

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas  
Gordon G. Cooper, Master-In-Equity  
Trial Court Case No. 2018-CP-42-01540

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Appellate Case No. 2019-000819

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Karolee Russell, Individually, and as Personal Representative of the Estate of Kevin Brian Russell, Respondent,

v.

B & R Contracting, LLC, Brian K. Bass, and Richard A. Robertson, Defendants,

Of Whom Richard A. Robertson is the Appellant.

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**RECORD ON APPEAL**

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**RECEIVED**  
OCT 07 2019  
SC Court of Appeals

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )

IN THE COURT OF COMMON PLEAS  
2018-CP-42-01540

Kevin Russell and Karolee Russell, )  
 )  
Plaintiff, )

ORDER OF REFERENCE

vs. )

B & R Contracting, LLC; Brian K. Bass, )  
and Richard A. Robertson, )  
 )  
Defendants. )

Non-Jury

This matter came before me for an Order of Reference in the above-referenced action.

It appears that the within matter is an action concerning a breach of contract and fraud. It further appears that the Defendants are in default. It further appears that it is the proper subject for a reference to the Master-in-Equity, for his finding of fact and final Order appealable to the Supreme Court of South Carolina. It further appears that Gordon G. Cooper is an appropriate person to so appoint.

IT IS THEREFORE ORDERED the within matter be referred to the Honorable Gordon G. Cooper, Master-in-Equity for Spartanburg County for his finding of fact and his final Order appealable to the Supreme Court of South Carolina.

ELECTRONIC SIGNATURE PAGE TO FOLLOW



Spartanburg Common Pleas

**Case Caption:** Kevin Russell , plaintiff, et al VS B & R Contracting, Llc ,  
defendant, et al  
**Case Number:** 2018CP4201540  
**Type:** Order/Referred to Master or Special Referee

IT IS SO ORDERED

s/M. Hope Blackley, Spartanburg County Clerk of  
Court by Maribel Martinez

Electronically signed on 2018-06-21 13:05:00 page 2 of 2

ELECTRONICALLY FILED - 2018 Jun 21 1:05 PM - SPARTANBURG - COMMON PLEAS - CASE#2018CP4201540

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )  
 )  
Karolee Russell individually, and as personal )  
representative of the Estate of Kevin Brian )  
Russell, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
B & R Contracting, LLC, Brian K. Bass, and )  
Richard A. Robertson, )  
 )  
Defendants. )  
 )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO. 2018CP4201540

ORDER FOR SUBSTITUTION FOR  
DECEASED PLAINTIFF

Karolee Russell, personal representative of the estate of Kevin B. Russell, deceased, has moved for an order substituting herself as the plaintiff in this action.

It appears to the court that the plaintiff is deceased, that the plaintiff's claim survives, and that the movant has been duly appointed and is qualified and acting as the representative of the plaintiff's estate, and that there is just cause for granting the motion.

It is therefore ORDERED that the motion is granted and that Karolee Russell, as the personal representative of the estate of Kevin B. Russell, deceased, is substituted as the plaintiff, and that this action shall proceed and the caption shall reflect this substitution as indicated in the caption for this order.

Judge's Electronic Signature to Follow



Spartanburg Common Pleas

**Case Caption:** Kevin Russell , plaintiff, et al VS B & R Contracting, Llc ,  
defendant, et al  
**Case Number:** 2018CP4201540  
**Type:** Order/Substitution of Parties

It is So Ordered

s/Judge Gordon G Cooper-3065

Electronically signed on 2018-08-01 10:11:43 page 2 of 2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	CASE NO. 2018-CP-42-1540
	)	
Karolee Russell, Individually, and as Personal Representative of the Estate of Kevin Brian Russell,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	ORDER
	)	
B & R Contracting, LLC, Brian K. Bass, and Richard A. Robertson	)	
	)	
Defendants.	)	
	)	

This matter is before the court by Order of Reference dated June 21, 2018. A hearing was held on September 27, 2018; Present were Plaintiff, Karolee Russell, and her attorney Paul A. McKee, III. Defendants Brian K. Bass and Richard A. Robertson appeared *pro se*. After reviewing the record, the testimony of the parties, evidence presented, and the arguments of Defendants and Plaintiff's counsel, the Court makes the following findings of law and fact:

1. Plaintiff filed a Summons and Complaint on May 9, 2018 alleging multiple causes of action to include Breach of Contract, Fraud, Breach of Contract Accompanied by a Fraudulent Act, Conversion, and Violation of the South Carolina Unfair Trade Practices Act.
2. Defendants B&R Contracting, LLC, Brian K. Bass, and Richard A. Robertson were personally served on May 19, 2018.
3. No Defendants responded or otherwise pled and on June 20, 2018 Plaintiff filed an Affidavit of Default against all Defendants.
4. All Defendants were provided notice of the time, place, and date of the hearing.
5. This court has jurisdiction over the parties and the subject matter. Venue is proper in Spartanburg County.
6. Plaintiff and Defendants entered into a residential construction agreement on October 10, 2016 for the construction of a log-cabin style home.

7. Defendants represented to Plaintiff that they were licensed contractors in the State of South Carolina and were experienced in constructing log-cabin style homes.
8. Plaintiff tendered to Defendants a deposit in the amount of \$29,928.46.
9. Defendants failed to do any work pursuant to the construction agreement.
10. Defendants failed to apply for a building permit.
11. Plaintiff requested Defendants return the deposit and Defendants failed to do so.
12. Defendants failed to respond to a letter sent to Defendants by Plaintiff's Counsel requesting a return of the deposit.
13. Plaintiffs had to obtain a new loan in order to pay for a different builder to undertake construction of the residence and paid \$11,053.00 in closing costs and \$2,716.94 in private mortgage insurance for the period of May 1, 2017 through September 1, 2018.
14. No Defendants demanded enforcement an arbitration clause in the construction agreement.
15. Defendants materially breached or unjustifiably failed to perform pursuant to the terms of said contract.
16. As a direct and proximate result of Defendants' material breach of the contract, Plaintiff had to obtain a new loan resulting in Plaintiff paying closing costs private mortgage insurance.
17. Defendants' conduct is an unfair or deceptive act or practice in the conduct of trade or commerce in the State of South Carolina and is unlawful pursuant to S.C. Code Ann. § 39-5-20 (1976).
18. Defendants' use or employment of said unfair or deceptive practice was willful, malicious, knowing, and without justification. Further Defendants' use or employment of said unfair or deceptive practice touches and concerns trade and commerce in South Carolina and is capable of repetition.
19. Accordingly, Plaintiff should be entitled to judgment against Defendants, jointly and severally, for all causes of action set forth in the Complaint, to recover actual damages, special damages, treble damages, attorney's fees and costs.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff Karolee Russell, Individually, and as Personal Representative of the Estate of Kevin Brian Russell should have judgment against Defendants B & R Contracting, LLC, Brian K. Bass, and Richard A. Robertson for Breach of Contract, Fraud, Breach of Contract Accompanied by a Fraudulent Act, Conversion, and violation of the South Carolina Unfair Trade Practices Act.

Plaintiff is entitled to actual damages in the amount of \$29,928.46 against Defendants, jointly and severally. Further, Plaintiff is entitled to treble damages for Defendants' willful violations of the South Carolina Unfair Trade Practices Act, for a total of \$89,785.38.

Plaintiff is entitled to recover special damages in the amount of \$11,053.00 for the new loan closing costs and \$2,716.94 in private mortgage insurance for the period of May 1, 2017 through September 1, 2018, for a total of \$13,769.94, against Defendants, jointly and severally.

Plaintiff entitled to recover attorney's fees in the amount of \$2,500.00 and costs in the amount of \$704.12, for a total of \$3,204.12.

Therefore, Plaintiff Karolee Russell, Individually, and as Personal Representative of the Estate of Kevin Brian Russell is awarded a total judgment against Defendants B & R Contracting, LLC, Brian K. Bass, and Richard A. Robertson, jointly and severally, in the amount of \$106,759.44.

IT IS FURTHER THEREFORE ORDERED, ADJUDGED AND DECREED that the Clerk of Court shall mail a copy of this Order to the South Carolina Attorney General pursuant to S.C. Code Ann. § 39-5-140(b) (1976).

Judge's Electronic Signature Page to Follow



Personal Representative Estate of Kevin Brian Russell		
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.**

<b>Circuit Court Judge</b>	<b>Judge Code</b>	<b>Date</b>
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**For Clerk of Court Office Use Only**

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

PAUL A. MCKEE, III  
 \_\_\_\_\_  
 409 MAGNOLIA ST.  
 \_\_\_\_\_  
 SPARTANBURG SC 29303

B & R Contracting, LLC, Brian Keith Bass, *Pro se*  
 \_\_\_\_\_  
 5923 Edmond Hwy.  
 \_\_\_\_\_  
 Lexington, SC 29073

Brian Keith Bass, *Pro se*  
 5923 Edmond Hwy.  
 Lexington, SC 29073

Richard A. Robertson  
 84 West Circle Dr.  
 Lexington, SC 29072

\_\_\_\_\_  
 ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
 ATTORNEY(S) FOR THE DEFENDANT(S)

\_\_\_\_\_  
 CLERK OF COURT

**Court Reporter:**

**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.

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Judge's Electronic Signature Page to Follow this Page.



Spartanburg Common Pleas

**Case Caption:** Karolee Russell vs B & R Contracting LLC etal  
**Case Number:** 2018CP4201540  
**Type:** Master/Order/Other

It is So Ordered

s/Judge Gordon G Cooper-3065

Electronically signed on 2018-10-08 14:54:49 page 7 of 7

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	CASE NO. 2018-CP-42-1540
	)	
Karolee Russell, Individually, and as Personal Representative of the Estate of Kevin Brian Russell,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	ORDER DENYING DEFENDANT
	)	ROBERTSON'S MOTION TO RECONSIDER
B & R Contracting, LLC, Brian K. Bass, and Richard A. Robertson	)	
	)	
Defendants.	)	
	)	

The matter before the Court is Defendant Robertson's Motion for an Order altering or amending the Court's Order of October 8, 2018, entering default judgment against B&R Contracting, LLC, Brian K. Bass, and Richard A. Robertson, joint and severally. Plaintiff's Counsel, Paul A. McKee, III was present with Defendant Robertson's Counsel, C. Daniel Atkinson at the hearing of this Motion on February 25, 2019.

Plaintiff personally served Defendant Robertson with the Summons and Complaint on May 18, 2018. Plaintiff filed an affidavit of default against Defendant Robertson on June 20, 2018. On August 21, 2018, Plaintiff served Defendant Robertson with a notice of the final hearing, scheduled on Tuesday, September 11, 2018 at 11:00am. On the morning of September 11, 2018, Defendant Bass informed Plaintiff's Counsel that he was unavailable because of the evacuation order for Hurricane Florence and the hearing was rescheduled. On the same day, Plaintiff served Defendant Robertson with a second notice of hearing, scheduled for September 27, 2018.

At the February 25, 2019 hearing on Defendant Robertson's Motion to Reconsider, the Court evaluated Defendant's Motion to Set Aside Default, based on Robertson's request at the September 27, 2018 hearing that the Court grant him leave to file an Answer. Rule 55(c) permits a party to move to set aside the entry of default. The standard for granting relief from an entry of default under Rule 55(c) is mere "good cause." Rule 55(c), SCRPC. This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice. Once a

party has put forth a satisfactory explanation for the default, the trial court must also consider (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct. App. 1989). The trial court need not make specific findings of fact for each factor if there is sufficient evidentiary support on the record for the finding of the lack of good cause. *Dixon v. Besco Engineering, Inc.*, 320 S.C. 174, 179, 463 S.E.2d 636, 639 (Ct. App. 1995). A motion under Rule 55(c) is addressed to the sound discretion of the trial court. *Williams v. Stalaker*, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994).

Appellate courts will reverse a trial court decision when there is an abuse of discretion, and “an abuse of discretion occurs when the decision is based upon an error of law or when the order is without evidentiary support.” *Stark Truss Co., Inc. v. Superior Constr. Co.*, 360 S.C. 503, 508, 602 S.E.2d 99, 101 (Ct. App. 2004).

Defendant Robertson stated that his reason for the default was because he thought Mr. Bass had filed a timely Answer for him. (Hr’g Tr. 10:1-7). The Court does not find Mr. Robertson’s explanation satisfactory.

Defendant Robertson’s first appearance in this matter was at the final hearing on October 8, 2018. At no time did Defendant Robertson communicate with Plaintiff’s Counsel prior to the hearing. He was personally served with the Summons and Complaint and mailed two notices of hearing over a period of approximately five months. At the final hearing, Defendant Robertson first asserted affirmative defenses when cross-examining Mrs. Russell. The Court finds that Defendant’s request for relief at the final hearing is untimely.

Defendant Robertson failed to timely Answer or otherwise plead, and, as a result of his failure to timely answer, does not deny the allegations in the Complaint. The Court found that, “[a]t this point there has been no denial that the deposit was made or any other denial.” (Hr’g Tr. 11:13-19).

The Court notes that the late Mr. Kevin B. Russell was the signator on the contract and that he is now deceased. The Court also finds that based upon the testimony presented and by Defendant’s failure to deny the allegations in the Complaint, evidence existed of a relationship between the co-Defendants and the construction project with Plaintiff.

Considering the foregoing, the Court finds that Defendant’s Motion to Alter or Amend Judgment is hereby DENIED.

March 7, 2019  
Spartanburg, South Carolina

Judge's Electronic Signature Page to Follow.



Spartanburg Common Pleas

**Case Caption:** Karolee Russell vs B & R Contracting LLC etal  
**Case Number:** 2018CP4201540  
**Type:** Master/Order/Other

It is So Ordered

s/Judge Gordon G Cooper-3065

Electronically signed on 2019-04-11 14:15:32 page 4 of 4

STATE OF SOUTH CAROLINA )  
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COUNTY OF SPARTANBURG )  
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Kevin Russell and Karolee Russell, )  
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 )  
Plaintiffs, )  
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 )  
v. )  
 )  
B & R Contracting, LLC, Brian K. Bass, and )  
Richard A. Robertson, )  
 )  
 )  
Defendants. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

SUMMONS

To Defendants:

YOU ARE SUMMONED and required to answer the complaint in this action, a copy of which is served on you here, and to serve a copy of your answer to the complaint on the subscriber at his office, at 409 Magnolia St., Spartanburg, SC 29304, within thirty (30) days after the service of the answer, exclusive of the date of the service. If you fail to answer the complaint within the time mentioned, plaintiff in this action will apply to the court for a default judgment which will be entered against you for the relief demand in the complaint.

This 9th day of May, 2018.

s/ PAUL A. MCKEE, III  
Paul A. McKee, III 77926  
409 Magnolia St.  
Spartanburg, SC 29303  
864-573-5149  
864-948-1403 fax  
pmckee@hanovertitle.com  
mcantrell@hanovertitle.com

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )  
 )  
Kevin Russell and Karolee Russell, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
B & R Contracting, LLC, Brian K. Bass, and )  
Richard A. Robertson, )  
 )  
Defendants. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

COMPLAINT  
(Breach of Contract)  
(Fraud)  
(Breach of Contract Accompanied by  
Fraudulent Act)  
(Conversion)  
(Unfair Trade Practice)

Jury Trial Requested

Plaintiffs, Kevin Russell and Karolee Russell, complaining of the Defendants, B & R Contracting, LLC, Brian K. Bass, and Richard A. Robertson, allege and say the following:

1. Plaintiffs are citizens and residents of Spartanburg County, South Carolina.
2. Defendant B&R Contracting, LLC is a Limited Liability Company organized and existing pursuant to the laws of South Carolina and doing business in Spartanburg County.
3. Defendants Bass and Robertson are citizens and residents of Lexington County South Carolina and doing business in Spartanburg County.
4. This court has jurisdiction over the subject matter and the parties and venue is proper in Spartanburg County.

FOR A FIRST CAUSE OF ACTION  
(Breach of Contract)

5. On or about October 10, 2016, Plaintiffs and Defendants entered into a contract in Spartanburg County whereby Plaintiffs agreed to pay Defendants to build a log-construction house on their property in Spartanburg County. A copy of the contract is attached and made a part hereto as Plaintiffs' Exhibit A.
6. Plaintiffs tendered a deposit in the amount of \$29,928.46 to Defendants.

7. Defendants failed to build said log-construction house.
8. Plaintiffs requested Defendants return the deposit money and Defendants refused to do so.
9. Defendants have either revoked or repudiated said contract or have materially and unjustifiably failed to perform pursuant to the terms of said contract.
10. As a direct and proximate cause of Defendants' breach, Plaintiffs have suffered damages in the amount of \$29,928.46 and special damages in the amount of \$11,053.00.

FOR A SECOND CAUSE OF ACTION  
(Fraud)

11. Each and every allegation set forth hereinabove, not inconsistent herewith, is herein realleged by reference.
12. Defendants made false material representations to Plaintiffs that they would undertake certain work pursuant to a written contract after receiving payment.
13. Defendants had knowledge of the materially false representations or acted with reckless disregard of their truth or falsity.
14. Plaintiffs were ignorant of Defendants' materially false representations and did rely on Defendants' representations as truth.
15. Plaintiffs had the right to rely on Defendant's representations as truth and as a consequent and proximate injury have suffered actual, consequential, and special damages.
16. As a direct and proximate result of Defendants' wanton and willful fraudulent acts, Plaintiffs are entitled to an award of punitive damages in an amount to be determined at trial.

FOR A THIRD CAUSE OF ACTION  
(Breach of Contract Accompanied by Fraudulent Act)

17. Each and every allegation set forth hereinabove, not inconsistent herewith, is herein realleged by reference.

18. Defendants materially breached said construction contract and fraudulently retained Plaintiffs' deposit money.
19. As a direct and proximate result of Defendants material breach of contract accompanied by fraudulent acts, Plaintiffs have have suffered actual, consequential, and special damages.

FOR A FOURTH CAUSE OF ACTION

(Conversion)

20. Each and every allegation set forth hereinabove, not inconsistent herewith, is herein realleged by reference.
21. Defendants converted Plaintiffs' deposit money for their own use and failed to return it upon demand.
22. As a direct and proximate cause of Defendants' conduct, Plaintiffs have suffered damages in the amount of \$29,928.46 and special damages in the amount of \$11,053.00.
23. Plaintiffs are also entitled to recover punitive damages from the defendant based on Defendants' reckless, willful, and wanton conduct.

FOR A SECOND CAUSE OF ACTION

(Civil Conspiracy)

24. Each and every allegation set forth hereinabove, not inconsistent herewith, is herein realleged by reference.
25. Defendants did work together or collude for the purpose of injuring Plaintiffs by taking Plaintiffs' deposit money and either converting it for their own use or for other business purposes.
26. As a direct and proximate cause of Defendants' civil conspiracy, Plaintiffs have suffered damages in the amount of \$29,928.46 and special damages in the amount of \$11,053.00.

FOR A FIFTH CAUSE OF ACTION

(Unfair Trade Practices)

27. Each and every allegation set forth hereinabove, not inconsistent herewith, is herein realleged by reference.

28. Defendants engaged in unfair and deceptive acts or practices by failing to perform pursuant a written construction contract, failing to refund Plaintiffs' deposit money, and converting Plaintiffs deposit money for their own use.
29. As a direct result of this clearly unfair and deceitful practice, Plaintiffs were directly damaged as a result in an ascertainable amount of money.
30. Defendants will continue to practice this deceptive tactic on other unsuspecting members of the public who will fall prey to the same unfair tactics repeatedly in the future.
31. In addition to Plaintiffs' claim for damages, Plaintiff is also entitled to treble damages and an award of attorney's fees due to Defendants' wanton and willful conduct.

WHEREFORE, Plaintiffs demand that the court grant it the following relief:

1. Enter judgment against Defendants, in the amount of \$29,928.46 and special damages in the amount of \$11,053.00;
2. Award Plaintiffs treble damages for its wanton and willful conduct;
3. Award Plaintiffs punitive damages in an amount to be determined at trial;
4. Award Plaintiffs attorneys' fees and costs in prosecuting this action;
5. Tax the costs of the action against the Defendants; and
6. Grant Plaintiffs such other and further relief as the court deems just and appropriate.

This 9th day of May, 2018

s/ PAUL A. MCKEE, III  
Paul A. McKee, III 77926  
409 Magnolia St.  
Spartanburg, SC 29303  
864-573-5149  
864-948-1403 fax  
pmckee@hanovertitle.com  
mcantrell@hanovertitle.com



# Residential Construction Contract

**NOTICE: ANY CLAIMS ARISING UNDER THIS CONTRACT SHALL BE RESOLVED BY ARBITRATION PURSUANT TO PROVISIONS OF THE UNIFORM ARBITRATION ACT (§ 1548-10 ET SEQ. S.C. CODE).**

This agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, by and between **B&R Contracting LLC**, hereinafter referred to as the builder), and **Kevin and Karolee Russell**, hereinafter referred to as the owner, for the construction of single-family residence for the owner on the property located in Spartanburg County, State of South Carolina and legally described as Lot \_\_\_\_\_ Block \_\_\_\_\_ Subdivision \_\_\_\_\_ and also known and numbered as (street address)

2245 White Stone Rd  
Spartanburg, SC 29302

The builder and the owners agree as set forth below:

1. Contract Documents – The terms of this contract include the conditions of this contract and by reference the provisions in the other documents specifically listed below. (Copies of these documents such as plans, specifications, color selections, etc. are attached to this contract as Exhibits A, B, C, D, and E). The terms of this agreement shall prevail over any conflicting provisions in the documents incorporated by reference. If a conflict exists between the plans and the specifications, the specifications shall govern.

Contract documents:

Title	Date	No. of Pages	Signed
A. <u>Plans</u>	_____	_____	_____
B. <u>Specifications</u>	_____	_____	_____
C. <u>Construction Draw Schedule</u>	_____	_____	_____
D. _____	_____	_____	_____
E. _____	_____	_____	_____

2. The Work – Unless otherwise specifically noted, the builder shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, transportation, and other facilities and services necessary for the proper execution and completion of the residence. The work shall be done substantially in conformance with the plans and specifications that have been initialed or signed by each party. These plans and specifications are attached to this contract and incorporated into it as Exhibit A. Because the plans and specifications were prepared by the owners' designer, the parties agree that the builder shall not be liable for errors or omissions attributable to the plans and specifications when the builder has complied with them. Contractor will demolish the existing burned house and prepare foundation to receive new home saving as much of the foundation and sub floor as possible.

ELECTRONICALLY FILED - 2018 May 09 4:07 PM - SPARTANBURG - COMMON PLEAS - CASE#2018CP4201540

B&R Contracting, LLC  
PO Box 2449  
Spartanburg, SC 29071

Office 803-309-6966  
Fax 803-828-3981

Builder BKB Owner KBR

The builder shall not be responsible for the following work unless specifically added as a change order to this contract: hauling excavation and existing debris from the property; off-site utility trenches; installation or construction of walks, driveways, pavements, or curbing; installation of cable television wiring; interior painting of garage; installation of well and septic tank and field, and extra work caused by the presence of concealed conditions as set forth in paragraph 12.

3. Financing – This contract is contingent upon the owners obtaining a construction loan in the amount of Ninety three thousand nine hundred thirty five dollars (\$\_\_\_\_\_). All fees and expenses of obtaining a loan including all commissions, title charges, and credit reports shall be borne by owners. The builder is not required to begin construction until the owners provide the builder with written notice from the lender that the owners have closed on said loan. If the owners cannot obtain financing within thirty (30) days from the date the builder approves this contract, either party has ten (10) days thereafter to elect to terminate this contract by giving written notice to the other party. The builder shall refund to the owners all money paid, less costs and obligations incurred by the builder at the owners' request.

4. Contract Price – The owners agree to pay the total contract price for all labor and materials furnished and work performed by the builder the sum of **295,000.00 (price includes Southland Log Homes Package price of \$99,233.50)**, including South Carolina state sales tax, subject to additions and deletions by change order as provided in paragraph 11. The contract price includes the allowances listed in the Allowance Schedule attached to this contract and incorporated into it as Exhibit B.

The allowance includes both materials and installation unless expressly noted otherwise. The parties agree that the allowances are not to be construed as bids by the builder and that the allowances may vary from the actual cost based on the owners' elections. If the cost of the owner-selected materials or their installation exceeds the material or installation allowance, the amount of that excess will be added to the next progress payment or the final payment. If the amount is less than the allowance amount, that amount will be subtracted from the final amount of the contract.

5. Payments – The contract price will be paid as follows:

- A. **\$ 29,500.00** as a deposit upon signing the contract, receipt of which is hereby acknowledged.
- B. Based on applications for payment submitted by the builder, the owners shall make progress payments toward the contract price in accordance with the Construction Draw Schedule as work is completed. The owners will pay the cost of each inspection for each draw request. (The Construction Draw Schedule is attached to this contract and incorporated in it as Exhibit C.)
- C. The owners agree to make the progress payments within five (5) days of the submission of the draw request (or certification by the owners' construction lender if applicable.) Payments due and unpaid shall bear interest (at the maximum legal rate) payable to the builder from the date the payment is due. If the owner's fail to pay the builder within seven (7) days of the date of the payment is due through no fault of the builder, upon three (3) additional days' written notice to the owners, the builder may stop the work. The builder may keep the job idle until such time as payments that are due to the builder are paid.\*

6. Acceptance, Final Payment and Occupancy – Upon receipt of written notice that the work is ready for final inspection and acceptance, the owners will promptly inspect the work. When the work is substantially completed (or when the owners' lender finds the work acceptable under the contract "substantial completion,") the owner will promptly pay (or cause to be paid) the balance due under the contract less an amount equal to the cost to complete any missing or unfinished remaining punch list items (the punch list escrow). The builder agrees to provide the owners with (a) an affidavit stating that all materials and services for which a lien could be filed, have been paid or will be paid from the proceeds and (b) such other affidavit as may be reasonably required by the owners' title insurance company. The punch list escrow will be paid to the builder immediately upon completion of each of the punch list items. Occupancy will be granted to the owner when construction is substantially

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PO Box 2449  
Lexington, SC 29071

Office 803-309-6966  
Fax 803-828-3981

Builder BKB Owner BR

completed, the certificate of occupancy is issued, and the builder receives payment of the final draw (including payment for all change orders and overages of allowances), less any money held for incomplete items.

- 7. Commencement and Completion – The work will begin promptly after the owners have obtained the financing referred to above, any other contingencies are cleared, and the owner provides the builder with that title report containing a correct statement of (a) the recorded legal title to the property on which the residence is to be built and (b) the owners’ interest therein at the time of the signing of this contract. The work will be substantially completed within two hundred and seventy (270) days from the date the building permit is obtained or the delivery date of the log home package, whichever date is later. Any time lost by reason of change in plans or specifications requested by the owners, other acts of the Owners, strikes, weather conditions not reasonably anticipated, or any other conditions that are not within the builder’s control shall be added to the specified time of completion, and the builder shall not be liable for such delay. For any delays not the responsibility of the builder, the contract price shall increase by the difference, if any, in the builder’s costs occasioned by such delay. A claim for an increase in the time for performance of the contract shall be made within fifteen (15) days after the builder first recognizes the condition giving rise to the claim, whichever is later.
- 8. Selections – Upon signing this contract, the owner will give the selection guide to the builder to help them select allowance items, materials, and colors required during the construction process. Exterior materials (brick, shingles, siding and so on) selections must be made within twenty-one (21) days. The remaining selections must be made within thirty (30) days of the signing of this contract to avoid delays. All materials and selections to be as described and selected in the contract documents or equal if the selection is not available or will cause a delay in the construction of the work.
- 9. Permits, Fees and Tests – The builder shall secure and pay for building permits, licenses, and other similar items necessary for the proper execution and completion of the work. If necessary, the owners agree to assist the builder in obtaining any such permits and licenses by completing all necessary applications and forms. However, if a covenant or an architectural review committee requires the approval of plans and specifications, the owners shall be responsible for obtaining these approvals and paying for any fees connected with them. If no soil report is currently available, the owners shall provide one at their expense.
- 10. Taxes – The owners shall pay all real property taxes and taxes imposed upon the improvements on the residence when they are due. The builder shall pay all necessary sales, use and similar taxes on materials used in construction that are legally enacted at the time this contract is signed.
- 11. Change Orders – Without invalidating this contract, the owners may order changes in the work within the general scope of the contract. However, no changes are to be made except upon a prior written order (signed by both parties) consisting of the change, any additional cost, and the additional number of delays to be added to the completion date. If the change reduces the cost, the owners will receive a credit, but the builder’s supervision and Overhead expenses and profit will not be reduced. Any additional cost shall be paid for the prior to installation, and the construction loan account may not be used to pay for changes. The owners agree to make requests concerning any changes, additions, or alterations in the work to the builder, and the owners agree not to issue any instructions to, or otherwise negotiate for additional work with, the builder’s subcontractors or employees. Either owner may sign the change order on his or her own behalf and on behalf of the other, or the signature shall be binding on both owners.
- 12. Insurance – The builder shall purchase and maintain at the builder’s own expense, all necessary workers’ compensation and employer’s liability insurance, commercial general liability insurance, and comprehensive automobile liability insurance to protect the builder from claims for damages because of bodily injury, including death, and for damages to property that may arise both out of and during operations under this contract. The owners shall purchase and maintain their own liability insurance, including fire and casualty Insurance upon the

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Fax 803-828-3981

Builder B&R Owner KBR

residence, to the full insurable value and shall name the builder as an additional insured. Each party shall issue a certificate of insurance to the other prior to construction.

13. Owners' Obligations – The owners shall (a) furnish all surveys describing the physical characteristics, and utility locations for the residence and (b) secure and pay for easements necessary for the completion of the work. The owners shall furnish information and services under their control to the builder promptly to avoid delay.

The owners warrant that the property upon which the residence is to be built conforms to all zoning planning, environmental, and other building requirements. The owners warrant that all utilities necessary for the completion of construction are to the property line.

14. Concealed Conditions – The builder has visited the site and has familiarized itself with the local conditions under which the work is to be performed. However the builder is not responsible for subsurface or latent physical conditions at the site or in an existing structure that differ materially from those (a) indicated or referred to in the contract documents or (b) ordinarily encountered and generally recognized as inherent in the work of the character provided for in this contract.

After receiving notice of the condition, the owners shall investigate the condition within five (5) business days. If the parties agree that the condition will increase (a) the builders cost of performance or any part of the work under this contract or (b) the time required for that work, the parties may sign a change order agreement incorporating the necessary revisions, or the owners may terminate the contract.

If the owners terminate the contract the builder will be entitled to recover from the owner payment for all work performed, including normal overhead, and a reasonable profit.

15. Disputes – Should any dispute arise relative to the performance of this contract that the parties cannot satisfactorily resolve, if the parties so agree, the dispute shall be referred to a single arbitrator acceptable to them. If the parties do not so agree, then the parties agree that the dispute shall be resolved by binding arbitration conducted by the American Arbitration Association. The party demanding arbitration shall give written notice to the opposite party and the American Arbitration Association promptly after the matter in dispute arises. In no event, however, shall a written notice of demand for arbitration be given after the date on which a legal action concerning the matter in dispute would be barred by the appropriate statute of limitations.

16. Termination – If the builder fails to supply proper materials and skilled workers, make payments for materials, labor and subcontractors in accordance with their respective agreements; disregards ordinances, regulations, or order of public authority; or fails to materially comply with the provisions of the contract, the owners may give the builder written notice to terminate. After seven (7) days if the builder has failed to remedy the breach of contract, the owner can give a second notice to terminate. If the builder still fails to cure the breach within three (3) days after the second notice, the owners may terminate the contract.

17. The owners acknowledge that the builder has made no guarantees, warranties, understandings, nor representations (nor have any been made by any representatives of the builder) that are not included in the contract documents.

18. Miscellaneous – Until the owners make the final payment and take possession, the owners agree that the builder shall have the right to place signs on or about the property and to show the residence to other prospective clients and customers.

19. Governing Law and Assignment – This contract will be construed, interpreted, and applied according to the law of the state where the property is located. This contract shall not be assigned without the written consent of all parties.

20. Effective date and Signature – This contract shall become effective on the day it is signed by both parties.

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Builder B&B Owner K&R

We the undersigned, have read, understand, and agree each of the provisions of this contract and hereby acknowledge receipt of a copy thereof.

**B&R Contracting, LLC**

By: Brian K Bass  
Title \_\_\_\_\_

Date 10/10/16

By: Kevin B. Russell  
Owner \_\_\_\_\_

Date 10/10/16

By: \_\_\_\_\_  
Owner \_\_\_\_\_

Date \_\_\_\_\_

**Exhibits**

- A. Plans and Specifications
- B. Allowance Schedule
- C. Construction Draw Schedule

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# SPECIFICATIONS and SELECTIONS

2245 White Stone Rd  
Spartanburg, SC 29302

## GENERAL NOTES

- Builder will provide all labor, materials, equipment, services, permits, and fees necessary to complete the Project as detailed in the following specifications unless otherwise specified in superseding contract documents.
- Builder will provide the Owner with all consumer information and warranties for equipment installed on the Project as well as schedule of all finish materials, manufacturers and colors used.
- Change Orders - All change orders will be agreed to and signed by both Client and Builder prior to the commencement of the work. Payment will be due upon the signing of the change order. Completion date extensions, if any, will be noted on each change order for the amount of time required to accommodate the change. Such changes, including the cost of delays to the construction schedule, if any, will be made at the Client's expense including any and all construction loan or permanent mortgage loan costs that may be affected. All change orders will be charged based on the cost of labor and material to make the change, plus Builder's gross margin.
- Change Orders, Specifications, Plans, and Building Agreement shall constitute the entire agreement (Contract) between the Builder and the Client. In the event that discrepancies exist in the contract documents the order of priority will be per the above sentence. Changes Orders will supersede Specifications, etc.
- Should conditions arise where, in the judgment of the Builder, certain changes to the plans or the specifications would be advisable, Builder will secure Client's approval of the change before proceeding with the work.
- All materials will be installed as specified or equivalent. Builder may substitute materials or products specified with those of equal quality that do not decrease the value of the home, structural soundness, or materially alter the appearance of the home with the approval of the Client.
- Styles, colors and finishes not noted in plans or specifications shall be selected by the Owner from manufacturer's standard pallet.
- Construction site shall be kept in a reasonably clean and neat condition. Builder will provide a portable trash container during construction. Trash shall be picked up at least once a week and deposited in the trash container. Debris from each phase of work will be deposited in the trash container by the trade partner responsible for that phase of work. No debris shall be buried.
- Materials stored on site shall be protected from damage and placed in locations to minimize the likelihood of damage from construction operations and weather or water. No materials shall be stored on adjacent properties or on public right of way.

Client Initials

APR





4

Screens: Included on all opening windows

DOORS

All doors per Southland Plans and Specifications

EXTERIOR TRIM

Cornice:

- Fascia: 1x6 By B&R
- Soffit: 1x8 T&G -By Southland
- Frieze: 1x6 By B&R

Ceilings: Per Plans

Columns: See EXTERIOR FINISHES

Screened enclosure: N/A

Shutters: None

Planters: None

GUTTERS AND DOWNSPOUTS

Gutters: Included

Downspouts: Included

EXTERIOR FLOORING

Covered Entry, Wood steps and risers

Porches and Decks: 5/4" Treated decking boards

**Note:** All steps are assumed to be per floor plans and elevations

EXTERIOR RAILING – Per Southland Plans and Specs. Plans do not show decks or patios, only steps to grade.

DRIVEWAYS

Driveway: N/A - existing

FRONT WALK – N/A - EXISTING

LANDSCAPING & IRRIGATION

Not included in contract:

All landscape related costs including design, fine grading, top soil, sod, plants, landscape lighting, and landscape-related clearing not included

Client Initials KBR

B&R Contracting, LLC BKB



Firebrick pattern: Running bond  
Hearth: Granite 1" thick, one piece slab with smooth edges  
Surround: Granite =\$40.00 per square foot allowance  
Mantle: None  
Overmantle: None  
Chimney chase to be wood siding

**ELECTRICAL**

All work shall comply with National Electrical codes and State and Local Regulations.  
Builder shall furnish Owner with an inspection certificate from inspectors having jurisdiction and all equipment shall bear the UL label of approval.

All electrical wiring and fixtures to be per Electrical Plan except where code is more stringent.

Service: (200) amp with 40 circuit panelbox. Equipment to be Square D brand

Appliance connections: Per plan

Interior:

Outlets:

Per building code

Color \_\_\_\_\_

Switches:

Color \_\_\_\_\_

Dimmers: None

Ceiling fans: Block, prewire, and install per plan. Fans per *LIGHTING* Client Choice

Recessed lighting: Per plan

Wire (line voltage) for accent lighting under the wall cabinets in the Kitchen

Ceiling and wall fixtures: Wire and install, per plan. Fixtures per *LIGHTING* Client Choice

Bath fans:

Per plan

Smoke detectors: Included per building code

Door bell buttons: (2) – Covered Entry and Rear Entry; per *LIGHTING* Client Choice

Door chimes: (1) – per *LIGHTING* Client Choice

Electric dryer outlets: (1) included

Exterior:

Outlets: Weatherproof

Fixtures: Wire and install. Fixtures per *LIGHTING* Client Choice

Pool: N/A

Well: All electrical costs related to the Well are **NIC**. Installation to be managed by Builder at Client's expense.

**OTHER SYSTEMS**

Infrastructure wiring: Per Client Choices, including, but not limited to, cable, internet, networking, phone

Stereo: None

Intercom: None

Client Initials ABR

B&R Contracting, LLC BKB

Security system: None  
Central Vacuum: None

**INSULATION**

Walls:  
Exterior log walls on first and second floors:

Floors & ceilings:  
First floor: R-19 fiberglass batts in floor  
First floor ceiling/ R-30 fiberglass batts in ceiling over heated spaces  
Second floor ceiling/Attic:

**DOE ENERGY STAR® RATING:**

Caulk and seal all air leakage paths including sill and band joists, door frames, duct penetrations, recessed light fixtures, chimney and flue penetrations, window frames, electrical outlets, and plumbing penetrations.

**WALLS & CEILINGS**

Ceilings:  
1/2" Gypsum Wall Board (GWB) throughout, screwed, smooth finish  
Moisture resistant tile backer at wet locations

Walls:  
1/2" GWB, screwed  
Moisture resistant tile backer at wet locations  
Outside wall corners: GWB with square edges  
Ceiling corners: GWB square

**HARDWOOD**

Per client choice in all areas except bathrooms, laundry, and mud room.  
Allowance By Southland Log Homes

**CARPET**

Per Client Choices including pad: **\$2.00 per sq ft**

**TILE/STONE \$2.00 per sq ft**

Per Client Choices including:

First Floor:  
Master Bath:  
Bath floor  
Half Bath: Wood (see above Hardwood Selection)  
Second Floor  
Bath floor

Client Initials KRS

Accent trim, tile installed in any pattern other than square, and specialty cuts made in the tile will be extra charge

TRIM

All interior trim to be stain grade unless otherwise noted  
No crown molding at vaulted or clipped ceilings, ceilings with beams (unless noted otherwise), or closets

Casing:

**1x4 pine**

All windows to have stool and casing apron

Baseboards:

First Floor: 1x8 base pine

Interior doors:

All 1 3/8" smooth, solid stain grade 6 panel wood.

Heights: 6'8" ft (All widths to be per plan)

Garage into Rear Hall: Fire rated **6 Panel**

Ceilings: Gypsum Wall Board smooth finish painted

CABINETS & BUILT-INS

Per Client Choices: **Allowance \$8,000.00** installed including labor, hardware, and trim

Cabinet hardware: Per Cabinet Client Choices included in allowance above

Study bookshelves: Per Cabinet Client Choices included in allowance above

COUNTERTOPS

Per Client Choices including, but not limited to:

First Floor:

Master Bath: Vanities, Formica

Powder Room: Vanity Formica

Kitchen island: Formica

Kitchen perimeter: Formica

Bath vanities: Formica

BACKSPLASHES

To match Formica surfaces 4" height

WALL FINISHES

Painted Walls: Primed with Sherwin Williams primer-sealer and finished with **two coats** of Sherwin Williams flat wall paint.

Client Initials KBR

B&R Contracting, LLC BKB

Ceilings: Primed and finished with **two coats** of Sherwin Williams primer-sealer  
Interior trim: Clear finish  
Colors:  
Prep and process:  
    Prepare all surfaces by sanding, filling, and cleaning  
    Seal any knots, sap streaks, or stains  
    Caulk all joints and cracks as required  
    Sand and vacuum between coats  
**Options:** Extra colors, dark colors, and eggshell finish

**INTERIOR DOOR HARDWARE**

Per Client Choices including handles, levers, door stops. Allowance \$ \_\_\_\_\_  
Style \_\_\_\_\_ Color \_\_\_\_\_  
Manufacturer \_\_\_\_\_

**BATH ACCESSORIES**

Per Client Choices including towel bars and rings and hooks, and toilet paper holders  
Allowance: \$ \_\_\_\_\_  
Style \_\_\_\_\_ Color \_\_\_\_\_  
Manufacturer \_\_\_\_\_

**SHELVING**

Per Client Choices : Wire rack shelving

**MIRRORS**

Per Client Choices  
Bath – 48" high full width of the vanity.

**LIGHTING Allowance: \$2,144.00**

Per Client Choices including, but not limited to, all hanging and mounted fixtures, ceiling fans, floods, keyless, fluorescents, accents, bulbs, transformers, doorbell buttons, and chimes.

**APPLIANCES**

Per Client Choices based **NIC Not in Contract**

**OTHER FEATURES INCLUDED**

- Building and mechanical permits
- General liability, worker's comp insurance
- Portable toilet during construction
- All utilities required during construction

Client Initials KBR

B&R Contracting, LLC BKB

**FEATURES NOT INCLUDED**

- All costs associated with Owner's construction or permanent mortgage loan, if any
- The property and costs related to property ownership
- Architectural construction drawings and engineered plans
- Costs associated with changes required by County Building Standards
- Builder's risk insurances

**CLIENT CHOICES**

Items that are undetermined at the time of contract or to be selected during construction. The dollar amounts assigned to the Client Choices are allowances to be applied to all of the actual costs related to the installation of the Client Choice item including, but not limited to, purchasing, shipping, storage, delivery to the site, off-loading and placement on the site in preparation for installation, and all additional materials and labor needed to completely install the item, unless otherwise noted.

Plumbing fixtures	
Bath faucets	\$60.00 each
Master Tub and Kitchen Faucets	\$150.00 each
Tile/Stone	\$2.00 per sqft material
Cabinets	\$8,000
Countertops	\$25.00 per sq ft
Interior door hardware	\$25.00 per lockset
Bath accessories	\$1,300
Mirrors	\$1,500
Light fixtures	\$2,144
Appliances	None

Client(s): Leon B. Russell

Date: 10/10/16

Builder: **B&R Contracting, LLC.**

By Brian K Bass

Date: 10/10/16

Client Initials KBR

# PLAINTIFF'S EXHIBIT B

PAUL A. MCKEE, III, ATTORNEY/HANOVER TITLE AGENCY

## STATEMENT OF SETTLEMENT FOR BORROWER(S)

PROPERTY ADDRESS: 2245 Whitestone Road, Spartanburg, SC 29302

BORROWER(S): Kevin Brian Russell and Karolee Spencer Russell

SELLER(S):

SETTLEMENT DATE: March 24, 2017

DISBURSED: March 29, 2017

PRORATION DATE: March 29, 2017

**LEGAL DESCRIPTION:**

Tax Map Reference Number 3-36-00-012.11  
 2245 Whitestone Road  
 Spartanburg, South Carolina. 29302  
 Lot Number 10  
 Whitestone Partners LLC

All that certain piece, parcel or lot of land, with any improvements thereon, situate, lying and being in the State of South Carolina, the County of Spartanburg, being shown and designated as Lot Number 10, containing 4.19 acres, on a plat of Whitestone Partners LLC, Plat 1 by Huskey & Husky, Inc. Registered Land Surveyors, dated December 17, 2002 and recorded in Plat Book 154, at Page 451. In the Office of the Register of Deeds for Spartanburg County, South Carolina.

LESS AND EXCEPT: that certain 0.73 acres shown as Lot 10A on a plat prepared for Mary K. Spencer by Huskey & Huskey, Inc., PLS, dated February 24, 2017 and recorded March 1, 2017 in Plat Book 172, page 225; ROD Office for Spartanburg County, South Carolina.

This being a portion of the same property conveyed to Kevin B. Russell and Karolee S. Russell by deed of Gregory L. Williams and Debra Debra J. Williams, dated July 21, 2004 and recorded July 23, 2004 in Deed Book 80-V, page 183. ROD Office for Spartanburg County, South Carolina. See also deed Book 108-G, page 931; ROD Office for Spartanburg County, South Carolina.

	DEBIT	CREDIT
Loan Amount		231,130.00
Lender Credits		806.59
Processing Fee	180.00	
to Finance of America Mortgage, LLC		
Supplement Origination Fee	1,000.00	
to Finance of America Mortgage, LLC		
Underwriting Fee	695.00	
to Finance of America Mortgage, LLC		
2nd Appraisal	525.00	
to MAS, Inc.		
Appraisal Fee	575.00	
to MAS, Inc.		
Consultant Fee (203K)	1,000.00	
to Absolute Inspection Sevie, LLC		
Credit Report	331.59	
to Credit Plus		
FHA Upfront MIP	3,975.21	
to Secretary of Housing and Urban Developme		
Final Inspection	750.00	
to MAS, Inc.		
Flood Cert. Fee	10.00	
to Corelogic Flooe		
Attorney Fees	350.00	
to Paul A. McKee, III, Attorney/Hanover Title A		
Title - Email Doc Fee	75.00	
to Paul A. McKee, III, Attorney/Hanover Title A		
Title - Express Closed Package Fee	35.00	
to Paul A. McKee, III, Attorney/Hanover Title A		
Title - Title Binder Fee	150.00	
to Paul A. McKee, III, Attorney/Hanover Title A		
Title - Title Search/Abstract Fee	125.00	
to Paul A. McKee, III, Attorney/Hanover Title A		
Title - Wire Fee	20.00	
to Paul A. McKee, III, Attorney/Hanover Title A		
Title - CPL Fee	35.00	
to Old Republic National Title Insurance Corr		
Title - Title review fee	35.00	
to Paul A. McKee, III, Attorney/Hanover Title A		
Title - Lender's Title Insurance	607.20	
to Paul A. McKee, III, Attorney/Hanover Title A		
Title Updates	550.00	
to Regional Abstract		
Recording Fees      Deed: \$0.00 Mortgage: \$25.00	25.00	
to Spartanburg County Register of Deeds		
Release Fee	4.00	
to Paul A. McKee, III, Attorney/Hanover Title A		
Homeowner's Insuranc (mo.)		
to State Farm Ins.		
\$ 1,265.00		
Paid by Borrower before closing		
Prepaid Interest      \$31.66164 per day from 03/29/17 to 04/01/17	84.88	
to Finance of America Mortgage, LLC		
Homeowner's Insuranc      \$105.42 per month for 11 mo.	1,159.62	
Property Taxes      \$47.57 per month for 5 mo.	237.85	
Aggregate Adjustment	-285.46	
Contingency Reserve (203K)	19,852.70	
to Scribner Enterprises, LLC		
Total cost of repairs	198,527.00	
to Scribner Enterprises, LLC		
Principal Reduction	796.90	
to Finance of America Mortgage, LLC		
<b>Subtotals</b>	<b>\$ 231,438.59</b>	<b>\$ 231,936.59</b>
Balance Due TO Borrower	\$ 500.00	
<b>TOTALS</b>	<b>\$ 231,936.59</b>	<b>\$ 231,936.59</b>

The above figures do not include sales or use taxes on personal property

APPROVED and ACCEPTED

BORROWER(S):

*Brian Russell*

Kevin Brian Russell

*Karolee Spence Russell*

Karolee Spence Russell

ESCROW AGENT:

*Paul A. McKee, III*

Paul A. McKee, III, Attorney/Hanover Title Agency

PLAINTIFF'S EXHIBIT C

DAVID G. INGALLS  
ATTORNEY AT LAW  
409 MAGNOLIA STREET  
SPARTANBURG, SOUTH CAROLINA 29303  
TELEPHONE (864) 573-5149  
FAX (864) 948-1403

PAUL A. McKEE, III

MAILING ADDRESS:  
POST OFFICE BOX 2196  
SPARTANBURG, SC 29304-2196

January 8, 2017

B&R Contracting, LLC  
PO Box 2449  
Lexington, SC 29071

Dear Sir,

Kevin and Karolee Russell entered into a building contract with you on October 10, 2016. To date they have not heard anything from you other than some of your equipment was not functional. I left voicemail messages with Mr. Bass and Mr. Robertson and neither returned our call.

Could you please contact my office to let the Russells when or if you intend on beginning work? It is my understanding that \$29,928.46 has been paid down on the construction. If we do not hear anything back from you within ten days of this letter, the Russells will file a civil complaint against you to seek the return of the down payment for non-performance of the contract. If you have an attorney, please forward this letter to him or her.

Respectfully,



P.A. McKee, III  
Attorney at Law

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )  
 )  
Kevin Russell and Karolee Russell, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
B & R Contracting, LLC, Brian K. Bass, and )  
Richard A. Robertson, )  
 )  
Defendants. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
CIVIL ACTION NO. 2018CP4201540  
NOTICE OF MOTION AND MOTION FOR  
SUBSTITUTION OF DECEASED PLAINTIFF

Karolee Russell, personal representative of the estate of Kevin B. Russell, deceased, moves that the court enter an order substituting herself as the plaintiff in this action. In support of the motion, Karolee Russell shows the following to the court:

- 1. The plaintiff, Kevin Russell, in this action died intestate on May 19, 2018 as shown in the affidavit attached as Exhibit A which has attached to it a copy of the certificate of death;
- 2. The movant was duly appointed as the representative of the estate of Kevin Brian Russell by the Probate Court of Spartanburg County, South Carolina on July 16, 2018;
- 3. The estate of Kevin B. Russell is entitled to proceed with this action;

WHEREFORE, Karolee Russell, on behalf of the estate of Kevin B. Russell, moves the court to enter an order substituting herself as the plaintiff in this action and for such other and further relief in favor of the plaintiff as the court deems just and proper.

This 24th day of July, 2018.

s/ PAUL A. MCKEE, III  
Paul A. McKee, III 77926  
409 Magnolia St.  
Spartanburg, SC 29303  
864-573-5149  
864-948-1403 fax  
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	C.A. No.: 2018-CP-42-01540
Kevin Russell and Karolee Russell,	)	
	)	
Plaintiffs,	)	<b>MOTION TO RECONSIDER OF DEFENDANT</b>
vs.	)	<b>RICHARD A. ROBERTSON</b>
	)	
B&R Contracting, LLC, Brian K. Bass,	)	
and Richard A. Robertson,	)	
	)	
Defendants.	)	
_____	)	

Pursuant to Rule 59, SCRCPC, Defendant Richard A. Robertson (“Robertson”) moves the Court for an Order altering or amending its Order of October 8, 2018, entering default judgment against Robertson. The basis for this Motion is that, upon information and belief, Robertson sought relief from the entry of default entered against him at the hearing conducted on Plaintiff’s Motion for Default Judgment, which was held on September 27, 2018.<sup>1</sup>

At the hearing, upon information and belief, Karolee Russell testified that she had no prior interaction with Robertson, and that she had not seen him before the hearing. The contract at issue in this case, filed as Exhibit A to Plaintiff’s Complaint, is not signed by Robertson, nor is Robertson listed as a party to the contract at issue. The Court entered judgment against Robertson on causes of action for breach of contract, fraud, breach of contract accompanied by fraudulent act, conversion, and unfair trade practices, despite testimony from one of the Plaintiffs (and signatories to the contract at issue) that she had no interaction with Robertson and did not

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<sup>1</sup> Robertson has requested a hearing transcript; however, he does not yet have it in his possession. Accordingly, Robertson cannot directly cite the record from the hearing, as the undersigned counsel was not retained until after said hearing. Robertson will supplement this Motion upon receipt of the hearing transcript, and it will verify that all factual positions asserted herein accurately reflect the record from said hearing.

recognize him. This constitutes an error of the controlling law, because Robertson could not breach a contract to which he was not a party, nor could he have engaged in fraud or unfair trade practices without making representations or engaging in trade with Plaintiffs. Additionally, there is no evidence that Robertson engaged in conspiracy to harm Plaintiffs, and Plaintiffs' cause of action for civil conspiracy fails as a matter of law, because it does not allege any damages. Further, there is no evidence that Robertson received any property, meaning there is no evidence to support Plaintiffs' cause of action for conversion.

Regardless of whether Robertson used the exact language requesting that the Entry of Default be set aside at the hearing, Robertson informed the Court at said hearing as to why the entry of default should have been set aside, and he requested leave to file an answer, which is, in fact, a motion to set aside default. Pursuant to Rule 55(c), SCRCP, a court may set aside an entry of default for good cause shown. Appellate courts will reverse a trial court decision when there is an abuse of discretion, and "an abuse of discretion occurs when the decision is based upon an error of law or when the order is without evidentiary support." *Stark Truss Co., Inc. v. Superior Constr. Co.*, 360 S.C. 503, 508, 602 S.E.2d 99, 101 (Ct. App. 2004). In the present case, the Order entered is without evidentiary support. Specifically, the Court found that Plaintiff and Defendants (including Robertson) entered a residential construction agreement on October 10, 2016. (Default Judgment Order, ¶ 6.) That contract, which was an exhibit to the Complaint and in the record for the hearing, does not show Robertson as a party or even a signatory. Further, at the September 27, 2018 hearing, Karolee Russell admitted that she had no prior interaction with Robertson. In Paragraph 7 of that Order, the Court found that Defendants, including Robertson, made representations to Plaintiff, even though that conflicted with Mrs. Russell's testimony. Further, the Court's Order found that Robertson willfully engaged in an

unfair trade practice with Plaintiff, when Plaintiff's testimony shows that Robertson engaged in no trade practices with her. Accordingly, not only are the findings of the Order at issue without evidentiary support, they are directly contradicted by the only evidence presented in this matter.

The evidence presented at the hearing on the Motion for Default Judgment indicates that Plaintiffs' interaction was solely with Defendants B&R Contracting, LLC, and Brian K. Bass, who signed the contract at issue on behalf of B&R Contracting, LLC. Accordingly, the Court should set aside its finding entering a default judgment against Defendant Richard A. Robertson.

The Court entered this Order on October 8. Although Robertson has not been served with the Order, he received notice of the Order by observing the online filing, on or around October 9, 2018.

This Motion is based upon the pleadings, South Carolina law, the hearing transcript (to be submitted to the Court upon receipt), and any affidavits and memoranda of authority to be submitted hereafter.

Pursuant to Rule 11, SCRPC, the undersigned certifies that he conferred with counsel for Plaintiffs in an effort to resolve this matter prior to filing this Motion to Reconsider.

October 18, 2018

By: s/ C. Daniel Atkinson  
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*Attorney for Richard A. Robertson*

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	C.A. No.: 2018-CP-42-01540
Kevin Russell and Karolee Russell,	)	
	)	
Plaintiffs,	)	<b>MEMORANDUM IN SUPPORT OF MOTION</b>
vs.	)	<b>TO RECONSIDER OF DEFENDANT</b>
	)	<b>RICHARD A. ROBERTSON</b>
B&R Contracting, LLC, Brian K. Bass,	)	
and Richard A. Robertson,	)	
	)	
Defendants.	)	

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Defendant Richard A. Robertson (“Robertson”) submits this Brief in Support of his Motion for an Order altering or amending its Order of October 8, 2018, entering default judgment against Robertson. The basis for this Motion is that Robertson sought relief from the entry of default entered against him at the hearing conducted on Plaintiff’s Motion for Default Judgment, which was held on September 27, 2018.

**RELEVANT FACTS**

At the time Robertson filed his Motion, counsel did not have a copy of the hearing transcript. (The hearing transcript is filed herewith as Exhibit A.) Below are references from the transcript relevant to the Motion. At the hearing, Karolee Russell testified that she had no prior interaction with Robertson, and that she had not seen him before the hearing. (Hearing Transcript., p. 3 - 5.) The contract at issue in this case, filed as Exhibit A to Plaintiff’s Complaint, is not signed by Robertson, nor is Robertson listed as a party to the contract at issue. Robertson testified regarding the Contract at the hearing. (Hearing Transcript, pp. 2-3.)

At the hearing, Robertson asked for leave to file an Answer to the Complaint. (Hearing Transcript, p. 11.) Further, Robertson offered to the Court an explanation for his failure to file

an Answer, stating that he thought Mr. Bass had filed an Answer for him. (Hearing Transcript, p. 10.)

### LEGAL ARGUMENT

Pursuant to Rule 55(c), SCRPC, a court may set aside an entry of default for good cause shown. Appellate courts will reverse a trial court decision when there is an abuse of discretion, and “an abuse of discretion occurs when the decision is based upon an error of law or when the order is without evidentiary support.” *Stark Truss Co., Inc. v. Superior Constr. Co.*, 360 S.C. 503, 508, 602 S.E.2d 99, 101 (Ct. App. 2004). In the present case, the Order entered is without evidentiary support. Specifically, the Court found that Plaintiff and Defendants (including Robertson) entered a residential construction agreement on October 10, 2016. (Default Judgment Order, ¶ 6.) That contract, which was an exhibit to the Complaint and in the record for the hearing, does not show Robertson as a party or even a signatory.

Further, at the September 27, 2018 hearing, Karolee Russell admitted that she had no prior interaction with Robertson. In Paragraph 7 of that Order, the Court found that Defendants, including Robertson, made representations to Plaintiff, even though that conflicted with Mrs. Russell’s testimony – she specifically said, when asked if she was familiar with Robertson “I am familiar with Brian Bass. I never met Richard Robertson.” (Hearing Transcript, p. 3.)

At the hearing, and before the entry of default judgment against Mr. Russell, Mr. Russell requested leave to file an Answer. A request for leave to file an Answer is a Motion to Set Aside Entry of Default. The Court did not conduct a hearing on the request, but the evidence in the record shows that Robertson is entitled to an Order setting aside the entry of default, rather than entry of judgment by default. To determine whether there is good cause to set aside an entry of default, the considerations are: (1) the timing of the defendant’s motion for relief; (2) whether the

defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted.” *Stark Truss Co., Inc. v. Superior Constr. Corp.*, 360 S.C. 504, 510, 602 S.E.2d 99, 102 (Ct. App. 2004). As stated in the Motion to Reconsider, the evidence before the Court was Plaintiff’s own testimony that she never interacted with Robertson, as well as the contract, which did not show Robertson as a party. In fact, there was no evidence provided to show Robertson undertook any obligation to Plaintiff. The Motion was made approximately 90 days after the Entry of Default.

Further, there is no prejudice to Plaintiff in granting the relief sought. She maintains her default judgment against the entity with whom she actually contracted, as well as the person with whom she communicated. If she has a basis for recovery against Robertson, which she has not shown in the evidence presented at the hearing, she can obtain a judgment. There has been no discovery time lost, and the hearing attended was not fruitless, and she obtained judgments against two other entities.

The Court’s Order found that Robertson willfully engaged in an unfair trade practice with Plaintiff, when Plaintiff’s testimony shows that Robertson engaged in no trade practices with her. Accordingly, not only are the findings of the Order at issue without evidentiary support, they are directly contradicted by the only evidence presented in this mater.

Even if the Court found that there was not a Motion to Set Aside the Entry of Default prior to entry of Default Judgment, it remains necessary for the Court to set aside the judgment. “An abuse of discretion [in a decision regarding setting aside a default judgment] occurs when the judge issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support.” *Sundown Operating Co. v. Intedge Indust., Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). In this

case, the Court found a breach of contract, when the contract introduced does not show Robertson to be a party. Further, the Court found Robertson to have represented to Plaintiff that he was a licensed contractor, when the sole evidence provided showed that Plaintiff had no interaction with Robertson. It found Robertson to have engaged in unfair or deceptive practices with Plaintiff, when Plaintiff identified no interaction with Robertson, and it found conversion with no evidence of payment to or interaction with Robertson. These findings are without evidentiary support, and they require setting aside the default (whether entry or judgment) as to Robertson. Robertson takes no position on the remaining judgments as to B&R or Bass.

**CONCLUSION**

Robertson is entitled to an Order which sets aside the Default Judgment as to Robertson, based on the evidence presented, as well as his request to set aside the entry of default at the September, 2017 hearing.

February 22, 2019

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*Attorney for Richard A. Robertson*

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ESTATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

KAROLEE RUSSELL, INDIVIDUALLY, AND  
AS PERSONAL REPRESENTATIVE OF THE  
ESTATE OF KEVIN BRIAN RUSSELL,

PLAINTIFFS,

-VS-

B & R CONTRACTING, LLC, BRIAN K. BASS  
AND RICHARD A. ROBERTSON,

DEFENDANTS.

TRANSCRIPT OF TESTIMONY

(2018CP42-1540)

Spartanburg, South Carolina

REFERENCE HELD: SEPTEMBER 27, 2018.

B E F O R E: HONORABLE GORDON G. COOPER,  
MASTER-IN-EQUITY FOR SPARTANBURG COUNTY

BY: PAUL MCKEE, III, ESQUIRE  
Attorney for the Plaintiff.

BRIAN K. BASS, PRO SE.

RICHARD A. ROBERTSON, PRO SE.

Sarah Hollis, Court Reporter

1 THE COURT: We go on the record in the case of Karolee Russell, Individually, and as Personal  
2 Representative of the Estate of Kevin Brian Russell, versus B & R Contracting, LLC, Brian K.  
3 Bass and Richard A. Robertson. This is case number 2018CP4201540. The Order of Reference  
4 has been filed with the Clerk. The appropriate Affidavits have been filed with the Clerk. The  
5 Plaintiff is represented by Paul McKee. Originally this matter was set for September 11, 2018  
6 and then rescheduled for today's date. Mr. McKee is you ready to proceed?

7 MR. MCKEE: I am, Your Honor.

8 THE COURT: All right.

9 MR. MCKEE: May it please the Court. Your Honor this is a damages hearing resulting from a  
10 breach of contract in the subject case. I believe that all of the Defendants are here. I have not  
11 had an opportunity to introduce myself to them. And this matter was filed on May 9, 2018, Your  
12 Honor. All of the Defendants were personally served. No responsive pleadings have been filed  
13 on behalf of any of those Defendants. Your Honor on June 20, 2018, the Plaintiff filed an  
14 Affidavit of Default against the Defendants. I believe that today is the first opportunity that we  
15 have had to meet with any of them or to see any of them. At this time I would like to call  
16 Karolee Russell.

17 THE COURT: All right.

18 **KAROLEE RUSSELL, BEING DULY SWORN,**

19 **TESTIFIES AS FOLLOWS:**

20 THE COURT: Please state your full name for the record.

21 A. Karolee Spencer Russell.

22 THE COURT: All right. Counsel.

23 **DIRECT EXAMINATION BY MR. MCKEE.**

24 Q. Mrs. Russell where do you live?

25 A. At 222 White Stone Road in Spartanburg, South Carolina.

1 Q. And are you familiar with the property at 2245 White Stone Road in Spartanburg?

2 A. Yes, that is my property.

3 Q. Okay. And do you own that property as well?

4 A. The 2245.

5 Q. Yes?

6 A. Yes.

7 Q. Okay. And are you familiar with the Defendants in this matter, B & R Contracting, LLC,  
8 Brian K. Bass and Richard A. Robertson?

9 A. I am familiar with Brian Bass.

10 Q. Okay.

11 A. I never met Richard Robertson.

12 Q. Okay. Did you and your husband enter into a contract with B & R Contracting, LLC, in  
13 October of 2016?

14 A. Yes sir.

15 Q. What was the contract for?

16 A. To rebuild our house from the foundation up after a house fire.

17 Q. Okay. And what was the type of house that you were going to have built?

18 A. It was a log home. The logs were from Southland Log Homes.

19 Q. Okay. So it was a log home kit, is that correct?

20 A. Yes sir.

21 Q. Okay. I am going to show you a copy of a document with B & R Contracting, LLC, at  
22 the top. Residential Construction Contract.

23 MR. MCKEE: May I approach, Your Honor?

24 THE COURT: Yes.

25 Q. I show you a copy of what is filed as Plaintiff's Exhibit A to the Complaint. Can you

1 identify that document?

2 A. Yes. That is what we signed. My husband's initials are on it.

3 Q. And I am going to reference you to the signature page on this. Is this the contract for the  
4 purchase of a log cabin kit and the construction of the log cabin?

5 A. No. We actually purchased the log kit from Southland and then we hired Brian to  
6 construct the home. To take possession of the logs and to construct the home.

7 Q. Okay. And I am going to show you on Page 5 of this contract, is that the signature of  
8 Brian K. Bass and your late husband Kevin Russell?

9 A. Yes sir, it is.

10 Q. Okay. And by the terms of that contract was it for the total price of Two hundred ninety  
11 five thousand & no/100 (\$295,000.00) dollars?

12 A. Yes sir.

13 Q. Okay. And did that amount also include the log cabin kit for the amount of Ninety nine  
14 thousand two hundred thirty three & 50/100 (\$99,233.50) dollars?

15 A. Yes sir. But we still owed on it. We had placed a down payment of Ten thousand and  
16 that was the remainder.

17 Q. Okay. Now you paid a deposit pursuant to the contract in the amount of Twenty nine  
18 thousand five hundred & no/100 (\$29,500.00) dollars, is that correct?

19 A. Yes sir.

20 Q. Okay. And at the time that you entered into this contract was it your understanding that  
21 B & R Contracting was the type of contractor that did this type of work?

22 A. Yes sir. Their name was on a paper given to us by Southland as some of their builders.

23 Q. Okay. And did you specifically talk with either Mr. Bass or Mr. Robertson in this  
24 matter?

25 A. About which matter.

1 Q. I am just saying about anything relating to this log cabin?

2 A. I talked to Brian Bass the day that he came and gave us a quote. I talked to him again  
3 when we met him at a gas station outside of Columbia for signing some paperwork. And  
4 I talked to him briefly again when we turned over the check for the down payment and the  
5 remainder of the logs.

6 Q. Okay. Did you believe that B & R Contracting or Brian Bass or Richard Robertson were  
7 licensed contractors in South Carolina?

8 A. Yes sir.

9 Q. Now I am going to refer you to the contract as to paragraph seven (7), which says  
10 commencement and completion. Is it correct that the contract states that the house or  
11 that the construction will be substantially completed within two hundred and seventy  
12 (270) days?

13 A. Yes sir.

14 Q. And again the date that you entered into the contract was October 10, 2016, is that  
15 correct?

16 A. That is right sir.

17 Q. Okay. So from October 10, 2016 until the time that you filed this action which was May  
18 9, 2018, what work did the B & R Contracting or Brian Bass or Richard Robertson do to  
19 the property?

20 A. Nothing.

21 Q. Did you contact my office regarding this matter?

22 A. Yes, I believe in January of 2017 was the first time.

23 Q. Do you recall that my office sent a letter to B & R Contracting in Lexington?

24 A. Yes sir.

25 Q. I am going to show you a copy of what is marked as Plaintiff's Exhibit C to the

1 Complaint. Do you recognize that as a copy of that letter that was sent?

2 A. Yes sir.

3 Q. Okay. And does the substance of the letter just ask for a refund if no work is going to be  
4 done on this contract?

5 A. Yes sir.

6 Q. Okay. Do you have any knowledge of any permits being pulled for this job?

7 A. No sir.

8 THE COURT: Wait a minute. There were no permits or you don't have any knowledge of it?

9 A. I don't have any knowledge of it. As far as I know there were no permits pulled.

10 THE COURT: All right. Thank you.

11 Q. And how often did any of the Defendants contact you or your husband from the time that  
12 you entered into the contract until this action begin?

13 A. I was never personally contacted and I think most of the time, I can't speak specifically,  
14 but most of the time I do believe that my husband was the one to contact Brian Bass.

15 Q. Now as a result of no work being performed on this contract, did you have to seek other  
16 contractors to attempt to get the work done?

17 A. Yes sir.

18 Q. Okay. And in doing that did you have to go obtain a new loan in order to pay for all of  
19 that?

20 A. Yes sir, we did.

21 Q. Okay.

22 A. Because we no longer had the down payment.

23 Q. And so today you are requesting from this Court that the Court consider an award of  
24 actual damages for your deposit, is that correct?

25 A. Yes sir.

1 Q. And the amount of that deposit was Twenty nine thousand five hundred & no/100  
2 (\$29,500.00) dollars?

3 A. Yes sir.

4 Q. And are you also asking the Court to award special damages for your closing costs as the  
5 result of having to get the new loan?

6 A. Yes sir.

7 Q. Okay. I am going to show you a document that is filed with the Complaint. It is entitled  
8 Plaintiff's Exhibit B. Do you recognize that document?

9 A. Yes sir.

10 Q. Okay. Is that a settlement statement showing the costs and fees associated with obtaining  
11 a new loan for this property?

12 A. Yes sir.

13 Q. And in the settlement statement you are not asking for all of the itemized things - - you  
14 are not asking for everything on the settlement statement, you are asking for the costs and  
15 the fees?

16 A. Yes sir.

17 Q. And is it correct that the total of those costs and fees that you are asking for is in the  
18 amount of Eleven thousand fifty three & no/100 (\$11,053.00) dollars?

19 A. Yes sir.

20 Q. You are also requesting that the Court consider the conduct of the Defendants in this  
21 matter and also asking the Court to award you attorney's fees and costs?

22 A. Yes sir.

23 Q. Okay. Is it correct that the costs prior to this matter, prior to today's hearing is Seven  
24 hundred four & 12/100 (\$704.12) dollars?

25 A. I believe so.

1 Q. Are you asking also for an attorney's fee in the amount of Two thousand five hundred &  
2 no/100 (\$2,500.00) dollars?  
3 A. Yes sir.  
4 Q. Okay. And you had filed a Plaintiff's affidavit setting forth these amounts, is that  
5 correct?  
6 A. Yes sir.  
7 Q. Okay. In addition to these items, as the additional costs to the loan are you asking for the  
8 mortgage insurance payments of One hundred fifty nine & 82/100 (\$159.82) dollars to be  
9 paid from May 1, 2017 through September 1, 2018?  
10 A. Yes sir.  
11 Q. And you are asking for that amount which is in the amount of Two thousand seven  
12 hundred sixteen & 94/100 (\$2,716.94) dollars.  
13 A. Yes sir.  
14 Q. Okay. I am going to show you -- is this a copy of your affidavit setting forth those  
15 costs?  
16 A. Yes sir.  
17 Q. Okay. Do you believe that B & R Contracting, Brian Bass and Richard Robertson's  
18 business affects any other persons, well may affect other persons in the State of South  
19 Carolina?  
20 A. I don't believe so.  
21 Q. Well do you believe that it is possible that they could?  
22 A. Yes. I don't think that I understood what you meant.  
23 Q. Okay. I am asking you do you have knowledge that they may do other work in the State  
24 of South Carolina?  
25 A. Oh yes.

1 Q. Okay. So do you believe that their business, what they do may affect other people in the  
2 State of South Carolina?

3 A. Yes sir.

4 Q. Okay. And again it was your understanding from Southland Log Homes that B & R  
5 Contracting has built log cabins for them for other clients of theirs in the past?

6 A. Yes sir.

7 Q. Okay. Are you asking that the Court make a finding that the conduct in this matter was  
8 done so willfully and without cause and as a result to be construed as a violation of the  
9 South Carolina Unfair Practices Act?

10 A. Yes sir,

11 Q. Are you asking for damages to be adjusted per statute?

12 A. Yes sir.

13 Q. Okay.

14 MR. MCKEE: I have no further questions, Your Honor.

15 THE COURT: All right.

16 MR. ROBERTSON: Your Honor, I am Richard Robertson, one of the Defendants. May I  
17 cross examine.

18 THE COURT: And what is the extent of your questioning?

19 MR. ROBERTSON: Just to verify that I had nothing to do with the contract.

20 THE COURT: And what is your name?

21 MR. ROBERTSON: Richard Robertson.

22 THE COURT: And are you apart of B & R Contracting?

23 MR. ROBERTSON: No sir.

24 THE COURT: You are one of the Defendants in this case?

25 MR. ROBERTSON: Yes sir.

1 THE COURT: And you did not file an answer?

2 MR. ROBERTSON: I thought that Mr. Bass had filed it for me.

3 THE COURT: I don't see an answer, if there is one. There is an affidavit filed by the attorney  
4 on behalf of Mrs. Russell that B & R Contracting, LC, Brian K. Bass and Richard A. Robertson,  
5 did not file an Answer and they are in default. You are all in default under the terms of this.  
6 But there is not an Answer.

7 MR. ROBERTSON: Like I say I thought that Mr. Bass had filed one.

8 THE COURT: If that is what you are asking, the only thing that you can be heard about is the  
9 damages in this case because you have defaulted as far as the allegations contained in the  
10 Complaint. Do you understand what I am saying?

11 MR. ROBERTSON: Yes sir.

12 THE COURT: There is no answer filed. There is no denial of the money being received.  
13 There is no denial of anything. There is just a Complaint, the service. You were all served  
14 because you are here. And the Affidavit of Default by Mr. McKee on behalf of the Plaintiff.  
15 But nothing was filed denying the position of the Plaintiff in this case.

16 MR. ROBERTSON: Right. Like I said the only thing I wanted is to make sure that you  
17 understood that I am not apart of B & R Contracting and I had no dealings with Mrs. Russell.

18 THE COURT: Well I understand what you - - but I can't understand that because it is not pled.

19 MR. ROBERTSON: Yes sir.

20 THE COURT: Do you see what I am saying?

21 MR. ROBERTSON: Yes sir.

22 THE COURT: So that is the reason that I asked you as far as the extent of the questions that I  
23 can't allow you to ask that question because you have failed to respond to that allegation. So as  
24 far as the action is concerned, you are in it.

25 MR. ROBERTSON: All right.

1 THE COURT: And you haven't denied it.

2 MR. ROBERTSON: Is there any way that I can appeal it now?

3 THE COURT: Well that is up to you and your attorney.

4 MR. ROBERTSON: I don't have an attorney.

5 THE COURT: But we are well beyond that point because you were served sometime prior to  
6 May of this year. And the default was entered in June. At 84 West Circle Drive, Lexington, is  
7 where you were served on May 19. And nothing was filed.

8 MR. ROBERTSON: Is there any way that I can go back and amend that to file it now?

9 THE COURT: Well now you have to talk to your attorney. I can't advise you on that. What I  
10 am saying to you at this point is that you were served. Default was entered and we are here on  
11 the damages hearing.

12 MR. ROBERTSON: Thank you.

13 THE COURT: All right. At this point there has been no denial that the deposit was made or  
14 any other denial. And the Complaint sets out exactly what the Plaintiff is seeking and that is a  
15 judgment against B & R Contracting, LLC, Brian Bass and Richard A. Robertson for the Twenty  
16 nine thousand nine hundred twenty eight & 46/100 (\$29,928.46) dollars which was the deposit  
17 and then the special damages in the amount of Eleven thousand fifty three & no/100 (\$11,053.00)  
18 dollars which are the costs that were incurred by the Plaintiff, what was that, securing a  
19 mortgage. Is that correct Mr. McKee?

20 MR. MCKEE: That is correct, Judge.

21 THE COURT: Was there subsequently construction on the property?

22 A. Yes sir, there was.

23 THE COURT: And that was with the logs that you had purchased?

24 A. Yes sir. They were the logs but because of the time they were damaged some but we  
25 were still able to build.

1 THE COURT: Okay. You may step down.

2 MR. MCKEE: Your Honor, I don't know if these other gentlemen wish to cross examine her.

3 THE COURT: Do you wish to ask her some questions about damages?

4 MR. BASS: I just would like to bring up one point.

5 THE COURT: And who are you sir?

6 MR. BASS: I am Brian Bass.

7 THE COURT: All right.

8 MR. BASS: Can I go over there?

9 THE COURT: You can sit over here. Right over there and let me put you under oath.

10 **BRIAN BASS. BEING DULY SWORN,**

11 **TESTIFIES AS FOLLOWS:**

12 THE COURT: All right. Go ahead.

13 A. Well as far as under this contract also it states in 15, disputes, if there is any dispute we  
14 are supposed to go to arbitration. Just so you better understand sir. They are caught in  
15 the middle. I was going through a divorce and all of my stuff was seized. I wasn't able  
16 to do anything. B & R Contracting is not in - - I mean not in practice any more. It  
17 wasn't that I ran off with their money. I took a hundred thousand dollars to Southland  
18 Log Homes, I mean if I was going to take all of the money - - I mean if I was going to try  
19 to do something dishonest, I would have took it all. But like I said, I had a Lis Pendens  
20 put against me. My bank accounts were frozen. Everything through divorce court. And  
21 this is where we are at right now. It wasn't that I - - I mean I have been self employed  
22 for twenty five (25) years sir and this is the first time that I have ever been sued, ever. I  
23 don't know anything about this. I mean I just never did - - the Russells got caught with  
24 divorce court and here we are. I have never intentionally ever took anybody's money.

25 THE COURT: Do you have any questions Mr. McKee?

1 MR. MCKEE: No questions.

2 THE COURT: All right.

3 THE COURT: Anything further sir?

4 A. No sir.

5 THE COURT: All right. You may step down.

6 A. Thank you.

7 THE COURT: All right, Mr. McKee.

8 MR. MCKEE: Your Honor, the Plaintiff is requesting the amounts as set forth in the Plaintiff's  
9 affidavit. If I may approach, Your Honor.

10 THE COURT: All right.

11 MR. MCKEE: In addition Your Honor, the Plaintiff is seeking damages pursuant to the South  
12 Carolina Unfair Trade Practices Act. As the Court is aware, that is well established in South  
13 Carolina law. In common law, that the Plaintiff must have suffered an ascertainable loss. I  
14 believe that the Plaintiff has set forth damages, actual damages in her affidavit as well as special  
15 damages which have resulted from the breach in this contract. That the conduct which the Court  
16 must evaluate in determining whether it is an unfair trade practice and whether or not it is  
17 capable of repetition. Your Honor, I believe that the Plaintiff has established by her  
18 understanding with Southland Log Homes that these individuals were licensed contractors to do  
19 the work and she did select them and that she believes that these Defendants have done other  
20 work for Southland Log Homes as well. Your Honor, the statutory definition of willful has been  
21 construed by the Court of Appeals to mean quote, "if, in the exercise of due diligence, a person  
22 of ordinary prudence engaged in trade or commerce could have ascertained that his conduct  
23 violates the Act, then such conduct is willful." Your Honor, that is taken from **Haley Nursery  
24 Company v. Forrest**, 298 S. C. 520. As also cited in **State v. Nest Egg Society Today, Inc.**,  
25 290 S.C. 124. Your Honor, I believe that the conduct in this matter that obtaining a deposit in

1 the amount of Thirty thousand & no/100 (\$30,000.00) dollars per the good faith to perform under  
2 the terms of a signed written contract certainly meets the definition of willful, especially when  
3 the Plaintiff through an attorney had to contact by sending a letter to the Defendants at the  
4 address listed on the contract. No subsequent contact was ever made with me or my office  
5 regarding the possibility of returning that money. And finally, Your Honor, it is well established  
6 that as a limitation under South Carolina Unfair Trade Practices Act that it is not available to  
7 address a private wrong where the public is not specifically effected. Your Honor, that is set  
8 forth in **South Carolina National Bank v. Silks**, 295 S.C. 107. In this matter, it is a contract  
9 between the Defendants and the Plaintiff, while it may be construed as a private contract and a  
10 private agreement between just these two parties. The nature of the Defendants' business does  
11 touch and concern trade or commerce in the State of South Carolina and, therefore, it is the  
12 Plaintiff's contention that with respect to that limitation that the Defendants' conduct in this  
13 matter does directly affect the trade or commerce in South Carolina as I believe at one point they  
14 were licensed contractors to perform various jobs and various work with the South Carolina  
15 LLR. So, Your Honor, we would respectfully request that the Court issue a judgment in favor of  
16 the Plaintiff Karolee Russell, individually and as personal representative of the estate of her  
17 husband, Kevin Brian Russell, as set forth in the Plaintiff's affidavit for a total debt of Forty six  
18 thousand nine hundred two & 52/100 (\$46,902.52) dollars. Additionally, the Plaintiff is  
19 requesting that those actual damages and the special damages in Items A, B, and E only affidavit,  
20 be treble in the Court finding a specific case of wantonness and willfulness in this matter. Thank  
21 you.

22 THE COURT: Give me that breakdown one more time Mr. McKee. The total as far as the  
23 Twenty nine thousand.

24 MR. MCKEE: It was for Items A, B and E.

25 THE COURT: The \$29,928.46 for the deposit and \$11,053.00 for the costs of the loan. The

1 attorney's fee of \$2500. Mr. McKee that request for the treble is under -- what is the Section, I  
2 don't see it in here. It sets out the -- what I am trying to do is it is determined ---

3 MR. MCKEE: I have got it right here, just a second.

4 THE COURT: As far as the allocation.

5 MR. MCKEE: It is 39-5-140, action for damages.

6 THE COURT: All right.

7 MR. MCKEE: It is 39-5-140(a), Judge. Any person who suffers any ascertainable loss of  
8 money or property, real or personal, as a result of the use or employment by another person of an  
9 unfair or deceptive method, declared unlawful by Section 39-5-20 may bring an action to recover  
10 actual damages. The court shall award three times the actual damages sustained where the court  
11 finds the use or employment of the unfair or deceptive method, act or practice was a willful or  
12 knowing. Subsection A, but the base, the UTPA is under 39-5-20, which just states unfair  
13 methods of competition. Unfair or deceptive acts or practices in the conduct of any trade or  
14 commerce are hereby declared unlawful.

15 THE COURT: What I am saying is the application is the actual, treble the actual not the special.

16 MR. MCKEE: Okay. That is correct Judge.

17 THE COURT: All right. So what I will do based on the Complaint filed by the Plaintiff and  
18 the failure of the Defendants to respond in any way and that they are in default award the special  
19 damages in the amount of Eleven thousand fifty three & no/100 (\$11,053.00) dollars which  
20 represents those costs incurred for obtaining the new loan or the mortgage as well as the  
21 mortgage insurance and then the deposit of Twenty nine thousand nine twenty eight forty six  
22 (29,928.46) and that will be the damage and I will treble that under the statute and award based  
23 on the statute the attorney's fees in the amount of Twenty five hundred & no/100 (\$2500.00)  
24 dollars and the costs of Seven hundred four & 12/100 (\$704.12) dollars. And that will be an  
25 award jointly and severally. And that there was no responsive pleading by any parties. So Mr.

1 McKee if you will prepare the order.

2 MR. MCKEE: Thank you Judge.

3 THE COURT: All right.

4 MR. BASS: I have got a question Judge.

5 THE COURT: Yes sir.

6 MR. BASS: This is the first piece of paper that we signed. The contract. And it plainly states  
7 if we have any disputes what we need to do. Then why wouldn't that be our first course of  
8 action because every time that Mr. Russell called me, I talked to him. I didn't avoid anybody.

9 THE COURT: Well the - - -

10 MR. BASS: It says the disputes will be - - -

11 THE COURT: Let me finish sir. Let me finish. Number one, you didn't plead that. You  
12 didn't answer. You didn't do anything in this case. And it clearly says that the party  
13 demanding arbitration shall give written notice to the opposite party promptly after the matter in  
14 dispute arises. So not only did you not file anything you didn't contest it and you didn't demand  
15 anything. And if you would put that in the order as well that there was no demand for arbitration  
16 under the terms of the contract either - - -

17 MR. BASS: There was with the homeowner, with Kevin Russell.

18 THE COURT: If you will put that in the order counsel?

19 MR. MCKEE: Yes sir.

20 THE COURT: All right.

21 ----- END OF HEARING -----

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STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

COURT OF COMMON PLEAS

CERTIFICATE

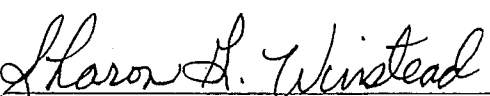
I, the undersigned Sarah Hollis, Court Reporter for the Master-In-Equity for the County of Spartanburg, State of South Carolina, do hereby certify that the foregoing is a true and accurate Transcript of Testimony of the hearing of the captioned case, before the Honorable Gordon G. Cooper, Master-In-Equity for Spartanburg County, South Carolina, on the 27th day of September, 2018.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

  
Sarah Hollis  
Court Reporter

SWORN to before me this  
19th day of September, 2018.

Spartanburg, South Carolina.

  
Notary Public for South Carolina  
My Commission Expires: September 13, 2026.

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF SPARTANBURG

3 KAROLEE RUSSELL, INDIVIDUALLY, AND )  
4 AS PERSONAL REPRESENTATIVE OF THE )  
ESTATE OF KEVIN BRIAN RUSSELL, )

TRANSCRIPT OF MOTION

5 PLAINTIFFS, )

6 -VS- )

(2018CP42-1540)

7 B & R CONTRACTING, LLC, BRIAN K. BASS )  
8 AND RICHARD A. ROBERTSON, )

Spartanburg, South Carolina

9 DEFENDANTS. )

11 REFERENCE HELD: FEBRUARY 25, 2019.

12 B E F O R E: HONORABLE GORDON G. COOPER,  
13 MASTER-IN-EQUITY FOR SPARTANBURG COUNTY.

14 BY: PAUL MCKEE, III, ESQUIRE  
15 Attorney for the Plaintiff.

16  
17 WILKES LAW FIRM, P.A.  
18 BY: C. DANIEL ATKINSON, ESQUIRE  
19 Attorney for Defendant Richard A. Robertson.

20  
21  
22 Sarah Hollis, Court Reporter  
23  
24  
25

1 THE COURT: We go on the record in the case originally captioned as Kevin Russell and  
2 Karolee Russell, versus B & R Contracting, LLC, Brian K. Bass and Richard A. Robertson. This  
3 is case number 2018CP42-1540. And we are here on the Motion to Reconsider filed by Mr.  
4 Atkinson on behalf of the individual Defendant Richard A. Robertson. All right Counsel, if you  
5 are ready?

6 MR. ATKINSON: I am, Your Honor.

7 THE COURT: All right.

8 MR. ATKINSON: As you stated Your Honor, this is a Motion to Reconsider as to Defendant  
9 Richard A. Robertson, only. Just for the record, I was not Mr. Robertson's counsel at the time  
10 of the hearing on the Motion for Default Judgment. I was retained afterwards. So what I have  
11 to discuss with Your Honor is what I can see in the Transcript. I wasn't there myself. So I am  
12 relying on that. On Friday, I did obtain a copy of the Transcript and I provided that to the Court.  
13 Did you receive it?

14 THE COURT: Yes, I did.

15 MR. ATKINSON: The basis for our Motion is relatively simply, Your Honor. It is our position  
16 that Mr. Robertson in the hearing asked for leave to file an Answer which I would say is a  
17 layman's motion to set aside the entry of default. And we believe that there exist grounds to set  
18 aside the entry of default which I will discuss in a moment. Even if that was not a proper motion  
19 to set aside the entry of default we believe that there is a basis to set aside the default judgment  
20 based on the factual and legal proceedings, the status of this case. Specifically, Your Honor, the  
21 causes of action presented against the Defendant Mr. Robertson are breach of contract, fraud,  
22 breach of contract accompanied by fraud, conversion, civil conspiracy and unfair trade practices.  
23 Your Honor attached to the Complaint and in the Record at the hearing on the Motion for Default  
24 Judgment was the contract at issue in the case and it was identified as Exhibit A to that  
25 Complaint. The contract was between Mr. and Mrs. Russell and B&R Contracting and it was

1 signed by Brian Bass. Mr. Robertson's name is no where on the document. There was no  
2 corporate veil piercing cause of action filed. There appears to be no factual basis for a contract  
3 complaint against someone who is not a party to the contract. Further, at the hearing and in the  
4 Transcript before Your Honor, I understand that Mr. Russell was deceased so Mrs. Russell was  
5 the person who testified at the damages hearing. And she testified that she had never met or had  
6 any interactions with Mr. Robertson. So I don't know how that could be a basis for a  
7 communication constituting fraud if there has been no interaction in any form and similar is their  
8 basis for the unfair trade practice action claim if there hasn't been trading among the parties.  
9 Further, I would note because there is no evidence of a payment to Mr. Robertson, I don't think  
10 that there is a basis for a conversion claim. So stated simply, Your Honor, our position is that  
11 the facts do not support the entry of default judgment against Mr. Robertson. If you look at the  
12 standards for courts to consider setting aside both entries of default and default judgment the  
13 question then is there a valid legal defense to the claim. And here the answer is undoubtedly yes  
14 because he was not a party to the contract. And there is no evidence of any communication  
15 between Mr. Robertson and Mrs. Russell. The second question is their prejudice faced by the  
16 Plaintiff in having the default set aside. And Your Honor, I would contend that there is not  
17 because she still has a default judgment against the two (2) parties with which she interacted.  
18 And if she has a valid claim against Mr. Robertson she can pursue it and prosecute it. Right now  
19 I don't think that there is enough evidence to show that she has a valid claim. She has a  
20 judgment against the party with whom she contracted and the member of that party who is the  
21 person who signed the contract. That would not be affected by setting aside the default  
22 judgment as to Mr. Robertson. Finally, there is the question of the timeliness. I cited the time  
23 in the brief and the reason given for missing the answer deadline is that Mr. Robertson  
24 understood that Mr. Bass was handling answering the Complaint on his behalf based on the  
25 arbitration provision and that did not happen. While that alone is not an excuse for not timely

1 answering, it is a reasonable explanation for what happened and what we have is a valid legal  
2 defense presented in the form he was not a party to the contract. I believe Mr. Robertson was  
3 served in May and the default judgment hearing occurred in September. So there has been no  
4 long delay in the case. The standard for setting aside or for an appellate review of addressing a  
5 default judgment is whether the order in place was supported by facts or whether it is a manifest  
6 error of law. Here I believe the issue is the contract shows that Mr. Robertson was not a party.  
7 The testimony presented at the hearing shows that the Plaintiff had no interaction with Mr.  
8 Robertson, therefore, there is not factual support for the default judgment against him and it  
9 should be set aside. I would be happy to answer any questions you might have, Your Honor.

10 THE COURT: Mr. McKee any response?

11 MR. MCKEE: Your Honor, first in failing to respond to this Complaint the Defendant  
12 Robertson has specifically admitted those allegations in the Complaint. Specifically, as to  
13 paragraph 5. That it was October 10, 2016, that Plaintiffs and Defendants entered into a contract  
14 in Spartanburg County. That contract is attached to the Complaint and it has been entered as an  
15 exhibit in this matter. The Plaintiff is relying on the fact that the Defendants here made no  
16 appearance or made no effort to do anything in this case until the date of the final hearing. As  
17 Plaintiff's counsel stated that the three (3) factors that the Court must consider, under *Wham V.*  
18 *Shearson Lehman Bros.* 298 S.C. 462. Again, the timing of the request for relief, the existence  
19 of a meritorious defense and then prejudice to the opposing party, with respect to the timeliness  
20 of the request for relief. An Affidavit of Default was filed against this Defendant. If the  
21 Defendant has a true meritorious defense at least to the effect that I didn't have anything to do  
22 with the contract. I am the wrong guy. I am the wrong party. Or at least, that it wasn't  
23 conclusively established by the Court. That I believe, Your Honor, would lead to prejudice and  
24 then considering the third factor under the *Wham v. Shearson Lehman Bros.* case  
25 and specific to Rule 55 ( c). Your Honor as far as this Defendant's appearance altogether, I mean

1 he was served in May of 2018. He made no appearance when he was sent the first notice of  
2 hearing which was scheduled for September 11, 2018 and this hearing was rescheduled because  
3 of the Hurricane. I think the Defendant Bass had contacted my office to inform that he would not  
4 be able to be here so it was rescheduled for a second time. He had an ample opportunity to make  
5 an appearance or at least pick up the phone and call my office. And at least to the technical  
6 defenses that Mr. Robertson alleges in here it is really just stating the effects of whether or not  
7 Mrs. Russell had any contact with him, which he admitted by his failing to answer. He has  
8 admitted those things in the Complaint. Furthermore, Your Honor, in the Transcript, Mrs.  
9 Russell did indicate that she believed that Mr. Robertson was a licensed South Carolina building  
10 contractor and they did this type of work that they were contracted to do in this matter. She  
11 stated in here that she was unfamiliar with them. I know that her husband was the one that did  
12 most of the planning plus everything with respect to these contractors, well these alleged  
13 contractors. Of course, Mr. Russell is deceased. He passed after the filing of this action  
14 requiring the change of the caption. But then finally, Your Honor, just by considering the third  
15 factor, too. The prejudice of the party, I don't see where in the Transcript that Mr. Robertson  
16 makes the claim that he thought Mr. Bass would answer for him because of an arbitration clause  
17 where he said, I thought Mr. Bass was going to answer for me. And if the Court is going to  
18 consider at least for the meritorious defense portion of this, if further analysis will be needed or  
19 necessary as to these individuals, there is the LLC. Membership in the LLC - - it seems that Mr.  
20 Robertson has already stated twice in the Transcript that he believes that Mr. Bass has the power  
21 to bind him, at least so far as his answer goes. I think that if he is adopting this position that Mr.  
22 Bass can just bind him with respect to answering a Complaint and dealing with the lawsuit it  
23 would be, if you are counting the two, he could go down a new path that he can bind me and I am  
24 not apart of this whole agreement. And so therefore, Your Honor, we would respectfully request  
25 that the Court deny his motion to reconsider. Thank you.

1 MR. ATKINSON: Your Honor, may I please reply?

2 THE COURT: Yes.

3 MR. ATKINSON: Your Honor, with regards to the argument that Paragraph 5 was admitted by  
4 the failure to answer. Paragraph 5, has to be read in context with the entirety of the Complaint  
5 which includes the Exhibits which Exhibit A is the contract which doesn't name Mr. Robertson.  
6 It does not bear his signature or indicate that he was involved in it. Also, Exhibit C, which is the  
7 demand letter was sent to B&R Contracting and not to Mr. Robertson showing who the Plaintiff  
8 thought was the party to the contract. Your Honor, I would contend that there was an untimely  
9 answer, a breach of contract action which is subject to Rule 46 dismissal based on the entirety of  
10 the Complaint. And if that is the case, a default judgment based on a pleading which on its face  
11 should have failed is not properly upheld because it is not being viewed in light of the facts and  
12 evidence at the time of the issuance of the default judgment. That it takes longer is not prejudice.  
13 That there might be an agreement that someone answers on behalf of somebody else does not  
14 indicate that there is a binding for purposes of contract. That was not said in the hearing. The  
15 evidence in the hearing was clear before the Court and I think it is clear there were no dealings  
16 between Mr. Robertson and Mrs. Russell. Therefore, the default should be set aside. Thank  
17 you, Your Honor.

18 THE COURT: All right. And I understand Mr. Atkinson that you were not here.

19 MR. ATKINSON: Yes, Your Honor.

20 THE COURT: As far as the initial stages of this action, my concern was and still is and that is  
21 that Mr. Robertson was served for this case, on May 19, 2018. The default was entered June  
22 20<sup>th</sup>. And at no time did Mr. Robertson respond in any way. No letter, no phone calls to the  
23 attorney for the Plaintiff. And then he shows up at the hearing with the statement, I thought Mr.  
24 Bass was going to file. Indicating that there was some relationship between the two of them.  
25 And he had nothing to do with it. If that is his meritorious defense, that is for a whole different

1 determination. But that is not what we are here today to do. We are here today to reconsider  
2 not set aside the default. The bottom line is Mr. Robertson can not just sit there after being  
3 served and simply say somebody else is going to take care of it for him and then just proceed. I  
4 don't think that is a - - well he is saying that he has nothing to do with it and then yet he says that  
5 Mr. Bass was going to answer or do something for him. That indicates to me that there was a  
6 relationship or something there or there was a business relationship. Any way, no answer by Mr.  
7 Robertson. There was no request during the time of or after the default as to a timely motion to  
8 set aside the default. So those were my concerns at the time of the hearing. And we also had  
9 the situation with Mr. Russell who did apparently a lot of negotiations during that time and he  
10 passed during the time between the contract and the bringing of the action or in the middle of the  
11 action. So having said all of that, the Motion is denied. And Mr. McKee if you will file the  
12 order denying the Motion and basically tracking what I have said.

13 MR. ATKINSON: Your Honor.

14 THE COURT: Yes sir.

15 MR. ATKINSON: One point for clarification. Is your ruling there was not a motion to set  
16 aside, and you are not ruling on that, or is it that you denied it?

17 THE COURT: Well I am denying your Motion for Reconsideration.

18 MR. ATKINSON: I understand that. Part of the Motion included a contention that there was a  
19 Motion to Set Aside.

20 THE COURT: And I am denying that as well.

21 MR. ATKINSON: Yes sir.

22 THE COURT: Because the only thing that was - - and you have properly stated in your brief  
23 that I have read as far as the basis for setting aside the default. And that is why I went over  
24 those other dates. And Mr. McKee you can include in the order that I expanded the Motion filed  
25 by Mr. Atkinson to include the Motion to Set Aside the Default which I have denied based on

1 that time line. All right gentlemen. Have a good day.

2 MR. ATKINSON: Yes sir.

3 MR. MCKEE: Thank you.

4 -----END OF MOTION-----

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1 STATE OF SOUTH CAROLINA

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COURT OF COMMON PLEAS

3 COUNTY OF SPARTANBURG

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**CERTIFICATE**

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7 I, the undersigned Sarah Hollis, Court Reporter for the Master-In-Equity for the County  
8 of Spartanburg, State of South Carolina, do hereby certify that the foregoing is a true and  
9 accurate Transcript of Motions hearing of the captioned case, before the Honorable Gordon G.  
10 Cooper; Master-In-Equity for Spartanburg County, South Carolina, on the 25th day of February,  
11 2019.

12 I do further certify that I am neither of kin, counsel nor interest to any party hereto.

13

14

  
Sarah Hollis  
Court Reporter

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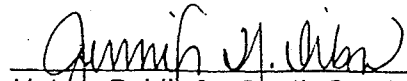
17 **SWORN** to before me this  
18 28th day of February, 2019.

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19 Spartanburg, South Carolina.

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\_\_\_\_\_  
Notary Public for South Carolina  
My Commission expires: January 2, 2025

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STATE OF SOUTH CAROLINA  
AFFIDAVIT OF SERVICE

SPARTANBURG COUNTY

COMMON PLEAS COURT

DOCKET # 2018-CP-42-1540

KEVIN RUSSELL AND KAROLEE RUSSELL

~ VS ~

B&R CONTRACTING, L.L.C., BRIAN K. BASS AND RICHARD A. ROBERTSON

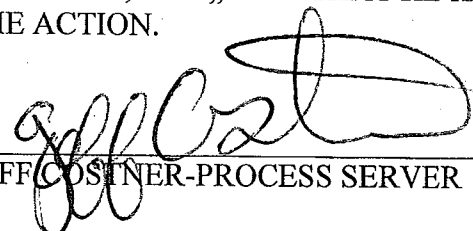
THE UNDERSIGNED, JEFF COSTNER, BEING DULY SWORN SAYS THAT HE SERVED THE FOLLOWING :

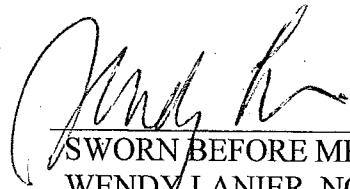
(1) SUMMONS, (2) COMPLAINT, (3) EXHIBITS A & B,

IN THE FOREGOING ACTION ON: B&R CONTRACTING, LLC., AND BY DELIVERING TO, BRIAN KEITH BASS AS THE AUTHORIZED PERSON TO ACCEPT SERVICE, AND BY LEAVING WITH HIM A COPY OF THE SAME AT,

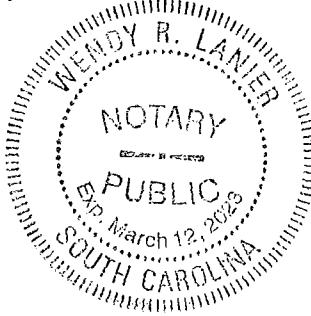
5923 EDMOND HIGHWAY, LEXINGTON, SOUTH CAROLINA 29073  
(FULL ADDRESS WHERE SERVED)

ON THIS, 19TH DAY OF MAY, 2018, AT 09:55 AM, AND THAT HE KNOWS THE PERSON SO SERVED TO BE THE PARTY MENTIONED AND DESCRIBED IN THE PLEADINGS SERVED AS, B&R CONTRACTING, LLC., AND THAT HE IS NOT A PARTY TO NOR INTERESTED IN THE ACTION.

  
JEFF COSTNER-PROCESS SERVER



SWORN BEFORE ME THIS, 19TH DAY OF MAY, 2018  
WENDY LANIER, NOTARY PUBLIC, STATE OF SOUTH CAROLINA  
MY COMMISSION EXPIRES, MARCH 12, 2023



STATE OF SOUTH CAROLINA  
AFFIDAVIT OF SERVICE

SPARTANBURG COUNTY

COMMON PLEAS COURT

DOCKET # 2018-CP-42-1540

KEVIN RUSSELL AND KAROLEE RUSSELL

~ VS ~

B&R CONTRACTING, L.L.C., BRIAN K. BASS AND RICHARD A. ROBERTSON


THE UNDERSIGNED, JEFF COSTNER, BEING DULY SWORN SAYS THAT HE SERVED THE FOLLOWING :

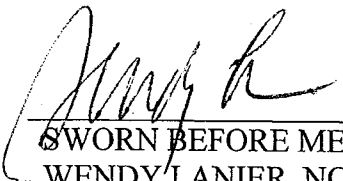
(1) SUMMONS, (2) COMPLAINT, (3) EXHIBITS A & B,

IN THE FOREGOING ACTION ON: BRIAN KEITH BASS, AND BY DELIVERING TO, HIM PERSONALLY, AND BY LEAVING WITH HIM A COPY OF THE SAME AT,

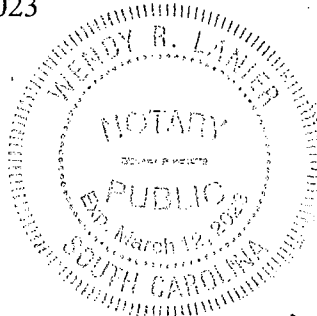
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ON THIS, 19TH DAY OF MAY, 2018, AT 09:55 AM, AND THAT HE KNOWS THE PERSON SO SERVED TO BE THE PARTY MENTIONED AND DESCRIBED IN THE PLEADINGS SERVED AS, BRIAN KEITH BASS, AND THAT HE IS NOT A PARTY TO NOR INTERESTED IN THE ACTION.

  
JEFF COSTNER-PROCESS SERVER



SWORN BEFORE ME THIS, 19TH DAY OF MAY, 2018  
WENDY LANIER, NOTARY PUBLIC, STATE OF SOUTH CAROLINA  
MY COMMISSION EXPIRES, MARCH 12, 2023



STATE OF SOUTH CAROLINA  
AFFIDAVIT OF SERVICE

SPARTANBURG COUNTY

COMMON PLEAS COURT

DOCKET # 2018-CP-42-1540

KEVIN RUSSELL AND KAROLEE RUSSELL

~ VS ~

B&R CONTRACTING, L.L.C., BRIAN K. BASS AND RICHARD A. ROBERTSON

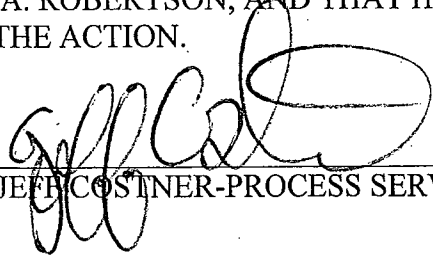
THE UNDERSIGNED, JEFF COSTNER, BEING DULY SWORN SAYS THAT HE SERVED THE FOLLOWING :

(1) SUMMONS, (2) COMPLAINT, (3) EXHIBITS A & B,

IN THE FOREGOING ACTION ON : RICHARD A. ROBERTSON, AND BY DELIVERING TO, HIM PERSONALLY, AND BY LEAVING WITH HIM A COPY OF THE SAME AT,

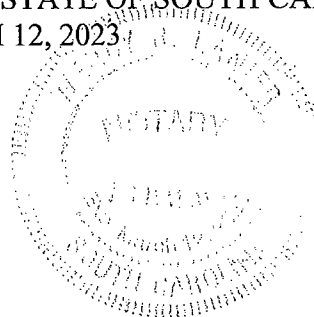
84 WEST CIRCLE DRIVE, LEXINGTON, SOUTH CAROLINA 29072  
(FULL ADDRESS WHERE SERVED)

ON THIS, 19TH DAY OF MAY, 2018, AT 10:30 AM, AND THAT HE KNOWS THE PERSON SO SERVED TO BE THE PARTY MENTIONED AND DESCRIBED IN THE PLEADINGS SERVED AS, RICHARD A. ROBERTSON, AND THAT HE IS NOT A PARTY TO NOR INTERESTED IN THE ACTION.

  
\_\_\_\_\_  
JEFF COSTNER-PROCESS SERVER

  
\_\_\_\_\_  
SWORN BEFORE ME THIS, 19TH DAY OF MAY, 2018

WENDY LANIER, NOTARY PUBLIC, STATE OF SOUTH CAROLINA  
MY COMMISSION EXPIRES, MARCH 12, 2023



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )

IN THE COURT OF COMMON PLEAS  
2018-CP-42-01540

Kevin Russell and Karolee Russell, )  
 )  
Plaintiff, )

vs. )

AFFIDAVIT OF DEFAULT

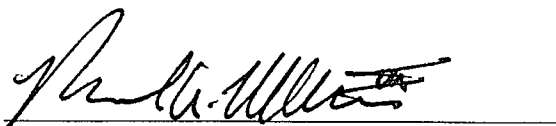
B & R Contracting, LLC; Brian K. Bass, )  
and Richard A. Robertson, )  
 )  
Defendants. )

Non-Jury

Personally appeared before me the undersigned attorney for the Plaintiff, who being sworn, says that on the 19th day of May, 2018, he caused to be served upon the Defendants B & R Contracting, LLC; Brian K. Bass, and Richard A. Robertson the Summons, and Complaint in the above-titled case and that more than thirty (30) days have elapsed since service and that the Defendants have not responded with an Answer or other pleading. Further, that he believes the Defendants are not members of the U.S. Armed Services.

SWORN TO before me this 20th  
day of June, 2018.

Melinda E. Cantrell  
Notary Public for S.C.  
My Commission Expires: 11/24/24



PAUL A. MCKEE, III  
Attorney at Law  
409 Magnolia Street  
Spartanburg, SC 29303



Common Pleas

**Case Caption:** Kevin Russell , plaintiff, et al VS B & R Contracting, Llc ,  
defendant, et al  
**Case Number:** 2018CP4201540  
**Type:** Affidavit/Default

IT IS SO ORDERED

s/M. Hope Blackley, Spartanburg County Clerk of  
Court by Maribel Martinez

Electronically signed on 2018-06-22 13:31:02 page 2 of 2



DEATH CERTIFICATION

STATE FILE NUMBER : 139-18-020068

DECEDENT'S NAME: \*KEVIN BRIAN RUSSELL\*

SEX: MALE

SOCIAL SECURITY NUMBER:

AKA's: NA

ARMED FORCES: NO

DATE OF BIRTH: , 1957

AGE: 60 YEARS

TYPE OF PLACE OF DEATH: HOSPITAL- INPATIENT

COUNTY OF DEATH: SPARTANBURG

NAME AND ADDRESS OF PLACE OF DEATH: SPARTANBURG REGIONAL MEDICAL CENTER, SPARTANBURG, SC 29303

PLACE OF DISPOSITION: GREENLAWN MEMORIAL GARDENS

DISPOSITION LOCATION: SPARTANBURG, SOUTH CAROLINA

METHOD OF DISPOSITION: BURIAL

DECEDENT'S RESIDENCE: 2245 WHITESTONE ROAD, SPARTANBURG, SPARTANBURG COUNTY, SC, 29302

PLACE OF BIRTH: CONNECTICUT

MARITAL STATUS: MARRIED

SURVIVING SPOUSE'S NAME: KAROLEE SPENCER

FATHER'S NAME: ALAN D RUSSELL

MOTHER'S NAME PRIOR TO FIRST MARRIAGE: JOYCE S ROBERTS

RELATIONSHIP: WIFE

INFORMANT'S NAME: KAROLEE S RUSSELL

MAILING ADDRESS: 2245 WHITESTONE ROAD, SPARTANBURG, SC, 29302

FUNERAL HOME: THE J. F. FLOYD MORTUARY, PO DRAWER 1530, SPARTANBURG, SC, 29304

FUNERAL DIRECTOR: DONALD E SMITH JR.

LICENSE NUMBER: 2499

EMBALMER'S NAME: DANIEL P DENLER

LICENSE NUMBER: 1570

ACTUAL OR PRESUMED DATE OF DEATH : MAY 19, 2018

MANNER OF DEATH : NATURAL

ACTUAL OR PRESUMED TIME OF DEATH: 1356

CAUSE OF DEATH - PART I  
CARDIAC ARREST

OTHER SIGNIFICANT CONDITIONS - PART II:

NA

CORONER CONTACTED? YES

AUTOPSY PERFORMED? NO

AUTOPSY AVAILABLE? NA

DATE OF INJURY: NA

TIME OF INJURY: NA

INJURY AT WORK? NA

PLACE OF INJURY: NA

LOCATION OF INJURY: NA

HOW THE INJURY OCCURRED?

NA

CERTIFIER NAME AND TITLE: DO TANYA TOCHAROEN TANG

LICENSE NUMBER: 1630

CERTIFIER'S ADDRESS: NA

DATE FILED: MAY 30, 2018

DATE OF ISSUANCE: MAY 30, 2018

SPECIAL INSTRUCTIONS:

NA

SC06802316

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

David E. Wilson, Jr.  
Acting Director

This is watermarked paper. Do not accept without noting watermark. Hold to light to verify watermark.

Revision Date: 12/01/2017

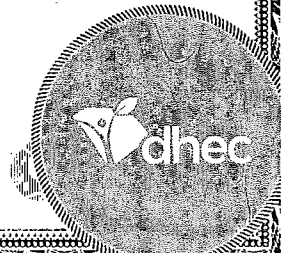


EXHIBIT B

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

PROBATE COURT

IN THE MATTER OF KEVIN B. RUSSELL

CASE NUMBER 2018ES4201169

CERTIFICATE OF APPOINTMENT

This is to certify that  
KAROLEE S. RUSSELL

\_\_\_\_\_  
\_\_\_\_\_

is/are the duly qualified

- PERSONAL REPRESENTATIVE
- GUARDIAN
- CONSERVATOR
- TRUSTEE
- \_\_\_\_\_

in the above matter and that this appointment, having been executed on the 16th day of July, 2018, now in full force and effect, including authorization to receive all monies, income, principal, interest & dividends of and belonging to said estate.

RESTRICTIONS:

NONE.

Executed this 16th day of July, 2018.

*Ponda A. Caldwell*

Ponda A. Caldwell, Probate Court Judge

Do not accept a copy of this certificate without the raised seal of the Probate Court.

ELECTRONICALLY FILED - 2018 Jul 31 1:20 PM - SPARTANBURG - COMMON PLEAS - CASE#2018CP4201540

STATE OF SOUTH CAROLINA )  
 :  
COUNTY OF SPARTANBURG )

IN THE COURT OF COMMON PLEAS  
Case No.: 2018-CP-42-1540

Karolee Russell, Individually, and as )  
Personal Representative of the Estate of )  
Kevin Brian Russell, )

PLAINTIFF, )

NOTICE OF HEARING

VS. )

B & R Contracting, LLC, Brian K. Bass, )  
and Richard A. Robertson, )

DEFENDANTS. )

YOU WILL PLEASE TAKE NOTICE that a hearing has been scheduled in regard to the above-captioned case for the date of **Tuesday, September 11, 2018 at 11:00 a.m.** at the Courtroom of the Honorable Gordon G. Cooper, Master-in-Equity, 3rd Floor, Spartanburg County Courthouse, 180 Magnolia Street, Spartanburg, South Carolina.

Please contact the undersigned if you have any questions.

s/Paul A. McKee, III  
PAUL A. MCKEE, III  
Attorney for the Plaintiff  
409 Magnolia St.  
Spartanburg, SC. 29301  
(864) 573-5149

Date: August 21, 2018  
Spartanburg, South Carolina

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )

IN THE COURT OF COMMON PLEAS  
Case No.: 2018-CP-42-1540

Karolee Russell, Individually, and as )  
Personal Representative of the Estate of )  
Kevin Brian Russell, )

PLAINTIFF, )

VS. )

B & R Contracting, LLC, Brian K. Bass, )  
and Richard A. Robertson, )

DEFENDANTS. )

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the 21st day of August, 2018, I caused to be served a copy of the following document(s):

Notice of Hearing

by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail, with return address clearly shown, as set forth below to the following person(s):

B & R Contracting, LLC  
Brian Keith Bass  
5923 Edmond Hwy.  
Lexington, SC 29073

Brian Keith Bass  
5923 Edmond Hwy.  
Lexington, SC 29073

Richard A. Robertson  
84 West Circle Dr.  
Lexington, SC 29072

s/Paul A. McKee, III  
Paul A. McKee, III  
Attorney for the Plaintiff  
409 Magnolia Street  
Spartanburg, SC 29303

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )  
Karolee Russell, Individually, and as )  
Personal Representative of the Estate of )  
Kevin Brian Russell, )  
PLAINTIFF, )  
VS. )  
B & R Contracting, LLC, Brian K. Bass, )  
and Richard A. Robertson, )  
DEFENDANTS. )

IN THE COURT OF COMMON PLEAS  
Case No.: 2018-CP-42-1540

AFFIDAVIT IN SUPPORT OF ATTORNEY'S FEES

PERSONALLY APPEARED BEFORE ME, the undersigned, who being duly sworn, does state as follows:

1. That he is the attorney for the Plaintiff in the above-entitled action.
2. This case is an action to.
3. I was retained by Plaintiff to bring this action pursuant to a contracted hourly rate.
4. Under Dedes v. Strickland, 307 S.C. 155, 414 S.E.2d 134 (S.C. 1992), the Supreme Court

of South Carolina has set forth the factors to be considered in an award of attorney's fees in real property actions. These factors include nature, extend, and difficulty of the legal services rendered, the time and labor necessarily devoted to the case, the professional standing of counsel, the contingency of compensation, the customary fees charged in the locality for similar services, and the beneficial result obtained. These factors, as applied in this case, are as follows:

- (a) The nature, extent and difficulty of the services rendered; As stated above, this is an action to foreclose a Mortgage on real property. This case involved complex issues of real property law. A hearing was held by the Master-in-Equity, who requires an order to be prepared by Plaintiff's counsel. Accordingly, the factual work performed was necessary to adequately prepare and try these matters and the matters decided were of legal and factual difficulty.
- (b) The time and labor necessarily devoted to the case; As stated above, this case involved difficult issues of both legal and factual matters. To-date, I have devoted approximately fifteen (15) hours to this case. The time and labor devoted to this case were necessary to

properly prepare and try this case. I anticipate that additional time and expense will be necessary to collect the subject debt until the conclusion of this matter.

- (c) The professional standing of counsel; I am a graduate of Charleston School of Law and have been a licensed attorney in South Carolina since 2011. I am a member of the Spartanburg County Bar Association. Since 2011, my practice has been primarily in the fields of real estate law and litigation, particularly in the fields of creditor's rights, foreclosures, and real estate disputes. Accordingly, I submit that I have a high standard professional standing in this area of practice.
- (d) The contingency of compensation; As recited above, compensation in this case is based on an hourly rate; this is not a contingency case.
- (e) Customary Fee Charged on the Locality for Similar Services: I am aware from discussions with clients, other attorneys, and from my general familiarity with the legal profession that the fees charged for services similar to those in this case are from \$2,500.00 to \$6,000.00 per case. The attorney's fees sought are within this range in this case. Accordingly, the fees sought are comparable to those customarily charged in this locality for similar services.
- (f) The beneficial results accomplished; This attorney obtained beneficial results for Plaintiff in this action by securing a judgment enforcing Plaintiff's Mortgage rights with regard to the subject property. Accordingly, it is submitted that beneficial results were obtained by this firm on Plaintiff's behalf.


5. After due consideration of the nature, extent, and difficulty of the legal services rendered, the time and labor necessarily devoted to the case, the professional standing of counsel, the contingency of compensation, the customary fee charged in the locality for similar services, and the beneficial result obtained, I respectfully submit that an award of attorney's fees to the full extent set forth in this Affidavit is appropriate; therefore, Plaintiff is entitled to recover \$2,500.00 in attorney's fees.

6. In conjunction with this Affidavit, Plaintiff is submitting an Affidavit of Attorney's Costs reflecting the costs actually incurred through the date of the hearing. The costs of this matter total \$704.12. These costs include filing fees, reference fees, service costs, and other miscellaneous costs. The costs are

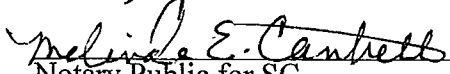
reasonable and necessary to pursue this action and are not, I believe, excessive given the nature, extent, and difficulty of the legal services in this case, the time and labor devoted to this case, and the beneficial result obtained.

7. Accordingly, the total attorney's fees and costs sought in this case total \$3,204.12, as of September 11, 2018.

FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
PAUL A. MCKEE, III  
Attorney for the Plaintiff  
409 Magnolia St.  
Spartanburg, SC. 29301  
(864)573-5149

SWORN to before me this 5<sup>th</sup>  
day of September, 2018.

  
Notary Public for SC  
my commission expires: 11/24/24

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )

IN THE COURT OF COMMON PLEAS  
Case No.: 2018-CP-42-1540

Karolee Russell, Individually, and as  
Personal Representative of the Estate of  
Kevin Brian Russell,

PLAINTIFF,

VS.

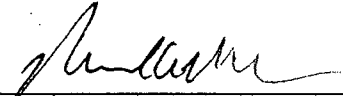
B & R Contracting, LLC, Brian K. Bass,  
and Richard A. Robertson,

DEFENDANTS.

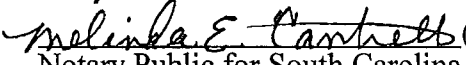
AFFIDAVIT OF COSTS

Personally appeared before me, Paul A. McKee, III, the attorney for the Plaintiff, who, being duly sworn, deposes and says that the following is a breakdown of costs to-date in regard to the above-referenced case.

Clerk of Court	\$ 424.12
Process Server	195.00
Probate Court	35.00
Master	50.00
<b>TOTAL</b>	<b>\$ 704.12</b>

  
Paul A. McKee, III, Attorney at Law  
409 Magnolia St.  
Spartanburg SC 29303  
864-573-5149

SWORN to and subscribed  
before me this 5<sup>th</sup> day of  
September, 2018.

 (SEAL)  
Notary Public for South Carolina  
My commission expires: 11/24/24

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	CASE NO. 2018-CP-42-1540
	)	
Karolee Russell, Individually, and as Personal	)	
Representative of the Estate of Kevin Brian	)	
Russell,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CERTIFICATE OF SERVICE
	)	
B & R Contracting, LLC, Brian K. Bass, and	)	
Richard A. Robertson	)	
	)	
Defendants.	)	
	)	

I, the undersigned, hereby certify that on the 11<sup>th</sup> day of September, 2018, I caused to be served a copy of the following document(s):

NOTICE OF HEARING

by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States Mail, with return address clearly shown, as set forth below to the following persons:

B&R Contracting, LLC  
Brian Keith Bass  
5923 Edmond Highway  
Lexington, SC 29073

Brian Keith Bass  
5923 Edmond Highway  
Lexington, SC 29073

Richard A. Robertson  
84 West Circle Dr.  
Lexington, SC 29072

/s PAUL A. MCKEE, III  
Paul A. McKee, III  
409 Magnolia St.  
Spartanburg, SC 29303  
864-573-5149  
864-948-1403 fax

September 11, 2018  
Spartanburg, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	CASE NO. 2018-CP-42-1540
	)	
Karolee Russell, Individually, and as Personal Representative of the Estate of Kevin Brian Russell,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CERTIFICATE OF SERVICE
	)	
B & R Contracting, LLC, Brian K. Bass, and Richard A. Robertson	)	
	)	
Defendants.	)	
_____	)	

I, the undersigned, hereby certify that on the 28th day of September, 2018, I caused to be served a copy of the following document(s):

PROPOSED ORDER TO BE SUBMITTED TO JUDGE FRIDAY OCTOBER 5, 2018

by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States Mail, with return address clearly shown, as set forth below to the following persons:

B&R Contracting, LLC  
Brian Keith Bass  
5923 Edmond Highway  
Lexington, SC 29073

Brian Keith Bass  
5923 Edmond Highway  
Lexington, SC 29073

Richard A. Robertson  
84 West Circle Dr.  
Lexington, SC 29072

/s/ PAUL A. MCKEE, III  
Paul A. McKee, III  
409 Magnolia St.  
Spartanburg, SC 29303  
864-573-5149  
864-948-1403 fax

September 28, 2018  
Spartanburg, South Carolina

DAVID G. INGALLS/PAUL A. MCKEE, III  
ATTORNEYS AT LAW  
409 MAGNOLIA STREET  
POST OFFICE BOX 2196  
SPARTANBURG, SOUTH CAROLINA 29304-2196

October 8, 2018

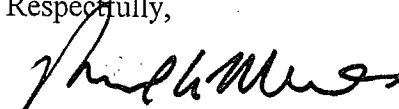
The Honorable Gordon G. Cooper  
Master-in-Equity  
Post Office Box 5666  
Spartanburg, SC 29304-5666

Re: Karolee Russell vs. B & R Contracting, LLC, et al.  
Case No.: 2018-CP-42-1540

Dear Judge Cooper:

I have provided a copy of the proposed order to all *pro se* Defendants and requested that they contact me by Friday, October 5, 2018 if they have any issues with the content of the order. No Defendant has contacted our office and accordingly, we present this proposed order for your consideration.

Respectfully,



Paul A. McKee, III  
Attorney at Law

PAM/mec

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )

IN THE COURT OF COMMON PLEAS  
Case No.: 2018-CP-42-1540

Karolee Russell, Individually, and as )  
Personal Representative of the Estate of )  
Kevin Brian Russell, )

PLAINTIFF,

CERTIFICATE OF SERVICE

VS. )

B & R Contracting, LLC, Brian K. Bass, )  
and Richard A. Robertson, )

DEFENDANTS. )

I, the undersigned, hereby certify that on the 19th day of October, 2018, I caused to be served a copy of the following document(s):

Order and Form 4

by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail, with return address clearly shown, as set forth below to the following person(s):

B & R Contracting, LLC  
Brian Keith Bass  
5923 Edmond Hwy.  
Lexington, SC 29073

Brian Keith Bass  
5923 Edmond Hwy.  
Lexington, SC 29073

Richard A. Robertson  
84 West Circle Dr.  
Lexington, SC 29072

C. Daniel Atkinson, Esq.  
Wilkes Law Firm P.A.  
127 Dunbar St., Ste. 200  
Spartanburg SC 29306

s/Paul A. McKee, III  
Paul A. McKee, III  
Attorney for the Plaintiff  
409 Magnolia Street  
Spartanburg, SC 29303

STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas  
Gordon G. Cooper, Master-In-Equity  
Trial Court Case No. 2018-CP-42-01540

Appellate Case No. \_\_\_\_\_

Karolee Russell, Individually, and as Personal Representative of the Estate of Kevin Brian Russell, is ..... Respondent.

v.

Richard A. Robertson, B&R Contracting, LLC, and Brian K. Bass ..... Defendants,

Of whom

Richard A. Robertson is ..... Appellant.

**NOTICE OF APPEAL**

Richard A. Robertson appeals the following orders of the Honorable Gordon G. Cooper:

1. The Order dated October 8, 2018, granting judgment by default against Defendant Richard A. Robertson, among others, ("Appellant") for Breach of Contract, Fraud, Breach of Contract Accompanied by a Fraudulent Act, Conversion, and violation of the South Carolina Unfair Trade Practices Act; and,
2. The Order dated April 11, 2019, denying Appellant's Motion to Reconsider.

Appellant timely filed a Motion to Reconsider the October 8, 2018 Order, and this appeal is taken from the Order of the Honorable Gordon W. Cooper, dated April 11, 2019, which denied Appellant's Motion to Reconsider the Order of October 8, 2018. Appellant received written notice of the Order denying the Motion to Reconsider on April 11, 2019.

May 9, 2019



C. Daniel Atkinson (SC Bar #72721)  
[datkinson@wilkeslaw.com](mailto:datkinson@wilkeslaw.com)

Wilkes Law Firm, P.A.  
127 Dunbar St., Suite 200  
Spartanburg, SC 29306  
(864) 591-1113

*Attorney for Appellant  
Richard A. Robertson*

Other Counsel of Record:

Paul A. McKee, III (SC Bar #77926)  
Hanover Title Agency  
409 Magnolia St.  
Spartanburg, SC 29303  
(864) 573-5149  
[pmckee@hanovertitle.com](mailto:pmckee@hanovertitle.com)

STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas  
Gordon G. Cooper, Master-In-Equity

Trial Court Case No. 2018-CP-42-01540

Appellate Case No. \_\_\_\_\_

Karolee Russell, Individually, and as Personal Representative of the Estate of Kevin Brian Russell, is ..... Respondent.

v.

Richard A. Robertson, B&R Contracting, LLC, and Brian K. Bass ..... Defendants,

Of whom

Richard A. Robertson is ..... Appellant.

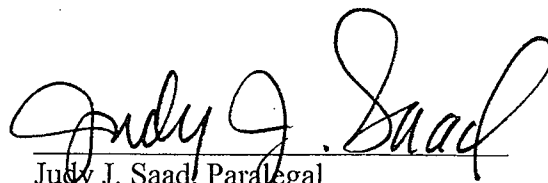
**PROOF OF SERVICE**

I certify that I have served the Notice of Appeal on the following counsel of record by depositing a copy of the Notice of Appeal it in the United States Mail, postage prepaid, on May, 9, 2019.

Paul A. McKee, III (SC Bar #77926)  
Hanover Title Agency  
409 Magnolia St.  
Spartanburg, SC 29303  
(864) 573-5149  
[pmckee@hanovertitle.com](mailto:pmckee@hanovertitle.com)

Brian K. Bass  
338 Mac Circle  
Lexington, SC 29073

B&R Contacting, LLC  
c/o Brian K. Brass, Registered Agent  
338 Mac Circle  
Lexington, SC 29073



Judy J. Saad, Paralegal  
[jsaad@wilkeslaw.com](mailto:jsaad@wilkeslaw.com)  
Wilkes Law Firm, P.A.  
127 Dunbar St., Suite 200  
Spartanburg, SC 29306

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )  
 )  
Karolee Russell, Individually, and as Personal )  
Representative of the Estate of Kevin Brian )  
Russell, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
B & R Contracting, LLC, Brian K. Bass, and )  
Richard A. Robertson )  
 )  
Defendants. )  
 )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
CASE NO. 2018-CP-42-1540

ORDER

This matter is before the court by Order of Reference dated June 21, 2018. A hearing was held on September 27, 2018; Present were Plaintiff, Karolee Russell, and her attorney Paul A. McKee, III. Defendants Brian K. Bass and Richard A. Robertson appeared *pro se*. After reviewing the record, the testimony of the parties, evidence presented, and the arguments of Defendants and Plaintiff's counsel, the Court makes the following findings of law and fact:

1. Plaintiff filed a Summons and Complaint on May 9, 2018 alleging multiple causes of action to include Breach of Contract, Fraud, Breach of Contract Accompanied by a Fraudulent Act, Conversion, and Violation of the South Carolina Unfair Trade Practices Act.
2. Defendants B&R Contracting, LLC, Brian K. Bass, and Richard A. Robertson were personally served on May 19, 2018.
3. No Defendants responded or otherwise pled and on June 20, 2018 Plaintiff filed an Affidavit of Default against all Defendants.
4. All Defendants were provided notice of the time, place, and date of the hearing.
5. This court has jurisdiction over the parties and the subject matter. Venue is proper in Spartanburg County.
6. Plaintiff and Defendants entered into a residential construction agreement on October 10, 2016 for the construction of a log-cabin style home.

7. Defendants represented to Plaintiff that they were licensed contractors in the State of South Carolina and were experienced in constructing log-cabin style homes.
8. Plaintiff tendered to Defendants a deposit in the amount of \$29,928.46.
9. Defendants failed to do any work pursuant to the construction agreement.
10. Defendants failed to apply for a building permit.
11. Plaintiff requested Defendants return the deposit and Defendants failed to do so.
12. Defendants failed to respond to a letter sent to Defendants by Plaintiff's Counsel requesting a return of the deposit.
13. Plaintiffs had to obtain a new loan in order to pay for a different builder to undertake construction of the residence and paid \$11,053.00 in closing costs and \$2,716.94 in private mortgage insurance for the period of May 1, 2017 through September 1, 2018.
14. No Defendants demanded enforcement an arbitration clause in the construction agreement.
15. Defendants materially breached or unjustifiably failed to perform pursuant to the terms of said contract.
16. As a direct and proximate result of Defendants' material breach of the contract, Plaintiff had to obtain a new loan resulting in Plaintiff paying closing costs private mortgage insurance.
17. Defendants' conduct is an unfair or deceptive act or practice in the conduct of trade or commerce in the State of South Carolina and is unlawful pursuant to S.C. Code Ann. § 39-5-20 (1976).
18. Defendants' use or employment of said unfair or deceptive practice was willful, malicious, knowing, and without justification. Further Defendants' use or employment of said unfair or deceptive practice touches and concerns trade and commerce in South Carolina and is capable of repetition.
19. Accordingly, Plaintiff should be entitled to judgment against Defendants, jointly and severally, for all causes of action set forth in the Complaint, to recover actual damages, special damages, treble damages, attorney's fees and costs.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff Karolee Russell, Individually, and as Personal Representative of the Estate of Kevin Brian Russell should have judgment against Defendants B & R Contracting, LLC, Brian K. Bass, and Richard A. Robertson for Breach of Contract, Fraud, Breach of Contract Accompanied by a Fraudulent Act, Conversion, and violation of the South Carolina Unfair Trade Practices Act.

Plaintiff is entitled to actual damages in the amount of \$29,928.46 against Defendants, jointly and severally. Further, Plaintiff is entitled to treble damages for Defendants' willful violations of the South Carolina Unfair Trade Practices Act, for a total of \$89,785.38.

Plaintiff is entitled to recover special damages in the amount of \$11,053.00 for the new loan closing costs and \$2,716.94 in private mortgage insurance for the period of May 1, 2017 through September 1, 2018, for a total of \$13,769.94, against Defendants, jointly and severally.

Plaintiff entitled to recover attorney's fees in the amount of \$2,500.00 and costs in the amount of \$704.12, for a total of \$3,204.12.

Therefore, Plaintiff Karolee Russell, Individually, and as Personal Representative of the Estate of Kevin Brian Russell is awarded a total judgment against Defendants B & R Contracting, LLC, Brian K. Bass, and Richard A. Robertson, jointly and severally, in the amount of \$106,759.44.

IT IS FURTHER THEREFORE ORDERED, ADJUDGED AND DECREED that the Clerk of Court shall mail a copy of this Order to the South Carolina Attorney General pursuant to S.C. Code Ann. § 39-5-140(b) (1976).

Judge's Electronic Signature Page to Follow

**FORM 4**

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

**JUDGMENT IN A CIVIL CASE**

CASE NO. 2018-CP-42-01540

Karolee Russell, Individually and as Personal...

B & R Contracting, LLC, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Paul A. McKee, III	Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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**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 : \_\_\_\_\_

<b>INFORMATION FOR THE JUDGMENT INDEX</b>		
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)
Karolee Russell, Individually and as Personal Representative Estate of Kevin Brian Russell	B & R Contracting, LLC	\$106,759.44
Karolee Russell, Individually and as Personal Representative Estate of Kevin Brian Russell	Brian K. Bass	\$106,759.44
Karolee Russell, Individually and as	Richard A. Robertson	\$106,759.44

Personal Representative Estate of Kevin Brian Russell		
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.

Circuit Court Judge	Judge Code	Date
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**For Clerk of Court Office Use Only**

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

PAUL A. MCKEE, III  
409 MAGNOLIA ST.  
SPARTANBURG SC 29303

B & R Contracting, LLC, Brian Keith Bass, Pro se  
5923 Edmond Hwy.  
Lexington, SC 29073

Brian Keith Bass, *Pro se*  
5923 Edmond Hwy.  
Lexington, SC 29073

Richard A. Robertson  
84 West Circle Dr.  
Lexington, SC 29072

\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

\_\_\_\_\_  
CLERK OF COURT

**Court Reporter:**

**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.

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Judge's Electronic Signature Page to Follow this Page.



Spartanburg Common Pleas

**Case Caption:** Karolee Russell vs B & R Contracting LLC etal  
**Case Number:** 2018CP4201540  
**Type:** Master/Order/Other

It is So Ordered

s/Judge Gordon G Cooper-3065

Electronically signed on 2018-10-08 14:54:49 page 7 of 7

ELECTRONICALLY FILED - 2019 MAY 09 4:17 PM - SPARTANBURG - COMMON PLEAS - CASE#2018CP4201540  
ELECTRONICALLY FILED - 2018 OCT 08 3:16 PM - SPARTANBURG - COMMON PLEAS - CASE#2018CP4201540

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	CASE NO. 2018-CP-42-1540
	)	
Karolee Russell, Individually, and as Personal Representative of the Estate of Kevin Brian Russell,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	ORDER DENYING DEFENDANT
	)	ROBERTSON'S MOTION TO RECONSIDER
B & R Contracting, LLC, Brian K. Bass, and Richard A. Robertson	)	
	)	
Defendants.	)	
	)	

The matter before the Court is Defendant Robertson's Motion for an Order altering or amending the Court's Order of October 8, 2018, entering default judgment against B&R Contracting, LLC, Brian K. Bass, and Richard A. Robertson, joint and severally. Plaintiff's Counsel, Paul A. McKee, III was present with Defendant Robertson's Counsel, C. Daniel Atkinson at the hearing of this Motion on February 25, 2019.

Plaintiff personally served Defendant Robertson with the Summons and Complaint on May 18, 2018. Plaintiff filed an affidavit of default against Defendant Robertson on June 20, 2018. On August 21, 2018, Plaintiff served Defendant Robertson with a notice of the final hearing, scheduled on Tuesday, September 11, 2018 at 11:00am. On the morning of September 11, 2018, Defendant Bass informed Plaintiff's Counsel that he was unavailable because of the evacuation order for Hurricane Florence and the hearing was rescheduled. On the same day, Plaintiff served Defendant Robertson with a second notice of hearing, scheduled for September 27, 2018.

At the February 25, 2019 hearing on Defendant Robertson's Motion to Reconsider, the Court evaluated Defendant's Motion to Set Aside Default, based on Robertson's request at the September 27, 2018 hearing that the Court grant him leave to file an Answer. Rule 55(c) permits a party to move to set aside the entry of default. The standard for granting relief from an entry of default under Rule 55(c) is mere "good cause." Rule 55(c), SCRCP. This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice. Once a

party has put forth a satisfactory explanation for the default, the trial court must also consider (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct. App. 1989). The trial court need not make specific findings of fact for each factor if there is sufficient evidentiary support on the record for the finding of the lack of good cause. *Dixon v. Besco Engineering, Inc.*, 320 S.C. 174, 179, 463 S.E.2d 636, 639 (Ct. App. 1995). A motion under Rule 55(c) is addressed to the sound discretion of the trial court. *Williams v. Stalnaker*, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994).

Appellate courts will reverse a trial court decision when there is an abuse of discretion, and “an abuse of discretion occurs when the decision is based upon an error of law or when the order is without evidentiary support.” *Stark Truss Co., Inc. v. Superior Constr. Co.*, 360 S.C. 503, 508, 602 S.E.2d 99, 101 (Ct. App. 2004).

Defendant Robertson stated that his reason for the default was because he thought Mr. Bass had filed a timely Answer for him. (Hr’g Tr. 10:1-7). The Court does not find Mr. Robertson’s explanation satisfactory.

Defendant Robertson’s first appearance in this matter was at the final hearing on October 8, 2018. At no time did Defendant Robertson communicate with Plaintiff’s Counsel prior to the hearing. He was personally served with the Summons and Complaint and mailed two notices of hearing over a period of approximately five months. At the final hearing, Defendant Robertson first asserted affirmative defenses when cross-examining Mrs. Russell. The Court finds that Defendant’s request for relief at the final hearing is untimely.

Defendant Robertson failed to timely Answer or otherwise plead, and, as a result of his failure to timely answer, does not deny the allegations in the Complaint. The Court found that, “[a]t this point there has been no denial that the deposit was made or any other denial.” (Hr’g Tr. 11:13-19).

The Court notes that the late Mr. Kevin B. Russell was the signator on the contract and that he is now deceased. The Court also finds that based upon the testimony presented and by Defendant’s failure to deny the allegations in the Complaint, evidence existed of a relationship between the co-Defendants and the construction project with Plaintiff.

Considering the foregoing, the Court finds that Defendant’s Motion to Alter or Amend Judgment is hereby DENIED.

March 7, 2019  
Spartanburg, South Carolina

Judge's Electronic Signature Page to Follow.

ELECTRONICALLY FILED 2019 MAR 09 4:12:31 PM - SPARTANBURG - COMMON PLEAS - CASE#2018CP4201540



Spartanburg Common Pleas

**Case Caption:** Karolee Russell vs B & R Contracting LLC etal  
**Case Number:** 2018CP4201540  
**Type:** Master/Order/Other

It is So Ordered

s/Judge Gordon G Cooper-3065

Electronically signed on 2019-04-11 14:15:32 page 4 of 4

ELECTRONICALLY FILED - 2019 May 09 4:17 PM - SPARTANBURG - COMMON PLEAS - CASE#2018CP4201540  
ELECTRONICALLY FILED - 2019 Apr 11 2:31 PM - SPARTANBURG - COMMON PLEAS - CASE#2018CP4201540



# 2018CP4201540 : Karolee Russell vs B & R Contracting LLC etal

Common Pleas

**Case Number** 2018CP4201540  
**Case Subtype** Breach of Cont 140  
**Filed Date** 05-09-2018  
**Status** Appeal

**Plaintiff** Kevin Russell et al  
**Defendant** B & R Contracting, Llc et al  
**Assigned Judge** Clerk Of Court C P, G S, And Family Court  
**File Type** Mediator-Jury

Show/Hide Participants

Name	Description	Type	File Date
Richard A. Robertson	Appeal/Notice of Appeal to Court of Appeals	Action	05-10-2019 04:17:35 PM
Richard A. Robertson	Appeal/Notice of Appeal to Court of Appeals-EX_1	Action	05-10-2019 04:17:35 PM
Richard A. Robertson	Appeal/Notice of Appeal to Court of Appeals-EX_2	Action	05-10-2019 04:17:35 PM
Richard A. Robertson	NEF(05-09-2019 04:17:35 PM) Appeal/Notice of Appeal to C...	Filing	05-09-2019 04:33:21 PM
Kevin Russell	NEF(04-11-2019 02:31:23 PM) Master/Order/Other	Filing	04-11-2019 02:31:37 PM
Kevin Russell	Master/Order/Other	Order	04-11-2019 02:31:23 PM
Kevin Russell	NEF(04-11-2019 01:22:42 PM) Proposed Master/Order/Other	Filing	04-11-2019 02:05:48 PM
Kevin Russell	Order/Order Cover Sheet \$25.00	Filing	04-11-2019 01:22:42 PM
Richard A. Robertson	NEF(02-22-2019 11:03:45 AM) Memo/Memo in Support	Filing	02-22-2019 11:16:42 AM
Richard A. Robertson	Memo/Memo in Support	Filing	02-22-2019 11:03:45 AM
Richard A. Robertson	Memo/Memo in Support-EX_1	Filing	02-22-2019 11:03:45 AM
Richard A. Robertson	NEF(02-07-2019 03:48:27 PM) Notice/Notice of Hearing and...	Filing	02-07-2019 03:52:44 PM
Richard A. Robertson	Notice/Notice of Hearing and Service	Filing	02-07-2019 03:48:27 PM
Kevin Russell	ADR/Alternative Dispute Resolution (Workflow)	Action	12-05-2018 04:07:40 PM
Richard A. Robertson	NEF(10-18-2018 01:48:06 PM) Motion/Reconsider	Filing	10-22-2018 10:15:53 AM
Karolee Russell	NEF(10-19-2018 09:43:04 AM) Service/Certificate Of Servi...	Filing	10-19-2018 11:37:57 AM
Richard A. Robertson	NEF(10-19-2018 10:59:52 AM) Service/Certificate Of Servi...	Filing	10-19-2018 11:05:19 AM
Richard A. Robertson	Service/Certificate Of Service	Filing	10-19-2018 10:59:52 AM
Karolee Russell	Service/Certificate Of Service	Filing	10-19-2018 09:43:04 AM
Richard A. Robertson	Motion/Reconsider	Motion	10-18-2018 01:48:06 PM
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Kevin Russell	Master/Order/Other	Order	10-08-2018 03:16:14 PM
Kevin Russell	Judgment/Judgment	Judgment	10-08-2018 03:15:34 PM
Richard A. Robertson	Judgment/Judgment	Judgment	10-08-2018 03:15:34 PM
Kevin Russell	Judgment/Judgment	Judgment	10-08-2018 03:15:10 PM
Brian K. Bass	Judgment/Judgment	Judgment	10-08-2018 03:15:10 PM
Kevin Russell	Judgment/Judgment	Judgment	10-08-2018 03:14:23 PM
B & R Contracting, Llc	Judgment/Judgment	Judgment	10-08-2018 03:14:23 PM
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Richard A. Robertson	Judgment/Judgment	Judgment	10-08-2018 03:13:45 PM
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Kevin Russell	Service/Certificate Of Service	Filing	09-11-2018	01:59:50 PM
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Karolee Russell	Master/Exhibit/Affidavit of Attorney Fees	Filing	09-05-2018	03:13:56 PM
Karolee Russell	Master/Exhibit/Affidavit of Costs	Filing	09-05-2018	03:13:56 PM
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Karolee Russell	Notice/Notice of Hearing	Filing	08-21-2018	08:47:08 AM
Karolee Russell	Certificate/Certificate of Service	Filing	08-21-2018	08:47:08 AM
Kevin Russell	NEF(08-01-2018 11:31:15 AM) Order/Substitution of Partie...	Filing	08-01-2018	11:31:37 AM
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Karolee Russell	Motion/Substitute Parties	Motion	07-31-2018	01:20:50 PM
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Karolee Russell	Motion/Substitute Parties-EX_2	Motion	07-31-2018	01:20:50 PM
Karolee Russell	Order/Order Cover Sheet \$25.00	Filing	07-31-2018	01:20:50 PM
Kevin Russell	NEF(06-20-2018 10:50:41 AM) Affidavit/Default	Filing	06-22-2018	01:38:17 PM
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Kevin Russell	Order/Referred to Master or Special Referee	Order	06-21-2018	01:05:28 PM
Kevin Russell	NEF(06-20-2018 10:57:31 AM) Proposed Order/Referred to M...	Filing	06-21-2018	11:23:48 AM
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Kevin Russell	Affidavit/Default	Filing	06-20-2018	10:50:41 AM
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Kevin Russell	Service/Affidavit Of Service	Filing	05-23-2018	11:42:21 AM
Kevin Russell	Service/Affidavit Of Service	Filing	05-23-2018	11:42:21 AM
Kevin Russell	Summons & Complaint	Filing	05-09-2018	04:07:40 PM
Kevin Russell	Summons & Complaint-EX_1	Filing	05-09-2018	04:07:40 PM

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM SPARTANBURG COUNTY  
Court of Common Pleas  
Gordon G. Cooper, Master-In-Equity  
Trial Court Case No. 2018-CP-42-01540

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Appellate Case No. 2019-000819

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Karolee Russell, Individually, and as Personal Representative of the Estate of Kevin Brian Russell, Respondent,

v.

B & R Contracting, LLC, Brian K. Bass, and Richard A. Robertson, Defendants,

Of Whom Richard A. Robertson is the Appellant.

**RECEIVED**

OCT 07 2019

SC Court of Appeals

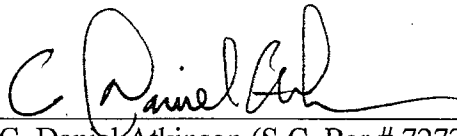
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**CERTIFICATE OF COUNSEL**

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The undersigned hereby certifies that the foregoing Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

September 25, 2019



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Spartanburg, SC 29306

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