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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Walton J. McLeod, Circuit Court Judge

Case No. 2022-CP-32-01932
Appellate Case No. 2025-000905

Bundy McDonald, LLC, Appellant,

vs.

WECO River District, LLC, Respondent.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

This matter comes before this Court pursuant to a Notice of Appeal filed by the Appellant, Bundy McDonald, LLC ("Appellant" or "Law Firm") on May 8, 2025. Appellant sued Respondent WECO River District, LLC ("Respondent" or "Client") for allegedly unpaid legal fees on November 17, 2021. Appellant's complaint asserted a single cause of action for breach of contract, arising from a hybrid contingent fee agreement for legal services. The case proceeded non-jury with an evidentiary hearing on September 26, 2024, and closing arguments on October 17, 2024. On March 13, 2025, the Honorable Judge Walton J. McLeod denied Appellant's claim and found in favor of Client because law firm did not meet the contingency. Judge McLeod found that Law Firm had been compensated in full for its services based upon payments of $255,558.00 previously paid by Client. Law Firm filed a motion to alter or amend, which was denied by Judge McLeod on April 8, 2024.

This appeal followed.

STATEMENT OF FACTS

On December 4, 2018, Respondent engaged Appellant for legal representation based on a written fee agreement (R.pp.268-269). The fee agreement described the scope of the representation as "legal counsel for purposes in connection with a project known as Brookland in West Columbia,

South Carolina that is under construction by Carter and Carter Construction, LLC." *Id.* Appellant prepared the fee agreement, and Appellant agreed to provide service on an hourly basis of $400.00 per hour for W.H. Bundy, $300.00 per hour for M. Brent McDonald and $100.00 per hour for "their paralegals." *Id.*

In January, 2019, Appellant proposed to convert the fee agreement to a hybrid fee agreement based on the same hourly rates, but subject to an hourly fee cap of $100,000.00 with an additional "contingency fee" of 25% computed on "any reduction or savings of the total amount of claims made by Contractor" (a reverse contingency of the defense of the claims) plus 25% of "any recovery" (a contingency for counterclaims). (R.pp. 273-275). The fee would be based upon the "amount of in-kind settlement or relief obtained and the same percentage of any funds actually collected, whether by settlement or judgment arising out of client's claims against Contractor or other parties to any proceeding covered by this fee agreement." *Id.* Appellant proposed the change in a letter of explanation dated January 24, 2019. (R. p. 271).

Respondent accepted the revision; the parties executed an amended fee agreement on November 15, 2019. During the representation, Respondent paid Appellant $105,558.00 in hourly billings, exceeding the $100,000.00 "cap" by $5,558.00 (R.pp..537-605, R. p. 620), and subsequently paid Appellant $150,000.00 in additional fees after Respondent had to engage alternate counsel to complete the scope of services included in the amended fee agreement after Appellant stopped working on the case (R. p. 606).

Respondent and Carter and Carter Construction, LLC were embroiled in a contract dispute which was subject to binding arbitration. The arbitration included various contract claims and counterclaims, including claims for disputed change orders and contract balances, allegations of delays, and counterclaims for defective and incomplete work. Respondent's counterclaim initially

included the "SCDOT" claims (R.p. 124, lines 6-25, R. pp.127-130). As the case unfolded, the SCDOT repairs were not yet complete, and Appellant advised Respondent to "carve out" those issues from the arbitration proceeding as not yet "ripe" for determination. Appellant did not advise Respondent the proposed bifurcation of the SCDOT issues would curtail the scope of the Respondent 's ongoing representation (R.p. 129, lines 7-25). Ultimately, the arbitrator retained jurisdiction over the SCDOT issues.

While the arbitration was pending, various subcontractors and Carter and Carter also filed mechanic's liens on the Project. Respondent posted millions in cash to bond off the liens. Appellant recommended, prepared, and filed, on Respondent 's behalf, a multi-party declaratory judgment action in Lexington County Common Pleas, Case No. 2020-CP-32-00580 (the "Civil Action"), against Contractor and a substantial number of subcontractors, including all known subcontractor lien claimants to defend the lien claims. These services were within Appellant's scope of work; the Appellant billed Respondent for this work under the hybrid fee agreement. Respondent paid Appellant for preparing the lawsuit pursuant to the hybrid fee agreement (R.pp 88-91, R. pp. 537-605). The Civil Action was stayed pending arbitration.

The arbitrator heard the case in July 2020, and Appellant represented Respondent in that hearing. The arbitrator did not issue a preliminary award until January 4, 2021 (R.pp. 287-288). In the meantime, on September 22, 2020, Appellant also filed a motion to lift the stay and confirm the expected arbitration award in anticipation of transforming an arbitration award to a final judgment in the Civil Action. (R.pp. 382-385). According to the filing, Appellant acknowledged there would be no "final" arbitration award until the arbitrator determined the issue of the "prevailing party" as between Respondent and Contractor so that statutory claims for attorney's

fees arising from South Carolina's mechanic's lien law could be presented and addressed (R.pp. 382-385).

The initial arbitration award also held that the SCDOT claims were not yet "ripe" for review (R.p.288). The award held open the issue of the final determination of the prevailing party and the potential award of attorney's fees to the prevailing party (R.p.289). The award, on its own terms, was not a final decision; neither the arbitration case nor the underlying Civil Action had concluded at that time. There was ongoing business before the arbitrator and ongoing business before the Court of Common Pleas.

Thereafter, the Contractor submitted a petition for award of attorney's fees to the arbitrator, claiming to be the "prevailing party" (R.pp. 391-395). Within 90 days of the initial arbitration award, Contractor also filed a motion to vacate the arbitration award in the Civil Action (R.pp. 409-423).

On February 15, 2021, the arbitrator clarified the first arbitration, award. The Arbitrator reconfirmed that the SCDOT issue remained undecided (R. pp. 292-295). At about this same time, Appellant, for the first time, advised Respondent that Appellant would no longer represent Respondent in the arbitration matter with respect to the SCDOT issue. Appellant informed Respondent it should hire a new attorney for the SCDOT matters. Appellant advised Respondent that a new arbitrator would need to be appointed for the SCDOT matter (R.p.618, R. pp. 132-133). This was the first notice Respondent received that Appellant considered the SCDOT issues to be outside of the scope of Appellant's scope of services (R. p. 133, L. 4-9).

On February 16, Respondent sought further guidance and assistance from Appellant on the interpretation of the scope of the arbitration ruling and the arbitrator's continuing authority, if any. Appellant responded, calling the SCDOT matter a "new claim" and advising client to retain a "new

attorney." (R.pp. 134-136, R. Audio Recording of call date February 23, 2021, R. p.618). Appellant stated: "our fee agreement does not include another arbitration/litigation on any issue, including but not limited to, the SCDOT, warranty, deficient construction work or any other issues not adjudicated in the completed July 2020 arbitration, as set forth in the award and Clarification thereof." *Id.* In this same communication, Appellant acknowledged it had a continuing duty to represent Respondent in: 1) the attorney fee issue in the arbitration, and 2) the Civil Action. *Id.*

On February 15, 2021, the arbitrator issued another clarification to the award, followed by yet another minor clarification on February 17, 2021 (R.pp.292-296). On that same day, Appellant invoiced Respondent for a contingent fee of $347,258.45[1](R.p.297). Appellant explained it sent the invoice at that time because "a paid invoice would "make it easier to get attorney's fees in the end" (R.p. 148, L 5-24).

Respondent did not terminate Appellant, but engaged separate legal counsel, Mr. Henry Brown, to evaluate the case status and provide a second opinion on the scope of the pending arbitration. Mr. Brown disagreed with Appellant's legal advice. Mr. Brown did not believe the SCDOT issues presented a "new claim" requiring the appointment of a "new" arbitrator. Mr. Brown believed the empaneled arbitrator had full authority and continuing jurisdiction to address the SCDOT issue which had, by this time become "ripe." Appellant disagreed with Mr. Brown and advised Respondent differently. Appellant claimed the arbitration was "over".

On February 23, 2021, the parties had a contentious phone conversation. Mr. Bundy and Mr. Brown disagreed over continuing authority of the arbitrator and the appropriate future legal

[1] According to Appellant, the Contractor, Carter and Carter Construction, LLC., asserted a total claim of $4,029,749.43 against Respondent in the arbitration and the arbitrator issued a preliminary award of $2,640,715.64 to the Contractor. Appellant claimed 25% of $1,389,033.64, the difference between the total claim and the preliminary award.

strategy. Appellant refused to continue with representation of the Respondent in the presentation of the SCDOT claims before the arbitrator but acknowledged the attorney fee petition and the declaratory judgment case remained open and unresolved. The lawyers sharply differed on their predications as to whether the current arbitrator would agree to further entertain the unresolved SCDOT claims. Respondent never discharged or terminated Appellant. Ultimately, Appellant hung up on Respondent (R. Audio Recording of call date February 23, 2021) (R.pp. 135-137).

After the call, Mr. Brown advised the arbitrator that he would assume responsibility for the arbitration with limited continued involvement of Appellant by letter dated February 24, 2021 (R.p.396). On March 2, 2021, Appellant responded to Mr. Brown's letter to the arbitrator, objecting to Mr. Brown's statement to the arbitrator concerning Appellant's continuing involvement (R.pp. 334-335). Appellant reiterated "the arbitration is over. The only remaining issue in the arbitration is the award of attorney's fees, if any.... I agree I will continue to be involved with that issue." After sending this letter, Appellant no longer meaningfully communicated with Respondent, effectively resigning from the representation (R.pp. 139-142).

Mr. Brown pressed the arbitrator for further clarification of the scope of the arbitrator's continuing jurisdiction on March 12, 2021 (R.pp.398-402). On April 14, 2021, the arbitrator determined he had continuing jurisdiction to hear the now ripened SCDOT claims, and the prior award of January 4, 2021, was "not final" (R.pp. 622-626). Appellant's opinion concerning the scope and conclusion of the ongoing arbitration was erroneous (R.pp. 142-146).

Appellant demanded to be relieved as counsel of record in the Civil Action and demanded "payment on the debt" or a lawsuit for the fees would ensue (R.p. 424). By consent order, Appellant withdrew as counsel in the Civil Action on September 3, 2021 (R.pp. 425-426).

For health reasons, Mr. Brown could not complete the ongoing arbitration. Respondent engaged a third lawyer on an hourly basis to complete the arbitration and represent Respondent in the civil action. When Appellant effectively resigned from representation four major tasks remained incomplete: 1) the conclusion of the pending arbitration, 2) the resolution of the petition for attorney's fees in the pending arbitration, 3) the outstanding motion to vacate the initial arbitration award, and, 4) the Civil Action for declaratory judgment and the ultimate discharge and resolution of numerous liens and dispensation of millions of dollars in lien bonds (R.pp.89-110).

On November 12, 2023, Respondent settled all pending issues with Contractor through a stipulated final arbitration award with the consent of the arbitrator (R.pp.. 427-431). This agreement addressed and resolved the first arbitration, the SCDOT claims, the attorney's fee issue, and settled of the Declaratory Judgment Case. The final resolution of the Declaratory Judgment Action occurred on February 8, 2022, by entry of an order of the Court of Common Pleas (R.pp. 483-486).

Appellant performed no services in connection with the continuing arbitration proceedings, the attorney fee issue, or the Civil Action from February 2021, through the dismissal of the Civil Action. During that time, Respondent incurred and paid hourly attorney fees of $46,907.50 to Mr. Brown's law firm and $49,166.00 to Mr. Wall's law firm (a total of $95,073.50 in legal fees to complete the arbitration and the Civil Action). Hourly rates for the new lawyers were $300.00 per hour and $360.00 per hour, respectively. (Def. Exs. 32, 38) (R.pp. 498-536, R. p.621).

Appellant law firm stopped billing hourly fees to Respondent in June of 2020, just before the first arbitration hearing. Up until that time, Respondent previously paid Appellant the hourly cap of $100,000.00 plus $5,558.00 in legal fees (R. PP. 537-607, R.p.620).

Appellant filed this suit for breach of contract on November 17, 2021 (R.pp. 28). In discovery Appellant produced a summary of unbilled hours which it claims had an hourly rate value of $117,960.00 in unpaid fees (R.pp. 478-482, R. pp. 152-154). Appellant kept accurate time records for the case until October 2020. After October 2020, Appellant kept no time records, but Appellant estimated it is spent "at least 100 hours" in "additional time" during from October 2020 through March 2021 (R.pp. 478-482)

On May 24, 2022, Respondent paid law firm an additional $150,000.00 for its services without requiring a release or dismissal of this lawsuit to be credited against the Appellant's claim (R.p. 497). The Respondent 's intent was to reach a fair approximation of Appellant's reasonable hourly rates for the unbilled work at fair and customary hourly rates in lieu of the claimed contingent fee. Respondent estimated the amount due as $117,960.00 at the Appellant's regular hourly rate, plus the estimated 100 additional hours at the same ratio/hourly rate of Bundy and McDonald (R.pp 152-155). Respondent paid Appellant a total of $255,558.00 in legal fees for its services in the arbitration and the Civil Case. Appellant has acknowledged these payments.

Appellant's expert and only witness agreed that a rate of $400.00 per hour for Mr. Bundy's time and $300.00 per hour for Mr. McDonald's time was a reasonable rate for those lawyers during their representation (R.p. 87). Appellant claims, however, the full reverse contingent fee is due based on the invoice of February 17, 2021 ($347,258.45 less $150,000.00) plus prejudgment interest on the unpaid amounts from February 17, 2021.

Appellant law firm did not fully complete the arbitration or obtain a final result in the arbitration. Appellant did not defend or resolve the Contractor's of attorney fee claim. Appellant did not resolve the motion to vacate the arbitration award. Appellant did not conclude the Civil Action Appellant filed to resolve the lien and lien bond issues never finished the case.

STANDARD OF REVIEW

"Actions seeking damages for breach of contract and . . . are actions at law." *Mathis v. Brown & Brown of S.C., Inc.*, 389 S.C. 299, 307, 698 S.E.2d 773, 777 (2010). "In an action at law tried without a jury, the trial judge's findings have the force and effect of a jury verdict upon the issues and are conclusive on appeal when supported by competent evidence." *Id.* Thus, "the appellate court's standard of review extends only to the correction of errors of law." *Electro-Lab of Aiken, Inc. v. Sharp Constr. Co. of Sumter, Inc.* 357 S.C. 363, 367, 593 S.E.2d 170, 172 (Ct. App. 2004); *See also J & W Corp of Greenwood v. Broad Creek Marina of Hilton Head, LLC,* 441 S.C. 642, 664, 896 S.E.2d 328, 340 (Ct. App. 2023).

ARGUMENT

I. THERE IS SUBSTANTIAL EVIDENCE IN THE RECORD TO SUPPORT THE TRIAL COURT'S FINDING THAT APPELLANT DID NOT MEET THE CONTINGENCY. THEREFORE, THE COURT DID NOT MISINTERPRET THE CONTRACT.

A. A Lawyer's Contingency Fee is Earned Upon a Successful Result or Outcome of a Case.

A contingency fee is due upon the conclusion of a case by settlement or judgment, not an interim, preliminary, or tentative determination. Appellant's fee agreement (R.p.273), the letter of explanation from Appellant (R.p. 271.), and the body of case law, in South Carolina and elsewhere, require that a final result, by settlement or judgment, as the trigger for a client's obligation to pay a lawyer's contingent fee.

Justice Toal defined the essence of a contingent fee agreement in *Leatherwood v. Estate of Jones*:

> A contingent fee is one which is made to depend upon the success or failure in the effort to enforce a right, whether doubtful or not." *Adair v. First Nat. Bank*, 139 S.C. 1, 5, 137 S.E. 192, 193 (1927); *see also City of Burlington v. Dague*, 505 U.S. 557, 560–61, 112 S.Ct. 2638, 2640, 120 L.Ed.2d 449, 455 (1992) ("Fees for legal services in litigation may

> be either 'certain' or 'contingent' {or some hybrid of the two}. A fee is certain if it is payable without regard to the outcome of the suit; it is contingent if the obligation to pay depends on a particular result's being obtained."); *Alexander v. Inman*, 903 S.W.2d 686, 696 (Tenn. Ct. App. 1995) ("Most jurisdictions would agree that a contingent fee arrangement is an agreement for legal services under which the amount or payment of the fee depends, in whole or in part, on the outcome of the proceedings for which the services were rendered."); *Martin v. Buckman*, 883 P.2d 185, 192 (Okla. App. 1994) ("In simple terms, a contingent fee contract is one in which a client engages an attorney to represent her in the recovery of, say, a certain sum of money she claims is owed to her, and the attorney agrees to accept for his services a certain percentage of what he recovers either by settlement or by judgment."); Black's Law Dictionary 614 (6th ed. 1990)(defining "contingent fees" as "arrangement between attorney and client whereby attorney agrees to represent client with compensation to be a percentage of the amount recovered . . . ."). . . . As the above authorities explain, a contingent fee agreement *necessarily requires that a successful result be achieved before the fee is paid.* (emphasis added).

Leatherwood v. Estate of Jones, 329 S.C. 97, 103, 495 S.E.2d 450, 453-54 (1998).

The Amended Fee Agreement, prepared by Appellant, imposes these requirements. It established a hybrid hourly fee agreement with fixed fees up to a cap of $100,000.00 with a contingent fee component based upon 25% of a reduction of the "claim(s) made by Contractor" and 25% of "any amount of in kind *settlement or relief obtained* and the same percentage of any funds *actually collected*, whether by *settlement or judgment*" (emphasis added). Appellant's agreement required a result for Appellant's scope of work whether by settlement or judgment. The letter of explanation from Appellant to Respondent ("Client") included this illustration: "if an arbitrator awards or a settlement is reached *so that client must pay"* and if the Client makes a claim "and the arbitrator awards or a settlement is reached. . .. then attorney will be entitled to . . . 25% of the of the *recovered claim.* ". The contingency is a *recovered claim* (the contingency component as it relates to Respondent's counterclaims) or Respondent's *obligation to pay* (the reverse contingency component as it relates to the defense of claims). The Amended Fee Agreement required a final result before any contingent fee is due or earned by its own terms. A lawyer is not

entitled to receive a preferential payment prior to conferring a tangible final benefit for his client. Proverbially, the sowing necessarily precedes the harvest before one can share in the harvest.

Appellant argues that the contract is unambiguous. Client agrees and goes even farther—the contract is crystal clear. Appellant never met the terms of the clear contract contingency which Appellant prepared: relief obtained by settlement or judgment.

B. **The First Award, as Clarified, was Not a Final Judgment or Settlement.**

The Arbitrator's first award (R.p. 287) was, in its own terms, preliminary. It did not resolve the issue of the "prevailing party" and required future argument, briefing, submissions by the parties, consideration, deliberations, and proceedings. The Award states: "Any award of attorney fees and costs to the prevailing party is expressly reserved *for future consideration.*". Appellant and opposing counsel in the arbitration both acknowledged the fee issue was within the scope of the arbitration, and a matter for further attention of the empaneled and appointed arbitrator before any final result in the arbitration could ever occur (R.pp. 385, 391,398,403,618). The Arbitrator specifically and expressly retained jurisdiction to clarify the award and further interpret its scope and the jurisdiction of the arbitrator in the ongoing and continuing arbitration. On April 12, 2021, contrary to the premature declaration of Appellant that the "arbitration is over", the Arbitrator issued a supplemental order: "I conclude that the Award is *not final* . . . I therefore further clarify the January 4, 2021, Award to expressly reserve jurisdiction over the DOT claim . . . jurisdiction exists to adjust the amount of the Award, if appropriate, *based on a final determination* . . . (emphasis added) (R.pp. 622-626). The arbitrator executed a final award, based on a settlement by and with the consent of all parties on November 12, 2021, which resolved all pending issues in the case, nine months after Appellant effectively withdrew from representing Client in the arbitration.

Thus, Appellant did not meet the required contingency or complete the full scope of services, even under the narrowest interpretation of Appellant's agreement.

C. Appellant's Witness Admitted the Initial Arbitration Award was not Final, Subject to Being Vacated, and, if Vacated, no Contingent Fee Would be due to Appellant.

According to Appellant's sole witness, Thomas Pope, the scope of the fee agreement covered "an arbitration" (i.e., one appearance in a single one-week hearing without any further representation for the Project[2]). Assuming, for the sake of argument, the Amended Fee Agreement limited the scope of representation to a single arbitration hearing and appearance, the preliminary arbitration award and subsequent clarification was not a final result or "recovery" by "settlement or judgment" as required in the fee agreement.

On cross examination, Mr. Pope confirmed that the claimant in the arbitration filed a motion to vacate the arbitration award which was pending in a separate Declaratory Judgment Action (the "D. J. Action"). Mr. Pope further acknowledged that if the Motion to Vacate were to be granted, the result would not be obtained, and Client would not owe any contingent fee (R.pp. 109-110). Therefore, the resolution and disposition of the pending motion to vacate the award was a condition precedent to achieving a final result in the case, even under Appellant's very narrow and restricted interpretation of the scope of legal services under its fee agreement. Appellant withdrew from both the arbitration[3] and the D. J. Action *before the resolution of the Motion to Vacate* which occurred at final award on November 12, 2021, by final settlement through the

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[2] The actual scope of representation, as Appellant's sole witness admitted on cross examination, included representation in both the Arbitration and the Declaratory Judgment case.

[3] Appellant notified Client it would need to retain new counsel (Ex. 35) (R.p.)the same date Appellant sent the contested invoice for legal services based on the preliminary arbitration decision (Ex. 11) (R.p.), February 17, 2021. In the notice, Appellant agreed to "continue to handle the DJ action" and continue to represent Client on the attorney's fee issue. (see also Ex. 14 "the arbitration is over") (R.p.). Appellant did not conclude the DJ Action or Fee petition.

efforts of alternate counsel. Appellant did not meet the contingency because it did not finish the case.

D. Appellant Acknowledged and Conceded the Initial Arbitration Award Would Not Constitute a Final Judgment in Legal Pleadings Filed in the Declaratory Judgment Case.

On September 22, 2020, Appellant filed a Motion to Confirm an Arbitration Award that had not yet been issued in the D. J. Action (R.pp. 382-385). Setting aside the question of whether such a motion was ripe for consideration, the Motion acknowledged and conceded that: (a) Appellant knew that the anticipated initial award would not be final, (b) the attorney fee issue would remain undecided, and (c) "[t]his Court has the authority and jurisdiction to confirm the final award once it is issued by the Arbitrator". Thus, Appellant was aware of the statutory procedure necessary to convert an arbitration award into a final judgment.

This anticipated and predicted sequence of events is precisely what occurred in the arbitration. After Appellant withdrew from the D. J. Action, there was indeed a final award, followed by a confirmation of the award. The uncontradicted testimony in the case is that Appellant was never terminated or discharged by Client. Had Appellant remained in the case, the final award would have triggered any contingent fee; however, Appellant had already withdrawn. Significant additional work remained in the case to reach this conclusion. Client's witness testified that Client had no expectation or understanding that Appellant would refuse to proceed with the arbitration until after the initial award or that reserving the SCDOT claims would result in Appellant's refusal to handle the remaining issues in the ongoing arbitration.

The clear and unequivocal statement from Appellant in Defendant's Exhibit 35 (R.p. 618) that Client would need a "new attorney" placed Client in the untenable position of retaining new counsel at considerable expense. Changing lawyers is not like changing shoes. Appellant was

familiar not only with the arbitration but was the sole architect and master planner of the D.J. action which had become the bank vault repository of millions of dollars in lien bonds (R.pp. 608-617). Indeed, the costs to complete the work to the end totaled more than $95,000.00 in additional legal fees because of Appellant's decision to declare early victory and withdraw from the case (R.p. 621).

E. Appellant's invoice and unilateral declaration that the Arbitration was "over" were premature, incomplete, and self-serving declarations of early victory.

The invoice for legal services, the foundation of the contract claim, was premature. The contingency—the successful result of the case—had not yet occurred when Appellant invoiced Client on February 17, 2021. Indeed, Appellant explained it sent the invoice to help bolster Client's claim for attorney's fees in the arbitration. However, Appellant calculated the fee based on an interim and incomplete ruling from the Arbitrator. The interim ruling was not only subject to adjustment and modifications, but it was under legal challenge in the D. J. Action, and it was later modified and adjusted, diminishing the benefit to the Client[4].

Furthermore, even if the award stood without alteration or amendment, the preliminary award was not a settlement or judgment as a matter of law. Appellant ignores this reality. An arbitration award *is not a self-executing final judgment or settlement*. Under the South Carolina Uniform Arbitration Act, the decision of an arbitrator may be (a) confirmed, (b) vacated, or (c) modified. It is not a judgment of the court until a timely motion to vacate or modify the award is denied and the award is confirmed as a judgment by a court of law.[5] The applicable statutory provisions make this abundantly clear:

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[4] Client settled the first portion of the arbitration and paid $2,950,000 to the arbitration claimant, not the $2,640,715, upon which Appellant calculated the "savings" for its reverse contingency fee computation. Clearly the claim was unliquidated at the time Appellant submitted the premature invoice. (*see* interest discussion, *infra.* Section III).

[5] The Federal Arbitration Act has similar provisions. See 9 U.S.C §9-12. Of course, the parties could willingly settle and pay an award without this formality, but settlement did not occur until months after Appellant withdrew from the D. J. action and refused to proceed further in the arbitration.

SECTION 15-48-120. Confirmation of an award.

Upon application of a party, the court shall confirm an award, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in Sections 15-48-130 and 15-48-140.

SECTION 15-48-130. Vacating an award.

(a) Upon application of a party, the court shall vacate an award where:

(1) The award was procured by corruption, fraud or other undue means;

(2) There was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;

(3) The arbitrators exceeded their powers;

(4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of Section 15-48-50, as to prejudice substantially the rights of a party; or

(5) There was no arbitration agreement and the issue was not adversely determined in proceedings under Section 15-48-20 and the party did not participate in the arbitration hearing without raising the objection;

But the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

(b) An application under this section shall be made within ninety days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud, or other undue means, it shall be made within ninety days after such grounds are known or should have been known.

(c) In vacating the award on grounds other than stated in item (5) of subsection (a) the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence thereof, by the court in accordance with Section 15-48-30, or, if the award is vacated on grounds set forth in items (3) and (4) of subsection (a) the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with Section 15-48-30. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

(d) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award.

SECTION 15-48-140. Modification or correction of award.

(a) Upon application made within ninety days after delivery of a copy of the award to the applicant, the court shall modify or correct the award where:

(1) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;

(2) The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(3) The award is imperfect in a matter of form, not affecting the merits of the controversy.

(b) If the application is granted, the court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the court shall confirm the award as made.

(c) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

SECTION 15-48-150. Judgment or decree on award.

Upon the granting of an order confirming, modifying, or correcting an award, judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto, and disbursements may be awarded by the court. (emphasis added).

In the case at hand, Appellant moved for confirmation of the award per S.C. Code Ann. § 15-48-120. Opposing counsel filed a timely motion to vacate per S.C. Code Ann. § 15-48-130. Appellant withdrew from the case before the resolution of either motion. No judgment or obligation could ensue as a matter of law until resolution of the competing motions. Nonetheless, Appellant sent an invoice to Client based upon an incorrect computation before the resolution of either motion. Replacement counsel completed the arbitration and the pending motions in the D. J. Action many months after Appellant issued the invoice for the full contingent fee.

Even assuming Appellant was engaged on a limited scope for "an arbitration", at the time Appellant issued its invoice, Appellant's unfinished business included: (a) the remaining issues in the arbitration case: the final award of attorney's fees and costs, (b) the resolution of the pending motions to vacate and/or confirm the award, and (c) the DJ action in which the arbitration motions were embedded. Client was forced to resolve all these issues without Appellant's representation with alternate legal counsel.

F. Plaintiff Withdrew From Representation of Defendant before Completing the Full Scope of its Representation; Therefore, the Plaintiff did not Earn the Contingent Fee.

According to the Amended Fee Agreement, Plaintiff's scope of work included employment "to represent Client as legal counsel for purposes in connection with the project known as

Brookland in West Columbia, South Carolina that is under construction by Carter & Carter Construction, LLC." The agreement notes the claim is subject to "an arbitration" but it nowhere states that Attorney's scope is limited to certain issues, a number of appearances, a limited stage of proceedings, or a limited number of hearings. *Id.* To the contrary, the agreement contemplates handling matters "arising out of the Client's claims against Contractor or other parties to any proceeding covered by this Fee Agreement." *Id.* A prudent Client could never deduce from the agreement and the course of dealing that it had engaged Appellant on a limited "a la carte" basis, opening itself up to the obligation to pay huge contingent fee and nonetheless engage new lawyers to complete the work another law firm started. The facts of the case are contrary to such an unreasonable limitation of Appellant's scope of work.

It is undisputed that Appellant's scope of work included completion of the D. J. Action. Appellant's testimony on this point is completely uncontradicted. Appellant's expert also acknowledged that Appellant billed hourly fees to the D. J. action and Appellant was paid for the work (R.pp. 538-607). Appellant acknowledged its responsibility for the work, even after it claimed the arbitration was "over" (R.p. 618). Appellant remained sole counsel of record in the D. J. action, fully responsible for that scope of work as a matter of law, until it unilaterally demanded to be relieved as counsel.[6]

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[6] While Appellant claims it was constructively discharged from the work based on claims that Henry Brown agreed to assume responsibility for the case, neither Mr. Brown nor his firm ever made a formal appearance in the DJ case. Until formally relieved, Appellant in fact remained fully responsible to Client regardless of any statements from Mr. Brown who would ultimately leave the case for health reasons (to have a heart transplant). *See Ex Parte Strom*, 334 S.C. 257, 539 S.E. 2d 699 (2000). Furthermore, Mr. Brown's email suggesting he would assume responsibility for the DJ case occurred subsequent to Appellant's refusal to participate further in the arbitration case and incorrect assumption that the arbitration was "over". Additionally, Client and attorney did not reach any agreement on the remaining scope of Appellant's responsibilities during that call. ("Bundy: So, you're going to take over the arbitration, whatever is left of it and whatever follows. What about the current case in Common Pleas. Mundy: I don't think that's what's been agreed to, and its still on the table. So, I'll interject there.... the arbitration is not over yet.... Bundy: Well, I'm certainly not going to do it...." The parties were at impasse: "Bundy: ...if we have a dispute later about whether I'm in breach of contract for failing to do what I said I was going to do, then that's just what we'll have." The full context of the Brown communication is also found in the audio portion of the record. In the full context, Appellant unilaterally declared the arbitration over, leaving the Client with a need to retain new counsel

From the record and testimony, it is manifest that:

1. Appellant did not participate or complete the remaining arbitration which involved the same parties, same project, same arbitrator, same witnesses, and same issues. The arbitration was not in fact "over" but rather continuing, and the Client had no appreciation or understanding that Appellant would declare an end to the case until February 2021. However, for whatever reason, Appellant decided to terminate representation of the Client in the arbitration on February 17th, 2021, "Our fee agreement does not include another arbitration..." (R.p. 618). Appellant also incorrectly forecasted that the arbitration was "over." This plainly occurred prior to meeting the contingency.[7]
2. Appellant did not complete the companion proceeding (the D. J. Action) which was within Appellant's scope of work and for which Appellant had been compensated in part. Nonetheless, Appellant insisted that it be relieved as counsel in that Action. Furthermore, the outcome of the Arbitration was inextricably tied to the outcome of the D. J. Action. Without resolution of the D. J. Action, the Arbitration could not become final, and the Client could not extricate its assets from the Clerk of Court.
3. The final settlement and outcome of the Arbitration and D. J. Action occurred through alternate representation at considerable additional cost to Client.
4. Appellant withdrew from both the Arbitration and the Declaratory Judgment Action before the matters were complete in the sense of settlement, judgment, or recovery.

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to finish the arbitration. The arbitrator in fact determined the arbitration was not "over." Thus, client was placed in the awkward position of finishing at least part of the arbitration Appellant started with new counsel. Meanwhile, Client had, upon the advice and recommendation of Appellant, posted cash bonds of more than seven million dollars which needed to be resolved in the D. J. Action.

[7] Even if Client constructively terminated client, it would not change the result. Under the rules, Client may discharge a lawyer at any time, subject to the obligation to pay reasonable fees. If termination occurred prior to the contingency, Appellant's fees must be "reasonable." *See* South Carolina Rules of Appellate Procedure, Rule 407. Model Rule 1.5 comment [1].

5. Within 90 days of the final resolution of the D. J. Action, Client paid Appellant an additional $150,000.00 computed based on Appellant's initial hourly rates computed from Appellant's estimated hours. Appellant has been compensated for more than $250,000.00 for legal fees in this case. The uncontracted testimony is that Client accepted Appellant's estimated hours. According to Appellant: "$117,960.00 of billable hours was spent . . . essentially preparation for and attendance at the Arbitration hearing . . . further at least 100 hours in additional hours were spent in additional time" (R.p. 478). Client paid the $117,960 at face value based on the time records. Client then paid additional sums to law firm[8], based on the ratio of hours between Bundy and McDonald. The additional payment was based, in part, on Appellant's time records and normal hourly fees to the extent Appellant kept records and Appellant's estimate of "at least 100 hours" to the extent Appellant did not keep accurate time records. Thus, the Trial Court correctly applied principles of contract law in finding that Appellant did not meet the contingency contemplated by its agreement. Appellant has been more than compensated for its work and is not owed any additional funds. Accordingly, Respondent requests that this Court affirm the decision of the Trial Court.

II. THE TRIAL JUDGE'S ORDER SATISFIED THE REQUIREMENTS OF RULE 52(A), SCRCP.

The Order of March 13, 2025 (the "Order") (R.p. 1), contains thirty (30) separate findings of fact supported by references to the transcript or exhibits, followed by a discussion of the applicable law and legal basis for the decision. This format meets the requirements of Rule 52(a), SCRCP. The South Carolina Rules of Civil Procedure require that in all actions tried upon the facts

[8] Client split the additional hours between Bundy and McDonald based upon the prior division of labor in Appellant's time records.

without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon. Rule 52(a), SCRCP. In applying this requirement, our courts have adopted this practical approach:

> We do not require a lower court to set out findings on all the myriad factual questions arising in a particular case. *See Golf City, Inc. v. Wilson Sporting Goods, Co., Inc.*, 555 F.2d 426 (5th Cir. 1977). But the findings must be sufficient to allow this Court, sitting in its appellate capacity, to ensure the law is faithfully executed below. The absence of factual findings makes our task of reviewing the court order impossible because "the reasons underlying the decision [are] left to speculation." *Kiawah Property Owners Group v. Public Serv. Com'n of South Carolina,* 338 S.C. at 96, 525 S.E.2d at 866 (quoting *Able Communications, Inc. v. S.C. Public Serv. Comm'n*, 290 S.C. 409, 411, 351 S.E.2d 151, 152 (1986)). To leave the chore of sorting through the record to review contradictory testimony taxes the judicial system and is unfair to the litigants as well as the lower court to whose factual determinations we give deference. *See Welsh Co. of California v. Strolee of California, Inc.*, 290 F.2d 509 (9th Cir. 1961).

In re Treatment and Care of Luckabaugh, 351 S.C. 122, 133, 568 S.E.2d 338, 343 (2002).

In *Luckabaugh*, the Supreme Court vacated a circuit court order for failing to comply with Rule 52(a) because the order provided no findings of fact to substantiate its ultimate legal conclusion. *Id.* at 134, 568 S.E.2d at 343-44. The Court reasoned that leaving the chore of sorting through the record and reviewing contradictory testimony both taxed the judicial system and was unfair to the litigants and the lower court, whose factual determinations are given deference. *Id.* at 133, 588 S.E.2d at 343.

Comparatively, in *Church v. McGee*, 391 S.C. 334, 346, 705 S.E.2d 481, 487 (Ct. App. 2011), this Court determined that a circuit court order did not violate Rule 52(a), SCRCP when it failed to make an explicit finding of fact concerning the credibility of a witness's testimony. In *Church*, this Court cited *Luckabaugh* for the proposition that a trial courts complies with Rule 52(a), SCRCP, when it adequately states the basis for the result it reaches. *Id.*

As stated above, the matter at issue in this case is whether Appellant completed its scope of work to earn its reverse contingent fee. In the Order's findings, the court specifically notes that

it found that, "on February 12, 2021, neither the arbitration case nor the Declaratory Judgment case was concluded on that date." This finding is substantiated by the prior eleven findings of fact that lay out the series of events that lead to the controversy at issue. Further, a subsequent finding notes that the arbitrator's decision on April 14, 2021, "rendered the arbitration award of January 4, 2021, which is the basis for the contingency fee claim, to be a preliminary and tentative decision rather than the outcome of the arbitration case." This finding of fact is supported by the preceding findings in the order, all of which cite to the record as a basis for the Trial Court's decision.

The final finding in the Order propounded that the Court found that Appellant did not complete the arbitration or the underlying Civil Action; hence the primary issue to be resolved is whether Appellant earned the full contingent fee, and if not, whether Appellant is due any additional attorneys' fees beyond what was already paid. After these findings, a comprehensive analysis resolves the issue of whether Appellant was compensated for its services.

Appellant asserts in its brief that, "[t]he Trial Court in this instance, however, failed to make such separate findings of fact and conclusions of law." Further, Appellant asserts that it has been prejudiced by this failure due and owing to the impossibility for Appellant or this Court to determine which finding the Trial Court considered to be a finding of fact or conclusion of law." *Id.*

Appellant's bare assertion does not assert which findings it takes issue with but rather makes a general assertion of the Order's failure to comply with Rule 52, SCRCP. Such a bare statement hardly deserves consideration in this appeal and Appellant's lack of effort in voicing its argument is illustrative of the argument's merit.

As noted above, the Order contains thirty (30) findings, all of which are substantiated by citations to the record. Further, the findings contained in the Order clearly state the basis for the Trial Court's decision. Thus, the Trial Court's Order complies with Rule 52(a), SCRCP.

III. THE EVIDENCE IN THE RECORD SUPPORT'S THE TRIAL COURT'S FINDING THAT APPELLANT WAS NOT ENTITLED TO PRE-JUDGMENT INTEREST ON THE PREMATURE INVOICE.

Appellant did not challenge section II of the Circuit's Court determination of a reasonable attorney's fee in this case. Instead, Appellant asserts a claim for pre-judgment interest on the full amount of Appellant's presumptive contingent fee invoice. This claim rises and falls on the validity of the early invoice.

Appellant simply asserts "The amount of the Fee was a sum certain". This is wishful thinking. When a lawyer who is engaged for a contingency fee withdraws before recovery, the lawyer is entitled to either no fees at all or the reasonable value of the services rendered on a *quantum meruit* or lodestar method of determination. There is not a single reported case in any of the fifty United States or territories thereof which holds that a lawyer who does not meet the contingency may recover a full contingent fee. The reason for this is manifest and obvious. If lawyers could simply abandon clients with or without cause without completing their work, clients would needlessly be at the mercy of the legal profession.[9]

In the case at hand the Court properly applied the analysis of South Carolina Rule of Appellate Procedure, Rule 407, model Rule 1.5 to determine a reasonable fee. Plaintiff's witness acknowledged that $400 per hour for Mr. Bundy's time on this file and $300 per hour for Mr. MacDonald's time were reasonable hourly rates for their work. after undertaking this analysis, the

[9] For this reason alone, the case at hand is of immense importance to the legal profession in South Carolina. Under Plaintiff's reasoning, a lawyer may declare a case "over," collect a full contingent fee before a client realizes any benefit or result and force the Client to retain alternate counsel.

trial court determined the Appellant's invoice for the full contingent fee was: 1) premature, 2) unjustified, 3) based upon a tentative arbitration award which was later adjusted and amended. While "[t]he law has long allowed prejudgment interest on obligation 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 Contr., Inc v. Court St., LLC*, 369 S.C. 121, 133, 631 S.E.2d 252, 259 (2006). A mere pre-bill which is not yet due is an unliquidated, contingent obligation.

Without unnecessarily laboring this Court again with the facts of this case, Appellant prematurely invoiced the client before a final judgment was obtained and based its claim to the full contingent fee on a preliminary award. Had Appellant finished its scope of work under the contract, its fee would have been demandable and capable of being reduced to certainty *upon recovery or settlement*. However, Appellant incorrectly calculated a presumptive fee based on a bad forecast and billed the client early because "a paid invoice would 'make it easier to get attorney's fees in the end.'" (T. P. 114) (R.p). Hence, Appellant's contingent fee claim was not demandable at the time it was sent to Respondent. Thus, the Trial Court correctly determined that the Appellant was not entitled to pre-judgment interest on the premature invoice for the unearned contingent fee because its fee was neither demandable nor capable of being reduced to certainty before the conclusion of the matter. Appellant took no exception to Section II of the Court's order, and does not argue that the Court improperly computed or applied the lodestar factors, and did not raise prejudgment interest as a factor in that computation.

CONCLUSION

For the foregoing reasons, the Trial Court's order should be affirmed.

Respectfully submitted,

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