THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Joseph M. Strickland, Master-In-Equity

Case No. 2019-000297

Mathes Auto Sales, Inc., Respondent/Appellant,

v.

Otis Morris, Jr., Pro Bowl Motors, Inc., Travelers Casualty & Surety Co. of America, Inc., Gerald Scott Dixon, Michael Tyrone Moore, and Dixon's Automotive, LLC, Defendants, of whom Otis Morris, Jr., Pro Bowl Motors, Inc., Gerald Scott Dixon, Michael Tyrone Moore, and Dixon's Automotive, LLC, are the Appellants/Respondents.

INITIAL BRIEF OF APPELLANTS/RESPONDENTS OTIS MORRIS, JR., AND PRO BOWL MOTORS, INC.

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STANDARD OF REVIEW

This is an action in equity tried by a Master-In-Equity without a jury. On appeal the appellate court has jurisdiction to find facts in accordance with its views of the preponderance of the evidence. Townes Assocs., LTD v. City of Greenville, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (176). In appeals in equity cases the appellant court has jurisdiction to find the facts in accordance with its view of the preponderances or greater weight of the evidence, in the absence of a verdict by a jury; and may reverse a factual finding by the lower court in such cases when the appellant satisfies the court that the finding is against the preponderance of the evidence." Crowder v. Crowder, 246 S.C. 299, 301, 143 S.E. 2d 580, 581 (1965).

STATEMENT OF THE CASE

The respondent/appellant, Mathes Auto Sales, Inc., filed suit against NextGear Capital, Inc., on November 4, 2016, alleging that its floorplan account with NextGear Capital had been inappropriately charged the sum of $35,368.00 for a vehicle purchased in its name by appellant/respondent, Otis Morris, Jr., of Pro Bowl Motors, Inc., from appellant/respondent, Dixon's Automotive, LLC, without the consent of Mathes Auto Sales. The respondent/appellant, Mathes Auto Sales, sought a declaratory judgment that it had no liability for any sums advanced by NextGear in connection with the purchase of the vehicle by Morris from Dixon's Automotive.

On February 1, 2017, Mathes Auto Sales filed an amended complaint adding several defendants including Otis Morris, Jr., Pro Bowl Motors, Inc., Travelers Casualty & Surety Co. of America, Inc., and Dixon's Automotive, LLC.

Mathes Auto Sales subsequently settled with NextGear Capital, with NextGear agreeing to remove the $35,368.00 charge from the account of Mathes Auto Sales. Prior to trial, Mathes Auto Sales also reached a settlement with Travelers Casualty & Surety Co. of America, the bond and surety company for Pro Bowl Motors, Inc. Travelers paid to Mathes Auto Sales the sum of $20,857.00 on behalf of Morris and Pro Bowl Motors.

The case against Otis Morris, Pro Bowl Motors and Dixon's Automotive, proceeded to trial before the Honorable Joseph M. Strickland, Richland County Master-In-Equity on February 8, 2016. The trial was recessed from February 9 through February 11, 2018 and was concluded on February 12, 2018. During the course of the trial, Mathes Auto Sales moved to amend its complaint to add appellants/respondents, Gerald Scott Dixon and Michael Tyrone Moore, as

defendants. Dixon and Moore were the principal owners of Dixon's Automotive, LLC. The court did not rule on the motion to amend at trial. On February 16, 2018, Mathes Auto Sales filed a written supplemental motion to add Dixon and Moore as parties.

On June 20, 2018, the Master-In-Equity issued an Order of Judgment in favor of Mathes Auto Sales. In the order, the court also granted the motion filed by Mathes to add Gerald Scott Dixon and Michael Tyrone Moore as parties. On July 2, 2018, the appellants/respondents, Otis Morris, Jr., and Pro Bowl Motors, Inc., filed a timely motion to amend the findings and judgment pursuant to Rules 52 and 59 of SCRCP. On July 2, 2018, the appellants/respondents, Dixon, Moore and Dixon's Automotive also filed a timely motion to amend the judgment and the respondent/appellant, Mathes Auto Sales, filed a timely motion to alter or amend the judgment.

On January 28, 2019, the Master-In-Equity issued his order denying all post trial motions and this appealed followed.

STATEMENT OF THE FACTS

This action arises out of a longtime friendship and business relationship between Otis Morris, Jr., President of Pro Bowl Motors, Inc., and John Mathes, President of Mathes Auto Sales, Inc. At all times relevant to this action, Pro Bowl Motors, Inc., was an automotive retail sales business located in Columbia, South Carolina and Mathes Auto Sales, Inc., was an automotive retail sales business located in Florence, South Carolina. Both businesses dealt primarily in purchasing used vehicles at auctions and selling those vehicles to the general public.

John Mathes and Otis Morris were friends for more the thirty (30) years and had a long history of doing deals together and for each other pertaining to the purchase and sale of vehicles. They had a long history of purchasing vehicles for each other's companies over the years. Otis Morris was authorized in a written agreement signed by John Mathes with Manheim Auctions to purchase vehicles in the name of Mathes Auto Sales at auctions held by Manheim.

On August 15, 2016, Morris purchased a vehicle at the Manheim Auction in the name of Mathes Auto Sales. The purchase price of the vehicle was $35,368.00 which amount was charged by Manheim to the floorplan account of Mathes Auto Sales at NextGear Capital. Upon learning that the vehicle had been charged to his floorplan account, John Mathes contacted Otis Morris to inquire as to whether he had purchased the vehicle in the name of Mathes Auto Sales. Upon learning that Morris had purchased the vehicle, Mathes contacted NextGear and objected to the vehicle being charged to his floorplan account and Mathes took the position that the vehicle had been purchased without his knowledge or consent. NextGear refused to remove the charge from the Mathes Auto Sales floorplan account which resulted in Mathes Auto Sales filing

suit against NextGear. The suit filed by Mathes Auto Sales against NextGear was subsequently settled with the $35,368.00 charge being removed from the Mathes Auto Sales floorplan account at no cost to Mathes Auto Sales.

In addition to successfully getting the charge removed from its floorplan account with NextGear, Mathes Auto Sales also sued Travelers Casualty & Surety Co., the bond and surety company for Pro Bowl Motors, and ultimately reached a settlement with Travelers in the amount of $20,857.00. Mathes sued Morris, Pro Bowl Motors and Dixon Automotive, LLC, for alleged damages and the case against these defendants proceeded to trial on February 8, 2018.

After a two (2) day bench trial between Mathes Auto Sales as plaintiff, and Otis Morris, Jr., Pro Bowl Motors, Inc., and Dixon's Automotive, LLC, as defendants, the Master-In-Equity issued an order ruling in favor of Mathes Auto Sales. The Master ruled that Mathes Auto Sales had suffered actual damages in the amount of $35,368.00 and that the said sum should be doubled to $70,736.00 pursuant to Section 56-15-110 (1) of the South Carolina Code of Laws. The Master further ruled that the plaintiff was entitled to punitive damages pursuant to Section 56-15-110(2) of the South Carolina Code in an amount calculated by the Master to be $212,208.00.

All parties have appealed the ruling of the Master-In-Equity.

ARGUMENT

THE LOWER COURT ERRED IN FAILING TO SETOFF AND CREDIT THE APPELLANTS WITH THE AMOUNT AND/OR MONETARY VALUE OF SETTLEMENTS REACHED BY THE RESPONDENT WITH OTHER PARTY DEFENDANTS. AGAINST THE ACTUAL DAMAGES THE COURT DETERMINED TO HAVE BEEN SUFFERED BY THE RESPONDENT.

In the order issued by the Master-In-Equity, the Master ruled that the respondent herein, Mathes Auto Sales, Inc., had suffered actual damages in the amount of $35,368.00. It is clear that the amount of actual damages found by the trial judge is the amount of the charge that the appellant, Otis Morris, Jr., had caused to be charged to the floorplan account that Mathes Auto Sales had with NextGear Capital. The amount of actual damages found by the lower court and the amount that Morris caused to be charged to the floorplan account of Mathes Auto Sales are both $35,368.00.

It is undisputed that Mathes Auto Sales did not suffer a loss of $35,368.00 because the charge was removed by NextGear Capital from the floorplan account of Mathes Auto Sales without any cost to or payment from Mathes Auto Sales. The trial judge did not find that Mathes had suffered any actual damages other than the $35,368.00 charge to its floorplan account. Since the $35,368.00 charge was removed by NextGear from the Mathes floorplan account, the appellants were entitled to a credit or setoff of $35,368.00 against the actual damages award of $35,368.00 given by the trial judge.

Additionally, not only did Mathes Auto Sales not have to pay the $35,368.00 that Morris caused to be charged to its floorplan account, Mathes Auto Sales collected the sum of $20,857.00 from Travelers Casualty & Surety Co. of America, Inc., the bonding and surety company for Pro Bowl Motors, which means that Mathes Auto Sales actually made a profit of $20,857.00 from

the transaction between Otis Morris and Manheim Auction.

Since Mathes Auto Sales did not, after the proper application of setoffs and credits, suffer any actual damages, there would not be any award from doubling the actual damages pursuant to Section 56-15-110 (1) of the South Carolina Code of Laws or from trebling the actual damages pursuant to Section 56-15-110 (2). Two times actual damages of zero is zero and three times actual damages of zero is zero.

In the case at bar, there is simply no mathematical bases or justification for doubling or trebling the damages when the net actual damages award is zero. Section 56-15-110 (1) of the South Carolina Code of Laws, which is the section that the lower court used to award double damages, states that ".....any person who shall be injured in his business or property by reason of anything forbidden by this Chapter may sue therefor in the court of common pleas and shall recover double the actual damages by him sustained....." It is clear that in order for a plaintiff to be entitled to recover the double damages provided for under Section 56-15-110 (1), the plaintiff must prove that he has been injured in his business or property thereby resulting in actual damages. If the plaintiff does not suffer actual damages, he cannot recover the double damages provided for under Section 56-15-110 (1).

Section 56-15-110 (2) which is the section that the lower court used to award punitive damages states that "In an action for money damages, if the jury finds that the defendant acted maliciously, the jury may award punitive damages not to exceed three times the actual damages." As with section 56-15-110 (1), Section 56-15-110 (2) ties the awarding of punitive damages to the suffering of actual damages. If the plaintiff does not suffer actual damages, he is not entitled to an award of punitive damages under section 56-15-110 (2).

Finally, it is clear that even if respondent Mathes Auto Sales was entitled to punitive damages under section 56-15-110 (2), which the appellants vehemently deny, the lower court improperly calculated the punitive damages by trebling the amount of the doubled damages. The lower court doubled the alleged actual damages of $35,368.00 and awarded the respondent $70,736.00 under section 56-15-110 (1). Then the court took the amount of the double damages and tripled this amount to award punitive damages of $212, 208.00. Even if the respondent suffered actual damages of $35,368.00 and the appellants were not entitled to a setoff, the punitive damages under section 56-15-110 (2) would be limited to three times $35,368.00 and not three times $70,736.00.

Since the respondent suffered no monetary loss due to the actions of the appellants and since the respondent actually made a profit through the money that it recovered from Travelers Casualty and Surely Co., the respondent is not entitled to an award of any damages from the appellants.

CONCLUSION

For the reasons stated herein, we believe that the ruling of the lower court should be reversed.

Respectfully Submitted,

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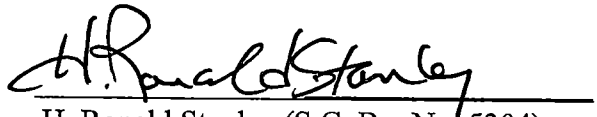
PROOF OF SERVICE

I certify that I served the appellants/respondents initial brief, by depositing a copy of it in the United States Mail, postage prepaid addressed to the attorneys of record, J. Gregory Studemeyer, Post Office Box 12201, Columbia, South Carolina 29211-2201 and Leland B. Greeley, Post Office Box 2981, Rock Hill, South Carolina 29732.



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June 26, 2019