STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas
Hon. Dale E. Van Slambrook, Master-in-Equity

Case No. 2012-CP-08-2981
Appellate Case No. 2022-000033

Rita Brooks, ... Respondent,

v.

Velocity Powersports, LLC, American Honda Finance Corporation and American Honda Motor Co. Inc., Defendants,

of whichVelocity Powersports, LLC, is the ..... Petitioner.

RETURN TO THE PETITION FOR A WRIT OF CERTIORARI

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COUNTER-STATEMENT OF THE QUESTIONS PRESENTED

(Responding to Petitioner's Questions I, II, & III)

1. Did the Court of Appeals correctly rule that the Petitioner willfully committed an unfair trade practice in this case where the Record shows the Petitioner abandoned the repair of Respondent's jet ski (which it had sold her, as new, with basic and extended warranties, only two years earlier); refused to return the unrepaired jet ski to Respondent unless she gave the Petitioner a complete release from all liability; unjustly threatened to go to the magistrate to "take possession" of the jet ski in an attempt to intimidate Respondent into giving up; and sued Respondent for "storage costs" for the 10 years the Petitioner has wrongfully retained possession of the jet ski?

(Responding to Petitioner's Questions IV & V)

2. Did the Court of Appeals correctly rule that the Petitioner was not entitled to recover 10 years of storage costs in this case?

STATEMENT OF THE CASE

On October 15, 2012, the Respondent Rita Brooks (Respondent), brought this action against the Petitioner Velocity Powersports, LLC (Petitioner), for violation of the Unfair Trade Practices Act and several other causes of action in connection with its wrongful retention of her jet ski. (R.12-19) Petitioner filed an Answer and Counterclaim asserting a number of affirmative defenses and counterclaims for breach of contract, unjust enrichment and storage costs. (R. 23-30) Respondent filed a Reply generally denying the allegations of the Counterclaim. (R. 31)

The case was heard by the Hon. Dale E. Van Slambrook, Master-in-Equity for Berkeley County, on August 28, 2018. He filed an Order of Final Judgment on October 8, 2018, granting Respondent relief under her claim for unfair trade practices. The Master found Respondent was entitled to an award of actual damages in the amount of $14,787.78, and to a trebling of her damages pursuant to the Unfair Trade Practices Act, resulting in a total damages award of $44,153.34, plus her reasonable attorney's fees and costs. The Master reserved the issue of the amount of the attorney's

fees award for a later hearing. (R. 1-4). On October 17, 2018, Petitioner filed a Motion for Reconsideration. (R. 32-35) Respondent filed a Return to the motion. (R. 36-37) A hearing on the motion was held on November 19, 2018, and an Order on Motion for Reconsideration and Supplemental Order of Final Judgment was entered on December 5, 2018. (R. 6-7)

On November 29, 2018, Respondent filed an Affidavit in support of her request for attorney's fees showing that she had incurred $6,108.12 in fees. (R. 38-52) On February 19, 2019, Petitioner filed a Memorandum In Opposition to Respondent's attorney's fees request. (R. 53-54) A hearing was held on February 20, 2019, followed by an Order on March 26, 2019, awarding Respondent $6,108.12 in fees. (R. 9-10) Petitioner filed an amended Notice of Appeal of all three Orders on March 28, 2019.

On appeal, the Court of Appeals affirmed the judgment with the exception of the amount of the award of attorney's fees, which issue it remanded for a determination after applying the six factors set out in *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997).

STATEMENT OF THE FACTS

On April 24, 2010, Respondent purchased a 2007 Honda AquaTrax F-12 jet ski from Petitioner. (R. 62, ll. 2-21) The jet ski was represented to be new. (R. 64, ll. 4-11) The total purchase price, including principal and interest, was $12,820.01. (R. 66, ll. 9-12) Petitioner also sold Respondent a separate extended warranty at a cost of $825. (R. 66, ll. 15-20)[1] The jet ski came with a trailer, but Respondent also purchased life vests, a cover for the jet ski, and a fire extinguisher. (R. 65, ll. 18-21) The salesperson told Respondent that the 2007 jet ski was part of some leftover stock

[1]Petitioner received an undetermined portion of this $825 warranty sale as an agent of Honda. (R. 139, l.22 to R. 140, l. 11)

they had due to the bad economy. (R. 68, ll. 13-18) Respondent was not informed that Honda no longer made watercraft. (R. 68, ll. 21-24) Had she known this she would not have made this purchase. (R. 68, l. 24 to R. 69, l. 1)

Respondent used the jet ski in 2010 and 2011 and it performed satisfactorily. (R. 69, ll. 17-24; R. 70, ll. 6-8) However, the first time she took it out in 2012 she found that the jet ski would not go above 30 or 35 miles per hour, there was a problem with reverse shifting, and the engine would cut off. (R. 70, ll. 12-21) Respondent took the jet ski back to Petitioner the following day. (R. 70, l. 25 to R. 71, l. 2) *The date was April 9, 2012.* (R. 71, ll. 11-12) The following discussion then took place between Respondent and Dave Carp, an agent for Petitioner:

> Q All right. And what was the discussion between you and he? What did you say to him and what did he say to you?
>
> A. Basically the problems we were having with the ski and at that time they -- we told them to go ahead and do a tune-up as far as oil change, spark plugs, whatever for the new season. *I gave him all the information on my warranty and extended warranty. He wrote all of that down and he told me everything would be covered under the warranty except for the tune-up.* (Emphasis added.)
>
> He also told me that -- this was on a Monday afternoon --that someone would contact me that Wednesday or Thursday and let me know what was going on with my jet ski.

(R. 72, ll. 8-22)[2]

[2]Petitioner's claim for 10 years of storage costs relies entirely on its claim that Respondent signed a Repair Order on this initial visit which included this language: "A fee of $25.00 per day will be charged if watercraft is not picked up *within 5 days of completion.*" (R. 299, emphasis added.) As explained hereafter, there never was any completion of the work, rendering this language inapplicable.

Respondent's next contact with Petitioner occurred on April 24, 2012, when she called to check on the progress of the repairs. She again spoke with Mr. Carp, who informed her that "They hadn't had time to look at it." (R. 76, ll.3-19)

On May 2, 2012, Respondent again called Petitioner and again spoke with Mr. Carp. This time she was told "they were still trying to troubleshoot and diagnose it." (R. 77, l. 22 to R. 78, l. 8)

On May 7, 2012, Respondent went to Petitioner to check on the jet ski. (R. 78, ll. 15-17) She spoke with a technician named P.J. Wilson, again with Mr. Carp, as well as with Byron Hagar, the service manager:

Q. Did you speak with Mr. Carp on that day?

A. Yes, sir.

Q. What did you say to him?

A. We need to know the progress on the ski.

Q. What did he say to you?

A. I believe it was Mr. Wilson had told us that they had tried to get the codes to come up on the jet ski.

Q. What is your understanding of codes?

A. It has a computer in it like newer vehicles do and to diagnose if it has issues.

Q. So Mr. Carp, you don't recall anything Mr. Carp said to you?

A. No, sir.

Q. Do you recall anything else of your conversation Mr. Wilson?

A. I believe he said they had called Honda to try to diagnose the problem and they didn't have any luck with what they told them.

(R. 79, l. 25 to R. 80, l. 20)

In Respondent's conversation with Mr. Hagar, he revealed that Petitioner had previously had very bad experiences with the same model of jet ski they had sold her:

Q. What, if anything, did he say to you?

A. We had asked him about the progress of the ski and who else we could talk to, and he told us, well, we found out that we're not having a problem with the waste gate. We've had problems with earlier units as far as the water flowing out the back or something. He said, your unit does not have that problem. And we said, well, we need to find out what is going on with it and what is wrong with the turbo or the brain of the unit.

* * *

He told me that they had taken in two jet skis like mine on trade, and they didn't know that they had issues because they would crank and run, and that they tried to -- they had sold them apparently new units. They had taken these units in on trade and they tried to fix them after they found out they had problems. One of them they spent about $3,000 on, the other one about $5,000 on in parts. And they could not get them to run and that they didn't even have money to pay their technicians to work on these units, and that they had ended up in the salvage yard in Atlanta.

(R. 81, l. 19 to R. 82, l. 25)

On May 21, 2012, Respondent again returned to Petitioner.

Q. What happened on that day? What was the nature of your contact?

A. We returned to Velocity and we talked to Dave Carp, the service writer, and he said they still hadn't diagnosed what was wrong with the ski, but their -- the -- let me back up. Their service manager would be returning to work because he had been on sick leave because he had hurt his back in motor cross, and that if anyone could fix my ski, he could, and he would be returning to work the next day. And he would he would call and let me know about my jet ski.

(R. 83, l. 16 to R. 84, l. 2)

The next day Respondent received a phone call from Mr. King:

Q. You testified that you were told that Mr. King would return the following day, correct?

A. I'm sorry, yes, yes.

Q. All right. And that Mr. King would contact you. And did Mr. King contact you?

A. Yes, he did.

Q. By telephone?

A. Yes, sir.

Q. What did he say to you?

A. He told me that I owed them money and I need to come and pick up the jet ski.

Q. What did you say to him?

A. I said I thought you were going to fix the jet ski.

Q. And he said what?

A. He said, no, we're not going to work on it any longer.

Q. Did he say why?

A. He said because I had contacted an attorney.

Q. Okay. Did he tell you how he knew that you had contacted an attorney?

A. He didn't say.

Q. Did you get a letter from Mr. King?

A. Yes, sir. The next day.

* * *

Q. Have you seen that before? Exhibit 3?

A. Yes, sir.

Q. You received that by certified mail?

A. Yes, sir.

Q. When did you receive it? Let me rephrase. Had you received this certified letter from Mr. King when he called you on the 22nd, the day after your visit --

A. No, sir.

Q. -- on the 21st?

A. No, sir.

Q. What does Mr. King tell you in that letter? Read it if you will, publish it.

A. "Dear Ms. Brooks, As of the date of this letter, you still have not picked up your 2007 Honda ARX12T3. Enclosed is a copy of your repair order showing a balance owed of $219.92. We will be charging you a storage fee of $25 per day starting May 28, 2012.

"Also, if we do not receive payment within the next 30 days, we will initiate proceedings with the magistrate's office to take possession of that unit. If you have any questions please contact me. 843-841-5371. Sincerely, Billy King, Service Manager."

Q. What is that date of that letter?

A. May 22nd.

Q. That is the day after you visited Velocity?

A. Yes, sir The day he was to return to work.

Q. Does he say when the servicing was done on the unit?

A. Not in the letter.

Q. On the 21st when you were there, did they tell you that you owed any money?

A. No, sir.

Q. All right. Let's look at the repair order. How many pages is the repair order?

A. This version?

Q. Yes, ma'am. The exhibit you're looking at.

A. Five pages.

Q. All right. Do you see any page that looks like the page that you previously looked at and identified in Plaintiff's Exhibit No. 4, that was Page No. 2 in Plaintiff's No. 4. Is there a page like that in this five-page repair order?

A. No, sir.

Q. And direct your attention to Page 4. Does that page have numbers typed in for certain work allegedly performed?

A. Yes, sir. Parts and labor.

Q. What is the amount?

A. Total amount 219.92

Q. Okay. I'm going to re-direct your attention to Page 2 of the repair order that you previously looked at which is Plaintiff's Exhibit No. 4. Are the numbers the same?

A. No, sir.

Q. On that Page No. 4, that you're looking at there, it has a line for your signature. Is your signature on that repair order?

A. No, sir.

Q. Is your signature on any of those five pages of that repair order?

A. No, sir.

Q. Did you ever agree to pay Velocity for storage?

A. No, sir.

Q. I'll direct your attention to Page 1 of this repair order, and specifically parts and a price. What is your understanding of that Page 1?

A. Okay. They have a part description "PGM/F1 unit, $779.75." Extension carried over shows a zero.

Q. Do you know what that part is?

A. I believe that is the brain or whatever for the unit to control the operation. I'm not a technician. I'm not exactly sure.

Q. Is there a provision for labor cost related to that part number?

A. No, sir.

Q. Whether there is an amount there, do you see a line item for labor?

A. It says, "Diagnose ski codes zero hours."

Q. Okay. So there is no charge to you on that page, correct?

A. Correct.

Q. Okay. On Page 2, is there any indication of a charge to you?

A. No, sir.

Q. On Page No. 3 you have previously discussed, correct?

A. Yes, sir.

Q. Page No. 4 is the page where it provides for your signature you discussed, correct?

A. Yes, sir.

Q. Okay. Page 5, any numbers or any billing on that?

A. No.

Q. Any indication anything was repaired?

A. No.

* * *

Q. What part of tune-up or summerization is a repair in your view?

A. None. It would be just a service.

Q. All right. Have you ever seen any bill or has anybody from Velocity told you they repaired anything?

A. No, sir.

* * *

Q. When did you next have contact with or from Velocity after you got this certified letter from Mr. King?

A. Someone called me back within about a couple of days and wanted to know if I was going to pick up the jet ski.

Q. Was that after you had spoken with Mr. King?

A. Yes, sir.

Q. Do you know who called you?

A. I'm not positive.

Q. What was your position on paying this bill?

A. I didn't understand why I owed anything if it wasn't repaired.

Q. What value is a tune-up or summerization on a vehicle that doesn't work?

A. None whatsoever.

Q. Was that your primary purpose in going to Velocity for a tune-up or summerization?

A. No, sir.

Q. Was it for repair?

A. For repair.

Q. You don't know when they supposedly did this tune-up or summerization, correct?

A. No, sir.

Q. They didn't mention it to you on the 21st of May when you were there, correct?

A. Correct.

Q. And when did you first hear about any bill or anything being owed?

A. When Billy King called me.

Q. On what day?

A. That Tuesday. That would have been --

Q. The day after you were there?

A. Yes, sir. May 22, 2012.

(R. 83, l. 16 to R. 93, l. 20)

Gerald Cristo, one of the three owners of Petitioner and its managing member (R. 137, l. 4 to R. 138, l. 6), testified that he offered to put the parts of the disassembled jet ski back together and waive the fees, "Provided they gave a release, obviously." (R. 164, l. 21)[3] Respondent declined to accept the return of the non-working jet ski and sign a release (R. 131, ll. 4-18), and Mr. Cristo

[3]Mr. Cristo made it clear to Respondent that "you have to sign a release." (R. 182, l. 1)

thereupon directed his employees to clean up the jet ski, which had been stored outside without a cover and in a disassembled state, and store it inside his warehouse, where it still remains:

> Q. What explanation did you offer to her for having left the unit outside and exposed to the elements for months on end?
>
> A. All of our skis are kept outside. Every single one of them. We have -- at any given point we could have 30 to 70 skis on our premises. There is no way we can store them inside. Now, what customers do do is those that have covers, and I believe Ms. Brooks said she had a cover. She could have brought her cover in there and we could have used that. But there is no way I can store a ski up in my warehouse with all my customers.
>
> Now, I did do this. After our face-to-face meeting, the next day, I had my lot guys totally detail the unit and put it up in my warehouse because I realized things were not going to get better and I put it in the warehouse and it's been in the warehouse ever since.

(R. 111, ll. 2 -19)

The Record shows that although Dave Carp assured Respondent on April 9, 2012 that the repairs would be covered by her basic and extended warranties, at trial Mr. Cristo attempted to blame Respondent for Petitioner's abandonment of the repair work, while admitting that Petitioner *never actually performed any warranty work on the jet ski or even submitted any warranty claims to Honda*, attempting to explain this oddity by claiming he was concerned about the "probability" that Honda might decline to honor the warranties:

> Q. What warranty work, if any, was conducted by Velocity on this particular ski?
>
> A. No warranty work was done or submitted to Honda.
>
> Q. Why is that?
>
> A. Because we never got deep enough into it because Ms. Brooks did not authorize us to go any further. When we knew the ski was more comprehensive, the signals that we were getting which is water was still in the oil, we knew that it was

going to be a much more comprehensive teardown. We also knew that there was a probability that the manufacturer would decline that warranty because of the red flags that I discussed earlier. So we stopped and communicated to her that that wouldn't be the case.

Q. How long has this ski -- how long has Ms. Brooks left the ski in your location?

A. Since she first brought it in in April of 2012.

Q. And through today's date; is that correct?

A. Correct.

(R. 182, l. 4 to R. 183, l. 1)[4]

STANDARD OF REVIEW

A claim under the Unfair Trade Practices Act is an action at law. *Jefferies v. Phillips*, 316 S.C. 523, 451 S.E.2d 21 (Ct. App. 1994). The standard of review for action at law tried without a jury is whether there is any evidence reasonably supporting the trial judge's findings of fact. *Townes Assoc. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976). The appellate court will correct any error of law, but it must affirm the trial court's factual findings unless there is no evidence that reasonably supports those findings." *Jefferies v. Phillips*, 316 S.C. 523, 451 S.E.2d 21 (Ct. App. 1994). Moreover, the appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal. Rule 220(c), SCACR

[4]Billy King, the former Service Manager of Petitioner, testified that after Honda became aware of the jet ski claim, it "called and wanted us to continue trying to figure out what was wrong with it. So we pulled it back in and started to look at it again. But shortly after that, we basically stopped with that." (R. 201, ll. 4-8)

ARGUMENT

(Responding to Petitioner's Questions I, II, & III)

1. THE COURT OF APPEALS CORRECTLY RULED THAT THE PETITIONER WILLFULLY COMMITTED AN UNFAIR TRADE PRACTICE IN THIS CASE WHERE THE RECORD SHOWS THE PETITIONER ABANDONED THE REPAIR OF RESPONDENT'S JET SKI (WHICH IT HAD SOLD HER, AS NEW, WITH BASIC AND EXTENDED WARRANTIES, ONLY TWO YEARS EARLIER); REFUSED TO RETURN THE UNREPAIRED JET SKI TO RESPONDENT UNLESS SHE GAVE THE PETITIONER A COMPLETE RELEASE FROM ALL LIABILITY; UNJUSTLY THREATENED TO GO TO THE MAGISTRATE TO "TAKE POSSESSION" OF THE JET SKI IN AN ATTEMPT TO INTIMIDATE RESPONDENT INTO GIVING UP; AND THEREAFTER SUED RESPONDENT FOR "STORAGE COSTS" FOR THE 10 YEARS THE PETITIONER HAS WRONGFULLY RETAINED POSSESSION OF THE JET SKI.

The questions presented for review in a petition for a writ of certiorari must be "expressed in the terms and circumstances of the case. . ." Rule 242(d)(2), SCACR. The right to a writ of certiorari cannot be conjured up based on imaginary facts. According to the first three questions presented by the Petitioner, the Petitioner would have this Court believe it is an honest tradesman who merely declined to service Respondent's jet ski only after she first "breached an agreement," and for the further reason that it knew Respondent would not pay what she rightfully owed for the repairs. Accordingly, so the argument runs, the Petitioner has been unfairly saddled with the 10 years of storage costs it seeks to collect in this action.

This is pure fantasy. Respondent breached no agreement and the Petitioner abandoned the repairs because Respondent contacted a lawyer. This case would never have arisen if the Petitioner had just treated Respondent fairly and honestly by repairing or replacing her two year old jet ski under the basic and extended warranties it sold her. Apparently finding itself unable or unwilling to repair this particular jet ski, much like it was unable to do with the same two Honda units sitting in the

Atlanta salvage yard, the Petitioner instead attempted to duck its warranty obligations by threatening to assess storage costs and the misuse of judicial process to seize ownership of the jet ski unless Respondent signed a full release releasing the Petitioner from all liability. So far as the Record shows, there is no other company that would have been authorized to perform warranty work on this jet ski without voiding the warranties sold by the Petitioner. Quite obviously, the Petitioner had no right whatsoever to attempt to extort a release of its obligations from the Respondent under these or any other circumstances. Having failed in its attempt to frighten Respondent into signing the release, the Petitioner soldiered on and decided to double down when Respondent sued it by *counterclaiming* for the bogus storage costs. As previously noted, even under normal conditions no storage costs could accrue until five days after completion of the work, and these conditions were anything but normal: the work was never completed because it was abandoned by the Petitioner.

In the final analysis, whether the Petitioner's conduct is viewed as bill padding (for the useless tuneup[5] and storage costs), extortion (threats of seizing the jet ski unless it received a release), outright conversion (wrongfully retaining possession of the jet ski for the past 10 years), or some combination of these and other acts of misconduct, whatever else it may have been it was surely a knowing unfair trade practice. "An unfair trade practice has been defined as a practice which is offensive to public policy or which is immoral, unethical, or oppressive." *Wogan v. Kunze*, 366 S.C. 583, 606, 623 S.E.2d 107, 120 (Ct. App. 2005) (*quoting deBondt v. Carlton Motorcars, Inc.*, 342 S.C. 254, 269, 536 S.E.2d 399, 407 (Ct. App. 2000)). Oppressive practices include those that are unreasonably

[5]Even assuming the truth of the Petitioner's dubious claim that it actually went forward with a tuneup of a jet ski that it already knew was functionally inoperable, the Court of Appeals agreed that in any event the Petitioner also violated its own policy in failing to obtain owner authorization before performing a teardown, which definitely rendered the jet ski inoperable, and yet it continued to seek reimbursement for a service it had itself rendered worthless.

burdensome, severe, or tyrannical. *Wingard v. Exxon Co., U.S.A.*, 819 F.Supp. 497, 506 (D.S.C. 1992). Examples of deceptive or unfair practices include mislabeling a product's package, misrepresenting a machine's operating requirements, misrepresenting a used car's history or condition, and padding repair bills. *See generally Haley Nursery Co., v. Forrest*, 298 S.C. 520, 381 S.E.2d 906 (1989); *Potomac Leasing Co. v. Bone*, 294 S.C. 494, 366 S.E.2d 26 (Ct. App. 1988); *Dowd v. Imperial Chrysler-Plymouth*, 298 S.C. 439, 381 S.E.2d 212 (Ct. App. 1989); *Inman v. Ken Hyatt Chrysler Plymouth*, 294 S.C. 240, 363 S.E.2d 691 (1988); *Barnes v. Jones Chevrolet Co.*, 292 S.C. 607, 358 S.E.2d 156 (Ct. App. 1987). Moreover, the Petitioner's own conduct in pursuing these claims against Respondent in this appeal amply demonstrates it is capable of repetition. In effect, the Petitioner is proudly proclaiming that given the chance it will do the same things all over again.

(Responding to Petitioner's Questions IV & V)

2. THE COURT OF APPEALS CORRECTLY RULED THAT THE PETITIONER WAS NOT ENTITLED TO RECOVER 10 YEARS OF STORAGE COSTS IN THIS CASE.

In his Order of Final Judgment dated October 8, 2018, the Master found and concluded that Petitioner failed to comply with S.C. Code Ann. § 56-19-840 in its quest to charge Respondent with years of storage costs:

> 7. I FIND AND CONCLUDE that the Defendant notified the Plaintiff of its intention to charge for storage fees by letter dated May 22, 2012; however, the Defendant failed to report the watercraft as unclaimed to the Department of Motor Vehicles; and,
>
> 8. I FIND AND CONCLUDE that all claims, liens or costs for storage by the Defendant are forfeit as in such cases made and provided by S.C. Code of Law, Section 56-19-840; and,

> 9. I FIND AND CONCLUDE that the Defendant wrongfully charged the Plaintiff for storage fees and its refusal to release the watercraft without payment of the storage fees constitutes an unfair trade practice, capable of repetition which affects the public interest and that the Defendant's actions were wilful and wanton in that the Defendant knew or should have known that its conduct was unfair and deceptive and therefore a violation of this States' statutes concerning unfair and deceptive acts and practices;
> . . .

(R. 2-3)

In his Reconsideration Order, the Master determined that, regardless of whether or not this statute applied, it was an unfair trade practice for Petitioner to charge storage costs given the factual circumstances of this case. (R. 6). This ruling was correct. If for no other reason, and whether or not the statute applies, it is undisputed that the Repair Order included this language: "A fee of $25.00 per day will be charged if watercraft is not picked up within 5 days of completion." As has been explained, there was never any completion of the work, rendering this language inapplicable. (R. 187, ll. 6-18) Petitioner's threat of assessing storage costs was simply yet another strong-arm tactic aimed at trying to frighten Respondent into giving up and signing a release.

The Petitioner has presented no authority that this section of the Code is an affirmative defense to a Counterclaim which must be specifically pled by a plaintiff as part of a Reply under Rule 8(c), SCRCP, but even if that were the case the Master did not rely solely on S.C. Code Ann. § 56-19-840 in denying the Petitioner's claim for storage costs in any event, but explained that it was an additional cumulative ground for denying storage costs. (R. 6) The Court of Appeals agreed that the Petitioner was not entitled to claim storage costs given the facts of the case. It is well settled that an appellate court may affirm any ruling, order, decision, or judgment upon any ground(s) appearing in the Record on Appeal. *See, e.g., Moorhead v. First Piedmont Bank and Trust Co.*, 273 S.C. 356, 360, 256 S.E.2d 414, 416 (1979) ("[T]his court may affirm upon any ground appearing in the record...

irrespective of the ground stated by the trial judge.") In fact, there are likely even more reasons to be found in the Record for why the Petitioner was not entitled to an award of 10 years worth of storage costs in this case but the point is this: the Petitioner was not entitled to 10 years of storage costs simply because the Respondent did not specifically plead S.C. Code Ann. § 56-19-840 in her Reply to Counterclaim, so that cannot be grounds for reversal.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the petition be denied.

Respectfully submitted,

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