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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY

The Honorable Walton J. McLeod
Circuit Court Judge

Appellate Case No. 2025-000905

Bundy McDonald, LLC, Appellant,

v.

WECO River District, LLC, Respondent.

APPELLANT'S AMENDED FINAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

(1) The Trial Judge committed errors of law in failing to apply the plain language of an unambiguous contract between Appellant and Respondent.

(2) The Trial Judge in this non-jury case committed errors of law in failing to make separate findings of fact and conclusions of law in accordance with the mandate of Rule 52, SCRCP.

(3) The Trial Judge committed errors of law in failing to award pre-judgment interest.

STATEMENT OF THE CASE

The action which is the subject of this appeal was originally filed by Appellant, Bundy McDonald, LLC, (hereinafter sometimes called "Appellant" or "Law Firm") on November 17, 2021. The action arose out of an unpaid legal fee earned pursuant to relief obtained in an arbitration ("The Arbitration") that Law Firm was hired to take over and represent the Respondent, WECO River District, LLC (hereinafter sometimes called "Respondent" or "Client").[1] The Complaint contained a single cause of action for breach of contract. (R. p. 29). On January 14, 2022, Respondent filed an Answer to the Complaint that contained a general denial. (R. p. 32). The Answer did not contain any counter-claims. Id. On February 14, 2022, Respondent filed an Amended Answer. (R. p. 34). The Amended Answer did not contain any counter-claims. Id. In the stead of any counter-claims, Respondent asserted seven (7) affirmative defenses. Id.

This matter was tried before the Trial Court on September 26, 2024 (R. p. 37). On March 13, 2025, the Trial Judge issued an order in favor of Respondent finding that the contingency Fee had not been earned AND that Appellant had been "reasonably compensated in full for its services." (R. pp. 1–25).

[1]The arbitration was pending when Appellant was hired. (Plaintiff's Exs. 1 and 4) (R. pp. 255, 270). Respondent was represented by Henry Brown Esq. at the time of the filing of the arbitration. Id.

On March 24, 2025, Appellant filed a timely motion to alter or amend the March 13, 2025 Order (R. p. 253). On April 8, 2025, the Trial Court entered an order denying the Appellant's motion to alter or amend. (R. p. 26). On May 8, 2025, Appellant filed its Notice of Appeal to this Court.

STATEMENT OF THE FACTS

On November 29, 2018, Appellant and Respondent entered into a valid and enforceable contract based upon an hourly fee arrangement ("Hourly Fee Agreement") (Plaintiff Ex. 4) (R. p. 270). The Hourly Fee Agreement was for The Arbitration which arose out of a construction dispute between Respondent and its general contractor for an apartment project.

On November 15, 2019, the parties entered into an amended valid and enforceable contract based upon an hourly fee arrangement and a reverse contingency fee ("The Contract"). (Plaintiff's Ex. 7) (R. p. 275). The Contract superseded and replaced the Hourly Fee Agreement. The Contract required Respondent to pay hourly fees to be capped at $100,000.00 and "25% of any reduction of the total amount of claims made by the Contractor…AND 25% of any in kind settlement **or relief obtained** AND the same percentage of any funds actually collected whether by settlement or judgment…" (Id.) (emphasis supplied). The total fee was to be capped at $500,000.00. (Id.).

On December 23, 2019, the general contractor in The Arbitration filed a mechanic's lien claim in the amount of $3,981,919.92. (Plaintiff's Ex. 8) (R. p. 278). On February 2, 2020, the general contractor in The Arbitration filed an amended claim in the amount of $4,029,749.43. (Plaintiff's Ex. 9) (R. p. 285).

On February 27, 2020, the arbitrator in The Arbitration entered a final scheduling order that required Respondent to submit a "Final Claim" by March 16, 2020. (Plaintiff's Ex. 10) (R. p. 288).

The Arbitration was held on July 7, 8, 14, and 15 in Summerville, SC. (Plaintiff's Ex. 11) (R. p. 289). The Arbitration resulted in an award to the general contractor in the amount of $2,640,715.80 ("Arbitration Award"). (Id.). The Arbitration Award reduced the general contractor's claim by $1,389,033.79. (Id.). This necessarily provided relief to Respondent in the same amount. (Id.).

On February 17, 2021, Plaintiff issued an invoice to Respondent for $347,258.45 (the "Fee") (Plaintiff's Ex. 15) (R. p. 299). This amount was based upon The Contract between the parties requiring a fee of "25% of any reduction of the total amount of claims made by the Contractor…AND 25% of any in kind settlement **or relief obtained**" by Appellant for Respondent in The Arbitration. (Plaintiff's Ex. 7) (R. p. 275) (emphasis supplied). It is uncontradicted that Appellant obtained for Respondent the relief upon which the Fee was based in The Arbitration.

Respondent failed to pay the invoice in full. Moreover, the Fee did not reach the $500,000.00 cap negotiated by the parties.

At trial, Appellant presented the testimony of Thomas A. Pope, Esq.— a licensed South Carolina lawyer with 50 years of experience. Mr. Pope was qualified without objection as an expert in "attorney fee disputes, legal fee contracts, and reasonable attorneys fees." (Transcript p. 24) (R. p. 60:15-20). He testified that he reviewed all the relevant information and opined that the Fee was owed in full.[2]

Respondent did not provide any witness qualified to perform any such analysis or give such testimony.

[2] Mr. Pope gave credit due for the $150,000.00 voluntarily paid by Defendant on May 24, 2022 (Plaintiff's Ex. 20) (R. p. 338).

STANDARD OF REVIEW

The matter before the Trial Court was a non-jury matter. This breach of contract action is an action at law. Respondent did not plead any counter-claims. This Court's scope of review is limited to correction of errors of law, and factual findings are reviewed for any evidence which supports the Trial Court's finding. *See Townes Associates, Ltd. v. City of Greenville,* 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976) ("In an action at law, on appeal of a case tried without a jury, the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings."); *Myers v. Nat'l States Ins. Co.,* 362 S.C. 41, 44, 606 S.E.2d 486, 488 (Ct. App. 2004); *Osterneck v. Osterneck,* 374 S.C. 573, 577, 649 S.E.2d 127, 129 (Ct. App. 2007) ("In a law case tried by the judge without a jury the standard of appellate review is limited to a correction of errors of law and a determination if there is any evidence to support the factual findings of the trial judge.").

Questions of law, however, are reviewed de novo. *Callawassie Island Members Club, Inc. v. Dennis*, 425 S.C. 193, 198, 821 S.E.2d 667, 669 (2018).

The construction of a clear and unambiguous contract is a question of law for the court. *S.C. Dep't of Natural Resources v. Town of McClellanville,* 345 S.C. 617, 550 S.E.2d 299 (2001).

LEGAL ARGUMENT

I. The Trial Judge committed errors of law in failing to apply the plain language of an unambiguous contract between Appellant and Respondent.

"The elements for breach of contract are the existence of the contract, its breach, and the damages caused by such breach." *Branche Builders, Inc. v. Coggins,* 386 S.C. 43, 48, 686 S.E.2d 200, 202 (Ct. App. 2009).

The only party in this action to bring a breach of contract claim in this action is Appellant. It is undisputed that the parties entered into a valid and enforceable contract. (Plaintiff's Ex. 7) (R.

p. 275). It is undisputed that Appellant obtained the relief upon which the Fee was based for Respondent in the Arbitration. (Plaintiff's Ex. 11) (R. p. 289). It is undisputed that Respondent has not paid Appellant in full—resulting in damages to the Appellant in the amount of $197,258.45.[3] There was no claim—nor any finding—that The Contract was ambiguous.

Notwithstanding the foregoing, the Trial Court ruled that Appellant failed to meet a "contingency" in The Contract in order for the Fee to be due. The Trial Court ruled that Appellant did not obtain a "final outcome". This was error. Nowhere in The Contract do the words "final outcome" appear. (Plaintiff's Ex. 7) (R. p. 275). The Contract expressly stated it was for "an arbitration." (Plaintiff's Ex. 7) (R. p. 275). Appellant represented Respondent in The Arbitration and obtained a reduction of claim and relief for the Respondent upon which the Fee was based. Notwithstanding the reduction and relief obtained and the plain language of The Contract, the Trial Court incorrectly ruled that Appellant must continue to arbitrate new matters—apparently in perpetuity. Indeed, the Arbitrator expressly ruled that certain issues/claims were not ripe for The Arbitration for which Appellant agreed to represent Respondent. (Plaintiff's Exs. 13 and 14) (R. pp. 294 and 298). Nothing in the Contract, however, required Appellant to continue to arbitrate matters that were not subject to The Arbitration upon which the Fee and The Contract were based.

The sole witness for Respondent explained on direct testimony exactly what happened after The Arbitration upon which the Fee was based and testified as follows:

> **Q.** And the SCDOT claim as issued by this clarification on the last page, can you read that into the record, please? The last page of Exhibit No. 10, second to last paragraph.
>
> **A.** With the exception of any claim by SCDOT for damage to its roadway, which is not ripe for review, and other than those characterized in the exhibits presented

[3]This amount is calculated by the total Fee of $347,258.45 (R. p. 299) minus the $150,000.00 (R. p. 338) paid by Respondent. This amount does not include pre-judgment interest on the sum certain amount pursuant to S.C. Code Ann. Section 34-31-20—as will be discussed below.

> by WECO during this proceeding, no evidence or claims for defective work were presented by WECO and were considered or encompassed by the arbitration award.
>
> **Q.** And that's February 15, 2021, right?
>
> **A.** Right.
>
> **Q.** Now, what was your understanding as to whether or not you could continue to pursue the SCDOT claim with the same impound arbitrator? What was your understanding of that?
>
> **A.** Well, at this time, Mr. Bundy told us that we could not pursue it with the same arbitrator. And as you've heard, by this time, we were, also, talking with our longstanding counsel, Mr. Brown, and he was telling us different, that that's not at all how he interpreted this document.
>
> **Q.** Okay. Now, how did -- tell us -- this is important, so tell us how those conversations evolved.
>
> **A.** With Mr. Brown?
>
> **Q.** With Mr. Bundy and then Mr. Brown.
>
> **A.** I don't recall if it was right before this or right after, but Mr. Bundy explains very clearly that he would not be a part of any other arbitration or hearing that had to do with SCDOT or the defective work. He clearly said that was not in his scope and he would not have any part of it.

(Trial Transcript, pp. 97–98) (R. pp. 133:5–134:7).

The Trial Court erred in failing to enforce the plain language of The Contract. The fact that The Contract is one for legal services does not provide the Trial Court authority to ignore its plain language. The Order(s) of the Trial Court should be reversed and judgment entered in favor of Appellant in the amount of $197,258.45 plus pre-judgment interest.

II. The Trial Judge in this non-jury case committed errors of law in failing to make separate findings of fact and conclusions of law in accordance with the mandate of Rule 52, SCRCP.

Rule 52, SCRCP, requires that a trial court—sitting without a jury—"shall find the facts specially and state separately its conclusions of law thereon." The Trial Court in this instance, however, failed to make such separate findings of fact and conclusions of law. Appellant 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.

As such, the standard of review applicable to this appeal would be pure speculation—vitiating the very purpose of the requirements of Rule 52, SCRCP.

III. The Trial Judge committed an error of law in failing to award pre-judgment interest.

The amount of the Fee was a sum certain. As such, Appellant is entitled to pre-judgment interest pursuant to S.C. Code Ann. Section 34-31-20.

The Trial Court erred in refusing to award pre-judgment interest in the amount of $78,808.05. (R. pp. 85:19–86:1).

CONCLUSION

For the reasons stated herein, the Orders of the Trial Court should be reversed and judgment entered in favor of Appellant against Respondent for the full amount of its claim of $276,066.50. This matter should be remanded to the Trial Court for the sole purpose of calculating pre-judgment interest through the date of the remittitur from this Court.

Respectfully submitted,
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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Amended Final Brief complies with Rule 211(b), SCACR.

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