STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

IN THE NINTH JUDICIAL CIRCUIT

THOMAS H. MORGAN

Plaintiff,

v.

JOHN L. GILBERT, STUART L. FRED, BELLA VISTA PARTNERSHIP, BOMASADA GROUP, INC., A TEXAS CORPORATION, BOMASADA INVESTMENT GROUP II, A TEXAS LIMITED LIABILITY COMPANY, LAURALIS MANAGEMENT, INC., A TEXAS CORPORATION and 150 BEE STREET, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY,

Defendants.

CASE NUMBER 2012-CP-10-00580

ORDER DENYING DEFENDANTS' MOTION TO VACATE JUDGMENT PURSUANT TO RULE 60(b), SCRCP, AND GRANTING PLAINTIFF'S MOTION FOR AWARD OF PREJUDGMENT AND POST-JUDGMENT INTEREST

The present matter is a dispute between investors in a real estate development. On March 13, 2026, the attorneys for the Defendants filed a Motion for Relief from an Order of Judgment pursuant to Rule 60(b), SCRCP. On March 14, 2026, the attorneys for the Plaintiff filed a Motion for Assessment and Award of Prejudgment Interest and Confirmation that Post-Judgment Interest applies. This matter came before the Court for hearing April 16, 2026[1]. Present for and representing the Plaintiff were Robert A. Bernstein, Esquire of Bernstein & Bernstein, P.A. and W. Andrew Gowder, Esquire of Austin & Gowder, LLC. Present for and representing the Defendants was Stephen P. Groves, Sr., Esquire of Butler Snow LLP. Having reviewed the

[1]Legal counsel for the Defendant, John L. Gilbert ("Mr. Gilbert"), had NEF notice of this hearing from the Office of the Charleston County Clerk of Court, as well as by a copy of the hearing scheduling e-mail

parties' written submissions and heard the attorneys' respective oral arguments, the Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. On January 26, 2012, the Plaintiff filed this action asserting various causes of action relating to the development and construction fo a building located at 150 Bee Street, Charleston, South Carolina.

2. This dispute was referred to binding arbitration.

3. On April 10, 2023, The Arbitration Panel made an award in favor of the Plaintiff against the Defendants "in the total amount of $2,976,234.00, excluding attorneys' fees and costs[2].

4. On June 19, 2023, the Arbitration Panel issued its final award to the Plaintiff in the amount of $3,672,743.00, which included he original monetary damages award, awarded legal fees, and awarded incurred costs and expenses[3].

5. The Arbitration Panel did not award interest upon the amount claimed by the Plaintiff prior to the Arbitration Award.

6. On June 30, 2023, the Defendants moved to vacate and/or modify the Arbitration Award.

7. On July 17, 2023, Mr. Morgan moved to have the Arbitration Award confirmed.

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from this Circuit Court. Neither Mr. Gilbert nor his legal counsel appeared.

[2] *Id.*, at p.1.
[3] *Id.*, at p.8-9.

8. By Order dated February 6, 2024, this Court confirmed the Arbitration Award and denied the Defendants' collective request to vacate or modify the Arbitration Award[4]; the Confirmation Order did not address either pre-judgment or post-judgment interest. The Confirmation Award was filed without the submission or entry of a Form 4 Order.

9. The Defendants filed an appeal of the Confirmation Order on March 4, 2024.

10. On April 15, 2024, the Defendants filed a Motion to Stay the enforcement of the Confirmation Order, asserting that no supersedeas bond or security should be required for the imposition of a stay because, inter alia, the Plaintiff was protected due to his ability to collect post-judgment interest at the statutory rate if the judgment was upheld on appeal.

11. On May 8, 2024, this Court issued a stay of the execution of the Confirmation Order without requiring the posting of a supersedeas bond or other security.

12. On December 10, 2024, the Plaintiff filed a Motion to Lift the stay imposed by this Court on May 8, 2024.

13. After a hearing conducted on March 4, 2025, this Court entered its order on March 8, 2025 denying the Motion to lift the stay.

14. On March 26, 2025, the South Carolina Court of Appeals affirmed the Confirmation Order[5].

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[4] Confirmation Order, p.1.

[5] *See* Morgan v. Gilbert, 2025 WL 928676 (S.C.App., 26 March 2025), *rehearing denied* (6 June 2025), *certiorari denied* (S.C., 13 August 2025). The Court of Appeals issued the *remittitur* therein on 21 August 2025.

15. By Order dated June 6, 2025, the South Carolina Court of Appeals denied the Defendants' petition for rehearing, and ordered that the May 8, 2024 Order staying the case be lifted.

16. After the Defendants sought a Writ of Certiorari to the South Carolina Supreme Court, on August 13, 2025 the South Carolina Supreme Court issued an Order denying the Writ of Certiorari.

17. On August 28, 2025, the attorneys for the Plaintiff submitted a proposed Execution to the Court; the Clerk of Court rejected the request for the issuance of the Execution because no Form 4 had been filed with the Confirmation Order.

18. Prior to October 14, 2025, the attorneys for the Plaintiff submitted a proposed Form 4 to the Court for execution, which this court received in its capacity at Chief Administrative Judge for Common Pleas.

19. On October 14, 2025, the Court entered a Form 4 with the notation that it was for the docketing of the Order dated February 6, 2024, and the date of enrollment of the judgment was thus February 6, 2024.

20. All counsel in the case were notified electronically by the Court of the entry of the Form 4 on October 14, 2025.

21. On October 17, 2025, the Plaintiff submitted a proposed Transcript of Judgment in the sum of $3,672,743.00[6] which also provided that "NOTICE IS GIVEN that interest will accrue from the date of docketing of judgment, October 14, 2025[7].

22. On November 13, 2025, the Plaintiff submitted a proposed Amended Transcript of Judgment in the sum of $3,672,743.00[8] which also provided that "NOTICE IS GIVEN that interest will accrue from the date of docketing of judgment, October 14, 2025" from the date of docketing.

23. All counsel in the case were notified electronically by the Court of the entry of the Amended Transcript of Judgment on November 13, 2025.

24. On November 17, 2025, the Defendants filed a Notice of Appeal of the entry of the Form 4 and the Amended Transcript of Judgment.

25. On November 18, 2025, the Defendants paid Mr. Morgan the sum of $3,709,851.67.[9]

26. On December 12, 2025, the Plaintiff filed a Motion for the assessment and an award of prejudgment and post judgment interest upon the amount awarded in the Arbitration Award and the Confirmation Order.

27. After a hearing conducted on January 7, 2026, this Court issued an Order on

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[6] Transcript of Judgment, p.2
[7] *Id*.
[8] Transcript of Judgment, p.2.
[9] [Mr. Morgan's] Memorandum in Support of [Renewed] Motion for Assessment and Award of Pre-Judgment Interest and Confirmation the Post-Judgment Interest Applies, p.9, *Post Judgment Interest Calculator* attachment.

January 9, 2026 denying the Plaintiff's Motion for an award of prejudgment and post-judgment interest, without prejudice, for the reason that the pending appeal of the Form 4 and the Transcript of Judgment divested this Court of jurisdiction.

28. On March 19, 2026, the South Carolina Court of Appeals dismissed the Defendants' appeal of the entry of the Form 4 and the Transcript of Judgment, finding that the Form 4 and the Transcript of Judgment are not appealable orders, and that the appellate court lacked jurisdiction because the Defendants had not filed the appeal within thirty days after receipt of written notice of those pleadings.

29. On March 13, 2026, the Defendants filed the present Motion to Vacate the Form 4 and the Transcript of Judgment pursuant to Rule 60(b), SCRCP.

30. On March 24, 2026, the Plaintiff filed a renewed Motion for the assessment of prejudgment and post-judgment interest.

Based upon the foregoing FINDINGS OF FACT and the applicable South Carolina law, this Circuit Court makes the following:

CONCLUSIONS OF LAW

1. This Circuit Court has subject matter jurisdiction and jurisdiction over the parties to consider and rule upon the pending motions.

2. The Defendant seeks to have this Court vacate the entry of the Form 4 and the Transcript of Judgment pursuant to Rule 60(b), SCRCP, which provides:

> (b) **Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.** On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for

the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud, misrepresentation, or other misconduct of an adverse party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

3. The Defendants have not asserted any grounds to support any assertion that any of the enumerated reasons for relief under Rule 60(b) other than to assert under Rule 60(b)(4) that the Form 4 and Transcript of Judgment were void, arguing that the failure to give prior notice of the entry of the Form 4 and Transcript of Judgment violated due process.

4. A judgment "'is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if [the court] acted in a manner inconsistent with due process of law.'"[10] "'The requirements of due process not only include[s] notice, but also include[s] an opportunity [for the party] to be heard in a meaningful way, and judicial review.' "[11]

5. The entry of the Form 4 and Transcript of Judgment in this case constitute the law of the case.

> Under the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court. C.J.S. *Appeal & Error* § 991 (2008); see also *Bakala v. Bakala*, 352 S.C. 612, 576 S.E.2d 156

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[10] Addison v. Amica Mutual Insurance Co., 2020 WL 5321461, at *4 (D.S.C., 4 Sept. 2020) (*quoting* Schwartz v. United States, 976 F.2d 213, 217 (4th Cir. 1992)).

[11] EverBank v. Scurry, 2015 WL 4755539, at *1 (S.C.App., 12 Aug. 12015) (*quoting* Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 183, 561 S.E.2d 659, 661 (Ct.App. 2002)) (*per curiam*). " '[A] person against whom a judgment or order is taken without notice may rightly ignore it and may assume that no court will enforce it against his . . . property.' " Belle Hall Plantation Homeowner's Association v. Murray, 419 S.C. 605, 618, 799 S.E.2d 310, 316 (Ct.App. 2017) (*quoting* McDaniel v. U.S. Fidelity & Guaranty Co., 324 S.C. 639, 644, 478, S.E.2d 868, 871).

> (2003) (holding that a family court judge could not overrule the prior unappealed order of another family court judge because it had become law of the case); *In re Morrison*, 321 S.C. 370 n. 2, 468 S.E.2d 651 n. 2 (1996) (noting that an unappealed ruling becomes the law of the case and precludes further consideration of the issue on appeal); *Cooper Tire & Rubber Co. v. Perry et al*, 261 S.C. 538, 201 S.E.2d 245 (1973) (holding that where a ruling on a demurrer to complaint is not appealed from, it becomes the law of the case); *Watkins v. Hodge*, 232 S.C. 245, 247, 101 S.E.2d 657, 658 (1958) (refusing to consider jurisdictional matter of underlying case where issue had been ruled upon and not challenged on appeal).

Judy v. Martin, 381 S.C. 455, 458-459, 674 S.E.2d 151, 153 (2009). In the present case, although the Defendants attempted to appeal the entry of the Form 4 and the Transcript of Judgment, they failed to do so in a timely manner and the appeal was dismissed. For this reason, the entry of the Form 4 and the Transcript of Judgment are unappealed rulings of this lower court and became the law of the case, and the Defendants cannot now seek to litigate the entry of those matters by way of a Rule 60(b) motion.

6. Even if the Defendants were not precluded from litigating the validity of the Form 4 and Transcript of Judgment by reason of the law of the case doctrine, the entry of those forms did not deny the Defendants due process, as they did not affect a substantial right of the Defendants. The entry of a Form 4 is a ministerial act to give information to the Clerk for the entry of the judgment in the Abstract of Judgment, and does not affect a substantial right of the Defendants. The Court of Appeals ruled:

> After careful consideration, we dismiss the appeal for lack of an appealable order. See S.C. Code Ann. 14-3-330 (2017) (providing appellate jurisdiction to review on appeal (1) any intermediate judgment that involves the merits, (2) an order affecting a substantial right when such an order "in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action," (3) a final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment, or (4) an interlocutory order or decree relating to an injunction or appointment of a receiver.

Since the Court of Appeals ruled that the Form 4 and Transcript of Judgment were not appealable Orders, they per se were not an intermediate judgment that affects the merits of the action, nor an Order affecting a substantial right or prevents a judgment from which an appeal can be taken, or a final order affecting a substantial right. The Defendants were provided with notice and an opportunity to be heard in the underlying motion to Confirm the Arbitration Award, and thus were provided due process as to their substantive arguments regarding the enforceability of the underlying Order. The entry of the Form 4[12] reflecting the Confirmation Order date as the date of entry of the judgment do not affect any substantive rights of the Defendants. The Defendants received due process, and Rule 60(b)(4) does not provide a basis to vacate the entry of the Form 4 and the Transcript of Judgment.

7. The Defendants have also asserted that the entry of the Form 4 and Transcript of Judgment are violative of S.C. Code Ann. §15-48-140(a), which requires that an arbitration award may be modified only upon certain grounds asserted within 90 days of the award. The Plaintiff, however, does not seek to modify the award of the Arbitration Panel; it merely seeks that this Court apply the provisions of S.C. Code Ann. §34-31-20 to the award made by the Arbitration panel. It is nonsensical to assert that the accumulation of interest after the award of the Arbitration panel is precluded by the failure of the arbitration panel to address interest after it

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[12] The instructions for the preparation of the Form 4 indicate:
Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
* * *
The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

has made its award; the Arbitration panel would have no way of knowing if the award was to be paid, appealed, ignored or otherwise unpaid after it issues its award, and could have no way of addressing the application of and amount of interest to accumulate upon its award. The application of post-judgment interest does not modify or alter the Arbitration Award, but reflects the legal effect of the Court's judgment under South Carolina law. Since the Plaintiff has only sought to apply statutory interest to the confirmed Arbitration award, and not to modify the award, §15-48-140(a) has no application to the award of interest on the Arbitration award.

8. The statutory 90-day period for seeking to modify an arbitration award further has no application because the Defendants by their conduct prevented the Plaintiff from filing any such motion to modify the award. The final Arbitration Award was entered on June 19, 2023, and the Defendants filed a Motion to Vacate the Arbitration award with this Court on June 30, 2023, a mere 11 days after the entry of the award. The filing of the Motion with this Court divested the Arbitration Panel of further jurisdiction to consider any matter of interest in the arbitration. Because Plaintiff does not seek to modify or correct the Arbitration Award, but instead seeks the statutory consequences of the Court's judgment, S.C. Code Ann. § 15-48-140(a) has no application.

Furthermore, the Defendants have appealed every Order of the Circuit Court, thus preventing the Plaintiffs from ever presenting any motion to amend the arbitration panel with the issue of prejudgment interest. Even if this court were to find that the 90 day provision of S.C. Code Ann. S.C. Code Ann. §15-48-140(a) has application to this matter, the Defendants are estopped from asserting the 90 day jurisdictional argument for the reason that their actions divested the arbitration panel of jurisdiction to even consider the issue if an application to modify the award could have been made.

9. S.C. Code Ann. 34-31-20 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.
> (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. The South Carolina Supreme Court shall issue an order by January 15 of each year confirming the annual prime rate. This section applies to all judgments entered on or after July 1, 2005. For judgments entered between July 1, 2005, and January 14, 2006, the legal rate of interest shall be the first prime rate as published in the first edition of the Wall Street Journal after January 1, 2005, plus four percentage points.

10. 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 and the sum is certain or capable of being reduced to certainty. *Babb v. Rothrock*, 310 S.C. 350, 353, 426 S.E.2d 789, 791 (1993). The fact that the sum due is disputed does not render the claim unliquidated for purposes of an award of prejudgment interest. *Boykin Contr., Inc. v. Kirby*, 748 S.E.2d 795, 800-801, 405 S.C. 631 (Ct.App. 2013). The law permits the award of prejudgment interest when a monetary obligation is a sum certain, or is capable of being reduced to certainty, accruing from the time payment may be demanded either by the agreement of the parties or the operation of law. *Butler Contr., Inc. v. Court St., LLC*, 369 S.C. 121, 133, 631 S.E.2d 252, 259 (2006).

11. While the amount and availability of recovery of the Plaintiff was not certain until the Arbitration Panel issued its award, as of that date, i.e., June 19, 2023, "the monetary obligation is a sum certain, or is capable of being reduced to certainty." The Plaintiff has not sougjht the recovery of interest prior to the June 19, 2023 date of the Arbitration Award.

Accordingly, the award of prejudgment interest is appropriate from June 19, 2023 to the date of the Confirmation Order entered by this Court, i.e. February 6, 2024. Pursuant to S.C. Code Ann §34-31-20 (A), interest should accrue on that amount at the rate of eight and three-fourths percent per annum. The arbitrator's award was dated June 19, 2023 in the amount of $3,672,743.00; applying pre judgment interest from that date to the date of confirmation of the award results in prejudgment interest of $205,145.34.[13]

12. The Defendants are judicially estopped from contesting the assessment of post judgment interest. Defendants' current position objecting to the applicability of post-judgment interest is directly inconsistent with their prior representations to this Court. During earlier proceedings, the Defendants affirmatively argued that post-judgment interest was accruing at a rate exceeding 11.5%. Defense counsel specifically advised the Court that the judgment amount 'increases every day' due to post-judgment interest, and Defendants did not dispute that representation. (See Transcript of May 2, 2024 Hearing, p. 6, 14–15).

> On February 8th of this year, and it took a long time without getting into why, Judge Price entered an order denying our motion to vacate or modify the arbitration award and Judge Price confirmed the award. So interest is now running on the judgment, the South Carolina statutory judgment rate which I believe is currently in excess of 11 and-a-half percent.
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> *Transcript of May 2, 2024 hearing, Page 6, lines 12-18.*
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> And, you know, Judge, to repeat what my colleague, Mr. Ellison, noted. Right now the Plaintiffs are earning 11 and-a-half percent, due to they show interest pending this appeal. They've already made a significant amount of money on this interest which, you know, I guess, that's the rule but as a practical matter, if the Plaintiffs prevail on appeal, you know, this interest will be I wouldn't say a windfall but they're certainly making money . . . . Indeed, as I noted, if they prevail on appeal they will earn a considerable amount of interest that's separate and apart from the underlying judgment.

[13] $3,672,743.00 x .0875/365 x 233 days

> *Transcript of May 2, 2024 hearing, Page 14, line 11 – Page 15, line 1.*

At the conclusion of the hearing, the Court issued a stay without requiring Defendants to post a bond.

> Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding. *See* *Colleton Reg. Hosp. v. MRS Med. Rev. Systs.*, 866 F. Supp. 896, 900 (D.S.C. 1994). The purpose of the doctrine is to ensure the integrity of the judicial process, not to protect the parties from allegedly dishonest conduct by their adversary. *See* *Hawkins v. Bruno Yacht Sales*, 353 S.C. 31, 42, 577 S.E.2d 202, 208 (2003).
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> We now adopt the following elements necessary for the doctrine to apply: (1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent. *See* *Carrigg v. Cannon*, 347 S.C. 75, 83, 552 S.E.2d 767, 772 (Ct. App. 2001).

Cothran v. Brown, 357 S.C. 210, 215-216, 592 S.E.2d 629, 631-632 (2004). *See also, Auto-Owners Ins. Co. v. Rhodes,* 405 S.C. 584, 589, 748 S.E.2d 781, 783 (2013); *Murray v. Estate of Murray, 436 S.C. 99, 105, 871 S.E.2d 173* (Ct.App. 2022);

13. Each of the elements of judicial estoppel are present in this situation. The Defendants have taken two inconsistent positions in the exact same proceeding, they were successful in maintaining that position and were permitted to proceed without the imposition of a supersedeas bond, the current position is an attempt to mislead the court in contradiction to their earlier statements, and the positions ae diametrically inconsistent. Judicial estoppel clearly applies, and Defendants should not be heard to contact the propriety of the assessment of post-judgment interest.

14. The Order confirming the award of the arbitration panel was entered by the Court on February 6, 2024. Although no Form 4 was entered at that time, it was clearly a final judgment, as the Defendants appealed that Order; they could only have appealed a final judgment. Pursuant to S.C. Code Ann. 34-31-20(B), the judgment should draw interest according to law. The Confirmation Order constitutes a final judgment on February 6, 2024, and should draw post-judgment interest pursuant to the dictates of S.C. Code Ann. §34-31-20(B).

15. With pre-judgment interest, the balance due as of the date of the Court Order confirming the award is $3,877,888.34. Post-judgment interest shall accrue from February 6, 2024 to January 14, 2025 at the rate of 12.5% per annum[14]; post-judgment interest shall accrue from January 15, 2025 through the date of partial payment, i.e., November 18, 2025 at the rate of 11.5% per annum[15]; after application of the payment, the remaining balance shall accrue interest at the rate of 11.5% per annum until January 14, 2026; post-judgment interest shall accrue from that date until January 14, 2027 (or such date as full payment is made before then) at the rate of 10.75% per annum.

IT IS SO ORDERED!

Jennifer McCoy
Circuit Judge, Ninth Judicial Circuit

[14] S.C. Supreme Court Order, Interest Rate on Money decrees and Judgments, January 4, 2024.
[15] S.C. Supreme Court Order, Interest Rate on Money decrees and Judgments, January 6, 2025.

Charleston Common Pleas

Case Caption:	Thomas H Morgan VS John L Gilbert , defendant, et al
Case Number:	2012CP1000580
Type:	Order/Other

So Ordered

s/Jennifer B. McCoy #2764