STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	Case No.: 2019-CP-10-05392
KEVIN STAVELEY-O'CARROLL,	)	
	)	
Plaintiff,	)	ORDER
-vs-	)	OF
	)	JUDGMENT FOR DAMAGES
FENIX AUTOMOTIVE, LLC,	)	
	)	
Defendant.	)	
	)	

Plaintiff Kevin Staveley-O'Carroll ("Plaintiff" or "Staveley-O'Carroll") brought this action against Defendant Fenix Automotive, LLC ("Defendant" or "Fenix") on October 21, 2019 alleging causes of action for breach of contract, negligence, conversion, and unjust enrichment. The record reflects that Plaintiff properly served Defendant with a copy of the Summons and Complaint on November 13, 2019. On January 28, 2020, after Defendant failed to file an answer or otherwise respond to the Complaint, Plaintiff filed and Affidavit of Default and Motion for Default Judgment, which the Court granted its Order dated January 29, 2020. Subsequently, Plaintiff filed his Motion for Damages and requested for a damages hearing.

On August 25, 2021, the parties having been duly and properly notified, the Court held a hearing on the issue of damages via WebEx. Present at the damages hearing via video/audio were Plaintiff appearing with his counsel W. Westbrook Wills III, Esq. and Axel Reinert ("Mr. Reinert"), his expert witness in automotive restoration. Damien A. Sobieraj, Esq. appeared on behalf of Defendant. Plaintiff's expert witness was duly qualified, without objection, to give expert testimony as to issues related to the damages in the matter. Plaintiff and Mr. Reinert's testimony was taken, evidence was received, and the entire record in the case was considered by

the Court.[1] The Court makes the following Findings of Fact and Conclusions of Law as required by SCRCP, Rule 52. Any Finding of Fact which is more appropriately characterized as a Conclusion of Law shall be treated as such, and vice-versa.

FINDINGS OF FACT

Based on Defendant's admissions by default of the allegations of Plaintiff's Complaint, and having considered the testimony and evidence presented at the damages hearing, Plaintiff has established the following facts by a preponderance of the evidence, unless otherwise specified.

1. Plaintiff is an individual residing in Columbia, Missouri.

2. Defendant is a South Carolina limited liability company engaged in the business of automotive restoration.

3. The parties are properly subject to the jurisdiction of the Court, and the Court has subject matter over the matters raised in the pleadings.

4. Defendant was properly served with a copy of Plaintiff's Summons and Complaint, which it failed to answer or otherwise respond, resulting in the entry of default judgment against it.

5. In 2015, Plaintiff entered into a contract with Defendant to restore his classic 1969 Mercedes 280 SL ("the Mercedes"), which he delivered into Defendant's possession and care at Defendant's place of business for that purpose.

6. At the time Plaintiff delivered the Mercedes to Defendant, the vehicle was in poor

[1] As Defendant was in default and default judgment having been entered against it, the Court took testimony and received evidence from and on behalf of Plaintiff only, and limited Defendant's participation in the hearing to cross-examination and objecting to evidence by its counsel. See Howard v. Holiday, Inc. 271 S.C. 238, 246 S.E.2d 880 (1978)(limiting a defendant's participation in a post-default hearing to cross-examination and objection to plaintiff's evidence); see also Limehouse v. Hulsey, 404 S.C. 93, 116, S.E.2d 566, 579 (S.C. 2013)(reaffirming Howard).

condition and had a value of between $20,000 and $25,000, based on the testimony of Mr. Reinert, Mr. Reinart testified that (i) he based his opinion regarding the value of the Mercedes on his observation of the Mercedes only after Defendant had disassembled the Mercedes and had already performed work on the vehicle, (ii) he did not personally observe the condition of the Mercedes when Plaintiff delivered the vehicle to Defendant, (iii) he did not review any photographs showing the condition of the Mercedes prior to Defendant disassembling the Mercedes and beginning work on the vehicle. Furthermore, Mr. Reinert did not identify any industry resources used by him to assist him with his valuation of the Mercedes as delivered to Defendant.

7. Plaintiff and Defendant agreed Defendant would restore the Mercedes to a "daily driver" condition, and that Defendant would provide Plaintiff a detailed estimate of the total cost and time required to perform the restoration project after completely disassembling the Mercedes. Defendant informed Plaintiff in their conversations and emails that the total cost to restore the Mercedes may increase as the project progressed and Defendant determined what original parts could be reused versus rebuilt or replaced.

8. Between September of 2015 and March of 2016, Defendant performed initial work on the Mercedes including completely disassembling it and preparing the body for anticipated metalwork and submitted invoices to Plaintiff for such work totaling $5,825.00, which Plaintiff paid in full.

9. 22 months later, in December of 2017, Defendant provided Plaintiff a detailed estimate for the remainder of the restoration of the Mercedes, which it represented would cost approximately $60,000, and would take approximately six months.

10. To keep the total cost of the remainder of the restoration process as close to the $60,000

estimate as possible, Plaintiff and Defendant specifically agreed that, wherever possible, Defendant would make use of the Mercedes's existing parts and components.

11. At Defendant's request, Plaintiff provided it a $20,000 deposit, which Defendant specifically represented it would maintain, in trust, in a separate account, and against which it would bill for restoration work on the Mercedes going forward. Defendant also represented to Plaintiff that any unused portion of the $20,000 would be returned to Plaintiff upon his request.

12. The evidence and testimony before the Court demonstrates, and the Court finds, that after Plaintiff provided the $20,000 deposit, Defendant failed to complete the restoration of the Mercedes, as agreed, and it remains to this day in an unrestored and completely disassembled state, in Defendant's possession.

13. Moreover, the evidence, testimony, and Defendant's admissions establish that after disassembling the Mercedes, Defendant stored a great many of its parts and components outdoors on the ground or in plastic bins, exposed to the elements and weather, where they have remained since April 2019.

14. From the photographs submitted in evidence and personal observation, Mr. Reinert identified many of the parts and components of the Mercedes, including the vehicle's motor, windshield, suspension, drivetrain, exterior finishes and chrome, and an array of interior components, which he testified were in a severe degradation condition or ruined as a direct result of Defendant leaving them outdoors in the weather over a a few years, but Mr. Reinart also conceded he did not have firsthand knowledge of the condition of these parts when the Plaintiff delivered the Mercedes to Defendant Mr. Reinert further testified that, if many of those parts and components were in good condition when the Mercedes was delivered to Defendant, then these parts could have been reused in the restoration of the Mercedes. However, due to their present

condition, Mr. Reinert opined many of those parts and components may no longer be usable for the restoration project, or may now require very extensive refurbishment.

15. Mr. Reinert testified that, based on Plaintiff and Defendant's agreement, the total actual cost of the restoration of the Mercedes at the time of the parties' original agreement would reasonably have been between $60,000 and $70,000 dollars. However, Mr. Reinert believed that because of the degradation to many of the parts of the Mercedes due to Defendant failure to properly protect them from damage, the current cost to restore the vehicle is likely to be double that figure.

16. Plaintiff alleged, Mr. Reinert testified, and the Court finds, that Defendant knew or should have known that storing the subject parts and components of Plaintiff's Mercedes outdoors, exposed to the elements over a period of years could result in their degradation or ruination. Mr. Reinert testified that by doing so, Defendant deviated from the standards of care, professionalism, and best practices for businesses in the automotive restoration industry.

17. Based on the uncontroverted testimony of Mr. Reinert, the Court finds the Mercedes would have had a value of between $42,000 and $120,000 had Defendant restored it as agreed in its contract with Plaintiff. Instead, in its present condition and state, the Mercedes currently has a value of $10,000.

18. In September of 2019, as Defendant had still failed to complete the restoration of the Mercedes, Plaintiff made a demand on Defendant for the return of his $20,000 deposit, which Defendant also failed to return to him.

CONCLUSIONS OF LAW

Plaintiff filed his action against Defendant alleging causes of action for breach of contract, negligence, conversion, and unjust enrichment for which he has prayed for actual,

consequential, special, and punitive damages as proven at trial, together with attorney's fees and costs of the action. The Defendant failed to answer or otherwise respond to Plaintiff's Complaint, and default judgment was entered against it.

A defendant in default admits liability but not the damages as set forth in the prayer for relief. Solley v. Navy Fed. Credit Union, Inc., 397 S.C. 192, 203 723 S.E.2d 597, 603 (S.C. App. 2012); see also Renney v. Dobbs House, Inc., 275 S.C. 562, 566, 274 S.E.2d 290, 292 (1981). The amount of damages in a default action must be proved by the preponderance of the evidence. Id.; see Jackson v. Midlands Human Res. Ctr., 296 S.C. 526, 529, 374 S.E.2d 505, 507 (Ct. App.1988) ("A judgment for money damages must be warranted by the proof of the party in whose favor it is rendered."). As to punitive or exemplary damages, the Plaintiff has the burden of proving by clear and convincing evidence the Defendant's demonstrated misconduct was willful, wanton, or with reckless disregard for the Plaintiff's rights. See Mishoe v. Qhg of Lake City, Inc., 621 S.E.2d 363, 366, 366 S.C. 195 (S.C. 2005). "A conscious failure to exercise due care constitutes willfulness." Id.

Based on the pleadings, admissions, and the uncontroverted evidence and testimony presented by Plaintiff and his expert witness at the damages hearing, the Court finds and concludes as follows:

Breach of Contract

Plaintiff and Defendant entered into a valid contract for the restoration of Plaintiff's Mercedes, supported by consideration, and creating rights and obligations between the parties, under which Defendant agreed to restore the vehicle to a "daily driver" condition, and Plaintiff agreed to pay Defendant for parts and labor associated with the restoration. Pursuant to the parties' contract, Defendant invoiced Plaintiff for the initial restoration work it performed in the

amounts totaling $5,825.00, which Plaintiff paid in full. Thereafter, Plaintiff provided Defendant a $20,000 deposit towards the remainder of the vehicle restoration, which Defendant was to hold in a separate account, as agreed, however, Defendant did complete the restoration of the Mercedes. Furthermore, after Plaintiff discovered Defendant had not performed its obligations, as promised, and demanded the return of his $20,000 deposit, as agreed, Defendant failed to deliver it. The Court finds Defendant has breached its contract with Plaintiff entitling Plaintiff to contract damages.

Damages in a breach of contract action are to put the non-breaching party in the position he or she would have been in had the breach not occurred and the contract were performed. See Minter v. GOCT, Inc., 322 S.C. 525, 473 S.E.2d 67(Ct. App. 1996)(purpose of damages for breach of contract is to put plaintiff in as good a position as he or she would have been if the contract had been performed). Compensation for lost profits or value is recoverable as damage in a breach of contract action where the estimate of such lost profit or value is not based wholly on speculation and conjecture. Charles v. Texas Co., 199 S.C. 156, 18 S.E.2d 719 (1942); South Carolina Federal Savings Bank v. Thorton-Crosby Development Co., 303 S.C. 74, 399 S.E.2d 8 (Ct. App. 1990); Global Protection Corp. v Halbersberg, 332 S.C. 149, 503 S.E.2d 483 (1998)(absolute certainty of data on which lost profits are estimated not required; must be such reasonable certainty that damages are not based wholly on speculation and conjecture and certain standard or fixed method by which profits or value may be estimated and determined with a fair degree of accuracy is sufficient).

The proper measure of damages for breach of contract is the loss actually suffered by the contractee as the result of the breach. Tomlinson v. Mixon, 626 S.E.2d 43, 50, 367 S.C. 467 (S.C. App. 2006); South Carolina Fin. Corp. v. West Side Fin. Co., 236 S.C. 109, 113 S.E.2d 329

(1960). "In the normal case, the damage will consist of two distinct elements: (1) out-of-pocket costs actually incurred as a result of the contract; and (2) the gain above costs that would have been realized had the contract been performed." Id; Collins Entm't., Inc. v. White, 363 S.C. 546, 611 S.E.2d 262 (Ct. App. 2005).

Here, therefore, as damages for Defendant's breach of contract, Plaintiff is entitled to the difference between the fair market value of the Mercedes as restored to the agreed upon condition and its present value, minus the difference between the cost of the restoration work and the amount the Plaintiff already paid toward that cost. According to the uncontroverted testimony of Mr. Reinert, the fair market value for the Mercedes as restored to the agreed "daily driver" condition would have been between $42,000 and $120,000, the average of which amounts to $81,000. Mr. Reinert did not identify any industry resources from which he used information to formulate his estimated fair market value of the Mercedes, relying upon general internet searches for sales listings of similar Mercedes. He further testified that based on the parties agreement at the time of its making, the reasonable cost of the labor and parts would have been between $60,000 and $70,000 dollars, the average of which amounts to $65,000. Plaintiff also paid Defendant a total of $25,825 towards the total cost of the restoration. Plaintiff's actual damage resulting from Defendant's breach of contract can, therefore, be expressed as ($81,000 - $2,500) – ($65,000 - $25,825) and totals $39,325.

Under the foregoing measure, Plaintiff is also entitled to the return of the vehicle in its present state. Mr. Reinert testified that shipping of the vehicle in its present disassembled state to a Charleston location will cost a fee of $525 which includes tarping, and two hours of loading and unloading, plus $100 dollars per hour for additional time. Mr. Reinert testified that in his opinion, loading and unloading the Mercedes in its disassembled condition would likely take

several hours. The Court finds Plaintiff is entitled to consequential damages associated with shipping the Mercedes to another location in Charleston in the amount of $1,125.

Plaintiff is entitled to actual and consequential damages as a result of Defendant's breach of contract in the total amount of $40,450, including the cost to return the vehicle, plus the costs and expenses of the action.

Negligence

Plaintiff's contract with Defendant for the restoration of the Mercedes and his delivery of the vehicle to Defendant for that purpose created a bailment. "A bailment is created by the delivery of personal property by one person to another in trust for a specific purpose, pursuant to an express or implied contract to fulfill that trust." Hadfield v. Gilchrist, 538 S.E.2d 268, 343 S.C. 88, 95 (S.C. App. 2000); Home Indent Co. v. Harleysville Mut. Ins. Co., 252 S.C. 452, 460, 166 S.E.2d 819, 824 (1969)("Bailment has been defined as the delivery of a chattel for some express or particular purpose upon a contract, express or implied, that, after the purpose has been fulfilled, then the chattel shall be redelivered to the bailor, or otherwise dealt with according to his directions.").

The bailment contract between Plaintiff and Defendant created a duty in Defendant to exercise due care in safekeeping of Plaintiff's Mercedes, see Harris v. Burnside, 261 S.C. 190, 199 S.E. 2d 65, 67-8 (1973)(citing Fortner v. Carnes, 258 S.C. 455, 189 S.E.2d 24), and in its repair, see id. (citing Edwards v. Charleston Sheet Metal, 253 S.C. 537, 172 S.E.2d 120). Breach of the duty of care arising under a bailment contract constitutes a tort. Id. at 195, 68.

In action involving a bailment alleging the tort of negligence, the bailor is entitled to be compensated for all losses that are the natural consequence and proximate result of the bailee's negligence. Dixon v. Besco Engineering, Inc., 320 S.C. 174, 180, 463 S.E.2d 636 (S.C. App.

1995)(citing 8 Am.Jur.2d Bailments § 346 (1980)). Damages are proximately caused if they are the foreseeable result of the defendant's tortious act. Id. (citing Young v. Tide Craft, Inc., 270 S.C. 453, 242 S.E.2d 671 (1978)). Further, the liability of a bailee under a bailment for mutual benefit, as we have here, arises upon a showing that (1) the goods were delivered to the bailee in good condition, (2) they were lost or returned in a damaged condition, and (3) the loss or damage to the goods was due to the failure of the bailee to exercise ordinary care in the safekeeping of the property. Hadfield v. Gilchrest, 343 S.C. 88 at 99. Importantly, the burden is on the bailee, and not on the bailor, to demonstrate the bailee used ordinary care in storing and safekeeping the property. Id.

Punitive damages are recoverable for negligence, which is so reckless of consequences as to imply or to assume the nature of wantonness, willfulness or recklessness. Solanki v. Wal-Mart Store # 2806, 410 S.C. 229, 237, 763 S.E.2d 615 (S.C. App. 2014)(referencing Bell v. Atl. Coast Line R. Co., 202 S.C. 160, 171, 24 S.E.2d 177, 182 (1943)). "If a person of ordinary reason and prudence would have been conscious of the probability of resulting injury, the law says the person is reckless or willful and wanton, all of which have the same meaning—the conscious failure to exercise due care." Berberich v. Jack, 392 S.C. 278, 287, 709 S.E.2d 607, 612 (2011).

In the present action, pursuant to the parties' agreement, Plaintiff delivered his Mercedes into the Defendant's possession which created a bailment for mutual benefit. As such, Defendant (bailee) owed Plaintiff (bailor) a duty of care both in the safekeeping and in the repair of Plaintiff's vehicle. Based on the admitted allegations in Plaintiff's Complaint and the evidence and testimony of Plaintiff and Mr. Reinert at the damages hearing, the Court finds the Defendant failed to exercise due care in restoring the Plaintiff's vehicle and in safekeeping its parts and components by storing many of them outdoors in such a manner as to allow them to be

directly exposed to the weather over a period of a few years. Such failure to exercise due care by Defendant proximately resulted in the severe degradation or ruination of some parts and components of Plaintiff's Mercedes, which not only reduced its value from the time Plaintiff delivered it to the Defendant, but also may have doubled the cost to restore the vehicle to the "daily driver" condition.

Furthermore, based on the testimony of the Plaintiff and Mr. Reinert and the photographic evidence entered into the record, the Court finds by a standard of clear and convincing evidence, that Defendant knew or should have know that storing the parts and components of Plaintiff's Mercedes on the outdoors on the ground or in bins and exposed to the weather and elements over a period of a few years would result in the very damage that was ultimately occasioned by such failure to exercise even slight care in safeguarding them. Mr. Reinert testified that Defendant's actions constituted an absolute departure from industry standards and best practices, that Defendant or it's agents or employees were conscious of such departure and the damage that would result, and that such acts or omissions amounted to a reckless disregard for Plaintiff's property. The Court finds such damages were foreseeable and avoidable by Defendant.

As stated above, based on the evidence and testimony, at the time Plaintiff delivered the Mercedes to Defendant, the vehicle had a value of between $20,000 and $25,000, the average of which amounts to $22,500. Presently the vehicle is worth $10,000. The damage occasioned to the Mercedes by the negligence of the Defendant has reduced its value by $12,500, and Defendant is liable to Plaintiff in that amount.

While Plaintiff has requested punitive damages, "to ensure that a punitive damage award is proper, the trial court shall conduct a post-trial review…" Gamble v. Stevenson, 305 S.C. 104,

112, 406 S.E.2d 350, 354 (S.C. 1991). The Court when conducting such a review may consider the following: (1) defendant's degree of culpability; (2) duration of the conduct; (3) defendant's awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) defendant's ability to pay; and (8) other factors deemed appropriate. *Id.* at 112. After conducting such review, this Court has found no evidence of (i) an excessive duration of conduct, (ii) concealment by Defendant, (iii) the existence of similar past conduct, or (iv) that Defendant has any ability to pay such an award, and this Court declines to award any punitive damages under Plaintiff's negligence cause of action.

Under the theory of negligence, Defendant is liable to Plaintiff for the return of the Mercedes and for compensatory damages in the amount of $13,625, including the cost of transport, , plus the costs and expenses of the action.

Conversion

Plaintiff's claim of conversion relates the $20,000 deposit Plaintiff provided Defendant, and that Defendant failed to return upon Plaintiff's demand, as agreed.

Conversion is the "unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of their condition or the exclusion of the owner's rights." Green v. Waidner, 284 S.C. 35, 324 S.E.2d 331 (S.C. App., 1984); Powell v. A.K. Brown Motor Co., 200 S.C. 75, 78, 20 S.E.2d 636, 637 (1942). Money may be the subject of conversion, when it is capable of being identified, and there may be conversion of determinate sums even though the specific coin and bills are not identified. See Owens v. Andrews Bank & Trust Co., 220 S.E.2d 116, 265 S.C. 490, 497 (S.C. 1975); 89 C.J.S. Trover and Conversion § 23, p. 541 (1955).

The measure of actual damages in an action for conversion of personal property is the value of the property with interest thereon from the date of conversion to the date of trial. Id.; Long v. Gibbs Auto Wrecking Company, 253 S.C. 370, 171 S.E.2d 155 (1969), Mims v. Bennett, 160 S.C. 39, 158 S.E. 124 (1931).

The measure of damages for a willful and intentional conversion, where the property is converted with knowledge of the owner's rights in the property, is the highest market value of the property with interest up to the time of trial, including any additional value due to additions or improvements made by the converter. See Green, 284 S.C. 35, 324 S.E.2d 331; Industrial Welding Supplies, Inc. v. Atlas Vending Co., 276 S.C. 196, 277 S.E.2d 885 (1981); Gregg v. Bank of Columbia, 72 S.C. 458, 52 S.E. 195 (1905); Restatement (Second) of Torts Section 927 (1981); 1 Am.Jur.2d Accession and Confusion Section 29 (1962). Punitive damages are permitted in a conversion claim where the evidence shows the conversion was done recklessly and with conscious indifference to the owner's rights. Long v. Gibbs Auto Wrecking Co., 253 S.C. 370, 171 S.E.2d 155 (1969); Lumpkin v. Allstate Insurance Co., 251 S.C. 19, 159 S.E.2d 852 (1968).

In the present case, based on the admitted allegations of the pleadings and the testimony and evidence presented to the Court, the Plaintiff, after paying for the totality of the restoration work performed on his Mercedes to a certain point, provided Defendant a $20,000 deposit in advance of the remainder of the work. Defendant was to maintain the $20,000, in trust, a separate account to bill against for restoration work going forward, and of which any unused portion would be refundable to Plaintiff on demand. Thereafter, Defendant failed to complete the restoration of Plaintiff's vehicle. When Plaintiff discovered that fact some 20 months later and demanded the return of his deposit money, Defendant did not return it to him, and has still

not returned it. Defendant has knowingly, consciously, and willfully deprived Plaintiff of possession and ownership of a determinant sum of money, and is liable to Plaintiff for conversion of his deposit money in the amount of $20,000, plus interest at the legal rate since Plaintiff demand on September 11, 2019 for its return in the amount of $3,095 totaling $23,095.

Under his conversion action, Plaintiff has again requested punitive damages, "to ensure that a punitive damage award is proper, the trial court shall conduct a post-trial review..." Gamble v. Stevenson, 305 S.C. 104, 112, 406 S.E.2d 350, 354 (S.C. 1991). The Court when conducting such a review may consider the following: (1) defendant's degree of culpability; (2) duration of the conduct; (3) defendant's awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) defendant's ability to pay; and (8) other factors deemed appropriate. *Id.* at 112. After conducting such review, this Court has found no evidence of (i) an excessive duration of conduct, (ii) concealment by Defendant, (iii) the existence of similar past conduct, or (iv) that Defendant has any ability to pay such an award, and the Court declines to award any punitive damages under Plaintiff's conversion cause of action.

Under a theory of conversion, Defendant is liable to Plaintiff for actual in the amount of $23,095, plus costs and expenses of the action.

Costs of Action

Based on the record, including the attorney's fee and expenses affidavit filed in the case by his attorney, Plaintiff has been caused to incur costs and expenses associated with bringing and prosecuting the action in the amount of $1,694, which includes the fee of $1,000 charged by his expert witness for his services, as attested to by Mr. Reinert during the damages hearing.

Plaintiff is entitled to recover from Defendant his costs and expenses in the total amount of $1,694.

Attorney's Fees

Plaintiff also requested an award of attorney's fees. "Attorney's fees are not recoverable unless authorized by contract or statute." Jackson v. Speed, 326 S.C. 289, 307, 486 S.E.2d 750, 759 (1997). Plaintiff and Defendant did not agree to the recovery of attorney's fees in any contract, and Plaintiff has not cited any statute by which this Court may award him attorney's fees. Consequently, the Court denies Plaintiff's request for an award of attorney's fees.

Summary of Judgment

The Court finds Defendant is liable to Plaintiff, as described above, on Plaintiff's causes of action for breach of contract, negligence, and conversion. Because the Court is awarding Plaintiff contract damages on the basis of a valid contract between the parties, the Court has not considered Plaintiff's unjust enrichment claim. See Gantt v. Morgan, 199 S.C. 138, 18 S.E.2d 672 (1942)(Relief under a theory of unjust enrichment is not available if an action is based on the existence of a contract).

Plaintiff is not permitted a double recovery for a single wrong. To prevent that outcome, Plaintiff is required to elect his remedies. See Taylor v. Medenica, 324 S.C. 200, 479 S.E.2d 35 (S.C. 1996) (citing Thompson v. Watts, 281 S.C. 504, 316 S.E.2d 393 (1984)(The purpose of election of remedies is to prevent a double recovery for a single wrong.)). However, an election of remedies is not applicable where remedies are addressed to different wrongs, requiring different or additional elements and standards of proof. See Thompson v. Watts, 316 S.E.2d 393, 281 S.C. 504 (S.C. 1984)(citing Tzouvelekas v. Tzouvelekas, 206 S.C. 90, 33 S.E.2d 73, 74

(1945)(Election of remedies is the act of choosing between different remedies allowed by law on the same state of facts.)).

Based on Defendant's liability to Plaintiff on his causes of action for breach of contract, negligence, and conversion, as set out above, and applying the doctrine of election of remedies, the Court finds judgment for the Plaintiff is appropriate in the following amounts:

a) for breach of contract in the amount of $40,450;

b) for negligence in the amount of $21,125, reduced by $40,450 for a total of $0;

c) for conversion in the amount of $23,095;

d) for the return of the Mercedes to Plaintiff; and

e) for Plaintiffs costs and expenses in the amount of $1,694.

IT IS HEREBY ORDERED AND ADJUDGED that judgment against Defendant be and is hereby entered in favor of Plaintiff in the total amount of **$65,239**. Defendant is also hereby ordered to prepare the Mercedes and its parts and components is such a manner that within 30 days of this Order becoming final, they may be available for pick-up and transport to a location in Charleston, South Carolina to be designated by Plaintiff.

IT IS SO ORDERED in Charleston, South Carolina, this _____ day of September 2021.

_____
Hon. Roger M. Young
Circuit Court Judge

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP10-05392

KEVIN STAVELEY-O'CARROLL
PLAINTIFF(S)

FEXNIX AUTOMOTIVE, LLC
DEFENDANT(S)

Submitted by: Damien A. Sobieraj	Attorney for : ☐ Plaintiff ☒ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
KEVIN STAVELEY-O'CARROLL	FENIX AUTOMOTIVE, LLC	$65,239.00
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Charleston Common Pleas

Case Caption: Kevin Staveley O'Carroll VS Fenix Automotive Llc

Case Number: 2019CP1005392

Type: Order/Damages

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134