

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Zeb Portanova,

Plaintiff,

vs.

GinJoint, LLC d/b/a BarVision,

Defendant.

IN THE CIRCUIT COURT

Case No. 2020-CP-02-01003

ORDER ON DAMAGES HEARING

RECEIVED

Jan 04 2022

SC Court of Appeals

THIS MATTER COMES BEFORE THE COURT upon the Form 4 Order signed and filed by the Honorable DeAndrea Gist Benjamin on September 3, 2021, ordering a damages hearing following a hearing on Plaintiff's Motion for Summary Judgment conducted on August 30, 2021. The damages hearing was held on November 4, 2021. Present at the hearing were (a) Plaintiff Zeb Portanova; (b) Kyle A. Brannon, Esq., attorney for Plaintiff, and (c) S. Jahue Moore, Esq., attorney for Defendant. Prior to the damages hearing, on October 25, 2021, Defendant filed a Motion for Jury Trial, and on November 3, 2021, the Plaintiff filed a Memorandum in Opposition to Defendant's Motion for Jury Trial. Before proceeding with the damages hearing, the Court heard arguments and denied Defendant's Motion for Jury trial, finding that Defendant waived any right to a jury trial in this matter pursuant to Rule 38, SCRPC.

Based on Plaintiff's testimony, Plaintiff's counsel's testimony regarding attorneys' fees and costs incurred by Plaintiff, and the documents admitted into evidence at the hearing, the Court finds and orders as follows:

FINDINGS OF FACT

1. This action arises out of a commercial loan Plaintiff provided to Defendant on

November 14, 2017, which is evidenced by that certain Promissory Note (the “Note”).¹ Principal and interest payments were due by Defendant to Plaintiff under the Note beginning January 1, 2019.

2. The Note provided that repayment to Plaintiff be with interest, at the rate of ten percent (10%) per annum. The Note further provided that combined principal and interest payments be remitted by Defendant in an amount no less than \$4,166.67 per month, and stated that Defendant agreed to pay Plaintiff’s reasonable attorneys’ fees and costs incurred seeking to collect the debt under the Note in any judicial proceeding.

3. Between January 10, 2019 and February 7, 2020, Plaintiff received thirteen (13) principal and interest payments from Defendant by wire transfer.² Plaintiff applied these thirteen payments to the monthly payment obligations for January 2019 through January 2020.

4. Thereafter, Defendant defaulted under the terms of the Note by failing to remit payment to Plaintiff for the monthly payments past due and owing from February 2020 through November 2021.

5. Based on Defendant’s default, Plaintiff exercised his right to accelerate the entire indebtedness due and owing under the Note, and he filed his Verified Complaint in this case on May 19, 2020. Defendant filed its Answer on June 23, 2020. Plaintiff then filed his Verified Amended Complaint on July 22, 2020, and Defendant filed its Answer to Amended Complaint on July 27, 2020. In the Verified Complaint and Verified Amended Complaint, Plaintiff asserted claims against Defendant for breach of contract, *quantum meruit*, and an accounting.

6. On June 29, 2021, Plaintiff filed his Motion for Summary Judgment on the grounds that there is no genuine issue of material fact that he is entitled to a monetary judgment against

¹ The Court admitted the Note into evidence at the damages hearing.

² The Court admitted the documents evidencing the wire transfers into evidence at the damages hearing.

Defendant as a matter of law. A hearing for consideration of the Motion for Summary Judgment was held before the Honorable DeAndrea Benjamin on August 30, 2021. On September 3, 2021, the Court entered an Order granting Plaintiff's Motion for Summary Judgment as to Defendant's liability under the Note, but denied Plaintiff's Motion as to damages and ordered that an evidentiary damages hearing be held.

7. After applying all thirteen payments Plaintiff received, Plaintiff's amortization calculation³ showed that Defendant owed him, as of November 1, 2021, \$100,406.64 in principal, and \$17,413.00 in accrued and unpaid interest. Interest continues to accrue at the rate of \$27.51 per day.

8. Plaintiff incurred attorneys' fees and costs during the course of this action between May 2020 and November 2021. Plaintiff's attorney prepared an Affidavit of Attorneys' Fees and Costs and testified regarding the amount of attorneys' fees and costs incurred by Plaintiff. Plaintiff's counsel testified that he and other attorneys and paralegals in his firm worked 85.10 hours on this matter and Plaintiff incurred \$21,500.00 in attorneys' fees, and \$461.53 in direct, out-of-pocket costs for filing fees and service of process.

CONCLUSIONS OF LAW

1. With respect to Defendant's Motion for Jury Trial, the Court denied that Motion pursuant to Rule 38(b) and (d), SCRCP. Defendant made no demand for a jury trial in its Answers, nor did it serve a separate demand in writing within ten (10) days after service of its Answers in accordance with Rule 38(b), SCRCP. Further Rule 38(d) provides that a failure to demand a jury trial in this manner constitutes a waiver by the party. Accordingly, Defendant waived its right to a jury trial under Rule 38, SCRCP.

³ The Court admitted Plaintiff's amortization calculation into evidence at the damages hearing.

2. Based on the evidence presented and admitted by the Court, Defendant breached the terms of the Note, and Plaintiff was damaged as a result of said breach, as of November 1, 2021, in the amount of \$100,406.64 in principal, \$17,413.00 in interest, \$21,500.00 in attorneys' fees and \$461.53 in costs, plus interest which continues to accrue at the rate of \$27.51 per day.

3. Based on the testimony of Plaintiff's counsel and applicable law, the attorneys' fees and costs totaling \$21,961.53 charged to Plaintiff by his counsel are reasonable, and shall be included as part of this judgment entered in favor of Plaintiff against Defendant pursuant to the terms of the Note.

4. The total amount, as of November 1, 2021, in which Plaintiff is entitled to a monetary judgment against Defendant for Defendant's breach of the terms and conditions of the Note, plus attorneys' fees and costs incurred in this action, is One Hundred Thirty-Nine Thousand Seven Hundred Eighty-One and 17/100 Dollars (\$139,781.17).

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Plaintiff is hereby awarded a monetary judgment against Defendant, as of November 1, 2021, in the total amount of \$139,781.17, plus interest that continues to accrue at the rate of \$27.51 per day. Post-judgment interest will continue to accrue on this judgment at the contract rate of ten percent (10%) per annum until the judgment is paid in full;

AND IT IS SO ORDERED.

[JUDGE'S SIGNATURE TO FOLLOW]

RECEIVED

Jan 04 2022

SC Court of Appeals

FORM 4

JUDGMENT IN A CIVIL CASE

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

CASE NO. 2020-CP-02-01003

Zeb Portanova

GinJoint, LLC d/b/a BarVision

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Kyle A. Brannon, Esquire Nexsen Pruet, LLC PO Box 2426 Columbia, SC 29202	Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

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

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

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : This is an Order granting judgment for Plaintiff.

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)
Zeb Portanova	GinJoint, LLC d/b/a BarVision	\$139,781.17, as of November 1, 2021
		\$
		\$

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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 parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

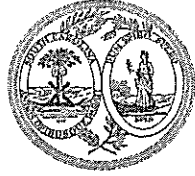
Court Reporter:

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.

[Blank lines for additional information]



Aiken Common Pleas

Case Caption: Zeb Portanova VS Ginjoint, Llc , defendant, et al
Case Number: 2020CP0201003
Type: Order/Damages

So Ordered

s/ Clifton B. Newman, 2127

Electronically signed on 2021-11-30 16:38:20 page 7 of 7