

W Y C H E

Attorneys at Law

September 1, 2021

RECEIVED

Sep 01 2021

SC Court of Appeals

BY FIRST CLASS MAIL AND BY EMAIL

Hon. Jenny Abbott Kitchings, Clerk  
South Carolina Court of Appeals  
1220 Senate Street  
P.O. Box 11629  
Columbia, SC 29211

Re: Julia Sibley-Jones v. Decide4action, Inc., Appellate Case No. 2021-000875  
*Hudson* Notice

Dear Ms. Kitchings:

We represent Respondent in this appeal. Pursuant to *Hudson v. Hudson*, 290 S.C. 215, 349 S.E.2d 341 (1986), we hereby notify the Court that Respondent timely filed a post-trial motion under Rule 59 simultaneously with or subsequent to the Appellant's Notice of Appeal.

A copy of Respondent's Rule 59 motion, filed August 9, 2021, as well as the Judgment on appeal dated July 30, 2021, authorizing the Rule 59 motion, are enclosed.

Accordingly, we request that this appeal be dismissed without prejudice.

Best regards,



Gregory J. English  
(SC Bar No. 65470)

(864) 242-8247  
genglish@wyche.com

GJE/sc

Enclosures

cc: Kimberly T. Thomason, Esq. (by mail & email)  
Devon M. Puriefoy, Esq. (by mail & email)

W Y C H E  
PROFESSIONAL ASSOCIATION

PO Box 728, Greenville, SC 29602-0728  
p: 864.242.8200 | f: 864.235.8900  
www.wyche.com

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

COUNTY OF GREENVILLE

Case No. 2019-CP-23-02032

Julia Sibley-Jones, as Personal  
Representative of the Estate of William  
A.L. Sibley, Jr.,

Plaintiff,

vs.

Decide4action, Inc.,

Defendant.

**PLAINTIFF'S AND  
THIRD-PARTY DEFENDANT'S  
MOTION TO ALTER AND AMEND  
JUDGMENT TO INCLUDE ACCRUED  
INTEREST, PREJUDGMENT INTEREST,  
AND COSTS**

Decide4action, Inc.,

Counterclaimant/Third Party Plaintiff,  
vs.

Julia Sibley-Jones, as Personal  
Representative of the Estate of William  
A.L. Sibley, Jr., and Joyce Featherstone,

Counterclaim Defendant/Third Party  
Defendant.

Plaintiff Julia Sibley-Jones and Third-Party Defendant Joyce Featherstone (collectively, "Sellers") hereby move the Court, pursuant to Rules 54, 58, and 59, SCRCP, and other applicable law, to alter and amend the Judgment in favor of Plaintiff against Defendant Decide4action Inc. ("Decide4action") to include awards of: (1) actual damages in the amount of \$443,869.43 being held by United Community Bank ("UCB") in escrow, plus accrued interest (the "Escrow Fund"); (2) prejudgment interest on the \$440,000 held in the Escrow Fund from October 16, 2018, to August 16, 2021; and (3) costs, as follows:

Escrow Fund as of July 16, 2021	\$443,869.43 (plus accrued interest)
Prejudgment interest to August 16, 2021	109,833.33
Costs	+ <u>999.31</u>
<b>Total Judgment vs. Decide4action, Inc.</b>	<b>\$554,702.07 (plus accrued interest)</b>

This motion is made upon the following grounds:

1. **The Judgment should be altered and amended to clarify that Decide4action is liable to Plaintiff in the amount of \$443,869.43 plus accrued interest on her breach of contract claim.**

In its Judgment in a Civil Case dated July 28, 2021, and filed July 30, 2021 (the “Judgment”), the Court granted Plaintiff’s motion for directed verdict and ordered the Escrow Fund be released to Plaintiff. *Id.* at p. 2 (“The Plaintiff then moved for a Directed Verdict on the Breach of Contract action regarding the distribution of the Escrow Account being held by [UCB] under the [Escrow Agreement].... [T]he Court granted Plaintiff’s Motion for Directed Verdict and ordered that the escrow funds being held by UCB be released to the Plaintiff.”).

This granting of directed verdict to Plaintiff on her breach of contract claim was correct because the Indemnity Escrow Agreement, Plaintiff’s Exhibit 9 (the “Escrow Agreement”), at p. 2, § 3(d), required that Decide4action prove a “Pending Claims Amount” in order recover any amount from the Escrow Fund.

Decide4action never proved a Pending Claims Amount. In fact, Decide4action admitted in its Rule 30(b)(6) deposition published in court that the claim it submitted to UCB was not the claim it wanted to try to prove to the jury. This is because what Decide4action submitted to UCB, Plaintiff’s Exhibit 10, was prohibited by the Stock Purchase Agreement (“SPA”), which provided:

**in no event shall any Seller be liable to Buyer for any punitive, incidental, consequential, special or indirect damages, including loss of future revenue or income, loss of business reputation or opportunity relating to the breach or alleged breach of this Agreement, or diminution of value or any damages based on any type of multiple.**

(Plaintiff’s Exhibit 8, p. 21, Section 8(b)) (emphasis added)

This language is absolute and applied to bar Decide4action’s claim to UCB, which was a claim of diminution in value of the Company based upon a multiple of EBITDA. Accordingly,

the Court correctly ruled that Decide4action breached the Escrow Agreement and Plaintiff was entitled to directed verdict against it on her breach of contract claim.

The Judgment for Plaintiff was listed as \$440,000 plus accrued interest. In addition to the original \$440,000 placed in the Escrow Fund, Sellers were also entitled to “any earnings and income thereon.” Escrow Agreement at 1, § 1(b). Therefore, Judgment against Decide4action should include all amounts in the Escrow Fund.

As of July 16, 2021, the Escrow Fund totaled \$443,869.43. Plaintiff’s Exhibit 21. Therefore, the Court should direct the clerk to enter judgment in favor of Plaintiff against Decide4action in the amount of \$443,869.43, plus interest accruing thereafter. Rules 54(b), SCRCF (decision final upon entry of judgment adjudicating all the claims and rights and liabilities of the parties); 58(a), SCRCF (Circuit Court shall enter judgment upon decision granting multiple forms of relief).

**2. The Judgment should be altered and amended to award Plaintiff prejudgment interest on \$440,000 from October 16, 2018, to August 16, 2021.**

Under S.C. Code Ann. § 34-31-20(A), liquidated sums bear prejudgment interest at the legal rate of 8.75% per annum. *Robert E. Lee & Co. v. Commission of Public Works*, 248 S.C. 92, 149 S.E.2d 59, 62 (1966); *Babb v. Rothrock*, 310 S.C. 350, 426 S.E.2d 789, 791 (1993); *T.W. Morton Builders v. von Buedingen*, 316 S.C. 388, 450 S.E.2d 87, 93 (Ct. App. 1994) (all finding that the law allows prejudgment interest on amounts that are liquidated).

Because the Closing Date was October 16, 2017, the \$440,000 originally placed in the Escrow Fund should have been released to Sellers on October 16, 2018. Escrow Agreement, p. 2, § 3(d) (Escrow Fund to be released to Sellers “on the first Business Day following the Indemnification Escrow Release Date,” defined as “the first anniversary of the date of the Closing Date”); Agreement regarding Application of Funds, Plaintiff’s Exhibit 16 (“Fund Agreement”), at

p. 2, § 5 (“on the first anniversary of the Closing (i.e., twelve (12) months following the Closing), any remaining amounts in the Escrow Account shall be paid to Sellers”).

Because it prevented Sellers from receiving the Escrow Fund for nearly three years and because it is liquidated amount, Decide4action is liable for prejudgment interest on the \$440,000. It does not matter that Decide4action disputed the amount. As noted by the Supreme Court:

The law allows prejudgment interest on obligations to pay money from the time when, either by agreement of the parties or operation of law, the payment is demandable and if the sum is certain or capable of being reduced to certainty. **The fact that the sum due is disputed does not render the claim unliquidated for the purposes of an award of prejudgment interest.** The proper test for determining whether prejudgment interest may be awarded is whether or not the measure of recovery, not necessarily the amount of damages, is fixed by conditions existing at the time the claim arose.

*Smith-Hunter Const. Co., Inc. v. Hopson*, 365 S.C. 125, 128, 616 S.E.2d 419, 421 (2005) (emphasis added; citations omitted).

The \$440,000 originally placed in the Escrow Fund is a liquidated sum because it is “certain or capable of being reduced to a certainty.” *Builders Transport, Inc. v. South Carolina Property & Casualty Ins. Guaranty Ass’n*, 307 S.C. 398, 415 S.E.2d 419, 424 (Ct. App. 1992); *Weeks v. McMillan*, 291 S.C. 287, 353 S.E.2d 289, 293 (Ct. App. 1987). “It is well settled in this state that the award of prejudgment interest is a function of the trial court ....” *Bickerstaff v. Prevost*, 380 S.C. 521, 524, 670 S.E.2d 660, 661 (Ct. App. 2008) (citing *Smith-Hunter Constr. Co. v. Hopson*, *supra*, and *Babb v. Rothrock*, *supra*). Therefore, the Judgment should have included prejudgment interest on the \$440,000.

The Judgment, however, incorrectly ruled that the lack of a provision in the Escrow Agreement for prejudgment interest precluded an award of prejudgment interest. The law, however, is that where a contract is silent on the rate of interest and Plaintiff is entitled to a liquidated amount, the Plaintiff is entitled to prejudgment interest at the legal rate set forth in S.C.

Code Ann. § 34-31-20(A). *Burnett Dubose Co., Inc. v. Starnes*, 284 S.C. 196, 324 S.E.2d 651 (Ct. App. 1984) (holding the statutory interest rate prescribed by Section 34-31-20 is applicable “in the absence of a written agreement between the parties fixing a different rate of interest.”); *Turner Coleman, Inc. v. Ohio Const. & Engineering, Inc.*, 272 S.C. 289, 251 S.E.2d 738 (1979) (same).

Pursuant to the parties’ Escrow Agreement, the \$440,000 in the Escrow Fund was to be released to Sellers on October 16, 2018. *Id.* at p. 2, § 3(c); Fund Agreement at p. 2, § 5. Therefore, Decide4action owes Plaintiff interest on the \$440,000 from October 16, 2018, to August 16, 2021, or 2 years and 10 months, at the legal rate of 8.75% in the amount of \$109,833.33 ( $\$440,000 \cdot .0875 \cdot 2 \frac{10}{12}$ ).

Accordingly, the Judgment should be altered and amended to add prejudgment interest of \$109,833.33. S.C. Code Ann. § 34-31-20(A); Rule 59(e), SCRPC.<sup>1</sup>

**3. The Judgment should be altered and amended to award Plaintiff costs of \$999.31.**

Plaintiff should also be awarded the following costs under Rule 54(d), SCRPC:

\$180.32	Filing fee for summons and complaint (Rule 54(e)(2), SCRPC)
31.74	Filing fee for motion to compel (Rule 54(e)(2), SCRPC)
<u>+787.25</u>	Deposition of Decide4action (S.C. Code Ann. § 15-37-40)
\$999.31	

*See* Exhibit A.

“Once a trial judge awards costs to the prevailing party the clerk shall insert in the judgment costs of ‘the fees of witnesses’ and ‘the reasonable compensation of commissioners in taking depositions.’ S.C. Code Ann. § 15-37-40 (1976). In addition, the Rules of Civil Procedure

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<sup>1</sup> Of course, once received by Plaintiff, the Escrow Fund, including interest accrued thereon from October 16, 2017, will be credited against and reduce the amount owed by Decide4action on the Judgment.

recognize that the prevailing party shall be allowed costs per a trial court's ruling. Rule 54(d), SCRCP.” *Peterson v. National R.R. Passenger Corp.*, 365 S.C. 391, 618 S.E.2d 903, 908 (2005). Accordingly, the Judgment should be altered and amended to add \$999.31 in costs. Rule 59(e), SCRCP.

**CONCLUSION**

For the foregoing reasons, the Court should alter and amend the Judgment, and direct the Clerk of Court to enter judgment in favor of Plaintiff against Defendant Decide4action Inc. as follows:

Escrow Fund as of July 16, 2021	\$443,869.43 (plus accrued interest)
Prejudgment interest to August 16, 2021	109,833.33
Costs	+ <u>999.31</u>
<b>Total Judgment vs. Decide4action, Inc.</b>	<b>\$554,702.07</b> (plus accrued interest)

Respectfully submitted,

WYCHE, P.A.

By: s/ Gregory J. English  
 Gregory J. English (SC #65470)  
 200 E. Camperdown Way  
 Post Office Box 728  
 Greenville, SC 29602-0728  
 Telephone: 864-242-8200  
 Telefax: 864-235-8900

Attorneys for Plaintiff and Third Party Defendant  
 Julia Sibley-Jones, as Personal Representative of the Estate  
 of William A.L. Sibley, Jr. and Joyce Featherstone

August 9, 2021

**EXHIBIT A**

**Greg English**

**From:** noreply@portal.sc.gov  
**Sent:** Thursday, April 11, 2019 3:44 PM  
**Subject:** Greenville County Circuit Court E-Filings Receipt

**Payment Receipt Confirmation**

Your payment was successfully authorized. Your credit or debit card will not be charged until the Clerk of Court accepts your filing.

**Receipt Contact Information**

**Contact Name** Greenville County Circuit Court  
**Contact Email**  
**Contact Url**  
**Contact Phone**  
**Contact Address** 305 East North Street ,  
Suite 226  
Greenville, SC 29601

**Transaction Summary**

Description	Amount
Greenville County Circuit Court - E-Filings	\$175.00
SC.GOV TOTAL	\$180.32

The online price of items or services purchased through SC.GOV, the state's official Web portal, includes funds used to develop, maintain, enhance and expand the service offerings of the state's portal.

**Customer Information**

**Customer Name** Gregory Jacobs English  
**Company Name**  
**Local Reference ID** F\_1634182\_2194  
**Receipt Date** 4/11/2019  
**Receipt Time** 03:44:19 PM EDT

**Payment Information**

**Payment Type** Credit Card  
**Credit Card Type** VISA  
**Credit Card Number** \*\*\*\*\*7598  
**Order ID** 70842970  
**Billing Name** Wyche, PA

**Billing Information**

**Billing Address** PO Box 728  
**Billing City, State** Greenville, SC  
**ZIP/Postal Code** 296020728  
**Country** US  
**Phone Number** 864-242-8247

**Greg English**

**From:** noreply@egov.com  
**Sent:** Thursday, December 10, 2020 11:17 AM  
**Subject:** Greenville County Common Pleas Court - E-Filings Receipt

**Payment Receipt Confirmation**

Your payment was successfully authorized. Your credit or debit card will not be charged until the Clerk of Court accepts your filing.

**Receipt Contact Information**

**Contact Name** Greenville County -  
Common Pleas - 23002 -  
E-Filings

**Transaction Summary**

Description	Amount
Greenville County - Common Pleas - 23002 - E-Filings	\$30.00
ServiceFee*SC.GOV	\$1.74
<b>TOTAL</b>	<b>\$31.74</b>

The online price of items or services purchased through SC.GOV, the state's official Web portal, includes funds used to develop, maintain, enhance and expand the service offerings of the state's portal.

**Customer Information**

**Customer Name** Gregory Jacobs English  
**Company Name**  
**Local Reference ID** F\_3265833\_2194  
**Receipt Date** 12/10/2020  
**Receipt Time** 11:16:54 AM EST

**Payment Information**

**Payment Type** Credit Card  
**Credit Card Type** VISA  
**Credit Card Number** \*\*\*\*\*7357  
**Order ID** 111584516  
**Billing Name** Wyche PA

**Billing Information**

**Billing Address** PO Box 728  
**Billing City, State** Greenville, SC  
**ZIP/Postal Code** 296020728  
**Country** US  
**Phone Number** 864-242-8247  
**This receipt has been emailed to the address below.**  
**Email Address** genglish@wyche.com



FORM 4

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

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2019CP2302032

William A L Sibley Jr	Decide4Action Inc William A L Sibley Jr Estate	Decide4action Inc	Joyce Featherstone
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PLAINTIFF(S) DEFENDANT(S)

Submitted by: Attorney for:  Plaintiff  Defendant  
 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), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):  Rule 40(j) SCRPC;  Bankruptcy;  Other: \_\_\_\_\_
- Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):  
 Affirmed;  Reversed;  Remanded;  Other: \_\_\_\_\_

**RECEIVED**  
**Sep 01 2021**  
 SC Court of Appeals

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: See Page \_\_\_\_\_  
**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)
William A L Sibley Jr Estate	Decide4Action, Inc.	Distribution of Escrow Funds (\$440,000) plus accrued interest

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.**

(Judge Gravely's E-Signature Page to Follow) 2755 7/28/2021  
 Circuit Court Judge Judge Code Date

For Clerk of Court Office Use Only

ELECTRONICALLY FILED - 2021 JUL 30 11:45 AM - GREENVILLE - COMMON PLEAS - CASE# 2019CP2302032

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

Gregory Jacobs English PO Box 728 Greenville, SC 29602-0728

Kimberly Truluck Thomason 3 Boyce Avenue Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

**Court Reporter:**

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

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

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. A jury trial was held in this matter. After the Plaintiff's case, Plaintiff moved for a Motion in Limine to restrict the Defendant from introducing any evidence of damages, and said Motion was granted on the various grounds set forth on the record. At the conclusion of the Defendant's case, the Plaintiff moved for a directed verdict on the Defendant's counterclaims on numerous grounds. Since the Court had already ruled that the Defendant was foreclosed from presenting any evidence of damages, the Defendant was not able to establish all of the elements of its causes of action asserted in its counterclaims and the Court granted the Plaintiff's Motion for a Directed Verdict, dismissing all of Defendant's Counterclaims. During the Motions, the Defendant's consented to the dismissal of Joyce Featherstone as a Third Party Defendant. The Plaintiff then moved for a Directed Verdict on the Breach of Contract action regarding the distribution of the Escrow Account being held by United Community Bank ("UCB") under the Indemnity Escrow Agreement ("Escrow Agreement"). Since the Defendant's counterclaims had been dismissed and no claim for offset had been asserted, the Plaintiff was entitled to the escrow funds held pursuant to the Stock Purchase Agreement and Escrow Agreement and the Court granted Plaintiff's Motion for Directed Verdict and ordered that the escrow funds being held by UCB be released to the Plaintiff. Defendant also moved for a directed verdict as to the Plaintiff's cause of action for Breach of Contract Accompanied by Fraudulent Act. The Court found that there was no credible evidence of fraud, even in light most favorable to the Plaintiff, and this Motion was granted and the Plaintiff's 2<sup>nd</sup> Cause of Action for Breach of Contract Accompanied by Fraudulent Act was dismissed. The Plaintiff asserted a claim for pre-judgment interest and the Court found that due to Defendant's viable claim under the Stock Purchase Agreement and the lack of such a provision in the Escrow Agreement, there was no basis for pre-judgment interest. In light of these rulings, no claims remained to be presented to the jury. The Court further instructed Plaintiff's counsel to submit a proposed Order directing UCB to release the escrow funds of \$440,000 including any accrued interest to the Plaintiff. Further, parties were granted 10 days for any post trial Motions with the deadline for such Motions being August 9, 2021. It is so Ordered.





Greenville Common Pleas

**Case Caption:** Julia Sibley Jones Personal Representative, plaintiff, et al vs.  
Decide4action Inc , defendant, et al  
**Case Number:** 2019CP2302032  
**Type:** Order/Judgment and Form 4

So Ordered

s/ Honorable Perry H. Gravely, #2755