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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Courtney Clyburn Pope, Circuit Court Judge
Lexington County
Trial Court Case No. Case No. 2020-CP-32-04007

Appellate Case No. 2024-001585

Insurance Office of America, Inc. — Respondent,

v.

1221 Bower, LLC — Appellant.

FINAL BRIEF OF APPELLANT

William S. Hammett
Jenna K. DePoy
Cobb Hammett Law Firm
222 W. Coleman Blvd.,
Mt. Pleasant, SC 29464
whammett@cobbhammett.com
jdepoy@cobbhammett.com
(843) 936-6680
Attorneys for Appellant 1221 Bower, LLC

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STATEMENT OF THE ISSUE ON APPEAL

1. Did the trial court abuse its discretion in reducing Appellant's attorneys' fees based on an improper consideration of the *Blumberg* Factors?
2. Did the trial court abuse its discretion in reducing Appellant's attorneys' fees based on unsuccessful motions, excluded evidence, and duplicative trial preparation?
3. Did the trial court abuse its discretion in reducing Appellant's attorneys' fees based on inferences drawn from disputed evidence and improperly admitted prejudicial evidence?

STATEMENT OF JURISDICTION

This case originated in the Court of Common Pleas for the County of Lexington. Jurisdiction was proper. Appellant 1221 Bower, LLC appealed the Court of Common Pleas' partial grant of Appellant's motion for attorneys' fees and costs to the South Carolina Court of Appeals. The South Carolina Court of Appeals has appellate jurisdiction over this matter as it does not lie within any of the seven classes of cases that the South Carolina Supreme Court exercises exclusive jurisdiction over, pursuant to S.C. CODE ANN. § 14-8-200(a)-(b). Therefore, the South Carolina Court of Appeals has jurisdiction over this case and controversy.

STATEMENT OF THE CASE

In July of 2019, 1221 Bower, LLC ("Appellant" or "1221 Bower") purchased the office spaces located at 1221 Bower Parkway Units 101, 102, 103, 104, and 105, in Columbia, SC 29212 ("Premises") from I.O.A. Properties III, LLC and assumed the lease agreement ("Lease") with I.O.A. Properties III, LLC's affiliate and tenant, Insurance Office of America, Inc. ("Respondent" or "IOA"). (ROA 0056). Unbeknownst to 1221 Bower at the time of the purchase, while I.O.A. Properties III, LLC owned the Premises multiple water intrusion events occurred throughout the

Premises which were caused by the residential condominium units located on the two floors above the Premises. (ROA 0057).

Thereafter, during the middle of the COVID-19 pandemic in 2020, there was a water leak, which was identical to the leaks that previously afflicted the Premises and were caused by a toilet leak located in the residential units above the Premises. (ROA 0057). This water leak was the beginning of what would be a three (3) year long dispute. 1221 Bower made repeated efforts to repair the water leak located in the shared common wall between Units 102 and 103, which included hiring plumbers to come out to the Premises at least eight (8) different times between August 2020 and December 2020 and having mold remediation performed. (ROA 0077-0078). Unfortunately, 1221 Bower's efforts to remedy the water leak were complicated due to (i) COVID-19 related delays, (ii) plumber availability delays, (iii) an inability to gain access to upstairs residential units where the cause of the leak was located, (iv) delays caused by IOA, and (v) the fact that the leak was fixed several times between August 2020 and December 2020 but kept reoccurring. (ROA 0155). As a result, 1221 Bower was unable to repair the water leak within IOA's desired time frame and on December 1, 2020, IOA sent 1221 Bower a letter stating their intent to terminate the Lease seven (7) years early and a demand for a reimbursement of rent. (ROA 0059). Rather than allowing 1221 Bower time to respond to the demands, the very next day IOA filed a lawsuit against 1221 Bower on December 2, 2020, seeking a declaratory judgement from the trial court that IOA validly terminated the Lease and were entitled to an abatement of rent. (ROA 0029-0035). 1221 Bower then counterclaimed seeking a declaratory judgment confirming the existence of the Lease and that IOA breached the Lease. (ROA 0036-0052).

For the next three (3) years, 1221 Bower was forced to defend itself against IOA's lawsuit and to pursue its counterclaims. (ROA 0142). This included eleven (11) depositions, twenty-six

(26) motions filed with the court, a mediation, over a dozen rounds of discovery requests, and numerous subpoenas. (ROA 0145). The jury trial was held from January 22, 2024 through January 26, 2024 at the Lexington County Courthouse before the Honorable Courtney Clyburn Pope. (ROA 0149). The jury rendered the following verdicts: (i) a verdict in favor of 1221 Bower on IOA's first cause of action for declaratory judgment relating to the termination of the Lease; (ii) a verdict and judgment for Twenty-Five Thousand and 00/100 Dollars ($25,000.00) to IOA on IOA's second cause of action relating to reimbursement of rent; (iii) a verdict in favor of 1221 Bower on 1221 Bower's cause of action for declaratory judgment confirming the existence of the Lease; and (iv) a verdict and judgment for One Hundred Fifty Thousand and 00/100 Dollars ($150,000.00) to 1221 Bower on 1221 Bower's counterclaim for breach of contract. (ROA 0010-0011).

On February 29, 2024, 1221 Bower filed its Memorandum in Support of its Motion for Attorneys' Fees and Costs along with an affidavit of attorneys' fees and the corresponding invoices that catalog the billable activity throughout the duration of the three (3) years of litigation. In total, 1221 Bower sought attorneys' fees and costs in the amount of One Hundred Seventy-Two Thousand Two Hundred Six and 03/100 Dollars ($172,206.03). (ROA 0145).

A post-trial hearing was held on March 4, 2024 for 1221 Bower's Motion for Attorneys' Fees and Costs as well as IOA's Motion for Judgment Notwithstanding the Verdict and for Costs under the declaratory judgement action. Subsequently, on September 11, 2024, the trial court issued its Post-Trial Order denying both of IOA's Motions for Judgement Notwithstanding the Verdict and for Costs. (ROA 0015). The trial court granted in part and denied in part 1221 Bower's Motion for Attorneys' Fees and Costs and awarded 1221 Bower reduced attorneys' fees and costs in the amount of Ninety-Four Thousand Five Hundred and 00/100 Dollars ($94,500.00). (ROA 0016).

1221 Bower timely filed its Notice of Appeal of the Post-Trial Order to this Court on September 17, 2024 and its Amended Notice of Appeal of the Post-Trial Order on September 23, 2024.

STANDARD OF REVIEW ON APPEAL

"When there is a contract, the award of attorneys' fees is left to the discretion of the trial judge and will not be disturbed unless an abuse of discretion is shown." *Baron Data Sys., Inc. v. Loter,* 297 S.C. 382, 384, 377 S.E.2d 296, 297 (1989). "An abuse of discretion occurs when the conclusions of the trial court are either controlled by an error of law or are based on unsupported factual conclusions." *Kiriakides v. Sch. Dist. Of Greenville Cnty*., 382 S.C. 8, 20, 675 S.E.2d 439, 445 (2009).

To preserve an error for appellate review, a contemporaneous objection is required. *State v. Hoffman*, 312 S.C. 386, 393, 440 S.E.2d 869, 873 (1994). An appellate court will reverse a trial court's evidentiary ruling only if it reflects an abuse of discretion, which occurs when the ruling is based on an error of law or lacks evidentiary support. *Johnson v. Sam English Grading, Inc.*, 412 S.C. 433, 448, 772 S.E.2d 544, 551 (Ct. App. 2015). To justify reversal based on the admission of evidence, an appellant must demonstrate both an error of law and resulting prejudice. *Conway v. Charleston Lincoln Mercury, Inc.*, 363 S.C. 301, 307, 609 S.E.2d 838, 842 (Ct. App. 2005).

ARGUMENT

I. The Court should reverse the trial court's reduced award of Appellant's attorneys' fees because the reduction was based on an improper consideration of the Blumberg Factors.

The trial court abused its discretion in reducing Appellant's attorneys' fees based on an improper assessment of the six (6) *Blumberg* Factors. In South Carolina, the general rule is that

attorneys' fees are not recoverable unless authorized by contract or by statute. *Baron Data Sys., Inc.*, 297 S.C. at 384, 377 S.E.2d at 297. In *Blumberg*, the South Carolina Supreme Court established "the six (6) factors to consider in determining an award for attorneys' fees: (1) nature, extent, and difficulty of the legal services rendered; (2) time and labor devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) fee customarily charged in the locality for similar services; and (6) beneficial results obtained." *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 494, 427 S.E.2d 659, 660 (1993). "Our case law and court rules make clear that when a contract authorizes an award of attorneys' fees, the trial court must make specific findings of fact on the record for each of the required factors to be considered." *Griffith v. Griffith*, 332 S.C. 630, 646, 506 S.E.2d 526, 534-535 (Ct. App. 1998). Without sufficient evidentiary support on the record for each of the factors, the award should be reversed and the issue remanded for the trial court to make specific factual findings. *Blumberg*, 310 S.C. at 494, 427 S.E.2d at 661.

A. Improper weight was given to the "beneficial results obtained" Blumberg factor.

The trial court abused its discretion in reducing Appellant's attorneys' fees based on the improper weight given to the "beneficial results obtained" *Blumberg* Factor. Consideration is to be given to all of the *Blumberg* Factors as none of the factors are controlling. *Taylor v. Medenica*, 331 S.C. 575, 580, 503 S.E.2d 458, 461 (1998). Importantly, the "beneficial results obtained" factor ***merely aids*** in determining whether an award is appropriate when considering whether the services of a lawyer facilitated a favorable result. [*Emphasis added*] *Glasscock v. Glasscock*, 304 S.C. 158, 161, 403 S.E.2d 313, 315 (1991).

In *Baron Data Systems, Inc*, the South Carolina Supreme Court reversed the decision of the Court of Appeals due to the improper weight given to the "beneficial results obtained" factor. *Baron Data Sys., Inc.*, 297 S.C. at 386, 377 S.E.2d at 298. There, the trial court had found that "the

total benefits Baron obtained included a sizeable judgement of Sixteen Thousand One Hundred Fifty-One and 00/100 Dollars ($16,151.00) and the avoidance of nearly half a million dollars in liability on the counterclaims." *Id*. at 385, 377 S.E.2d at 297. However, the Court of Appeals subsequently concluded that Baron's beneficial result was not significant enough to support the trial court's award of attorneys' fees because Baron had initially sought over Seventy Thousand and 00/100 Dollars ($70,000.00) in damages and only recovered Sixteen Thousand One Hundred Fifty-One and 00/100 Dollars ($16,151.00). *Id*. at 385, 377 S.E.2d at 297. The Supreme Court determined that based on a reading of the Court of Appeals' opinion, it was evident that the amount of the monetary judgement was the critical factor upon which the Court of Appeals relied in making its decision. *Id*. at 385, 377 S.E.2d at 297. Because the amount of recovery is but one factor to be considered when determining reasonable attorneys' fees, the Supreme Court reversed the erroneous decision of the Court of Appeals. *Id*. at 385, 377 S.E.2d at 297.

Like in *Baron Data Systems, Inc*., the trial court here erred by diminishing the significance of the "beneficial results obtained" by Appellant based solely on the disparity between the amount of damages initially sought by Appellant and the amount ultimately recovered by Appellant. For example, the trial court states "the jury reduced Landlord's damages claim by $514,302.35. The significant disparity between what was claimed and what was awarded warrants a reduction in the amount of fees and expenses that Landlord should recover." (ROA 0019). This erroneous comparison is similar to that of the Court of Appeals in *Baron Data Systems*, which was ultimately reversed.

The trial court's approach improperly discounts the substance of the verdict and the overall success Appellant achieved. The jury's verdict clearly demonstrated that Appellant prevailed on multiple claims, including: (i) Respondent's first cause of action for declaratory judgment

regarding termination of the Lease, (ii) Appellant's first cause of action for declaratory judgment regarding termination of the Lease, and (iii) Appellant’s counterclaim for breach of contract, which resulted in a judgment for Appellant in the amount of One Hundred Fifty Thousand and 00/100 Dollars ($150,000.00). (ROA 0015).

In stark contrast, Respondent prevailed on only one claim—a partial award of Twenty-Five Thousand and 00/100 Dollars ($25,000.00) on Respondent’s second cause of action for a partial refund of rent under Section 11.1 of the Lease. (ROA 0015). When comparing the number of claims on which Appellant secured a favorable judgment versus the one limited claim Respondent partially succeeded on, it becomes abundantly clear that Appellant obtained significant beneficial results. The trial court's reliance on a narrow, numerical comparison of damages fails to capture the broader context of the litigation’s outcome. Appellant achieved success on multiple fronts, including securing a substantial monetary judgment, and the trial court’s decision to diminish these results constitutes an abuse of discretion.

It is well-established that the “beneficial results obtained’ factor should not be reduced to a mere tally of damages recovered, but rather should be viewed in the context of the overall success in the litigation, as demonstrated by Appellant’s favorable outcomes on multiple claims. The trial court’s error in giving undue weight to the amount of damages recovered, while disregarding the significant claims Appellant won, undermines the proper application of the *Blumberg* Factors and warrants reconsideration in conformity with *Baron Data Systems, Inc*.

In the Post Trial Order, the trial court’s approach reveals a clear and improper focus on the amount of the monetary judgment obtained by Appellant, to the detriment of a fair and comprehensive evaluation of all relevant *Blumberg* Factors. Despite the importance of considering the full range of factors in determining reasonable attorneys’ fees, the trial court dedicates a

disproportionate five (5) pages of its ten (10) page opinion solely to an analysis of the amount of the judgment recovered by Appellant. (ROA 0016, 0018-0021). In contrast, the trial court devotes just a little over one (1) page to evaluating the remaining five (5) *Blumberg* Factors, which are equally important in determining the appropriateness of an attorneys' fee award. (ROA 0024-0025).

This imbalanced analysis mirrors the concerns raised in *Baron Data Systems*, where a similar overemphasis on the amount recovered led to an erroneous decision. In both cases, the court relied too heavily on a single factor—here, the monetary judgment—while failing to properly weigh the other factors that contribute to a fair and equitable attorneys' fee award. The trial court's overemphasis on the amount of the judgment creates a fundamentally flawed conclusion, ignoring the broader context of Appellant's legal achievements and the overall nature of the case.

The *Blumberg* Factors require a balanced, holistic review of the circumstances surrounding the litigation, not a decision driven primarily by the outcome in terms of monetary damages. By focusing almost exclusively on the monetary recovery, the trial court committed an error in judgment, resulting in an unjust reduction of Appellant's attorneys' fees. This improper reliance on a single factor—especially to the exclusion of a more comprehensive review—warrants reversal and remand for proper consideration of all relevant factors.

Specifically, the trial court repeatedly mentions that Appellant was only awarded twenty three percent (23%) of the Six Hundred Sixty-Four Thousand Three Hundred Two and 25/100 Dollars ($664,302.25) in damages sought in Appellant's Pre-Trial Brief, which included the attorneys' fees incurred as of that date. (ROA 0016, 0018-0019). Although the trial court acknowledges that attorneys' fees were factored into the amount of damages sought, the trial court erroneously contends that Appellant's Pre-Trial Brief failed to allocate between attorneys' fees and

actual damages making it impossible to determine the specific amounts of each that were being claimed. (ROA 0023). This finding is inconsistent with the fact that page 10 of Appellant's Pre-Trial Brief contained a chart with the breakdown of the damages sought and specifically apportioned One Hundred Sixteen Thousand Nine Hundred Seventy-Two and 86/100 Dollars ($116,972.86) to attorneys' fees incurred as of that date. (ROA 0085).

In the Post Trial Order, the trial court places undue emphasis on the degree of success when determining the award of attorneys' fees, devoting two full pages to citations regarding the application of percentage reductions based on partial success. However, every case cited by the trial court in this section involves the award of attorneys' fees under federal and state statutes that limit the award of attorneys' fees to the "prevailing party," a threshold that is not applicable to the present case. *See e.g*., *Hensley v. Eckerhart,* 461 U.S. 424, 103 S. Ct. 1933 (1983) (attorney's fees awarded under the Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C.S. §1988(b)); *Johnson v. City of Aiken*, 278 F.3d. 333 (4th Cir. 2002) (attorney's fees awarded under 42 U.S.C.S. §1988(b)); *S.C. Citizens for Life, Inc. v. Krawcheck*, 2011 WL 13324484 (attorney's fees awarded under 42 U.S.C.S. §1988(b)); *Prevatte v. Asbury Arms*, 302 S.C. 413, 396 S.E.2d 642 (Ct. App. 1990) (attorney's fees awarded under S.C. CODE ANN. § 27-40-410(b)). These federal statutes limit the award of attorneys' fees to the "prevailing party," a threshold that is not applicable to the present case. In each of these cases, the courts' analysis was framed within the specific statutory context, which limits fee awards to "prevailing parties" or requires a reduction based on the degree of success.

By contrast, the attorneys' fees in the present case are not governed by federal law or statutes with similar limitations, but rather by a contract between the Parties. Specifically,

Appellant is entitled to attorneys' fees under Sections 12.5 and 15.23 of the Lease, which do not condition the right to fees on being the "prevailing party." Section 12.5 of the Lease states:

> "Following the occurrence of any Event of Default, Tenant shall also be liable for and shall pay to Landlord, in addition to any sum provided to be paid above: [the above being Tenant's rent payment obligations] […] (vii) all reasonable expenses incurred by Landlord in enforcing or defending Landlord's rights and/or remedies at law and equity or hereunder, **including reasonable attorneys' fees (which shall not be less than fifteen (15%) of all sums then owing by Tenant to Landlord), litigation expenses and court costs.**"
>
> *See* (ROA 1266-1302).

Additionally, Section 15.23 of the Lease provides:

> "In the event of a breach by Tenant of any of the covenants or provisions hereof, and irrespective of whether Landlord declares a Default or exercises its remedies under Article XII in connection therewith, to obtain an injunction of such breach therein, and the right to invoke any other remedies allowed at law or at equity as if re-entry, summary proceedings, or other remedies were not herein provided for, and in the event of such breach by Tenant, **Landlord shall be entitled to recovery from Tenant**, payable as Additional Rent hereunder, **any and all expenses as Landlord may incur in connection with its efforts to secure such injunctive relief or other remedy at law or in equity, including but not limited to, court costs and attorneys' fees.**"
>
> *See* (ROA 1266-1302).

As such, the trial court's reliance on cases involving federal statutes and the "prevailing party" standard is misplaced. There is no statutory or contractual language in this case that requires Appellant to achieve total success on all claims in order to be entitled to attorneys' fees and Section 15.23 specifically authorizes any and all fees incurred in connection with this matter.

Thus, the trial court's reliance on cases interpreting federal statutes or the "prevailing party" standard is legally improper. Appellant is entitled to attorneys' fees under the Lease as agreed to by the Parties, and the trial court's decision to reduce those fees based on an incorrect

application of federal law is a clear abuse of discretion. The case should be remanded for a proper analysis in accordance with the contractual provisions, not federal or state statutory requirements.

In light of the trial court's improper and disproportionate emphasis on the "beneficial results obtained" factor, and the trial court's failure to apply the terms of Section 15.23 of the Lease according to its plain language, the resulting reduction of Appellant's attorneys' fees, constitutes an abuse of its discretion. The trial court failed to properly balance all of the relevant *Blumberg* Factors and erroneously relied on the wrong standard. Given that Appellant is entitled to attorneys' fees under the terms of the Lease, and considering the significant legal success achieved, this Court should correct the trial court's error. Accordingly, Appellant respectfully requests that this Court reverse the trial court's decision and award the full amount of reasonable attorneys' fees initially sought, in recognition of the contractual entitlement and the substantial results obtained throughout the litigation.

B. Improper assessment of the other relevant *Blumberg* Factors.

Despite the importance of equally considering all of the *Blumberg* Factors in determining reasonable attorneys' fees, the trial court dedicates a disproportionate five (5) pages of its ten (10) page opinion solely to an analysis of the amount of the judgment recovered by Appellant. (ROA 0016, 0018-0021). In contrast, the trial court spends just a little over one (1) page evaluating the remaining five (5) *Blumberg* Factors, which are equally important in determining the appropriateness of an attorneys' fee award. (ROA 0024-0025). Given the limited page count spent discussing the remaining *Blumberg* Factors, the Post Trial Order lacks sufficient details on the facts that supposedly support the trial court's decision to reduce Appellant's attorneys' fees.

1. The nature, extent, and difficulty of the legal services rendered.

The trial court abused its discretion by improperly assessing the nature, extent, and difficulty of the legal services rendered in this case. In its Post Trial Order, the trial court erroneously concluded that the case was merely a "commercial lease dispute that was neither exceptional nor novel." (ROA 0024). This assessment fails to account for the substantial complexity of the case, which involved much more than a typical commercial lease dispute. Specifically, the litigation encompassed eleven (11) depositions, twenty-six (26) motions filed with the court, a mediation, over a dozen rounds of discovery requests and subpoenas, and the four (4) day jury trial. (ROA 0145). Such a breadth of legal work clearly reflects the significant effort and resources expended on Appellant's behalf.

Moreover, the involvement of Respondent, a corporate entity, compounded the complexity and time necessarily dedicated to the case. The case required coordination among multiple individuals within Respondent's organization, increasing both the number of parties involved and the intricacy of the legal issues at stake. Contrary to the trial court's assertion that Appellant "complicated the dispute with motions and theories that were unsuccessful," it is important to highlight that Respondent, too, filed numerous motions which Appellant was compelled to defend. *See* (ROA 0053-0055); (ROA 0070-0072); (ROA 0073-0075); (ROA 0113-0115); (ROA 0104-0112); (ROA 0116-0124). These actions were unavoidable from Appellant's perspective and added to the overall legal burden.

Furthermore, the trial court's analysis overlooks the fact that a substantial portion of the discovery work that Appellant undertook was in response to data that Respondent ultimately did not even use at trial. (ROA 0145). The time and resources spent addressing this irrelevant information should not be discounted in assessing the complexity of the case and the legal services

rendered, which would effectively punish only one party for engaging in behavior that both parties did throughout litigation. Importantly, Appellant did not initiate this litigation; rather, Appellant was forced to defend itself against Respondent's actions over the course of three (3) years. (ROA 0147). This protracted defensive posture further underscores the considerable legal efforts required to resolve this matter.

The trial court's failure to properly evaluate the substantial nature and complexity of the legal services rendered in this case led to an erroneous assessment of the difficulty of the case. Given the extensive discovery, the number of motions, the involvement of a corporate entity, and the significant duration of the litigation, Appellant's legal team faced challenges far beyond a standard commercial lease dispute. The trial court's failure to acknowledge these factors resulted in an unjust reduction of the attorneys' fee award and warrants correction.

In light of the trial court's erroneous conclusion that this case was neither exceptional nor novel, and its incorrect assessment that Appellant unnecessarily complicated the dispute, the trial court abused its discretion in reducing Appellant's attorneys' fees by forty-five percent (45%). The complexities of this case were significant and warranted full compensation for the legal efforts expended. The trial court's failure to properly evaluate these factors resulted in an unjust reduction of the fee award. Accordingly, Appellant respectfully requests that this Court reverse the trial court's decision and award the full amount of reasonable attorneys' fees initially sought, consistent with the complexity and nature of the case.

2. Time and labor devoted to the case

The trial court's assertion that the involvement of eighteen (18) timekeepers on a single file was excessive and inefficient is fundamentally flawed and overlooks key contextual factors.

This case spanned over three (3) years of litigation, a period marked by significant employee turnover due to the disruptions caused by the COVID-19 pandemic. Given these circumstances, the involvement of multiple timekeepers was not only reasonable but necessary to ensure the efficient progression of the case. Moreover, Appellant's legal team strategically delegated tasks to associate attorneys, paralegals, and law clerks in an effort to minimize costs, with none of their hourly rates exceeding the capped rate of One Hundred Sixty-Seven and 50/100 Dollars ($167.50) for the majority of the litigation period. (ROA 1240, lines 21-25; 1241, line 1). This demonstrates a prudent approach to cost management and a commitment to ensuring Appellant was not burdened with unnecessary expenses.

Furthermore, the trial court's reference to "block billing"—without citing any specific invoices—fails to substantiate the claim that the billing was insufficiently detailed. (ROA 0025). The trial court's non-specific criticism does not provide any concrete examples or instances where the billing was inadequate, rendering the blanket assertion ungrounded. In response to any concerns about the invoices, Appellant's attorney, Hal E. Cobb, made a clear offer to participate in an abuse hearing and provide a detailed explanation of the legal services rendered. (ROA 1248, lines 10-15). This offer reflects a willingness to address any perceived deficiencies in the billing, but the trial court chose to disregard it without further inquiry.

Moreover, the invoices submitted by Appellant's attorney contain sufficient detail to distinguish between which of the timekeepers were attorneys and law clerks. For example, on the top of the very first invoice, Invoice No. 24014, it lists the names of the partners of the law firm at the time, which includes timekeepers Hal E. Cobb ("H.E.C."), William S. Hammett, III ("W.H."), and Bryan A. Raymond ("B.A.R."). *See* (ROA 1455). However, ("W.H.") only had one (1) time entry for no charge and ("B.A.R.") had one (1) time entry for 0.20. *See* (ROA 1546-1549; 1485-

1486). Additionally, the invoices provide enough details to determine that five (5) of the timekeepers, ("H.B."), ("R.J."), ("M.K."), ("C.T."), and ("K.T."), were law clerks based on their hourly rates and their billing descriptions. *See* (ROA 1471-1473; 1474-1476; 1496; 1498-1500; 1501-1505; 1531-1532; 1550-1552)). In contrast, ("C.T."), ("K.T."), and ("M.K.") all had less than three (3) time entries. *See* (ROA 1471-1473; 1474-1476; 1496-1500; 1531-1532; 1550-1552). The Court's logic is an example of *cum hoc ergo propter hoc*. Numerosity of timekeepers does not equate to excessive and inefficient billing. It is clear that the involvement of numerous timekeepers did not result in any increased fees, contrary to the trial court's finding.

In light of the facts presented, it is clear that the trial court's assessment of the timekeepers and billing practices was both unsupported and unjustified. The legal team's structure, billing practices, and willingness to provide additional clarification all demonstrate a reasonable and responsible approach to the litigation. The invoices provided contained adequate details of the legal services rendered, and the use of eighteen (18) timekeepers was neither excessive nor inefficient, given the complexity and duration of the case, as well as the use of law clerks to keep costs low. Therefore, the trial court's decision to reduce Appellant's attorneys' fees by forty-five percent (45%) based on these unfounded criticisms was an abuse of discretion. This Court should reverse the erroneous decision of the trial court and award Appellant the reasonable attorneys' fees initially sought.

3. Fee customarily charged in the locality for similar services.

The trial court's analysis regarding the customary fees charged in the locality for similar services is inconsistent and unsupported. While the trial court initially claimed that "from the record presented, it is uncertain how the fees requested would compare to the fees customarily charged in the locality for similar services," it subsequently acknowledged that "the hourly rates

charged do not appear to be excessive." (ROA 0024-0025). This contradiction with the trial court's previously referenced findings is irreconcilable. One cannot unreasonably bill a client without excessively billing the client (per the Court's logic by employing less members of the Appellant's case team).

Courts routinely rely on their own knowledge and experience to assess whether fees conform to local practices, especially when the record provides ample support for the rates charged. For instance, in *Firehouse Restaurant Group, Inc.*, the court utilized its own understanding of the local legal market to determine the reasonableness of fees. *Firehouse Rest. Grp., Inc. v. Scurmont LLC*, 2011 WL 4943889, at 17 (D.S.C. Oct. 17, 2011). Similarly, in *Baron Data Systems, Inc.*, the South Carolina Court of Appeals reaffirmed that courts are well-equipped to evaluate customary fees based on their familiarity with the community's legal standards. *Baron Data Sys., Inc.*, 297 S.C. at 385, 377 S.E.2d at 297.

Accordingly, in *Hayduk*, the Court of Appeals held that an attorney's fee affidavit stating that "her fees were comparable to fees customarily charged in the area for similar legal services," along with her attestation of billing at Two Hundred and 00/100 Dollars ($200.00) per hour, was sufficient to establish compliance with the customary legal fees for similar services. *Hayduk v. Hayduk*, 436 S.C. 411, 433, 872 S.E.2d 847, 859 (Ct. App. 2022). This case shows that a straightforward demonstration of reasonableness can suffice in establishing customary fees.

Here, the trial court failed to fully leverage its own knowledge and experience or adequately weigh the evidence supporting the reasonableness of Appellant's attorneys' fees. The hourly rates charged were far below local norms and, as the trial court found, not excessive. (ROA 0024-0025). This acknowledgment should have weighed in favor of awarding Appellant's fees as

requested. The trial court's failure to properly assess this factor further demonstrates the flawed reduction of Appellant's attorneys' fees, warranting reversal of the trial court's decision.

Further, at the outset of this litigation, Appellant's lead attorney, Hal E. Cobb, charged Three Hundred and 00/100 Dollars ($300.00) per hour, with his two (2) associate attorneys billing at Two Hundred Twenty-Five and 00/100 Dollars ($225.00) and Two Hundred Thirty-Five and 00/100 Dollars ($235.00) per hour, respectively. (ROA 0146). Recognizing the financial strain of prolonged litigation on Appellant, Mr. Cobb implemented an hourly cap of One Hundred Sixty-Seven and 50/100 Dollars ($167.50) for all attorneys working on the case—a significant reduction aimed at controlling costs for Appellant. (ROA 0146). Further, law clerks assisting in the case billed at a modest Ninety-Five and 00/100 Dollars ($95.00) per hour, less than half the hourly rates of the associate attorneys. (ROA 1471-1473; 1498-1500). This conscientious effort to reduce costs evidences the reasonableness of the fees requested.

Even in the absence of additional evidence regarding the customary fees charged in the locality, the original hourly rates—before the cap was applied—fall well within the range of reasonable fees as recognized by precedent and community standards. The trial court's own knowledge of local practices should have further confirmed that One Hundred Sixty-Seven and 50/100 Dollars ($167.50) per hour was not only reasonable but also significantly below the customary rates for attorneys of comparable skill and experience. Thus, it was unnecessary for the trial court to order a reduction of the already reduced amount of attorneys' fees.

Given these considerations, the trial court's reduction of Appellant's fees was unwarranted and represents an abuse of discretion. The fees charged were both reasonable and well-documented, satisfying the standards established in *Hayduk*. Accordingly, this Court should

reverse the trial court's decision and award Appellant the full amount of attorneys' fees originally sought.

II. The Court should reverse the trial court's reduced award of Appellant's attorneys' fees because the trial court's reduction was based on unsuccessful motions, excluded evidence, and duplicative trial preparation.

Despite the trial court stating "the Court's analysis and decision to reduce the Landlord's fee request by forty-five percent (45%) is not limited to Landlord's limited degree of success" after only discussing Appellant's degree of success for the preceding five (5) pages, the Post Trial Order goes on to further mention Appellant's "unsuccessful motions, excluded evidence, and duplicative trial preparation" as being grounds for reducing the award of attorneys' fees by forty-five percent (45%). (ROA 0021-0022).

Case law recognizes that litigants may in good faith raise alternative legal grounds for a desired outcome, and the court's rejection of or failure to reach certain grounds is not a sufficient reason for reducing a fee because it is the result that matters. *Hensley v. Eckerhart*, 461 U.S. 424, 435, 103 S. Ct. 1933, 1940 (1983). Likewise, "where the movant has failed to prevail on a claim that is distinct in all respects from his successful claims, the hours spent on the unsuccessful claim should be excluded in considering the amount of a reasonable fee." *Id*. at 440, 103 S. Ct. at 1943. Pursuant to Rule 13(a), SCRCP, a pleading shall state as a counterclaim any claim the pleader has against the opposing party if it arises out of the same transaction or occurrence that is the subject matter of the opposing party's claim.

In *Charleston Lumber Co*., the Court of Appeals upheld the trial court's award of reasonable attorneys' fees for the full amount requested even though a significant amount of the attorneys' fees awarded to Charleston Lumber was for defending counterclaims on which Charleston Lumber was unsuccessful. *Charleston Lumber Co. v. Miller Hous. Corp*., 318 S.C. 471,

482, 458 S.E.2d 431, 438 (Ct. App. 1995). The Court of Appeals reasoned that it agreed with the trial court's finding that the facts and issues surrounding the claims upon which Charleston Lumber prevailed were intertwined with those of the counterclaims which required extensive discovery and transformed a normally uncomplicated action on a promissory note into complex litigation. *Id*. at 484, 458 S.E.2d at 439.

Further, in *Hardaway Concrete Co., Inc.*, the Court of Appeals held that the trial court did not err in awarding attorneys' fees for repreparing for trial. *Hardaway Concrete Co., Inc. v. Hall Contracting Corp.,* 374 S.C. 216, 233, 647 S.E.2d 488, 496 (Ct. App. 2007). There, the trial took place approximately two (2) months after it was originally set to begin, not just a few days later. *Id.* at 233, 647 S.E.2d at 496-497. The Court of Appeals found that it was reasonable that counsel would need to refresh himself pending such a period of time. *Id*. at 233, 647 S.E.2d at 497.

In the present case, the Post Trial Order cites to attorneys' fees incurred in relation to Appellant's unsuccessful motion for summary judgement as being grounds for a reduction in the award of attorneys' fees. (ROA 0023). However, the attorneys' fees incurred in relation to the summary judgement motion were in pursuit of an alternative legal ground to Appellant's overall desired outcome of a judgement affirming that Respondent was not entitled to terminate the Lease, that Respondent breached the Lease, and that Appellant was entitled to damages, all of which Appellant achieved at trial. *See* (ROA 0056-0066). Additionally, Appellant prevailed on all of its counterclaims at trial and was only partially unsuccessful in the defense of one of Respondent's claims for a partial refund of rent under Section 11.1 of the Lease. (ROA 0010-0011). Similar to *Charleston Lumber Co*., Appellant's partially unsuccessful defense of one of Respondent's claims would not be distinct in all respects from Appellant's successful claims as both of Appellant's counterclaims are also centered around the Lease as required by the Rule 13(a), SCRCP. Thus,

neither Appellant's unsuccessful motion nor partially unsuccessful defense of one of Respondent's claims would necessitate a reduction in attorneys' fees.

Further, the attorneys' fees incurred include the development of legal theories and arguments as well as the discovery of evidence that directly related to Appellant's overall victory at trial as to both of Appellant's counterclaims. For example, at the time that memorandum in support of the motion for summary judgment was filed, Appellant had already taken depositions of Dave Dunnagan, Crissy Warner, Scott Berry, and Robert Motley, all of whom were later witnesses at the trial and provided crucial evidence that aided Appellant's overall victory at trial.

Also, the litigation took place over the course of three (3) years. During that time, trial was originally scheduled for October 9, 2023. (ROA 0132). However, counsel for both Parties agreed to defer trial until January 22, 2024 based on the recommendation of the trial court immediately prior to the commencement of trial. (ROA 1245, line 25; 1246, lines 1-2). Similar to *Hardaway Concrete Co., Inc.*, the trial occurred approximately three (3) months after it was originally set to begin. As a result, it was reasonable for Appellant to need to reprepare for trial.

Thus, the trial court abused its discretion in reducing Appellant's attorneys' fees by forty-five percent (45%) based on Appellant's unsuccessful motions, excluded evidence, and duplicative trial preparation. Therefore, this Court should reverse the erroneous decision of the trial court and award Appellant reasonable attorneys' fees in the amount initially sought.

III. The Court should reverse the trial court's reduced award of Appellant's attorneys' fees because the reduction was based on inferences drawn from improperly admitted prejudicial evidence and disputed evidence.

The trial court abused its discretion by improperly admitting into evidence unfairly prejudicial emails when they were not within the scope of Mr. Leone's testimony and thus not

admissible as impeachment evidence. Secondly, the trial court abused its discretion by reducing Appellant's attorneys' fees based on inferences drawn from the unfairly prejudicial evidence that was improperly admitted and other disputed evidence.

A. The trial court abused its discretion by reducing Appellant's attorneys' fees based on improperly admitted, *unfairly* prejudicial evidence.

The trial court's reliance on unfairly prejudicial emails as impeachment evidence was legally erroneous. These emails were not only improperly admitted but also served as an unjustifiable basis for reducing Appellant's attorneys' fees. Such a decision constitutes an abuse of discretion and warrants reversal.

South Carolina jurisprudence acknowledges that a defendant may open the door to evidence that would otherwise be inadmissible. *State v. Young*, 364 S.C. 476, 485, 613 S.E.2d 386, 391 (Ct. App. 2005). However, the open-door doctrine cannot be used as a pretext to admit evidence solely to show propensity. *State v. Heyward*, 426 S.C. 630, 637, 828 S.E.2d 592, 595 (2019).

Under Rule 608(a), SCRE a witness's credibility may be attacked by opinion or reputation evidence, but only if it pertains to their character for truthfulness or untruthfulness. Rule 608(b), SCRE explicitly prohibits the use of extrinsic evidence to prove specific instances of conduct for this purpose in civil cases.

In *Andrews v. City and County of San Francisco*, the court affirmed that a witness who makes sweeping statements on direct or cross-examination may open the door to otherwise inadmissible evidence for purposes of contradiction. *Andrews v. City and Cnty. of S.F.*, 205 Cal. App. 3d 938, 946, 252 Cal. Rptr. 716, 721 (1988). There, a police officer's broad claims about his general patience and restraint opened the door to evidence contradicting those assertions. *Id.* at

946, 252 Cal. Rptr at 721. However, such evidence must still directly address the statements made by the witness.

Here, the trial court relied on unfairly prejudicial emails from a former tenant, Jessica Colby, who rented an office space on the Premises in 2022. These emails alleged that the Appellant failed to act in good faith and contained references to water intrusions that occurred two (2) years after Respondent wrongfully terminated the Lease. Appellant filed a Motion *in Limine* to exclude the prejudicial emails as well as any discussion of water damage that occurred after Respondent vacated the Premises in late 2020. *See* (ROA 0089-0103). The trial court granted Appellant's motion and barred any discussion of water damage that occurred after Respondent's tenancy and excluded Colby as a witness under SCRE Rule 403 on prejudice grounds. *See* (ROA 0001-0004; 0005-0009). Despite these rulings, the trial court admitted these prejudicial emails after Respondent's counsel claimed that Mr. Leone's testimony on direct examination broadly portrayed himself as an advocate for his tenants and someone who always acted in good faith.

Respondent's counsel incorrectly alleged that Mr. Leone made generalized statements about always working in good faith and being reasonable. *See* (ROA 1018, lines 9-13; 1020, lines 18-25; 1022, lines 5-8). However, Mr. Leone's testimony was far narrower. During cross-examination, Respondent's counsel addressed Mr. Leone asserting, "you indicated yesterday that you feel like you're responsive, that you advocate for your tenants, and always work in good faith." (ROA 1099, lines 5-8). Mr. Leone explicitly clarified, "You're using the word, 'always,' I'm not certain I used the word 'always,' but I believe we try. And if you had the transcript, I'd request to see where I said always." (ROA 1099, lines 9-13). Despite this testimony and Mr. Leone's request to review the transcript, the trial court ignored Appellant's counsel's objection and allowed the

emails to be admitted as impeachment evidence. (ROA 1099, lines 16-19, 24-25; 1100, lines 21-25).

A review of Mr. Leone's testimony demonstrates that his statements were limited to the events during Respondent's tenancy. For example, he stated that during the relevant period, "We still would be advocating to the owners association to get this fixed. It was their responsibility." (ROA 0947, lines 4-8). Similarly, Mr. Leone's references to "good faith" pertained specifically to efforts to resolve the leaks during Respondent's tenancy. *See* (ROA 0971, lines 9-12; 0972, lines 11-17). Unlike *Andrews*, at no point did Mr. Leone make broad and sweeping claims about always acting in good faith or being universally reasonable.

The trial court's reliance on improperly admitted emails was not only erroneous but prejudicial. These emails, which were excluded for being unfairly prejudicial, were subsequently used as a basis to reduce Appellant's attorneys' fees. *See* (ROA 0022). Such a decision was without evidentiary support and undermines the fairness of the trial proceedings.

The trial court's reliance on improperly admitted, unfairly prejudicial evidence and inferences drawn from disputed testimony constituted an abuse of discretion. Mr. Leone did not open the door to impeachment evidence, and the trial court's decision to reduce Appellant's attorneys' fees on this basis was an error of law. This Court should reverse the trial court's decision and award Appellant the full amount of attorneys' fees initially sought.

B. The trial court erroneously reduced Appellant's attorneys' fees based on inferences drawn from disputed evidence.

The trial court claims that certain actions and inactions on the part of Appellant contributed to and complicated this dispute. However, this finding fails to consider the fact that plumbers went to the Leased Premises eight (8) different times between August 19 and November 11 attempting to resolve the leak. (ROA 1164, lines 20-22). Further, the Post Trial Order omits the fact that the

delays in fixing the leak were also attributable to Respondent not providing Angela Adelman with a key to the offices until November 16th and the owner of the upstairs condo unit with the leaking toilet not providing access to the condo, which even necessitated the assistance of law enforcement to gain access. (ROA 1161, lines 8-9, 14-17). None of these facts support an inference that Appellant was responsible for complicating this dispute nor that Appellant's actions were inconsistent with good faith dealing.

Additionally, the trial court asserts that Appellant did not offer any reimbursement of rent to Respondent despite Section 11.1 in the Lease providing for such. (ROA 0022). However, Respondent did not make any demands for rent reimbursement until it sent the letter terminating the Lease on December 1, 2020. (ROA 1236, lines 4-5). Appellant had no time to respond to Respondent's demand with any refusal to offer rent reimbursement because Respondent filed the lawsuit the very next day on December 2, 2020. (ROA 1236, lines 7-9). Further, Appellant never had any objection to providing a rent reimbursement to Respondent, the only issue was the computation of the amount of rent reimbursement. (ROA 1236, lines 12-15). Likewise, Mr. Leone even stated that rent reimbursement was "something that could have been discussed and while this was being taken care of, those could have been abated if they couldn't use it. But no one asked us." (ROA 0969, lines 15-18).

Thus, the trial court abused its discretion when it reduced Appellant's attorneys' fees based on inferences that Appellant failed to act with good faith dealing that was drawn from incorrectly admitted evidence. Therefore, this Court should reverse the decision of the trial court and award Appellant reasonable attorneys' fees in the amount initially sought.

CONCLUSION

For these reasons, the Court should reverse the decision of the trial court and award Appellant reasonable attorneys' fees in the amount of One Hundred Seventy-Two Thousand Two Hundred Six and 03/100 Dollars ($172,206.03).

Very Respectfully Submitted,

s/ Jenna K. DePoy

Jenna K. DePoy, Esq.
S.C. Bar No.: 106309
jdepoy@cobbhammett.com
William S. Hammett, III, Esq.
S.C. Bar No.: 100627
whammett@cobbhammett.com
Cobb Hammett Law Firm
222 W. Coleman Blvd.,
Mt. Pleasant, SC 29464
Phone: (843) 936-6680
Attorneys for Appellant

Mt. Pleasant, SC
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