

STATE OF SOUTH CAROLINA)
 COUNTY OF ANDERSON)
)
 Joyce Porter and Edith Durham,)
)
 Plaintiffs,)
)
 vs.)
)
 Jimmy L. Davis, Inc. and)
 Jimmy L. Davis, individually)
)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 CASE NO.: 2019-CP-04-00927

**ORDER GRANTING
 DEFAULT JUDGMENT**

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FEB 28 2022

SC Court of Appeals

The parties came before this Court on July 28, 2021, for a default damages hearing in this matter. The Court asked the parties to submit their respective statements of damages, and they did so accordingly. After careful review and consideration of the record, the arguments of the parties, and their respective statements of damages, the Court finds that there is sufficient evidence to award the Plaintiffs damages in the amount of \$143,391.76. An explanation of this award and of the history of this case now follows.

FACTUAL BACKGROUND

This case has a tortured procedural history, but it is one which this Court believes merits detailing as a part of this Order. The Plaintiffs filed this suit on May 16, 2019, and alleged that they had entered into an agreement with the Defendants in August 2017 whereby the Defendants would construct a home for them on the condition of payment of \$315,968.00 (\$94,790.40 of which the Plaintiffs allege they paid as a down payment). *See* Compl. ¶¶ 7-13. The Plaintiffs further alleged that, as a part of the contract, they agreed to subdivide the lot and sell one half of the subject property to the Defendants. *See* Compl. ¶ 9. The Plaintiffs further allege that the Defendants were to complete construction of the home by Thanksgiving 2017. *See* Compl. ¶¶ 10-12. The Plaintiffs

allege that the Defendants did not comply with the contract by failing to complete the work by Thanksgiving 2017 and by deviating from the agreed-upon construction plans. *See* Compl. ¶¶ 16-19. The Plaintiffs then terminated the contract in mid-October 2017 and demanded a return of their deposited funds. *See* Compl. ¶¶ 20-22.

The Plaintiffs further allege that the Defendants' actions violated the Subdivision's covenants and restrictions and caused them additional damages in the form of diminished property value, loss of funds paid to the Defendants, design fees, storage fees, legal fees, delay damages, lost profits, and such other actual and consequential damages resulting from the Defendants' conduct. *See* Compl. ¶¶ 27-30. As a result, the Plaintiffs allege they were forced to sell their property at a significant loss. *See* Compl. ¶ 29.

The Plaintiffs further allege that on January 3, 2018, the parties entered into a settlement agreement and release (hereinafter "Agreement") whereby "the Defendants agreed to pay the Plaintiffs \$25,000.00, with \$1,000.00 due upon execution of the Settlement Agreement, followed by five equal consecutive monthly installments of at least \$1,000.00, and then a balloon payment of the balance on or before June 30, 2018." *See* Compl. ¶ 24 and Compl. Ex. A. The Plaintiffs allege that the Defendants made the first \$1,000.00 payment upon the full execution of the Agreement, but failed and refused to make any further payments. *See* Compl. ¶ 26.

The Plaintiffs brought causes of action against the Defendants in the form of breach of contract as to both the construction contract and the settlement agreement, negligence, fraud, constructive fraud, and negligent misrepresentation. *See* Compl. ¶¶ 31-68.

The Defendant failed to answer or otherwise appear, and this Court, by order dated July 9, 2019, granted the Plaintiffs' Motion for an Entry of Default. The Plaintiffs then moved for a Default Judgment on August 19, 2019, and the Court ordered a damages hearing be held within

90 days from the date of September 6, 2019. A default damages hearing was held on October 22, 2019 with the Defendants failing to appear despite receiving apparent notice. Thereafter, by Order dated November 4, 2019, the Court granted the Plaintiffs a Default Judgment against the Defendants in the amount of \$477,300.75. The Plaintiffs moved to execute the judgment on December 11, 2019.

Counsel for the Defendants then filed a Notice of Appearance on December 23, 2019, and, on December 30, 2019, the Defendants moved to stay the execution of the judgment, to dismiss the action, and, in the alternative, to set aside default. A hearing for these motions was scheduled for early 2020, but the Covid-19 pandemic significantly delayed the proceedings.

A motion/evidentiary hearing was finally held on August 31, 2020. Due to the unusual circumstances of the case, the parties were also allowed to present live testimony. By Order dated September 3, 2020, the Court denied the Defendants' Motions to Dismiss and to Set Aside Default but vacated its previous order granting a default judgment. The basis for the vacation of the default judgment was the Court's finding that the Defendants did not receive proper notice of the original October 22, 2019, damages hearing in accordance with Rule 5(a) SCRCP.

A subsequent damages hearing was scheduled but delayed several times over the course of early 2021. This Court finally held the damages hearing on July 28, 2021, and the Plaintiffs and Defendants submitted their statements of damages on August 4 and August 12, 2021, respectively. The parties' claimed damages are as follows:

	Plaintiffs' Statement of Damages	Defendants' Statement of Damages
1. Construction Contract Deposit	\$94,790.40 for repayment of full deposit paid to Defendants.	Defendant argues Plaintiffs unilaterally terminated the contract and that the parties entered a Settlement Agreement and Release on 1/3/18 in the amount of \$25,000.00.
2. New Architectural Design Plans	\$1,003.00 for repayment of costs incurred by the Plaintiffs in purchasing new design plans after Defendants' alleged deviation from original design plans.	Defendants argue the cancelled check presented as evidence of new design plans costs is unrelated to the underlying breach of contract action.
3. Diminished Property Value	\$12,500.00 in alleged lost value for the resale price of the property.	Defendants argue there was no loss in value of the property.
4. Storage Costs	\$1,320.00 for storage fees allegedly incurred while searching for alternative housing.	Defendants argue the alleged storage costs are unrelated to the breach of contract action.
5. Moving Costs	\$602.00 for alleged costs incurred for hiring movers.	Defendants argue the \$601.72 Bill Sanders Moving, Inc. invoice is unrelated to the underlying action.
6. Lost Profits/Appreciation	\$150,000.00 the Plaintiffs allege they would have received in appreciation of the property had the Defendants completed the construction of the house. This amount is based on an alleged comparable home.	Defendants objected to the testimony regarding the lost appreciation, but the testimony was allowed. Defendants still argue this is not a legitimate element of damages and that, even if it is, there is insufficient evidence.
7. Punitive Damages	Plaintiffs seek \$520,430.80 in punitive damages. Plaintiffs allege Defendant Davis "guided the Plaintiffs who were both vulnerable widows" to purchase the property with the knowledge of the Plaintiffs' intent to build a house there and that Davis later convinced the Plaintiffs to sell him half of the property for a zero-net profit, rendering the property inadequate for construction of a home.	Defendants argue this is at most a breach of contract case and that punitive damages are inappropriate. They also argue the Plaintiffs failed to prove clear and convincing evidence of the intentional acts on the part of the Defendants of fraud or gross negligence.

8. Prejudgment Interest on Contract Down Payment	Plaintiffs seek \$33,176.64 in interest based on the \$94,790.40 down payment with interest accruing from 8/16/17 at a rate of 8.75%.	Defendants contend that Plaintiffs' failed to offer testimony which would legally allow them to recover prejudgment interest.
9. Settlement Agreement and Release	The Plaintiffs' allege the Defendants breached the Settlement Agreement and Release.	The Defendants contend that the parties entered into the Settlement Agreement and Release on 1/3/18 for \$25,000.00. Defendants argue the Agreement is evidence of Plaintiffs' actual damages and tantamount to an election of remedies by the Plaintiffs.
Total Actual and Consequential Damages	\$260,215.40	\$25,000.00
Prejudgment Interest	\$33,176.64	None
Punitive Damages	\$520,430.80	None
Grand Total	\$813,822.84	\$25,000.00

The Defendants objected to the July 28, 2021, damages hearing and still contend that this Court lacks jurisdiction due to improper service of process. However, this Court finds that service was effectuated, all parties received notice and were present at the most recent damages hearing, and this Court has proper jurisdiction over this action.

LAW/ANALYSIS

South Carolina Courts have long recognized that a plaintiff must prove his or her damages, even when the defendant has defaulted as to liability. *Wells Fargo Bank, N.A. v. Marion Amphitheatre, LLC*, 408 S.C. 87, 90, 757 S.E.2d 557, 558 (Ct. App. 2014). "A defendant in default admits liability but not the damages...." *Id.* (quoting *Solley v. Navy Fed. Credit Union, Inc.*, 397 S.C. 192, 203, 723 S.E.2d 597, 603 (Ct.App.2012) (citing *Renney v. Dobbs House, Inc.*, 275 S.C. 562, 566, 274 S.E.2d 290, 292 (1981)). "[T]he defaulting defendant has conceded liability. However, a defaulting defendant does not concede the [a]mount of liability." *Id.* (quoting *Solley*, 397 S.C. at 203, 723 S.E.2d at 603 (quoting *Howard v. Holiday Inns, Inc.*, 271

S.C. 238, 242, 246 S.E.2d 880, 882 (1978)). Even “[i]n a default case, [therefore,] the plaintiff must prove ... the amount of his damages, and such proof must be by a preponderance of the evidence.” *Id.* (quoting *Solley*, 397 S.C. at 204, 723 S.E.2d at 603 (internal citation omitted)).

The South Carolina Supreme Court has previously criticized trial courts for awarding default damages in the inflated amounts sometimes found in the prayer for relief in a complaint. *See id.* In *Howard*, for example, the Supreme Court stated, “It is common knowledge ... that in a tort action the amount stated in the prayer for relief often bears little relation to the amount which the plaintiff is entitled to recover. The prayer in an action may not serve as a substitute for proof.” 271 S.C. at 240, 246 S.E.2d at 881. In *Renney*, the Supreme Court stated, “This case is one more in a series of cases which has given the court great concern. They involve large awards in default claims involving unliquidated damages.” 275 S.C. at 566, 274 S.E.2d at 292. In *Solley*, the Court of Appeals reversed part of an award of damages, not because the trial court awarded the amount demanded in the prayer, but because the plaintiff failed to prove the amount of the alleged loss. *See* 397 S.C. at 210, 723 S.E.2d at 606. These cases demonstrate, therefore, the principle that a plaintiff must prove all of his claims for damages, even when the defendant is in default. *See Wells Fargo Bank* at 90, 757 S.E.2d at 559.

In the present case at hand, the Plaintiffs’ original prayer for relief constituted \$150,000.00 for the breach of the construction contract claim, \$34,800.00 for the breach of the settlement agreement claim, and \$150,000.00 for the remaining causes of action. *See* Compl. Prayer for Relief ¶¶ a-c. The Plaintiffs also sought damages in the form of pre-judgment interest, costs, legal fees, and punitive damages based on the negligence, fraud, constructive fraud, and negligent misrepresentation causes of action. *See* Compl. Prayer for Relief ¶¶ a-e. The Court finds that these

figures sought in the prayer for relief are over-inflated, and that the Statements of Damages more closely resemble the actual claims for damages in this action.

As the finder of fact regarding these alleged damages, the Court finds there is sufficient evidence to show the Defendants owe the Plaintiffs the following:

1. \$94,790.40 for repayment of the full deposit paid to the Defendants at the time the parties entered into the agreement;
2. \$1,003.00 for repayment of costs incurred by the Plaintiffs in purchasing new design plans after the Defendants' deviation from the original design plans;
3. \$12,500.00 for the loss of value in resale price of the subject property;
4. \$1,320.00 for storage fees incurred by the Plaintiffs while searching for alternative housing;
5. \$601.72 for costs incurred by the Plaintiffs for hiring movers; and
6. \$33,176.64 in pre-judgment interest based on the contract down payment accruing at a rate of 8.75%.

The Court had the opportunity to consider the credibility of the witnesses as to the issue damages and finds it compelling. Therefore, this Court awards a default judgment with a grand total of damages to the Plaintiffs against the Defendants, jointly and severally, in the amount of \$143,391.76.

As to the Plaintiffs' claims for lost profits and appreciation of the property, the Court finds that these figures are too speculative and that there is insufficient evidence to award the \$150,000.00 sought.

Finally, the Court finds that punitive damages are not appropriate in this case. The record reflects that there was an agreement between the parties and a subsequent breach by the Defendants

such that the Plaintiffs could sustain their causes of action for breach of contract. However, the Court finds there is insufficient evidence to prove a fraudulent act accompanied the Defendants' breach of the contract. "[M]ere breach of a contract, even if willful or with fraudulent purpose, is not sufficient to entitle a plaintiff to go to the [finder of fact] on the issue of punitive damages." *Lister v. NationsBank of Delaware, N.A.*, 329 S.C. 133, 142, 494 S.E.2d 449, 454 (Ct. App. 1997). *See also Vann v. Nationwide Ins. Co.*, 257 S.C. 217, 220, 185 S.E.2d 363, 364 (1971) ("Even in the willful and fraudulent breach of a contract only actual damages may be recovered, unless the fraudulent breach is accompanied by a fraudulent act."). The Court finds that there is insufficient evidence to support a finding of a fraudulent act on the part of the Defendants, and an award of punitive damages, as such, is not appropriate.

One of the most important factors in determining a punitive damages award is the reprehensibility of the defendant's conduct. *See Mitchell, Jr. v. Fortis Ins. Co.*, 385 S.C. 570, 587, 686 S.E.2d 176, 185 (2009) (quoting *BMW of North America v. Gore*, 517 U.S. 559, 565). In determining reprehensibility, a Court should consider whether harm was physical as opposed to economic, with purely economic harm weighing against a finding of reprehensibility. *See id.* at 589, 686 S.E.2d at 186. The evidence before the Court supports a finding of damages which are purely economic in nature. There is insufficient evidence to support the proposition that the damages exposed the Plaintiff to any additional risk of physical harm, and, therefore, an award of punitive damages is inappropriate.

Contrary to the Defendants' assertions at the hearing and in their Statement of Damages, the Court finds that the Settlement Agreement and Release no longer controls. Plaintiffs have proven the Defendants' breach of the Agreement, and the Plaintiffs' release of the Defendants, which was conditioned on complete payment pursuant to the Agreement, was never effectuated.



Anderson Common Pleas

Case Caption: Joyce Porter , plaintiff, et al VS Jimmy L. Davis, Inc. , defendant, et al
Case Number: 2019CP0400927
Type: Order/Other

So Ordered

s/ J. Cordell Maddox Jr.