THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James O. Spence, Master-in-Equity

APPELLATE CASE NO.: 2017-1497

Team IA, Inc. . . . . .Appellant,

v.

Cicero Lucas. . . . . .Respondent.

INITIAL BRIEF OF APPELLANT

RECEIVED
AUG 09 2017
SC Court of Appeals

Benjamin C. Bruner
BBruner@brunerpowell.com
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, South Carolina 29260
(803) 252-7693
Attorneys for Team IA, Inc.

August 7, 2017

TABLE OF CONTENTS

Table of Contents i

Table of Authorities. ii

Statement of Issues on Appeal iv

Statement of the Case 1

Statement of Facts 2

Standard of Review 6

Argument 7

I. THE MASTER-IN-EQUITY ERRED WHEN HE DENIED TEAM IA THE RIGHT TO RECOVER ATTORNEY'S FEES AND COSTS INCURRED IN THE COLLECTION OF ITS JUDGMENT DESPITE THE PRESENCE OF LANGUAGE IN BOTH THE PARTIES' CONTRACT AND THE TRIAL COURT'S ORDER PROVIDING THAT TEAM IA HAS A RIGHT TO RECOVER ANY AND ALL ATTORNEY'S FEES AND COSTS IT INCURS IN THE ENFORCEMENT OF ITS RIGHTS. 8

II. THE MASTER-IN-EQUITY ERRED WHEN HE HELD THE FEE-SHIFTING PROVISION WAS AMBIGUOUS, WHEN HE DETERMINED THE PARTIES' INTENT WITHOUT TAKING ANY EVIDENCE, AND WHEN HE FOUND THE PARTIES DID NOT INTEND THAT THE FEE PROVISION SURVIVE ENTRY OF JUDGMENT. 14

III. THE MASTER-IN-EQUITY ERRED WHEN HE HELD TEAM IA'S RIGHT TO RECOVER ATTORNEY'S FEES AND COSTS WAS EXTINGUISHED PURSUANT TO THE DOCTRINE OF MERGER. 17

IV. THE MASTER-IN-EQUITY'S HOLDING IS CONTRARY TO THE LAW OF THE CASE. 21

Conclusion 23

Proof of Service 25

TABLE OF AUTHORITIES

Cases

A Fast Photo Exp., Inc. v. First Nat. Bank of Chicago, 369 S.C. 80, 630 S.E.2d 285 (Ct. App. 2006) 6

Ag-Chem Equip. Co. v. Daggerhart, 281 S.C. 380, 315 S.E.2d 379 (Ct. App. 1984) . . . 6

Atl. Coast Builders & Contrs., LLC v. Lewis, 398 S.C. 323, 730 S.E.2d 282 (2012) . . .22

Baugh v. Columbia Heart Clinic, P.A., 402 S.C. 1, 738 S.E.2d 480 (Ct. App. 2013) 8

Dauntless Mfg. Co. v. Davis, 24 S.C. 536 (1886) 23

Dedes v. Strickland, 307 S.C. 155, 414 S.E.2d 134 (1992) 9

ESA Servs., LLC v. S.C. Dep't of Revenue, 392 S.C. 11, 707 S.E.2d 431 (Ct. App. 2011) 16

Farr v. Duke Power Co., 265 S.C. 356, 218 S.E.2d 431 (1975) 16

Friarsgate, Inc., v. First Fed. Sav. & Loan Ass'n, 317 S.C. 452, 454 S.E.2d 901 (Ct. App. 1995) 7

Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750 (1997) 4, 11

Hawkins v. Greenwood Dev. Corp., 328 S.C. 585, 493 S.E.2d 875 (Ct. App. 1997) 16-17

Kanawha-Gauley Coal & Coke Company v. Pittston Minerals Group, Inc., 501 Fed.Appx. 247 (4th Cir. 2012) 21

Kennesaw Mills Co. v. Walker, 19 S.C. 104 (1883) 23

Laser Supply & Servs. v. Orchard Park Assocs., 382 S.C. 326, 676 S.E.2d 139 (Ct. App. 2009) 8, 12

Lewis v. Lewis, 392 S.C. 381, 709 S.E.2d 650 (2011) 7, 17

Linda McCo. v. Shore, 390 S.C. 543, 703 S.E.2d 499 (2010) 10-11

Maybank v. BB&T Corp., 416 S.C. 541, 787 S.E.2d 498 (2016) 8

McDowell v. S.C. Dept. of Social Services, 304 S.C. 539, 405 S.E.2d 830 (1991) 10

McGill v. Moore, 381 S.C. 179, 672 S.E.2d 571 (2009) 14

Muller v. Myrtle Beach Golf & Yacht Club, 313 S.C. 412,
438 S.E.2d 248 (1993) 10, 20

NationsBank v. Scott Farm, 320 S.C. 299, 465 S.E.2d 98 (Ct. App. 1995) 9, 12

Nichols Holding, LLC v. Divine Capital Grp., LLC, 416 S.C. 327,
785 S.E.2d 613 (Ct. App. 2016) 15-16

Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 672 S.E.2d 799 (Ct. App. 2009) . . . 15, 16

Pickett v. Pickett, 2 Hill Eq. 363. . . . . 19, 20

Plantation A.D., LLC v. Gerald Builders of Conway, Inc.,
386 S.C. 198, 687 S.E.2d 714 (Ct. App. 2009) 14

Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.,
368 S.C. 342, 628 S.E.2d 902 (Ct. App. 2006) 9, 13

Renaissance Enterprises. v. Ocean Resorts, 326 S.C. 460,
483 S.E.2d 796 (Ct. App. 1997) 9-10, 11

Ryan v. Southern Mutual Building & Loan Association, 50 S.C. 185,
27 S.E. 618 (1897) 17-19, 20

S.C. Dep't of Natural Res. v. Town of McClellanville, 345 S.C. 617,
550 S.E.2d 299 (2001) 14, 16

Sears v. Fowler, 293 S.C. 43, 358 S.E.2d 574 (1987) 10, 19, 20, 21

Sphere Drake Ins. Co. v. Litchfield, 313 S.C. 471,
438 S.E.2d 275 (Ct. App. 1993) 8

Turner Coleman, Inc. v. Ohio Construction & Engineering, Inc.,
272 S.C. 289, 251 S.E.2d 738 (1979) 10, 19, 20, 21

Wallace v. Day, 390 S.C. 69, 700 S.E.2d 446 (Ct. App. 2010) 16

West v. Gladney, 341 S.C. 127, 533 S.E.2d 334 (Ct. App. 2000) 9, 12-13

Constitutional and Statutory Provisions

S.C. Const. Ann. Art. V, § 5. 6-7

S.C. Code Ann. §§ 15-39-310 to 490 (Rev. 2005) 1

STATEMENT OF ISSUES ON APPEAL

I. DID THE MASTER-IN-EQUITY ERR WHEN HE HELD, CONTRARY TO THE PARTIES' AGREEMENT, THAT TEAM IA HAS NO RIGHT TO RECOVER ATTORNEY'S FEES AND COSTS NECESSARILY INCURRED IN THE COLLECTION OF ITS JUDGMENT AGAINST LUCAS?

II. DID THE MASTER-IN-EQUITY ERR IN FINDING THE FEE-SHIFTING PROVISION IN THE PARTIES' AGREEMENT WAS AMBIGUOUS?

III. DID THE MASTER-IN-EQUITY ERR WHEN, AFTER FINDING THE FEE-SHIFTING PROVISION AMBIGUOUS, HE DETERMINED THE PARTIES INTENT WITHOUT TAKING ANY EVIDENCE ON THE ISSUE?

IV. DID THE MASTER-IN-EQUITY ERR WHEN HE HELD TEAM IA'S RIGHT TO RECOVER ATTORNEY'S FEES AND COSTS WAS EXTINGUISHED UPON ENTRY OF JUDGMENT UNDER THE DOCTRINE OF MERGER?

V. DID THE MASTER-IN-EQUITY ERR WHEN HE HELD TEAM IA IS NOT ENTITLED TO RECOVER ATTORNEY'S FEES AND COSTS DESPITE THE LAW OF THE CASE?

STATEMENT OF THE CASE

This is an appeal from supplemental proceedings that Team IA, Inc. initiated pursuant to S.C. Code Ann. §§ 15-39-310 to 490 (Rev. 2005) to collect on a judgment it obtained against Cicero "Ro" Lucas.

Team IA originally filed this lawsuit against Lucas and others on March 17, 2009. (Complaint filed .) On March 27, 2015, a Lexington County jury returned a verdict for Team IA, Inc. against Cicero "Ro" Lucas ("Respondent") and a co-defendant. (Jury Verdict, March 27, 2015.)

On November 20, 2015, the trial court issued an Order on Post-Trial Motions, in which it granted Lucas's Motion for Judgment Notwithstanding the Verdict in part, denied it in part, and granted Team IA's motion for attorney's fees and costs. (Order on Post-Trial Motions signed November 20, 2015 and filed November 24, 2015.) The trial court entered judgment against Lucas for actual damages in the amount of $278,137.34 and attorney's fees and costs in the amount of $526,334.52, for a total judgment of $804,471.86. *Id.* at 31-37.

The parties filed cross-appeals, which they later dismissed by agreement. (Notice of Appeal, December 22, 2015; Notice of Cross-Appeal, December 22, 2015; Consent Motion to Dismiss Appeal, July 5, 2016; Order of Dismissal, August 2, 2016.)

In July of 2016, Team IA initiated these supplemental proceedings. (Verified Petition for Supplemental Proceedings, Rule to Show Cause and Order of Reference.) After an initial hearing on November 3, 2016, a dispute arose about whether Team IA could recover attorney's fees and costs necessarily incurred in the collection of its judgment against Lucas. The parties agreed for the Master to determine the narrow issue

of whether Team IA has a right to recover attorney's fees and costs incurred after entry of its judgment against Lucas. (Transcript of March 29, 2017 Hearing p. 4, lines 4-22; Order Denying Mot. to Reconsider p. 1.)

On December 15, 2016, the Master issued an order denying Team IA's claim for post-judgment attorney's fees and costs. (Order dated December 15, 2016 and filed December 22, 2016.) Team IA timely moved for the Master to reconsider his Order. (Motion to Reconsider, January 13, 2017.) After hearing the parties' arguments on the motion on March 29, 2017, the Master denied Team IA's motion. (Order denying Motion to Reconsider, May 31, 2017.) After receiving written notice of entry of the order, Team IA timely served its notice of appeal on July 7, 2017.

STATEMENT OF FACTS

Team IA initiated these proceedings to collect on a judgment it obtained against Cicero "Ro" Lucas, a former employee who breached the non-compete and non-solicitation provisions in his employment agreement with Team IA. (Jury Verdict pp. 4-10; Order on Post-Trial Motions pp. 1, 36-37; Verified Petition; Rule to Show Cause and Order of Reference.) At the conclusion of trial, the jury found that Lucas had not been induced or defrauded into signing the employment agreement and that the employment agreement was enforceable. (Jury Verdict p. 4.) In addition, the jury found Lucas breached the employment agreement and caused Team IA to lose nine projects. (Jury Verdict pp. 4-10.) The jury awarded Team IA a total $463,728.88 in actual damages on Team IA's breach of contract claim, which, according to special interrogatories, was based on Team IA's lost profits from the nine different projects. (Jury Verdict pp. 4-10.) The jury determined the specific amount of lost profits for each project. *Id.* In addition,

the jury awarded Team IA $282,344.30 on its claim against Lucas for tortious interference with contractual relations. (Jury Verdict pp. 2-3.) While post-trial motions were pending, Team IA elected its remedy in contract. (Consent Order signed November 20, 2015 and filed November 24, 2015.)

After considering the parties' post-trial motions, the trial court granted Lucas's JNOV motion on the breach of contract claims only as to two projects. (Order on Post-Trial Motions pp. 2-6.) As a result, the trial court concluded "the damages recoverable under the Breach of Contract claims are $278,137.34." (Order on Post-Trial Motions pp. 36-37.)

With respect to Team IA's motion for attorney's fees and costs, the trial court rejected Lucas's argument that the fee provision in the employment agreement was unenforceable, holding,

> In the Employment Agreement between Team IA, Inc. and Cicero Lucas, Lucas is responsible for die attorney's fees, costs, and expenses incurred in Team IA, Inc. enforcing the terms of the Employment Agreement. Based on the jury's verdict determining that Cicero Lucas breached the Employment Agreement, Team IA Inc. is entitled to reimbursement of attorney's fees, expenses, and costs incurred. Paragraph VII, (G) of the Employment Agreement provides:
>
> > **Fees, Costs, and Expenses:** In the event Employer must enforce any of the rights herein granted to it through an attorney, Employee shall be liable for any and all reasonable attorney's fees, expenses, and court costs incurred in connection with the enforcement of Employer's rights hereunder.
>
> Based on the language of the fee-shifting provision, I must conclude that Lucas is liable for any and all reasonable attorney's fees, expenses, and court costs incurred in connection with the enforcement of Team IA rights. I find that the attorney's fees, costs, and expenses incurred by Team IA were reasonable and necessary.

Id. pp. 28-29. The trial court considered the "Affidavit and Supplemental Affidavit of Robert F. Goings, the Affidavit of Professor John P. Freeman, and all billing records, invoices, and documentation related to the fees and costs sought in this motion." (Order on Post-Trial Motions at 31.) In addition, the trial court applied the factors from *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997). (Order on Post-Trial Motions pp. 31-37.) With respect to the first factor, the court held,

> I find that this litigation involved many complex legal and factual issues. This case involved multiple causes of action arising out of violations of the Employment Agreement. Lucas denied these allegations and Lucas raised various affirmative defenses and six counterclaims regarding the Employment Agreement. This case has been difficult, highly contentious and time consuming for the last six (6) years. Prior to a trial on the merits, this case went to the South Carolina Court of Appeals and the South Carolina Supreme Court. The litigation file of Team IA's lead counsel consisted of roughly 16 bankers boxes of documents and several gigabytes of electronic data. The discovery process was complicated, involving the production of thousands of documents and electronic discovery and data. The parties participated in eleven (11) depositions, including three out of state. The motions filed by the parties were extensive throughout the litigation. I find that the nature, extent, and difficulty of the legal services rendered supports the attorney's fees and expenses sought by Team IA in this case.

(Order on Post-Judgment Fees pp. 31-32.) After discussing the remaining factors, the trial court awarded Team IA attorney's fees and costs in the amount of $526,334.52. (Order on Post-Judgment Fees pp. 36-37.) After adding that amount to the reduced actual damages, the trial court entered judgment for Team IA against Lucas in the amount of $804,471.86. (Order on Post-Judgment Fees p. 37.) The Clerk of Court enrolled the judgment on December 2, 2015. (Form 4 Coversheet for Order on Post-Trial Motions p. 2.) That judgment was the result of six years of highly contested litigation that included an appeal that reached the Supreme Court of South Carolina. (Order on Post-Trial Motions p. 31.)

In July of 2017, Team IA initiated supplemental proceedings to collect on the judgment. (Verified Petition; Rule to Show Cause and Order of Reference.) The Master-in-Equity held a supplemental hearing on November 3, 2016. After 40 minutes, the Master halted the hearing and continued it to reconvene at a future time. (Supplemental Proceeding Order, November 3, 2016; Transcript of November 3, 2016 Hearing p. 1, line 12, p. 30, line 1 - p. 32, line 14; p. 35, line 23 - p. 37, line 16.) The Master asked that the parties confer to find agreeable stipulations and schedule a conference call to discuss any issues remaining for the Master to decide. *Id.* After a November 9, 2016 conference call with the Master, the parties agreed for the Master to decide the narrow issue of whether Team IA has a right to recover attorney's fees and costs Team IA incurs in the supplemental proceedings. (E-mails between Master and Parties, December 5, 2016.)

At the Master's request, the parties submitted proposed orders on that issue on December 2, 2016. (Letter from Bruner to Court, December 2, 2016; Letter from Mendoza to Court, December 2, 2016.) After receiving the proposed orders, the Master asked the parties whether the specific amount of attorney's fees was at issue. The Parties confirmed that the amount was not yet at issue; the only issue was whether Team IA has a right to recover fees and costs incurred during supplemental proceeding to collect on the judgment. (E-mails between Parties and Court dated December 5, 2016.) The Master subsequently asked that the parties resubmit their proposed orders and address certain specific concerns he had. (E-mail from Court to Parties, December 6, 2016.) On December 9, 2016, the parties resubmitted their proposed orders with supporting authorities, as requested. (E-mail from Court to Parties, December 6, 2016; E-mail from

Bruner to Court, December 9, 2016; E-mail from Mendoza to Court, December 9, 2016 at 11:01 AM; E-mail from Mendoza to Court, December 9, 2016 at 3:34 PM.)

In an Order filed December 22, 2016, the Master held Team IA had no right to recover attorney's fees and costs incurred after entry of judgment based upon the law of the case doctrine. (Order Denying Attorney's Fees, December 22, 2016, pp. 1-10.) Team IA filed a motion to reconsider, which the Master heard during an extended proceeding on March 29, 2017. (Mot. to Reconsider, January 13, 2017; Transcript of March 29, 2017 hearing pp. 1-61.) The Master asked during the hearing that the parties submit proposed orders on the motion to reconsider by e-mail after receiving a copy of the hearing transcript. (Tr. p. 59, line 1 – p. 61, line 2.) The parties submitted proposed orders on May 26, 2017. (E-mail from Bruner to Court, May 26, 2017; E-mail from Mendoza to Master, May 26, 2017.) The Master took no evidence; he only considered the parties' proposed orders.

On May 31, 2017, the Master signed the order Lucas submitted and denied Team IA's motion to reconsider. (Order filed May 31, 2017.)

STANDARD OF REVIEW

"Supplementary proceedings are equitable in nature." *A Fast Photo Exp., Inc. v. First Nat. Bank of Chicago*, 369 S.C. 80, 84, 630 S.E.2d 285, 287 (Ct. App. 2006) (quoting *Ag-Chem Equip. Co. v. Daggerhart*, 281 S.C. 380, 383, 315 S.E.2d 379, 381 (Ct. App. 1984)). In cases of equity, the appellate court reviews the master-in-equity's legal conclusions as well as the findings of fact *de novo*. S.C. Const. Ann. Art. V, § 5. "In an equitable matter referred to a master for final judgment with direct appeal to the supreme court, the appellate court may determine the facts in accordance with its own view of the

preponderance of the evidence." *Id.* (quoting *Friarsgate, Inc., v. First Fed. Sav. & Loan Ass'n*, 317 S.C. 452, 456, 454 S.E.2d 901, 904 (Ct. App. 1995)). *See also Lewis v. Lewis*, 392 S.C. 381, 386, 709 S.E.2d 650, 652 (2011) (holding appellate court's standard of review in cases of equity is *de novo* pursuant to Article V, § 5 of the South Carolina Constitution).

ARGUMENT

In this case, Team IA argues it has a right to recover reasonable attorney's fees and costs necessarily incurred to collect its judgment against Lucas. The parties stipulated for the Master to determine the narrow issue of whether that right exists, and agreed the amount of any such fee award would be taken up only if the Master answered the question before him in the affirmative. He did not. Now, Team IA asks this Court to review the Master's orders and reverse them because: (i) the Master's holding is contrary to the language in the employment agreement and language in the trial court's order entering judgment; (ii) the Master erred when he found the fee-shifting provision in the employment agreement was ambiguous and when he found the parties' intent was that the provision not survive entry of judgment; (iii) the Master erred when he held Team IA's right to recover attorney's fees and costs was extinguished upon entry of judgment pursuant to the doctrine of merger; and (iv) the Master's holding is contrary to the law of the case.

I. THE MASTER-IN-EQUITY ERRED WHEN HE DENIED TEAM IA THE RIGHT TO RECOVER ATTORNEY'S FEES AND COSTS INCURRED IN THE COLLECTION OF ITS JUDGMENT DESPITE THE PRESENCE OF LANGUAGE IN BOTH THE PARTIES' CONTRACT AND THE TRIAL COURT'S ORDER PROVIDING THAT TEAM IA HAS A RIGHT TO RECOVER ANY AND ALL ATTORNEY'S FEES AND COSTS IT INCURS IN THE ENFORCEMENT OF ITS RIGHTS.

The Master should have enforced Team IA's right to recover reasonable attorney's fees and costs based on the fee-shifting provision in the employment agreement, which the trial court incorporated into the judgment.

"Generally, attorneys' fees and costs are not recoverable unless authorized by contract or statute." *Maybank v. BB&T Corp.*, 416 S.C. 541, 580, 787 S.E.2d 498, 518 (2016). "When the language of a contract is clear, explicit, and unambiguous, the language of the contract alone determines the contract's force and effect and the court must construe it according to its plain, ordinary, and popular meaning." *Baugh v. Columbia Heart Clinic, P.A.*, 402 S.C. 1, 22, 738 S.E.2d 480, 492 (Ct. App. 2013). "A court must enforce an unambiguous contract according to its terms regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully." *Laser Supply & Servs. v. Orchard Park Assocs.*, 382 S.C. 326, 334, 676 S.E.2d 139, 144 (Ct. App. 2009). It is not for the court to determine whether the parties' agreement was reasonable or wise, or whether they carefully guarded their rights. *Sphere Drake Ins. Co. v. Litchfield*, 313 S.C. 471, 473, 438 S.E.2d 275, 277 (Ct. App. 1993). "When the language of a contract is clear, explicit, and unambiguous, the language of the contract alone determines the contract's force and effect and the court must construe it according to its plain, ordinary, and popular meaning." *Baugh*, 402 S.C. at 22, 738 S.E.2d at 492.

Our courts have repeatedly applied these principles to fee-shifting provisions in contracts. *See, e.g., West v. Gladney*, 341 S.C. 127, 135-36, 533 S.E.2d 334, 338 (Ct. App. 2000) (citing *Dedes v. Strickland*, 307 S.C. 155, 414 S.E.2d 134 (1992), *and NationsBank v. Scott Farm*, 320 S.C. 299, 305, 465 S.E.2d 98, 101 (Ct. App. 1995)); *but see Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 375, 628 S.E.2d 902, 920 (Ct. App. 2006) (construing fee-shifting provision in property regime's covenants, which are to be construed narrowly, not to allow recovery of attorney's fees because defendant was not "violator").

However, there appears to be no clear, controlling precedent in this State deciding the precise issue before this Court. This Court addressed the issue in *Renaissance Enterprises v. Ocean Resort*, but that decision was subsequently reversed on other grounds. *Renaissance Enterprises. v. Ocean Resorts*, 326 S.C. 460, 464, 483 S.E.2d 796, 798 (Ct. App. 1997), *rev'd on other grounds,* 334 S.C. 324, 513 S.E.2d 617 (1999).[1] Nevertheless, a discussion of that case is instructive.

In *Renaissance Enterprises*, the contract between the parties included the following fee-shifting provision:

> If arbitration and/or litigation shall become necessary, [Renaissance] shall be entitled to recover from [Ocean Resorts], reasonable attorney's fees . . . and all other costs of such arbitration and/or litigation.

326 S.C. at 469, 483 S.E.2d at 801. Ocean Resorts argued, as Lucas does in this case, that Renaissance Enterprises failed to establish its entitlement to attorney's fees incurred

[1] The Supreme Court reviewed "the Court of Appeals' decision holding that the deposit of money into court as provided in Rule 67, SCRCP, stops the accrual of interest pursuant to the contract between the parties," and reversed that holding.

during supplemental proceedings because the fee-shifting provision did not clearly allow for fees incurred after entry of judgment. This Court rejected that argument, reasoning,

> The contract between the parties clearly provided for the recovery of reasonable attorney's fees for necessary litigation. The supplemental proceeding was brought to collect on the debt owed pursuant to the contract. We find no reason that the agreement would not encompass fees incurred in this supplemental proceeding, brought in order to determine the amount due from the underlying proceeding. *See McDowell v. South Carolina Department of Social Services*, 304 S.C. 539, 405 S.E.2d 830 (1991) (wherein the Supreme Court found, where party was entitled to attorney's fees in underlying action pursuant to statute, that party was likewise entitled to attorney's fees for subsequent litigation over such fees incurred in supplemental proceeding). Accordingly, we find no error.

Id. This Court held, therefore, that the fee-shifting provision in the contract survived entry of judgment.

The holding in *Renaissance Enterprises* was—and still is—consistent with other decisions in this State. *See Muller v. Myrtle Beach Golf & Yacht Club*, 313 S.C. 412, 438 S.E.2d 248 (1993) (holding right to recover reasonable fees and costs under mechanic's lien statute extends to fees incurred on appeal after entry of judgment despite absence of language in statute specifically providing for post-judgment fees); *McDowell v. South Carolina Department of Social Services*, 304 S.C. 539, 405 S.E.2d 830 (1991) (holding where party was entitled to attorney's fees in underlying action pursuant to statute, that party was likewise entitled to attorney's fees for subsequent litigation over such fees incurred in supplemental proceeding); *Sears v. Fowler*, 293 S.C. 43, 45, 358 S.E.2d 574, 575 (1987) (holding contract provision setting higher rate of interest survives entry of judgment and applies to post-judgment interest as well); *Turner Coleman, Inc. v. Ohio Construction & Engineering, Inc.*, 272 S.C. 289, 251 S.E.2d 738 (1979) (same). *See also Linda McCo. v. Shore*, 390 S.C. 543, 550, 703 S.E.2d 499, 502 (2010) (noting special

referee awarded attorney's fees pursuant to confession of judgment during supplemental proceedings).

In this case, the employment agreement contained a fee-shifting provision as clear as the one in *Renaissance Enterprises*. In this case, a jury has already rejected Lucas's argument to defeat the enforceability of the employment agreement (Jury Verdict p. 4), and the trial court rejected Lucas's argument to defeat the enforceability of the fee provision (Order on Post-Trial Motions pp. 31-37). As in *Renaissance Enterprises*, the supplemental proceedings from which this appeal arises were initiated to collect a debt that arose in contract and has been reduced to a judgment. Therefore, the Master should have recognized Team IA's right to recover reasonable attorney's fees and costs incurred in the collection of its judgment.

In his orders, the Master referred more than once to the amount of the fee award the trail court entered. Those references suggest the prior award improperly influenced the Master's decision. While the amount of that prior award may have caused the Master discomfort in awarding any additional fee and costs, it was no reason to deny Team IA's right to additional fees and costs incurred as a result of Lucas's refusal to pay the judgment. The Order entering judgment shows the trial court, much to its credit, went to great lengths to explain why the circumstances of the case justified awarding $526,334.52 for fees and costs. (Order on Post-Trial Motions at 31-36.) The trial court's careful and detailed analysis of the *Jackson v. Speed* factors shows the award was not excessive; it was justified, well-supported, and reasonable given the duration and highly contentious nature of this case:

> I find that this litigation involved many complex legal and factual issues. This case involved multiple causes of action arising out of violations of the

> Employment Agreement. Lucas denied these allegations and Lucas raised various affirmative defenses and six counterclaims regarding the Employment Agreement. This case has been difficult, highly contentious and time consuming for the last six (6) years. Prior to a trial on the merits, this case went to the South Carolina Court of Appeals and the South Carolina Supreme Court. The litigation file of Team IA's lead counsel consisted of roughly 16 bankers boxes of documents and several gigabytes of electronic data. The discovery process was complicated, involving the production of thousands of documents and electronic discovery and data. The parties participated in eleven (11) depositions, including three out of state. The motions filed by the parties were extensive throughout the litigation. I find that the nature, extent, and difficulty of the legal services rendered supports the attorney's fees and expenses sought by Team IA in this case.

Id. at 31-32. Therefore, the Master's denial of Team IA's right to recover attorney's fees and costs in supplemental proceedings was improper to the extent it was influenced by the trial court's prior award.

South Carolina appellate courts have repeatedly enforced clear terms in a contract regardless of the parties' wisdom or folly. *Laser Supply, supra.* In fact, this Court held in *West v. Gladney* that while the amount of attorney's fees typically requires a judicial determination of reasonableness, where the parties' agreement provides a specific amount the court is required to follow the contract. *West*, 341 S.C. at 135-36, 533 S.E.2d at 338. In that case, the Court cited precedent holding, "When a note provides for attorneys' fees at a specific rate in the event collection becomes necessary, the amount of attorneys' fees is governed by the contract." *Id.* at 135, 533 S.E.2d at 338 (citing *NationsBank*, 320 S.C. at 305, 465 S.E.2d at 101, as holding, "In South Carolina, where a contractual obligation provides only that a party is to pay 'reasonable attorney's fees, the amount is unliquidated and, therefore, requires a finding on the reasonableness of the award. On the other hand, where a contractual provision in a note provides for attorney's fees at a specific rate, the amount of attorney fees is governed by the contract."). The

note at issue in *West v. Gladney* provided "that if this note be placed in the hands of an attorney for collection, or if this debt, or any part thereof, be collected by an attorney, or by legal proceedings, of any kind, a reasonable attorney's fee of not less than fifteen (15%) percent, besides all costs and expenses incident upon such collection shall be added to the amount due upon this note, and be collectible as a part thereof." *Id.* at 135-36, 533 S.E.2d at 338. Based upon those facts, this Court held, "The note unequivocally provides for attorneys' fees at a specified rate. It is not for us to determine whether the parties' agreement was reasonable or wise, or whether they carefully guarded their rights." *Id.* at 136, 533 S.E.2d at 338. Similarly, the parties in this case unequivocally agreed that if Lucas breached the employment agreement (which he did), then Lucas would be liable for any and all of Team IA's reasonable attorney's fees and costs incurred in the enforcement of Team IA's rights. It was not for the Master to determine whether that fee provision was reasonable or wise, or whether the parties carefully guarded their rights. Instead, the Master was bound to enforce the terms of the agreement.

The only hesitation our courts have expressed on this issue is where the contract terms are to be construed narrowly. For example, in *Queens Grant II*, the court denied a property regime's request for attorney's fees where the request was based on restrictive covenants, which are strictly construed. *Queen's Grant II*, 368 S.C. at 374-75, 628 S.E.2d at 919-20. The court in that case held that because the party from whom fees were sought was not a "violator," the property regime was not entitled to recover its attorney's fees. *Id.* The record in this case contains no basis to strictly construe the fee-shifting provision against Team IA. Rather, this case involves two sophisticated parties who both knew and appreciated the extent of the obligations they undertook when they entered the

agreement. As noted above, both the jury and the trial court enforced the terms of the employment agreement notwithstanding Lucas's arguments. (Jury Verdict at 4-10.)

The Master was required to enforce the terms of the parties' agreement, which was the basis of the judgment, and allow Team IA to recover reasonable attorney's fees and costs incurred in supplemental proceedings. The Master's holding, therefore, was contrary to law and should be reversed.

II. THE MASTER-IN-EQUITY ERRED WHEN HE HELD THE FEE-SHIFTING PROVISION WAS AMBIGUOUS, WHEN HE DETERMINED THE PARTIES' INTENT WITHOUT TAKING ANY EVIDENCE, AND WHEN HE FOUND THE PARTIES DID NOT INTEND THAT THE FEE PROVISION SURVIVE ENTRY OF JUDGMENT.

The Master also erred when he held that the fee-shifting provision in the employment agreement was ambiguous and that the parties' intent was for the provision to apply only to attorney's fees and costs prior to entry of judgment.

"A contract is read as a whole document so that one may not create an ambiguity by pointing out a single sentence or clause." *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009). It is a question of law for the court whether the language of a contract is ambiguous. *Id.* (citing *S.C. Dep't of Natural Res. v. Town of McClellanville,* 345 S.C. 617, 623, 550 S.E.2d 299, 302-03 (2001)). "A contract is ambiguous when the terms of the contract are reasonably susceptible of more than one interpretation." *McClellanville*, 345 S.C. at 623, 550 S.E.2d at 302-03. "An ambiguous contract is one that can be understood in more ways than just one or is unclear because it expresses its purpose in an indefinite manner." *Plantation A.D., LLC v. Gerald Builders of Conway, Inc.*, 386 S.C. 198, 205-06, 687 S.E.2d 714, 718 (Ct. App. 2009).

In this case, the Master not only erred in concluding the fee-shifting provision was ambiguous, he also erred when he proceeded to determine the parties' intent without taking any evidence. First, the fee provision in this case is clear and could be understood only one way when the parties entered the contract. Lucas agreed unequivocally that he would be liable for any and all reasonable attorney's fees and costs Team IA incurred in connection with the enforcement of its rights in the event he breached the contract. The parties placed no limitation on that obligation. To the contrary, the use of "any and all" emphasized that Lucas's obligation for attorney's fees be qualified only by the requirement that the fees and costs be incurred in connection with the enforcement of Team IA's rights (*e.g.*, the right to recover lost profits from Lucas in the event of a breach). The purpose of the provision is evident. Given the rising cost of litigation, fee-shifting provisions are common practice to ensure the non-breaching party is truly made whole, even where the dispute results in six years of highly contentious litigation. The provision rendering Lucas liable for "any and all" attorney's fees and costs demonstrates the parties' intent that Lucas would make Team IA whole by paying not only actual damages but also all litigation expenses if he breached the agreement. Only when Team IA recovers the full judgment amount plus fees and costs incurred in the collection of the judgment will Team IA truly be made whole for the Respondent's breach of contract, as the parties intended. One cannot reasonably interpret the fee provision to apply only to fees and costs incurred prior to entry of judgment without injecting terms which the parties did not intend and to which they did not agree. *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009) ("The court is without authority to consider parties' secret intentions, and therefore words cannot be read into a contract to impart an intent

unexpressed when the contract was executed."); *see also Nichols Holding, LLC v. Divine Capital Grp., LLC*, 416 S.C. 327, 336, 785 S.E.2d 613, 617 (Ct. App. 2016). The language in the agreement contains no indication that Lucas's obligation was to be limited to fees and costs incurred only up to entry of judgment. The Master erred, therefore, in finding the fee provision ambiguous.

Second, the Master erred because he examined the fee provision in isolation without examining the entire agreement. *Pee Dee Stores,* 381 S.C. at 242, 672 S.E.2dat 803 ("Whether a contract is ambiguous must be determined from the entire contract and not from any isolated clause of the agreement.") (citing *Farr v. Duke Power Co.*, 265 S.C. 356, 362, 218 S.E.2d 431, 433 (1975)). Rather than examining the fee provision in the context of the entire employment agreement, the Master examined only the fee provision. Lucas argued the fee provision was ambiguous, but he failed to introduce other portions of the agreement, nor did he introduce any evidence of who drafted it. Lucas and the Master both relied only on a single, isolated provision of the agreement. Therefore, the Master's holding constituted reversible error.

Finally, the Master erred when he determined the parties' intent without taking evidence on the issue. While the determination of whether a contract is ambiguous is an issue of law for the court to determine, the determination of the parties' intent is a factual finding that requires evidence. *McClellanville*, 345 S.C. at 623, 550 S.E.2d at 302-03 ("Once the court decides the language is ambiguous, evidence may be admitted to show the intent of the parties."); *ESA Servs., LLC v. S.C. Dep't of Revenue*, 392 S.C. 11, 20, 707 S.E.2d 431, 436 (Ct. App. 2011); *Wallace v. Day*, 390 S.C. 69, 75, 700 S.E.2d 446, 449 (Ct. App. 2010); *Hawkins v. Greenwood Dev. Corp.*, 328 S.C. 585, 592, 493 S.E.2d

875, 878-79 (Ct. App. 1997). Upon determining the fee provision was ambiguous, the Master should have allowed the parties to present testimony and other evidence as the factual issue of their intent at the time they signed the employment agreement. (*See* Transcript of March 29, 2017 Hearing, p. 39, lines 2-5.) Instead, the Master, finding no evidence in the record as to the parties' intent, defaulted to the American Rule. (Order Denying Motion to Reconsider p. 7.) That factual finding was erroneous. Moreover, it is a finding this Court may freely disregard because the Master heard no witness testimony. *See Lewis*, 392 S.C. at 385, 709 S.E.2d at 651-52 (recognizing the rule that appellate courts are not required to disregard the findings of fact of a court sitting in equity exists because the trial judge is in a superior position to make credibility determinations).

For these reasons, the Master's holdings that the fee-shifting provision was ambiguous and that the parties intended for Team IA's right to cease upon entry of judgment was erroneous and should be reversed.

III. THE MASTER-IN-EQUITY ERRED WHEN HE HELD TEAM IA'S RIGHT TO RECOVER ATTORNEY'S FEES AND COSTS WAS EXTINGUISHED PURSUANT TO THE DOCTRINE OF MERGER.

The Master also held Team IA's claim for post-judgment attorney's fees and costs is barred by the doctrine of merger because any claim to fees and costs was based upon a contract that merged into the judgment and is now extinguished. That holding was based on *Ryan v. Southern Mutual Building & Loan Association,* 50 S.C. 185, 27 S.E. 618 (1897). An examination of *Ryan* and other South Carolina cases reveals that the Master misapplied the doctrine of merger to this case.

In *Ryan*, the plaintiff, Ryan, filed suit against Southern Mutual for usurious interest it collected in violation of statute. *Id.* at 186, 27 S.E. at 618. Southern Mutual defended upon the following grounds:

> [T]hat "the action could not be maintained because the questions involved in said action were *res judicata,* for the reason that in an action in the Court of Common Pleas for Barnwell County, the said Southern Mutual Building and Loan Association had brought an action and foreclosed a mortgage against the said G. K. Ryan, and that no plea of usury as a defense or counterclaim was interposed in said action to recover the principal sum out of which the claim for usury arose in this case."

Id. (emphasis added). In a prior suit, Southern Mutual had obtained a default judgment against Ryan based on a note. At the time that suit was commenced, Ryan had not paid any usurious interest on the note. Instead, Ryan argued he paid the usurious interest when he paid the judgment. *Id.* at 187-88, 27 S.E. at 618-19. When Ryan filed suit, Southern Mutual moved for nonsuit because Ryan's claim arose out of the same transaction as the prior suit and because Ryan should have raised the issue as a defense or counterclaim in that prior suit. Specifically, Southern Mutual argued Ryan "could not now maintain a separate action to recover said amount, as the same had become *res judicata.*" *Id.* at 187, 27 S.E. at 618.

The Court framed the issue before it: "The question, then, is, can a suit be maintained . . . for double the sum of interest received in excess of lawful interest, where the only evidence of the receipt of usurious interest was the receipt of the proceeds of a judgment and sale in foreclosure, in a suit on a contract to which the defense of usury might have been interposed." *Id.* at 187-88, 27 S.E. 618-19. The court answered the question in the negative. Quoting prior precedent, the Court reaffirmed that a defendant "was not allowed to go behind the judgment and examine the contract on which it was

founded. Numberless cases of a similar character have occurred where a like decision was made." *Id.* at 189, 27 S.E. at 619 (quoting *Pickett v. Pickett,* 2 Hill Eq. 363, 474). That principle led the *Ryan* court to preclude Ryan from disputing the terms of the contract after entry of judgment. The Court further reasoned that Ryan's claim was based upon interest paid on a judgment, rather than interest paid on a contract. As a result, the court held the usury statute, which applied only to interest paid on contracts, did not apply. *Id.* at 619-20, 27 S.E. at 190-91. Hence the Court's explanation, "The contract now said to be usurious had become merged into the judgment. The original contract was extinguished. The judgment became a new debt . . . ." *Id.* at 190, 27 S.E. at 619.

In his order denying Team IA's claim for attorney's fees and costs, the Master cited *Ryan* for the proposition that "merger of the contract into the judgment precluded a post-judgment claim that the contract was usurious." (Order Denying Attorney's Fees p. 7.) Extricating only that principle and nothing else, the Master held that the employment agreement was extinguished upon entry of the judgment and, therefore, Team IA's right to recover attorney's fees was also extinguished. In doing so, the Master improperly conflated the employment agreement with Team IA's rights, which arose from the agreement.

Lucas and Team IA agreed that if Lucas breached the employment agreement, which he did, then he would be liable for Team IA's reasonable attorney's fees incurred in connection with Team IA enforcing its *rights*. Among those rights was Team IA's right to recover profits it lost when Lucas breached his non-compete and non-solicitation provisions. That right has not been extinguished, even if the contract has been. Like the right to higher interest in *Sears* and *Turner Coleman* cited above, Team IA's right to

recover lost profits survived entry of judgment. Similarly, Team IA's right to recover "any and all" reasonable attorney's fees it incurs in the enforcement of its rights (including the right to recover lost profits from Lucas) survived entry of the judgment. Indeed, those rights are the very basis of the judgment at issue in the supplemental proceedings. This approach tracks South Carolina law. *See, e.g., Muller, supra*, (allowing the right to recover reasonable fees and costs under mechanic's lien statute extends to fees incurred on appeal after entry of judgment despite absence of language in statute specifically providing for post-judgment fees).

It must be noted that the Master's holding amounts to the preclusion of a claim before it even existed. Team IA could not claim the fees and costs at issue until after Lucas refused to pay the judgment, and after it became necessary to initiate supplemental proceedings. *See Ryan* at 191, 27 S.E. at 620 ("It is the *duty* of the judgment debtor to pay the judgment and it is the *right* of the judgment creditor to *receive* what the Court has adjudged to be due him.") (emphasis in original).

By allowing Lucas to dispute the terms of the employment agreement after entry of judgment, the Master allowed Lucas to do the very thing South Carolina courts have prohibited for centuries. He allowed Lucas to go behind the judgment and examine the contract on which it was founded. *See Ryan* at 189, 27 S.E. at 619 (quoting *Pickett v. Pickett,* 2 Hill Eq. 363, 474). Opening that door to judgment debtors in supplemental proceedings encroaches on South Carolina's strong policy favoring finality of judgments and encourages endless relitigation, especially in highly contentious cases such as the one at bar.

The Master's error is further shown by his reliance on cases that are irreconcilable with South Carolina law. The Master drew support for his conclusion from *Kanawha-Gauley Coal & Coke Company v. Pittston Minerals Group, Incorporated,* 501 Fed.Appx. 247, 254-55 (4th Cir. 2012). The Master cited that case for the proposition that the doctrine of merger eliminates a contract provision setting a rate of interest unless the contract includes "clear, unambiguous, and unequivocal language indicating the parties' express intent to agree on a post-judgment interest rate." (Order Denying Attorney's Fees pp. 7-8.) Contrary to that proposition, our Supreme Court has repeatedly held contractual interest rates survive entry of a judgment. *See, e.g., Sears and Turner Coleman, supra.*

Our courts have never required clear, unambiguous, and unequivocal language indicating the parties' express intent that the contract provision survive entry of judgment. *Id.* Lucas attempts to distinguish those cases by arguing that interest on a judgment is a statutory right, not a contractual one. However, that argument overlooks the fact that the *rate* at which interest was held to accrue in both *Sears* and *Turner Coleman* was not set by any statute. Rather, in both cases the judgment creditors' right to collect interest at the higher rate arose purely from contract. If the Master and Lucas are correct, then both *Sears* and *Turner Coleman* were decided improperly. In neither of those cases did the contract contain clear and unequivocal language indicating the parties' intent that the interest rate provisions would survive entry of judgment. If, as Lucas argued and the Master held, the law in this State is that upon entry of judgment all contract terms are eliminated absent a clear, unequivocal language that the terms are to survive entry of judgment, then the Supreme Court would have denied the accrual of post-judgment interest at the higher rate in both *Sears* and *Turner Coleman*. It did not.

Therefore, the Master erred when he held the entry of judgment extinguished Team IA's right to recover attorney's fees incurred in the collection of its judgment against Lucas. While the doctrine of merger may have extinguished the employment agreement, it did not extinguish Team IA's right to payment from Lucas, nor did it extinguish Team IA's right to attorney's fees incurred in pursuing collection of the judgment.

IV. THE MASTER-IN-EQUITY'S HOLDING IS CONTRARY TO THE LAW OF THE CASE.

Finally, the Master erred when he denied Team IA's claim because the trial court's holding that Team IA is "entitled to recover any and all reasonable attorney's fees, expenses, and court costs incurred in connection with the enforcement of [its] rights" is the law of the case.

It is well-established in South Carolina that "an unappealed ruling, right or wrong, is the law of the case." *Atl. Coast Builders & Contrs., LLC v. Lewis*, 398 S.C. 323, 329, 730 S.E.2d 282, 285 (2012). In this case, Lucas disputed Team IA's claim for attorney's fees prior to entry of judgment. The trial court rejected his argument and held,

> Paragraph VII, (G) of the Employment Agreement provides:
>
> > **Fees, Costs, and Expenses**: In the event Employer must enforce any of the rights herein granted to it through an attorney, Employee shall be liable for any and all reasonable attorney's fees, expenses, and court costs incurred in connection with the enforcement of Employer's rights hereunder.
>
> Based on the language of the fee-shifting provision, I must conclude that Lucas is liable for any and all reasonable attorney's fees, expenses, and court costs incurred in connection with the enforcement of Team IA's rights.

(Order on Post-Trial Motions p. 29.) When the parties agreed to dismiss their cross-appeals, the trial court's order entering judgment became the law of the case. Nothing in

the trial court's order limits the recovery of attorney's fees and costs to expenses incurred prior to entry of judgment. To the contrary, the trial court's order held Lucas liable for "*any and all* reasonable attorney's fees, expenses, and court costs incurred in connection with the enforcement of Team IA's rights." *Id.* (emphasis added). As discussed above, those rights include Team IA's right to recover lost profits and pre-judgment litigation expenses, as well as its right to recover attorney's fees and costs it incurs in the enforcement of its rights. Team IA initiated these supplemental proceedings to enforce its right to collect payment from Lucas. These proceedings are not a separate civil action but rather a continuation of the same action in which Team IA obtained its breach of contract judgment against Lucas. *Dauntless Mfg. Co. v. Davis*, 24 S.C. 536, 542 (1886); *Kennesaw Mills Co. v. Walker*, 19 S.C. 104, 107 (1883). By holding Team IA was not entitled to recover attorney's fees and costs in these supplemental proceedings, the Master contradicted the trial court's order entering judgment.

Therefore, the Master's order should be reversed.

CONCLUSION

The Master-in-Equity erred when he held Team IA has no right to recover reasonable attorney's fees and costs necessarily incurred in the collection of its judgment against Lucas. The holding is contrary to the parties' agreement and controlling law. Second, the Master erred when he held the fee-shifting provision in the Employment Agreement was ambiguous and when he found the parties' intent was that the fee-shifting provision not survive entry of judgment despite no evidence supporting that finding. Third, the Master erred when he misapplied the doctrine of merger to bar Team IA's claim because the right to attorney's fees survived entry of judgment. Finally, the Master erred

because his holding was contrary to the law of the case. Therefore, Team IA asks that this Court review the record, find Team IA has a right to recover attorney's fees and costs necessarily incurred in the collection of its judgment against Lucas, and reverse the Master's holding.

Benjamin C. Bruner
BBruner@brunerpowell.com
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, South Carolina 29260
(803) 252-7693
Attorneys for Team IA, Inc.

August 7, 2017

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

James O. Spence, Master-in-Equity

APPELLATE CASE NO.: 2017-1497

Team IA, Inc. . . . . Appellant,

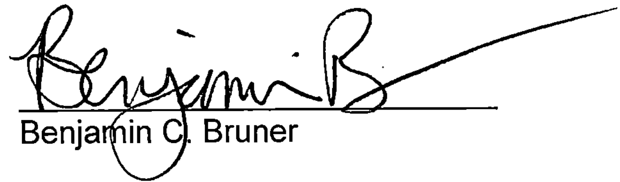
v.

Cicero Lucas. . . . . Respondent.

PROOF OF SERVICE

I, Benjamin C. Bruner, counsel for the Appellant, certify that I served a copy of the attached **Initial Brief of Appellant** by depositing a copy of it in the U.S. Mail, postage prepaid, on August 7, 2017, addressed to Julio E. Mendoza, Jr., Esquire, Nexsen Pruet, LLC, Post Office Box 2426, Columbia, SC 29202.

August 7, 2017



Benjamin C. Bruner

RECEIVED
AUG 09 2017
SC Court of Appeals

BRUNER, POWELL, WALL & MULLINS, LLC
ATTORNEYS AND COUNSELORS AT LAW
1735 ST. JULIAN PLACE, SUITE 200
POST OFFICE BOX 61110
COLUMBIA, SOUTH CAROLINA 29260-1110
TELEPHONE 803-252-7693
FAX 803-254-5719
WWW.BRUNERPOWELL.COM

WARREN C. POWELL, JR., P.A.**
HENRY P. WALL
E. WADE MULLINS III, P.A.
BRIAN P. ROBINSON, P.A.
WESLEY D. PEEL, P.A.
JOEY R. FLOYD, P.A.
BENJAMIN C. BRUNER, P.A.

** Also Admitted in District of Columbia

JAMES L. BRUNER, P.A.
OF COUNSEL

ANN F. ALLISON
CAITLIN C. HEYWARD
ROBERT C. OSBORNE III

AUTHOR'S E-MAIL: BBRUNER@BRUNERPOWELL.COM

August 7, 2017

VIA HAND DELIVERY
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RECEIVED
AUG 09 2017
SC Court of Appea

Re: ***Team IA, Inc. v. Cicero Lucas***
Case No. 2014-1497
BPWM File No.: 11-2795.100

Dear Ms. Kitchings:

Enclosed for filing with your office, please find the original and one copy of the *Initial Brief of Appellant* and *Appellant's Designation of Matter to be Included in the Record on Appeal*, as well as proof of service of each. Please have your office file the original and return a filed, stamped copy to me in the enclosed envelope.

Sincerely,

Benjamin C. Bruner

BCB/
Enclosures

cc: Julio E. Mendoza, Jr., Esquire (via U.S. Mail)

NEOPOST

08/07/2017
US POSTAGE $003.50

ZIP 29204
041M11278675

ɴER, POWELL, WALL & MULLINS, LLC
A Professional Limited Liability Company
ᴛTORNEYS AND COUNSELORS AT LAW
1735 ST. JULIAN PLACE, SUITE 200
POST OFFICE BOX 61110
ᴊUMBIA, SOUTH CAROLINA 29260-1110

11-2795.100

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RECEIVED
AUG 09 2017
SC Court of Appeals