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May 13 2024

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master-in-Equity

Opinion No. 2024-UP-037
(S.C. Ct. App. filed January 31, 2014)

DAVID WILSON, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF CAROLINA CUSTOM CONVERTING, LLC, ... Plaintiff,

vs.

JOHN GANDIS, ANDREA COMEAU-SHIRLEY, ZOI FILMS, LLC, AND CAROLINA CUSTOM CONVERTING, LLC, ... Defendants,

vs.

CAROLINA CUSTOM CONVERTING, LLC,.....Counterclaim Plaintiff,

vs.

DAVID WILSON, STEVE NORVELL, NEOLOGIC DISTRIBUTION, INC. AND FRESH WATER SYSTEMS, INC., ...Counterclaim Defendants

OF WHICH CAROLINA CUSTOM CONVERTING, LLC, JOHN GANDIS, AND ANDREA COMEAU-SHIRLEY are the ..... Appellants

and

DAVID WILSON is the.....Respondent.

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for Petitioners certifies that the petition for rehearing was timely made and finally ruled on by the court of appeals on April 4, 2024. This Court subsequently granted a seven-day extension for the time to file the petition for a writ of certiorari, which made the petition due on or before May 13, 2024.

QUESTIONS PRESENTED

1. Did the court of appeals err in holding that an issue was not preserved for appellate review when that issue was raised to, and ruled on, by the lower court, when the lower court elected to rule on the issue advanced in a Rule 59(e), SCRCP, motion?

2. If the issue was preserved for appellate review, does the posting of a supersedeas bond pursuant to Rule 241(c)(1), SCACR, and a court order prevent the running of post-judgment interest?

3. Did the court of appeals err in holding that post-judgment interest accrued on a judgment during the entirety of an appeal when (i) the primary judgment debtor was not subject to the judgment until the opinion of this Court, (ii) a supersedeas bond was posted, and (iii) the judgment was paid within a reasonable amount of time following issuance of the changed judgment and the remittitur?

4. Did the court of appeals err in holding that the lower court did not improperly undertake a reverse corporate veil piecing when, assuming post judgment interest accrued against the individuals during the pendency of the appeal, the obligation was transferred to the LLC?

Carolina Custom Converting, LLC (the "Company" or "CCC"), John Gandis, and Andrea Comeau-Shirley (together, the "individuals" or "members") petition this Court to grant a petition for a writ of certiorari to review and reverse the court of appeals decision in *Wilson v. Gandis, et al.*, Unpublished Opinion No. 2024-UP-037 (the "Unpublished Opinion").

STATEMENT OF THE CASE

This case addresses whether post-judgment interest accrued from the inception of the appeal against a buyout order that this Court modified in *Wilson v. Gandis, et al.*, 430 S.C. 282, 844 S.E.2d 631 (2020) (hereinafter, "*Wilson I*"). In *Wilson I*, this Court addressed a shareholder oppression lawsuit that resulted in a buyout order that imposed joint and several liability upon the individuals of a South Carolina limited liability company.

On appeal, the individuals argued, among other matters, that the doctrine of unclean hands should prevent the Respondent from the equitable relief of a buyout. *Id.* at 308, 844 S.E.2d at 645. Specifically, the individuals argued that Respondent "orchestrated a steady stream of side deals that he concealed from them, shared CCC's trade secrets and confidential information with competitors, and destroyed evidence before and during this litigation." *Id.* at 308, 844 S.E.2d at 645. This Court declined to enforce the equitable defense, finding that Respondent's "conduct did not rise to the level complained of by [the individuals]." *Id.* at 308, 844 S.E.2d at 645. Nevertheless, in affirming the lower court's decision to order a buyout, this Court later noted that, "in the exercise of our de novo review, we may order the relief we conclude is most equitable under the relevant circumstances." *Id.* at 310, 844 S.E.2d at 646.

Based on that de novo review, this Court modified the buyout order in a way that created a new judgment debtor. *Wilson I* held that the individuals should not have been the judgment debtors in the first instance; rather, the judgment debtor should have been the Company. *Id.* at 310, 844 S.E.2d at 646. During the pendency of the appeal, the Company did not have an obligation to

buyout Respondent's interest—and would have acted contrary to the buyout order had it done so. After the appeal, the Company became obligated to make the buyout. Furthermore, this Court held that if the Company did not make the buyout within a reasonable time, then the individuals would have contingent liability. The contingent liability, however, was no longer joint and several. Rather, the contingent liability was made proportional to the ownership interest of the individuals in the company. *Id.* at 310, 844 S.E.2d at 646.

The relevant procedural history following remand from *Wilson I* follows.

This Court issued its remittitur on June 22, 2020. On July 13, 2020, the Company filed a motion for a remand status conference. (R. p. 76-86). On September 21, 2020, a hearing was held before the Honorable Alex Kinlaw, Jr., of the Greenville County Court of Common Pleas. (R. p. 114). At the hearing, the Company requested the lower court to allow for a structured buyout process comprised of a down payment in the $200,000 range, followed by monthly payments drawing interest. The argument for the structured buyout process followed *Wilson I*'s decision to shift the primary liability from the individuals to the Company. (R. p. 121; *see also* S.C. Code Ann. § 33-44-701(e) (addressing court involvement in setting terms for a buyout)).

The lower court declined to allow a structured buyout, but instead ordered the Company to make a $250,000 payment towards the total purchase price ($347,863.23) of Respondent's membership interest and permitted Respondent to seek the remaining balance from the supersedeas bond. Further, the court referred the case to the Master-in-Equity to conduct supplemental proceedings to determine whether post-judgment interest should be awarded.

On October 19, 2020, CCC filed a Rule 59(e), SCRCP, motion. CCC's Rule 59(e) motion challenged, relevant here, the appropriateness of referring resolution of the post-judgment interest claim to the Master-in-Equity for supplemental proceedings. CCC did not seek to amend the

decision to have the Master-in-Equity determine whether post-judgment interest was payable. Instead, CCC sought amendment of the characterization that the inquiry would be conducted as a supplemental proceeding. The court denied CCC's Rule 59(e) motion.

On or about November 1, 2020, Respondent was paid $347,863.23 for his membership interest in CCC.

On April 13, 2021, a hearing was held before the Honorable Charles B. Simmons, Jr., Master-in-Equity of Greenville County, to decide whether post-judgment interest was collectable from the date the buyout order was entered, January 9, 2015. (R. p. 148). Judge Simmons entered an order on May 4, 2021, finding that post-judgment interest accrued from January 9, 2015, in the amount of $208,930.15. (R. p. 36).

CCC then filed a Rule 59(e) motion to the court's order dated May 4, 2021. A hearing was held before Judge Simmons on the Rule 59(e) motion on June 8, 2021. On June 10, 2021, a supplemental motion was filed addressing the issue that the court of appeals found was not preserved for appellate review. On June 17, 2021, Judge Simmons entered an order denying the motions. (R. p. 38).

Relevant to the first question presented for review, Judge Simmons's Rule 59(e) order found that "the substance of the argument is that by posting an appeal bond, interest on a judgment no longer accrues. An appeal bond suspends enforcement of a judgment but does not, in the court's opinion, suspend accruing of statutory interest." (R. p. 39).

On July 15, 2021, the Company and the individuals timely filed a Notice of Appeal from: (1) the May 4, 2021, order, and (2) the June 17, 2021, order.[1]

[1] On June 18, 2021, Judge Simmons entered a consent order providing that CCC would create an account in its name and transfer $210,650.89 into the Fidelity Total Bond Fund ("Bond Fund"). (R. p. 41). Pursuant to the consent order, CCC and Respondent agreed that if CCC

STANDARD OF REVIEW

The question before the Court is whether the court of appeals incorrectly applied the law of issue preservation, whether a supersedeas bond entered pursuant to a court order and Rule 221(c), SCACR, prevents the accrual of post-judgment interest, and whether Respondent is owed post-judgment interest pursuant to S.C. Code Ann. § 34-31-20. These are questions of law. This Court undertakes a de novo review of questions of law. *See, e.g.*, *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008) ("Determining the proper interpretation of a statute is a question of law, and this Court reviews questions of law de novo.").

prevailed in the appeal, then it would be entitled to the Bond Fund. However, if Respondent prevailed on appeal, then he would be entitled to the Bond Fund. Significantly, the parties agreed that the Bond Fund would serve as the sole source of any further recovery in this dispute.

SUMMARY OF THE ARGUMENT

First, the court of appeals misapplied the law of issue preservation and failed to follow the decisions of this Court by refusing to consider an issue even though it had been both raised to and ruled upon by the lower court. The lower court's order ruled as follows: "The substance of the argument is that by posting an appeal bond, interest on a judgment no longer accrues. An appeal bond suspends enforcement of a judgment but does not, in the court's opinion, suspend accruing of statutory interest." (R. p. 39). The court of appeals held that this issue was not preserved for appellate review. This holding conflicts with this Court's decisions addressing issue preservation. *See* Rule 242(b)(3), SCACR.

"*At a minimum*, issue preservation requires that an issue be raised to and ruled upon by the trial judge." *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) (emphasis added). This Court has noted that, "[w]e are mindful of the need to approach issue preservation rules with a practical eye and not in a rigid, hyper-technical manner." *Id.* at 470, 719 S.E.2d at 644-45 (emphasis added). In *Herron*, the Court concluded, however, that "because Appellant can point to no instance where [the issue] was properly raised or ruled upon, to disregard our issue preservation rules under these circumstances would render them meaningless." *Id.* at 470, 719 S.E.2d at 644-45 (emphasis added). "The rationale for the rule is that until the trial court considers the matter and makes a ruling, an appellate court is unable to find error. Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review." *Queen's Grant II Horizontal Property Regime v. Greenwood Development Corp.*, 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006).

The court of appeals blew past these rules of issue preservation law and held that, notwithstanding the issue was ruled upon, it was not preserved for appeal because the issue was raised in a supplemental Rule 59(e) motion. In support of this ruling, the court of appeals cited to

this Court's decision in *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 563, 762 S.E.2d 693 (2014). *Stevens & Wilkinson* held that the lower court did not err in refusing to rule on a new issue, raised for the first time in a Rule 59(e) motion. *Id.* at 567, 762 S.E.2d at 695. However, unlike in *Stevens & Wilkinson*, the lower court here did rule on the issue. Consequently, *Stevens & Wilkinson* is distinguishable from this case and the basis for the issue preservations rules are not at play.

On the merits of the issue that the court of appeals declined to address, when a supersedeas bond is posted pursuant to a court order, that order "suspend[s]" the judgment. Rule 241(c)(1), SCACR. Suspension of the judgment means that post-judgment interest does not accrue because the judgment is on hold and temporarily inoperative. As a result, post-judgment interest should not have accrued, as more fully discussed below.

Second, post-judgment interest could not have accrued from the date of the original buyout order for three reasons. One, this Court changed the judgment debtor from the individuals to the Company. Prior to this decision, the Company did not have a judgment against it. Nevertheless, the court of appeals, and the lower court's decision, treat this Court's decision to make the Company the judgment debtor as a meaningless act and assessed post-judgment interest against the Company during the entirety of the appeal and before the Company had a judgment against it. This Court, however, does not issue opinions that serve no purpose. *See Gainey v. Gainey*, 279 S.C. 68, 69, 301 S.E.2d 763, 764 (1983) (noting the "Court will not issue advisory opinions"). Changing the judgment debtor from the individuals to the Company was intentional, and it had a legal effect on the proceedings and the proper interpretation of the post-judgment interest statute.

Two, Petitioners posted a supersedeas bond. That bond guaranteed future payment for Respondent. Posting the supersedeas bond meant that Petitioners did not "retain" funds or assets

belonging to Respondent. Posting the supersedeas bond meant also that Petitioners were not disregarding the obligation to pay a judgment. These indisputable facts are incompatible with the policy purposes for post-judgment interest. *Sears v. Fowler*, 293 S.C. 43, 45-46, 358 S.E.2d 574, 575 (1987) ("[A judgment debtor is] required to pay interest on his debt as compensation for his further retention and use of the judgment creditor's money."); *id.* at 45, 358 S.E.2d at 575 ("The reason most frequently given for the majority's position is that the purpose of postjudgment interest is to penalize non-payment of a judgment by a judgment debtor.").

Three, the Company made the buyout payment within a reasonable time following the lower court's decision denying a structured buyout. This payment complied with the opinion of this Court and so, post-judgment interest should not have applied to this timely payment.

Based on these three reasons, post-judgment interest could not have accrued from the date of the original buyout order and the court of appeals incorrectly relied on *Calhoun v. Calhoun*, 339 S.C. 96, 529 S.E.2d 14 (2000) to find that it did. *Calhoun* held that post-judgment interest runs from the date that the judgment is entered, whether the amount of the judgment is increased or decreased after an appeal. *Calhoun* does not address the fact pattern where a new judgment debtor is established.

Third, the court of appeals erred by affirming the lower court's decision to impose a reverse corporate veil piercing. Assuming post-judgment interest was not suspended by the supersedeas bond and accrued during the appeal against the individuals, the post-judgment interest obligation of the individuals was transferred to the Company. The court of appeals approved of this result because this Court did not provide any "directives indicating an intention to 'vacate' or 'abrogate' the circuit court's holding or any accrued interest." (Unpublished Opinion, at 3). As a result, the court of appeals found that the lower court did not reverse pierce the corporate veil of the company

when it transferred the post-judgment obligation from the individuals to the company. Instead, "it ruled in accordance with the supreme court's opinion." *Id.*

The court of appeals' holding affirmed an improper reverse piercing of the corporate veil. This was legal error because the lower court did not make any of the necessary factual findings to do this. If the Court does not reverse the award of post-judgment interest, it should remand on this issue with instructions to the lower court to conduct a hearing to determine whether a factual basis even exists to pursue a reverse veil piercing claim.

I. THE ISSUE OF WHETHER POST-JUDGMENT INTEREST SHOULD ACCRUE AFTER PETITIONERS POSTED A SUPERSEDEAS BOND PURSUANT TO COURT ORDER IS PRESERVED FOR APPELLATE REVIEW

Appellants presented a singular issue for resolution by the lower court. Whether Respondent is entitled to post-judgment interest. Through multiple rounds of briefing in the lower court, Appellants presented various arguments for why post-judgment interest should not be awarded. The lower court ruled on these arguments.

"In order for an issue to be properly preserved for appeal, it must have been both raised to and ruled upon by the trial court." *Queen's Grant*, 368 S.C. at 372, 628 S.E.2d at 919. "The rationale for the rule is that until the trial court considers the matter and makes a ruling, an appellate court is unable to find error. Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review." *Id.* at 373, 628 S.E.2d at 919.

The lower court ruled on the question of whether posting a supersedeas bond prevented the accrual of post-judgment interest. Therefore, the court of appeals had the obligation to review the record and law and determine whether the lower court's ruling was correct. The Petitioners met the bare minimum requirement to preserve the argument for appellate review. *Herron v. Century*

BMW, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) ("At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge."). *Stevens & Wilkinson of South Carolina, Inc. v. City of Columbia*, 409 S.C. 563, 762 S.E.2d 693 (2014), is distinguishable and the court of appeals erred in relying on this decision to avoid addressing the argument. The lower court would have been within its rights to decline to address this issue, yet the judge chose to do so.

In the case relied upon by the court of appeals, Stevens & Wilkinson of S.C., Inc. ("S&W") moved for partial summary judgment that it had a contract with the City of Columbia (the "City"). 409 S.C. at 565, 762 S.E.2d at 694. The City defended that motion by arguing that it did not have a contract with S&W. *Id.* at 565, 762 S.E.2d at 694. The City lost the motion. The City filed a Rule 59(e), SCRCP, motion in which it did an about-face. The City argued that there was a counter-offer provided to S&W. *Id.* at 565, 762 S.E.2d at 694. Further, the City argued that it and S&W performed under that counter-offer resulting in a contract with S&W, and a satisfaction of the contract. *Id.* at 565, 762 S.E.2d at 694.

The circuit court did not rule on the City's Rule 59(e) argument that a different contract was entered into, accepted, and satisfied. The City appealed. The court of appeals affirmed the lower court, but modified its affirmance to adopt the City's about-face argument that a different contract was accepted. *Id.* at 566, 762 S.E.2d at 695. The court of appeals remanded for a determination of whether the contract was satisfied. S&W appealed, and this Court affirmed the court of appeals for a modified reason.

This Court found that the court of appeals should not have addressed the City's about-face argument. In doing so, this Court noted the rule that an issue must have been raised to and ruled upon by the trial court in order to preserve that issue for appellate review. *Id.* at 567, 762 S.E.2d

at 695. In addition, this Court noted that a "party cannot use a Rule 59(e) motion to advance an issue the party could have raised to the circuit court prior to judgment, but did not." *Id.* at 567, 762 S.E.2d at 695.

The new issue rule does not apply. In *Stevens & Wilkinson*, the City raised a wholly different and new issue at the Rule 59(e) stage. It went from there is "no contract" to "there is a contract, and it has been satisfied." Further, the circuit court did not rule on the City's new issue. It is against the backdrop of these facts that this Court wrote that, "[i]t is improper for the City to concede the sole issue before the circuit court and attempt to inject new issues and theories on appeal." *Id.* at 567-68, 762 S.E.2d at 695.

Here, Petitioners advanced the same issue—whether post-judgment interest is owed to Respondent. The argument in support of the same issue was supplemented at the Rule 59(e) stage. And the lower court ruled on that supplemental argument.

Pursuant to *Stevens & Wilkinson*, the lower court had the option to not rule on the supplemental argument. The lower court elected to rule on that supplemental argument. It was therefore incumbent on the court of appeals to address the merits of the issue. The court of appeals side-stepped its obligation to address the merits of the issue, and that decision was legal error. This issue was preserved for appellate review.

The lower court heeded this Court's admonition that cases are to be decided on the merits, when possible. In contrast, the court of appeals employed the issue preservation rules in a technical manner, seeking a method by which to avoid considering the issue. This use of the issue preservation rules ignores the basis for the rules. There is no prejudice to the parties or to the trial judge by considering an issue on which the lower court ruled.

II. WHEN PETITIONERS POSTED THE SUPERSEDEAS BOND PURSUANT TO THE CIRCUIT COURT'S ORDER, THAT PREVENTED THE ACCRUAL OF POST-JUDGMENT INTEREST

While the appeal in *Wilson I* was pending, Respondent began efforts to collect on the buyout order. As a result, a hearing was held before then-Circuit Court Judge D. Garrison Hill regarding the impact of the appeal on the enforceability of the buyout order. As a result of the hearing, then-Judge Hill entered an order requiring the individuals and the Company to secure a supersedeas bond in order to prevent collection efforts. ("Bond Order"; R. p. 22).

The Bond Order required the Company to be a party to the forthcoming supersedeas bond even though it had no liability under the buyout order. The lower court noted that, "[the individuals] have appealed, and argue that any obligation to pay [Respondent] for his membership share properly belongs to [the Company]. . . . In addition . . . , requiring [the Company] to post bond protects [Respondent] should an appellate court decide that the obligation to pay [Respondent] for his membership interest rests with CCC, and the company—of which he is still a member, yet from whose affairs he is excluded—becomes insolvent or otherwise unable to pay the judgment should it be affirmed." (R. p. 23).

When the circuit court entered the order requiring Petitioners to post a supersedeas bond to avoid collection efforts, and Petitioners complied with the order, the accrual of post-judgment interest ceased. Accrual of post-judgment interest ceased to occur because the supersedeas bond suspended the judgment.

Under Rule 241(c)(1), "[t]he effect of the granting of a supersedeas is to ***suspend*** or stay the matters decided in the order, judgment, decree or decision on appeal and, where a prior order or decision was in effect at the time the appealed order, judgment, decree or decision was filed, to revive the terms of the prior order or decision." (emphasis added).

The Court should interpret this rule according to its plain and ordinary meaning. *See Ex parte Wilson*, 367 S.C. 7, 15, 625 S.E.2d 205, 209 (2005) ("In interpreting the meaning of the South Carolina Rules of Civil Procedure, the Court applies the same rules of construction used to interpret statutes."). "If a rule's language is plain, unambiguous, and conveys a clear meaning, interpretation is unnecessary and the stated meaning should be enforced." *Id.* at 15, 625 S.E.2d at 209. "Courts should consider not only the particular clause in which a word may be used, but the word and its meaning in conjunction with the purpose of the whole rule and the policy of the rule." *Id.* at 15, 625 S.E.2d at 209. "In construing a rule, language in the rule must be read in a sense which harmonizes with its subject matter and accords with its general purpose." *Id.* at 15, 625 S.E.2d at 209.

The verb *suspend* means "to hold in an undetermined or undecided state awaiting further information"; "to set aside or make temporarily inoperative."[2] Allowing post-judgment interest to accrue on a judgment that is placed on hold or made temporarily inoperative is at odds with the plain meaning of the words used in the rule. If post-judgment interest accrues on a judgment that is on hold or temporarily inoperative, then the judgment is ***not*** on hold or temporarily inoperative. As a result, the plain meaning of the word *suspend* in Rule 241(c)(1) must mean that the judgment is on hold or temporarily inoperative and, therefore, cannot accrue interest.

The remainder of the language following the word *suspend* in the rule supports this interpretation. The last sentence of Rule 241(c)(1) provides that "where a prior order or decision was in effect at the time the appealed order, judgment, decree or decision was filed, [the supersedeas bond operates] to revive the terms of the prior order or decision." Stated more clearly,

[2] https://www.merriam-webster.com/dictionary/suspend

the supersedeas bond causes the current judgment or order to effectively cease to exist. A judgment or order that ceases to exist cannot accrue interest.

This interpretation comports with the guarantee of payment provided by a supersedeas bond. It is a guarantee because a supersedeas bond requires a party to pledge collateral to satisfy the judgment amount. *See Van Romer v. Interstate Prods., Inc*., 2010 WL 1999528, at *1-3 (D.S.C. May 19, 2010) (describing what a full supersedeas bond requires). Pledging collateral means that the collateral can no longer be used for any other purpose.

South Carolina Code Section 18-9-130 operates in concert with Rule 241, SCACR. It provides that "[i]f the presiding judge grants a stay of execution and requires a bond or other surety to guarantee the payment of the judgment pending the appeal, the amount of the bond or other surety *may not exceed the amount of the judgment*." S.C. Code Ann. §18-9-130(A)(1) (emphasis added). The bond may not exceed the amount of the judgment because post-judgment interest cannot accrue on a judgment that is on hold and temporarily inoperative.

It is well established that, "a judgment debtor may stop the running of interest by paying the amount of the judgment into court during the pendency of an appeal." *Sears v. Fowler*, 293 S.C. 43, 44 n.1, 358 S.E.2d 574, 575 n.1 (1987); *see also* Rule 67, SCRCP. Similarly, under Rule 241(c)(1), SCACR, the General Assembly (and this Court by approving the appellate rule in the first instance) decided that a supersedeas bond should operate in the exact same manner. This interpretation makes sense because a supersedeas bond is the equivalent of paying a judgment into court. The payment of the judgment is guaranteed if there is a successful appeal. After Petitioners posted the supersedeas bond, post-judgment interest stopped accruing.

III. THE COURT OF APPEALS ERRED IN CONCLUDING THAT POST-JUDGMENT INTEREST ACCRUED EVEN THOUGH THE JUDGMENT DEBTOR WAS CHANGED, A SUPERSEDEAS BOND WAS ENTERED, AND THE JUDGMENT WAS PAID WITHIN A REASONABLE TIME

A. This Court's Decision in *Wilson I* Created a New Judgment Debtor

Wilson I created a new judgment debtor and a new judgment. As a result, the court of appeals and the lower court erred by concluding that post-judgment interest accrued from the date of the original buyout order.

The post-judgment interest statute provides, in relevant part, that, "[a] money decree or judgment of a court enrolled or entered must draw interest according to law." S.C. Code Ann. § 34-31-20(B).

"Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." *Id.* at 85, 533 S.E.2d at 581. "'What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.'" *Id.* at 85, 533 S.E.2d at 581 (citing *Norman J. Singer*, SUTHERLAND STATUTORY CONSTRUCTION § 46.03 at 94 (5th ed. 1992)).

Before *Wilson I*, Respondent's options for collecting on the buyout order were: (1) demand that the 10% member purchase the entirety of his membership interest, or (2) have the other member purchase the entirety of his membership interest. After *Wilson I*, Respondent's option for collecting pursuant to the modified buyout order were: (1) demand that the Company purchase his membership interest, or (2) if the Company did not comply, then Respondent could cause the 10% member to pay 10% of the purchase price and cause the other member to pay the remainder of the

purchase price. The before and after options for Respondent are markedly different. It is inescapable that the pre-*Wilson I* buyout order and the post-*Wilson I* modified buyout order are not the same "judgment" for purposes of § 34-31-20(B). Accordingly, post-judgment interest could not have accrued on the original buyout order.

Wilson I created a new judgment debtor when it made the Company the primary judgment debtor. Respondent acknowledged this fact in the lower court. "[T]here certainly is a new individual or new entity who is responsible for the judgment, so perhaps, yes, there is a new judgment debtor." (R. p. 153, ln. 4-6). Nevertheless, the lower court and the court of appeals treated this material change as meaningless.

In its order, the lower court justified transferring the post-judgment interest that, assuming *arguendo*, accrued during the appeal against the members of the Company as follows:

> [A]lthough the Supreme Court decision makes CCC primarily liable for payment of the money judgment, [the members] remain obligated in the event that the judgment is not paid within a reasonable time. Moreover, *the fact that [the members] are the majority owners of CCC and the individuals who made the decisions leading to the trial court's order, there is no undue prejudice by allowing the statutory interest*. In fact, to hold otherwise, would be to allow a windfall to the at-fault and appealing parties.

(R. p. 36) (emphasis added). The language used by the lower court indicated that it improperly treated the Company and the members as one in the same, in contravention of *Wilson I* and South Carolina law. S.C. Code Ann. § 33-44-201 (declaring "a limited liability company is a legal entity distinct from its members"). As a result, the court of appeals and the lower court committed legal error by failing to correctly apply the undisputed facts to the plain language of the statute. The buyout order and the modified opinion cannot be the same judgment for purposes of § 34-31-20(B). Accordingly, post-judgment interest could not have accrued from the date of the original buyout order.

B. Whether Post-Judgment Interest Should be Awarded is Guided by Policy Considerations and those Policy Considerations Point in Favor of Not Awarding Post-Judgment Interest When a Supersedeas Bond is Ordered and Entered and a New Judgment Debtor is Established.

The word *judgment* in § 34-31-20(B) must be interpreted to mean only the post-*Wilson I* modified buyout order based on the marked difference between it and the pre-*Wilson I* buyout order. Interpreting this statute with a reference to indisputable facts juxtaposed to the policy purposes of post-judgment interest confirms that the court of appeals erred by holding that post-judgment interest accrued from the date of the original buyout order.

When a supersedeas bond is ordered and entered, the judgment creditor receives a guarantee that the judgment will be paid. Moreover, when a new judgment debtor is established, there is no one to penalize for nonpayment. The policy behind post-judgment interest is two-fold: (1) to penalize the judgment debtor for the retention and use of the judgment creditor's money, and (2) to penalize the judgment debtor for failing to promptly pay the judgment creditor. Neither of these policy goals are present here. When the policy purposes for post-judgment interest are absent, that is a good sign that post-judgment interest should not be awarded. The court of appeals erred by failing to consider that the policy purposes for post-judgment interest were nonexistent.

1. Petitioners Did Not Continue to Use Their Assets

During the lower court proceedings and on brief, Respondent argued that Petitioners' retention and use of their capital supported an award of post-judgment interest. This argument, apparently credited by the lower court, is in direct conflict with how a supersedeas bond operates. Petitioners were required to pledge assets and make the members and the non-judgment debtor Company a party to the supersedeas bond. The Petitioners were financially impaired for the entire time the supersedeas bond was in existence. *See Van Romer*, 2010 WL 1999528, at *1-3 (describing what a full supersedeas bond requires).

This Court has noted that, "[[a] judgment debtor is] required to pay interest on his debt as compensation for his further retention and use of the judgment creditor's money." *Sears*, 293 S.C. at 45-46, 358 S.E.2d at 575. This argument does not apply in the present situation because Petitioners were required to post a supersedeas bond in the amount of $347,863.23 to guarantee the purchase of Respondent's membership interest.

2. The Changed Judgment Debtor Means There is No One to Penalize for Non-Payment

This Court has also recognized that the "reason most frequently given for the majority[] position is that the purpose of postjudgment interest is to penalize nonpayment of a judgment by a judgment debtor." *Sears*, 293 S.C. at 45, 358 S.E.2d at 575. After *Wilson I*, there was never a non-compliant individual or entity to penalize for nonpayment of a debt. The members appealed the buyout order, in part, because the individuals believed that the circuit court committed legal error by imposing individual and joint and several liability. A position that Respondent opposed. This Court agreed with the individuals. As a result, there is no one to penalize for not paying the judgment during the appeal. After *Wilson I* was handed down, and the Company became primarily liable for the buyout, the Company timely paid the debt. Accordingly, there has never been an individual or entity to penalize for nonpayment.

C. The Judgment was Paid within a Reasonable Amount of Time

Respondent's membership interest was timely purchased on or about November 1, 2020. This Court held that the Company had a "reasonable" amount of time to purchase the membership interest. The lapse of approximately four (4) months between the remittitur and the purchase was based upon the Company's request to the circuit court to implement a structured buyout. The Company made this good faith request based upon the change in the judgment debtor. (R. p. 76). The Company filed the motion for a remand status conference on July 13, 2020. (R. p. 76). The

status conference was held on September 21, 2020. The circuit court denied the request for a structured buyout. Thereafter, the bond company made the full payment to Respondent. Considering the timeline of events that occurred between the remittitur and the purchase of Respondent's membership interest, the Company complied with its obligation to purchase Respondent's membership interest within a reasonable time. Accordingly, no post-judgment interest could have accrued between the date the remittitur was entered and the date the payment was made.

D. *Calhoun* Did Not Establish a "Bright Line" Test Applicable to this Fact Pattern

The court of appeals and the lower court wrongly relied on *Calhoun v. Calhoun*, 339 S.C. 96, 529 S.E.2d 14 (2000) to find that post-judgment interest accrued from the date of the original buyout order. *Calhoun* addressed a monetary dispute between two parties in a domestic relations case. *Calhoun*, 339 S.C. at 98, 529 S.E.2d at 15. In that specific context, the Court held that when the amount of the judgment is modified up or down, post-judgment interest will nevertheless run from the date of the original judgment. *Id.* at 104, 529 S.E.2d at 19. *Calhoun* does not address the fact pattern where the judgment was not modified up or down, but sideways to a new party. The court of appeals did not consider the policy purposes behind post-judgment interest to the presence of the factual distinction between *Calhoun* and this case. This was legal error and should be corrected. Correcting this legal error should result in this Court holding that no post-judgment interest is owed.

IV. THE COURT OF APPEALS ERRED BY APPROVING A REVERSE PIERCING OF THE CORPORATE VEIL WHEN IT ORDERED THE COMPANY TO PAY FOR THE POST-JUDGMENT INTEREST THAT ACCRUED AGAINST THE MEMBERS DURING THE APPEAL

The court of appeals committed legal error by affirming the reverse corporate veil piercing done by the lower court. Assuming *arguendo* that post-judgment interest accrued during the

appeal, the lower court erred when it failed to undertake the required factual analysis to determine whether a reverse corporate veil piercing was appropriate. The Court should reverse and remand with instruction to the lower court to conduct the necessary factual findings to determine whether a reverse veil piercing claim is appropriate.

The court of appeals misapprehended *Wilson I* when it concluded that (assuming post-judgment interest accrued during the appeal) the obligations of the members could be transferred to the Company. The court of appeals found it significant that this Court did not have any "directives indicating an intention to 'vacate' or 'abrogate' the circuit court's holding or any accrued interest." (Unpublished Opinion, at 3). Again, the court of appeals refused to give any meaning to this Court's decision to transfer the primary liability for the buyout from the individuals to the Company. By failing to apply *Wilson I*, the court of appeals found that the lower court did not reverse pierce the corporate veil of the Company. Instead, "it ruled in accordance with the supreme court's opinion." *Id.* The court of appeals' holding is a misapprehension of *Wilson I* and approves an improper reverse piercing of the corporate veil.

Wilson I did not address the transfer of post-judgment interest to the Company. The court of appeals interpreted this Court's silence regarding post-judgment interest as the equivalent of an acknowledgment that post-judgment interest accrued. This was an error. Further, the lower court order erred by finding that, "the fact that [the individuals] are the majority owners of CCC and the individuals who made the decisions leading to the trial court's order, there is no undue prejudice by allowing the statutory interest." (R. p. 36). This finding is legal error because it treats the members and the Company as one in the same. S.C. Code Ann. § 33-44-201 (declaring "a limited liability company is a legal entity distinct from its members").

"As a general rule, a corporation will be looked upon as a legal entity until sufficient reason to the contrary appears." *Wilson v. Friedberg*, 323 S.C. 248, 251, 473 S.E.2d 854, 856 (Ct. App. 1996). "However, the law will regard the corporation as an association of persons when the notion of the legal entity is used to protect fraud, justify wrong, or defeat public policy. *Id.* at 251, 473 S.E.2d at 856. "[R]everse veil piercing attaches liability to the *entity* for a judgment against the individuals who hold an ownership interest in that entity." *Sky Cable, LLC v. DIRECTV, Inc.*, 886 F.3d 375, 385-86 (4th Cir. 2018) (emphasis added). South Carolina courts hold that, "[t]he equitable doctrine of piercing the corporate veil is not to be applied without substantial reflection and the party seeking to have the corporate identity disregarded has the burden of proving the doctrine should be applied." *Wilson*, 323 S.C. at 251, 473 S.E.2d at 856; *see also Mid-South Management Co. v. Sherwood Development Corp.*, 374 S.C. 588, 597, 649 S.E.2d 135, 140 (Ct. App. 2007); *Sturkie v. Sifly*, 280 S.C. 453, 313 S.E.2d 316 (Ct. App. 1984).

Courts "have developed a two-prong test to be used in determining whether the corporate entity should be disregarded. The first prong of the test looks to the observance of corporate formalities by the dominant shareholder and consists of the following factors: (1) whether the corporation was grossly undercapitalized; (2) failure to observe corporate formalities; (3) non-payment of dividends; (4) insolvency of the debtor corporation at the time; (5) siphoning of corporate funds by the dominant stockholder; (6) non-functioning of other officers or directors; (7) absence of corporate records; and (8) the fact that the corporation was merely a facade for the operations of the dominant stockholder. . . . The second prong of the test requires that there be an element of injustice or fundamental unfairness if the acts of the corporation are not regarded as the acts of the individual." *Wilson*, 323 S.C. at 252, 473 S.E.2d at 856.

The Respondent never moved the lower court to consider a veil piercing claim. Further, the lower court never addressed the required and substantial factual prerequisites to effectuate a veil piercing. And, of course, the Respondent never introduced any evidence that would support a veil piercing. The lower court did so based upon its own sense of what a just result should look like. The court of appeals erred by affirming this decision. This Court should grant the petition, find that a reverse veil piercing occurred, reverse that decision, and remand with instructions to determine whether reverse veil piercing is even a viable claim for Respondent.

CONCLUSION

For the reasons identified herein, the Court should respectfully grant the petition for a writ of certiorari.

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Respectfully submitted,

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