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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Alison Renee Lee, Presiding Judge

Case No. 2016-CP-32-01385

Appellate Case No. 2018-002157

Richie D. Barnes,..... Respondent,

v.

James Reese,..... Appellant.

AMENDED BRIEF OF RESPONDENT

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TABLE OF CONTENTS

Table of Authorities	ii
Statement of Issues on Appeal	1
Statement of the Case	1
Standard of Review	3
Arguments	
A. Reese did not make a post-trial motion, and therefore his arguments are not preserved for appellate review	4
B. Even if Reese had filed a proper post-trial motion, the jury’s verdict should not be disturbed, as the evidence clearly supported the verdict	7
C. Responses to Reese’s Arguments	8
Conclusion	14

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>Bochette v. Bochette</i> , 300 S.C. 109, 112, 386 S.E.2d 475 (Ct. App 1989).....	8
<i>Bryson v. Bryson</i> , 378 S.C. 502, 510, 662 S.E.2d 611, 615 (Ct. App. 2008)	8
<i>Burns v. Universal Health Servs.</i> , 361 S.C. 221, 232, 603 S.E.2d 605, 611 (Ct. App. 2004).....	8
<i>Chastain v. Hiltabidle</i> , 381 S.C. 508, 514-15, 673 S.E.2d 826, 829 (Ct. App. 2009)	4
<i>Force v. Richland Mem. Hosp.</i> , 322 S.C., 283, 284, 471 S.E.2d 714, 715 (Ct. App. 1996).....	7
<i>Gastineau v. Murphy</i> , 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998).....	7
<i>Gilliland v. Doe</i> , 357 S.C. 197, 199, 592 S.E.2d 626, 627 (2004).....	7
<i>Glasscock, Inc. v. U.S. Fid. & Guar. Co.</i> , 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) .	8
<i>Harris v. Bennett</i> , 332 S.C. 238, 245, 503 S.E.2d 782, 786 (Ct. App. 1998).....	3, 4
<i>Jinks v. Richland County</i> , 355 S.C. 341, 345, 385 S.E.2d 281, 283 (2003).....	7
<i>Lite v. Taylor</i> , 284 S.C., 316, 318, 326 S.E.2d 173, 175 (Ct. App. 1985)	5
<i>Palmer v. State</i> , 427 S.C. 36, 46, 829 S.E.2d 255, 261 (Ct. App. 2019)	8, 9, 10, 11, 12, 13, 14
<i>Peay v. Ross</i> , 292 S.C. 535, 536, 357 S.E.2d 482, 483 (Ct. App. 1987)	5
<i>Pelican Bldg. Ctrs. v. Dutton</i> , 311 S.C. 56, 60, 427 S.E.2d 673, 675 (1993)	4
<i>S.C. Dep't of Highways & Pub. Transp. v. Galbreath</i> , 315 S.C. 82, 86, 431 S.E.2d 625, 628 (Ct. App. 1993)	10
<i>S.C. DOT v. First Carolina Corp.</i> , 372 S.C. 295, 301-02, 641 S.E.2d 903, 907 (2007).....	5
<i>Shupe v. Settle</i> , 315 S.C. 510, 515, 445 S.E.2d 651, 654 (Ct. App. 1994).....	8, 15
<i>State v. Burton</i> , 356 S.C. 259, 265 n.5, 589 S.E.2d 6, 9 n.5 (2003)	4
<i>State v. Lindsey</i> , 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011)	8
<i>Stephen v. CSX Tranp., Inc.</i> , 415 S.C. 182, 195, 781 S.E.2d 534, 541 (2015)	5
<i>Strange v. South Carolina Dep't of Highways & Pub. Transp.</i> , 314 S.C. 427, 429-30, 445 S.E.2d 439, 440 (1994)	7
<i>Welch v. Epstein</i> , 342 S.C. 279, 303, 536 S.E.2d 408, 420 (Ct. App. 2000)	7
 <u>Statutes</u>	
S.C. Code Ann. §22-3-20(2)	9
S.C. Code Ann. §27-40-510(6).....	2
 <u>Other Authorities</u>	
Rule 50	3, 5, 6, 14

Rule 50(a)5

Rule 50(b)5

Rule 50(e)6

Rule 59 3, 5, 6, 15

Rule 59(a)6

Rule 59(b)6

Rule 59(e)4, 6

Jean Hoefer Toal et al. *Appellate Practice in South Carolina* 57 (2d ed. 2002).5

STATEMENT OF ISSUES ON APPEAL

Does the failure of Appellant to make a post-trial motion preclude consideration of his challenge of the verdict?

Does the fact that Appellant's arguments are not preserved for appellate review require the dismissal of this appeal?

Does the failure to cite and discuss legal authorities applicable to Appellant's Arguments in Appellant's Brief result in the abandonment of such Arguments?

STATEMENT OF THE CASE

This suit was filed by Respondent, Richie D. Barnes ("Barnes"), on April 21, 2016. The Complaint was amended by Amended Complaint filed on October 16, 2017. [R.p. 85] Appellant, James Reese ("Reese"), through an attorney, filed Defendant's Answer to Amended Complaint and Defendant's Counterclaim on November 6, 2017. Barnes filed a Reply on November 15, 2017. [R.p. 100]

This case involves certain real property located in Lexington County, which is known as 41 Canterbury Court, Columbia, South Carolina (the "Property"), which property is owned, in fee simple, by Barnes.

Based upon an agreement between the parties, which they reached on March 9, 2013, Barnes agreed to allow Reese to take possession of the Property so long as he paid an earnest money deposit and made stipulated monthly payments. The parties attempted to formalize their agreement, and this is where the dispute arises. There is no dispute over whether or not Reese took possession of the Property, or whether or not he made the requisite payments, through January 2016. During this time frame, and thereafter, Reese leased (sub-let) the Property to various tenants.

The dispute involves the validity of two written documents (“contracts”) purportedly signed by Barnes and Reese, to wit: Residential Lease, dated March 9, 2013, and Agreement to Sell Real Estate, dated March 9, 2013. [R.p. 110]

Barnes claims that the Residential Lease is the one effective contract between the parties involving the Property. Barnes also asserts that he granted to Reese an option to purchase in conjunction with the Residential Lease. Reese claims that the one effective contract is the Agreement to Sell Real Estate.

Possession of the Property was awarded to Barnes by the Order Granting Plaintiff’s Motion for Partial Summary Judgment filed on February 15, 2018. [R.p. 66] This Order resolved Barnes’ First Cause of Action (granting Barnes possession of the Property). It provided that both of the alleged contracts required monthly payments by Reese to Barnes and that Reese breached the payment terms of whichever of these two contracts is determined to be the effective one. [R.p. 68]

By his Second Cause of Action [R.pp. 87-88], Barnes sought a judgment against Reese for his actual damages for past-due rent, holdover rent, attorney’s fees and collection costs, all in accordance with the Residential Lease.

By his Third Cause of Action [R.pp. 89-90], Barnes sought a judgment against Reese for his actual damages for the cost of repairing the Property, which was extensively damaged during Reese’s possession.

By his Fourth Cause of Action [R.p. 90], Barnes sought a judgment against Reese for additional rent for an appropriate timeframe needed to make repairs.

By his Fifth Cause of Action [R.pp. 90-91], Barnes sought a judgment against Reese for punitive damages for making extensive damages to the Property in a deliberate and malicious manner, which constituted waste under S.C. Code Ann. §27-40-510(6).

Reese denied having liability under a lease and argued that Barnes refused to accept his payments under the Agreement to Sell Real Estate, and he counterclaimed for damages.

This case was tried before a jury on November 5 – 7, 2018. Reese represented himself at the trial. As indicated by Defendant's Answer to Amended Complaint and Defendant's Counterclaim and the Order Granting Plaintiff's Motion for Partial Summary Judgment [R.p. 66], Reese had been represented by an attorney; but prior to the trial of this case, Reese and his attorney parted ways. The attorney was relieved as counsel for Reese by Order filed on July 17, 2018 [R.p. 73]; and by said Order, the trial was set for a day certain (November 5, 2018), which afforded Reese well over three months to prepare for trial.

At the conclusion of the trial, the jury, after deliberation, issued a verdict in favor of Barnes, as follows:

Actual Damages: \$82,815.86; and

Punitive Damages: \$8,200.00; and

finding for Barnes on Reese's Counterclaim. [R.p. 76]

Although granted ten days to make any post-trial motions pursuant to Rules 50 and 59 [R.p. 81], Reese made no such motions.

Reese filed a Notice of Appeal on December 7, 2018. [R.p. 103]

STANDARD OF REVIEW

It is a fundamental rule of law that an appellate court will affirm a ruling by a lower court if the offended party does not challenge that ruling. Failure to challenge the ruling is an abandonment of the issue and precludes consideration on appeal. The unchallenged ruling, right or wrong, is the law of the case and requires affirmance. See *Harris v. Bennett*, 332 S.C. 238, 245,

503 S.E.2d 782, 786 (Ct. App. 1998).

“It is well settled that, but for a very few exceptional circumstances, an appellate court cannot address an issue unless its was raised to and ruled upon by the trial court. . . . When an issue is raised to but not ruled upon by the trial court, the issue is preserved for appeal only if the party raises the same issue in a Rule 59(e) motion.” *Chastain v. Hiltabidle*, 381 S.C. 508, 514-15, 673 S.E.2d 826, 829 (Ct. App. 2009) (internal citations omitted).

“A pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law.” *State v. Burton*, 356 S.C. 259, 265 n.5, 589 S.E.2d 6, 9 n.5 (2003).

ARGUMENTS

A. REESE DID NOT MAKE A POST-TRIAL MOTION, AND THEREFORE HIS ARGUMENTS ARE NOT PRESERVED FOR APPELLATE REVIEW.

Reese failed to make a motion during the trial (i.e. a motion for a directed verdict or for a non-suit), upon which the trial judge ruled, and which was renewed following the jury verdict by a motion notwithstanding the verdict, or to make a timely post-trial motion (i.e. motion for a new trial or a motion to alter or amend the judgment), although informed thereof, and provided a reasonable opportunity to do so, by the trial judge’s post-trial Order [R.p. 81].

“Where an issue presented to the court is not ruled on in the final order, the issue must be raised by an appropriate post-trial motion to be preserved for appeal.” *Harris v. Bennett, supra*.

“[W]here an issue has not been ruled upon by the trial judge nor raised in a post-trial motion, such issue may not be considered on appeal.” *Pelican Bldg. Ctrs. v. Dutton*, 311 S.C. 56, 60, 427 S.E.2d 673, 675 (1993).

“ ‘There are four basic requirements to preserving issues at trial for appellate review. The issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity.’ Jean Hoefer Toal et al. *Appellate Practice in South Carolina* 57 (2d ed. 2002).” *S.C. DOT v. First Carolina Corp.*, 372 S.C. 295, 301-02, 641 S.E.2d 903, 907 (2007).

Rule 50(a) of the South Carolina Rules of Civil Procedure (SCRCP) provides for motions for directed verdict. Reese did not make a motion for a directed verdict at the end of Barnes’ case; and even if he had made such motion, as he introduced evidence following the closing of Barnes’ case, he failed to renew such motion at the conclusion of all of the evidence.

“[T]he failure of defendant to move for nonsuit or directed verdict precludes challenge on appeal to sufficiency of the evidence.” *Lite v. Taylor*, 284 S.C., 316, 318, 326 S.E.2d 173, 175 (Ct. App. 1985).

Rule 50(b) (SCRCP) provides for a motion for judgment notwithstanding the verdict. According to this Rule, the party must timely make such motion; and here, the trial judge, by a Form 4 Order filed on November 8, 2018, granted Reese “10 days to file any post-trial motions (Rule 50, 59).” [R.p. 81] Reese filed no post-trial motion, including specifically a motion for judgment notwithstanding the verdict.

As he failed to make a motion for directed verdict before the case went to the jury, Reese was precluded from moving for a judgment notwithstanding the verdict. See *Stephen v. CSX Transp., Inc.*, 415 S.C. 182, 195, 781 S.E.2d 534, 541 (2015).

As in the case of *Peay v. Ross*, 292 S.C. 535, 536, 357 S.E.2d 482, 483 (Ct. App. 1987), where the appellant “did not move at trial for a nonsuit or a directed verdict, but instead let the case go to the jury without objection to the sufficiency of the evidence [and] made no motion for

judgment notwithstanding the verdict,” Reese’s objection to the sufficiency of the evidence cannot be reviewed for the first time on appeal.

The foregoing citations and comments address motions under Rule 50. No motion under that Rule was made. The trial judge offered Reese (pointedly informed him about) the opportunity to make motions under that Rule and also under Rule 59. Reese could have moved for a new trial under Rule 59(a) or to alter or amend the judgment under Rule 59(e). No motion under Rule 59 was made.

Reese could have made a motion to reduce the jury’s verdict. No such motion was made. No argument was timely made that the verdict was the result of confusion, prejudice or some other influence outside the evidence, which Reese now argues for the first time in Appellant’s Brief.

Both of these Rules require timely action. Rule 50(e) provides: “The motion for judgment n.o.v. shall be made promptly after the jury is discharged, or in the discretion of the court not later than 10 days thereafter.” Rule 59(b) provides: “A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order.”

The time constraints under these Rules coincide with the trial judge’s post-trial Order. [R.p. 81] Reese cannot, and does not, maintain that this Order was insufficient notice to him of the opportunity available to protect the record or to clarify the trial judge’s ruling as well as the time constraints to move under either Rule 50 or Rule 59 or both.

B. EVEN IF REESE HAD FILED A PROPER POST-TRIAL MOTION, THE JURY'S VERDICT SHOULD NOT BE DISTURBED, AS THE EVIDENCE CLEARLY SUPPORTED THE VERDICT.

Even if Reese had filed a sufficient motion for judgment notwithstanding the verdict, “the trial judge could not disturb the findings of fact by the jury unless a review of the record discloses no evidence which reasonably supports them.” *Force v. Richland Mem. Hosp.*, 322 S.C., 283, 284, 471 S.E.2d 714, 715 (Ct. App. 1996).

“A motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict.” *Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998).

When viewing the evidence and inferences that reasonably can be drawn therefrom, the trial judge must consider same in the light most favorable to the nonmoving party. See *Gilliland v. Doe*, 357 S.C. 197, 199, 592 S.E.2d 626, 627 (2004).

“In ruling on motions for directed verdict and JNOV, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions and to deny the motions 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).

“The trial court can only be reversed by this Court when there is no evidence to support the ruling below.” *Id.* at 430, 445 S.E.2d at 440. *Jinks v. Richland County*, 355 S.C. 341, 345, 385 S.E.2d 281, 283 (2003).

“[T]he jury’s determination of damages is entitled to substantial deference.” *Welch v. Epstein*, 342 S.C. 279, 303, 536 S.E.2d 408, 420 (Ct. App. 2000).

“The verdict will be upheld if there is any evidence to sustain the factual findings implicit

in the jury's verdict." *Shupe v. Settle*, 315 S.C. 510, 515, 445 S.E.2d 651, 654 (Ct. App. 1994); see also *Burns v. Universal Health Servs.*, 361 S.C. 221, 232, 603 S.E.2d 605, 611 (Ct. App. 2004).

Appellant's Brief contained numerous conclusory comments about the evidence, but none of these comments were supported by legal authority. There is nothing in the Appellant's Brief which would indicate or even imply that there is no evidence in the record which reasonably (viewed in the light most favorable to Barnes) supports the jury's verdict. To the contrary, the contractor's estimate (Supp.R.p. 1) and the summary of actual damages (Supp.R.p. 8), both of which were testified to at length, reasonably support the findings of fact made by the jury, as implied by the verdict.

C. RESPONSES TO REESE'S ARGUMENTS

"An appellant may not use either oral argument or the reply brief as a vehicle to argue issues not argued in the appellant's brief." *Bochette v. Bochette*, 300 S.C. 109, 112, 386 S.E.2d 475 (Ct. App. 1989). (emphasis added)

Reese's Arguments are replete with conclusory statements – without more. He fails to cite any law to support these statements.

'An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority.' *Bryson v. Bryson*, 378 S.C. 502, 510, 662 S.E.2d 611, 615 (Ct. App. 2008). '[S]hort, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review.' *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001). When a party provides no legal authority regarding a particular argument, the argument is abandoned and the court will not address the merits of the issue. *State v. Lindsey*, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011). *Palmer v. State*, 427 S.C. 36, 46, 829 S.E.2d 255, 261 (Ct. App. 2019).

Reese's Argument 1. This suit followed the dismissal (without appeal) of a magistrate's court case. The magistrate ruled that she was without jurisdiction to hear this dispute. As Reese

claimed to have an equitable interest in the Property (that is, that the title to the Property was in question), the magistrate correctly ruled (apparently pursuant to S.C. Code Ann. §22-3-20(2)) that she had no subject matter jurisdiction. Such magistrate's court case had no bearing whatsoever on this suit in the Court of Common Pleas.

Reese's Argument 1 is more in the nature of a statement of additional facts. There is no point. No conclusion is argued. Importantly, this Argument fails to cite any law or authority that supports some issue or proposition. This Argument, not being supported by any legal authority, results in it being abandoned. *Palmer v. State, supra*.

Reese's Argument 2. Barnes instituted this suit believing that the Residential Lease could not be located; but before the trial, the Residential Lease was located, and said document was entered into evidence at the trial. [R.p. 110] The Residential Lease presented to the jury was, quite obviously, considered by the trial judge and the jury to be legitimate (not fraudulent). All of this Argument 2 is an effort by Reese to confuse this court, just as he tried to do in the lower court. The fact remains that, under both of the alleged contracts (the Residential Lease and the Agreement to Sell Real Estate), which are the only possible contracts between the parties [R.p. 67], Reese is in default due to his failure to make monthly payments, be they rent or something else. [R.p. 68] In any event, Reese made no motion for directed verdict seeking to declare the Residential Lease to be inadmissible, due to execution irregularities (or otherwise), and to strike any testimony in support of same.

Reese's Argument 2 is more in the nature of a statement of additional facts. It makes conclusory statements ("now fraudulent 'original lease' . . . 'fraudulent lease' . . . 'fraudulent blank lease' . . . obvious confusion . . . conflicting testimonies"), but such statements are not accompanied by a discussion, and citation, of authority. Reese's failure to support this Argument by legal

authority results in it being abandoned. *Palmer v. State, supra*.

Reese's Argument 3. Witness testimony, including such testimony which might arguably be considered to be inconsistent, was presented to the jury; and there was no evidence demonstrating (or any post-trial motion claiming) that the jury was incapable of evaluating and giving proper weight to such evidence. "The conduct of trial, including the admission and rejection of testimony, is largely within the trial judge's sound discretion, the exercise of which will not be disturbed on appeal absent an abuse of that discretion or the commission of legal error that results in prejudice for the appellant." *S.C. Dep't of Highways & Pub. Transp. v. Galbreath*, 315 S.C. 82, 86, 431 S.E.2d 625, 628 (Ct. App. 1993).

Much ado is made by Reese with regard to the notary public, who witnessed the Residential Lease. Customarily, leases involving residential property have one or two witnesses, if any, but no notary public involvement, so none of Reese's commentary about a notary being required by law to witness all parties' signatures and to affix a seal has any relevance to the validity of the Residential Lease [R.p. 110]. Nevertheless, Reese made no motion for directed verdict seeking to declare the Residential Lease to be ineffective or fraudulent and to remove said instrument from evidence and strike any testimony in support of same.

Reese's Argument 3 is more in the nature of a statement of additional facts. It makes conclusory statements ("now proven to be 'fraudulent' . . . improperly notarized . . . notary required by law to witness 'all' parties (sic) signatures"), but such statements are not accompanied by a discussion, and citation, of authority. Reese's failure to support this Argument by legal authority results in it being abandoned. *Palmer v. State, supra*.

Reese's Argument 4. The matter of Reese's signature on the Residential Lease, including the testimony of a handwriting expert, was discussed at length before the jury, which was

obviously satisfied with the explanation, as reflected by its verdict. In any event, Reese made no motion for directed verdict seeking to declare the Residential Lease to be ineffective or fraudulent and to remove the Residential Lease from evidence and strike any testimony in support of same.

Reese's Argument 4 is more in the nature of a statement of additional facts. It makes a conclusory statement ("fraudulent act"), but there is no discussion, or citation, of authority. Reese's failure to support this Argument by legal authority results in it being abandoned. *Palmer v. State, supra*.

Reese's Argument 5. Barnes has, at all relevant times, acknowledged that he gave Reese an option to purchase the Property. Interestingly, this acknowledged option to purchase, coincides with the alleged Agreement to Sell Real Estate in one material respect (the primary term): both involve an agreed-upon purchase price of \$70,000.00. In both of the alleged contracts, Reese was required to make monthly payments. Interestingly, the alleged Agreement to Sell Real Estate [designated as p. 6 of Record on Appeal, but some pages are not numbered] did not address possessory rights. It was neither a lease nor a typical installment land contract. It was, according to its terms, no more than a plan to pay a definite price to purchase the Property in monthly installments.

According to court order, Reese breached the payment terms of the contract (either the Residential Lease or the Agreement to Sell Real Estate). [R.p. 68] So, even if Reese's claim that the parties' contract was the Agreement to Sell Real Estate, rather than the Residential Lease, the outcome is the same: Reese was in breach of contract.

Reese's Argument 5 is more in the nature of a statement of additional facts. It makes a conclusory statement ("fraudulent act" . . . 'fraudulent lease'"), but there is no discussion, or citation, of authority. Reese's failure to support this Argument by legal authority results in it being

abandoned. *Palmer v. State, supra*.

Reese's Argument 6. In either case (if the Residential Lease is the contract or if the Agreement to Sell Real Estate is the contract), Barnes, as the owner of the Property, is capable of mortgaging, and well within his right to mortgage, his Property. Reese, if considered to be a lessee, should have no complaint about a mortgage lien upon the Property, so long as his possession pursuant to the lease is uninterrupted; and Reese, if considered to be a purchaser, should likewise have no complaint, so long as clear title is delivered to him when he elected (and was entitled to make such election) and paid to Barnes, in lump sum, the balance due on the purchase price. This argument is moot because Reese, by breaching the payment terms of both alleged contracts [R.p. 68], could not demand clear title to the Property. There is no indication, much less evidence, that Barnes intended to defraud Reese, as Barnes could have used Reese's lump sum payment of the balance of the purchase price to retire or remove the mortgages from the title to the Property in order to convey clear title. In any event, Reese made no motion for directed verdict with regard to this Argument, and this Argument is not preserved.

Reese's Argument 6 is more in the nature of a statement of additional facts. It makes conclusory statements ("unjustly enriched himself . . . intention to defraud . . . willful breach of contract . . . dishonesty"), but such statements are not accompanied by a discussion, and citation, of authority. Reese's failure to support this Argument by legal authority results in it being abandoned. *Palmer v. State, supra*.

Reese's Argument 7. There is no evidence that the testimony of Barnes' contractor, with regard to the cost of the repairs made to the Property, created a false perception to jury. To the contrary, the jury reduced the actual damages requested by Barnes (Spp.R.p. 8), thereby indicating that they understood the contractor's explanation of his repairs (but did not accept fully the list of

repair costs).¹ There is no evidence that Barnes' other witnesses conspired to defraud Reese or perjured themselves to support Barnes. In any event, Reese made no motion for directed verdict seeking to exclude the testimony of any of these witnesses, and the trial judge made no ruling in that regard.

Reese's Argument 7 is more in the nature of a statement of additional facts. It makes conclusory statements ("lack of memory' and uncertainty . . . defraud and cause prejudice . . . inconsistency . . . perjure themselves"), but such statements are not accompanied by a discussion, and citation, of authority. Reese's failure to support this Argument by legal authority, results in it being abandoned. *Palmer v. State, supra*.

Reese's Argument 8. There is no evidence that the jury was confused or failed to properly comprehend the evidence and facts presented. There is certainly nothing in the record which would warrant a claim that the jury "displayed substantial forms of incompetency." To the contrary, the one question that the jury had, during deliberations, which had to do with how the verdict form should be filled-out [R.p. 76], was a good question, which demonstrated that they wanted to avoid making a misstep in disclosing their decision. Even at this late point in the trial, Reese could have made a motion for directed verdict related to his allegation of the jury's incompetence, but he did not do so; and this Argument is not preserved.

Reese's Argument 8 is more in the nature of a statement of additional facts. It makes conclusory statements ("the jury's noted confusion . . . incompetency . . . the judges (sic) confusion"), but such statements are not accompanied by a discussion, and citation, of authority.

¹ While it is unknown how the jury determined the damages to be awarded, the jury deducted \$5,281.00 from the gross amount of actual damages requested by Barnes. This amount is approximately one-half of the construction costs related to the kitchen, which costs included "upgrades" (granite counter tops) in addition to basic repairs.

Reese's failure to support this Argument by legal authority results in it being abandoned. *Palmer v. State, supra*.

Reese's Conclusion and Prayer for Relief. Reese continues his arguments in the sections headed: Conclusion and Prayer for Relief. In the Conclusion, Reese again complains about the jury's "confusion and incompetence" and then, for the first time, complains that comments made by the respondent's attorney did not align with the evidence. These complaints could have been raised at trial and could have been the subjects of a post-trial motion, but they were not raised; and they are not preserved for appeal. In addition, Reese argues, for the first time, in the Conclusion, that state law "regarding landlord/rental property" does not apply to a "sell contractual agreement." This argument could have been raised at trial and by a post-trial motion, but it was not raised; and it is not preserved for appeal.

In the Prayer for Relief, Reese seeks, for the first time, the following affirmative relief: "reimburse the appellant the amount of \$45,000.00 for emotional distress, time lost, and monies invested." This claim should have been made, if at all, in Reese's Counterclaim, but no such claim was made; and no motion was made prior to, or at, trial to amend the pleading. This claim is not subject to consideration for the first time on appeal.

CONCLUSION

Unquestionably, sufficient evidence existed to submit this case to the jury.

Reese could have moved under Rule 50 (SCRCP) for (1) a directed verdict before the case was submitted to the jury and (2) a judgment notwithstanding the verdict after the jury's decision was announced. These motions would have preserved one or more issues for appeal, but Reese failed to make them.

Reese could have moved under Rule 59 (SCRCP) for: (1) a new trial or (2) a specific ruling on specific issues. One of these motions would have preserved one or more issues for appeal, but he failed to make a motion.

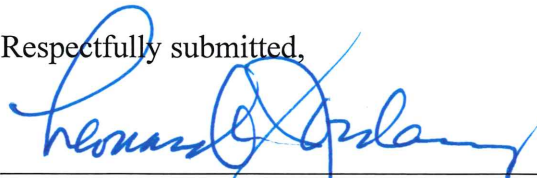
The trial judge informed Reese of this opportunity [R.p. 81], but he did not avail himself of this opportunity.

Ultimately, since Reese raised no post-trial motion, he is precluded from appealing the jury's verdict.

Setting aside the procedural technicalities, there is no substantive argument, supported by legal authority, demonstrating that there is no evidence "to sustain the factual findings implicit in the jury's verdict." *Shupe v. Settle, supra*.

The verdict of the jury should be affirmed.

Respectfully submitted,



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Columbia, South Carolina
October 4, 2021

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Alison Renee Lee, Presiding Judge

Case No. 2016-CP-32-01385

Appellate Case No. 2018-002157

Richie D. Barnes,..... Respondent,

v.

James Reese,..... Appellant.

CERTIFICATE OF COUNSEL

The undersigned counsel for Respondent hereby certifies that the Amended Brief of Respondent complies with Rule 211(b), SCACR.

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October 4, 2021