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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas  
Edgar W. Dickson, Circuit Judge

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Appellate Case No. 2022-001070  
Court of Common Pleas Case No. 2020-CP-18-02003

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ROSEN HAGOOD, LLC,

Respondent/Appellant,

v.

ALBERT T. HENSON, JR.,

Appellant/Respondent.

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**APPELLANT'S BRIEF OF RESPONDENT/APPELLANT**

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## STATEMENT OF ISSUES ON APPEAL

I. Did the Circuit Court err as a matter of law by denying Rosen Hagood's request for an award of prejudgment interest when its claim involves an account stated or sum that is certain or capable of being reduced to certainty within the meaning of S.C. CODE ANN. § 34-31-20(A)?

II. Did the Circuit Court abuse its discretion by denying Rosen Hagood's request for an award of attorney's fees and costs incurred in enforcing Henson's obligations under the representation agreement and in collecting the payments due under that agreement when the agreement expressly authorizes recovery of collection costs, including reasonable attorney's fees and costs?

III. Did the Circuit Court abuse its discretion by refusing to require Henson to pay Rosen Hagood's final invoice in the underlying representation based on an unsupported factual finding this invoice reflected legal services Rosen Hagood had performed after its withdrawal as Henson's legal counsel on November 25, 2019, when in fact the final invoice involved legal services that Rosen Hagood had provided to Henson before and up until it was relieved as his legal counsel, and the representation agreement expressly obligated Henson to pay for those services even after Rosen Hagood's withdrawal?

## STATEMENT OF THE CASE AND FACTS

Respondent/Appellant Rosen Hagood, LLC (hereinafter “Rosen Hagood”) is a law firm with offices in Charleston, South Carolina. (R. p. 9 ¶1). Appellant/Respondent Albert T. Henson, Jr. (hereinafter “Henson”) formerly was a client of the law firm.

By written representation agreement dated and executed May 25, 2016, Henson retained Rosen Hagood to represent him individually and in his capacity as Personal Representative of the Estate of Ann Page Henson Pittillo against claims being pursued in the Dorchester County Probate Court by Richard S. Henson and Vann K. Henson involving Mrs. Pittillo’s Estate and a Trust settled by the late Eunice I. Page, including claims alleging Mrs. Pittillo’s will was invalid and the Pittillo Trust (rather than Henson) is the rightful owner of certain real property located at 605 North Main Street, Summerville, South Carolina.<sup>1</sup> (R. pp. 9 ¶3, 18 ¶4, 24 ¶2, 26-30, 36-39, 87-93). Daniel F. Blanchard, III, Esquire of Rosen Hagood was the attorney at the firm who primarily handled the representation. (R. p. 24 ¶3).

In the representation agreement, Henson agreed to pay attorney’s fees to Rosen Hagood on an hourly fee basis and to reimburse the firm for disbursements and costs. (R. pp. 27-28). The agreement provides for Henson to be billed for the firm’s legal services on a monthly basis. It also expressly states in part:

Our monthly statements submitted for our legal services are due upon receipt. If your account becomes delinquent for more than sixty (60) days, we may move to be relieved as counsel. If you fail to pay all amounts owed, then you agree to reimburse us for all costs incurred in collecting these amounts, including reasonable attorney’s fees and costs.

(R. p. 28). The agreement further provides that “[i]f a monetary judgment or award is made in favor of the client, we shall have a lien on the proceeds to the extent of any unpaid fees,

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<sup>1</sup> Richard and Vann Henson are Henson’s brothers. Mrs. Pittillo was Henson’s mother and Mrs. Page was his maternal grandmother.

disbursements, or other charges.” Id.

Beginning in May 2016 and continuing through December 2019, Rosen Hagood provided legal representation and services to Henson in the pending litigation and Henson received the benefit of the representation and services. (R. p. 9 ¶4). However, from March 14, 2017 through November 2019, Henson failed to make any payments to Rosen Hagood for the services provided to him despite being invoiced for these services on a monthly basis. (R. pp. 25 ¶4, 30). The last payment that Henson made to Rosen Hagood was on March 2, 2017. (R. pp. 19 ¶8, 25 ¶4, 30). Henson concedes he did not pay all amounts due to Rosen Hagood under the agreement. (R. p. 41). He further admits he never sought to terminate Rosen Hagood or Mr. Blanchard as his legal counsel. (R. pp. 40-41).

As a result of Henson’s failure to make payment of the attorney’s fees and costs that were owed under the representation agreement, Rosen Hagood and Mr. Blanchard moved the Probate Court to be relieved as Henson’s counsel. (R. p. 25 ¶4). After a hearing on Rosen Hagood’s motion, which Henson attended, the Probate Court entered an Order dated November 25, 2019, relieving Rosen Hagood and Mr. Blanchard as Henson’s legal counsel effective immediately. (R. pp. 25 ¶4, 32-33). As of the termination of the representation, the outstanding attorney’s fees and costs that Henson owed to Rosen Hagood under the representation agreement totaled \$161,671.96. (R. p. 10 ¶8).

The Circuit Judge’s Order gave Henson thirty (30) days to obtain replacement or substitute legal counsel in the pending Probate Court litigation. (R. pp. 25 ¶4, 32-33). After Rosen Hagood’s withdrawal, Henson did procure replacement counsel and eventually settled that litigation. As part of the settlement, Henson received an award of \$275,000.00 from the Pittillo

Trust and was to receive an additional \$150,000.00 from the Trust once certain assets were sold by the Trustee. (R. pp. 25 ¶5, 44-45).

On December 16, 2020, Rosen Hagood filed this action against Henson in the Dorchester County Circuit Court arising from Henson's nonpayment of the attorney's fees and costs that were owed to the firm under the representation agreement. (R. pp. 8-17). The Verified Complaint avers causes of action against Henson for (1) Breach of Contract; (2) Money Had and Received; (3) Constructive Trust; and (4) Enforcement of Security Interest. On January 27, 2021, Henson filed a *pro se* Answer to the lawsuit denying liability. (R. pp. 18-22).

On April 7, 2022, Rosen Hagood moved for summary judgment involving its claims against Henson. The motion was supported by an Affidavit of Mr. Blanchard, excerpts of Henson's discovery deposition taken on March 23, 2022, and Henson's response to a request for admission. (R. pp. 23-48). On May 26, 2022, Rosen Hagood submitted a Memorandum of Law in support of its motion to the Circuit Judge Dickson. (R. pp. 127-33).

On June 1, 2022, Circuit Judge Edgar W. Dickson conducted a duly noticed hearing on Rosen Hagood's Motion for Summary Judgment. (R. pp. 62-86). Henson appeared at the hearing. *Id.* At the hearing, Rosen Hagood provided the Court with detailed entries showing the \$161,671.96 in attorney's fees and costs provided to Henson in the underlying Probate Court litigation. (R. pp. 72-73, 93-126). Rosen Hagood also provided a summary sheet itemizing the calculation of the accrued prejudgment interest on the amounts owed, which interest totaled \$57,083.46, as well as an affidavit of counsel supporting the attorney's fees and costs incurred in this suit to collect the payments owed by Henson, which comprised attorney's fees of \$22,664.00 and costs of \$1,904.89. (R. pp. 134-35).

At the motion hearing, Rosen Hagood requested summary judgment in its favor and

asked that it be awarded damages in the amount of \$161,671.96 for Henson’s breach of his contractual obligations in the representation agreement. Rosen Hagood further requested prejudgment interest on this amount totaling \$57,083.46, which was calculated on the outstanding fees and costs using the statutory rate of 8.75% per annum established in S.C. CODE ANN. § 34-31-20(A). Rosen Hagood also requested attorney’s fees of \$22,664.00 and costs of \$1,904.89 that it incurred in the present lawsuit to enforce Henson’s contractual obligations. The total that Rosen Hagood sought was as follows:

Unpaid attorney’s fees and costs in underlying representation	\$161,671.96
Prejudgment interest pursuant to § 34-31-20(A)	\$57,083.46
Attorney’s fees incurred in suit to enforce contract	\$22,664.00
Costs incurred in suit to enforcing contract	<u>\$1,904.89</u>
Total:	\$243,324.31

Judge Dickson took the matter under advisement at the conclusion of the hearing. On June 30, 2022, he entered a written Order granting Rosen Hagood’s Motion for Summary Judgment as follows:

On June 2 (sic), 2022, this Court took under advisement Plaintiff’s Motion for Summary Judgment. After consideration of the arguments of the parties presented at the hearing, along with careful review of the memoranda and exhibits submitted by the parties, the Court finds that no genuine issue of material fact exists and Plaintiff’s motion is hereby GRANTED. However, in awarding judgment and reviewing the retainer agreement between Plaintiff and Defendant, marked as Exhibit A to Plaintiff’s motion, this Court finds no reference to Defendant being responsible for interest accrued on unpaid fees. Accordingly, the Court denies Plaintiff’s request for \$57,083.46 in accrued interest. Moreover, this Court finds that Plaintiff is not entitled to any attorney’s fees or costs accrued after November 25, 2019, the date on which Judge Molly D. Edwards granted Rosen Hagood, LLC and Daniel F. Blanchard, III’s motion to withdraw as counsel. According to Exhibit B of Plaintiff’s motion, that would put Defendant’s balance at \$158,369.96. For the foregoing reasons, Plaintiff’s Motion for Summary Judgment is GRANTED and Plaintiff is entitled to \$158,369.96 in unpaid fees and expenses.

(R. pp. 3-4). Judge Dickson entered a judgment in favor of Rosen Hagood in the amount of

\$158,369.96 based on this Order.

On August 3, 2022, Henson filed a Notice of Appeal from Judge Dickson's Order to this Court. See Notice of Appeal. On August 4, 2022, Rosen Hagood filed a Notice of Cross-Appeal to this Court. See Notice of Cross-Appeal.

## ARGUMENTS

### **I. THE CIRCUIT COURT ERRED AS A MATTER OF LAW BY DENYING ROSEN HAGOOD'S REQUEST FOR PREJUDGMENT INTEREST WHEN ITS CLAIM INVOLVES AN ACCOUNT STATED OR SUM THAT IS CERTAIN OR CAPABLE OF BEING REDUCED TO CERTAINTY UNDER S.C. CODE ANN. § 34-31-20(A).**

The Circuit Judge denied Rosen Hagood's request for prejudgment interest under S.C. CODE ANN. § 34-31-20(A) based on his finding the representation agreement executed by Henson contains "no reference to [Henson] being responsible for interest accrued on unpaid fees." (R. pp. 3-4). The Circuit Judge effectively held that prejudgment interest is not recoverable because the contract between the parties did not contain a term requiring Henson to pay prejudgment interest to Rosen Hagood. However, the Circuit Judge erred as a matter of law because it is unnecessary to show a contract allowing for recovery of prejudgment interest when state statutory law (§ 34-31-20(A)) authorizes the recovery of interest in cases of this type.

#### **(1) *Standard of Review.***

"The determination of the appropriateness of an award of pre-judgment interest ... is a question of law because the right to relief is entirely statutory." Keane v. Lowcountry Pediatrics, P.A., 372 S.C. 136, 143, 641 S.E.2d 53, 57 (Ct. App. 2007). "Questions of law are reviewed *de novo*." Doe v. Bishop of Charleston, 407 S.C. 128, 134, 754 S.E.2d 494, 498 (2014).

(2) ***Section 34-31-20(A) Authorizes Recovery of Prejudgment Interest.***

This Court has said that “[t]he law has long allowed prejudgment interest on obligations to pay money from the time when, *either by agreement of the parties or operation of law*, the payment is demandable, if the sum is certain or capable of being reduced to certainty.” Butler Contracting, Inc. v. Ct. St., LLC, 369 S.C. 121, 133, 631 S.E.2d 252, 258-59 (2006) (citing cases) (emphasis added). Specifically, South Carolina’s pre-judgment interest statute provides as follows:

(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*, the legal interest *shall be at the rate of eight and three-fourths percent per annum*.

S.C. CODE ANN. § 34-31-20(A) (emphasis added).

This section applies to two general types of cases: (1) cases on accounts stated and (2) cases wherein “the sum is certain or capable of being reduced to certainty, even if the parties do not agree on the amount of the obligation.” Brooklyn Bridge, Inc. v South Carolina Ins. Co., 309 S.C. 141, 420 S.E.2d 511, 513 (Ct. App. 1992). In Lee v. Thermal Eng’g Corp., 352 S.C. 81, 572 S.E.2d 298 (Ct. App. 2002), this Court held that “pre-judgment interest is *mandatory* under the statute” for these types of claims. Id. at 90, 572 S.E.2d at 303 (emphasis added); see also S.C. CODE ANN. § 34-31-20(A) (stating “*shall* draw interest according to law” (emphasis added)); Liberty Mut. Ins. Co. v. Emp. Res. Mgmt., Inc., 176 F. Supp. 2d 510, 540 (D.S.C. 2001) (“A plain reading of [§ 34-31-20(A)] indicates that prejudgment interest shall be awarded on ascertainable amounts of money that are due and owing, and that the rate shall be at 8.75%. The statutory language is unambiguous and, accordingly, mandates an award of prejudgment interest in this matter.”); Calhoun v. Calhoun, 339 S.C. 96, 102, 529 S.E.2d 14, 18 (2000) (“Use of the word ‘shall’ in a statutory provision indicates the provision is mandatory.”).

The purpose of pre-judgment interest is to compensate Rosen Hagood for the time value of money it should have received at an earlier date. See 44B AM. JUR. 2D Interest and Usury § 29 (“Prejudgment interest is compensation for recoverable damages wrongfully withheld from the time of the loss until judgment, and ultimately serves to make the aggrieved party whole.” (footnotes omitted)); S.C. Dep’t of Transp. v. Faulkenberry, 337 S.C. 140, 149, 522 S.E.2d 822, 826 (Ct. App. 1999). This is accomplished by requiring the debtor “to pay interest on his debt as compensation for his continued retention and use of the creditor’s money beyond the date payment was due.” Butler Contracting, 369 S.C. at 134, 631 S.E.2d at 259; Eldeco, Inc. v. Skanska USA Bldg., Inc., No. CV 2:05-2329-PMD, 2007 WL 9735185, at \*3 (D.S.C. Mar. 26, 2007); Garrison v. Target Corp., 435 S.C. 566, 587, 869 S.E.2d 797, 809 (2022) (“Prejudgment interest is in the nature of compensation for use by defendant of money to which plaintiff is entitled from the time the cause of action accrues until the time of judgment.” (quoting Haskins v. Shelden, 558 P.2d 487, 494 (Alaska 1976))).

In calculating the pre-judgment interest that is due under the statute “on liabilities to pay money,” the interest begins to accrue “from the time when, either by agreement of the parties or operation of law, the payment was demandable, if the sum is certain or capable of being reduced to certainty.” S. Welding Works, Inc. v. K & S Const. Co., 286 S.C. 158, 164, 332 S.E.2d 102, 106 (Ct. App. 1985); see Smith-Hunter Const. Co. v. Hopson, 365 S.C. 125, 128, 616 S.E.2d 419, 421 (2005) (“The law allows prejudgment interest on obligations to pay money from the time when, either by agreement of the parties or operation of law, the payment is demandable and if the sum is certain or capable of being reduced to certainty.”); Faulkenberry, 337 S.C. at 153–54, 522 S.E.2d at 829 (“The law expressly allows the payment of prejudgment interest on obligations to pay money from the time the *payment is demandable*.”). “In actions for breach of

contract, interest ordinarily runs from the time of the breach or the time when payment was due under the contract.” 22 AM. JUR. 2d Damages § 486 (footnote omitted).

South Carolina’s courts have consistently held that the sum is certain or capable of being reduced to certainty when it is “based on a mathematical calculation previously agreed to by the parties.” Bickerstaff v. Prevost, 380 S.C. 521, 525, 670 S.E.2d 660, 662 (Ct. App. 2009); Butler Contracting, 369 S.C. at 133, 631 S.E.2d at 258-59 (A “liquidated claim” occurs when “the sum is certain or capable of being reduced to certainty based on a mathematical calculation previously agreed to by the parties.”); Builders Transp., Inc. v. S.C. Prop. & Cas. Ins. Guar. Ass’n, 307 S.C. 398, 406, 415 S.E.2d 419, 424 (Ct. App. 1992) (“The claim by Builders Transport is liquidated because it is capable of being reduced to certainty by simple mathematical calculation.”).

“The proper test for determining whether prejudgment interest may be awarded is whether or not the measure of recovery, not necessarily the amount of damages, is fixed by conditions existing at the time the claim arose.” Babb v. Rothrock, 310 S.C. 350, 353, 426 S.E.2d 789, 791 (1993) (citing 47 C.J.S. Interest & Usury § 49); Smith-Hunter Const., 365 S.C. at 128, 616 S.E.2d at 421. The fact that the sum due is disputed does not render the claim unliquidated for purposes of awarding pre-judgment interest. Brooklyn Bridge, 309 S.C. at 145, 420 S.E.2d at 513; Babb, 310 S.C. at 353, 426 S.E.2d at 791. In C.J.S., it is explained:

Even when a claim may in a sense be unliquidated, in that it has not been reduced to judgment, interest thereon will generally be allowed where the amount due can be readily ascertained, or is capable of ascertainment by easy calculation or computation.... Interest will be allowed on an unliquidated claim where the amount due can be ascertained by a legal or recognized standard....

The existence of a good faith defense to a claim does not preclude recovery of interest. Likewise, a dispute over the amount owed does not make a claim unliquidated. The mere fact that a party denies liability or defends a claim against him or her, or even the existence of a bona fide dispute as to the amount of the indebtedness, does not preclude recovery of interest, as it is the character of the claim and not of the defense to it that determines whether it is liquidated.

47 C.J.S. Interest & Usury §§ 48-49 (footnotes omitted); Butler Contracting, 369 S.C. at 134, 631 S.E.2d at 259 (rejecting argument that claim was unliquidated because there was a “good faith dispute by [Owner and Contractor] as to the amount due”).

In Smith-Hunter Const., a builder sued homeowners for breach of contract when the homeowners had failed to pay the builder for work performed on their house. The Court held that “[t]he measure of recovery was fixed by conditions existing at the time the claim arose” because “[t]he costs of the work completed by Builder at the time of Homeowners’ breach of contract were established via Builder’s invoices.” 365 S.C. at 128, 616 S.E.2d at 421; see also Boykin Contracting, Inc. v. Kirby, 405 S.C. 631, 643, 748 S.E.2d 795, 801 (Ct. App. 2013) (Electrical contractor was entitled to pre-judgment interest on quantum meruit claim against building tenant despite tenant’s disagreement with contractor over the amount due for the work; the amount owed to contractor was capable of being reduced to a sum certain, and the measure of recovery was fixed by conditions existing at the time contractor’s claim arose as the costs incurred by contractor at the time of the work were established by contractor’s invoices.).

In Lee, this Court affirmed an award of pre-judgment interest on unpaid sales commissions that an employer owed to a sales representative under the terms of an employment contract with the interest running from the date that the payment of the commissions was due. Lee, 352 S.C. at 88, 572 S.E.2d at 302. Numerous other South Carolina cases have awarded pre-judgment interest in circumstances indistinguishable from the present case, even though the specific amount of the claim in question was disputed, because the claim was capable of being reduced to a certainty. See, e.g., Brooklyn Bridge, 309 S.C. at 145, 420 S.E.2d at 513; Hope Petty Motors of Columbia, Inc. v. Hyatt, 310 S.C. 171, 425 S.E.2d 786 (Ct. App. 1992); Wayne Smith Constr. Co. v. Wolman, Duberstein & Thompson, 294 S.C. 140, 363 S.E.2d 115, 119 (Ct.

App. 1987); Anderson v. Citizens Bank, 294 S.C. 387, 365 S.E.2d 26 (Ct. App. 1987); Edens v. South Carolina Farm Bureau Mutual Ins. Co., 288 S.C. 435, 343 S.E.2d 49, 51 (Ct. App. 1986).

In this case, Rosen Hagood demonstrated that Henson owed fees and costs on an account stated. Rosen Hagood is also entitled to recover pre-judgment interest at the statutory rate of 8.75% per annum in this matter because the amount owed by Henson involves a sum that is certain or capable of being reduced to certainty.

The representation agreement establishes the hourly rates for calculating the exact amount of fees and expense reimbursement that Henson owed to Rosen Hagood for the services rendered. The measure of recovery was fixed by conditions existing at the time Rosen Hagood's claim arose because the attorney's fees and costs owed by Henson at the time of the work were established by Rosen Hagood's invoices. Indeed, Henson did not dispute that the "measure of recovery" was "fixed by conditions existing at the time the claim arose."

The amount of prejudgment interest owed to Rosen Hagood is based on a mathematical calculation previously agreed to by the parties—*i.e.*, the attorney's hourly rate multiplied by the attorney's number of hours. It involves a simple mathematical calculation to determine the exact amount Henson owed to Rosen Hagood under the representation agreement. The mere fact that Henson disputed or denied liability to Rosen Hagood does not render the law firm's claim unliquidated for purposes of the pre-judgment interest statute.

The Circuit Judge erred as a matter by refusing to award prejudgment interest to Rosen Hagood. This portion of the Circuit Judge's Order should be reversed and the judgment amended to award \$57,083.46 in prejudgment interest to Rosen Hagood.

## **II. THE CIRCUIT COURT ABUSED ITS DISCRETION BY DENYING ROSEN HAGOOD'S REQUEST FOR ATTORNEY'S FEES AND COSTS WHEN THE CONTRACT TERMS EXPRESSLY AUTHORIZE SUCH RECOVERY.**

In calculating the amounts to be awarded to Rosen Hagood, the Circuit Judge denied Rosen Hagood's request for the attorney's fees and costs it had incurred in the present lawsuit to enforce Henson's contractual obligations under the representation agreement based on the conclusion the law firm "is not entitled to any attorney's fees or costs accrued after November 25, 2019," which is the date on which the Probate Court relieved Rosen Hagood as Henson's legal counsel in the underlying case. (R. pp. 3-4). The Circuit Judge also refused to require Henson to pay Rosen Hagood's final invoice in the underlying matter (totaling \$3,302.50) based on his finding this invoice reflected legal services Rosen Hagood had performed *after* its withdrawal as Henson's legal counsel on November 25, 2019. Id. The Circuit Judge found that only \$158,369.96 of the total \$161,671.96 that Rosen Hagood invoiced to Henson was for legal services provided prior to November 25, 2019. Id.

Rosen Hagood respectfully submits the Circuit Judge abused his discretion for two separate reasons. First, the Circuit Judge miscalculated the amount of attorney's fees and costs for legal services which Rosen Hagood provided to Henson up until the law firm's withdrawal on November 25, 2019. Specifically, he erred in finding Rosen Hagood's final invoice for \$3,302.50 involves legal services the law firm performed for Henson after its withdrawal as his legal counsel. Second, the express terms of the representation agreement unambiguously authorized Rosen Hagood to recover the attorney's fees and costs it incurred in enforcing Henson's contractual obligations or collecting the payments due from him under that contract. These collection costs are separate and distinct from the fees and costs that Henson owed to Rosen Hagood for the legal services it provided to Henson in the underlying legal matter.

**(1) Standard of Review.**

“The interpretation of an unambiguous contract is a question of law.” Miles v. Miles, 393 S.C. 111, 117, 711 S.E.2d 880, 883 (2011); see Hope Petty Motors, 310 S.C. at 175, 425 S.E.2d at 789 (Generally, “the construction of contracts is a question of law for the court.”). “Because the construction of a clear and unambiguous contract is a matter of law for the court, [appellate courts] review the trial court’s findings of law *de novo*.” Lee v. Univ. of S.C., 407 S.C. 512, 517–18, 757 S.E.2d 394, 397 (2014).

“When an award of attorney’s fees is based upon a contract between the parties, the determination of the fees is left to the discretion of the trial court and will not be disturbed absent an abuse of discretion.” S.C. Elec. & Gas Co. v. Hartough, 375 S.C. 541, 550, 654 S.E.2d 87, 91 (Ct. App. 2007); see Baron Data Sys., Inc. v. Loter, 297 S.C. 382, 384, 377 S.E.2d 296, 297 (1989). “The review of attorney fees awarded pursuant to a contract is governed by an abuse of discretion standard.” Laser Supply & Servs., Inc. v. Orchard Park Assocs., 382 S.C. 326, 340, 676 S.E.2d 139, 147 (Ct. App. 2009). Under this standard, “[a]n appellate court will not reverse an award unless it is based on an error of law or is without any evidentiary support.” Id.

**(2) The Circuit Judge Miscalculated the Amount of Attorney’s Fees and Costs for Legal Services Rosen Hagood Provided to Henson Up Until the Law Firm’s Withdrawal from the Representation.**

The Circuit Judge erroneously found that only \$158,369.96 of the total \$161,671.96 that was invoiced to Henson involves fees and costs for legal services performed prior to November 25, 2019. The Circuit Judge deleted or omitted Rosen Hagood’s final invoice in the amount of \$3,302.50 from the amounts he awarded to the law firm based on the erroneous finding this invoice reflected legal services or work that was performed after Rosen Hagood’s withdrawal as Henson’s legal counsel. This finding is unsupported by any evidence.

Although Rosen Hagood invoiced \$3,302.50 to Henson as part of its final invoice to him dated December 11, 2019, the attorney's fees and costs included on that invoice involve legal services that Rosen Hagood had provided to Henson before and up until it was relieved as his legal counsel on November 25, 2019. (R. pp. 25 ¶4 & 30-31). Rosen Hagood sent its billing invoices to Henson on a monthly basis following the end of each calendar month. As a result, Henson was not billed for the law firm's work and costs occurring in November until the law firm sent him an invoice in December for the work performed the previous month.

The final invoice that Rosen Hagood sent to Henson on December 11, 2019 includes the law firm's attorney's fees and costs for the portion of November 2019 preceding the firm's withdrawal from the representation. Specifically, the final invoice includes \$3,302.50 in fees and costs for legal services which the law firm provided to Henson before it was relieved as his legal counsel in the underlying matter. That final invoice did not include attorney's fees or costs for the period after the firm was relieved as Henson's legal counsel on November 25, 2019.

Although the final invoice for these services was not sent to Henson until December 11, 2019, which was after the representation had ended, the representation agreement makes explicit that Henson remained obligated to pay for those legal services. The representation agreement states in pertinent part:

We reserve the right to withdraw from our representation with your consent or for good cause. Good cause may include your failure to honor the terms of the engagement letter [or] your failure to pay amounts billed in a timely manner .... If we elect to do so, you agree to take all steps necessary to free us of any obligation to perform further, including the execution of any documents (including forms for substitution of counsel) necessary to complete our withdrawal, ***and we will be entitled to be paid for all services rendered and disbursements and other charges made or incurred on behalf of the client prior to the date of withdrawal.***

(R. pp. 28-29) (emphasis added).

It was error for the Circuit Judge to omit or delete the final invoice totaling \$3,302.50 from the amounts that Henson owed to Rosen Hagood under the representation agreement because that invoice involved legal services performed prior to Rosen Hagood's withdrawal from the representation. This portion of the Circuit Judge's Order should be reversed and the judgment amended to make an award of an additional \$3,302.50 in attorney's fees and costs for the period prior to Rosen Hagood's withdrawal from the representation on November 25, 2019.

**(3) *The Terms of the Representation Agreement Explicitly Authorize Recovery of Attorney's Fees and Costs Incurred in Collecting Payments Due Under the Agreement.***

"The general rule is that attorney's fees are not recoverable unless authorized by contract or statute." Seabrook Island Prop. Owners' Ass'n v. Berger, 365 S.C. 234, 238-39, 616 S.E.2d 431, 434 (Ct. App. 2005) (citing cases). The representation agreement in this case unambiguously obligates Henson to pay attorney's fees and costs to Rosen Hagood that it incurred in enforcing Henson's obligations under that contract.

The representation agreement provides in relevant part:

Our monthly statements submitted for our legal services are due upon receipt. If your account becomes delinquent for more than sixty (60) days, we may move to be relieved as counsel. ***If you fail to pay all amounts owed, then you agree to reimburse us for all costs incurred in collecting these amounts, including reasonable attorney's fees and costs.***

(R. p. 28) (emphasis added). Henson does not deny that he executed and agreed to the terms of the representation agreement on May 25, 2016.

It is settled law in this state that "[i]f [a contract's] language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and the contract's language determines the instrument's force and effect." Progressive Max Ins. Co. v. Floating Caps, Inc., 405 S.C. 35, 46, 747 S.E.2d 178, 184 (2013) (quoting Ellie, Inc. v. Miccichi, 358 S.C.

78, 93, 594 S.E.2d 485, 493 (Ct. App. 2004)). Courts “are without authority to alter an unambiguous contract by construction or to make new contracts for the parties.” S.C. Dep’t. of Transp. v. M & T Enters. of Mt. Pleasant, 379 S.C. 645, 655, 667 S.E.2d 7, 13 (Ct. App. 2008) (citations omitted). “The Court’s duty is to enforce the contract made by the parties regardless of its wisdom or folly, apparent unreasonableness, or the parties’ failure to guard their rights carefully.” Jordan v. Sec. Grp., Inc., 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993).

The terms of the representation agreement are not limited to payment of attorney’s fees and costs during the period that Rosen Hagood was serving as Henson’s legal counsel. Instead, in addition to those fees and costs, the agreement also obligates Henson to pay reasonable attorney’s fees and costs incurred by Rosen Hagood in collecting the payments that Henson owed to the firm for its legal services. These collection costs are separate and distinct from the fees and costs that Henson owed to Rosen Hagood for the legal services it provided to Henson in the underlying legal matter. The Circuit Judge disregarded this contractual provision and erroneously merged these different items of recovery.

In Raynor v. Byers, 422 S.C. 128, 810 S.E.2d 430 (Ct. App. 2017), for instance, the promissory note at issue in that case provided: “In the event of default in the payment of this note, and if it is placed in the hands of an attorney for collection, the undersigned hereby agrees to pay all costs of collection, including a reasonable attorney’s fee.” Id. at 132, 810 S.E.2d at 432-33. This Court held this provision in the “[t]he contract between the parties clearly provided for the recovery of reasonable attorney’s fees for necessary litigation in the event of default” and that “[t]here is no limitation in the contract for only fees incurred prior to or in the process of obtaining the judgment.” Id. “Instead, the parties intended for Appellants to be responsible for all costs of collection.” Id.; see also Clardy v. Bodolosky, 383 S.C. 418, 428–29, 679 S.E.2d 527,

532 (Ct. App. 2009) (“Here, no statute authorizes an award of attorney’s fees; therefore, we must look to the contract for such remedy. Attorneys’ fees were authorized under the default clause of the contract. Specifically, the default clause provides: ‘If Buyer or Seller fails to perform any covenant of this Agreement, the other may elect to seek any remedy provided by law, including but not limited to attorney fees and actual costs incurred ... or terminate this Agreement with a five day written notice.’ The trial court awarded the Clardys attorney’s fees and costs for having to initiate suit in order to carry out the terms of their contract.” (citation omitted)).

The terms of the representation agreement in this case expressly authorize Rosen Hagood to recover attorney’s fees and costs incurred in collecting the payments owed by Henson. Rosen Hagood presented uncontroverted evidence in the Circuit Court showing it incurred \$22,664.00 in attorney’s fees and \$1,904.89 in costs to enforce Henson’s payment obligations under the contract. Henson did not dispute the amount or reasonableness of these fees or costs. The Circuit Court erred by not enforcing the provision in the parties’ contract.

The Circuit Judge erred as a matter of law by denying attorney’s fees and costs to Rosen Hagood which it incurred in enforcing Henson’s contractual obligations under the representation agreement. This portion of the Circuit Judge’s Order should be reversed and the judgment amended to make an award of \$22,664.00 in attorney’s fees and \$1,904.89 in costs (\$22,664.00 + \$1,904.89 = \$24,568.89 total) to Rosen Hagood for legal fees and expenses incurred in enforcing Henson’s contractual obligations.

### **CONCLUSION**

For the reasons stated, this Court should reverse portions of the Circuit Court’s Order and should amend the judgment in favor of Rosen Hagood to award \$57,083.46 in prejudgment interest, additional attorney’s fees and costs of \$3,302.50 for the period prior to Rosen Hagood’s

withdrawal from the representation on November 25, 2019, and additional attorney's fees and costs of \$24,568.89 incurred by Rosen Hagood in enforcing Henson's contractual obligations or, alternatively, remand this matter to the Circuit Court with instructions to make an appropriate award of prejudgment interest, attorney's fees, and costs to Rosen Hagood.

Respectfully submitted,

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