

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

159 Welborn Street, LLC,

Plaintiff,

v.

Harold Means,

Defendant.

IN THE COURT OF COMMON PLEAS

Case No. 2019CP2300775

Order

**RECEIVED**

**Aug 21 2020**

**SC Court of Appeals**

This matter came before the Court for Damages hearing on June 29, 2020 and was conducted pursuant to the Order of the South Carolina Supreme Court for the "Operation of the Trial Courts During the Coronavirus Emergency" issued on April 3, 2020 (as amended) (hereinafter "Emergency Order"). The parties consented to holding the hearing via videoconference with a Court Reporter. Participating in the hearing were George Campbell on behalf of the Plaintiff and Clayton Jennings on behalf of the Defendant. Having considered the arguments of the parties, the record in this case, and being otherwise advised in the premises, IT IS HEREBY ORDERED AS FOLLOWS:

**BACKGROUND**

1. Plaintiff filed its Complaint on February 15, 2019, alleging actions for private and public nuisance occurring at a house owned by Defendant Harold Means at 18 Monroe Street in Greenville South Carolina ("18 Monroe Street"), which was across the street from two apartment buildings owned by Plaintiff: City View Apartments, and Cedar Grove Apartments.

2. On February 19, 2019, Plaintiff served Mr. Means with the Complaint via personal service, making Mr. Means' response due on March 21, 2019.

3. Mr. Means failed to respond to the Complaint by March 21, 2019, so Plaintiff moved for default judgment.

4. On April 1, 2019, the Court granted Plaintiff's motion as to liability and set a hearing on damages.

5. Following a May 20, 2019 damages hearing, this Court entered final default judgment on June 3, 2019 in the amount of \$144,180.

6. On January 13, 2020, Mr. Means moved to set aside the default judgment.

7. Following a hearing on the motion, the Court entered an order on February 27, 2020 declining to set aside the default judgment but ordering a re-hearing on damages.

8. On June 29, 2020, the Court held the damages re-hearing, which was attended by in addition to counsel referenced above: Mr. Means; Plaintiff's authorized representative; Mr. Ron Mogard, the former property manager of City View Apartments; Ms. Springer, the former property manager of Cedar Grove Apartments; and two other individuals who did not testify.

9. Mr. Mogard testified, in relevant part:

- a. That he managed City View Apartments during the time period December 2010-December 2014;
- b. That, during that four-year period, approximately three apartments remained vacant on a monthly basis as a result of the nuisance activities at 18 Monroe Street; and
- c. That the monthly rent at City View Apartments ranged between \$425 and \$595 during that time period.

10. Ms. Springer testified, in relevant part:

- a. That she, in her capacity as an employee of Vista Capital Management Group, managed Cedar Grove Apartments from September 2017 through the end of January 2019;

- b. That, during that 16-month period, between three and five apartments remained vacant on a monthly basis as a result of the nuisance activities at 18 Monroe Street; and
- c. That the loss in rental for this period was between \$1950 and \$3250 at Cedar Grove Apartments for an average of \$2275 per month.

11. I find that Plaintiff has proved, by a preponderance of the evidence, damages in the amount of **\$109,840** as follows:

- a. \$73,440 in lost rent from the City View Apartments, based on three vacancies per month for four years at an average rental rate of \$510 per month; and
- b. \$36,400 in lost rent from the Cedar Grove Apartments, based on an average loss of \$2275 for 16 months.

12. During oral argument, Mr. Means' counsel suggested that Plaintiff's damages should be limited by the 3-year statute of limitations for nuisance. However, Mr. Means waived any purported statute-of-limitations defense by virtue of his default, which the Court declined to set aside in its June 3, 2019 order. *See Ammons v. Hood*, 341 S.E.2d 816, 818 (S.C. App. 1986) ("A defendant who wishes to raise . . . a defense must do so affirmatively."); *Palmetto Constr. Group, LLC v. Restoration Specialists, LLC*, 834 S.E.2d 204, 208 (S.C. App. 2019) (holding that affirmative defense "may be waived by failing to timely assert it under the rules of civil procedure").

13. Accordingly, the Clerk of Court is instructed to enter FINAL DEFAULT JUDGMENT in favor of 159 Welborn Street, LLC and against Defendant Harold Means for a total of **\$109,840**. Plaintiff is entitled to post-judgment interest in accordance with applicable law. See S.C. Code § 34-31-20(B). IT IS SO ORDERED.

*E-Signature of Judge Gravely to follow*

Greenville, South Carolina

July 6, 2020

SCRCF Form 4C (02/2017)

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2019-CP-2300775

RECEIVED

159 Welborn Street, LLC

Harold Means

Aug 21 2020

PLAINTIFF(S)

DEFENDANT(S)

SC Court of Appeals

Submitted by: George Campbell	Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

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
- STAYED DUE TO BANKRUPTCY**
- 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 :

INFORMATION FOR THE JUDGMENT INDEX		
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)
159 Welborn Street, LLC	Harold Means	\$109,840.00
If applicable, describe the property, including tax map information and address, referenced in the order: 18 Monroe Street, Greenville SC; Tax Map # 0149001000301		

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



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Greenville Common Pleas

**Case Caption:** 159 Wellborn Street LLC vs. Harold Means  
**Case Number:** 2019CP2300775  
**Type:** Order/Judgment and Form 4

So Ordered

s/ Honorable Perry H. Gravely, #2755

Electronically signed on 2020-07-04 11:32:37 page 7 of 7