THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APPEAL FROM AIKEN COUNTY
IN THE COURT OF COMMON PLEAS
THE HONORABLE DOYET A. EARLY, III
CIRCUIT COURT JUDGE

Court of Appeals Opinion No. 5527
CASE NO. 2016-000106

Harold Raynor a/k/a Harold
Reynor and Michael Caldwell,

Respondents,

v.

Charles C. Byers, John T. Bakhaus,
Kurt Kasler and Kenneth Smith,

Defendants,

of whom

Charles C. Byers, John T. Bakhaus and kenneth Smith are the Petitioners,

---

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Harold Raynor a/k/a Harold Reynor, and Michael Caldwell, Respondents,

v.

Charles C. Byers, John T. Bakhaus, Kurt Kasler, and Kenneth Smith, Defendants,

Of whom Charles C. Byers, John T. Bakhaus, and Kenneth Smith are the Appellants.

Appellate Case No. 2016-000106

Appeal From Aiken County
Doyet A. Early, III, Circuit Court Judge

Opinion No. Op. 5527
Heard October 3, 2017 – Filed December 20, 2017

AFFIRMED

Herbert W. Hamilton, of Hamilton Martens, LLC, of Rock Hill, for Appellant Kenneth Smith.

Spencer Andrew Syrett, of Columbia, for Appellants John T. Bakhaus and Charles C. Byers.

Kevin Nicklaus Molony, of Thurmond Kirchner & Timbes, P.A., and Robert J. Harte, of Robert J. Harte, P.C., both of Aiken, for Respondents.

THOMAS, J.: Charles C. Byers, John T. Bakhaus, and Kenneth Smith (Appellants) appeal the circuit court's order granting attorney's fees to Harold Raynor and Michael Caldwell (Respondents). Appellants argue the circuit court erred because (1) no statute provided for attorney's fees and (2) there was no longer a contractual provision allowing for attorney's fees. We affirm.

FACTS/PROCEDURAL HISTORY

On March 14, 2008, Appellants and Kurt Kasler executed a promissory note to Respondents. Appellants and Kasler agreed to pay the principal amount of $250,000 by March 1, 2009, and to pay eight percent interest in the event of default. The note further provided: "In the event of default in the payment of this note, and if it is placed in the hands of an attorney for collection, the undersigned hereby agrees to pay all costs of collection, including a reasonable attorney's fee."

On April 3, 2009, Respondents filed a breach of contract action seeking repayment of the $250,000 note, interest, attorney's fees, and costs. Appellants and Kasler did not answer the complaint and the circuit court entered a default judgment against them on August 4, 2009. The judgment provided Appellants and Kasler were required to pay $258,768.15, which included the principal amount, interest, costs, and attorney's fees. On October 14, 2015, Respondents filed a motion for attorney's fees and costs seeking $82,433.68 in fees and costs associated with attempting to collect the judgment from Appellants and Kasler in supplemental proceedings.

At the hearing on Respondents' motion for attorney's fees, Appellants argued Respondents were not entitled to post-judgment attorney's fees because attorney's fees were not warranted by a statute or contract. Appellants argued "the purpose of entering a judgment is to liquidate that amount of debt that is owed" such that "the instrument upon which the debt is based merges into the judgment and the judgment becomes the document that's being enforced." According to Appellants, "the supplemental proceedings [were] not to collect the note, they[were] to collect the judgment." In contrast, Respondents argued the note provided for attorney's fees in the event of default and the supplemental proceedings were part of the collections process agreed to by both parties in the contract. The circuit court granted Respondents' motion for attorney's fees, finding: (1) South Carolina courts had not adopted the merger doctrine, (2) "[t]he parties contracted for the award of attorney['s] fees should any 'litigation' or 'collections' be necessary," and (3) the amount of the requested attorney's fees was reasonable. This appeal followed.

LAW/ANALYSIS

Appellants argue the circuit court erred in awarding post-judgment attorney's fees to Respondents because attorney's fees were not warranted by a statute or contract. Appellants urge this court to follow the Maryland court in *Monarc Construction, Inc. v. Aris Corp.*[1] in applying the merger doctrine from the Restatement of Judgments.[2] Appellants contend "once the judgment was issued, the contractual provisions of the note merged into the judgment" so there was no longer a contract providing for attorney's fees. We disagree.

"The review of attorney fees awarded pursuant to a contract is governed by an abuse of discretion standard." *Laser Supply & Servs., Inc. v. Orchard Park Assocs.*, 382 S.C. 326, 340, 676 S.E.2d 139, 147 (Ct. App. 2009). "An abuse of discretion occurs when the [circuit] court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000). "In South Carolina, the authority to award attorney's fees can come only from a statute or be provided for in the language of a contract. There is no common law right to recover attorney's fees." *Harris-Jenkins v. Nissan Car Mart, Inc.*, 348 S.C. 171, 176, 557 S.E.2d 708, 710 (Ct. App. 2001).

South Carolina has not adopted the merger doctrine from the Restatement. Thus, we find post-judgment attorney's fees can be awarded if a statute or contract provides for such fees. Because no statutory authority exists to grant attorney's fees in this case, we must look to the language of the note itself to determine whether the parties intended for post-judgment attorney's fees to be recoverable. *See McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009) ("The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language."). The note provided:

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[1] 981 A.2d 822, 834–35 (Md. Ct. Spec. App. 2009) (holding a settlement agreement merged into prior default judgment and thus could not provide a basis to recover post-judgment costs and fees).

[2] The Restatement (Second) of Judgments § 18 (1982) provides "[w]hen a valid and final personal judgment is rendered in favor of the plaintiff[, t]he plaintiff cannot thereafter maintain an action on the original claim or any part thereof, although he may be able to maintain an action upon the judgment." The comments to the Restatement further explain "[w]hen the plaintiff recovers a valid and final personal judgment, his original claim is extinguished and rights upon the judgment are substituted for it." *Id.* cmt. a.

"In the event of default in the payment of this note, and if it is placed in the hands of an attorney for collection, the undersigned hereby agrees to pay all costs of collection, including a reasonable attorney's fee." The contract between the parties clearly provided for the recovery of reasonable attorney's fees for necessary litigation in the event of default. There is no limitation in the contract for only fees incurred prior to or in the process of obtaining the judgment. Instead, the parties intended for Appellants to be responsible for *all* costs of collection. We find the circuit court did not abuse its discretion because there was evidence to support its finding that the contract allowed for an award of attorney's fees.

Accordingly, the circuit court's order is

AFFIRMED.

WILLIAMS and MCDONALD, JJ., concur.

The South Carolina Court of Appeals

Harold Raynor a/k/a Harold Reynor, and Michael Caldwell, Respondents,

v.

Charles C. Byers, John T. Bakhaus, Kurt Kasler, and Kenneth Smith, Defendants,

Of whom Charles C. Byers, John T. Bakhaus, and Kenneth Smith are the Appellants.

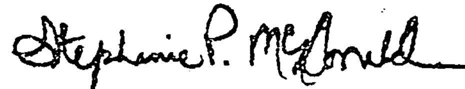
Appellate Case No. 2016-000106

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

J.

J.


J.

Columbia, South Carolina

FILED

March 22, 2018

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM AIKEN COUNTY
IN THE COURT OF COMMON PLEAS
THE HONORABLE DOYET A. EARLY, III
CIRCUIT COURT JUDGE

CASE NO. 2016-000106

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SC Court of Appeals

Harold Raynor a/k/a Harold
Reynor and Michael Caldwell,

Respondents,

v.

Charles C. Byers, John T. Bakhaus,
Kurt Kasler and Kenneth Smith,

Defendants,

of whom

Charles C. Byers, John T. Bakhaus and Kenneth Smith are the Appellants,

---

PETITION FOR REHEARING

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TABLES OF AUTHORITIES

CASES

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TREATISES

Restatement of Judgments §18 1,2

STATEMENT OF POINTS OVERLOOKED OR MISAPPREHENDED

1. The Court failed to address the adoption of the merger doctrine in Family Court Orders as set forth in Moseley v. Mosier, 279 S.C. 348, 306 S.E. 2d 624 (1983) and find that South Carolina has adopted merger..
2. The Court failed to state why it could not adopt the Restatement's provision on merger.

ARGUMENT

The Court was correct in finding that the Courts of this state have not expressly adopted the Restatement of Judgments on merger of civil court cases. This case is apparently a case of first impression. The Court overlooked and failed to address the impact of Moseley v. Mosier, 279 S.C. 348, 306 S.E. 2d 624 (1983) in which the Supreme Court clearly adopted the doctrine of merger of Family Court agreements into decrees of divorce.

The same rationale expressed by the Supreme Court in Moseley should also apply in the case of judgments arising from promissory notes.

It is certainly possible that the Court takes the position that if the doctrine of merger is to be adopted by South Carolina, then it is the sole province of the Supreme Court to do so,. If that is the case, the Court should so state and indicate that it defers to the judgment of the Supreme Court.

CONCLUSION

The Court should vacate its ruling and enter an opinion finding that merger is the law of South Carolina.

Failing that, the Court should address the merger adopted in Moseley and distinguish this case from Moseley.

Finally if the Court finds that this issue is one that the Supreme Court should solely have the power to decide, it should so state.

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January 4, 2018

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED
APR 23 2018
S.C. SUPREME COURT

APPEAL FROM AIKEN COUNTY
IN THE COURT OF COMMON PLEAS
THE HONORABLE DOYET A. EARLY, III
CIRCUIT COURT JUDGE

Court of Appeals Opinion No. 5377
CASE NO. 2016-000106

Harold Raynor a/k/a Harold
Reynor and Michael Caldwell,

Respondents,

v.

Charles C. Byers, John T. Bakhaus,
Kurt Kasler and Kenneth Smith,

Defendants,

of whom

Charles C. Byers, John T. Bakhaus and Kenneth Smith are Petitioners,

Petitioners.

PROOF OF SERVICE

APPENDIX TO

I certify that I have served the Petition for Writ of Certiorari on the Respondents, Harold Raynor a/k/a Harold Reynor and Michael Caldwell, by depositing a copy of it in the United States Mail, postage prepaid, on April 23, 2018, addressed to the attorneys of record:

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April 23, 2018