RECEIVED

Nov 19 2025

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

DeAndrea Gist Benjamin, Circuit Court Judge

Opinion No. 6115 (S.C. Ct. App. file July 9, 2025)
Appellate Case No. 2025-002144

Paul David Hess, APRN-BC,.. . . . . Respondent-Petitioner

v.

Morphis Pediatric Group of Lancaster, P.A.; Elizabeth J. Morphis, M.D.; Gregory M. Alexander, CPA; and Moore Beauston and Woodham, LLP,.. . . . . Defendants

Of whom Morphis Pediatric Group of Lancaster, P.A. and Elizabeth J. Morphis, M.D. are. . . . . Petitioners-Respondents

---

REPLY IN SUPPORT OF RESPONDENT-PETITIONER'S PETITION FOR CERTIORARI ON PREJUDGMENT INTEREST ISSUE ONLY

David E. Rothstein, SC Bar No. 66295
BURNETTE, SHUTT & McDANIEL, P.A.
415 W. Washington Street
Greenville, SC 29601
(803) 904-7928 (direct)
Attorney for Respondent-Petitioner

Other Counsel of Record:

Charles F. Thompson, Jr.
Malone, Thompson, Summers & Ott
339 Heyward St.
Columbia, SC 29201

Ryan Beasley, Esq.
Ryan Beasley Law
416 E. North St. Level 2
Greenville, SC 29601
Attorneys for Petitioners-Respondents

INDEX

Arguments in Reply. 1

Conclusion. 7

ARGUMENTS IN REPLY

Respondent-Petitioner, Paul David Hess, APRN-BC, by and through his undersigned counsel, hereby submits this Reply in Support of Respondent-Petitioner's Petition for Writ of Certiorari on Prejudgment Interest Issue Only. Tellingly, Petitioners-Respondents' three-page Return omits any mention of, much less discussion about, Babb v. Rothrock, 310 S.C. 350, 426 S.E.2d 789 (1993), the clear, binding precedent from the South Carolina Supreme Court with which the Court of Appeals's decision in this case squarely contradicts. The conflict between the Court of Appeals opinion and Babb is the primary basis for Respondent-Petitioner's Petition for Certiorari on Prejudgment Interest Issue Only, per Rule 242(b)(3), SCACR.

The Babb case is widely recognized as the seminal opinion about the standard for an award of prejudgment interest in South Carolina. As quoted in Respondent-Petitioner's original Petition, the Babb court made the following pronouncement about prejudgment interest:

> The law allows prejudgment interest 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. The fact that the sum due is disputed does not render the claim unliquidated for the purposes of an award of prejudgment interest. The proper test for determining whether prejudgment interest may be awarded is whether or not the measure of recovery, not necessarily the amount of damages, is fixed by conditions existing at the time the claim arose.

Id. at 353, 426 S.E.2d at 791 (emphases added).

There is no dispute that all of the conditions necessary to calculate Mr. Hess's annual bonus of 50% of the net profits of the Lancaster practice were fixed and "exist[ed] at the time the claim arose"; therefore, under the Babb the damages amount was "capable of being reduced to certainty" so as to make an award of prejudgment interest appropriate. Indeed, all of Mr. Hess's calculations

of back pay were based on contemporaneous financial statements and tax returns of the Lancaster practice each year, and are mostly consistent with the accountant's "smoking gun" spreadsheet from May 28, 2015, which he provided only to Dr. Morphis, where he expressly calculates "Net Income," "Doctor Bonuses," and "Net Income Before Doctor Bonuses." (Pl. Ex. 3) (R. 844). As the accountant stated in his cover email to Dr. Morphis, "I thought it may be helpful for you to see what kind of profit you are receiving from the practice in Lancaster. This is for your benefit only, I won't share this with David [Hess]." (Pl. Ex. 3) (R. 843) (emphasis added). Clearly, the accountant had no trouble calculating net income, profits, and bonuses of the Lancaster practice in 2015, from information that existed at the time Mr. Hess's claims originally arose.

Petitioners-Respondents also fail to mention the Court of Appeals opinion in Lee v. Thermal Engineering Corp., 352 S.C. 81, 89, 572 S.E.2d 298, 302 (Ct. App. 2002), which held that "'It is the character of the claim and not of the defense to it that determines whether prejudgment interest is allowable.'" Id. at 89, 572 S.E.2d at 302 (quoting Southern Welding Works, Inc. v. K & S Constr. Co., 286 S.C. 158, 164, 332 S.E.2d 102, 106 (Ct. App. 1985)). Petitioners-Respondents argue that the "the contractual obligation was uncertain, the jury had to construe the language of the contract, the jury did not award exactly what Hess sought, the jury had to find a duty to exclude Dr. Morphis's compensation and a duty to disclose information, and the trial judge had to find bad faith on the part of Dr. Morphis in awarding treble damages and jury [sic] fees." (Return, at 2). These are all arguments that the Morphis Defendants made at trial and are part of the "character of" the defenses to payment, not the character of the claim itself. There is no doubt that the language of the contract existed at the time the claim arose, since the 2010 Employment Agreement was never changed until December 20, 2015. Mr. Hess's cause of action under the Payment of Wages Act did not depend

on Dr. Morphis's deliberate effort to conceal information from Mr. Hess and to mislead him about the profits of the Lancaster practice and, thus, his bonus calculations (such facts were only relevant to the claims for fraud, negligent misrepresentation and breach of contract accompanied by a fraudulent act, for which the jury also awarded verdicts in Mr. Hess's favor and awarded punitive damages). The fact that the jury awarded Mr. Hess less than he requested for back pay falls within the Babb court's pronouncement: "The fact that the sum due is disputed does not render the claim unliquidated for the purposes of an award of prejudgment interest." Babb, 310 S.C. at 353, 426 S.E.2d at 791. Finally, the trial judge's post-trial decision to award treble damages and attorney's fees under the Payment of Wages Act has nothing to do with prejudgment interest, because the trial judge's calculation of prejudgment interest was based only on the back-pay amount, not the statutory enhancement for treble damages under the statute.

The one thing that the parties in this case do agree on is that the decision to award prejudgment interest is an issue committed to the sound discretion of the trial judge and that such an award is reviewed on appeal only for abuse of discretion. See, e.g., Historic Charleston Holdings, LLC v. Mallon, 381 S.C. 417, 435, 673 S.E.2d 448, 457–58 (2009). Curiously, Petitioners-Respondents cited to two federal cases for this proposition (Return, at 2), rather than abundant precedent for this standard from the South Carolina Supreme Court. Unfortunately, Petitioners-Respondents in their Return, like the Court of Appeals in its Opinion below, did not explain exactly how the trial judge's award of prejudgment interest to Mr. Hess was an abuse of her discretion.

Petitioners-Respondents misread Dixie Bell, Inc. v. Redd, 376 S.C. 361, S.E.2d 765 (Ct. App. 2007), in arguing that "If a jury is needed to fix the obligation, it is not liquidated." (Return, at 4). The actual quotation from Dixie Bell uses the word "and" to connect the four factors identified

by the court of appeals to determine whether damages are unliquidated: "In general, damages are unliquidated where they are an uncertain quantity, depending on no fixed standard, referred to the wise discretion of a jury, and can never be made certain except by accord or verdict." Dixie Bell, 376 S.C. at 371, 656 S.E.2d at 770 (emphasis added). Here, because the jury's award of actual damages was based on a fixed standard as set forth in Appendix A to the Employment Agreement, and because the amounts needed to plug into the mathematical formula were known quantities at the time the claims arose, not some indeterminate amount, the damages were clearly capable of being reduced to a certainty.

Petitioners-Respondents also rely on an unpublished federal case, Builders Source Direct v. Cosco Logistics (Americas) Inc., No. C.A. 2:07-CV-531-PMD, 2008 WL 3823864 (D.S.C. Aug. 12, 2008), which was a non-jury trial involving bailment claims arising out of missing lumber from a warehouse operated by defendant. United States District Judge Duffy applied the South Carolina Supreme Court's case of Babb v. Rothrock, 310 S.C. 350, 426 S.E.2d 789 (1993), to decide that prejudgment interest was not appropriate in that case: "The amount of the claim could not be ascertained by a simple mathematical calculation. Throughout this litigation, Defendant asserted that it lost no lumber at all. Furthermore, while the three pieces of evidence presented by Plaintiff . . . concerning the amount of lumber lost may be considered reasonably consistent, all reveal different amounts and values of lumber missing. Even the method for computing the value of the lost lumber is disputed. The court therefore concludes that the method of recovery was not fixed at the time the claim arose." Builders Source, 2008 WL 3823864, at *16. In the Builder Source case, the trial judge made the discretionary call not to award prejudgment interest because of factual disputes about how to calculate the amounts and value of the missing lumber, information that was not readily

determinable at the time the claims arose. Here, by contrast, there was no dispute about the numbers themselves that went into the calculation of the profits of the Lancaster practice each year, and those numbers were known to, or readily ascertainable by, the Morphis Defendants at the time. The fact that the jury did not accept all of Mr. Hess's arguments that the lease payments for Dr. Morphis's car and other compensation for Dr. Morphis should not have been included as expenses does not render the claim unliquidated.

Appellants-Respondents also rely heavily on Vaughn Dev., Inc. v. Westvaco Dev. Corp., 372 S.C. 576, 642 S.E.2d 757 (Ct. App. 2007), which involved a dispute between a developer and seller of land about who was responsible for installing the sewer infrastructure for a residential development. The Vaughn court found that prejudgment interest was not appropriate in that case because the contract was not sufficiently specific about the extent of the sewer work required, the methods of installation, and whether the seller was required to do the necessary work or whether the purchaser could hire a subcontractor to perform the sewer installation. Id. at 581, 642 S.E.2d at 760. Furthermore, in Vaughn, both parties were sophisticated business entities. Here, by contrast, any ambiguity in the 2010 Employment Agreement or in Appendix A setting forth the bonus calculation, must be construed against Petitioners-Respondents and in favor of Mr. Hess because he was not involved in the drafting of either document.

The two cases referenced in the Vaughn quotation contained in Petitioners-Respondents' Return (at page 3) are strongly supportive of the trial court's award of prejudgment interest here. The first case, Smith-Hunter Constr. Co. v. Hopson, 365 S.C. 125, 616 S.E.2d 419 (2005), involved a dispute between a builder and a homeowner about the amounts of work set forth in the builder's invoices. The homeowner argued that the builder did not follow the change-order procedures as

spelled out in the contract. The court of appeals applied the Babb v. Rothrock standard and held that prejudgment interest was appropriate: "The measure of recovery was fixed by conditions existing at the time the claim arose. The costs of the work completed by Builder at the time of Homeowners' breach of contract were established via Builder's invoices. Builder was also entitled to 13% in profits and overhead on the jobs completed. The mere fact that Homeowners disagreed with Builder regarding the amounts, which were stated in the invoices, representing completed work did not preclude an award of prejudgment interest. The trial court did not err by awarding prejudgment interest because the measure of recovery was fixed by conditions existing at the time the claim arose." Smith-Hunter Constr., 365 S.C. at 128–29, 616 S.E.2d at 421.

The second case is Butler Contr., Inc. v. Court Street, LLC, 369 S.C. 121, 631 S.E.2d 252 (2006), where the South Carolina Supreme Court ruled that the trial court erred in not awarding prejudgment interest in a dispute between a subcontractor and a contractor involving a commercial renovation project. The Butler court stated, "The fact that the amount due is disputed by the opposing party does not render the claim unliquidated for the purposes of an award of prejudgment interest. The proper test for determining whether prejudgment interest may be awarded is whether the measure of recovery, not necessarily the amount of damages, is fixed by conditions existing at the time the claim arose." Id. at 133, 631 S.E.2d at 259 (citing Smith-Hunter, 365 S.C. at 128, 616 S.E.2d at 421, and Babb, 310 S.C. at 353, 426 S.E.2d at 791).

Significantly, the Butler court also recognized the underlying purpose of an award of prejudgment interest: "A judgment debtor is required to pay interest on his debt as compensation for his continued retention and use of the creditor's money beyond the date payment was due." Butler, 369 S.C. at 134, 631 S.E.2d at 259. Here, the Morphis Defendants do not dispute the fact that they

retained the use of significant money (over half a million dollars in total) that rightfully should have been paid to Mr. Hess as additional bonuses between 2010 and 2015.

CONCLUSION

For all of the foregoing reasons, as well as for the reasons previously set forth in the initial petition, Respondent-Petitioner respectfully requests that this Court grant the petition for a writ of certiorari to review the Court of Appeals's mistaken ruling taking away the award of prejudgment interest to Mr. Hess in this case and to reaffirm the standards for prejudgment interest set forth in Babb, Smith-Hunter, and Butler.

Respectfully submitted,

November 19, 2025

s/ David E. Rothstein

David E. Rothstein, SC Bar No. 66295
BURNETTE, SHUTT & McDANIEL, P.A.
415 W. Washington Street
Greenville, SC 29601
(803) 904-7928 (direct)
Attorney for Respondent-Petitioner