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STATE OF SOUTH CAROLINA COUNTY OF YORK Carolina Real Estate Holdings, LLC, Plaintiff, v. Brilin Electric, LLC and W&L Services, LLC, Defendant.	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT C/A NO.: 2020-CP-46-01145 **ORDER** **ENTERING JNOV AS TO UTPA CLAIM ONLY** ***AND*** **RECONSIDERING ATTORNEY'S FEES AND COSTS**

THIS MATTER came before the Court on February 18, 2026, on remand from the South Carolina Court of Appeals ("COA") "for entry of a JNOV on [Brilin's Unfair Trade Practices Act] claim and reconsideration of the award of attorney's fees [and costs]." *Carolina Real Estate. Holdings, LLC v. Brilin Elec., LLC and W&L Serv.'s, LLC*, No. 6114 (July 2, 2025).[1] The underlying dispute arose from a commercial real estate lease. Defendant/Tenant Brilin leased a commercial unit from Plaintiff/Landlord Carolina Real Estate Holding, LLC—that owned and offered several commercial real estate units for lease—to operate an electrical contracting business.[2] Present at the hearing were Brian Scott McCoy, Esq. for Plaintiff and Nathan Adam

[1] The central and overarching issue involved in this Order is the exercise of discretion. in determining which party (landlord or tenant) is the "prevailing party" for purposes of awarding attorney's fees pursuant to a commercial lease. After a lengthy and adversarial trial, a jury issued its decision awarding Plaintiff $10,513.88 (Plaintiff requested $28,802.76) against the Defendant, and awarding Defendant as to its counterclaim for breach of contract $4,424,75 (100% of the amount it requested) against Plaintiff and $6,089.13 (Defendant requested only a nominal award of $1.00) on a UTPA counterclaim against the Plaintiff. Tr. 645:1-20**.** A subsequent post-trial order found the Plaintiff's conduct willful. Therefore, the UTPA damages were trebled. Additionally, attorney's fees were awarded to the Defendant as the prevailing party for purpose of the UTPA and for the purposes of the lease provision that mandated an award of attorney's fees. *See* Post Trial Order Dated December 9, 2022**.** This Order follows the COA's remand as discussed herein.

[2] The particular unit leased by Defendant was in a building with multiple units. Once the Lease in question ended, an adjoining tenant eventually took possession of the unit previously leased by Defendant. Tr. 65:4-5; 115:21; 116:14.

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White, Esq. for Defendant Brilin.[3] Counsel for both parties waived any challenges to venue.[4] After carefully reviewing the Remittitur and related filings, arguments and evidence presented by Counsel at the hearing, the transcript of the jury trial,[5] and relevant South Carolina statutory and case law, this Court **ENTERS** a JNOV on Brilin's UTPA claim and **GRANTS** Brilin's request for attorney's fees and costs in the amount of **$62,432.60** (attorney fees of $58,879.65 and cost of $3,553.05) for the following reasoning:

ANALYSIS

A. Entry of a JNOV on the UTPA claim.

The remand from the COA followed its decision to reverse this Court's denial of Plaintiff's JNOV on the Defendant's UTPA claim. Plaintiff's original JNOV motion was made after a trial jury awarded damages in favor of the Defendant on its UTPA counterclaim.[6] After receiving post-trial motions, Plaintiff's JNOV motion was denied and the Defendant's request for treble damages and attorney's fees were granted.[7] As indicated in its opinion, the COA reversed the denial of the JNOV motion finding that Defendant had failed to present evidence on two UTPA elements—actual damages and public interest. The COA noted that "[a]n unfair or deceptive act or practice that affects only the parties to a trade or commercial transaction is beyond the UTPA's embrace."

[3] W & L was dismissed, prior to the jury trial, from this matter via a consent order dated January 7, 2022. W & L's dismissal predates this Court's involvement with this case.
[4] Upon consent of the parties, the February 18, 2026, hearing was held at the Spartanburg County Courthouse.
[5] Any direct citation to the trial transcript should not be construed to exclude any other relevant portion of the transcript.
[6] Even though the Defendant asked in its closing argument for the jury to return a verdict of only one dollar ($1.00), a nominal damage amount, on its UTPA claim, the jury awarded Defendant $6,089.13 for the UTPA claim against Plaintiff. Tr. 623:9; 624:22. The total awarded by the jury to the Defendant on its UTPA claim and to the Defendant for its Breach of Contract counterclaim ($4,424,74) is undeniably reflective of the award made to Plaintiff on its Breach of Contract claim against Defendant. The jury's verdict (awarding an amount substantially in excess of that requested) is consistent with, even though not evidence used in the exercise of its discretion, this Court's opinion that the Defendant's case at trial was more believable and truthful of the relationship between the parties and the issues litigated before the jury.
[7] *See* Order dated December 9, 2022, wherein this Court found the burden of proof of establishing Plaintiff's willfulness had been met.

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Carolina Real Estate Holdings, No. 6114 (*citing Noack Enters., Inc. v. Country Corner Interiors of Hilton Head Island, Inc.*, 290 S.C. 475, 479, 351 S.E.2d 347, 349-50 (Ct. App. 1986)).

Therefore, this Court, as directed, orders an entry of a JNOV reversing this Court's prior denial on the UTPA claim.

B. Attorney's Fees Reconsideration

The COA reasoned that because it reversed the denial of the JNOV on the UTPA claim and because it could not distinguish the award of attorney's fees under the lease agreement from the attorney's fees under the UTPA claim, the matter of attorney's fees and cost necessitated a remitter to this Court to review the issue of attorney's fees and cost. *See id.* (*citing Richland Cnty. v. Kaiser*, 351 S.C. 89, 97, 567 S.E.2d 260, 264 (Ct. App. 2002)).

As directed, this Court reconsiders the award of attorney's fees. With this reconsideration this Court makes two basic determinations: (a) who was the prevailing party for purposes of making the award under the lease, and (b) what amount is a reasonable award for the attorney's fees to be awarded. After reviewing the submissions from the parties, receiving the arguments, reviewing the trial transcript, and considering the applicable law, this Court's decision is that Defendant Brilin is the prevailing party for purposes of awarding attorney's fees and costs pursuant to the terms of the lease agreement and awards $62,432.60 as reasonable attorney's fees and costs.

In issuing this decision, this Court is mindful that the decision to award attorney's fees and costs rests in the discretion of this Court. This Court has not taken its assignment of reconsidering the attorney's fees issue lightly. Given that the business relationship between these parties ended over six (6) years ago, in exercising its discretion, this Court has proceeded cautiously and made a deliberative decision after reviewing the transcript of the 4-day trial;[8] the COA decision remitting

[8] The term 4-day trial is used to include jury selection, pre-trial meetings with the attorneys in attempting to negotiate a reasonable settlement of the dispute, and the trial of the case.

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this case; and examining guidance provided by the Supreme Court and the COA on the issue of awarding attorney's fees—as well as considering the arguments offered by the parties after the remand. Even though this Court, prior to reviewing the transcript, broadly recalled the issues in the case—including the credibility and manner the witnesses acted on the witness stand—after reviewing the testimony, this Court's memory, especially as to factual details and credibility of the witnesses, was refreshed and served to validate this Court's broad recollection.[9]

Again, the parties have been engaged in protracted litigation that exceeds six (6) years since their business relationship terminated. The three (3) year commercial lease, from which the litigation arose, was entered into by the parties in March of 2017 and was to expire in April of 2020.[10] The original Summons and Complaint were filed in March of 2020.[11] The 4-day trial of the case occurred in late July of 2022, the decision and Remittitur from the COA was issued in July of 2025. The oral arguments related to the present decision were received by this Court in February of 2026. Again, this Court cautiously and measuredly exercises its discretion.

The following is this Court's effort of explaining how it exercised its discretion by

[9] While either, or both, of the parties may find disagreement with this Court's decision, it was, and remains, this Court's desire to do the best it can in exercising its discretion and, hopefully, to assist the parties in bringing some closure to the issues between these parties.

[10] *See* Summons & Compl. ¶¶ 6-8.

[11] The timing of the filing of the Summons and Complaint indicates the Plaintiff's rushed to invoke the judicial process prior to expiration of the lease term to gain an unjustifiable tactical advantage, or alternatively, is motivated by unjustifiable hostility or retribution, after wrongfully threatening the Defendant with eviction and damages even though Defendant was attempting to address Plaintiff's concerns. The jury's verdict, even with the UTPA claim removed, validates this Court's opinion of the timing of the filings of the original summons and complaint. The record reflects that Defendant was attempting in good faith to address Plaintiff's concerns prior to the original filing of the summons and complaint. Of the six (6) specific allegations listed by Plaintiff in its original complaint all were decided by the jury in Defendant's favor, except one—the internal demising wall. *See* Answer & Countercl.'s ¶¶ 1-30; 56-64; 68-70. Plaintiff also failed to perform a final walk through which, based upon the Defendant's prior conduct of attempting to correct any known alleged defects to the leased property may have resolved the issue related to the demising wall without the need of the litigation. Tr. 59:11-25; 620:23-25. *See also* Def.'s Ex. 14 (e-mail exchanges). It was not until after Plaintiff failed to perform a walk through, Defendant vacated the unit and the lease term had expired that damage to the interior of the wall was claimed to be a problem the Defendant needed to fix. Defendant hired W&L Services to make the repairs to the wall prior to it vacating the premises. Evidence was presented that Plaintiff was aware of the repairs being made by W&L Services prior to Defendant vacating the building. Defendant's trial position was that it was never given a chance to prepare the interior of wall. The amended complaint added W&L Services and asserted a conspiracy existed between W&L and Defendant when the prior repairs to the wall were made.

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examining the law, and reviewing and weighing the evidence to support its decision that Brilin is the prevailing party and awarding its attorney's fees and costs.

The Prevailing Party

The parties do not dispute that the prevailing party is entitled to offer its claims for payment of its attorney's fees and costs under the Lease terms.[12] A review of the oral arguments demonstrate that the parties have a differing opinion as to the law in South Carolina as to the issue of attorney's fees. Both parties offered *Heath v. Aiken*, 302 S.C. 178, 394 S.E.2d 709 (1990) and *Seckinger v. Vessel Excalibur¸* 326 S.C. 382, 483 S.E.2d 775 (Ct. App. 1997), as authorities upon which this Court may rely in determining the "prevailing party." "There is no common law right to recover attorney's fees.'" *Raynor v. Byers*, 422 S.C. 128, 131, 810 S.E.2d 430, 432 (Ct. App. 2017) (*quoting Harris-Jenkins v. Nissan Car Mart, Inc.*, 348 S.C. 171, 176, 557 S.E.2d 708, 710 (Ct. App. 2001)). In this case, the claim for attorney's fee and costs arises from the Lease agreement.

The Lease provided that the prevailing party shall be entitled to recover attorney's fees and costs. "A prevailing party is defined as 'one who successfully prosecutes an action or successfully defends against it, prevailing on the main issue[13], even [if] not to the extent of the original contention [,] [and] is the one whose favor the decision or verdict is rendered and judgment entered.'" *Brawley v. Richland Cnty.*, 445 S.C. 80, 96, 911 S.E.2d 156, 163 (Ct. App. 2025) (*quoting Sloan v. Friends of Hunley, Inc.*, 393 S.C. 152, 156, 711 S.E.2d 895, 897 (2011)). "The key factor in determining whether a party is a prevailing party is the degree of success obtained by the party seeking attorney's fees." *Douan v. Charleston Cnty. Council*, 373 S.C. 384, 386, 645

[12] Even though Plaintiff did not sign the lease, the Defendant accepted the Lease terms as binding. Never signing the lease reflects disrespect for the legal significance of the document and disrespect for the mutual obligations contained in the Lease. *See* Plttf.'s Ex. 2; Ex. A to Plttf.'s No.3. *See also* Tr. 603:6-12.

[13] Borrowing from Plaintiff's theme in its closing argument, the main issue can be phrased as which party acted "reasonable" under the Lease terms. *See generally* Tr: 567:17 - 599:13

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S.E.2d 241, 243 (2007). Generally, "[t]he review of attorney fees [and costs] awarded pursuant to a contract is governed by an abuse of discretion standard." *Laser Supply and Servs., Inc. v. Orchard Park Assocs.*, 382 S.C. 326, 340, 676 S.E.2d 139, 147 (Ct. App. 2009).[14]

Plaintiff contends that, as a matter of law, pursuant to its view of *Heath*, since the COA removed the counterclaim award of the UTPA, it is the prevailing party because the jury award was now for a dollar amount greater than the amount the jury awarded to the Defendant.[15] Plaintiff asserts it's an abuse of discretion, to find the Defendant was the prevailing party when the dollar amount awarded to the Plaintiff exceeded the amount the jury awarded the Defendant on its counterclaims. The Defendant contends, even with the UTPA claim removed, it remains the prevailing party under a *Heath* analysis that examines the prevailing party without limiting the determination to the dollar amounts awarded by the jury. This Court's opinion is that an exercise of discretion that is limited simply to a determination of which party received a higher dollar award from the jury is not consistent with the *Heath* decision.[16] While the dollar amounts awarded by a jury is a proper component to consider when exercising discretion, this Court's view of *Heath* is

[14] Plaintiff offer's no lease provision upon which this Court can rely on to deviate from this Court's opinion that case precedent is to be used to define "prevailing party."

[15] In the Plaintiff's brief, the sole basis of it being the prevailing party is the comparison of the jury's final award. Plaintiff's arguments are silent as to any analysis of the facts involving the overall litigation. Ignoring the overall aspects of the litigation is inconsistent with the provision of the lease that contemplates an award of attorney's fees only upon the occasion, "if legal proceedings are instituted." As discussed herein, the legal proceeding resulted in a jury's decision that was more favorable to the Defendant, even with the removal of the UTPA claim.

[16] To accept Plaintiff's position that this Court must exercise its discretion based solely on the dollar amounts awarded by the jury, divests this Court of discretion. *See Richardson ex rel. 15th Cir. Drug Enf't Unit v. Twenty-One Thousand & no/100 Dollars ($21,000.00) U.S. Currency & Various Jewelry*, 430 S.C. 594, 601, 846 S.E.2d 14 (Ct. App 2020)(where it was observed that "[a] court that does not use discretion—or recognize it has discretion—when discretion exists commits an error of law.")

Moreover, to accept Plaintiff's position would require a trial court to surrender its discretion of determining prevailing party solely on a jury's verdict amount into a mechanical application that eliminates "decision or verdict" to just 'verdict'; and eliminates "defends against" from the *Heath* holding. Plaintiff's reading of *Heath* would automatically declare a party "prevailing" even though the party had made numerous unjust monetary demands on the others, squeezed pre-litigations concessions out of the other party, refused reasonable pre-trial settlement offers, and only obtain a jury verdict representing a fraction of the total litigated monetary demand without considering the overall success of, or lack thereof, the litigation for the party seeking attorney's fees—thus, transforming the *Heath* decision into a mechanical exercise.

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that the key factor in determining the prevailing party status is the degree of success obtained by the party seeking attorney's fees. The overall outcome, other than success on every individual claim or issue presented, is the proper analytical approach when exercising discretion. Based on this Court's review, the proper exercise of its discretion of the overall case is to find that the Defendant was the prevailing party—the overall outcome of the litigation clearly weighs in favor of Defendant.[17]

Heath established that a party need not be successful as to all issues in order to be the prevailing party. The Supreme Court stated that "[a] prevailing party has been defined as: the one who successfully prosecuted the action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention and in the one in whose favor the decision or verdict is rendered and judgment entered." 302 S.C. at 182-83, 394 S.E.2d at 711 (*quoting Buza v. Columbia Lumber Co.*, 395 P.2d 511, 514 (Alaska 1964)). The Supreme Court went on to state, "[a] court determines the prevailing party by evaluating the degree of success obtained." *Id.* (*citing Commissioner, Immigration and Naturalization, et al. v. Jean*, 496 U.S. 154, 110 S.Ct. 2316, 110 L.Ed.2d 134 (1990)). The degree of success obtained, again, clearly weighs in favor of the Defendant being the prevailing party for purposes of exercising discretion.

In applying the *Heath* analysis to the issue of prevailing party, this Court's determination, as stated, is that the Defendant was the prevailing party for the award of attorney's fees. In this Court's prior Order on Post-Trial Motions the conclusion was reached that "even if the Plaintiff's JNOV and *nisi* motions were granted, the Plaintiff still would not meet its burden of it being the prevailing party given the magnitude of the case it brought and actively pursued against the

[17] During oral arguments, Plaintiff's position was that it being the prevailing party was "obvious" and if this Court decided otherwise, this Court was required to articulate deviating from the "obvious." Plaintiff offered no factual analysis of the record that demonstrated it was the successful party.

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Defendant in relation to the award of damages." Order dated December 9, 2022, p.5.[18] This Court, as previously stated, has made a deliberative and cautious review before exercising its discretion and, once again, decides that the Defendant is the prevailing party. This Court's opinion remains that the testimony presented at trial and the overall nature of the case does not support the determination that Plaintiff was the prevailing party.

Several obvious factors support this Court's exercising its discretion in favor of the Defendant. The history, as determined by this Court's review of the record, indicates that the original Summons and Complaint were filed prior to the expiration of the lease terms. The original Complaint and the Amended complaint listed six (6) specific alleged lease violations by the Defendant.[19]

Even though this Court exercises its discretion based on the degree of success obtained in the litigation based on its consideration of the overall litigation, employing a version of Plaintiff's suggested analytical approach that examines just the monetary dispute and the jury's award,

[18] This Court's opinion continues to be that that Plaintiff has not established it is the prevailing party under the terms of the Lease. Moreover, this Court notes that reversal of the UTPA claims was not based on a lack of evidence that established Plaintiff engaged in unfair or deceptive acts. The COA characterized part of Plaintiff's conduct as lamentable. This Court disagrees with Plaintiff's assertion that the COA was merely addressing a "hypothetical." Credible testimony was presented at trial that this conduct occurred. Webster's New Collegiate Dictionary includes the term "deplorable" in its definition of lamentable (1974); an online search of the definition of lamentable includes "deplorable, abysmal and distressing."

[19] After reviewing the trial transcript and accepting that the jury's verdict was in favor of the Defendant on all of the alleged defects, except one, the truthfulness of the factual allegations offered by Defendant is clear. *See* Summons & Compl. ¶¶ 11(a)-(f). The Complaint was filed prior to the expiration of the Lease term at a time when Defendant, in good faith, was attempting to address Plaintiff's concerns. It was filed after the Plaintiff had made demands upon the Defendant that were beyond the scope of the Lease—applying unjustifiable pressure to the Defendant to do things not required in the Lease. It was filed after the Plaintiff had wrongfully threatened eviction and engaged in conduct that wrongfully interfered with the Defendant's reasonable use of the leased premises—including, but not limited to, the erecting of barriers to prevent reasonable access by Defendant to the leased property, repairing portions of the property without prior notice to the Defendant, presenting quotes to repair asphalt to a greater thickness than existed when prior repairs were accomplished, and requiring its property manager to enter the leased premise at unreasonable times. Furthermore, Plaintiff unreasonably called the police on the Defendant, presented inflated invoices for repairs and demanded repairs be made that were not the responsibility of the Defendant, and wrongfully withheld its approval of repairs for the purpose of obtaining from Defendant an advantage not contemplated under the Lease (obtaining certificates of insurance on all repairs and use of contractors/vendors approved by the Plaintiff). *See* April 8, 2020 Email within Def.'s Ex. 14; *see also* Tr. 104:18 – 105:3; 111:7-8; 112:1-15; 148:2-4; 154:5; 155:8 – 158:14; 162:4-13; 167:11-20; 171:12 – 174:5; 173:15-18; 190:1-7: 210:23-25; 211:1-8; 284:6-8; 405:5-7.

discretions are also justified as exercised in favor of Defendant.

Based on an analysis that is limited to monetary considerations, discretion is properly justified as exercised in favor of Defendant. At trial, Plaintiff argued to the jury that it should be awarded $28,862.76. Thus, Defendant could be considered the prevailing party, if the analysis were limited to just Plaintiff's breach of contract claims because the jury only awarded Plaintiff $10,513.88 of the $28,802.76 it sought—only 36.5 percent. The jury's decision was significantly more favorable monetarily for the Defendant. In other words, to Plaintiff's breach of contract claims against the Defendant, the jury decided the Defendant prevailed on $18,288.88 (63.5%) of the overall claims asserted against it. The jury also was asked to award money to the Defendant and against the Plaintiff on its counterclaim. The jury awarded Defendant 100% of the actual damages it requested for Plaintiff's breach of the lease. Therefore, when examining the degrees of success, limiting the degree of success analysis to monetary awards—the combined gross amount of all damages ($28,802.76 plus $4,424.75 = $33,227.51) sought by the parties in relation to monetary decisions made by the jury—it is clear that Defendant can be declared the prevailing party in the overall case presented to the jury. Appling an overall gross monetary decision analysis, Defendant was successful on 68.36% and Plaintiff only 31.64%.

Additionally—alternatively—applying a claims-based analysis, Plaintiff did not carry its burden of proof on five (5) of the six (6) alleged lease violations asserted in the original and amended Summons and Complaint against Defendant. Even though much of the transcript dealt with alleged lease violations asserted against the Defendant (as well as much of Plaintiff's closing arguments), the jury rejected the overall vast majority of Plaintiff's factual assertions and closing arguments in favor of Defendant's view of the facts and closing arguments. In other words, examining the record and jury's decision under a claims-based analysis, the Defendant prevailed

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on five (5) of the six (6) claimed lease violations asserted against it. In other words, Plaintiff was successful on approximately 17% and Defendant was successful on 83%.

Once again, this case involved counterclaims for violations of the lease asserted by the Defendant against the Plaintiff. On the Defendant's counterclaim for lease violation, the jury awarded 100% of the amount (100% of claims) the Defendant sought. Thus, even when this Court exercises its discretion based on a limited analysis that rests in dollar amounts the jury was asked to decide OR the number of claims presented, when the overall decisions made by the jury case are considered, discretion is properly justified, exercised in finding the Defendant was the successful party and prevailing party.

This Court does not embrace either a strict monetary or strict claim-based analysis when exercising its discretion. *Heath* stands for the proposition that a prevailing party is determined based upon an exercise of discretion that looks at the overall case in determining which party prevailed in the litigation. Clearly, the Defendant was the successful party in the litigation. *See also* n.13.[20]

Credibility of Each Sides Case[21]

There exists another aspect of this case that determines discretion is properly exercised in favor of Defendant being the prevailing party.[22]

After conducting the trial of this case and reviewing the transcript as part of the exercise of this Court's discretion, the credibility for truthfulness weighs heavily in favor of the Defendant.

[20] During oral argument Plaintiff stated any analysis that went beyond comparing the two awards made by the jury was "nonsense".

[21] During oral arguments, Plaintiffs position was that a party's conduct during the trial was no longer important in deciding prevailing party.

[22] At the hearing, this Court was asked if it remembered the trial. The hearing was conducted over three (3) years after the trial. Yes, this Court recalled the trial. Since Plaintiff desires to minimize the importance of his client's conduct during the trial to the issue of prevailing party, this Court will reference any reviewing court to statements offered by this Court during oral arguments because this Court's statements were offered prior to its memory being refreshed.

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The jury believed the Defendant's factual assertions as it related to, among other things, doors, the ductwork, the bricks, the cleaning of the carpet, and to the asphalt. *See also* n.13. This Court agrees with the jury's version of the facts implicitly found from their verdict. This Court agrees that the Defendant's factual assertion that improper and higher quotes were presented to the Defendant. This Court continues to agree that the Plaintiff's conduct was unfair and deceptive, even if not in context of the UTPA. This Court believes the Defendant's position that the property manager, Mr. Schulte, was used to harass the Defendant.[23] The Plaintiff threatened the Defendant with eviction for no justifiable reason. Plaintiff failed to conduct a final walk through—which if performed may have, to a high degree of probability, prevented the entire litigation given Defendant's conduct of attempting to satisfy Plaintiff's concerns.[24]

As previously stated, this Court had a broad recollection of the trial prior to reviewing the transcript. While the Plaintiff's conduct during the trial, as evident by the jury's unilateral and unsolicited note to the Court, is lamentable,[25] it demonstrated a lack of unprecedented respect for the court process. It was shocking given the Plaintiff's owners level of sophistication of being a successful businessman and owner of multiple commercial properties. Separate from the Plaintiff's owner's general courtroom disrespect, reviewing the transcript refreshed this Court's recollection as to credibility of the parties' positions. The testimony of the landlord and the property manager, and particularly the cross examinations, recalled the diminished view this Court had of the witnesses' credibility. At times, the witnesses unnecessarily became hostile toward opposing counsel.[26] These witnesses' contrast to the testimony presented by the Defendant's owner and its witnesses. In their closing arguments, the attorneys presented two very different factual theories

[23] Tr. 104:18 – 105:3; 419:5 – 420:13; 471:15 – 472:9.
[24] Tr. 177:10-23.
[25] Court Ex to Trial No.1.
[26] For example, *see* Tr. 160:10 – 161:25.

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to the jury.[27] The jury accepted, and this Court agrees, that the greater weight of the evidence supports the factual version of the landlord/tenant relationship presented by the Defendant's attorney. Reviewing these closing arguments, the main issue, even though artfully phrased in different terminology, was "which side of the case do you believe more?" The jury's verdict indicates the belief of truthfulness in the Defendant to a larger degree than the Plaintiff. This Court also recalls and finds Defendant's case more credible. This Court notes that during its closing, Plaintiff's attorney repeatedly asked the jury to consider if the Defendant's testimony/witnesses were "reasonable."[28] In exercising its discretion on the issue of prevailing party, this Court finds the Defendant's factual positions to be more reasonable, more truthful, and more consistent with acting in good faith with the Lease terms. The credibility of the Defendant's case also weighs in favor of exercising discretion for the Defendant being the prevailing party.

This Court exercises its discretion to find the Defendant is the prevailing party for purposes of awarding attorney's fees under the Lease.

C. Amount of Fees and Costs

"Once a party is deemed prevailing, the next step is to determine a 'reasonable' award." *Brawley*, 445 S.C. at 94, 911 S.E.2d at 163 (*citing Burton v. York Cnty. Sheriff's Dep't*, 358 S.C. 339, 257, 594 S.E.2d 888, 898 (Ct. App. 2004)). In determining a reasonable award of attorney's fees and costs, a court should consider: "(1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services." *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997); *Dedes v. Strickland*, 307 S.C.

[27] Tr. 567:17 – 599:13; 599:19 – 626:18.
[28] Tr. 580:5-15; 581:18-25; 584:19: 586:6.

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155, 414 S.E.2d 134 (1992).[29]

In deciding the amount of attorney fees to award, this Court is mindful that the amount of attorney's fees rests within the sound discretion of this Court. In exercising its discretion, the Court has considered the information submitted by Counsel and this Court's prior Post-Trial Motion Order wherein this Court reduced the attorney's fees because of the award of the UTPA claim. Neither party offered specific criticism of the other's amount sought as attorney's fees. Their focus was on the issue of prevailing party. The best guidance offered by the parties was that this Court should apply the previously stated six (6) factors in determining a reasonable award of attorney's fees. At the hearing, Defendant's counsel orally increased his request for a net attorney's fees from the amount requested in his brief into $85,000 range. Plaintiff sought fees in $99,000.00 range.

In applying the factors listed above, the nature, extent and difficulty of the case is obvious. Standing alone, a four (4) day jury trial (including the pretrial conferences with this Court) and the effort needed to prepare and vigorously defend and prosecute the case was significant. This was a commercial lease dispute wherein the Defendant was being accused of numerous lease violations that did not—except one—prove true and being asked, unjustifiably, to pay for repairs beyond the lease agreement. In addition, the counterclaims were all successfully pursued. The time devoted by counsel appears both reasonable and necessary to successfully defend his client and to successfully prosecute its counterclaims against the Plaintiff—with the UTPA claim removed. Counsel's high professional standing is without challenge. His courtroom skills as an advocate for his client were obvious and evident also by the jury's decisions. No contingency fee agreement

[29] In finding no abuse of discretion, the Supreme Court noted that the master gave consideration to the foregoing and other factors in determining the attorney's fee award. *Id.* at 160. By reference, this Court incorporates the prior sections of this Order into its determination of the amount of attorney's fee to award.

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exists. Counsel obtained a very beneficial result for the Defendant. After reviewing the trial transcript, it is clear his legal skills of persuasion were high, excellently executed, and successful. Defense counsel's performance is further noted as superior given the high quality of representation performed by Plaintiff's trial counsel. The fees charged appear reasonable—with the Court's adjustments—and are not contested as being outside of is customary charge for similar services.

Even though Defendant requested during oral arguments an attorney fee in the range of $85,000, after once again reviewing the trial transcript, this Court finds its previously reduced award of attorney's fees remains proper and reasonable.[30] Therefore, this Court exercises its discretion to award $62,432.60 as attorney's fees and cost.

CONCLUSION

For the reasoning stated herein, this Court hereby **ENTERS** JNOV on Brilin's UTPA claim and **GRANTS** Brilin's request for attorney's fees and costs in the amount of $62,432.60. Accordingly, Brilin is entitled to **$66,857.35** (includes the $4,424,75 in actual damages for their Breach of Contract Claim) minus $10,513.88 awarded to Plaintiff for its breach of contract claim and minus $7,076.07 in costs awarded to Plaintiff by the COA,[31] for a net award to Brilin in the amount of $49,267.40.

[30] The transcript and billing records reviewed, did not indicate or justify an additional reduction associated with the UTPA claim needed to be made. Once again, this Court's analysis contained in its previous order reducing the attorney fee amount due to the treble damage award is incorporated by reference. Additionally, a review of the Plaintiff's billing record during the time of trial did not reveal a specific monetary charge for the UTPA claim. Also, a review of the trial record does not reflect evidence presented by Defendant different from its counterclaims to its UTPA claim. Therefore, no additional reduction in attorney's fees was warranted for the fee to be reasonable, and this Court cannot find a justifiable reason to increase the award of attorney's fees to make the fee reasonable.

[31] After Plaintiff's brief related to the present motion was filed, the COAs issued its Order awarding costs of $7,076.07 to Plaintiff associated with its appeal and directed this Court to add the award to the remitter. This Court views Plaintiff's counsel request for attorney's fees and cost associated with the UTPA claim issues now moot. Notwithstanding, given the record before this Court and that the UTPA does not allow for a party who successfully defends against a UTPA claim to seek attorney's fees, no further analysis is needed. *See Taylor v. Medenica*, 331 S.C. 575, 503 S.E. 2d 458 (1998) (finding S.C. Code section 39-5-140 constitutional even though the statute does not allow a successful UTPA defendant the ability to claim attorney's fees, and approving an award of attorney's fees even if the fee substantially exceeds the actual recovery).

AND IT SO ORDERED.

Honorable J. Mark Hayes, II
Presiding Judge

July __, 2026

Spartanburg, South Carolina

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York Common Pleas

Case Caption: Carolina Real Estate Holdings Llc VS Brilin Electric Llc , defendant, et al

Case Number: 2020CP4601145

Type: Order/Other

IT IS SO ORDERED

s/ J. Mark Hayes, II #2132