STATE OF SOUTH CAROLINA COUNTY OF ANDERSON Vicki Littlefield, Plaintiff, vs. Paul W. Cromer, Jr., individually and d/b/a Paul Cromer, Inc. Defendants.	IN THE COURT OF COMMON PLEAS CASE NO.: 2016-CP-04-00443 **FINAL ORDER**

The above-entitled matter was referred pursuant to Rule 53 SCRCP and upon agreement of the parties.

A hearing was held September 24, 2019, and testimony was taken, which is reported herewith. From the testimony of all parties and witnesses and evidence presented, I find, conclude and order as follows:

HISTORY AND PROCEDURAL BACKGROUND

1. Plaintiff filed a complaint in this action on February 16, 2016, for collection of principal on a Promissory Note executed on January 1, 2007, an accounting and collection of interest owed pursuant to the terms of the Note, breach of trust with fraudulent intent, fraud and deceit, and an award of attorney's fees and costs.

2. Defendants filed a counterclaim on March 25, 2016, seeking judgment against the Plaintiff for overpayment of the Promissory Note.

3. Plaintiff filed an Amended Reply on August 30, 2017, inserting a defense of statute of limitations.

4. The parties consented to this matter being referred and Plaintiff dismissed her breach of contract with fraudulent intent and fraud and deceit causes of action (Fourth and Fifth) by Order of Reference filed December 10, 2018.

5. Plaintiff is the holder and owner of a Promissory Note executed by the Defendants, Paul Cromer individually and as Paul Cromer, Inc. on January 1, 2007, in favor of Plaintiff's father Charles Whitfield. The Defendants and Charles Whitfield executed the Note to guarantee repayment of funds loaned by Charles Whitfield to Defendants for the purpose of financing inventory for used car dealers.

6. Mr. Whitfield died on March 24, 2008, and devised the Note to Plaintiff's mother, Helen Whitfield.

7. Mrs. Whitfield died on February 25, 2012, devising the Note to her daughter and sole heir, the Plaintiff in this action.

8. The principal amount of the Promissory Note was $800,000. Interest on the $800,000 was to be paid as follows as set forth on the face of the Note:

> a) Principal. Maker shall pay the Holder the principal sum in full one hundred eighty (180) days after demand.
>
> b) Interest: Interest accruing on the principal sum shall be paid semi-annually on the 15th day of July and January, beginning July 15, 2007.
>
> c) Interest Rate: The interest rate which the Maker agrees to pay on the principal sum is a sum that is equal to fifty percent (50%) of the profits on car loans during each calendar year, minus fifty percent (50%) of the bad debts on car loans.

FINDINGS OF THE COURT

9. Defendants paid $450,000.00 on the principal of the Note prior to the institution of this lawsuit. Some sixteen months after the lawsuit was commenced the Defendants produced and demanded credit for a cancelled check in the amount of $258,856.00 which Defendants turned over to Plaintiff's mother, Helen Whitfield in July of 2009 after the execution of the Promissory Note and the death of Plaintiff's father, Charles Whitfield. Defendant Cromer testified that the $258,856.00 was from a joint account with the right of survivorship in the names of Charles Whitfield and Paul Cromer which Cromer withdrew after the death of Mr. Whitfield. Due to the age of the account, Plaintiff's attorneys were unable to obtain the bank's file regarding the account. Defendant Cromer testified that all funds in the joint account had been deposited by Charles Whitfield.

10. A specific procedure and normal course of dealing was followed by the parties to protect their investments as set forth in the Complaint filed by Paul Cromer, Inc. against Darrell and Brandon Massey (2008-CP-04-4470) and identified at trial as Plaintiff's Exhibit #2.

> "3. The normal course of business between the Plaintiff and Defendants was for the Masseys to find a vehicle to purchase (usually at auction), the Plaintiff would pay for the vehicles and hold onto the title for said vehicle until it was sold. Upon the sale of the vehicle, the Plaintiff would deliver the title to the Masseys either directly or through one of their agents/employees, and then receive payment for the vehicle in accordance with the parties agreement." (¶ 3 of Complaint).

11. From February through November of 2008, and in violation of the normal course of business, the Defendants, without the knowledge or consent of the Plaintiff, delivered more than twelve titles to the Masseys without receiving payment for the vehicles. Defendants filed suit against the Masseys in December 31, 2008 and obtained a

judgement in the amount of $282,142.00 on April 9, 2009. Neither the Plaintiff nor any member of her family was a party to that lawsuit and the Defendants are the sole owners of the judgement.

12. Defendants continued to pay interest on the Promissory Note until 2013. Plaintiff filed this action after contacting Defendants and demanding payment pursuant to the terms of the Note.

13. In their Answer and Counterclaim, Defendants allege, among other things, that the money owed to Defendants by Darrell and Brandon Massey are bad debts on car loans and the Plaintiff is responsible for one-half of the Massey loss. Defendants also allege that they satisfied the principal of the Note, overpaid the Plaintiff, and are therefore entitled to a judgement against the Plaintiff in the amount of $227,495.80.

14. The court finds Kline Iron & Steel Co. v. Superior Trucking Co., Inc., 261 S.C. 542, 201 SE2d 388 (S.C. 1973) controlling in this matter. The Defendants did not follow the normal course of dealing in allowing the Masseys to hold the titles to vehicles for which Defendants had not been paid. The court bases this finding on Defendant Cromer's own testimony. Further, the court is not making a finding of fraud or tortious conduct on the part of the Defendants for the Massey losses, but rather finds Defendants' failure to follow the normal course of business was not reasonably contemplated by the parties executing the Promissory Note. In the case at bar, the Plaintiff seeks only an accounting and payment of monies contractually owed pursuant to a Promissory Note. The court finds that damages in this matter follow as a material consequence of the breach of contract. The court further finds that the language of the Note or contract executed in

January 2007 does not allow for recovery as alleged by the Defendants in their counterclaim, nor does it allow them to reduce the Plaintiff's recovery to zero.

15. The Defendant Paul Cromer acknowledged that prior to 2008, he had problems with Massey but Massey had "made all that straight." Defendant further agreed that despite the prior problems, he had given Massey another bite at the apple and that "he was a friend." Defendant Cromer admitted that he had no proof of checking the inventory on a regular basis and that when he gave the titles to Massey, Massey did not pay him.

16. As this is a significant deviation from ordinary and reasonable business practice, any losses as a result of Defendants' actions in handing over titles to cars for which no payment had been received would not have been anticipated as a bad debt by Mr. Whitfield at the time he entered into the contact for repayment of the Promissory Note. It would be an absurd interpretation of the Note to believe that Mr. Whitfield would loan $800,000 to Defendants and anticipate that they would effectively give away over $280,000 of inventory by handing over titles to cars for which they admittedly received no payment. Therefore, pursuant to Kline, the court finds that the Defendants are not entitled to deduct from the principal of the Note the losses ultimately created by Defendants. Further, the court finds that disallowing the Defendants' claim for an offset does not give the Plaintiff "double redress" as set forth in Brown v. Felkel, 320 S.C. 292, 465 SE2d 93 (S.C. App. 1995). The Plaintiff elected to proceed on breach of contract and this court finds that the Defendants have breached the terms of the Promissory Note executed on January 1, 2007.

17. Further, the court finds that Defendants' claim of an offset for the Massey losses is barred by the statute of limitations. The interpretation and application of the Note

is subject to the 1976 S.C. Code of Laws, §15-3-530 et. seq. barring claims more than three (3) years old. The Plaintiff's Complaint seeks an accounting and payment of the moneys owed pursuant to the terms of the Note. Although the Defendants allege that the Plaintiff waived the statute of limitations by requesting an accounting, the court finds that there is a considerable difference between determination or calculation of the amount due and a finding that the Defendants are liable for tortious conduct. It is undisputed that the Massey loss was known to Defendants in 2008 well after the execution of the Promissory Note; however, the Defendants asserted no claims against the estates of either of Plaintiff's parents or any claim against the Plaintiff until 2016 when it was self-serving to do so. Also, Defendants continued to make interest payments until 2013.

18. The court finds both the Defendant and his expert, Darrell Hardy, to be lacking in credibility. The Master In Equity as trier of fact may accept or reject any of a witness's testimony, including that of an expert witness. Dixon v. Besco Engineering, Inc. 320 S.C. 174, 463 SE2d 636 (S.C. App. 1995). The fact finder must determine the weight to be accorded the testimony of the witnesses, and accept or reject their valuations. Bray v. Head 311 S.C. 490, 429 SE2d 842 (S.C. App. 1993). Neither the Defendants nor their expert provided definitive proof of the losses they claimed should be deducted from the amount due on the Note and reimbursed by Plaintiff as overpayment thereof. Defendants produced many pieces of paper which appeared to be from an adding machine; however there was no documentation which credibly linked the papers to losses claimed by the Defendants or to the Promissory Note itself. Mr. Hardy, a former CPA who prepared the Defendants' taxes both before and after surrendering his license, was hesitant, disjointed, vague, and confusing. Mr. Hardy produced several different account statements prior to

and during the course of this litigation which purported to establish the amounts Defendants owed on the Promissory Note. On April 28, 2015, Mr. Hardy produced a statement in response to Plaintiff's demand for payment on the Note, indicating that Defendants owed $31,359.95. Later, he amended the statement to indicate that Defendants owed Plaintiff $11,726.55. After the commencement of this litigation, Mr. Hardy prepared yet another statement which indicated that Defendants no longer owed anything to Plaintiff but in fact Plaintiff owed $227,495.80 to Defendants. Mr. Hardy stated on direct examination, "Well, somewhere along the line, either I or Mr. Cromer dropped the ball and we weren't -- we didn't, we didn't keep up with the actual computation of the Note, you know, and we should have." His delivery coupled with his admitting on cross examination that he had impersonated an IRS agent in an effort to get information for clients significantly undermines his credibility.

19. Conversely, the court finds the testimony of the Plaintiff's expert, who holds a doctorate in economics and business administration, has provided expert testimony from Family Court to United States District Court in six different states, and formerly served as Chairman of the Department of Economics and Business Administration at Furman University to be clear, concise and convincing. The court finds that the document produced by Plaintiff's expert setting forth the principal and interest owed and credits for payments made, provides a credible and accurate accounting of monies paid and owed on the Promissory Note executed on January 1, 2007.

20. According to testimony of Plaintiff's expert, Defendants have not yet satisfied the principal amount on the Note. The Note has a remaining principal balance of $91,145.00 and interest of $165,928.00 has accrued pursuant to the terms of the Promissory

Note. Dr. Alford reached his conclusion after conducting an extensive investigation of the business dealings between the parties in this case as well as the dealings between the Plaintiff's late father and the Defendants. He examined both individual and corporate tax returns as well as over 10 years of business records.

21. Defendants allege that a partnership existed between Defendants and Plaintiff's father which affects the terms of the Promissory Note. The Plaintiff's expert, Dr. Charles Alford, testified that in his opinion, no partnership existed as it relates to the Note and that there is no provision in the Note for the Massey loss to be "a partial offset" to the $800,000.00. Further, Dr. Alford testified that he had examined the "settlement book" which was provided by Defendants and utilized to calculate the interest due on the Note and Defendants recorded no losses for the Massey debt. The losses claimed by the Defendants appeared only after the commencement of this lawsuit. Based on the evidence presented at trial, the court finds no credible evidence of a partnership as it relates to the terms of the Note.

22. The court further finds that Plaintiff is entitled to attorney's fees as set forth below. The Note itself specifically allows for the award of attorney's fees.

> If default be made in the payment of principal and/or interest when due under this Note, or in the performance of any of the terms, covenants, conditions or warranties contained in the mortgage securing payment hereof, at the option of the Holder of this Note, the entire principal sum evidenced hereby, together with interest accrued thereon, without notice, shall become immediately due and payable. Failure to exercise this option shall not constitute a waiver of the right to exercise same in the event of any subsequent default. If any suit or action is instituted or an attorney is employed to collect any amount due on this Note, or any part thereof, or to enforce any remedy of the Holder as contained in the mortgage securing the same, the undersigned promises and agrees to pay all cost of collection, including a reasonable amount as attorney's fees.

23. Plaintiff employed an expert to assist her in determining the balance due to Plaintiff by the Defendants pursuant to the terms of the Note. Plaintiff also retained attorneys to collect payment due on the Note. I find that based upon careful consideration of the factors set out in Seabrook Island Property v. Berger, 365 S.C. 234, 616 SE2d 431 (S.C. 2005), the Plaintiff is entitled to reimbursement from the Defendant as her attorney fees and expert costs are reasonable and necessary. This case involves years of litigation and extensive discovery to address the complex business of financing and business dealings in the used car industry. The litigation required the review of business records and corporate and individual tax returns spanning well over a decade. Plaintiff's attorneys and her expert witness devoted considerable time and effort in representing Plaintiff's interests. I find that the fees submitted by counsel are fair, reasonable and customary for this locality. Plaintiff's attorneys obtained a favorable result in this matter. Therefore, Defendants shall pay to the Plaintiff's attorneys the amount of $56,868.53 in fees and costs which the court finds reasonable and necessary.

24. The court finds that the Plaintiff shall have judgment in her favor as to Defendants' counterclaims.

CONCLUSIONS OF LAW

1. "Where an agreement is clear and capable of legal construction, the court's only function is to interpret its lawful meaning and the intention of the parties as found within the agreement and give effect to it." Department of Transp. v. M & T Ent., 379 SC 645, 667 SE2d 7 (S.C. App. 2008), "A Court must enforce an unambiguous contract according to its terms regardless of its wisdom or folly, apparent unreasonableness, or the

parties' failure to guard their rights carefully." Id. It is well settled law that parole evidence is not admissible to vary the terms of a Promissory Note which shows clear terms and conditions as recited in the case of Ray v. S.C. National Bank, Inc., 281 S.C. 170, 314 SE2d 359 S.C. App. 1984). In this matter both the original holder of the Note and the Defendant Paul Cromer went to the office of Harold Threlkeld, Esquire to sign the Promissory Note Mr. Threlkeld prepared based upon the terms of their agreement. The Note explicitly sets out that only the interest due on the principal of the Note is subject to 50% of the profits on car loans for the calendar year minus 50% of the bad debts on car loans."

2. One cardinal rule of contract interpretation is to ascertain and give effect to the intention of the parties. "To determine the intention of the parties, the court 'must first look at the language of the contract'." Department of Transp. v. M & T Ent., 379 SC 645, 667 SE2d 7 (S.C. App. 2008) [citing Chan v. Thompson, 302 S.C. 285, 395 SE2d 731 (Ct. App. 1990)].

3. The standards for determining reasonableness of attorney's fees is set forth in the case of Seabrook Island Property v. Berger, 365 S.C. 234, 616 SE2d 431 (S.C. 2005). There are six factors to consider in determining the award of attorney's fees: (1) nature, extent, and difficulty of the legal services rendered; (2) time and labor devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) fee customarily charged in the locality for similar services; and (6) beneficial results obtained. After careful review of the relevant factors and observing the trial, the court concludes that $56,868.53 is a reasonable amount of attorney fees and costs for Plaintiff's attorneys.

4. Damages recoverable for a breach of contract are those which follow as a natural consequence of the breach or which may reasonably be supposed to have been

within the contemplation of the parties at the time the contract was entered into. Kline Iron & Steel Co. v. Superior Trucking Co., Inc., 261 S.C. 542, 201 SE2d 388 (S.C. 1973).

5. S.C Code Ann. §15-3-530 bars claims more than three years old and requires a party to commence action before the expiration of the three-year period.

6. The Master In Equity as trier of fact may accept or reject any of a witness's testimony, including that of an expert witness. Dixon v. Besco Engineering, Inc. 320 S.C. 174, 463 SE2d 636 (S.C. App. 1995). The fact finder must determine the weight to be accorded the testimony of the witnesses, and accept or reject their valuations. Bray v. Head 311 S.C. 490, 429 SE2d 842 (S.C. App. 1993).

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that:

1. The Plaintiff is awarded judgement against the Defendants in the amount of Two Hundred Fifty-seven thousand and 00/100 ($257,073.00) Dollars.

2. The Defendants shall pay Fifty-Six Thousand Eight Hundred Sixty-eight and 53/100 ($56,868.53) Dollars in attorneys' fees and costs to the Plaintiff's attorneys.

3. The Plaintiff shall have judgment in her favor as to Defendants' counterclaims.

IT IS SO ORDERED this _____ day of _____, 20_____.

_____
Steven C. Kirven
Master In Equity
Tenth Judicial Circuit

Anderson, South Carolina.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016- **CP**-04-00443

Vicki Littlefield
PLAINTIFF(S)

Paul W. Cromer, Jr., individually and d/b/a Paul Cromer, Inc.
DEFENDANT(S)

Submitted by: Robert L. Waldrep, Jr	**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 :

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)
Vicki Littlefield	Paul W. Cromer, Jr. dba Paul Cromer, Inc	$257,073.00
Robert L. Waldrep, Jr, P.A.	Paul W. Cromer, Jr. dba Paul Cromer, Inc	$56,868.53

		$

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.

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:

Robert L. Waldrep, Jr.
Elizabeth Waldrep

ATTORNEY(S) FOR THE PLAINTIFF(S)

J. Calhoun Pruitt, Jr.
Joshua B. Raffini

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Ellen Bowen

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.

See attached Order.

Anderson Common Pleas

Case Caption: Vicki Littlefield VS Paul W Cromer Jr , defendant, et al

Case Number: 2016CP0400443

Type: Master/Order/Form 4

And it is so ordered

s/ Steven C. Kirven, Master in Equity, #3081

Electronically signed on 2020-04-16 17:51:13 page 15 of 15