STATE OF SOUTH CAROLINA **COUNTY OF LEE**	)	**IN THE COURT OF COMMON PLEAS** **THIRD JUDICIAL CIRCUIT**
Lee County Landfill SC, LLC, Plaintiff, v. Industrial Waste Service, Inc. and Warren Lee, Defendants.	)	C/A No. 2009-CP-31-046 **ORDER AWARDING JUDGMENT AND ATTORNEYS' FEES AND COSTS**

Introduction

This matter came before the Court for a bench trial on January 26 and 27, 2016, in the Lee County Court of Common Pleas. Tracey C. Green and John W. Roberts of the law firm of Willoughby & Hoefer, P.A. and Matthew R. Arnold, *pro hac vice*, of the North Carolina law firm of Arnold and Smith, PLLC represented Plaintiff Lee County Landfill SC, LLC (LCL). William W. Wheeler, III of Jennings & Jennings, P.A. represented Defendants Industrial Waste Service, Inc. (IWS) and Warren Lee (Lee). The Court thereafter held a hearing on July 25, 2016, regarding LCL's motion for an award of attorneys' fees and costs. For the reasons explained below, I award judgment to LCL and against IWS and Lee in the amount of $350,809.63 and I award attorneys' fees and costs to LCL in the amount of $137,952.34, for a total award of $488,761.97 plus post-judgment interest from the date of the entry of this Order.

Order Awarding Judgment to Lee County Landfill

Summary of the Case

This case was about IWS and Lee's refusal to pay for solid waste disposal services provided by LCL. LCL operates a disposal facility for solid waste. IWS is a transporter of solid waste and was a provider of temporary labor services. For several years, IWS disposed of two waste streams at LCL's facility pursuant to a written agreement and disposed of a third waste stream pursuant to a month-to-month arrangement between the parties not covered by any written agreement. The parties developed a course of dealing by which LCL would submit monthly invoices to IWS and Lee and, when the invoices became due, LCL would contact Lee for authorization to charge the total monthly invoice amounts to Lee's American Express card. IWS also provided temporary labor services at LCL's facility pursuant to a contract with an affiliate of LCL.

In August 2008, LCL's affiliate transitioned to another company for temporary labor services and IWS stopped providing these services at LCL's facility, which Lee admitted angered him. A few days after losing the temporary labor services work, Lee disputed certain LCL invoices, claiming that the fuel recovery fees that LCL charged, and had been charging for the previous two and one-half years, were improper. Nevertheless, Lee authorized full payment of those invoices, including fuel fees, after being told that LCL believed the fees were appropriately charged, and IWS continued hauling waste to LCL's facility until November 2008.

However, in late November 2008, after being approved to deliver IWS's waste to another landfill and upon receiving his monthly American Express bill for October 2008, Lee disputed the previously authorized payment for LCL's September 2008 waste disposal

invoices. IWS and Lee then refused to pay LCL's waste disposal invoices for October and November 2008. Lee claimed at the time that he refused to pay the invoices because LCL could not charge fuel recovery fees and because LCL owed IWS more than $117,000 for allegedly unbilled temporary labor services provided from September 2007 to August 2008, for which Lee claimed he provided an invoice to LCL in August 2008.

LCL filed this action in March 2009 to recover the full invoice amounts and all corresponding fees and costs owed for September, October, and November 2008, asserting claims against IWS and Lee for breach of contract, breach of contract accompanied by a fraudulent act, breach of implied covenant of good faith and fair dealing, quantum meruit/implied contract, alter ego liability, and violation of the South Carolina Unfair Trade Practices Act. IWS and Lee answered and counterclaimed, denying LCL's claims and asserting nine counterclaims to, in part, recover the fuel recovery fees IWS had paid for the previous two and one-half years.[1]

The primary dispute between the parties at trial centered on the fuel recovery fees as IWS and Lee admitted that LCL provided the waste disposal services itemized in the invoices and also admitted that all other fees were appropriate. Moreover, because IWS's counterclaims regarding the allegedly unbilled amounts for the temporary labor services

[1] At issue during the trial were IWS and Lee's counterclaims for breach of contract, breach of contract accompanied by a fraudulent act, and breach of implied covenant of good faith and fair dealing related to the written waste disposal agreement between LCL and IWS. In their original Answer and Counterclaim, IWS and Lee had asserted additional breach of contract, breach of contract accompanied by a fraudulent act, and breach of implied covenant of good faith and fair dealing counterclaims related to the temporary labor services agreement with LCL's affiliate as well as counterclaims for intentional interference with a contract, violation of the South Carolina Unfair Trade Practices Act, and offset. These counterclaims were all dismissed prior to trial.

were dismissed before the trial, IWS and Lee did not assert at trial the amounts allegedly owed for temporary labor services were a reason for not paying for the waste disposal services. Accordingly, the crux of the case was whether the fuel recovery fees were appropriately charged and had been approved by IWS and Lee. If they were, then LCL was entitled to full payment of the September, October, and November 2008 invoices and IWS and Lee's remaining counterclaims would fail.

Another issue at trial related to the temporary labor services invoice IWS and Lee submitted to LCL at the time they refused to pay for the waste disposal services. Although IWS and Lee's counterclaims related to the temporary labor services had been dismissed prior to trial, LCL contended that IWS and Lee had fraudulently created this invoice to avoid paying what they owed LCL for waste disposal services. LCL also contended that IWS and Lee fraudulently created a back-dated September 2007 letter to justify that fraudulent invoice and their claims for more money from LCL. These allegations and the evidence submitted in support related to LCL's breach of contract accompanied by a fraudulent act and violation of the South Carolina Unfair Trade Practices Act claims against IWS and Lee.

During the two-day trial, LCL presented the testimony of three witnesses and published portions of the deposition testimony of another witness on its behalf as well as portions from Lee's deposition testimony. IWS and Lee presented two witnesses. The parties stipulated to and entered into evidence 23 joint exhibits, and IWS and Lee entered into evidence one additional exhibit without objection by LCL.

Findings of Fact

Having carefully considered all testimony, exhibits, and arguments presented at the trial, and taking into account the burden of proof of the parties and the credibility and

accuracy of the evidence, I make the following Findings of Fact based on the preponderance of evidence:

1. LCL operates a solid waste disposal facility in Bishopville, South Carolina.

2. IWS is a transporter of solid waste and a provider of temporary labor services.

3. Lee is the sole owner and shareholder of IWS.

4. Lee admitted, and I find, that "IWS is [Lee's] alter ego, the corporate veil is pierced and should a judgment be rendered against IWS, the Defendant, Warren Lee, would be personally, jointly and severally liable for such judgment." [Trial Tr. 125:2-12; Jt. Ex. 18.]

5. On June 8, 2005, LCL and IWS entered into a written "Waste Disposal Agreement" (WDA), which authorized IWS to dispose of two solid waste streams at LCL's facility—"OMNI (Giant Recycling)" and "City of Florence Sewage Sludge"—in return for a disposal fee for "acceptable waste" dumped at the facility. [Trial Tr. 63:1-3; Jt. Ex. 1.] The WDA provides that, in addition to disposal fees, LCL could impose other fees with notice and approval by IWS. [Jt. Ex. 1].

6. LCL and IWS also had a month-to-month arrangement for IWS to dispose of waste from another entity, Darlington Shredding, at LCL's facility subject to terms and fees in place at the time of disposal. [Trial Tr. 15:5-6; 20:21-21:15.] This arrangement was not expressly covered by the WDA or any other written contract. [Trial Tr.14:12-18, 78:2-10, 78:14-16; Jt. Ex. 1.]

7. At trial, Lee testified that the Darlington Shredding waste stream was covered by the WDA. [Tr. 181:18-182:11.] The WDA, by its plain language, includes only the OMNI and City of Florence waste stream. [Jt. Ex. 1.] Based on the plain language, I find the testimony of LCL's witnesses that the Darlington Shredding waste was not covered by the

WDA and instead was a month-to-month arrangement to be credible and consistent with the WDA. I reject Lee's testimony on this point.

8. Accordingly, I find that LCL and IWS had a month-to-month arrangement for IWS to dispose of the Darlington Shredding waste stream at LCL's facility subject to terms and fees in place at the time of disposal that was not covered by the WDA or any other written contract.

9. In addition to disposing of waste at LCL's disposal facility, for several years, IWS also provided temporary labor services at LCL's facility pursuant to a written agreement with LCL's affiliate, Allied Waste North America, Inc. (Allied). [Jt. Ex. 17; Trial Tr. 11:16-12:20.]

10. However, in the summer of 2008, Allied began transitioning to another company for temporary labor at LCL's facility and IWS stopped providing temporary labor at LCL's disposal facility completely in August 2008. [Trial Tr. 77:13-18; 78:17-18.] Lee admitted he was angry about losing the temporary labor services work. [Trial Tr. 77:7-9, 77:19-21, 208:21-23, 246:1-2.]

11. Up until the dispute between the parties in late 2008, LCL and IWS operated under a course of dealing by which LCL would submit invoices for waste disposal fees and, when the invoices became due, LCL would call or email Lee for authorization to charge the total monthly invoice amounts to Lee's American Express card. [Trial Tr. 75:12-14, 103:5-14, 241:1-10; Jt. Exs. 3, 4, 5, 6.]

12. The last payment authorized in this manner was the payment for the September 2008 invoices and Lee was notified by email of that payment. [Trial Tr. 218:22-

219:3; Jt. Ex. 6.] Lee testified, and I find, that he initially authorized this payment. [Trial Tr. 242:5-17.]

13. However, in late November 2008, after being approved to deliver IWS's waste to another landfill and upon receiving his monthly American Express bill for October 2008, Lee disputed in full the previously authorized payment for the September 2008 invoices. [Trial Tr. 242:12-243:25, 257:3-6; Jt. Ex. 7.]

14. IWS and Lee then refused to pay LCL's waste disposal invoices for October and November 2008. [*Id.*] Lee claimed at the time that he refused to pay the invoices because LCL could not charge fuel recovery fees and because LCL owed IWS more than $117,000 for allegedly unbilled temporary labor services provided from September 2007 to August 2008. [Trial Tr. 77:10-12, 114:4-117:2; Jt. Exs. 3-5, 7, 16, 19.]

15. LCL began imposing fuel recovery fees in March 2006 on all of its customers, including IWS, except for some governmental entities. [Trial Tr. 15:19-16:6, 32:18-21, 63:11-64:17, 66:17-67:7; Jt. Exs. 21-23.]

16. The purpose of the fees was to recover increasing diesel fuel costs for operating the disposal facility. [Trial Tr. 16:7-17:2.]

17. The fuel recovery fees were listed as a separate line item on each invoice submitted by LCL to IWS. [Jt. Exs. 20-23.]

18. Over approximately two and one-half years, from March 2006 until September 2008, IWS fully paid more than 320 invoices for waste disposal that included $155,613 in separately stated fuel recovery fees. [Trial Tr. 238:6-239:14; Jt. Exs. 14, 21-23.]

19. I find that fuel recovery fees are standard in the waste disposal industry. LCL's current general manager, Lee Postal, testified that these fees are standard in the waste

disposal industry. [Trial Tr. 16:7-17:2, 44:13-14.] Postal also was LCL's general manager from 2005 through 2007, which included the time the fees were first imposed. [*Id.*] LCL's general manager from 2007-2009, Timothy Loveland, also testified that fuel recovery fees are standard in the industry. [Trial Tr. 74:13-15, 75:24-76:1, 76:5-7; Jt. Ex. 10.] Lee testified that IWS charged fuel recovery fees to its customers. [Trial Tr. 187:7-10, 224:20-225:22; Jt. Ex. 11.] Lee also acknowledged he testified in his deposition that fuel recovery fees had become an industry standard. [Trial Tr. 222:13-224:19, 227:23-228:15.]

20. Mr. Postal, testified to his belief that, as was LCL's typical practice, written notice of the fuel recovery fees was provided to IWS and Lee prior to the imposition of the fees in March 2006, although he acknowledged that LCL was unable to locate copies of these specific notices. [Trial Tr. 18:4-14, 21:16-24.]

21. Mr. Postal further testified that he met with Lee shortly after the imposition of the fuel recovery fees in April or May 2006. [Trial Tr. 18:18-19:14, 70:3-6.] Mr. Postal testified that the meeting occurred after he had notified waste haulers that he was placing the City of Florence waste stream contract out for bid due to his concerns about the low rate being charged for disposal of that waste stream. [Trial Tr. 18:20-25, 64:18-66:16.] Mr. Postal testified that Lee produced the WDA at the meeting and, to address Mr. Postal's concerns regarding the rate charged for the waste stream, said that he now was paying the fuel recovery fees and that would help LCL. [Trial Tr. 19:4-14, 48:22-25.]

22. Mr. Postal testified that he never received or heard of any complaint from Lee about paying the fuel recovery fees. [Trial Tr. 18:15-17, 43:15-23, 52:9-16.]

23. Mr. Loveland also testified that he did not become aware of any complaint or dispute about the fuel recovery fees until a few days after IWS stopped providing temporary labor at LCL's facility in August 2008. [Trial Tr. 78:11-13.]

24. In late August 2008, Lee contacted Mr. Loveland and complained about losing the temporary labor work. He also disputed the July 2008 waste disposal invoices issued by LCL for which payment was currently due, claiming that the fuel recovery fees were improper. [Tr. 13:11-17, 75:17-19, 76:8-10, 248:7-249:10, 252:21-253:1; Jt. Exs. 10-3, 10-4.]

25. Mr. Loveland took contemporaneous notes of these conversations with Lee, and he also exchanged several emails with other LCL employees at the time regarding Lee's complaint about the fuel recovery fees. [Trial Tr. 76:8-77:2; Jt. Exs. 10-3, 10-4.] I find that these notes and emails dated August 28 and 29, 2008, are the earliest written records of any complaint by Lee about the fuel recovery fees.

26. Notwithstanding his complaints to Mr. Loveland regarding the fuel recovery fees, Lee authorized full payment of the July 2008 invoices, including the fuel recovery fees, after being told that LCL believed the fees were appropriately charged.[2] [Trial Tr. 76:8-77:2, 253:2-6; Jt. Exs. 10-3, 10-4.]

[2] IWS continued hauling waste to LCL's facility until November 2008 and authorized full payment for the August and September waste disposal invoices. [Trial Tr. 253:2-254:19; Jt. Exs. 4, 5, 6.] But also during this time, Lee and IWS began the process to start delivering waste to a landfill in Blythewood, South Carolina operated by Waste Management and started transporting waste there in late October or early November 2008. [Trial Tr. 254:20-257:6.] Lee admitted that, as Mr. Postal testified, IWS could not move to another landfill without going through an extensive approval process. [Trial Tr. 19:15-20:20, 256:25-257:2.]

27. Lee admitted that he met with Mr. Postal in April or May 2006 shortly after the imposition of the fuel recovery fees. [Trial Tr. 189:19-192:7.] However, he testified that, even though the purpose of the meeting was to discuss the WDA and the rates charged to IWS, he never mentioned the fuel recovery fees and the fees were never discussed at that meeting. [Trial Tr. 232:8-235:13.] He testified that he instead complained about the fuel recovery fees several months after his meeting with Mr. Postal by visiting LCL's office and informing LCL's office manager at the time, Morgan Monnig Gavia, that he did not believe the fees should be charged. [Trial Tr. 191:13-192:7.]

28. On cross examination, however, Lee admitted that he testified during his deposition that he complained about the fuel recovery fees about a month or so after they were imposed, which was consistent with the April/May 2006 timeframe identified by Mr. Postal in his testimony that Lee acknowledged that the fees would help LCL during their meeting to discuss the City of Florence waste stream. [Trial Tr. 231:4-233:3.]

29. Lee could not recall exactly when he raised the issue of the fuel recovery fees again after complaining to Ms. Gavia, but he testified that he complained "maybe" once every six to eight months. [Trial Tr. 235:25-236:15.] He further testified that he didn't "really force the issue" and that, while he did not "approv[e]" the fuel recovery fees, he had "accept[ed]" them. [Trial Tr. 195:4-6, 200:12-15.] He also testified that he never submitted anything in writing to LCL to complain about the fuel recovery fees. [Trial Tr. 236:16-19.]

30. Ms. Gavia testified as a witness for IWS and Lee. Ms. Gavia worked for LCL from 2006 to 2009. [Trial Tr. 130:19-25.] From February 2009 until May 2015, Ms. Gavia worked for IWS and Lee. [Trial Tr. 131:22-132:4.]

31. Ms. Gavia initially testified that she began working for LCL in March 2006 and that she first met Lee when he came to LCL's office in July or August 2006 to, as she testified, complain about the fuel recovery fees. [Trial Tr. 134:3-6, 134:14-135:14.] She testified that she verbally reported his complaint to her superior and then followed up with Lee approximately one to two weeks later and then on several other occasions. [Trial Tr. 136:25-138:22.] Ms. Gavia admitted that she did not record or report in writing any complaint by Lee about the fuel recovery fees. [Trial Tr. 160:7-17; Jt. Exs. 3-5.]

32. Regarding the circumstances surrounding the imposition of the fuel recovery fees and any complaints by IWS and Lee, I find the testimony of the witnesses on behalf of LCL to be more credible and reliable than the testimony of Lee and Ms. Gavia.

33. First, there is no documentation or evidence to support Lee's and Ms. Gavia's testimony. Rather, the documentation and evidence supports LCL's witnesses' testimony. The earliest written records of any complaint about the fuel recovery fees are Mr. Loveland's notes of his August 28 and 29, 2008 conversations with Lee and LCL's internal emails on those same days discussing Lee's complaint, all of which support LCL's witnesses' testimony. Moreover, the customer account inquiry and service records for all of IWS's accounts with LCL from 2006 through September 2008 did not identify a single complaint by Lee regarding the fuel recovery fees. [Trial Tr. 90:24-103:4; Jt. Exs. 3-5.]

34. Second, Lee's and Ms. Gavia's testimony was inconsistent, and Lee's testimony at trial differed from his deposition testimony. For instance, Ms. Gavia admitted during cross-examination that she did not start working for LCL until October 2006, which directly contradicted her testimony on direct that she started with LCL in March 2006 and that Lee complained to her about the fees in July or August 2006. [Trial Tr. 156:19-21.]

Second, Ms. Gavia's testimony that she followed up with Lee one to two weeks after their first conversation and then on several other occasions was inconsistent with Lee's testimony that his complaints about the fuel recovery fees were not a "common occurrence" and were only made every six to eight months. [Trial Tr. 236:6-15.] Lee also did not testify that he had any follow up conversation with Ms. Gavia after their first meeting. Lee's testimony at trial that he only complained every six to eight months also contradicted his deposition testimony in which he stated he complained almost every month.

35. Finally, Lee's and Ms. Gavia's testimony is contradicted by the undisputed fact that for approximately two and one-half years IWS paid over 320 waste disposal invoices with fuel recovery fees totaling $155,613. And Lee testified that he believed his relationship with LCL was good right up until the end, which is inconsistent with someone that believes his complaints about perceived wrongly charged fees were being ignored for two and one-half years. [Trial Tr. 199:23-200:3.]

36. I therefore find that Lee approved the fuel recovery fees in his conversation with Mr. Postal in April or May 2006 and that, as testified by LCL's witnesses, IWS and Lee did not complain about the fuel recovery fees until late August 2008.

37. I further find that after first complaining about the fuel recovery fees in late August 2008 and being told by LCL that the fees were appropriate, IWS and Lee continued to dispose of its waste at LCL's facility for almost three additional months and authorized payment for three months of invoices that included fuel recovery fees.

38. With respect to the $117,000 allegedly owed for temporary labor services,[3] Lee claimed that he had sent an invoice for that amount in August 2008. [Trial Tr. 212:1-2.] Lee admitted that the invoice was generated after IWS lost the temporary labor services agreement and was submitted to LCL, in part, to "get [their] goat." [Trial Tr. 212:16-25, 245:10-25.]

39. Although Lee claimed the invoice was faxed to LCL in August 2008, LCL had no record or knowledge of the invoice until IWS and Lee refused to pay the waste disposal invoices at the end of November 2008 and faxed a copy of the invoice to LCL on December 1, 2008. [Trial Tr. 77:10-12, 114:4-117:2; Jt. Ex. 16.] The only faxed copy of the invoice, which was jointly entered into the record, was marked by the fax machine as being transmitted to LCL on December 1, 2008, and Lee produced no written evidence that the invoice was provided to LCL in August 2008. [*Id.*]

40. Lee contended the invoice was related to a rate increase notification letter dated September 3, 2007 that Lee claimed was sent to Allied, but neither LCL nor Allied had any record or knowledge of this rate increase notice letter until Lee provided it to LCL by fax

[3] Prior to the trial, IWS and Lee's counterclaims related to the $117,000 temporary labor services invoice were dismissed because the temporary labor services agreement was with Allied, not LCL, and the temporary labor services invoice was not asserted by IWS and Lee at trial as a defense to the payment of LCL's waste disposal invoices for September, October, and November 2008. Accordingly, IWS and Lee's only proffered reason at trial as to why they refused to pay the September, October, and November 2008 invoices was their contention that the fuel recovery fees were improper because IWS and Lee were not provided notice of and did not approve the fuel recovery fees.

However, LCL claimed that IWS and Lee fraudulently created the invoice and the corresponding September 2007 rate increase letter to avoid paying the amounts owed to LCL. Under LCL's theory of the case, the facts and circumstances related to the $117,000 temporary labor services invoice therefore remained relevant to LCL's claims for breach of contract accompanied by a fraudulent act and violation of the SCUTPA against IWS and Lee.

on December 3, 2008. [Trial Tr. 246:3-23, 114:4-117:2, 122:2-21, 124:5-14.] IWS and Lee did not introduce any written evidence to corroborate their claim that the rate increase notification letter was provided to Allied or LCL prior to the December 3, 2008 fax.

41. Additionally, although Lee claimed that the September 3, 2007 rate increase letter was related to IWS's temporary labor services bid proposal allegedly submitted a few days prior, Lee also acknowledged during his trial testimony that the bid proposal form provided by Allied and submitted by IWS expressly stated that the current rates could not be increased in conjunction with the bid proposal. [Trial Tr. 247:2-248:7; Jt. Exs. 13, 17]

42. The total amount of the invoices for September, October, and November 2008 at issue in this case is $149,856.31, which Lee admits, and I find, has not been paid. [Trial Tr. 240:3-10; Jt. Exs. 2, 20.]

43. Lee also admitted, and I find, that LCL provided the waste disposal services related to the unpaid September, October, and November 2008 invoices and that IWS owes the disposal fees, environmental fees, and administrative fees in those invoices. [Trial Tr. 229:25-230:23; Jt. Exs. 1, 2, 20.]

44. Lee further admitted, and I find, that IWS received payment from its customers for the waste disposal at LCL's facility related to the unpaid invoices and has had the benefit and use of this money for more than six years. [Trial Tr. 240:3-20.]

45. The WDA provides that IWS shall pay all invoices within 30 days of receipt of the invoice and shall pay late fees for any invoices not paid within this 30-day period. [Jt. Ex. 1].

46. Every invoice expressly provided that a 1.5% per month late fee would be imposed on balances over 30 days from the date of the invoice. [Jt. Ex. 20.].

47. LCL's normal business practice is to charge and collect late fees on unpaid balances. [Trial Tr. 104:22-105:16.]

48. I find that payment for the September 2008 invoices was overdue as of close of business October 30, 2008; payment for the October 2008 invoices was overdue as of close of business November 30, 2008; and payment for the November 2008 invoices was overdue as of close of business December 30, 2008.

49. I find that the total amount of late fees corresponding to the unpaid invoice balance of $149,856.31 calculated through April 2016 is $200,953.32.

Conclusions of Law

Based on the preceding Findings of Fact, I make the following Conclusions of Law:

General

50. This Court has jurisdiction over the subject matter and parties in this action.

51. The weight and credibility of the evidence and the witnesses is within the province of the trier of fact. *See S.C. Cable Television Ass'n v. S. Bell Tel.& Tel. Co.*, 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992); *Small v. Pioneer Mach., Inc.*, 329 S.C. 448, 465, 494 S.E.2d 835, 843 (Ct. App. 1997) ("The fact finder is imbued with broad discretion in determining credibility or believability of witnesses.").

52. A judge who observes a witness is in the best position to assess the witness's demeanor, veracity, and credibility. *See, e.g., Woodall v. Woodall*, 322 S.C. 7, 10, 471 S.E.2d 154, 157 (1996); *Wallace v. Milliken & Co.*, 300 S.C. 553, 556, 389 S.E.2d 448, 450 (Ct. App. 1990).

LCL's Claims

Breach of Contract

53. A breach of contract claim has three elements: (1) a contract, (2) a breach of the contract, and (3) damages proximately resulting from the breach. *See, e.g., Fuller v. E. Fire & Cas. Ins. Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962).

54. LCL has established by a preponderance of the evidence all of the elements for its breach of contract claim against IWS.

55. The WDA, as the parties agreed, is a valid and enforceable contract between IWS and LCL covering the OMNI and City of Florence streams.

56. The September, October, and November 2008 invoices were timely submitted to IWS and Lee consistent with the parties' normal course of dealing and, as Lee admitted, IWS has not submitted payment for any of these invoices.

57. Lee admitted, and I find, that LCL provided the waste disposal services to IWS related to the unpaid September, October, and November 2008 invoices and LCL fully performed its obligations under the WDA.

58. Lee also admitted, and I find, that IWS owes the disposal fees, environmental fees, and administrative fees charged in the September, October, and November 2008 invoices.

59. I further find that the fuel recovery fees charged on the September, October, and November were proper and permitted under the WDA, and I reject, as a matter of fact and law, IWS and Lee's defense that they did not have notice of and approve the fuel recovery fees.

60. Since March 2006, the first month in which they were instituted, the fuel recovery fees were separately stated on each and every invoice submitted to IWS and Lee. This was sufficient notice to IWS and Lee of the fuel recovery fees. *See Gibson v. Bank of Am., N.A.*, 383 S.C. 399, 407-408, 680 S.E.2d 778, 783 (Ct. App. 2009) (holding that receipt of bank statements provided notice to account holder of issues related to bank account).

61. Moreover, by his own admission, Lee had notice of the fuel recovery fees within several months of them first being imposed in March 2006. *Blind Tiger, LLC v. City of Charleston*, 366 S.C. 182, 186, 621 S.E.2d 361, 363 (Ct. App. 2005) ("Actual notice is synonymous with knowledge."). LCL's witness, Mr. Postal, whose testimony I find more credible than Lee's on this issue, also testified that Lee acknowledged IWS's payment of the fuel recovery fees during a meeting that occurred in April or May 2006 shortly after the imposition of the fuel recovery fees. Moreover, the credible evidence and testimony established, and I find, that fuel recovery fees, like those charged by LCL, are standard in the waste disposal industry.

62. I therefore find that IWS and Lee had notice of the fuel recovery fees prior to using LCL's waste disposal services for September, October, and November 2008.

63. Additionally, it is undisputed that over a two and one-half year period, IWS and Lee paid more than 320 invoices with fuel recovery fees increasing to more than $155,000. Although denying that he "approv[ed]" the fuel recovery fees even while paying those fees for two and one-half years, Lee did testify that he had "accept[ed]" the fees over this same two and one-half year period.

64. I therefore find that IWS and Lee approved the fuel recovery fees. *See, e.g.*, APPROVE, Black's Law Dictionary (10th ed. 2014) ("To give formal sanction to; to confirm

authoritatively."); ACCEPT, Merriam-Webster Online Dictionary, http://www.merriam-webster.com/dictionary (last visited Mar. 16, 2016) ("to give admittance or approval to; to assume an obligation to pay").

65. As further support for my determination, I find that there is no documentation supporting Lee's contention that he complained about the fees prior to August 2008 and he admitted that he did not submit anything in writing to LCL complaining about the fees. Moreover, as set forth above, LCL's witness, Mr. Postal, testified that Lee acknowledged IWS's payment of the fuel recovery fees during a meeting that occurred in April or May 2006 shortly after the imposition of the fuel recovery fees, and all of LCL's witnesses testified and the credible evidence in the record supports that Lee did not complain about the fuel recovery fees until after losing the temporary labor services contract in August 2008.

66. Additionally, even after Lee complained about the fuel recovery fees in late August 2008, IWS and Lee paid two more months of invoices that included fuel recovery fees, initially authorized payment for the September invoices that included fuel recovery fees, and, knowing that LCL charged fuel recovery fees for its waste disposal services, continued to use LCL's waste disposal services until November 2008.

67. I therefore find that IWS materially breached the WDA by failing to pay the September, October, and November 2008 invoices related to the waste disposal services provided by LCL under the WDA.

68. As a result of this breach, I find that LCL incurred and is entitled to damages in the full amount of the unpaid invoices for September, October, and November 2008.

69. I further find that LCL is entitled to recover late fees owed pursuant to the WDA. As provided on the invoices, the late fees shall be calculated at a rate of 1.5% per month from 30 days after each invoice's due date to the date of this Order.

70. Full payment for the September 2008 invoices was due to LCL and owed by IWS and Lee on September 30, 2008; full payment for the October 2008 invoices was due to LCL and owed by IWS and Lee on October 31, 2008; and full payment for the November 2008 invoices was due to LCL and owed by IWS and Lee on November 30, 2008.

71. IWS and Lee were on notice prior to refusing to pay the invoices that a late fee of 1.5% per month would be imposed on all overdue balances.

72. The WDA provides that the prevailing party in any action brought to enforce the agreement is entitled to its reasonable attorneys' fees and costs. [Jt. Ex. 1.] I find that LCL is the prevailing party in this action and therefore is entitled to its reasonable attorneys' fee and costs incurred in this action.

73. I therefore find that LCL suffered and is entitled to damages in the full amount of the unpaid invoices and the corresponding late fees owed under the WDA.

Breach of Implied Covenant of Good Faith and Fair Dealing

74. "[T]here exists in every contract an implied covenant of good faith and fair dealing." *Williams v. Riedman*, 339 S.C. 251, 267, 529 S.E.2d 28, 36 (Ct. App. 2000).

75. I find by a preponderance of the evidence that IWS and Lee breached the implied covenant of good faith and fair dealing in the WDA by: (i) refusing to pay for services and costs rendered and admittedly owed; (ii) using LCL's disposal facility for months while seeking approval to dispose of waste at another facility and then leaving without paying as soon as approval was obtained; (iii) acknowledging, accepting, and paying

fuel recovery fees for over two and half years and then claiming they were wrongfully charged; (iv) authorizing payment of the September invoices and then disputing the charge with American Express one month later; and (v) refusing to pay invoices owed under the WDA based on the temporary labor services invoice.

76. As a result of this breach, I find that LCL incurred and is entitled to damages in the full amount of the unpaid invoices and the corresponding late fees owed under the WDA.

Quantum Meruit/Implied Contract

77. The elements of a *quantum meruit* claim are: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value. *Earthscapes Unlimited, Inc. v. Ulbrich*, 390 S.C. 609, 616-17, 703 S.E.2d 221, 225 (2010).

78. LCL has established by a preponderance of the evidence all of the elements for its *quantum meruit* claim.

79. LCL and IWS had a month-to-month arrangement for IWS to dispose of, and LCL to be paid for, the waste stream from Darlington Shredding at LCL's disposal facility, which was not covered by the WDA or any other written contract.

80. Lee admitted, and I find, that LCL provided the waste disposal services to IWS for the Darlington Shredding waste related to the unpaid September, October, and November 2008 invoices.

81. Lee also admitted, and I find, that IWS owes the disposal fees, environmental fees, and administrative fees in the September, October, and November 2008 invoices related to the Darlington Shredding waste.

82. Because IWS and Lee's only defense to not paying the invoices was based on the WDA, which, as I have found, did not cover the Darlington Shredding waste stream, IWS and Lee did not offer any defense or reason for not paying the invoices related to the Darlington Shredding waste. Nevertheless, I further find that the fuel recovery fees related to the disposal of the Darlington Shredding waste were proper, were part of the benefit conferred upon and realized and retained by IWS, and are owed by IWS to LCL.

83. Lee also admitted, and I find, that IWS received payment from Darlington Shredding for the waste disposed at LCL's facility and has had the benefit of this money for over six years.

84. I therefore find that LCL conferred a benefit upon IWS and Lee that IWS and Lee have realized and unjustly retained.

85. I further find that the value of that benefit, which LCL is entitled to recover, is the full amount of the unpaid September, October, and November 2008 invoices and all corresponding late fees related to the Darlington Shredding waste stream.

86. As provided on the invoices, the late fees shall be calculated at a rate of 1.5% per month from 30 days after each invoice's due date to the date of this Order.

87. Full payment for the September 2008 invoices was due to LCL and owed by IWS and Lee on September 30, 2008; full payment for the October 2008 invoices was due to LCL and owed by IWS and Lee on October 31, 2008; and full payment for the November 2008 invoices was due to LCL and owed by IWS and Lee on November 30, 2008.

88. I therefore find that LCL incurred and is entitled to recover as the benefit conferred on and unjustly retained by IWS and Lee the full amount of the unpaid September, October, and November 2008 invoices and all corresponding late fees related to the Darlington Shredding waste stream disposed at LCL's facility.

Alter Ego Liability

89. Lee admitted that "IWS is Defendant's alter ego, the corporate veil is pierced and should a judgment be rendered against IWS, the Defendant, Warren Lee, would be personally, jointly and severally liable for such judgment."

90. I therefore find as a matter of law that Lee is personally, jointly, and severally liable and responsible for each judgment and all damages and attorneys' fees and costs assessed against IWS in this action. *See, e.g., Catawba Indian Tribe of S. Carolina v. State of S.C.*, 978 F.2d 1334, 1344 (4th Cir. 1992) (holding that the corporate veil may be pierced in the appropriate case and in furtherance of ends of justice) (applying South Carolina law).

Breach of Contract Accompanied By a Fraudulent Act

91. A claim for breach of contract accompanied by a fraudulent act has the following elements: (1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract and not merely to its making; and (3) a fraudulent act accompanying the breach. *Conner v. City of Forest Acres*, 348 S.C. 454, 466, 560 S.E.2d 606, 612 (2002).

92. In support of this claim, LCL contends that, after becoming angry about losing the temporary labor services contract, Lee fraudulently denied that he had notice or approval of the fuel recovery fees; fraudulently claimed that he had complained to LCL on multiple occasions; fraudulently authorized LCL to charge his American Express card while at the same time initiating a change of operations to another landfill; fraudulently retained amounts

billed to his customers instead of paying those amounts to LCL for waste disposal charged; fraudulently denied authorizing the September invoices when his American Express bill became due; fraudulently created a temporary labor services invoice even though the terms under which he operated did not permit such increases or additions; and fraudulently created a September 2007 letter to justify that fraudulent invoice and his claims for more money from LCL.

93. However, I find that, although IWS and Lee breached the WDA, LCL did not meet its burden of proof as to the remaining elements of this claim.

Violation of the South Carolina Unfair Trade Practices Act

94. To recover under the SCUTPA, a claimant must demonstrate: "(1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected the public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s)." *Estate of Carr ex rel. Bolton v. Circle S Enterprises, Inc.*, 379 S.C. 31, 43, 664 S.E.2d 83, 89 (Ct. App. 2008) (citing S.C. Code Ann. § 39-5-10 to -560). If the defendant knew or should have known that his unfair or deceptive act violated the SCUTPA, the claimant is entitled to treble damages. S.C. Code Ann. § 39-5-140.

95. In support of its SCUTPA claim, LCL contends IWS and Lee willfully and knowingly violated SCUTPA by engaging in the following unfair and deceptive acts: (i) using LCL's disposal facility for months while seeking approval to dispose of waste at another facility and then leaving without paying as soon as approval was obtained; (ii) acknowledging, accepting, and paying fuel recovery fees for over two and one-half years and then claiming they were wrongfully charged; (iii) authorizing the payment of the September

invoices and then disputing the charge with American Express one month later; and (iv) refusing to pay the amounts owed based on a fraudulently created temporary labor services invoice.

96. LCL contends IWS and Lee's unfair and deceptive acts impacted the public interest by having the potential for repetition. LCL contends IWS and Lee committed multiple acts in furtherance of their deception that involved not only LCL but its affiliate, Allied, by creating false invoices, false letters, and falsely authorizing LCL to charge Lee's American Express card while moving IWS's landfill hauling operations to another location. LCL also contends IWS's procedures create the potential for repetition because its actions are taken at the whim of Lee, which affords both with the opportunity to engage in the same deceptive conduct to avoid payment to any other customers or vendors.

97. I find, however, that LCL did not meet its burden of proof as to the elements of this claim.

Request for Prejudgment Interest

98. LCL requested prejudgment interest pursuant to S.C. Code Ann. § 34-31-20.

99. However, I find that, although the September, October, and November 2008 invoice amounts were ascertainable and due by the dates set forth above, prejudgment interest is not appropriate in this case. The agreed upon late fees that I have found are appropriate and owed by IWS and Lee serve the same purpose as prejudgment interest.

IWS and Lee's Counterclaims

Breach of Contract, Breach of Contract Accompanied By a Fraudulent Act, and Breach of Implied Covenant of Good Faith and Fair Dealing

100. IWS and Lee claimed that LCL's imposition of the fuel recovery fees breached the WDA and that IWS and Lee were entitled to the total amount of fuel recovery fees paid by IWS and Lee over the approximately two and one-half year period since the fees were first imposed.

101. Because I find that LCL is entitled to the fuel recovery fees under the terms of the WDA, I find that IWS and Lee did not meet their burden of proof with regard to any of their counterclaims for the OMNI and City of Florence waste streams included under the WDA.

102. Because the Darlington Shredding waste stream was not covered by the WDA and was instead disposed at LCL's facility pursuant to a month-to-month arrangement based on the terms then in effect, I also find that IWS and Lee are not entitled to recover any of the fuel recovery fees previously charged and paid with respect to this waste stream.

103. For the same reasons that I find that LCL is entitled to recover on its claims against IWS and Lee, I find that IWS and Lee failed to establish by a preponderance of the evidence that LCL breached the WDA, including the implied covenant of good faith and fair dealing.

104. I further find that the evidence does not support any claim that LCL had any fraudulent intent with respect to its dealings with IWS and Lee, nor does the evidence support any claim that LCL committed a fraudulent act.

105. I also find that, whether or not the imposition of fuel recovery fees was a breach of the WDA, LCL established by the preponderance of evidence the defense of waiver because IWS and Lee acknowledged payment of the fuel recovery fees soon after their imposition and paid them for two and one-half years without objection. *Parker v. Parker*, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994) ("Waiver is a voluntary and intentional abandonment or relinquishment of a known right . . . [and] may be expressed or implied by a party's conduct . . . ."); *SPUR at Williams Brice Owners Ass'n, Inc. v. Lalla*, 2015 WL 7277467, at *7 (Ct. App. 2015) ("An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable.").

106. I also find that IWS and Lee are estopped from asserting any breach because IWS and Lee acknowledged payment of the fuel recovery fees soon after their imposition and paid them for two and one-half years without objection. *Parker*, 313 S.C. at 487, 443 S.E.2d at 391 ("Equitable estoppel occurs where a party is denied the right to plead or prove an otherwise important fact because of something which he has done or failed to do."); *Janasik v. Fairway Oaks Villas Horizontal Prop. Regime*, 307 S.C. 339, 344, 415 S.E.2d 384, 387 (1992) ("Equitable estoppel is the inhibition to assert such right by reason of mischief following one's own fault and may arise even though there was no intention on the part of the party estopped to relinquish or change any existing right).

107. Finally, I find that IWS and Lee's counterclaims are barred by laches because IWS and Lee paid the fuel recovery fees for two and one-half years without objection knowing LCL continued to provide waste disposal services and incur the related expenses to do so on the condition that IWS fully paid its invoices, including any amounts for fuel

recovery fees. *Chambers of S. Carolina, Inc. v. Cty. Council for Lee Cty.*, 315 S.C. 418, 421, 434 S.E.2d 279, 280 (1993) ("Under the doctrine of laches, if a party, knowing his rights, does not seasonably assert them, but by unreasonable delay causes his adversary to incur expenses or enter into obligations or otherwise detrimentally change his position, then equity will ordinarily refuse to enforce those rights.").

Order Awarding Attorneys' Fees and Costs to LCL

At the hearing on LCL's motion for attorneys' fees and costs, LCL was represented by Mr. Green and IWS and Lee were represented by Mr. Wheeler. Counsel for IWS and Lee submitted a memorandum opposing the relief sought by LCL and counsel for LCL submitted a supplemental affidavit. Subsequent to the hearing, counsel for LCL submitted the original invoices paid by LCL for attorneys' fees and costs for this Court's *in camera* review along with a supplemental affidavit. I have fully reviewed these materials and considered the arguments presented in the memoranda and at the hearing. I find and award LCL attorneys' fees in this case in the amount of $116,936 and costs in the amount of $21,016.34, for a total award of fees and costs in the amount of $137,952.34.

Background

This case was tried before the Court on January 26 and 27, 2016, in the Lee County Court of Common Pleas. LCL sought to recover the full invoice amounts and all corresponding fees and costs LCL claimed IWS and Lee owed for certain waste disposal services LCL provided in September, October, and November 2008. LCL asserted claims for breach of contract, breach of contract accompanied by a fraudulent act, breach of implied covenant of good faith and fair dealing, quantum meruit/implied contract, alter ego liability,

and violation of the South Carolina Unfair Trade Practices Act (SCUTPA). IWS and Lee denied LCL's claims and asserted that IWS was entitled to recover fuel recovery fees IWS had paid for the previous two and one-half years. At issue during the trial were IWS and Lee's counterclaims for breach of contract, breach of contract accompanied by a fraudulent act, and breach of implied covenant of good faith and fair dealing related to the written waste disposal agreement between LCL and IWS.

Discussion

LCL has moved for an award of attorneys' fees and costs pursuant to the Waste Disposal Agreement (WDA) between LCL and IWS. The WDA provides:

> If any legal action or any other proceeding is brought for the enforcement of [the WDA], or because of an alleged dispute, breach, default, or misrepresentation in connection with [the WDA], the prevailing party **shall be entitled to recover** reasonable attorneys' fees and other costs incurred in that action or proceeding.

WDA § 9(f) (emphasis added).

I find that LCL is the prevailing party in this action by virtue of the award of damages to LCL and the dismissal and denial of all nine of IWS and Lee's counterclaims. *See, e.g., Sloan v. Friends of Hunley, Inc.*, 393 S.C. 152, 156, 711 S.E.2d 895, 897 (2011) ("A prevailing party is one who successfully prosecutes an action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention [and] is the one in whose favor the decision or verdict is rendered and judgment entered."). Accordingly, I find that LCL is entitled to an award of reasonable attorneys' fees and costs.

Having found that LCL is entitled to an award of reasonable attorneys' fees and costs, I must determine the amount of an award of fees and costs that would be reasonable. *See Baron Data Sys., Inc. v. Loter*, 297 S.C. 382, 384, 377 S.E.2d 296, 297 (1989) ("Where there

is a contract, the award of attorney's fees is left to the discretion of the trial judge and will not be disturbed unless an abuse of discretion is shown."). LCL has requested an award of attorneys' fees in the amount of $339,364.14 and costs in the amount of $21,016.34. In support, LCL has submitted affidavits of its counsel, which detail and categorize the actual fees and costs billed to and paid by LCL in litigating this case, including the hourly rates billed and the number of hours worked for each attorney in this case. The affidavits also detail the current hourly rates for each attorney involved in this case as supporting evidence of the prevailing market rates in the community for similar services. As noted above, LCL also submitted detailed billing records to this Court, which I have reviewed *in camera*. In further support of the requested fees and costs, LCL submitted the affidavit of Peter Protopapas, who provided the Court with his expert opinion as to the reasonableness of the hours, rates, and costs incurred and requested.[4]

I find it appropriate to limit the award of fees to LCL to one-third of the total judgment awarded to LCL. In rendering my decision on this matter, I have relied upon my own knowledge and observations in the case as well as the billing records and affidavits submitted by LCL, including the affidavit of Mr. Protopapas. I find that the legal fees and costs requested by LCL are the amounts it actually incurred and paid pursuant to its agreements with counsel and I further find that those payments are based on rates that are less than LCL's counsel's current hourly rates for similar matters. I also have considered the following factors in reviewing LCL's request for reasonable attorneys' fees and costs: (1) the

[4] I find that Mr. Protopapas is qualified to render an opinion assisting the Court in exercising its discretion. *See* Rule 702, SCRE.

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] (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, 759 (1997); *Baugh, M.D. v. Columbia Heart Clinic, P.A.*, 2015 WL 1887822, at *2 (S.C. Com. Pl) (Mar. 31, 2015); *see also Blumberg v. Nealco, Inc.*, 310 S.C. 492, 494, 427 S.E.2d 659, 661 (1993) (holding that trial courts "should make specific findings of fact on the record for each factor..."). However, for the reasons explained below, I ultimately find that the requested award of fees should be limited to one-third of the judgment awarded but that LCL should be awarded 100% of its costs.

[5] Because LCL's counsel was paid on an hourly basis, I find that the "contingency of compensation" factor does not weigh in favor of or against LCL's request for attorneys' fees and costs. *See Baron*, 297 S.C. at 385, 377 S.E.2d at 297.

Reasonableness Factors

1. *The nature, extent, and difficulty of the case and the time necessarily devoted to it weigh in favor of granting an award of fees and costs to LCL.*

I find that the first two factors—the nature, extent, and difficulty of this case and the time that LCL and its counsel necessarily devoted to this case—weigh heavily in favor of awarding attorneys' fees and costs to LCL. This litigation began in March 2009 after IWS refused to pay certain waste disposal invoices, and thus, for seven years, LCL pursued amounts to which, as this Court has found, it was entitled. In fact, Lee admitted in both his deposition and at trial that IWS owed all amounts charged in the invoices except for the fuel recovery fees; yet, he never paid those amounts and required LCL to bring this litigation, go to trial, and obtain a judgment from this Court.

Moreover, as more fully explained above, Lee refused to pay the amounts and stopped doing business with LCL only after he lost a temporary labor services agreement with LCL's affiliate and had submitted an invoice to LCL allegedly for such services, thereby necessarily making the temporary labor services an issue in this case directly tied to LCL's attempt to collect on its waste disposal invoices. Accordingly, Lee's pre-litigation actions not only caused this avoidable litigation but interjected complexity into the case and increased the extent of pre-trial discovery and motions practice that was needed. During this time, LCL's counsel conducted and responded to discovery, which involved thousands of pages of documents; conducted and defended multiple depositions; engaged in mediation; and argued and defended against numerous motions.

The complexity of the case was compounded by IWS and Lee alleging nine counterclaims against LCL and by seeking a jury trial even though they had expressly

waived the right to a jury trial in the WDA. Moreover, although this Court denied all of IWS and Lee's counterclaims and several counterclaims were dismissed before trial, LCL still had to address those counterclaims and file multiple motions opposing these claims, such as successfully moving for and obtaining summary judgment with respect to IWS and Lee's counterclaim for intentional interference with contract. LCL also had to oppose, which it did successfully, several attempts by IWS and Lee to amend their counterclaims.

IWS and Lee also filed an interlocutory appeal of the Court's order dismissing one of the counterclaims, which LCL's counsel had to fully brief and argue before the Court of Appeals. LCL successfully defended this Court's order. *See Lee County Landfill SC, LLC v. Industrial Waste Service, Inc.*, Op. No. 2013-UP-077 (Ct App. 2013). Then, on remand, LCL successfully defended against a motion to amend on the basis that law of the case prohibited the amendment and also successfully obtained summary judgment dismissing IWS and Lee's SCUTPA claim.

In sum, IWS and Lee's actions and litigation strategy not only caused this litigation but transformed what may have been a simple breach of contract action into a complex, multi-year litigation. This, in turn, caused LCL and its counsel to expend considerable time and effort to obtain the beneficial results that it did. I have reviewed the affidavits and billing records of LCL's counsel detailing the time devoted by LCL's counsel to litigating this case and, for the reasons described above, find that this time was necessary, essential, and reasonable. The successful result produced by LCL's counsel strongly supports this conclusion. I also have reviewed the costs and expenses incurred and find that they were necessary, essential, and reasonable.

2. *The beneficial results obtained weigh in favor of granting an award of fees to LCL.*

Similarly, I find that the beneficial results obtained also weigh heavily in favor of an award of fees and costs. *See Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (stating that, in determining the reasonableness of a fee award, "the most critical factor is the degree of success obtained."). LCL obtained a substantial judgment and had all of its key claims fully vindicated. LCL also defeated all nine of IWS and Lee's counterclaims, thereby avoiding nearly $275,000 in liability and the punitive damages, SCUTPA damages, and attorneys' fees and costs requested by IWS and Lee. LCL also successfully opposed two motions to amend that, if granted, likely would have drastically increased the complexity of this case, *see* Aff. of Protopapas, and successfully protected and enforced the jury trial waiver in the negotiated agreement between the parties, which likely significantly decreased the time, work, and expense necessary for the trial. *See id.*

As discussed above, LCL also successfully preserved the grant of summary judgment against IWS and Lee's interlocutory appeal. Finally, through pretrial discovery, LCL obtained a pre-trial admission that IWS is Lee's alter ego and the corporate veil is pierced, which not only serves to protect LCL's potential recovery in this case but likely would have required the presentation of significant evidence at trial to prove. *Dev. Corp. v. Found. Ins. Co.*, 380 S.C. 97, 101 (2008) (stating that "[t]he party seeking to pierce the corporate veil has the burden of proving that the doctrine should be applied" and that "it is settled authority that the doctrine of piercing the corporate veil is not to be applied without substantial reflection.") (internal citations and quotation marks omitted). In sum, as a direct result of the facts developed and the legal theories advanced by LCL's counsel, LCL prevailed on all of the key issues in this case.

This conclusion is not altered by the fact that LCL did not prevail on its claims for breach of contract accompanied by a fraudulent act and violation of the SCUTPA and, thus, prevailed on 13 of the 15 claims and counterclaims at issue in this case rather than all 15.[6] *See Hensley*, 461 U.S. at 440 ("Where a lawsuit consists of related claims, a plaintiff who has won substantial relief should not have his attorney's fee reduced simply because the district court did not adopt each contention raised."). First, the facts supporting these two claims were exactly the same as those at issue for LCL's simple breach of contract claim as well as those at issue for IWS and Lee's counterclaims. IWS and Lee's refusal to pay and attempt to offset the invoices owed to LCL was based on Lee's assertions regarding the fuel recovery fees and the temporary labor services amounts he claimed LCL owed, which LCL successfully opposed. Moreover, the discovery and work for these two claims was intertwined with the breach of contract claim. *Charleston Lumber Co., Inc. v. Miller Housing Corp.*, 318 S.C. 471, 483-84, 458 S.E.2d 431, 438-39 (Ct. App. 1995) (finding that prevailing party was entitled to attorneys' fees and costs attributable to its successful contract

[6] "Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee. Normally this will encompass all hours reasonably expended on the litigation, and indeed in some cases of exceptional success an enhanced award may be justified. In these circumstances the fee award should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit .... Litigants in good faith may raise alternative legal grounds for a desired outcome, and the court's rejection of or failure to reach certain grounds is not a sufficient reason for reducing a fee. The result is what matters." *Hensley*, 461 U.S. at 435.

claims and its defense against other party's counterclaims because the facts and issues were intertwined).[7]

3. *The professional standing of counsel weighs in favor of granting an award of fees and costs to LCL.*

I further find that the factor regarding the professional standing of counsel supports the request for an award of fees and costs. As set forth in LCL's supporting affidavits, counsel for LCL and their respective law firms have stellar reputations and significant experience in litigating similar matters, which IWS and Lee did not dispute. Both parties' counsel submitted excellent briefing, and I witnessed firsthand during the trial that both sides in this case were represented by experienced and skillful advocates.

4. *The customary legal fees for legal services of this type of action weigh in favor of reducing the amount of fees and costs requested by LCL.*

As set forth in the billing records and supporting affidavits submitted by LCL, the legal fees and costs requested are the fees and costs actually incurred and paid by LCL pursuant to its agreements with counsel and are based on rates that are less than LCL's counsel's current hourly rates for similar matters. Mr. Protopapas also testified that, based on his knowledge, background, training, and experience in fee-related matters, LCL's counsel's

[7] I therefore considered but do not adopt Defendant's arguments regarding a reduction in the award based on amounts expended in defending against counterclaims because the South Carolina Court of Appeals has expressly rejected the very argument presented by IWS and Lee. *Charleston Lumber Co.*, 318 S.C. at 483-84, 458 S.E.2d at 438-39; *see Hardaway Concrete Co., Inc. v. Hall Contracting Corp.*, 374 S.C. 216, 231, 647 S.E.2d 488, 495 (Ct. App. 2007). For example, in *Charleston Lumber Co.*, the defendant, like IWS and Lee in this case, contended that the amount of the attorneys' fee award "was improper because some of Charleston Lumber's fees were attributable to defending counterclaims and not collection on the [contract]." 318 S.C. at 483, 458 S.E.2d at 438-39. The Court of Appeals found "this distinction specious" and agreed with the trial court's finding that "the facts and issues surrounding the [contract] were intertwined with those of the counterclaims which required extensive discovery and transformed a normally uncomplicated action on a [contract] into complex litigation." *Id.*

current hourly rates were representative of the prevailing market rates and that the rates actually billed to LCL were below the prevailing market rates for similar services in South Carolina. IWS and Lee also did not challenge LCL's counsel's hourly rates as unreasonable.

Notwithstanding the foregoing, I find that the amount of fees should be reduced to one-third of the total judgment awarded to LCL. I view this action as a debt collection matter and, as such, find that a reasonable award of fees would be one-third of the judgment. I find that it is the Court's obligation in this action to consider the overall reasonableness of the fee award, the impact that an award of fees would have on the Defendants, and the fairness of the calculated award in view of the nature of the action. Therefore, I am awarding attorneys' fees to LCL in the amount of one-third of the judgment, or $116,936. I am awarding full costs to LCL in the amount of $21,016.34. The total award of attorneys' fees and costs pursuant to this Order is $137,952.34.

Conclusion

Based upon the foregoing, the Court orders as follows:

(1) Judgment is entered in favor of LCL and against IWS and Lee on LCL's claims for breach of contract, breach of the implied covenant of good faith and fair dealing, quantum meruit, and alter ego liability;

(2) LCL's claims for breach of contract accompanied by a fraudulent act and violation of the SCUTPA are denied;

(3) IWS and Lee's counterclaims for breach of contract, breach of contract accompanied by a fraudulent act, and breach of the implied covenant of good faith and fair dealing are denied;

(4) IWS and Lee are ordered to pay LCL $350,809.63, which constitutes the full amount of the unpaid September, October, and November 2008 invoices plus the corresponding late fees through April 2016;

(5) LCL is awarded attorneys' fees in the amount of $116,936 and costs in the amount of $21,016.34, for a total award of $137,952.34;

(6) IWS and Lee are jointly and severally liable for any and all amounts awarded under this Order;

(7) LCL's request for prejudgment interest pursuant to S.C. Code Ann. § 34-31-20 is denied;

(8) Pursuant to S.C. Code Ann. § 34-31-20(B), post-judgment interest shall accrue on the monetary judgment from the date of entry of this Order, compounded annually; and

(9) This Order supersedes any prior orders regarding the judgment or the award of attorneys' fees and costs that has been entered in this case.

AND IT IS SO ORDERED.

The Honorable W. Jeffrey Young
Presiding Judge

October ___, 2016
Sumter, South Carolina

Lee Common Pleas

Case Caption: Llc Lee County Landfill Sc VS Industrial Waste Service, Inc , defendant, et al

Case Number: 2009CP3100046

Type: Order/Other

So Ordered

s/W. Jeffrey Young2156