals in Appellate Case No 2015-001472.

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
2018 FEB -1 PM 2:21)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Lawrence Potts, Candace Potts and)
Lanette Zimmerman,)
CLERK OF COURT)
DORCHESTER COUNTY)

Civil Action No. 2012-CP-18-01764

Plaintiff,

v.

Edward Yager,

Defendant.

AMENDED ORDER

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)¹ 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 2007.² 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) arears by August 8, 2011. Additionally, the letter put Mr. Potts on notice that failure to take

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

² 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. Hoefer*, 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).

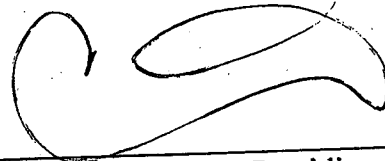
24. Based on the facts and circumstances in this case, the Plaintiffs relinquished possession of the trailer and its contents prior to the Defendant's sale on October 26, 2011.
25. Plaintiffs' intent to abandon the property is demonstrated by their failure to access the trailer and its contents after 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 months³ 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.

³ 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.



Carmen T. Mullen, Presiding Judge
Fourteenth Judicial Circuit

This 23 Day of January, 2018.

Case No. 2015-1472

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

LAWRENCE R. POTTS, CANDACE
MARIE POTTS, and LANETTE ZIMMERMAN
Plaintiffs-Appellants

v.

EDWARD E. YAGER,
Defendant-Appellee

NOTICE OF APPEAL

Plaintiffs appeal the post-appeal Judgment entered on February 1, 2018 (attached).

February 7, 2018



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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. 2012-CP-18-1764
Case No. 2015-1472

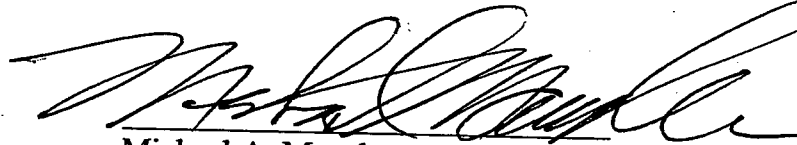
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JUN 20 2018
SC Court of Appeals

Lawrence R. Potts, Candace Marie Potts, and Lanette
Zimmerman,Appellants,
v.
Edward E. Yager,Respondent.

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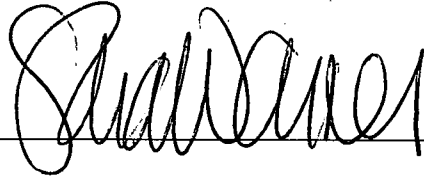
I certify that I have served the Notice of Appeal on Edward E. Yager by depositing a copy of it in the United States Mail, postage prepaid, on February 7, 2018, addressed to his attorney of record, Jenny A. Horne, 133 East 1st North Street, Suite 5, Summerville, SC 29483.

February 7, 2018



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The undersigned certifies that this Record on Appeal includes all materials designated by either party for inclusion.



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