

RECEIVED

Mar 02 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Appellate Case No. 2025-000801

Daniel O’Shields And Roger W.  
Whitley, A Partnership d/b/a O&W Cars,

Appellants,

v.

Columbia Automotive Company,  
LLC d/b/a Midlands Honda,

Respondent.

Appellants’ Motion to Strike from the Brief of Respondent  
Extended Discussions of Unpublished Cases

Appellants move that Respondent be directed to amend its Initial Brief by striking the extended discussions of unpublished cases and related text. This means striking footnote 7 on page 12; the text beginning with “As this court has” and ending with “the requested costs.” on page 17; and the page-length single-spaced quotation (that would be two pages if double-spaced) that is footnote 11 on pages 23-24. The material that should be excised is provided in the Attachment to this Motion.

These unpublished cases each state, at the top of the first page, **“THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.”** That Rule states in pertinent part, “(2) Memorandum opinions and unpublished orders have no precedential value and *should not*

*be cited except in proceedings in which they are directly involved.”* (Emphasis added).

Because the current case does not directly involve any of the unpublished cases Respondent quotes, the material should not have been cited and should be struck.

Appellants request that the deadline to file and serve their Reply Brief be tolled until the Court rules on this Motion.

Respectfully submitted,

March 1, 2026

LAW OFFICE OF BROOKS R. FUDENBERG, LLC

*s/ Brooks R. Fudenberg*

Brooks R. Fudenberg

S.C. Bar No. 72019

14 Ashe Street

Charleston SC 29403

Tel.: 843-696-8911

BRF@Fudenberglaw.com

C. STEVEN MOSKOS, P.A.

*s/ C. Steven Moskos*

C. Steven Moskos

S.C. Bar No. 7938

6650 Rivers Ave., Ste 210

N. Charleston, SC 29406

Tel. (843) 763-5297

Steve@moskoslawfirm.com

Attorneys for Appellants

# **Attachment to Motion to Strike**

Highlighted material is material proposed to be excised  
from Initial Brief of Respondent.

48 (Exhibit 5), 1544-48 (Exhibit 6), 1982-91 (Exhibit 7), 2070-81 (Exhibit 8), 2137-42 (Exhibit 9)). O&W made no effort to remove the fees after September 14, 2016, did not remove fees that were previously excluded and not subject to reversal (such as the late submitted hours or the hours spent on a largely improper affidavit), did not attempt to address excessive entries such as 23.2 hours spent for review of a single deposition (R. at 16), and did not undertake to provide further clarity on block billed time.<sup>7</sup>

In the absence of any effort by O&W to present a more reasonable demand, the circuit court made its own review and awarded \$32,317 in attorney's fees in addition to the \$31,404 previously awarded, bringing the total award to \$63,931. (Orders, R. at \_\_\_\_). This award is slightly less than ten times the amount of actual damages, \$6,645.

**A. Standard of Review.**

The South Carolina standard of review applies to the consideration of the attorney's fee award. *O&W I*, 435 S.C. at 335 n.10, 867 S.E.2d at 454 n. 10. In considering an award of attorney's fees, "the overriding benchmark [] is that attorneys' fees must be 'reasonable.'" *Layman v. State*, 376 S.C. 434, 455, 658 S.E.2d 320, 331 (2008).

---

<sup>7</sup> This unwillingness to accept an attorney's fee award of anything less than the full amount claimed is standard operating procedure for O&W's counsel. *See Greenawalt v. Nissan N. Am., Inc.*, No. 2023-001124, 2025 WL 1517016, at \*1 (S.C. Ct. App. May 28, 2025) ("The circuit court awarded \$75,000 in fees. Appellants concede the court performed the appropriate legal analysis up until the portion of the order reducing the award. Appellants argue this was error because they are statutorily entitled to all hours 'actually expended,' or 'full compensation.' We respectfully disagree and affirm."), *cert. denied* January 16, 2026; *West v. Am. Honda Motor Co., Inc.*, No. 2022-000162, 2025 WL 1514479, at \*1 (S.C. Ct. App. May 28, 2025) ("Appellant requested \$92,385 in fees and \$2,386.28 in costs. The circuit court awarded \$27,585. On appeal, Appellant asserts the circuit court erred in not awarding all of the requested fees and in failing to award costs. We affirm the amount of awarded fees but amend the award to include the requested costs."), *cert. denied* December 16, 2025.

This result is particularly appropriate in light of the degree of success achieved in this case where O&W asserted eight claims, but either abandoned or was unsuccessful on four of them. In addition to the lack of success with respect to certain of the claims, much of O&W's counsel's time was spent chasing a large punitive damages award beyond any level that was constitutionally supported. O&W viewed success in this matter to be based on a multi-million dollar punitive damages award, or at the very least, a \$500,000 award (one award of the North Carolina punitive damages cap as set in N.C.G.S. § 1D-25 for each of the partners in O&W)—a view that was objectively unreasonable based on South Carolina and United States Supreme Court case law discussing the due process implications of punitive damages awards. *See BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 568, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996); *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 691 S.E.2d 135 (2010). O&W maintained this position for years until it was finally rejected by the South Carolina Supreme Court in *O&W I*.

In short, the circuit court found that any additional post-verdict time that had not been previously awarded was either not incurred to protect the judgment or was not reasonable given the success achieved, and it declined to make any additional award in the post-verdict period. With respect to the pre-verdict period, the circuit court determined that an additional \$32,317 would be a reasonable award considering the remand in *O&W I*. As this court has repeatedly reminded O&W's counsel, the circuit court is not required to award all fees requested. *See Greenawalt*, 2025 WL 1517016 at \*1 ("Appellants argue this was error because they are statutorily entitled to all hours 'actually expended,' or 'full compensation.' We respectfully disagree and affirm."); *West*, 2025 WL 1514479, at \*1 ("On appeal, Appellant asserts the circuit court erred in not awarding all of the requested fees and in failing to award costs. We affirm the amount of awarded fees but amend the award to include the requested costs."). Here, the fee award is reasonable in light of

O&W repeatedly refers to the holding in *Russo* as dicta. This is incorrect. The issue in *Russo*, as framed by the South Carolina Supreme Court, was “[D]id Sutton’s deposit of the judgment with the Clerk of Court [“pending the debtor’s own appeal of the judgment”] stop accrual of post-judgment interest?” 317 S.C. at 443, 454 S.E.2d at 896. In answer to that question, the *Russo* court ruled, “we **hold** that to stop accrual of interest, a debtor must comply with the plain language of Rule 67.” 317 S.C. at 444, 454 S.E.2d at 897 (emphasis added). In other words, if a deposit is made in accordance with Rule 67, there is no further accrual of interest. The cases cited by O&W address interest generally and do not have any bearing on the holding in *Russo* and the implications of a deposit under Rule 67.<sup>11</sup>

---

<sup>11</sup> This Court recently rejected O&W’s argument in an unpublished opinion, as follows:

As to Wedgewood’s argument the circuit court erred in granting Centex’s motion because [S.C. Code Ann. § 34-31-20] conflicts with Rule 67, SCRCPP, we find no error. See [*S.C. Dep’t of Transp. v. First Carolina Corp. of S.C.*, 369 S.C. 150, 153, 631 S.E.2d 533, 535 (2006)] (“The granting of leave to deposit money with the court pursuant to Rule 67, SCRCPP[,] is a matter within the discretion of the trial court and will not be overturned absent an abuse of that discretion.”); *id.* (“An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support.”); Rule 67, SCRCPP (“In an action in which any part of the relief sought is a judgment for a sum of money ..., a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing ....”); S.C. Code Ann. § 34-31-20(B) (“A money decree or judgment of a court enrolled or entered must draw interest according to law. The legal rate of interest is equal to the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year for which the damages are awarded, plus four percentage points, compounded annually.”); *Russo v. Sutton*, 317 S.C. 441, 444, 454 S.E.2d 895, 896 (1995) (holding “**a judgment debtor’s deposit of funds into court [pursuant to Rule 67] pending his own appeal prevents further accrual of interest**”); [*Small v. Pioneer Mach., Inc.*, 330 S.C. 62, 64–65, 496 S.E.2d 884, 885 (Ct. App. 1998)] (affirming the circuit court’s grant of a motion to deposit \$500,000 based on a damages award pursuant to Rule 67 when the defendant had complied with the requirements of Rule 67 and noting that the “judgment debtor’s deposit of funds into the court pending his own appeal prevents further accrual of interest on the judgment”); *Duval v. Heritage Life Ins. Co.*, 339 S.C. 616, 620, 529 S.E.2d 566, 568-69 (Ct. App. 2000) (affirming the trial court’s allowing a judgment debtor to avoid postjudgment interest by depositing the amount of the judgment with the court and stating it was bound by the clear

There is one judgment in this action, the amount of which is challenged by O&W in this appeal. Midlands Honda has tried to resolve this case for years as acknowledged by the circuit court in disallowing fees after September 14, 2016. (R. at 27-28). Midlands Honda further represented that it was prepared to pay the judgment following remand if O&W did not challenge the judgment amount by way of appeal. (March 2025 Order, R. at \_\_\_\_). Midlands Honda has not appealed any of the circuit court’s rulings in the interest of putting this matter to rest. The long history of this case falls entirely on O&W’s shoulders. The request to deposit into court was made in yet another effort by Midlands Honda to bring this matter to a close.

The circuit court, given its familiarity with this case and O&W’s insatiable demands for attorney’s fees, granted the motion for leave after reciting the applicable law and finding that the request was “consistent with the language and spirit of Rule 67” should O&W pursue another appeal. (*Id.*, R. at \_\_\_\_). This ruling is a clear exercise of discretion by the circuit court.<sup>12</sup>

---

precedent in *Russo*); *Zurich Am. Ins. Co. of Ill. v. Palmetto Cont. Servs., Inc.*, 434 S.C. 104, 110, 862 S.E.2d 714, 717 (Ct. App. 2021) (noting that when our state rule is substantially the same as the federal rule, the court can analyze federal case law interpreting the federal rule when deciding issues related to our state rule); [*Renaissance Enters., Inc. v. Ocean Resorts, Inc.*, 334 S.C. 324, 327, 513 S.E.2d 617, 619 (1999)] (“Rule 67 is substantially the same as the federal rule allowing a deposit into court.”); *Zelaya/Cap. Int’l Judgment, LLC v. Zelaya*, 769 F.3d 1296, 1303 (11th Cir. 2014) (“The federal courts ... have overwhelmingly held that post[-]judgment statutory interest stops accruing once the disputed funds are deposited into the court’s registry.”); *Russo*, 317 S.C. at 443, 454 S.E.2d at 896 (explaining the cessation of postjudgment interest under Rule 67 **“encourages the debtor to pay the judgment and assures the judgment creditor the funds will be available at the conclusion of the appeal”**).

*Wedgewood Condo. Ass’n v. Centex Homes*, No. 2023-001150, 2025 WL 2718547, at \*1 (S.C. Ct. App. Sept. 24, 2025) (footnote omitted).

<sup>12</sup> O&W’s arguments relating to the exercise of discretion were not raised to the circuit court and are not preserved for consideration by this Court. O&W did not raise them in its pro-order briefing, nor were they raised in a motion to alter or amend. Therefore, these arguments should not be considered on appeal. *Wilder Corp.*, 330 S.C. at 76, 497 S.E.2d at 734.

**RECEIVED**

**Mar 02 2026**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

R. Ferrell Cothran, Jr., Circuit Court Judge

Appellate Case No. 2025-000801

Daniel O'Shields And Roger W.  
Whitley A Partnership d/b/a  
O&W Cars,

Appellants,

v.

Columbia Automotive Company,  
LLC d/b/a Midlands Honda,

Respondent.

PROOF OF SERVICE

I certify that I have served Appellants' Motion to Strike on Columbia Automotive Company, LLC d/b/a Midlands Honda by emailing a copy to its attorney of record, Sarah Spruill, Esq., at [sspruill@hsblawfirm.com](mailto:sspruill@hsblawfirm.com).

The email serving Respondent is attached.

March 1, 2026

s/ Brooks R. Fudenberg  
Brooks R. Fudenberg  
Law Office of Brooks R. Fudenberg  
LLC  
14 Ashe Street, Charleston SC 29403  
843-696-8911