

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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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. 5527
SC CASE NO. ~~2016-000100~~
~~2018-000750~~

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,

REPLY TO RESPONDENTS' RETURN TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Should the South Carolina Supreme Court adopt §18 of the Restatement of Judgments and find the terms of a note providing for costs of collection and attorney fees merge into a judgment on the debt?
2. Should the Court reverse the award of post-judgment attorney fees?

STATEMENT OF THE CASE

The Petitioner re-adopts the Statement of the Case set for in the Petition for Writ of Certiorari

RETURN TO RESPONDENTS' REPLY

1. Should the South Carolina Supreme Court adopt §18 of the Restatement of Judgments and find the terms of a note providing for costs of collection and attorney fees merge into a judgment on the debt?

Respondents' arguments would be more properly set forth in their Brief in the Petition is granted.

Respondents are incorrect in stating that South Carolina has rejected the doctrine of merger. The issue has never been presented to the Court for its review.

The sole argument in Renaissance Enterprises v. Ocean Resorts, 326 S.C. 460, 483 S.E.2d 796 (Ct. App. 1997) was the reasonableness of the fee. Merger was neither argued nor ruled upon.

McDowell v. SCDSS 304 S.C. 359, 405 S.E.2d 830 (1991) did not involve merger

at all.

Respondents have misread Monarc v. Aris 188 Md. App. 377, 981 A.2d 822 Md. App. 2009). In Monarc, there was a settlement agreement which provide for attorney fees in the event either party had to enforce the terms of the agreement in court. After judgment was entered, one of the parties sought to collect attorneys fees for its post judgment collection activities. Despite the clear language in the settlement agreement, the Court found merger had occurred and denied any award of fees. There is no language in the note execute4d by the Petitioners which indicates any intent that terms survive the judgment. Monarc is indistinguishable from the case on appeal.

2. Should the Court reverse the award of post-judgment attorney fees?

The issue of merger is one which South Carolina has neither adopted nor rejected. Although the Petitioners did not challenge the amount of fees sought in either the trial court or the Court of Appeals, the amount of fees is an issue of fact. Whether the doctrine of merger should be adopted is an issue of law.

Whether or not the fees are reasonable has no relation to whether or not fees should have been awarded. The “two issue” rule is inapplicable to this appeal.

The parties’ intent is inapplicable to this appeal. There is no language in the note that evidences any intent that the attorneys fee provisions survives th entry of judgment. The Respondents’ second argument is without merit.

CONCLUSION

The Court should grant the Writ and adopt the doctrine of merger as set forth in the Restatement of Judgments. The Court should rule that the terms of the note merged into the judgment. It should therefore reverse the award of post-judgment attorney fees.



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May 29, 2018

THE STATE OF SOUTH CAROLINA
IN THE 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

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MAY 31 2018

S.C. SUPREME COURT

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,

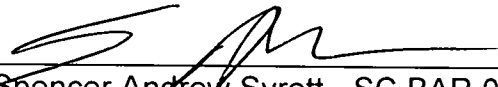
Petitioners.

PROOF OF SERVICE

I certify that I have served the Reply to return to 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 May 29, 2018, addressed to the attorneys of record:

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