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**Jul 14 2025**

**SC Court of Appeals**

Lower Court Case No.: 2022-CP-40-02958

Appellate Case No.: 2024-\_\_\_\_\_

# EXHIBIT A

to

# Notice of Appeal

*June 12, 2025*  
*Amended Order*

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

FIFTH JUDICIAL CIRCUIT

Michael D. Jordan, Apple Services, Inc., and  
Plumbinator 1051, LLC,

C/A NO: 2022-CP-40-02958

Plaintiffs,

v.

Liquid Services and Logistics, LLC, and Tim  
Freeman,

Defendants.

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**Jul 14 2025**

**SC Court of Appeals**

**AMENDED  
ORDER GRANTING, IN PART, AND DENYING, IN PART, PLAINTIFFS’  
MOTION FOR PARTIAL SUMMARY JUDGMENT<sup>1</sup>**

THIS MATTER is before the Court on the Motion for Partial Summary Judgment (“Motion”)<sup>2</sup> of Plaintiffs Michael D. Jordan (“Jordan”), Apple Services, Inc.; and Plumbinator 1051, LLC (collectively, “Plaintiffs”) on their first cause of action for breach-of-contract against Defendant Liquid Services and Logistics, LLC (“LSL”). Plaintiffs’ also seek an award of prejudgment interest on the amount due under the contract. The Plaintiffs’ Complaint was filed on June 8, 2022.

A hearing on this Motion was held on April 17, 2025. As explained below, this Court grants Plaintiffs’ Motion, in part, because there is no genuine issue of material fact as to whether

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<sup>1</sup> The order is amended in response to the Motion to Alter or Amend filed by Defendant Liquid Services and Logistics, LLC. The motion is denied as indicated in the Court’s form 4 order with the exception of the corrections made here.

<sup>2</sup> Plaintiffs filed the Motion for Partial Summary Judgment on October 30, 2023, Supplemental Exhibits in support of the Motion on October 31, 2023, an Amended Motion on December 1, 2023, and a Supplemental Memorandum in support of the Motion with discovery responses and other evidence on April 16, 2025. The Defendants did not submit any memoranda, affidavits, or other evidence in opposition to the Motion.

LSL breached the contract between the parties by failing to make a required payment to Jordan within a year of the contract closing date.

### **THE CONTRACT**

Plaintiffs' breach-of-contract claim arises from the Asset Purchase and Sale Agreement dated May 10, 2021 between the sellers, Jordan and Apple Services, Inc., and the Buyer, LSL (the "APA").<sup>3</sup> Under the APA, LSL agreed to purchase certain assets of Apple Services, Inc., including its goodwill, furniture, fixtures, and equipment. As part of the purchase, LSL was required to make certain payments to Jordan under the APA, including a payment for the post-closing adjustment of working capital and an earn-out payment. Those payments are subject to certain conditions discussed below.

#### **A. The Post-Closing Adjustment of Working Capital.**

The APA requires LSL to provide Jordan a Closing Working Capital Statement, calculating the Working Capital of the Business as of the date of Closing ("Working Capital Statement"). (*See* APA § 3.2(a)(i).) If the Working Capital exceeded \$84,000.00, LSL was required to pay Jordan the amount of the difference (the "Post-Closing Adjustment"). (*Id.* § 3.2(a)(ii).) If the Working Capital was less than \$84,000.00, Jordan was required to pay the difference to LSL. (*Id.*) Section 3.2(b) contains its own "Examination and Review" process for "Resolution of Disputes" regarding the Post Closing Adjustment by an "Independent Accountant." Section 3.2(a)(ii) of the APA further states the "Post-Closing Adjustment shall be paid to the applicable Party no later than thirty

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<sup>3</sup> A copy of the APA was attached as Exhibit A to the Plaintiffs' Complaint filed on June 8, 2022. In its Answer, LSL does not contest that Exhibit A to the Complaint is a true and accurate copy of the final, fully-executed APA. *See* Compl. ¶ 8; Ans. of LSL ¶ 8. Plumbinator 1051, LLC was not a party to the APA.

(30) days *after final determination of the amount* of the Post-Closing Adjustment." (emphasis added.)

**B. The Earn-Out Payment.**

Under the APA, LSL was required to and did pay a portion of the purchase price to Jordan at closing, which occurred on May 10, 2021. The remaining balance was to be paid as an earn out. (See APA §3.1, §3.3.) Specifically, the APA required LSL to pay Jordan an earn out of \$882,000.00 (the "Earn-Out Payment") "so long as LTM Revenue for the Earn-Out Period exceeds the Revenue Threshold." (*Id.* § 3.3(a).)

The APA defines "LTM Revenue" as "the last twelve months' revenue of the [purchased] Business up to the Closing Date *and* for the Earn-Out Period." (*Id.* at p. A-4.) (emphasis added). The "Earn-Out Period" means "the period beginning on the Closing Date and ending on the three-month anniversary of the Closing Date." (*Id.* at p. A-2.) And the "Revenue Threshold" means \$1,000,000.00. (*Id.* at p. A-6.) Thus, if the twelve month trailing gross revenue of the purchased Business exceeded \$1,000,000.00 as of the Closing Date, *i.e.* May 10, 2021, *and* at the end of the Earn-Out Period, *i.e.* August 10, 2021, then LSL was obligated to pay Jordan the Earn-Out Payment.

Subsection 3.3(e) provides a "Right of Set-Off," whereby LSL "shall have the right to withhold and set off against" the Earn-out Payment "the amount of any (i) Post-Closing Adjustment owed to it pursuant to Section 3.2;" and (ii) the amount of any "Adverse Consequences" to which LSL may be entitled under the APA.

"Adverse Consequences" are defined in the APA as claims and resulting damages arising from (a) "misrepresentation or breach of warranty;" (b) "nonfulfillment of any covenant"; (c) any "liability or obligation of [Jordan] to any Party not being assumed by [LSL]" under the APA; and

(d) “any liability or obligation arising out of the Business prior to the Closing, including, without limitation, the Vehicle Accident.” (See APA §§ 3.3(e), 7.1, and p. A-1.)

Section 3.3(c) of the APA provides that LSL’s “obligation to pay the Earn-out Payment” to [Jordan] “is an *independent* obligation of” LSL. And Section 3.3(d) of the APA states: “Subject to Section 3.3(e) [concerning the “Right to Set Off”], *if [LSL] is required to make the Earn-out Payment pursuant to Section 3.3(a), such payment shall be made no later than (12) months after the Closing Date.*” (Emphasis added.)

## **LEGAL STANDARD**

### **A. Summary Judgment**

This Court must grant summary judgment if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRPC; *Singleton v. Sherer*, 377 S.C. 185, 197, 659 S.E.2d 196, 202 (Ct. App. 2008). Stated another way, “summary judgment is proper where plain, palpable, and indisputable facts exist on which reasonable minds cannot differ.” *Rothrock v. Copeland*, 305 S.C. 402, 405, 409 S.E.2d 366, 368 (1991).

Although the “evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party,” *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991), “it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.” *Kitchen Planners, LLC v. Friedman*, No. 2020-001669, 2023 WL 5420401 (S.C. Aug. 23, 2023).

Pursuant to Rule 54(b) of the South Carolina Rules of Civil Procedure, “[w]hen more than one claim for relief is presented in an action, . . . the court may direct the entry of a final judgment

as to one or more but fewer than all of the claims [] only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.” See *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 351 S.C. 459, 467, 570 S.E.2d 197, 200 (Ct. App. 2002) (claims are considered separate when “there is [not] a substantial factual overlap between the claim adjudged and the remaining claims.”)

### **B. Prejudgment Interest**

Prejudgment interest is permitted on “obligations to pay money from the time when, either by agreement of the parties or operation of law, the payment is demandable, if the sum is certain or capable of being reduced to certainty.” *Butler Contracting, Inc. v. Ct. St., LLC*, 369 S.C. 121, 133, 631 S.E.2d 252, 258 (2006) (citing *Smith–Hunter Constr. Co. v. Hopson*, 365 S.C. 125, 128, 616 S.E.2d 419, 421 (2005)). Prejudgment interest is set by statute at an annual rate of 8.75%. S.C. Code Ann. § 34-31-20(A).

### **ANALYSIS**

In its responses to Plaintiffs’ First Requests for Admission, LSL admitted (1) that the purchased Business exceeded the Revenue Threshold of \$1,000,000.00 as of May 10, 2021, and August 10, 2021, (2) that if the Earn-out Payment is due, LSL is obligated to make such payment “no later than twelve months after the Closing Date,” or May 10, 2022, and (3) that Jordan earned the Earn-Out Payment. (See LSL’s Responses to Plaintiffs First Requests for Admissions No. 6-8). There is no dispute that LSL has not paid the Earn-Out Payment to Jordan.

As to the Post Closing Adjustment of Working Capital, there appears to be a genuine issue of disputed fact.<sup>4</sup> Jordan presented affidavit testimony from three witnesses at a May 9, 2022

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<sup>4</sup> It also appears that neither party has invoked the dispute resolution mechanism provided in the APA for final determination of the Post Closing Adjustment of Working Capital.

meeting between Jordan and representatives of LSL, including, its accounting manager, Jacob Taylor. Jordan's affidavit stated that Taylor said the Working Capital on the closing date exceeded the \$84,000.00 threshold by \$79,000.00. The other two witnesses' affidavits did not specify any particular amount, but did confirm Taylor's statement that the Working Capital calculation would be "to the good," i.e., in Jordan's favor.

LSL, however, claims that it has made a "good faith effort" to make the calculation, "using the information known and readily obtainable to it," and that it has provided "several Closing Working Capital Statements to Jordan" but "Jordan has refused to accept LSL's Closing Working Capital Statements or provide the required financial documentation to finalize the Statement." (See, LSL Responses to Plaintiff's request to admit 13-14.) LSL further argues that because the Post Closing Adjustment is a set-off to the Earn-Out Payment, the Earn-Out Payment is not yet *due*, even though LSL admits it has been *earned*. (See generally, *id.* 9-14.)

Pursuant to the APA, LSL is obligated to provide a Working Capital Statement, not later than August 19, 2021. Jordan has a contractual right under the APA § 3.2(b)(ii) to object to LSL's proposed Working Capital Calculation, and LSL was clearly able to produce "several" Working Capital Statements with the information it had. And now, almost four years later, LSL has not specifically identified what financial documentation or information Jordan has failed to provide or how that information is necessary for completing the Post Closing Adjustment. Further, LSL has failed to provide any evidence of Adverse Consequences which may provide a set-off to the Earn-Out, even though this Motion has been pending since October 30, 2023. Moreover, the discovery evidence produced by LSL to Plaintiffs included only a single-page "draft," undated spreadsheet showing "Adjusted Net Working Capital" of \$85,000.00 at closing. (LSL-Defendant's Doc.

Production-000111). If correct, this would mean a Post Closing Adjustment payment of \$1,000.00 is due and owing to *Jordan from LSL*, and would result in no set-off to the Earn-out Payment.

Finally, LSL argues that the parties mutually adjusted the due-date for the Earn-Out Payment based on a May 17, 2022 email from Jordan's counsel Stephen Porter to counsel for LSL, stating "[i]t appears the working capital adjustment will take some time to calculate based on our meeting last week. However, can you provide me with a timeline for payment of the earn-out? I do not know that any of the financial information we discussed last week will impact that analysis." Clearly, this email communication does not express an agreement to extend the due date for any required payment. At most, it acknowledges some difficulty for LSL in preparing the Working Capital Statement, but nothing expressing consent to delayed payment. And in the very next sentence, Jordan's counsel asked LSL's counsel for a timeline on when the Earn-Out Payment would be paid, with the obvious understanding that it was due on May 10, 2022, and was already one-week late. Nothing in the May 17, 2022 email or other evidence in the record establishes an adjusted due date for the Earn-Out Payment. The email also appears to be a Rule 408 SCRPC communication between counsel to facilitate resolution of the dispute that has led to this litigation, and is likely not evidence in this case.

Out of an abundance of caution, the Court concludes that there remain genuine issues of material fact regarding the Post Closing Adjustment of Working Capital which prevent a grant of summary judgment on this issue. But any genuine issue of fact concerning the Working Capital Statement or any right of set-off does not prevent this Court from granting judgment in favor of Plaintiffs for LSL's failure to pay the Earn-Out Payment.

The Earn-out Payment is unquestionably a sum certain that is demandable pursuant to the APA, and LSL's obligation to pay the Earn-out Payment is "independent" of its other obligations

in the APA. The undisputed facts and admissions of LSL clearly establish that LTM Revenue for the Earn-Out Period exceeded the Revenue Threshold and that Jordan earned the Earn-out Payment. The plain language of Section 3.3(e) of the APA provides “such payment *shall be made no later than (12) months after the Closing Date.*” (Emphasis added.) In contrast, Section 3.2(a)(ii) of the APA provides that the Post Closing Adjustment of Working Capital “shall be paid to the applicable Party no later than thirty (30) days *after final determination of the amount.*” (emphasis added.) The contract plainly envisions that the Earn-out Payment does not have to wait more than 12 months after the Closing Date on calculation and payment of the Post Closing Adjustment of Working Capital. And no reasonable interpretation of the APA would allow LSL to indefinitely withhold a required payment to Jordan based upon a condition, in this instance calculating and proving a possible set-off to the Earn-out Payment, that is largely within LSL’s power to complete. If future proceedings in this case, or in the “Examination and Review” process for “Resolution of Disputes” regarding the Post Closing Adjustment provided in Section 3.2(b) of the APA, determine that either party owes additional money to the other, then judgment may be granted to that party, and any appropriate set-offs may be applied at that time.

Plaintiffs are thus entitled to a judgment against LSL in the amount of \$882,000.00 for non-payment of the Earn-Out Payment, plus prejudgment interest at 8.75% per annum, from May 10, 2022, until the judgment is entered. This order is also without prejudice to any future motion for an award of attorney’s fees pursuant to the APA.

Plaintiffs moved for partial summary judgment only as to their breach-of-contract claim against LSL. There is little, if any, and certainly no substantial, factual overlap between the breach-of-contract claim and the remaining tort and other claims Plaintiffs asserted against LSL and the individual defendant in the Complaint. For this reason, there is no just reason to delay the entry

of a final judgment for the Earn-out Payment and prejudgment interest until the entire case has concluded.

**CONCLUSION**

Based on the foregoing, this Court grants entry of partial summary judgment in favor of Plaintiffs on the breach of contract claim against Defendants Liquid Services and Logistics, LLC for non-payment of the Earn-Out Payment in the amount of \$882,000.00, plus prejudgment interest at 8.75% per annum, from May 10, 2022, the date the payment was due, until the date the judgment is entered, and thereafter at the judgment rate until paid in full. Through April 28, 2025, the prejudgment interest owed is \$229,199.18, and the combined total owed is \$1,111,199.18.

The Court further directs entry of final judgment pursuant to SCRCP 54(b).

**AND IT IS SO ORDERED.**

*[JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW]*



Richland Common Pleas

**Case Caption:** Michael D Jordan , plaintiff, et al vs Liquid Services And Logistics Llc , defendant, et al  
**Case Number:** 2022CP4002958  
**Type:** Order/Amend

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157