

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable Doyet Early, III

Trial Court Case 2016-CP-40-00100

Hills Machinery Respondent
Company, LLC
v.

Jackson Development..... Appellants.
Group, LLC and J. Elliott Summey

SUPPLEMENTAL RECORD ON APPEAL

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| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | CIVIL ACTION NO. 16-CP-40-00100 |
| COUNTY OF RICHLAND |) | |
| Hills Machinery Corporation, LLC, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | NOTICE OF MOTION AND MOTION |
| |) | TO RECONSIDER ORDER |
| Jackson Development Group, LLC and |) | |
| J. Elliott Summey, |) | |
| |) | |
| Defendants. |) | |

TO: THE HONORABLE DOYET A. EARLY, III

YOU WILL PLEASE TAKE NOTICE THAT the Defendants Jackson Development Group, LLC and J. Elliott Summey pursuant to S.C.R.C.P. 59 will move on the tenth day after service hereof, or as soon thereafter as counsel may be heard, before the Honorable Doyet A. Early, III for an Order of this Court granting their Motion to Reconsideration the Court's Order Granting Hills Machinery Company, Inc. Judgment entered February 13, 2019 and received electronically on February 13, 2019.

Defendants' Motion is based upon the grounds that the Court's Order was based upon factual errors, as well as errors at law and inconsistencies contained within the Order. The errors include, but are not limited to, the following:

- (1) Defendants only owe \$42,226.06 to Plaintiff;
- (2) Plaintiff is not entitled to interest or attorney fees;
- (3) In the event this Court finds that Plaintiff is entitled to interest under an account stated cause of action, the interest rate is set by statute, not a separate contract. Pursuant to S.C. Code §34-31-20, the rate of interest should be 8.75%, not 18%;
- (4) No statement of account presented to Defendant entitled Plaintiff to attorney fees and was never signed by an agent of Defendant; and
- (5) The Court failed to account for Plaintiff's admitted failure to mitigate its damages under the account.

For these reasons, the Defendants Jackson Development Group, LLC and J. Elliott Summey, request that this Court grant its Motion for Reconsideration of its Order.

This motion shall be further based upon the statutory and common laws of the State of South Carolina, the South Carolina Rules of Civil Procedure, the pleadings heretofore filed, and any and all affidavits memorandums and supporting material which may be served on or before the date of service hereon.

Respectfully Submitted,

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And J. Elliott Summey

February 20, 2019

Summerville, South Carolina

| | | |
|-------------------------------------|---|-------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
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| Hills Machinery Company, LLC, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| |) | |
| Jackson Development Group, LLC, and |) | |
| J. Elliott Summey, |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

AFFIDAVIT OF M. BARON STANTON
RE FEES AND EXPENSES IN CASE TO 2-25-19

Personally appeared before me, an officer duly authorized by law to administer oaths, M. Baron (“Barry”) Stanton, who after being sworn and under penalty of perjury, states as follows:

1. I am the sole shareholder and designated director of Stanton Law Offices, P.A. and a member in good standing with the South Carolina Bar. I offer this Affidavit on my personal knowledge pursuant to this Court's February 13, 2019 Order after a bench trial, granting Plaintiff judgment in the amount of \$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, plus the costs and expenses incurred thus far in collecting the money due under the account, including reasonable attorney’s fees.

2. Therein, the Court stated,

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.

The proposed order and proposed amended Form 4 accompany this affidavit.

3. I graduated from the University of South Carolina School of Law in 1986. I was admitted to the South Carolina Bar the same year. I have practiced law in South Carolina full-time and continuously since then.¹ I am in good standing; I am familiar with standards and

¹My present law office was established in 1994. I have a listed phone number. I do not maintain a resume, do not advertise, do not have a website, and do not use Facebook or any social media. I do not apply to, respond to, pay, or provide any listings on or in, Martindale Hubbell, AVVO, Who's Who, Best Lawyers, Superlawyers, the Better Business Bureau, any chamber of commerce, Linked-In, or any lawyer-promoting, lawyer-ranking, or lawyer-listing, web services or other publications. Any found are unauthorized and likely inaccurate.

I do not report my pro bono work. I do not have a sign on my building. The identities of my clients are not discussed or ever advertised.

Exclusive of law-related work in law firms, an indigent services office and the legislature before law school, I worked for two firms before opening my own. One, the successor to a firm opened by one of our former governors, engaged primarily in business and private international law and commercial litigation, in state and federal courts. I engaged in all those activities, as well as served as the firm's immigration law department. My first real estate closing my first year was an office building consuming nearly an entire city block, and my first federal litigation commencing in my first year was multi-year litigation of a business dispute between airlines involving claims of fraud, unfair trade practices, violation of the Sherman and Clayton Antitrust Acts, and violation of the Racketeer Influenced and Corrupt Organizations Act. The case, defended by a Miami in-house legal department and firms from Charleston, Atlanta, and New York, was resolved before the demise of Eastern Airlines in the late 1980s.

The other, at the time a 90-year-old firm, provided a full range of services, and I was engaged in all, although primarily in civil litigation and transactional work, with a dash of white collar criminal work.

I have owned and run my own operation for the last twenty four years as of April of 2018.

I have formed -- and represented in consultation, transactions and litigation -- environmental engineering firms, technology companies, and real estate ventures.

I have sued and defended banks, construction companies, title insurance companies, sellers of products, and injurers of people. I have defended radio stations and sold radio stations

in bankruptcy proceedings. I have overseen, litigated the successful result of, and defended on appeal, a corporate proxy battle, and have litigated the meanings of and applications of the provisions of the corporate and LLC codes. I have negotiated the sale of oil and gas reserves. I have sued for violations of the Securities Act of 1933, the Securities Exchange Act of 1934 and related laws.

I have done: mergers and acquisitions work; health- and-casualty-insurance inter-company negotiations and consulting; appellate work of all kinds (including work resulting in a published case on entitlement to and reasonableness of attorney's fees); injury and malpractice litigation; commercial lease negotiations and eviction litigation; distributorship and international distributorship structuring and negotiation; occasional licensure and other administrative or regulatory proceedings and contested cases.

I have done: all sides of debtor-creditor law, from counseling, to asset structure planning, to strategic response to collections, to all phases of litigation, to debtor or creditor bankruptcy (from time to time); property tax and tax sale contested cases and litigation; condemnation defense and negotiation; land use, building and zoning work; horizontal property regime work and litigation (e.g., condominium and condominium-timeshare); and some intellectual property drafting, negotiation, consulting and litigation.

I have also done: lawyer ethics and grievances representation; construction litigation; constitutional and state tort claims litigation; housing law litigation; litigation involving Articles 2, 3, 4, 5, 6, 7 and 9 of the UCC; trust and probate litigation; occasionally bizarre family law; complex estate planning (now mostly from a consult-structure-and-and-refer standpoint); when required, criminal law (federal white collar, or magistrate or municipal court adjuncts to other cases); school law; labor and employment law and litigation; land use litigation; principal-surety and surety-beneficiary litigation; lender liability litigation; wreck cases; and things I, and often others, have never done before.

I have represented in litigation and otherwise, farmers, dog owners, Middle Eastern royalty, horse stables, server farms (a/k/a internet "clouds"), lawyers, unconventional lenders, real estate brokers, real estate developers, homeowners, unit owners, landlords, tenants, debt and residual asset purchasers, heavy equipment and other industrial equipment companies, every-day working people, captains of industry, the poor, the injured, the convicted, the downtrodden, the disbarred, the depressed, the crazy, and the oppressed.

I have lectured to the bar over the years on such topics as defamation, lawyer ethics, and lender liability. I have been written about anonymously as a lawyer with interests in the economics of law practice and as a lawyer playing in a rock band, and have spoken on the radio about collection of judgments.

I have been a member of the Pawleys Island Civic Association for 21 years. I served on the board of an entirely private specialized instruction/special needs school for the nine year maximum (at times, vice-chairman, chair of development committee, and chair of building committee) and was heavily involved in the planning, siting, detailed design, architecture, legal, and construction oversight functions for two beautiful large buildings and grounds improvements. For the latter, I received the board's Ed Pulaski award, complete with genuine

qualities of legal service rendered from town to town, county to county, state to state, and to some extent, country to country; I am familiar with the rates of colleagues in the community, across the country and, in some instances, in other parts of the world; I am familiar with the needs, demands, and results in the instant case; I am familiar with the factors of Blumberg v. Nealco, Inc., 310 S.C. 492, 427 S.E. 2d 659 (1993) pertaining to the reasonableness of attorney's fees; and am familiar with the fee and expense recovery provisions in (i) the credit application signed by Mr. Summey in this case, (ii) each of the four (4) rental contracts entered by Mr. Summey's company in this case, and (iii) the footer on each and every one of the fifteen invoices at issue in this case, and all the numerous earlier ones sent to the defendants.

4. I served as sole counsel in this proceeding. Others in my office, with whose work I am also familiar, and with whom I coordinated, and whom I trained and supervised, also provided directly related services.

5. My own rates are in my estimation, lower than those customarily charged by others in the locality for similar services, which is to the advantage of the opposing parties in this case. My rates are, however, generally what I charge in the locality for similar services, although I do not always defer or temporarily discount some of the time, as described hereinbelow.

6. Given: (a) the nature, extent and difficulty of the legal services rendered; (b) the

used Pulaski Tool, recognizing contribution of work, and multi-purpose invention for no recognition or gain, simply out of desire to fill a need.

I have also served on the board of a homeowner's association for a mainland mobile home beach enclave, currently as president. I am also a member of the Waverly Creek [owner's] Association. I recently became the live music provider and coordinator for the Pawley's Island Surf Club's efforts to raise funds for widows and families of dead surfers. Most of my community work and modest philanthropic activity (including pro bono cases lasting years), however, is unreported if not anonymous.

time and labor devoted to the case; (c) the professional standing of counsel; (d) the contingency of compensation, (e) the fee customarily charged in the locality for similar services; and (e) the beneficial results obtained: The fees and expenses of my office are reasonable and the fees and expenses sought by Hills Machinery are reasonable. Total fees and out-of-pocket expenses of at least \$32,548.55, as of 2-25-19, directly associated with the collection of the money due, should be awarded as the costs and expenses, including reasonable attorney's fees, of Hills Machinery Company, LLC up to this point in the collection of the funds due. Additional expenses of this nature should be awarded for work and outlays following 2-25-19. In this regard, I note that the defendants have filed a post-trial motion upon which we have not yet expended efforts.

7. Time spent and expenses incurred in the matter for the almost four years represented by the 4-28-15 through 2-15-19 statements of my office are as follows:

| | | | |
|----------------------|------|---|-------------|
| M. Baron Stanton | 70.3 | hours billed at \$175 per hour | \$12,302.50 |
| M. Baron Stanton | 15.3 | hours unbilled ² at \$175 per hour | \$2,677.50 |
| M. Baron Stanton | 74.6 | hours billed at \$190 per hour | \$14,174.00 |
| M. Baron Stanton | 13.3 | hours unbilled at \$190 per hour | \$2,527.00 |
| William P. Sefcik | 4.0 | hours billed at \$45 per hour | \$180.00 |
| Matthew V. Christian | 25.8 | hours billed at \$45 per hour | \$1,161.00 |
| Matthew V. Christian | 3.0 | hours unbilled at \$45 per hour | \$135.00 |
| Jessica L Paribello | 9.0 | hours billed at \$45 per hour | \$405.00 |
| Expenses advanced | | (e.g., filing fees, service of process, | |

²Other than time which was recorded, but which was deferred on the bills as not yet charged, the bills between and 2-15-19 also include a total \$672.57 in overall courtesy discount-deferrals applied as line items, only for the benefit of Hills Machinery.

| | |
|---|--------------------|
| photocopies, postage, courier, court reporter, mileage at lower than federal reimbursement rate, mediator fee, etc.) | <u>\$2,549.12</u> |
| SUBTOTAL (to 2-15-19 statement) | <u>\$36,111.12</u> |

8. Time spent since the 2-15-19 statement, not yet in the billing system, is as follows, as of 2-25-19:

| | | |
|---|-------------------------------------|--------------------|
| M. Baron Stanton | 12.3 hours billed at \$190 per hour | \$2,337.00 |
| Jessica L Paribello | 2.5 hours billed at \$45 per hour | \$112.50 |
| Expenses advanced (e.g., filing fees, service of process, photocopies, postage, courier, court reporter, mileage at lower than federal reimbursement rate, mediator fee, etc.) | | <u>\$0</u> |
| SUBTOTAL (post-2-15-19 statement to 2-25-19) | | <u>\$2,449.50</u> |
| TOTAL (to 2-25-19, not including work after that) | | <u>\$38,560.62</u> |

9. There are no unrelated expenses to separate. The legal expense all relates to effort to collect the same money. The claim began with potential mechanic's liens and a potential bond claim. The litigation seeking the same money was based on related and intertwined legal theories for recovery of the same amount based on the same items of debt -- action on an account stated, breach of contract, and action on an open account. The billing included only the time on the one

matter.

10. The actual billing records of my office reflecting the legal services and actual expenses incurred and agreed by Hills Machinery in connection with collection of the account consist of seventy-two pages over almost four (4) years from the 4-28-15 bill to the 2-15-19 bill.

11. As noted, work on the case has continued since the 2-15-19 bill, but we are mindful that the defendants are also liable for the continuing legal expense. We are attempting to minimize these expenses while being sufficiently thorough and accurate. Our billing records in this case span a considerable length of time, are lengthy, and in some instances are detailed in referencing subjects of research, sometimes the results of research, attorney impressions, confidential client communications, and settlement overtures, and the case and efforts to actually collect the actual money are still open and ongoing. As noted, the defendants have filed a post-trial motion. We therefore cannot present a single unprivileged bill with one total.

12. All the time incurred in the case and all the expenses advanced were legal expense necessarily and actually incurred in pursuing the collection of the account. My bills reflect some notations of time necessarily and reasonably spent, but discounted temporarily purely as a courtesy only to Hills Machinery, and not to anyone else. To my recollection, there was also time necessarily spent directly on the case from time to time, which I simply did not record. My estimate is five to as much as fifteen hours over the years the case has been pending.

13. Time was of the essence in the case, and still is, and thoroughness was required, and still is. Initially, we were presented with a case in which the defendants were not paying, and liens needed to be filed and bond claims needed to be made. After discussions between the

parties, no lien was filed nor bond claim, made. Later, we were still presented with a case of failure to pay despite renewed promises to do so.

14. Having had no indication of an existing dispute at the time of filing suit, initially, we continued to be unsure from the defendants' pleading and communications, the nature of the defense. Before the issues were narrowed, the defendants indicated the possibility of dispute of whether there was a contractual provision for interest, and a dispute of whether there was a contractual provision for attorney's fees. We promptly furnished the contractual bases for these things. We commenced discovery, and began shaping the case for summary judgment. The case came up relatively soon on the trial roster, on its own, and when opposing counsel, Mr. Goodstein, asserted it was too soon, we cooperated.

15. The defendants eventually had, not one, but two, able, learned counsel with good reputations. We continued to pursue discovery, including followups and motions compel.

16. The defendant Mr. Summey readily volunteered in his deposition that he was experienced in contested legal matters (i.e., stating it was "not his first rodeo"). Before the issues were narrowed, the defendants indicated in deposition the possibility of dispute of something on almost every invoice, on issues ranging from backup cameras, to root rakes, to fuel costs. We continued to pursue summary judgment, which ended up requiring two hearings. We sought additional discovery thereafter, also requiring followup and motion work. We periodically inquired with the Clerk's office about moving the case forward onto the roster.

17. We also mediated, the details of which are, by rule as well as agreement of the parties, off the record and confidential.

18. Closer to trial, we were advised that the defendants wished to continue to assert as a defense to repair charges, an alleged design defect of a machine the plaintiff did not design or manufacture. We arranged for potential additional witnesses and prepared potential testimony on machine design, and evidence of customer abuse or misuse of the equipment. We also prepared additional potential testimony about the pertinent terms of the rental contracts. At one point closer to trial, the defendants, although listing two witnesses in compelled discovery responses, estimated that they could have as many as four witnesses and that the trial would take all day and possibly two days.

19. After the defendants ceased to pay on the account and suit was filed, no part of the debt was paid and no part of the case was resolved without a trial and a final ruling. The results of the case were beneficial to Hills Machinery.

20. We attended all hearings and roster meetings. The latter were numerous and included roster meetings we covered for the defendants.

21. We, as Hills Machinery's counsel, never, to my recollection, sought for our own benefit, nor caused, any delay of trial, delay of hearing, delay of discovery, or continuance.

22. The trial took the better part of a day, and included opening statements. Two witnesses and numerous documentary exhibits took the most time, and two other witnesses provided relatively brief testimony. Mssrs. Hills, Hills and Allesandro, for the plaintiff, traveled to Columbia from the Charleston area for the trial. Their expenses are not included.

23. Proposed orders were submitted post-trial. The proposed order we submitted included a detailed account of the testimony, previously prepared extensive legal background on

the causes of action and remedies, and detailed interest calculations. The proposed order was thereafter amended pursuant to instructions from the Court.

24. Importantly, the fees sought by Hills Machinery are reasonable because they are not hypothetical. They are, rather, no more than the actual, bargained-for fees incurred and agreed for the actual time and expenses required. They are in fact less than the fees and expenses resulting from the fee agreement between my office and Hills Machinery and the time actually spent on the matter. I submit that as actually agreed fees, they are therefore, per se reasonable fees for my office to charge Hills Machinery, and per se reasonable fees to be taxed to the defendants in accordance with the agreement between the defendants and Hills Machinery.

25. The fees sought do not include a large amount of the actual, bargained-for fees incurred and agreed for the actual time and expenses required. The unbilled or temporarily discounted time in the case (noted above) is subject to later billing and was provided solely as a courtesy deferral for the immediate benefit of the client, and not a discount for the responsible

party. Additionally, our ongoing fee agreement with Hills Machinery provides: “We may in our discretion, increase our rates by up to 1/3 for actual in-court or hearing time, depending upon the nature of the case.”³ We have not exercised that increase for the numerous roster meetings, two summary judgment hearings and bench trial in the case.

26. In my opinion, the total fees and out-of-pocket expenses of \$38,560.62 recorded by my office for counsel services through 2-25-19 in connection with the case were reasonable, necessary and required, and \$32,548.55⁴ or more as of 2-25-19 should be an expense borne by the defendants as they agreed under contract, rather than by Hills Machinery.


M. Baron Stanton

SWORN TO BEFORE ME THIS

26th day of February, 2019.

Amanda J. Barz
Notary Public for South Carolina
My comm'n exp. 9/28/21

³I quote from our standard template and have not attempted to locate the agreement entered in another file years ago.

⁴Namely, a figure which does not include the \$5,339.50 in time noted as not currently charged, does not include the additional \$672.57 in overall courtesy discount-deferrals applied as line items, does not include an increase of our rates by up to one-third for actual in-court or hearing time before 2-25-19, and does not include any estimated unrecorded time.

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v.

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CERTIFICATION OF COUNSEL

I hereby certify that Appellant's Supplemental Record on Appeal conforms with the applicable Rules and does not contain any irrelevant information. All parties consented to the submission of this Supplemental Record.

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