THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SALUDA COUNTY
Court of Common Pleas

The Honorable Letitia H. Verdin Circuit Court Judge

Appellate Case No.: 2014-001588

Carl Eugene Berry.....Respondent,

v.

Jess T. Reichardt and Thomas H. Reichardt .....Appellants.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE FACTS

Appellants Jess T. Reichardt and Thomas Reichardt (**i**) trespassed upon Respondent's property, on numerous occasions, *(see bullet points in "I", hereinbelow)*, (**ii**) cut timber products located wholly on Respondent's property *(see bullet points in "I", hereinbelow)*, and (**iii**) erected a fence on Respondent's property which prevented Respondent from utilizing almost ten acres of Respondent's property, *(see bullet points in "I", hereinbelow)*.

After the first trespass by Appellants, Respondent personally met with both Appellants at Respondent's residence, *(R. p. 47, Lines 8-10)*. Respondent presented the Appellants with documents and a Plat, which showed that Appellants were trespassing upon Respondent's property, thereby placing the Appellants on Actual Notice of Appellants' trespass, *(R. p. 47 Lines 8-10)*. Appellants were also on Actual Notice by way of correspondence from a Surveyor that the Appellants themselves had hired, *(Statement of Mark Mills, R. p. 90), (R. p. 53 Lines 18-25)*.

Appellants were also on Record Notice of the correct boundary line between Appellant Jess T. Reichardt's property and Respondent's property, as testified to by Respondent's witness Attorney Kathryn Rauton, during the Damages Hearing in this matter, *(R. p. 35 Lines 5-20), (R. p. 39 Lines 14-25), (Affidavit of Kathryn M. Rauton, Esq., R. pp. 83-88)*.

Respondent commenced this matter by filing of a Complaint on May 14, 2013, which was amended and served on June 27, 2013. Respondent's Amended Complaint contained the following Causes of Action, 1). Theft of Forest Products; 2). Conversion; 3). Eviction; 4). Interference and Obstruction of Use of Property; 5). Trespass (*Quare Clausum Fregit*); 6). Civil Trespass to Land After Notice; 7). Entry Upon Land; and 8). Civil Conspiracy, *(Complaint (First Amended), R. pp. 18-30)*.

STATEMENT OF THE FACTS (Cont.)

Respondent's legal counsel and Appellants' legal counsel then appeared in a Hearing in Chambers before the Honorable Thomas A. Russo on July 2, 2013, *(Consent Order, R. pp. 3-6)*. At that time Judge Russo indicated that he was issuing the Appellants a Rule to Vacate or Show Cause, as to why the Appellants should not be evicted from Respondent's property. Counsel for all parties then reached a Consent Order filed August 5, 2013, formalizing **(i)** Appellants eviction from Respondent's property **(ii)** Appellants agreement not to further trespass upon or enter upon Respondent's property for any reason and **(iii)** ordering Appellants to remove the fence located on Respondent's property *(Consent Order, R. pp. 3-4)*.

Appellants failed to remove the fence consistent with the deadline set in Judge Russo's original Order. The fence was later removed by Appellants and after a Hearing, Judge Russo excused Appellants' non-performance.

Appellants' defaulted and the Trial Court signed a Notice of Entry of Default on August 28, 2013, and an Order for Judgment by Default on September 26, 2013, *(R. p. 7),(R. p. 12)*.

Appellants' filed a Motion to Set Aside the Default on October 15, 2013, which was heard by the Honorable William H. Seals, Jr., on November 12, 2013, in the Saluda County Courthouse, with counsel present *(Motion, R. pp. 75-79)*. Judge Seals denied Appellants' Motion to Set Aside Default by his Order filed November 20, 2013, *(Order Denying Defendants' Motion to Set Aside Default, R. pp. 8-10)*.

Thereafter, a Damages Hearing was conducted in the Saluda County Courthouse on June 16, 2014, with all parties and counsel present. Respondent appeared, along with an attorney witness and both gave live testimony to the lower Court, along with evidentiary documents.

STATEMENT OF THE FACTS (Cont.)

Respondent's witness Kathryn Rauton, Esquire testified that she conducted a Title Search on Appellant Jess T. Reichardt's property and Attorney Rauton's Affidavit was accepted into evidence at that time, *(R. p. 41 Lines. 12-19)*, *(Affidavit of Kathryn M. Rauton, Esq., R. pp. 83-88)*.

Attorney Rauton also testified that Appellants were on, "Record Notice" of Respondent's property boundary line, *(R. p. 35 Lines 5-20), (R. p. 39 Lines 14-25), (Affidavit of Kathryn M. Rauton, Esq., R. pp. 83-88)*. Respondent provided evidence and gave testimony as to his actual damages incurred, *(R. p. 50 Lines 8-17), (R. p. 58 Line 9 – R. p. 67 Line 16)* , and his request for punitive damages, *(R. p. 42 Line 3 – R. p. 52 Line 4)*. The Trial Court accepted Respondent's comprehensive statement of Damages into evidence *(R. p. 50 Lines 18-25)*. The Report of Thomas E. Mills, Investigator for the South Carolina Forestry Commission, dated May 11, 2012, was accepted into evidence, to show the value of the timber which was improperly cut by the Appellants, *(Report of Thomas E. Mills, R. p. 89), (R. p. 53, Lines 22-25)*.

Thereafter, the Honorable Letitia H. Verdin filed her Order for Judgment on June 19, 2014, awarding Respondent actual damages of $4,193.90 and punitive damages of $20,969.00, for a total damage award to Respondent of $25,163.00, *(Order, R. pp. 13-17)*.

Thereafter, Appellants filed their Notice of Motion and Motion for Judgment Alteration, *(Motion, R. pp. 80-82)*. The Trial Judge denied Appellants' Motion by way of her Order Denying Motion for Judgment Alteration, filed July 11, 2014, *(Order, R. p. 11)*.

Thereafter, Appellants filed their Notice of Appeal and Appellants appeal followed.

ARGUMENT AS TO ALL OF APPELLANTS' ISSUES

Because Appellants were found in Default, by Order issued September 26, 2013, *(Order, R. p. 12)*, and Appellants' Motion to Set Aside Default was denied by Order filed on November 20, 2013, *(Order, R. pp. 8-10)*, all the allegations of Respondent's Amended Complaint filed June 27, 2013, are deemed admitted[1] by Appellants, *(Amended Complaint, R. pp. 18-30)*. Appellants ignore their Default posture in the Lower Court and Appellants throughout this Appeal and in each Exception, Appellants attempt to argue matters, which have been deemed admitted by the Appellants. Appellants' admissions are not subject to further argument by Appellants. "It is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and to have conceded liability." Austin v. Specialty Transp. Services, Inc., 358 S.C. 298, 594 SE 2d 867 (S.C. Ct. of App. 2004). Furthermore, Appellants' arguments include numerous, *ipse dixit,* statements with no citation to South Carolina Case Law or Statute.

I. THE TRIAL JUDGE DID NOT ERR IN HOLDING THAT THE APPELLANTS INTENTIONALLY TRESPASSED AT THE TIME THE TREES WERE CUT, BECAUSE APPELLANTS WERE IN DEFAULT.

Appellants attempt to argue in this Exception that their trespasses on the Respondent's property, were not intentional. Appellants' argued in their Initial Brief that, "…the Appellants had a valid basis for their right to cut the trees. The trespass associated with the tree cutting was not intentional", *(Appellants' Initial Brief pg. "9")*. The Appellants were in Default in the Lower Court and their actions were found to be intentional by the admitted allegations imputed to the Appellants by that default, as discussed at length below.

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[1] Although, Appellants attempt to reargue these specific issues in Appellants' Initial Brief, Appellants are deemed to have admitted that, *inter alia*, **(i)** Appellants intentionally trespassed upon Respondent's property *(see bullet points in "I", herein)* **(ii)** Appellants improperly erected a fence upon Respondent's property,*(see bullet points in "I", herein)* **(iii)** Appellants violated Section 16-11-580 and Section 16-11-615, S.C. Code Ann., (1976, as amended) by Appellants' cutting of timber products on Respondent's property, *(see bullet points in "I", herein)* and **(iv)** Appellants had received actual Notice of the boundary location between Appellants and Respondent, *(Statement of Mark Mills, R. p. 90) (R. p. 48 Lines 15-18)*.

The Appellants defaulted in the Lower Court and the following allegations of the Respondent are deemed admitted by Appellants. Namely,

- "[Appellant] Jess T. Reichardt and [Appellant] Thomas H. Reichardt have, on several occasions, without legal right or justification, **(i)** cut forest products (timber), belonging to [Respondent] **(ii) repeatedly, intentionally trespassed onto [Respondent's] Property (iii) [Appellants] trespass is continuing and** (**iv**) as a direct result thereof, physically damaged the lands belonging to [Respondent]." (Emphasis not in original), *(Paragraph "11" of Complaint (First Amended) R. p. 19).*

- **"[Appellants] have unlawfully invaded [Respondent's] Property."** (Emphasis not in original), *(Paragraph "12" of Complaint (First Amended), R. p. 19).*

- "[Appellant] Jess T. Reichardt and [Appellant] Thomas H. Reichardt met and conspired together against the economic interests of [Respondent] Mr. Berry, intending as their primary purpose and object, to harm [Respondent] Mr. Berry. **[Appellants] acted in furtherance of that conspiracy, by construction of a fence on [Respondent's] Property**." (Emphasis not in original), *(Paragraph "17" of Complaint (First Amended) R. p. 19).*

- "Shortly after the occasion of **[Appellants] first acts of intentional trespass onto [Respondent's] Property**, [Respondent] personally met with both [Appellants], and reviewed [Respondent's] Plats with both [Appellants] showing [Appellants] that they were trespassing onto [Respondent's] Property." (Emphasis not in original), *(Paragraph "19" of Complaint (First Amended) R. p. 19).*

- "**[Appellants'] actions thereafter were with actual notice of their intentional trespass**..." (Emphasis not in original), *(Paragraph "23" of Complaint (First Amended), R. p. 20).*

- "On or about May 6, 2012, **[Appellants] did, without legal permission from [Respondent], intentionally come onto and trespass upon the Property of [Respondent]**..." (Emphasis not in original), *(Paragraph "24" of Complaint (First Amended) R. p. 20).*

- "**[Appellants] were given oral notice of their intentional trespass, by the [Respondent], and [Appellants] were given written notice of their intentional trespass, by [Respondent's] counsel**..." (Emphasis not in original), (*Paragraph "25" of Complaint (First Amended), R. p. 20).*

- **[Appellant] Jess T. Reichardt, knowingly and willfully cut forest products located on [Respondent's] Property, belonging to the [Respondent], without [Respondent's] permission**. (Emphasis not in original), *(Paragraph "27" of Complaint (First Amended) R. p. 21).*

- **[Appellant] Thomas H. Reichardt, knowingly and willfully cut forest products located on [Respondent's] Property, belonging to the [Respondent], without [Respondent's] permission.** (Emphasis not in original), *(Paragraph "78" of Complaint (First Amended) R. p. 25).*

Appellants' Intentional Acts Are Established.

Based on the foregoing, the Record is replete with admitted allegations that the Appellants intentionally trespassed upon Respondent's property, before, during the time and after the trees were cut on Respondent's property, *(see bullet points above)*.

II. THE TRIAL JUDGE DID NOT ERR IN GIVING EVIDENTIAL MERIT TO RESPONDENT'S CLAIM OF "RECORD NOTICE" BECAUSE OF THE EVIDENCE PROVIDED BY RESPONDENT AND RESPONDENT'S WITNESS' TESTIMONY.

Record Notice.

The Trial Court did not err in giving evidentiary merit to Respondent's claim of "Record Notice", because Respondent's witness Kathryn Rauton, Esquire, appeared before the Lower Court during the Damages Hearing held in this matter on June 16, 2014, and testified that the Appellants were on Record Notice of the boundary line between Appellant Jess Reichardt's property and the Respondent's property, at the time of the Appellants' trespasses and interference *(R. p. 35 Lines 5-20), (R. p. 39 Lines 14-25), (Affidavit of Kathryn M. Rauton, Esq., R. pp. 83-88)*. Attorney Rauton's testimony was supported by an Affidavit she completed concerning Appellant Jess T. Reichardt's property, including a Title Search and Attorney Rauton's Affidavit was entered into evidence before the Lower Court, *(Affidavit of Kathryn Rauton, Esq., R. pp. 83-88)*. Appellants' counsel was given an opportunity to, and did, cross-examine Respondent's witness Attorney Rauton during the Damages Hearing, *(R. p. 36 Line 9 – R. p. 41 Line 2)*.

Appellants' counsel argues, "Attorney Rauton [Respondent's witness at trial) provided no evidence that the Appellants could have known the on-site actual location of the boundary that existed at (*sic*) time of the single meeting between Appellants and Respondent." *(Appellants' Initial Brief pg. "9").* Appellants' counsel's argument confuses, "Actual Notice", with "Record Notice". Attorney Rauton testified as to "Record Notice" and not "Actual Notice", therefore Appellants' counsel's argument is inapposite, *(R. p. 35 Lines 5-20), (R. p. 39 Lines 14-25), (Affidavit of Kathryn M. Rauton, Esq., R. pp. 83-88).*

The Trial Court's Finding of Record Notice in her Order, was properly supported by live witness testimony from Respondent's witness, Kathryn Rauton, Esquire, *(R. p. 35 Lines 5-20), (R. p. 39 Lines 14-25), (Affidavit of Kathryn M. Rauton, Esq., R. pp. 83-88).* "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 reasonable supports the judge's findings." Gowdy v. Gibson, 391 S.C. 374, 385, 706 S.E.2d 495, 501 (2011).

III. THE RESPONDENT PROVIDED SUFFICIENT EVIDENCE TO SUPPORT HIS ACTUAL DAMAGE CLAIM FOR THE APPELLANTS' TREE CUTTING BY HIS TESTIMONY IN COURT AND HIS EXHIBITS.

The Respondent appeared and gave testimony, and provided documentary evidence to the Lower Court during the Damages Hearing held in this matter on June 16, 2014, concerning his damages as to the tree cutting, *(R. p. 43 Lines 7-19), (R. p. 46 Line 13- R. p. 47 Line 1), (R. p. 50 Lines 14-15).*

"Actual or compensatory damages include compensation for all injuries which are naturally the proximate result of the alleged wrongful conduct of the defendant. The basic measure of actual damages is the amount needed to compensate the plaintiff for the losses proximately caused by the defendant's wrong so that the plaintiff will be in the same position he would have been in if there had been no wrongful injury." (Internal citation omitted) *Austin v. Specialty Transp. Services, Inc., 358 S.C. 298, 594 SE 2d 867 (S.C. Ct. of App. 2004).*

Appellants Argue That the Timber Statute Does Not Apply.

The Appellants also argue on page "9" of their Initial Brief that there was no violation of South Carolina Code Section 16-11-580, (1976, as amended). Because of their Default in the Lower Court, the violation of Section 16-11-580, S.C. Code Ann., (1976, as amended), and the violation of Section 16-11-615, S.C. Code Ann., (1976, as amended), the following allegations from the Respondent's First Amended Complaint are deemed admitted.

- "[Appellant] Jess T. Reichardt, **knowingly and willfully cut forest products located on [Respondent's] Property**, belonging to the [Respondent], without [Respondent's] permission." (Emphasis not in original), *(Paragraph "27" of Complaint (First Amended), R. p. 21).*

- "[Respondent] was proximately damaged by [Appellant] Jess T. Reichardt's actions and **[Respondent] is entitled to recover damages of three times the market value of the forest products.**" (Emphasis not in original), *(Paragraph "29" of Complaint (First Amended), R. p. 21).*

- "On or about May 6, 2012, [Appellants] did, without legal permission from [Respondent], intentionally come onto and **trespass upon the Property of [Respondent] and cut forest products, (timber) belonging to [Respondent]**, with the intent to permanently deprive the [Respondent] of the economic value of those forest products." (Emphasis not in original), *(Paragraph "24" of Complaint (First Amended), R. p. 20).*

- "[Appellant] Thomas Reichardt, **knowingly and willfully cut forest products located on [Respondent's] Property**, belonging to the [Respondent], without [Respondent's] permission." (Emphasis not in original), *(Paragraph "78" of Complaint (First Amended) R. p. 25).*

- "[Respondent] was proximately damaged by [Appellant] Thomas Reichardt's actions and **[Respondent] is entitled to recover damages of three times the market value of the forest products.**" (Emphasis not in original), *(Paragraph "80" of Complaint (First Amended), R. p. 25).*

Appellants' argue, "By relying on a statute that does not apply, the Respondent is left with a trespass that does not have damages in evidence" *(Appellants' Initial Brief pg. "11").*

As shown above, the timber Statute, Section 16-11-615, S.C. Code Ann., (1976, as amended), does apply. Also, Respondent has made copious references to his damages in evidence to the Trial Court, in this Brief, (see, discussion on Respondent's Damages in, "IV", hereinbelow).

Appellants' Reliance on *Wimberly v. Barr*, is Misplaced.

On pages "9" and "10" of Appellants' Initial Brief, Appellants provide a lengthy discussion on, Wimberly v. Barr, 597 S.E.2d 853 (Ct. of App. 2004).

However, Wimberly v. Barr supports Respondent's position in this matter. Namely, Section 16-11-615 S.C. Code Ann. (1976, as amended), **does not**, "…[set] forth the exclusive remedy for recovering damages associated with the improper removal of timber or whether a landowner is able to bring additional causes of action. We find the statue does not create the exclusive remedy for all damages associated with the removal of timber." Wimberly *supra* at, 856). Therefore, Appellants' argument is inapposite, "In the 2004 Case, Wimberly v. Barr, the Court stated that if the owner of removed timber proceeds, under the statute his damages are capped at three times the value of the timber", *(page "9" of Appellants' Initial Brief)*.

Appellants incorrectly argue in their Brief, "The guidance issuing from the Wimberly Court is clear. The triple value code (South Carolina Code §16-11-615) can not (*sic*) be used by the tree cutter to limit damages. However, on the other hand, if the tree owner elects to use the triple value code, the total damages are capped. The total damages include the sum of both actual and punitive damages." *(Appellants' Initial Brief page "10")*. Appellants' statements are not supported by Wimberly, and do not appear in Wimberly.

Further support for Respondent, in Wimberly, follows. "Although the timber statute provides that a landowner may institute a civil action to recover up to three times the fair market value of the timber cut, a clear reading of the statute does not prohibit a landowner from recovering other types of damages. **Nothing in the statute provides that it is the exclusive remedy for all kinds of damages**." (emphasis not in original), Wimberly *supra* at, 857.

The Wimberly Court stated, "We find the Legislature did not intend to eliminate the common law right to collect all damages associated with a wrong. Instead, the Legislature intended to set forth a means for a landowner to recover the fair market value of timber wrongfully harvested in violation of the criminal statute. The plain language of the statute does not prohibit the landowner from also recovering for the other damages that naturally flow from the wrongful harvesting of timber." Wimberly *supra* at, 857, 858. Wimberly v. Barr, is on point and fully supports the Respondent's position, in this matter.

IV. THE TRIAL JUDGE DID NOT ERR BY AWARDING ACTUAL DAMAGES OF $4,193.90 TO THE RESPONDENT, BASED ON THE EVIDENCE AND TESTIMONY BEFORE HER.

Respondent appeared before the Trial Court and gave extensive testimony on his actual damages, *(R. p. 50 Lines 8-17), (R. p. 58 Line 9 – R. p. 67 Line 16)*. Respondent was extensively cross examined by Appellants' counsel concerning his damages in this matter, *(R. p. 56 Line 19 – R. p. 70 Line 9).* Respondent's damages were (**i**) the tripled value of the timber improperly cut by Appellants was found to be by a Representative of the South Carolina Forestry Commission, $750.90, *(R. p. 50 Lines 9-10)* (**ii**) the Respondent's Trial Court's filing fee was $150.00, *(R. p. 50 Line 11),* (**iii**) the Respondent's payment to Saluda County Clerk of Court for a Plat was $10.00, *(R. p. 50 Lines 11-13)*, (**iv**) the Respondent's purchase of twelve white oak trees at a cost of $1,200.00, for reforestation of the trees destroyed by the Appellants, *(R. p. 50 Lines 14-15),*

(**v**) the Respondent's purchase of one hundred pounds of fescue grass seed at a cost of $70.00, to restore the grass destroyed by the Appellants, *(R. p. 50 Lines 16-17)*, (**vi**) the Respondent's cost of a Title Search by Attorney Rauton was $263.00, *(R. p. 50 Lines 10-11)*, and (**vii**) Respondents costs of the survey fee by Surveyor, George Todd was $1,750.00, *(R. p. 50 Lines 13-14).* Respondent's total Actual Damages as testified to during the Damages Hearing totaled, $4,193.90, *(R. p. 50 Line 17)*.

Trial Judge Has Considerable Discretion on Actual Damages.

A fair reading of the Trial Judge's Order for Judgment for Actual Damages shows that she carefully considered the issues related to Actual Damages, before awarding Actual Damages, *(Order, R. pp. 13-17)*. The Trial Judge has considerable discretion in awarding Actual Damages, "The trial judge has considerable discretion regarding the amount of damages both actual or punitive awarded." Kuznik v. Bees Ferry Assoc., 538 S.E.2d 15, 32 (S.C. Ct. of App. 2000).

Appellants' counsel incorrectly argues that, "The seven components were presented as a list by the Respondent, and the Respondent was instructed by his counsel to refrain from providing any explanation for the [damages]." *(Appellants' Initial Brief pg. "11")*. **Factually** and **contrary to Appellants' argument in their Initial Brief** Respondent's counsel elicited testimony from Respondent on each component of Respondent's damages, *(R. p. 56 Line 19 – R. p. 70 Line 9).* Appellants' counsel also incorrectly argues that, "The appellants requested the opportunity to cross examine. However, the Court allowed the statement of damages without further applicable proceedings." *(Appellants' Initial Brief pg. "11")*. **Factually** and **contrary to Appellants' argument in their Initial Brief**, Appellants' counsel cross-examined the Respondent on each component of Respondent's damages, *(R. p. 56 Line 19 – R. p. 70 Line 9).*

"During a default damages trial, the defendant's participation shall be limited to cross examination and objection to the plaintiff's evidence" Limehouse v. Hulsey, 397 S.C. 49, 723, S.E.2d 211 (2011). During the Damages Hearing in this matter, the Trial Judge gave great latitude to the Appellants' legal counsel and the Trial Judge allowed appropriate participation by Appellants' legal counsel, *(R. p. 72 Lines 6- 11)*.

V. THE TRIAL JUDGE DID NOT ERR IN HER CALCULATION OF PUNITIVE DAMAGES, BASED ON THE EVIDENCE AND TESTIMONY BEFORE HER.

Respondent gave extensive testimony to the Trial Judge, as to the facts to support Respondent's request for Punitive Damages, *(R. p. 42 Line 3 – R. p. 52 Line 4)*. Appellants' counsel cross-examined Respondent, *(R. p. 56 Line 19 – R. p. 70 Line 9)*.

Trial Judge Has Considerable Discretion on Punitive Damages.

A fair reading of the Trial Judge's Order for Judgment, including Punitive Damages shows that she carefully considered the Factors and issues related to Punitive Damages, before awarding Punitive Damages, *(Order, R. pp. 13-17)*. The Trial Judge has considerable discretion in awarding Punitive Damages, "The trial judge has considerable discretion regarding the amount of damages both actual or punitive awarded." Kuznik v. Bees Ferry Assoc., 538 S.E.2d 15, 32 (S.C. Ct. of App. 2000).

Statutory Violation Supports Punitive Damages.

Because there was an uncontroverted and admitted violation of Section 16-11-615, S.C. Code Ann., (1976, as amended), by the Appellants, the door was opened for the Trial Court to consider punitive damages against the Appellants, (*see bullet points in "I", herein)*. "A factual question as to punitive damages is presented when there is evidence of a statutory violation." Austin v. Specialty Transp. Services, Inc., 358 S.C. 298, 594 SE 2d 867 (S.C. Ct. of App. 2004). It is undisputed that Appellants, in light of their default, are deemed to have violated a Statute (*see bullet points in "I", herein)*.

Violation of the Statute is Evidence Supporting Punitive Damages.

The violation of a statute described above, supports a Punitive Damage award against Appellants. "Violation of a statute does not constitute recklessness, willfulness, and wantonness per se, but is some evidence the defendant acted recklessly, willfully, and wantonly. Id. However, even in cases involving disputed liability, punitive damages are sustainable if there is any evidence supporting a violation of a statute. See, e.g., id. (evidence of a violation of an applicable statute is a proper basis for submitting punitive damages to the trial jury); (affirming finding of punitive damages in automobile accident where record contained evidence from which the jury could draw inferences of gross negligence)."(Internal citation omitted). *Austin v. Specialty Transp. Services, Inc., 358 S.C. 298, 594 SE 2d 867 (S.C. Ct. of App. 2004).*

S.C. Case Law Precludes Appellants From Presenting Evidence.

Appellants improperly argue that Appellants should have been able to present evidence during the punitive damages phase at the Damages Hearing on June 16, 2014, *(Appellants' Initial Brief page "14")*. Specifically, Appellants argue, "At the Damages Hearing, the Court took the position that the [Appellants] could not present evidence that related to Punitive Damages, because the [Appellants] were in default.... That position is not supported by case law." *(Appellants' Initial Brief page "14")*. Also, "During a default damages trial, the defendant's participation shall be limited to cross examination and objection to the plaintiff's evidence" *Limehouse v. Hulsey, 397 S.C. 49, 723, S.E.2d 211 (2011).*

Same Procedure Employed For Punitive And Actual Damages.

The actual damages and punitive damages request of the Respondent were properly handled in the same manner by the Trial Court.

"Initially, Hulsey cites no authority to support the proposition that South Carolina should employ a different default damages procedure for punitive damages than for actual damages. (making no distinction on appeal between punitive damages and actual damages during a default damages trial)." (internal citation omitted) *Limehouse v. Hulsey, 723 SE 2d 211 (Ct. of App. 2011).*

Appellants' Actions Were Reprehensible, Willful, Wanton and With Reckless Disregard For The Respondent's Rights.

The Appellants' actions were reprehensible, willful, wanton and with reckless disregard for the Respondent's rights and the Appellants were properly punished by the Lower Court's award of punitive damages (R. p. 43 Line 4 – R. p. 44 Line 2), *(R. p. 51 Lines 6-15).*

Reprehensibility.

The Respondent appeared and gave testimony to the Lower Court at the Damages Hearing held in this matter on June 16, 2014, and testified as to the Reprehensible conduct by Appellants, (R. p. 43 Line 4 – R. p. 44 Line 2), *(R. p. 51 Lines 6-15).*

Reprehensibility Factors.

Reprehensible conduct by a Defendant supports punitive damages and, "In considering reprehensibility, a court should consider whether: (**i**) the harm caused was physical as opposed to economic; (**ii**) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (**iii**) the target of the conduct had financial vulnerability; (**iv**) the conduct involved repeated actions or was an isolated incident; and (**v**) the harm was the result of intentional malice, trickery, or deceit, rather than mere accident." Limehouse v. Hulsey, 723 SE 2d 211 (S.C. Ct. of App. 2011).

The Limehouse factors on Reprehensibility are discussed *seriatim,* below.

Factor (**i**) the damage to Respondent was physical, because the Appellants repeatedly trespassed upon and damaged the Respondent's property, (*see bullet points in "I", herein).*

Factor (**ii**) the Appellants exhibited an indifference and reckless disregard for the health and safety of the Respondent and others because Appellants' actions created a fire hazard on the Respondent's property, caused excessive runoff into Crooked Creek, and caused great stress and mental anguish to the Respondent, *(R. p. 43 Line 4 – R. p. 44 Line 2), (R. p. 51 Line 6-15).*

Factor (**iii**) because the Appellants met in-person with the Respondent in May 2012, Appellants had actual knowledge that the Respondent is an older individual, who is retired and therefore had financial vulnerability, *(R. p. 31 Line 19 – R. p. 32 Line 11), (R. p. 43 Line 24 – R. p. 49).* After the in-person meeting above, the Appellants were also placed on Actual Notice of their trespass upon Respondent's property, by Appellants' own Surveyor by way of correspondence to the Appellants' legal counsel, dated September 17, 2013, "…I am without doubt that the present location of the [Crooked] creek, also being [Appellant Jess T. Reichardt's] boundary, has not changed in any considerable period of time. Therefore, it is not a factor in the area discrepancy…", *(Statement of Mark Mills, R. p. 90), (R. p. 53 Lines 18-25).* As Respondent's witness, Attorney Rauton testified in the Damages Hearing held in this matter, Appellants were on Record Notice, that Appellants were trespassing upon and damaging Respondent's property, *(R. p. 35 Lines 5-20), (R. p. 39 Lines 14-25), (Affidavit of Kathryn M. Rauton, Esq., R. pp. 83-88).*

Factor (**iv**) the conduct involved repeated actions and was not an isolated incident. Those repeated actions were, the cutting of timber, the fencing-in of Respondent's property, installing gates and "no trespassing" signs on Respondent's property, repeated trespasses upon Respondent's property *(see bullet points in "I", herein)* and

Factor (v) the Appellants' actions were not a result of an accident, but instead the Appellants' actions were intentional, malicious and deceitful, as evidenced by their actions outlined in "Factor (iv)", hereinabove. All of which shows that the Appellants' conduct was reprehensible.

Amount of Punitive Damage Award Appropriate.

The Trial Judge awarded Punitive Damages in this case, which were approximately five times the Respondent's base damages, which is a single-digit multiplier. Our Appellate Courts have repeatedly held that a single-digit multiplier is more likely to comport with due process. Austin v. Specialty, 358 S.C. 298, 594 SE2d 867 (S.C. Ct. of App. 2004); Jenkins v. Few, 705 SE2d 457 (S.C. Ct. of App. 2010). Our Appellate Courts have declined to establish an accepted ratio between actual damages and a punitive damages award. "We decline again to impose a bright-line ratio which a punitive damages award cannot exceed." Austin, *supra* at, 318. "This court has also affirmed ratios on the high end of the single-digit spectrum. For instance, in *Collins Entertainment Corp. v. Coats & Coats Rental Amusement,* this court [**S.C. Ct. of App.**] **upheld a punitive to actual damage ratio of 9.9 to 1** on an intentional interference with contract claim." (emphasis not in original), Jenkins, *supra* at, 224. Finally, the Trial Judge had considerable discretion over the amount of a Punitive Damages award. Austin, *supra* at, 317, and the Trial Judge's award of Punitive Damages was appropriate, given the willful, wanton, reckless and malicious acts of the Appellants, and the fact that the Appellants acted without regard for Respondent's legal rights in his property.

CONCLUSION

Appellants were found in Default in the Lower Court, *(Order, R. p. 12)*, and Appellants' Motion to Set Aside Default was denied by the Trial Judge, *(Order, R. pp. 8-10)*. All the allegations of Respondent's Amended Complaint are deemed admitted by Appellants, *(Complaint (First Amended), R. pp. 18-30)*. Appellants ignore their Default posture in the Lower Court and Appellants throughout this Appeal and in each Exception, Appellants attempt to argue matters, which have been deemed admitted by the Appellants. Appellants' admissions are not subject to further argument by Appellants in this Appeal. Furthermore, Appellants' arguments include numerous, *ipse dixit,* statements with no citation to South Carolina Case Law or Statute. The Trial Court issued a comprehensive Order and Judge Verdin's Findings of Fact, fully support her decision on both actual and punitive damages by a preponderance of evidence.

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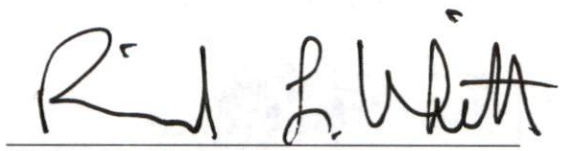
AUSTIN & ROGERS, P.A.,

By: 

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December 3, 2014
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