STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS Civil Action No. 2012-CP-23-02887
David Wilson, individually and on behalf of Carolina Custom Converting, LLC, Plaintiff, v. John Gandis, Andrea Comeau-Shirley, ZOi Films, LLC, and Carolina Custom Converting, LLC, Defendants. v. Carolina Custom Converting, LLC, Counterclaim Plaintiff, v. David Wilson, Steve Norvell, Neologic Distribution, Inc., and Fresh Water Systems, Inc. Counterclaim Defendants.	**ORDER**

This matter comes before this Court on reference by order dated October 8, 2020 as well as a Consent Order dated January 26, 2021 to determine the amount of post-judgment interest, if any, that has accrued on the January 9, 2015 judgment in the above-reference matter.

INTRODUCTION

The facts and procedural history of this 9-year litigation are set out fully in *Wilson v. Gandis*, 430 S.C. 282, 844 S.E.2d 631 (2020), by which the S.C. Supreme Court unanimously upheld Judge Garrison Hill's judgment in favor of Plaintiff Dave Wilson against Defendants for acts of shareholder oppression. The Supreme Court concluded: "We completely agree with the

trial court's conclusion that '[t]he record—particularly the remarkable emails between Gandis and Shirley—abounds with evidence of calculated oppression.' We find Wilson has proven [John] Gandis and [Andrea] Shirley engaged in oppressive conduct against him." *Id. at* 309, 844 S.E.2d at 645. The Supreme Court affirmed the judgment, but modified the judgment to require that Defendant Carolina Custom Converting, LLC ("CCC") to have a reasonable amount of time to pay the judgment. After a reasonable time, Plaintiff could seek to have the judgment paid by Defendants Gandis and Shirley.

After collecting the original judgment amount from the bond posted by the Defendants, Plaintiff seeks to begin supplemental proceedings to collect post-judgment interest pursuant South Carolina Code section 34-31-20(B). Defendants argue that the Supreme Court's decision affirming as modified the January 9, 2015 judgment constitutes a new judgment. Defendants asked this Court to declare that South Carolina Code section 34-31-20(B) is inoperative in the instant case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On January 9, 2015, Plaintiff Dave Wilson obtained a money judgment for the value of his membership interest in Carolina Custom Converting, LLC. As it relates to post-judgment interest for money judgments, South Carolina law is clear:

> A money decree or judgment of a court enrolled or entered *must* draw interest according to law. The legal rate of interest is equal to the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year for which the damages are awarded, plus four percentage points, compounded annually. The South Carolina Supreme Court shall issue an order by January 15 of each year confirming the annual prime rate. This section applies to all judgments entered on or after July 1, 2005. For judgments entered between July 1, 2005, and January 14, 2006, the legal rate of interest shall be the first prime rate as published in the first edition of the Wall Street Journal after January 1, 2005, plus four percentage points.

S.C. Code Ann. § 34-31-20 (B)(emphasis added). "Our courts have consistently held that use of words such as "shall" or "must" indicates the Legislature's intent to enact a mandatory

requirement." *See e.g., State v. Frey*, 362 S.C. 511, 516, 608 S.E.2d 874, 877 (Ct. App. 2005). The Supreme Court has stated that post-judgment interest under §34-31-20(B) is mandatory (such that a plaintiff does not even need to request it or plead its entitlement). *Calhoun v, Calhoun*, 339 S.C. 96, 102, 529 S.E.2d 14 (2000). This statute creates no exceptions, and the S.C. Supreme Court has found none. [1]

In recognition of the mandatory nature of § 34-31-20(B), our Supreme Court created a "bright-line test" for determining the date of judgments that are "affirmed, but modified." In *Calhoun v. Calhoun*, 339 S.C. 96, 529 S.E.2d 14 (2000), the amount of the judgment had changed on appeal and one of the issues on cert before the Supreme Court was whether modification of the judgment impacted application of the § 34-31-20(B). The Supreme Court held that statutory post-judgment interest runs from the date of the original judgment despite the modification. The Court found that the statute's mandatory language (shall/must) controlled. The Court reasoned as follows:

> The case before us is a perfect example of how complicated calculating post-judgment interest can become when a money judgment is modified at several different junctures before reaching finality and why a bright line rule for the accrual of interest needs to be established. While different jurisdictions have come up with creative and complicated methods of resolving the issue, it appears that the simplest way to resolve it is by adopting a rule that when a money judgment is finalized, whether in a lower court or in an appellate court, the interest on that amount, whether it has been modified upward or downward or remains the same, runs from the date of the original judgment.

Calhoun v. Calhoun, 339 S.C. 96, 104, 529 S.E.2d 14, 18–19 (2000).

In *Calhoun*, the Court states clearly that after a judgment is modified (even at "at several different junctures"), the judgment becomes "finalized" in the appellate court. However, the

[1] "[T]he purpose of post-judgment interest is to compensate the successful plaintiff for being deprived of compensation for the loss from the time between the ascertainment of the damage and the payment by the defendant." *Kaiser Aluminum & Chem. Corp. v. Bonjorno*, 494 U.S. 827, 835–36, 110 S. Ct. 1570, 1576, 108 L. Ed. 2d 842 (1990)(citation omitted). *See* Affidavit of David Wilson.

interest runs from the "date of the *original* judgment." The Supreme Court agreed and held that post-judgment interest accrues from the date of judgment's origin and not the date of the judgment's finalization. So, it is in this case, and this Court finds that Plaintiff is entitled to an award of interest pursuant to S.C. Code § 34-31-20(B) from the date of the January 9, 2015 judgment.

Moreover, although the Supreme Court decision makes CCC primarily liable for payment of the money judgment, Gandis and Shirley remain obligated in the event that the judgment is not paid within a reasonable time. Moreover, the fact that Gandis and Shirley are the majority owners of CCC and the individuals who made the decisions leading to the trial court's order, there is no undue prejudice by allowing the statutory interest. In fact, to hold otherwise, would be to allow a windfall to the at-fault and appealing parties. *See Calhoun*, 529 S.E.2d at 14.

South Carolina Code Ann. § 34-31-20 (B) (2020) provides that the legal rate of interest on money decrees and judgments "is equal to the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year for which the damages are awarded, plus four percentage points, compounded annually." The Supreme Court Order 2021-01-04-01 provides that the statutory rate of interest from January 15, 2021 through January 14, 2022 shall be 7.25%. Based upon the Supreme Court orders setting forth the amount of interest, this Court finds that the total accrued interest through the date of May 1, 2021 is equal to $208,930.15.[2]

This court denies Plaintiff's request for attorneys' fees. This Court finds that the issues raised herein are novel and do not justify an award of fees.

IT IS SO ORDERD.

JUDGE'S SIGNATURE PAGE TO FOLLOW

[2] Interest will continue to accrue until January 14, 2022 at a rate of $40.97/day. After this date, interest will accrue at the statutory rate issued by the Supreme Court for that year.

Greenville Common Pleas

Case Caption: David Wilson , plaintiff, et al vs. John Gandis , defendant, et al

Case Number: 2012CP2302887

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And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)