

# South Carolina

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## **A. Adoption of the UCC<sup>1</sup>**

South Carolina adopted and codified the Uniform Commercial Code to resolve commercial disputes.<sup>2</sup>

## **B. Compensatory Damages**

“Actual damages, compensatory damages, are awarded for the purpose of placing the injured person in the place he previously occupied, as far as money can do it.”<sup>3</sup> Compensatory damages are intended to make the party whole and include compensation for all injuries which are naturally the proximate result of the wrongful conduct of the defendant.

Compensatory damages address various elements of injury to persons and property and include monetary injuries, such as injuries to the value of real property, financial losses due to a breach of contract, or medical expenses or loss of income resulting from a physical injury. Compensatory damages, particularly in negligence cases, can address elements of injury that are not easily calculated in money damages, such as pain and suffering, mental anguish, and loss of enjoyment of life.

These damages include nominal damages. As a general rule, a party must suffer some actual damage to be entitled to compensatory damages. However, South Carolina courts have long recognized that

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<sup>1</sup> The quintessential South Carolina treatise on damages is JAMES L. WARD, JR. AND EDWARD J. WESTBROOK, *SOUTH CAROLINA DAMAGES* 2D (2009), published by the South Carolina Bar.

<sup>2</sup> S.C. CODE ANN. §§ 36-1-101, *et seq.*, effective January 1, 1989.

<sup>3</sup> *Bedenbaugh v. Southern R. Co.*, 69 S.C. 1, 6-7, 48 S.E. 53, 54 (S.C. 1904).

“every violation of a legal right imports damage and authorizes the maintenance of an action and the recovery of at least nominal damages, regardless of whether any actual damage has been sustained.”<sup>4</sup> The law presumes such damages when a defendant violates a legal right of a party.

A successful plaintiff is entitled to recover the actual damages proximately caused by a defendant’s wrongdoing. For tort cases, actual damages should be awarded in the amount needed to restore an injured party, as nearly as possible through the payment of money, to

the same position he or she was in before the wrongful injury occurred.<sup>5</sup> Future damages are permitted, and the plaintiff must show that they are reasonably certain to arise in the future in order to recover them.<sup>6</sup> For property damage cases, the actual damages will generally be the diminution in the market value of the property following the injury.<sup>7</sup>

In contract cases, the plaintiff has a choice of remedies; he may rescind the contract and recover what he has paid, or he may affirm the contract and recover damages.<sup>8</sup> The non-breaching party may

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<sup>4</sup> *Stevens v. Allen*, 342 S.C. 47, 53, 536 S.E.2d 663, 665 n. 5 (S.C. 2000).

<sup>5</sup> *Clark v. Cantrell*, 339 S.C. 369, 529 S.E.2d 528 (S.C. 2000); *see also* *Hicks v. Herring*, 246 S.C. 429, 436, 144 S.E.2d 151, 154 (S.C. 1965) (stating no set formula can be used for the measurement of actual damages in a personal injury case). Damages in personal injury cases include: medical expenses, lost earnings, pain and suffering, disfigurement and disability, emotional/mental distress, loss of consortium, loss of enjoyment of life, and other types of recovery by third-party parent(s), child(ren) or spouse.

<sup>6</sup> *Haltiwanger v. Barr*, 258 S.C. 27, 186 S.E.2d 819 (S.C. 1972); *see also* *Lockhart Power v. Askew*, 110 S.C. 449, 96 S.E. 685 (S.C. 1918) (“[I]f it can be proved that such an element of damage is reasonably certain to follow, then it ought to be included in the compensation, for otherwise respondent would be remediless if it should occur.”).

<sup>7</sup> *Ravan v. Greenville County*, 315 S.C. 447, 434 S.E.2d 296 (S.C. Ct. App. 1993); *see also* *Gray v. Southern Facilities, Inc.*, 256 S.C. 558, 569, 183 S.E.2d 438, 443 (S.C. 1971) (a plaintiff is not required to prove the diminution in value to his property to a degree of mathematical certainty).

<sup>8</sup> *Designer Showrooms, Inc. v. Kelley*, 304 S.C. 478, 405 S.E.2d 417 (S.C. Ct. App. 1991);

generally receive as actual damages the out-of-pocket costs actually incurred as a result of the contract and the gain above costs that would have been realized had the contract been performed.<sup>9</sup>

The plaintiff is responsible for putting forth evidence regarding the value of damages suffered. South Carolina courts allow great latitude in the introduction of evidence concerning alleged damages.<sup>10</sup> The actual damages claimed must be “certain” and not “speculative.”<sup>11</sup>

South Carolina adopted a modified comparative negligence scheme in *Nelson v. Concrete Supply*.<sup>12</sup> Under current law, a plaintiff can recover damages if the plaintiff’s fault is less than or equal to fifty percent of the total fault.<sup>13</sup>

South Carolina’s joint and several liability statute allows the jury to allocate fault between parties, and a defendant can only be held jointly and severally liable if he is fifty percent or more at fault for the plaintiff’s injuries.<sup>14</sup>

State statutes provide limitations on damages against the

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*Sparrow v. Toyota of Florence, Inc.*, 302 S.C. 418, 396 S.E.2d 645 (S.C. Ct. App. 1990); *Warr v. Carolina Power & Light Co.*, 237 S.C. 121, 115 S.E.2d 799 (S.C. 1960); *First Equity Inv. Corp. v. United Serv. Corp. of Anderson*, 299 S.C. 491, 386 S.E.2d 245 (S.C. 1989); *Baeza v. Robert E. Lee Chrysler, Plymouth, Dodge, Inc.*, 279 S.C. 468, 309 S.E.2d 763 (S.C. Ct. App. 1983); *Turner v. Carey*, 227 S.C. 298, 87 S.E.2d 871 (S.C. 1955).

<sup>9</sup> *South Carolina Federal Savings Bank v. Thornton-Crosby Development Co.*, 303 S.C. 74, 399 S.E.2d 8 (S.C. Ct. App. 1990); *see also* *Bensch v. Davidson*, 354 S.C. 173, 177-178, 580 S.E.2d 128, 130 (S.C. 2003); *S.C. Fin. Co. v. W. Side Fin. Co.*, 236 S.C. 109, 113 S.E.2d 329, 335-337 (S.C. 1960). In short, the award of actual damages suffered by the non-

breaching party is to give him or her the benefit of the bargain which was negotiated in the contract.

<sup>10</sup> *Martin v. Mobley*, 253 S.C. 103, 109, 169 S.E.2d 278, 281-282 (S.C. 1969) (permitting “any evidence which tends to establish the nature, character, and extent of injuries which are the natural and proximate consequences of the defendant’s acts” if otherwise competent).

<sup>11</sup> *S. C. Fin. Corp.*, 113 S.E.2d at 336.

<sup>12</sup> 303 S.C. 243, 399 S.E.2d 783 (S.C. 1991).

<sup>13</sup> *Id.* at 245, 399 S.E.2d at 784; *see also* *Ross v. Paddy*, 340 S.C. 428, 433, 532 S.E.2d 612, 614 (S.C. Ct. App. 2000) (to recover damages for negligence, the plaintiff’s own negligence must not exceed that of the defendant).

<sup>14</sup> S.C. CODE ANN. § 15-38-15(A), (C).

State of South Carolina<sup>15</sup> and charitable organizations.<sup>16</sup>

In South Carolina courts, the proper amount of actual damages is left almost entirely to the trial jury and the trial judge.<sup>17</sup> Appellate courts give substantial deference to the jury's determination of damages.<sup>18</sup> A trial judge can interfere with a jury verdict when it believes the damages are: (a) either inadequate or excessive; or (b) so inadequate or excessive that the amount awarded was the result of passion, caprice, or prejudice.<sup>19</sup> The trial judge must find compelling reasons to interfere with a jury's verdict. The doctrine of the thirteenth juror permits a judge to grant a new trial when the judge finds that the evidence put forth at trial does not justify the verdict.<sup>20</sup>

### C. Consequential Damages (and Exclusions)

References to incidental and consequential damages are made properly only in the context of a contract for the sale of goods, in

which special damages are governed by the South Carolina Commercial Code. It is the language of the Code which divides special damages into incidental and consequential damages. As provided in South Carolina Code Section 36-2-715(2), "[c]onsequential damages . . . include (a) [a]ny loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and (b) [i]njury to person or property proximately resulting from any breach of warranty."

The Code provides that "[c]onsequential damages may be limited or excluded unless the limitation or exclusion is unconscionable."<sup>21</sup> South Carolina courts have recognized that conspicuous limitations of consequential damages are not per se unconscionable.<sup>22</sup> But a seller's right to exclude consequential damages is not unlimited. Rather, the Code prohibits limitations on

<sup>15</sup> See South Carolina Tort Claims Act, S.C. CODE ANN. §§ 15-78-10, *et seq.*

<sup>16</sup> See South Carolina Solicitation of Charitable Funds Act, S.C. CODE ANN. §§ 33-56-10, *et seq.*

<sup>17</sup> Scott ex rel. Scott v. Porter, 340 S.C. 158, 530 S.E.2d 389 (S.C. Ct. App. 2000).

<sup>18</sup> Jackson v. Solomon, 228 S.C. 225, 89 S.E.2d 436 (S.C. 1955).

<sup>19</sup> Watson v. Wilkinson Trucking Co., 244 S.C. 217, 136 S.E.2d 286 (S.C. 1964).

<sup>20</sup> In such a case, the judge plays the role of a "thirteenth juror" sitting on the panel and by

his decision conceptually deadlocks the jury by disagreeing with the other jurors about the facts proven in the case. *Folkens v. Hunt*, 300 S.C. 251, 254, 387 S.E.2d 265, 267 (S.C. 1990). The judge's position then renders the jury a "hung" jury and a new trial will follow. <sup>21</sup> S.C. CODE ANN. § 36-2-715 cmt. 2.

<sup>22</sup> *Laidlaw Env'tl. Servs. v. Honeywell, Inc.*, 996 F. Supp. 1401, 1413-1414 (D. S.C. 1996), *aff'd*, 113 F.3d 1232 (4th Cir. 1996); *Investors Premium Corp. v. Burroughs Corp.*, 389 F. Supp. 39, 45-46 & nn. 8, 12 (D. S.C. 1974).

damages for injuries to persons in connection with the sale of consumer goods.<sup>23</sup>

Despite the Code's allowance for contracting parties to establish exclusive, written warranties that limit the buyer's remedies to repair or replacement of nonconforming goods, a party may nonetheless be entitled to the general remedies of the UCC if the exclusive remedy fails of its essential purpose.<sup>24</sup>

#### **D. Incidental Damages**

Where a plaintiff seeks special damages in a breach of contract action, in addition to his general damages, the plaintiff must also

plead and prove both the fact of special damages and the amount of those damages.<sup>25</sup> Incidental damages include "expenses reasonably incurred" as a result of the breach.<sup>26</sup>

#### **E. Punitive Damages**

Plaintiffs in South Carolina can receive punitive damages award as a common law remedy or a statutory remedy.<sup>27</sup> To recover punitive, or exemplary, damages, a plaintiff must prove by clear and convincing evidence that the defendant acted recklessly, willfully, wantonly, or maliciously. These damages punish the wrongdoer and deter similar conduct in the future by the defendant or others.

In South Carolina, the law regarding post-verdict review of a punitive damages award is clear. The South Carolina Supreme Court, in *Gamble v. Stevenson*, developed an eight factor post-verdict review which trial courts are required to conduct to determine if a punitive damages award comports with due process: (1) defendant's degree of

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<sup>23</sup> S.C. CODE ANN. §§ 36-2-314, -719(3).

<sup>24</sup> S.C. CODE ANN. § 36-2-719(2); *see also* Bishop Logging Co. v. John Deere Indus. Equip. Co., 317 S.C. 520, 533, 455 S.E.2d 183, 191 (S.C. Ct. App. 1995) (when a seller is given a reasonable chance to repair or replace a defective product and the product still fails to function, then the buyer is deprived of the benefits of the limited remedy and it therefore fails of its essential purpose).

<sup>25</sup> *Kline Iron & Steel Co. v. Superior Trucking Co.*, 261 S.C. 542, 201 S.E.2d 388 (S.C. 1973).

<sup>26</sup> S.C. CODE ANN. § 36-2-715(1).

<sup>27</sup> Some statutory remedies include a mandate for punitive damages but permit the trier of fact to determine the amount. Other statutory remedies provide for a multiplication of damages. Yet other statutes provide a minimum amount that must be awarded or maximum amount that can be awarded.

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.<sup>28</sup>

#### F. Liquidated Damages

Under both South Carolina common law and the South Carolina Commercial Code, parties may include a contractual amount of damages for a prospective breach of contract through the inclusion of a liquidated damages provision.<sup>29</sup> Such a provision is enforceable so

long as the amount is reasonable.<sup>30</sup> In determining the reasonableness of the amount of the liquidated damages provision, the court looks to not only the language used by the parties, but also the nature of the contract, the attitude of the parties at the time of contracting, and all circumstances surrounding the transaction.<sup>31</sup> A party intending to dispute a liquidated damages provision on a theory of penalty must plead such a theory as an affirmative defense, and his failure to do so will result in a waiver of the defense.<sup>32</sup> If the contract at issue has a provision for liquidated damages, the plaintiff merely has to prove a violation of the contract by the defendant.<sup>33</sup> The plaintiff in such a case is relieved of his or her burden

<sup>28</sup> 305 S.C. 104, 111-112, 406 S.E.2d 350, 354 (S.C. 1991). These factors must be analyzed in light of the U.S. Supreme Court's decision in *BMW of North America v. Gore*, 517 U.S. 599 (1996). *See Welch v. Epstein*, 342 S.C. 279, 309, 536 S.E.2d 408, 424 (S.C. Ct. App. 2000). Since the decision in *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (S.C. 2003), courts in South Carolina also review the case by applying the concepts enumerated in that decision as well. *See Collins Entm't Corp. v. Coats*, 355 S.C. 125, 140-143, 584 S.E.2d 120, 128-130 n. 36 (S.C. Ct. App. 2003).

<sup>29</sup> S.C. CODE ANN. § 36-2-718(1)(goods); S.C. CODE ANN. § 36-2A-504 (leases); *Lewis v. Premium Inv. Corp.*, 351 S.C. 167, 172, 568 S.E.2d 361, 363 (S.C. 2002) (parties to a contract may stipulate as to the amount of liquidated damages owed in the event of nonperformance).

<sup>30</sup> *See* S.C. CODE ANN. § 36-2-718(1) ("an amount which is reasonable in light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy"); *see also Lewis*, 351 S.C. at 172, 568 S.E.2d at 3634 (requiring the stipulated sum to be proportionate to any probable damage to be enforceable; if otherwise, it is unenforceable as a penalty provision).

<sup>31</sup> *Rental Unif. Serv. v. K & M Tool & Die, Inc.*, 292 S.C. 571, 573, 357 S.E.2d 722, 724 (S.C. Ct. App. 1987).

<sup>32</sup> *D & D. Leasing Co. v. Lipson*, 305 S.C. 540, 542-543, 409 S.E.2d 794, 796 (S.C. Ct. App. 1991) (trial court had no authority to find liquidated damages provision was unenforceable penalty as the defense was not plead).

<sup>33</sup> *Tate v. Le Master*, 231 S.C. 429, 99 S.E.2d 39 (S.C. 1957).

of proving that an exact amount of damage was actually sustained.

### **G. Pre- and Post-Judgment Interest**

The general rule is that prejudgment interest is not recoverable in the absence of (1) a statutory provision or (2) a contractual agreement.<sup>34</sup> South Carolina allows prejudgment interest of 8  $\frac{3}{4}$ % per year in certain circumstances.<sup>35</sup> The statute does not provide for the compounding of prejudgment interest. Where parties have contractually agreed to

a particular rate of interest, the contractual rate applies.<sup>36</sup> Compound interest is recoverable where parties contractually agree to compounding.<sup>37</sup> In order to recover prejudgment interest, a plaintiff must plead it.<sup>38</sup>

Post-judgment interest is provided by statute in South Carolina Code Section 34-31-20(B), and expressly provides for compound interest on judgments, in the amount of the prime rate plus 4%. Pleading post-judgment interest is not required.<sup>39</sup>

### **H. Attorney's Fees**

An award of attorney's fees must be authorized by contract or statute.<sup>40</sup> The amount of attorney's fees is left to the discretion of the trial judge and will not be disturbed on appeal unless the judge has abused his or her discretion.<sup>41</sup>

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<sup>34</sup> *Llewelyn v. Dobson Bros.*, 274 S.C. 177, 178, 262 S.E.2d 726, 727 (S.C. 1980) ("In the absence of agreement or statute, interest is not recoverable on an unliquidated demand."); *see also* *Republic Textile Equip. Co. of S.C., Inc. v. Aetna Ins. Co.*, 293 S.C. 381, 390-391, 360 S.E.2d 540, 545-546 (S.C. Ct. App. 1987); *Dibble v. Sumter Ice & Fuel Co.*, 283 S.C. 278, 322 S.E.2d 674 (S.C. Ct. App. 1984).

<sup>35</sup> S.C. CODE ANN. § 34-31-20(A) ("In all cases of accounts stated and in all cases wherein any sum or sums of money shall be

ascertained and, being due, shall draw interest according to law").

<sup>36</sup> *Burnett Dubose Co. v. Starnes*, 284 S.C. 196, 324 S.E.2d 651 (S.C. Ct. App. 1984).

<sup>37</sup> *Edwards v. Campbell*, 369 S.C. 572, 576, 633 S.E.2d 514, 516 (S.C. 2006).

<sup>38</sup> *Calhoun v. Calhoun*, 339 S.C. 96, 529 S.E.2d 14 (S.C. 2000).

<sup>39</sup> *Id.* at 102.

<sup>40</sup> *Hegler v. Gulf Ins. Co.*, 270 S.C. 548, 549, 243 S.E.2d 443, 444 (S.C. 1978).

<sup>41</sup> *Am. Fed. Bank v. No. One Main Joint Venture*, 321 S.C. 169, 175, 467 S.E.2d 439, 442 (S.C. 1996).

## I. Reliance Damages

Under an equitable theory of promissory estoppel, a party may recover reliance damages. South Carolina courts have enumerated the elements a party must prove to obtain relief under the doctrine of promissory estoppel: (1) the presence of a promise unambiguous in its terms; (2) reasonable reliance upon the promise by the party to whom the promise is made; (3) the reliance is expected and foreseeable by the party who makes the promise; and (4) the party to whom the promise is made must sustain injury in reliance on the promise.<sup>42</sup> In *Thomerson*, the Supreme Court recognized (citing the Second Restatement of Contracts), that “the remedy ‘may be limited as justice requires’ (e.g., reliance damages may be appropriate instead of expectation damages).”<sup>43</sup>

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<sup>42</sup> *Thomerson v. DeVito*, 430 S.C. 246, 256, 844 S.E.2d 378, 383 (S.C. 2020) (citing *Davis v. Greenwood Sch. Dist.* 50, 365 S.C. 629, 634, 620 S.E.2d 65, 67 (S.C. 2005); *Woods v. State*, 314 S.C. 501, 505, 431 S.E.2d 260, 263 (S.C. Ct. App. 1993); *Powers Constr. Co. v. Salem Carpets, Inc.*, 283 S.C. 302, 306, 322 S.E.2d 30, 33 (S.C. Ct. App. 1984)).

<sup>43</sup> *Thomerson*, 430 S.C. at 255, 844 S.E.2d at 383.

## J. Unjust Enrichment

“Unjust enrichment is an equitable doctrine, akin to restitution, which permits the recovery of that amount the defendant has been unjustly enriched at the expense of the plaintiff.”<sup>44</sup> “The terms ‘restitution’ and ‘unjust enrichment’ are modern designations for the older doctrine of quasi-contracts.”<sup>45</sup> In order to recover, the plaintiff must show “(1) that he conferred a non-gratuitous benefit on the defendant; (2) that the defendant realized some value from the benefit; and (3) that it would be inequitable for the defendant to retain the benefit without paying the plaintiff for its value.”<sup>46</sup> The court may impose a constructive trust to prevent unjust enrichment.<sup>47</sup> Such trusts arise when a person a person has obtained money or property which does not belong to him. The trustee of the resulting trust then stands in

<sup>44</sup> *Ellis v. Smith Grading & Paving, Inc.*, 294 S.C. 470, 473, 366 S.E.2d 12, 14 (S.C. Ct. App. 1988).

<sup>45</sup> *Id.* at 473, 366 S.E.2d at 14. *See also Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 409, 581 S.E.2d 161, 167 (S.C. 2003) (“Restitution is a remedy designed to prevent unjust enrichment.”).

<sup>46</sup> *Sauner*, 354 S.C. at 409, 581 S.E.2d at 167; *see also Earthscapes Unlimited, Inc. v. Ulbrich*, 390 S.C. 609, 616-617, 703 S.E.2d 221, 225 (S.C. 2010) (providing the same requirements to recover under the doctrine of quantum meruit).

<sup>47</sup> *McNair v. Rainsford*, 330 S.C. 332, 499 S.E.2d 488 (S.C. Ct. App. 1998).

a fiduciary relationship to the beneficiary and is responsible to transfer the money or property to the beneficiary according to instructions.

#### **K. Unique Remedies (plaintiff-friendly pre-judgment remedy statutes)**

Known at common law,<sup>48</sup> and permitted by statute,<sup>49</sup> South Carolina law has proceedings to summarily dispossess parties of their property and hold that property subject to the resolution of an action in progress, called pre-judgment attachment.<sup>50</sup> An attachment lien arises only when the statutory procedure has been strictly followed<sup>51</sup> and can only be invoked in specific types of actions

articulated in the Code. All property interests of a debtor, whether legal or equitable, are subject to attachment,<sup>52</sup> unless such property is exempt.<sup>53</sup>

The grounds for attachment are listed at section 15-19-10 in the South Carolina Code. The statute specifies what kinds of actions will support ancillary attachment proceedings: (1) for the recovery of money; (2) for the recovery of real or personal property, or for damages for conversion or wrongful detention of personal property; or (3) for the recovery of personal injury or property damages.<sup>54</sup> The general grounds for attachment in those cases are when the defendant is a non-resident or foreign corporation; when the defendant is a captain or agent of any sailing

<sup>48</sup> *Wando Phosphate Co. v. Rosenberg*, 31 S.C. 301, 307, 9 S.E. 969, 970 (S.C. 1889)

<sup>49</sup> South Carolina has had an attachment statute as far back as 1744. *Crosslin v. Reed*, 27 S.C.L. 10 (S.C. 1841)). See S.C. CODE ANN. § 15-39-100.

<sup>50</sup> "Attachment" is the act or process of taking, apprehending, or seizing persons or property, by virtue of writ, summons, or other judicial order, and bringing same into custody of the law. S.C. CODE ANN. § 15-39-100; *LaRosa v. Johnson*, 328 S.C. 293, 493 S.E.100 (S.C. Ct. App. 1997).

<sup>51</sup> *Wando Phosphate Co.*, 31 S.C. at 307, 9 S.E. at 970.

<sup>52</sup> S.C. CODE ANN. § 15-19-220; *Charles R. Allen, Inc. v. Island Coop. Servs. Coop. Ass'n Ltd.*, 234 S.C. 537, 109 S.E.2d 446 (S.C. 1959); *Charles R. Allen, Inc. v. Rhode Island Ins. Co.*, 217 S.C. 296, 60 S.E.2d 609 (S.C. 1950); *Pelzer Mfg. Co. v. Pitts & Hartzog*, 76 S.C. 349, 57 S.E. 29 (S.C. 1907).

<sup>53</sup> S.C. CODE ANN. § 15-19-220. Section 15-19-220 refers to property made exempt by the state constitution. Until the enactment of S.C. CODE ANN. § 15-41-200 in 1981, South Carolina's single exemption, a homestead exemption, was found in the constitution. Section 15-41-200 was recodified in 1988 as § 15-41-30, and provides for the exemption of the stated property from "attachment, levy, or sale." Section 15-19-220 has not been amended to reference this codification of prior constitutional provisions. Also see S.C. CODE ANN. § 16-3-1300, under which an award from the Victim's Compensation Fund is made exempt.

<sup>54</sup> S.C. CODE ANN. § 15-19-10(1), (2).

vessel entering ports of this state owing pilotage services; when the defendant has absconded with property or has concealed himself; or when the defendant has or is about to remove property from this state or has secreted or assigned any property with the intent to defraud creditors.<sup>55</sup> A plaintiff may attach property of a non-resident defendant or foreign corporation in a libel and slander suit if the plaintiff satisfies the other requirements for obtaining a valid attachment.<sup>56</sup>

#### **L. Public Policy Prohibitions**

South Carolina courts generally uphold the terms of private agreements; however, “courts will not enforce a contract when the subject matter of the contract or an act required for performance violates public policy as expressed in constitutional provisions, statutory law, or judicial decisions.”<sup>57</sup>

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<sup>55</sup> S.C. CODE ANN. § 15-19-10(4).

<sup>56</sup> S.C. CODE ANN. § 15-19-20.

<sup>57</sup> *White v. J.M. Brown Amusement Co., Inc.*, 360 S.C. 366, 371, 601 S.E.2d 342, 345 (S.C. 2004) (citations omitted).