THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jennifer B. McCoy, Circuit Court Judge

Circuit Case No. 2016-CP-10-5773

Appellate Case No. 2019-000738

Amanda Griffith, ...Respondent,

v.

ISL Development, LLC and Steven Stewart, Individually,

Of Whom, Steven Stewart, Individually, is ..... Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

In its Findings of Fact and Conclusions of Law, the trial court confirmed that the Appellant signed a Promissory Note on behalf of ISL Development, LLC on December 27, 2012, in which promising that ISL would repay $200,000 plus interest to the Respondent Amanda Griffith. (R. p. ___). The trial court further confirmed that on January 16, 2013, the Appellant promised to personally guarantee the repayment of the loan to Ms. Griffith in exchange for her extending the repayment term beyond March 31, 2013. (R. p. ___).

Ms. Griffith did extend that repayment deadline and did not demand repayment on March 31, 2013. Appellant signed ISL checks paying interest to Ms. Griffith through November, 2013. (R. p. ___). After the last interest payment check was returned for non-sufficient funds in January, 2014, Ms. Griffith received no further payments from ISL, and Appellant made no payments under his personal guarantee obligation.

Ms. Griffith filed the lawsuit to enforce this personal guarantee on October 27, 2016. (R. p. ___). The non-jury trial was held on August 29, 2018 and a damages hearing was conducted on January 25, 2019. ISL admitted that it was in default of the Promissory Note, and the trial court ruled that Appellant was liable to Ms. Griffith under his personal guarantee. In the Final Order dated March 5, 2019, the trial court held Appellant liable for $200,000 on the principal amount of the Note, accrued interest of $130,000, and attorney fees in the amount of $89,160.54. (R. p. ___).

Appellant moved for reconsideration, and the trial court denied his motions on April 4, 2019. Appellant filed his notice of appeal on May 3, 2019.

STATEMENT OF FACTS

Appellant Steven Stewart and Adam Salis, as co-owners of ISL Development, LLC, were trying to develop a nursing home project in Wittier, California, and desperately needed $200,000 before December 31, 2012 to pay bills owed by ISL. Appellant and his wife were living in Charleston, South Carolina and became social acquaintances of Respondent Amanda Griffith, an Architect in Charleston, South Carolina. In December, 2012, Appellant asked for and received a short-term loan of that $200,000 from Ms. Griffith. On December 27, 2012 Appellant signed a Promissory Note in which ISL promised to repay the $200,000 to Ms. Griffith by March 31, 2013.

In addition to having Ms. Griffith lend $200,000 to ISL, Appellant implored Ms. Griffith to become an investor in ISL and convert her loan into equity capital for that company. In fact, Appellant wanted her to contribute that $200,000 plus an additional $550,000 as capital to ISL to relieve the financial pressure of the struggling nursing home project in California. (R. p. ___). Ms. Griffith considered the proposal and discussed it with Appellant and her personal financial advisor, and ultimately she rejected the investment proposal, because repayment of the principal and interest by ISL beyond March 31, 2013 would be too risky.

Accordingly, by her email to Appellant on January 16, 2013, Ms. Griffith refused to convert her loan to an investment in ISL, but proposed to Appellant that if he would personally guarantee that ISL's Promissory Note would be repaid in principal and interest, she would extend the repayment date of the Promissory Note. Appellant recognized that he was being paid a salary by ISL during this project, and any funds repaid to Ms. Griffith on March 31, 2013 would, accordingly, be unavailable to be paid to him in salary, or for any other use by ISL. By his

responsive email to Ms. Griffith on January 16, 2013, Appellant agreed with her proposal, thereby establishing that the loan repayment date was extended; ISL did not need to repay the principal and interest on March 31, 2013; and that Appellant would personally guarantee that Ms. Griffith would have the ISL Note's principal and interest repaid to her. (R. p. ___).

STANDARD OF REVIEW

Regarding the applicable standard of review, the Appellant cites to *Townes Associates Limited. Ltd vs. Greenville,* 266 S.C. 81, 221 S.E.2d 773 (1976) (*abrogated on other grounds, Matter of the Estate of Kay,* 423 S.C. 476, 816 S.E.2d 542 (2018)). In the *Matter of the Estate of Kay,* the South Carolina Supreme Court abrogated *Townes Associates*' in that its "two-judge rule has no applicability to cases wherein the circuit court, sitting in a purely appellate capacity . . . affirms the findings of a lower tribunal." 423 S.C. at 481, 816 S.E.2d at 545. Accordingly, the *Townes Associates* matter appears to still be authoritative in the instant case, as this matter does not involve a circuit court sitting in an appellate capacity.

Nonetheless, the Appellant improperly suggests that the *Townes Associates* case stands for the proposition that the appellate courts must delve into the evidence and evaluate whether it reasonably supported the trial court's findings of fact. Brief of Appellant at 7 (R. p. ___). To the contrary, our Supreme Court ruled in *Townes Associates* that it is the trial court's province to rule based upon the preponderance of the evidence. In *Townes Associates*, the Supreme Court affirmed the trial court's findings because "counsel conceded that there is ***some evidence*** which, if believed, supports the findings of the lower court." *Id.* at 86, 221 S.E.2d at 774 (emphasis added). "We are not at liberty to decide the case on the basis of our views as to the preponderance. Accordingly, the findings of the lower court, being supported by the evidence, are affirmed." *Id.*

In his Brief, Appellant cites to pages of evidence and testimony transcripts which are assuredly "some evidence" which supports the trial court's ruling. It is Ms. Griffith's position that, indeed, the evidence fully supports the findings by the trial judge, and that the conclusions of law accurately apply the proper legal standards to the facts. Nonetheless, it is the trial judge's province to weigh the evidence and testimony, and to decide based upon the record presented. Once the appellate court determines that there was some evidence which related to those findings, the appellate inquiry ends on that issue. *Id.*

Appellant further attempts to apply a new and dramatically more stringent standard to the memorialization of the findings of fact and conclusions of law by a trial court. Appellant suggests that in the case of *In re: Treatment and Care of Luckabaugh,* 351 S.C. 122, 568 S.E.2d 338, (2002) the South Carolina Supreme Court adopted a standard that requires in-depth detail and verbiage to elaborate upon the trial court's findings. Brief of Appellant at 16 (R. p. ___).

Contrary to the Appellant's suggested interpretation, however, just as the Supreme Court in *Townes Associates* limits the appellate inquiry to determine whether there exists "some evidence" in the record, 266 S.C. at 86, 221 S.E.2d at 774, the Supreme Court in *Luckabaugh* states that "[w]e do not require a lower court to set out findings on all the myriad factual questions arising in a particular case." 351 S.C. at 132, 568 S.E.2d at 342. To the contrary, the *Luckabaugh*, court examined an order which was totally devoid of any findings of fact contemplated in Rule 52, SCRCP. "The order below provides ***no findings of fact*** to support its ultimate legal conclusion. Without findings of fact, we are forced to wade through the record and speculate how the lower court viewed the ultimate facts when confronted with contradictory evidence." *Luckabaugh*, 351 S.C. at 133, 568 S.E.2d at 343 (emphasis added).

More appropriate cases to illustrate the standard of review here include *Noisette v. Ismail*, 304 S.C. 56, 58, 403 S.E.2d 122, 123-24 (1991) ("where a trial court substantially complies with Rule 52(a) and adequately states the basis for the result it reaches, the appellate court should not vacate the trial court's judgment for lack of an explicit or specific factual finding.") *See also Henderson v. Gould*, 288 S.C. 261, 341 S.E.2d 806 (1986) (applying S.C. Code 15-35-110 prior to the effective date of Rule 52, SCRCP, the Supreme Court stated that "[w]hile the order does not set out conclusions of law as such, it adequately states the legal basis for the result the court reached. Moreover, Section 15-35-110 is directory rather than mandatory and failure to follow its directions does not require reversal.") *See also Borg Warner Acceptance Corp. v. Darby*, 296 S.C. 275, 372 S.E.2d 99 (Ct. App. 1988).

ARGUMENT

I. The Trial Court Properly Found and Articulated that the Appellant's Promise of a Personal Guaranty was Supported by Adequate Consideration

It is notable that the Appellant only cites to one case for support of its claim that the trial court's order is insufficient under Rule 52, S.C.R. Civ.P. As noted above, the *Luckabaugh* case is inapposite, as the order analyzed therein was completely devoid of the finding of fact. *Luckabaugh*, 351 S.C. at 133, 568 S.E.2d at 343. The cases cited above regarding Rule 52, including *Henderson* and *Borg-Warner*, *supra,* support the proposition that the appropriate standard of review for the trial court's Order is: "where a trial court substantially complies with Rule 52(a) and adequately states the basis for the result it reaches, the appellate court should not vacate the trial court's judgment for lack of an explicit or specific factual finding." *Noisette v. Ismail, supra,* 304 S.C. at 58, 403 S.E.2d at 123-24.

In its Order, the trial court made no fewer than nine separate findings of fact and six conclusions of law, each of which were clearly set forth in separate paragraphs, with references to the evidence and testimony submitted at trial for the factual findings, and citations to both South Carolina and California law in support of its conclusions. Moreover, while the substantive legal conclusions were governed by California law, the trial court additionally compared those findings to the substantive law of South Carolina, in order to carry out a broad and well-reasoned opinion.

In essence, the trial court held that the Defendant ISL entered into a Promissory Note with Ms. Griffith and, as that Note was approaching its expiration and deadline for payment, Appellant agreed to personally guarantee repayment to the Ms. Griffith in exchange for an extension of time within which the Note would be repaid. In its Findings of Fact and Conclusions of Law dated December 12, 2018 (hereinafter, the "Order"), the trial court made the following findings of fact on page 2:

> A. Plaintiff loaned $200,000.00 to Defendant ISL Development, LLC, which was deposited into the ISL bank account on December 28, 2012. ISL executed a Promissory Note on December 27, 2012 (the "Note"), which provided that "[i]nterest only shall be payable monthly in arrears as follows: (a) February 1, 2013 and continuing on the first (1st) day of each calendar month thereafter until the Maturity Date, Maker shall make monthly interest-only payments based on a rate of twelve percent (12%) per annum. (b) If not sooner paid, the entire outstanding principal balance of this Note, together with accrued and unpaid interest and any other amounts due under this Note shall be due and payable on March 31, 2013 (the 'Maturity Date')."
>
> B. In the email exchange dated January 16, 2013, Defendant personally guaranteed repayment of the Note to Plaintiff.
>
> (R. p. ____).

This was followed by the trial court's conclusion of law on page 6 regarding consideration which supported this personal guarantee by Appellant:

D. This court finds that, based upon the evidence presented at trial, there was sufficient consideration exchanged by the parties to support the January 16, 2013, emails between Plaintiff and Stewart as an enforceable agreement between those parties. The Plaintiffs agreement to extend the due date of the Note was supported by Stewart's promise and acceptance of the personal guarantee of repayment of the Note to Plaintiff, and Stewart received sufficient consideration to support his personal guarantee of repayment to Plaintiff in that both Stewart and ISL received actual use and substantial benefit of the borrowed funds beyond the Note's original repayment date of March 31, 2013. Cal. Civ. Code § 1605.

(R. p. ___).

The Appellant asserts that the trial court's Order is defective in that it "fails to address the central, predicate issue that should have been decided and was not: was there a bargain or exchange between Griffith and Stewart to personally guarantee the note in exchange for an extension of its term, that would constitute an "agreement", in the first place?" Brief of Appellant at 8 (R. p. ___). This assertion by Appellant, in light of the above-quoted language from the trial court's order, is plainly inaccurate. Bearing in mind that according to the standard by which the appellate court is to review the trial court's Order, even under the *Luckabaugh* case, 351 S.C. at 122, 568 S.E.2d at 338, the trial court fully adhered to its requirements. The trial court found that the weight of the email communications exchanged between Appellant and Ms. Griffith on January 13, 2013 (R. p. ___) constituted Appellant's agreement to personally guarantee the Note. The trial court then fully addressed the type and sufficiency of the consideration supporting the agreement for Appellant to personally guarantee the Note. Order at p. 6 (R. p. ___).

Appellant is correct in his statement that he and Ms. Griffith agree that California law applies to determine the sufficiency of the consideration for his personal guarantee. (R. p. ___). Appellant recognizes that the trial court relied upon *Steiner v. Thexton,* 48 Cal. 4th 411, 226 P.3d 359, 106 Cal.Rptr.3d 252 (2010) for the proposition that when Ms. Griffith promised to extend the repayment terms of the Note beyond March 31, 2013, that promise was not illusory but,

even if that promise was illusory, any such deficiency was cured by her part performance by actually extending the repayment term of the Note.

Appellant then concludes that the *Steiner* case contemplates a two-stage process for a finding that a contract is supported by consideration: (1) the promisee must confer a benefit or suffer a prejudice; and (2) that benefit or prejudice must be bargained for as the exchange for the promise. See *Steiner*, 48 Cal.4th at 420-21, *citing Bard v. Kent,* 19 Cal.2d at 452, 122 P.2d at 8. *See also* California Civil Code Section 1605 (statutory definition of what constitutes sufficient consideration). It is noteworthy that the *Bard* case, 19 Cal.2d at 452, 122 P.2d at 8 is distinguishable from the circumstances of negotiations between Appellant and Ms. Griffith, in that *Bard* involved a payment to a third party which was claimed to be sufficient consideration. That claim was rejected by Justice Traynor of the California Supreme Court because it was beyond the contemplation of either party during negotiations. *Id.* The negotiations between Appellant and Ms. Griffith, on the other hand, were plainly in contemplation of an extended repayment date in exchange for a personal guarantee. Ms. Griffith's email shown below suggested that if she had to wait two years to recover her money from ISL, it is likely that ISL would not be able to repay her. Appellant satisfied her risk of extending the repayment date by agreeing to personally guarantee repayment for ISL. (R. p. ____).

In order to establish a basis for reversal of the trial court's order, Appellant suggests that there "is simply no evidence" that the parties bargained for the exchange of a personal guarantee for an extension of the repayment terms of the Note. Of course, Appellant's suggestion ignores the emails exchanged by Appellant and Ms. Griffith on January 16, 2013. These emails were admitted into evidence, and represented discussions by the parties after Appellant implored Ms. Griffith to convert her short-term loan into a capital investment, which would have eliminated the duty to repay according to the terms of the Note. (R. p. ___).

The Trial Judge heard testimony regarding this proposed conversion of debt-to-equity, and testimony by Ms. Griffith regarding her rejection of that proposal. The Trial Judge then evaluated the weight of this evidence in concluding that the Appellant agreed to personally guarantee repayment of the Note in exchange for continued use of the $200,000 beyond March 31, 2013 (R. p. ___). In sum, Ms. Griffith's email quoted below indicates that she was concerned that if she allowed Appellant and ISL to use the money beyond March 31, 2013, perhaps even two years beyond that date, there was an ever-increasing risk that ISL would not be able to pay it back. Ms. Griffith then concluded by saying that she is only willing to accept the risks of an extended repayment date for the Note if Appellant personally guaranteed that ISL would repay the debt. Appellant knew that he would be able to derive personal benefit in the form of continued salary payments beyond March 31, 2013 if he ISL was not bound to repay Ms. Griffith on that date (R. p. ___). Not surprisingly, then, Appellant stated in his responsive email to Ms. Griffith quoted below: "Of course I will personally guarantee the $200,000.00 and I appreciate your help and consideration." (R. p. ____).

Excerpt of Email of Amanda Griffith on January 16, 2013 (R. p. ____):

. . . .

I considered that part of this investment would be a supplement to my income and not as something I would receive two years in the future if there was any money available. After the salaries, management fees, mortgage interest, the repayment of the Henderson loan, and additional consultants fees, it is unlikely that there will be any money left over.

All that aside, I was willing to take these risks because you were also taking them and I felt that my risk was linked to yours and that you would take good care of yourself and, by extension, me. With the new changes in the agreement, this appears less so. I am not a greedy person. My goals are not to lose my capitol and to make a little money. I don't see how this proposal addresses that.

I am happy to lend the $ 200,000 to you if you will personally guarantee the loan.

Excerpt of Response Email by Steve Stewart on January 16, 2013 (R. p. ___).

Hey Amanda,

I can certainly appreciate your concerns and I respect your decision. Of course I will personally guarantee the $200,000.00 and I appreciate your help and consideration.

> When we have talked about your investment in our projects, we both had assumed that only a part of the money would come from borrowed funds. I can see what a problem this could create for you. . . . .

In his Brief, Appellant even acknowledges Ms. Griffith's testimony that she and Appellant had previously discussed the potential for a personal guarantee by Appellant. Brief of Appellant at 10, citing Transcript p. 29:1 (R. p. ____). In the Transcript at pp. 49-50, in response to the first question her re-direct examination, Ms. Griffith testified as follows:

[Mr. Flynn:]

Q. So you had testified earlier that your understanding that this loan modification extended the terms beyond March 31st?

[Ms. Griffith:]

A. Yes. In addition to the e-mail, we were verbally speaking.

(R. p. ____).

Although Appellant Mr. Stewart "could not recall" any such conversations Transcript at 90:6 (R. p. ___), it is perfectly within the trial court's purview to weigh the respective testimony by the parties in making the findings of fact. *Townes Associates, supra*, 266 S.C. at 86, 221 S.E.2d at 774

Further, Appellant fails to include any evidence which would suggest that this promise to personally guarantee the repayment of $200,000 was purely gratuitous, which is simply not credible in light of the evidence that Appellant needed additional funding for his project beyond March 31, 2013. It is not the role of the appellate court to delve into the evidence to determine exactly how and why the trial court weighed evidence in the way that it did. *Id.*

The foregoing documentary evidence and testimony by witnesses completely eviscerate Appellant's suggestion that there "is simply no evidence" that the parties bargained for the

exchange of a personal guarantee for an extension of the repayment terms of the Note. Moreover, as the South Carolina Supreme Court recognized in *Townes Associates, supra,* 266 S.C. at 86, 221 S.E.2d at 774 the appellate inquiry is limited to determining whether there exists "some evidence" in the record to support the trial court's findings. The Supreme Court in *Luckabaugh* confirmed that the appellate courts in South Carolina "do not require a lower court to set out findings on all the myriad factual questions arising in a particular case." 351 S.C. at 133, 568 S.E.2d at 343.

Because the trial court had sufficient evidence upon which it could reach its findings and conclusions, the Appellant's speculation about how and why the trial court weighed the evidence before it is an improper and unwarranted intrusion into the purview of the trial court. Because the Findings of Fact and Conclusions of Law clearly articulate the Appellant's personal guarantee supported by consideration, the requirements of *Steiner* are met and this appeal must be dismissed. *See Steiner, supra*, 48 Cal. 4th at 411, 226 P.3d at 359, 106 Cal.Rptr.3d at 252.

II. The Trial Court Properly Found and Articulated that the Respondent was Entitled to an Award of Attorney Fees

Appellant correctly notes in his Brief that attorney fees are only awarded when they are authorized under Statute or there is a contractual obligation, and that "when there is a contract, the award of attorney's fees is left to the discretion of the trial judge, which will not be disturbed unless an abuse of discretion is shown." Appellant's Brief at 17, *citing Baron Data Systems, Inc.* v. *Loter,* 297 S.C. 382, 377 S.E.2d 296 (1989). In this matter, Appellant admitted at trial that the Promissory Note signed by ISL in favor of Amanda Griffith on December 27, 2019 (the "Note") authorizes the payment of attorney fees to Ms. Griffith in the event of default by ISL:

Trial Transcript, page 105, lines 11-25 (R. p. ____):

Q. Do you dispute that Amanda is entitled to 12 percent interest on the balance of her loan, on the 200,000? Do you dispute that?
A. That's what the interest rate on the note was.

Q. Okay and after the due date, you on behalf of ISL, you continued to honor that as 12 percent annual monthly interest payments, right?
A. Monthly or semi-month, whatever it was.

Q. So you are okay with the 12 percent? That's what she was owed?
A. That's what she was told.

Q. And you understand that in the promissory note that if ISL defaults, then she's entitled to attorney fees in the collection of the note?
A. Yes.

The trial court conducted a damages hearing on January 25, 2019 (the "Damages Hearing"), in order to determine the appropriate measure of damages for which the Appellant was liable, consistent with the Trial Court's Order dated December 12, 2019. (the "Order", R. p. ____). Prior to the Damages Hearing, the undersigned counsel for Respondent Amanda Griffith submitted a brief to the trial court and opposing counsel, entitled "Plaintiff's Brief In Support Of Damages Award and in Opposition to Defendants' Motion to Alter, Amend, or Reconsider Order." (the "Damages Brief", R. p. ____). During the Damages Hearing, Counsel for Respondent introduced the Damages Brief to the trial court and to the witness, Ms. Griffith, on direct examination.

The following is an excerpt of Ms. Griffith's testimony on direct examination during the Damages Hearing:

Transcript of Damages Hearing, page 3, lines 9-20 (R. p. _____).

Q. Good morning, Ms. Griffith. I have here a brief which I've submitted to the Court. And I know you've had a chance to take a look at that. So I've broken it up into the brief and then the four different exhibits. And what I was going to do is briefly go through this with you. And shouldn't take too long.

MR. FLYNN: Your Honor, do you have a paper copy?
THE COURT: I do, indeed.
MR. BARR: Excuse me. Is it the brief you handed to the witness?
MR. FLYNN: Yes. I got the exhibits for you. MR. BARR: That's okay. I've got my notes here.

Transcript of Damages Hearing, page 5, lines 2-25 (R. p. _____).

Q. We will move right on to the attorney's fees, which I believe is the only one there will be any contest here. And that is on page 3 of the brief and also shown in Exhibit D.
So what was the arrangement that you struck with me as your counsel for this trial in terms of compensation?
A. That you would receive a third of what I prevailed on.

Q. Have you also had a chance to review what is my internal accounting of time and expenses for this trial?
A. I did not.

Q. Please take a look at that.
A. It's way to scary.

Q. All right. It's summarized there on the first page?
A. Right.

Q. Do you see total legal fees is $66,286?
A. Right.

Q. Do you have any reason to dispute the volume of detail?
A. No.

Q. Do you have any challenge to the reasonableness of the one-third fee?
A. No.

Transcript of Damages Hearing, page 6, lines 1-3 (R. p. _____).

Q. And do you right now wish to amend or modify our agreement of a one-third contingency fee?
A. No.

The Damages Brief, (R. p. ____) provided guidance from both the applicable California law and South Carolina authorities regarding the proper evaluation, measure, and application of

attorney fees for cases in which attorney fees are provided as a remedy by contract or statute. As indicated in the colloquy between counsel and the trial court above, Transcript of Damages Hearing, page 3, lines 9-20 (R. p. ___), the Trial Judge had a copy of the Damages Brief in front of her during the direct and cross-examination of Ms. Griffith at the Damages Hearing.

Additionally, the Trial Judge and Ms. Griffith had a copy of the hourly billing details submitted by Respondent's counsel (R. p. ____) and Ms. Griffith was questioned regarding that subject matter on both direct and cross examination during the Damages Hearing. The trial court issued the Damages Order on March 5, 2019, (R. p. ____) and it included an award of attorney fees to Ms. Griffith of $89,160.54, which was approximately Twenty Percent (20%) of the total $330,000 principal and interest award. Indeed, the trial court considered the evidence and testimony, and determined that the appropriate amount of attorney fees was less than the 1/3 contingency fee to which Ms. Griffith agreed in her testimony. (R. p. ___). In the Damages Order, (R. p. ___) the trial court indicated that it had determined $89,160.54 to be the reasonable attorney fee to award to Ms. Griffith in this matter. Although that amount is less than Ms. Griffith sought in her trial testimony, she did not appeal that finding by the trial court.

In his Brief, Appellant argues that the trial court did not properly evaluate the evidence and testimony in determining the appropriate measure of attorney fees to award to Ms. Griffith in the Damages Order. In particular, Appellant argues that the trial court did not consider the analysis required in *Baron Data Systems, Inc.* v. *Loter, supra,* 297 S.C. 382, 377 S.E.2d 296 (1989). Appellant noted that the following six factors from the *Baron Data* case must be considered by the trial court:

I. The nature, extent and difficulty of the legal services rendered;
II. The time and labor necessarily devoted to the case;
III. The professional standing of counsel;
IV. The contingency of compensation;
V. The fee customarily charged in the locality for similar legal services;

VI. The beneficial results obtained.

Appellant's Brief at 18, *citing Baron Data*, 297 S.C. at 384, 377 S.E.2d at 297 (R. p. ___).

Of course, Appellant did not indicate in his Brief that during the direct and cross-examination of Ms. Griffith at the Damages Hearing, counsel for Appellant, counsel for Respondent, and the Trial Judge all followed Appellant's list of six *Baron Data* factors, which were among those items in the list presented by counsel for Ms. Griffith during her testimony. Indeed, the actual list of criteria considered by the trial court exceeded those six items factors and was, therefore, even a more strenuous list of factors to determine the appropriate measure of attorney fees.

The following is an excerpt of the document which was presented to Ms. Griffith as a witness during the Damages Hearing. Plaintiff's Damages Brief at 3-4 (R. p. ____).

B. Attorney Fees:

The uncontroverted evidence at trial, see Trial Transcript attached as Exhibit "C" at pp. 32-33, established that the Plaintiff agreed to pay to her attorney a contingency fee of One-Third (1/3) of the amount to which she is entitled in this lawsuit. There was substantial evidence to support this contingency fee including consideration of the following factors:

(1) The amount of the fee in proportion to the value of the services performed.
(2) The novelty and difficulty of the questions involved and the skill necessary to perform the legal services properly.
(3) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the attorney.
(4) The amount involved and the results obtained.
(5) The time limitations imposed by the client or by the circumstances.
(6) The nature and length of the professional relationship with the client.
(7) The experience, reputation, and ability of the attorney performing the services.
(8) The time and labor required.
(9) The informed consent of the client to the fee. *See, e.g., Fergus v. Songer*, 150 Cal.App.4th 552, 561, 59 Cal.Rptr.3d 273, 281 (Court of Appeal, Second District, Div. 6, Cal. 2007).

This award of attorney fees is further supported by viewing the evidence at trial in accordance with the requirements of Rule 407, SCACR, Rules of Prof. Conduct, Rule 1.5, which provides that:

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
(2) the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;
(3) the fee customarily charged in the locality for similar legal services;
(4) the amount involved and the results obtained;
(5) the time limitations imposed by the client or by the circumstances;
(6) the nature and length of the professional relationship with the client;
(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
(8) whether the fee is fixed or contingent.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall be communicated to the client, preferably in writing.

A cursory review of the factors listed above indicate that the Trial Judge and counsel for Appellant and Respondent all had the appropriate guidance in carrying out a full and exhaustive examination of the appropriate measure of attorney's fees to award to Ms. Griffith. The trial court had certainly observed the skill and ability of Respondent's counsel throughout the trial and Damages Hearing. Further, Ms. Griffith reviewed these same factors during her direct and cross-examination at the Damages Hearing, as well as the detailed invoice of hourly time expended (R. p. ___) and she testified that a 1/3 contingency fee would be appropriate for the legal services provided on her behalf in this matter.

As noted above, just as the Supreme Court in *Townes Associates* limits the appellate inquiry to determine whether there exists "some evidence" in the record, 266 S.C. at 86, 221 S.E.2d at 774 the Supreme Court in *Luckabaugh* ruled that "[w]e do not require a lower court to set out findings

on all the myriad factual questions arising in a particular case." 351 S.C. at 133, 568 S.E.2d at 343. Because the trial court, with the assistance of counsel for Appellant and counsel for Respondent in their respective examinations of Ms. Griffith at the Damages Hearing, had the entire record of trial, the details of hourly billing by counsel for Respondent, and the exhaustive list of factors relevant to an attorney-fee award analysis under both South Carolina and California law, the measure of attorney fees awarded to Ms. Griffith was well-founded and appropriate in these circumstances.

As Appellant noted in his Brief, "when there is a contract, the award of attorney's fees is left to the discretion of the trial judge, which will not be disturbed unless an abuse of discretion is shown." Appellant's Brief at 17, *citing Baron Data Systems, Inc.* v. *Loter, supra,* 297 S.C. 382, 377 S.E.2d 296 (1989). Appellant makes no argument that the Trial Judge abused her discretion in awarding attorney fees in the amount as described in the Damages Order. (R. p. ___). For these reasons, Appellant's appeal as to the award of attorney fees must be dismissed.

III. The Trial Court's Award of Interest was Proper Under the Terms of the Promissory Note as Well as the laws of California and South Carolina

Appellant contends that the trial court erred by including the correct annual rate of Judgment Interest applicable to the Damages Order entered on March 5, 2019. While Appellant correctly cites to South Carolina Code Section 34-31-20 as the authority by which the courts in South Carolina award interest to accrue after a judgment is entered, it is apparent that the trial court's statement of the judgment interest rate at 9.5% per annum is accurate and correct. To the extent that the collection of judgment interest becomes an issue in the satisfaction of judgment process at a future time, it is a matter for the parties to determine the applicable rate of judgment interest to be applied. Had the trial court noted that the interest was to accrue "at the applicable judgment rate" then the impact upon the parties to this matter

would be precisely the same. South Carolina Code Section 34-31-20 authorizes the correct rate to be applied to judgment interest, and the fact that the trial court included the correct and accurate rate as of the time of the Damages Order, any issue with that would be harmless error, and would not affect the validity of the Damages Order.

Accordingly, the Appellant's appeal as to the trial court's inclusion of the correct interest rate as of the date of the Damages Order must be dismissed.

IV. Respondent's Request that the Court Affirm the Trial Court's Orders on Any Ground Appearing on the Record as Provided by Rule 220(c), S.C. R. App. P.

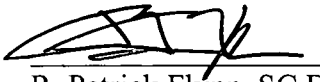
Rule 208(b)(2), SCACR provides that Respondent's brief may also contain argument asking the court to affirm for any ground appearing on the record as provided by Rule 220(c), SCACR. The Respondent hereby requests the appellate court to affirm the trial court's order on any ground appearing on the record as provided by Rule 220(c), SCACR.

CONCLUSION

For the foregoing reasons, the Findings of Fact and Conclusions of Law entered by the trial court on December 12, 2018, as well as the Order setting forth the Damages Award entered by the trial court on March 5, 2019, have met the applicable requirements of substantive law for California and procedural law for South Carolina and, therefore, must be affirmed.

Respectfully Submitted,

POPE FLYNN, LLC



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