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S.C. SUPREME COURT

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

APPEAL FROM BEAUFORT COUNTY COURT OF COMMON PLEAS
Bentley D. Price, Circuit Court Judge

Circuit Court Case No. 2016-CP-07-2541
Court of Appeals Appellate Case No. 2022-000231
Supreme Court of South Carolina Appellate Case No. 2025-000436

Forum Benefits, LLC,

Respondent,

v.

Brian Bannon and Assured Partners, NL,

Petitioners.

**RESPONDENT'S MOTION
FOR
RECOVERY OF INTEREST ON REVERSED MONEY JUDGMENT**

YOU WILL PLEASE TAKE NOTICE that the Respondent, Forum Benefits, LLC, by and through its undersigned counsel, hereby moves the Court for its Order providing for the recovery by Respondent of interest from Petitioners on the funds provisionally paid by Respondent to Petitioners as ordered by the now-reversed trial court. More specifically, Respondents move that:

- A. This Court enter an Order requiring Petitioners to pay such interest; or
- B. This Court enter an Order directing the Circuit Court upon the remittitur, after such hearing and upon such evidence, if any, as the Circuit Court may deem appropriate, to require Petitioners to pay such interest; or

C. In the last alternative, denying this motion without prejudice with leave to pursue the issue with the Circuit Court.

Factual Predicate

The Circuit Court ordered judgment against Respondent for \$484,312.10 on an erroneous award of attorney fees.

On March 17, 2022, pursuant to that judgment, that amount was paid by Respondent to Petitioners, by letter providing in part:

“Payment of the judgment is only being made to comply with the trial judge’s order, and Plaintiff is continuing to pursue the noticed appeal. In the event that the judgment is reversed, vacated, or otherwise changed, Plaintiff will pursue immediate repayment of the payment, including interest at the statutory rate.”

Appeal resulted in (a) the Court of Appeals reversing *per curiam* the Circuit Court on December 11, 2024 and (b) this Court dismissing its writ of certiorari on December 17, 2025. The case is now on remittitur to the Circuit Court for retrial.

Thus, by the date of this motion, Petitioners have had use of Respondent’s money for 1,405 days because of a legally baseless Order from the Circuit Court. At the 8¾ % interest rate directed by S.C. CODE ANN. § 34-31-20(A), \$484,312.10 accrues interest at \$116.10 per day. Interest at such rate through January 20, 2026 totals \$163,120.50.

Notwithstanding this Court’s December 17, 2025 decision, to-date Petitioners have repaid nothing to Respondent. Specifically, Petitioners have not even repaid the reversed judgment amount, nor anything toward the accumulated interest.

Argument

This Court has the authority and discretion to address this situation and remedy it.

And it should. Someone has to bear the cost of the Circuit Court’s error, including the time value of the erroneous money judgment. Between the parties, the equities favor Respondent –

Petitioners should have to pay interest. The argument that follows addresses “why” and “how.”

1. **Why**

Respondent has located no South Carolina case authority addressing this precise situation.

However, S.C. CODE ANN. § 34-31-20(A) provides:

“(A) In all cases of accounts stated and in all cases wherein any sum or sums of money shall be ascertained and, being due, shall draw interest according to law, the legal interest shall be at the rate of eight and three-fourths percent per annum.”

Surely, the Circuit Court’s judgment and Respondent’s counsel’s March 17, 2022 letter, alone or together, constituted an “account stated” and/or an ascertained sum under this statute.

Interestingly, S.C. CODE ANN. § 18-7-200 provides:

“If the judgment below, or any part thereof, be paid or collected and the judgment be afterwards reversed, the appellate court shall order the amount paid or collected to be restored, with interest from the time of such payment or collection. The order may be obtained on proof of the facts made at or after the hearing, upon a previous notice of six days; and if the order shall be made before the judgment is entered, the amount may be included in the judgment.”

This statute appears in a set of statutes directed to “Appeals to Circuit and County Courts in Other Cases.” However, by its literal terms, it would appear to apply to the case at bar.

If neither S.C. CODE ANN. § 34-31-20(A) nor § 18-7-200 is held to apply to the case at bar, this Court nevertheless has the authority to remedy this problem and Respondent seeks an Order doing so.¹ Respondent urges that the alternative should not be acceptable to this Court and would leave a conspicuous hole in South Carolina jurisprudence:

- (a) accounts stated accruing interest under S.C. CODE ANN. § 34-31-20(A);

¹ Interestingly, the Federal Rule of Appellate Procedure 37(b) appears to address this situation for federal cases, providing:

37(b) When the Court Reverses. If the court modifies or reverses a judgment with a direction that a money judgment be entered in the district court, the mandate must contain instructions about the allowance of interest.

- (b) reversed judgments from magistrate courts “or by any other inferior court or jurisdiction” accruing interest under S.C. CODE ANN. § 18-7-200; and
- (c) reversed South Carolina federal court judgments accruing interest under Federal Rule of Appellate Procedure 37(b) (see footnote 1, *supra*); BUT
- (d) reversed Circuit Court judgments not accounting for the time value of money.

2. How

The precise mechanism for how the Court remedies the situation is for the Court. It appears to Respondent that the Court could rightfully address the issue itself by entering an Order requiring Petitioners to pay such interest. Alternatively, the Court might enter an Order directing the Circuit Court upon the remittitur, upon such evidence, if any, as the Circuit Court may deem appropriate, to require Petitioners to pay such interest. Other avenues might also be available.

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Based on the foregoing as well as the attached affidavit of the undersigned, Respondent, Forum Benefits, LLC respectfully moves the Court for its Order providing for the recovery by Respondent of interest from Petitioners on the funds provisionally paid pursuant to the now-reversed trial court.

Respectfully submitted,

s/Timothy D. St. Clair

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