

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM LANCASTER COUNTY  
In The Circuit Court

Brian Gibbons, Circuit Court Judge

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Appellate Case No. 2019-001243

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**SC Court of Appeals**

Katkams Ventures, LLC  
and Suprema, LLC,  
as successors in interest to 521, LLC, Respondents,

v.

No Limit, LLC, d/b/a No Limit Financial, LLC  
and Estate of Erich Simpson, Appellants.

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INITIAL BRIEF OF APPELLANTS

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John Martin Foster  
Post Office Box 106  
Rock Hill, South Carolina 29731  
(803) 324-8100  
Attorneys for Appellants

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22 AM.JUR.2D *Damages* § 678 (09/2002)

STATEMENT OF THE ISSUES ON APPEAL

- I. ARE THE APPELLANTS ENTITLED TO HAVE THE FUTURE RENTAL DAMAGES AWARDED REDUCED TO PRESENT VALUE?

STATEMENT OF THE CASE

In June, 2016, NO LIMIT, LLC, doing business as No Limit Financial, LLC leased commercial space in Indian Land, Lancaster County from 521, LLC, the assignor of the Respondents KATKAMS VENTURES, LLC and SUPREMA, LLC. ERICH SIMPSON, now deceased, executed a guaranty for the lease

Under the lease, base monthly rent was set as follows:

the first two months:	No rent
3 <sup>rd</sup> through the 12 <sup>th</sup> months:	\$ 2,296.00
12 <sup>th</sup> through the 24 <sup>th</sup> months:	\$ 2,364.88
25 <sup>th</sup> through the 36 <sup>th</sup> months:	\$ 2,435.67
37 <sup>th</sup> through the 48 <sup>th</sup> months:	\$ 2,508.38
49 <sup>th</sup> through the 60 <sup>th</sup> months:	\$ 2,583.96
Total:	\$59,081.42

Under the lease, NO LIMIT, LLC was also to pay a proportion of other upkeep or “CAM” fees in the amount of \$406.58 per month, as well as late charges and brokerage fees in the event of default.

In July, 2017, NO LIMIT, LLC vacated the premises and requested the lease be terminated.

In December, 2017, the Respondents re-rented the premises for a term beginning in February, 2018 at a lesser rent. Under the term of the re-rental, base monthly rent was set as follows:

months 1-2:	rent free period
months 3-14:	\$ 2,296.00
months 15-26:	\$ 2,364.88
months 27-38:	\$ 2,435.67

The new lease maintained the “CAM” fees in the same amount. ERICH SIMPSON, now deceased, became ill and the rental property was abandoned. [RECORD ON APPEAL, p. \_\_\_\_]

Suit was filed March 12<sup>th</sup>, 2018 for breach of the lease against NO LIMIT, breach of the guaranty against SIMPSON, and breach of good faith by both Appellants. The Respondents moved for summary judgment by Motion filed November 12<sup>th</sup>, 2018. By Memorandum to that Motion, they sought:

a. Unpaid Rent from July 1, 2017 to January 30, 2018:	\$16,209.76
b. Late Fees at five percent (5%) of the monthly rent from July 1, 2017 to January 30, 2018:	\$ 952.79
c. Past Due CAM fees:	\$ 2,846.06
d. Calculated Loss from Difference in Rent:	\$28,862.32
e. Broker Commission to re-let property:	\$ 3,406.36
f. <u>Attorney’s fees and costs:</u>	<u>\$11,584.24</u>
Total:	\$63,825.53 <sup>1</sup>

By their Memorandum in support of summary judgment and in argument, the Respondents sought the full difference between the old lease amounts and the lesser, new rent payments. [RECORD ON APPEAL, p. \_\_\_\_]

The Motion for summary judgment was heard January 28, 2019. Counsel for the Appellants argued for a reduction based on present value. By Order filed February 8, 2019, the Circuit Court awarded the full amount of \$ 63,825.53 recited in the Respondents’ Memorandum.

Appellants’ Rule 59 Motion was filed February 18, 2019 and heard on June 24, 2019. At hearing the Appellants submitted evidence of present value of the damages sought. The Motion to Reconsider was denied by Form 4 Order on June 25, 2019. Appeal was filed and served on July 25, 2019.

#### STANDARD OF REVIEW

This Court has held, in *Hunt v. Forestry Comm*, 358 S.C. 564, 595 S.E.2d 846 (Ct.App. 2004) as follows:

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<sup>1</sup> The true total is \$ 63,861.53; the amount recited above is the Respondent’s stated total, which was adopted by the Circuit Court.

While a trial court's findings of fact in a nonjury action at law should not be disturbed on appeal unless they are without evidentiary support, a reviewing court is free to decide questions of law with no particular deference to the trial court. See *Rickborn v. Liberty Life Ins. Co.*, 321 S.C. 291, 296, 468 S.E.2d 292, 295 (1996); *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 327, 534 S.E.2d 672, 675 (2000); see *Okatie River, L.L.C. v. Southeastern Site Prep, L.L.C.*, 353 S.C. 327, 334, 577 S.E.2d 468, 479 (2003) ("In an action at law, tried without a jury, the appellate court standard of review extends only to the correction of errors of law."); *State Farm Mut. Auto. Ins. Co. v. Moorner*, 330 S.C. 46, 51, 496 S.E.2d 875, 878 (Ct.App. 1998) ("In legal actions, our scope of review extends only to the correction of errors of law."). [Hunt v. Forestry Comm, 358 S.C. at 569, 595 S.E.2d at \_\_\_\_.]

The matter in question is an error of law.

#### ARGUMENT

The general rule is that an allowance for future damages must be reduced to its present worth. 22 AM.JUR.2D *Damages* § 678 (09/2002). The commentators of AMERICAN JURISPRUDENCE 2D state:

Therefore, the amount awarded for damage to be suffered in the future is such sum as, being put at interest, will amount (at the dates the damage will be suffered) to the sum the jury finds the plaintiff will lose in the future by reason of the alleged tort or breach of contract.

[*Id.*, citing *Hollwedel v. Duffy-Mott Co.*, 263 N.Y. 95, 188 N.E. 266 (N.Y. 1933); *Gallaspy v. Warner*, 324 P.2d 848, *reh. denied* (Okla. 1958); and *Look v. Werlin*, 590 S.W.2d 526 (Tex.Civ.App. Houston (1st Dist) (1979); the last case cited dealing with future rent payments on a commercial lease.]

The same rule has been applied by other Courts dealing with damages under a lease. See *720 Lex Acquisition LLC v. Guess? Retail, Inc.* 09-cv-7199 (AJN) (S.D.N.Y. 08/17/2015); *IN RE United American Financial Corp.*, 55 B.R. 117 (Bankr. E.D.Tenn. 1985); *Consumers United Ins. Co. v. Smith*, 644 A.2d 1328 (D.C. 1994)

The rule reducing future rental damages to present value has been followed in many South Carolina cases. See, *e.g.*, *Hamilton v. Martin*, 270 S.C. 223, 241 S.E.2d 569 (1978); *E & S Investment Corp. v. Richland Bowl, Inc.*, 264 S.C. 582, 216 S.E.2d 522 (1975); *Frampton v. S.C. Dep't of Transp.*, 406 S.C. 377, 752 S.E.2d 269 (Ct.App. 2014).

The Respondents produced no evidence as to present value of the claimed future rent other than the new rental amount. [RECORD ON APPEAL, p. \_\_\_\_] Taking that as given, the Respondents are entitled to the difference between the two rental amounts, reduced to present value as of the date of judgment.


The Appellants cited, and supplied to the Circuit Court, within the period allowed by that Court, the opinion of a Certified Public Accountant as to such value, which value was calculated at \$ 7,976.65, far beneath the \$ 28,862.32 awarded as a portion of the Order granting summary judgment. [RECORD ON APPEAL, p. \_\_\_\_]

#### CONCLUSION

The Appellants are entitled to judgment reducing that portion of the awarded damages to its present value, based upon the sole evidence presented.

February 3, 2020

Respectfully submitted,

  
John Martin Foster  
S.C. Bar No. 2086  
Post Office Box 106  
Rock Hill, SC 29731-6106  
803 324-8100  
Attorney for Appellants

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CERTIFICATE OF COUNSEL

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The undersigned certifies that the final Brief of Appellants complies with Rule 211(b), S.C.A.C.R.

May 11, 2018

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John Martin Foster  
Post Office Box 106  
Rock Hill, South Carolina 29731-6106  
(803) 324-8100  
Attorney for Appellant

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM LANCASTER COUNTY  
In The Circuit Court

Brian Gibbons, Circuit Court Judge

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Appellate Case No. 2019-001243

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Katkams Ventures, LLC  
and Suprema, LLC,  
as successors in interest to 521, LLC, Respondents,

v.

No Limit, LLC, d/b/a No Limit Financial, LLC  
and Estate of Erich Simpson, Appellants.

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CERTIFICATE OF SERVICE

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The undersigned, counsel for Appellants in the civil appeal above, hereby certifies that, on the date written below, he served copies of the following pleadings or documents in the above-captioned and numbered civil action:

Initial Brief of Appellants;  
Designation of Matter to Be Included in the Record on Appeal; and  
this Certificate of Service,


by depositing the same with the United States mail, with sufficient first class postage attached, properly addressed to the clerk of the Court, and with a copy also directed to the respective last known address(es) of those attorney(s) and/or persons set out below; or

by hand delivering copies of the same to the following persons, or by leaving the same at that person's office with that person's clerk or some other person in charge thereof, or by leaving it in a

conspicuous place therein; of if the office was closed or the person to be served has no office, by leaving a copy at that person's dwelling place or usual place of abode with some person of suitable age and discretion then residing therein. all pursuant to Rule 262, S.C.A.C.R.

Brian W. Tyson  
Law Office of Paul H. Bass, LLC  
16928 Lancaster Highway, Suite 109  
Charlotte, NC 28277  
Attorney for Respondent

February 3, 2020

  
\_\_\_\_\_  
John Martin Foster  
S.C. Bar No. 2086  
Post Office Box 106  
Rock Hill, South Carolina 29731-6106  
(803) 324-8100  
Attorney for Appellants

JOHN MARTIN FOSTER

*Attorney at law*

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The Guardian Building	PO Box 106	803 324 8100
223 East Main Street Suite 520	Rock Hill SC	803 324 8109 Fax
Rock Hill South Carolina 29730	29731-6106	jmfoster@comporium.net

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SC Court of Appeals

February 3, 2020

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

Re: Katkams Ventures, LLC *et al.*,  
v. No Limit, LLC *et al.*  
Appeallate Case No. 2019-001243

Dear Ms. Kitchings:

In accordance with Rules 208 and 209, S.C.A.C.R., enclosed herewith please find the original and one (1) copy each of:

- a) the Appellant's Initial Brief, and
- b) the Appellant's Designation of Matter to be Included in the Record on Appeal,

together with the Certificate of Service for the same in the above referenced case.

By copy of this letter, I am serving the attorneys for the Respondent with copies of the Brief and Designation, as evidenced by the Certificates of Service.

Please return the extra conformed copies to my office in the enclosed self-addressed, stamped envelope. As always, thank you, and your staff, for your assistance in these matters.

Sincerely yours,



John Martin Foster

jmf/  
enclosures

cc: Brian W. Tyson  
Law Office of Paul H. Bass, LLC  
16928 Lancaster Highway, Suite 109  
Charlotte, NC 28277  
704 644-1855  
Attorney for Respondent



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**John Martin Foster Attorney**  
 223 East Main St Suite 520  
 Post Office Box 106  
 Rock Hill SC 29731-6106

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**TO:**  
 THE HONORABLE JENNY ABBOTT KITCHINGS  
 CLERK OF THE COURT OF APPEALS  
 POST OFFICE BOX 11629  
 COLUMBIA, SC 29211

FEB 05 2020  
 SC Court of Appeals

