

Code Ann. §27-1-15 (Thomson West 2007). Payment was not received, and this litigation followed.

Guess Irrigation's Complaint originally asserted ten causes of action: (1) foreclosure of mechanic's lien on the Project, (2) breach of contract against JFF on the Project, (3) *quantum meruit*/unjust enrichment on the Project, (4) breach of contract against JFF on another project Guess Irrigation performed for JFF (the "Paxville Project"), (5) *quantum meruit*/unjust enrichment on the Paxville Project, (6) civil conspiracy against JFF and parties to be identified, (7) abuse of process against JFF, (8) violation of the South Carolina Unfair Trade Practices Act (SCUTPA) against JFF, (9) breach of the implied covenant of good faith and fair dealing against JFF, and (10) recovery of fees, costs, and interest from JFF under Section 27-1-15. Of these, only the causes of action for foreclosure of the mechanic's lien (C/A 1), breach of contract against JFF on the Project (C/A 2), and recovery of fees, costs, and interest under Section 27-1-15 (C/A 10) were submitted to the jury. The claims relating to the Paxville Project (C/A 4 and C/A 5) were settled before trial, and the claim of civil conspiracy (C/A 6) was voluntarily dismissed. The claim for breach of the implied covenant of good faith and fair dealing (C/A 9) was merged into the breach of contract claim (C/A 2). The claim for *quantum meruit*/unjust enrichment on the Catfish Bay Project (C/A 3) was not available because of the express contract between Guess Irrigation and JFF, and the evidence at trial established that contract had not been abandoned or rescinded. See Swanson v. Stratos, 350 S.C. 116, 122, 564 S.E.2d 117, 120 (Ct. App. 2002) ("If the tasks the plaintiff is seeking compensation for under a *quantum meruit* theory are encompassed within the terms of an express contract which was not been abandoned or rescinded, the plaintiff may not recover under *quantum meruit*."). JFF was granted summary judgment on Guess Irrigation's remaining causes of action—abuse of process (C/A 7) and

violation of the SCUTPA (C/A 8)—by Order entered on September 8, 2015. That same Order also granted in part Guess Irrigation’s motion for summary judgment on its mechanic’s lien claim (C/A 1), holding the lien was valid but subject to proof of entitlement as to the amount sought and any attorney’s fees.

JFF and Catfish Bay originally defaulted on the claims asserted in the Complaint but were allowed to file an Answer pursuant to a consent Order dated June 27, 2012. JFF was also allowed to file and serve compulsory construction-related counterclaims against Guess Irrigation. In response to JFF’s counterclaims, Guess Irrigation commenced a third party claim against Valmont Industries, Inc. (“Valmont”). The third party action against Valmont was ultimately dismissed when JFF stipulated it was no longer alleging any defect or deficiency in the original design of the irrigation canals or the irrigation equipment that Valmont designed or manufactured. *See* Stipulation entered August 19, 2015.

The case proceeded to trial on September 14, 2015. On September 18, the jury returned a verdict in Guess Irrigation’s favor on all claims, including JFF’s counterclaims. Guess Irrigation was awarded \$144,016.00, the full amount sought on its surviving claims. The jury also answered the following Special Interrogatories relevant to Guess Irrigation’s Section 27-1-15 claim:

1. Upon receiving a just demand for payment from the Plaintiff, did Justice Family Farms, LLC make a reasonable and fair investigation of the merits of the Plaintiff’s claim?

_____ YES X NO

2. Upon receiving a just demand for payment from the Plaintiff, did Justice Family Farms, LLC unreasonably refuse to pay the Plaintiff?

 X YES _____ NO

On September 25, 2015, Guess Irrigation timely filed and served a Motion for an Award of Attorney's Fees, Costs, Litigation Expenses, and Interest (the "Motion"). The Motion seeks a total award of Four Hundred Ninety-four Thousand, Nine Hundred Thirty-four and 54/100 Dollars (\$494,934.54) in attorney's fees, costs, and litigation expenses. This total included amounts expended by the two law firms representing Guess Irrigation in this matter: Barnes, Alford, Stork & Johnson, LLP (\$232,049.94), and Haynsworth Sinkler Boyd, P.A. (\$262,884.60). Plaintiff's counsel stated at the hearing that Guess Irrigation retained Barnes, Alford, Stork & Johnson, LLP ("BASJ") to file the mechanic's lien and pursue Guess Irrigation's claims against the Defendants, while Haynsworth Sinkler Boyd, P.A. ("HSB") was retained by Guess Irrigation's insurance carriers to defend their common insured from JFF's counterclaims. Guess Irrigation later sought to recover an additional One Thousand, Eight Hundred Dollars (\$1,800.00) in fees from the Law Offices of Daniel H. Shine.

Guess Irrigation also sought an award of Fifty-one Thousand, Twenty-seven and 04/100 Dollars (\$51,027.04) in prejudgment interest.

The fees, costs, and litigation expenses sought by Guess Irrigation are itemized in and supported by the Affidavits of Robert T. Strickland and Robert W. Buffington filed contemporaneously with the Motion. Redacted copies of billing statements from BASJ and HSB were filed with the court and served on counsel for the Defendants. The redactions concern matters Guess Irrigation maintains are protected from disclosure under the attorney-client and work product privileges. Unredacted copies of the invoices were provided to this court for an *in camera* inspection. A billing statement from the Law Offices of Daniel H. Shine was also presented, but no affidavit supporting those fees was submitted by the Plaintiff.

The Defendants served an Objection to the Motion for Award of Attorney's Fees, Costs, Litigation Expenses, and Interest (the "Objection") on September 30, 2015. Guess Irrigation submitted a Reply to the Objection on October 8, 2015. Guess Irrigation also submitted a Supplemental Affidavit of Robert T. Strickland prior to the hearing. The Supplemental Affidavit authenticated a Schedule counsel prepared summarizing the fees and costs attributable to claims not submitted to the jury and his dealings with Guess Irrigation's insurance carriers. Redacted copies of BASJ's statements for services highlighting those fees and costs accompanied the Supplemental Affidavit. Unredacted copies were also provided to the court for an *in camera* inspection. This additional information was provided in response to the Defendants' position that attorney's fees, costs, and litigation expenses attributable to claims not submitted to the jury were not recoverable. However, Guess Irrigation continues to maintain that all fees, costs, and litigation expenses are properly recoverable because of the complexity of the case and the fact claims not submitted to the jury were intertwined with those that were, due to many common and overlapping issues.

HSB submitted redacted copies of its billings to opposing counsel on the day immediately prior to the hearing.

The Motion was argued before me on October 13, 2015. The parties consented to the hearing being held in Florence, South Carolina. At the hearing, counsel for the Defendants requested an opportunity to respond further in writing to the material supplied the day before by HSB. I find that no additional time is necessary and would not affect this ruling. I further find that the redacted bills submitted by HSB were received by the court and by JFF with reasonable and sufficient time for review and that the filing was in supplement to the billing summaries previously filed several days before the hearing. I further find that a review of the bills supports

that they were incurred in defense of the counterclaim and are recoverable. I thus proceeded to rule from the bench for the reasons stated from the bench and herein.

BASIS FOR AN AWARD

The general rule in South Carolina is that attorney fees are not recoverable unless they are authorized by contract or by statute. EFCO Corp. vs. Renaissance on Charleston Harbor, LLC, 370 S.C. 612, 635 S.E.2d 922 (Ct. App. 2006). See also Blumberg v. Nealco, Inc., 310 S.C. 492, 427 S.E.2d 659 (1993); Hegler v. Gulf Ins. Co., 270 S.C. 548, 243 S.E.2d 443 (1978).

The contract between Guess Irrigation and JFF does not contain an attorney's fee provision. Guess Irrigation's claim is based on two statutes: S.C. Code Ann. §29-5-10 (Thomson West 2007) and S. C. Code Ann. §27-1-15 (Thomson West 2007). Section 29-5-10(a), found in the Mechanic's Lien Act, provides in part:

The costs which may arise in enforcing or defending against the lien under this chapter, including a reasonable attorney's fee, may be recovered by the prevailing party. The fee must be determined by the court in which the action is brought but the fee and the court costs may not exceed the amount of the lien.

Section 27-1-15 provides:

Whenever a contractor, laborer, design professional, or materials supplier has expended labor, services, or materials under contract for the improvement of real property, and where due and just demand has been made by certified or registered mail for payment for the labor, services, or materials under the terms of any regulation, undertaking, or statute, it is the duty of the person upon whom the claim is made to make a reasonable and fair investigation of the merits of the claim and to pay it, or whatever portion of it is determined as valid, within forty-five days from the date of mailing the demand. If the person fails to make a fair investigation or otherwise unreasonably refuses to pay the claim or proper portion, he is liable for reasonable attorney's fees and interest at the judgment rate from the date of the demand.

I find that both statutes authorize an award of attorney's fees in this case.

Under Section 29-5-10, fees are recoverable by the “prevailing party.”¹ There is no question that Guess Irrigation is the prevailing party in this case. The jury awarded Guess Irrigation the entire amount sought on its claims, and the jury further found in Guess Irrigation’s favor on JFF’s counterclaims. Guess Irrigation prevailed on all claims to the maximum extent possible.

Under Section 27-1-15, the unchallenged evidence at trial established that Guess Irrigation made a due and just demand for payment on JFF by certified mail. That demand triggered a duty on JFF’s part to make a reasonable and fair investigation of the merits of the claim and pay it, or whatever portion was determined as valid, within forty-five days from the date of the mailing of the demand. JFF made no payment through the time of trial. In response to the special interrogatories, the jury found JFF did not make a reasonable and fair investigation of the merits of the Plaintiff’s claim, and that upon receiving a just demand for payment from Guess Irrigation, JFF unreasonably refused to pay the Plaintiff. Thus, the jury found both bases for an award of attorney’s fees and interest under Section 27-1-15 existed.

JFF also argues that Section 27-1-15 does not apply because Guess Irrigation did not expend labor, services, or materials under contract for the improvement of real property. I specifically find this requirement under the statute was satisfied. The record clearly reflects that this irrigation system was an improvement to real property.

I therefore find that Guess Irrigation is entitled to an award of reasonable attorney’s fees, court costs, and litigation expenses under Section 29-5-10. Per Section 29-5-10(a), the amount awarded under this statute may not exceed the amount of the lien, \$144,016. I further find that

¹ Neither party made an offer of settlement before trial under Section 29-5-10(b). Thus, the \$144,016 prayed for in the Complaint is considered the Plaintiff’s final offer of settlement. The value of JFF’s counterclaims is its negative offer of settlement. Catfish Bay, LLC had no counterclaim and made no offer, so its offer of settlement is considered to be zero.

Guess Irrigation is entitled to an award of reasonable attorney's fees and interest under Section 27-1-15. The amount of reasonable fees awarded under Section 27-1-15 is not subject to any cap.

**FACTORS TO BE CONSIDERED IN
AWARDING REASONABLE ATTORNEY'S FEES**

Under South Carolina law, a court should consider the following six factors in determining a reasonable attorney's fee:

(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). I will address each factor separately.

1. The Nature, Extent, and Difficulty of the Case.

This litigation rose from the construction of a million dollar-plus irrigation system on Catfish Bay Farm. The farm crossed the Dillon-Marlboro county line and thus required more extensive research and investigation than a typical mechanic's lien. When the Defendants failed to pay, litigation became necessary, and the record reflects discovery was extensive. JFF filed counterclaims alleging defects and deficiencies in the Plaintiff's performance. Those counterclaims transformed what could have been a relatively simple collections case into complex litigation. Thousands of pages of documents were exchanged by the parties, and hundreds of exhibits were offered into evidence at trial. Both sides engaged multiple experts. The case was designated complex by the Chief Judge for Administrative Purposes and assigned to me. For these reasons and others reflected in the record and referenced during the hearing, I

find the case was a complex construction dispute that required extensive lay and expert discovery, and I have given this fact due consideration in determining the amount of reasonable attorney's fees to award Guess Irrigation.

2. The Time Necessarily Devoted to the Case.

The two law firms representing Guess Irrigation in this matter submitted their invoices in support of the Motion. The copies provided to opposing counsel and filed with the Clerk of Court were redacted to protect the attorney-client and work product privileges; those copies provided to me for an *in camera* inspection were not redacted. The fee statements are very detailed and provide specific information about the services counsel provided. They confirm the case had a very long, protracted history. Suit was first filed in October 2011 and did not reach trial until nearly four years later, in September 2015. Many depositions were taken and significant written discovery was exchanged. The Defendants changed counsel on several occasions, as was their right, but the resulting delays were not the fault of the Plaintiff. These changes in counsel led to several extensions of Scheduling Orders at the Defendants' request. The record also reflects that the Defendants' theory of the case changed during this long history, with some original theories and defenses abandoned and others surfacing as discovery proceeded. Each new issue raised or theory pursued by the Defendants had to be factually investigated, the applicable law researched, and appropriate rebuttals prepared. The Defendants also named a number of experts, some of whom were withdrawn and others who were not called to testify. Several discovery motions were filed by the Plaintiff, including motions to compel (some of which were granted and others or portions thereof denied). There were also extensive dispositive motions and pre-trial motions filed by both sides. The result was a very long

discovery process culminating in a five-day jury trial. Accordingly, I find that the time Plaintiff's counsel devoted to the case, as reflected in their billing statements, was reasonable, and I have given this fact due consideration in determining the award of reasonable attorney's fees.

3. The Professional Standing of Counsel.

Per the affidavits of attorneys Strickland and Buffington, both lead counsel for the Plaintiff maintain "AV" preeminent ratings from Martindale Hubbell. Mr. Strickland has practiced law for over thirty years and Mr. Buffington, for twenty-nine years. Both have handled a large number of construction cases. For these reasons, and others summarized in their affidavits, I find that both Mr. Strickland and Mr. Buffington are skilled and experienced attorneys who enjoy a high professional standing. I have given these facts due consideration in determining the award of reasonable attorney's fees. I also note that the Defendants made no challenge to the professional standing of Plaintiff's counsel.

4. The Contingency of Compensation.

Both BASJ and HSB were employed on an hourly basis, so the contingency of compensation is not a factor.

5. The Beneficial Results Obtained.

As discussed previously, there is no question that the jury's verdict was a total and complete victory for the Plaintiff. The jury awarded Guess Irrigation the entire amount sought and further found for the Plaintiff on all counterclaims asserted by JFF. JFF had sought damages

well in excess of one million dollars on its counterclaims. Thus, the efforts of counsel resulted in a very beneficial result for the Plaintiff, and I have given this fact due consideration in determining the award of reasonable attorney's fees.

6. The Customary Legal Fees for Similar Services.

The Affidavits of Mr. Strickland and Mr. Buffington set forth their hourly rates and the rates charged by other attorneys, paralegals, and law clerks in their firms. They further state that these rates are equal to or lower than the rates they customarily charge for cases of this type and complexity. I further find that the rates charged by BASJ and HSB are reasonable and take judicial notice that these rates are consistent with fee petitions seen by this court for similar cases in this legal community. I have given this fact due consideration in determining the award of reasonable attorney's fees.

I also note that the Defendants made no objection to the rates charged by Plaintiff's counsel, though the Defendants did, on oral argument, state that some of HSB's paralegal fees were for clerical services that should not have been billed. I find that such services provided by HSB's support staff were necessary and appropriately billed.

DEFENDANTS' OBJECTIONS TO MOTION

Based on the Objection they filed and their arguments at the hearing on the Motion, the Defendants' objections to an award of attorney's fees, costs, and litigation expenses are as follows:

1. The amount of attorney's fees and expenses sought by Guess Irrigation is more than three times the amount of the verdict in its favor.

2. Fees and expenses incurred by Guess Irrigation for causes of action independent of and unrelated to the contract should not be awarded.
3. Fees recoverable by Guess Irrigation should not include fees and expenses paid by the Plaintiff's insurance carriers in defense of JFF's counterclaims.
4. Fees of Daniel H. Shine should not be awarded because they are not supported by affidavit.
5. Expert witness fees are not recoverable as either attorney's fees or taxable costs.

Each objection is addressed below.

1. The amount of attorney's fees and expenses sought by Guess Irrigation is more than three times the amount of the verdict in its favor.

While it is true that the total amount of fees, costs, and expenses sought by Guess Irrigation significantly exceed the amount the jury awarded Guess Irrigation in its verdict, the appellate courts of this state have long held that this is not a controlling factor. In Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989), the South Carolina Supreme Court held that a trial court did not abuse its discretion in awarding attorney's fees to the plaintiff even though the award was greater than the plaintiff's recovery. *See also* Laser Supply and Services, Inc. v. Orchard Park Assoc., 382 S.C. 326, 676 S. E. 2d 139 (Ct. App. 2009) (following Baron, and holding the disparity in the amount of the damages award and the attorney fees award, by itself, does not invalidate the latter). While the fees claimed in this case significantly exceed the amount recovered, that fact alone cannot justify denying the award sought. The reasons for the high amount of fees, costs, and litigation expenses is addressed in this court's analysis of the six factors discussed above, so this objection to an award is denied. Furthermore, while attorney's fees and costs awarded under the Mechanic's Lien Act are capped at the amount of the lien, no such cap exists on a Section 27-1-15 award. Thus, any award under Section 27-1-15 that is

deemed fair and reasonable after applying the six factors test is appropriate even if that award exceeds the Plaintiff's recovery.

2. The fees, costs, and expenses incurred by Guess Irrigation for causes of action independent of and unrelated to the contract should not be awarded.

The Defendants argue that the fees, costs and expenses attributable to causes of action other than Guess Irrigation's breach of contract and mechanic's lien claims should be excluded from any award. Guess Irrigation maintains such a reduction is inappropriate, as due to the complexity of the case all of the claims were intertwined to those that were because of common and overlapping issues. Nevertheless, Guess Irrigation filed a Supplemental Affidavit of Robert T. Strickland in which counsel made what he felt was a reasonable allocation between claims that were part of the award and those that were not. Attached as exhibits to the Supplemental Affidavit were redacted copies of BASJ's fee invoices highlighting those entries attributable to claims that were not part of the award (Exhibit A) and a Summary showing a breakdown of the hours and monetary amount of the highlighted entries, along with pertinent cost entries (Exhibit B).

Guess Irrigation's counsel identified \$599.53 in such costs, plus \$40,465.00 in fees attributable to claims that were not part of the verdict and another \$2,242.50 in fees attributable to his dealings with Guess Irrigation's insurance carriers. These three amounts total Forty-three Thousand, Three Hundred Seven and 03/100 Dollars (\$43,307.03). Unredacted copies of the invoices attached as Exhibit A to the Supplemental Affidavit were provided to me for an *in camera* inspection.

I find that the fees, costs, and litigation expenses recoverable by the Plaintiff should be reduced by the amount allocable to those claims that were not part of the verdict—namely, those

claims other than the Plaintiff's mechanic's lien, breach of contract, and Section 27-1-15 claims. See Utilities Construction Co. v. Wilson, 321 S.C. 244, 468 S.E.2d 1 (Ct. App. 1996). I have reviewed both the redacted and unredacted invoices submitted with the Supplemental Affidavit of Robert T. Strickland and find the deductions and allocations counsel made for this reason to be fair and reasonable. Therefore, I find that Forty-three Thousand, Three Hundred Seven and 03/100 Dollars (\$43,307.03) should be deducted from the BASJ fee invoices, as that is the amount reasonably allocated to the claims that are not part of the jury's verdict, as those claims were either removed from the case voluntarily or by the court on summary judgment, or otherwise not presented to the jury for consideration.

The Defendants challenge Guess Irrigation's redaction of its invoices and maintain they should be allowed to review unredacted copies. The Defendants rely exclusively on a single federal appeals court opinion, Ideal Electronic Security Co. v. International Fidelity Ins. Co., 129 F.3d 143 (D.C. Cir. 1997), which has no precedential value in this case.

Guess Irrigation provided a most compelling reason for the redactions: preservation of the attorney-client and work product privileges. In Chaudhry v. Gallerizzo, 174 F.3d 394 (4th Cir. 1999), the Fourth Circuit Court of Appeals observed that while the attorney-client privilege typically does not extend to billing records and expense reports, there is a distinction between discoverable information in billing records and privileged information those records may contain. The Chaudhry court quoted a Ninth Circuit Court of Appeals decision in Clarke v. American Commerce National Bank, 974 F.2d 127 (9th Cir.1992):

[T]he identity of the client, the amount of the fee, the identification of payment by case file name, and the general purpose of the work performed are usually not protected from disclosure by the attorney-client privilege. However, correspondence, bills, ledgers, statements, and time records which also reveal the motive of the client in seeking representation, litigation strategy, or the specific

nature of the services provided, such as researching particular areas of law, fall within the privilege.

Id. at 129 (citations omitted). In Clarke, the Ninth Circuit concluded that the billing records were discoverable because of the general nature of the information provided therein, e.g., information on the identity of the client, the case name for which payment was made, and the amount of the fee. Id. at 130. The attorney's bills in Clarke, unlike those in Chaudhry, contained "nothing [that] . . . reveal[ed] specific research or litigation strategy which would be entitled to protection from disclosure." Id. at 130; *see also* In re Grand Jury Proceedings, Thursday Special Grand Jury Sept. Term, 1991, 33 F.3d 342, at 354 (4th Cir. 1994) (intimating that the determination as to whether attorney billing statements are privileged hinges on whether the statements reveal something about the advice sought or given). In Chaudhry, the legal bills revealed the identity of the federal statutes researched. The court found that "[s]ince the records would divulge confidential information regarding legal advice, they constitute privileged communications and, as such, should not be disclosed." Chaudhry, 174 F.3d at 402-03.

I find that the redaction of the bills by Guess Irrigation is appropriate to prevent the disclosure of privileged information. Furthermore, I have reviewed the unredacted copies of the invoices the Plaintiff submitted for an *in camera* inspection to guard against any improper redactions. My *in camera* inspection adequately addressed any concerns the Defendants may have had in this regard.

Finally, per the reasons discussed in this Order, the unredacted copies of the BASJ and HSB invoices submitted for *in camera* inspection are to be filed under seal. "[W]hen a protective order sealing the record is sought, the trial court shall make specific factual findings, on the record, which weigh the need for secrecy against the right of access." Davis v. Jennings, 304 S.C. 502, 506, 405 S.E.2d 601, 604 (1991). I find that the need to protect the privileges

attaching to the redacted portions of counsel's invoices is a compelling reason for placing these documents under seal. The need for secrecy outweighs the right of access. Therefore, the unredacted fee invoices of Barnes, Alford, Stork & Johnson, LLP and Haynsworth Sinkler Boyd, P.A. are to be filed with the Dillon County Clerk of Court under seal.

3. The fees recoverable by Guess Irrigation should not include fees and expenses paid by the Plaintiff's insurance carriers in defense of JFF's counterclaims.

The Plaintiff's insurance carriers retained HSB to defend Guess Irrigation from JFF's counterclaims. At the hearing on the Motion, Defendants' counsel argued that HSB's fees, costs, and litigation expenses should be denied because they were paid by insurance carriers, not Guess Irrigation. The Defendants claim the insurance carriers were simply honoring their contractual commitments to their insured and should be barred from recouping those payments from the Defendants.

The Defendants' argument disregards two longstanding principles of South Carolina law: subrogation and the collateral source rule. The fact these fees, costs, and expenses were billed to and paid by an insurance carrier and not paid by the insured Plaintiff should have no effect whatsoever on their recoverability.² The fact they were ultimately paid by an insurance carrier is irrelevant. If these fees, costs, and expenses are recoverable by the Plaintiff, they should be part of the award. Guess Irrigation undoubtedly paid premiums for that insurance coverage and the Defendants should not be allowed to profit from that. *See, e.g., Manor Healthcare Corp. v. Lomelo*, 929 F.2d 633, 639 (11th Cir.1991) (recognizing that preventing the prevailing party from regaining its costs would allow plaintiffs to bring lawsuits against insured defendants

² It was disclosed at the hearing that one of Guess Irrigation's two insurance carriers has made a claim against Guess Irrigation for reimbursement of the portion of the attorney's fees, costs, and litigation expenses it paid in defense of the Plaintiff, a claim that Guess Irrigation strongly denies.

without incurring litigation costs after losing on the merits, and observing that the nonprevailing plaintiff should not benefit from the prevailing party's insurance coverage). *See also Aspen v. Bayless*, 564 So.2d 1081 (Fla.1990) (holding that a party was not precluded from recovering costs when someone other than the named party paid or advanced those costs); *Hough v. Huffman*, 555 So.2d 942, 944-45 (Fla. Dist. Ct. App. 1990) ("Failure to allow a cost award to a prevailing defendant who is insured, because of the fact of insurance coverage alone, gives the plaintiff, and/or the plaintiff's insurance carrier, an undeserved windfall. The defendant has paid premiums for such insurance coverage. Why should a nonprevailing plaintiff be afforded any fortuitous benefit from such circumstances?"); *Mullins v. Kessler*, 83 P.3d 1203, 1204 (Colo. App. 2003) (holding that the arrangement between a prevailing defendant and his liability insurer for the disbursement and repayment of the costs is of no consequence to the defendant's substantive right to receive reimbursement for such costs).

The Defendants further argue that HSB's fees, costs, and expenses were incurred in defense of JFF's counterclaims and thus should not be recoverable under Section 29-5-10 or Section 27-1-15. I find they are not recoverable under the Mechanic's Lien Act (Section 29-5-10) because they do not relate to the pursuit of the mechanic's lien or the underlying breach of contract claim. However, I find they are recoverable under Section 27-1-15. In *Hardaway Concrete Company, Inc. v. Hall Contracting Corporation*, 374 S.C. 216, 647 S.E.2d 488 (2007), the South Carolina Court of Appeals affirmed a trial court's decision to include in the Section 27-1-15 award attorney's fees for defending the opposing party's counterclaims. *See also Charleston Lumber Co. v. Miller Housing Corp.*, 318 S.C. 471, 483, 458 S.E.2d 431, 438-39 (Ct. App. 1995) (holding trial court did not abuse its discretion in awarding attorney's fees for the counterclaim where the facts and issues surrounding a promissory note were intertwined with

those of the counterclaims and transformed a normally uncomplicated action into complex litigation).

As stated previously, this matter was a complex case that was made even more so by JFF's counterclaims, which required Guess Irrigation to expend significant attorney's fees, costs, and litigation expenses to defend and ultimately prevail on those counterclaims and its own claims for payment. I find that the facts and issues surrounding the counterclaims were so intertwined with the Plaintiff's claims that HSB's fees, costs, and litigation fees are recoverable under Section 27-1-15.

4. The fees of Daniel H. Shine should not be awarded because they are not supported by affidavit.

Unlike the fees expended by BASJ and HSB, the invoice submitted from The Law Offices of Daniel H. Shine was not verified by an Affidavit addressing the six factors enunciated in Jackson. Without a proper basis upon which to base an award, Mr. Shine's fees and costs must be denied.

5. The expert witness fees are not recoverable as either attorney's fees or taxable costs.

As stated more fully in their Objection, the Defendants argue that the expert witness fees incurred by Guess Irrigation are not recoverable, as they are not taxable costs. These expert fees were incurred primarily in defense of the counterclaim. As set forth in the Affidavit of Robert W. Buffington filed in support of the motion for fees, expert fees were incurred in the amount of \$49,094.20 and statements of the experts were submitted as part of his fee affidavit. Agricultural engineer Tyler Fields was paid \$7,406.42, agricultural engineer Kendall Kirk was paid \$16,480.00, and agronomist Virgil Quisenberry was paid \$25,207.78. All of these witnesses

testified at the trial of the case. As stated above, this case was complex and the insertion of the counterclaims contributed substantially to the complexity. Pursuant to Section 27-1-15, I find that these expenses incurred in the defense of the counterclaim are recoverable. See Hardaway Concrete Company, Inc. v. Hall Contracting Corporation, 374, S.C. 216, 647 S.E.2d 488 (2007). The fees for the experts retained were necessary for the defense of the counterclaim which, as discussed above, was intertwined with the prosecution of the mechanic's lien action. I find that those expert expenses are reasonable and recoverable under Section 27-1-15. I find that the reimbursement of expert fees is equitable and that one goal of Section 27-1-15 is to make a claimant such as Guess Irrigation whole for defending counterclaims where, as here, the jury found that JFF failed to make a reasonable and fair investigation of the merits of the Guess Irrigation's claims, the failure of which precipitated this litigation.

THE AWARD OF PRE-JUDGMENT INTEREST

The jury awarded Guess Irrigation the full amount claimed on its contract with JFF. As this debt was a sum certain, Guess Irrigation is entitled to prejudgment interest on the verdict. South Carolina law allows for the recovery of 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, if the sum is certain or capable of being reduced to certainty. Smith-Hunter Constr. Co. v. Hopson, 365 S.C. 125, 128, 616 S.E.2d 419, 421 (2005); Babb v. Rothrock, 310 S.C. 350, 353, 426 S.E.2d 789, 791 (1993). "Stated another way, prejudgment interest is allowed on a claim of liquidated damages; i.e., the sum is certain or capable of being reduced to certainty based on a mathematical calculation previously agreed to by the parties." Butler Contracting, Inc. v. Court St., LLC, 369 S.C. 121, 133, 631 S.E.2d 252, 258-59 (2006). "The fact that the amount

due is disputed by the opposing party does not render the claim unliquidated for the purposes of an award of prejudgment interest.” Butler, 369 S.C. at 133, 631 S.E.2d at 259.

I further find that Guess Irrigation is also entitled to an award of interest under Section 27-1-15, as discussed previously in this Order.

“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.” S.C. Code Ann. § 34-31-20(A) (Thomson Reuters Supp. 2014). Applying this interest rate to the debt owed Guess Irrigation, and assuming an initial due date of September 1, 2011, the interest due Guess Irrigation is Fifty-one Thousand, Twenty-seven and 04/100 Dollars (\$51,027.04).

Amount of verdict:	\$144,016.00
Statutory prejudgment interest rate (S.C. Code § 34-31-20(A)):	8.75%
Days of prejudgment interest (September 1, 2011 – September 18, 2015):	1,478
Calculation based on 365-day year: $(0.0875 \times 1,478 \times \$144,016.00) / 365 =$	\$ 51,027.04

The Defendants have not challenged an award of interest or Guess irrigation’s calculations of the amount due. Regardless, based on the case law and plain language of Section 27-1-15, I find an award of prejudgment interest is appropriate and that the Plaintiff’s calculations are correct. Accordingly, I award the Plaintiff Fifty-one Thousand, Twenty-seven and 04/100 Dollars (\$51,027.04) in prejudgment interest.

SUMMARY OF RULINGS

Based on the above, my rulings on the Plaintiff's Motion for an Award of Attorney's Fees, Costs, and Litigation Expenses are summarized as follows:

1. I find that Guess Irrigation, as the prevailing party on its mechanic's lien claim, is entitled to an award of attorney's fees, costs, and litigation expenses against Justice Family Farms, LLC and Catfish Bay, LLC in the maximum amount recoverable under Section 29-5-10, One Hundred Forty-four Thousand Sixteen Dollars (\$144,016.00). I specifically find this amount is fair and reasonable after considering the six factors stated in Jackson. This amount is in addition to the jury's verdict of \$144,016.00.

2. I find that Guess Irrigation is entitled to an additional award of attorney's fees under Section 27-1-15 from Justice Family Farms, LLC in the amount of Three Hundred Seven Thousand, Six Hundred Eleven and 51/100 Dollars (\$307,611.51). This amount is calculated as follows:

BASJ Invoices Claimed	\$232,049.94
Less Deduction for Claims Not Part of Verdict	(\$ 43,307.03)
Less Amount Awarded Under Section 29-5-10	(\$144,016.00)
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BASJ TOTAL	\$ 44,726.91
HSB Invoices Claimed	\$262,884.60
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TOTAL 27-1-15 AWARD (Excluding Interest)	\$307,611.51

I specifically find this amount is fair and reasonable after considering the six factors stated in Jackson v. Speed. I further find that if an award of attorney's fees, costs, and litigation expenses was not available to Guess Irrigation under Section 29-5-10 of the Mechanic's Lien Act, Guess Irrigation would have been entitled to recover the \$144,016.00 awarded under Section 29-5-10 from JFF under Section 27-1-15.

3. I find that Guess Irrigation is entitled to an award of prejudgment interest against Justice Family Farms, LLC in the amount of Fifty-one Thousand, Twenty-seven and 04/100 Dollars (\$51,027.04). This award is based both on Section 27-1-15 and South Carolina case law authorizing an award of prejudgment interest where, as here, the sum is certain or capable of being reduced to a certainty.

IT IS, THEREFORE, ORDERED that judgment be entered in favor of the Plaintiff, Guess Farm Equipment Company, Inc., d/b/a Guess Irrigation Company, and against the Defendant, Justice Family Farms, LLC, in the total sum of Six Hundred Forty-six Thousand, Six Hundred Seventy and 55/100 Dollars (\$646,670.55). This amount represents the jury's verdict of \$144,016.00, a total attorney's fee award of \$451,627.51, and an award of prejudgment interest of \$51,027.04.

IT IS FURTHER ORDERED that of this total judgment amount, the sum of Two Hundred Eighty-eight Thousand, Thirty-two Dollars (\$288,032.00) be entered as a judgment on the Plaintiff's mechanic's lien claim against Justice Family Farms, LLC and Catfish Bay, LLC to secure the payment of the debt due the Plaintiff. This lien is enforceable against the real property identified in the lien as being owned by the Defendant, Catfish Bay, LLC. This sum is

the total lien amount awarded by the jury's verdict plus the maximum amount of attorney's fees, costs, and litigation expenses recoverable under Section 29-5-10.

IT IS FURTHER ORDERED that the property identified in the Plaintiff's mechanic's lien, attached hereto as Exhibit A and incorporated by reference, be sold to satisfy the Plaintiff's mechanic's lien, the sale to be made by such officer as may be authorized by law to make sales of property.

IT IS FURTHER ORDERED that the unredacted fee invoices of Barnes, Alford, Stork & Johnson, LLP and Haynsworth Sinkler Boyd, P.A. be filed with the Dillon County Clerk of Court under seal. The Clerk of Court is instructed to maintain those records under seal pending further Order of this court or any appellate court.

IT IS SO ORDERED.



Michael G. Nettles
Presiding Judge

Nov 4, 2015
Greenville, South Carolina