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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 16-CP-40-100
Hills Machinery Company, LLC,	)	
Plaintiff,	)	
v.	)	**ORDER**
Jackson Development Group, LLC, and J. Elliott Summey,	)	
Defendants.	)	

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SC Court of Appeals

I. The matter before the court, nature of the issues, and decision.

This case, filed in January 2016, came before the undersigned for bench trial January 7, 2019. Involved are primarily charges relating to heavy equipment rental.

Plaintiff, Hills Machinery Company, LLC ("HMC" or "Hills Machinery"), seeks judgment on a cause of action for an account stated, or alternatively on the underlying contracts between the parties. HMC seeks judgment jointly and severally against the defendants in the amount of $101,149.51 as of January 20, 2019, plus interest thereafter at $28.06 per day, plus legal expenses actually incurred including reasonable attorney's fees.

HMC contends that an account stated existed between the parties at least as early as a March 23, 2015 meeting at which the defendants affirmed a March 2, 2015 statement of account. HMC further contends that after March 23, 2015, HMC relied to its detriment on the agreement in forgoing bond and lien claims, and that the defendants' partial payments on the account

further affirmed that the account was an account stated and that later statements of account were accounts stated.

HMC further contends that the amount of the account stated changed as a result of these partial payments, routine credits to the account, miscellaneous trailing charges after recovering rented equipment from the defendants, ongoing interest charges on unpaid amounts, and regular monthly undisputed statements of account. HMC contends that the amount of the account stated as of the September 8, 2015 statement of account was $66,663.77, and that contractually agreed pre-judgment interest of 18% per annum on this amount, and contractually agreed legal expenses including attorney's fees are to be added.

The defendants contend that they do not owe for $13,685.14 in charges pertaining to a damaged bulldozer which were in an invoice sent to the defendants on or around January 28, 2015, and which appeared in the February 2015 and March 2, 2015 statements of account and subsequently.

The defendants also contend that they do not owe interest on the charges for the damaged bulldozer, and may contend they owe no interest at all on any sum.

HMC maintains that these matters are factually and legally irrelevant and that the defendants have failed to adduce or prove a defense to liability on an account stated.

To wit, HMC maintains that no objection to any of the invoices in issue was made in writing within 15 days as provided in the contracts, and the statements of account were all agreed to expressly, through affirming acts and communications, and through failure to state disagreement, and that, therefore, a late purported disagreement about one repair bill long after

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agreement to the account is simply irrelevant and insufficient to avoid liability on the account stated.

For the reasons discussed more fully below, I partially agree.

II. The law of an action on an account stated.

An action on an account stated is a separate cause of action from the action on the underlying contract or contracts, if any, of the parties. The essential elements of an account stated are: (1) that the account is actually stated; and (2) that the parties either expressly or impliedly agreed that it is a true statement and is due to be paid then or at some other specified time. Meredith v. Fretwell, 128 S.C. 267, 122 S.E. 767 (1924); Wakefield v. Spoon, 100 S.C. 100, 84 S.E. 418 (1915); Miller Construction Co. v. PC Construction of Greenwood, Inc., 418 S.C. 186, 791 S.E.2d 321 (Ct. App. 2016); Southern Welding Works, Inc. v. K&S Construction Co., 286 S.C. 158, 332 S.E.2d 102 (Ct. App. 1985).

HMC has pled an allegation of each element. HMC has alleged that the defendants admitted the correctness of the account and that they expressly or impliedly assented to it.[1]

The second element of the cause of action, the element of express or implied agreement, refers to agreement in the past, not continued agreement at the time of suit.

To require agreement at the time of suit would render the cause of action meaningless as a thing to sue on, by allowing any suit to be defeated by disagreeing after having agreed earlier. Once an account stated is established, all previous matters of contract growing out of the previous transactions, whether express or implied, are merged in the account stated. Unless the

[1] As discussed hereinbelow, HMC has also pled and produced evidence of the written contracts and guarantees underlying the account stated.

fact finder concludes based on proper pleading and proof that the account stated is void, the fact finder cannot consider attacks on the account stated based on failure of consideration or even based on fraud underlying the items included. Gem Chemical Company v. Youngblood, 58 S.C. 56, 36 S.E. 437 (1900).

As recognized in North Carolina:

> "An account stated is by nature a new contract to pay the amount due based on the acceptance of or failure to object to an account rendered." Carroll v. Industries, Inc., 296 N.C. 205, 209, 250 S.E.2d 60, 62 (1978). "It is an agreement between parties that an account rendered by one of them to the other is correct. Once this agreement is made the account stated constitutes a new and independent cause of action superseding and merging the antecedent cause of action." Mahaffey v. Sodero, 38 N.C.App. 349, 351, 247 S.E.2d 772, 774 (1978). There are four basic elements to an account stated cause of action: "(1) a calculation of the balance due; (2) submission of a statement to [the party to be charged]; (3) acknowledgment of the correctness of that statement by [the party to be charged]; and (4) a promise, express or implied, by [the party to be charged] to pay the balance due." Carroll, 296 N.C. at 209, 250 S.E.2d at 62.
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> In regard to the third and fourth elements, an acknowledgment of the correctness of an account by the party to be charged and a promise to pay the account by the party to be charged may be express or implied. Id.

Mast v. Lane, 228 N.C. App. 294, 296-297, 745 S.E.2d 56, 58 (2013).

Thus, if an account stated is established, offsets can thereafter only be had if it is established that items were fraudulently stated or omitted. Pope Manufacturing Co. v. The Charleston Cycle Co., 59 S.C. 29, 37 S.E. 20 (1900).

In Pope Manufacturing, when items were referred to in the earlier account stated, but were only later disputed, the court held that, absent pleading and proof of fraud or mistake in the inclusion of an item or omission of an agreed credit, the account stood as stated and the items were not susceptible to dispute: "An examination of that part of the answer will show that no

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fraud or mistake is alleged against the account stated. On the contrary, it is alleged that the claims spoken of in the answer were referred to at the time of the stating of the account." 59 S.C. at 35. "Such allegation negatives any omissions of credit through fraud or mistake or any wrong charge." Id.

Where the account is stated as to certain months or as of a certain date, so that the balance as of a certain month constitutes an account stated, the debtor cannot allege or recover for any alleged breach of contract which occurred prior to the date of the last account stated. John Deere Plow Company of St. Louis v. McLeod, 132 F.Supp. 373 (D.S.C. 1955) (applying South Carolina law).

"Where a creditor sends to his debtor a statement of the account between them and the debtor assents to the balance stated, then the account between them ceases to be an open account and becomes an account stated." Gwathmey v. Burgiss, 104 S.C. 280, 88 S.E. 816 (1916). "The creditor can then bring his action upon the account stated as a liquidated demand, and he is entitled to interest from the date of the assent." Id. at 282.

In Gwathmey, the court observed that the use of an action on an account stated was at first confined to accounts between merchants, but that by 1916, the trend of decisions was to open the doors to persons other than merchants. Gwathmey further clarified that the element of assent might be expressed or implied from the circumstances. Id. The circumstances could be a promise to pay the stated balance, long retention of the account without question of the balance, and "the like." Id.

For example, the court in Gwathmey observed, "In Pratt v. Weyman, 12 S.C.L. (1 McCord. Eq.) 162, we find: 'In some cases where an account is sent by one merchant to another

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with a balance stated against him, and keeps it by him for two or three years, it is considered as a settled account between them.'" Gwathmey at 282. In Gwathmey, the creditor apparently mailed a statement of account, and claimed it was an "account stated" the day that it was mailed, and showed no other evidence of assent. Id. at 282 (sustaining exception: "It certainly was not an account stated on the 4th of January, 1912, the day it was sent").

There are a number of defenses or exceptions, recognized by most courts, that essentially attack the elements and limit the application of the doctrine. For example, one is a clear objection to a received bill or bills. When a debtor explicitly and specifically objects to a statement of account and does not later agree to it, courts have naturally found that such an objection obviates the finding of an implied agreement. Darby & Darby, P.C. v. VSI Int'l, Inc., 178 Misc.2d 113, 678 N.Y.S.2d 482, 485 (N.Y.Sup.Ct.1998). Even a defense simply attempting to attack the elements does not hold in a variety of circumstances, such as, for example, where clients contest bills only orally, Berkman Bottger & Rodd, LLP v. Moriarty, 58 A.D.3d 539, 871 N.Y.S.2d 135 (2009), or where the objection is too generally phrased. LePatner & Associates, LLP v. Horowitz, 81 A.D.3d 472, 916 N.Y.S.2d 105, 106 (2011).

In more modern times of not only easier, but also nearly instantaneous, ability to communicate, the debtor's lack of objection can imply agreement after a relatively short period. New York Courts have found the period to be generally more than five months, and in no case less than three, at least where there is no other evidence of express or implied agreement. Zhuhai Winners M&E Ltd. v. Hudson Valley Umbrella Co., 660 F. Supp. 2d 551, 555 (S.D.N.Y. 2009); DiMare Homestead, Inc. v. Alphas Co. of New York, No. 09 CIV. 6644 PKC, 2012 WL 1155133, at *23 (S.D.N.Y. Apr. 5, 2012) aff'd, 547 F. App'x 68 (2d Cir. 2013).

North Carolina courts have found the period to be a reasonable time sufficient for the fact finder to infer agreement, which can be as little as ten days if that period is contractually established. Mast v. Lane.[2]

Even in the specially scrutinized case of statements for legal fees, when the reasonableness of the charges is a legally relevant issue, under most circumstances the reasonableness of charges is assumed if the debtor fails to object for a considerable period of time. Cohen Tauber Spievak & Wagner, LLP v. Alnwick, 33 A.D.3d 562, 563, 825 N.Y.S.2d 439 (2006); Hinkle, Cox, Eaton, Coffield & Hensley v. Cadle Co. of Ohio, Inc., 115 N.M. 152, 848 P.2d 1079 (1993); Mast v. Lane, 745 S.E.2d 56 at 60.

Partial payment on an account will also be interpreted to imply agreement. See Mast v. Lane (Defendant made payments and stated he would pay an amount he could afford until the balance was paid off).

Failure to object or take action after a demand letter is sent can also imply agreement was made. Mast v. Lane, 745 S.E.2d 56 at 59.

Because the agreement on which an account stated claim is based can be express or implied, the creditor need not produce a written contract, as long as it produces other evidence of the agreement to the account stated between the parties.[3] Dulong v. Citibank (S.D.), NA., 261 S.W.3d 890, 894 (Tex. App.-Dallas 2008, no pet.). Thus, the Dulong court simply observed, "Based on the series of transactions reflected on the account statements, it is reasonable to infer

[2] In the instant case, there is a contractual dispute period of 15 days.
[3] Here, the written contracts were introduced in evidence.

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that [the debtor] agreed to the full amount shown on the statements and impliedly promised to pay the indebtedness." Id.

Other evidence of account stated may include letters and e-mails, dishonored checks, credit card statements, and discovery responses. For example, where a letter from the debtor to the creditor stated, "In answer to your letter of February 17 regarding our balance as of beginning of 1950, our books show a balance of $12,532.83, which agrees with your books," this constituted undisputed evidence establishing an account stated. Dozier v. Jarman, 254 S.W.2d 569, 570 (Tex. Civ. App.-Amarillo 1952, no writ).

As another example, in Magic Carpet Co. v. Pharr, 508 S.W.2d 696 (Tex. App.-Dallas 1974, no writ), introduction of a receipt, together with a "payment stopped" check, was sufficient acknowledgment by the debtor of the amount due. Id. (citing Graham v. San Antonio Machine & Supply Corp., 418 S.W.2d, 303, 312 (Tex. Civ. App.-San Antonio 1967, writ ref'd n.r.e.)). Credit card statements also may be used as evidence to establish an account stated. See Compton v. Citibank (SD.), NA., 364 S.W.3d 415, 418 (Tex. App.-Dallas 2012, no pet.)(account statements, along with checks and payment stubs, established account stated); Dulong v. Citibank (SD.), NA., 261 S.W.3d 890, 893 (Tex. App.-Dallas 2008, no pet.)(summary judgment affirmed against debtor on account stated - monthly credit card statements reflecting charges and payments established implied agreement fixing the amount due and implied promise to pay); and Aymett v. Citibank South Dakota NA., 397 S.W.3d 876 (Tex. App.-Dallas, Apr. 5, 2013, no pet.)(same).

In Gonzales v. Main St. Acquisition Corp., No. 14-13-00546-CV (Tex. App-Houston [14th Dist.], July 1, 2014, no pet.)(2014 Tex. App. Lexis 7094)(mem. op.), the defendant's

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responses to requests for admissions established the following: (1) The defendant applied for the credit card;[4] (2) At the defendant's request, the account was opened;[5] (3) The defendant fully understood the risk and obligations associated with credit card accounts;[6] (4) The defendant "made the purchases and took cash advances using the credit card made the basis of Plaintiff's Original Petition";[7] (5) The plaintiff was the present owner and holder of the subject account;[8] (6) Since the defendant opened the account, the defendant had not notified the plaintiff of any dispute or error regarding any information contained in any monthly statement;[9] (7) Prior to the lawsuit, the defendant never requested verification of the debt from the plaintiff or disputed the debt owing on the subject account;[10] (8) The defendant requested and made written demand upon the defendant for payment of the subject account;[11] and (9) The defendant failed to pay the

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[4] Here, Mr. Summey applied for credit in a written agreement.
[5] The account was opened at Mr. Summey's request.
[6] Mr. Summey testified that he was an industrial developer with a college degree, and had rented heavy equipment before.
[7] Mr. Summey acknowledged that his company used the equipment and that HMC rendered goods and services.
[8] It was HMC's equipment which was used and it was HMC who rendered the goods and services and with whom the account was originally established.
[9] During the two years preceding suit, the Defendants did not present any written dispute of the account to HMC within the 15 days required by the contract or within any other time.
[10] Witnesses Jim Hills, Adam Hills, and Dee Allesandro all testified that prior to the lawsuit, the Defendants never disputed the debt owed on the subject account, and that at a March 23, 2015 meeting concerning the past due balance on the account and the possible assertion of mechanics liens and bond claims by HMC on related projects, JDG affirmed the agreement to pay the outstanding balance. They testified that JDG re-affirmed this agreement in every subsequent communication on the subject.
[11] HMC requested payment on the subject account numerous times, and sent formal written demand through counsel, Pl. Exhibits 5 and 4.

plaintiff for the subject account.[12] The admissions, along with credit card statements addressed to the defendant,[13] were sufficient proof of an account stated.

III. The law of interest on liquidated sums.

In the instant case, it is undisputed that the relevant contracts and guarantees include an agreement for interest on past-due sums. This is therefore not a case in which the court is called upon to interpret the requirements of the statute establishing the right to pre-judgment interest in the absence of contractual interest. Nevertheless, as noted in Gwathmey, even in the absence of a contractual agreement to interest on sums due, statutory pre-judgment interest is recoverable on an account stated from the time the account becomes an account stated. Gwathmey, 104 S.C. at 282.

In the event that any items are removed from the debt by agreement or appropriately pled and proved defenses, the removal of the items does not affect entitlement to interest. "The right of a party to prejudgment interest is not affected by rights of discount or offset claimed by the opposing party. It is the character of the claim and not the defense to it that determines whether prejudgment interest is allowable." Butler Contracting, Inc. v. Court St., LLC, 369 S.C. 121, 133-134, 631 S.E.2d 252, 259 (2006); see also Southern Welding (Bell, J.). "A judgment debtor is required to pay interest on his debt as compensation for his continued retention and use of the creditor's money beyond the date payment was due." Butler, 369 S.C. at 134.

[12] The Defendants make no contention that they have paid any of the unpaid balance sued on by HMC.

[13] The regular monthly statements dated March 2, 2015 and September 8, 2015 were introduced in evidence as Pl. Exhibits 2 and 1g.

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In the instant case, the right of HMC to prejudgment interest at 18% per year is established by contract.

IV. Some of the other evidence in the case.

James M. ("Jim") Hills, III, an owner and president of HMC, testified substantially as follows.

Mr. Hills has extensive education and experience in the heavy equipment business, is a principal and president of Plaintiff, and is familiar with the agreements the company enters into, the form of the agreements, the form of agreements used by others in the industry, the basis for the charges, this particular account, and the other matters in his testimony.

Introduced as into evidence were the following:

Pl. Exhibits 1a and 1b: The credit application and account contract submitted by Mr. Summey to Hills Machinery[14];

Pl. Exhibits 1c, 1d, 1e and 1f: The four equipment rental contracts for equipment rented by Mr. Summey's company from Hills Machinery; and

Pl. Exhibit 1g: The 9-8-15 account stated to Mr. Summey; along with the invoices appearing in the account stated.

In the credit application (Pl. Exhibits 1a and 1b), Defendant J. Elliott Summey personally, unconditionally, and irrevocably guaranteed any and all debt of Jackson Development to Hills Machinery. He also agreed on behalf of his company, to interest on past-due sums at 1½ % per month, and all costs of collection including attorney's fees.

[14] It was clarified in the testimony that the two pages constitute one document and that the two pages were simply separately marked when a composite exhibit 1 marked for identification was renumbered.

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Defendant Jackson Development entered into the four separate rental agreements with Hills Machinery appearing in Pl. Exhibits 1c, 1d, 1e, and 1f, each for a different piece of equipment. The rental agreements addressed rental payments, damage repairs, re-fueling, and other matters, including, again, interest on past-due sums, and costs of collection including attorney's fees.

Defendants also agreed in paragraph 4 of each equipment rental contract, that Jackson Development accepted the validity and accuracy of any invoiced charge unless Jackson Development challenged the charge in writing to HMC within 15 days of the invoice originally containing the charge.

HMC never, from September 2014 to the time suit was filed in January 2016, received any such written dispute from the Defendants.[15]

From August of 2014, Defendants incurred charges for rental, damage repairs, refueling machines, and interest with Hills Machinery as appears on statements of account sent monthly to them. In each instance of a new charge appearing on the statement, the invoice was sent as well.

Among the regular monthly statements sent to Mr. Summey was a March 2, 2015 statement, introduced as Pl. Exhibit 2. Up to and after the March 2, 2015 statement of account in the amount of $117,986.89, Jackson Development affirmatively agreed to the account, did not send dispute of the account, and made partial payments on the account. The March 2, 2015

[15] Mr. Summey admitted as well, on cross-examination at the trial, that he could not produce "one scrap of paper, e-mail, or text" showing a dispute was made to HMC in writing during the two or more years before suit was filed.

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statement, and the statement before it, included among many others, the charges pertaining to the January 7th damage of a bulldozer rented by JDG,[16] which were invoiced January 28, 2015.

On March 23, 2015, Defendants Jackson Development Group, LLC, and J. Elliott Summey attended a meeting with Hills Machinery at Hills Machinery in North Charleston.

Adam Hills, Dee Allesandro, and Jim Hills were present, as was Mr. Elliott Summey. Toward the conclusion of the meeting, Mr. Bobby Owens, an associate of Mr. Summey's, joined them.

The purpose of the meeting was the status of the account, and payment. Mr. Summey's company, Jackson development, and Mr. Summey, as guarantor, owed HMC a substantial sum of money and were in arrears. HMC was considering filing mechanics liens or bond claims on the two projects for which JDG rented the machines.

At this point there was $117,986.89 owed and an account had been stated to Mr. Summey and his company in that amount on March 2, 2015.

He agreed to pay it. He stated he would.[17]

When Mr. Owens arrived at the meeting, Mr. Summey informed Mr. Owens that everything about the account had been resolved and agreed and that Mr. Owens needed to continue to look for ways to pay down the account in general. That is, there had been some discussion of Mr. Summey's need to collect some money owed him by others, and agreement

[16] Later testimony in the case confirmed that the bulldozer was damaged while being used on a third property, other than the two properties for which the equipment was rented.
[17] Jim Hills, Adam Hills and Dee Allesandro all testified to this fact.

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that JDG would write HMC a check, and thereafter make efforts to pay off the agreed stated debt.[18]

There was absolutely no reservation by Mr. Summey of rights on his part to dispute anything.[19]

Introduced in evidence as Pl. Exhibit 5 were text communications with Mr. Summey leading up to the March 23, 2015 meeting, texts following up after the meeting on the payments promised at the meeting, texts leading up to a September 2015 demand letter, and texts preceding the January 2016 filing of suit. All were consistent with an undisputed account due. They were devoid any dispute.

Mr. Summey and his company did not incur further credit after the March 23, 2015 meeting in terms of further goods and services. The only thing owed after that was the same money, plus charges pertaining to recovered equipment, less routine credit for the parts of rental periods not completed when the equipment was recovered, less partial payments made, plus contractual interest on the unpaid balance. Not included in the monthly statements on which the suit is based were collection fees accruing on the account.

Both parties acted on the March 23, 2015 agreement after that. JDG acted and reaffirmed the agreement to the account stated by making three partial payments. HMC acted by forbearing on legal action, including forbearing on filing liens and payment bond claims on projects on which HMC's equipment was used. Hills Machinery did everything it agreed to do. HMC continued to send Mr. Summey regular monthly statements of account, which were not disputed.

[18] Jim Hills, Adam Hills and Dee Allesandro all testified to this fact.
[19] Jim Hills, Adam Hills and Dee Allesandro all testified to this fact.

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All of Mr. Summey's company's payments thereafter and every communication from him or his company thereafter, by phone, text, or e-mail, was consistent with his earlier express agreement to the account as stated.

Payments by Mr. Summey's company were paid by Mr. Summey's company on the account in general, and not designated to be applied to any particular invoice or charge. They were just paid on account. Having an agreement on the account stated, and relying on Mr. Summey's agreement to it, HMC applied incoming payments in whatever manner was customary and convenient to HMC.

Through September of 2015, Mr. Summey never thereafter disputed any part of the account that he had agreed to. By September of 2015, JDG ceased to pay.

In early September, 2015, Hills directed that Summey be sent a demand letter, and this was done September 9, 2015, setting out the debt and stating the account to Mr. Summey again in the amount of $66,663.77, plus legal expenses and interest after September 9, 2015. (Pl. Exhibit 4.)

The statement Mr. Summey was sent was the September 8, 2015 statement, Pl. Exhibit 1g. All the components of the September 8, 2015 statement had appeared on the account stated March 2 (Pl. Exhibit 2) before the March 23, 2015 meeting, except for additional rental ending in March, subsequent refueling and repairs, and finance charges in accordance with the agreement. No dispute of the September 8, 2015 account stated was made.

In January of 2016, Hills spoke with Mr. Summey via telephone and Summey reassured Hills Summey would pay the account off even if he had to put a mortgage on his home. He did not in any way dispute any aspect of the agreed debt.

HMC filed suit in January of 2016. By then, HMC had posted Mr. Summey's payments to early items and other items on his agreed account as chosen by HMC and HMC no longer had lien and payment bond rights on projects HMC's machines were used on, because the lien and bond rights expire with passage of time.

Even after HMC filed suit, for a long time, no dispute was made of any rental charges, repair charges, refueling charges, delivery charges, retrieval charges or any other charges.[20]

Later, in the lawsuit, Mr. Summey stated that he was disputing some charges, but admitted a specific amount he contended he did indeed owe. Yet, even with the different, later, admission of an amount Mr. Summey owes, Hills Machinery Company, LLC, still has not received any payment whatsoever from Defendants Jackson Development Group, LLC, and Summey since the January 2016 filing of this suit, as of trial January 7, 2019.

The account, including interest, was stated to Jackson Development Group and J. Elliott Summey as of September 8, 2015 in the amount of $66,663.77 without any dispute, payment or other communication, can be determined mathematically, and is a liquidated sum. A true and correct copy of Pl. Exhibit 1g is attached to the complaint.

As of December 11, 2018, Mr. Summey and Jackson Development owe HMC $100,027.11, plus interest after December 11 and all the legal expense including attorney's fees HMC has incurred from pursuing payment and being in court for close to three years. The foregoing was the basic evidence presented by HMC.

[20] Dee Allesandro testified that on an occasion when he was with Summey, Summey again affirmed to Allesandro that Summey was going to pay the account.

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On the other hand, J. Elliott Summey testified, as follows. Mr. Summey believes he owes $43,226.06.

This figure represents the $56,911.78 sum of the principal amounts on the September 8, 2015 statement of account (Pl. Exhibit 1g), less $13,685.72 in charges pertaining to the bulldozer damaged and repaired in January 2015.

Mr. Summey stated he does not include any interest in the figure, and has not paid any part of the figure.

Mr. Summey gave various reasons why he now disputes the bulldozer charges of January 28, 2015. Among them is his assertion that all the charges should have been covered by the Loss Damage Waiver ("LDW") fee in the LDW clause of the contract.

When asked about the scope of the damage waiver, the $1000 deductible, and other indemnity provisions in the LDW clause, Mr. Summey testified that he has not read the LDW clause.

Mr. Summey acknowledged that the bulldozer charges included not only repairs, but retrieval and transportation charges.

Mr. Summey admitted that he could not produce any written dispute of the bulldozer charges made before the suit, whether by paper correspondence, e-mail, or text. He did state that before the suit, he had discussed the bulldozer charges with his own employee at the time, Mr. Bobby Owens, who was not present at trial.

Mr. Summey acknowledges that his company damaged the bulldozer in January 2015, before the March 23, 2015 meeting, while it was rented to Mr. Summey's company. HMC brought it back in and repaired it. Work on the repairs started January 7, 2015. The machine

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was repaired by January 21. The repair and other charges associated with the machine were invoiced to Mr. Summey's company by January 28, 2015. The charges appeared on each of the periodic statements of account and were $13,685.14.[21]

No witness or exhibit showed that any of the invoices in Pl. Exh. 1g were disputed in writing within 15 days.

V. Findings of fact.

I find that the March 2, 2015 statement of account for $117, 986.89 was agreed to and then Defendants agreed to the September 8, 2015 statement of account, which was for $66,663.77.

I find that the rental rates and interest rate were agreed in advance in writing and the other charges stated to the Defendants were agreed five ways – (1) contractually, by failure to object to the charges within 15 days in writing as required in the contracts, (2) at least twice explicitly – once at the March 23, 2015 meeting and again on the phone before suit after demand was sent, and in additional affirmances by phone text message, (3) through at least three partial payments following the March 23, 2015 explicit agreement to pay the balance of the account, (4) through failure to object or disagree after invoicing and multiple statements over an extended period of time, and (5) through further failure to object after an overt demand letter was sent prior to suit.

I find that Paragraph 4 of each equipment rental contract states: "LESSEE waives the right to challenge, and therefore accepts, the validity and accuracy of any invoiced charge, if

[21] This Court assumes that there is no need to resolve the $0.58 discrepancy between $13,685.72 and $13,685.14.

LESSEE fails to make such challenge in **written** notice to LESSOR within 15 days of the date of the invoice originally containing the disputed charge." (Emphasis added.) Here, the lessee, Jackson Development, was invoiced with every charge sought in this case, and in no instance was a charge disputed in writing within fifteen days.

The parties agreed by contract that HMC would recover interest at 18% per year and legal expenses for collection including attorney's fees.

The sum of the underlying principal amounts on the September 8, 2015 statement is $56,911.78. At the rate of 1 ½ % per month ($28.06 per day, simple interest) from September 8, 2015 to February 11, 2019, the interest amounts to total additional interest as of February 11, 2019, of $35,103.06 (1,251 days x $28.06). When added to the September 8, 2015 statement balance of $66,663.77, the total is $101,766.83 as of February 11, 2019.

As an exception to the foregoing findings, I find by a preponderance of the evidence that Plaintiff is not entitled to the $13,685.14 for the damage to the bulldozer, invoiced January 28, 2015.

As an adjustment to the foregoing figures, I calculate that 18% annual interest on $13,685.14, compounded monthly from the January 28, 2015 date invoiced, to September 8, 2015[22] is $1,563.99.[23] I calculate that 18% annual interest on $13,685.14, as simple interest

[22] I note that the interest for the overall account by Hills Machinery after the date of the September 8, 2015 statement sued on is calculated as simple, not compounded interest.

[23] This amount can be derived by compounding interest on $13,685.14 at 1 ½% per month for the seven periods from 1/28/15 to 8/28/15, adding nine days' simple interest from 8/28/15 to 9/8/15 at $6.75 per day, and subtracting from the foregoing sum, $13,685.14, as follows: (($13,685.14 x 1.015^7) + (9 x ($13,685.14 x .18 ÷ 365)) - $13,685.14.

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only, from September 9, 2015 to February 11, 2019 is $9,112.50[24] Accordingly, adding these two figures together as $10,676.49 in interest attributable to the bulldozer from January 28, 2015 to February 11, 2019, and subtracting this figure and the $13,685.14 in bulldozer charges from Hills Machinery's overall calculated February 11, 2019 total, I find that Plaintiff is entitled to $77,405.20[25] as of February 11, 2019.

Interest will continue to accrue from February 11, 2019 at the rate of $21.31[26] per day until the date of entry of judgment.

VI. Conclusions of law.

With the exception stated above as to the bulldozer charges, there was as a matter of law, an account stated for $66,663.77 as of September 8, 2015, making Defendants liable as prayed for in the complaint. This figure is adjusted to $52,978.63.

As a matter of law, with the exception stated above as to the bulldozer charges, the subsequent interest is as prayed for, and amounts to $35,103.06 as of February 11, 2019, continuing thereafter at $28.06 per day. These figures are adjusted to $24,426.57[27] and $21.31per day. Further, Plaintiff is entitled by contract to expenses incurred in collection of the debt including reasonable attorney's fees, and as requested at trial, shall be allowed to submit a bill of expenses including attorney's fees thus far, by affidavit.

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[24] This amount can be derived by multiplying the 1350 days between 9/9/15 and 2/11/19 by $6.75 per day as follows: 1350 x ($13,685.14 x .18 ÷ 365).
[25] $101,766.83 - $13,685.14 - $10,676.49
[26] $28.06 - $6.75
[27] As noted above, the adjustment actually subtracts interest from January 28, 2015 to September 8, 2015 as well as interest after September 8, 2015.

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There is no just reason for delay in entry of judgment. Judgment should therefore be entered without delay for $77,405.20 as of February 11, 2019, jointly and severally against the Defendants, plus $21.31 per day for any days thereafter preceding the entry of judgment.

Plaintiff is directed to file within fourteen (14) days of receipt of written notice of the entry of this order, (i) an affidavit of all expenses and reasonable attorney's fees incurred thus far, as directed above, along with (ii) a proposed order awarding expenses including attorney's fees and directing that the clerk of court add such fees and expenses, and any additional accrued interest, to the judgment and (iii) a proposed amended Form 4 adding the award and any additional accrued interest to the amount of the judgment. Upon motion served within 10 days after service of these items, I will, before taking action on the application, review it in any particulars set forth in the motion.

AND IT IS SO ORDERED.

____
Doyet A. Early, III
Presiding Circuit Court Judge

Date: ______________________

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 16-CP-40-00100

Hills Machinery Company, LLC,

PLAINTIFF(S)

Jackson Development Group, LLC and J. Elliott Summey

DEFENDANT(S)

Submitted by: M. Baron Stanton	**Attorney for :** ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☒ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : Enter judgment. This order ends the case, but there will be an award of expenses including attorney's fees to be added by supplemental order and amended Form 4.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Hills Machinery Company, LLC	Jackson Development Group, LLC	$77,405.20
Hills Machinery Company, LLC	J. Elliott Summey	$77,405.20

RECEIVED
MAY 08 2019
SC Court of Appeals

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

FOR ELECTRONIC SIGNATURE
Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

M. Baron Stanton
P.O. Box 245
Columbia, SC 29202

ATTORNEY(S) FOR THE PLAINTIFF(S)

Arnold Goodstein
208 Sumter Ave.
Summerville, SC 29483

Jenny A. Horne
JENNY HORNE LAW FIRM, LLC
Post Office Box 3199
Summerville, South Carolina 29483

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Judgment on bench trial was granted, as detailed in the accompanying order.

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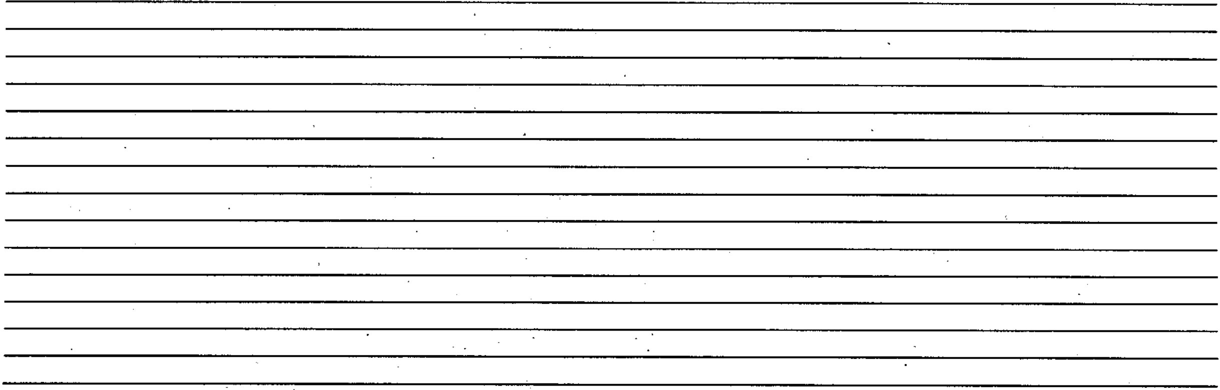

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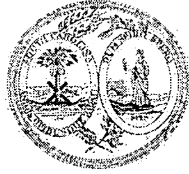

Richland Common Pleas

Case Caption: Hills Machinery Company LLC vs Jackson Development Group LLC , defendant, et al

Case Number: 2016CP4000100

Type: Order/Judgment and Form 4

So Ordered

s/D.A. Early III 2136

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