IN THE SUPREME COURT OF IOWA

No. 20-1035

JAMES C. LAREW,
Plaintiff-Appellant/Cross-Appellee,

v.

HOPE LAW FIRM, P.L.C.,
Defendant-Appellee/Cross-Appellant.

and

ANDREW L. HOPE, TRAVIS J. BURK, and HOPE LAW FIRM & ASSOCIATES, P.C.,
Defendants-Appellees,

APPEAL FROM THE DISTRICT COURT
OF POLK COUNTY
NO. CVCV055562
HON. ROBERT B. HANSON, JUDGE

FINAL BRIEF OF PLAINTIFF-APPELLANT / CROSS-APPELLEE

Craig Kelinson
Dean Lerner
Kelinson & Lerner, PLC
P.O. Box 65372
West Des Moines, Iowa 50265
Phone: (515) 720-2839
Email: craig@kelinsonlaw.com
Email: dean@kelinsonlaw.com

ATTORNEYS FOR PLAINTIFF-APPELLANT / CROSS-APPELLEE

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ROUTING STATEMENT

This case involves substantial issues of first impression that: implicate fundamental legal ethics and principles; involve the appropriate practice of law; and measure attorneys' treatment of clients and fellow lawyers. Fundamental "issues of broad public importance requiring . . . ultimate determination by the supreme court" are at the core of this litigation. Iowa R. App. P. 6.1101(2)(d). This case implicates the Court's recent admonition in *Iowa Supreme Court Atty. Disciplinary Bd. v. Den Beste* regarding "nonclient theft" and the "need to deter other lawyers from engaging in similar conduct." 933 N.W.2d 251, 257 (Iowa 2019). It should be retained by the Iowa Supreme Court. Iowa R. App. P. 6.1101(2)(c), (e), and (f).

STATEMENT OF THE CASE

In January of 2018, Plaintiff-Appellant/Cross-Appellee James C. Larew ("Larew") filed a Petition against Defendants-Appellees Hope Law Firm, P.L.C. ("HLF")/Cross-Appellant, Andrew Hope ("Hope"), and Travis Burk ("Burk") to collect professional fees and expenses resulting from Larew's work in a Minnesota case, *Swanny of Hugo, Inc. v. Integrity Mutual Insurance*, 82-CV-12-347 ("*Swanny*"). Larew had obtained a $1,134,500 verdict in 2013 while working as co-counsel with HLF, but had never received payment or reimbursement. On July 26, 2018, Larew filed a First Amended Petition at Law, adding Hope

Law Firm & Associates, P.C. ("HLFA") as a Defendant, which Hope had incorporated three days after Larew had filed this lawsuit. The Amended Petition asserted the following claims (several in the alternative): breach of express contract; breach of implied contract; promissory estoppel; unjust enrichment; conversion; intentional interference with contract and prospective business advantage; conspiracy; and punitive damages.

On January 8, 2019, the district court granted Plaintiff's Motion for Partial Summary Judgment on the issue of liability for fees and expenses against Defendants, and specifically ordered expenses owed of $42,055.91, plus interest. The exact theory and amount of professional fees were to be determined at trial.

During two weeks in January and March of 2019, the district court conducted the trial. On May 6, 2019, the parties submitted proposed orders, and the case was fully submitted. In August of 2019, the district court ordered, pursuant to a 2018 Order on Plaintiff's Motion to Compel, that Defendants pay a sanction. On September 9, 2019, Plaintiff filed a Partial Satisfaction, noting that HLFA, the new entity, had issued the check.

On February 11, 2020, the district court issued its Findings of Fact, Conclusions of Law, and Ruling ("Ruling"). It held that only Defendant HLF was liable under a theory of implied-in-fact contract, and awarded *quantum meruit* damages in the amount of $261,640.39, plus interest, to Larew.

Larew filed a motion to enlarge and amend on February 26, 2020; HLF filed one the same day. The parties filed respective resistances to those motions on March 13, 2020. Larew filed a Reply on March 20, 2020. The district court issued its final ruling on July 20, 2020, reiterating its prior Ruling. Larew filed his Notice of Appeal on August 10, 2020. HLF filed its Notice of Appeal on August 18, 2020.

STATEMENT OF FACTS

Larew is an attorney working as Larew Law Office (LLO) in Iowa City. Hope is an attorney and sole owner of HLF and HLFA. (Hope transcript (T.) vol. VII, p.141, ll.22-25; Burk T. vol. VII, p.137, ll.17-24). HLF is a P.L.C. organized in 2004 by Hope for "the rendition of legal services." (Appendix Volume One "App1." 757). Defendant-Appellee Burk is an attorney and, for all times material, was an employee of HLF and HLFA. (Burk T. vol. VII, p.89, l.22—p.90, l.9; p.91, ll.5-8; App1. 724).

HLFA, a P.C., was organized by Hope on January 12, 2018, three days following the filing of this suit, "to engage in the practice of law." (App1. 759-60). By Defendants' own description, "HLFA is a **mere continuation** of HLF." (Amended Petition (Ex P2) and Amended Answer (Ex Q2), App1. 1140, ¶5, 1166, ¶5) (emphasis added). HLFA is taking the place of HLF, morphing from one form to another. (Hope T. vol. VII, p.142, l. 21—p.143, l.

1). HLFA provides legal services through the same or similar attorneys, from the same or similar locations, using the same general appellation—Hope Law Firm—under the same sole owner—Andrew Hope, as had HLF. (Hope T. vol. IX, p.11, l.6—p.12, l.10; Burk T. vol. VII, p.95, l.22–-p.96, l.17; Charlotte Keul T. vol. VIII, p.107, ll.6-16; p.108, ll.8-12; Henson T. vol. VIII, p.118, l.17—p.119, l.8; App1. 724-40, 757-60). All general expenses of the law firm previously paid by HLF are now paid by HLFA. (Hope T. vol. VII, p.144, l.5–p.145, l.9; vol. VIII, p.28, ll.2-19). The "Hope Law Firm" has been *both* the P.L.C. *and* the P.C: it simply "turned into the Associates, P.C. currently." (Alisha Stewart deposition, p.10, ll.11-18).

Pursuant to a series of conversations and emails initiated by Hope in March of 2011, Larew, working through the LLO, had participated in an of-counsel capacity on some cases with Hope, with the structure of their agreement laid out by Hope. (App1. 307, 308-14, 315-32, 333-35, 336-38; Appendix Volume Two ("App2.") 254-302; Larew T. vol. 1, p.51, l.17–p.54, l.2; p.56, ll.12-20). Hope needed a trial attorney and wanted an Iowa City presence. (Larew T. vol. 1, p.57, ll.18-24; App2. 258-59). On June 16, 2011, Hope and Larew signed a written "Of Counsel Agreement" for work in Iowa (OCA) under which Larew would provide litigation counsel services; that OCA did not have an integration clause. (App1. 336-38).

In December, 2011, Larew and Hope traveled together to Minnesota to investigate possible first-party insurance cases in that state. (App1. 339-46; Larew T. vol. I, p.65, l.15—p.66, l.10). They agreed to new terms for their Minnesota of-counsel relationship including, but not limited to, Hope's promise to pay Larew a more favorable fee split (50-50) than for Iowa-based litigation (60-40). (Larew T. vol. I, p.67, l.7–p.68, l.16).

Also in December of 2011, *Swanny* had come to HLF as the statute of limitations approached, where no Minnesota attorney had been willing to take the case on a contingent basis. (Larew T. vol. I, p.70, l.19—p.71, l.4; p.73, ll.10-18). *Swanny* involved an insurance company's failure to pay full damages—including loss of business income and extra expenses—to a policyholder after a fire had destroyed a popular, longstanding restaurant. (Larew T. vol. I, p.78, ll.8-24). Mrs. Catherine Anderson wholly-owned the corporation, Swanny of Hugo, Inc., under which she had operated the restaurant. (Larew T. vol. I, p.71, l.8–p.72, l.4). Larew was enthusiastic to pursue the case because Larew and his LLO colleague, Claire Diallo (Diallo), had just learned of a New York case that had supported the award of consequential damages to a business owner after an insurer had wrongfully failed to pay loss of business income and extra expenses. (Larew T. vol. I, p.68, l.17—p.70, l.10; Diallo T. vol. IV, p.10, ll.18-20). *Swanny*, however, would pose substantial risk, as the New York-recognized common law claims had not yet been well-established in Minnesota; in

addition, there was a new bad faith statute in Minnesota. (Larew T. vol. I, p.72, l.5-16; p.73, l.19—p.75, l.2). Hope was "open to taking the case" and requested that Larew "review the file and get a petition put together." (App1. 347). A Limited Power of Attorney and Contingency Contract ("Swanny Contract") was signed by Mrs. Anderson, Lucas Wilson (Wilson), of Wilson Law, LLC (local Minnesota counsel) and Hope, on behalf of HLF. (App1. 348-50). HLF was to receive 75% of the fees, from which Larew would receive his 50% fee. (Larew T. vol. III p.186, l.17-23).

Larew pursued the *Swanny* litigation as lead counsel from the outset. (App2. 40-101). In this vigorously prosecuted and defended case, Larew and Diallo took and defended every deposition (more than 10), researched and drafted every brief, and argued every motion. (App2. 40-101; Larew, vol. I, p.102, ll.2-10, 134, ll.5-24; Diallo T. vol. IV, p.15, ll.18-25). After rejecting a settlement offer of $35,000, Larew tried the case to a successful jury verdict, returned on October 16, 2013, for $1,134,500. (Larew T. vol. I, p.101, l.6—p.102, l.10, p.104, ll.21-25; Diallo T. vol. IV, p.15, ll.7-25, p.24, ll.1-20; App1. 399-402; App2. 40-101).

Hope's role had been very limited throughout. (App2. 102-137; Larew T. vol. I, p.81, l.12—p.84, l.10; p.105, ll.1-8). Hope's involvement further diminished as the case progressed, such that, a year before trial, defense counsel inquired as to the necessity of copying him at all. (App1. 398). As of May of

2013, his and HLF's presence in the case ceased entirely—until hearing of Larew and Diallo's obtaining the substantial verdict. (App2. 108).[1]

In November, 2012, Larew had begun voicing to Hope concerns about HLF's business practices, including conflicts of interest and ethics issues that needed to be addressed. (Larew, T. vol. I, p.86, l.5–p.88, l.13). The relationship had become strained; Larew expressed concerns about being identified as "Of Counsel" to the firm. (Larew, T. vol. I, p.94, ll.2-7; p.96, l.7—p.97, l.7; Hope, T. vol. IX, p.93, ll.13-20). On May 20, 2013, as *Swanny* was approaching its first scheduled trial date, Hope, in writing, unilaterally terminated the Of Counsel arrangement. (App2. 145).

Attempts were made to determine an appropriate division of cases and fee splits between Hope and Larew. (App2. 138-47, 148-68; Larew, T. vol. I, p.113, l.3–p.114, l.5). Ultimately, they agreed to a division of cases, wherein Larew's representation of Mrs. Anderson in *Swanny* would continue. (App2. 155; Larew, T. vol. III, p.186, ll.1-15). They, however, could not finally agree on the allocation of fees—in *Swanny* and other cases. (*Id.*). Given Hope's limited involvement on *Swanny*, Hope proposed "95% [to] LLO," whereas Larew proposed "100% [to] LLO." (App2. 165, 168). Larew continued with *Swanny*,

[1] The 10/31/2013 date erroneously appears as "10/13/13."

openly fulfilling HLF's obligations under the Swanny Contract. (Larew, T. vol. I, p.127, l. 8-19; p.130, l.11-21; p.131, l.24—p.132, l.10.

This altered arrangement was unfortunately not made known to Mrs. Anderson at the time, with such communication hindered, in Larew's mind, by Hope's threats:

> If you attempt to secure a separate contract with any of the clients [including Mrs. Anderson], then I will treat said action as an intentional interference with HLF's contract with the client. Also, if you do attempt to secure a separate contract from any client, then you have an ethical obligation to inform them that they will still be obligated to pay on the HLF contract and a failure to do so could result in litigation being brought against the client as well.

(App2. 158). Believing *Swanny* was his case, Larew continued to finance its expenses, entirely. (App1. 716-20). Hope disappeared from it. (App2. 108). In his last exchange with Hope concerning a *Swanny* fee division, Larew left the matter to later "court supervision," if necessary. (App2. 150). Hope did not respond. (Larew T., vol. I, p.133, ll.9-12). Hope simply let Larew assume all litigation risks and expenses in a "challenging legal environment." (App2. 150; Larew, T. vol. V, p.42, ll.10-17). Larew anticipated compensation if successful. (*Id.).*

Larew, with Diallo, tried *Swanny*'s first phase, with Judge Mary E. Hannon presiding, from October 7-15, 2013. (App1. 782; Larew, T. vol. I, p.134, l.5–p.135, l.2). On the 16th, Plaintiffs obtained a jury verdict of $1,134,500, much of the damages awarded under the consequential damages

theory newly proffered by Larew in Minnesota first-party insurance cases. (App1. 399-402). The second upcoming bad-faith/penalty phase of the trial, to be tried to the court, would allow for the award of additional damages and attorney fees against an insurance company that acted in bad faith.[2]

Hope/HLF's involvement in *Swanny*, always limited, had ended entirely on May 9, 2013, before Hope's May 20, 2013 termination of the Of Counsel relationship. (App2. 102-37; App1. 560; Larew T. Vol. III, p.186, ll.45). Indeed, Hope had forgotten entirely about *Swanny* in his initial case division proposal. (App2. 145; Larew T. Vol. VI, p.117, l.21-p.118, l.9). Between *Swanny's* inception in December, 2011, and October 30, 2013, Larew and Diallo provided more than 2,500 hours of legal services (1,617.91 and 879.1 hours, respectively). (App2. 40-101). By comparison, Hope's/HLF's total time for this same period had been 175.1 hours, 90.9 hours by Hope (including two post-trial trips to Minneapolis, described below, in October 2013 to have Larew terminated) and 84.2 hours by HLF support staff. (App2. 102-37; App1. 351).

Larew's October 16 verdict of $1,134,500 resurrected Hope's deadened interest in *Swanny*. (Hill T. vol. VII, p.60, l.24—p.64, l.16). After sending a congratulatory email to Larew on October 22, 2013, indicating that Hope would send Larew HLF's time on *Swanny* to support the bad faith phase (App2.

[2] Filed under Minn. Stat. sec. 604.18, no case had yet been tried on this. (Wilson deposition, p.16, l.5—l.14; Sauro, T. vol. III, p.94, l.20—p.95, l.6).

169-70), Hope joined with Burk, two days later, to travel secretly to Minnesota to meet with local counsel Wilson for the first time. (App1. 553-567, 405; App2. 108; Hope T. vol. VIII, p.55, l.8—p.56, l.20**;** Burk T. vol. VII, p.109, l.15—p.116, l.4; Wilson deposition, p.41, l.10—p.43, l.14). The day before this meeting, Diallo had sent Wilson an email regarding their upcoming prosecution of the bad faith phase. (App1. 403; Diallo, T. vol. IV, p.34, ll.20-25, p.35, ll.1-9).

Larew and Diallo fully intended to complete the bad-faith phase of the case, and all post-trial efforts, including appeal(s), with Wilson. (Larew, T. vol. I, p.139, ll.7-18, vol. VI, p.111, l. 23—p.112, l. 23; Diallo T. vol. IV, p.37, l.24—p.38, l.20). A few days after Hope and Burk's secret (from Larew) meeting with Wilson, on October 28, 2013, Wilson invoiced HLF (and not Larew) for expenses for the first time. (App1. 767-68).

Then, on October 31, 2013, Hope and Burk again traveled secretly (from Larew) to Minnesota, to attend a Burk-arranged meeting with other attorneys who had been recruited by them to become new *Swanny* lead counsel: Brenda Sauro and Adina Bergstrom (S&B).[3] (App1. 419-20, 439-41, 442-49; App2. 108; Hope T. vol. VIII, p.70, l.6—p.86, l.5**;** Burk T. vol. VII, p.115, l.25—p.123, l.18; Sauro T. vol. III, p.103, ll.16-25, p.111, ll.16-19). The day before,

[3] According to Bergstrom, Hope had a pre-existing relationship with S&B. (App1. 644, ll.13-22). Hope, however, denied such: "I had not had prior dealings with them." (Hope T. vol. VIII, p.57, ll.2-7).

on October 30, 2013, Hope had issued a $5,000 HLF check to S&B as down payment for their *Swanny* representation. (App1. 418; Hope T. vol. VIII, p.9, ll.7-14; Burk T. vol. VII, p.116, l.17—p.117, l.6; Sauro T. vol. III, p.33, ll.6-21). Meeting together, Hope, Burk, Wilson, and Sauro and Bergstrom prepared a new *Swanny* fee agreement (Addendum) that excluded Larew from future involvement: "Client authorizes and agrees that **only** THE HOPE LAW FIRM, PLC; WILSON LAW, LLC; and SAURO & BERGSTROM, PLLC handle **all aspects** of the Action, . . . on Client's behalf from the date of this Agreement forward." (App1. 419-20 (emphasis added); Sauro, T. vol. III, p.104, ll.7-14). The Addendum not only cut Larew out, it assigned 5% of the contingency fee to S&B immediately upon their signing (a *retroactive* contingency fee), and promised them hourly payments up to $40,000, and higher contingency fees, 10% or 12.5%, after appeal. (App1. 419-20). Regarding this meeting, concealed from Larew, Sauro testified that Hope reported he had worked things out with Larew and would pay Larew from HLF's share under the Addendum (which had been reduced from the original Swanny Contract). (App1. 419-20; Sauro, T. vol. III, p.102, l.22—p.103, l.20, p.113, ll.11-25).[4]

[4] Sauro specifically recalled asking Hope during the meeting: "Do you have things worked out with trial counsel," and "Hope said yep." (Sauro T. Vol. III, p.102, l.16—p.103, l.12). Contrastingly, Hope indicated that "[n]othing was said about Mr. Larew during that meeting." (Hope T. vol. IX, p.135, ll.12-14).

After finalizing their fee Addendum, in obvious expectation of her consent, the lawyers summoned Mrs. Anderson; she and her son, Michael, arrived within an hour. (C. Anderson deposition, p.33, ll. 2-23 (video—Court Ex. 1); Sauro, T. vol. III, p.33, l.6 – p.34, l.18). Mrs. Anderson recognized Bergstrom of S&B, as Bergstrom had declined to take Mrs. Anderson's case, two years earlier. (Sauro T. vol. III, p.13, l.24—p.14, l.10; App1. 645). As described to her, S&B would serve as her "appeals attorneys." (C. Anderson deposition, p.31, l.22 - p.32, l.18).

At this Halloween meeting, the Andersons met Hope and Burk for the very first time. (C. Anderson deposition, p.34, ll.8-20; Michael Anderson deposition, p.22, ll.1-7 (video—Court Ex. 2)). Hope did not reveal that, months earlier, he had terminated his Of Counsel relationship with Larew, nor that he had been uninvolved in *Swanny* for over five months. (App1. 741-756; M. Anderson deposition, p.29, ll.8-14; Wilson deposition p.74, l.9—p.75, l.4 (video—Court Ex. 3)). Wilson testified that had he known of the Hope/Larew "falling out," he would have certainly included Larew in the meeting. (Wilson dep., p.89, ll.4-7; *see also* Sauro, T. vol. III, p.142, l.13—p.143, l.24).

Presented with the Addendum, in this context, Mrs. Anderson signed it. (App1. 419-20). Hope's failure to disclose his changed relationship with Larew caused Mrs. Anderson to leave the meeting believing that Larew would continue to represent her, along with the other attorneys. (C. Anderson

deposition p.16, ll.4-11; p.32. ll.11-18; p.102, ll.12-25; M. Anderson deposition, p.24, ll.6-17; p.27, l.21– p.28, l.9; Larew, T. vol. II, p.7, ll.1-19).

Hope and Burk's clandestine orchestration had been observed from within HLF by an attorney at the firm, Gary Hill (who neither knew, nor had ever met, Larew) (Hill T. vol. VII, p.65, ll.8-10)). Hill described that, in October of 2013, Hope had summoned him to handle scheduled client meetings for Hope and Burk when they traveled urgently to Minnesota. (*Id.,* p.67, ll.1-12). News of the *Swanny* verdict had traveled quickly throughout HLF. (*Id.*, p.61, l.19—p.62, l.6). Hill had observed that Hope knew little about the case; Hope and Burk were "surprised, stunned, shocked, did not expect [the verdict]." (*Id.,* p.63, ll.1-3 & p.65, ll.14-20). During these conversations, Hope and Burk expressed their planned trip to Minnesota to "fire the lawyer who had just won the case . . . they were going to take him off the case." (*Id.*, p.64, ll.3-10). Hope referred to the case as "venture capital." *(Id.*, p.66, ll.7-8). Hill remembers Hope chuckling at the prospect, saying that "this lawyer was too stupid to get a fee contract with the client." (*Id.*, p.64, ll.3-5, 14-16, p.65, l.10). Hill learned, by later report, that "they successfully were able to get the lawyer off the case." (*Id.*, p.67, ll.16-18).

On November 1, 2013, Larew learned, only incidentally, of the October 31 meeting, when he had called Wilson to discuss, in part, the upcoming bad faith phase. (Larew T. vol. I, p.153, l.15—p.154, l.15). Wilson mentioned the

previous day's meeting, and Larew reported he was stunned to learn of it—"a feeling of shock"; Wilson then hung up on Larew. (*Id.,* p.54, ll.16-24; Wilson deposition, p.86. l.17—p.88, l.2). Wilson immediately called Hope (*Id.***,** p.89, l.13—p.90, l.12), which call prompted, moments later, an 8:41 a.m. email from Hope, advising Larew that S&B would "handle this matter from this point forward" because "Catherine Anderson's interests will be best served…" and she has "consented to the association and has signed the … addendum." (App1. 439). That same day, S&B requested that Larew execute their attached proposed form, under which Larew would withdraw from *Swanny*, and substitute S&B in his stead. (App1. 442-44).

Larew telephoned Mrs. Anderson shortly thereafter, with Diallo; they discussed the email Larew had just received from Hope and the meeting to which the Andersons had been summoned the day before. (Larew T. vol. I, p.162, l.24–p.163, l.12). Larew told his client that Hope had terminated his contract with Hope in May of 2013, and he apologized for not informing her sooner. (*Id.*, p.164, l.23—p.165, l.4; App1. 446-49). Concerned that the events of October 31 had caused Larew and Mrs. Anderson's legal interests to become potentially adverse, and that the change of counsel at this juncture could jeopardize Mrs. Anderson's legal interests, Larew encouraged her to seek independent legal advice. (App1. 446-49; Larew, T. vol. I, p.165, l.17–p.165, l. 5; p.170, l. 18–p.171, l.4).

Emails back and forth between Hope, S&B, and Wilson during this time reflect their collective efforts to undermine Larew and solidify/justify Mrs. Anderson's already-signed new fee commitment. (App1. 450-62). Hope's November 4, 2013, email to S&B claimed that Larew "has to inform [Mrs. Anderson] of her obligations to existing contracts and that any fee he plans to charge her will be in addition to those fees." (App1. 453). Mrs. Anderson was wrongfully so-advised, apparently by Wilson. (C. Anderson testimony, p.41, ll.21-25, p.42, ll.1-25; Wilson deposition, p.161, ll.12-23).

In similar fashion, Hope misrepresented to S&B his and Burk's involvement in *Swanny* as substantial. (App1. 458). By contrast, Burk, in this litigation, in an initial interrogatory response portrayed the following: "I provided no work on the Swanny case at any time."[5] (App1. 568-70). Given that fee splits must bear some relation to the actual work done, Sauro expressed her concern: "[D]o you anticipate a dispute with Jim re fee split is inequitable given his work on the case?," to which Hope replied: "There is a good chance." (App1. 458).

[5] Despite this, Hope submitted an Affidavit to the Minnesota Court to recover attorneys' fees for his law firm attributable to Burk, including Burk's attending the October 24 and 31, 2013 meetings. (App1. 560).

On November 4, 2013, Larew spoke on the telephone with Sauro[6] (App1. 453) and sent Hope, Burk, S&B, and Wilson (copy to Mrs. Anderson) a letter stating that attorneys could not dismiss him; any such a determination remained Mrs. Anderson's, as Larew's client, to make. (App1. 465-69). Larew warned of the prejudice his dismissal would cause to Mrs. Anderson's case, and that she had not been fully informed of facts necessary to make a knowing decision. (*Id.*). Earlier that day, however, Wilson had emailed Mrs. Anderson a document, not copied to Larew, asking her to make a written choice of counsel. (App1. 455, 459-61). Mrs. Anderson had executed the document, indicating her choice of the Addendum attorneys, and specifically directing Larew to execute the Substitution of Counsel. (App1. 462). It was forwarded to Larew the next day; on November 6, 2013, having the client's written confirmation, Larew and Diallo edited and then returned for filing their Substitution of Counsel. (App1. 474-82; Larew, T. vol. II, p.18, l.8–p.19, l.22; Diallo T. vol. IV, p.48, l.25—p.49, l.10).

S&B, new to the long-ongoing case, requested and received assistance from Larew and Diallo going forward. (App1. 474-82; App2. 171-83; Diallo, T.

[6] From October 21-23, 2013, Larew had attended a conference in Rhode Island regarding first party insurance; S&B were also in attendance. (Larew, T. vol. I, p.143, ll.7-11). They had congratulated Larew on his *Swanny* trial and offered themselves as expert witnesses in the upcoming bad faith phase, an invitation Larew had declined. (Larew T. vol. I, p.146, ll.2-16; Diallo T. vol. IV, p. 37, ll.12-23).

vol. IV, p.50, l.13—p.54, l.6). Indeed, S&B did not understand the verdict; their substantial error, to Mrs. Anderson's detriment, noted to them upon Larew and Diallo's discovery of it, had to be corrected; the *Swanny* Defendant contested this on appeal. (App1. 492-94, 495-538, 539-52, 884-91; Diallo T. vol IV, p.60, l.4—p.62, l.8). The bad faith phase, earlier prepared-for by Larew and Diallo (Diallo, T. vol. IV, p.54, l.7—p.58, l.6), was tried by S&B in March, 2014. Judge Hannon found for the insurance company; nothing further was awarded to Mrs. Anderson in either bad faith damages or attorney fees. (App1. 571-87). Both parties appealed, and the initial jury verdict obtained by Larew, the only award of damages, along with interest, was upheld by the Minnesota Court of Appeals. *Swanny of Hugo, Inc. v. Integrity Mut. Ins. Co.*, No. A15-0370, 2015 Minn. App. Unpub. LEXIS 1191 (Dec. 28, 2015). The Minnesota Supreme Court denied further review. (Sauro T. vol. III, p.76, ll.2-8).

Concerned about Hope's intentions given Hope's abandonment and reappearance only after $1,134,500 had been awarded, Larew retained Minnesota counsel, who filed for an attorney's lien in the Minnesota court. (Larew, T. vol. II, p.36, l.1—p.37, l.1; App1. 588-98). Judge Hannon, intimately familiar with Larew's performance in the *Swanny* proceeding, stated at the hearing that she knew "…Mr. Larew would never want to do anything to harm Mrs. Anderson." (App1. 614). She noted that "Larew performed most of the work on [the] case." (App1. 668). Judge Hannon found that Larew clearly

deserved to be compensated, but held that his claim was against Hope/HLF and was not allowed, pre-judgment, under the lien statute. (App1. 673-74). After the judgment was obtained, based upon a separate provision of the lien statute, Larew again sought a lien, which was also denied. (App1. 655-62). S&B and HLF both submitted ethics complaints against Larew for his lien filings; both were summarily dismissed. (App1. 677-80, 681-88).

Corresponding in time to Larew's two Minnesota lien filings, Hope, *individually*, and HLF, filed two successive identical Declaratory Judgment proceedings in the Polk County District Court against Larew seeking to require arbitration of any fee dispute under the Iowa OCA. (App1. 689-97, 698-705). Hope and HLF, however, voluntarily dismissed both suits before any presentation by them of the merits. Judge Hannon noted that Hope "may be engaging in inappropriate forum shopping." (App1. 661).

Hope's tendentious removal of Larew from *Swanny* had not been an isolated event. At the same time as the *Swanny* steal, on November 4, 2013, Hope/HLF had contacted one of HLF's clients that Larew, pursuant to their case-division agreement, was continuing to represent: Pastor James Crapson of College Springs Presbyterian Church. (App1. 483-88; Crapson T. vol. VI, p.86, l.22—87, l.3). Larew as lead counsel on this first-party insurance case had been responsive to his client, until Larew had been suddenly removed on the verge of settlement. (*Id.* at p.85, l.15—p.86, l.21). HLF, through one of Hope's

employee-attorneys, Shannon Henson, had called and had represented to Pastor Crapson that "there were some improprieties involved with [Larew]" (*Id.,* p.87, ll.18-23), and that Larew had been "taken off the case." (*Id.).* In response, Crapson dismissed Larew and "chose" HLF based upon what he had been told. (*Id.,* p.89, ll.10-20). Larew still has not been fully paid for his work on that case. (Larew T. Vol. VI, p.136, l.11-p.138, l.23).

In a *modus operandi* strikingly similar, Mike and Colleen Adams, clients in another first-party bad faith lawsuit, where Larew had been retained as co-counsel with HLF and a third law firm, summarily dismissed Larew, remaining with HLF and the other co-counsel. (App1. 490-91).

Similarly, Hope attempted to have Larew removed as co-counsel from a class action lawsuit, *Freeman et. al. v. Grain Processing Corporation*, LACVCV021232. (App1. 227). In the Order denying Hope's request for fees from former co-counsel, where Hope claimed he could not work on *Freeman* anymore because of *Swanny*, "[t]he Court did not find Andrew Hope's testimony to be remotely credible." (App1. 236-37) ("On this and many other examples, Hope's testimony was contradictory and simply not believable").

After the appeal of the *Swanny* verdict, the judgment was satisfied on April 5, 2016, totaling $1,708,707.98, including interest and costs. (App1. 706-09). Under the Swanny Contract (and Addendum), given the appeal, 40% of the gross proceeds, or $683,483, was allocated as attorneys' fees. (App1. 348-

50, 419-20; App2. 211-13). This amount was then divided among the lawyers, specifically approved by Mrs. Anderson, as follows: "Sauro and Bergstrom: $166,062.17; Hope Law and Larew Law: $388,421.02; Wilson Law: $129,000.00." (App2. 211-13). Larew had not been advised of the discussions or this division, despite the statement that "[t]hese are the numbers that all of the lawyers have agreed upon . . ." (App2. 211, 197-210; Larew T. vol. II p.55, l.22—p.57, l.9; Burk T. vol. VII, p.127, l.22—p.131, l.13). Hope, Wilson and S&B had disputed the allocation of fees amongst their respective firms, given their different readings of the Addendum. (App2. 197-210).[7] The $388,421.02 designated for "Hope Law and Larew Law" was paid to the "Hope Law Firm" from S&B in checks dated April 21, 2016. (App1. 710-15). Again, Larew was not advised of, nor paid from, Hope's receipt of these funds. (Hope T. vol. VIII, p.22, l. 21—p.23, l. 12).

Larew made multiple attempts to receive payment from Hope for his work done in *Swanny*, noting that the *quantum meruit* value of his work was $873,839. (App2. 40-101; Larew, T. vol. II p.60, l.24—p.62, l.14). The value of LLO's services was determined by multiplying the hours worked by the hourly

[7] S&B interpreted the Addendum to allocate to them a percentage of the total verdict, rather than a percentage of the 40% of attorneys' fees. (Burk, T. vol. VIII, p.128, l.12-p.129, l.12. Hope had understood it to be the latter. *Id.* Based on S&B's interpretation, they were entitled to $56,725 in retroactive contingency fees on the day that they signed the Addendum (5% of $1,134,500).

rate for such services: $400/hour for Larew x 1615.91 hours; $250/hour for Diallo x 880.2 hours; and $150/hour for the LLO legal assistant x 46 hours. (App1. 721-23; App2. 40-101; Larew, T. vol. II p.62, l.14—p.63, l.14).

To date, more than seven years after the trial verdict, and five years after Hope deposited the *Swanny* fees into HLF's operating account, no payment for legal services provided by Larew and Diallo in *Swanny* has been made.[8] (App1. 746; Larew, T. vol. II, p.58, l.5—p.59, l.12; Hope, T. vol. VIII, p.28, ll.20-24).

ARGUMENT

I. THE DISTRICT COURT ERRED IN FINDING THAT HLFA WAS NOT A SUCCESSOR TO HLF

A. Standard of Review and Error Preservation

Review of bench trials depend on the manner in which it was tried; where tried at law, "review is for correction of errors at law." *Carroll Airport Comm'n v. Danner,* 927 N.W.2d 635, 642-43 (Iowa 2019); *see also* Section II.A.

Plaintiff preserved error on this matter in his Proposed Findings of Fact and Conclusions of Law (Proposed Findings), App1. 76, and Motion to Enlarge Findings and Amend (Motion to Enlarge), App1. 185-89.

[8] Hope stated at trial (Hope T. vol. VII, p. 145, ll.16-21) and in discovery (App1. 743-44) that $130,000 to $150,000, approximately 40% of HLF's fee received in *Swanny,* had been retained in HLF's operating account. Garnishment of that account returned only $1,624.90, which amount has been ordered condemned, of which Plaintiff asks the Court to take judicial notice. (App1. 302-06).

B. HLFA is a Mere Continuation of HLF, and is Therefore Liable for the Judgment

The substantial evidence was that HLFA was a successor to HLF, including an express admission by HLFA. (App1. 1140, ¶5, 1165, ¶5). Contrastingly, the district court found "[t]here is no substantial evidence that HLFA was a successor entity to HLF or that HLFA merged with or took over the rights and obligations of HLF." (App1. 179). The district court did not make any relevant findings of fact. All the evidence, let alone substantial, was consistent with a finding that HLFA, as a successor to HLF, was liable for judgment.

Generally, a successor corporation that purchases the assets of another "assumes no liability for the transferring corporation's debts and liabilities." *Pancratz v. Monsanto Co.*, 547 N.W.2d 198, 200 (Iowa 1996). There are several exceptions, however, including when the "two corporations consolidate or merge" or "the buyer is a 'mere continuation' of the seller." *Id.* The key to demonstrating a continuation is "a common identity of the officers, directors and stockholders in the selling and purchasing corporations." *Id.*

HLF and HLFA have a common owner—Hope— and employees, as well as the same business: practicing law. HLFA was formed just three days after Plaintiff filed this lawsuit. (App1. 759-60). Alisha Hope Stewart, HLF's former office manager and bookkeeper, testified that she was now paid from

the new corporation's (HLFA's) operating account. (Stewart deposition, p.10, ll.15-16: "It **turned into** the Associates P.C. currently") (emphasis added). Ongoing expenses for the law firm go out of HLFA's operating account, such as payroll, rent, office supplies, etc. (Stewart deposition, p.18, l.4—p.20, l.5). Similarly, HLF/HLFA Attorneys Burk and Shannon Henson (through stipulation) confirmed that they are now paid from HLFA's operating account. (Burk, T. Vol. VII, p.95, l.22-p.96, l.8; T. vol. IX, p.5, l.23-p.6, l.6). HLFA is merely a changed-in-form continuation of HLF: from a P.L.C. to a P.C. *See Nelson v. Pampered Beef-Midwest, Inc.*, 298 N.W.2d 281, 287 (Iowa 1980) (describing "mere continuation" where an entity "changed its form of business organization from partnership to a corporation"). Here, HLF transformed itself into HLFA, a "professional corporation." *Id.*

Hope admitted that HLFA was a successor entity to HLF. (App1. 1140, ¶5, 1166, ¶5). Plaintiff did not need to offer more evidence to prove that proposition, but significantly more was produced. Hope's own trial testimony—that he created a new entity merely for tax purposes—is further evidence that one law firm, HLF, is now functioning as HLFA. Bills formerly paid by HLF are now paid by HLFA. Indeed, as a sanction for Defendants' "bogus and obstructionist" (App1. 22) responses after Plaintiff's motion to compel, post-trial, HLFA issued the check to Plaintiff's counsel. (App1. 164-66).

"A business cannot shrug off personal liability to its creditors simply by merging, consolidating, switching from partnership to corporate form or vice versa, or changing its name." *Nelson*, 298 N.W.2d at 288. Therefore, HLFA is also liable for the debts of HLF. To find otherwise would permit a corporate entity to simply change its form, continue functioning with the same owner and employees, but totally escape valid collection efforts. The fact that Hope, the sole owner of HLF, is an attorney, and was aware for years of the liability to pay Larew, makes the corporate restructuring through the creation of HLFA particularly problematic. Given this overwhelming evidence, the judgment in this case should be against HLFA as well as HLF. The district court erred in failing to make any findings of fact and then reaching the legal determination that HLFA was not a successor.

II. THE DISTRICT COURT FAILED TO DETERMINE THE TERMS OF THE IMPLIED-IN-FACT CONTRACT AND WHEN IT WAS BREACHED

A. Standard of Review and Error Preservation

"A breach-of-contract claim tried at law to the district court is reviewed … for correction of errors at law." *NevadaCare, Inc. v. Dep't of Human Servs.*, 783 N.W.2d 459, 465 (Iowa 2010). Factual findings by the district court have the effect of a special verdict. *Id.* (citing Iowa R. App. P. 6.907). If the district court's factual findings are supported by substantial evidence, they are binding. *Id.* However, "[t]he trial court's 'legal conclusions and application of legal

principles are not binding[.]'" *Id.* If erroneous rules of law have been applied, materially affecting the decision, the district court's judgment will be reversed. *Id.*

Plaintiff preserved error on these issues in Plaintiff's Proposed Findings, (App1. 69-77, 95), and Plaintiff's Motion to Enlarge, (App1. 191-198).

B. The Metes and Bounds of the Implied Agreement Must be Determined to Identify When the Breach Occurred.

Based on the emails exchanged, Larew has always maintained that there was an express agreement as to the case division, and an implied-in-fact agreement as to the fee split.[9] "When the parties manifest their agreement by words the contract is said to be express." *Rucker v. Taylor*, 828 N.W.2d 595, 597 (Iowa 2013). Hope affirmed the agreement in writing: "so you agree we discussed and *agreed upon the designation of which firm was to take over each file*, do you also agree with the corresponding fee splits[?]"). (App2. 155) (emphasis

[9] The post-Of Counsel termination transfer of *Swanny* and other cases could not be made completely to Larew without clients' written approvals; the termination's impact was to transform Hope and Larew's relationship from that of Of-Counsel to that of Co-Counsel on those cases. Larew recognized that he could not take on full or exclusive responsibility for these cases without entering into a new attorney-client agreement with the clients. (App2. 619-20).

added).[10] However, given that the result is the same,[11] Larew does not challenge the judicial determination that only an implied-in-fact contract existed. (App1. 175-76). Larew's issue with this determination is that the terms of the implied contract, and corresponding timing of the breach, were not determined, and that failure constitutes legal error.

The district court properly found that Larew carried out the attorney work on *Swanny* for the benefit of HLF, and that HLF was benefitted by it. (App1. 176) (citing *Iowa Waste Systems, Inc. v. Buchanan County*, 617 N.W.2d 23, 29 and *Roger's Backhoe Serv. v. Nichols*, 681 N.W.2d 647, 652 (Iowa 2004)). The district court also found:

> [Larew] spent over $40,000 litigating Swanny through trial, including reimbursement of Wilson for Wilson's expenses incurred during that litigation.
> On October 16, 2013, the jury found that the Swanny plaintiffs' insurer had breached its contract with them. The jury returned a verdict of $859,500 in consequential damages, and $275,000 in business income losses, totaling $1,134,500.00. . . .
> On October 18, 2013, the Minnesota District Court scheduled a status conference on the bad-faith phase of the proceedings for December 3, 2013.
> On October 22, 2013, Hope wrote Larew congratulating him on the verdict and offering to send him HLF's time records for the fee application to be submitted in the bad faith penalty phase.

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[10] An email from HLF attorney Henson further describes the agreement when she asked whether Larew was handling College Springs: "I wasn't sure if this was a case you were running point on/assuming responsibility for, or if HLF is keeping it". (App1. 487)

[11] "Contracts are often spoken of as express or implied. The distinction involves, however, no difference in legal effect[.]" *Rucker*, 828 N.W.2d at 601-02.

> On October 23, 2013, Larew contacted Wilson for purposes of asking him to gather his hours for the bad faith/penalty phase.
> On October 24, Hope and Burk travelled to Minnesota to meet with Wilson for the first time in person. . . .
> On October 28, 2013, for the first time, Wilson billed HLF directly for reimbursement of costs.

(App1. 169-70). These findings have the effect of a special verdict. In addition, Hope and HLF's timesheets (and expenses) stopped in May (and April, respectively) of 2013. (App1. 169, 175). Not a single minute was expended by Hope or HLF after May 9, 2013 until after Larew's successful October trial. (App1. 553-67; App2. 108, 888). Indeed, more than 90% of the work was conducted by Larew over the entire course of *Swanny* to trial, even assuming, *arguendo*, Hope accurately reported his hours.[12]

As the district court held, HLF benefitted from Larew's efforts in *Swanny*. (App1. 176). Indeed, HLF received $388,421.02 under the Addendum, that neither Hope nor his law firm had earned, as Larew had completed the vast majority of work. The district court ignored, however, that there was never an implied agreement that after transferring the case to Larew, Hope: could take back *Swanny* after it had proven valuable; could assign a retroactive

[12] Hope includes time for Henson, who stipulated at trial that she had not spent any time on *Swanny*. *Compare* App2. 903-04 *with* T. Vol. IX, p.6, ll.16-19. In addition, Hope's own time includes many self-interested, not client-related, hours related to the attorney lien dispute, or to driving to Minnesota on multiple secret trips. (App2. 888-99) (including 12 hours to drive to mediation on attorney fees; 12 hours to drive to hearing on fees, etc.).

contingency fee to new attorneys; or reduce Larew's fee. In failing to determine that the terms of the implied agreement included a provision that Larew would remain lead counsel (and the timing of its breach), the district court misapplied the law of implied contracts to this case.

C. The Breach Occurred When Hope Removed Larew as Lead Counsel, Transferred Funds Earned by Larew to New Counsel, and Never Paid Fees to Larew

While the case division agreement—that Larew would serve as lead counsel in *Swanny*—did not include an express timeline, there was nothing from the course of conduct indicating that Larew's involvement would end before litigation had been completed. *See Pillsbury Co. v. Wells Dairy, Inc.*, 752 N.W.2d 430, 436 (Iowa 2008) ("[T]he manifestations of intention of the parties . . . are interpreted as consistent with each other and with any relevant course of performance[.]"). As described above, Hope had disappeared, completely abandoning the case for months.

Pursuant to that understanding, Larew undertook all the risks: hours spent; the possibility of no recovery; and paying litigation-related expenses. (Larew, T. vol. V, p.42, ll.10-17, p.86, l.22–p.87, l.7). Bullyingly, Hope had threatened to try to have Larew removed in July of 2013, but he had neither taken that action nor responded to Larew's email that court supervision could be required to determine their fee split. (App2. 150-51). A fee split would only be necessary after the successful litigation of the entire case. There was not a

single email from Hope in the months subsequent, and extending up to the *Swanny* jury trial, asking for an update, or indicating that Larew's time would end at the first phase of the trial. The implied-in-fact case division agreement was therefore breached when Hope decided, secretly, and acted to take the case back from Larew.

Hope's time records provide proof of the breach. They show entries for Hope and Burk on October 24, 2013, when they covertly traveled to meet with Wilson for the first time. (App1. 560, 1190). This was just two days after Hope had congratulated Larew on winning the verdict. (App2. 169-70). On October 30, 2013, HLF had cut a check for $5,000 as a retainer to S&B, to serve as new lead counsel, without notice to Larew. (App1. 418). HLF orchestrated the signing of a new agreement, cutting out Larew entirely, and assigning a retroactive contingency fee to S&B, without any re-negotiation of Hope and Larew's implied-in-fact contract. (App1. 419-20). The agreement that Larew would continue on *Swanny*, and incur all the costs and expenses, did not include a clause, express or implied, that Hope could transfer the case to other counsel, paying consideration with money Hope had not earned. No attorney would have agreed to such an arrangement. Larew had put thousands of hours into the case through trial (App2. 40-101), and had invested tens of thousands of dollars in litigation expenses. (App1. 169, 716-720). Hope's email to Larew on November 1, 2013, attempting to terminate him, stated: "Adina and Brenda

have agreed to associate with Hope Law Firm and Wilson Law and handle all matters going forward." (App1. 439-40). Also on November 1, 2013, S&B sent Larew a substitution of counsel to replace him. (App1. 442-44; Larew T. vol. I, p.161, l.4–p.162, l.18). Such conduct manifested a material breach of the agreement that Larew would litigate *Swanny*.

The district court affirmed that the "Addendum to Fee Agreement Dated December 23, 2013 [sic] And Consent to Association of Sauro & Bergstrom, PLLC" … assigned to "S&B a 5% contingency **retroactive** to the jury verdict." (App1. 170) (emphasis added). The district court also found that a fee dispute developed amongst the Minnesota attorneys where Burk originally proposed that HLF take $400,164 in fees. (App1. 172). But the district court failed to apply the law of implied-in-fact contracts to affirm that these actions constituted a clear breach of Hope and Larew's case division agreement.

While the parties did not agree as to the exact *Swanny* fee split, Larew certainly did not agree to have 5% of his earned fee retroactively assigned to new counsel, and, then, an additional 10-12% of the entire fee paid to other attorneys. The district court's failure to determine when the breach occurred would logically lead to extremely unjust results: under that Ruling's rationale, Hope could, arguably, have given away *all* the fees (or 80%) earned by Larew to other counsel without consequence. Implied-in-fact contracts have all the components of contracts, however, including breach. *Hunter v. Union State Bank*,

505 N.W.2d 172, 177 (Iowa 1993). Without determining when the breach occurred, the district court ignored the clear terms of the implied agreement, and, correspondingly, miscalculated damages.

III. THE DISTRICT COURT IMPROPERLY CALCULATED *QUANTUM MERUIT* OWED

A. Standard of Review and Error Preservation

Generally, "actions for … quantum meruit recovery based on implied contract are actions at law." *Frontier Props. Corp. v. Swanberg*, 488 N.W.2d 146 (Iowa 1992). However, *Watson* applied *de novo* review to a *quantum meruit* ("QM") claim. *Watson, P.C. v. Peterson*, 650 N.W.2d 562, 564 (Iowa 2002). Given the equitable claim involved, Plaintiff seeks *de novo* review.

Plaintiff preserved error in Plaintiff's Proposed Findings of Fact, App1. 77-95, and Motion to Enlarge, App1. 198-209.

B. The District Court Improperly Calculated *Quantum Meruit* in Failing to Consider Equitable Factors Based on These Facts

Clearly, the agreement as to the fee division was implied.[13] (App1. 176). The court erred however when it applied a partially express and partially

[13] Hope has taken a variety of inconsistent positions with respect to the fee division: 1. "Larew proceeded to expend time and/or expenses on the *Swanny* litigation, essentially serving as Pro Bono Counsel." (App1. 1180); 2. "There was no contract, written or oral, between any of the named Defendants in this matter and James C. Larew which would have required payment to be made to Mr. Larew for the *Swanny* litigation." (App1. 1228); and 3. Hope then started to argue the terminated Iowa OCA applied to the fee split. (Hope T. vol. VII, p.146, ll.5-14).

implied term on the same subject, and imposed a contractual cap (the OCA) on *quantum meruit*.

Given there was no express agreement on the compensation split for Larew's continued work, "the law implies a promise to pay the reasonable value of the services rendered." *Welter v. Heer*, 181 N.W.2d 134, 136 (Iowa 1970); *see also Iowa Waste Sys.*, 617 N.W.2d at 29. The measure of compensation for an attorney who proceeds under an agreement without an express term governing the same is *quantum meruit* . *Kelly, Shuttleworth & McManus v. Cent. Nat'l Bank & Tr. Co.*, 248 N.W. 9, 14-15 (Iowa 1934).

The district court determined the amount of fees owed by HLF to Larew by using a modified *Watson* approach. (App1. 176-77). The issue with the approach is that it applied an express terminated agreement to calculate part of the fee (through May 2013), and then the implied (QM) for the remainder of work by Larew (May through October 2013). *Id.* While there can be contracts that have different express and implied terms, there cannot be an agreement as to fee splitting that is both express (40% from Iowa OCA) and implied (QM): that is the *same* contractual term. *See Clemens Graf Droste Zu Vischering v. Kading*, 368 N.W.2d 702, 712 (Iowa 1985) ("[A]n express and an implied contract cannot coexist with respect to the same subject matter."); *see also Scott v. Grinnell Mut. Reinsurance Co.*, 653 N.W.2d 556, 562 (Iowa 2002) (describing difference in damages for implied-in-fact contract, entitling one to QM, as compared to

express contract damages, which are "limited to the protection of the injured party's 'expectation interest' (benefit of the bargain) or 'reliance interest'"). Where the OCA was undisputedly express and terminated,[14] its terms cannot govern the implied contract for QM. *See Shultz v. Hawkeye Ins. Co.*, 42 Iowa 239, 245 (1875) (holding that contract terminated pursuant to its terms had no binding effect). Therefore, it was legal error for the district court to rely on the 40% for any QM calculation.

QM is an equitable theory of recovery. *Kunde v. Estate of Bowman*, 920 N.W.2d 803, 806 (Iowa 2018). Factors considered in *quantum meruit* analysis are: "[f]irst, the amount involved; second, the character of the question in the case and the standing of the attorneys; third, the time occupied; and, fourth, the result accomplished." *Kelly, Shuttleworth & McManus*, 248 N.W.2d at 15. These considerations, along with the specific facts of this case, support Larew's claim for the full amount of QM proven.

This case involves QM between attorneys who were previously Of Counsel and then who became Co-Counsel upon termination of the Of Counsel relationship. *Watson* is one of a few Iowa cases reviewing QM calculations between attorneys. *Watson*, 650 N.W.2d 562. *Watson* involved an associate, Peterson, who had worked for the Watson firm for 12 years, and

[14] Consistent with the undisputed evidence, the district court found that Hope terminated the OCA on May 20, 2013. (App1. 169, 174).

then had joined another firm, EVP, taking thirty cases with him when he had left. 650 N.W.2d at 563. This practice has been called "grabbing and leaving." *Id.* at 565. The *Watson* Court recognized the importance of the client's best interest, as well as a client's ability to choose counsel: a client is not property of any firm. *Id.* at 566-67. The district court applied a modified *Watson* analysis for QM, noting that, unlike *Watson*, there was no "grabbing and leaving" by Larew. (App1. 177). The district court then combined the hours worked by HLF and Larew over the course of *Swanny*, and determined that fees for the hours prior to the termination would be paid pursuant to the OCA (60% to HLF and 40% to Larew), and fees for time spent by Larew post-termination would be paid 100% to Larew. (App1. 177). The district court made this division using only the amount of fees actually paid to HLF, $388,421.02. *Id.*

Larew asserts this was error on at least three levels: first, by putting a contractual cap on QM; second, by failing to consider equitable factors such as when and how the breach occurred, as well as the risks; and, third, by failing to consider the respective contributions of the firms. In capping Larew's QM based on how much HLF received under the Addendum, the district court placed contractual limits contrary to QM law. *See Watson*, 650 N.W.2d at 567 ("When a contingency-fee case is concluded after the termination of the attorney-client relationship, the attorney is entitled to be paid the value of his services under a quantum meruit theory, but **not on the basis of the contract**

amount.") (emphasis added). When Larew had obtained the $1,134,500 verdict, HLF was entitled to 75% of 38% of the total award. (App1. 348-50). Attorney fees were later calculated in the total amount of $683,483.19 (40% of $1,708,707.98). (App1. 174; App2. 211-13). The district court erred in applying the law by imposing an express contractual cap—the Addendum executed after Larew had performed his services—to Larew's QM claim. This is a particularly inequitable error given the facts of this case, wherein Hope had knowingly given away fees that had not been earned by either HLF or S&B.

In addition, the district court erred in applying a partial express agreement and partial implied agreement to the same contract term: the fee split. In finding an implied-in-fact contract, the measure of damages is QM. The reason *Watson* considered the amount of time at the firm was because Peterson was an associate of the firm, and paid a salary by that firm: therefore, his hours counted for the firm who paid him at that time. 650 N.W.2d at 568. Larew, however, was never an associate of HLF, and always paid on contingency fee splits (not salary), as part of LLO. (Larew T. vol. V, p.137, l.25–p.138, l.5; p.138, ll.15-16). Larew's time should be afforded to him entirely, throughout the proceeding, as that was his only manner of compensation. QM cannot rely on a term of the OCA to calculate even part of the damages because Hope had terminated it—followed by his transfer of *Swanny* to Larew—changing the benefit of the original bargain. Larew would not have

continued on *Swanny*, taking all of the risks, if he was limited to 40% (or 50% in Minnesota) in effect prior to Hope's termination. (Larew T. vol. V, p.42, ll.10-17; p.86, l.22–p.87, l.7). No attorney would have agreed to take on all the risks if their fees could be given away. There was no consideration for Larew's agreement to take on all the financial risk in *Swanny* without the implied-in-fact contract, which uses QM.

Reviewing the law of other jurisdictions, QM analysis generally begins with a lodestar method: the amount of hours spent times a reasonable rate. *See, e.g., Weg & Myers, P.C. v. 126 Mulberry St. Realty Corp.*, 453 F. App'x 90, 91-93 (2d Cir. 2011) (upholding lodestar method without adjustment in QM determination); *Faricy Law Firm, P.A. v. API, Inc. Asbestos Settlement Tr.*, 912 N.W.2d 652, 659 (Minn. 2018) (describing the lodestar method to evaluate the reasonableness of statutory attorney fees). The analysis does not necessarily end with the lodestar, however, as it may be adjusted upward or downward based on a variety of factors. *Faricy Law Firm*, 912 N.W.2d at 659; *Gilbert LLP v. Tire Eng'g & Distribution, Ltd. Liab. Co.*, 689 F. App'x 197, 202-03 (4th Cir. 2017) (reversing the court's straight lodestar application where QM fee award did not take into consideration the serious risk of the contingency fee, among other factors); *Consolver v. Hotze*, 395 P.3d 405, 411-12 (Kan. 2017) (citing eight reasonableness factors used regarding fees).

The reasonable value of Larew's services in *Swanny* was $873,839. (App2. 100--101). He and his office worked more than 2500 hours on this complicated case, which was very motion-heavy and novel with respect to consequential damages. (Diallo, T. vol. IV, p.12, l.20-p.14, l.17). Larew's rates were supported by the deposition testimony of an Iowa trial attorney, Martin Diaz, as well as a Minnesota trial attorney. (App1. 721-23; Diaz Deposition, p.22, l.13—p.23, l.10; p.24, l.15—p.25, l.18). Larew's QM calculations do not include considerable time spent after October 31, 2013, during which Larew and Diallo were still providing services to Mrs. Anderson, including the correction of a gross error committed by new counsel. (*Compare* App1. 492-94, 495-538 *with* App1. 539-552). Defendants did not dispute that Larew undertook any of this work or his hourly rates.

The question then becomes whether the lodestar should be adjusted upward or downward based on any equitable factors. For damages, Plaintiff sought a range of compensation: from 95% of 75% of 38% of the contingency fee amount, which amounted to $462,632.68 (a quasi-QM amount) up to the QM amount. (App1. 791-93). Here, the QM value of Larew's efforts *exceeds* the amount recovered in attorneys' fees. The total attorneys' fees to be divided were 40% of $1,708,707.98, or $683,483.19. (App2. 211-13). Recognizing the breach occurred on October 31, 2013, when Hope hired new counsel without consulting Larew and gave away Larew's fees, should result in a finding that

Larew cannot be limited to what Hope, in the end, retained. The trial court's failure to consider these other factors was an error in application of the equitable theory of QM. *Kelly, Shuttleworth & McManus*, 248 N.W.2d at 15.

Even more expansively than the Iowa Supreme Court in *Kelly*, the Minnesota Supreme Court, in *Faricy*, reviewed these factors in determining the reasonableness of a QM fee:

> (1) Time and labor required;
> (2) Nature and difficulty of the responsibility assumed;
> (3) Amount involved and the results obtained;
> (4) Fees customarily charged for similar legal services;
> (5) Experience, reputation, and ability of counsel;
> (6) Fee arrangement existing between counsel and the client;
> (7) Contributions of others; and
> (8) Timing of the termination.

912 N.W.2d at 658. These factors are telling in the instant situation. The time and labor: 2,500 hours through discharge on October 31, 2013. (App2. 100—101). Much of the testimony reviewed the nature and difficulty of the case, including the use of consequential damages to compensate Mrs. Anderson. (Larew T. vol. I, p.71, l.8—p.73, l.2). HLF also assumed no responsibility after May 2013. The result Larew obtained was a $1,134,5000 verdict. Larew is a trial attorney who had more than 25 years of experience in 2013.

The fee arrangement between the client and counsel is different as the Minnesota District Court held there was no express or implied fee agreement between Larew and the client, as the express fee agreement was between HLF

and Mrs. Anderson. (App1. 348-50, 419-20, 655-76). Larew, however, had operated under that contract on behalf of HLF for almost two years. This case does not involve the client, and therefore, this factor does not cut either way. The only relevance of the fee agreement would be if one were to cap Larew's QM by the amount received by HLF. But given the facts of this case, that would lead to an inequitable result, as Hope had knowingly given away fees earned by Larew.

With respect to the contribution of others, administrative support staff from HLF assisted to a limited extent in *Swanny* through May of 2013. Local counsel Wilson had provided administrative support. (Larew, vol. I, p.132, l.11-p.133, l.8). After Larew had been terminated, the laboring oars were taken over by S&B. While S&B were unsuccessful on the penalty phase of the trial, they did successfully defend the verdict and obtain statutory interest on the same. (App1. 860-68; 884-91). As Sauro recognized, however, she had to spend a lot of time just reviewing the trial transcript, which exercise would not have involved nearly as much time for Larew, as he had actually tried the case. (*Cf.* Vol. III, p.41, ll.10-11). No credit should be given for this needlessly repetitive work. In any event, S&B have been paid handsomely for their efforts (more than $200,000 total). (App2. 197-210, 211-213).

The final factor from *Faricy* (8, above) is the timing of the termination. This has been considered an important factor by other courts reviewing QM. *See Galanis v. Lyons*, 715 N.E. 2d 858 (Ind. 1999):

> To illustrate the point, consider the lawyer who is terminated (or dies) while the jury is deliberating before returning a verdict that produces a contingent fee that is twice the hourly rate for the work expended. Where the successor is needed only to defend an appeal, it would be quite unreasonable to measure the discharged lawyer's contribution solely by the number of hours multiplied by a standard rate. **The first lawyer accepted the risk of a loss and the second boarded the train when victory was in sight and when at least some recovery by a negotiated settlement was a high probability.**

(emphasis added). The timing of the termination in the instant case is extraordinary. Two weeks after obtaining a $1,134,500 verdict, Hope discharged Larew, but failed to inform the client of the same. (C. Anderson, deposition p.16, ll.4-11; p.32. ll.11-18; p.102, ll.12-25). After the most difficult portion of the contingency had been completed—whether a jury would award anything, or more than a million dollars—Larew was discharged. Timing, as they say, is everything. Hope and S&B boarded the train only once victory was in sight. The entire purpose of Hope's termination of Larew was to cut him out of his entitlement to a reasonable fee, or any fee at all.

These equitable factors indicate that the reasonable measure of QM for Larew's services is the lodestar, or $873,839. No adjustment upward is necessary, as it is significant but reasonable. No adjustment downward is

warranted, as the equitable factors cut in favor of maintaining the lodestar amount. It is the risk that Hope took in proceeding as he did.

The contributions of Larew and HLF are in stark contrast in time, expenses, and substance, further justifying the award of the full lodestar as QM. Using expenses-incurred as a proxy to divide, Larew had incurred more than $41,000, and HLF had incurred just under $2,000, up to the time of trial (i.e., 95% by Larew). *See ACF 2006 Corp. v. Ladendorf*, 826 F.3d 976, 978-79 (7th Cir. 2016) (reducing QM amount for a prior firm from 40% to 10% and noting that if had used expenses as the proxy, would have been closer to 7%).

The factors as set forth in *Faricy* are also consistent with the mandates of the Iowa Rules of Professional Conduct when determining a reasonable fee. *See* Iowa R. Prof'l Conduct 32:1.5 (setting forth 8 factors). As the Supreme Court of Kansas noted, it is reasonable to consider the rules of conduct in a QM analysis. *Consolver*, 395 P.3d at 411-412. The final factor under the Iowa rule, whether the fee was fixed or contingent, results in the same analysis: that by the time Larew was discharged, the fee was much more fixed than contingent, and all the attorneys who came thereafter significantly benefitted.

The Iowa Rule also requires that fee splits be consistent with either the amount of work conducted by the attorneys or that joint responsibility for the same exist. Iowa R. Prof'l Conduct 32:1.5. Based on this, even limiting it to the amount received, Hope cannot retain even 25% of the fee in *Swanny* where he

did not remain jointly financially responsible for at least five months, and certainly did not work anywhere near 25% of the total hours. The district court's Ruling therefore improperly allocated 33% of the total $388,421.02 fee to HLF.[15] (App1. 177). Hope and S&B attempted to address this situation, noting that Burk would need to travel to Minnesota more to increase HLF's hours. (App1. 458). This did not occur, however. In hiring S&B and promising them retroactive contingency fees, Hope risked owing more money than he would receive: a risk that the trial court should have assigned to him.

Based on all of these factors, Larew should be entitled to $873,839 in QM. The factual findings by the district court—*e.g.*, assignment of a retroactive contingency fee—cannot be reconciled with the application of implied-in-fact contracts and QM. Larew seeks reversal of the district court's QM conclusion and application of the equitable factors to award the lodestar amount.

IV. THE DISTRICT COURT ERRED IN FAILING TO AFFIRM EVIDENCE OF CONVERSION AND CONSPIRACY

A. Standard of Review and Error Preservation

A claim for conversion is "an action at law and reviewable for errors at law." *Lewis v. Jaeger*, 818 N.W.2d 165, 175-76 (Iowa 2012).

[15] Larew also pursued a claim against Defendants for unjust enrichment, which is the counterpart to the failure to award Larew sufficient damages under QM. As equitable relief, it further supports *de novo* review. Iowa Waste Sys., Inc., 617 N.W.2d at 30.

Plaintiffs preserved error on these matters in Plaintiff's Proposed Findings, App1. 102-116, and Plaintiff's Motion to Enlarge, App1. 209-14.

B. Hope Converted Funds Owed to Larew in Promising Them to Others and Keeping Them all Upon Receipt of Payment

"The intentional tort of conversion is the civil counterpart to theft." *State v. Roache*, 920 N.W.2d 93, 103 (Iowa 2018). Larew seeks judgment of liability for conversion and an award of $208,211.69. The district court erred in failing to find facts, and in applying the law.

Defendants converted Larew's personal property in two phases: first, when a significant portion of the fees owed to Larew were paid to others under the Addendum; and, second, when Hope placed all of the wrongfully-reduced fees into his law office's operating account when he knew that Larew claimed ownership in those proceeds. The district court denied Larew's claim for conversion based, in part, on the failure to demonstrate a "possessory interest in the fees paid to HLF by the Swanny plaintiffs." (App1. 178). The district court then assumed *arguendo* that HLF recognized Larew was entitled to a fee, but "it was not known prior to this ruling what the amount of said fee was." *Id.*

The substantial evidence, however, proved that Hope knew Larew was entitled to at least some fee. The district court applied erroneous rules of law, as one does not have to know an *exact* amount of fees-owed for conversion to have occurred. During summary judgment and trial, Hope asserted he only

owed Larew 40% of the fees HLF retained in *Swanny*, pursuant to the terminated Iowa OCA. (Hope T. vol. VII, p.146, ll.5-15). Therefore, at the very least, Hope recognized that Larew had at least a 40% interest (i.e., possessory interest) in the fees. Indeed, the Settlement Statement approved by the client in April of 2016 recognized that Larew had a possessory interest in the funds with HLF. (App2. 211-13)).

"Conversion is 'the wrongful control or dominion over another's property contrary to that person's possessory right to the property.'" *Blackford v. Prairie Meadows Racetrack & Casino, Inc.*, 778 N.W.2d 184, 188 (Iowa 2010). The elements to prove conversion are:

> 1) ownership by the plaintiff or other possessory right in the plaintiff greater than that of the defendant;
> 2) exercise of dominion or control over chattels by defendant inconsistent with, and in derogation of, plaintiff's possessory rights thereto; and
> 3) damage to plaintiff.

In re Estate of Bearbower, 426 N.W.2d 392, 394 n.1 (Iowa 1988). Larew's ownership and possessory right to the fees arise from the implied-in-fact contract he had with Hope to undertake *Swanny*, and be paid QM. A "possessory interest" in the fees, under conversion analysis, does not require the other party to agree on the exact amount owed (or that it is owed at all). The requirement is that the "ownership by the plaintiff or other possessory right in the plaintiff greater than that of the defendant[.]" *Id.* at 394 n.1. In the

case cited by the district court, it required only that a legally binding contract be demonstrated to show a possessory interest. *Blackford*, 778 N.W.2d at 188-89. The district court held that there was an implied-in-fact contract between Larew and HLF; this binding contract established Larew's possessory right to *Swanny* proceeds. The district court's failure to so-find is error.

For the second element, Hope has exercised dominion and control over the fees earned in *Swanny* in direct derogation of Larew's rights. No amount of fees owed to Larew has been paid. A substantial amount of the legal fees earned by Larew were given away under the Addendum to S&B (an initial $40,000 plus $166,062.17). (App2. 198, 211-13). The remainder of fees owed were placed in HLF's operating account in 2016. (Hope T., vol. VIII, p.22, l.21-p.23, l.7). Hope testified that approximately 40% of the fees remained in that account. *See* n. 8. This assertion, if true at trial, was false when garnishment was issued, as the account showed a *de mimimis* balance. *See* n. 8.

Wrongfulness of the conduct is an additional implied requirement. The "wrongful" part of the test of conversion requires a showing that the control was somehow unlawful. *Williamson v. Williamson*, 829 N.W.2d 591 (Iowa Ct. App. 2013). The following factors are considered in whether the seriousness of the interference gives rise to a conversion claim:

> (a) the extent and duration of the actor's exercise of dominion or control;

(b) the actor's intent to assert a right in fact inconsistent with the other's right of control;
(c) the actor's good faith;
(d) the extent and duration of the resulting interference with the other's right of control;
(e) the harm done to the chattel;
(f) the inconvenience and expense caused to the other.

Id. (citing, *inter alia*, Restatement (Second) of Torts § 224A)). "[M]oney can be the subject of conversion if the specific money in question can be identified." *Sheeder v. Jamison*, 888 N.W.2d 680 (Iowa Ct. App. 2016).

These factors all weigh in Larew's favor. With respect to Defendants' exercise of dominion or control, Hope secretly went to Minnesota more than seven years ago to take fees earned by Larew and give them to new counsel. In addition, Hope received funds in 2016 he had not earned, more than five years ago. Hope knew that Larew made a claim for these funds and, despite years of demands, then litigation and a judgment, has still not paid any fees to Larew.

Regarding the "actor's good faith," the facts demonstrated that this was an intentional, malicious act by Hope, as directly observed and described by attorney Hill. Hope's tangled web—comprised of wildly-inconsistent explanations as to his failure to pay Larew professional fees in any amount (*see* n. 13)—results from when "first [he] practice[d] to deceive." Its malicious intent is further illustrated by Hope's comparable conduct in other cases that had been agreed Larew would continue to work on, such as College Springs and Adams. *See* Statement of Facts.

The extent and duration of the resulting interference with Larew's control is coming on eight years. Correspondingly, the harm to the property is all-encompassing. The funds no longer exist. Hope should have placed not less than 95% of the amount of the *Swanny* proceeds into a Trust Account, as requested. (App2. 184-96). Hope had a duty, once on notice of Larew's claim--similar to a bank being held liable for conversion when it allows one payee to endorse a check when there are two payees. *See Am. State Bank v. Union Planters Bank*, N.A., 332 F.3d 533, 534 (8th Cir. 2003) (applying Arkansas law). The fact that Larew's name had been listed on the April 15, 2016 settlement statement approved by Mrs. Anderson (App2. 211-13), imposed a duty on Hope to impress a trust on amounts claimed by Larew. Instead, the chattel has been demolished.

Finally, with respect to the expense and inconvenience caused, it is difficult to begin to measure. It has taken multiple lawsuits, including incurring additional attorneys' fees, to try to even collect the expenses that Larew paid. But more significantly, it has taken years of time where Larew could have been representing clients who have been unjustly treated, but instead, has been embroiled in this battle to obtain his own justice.

The district court erred in its application of the law of conversion to the facts proven at trial. Clearly, Larew held a possessory interest in the fees earned by him in obtaining a jury verdict; Hope and HLF converted that

property when Hope agreed to pay S&B a retroactive contingency fee and then kept all remaining funds paid to his operating account.

Given that all elements were met in demonstrating conversion, damages should be awarded. Larew sought $208,211.69 in conversion damages. (App1. 791-93). Under the terms of the original contract with Mrs. Anderson, Hope and HLF should have obtained 75% of 40% of the fees earned ($1,708,707.98), or, at least $512,612.39. That is the amount HLF would have received if Larew had remained lead counsel on *Swanny*—assuming, *arguendo*, that Larew had not prevailed in the penalty phase of trial. Instead, HLF received only $388,421.02. (App2. 211-13). Larew argued at trial that the clearest case for conversion was the undisputed amount Hope recognized as being owed, or $134,000, in addition to the amount HLF should have received under the original Swanny Contract (App1. 348-50) compared to what it actually received (App1. 419-20; 791-93). The latter came out to $74,211.69, which represents 95% of 75% of 38% of $1,708,707.98, which is $462,632.68, reduced by $388,421.02. In allocating fees to S&B that had not been earned by HLF, $74,211.69 were converted, along with $134,000, for a total of $208,211.69.

The undisputed evidence is that an attorney who had never met the client, who had never attended a deposition, who had never participated actively in any drafting or legal work, who had not attended a single day of a seven-day trial, and who had abandoned the client entirely five months before

trial, met with that client for the first time in person two weeks after the jury had returned a $1,134,500 verdict. And in that meeting, the same attorney effectively removed trial counsel from the case, assigned a retroactive contingency fee to new attorneys, and then refused to pay trial counsel any amount at all.

Such serious facts, whether of client funds or firm funds, have been reviewed by the Iowa Supreme Court in the context of disciplinary actions. *Den Beste*, 933 N.W.2d at 256-57. The Iowa Supreme Court held that the "same lack of trust is implicated" whether it is client or fellow attorney funds. *Id.* Hope converted funds from former Of Counsel and then Co-Counsel, a fellow attorney. The undisputed (40% of what HLF received) funds belonging to Larew were placed in HLF's operating account, where they have been spent. This conversion of funds was serious, and intentional. The district court erred in not finding facts on these issues, and others (Iowa R. Civ. P. 1.904(1)), and in failing to properly apply the law of conversion to these facts.

A. Hope and Burk Engaged in a Conspiracy to Convert Larew's Fees

The district court summarily dismissed Larew's conspiracy claim given the finding that "Larew has failed to prove any of his tort claims against the defendants, this claim also fails." (App1. 178). Given the misapplication of the

definition of "possessory interest" by the district court, this too should be reversed.

"The principal element of conspiracy is an agreement or understanding between two or more persons to effect a wrong against another." *Bump v. Stewart, Wimer & Bump, P.C.*, 336 N.W.2d 731, 737-38 (Iowa 1983). A claim for conspiracy cannot exist on its own; there must be an underlying wrong or unlawful act. *Basic Chems, Inc. v. Benson*, 251 N.W.2d 220, 233 (Iowa 1977). If the conspiracy is based upon an act requiring intentionality (here, conversion so requires), the intent element is met if a "defendant knowingly and voluntarily participates in a common scheme to commit an unlawful act or a lawful act in an unlawful manner." *Wright v. Brooke Grp. Ltd.*, 652 N.W.2d 159, 173 (Iowa 2002).

Hope and Burk traveled to Minnesota on October 24, 2013, to meet with Wilson, whom neither had ever met in person before, regarding *Swanny*. (App1. 170, 404-14, 415-17, 560; Wilson deposition, p.42). While the participants of that meeting provide details that are hazy, at best, the result of the meeting was that Wilson agreed with Hope and Burk that they were going to seek out "appellate" Minnesota counsel. (Wilson deposition, p.54; Hope T. vol. VIII, p.71, l.8-p.72, l.5; *cf.* App1. 405). It is further undisputed that HLF issued a check to S&B on October 30, 2013. (App1. 418). The next day, Burk and Hope met with Wilson, Sauro, and Bergstrom, to hash out terms of S&B's

involvement. (Sauro, T. vol. III, p.33, l.12-p.34, l.13). After the attorneys had agreed to their respective fees and drafted the Addendum, Mrs. Anderson and her son were called and asked to report within an hour to meet with the attorneys. (Wilson deposition, p.58). Hope and Burk chose not to inform Larew of either of these meetings. (Burk T. vol. VII, p.118, ll.10-25).

Conspiracies are often demonstrated through circumstantial evidence. *Des Moines Bank & Tr. Co. v. George M. Bechtel & Co.*, 51 N.W.2d 174, 217 (Iowa 1952). In addition to the circumstantial evidence demonstrated from the undisputed facts, there was direct evidence as well. Attorney Hill, who worked as an associate with HLF from March, 2013 until October, 2014, vividly recalled October 2013 conversations he participated in with Hope and Burk regarding the *Swanny* verdict. (Hill T. vol. VII, p.60, l.24-p.67, l.19). Hill described the excitement of Hope and Burk in suddenly deciding to drive up to Minnesota. (Hill T. vol. VII, p.66, l.9-p.67, l.12). Hill was a direct witness to the conspiracy coming together to commit conversion. These are not the actions of a well-thought out, considered plan in the best interest of a client one had never met. This was an impulsive grab for a case, a conspiracy to take fees HLF had not earned.

Burk testified that the only thing he would have done differently, in looking back at his actions in *Swanny*, was not to get into Hope's car to travel to Minnesota. (Burk, T. Vol. VIII, p.125, ll.14-20). Therein lies the conspiracy, and

Burk would have avoided this lawsuit had he not decided to get in the car, twice. But he did. And whether Burk intended to benefit financially from his misconduct does not matter, as he long as he intentionally got into the car, knowing the purpose of those travels. *Des Moines Bank & Tr. Co.*, 51 N.W.2d at 217.

Damages for conspiracy can transition quickly into a review of punitive damages. *Condon Auto Sales & Serv. v. Siouxland Auto Auction, Inc.*, 2006 Iowa App. LEXIS 281, at *4-5 (Ct. App. Mar. 29, 2006). Larew agreed to seek these damages under punitives to avoid any duplicative recovery. The district court's determination regarding liability for conspiracy should be reversed.

V. THE DISTRICT COURT ERRED IN NOT HOLDING HOPE AND BURK INDIVIDUALLY LIABLE

A. Standard of Review and Preservation of Error

See standard in Section II.A. Plaintiff argued before, at and after trial that Hope and Burk should be individually liable for the damages in this case, particularly given the torts involved. (App1. 75, 112-15, 154).

B. Liability of Andrew Hope

The district court determined that there was "no substantial evidence in the record supporting liability on the part of Andrew Hope, individually, HLFA, or Travis Burk individually[.]" (App1. 179). Plaintiff asserts that based on the misapplication of the law with respect to conversion, as well as the

implied contract, and this was erroneous. Corporate officers can be individually liable "for their own torts, even when acting in their official corporate capacity." *Jasper v. H. Nizam, Inc.*, 764 N.W.2d 751, 775 (Iowa 2009). The substantial evidence, described above, including that Hope filed two declaratory judgment actions against Larew, individually and for HLF, was that Hope was personally involved in every step of these contractual and tortious actions, and should therefore be held individually liable.

C. Liability of Travis Burk

Burk held himself out to the public as a "Member" of HLF, unlike other employees. (App1. 724-40). While Burk was apparently a W-2 employee, he also received a percentage of non-family law fees paid to HLF and, later, HLFA. (Burk T. vol. VII, p.94, l.6-p.95, l.21). Burk was keenly aware of *Swanny* and Larew's situation as lead counsel. (Burk T. vol. VII, p.97, ll.9-11). Burk had called Sauro the day before the October 31, 2013 meeting to become involved. (Sauro, T. vol. III, p.31, ll.9-12, p.83, ll.3-23). Sauro testified that she understood that Larew was Of Counsel to HLF at the time of the secret meeting. (Sauro, T. vol. III, p.123, ll.1-14). Burk, however, was well aware that this was not true, but did nothing to assure that this essential piece of information was provided. (Burk T. vol. VII, p.123, ll.6-20). Burk participated in October 31, 2013 negotiations of the new fee split with S&B, thereby reducing HLF's fee (and Larew's fee, as well).

Burk also negotiated the fee dispute between S&B, Wilson, and Hope, certainly knowing that any reduction in HLF's fee would reduce Larew's fee. (App2. 197-210). Burk admitted that Larew is owed money for *Swanny*, but still accepted the benefit of HLF's advertising, drawn on HLF's operating account, since the April 2016 deposit of *Swanny* funds. (Burk T. vol. X, p.88, ll.10-16). Conversion can be demonstrated by showing: (1) a tortious undertaking, or (2) any use or appropriation to the use of the person in possession indicating a claim of right in opposition to the rights of the real owner, or (3) by a refusal to surrender on demand." *Sheeder v. Jamison*, 888 N.W.2d 680 (Iowa Ct. App. 2016). Given the seriousness of these actions, as known and committed jointly with Hope, Burk should be individually liable for the acts of conversion and conspiracy.

VI. THE DISTRICT COURT ERRED IN NOT AWARDING PUNITIVE DAMAGES

A. Standard of Review and Error Preservation

Punitive damage determinations that do not involve due process are reviewed for "correction of errors at law." *Wolf v. Wolf*, 690 N.W.2d 887, 893 (Iowa 2005).

Plaintiff preserved error on this issue in Plaintiff's Proposed Findings, (App1. 135-49), and Motion to Enlarge, (App1. 213, n.18).

B. Actual and Legal Malice Support Punitive Damages

Without finding specific facts with respect to the same, the district court held that Plaintiff had not introduced "substantial evidence of the commission of any tort, let alone substantial evidence of any intentional tort, committed maliciously[.]" (App1. 179). Plaintiff avers that the misapplication of the law on conversion led to this error, and it must be reversed.

Punitive damages are intended to "punish bad behavior and deter future bad conduct." *Miranda v. Said*, 836 N.W.2d 8, 34-35 (Iowa 2013). A punitive damages claimant must demonstrate "by a preponderance of clear, convincing, and satisfactory evidence, the conduct of the defendant from which the claim arose constituted willful and wanton disregard for the rights or safety of another." *Id.* "Willful and wanton disregard" is demonstrated through "actual or legal malice." *Gibson v. ITT Hartford Ins. Co.*, 621 N.W.2d 388, 396 (Iowa 2001). "Actual malice is characterized by such factors as personal spite, hatred, or ill will[;] [l]egal malice is shown by wrongful conduct committed or continued with a willful or reckless disregard for another's rights." *Id.*

This case involves both actual and legal malice committed by Defendants. First, actual malice is present in Hope's actions in removing Larew from *Swanny* after agreeing that Larew would remain lead counsel. In addition, Hope's manner and method of affecting such removal and, thereafter, preventing Larew from receiving any fees for more than five years, or expense

reimbursements, demonstrate actual malice. These actions were specifically directed against Larew. *Jones v. Lake Park Care Ctr.*, 569 N.W.2d 369, 378 (Iowa 1997). And Hope then developed a pattern and practice of similar behavior. His conduct with respect to clients in College Springs, Adams, and *Freeman*, earlier summarized, describe Hope's intentional misconduct.

The foundation of the punitive damages award is to deter this conduct, and "protection [of] society and the public in general." *Claude v. Weaver Const. Co.*, 158 N.W.2d 139, 143 (Iowa 1968). When greed and animosity are the underlying cause, it is necessary to punish the pocketbook. The fact that Hope and Burk, as well as HLF, had fiduciary duties to their client when committing these intentional torts against Mrs. Anderson's former attorney further supports punitive damages. *Williams v. Barnhill*, No. 09-1387, 2010 Iowa App. LEXIS 1178, at *21-24 (Ct. App. Oct. 6, 2010). Lawyers are privileged to operate in a self-regulating profession. Hope and Burk's conduct comprised a concentrated effort to financially gain for themselves and harm another attorney without any concern for the consequences of that conduct, including those to befall the client.

Larew sought an award of punitive damages equal to three times the amount of compensatory damages for the intentional torts, now $208,211.69,[16]

[16] This does not include the amount sought below for tort of intentional interference with prospective business advantage.

times three, or $624,635.07. This is in addition to the QM damages. An amount to compensate, and an amount to punish and deter. The district court erred in failing to find this behavior needed to be deterred, and failing to award damages. The decision should be reversed, and damages awarded.

CONCLUSION

Plaintiff respectfully requests that the district court's determination on liability for HLFA as a successor entity be reversed. In addition, Plaintiff requests that the district court's determination on the implied-in-fact contract be affirmed, but its failure to determine when the breach occurred and calculation of QM damages be reversed, with a finding of QM entitlement to the full amount of Plaintiff's lodestar. Plaintiff further requests that the district court be reversed as to the finding of conversion and conspiracy against Defendants Hope and Burk, as well as QM under implied-in-fact contract against Hope. Finally, Plaintiff seeks reversal as to the determination on punitive damages to deter this conduct.

Dated this 15th day of October, 2021.

REQUEST FOR ORAL ARGUMENT

Plaintiff respectfully requests oral argument.

CERTIFICATE OF COST

Plaintiff-Appellant/Cross-Appellee will not submit a Certificate of Cost given the electronic filing of the Briefs and Appendix.

Respectfully submitted,

/s/ *Dean Lerner*
Craig Kelinson
Dean Lerner
Kelinson & Lerner, PLC
P.O. Box 65372
West Des Moines, Iowa 50265
Phone: (515) 720-2839
Email: craig@kelinsonlaw.com
Email: dean@kelinsonlaw.com
ATTORNEYS FOR PLAINTIFF-APPELLANT/CROSS-APPELLEE

CERTIFICATE OF FILING/SERVICE

I hereby certify that on October 15, 2021, I electronically filed the foregoing Final Brief of Plaintiff-Appellant/Cross-Appellee with the Clerk of the Supreme Court by using the Iowa Electronic Document Management System which will send notice of electronic filing to the following. This constitutes service of the document on the following for purposes of the Iowa Court Rules.

Bruce H. Stoltze (AT0007521) bruce.stoltze@stoltzelaw.com
John Q. Stoltze (AT0013285) john.stoltze@stoltzelaw.com
Stoltze & Stoltze, PLC
300 Walnut Street, Suite 260 Des Moines, Iowa 50309
Attorneys for Appellees/Cross-Appellant

/s/ *Dean Lerner*
Dean Lerner

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

This brief complies with the type-face requirements and type-volume limitation of Iowa R. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because: this brief has been prepared in a proportionally spaced typeface using Garamond in size 14, and contains 13,946 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

/s/ *Dean Lerner*
Dean Lerner

Dated this 15th day of October, 2021.

Respectfully submitted,

KELINSON & LERNER, PLC

/s/ *Dean Lerner*

Craig Kelinson
Dean Lerner
Kelinson & Lerner, PLC
P.O. Box 65372
West Des Moines, Iowa 50265
Phone: (515) 720-2839
Email: craig@kelinsonlaw.com
Email: dean@kelinsonlaw.com
ATTORNEYS FOR PLAINTIFF-APPELLANT/CROSS-APPELLEE