

January 14, 2014

Jenny A. Kitchings, Clerk
SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Brannon Poe, CPA, LLC v. Steve Stravolo, Stravolo & Company, P.A.
And Upstate CPAS, P.A. f/k/a Mathur & Co., P.A.
CA No. 2011-CP-42-2880
3014-002755

Dear Clerk:

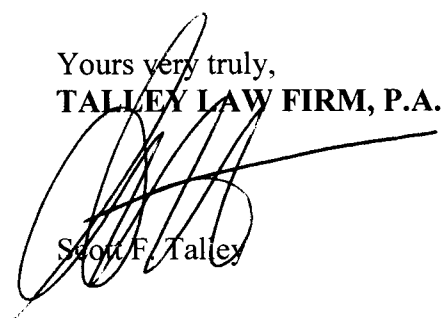
In compliance with your letter dated January 6, 2015 in the above matter, please find enclosed a copy of the Orders of the Honorable J. Mark Hayes, II filed November 17, 2014 and October 4, 2013. I am including the October order because the November 2014 Order was based on Motions to Alter/Amend that October order.

In compliance with your additional letters dated January 6, 2015 and January 7, 2015, and by copy of this letter, I am forwarding to the Office of Court Administration copies of letters forwarded to the Court Reporters requesting transcripts dated December 23, 2014 and December 29, 2015. On January 2, 2015, Linda Moffitt, Court Reporter, provided me with copies of transcripts of hearings held on May 14, 2012, December 6, 2012 and August 26, 2014. My check for payment of such transcripts was forwarded to her on January 12, 2015. The August 26, 2014 hearing is the hearing that led to issuance of the November 17, 2014 Order.

If anything further is needed at this time, please let me know.

With kind regards, I remain

Yours very truly,
TALLEY LAW FIRM, P.A.


Scott F. Talley

/jm
Enclosures
Copy to:

Christy Ford Allen, Esquire (w/all enclosures)
Hannah Rogers Metcalfe, Esquire (w/all enclosures)
SC Court of Appeals (w/all enclosures)
Office of Court Administration

RECEIVED

JAN 16 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Case No. 2011-CP-42-2880

Brannon Poe, CPA, LLC,

Respondent,

v.

Steve Stravolo, Stravolo &
Company, P.A. and Upstate
CPAS, P.A. f/k/a Mathur &
Co., P.A.,

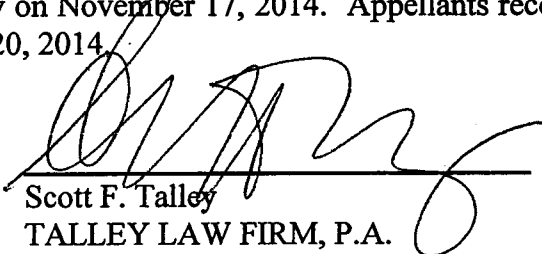
Appellants.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 DEC 17 AM 11:27
M. HOPE BLACKLEY

NOTICE OF APPEAL

Steve Stravolo, Stravolo & Company, P.A. and Upstate CPAS, P.A. f/k/a Mathur & Co., P.A., appeal the order of the Honorable J. Mark Hayes, II, dated November 17, 2014 and filed with the Clerk of Court for Spartanburg County on November 17, 2014. Appellants received written notice of entry of this order on November 20, 2014.

December 17, 2014



Scott F. Talley
TALLEY LAW FIRM, P.A.
2500 Winchester Place, Suite 100
Spartanburg, South Carolina 29301
(864) 595-2966
Attorney for Appellants

RECEIVED

JAN 16 2015

SC Court of Appeals

Other Counsel of Record:

Christy Ford Allen

WILLS MASSALON & ALLEN, LLC

Post Office Box 859

Charleston, SC 29402

(843) 727-1144

And

Hannah R. Metcalfe

METCALFE PERKINS & ATKINSON, LLC

Post Office Box 1826

Greenville, SC 29602

(864) 214-2319

Attorneys for Respondent

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CLERK OF COURT
SPARTANBURG COUNTY
2014 DEC 17 AM 11:27
M. HOPE BLACKLEY

Rec'd 11/20/14

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JAN 16 2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

SC Court of Appeals

CASE NO: 11-CP-42-2880

Brannon Poe, CPA, LLC,)
)
Plaintiff,)

v.)

ORDER

Steve Stravolo, Stravolo & Company, P.A.)
and Upstate CPAS, P.A. f/k/a Mathur &)
Co., P.A.,)

Defendants.)

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 NOV 17 PM 4:28
M. HOPE BLANCHARD

This matter is before the court of the Defendants' Motion to Alter or Amend and Plaintiff's Motion to Alter or Amend the Order of the court filed on October 4, 2013. A hearing was held by the undersigned on August 26, 2014, and all parties were represented by counsel. The motions are denied on the following grounds:

This is a breach of contract case. The court first granted partial summary judgment to the Plaintiff on the breach of the contract liability only. Defendants moved to alter or amend the grant of partial summary judgment against the Defendants, and the court issued a reasoned order denying the motion to alter amend its Order.¹ The matter was then scheduled for a non-jury hearing on damages only. The undersigned heard testimony and received evidence on damages

¹ On May 17, 2012, the trial judge who heard the motion for partial summary judgment on liability issued a Form 4 Order stating Plaintiff's "motion for partial summary judgment is granted," and checked the box labeled see attached order (formal order to follow). It is undisputed that Plaintiff promptly submitted a proposed order and that all parties believed the court had filed the proposed order. On May 30, 2012, the Defendants filed a Motion to Alter or Amend the Order granting partial summary judgment to the Plaintiff. Thereafter, the court held a hearing at which time no party raised any issue about whether the prior formal order had been filed. The court denied the motion to alter or amend by a reasoned order filed January 4, 2013, relying on the plain language of the contract terms. It was discovered and raised for the first time on or about September 11, 2013, at the non-jury trial on damages, that the "formal order to follow" the May 17, 2012 Form 4 order, which was submitted as a proposed order, had never been file-stamped and recorded in the clerk's office by the Court. Nonetheless, the Defendants previously acknowledged its basis, were afforded the opportunity to and did, in fact, argue to alter or amend the "unfiled" order. Thus, there is no basis on which the Defendants now raise any issue as to the award of summary judgment to the Plaintiff at this time, and it is law of the case.




and issued a reasoned Order granting Judgment in the favor of the Plaintiff against the Defendants on October 4, 2013.

To the extent Plaintiff is attempting to have the undersigned reconsider the rulings made previously as to issues related to the underlying liability on the contract, those are untimely and were not before the undersigned at the damages trial. As to the calculation of damages, the contract states that the plaintiff is entitled to a "performance fee," and that the fee is due whether a sale or merger occurs. Additionally, based on the facts of this case, the Defendants' distinction between sale or merger results in no monetary difference under the financial figures. Therefore, the Order does not need correction, and the motion is denied.

The Plaintiff also made a motion to alter or amend the court's calculation of the attorneys' fees. While the court does not disagree with the Plaintiff's analysis, the court believes, under the facts of this case, that the price agreed to between the Plaintiff and the Plaintiff's attorneys – which was a contingency fee – is a reasonable award of attorney fees, plus the costs of the litigation. Therefore, Plaintiff's motion to alter or amend is also denied.

AND IT IS SO ORDERED.



The Hon. J. Mark Hayes, II
Seventh Judicial Circuit

November 17, 2014
Spartanburg, South Carolina

FILED
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SPARTANBURG
2014 NOV 17 PM 4:28
M. HOPKINS BUREAU

RECEIVED

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Brannon Foe CPA, LLC,)
)
) Plaintiff,)
)
 v.)
)
 Steve Stravolo; Stravolo & Company, PA;)
) and Upstate CPAs, PA f/k/a Mathur)
) and Co. PA,)
) Defendant.)

IN THE COURT OF COMMON PLEAS JAN 16 2015
 SEVENTH JUDICIAL CIRCUIT

Case No.: 2011-CP-42-02880

Court of Appeals

ORDER

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2013 OCT -4 PM 4:05
 M. HOPE BLACKLEY

This matter came before the court for a damages hearing and an award of attorney fees. Previously another circuit judge ruled upon the plaintiff's Motion for Partial Summary Judgment and the defendants' Motion to Seek to Alter/Amend Judgment. Both of the judge's decisions were in favor of the plaintiffs. Therefore the issues related to liability, including the issue of lack of or the existence of privity between all of the defendants to the plaintiff through the provision of the Sales Consulting Agreement, are not issues for this court to decide.

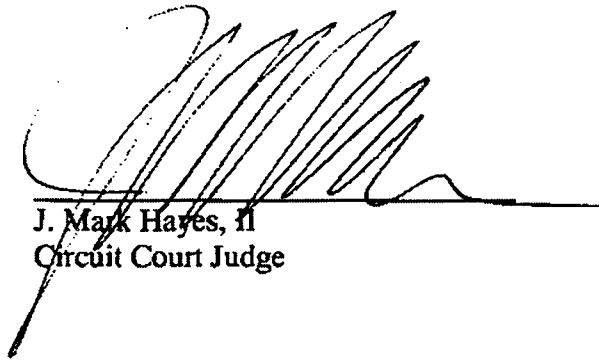
Based on a review of the documents presented, the testimony offered during the hearing, and a review of the information in the clerk's file, this court's decision is that the measure of damages and the award of attorney fees will be determined from the terms of the Sales Consulting Agreement. The terms of the agreement provide that a "performance fee" will be paid to the plaintiff, "if the firm is merged," of ten percent (10%) of the transactional value. The agreement dictates that the transactional value if a merger occurred "shall" be the gross revenue of the Firm for the year preceding the transaction.

Here the defendant's firm merged with another firm. The preceding year's gross revenues were \$298,234.00. Thus the amount due the plaintiff is \$29,823.40.

The right to recover attorney fees is also controlled by the terms of the contract and by the terms of the contract between the plaintiff and it lawyers. The contract provides for an award of attorney fees. The plaintiff had a contract with it lawyers for a 33.33% contingent fee of any gross recovery. Therefore, the attorney fee shall be \$9941.13. Based on the affidavits presented by the attorneys, the award of this fee is reasonable and costs of \$1772.11 is also awarded.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment as outlined herein be entered in favor of the plaintiff.

IT IS SO ORDERED.



J. Mark Hayes, II
Circuit Court Judge

October 4, 2013
Spartanburg, South Carolina

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 OCT -4 PM 4:06
M. HOPE BLACKLEY



TALLEY Law Firm, P.A.

Scott F. Talley
Shannon M. Phillips
Wendy N. Griffith

December 22, 2014

Pamela E. Green
Court Reporter
516 Traversie Court
Spartanburg, SC 29306

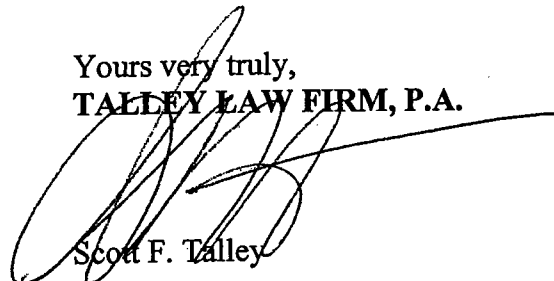
Re: Brannon Poe, CPA, LLC v. Steve Stravolo, Stravolo & Company, P.A.
And Upstate CPAS, P.A. f/k/a Mathur & Co., P.A.
CA No. 2011-CP-42-2880

Dear Ms. Green:

The above case was heard by Judge J. Mark Hayes, II, in Spartanburg, SC on August 26, 2014. An Order was issued on November 17, 2014 and filed November 17, 2014. On behalf of my clients, Steve Stravolo, Stravolo & Company, P.A. and Upstate CPAS, P.A. f/k/a Mathur & Co., P.A., I have filed an Appeal. Please provide me with a transcript of this hearing as soon as possible. Also, please forward your statement for services rendered. Thank you, in advance, for your assistance.

With kind regards, I am

Yours very truly,
TALLEY LAW FIRM, P.A.



Scott F. Talley

/jbm
Copy to:

Christy Ford Allen, Esquire
Hannah R. Metcalfe, Esquire
Jenny A. Kitchings, Clerk
Court of Appeals

*Pamela Green was not Court Reporter.
See attached ltr to Linda Moffitt.*



December 23, 2014

Linda Moffitt
Court Reporter
800 Belcher Road
Boiling Springs, SC 29316

Re: Brannon Poe, CPA, LLC v. Steve Stravolo, Stravolo & Company, P.A.
And Upstate CPAS, P.A. f/k/a Mathur & Co., P.A.
CA No. 2011-CP-42-2880

Dear Ms. Moffitt:

Two motion hearings were held in the above matter before Judge Cole on or about May 14, 2012 and on December 6, 2012. On behalf of my clients, Steve Stravolo, Stravolo & Company, P.A. and Upstate CPAS, P.A. f/k/a Mathur & Co., P.A., I have filed an Appeal. Please provide me with a transcript of these motion hearings as soon as possible. Also, please forward your statement for services rendered. Thank you, in advance, for your assistance.

With kind regards, I am

Yours very truly,
TALLEY LAW FIRM, P.A.

Scott F. Talley / jbm
Scott F. Talley

/jbm

Copy to: Christy Ford Allen, Esquire
Hannah R. Metcalfe, Esquire
Jenny A. Kitchings, Clerk
Court of Appeals



TALLEY Law Firm, P.A.

Scott F. Talley
Shannon M. Phillips
Wendy N. Griffith

December 29, 2014

Linda Moffitt
Court Reporter
800 Belcher Road
Boiling Springs, SC 29316

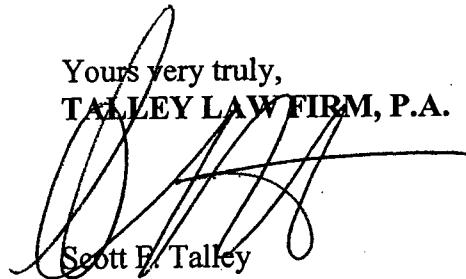
Re: Brannon Poe, CPA, LLC v. Steve Stravolo, Stravolo & Company, P.A.
And Upstate CPAS, P.A. f/k/a Mathur & Co., P.A.
CA No. 2011-CP-42-2880

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With kind regards, I am

Yours very truly,
TALLEY LAW FIRM, P.A.



Scott F. Talley

/jbm

Copy to: Christy Ford Allen, Esquire
Hannah R. Metcalfe, Esquire
Jenny A. Kitchings, Clerk
Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Case No. 2011-CP-42-2880

Brannon Poe, CPA, LLC,

Respondent,

v.

Steve Stravolo, Stravolo &
Company, P.A. and Upstate
CPAS, P.A. f/k/a Mathur &
Co., P.A.,

Appellants.

PROOF OF SERVICE

IT IS HEREBY CERTIFIED that a copy of the foregoing NOTICE OF APPEAL in this action was served upon Counsel for Respondent, Christy Ford Allen, Esquire and Hannah R. Metcalfe, Esquire, by placing copies of same in the United States Mail this date, with sufficient postage affixed thereto, addressed as follows:

Christy Ford Allen
WILLS MASSALON & ALLEN, LLC
Post Office Box 859
Charleston, SC 29402

Hannah R. Metcalfe
METCALFE PERKINS & ATKINSON, LLC
Post Office Box 1826
Greenville, SC 29602

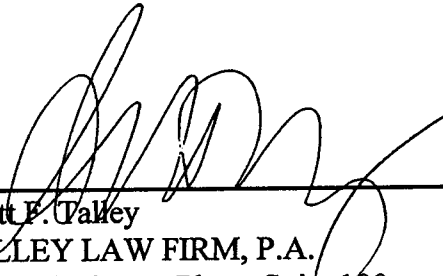
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JAN 16 2015

SC Court of Appeals

December 17, 2014



Scott P. Talley
TALLEY LAW FIRM, P.A.
2500 Winchester Place, Suite 100
Spartanburg, South Carolina 29301
(864) 595-2966
Attorney for Appellants

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