

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM YORK COUNTY  
In The Circuit Court

Teasa K. Weaver, Circuit Court Judge

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Appellate Case No. 2021-000480

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Jimmy Shaver,

Respondent,

v.

Donald Shaver,

Appellant.

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INITIAL REPLY BRIEF OF APPELLANT

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**Feb 14 2022**

**SC Court of Appeals**

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## ARGUMENT

I. THE APPELLANT'S DEFAULT AFFECTED ONLY THOSE MATTERS WELL-PLED AND PRECLUDED A DEFAULT HEARING BASED ON A DIFFERENT THEORY.

Rule 54(c), S.C.R.C.P. states

(c) Demand for Judgment. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

[*Emphasis added.*]

Rule 54(c) will not permit recovery on issues that were not actually litigated; it cannot revive a right to relief lost in the pleadings. *Old Republic Ins. Co. v. Employers Reinsurance Corp.*, 144 F.3d 1077, 1080 (7<sup>th</sup> Cir. 1998) states:

A party seeking a default judgment is entitled to only such relief as is framed by his pleading .... It follows that if a complaint fails to state a cause of action, the rendering of a default judgment thereon is without authority of law and therefore reversible error. *Mutual Savings & Loan Association v. McKenzie*, 274 S.C. 630, 632, 266 S.E.2d 423, 424 (1980).

[*Id.*, 283 S.C. 251, 321 S.E.2d 196.]

In *Evans Prods. Co. v. West Am. Ins. Co.*, 736 F.2d 920 (3<sup>rd</sup> Cir. 1984), the Federal District Court held:

Fed.R.Civ.P. 54(c) permits relief based on a particular theory of relief only if that theory was squarely presented and litigated by the parties at some stage or other of the proceedings. *Cioffe v. Morris*, 676 F.2d 539, 541 (11<sup>th</sup> Cir. 1981). Put another way, relief may be based on a theory of recovery only if the theory was presented in the pleadings or tried with the express or implied consent of the parties. *Monod v. Futura, Inc.*, 415 F.2d 1170, 1174 (10<sup>th</sup> Cir. 1969).

[*Id.*, 736 F.2d 923-924; *emphasis added.*]

Against this precedent, the Respondent argues that precedent does not relieve a *pro se* litigant of responsibility for complying with the substantive and procedural points of law, citing *State v. Burton*, 356 S.C. 259, 589 S.E.2d (2003). This argument, while superficially acceptable, overlooks the ruling of the Trial Judge. In this case, the Trial Judge specifically ruled the Appellant in default and limited him to cross-examination and argument from the testimony or evidence presented. [RECORD ON APPEAL, p.22, l.10-14.]

That ruling by the Trial Court was an error at law. The basis of the Respondent's action was stated in his Complaint as a claim for monies allegedly paid to the Appellant by the insurance company. [RECORD ON APPEAL, p.\_\_\_\_.] At trial, this was changed to a claim for contract between the Appellant and Respondent. [RECORD ON APPEAL, p.\_\_\_\_.] The Appellant cannot be in default as to factual allegations that were never made in the Complaint. The ruling of the Trial Court was a legal error. As such, the Appellant has fulfilled the requirement for Rule 60 relief.

II. THE THEORY ADVANCED BY THE RESPONDENT FOR RELIEF WAS NOT PLED AND PRECLUDED A DEFAULT HEARING ON BOTH CAUSES OR ACTION.

The Respondent also seems to argue that sufficient allegations of his Complaint remained to allow this Court to confirm the Trial Court on the basis of his Second Cause of Action, for *quantum meruit*. The problem with this line of reasoning is that he heads the Second Cause of Action with Paragraph 19. of the Complaint, stating:

To the extent not inconsistent with the allegations of this Complaint the Plaintiffs [*sic*] re-alleges and incorporates herein Paragraphs 1 through 17 above.

[RECORD ON APPEAL, p.\_\_\_\_.]

Paragraphs 1 through 17 of the Complaint set out the claim for monies allegedly paid to the Appellant by the insurance company. [RECORD ON APPEAL, p.\_\_\_\_.] Therefore, both of the Respondent's Causes of Action rely upon facts which were not plead at trial, and were in fact contradicted by the Appellant's letter (furnished to opposing counsel before trial) showing that the facts alleged in Paragraphs 1 through 17 were untrue.

## CONCLUSION

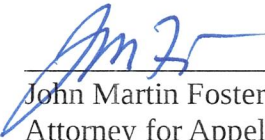
The Appellant was not represented in this case until after rendition of judgment. Owing to the Trial Court's ruling, he was unable to raise the defenses of a lack of proper LLR license by the Respondent for the work claimed, or the Respondent's failure to file any claim in the Probate Court.

The Appellant was not in default as to a theory of the case which was not pled, but was allowed at trial. Both causes of action pled depended upon facts which were not placed in evidence, and were contradicted by the letter provided to opposing counsel. The allowance of that theory at trial was a legal error.

The Appellant is entitled to have the decisions of the Trial Court reversed and to present all of his defenses relating to this dispute.

February 14, 2022

Respectfully submitted,



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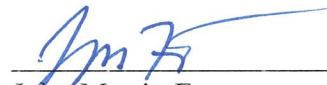
**SC Court of Appeals**

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CERTIFICATE OF COUNSEL

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The undersigned certifies that the final Reply Brief of Appellant complies with Rule 211(b),  
S.C.A.C.R.

  
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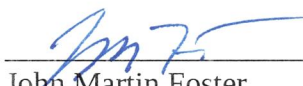
CERTIFICATE OF SERVICE

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:

Initial Reply Brief of Appellant; and  
this Certificate of Service,

by filing the same by e-mail with the South Carolina Court of Appeals, pursuant Section (b)(2) of that Order on Methods of Electronic Filing and Service under Rule 262 of the South Carolina Appellate Court Rules entered January 28, 2022, and by Section (d)(1) upon counsel named above using the said lawyer's primary e-mail addresses listed in the Attorney Information System (AIS).

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