

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY  
COURT OF COMMON PLEAS

R. Lawton McIntosh, Circuit Court Judge

Case No.: 2017-CP-04-01382

**RECEIVED**  
FEB 27 2020  
SC Court of Appeals

Federal Logistics, Inc.....Respondent

v.

DMP Construction, LLC.....Appellant.

APPELLANT'S FINAL BRIEF

William Norman Epps III, #73158  
Post Office Box 2167  
Anderson, South Carolina 29622  
(864) 224-2111  
(864) 224-3536, fax  
Attorney for Appellant

**TABLE OF CONTENTS**

TABLE OF CONTENTS ..... i

TABLE OF AUTHORITIES .....ii

STATEMENT OF ISSUES ON APPEAL .....1

STATEMENT OF THE CASE .....2

STATEMENT OF THE FACTS.....3

ARGUMENTS

    I.    STANDARD OF REVIEW .....10

    II.   THE TRIAL COURT ERRED IN GRANTING A DIRECTED VERDICT IN  
          FAVOR OF THE RESPONDENT.....10

    III.  THE TRIAL COURT ERRED IN FAILING TO GRANT APPELLANT’S  
          MOTION TO VACATE AND/OR FOR A NEW  
          TRIAL.....12

CONCLUSION .....15

## TABLE OF AUTHORITIES

### I. CASES:

<i>Brown v. Orndorff</i> , 309 S.C. 320, 325, 422 S.E.2d 151, 154 (Ct. App. 1992).....	12
<i>Bultman v. Barber</i> , 277 S.C. 5, 7, 281 S.E.2d 791, 792 (1981).....	10
<i>Creech v. South Carolina Wildlife and Marine Resources Dep't</i> , 328 S.C. 24, 491 S.E.2d 571 (1997).....	10
<i>Graham v. Whitaker</i> , 282 S.C. 393, 321 S.E.2d 40 (1984).....	12
<i>Harvey v. Strickland</i> , 350 S.C. 303, 308-09, 566 S.E.2d 529, 532 (2002).....	10
<i>Quesinberry v. Rouppasong</i> , 331 S.C. 589, 594, 503 S.E.2d 717, 720 (1998).....	10
<i>Strange v. South Carolina Dep't of Highways &amp; Pub. Transp.</i> , 314 S.C. 427, 429-30, 445 S.E.2d 439, 440 (1994).....	10

**STATEMENT OF ISSUES ON APPEAL**

1. DID THE TRIAL COURT ERR IN GRANTING A DIRECTED VERDICT IN FAVOR OF THE RESPONDENT?
2. DID THE TRIAL COURT ERR IN FAILING TO GRANT APPELLANT'S MOTION TO VACATE AND/OR FOR A NEW TRIAL?

### **STATEMENT OF THE CASE**

On July 4, 2017, the Respondent filed a Summons and Complaint, Case No. 2017-CP-04-1382, in the Court of Common Pleas for Anderson County, State of South Carolina alleging two causes of action. The Appellant filed an Answer on September 4, 2017. A jury trial was held before the Honorable R. Lawton McIntosh on December 5, 2018. A directed verdict was granted in favor of the Respondent and the Order for Judgment was filed December 13, 2018 awarding judgment of \$86,946.74. The Appellant received written notice of this Order on December 13, 2018 and filed his Motion to Vacate and/or for a New Trial on December 19, 2018. Judge McIntosh denied the Appellant's Motion to Vacate and/or for a New Trial in an Order filed March 21, 2019. Appellant filed his Notice of Appeal on April 22, 2019.

## STATEMENT OF FACTS

Marko Petrovic is the president of DMP Construction, LLC (hereinafter referred to as "DMP"). (R. p. 179). DMP is in the business of providing services to hotels, providing millwork countertops and some exterior finishes. (R. p. 179). On November 16, 2015, Petrovic signed a credit application with GlobalTranz Enterprises, Inc., through Rich Fair of Federal Logistics, Inc. (hereinafter referred to as "Federal Logistics"). (R. p. 180). (R. p. 257). That credit application referred to Freight Broker Agreement Terms and Conditions that was agreed to by DMP on the date the credit application was signed. (R. pp. 180 and 181). (R. pp. 258-262). The Agreement in paragraph 5 stated that past due invoices are subject to a service charge or interest at the rate of one-and-a-half percent a month. (R. p. 111). (Id.). Paragraph 7 (iiii) states if over due invoices exceed 30 days with non payment from Customer, rates may reflect original cost with no discount. Any dispute by customer of any invoice issued by GlobalTranz/Federal Logistics shall be made in writing, specifically indicating the nature of the dispute and made within 30 days from the date of the invoice. (R. pp. 111 and 112). (Id.).

Federal Logistics provided freight services for DMP for approximately a year and a half. (R. p. 113). These services were stopped after May of 2016 after non payment by DMP. (R. p. 113). Federal Logistics sent 11 invoices from February of 2016 to May 15, 2016 to DMP. Each invoice in Plaintiff's Exhibit 3 stated a late daily fee of 3.5% on outstanding balance for any payments past due date as reflected on invoice. (R. pp. 263-273). Rich Fair testified that he has charged a 3.5% daily fee on past due amounts in the past but he did not in this matter. (R. pp. 129 and 130). DMP made a payment of \$1,000.00 on invoice #1065. (Id.). Around this time DMP was involved in litigation with an unrelated client that as a result made it difficult to pay their bills. (R. p. 183). Rich

Fair of Federal Logistics sent and received emails with DMP from June 14, 2016 through August 3, 2016 regarding the outstanding invoices due from DMP. (R. pp. 275-278). On Rich Fair's email to DMP regarding outstanding invoices on June 14, 2016 the subject line referenced **Past due Invoice and daily interest calculated**. Rich Fair's email represented a current balance owed on the outstanding invoices **in the amount of \$16,421.28 and has a current daily interest charge of \$246.32**. Plaintiff's Exhibit 5 referenced an attached statement as of today reflecting each invoices original balance, however that statement was not submitted with this Exhibit or provided by Federal Logistics. (R. pp. 275-278). This email was sent as a reply to an email by DMP requesting contact from Federal Logistic regarding the past due amount and daily interest accruing. (Id.). DMP sent an email on July 4, 2016 requesting a current statement showing each invoice and the interest owed Federal Logistics. (Id.). Rich Fair of Federal Logistics responded with an email of an updated statement which was not submitted with this Exhibit or provided by Federal Logistics. (Id.) Rich Fair of Federal Logistics also submitted an email on August 3, 2016 to DMP with an updated invoice and interest through August 2, 2016. However, this statement was not submitted with this Exhibit or provided by Federal Logistics. (Id.). Federal Logistics did provide a statement to DMP as of October 17, 2016 that was entered as Plaintiff's Exhibit 4 and reflected the following:

DMP Construction Statement  
As of 10/17/2016

Invoice #	Due Date	Days Overdue	Original Amount Due with Discount	Amount Due without Discount for Non Payment	Payment From DMP	Remaining Balance Due
1065	2/13/2016	247	\$2,000.00	\$3,564.40	\$1,000.00	\$2,564.40
1071	3/5/2016	226	\$2,100.00	\$6,758.10	\$0.00	\$6,758.10
1072	2/18/2016	242	\$295.36	\$395.81	\$0.00	\$395.81
1073	2/18/2018	242	\$346.05	\$866.89	\$0.00	\$866.89

1074	2/18/2016	234	\$2,655.71	\$8,411.66	\$0.00	\$8,411.66
1075	2/26/2016	234	\$1,250.00	\$7,954.40	\$0.00	\$7,954.40
1076	3/5/2016	226	\$608.70	\$5,785.25	\$0.00	\$5,785.25
1086	3/23/2016	208	\$1,649.20	\$3,884.40	\$0.00	\$3,884.40
1088	3/26/2016	205	\$2,100.00	\$6,758.10	\$0.00	\$6,758.10
1091	4/7/2016	193	\$2,800.00	\$9,156.00	\$0.00	\$9,156.00
1099	5/15/2016	155	\$616.26	\$1,842.23	\$0.00	\$1,842.23
Totals			\$16,421.28	\$55,377.24	\$1,000.00	\$54,377.24

(R. p. 274).

Marko Petrovic testified that a lot of the communication with Federal Logistics regarding these invoices was between Esther, his sister and employee, and Rich Fair regarding DMP's problems with the invoices. Petrovic testified that when he saw the invoices it was an issue and was not prepared to pay the amounts because he did not think it was fair and the amounts were not industry standard. He testified to his concern that some of the invoices were marked up substantially more than the originally invoiced amount and that he was being charged interest at a daily rate. (R. p. 187 and R. pp 189 through 191).

During the trial of this case on December 5, 2018 Rich Fair of Federal Logistics for the first time testified to and provided invoices that referenced the discounted amounts and non-discounted amounts for Invoice #s 1065, 1071, 1072, 1073, 1074, 1075, 1076, 1086, 1088, 1091 and 1099. (R. pp. 279-310). Also during the trial of this case Rich Fair of Federal Logistics had a file folder which contained Plaintiff's Exhibit 6 and also Defendant's Exhibit 3. Defendant's Exhibit 3 was a DMP Construction Statement as of July 13, 2016 and detailed the following:

DMP Construction Statement  
As of 7/13/2016

Invoice #	Due Date	Days Overdue	Original Amount Due	Late Interest Fees @ 1.5% per day	Total Due Now
1065	2/13/2016	171	\$2,000.00	\$5,130.00	\$7,130.00
1071	3/5/2016	150	\$2,100.00	\$4,725.00	\$6,825.00
1072	2/18/2016	166	\$295.36	\$735.45	\$1,030.81
1073	2/18/2018	166	\$346.05	\$861.66	\$1,207.71
1074	2/18/2016	166	\$2,655.71	\$6,612.72	\$9,268.43
1075	2/26/2016	158	\$1,250.00	\$2,962.50	\$4,212.50
1076	3/5/2016	150	\$608.70	\$1,369.58	\$1,978.28
1086	3/23/2016	132	\$1,649.20	\$3,265.42	\$4,914.62
1088	3/26/2016	129	\$2,100.00	\$4,063.50	\$6,163.50
1091	4/7/2016	117	\$2,800.00	\$4,914.00	\$7,714.00
1099	5/15/2016	79	\$616.26	\$730.27	\$1,346.53
Totals			\$16,421.28	\$35,370.09	\$51,791.37

(R. p. 313).

On cross examination, Rich Fair of Federal Logistics, testified as to Defendant's Exhibit 3 stating that he was working on a spreadsheet in Excel, that he was not proficient at it and he knew that it was not right. That he had wrong things in the wrong column and that it never went anywhere. He further testified that he did not send that document to anybody and it stayed in the file. (R. pp. 167 though 174).

Marko Petrovic testified that he admitted DMP owed Federal Logistics the amount of \$16,421.28 plus 1.5% per month for 30 months since May of 2016. That interest amount would be \$7,389.60, for a total amount due to Federal Logistics of \$23,810.88. The trial court granted a directed verdict in favor of Federal Logistics against DMP for the principal sum of \$54,377.24, plus interest of \$24,469.50, plus reasonable attorney fees of \$8,100.00, making a total of \$86,946.74 dollars. (R. pp. 1-5).

The trial court in granting the directed verdict in favor of Federal Logistics found that Defendant's Exhibit 3 meant nothing. "It's just something he had in his worksheet. Didn't send it

to you. Didn't try to enforce it. It doesn't mean a thing". (R. p. 208). The trial court further stated "I know what the document says. It's a worksheet that he never sent your client. It means nothing. I mean, it just has no relevance. It doesn't matter. I'm telling you, it doesn't matter. It did not go out to this Defendant". (R. p. 209). The trial court also stated, "That document doesn't mean anything, Mr. Epps. Doesn't mean anything at all. (R. p. 211). After the trial court granted the directed verdict, it found, "If on the other hand, I'm going to tell you this, I do not know procedurally how proper it is, but in taking this case away from the jury, if you find that there has been actual inclusion of this daily interest in the figures, then by way of timely filed post-trial motion, I'm going to grant his relief, okay, so be aware that may happen". (R. p. 225). The trial court told the jury "There's no evidence -- there's claims of inclusion in the pretrial 1.5 percent interest on amounts due, but there's never any billings of the same. So I have granted judgment in favor of the plaintiff's in the amount that they claimed, so you don't have to decide this case". (R. p. 228).

Subsequently, DMP was able to retrieve the original e-mails from Rich Fair of Federal Logistics to DMP as well as the original attachments regarding the outstanding invoices sent directly to DMP. The complete original email dated June 14, 2016, which was entered as Plaintiff's Exhibit 5, which stated the following:

I am following up with you regarding the outstanding invoices DMP still owes Federal Logistics. Some of these are now over 100 days past due. As communicated previously, these overdue balances are subject to a 1.5% late fee per day they are overdue. As such, the original total balance of \$16,421.28 has a current daily interest charge of \$246.32. I have attached a statement as of today reflecting each invoice's original balance, # of days overdue, and the corresponding late fees now also due as a result of non-payment.

(R. pp. 27-73).

The statement attached to the email on June 14, 2016 sent to DMP referenced invoice numbers; 1065, 1071, 1072, 1073, 1074, 1075, 1076, 1086, 1088, 1091 and 1099, with the original amount due plus interest charge of 1.5% per day. (Id.). This attachment states as follows:

DMP Construction Statement  
As of 06/14/2016

Invoice #	Due Date	Days Overdue	Original Amount Due	Late Interest Fees @ 1.5% per day	Total Due Now
1065	2/13/2016	122	\$2,000.00	\$3,660.00	\$5,660.00
1071	3/5/2016	101	\$2,100.00	\$3,181.50	\$5,281.50
1072	2/18/2016	117	\$295.36	\$518.36	\$813.72
1073	2/18/2018	117	\$346.05	\$607.32	\$959.37
1074	2/18/2016	117	\$2,655.71	\$4,660.77	\$7,316.48
1075	2/26/2016	109	\$1,250.00	\$2,043.75	\$3,293.75
1076	3/5/2016	101	\$608.70	\$922.18	\$1,530.88
1086	3/23/2016	83	\$1,649.20	\$2,053.25	\$3,702.45
1088	3/26/2016	80	\$2,100.00	\$2,520.00	\$4,620.00
1091	4/7/2016	68	\$2,800.00	\$2,856.00	\$5,656.00
1099	5/15/2016	30	\$616.26	\$277.32	\$893.58
Totals			\$16,421.28	\$23,300.45	\$39,721.73

(R. pp. 27-73).

The next email from Rich Fair of Federal Logistics to DMP dated August 3, 2016 sending an updated invoice and interest up through August 2, 2016. Again, the statement to DMP dated July 13, 2016, referenced the above invoice numbers with the original amount due plus additional late interest fees of 1.5% a day. It stated as follows:

DMP Construction Statement  
As of 7/13/2016

Invoice #	Due Date	Days Overdue	Original Amount Due	Late Interest Fees @ 1.5% per day	Total Due Now
1065	2/13/2016	171	\$2,000.00	\$5,130.00	\$7,130.00
1071	3/5/2016	150	\$2,100.00	\$4,725.00	\$6,825.00

1072	2/18/2016	166	\$295.36	\$735.45	\$1,030.81
1073	2/18/2018	166	\$346.05	\$861.66	\$1,207.71
1074	2/18/2016	166	\$2,655.71	\$6,612.72	\$9,268.43
1075	2/26/2016	158	\$1,250.00	\$2,962.50	\$4,212.50
1076	3/5/2016	150	\$608.70	\$1,369.58	\$1,978.28
1086	3/23/2016	132	\$1,649.20	\$3,265.42	\$4,914.62
1088	3/26/2016	129	\$2,100.00	\$4,063.50	\$6,163.50
1091	4/7/2016	117	\$2,800.00	\$4,914.00	\$7,714.00
1099	5/15/2016	79	\$616.26	\$730.27	\$1,346.53
Totals			\$16,421.28	\$35,370.09	\$51,791.37

(R. pp. 27-73). This was the DMP Construction Statement that Rich Fair testified he never sent to DMP. (R. pp. 167 though 174).

The next email attached is an email from Rich Fair, dated August 4, 2016, to Jeremy@bbcollects.com and Ester Barakat of DMP Construction, LLC, regarding collection of the invoices referenced herein, as well as paperwork to backup the invoices. The statement regarding the amounts owed on August 4, 2016, was the DMP Construction Statement as of July 13, 2016, referencing the original amount due with late interest fees of 1.5% per day. (Id.). The final email from Rich Fair, dated October 17, 2016, to DMP with a current statement of October 17, 2016, which for the first time references a discount but also includes late interest S.C. fees of 8.75%. (Id.).

DMP timely filed its post trial motion which was denied by the trial court. (R. pp. 232-256). (R. pp. 6-9).

## ARGUMENTS

### STANDARD OF REVIEW

In ruling on a motion for directed verdict, the trial court is required to view the evidence and the inferences which reasonably can be drawn therefrom in the light most favorable to the party opposing the motion and to deny the motion where either the evidence yields more than one inference or its inference is in doubt. *Strange v. South Carolina Dep't of Highways & Pub. Transp.*, 314 S.C. 427, 429–30, 445 S.E.2d 439, 440 (1994). When considering directed verdict motions, neither the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence. *Creech v. South Carolina Wildlife and Marine Resources Dep't*, 328 S.C. 24, 491 S.E.2d 571 (1997). “In essence, we must determine whether a verdict for a party opposing the motion would be reasonably possible under the facts as liberally construed in his favor.” *Bultman v. Barber*, 277 S.C. 5, 7, 281 S.E.2d 791, 792 (1981). “If the evidence is susceptible to more than one reasonable inference, the case should be submitted to the jury.” *Quesinberry v. Rouppasong*, 331 S.C. 589, 594, 503 S.E.2d 717, 720 (1998). *Harvey v. Strickland*, 350 S.C. 303, 308–09, 566 S.E.2d 529, 532 (2002).

### **II. THE TRIAL COURT ERRED IN GRANTING A DIRECTED VERDICT IN FAVOR OF THE RESPONDENT**

The trial court erred in finding that there was no issue of fact to be determined by the jury and directing a verdict on the amount due to Federal Logistics. The trial court found that "Defendant asserts that the non-discounted charges include interest at a daily rate not allowed by the contract, however there is no evidence in the record that the non-discounted charges are anything other the full cost of the shipments without discount". (R. pp. 1-5). However entered

into evidence was a email from Rich Fair of Federal Logistics to DMP on June 14, 2016 stating that the amount due Plaintiff was **\$16,421.28 with a daily interest charge of \$246.32**. (R. p. 275). Further said e-mail's subject line stated "**Past due invoice and daily interest calculated**". (emphasis added). Also entered into evidence was a document created by Federal Logistics and in possession of Federal Logistics that it failed to disclose to DMP during the pendency of this case that stated that Federal Logistics was charging the individual invoices to DMP, a daily late interest rate of 1.5 %. ( R. p. 313). Defendant's Exhibit 3 detailed the following:

DMP Construction Statement

*As of 7/13/2016*

Invoice #	Due Date	Days Overdue	Original Amount Due	Late Interest Fees @ 1.5% per day	Total Due Now
1065	2/13/2016	171	\$2,000.00	\$5,130.00	\$7,130.00
1071	3/5/2016	150	\$2,100.00	\$4,725.00	\$6,825.00
1072	2/18/2016	166	\$295.36	\$735.45	\$1,030.81
1073	2/18/2018	166	\$346.05	\$861.66	\$1,207.71
1074	2/18/2016	166	\$2,655.71	\$6,612.72	\$9,268.43
1075	2/26/2016	158	\$1,250.00	\$2,962.50	\$4,212.50
1076	3/5/2016	150	\$608.70	\$1,369.58	\$1,978.28
1086	3/23/2016	132	\$1,649.20	\$3,265.42	\$4,914.62
1088	3/26/2016	129	\$2,100.00	\$4,063.50	\$6,163.50
1091	4/7/2016	117	\$2,800.00	\$4,914.00	\$7,714.00
1099	5/15/2016	79	\$616.26	\$730.27	\$1,346.53
Totals			\$16,421.28	\$35,370.09	\$51,791.37

(Id). Further both the discounted invoices and non-discounted invoices that were submitted in Plaintiff's Exhibit 3 and Plaintiff's Exhibit 4 state that failure to timely pay incurs a daily 3.5% late charge.

Rich Fair testified that he has charged a 3.5% daily fee on past due amounts in the past but he did not in this matter. (R. pp. 129 and 130). That coupled with the gross discrepancy

between the original amounts owed and the non-discounted amounts should have been submitted to the jury. The trial court is not at liberty to pass upon the veracity of the witnesses and determine the case according to its view of the weight of the evidence. *See Brown v. Orndorff*, 309 S.C. 320, 325, 422 S.E.2d 151, 154 (Ct. App. 1992)(We are not at liberty to pass upon the veracity of the witnesses and determine the case according to our view of the weight of the evidence). *See also Graham v. Whitaker*, 282 S.C. 393, 321 S.E.2d 40 (1984).

In this case, the trial court in deciding the Federal Logistic's directed verdict motion, impermissibly commented on the credibility of Rich Fair of Federal Logistics and assigned weight to the above referenced evidence, particularly Defendant's Exhibit 3. The trial court in granting the directed verdict in favor of Federal Logistics found that Defendant's Exhibit 3 meant nothing. "It's just something he had in his worksheet. Didn't send it to you. Didn't try to enforce it. It doesn't mean a thing". (R. p. 208). The trial court made this finding multiple times. (R. pp. 208, 209, 211, 212 and 228). The trial court further found that Plaintiff's Exhibit 5, specifically, the email from Rich Fair of Federal Logistics to DMP on June 14, 2016 stating that the amount due Plaintiff was \$16,421.28 with a daily interest charge of \$246.32., and that Rich Fair testified that he has charged other people daily interest rates of 3.5%, had no relevance. (R. pp. 218-219).

The evidence submitted at trial taken in light most favorable to DMP was susceptible to more than one reasonable inference, and the case should have been submitted to the jury.

## **II. THE TRIAL COURT ERRED IN FAILING TO GRANT APPELLANT'S MOTION TO VACATE AND/OR FOR A NEW TRIAL**

The Order of Judgment was entered December 13, 2018 granting judgment against the Defendant, DMP Construction, LLC, for the principal sum of \$54,377.24, plus interest of

\$24,469.50, plus reasonable attorney fees of \$8100.00, making a total of eighty-six thousand nine hundred forty six and 74/100 (\$86,946.74) dollars. The trial court advised the parties at the conclusion of the trial on December 5, 2018 that if evidence was found that Federal Logistics charged DMP impermissible daily interest on the invoices at issue that the Court would vacate its judgment, grant the DMP's requested relief. (R. p. 225). Federal Logistics at trial entered e-mails from them to DMP regarding past due invoices with attached current statements of amounts due to Federal Logistics. (R. pp. 275-278). The only statement entered into evidence from the Federal Logistics was from October 17, 2016 to DMP in the amount of \$54,377.24. (R. p. 274).

Subsequently, DMP was able to retrieve the original e-mails from Rich Fair of Federal Logistics to DMP as well as the original attachments regarding the outstanding invoices sent directly to DMP. The complete original email dated June 14, 2016, which was entered as Plaintiff's Exhibit 5, which stated the following:

I am following up with you regarding the outstanding invoices DMP still owes Federal Logistics. Some of these are now over 100 days past due. As communicated previously, these overdue balances are subject to a 1.5% late fee per day they are overdue. As such, the original total balance of \$16,421.28 has a current daily interest charge of \$246.32. I have attached a statement as of today reflecting each invoice's original balance, # of days overdue, and the corresponding late fees now also due as a result of non-payment.

(R. pp. 27-73).

The statement attached to the email on June 14, 2016 sent to DMP referenced invoice numbers; 1065, 1071, 1072, 1073, 1074, 1075, 1076, 1086, 1088, 1091 and 1099, with the original amount due plus interest charge of 1.5% per day. (Id.). This attachment states as follows:

DMP Construction Statement

*As of 06/14/2016*

Invoice #	Due Date	Days Overdue	Original Amount Due	Late Interest Fees @ 1.5% per day	Total Due Now
1065	2/13/2016	122	\$2,000.00	\$3,660.00	\$5,660.00
1071	3/5/2016	101	\$2,100.00	\$3,181.50	\$5,281.50
1072	2/18/2016	117	\$295.36	\$518.36	\$813.72
1073	2/18/2018	117	\$346.05	\$607.32	\$959.37
1074	2/18/2016	117	\$2,655.71	\$4,660.77	\$7,316.48
1075	2/26/2016	109	\$1,250.00	\$2,043.75	\$3,293.75
1076	3/5/2016	101	\$608.70	\$922.18	\$1,530.88
1086	3/23/2016	83	\$1,649.20	\$2,053.25	\$3,702.45
1088	3/26/2016	80	\$2,100.00	\$2,520.00	\$4,620.00
1091	4/7/2016	68	\$2,800.00	\$2,856.00	\$5,656.00
1099	5/15/2016	30	\$616.26	\$277.32	\$893.58
Totals			\$16,421.28	\$23,300.45	\$39,721.73

(R. pp. 27-73).

The next email from Rich Fair of Federal Logistics to DMP dated August 3, 2016 sending an updated invoice and interest up through August 2, 2016. Again, the statement to DMP dated July 13, 2016, referenced the above invoice numbers with the original amount due plus additional late interest fees of 1.5% a day. It stated as follows:

DMP Construction Statement

*As of 7/13/2016*

Invoice #	Due Date	Days Overdue	Original Amount Due	Late Interest Fees @ 1.5% per day	Total Due Now
1065	2/13/2016	171	\$2,000.00	\$5,130.00	\$7,130.00
1071	3/5/2016	150	\$2,100.00	\$4,725.00	\$6,825.00
1072	2/18/2016	166	\$295.36	\$735.45	\$1,030.81
1073	2/18/2018	166	\$346.05	\$861.66	\$1,207.71
1074	2/18/2016	166	\$2,655.71	\$6,612.72	\$9,268.43

1075	2/26/2016	158	\$1,250.00	\$2,962.50	\$4,212.50
1076	3/5/2016	150	\$608.70	\$1,369.58	\$1,978.28
1086	3/23/2016	132	\$1,649.20	\$3,265.42	\$4,914.62
1088	3/26/2016	129	\$2,100.00	\$4,063.50	\$6,163.50
1091	4/7/2016	117	\$2,800.00	\$4,914.00	\$7,714.00
1099	5/15/2016	79	\$616.26	\$730.27	\$1,346.53
Totals			\$16,421.28	\$35,370.09	\$51,791.37

(R. pp. 27-73). This was the DMP Construction Statement that Rich Fair testified he never sent to DMP, when in fact he did send it. (R. pp. 167 though 174).

The next email is an email from Rich Fair, dated August 4, 2016, to Jeremy@bbcollects.com and Ester Barakat of DMP Construction, LLC, regarding collection of the invoices referenced herein, as well as paperwork to backup the invoices. The statement regarding the amounts owed on August 4, 2016, was the DMP Construction Statement as of July 13, 2016, referencing the original amount due with late interest fees of 1.5% per day. (Id.). The final email from Rich Fair, dated October 17, 2016, to DMP with a current statement of October 17, 2016, which for the first time references a discount but also includes late interest S.C. fees of 8.75%. (Id.). (R. pp. 232-256).

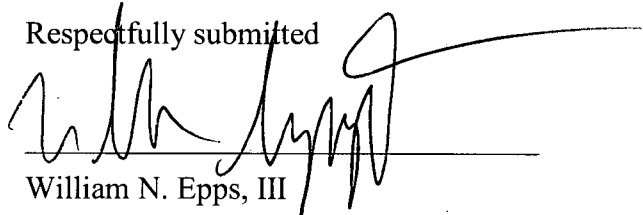
Evidence was submitted by timely post trial motion that showed Federal Logistics did bill DMP late interest fees of 1.5% per day. The trial court erred in failing to vacate the judgment or grant DMP a new trial.

### **CONCLUSION**

Based on the above, DMP respectfully asks that the trial court's grant of a directed verdict be reversed and that a new trial be granted, or that this court reduce the judgment to the amount

of \$16,421.28 plus 1.5% per month for 30 months since May of 2016. That interest amount would be \$7,389.60, for a total amount due to Federal Logistics of \$23,810.88.

Respectfully submitted

A handwritten signature in black ink, appearing to read 'William N. Epps, III', written over a horizontal line.

William N. Epps, III

EPPS & EPPS. LLC

230 W. Whitner Street

Post Office Box 2167

Anderson, South Carolina 29622

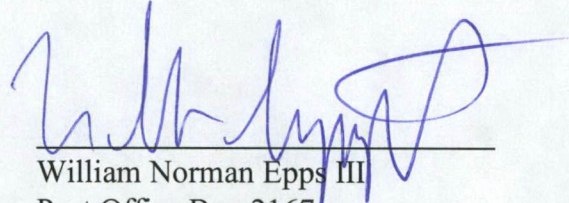
(864) 224-2111

ATTORNEY FOR THE APPELLANT

February 21, 2020

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Appellant's Final Brief is in compliance with Rule 211(b) SCACR.



William Norman Epps III  
Post Office Box 2167  
Anderson, South Carolina 29622  
(864) 224-2111  
Attorney for Appellant

February 21, 2020

**RECEIVED**  
FEB 27 2020  
SC Court of Appeals