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May 29 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas for the Ninth Circuit

The Honorable Mikell Scarborough, Master in Equity

Case No. 2016-CP-10-2955

Appellate Case No. 2021-000272

TCC of Charleston, Inc. .... *Appellant/Respondent*

v.

Concord and Cumberland, LLC, Concord & Cumberland HPR, Leo Hall, Diane Hall, Bea H. Smith, Margaret C. Pope, William D. Foster, Jr., Gene G. Foster, Mattison J. MacGillivray, Teresa MacGillivray, Pamela L. Vaughn, Nelia A. Patricio, Trustee of the Nelia A. Patricio Revocable Trust Agreement, Stuart D. Reeves, Edward T. Strom, Barbara K. Henderson, James R. Clarke, Paul A. Brim, Robert K. Seidl, Jennifer M. Seidl, Robert Kenneth Seidl, II, M. Bert Storey, Thomas R. Mather, Edward T. Strom, 304 Concord & Cumberland, LLC, Marion M. Simpson f/k/a Marion Moore McDonald Simpson, Kathy Gardner, Gregory J. Gardner, Freeman Waterfront Properties, LLC, Jo-Ann Cooper, Betty Y. Segal, Robert M. Levin, and Bonita K. Levin, Donald D. Leonard, Betty L. Beatty, Mattellen, LLC, and Thomas R. Debnam, Trustee of the Trust Agreement of Thomas R. Debnam..... *Respondents/Appellants*

TCC OF CHARLESTON, INC.’S CONSOLIDATED RESPONSE TO  
THE PETITIONS FOR REHEARING BY  
CONCORD & CUMBERLAND HPR  
AND  
BETTY L. BEATTY

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ATTORNEY FOR TCC OF CHARLESTON, INC.

Appellant/Respondent TCC of Charleston, Inc. (“TCC”) responds to the Petitions for Rehearing filed by Respondent/Appellant Concord & Cumberland HPR (“the HPR”) and Respondent Betty Beatty (“Ms. Beatty”) as follows.

**I. THE HPR’S PETITION**

**A. Contractual Interest Is Not Suspended by the Deposit of Funds Into Court.**

This Court ruled, consistent with *Renaissance Enter., Inc. v. Ocean Resorts, Inc.*,<sup>1</sup> that the deposit of funds into court pursuant to Rule 67, S.C.R.C.P. does not stop the accrual of contractual interest. **Opinion** at 16. The HPR contends this Court “takes an overly broad approach on the holding issued in [*Renaissance*] and overlooks controlling law and practice” regarding the effect on contractual interest of depositing funds in court. **HPR Petition** at 1. This Court did not err.

The arbitrators, including the HPR’s party-appointed arbitrator, held TCC was the prevailing party in the arbitration and, accordingly, that interest would accrue at the contractual rate on the unpaid, undisputed sum of \$958,573. **R. pp. 00015**. Neither that amount nor the accrued interest has been paid to TCC. Rather, the HPR deposited the full amount of the confirmed arbitration award (which included the \$958,573) in court pending this appeal. As it is settled that “a deposit into court pursuant to Rule 67 does not stop the accrual of interest provided by contract,” *Renaissance Enters.* 334 S.C. at 326, 513 S.E.2d at 618, this Court correctly held that TCC is entitled to continued contractual interest.

However, the HPR argues that the circumstances of this case differ from those of *Renaissance Enterprises* because that case involved supplemental proceedings. This is an immaterial distinction and impermissibly narrows the scope of the holding of that case. In both

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<sup>1</sup> 334 S.C.324, 326, 513 S.E.2d 617, 618 (1999).

cases, a party obtained an arbitration award on a contract that had not been paid, and in both cases the contract provided that interest was owed on late payments. In both cases, the judgment debtor sought to suspend the further accrual of that interest by depositing the amount of the award in court.

Further, the issue presented in *Renaissance* was not concerned with the procedural posture of that case, but rather was broadly stated: “Does the payment of money into court stop the accrual of interest where the contract provides for interest to be paid on amounts past due?” *Renaissance*, 334 S.C. at 326, 513 S.E.2d at 618. The *Renaissance* Court’s ruling likewise was not based upon the procedural posture of the case as the HPR contends. Rather, the Court focused on parties’ right to negotiate the terms of their contractual duties, stating:

In *Turner Coleman, Inc. v. Ohio Constr. & Eng. Co.*, 272 S.C. 289, 251 S.E.2d 738 (1979), we held contractual interest rates prevailed over statutory post-judgment interest rates because there was nothing in the statute providing for post-judgment interest rates to override the intent of the parties expressed in their contract regarding the appropriate interest rate. Accordingly, we concluded the post-judgment statutory rate applied only where there was no contractual interest rate; where the contract provided a rate of interest, that rate would apply to a judgment entered on the contract.

Similarly, there is nothing in Rule 67 indicating a deposit into court will affect the parties’ contract regarding interest. Although *Turner Coleman* involved interest rates, the principal is analogous in this case where the contract provides for the accrual of interest without providing accrual will stop before actual payment.

Further, Rule 67 is substantially the same as the federal rule allowing a deposit into court. See Rule 67, Fed. R. Civ. P. Federal courts have uniformly held that **Rule 67 “cannot be used as a means of altering the contractual relationships and legal duties of the parties.”** *LTV Corp. v. Gulf States Steel, Inc.*, 297 U.S. App. D.C. 50, 969 F.2d 1050, 1063 (D.C. Cir. 1992); *In re: Dept. of Energy Stripper Well Exemption Litigation*, 124 F.R.D. 217, 218-19 (D. Kan. 1989); *Prudential Ins. Co. v. BMC Indus.*, 630 F. Supp. 1298, 1300 (S.D.N.Y. 1986). **Stopping the contractual accrual of interest would in effect substitute the interest rate of the court’s deposit**

**account for that provided by contract which the court has no authority to do.** *LTV Corp. v. Gulf States Steel, Inc.*, *supra*.

*Id.* at 326–27, 513 S.E.2d 618–19 (emphases added).

The HPR’s reliance on *Russo v. Sutton*, 317 S.C. 441, 454 S.E.2d 895 (1995), is equally unavailing. That case—which was decided four years *before* the *Renaissance* case—did not involve contractual interest. It involved a jury verdict on claims of criminal conversion and alienation of affections, and it held that the payment of the amount of that judgment stopped the accrual of post-judgment interest at the prevailing rate. Here, the parties contracted for a lower rate of interest on late payments, and based upon *Renaissance*, the Rules of Civil Procedure cannot substitute a separate mechanism for late payments than the one agreed by the parties.

Accordingly, this Court properly concluded that the holding in *Renaissance* requires the continuation of the contractual interest agreed between the parties notwithstanding the deposit of funds into court.

**B. The Master’s Order Awarding Attorneys’ Fees Did Not Permit TCC or this Court to Determine What Amount of the HPR’s and Ms. Beatty’s Fees Related to the Foreclosure Cause of Action.**

It is well-settled that attorneys’ fees under the S.C. Mechanic’s Lien Statute may be awarded only to the extent they are incurred defending or prosecuting a foreclosure cause of action. *Utilities Construction Co. v. Wilson*, 321 S.C. 244, 250, 468 S.E.2d 1, 4 (Ct. App. 1996). This Court found that the Master’s award of attorneys’ fees to the HPR should be reversed and remanded the case for further proceedings, finding (i) the Master did not make the requisite findings under *Jackson v. Speed* and (ii) the record before this Court was insufficient to determine the appropriate quantum of fees because the relevant time entries were redacted and had not been provided to this Court or to TCC. **Opinion** at 17–18. TCC agrees with the HPR that the Master entered the order the HPR drafted addressing the *Jackson* factors (**R. pp. 2788–92**), however this Court is correct

that neither the order nor the record on appeal contain sufficient evidence on each factor to support the award. Even if it did, however, this would not be dispositive of the issue.

The facts remains that (i) this Court was not provided a sufficient record to review the Master’s award of fees because (ii) this Court and TCC were never provided unredacted time records, and (iii) it is inconceivable that the HPR incurred \$250,553.70 in fees on the discrete question of foreclosure of the mechanic’s lien—especially as TCC never sought to foreclose the mechanic’s lien as to the HPR. TCC must be provided with unredacted time entries and afforded the opportunity to contest the amount of the HPR’s and Ms. Beatty’s claimed fees before the Master in the first instance and, if necessary, before this Court.

This Court did not err in so holding.

**C. The Unanimous Arbitration Award Must Stand, As This Court and Lower Courts Have Uniformly Ruled.**

The scope of review of an arbitration award is among the narrowest known in the law. *Group III Mgmt., Inc. v. Suncrete of Carolina, Inc.*, 425 S.C. 141, 149, 819 S.E.2d 781, 785 (Ct. App. 2018). Here, the Panel did not “manifestly disregard the law” — they addressed the law and interpreted it in a way the HPR disagrees with. This is not a valid basis for overturning or modifying an arbitration award. *Id.* at 150, 819 S.E.2d at 786 (recognizing the court’s function in reviewing an arbitration award is limited “the court's function is limited "to determin[ing] whether the arbitrators did the job they were told to do-not whether they did it well, or correctly, or reasonably, but simply whether they did it”); *Gissel v. Hart*, 382 S.C. 235,241, 676 S.E.2d 320, 323 (2009) (“Even a clearly erroneous interpretation of the contract cannot be disturbed.” (internal quotation omitted)).

Little more need be said about the arbitration award, including the portion awarding costs relating to the Stone Tower, and TCC refers to its prior briefing on these matters. However, TCC notes that even the HPR's own arbitrator concurred in the award.

This Court correctly declined to vacate or modify the arbitration award.

## **II. MS. BEATTY'S PETITION**

### **A. The Issue of the Quantum of Ms. Beatty's Fees Is Preserved.**

Ms. Beatty argues that TCC's contention regarding the amount of fees awarded to Ms. Beatty is not preserved. On November 30, 2020, following the Master's November 5, 2020 oral ruling that he would grant Ms. Beatty's motion for summary judgment and award her fees, TCC filed a response to Ms. Beatty's fee submittals stating:

Should she prevail on her motion for summary judgment, Ms. Beatty's request for approximately \$65,000 in attorneys' fees is improper and inconsistent with the law. Caselaw limits the recovery of fees to those incurred in successfully defending a lien foreclosure action.

[. . .]

Ms. Beatty first filed a pleading in this matter on January 17, 2020, not previously having answered TCC's complaint filed June 10, 2016. Nevertheless, the fee affidavit submitted by Mr. Buckley includes time from 2016–2019, prior to even filing a pleading in this case. This time should be struck. Further, time entries are included for attorneys Siau Barr and Michael Molony; TCC's counsel is unaware that Mr. Barr or Mr. Molony represented Ms. Beatty, having interacted with them only in their capacity as counsel for Betty Segal (a prior unit owner TCC dismissed by agreement) and not Betty Beatty.

Ms. Beatty did not move for summary judgment until May 11, 2020, after the stay had been lifted. Ms. Beatty seeks \$65,000 in attorneys' fees for work over six months relating to the sole argument that Ms. Beatty was served with the lien more than 90 days after March 17, 2016, the erroneous date of last work. This Court should not allow it.

**R. p. 02139.** The trial court did not change its mind, and its order issued on February 16, 2021 awarding Ms. Beatty fees and costs of \$76,000. **R. p. 00098.** TCC timely appealed, filing and serving its notice of appeal on March 11, 2021. TCC’s arguments made to this Court are the same as were raised on November 30, 2020 to the Master, were rejected by the Master, and are preserved.<sup>2</sup>

Ms. Beatty’s contention that the issue was not preserved because it was not raised in a timely motion under Rule 59(e), S.C.R.C.P., is unavailing. **Beatty Petition** at 6–7. The issue was raised to the trial court, ruled upon, and timely appealed. No motion for reconsideration was necessary to preserve the issue.

**B. TCC Carried its Burden of Demonstrating an Abuse of Discretion With Regard to the Award of Fees to Ms. Beatty.**

As discussed *supra* (Part I.B), TCC was never provided with unredacted time entries so that it could challenge Ms. Beatty’s contention regarding what fees were related to the foreclosure cause of action. Instead, \$76,000 was awarded to Ms. Beatty without Trident being provided an opportunity to challenge the amount and without this Court being provided a sufficient record to review the Master’s determination. This was an abuse of discretion, as this Court properly held.

**III. CONCLUSION**

For the reasons stated above, TCC submits the Petitions for Rehearing by the HPR and Ms. Beatty should be denied.

**[signature on following page]**

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<sup>2</sup> Out of an abundance of caution, TCC filed a motion on March 12, 2021 further challenging Ms. Beatty’s fee award, which was denied. **R. p. 01325.**

This 29th day of May, 2025  
Charleston, South Carolina

**Respectfully submitted:**

**EPTING & RANNIK, LLC**

*/s/ Jaan Rannik*

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PROOF OF SERVICE

I certify that I have caused to be served the Appellant/Respondent TCC of Charleston, Inc.’s Consolidated Response to the Petitions for Rehearing Filed by Concord & Cumberland, HPR and Betty L. Beatty, addressed to counsel of record *via* email to the email addresses below:

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May 29, 2025  
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