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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

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

ROSEN HAGOOD, LLC,

Respondent/Appellant,

v.

ALBERT T. HENSON, JR.,

Appellant/Respondent.

AMENDED RESPONDENT'S REPLY BRIEF OF RESPONDENT/APPELLANT

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Respondent/Appellant Rosen Hagood, LLC (hereinafter "Rosen Hagood") respectfully submits this Reply in support of its cross-appeal of those portions of the Circuit Court's Order denying its request for an award of prejudgment interest and denying it an award of attorney's fees and costs incurred in enforcing Appellant/Respondent Albert T. Henson, Jr.'s (hereinafter "Henson") obligations under his representation agreement with the law firm.[1]

ARGUMENTS

I. THE MATERIALS CITED BY RESPONDENT/APPELLANT IN ITS BRIEF WERE PRESENTED TO THE CIRCUIT COURT AND ARE PROPERLY INCLUDED IN THE RECORD ON APPEAL.

Henson's Amended Initial Respondent's Brief contends that Rosen Hagood's Initial Brief of Appellant in support of its cross-appeal and its Designation of Matter to be Included in Record on Appeal supposedly rely upon documents that cannot be properly included in the Record on Appeal. See Henson's Amend. Initial Brief p.5. Henson points out these materials were not filed with the Clerk of Court. However, Henson's argument disregards Rule 210(c), SCACR.

Rule 210(c) states in pertinent part that "[t]he Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267" and that "[t]he Record shall not, however, include matter *which was not presented to the lower court* or tribunal." Rule 210(c), SCACR (emphasis added); see also Rule 212, SCACR (record on appeal may be supplemented with "all or any part of the transcript of proceedings or other matter which was before the trial court"). In sum, material must have been "presented to"

[1] As discussed in Section IV below, Henson did not timely file or serve his Initial Respondent's Brief; instead, he simply filed his untimely brief without leave of Court to do so. His untimely brief should be disallowed. Rule 208(a)(4), SCACR, provides in part: "Upon the failure of respondent to timely file a brief, the appellate court may take such action as it deems proper." Case law holds that such action may include reversal. See Turner v. Santee Cement Carriers, Inc., 277 S.C. 91, 96, 282 S.E.2d 858, 860 (1981); Robinson v. Hassiotis, 364 S.C. 92, 93 n.2, 610 S.E.2d 858, 859 n.2 (Ct. App. 2005). Rosen Hagood is filing this Initial Reply Brief only in the event the Court considers Henson's untimely Initial Brief.

the lower court to be included in the Record on Appeal. There is no requirement that the materials must be filed with the Clerk of Court for them to be included in the Record on Appeal.

In this case, the materials that Henson now argues cannot be included in the Record on Appeal constitute documents that Rosen Hagood's counsel (F. Truett Nettles, II) presented to the Circuit Judge either before or during the hearing conducted on June 1, 2022, involving Rosen Hagood's summary judgment motion.[2] On May 26, 2022, Debbie Hill (Mr. Nettles' legal assistant) emailed a copy of Rosen Hagood's Memorandum of Law in Support of Motion for Summary Judgment to the presiding Circuit Judge in advance of the hearing on the motion. (R. pp. 127-33).

At the hearing on June 1, 2022, Rosen Hagood's counsel also provided the presiding Circuit Judge with time entries showing the attorney's fees and costs the law firm provided to Henson in the underlying Probate Court litigation (totaling $161,671.96), a summary sheet itemizing the calculation of the accrued prejudgment interest on the amounts owed pursuant to S.C. CODE ANN. § 34-31-20(A) (totaling $57,083.46), and an affidavit of counsel supporting the attorney's fees and costs the law firm incurred in this suit to collect the payments owed by Henson (attorney's fees of $22,664.00 and costs of $1,904.89). (R. pp. 72-73, 93-126, 134-35).

Henson concedes that the transcript from the June 1 hearing includes colloquy between Rosen Hagood's counsel and the Circuit Judge discussing the fact that counsel was providing the Court with documents at the hearing. See Henson's Amend. Initial Brief p.5 n.4; R. pp. 72-73. At the hearing, Rosen Hagood's counsel specifically advised the Circuit Judge that it was seeking a judgment against Henson totaling $243,324.31. (R. pp. 72-73). Counsel explained that this total sum comprised the principal balance of fees and costs owed in the underlying representation

[2] Henson's appellate counsel was not Henson's lawyer at the time of the summary judgment hearing and was not present for the hearing.

($161,671.96), prejudgment interest at 8.75% per annum pursuant to § 34-31-20(A) ($57,083.46), attorney's fees incurred in the suit to enforce the contract ($22,664.00), and costs incurred in the suit to enforce the contract ($1,904.89). Id. These figures were taken directly from the Detail Transaction Sheet, Interest Sheet, and Affidavit of Plaintiff's Attorney that Rosen Hagood's counsel provided to the Circuit Judge at the hearing, which although not filed with the Clerk of Court were considered and addressed by the Circuit Judge in his decision on the motion.

On June 30, 2022, the Circuit Judge's law clerk sent an email to Henson and Mr. Nettles notifying them that the Circuit Judge had taken the Motion for Summary Judgment under consideration and that "[a]fter 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 Judge had decided to grant the motion. (R. pp. 136-37). The Circuit Judge's Order entered later that same day reiterates that he had considered "the memoranda and exhibits submitted by the parties." (R. pp. 3-4).

Although Rosen Hagood's memorandum and exhibits were presented to the Circuit Judge, Rosen Hagood concedes they were not filed with the Clerk of Court through oversight.[3] However, Rule 210(c) does not necessitate that materials presented to the Circuit Judge must also be filed with the Clerk of Court for those materials to be included in the Record on Appeal. The rule merely requires that the materials be presented to the Circuit Court, which is the case here. See Rule 210(c), SCACR. Because the Memorandum of Law, Detail Transaction Sheet, Interest Sheet, and Affidavit of Plaintiff's Attorney were presented to the Circuit Judge, they are properly included in the Record on Appeal.

[3] Ms. Hill (Mr. Nettles's legal assistant) was hospitalized and passed away unexpectedly on June 7, 2022, a few days after the hearing.

II. ROSEN HAGOOD PROPERLY RAISED ITS REQUEST FOR AN AWARD OF PREJUDGMENT INTEREST, ATTORNEY'S FEES, AND COSTS TO THE CIRCUIT COURT AND THE CIRCUIT COURT RULED ON THE MERITS OF THAT REQUEST.

Henson's Amended Initial Brief argues that "Rosen Hagood's complaint did not seek an award of prejudgment interest or attorney's fees." See Henson's Amend. Initial Brief p.5. Although the Circuit Judge denied Rosen Hagood's request for prejudgment interest under § 34-31-20(A) and its request for attorney's fees and costs to enforce Henson's contractual obligations under the representation agreement, his Order nowhere states that he did so based on any finding that Rosen Hagood had failed to properly ask for this relief. (R. pp. 3-4).

Henson is now raising this new argument on appeal as an additional sustaining ground. As our state supreme court observed in I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000), "[w]hile the current rules do not require the respondent to present an issue to the lower court in order to raise it as an additional sustaining ground, an appellate court is less likely to rely on such a ground when the respondent has failed to present it to the lower court." 526 S.E.2d at 724. "In such cases, the appellate court likely would perceive it as being unfair or unwise to resolve a case on a ground never mentioned by the respondent prior to appeal." Id. "Stated another way, the respondent may raise an additional sustaining ground that was not even presented to the lower court, but the appellate court is likely to ignore it." Id.; see also Semken v. Semken, 379 S.C. 71, 664 S.E.2d 493, 497-98 (Ct. App. 2008) (same).

Because Henson did not raise this argument in the Circuit Court, Rosen Hagood was never afforded the opportunity to address or rectify any alleged deficiency with the pleadings before the Circuit Judge disposed of the summary judgment motion. Rosen Hagood could have moved to amend the prayer for relief in its Complaint to more specifically address prejudgment interest and attorney's fees if Henson had raised the point, but he never did. See Rule 15(a),

SCRCP (stating "leave shall be freely given when justice so requires and does not prejudice any other party"). In Maynard v. Bank of Kershaw, 188 S.C. 160, 198 S.E. 188 (1938), the supreme court affirmed a trial court's decision to allow the plaintiff to amend the prayer of her complaint *at trial* so she could seek prejudgment interest. Id. at 160, 198 S.E. at 196. In allowing the amendment, the trial judge had observed that "[t]he plaintiff seeks only to amend the prayer of her complaint and it might be argued that the failure to ask for interest was inconsequential because the Court would grant relief which the allegations of the complaint showed to be appropriate." Id. Rosen Hagood respectfully requests the Court to ignore Henson's additional sustaining ground because it would be unfair to penalize the firm for not addressing a matter that was never raised in the lower court. I'On, L.L.C., 338 S.C. at 406, 526 S.E.2d at 724.

With respect to prejudgment interest, it is important to bear in mind that this case involves a claim where Rosen Hagood is entitled to such interest *as a matter of course*. Section 34-31-20(A) provides that "[i]n 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). Citing this statute, 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). "Stated another way, prejudgment interest is allowed on a claim of liquidated damages; *i.e.*, the sum is certain or capable of being reduced to certainty based on a mathematical calculation previously agreed to by the parties." Id. Henson nowhere asserts that Rosen Hagood's invoices do not reflect sums certain or liquidated damages. See

Sprewell v. Thompson & Hutson, S.C., LLC, 581 S.E.2d 322, 325 (Ga. Ct. App. 2003) (holding that client's balance due on the attorney fees owed to law firm constituted liquidated damages).

In Lee v. Thermal Eng'g Corp., 352 S.C. 81, 572 S.E.2d 298 (Ct. App. 2002), this Court further held that "pre-judgment interest is *mandatory* under" § 34-31-20(A) for claims on liabilities to pay a sum that is certain or capable of being reduced to certainty. Id. at 90, 572 S.E.2d at 303 (emphasis added); see Liberty Mut. Ins. Co. v. Emp. Res. Mgmt., Inc., 176 F. Supp. 2d 510, 540 (D.S.C. 2001) ("The statutory language [of § 34-31-20(A)] is unambiguous and, accordingly, mandates an award of prejudgment interest in this matter."); Garrison v. Target Corp., 435 S.C. 566, 582, 869 S.E.2d 797, 806 (2022) ("The term 'shall' in a statute means that the action is mandatory."). Henson's Amended Initial Brief nowhere claims Rosen Hagood is not entitled to prejudgment interest assuming such interest was properly raised to the Circuit Judge.

When a party is entitled to prejudgment interest as a matter of course, it is unnecessary that the party specifically demand such interest in its pleading. As this Court held in Anderson v. Citizens Bank, 294 S.C. 387, 365 S.E.2d 26 (Ct. App. 1987), overruled other grounds by Ward v. Dick Dyer & Assocs., Inc., 304 S.C. 152, 403 S.E.2d 310 (1991):

> The partners also assert there was no demand for prejudgment interest in the pleadings as required by Town of Bennettsville v. Bledsoe, 226 S.C. 214, 84 S.E.2d 554 (1954). This argument rests on a misapprehension of the law. The law allows prejudgment interest as a matter of course on an agreement to pay a sum certain. Columbia Lumber & Mfg. Co. v. Globe Indemnity Co., 166 S.C. 408, 164 S.E. 916 (1932). ***Where the claimant is entitled to prejudgment interest as a matter of course, it is unnecessary to make demand for it in the pleadings.*** Sims v. Goudelock, 41 S.C.L. (7 Rich.) 9 (1853); Kincaid v. Neall, 14 S.C.L. (3 McC.) 81 (1825). Interest allowable as a matter of law may be requested by a post trial motion and nothing turns on the failure of the claimant to demand interest in the

> complaint or to request a jury charge on his right to interest. Flamm v. Noble, 296 N.Y. 262, 72 N.E.2d 886 (1947).

Id. at 401-02, 365 S.E.2d at 34 (emphasis added in part).[4]

Furthermore, even putting aside the fact that Rosen Hagood is entitled to prejudgment interest as a matter of course and it is unnecessary to make demand for it in the Complaint, the prayer for relief in Rosen Hagood's Complaint explicitly requested an award of "such other and further relief as may be deemed trust (sic) and proper by the Court." See Complaint ¶26(e).[5] This prayer for general relief sufficiently requests prejudgment interest. See Federal Sav. & Loan v. Texas Real Estate Counselors, 955 F.2d 261, 269-70 (5th Cir. 1992) (plaintiff's request in pleadings for "any other relief, both special and general, to which it may be justly entitled" sufficed to plead a claim for prejudgment interest); Gordon v. Leasman, 365 S.W.3d 109, 118 (Tex. Ct. App. 2011) (plaintiff was entitled to prejudgment interest "based on a prayer for general relief alone"); Law Offices of C. Kendall Harrell v. Commerce Sav. Assoc., 824 F. Supp. 1159, 1175 (W.D. Tex. 1993) (complaint requesting "such other relief, general or special, at law or in equity to which [plaintiff] may be entitled" sufficiently pled claim for prejudgment interest); Call v. Heard, 925 S.W.2d 840, 854 (Mo. 1996) ("The statute contains no pleading requirement; therefore, an open-ended prayer of relief will suffice. In this case, the prayers for each count of the petition call for damages 'and for such other and further relief as this court deems just and proper under the circumstances.' This language provides a sufficient basis for awarding prejudgment interest."); Dierker Assocs., D.C., P.C. v. Gillis, 859 S.W.2d 737, 746 (Mo. Ct. App. 1993) (prayer in petition asking the court to grant "such other relief as may be

[4] In Ward, the court overruled Anderson to the extent it had relied upon the "general activity" test in determining whether conduct was exempt from the South Carolina Unfair Trade Practices Act's coverage. However, Ward does not affect Anderson's holding as to prejudgment interest.

[5] This subparagraph contains a typographical error—the word "trust" should state "just."

proper" was sufficient to recover prejudgment interest); cf. McMaster v. Strickland, 322 S.C. 451, 472 S.E.2d 623, 625 (1996) (Although complaint alleged only a claim for specific performance and did not request money damages, court affirmed award of money damages because "[i]n addition to a prayer for specific performance, the complaint … contains a prayer for general relief.... 'Granting such other or further relief as the Court deems just and proper.'").

Even assuming *arguendo* the Complaint does not sufficiently plead prejudgment interest, Rosen Hagood respectfully submits it should not be penalized for this omission under the circumstances. It specifically asked for such an award of prejudgment interest at the summary judgment hearing. Henson never opposed such an award on the grounds that prejudgment interest had not been pled or requested previously. The Circuit Judge denied Rosen Hagood's request for prejudgment interest based on the merits, not because of any technical pleading deficiency. (R. pp. 3-4, 72-73).

Finally, Henson's arguments that "Rosen Hagood never attempted to bill [him] for prejudgment interest" and "there is no evidence that Rosen Hagood ever charged [him] prejudgment interest" miss the point. See Henson's Amend. Initial Brief pp.7-8. Prejudgment interest is recoverable as a matter of course under § 34-31-20(A). There is no obligation or requirement under § 34-31-20(A) that Rosen Hagood must first attempt to "charge" Henson prejudgment interest or send him a "bill" for such interest. To the contrary, in cases of accounts stated or sums certain, the prejudgment interest accrues by operation of law.

With respect to attorney's fees, Henson's appellate brief overlooks the fact that paragraph 10 of Rosen Hagood's Complaint does specifically reference the firm's entitlement to recover attorney's fees and costs from him. (R. p. 10 ¶10). Paragraph 3 of the Complaint discusses the parties' written representation agreement. (R. p. 9 ¶3). Paragraphs 8 and 9 then state that as a

proximate result of Henson's breach of this representation agreement, Rosen Hagood suffered a loss in the "total amount of $161,671.96 for legal fees, costs and expenses as more particularly set forth in Exhibit A attached hereto and incorporated by reference." (R. p. 10 ¶¶8-9). Exhibit A is a Client Ledger Report detailing the dates and amounts of each billing invoice sent to Henson, the dates and amounts of Henson's payments towards the outstanding invoices, and the amounts of the fees and costs that Henson still owed when Rosen Hagood was relieved as his counsel. (R. p. 14-15).

Paragraph 10 of the Complaint then provides that "[o]n page three of the Representation Agreement between the parties, the *Defendant agreed to reimburse the Plaintiff for all costs incurred in collecting all unpaid fees, including reasonable attorney's fees and court costs*." (R. p. 10 ¶10). Contrary to Henson's assertions in his appellate brief, Rosen Hagood did raise the matter of attorney's fees and costs in its Complaint and put Henson on notice that it was entitled to recover such fees and costs from him under the terms of their representation agreement. Henson certainly cannot claim any prejudice due to a purported lack of notice that Rosen Hagood is seeking its attorney's fees and costs incurred in collecting the unpaid fees.

In sum, the Court should reject Henson's belated argument that Rosen Hagood did not properly seek an award of prejudgment interest or attorney's fees in the Circuit Court.

III. ROSEN HAGOOD INCURRED LEGAL FEES AND COSTS IN ITS COLLECTION ACTION TO ENFORCE HENSON'S OBLIGATIONS UNDER THE REPRESENTATION AGREEMENT.

Henson's Amended Initial Brief also argues for the first time that Rosen Hagood did not "incur" any attorney's fees or costs in pursuing its collection action against him because the firm was "*pro se.*" See Henson's Amend. Initial Brief pp.7-8. Once more this is not an argument Henson ever expressed in the Circuit Court. Because Henson did not argue this point below,

Rosen Hagood never had an opportunity to present evidence to respond to it. Rosen Hagood respectfully asks the Court to ignore Henson's additional sustaining ground because it would be unfair to penalize the firm for not addressing a matter that was never an issue in the lower court. I'On, L.L.C., 338 S.C. at 406, 526 S.E.2d at 724.

If the merits of this argument are addressed, Henson ignores the fact that Rosen Hagood has been represented throughout this collection action by Mr. Nettles, who is "of counsel" to the firm. Mr. Nettles is not a partner, associate, member, or shareholder of the firm and receives no salary from the firm. He undertook the representation of Rosen Hagood based on a fee arrangement with the firm, not as an employee of the firm. Mr. Nettles' affidavit submitted to the Circuit Judge at the summary judgment hearing shows the firm "incurred" fees and costs with him in this matter. (R. p. 134). These fees and costs are recoverable from Henson. See Dzwonkowski v. Spinella, 133 Cal. Rptr. 3d 274, 278-80 (Cal. Ct. App. 2011) (holding that attorney's fees of lawyer who was "of counsel" to law firm and had represented law firm in fee collection case against law firm's client were "actually incurred" by law firm and could be recovered from client).

The cases relied upon by Henson are inapposite to this case. In Williamson v. Middleton, 383 S.C. 490, 681 S.E.2d 867 (2009), the supreme court held that a party had not incurred legal fees in his pursuit of a successful lawsuit to recover unpaid commissions because his lawyer was a personal friend who never sent him any statements for attorney's fees and his lawyer had given testimony at his deposition in which he answered in the negative when specifically asked if his client had incurred any attorney's fees with him. Id. at 495-96, 681 S.E.2d at 870 ("Q. Has Mr. Middleton incurred any attorney's fees from this representation? A. No, technically, he hasn't because we don't have a fee agreement with Mr. Middleton…. Right now, he has no obligation

at this point if there is no agreement."). Unlike Williamson, Henson offered no evidence showing that Rosen Hagood has no obligation to pay Mr. Nettles a fee for his services.

In S.C. Dep't of Soc. Servs. v. Mary C., 396 S.C. 720 S.E.2d 503 (Ct. App. 2011), this Court overturned a family court's order requiring a mother to pay part of the legal fees of a court-appointed attorney who represented a guardian *ad litem* (GAL) in a child abuse and neglect proceeding. The GAL's legal fees were funded and paid by the General Assembly under a program administered by the Office of the Governor. Id. at 26–27, 720 S.E.2d at 509. The GAL was not contractually obligated to the lawyer under the program. Id. at 29, 720 S.E.2d at 510. Under these circumstances, this Court held the GAL had not "incurred any fees" that could be awarded against the mother. Id. That case simply has no relevance to the present case. Unlike Mary C., Henson offered no evidence showing that Mr. Nettles' fees were funded or paid by the state government or that Rosen Hagood has no obligation to pay Mr. Nettles a fee.

Other courts have allowed for the recovery of attorney's fees and costs in circumstances on point with the present case. In Hal Wright, Esq., P.C. v. Gentemann, 760 S.E.2d 654 (Ga. Ct. App. 2014), for example, a law firm brought a collection action against its client to recover unpaid attorney's fees pursuant to a legal services contract as well as attorney's fees for its collection activities. The trial judge entered a judgment for the law firm, but declined to award it attorney's fees for representing itself in the collection case. The Georgia Court of Appeals reversed on appeal. Like the present case, the contract between the client and the law firm expressly authorized an award of collection attorney fees. Id. at 655 (contract stating "[the law firm] is entitled to attorney's fees and costs if collection activities are necessary."). The Court held that "[w]hen a contract for legal services contains a provision like this one, an award of

attorney fees is available with respect to a firm or attorney's self-representation in an action to collect fees owed by a client." Id. at 656.

In Stiles v. Kearney, 277 P.3d 9, 16 (Wash. Ct. App. 2012), the Court rejected the argument that "a pro se attorney cannot recover attorney fees." Id. at 16. As part of its rationale, the Court held that "pro se attorneys could recover attorney fees where fees are otherwise justified because they must take time from their practices to prepare and appear as any other lawyer would." Id. Likewise, in order to enforce its contract with Henson, Mr. Nettles was forced to take time from his practice to prepare and appear as any other lawyer would in representing the law firm in its collection action against Henson. See also Ahtna Tene Nene v. State, Dep't of Fish & Game, 288 P.3d 452, 461-62 (Alaska 2012) ("Pro se litigants who are also attorneys may recover fees when they are successful, but they can only do so for time spent acting as an attorney in the litigation, not for time expended as a client.").

Rosen Hagood incurred attorney's fees and costs with Mr. Nettles in the prosecution of its collection case against Henson. The representation agreement which Henson signed with the law firm explicitly allows for recovery of these fees and costs. Mr. Nettles' affidavit showed the firm incurred $22,664.00 in attorney's fees and $1,904.89 in costs to enforce Henson's payment obligations under the contract. (R. p. 134). Henson did not dispute the amount or reasonableness of these fees or costs. Rosen Hagood should be allowed to recover its collection fees and costs under the contract.

IV. THE COURT SHOULD DISREGARD HENSON'S UNTIMELY RESPONDENT'S BRIEF AND DESIGNATION OF MATTER.

Rosen Hagood filed and served its Initial Appellant's Brief in support of its cross-appeal on November 23, 2022. Pursuant to Rule 208(a)(2), SCACR, Henson's Initial Respondent's Brief and Designation of Matter to be Included in Record on Appeal became due thirty-five days

later on December 28, 2022, allowing for the intervening weekend and three court holidays. Henson did not timely file or serve an Initial Brief or Designation of Matter by December 28. He did not seek or obtain an extension of time to file and serve those documents.[6] Instead, on January 3, 2023, after the deadline had lapsed and after Henson had retained new legal counsel to represent him in the appeal, his new counsel then filed an untimely Initial Respondent's Brief and an untimely Designation of Matter on Henson's behalf. Henson's counsel did not seek or obtain leave of court to file these tardy documents.[7]

Rule 208(a)(4), SCACR, provides in part: "Upon the failure of respondent to timely file a brief, the appellate court may take such action as it deems proper." Such action may include reversal of the lower court judgment. See Turner, 277 S.C. at 96, 282 S.E.2d at 860; Robinson, 364 S.C. at 93 n.2, 610 S.E.2d at 859 n.2. In Walker v. Walker, No. 2017-002569, 2020 WL 6481385 (S.C. Ct. App. Nov. 4, 2020), albeit an unpublished decision, this Court held that "because [the respondent] filed an initial Respondent's brief but never filed a final version, we may take any action we find proper." Id. at *1 n.1. The Court reversed the trial court in that case. Id.; see also Wierszewski v. Tokarick, 308 S.C. 441, 444 n.2, 418 S.E.2d 557, 559 n.2 (Ct. App. 1992) (stating where the respondent failed to file a brief, "it [was] proper to reverse on the points presented rather than to search the record for reasons to affirm").

[6] On November 22, 2022, before Rosen Hagood had even filed or served its Initial Appellant's Brief, Henson did apply for and was granted an extension of time to file his Initial Appellant's Brief involving his appeal of the Circuit Court's Order. However, once Rosen Hagood filed and served its Initial Appellant's Brief in support of its cross-appeal, Henson never requested an extension of time to file his Initial Respondent's Brief involving the cross-appeal.

[7] On April 24, 2023, after the Court granted Rosen Hagood's motion to strike certain materials that Henson had improperly designated to be included in the record on appeal and instructed Henson to file a corrected brief deleting references to those materials, Henson filed his Amended Initial Respondent's Brief and Amended Designation of Matter. See Order filed 4.5.23; Amended Initial Respondent's Brief and Amended Designation of Matter filed 4.24.23.

Henson is not excused from compliance with the SCACR simply because he initially appeared *pro se*. See State v. Burton, 356 S.C. 259, 265, n.5, 589 S.E.2d 6, 9 n.5 (2003) ("A *pro se* litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law."); State v. Hollman, 232 S.C. 489, 498, 102 S.E.2d 873, 877 (1958) ("[E]stablished rules of procedure are not to be discarded, either in the trial court or on appeal, merely because the defendant has been his own lawyer."), overruled on other grounds by Stevenson v. State, 335 S.C. 193, 516 S.E.2d 434 (1999).

Rosen Hagood respectfully submits that Henson's Respondent's Brief involving the cross-appeal should not be considered given his unexcused failure to comply with the mandates of Rule 208(a)(2), SCACR. The Court should determine this appeal without considering Henson's arguments made for the first time in his untimely Respondent's Brief.

CONCLUSION

For the reasons stated above and in Rosen Hagood's opening brief, the 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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