

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

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AUG 16 2016

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,

RECORD ON APPEAL

Spencer Andrew Syrett SC BAR 05459
P.O. Box 7403
Columbia, SC 29202
803-765-2110
syrettlaw@sc.rr.com
Attorney for the Appellants
Charles C. Byers and John T. Bakhaus

Kevin Nicklaus Molony SC BAR 80679
208 Newberry St. NW
Aiken, SC 29801
803-648-0706
Attorney for Respondents

Herbert W. Hamilton SC BAR 02626
P.O. Box 10940
Rock Hill, SC 29731
803-329-7607
Attorney for Appellant
Kenneth Smith

Robert J. Harte
P.O. Box 1959
Aiken, SC 29802-1959
803-648-0853
Attorney for the Respondents

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STATE OF SOUTH CAROLINA
COUNTY OF ^{AIKEN} EDGEFIELD

: IN THE COURT OF COMMON PLEAS
: CASE NUMBER: 09-CP-02-00706

Harold Raynor aka Harold
Reynor and Michael Caldwell,
Plaintiffs,

vs.

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

ORDER ENTERING DEFAULT JUDGMENT

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this

MAR 11 2015

Liz Godard
C.C.C.P. & G.A., Aiken County, S.C.
Anita Knoepfle
Deputy Clerk

The plaintiffs' files a motion requesting that the court grant judgment by default in the above-captioned case in regards to the defendants, Kenneth Smith, Charles C. Byers and John Bakhaus. The plaintiffs filed a summons and verified complaint in this matter along with their request for admissions.

It appears to the court that there is just cause for granting the motion.

It is therefore ORDERED that the plaintiff have judgment against the defendant as follows:

1. The principle sum of \$250,000.00;
2. Prejudgment interest from March 1, 2009 through July 17, 2009, in the amount of \$7,615.81;
3. Cost in the amount of \$432.34. Attorney fees in the amount of \$720.00;
4. For a total of \$258,768.15.
5. With post judgment interest at the legal rate to be applied from the date of entry of this Order and Judgment.

This 3rd day of July 2009.

W. E. Carlson
Presiding Circuit Court Judge
Second Judicial Circuit

FILED 8-4 2009
Liz Godard
C.C.C.P. & G.S.
Barbara Huggins
Deputy Clerk

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

HAROLD RAYNOR A/KA/ HAROLD
REYNOR AND MICHAEL CALDWELL,

PLAINTIFFS,

vs.

CHARLES C. BYERS, JOHN T.
BAKHAUS, KURT KASLER, AND
KENNETH SMITH,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

C/A NO.: 2009-CP-02-00706

ORDER GRANTING PLAINTIFFS'
MOTION FOR ATTORNEY FEES

FILED December 18, 15
Liz Adair
C.C.C.P. & G.S. LMC
Dea. Comar 8:30am
Deputy Clerk

THIS MATTER came before the court on Monday, November 9, 2015 upon the Motion of the Plaintiffs for Attorney Fees and Costs associated with the Default Judgment (hereinafter, "Judgment") referenced above. Plaintiffs were represented by Kevin N. Molony and Robert J. Harte. Defendant John T. Bakhaus was represented by Spencer Andrew Syrett. Defendant Kenneth Smith was represented by Herbert W. Hamilton.

The Judgment was entered on August 3, 2009 in Aiken, South Carolina. The Judgment included the principle amount of \$250,000.00, pre-judgment interest of \$9,535.20 as well as \$482.34 in costs and attorney fees of \$960.00. Over six years later, Plaintiffs conducted supplemental proceedings in four separate counties and have collected \$258,768.15. Subsequently, Plaintiffs brought this motion requesting \$90,365.80 in attorney fees, costs, and expenses.

In the present case, the contract between the parties was a simple promissory note, in which Defendants promised to pay back the principal of \$250,000.00 to Plaintiffs. The note, if read using the plain and ordinary meaning of the terms used by the parties, also included the award of interest at the rate of eight percent (8%) per annum should the Defendants default. Further, the parties contracted for Defendants to be liable for all costs of collection, including a reasonable attorney fee, should the Defendants default.

At the hearing, Plaintiffs presented an affidavit outlining the work performed in collecting the Judgment and detailing the relevant factors as set forth in Prevatte v. Asbury Arms, 302 S.C. 413, 396 S.E.2d 642 (Cl. App 1990); Baron Data Sys., Inc v. Lotter, 297 S.C. 382, 384, 377 S.E.2d 296, 297 (1989), and similar cases. Plaintiffs also presented an affidavit from a local attorney that stated in his opinion the fees requested by Plaintiffs were reasonable.

DAE#1

Defendants objected to the award of attorney fees, arguing that the underlying contract between the parties was extinguished once the Judgment was entered. Defendants argued that because the original contract between the parties no longer existed, the obligation for them to pay a reasonable attorney fee ended at the time of the entry of default on August 3, 2009. Defendants cited case law from Maryland and argued the "Merger Doctrine" limited Plaintiffs ability to obtain attorney fees for post-judgment collections. Suntrust Bank v. Goldman 201 Md. App. 390 (2011), 29 A.3d 724.

The parties in *Suntrust* entered into a contract, which included a clause that provided the Defendant pay fifteen percent (15%) of the principle in attorney fees should the Defendant default and attorneys were required to collect the debt. Although the Plaintiffs incurred only \$3,094.00 in attorney fees, Suntrust requested that the Court order \$60,206.00 in attorney fees, equaling fifteen percent (15%) of the principle.

The Maryland Court of Appeals ruled that that percentage based fee calculations would not be enforced unless the amount of attorneys' fees actually incurred by the prevailing party exceed the amount calculated in accordance with the percentage formula. The Court reasoned that fee-shifting provisions are indemnification obligations, and thus, a party should not be permitted to obtain a judgment for an amount greater than the amount the party owes its lawyers. *Suntrust* at 395.

Although the Maryland courts have applied the "Merger Doctrine" to limit the ability for attorney fees to be awarded pursuant to a valid contract in certain situations, the courts of this state have not. Plaintiffs cited *Renaissance Enterprises v. Ocean Resorts*, 326 S.C. 460 (Ct.App. 1997), 483 S.E.2d 796 and argued the parties entered into a valid contract, which included the award of attorney's fees for work performed during supplemental proceedings.

In *Renaissance*, the South Carolina Court of Appeals was asked to determine whether the Master erred in granting attorney's fees for supplemental proceedings when the parties had contracted for the award of attorney fees in their original contract. *Id* at 469. Subsequent to the Circuit Court approving an arbitration award in favor of Renaissance, Renaissance filed and conducted supplemental proceedings to collect on the outstanding debt owed by Ocean Resorts. *Id* at 462. The original contract between the parties provided, in part,

"[i]f 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."

Three years after the Circuit Court approved the arbitration award entered in favor of Renaissance, Renaissance filed the Motion for Attorney Fees. *Id* at 462. After reviewing the language of the contract between the parties, the Court ruled,

“[t]he 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” *Id* at 469.

Although the procedural steps taken to secure the Judgment in the present case differ somewhat from the facts in *Renaissance*, the underlying analysis is the same. A judgment was entered. The parties contracted for the award of attorney fees should any “litigation” or “collections” be necessary. Because the parties entered into a valid contract, Plaintiffs have met the first burden of being awarded attorney fees. Under the common law of South Carolina, a prevailing party has no right to recover attorney's fees. *Duke Power Co. v. South Carolina Public Service Commission*, 284 S.C. 81, 326 S.E.2d 395 (1985). In the absence of a common law right, the plaintiff must plead either a contract or a statute to receive enhanced damages or attorney's fees. *Hegler v. Gulf Insurance Co.*, 270 S.C. 548, 243 S.E.2d 443 (1978).

In the present case, the parties clearly entered into a valid contract. The clear language of the contract at issue provides, in part,

“[i]n 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.”

I find the contract entered between the parties is clear and unambiguous. The parties contracted for an award of attorney fees in the event the Defendants default in the payment of the note. The contract clearly provides that the Defendants will pay all costs of collection, including a reasonable attorney's fee, upon the default of the Defendants. Read as a whole, I find the terms of the contract in no way limit the ability of the Plaintiffs to recover attorney fees in supplemental proceedings.

“It is a question of law for the court whether the language of a contract is ambiguous.” *S.C. Dep't of Nat. Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302-03 (2001) (citation omitted). The cardinal rule of contract interpretation is to ascertain and give legal

effect to the parties' intentions as determined by the contract language. *Whitlock v. Stewart Title Guar. Co.*, 399 S.C. 610, 614, 732 S.E.2d 626, 628 (2012) (internal citations omitted). Based on the terms of the contract, it is clear the parties intended for attorney fees to be awarded for *all costs of collection*.

Black's Law Dictionary defines the term, "all", as meaning, "each or every". <http://thelawdictionary.org/all>. Further, Black's Law Dictionary defines the term, "collection", as meaning, "a process for recovering delinquent amounts owed". <http://thelawdictionary.org/collection/>. Applying the clear meaning of the terms entered into by the parties, it is clear that attorney's fees were contracted for, and the obligation to the Defendants to pay such reasonable fees extended to each and every action the Plaintiffs were required to initiate to recover the delinquent amount owed, including supplemental proceedings.

Therefore, based on the Court's rationale in *Renaissance* and the clear and unambiguous language of the contract between the parties, I find and conclude that Plaintiffs are entitled to the award of reasonable attorney's fees associated with the supplemental proceedings undertaken.

Next, it is necessary to determine whether or not the requested attorney fees as set forth in Plaintiffs' Affidavit of Attorney Fees are reasonable. Plaintiffs filed an Affidavit of Attorney's Fees as well as an Affidavit from a local attorney, Paul Knapp Simmons, Jr., which stated in his opinion the requested fees of \$90,365.80 were reasonable. At the hearing, the Defendants objected to the reasonableness of the fees requested by the Plaintiffs.

I find the award of \$90,365.80 is consistent with the laws of this state in the awarding of attorney fees. I have considered the six (6) factors (none of these factors is controlling in the singular) as follows: (1) the nature, extent and difficulty of the legal service rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar legal services; and (6) the beneficial results obtained. *Taylor v. Medenica*, 331 S.C. 575, 503 S.E. 2d 458 (1998).

According to the Affidavit of Attorney's Fees filed by the Plaintiffs, Plaintiffs' counsel worked approximately three hundred forty-eight hours (348.0) hours on collecting the outstanding debt. At the time of the filing of the Motion for Attorney's Fees, Plaintiffs' counsel had collected \$258,778.15, which is the entire principal of the Judgment. The issues presented were complex in nature and required extensive research into assets of four separate Defendants. Plaintiffs' counsel traveled to York County to conduct supplemental proceedings against Defendant Kenneth Smith. Plaintiffs' counsel traveled on two separate occasions to Beaufort County to conduct supplemental proceedings against Defendant Charles C. Byers and to Richland County

on seven separate occasions for supplemental proceedings regarding Defendant John T. Bakhaus. Plaintiffs' counsel also worked with the Billings Law Firm in Lexington, Kentucky in an effort to collect properties owed by Defendant John T. Bakhaus. Plaintiffs incurred fees in the amount of \$4,843.47 for the representation of the Billings Law Firm. Further, Plaintiffs incurred fees for their previous attorney in the amount of \$7,368.68, before Mr. Molony and Mr. Harte were retained.

The contract between Plaintiffs and their counsel provided for a contingency rate of twenty percent (20%) of the amount collected to be awarded as attorney fees. At the present time, Plaintiffs have actually incurred attorney fees in the amount of \$66,467.78, plus costs and expenses. The additional amount to be collected on the Judgment is \$130,163.92, of which the Plaintiffs will incur additional attorney fees of \$26,032.78. If the Judgment were to be paid off in full, Plaintiffs actual attorney fees incurred would be \$92,500.56.

Considering the amount requested by Plaintiffs is less than the amount of fees Plaintiffs will actually incur and the six factors as set out in *Taylor*, I find the requested amount of \$90,365.80 is fair and reasonable. Further, Plaintiffs' Attorney Fee Affidavit sufficiently details the work performed by counsel in collecting the judgment.

IT IS THEREFORE ORDERED that the award of \$90,365.80 in attorney's fees, costs, and expenses be awarded to the Plaintiffs.

IT IS SO ORDERED.

DONE this 17 day of Dec, 2015 at Aiken,
South Carolina.

By:

Doyet A. Early, III
The Honorable Doyet A. Early, III

STATE OF SOUTH CAROLINA : IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN : CASE NUMBER:

Harold Raynor aka Harold
Reynor and Michael Caldwell,

2009 - CP - 02 - 00706

Plaintiffs,

COMPLAINT
(NON-JURY)

vs.

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

Defendants.

FIRST CAUSE OF ACTION

1. On or about March 14, 2008, the plaintiffs and the defendants entered into a Promissory Note, a copy of which is attached and incorporated as exhibit A.
2. The terms of the Promissory Note provide that the plaintiffs provided Two Hundred Fifty Thousand and 00/100 (\$250,000.00) to the defendants.
3. The defendants were required under the terms of the Promissory Note to repay Two Hundred Fifty Thousand and 00/100 to the plaintiffs on March 1, 2009.
4. If the funds were repaid by March 1, 2009, no interest would be due from the defendants.
5. All conditions precedent to the plaintiff's enforcement of the Promissory Note have been satisfied or performed, including the funding of the loan to the plaintiffs.
6. The defendants breached the agreement by failing to pay the Two Hundred Fifty Thousand and 00/100 (\$250,000.00) by March 1, 2009.
7. The agreement provides that, in the event of default, the plaintiffs are entitled to:
 - a. Interest at eight percent (8%) per annum until ~~ORIGINAL FILED~~ full;

COPY
ORIGINAL FILED

APR 03 2009
10:30
AIKEN COUNTY
CLERK OF COURT

b. Defendants will pay all cost if the matter is turned over to an attorney for the purposes of collecting payment pursuant to the note;

c. Defendants will pay reasonable attorney fees.

8. Payment is due and owing under the note.

9. Despite repeated demands for payment, the defendants have failed to repay any of the amount owed to the plaintiffs.

10. As a result of the defendants' breach, the plaintiff has suffered damages and is entitled to a judgment against the named defendants for:

a. Repayment of the principal in the amount of Two Hundred Fifty Thousand and 00/100 (\$250,000.00);

b. Interest at eight percent (8%) per annum from March 1, 2009 until the debt is repaid in full;

c. The cost of this action;

d. Reasonable attorney fees.

SECOND CAUSE OF ACTION

11. Paragraphs one through ten are incorporated as if repeated herein.

12. Defendants, Charles C. Byers and John T. Bakhus signed the Promissory Note and specifically guaranteed the obligation for the repayment of Two Hundred Fifty Thousand and 00/100 (\$250,000.00);

13. The plaintiffs have made demand for payment from Charles C. Byers and John T. Bakhus but no payments have been made to the plaintiffs.

14. The agreement provides that, in the event of default, the plaintiffs are entitled from the guarantors to:

- a. Interest at eight percent (8%) per annum until the debt is repaid in full;
- b. Defendants will pay all cost if the matter is turned over to an attorney for the purposes of collecting payment pursuant to the note;
- c. Defendants will pay reasonable attorney fees.

15. Payment is due and owing under the note from the guarantors.

16. Despite repeated demands for payment from the guarantors, they have failed to repay any of the amount owed to the plaintiffs.

17. As a result of the guarantor's breach, the plaintiff has suffered damages and is entitled to a judgment against the guarantors for:

- a. Repayment of the principal in the amount of Two Hundred Fifty Thousand and 00/100 (\$250,000.00);
- b. Interest at eight percent (8%) per annum from March 1, 2009 until the debt is repaid in full;
- c. The cost of this action;
- d. Reasonable attorney fees.

WHEREFORE, the plaintiffs request the following relief:

As to the first cause of action:

- a. Repayment of the principal in the amount of Two Hundred Fifty Thousand and 00/100 (\$250,000.00);
- b. Interest at eight percent (8%) per annum from March 1, 2009 until the debt is repaid in full;
- c. The cost of this action;

d. Reasonable attorney fees.

e. Any other relief that the court would deem proper.

As to the second cause of action to the guarantors::

a. Repayment of the principal in the amount of Two Hundred Fifty Thousand and 00/100 (\$250,000.00);

b. Interest at eight percent (8%) per annum from March 1, 2009 until the debt is repaid in full;

c. The cost of this action;

d. Reasonable attorney fees.

e. Any other relief that the court would deem proper.

BUSBEE, HUNTER & GRIFFITH

By: MA Griffith
M. Anderson Griffith
P.O. Drawer 2009
147 Newberry Street
Aiken, SC 29802-2009
(803) 648-3255
SC Bar No.: 011909

Date: 4/1/09
Aiken, South Carolina

STATE OF SOUTH CAROLINA : IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN : CASE NUMBER:

Harold Raynor aka Harold
Reynor and Michael Caldwell,

Plaintiffs,

vs.

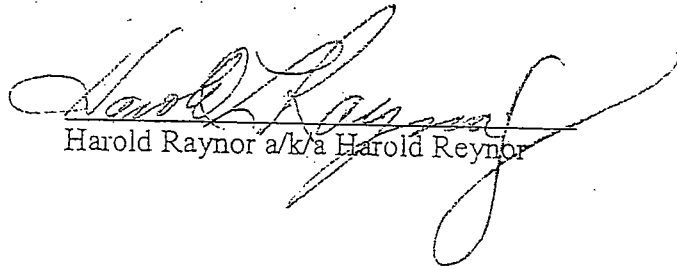
Charles C. Byers, John T. Bakhaus
Kurt Kasler and Kenneth Smith,

Defendants.

VERIFICATION

PERSONALLY appeared before me, Harold Raynor a/k/a Harold Reynor, who, being
duly sworn, deposes and says: that he is a plaintiff in the above entitled action; that he has read
the foregoing and the information contained therein is true of his own knowledge, except those
matters set forth on information and belief and as to those he believes them to be true.

Sworn to before me this 27th
day of March, 2009


Harold Raynor a/k/a Harold Reynor

Beth Reichardt
Notary Public for South Carolina
My commission expires: 4/3/13

STATE OF SOUTH CAROLINA : IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN : CASE NUMBER:

Harold Raynor aka Harold
Reynor and Michael Caldwell,

Plaintiffs,

vs.

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

Defendants.

VERIFICATION

PERSONALLY appeared before me, Michael Caldwell, who, being duly sworn, deposes and says: that he is a plaintiff in the above entitled action; that he has read the foregoing and the information contained therein is true of his own knowledge, except those matters set forth on information and belief and as to those he believes them to be true.



Michael Caldwell

Sworn to before me this 27th
day of March, 2009

Ruth Reichardt
Notary Public for South Carolina
My commission expires: 4/3/13

\$250,000.00

PROMISSORY NOTE
Columbia, South Carolina
March 14, 2008

FOR VALUE RECEIVED, the undersigned, according to their interests, promise to pay to Michael Caldwell and Harold Reynor, the principal sum of Two Hundred Fifty-Thousand and 00/100's. The principal will be due and payable March 1, 2009. If paid by the due date, no interest will be charged on the Note.

In the event of default, the entire indebtedness secured hereby will bear interest thereafter at the rate of 8% per annum until paid.

If at any time any portion of the principal or interest be past due and unpaid, the whole amount evidenced by this Note shall, at the option of the holder, become immediately due and payable, and the holder shall have the right to institute any proceedings upon this note and any lien given to secure the same for the purpose of collecting the principal and interest, with costs and expenses, or of protecting any security connected herewith.

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. Charles C. Byers and John T. Bakhaus guarantee this obligation.

The undersigned reserves the right to prepay in full or in part at any time without penalty.

Presentment, protest and notice are hereby waived.

Given under the hand and seal of each party on the date above written.

Charles C. Byers
Borrower: Charles C. Byers

25%
% Interest

March 14, 2008
Date

John T. Bakhaus
Borrower: John T. Bakhaus

25%
% Interest

Hurt Kaster
Borrower: Hurt Kaster

16.667
% Interest

Guarantors:
Charles C. Byers
Charles C. Byers

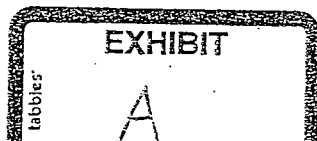
Kenneth Smith
Borrower: Kenneth Smith

16.666
% Interest

John T. Bakhaus
John T. Bakhaus

Ron Woolwine
Borrower: Ron Woolwine

16.666
% Interest



STATE OF SOUTH CAROLINA : IN THE COURT OF COMMON PLEAS

COUNTY OF EDGEFIELD : CASE NUMBER: 09-CP-02-00706

Harold Raynor aka Harold : Motion for Entry of Default
Reynor and Michael Caldwell, : and for Default Judgment

Plaintiffs,

vs.

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

Defendants.

The plaintiffs move the court, pursuant to Rules 55(a) and 55(b)(1) of the South Carolina Rules of Civil Procedure, for a judgment of default in the above-captioned case. In support of the motion, the plaintiff shows the following to the court:

1. The summons and complaint was served on the defendant, John Bakhaus on April 30, 2009, as evidenced by the certified mailing, restricted delivery. The specifics of the service and the relief requested are set forth in an affidavit of default, attached as exhibit A.

2. The summons and complaint was served on the defendant, Charles C. Byers, on April 30, 2009, as evidenced by the certified mailing, restricted delivery. The specifics of the service and the relief requested are set forth in an affidavit of default, attached as exhibit A.

3. The summons and complaint was served on the defendant, Kenneth Smith on April 29, 2009, as evidenced by the certified mailing, restricted delivery. The specifics of the service and the relief requested are set forth in an affidavit of default, attached as exhibit A.

5. The summons included a statement informing the defendants named above that a default would be sought against them for the relief sought in the complaint unless the defendant answered or responded within 30 days.

FILED 8-4-09
Luis Hodard
J.C.P. & G.S.
8:30 AM
Deputy Clerk

6. More than 30 days have elapsed since the service of the summons and complaint on three defendants named in this motion.

7. Kenneth Smith, Charles C. Byers and John Bakhaus have not answered, otherwise pled, or requested an extension of the time in which to answer.

8. These three defendants were also served with a copy of the plaintiffs' request for admissions that are attached to the Affidavit of Default as exhibit E.

9. The current amount due, as set forth in and calculated from the verified statement of account attached as exhibit F to the Affidavit of Default \$258,768.15 (the adjusted principal amount of \$250,000.00 plus prejudgment interest from March 1, 2009 through July 17, 2009, in the amount of \$7,615.81, costs in the amount of \$432.34 and attorney's fees in the amount of \$720.00).

WHEREFORE, the plaintiffs move the court for an order entering a default judgment against the defendants, Kenneth Smith, Charles C. Byers and John Bakhaus and for such other and further relief in favor of the plaintiffs.

BUSBEE, HUNTER & GRIFFITH

By: MA Griffith
M. Anderson Griffith
P.O. Drawer 2009
147 Newberry Street
Aiken, SC 29802-2009
(803) 648-3255
SC Bar No.: 011909

Date: 7/20/09
Aiken, South Carolina

STATE OF SOUTH CAROLINA : IN THE COURT OF COMMON PLEAS

COUNTY OF EDGEFIELD : CASE NO.: 09-CP-02-00706

Harold Raynor aka Harold
Reynor and Michael Caldwell,

Plaintiffs,

vs.

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

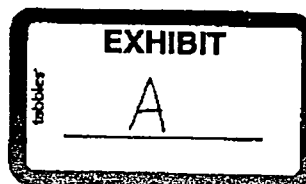
Defendants.

FILED 8-4 9
Liz G. ...
K.C.P. & ...
Barbara ... 8:30 AM
Deputy Clerk

AFFIDAVIT OF DEFAULT

I, M. Anderson Griffith, Esquire, having been duly sworn, depose and say the following:

1. I am the attorney for the plaintiffs in the above matter.
2. On or about April 30, 2009, the summons and verified complaint in this action, a copy of which is attached as exhibit A, was served on the defendant, John Bakhaus by certified mail, restricted delivery, as evidenced by the copy attached as exhibit B.
3. On or about April 29, 2009, the summons and verified complaint in this action, a copy of which is attached as exhibit A, was served on the defendant, Kenneth Smith was served by certified mail, restricted delivery, as evidenced by the copy attached as exhibit C.
4. On or about April 30, 2009, the summons and verified complaint in this action, a copy of which is attached as exhibit A, was served on the defendant, Charles C. Byers was served by certified mail, restricted delivery, as evidenced by the copy attached as exhibit D.
5. More than thirty (30) days have elapsed since service of the above-mentioned pleadings and no notice of appearance, answer, responsive pleading, or request for an extension of time to answer has been made by any of the three defendants named in paragraphs two through four above.
6. The three defendants named in paragraphs two through four above are not minors, incompetent, or members of the military service.
7. Each of the above named defendants are now in default.



8. These three defendants were also served with a copy of the plaintiffs' request for admissions that are attached as exhibit E.

9. The current amount due, as set forth in and calculated from the verified statement of account attached as exhibit F is \$258,768.15 (the adjusted principal amount of \$250,000.00 plus prejudgment interest from March 1, 2009 through July 17, 2009, in the amount of \$7,615.81, costs in the amount of \$432.34 and attorney's fees in the amount of \$720.00).

This 20th day of July, 2009

M.A. Griffith
M. Anderson Griffith
Attorney for the Plaintiff

Sworn to and subscribed before me
this 20th day of July, 2009.

Ruth Reichardt
Notary Public for South Carolina
My Commission Expires: 4/3/13

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
HAROLD RAYNOR A/K/A HAROLD
REYNOR AND MICHAEL CALDWELL,

PLAINTIFFS,

VS.

CHARLES C. BYERS, JOHN T.
BAKHAUS, KURT KASLER, AND
KENNETH SMITH,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2009-CP-02-00706

MOTION FOR ATTORNEY
FEES AND COSTS

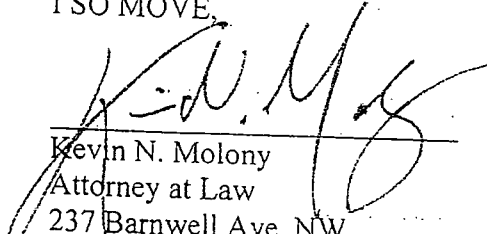
COPY LMC
ORIGINAL FILED

OCT 14 2015
12:14 PM
AIKEN COUNTY
CLERK OF COURT

TO: CHARLES C. BYERS, JOHN T. BAKHAUS,
KURT KASLER, AND KENNETH SMITH

PLEASE TAKE NOTICE that the Plaintiffs, The Estate of Harold Raynor A/K/A Reynor and Michael Caldwell, by and through their counsel, will move this Court, on November 9, 2015 at 1:30 p.m. at the Aiken County Courthouse, 109 Park Ave., Aiken, SC 29801, for entry of an Order for an award of attorneys' fees and expenses. Plaintiffs rely on their Affidavit in Support of their Motion for Award of Attorneys' Fees and Expenses, with supporting exhibits, to be filed subsequently with the Court.

I SO MOVE,


Kevin N. Molony
Attorney at Law
237 Barnwell Ave. NW
Aiken, SC 29801

October 14, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

HAROLD RAYNOR A/KA/ HAROLD
REYNOR AND MICHAEL CALDWELL,

C/A NO.: 2009-CP-40-06338

PETITIONERS,

SECOND AMENDED ATTORNEYS' FEES
AND COSTS AFFIDAVIT

vs.

CHARLES C. BYERS, JOHN T.
BAKHAUS, KURT KASLER, AND
KENNETH SMITH,

RESPONDENTS.

RICHLAND COUNTY
FILED
2015 SEP 14 PM 1:17
BEANETTE W. MCBRIDE
C.C.P. & G.S.

I, Kevin N. Molony, being duly sworn, depose and state on oath as follows:

1. Kevin N. Molony and Robert J. Harte are the attorneys for the Plaintiffs in the above captioned action. This affidavit is submitted to the court for its consideration in awarding Kevin N. Molony and Robert J. Harte reasonable attorneys' fees in the above case under the factors set forth in Prevatte v. Asbury Arms, 302 S.C. 413, 396 S.E.2d 642 (Ct. App 1990) and similar cases.
2. Time and labor expended: In connection with the subject matter, Plaintiffs' counsel have spent approximately 326.3 hours as of the date of this affidavit. Counsel also expects that additional time and expense will be necessary to prepare and argue future hearings associated with this case, which are now scheduled for September 14, 2015 in Columbia.
3. The novelty and difficulty of the questions raised: The legal principles involved in this case concerned researching title, property, real estate and business associations in multiple states for all four Defendants. Other principles included researching the new case law related to judgment creditors and the rights provided to them by the South Carolina courts, fraudulent transfers of property, and Kentucky and North Carolina law concerning judgment collections.

Charles C. Byers, one of the named defendants, lives in Beaufort, South Carolina. Plaintiffs' attorneys were required to conduct title searches for all of the property owned by Mr. Byers in Beaufort, South Carolina. Mr. Byers is also connected with multiple limited liability companies and corporations, both in South Carolina and North Carolina. Title searches were conducted in every county of both South Carolina and North Carolina

to determine the current assets of Mr. Byers and those of his limited liability companies. Plaintiffs' attorneys have attended two hearings in Beaufort, South Carolina in relation to Mr. Byers.

John T. Bakhaus, currently resides in Richland County, South Carolina. Mr. Bakhaus owns property in Richland County, South Carolina. Title searches were conducted on all of the property in his name in Richland County. Mr. Bakhaus also owns fourteen (14) limited liability companies in South Carolina. A title search for all of the property associated with Mr. Bakhaus' limited liability companies was conducted. Plaintiffs' attorneys were able to locate an extremely large number of properties that were in the name of Mr. Bakhaus' limited liability companies in South Carolina. While doing so, Mr. Molony and Mr. Harte located property and corporations owned by Mr. Bakhaus in Lexington, Kentucky. Title searches had to be conducted on all of the property Plaintiffs' attorneys were able to locate in Lexington, Kentucky. Plaintiffs' attorneys have located legal counsel in Kentucky to help Plaintiffs collect from Mr. Bakhaus there should they be unsuccessful in South Carolina.

Mr. Bakhaus, Mr. Smith and Mr. Byers are all members of limited liability companies in North Carolina. Plaintiffs' attorneys were required to search all relevant property records and conduct title searches on the joint business ventures of the three Defendants in North Carolina as well as the individual ventures. Through the research of the business associations, Mr. Molony and Mr. Harte located funds sufficient to satisfy the judgment plus interest, costs, and reasonable attorney fees.

Kenneth Smith is a resident of York County, South Carolina. The judgment in this case have been filed in York County and supplemental have been conducted in York County. Currently, a hearing is set for September 2015 in Aiken, South Carolina in relation to Mr. Smith's outstanding judgment.

Kurt Kasler is a resident of Charlotte, North Carolina. This judgment will be domesticated in Mecklenburg County, North Carolina as soon as possible if the judgment is not satisfied by Defendants Bakhaus and/or Defendant Smith.

Approximately six years have passed since the date of the judgment and the date of the supplemental proceedings. This extended length of time has made the preparation for the supplemental proceedings more difficult. Defendants Bakhaus, Smith, and Byers were involved in an extremely large number of real estate transactions over the last six years, and Plaintiffs' attorneys were required to track all of these transactions to determine what assets were currently in the possession of the Defendants and/or their companies.

Further, many of the limited liability companies the Defendants were involved in converged, changed names, or changed registered agents.

As of the filing of this affidavit, all Defendants have failed to provide Plaintiffs' attorneys with the information ordered for them to provide by the Court. At this point, Mr. Bakhaus has yet to provide the Plaintiff's with any of the original information requested and ordered by the Court, other than a set of tax records. Mr. Smith provided no documentation associated with his assets or business associations. Mr. Molony and Mr. Harte have located assets of the Defendants through diligent research and multiple hearings in Richland County, York County, and Beaufort County.

4. The skill required to perform the legal service properly: The skill required in this case was that possessed by an ordinarily competent judgment collection attorney.
5. The preclusion of other employment by the attorney due to acceptance of the case: Plaintiffs' counsel do not assert that preclusion of other employment arose as a result of this case.
6. Customary fee: The customary attorneys' fees for the type of legal services involved ranges from \$200.00 to \$350.00 per hour.
7. Expectations at the outset of litigation: Plaintiffs were hopeful some of the monies owed to them would be collected, including the interest that has accrued since the judgment was entered. Plaintiffs were aware that the original contract they entered with the Defendants included reasonable attorney fees paid by the Defendants.
8. Time limitations imposed by the client or circumstances: Plaintiffs urged Mr. Molony and Mr. Harte to proceed with this case as quickly as possible. Both Mr. Molony and Mr. Harte have kept this matter at the forefront of their caseloads in an effort to resolve this matter as efficiently as possible for both parties.
9. The amount in controversy and the results obtained: The amount in controversy is \$258,768.15 plus 8% per annum interest until the entire amount is paid in full, with "reasonable attorney fees" being a part of the original contract between the Plaintiffs and the Defendants. At the time of this affidavit, the final results have yet to be determined. However, Plaintiffs' attorneys have located assets currently in the possession of the judgment debtors that could satisfy the entire judgment, plus interest, costs, expenses and reasonable attorney fees. As of September 11, 2015, Plaintiffs have collected a total of \$258,778.15. The remaining amount owed to Plaintiffs is \$120,372.98.
10. The experience, reputation and ability of the attorneys: Kevin N. Molony graduated from law school in May, 2010 and began a judicial clerkship with the Honorable William P.

Keesley in August of 2010. In December of 2010, Kevin N. Molony began working for Solicitor Strom Thurmond Jr. in Aiken, South Carolina, where he tried violent crime and drug cases in Circuit Court. Kevin N. Molony was awarded the Solicitor J. Strom Thurmond, Jr. Award of Excellence in 2014. Four years after he began prosecuting with the Second Judicial Circuit Solicitor's Office, Kevin N. Molony opened Molony Law, LLC in Aiken, South Carolina. He has focused primarily on civil and criminal defense work. Approximately forty percent (40%) of Kevin N. Molony's time has been spent handling civil law cases similar to the one in the instant case. In the other judgment collection cases, Mr. Molony charges an hourly fee of \$210.00 per hour.

Robert J. Harte has been practicing law in Aiken, South Carolina for forty years. He was elected Solicitor for the Second Judicial Circuit and served in that role before opening his own law practice in Aiken, South Carolina. Robert J. Harte is known in Aiken, South Carolina as one of the best attorneys in the CSRA. Robert J. Harte has twenty-five years of experience in the areas of law associated with this case.

11. The undesirability of the case: There was no element of undesirability in handling this case.
12. The nature and length of the professional relationship with the client: This is the first time either Kevin N. Molony or Robert J. Harte have represented the Plaintiffs.
13. Awards in similar cases: We are not aware of any particular awards that would serve as guidance for this court in this case, but the reward requested is, in the opinion of the undersigned, typical of awards in similar cases.
14. Contract Provided For Reasonable Attorneys' Fees: In addition to the above factors, the court should be made aware that the Note signed by all Defendants provides, in part, "[i]n 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." A copy of the original promissory note is attached as Exhibit A.
15. Plaintiffs' counsel have minimized the costs and expenses associated with this matter in an effort to resolve in any disputes and to efficiently conclude the case.
16. Connie Nixon spent 9.5 hours working on this case. Mrs. Nixon has been a paralegal in South Carolina for over twenty years. Mrs. Nixon prepared notebooks, helped research personal property of each Defendant, and helped research real property of each Defendant. Mrs. Nixon's services are charged at the rate of \$100.00/hour.
17. Prior to Mr. Molony and Mr. Harte's involvement in the case, Plaintiffs had retained Judge Andy Griffith to obtain a judgment and file the supplemental proceedings. However, in

2012 Judge Griffith was required to recuse himself do to his then new position as Master-in-Equity in Aiken County. Plaintiffs' legal fees for Judge Andy Griffith's representation were \$7,368.68.

18. After supplemental proceedings were conducted on February 4, 2015 and February 5, 2015, Plaintiff's retained the Billings Law Firm in Lexington, Kentucky to begin supplemental proceeding against Mr. Bakhaus in Kentucky. The Billings Law Firm required a \$4,600.00 retainer fee, which the Plaintiffs paid in April of 2015. The Billings Law Firm will be working on an hourly rate once the retainer is depleted should the judgement not be collected before then.

Mr. Molony and Mr. Harte also expect that additional time and expense will be necessary to collect the subject debt and see this matter to conclusion. Although both Mr. Molony and Mr. Harte spent a considerable amount of time researching assets of all Defendants, the requested attorneys' fees have been modified to reflect the time associated with one lawyer. Based on the progress made in the case, the efforts put forth by Mr. Molony and Mr. Harte, and the relevant factors as set forth in *Prevatte*, it is therefore reasonable to award Plaintiff reasonable attorneys' fees and costs of \$82,433.68 with leave for Plaintiff to request additional attorneys' fees and expenses at a later date.

Id.

| | | | |
|--|---------------------|---|-------------|
| 19. Kevin N. Molony, Attorney at Law - | 316.0 hours/\$210hr | = | \$66,360.00 |
| Robert J. Harte, Attorney at Law - | 10.3 hours/\$250hr | = | \$2,575.00 |
| Connie Nixon, Paralegal - | 9.5 hours/\$100hr | = | \$950.00 |
| Previous Attorney Fees/Costs- | Judge Griffith | = | \$7,368.68 |
| Billings Law Firm- | Kentucky Counsel | = | \$4,600.00 |
| Costs - | Filing Fees | = | \$580.00 |

\$82,433.68

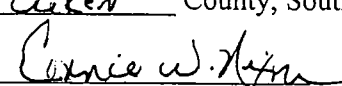
Further Affiant sayeth not.

By: 

Kevin N. Molony
Attorney for the Plaintiff
SC Bar No. 80679
237 Barnwell Ave. NW

SWORN to and subscribed before me
on this 11 day of Sept., 2015.

Notary Public
Aiken County, South Carolina


My commission expires: 9/14/16



Statement of Account

Caldwell & Raynor v. Bakhaus, Byers, Smith & Kasler
 Supplemental Proceedings
 \$210/Hour

| DATE | DESCRIPTION | Hours |
|---------------|---|-------|
| Sep. 26, 2014 | Met with Clients and Reviewed File | 2.3 |
| Oct. 5, 2014 | Prepared supplemental proceedings re: Bakhaus, all paperwork | 5 |
| Oct. 6, 2014 | Reviewed entire file, searched judgments in all counties to determine priority, began locating Bakhaus' business associations | 5.5 |
| Oct. 7, 2014 | met with clients after reviewing and organizing file, began in depth search of Bakhaus' assets | 4.2 |
| Oct. 8, 2014 | researched def Bakhaus' assets, including all business associations, pulled deeds/mortgages/contracts, all deeds for Fairways Developmer | 7.2 |
| Oct. 15, 2014 | Reviewed file, met with clerks concerning status/domesticating in Beaufort | 4 |
| Oct. 21, 2014 | Completed petition and rule to show cause re: Byers, conducted research on all business associations | 7 |
| Oct. 22, 2014 | Organized first hearing in Beaufort with clerks, researched all assets, researched BUIE LAKES | 5.5 |
| Oct. 23, 2014 | Case Law research regarding out of state property/domesticating judgments & creditors rights re: LLC interests | 3 |
| Oct. 27, 2014 | Prepared outline for Bakhaus' many business associations (deeds, mortgages, SCSOS paperwork), spoke with clerks office re: hearing | 6 |
| Oct. 28, 2014 | Bakhaus Business Associations research in Kentucky | 2.6 |
| Nov. 4, 2014 | emailed Beaufort court, research on Bakhaus/Byers | 2.4 |
| Nov. 5, 2014 | Met with Beaufort Clerk, spoke with clients concerning hearing in Beaufort | 1.2 |
| Nov. 11, 2014 | met with clients, reviewed full file and assets of Byers, organized notebook with all known deeds/mortgages/personal property | 5 |
| Nov. 12, 2014 | Bakhaus LLC research, located property in Kentucky, located multiple lots in Richland County, met with attorney re: Byers interest in BL | 7 |
| Nov. 19, 2014 | Emailed with Beaufort Clerk, Prepared Bakhaus' RTSC paperwork | 4.5 |
| Nov. 20, 2014 | Emailed with Beaufort Clerk, prepared Byers paperwork and researched Buie Lakes | 4.2 |
| Nov. 26, 2014 | emailed with Beaufort Clerk, researched Kenneth Smith's assets in York County | 2.2 |
| Dec. 2, 2014 | researched Bakhaus' business associations in North Carolina | 3.8 |
| Dec. 4, 2014 | emails with Beufort, letter to civil process for Nolla Bona re: Byers, spoke with Beaufort Sheriff's Office, researched Byers | 3.4 |
| Dec. 8, 2014 | Organized all paperwork regarding Byers, prepared chart for RTSC hearing | 1 |
| Dec. 16, 2014 | Researched Byers Assets and business associations, researched all Byer's family members assets | 6.5 |
| Dec. 22, 2014 | met with clients, thoroughly discussed options and the process of the RTSC hearing, went through all assets located for each Def. | 2.5 |
| Dec. 26, 2014 | researched assets of Byers, Bakhaus, Smith and Spoke with Attorney in Georgetown re: his proceedings against Byers | 4 |
| Dec. 29, 2014 | Organized all files, prepared questions for Byers after researching all LLC's in which he holds an interest | 5.2 |
| Dec. 30, 2014 | researched assets of Byers and Bakhaus' LLC's.....Domesticated the judgment in NC, pulled all known NC records for all LLC's with Bakha | 3 |
| Jan. 5, 2015 | prepared for hearing re: Byers, reviewed assets, researched caselaw and prepared arguments | 7.2 |
| Jan. 6, 2015 | met with clients, Pulled all paperwork on Bakhaus' Kentucky LLC's and Corporations, researched Bakhaus' family members assets | 5.5 |
| Jan. 7, 2015 | Met with clients to discuss offer, reveiwed all assets with them for each defendant, researched all of Bakhaus' Fairway Dev. deeds | 6.2 |
| Jan. 8, 2015 | met with clients, prepared for hearing re: Byers, researched Bakhaus' Windermere deeds/mortgages | 7 |
| Jan. 9, 2015 | Met individually with each client, researched Byers' wife's assets, located possible Statute of Elizabeth transfers | 2.5 |
| Jan. 12, 2015 | researched assets of Byers, pulled all documentation re: BUIE LAKES news reports | 6.6 |
| Jan. 13, 2015 | researched assets of Bakhaus' Winmar Corporation | 8.2 |
| Jan. 14, 2015 | researched case law, orgainzed files regarding each Def., spoke with clients | 7.8 |
| Jan.15, 2015 | Prepared RTSC hearing, researched Byers assets in North Carolina, Prepared final list of questions for hearing, located all deeds/mortgag | 10.5 |
| Jan. 16, 2015 | RTSC hearing re: Byers in Beaufort (Byers didn't show up), researched more assets when back in Aiken | 8.5 |
| Jan. 20, 2015 | prepared amended RTSC pursuant to Judge's request, researched Bakhaus' assets | 4.2 |
| Jan. 21, 2015 | emailed Beaufort Clerk, sent new order to Beaufort Master, researched Smith's LLC assets | 2.2 |
| Jan. 22, 2015 | prepared and mailed RTSC, researched BUIE LAKES regarding each Def. interest, emailed Beaufort | 5.5 |
| Jan. 23, 2015 | Organized Bakhaus' business association records, researched KY personal assets of Bakhaus in each county | 3.5 |
| Jan. 26, 2015 | Emailed with Mr. Syrett, met with clients about all new information obtained from KY assets | 1.2 |
| Feb. 2, 2015 | prepared for RTSC hearing in Richland County | 4.4 |
| Feb. 3, 2015 | prepared for RTSC hearing in Richland County Re: Bakhaus, organized all documents, contacted clients to update them of status | 9.2 |
| Feb. 4, 2015 | Rule to Show Cause hearing in Richland County, back in Aiken prepared for hearing on Feb. 5, caselaw/motions/questions | 10.2 |
| Feb. 5, 2015 | Rule to Show Cause hearing in Richland County, prepared for hearing, drove to hearing, conducted hearing | 6.2 |
| Feb. 10, 2015 | Prepared for Rule to Show Cause against Mr. Byers, emailed back and forth with Judge Strickland's Office | 5.5 |
| Feb. 16, 2015 | prepared for rule to show cause against Mr. Byers, drove to Beaufort, conducted RTSC, began researching SMITH | 8.5 |
| Feb. 23, 2015 | Emailed back and forth with Judge Strickland's office, prepared for Petition and proposed RTSC with York County re: SMITH | 1.5 |
| Mar. 2, 2015 | Prepared Nolla Bona execution for York County/Kenneth Smith, wrote letter to York County Sheriff's office, mailed both, researched LLC | 2.5 |
| Mar. 10, 2015 | Emailed back and forth with Judge Strickland's office concerning the Proposed Order appointing a Receiver, began preparing order | 0.5 |
| Mar. 11, 2015 | contacted Herb Hamilton re: Kenneth Smith | 0.5 |
| Mar. 16, 2015 | Spoke with Herb Hamilton re: Kenneth Smith | 0.4 |
| Mar. 17, 2015 | Researched applicable Kentucky law, sent a transcript of judgment to Lexington Kentucky to domesticate case there (§180) | 3.2 |

| DATE | DESCRIPTION | Hours |
|-----------------|---|-------------|
| Mar. 18, 2015 | Informed Clients of filing in Kentucky, attempted to located KY judgment attorney | 1.5 |
| Mar. 26, 2015 | emailed Judge Strickland's office ab. Receiver, Researched Smith's assets in York and called three KY attorneys re: Bakhaus | 5.5 |
| Apr. 3, 2015 | contacted attorney in Lexington Kentucky at Billing's Law firm, discussed our case and likely will hire them after speaking with clients | 1 |
| Apr. 7, 2015 | Prepared Civil Process papers for York County, spoke with York County Sheriff's Office, mailed all paperwork | 1.5 |
| Apr. 8, 2015 | contacted Billings Law Firm in Kentucky, spoke with associate about possible outcomes there, informed clients | 3.2 |
| April 9, 2015 | Spoke with Billings Law firm concerning case, spoke with both clients, prepared paperwork to send Billings Law Firm | 1 |
| Apr. 10, 2015 | Phone conference with Billings Law Firm and then informed clients of conversation, met with clients and prepared contract | 4.5 |
| Apr. 13, 2015 | Spoke with Robert Maring re: Buie Lakes property sold, Byer's interest is now Maring's clients, Informed Clients | 1 |
| Apr. 14, 2015 | Spoke with Robert Maring and was informed of the tax distributions that were to be received by Bakhaus and Smith on April 15, 2015. Reviewed emails and spreadsheets associated with the distributions. Attempted to contact Andrew Syrett concerning Mr. Bakhaus' money. Contacted clients to inform them of the new information, researched case law re: tax distributions and creditors | 5.2 |
| Apr. 15, 2015 | Contacted Judge Strickland's office concerning the status of the Receiver, emailed Mr. Syrett about tax distributions, spoke with clients and Robert Maring concerning tax distributions | 2.6 |
| Apr. 16, 2015 | Spoke with clients about the case, reviewed all of the documents that were sent to me from Mr. Maring concerning the distributions of the Buie Lakes money, spoke with Judge Strickland concerning the appointment of Mr. Pendarvis as receiver, emailed Mr. Pendarvis concerning the money/its' whereabouts/history of case | 3.8 |
| Apr. 17, 2015 | Spoke with clients and spoke with Receiver in depth on phone concerning the case and upcoming RTSC in Richland, RTSC resent to Beau | 4.5 |
| Apr. 21, 2015 | Emailed receiver and spoke with clients about case/buie lakes money/Monday hearing | 2.2 |
| Apr. 22, 2015 | Case law research on the ability to sign over interests in LLC, of | 1.4 |
| Apr. 27, 2015 | Attended Supplemental Proceedings in Columbia, SC, Standing down for 30 days based on promise of Bakhaus to pay | 3.2 |
| May 4, 2015 | prepared for hearing re: Smith, met with clients, finalized all questions | 3.5 |
| May 5, 2015 | RTSC hearing in York Re: Smith | 5.5 |
| May 8, 2015 | Met with Clients, prepared for upcoming hearing re: Bakhaus, spoke with Receiver | 1 |
| May 27, 2015 | Emailed both Receiver and Billings Law firm to inform them the thirty days had expired and it was time to proceed | 0.2 |
| June 2, 2015 | Spoke with Billings Law Firm concerning their efforts in KY against Bakhaus' Bank Account, prepared motions | 1.5 |
| June 4, 2015 | Spoke with Receiver concerning status of case | 0.2 |
| June 8, 2015 | Spoke with Receiver/Billings Law Firm/Judge Stricklands Office concerning case | 0.5 |
| June 10, 2015 | Met with Clients concerning status of case, updated them with Billings Law Firm progress | 0.75 |
| June 17, 2015 | Spoke with Receiver and Billings Law Firm concerning bank lien and updated them both on status on our end | 1.25 |
| June 18, 2015 | Spoke with Receiver and Billings Law Firm regarding KY proceedings | 0.5 |
| June 23, 2015 | Phone conference with Billings Law Firm, spoke with both clients regarding proceedings on 6-25 | 1.2 |
| June 25, 2015 | RTSC hearing in Richland County, Bakhaus nor Mr. Syrett notified | |
| July 8, 2015 | spoke with Billing's Law Firm re: foreclosure of Bakhaus' property in Ky | 0.5 |
| July 28, 2015 | prepared for hearing re: Bakhaus on 7-30-15, spoke with Receiver, met with clients | 2.2 |
| July 30, 2015 | RTSC Hearing, Richland County re: Bakhaus, Researched caselaw re: Master in Equity | 4 |
| August 4, 2015 | Met with Mr. Hamilton regarding payment of interest, sent all bank information requested | 1 |
| August 6, 2015 | Spoke with Receiver and Mr. Hamilton regarding status of interest payment | 0.5 |
| August 24, 2015 | Met with Receiver concerning status of case | 0.2 |
| August 25, 2015 | Met with Receiver concerning Status of case, prepared for hearing on 9-14-15 | 0.5 |
| Sep. 8, 2015 | Spoke with Billing's Law firm, prepared for 9-14-15 hearing | 1.5 |
| | | 316 Hours |
| | \$210.00/Hour | \$66,360.00 |

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

HAROLD RAYNOR A/K/A/ HAROLD
REYNOR AND MICHAEL CALDWELL,

PETITIONERS,

vs.

CHARLES C. BYERS, JOHN T.
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KENNETH SMITH,

RESPONDENTS.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2009-CP-02-00706

ATTORNEYS' FEES
AND COSTS AFFIDAVIT

FILED

10-29-15

L. J. Hester
C.C.P. & G.S.

Wita Hester 350
Deputy Clerk

I, Kevin N. Molony, being duly sworn, depose and state on oath as follows:

1. Kevin N. Molony and Robert J. Harte are the attorneys for the Petitioners in the above captioned action. This affidavit is submitted to the court for its consideration in awarding Kevin N. Molony and Robert J. Harte reasonable attorneys' fees in the above case under the factors set forth in Prevatte v. Asbury Arms, 302 S.C. 413, 396 S.E.2d 642 (Cl. App 1990) and similar cases.
2. Time and labor expended: In connection with the subject matter, Petitioners' counsel have spent approximately 348.4 hours as of the date of this affidavit. Counsel also expects that additional time and expense will be necessary to prepare and argue future hearings associated with this case throughout South Carolina.
3. The novelty and difficulty of the questions raised: The legal principles involved in this case concerned researching titles to property, real estate transactions, personal property, and business associations in multiple states involving all four Respondents. Other principles included researching case law related to judgment creditors and the rights provided to them by the South Carolina courts, fraudulent transfers of property, and Kentucky and North Carolina law concerning judgment collections.

Charles C. Byers, one of the named respondents, lives in Beaufort, South Carolina. Petitioners' attorneys were required to conduct title searches for all of the property owned by Mr. Byers in Beaufort, South Carolina. Mr. Byers is also connected with multiple limited liability companies and corporations, both in South Carolina and North Carolina. Title searches were conducted in every county of both South Carolina and North Carolina

to determine the current assets of Mr. Byers and those of his limited liability companies. Petitioners' attorneys have attended two hearings in Beaufort, South Carolina in relation to Mr. Byers.

John T. Bakhaus, a second named respondent, currently resides in Richland County, South Carolina. Mr. Bakhaus owns property in Richland County, South Carolina. Title searches were conducted on all of the property in his name in Richland County. Mr. Bakhaus also owns fourteen (14) limited liability companies in South Carolina. A title search for all of the property associated with Mr. Bakhaus' limited liability companies was conducted. Petitioners' attorneys were able to locate an extremely large number of properties that were in the name of Mr. Bakhaus' limited liability companies in South Carolina. While doing so, Mr. Molony and Mr. Harte located property and corporations owned by Mr. Bakhaus in Lexington, Kentucky. Title searches had to be conducted on all of the property Petitioners' attorneys were able to locate in Lexington, Kentucky. Petitioners' attorneys have located legal counsel in Kentucky to aid in the collection effort. At this point, Petitioners have paid \$4,843.47 in legal fees for the work performed by the Kentucky lawyers.

Kenneth Smith is a resident of York County, South Carolina. The judgment in this case have been filed in York County and supplemental have been held in York County, South Carolina.

Kurt Kasler is a resident of Charlotte, North Carolina. The underlying judgment will be domesticated in Mecklenburg County, North Carolina as soon as possible if the judgment is not satisfied by Respondents Bakhaus and/or Defendant Smith.

Mr. Bakhaus, Mr. Smith and Mr. Byers are all members of limited liability companies in North Carolina. Petitioners' attorneys were required to search all relevant property records and conduct title searches on the joint business ventures of the three Respondents in North Carolina as well as the individual ventures. Through the research of the business associations, Mr. Molony and Mr. Harte located funds which were applied as partial satisfaction of the underlying judgment.

Approximately six years have passed since the date of the judgment and the date of the supplemental proceedings. This extended length of time has made the preparation for the supplemental proceedings more difficult. Respondents Bakhaus, Smith, and Byers were involved in an extremely large number of real estate transactions over the last six years, and Petitioners' attorneys were required to track all of these transactions to determine what assets were currently in the possession of the Respondents and/or their

companies. Further, many of the limited liability companies the Respondents were involved in converged, changed names, or changed registered agents.

As of the filing of this affidavit, all Respondents have failed to provide Petitioners' attorneys with the information ordered for them to provide by the Court. At this point, Mr. Bakhaus has yet to provide the Plaintiff's with any of the original information requested and ordered by the Court, other than a set of tax records. Mr. Smith provided no documentation associated with his assets or business associations. Mr. Molony and Mr. Harte have located assets of the Respondents through diligent research and multiple hearings in Richland County, York County, and Beaufort County.

4. The skill required to perform the legal service properly: The skill required in this case was that possessed by an ordinarily competent judgment collection attorney.
5. The preclusion of other employment by the attorney due to acceptance of the case: Petitioners' counsel do not assert that preclusion of other employment arose as a result of this case.
6. Customary fee: The customary attorneys' fees for the type of legal services involved ranges from \$200.00 to \$350.00 per hour.
7. Expectations at the outset of litigation: Petitioners were hopeful some of the monies owed to them would be collected, including the interest that has accrued since the judgment was entered. Petitioners were aware that the original contract they entered with the Respondents included reasonable attorney fees paid by the Respondents.
8. Time limitations imposed by the client or circumstances: Petitioners urged Mr. Molony and Mr. Harte to proceed with this case as quickly as possible. Both Mr. Molony and Mr. Harte have kept this matter at the forefront of their caseloads in an effort to resolve this matter as efficiently as possible for both parties.
9. The amount in controversy and the results obtained: The amount in controversy is \$258,768.15 plus 8% per annum interest until the entire amount is paid in full, with "reasonable attorney fees" being a part of the original contract between the Petitioners and the Respondents. At the time of this affidavit, the final results have yet to be determined. However, Petitioners' attorneys have located assets currently in the possession of the judgment debtors that could satisfy the entire judgment, plus interest, costs, expenses and reasonable attorney fees. As of October 2015, Petitioners have collected a total of \$258,778.15. The remaining amount owed to Petitioners is \$120,372.98 plus a reasonable attorney fee, costs, and expenses.

10. The experience, reputation and ability of the attorneys: Kevin N. Molony graduated from law school in May, 2010 and began a judicial clerkship with the Honorable William P. Keesley in August of 2010. In December of 2010, Kevin N. Molony began working for Solicitor Strom Thurmond, Jr. in Aiken, South Carolina, where he tried violent crime and drug cases in Circuit Court. Kevin N. Molony was awarded the Solicitor J. Strom Thurmond, Jr. Award of Excellence in 2014. Four years after he began prosecuting with the Second Judicial Circuit Solicitor's Office, Kevin N. Molony opened Molony Law, LLC in Aiken, South Carolina. He has focused primarily on civil and criminal defense work. Approximately forty percent (40%) of Kevin N. Molony's time has been spent handling civil law cases similar to the one in the instant case. In the other judgment collection cases, Mr. Molony charges an hourly fee of \$210.00 per hour.

Robert J. Harte has been practicing law in Aiken, South Carolina for forty years. He was elected Solicitor for the Second Judicial Circuit and served in that role before opening his own law practice in Aiken, South Carolina. Robert J. Harte is known in Aiken, South Carolina as one of the best attorneys in the CSRA. Robert J. Harte has twenty-five years of experience in the areas of law associated with this case.

11. The undesirability of the case: There was no element of undesirability in handling this case.
12. The nature and length of the professional relationship with the client: This is the first time either Kevin N. Molony or Robert J. Harte have represented the Petitioners.
13. Awards in similar cases: We are not aware of any particular awards that would serve as guidance for this court in this case, but the reward requested is, in the opinion of the undersigned, typical of awards in similar cases.
14. Contract Provided For Reasonable Attorneys' Fees: In addition to the above factors, the court should be made aware that the Note signed by all Respondents provides, in part, "[i]n 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." A copy of the original promissory note is attached as Exhibit A.
15. Petitioners' counsel have minimized the costs and expenses associated with this matter in an effort to resolve in any disputes and to efficiently conclude the case.
16. Connie Nixon spent 9.5 hours working on this case. Mrs. Nixon has been a paralegal in South Carolina for over twenty years; Mrs. Nixon prepared notebooks, helped research personal property of each Defendant, and helped research real property of each Defendant. Mrs. Nixon's services are charged at the rate of \$100.00/hour.

17. Prior to Mr. Molony and Mr. Harte's involvement in the case, Petitioners had retained Judge Andy Griffith to obtain a judgment and file the supplemental proceedings. However, in 2012 Judge Griffith was required to recuse himself due to his then new position as Master-in-Equity in Aiken County. Petitioners' legal fees for Judge Andy Griffith's representation were \$7,368.68.

18. After supplemental proceedings were conducted on February 4, 2015 and February 5, 2015, Plaintiff's retained the Billings Law Firm in Lexington, Kentucky to begin supplemental proceeding against Mr. Bakhaus in Kentucky. As of October 2015, Petitioners have spent \$4,843.47 on the services of The Billings Law Firm. The Billing Law Firm continues to work on the judgment collection in Kentucky, and Petitioners expect additional monies will be owed to the Billing Law Firm in the near future.

Mr. Molony and Mr. Harte also expect that additional time and expense will be necessary to collect the subject debt and see this matter to conclusion. Although both Mr. Molony and Mr. Harte spent a considerable amount of time researching assets of all Respondents, the requested attorneys' fees have been modified to reflect the time associated with one lawyer. Based on the progress made in the case, the efforts put forth by Mr. Molony and Mr. Harte, and the relevant factors as set forth in *Prevalle*, it is therefore reasonable to award Plaintiff reasonable attorneys' fees and costs of \$89,945.80 with leave for Plaintiff to request additional attorneys' fees and expenses at a later date.

Id.

THIS PORTION INTENTIONALLY LEFT BLANK

| | | | |
|------------------------------------|---------------------|---|-------------|
| Kevin N. Molony, Attorney at Law - | 338.1 hours/\$210hr | = | \$71,001.00 |
| Robert J. Harte, Attorney at Law - | 10.3 hours/\$250hr | = | \$2,575.00 |
| Connie Nixon, Paralegal - | 9.5 hours/\$100hr | = | \$950.00 |
| Previous Attorney Fees/Costs- | Judge Griffith | = | \$7,368.68 |
| Receiver Fees- | Ned Pendarvis | = | \$2,500.00 |
| Billings Law Firm- | Kentucky Counsel | = | \$4,843.47 |
| Costs - | Filing Fees | = | \$1,127.65 |

\$90,365.80

Further Affiant sayeth not.

By:

K. N. Molony
 Kevin N. Molony
 Attorney for the Plaintiff
 SC Bar No: 80679
 237 Barnwell Ave. NW

SWORN to and subscribed before me
 on this 29 day of Oct, 2015

Notary Public
Aiken County, South Carolina

Connie W. Hite
 My commission expires: 9/14/16

\$250,000.00

PROMISSORY NOTE
Columbia, South Carolina
March 14, 2008

FOR VALUE RECEIVED, the undersigned, according to their interests, promise to pay to Michael Caldwell and Harold Retnor, the principal sum of Two Hundred Fifty-Thousand and 00/100's. The principal will be due and payable March 1, 2009. If paid by the due date, no interest will be charged on the Note.

In the event of default, the entire indebtedness secured hereby will bear interest thereafter at the rate of 8% per annum until paid.

If at any time any portion of the principal or interest be past due and unpaid, the whole amount evidenced by this Note shall, at the option of the holder, become immediately due and payable, and the holder shall have the right to institute any proceedings upon this note and any lien given to secure the same for the purpose of collecting the principal and interest, with costs and expenses, or of protecting any security connected herewith.

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. Charles C. Byers and John T. Bakhaus guarantee this obligation.

The undersigned reserves the right to prepay in full or in part at any time without penalty.

Presentment, protest and notice are hereby waived.

Given under the hand and seal of each party on the date above written.

| | | |
|---|-----------------------------|--|
| <u>Charles C. Byers</u> Borrower: Charles C. Byers | <u>25%</u> % Interest | <u>March 14, 2008</u> Date |
| <u>John T. Bakhaus</u> Borrower: John T. Bakhaus | <u>25%</u> % Interest | |
| <u>Kurt Kosler</u> Borrower: Kurt Kosler | <u>16.667</u> % Interest | Guarantors: <u>Charles C. Byers</u> <u>John T. Bakhaus</u> |
| <u>Kenneth Smith</u> Borrower: Kenneth Smith | <u>16.666</u> % Interest | |
| <u>Ron Woolwine</u> Borrower: Ron Woolwine | <u>16.666</u> % Interest | |



STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
HAROLD RAYNOR A/K/A HAROLD REYNOR AND MICHAEL CALDWELL,
PETITIONERS,
vs.
CHARLES C. BYERS, JOHN T. BAKHAUS, KURT KASLER, AND KENNETH SMITH,
RESPONDENTS.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2009-CP-02-00706

ATTORNEYS' FEES
AND COSTS AFFIDAVIT

FILED November 4, 2015
Paul Simons, Jr.
Att. C.P. & C.V.
2:15pm

I, Paul Simons, Jr., being duly sworn, deposes and states on oath as follows:

1. I am an attorney with the law firm of Hull Barrett, PC. I graduated from law school in May, 2006 and have been in private practice with Hull Barrett, PC since August, 2007.
2. I have had the opportunity to review the affidavit of attorney fees filed by Kevin Molony in the case of Harold Raynor A/K/A Harold Reynor and Michael Caldwell v. Charles C. Byers, John T. Bakhaus, Kurt Kasler, and Kenneth Smith.
3. Based on the reputation of Kevin Molony and Robert Harte, the favorable outcome they have achieved at this point on behalf of their clients, the difficulty of judgment collections, and the time they have spent on this case, I believe the requested amount of \$90,365.80 is fair and reasonable.

Further Affiant sayeth not.

HULL BARRETT, P.C.

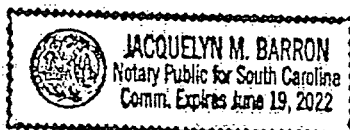
By:

Paul Simons, Jr.
Paul Simons, Jr.
SC Bar No. 76883

SWORN to and subscribed before me
on this 3rd day of November, 2015.

Notary Public
Aiken County, South Carolina

Jacquelyn M. Barron
My commission expires: 6/19/2022



1 gentlemen?

2 MR. SYRETT: No, Your Honor. I think that's
3 simply a mathematical computation. And if they're
4 off by 500 or a thousand, in light of the amount of
5 the judgment, it doesn't really make any difference.

6 THE COURT: \$500,000?

7 MR. SYRETT: I said if they're off by 500 or a
8 thousand.

9 THE COURT: Oh, I thought you said 500,000.
10 And the judgment amount was what?

11 MR. MALONY: The original judgment amount was
12 \$258,768.15.

13 THE COURT: So what's in context today is the
14 amount of the attorneys' fees, or is it the amount
15 or is it the entitlement?

16 MR. SYRETT: The entitlement, Your Honor.

17 THE COURT: All right. Well, why are they not
18 entitled to attorneys' fees?

19 MR. SYRETT: Your Honor, first of all, the
20 note -- all right. First of all, the purpose of
21 entering a judgment is to liquidate the amount of
22 debt that is owed. And when that happens, the
23 instrument upon which the debt is based merges into
24 the judgment and the judgment becomes the document
25 that's being enforced.

1 THE COURT: The law of the case.

2 MR. SYRETT: Pardon me?

3 THE COURT: Pretty much the law of the case.

4 MR. SYRETT: Correct. So, in effect, the
5 provision for attorneys' fees in the original note
6 no longer applies, because by getting the judgment,
7 they've now liquidated the amount and they've got no
8 award of attorneys' fees.

9 THE COURT: Well, how about when the note says
10 though in the event of default in the payment of
11 this note, if it is placed in the hands of an
12 attorney for collection, undersigned agrees to pay
13 all costs of collection, including reasonable
14 attorneys' fees?

15 MR. SYRETT: Your Honor, I --

16 THE COURT: Wouldn't that result in
17 supplemental proceedings to collect it?

18 MR. SYRETT: I agree. But the problem is that
19 the supplemental proceedings are not to collect the
20 note, they're to collect the judgment. And the
21 judgment has merged that note into it so, therefore,
22 the only thing left is to -- is the judgment. And,
23 as you know, South Carolina provides you only get
24 attorneys' fees if there is a statute or an
25 agreement for attorneys' fees.

1 THE COURT: Or contracted for.

2 MR. SYRETT: Right. So there is no longer any
3 contract. The only thing that is left is the
4 judgment. So, therefore, in order to justify an
5 award of attorneys' fees, they're going to have to
6 point to a statute that allows them to
7 collect attorneys' fees.

8 The only -- I did research over the weekend and
9 I looked at headnotes on about 200 cases. I found
10 one case in which the Court awarded postjudgment
11 attorneys' fees, and that was in the Stokes-Craven
12 case, and that action was brought under the South
13 Carolina Automobile Dealers Act. And it provided
14 for attorneys' fees. And so --

15 THE COURT: You read the advance sheets last
16 week?

17 MR. SYRETT: This was not that case. The most
18 crazy --

19 THE COURT: I just asked if you read it.

20 MR. SYRETT: I did read it, yes, sir.

21 THE COURT: That was my case. Just got off the
22 phone with all the lawyers.

23 MR. SYRETT: Anyway, in family court we have a
24 rule under Moseley vs. Boziere [phonetic] where
25 parties enter into a separation agreement, when they

1 take it to the family court and say this is our
2 agreement, Court, approve it, the family court
3 issues a decree of divorce and incorporates that
4 agreement into the decree of divorce. It's no
5 longer a separately enforceable contract. You can't
6 take your separation agreement in to the court of
7 common pleas and say, I want to sue to get a
8 judgment, you have to enforce it in the family
9 court.

10 The same rule applies to judgments that are
11 entered in the court of common pleas. So --

12 THE COURT: Or as a supplemental proceeding.
13 Is that a statutory --

14 MR. SYRETT: That is a statutory provision. It
15 is --

16 THE COURT: Does it allow for attorneys'
17 fees --

18 MR. SYRETT: There is no provision in the
19 supplemental proceedings statute to allow for -- it
20 is 15-39-310, which is entitled Order For Discovery
21 of Property. And it basically says that it's --
22 when an execution against property of the judgment
23 debtor resides issued to the sheriff in which he
24 resides or his place of business in which judgment
25 is returned unsatisfied in whole or in part, the

1 judgment creditor, at any time after such return, is
2 entitled to an order from the Court, of the judge's
3 circuit court, requiring the debtor to appear and be
4 examined as to his assets.

5 There is no provision whatsoever for attorneys'
6 fees in there. There is a subsequent statute which
7 is also -- follows that. And if you'll give me just
8 a second, I'll find it. 15-39, I believe it's -480,
9 and it does provide for costs. And the amount of
10 costs it says is \$30. And we're willing to concede
11 that they're entitled to an award of cost for
12 conducting the supplemental proceedings in the
13 amount of \$30.

14 But they're not entitled to any award of
15 attorneys' fees postjudgment absent a statute
16 providing for that. Again, the judgment takes the
17 place of the note, whatever else is available, you
18 know, that substantiates the debt. So they're not
19 entitled to any postjudgment attorneys' fees.

20 THE COURT: Thank you.

21 Mr. Malony, why are you entitled?

22 MR. MALONY: Your Honor, Court of Appeals
23 Renaissance Enterprises v. Ocean Resort, 326 S.C.
24 460. I have a copy for the Court.

25 THE COURT: Pass it up, please.

1 You got it where it was reversed in 1999?

2 MR. MALONY: There were multiple issues on
3 appeal, Your Honor. I was not aware that the actual
4 portion dealing with attorneys' fees was --

5 THE COURT: I didn't ask you that. I just
6 asked if you had it where it was reversed.

7 All right. Go ahead.

8 MR. MALONY: Your Honor, in that case, there
9 was a contract between the parties that clearly
10 provided for the recovery for reasonable attorneys'
11 fees in necessary litigation. In the case the Court
12 stated that a supplemental proceeding was brought to
13 collect on the debt owed pursuant to the contract
14 between the parties, and the Court ultimately found
15 no reason that the agreement would not encompass
16 fees incurred in the supplemental proceedings
17 brought in order to determine the amount due.

18 THE COURT: In order to determine the amount
19 due. You've already got the amount due.

20 MR. MALONY: Through supplemental proceedings,
21 Your Honor.

22 THE COURT: No. You got the amount due through
23 the default judgment, didn't you?

24 MR. MALONY: No, sir. The interest at this
25 time has gone up considerably since the -- since we

1 were able to collect the amount of the original
2 judgment, we've been working on it about a year --

3 THE COURT: I know the interest has gone up.

4 MR. MALONY: Yes, sir. And in order for that
5 interest to go up and for us to collect on that
6 interest and put in the time in the affidavit, Your
7 Honor, that showed --

8 THE COURT: No. The interest -- that's part of
9 the statute that allows you to collect interest on
10 the judgment subsequent to the entry of judgment.
11 Supplemental proceedings is to collect --

12 MR. MALONY: Your Honor, this was --

13 THE COURT: -- any judgment plus the interest.

14 MR. MALONY: This interest in this case, Your
15 Honor, was pursuant to the contract of the parties,
16 eight percent interest per annual until collected.

17 MR. SYRETT: Your Honor, he doesn't need a
18 court order to add the judgment interest; that's
19 simply a matter of calculation with a -- all you
20 need is a calculator and a calendar and you can come
21 up with the amount of the debt. You know he can
22 certainly do that, but I don't think he needs to do
23 that in order to collect his interest.

24 THE COURT: Well, they cite another case in
25 here called McDowell vs. South Carolina Department

1 of Social Services wherein the Supreme Court found
2 where a party was entitled to attorneys' fees in the
3 underlying action. That party was likewise entitled
4 to attorneys' fees for subsequent litigation over
5 such fees incurred in supplemental proceedings.

6 MR. SYRETT: Your Honor, I'd say that the DSS
7 case would be in the family court, and the family
8 court has a statute that provides for attorneys'
9 fees. But there is no such corresponding statute in
10 a case involving -- in the court of common pleas.
11 As we said, the debt has already been determined.

12 THE COURT: Well, that Department of Social
13 Services case was in the court of common pleas,
14 Judge McGowan up in Spartanburg County on food stamp
15 fraud or food stamp eligibility. Might be a little
16 bit, but this was -- that was the fee for the
17 appeal.

18 MR. MALONY: Your Honor, if I may.

19 THE COURT: Sure.

20 MR. MALONY: The actual promissory note is one
21 page, and I did attach it to the affidavit.

22 THE COURT: I've got it right here.

23 MR. MALONY: It actually says: In the event of
24 default in the payment of this note and if it is in
25 place in the hands of the attorney for collection --

1 which is what supplemental proceedings actually
2 is -- the other side agrees to pay all costs of
3 collection, including a reasonable attorneys' fee.

4 There is nothing -- after a default judgment is
5 entered -- that's what collections is, Your Honor.
6 I'd just state that the parties contracted for
7 attorneys' fees --

8 THE COURT: For the collection of the note.

9 MR. MALONY: For the collection, after a
10 default.

11 THE COURT: And it took the supplemental
12 proceedings to get -- to allow you to collect?

13 MR. MALONY: That's correct.

14 THE COURT: It wasn't collected any other way?

15 MR. MALONY: No, sir.

16 MR. SYRETT: Your Honor --

17 THE COURT: Yes, sir?

18 MR. SYRETT: Your Honor, I understand his
19 argument. But the problem is the judgment takes the
20 place of that note.

21 THE COURT: Show me a case that says that.

22 MR. SYRETT: Well, I've got a case from the
23 Third Circuit of United States Court of Appeals that
24 said the New Jersey Merger Doctrine -- talking about
25 the New Jersey Merger Doctrine, which I think

1 applies in -- the same principle applies in South
2 Carolina. If we do it any other way, we'll have two
3 trials on every judgment. That's just not
4 practical.

5 Lenders' rights to postjudgment attorneys' fees
6 and expenses as provided in the loan documents are
7 extinguished upon their merger into a final judgment
8 of foreclosure. The potential exception to the rule
9 finding when the language clearly evidenced intend
10 to preserve the effectiveness of attorneys' fees
11 provision of mortgage if it specifically says
12 postjudgment. This note does not say postjudgment;
13 it just says cost of collection, which the common
14 understanding of that is in order to get your
15 judgment, because the judgment takes the place of
16 the note. It liquidates the amount.

17 THE COURT: There's a million judgments out
18 there, and probably 900,000 aren't collected.

19 MR. SYRETT: Well, I understand that. But I
20 have never seen, in 40 years, someone come back and
21 say I'm entitled to postjudgment attorneys' fees for
22 conducting research into the debtors' assets in
23 order that I can bring them in for supplemental
24 proceedings. The supplemental proceedings statute
25 doesn't say that, the judgment statutes don't say

1 that.

2 THE COURT: Well, you agree with me that you're
3 not entitled to attorneys' fees unless, like you
4 already said, there's a statutory provision or it is
5 contracted for.

6 MR. SYRETT: That's correct. But --

7 THE COURT: And in this case, it's contracted
8 for.

9 MR. SYRETT: No. I think it's contracted for
10 for purposes of obtaining the judgment.

11 THE COURT: Well --

12 MR. SYRETT: And it doesn't apply after the
13 judgment is entered because they can't bring another
14 action to enforce the contract. Res judicata says
15 you've got your judgment, we're done with the
16 contract. Res judicata says you've now got your
17 judgment, you can't bring another action now. So
18 the fact is --

19 THE COURT: Well, my question to you is this:
20 If it's contractual, do I not look at the four
21 corners of the contract and ascertain the intentions
22 of the party from the language of the contract?

23 MR. SYRETT: No, Your Honor. You look at the
24 judgment, because that's the operative document now.
25 You don't get to bring supplemental proceedings on

1 the note, you get to bring supplemental proceedings
2 on the judgment.

3 THE COURT: And why is he bringing supplemental
4 proceedings?

5 MR. SYRETT: He's trying to collect the
6 judgment. He's not trying to collect the note, he's
7 trying to collect the judgment.

8 THE COURT: Well, doesn't the judgment indicate
9 what was owed on the note?

10 MR. SYRETT: That is correct. But it now
11 liquidates the amount because there's a dispute,
12 usually, about the amount that's owed. There's
13 simply no procedure to allow attorneys' fees
14 postjudgment because a judgment resolves all of
15 those issues. It resolves any issues that relate to
16 the note.

17 Now, in this case, we defaulted long before
18 Herb and I got involved in this case. But, again,
19 there's no document, there's no note left to
20 enforce. They're basically trying to bring two
21 actions on the note. They can't do that. They've
22 got their judgment, they're entitled to collect
23 their judgment; they're not entitled to collect
24 attorneys' fees to try to collect the judgment.

25 THE COURT: So you cite the New Jersey case

1 from the Third Circuit. Anything else you want
2 to --

3 MR. SYRETT: I have a case from Maryland that
4 says exactly the same thing. And the fact that I
5 can't find a South Carolina case indicates to me
6 that we've adopted the merger. We've certainly done
7 it in family court. And it makes sense to apply it
8 in the other thing. In the Stokes-Craven case, they
9 went out of the way to say this is done under the
10 automobile dealers statute. And if there were a
11 statute, they would be entitled.

12 THE COURT: What does the statute say about
13 collection?

14 MR. SYRETT: The statute says you're entitled
15 to all attorneys' fees for enforcing the violation.
16 And they were enforcing -- what they did was, there
17 was a case, they resolved that the Court ruled for
18 the purchaser, issued a judgment, awarded attorneys'
19 fees. It was appealed, the purchaser won on appeal.
20 He filed for his \$1,000 under the rules and then
21 turned around and applied for additional attorneys'
22 fees, and the Court said, yes, you can get the
23 additional attorneys' fees because there's a
24 statute.

25 And under the Renaissance case, you know, if he

1 wants to charge a couple hundred bucks to compute
2 the judgment, that probably works, but not for
3 purposes of examination. The supplemental
4 proceedings statute would have to apply, would have
5 to give us attorneys' fees, and it doesn't.

6 THE COURT: Well, the issue that was on appeal
7 in the Renaissance vs. Ocean Resort, one of the
8 issues was: Ocean Resort next contends the Master
9 erred in awarding attorneys' fees associated with
10 the supplemental proceedings. We disagree. The
11 contract between the parties clearly provided for
12 the recovery of the reasonable attorneys' fees in
13 necessary litigation. The supplemental proceeding
14 was brought to collect on the debt owed pursuant to
15 the contract. We find no reason that the agreement
16 would not encompass fees incurred in this
17 supplemental proceeding brought in order to
18 determine the amount due from the underlying
19 proceeding.

20 MR. SYRETT: But we're not trying to determine
21 the amount due, Your Honor; we're trying to collect
22 the judgment. That's a distinct difference.

23 THE COURT: All right. Interesting arguments
24 on both sides. I'll take it under advisement.
25 Proposed orders within two weeks.

1 MR. SYRETT: Thank you, Your Honor.

2 MR. MALONY: Thank you, Judge.

3 THE COURT: But seriously, gentlemen, if you
4 can find something other than a New Jersey case and
5 a Maryland case, and Mr. Malony and Mr. Harte can
6 find me something where you got a judgment, this is
7 a -- the Renaissance case is a little different;
8 that was -- calls for arbitration, et cetera --
9 where you've obtained a judgment and subsequent to
10 the judgment you've gone through supplemental
11 proceedings and you're seeking attorneys' fees on
12 that. So it's all sort of a hybrid on both of your
13 arguments a little bit. But I'm going to look for
14 some case law on it other than what you've given me.
15 It may not be out there. It may be that --

16 MR. MALONY: Yes, sir. And if it's not the
17 case, Your Honor, I certainly wouldn't ask the Court
18 for it. But --

19 THE COURT: Well, I mean, I think your strong
20 argument is the language of the contract which says
21 for collection.

22 MR. MALONY: Sure.

23 THE COURT: But they say it's collection of the
24 judgment, which has already been reduced.

25 MR. HARTE: It's still collection of the same

1 debt, Your Honor.

2 MR. SYRETT: Your Honor, there's a significant
3 difference in whether it's a judgment or whether
4 it's the document.

5 THE COURT: Proposed orders, gentlemen.

6 MR. MALONY: Your Honor, in the meantime -- I'm
7 sorry.

8 THE COURT: They can go ahead and pay the
9 interest, if you want to go ahead and take care of
10 that.

11 MR. SYRETT: We've been trying to pay it. We
12 know we still owe about \$40,000. And, like I said,
13 you can see on his calculation that we've already
14 paid \$200,000-some-odd. We know we still owe some
15 money.

16 THE COURT: Thank you.

17 MR. MALONY: Thank you.

18 THE COURT: Well, let me ask you this before we
19 get out of here: If I award the attorneys' fees, is
20 there any question to the amount they're claiming
21 or --

22 MR. SYRETT: I think most of it is fishing
23 around to try to find assets. If he's talking about
24 specifically the -- bringing the plaintiff -- the
25 defendant in for supplemental proceedings and the

1 time spent doing the supplemental proceedings
2 examination, I think he might have a say. But
3 otherwise, we're just signing a blank check for him
4 to check everywhere in the world to see if he can
5 find an asset on these people when the supplemental
6 proceedings says you bring the debtor in, you
7 examine as to -- you put him under oath, you examine
8 him as to assets; if he lies, he's got a perjury
9 problem.

10 THE COURT: Well, how do you know he lies if
11 you haven't checked?

12 MR. SYRETT: Well, I understand that. But I --

13 THE COURT: The question is simply this: The
14 amount they're claiming, would you contest that if I
15 were to award it?

16 MR. SYRETT: Yes, I would.

17 THE COURT: What's your contest on that, on the
18 amount?

19 MR. SYRETT: Because, number one, the
20 attorneys' fees need to be reasonable. They have
21 spent \$82,000 chasing my -- our clients. And I just
22 cannot figure how they could have spent that amount
23 of time chasing -- we're talking months,
24 essentially, doing nothing else but this. And I
25 just don't think that that's reasonable under the

1 circumstances. It's more than a third of the
2 judgment --

3 THE COURT: Thank you.

4 MR. SYRETT: -- whereas the provision says
5 reasonable.

6 THE COURT: Thank you. All right.

7 Thank you, gentlemen.

8 -- END OF TRANSCRIPT OF RECORD --

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CERTIFICATE OF COUNSEL

The undersigned certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



Spencer Andrew Syrett SC BAR 05459
Attorney for Appellant
712 Richland Street Suite E
Columbia, SC 29201
P.O. Box 7403
Columbia, SC 29202
803-765-2110

June 20, 2016

RECEIVED

JUL 01 2016

SC Court of Appeals