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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas  
Jessica Ann Salvini, Circuit Court Judge

Civil Action No. 2024-CP-10-04202

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Appellate Case No. 2025-000355

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Hulsey Law Group, LLC,

Respondent,

v.

Robin M. Schoepfel, Jessica Lynn Schoepfel, and Nicolas Mark Schoepfel,

Appellants.

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**APPELLANTS' REPLY BRIEF**

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## ARUGMENT

### **I. Respondent is the one who owed a duty of confidentiality to Appellants and breached that duty.**

In its brief, Respondent admits it shared a draft complaint containing Appellants' confidential information with "John T. Lay, counsel for Patrick Cross, Brad Meyer and David Sparkman in the context of negotiations." (Resp. Br. p. 7.) Respondent tries to avoid its responsibility for breaching the duty of confidentiality by arguing the breach occurred when Mr. Lay shared the Complaint with Patricia Scarborough, the Special Administrator for the Decedent's estate, stating: "any breach of confidentiality was accomplished by Mr. Lay on behalf of his clients for his own strategic purposes." (Resp. Br. p. 7.) Respondent states it filed a third-party complaint "against Mr. Lay for his unauthorized disclosure of confidential and privileged information." (Resp. Br. 8.) This is a gross misunderstanding of the attorney-client privilege and duty of confidentiality, further illustrating the necessity for the temporary injunction.

Respondent represented Appellants Robin M. Schoepfel, Jessica Lynn Schoepfel, and Nicolas Mark Schoepfel in the context of the underlying Summer Hall litigation<sup>1</sup> prior to being discharged by Appellants. After termination, Respondent utilized confidential information it

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<sup>1</sup> Respondent alleges Appellants have not specifically identified the referenced "underlying matters" before the circuit court or this court. (Resp. Br. p. 18 n.8.) This is not true. Respondent has specifically identified the litigation involving Summer Hall in numerous filings before the circuit court and in their brief to this Court. Specifically, Defendants have stated:

Until March 8, 2024, HLG represented the Schoepfels in various litigation against Ms. Hall, including in Case No. 2023-CP-10-02649, pending in the Court of Common Pleas, Ninth Judicial Circuit of Charleston County; Case No. 2023-ES-10-33, pending in the Probate Court of Charleston County; and Case No. 2:23-CV-814-RMG, pending in the U.S. District Court for the District of South Carolina (collectively, the "Litigation").

(R. pp. 40, 79, 99; App. Br. at p. 6.)

learned during that representation to draft a complaint where Respondent itself was the purported plaintiff and shared that draft complaint with a third-party, the attorney for the purported defendants. Respondent is the one that owed a duty of confidentiality to Appellants by virtue of the attorney-client relationship. Respondent breached that duty when it shared the complaint with Mr. Lay. It is Respondent that had a duty to keep information gained through the representation of Appellants confidential, and it cannot escape its own liability for failing to do so by blaming the third-party to which it disclosed the information.

The duty of confidentiality is broader than the attorney-client privilege and requires a lawyer to protect all information relating to a client's representation Rule 1.6, cmt. 3. This duty also extends beyond the termination of the attorney-client relationship: a lawyer who has formerly represented a client shall not thereafter use information relating to the representation to the disadvantage of the former client or reveal information relating to the representation except in the limited circumstances permitted by the Rules of Professional Conduct. Rule 1.6, cmt. 22 & Rule 1.9(c)(2), SCRPC.

The need for the temporary injunction is illustrated by Respondent's continued unwillingness to take any steps whatsoever to protect Appellants' confidential information. Respondent objected to sealing confidential information from the public record both at the circuit court and at this Court. While Respondent argues that Appellants have an adequate remedy due to the circuit court and this Court granting their motion to seal, the fallacy of that argument is illuminated by their brief in this appeal. Respondent's brief contains no redactions despite directly quoting language from a document that has been sealed in both the circuit court and this Court due to Appellants' arguments that it contains confidential information. (Resp. Br. p. 12.) Respondent is unwilling to ensure Appellants' confidential information is protected. Allowing Appellants to

seal information they file is in no way an adequate remedy for the temporary injunction. Appellants requested the temporary injunction to require *Respondent* to protect the information during the pendency of this case.

Respondent's reliance on Rule 1.6(b)(6) of the South Carolina Rules of Professional Conduct is unavailing. First, Rule 1.6(b)(6) has no bearing on Respondent's disclosure of Appellants' confidential information in order to pursue claims on behalf of the law firm against third-parties. This rule does not apply when Respondent shared the draft complaint with Mr. Lay or when Respondent included confidential information within the third-party complaint filed against Mr. Lay because these are not "controvers[ies] between the lawyer and the client." *See* Rule 1.6(b)(6). Second, Rule 1.6(b)(6) does not give an attorney carte blanche to completely ignore its duties of confidentiality under the guise of a fee dispute as Respondent argues. As explained by Mr. Virzi, Respondent "gross[ly] misunderstand[s]" Rule 1.6, which is "limited to disclosing only so much information as reasonably necessary to defend against the claims asserted against the lawyer or establish the amount due in a fee collection action." (R. p. 273.) Respondent must take steps to protect Appellants' confidential information, and Appellants have shown a temporary injunction is the only adequate remedy to ensure Respondent will do so.

This case involves a fundamental tenant of South Carolina law that information clients share with their attorneys is confidential, privileged, and protected from disclosure. *See Hartsock v. Goodyear Dunlop Tires N. Am. Ltd.*, 422 S.C. 643, 648, 813 S.E.2d 696, 699 (2018), *opinion after certified question answered sub nom. Hartsock v. Goodyear Dunlop Tires N. Am. Ltd.*, 723 F. App'x 224 (4th Cir. 2018) ("A review of privileges in general reveals the common thread is that public policy favors the confidentiality of these communications or information."); *Wilson v. Preston*, 378 S.C. 348, 359, 662 S.E.2d 580, 585 (2008) ("The attorney-client privilege is based

upon a public policy that the best interest of society is served by promoting a relationship between the attorney and the client whereby utmost confidence in the continuing secrecy of all confidential disclosures made by the client within the relationship is maintained.”). Appellants should not be forced to publicly disclose confidential information in order to defend themselves against an action brought by their former counsel. Instead, the Rules of Professional Conduct require Respondent to cooperate with Appellants in taking all steps necessary to prevent the gratuitous disclosure of Appellants’ protected information. The public disclosure of information gleaned from Respondent during the course of their legal representation of Appellants serves no legitimate purpose in the context of establishing a disputed fee.

Respondent’s argue Appellants have failed to “explain how [Respondent’s] disclosures in a breach of contract claim had or will have any adverse effect upon Appellants’ positions in the estate litigation.” (Resp. Br. p. 8.) This is not true. Appellants submitted an email communication from Summer Hall’s counsel requesting an unredacted copy of the draft complaint disseminated by Respondent. (R. p. 156.) This communication came days after Respondent filed its third-party complaint. It is clear that irreparable harm will occur if Respondent is allowed to continue to disclose confidential information and purported strategy it learned during its representation of Appellants in the Summer Hall litigation.

Therefore, the circuit court erred in refusing to grant Appellants’ motion for a temporary injunction.

## **II. The purported contingency fee agreement is not enforceable.**

The enforceability of the contract was ripe for determination by the circuit court at this stage of the litigation. In order to establish a breach of contract claim, there must be a valid and enforceable contract. *See Chitwood v. McMillan*, 189 S.C. 262, 266, 1 S.E.2d 162, 164 (1939) (“Before any question of liability for procuring a breach of contract arises, certain necessary factors

and elements must appear—the first of which is the existence of a valid contract.”); *Jackson v. Bi-Lo Stores, Inc.*, 313 S.C. 272, 277–78, 437 S.E.2d 168, 171 (Ct. App. 1993) (“A contract which contravenes public policy is void, and an action cannot be maintained for either its breach or for inducing its breach.”); *White v. J.M. Brown Amusement Co.*, 360 S.C. 366, 371, 601 S.E.2d 342, 345 (2004) (“The general rule, well established in South Carolina, is that courts will not enforce a contract when the subject matter of the contract or an act required for performance violates public policy as expressed in constitutional provisions, statutory law, or judicial decisions.”). Respondent alleges that it may proceed in the face of an unenforceable contingency fee agreement, however this is not true. Respondent did not plead a quasi-contract cause of action. Respondent’s breach of contract claim fails as a matter of law because the purported contingency fee agreement does not comply with South Carolina law.

Respondent’s reliance on *Williamson v. Middleton*, 374 S.C. 419, 649 S.E.2d 57 (Ct. App. 2007), *rev’d* 383 S.C. 490, 681 S.E.2d 867 (2009)<sup>2</sup> is misplaced. The *Williamson* case did not involve a contingency fee agreement that violated the requirements of South Carolina law. The *Williamson* case involved an order requiring the plaintiff to pay the defendant’s attorney’s fees and an argument by the plaintiff that he should not be required to pay the ordered amount of fees because the defendant did not have a formal fee agreement with his attorneys. *Id.* at 430, 681 S.E.2d at 63. The Court of Appeals affirmed the attorney’s fee award and found the circuit court properly considered the six factors required when awarding attorney’s fees. *Id.* *Williamson* did not involve a contingency fee agreement. Our state has determined that the special nature of contingency fee agreements require such agreements to be in writing with specific items included.

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<sup>2</sup> The Supreme Court later reversed the award of attorney’s fees, finding there was no evidence the defendant had a fee agreement with his attorney or incurred any attorney’s fees. *See Williamson*, 383 S.C. at 496–97, 681 S.E.2d at 870.

*See* Rule 1.5(c). The same is not true of hourly fee agreements. While it is preferred that these agreements be in writing, it is not a requirement. *See* Rule 1.5(b) (“The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation[.]”). Thus, *Williamson* has no applicability to the instant case. It does not stand for the proposition that Respondent may recover for breach of a purported contingency fee agreement that does not comply with the law. Because the purported contingency fee agreement violates South Carolina law and is not enforceable, the circuit court erred in denying Appellants’ motion to dismiss Respondent’s causes of action that rely on the purported contingency fee agreement.

### CONCLUSION

For the reasons discussed herein and in the previous brief, Appellants respectfully request the Court reverse the circuit court’s November 27, 2024 orders and either direct the circuit court to dismiss the case, or, in the alternative, direct the circuit court to issue the temporary injunction and stay the case upon remand.

RESPECTFULLY SUBMITTED,

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Appellants.

**CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 211(a), SCACR, I certify that this brief complies with the provisions of Rule 211(b), SCACR.

RESPECTFULLY SUBMITTED,

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