

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Teasa K. Weaver, Master in Equity

Appellate Case No. 2020-001023

Mark Giles Pafford,

Appellant,

v.

Robert Wayne Duncan, Jr.,
Robert Duncan, Sr., and Frank Eason,
d/b/a "Rock City Heavy Hauling, Inc."
of whom

Robert Wayne Duncan, Jr. and
Robert Duncan, Sr. are the

Respondents.

RECORD ON APPEAL

Volume 5

John Martin Foster
Post Office Box 106
Rock Hill, S. C. 29731-6106
803 324-8100
Attorney for Appellant

Stephen D. Schusterman
Post Office Box 4211
Rock Hill, South Carolina 29731
803 325-7788
Attorney for Respondents

RECEIVED

AUG 09 2021

SC Court of Appeals

1 way up. They drove the truck out. It actually tore the
2 stacks off the truck and ---

3 Q Wait a minute. Slow down. So they go in
4 through a window. He said he never got the truck. Did
5 they actually get into the truck?

6 A Yes.

7 Q Did they start it up?

8 A Yes.

9 Q Did they drive it?

10 A Yes.

11 Q Really? How far did they drive it?

12 A They drove it through my gate and out there on
13 the highway. That's where the police stopped them at,
14 right before they touched the asphalt.

15 Q So he actually made it out of the garage?

16 A Yes, and out of my gate.

17 Q And out of your gate?

18 A Yes.

19 Q So let's talk -- Let's go back now. They go
20 into the window. What did they do? What did they
21 break?

22 A Broke the window, went through the window.
23 I'm assuming they --

24 Q Don't assume. Tell me what you saw. What was
25 broken?

1	A	Window, lock, door.
2	Q	You're going from one extreme to the other.
3	Slowly.	When you go in the garage door, is that the lock
4		you're talking about?
5	A	Yes. I had a lock on the inside of the garage.
6	Q	Was it clicked?
7	A	Yes.
8	Q	You're saying a lock. Did it do any other
9		damage?
10	A	As far as him cutting it, no. The damage was
11		done when the truck was taken out of the garage.
12	Q	Tell me when the truck was taken out of the
13		garage what damage was done. First the truck, what
14		damage was done to the truck?
15	A	Both stacks and then on the right-hand side -
16	Q	Stack is the exhaust?
17	A	Yes.
18	Q	What happened?
19	A	It caught the garage door and broke them both
20		off. The truck actually run over the stack. It cut down
21		one tire, and it's got some damage on the passenger side
22		of the vehicle, on the sleeper, where the stack came out
23		and hit it.
24	Q	Is that all the damage to the truck?
25	A	As far as I can tell.

1 Q Now, to the garage.

2 A Door, frame, the opening where the stack hit it.
3 It caught the door, and the door caught the jamb. I've
4 had a new jamb put in, new door. There was a motorcycle
5 in there that got damaged at the time that belonged to
6 my father.

7 Q Your father had a motorcycle in there?

8 A Yes.

9 Q How did the motorcycle get damaged?

10 A I'm not 100 percent sure, but -

11 Q Just tell me what was the damage to the
12 motorcycle.

13 A Scratches on the tank, on the side of it.

14 Q Did it look like it had been attempted to be
15 ridden or it just got -

16 A I think it got in the way.

17 Q Got in the way. Okay. So you're saying that
18 the truck actually left the building?

19 A Yes, it did.

20 Q And then the sheriff's department gave it back
21 to you.

22 Mr. Foster: That calls for a conclusion,
23 I believe.

24 Q Did you get the truck back that night?

25 A Yes, I did.

1	Q	Who gave you the truck back?
2	A	York County Sheriff's Department.
3	Q	Was Mr. Pafford arrested to your knowledge?
4	A	Yes.
5	Q	That night?
6	A	Yes.
7	Q	And he had people with him? Did you see anybody
8		with him?
9	A	Yes.
10	Q	Who did you see with him?
11	A	Danny Soles.
12	Q	Whoever Mr. Soles was, was Mr. Soles arrested,
13		too?
14	A	Yes.
15	Q	Do you believe that Mr. Pafford should be --
16		Regardless of what they do with the property, do you
17		believe that he should be responsible for his conduct?
18	A	Absolutely.
19	Q	Financially?
20	A	Yes, sir.
21	Q	What would you like done? If you had -- Mr.
22		Foster in the last couple minutes has talked the different
23		choices. Do you want to keep the truck?
24	A	I'd like to keep what I paid for.
25	Q	What do you believe you paid for?

1 A Everything.

2 Q So your position is that if you were asking the
3 Court, you would prefer to have the items than to return
4 them and get your money back?

5 A That is correct, but I don't want nothing to
6 do with stolen trailer so that part is going to be out of
7 the equation. I don't want nothing to do with that
8 trailer.

9 Q What is your understanding Mr. Pafford was
10 paid for the trailer?

11 A They have not discussed the full payment.

12 Q You don't have an understanding?

13 Mr. Foster: I have to say something about
14 the source of his knowledge.

15 A His insurance company has not disclosed to me
16 yet how much.

17 Mr. Schusterman: Last but not least, may
18 I approach?

19 The Court: Yes.

20 Q This is this famous piece of paper that's been
21 spoken about since you've been on the stand.

22 A Right.

23 Q You obtained this from (indiscernible).

24 A Yes. (indiscernible)

25 Mr. Foster: If the Court allows this so

1 be it. My view is this. I asked Mr. Duncan
2 if he obtained a title. He said he had not and
3 not attempted to. He did not contact, as I
4 understand it, this insurance company, whatever
5 its involvement in this matter is. We are
6 being offered a third-party non-testifying
7 entity with no indication that this is a
8 regularly kept data base to indicate there is
9 some question in his mind as this being the
10 title of the trailer. Regardless of what
11 is (indiscernible) so far, I believe this to be
12 hearsay and inadmissible. It is the Court's
13 decision.

14 The Court: I'm going to allow the question
15 subject to the objection. Mr. Schusterman, just
16 be aware that I could ultimately decide that it
17 is hearsay.

18 Mr. Schusterman: Absolutely.

19 Mr. Schusterman - Resuming

20 Q How did you obtain this?

21 A We are a member of that. The York County
22 Sheriff's Department recognized that (indiscernible).
23 We are a member of the auto data (indiscernible).

24 Q The way it would work, I'm assuming, is it's
25 done by VIN number.

1 A Yes.

2 Q So you punch in the VIN number, and this comes
3 out?

4 A Yes.

5 Q In this particular case, the only entry you
6 put in was the VIN number?

7 A Absolutely.

8 Q And you can produce this document?

9 Mr. Foster: For the record, I am now
10 hearing the statement about I accessed a data
11 base, and I got X result. There's no
12 difference between that and what we were dealing
13 with before. I don't wish to be interrupting.
14 I just make the point this is the same
15 objection on the same basis.

16 The Court: You may proceed.

17 Mr. Schusterman - Resuming

18 Q And this is what came out?

19 A Correct.

20 Q When you were asked by Mr. Foster your belief,
21 you think that Mr. Pafford doesn't have good title to it.
22 You said because of the document, and you pointed. You
23 were referring to this document?

24 A Absolutely.

25 Q And that's where you're getting your

1 information?

2 A Yes, sir.

3 Q And you've actually had conversation with
4 Century. Don't tell me what -

5 A Yes, I have.

6 Q And based on your conversations, they
7 acknowledge an ownership interest -

8 Mr. Foster: Objection again because he's
9 effectively now putting the good faith or
10 knowledge of Century into the case without
11 anything other than what we have as Mr. Duncan's
12 knowledge of his claimed conversation with them.

13 Mr. Schusterman: Your Honor, I would ask
14 that this be moved into evidence at the Court's
15 discretion.

16 Mr. Foster: Subject to our objection.

17 Mr. Schusterman: We're not in front of
18 the jury so whatever the Court chooses to do is
19 absolutely fine. The point has been made in
20 both directions. Mr. Duncan, thank you. Please
21 answer any questions if Mr. Foster has something
22 on redirect.

23 Mr. Foster: I do. I always want to ask
24 at this time in the afternoon, without trying
25 to show my weakness in the morning, does the

1 court want to take a break. I don't think I
2 have a lot more.

3 The Court: We can take a break.

4 Mr. Foster: Do you wish to take a break?

5 The Court: I'm fine, but if you would
6 like a break.

7 Mr. Foster: I'm fine.

8 Mr. Schusterman: We're fine.

9 Further Examination: (By Mr. Foster)

10 Q Mr. Duncan, over my objection, which I'm going
11 to continue with to the extent allowed, you testified to
12 the condition of this truck at the time you made an
13 agreement to purchase it from Mr. Pafford; is that
14 correct?

15 A Yes.

16 Q You had a chance to look at it then; is that
17 correct?

18 A Yes.

19 Q You've seen, sir, I believe -- I'm going to
20 hand you the pictures of this truck. Would you call these
21 pictures an indication of the truck in bad shape? That
22 is, I believe Exhibit 1, or part of it?

23 A Not after \$19,000, no, sir.

24 Q When does the \$19,000 come in?

25 A Approximately after I obtained possession of

1 it.

2 Q Sir, do you have someone here to testify that
3 spent \$19,000 on the vehicle?

4 A I do.

5 Q My question is, you spent it in your place or
6 you spent it with third parties?

7 A To answer your question correctly, both.

8 Q Both?

9 A Yes.

10 Q And you supplied us with those documents?

11 A I'm not sure what you got.

12 Q Well, sir, that's my question because if you're
13 going to testify that you spent \$19,000 on in, leaving
14 aside the question who's responsible for that, my first
15 question is going to be, who's going to establish that
16 figure. I don't have checks for that figure.

17 A Okay.

18 Q I might have some affidavits. I might have
19 some invoices which have nothing to do with my question.
20 If you look over those, that is the current situation of
21 the truck?

22 A Yes, sir.

23 Mr. Foster: I'm handing these back to the
24 Court.

25 Q Sir, Mr. Schusterman asked you about

1 (Indiscernible). If misunderstood, I misunderstood. I
2 understood you to say that you had not given W-2s or 1099s
3 for Mr. Pafford for the time he worked there?

4 A That is correct, sir.

5 Q Did you give those to Mr. Deas, who is in the
6 courtroom or was in the courtroom?

7 A Absolutely. I sure did.

8 Q Despite him saying otherwise?

9 A He never said that.

10 Q Did you give them to Mr. Reiter?

11 A Mr. Reiter, I'm not 100 percent sure.

12 Q Do you normally give them, sir?

13 A Yes, I do.

14 Q Let me go back. And you did not give them to
15 Mr. Pafford?

16 A No. Our payroll company denied him payroll.

17 Q For three years?

18 A Absolutely.

19 Q Since (indiscernible).

20 A Absolutely.

21 Q How about your other employees? Have they been
22 given 1099s or W-2s?

23 A Absolutely.

24 Q They have been given them?

25 A W-2s, yes, sir.

1	Q	Who besides Mr. Pafford has not been given tax
2		documents by your company since 2015?
3	A	I don't have an answer to question at this
4		time.
5	Q	I'm sorry. I can't hear you.
6	A	I don't know the answer to your question at
7		this time.
8	Q	Who would be in charge of that?
9	A	My mother.
10	Q	Who is not here?
11	A	Right.
12	Q	Sir, you indicated you had not taken back the
13		T-Bird; is that correct?
14	A	I didn't go get it. No, sir, I sure didn't.
15	Q	Where is the T-Bird now?
16	A	I'm not 100 percent.
17	Q	I'm sorry. Maybe I should stand over here.
18		Where did you say it was?
19	A	I don't have any idea a location of the T-Bird.
20	Q	Well, if I understood, you testified it was
21		returned to your lot; is that correct?
22	A	Yes.
23	Q	And you don't know what happened to it after
24		that?
25	A	I do, but you asked for the location of the

1 T-Bird.

2 Q What happened to it after that?

3 A It's been sold.

4 Q By who?

5 A My father who owned the vehicle.

6 Q Well, sir, if your father sold the vehicle
7 that's taking it back; is it not?

8 A No, it was kind of forced on us to take it back.

9 Q Well, you didn't sue Mr. Pafford for giving
10 it back to you. You didn't sue him for the rest of the
11 money. So what I understand you're saying is you got the
12 T-Bird back, you sold it to somebody else, but you still
13 get a credit for \$14,000; is that it?

14 A I'm not sure.

15 Q Neither am I. Sir, you indicated and I
16 understood your testimony that you were buying this
17 vehicle (Indiscernible), that Mr. Pafford have an amount
18 for repairs deducted; is that correct?

19 A Yes, sir.

20 Q Was that in writing anywhere?

21 A It was not. Mr. Pafford brought the truck to
22 me and there would be no other reason for him to bring
23 it to me.

24 Q Do you have any third parties here to testify
25 that they did the repairs, and they cost X?

1 A I do not.

2 Q You have checks here to indicate that you
3 paid the amount of money that you're talking about to have
4 the truck worked on.

5 A Not with me, no, sir.

6 Q Now, I don't want to be endless about this,
7 but you have (Indiscernible) discovery in this case?

8 A Right.

9 Mr. Foster: For the benefit of the Court
10 I will recite we've asked for all documents
11 regarding correspondence and communications
12 between parties referenced in the Answers to
13 responding parties, all prepared documents
14 whatsoever related to this civil action. I'll
15 leave to the Court as to whether that includes
16 the documents we're referring to. We, of
17 course, maintain it does.

18 Q Sir, Mr. Schusterman led you through a
19 recitation of the damage done to your garage, I take it.

20 A Yes.

21 Q Sir, do you have photographs of that damage?

22 A I do.

23 Q I don't believe you supplied us with any. Do
24 you have any estimates as to repair of those damages?

25 A I do.

1 Q Do you have anyone here to testify as to the
2 price of those repairs?

3 A I do not.

4 Q Do you have anyone here who has performed those
5 repairs?

6 A I do not.

7 Q Now, sir, you mentioned the fact that Mr.
8 Pafford and his helper were charged with criminal whatever
9 because they went out and tried to get his truck, what he
10 believed to be his truck?

11 A Yes.

12 Q Are you aware of what the result was of those
13 charges?

14 A From my understanding, the officer was off that
15 day, and they dropped the charges except for
16 (indiscernible).

17 Q (Indiscernible) I'm not asking were they
18 charged. That's been agreed by all parties. I'm asking
19 you about the result of those charges. Have you any
20 knowledge of what they resulted in?

21 A I know that he has to pay for the lock on my
22 property. That's what the sheriff's department told me.

23 Q What were the result of the charges, sir, to
24 your knowledge, if any? Were those charges -- Did they
25 result in criminal charges against Mr. Pafford or his

1 helper?

2 A I do not know. I mean -

3 Q If I were to tell you they did not, do you have
4 the grounds to disagree?

5 A I don't know either way. All I know is I was
6 contacted, and I should get restitution for my lock.

7 Q Sir, subject to my objection, to the extent
8 I can (indiscernible), you've been shown a document by an
9 unknown third party entity. It claims to be indicating
10 something about the title of one of the vehicles, I'll
11 call it that, that you were purchasing from Mr. Pafford,
12 the trailer.

13 A Right.

14 Q Do you, sir, have any knowledge of whether they
15 operate a regularly kept data base that is accurate in
16 its nature?

17 A I have used it for many years, and I have never
18 had it be inaccurate.

19 Q That's interesting. I've walked on these for
20 many years but when I stumble, I stumble. Do you have
21 any knowledge, sir, as to whether they represent their
22 documents to be accurate?

23 A They do.

24 Q Where is that?

25 A I guess on their website.

1 Q Do you have that, sir?

2 A I do not.

3 Mr. Foster: I don't believe I have anything
4 further of Mr. Duncan, Jr.

5 Mr. Schusterman: I just have two brief on
6 re-cross.

7 Further Examination: (By Mr. Schusterman)

8 Q Can you identify this document for me?

9 A Yes, I can. That's the repairs to Mr. Pafford's
10 tractor.

11 Q What's the date on it? It was provided in
12 discovery.

13 A 6-15-2016.

14 Q This is the bill that was presented
15 (indiscernible)?

16 A Yes. Mr. Foster asked me if I had any receipts.
17 I'm saying that's a bill to Mr. Pafford.

18 Mr. Foster: My objection is the same.
19 This is an invoice. We do not have the people
20 who made it out. We do not know ---

21 A I made it out.

22 Mr. Foster: (Indiscernible) Has he
23 identified this as being the vehicle.

24 (Indiscernible)

25 Mr. Foster: Subject to my objection.

1 The Court: Overruled.

2 Mr. Schusterman - Resuming

3 Q Mr. Duncan, can you tell me what this four
4 page document is?

5 A This is a repair bill -

6 Q It's not actually a bill. It's a quote; is
7 that correct?

8 A I'm assuming so. I cannot -- Yes, it's a
9 quotation.

10 Q What were they quoting and what company is it?

11 A Overhead Door Company.

12 Q Overhead Door. And why did you get a quote
13 from Overhead Door?

14 A Because of the damage from Mr. Pafford and
15 the truck.

16 Mr. Foster: Same objection and in this
17 case because it's third party. We have no one
18 from the third party. We do not know what
19 they looked at. They have no way to
20 (indiscernible). The earlier one, of course,
21 is claimed by themselves which is, of course,
22 self-serving.

23 The Court: I'm inclined to agree with
24 him. This one is prepared by a third party.
25 The previous one had been prepared by

1 (indiscernible).

2 Mr. Schusterman: Thank you very much.
3 That's all I have for Mr. Duncan, Jr. I
4 appreciate it.

5 The Court: You're excused.

6 Mr. Foster: We would call Mr. Robert
7 Duncan, Sr.

8 Mr. Schusterman: Can we have a restroom
9 break.

10 The Court: Absolutely.

11 Whereupon: A recess was taken.

12 The Court: Mr. Foster, you may proceed.

13 Mr. Foster: We would call Mr. Robert
14 Duncan, Sr.

15 Whereupon -

16 Robert Duncan, Sr.

17 Was called as a witness and first being duly sworn,
18 testified as follows:

19 Examination: (By Mr. Foster)

20 Q Sir, I am showing you the same documents I
21 showed your son, Plaintiff's Exhibit 5, which I understand
22 has been identified as all the documents, in our
23 possession or in this case, representing payments to Mr.
24 Pafford by what I would call generally the company or the
25 defendants. I'm told, sir, that the signature on those

1 documents that say Robert Duncan are yours; is that
2 correct, sir?

3 A Most of them. Now, my wife did the books at
4 that time. Some of these signatures look different.
5 They're me and that was my wife. She signed my name.

6 Q So I ask you the same question that I asked
7 your son, do you had knowledge or possession of any
8 documents other than these and the \$10,000 receipt you've
9 been credit for that would add to the amount of payments
10 that the company or the defendants have made to Mr.
11 Pafford?

12 A That's a long question.

13 Q I'll make it shorter.

14 A No. I don't have anything. I mean, I've gone
15 back three or four years and tried to go through every
16 check and, you know, it's impossible.

17 Q I'm going to show you a document that I showed
18 your son. Do you recognize that?

19 A Yes, I do.

20 Q Who made that document out, sir?

21 A I made it out.

22 Q Okay, sir. With the Court's permission, I'm
23 going to ask you to step up here because we're going to be
24 discussing this line by line.

25 (Indiscernible)

1 Q Now, sir, you see it shows here at the bottom
2 left. Is this your signature?

3 A Yes, it is.

4 Q Robert something or other, is that your name?

5 A Yes, sir.

6 Q Now, there is a printed signature here of
7 Mark Giles Pafford. Do you know who made that?

8 A I assume Mark Pafford.

9 Q You don't know?

10 A Well -

11 Q (Indiscernible)

12 A I actually wasn't the one who wrote this.

13 Q Who wrote it up?

14 A Secretary.

15 Q Secretary being -

16 A Brandy.

17 Q Is she here, sir?

18 A No.

19 Q Do you have any knowledge about why this claims
20 the purchase of -- I take this is the truck.

21 A That was a tractor. (Indiscernible) That's what
22 he -

23 Q He being Mr. Pafford.

24 A That ain't the way we figured it (indiscernible)

25 Q That's what he said. Did you agree when he

1	said it?	
2	A	Yeah.
3	Q	You were there when this was made out?
4	A	Yeah.
5	Q	Well, you signed it. You said this was made out
6		by someone else. Brandy is not here, is she?
7	A	No.
8	Q	So this represents one document (indiscernible).
9		This is not the whole - What he's buying - Y'all were
10		buying?
11	A	No. (Indiscernible)
12	Q	Sir, do you have any knowledge what condition
13		the truck was in when it was purchased or agreed to be
14		purchased by what I will call the defendants?
15	A	It was in need of repair, a tractor 17 years,
16		wore out tires, paint's bad.
17	Q	Sir, do you have knowledge of how taxes were
18		reported in the company to employees?
19	A	Yes.
20	Q	Were they given Social Security statements,
21		I believe 1099s. I may be wrong about the statements,
22		W-2s. Were they given -
23	A	They were given W-2s.
24	Q	Was Mr. Pafford given those?
25	A	No, he was not given those.

1 Q Why not?

2 A Because he was not an employee.

3 Q Well, sir, if you're not an employee, my
4 understanding they are then called 1099s. Was he given
5 1099s?

6 A No.

7 Q Why is that?

8 A Because we're still figuring out how much he
9 got paid.

10 Q What happened to the T-Bird when it was
11 returned, sir?

12 A What happened to it?

13 Q Yes.

14 A When he returned it?

15 Q Yes, sir.

16 A Well, I had it for about a year. Finally, I
17 just sold it to get rid of it.

18 Q What did you sell it for?

19 A I don't know. \$8,000 I think.

20 Q Do you have documents on that sale, sir?

21 A No.

22 Q I presume it's obvious if you have documents
23 they weren't supplied to us to your knowledge; is that
24 correct?

25 A I didn't realize that was important.

1 Q Sir, are you aware of any agreement under
2 which Mr. Pafford was both selling these, I'm calling
3 them generically vehicles, to your company and also
4 agreeing to pay for their repairs?

5 A Yes.

6 Q Was that in writing?

7 A No.

8 Q Would you agree with me that's a fairly unusual
9 agreement?

10 A Yeah, this whole deal was unusual.

11 Q Sir, these damages that were claimed to the
12 house of your son, do you have any photographs of those
13 damages?

14 A No, I don't.

15 Q I believe there was a motorcycle that belonged
16 to you that was claimed to be damaged.

17 A Correct.

18 Q Did you get any estimates to repair that
19 motorcycle?

20 A I had it repaired.

21 Q How much did you pay?

22 A Like \$4,000.

23 Q Do you have a statement to that effect or
24 receipt or check?

25 A My attorney has it.

1 Q Sir?

2 A My attorney has it.

3 Mr. Foster: Then I would pause and ask
4 Mr. Schusterman to show that.

5 Q I have what appears to be an estimate which
6 says that the repairs (indiscernible) rear fender, side
7 covers, front fender, saddle bags. Your testimony is,
8 sir, that all of these matters were damaged in this
9 incident?

10 A Correct.

11 Q Do you have photographs of this, sir?

12 A No.

13 Q Do you have proof that you've paid this, sir?

14 A Yes. I mean, that's not -- That should have
15 been the original, the receipt.

16 Q Do you have any knowledge, sir, what happened
17 on the supposed criminal claims or charges that were made
18 against Mr. Pafford and his helper in trying to get his
19 truck back?

20 A No, sir.

21 Q This is again subject to my objection. Do you
22 have any knowledge of the veracity or reliability of the
23 company which apparently is giving communication about
24 a question as to the trailer title?

25 A No.

1 Q You were here during your son's testimony, sir;
2 is that correct?

3 A Correct, sir.

4 Q Do you have anything to correct him on or
5 anything you believe is different from what he said?

6 A No, sir.

7 Q Sir, if I've asked this before, forgive me.
8 Are all employees of the company, as I will call it,
9 regardless of what name it's under, they're all given
10 either W-2s or 1099s at the end of the tax year except for
11 Mr. Pafford; is that correct?

12 A Correct.

13 Q If I've asked this before, I'm not trying to
14 harass you. Why was he not given one?

15 A Because he's saying that he made \$70,000 more
16 than what he did.

17 Q And that relieves you of your responsibility -

18 A No, sir.

19 Q Let me finish my question.

20 A Okay. I'm sorry.

21 Q If there's dispute that relieves -- In your
22 opinion, that they would relieve you and your company of
23 the responsibility to report his income to tax
24 authorities?

25 A No, sir.

1 Q Did you receive any advice from an attorney or
2 an accountant that said you were relieved from that
3 responsibility?

4 A No, I did not.

5 Q And this is the only person in the company for
6 whom that is true?

7 A Correct.

8 Q I believe we had one of our witnesses say he
9 also did not receive such a thing.

10 A He said he didn't know.

11 Q He didn't know?

12 A He did get a W-2.

13 Q So who owns Rock City Hauling?

14 A Well, I used to be the president. I was the
15 total person in charge.

16 Q Did you have an interest in the company, sir?

17 A Did I?

18 Q Yes, sir.

19 A Yes, sir.

20 Q Do you have it now?

21 A No, sir.

22 Q When did that cease?

23 A About 2016.

24 Q Do you have any documents to show that it
25 ceased?

1	A	No, sir.
2	Q	How did it cease? Did you sign an agreement
3		with the other members or the other people in the
4		company?
5	A	No. I retired.
6	Q	Who do you understand has an interest in the
7		company right now?
8	A	I don't know.
9	Q	You have no idea?
10	A	I assume my son.
11	Q	You literally do not know who owns the company?
12	A	I assume my son. I don't work anymore so -
13	Q	Are you aware of any titles being mocked up in
14		the company?
15	A	Titles being what?
16	Q	Fabricated?
17	A	No, sir.
18	Q	You never saw that done?
19	A	No, sir.
20	Q	Never did it yourself?
21	A	No, sir.
22	Q	Never did it for the company?
23	A	No, sir.
24	Q	Never did it -
25	A	I don't know how to make a title. Okay. Never

1 did it for anybody else. I used to be a title clerk, the
2 reason I know about titles. I do know that you cannot
3 make them.

4 Q I said fabricate. Let's say forge. Would that
5 change your answer if I used the verb forge instead of
6 fabricate?

7 A I don't know how you forge one, but I didn't.
8 I guess it's possible.

9 Q I beg your pardon, sir?

10 A I guess it's possible.

11 Q You've never done it?

12 A No, sir.

13 Mr. Foster: I believe I have no further
14 questions of Mr. Duncan, Sr.

15 The Court: Mr. Schusterman?

16 Mr. Schusterman: So that we don't have to
17 belabor the point. If I can take back about
18 five minutes ago, Mr. Foster asked about the
19 motorcycle. He asked about any damage that was
20 done. He asked did you get any quotes. My
21 recollection was that you said not only I got a
22 quote, but I actually had it repaired. I do. I
23 have the receipt. It's been produced. It says
24 paid cash on the quote. I do not have the third
25 party here. My position is that the door was

1 opened by all those questions.

2 Mr. Foster: It was opened, but we have
3 no proof as to who wrote that quote.

4 Mr. Schusterman: I don't think you need
5 proof. I think it goes to the weight it's
6 given, not its admissibility.

7 The Court: I would agree with that.

8 Mr. Foster: Preserving that objection.

9 Mr. Schusterman: At 3:30 I'm starting
10 to cut corners. I apologize. May I approach.

11 The Court: Yes.

12 Examination: (By Mr. Schusterman)

13 Q Can you please identify this document, sir?

14 A Yes, that's where I had my motorcycle repaired.

15 Q What company is that?

16 A Well, the name of it is -- This is at Custom
17 Motorcycle Repair.

18 Q What kind of motorcycle have you got?

19 A Harley Davidson.

20 Q What happened to it?

21 A Well, when they said that --

22 Q Forget about what they said. Just tell me what
23 was wrong with the motorcycle.

24 A It had scratches, glass. Somebody climbed
25 in a window and on top of my motorcycle -- I had custom

1 paint on it.

2 Q So when they came in through the window they
3 had to use the motorcycle to get in -

4 A I happened to park at the window. You know,
5 I paid a lot of money for this custom paint job.

6 Q Just tell us, how much did you pay to have it
7 repaired?

8 A 4,195.

9 Q Did you pay cash for it?

10 A Yes, I did.

11 Q And that was in October of 2017?

12 A Yes, it was.

13 Q Is that the actual (indiscernible) you paid?

14 A Yes. This is the company (indiscernible).

15 Q This is who did it?

16 A Yeah.

17 Q I mean, it's not just a quote. You actually
18 had -

19 A Yes.

20 Mr. Foster: Subject to my objection.

21 Mr. Schusterman: That's all I have.

22 The Court: Anything further.

23 Mr. Foster: Plaintiff's case.

24 The Court: Mr. Schusterman.

25 Mr. Schusterman: Mr. Duncan, Sr., jut

1 placed this. This is an exhibit.

2 Mr. Foster: That would be good.

3 The Court: Mr. Foster, this is your copy

4 Mr. Foster: Thank you.

5 The Court: Anything else?

6 Mr. Schusterman: Yes, Your Honor. The
7 one motion I have at this time before we move
8 on is -- This case is somewhat unusual, Your
9 Honor, procedural that we somehow we missed
10 ADR (phonetic). We never mediated it. There
11 were pending motions that were never heard.

12 One of the motions that's out there is
13 a Motion to Dismiss. Now that the Plaintiff
14 has concluded their case, I submit to you that
15 taking everything that was presented in a light
16 most favorable to Mr. Pafford, that there is
17 absolutely no evidence whatsoever that Mr. Eason
18 has any interest in this business, that he had
19 anything to do with it. The only testimony that
20 had any compelling nature to it was the fact
21 that he goes in and tells people to clean up.
22 Even if he were the president of the company,
23 if he didn't have a legal interest in it, the
24 mere fact that he's an employee, which he's
25 not, wouldn't give rise to liability in this

1 matter.

2 So taking in a light most favorable to
3 the Plaintiff, I don't see why Mr. Eason should
4 be involved in this case. Whatever the Court
5 decides to do. At this time, I'd ask you to
6 dismiss him as a party.

7 The Court: Mr. Foster?

8 Mr. Foster: This is the Court's question
9 as the trier of fact. We've produced evidence,
10 which has been denied, that he went out and
11 exercised control over the mechanical area.
12 We've also testified without being, in my
13 opinion, contradicted that he was given monthly
14 checks by the company.

15 There is evidence sufficient to show that
16 he had an interest in the company. The Court
17 must make its decision based upon the weight
18 of the evidence. We acknowledge that fact and
19 rely upon the trier of fact.

20 The Court: In the light most favorable
21 to the Plaintiff, I grant Defendant's motion
22 for a directed verdict (indiscernible).

23 Mr. Schusterman: Thank you, Your Honor.
24 Now that that's done, the defense rests. We
25 have no other evidence to present.

1 The Court: Would you like to make brief
2 statements -

3 Mr. Foster: What the court wishes, a
4 brief or a statement. I will try to be briefly
5 brief.

6 We believe we have the evidence in this
7 matter. The only things that I would suggest
8 that have gone against that case have been what
9 I call a rabbit trail.

10 The repairs, an unwritten agreement to
11 repair on my client's part vehicles
12 that had been agreed to be bought by the
13 defendants for \$95,000. I suggest that is an
14 unreasonable statement, especially in lack
15 of any writing to that effect.

16 We heard about the possibility of another
17 title. No other title has been produced. No
18 (Indiscernible) has been produced. We're
19 hearing about incidents from nine or ten years
20 ago.

21 The insurance company's claim has not been
22 joined. They have not been asked to be here
23 as witnesses. We are now told, as I understand
24 it -- Well, I'm not quite sure what we're being
25 told by the defendants.

1 Mr. Duncan, Jr., wanted the items as I
2 understand it. Then I understood at some point
3 that they wanted just their money back.

4 We have been given no notice of rescision.
5 I don't think the court, under the
6 circumstances, can manage rescision and cannot
7 rewrite the contract.

8 If there was going to be an objection on
9 the basis of non-compliance as to a title,
10 that should have been proven. It wasn't.
11 Under whatever theory, ours is that we have
12 proved the (indiscernible). Our is that we have
13 produced the aggregation of the payments made.
14 Under any theory, even allowing the various
15 matters which defendants have shown to me,
16 what they claim are deductions from our claim,
17 we are still owed sizeable sums of money.

18 I remind the Court, but I'm sure I do
19 not need to remind it, but a failure to pay
20 wages in this state carries a burden of three
21 times the damages and attorney's fees.

22 If the court believes that we have proved
23 that accurately, which we maintain we have, I
24 will be happy to submit an affidavit as to
25 attorney's fees and costs.

1 Beyond that, I will only say that I think
2 it's up to the Court whether it wishes to let
3 this brief statement live or whether it would
4 like briefs on the case. I'm happy to do
5 either one.

6 The Court: Thank you, Mr. Foster. Mr.
7 Schusterman, if you would like to make a
8 state or the parties submit a brief -

9 Mr. Schusterman: Your Honor, I defer to
10 the Court. We're not playing to a jury. I
11 don't need to write a brief. I have no doubt
12 in my mind you understand the case.

13 I think what you have here is a man -
14 First of all, I think that this whole case
15 really comes down to credibility. In all
16 candor, if you really look at the facts of the
17 case, and you look at the money, which obviously
18 it all comes down to, the \$159,000 that's been
19 paid is really uncontraverted. We're within
20 \$500. The decisions the Court, in my opinion,
21 has to make is, number one, this increase from
22 \$1,000 to \$1,500 after four months. The mere
23 fact that someone writes it down and produces
24 a journal, there's that old statement that
25 figures lie and liars figure, and he figured

1 he's owed that amount.

2 The reality is that at \$1,000 he probably
3 is owed \$90,000 in that regard. We all agree.
4 We're talking very small differences. I submit
5 to the Court that there are other deductions
6 that he, Mr. Pafford, doesn't want to take into
7 account. The \$14,000 for the Thunderbird, even
8 if you say he mitigated, he being Mr. Duncan,
9 Sr., mitigated his damages and got \$8,000.
10 That's a still a \$6,000 credit that wasn't
11 given. If you take off the \$500 for 40-some
12 weeks, you will see the number go from 161
13 down to \$91,000, \$92,000.

14 The equipment -- Mr. Foster keeps referring
15 to good title. I haven't yet seen a good
16 title for the quote, unquote, stolen or for
17 that particular trailer. I submit to the
18 court that what actually occurred was that this
19 man took the trailer, reported it stolen,
20 collected money and then attempted to sell it
21 again and that's why he can't give a title.

22 The fact is that at this point my client
23 has given him over and above -- If we assume
24 the \$1,000, and I don't believe that there has
25 been any credible testimony that it went from

1 \$1,000 to \$1,500. The greatest barometer of
2 that would be that the amounts that were paid
3 -- the amounts that were paid by Mr. Duncan to
4 Mr. Pafford, even if you go along the concept
5 that anything that didn't say equipment was
6 not equipment. Even that, the monies are not
7 paid in increments of \$1,500. So why would
8 someone pay -- What strikes the defendant is
9 that you look at all the amounts. The amounts
10 were all divisible by 1,000, not divisible at
11 1,500. I think that speaks volumes about what,
12 in fact, was the agreement.

13 My client absolutely wants the truck.
14 My client absolutely wants one of the trailers.
15 He's paid for everything. He would simply
16 like the Court to determine that \$1,000 was
17 in fact the man's wages; that there was a
18 \$6,000 mitigation on the Thunderbird; that the
19 \$8,000 that is put into evidence regarding the
20 repairs done for the truck, clearly that was
21 done. Certainly now it's very easy -- When he
22 needed \$8,000 in repairs it wasn't an issue.
23 Today all of sudden there is an issue.

24 I submit to you that that \$8,000 nothing
25 was paid. It goes back -- the date of the

1 invoice. It's not like my client invoiced it
2 and did it forward. This invoice goes back to
3 2016. They were (indiscernible) this money
4
5 (Indiscernible).

6 I believe, Your Honor, to determine that,
7 I think that if you make a determination, I
8 believe that the value, even by Mr. Pafford's
9 testimony, that the trailer that's in question
10 is worth approximately \$22,000, \$22,500. I
11 believe that approximately -- I'm not holding
12 anyone to it. I think the testimony he said
13 was that it was about \$40,000 for the truck and
14 the remaining two trailers would be the other
15 \$45,000. That's where I come up with \$22,500.

16 I submit to you that my client is entitled
17 to that money back as an offset to that.
18 When you do that mathematical calculation, I
19 think that what comes out is that Mr. Pafford
20 is way ahead of the game. It's very easy to
21 do the math and say that Mr. Duncan is in the
22 hole. I believe that when we do the numbers
23 and you credit all the credits for the dollars
24 that everyone agrees, the 159 plus all those
25 other credits, and you reverse this trailer

1 situation, I think you're going to find
2 numerically that there is money owed from
3 plaintiff to defendant.

4 I encourage the Court as part of its order,
5 if it does decide to deal with monetary and
6 let my client (indiscernible), to order the
7 plaintiff to immediately transfer the truck
8 and one of the trailers, the titles, to give
9 my client good title. My client is still
10 sitting here with whatever they paid and do not
11 have title. They may have possession but
12 possession without title doesn't do a lot for
13 you. I would kindly ask for the court to
14 consider that.

15 In terms of discretionary, Mr. Pafford
16 admits that he went in to retrieve the truck.
17 Back to the credibility. It may have been the
18 way I perceived it, and that's not important,
19 but how you perceive it. I got the perception
20 that all that occurred, from Mr. Pafford's
21 testimony, was that he clicked the lock, and
22 he got stopped at that point.

23 It's only when you hear the testimony of
24 Mr. Duncan, Jr., that you find that he not only
25 got in but also did damage to the motorcycle,

1 got in the truck and made it down the street and
2 at that point was arrested. So there is a great
3 deal of damage that was done to Mr. Duncan's
4 home. We think those are offsets. It doesn't
5 matter whether it's a padlock for \$20 or it's
6 \$12,000. The point is that if he created those
7 damages that he should be responsible for them.
8 It's not I'm willing to buy you a new padlock.
9 I'm not willing to fix this garage. I submit
10 that is the wrong place where the line is drawn.

11 Other than that, I'd ask the Court -- The
12 Court listened to all the testimony. Like I
13 say, I think that more than in most civil
14 cases I think there is a real issue with
15 credibility and believability and logical
16 answers and stories. I would ask the Court to
17 use its good judgment in making this
18 determination. Thank you for listening.

19 Mr. Foster: Well, I'm certainly glad we
20 got through that brief closing statement.
21 Your Honor, do I understand the Court to
22 indicate she would like briefs or not?

23 The Court: No. If you would like to submit
24 one, Mr. Foster, I'm always appreciative of
25 them.

1 Mr. Foster: What kind of time frame,
2 ma'am.

3 The Court: How much time would you like?

4 Mr. Foster: I have another knock down
5 drag out on the 21st, but I'll try my best.
6 Whatever the Court says.

7 The Court: 30 days.

8 Mr. Foster: That would be wonderful.

9 The Court: If you need more time -

10 Mr. Foster: That's fine.

11 Mr. Schusterman: May I ask just because
12 obviously I guess I have to come to the party.
13 What are we briefing, if I may ask.

14 Mr. Foster: It's in my closing statements
15 and arguments. Am I correct?

16 The Court: Basically, just what you set
17 out. (Indiscernible)

18 Mr. Schusterman: (indiscernible)
19 Simultaneously. I don't think one of us gets
20 to respond -

21 Mr. Foster: That's fine. I will happy to
22 wait for Mr. Schusterman's when it is ready,
23 and I will turn mine in on the same day.

24 Mr. Schusterman: You know what? I think
25 you'll be turning one in alone. I think you're

1 going to be turning it in alone. I'm going to
2 stand on my closing statement.

3 Mr. Foster: Well, I think you were
4 certainly thorough enough.

5 Mr. Schusterman: I hope the Court feels
6 that way, too. (indiscernible) Mr. Foster,
7 please let me know, and I'll write a brief, and
8 I'll ask for a transcript.

9 The Court: Just so you know, Mr.
10 Schusterman and Mr. Foster. The way that I'm
11 inclined to do, I probably will reach out to
12 one of you and say, did you prepare an order
13 for me. (indiscernible)

14 Mr. Foster: You mean prepare purposed
15 orders instead of briefs?

16 The Court: That's correct. That would
17 probably be the most helpful to me.

18 Mr. Foster: I will be happy to do that.

19 The Court: 30 days and if you need more
20 time that is fine.

21 Mr. Foster: (indiscernible) I certainly
22 hope in that case that (indiscernible) and I
23 will wait for Mr. Schusterman's acknowledgment
24 if that is the case,

25 Mr. Schusterman: When we submit these

1 orders, is this literally submitting it or is
2 it filing them?

3 The Court: You can email (indiscernible).

4 Mr. Schusterman: (indiscernible) like a
5 formal filing.

6 The Court: Email is just fine because I
7 can E File it.

8 Whereupon - The hearing was concluded.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 PROCEEDINGS

2 Before: The Honorable Teasa Weaver

3 * * * * *

4 The Court: This is Case Number 2017-CP-46-2487,
5 Mark Giles Pafford -vs- Robert Wayne Duncan, Jr. and
6 others. This is the plaintiff's Rule 59 Motion. The
7 plaintiff is represented by Martin Foster. The
8 defendant is represented by Steve Schusterman. Mr.
9 Foster, whenever you're ready.

10 Mr. Foster: Thank you, ma'am.

11 Mr. Schusterman: One housekeeping measure. Just
12 a moment ago Mr. Foster came in and said that my
13 Response or my Return to his motion that I filed was
14 a document he said that was incorrect, that it was -
15 I said something from Tega Cay.

16 The Court: I did not see a Response other than
17 the -- I believe it was just on another case.

18 Mr. Schusterman: If I may make a copy of it. If
19 we can have a copy made. I'm sorry.

20 The Court: Sure.

21 Mr. Schusterman: I just wanted to make sure the
22 Court had my response. I was unaware it was the
23 wrong document. We can just blame it on Allison,
24 since she's the one that does it.

25 The Court: Mr. Foster, you may proceed.

1 Mr. Foster: Ma'am, in terms of my housekeeping,
2 you see I am fumbling with a hearing aid. As I
3 believe I told you yesterday, that is the fun and
4 games of my age. I hope I will be a little more
5 audible and auditory. First of all, do you have my
6 memorandum?

7 The Court: Yes.

8 Mr. Foster: With counsel's permission -- I have
9 given a copy to him. Let me hand up copies of the
10 documents that we have referenced therein.

11 My intent is to basically go through points on
12 my memorandum. I welcome the Court's interjections.
13 This may not be the most logical order, but it was
14 the way I did it.

15 Ma'am, first of all, we understand that this
16 deal was clearly for \$95,000, it involved a truck and
17 two trailers as well as a joe dog so called and an
18 extra axle. I don't think there's any dispute about
19 that. I don't believe there's any dispute about the
20 original amount which is \$95,000 which, as I recall,
21 shown on Defendant's Exhibit 1.

22 The Court, as I understand it, accepts the
23 arguments of defendants. I should probably say the
24 Duncans because Mr. Eason (phonetic) has been
25 dismissed. Basically, there is a claim here for

1 fraud or negligent misrepresentation.

2 We maintain that the evidence that was used to
3 reach that conclusion is insufficient, since in my
4 understanding it was a document off a website and a
5 statement made by a third party.

6 I make the argument, but I do not rely upon
7 that in the main for this reason. For the sake of
8 this argument, ma'am, and for that only, let me
9 assume my client is completely the SOB that I'm being
10 told he is; that he completely messed this thing up
11 in 2010 and 2011. My response to that is, so what?

12 One of the necessities of any cause of action
13 is damage. My client has the title to the two
14 trailers. That is prima facie evidence of South
15 Carolina law.

16 The Court: Let me interject there. The 2009
17 title, what item of evidence was it?

18 Mr. Foster: Beg your pardon.

19 The Court: You said there was a certificate of
20 title for the 2009 trailer that's in dispute. What
21 exhibit item was that?

22 Mr. Foster: I believe, ma'am, that is our 3 or
23 4. I'm not going to swear to it because I cannot
24 tell you off of my head, but that was one of the
25 first things we put in.

1 The Court: I did not see a title for the 2009
2 trailer. I saw a title for the truck. I saw a title
3 for the 1998 trailer. The only documents that were
4 submitted about a 2009 trailer was a registration,
5 and it appeared to be for three different 2009
6 trailers with three different VIN numbers.

7 Mr. Foster: I accept the Court's statement. I
8 am not capable right now of pulling my file out and
9 arguing with it. My argument would be the fact
10 applies. It is prima facie evidence.

11 To go back to what I consider to be the
12 dispositive point, without arguing about -- with the
13 Court with greatest respect, it considers to
14 be proper evidence. The problem is this. We're
15 talking about events, that by testimony occurred,
16 if I recall correctly, in 2009.

17 Let us assume for the sake of this, not being a
18 joke, that's true. So what? If anyone wanted to
19 come forward at this point, insurance company or any
20 third party and say, that truck -- that trailer is
21 not the property of Mr. Pafford. What are they going
22 to do?

23 They are going to be met with any competent
24 attorney saying, you are dead in the water because of
25 statute of limitations. They obviously haven't come

1 forward because if they had then Mr. Schusterman, who
2 is quite competent, would have shown that to the
3 Court. There would have been a lawsuit or a judgment
4 that said, here it is. It's been determined to be
5 the property of a third party. There's nothing
6 there. There are no damages so we maintain that
7 there's no damages regardless of whether this Court
8 happens to believe my client did the wrong thing,
9 there is no fraud, no negligence or
10 misrepresentation.

11 There was a reference in the order about the
12 Thunderbird, which at one point was given to my
13 client or sold to my client. This was -- If at any
14 point and this is not, I hope, backhanded. If I'm
15 going too fast, stop me. At some point my client
16 got a Thunderbird. He's therefore -- They are;
17 therefore, allowed to take a \$14,000 credit.

18 My recollection of the evidence was that that
19 car was almost immediately returned, was resold
20 and/or used by the defendants so that's just out of
21 the picture.

22 I would note the fact that if that was car
23 was intended to be in some fashion involved in a
24 security interest, under the UCC there was a
25 requirement that my client be given a notice of sale

1 and notice of the results of the sale.

2 In the absence of those two documents, the
3 return of that car was obviously an acceptance of the
4 same whatever it was intended to be.

5 This also claims, as I understand it, for
6 damages because of repairs done to the truck. Well,
7 it's my understanding that it's quite obvious in the
8 law if the defendants, Duncans I should say, owned a
9 right in the truck or purchased it from my client,
10 the responsibility for repairs lay on them. They
11 used the truck. They made a decision to repair it.
12 They didn't put a claim on my client to repair it. I
13 frankly fail to see how this is a basis for any
14 credit on their part.

15 We then come to the more involved matter of
16 wages. I gather there is a dispute between myself
17 and Mr. Schusterman, not unsurprisingly, about the
18 number of weeks my client worked. We presented the
19 spreadsheet, which is the basis, I believe, for most
20 of the argument in this case, that shows 116 weeks of
21 work by my client.

22 Now, I will briefly say the Court found that
23 my client's income should be calculated at \$1,000 per
24 week and rejected our argument that it should have
25 been raised at some point to \$1,500. I simply recite

1 that we had two witnesses to indicate his statements
2 and comparable income and pay to other members of the
3 Duncans' business.

4 I would suggest that the evidence is such that
5 we have the right to rely upon that to say the better
6 evidence shows he had the right to \$1,500 a week
7 after a certain point.

8 To go off on another subject here and, again, I
9 may be wandering a bit. The Court took the view, as
10 I understand it, as I read it, that we did not
11 produce evidence as to the use of or the purpose for
12 which payments were made. We have cited at some
13 length, and I handed up to the Court, documents that
14 basically stand to the proposition that once we --
15 I'm summarizing, but I believe this is accurate.
16 Once we established that an amount was due, which I
17 don't think it is disputed, and the fact that there
18 were two items that it was to be paid on. At that
19 point, the burden of proof shifts over to the
20 defendants. This is their money after all.

21 I don't recall much discussion by them as to
22 where any of the money went to. We put down what we
23 understood to be the case on the spreadsheet. But I
24 point out to the Court that there are allegations,
25 both that of Mr. Duncan, Sr., and Mr. Duncan, Jr., in

1 their pleading was, we have paid for the truck in
2 full.

3 Now, I've cited South Carolina law. I'll be
4 long winded enough to read to the Court language out
5 of Postal v. Mann, 1992. This is the Court of
6 Appeals. It is well settled that parties are
7 judicially bound by their pleadings unless withdrawn,
8 altered or stricken by amendment or otherwise. None
9 of those things happened. I don't recall any
10 testimony to the contrary by the defendants or by
11 anyone else that said that they -- Well, obviously it
12 was contrary by the client, but that was based upon
13 his understanding.

14 The defendants have never, to my knowledge,
15 backed off their view that they have paid for the
16 truck in full. All right. They paid for the truck
17 in full. If they owed my client 116 weeks at \$1,000,
18 excepting for the time being, the Court's position
19 with respect, then they paid \$95,000 plus I believe
20 it was \$1,500 -- The full amount we have is \$99,500.
21 That leaves us with \$4,500 toward wages. That
22 leaves us with \$116,000 minus \$4,500 they have not
23 paid in wages. The rest would go to the truck.

24 If that is the case now, according to the law,
25 and according to the position these people have

1 taken, we have the right to triple damages and
2 attorneys fees.

3 That basically is where we're at. We do dispute
4 the question of how much was due to my client per
5 week, but assuming for the sake of this argument it
6 is only \$1,000.00, I do not recall any contradictory
7 testimony or evidence to back up the defendants'
8 claim he only worked for -- I've forgotten what Mr.
9 Schusterman says in his brief, 91 weeks. The point
10 being, that still leaves the question of how much
11 he's due. That still leaves them having stated a
12 position to this Court in their pleading, which is
13 inconsistent with the view that they paid his wages,
14 and he his due those wages. I hope I haven't run on
15 too much. That's where we're at. Thank you.

16 The Court: Mr. Schusterman.

17 Mr. Schusterman: Thank you, Your Honor. May it
18 please the Court, five months and ten days ago, we
19 tried this case ad nauseum.

20 These arguments -- With all due respect to Mr.
21 Foster, these were arguments he made the day of
22 trial. These were arguments that he made when he
23 presented his proposed order to the Court.

24 I simply stand on the exhaustive nature that
25 this Court went through in reviewing the evidence.

1 The order that the Court neither used defendants'
2 proposed order nor the plaintiff's proposed order but
3 wrote her own.

4 I believe that anything that Mr. Foster says
5 factually that he articulates now or articulated back
6 them, I submit is contrary to what occurred at the
7 trial. I believe that the deductions that he makes
8 from these bits of evidence are incorrect as well.

9 I believe that every paragraph in the Court's
10 order has a firm and logical basis both in fact and
11 the law. I would ask the Court just to affirm it's
12 ruling. Like I said, none of these arguments that
13 Mr. Foster are making today are any different than
14 what he orally made at the trial and that he made
15 clearly in his proposed order. The Court has heard
16 this.

17 I respectfully, with all the respect I can
18 muster, believe that they were good arguments for his
19 client on January 2nd, and they were good in March
20 when he submitted his proposed order, and they're
21 good today. But I don't believe they carry today. I
22 would ask you to please affirm your prior order.
23 Thank you.

24 Also, Your Honor, to the extent necessary, just
25 for the record, because of my blunder, I would ask

1 that in my response to - I believe it's six, five or
2 six, assertions that Mr. Foster makes that I put in
3 my response, to just make that part of the record.

4 Mr. Foster: For the record, ma'am, I don't
5 believe the mistake is that of Mr. Schusterman's
6 office but by a clerk, who I, of course, will not
7 repeat that to. Therefore, I have no objection to
8 that.

9 The Court: Mr. Foster, I'm going to address
10 each of your positions. If I fail to address
11 something, let me know.

12 The first, as far as the plaintiff filing a
13 negligent misrepresentation based upon prima facie
14 evidence of ownership, I state again, I did not see
15 a certificate of title in evidence. This is based
16 upon the exhibits that were presented the day of
17 trial and also the fact that the exhibits attached to
18 the Amended Complaint, I believe, were received into
19 evidence as well. I reviewed those. I did not see a
20 certificate of title nor did I see -- nor was it made
21 to clear to the court, according to Mr. Pafford, what
22 2009 trailer was actually sold to you by the
23 defendants.

24 You asked Mr. Pafford in some testimony. I
25 explained it my order that Mr. Pafford could not say

1 what 2009 trailer was transferred, and there is no
2 certificate of title in evidence that I saw in the
3 exhibits so I deny your motion based upon that
4 ground.

5 As far as claim for credit for the Thunderbird,
6 Mr. Foster maybe I'm misunderstanding what your claim
7 is for this. My ultimate decision was that
8 defendants were owed for damages for the trailer,
9 whether it was an offset, that damage amount, based
10 upon what had been provided to defendants, based upon
11 the amounts -- the total amount found for wages and
12 payments from the equipment. So it's actually more
13 of a credit, I would say, for plaintiff in that he
14 did not -- I offset that damage amount by what
15 defendants had already been benefitted from the
16 deals.

17 I don't know if that changes what your argument
18 is, but that is the reason why I -- So I actually
19 credited offsets, the damage amount awarded to
20 defendants that plaintiff would owe by what -- by the
21 benefits, the resale. I credited him for that.

22 When you say the credit cannot be allowed, that
23 was really I was crediting your client with the
24 offset. I guess I'm a little confused as to why that
25 argument. I guess what you're saying is that I

1 should not have -- maybe I should have credited the
2 entire \$14,000, I think is really what your argument
3 is. I deny that request.

4 As far as the repairs for the truck, as far as
5 the parties and the evidence submitted, this was an
6 amendment. From what the court remembers of the
7 testimony, this was not -- Mr. Foster, I think what
8 you're saying is this was repairs to the Kenworth.
9 My understanding was that this was repairs to another
10 vehicle, another truck owned by plaintiff. This was
11 something they agreed to. Their agreement was
12 amended by this. I deny the motion as far as the
13 claims on the repairs of the truck.

14 As far as the wages, and Mr. Foster maybe you
15 can clarify this. To me it's important that
16 plaintiff proved what amounts were paid by wages and
17 what amounts were paid for equipment because one of
18 plaintiff's requests was that I find treble damages
19 for unpaid wages.

20 I don't know how this Court can determine unpaid
21 wages unless the proof is before the Court to say
22 that wages were not paid. I think it's important --
23 I know you're addressing the accounts, and it's about
24 the full amount paid, and that I should be able to
25 base my decision upon that. I think when there's --

1 I would think it's important when there's a request
2 for a different amount of damages that that's the
3 burden of plaintiff to prove. If wages have been
4 unpaid, it's his burden. To base treble damages off
5 that, there was just not enough evidence before me to
6 show that wages had not been fully paid. So I deny
7 your motion based upon that.

8 Mr. Foster, have I addressed your full arguments
9 about wages? Was that the only argument as far as
10 wages? Ordinarily --I think what you were saying it
11 was reasonable to just say what -- the full amount
12 had been paid for both wages and equipment, that the
13 Court could base its decision off that. I don't see
14 anything else Mr. Foster. Anything I'm not
15 addressing?

16 Mr. Foster: I believe the Court has addressed
17 all of our arguments.

18 The Court: Anything further, Mr. Foster?

19 Mr. Foster: That's our motion.

20 The Court: Anything, Mr. Schusterman?

21 Mr. Schusterman: Nothing.

22 The Court: Then I affirm my ruling. Is that
23 sufficient, Mr. Foster?

24 Mr. Foster: I believe Your Honor was able to
25 do that, yes, ma'am.

1 The Court: I thank you both.

2 Whereupon: Hearing was concluded at 1:55 p.m.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
In The Circuit Court

Teasa K. Weaver, Master in Equity

Case No. 2017-CP-46-02487

Mark Giles Pafford,

Appellant,

v.

Robert Wayne Duncan, Jr.,
Robert Duncan, Sr., and Frank Eason,
d/b/a "Rock City Heavy Hauling, Inc."

of whom

Robert Wayne Duncan, Jr. and
Robert Duncan, Sr. are the,

Respondents.

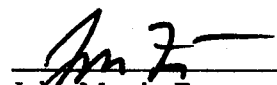
NOTICE OF APPEAL

Mark Giles Pafford appeals the following orders:

Order filed May 4th, 2020, by the Honorable Teasa K. Weaver; and
Order denying Plaintiffs' Motion to Alter or Amend Judgment, filed June 24,
2020, by the Honorable Teasa K. Weaver.

Appellants received written notice of entry of the Orders listed above on the dates of
entry pursuant to the e-filing system.

July 23, 2020



John Martin Foster

Post Office Box 106

Rock Hill, S.C. 29731-6106

803 324-8100

Attorney for Appellant

Other Counsel of Record:

Stephen D. Schusterman
P.O. Box 4211
Rock Hill, South Carolina 29731
803 325-7788
Attorney for Respondents

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
In The Circuit Court

Teasa K. Weaver, Master in Equity

Case No. 2017-CP-46-02487

Mark Giles Pafford,

Appellant,

v.

Robert Wayne Duncan, Jr.,
Robert Duncan, Sr., and Frank Eason,
d/b/a "Rock City Heavy Hauling, Inc."
of whom

Robert Wayne Duncan, Jr. and
Robert Duncan, Sr. are the,

Respondents.

CERTIFICATE OF SERVICE

The undersigned, counsel for Appellant 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:

Notice of Appeal, with referenced Orders; and
this Certificate of Service

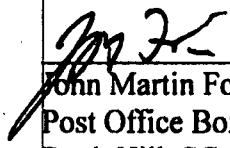
the original of which was sent to be filed with the Clerk of the Court for the Court named above,

by depositing the same with the United States Postal Service on the date above, with sufficient postage affixed and 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; or 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:

Stephen D. Schusterman
P.O. Box 4211
Rock Hill, South Carolina 29731
803 325-7788
Attorney for Respondents



John Martin Foster
Post Office Box 106
Rock Hill, SC 29731-6106
803 324-8100
Attorney for Appellant

July 23, 2020

Rock Hill, South Carolina

ELECTRONICALLY FILED - 2020 Jul 23 2:25 PM - YORK - COMMON PLEAS - CASE#2017CP4602487